A favour.rtf

From: Kim Marshall [Kim.Marshall@ieso.ca]
To: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]
Subject: A favour
Date: Saturday, October 14, 2017 07:01:39

If either of you has access to the public accounts presentation pieces re ieso can you pls send to me, would like to use it as a model for technical briefing and am having vpn issues at home thx

Sent from my iPad

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Accepted_ Cindy & Kim Call.rtf

From: Kim Marshall [Kim.Marshall@ieso.ca]
To: Jack, Shannon (TBS) [Shannon.Jack@ontario.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Bernard, Dena (TBS) [Dena.Bernard@ontario.ca]
Subject: Accepted: Cindy & Kim Call
Date: Wednesday, August 30, 2017 13:06:59

Accepted_ Cindy_Kim Chat.rtf

From: Kim Marshall [Kim.Marshall@ieso.ca]
To: Jack, Shannon (TBS) [Shannon.Jack@ontario.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Bernard, Dena (TBS) [Dena.Bernard@ontario.ca]
Subject: Accepted: Cindy/Kim Chat
Date: Thursday, November 16, 2017 12:33:01

Accepted_ EY_OPCD Status Update Meeting.rtf

From: Lee Anne Probert [leeanne.probert@ca.ey.com]
To: Jack, Shannon (TBS) [Shannon.Jack@ontario.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Bernard, Dena (TBS) [Dena.Bernard@ontario.ca]
Subject: Accepted: EY/OPCD Status Update Meeting
Date: Wednesday, August 23, 2017 10:48:10

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Accepted_ Fair Hydro Plan.rtf

From: Kim Marshall [Kim.Marshall@ieso.ca]
To: Jack, Shannon (TBS) [Shannon.Jack@ontario.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Bernard, Dena (TBS) [Dena.Bernard@ontario.ca]
Subject: Accepted: Fair Hydro Plan
Date: Wednesday, October 11, 2017 16:20:47

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Accepted_ Financial Instruments & Rate Regulated Accounting.rtf

From: Kim Marshall [Kim.Marshall@ieso.ca]
To: Jack, Shannon (TBS) [Shannon.Jack@ontario.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Bernard, Dena (TBS) [Dena.Bernard@ontario.ca]
Subject: Accepted: Financial Instruments & Rate Regulated Accounting
Date: Thursday, November 02, 2017 17:01:44

Accepted_ IESO Market Accounts.rtf

From: Kim Marshall [Kim.Marshall@ieso.ca]
To: Jack, Shannon (TBS) [Shannon.Jack@ontario.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Bernard, Dena (TBS) [Dena.Bernard@ontario.ca]
Subject: Accepted: IESO Market Accounts
Date: Friday, August 25, 2017 11:21:50

Accepted_ Kim & Cindy.rtf

From: Kim Marshall [Kim.Marshall@ieso.ca]
To: Jack, Shannon (TBS) [Shannon.Jack@ontario.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Bernard, Dena (TBS) [Dena.Bernard@ontario.ca]
Subject: Accepted: Kim & Cindy
Date: Friday, August 25, 2017 10:13:31

Accepted_ Kim_Cindy Chat.rtf

From: Kim Marshall [Kim.Marshall@ieso.ca]
To: Barrette, France (TBS) [SOM.3France.Barrette@ontario.ca]; Jack, Shannon (TBS) [Shannon.Jack@ontario.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Bernard, Dena (TBS) [Dena.Bernard@ontario.ca]
Subject: Accepted: Kim/Cindy Chat
Date: Monday, April 23, 2018 15:46:01

Accepted_ various.rtf

From: Suzie Gignac [suzie.r.gignac@ca.ey.com]
To: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
Subject: Accepted: various
Date: Thursday, December 01, 2016 12:02:03

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Accepted_ EY_OPCD Status Updates.rtf

From: Suzie Gignac [suzie.r.gignac@ca.ey.com]
To: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
Subject: Accepted: EY/OPCD Status Updates
Date: Tuesday, December 19, 2017 16:01:12

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Accepted_ EY_OPCD Update.rtf

From: Suzie Gignac [suzie.r.gignac@ca.ey.com]
To: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
Subject: Accepted: EY/OPCD Update
Date: Monday, July 30, 2018 15:13:40

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Accepted_ FW_ touch base.rtf

From: Danyluk, Kerry (CA - Toronto) [kdanyluk@deloitte.ca]
To: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]; Lloyd, Patti (TBS) [Patti.Lloyd@ontario.ca]
Subject: Accepted: FW: touch base
Date: Sunday, September 18, 2016 14:57:29

Accepted_ Hydro One Control Assessment .rtf

From: Picard, Michel [mpicard@kpmg.ca]
To: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
Subject: Accepted: Hydro One Control Assessment
Date: Thursday, January 11, 2018 15:04:55

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Accepted_ Questions.rtf

From: Picard, Michel [mpicard@kpmg.ca]
To: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
Subject: Accepted: Questions
Date: Thursday, January 11, 2018 10:43:55

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Accepted_ Questions.rtf

From: Picard, Michel [mpicard@kpmg.ca]
To: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
Subject: Accepted: Questions
Date: Thursday, January 11, 2018 10:20:47

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Added items to the calendar invite.rtf

From: Petsche, Nadine (TBS) []
To: Picard, Michel (mpicard@kpmg.ca) [mpicard@kpmg.ca]
Subject: Added items to the calendar invite
Date: Saturday, March 18, 2017 05:28:13

Hi Michel.
I've just added two items to the calendar invite for the proposed meeting this afternoon at 1 pm:

i) Updated guidance on one-time transfers (we updated the reference to pre-flows to clarify PSAS)

ii) Trust Guidance document (most relevant to our discussion today). This document was reviewed by the OAG when the one-time transfer guidance was originally crafted in 2007/08.

Hope to hear back from you this am confirming a time for a call.

As an aside, I agree that the level of detail/specificity in the draft docs needs to be reviewed and reconsidered. The team acknowledges (lawyers esp) the need to 'hear back from the accountants' on identified risks that may compromise the intended accounting treatment. In this regard, I think that today's discussion would be extremely helpful to identify areas that need to be reconsidered w.r.t. level of specificity. The guidance on trusts (including Q&As) can be a helpful reference in that regard and I can help to reinforce the message.

Thanks.

Nadine

Addendum to the SOW.rtf

From: Virani, Shyrose (TBS) []
To: Kaufman, Paul (TBS) [Paul.Kaufman@ontario.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; Lo, Tom (TBS) [Tom.Lo@ontario.ca]
Subject: Addendum to the SOW
Date: Thursday, June 15, 2017 08:20:03

Nadine to moderate:

Nadine:

I have reviewed the proposed Addendum. My comments and suggested edits are attached. I have also discussed the proposed Addendum with Paul.

From a procurement perspective, I note that the SOW was awarded to KPMG pursuant to a competitive second stage (RFS) selection process. Therefore, under the User Guide for the VOR and under general procurement policy, there should be no material changes to the Deliverables or the terms and conditions of the Statement of Work after submissions are received. In our view, KPMG's proposed Addendum requires material amendments to the terms of the Statement of Work and potential limitations on the Deliverables described in the RFS. While the second stage selection process under the Management Consulting Services VOR is not intended to result in any legal liability for a failure to follow the RFS process, accepting KPMG's Addendum can still expose the Ministry to an increased risk of challenges by other bidders (e.g. complaint to senior management or the Ombudsman, or a bid dispute under Supply Chain's internal bid dispute process). These changes may also attract the attention of the Auditor General. OPCD should consider this when deciding whether to accept the terms of the Addendum.

Our comments on the specific "Conflict of Interest" issues/acknowledgements are set out in the Addendum.

I will be offline shortly until this evening. If you have any immediate questions, please email me and copy in Paul and one of us will try to get back to you.

Regards,

Tom

Tom Lo

Counsel

Ministry of the Attorney General | Legal Services Branch |Treasury Board Secretariat

9th Floor, 77 Wellesley Street West, Ferguson Block, Toronto, ON M7A 1N3

Phone: 416-314-5436 Fax: 416-325-9404

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From: Petsche, Nadine (TBS)
Sent: June-14-17 12:57 PM
To: Kaufman, Paul (TBS); Lo, Tom (TBS)
Cc: Hatzis, Len (TBS)
Subject: FW: Addendum to the SOW

Paul/Tom,

Please see the attached addendum to the SOW with KPMG for the recently competed RFS. I have read the doc and have no issues with it. Please advise if you have any concerns.

Thanks.

Nadine

From: Picard, Michel [mailto:mpicard@kpmg.ca]
Sent: June 9, 2017 4:44 PM
To: Petsche, Nadine (TBS)
Subject: Addendum to the SOW

Hi Nadine,

As requested, please find enclosed the addendum to the SOW.

Please let me know when you are available to discuss.

Have a great weekend.

Michel Picard, CPA, CA

Partner, Accounting Advisory Services

KPMG LLP

333 Bay Street, Suite 4600

Toronto, Ontario, M5H 2S5

T 416 777 8414

M 416 560 2569

mpicard@kpmg.ca

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Addendum to the SOW.rtf

From: Virani, Shyrose (TBS) []
To: Kaufman, Paul (TBS) [Paul.Kaufman@ontario.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; Lo, Tom (TBS) [Tom.Lo@ontario.ca]
Subject: Addendum to the SOW
Date: Thursday, June 15, 2017 08:19:06

Nadine to moderate:

Nadine:

I have reviewed the proposed Addendum. My comments and suggested edits are attached. I have also discussed the proposed Addendum with Paul.

From a procurement perspective, I note that the SOW was awarded to KPMG pursuant to a competitive second stage (RFS) selection process. Therefore, under the User Guide for the VOR and under general procurement policy, there should be no material changes to the Deliverables or the terms and conditions of the Statement of Work after submissions are received. In our view, KPMG's proposed Addendum requires material amendments to the terms of the Statement of Work and potential limitations on the Deliverables described in the RFS. While the second stage selection process under the Management Consulting Services VOR is not intended to result in any legal liability for a failure to follow the RFS process, accepting KPMG's Addendum can still expose the Ministry to an increased risk of challenges by other bidders (e.g. complaint to senior management or the Ombudsman, or a bid dispute under Supply Chain's internal bid dispute process). These changes may also attract the attention of the Auditor General. OPCD should consider this when deciding whether to accept the terms of the Addendum.

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Tom

Tom Lo

Counsel

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Partner, Accounting Advisory Services

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Toronto, Ontario, M5H 2S5

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ATTENTION Required - EY Access Letter.doc.rtf

From: Petsche, Nadine (TBS) []
To: Picard, Michel (mpicard@kpmg.ca) [mpicard@kpmg.ca]; Kim Marshall (Kim.Marshall@ieso.ca) [Kim.Marshall@ieso.ca]
Subject: ATTENTION Required - EY Access Letter.doc
Date: Wednesday, June 14, 2017 18:41:14
Attachment 1: EY Access Letter.doc

Michel/Kim,

Please see attached notes from E&Y that require attention in advance of the call tomorrow morning.

As background, the call tomorrow is not intended to delve into the IESO's accounting, but rather to be a more general discussion on rate regulated accounting (leveraging Michel's expertise in this area). The call was suggested by me in response to some of E&Y's questions (I think they would benefit from a better understanding of the different types of regulatory assets – those subject to prudence vs. others).

Thanks.

Nadine

From: Suzie Gignac [mailto:suzie.r.gignac@ca.ey.com]
Sent: June-14-17 5:44 PM
To: Petsche, Nadine (TBS)
Cc: Blake Langill; Lee Anne Probert
Subject: EY Access Letter.doc

Hi Nadine:

We've reviewed and have a few comments which are included in the attached. I'm a little concerned with our timeline to get this signed though given the call is tomorrow at 10.

Assuming we can get acceptable wording in the letter before then (and get an updated version signed and returned), Lee Anne is available and has questions prepared for discussion. I am unfortunately unavailable tomorrow and Blake is not sure if he will be able to join so the alternative would be to postpone to early next week.

Thanks,

Suzie

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[ON KPMG LETTERHEAD]

Commented [SG1]: To be put on KPMG letterhead

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Ernst & Young LLP (the "Recipient")
99 Bank Street, Suite 1200
Ottawa, ON
K1p 6B9

Attention: Suzanne Gignac

June 12, 2017

Re: Independent Electricity System Operator ("IESO")

In connection with the accounting advisory work performed by KPMG LLP ("KPMG") for IESO, IESO has requested that KPMG attend a meeting with IESO, the Province of Ontario's Treasury Board Secretariat ("TBS"), and the Recipient, in your capacity as external advisor to TBS, in order to answer your questions related to:

1 IESO's market related activities and their potential adoption of rate regulated accounting; and

2 the interpretation and application of Generally Accepted Accounting Principles regarding regulator independence

(collectively, the "Information").

The Information was derived solely in accordance with the specific terms of reference (the "**Engagement Letter**") agreed between ourselves and IESO for their exclusive use and for no other purpose.

The Information should not be regarded as suitable for use by any person or persons other than IESO or for any purpose other than set out in the Engagement Letter. We accept no responsibility or liability for any reliance that the Recipient may place on the Information.

You should note that we have not sought to update the Information for events subsequent to **[X]** and significant events may well have occurred since that date.

Commented [SG2]: Need date - not sure this sentence is relevant for our purposes anyway so could likely just remove.

In consideration of our providing to the Recipient the Information the parties hereto agree to the following:

a) No one at KPMG is authorized by KPMG to make any representations to the Recipient with respect to IESO. Nor may anyone at KPMG provide the Recipient with the Information on any basis which is inconsistent with or varies or adds to the terms of this letter;

b) KPMG neither warrants nor represents that the Information is accurate, complete, sufficient or appropriate for any purpose contemplated by the Recipient;

c) The Information is not provided pursuant to any agreement or other arrangement of a contractually binding nature between our firm and the Recipient;

d) The Recipient does not acquire any rights against our firm or otherwise as a result of our providing the Information;

e) Our firm and personnel do not have any duties, responsibilities, liabilities or obligations to the Recipient as a result of our providing the Information; and

f) The Recipient will not commence any action, suit or proceeding or make any demand, complaint or claim against us as a result of KPMG providing the Information or for any omission thereto.

Further, the Recipient agrees that the Information will be maintained by them in strict confidence and not disclosed to any other party, and will be used by them only in connection with purpose described above. The Recipient agrees to notify KPMG promptly of any request received by the Recipient from any court or applicable regulatory authority with respect to the Information.

Commented [SG3]: We are concerned that this could be difficult to adhere to. Disclosure to other parties would need, at a minimum, to include OPCD (or perhaps the government reporting entity?) as the info may be incorporated into OPCD documents and may be discussed on calls with other parties.

Thoughts?

This letter sets out the entire understanding of the parties in relation to the conditions upon which access to the Information is provided and replaces all prior understandings, if any, made by KPMG.

Please indicate your acceptance to the terms of this letter by signing and returning one copy of this letter to the undersigned.

Yours very truly,

KPMG LLP

Michel Picard
Partner

****

The Recipient hereby acknowledges that it understands and agrees to the conditions upon which the Information is provided.

by: _____ _____
signature Date:

Name:

Title: _____

ATTENTION Required - EY Access Letter.doc.pdf

From: Petsche, Nadine (TBS)
To: Picard, Michel (mpicard@kpmg.ca); Kim Marshall (Kim.Marshall@ieso.ca)
Subject: ATTENTION Required - EY Access Letter.doc
Date: June 14, 2017 6:41:00 PM
Attachments: EY Access Letter.doc
Importance: High

Michel/Kim,

Please see attached notes from E&Y that require attention in advance of the call tomorrow morning.

As background, the call tomorrow is not intended to delve into the IESO's accounting, but rather to be a more general discussion on rate regulated accounting (leveraging Michel's expertise in this area). The call was suggested by me in response to some of E&Y's questions (I think they would benefit from a better understanding of the different types of regulatory assets – those subject to prudence vs. others).

Thanks.

Nadine

From: Suzie Gignac [mailto:suzie.r.gignac@ca.ey.com]
Sent: June-14-17 5:44 PM
To: Petsche, Nadine (TBS)
Cc: Blake Langill; Lee Anne Probert
Subject: EY Access Letter.doc

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Suzie

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EY Access Letter.pdf

[ON KPMG LETTERHEAD]

Commented [SG1]: To be put on KPMG letterhead

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99 Bank Street, Suite 1200
Ottawa, ON
K1p 6B9

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2 the interpretation and application of Generally Accepted Accounting Principles regarding regulator independence

(collectively, the "Information").

The Information was derived solely in accordance with the specific terms of reference (the "**Engagement Letter**") agreed between ourselves and IESO for their exclusive use and for no other purpose.

The Information should not be regarded as suitable for use by any person or persons other than IESO or for any purpose other than set out in the Engagement Letter. We accept no responsibility or liability for any reliance that the Recipient may place on the Information.

You should note that we have not sought to update the Information for events subsequent to **[X]** and significant events may well have occurred since that date.

Commented [SG2]: Need date - not sure this sentence is relevant for our purposes anyway so could likely just remove.

In consideration of our providing to the Recipient the Information the parties hereto agree to the following:

a) No one at KPMG is authorized by KPMG to make any representations to the Recipient with respect to IESO. Nor may anyone at KPMG provide the Recipient with the Information on any basis which is inconsistent with or varies or adds to the terms of this letter;

b) KPMG neither warrants nor represents that the Information is accurate, complete, sufficient or appropriate for any purpose contemplated by the Recipient;

c) The Information is not provided pursuant to any agreement or other arrangement of a contractually binding nature between our firm and the Recipient;

d) The Recipient does not acquire any rights against our firm or otherwise as a result of our providing the Information;

e) Our firm and personnel do not have any duties, responsibilities, liabilities or obligations to the Recipient as a result of our providing the Information; and

f) The Recipient will not commence any action, suit or proceeding or make any demand, complaint or claim against us as a result of KPMG providing the Information or for any omission thereto.

Further, the Recipient agrees that the Information will be maintained by them in strict confidence and not disclosed to any other party, and will be used by them only in connection with purpose described above. The Recipient agrees to notify KPMG promptly of any request received by the Recipient from any court or applicable regulatory authority with respect to the Information.

Commented [SG3]: We are concerned that this could be difficult to adhere to. Disclosure to other parties would need, at a minimum, to include OPCD (or perhaps the government reporting entity?) as the info may be incorporated into OPCD documents and may be discussed on calls with other parties.

Thoughts?

This letter sets out the entire understanding of the parties in relation to the conditions upon which access to the Information is provided and replaces all prior understandings, if any, made by KPMG.

Please indicate your acceptance to the terms of this letter by signing and returning one copy of this letter to the undersigned.

Yours very truly,

KPMG LLP

Michel Picard
Partner

****

The Recipient hereby acknowledges that it understands and agrees to the conditions upon which the Information is provided.

by: _____ _____
signature Date:

Name:

Title: _____

Affordability Fund Trust (Further Revisions to the DoT and TPA).rtf

From: Syed, Usman (ENERGY) []
To: Morag Abraham [Morag.Abraham@computershare.com]
CC: Sermat-Harding, Kaili (ENERGY) [Kaili.Sermat-Harding@ontario.ca]; Schwab-Pflug, Emma (ENERGY) [Emma.Schwab-Pflug@ontario.ca]; Qureshi, Musab (ENERGY) [Musab.Qureshi@ontario.ca]; Johnson, Paul (ENERGY/MEDEI/MRI) [Paul.Johnson3@ontario.ca]; Schachtschneider, Michelle (ENERGY) [Michelle.Schachtschneider@ontario.ca]; ASHBOURNE, STEPHEN [STEPHEN.ASHBOURNE@blakes.com]; PRESTAGE, JA [JA.PRESTAGE@blakes.com]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; Alexandra.Phillips@HydroOne.com [Alexandra.Phillips@HydroOne.com]; Daniel.Levitan@HydroOne.com [Daniel.Levitan@HydroOne.com]; GILL Spencer [Spencer.Gill@HydroOne.com]; An, Tai (ENERGY) [Tai.An@ontario.ca]; Gounden, Pratima (ENERGY) [Pratima.Gounden@ontario.ca]
Subject: Affordability Fund Trust (Further Revisions to the DoT and TPA)
Date: Thursday, March 23, 2017 17:53:30
Attachment 1: 2017-03-23-v15- (TRACK) Transfer_Payment_Agreement_(Affordability_Fund_Tr....pdf
Attachment 2: 2017-03-23-v15-Transfer_Payment_Agreement_(Affordability_Fund_Tr....pdf
Attachment 3: 2017-03-23-v21-(TRACK) Affordability_Fund_Trust_–_Declaration_of_Trust_-....pdf
Attachment 4: 2017-03-23-v21-Affordability_Fund_Trust_–_Declaration_of_Trust_-....pdf
Attachment 5: image001.gif

Hi Morag,

Please see attached for tracked and clean versions of the TPA and Declaration. The tracked versions are compared to the versions you saw yesterday.

Would it be possible to send us signed copies of the two documents by email by 6:30pm today?

Declaration- Next Steps

· Could you sign two copies of the clean version of the Declaration (one for us and one for you) and email us a scanned copy.

· We will pick up our copy of the original Declaration tomorrow morning.

TPA- Next Steps

· Could you sign three copies of the clean version of the TPA (two for us and one for you) and email us a scanned copy (entire version- including signature and non-signature pages)

· Our Deputy Minister will then sign on three printed copies.

· Tomorrow we will pick up two copies of the TPA that you signed and give you one copy of the TPA our Deputy signed.

Thanks!

- Usman

Usman Syed

Director, Conservation and Energy Efficiency

Ontario Ministry of Energy

5th Floor, 77 Grenville Street
Toronto ON M7A 2C1

Direct Line: (416) 325-6651

Email: usman.syed@ontario.ca

From: Morag Abraham [mailto:Morag.Abraham@computershare.com]
Sent: March-23-17 10:52 AM
To: Schwab-Pflug, Emma (ENERGY); Lisa Kudo
Cc: Syed, Usman (ENERGY); Qureshi, Musab (ENERGY); Di Tullio, Yvonne (ENERGY); Alexandra.Phillips@HydroOne.com; Johnson, Paul (ENERGY/MEDEI/MRI); Schachtschneider, Michelle (ENERGY); Petsche, Nadine (TBS); Gounden, Pratima (ENERGY); An, Tai (ENERGY)
Subject: RE: Affordability Fund Trust (Further Revisions to the DoT and TPA)

Good morning Emma,

I've reviewed the revised agreements and I have some further comments. Please see attached pages.

Regards, Morag.

From: Morag Abraham
Sent: Wednesday, March 22, 2017 5:52 PM
To: 'Schwab-Pflug, Emma (ENERGY)'; Lisa Kudo
Cc: Syed, Usman (ENERGY); Qureshi, Musab (ENERGY); Di Tullio, Yvonne (ENERGY); Alexandra.Phillips@HydroOne.com; Johnson, Paul (ENERGY/MEDEI/MRI); Schachtschneider, Michelle (ENERGY); Petsche, Nadine (TBS); Gounden, Pratima (ENERGY); An, Tai (ENERGY)
Subject: RE: Affordability Fund Trust (Further Revisions to the DoT and TPA)

Hi Emma,

Thank you for the revised documents. I'll review the changes and get back to you tomorrow morning.

Regards, Morag.

From: Schwab-Pflug, Emma (ENERGY) [mailto:Emma.Schwab-Pflug@ontario.ca]
Sent: Wednesday, March 22, 2017 5:45 PM
To: Lisa Kudo
Cc: Syed, Usman (ENERGY); Qureshi, Musab (ENERGY); Di Tullio, Yvonne (ENERGY); Alexandra.Phillips@HydroOne.com; Morag Abraham; Johnson, Paul (ENERGY/MEDEI/MRI); Schachtschneider, Michelle (ENERGY); Petsche, Nadine

(TBS); Gounden, Pratima (ENERGY); An, Tai (ENERGY)
Subject: FW: Affordability Fund Trust (Further Revisions to the DoT and TPA)

Hello Lisa,

Please find attached updated versions of the TPA and Declaration. Changes are tracked against the previous versions we had sent you.

There are three main outstanding elements that we are working to address:

1. On page 2 and 10 of the TPA, we need to add Computershare's relevant contact info. Could you kindly add this to the TPA?

2. For now we have left a placeholder for the effective date. We will replace that with tomorrow's date once you review.

3. Both documents have some formatting issues (Blakes is working to address):

- inconsistent page numbering and footers for both the TPA and Declaration

- incorrect sub section numbering in Annex A of the TPA

- Schedule B reference to the hospitality directive needs to be updated

Could you kindly review the TPA and Declaration and give us your final OK. Appreciate if you can let us know by tomorrow morning (Mar 23).

We can then circulate clean versions for your signature.

Thank you,

Emma

From: ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
Sent: March-22-17 4:23 PM
To: PRESTAGE, JA; Johnson, Paul (ENERGY/MEDEI/MRI); Ranalli, David (ENERGY); Schachtschneider, Michelle (ENERGY); Qureshi, Musab (ENERGY); Schwab-Pflug, Emma (ENERGY); Syed, Usman (ENERGY); Petsche, Nadine (TBS)
Subject: RE: Affordability Fund Trust (Further Revisions to the DoT and TPA)

Hi. Here is a further revised set of the DoT and TPA, reflecting some final edits, catch-ups and clean-ups. Regards, Steve

Stephen R. Ashbourne

Partner

stephen.ashbourne@blakes.com

Dir: 416-863-3086

Blake, Cassels & Graydon LLP
199 Bay Street, Suite 4000, Toronto ON M5L 1A9
Tel: 416-863-2400 Fax: 416-863-2653
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L'information paraissant dans ce message électronique est CONFIDENTIELLE. Si ce message vous est parvenu par erreur, veuillez immédiatement m'en aviser par téléphone ou par courriel et en détruire toute copie. Merci.

From: PRESTAGE, JA
Sent: Wednesday, March 22, 2017 2:48 PM
To: Paul.Johnson3@ontario.ca; David.Ranalli@ontario.ca; Michelle.Schachtschneider@ontario.ca; Musab.Qureshi@ontario.ca; Emma.Schwab-Pflug@ontario.ca; Usman.Syed@ontario.ca; Petsche, Nadine (TBS)
Cc: ASHBOURNE, STEPHEN
Subject: Affordability Fund Trust

All:

Attached are revised versions of the Declaration of Trust and the TPA which seek to reflect all of the comments received.

There are a few highlighted sections which require specific decisions or attention.

J.A.

J.A. Prestage
Partner
ja.prestage@blakes.com
Dir: 416-863-2955

****
Please visit the following website to read the Computershare legal notice:
http://www.computershare.com/disclaimer/americas/en

Veuillez visiter le site Web suivant afin de prendre connaissance de l'avis juridique de Computershare: http://www.computershare.com/disclaimer/americas/fr

****

2017-03-23-v15- (TRACK) Transfer_Payment_Agreement_(Affordability_Fund_Tr....pdf

ONTARIO TRANSFER PAYMENT AGREEMENT

THE AGREEMENT, effective as of the •23rd day of March, 2017 (the **"Effective Date"**)

B E T W E E N :

Her Majesty the Queen in right of Ontario
as represented by the Minister of Energy

(the "Province")

- and -

Computershare Trust Company of Canada, in its capacity as trustee of Affordability Fund Trust

(together with its successors and assigns, the "Recipient" and, together with the Province, the "Parties")

BACKGROUND

Computershare Trust Company of Canada is the original trustee of the Affordability Fund Trust.

The Province wishes to provide Funds to the Recipient to be held, invested, applied and distributed in accordance with the terms of the Declaration of Trust (defined below), in furtherance of the Purpose (as defined in the Declaration of Trust), including having regard to the Principles set forth in Annex A.

CONSIDERATION

In consideration of the mutual covenants and agreements contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is expressly acknowledged, the Parties agree as follows:

ENTIRE AGREEMENT

This agreement (as amended, restated, supplemented or otherwise modified from time to time, the **"Agreement"**), including:

Schedule "A" - General Terms and Conditions
Schedule "B" - Project Specific Information
Schedule "C" - Project - Certain Obligations of the Recipient
Schedule "D" - Budget
Schedule "E" - Payment Plan
Schedule "F" - Reporting
Annex "A" - Principles, and
any amending agreement entered into as provided for below,

constitutes the entire agreement between the Parties with respect to the subject matter contained in this Agreement and supersedes all prior oral or written representations and agreements.

COUNTERPARTS

The Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

AMENDING THE AGREEMENT

The Agreement may only be amended by a written agreement duly executed by the Parties.

ACKNOWLEDGEMENT

The Recipient:

(a) acknowledges that it has read and understands the provisions contained in the entire Agreement; and

(b) agrees to be bound by the terms and conditions contained in the entire Agreement.

IN WITNESS WHEREOF, the Parties have executed the Agreement on the dates set out below.

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO as represented by Minister of Energy

by:

_____
Date

_____
Name: Serge Imbrogno

Title: Deputy Minister

Authorized Signing Officer

COMPUTERSHARE TRUST COMPANY OF CANADA, in its capacity as trustee of AFFORDABILITY FUND TRUST

by:

_____
Date

_____
Name: Morag Abraham

Title: Corporate Trust Officer

by:

_____
Date

_____
Name: Ann Samuel

Title: Associate Trust Officer

I/We have authority to bind the Recipient.

SCHEDULE "A"
GENERAL TERMS AND CONDITIONS

1.0 INTERPRETATION AND DEFINITIONS

1.1 Interpretation. For the purposes of interpretation:

(a) words in the singular include the plural and vice-versa;

(b) words in one gender include all genders;

(c) the headings do not form part of the Agreement; they are for reference only and will not affect the interpretation of the Agreement;

(d) any reference to dollars or currency will be in Canadian dollars and currency;

(e) "include", "includes" and "including" denote that the subsequent list is not exhaustive;

(f) where any reference is made in the Agreement to an act to be performed by or for or on behalf of the Affordability Fund Trust, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Recipient in its capacity as trustee of the Affordability Fund Trust, and, where any reference is made in the Agreement to an act to be performed by or for or on behalf of the Recipient, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Recipient in its capacity as trustee of the Affordability Fund Trust; and

(g) it is intended that the transfer of the Funds to the Recipient will be a transfer made to a ~~"non-controlled~~ trust~~" (as~~ that ~~term~~ is ~~given meaning in • applicable to the accounting rules and principles applicable to~~not controlled by the Province ~~as of the date of the Agreement~~(as the term "control" is used in *Government Reporting Entity* at paragraphs PS 1300.07-.24), and so if a term or condition of the Agreement is determined to conflict with the requirements applicable to the Province recording the transfers to the Recipient of Funds contemplated hereunder as an expense incurred by the Province on the date of the transfer of Funds under the Agreement otherwise in connection with activities undertaken by the Province with such a "~~"~~non-controlled trust~~",~~ then such term or condition shall be given a meaning and shall have an effect insofar as it is possible to interpret such term or condition in a manner that eliminates such conflict while preserving the other provisions of the Agreement and furthering the Purpose.

1.2 Definitions. In the Agreement, the following terms will have the following meanings:

"Administrative Services Agent" has the meaning given such term in the Declaration of Trust.

"Affordability Fund Trust" means the trust established and governed by the Declaration of Trust, and for greater certainty includes such trust operating under any other name that may be designated from time to time by the Recipient in accordance with the Declaration of Trust.

"BPSAA" means the Broader Public Sector Accountability Act, 2010 (Ontario).

"**Beneficiary**" has the meaning given to such term in the Declaration of Trust.

"Budget" means the Recipient's budget attached to the Agreement as Schedule "D".

"Business Day" means any working day, Monday to Friday inclusive, excluding statutory and other holidays, namely: New Year's Day; Family Day; Good Friday; Easter Monday; Victoria Day; Canada Day; Civic Holiday; Labour Day; Thanksgiving Day; Remembrance Day; Christmas Day; Boxing Day and any other day on which the Province has elected to be closed for business.

"**Declaration of Trust**" means the declaration of trust made as of March ~~[•],~~23, 2017, under which the Affordability Fund Trust was established, as such declaration of trust may be amended, restated, supplemented or otherwise modified from time to time with the consent of the Province in accordance with Section 20.2.

"Expiration Date" means the date on which this Agreement will expire and is the date set out in Schedule "B".

"Funds" means the money the Province provides to the Recipient pursuant to the Agreement.

"Implementation Agents" has the meaning given such term in the Declaration of Trust.

"Maximum Funds" means the maximum amount of Funds that the Province will provide the Recipient under the Agreement, as set out in Schedule "B".

"Notice" means any communication given or required to be given pursuant to the Agreement.

"Party" means either the Province or the Recipient.

"**Person**" includes any individual, sole proprietorship, corporation, partnership, joint venture, association, society, club, board, chamber, joint-stock company, trust, trustee, unincorporated or incorporated organization or entity or government or any entity, agency or political subdivision thereof.

"**Program**" has the meaning given to such term in the Declaration of Trust.

"Project" means the undertaking described in Schedule "C".

"**Purpose**" has the meaning given to such term in the Declaration of Trust.

"PSSDA" means the *Public Sector Salary Disclosure Act, 1996* (Ontario).

"**Recipient**" means, initially, Computershare Trust Company of Canada, and any additional or replacement trustee in its capacity as trustee of the Affordability Fund Trust pursuant to the Declaration of Trust, including the Board of Trustees (as defined in the Declaration of Trust) and each of their respective successors and permitted assigns.

"Reports" means the reports described in Schedule "F".

2.0 REPRESENTATIONS, WARRANTIES AND COVENANTS

2.1 General. The Recipient represents, warrants and covenants that:

(a) it is the trustee of the Affordability Fund Trust; and

(b) the Affordability Fund Trust is, and will continue to be for the term of the Agreement, a trust existing under and governed by the laws of the Province of Ontario.

2.2 Execution of Agreement. The Recipient represents and warrants that it has:

(a) the full power and authority to enter into the Agreement; and

(b) taken all necessary actions to authorize the execution of the Agreement.

2.3 Governance. The Recipient covenants that it will develop and maintain in writing until the Agreement is no longer in effect:

(a) decision-making mechanisms and procedures to enable the Recipient to hold, invest, manage, apply and distribute the Funds in accordance with the Declaration of Trust in furtherance of the Purpose; and

(b) procedures to enable the preparation and delivery of all Reports required pursuant to Article 7.0.

2.4 Supporting Documentation. Upon request, the Recipient will provide the Province with proof of the matters referred to in this Article 2.0.

3.0 TERM OF THE AGREEMENT

3.1 Term. The term of the Agreement will commence on the Effective Date and will expire on the Expiration Date.

3.2 Extension. The term of the Agreement may be extended by further agreement between the Parties.

3.3 Extension of the Declaration of Trust. If the Province determines that an extension of the Final Distribution Date (as defined in the Declaration of Trust) and time for termination of the Declaration of Trust is consistent with and in furtherance of the Purpose and the Province's original intentions and expectations in establishing the Project, the Province may request that the Recipient extend such date to a date specified by the Province in a Notice (such date not to be later than December 31, 2021~~,~~), whereupon the Recipient, so long as the Recipient does not have a reasonable basis to believe that such an extension would be inconsistent with the Purpose or weaken the protections intended for the benefit of the ~~trustee~~Recipient pursuant to the Declaration of Trust, will undertake such actions as it may consider to be necessary or appropriate to so extend the Declaration of Trust, including by amending the Declaration of Trust to provide for such an extension and to modify any other term or requirement as would be necessary or prudent to conform such term or requirement in light of such extension.

4.0 FUNDS AND CARRYING OUT THE PROJECT

4.1 Funds Provided. The Province will:

(a) provide the Recipient up to the Maximum Funds to be held, invested, applied and distributed in accordance with the terms of the Project and the Declaration of Trust;

(b) provide the Funds to the Recipient in accordance with the Payment Plan attached to the Agreement as Schedule "E"; and

(c) deposit the Funds into an account designated by the Recipient, provided that the account:

(i) resides at a Canadian financial institution; and

(ii) is in the name of the Recipient.

4.2 Timing of Distributions to Beneficiaries. The expectations of the Province regarding when Funds will begin to be distributed by the Recipient to Beneficiaries are set out in Schedule C. The Recipient will have regard to those expectations in the exercise of its discretion under the Declaration of Trust, in determining when Funds will be distributed to Beneficiaries in furtherance of the Purpose.

4.3 Use of Funds and Project. The Recipient will exercise its rights, duties and discretions under the Declaration of Trust so that the Funds are used, applied and distributed only for and in furtherance of the Purpose, including having regard to the Principles set forth in Annex A.

4.4 Province's Role Limited to Providing Funds. For greater clarity, the Province's role under the Agreement is limited to providing Funds to the Recipient and the Province is not responsible for carrying out or overseeing the terms of the Declaration of Trust.

4.5 Maximum Funds. The Recipient acknowledges that the Funds available to it pursuant to the Agreement will not exceed the Maximum Funds.

4.6 **Funding, Not Procurement.** For greater clarity, the Recipient acknowledges that:

(a) it is receiving funding from the Province for the Project and is not providing goods or services to the Province; and

(b) the funding the Province is providing under the Agreement is funding for the purposes of the PSSDA.

5.0 RECIPIENT'S ACQUISITION OF GOODS OR SERVICES, AND DISPOSAL OF ASSETS

5.1 **Acquisition.** If the Recipient acquires goods, services, or both with or by applying the proceeds of the Funds, it is expected to do so through a process that promotes the best value for money and to take reasonable steps to ensure that its Administrative Services Agents and Implementation Agents also follow a process that promotes the best value for money when acquiring goods and services with or by applying the proceeds of the Funds. ~~In this regard, it is expected that the Recipient will have regard the following procurement principles:~~

~~(a) ***Accountability*** - Procurement is conducted in a manner that is well-informed and reflects rules of good governance and decision-making.~~

~~(b) ***Geographic Neutrality and Reciprocal Non-Discrimination*** - Procurement should not differentiate between competing goods, services, or suppliers based on their geographic origin or location.~~

~~(c) ***Responsible Management*** - Procurement of goods and services should be responsibly, efficiently and effectively managed and should observe the highest standard of ethics, avoiding conflict of interest.~~

~~(d) ***Value for Money*** - Procurement processes should apply a value for money evaluation that takes into account price as well as other costs and benefits, including life cycle costs and relevant non-price attributes such as quality.~~

~~(e) ***Vendor Access, Transparency, and Fairness*** - Procurement is conducted in a fair and transparent manner, offering all qualified suppliers equal treatment and open access to compete for the opportunity to supply goods and services.~~

6.0 CONFLICT OF INTEREST

6.1 **No Conflict of Interest.** Except as expressly permitted by the Declaration of Trust, the Recipient is expected to implement appropriate processes and control to ensure that the Program and the use, application and distribution of the Funds are without an actual, potential or perceived conflict of interest.

6.2 **Conflict of Interest Includes.** For the purposes of this Article, a conflict of interest includes any circumstances where, except as expressly permitted by the Declaration of Trust:

(a) the Recipient; or

(b) any person who has the capacity to influence the Recipient's decisions,

has outside commitments, relationships or financial interests that could, or could be seen to, interfere with the Recipient's objective, unbiased and impartial judgment relating to the Project, or the Recipient's use, application or distribution of the Funds, or both.

7.0 REPORTING, ACCOUNTING AND REVIEW

7.1 Preparation and Submission. The Recipient will cooperate with the Province to accommodate the Province's on-going information and reporting objectives in order to enable the Province to be aware of the Recipient's activities in furtherance of the Purpose, and to that end the Recipient will be expected, from and following the Original Trustee Replacement Date, to:

(a) submit to the Province at the address referred to in Schedule "B", all Reports in accordance with the timelines and content requirements set out in Schedule "F", or in a form as specified by the Province from time to time, acting reasonably;

(b) submit to the Province at the address referred to in Schedule "B", any other reports as may be reasonably requested by the Province from time to time in accordance with the timelines and content expectations identified by the Province, acting reasonably;

(c) undertake diligent efforts so that such Reports and any such other reports are complete and accurate in all material respects; and

(d) have an authorized signatory of the Recipient sign-off on such Reports and other reports.

7.2 Record Maintenance. The Recipient will keep and maintain financial and other records necessary to permit it to satisfy its obligations under section 7.1 and to permit the Province to exercise its rights under section 7.3.

7.3 Inspection. The Province, its authorized representatives or an independent auditor identified by the Province may, at its own expense, upon twenty-four hours' Notice to the Recipient and during normal business hours, inspect the records of and information respecting the Recipient to confirm its compliance with the terms of this Agreement, including to ensure consistency with the Purpose and, for these purposes, the Province, its authorized representatives or an independent auditor identified by the Province may take one or more of the following actions:

(a) inspect and copy the records and documents referred to in section 7.2;

(b) keep any copies made pursuant to section 7.3(a); and

(c) conduct an audit or investigation of the Recipient in respect of the expenditure of the Funds to confirm that the Funds have been used, applied and distributed for and in furtherance of the Purpose, including a review of the Recipient's processes, records, documents, as well as the processes and controls applied to obtain assurance that Funds disbursed to Electricity Distributors were used, applied and distributed for and in furtherance of the Purpose.

7.4 Disclosure. To assist in respect of the rights set out in section 7.3, the Recipient will disclose any information requested by the Province, its authorized representatives or an independent auditor identified by the Province, and will do so in the form requested by the Province, its authorized representatives or an independent auditor identified by the Province, as the case may be.

7.5 No Control of Records. No provision of the Agreement will be construed so as to give the Province any control whatsoever over the Recipient's records.

7.6 Auditor General. For greater certainty, the Province's rights under this Article are in addition to and do not limit any rights provided to the Auditor General pursuant to section 9.1 of the *Auditor General Act* (Ontario).

8.0 COMMUNICATIONS REQUIREMENTS

8.1 Publication. The Recipient will acknowledge, in any of its Program-related external communications and marketing whether written, oral, or visual, the financial support of the Province in connection with the establishment and funding of the program, while noting that the

views expressed in the publication are the views of the Recipient and do not necessarily reflect those of the Province.

9.0 FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY

9.1 FIPPA. The Recipient acknowledges that the Province is bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province in connection with the Project or otherwise in connection with the Agreement may be subject to disclosure in accordance with that Act.

10.0 Intentionally Deleted

11.0 EVENT OF DEFAULT, CORRECTIVE ACTION AND TERMINATION FOR DEFAULT

11.1 Events of Default. An Event of Default will occur if:

(a) the Recipient fails to perform or observe any covenant in this Agreement and such failure has and continues to have a material adverse effect on the Province and remains unremedied during any Notice ~~period~~Period applicable under section 11.2 after the earlier of (i) actual knowledge thereof by the Recipient, or (ii) receipt by the Recipient of Notice thereof from the Province;

(b) any representation or warranty made by the Recipient in the Agreement shall prove to have been incorrect in any material respect when made or deemed made, and, if capable of remedy, continues to be incorrect in any material respect during any Notice period applicable under section 11.2 after the earlier to occur of (i) the actual knowledge thereof by the Recipient or (ii) receipt by the Recipient of Notice thereof from the Province;

(c) it is determined that the Recipient has breached its Standard of Care (within the meaning given in and context of the Declaration of Trust) in discharging its material duties under the Declaration of Trust, with the result that all or a significant part of the Funds have not been or are not being applied in furtherance of the Purpose or are being applied in a manner that is directly contrary or without regard to the Purpose, and, if such breach is capable of remedy, it continues and remains unremedied during any Notice Period (as defined in section 11.3) applicable under section 11.2 after the earlier of (i) actual knowledge thereof by the Recipient, or (ii) receipt by the Recipient of Notice thereof from the Province;

(d) an insolvency event shall have occurred and be continuing with respect to the Recipient.

11.2 Consequences of Events of Default and Corrective Action. If an Event of Default occurs, the Province may, at any time, take one or more of the following actions:

(a) provide the Recipient with Notice allowing the Recipient an opportunity to remedy the Event of Default during a specified Notice Period;

(b) seek an order of specific performance, including an order that the Recipient pursue its available remedies against third parties;

(c) require, by Notice of demand, that the Recipient transfer to the Province (without any need for compensation, indemnity or consideration to the Recipient or any Beneficiary or other third party) any and all Assets remaining in the possession or under the control of the Recipient that can reasonably be traced or attributed to the Funds after first providing for the completion and performance by the Recipient of any unperformed contractual obligations of the Recipient undertaken in compliance with the Declaration of Trust on or prior to transfer; and

(d) terminate the Agreement, including immediately, without liability, penalty or costs to the Province upon giving Notice to the Recipient.

The transfer of Funds in accordance with the Agreement is made by the Province with the expressed intention and reservation that the transferred Funds shall be returned to the Province and the entitlements of the Recipient in remaining Funds shall thereby be revoked with reversion thereof to the Province in the circumstances contemplated in Section 11.2(c).

11.3 Opportunity to Remedy. If, in accordance with section 11.2, the Province provides the Recipient with an opportunity to remedy the Event of Default, the Province will provide Notice to the Recipient of:

(a) the particulars of the Event of Default; and

(b) the length of time within which the Recipient may cure such Event of Default without the Province pursuing any other remedy (the "Notice Period").

11.4 Recipient not Remedying. If the Province has provided the Recipient with an opportunity to remedy the Event of Default pursuant to section 11.2(a), and:

(a) the Recipient does not remedy the Event of Default within the Notice Period;

(b) it becomes apparent to the Province that the Recipient cannot adequately remedy the Event of Default within the Notice Period; or

(c) the Recipient is not proceeding to remedy the Event of Default in a way that is satisfactory to the Province,

the Province may extend any Notice Period, or initiate any one or more of the actions provided for in section 11.2.

12.0 REPAYMENT

12.1 Debt Due. If, pursuant to the Agreement: the Province demands the payment of any Funds from the Recipient pursuant to section 11.2(c) such Funds or other amount will be deemed to be a debt due and owing to the Province by the Recipient, and the Recipient will pay or return the amount to the Province immediately, unless the Province directs otherwise.

12.2 Payment of Money to Province. The Recipient will pay any money owing to the Province by cheque payable to the "Ontario Minister of Finance" and delivered to the Province at the address referred to in Schedule "B".

12.3 Failure to Repay. Without limiting the application of section 43 of the Financial Administration Act (Ontario), if the Recipient fails to repay any amount owing under the Agreement, Her Majesty the Queen in right of Ontario may deduct any unpaid amount from any money payable to the Recipient by Her Majesty the Queen in right of Ontario.

13.0 NOTICE

13.1 Notice in Writing and Addressed. Notice will be in writing and will be delivered by email, postage-prepaid mail, personal delivery or fax, and will be addressed to the Province and the Recipient respectively as set out in Schedule "B", or as either Party later designates to the other by Notice.

13.2 Notice Given. Notice will be deemed to have been given:

(a) in the case of postage-prepaid mail, five Business Days after the Notice is mailed; or

(b) in the case of email, personal delivery or fax, one Business Day after the Notice is delivered.

13.3 Postal Disruption. Despite section 13.2(a), in the event of a postal disruption:

(a) Notice by postage-prepaid mail will not be deemed to be received; and

(b) the Party giving Notice will provide Notice by email, personal delivery or by fax.

14.0 SEVERABILITY OF PROVISIONS

14.1 Invalidity or Unenforceability of Any Provision. The invalidity or unenforceability of any provision of the Agreement will not affect the validity or enforceability of any other provision of the Agreement. Any invalid or unenforceable provision will be deemed to be severed.

15.0 WAIVER

15.1 Waivers in Writing. If a Party fails to comply with any term of the Agreement, that Party may only rely on a waiver of the other Party if the other Party has provided a written waiver in accordance with the Notice provisions in Article 13.0. Any waiver must refer to a specific failure to comply and will not have the effect of waiving any subsequent failures to comply.

16.0 INDEPENDENT PARTIES

16.1 Parties Independent. The Recipient acknowledges that it is not an agent, joint venturer, partner or employee of the Province, and the Recipient will not represent itself in any way that might be taken by a reasonable person to suggest that it is, or take any actions that could establish or imply such a relationship.

17.0 ASSIGNMENT OF AGREEMENT OR FUNDS

17.1 Agreement Binding. All rights and obligations contained in the Agreement will extend to and be binding on the Parties' respective heirs, executors, administrators, successors and permitted assigns.

18.0 LIMITATION OF LIABILITY

18.1 This Agreement has been entered into by the Recipient solely in its capacity as trustee of the Affordability Fund Trust and is not binding on the Recipient in any other capacity, whether in tort, contract or otherwise. The Beneficiaries of the Affordability Fund Trust are not subject to any liability in respect of the Affordability Fund Trust. Resort may not be had to, nor recourse or satisfaction be sought from, the private property of the Recipient (whether owned by it in its personal capacity or in any other capacity other than in its capacity as trustee of the Affordability Fund Trust), its directors, officers, employees, or agents, or the private property of any Beneficiary, and resort will be had solely to the ~~property~~Assets (as defined in the Declaration of ~~the Recipient held in trust~~Trust) for the payment, performance or satisfaction of any liability or obligation of the Recipient under this Agreement. However, the foregoing limitations in this section shall not apply where the Recipient has demonstrated gross negligence, bad faith, fraud or wilful misconduct.

19.0 GOVERNING LAW

19.1 Governing Law. The Agreement and the rights, obligations and relations of the Parties will be governed by and construed in accordance with the laws of the Province of Ontario and the applicable federal laws of Canada. Any actions or proceedings arising in connection with the Agreement will be conducted in the courts of Ontario, which will have exclusive jurisdiction over such proceedings.

20.0 FURTHER ASSURANCES

20.1 Agreement into Effect. The Recipient will provide such further assurances as the Province may request from time to time with respect to any matter to which the Agreement pertains, and will otherwise do or cause to be done all acts or things necessary to implement and carry into effect the terms and conditions of the Agreement to their full extent.

20.2 **Declaration of Trust.** The Recipient covenants that it shall not amend, restate or terminate the Declaration of Trust without obtaining the written consent of the Province in respect of same, such consent not to be unreasonably withheld or delayed.

21.0 JOINT AND SEVERAL LIABILITY

21.1 **Joint and Several Liability.** Without limiting and subject to section 18.1 and the Declaration of Trust, if the Recipient is comprised of more than one entity, all such entities will be jointly and severally liable to the Province for the fulfillment of the obligations of the Recipient under the Agreement.

22.0 RIGHTS AND REMEDIES CUMULATIVE

22.1 **Rights and Remedies Cumulative.** The rights and remedies of the Province under the Agreement are cumulative and are in addition to, and not in substitution for, any of its rights and remedies provided by law or in equity.

23.0 ACKNOWLEDGEMENT OF OTHER LEGISLATION AND DIRECTIVES

23.1 **Recipient Acknowledges.** The Recipient acknowledges that by receiving Funds it may become subject to legislation applicable to organizations that receive funding from the Government of Ontario, including the BPSAA, the PSSDA, and the *Auditor General Act* (Ontario).

24.0 SURVIVAL

24.1 **Survival.** The following Articles and sections, and all applicable cross-referenced sections and schedules, will continue in full force and effect for a period of seven years from the date of expiry or termination of the Agreement: Article 1.0 and any other applicable definitions, section, 4.5, section 7.1 (to the extent that the Recipient has not provided the Reports to the satisfaction of the Province), sections 7.2, 7.3, 7.4, 7.5, 7.6, Article 8.0, Article 12.0, Article 14.0, Article 16.0, Article 17.0, Article 19.0, Article 21.0, Article 23.0 and Article 24.0.

- END OF GENERAL TERMS AND CONDITIONS -

SCHEDULE "B"

PROJECT SPECIFIC INFORMATION

Maximum Funds	$100 million
Expiration Date	The date upon which the Affordability Fund Trust is terminated in accordance with the Declaration of Trust
Contact information for the purposes of Notice to the Province	**Attention: Usman Syed** **Position: Director** **Address: 77 Grenville St, Toronto, Ontario, M7A 2C1** **Fax: 416-325-6651** **Email: Usman.Syed@ontario.ca**
~~**Contact information for the purposes of Notice to the Recipient**~~	~~**Attention:**~~ ~~**Position:**~~ ~~**Address:**~~ ~~**Email:**~~
Contact information for the ~~senior financial person in~~ purposes of Notice to the Recipient ~~organization (e.g., CFO, CAO) – to respond as required to requests from the Province related to the Agreement~~	**Attention:** ~~**Position:**~~ **Manager, Corporate Trust Services** **Address: 100 University Ave., 11th Floor, Toronto, Ontario, M5J 2Y1** **Email: CorporateTrust.Toronto@computershare.com**

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SCHEDULE "C"

PROJECT

For the purposes of this Agreement, the "Project" is the distribution of the Funds in accordance with the Declaration of Trust.

It is intended the Project will be undertaken by the Recipient in furtherance of the Purpose and in accordance with the Declaration of Trust. In this regard, it is expected that the Recipient will undertake the Program having regard to the Budget and the Principles set forth in Annex A.

The following are the Province's expectations regarding the circumstances in which the Recipient will begin to distribute any Funds to any Beneficiary.

1. The Original Trustee Replacement Date (as defined in the Declaration of Trust) will have occurred.

2. An Administrative Services Agreement (as defined in the Declaration of Trust) will have been entered into between the Recipient and Hydro One Limited under which Hydro One Limited shall provide specified administrative and other services on behalf of the Recipient.

3. Administrative procedures will have been developed and implemented under which Electricity Distributors (as defined in the Declaration of Trust) will be invited to assist with (a) the identification and selection of Primary Beneficiaries under the Declaration of Trust, (b) the determination of the amount of Funds to be distributed to particular Primary Beneficiaries, and (c) the distribution of Funds to or for the benefit of such Primary Beneficiaries (in each case substantially on the basis contemplated in the Permitted Delegations Annex).

4. The Recipient will have obtained commercial general liability insurance from insurers having a secure A.M. Best rating of B+ or greater, or the equivalent, that in the opinion of the Recipient a prudent person similar to the Recipient would maintain, and having an inclusive limit of not less than $2,000,000 per occurrence and providing for contractual liability coverage. If requested, the Recipient will provide the Province (for its information purposes) with copies of the certificates of insurance and policies for such insurance coverage.

The Province recognizes that the foregoing may involve the Recipient entering into agreements as the Recipient considers to be necessary or expedient, including any required amendment or amendment and restatement of the Declaration of Trust. Funds may be expended to pay the expenses of the Recipient in completing these matters. The Recipient is requested to advise the Province through its quarterly reports on the status of the foregoing.

SCHEDULE "D"

Recipient's Budget

1. It is expected that the administrative expenses of the Recipient, including any administrative expenses of any Administrative Services Agents or any Implementation Agents or any other agents retained by the Recipient, relating to the establishment of the Affordability Fund Trust and ~~satisfying~~addressing the ~~Requirements (~~Province's expectations as ~~defined~~enumerated in Schedule "C~~"),~~" and any expenses related to the operation of the Affordability Fund Trust and the execution of the Project (including any reimbursable expenses incurred by any Administrative Services Agent or any Implementation Agent (as such terms are defined in the Declaration of Trust)), will be no greater than 10 percent of the total Project budget.

2. The only expenditures incurred by the Recipient that are eligible for reimbursement are actual (excluding HST) administrative overhead expenses incurred by or on behalf of the Recipient that directly related to the Recipient or the establishment of the Affordability Fund Trust.

4. Any expenses that have been or may be reimbursed by other parties should not be reimbursed from the assets of the Affordability Fund Trust.

5. It is expected any travel, meals and hospitality expenses by the Recipient will be consistent with the ~~Province's Travel, Meal and Hospitality Expenses Directive.~~the accountability principles set out in Schedule B to the Principles Annex. For purposes of funding entities receiving funding from the Recipient, the following would not be considered eligible claims:

   - Alcohol
   - First-Class travel
   - Meals, snacks and beverages
   - Gratuities
   - Laundry or dry cleaning
   - Valet services
   - Dependent care
   - Home management
   - Personal telephone calls

6. In the event that the Recipient performs any procurements, it is expected that all procurements will reflect the principles of Ontario's Public Service Procurement Directive.

SCHEDULE "E"

PAYMENT PLAN

PAYMENT DATE	MAXIMUM FUNDS TO BE DISBURSED BY THE PROVINCE
Within 7 days of signing the Agreement	$ 100,000,000

SCHEDULE "F"

REPORTING

From and following the Original Trustee Replacement Date, Reports will be quarterly on the basis of the government's fiscal year starting at the execution of this Agreement and continuing until conclusion of the Agreement. Annual Reports will be on a fiscal basis starting at the execution of this Agreement and continuing until conclusion of the Agreement. Quarterly Reports and Annual Reports would be expected to be submitted to the Province within one month following the end of the reporting period that they represent. The Province expects that these Reports would be prepared to demonstrate the impact of the Province's funding and address the following:

- Quarterly Reports would include a report back on the trustee-developed performance management criteria. Initially, such Quarterly Reports would include details respecting:
    - Amounts disbursed by the Recipient in the previous quarter. It is expected that this information would be provided at the Electricity Distributor level and in the aggregate.
    - Total Affordability Fund investment income earned and accrued to date.
    - Key activities and achievements from the quarter, including the number of participant households per Electricity Distributor, average participant incentive cost per Electricity Distributor, and uptake of energy efficiency measures per Electricity Distributor.
    - Any challenges or modifications to the application, funding, or eligibility processes/rules of the Recipient.
    - Key activities planned for the upcoming quarter.
    - Details of any situation that a reasonable person might interpret as an actual, potential or perceived conflict of interest.
- Annual Reports would include a report back on the trustee-developed performance management criteria. Initially, such Annual Report would include details respecting:
    - A description of an Electricity Distributor's application process and the criteria used by the Recipient to distribute funds.
    - Any challenges identified by the Recipient or any Administrative Services Agent in achieving the Purpose and proposed solutions, if applicable.
    - Lesson learned.
    - Electricity Distributor and customer feedback.
    - Amounts distributed to Beneficiaries or otherwise disbursed by the Recipient in the previous year. It is expected that this information will be provided by each Electricity Distributor.
    - Key activities and achievements from each quarter being reported, including number of participant households per Electricity Distributor, average participant incentive cost per Electricity Distributor, and uptake of energy efficiency measures per Electricity Distributor.
    - Total Affordability Fund interest earned and accrued to date.

  As part of an Annual Report, the Recipient would also provide the Province with an audited financial statement for the previous year.

ANNEX A

Principles

Except as otherwise defined herein, capitalized terms used in this Annex A shall have the respective meanings given to such terms in the Declaration of Trust.

The Trustee shall have regard to, but shall not be specifically bound by, the following principles in applying its discretion in relation to the administration of the Trust:

~~4.~~1. Identification of Primary Beneficiary Payees

~~4.1~~1.1 Except in exceptional circumstances, a Primary Beneficiary would not be expected to receive a benefit from the Trust unless at the time of consideration it satisfies, in addition to the requirements contemplated in the definition of "Primary Beneficiary", each of the following criteria (the "**Selection Factors**"):

(i) it has a participant agreement with an applicable Electricity Distributor to undertake measures (its "**Energy Plan**") to improve the electricity efficiency and/or promote the conservation of electricity at its Ontario residence;

(ii) its Energy Plan involves one or more Eligible Measures, as may be designated by the Trustee from time to time from;

(iii) it confirms that:

1. the primary purpose of its Energy Plan is the conservation and efficient use by the Primary Beneficiary of electricity, and is not for the purposes of the Primary Beneficiary making a profit;

2. it would otherwise not have the financial resources to undertake the Eligible Measures included in its Energy Plan; and

3. it would otherwise not be eligible to receive amounts in respect of the Eligible Measures as a HAP Eligible Person;

(iv) it has demonstrated a need for financial assistance on the basis that its periodic electricity bills represent a financial burden, relative to its available financial resources; and

(v) such other criteria as the Trustee may determine, including based on the recommendations of Electricity Distributors or other knowledgeable Persons made on the basis and having regard to the delegations contemplated by the Permitted Delegations Annex or any applicable Implementation Agreement.

~~4.2~~1.2 It is recognized that, in furthering the Purpose, an efficient basis upon which to allocate funds to the Primary Beneficiaries across different areas and regions within Ontario may be based on the areas and regions serviced by the Electricity Distributors operating within Ontario.

~~4.3~~1.3 It would not be contrary to the Purposes if funds are made available by the Trustee to the Primary Beneficiaries unequally across different areas and regions within Ontario, and it is expected that in making such an unequal division it would be appropriate to have regard to:

(i) broad economic parameters of economic activity and the specific financial resources of the residents of the areas and regions, in each case as an indication of the relative need of such residents across the areas and regions;

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(ii) electricity use and efficiency levels of residential electricity customers across the areas and regions;

(iii) specific regional indicators of economic weakness and need; and

(iv) such other factors as the Trustee may determine are relevant, including based on the submissions, advice and recommendations of Electricity Distributors or other knowledgeable Persons made on the basis and having regard to the delegations contemplated by the Permitted Delegations Annex or any applicable ~~implementation~~Implementation Agreement.

~~4.4~~1.4 It is recognized that, in furthering the Purpose, the designated Electricity Distributor for an area or region in which a Primary Beneficiary resides would be expected to:

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(i) be a reliable source for the purpose of assessing and confirming whether the Primary Beneficiary satisfies the Selection Factors;

(ii) be an efficient intermediary for the purpose of communicating with the Primary Beneficiary, including with respect to matters such as regarding the availability, terms, conditions and intended purposes of Program;

(iii) be able to facilitate an efficient payment of distribution determined to be made to or on behalf of the Primary Beneficiary, having regard to the Electricity Distributor's established practices, procedures and systems for dealing with its customers; and

(iv) have established contractual arrangements with the Primary Beneficiary that may apply to the protection and confidentiality of information provided by or respecting the Primary Beneficiary, which information may be useful in the consideration by the Electricity Distributor in its assessment of whether the Primary Beneficiary satisfies the Selection Factors, which information may not otherwise be available or readily accessible or verifiable by the Trustee.

~~4.5~~1.5 It is recognized that, in furthering the Purpose, the Electricity Distributor for an area or region in which a Primary Beneficiary resides will have market and utilization information that may be useful in assessing the relative needs of Primary Beneficiaries within its area or region. Such information is expected to be relevant in assessing the extent to which one such Primary Beneficiary's financial needs and the merits of its Energy Plan are greater or more compelling than those of another such Primary Beneficiary, which comparison may be relevant to the extent that the funds allocable to the Primary Beneficiaries resident in the area or region are otherwise insufficient to meet the requests for funding by all such Primary Beneficiaries.

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~~4.6~~1.6 Accordingly, it is recognized that, in furthering the Purpose, it is consistent with the Purpose that the recommendations of Electricity Distributors be utilized and relied upon by the Trustee to guide the process of identifying particular Primary Beneficiaries in making distributions to the Primary Beneficiaries.

~~4.7~~1.7 If an Electricity Distributor for a particular area or region is unable or unwilling to assess or confirm the application of the Selection Factors to Primary Beneficiaries residing in the area or region or to make recommendations in relation to such matters, one or more of the following may provide a suitable alternative source of information and for information gathering, assessment and confirmation purposes in relation to such area or region:

(i) other Electricity Distributors operating in adjacent or other areas or regions in Ontario;

(ii) the Ontario Energy Board;

(iii) the Independent Electricity System Operator; and

(iv) anyone else having relevant expertise and access to information regarding the electricity market of the Province, in each case as may be considered relevant by the Trustee.

~~4.8~~1.8 To the extent that privacy law or other legal requirements limit an Electricity Distributor from providing or making available specific information respecting the application of the Selection Factors to a particular Primary Beneficiary or group of Primary Beneficiaries, it is recognized that, in furthering the Purpose, it may be appropriate to redact or make generic affected information regarding such Primary Beneficiary in connection with the identification and confirmation of a Primary Beneficiary's eligibility and participation in the Program. If such limitations or restrictions would limit an Electricity Distributor from providing or confirming the name of a particular Primary Beneficiary to the Trustee, then it should be sufficient that such information may be obtained or disseminated on a confidential basis if and when required by the Trustee for the proper administration of the Trust and on that basis such impediments should not disqualify a Primary Beneficiary from participating in the benefits of the Program, provided that the confidential record-keeping of the Electricity Distributor would be available in connection with the application of any applicable legal process predicated on the identification of such Primary Beneficiary for the purposes of substantiating its rights as a Primary Beneficiary of the Trust or as to the validity or subsistence of the Trust.

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~~5.~~2. Eligible Measures

~~5.1~~2.1 It is expected that the Trust will identify eligible measures that, taking into consideration the principles set forth in the Principles Annex, have regard to the following (the "**Measures Factors**"):

(i) is the measure generally expected to result in reduced electricity consumption by a Primary Beneficiary if properly installed and used;

(ii) is the measure recognized under another Provincial program as being appropriate for achieving electricity conservation among a population analogous to the Primary Beneficiaries;

(iii) does the measure present any unacceptable health or safety considerations, either with respect to the Primary Beneficiary, a party providing or installing the measure, or the physical environment;

(iv) is the measure broadly available to residents across different areas and regions of the Province; or

(v) is the measure a requirement or precursor to another measure, the other measure being one which meets any of the other Measures Factors.

~~5.2~~2.2 In identifying and applying the Measures Factors, Electricity Distributors would be expected to have expertise in assessing the suitability of efficiency and conservation measures in their respective areas and regions, which may differ across areas and regions across the Province based on factors (among other things) such as the climate, geography, density, electricity infrastructure, residential structures, and electricity use rates applicable within such areas or regions.

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~~5.3~~2.3 The measures specified in Schedule A to this Principles Annex may initially be considered to be consistent with the Measures Factors (subject to change as contemplated under the Permitted Delegations Annex).

~~6.~~3. Promotion of the Program

~~6.1~~3.1 It is expected that the Trustee will undertake or engage others to undertake diligent efforts to promote the availability, terms and benefits of the Program to Primary Beneficiaries, including by establishing consistent communications through the Electricity Distributors.

~~6.2~~3.2 It is expected that the Trustee will acknowledge the financial support of the Province in connection with the establishment and the funding for the Program, including in any external communications to or marketing directed at the Electricity Distributors and the Primary and Residual Beneficiaries. In ~~its~~the Trustee's delegation of any duties or powers to the Electricity Distributors through Implementation Agreements it is expected that Electricity Distributors will acknowledge the financial support of the Province in connection with the program including in any communications or marketing to Primary Beneficiaries.

~~7.~~4. Conduct of the Trust and the Program

~~7.1~~4.1 It is expected that administrative expenses of the Board of Trustees and its members, including any expenses relating to the Trust, to the establishment of the Trust and any expenses related to the implementation and operation of the Program, including by or through Electricity Distributors and other relevant entities, will be recognized and subject to reimbursement on a basis that is substantially consistent with the accountability ~~provisions contemplated in the Transfer Payment Agreement and the principles in the Province's Travel, Meal and Hospitality Expenses Directive, as~~principles set out in Schedule B to this Principles Annex.

~~7.2~~4.2 The Trustee is expected to conduct its activities in a manner that complies in all material respects with the Transfer Payment Agreement, including to:

(i) act prudently and in furtherance of the Purpose;

(ii) report not less frequently than annually the results of its activities for information purposes to the Province in connection with the Program;

(iii) comply with the Province's request for any independent verification or audit if determined to be necessary or appropriate by the Province;

(iv) return Assets that have not been distributed if it is determined that the Trustee has breached its Standard of Care in discharging its material duties under the Declaration, and has not cured such material breach despite having been given a reasonable opportunity by the Province to do so in light of the circumstances of such material breach, with the result that all or a significant part of the Assets have not been or are not being applied and distributed in furtherance of the Purpose or are being applied and distributed in a manner that is directly contrary or without regard to the Purpose.

~~7.3~~4.3 Electricity Distributors are not intended to directly profit from distributions of funds made from the Trust, although it is recognized that the objectives of electricity efficiency and conservation of Primary Beneficiaries located in the service area or region of an Electricity Distributor, and the cost savings and improved credit worthiness of such Primary Beneficiaries, may be financially beneficial to the Electricity Distributor.

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~~7.4~~4.4 Distributions from the Trust are intended to allow receiving Primary Beneficiaries to undertake Eligible Measures at no or minimal personal cost.

~~7.5~~4.5 Without in any way limiting the discretion of the Board of Trustees to extend the period during which the benefits of the Program may be available to the Primary Beneficiaries, up to and including the Final Distribution Date, it is expected that the Trust Assets would be distributed to

Primary Beneficiaries during the period from the Original Trustee Replacement Date to April 30, 2019.

SCHEDULE A TO THE PRINCIPLES ANNEX
INDICATIVE ELIGIBLE MEASURES[1]

Initial Specified Measures
Block Heater Timer (just timer) – rated for outdoor use, have at least a 15 amp/1800 watt capacity, be cold weather resistant, bear a C-UL or CSA certification mark
Power bar with integrated timer, and switched power outlets, four each for a total of 8 outlets, have a total capacity of 15 amps. The switched outlets must remain "live", independent of timer settings, so long as the power bar itself remains switched on. The power bar must bear either a C-UL or CSA certification mark.
Efficient Showerheads (standard) - rated at no more than 4.8 Lpm (1.25 U.S. gpm) and be of the laminar flow type (non-aerating).
Efficient Showerhead (handheld) - rated at no more than 4.8 Lpm (1.25 U.S. gpm) and be of the laminar flow type (non-aerating).
Efficient Aerators (kitchen) - rated no more than 5.7 Lpm (1.5 U.S. gpm), dual threaded to allow installation in both thread type faucets, swivel type with pause lever.
Efficient Aerators (bathroom) - rated no more than 3.8 Lpm (1.0 U.S. gpm), be dual threaded to allow installation in both thread type faucets.
Hot Water Tank Pipe Insulation - $^{1}/_{2}$" inside diameter – foam, meets ASTM –C547-00, minimum $^{3}/_{4}$" thick
Hot Water Tank Pipe Insulation - $^{3}/_{4}$ " inside diameter - – foam, meets ASTM –C547-00, minimum $^{3}/_{4}$" thick
Hot Water Tank Insulation - fibreglass R10 (fits up to a 60 gal tank) – not bubble wrap
≤11W ENERGY STAR® Qualified LED A Shape (60W) (minimum 600 Lumen output) (Formerly: 7W – 11W ENERGY STAR® Qualified LED A Shape (60W))

[1] These measures are indicative. Eligible measures added to HAP during the administration of the Trust may also be appropriately considered relevant by the Trustee.

Initial Specified Measures
≤14W ENERGY STAR® Qualified LED A Shape (75W) (minimum 800 Lumen output) (Formerly: 10W – 14W ENERGY STAR® Qualified LED A Shape (75W))
≤23W ENERGY STAR® Qualified LED A Shape (100W) (minimum 1600 Lumen output) (Formerly:17W – 23W ENERGY STAR® Qualified LED A Shape (100W))
≤16W ENERGY STAR® Qualified LED PAR 20 (minimum 600 Lumen output) (Formerly: 8W – 12W ENERGY STAR® Qualified LED PAR 20)
≤16W ENERGY STAR® Qualified LED PAR30 & PAR38 (minimum 600 Lumen output) (Formerly: 8W – 12W ENERGY STAR® Qualified LED PAR 30)
≤23W ENERGY STAR® Qualified LED PAR (minimum 1100 Lumen output) (Formerly: 14W – 18W ENERGY STAR® Qualified LED PAR 38)
≤6W ENERGY STAR® Qualified LED MR 16 / PAR 16 (minimum 250 Lumen output) (Formerly: 7W – 10W ENERGY STAR®
Qualified LED MR 16 / PAR 16 - GU 10 Base)
≤11W ENERGY STAR® Qualified LED MR 16 (minimum 400 Lumen output) (Formerly: 7W – 12W ENERGY STAR® Qualified LED MR 16 GU 5.3 Base)
ENERGY STAR® LED Wet Location Rated PAR lamp ≤ 23 Watt (minimum 1100 Lumen output)
Recessed Downlight Fixture including LED with Light Output >600 and <800 lumens (Retrofit Measure List)
Recessed Downlight Fixture including LED with Light Output >800 lumens (Retrofit Measure List)
Indoor Drying Rack

Extended Measures
Replace refrigerator with ENERGY STAR qualified refrigerator - 15.5 - 16.9 cubic foot top freezer, automatic defrost, refrigerator/ freezer, no through the door ice service
Replace refrigerator with ENERGY STAR qualified refrigerator - 17.0 - 18.4 cubic foot top freezer, automatic defrost, refrigerator/ freezer, no through the door ice service
Replace refrigerator with a refrigerator that has a consumption level of less than 425 kwh, 10 – 12.5 cubic foot top freezer, automatic defrost, refrigerator freezer, no through the door ice service
Replace freezer with ENERGY STAR qualified freezer - 12-14.4 cubic foot freezer
Replace freezer with ENERGY STAR qualified freezer - 14.5 - 16.0 cubic foot freezer
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 6,000 – 7,999 BTU/hr with C-UL or CSA certification mark
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 8,000 – 9,999 BTU/hr with C-UL or CSA certification mark
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 10,000 – 12,000 BTU/hr with C-UL or CSA certification mark
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 14.2 - 21.2 l/day (30-44.9 pints/day) dehumidifier
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 21.3 - 25.4 l/day (45-53.9 pints/day) dehumidifier
~~**Extended Measures**~~
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 25.5 - 35.5 l/day (54-75 pints/day) dehumidifier
Programmable Thermostat – line voltage – meets CAN/CSA-C828-06 standard, minimum performance: Droop: 1.5°C, Differential: 0.5°C, Precision 0% within 0.5°C of the original set point of 22°C
Programmable Thermostat – low voltage - meets CAN/CSA-C828-06 standard, minimum performance: Droop: 1.5°C, Differential: 0.5°C, Precision 0% within 0.5°C of the original set point of 22°C

Weatherization Measures
Comprehensive Draftproofing (caulking, foam and weather stripping, and application of same) – lifespan of 20 years plus If one or two component polyurethane foams are used, the products and installations must conform to: • CAN/ULC-S710.1 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 1: Material Specification. • CAN/ULC-S710.2 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 2: Application. • CAN/ULC-S711.1 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification • CAN/ULC-S711.2 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification, and Part 2: Application. **Attic Insulation (including installation):**
cellulose: CAN/ULC-S703-01 Amendment 1 - Cellulose Fibre Insulation (CFI) for Buildings OR 2) Mineral Fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre

Weatherization Measures
for Buildings **Wall Insulation (including installation):**
cellulose: CAN/ULC-S703-01 Amendment 1 - Cellulose Fibre Insulation (CFI) for Buildings OR 2) Mineral Fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre **Basement Insulation (including installation):**
mineral fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre for Buildings Vapour Barrier: 69009-CAN/CGSB-51.34-m86 If one or two component polyurethane foams are used, the products and installations must conform to: • CAN/ULC-S710.1 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 1: Material Specification. • CAN/ULC-S710.2 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 2: Application. • CAN/ULC-S711.1 Standard for Thermal Insulation – Bead Applied Two-Component
Polyurethane Air Sealant Foam, Part 1: Material Specification • CAN/ULC-S711.2 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification, and Part 2: Application.

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Heat Pumps
(Selection of manufacturers and technologies to meet the US federal minimum efficiency standard for ASHPs, as of 2015, is 13.0 SEER and 7.7 HSPF. Energy Star–certified models offer roughly 9 percent more efficiency than most new uncertified ASHPs and 20 percent more efficiency than existing models
Ductless Multiport Heat Pump
Cold Climate Ductless Heat Pump
Cold Climate Multiport Ductless Heat Pump
Cold Climate Ducted Heat Pump

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SCHEDULE B TO THE PRINCIPLES ANNEX
~~PERMITTED~~PRINCIPLES APPLICABLE TO EXPENSE REIMBURSEMENTS

~~**Travel, Meal and Hospitality Expenses Directive**~~

1. Funds should be used prudently and responsibly with a focus on accountability and transparency.

2. Expenses for travel, meals and hospitality support the Purpose.

3. Plans for travel, meals, accommodation and hospitality are necessary and economical with due regard for health and safety.

4. Legitimate authorized expenses incurred during the course of furthering the Purpose may be reimbursed.

5. Best practices should be followed, including:

   a. Prior approval to incur expenses is appropriately obtained.

   b. Other options for meetings are always considered before travel is approved, including audio or video conferencing.

   c. Corporate travel cards are to be used for authorized business travel and business related expenses.

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ONTARIO TRANSFER PAYMENT AGREEMENT

THE AGREEMENT, effective as of the 23rd day of March, 2017 (the **"Effective Date"**)

B E T W E E N :

Her Majesty the Queen in right of Ontario
as represented by the Minister of Energy

(the "Province")

- and -

Computershare Trust Company of Canada, in its capacity as trustee of Affordability Fund Trust

(together with its successors and assigns, the "Recipient" and, together with the Province, the "Parties")

BACKGROUND

Computershare Trust Company of Canada is the original trustee of the Affordability Fund Trust.

The Province wishes to provide Funds to the Recipient to be held, invested, applied and distributed in accordance with the terms of the Declaration of Trust (defined below), in furtherance of the Purpose (as defined in the Declaration of Trust), including having regard to the Principles set forth in Annex A.

CONSIDERATION

In consideration of the mutual covenants and agreements contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is expressly acknowledged, the Parties agree as follows:

ENTIRE AGREEMENT

This agreement (as amended, restated, supplemented or otherwise modified from time to time, the **"Agreement"**), including:

Schedule "A" - General Terms and Conditions
Schedule "B" - Project Specific Information
Schedule "C" - Project - Certain Obligations of the Recipient
Schedule "D" - Budget
Schedule "E" - Payment Plan
Schedule "F" - Reporting
Annex "A" - Principles, and
any amending agreement entered into as provided for below,

constitutes the entire agreement between the Parties with respect to the subject matter contained in this Agreement and supersedes all prior oral or written representations and agreements.

COUNTERPARTS

The Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

AMENDING THE AGREEMENT

The Agreement may only be amended by a written agreement duly executed by the Parties.

ACKNOWLEDGEMENT

The Recipient:

(a) acknowledges that it has read and understands the provisions contained in the entire Agreement; and

(b) agrees to be bound by the terms and conditions contained in the entire Agreement.

IN WITNESS WHEREOF, the Parties have executed the Agreement on the dates set out below.

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO as represented by Minister of Energy

by:

_____ _____

Date Name: Serge Imbrogno

Title: Deputy Minister

Authorized Signing Officer

COMPUTERSHARE TRUST COMPANY OF CANADA, in its capacity as trustee of AFFORDABILITY FUND TRUST

by:

_____ _____

Date Name: Morag Abraham

Title: Corporate Trust Officer

by:

_____ _____

Date Name: Ann Samuel

Title: Associate Trust Officer

I/We have authority to bind the Recipient.

SCHEDULE "A"
GENERAL TERMS AND CONDITIONS

1.0 INTERPRETATION AND DEFINITIONS

1.1 Interpretation. For the purposes of interpretation:

(a) words in the singular include the plural and vice-versa;

(b) words in one gender include all genders;

(c) the headings do not form part of the Agreement; they are for reference only and will not affect the interpretation of the Agreement;

(d) any reference to dollars or currency will be in Canadian dollars and currency;

(e) "include", "includes" and "including" denote that the subsequent list is not exhaustive;

(f) where any reference is made in the Agreement to an act to be performed by or for or on behalf of the Affordability Fund Trust, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Recipient in its capacity as trustee of the Affordability Fund Trust, and, where any reference is made in the Agreement to an act to be performed by or for or on behalf of the Recipient, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Recipient in its capacity as trustee of the Affordability Fund Trust; and

(g) it is intended that the transfer of the Funds to the Recipient will be a transfer made to a trust that is not controlled by the Province (as the term "control" is used in *Government Reporting Entity* at paragraphs PS 1300.07-.24), and so if a term or condition of the Agreement is determined to conflict with the requirements applicable to the Province recording the transfers to the Recipient of Funds contemplated hereunder as an expense incurred by the Province on the date of the transfer of Funds under the Agreement otherwise in connection with activities undertaken by the Province with such a non-controlled trust, then such term or condition shall be given a meaning and shall have an effect insofar as it is possible to interpret such term or condition in a manner that eliminates such conflict while preserving the other provisions of the Agreement and furthering the Purpose.

1.2 Definitions. In the Agreement, the following terms will have the following meanings:

"Administrative Services Agent" has the meaning given such term in the Declaration of Trust.

"Affordability Fund Trust" means the trust established and governed by the Declaration of Trust, and for greater certainty includes such trust operating under any other name that may be designated from time to time by the Recipient in accordance with the Declaration of Trust.

"BPSAA" means the Broader Public Sector Accountability Act, 2010 (Ontario).

"**Beneficiary**" has the meaning given to such term in the Declaration of Trust.

"Budget" means the Recipient's budget attached to the Agreement as Schedule "D".

"Business Day" means any working day, Monday to Friday inclusive, excluding statutory and other holidays, namely: New Year's Day; Family Day; Good Friday; Easter Monday; Victoria Day; Canada Day; Civic Holiday; Labour Day; Thanksgiving Day; Remembrance Day; Christmas Day; Boxing Day and any other day on which the Province has elected to be closed for business.

"**Declaration of Trust**" means the declaration of trust made as of March 23, 2017, under which the Affordability Fund Trust was established, as such declaration of trust may be amended, restated, supplemented or otherwise modified from time to time with the consent of the Province in accordance with Section 20.2.

"Expiration Date" means the date on which this Agreement will expire and is the date set out in Schedule "B".

"Funds" means the money the Province provides to the Recipient pursuant to the Agreement.

"Implementation Agents" has the meaning given such term in the Declaration of Trust.

"Maximum Funds" means the maximum amount of Funds that the Province will provide the Recipient under the Agreement, as set out in Schedule "B".

"Notice" means any communication given or required to be given pursuant to the Agreement.

"Party" means either the Province or the Recipient.

"**Person**" includes any individual, sole proprietorship, corporation, partnership, joint venture, association, society, club, board, chamber, joint-stock company, trust, trustee, unincorporated or incorporated organization or entity or government or any entity, agency or political subdivision thereof.

"**Program**" has the meaning given to such term in the Declaration of Trust.

"Project" means the undertaking described in Schedule "C".

"**Purpose**" has the meaning given to such term in the Declaration of Trust.

"PSSDA" means the *Public Sector Salary Disclosure Act, 1996* (Ontario).

"**Recipient**" means, initially, Computershare Trust Company of Canada, and any additional or replacement trustee in its capacity as trustee of the Affordability Fund Trust pursuant to the Declaration of Trust, including the Board of Trustees (as defined in the Declaration of Trust) and each of their respective successors and permitted assigns.

"Reports" means the reports described in Schedule "F".

2.0 REPRESENTATIONS, WARRANTIES AND COVENANTS

2.1 General. The Recipient represents, warrants and covenants that:

(a) it is the trustee of the Affordability Fund Trust; and

(b) the Affordability Fund Trust is, and will continue to be for the term of the Agreement, a trust existing under and governed by the laws of the Province of Ontario.

2.2 Execution of Agreement. The Recipient represents and warrants that it has:

(a) the full power and authority to enter into the Agreement; and

(b) taken all necessary actions to authorize the execution of the Agreement.

2.3 Governance. The Recipient covenants that it will develop and maintain in writing until the Agreement is no longer in effect:

(a) decision-making mechanisms and procedures to enable the Recipient to hold, invest, manage, apply and distribute the Funds in accordance with the Declaration of Trust in furtherance of the Purpose; and

(b) procedures to enable the preparation and delivery of all Reports required pursuant to Article 7.0.

2.4 Supporting Documentation. Upon request, the Recipient will provide the Province with proof of the matters referred to in this Article 2.0.

3.0 TERM OF THE AGREEMENT

3.1 Term. The term of the Agreement will commence on the Effective Date and will expire on the Expiration Date.

3.2 Extension. The term of the Agreement may be extended by further agreement between the Parties.

3.3 Extension of the Declaration of Trust. If the Province determines that an extension of the Final Distribution Date (as defined in the Declaration of Trust) and time for termination of the Declaration of Trust is consistent with and in furtherance of the Purpose and the Province's original intentions and expectations in establishing the Project, the Province may request that the Recipient extend such date to a date specified by the Province in a Notice (such date not to be later than December 31, 2021), whereupon the Recipient, so long as the Recipient does not have a reasonable basis to believe that such an extension would be inconsistent with the Purpose or weaken the protections intended for the benefit of the Recipient pursuant to the Declaration of Trust, will undertake such actions as it may consider to be necessary or appropriate to so extend the Declaration of Trust, including by amending the Declaration of Trust to provide for such an extension and to modify any other term or requirement as would be necessary or prudent to conform such term or requirement in light of such extension.

4.0 FUNDS AND CARRYING OUT THE PROJECT

4.1 Funds Provided. The Province will:

(a) provide the Recipient up to the Maximum Funds to be held, invested, applied and distributed in accordance with the terms of the Project and the Declaration of Trust;

(b) provide the Funds to the Recipient in accordance with the Payment Plan attached to the Agreement as Schedule "E"; and

(c) deposit the Funds into an account designated by the Recipient, provided that the account:

(i) resides at a Canadian financial institution; and

(ii) is in the name of the Recipient.

4.2 Timing of Distributions to Beneficiaries. The expectations of the Province regarding when Funds will begin to be distributed by the Recipient to Beneficiaries are set out in Schedule C. The Recipient will have regard to those expectations in the exercise of its discretion under the Declaration of Trust, in determining when Funds will be distributed to Beneficiaries in furtherance of the Purpose.

4.3 Use of Funds and Project. The Recipient will exercise its rights, duties and discretions under the Declaration of Trust so that the Funds are used, applied and distributed only for and in furtherance of the Purpose, including having regard to the Principles set forth in Annex A.

4.4 **Province's Role Limited to Providing Funds.** For greater clarity, the Province's role under the Agreement is limited to providing Funds to the Recipient and the Province is not responsible for carrying out or overseeing the terms of the Declaration of Trust.

4.5 **Maximum Funds.** The Recipient acknowledges that the Funds available to it pursuant to the Agreement will not exceed the Maximum Funds.

4.6 **Funding, Not Procurement.** For greater clarity, the Recipient acknowledges that:

(a) it is receiving funding from the Province for the Project and is not providing goods or services to the Province; and

(b) the funding the Province is providing under the Agreement is funding for the purposes of the PSSDA.

5.0 RECIPIENT'S ACQUISITION OF GOODS OR SERVICES, AND DISPOSAL OF ASSETS

5.1 **Acquisition.** If the Recipient acquires goods, services, or both with or by applying the proceeds of the Funds, it is expected to do so through a process that promotes the best value for money and to take reasonable steps to ensure that its Administrative Services Agents and Implementation Agents also follow a process that promotes the best value for money when acquiring goods and services with or by applying the proceeds of the Funds.

6.0 CONFLICT OF INTEREST

6.1 **No Conflict of Interest.** Except as expressly permitted by the Declaration of Trust, the Recipient is expected to implement appropriate processes and control to ensure that the Program and the use, application and distribution of the Funds are without an actual, potential or perceived conflict of interest.

6.2 **Conflict of Interest Includes.** For the purposes of this Article, a conflict of interest includes any circumstances where, except as expressly permitted by the Declaration of Trust:

(a) the Recipient; or

(b) any person who has the capacity to influence the Recipient's decisions,

has outside commitments, relationships or financial interests that could, or could be seen to, interfere with the Recipient's objective, unbiased and impartial judgment relating to the Project, or the Recipient's use, application or distribution of the Funds, or both.

7.0 REPORTING, ACCOUNTING AND REVIEW

7.1 **Preparation and Submission.** The Recipient will cooperate with the Province to accommodate the Province's on-going information and reporting objectives in order to enable the Province to be aware of the Recipient's activities in furtherance of the Purpose, and to that end the Recipient will be expected, from and following the Original Trustee Replacement Date, to:

(a) submit to the Province at the address referred to in Schedule "B", all Reports in accordance with the timelines and content requirements set out in Schedule "F", or in a form as specified by the Province from time to time, acting reasonably;

(b) submit to the Province at the address referred to in Schedule "B", any other reports as may be reasonably requested by the Province from time to time in accordance with the timelines and content expectations identified by the Province, acting reasonably;

(c) undertake diligent efforts so that such Reports and any such other reports are complete and accurate in all material respects; and

(d) have an authorized signatory of the Recipient sign-off on such Reports and other reports.

7.2 Record Maintenance. The Recipient will keep and maintain financial and other records necessary to permit it to satisfy its obligations under section 7.1 and to permit the Province to exercise its rights under section 7.3.

7.3 Inspection. The Province, its authorized representatives or an independent auditor identified by the Province may, at its own expense, upon twenty-four hours' Notice to the Recipient and during normal business hours, inspect the records of and information respecting the Recipient to confirm its compliance with the terms of this Agreement, including to ensure consistency with the Purpose and, for these purposes, the Province, its authorized representatives or an independent auditor identified by the Province may take one or more of the following actions:

(a) inspect and copy the records and documents referred to in section 7.2;

(b) keep any copies made pursuant to section 7.3(a); and

(c) conduct an audit or investigation of the Recipient in respect of the expenditure of the Funds to confirm that the Funds have been used, applied and distributed for and in furtherance of the Purpose, including a review of the Recipient's processes, records, documents, as well as the processes and controls applied to obtain assurance that Funds disbursed to Electricity Distributors were used, applied and distributed for and in furtherance of the Purpose.

7.4 Disclosure. To assist in respect of the rights set out in section 7.3, the Recipient will disclose any information requested by the Province, its authorized representatives or an independent auditor identified by the Province, and will do so in the form requested by the Province, its authorized representatives or an independent auditor identified by the Province, as the case may be.

7.5 No Control of Records. No provision of the Agreement will be construed so as to give the Province any control whatsoever over the Recipient's records.

7.6 Auditor General. For greater certainty, the Province's rights under this Article are in addition to and do not limit any rights provided to the Auditor General pursuant to section 9.1 of the *Auditor General Act* (Ontario).

8.0 COMMUNICATIONS REQUIREMENTS

8.1 Publication. The Recipient will acknowledge, in any of its Program-related external communications and marketing whether written, oral, or visual, the financial support of the Province in connection with the establishment and funding of the program, while noting that the views expressed in the publication are the views of the Recipient and do not necessarily reflect those of the Province.

9.0 FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY

9.1 FIPPA. The Recipient acknowledges that the Province is bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province in connection with the Project or otherwise in connection with the Agreement may be subject to disclosure in accordance with that Act.

10.0 Intentionally Deleted

11.0 EVENT OF DEFAULT, CORRECTIVE ACTION AND TERMINATION FOR DEFAULT

11.1 Events of Default. An Event of Default will occur if:

(a) the Recipient fails to perform or observe any covenant in this Agreement and such failure has and continues to have a material adverse effect on the Province and remains unremedied during any Notice Period applicable under section 11.2 after the earlier of (i) actual knowledge thereof by the Recipient, or (ii) receipt by the Recipient of Notice thereof from the Province;

(b) any representation or warranty made by the Recipient in the Agreement shall prove to have been incorrect in any material respect when made or deemed made, and, if capable of remedy, continues to be incorrect in any material respect during any Notice period applicable under section 11.2 after the earlier to occur of (i) the actual knowledge thereof by the Recipient or (ii) receipt by the Recipient of Notice thereof from the Province;

(c) it is determined that the Recipient has breached its Standard of Care (within the meaning given in and context of the Declaration of Trust) in discharging its material duties under the Declaration of Trust, with the result that all or a significant part of the Funds have not been or are not being applied in furtherance of the Purpose or are being applied in a manner that is directly contrary or without regard to the Purpose, and, if such breach is capable of remedy, it continues and remains unremedied during any Notice Period (as defined in section 11.3) applicable under section 11.2 after the earlier of (i) actual knowledge thereof by the Recipient, or (ii) receipt by the Recipient of Notice thereof from the Province;

(d) an insolvency event shall have occurred and be continuing with respect to the Recipient.

11.2 Consequences of Events of Default and Corrective Action. If an Event of Default occurs, the Province may, at any time, take one or more of the following actions:

(a) provide the Recipient with Notice allowing the Recipient an opportunity to remedy the Event of Default during a specified Notice Period;

(b) seek an order of specific performance, including an order that the Recipient pursue its available remedies against third parties;

(c) require, by Notice of demand, that the Recipient transfer to the Province (without any need for compensation, indemnity or consideration to the Recipient or any Beneficiary or other third party) any and all Assets remaining in the possession or under the control of the Recipient that can reasonably be traced or attributed to the Funds after first providing for the completion and performance by the Recipient of any unperformed contractual obligations of the Recipient undertaken in compliance with the Declaration of Trust on or prior to transfer; and

(d) terminate the Agreement, including immediately, without liability, penalty or costs to the Province upon giving Notice to the Recipient.

The transfer of Funds in accordance with the Agreement is made by the Province with the expressed intention and reservation that the transferred Funds shall be returned to the Province and the entitlements of the Recipient in remaining Funds shall thereby be revoked with reversion thereof to the Province in the circumstances contemplated in Section 11.2(c).

11.3 Opportunity to Remedy. If, in accordance with section 11.2, the Province provides the Recipient with an opportunity to remedy the Event of Default, the Province will provide Notice to the Recipient of:

(a) the particulars of the Event of Default; and

(b) the length of time within which the Recipient may cure such Event of Default without the Province pursuing any other remedy (the "Notice Period").

11.4 Recipient not Remedying. If the Province has provided the Recipient with an opportunity to remedy the Event of Default pursuant to section 11.2(a), and:

(a) the Recipient does not remedy the Event of Default within the Notice Period;

(b) it becomes apparent to the Province that the Recipient cannot adequately remedy the Event of Default within the Notice Period; or

(c) the Recipient is not proceeding to remedy the Event of Default in a way that is satisfactory to the Province,

the Province may extend any Notice Period, or initiate any one or more of the actions provided for in section 11.2.

12.0 REPAYMENT

12.1 Debt Due. If, pursuant to the Agreement: the Province demands the payment of any Funds from the Recipient pursuant to section 11.2(c) such Funds or other amount will be deemed to be a debt due and owing to the Province by the Recipient, and the Recipient will pay or return the amount to the Province immediately, unless the Province directs otherwise.

12.2 Payment of Money to Province. The Recipient will pay any money owing to the Province by cheque payable to the "Ontario Minister of Finance" and delivered to the Province at the address referred to in Schedule "B".

12.3 Failure to Repay. Without limiting the application of section 43 of the Financial Administration Act (Ontario), if the Recipient fails to repay any amount owing under the Agreement, Her Majesty the Queen in right of Ontario may deduct any unpaid amount from any money payable to the Recipient by Her Majesty the Queen in right of Ontario.

13.0 NOTICE

13.1 Notice in Writing and Addressed. Notice will be in writing and will be delivered by email, postage-prepaid mail, personal delivery or fax, and will be addressed to the Province and the Recipient respectively as set out in Schedule "B", or as either Party later designates to the other by Notice.

13.2 Notice Given. Notice will be deemed to have been given:

(a) in the case of postage-prepaid mail, five Business Days after the Notice is mailed; or

(b) in the case of email, personal delivery or fax, one Business Day after the Notice is delivered.

13.3 Postal Disruption. Despite section 13.2(a), in the event of a postal disruption:

(a) Notice by postage-prepaid mail will not be deemed to be received; and

(b) the Party giving Notice will provide Notice by email, personal delivery or by fax.

14.0 SEVERABILITY OF PROVISIONS

14.1 Invalidity or Unenforceability of Any Provision. The invalidity or unenforceability of any

provision of the Agreement will not affect the validity or enforceability of any other provision of the Agreement. Any invalid or unenforceable provision will be deemed to be severed.

15.0 WAIVER

15.1 Waivers in Writing. If a Party fails to comply with any term of the Agreement, that Party may only rely on a waiver of the other Party if the other Party has provided a written waiver in accordance with the Notice provisions in Article 13.0. Any waiver must refer to a specific failure to comply and will not have the effect of waiving any subsequent failures to comply.

16.0 INDEPENDENT PARTIES

16.1 Parties Independent. The Recipient acknowledges that it is not an agent, joint venturer, partner or employee of the Province, and the Recipient will not represent itself in any way that might be taken by a reasonable person to suggest that it is, or take any actions that could establish or imply such a relationship.

17.0 ASSIGNMENT OF AGREEMENT OR FUNDS

17.1 Agreement Binding. All rights and obligations contained in the Agreement will extend to and be binding on the Parties' respective heirs, executors, administrators, successors and permitted assigns.

18.0 LIMITATION OF LIABILITY

18.1 This Agreement has been entered into by the Recipient solely in its capacity as trustee of the Affordability Fund Trust and is not binding on the Recipient in any other capacity, whether in tort, contract or otherwise. The Beneficiaries of the Affordability Fund Trust are not subject to any liability in respect of the Affordability Fund Trust. Resort may not be had to, nor recourse or satisfaction be sought from, the private property of the Recipient (whether owned by it in its personal capacity or in any other capacity other than in its capacity as trustee of the Affordability Fund Trust), its directors, officers, employees, or agents, or the private property of any Beneficiary, and resort will be had solely to the Assets (as defined in the Declaration of Trust) for the payment, performance or satisfaction of any liability or obligation of the Recipient under this Agreement. However, the foregoing limitations in this section shall not apply where the Recipient has demonstrated gross negligence, bad faith, fraud or wilful misconduct.

19.0 GOVERNING LAW

19.1 Governing Law. The Agreement and the rights, obligations and relations of the Parties will be governed by and construed in accordance with the laws of the Province of Ontario and the applicable federal laws of Canada. Any actions or proceedings arising in connection with the Agreement will be conducted in the courts of Ontario, which will have exclusive jurisdiction over such proceedings.

20.0 FURTHER ASSURANCES

20.1 Agreement into Effect. The Recipient will provide such further assurances as the Province may request from time to time with respect to any matter to which the Agreement pertains, and will otherwise do or cause to be done all acts or things necessary to implement and carry into effect the terms and conditions of the Agreement to their full extent.

20.2 Declaration of Trust. The Recipient covenants that it shall not amend, restate or terminate the Declaration of Trust without obtaining the written consent of the Province in respect of same, such consent not to be unreasonably withheld or delayed.

21.0 JOINT AND SEVERAL LIABILITY

21.1 Joint and Several Liability. Without limiting and subject to section 18.1 and the Declaration of Trust, if the Recipient is comprised of more than one entity, all such entities will be jointly and severally liable to the Province for the fulfillment of the obligations of the Recipient under the Agreement.

22.0 RIGHTS AND REMEDIES CUMULATIVE

22.1 Rights and Remedies Cumulative. The rights and remedies of the Province under the Agreement are cumulative and are in addition to, and not in substitution for, any of its rights and remedies provided by law or in equity.

23.0 ACKNOWLEDGEMENT OF OTHER LEGISLATION AND DIRECTIVES

23.1 Recipient Acknowledges. The Recipient acknowledges that by receiving Funds it may become subject to legislation applicable to organizations that receive funding from the Government of Ontario, including the BPSAA, the PSSDA, and the *Auditor General Act* (Ontario).

24.0 SURVIVAL

24.1 Survival. The following Articles and sections, and all applicable cross-referenced sections and schedules, will continue in full force and effect for a period of seven years from the date of expiry or termination of the Agreement: Article 1.0 and any other applicable definitions, section, 4.5, section 7.1 (to the extent that the Recipient has not provided the Reports to the satisfaction of the Province), sections 7.2, 7.3, 7.4, 7.5, 7.6, Article 8.0, Article 12.0, Article 14.0, Article 16.0, Article 17.0, Article 19.0, Article 21.0, Article 23.0 and Article 24.0.

- END OF GENERAL TERMS AND CONDITIONS -

SCHEDULE “B”

PROJECT SPECIFIC INFORMATION

Maximum Funds	$100 million
Expiration Date	The date upon which the Affordability Fund Trust is terminated in accordance with the Declaration of Trust
Contact information for the purposes of Notice to the Province	**Attention: Usman Syed** **Position: Director** **Address: 77 Grenville St, Toronto, Ontario, M7A 2C1** **Fax: 416-325-6651** **Email: Usman.Syed@ontario.ca**
Contact information for the purposes of Notice to the Recipient	**Attention: Manager, Corporate Trust Services** **Address: 100 University Ave., 11th Floor, Toronto, Ontario, M5J 2Y1** **Email: CorporateTrust.Toronto@computershare.com**

SCHEDULE "C"

PROJECT

For the purposes of this Agreement, the "Project" is the distribution of the Funds in accordance with the Declaration of Trust.

It is intended the Project will be undertaken by the Recipient in furtherance of the Purpose and in accordance with the Declaration of Trust. In this regard, it is expected that the Recipient will undertake the Program having regard to the Budget and the Principles set forth in Annex A.

The following are the Province's expectations regarding the circumstances in which the Recipient will begin to distribute any Funds to any Beneficiary.

1. The Original Trustee Replacement Date (as defined in the Declaration of Trust) will have occurred.

2. An Administrative Services Agreement (as defined in the Declaration of Trust) will have been entered into between the Recipient and Hydro One Limited under which Hydro One Limited shall provide specified administrative and other services on behalf of the Recipient.

3. Administrative procedures will have been developed and implemented under which Electricity Distributors (as defined in the Declaration of Trust) will be invited to assist with (a) the identification and selection of Primary Beneficiaries under the Declaration of Trust, (b) the determination of the amount of Funds to be distributed to particular Primary Beneficiaries, and (c) the distribution of Funds to or for the benefit of such Primary Beneficiaries (in each case substantially on the basis contemplated in the Permitted Delegations Annex).

4. The Recipient will have obtained commercial general liability insurance from insurers having a secure A.M. Best rating of B+ or greater, or the equivalent, that in the opinion of the Recipient a prudent person similar to the Recipient would maintain, and having an inclusive limit of not less than $2,000,000 per occurrence and providing for contractual liability coverage. If requested, the Recipient will provide the Province (for its information purposes) with copies of the certificates of insurance and policies for such insurance coverage.

The Province recognizes that the foregoing may involve the Recipient entering into agreements as the Recipient considers to be necessary or expedient, including any required amendment or amendment and restatement of the Declaration of Trust. Funds may be expended to pay the expenses of the Recipient in completing these matters. The Recipient is requested to advise the Province through its quarterly reports on the status of the foregoing.

SCHEDULE "D"

Recipient's Budget

1. It is expected that the administrative expenses of the Recipient, including any administrative expenses of any Administrative Services Agents or any Implementation Agents or any other agents retained by the Recipient, relating to the establishment of the Affordability Fund Trust and addressing the Province's expectations as enumerated in Schedule "C" and any expenses related to the operation of the Affordability Fund Trust and the execution of the Project (including any reimbursable expenses incurred by any Administrative Services Agent or any Implementation Agent (as such terms are defined in the Declaration of Trust)), will be no greater than 10 percent of the total Project budget.

2. The only expenditures incurred by the Recipient that are eligible for reimbursement are actual (excluding HST) administrative overhead expenses incurred by or on behalf of the Recipient that directly related to the Recipient or the establishment of the Affordability Fund Trust.

4. Any expenses that have been or may be reimbursed by other parties should not be reimbursed from the assets of the Affordability Fund Trust.

5. It is expected any travel, meals and hospitality expenses by the Recipient will be consistent with the the accountability principles set out in Schedule B to the Principles Annex. For purposes of funding entities receiving funding from the Recipient, the following would not be considered eligible claims:

    - Alcohol
    - First-Class travel
    - Meals, snacks and beverages
    - Gratuities
    - Laundry or dry cleaning
    - Valet services
    - Dependent care
    - Home management
    - Personal telephone calls

6. In the event that the Recipient performs any procurements, it is expected that all procurements will reflect the principles of Ontario's Public Service Procurement Directive.

SCHEDULE “E”

PAYMENT PLAN

PAYMENT DATE	MAXIMUM FUNDS TO BE DISBURSED BY THE PROVINCE
Within 7 days of signing the Agreement	$ 100,000,000

SCHEDULE “F”

REPORTING

From and following the Original Trustee Replacement Date, Reports will be quarterly on the basis of the government’s fiscal year starting at the execution of this Agreement and continuing until conclusion of the Agreement. Annual Reports will be on a fiscal basis starting at the execution of this Agreement and continuing until conclusion of the Agreement. Quarterly Reports and Annual Reports would be expected to be submitted to the Province within one month following the end of the reporting period that they represent. The Province expects that these Reports would be prepared to demonstrate the impact of the Province’s funding and address the following:

- Quarterly Reports would include a report back on the trustee-developed performance management criteria. Initially, such Quarterly Reports would include details respecting:
    - Amounts disbursed by the Recipient in the previous quarter. It is expected that this information would be provided at the Electricity Distributor level and in the aggregate.
    - Total Affordability Fund investment income earned and accrued to date.
    - Key activities and achievements from the quarter, including the number of participant households per Electricity Distributor, average participant incentive cost per Electricity Distributor, and uptake of energy efficiency measures per Electricity Distributor.
    - Any challenges or modifications to the application, funding, or eligibility processes/rules of the Recipient.
    - Key activities planned for the upcoming quarter.
    - Details of any situation that a reasonable person might interpret as an actual, potential or perceived conflict of interest.
- Annual Reports would include a report back on the trustee-developed performance management criteria. Initially, such Annual Report would include details respecting:

- A description of an Electricity Distributor's application process and the criteria used by the Recipient to distribute funds.
- Any challenges identified by the Recipient or any Administrative Services Agent in achieving the Purpose and proposed solutions, if applicable.
- Lesson learned.
- Electricity Distributor and customer feedback.
- Amounts distributed to Beneficiaries or otherwise disbursed by the Recipient in the previous year. It is expected that this information will be provided by each Electricity Distributor.
- Key activities and achievements from each quarter being reported, including number of participant households per Electricity Distributor, average participant incentive cost per Electricity Distributor, and uptake of energy efficiency measures per Electricity Distributor.
- Total Affordability Fund interest earned and accrued to date.

As part of an Annual Report, the Recipient would also provide the Province with an audited financial statement for the previous year.

ANNEX A

Principles

Except as otherwise defined herein, capitalized terms used in this Annex A shall have the respective meanings given to such terms in the Declaration of Trust.

The Trustee shall have regard to, but shall not be specifically bound by, the following principles in applying its discretion in relation to the administration of the Trust:

1. Identification of Primary Beneficiary Payees

1.1 Except in exceptional circumstances, a Primary Beneficiary would not be expected to receive a benefit from the Trust unless at the time of consideration it satisfies, in addition to the requirements contemplated in the definition of "Primary Beneficiary", each of the following criteria (the "**Selection Factors**"):

(i) it has a participant agreement with an applicable Electricity Distributor to undertake measures (its "**Energy Plan**") to improve the electricity efficiency and/or promote the conservation of electricity at its Ontario residence;

(ii) its Energy Plan involves one or more Eligible Measures, as may be designated by the Trustee from time to time from;

(iii) it confirms that:

1. the primary purpose of its Energy Plan is the conservation and efficient use by the Primary Beneficiary of electricity, and is not for the purposes of the Primary Beneficiary making a profit;

2. it would otherwise not have the financial resources to undertake the Eligible Measures included in its Energy Plan; and

3. it would otherwise not be eligible to receive amounts in respect of the Eligible Measures as a HAP Eligible Person;

(iv) it has demonstrated a need for financial assistance on the basis that its periodic electricity bills represent a financial burden, relative to its available financial resources; and

(v) such other criteria as the Trustee may determine, including based on the recommendations of Electricity Distributors or other knowledgeable Persons made on the basis and having regard to the delegations contemplated by the Permitted Delegations Annex or any applicable Implementation Agreement.

1.2 It is recognized that, in furthering the Purpose, an efficient basis upon which to allocate funds to the Primary Beneficiaries across different areas and regions within Ontario may be based on the areas and regions serviced by the Electricity Distributors operating within Ontario.

1.3 It would not be contrary to the Purposes if funds are made available by the Trustee to the Primary Beneficiaries unequally across different areas and regions within Ontario, and it is expected that in making such an unequal division it would be appropriate to have regard to:

(i) broad economic parameters of economic activity and the specific financial resources of the residents of the areas and regions, in each case as an indication of the relative need of such residents across the areas and regions;

(ii) electricity use and efficiency levels of residential electricity customers across the areas and regions;

(iii) specific regional indicators of economic weakness and need; and

(iv) such other factors as the Trustee may determine are relevant, including based on the submissions, advice and recommendations of Electricity Distributors or other knowledgeable Persons made on the basis and having regard to the delegations contemplated by the Permitted Delegations Annex or any applicable Implementation Agreement.

1.4 It is recognized that, in furthering the Purpose, the designated Electricity Distributor for an area or region in which a Primary Beneficiary resides would be expected to:

(i) be a reliable source for the purpose of assessing and confirming whether the Primary Beneficiary satisfies the Selection Factors;

(ii) be an efficient intermediary for the purpose of communicating with the Primary Beneficiary, including with respect to matters such as regarding the availability, terms, conditions and intended purposes of Program;

(iii) be able to facilitate an efficient payment of distribution determined to be made to or on behalf of the Primary Beneficiary, having regard to the Electricity Distributor's established practices, procedures and systems for dealing with its customers; and

(iv) have established contractual arrangements with the Primary Beneficiary that may apply to the protection and confidentiality of information provided by or respecting the Primary Beneficiary, which information may be useful in the consideration by the Electricity Distributor in its assessment of whether the Primary Beneficiary satisfies the Selection Factors, which information may not otherwise be available or readily accessible or verifiable by the Trustee.

1.5 It is recognized that, in furthering the Purpose, the Electricity Distributor for an area or region in which a Primary Beneficiary resides will have market and utilization information that may be useful in assessing the relative needs of Primary Beneficiaries within its area or region. Such information is expected to be relevant in assessing the extent to which one such Primary Beneficiary's financial needs and the merits of its Energy Plan are greater or more compelling than those of another such Primary Beneficiary, which comparison may be relevant to the extent that the funds allocable to the Primary Beneficiaries resident in the area or region are otherwise insufficient to meet the requests for funding by all such Primary Beneficiaries.

1.6 Accordingly, it is recognized that, in furthering the Purpose, it is consistent with the Purpose that the recommendations of Electricity Distributors be utilized and relied upon by the Trustee to guide the process of identifying particular Primary Beneficiaries in making distributions to the Primary Beneficiaries.

1.7 If an Electricity Distributor for a particular area or region is unable or unwilling to assess or confirm the application of the Selection Factors to Primary Beneficiaries residing in the area or region or to make recommendations in relation to such matters, one or more of the following may

provide a suitable alternative source of information and for information gathering, assessment and confirmation purposes in relation to such area or region:

(i) other Electricity Distributors operating in adjacent or other areas or regions in Ontario;

(ii) the Ontario Energy Board;

(iii) the Independent Electricity System Operator; and

(iv) anyone else having relevant expertise and access to information regarding the electricity market of the Province, in each case as may be considered relevant by the Trustee.

1.8 To the extent that privacy law or other legal requirements limit an Electricity Distributor from providing or making available specific information respecting the application of the Selection Factors to a particular Primary Beneficiary or group of Primary Beneficiaries, it is recognized that, in furthering the Purpose, it may be appropriate to redact or make generic affected information regarding such Primary Beneficiary in connection with the identification and confirmation of a Primary Beneficiary's eligibility and participation in the Program. If such limitations or restrictions would limit an Electricity Distributor from providing or confirming the name of a particular Primary Beneficiary to the Trustee, then it should be sufficient that such information may be obtained or disseminated on a confidential basis if and when required by the Trustee for the proper administration of the Trust and on that basis such impediments should not disqualify a Primary Beneficiary from participating in the benefits of the Program, provided that the confidential record-keeping of the Electricity Distributor would be available in connection with the application of any applicable legal process predicated on the identification of such Primary Beneficiary for the purposes of substantiating its rights as a Primary Beneficiary of the Trust or as to the validity or subsistence of the Trust.

2. Eligible Measures

2.1 It is expected that the Trust will identify eligible measures that, taking into consideration the principles set forth in the Principles Annex, have regard to the following (the "**Measures Factors**"):

(i) is the measure generally expected to result in reduced electricity consumption by a Primary Beneficiary if properly installed and used;

(ii) is the measure recognized under another Provincial program as being appropriate for achieving electricity conservation among a population analogous to the Primary Beneficiaries;

(iii) does the measure present any unacceptable health or safety considerations, either with respect to the Primary Beneficiary, a party providing or installing the measure, or the physical environment;

(iv) is the measure broadly available to residents across different areas and regions of the Province; or

(v) is the measure a requirement or precursor to another measure, the other measure being one which meets any of the other Measures Factors.

2.2 In identifying and applying the Measures Factors, Electricity Distributors would be expected to have expertise in assessing the suitability of efficiency and conservation measures in their

respective areas and regions, which may differ across areas and regions across the Province based on factors (among other things) such as the climate, geography, density, electricity infrastructure, residential structures, and electricity use rates applicable within such areas or regions.

2.3 The measures specified in Schedule A to this Principles Annex may initially be considered to be consistent with the Measures Factors (subject to change as contemplated under the Permitted Delegations Annex).

3. Promotion of the Program

3.1 It is expected that the Trustee will undertake or engage others to undertake diligent efforts to promote the availability, terms and benefits of the Program to Primary Beneficiaries, including by establishing consistent communications through the Electricity Distributors.

3.2 It is expected that the Trustee will acknowledge the financial support of the Province in connection with the establishment and the funding for the Program, including in any external communications to or marketing directed at the Electricity Distributors and the Primary and Residual Beneficiaries. In the Trustee's delegation of any duties or powers to the Electricity Distributors through Implementation Agreements it is expected that Electricity Distributors will acknowledge the financial support of the Province in connection with the program including in any communications or marketing to Primary Beneficiaries.

4. Conduct of the Trust and the Program

4.1 It is expected that administrative expenses of the Board of Trustees and its members, including any expenses relating to the Trust, to the establishment of the Trust and any expenses related to the implementation and operation of the Program, including by or through Electricity Distributors and other relevant entities, will be recognized and subject to reimbursement on a basis that is substantially consistent with the accountability principles set out in Schedule B to this Principles Annex.

4.2 The Trustee is expected to conduct its activities in a manner that complies in all material respects with the Transfer Payment Agreement, including to:

(i) act prudently and in furtherance of the Purpose;

(ii) report not less frequently than annually the results of its activities for information purposes to the Province in connection with the Program;

(iii) comply with the Province's request for any independent verification or audit if determined to be necessary or appropriate by the Province;

(iv) return Assets that have not been distributed if it is determined that the Trustee has breached its Standard of Care in discharging its material duties under the Declaration, and has not cured such material breach despite having been given a reasonable opportunity by the Province to do so in light of the circumstances of such material breach, with the result that all or a significant part of the Assets have not been or are not being applied and distributed in furtherance of the Purpose or are being applied and distributed in a manner that is directly contrary or without regard to the Purpose.

4.3 Electricity Distributors are not intended to directly profit from distributions of funds made from the Trust, although it is recognized that the objectives of electricity efficiency and conservation of

Primary Beneficiaries located in the service area or region of an Electricity Distributor, and the cost savings and improved credit worthiness of such Primary Beneficiaries, may be financially beneficial to the Electricity Distributor.

4.4 Distributions from the Trust are intended to allow receiving Primary Beneficiaries to undertake Eligible Measures at no or minimal personal cost.

4.5 Without in any way limiting the discretion of the Board of Trustees to extend the period during which the benefits of the Program may be available to the Primary Beneficiaries, up to and including the Final Distribution Date, it is expected that the Trust Assets would be distributed to Primary Beneficiaries during the period from the Original Trustee Replacement Date to April 30, 2019.

SCHEDULE A TO THE PRINCIPLES ANNEX
INDICATIVE ELIGIBLE MEASURES[1]

Initial Specified Measures
Block Heater Timer (just timer) – rated for outdoor use, have at least a 15 amp/1800 watt capacity, be cold weather resistant, bear a C-UL or CSA certification mark
Power bar with integrated timer, and switched power outlets, four each for a total of 8 outlets, have a total capacity of 15 amps. The switched outlets must remain "live", independent of timer settings, so long as the power bar itself remains switched on. The power bar must bear either a C-UL or CSA certification mark.
Efficient Showerheads (standard) - rated at no more than 4.8 Lpm (1.25 U.S. gpm) and be of the laminar flow type (non-aerating).
Efficient Showerhead (handheld) - rated at no more than 4.8 Lpm (1.25 U.S. gpm) and be of the laminar flow type (non-aerating).
Efficient Aerators (kitchen) - rated no more than 5.7 Lpm (1.5 U.S. gpm), dual threaded to allow installation in both thread type faucets, swivel type with pause lever.
Efficient Aerators (bathroom) - rated no more than 3.8 Lpm (1.0 U.S. gpm), be dual threaded to allow installation in both thread type faucets.
Hot Water Tank Pipe Insulation - $^{1}/_{2}$" inside diameter – foam, meets ASTM –C547-00, minimum $^{3}/_{4}$" thick
Hot Water Tank Pipe Insulation - $^{3}/_{4}$ " inside diameter - – foam, meets ASTM –C547-00, minimum $^{3}/_{4}$" thick
Hot Water Tank Insulation - fibreglass R10 (fits up to a 60 gal tank) – not bubble wrap
≤11W ENERGY STAR® Qualified LED A Shape (60W) (minimum 600 Lumen output) (Formerly: 7W – 11W ENERGY STAR® Qualified LED A Shape (60W))

[1] These measures are indicative. Eligible measures added to HAP during the administration of the Trust may also be appropriately considered relevant by the Trustee.

Initial Specified Measures
≤14W ENERGY STAR® Qualified LED A Shape (75W) (minimum 800 Lumen output) (Formerly: 10W – 14W ENERGY STAR® Qualified LED A Shape (75W))
≤23W ENERGY STAR® Qualified LED A Shape (100W) (minimum 1600 Lumen output) (Formerly:17W – 23W ENERGY STAR® Qualified LED A Shape (100W))
≤16W ENERGY STAR® Qualified LED PAR 20 (minimum 600 Lumen output) (Formerly: 8W – 12W ENERGY STAR® Qualified LED PAR 20)
≤16W ENERGY STAR® Qualified LED PAR30 & PAR38 (minimum 600 Lumen output) (Formerly: 8W – 12W ENERGY STAR® Qualified LED PAR 30)
≤23W ENERGY STAR® Qualified LED PAR (minimum 1100 Lumen output) (Formerly: 14W – 18W ENERGY STAR® Qualified LED PAR 38)
≤6W ENERGY STAR® Qualified LED MR 16 / PAR 16 (minimum 250 Lumen output) (Formerly: 7W – 10W ENERGY STAR®
Qualified LED MR 16 / PAR 16 - GU 10 Base)
≤11W ENERGY STAR® Qualified LED MR 16 (minimum 400 Lumen output) (Formerly: 7W – 12W ENERGY STAR® Qualified LED MR 16 GU 5.3 Base)
ENERGY STAR® LED Wet Location Rated PAR lamp ≤ 23 Watt (minimum 1100 Lumen output)
Recessed Downlight Fixture including LED with Light Output >600 and <800 lumens (Retrofit Measure List)
Recessed Downlight Fixture including LED with Light Output >800 lumens (Retrofit Measure List)
Indoor Drying Rack

Extended Measures
Replace refrigerator with ENERGY STAR qualified refrigerator - 15.5 - 16.9 cubic foot top freezer, automatic defrost, refrigerator/ freezer, no through the door ice service
Replace refrigerator with ENERGY STAR qualified refrigerator - 17.0 - 18.4 cubic foot top freezer, automatic defrost, refrigerator/ freezer, no through the door ice service
Replace refrigerator with a refrigerator that has a consumption level of less than 425 kwh, 10 – 12.5 cubic foot top freezer, automatic defrost, refrigerator freezer, no through the door ice service
Replace freezer with ENERGY STAR qualified freezer - 12-14.4 cubic foot freezer
Replace freezer with ENERGY STAR qualified freezer - 14.5 - 16.0 cubic foot freezer
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 6,000 – 7,999 BTU/hr with C-UL or CSA certification mark
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 8,000 – 9,999 BTU/hr with C-UL or CSA certification mark
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 10,000 – 12,000 BTU/hr with C-UL or CSA certification mark
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 14.2 - 21.2 l/day (30-44.9 pints/day) dehumidifier
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 21.3 - 25.4 l/day (45-53.9 pints/day) dehumidifier
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 25.5 - 35.5 l/day (54-75 pints/day) dehumidifier
Programmable Thermostat – line voltage – meets CAN/CSA-C828-06 standard, minimum performance: Droop: 1.5°C, Differential: 0.5°C, Precision 0% within 0.5°C of the original set point of 22°C
Programmable Thermostat – low voltage - meets CAN/CSA-C828-06 standard, minimum performance: Droop: 1.5°C, Differential: 0.5°C, Precision 0% within 0.5°C of the original set point of 22°C

Weatherization Measures
Comprehensive Draftproofing (caulking, foam and weather stripping, and application of same) – lifespan of 20 years plus If one or two component polyurethane foams are used, the products and installations must conform to: • CAN/ULC-S710.1 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 1: Material Specification. • CAN/ULC-S710.2 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 2: Application. • CAN/ULC-S711.1 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification • CAN/ULC-S711.2 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification, and Part 2: Application. **Attic Insulation (including installation):**
cellulose: CAN/ULC-S703-01 Amendment 1 - Cellulose Fibre Insulation (CFI) for Buildings OR 2) Mineral Fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre

Weatherization Measures
for Buildings **Wall Insulation (including installation):**
cellulose: CAN/ULC-S703-01 Amendment 1 - Cellulose Fibre Insulation (CFI) for Buildings OR 2) Mineral Fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre **Basement Insulation (including installation):**
mineral fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre for Buildings Vapour Barrier: 69009-CAN/CGSB-51.34-m86 If one or two component polyurethane foams are used, the products and installations must conform to: • CAN/ULC-S710.1 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 1: Material Specification. • CAN/ULC-S710.2 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 2: Application. • CAN/ULC-S711.1 Standard for Thermal Insulation – Bead Applied Two-Component
Polyurethane Air Sealant Foam, Part 1: Material Specification • CAN/ULC-S711.2 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification, and Part 2: Application.

Heat Pumps
(Selection of manufacturers and technologies to meet the US federal minimum efficiency standard for ASHPs, as of 2015, is 13.0 SEER and 7.7 HSPF. Energy Star–certified models offer roughly 9 percent more efficiency than most new uncertified ASHPs and 20 percent more efficiency than existing models
Ductless Multiport Heat Pump
Cold Climate Ductless Heat Pump
Cold Climate Multiport Ductless Heat Pump
Cold Climate Ducted Heat Pump

SCHEDULE B TO THE PRINCIPLES ANNEX
PRINCIPLES APPLICABLE TO EXPENSE REIMBURSEMENTS

1. Funds should be used prudently and responsibly with a focus on accountability and transparency.

2. Expenses for travel, meals and hospitality support the Purpose.

3. Plans for travel, meals, accommodation and hospitality are necessary and economical with due regard for health and safety.

4. Legitimate authorized expenses incurred during the course of furthering the Purpose may be reimbursed.

5. Best practices should be followed, including:

    a. Prior approval to incur expenses is appropriately obtained.

    b. Other options for meetings are always considered before travel is approved, including audio or video conferencing.

    c. Corporate travel cards are to be used for authorized business travel and business related expenses.

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DECLARATION OF TRUST

Made as of March ~~●~~23, 2017

by

COMPUTERSHARE TRUST COMPANY OF CANADA

establishing

AFFORDABILITY FUND TRUST

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DECLARATION OF TRUST

This Declaration of Trust is made as of March ~~•,~~23, 2017, by Computershare Trust Company of Canada, a trust company established under the laws of Canada and licensed to carry on business as a trust company in each of the provinces and territories of Canada (together with its successors and assigns and the other trustees (including the Board of Trustees) contemplated herein, the "**Trustee**").

WHEREAS Computershare Trust Company of Canada, as settlor, wishes to establish a trust to acquire, hold, manage, invest, apply and dispose of certain property for the benefit of certain Beneficiaries as herein described.

NOW THEREFORE Computershare Trust Company of Canada hereby declares that it holds in trust as trustee (a) the sum of ONE HUNDRED DOLLARS ($100) contributed by it on this date and (b) all other property of every type and description which it may hereafter acquire or hold in its capacity as trustee of the Trust and all income therefrom and proceeds thereof, to hold, manage, invest, apply and dispose of same on and subject to the provisions set forth in this Declaration of Trust, including the annexes and schedule attached hereto.

SECTION 1
INTERPRETATION

1.1 Definitions

In this Declaration:

(a) "***Administrative Services Agent***" means each agent, which may include any Electricity Distributor or other Person, appointed from time to time under an Administrative Services Agreement, and its successors and permitted assigns solely in such capacity.

(b) "***Administrative Services Agreement***" means each agreement entered into from time to time by the Trust and one or more Administrative Services Agents or other Persons, in furtherance of the Purpose, under which the Administrative Services Agent agrees to provide specified administrative and other services to and on behalf of the Trustee, as such agreement may be amended, supplemented, restated, renewed or replaced from time to time and includes the agreement entered into on or about the date hereof between the Trustee and Hydro One Limited.

(c) "***Assets***" means, collectively, the following:

(i) the $100 Canadian referred to above, contributed by Computershare Trust Company of Canada on the date hereof;

(ii) all other property which is now or which at any time in the future may be issued, assigned, transferred, provided, donated, gifted and contributed to the Trustee (including pursuant to the Transfer Payment Agreement) to be held in trust pursuant to this Declaration (and which the Trustee is willing to accept and hold);

(iii) all acquisitions of property made by the Trust;

(iv) all property which may at any time be substituted for or in respect of the property referred to in clauses (i), (ii) and (iii), above;

(v) all income of the Trust, including investment income generated by the investment of the property referred to in clauses (i), (ii), (iii) and (iv), above; and

(vi) all proceeds of disposition of any of the property referred to in clauses (i) through (v) above,

but excludes any property paid out or distributed (whether out of income or capital) pursuant to the provisions of this Declaration.

(d) "***Beneficiary***" means each Primary Beneficiary and each Residual Beneficiary, as applicable.

(e) "***Board of Trustees***" means (i) as of the Original Trustee Replacement Date, the individual trustees appointed by the Original Trustee pursuant to Section 5.7 on the basis described in the Trustee Replacement Annex, and (ii) thereafter, the group of trustees appointed hereunder and acting in such capacity.

(f) "***Business Day***" means any working day, Monday to Friday inclusive, excluding statutory and other holidays, namely: New Year's Day; Family Day; Good Friday; Easter Monday; Victoria Day; Canada Day; Civic Holiday; Labour Day; Thanksgiving Day; Remembrance Day; Christmas Day; Boxing Day and any other day on which the Province has elected to be closed for business.

(g) "***Declaration***" means this Declaration of Trust, as it may be amended, restated, supplemented or otherwise modified from time to time, and includes each of the annexes and the Schedule attached hereto which constitute and form an integral part of this Declaration.

(h) "***Electricity Distributor***" means, in respect of a designated service area or region in Ontario, the distributor of electricity to residences located in such area or region.

(i) "***Electricity Invoice***" means an invoice issued by an Electricity Distributor in respect of electricity charges and related services and amounts incurred or assessed in respect of a residence located in the Electricity Distributor's designated service area or region in Ontario.

(j) "***Eligible Investments***" means (i) a deposit receipt, note, certificate or instrument issued, guaranteed or endorsed by a bank listed in Schedule I to the *Bank Act* (Canada), which provides that the principal and any interest shall be fully paid no later than one year after the day the investment was made, or (ii) a deposit account at a bank listed in Schedule I to the *Bank Act* (Canada).

(k) "***Eligible Measures***" means electricity efficiency and/or conservation measures determined by the Trustee from time to time on the basis contemplated in the Principles Annex and in the manner specified in and having regard to the Permitted Delegations Annex.

(l) "***Final Distribution Date***" means the earlier of (a) the date (if any) on which the Trustee determines (by a resolution of the Board of Trustees) that no further distributions are likely to be made to any Primary Beneficiary and (b) December 31, 2019.

(m) "***HAP Eligible Person***" means an "Eligible Person" as defined in Section 3.1 of the document entitled "Conservation First Framework LDC Took Kit" published by the Independent Electricity System Operator and designated as Final v3.0 – March 11, 2016, as amended in accordance with the Energy Conservation Agreement between the Independent Electricity System Operator and Electricity Distributors.

(n) **"Implementation Agent"** –means each agent which may include any Electricity Distributor or other Person, appointed from time to time under an Implementation Agreement, and its successors and assigns solely in such capacity.

(o) **"Implementation Agreement"** means each agreement entered into from time to time by the Trustee and one or more Implementation Agents or other Persons in furtherance of the Purpose under which the Implementation Agent would agree to provide specified services to and on behalf ~~of~~of the Trustee (including, following the Original Trustee Replacement Date, as contemplated by the Permitted Delegations Annex) in connection with the implementation of the Program as such agreement may be amended , supplemented, restated, renewed or replaced from time to time.

(p) "***Minister of Energy***" means the Minister of Energy or such other member of the Executive Council as may be assigned primary ministerial responsibility for the administration of the *Ministry of Energy Act, 2011* under the *Executive Council Act*.

(q) "***Original Trustee***" means Computershare Trust Company of Canada, acting in its capacity as trustee hereunder, together with any additional or replacement Trustee appointed hereunder prior to the Original Trustee Replacement Date and any of their respective successors and assigns.

(r) "***Original Trustee Replacement Date***" has the meaning specified in Section 5.7, being the date on which the Original Trustee is replaced as trustee under this Declaration by the Board of Trustees as contemplated under Section 5.7.

(s) "***Permitted Delegations Annex***" means the Permitted Delegations Annex set forth as an annex to this Declaration.

(t) "***Person***" includes any individual, sole proprietorship, corporation, partnership, joint venture, association, society, club, board, chamber, joint-stock company, trust, trustee, unincorporated or incorporated organization or entity or government or any entity, agency or political subdivision thereof.

(u) "***Primary Beneficiary***" means each individual that, as of a time of determination, satisfies each of the following criteria:

(i) the individual owns, rents or leases a residence located in Ontario and is the primary or secondary electricity utility account holder named on an Electricity Invoice issued in respect of that residence; and

(ii) the individual is not a HAP Eligible Person.

(v) "***Principles Annex***" means the Principles Annex set forth as an annex to this Declaration.

(w) "***Province***" means the Province of Ontario.

(x) "***Program***" means the establishment, promotion, implementation and administration of a program to achieve the Purpose on the basis contemplated in this Declaration.

(y) "***Purpose***" means (i) the making of distributions to Primary Beneficiaries who are identified and whose needs are assessed in accordance with section 3.1 and 3.2 of this Declaration, having regard to (x) the principles set forth in the Principles Annex, (y) the manner and basis of implementation and administration of the Program contemplated in the Permitted Delegations Annex, and (z) the other terms, limitations and requirements set forth in this Declaration, and (ii) to the extent that Assets are available following the distributions made to Primary Beneficiaries as contemplated in (i), above, the making of distributions to Residual Beneficiaries who are identified and whose needs are assessed in accordance with section 3.3 and otherwise having regard to the other terms, limitations and requirements set forth in this Declaration.

(z) ***"Residual Beneficiary"*** means each charitable organization identified by the Trustee and specified as a residual beneficiary hereunder from time to time, selected by the Trustee in consultation with and having regard to the recommendations of the Ontario Energy Board in accordance with section 3.3.

(aa) "***Transfer Payment Agreement***" means the transfer payment agreement dated as of March ~~•~~,23, 2017 between the Trustee and Her Majesty the Queen in right of Ontario as represented by the Minister of Energy, as such agreement may be amended, restated, supplemented or otherwise modified by the further agreement of the parties thereto from time to time.

(bb) "***Trust***" means Affordability Fund Trust, a trust established under and governed by the laws of the Province of Ontario pursuant to this Declaration.

(cc) "***Trustee***" means (i) the Original Trustee and (ii) on and after the Original Trustee Replacement Date, the Board of Trustees acting together in accordance with and subject to Section 5.7 and in accordance with the rules and procedures adopted by the Board of Trustees pursuant to Section 5.8.

(dd) "***Trustee Replacement Annex***" means the Trustee Replacement Annex set forth as an annex to this Declaration.

1.2 Headings and Table of Contents

The insertion of headings and the provision of a table of contents are for convenience of reference only and shall not affect the construction or interpretation of this Declaration.

1.3 References

Unless otherwise specified, all references to Sections are to Sections of this Declaration. The words "hereto", "herein", "hereof", "hereunder" and similar expressions refer to this Declaration and not to any particular Section or other provision of this Declaration.

1.4 Number and Gender

Unless otherwise specified, words importing the singular include the plural and vice versa and words importing gender include all genders.

1.5 Governing Law

This Declaration shall be governed by, and construed and interpreted in accordance with, the laws of the Province of Ontario and of Canada applicable therein.

1.6 Severability

Any provision of this Declaration which is illegal, invalid or unenforceable in any jurisdiction shall not affect the legality, validity or enforceability of the remaining provisions and any such illegality, invalidity or unenforceability in any jurisdiction shall not affect the legality, validity or enforceability of such provision in any other jurisdiction.

1.7 Reference to the Trust and the Trustee

For greater certainty, where any reference is made in this Declaration to an act to be performed by or for or on behalf of the Trust, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Trustee in its capacity as trustee of the Trust, and, where any reference is made in this Declaration to an act to be performed by or for or on behalf of the Trustee, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Trustee solely in its capacity as trustee of the Trust. Except as provided under the Transfer Payment Agreement, no Person dealing with the Trust or the Trustee shall be bound to make any enquiry concerning, or has the right to require production of, any evidence of the validity of any act of, or transaction purporting to be made by, the Trustee.

1.8 Defect in Appointment

No action taken by the Trustee will be invalid or ineffective by reason only of any defect in the appointment of the Trustee or the non-compliance by the Trustee with any rules or procedures adopted by the Trustee and which is discovered after the taking of such action.

SECTION 2
CONCERNING THE TRUST

2.1 Objectives

The Trust is established to hold, invest, apply and dispose of the Assets for the benefit of the Beneficiaries in furtherance of the Purpose, as provided for in this Declaration. In furtherance of the Purpose:

(a) the Original Trustee shall hold and invest the Assets as contemplated in this Declaration until the Original Trustee Replacement Date, after which the Board of Trustees shall be duly appointed hereunder; and

(b) the Board of Trustees shall hold, invest, apply and dispose of the Assets in accordance with this Declaration, including by determining the identities of and distributions (if any) to be made to or for the benefit of the Primary Beneficiaries in accordance with Sections 3.1 and 3.2 of this Declaration, having regard to the principles set forth in the Principles Annex and in the manner and on the basis contemplated in the Permitted Delegations Annex, or otherwise by determining the identities of and distributions to be made to or for the benefit of any Residual Beneficiary in accordance with Section 3.3,

in each case and in all respects subject to the terms, limitation and requirements set forth in this Declaration.

2.2 Name of the Trust

The name of the Trust shall be the "Affordability Fund Trust" or such replacement name as the Trustee shall determine and specify from time to time. The Trustee shall hold the Assets and conduct the activities of the Trust under such name or variation thereof (including any variation of such name in the French language). If the Trustee determines to change the name of the Trust, the Trustee may specify and use such other designation or adopt such other name (including any name in the French language) as it considers appropriate and may hold the Assets and conduct the activities of the Trust under such designation or other name.

2.3 Location

The head office and the situs of the administration of the Trust shall be • or such other address in Ontario as the Trustee may determine from time to time.

2.4 Fiscal Year

The fiscal year of the Trust shall end on December 31 of each year.

SECTION 3
DISTRIBUTIONS

3.1 Distributions to Primary Beneficiaries

After the Original Trustee Replacement Date and prior to the Final Distribution Date, the Trustee shall undertake diligent efforts in good faith to distribute the Assets (including capital or income) to the Primary Beneficiaries identified based on the application of the principles specified in the Principles Annex and in the manner and in the amounts determined on the basis contemplated by the Permitted Delegations Annex, in each case in the amounts and to the extent specified herein and therein, subject in all respects to the exercise by the Trustee of its discretion hereunder and to the exclusion of the other Beneficiaries.

3.2 Amount of Distributions to Primary Beneficiaries

For the purposes of determining the amount of distributions to be made to the Primary Beneficiaries, the Trustee shall have regard to and be entitled to rely on the recommendations of and information provided by Electricity Distributors acting as Implementation Agents appointed for the purposes, in the manner and substantially on the terms contemplated in the Permitted Delegations Annex, without any duty or obligation to verify or makes enquiries regarding the basis for or propriety of such recommendations or the accuracy or completeness of such information, except if and to the extent that the Trustee, in its discretion, determines that (i) it has actual knowledge that such recommendations are contrary to the reasonable application of the principles set forth in the Principles Annex or have been made on a basis that is manifestly contrary to such principles or the delegations and activities specified or contemplated to be undertaken under the Permitted Delegations Annex or (b) such information is known by the Trustee to be erroneous, contain a material misrepresentation or is materially incomplete.

3.3 Distributions to Residual Beneficiaries

Prior to the Final Distribution Date, the Trustee shall identify the Residual Beneficiary, or if more than one the Residual Beneficiaries and their respective allocations, by consulting with and having regard to the recommendations of the Ontario Energy Board, based on those charitable organizations which provide support services for Low Income Energy Assistance Program Emergency Financial Assistance (LEAP EFA) and the Ontario Electricity Support Program (OESP) or other charities that OEB may identify as relating to the Purpose. Following the Final Distribution Date, the Trustee shall, subject to compliance with section 7.3 and completion of a final audit, distribute all remaining Assets (including capital or income) to the Residual Beneficiaries, in each case in the amounts and to the extent determined by the Trustee in its discretion hereunder (having consulted with and having had regard to the recommendations of the Ontario Energy Board as aforesaid) and to the exclusion of the other Beneficiaries.

SECTION 4
POWERS OF THE TRUSTEE

4.1 General

Subject to and in compliance with the terms, limitations and restrictions of this Declaration and notwithstanding applicable trust legislation, the Trustee shall have, without other or further

authorization, full, exclusive and absolute power, control and authority over the Assets and over the affairs and activities of the Trust to the same extent as if the Trustee were not a trustee, but rather the sole and absolute owner of the Assets in its own right, including such power, control and authority to do all such acts and things as in its sole judgment and discretion are necessary, incidental or desirable for carrying on the affairs and activities of the Trust, with such powers of delegation as may be permitted or otherwise contemplated by this Declaration. Except as expressly provided in this Declaration, the enumeration in this Declaration of any specific power or authority shall not be construed as limiting the aforesaid general power or authority or any other specific power or authority set out herein. Subject to the terms, limitations and restrictions of this Declaration, every discretion or power hereby conferred on the Trustee is an absolute and uncontrolled discretion or power.

4.2 Specifically Enumerated Powers

The Trustee shall have the following specific powers and authorities:

(a) ***Transfer Payment Agreement.*** The Trustee shall have the power to enter into, amend, supplement, modify and perform its obligation under the Transfer Payment Agreement.

(b) ***Contracts and Undertakings.*** The Trustee shall have the power to enter into, amend, supplement, modify and perform its obligation under any contract entered into or undertaking given by the Trustee in furtherance of the Purpose, including any Administrative Services Agreement and any Implementation Agreement.

(c) ***Power to Own, Hold and Manage.*** Subject to section 4.2(d), the Trustee shall have the power to own, hold and manage the Assets in such manner as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable.

(d) ***Power to Invest in Eligible Investments.*** The Trustee shall have the power to invest the Assets only in Eligible Investments, and to change such Eligible Investments at any time and from time to time, all as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable, but always having regard to the Trustee's expectations regarding the timing of payments to be made to the Beneficiaries hereunder. If an investment of Assets in Eligible Investments would not be authorized under the applicable trust laws of Ontario, the Trustee shall nevertheless be permitted to make an investment of the Assets in such Eligible Investments. The Trustee will have no liability for the diminution in the value of any investment in Eligible Investments made hereunder.

(e) ***Power to Dispose of Assets.*** The Trustee shall have the power to sell, convey, assign, transfer, exchange and in any other manner dispose of the Assets or any part or parts thereof free and clear of any and all trusts established under this Declaration, by public or private sale, for cash or on credit, with or without advertisement, and subject to such restrictions, stipulations, agreements and reservations as the Trustee in its sole and absolute discretion may consider appropriate or advisable, and to execute and deliver and perform any agreement, deed, conveyance, transfer or other document or instrument in connection with the foregoing.

(f) ***Power to Apply Assets and Proceeds to Make Distributions to Beneficiaries.*** The Trustee shall have the power to apply the Assets and the proceeds and income derived therefrom to make distributions to the Beneficiaries contemplated by Section 3, and to execute and deliver

and perform any agreement, deed, conveyance, transfer or other document or instrument in connection therewith.

(g) ***Power to Delegate and to Appoint Agents, etc.*** The Trustee shall have the power to appoint, employ or contract with any Person as the Trustee in its sole and absolute discretion may consider appropriate or advisable in connection with the activities of the Trust. Without limiting the generality of the foregoing:

(i) the Trustee will have the power at any time and from time to time to appoint, employ or retain consultants, financial advisers, technical advisers, legal counsel, accountants, administrative services agents, implementation agents, insurers, insurance agents and insurance brokers, as the Trustee may require for the purpose of discharging its duties hereunder and shall not be responsible for or for the actions of any of them, including to:

(A) act for and on behalf of the Trust in connection with any and all matters in any way relating to the negotiation, settlement, entering into, amending, performance and enforcement of the Transfer Payment Agreement, the Administrative Services Agreements, the Implementation Agreements, and any other agreements and contracts to which the Trust becomes a party in accordance with this Declaration;

(B) to provide or cause to be provided any or all kinds of administrative and other services in any way relating to the activities of the Trust;

(C) to act as attorney in fact, agent or trustee in the acquisition, holding, investment, application, sale or other disposition of the Assets and in the handling, prosecuting, defending or settling of any claims of or made against the Trust;

(D) to value the Assets and determine the net income of the Trust; and

(E) to make any filings, elections and submissions (including in respect of taxation matters) in connection with the Trust's compliance with applicable laws and regulatory requirements; and

(ii) the Trustee may pay remuneration and reimbursements from the Assets for services performed for it or on its behalf in the discharge of the trusts hereof without taxation for costs or fees of any counsel, solicitor or attorney.

Without limiting the foregoing, it is expected that the Board of Trustees will seek to enter into Implementation Agreements with Electricity Distributors for the purposes contemplated by the Permitted Delegations Annex, and on such terms and conditions (including terms and conditions as to the payment of reasonable fees and expenses) not inconsistent therewith as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable.

(h) ***Power to Operate Accounts.*** The Trustee shall have the power to (i) open and operate accounts at any chartered bank, trust company or other financial institution in Canada or

elsewhere, as the Trustee in its sole and absolute discretion may consider appropriate or advisable; (ii) deposit therein any moneys or securities forming part of the Assets whether or not such deposits will earn interest; (iii) withdraw such deposits at such times and in such manner as the Trustee may determine; (iv) draw, make, endorse, deposit or otherwise deal in cheques, bills of exchange, promissory notes, drafts and other kinds of instruments and securities; and (v) enter into contracts or agreements with any such chartered bank, trust company or other financial institution containing such terms and provisions as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable. In connection therewith, the Trustee shall have no liability or responsibility for any loss which may occur by reason of the failure of any such chartered bank, trust company or other financial institution.

(i) ***Power to Collect, etc.*** The Trustee shall have the power to (i) collect, sue for, receive and give receipts for all sums of money or other property due to the Trust; (ii) consent to extensions of time for payment or to the renewal of any securities or obligations; (iii) engage or intervene in, prosecute, defend, compound, compromise, abandon or adjust by arbitration or otherwise, any demands, claims, actions, suits or proceedings relating to the Trust or the Assets; (iv) exercise any and all remedies available to the Trustee under any agreement or as may otherwise be available, including any power of foreclosure or sale available at law; (v) in connection with any such foreclosure or sale, purchase or otherwise acquire title to any property and to convey good title thereto free of any and all trusts hereby established, or to take or retake possession of any property secured under any agreement or instrument; (vi) extend the time, with or without security, for the payment or delivery of any debts or property; (vii) execute and deliver releases, acquittances, discharges, agreements or other instruments related thereto; and (viii) pay or satisfy any debts or claims upon any evidence that the Trustee, in its sole and absolute discretion, may determine to be sufficient.

(j) ***Power to Obtain Insurance***. The Trustee shall have the power to enter into contracts for or in relation to or otherwise obtain policies of insurance for the purpose of insuring the risks associated with the Trust, including to insure the Trustee (including the members of the Board of Trustees) against any risk of loss associated with assuming and performing the duties as Trustee. Without limiting the foregoing, it is expected that the Board of Trustees will obtain commercial general liability insurance from insurers having a secure A.M. Best rating of B+ or greater, or the equivalent, that in the opinion of the Recipient a prudent person similar to the Recipient would maintain, and having an inclusive limit of not less than $2,000,000 per occurrence and providing for contractual liability coverage.

(k) ***Power to Pay Trustee's Fees.*** The Original Trustee shall be entitled to be paid and receive the fees set forth in the Original Trustee's schedule of fees delivered as of or prior to the date hereof as compensation for its services under this Declaration, and to be reimbursed for its out-of-pocket expenses reasonably incurred, in each case from the Assets and without the approval of any Beneficiary or any court. The Original Trustee shall be entitled, in its sole and absolute discretion, to withdraw funds from time to time for such purpose from any account of the Trust. Members of the Board of Trustees shall be entitled to reimbursement for and in respect of their out-of-pocket expenses reasonably incurred in discharging their respective duties and obligations under this Declaration, in each case without the approval of any Beneficiary or any court, provided that the members of the Board of Trustees have general regard to ~~sorts of limitations as are set forth in the "Travel, Meal and Hospitality Expenses Directive of the Province" specified and amended by the Province from time to time, a copy of the current~~

~~version of which is attached as Exhibit 1~~the accountability principles set out in Schedule B to the Principles Annex.

(l) ***Power to Pay Taxes.*** The Trustee shall have the power to (i) pay, deduct, withhold or remit any taxes or assessments which are required by law to be paid, deducted, withheld or remitted together with or from any payment made by the Trustee; (ii) pay all taxes or assessments of whatever kind or nature imposed upon or against the Trust or the Trustee in connection with the Assets or any part thereof; (iii) collect and remit all taxes and assessments of whatever kind or nature required to be collected and remitted by the Trust or the Trustee in connection with their activities or the Assets or any part thereof; (iv) appeal, settle or compromise tax claims or liabilities; and (v) for the foregoing purposes, to make such returns, elections and submissions and do all such other acts and things as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable.

(m) ***Power to Appoint Auditors.*** The Trustee shall have the power to select and appoint and discharge and re-appoint, in its sole and absolute discretion, an auditor or auditors of the Trust and to settle and pay the fees of any such auditor or auditors from any account of the Trust.

(n) ***Form of Accounts.*** The Trustee shall have the power to determine and change from time to time, in its sole and absolute discretion, the method or form in which the accounts of the Trust will be kept and shall not be required to keep or provide accounts in the form usually required by law to be kept or provided by trustees; provided that such method or form reasonably complies with generally accepted accounting principles in effect in Canada to the extent applicable.

(o) ***Title to Assets.*** The Trustee shall have the power to cause all or any part of the Assets to be held by or registered, in its sole and absolute discretion, in the name of any Person.

(p) ***Delegation of Discretion***. The Trustee shall have the power to delegate the right and power to exercise, or concur in the exercise of any discretion or power, conferred on the Trustee in this Declaration or conferred by law to any one or more of its directors, officers, employees, agents, representatives or to such other Person, as the Trustee, in its sole and absolute discretion, may think is appropriate or advisable, including to one or more Administrative Services Agents under an Administrative Services Agreement and to one or more Implementation Agents and their respective employees, officers and directors under a related Implementation Agreement entered into by the Trust substantially on the basis contemplated in the Permitted Delegations Annex. In particular, the Trustee shall have the power to accept, rely on and follow the recommendations of an Electricity Distributor made under and having regard to the Permitted Delegation Annex with respect to the identification of, and the determination of distributions (if any) to be made to, any Primary Beneficiary, except if and in so far as the Trustee has actual knowledge that (1) such Primary Beneficiary did not in fact satisfy the "Selection Factors" specified in the Principles Annex as of the applicable time of determination; and/or (ii) the amount recommended to be distributed to the Primary Beneficiary was not calculated in substantial compliance with, or was calculated in a manner that is manifestly contrary to the requirements set forth or contemplated in, the Permitted Delegation Annex or the applicable Implementation Agreement.

(q) ***Additional Powers.*** The Trustee shall have the power to perform and do all such other acts, to take such steps and to execute all such deeds, transfers, assignments, agreements and

other documents and instruments as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable for the carrying out of any of its powers hereunder or of any of the activities of the Trust as herein contemplated, or for the carrying out, promotion or advancement of the interests of the Trust, whether or not any of such acts, things, documents or instruments are herein expressly mentioned. Any good faith determination by the Trustee as to what is necessary, desirable or appropriate to carry out its powers or activities of the Trust as contemplated under this Declaration or to carry out, promote or advance the interests of the Trust shall be conclusive. Any construction of this Declaration or any determination as to the activities of the Trust or the existence of any power or authority hereunder made in good faith by the Trustee, relying upon the advice of counsel, shall be conclusive. In construing the provisions of this Declaration, there shall be a presumption in favour of a grant of power to the Trustee.

SECTION 5
CONCERNING THE TRUSTEE

5.1 Duty of Trustee

In performing its duties and exercising its powers under this Declaration, the Trustee shall act honestly, in good faith and with a view to the best interests of the Trust and the Beneficiaries and shall exercise that degree of care, diligence and skill that a reasonably prudent trustee would exercise in comparable circumstances (the "**Standard of Care**"). The Trustee shall observe and act in accordance with the terms of, and shall observe and comply with the limitations and restrictions set forth in, this Declaration, including having due regard to the principles set forth in the Principles Annex. To the extent that the Trustee has so delegated any of its duties or powers, it shall be deemed to have satisfied the Standard of Care in respect of the subject matter of such delegation, subject to the Trustee's overall duty as a trustee to exercise prudent oversight in relation to such delegation. Unless required by law, the Trustee will not be required to give any security, bonds or sureties in any jurisdiction for the performance of any of its duties and obligations under this Declaration. The Trustee (including the individual members of the Board of Trustees) will not be required to devote its entire time to the trust activities.

5.2 Limitation of Liability

The Trustee shall not be personally liable in tort, contract or otherwise to any Beneficiary or any other Person for any loss or diminution in the value of the Assets, or for any action or failure to act on the part of the Trustee or any of its employees or agents or any other Person, and shall not be subject to any personal liability for any debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses incurred by or against the Trust, howsoever arising, and resort will be had solely to the Assets for the payment, performance or satisfaction thereof. No property or assets of the Trustee, owned in its personal capacity or otherwise, will be subject to levy, execution or other enforcement procedure**s** with respect to any obligation under this Declaration. However, the foregoing limitations in this Section shall not apply where the Trustee has demonstrated gross negligence, bad faith, fraud or wilful misconduct.

5.3 Liability of Trustee under Contracts

Any document or instrument creating a liability or obligation of the Trust or of the Trustee will be conclusively deemed to have been executed by the Trustee only in its capacity as Trustee of

the Trust and will be binding upon the Trustee only in its capacity as trustee hereunder and resort may not be had to, nor recourse or satisfaction be sought from, the property of the Trustee other than the Assets, whether owned by its in its personal capacity or in any other capacity other than in its capacity as Trustee of the Trust, or from its employees or agents, and in all cases resort will be had solely to the Assets for the payment, performance or satisfaction of any such liability or obligation. However, the foregoing limitations in this Section shall not apply where the Trustee has demonstrated gross negligence, bad faith, fraud or wilful misconduct. Each document or instrument creating a liability or obligation of the Trust or of the Trustee shall contain a provision providing for the aforesaid limitation of liability.

5.4 Funds of the Trustee

The Trustee shall not be required to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers.

5.5 Indemnification of Trustee

In addition to and without limiting any other protection hereunder or otherwise by law of the Trustee and its respective employees, agents, representatives and assigns (in this Section 5.5, collectively, the "**Representatives**"), the Trustee and its respective Representatives shall be indemnified, defended and saved harmless out of the Assets from, against and in respect of any and all liabilities arising or related to actions taken or omitted to be taken by any agent of the Trustee, losses, claims (including any claim arising out of the assessment of any tax on income by a taxing authority), damages, penalties, fines, actions, suits, demands, levies, assessments, costs, charges, expenses and disbursements (including, without limitation, any and all legal and advisor fees and disbursements) (in this Section 5.5, collectively, the "**Liabilities**") of whatever kind or nature which may at any time be suffered by, imposed upon, incurred by or asserted against the Trustee and its Representatives, whether groundless or otherwise, howsoever arising from or out of any act, omission or error of the Trustee, in each case made in connection with its acting as Trustee hereunder, in each case except and to the extent that the Liabilities are a result from or are caused by gross negligence, wilful misconduct, bad faith or fraud. Further, except as provided in section 5.2, the Trustee shall not be liable to any Beneficiary for any loss or damage relating to any matter regarding the Trust, including any loss or diminution in value of the Assets. Notwithstanding any other provision hereof, the obligations provided for in this section 5.5 shall survive any termination of the Trust, whether by reason of removal or resignation of the Trustee, termination or discharge of this Declaration or otherwise.

5.6 Reliance upon Advice

Subject to section 5.1, in performing its duties and exercising its powers hereunder, the Trustee may rely and may act or not act, and shall be fully protected in relying and acting or not acting, upon (a) any statement, telecopy or other electronic means of communication, writing, notice, resolution, report, opinion or other document or conversation believed by it to be genuine and correct and to have been signed, sent or made by the proper Person; (b) any opinion or advice received or information obtained from auditors, solicitors, or other professional advisers, whether retained by the Trustee or otherwise, and shall not be responsible or held liable for any loss or damage resulting from so relying or acting or not acting; and (c) the advice and actions of any

Administrative Services Agent or Implementation Agent, including in connection with the delegations and reliances contemplated under the Permitted Delegations Annex. For greater certainty, it shall not be necessary for the Trustee to ascertain whether or not the Persons who have executed, signed or otherwise issued, authenticated or receipted such papers, writings or documents (including any Administrative Services Agreement or any Implementation Agreement or any other contract entered into by the Trustee) have authority to do so or that they are the same Persons named therein or otherwise to pass upon any requirement of such papers, writing or documents that may be essential for their validity or effectiveness or upon the truth and acceptability.

5.7 Replacement of the Original Trustee

The Persons identified in the Trustee Replacement Annex are hereby appointed to comprise the Advisory Committee contemplated therein (the "**Advisory Committee**"). The Original Trustee shall promptly request that the Advisory Committee make recommendations with respect to the composition of the "Board of Trustees", as contemplated by the Trustee Replacement Annex. The Original Trustee shall have no duty or obligation to investigate the basis for any of the Advisory Committee's recommendations and may rely on such recommendations without any duty of enquiry, supervision or oversight with respect to the activities and decision-making processes adopted by the Advisory Committee in its discretion, in full satisfaction of the Original Trustee's Standard of Care with respect to such matters hereunder. Except where it is manifestly apparent to the Original Trustee that the individuals recommended by the Advisory Committee to become members of such Board of Trustees are disqualified from so acting on the basis of manifest non-compliance with the "Selection Factors" set forth in the Trustee Replacement Annex, the Original Trustee shall appoint, as members of the Board of Trustees, the six (five voting and one non-voting) individuals recommended for appointment to the Board of Trustees by the Advisory Committee. If the Original Trustee declines to appoint any individual recommended by the Advisory Committee, the Original Trustee will promptly request that the Advisory Committee provide a further recommendation whom the Original Trustee shall appoint as a member of the Board of Trustees unless it is manifestly apparent to the Original Trustee that the individual so recommended is also disqualified from so acting on the basis of manifest non-compliance with the "Selection Factors" set forth in the Trustee Replacement Annex,. Upon the appointment of such six individuals pursuant to this provision and their agreement to act as members of the Board of Trustees, the Original Trustee shall be deemed to have resigned and shall cease to be a trustee (such resignation occurring on the "**Original Trustee Replacement Date**").

5.8 Rules and Procedures of the Board of Trustees

(a) ***Initial Requirements.*** As soon as practicable and in any event no later than one month following the Original Trustee Replacement Date, the Board of Trustees ~~id~~is expected to meet to take such decisions and actions as they deem necessary to ensure the proper management and administration of the Trust. The date (and location if in person) of the initial meeting shall be determined by a majority of the Board of Trustees.

(b) ***Meetings.*** Subject to the Board of Trustees' discretion to make such rules and procedures that they may deem desirable, meetings of the Board of Trustees may be held at such time and place as the trustee members of the Board of Trustees may agree upon or as they may

fix by resolution for the purpose or if the meeting is called as hereinafter mentioned then at such time as may be designated in the notice calling the meeting. A meeting of the Board of Trustees may be called at any time by any two members of the Board of Trustees by two Business Days' notice given to the members of the Board of Trustees. No notice of any Board of Trustees' meeting shall be necessary when a quorum is present if those comprising the quorum consent to the transaction of the affairs of the Trust and the absent trustee or trustees, if any, either before or after the meeting shall waive in writing notice of the meeting. Meetings of the Board of Trustees may be conducted in person, by telephone, or in such other manner as determined by the Board of Trustees. The Board of Trustees may elect a Chairperson.

(c) ***Quorum.*** At any meeting of the Board of Trustees, a majority of the voting members of the Board of Trustees shall be a quorum irrespective of the number of members in office. The decision of the majority of the voting members where quorum exists shall govern and shall be binding for all purposes and shall be acted upon and carried out in the same manner and with the same effect as if all the voted members concurred therein; provided always that in the case of equality of votes the Chairperson, if any, shall not be entitled to cast a second or deciding vote.

(d) ***Power to Adopt Rules and Procedures.*** The Board of Trustees may make such rules and procedures not inconsistent herewith as it may deem desirable for the proper management and administration of the Trust and the discharge of the responsibilities of the Board of Trustees.

(e) ***Replacement of Members of the Board of Trustees***. The Board of Trustees shall have the power to replace any vacancy arising following the Original Trustee Replacement Date according to such rules and procedures as they deem appropriate subject to compliance with the Selection Factors specified in Trustee Replacement Annex and having regard for such considerations necessary to ensure that the composition of the Board of Trustees will be able to discharge its responsibilities in respect of the Declaration. If necessary, the Board of Trustees may fill any vacancy by application to the Courts of Ontario in the event of an unfilled vacancy.

(f) ***Decisions of the Board of Trustees.*** Decisions and actions of the Board of Trustees shall be made by voting, with each individual voting member having one vote. Subject to quorum requirements, a majority vote shall be determinative in respect of such decisions and actions. Subject to quorum requirements, any decision or action taken by the majority of voting members will represent the decision or action of the Trustee, and not any member of the Board of Trustees.

(g) ***Conflicts of Interest.*** With respect to any matter before the Board of Trustees, to the extent of a conflict of interest, whether actual, perceived or potential, involving a member of the Board of Trustees' personal interests and a matter concerning the Trust, such member shall abstain from voting on the matter or taking any other discretionary action on the matter. For the purposes of the foregoing, no member of the Board of Trustees shall be deemed to have a conflict by reason only that the member holds any office or position with an Electricity Distributor, social services agency or governmental or quasi-governmental agency or entity (such as the Independent Electricity System Operator); provided, however, that in relation to any decision of the Board of Trustees pertaining specifically to a particular Electricity Distributor, any member of the Board of Trustees who is a director, officer or employee of the Electricity Distributor would be expected to recuse himself or herself from participating in deliberations, discussions or voting in respect of such decision.

(h) ***Expense Reimbursements to Members of the Board of Trustees.*** Members of the Board of Trustees shall be entitled to reimbursement for and in respect of their out-of-pocket expenses reasonably incurred in discharging their duties and obligations as members of the Board of Trustees. Members of the Board of Trustees shall serve without compensation.

5.9 Confidentiality

Notwithstanding the resignation or removal and discharge from the trusts and powers reposed in and conferred on the Trustee by this Declaration, or the termination of this Declaration, the Trustee so resigning or removed shall continue to treat as confidential all information relating to the Trust, the Assets and the Beneficiaries and shall only be entitled to make disclosures concerning such information if disclosure is required in the performance of the functions of the resigning or removed Trustee or is ordered by a court of competent jurisdiction or is otherwise required by law. The Trustee shall not be responsible or liable to any Person for any loss or damage arising out of or in any way sustained or incurred in any way relating to any such required disclosure. The obligations arising under this section 5.9 shall survive the termination of the Trust.

5.10 Vesting in Successor Trustee

Any successor trustee (including any reconstituted Board of Trustees) shall automatically become vested with the Assets and with the same powers, rights, duties, responsibilities and trusts as if it, he or she had originally been named as Trustee under this Declaration, without the requirement of any further instrument or act or conveyance, and the Trustee ceasing to act shall execute all such transfers and other documents and do all such other acts or things as may be necessary or desirable to assign, transfer, deliver to, and vest in, the successor trustee, upon the trusts expressed in this Declaration, all the Assets and all the rights, powers and trusts of the Trustee ceasing to act. The expense of any act, document, deed or other instrument or thing required under this Section 5.10, including for greater certainty, outstanding fees and unreimbursed expenses of the Trustee (including any member of the Board of Trustees) ceasing to act, shall be satisfied from the Assets.

5.11 Execution of Instruments

The Trustee shall have the power to execute all deeds, transfers, agreements, promissory notes and other instruments on behalf of the Trust. Such power may be exercised by any one or more Administrative Services Agents acting in accordance with any delegated right to do so pursuant to an applicable Administrative Services Agreement or by any one or more Implementation Agents acting in accordance with any delegated right to do so pursuant to an applicable Implementation Agreement, and any such execution of instrument by an Administrative Services Agent, acting in such capacity as agent of the Trust pursuant to the terms and conditions of an Administrative Services Agreement or by an Implementation Agent acting in such capacity as agent of the Trust pursuant to the terms and conditions of an Implementation Agreement shall in each case be deemed to be a proper execution of such instrument by the Trustee and shall be binding for all purposes on the Trust.

5.12 Decisions by the Trustee

If there is more than one Trustee, decisions of the Trust may be made by a majority of Trustees eligible to vote on the applicable matter. Whenever the Trustees are unable to agree in relation to the commission or omission of any act or howsoever in the execution of the Trust, the decision of a majority of such Trustees shall prevail.

SECTION 6
AMENDMENTS AND SUPPLEMENTS

6.1 Amendments

Subject to the requirements of the Transfer Payment Agreement, the Trustee shall have the power in its sole and absolute discretion from time to time without the approval of any Beneficiary or any court to amend, vary, supplement, replace or restate this Declaration in its entirety or any portion thereof; provided, however that it is expected that any amendment shall be consistent with the intent of the principles set forth in the Principles Annex and with the intended scope and effect of the permitted delegations and activities of any Implementation Agent pursuant to the Permitted Delegations Annex. Without in any way limiting the foregoing, any such amendments, variations, supplements, replacements or restatements may:

(a) add provisions for the replacement of or appointment of additional trustees to act with the Original Trustee prior to the Original Trustee Replacement Date;

(b) in the case of the Original Trustee, add provisions to those contemplated in the Trustee Replacement Annex in respect of the appointment of the members and the formation and empowerment of the Board of Trustees;

(c) in the case of the Original Trustee, vary the terms and requirements applicable to the duties, responsibilities, obligations, liabilities, indemnities, protections, limitations, restrictions, compensation, expense reimbursements and such other matters, in each case as the Advisory Committee may indicate are necessary to be made in order to attract and receive confirmation of appointment of appropriately qualified individuals that the Advisory Committee specifies are to be appointed as members of the Board of Trustees in accordance with its recommendations;

(d) add additional or replace existing Trustees;

(e) add to or reasonably clarify the principles set forth in the Principles Annex;

(f) add to or reasonably clarify the delegations and activities contemplated to be made in the Permitted Delegation Annex;

(g) include provisions for the management of the Trust by the Trustees, including the making of rules, requirements and procedures governing the decision-making of the Board of Trustees;

(h) add provisions for the replacement of members of the Board of Trustees (in addition to those provisions contemplated in section 5.7 and the Trustee Replacement Annex);

(i) provide for the engagement of any Person or Persons as managers, administrators or other service providers to the Trust, including any additional or replacement Administrative Services Agent or Implementation Agent or representative thereof;

(j) specify supplemental procedures for the identification of Primary Beneficiaries and the exchange of information with Electricity Distributors in connection with identifying such Primary Beneficiaries; or

(k) specify procedures for the transfer and transmission of funds from the Trust or any Implementation Agent acting on its behalf and with delegated responsibility over funds constituting Assets, to or for the benefit of, Beneficiaries or their designated representatives, payees or assignees.

6.2 Supplemental Declarations

The Trustee is authorized to execute any supplemental declaration of trust (including one or more amendments and restatements from time to time of this Declaration) to give effect to amendments to this Declaration made pursuant to section 6.1.

SECTION 7
TERMINATION

7.1 Duration

Subject to sections 7.2 and 7.3, the Trust will continue in full force and effect so long as there are any Assets and until all of the debts, liabilities and obligations of the Trust have been paid and satisfied in full.

7.2 Termination and Distribution of Assets

The Trustee shall terminate the Trust and wind up its affairs as soon as practicable after the Final Distribution Date. In connection with the termination of the Trust, the Trustee shall identify the Residual Beneficiaries and distribute or cause to be distributed the remaining Assets, in cash or in kind or partly in each, to the Residual Beneficiaries, in each case in accordance with section 3.3. Despite the foregoing, the Trust will only be terminated and wound up after the Trustee, in its sole and absolute discretion, determines that all debts, liabilities and obligations of the Trust have been paid or otherwise adequately provided for and satisfied and upon receipt of such releases, indemnities and discharges as the Trustee, relying on the opinion of counsel, deems necessary for the protection of the Beneficiaries and for its own protection.

7.3 Distribution of Assets on Final Distribution Date

If the Trust holds Assets on the Final Distribution Date, the Trustee shall pay or provide reserves for the payment, and otherwise shall satisfy, all debts, liabilities and obligations of the Trust and shall provide or arrange to provide such investigations, audits, releases, indemnities and discharges as the Trustee, relying on the opinion of counsel, deems necessary for the protection of the Beneficiaries and for its own protection. Thereafter, any remaining Assets shall be paid to the Residual Beneficiaries in accordance with section 3.3.

SECTION 8
ACCEPTANCE OF TRUSTS

8.1 Acceptance of Trusts

The Trustee hereby accepts the trusts and duties contained in this Declaration and agrees to perform the same upon the terms and conditions hereof until discharged therefrom.

[Signature Page Follows]

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The Trustee has executed this Declaration as of the date first written above.

COMPUTERSHARE TRUST COMPANY OF CANADA,

By: _____
Name: Morag Abraham
Title: Corporate Trust Officer

By: _____
Name: Ann Samuel
Title: Associate Trust Officer

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PRINCIPLES ANNEX

The Trustee shall have regard to, but shall not be specifically bound by, the following principles in applying its discretion in relation to the administration of the Trust:

1. Identification of Primary Beneficiary Payees

1.1 Except in exceptional circumstances, a Primary Beneficiary would not be expected to receive a benefit from the Trust unless at the time of consideration it satisfies, in addition to the requirements contemplated in the definition of "Primary Beneficiary", each of the following criteria (the "**Selection Factors**"):

(i) it has a participant agreement with an applicable Electricity Distributor to undertake measures (its "**Energy Plan**") to improve the electricity efficiency and/or promote the conservation of electricity at its Ontario residence;

(ii) its Energy Plan involves one or more Eligible Measures, as may be designated by the Trustee from time to time from;

(iii) it confirms that:

1. the primary purpose of its Energy Plan is the conservation and efficient use by the Primary Beneficiary of electricity, and is not for the purposes of the Primary Beneficiary making a profit;

2. it would otherwise not have the financial resources to undertake the Eligible Measures included in its Energy Plan; and

3. it would otherwise not be eligible to receive amounts in respect of the Eligible Measures as a HAP Eligible Person;

(iv) it has demonstrated a need for financial assistance on the basis that its periodic electricity bills represent a financial burden, relative to its available financial resources; and

(v) such other criteria as the Trustee may determine, including based on the recommendations of Electricity Distributors or other knowledgeable Persons made on the basis and having regard to the delegations contemplated by the Permitted Delegations Annex or any applicable Implementation Agreement.

1.2 It is recognized that, in furthering the Purpose, an efficient basis upon which to allocate funds to the Primary Beneficiaries across different areas and regions within Ontario may be based on the areas and regions serviced by the Electricity Distributors operating within Ontario.

1.3 It would not be contrary to the Purposes if funds are made available by the Trustee to the Primary Beneficiaries unequally across different areas and regions within Ontario, and it is expected that in making such an unequal division it would be appropriate to have regard to:

(i) broad economic parameters of economic activity and the specific financial resources of the residents of the areas and regions, in each case as an indication of the relative need of such residents across the areas and regions;

(ii) electricity use and efficiency levels of residential electricity customers across the areas and regions;

(iii) specific regional indicators of economic weakness and need; and

(iv) such other factors as the Trustee may determine are relevant, including based on the submissions, advice and recommendations of Electricity Distributors or other knowledgeable Persons made on the basis and having regard to the delegations contemplated by the Permitted Delegations Annex or any applicable ~~implementation~~Implementation Agreement.

1.4 It is recognized that, in furthering the Purpose, the designated Electricity Distributor for an area or region in which a Primary Beneficiary resides would be expected to:

(i) be a reliable source for the purpose of assessing and confirming whether the Primary Beneficiary satisfies the Selection Factors;

(ii) be an efficient intermediary for the purpose of communicating with the Primary Beneficiary, including with respect to matters such as regarding the availability, terms, conditions and intended purposes of Program;

(iii) be able to facilitate an efficient payment of distribution determined to be made to or on behalf of the Primary Beneficiary, having regard to the Electricity Distributor's established practices, procedures and systems for dealing with its customers; and

(iv) have established contractual arrangements with the Primary Beneficiary that may apply to the protection and confidentiality of information provided by or respecting the Primary Beneficiary, which information may be useful in the consideration by the Electricity Distributor in its assessment of whether the Primary Beneficiary satisfies the Selection Factors, which information may not otherwise be available or readily accessible or verifiable by the Trustee.

1.5 It is recognized that, in furthering the Purpose, the Electricity Distributor for an area or region in which a Primary Beneficiary resides will have market and utilization information that may be useful in assessing the relative needs of Primary Beneficiaries within its area or region. Such information is expected to be relevant in assessing the extent to which one such Primary Beneficiary's financial needs and the merits of its Energy Plan are greater or more compelling than those of another such Primary Beneficiary, which comparison may be relevant to the extent that the funds allocable to the Primary Beneficiaries resident in the area or region are otherwise insufficient to meet the requests for funding by all such Primary Beneficiaries.

1.6 Accordingly, it is recognized that, in furthering the Purpose, it is consistent with the Purpose that the recommendations of Electricity Distributors be utilized and relied upon

by the Trustee to guide the process of identifying particular Primary Beneficiaries in making distributions to the Primary Beneficiaries.

1.7 If an Electricity Distributor for a particular area or region is unable or unwilling to assess or confirm the application of the Selection Factors to Primary Beneficiaries residing in the area or region or to make recommendations in relation to such matters, one or more of the following may provide a suitable alternative source of information and for information gathering, assessment and confirmation purposes in relation to such area or region:

(i) other Electricity Distributors operating in adjacent or other areas or regions in Ontario;

(ii) the Ontario Energy Board;

(iii) the Independent Electricity System Operator; and

(iv) anyone else having relevant expertise and access to information regarding the electricity market of the Province, in each case as may be considered relevant by the Trustee.

1.8 To the extent that privacy law or other legal requirements limit an Electricity Distributor from providing or making available specific information respecting the application of the Selection Factors to a particular Primary Beneficiary or group of Primary Beneficiaries, it is recognized that, in furthering the Purpose, it may be appropriate to redact or make generic affected information regarding such Primary Beneficiary in connection with the identification and confirmation of a Primary Beneficiary's eligibility and participation in the Program. If such limitations or restrictions would limit an Electricity Distributor from providing or confirming the name of a particular Primary Beneficiary to the Trustee, then it should be sufficient that such information may be obtained or disseminated on a confidential basis if and when required by the Trustee for the proper administration of the Trust and on that basis such impediments should not disqualify a Primary Beneficiary from participating in the benefits of the Program, provided that the confidential record-keeping of the Electricity Distributor would be available in connection with the application of any applicable legal process predicated on the identification of such Primary Beneficiary for the purposes of substantiating its rights as a Primary Beneficiary of the Trust or as to the validity or subsistence of the Trust.

2. Eligible Measures

2.1 It is expected that the Trust will identify eligible measures that, taking into consideration the principles set forth in the Principles Annex, have regard to the following (the "**Measures Factors**"):

(i) is the measure generally expected to result in reduced electricity consumption by a Primary Beneficiary if properly installed and used;

(ii) is the measure recognized under another Provincial program as being appropriate for achieving electricity conservation among a population analogous to the Primary Beneficiaries;

(iii) does the measure present any unacceptable health or safety considerations, either with respect to the Primary Beneficiary, a party providing or installing the measure, or the physical environment;

(iv) is the measure broadly available to residents across different areas and regions of the Province; or

(v) is the measure a requirement or precursor to another measure, the other measure being one which meets any of the other Measures Factors.

2.2 In identifying and applying the Measures Factors, Electricity Distributors would be expected to have expertise in assessing the suitability of efficiency and conservation measures in their respective areas and regions, which may differ across areas and regions across the Province based on factors (among other things) such as the climate, geography, density, electricity infrastructure, residential structures, and electricity use rates applicable within such areas or regions.

2.3 The measures specified in Schedule A to this Principles Annex may initially be considered to be consistent with the Measures Factors (subject to change as contemplated under the Permitted Delegations Annex).

3. Promotion of the Program

3.1 It is expected that the Trustee will undertake or engage others to undertake diligent efforts to promote the availability, terms and benefits of the Program to Primary Beneficiaries, including by establishing consistent communications through the Electricity Distributors.

3.2 It is expected that the Trustee will acknowledge the financial support of the Province in connection with the establishment and the funding for the Program, including in any external communications to or marketing directed at the Electricity Distributors and the Primary and Residual Beneficiaries. In ~~its~~the Trustee's delegation of any duties or powers to the Electricity Distributors through Implementation Agreements it is expected that Electricity Distributors will acknowledge the financial support of the Province in connection with the program including in any communications or marketing to Primary Beneficiaries.

4. Conduct of the Trust and the Program

4.1 It is expected that administrative expenses of the Board of Trustees and its members, including any expenses relating to the Trust, to the establishment of the Trust and any expenses related to the implementation and operation of the Program, including by or through Electricity Distributors and other relevant entities, will be recognized and subject to reimbursement on a basis that is substantially consistent with the accountability ~~provisions contemplated in the Transfer Payment Agreement and the~~ principles ~~in the~~

~~Province's Travel, Meal and Hospitality Expenses Directive, as~~ set out in Schedule B to this Principles Annex.

~~4.1~~

4.2 The Trustee is expected to conduct its activities in a manner that complies in all material respects with the Transfer Payment Agreement, including to:

(i) act prudently and in furtherance of the Purpose;

(ii) report not less frequently than annually the results of its activities for information purposes to the Province in connection with the Program;

(iii) comply with the Province's request for any independent verification or audit if determined to be necessary or appropriate by the Province;

(iv) return Assets that have not been distributed if it is determined that the Trustee has breached its Standard of Care in discharging its material duties under the Declaration, and has not cured such material breach despite having been given a reasonable opportunity by the Province to do so in light of the circumstances of such material breach, with the result that all or a significant part of the Assets have not been or are not being applied and distributed in furtherance of the Purpose or are being applied and distributed in a manner that is directly contrary or without regard to the Purpose.

4.3 Electricity Distributors are not intended to directly profit from distributions of funds made from the Trust, although it is recognized that the objectives of electricity efficiency and conservation of Primary Beneficiaries located in the service area or region of an Electricity Distributor, and the cost savings and improved credit worthiness of such Primary Beneficiaries, may be financially beneficial to the Electricity Distributor.

4.4 Distributions from the Trust are intended to allow receiving Primary Beneficiaries to undertake Eligible Measures at no or minimal personal cost.

4.5 Without in any way limiting the discretion of the Board of Trustees to extend the period during which the benefits of the Program may be available to the Primary Beneficiaries, up to and including the Final Distribution Date, it is expected that the Trust Assets would be distributed to Primary Beneficiaries during the period from the Original Trustee Replacement Date to April 30, 2019.

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SCHEDULE A TO THE PRINCIPLES ANNEX
INDICATIVE ELIGIBLE MEASURES[1]

Initial Specified Measures
Block Heater Timer (just timer) – rated for outdoor use, have at least a 15 amp/1800 watt capacity, be cold weather resistant, bear a C-UL or CSA certification mark
Power bar with integrated timer, and switched power outlets, four each for a total of 8 outlets, have a total capacity of 15 amps. The switched outlets must remain "live", independent of timer settings, so long as the power bar itself remains switched on. The power bar must bear either a C-UL or CSA certification mark.
Efficient Showerheads (standard) - rated at no more than 4.8 Lpm (1.25 U.S. gpm) and be of the laminar flow type (non-aerating).
Efficient Showerhead (handheld) - rated at no more than 4.8 Lpm (1.25 U.S. gpm) and be of the laminar flow type (non-aerating).
Efficient Aerators (kitchen) - rated no more than 5.7 Lpm (1.5 U.S. gpm), dual threaded to allow installation in both thread type faucets, swivel type with pause lever.
Efficient Aerators (bathroom) - rated no more than 3.8 Lpm (1.0 U.S. gpm), be dual threaded to allow installation in both thread type faucets.
Hot Water Tank Pipe Insulation - $^1/_2$" inside diameter – foam, meets ASTM –C547-00, minimum $^3/_4$" thick
Hot Water Tank Pipe Insulation - $^3/_4$ " inside diameter - – foam, meets ASTM –C547-00, minimum $^3/_4$" thick
Hot Water Tank Insulation - fibreglass R10 (fits up to a 60 gal tank) – not bubble wrap
≤11W ENERGY STAR® Qualified LED A Shape (60W) (minimum 600 Lumen output) (Formerly: 7W – 11W ENERGY STAR® Qualified LED A Shape (60W))

[1] These measures are indicative. Eligible measures added to HAP during the administration of the Trust may also be appropriately considered relevant by the Trustee.

Initial Specified Measures
≤14W ENERGY STAR® Qualified LED A Shape (75W) (minimum 800 Lumen output) (Formerly: 10W – 14W ENERGY STAR® Qualified LED A Shape (75W))
≤23W ENERGY STAR® Qualified LED A Shape (100W) (minimum 1600 Lumen output) (Formerly:17W – 23W ENERGY STAR® Qualified LED A Shape (100W))
≤16W ENERGY STAR® Qualified LED PAR 20 (minimum 600 Lumen output) (Formerly: 8W – 12W ENERGY STAR® Qualified LED PAR 20)
≤16W ENERGY STAR® Qualified LED PAR30 & PAR38 (minimum 600 Lumen output) (Formerly: 8W – 12W ENERGY STAR® Qualified LED PAR 30)
≤23W ENERGY STAR® Qualified LED PAR (minimum 1100 Lumen output) (Formerly: 14W – 18W ENERGY STAR® Qualified LED PAR 38)
≤6W ENERGY STAR® Qualified LED MR 16 / PAR 16 (minimum 250 Lumen output) (Formerly: 7W – 10W ENERGY STAR®
Qualified LED MR 16 / PAR 16 - GU 10 Base)
≤11W ENERGY STAR® Qualified LED MR 16 (minimum 400 Lumen output) (Formerly: 7W – 12W ENERGY STAR® Qualified LED MR 16 GU 5.3 Base)
ENERGY STAR® LED Wet Location Rated PAR lamp ≤ 23 Watt (minimum 1100 Lumen output)
Recessed Downlight Fixture including LED with Light Output >600 and <800 lumens (Retrofit Measure List)
Recessed Downlight Fixture including LED with Light Output >800 lumens (Retrofit Measure List)
Indoor Drying Rack

Extended Measures
Replace refrigerator with ENERGY STAR qualified refrigerator - 15.5 - 16.9 cubic foot top freezer, automatic defrost, refrigerator/ freezer, no through the door ice service
Replace refrigerator with ENERGY STAR qualified refrigerator - 17.0 - 18.4 cubic foot top freezer, automatic defrost, refrigerator/ freezer, no through the door ice service
Replace refrigerator with a refrigerator that has a consumption level of less than 425 kwh, 10 – 12.5 cubic foot top freezer, automatic defrost, refrigerator freezer, no through the door ice service
Replace freezer with ENERGY STAR qualified freezer - 12-14.4 cubic foot freezer
Replace freezer with ENERGY STAR qualified freezer - 14.5 - 16.0 cubic foot freezer
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 6,000 – 7,999 BTU/hr with C-UL or CSA certification mark
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 8,000 – 9,999 BTU/hr with C-UL or CSA certification mark
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 10,000 – 12,000 BTU/hr with C-UL or CSA certification mark
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 14.2 - 21.2 l/day (30-44.9 pints/day) dehumidifier
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 21.3 - 25.4 l/day (45-53.9 pints/day) dehumidifier
~~**Extended Measures**~~
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 25.5 - 35.5 l/day (54-75 pints/day) dehumidifier
Programmable Thermostat – line voltage – meets CAN/CSA-C828-06 standard, minimum performance: Droop: 1.5°C, Differential: 0.5°C, Precision 0% within 0.5°C of the original set point of 22°C
Programmable Thermostat – low voltage - meets CAN/CSA-C828-06 standard, minimum performance: Droop: 1.5°C, Differential: 0.5°C, Precision 0% within 0.5°C of the original set point of 22°C

Weatherization Measures
Comprehensive Draft proofing (caulking, foam and weather stripping, and application of same) – lifespan of 20 years plus If one or two component polyurethane foams are used, the products and installations must conform to: • CAN/ULC-S710.1 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 1: Material Specification. • CAN/ULC-S710.2 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 2: Application. • CAN/ULC-S711.1 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification • CAN/ULC-S711.2 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification, and Part 2: Application. **Attic Insulation (including installation):**
cellulose: CAN/ULC-S703-01 Amendment 1 - Cellulose Fibre Insulation (CFI) for Buildings OR 2) Mineral Fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre

Weatherization Measures
for Buildings **Wall Insulation (including installation):**
cellulose: CAN/ULC-S703-01 Amendment 1 - Cellulose Fibre Insulation (CFI) for Buildings OR 2) Mineral Fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre **Basement Insulation (including installation):**
mineral fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre for Buildings Vapour Barrier: 69009-CAN/CGSB-51.34-m86 If one or two component polyurethane foams are used, the products and installations must conform to: • CAN/ULC-S710.1 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 1: Material Specification. • CAN/ULC-S710.2 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 2: Application. • CAN/ULC-S711.1 Standard for Thermal Insulation – Bead Applied Two-Component
Polyurethane Air Sealant Foam, Part 1: Material Specification • CAN/ULC-S711.2 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification, and Part 2: Application.

Heat Pumps (Selection of manufacturers and technologies to meet the US federal minimum efficiency standard for ASHPs, as of 2015, is 13.0 SEER and 7.7 HSPF. Energy Star–certified models offer roughly 9 percent more efficiency than most new uncertified ASHPs and 20 percent more efficiency than existing models that may be in place)
Ductless Multiport Heat Pump
Cold Climate Ductless Heat Pump
Cold Climate Multiport Ductless Heat Pump
Cold Climate Ducted Heat Pump

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SCHEDULE B TO THE PRINCIPLES ANNEX
~~PERMITTED~~PRINCIPLES APPLICABLE TO EXPENSE REIMBURSEMENTS

~~**Travel, Meal and Hospitality Expenses Directive**~~

1. Funds should be used prudently and responsibly with a focus on accountability and transparency.

2. Expenses for travel, meals and hospitality support the Purpose.

3. Plans for travel, meals, accommodation and hospitality are necessary and economical with due regard for health and safety.

4. Legitimate authorized expenses incurred during the course of furthering the Purpose may be reimbursed.

5. Best practices should be followed, including:

    a. Prior approval to incur expenses is appropriately obtained.

    b. Other options for meetings are always considered before travel is approved, including audio or video conferencing.

    c. Corporate travel cards are to be used for authorized business travel and business related expenses.

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PERMITTED DELEGATION ANNEX

1. Under section 4.2(g) of the Declaration, the Trustee has the power to: (a) appoint, employ or retain Implementation Agents for the purpose of discharging its duties and obligations under the Declaration; and (b) enter into, perform, enforce and amend Implementation Agreements.

2. In accordance with section 4.2(g) of the Declaration, consistent with the principles set forth in the Principles Annex, the Trustee or its agent will seek to enter into one or more Implementation Agreements with individual Electricity Distributors under which the Electricity Distributors will act as Implementation Agents to the Trustee. In this manner, the Trustee will delegate certain of its powers and duties to the Electricity Distributors.

3. Under section 5.1 of the Declaration, to the extent the Trustee has delegated any of its duties or powers, it shall be deemed to have satisfied the Standard of Care in respect of the subject matter of such delegation, subject to the Trustee's overall duty to exercise prudent oversight thereof. The Trustee is entitled to rely on an Electricity Distributor to discharge the duties delegated to it, as Implementation Agent, pursuant to an Implementation Agreement as described in this Annex.

4. Accordingly, and without limiting the Trustee's right to delegate under the Declaration and its other rights, powers and discretion as Trustee, the Trustee will be permitted to, and is expected to seek to, enter into Implementation Agreements with Electricity Distributors in order to further the Purpose. Without limiting the Trustee's discretion to negotiate and settle the terms and conditions of such Implementation Agreements, it is expected that such Implementation Agreements will include customary terms and conditions for ~~an administrative services arrangement~~arrangements of this type and, in addition, would (subject to the acceptance and agreement of the applicable Electricity Distributor counterparty) address the following points in particular:

    a. **Identification of Applicable Primary Beneficiary Payees and Determination of Individual Distribution Amounts**

        i. Each Electricity Distributor would make an initial assessment of the financial needs of Primary Beneficiaries within its designated service area or region, having regard to the Selection Factors set forth in section 1.3 of the Principles Annex, together with applicable economic data, in order to prepare and provide to the Trustee an estimate of the number of Primary Beneficiaries who the Electricity Distributor reasonably expects would satisfy the Selection Factors.

        ii. Each Electricity Distributor would make an initial assessment of the measures it would recommend be included as Eligible Measures, having regard to the Measures Factors set forth in section 2.1 of the Principles Annex, in order to prepare and provide to the Trustee an estimate of the average cost per Primary Beneficiary Payee (as defined below) of such Eligible Measures that the Electricity Distributor reasonably expects would apply in respect of Primary Beneficiaries resident in its service area or region.

iii. Based on the product of (i) and (ii), above, and such other considerations as it considers to be directly relevant, each Electricity Distributor would make a written recommendation to the Trustee regarding the aggregate funding amount that the Electricity Distributor anticipates would be utilized under the Program by the Primary Beneficiaries resident in its service area or region (the "**Local Funding Estimate**"). Such recommendation would be accompanied, when submitted to the Trustee, by a detailed explanation regarding the assumptions, financial parameters, suitability considerations and other information underlying the Local Funding Estimate (including the type of information contemplated by the Selections Factors and the Measures Factors~~,~~) which would be relied upon by the Trustee in its assessment regarding the allocation of available funding to or for the benefit of the Primary Beneficiaries across the specified areas and regions of Ontario.

iv. The Trustee would inform the Electricity Distributor regarding the aggregate of the amount determined by the Trustee to be made available under the Program for Primary Beneficiaries in the Electricity Distributor's designated service area or region (for each Electricity Distributor, its "**Maximum Electricity Distributor Allocation**") and as to any maximum amount that may be paid to or for the benefit of any single Primary Beneficiary located in the ~~servicer~~service area or region of the Electricity Distributor (the "**Maximum Primary Beneficiary Amount**"). The Maximum Electricity Distributor Allocation and Maximum Primary Beneficiary Amount may vary between areas and regions, among the Primary Beneficiaries within such areas and regions, and may be increased by the Trustee from time to time in its discretion.

v. Each Electricity Distributor would apply the principles set forth under "Identification of Primary Beneficiary Payees" in the Principles Annex to identify and make recommendations to the Trustee regarding the amount of funds (if any) to be distributed to or for the benefit of Primary Beneficiaries resident within its service area or region from time to time (the "**Primary Beneficiary Payees**").

vi. Each Electricity Distributor would ensure that the aggregate of the amounts it recommends be distributed to or for the benefit of Primary Beneficiary Payees from time to time does not exceed (1) its Maximum Electricity Distributor Allocation and (2) for any single Primary Beneficiary located in the service area or region of the Electricity Distributor, the lesser of (x) the applicable Maximum Primary Beneficiary Amount and (y) the estimated costs (including any applicable taxes, but excluding any amount payable to the Electricity Distributor by or on behalf of the Primary Beneficiary) to be incurred by or on behalf of such Primary Beneficiary (whether or not such costs have been paid or remain outstanding) in respect of Eligible Measures applied or to be applied in respect of the Primary Beneficiary's Ontario residence.

vii. The Trustee would provide written confirmation to each Electricity Distributor:

1. Either (x) that the recommendations specified of the Electricity Distributor in clause (v), above, have been accepted, or (y) as to the specific reasons for any non-acceptance; and

2. The amount of the distributions to be paid to or for the benefit of each Primary Beneficiary Payee that is resident in the Electricity Distributor's service area or region.

viii. With respect to each Primary Beneficiary resident in a Electricity Distributor's service area or region that is confirmed as a Primary Beneficiary Payee, the Electricity Distributor would provide the Trustee written confirmation as to:

1. The identity of such Primary Beneficiary Payee; and

2. The amount of the distribution paid to or for the benefit of such Primary Beneficiary Payee.

ix. If the amount of a distribution to be made to a Primary Beneficiary Payee is based on the estimated costs to be incurred by or on behalf of such Primary Beneficiary and, prior to making the distribution to the Primary Beneficiary Payee, the Electricity Distributor determines that the actual costs (including any applicable taxes but excluding any amount payable to the Electricity Distributor by or on behalf of the Primary Beneficiary) incurred or to be incurred by or on behalf of such Primary Beneficiary in respect of Eligible Measures applied or to be applied in respect of the Primary Beneficiary's Ontario residence has or would be less than such estimated costs, then the amount to be distributed to the Primary Beneficiary shall be based on such actual costs.

b. **Making of Distributions to Primary Beneficiaries**

i. It is expected that promptly after the Trustee confirms the identity of a Primary Beneficiary Payee resident in an Electricity Distributor's service area or region and the amount of the distribution to be paid to or for the benefit of such Primary Beneficiary Payee, the Trustee would arrange for payment to or on the direction of the Electricity Distributor of an amount equal to the amount of such distribution.

ii. It is expected that promptly upon receipt of funds in respect of a distribution to be made to a Primary Beneficiary Payee, the Electricity Distributor would arrange for payment of the full amount of such distribution to or for the benefit of the Primary Beneficiary Payee (including by direct payment to a third party of, or as a reimbursement or rebate of, the costs of applicable Eligible Measures installed at the residence of and for the benefit of the Primary Beneficiary Payee), without reduction or set-off by the Electricity Distributor.

iii. If the amount paid to an Electricity Distributor in respect of a distribution to be made to a Primary Beneficiary exceeds the actual amount of the

distribution made to or on behalf of the Primary Beneficiary, it is expected that the Trustee would require Electricity Distributor to return such excess to the Trustee, whereupon the proceeds of such returned amount shall continue to form part of the Assets.

c. **Establishment of Operational, Administrative, Record-Keeping and Other Systems and Policies by Electricity Distributors to facilitate the Program**

i. It is expected that the Electricity Distributor would establish such operational, administrative, record-keeping and other systems and policies as are necessary to facilitate the Program and perform its duties under the Implementation Agreement, including systems or policies to: identify Primary Beneficiary Payees; comply with applicable privacy and regulatory laws; communicate with Primary Beneficiaries on behalf of the Trust; assess Eligible Measures; determine the Local Funding Estimate; monitor its recommendations to the Trustee against its Maximum Electricity Distributor Allocation and the Maximum Primary Beneficiary Amount; receive funds from the Trust in respect of distributions to the Primary Beneficiary Payees and transfer such funds to the appropriate recipients for the benefit of the Primary Beneficiary Payees; preparation and timely delivery to Primary Beneficiary Payees of such documents as are required by the *Income Tax Act* (Canada); and create and maintain records in respect of the foregoing.

ii. The Electricity Distributor would set up a separate bank account for the purpose of receiving funds from the Trust in respect of distributions to the Primary Beneficiary Payees and the transfer of such funds to the appropriate recipients for the benefit of the Primary Beneficiary Payees.

d. **Reporting, Record-Keeping, Inspection and Disclosure and Compliance Matters**

i. The Electricity Distributor would provide record-keeping, clerical and bookkeeping services relating to all matters relating to its recommendations and the performance of its other duties and obligations under its Implementation Agreement.

ii. The Electricity Distributor would keep and maintain all financial records and non-financial documents and records relating to the provision of services under its Implementation Agreement.

iii. The Electricity Distributor would provide to the Trustee quarterly and annual reports ("**Reports**") for the duration of its Implementation Agreement. Such Reports would set out, among other things, the amounts of the distributions paid to or for the benefit of applicable Primary Beneficiary Payees, the average distribution amount per such Primary Beneficiary Payee, the Eligible Measures for which distributions have been made, and the uptake of energy efficiency measures.

iv. The Electricity Distributor would agree to provide to the Trustee such information as is necessary for the Trustee to (v) comply with applicable law;

(w) prepare financial statements for the Trust; (x) prepare and submit such documents as are required under the *Income Tax Act* (Canada); (y) comply with the Trust's applicable obligations under the Transfer Payment Agreement; and (z) such other matters as the Trustee reasonably requests.

v. The Trustee, its authorized representatives or an independent auditor would be permitted to, at its own expense, on twenty-four hours' notice to the Electricity Distributor and during normal business hours, inspect the records of and information respecting the Electricity Distributor to confirm its compliance with the Implementation Agreement, including regarding its processes for recommending the Primary Beneficiary Payees and their respective distribution amounts and regarding the delivery of Trust funds on behalf of the Trustee to or for the benefit of the Primary Beneficiary Payees.

e. **Standard of Care**

i. The Electricity Distributor would be required to agree to perform its duties provided under the Implementation Agreement exercising the degree of care, diligence and skill that a reasonably prudent Person would exercise in comparable circumstances.

ii. In performing its duties under the Implementation Agreement (including the recommending of Primary Beneficiary Payees to the Trustee), the Electricity Distributor would be required to agree to seek to avoid actual, potential or perceived conflicts of interest.

iii. The Electricity Distributor would be required to agree that it would not, in performing its obligations under the Implementation Agreement, take any action which it knows or ought reasonably to know would cause the Trustee or the Trust to be in violation of any law, rule or regulation applicable to it.

f. **Expenses**

The Electricity Distributor would be eligible to receive reasonable compensation and reimbursement of its actual out-of-pocket costs associated with the performance of its duties and obligations under the Implementation Agreement, subject to ~~compliance with requirements substantially equivalent to the Province's Travel, Meal and Hospitality Expenses Directive.~~ adherence with the accountability principles set out in Schedule B to the Principles Annex. Such compensation amounts and reimbursement entitlements would be specified in the Implementation Agreement.

g. **Representations**

The Electricity Distributor would make customary representations to the Trust regarding, among other things, its legal capacity; authorization; non-contravention of law or material contract to which it is a party; and the enforceability of the Implementation Agreement.

h. **Indemnification**

The Electricity Distributor would be required to agree to provide customary indemnities to the Trust and the Trustee from and against claims, damages and liabilities which the Trust or Trustee may suffer or incur as the result of any breach of the Implementation Agreement by the Electricity Distributor or its representatives.

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TRUSTEE REPLACEMENT ANNEX

1. The Advisory Committee shall consist of the following individuals:

   Brian Bentz, President and Chief Executive Officer at Alectra

   Bryce Conrad, President and Chief Executive Officer at Hydro Ottawa

   Robert Mace, President and Chief Executive Officer at Thunder Bay Hydro

   Ferio Pugliese, Executive Vice President Customer Care and Corporate Affairs at Hydro One

   Terry Young, Vice President Conservation and Corporate Relations at the Independent Electricity System Operator

2. In the event any member of the Advisory Committee resigns or is unable to act, it is expected that the remaining members of the Advisory Committee would appoint another resident of Ontario as a replacement.

3. On or before May 31, 2017, the Advisory Committee shall identify six residents of Ontario who have expressed that they are willing to act as members of the Board of Trustees and who, individually and collectively, satisfy the following criteria (collectively, the "**Selection Factors**"):

   a) each member demonstrates an understanding of the electricity sector including the electricity distribution sector;

   b) each member demonstrates an expertise in conservation and low income programs;

   c) three of the identified individuals will be representatives from separate electricity distributors, two individuals will be representatives from separate social services agencies and one individual member, who will be a non-voting member, will be an employee or representative of the Government of Ontario; and

   d) it is expected that representation by the Government of Ontario will be non-controlling.

4. If the Advisory Committee determines that changes to the Declaration (including to this Trustee Replacement Annex) are necessary in order to (a) replace, or appoint additional trustees to act with, the Original Trustee prior to the Original Trustee Replacement Date or (b) attract and receive confirmation of appointment of appropriately qualified individuals that the Advisory Committee believes would be suitable candidates to serve as members of the Board of Trustees, the Advisory Committee shall make recommendations regarding such necessary changes, including without limitation in respect of (i) any necessary limitations on the nature or scope of the appointment of the members of the Board of Trustees, (ii) the formation and empowerment of the Board of Trustees, and (iii) the duties, responsibilities, obligations, liabilities, indemnities, protections, limitations, restrictions,

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compensation, expense reimbursement entitlements of members of the Board of Trustees.

5. The Advisory Committee shall recommend that the Original Trustee appoint the individuals so identified to become the initial members of the Board of Trustees pursuant to section 5.7 of the Declaration.

6. If any of the individuals recommended under paragraph 4 or under this paragraph are not accepted and appointed by the Original Trustee pursuant to section 5.7 of the Declaration, the Advisory Committee shall forthwith identify and recommend an alternative individual or individuals willing to act and whose presence as a member of the Board of Trustees would result in the Trustee collectively satisfying the criteria in paragraph 3 above.

7. Upon the appointment of six trustees (five voting and one non-voting) pursuant to section 5.7 of the Declaration, the Advisory Committee will be functus.

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DECLARATION OF TRUST

Made as of March 23, 2017

by

COMPUTERSHARE TRUST COMPANY OF CANADA

establishing

AFFORDABILITY FUND TRUST

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DECLARATION OF TRUST

This Declaration of Trust is made as of March 23, 2017, by Computershare Trust Company of Canada, a trust company established under the laws of Canada and licensed to carry on business as a trust company in each of the provinces and territories of Canada (together with its successors and assigns and the other trustees (including the Board of Trustees) contemplated herein, the "**Trustee**").

WHEREAS Computershare Trust Company of Canada, as settlor, wishes to establish a trust to acquire, hold, manage, invest, apply and dispose of certain property for the benefit of certain Beneficiaries as herein described.

NOW THEREFORE Computershare Trust Company of Canada hereby declares that it holds in trust as trustee (a) the sum of ONE HUNDRED DOLLARS ($100) contributed by it on this date and (b) all other property of every type and description which it may hereafter acquire or hold in its capacity as trustee of the Trust and all income therefrom and proceeds thereof, to hold, manage, invest, apply and dispose of same on and subject to the provisions set forth in this Declaration of Trust, including the annexes and schedule attached hereto.

SECTION 1
INTERPRETATION

1.1 Definitions

In this Declaration:

(a) "***Administrative Services Agent***" means each agent, which may include any Electricity Distributor or other Person, appointed from time to time under an Administrative Services Agreement, and its successors and permitted assigns solely in such capacity.

(b) "***Administrative Services Agreement***" means each agreement entered into from time to time by the Trust and one or more Administrative Services Agents or other Persons, in furtherance of the Purpose, under which the Administrative Services Agent agrees to provide specified administrative and other services to and on behalf of the Trustee, as such agreement may be amended, supplemented, restated, renewed or replaced from time to time and includes the agreement entered into on or about the date hereof between the Trustee and Hydro One Limited.

(c) "***Assets***" means, collectively, the following:

(i) the $100 Canadian referred to above, contributed by Computershare Trust Company of Canada on the date hereof;

(ii) all other property which is now or which at any time in the future may be issued, assigned, transferred, provided, donated, gifted and contributed to the Trustee (including pursuant to the Transfer Payment Agreement) to be held in trust pursuant to this Declaration (and which the Trustee is willing to accept and hold);

(iii) all acquisitions of property made by the Trust;

(iv) all property which may at any time be substituted for or in respect of the property referred to in clauses (i), (ii) and (iii), above;

(v) all income of the Trust, including investment income generated by the investment of the property referred to in clauses (i), (ii), (iii) and (iv), above; and

(vi) all proceeds of disposition of any of the property referred to in clauses (i) through (v) above,

but excludes any property paid out or distributed (whether out of income or capital) pursuant to the provisions of this Declaration.

(d) "***Beneficiary***" means each Primary Beneficiary and each Residual Beneficiary, as applicable.

(e) "***Board of Trustees***" means (i) as of the Original Trustee Replacement Date, the individual trustees appointed by the Original Trustee pursuant to Section 5.7 on the basis described in the Trustee Replacement Annex, and (ii) thereafter, the group of trustees appointed hereunder and acting in such capacity.

(f) "***Business Day***" means any working day, Monday to Friday inclusive, excluding statutory and other holidays, namely: New Year's Day; Family Day; Good Friday; Easter Monday; Victoria Day; Canada Day; Civic Holiday; Labour Day; Thanksgiving Day; Remembrance Day; Christmas Day; Boxing Day and any other day on which the Province has elected to be closed for business.

(g) "***Declaration***" means this Declaration of Trust, as it may be amended, restated, supplemented or otherwise modified from time to time, and includes each of the annexes and the Schedule attached hereto which constitute and form an integral part of this Declaration.

(h) "***Electricity Distributor***" means, in respect of a designated service area or region in Ontario, the distributor of electricity to residences located in such area or region.

(i) "***Electricity Invoice***" means an invoice issued by an Electricity Distributor in respect of electricity charges and related services and amounts incurred or assessed in respect of a residence located in the Electricity Distributor's designated service area or region in Ontario.

(j) "***Eligible Investments***" means (i) a deposit receipt, note, certificate or instrument issued, guaranteed or endorsed by a bank listed in Schedule I to the *Bank Act* (Canada), which provides that the principal and any interest shall be fully paid no later than one year after the day the investment was made, or (ii) a deposit account at a bank listed in Schedule I to the *Bank Act* (Canada).

(k) "***Eligible Measures***" means electricity efficiency and/or conservation measures determined by the Trustee from time to time on the basis contemplated in the Principles Annex and in the manner specified in and having regard to the Permitted Delegations Annex.

(l) "***Final Distribution Date***" means the earlier of (a) the date (if any) on which the Trustee determines (by a resolution of the Board of Trustees) that no further distributions are likely to be made to any Primary Beneficiary and (b) December 31, 2019.

(m) "***HAP Eligible Person***" means an "Eligible Person" as defined in Section 3.1 of the document entitled "Conservation First Framework LDC Took Kit" published by the Independent Electricity System Operator and designated as Final v3.0 – March 11, 2016, as amended in accordance with the Energy Conservation Agreement between the Independent Electricity System Operator and Electricity Distributors.

(n) **"Implementation Agent"** means each agent which may include any Electricity Distributor or other Person, appointed from time to time under an Implementation Agreement, and its successors and assigns solely in such capacity.

(o) **"Implementation Agreement"** means each agreement entered into from time to time by the Trustee and one or more Implementation Agents or other Persons in furtherance of the Purpose under which the Implementation Agent would agree to provide specified services to and on behalf of the Trustee (including, following the Original Trustee Replacement Date, as contemplated by the Permitted Delegations Annex) in connection with the implementation of the Program as such agreement may be amended , supplemented, restated, renewed or replaced from time to time.

(p) "***Minister of Energy***" means the Minister of Energy or such other member of the Executive Council as may be assigned primary ministerial responsibility for the administration of the *Ministry of Energy Act, 2011* under the *Executive Council Act*.

(q) "***Original Trustee***" means Computershare Trust Company of Canada, acting in its capacity as trustee hereunder, together with any additional or replacement Trustee appointed hereunder prior to the Original Trustee Replacement Date and any of their respective successors and assigns.

(r) "***Original Trustee Replacement Date***" has the meaning specified in Section 5.7, being the date on which the Original Trustee is replaced as trustee under this Declaration by the Board of Trustees as contemplated under Section 5.7.

(s) "***Permitted Delegations Annex***" means the Permitted Delegations Annex set forth as an annex to this Declaration.

(t) "***Person***" includes any individual, sole proprietorship, corporation, partnership, joint venture, association, society, club, board, chamber, joint-stock company, trust, trustee, unincorporated or incorporated organization or entity or government or any entity, agency or political subdivision thereof.

(u) "***Primary Beneficiary***" means each individual that, as of a time of determination, satisfies each of the following criteria:

(i) the individual owns, rents or leases a residence located in Ontario and is the primary or secondary electricity utility account holder named on an Electricity Invoice issued in respect of that residence; and

(ii) the individual is not a HAP Eligible Person.

(v) "***Principles Annex***" means the Principles Annex set forth as an annex to this Declaration.

(w) "***Province***" means the Province of Ontario.

(x) "***Program***" means the establishment, promotion, implementation and administration of a program to achieve the Purpose on the basis contemplated in this Declaration.

(y) "***Purpose***" means (i) the making of distributions to Primary Beneficiaries who are identified and whose needs are assessed in accordance with section 3.1 and 3.2 of this Declaration, having regard to (x) the principles set forth in the Principles Annex, (y) the manner and basis of implementation and administration of the Program contemplated in the Permitted Delegations Annex, and (z) the other terms, limitations and requirements set forth in this Declaration, and (ii) to the extent that Assets are available following the distributions made to Primary Beneficiaries as contemplated in (i), above, the making of distributions to Residual Beneficiaries who are identified and whose needs are assessed in accordance with section 3.3 and otherwise having regard to the other terms, limitations and requirements set forth in this Declaration.

(z) ***"Residual Beneficiary"*** means each charitable organization identified by the Trustee and specified as a residual beneficiary hereunder from time to time, selected by the Trustee in consultation with and having regard to the recommendations of the Ontario Energy Board in accordance with section 3.3.

(aa) "***Transfer Payment Agreement***" means the transfer payment agreement dated as of March 23, 2017 between the Trustee and Her Majesty the Queen in right of Ontario as represented by the Minister of Energy, as such agreement may be amended, restated, supplemented or otherwise modified by the further agreement of the parties thereto from time to time.

(bb) "***Trust***" means Affordability Fund Trust, a trust established under and governed by the laws of the Province of Ontario pursuant to this Declaration.

(cc) "***Trustee***" means (i) the Original Trustee and (ii) on and after the Original Trustee Replacement Date, the Board of Trustees acting together in accordance with and subject to Section 5.7 and in accordance with the rules and procedures adopted by the Board of Trustees pursuant to Section 5.8.

(dd) "***Trustee Replacement Annex***" means the Trustee Replacement Annex set forth as an annex to this Declaration.

1.2 Headings and Table of Contents

The insertion of headings and the provision of a table of contents are for convenience of reference only and shall not affect the construction or interpretation of this Declaration.

1.3 References

Unless otherwise specified, all references to Sections are to Sections of this Declaration. The words "hereto", "herein", "hereof", "hereunder" and similar expressions refer to this Declaration and not to any particular Section or other provision of this Declaration.

1.4 Number and Gender

Unless otherwise specified, words importing the singular include the plural and vice versa and words importing gender include all genders.

1.5 Governing Law

This Declaration shall be governed by, and construed and interpreted in accordance with, the laws of the Province of Ontario and of Canada applicable therein.

1.6 Severability

Any provision of this Declaration which is illegal, invalid or unenforceable in any jurisdiction shall not affect the legality, validity or enforceability of the remaining provisions and any such illegality, invalidity or unenforceability in any jurisdiction shall not affect the legality, validity or enforceability of such provision in any other jurisdiction.

1.7 Reference to the Trust and the Trustee

For greater certainty, where any reference is made in this Declaration to an act to be performed by or for or on behalf of the Trust, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Trustee in its capacity as trustee of the Trust, and, where any reference is made in this Declaration to an act to be performed by or for or on behalf of the Trustee, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Trustee solely in its capacity as trustee of the Trust. Except as provided under the Transfer Payment Agreement, no Person dealing with the Trust or the Trustee shall be bound to make any enquiry concerning, or has the right to require production of, any evidence of the validity of any act of, or transaction purporting to be made by, the Trustee.

1.8 Defect in Appointment

No action taken by the Trustee will be invalid or ineffective by reason only of any defect in the appointment of the Trustee or the non-compliance by the Trustee with any rules or procedures adopted by the Trustee and which is discovered after the taking of such action.

SECTION 2
CONCERNING THE TRUST

2.1 Objectives

The Trust is established to hold, invest, apply and dispose of the Assets for the benefit of the Beneficiaries in furtherance of the Purpose, as provided for in this Declaration. In furtherance of the Purpose:

(a) the Original Trustee shall hold and invest the Assets as contemplated in this Declaration until the Original Trustee Replacement Date, after which the Board of Trustees shall be duly appointed hereunder; and

(b) the Board of Trustees shall hold, invest, apply and dispose of the Assets in accordance with this Declaration, including by determining the identities of and distributions (if any) to be made to or for the benefit of the Primary Beneficiaries in accordance with Sections 3.1 and 3.2 of this Declaration, having regard to the principles set forth in the Principles Annex and in the manner and on the basis contemplated in the Permitted Delegations Annex, or otherwise by determining the identities of and distributions to be made to or for the benefit of any Residual Beneficiary in accordance with Section 3.3,

in each case and in all respects subject to the terms, limitation and requirements set forth in this Declaration.

2.2 Name of the Trust

The name of the Trust shall be the "Affordability Fund Trust" or such replacement name as the Trustee shall determine and specify from time to time. The Trustee shall hold the Assets and conduct the activities of the Trust under such name or variation thereof (including any variation of such name in the French language). If the Trustee determines to change the name of the Trust, the Trustee may specify and use such other designation or adopt such other name (including any name in the French language) as it considers appropriate and may hold the Assets and conduct the activities of the Trust under such designation or other name.

2.3 Location

The head office and the situs of the administration of the Trust shall be • or such other address in Ontario as the Trustee may determine from time to time.

2.4 Fiscal Year

The fiscal year of the Trust shall end on December 31 of each year.

SECTION 3
DISTRIBUTIONS

3.1 Distributions to Primary Beneficiaries

After the Original Trustee Replacement Date and prior to the Final Distribution Date, the Trustee shall undertake diligent efforts in good faith to distribute the Assets (including capital or income) to the Primary Beneficiaries identified based on the application of the principles specified in the Principles Annex and in the manner and in the amounts determined on the basis contemplated by the Permitted Delegations Annex, in each case in the amounts and to the extent specified herein and therein, subject in all respects to the exercise by the Trustee of its discretion hereunder and to the exclusion of the other Beneficiaries.

3.2 Amount of Distributions to Primary Beneficiaries

For the purposes of determining the amount of distributions to be made to the Primary Beneficiaries, the Trustee shall have regard to and be entitled to rely on the recommendations of and information provided by Electricity Distributors acting as Implementation Agents appointed for the purposes, in the manner and substantially on the terms contemplated in the Permitted Delegations Annex, without any duty or obligation to verify or makes enquiries regarding the basis for or propriety of such recommendations or the accuracy or completeness of such information, except if and to the extent that the Trustee, in its discretion, determines that (i) it has actual knowledge that such recommendations are contrary to the reasonable application of the principles set forth in the Principles Annex or have been made on a basis that is manifestly contrary to such principles or the delegations and activities specified or contemplated to be undertaken under the Permitted Delegations Annex or (b) such information is known by the Trustee to be erroneous, contain a material misrepresentation or is materially incomplete.

3.3 Distributions to Residual Beneficiaries

Prior to the Final Distribution Date, the Trustee shall identify the Residual Beneficiary, or if more than one the Residual Beneficiaries and their respective allocations, by consulting with and having regard to the recommendations of the Ontario Energy Board, based on those charitable organizations which provide support services for Low Income Energy Assistance Program Emergency Financial Assistance (LEAP EFA) and the Ontario Electricity Support Program (OESP) or other charities that OEB may identify as relating to the Purpose. Following the Final Distribution Date, the Trustee shall, subject to compliance with section 7.3 and completion of a final audit, distribute all remaining Assets (including capital or income) to the Residual Beneficiaries, in each case in the amounts and to the extent determined by the Trustee in its discretion hereunder (having consulted with and having had regard to the recommendations of the Ontario Energy Board as aforesaid) and to the exclusion of the other Beneficiaries.

SECTION 4
POWERS OF THE TRUSTEE

4.1 General

Subject to and in compliance with the terms, limitations and restrictions of this Declaration and notwithstanding applicable trust legislation, the Trustee shall have, without other or further authorization, full, exclusive and absolute power, control and authority over the Assets and over the affairs and activities of the Trust to the same extent as if the Trustee were not a trustee, but rather the sole and absolute owner of the Assets in its own right, including such power, control and authority to do all such acts and things as in its sole judgment and discretion are necessary, incidental or desirable for carrying on the affairs and activities of the Trust, with such powers of delegation as may be permitted or otherwise contemplated by this Declaration. Except as expressly provided in this Declaration, the enumeration in this Declaration of any specific power or authority shall not be construed as limiting the aforesaid general power or authority or any other specific power or authority set out herein. Subject to the terms, limitations and restrictions of this Declaration, every discretion or power hereby conferred on the Trustee is an absolute and uncontrolled discretion or power.

4.2 Specifically Enumerated Powers

The Trustee shall have the following specific powers and authorities:

(a) ***Transfer Payment Agreement.*** The Trustee shall have the power to enter into, amend, supplement, modify and perform its obligation under the Transfer Payment Agreement.

(b) ***Contracts and Undertakings.*** The Trustee shall have the power to enter into, amend, supplement, modify and perform its obligation under any contract entered into or undertaking given by the Trustee in furtherance of the Purpose, including any Administrative Services Agreement and any Implementation Agreement.

(c) ***Power to Own, Hold and Manage.*** Subject to section 4.2(d), the Trustee shall have the power to own, hold and manage the Assets in such manner as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable.

(d) ***Power to Invest in Eligible Investments.*** The Trustee shall have the power to invest the Assets only in Eligible Investments, and to change such Eligible Investments at any time and from time to time, all as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable, but always having regard to the Trustee's expectations regarding the timing of payments to be made to the Beneficiaries hereunder. If an investment of Assets in Eligible Investments would not be authorized under the applicable trust laws of Ontario, the Trustee shall nevertheless be permitted to make an investment of the Assets in such Eligible Investments. The Trustee will have no liability for the diminution in the value of any investment in Eligible Investments made hereunder.

(e) ***Power to Dispose of Assets.*** The Trustee shall have the power to sell, convey, assign, transfer, exchange and in any other manner dispose of the Assets or any part or parts thereof free and clear of any and all trusts established under this Declaration, by public or private sale, for cash or on credit, with or without advertisement, and subject to such restrictions, stipulations, agreements and reservations as the Trustee in its sole and absolute discretion may consider appropriate or advisable, and to execute and deliver and perform any agreement, deed, conveyance, transfer or other document or instrument in connection with the foregoing.

(f) ***Power to Apply Assets and Proceeds to Make Distributions to Beneficiaries.*** The Trustee shall have the power to apply the Assets and the proceeds and income derived therefrom to make distributions to the Beneficiaries contemplated by Section 3, and to execute and deliver and perform any agreement, deed, conveyance, transfer or other document or instrument in connection therewith.

(g) ***Power to Delegate and to Appoint Agents, etc.*** The Trustee shall have the power to appoint, employ or contract with any Person as the Trustee in its sole and absolute discretion may consider appropriate or advisable in connection with the activities of the Trust. Without limiting the generality of the foregoing:

(i) the Trustee will have the power at any time and from time to time to appoint, employ or retain consultants, financial advisers, technical advisers, legal counsel, accountants, administrative services agents, implementation agents, insurers, insurance agents and insurance brokers, as the Trustee may require for the

purpose of discharging its duties hereunder and shall not be responsible for or for the actions of any of them, including to:

(A) act for and on behalf of the Trust in connection with any and all matters in any way relating to the negotiation, settlement, entering into, amending, performance and enforcement of the Transfer Payment Agreement, the Administrative Services Agreements, the Implementation Agreements, and any other agreements and contracts to which the Trust becomes a party in accordance with this Declaration;

(B) to provide or cause to be provided any or all kinds of administrative and other services in any way relating to the activities of the Trust;

(C) to act as attorney in fact, agent or trustee in the acquisition, holding, investment, application, sale or other disposition of the Assets and in the handling, prosecuting, defending or settling of any claims of or made against the Trust;

(D) to value the Assets and determine the net income of the Trust; and

(E) to make any filings, elections and submissions (including in respect of taxation matters) in connection with the Trust's compliance with applicable laws and regulatory requirements; and

(ii) the Trustee may pay remuneration and reimbursements from the Assets for services performed for it or on its behalf in the discharge of the trusts hereof without taxation for costs or fees of any counsel, solicitor or attorney.

Without limiting the foregoing, it is expected that the Board of Trustees will seek to enter into Implementation Agreements with Electricity Distributors for the purposes contemplated by the Permitted Delegations Annex, and on such terms and conditions (including terms and conditions as to the payment of reasonable fees and expenses) not inconsistent therewith as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable.

(h) ***Power to Operate Accounts.*** The Trustee shall have the power to (i) open and operate accounts at any chartered bank, trust company or other financial institution in Canada or elsewhere, as the Trustee in its sole and absolute discretion may consider appropriate or advisable; (ii) deposit therein any moneys or securities forming part of the Assets whether or not such deposits will earn interest; (iii) withdraw such deposits at such times and in such manner as the Trustee may determine; (iv) draw, make, endorse, deposit or otherwise deal in cheques, bills of exchange, promissory notes, drafts and other kinds of instruments and securities; and (v) enter into contracts or agreements with any such chartered bank, trust company or other financial institution containing such terms and provisions as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable. In connection therewith, the Trustee shall have no liability or responsibility for any loss which may occur by reason of the failure of any such chartered bank, trust company or other financial institution.

(i) ***Power to Collect, etc.*** The Trustee shall have the power to (i) collect, sue for, receive and give receipts for all sums of money or other property due to the Trust; (ii) consent to extensions

of time for payment or to the renewal of any securities or obligations; (iii) engage or intervene in, prosecute, defend, compound, compromise, abandon or adjust by arbitration or otherwise, any demands, claims, actions, suits or proceedings relating to the Trust or the Assets; (iv) exercise any and all remedies available to the Trustee under any agreement or as may otherwise be available, including any power of foreclosure or sale available at law; (v) in connection with any such foreclosure or sale, purchase or otherwise acquire title to any property and to convey good title thereto free of any and all trusts hereby established, or to take or retake possession of any property secured under any agreement or instrument; (vi) extend the time, with or without security, for the payment or delivery of any debts or property; (vii) execute and deliver releases, acquittances, discharges, agreements or other instruments related thereto; and (viii) pay or satisfy any debts or claims upon any evidence that the Trustee, in its sole and absolute discretion, may determine to be sufficient.

(j) ***Power to Obtain Insurance***. The Trustee shall have the power to enter into contracts for or in relation to or otherwise obtain policies of insurance for the purpose of insuring the risks associated with the Trust, including to insure the Trustee (including the members of the Board of Trustees) against any risk of loss associated with assuming and performing the duties as Trustee. Without limiting the foregoing, it is expected that the Board of Trustees will obtain commercial general liability insurance from insurers having a secure A.M. Best rating of B+ or greater, or the equivalent, that in the opinion of the Recipient a prudent person similar to the Recipient would maintain, and having an inclusive limit of not less than $2,000,000 per occurrence and providing for contractual liability coverage.

(k) ***Power to Pay Trustee's Fees.*** The Original Trustee shall be entitled to be paid and receive the fees set forth in the Original Trustee's schedule of fees delivered as of or prior to the date hereof as compensation for its services under this Declaration, and to be reimbursed for its out-of-pocket expenses reasonably incurred, in each case from the Assets and without the approval of any Beneficiary or any court. The Original Trustee shall be entitled, in its sole and absolute discretion, to withdraw funds from time to time for such purpose from any account of the Trust. Members of the Board of Trustees shall be entitled to reimbursement for and in respect of their out-of-pocket expenses reasonably incurred in discharging their respective duties and obligations under this Declaration, in each case without the approval of any Beneficiary or any court, provided that the members of the Board of Trustees have general regard to the accountability principles set out in Schedule B to the Principles Annex.

(l) ***Power to Pay Taxes.*** The Trustee shall have the power to (i) pay, deduct, withhold or remit any taxes or assessments which are required by law to be paid, deducted, withheld or remitted together with or from any payment made by the Trustee; (ii) pay all taxes or assessments of whatever kind or nature imposed upon or against the Trust or the Trustee in connection with the Assets or any part thereof; (iii) collect and remit all taxes and assessments of whatever kind or nature required to be collected and remitted by the Trust or the Trustee in connection with their activities or the Assets or any part thereof; (iv) appeal, settle or compromise tax claims or liabilities; and (v) for the foregoing purposes, to make such returns, elections and submissions and do all such other acts and things as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable.

(m) ***Power to Appoint Auditors.*** The Trustee shall have the power to select and appoint and discharge and re-appoint, in its sole and absolute discretion, an auditor or auditors of the Trust and to settle and pay the fees of any such auditor or auditors from any account of the Trust.

(n) ***Form of Accounts.*** The Trustee shall have the power to determine and change from time to time, in its sole and absolute discretion, the method or form in which the accounts of the Trust will be kept and shall not be required to keep or provide accounts in the form usually required by law to be kept or provided by trustees; provided that such method or form reasonably complies with generally accepted accounting principles in effect in Canada to the extent applicable.

(o) ***Title to Assets.*** The Trustee shall have the power to cause all or any part of the Assets to be held by or registered, in its sole and absolute discretion, in the name of any Person.

(p) ***Delegation of Discretion***. The Trustee shall have the power to delegate the right and power to exercise, or concur in the exercise of any discretion or power, conferred on the Trustee in this Declaration or conferred by law to any one or more of its directors, officers, employees, agents, representatives or to such other Person, as the Trustee, in its sole and absolute discretion, may think is appropriate or advisable, including to one or more Administrative Services Agents under an Administrative Services Agreement and to one or more Implementation Agents and their respective employees, officers and directors under a related Implementation Agreement entered into by the Trust substantially on the basis contemplated in the Permitted Delegations Annex. In particular, the Trustee shall have the power to accept, rely on and follow the recommendations of an Electricity Distributor made under and having regard to the Permitted Delegation Annex with respect to the identification of, and the determination of distributions (if any) to be made to, any Primary Beneficiary, except if and in so far as the Trustee has actual knowledge that (1) such Primary Beneficiary did not in fact satisfy the "Selection Factors" specified in the Principles Annex as of the applicable time of determination; and/or (ii) the amount recommended to be distributed to the Primary Beneficiary was not calculated in substantial compliance with, or was calculated in a manner that is manifestly contrary to the requirements set forth or contemplated in, the Permitted Delegation Annex or the applicable Implementation Agreement.

(q) ***Additional Powers.*** The Trustee shall have the power to perform and do all such other acts, to take such steps and to execute all such deeds, transfers, assignments, agreements and other documents and instruments as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable for the carrying out of any of its powers hereunder or of any of the activities of the Trust as herein contemplated, or for the carrying out, promotion or advancement of the interests of the Trust, whether or not any of such acts, things, documents or instruments are herein expressly mentioned. Any good faith determination by the Trustee as to what is necessary, desirable or appropriate to carry out its powers or activities of the Trust as contemplated under this Declaration or to carry out, promote or advance the interests of the Trust shall be conclusive. Any construction of this Declaration or any determination as to the activities of the Trust or the existence of any power or authority hereunder made in good faith by the Trustee, relying upon the advice of counsel, shall be conclusive. In construing the provisions of this Declaration, there shall be a presumption in favour of a grant of power to the Trustee.

SECTION 5
CONCERNING THE TRUSTEE

5.1 Duty of Trustee

In performing its duties and exercising its powers under this Declaration, the Trustee shall act honestly, in good faith and with a view to the best interests of the Trust and the Beneficiaries and

shall exercise that degree of care, diligence and skill that a reasonably prudent trustee would exercise in comparable circumstances (the "**Standard of Care**"). The Trustee shall observe and act in accordance with the terms of, and shall observe and comply with the limitations and restrictions set forth in, this Declaration, including having due regard to the principles set forth in the Principles Annex. To the extent that the Trustee has so delegated any of its duties or powers, it shall be deemed to have satisfied the Standard of Care in respect of the subject matter of such delegation, subject to the Trustee's overall duty as a trustee to exercise prudent oversight in relation to such delegation. Unless required by law, the Trustee will not be required to give any security, bonds or sureties in any jurisdiction for the performance of any of its duties and obligations under this Declaration. The Trustee (including the individual members of the Board of Trustees) will not be required to devote its entire time to the trust activities.

5.2 Limitation of Liability

The Trustee shall not be personally liable in tort, contract or otherwise to any Beneficiary or any other Person for any loss or diminution in the value of the Assets, or for any action or failure to act on the part of the Trustee or any of its employees or agents or any other Person, and shall not be subject to any personal liability for any debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses incurred by or against the Trust, howsoever arising, and resort will be had solely to the Assets for the payment, performance or satisfaction thereof. No property or assets of the Trustee, owned in its personal capacity or otherwise, will be subject to levy, execution or other enforcement procedure**s** with respect to any obligation under this Declaration. However, the foregoing limitations in this Section shall not apply where the Trustee has demonstrated gross negligence, bad faith, fraud or wilful misconduct.

5.3 Liability of Trustee under Contracts

Any document or instrument creating a liability or obligation of the Trust or of the Trustee will be conclusively deemed to have been executed by the Trustee only in its capacity as Trustee of the Trust and will be binding upon the Trustee only in its capacity as trustee hereunder and resort may not be had to, nor recourse or satisfaction be sought from, the property of the Trustee other than the Assets, whether owned by its in its personal capacity or in any other capacity other than in its capacity as Trustee of the Trust, or from its employees or agents, and in all cases resort will be had solely to the Assets for the payment, performance or satisfaction of any such liability or obligation. However, the foregoing limitations in this Section shall not apply where the Trustee has demonstrated gross negligence, bad faith, fraud or wilful misconduct. Each document or instrument creating a liability or obligation of the Trust or of the Trustee shall contain a provision providing for the aforesaid limitation of liability.

5.4 Funds of the Trustee

The Trustee shall not be required to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers.

5.5 Indemnification of Trustee

In addition to and without limiting any other protection hereunder or otherwise by law of the Trustee and its respective employees, agents, representatives and assigns (in this Section 5.5,

collectively, the "**Representatives**"), the Trustee and its respective Representatives shall be indemnified, defended and saved harmless out of the Assets from, against and in respect of any and all liabilities arising or related to actions taken or omitted to be taken by any agent of the Trustee, losses, claims (including any claim arising out of the assessment of any tax on income by a taxing authority), damages, penalties, fines, actions, suits, demands, levies, assessments, costs, charges, expenses and disbursements (including, without limitation, any and all legal and advisor fees and disbursements) (in this Section 5.5, collectively, the "**Liabilities**") of whatever kind or nature which may at any time be suffered by, imposed upon, incurred by or asserted against the Trustee and its Representatives, whether groundless or otherwise, howsoever arising from or out of any act, omission or error of the Trustee, in each case made in connection with its acting as Trustee hereunder, in each case except and to the extent that the Liabilities are a result from or are caused by gross negligence, wilful misconduct, bad faith or fraud. Further, except as provided in section 5.2, the Trustee shall not be liable to any Beneficiary for any loss or damage relating to any matter regarding the Trust, including any loss or diminution in value of the Assets. Notwithstanding any other provision hereof, the obligations provided for in this section 5.5 shall survive any termination of the Trust, whether by reason of removal or resignation of the Trustee, termination or discharge of this Declaration or otherwise.

5.6 Reliance upon Advice

Subject to section 5.1, in performing its duties and exercising its powers hereunder, the Trustee may rely and may act or not act, and shall be fully protected in relying and acting or not acting, upon (a) any statement, telecopy or other electronic means of communication, writing, notice, resolution, report, opinion or other document or conversation believed by it to be genuine and correct and to have been signed, sent or made by the proper Person; (b) any opinion or advice received or information obtained from auditors, solicitors, or other professional advisers, whether retained by the Trustee or otherwise, and shall not be responsible or held liable for any loss or damage resulting from so relying or acting or not acting; and (c) the advice and actions of any Administrative Services Agent or Implementation Agent, including in connection with the delegations and reliances contemplated under the Permitted Delegations Annex. For greater certainty, it shall not be necessary for the Trustee to ascertain whether or not the Persons who have executed, signed or otherwise issued, authenticated or receipted such papers, writings or documents (including any Administrative Services Agreement or any Implementation Agreement or any other contract entered into by the Trustee) have authority to do so or that they are the same Persons named therein or otherwise to pass upon any requirement of such papers, writing or documents that may be essential for their validity or effectiveness or upon the truth and acceptability.

5.7 Replacement of the Original Trustee

The Persons identified in the Trustee Replacement Annex are hereby appointed to comprise the Advisory Committee contemplated therein (the "**Advisory Committee**"). The Original Trustee shall promptly request that the Advisory Committee make recommendations with respect to the composition of the "Board of Trustees", as contemplated by the Trustee Replacement Annex. The Original Trustee shall have no duty or obligation to investigate the basis for any of the Advisory Committee's recommendations and may rely on such recommendations without any duty of enquiry, supervision or oversight with respect to the activities and decision-making processes adopted by the Advisory Committee in its discretion, in full satisfaction of the Original Trustee's Standard of Care with respect to such matters hereunder. Except where it is manifestly

apparent to the Original Trustee that the individuals recommended by the Advisory Committee to become members of such Board of Trustees are disqualified from so acting on the basis of manifest non-compliance with the "Selection Factors" set forth in the Trustee Replacement Annex, the Original Trustee shall appoint, as members of the Board of Trustees, the six (five voting and one non-voting) individuals recommended for appointment to the Board of Trustees by the Advisory Committee. If the Original Trustee declines to appoint any individual recommended by the Advisory Committee, the Original Trustee will promptly request that the Advisory Committee provide a further recommendation whom the Original Trustee shall appoint as a member of the Board of Trustees unless it is manifestly apparent to the Original Trustee that the individual so recommended is also disqualified from so acting on the basis of manifest non-compliance with the "Selection Factors" set forth in the Trustee Replacement Annex,. Upon the appointment of such six individuals pursuant to this provision and their agreement to act as members of the Board of Trustees, the Original Trustee shall be deemed to have resigned and shall cease to be a trustee (such resignation occurring on the "**Original Trustee Replacement Date**").

5.8 Rules and Procedures of the Board of Trustees

(a) ***Initial Requirements***. As soon as practicable and in any event no later than one month following the Original Trustee Replacement Date, the Board of Trustees is expected to meet to take such decisions and actions as they deem necessary to ensure the proper management and administration of the Trust. The date (and location if in person) of the initial meeting shall be determined by a majority of the Board of Trustees.

(b) ***Meetings.*** Subject to the Board of Trustees' discretion to make such rules and procedures that they may deem desirable, meetings of the Board of Trustees may be held at such time and place as the trustee members of the Board of Trustees may agree upon or as they may fix by resolution for the purpose or if the meeting is called as hereinafter mentioned then at such time as may be designated in the notice calling the meeting. A meeting of the Board of Trustees may be called at any time by any two members of the Board of Trustees by two Business Days' notice given to the members of the Board of Trustees. No notice of any Board of Trustees' meeting shall be necessary when a quorum is present if those comprising the quorum consent to the transaction of the affairs of the Trust and the absent trustee or trustees, if any, either before or after the meeting shall waive in writing notice of the meeting. Meetings of the Board of Trustees may be conducted in person, by telephone, or in such other manner as determined by the Board of Trustees. The Board of Trustees may elect a Chairperson.

(c) ***Quorum.*** At any meeting of the Board of Trustees, a majority of the voting members of the Board of Trustees shall be a quorum irrespective of the number of members in office. The decision of the majority of the voting members where quorum exists shall govern and shall be binding for all purposes and shall be acted upon and carried out in the same manner and with the same effect as if all the voted members concurred therein; provided always that in the case of equality of votes the Chairperson, if any, shall not be entitled to cast a second or deciding vote.

(d) ***Power to Adopt Rules and Procedures.*** The Board of Trustees may make such rules and procedures not inconsistent herewith as it may deem desirable for the proper management and administration of the Trust and the discharge of the responsibilities of the Board of Trustees.

(e) ***Replacement of Members of the Board of Trustees***. The Board of Trustees shall have the power to replace any vacancy arising following the Original Trustee Replacement Date according to such rules and procedures as they deem appropriate subject to compliance with the Selection Factors specified in Trustee Replacement Annex and having regard for such considerations necessary to ensure that the composition of the Board of Trustees will be able to discharge its responsibilities in respect of the Declaration. If necessary, the Board of Trustees may fill any vacancy by application to the Courts of Ontario in the event of an unfilled vacancy.

(f) ***Decisions of the Board of Trustees.*** Decisions and actions of the Board of Trustees shall be made by voting, with each individual voting member having one vote. Subject to quorum requirements, a majority vote shall be determinative in respect of such decisions and actions. Subject to quorum requirements, any decision or action taken by the majority of voting members will represent the decision or action of the Trustee, and not any member of the Board of Trustees.

(g) ***Conflicts of Interest.*** With respect to any matter before the Board of Trustees, to the extent of a conflict of interest, whether actual, perceived or potential, involving a member of the Board of Trustees' personal interests and a matter concerning the Trust, such member shall abstain from voting on the matter or taking any other discretionary action on the matter. For the purposes of the foregoing, no member of the Board of Trustees shall be deemed to have a conflict by reason only that the member holds any office or position with an Electricity Distributor, social services agency or governmental or quasi-governmental agency or entity (such as the Independent Electricity System Operator); provided, however, that in relation to any decision of the Board of Trustees pertaining specifically to a particular Electricity Distributor, any member of the Board of Trustees who is a director, officer or employee of the Electricity Distributor would be expected to recuse himself or herself from participating in deliberations, discussions or voting in respect of such decision.

(h) ***Expense Reimbursements to Members of the Board of Trustees.*** Members of the Board of Trustees shall be entitled to reimbursement for and in respect of their out-of-pocket expenses reasonably incurred in discharging their duties and obligations as members of the Board of Trustees. Members of the Board of Trustees shall serve without compensation.

5.9 Confidentiality

Notwithstanding the resignation or removal and discharge from the trusts and powers reposed in and conferred on the Trustee by this Declaration, or the termination of this Declaration, the Trustee so resigning or removed shall continue to treat as confidential all information relating to the Trust, the Assets and the Beneficiaries and shall only be entitled to make disclosures concerning such information if disclosure is required in the performance of the functions of the resigning or removed Trustee or is ordered by a court of competent jurisdiction or is otherwise required by law. The Trustee shall not be responsible or liable to any Person for any loss or damage arising out of or in any way sustained or incurred in any way relating to any such required disclosure. The obligations arising under this section 5.9 shall survive the termination of the Trust.

5.10 Vesting in Successor Trustee

Any successor trustee (including any reconstituted Board of Trustees) shall automatically become vested with the Assets and with the same powers, rights, duties, responsibilities and trusts as if it, he or she had originally been named as Trustee under this Declaration, without the requirement of any further instrument or act or conveyance, and the Trustee ceasing to act shall execute all such transfers and other documents and do all such other acts or things as may be necessary or desirable to assign, transfer, deliver to, and vest in, the successor trustee, upon the trusts expressed in this Declaration, all the Assets and all the rights, powers and trusts of the Trustee ceasing to act. The expense of any act, document, deed or other instrument or thing required under this Section 5.10, including for greater certainty, outstanding fees and unreimbursed expenses of the Trustee (including any member of the Board of Trustees) ceasing to act, shall be satisfied from the Assets.

5.11 Execution of Instruments

The Trustee shall have the power to execute all deeds, transfers, agreements, promissory notes and other instruments on behalf of the Trust. Such power may be exercised by any one or more Administrative Services Agents acting in accordance with any delegated right to do so pursuant to an applicable Administrative Services Agreement or by any one or more Implementation Agents acting in accordance with any delegated right to do so pursuant to an applicable Implementation Agreement, and any such execution of instrument by an Administrative Services Agent, acting in such capacity as agent of the Trust pursuant to the terms and conditions of an Administrative Services Agreement or by an Implementation Agent acting in such capacity as agent of the Trust pursuant to the terms and conditions of an Implementation Agreement shall in each case be deemed to be a proper execution of such instrument by the Trustee and shall be binding for all purposes on the Trust.

5.12 Decisions by the Trustee

If there is more than one Trustee, decisions of the Trust may be made by a majority of Trustees eligible to vote on the applicable matter. Whenever the Trustees are unable to agree in relation to the commission or omission of any act or howsoever in the execution of the Trust, the decision of a majority of such Trustees shall prevail.

SECTION 6
AMENDMENTS AND SUPPLEMENTS

6.1 Amendments

Subject to the requirements of the Transfer Payment Agreement, the Trustee shall have the power in its sole and absolute discretion from time to time without the approval of any Beneficiary or any court to amend, vary, supplement, replace or restate this Declaration in its entirety or any portion thereof; provided, however that it is expected that any amendment shall be consistent with the intent of the principles set forth in the Principles Annex and with the intended scope and effect of the permitted delegations and activities of any Implementation Agent pursuant to the Permitted Delegations Annex. Without in any way limiting the foregoing, any such amendments, variations, supplements, replacements or restatements may:

(a) add provisions for the replacement of or appointment of additional trustees to act with the Original Trustee prior to the Original Trustee Replacement Date;

(b) in the case of the Original Trustee, add provisions to those contemplated in the Trustee Replacement Annex in respect of the appointment of the members and the formation and empowerment of the Board of Trustees;

(c) in the case of the Original Trustee, vary the terms and requirements applicable to the duties, responsibilities, obligations, liabilities, indemnities, protections, limitations, restrictions, compensation, expense reimbursements and such other matters, in each case as the Advisory Committee may indicate are necessary to be made in order to attract and receive confirmation of appointment of appropriately qualified individuals that the Advisory Committee specifies are to be appointed as members of the Board of Trustees in accordance with its recommendations;

(d) add additional or replace existing Trustees;

(e) add to or reasonably clarify the principles set forth in the Principles Annex;

(f) add to or reasonably clarify the delegations and activities contemplated to be made in the Permitted Delegation Annex;

(g) include provisions for the management of the Trust by the Trustees, including the making of rules, requirements and procedures governing the decision-making of the Board of Trustees;

(h) add provisions for the replacement of members of the Board of Trustees (in addition to those provisions contemplated in section 5.7 and the Trustee Replacement Annex);

(i) provide for the engagement of any Person or Persons as managers, administrators or other service providers to the Trust, including any additional or replacement Administrative Services Agent or Implementation Agent or representative thereof;

(j) specify supplemental procedures for the identification of Primary Beneficiaries and the exchange of information with Electricity Distributors in connection with identifying such Primary Beneficiaries; or

(k) specify procedures for the transfer and transmission of funds from the Trust or any Implementation Agent acting on its behalf and with delegated responsibility over funds constituting Assets, to or for the benefit of, Beneficiaries or their designated representatives, payees or assignees.

6.2 Supplemental Declarations

The Trustee is authorized to execute any supplemental declaration of trust (including one or more amendments and restatements from time to time of this Declaration) to give effect to amendments to this Declaration made pursuant to section 6.1.

SECTION 7
TERMINATION

7.1 Duration

Subject to sections 7.2 and 7.3, the Trust will continue in full force and effect so long as there are any Assets and until all of the debts, liabilities and obligations of the Trust have been paid and satisfied in full.

7.2 Termination and Distribution of Assets

The Trustee shall terminate the Trust and wind up its affairs as soon as practicable after the Final Distribution Date. In connection with the termination of the Trust, the Trustee shall identify the Residual Beneficiaries and distribute or cause to be distributed the remaining Assets, in cash or in kind or partly in each, to the Residual Beneficiaries, in each case in accordance with section 3.3. Despite the foregoing, the Trust will only be terminated and wound up after the Trustee, in its sole and absolute discretion, determines that all debts, liabilities and obligations of the Trust have been paid or otherwise adequately provided for and satisfied and upon receipt of such releases, indemnities and discharges as the Trustee, relying on the opinion of counsel, deems necessary for the protection of the Beneficiaries and for its own protection.

7.3 Distribution of Assets on Final Distribution Date

If the Trust holds Assets on the Final Distribution Date, the Trustee shall pay or provide reserves for the payment, and otherwise shall satisfy, all debts, liabilities and obligations of the Trust and shall provide or arrange to provide such investigations, audits, releases, indemnities and discharges as the Trustee, relying on the opinion of counsel, deems necessary for the protection of the Beneficiaries and for its own protection. Thereafter, any remaining Assets shall be paid to the Residual Beneficiaries in accordance with section 3.3.

SECTION 8
ACCEPTANCE OF TRUSTS

8.1 Acceptance of Trusts

The Trustee hereby accepts the trusts and duties contained in this Declaration and agrees to perform the same upon the terms and conditions hereof until discharged therefrom.

[Signature Page Follows]

The Trustee has executed this Declaration as of the date first written above.

COMPUTERSHARE TRUST COMPANY OF CANADA,

By: _____
Name: Morag Abraham
Title: Corporate Trust Officer

By: _____
Name: Ann Samuel
Title: Associate Trust Officer

PRINCIPLES ANNEX

The Trustee shall have regard to, but shall not be specifically bound by, the following principles in applying its discretion in relation to the administration of the Trust:

1. Identification of Primary Beneficiary Payees

1.1 Except in exceptional circumstances, a Primary Beneficiary would not be expected to receive a benefit from the Trust unless at the time of consideration it satisfies, in addition to the requirements contemplated in the definition of "Primary Beneficiary", each of the following criteria (the "**Selection Factors**"):

(i) it has a participant agreement with an applicable Electricity Distributor to undertake measures (its "**Energy Plan**") to improve the electricity efficiency and/or promote the conservation of electricity at its Ontario residence;

(ii) its Energy Plan involves one or more Eligible Measures, as may be designated by the Trustee from time to time from;

(iii) it confirms that:

1. the primary purpose of its Energy Plan is the conservation and efficient use by the Primary Beneficiary of electricity, and is not for the purposes of the Primary Beneficiary making a profit;

2. it would otherwise not have the financial resources to undertake the Eligible Measures included in its Energy Plan; and

3. it would otherwise not be eligible to receive amounts in respect of the Eligible Measures as a HAP Eligible Person;

(iv) it has demonstrated a need for financial assistance on the basis that its periodic electricity bills represent a financial burden, relative to its available financial resources; and

(v) such other criteria as the Trustee may determine, including based on the recommendations of Electricity Distributors or other knowledgeable Persons made on the basis and having regard to the delegations contemplated by the Permitted Delegations Annex or any applicable Implementation Agreement.

1.2 It is recognized that, in furthering the Purpose, an efficient basis upon which to allocate funds to the Primary Beneficiaries across different areas and regions within Ontario may be based on the areas and regions serviced by the Electricity Distributors operating within Ontario.

1.3 It would not be contrary to the Purposes if funds are made available by the Trustee to the Primary Beneficiaries unequally across different areas and regions within Ontario, and it is expected that in making such an unequal division it would be appropriate to have regard to:

(i) broad economic parameters of economic activity and the specific financial resources of the residents of the areas and regions, in each case as an indication of the relative need of such residents across the areas and regions;

(ii) electricity use and efficiency levels of residential electricity customers across the areas and regions;

(iii) specific regional indicators of economic weakness and need; and

(iv) such other factors as the Trustee may determine are relevant, including based on the submissions, advice and recommendations of Electricity Distributors or other knowledgeable Persons made on the basis and having regard to the delegations contemplated by the Permitted Delegations Annex or any applicable Implementation Agreement.

1.4 It is recognized that, in furthering the Purpose, the designated Electricity Distributor for an area or region in which a Primary Beneficiary resides would be expected to:

(i) be a reliable source for the purpose of assessing and confirming whether the Primary Beneficiary satisfies the Selection Factors;

(ii) be an efficient intermediary for the purpose of communicating with the Primary Beneficiary, including with respect to matters such as regarding the availability, terms, conditions and intended purposes of Program;

(iii) be able to facilitate an efficient payment of distribution determined to be made to or on behalf of the Primary Beneficiary, having regard to the Electricity Distributor's established practices, procedures and systems for dealing with its customers; and

(iv) have established contractual arrangements with the Primary Beneficiary that may apply to the protection and confidentiality of information provided by or respecting the Primary Beneficiary, which information may be useful in the consideration by the Electricity Distributor in its assessment of whether the Primary Beneficiary satisfies the Selection Factors, which information may not otherwise be available or readily accessible or verifiable by the Trustee.

1.5 It is recognized that, in furthering the Purpose, the Electricity Distributor for an area or region in which a Primary Beneficiary resides will have market and utilization information that may be useful in assessing the relative needs of Primary Beneficiaries within its area or region. Such information is expected to be relevant in assessing the extent to which one such Primary Beneficiary's financial needs and the merits of its Energy Plan are greater or more compelling than those of another such Primary Beneficiary, which comparison may be relevant to the extent that the funds allocable to the Primary Beneficiaries resident in the area or region are otherwise insufficient to meet the requests for funding by all such Primary Beneficiaries.

1.6 Accordingly, it is recognized that, in furthering the Purpose, it is consistent with the Purpose that the recommendations of Electricity Distributors be utilized and relied upon

by the Trustee to guide the process of identifying particular Primary Beneficiaries in making distributions to the Primary Beneficiaries.

1.7 If an Electricity Distributor for a particular area or region is unable or unwilling to assess or confirm the application of the Selection Factors to Primary Beneficiaries residing in the area or region or to make recommendations in relation to such matters, one or more of the following may provide a suitable alternative source of information and for information gathering, assessment and confirmation purposes in relation to such area or region:

(i) other Electricity Distributors operating in adjacent or other areas or regions in Ontario;

(ii) the Ontario Energy Board;

(iii) the Independent Electricity System Operator; and

(iv) anyone else having relevant expertise and access to information regarding the electricity market of the Province, in each case as may be considered relevant by the Trustee.

1.8 To the extent that privacy law or other legal requirements limit an Electricity Distributor from providing or making available specific information respecting the application of the Selection Factors to a particular Primary Beneficiary or group of Primary Beneficiaries, it is recognized that, in furthering the Purpose, it may be appropriate to redact or make generic affected information regarding such Primary Beneficiary in connection with the identification and confirmation of a Primary Beneficiary's eligibility and participation in the Program. If such limitations or restrictions would limit an Electricity Distributor from providing or confirming the name of a particular Primary Beneficiary to the Trustee, then it should be sufficient that such information may be obtained or disseminated on a confidential basis if and when required by the Trustee for the proper administration of the Trust and on that basis such impediments should not disqualify a Primary Beneficiary from participating in the benefits of the Program, provided that the confidential record-keeping of the Electricity Distributor would be available in connection with the application of any applicable legal process predicated on the identification of such Primary Beneficiary for the purposes of substantiating its rights as a Primary Beneficiary of the Trust or as to the validity or subsistence of the Trust.

2. Eligible Measures

2.1 It is expected that the Trust will identify eligible measures that, taking into consideration the principles set forth in the Principles Annex, have regard to the following (the "**Measures Factors**"):

(i) is the measure generally expected to result in reduced electricity consumption by a Primary Beneficiary if properly installed and used;

(ii) is the measure recognized under another Provincial program as being appropriate for achieving electricity conservation among a population analogous to the Primary Beneficiaries;

(iii) does the measure present any unacceptable health or safety considerations, either with respect to the Primary Beneficiary, a party providing or installing the measure, or the physical environment;

(iv) is the measure broadly available to residents across different areas and regions of the Province; or

(v) is the measure a requirement or precursor to another measure, the other measure being one which meets any of the other Measures Factors.

2.2 In identifying and applying the Measures Factors, Electricity Distributors would be expected to have expertise in assessing the suitability of efficiency and conservation measures in their respective areas and regions, which may differ across areas and regions across the Province based on factors (among other things) such as the climate, geography, density, electricity infrastructure, residential structures, and electricity use rates applicable within such areas or regions.

2.3 The measures specified in Schedule A to this Principles Annex may initially be considered to be consistent with the Measures Factors (subject to change as contemplated under the Permitted Delegations Annex).

3. Promotion of the Program

3.1 It is expected that the Trustee will undertake or engage others to undertake diligent efforts to promote the availability, terms and benefits of the Program to Primary Beneficiaries, including by establishing consistent communications through the Electricity Distributors.

3.2 It is expected that the Trustee will acknowledge the financial support of the Province in connection with the establishment and the funding for the Program, including in any external communications to or marketing directed at the Electricity Distributors and the Primary and Residual Beneficiaries. In the Trustee's delegation of any duties or powers to the Electricity Distributors through Implementation Agreements it is expected that Electricity Distributors will acknowledge the financial support of the Province in connection with the program including in any communications or marketing to Primary Beneficiaries.

4. Conduct of the Trust and the Program

4.1 It is expected that administrative expenses of the Board of Trustees and its members, including any expenses relating to the Trust, to the establishment of the Trust and any expenses related to the implementation and operation of the Program, including by or through Electricity Distributors and other relevant entities, will be recognized and subject to reimbursement on a basis that is substantially consistent with the accountability principles set out in Schedule B to this Principles Annex.

4.2 The Trustee is expected to conduct its activities in a manner that complies in all material respects with the Transfer Payment Agreement, including to:

(i) act prudently and in furtherance of the Purpose;

(ii) report not less frequently than annually the results of its activities for information purposes to the Province in connection with the Program;

(iii) comply with the Province's request for any independent verification or audit if determined to be necessary or appropriate by the Province;

(iv) return Assets that have not been distributed if it is determined that the Trustee has breached its Standard of Care in discharging its material duties under the Declaration, and has not cured such material breach despite having been given a reasonable opportunity by the Province to do so in light of the circumstances of such material breach, with the result that all or a significant part of the Assets have not been or are not being applied and distributed in furtherance of the Purpose or are being applied and distributed in a manner that is directly contrary or without regard to the Purpose.

4.3 Electricity Distributors are not intended to directly profit from distributions of funds made from the Trust, although it is recognized that the objectives of electricity efficiency and conservation of Primary Beneficiaries located in the service area or region of an Electricity Distributor, and the cost savings and improved credit worthiness of such Primary Beneficiaries, may be financially beneficial to the Electricity Distributor.

4.4 Distributions from the Trust are intended to allow receiving Primary Beneficiaries to undertake Eligible Measures at no or minimal personal cost.

4.5 Without in any way limiting the discretion of the Board of Trustees to extend the period during which the benefits of the Program may be available to the Primary Beneficiaries, up to and including the Final Distribution Date, it is expected that the Trust Assets would be distributed to Primary Beneficiaries during the period from the Original Trustee Replacement Date to April 30, 2019.

SCHEDULE A TO THE PRINCIPLES ANNEX
INDICATIVE ELIGIBLE MEASURES[1]

Initial Specified Measures
Block Heater Timer (just timer) – rated for outdoor use, have at least a 15 amp/1800 watt capacity, be cold weather resistant, bear a C-UL or CSA certification mark
Power bar with integrated timer, and switched power outlets, four each for a total of 8 outlets, have a total capacity of 15 amps. The switched outlets must remain "live", independent of timer settings, so long as the power bar itself remains switched on. The power bar must bear either a C-UL or CSA certification mark.
Efficient Showerheads (standard) - rated at no more than 4.8 Lpm (1.25 U.S. gpm) and be of the laminar flow type (non-aerating).
Efficient Showerhead (handheld) - rated at no more than 4.8 Lpm (1.25 U.S. gpm) and be of the laminar flow type (non-aerating).
Efficient Aerators (kitchen) - rated no more than 5.7 Lpm (1.5 U.S. gpm), dual threaded to allow installation in both thread type faucets, swivel type with pause lever.
Efficient Aerators (bathroom) - rated no more than 3.8 Lpm (1.0 U.S. gpm), be dual threaded to allow installation in both thread type faucets.
Hot Water Tank Pipe Insulation - $^{1}/_{2}$" inside diameter – foam, meets ASTM –C547-00, minimum $^{3}/_{4}$" thick
Hot Water Tank Pipe Insulation - $^{3}/_{4}$ " inside diameter - – foam, meets ASTM –C547-00, minimum $^{3}/_{4}$" thick
Hot Water Tank Insulation - fibreglass R10 (fits up to a 60 gal tank) – not bubble wrap
≤11W ENERGY STAR® Qualified LED A Shape (60W) (minimum 600 Lumen output) (Formerly: 7W – 11W ENERGY STAR® Qualified LED A Shape (60W))

[1] These measures are indicative. Eligible measures added to HAP during the administration of the Trust may also be appropriately considered relevant by the Trustee.

Initial Specified Measures
≤14W ENERGY STAR® Qualified LED A Shape (75W) (minimum 800 Lumen output) (Formerly: 10W – 14W ENERGY STAR® Qualified LED A Shape (75W))
≤23W ENERGY STAR® Qualified LED A Shape (100W) (minimum 1600 Lumen output) (Formerly:17W – 23W ENERGY STAR® Qualified LED A Shape (100W))
≤16W ENERGY STAR® Qualified LED PAR 20 (minimum 600 Lumen output) (Formerly: 8W – 12W ENERGY STAR® Qualified LED PAR 20)
≤16W ENERGY STAR® Qualified LED PAR30 & PAR38 (minimum 600 Lumen output) (Formerly: 8W – 12W ENERGY STAR® Qualified LED PAR 30)
≤23W ENERGY STAR® Qualified LED PAR (minimum 1100 Lumen output) (Formerly: 14W – 18W ENERGY STAR® Qualified LED PAR 38)
≤6W ENERGY STAR® Qualified LED MR 16 / PAR 16 (minimum 250 Lumen output) (Formerly: 7W – 10W ENERGY STAR®
Qualified LED MR 16 / PAR 16 - GU 10 Base)
≤11W ENERGY STAR® Qualified LED MR 16 (minimum 400 Lumen output) (Formerly: 7W – 12W ENERGY STAR® Qualified LED MR 16 GU 5.3 Base)
ENERGY STAR® LED Wet Location Rated PAR lamp ≤ 23 Watt (minimum 1100 Lumen output)
Recessed Downlight Fixture including LED with Light Output >600 and <800 lumens (Retrofit Measure List)
Recessed Downlight Fixture including LED with Light Output >800 lumens (Retrofit Measure List)
Indoor Drying Rack

Extended Measures
Replace refrigerator with ENERGY STAR qualified refrigerator - 15.5 - 16.9 cubic foot top freezer, automatic defrost, refrigerator/ freezer, no through the door ice service
Replace refrigerator with ENERGY STAR qualified refrigerator - 17.0 - 18.4 cubic foot top freezer, automatic defrost, refrigerator/ freezer, no through the door ice service
Replace refrigerator with a refrigerator that has a consumption level of less than 425 kwh, 10 – 12.5 cubic foot top freezer, automatic defrost, refrigerator freezer, no through the door ice service
Replace freezer with ENERGY STAR qualified freezer - 12-14.4 cubic foot freezer
Replace freezer with ENERGY STAR qualified freezer - 14.5 - 16.0 cubic foot freezer
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 6,000 – 7,999 BTU/hr with C-UL or CSA certification mark
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 8,000 – 9,999 BTU/hr with C-UL or CSA certification mark
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 10,000 – 12,000 BTU/hr with C-UL or CSA certification mark
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 14.2 - 21.2 l/day (30-44.9 pints/day) dehumidifier
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 21.3 - 25.4 l/day (45-53.9 pints/day) dehumidifier
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 25.5 - 35.5 l/day (54-75 pints/day) dehumidifier
Programmable Thermostat – line voltage – meets CAN/CSA-C828-06 standard, minimum performance: Droop: 1.5°C, Differential: 0.5°C, Precision 0% within 0.5°C of the original set point of 22°C
Programmable Thermostat – low voltage - meets CAN/CSA-C828-06 standard, minimum performance: Droop: 1.5°C, Differential: 0.5°C, Precision 0% within 0.5°C of the original set point of 22°C

Weatherization Measures
Comprehensive Draft proofing (caulking, foam and weather stripping, and application of same) – lifespan of 20 years plus If one or two component polyurethane foams are used, the products and installations must conform to: • CAN/ULC-S710.1 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 1: Material Specification. • CAN/ULC-S710.2 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 2: Application. • CAN/ULC-S711.1 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification • CAN/ULC-S711.2 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification, and Part 2: Application. **Attic Insulation (including installation):**
cellulose: CAN/ULC-S703-01 Amendment 1 - Cellulose Fibre Insulation (CFI) for Buildings OR 2) Mineral Fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre

Weatherization Measures
for Buildings **Wall Insulation (including installation):**
cellulose: CAN/ULC-S703-01 Amendment 1 - Cellulose Fibre Insulation (CFI) for Buildings OR 2) Mineral Fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre **Basement Insulation (including installation):**
mineral fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre for Buildings Vapour Barrier: 69009-CAN/CGSB-51.34-m86 If one or two component polyurethane foams are used, the products and installations must conform to: • CAN/ULC-S710.1 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 1: Material Specification. • CAN/ULC-S710.2 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 2: Application. • CAN/ULC-S711.1 Standard for Thermal Insulation – Bead Applied Two-Component
• Polyurethane Air Sealant Foam, Part 1: Material Specification CAN/ULC-S711.2 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification, and Part 2: Application.

Heat Pumps (Selection of manufacturers and technologies to meet the US federal minimum efficiency standard for ASHPs, as of 2015, is 13.0 SEER and 7.7 HSPF. Energy Star–certified models offer roughly 9 percent more efficiency than most new uncertified ASHPs and 20 percent more efficiency than existing models that may be in place)
Ductless Multiport Heat Pump
Cold Climate Ductless Heat Pump
Cold Climate Multiport Ductless Heat Pump
Cold Climate Ducted Heat Pump

SCHEDULE B TO THE PRINCIPLES ANNEX
PRINCIPLES APPLICABLE TO EXPENSE REIMBURSEMENTS

1. Funds should be used prudently and responsibly with a focus on accountability and transparency.

2. Expenses for travel, meals and hospitality support the Purpose.

3. Plans for travel, meals, accommodation and hospitality are necessary and economical with due regard for health and safety.

4. Legitimate authorized expenses incurred during the course of furthering the Purpose may be reimbursed.

5. Best practices should be followed, including:

    a. Prior approval to incur expenses is appropriately obtained.

    b. Other options for meetings are always considered before travel is approved, including audio or video conferencing.

    c. Corporate travel cards are to be used for authorized business travel and business related expenses.

PERMITTED DELEGATION ANNEX

1. Under section 4.2(g) of the Declaration, the Trustee has the power to: (a) appoint, employ or retain Implementation Agents for the purpose of discharging its duties and obligations under the Declaration; and (b) enter into, perform, enforce and amend Implementation Agreements.

2. In accordance with section 4.2(g) of the Declaration, consistent with the principles set forth in the Principles Annex, the Trustee or its agent will seek to enter into one or more Implementation Agreements with individual Electricity Distributors under which the Electricity Distributors will act as Implementation Agents to the Trustee. In this manner, the Trustee will delegate certain of its powers and duties to the Electricity Distributors.

3. Under section 5.1 of the Declaration, to the extent the Trustee has delegated any of its duties or powers, it shall be deemed to have satisfied the Standard of Care in respect of the subject matter of such delegation, subject to the Trustee's overall duty to exercise prudent oversight thereof. The Trustee is entitled to rely on an Electricity Distributor to discharge the duties delegated to it, as Implementation Agent, pursuant to an Implementation Agreement as described in this Annex.

4. Accordingly, and without limiting the Trustee's right to delegate under the Declaration and its other rights, powers and discretion as Trustee, the Trustee will be permitted to, and is expected to seek to, enter into Implementation Agreements with Electricity Distributors in order to further the Purpose. Without limiting the Trustee's discretion to negotiate and settle the terms and conditions of such Implementation Agreements, it is expected that such Implementation Agreements will include customary terms and conditions for arrangements of this type and, in addition, would (subject to the acceptance and agreement of the applicable Electricity Distributor counterparty) address the following points in particular:

    a. **Identification of Applicable Primary Beneficiary Payees and Determination of Individual Distribution Amounts**

        i. Each Electricity Distributor would make an initial assessment of the financial needs of Primary Beneficiaries within its designated service area or region, having regard to the Selection Factors set forth in section 1.3 of the Principles Annex, together with applicable economic data, in order to prepare and provide to the Trustee an estimate of the number of Primary Beneficiaries who the Electricity Distributor reasonably expects would satisfy the Selection Factors.

        ii. Each Electricity Distributor would make an initial assessment of the measures it would recommend be included as Eligible Measures, having regard to the Measures Factors set forth in section 2.1 of the Principles Annex, in order to prepare and provide to the Trustee an estimate of the average cost per Primary Beneficiary Payee (as defined below) of such Eligible Measures that the Electricity Distributor reasonably expects would apply in respect of Primary Beneficiaries resident in its service area or region.

        iii. Based on the product of (i) and (ii), above, and such other considerations as it considers to be directly relevant, each Electricity Distributor would make a

written recommendation to the Trustee regarding the aggregate funding amount that the Electricity Distributor anticipates would be utilized under the Program by the Primary Beneficiaries resident in its service area or region (the "**Local Funding Estimate**"). Such recommendation would be accompanied, when submitted to the Trustee, by a detailed explanation regarding the assumptions, financial parameters, suitability considerations and other information underlying the Local Funding Estimate (including the type of information contemplated by the Selections Factors and the Measures Factors) which would be relied upon by the Trustee in its assessment regarding the allocation of available funding to or for the benefit of the Primary Beneficiaries across the specified areas and regions of Ontario.

iv. The Trustee would inform the Electricity Distributor regarding the aggregate of the amount determined by the Trustee to be made available under the Program for Primary Beneficiaries in the Electricity Distributor's designated service area or region (for each Electricity Distributor, its "**Maximum Electricity Distributor Allocation**") and as to any maximum amount that may be paid to or for the benefit of any single Primary Beneficiary located in the service area or region of the Electricity Distributor (the "**Maximum Primary Beneficiary Amount**"). The Maximum Electricity Distributor Allocation and Maximum Primary Beneficiary Amount may vary between areas and regions, among the Primary Beneficiaries within such areas and regions, and may be increased by the Trustee from time to time in its discretion.

v. Each Electricity Distributor would apply the principles set forth under "Identification of Primary Beneficiary Payees" in the Principles Annex to identify and make recommendations to the Trustee regarding the amount of funds (if any) to be distributed to or for the benefit of Primary Beneficiaries resident within its service area or region from time to time (the "**Primary Beneficiary Payees**").

vi. Each Electricity Distributor would ensure that the aggregate of the amounts it recommends be distributed to or for the benefit of Primary Beneficiary Payees from time to time does not exceed (1) its Maximum Electricity Distributor Allocation and (2) for any single Primary Beneficiary located in the service area or region of the Electricity Distributor, the lesser of (x) the applicable Maximum Primary Beneficiary Amount and (y) the estimated costs (including any applicable taxes, but excluding any amount payable to the Electricity Distributor by or on behalf of the Primary Beneficiary) to be incurred by or on behalf of such Primary Beneficiary (whether or not such costs have been paid or remain outstanding) in respect of Eligible Measures applied or to be applied in respect of the Primary Beneficiary's Ontario residence.

vii. The Trustee would provide written confirmation to each Electricity Distributor:

1. Either (x) that the recommendations specified of the Electricity Distributor in clause (v), above, have been accepted, or (y) as to the specific reasons for any non-acceptance; and

2. The amount of the distributions to be paid to or for the benefit of each Primary Beneficiary Payee that is resident in the Electricity Distributor's service area or region.

viii. With respect to each Primary Beneficiary resident in a Electricity Distributor's service area or region that is confirmed as a Primary Beneficiary Payee, the Electricity Distributor would provide the Trustee written confirmation as to:

1. The identity of such Primary Beneficiary Payee; and

2. The amount of the distribution paid to or for the benefit of such Primary Beneficiary Payee.

ix. If the amount of a distribution to be made to a Primary Beneficiary Payee is based on the estimated costs to be incurred by or on behalf of such Primary Beneficiary and, prior to making the distribution to the Primary Beneficiary Payee, the Electricity Distributor determines that the actual costs (including any applicable taxes but excluding any amount payable to the Electricity Distributor by or on behalf of the Primary Beneficiary) incurred or to be incurred by or on behalf of such Primary Beneficiary in respect of Eligible Measures applied or to be applied in respect of the Primary Beneficiary's Ontario residence has or would be less than such estimated costs, then the amount to be distributed to the Primary Beneficiary shall be based on such actual costs.

b. **Making of Distributions to Primary Beneficiaries**

i. It is expected that promptly after the Trustee confirms the identity of a Primary Beneficiary Payee resident in an Electricity Distributor's service area or region and the amount of the distribution to be paid to or for the benefit of such Primary Beneficiary Payee, the Trustee would arrange for payment to or on the direction of the Electricity Distributor of an amount equal to the amount of such distribution.

ii. It is expected that promptly upon receipt of funds in respect of a distribution to be made to a Primary Beneficiary Payee, the Electricity Distributor would arrange for payment of the full amount of such distribution to or for the benefit of the Primary Beneficiary Payee (including by direct payment to a third party of, or as a reimbursement or rebate of, the costs of applicable Eligible Measures installed at the residence of and for the benefit of the Primary Beneficiary Payee), without reduction or set-off by the Electricity Distributor.

iii. If the amount paid to an Electricity Distributor in respect of a distribution to be made to a Primary Beneficiary exceeds the actual amount of the

distribution made to or on behalf of the Primary Beneficiary, it is expected that the Trustee would require Electricity Distributor to return such excess to the Trustee, whereupon the proceeds of such returned amount shall continue to form part of the Assets.

c. **Establishment of Operational, Administrative, Record-Keeping and Other Systems and Policies by Electricity Distributors to facilitate the Program**

i. It is expected that the Electricity Distributor would establish such operational, administrative, record-keeping and other systems and policies as are necessary to facilitate the Program and perform its duties under the Implementation Agreement, including systems or policies to: identify Primary Beneficiary Payees; comply with applicable privacy and regulatory laws; communicate with Primary Beneficiaries on behalf of the Trust; assess Eligible Measures; determine the Local Funding Estimate; monitor its recommendations to the Trustee against its Maximum Electricity Distributor Allocation and the Maximum Primary Beneficiary Amount; receive funds from the Trust in respect of distributions to the Primary Beneficiary Payees and transfer such funds to the appropriate recipients for the benefit of the Primary Beneficiary Payees; preparation and timely delivery to Primary Beneficiary Payees of such documents as are required by the *Income Tax Act* (Canada); and create and maintain records in respect of the foregoing.

ii. The Electricity Distributor would set up a separate bank account for the purpose of receiving funds from the Trust in respect of distributions to the Primary Beneficiary Payees and the transfer of such funds to the appropriate recipients for the benefit of the Primary Beneficiary Payees.

d. **Reporting, Record-Keeping, Inspection and Disclosure and Compliance Matters**

i. The Electricity Distributor would provide record-keeping, clerical and bookkeeping services relating to all matters relating to its recommendations and the performance of its other duties and obligations under its Implementation Agreement.

ii. The Electricity Distributor would keep and maintain all financial records and non-financial documents and records relating to the provision of services under its Implementation Agreement.

iii. The Electricity Distributor would provide to the Trustee quarterly and annual reports ("**Reports**") for the duration of its Implementation Agreement. Such Reports would set out, among other things, the amounts of the distributions paid to or for the benefit of applicable Primary Beneficiary Payees, the average distribution amount per such Primary Beneficiary Payee, the Eligible Measures for which distributions have been made, and the uptake of energy efficiency measures.

iv. The Electricity Distributor would agree to provide to the Trustee such information as is necessary for the Trustee to (v) comply with applicable law;

(w) prepare financial statements for the Trust; (x) prepare and submit such documents as are required under the *Income Tax Act* (Canada); (y) comply with the Trust's applicable obligations under the Transfer Payment Agreement; and (z) such other matters as the Trustee reasonably requests.

v. The Trustee, its authorized representatives or an independent auditor would be permitted to, at its own expense, on twenty-four hours' notice to the Electricity Distributor and during normal business hours, inspect the records of and information respecting the Electricity Distributor to confirm its compliance with the Implementation Agreement, including regarding its processes for recommending the Primary Beneficiary Payees and their respective distribution amounts and regarding the delivery of Trust funds on behalf of the Trustee to or for the benefit of the Primary Beneficiary Payees.

e. **Standard of Care**

i. The Electricity Distributor would be required to agree to perform its duties provided under the Implementation Agreement exercising the degree of care, diligence and skill that a reasonably prudent Person would exercise in comparable circumstances.

ii. In performing its duties under the Implementation Agreement (including the recommending of Primary Beneficiary Payees to the Trustee), the Electricity Distributor would be required to agree to seek to avoid actual, potential or perceived conflicts of interest.

iii. The Electricity Distributor would be required to agree that it would not, in performing its obligations under the Implementation Agreement, take any action which it knows or ought reasonably to know would cause the Trustee or the Trust to be in violation of any law, rule or regulation applicable to it.

f. **Expenses**

The Electricity Distributor would be eligible to receive reasonable compensation and reimbursement of its actual out-of-pocket costs associated with the performance of its duties and obligations under the Implementation Agreement, subject to adherence with the accountability principles set out in Schedule B to the Principles Annex. Such compensation amounts and reimbursement entitlements would be specified in the Implementation Agreement.

g. **Representations**

The Electricity Distributor would make customary representations to the Trust regarding, among other things, its legal capacity; authorization; non-contravention of law or material contract to which it is a party; and the enforceability of the Implementation Agreement.

h. **Indemnification**

The Electricity Distributor would be required to agree to provide customary indemnities to the Trust and the Trustee from and against claims, damages and liabilities which the Trust or Trustee may suffer or incur as the result of any breach of the Implementation Agreement by the Electricity Distributor or its representatives.

TRUSTEE REPLACEMENT ANNEX

1. The Advisory Committee shall consist of the following individuals:

   Brian Bentz, President and Chief Executive Officer at Alectra

   Bryce Conrad, President and Chief Executive Officer at Hydro Ottawa

   Robert Mace, President and Chief Executive Officer at Thunder Bay Hydro

   Ferio Pugliese, Executive Vice President Customer Care and Corporate Affairs at Hydro One

   Terry Young, Vice President Conservation and Corporate Relations at the Independent Electricity System Operator

2. In the event any member of the Advisory Committee resigns or is unable to act, it is expected that the remaining members of the Advisory Committee would appoint another resident of Ontario as a replacement.

3. On or before May 31, 2017, the Advisory Committee shall identify six residents of Ontario who have expressed that they are willing to act as members of the Board of Trustees and who, individually and collectively, satisfy the following criteria (collectively, the "**Selection Factors**"):

   a) each member demonstrates an understanding of the electricity sector including the electricity distribution sector;

   b) each member demonstrates an expertise in conservation and low income programs;

   c) three of the identified individuals will be representatives from separate electricity distributors, two individuals will be representatives from separate social services agencies and one individual member, who will be a non-voting member, will be an employee or representative of the Government of Ontario; and

   d) it is expected that representation by the Government of Ontario will be non-controlling.

4. If the Advisory Committee determines that changes to the Declaration (including to this Trustee Replacement Annex) are necessary in order to (a) replace, or appoint additional trustees to act with, the Original Trustee prior to the Original Trustee Replacement Date or (b) attract and receive confirmation of appointment of appropriately qualified individuals that the Advisory Committee believes would be suitable candidates to serve as members of the Board of Trustees, the Advisory Committee shall make recommendations regarding such necessary changes, including without limitation in respect of (i) any necessary limitations on the nature or scope of the appointment of the members of the Board of Trustees, (ii) the formation and empowerment of the Board of Trustees, and (iii) the duties, responsibilities, obligations, liabilities, indemnities, protections, limitations, restrictions,

compensation, expense reimbursement entitlements of members of the Board of Trustees.

5. The Advisory Committee shall recommend that the Original Trustee appoint the individuals so identified to become the initial members of the Board of Trustees pursuant to section 5.7 of the Declaration.

6. If any of the individuals recommended under paragraph 4 or under this paragraph are not accepted and appointed by the Original Trustee pursuant to section 5.7 of the Declaration, the Advisory Committee shall forthwith identify and recommend an alternative individual or individuals willing to act and whose presence as a member of the Board of Trustees would result in the Trustee collectively satisfying the criteria in paragraph 3 above.

7. Upon the appointment of six trustees (five voting and one non-voting) pursuant to section 5.7 of the Declaration, the Advisory Committee will be functus.

image001.pdf

Blakes

Amended indemnity letters.pdf

From:	Picard, Michel
To:	Veinot, Cindy (TBS)
Subject:	Amended indemnity letters
Date:	April 20, 2018 9:52:58 AM
Attachments:	OPCD indemnity letter.pdf OPCD Letter.docx

Hi Cindy,

I enclosed the original indemnity letter. If our report will not be provided to EY then the letter should be amended to exclude EY as a Recipient. I have amended the letter to exclude EY.

Regards,

Michel Picard, CPA, CA

Partner, Accounting Advisory Services

KPMG LLP
333 Bay Street, Suite 4600
Toronto, Ontario, M5H 2S5
T 416 777 8414
M 416 560 2569
mpicard@kpmg.ca
LinkedIn

This email was sent to you by **KPMG** (http://info.kpmg.ca). To sign up to receive event invitations and other communications from us (we have some informative publications that may be of interest to you), or to stop receiving electronic messages sent by KPMG, visit the **KPMG Online Subscription Centre** (http://subscribe.kpmg.ca).

At KPMG we are passionate about earning your trust and building a long-term relationship through service excellence. This extends to our communications with you.

Our lawyers have recommended that we provide certain disclaimer language with our messages. Rather than including them here, we're drawing your attention to the following links where the full legal wording appears.

- **Disclaimer concerning confidential and privileged information/unintended recipient** (http://disclaimer.kpmg.ca).
- **Disclaimer concerning tax advice** (http://taxdisclaimer.kpmg.ca).

If you are unable to access the links above, please cut and paste the URL that follows the link into your browser.

OPCD indemnity letter.pdf

KPMG LLP
Bay Adelaide Centre
Suite 4600
333 Bay Street
Toronto ON
M5H 2S5

Telephone (416) 777-8500
Fax (416) 777-8818
www.kpmg.ca

Private & Confidential

Ms. Cindy Veinot
Treasury Board Secretariat, Office of the Provincial Controller
Frost Building South
7 Queen's Park Crescent East
Toronto, Ontario, M7A 1 Y7
Canada

Ernst & Young LLP
[address]

February 14, 2018

In connection with the preparation of a technical accounting paper (the "Accounting Paper") by the Office of the Provincial Controller Division, Treasury Board Secretariat (the "OPC") and their advisors at Ernst & Young LLP ("EY") (OPC and EY collectively being the "Recipients") related to the Fair Hydro Plan, 2017, KPMG LLP ("KPMG") understands that the Recipients have requested a copy of our letter to IESO dated February 12, 2018 regarding the application of PSAS to the consolidation of a trust and to the recognition and derecognition of a variance account in relation to the Ontario Fair Hydro Plan Act, 2017 (the "Document").

KPMG is prepared to consent to IESO providing the Recipients with a copy of the Document subject to their agreement to the terms of this letter agreement.

The Document was prepared solely in accordance with the specific terms of reference (the "Engagement Letter") agreed between ourselves and IESO for their exclusive use and for no other purpose.

The Document should not be regarded as suitable for use by any person or persons other than the addressees of the Document or for any purpose other than set out in the Engagement Letter. We accept no responsibility or liability for any reliance that the Recipients may place on the Document.

The Recipients should note that we have not sought to update the Document for events subsequent to February 12, 2018 and significant events may well have occurred since that date.

In consideration of IESO providing the Document to the Recipients, the Recipients hereby agrees to the following:

a) No one at KPMG is authorized by KPMG to make any representations to the Recipients with respect to IESO. Nor may anyone at KPMG provide the Recipients with the

KPMG LLP is a Canadian limited liability partnership and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. KPMG Canada provides services to KPMG LLP.

Document on any basis which is inconsistent with or varies or adds to the terms of this letter;

b) KPMG neither warrants nor represents that the Document is accurate, complete, sufficient or appropriate for any purpose contemplated by the Recipients;

c) The Document is not provided pursuant to any agreement or other arrangement of a contractually binding nature between our firm and the Recipients;

d) The Recipients do not acquire any rights against our firm or otherwise as a result of our agreement to disclose the Document to the Recipients;

e) Our firm and personnel do not have any duties, responsibilities, liabilities or obligations to the Recipients relating to the Document;

f) The Recipients will not commence any action, suit or proceeding or make any demand, complaint or claim against us relating to the Document; and

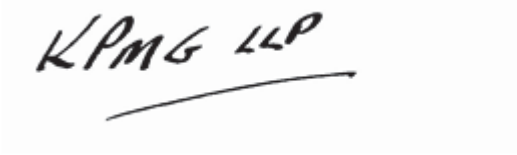
g) The Recipients will provide KPMG with a copy of the Accounting Paper as soon as it is available.

Further the Recipients agree that the Document will be maintained by them in strict confidence and not disclosed to any other party, will be used by them only in connection with purpose described above, and that the Recipients will notify KPMG promptly of any request received by Recipients from any court, regulatory authority or other person or entity with respect to the Document.

This letter sets out the entire understanding of the parties in relation to the conditions upon which access to the Document is provided and replaces all prior understandings, if any, made by KPMG.

Please indicate your acceptance to the terms of this letter by signing and returning one copy of this letter to the undersigned.

Yours very truly



Michel Picard
Partner

****

The Recipients hereby acknowledges that it understands and agrees to the conditions upon which the Document is provided.

Office of the Provincial Controller, Ontario Treasury Board Secretariat

by: _____ _____

Signature Date

Name: Ms. Cindy Veinot
Title: Treasury Board Secretariat, Office of the Provincial Controller

Ernst & Young LLP

by: _____ _____

Signature Date

Name: _____

Title: _____

OPCD Letter.pdf

KPMG LLP
Bay Adelaide Centre
333 Bay Street, Suite 4600
Toronto, ON M5H 2S5
Canada
Tel 416-777-8500
Fax 416-777-8818

Private & Confidential

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Treasury Board Secretariat, Office of the Provincial Controller
Frost Building South
7 Queen's Park Crescent East
Toronto, Ontario, M7A 1 Y7
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This letter sets out the entire understanding of the parties in relation to the conditions upon which access to the Document is provided and replaces all prior understandings, if any, made by KPMG.

Please indicate your acceptance to the terms of this letter by signing and returning one copy of this letter to the undersigned.

Yours very truly

Michel Picard
Partner

****

The Recipient hereby acknowledges that it understands and agrees to the conditions upon which the Document is provided.

Office of the Provincial Controller, Ontario Treasury Board Secretariat

by: _____ _____

Signature Date

Name: Ms. Cindy Veinot
Title: Treasury Board Secretariat, Office of the Provincial Controller

Amendment 1.rtf

From: Virani, Shyrose (TBS) []
To: Chamberlin, Michael (TBS) [Michael.Chamberlin@ontario.ca]
Subject: Amendment 1
Date: Tuesday, August 28, 2018 12:20:18
Attachment 1: Amendment 001 - To exercise the Option Period on SOW.doc
Attachment 2: SOW.docx

Hi Michael

We would like to extend the contract for KPMG for another four months, I have prepared an amendment letter and am also enclosing SOW. Can you please have a look at it and let me know if it is okay to be sent out.

Thanks

Shyrose

p.s. contract is ending on August 30th

Amendment 001 - To exercise the Option Period on SOW.pdf

AMENDMENT
To Exercise Optional Extension Period

Name of Project:	Complex Accounting - Electricity
Original Agreement Date:	June 7, 2017
Name of Vendor:	KPMG LLP
Original Contract Number:	OSS 224171
Date of Amendment:	August 28, 2018
Amendment Number:	001

1) Amendment Details:

1.1 This amendment hereby exercises the Ministry's right to exercise the optional extension period from August 30, 2018 – December 31, 2018

1.2 This amendment is subject to the terms and conditions of the Master Agreement as well as the Statement of Work.

1.3 All other terms and conditions of the Statement of Work between KPMG and the Ministry are unchanged.

HER MAJESTY THE QUEEN in right of Ontario
as represented by the President of the Treasury Board Secretariat

Per: _____

Print Name: _____

Title: _____

KPMG LLP

Acknowledged: _____

Print Name: _____

Title: _____

SOW.pdf

STATEMENT OF WORK- MINISTRIES

Statement of Work for Management Consulting Services

This Statement of Work no. **TBS-OTB-OPCD-21** made in duplicate and effective **June 7, 2017**

KPMG LLP (the "Vendor") and Her Majesty the Queen in Right of Ontario (the "Client") as represented by the President of the Treasury Board enter into this Statement of Work pursuant to the Master Agreement for Management Consulting Services made as of **June 16, 2014** between the Vendor and Her Majesty the Queen in Right of Ontario as represented by the Minister of Government and Consumer Services (such Master Agreement, as from time to time amended, is referred to as the "Master Agreement"). This document and the Master Agreement together comprise a separate Statement of Work between the Vendor and the Client.

In consideration of their respective agreements set out below, the parties agree as follows:

1. *Structure* - The terms and conditions of the Master Agreement are hereby incorporated by reference in this Statement of Work to the same effect as if fully set out in this Statement of Work. This document and the Master Agreement together comprise a separate Statement of Work between the Vendor and the Client. All capitalized terms used in this Statement of Work without definition have the meanings ascribed to them in the Master Agreement. In the event of any conflict or inconsistency between any term or provision of this Statement of Work and any term or provision of the Master Agreement, the terms and provisions of the Master Agreement shall govern.

2. *Statement of Work* – Except where prohibited by applicable law, regulation or professional standards, the Vendor agrees to provide to the Client, and the Client agrees to acquire from the Vendor, the Services and Deliverables described in this Statement of Work upon and subject to the terms of this Statement of Work.

3. *Maximum Price:* C$**$299,000,** plus HST

4. *Project Start Date:* **June 7, 2017**

5. *Project End Date:* **August 30, 2018 (with an option to extend 4 months with no increase to the Maximum Price)**

   The Client may, by giving written notice to the Vendor no later than 10 days before the initial Project End Date, extend the agreement for up to 4 additional months, ending December 31, 2018. Additionally, the Client may engage the Vendor in optional follow-on work that will result in changes to the scale and/or scope of the engagement. All additional work will be set out in a mutually agreed upon Change Order in accordance with the terms of the Master Agreement.

6. *Scope of Services and Deliverables* - The Services and Deliverables to be provided by the Vendor under this Statement of Work include the following:

   Working with management of OPCD's Accounting Policy and Financial Reporting Branch (APFR), the consultants will be expected to provide support for accounting analysis related to:

   - Consolidation of the Province's electricity sector entities,
   - Control assessments related to electricity sector entities
   - The impact of accounting changes by consolidated organizations on the Province's consolidated financial statements.
   - If required the service provider will be expected to work with OPCD to present findings and analysis to the Office of the Auditor General.

The consultants may be required to perform the following duties

- Develop issues notes summarizing the analysis and conclusions as input to the Province's financial accounting and reporting processes.
- Collaborate with OPCD and other stakeholders to gather and assess relevant information necessary to inform the analysis
- Present issues paper to senior management
- Support OPCD in presentation of issues analysis and conclusions to the Office of the Auditor General

7. *Ownership and Licences* - **Attachment D** of the Master Agreement forms a part of this Statement of Work.

8. *Communications and Reporting* – The Vendor must keep the Client informed of status, including progress reports and any other types of reports or reporting requirements, as described in the Vendor's submission.

9. *Contingency Plan* – The Vendor must manage potential areas wherein problems may arise in accordance with its contingency planning practices as described in the Vendor's submission.

10. *Work Location* – All meetings will be within Greater Toronto Area.

11. *Working Hours* – The Client's normal working hours are 7.25 hours per day, normal working hours are between 8:15 a.m. to 4:30 p.m., Monday to Friday inclusive. If required, the Vendor must provide Services outside of these normal working hours and on non-Business Day(s).

12. *Administrative Services and Supplies* – All administrative services and supplies used by the Vendor to complete the Services will be provided to the Client at no additional charge.

13. *Billing and Payment Process* - **The Vendor shall provide the Client with quarterly billing statements that outline the Per Diem Charges no later than 10 Business Days after the end of each quarter.**

    Billing statements should include **dates, hours worked and services performed** .

14. Names and Roles of Vendor's Personnel:

Individual's Legal Name	Individual's Role and Experience Level	Service Category
Michel Picard	Senior Consultant	Complex Accounting Advisory Services
Bailey Church	Intermediate Consultant	"
Andrew Newman	Back-up/Subject Matter Expert	"
Janet Allen	Back-up/Subject Matter Expert	"
Lois Ouellette	Partner	"
Jeremy Destefanis	Senior Manager	"
Clever Ngorima	Senior Manager	"
Alexandra Duret	Senior Manager	"
Dennis Weatherdon	Senior 3 in Ottawa	"

15. *Invoices* - Invoices for payment of any charges under this Statement of Work shall be sent to:

Client: **Treasury Board Secretariat**
Office of the Provincial Controller Division

Branch:	**Accounting Policy and Financial Reporting**
Phone number:	**416-325-8027**
Email:	**Nadine.petsche@ontario.ca**

16. *Knowledge Transfer:* The Vendor will work closely with the client to ensure knowledge transfer to the client's designated staff through each phase of the project and at key milestone opportunities. The Client will also be able to access to the Vendor's Collaboration Site which will help with Knowledge Transfer.

17. *Destruction of Information* - The Vendor shall destroy all information contained on any media, if requested to do so by the Client, except as required to be retained in accordance with professional standards requirements. The Client may choose to witness this destruction. The Vendor shall provide a certificate of destruction to the Client, if requested to do so by the Client.

18. "Future Engagements/Transactions – The information that will be handled by the Vendor under this Statement of Work is highly confidential and can provide the holder with a potential unfair or improper advantage in future engagements/transactions related to the scope of this Statement of Work ("Future Engagement/Transaction") where open competition or negotiation occurs. As a result, the Vendor acknowledges that the firms or persons that have been contracted with or retained to work on this initiative can, depending on the engagement/transaction, become ineligible to submit a submission, assist in the preparation of a submission, or provide advice on any Future Engagement/Transaction that arises from or follows this assignment, where a potential unfair or improper advantage arises as a result of the confidential information obtained under this Statement of Work.

    The names of all advisors to this process may be published in any such Future Transactions to ensure adherence by potential bidders to the above requirement.

19. Indemnity – the indemnity set out in the Master Agreement applies to this assignment.

20. *Client Representative and Receipt of Notices*

Client's address for receipt of notices:	Treasury Board Secretariat Office of the Provincial Controller Division Accounting Policy and Financial Reporting Br. 7 Queen's Park Cres, 2nd Flr Toronto ON M7A 1Y7
Client Representative:	Nadine Petsche
Telephone number:	416-325-8027
E-mail:	Nadine.Petsche@ontario.ca
Backup Client Representative:	Shyrose Virani
Telephone number:	416-325-1448
E-mail:	Shyrose.Virani@ontario.ca

21. *Vendor Representative and Receipt of Notices*

Vendor's address for receipt of notices:	333 Bay Street, Suite 4600 Toronto ON M5H 2S5
Vendor Representative:	Michel Picard, Partner, Accounting Advisory
Telephone number:	416-777-8414
E-mail:	mpicard@KPMG.ca
Backup Vendor Representative:	Bailey Church, Partner, Accounting Advisory
Telephone number:	613-212-3698
E-mail:	bchurch@kpmg.ca

IN WITNESS WHEREOF the parties hereto have executed this Statement of Work as of the date first above written.

HER MAJESTY THE QUEEN in right of Ontario as represented by **the President of the Treasury Board**

Per:

Signature: _____

Name: _____

Title: _____

Pursuant to delegated authority.

[INSTRUCTIONS: INSERT LEGAL NAME OF THE VENDOR]

Per:

Signature: _____

Name: _____

Title: _____

I have the authority to bind the Vendor.

Amendment 1.rtf

From: Virani, Shyrose (TBS) []
To: Chamberlin, Michael (TBS) [Michael.Chamberlin@ontario.ca]
Subject: Amendment 1
Date: Tuesday, August 28, 2018 12:20:18
Attachment 1: Amendment 001 - To exercise the Option Period on SOW.doc
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KPMG LLP

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Clever Ngorima	Senior Manager	"
Alexandra Duret	Senior Manager	"
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18. "Future Engagements/Transactions – The information that will be handled by the Vendor under this Statement of Work is highly confidential and can provide the holder with a potential unfair or improper advantage in future engagements/transactions related to the scope of this Statement of Work ("Future Engagement/Transaction") where open competition or negotiation occurs. As a result, the Vendor acknowledges that the firms or persons that have been contracted with or retained to work on this initiative can, depending on the engagement/transaction, become ineligible to submit a submission, assist in the preparation of a submission, or provide advice on any Future Engagement/Transaction that arises from or follows this assignment, where a potential unfair or improper advantage arises as a result of the confidential information obtained under this Statement of Work.

    The names of all advisors to this process may be published in any such Future Transactions to ensure adherence by potential bidders to the above requirement.

19. Indemnity – the indemnity set out in the Master Agreement applies to this assignment.

20. *Client Representative and Receipt of Notices*

Client's address for receipt of notices:	Treasury Board Secretariat Office of the Provincial Controller Division Accounting Policy and Financial Reporting Br. 7 Queen's Park Cres, 2nd Flr Toronto ON M7A 1Y7
Client Representative:	Nadine Petsche
Telephone number:	416-325-8027
E-mail:	Nadine.Petsche@ontario.ca
Backup Client Representative:	Shyrose Virani
Telephone number:	416-325-1448
E-mail:	Shyrose.Virani@ontario.ca

21. *Vendor Representative and Receipt of Notices*

Vendor's address for receipt of notices:	333 Bay Street, Suite 4600 Toronto ON M5H 2S5
Vendor Representative:	Michel Picard, Partner, Accounting Advisory
Telephone number:	416-777-8414
E-mail:	mpicard@KPMG.ca
Backup Vendor Representative:	Bailey Church, Partner, Accounting Advisory
Telephone number:	613-212-3698
E-mail:	bchurch@kpmg.ca

IN WITNESS WHEREOF the parties hereto have executed this Statement of Work as of the date first above written.

HER MAJESTY THE QUEEN in right of Ontario as represented by **the President of the Treasury Board**

Per:

Signature: _____

Name: _____

Title: _____

Pursuant to delegated authority.

[INSTRUCTIONS: INSERT LEGAL NAME OF THE VENDOR]

Per:

Signature: _____

Name: _____

Title: _____

I have the authority to bind the Vendor.

An audit related question.rtf

From: Petsche, Nadine (TBS) []
To: LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]
Subject: An audit related question
Date: Wednesday, January 25, 2017 14:50:13
Attachment 1: MOE letter on IFRS - discount rate and ARO-May 20 (4).pdf

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Hi LeeAnne.

We have an ask related to the appropriate application of GAAS in assessing a potential error in the audit of the Public Accounts. I have attached documents for reference which I will explain further when we chat. In essence, our question relates to the appropriate position to take in determining the appropriate SUD when two different estimation alternatives are presented, but one is preferred by the client.

Please let me know when you might be available to chat.

Thanks in advance.

Nadine

MOE letter on IFRS - discount rate and ARO-May 20 (4).pdf

ONTARIO POWER GENERATION

John Mauti
VP Chief Controller and Accounting Officer

700 University Avenue, 17th Fl., Toronto, Ontario, M5G 1X6 Tel: (416) 592-4046

May 20, 2016

Delivered via email

Michael Reid
Assistant Deputy Minister
Strategy & Agency Affairs
Ministry of Energy
77 Grenville St. 6th Floor
Toronto, ON M7A 2C1

Re: Using International Financial Reporting Standards (IFRS) for the Province's Financial Reporting Purposes

Since late 2014, OPG has been supporting the Office of the Provincial Controller in determining the impacts of consolidating OPG's financial results on the basis of IFRS. The application of IFRS is expected to increase the Province's annual deficit and accumulated deficit for the fiscal year ended March 31, 2016. The unfavourable impact of applying IFRS is expected to continue in future years, and OPG's financial results for the Province's consolidation purposes are expected to become more volatile under IFRS.

The most significant IFRS adjustment to the Province's financial results relates to the accounting for the nuclear asset retirement obligation (ARO). IFRS requires the ARO to be re-measured using a current discount rate each period. In the current low interest rate environment, IFRS is expected to result in significant increases in the ARO balances. IFRS also results in certain changes in ARO estimates being fully recorded in the income statement in the period the changes arise, rather than being capitalized and expensed over time under United States generally accepted accounting principles (US GAAP), which OPG currently follows for its own external financial reporting purposes.

OPG has identified two acceptable accounting policy alternatives with respect to the discount rate for ARO re-measurement under IFRS. OPG's preferred accounting policy is to update the discount rate every year. This would result in smaller but annual impacts to the Province's net income, beginning with the Province's March 31, 2016 fiscal year. The estimated impact of this alternative on the Province's accumulated deficit as of April 1, 2015, as well as the impacts to the Province net income for the March 31, 2016 and March 31, 2017 fiscal years are outlined in the following table:

(millions of dollars)	**April 1, 2015 Accumulated Deficit**	**Province's March 31, 2016 Fiscal Year Net Income**	**Province's March 31, 2017 Fiscal Year Net Income (estimated)**
Increase in accumulated deficit / decrease in income	(425)	(375)[1]	(300)

[1] *Includes approximately $100 million arising from extensions to the accounting useful lives of the Bruce units following the announcement of the updated Bruce refurbishment agreement in December 2015.*

Although the above represents OPG's current best estimate of the impacts, the actual March 31, 2017 fiscal year impact may be materially different from those presented due to ARO cost estimate changes expected to arise in connection with the 2017-2021 Ontario Nuclear Funds Agreement (ONFA) reference plan update, which is expected to be finalized near the end of 2016.

Subject to ARO cost estimate changes related to the 2017-2021 ONFA Reference Plan, a decrease in net income similar to that for the March 31, 2017 fiscal year is expected for the Province's March 31, 2018 year, on account of relatively gradual annual decreases in the IFRS discount rate under OPG's preferred policy.

An alternate accounting policy option is to update the discount rate during the year in which the ONFA Reference Plan is being updated, but is expected to result in markedly more significant impacts during those years. The impact would occur at least every five years, coincident with the ONFA Reference Plan update cycle. The first discount rate change under this alternative would impact the Province's March 31, 2017 fiscal year. The resulting impact to the Province's opening accumulated deficit on April 1, 2015, as well as the impacts to the Province's net income for the March 31, 2016 and March 31, 2017 fiscal years are outlined in the table below. As noted above, the actual March 31, 2017 impacts can be materially different in connection with the 2017-2021 ONFA Reference Plan update.

(millions of dollars)	**April 1, 2015 Accumulated Deficit**	**Province's March 31, 2016 Fiscal Year Net Income**	**Province's March 31, 2017 Fiscal Year Net Income (estimated)**
Increase in accumulated deficit / decrease in income	(325)	(100)[1]	(1,000)

[1] *Primarily represents the impact arising from extensions to the accounting useful lives of the Bruce units following the announcement of the updated Bruce refurbishment agreement in December 2015*

Under both alternatives, changes in ARO balances will continue to impact net income in future years.

Both discount rate alternatives are acceptable to OPG's external auditors. A consistent ARO discount rate policy would be required to be used in the future for both the Province's consolidation purposes as well as for OPG's own external financial reporting, if and when OPG transitions from US GAAP to IFRS. Given that the first approach would provide more consistent financial results over time, it is OPG's preferred policy.

OPG is currently authorized to use US GAAP by the Ontario Securities Commission until the earlier of January 1, 2019 or the mandatory effective date of a permanent IFRS standard specific to entities with rate-regulated activities, which is currently uncertain.

In closing, I would also like to bring to your attention that OPG is in the process of supporting the Auditor General of Ontario's assurance requirements with respect to applying IFRS for consolidating OPG's financial results, for the purposes of the audit of the Province's consolidated financial statements for the March 31, 2016 fiscal year. OPG has engaged its external auditors to perform certain procedures in connection with the Auditor General's requirements.

Sincerely,

John Mauti
VP, Chief Controller and Accounting Officer
Ontario Power Generation

Cc:
Shruti Talwar (Ministry of Energy)
Nadine Petsche (OPCD)
Ken Hartwick (OPG)

Assessment Results.rtf

From: Sun, Alicia (TBS) []
To: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
Subject: Assessment Results
Date: Tuesday, May 16, 2017 16:33:01
Attachment 1: Individual Evaluation Booklet RFS-TBS-OTB-OPCD-21 deloitte to AS.doc
Attachment 2: Individual Evaluation Booklet RFS-TBS-OTB-OPCD-21 E & Y to AS.doc
Attachment 3: Individual Evaluation Booklet RFS-TBS-OTB-OPCD-21 KPMG to AS.doc

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Hi Nadine,

Please see attached the assessment results.

Thanks,

Alicia

Individual Evaluation Booklet RFS-TBS-OTB-OPCD-21 deloitte to AS.pdf

Confidential
Individual Evaluation Booklet
Treasury Board Secretariat

RFS TBS-OTB-OPCD-21

Evaluator (Print Name): **Alicia Sun**	**Signature:**
Full Legal Name of Proponent:	**Deloitte LLP**
Rated Criteria **Experience and Qualifications– 70 points** **Pricing – 30 points**	**Experience and qualifications: 65** **Pricing: 18** **Total: 83**

PROPONENT:

Item	Rated Criteria	Points Available	Points Awarded	This section MUST be filled out by Evaluators with qualitative comments to support All scoring		
				Positive Feedback	Pg. #'s	Improvement Feedback
1	A description of the Vendor's current or past experience with similar projects, with examples of successful outcomes, anticipated challenges, and corresponding mitigation strategies that the Vendor would employ. Understanding of the Deliverables: Providing timely advice and guidance to the management of the Office of Provincial Controller on complex accounting transactions with potential impact on the Provincial Budget or Annual Report of the Province or select policy decisions in support of specific ministry initiatives. Demonstrated experience in assessing and documenting sensitive issues related to the preparation and audit of the Province's consolidated financial statements prepared on a Public Sector Accounting Standards basis, including participation in discussions with the Auditor General on such matters	10	8	The submission demonstrates that the vendor has relevant experience in the Ontario hydro sector, and had provided advisory services to OPCD on recent complex and rare transactions such as Hydro One IPO. The vendor also shows strong technical understanding of IFRS 14 and PSAB requirement for consolidation.	18-19	Experiences in working with the auditor general community seem limited.

PROPONENT:

Item	Rated Criteria	Points Available	Points Awarded	This section MUST be filled out by Evaluators with qualitative comments to support All scoring		
				Positive Feedback	Pg. #'s	Improvement Feedback
2 a b c d	Demonstrated related knowledge and experience of the Supplier Experience in assessing policy and reporting implications of complex accounting issues and PSAB accounting for complex financing transactions as related to Ontario's electricity sector. Experience in providing advice in PSAB accounting for government business enterprises, capital investments, joint ventures and private-public partnerships. Experience in providing public and private sector accounting advice on acquisitions and divestments, taking into account IFRS and PSAS-related implications; Strong understanding and demonstrated experience in applying PSAB's criteria of control to assessing government control for government business enterprises.	25	25	Demonstrated knowledge and experience in the hydro sector gained through working with OPCD on past Hydro One related engagements and consolidation of GBEs. Had experience related to P3. Had extensive experience in IFRS and knowledge related control assessment under PSAB for entities in the Ontario hydro sector.	20-29	None.

PROPONENT:

Item	Rated Criteria	Points Available	Points Awarded	This section MUST be filled out by Evaluators with qualitative comments to support All scoring		
				Positive Feedback	Pg. #'s	Improvement Feedback
3	Qualifications and experience of Vendor personnel to undertake the specified Deliverables	**35**	32	Demonstrated that key project team members have extensive experience in IFRS, PSAB, IPSASB, and US GAAP.	31-42	Key personnel for past key OPCD hydro engagements has left the firm.
a	Public Sector Accounting Board (PSAB) standards for accounting and financial reporting as established by CPA Canada					
b	International Public Sector Accounting Standards Board (IPSASB) standards					
c	International Financial Reporting Standards (IFRS) and other relevant standards, including their application to large public sector organizations.					
d	Experience assessing control of government business enterprises against PSAB criteria of control as related to government business enterprises, especially as related to publicly traded entities					
e	Ability to work within tight deadlines					

PROPONENT:

Item	Rated Criteria	Points Available	Points Awarded	This section MUST be filled out by Evaluators with qualitative comments to support All scoring		
				Positive Feedback	Pg. #'s	Improvement Feedback
	Pricing	**30**	18	Being the highest bid Calculation of points: ($142,553/$232,725)*30 = 18		

Individual Evaluation Booklet RFS-TBS-OTB-OPCD-21 E & Y to AS.pdf

Confidential
Individual Evaluation Booklet
Treasury Board Secretariat

RFS TBS-OTB-OPCD-21

Evaluator (Print Name): **Alicia Sun**	**Signature:**
Full Legal Name of Proponent:	**Ernst & Young LLP**
Rated Criteria **Experience and Qualifications– 70 points** **Pricing – 30 points**	**Experience and qualifications: 57** **Pricing: 30** **Total: 87**

PROPONENT:

Item	Rated Criteria	Points Available	Points Awarded	This section MUST be filled out by Evaluators with qualitative comments to support All scoring		
				Positive Feedback	Pg. #'s	Improvement Feedback
1	A description of the Vendor's current or past experience with similar projects, with examples of successful outcomes, anticipated challenges, and corresponding mitigation strategies that the Vendor would employ. Understanding of the Deliverables: Providing timely advice and guidance to the management of the Office of Provincial Controller on complex accounting transactions with potential impact on the Provincial Budget or Annual Report of the Province or select policy decisions in support of specific ministry initiatives. Demonstrated experience in assessing and documenting sensitive issues related to the preparation and audit of the Province's consolidated financial statements prepared on a Public Sector Accounting Standards basis, including participation in discussions with the Auditor General on such matters	**10**	8	• Experienced in similar projects on advisory services on complex accounting issues related to the energy sector • Experienced auditor within the power & utilities sector thus have a good understanding on the sector specific complex accounting issues • Long-standing relationship with the Auditor General of Canada and the Office of the Auditor General of Alberta through providing on-call accounting advice. • Advisory services on reporting differences between USGAAP and IFRS. • Past experience with comptroller office with Government of Canada	6-7	May not fully understand potential impact of complex transactions on the Provincial Budget since relevant experience seems limited. Similar experience on selecting policy decisions in support of specific ministry initiatives are not elaborated.

PROPONENT:

Item	Rated Criteria	Points Available	Points Awarded	This section MUST be filled out by Evaluators with qualitative comments to support All scoring		
				Positive Feedback	Pg. #'s	Improvement Feedback
2 a b c d	Demonstrated related knowledge and experience of the Supplier Experience in assessing policy and reporting implications of complex accounting issues and PSAB accounting for complex financing transactions as related to Ontario's electricity sector. Experience in providing advice in PSAB accounting for government business enterprises, capital investments, joint ventures and private-public partnerships. Experience in providing public and private sector accounting advice on acquisitions and divestments, taking into account IFRS and PSAS-related implications; Strong understanding and demonstrated experience in applying PSAB's criteria of control to assessing government control for government business enterprises.	25	18	Have past engagements in the power and utilities sectors for senior governments. Being the auditor of power and utilities companies would demonstrated that the supplier has related knowledge and experience in the hydro sector.	7	No indication of experience in applying PSAB's criteria of control to assessing government control for government organizations. No indication of experience in P3s.

PROPONENT:

Item	Rated Criteria	Points Available	Points Awarded	This section MUST be filled out by Evaluators with qualitative comments to support All scoring		
				Positive Feedback	Pg. #'s	Improvement Feedback
3 **a** **b** **c** **d** **e**	Qualifications and experience of Vendor personnel to undertake the specified Deliverables Public Sector Accounting Board (PSAB) standards for accounting and financial reporting as established by CPA Canada International Public Sector Accounting Standards Board (IPSASB) standards International Financial Reporting Standards (IFRS) and other relevant standards, including their application to large public sector organizations. Experience assessing control of government business enterprises against PSAB criteria of control as related to government business enterprises, especially as related to publicly traded entities Ability to work within tight deadlines	**35**	31	• The proposed project team collectively have a good mix of qualifications in the areas of PSAB, USGAAP, IFRS, and electricity sector. • Demonstrated that the team members would be able to work within tight deadlines.	16-25	No indication on relevant experience in control assessment related to GBEs. No IPSASB experience. Relevant experience seems limited in scope.

PROPONENT:

Item	Rated Criteria	Points Available	Points Awarded	This section MUST be filled out by Evaluators with qualitative comments to support All scoring		
				Positive Feedback	Pg. #'s	Improvement Feedback
	Pricing	**30**	30	• Lowest bid, thus getting the full points		

Individual Evaluation Booklet RFS-TBS-OTB-OPCD-21 KPMG to AS.pdf

Confidential
Individual Evaluation Booklet
Treasury Board Secretariat

RFS TBS-OTB-OPCD-21

Evaluator (Print Name): **Alicia Sun**	**Signature:**
Full Legal Name of Proponent:	**KPMG**
Rated Criteria **Experience and Qualifications– 70 points** **Pricing – 30 points**	**Experience and qualifications: 69** **Pricing: 24** **Total: 93**

PROPONENT:

Item	Rated Criteria	Points Available	Points Awarded	This section MUST be filled out by Evaluators with qualitative comments to support All scoring		
				Positive Feedback	Pg. #'s	Improvement Feedback
1	A description of the Vendor's current or past experience with similar projects, with examples of successful outcomes, anticipated challenges, and corresponding mitigation strategies that the Vendor would employ. Understanding of the Deliverables: Providing timely advice and guidance to the management of the Office of Provincial Controller on complex accounting transactions with potential impact on the Provincial Budget or Annual Report of the Province or select policy decisions in support of specific ministry initiatives. Demonstrated experience in assessing and documenting sensitive issues related to the preparation and audit of the Province's consolidated financial statements prepared on a Public Sector Accounting Standards basis, including participation in discussions with the Auditor General on such matters	**10**	10	The proposed team has rich knowledge and extensive experience in control assessment and consolidation principles of GBEs under PSAB, conversion of Canadian GAAP/US GAAP to IFRS, especially as applicable to the hydro sector. The vendor also has experience working with the audit community across Canada, notably including Ontario's Auditor General, Government of Canada's Auditor General, and New Brunswick's Auditor General on complex accounting transactions/issues.	2, 10-34	None

PROPONENT:

Item	Rated Criteria	Points Available	Points Awarded	This section MUST be filled out by Evaluators with qualitative comments to support All scoring		
				Positive Feedback	Pg. #'s	Improvement Feedback
2 a b c d	Demonstrated related knowledge and experience of the Supplier Experience in assessing policy and reporting implications of complex accounting issues and PSAB accounting for complex financing transactions as related to Ontario's electricity sector. Experience in providing advice in PSAB accounting for government business enterprises, capital investments, joint ventures and private-public partnerships. Experience in providing public and private sector accounting advice on acquisitions and divestments, taking into account IFRS and PSAS-related implications; Strong understanding and demonstrated experience in applying PSAB's criteria of control to assessing government control for government business enterprises.	25	25	Demonstrated related knowledge and experience with specific current/recent/past projects in the hydro sector across Canada: 2.a, 2b, 2c: • Lead advisor for the Independent Electricity System Operator and the OPCD, with respect to complex accounting and reporting matters regarding transactions being considered for the Ontario Fair Hydro Plan Act 2017. • Accounting advisory services around interpretation, and applications of accounting standards related to Hydro One and OPG and to formulate strategies and arguments on appropriate treatment that reflect provincial financial reporting and financial management	2, 10-34	None

PROPONENT:

Item	Rated Criteria	Points Available	Points Awarded	This section MUST be filled out by Evaluators with qualitative comments to support All scoring		
				Positive Feedback	Pg. #'s	Improvement Feedback
				objective. • Accounting advisory service to determine the impact of Hydro One's IPO on the Province's financial reports, budgets, and appropriations. • Advisor to the Government of Nunavut on various complex accounting and reporting matters for the Iqaluit International Airport Improvement Project (P3 arrangement) • Key advisor to the Ontario Energy Board on their IFRS consultations since 2008 2.d • Control assessment of post-IPO Hydro One as the Province reduced its ownership percentage. • Assessment of control indicators to Atomic Energy of Canada Limited,		

PROPONENT:

Item	Rated Criteria	Points Available	Points Awarded	This section MUST be filled out by Evaluators with qualitative comments to support All scoring		
				Positive Feedback	Pg. #'s	Improvement Feedback
				relationship with a special purpose entity.		
3 **a** **b** **c** **d** **e**	Qualifications and experience of Vendor personnel to undertake the specified Deliverables Public Sector Accounting Board (PSAB) standards for accounting and financial reporting as established by CPA Canada International Public Sector Accounting Standards Board (IPSASB) standards International Financial Reporting Standards (IFRS) and other relevant standards, including their application to large public sector organizations. Experience assessing control of government business enterprises against PSAB criteria of control as related to government business enterprises, especially as related to publicly traded entities	**35**	34	Michel Picard, Senior Consultant/Project Lead • Experience in preparing technical papers and accounting opinion on the application of PSAB standards related to engagement on advisory services related to the Ontario Fair Hydro Plan Act, 2017 • Advisory services around interpretation, and application of IFRS related to Hydro One and OPG • Provided training on the new accounting IFRS 14 *Regulatory Deferral Accounts* • Deep knowledge in accounting for the effect of	42-52	IPSASB experience is limited in scope.

PROPONENT:

Item	Rated Criteria	Points Available	Points Awarded	This section MUST be filled out by Evaluators with qualitative comments to support All scoring		
				Positive Feedback	Pg. #'s	Improvement Feedback
	Ability to work within tight deadlines			rate regulation in the Power and Utilities sector under both IFRS and US GAAP frameworks • Control assessment related to Hydro One under PSAB standards Baily Church, Intermediate Consultant/Senior Analyst • Provided advisory services on divestment of Hydro One • Advisory services on complex accounting matters PSAB and IFRS with respect the restructuring of the nuclear laboratories division for Atomic Energy of Canada Limited • More than 15 years experience in serving or working in the public sector with in-depth understanding of all aspects of financial reporting objectives, and deep experience advising		

PROPONENT:

Item	Rated Criteria	Points Available	Points Awarded	This section MUST be filled out by Evaluators with qualitative comments to support All scoring		
				Positive Feedback	Pg. #'s	Improvement Feedback
				on complex accounting matters under PSAB standards. • Extensive experience in control assessment under PSAB standards as related to GBEs, government restructuring, crown organizations types and reporting for senior governments including Ontario, Saskatchewan, New Brunswick, and the Government of Canada. • Experience and knowledge with IPSASB standards.		
	Pricing	**30**	24	• Calculation: (142,553/175,000)*30=24		

Automatic reply_ Quick Question.rtf

From: Kim Marshall [Kim.Marshall@ieso.ca]
To: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
Subject: Automatic reply: Quick Question
Date: Wednesday, August 09, 2017 11:28:04

I am out of the office until August 14th and will be checking email periodically. In case of an emergency please contact Georgia.ritchie-wust@ieso.ca.

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

Automatic reply_ Rate Regulated.rtf

From: Kim Marshall [Kim.Marshall@ieso.ca]
To: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
Subject: Automatic reply: Rate Regulated
Date: Friday, November 17, 2017 12:03:57

I am out of the office until November 20th and will be checking email periodically. In case of an emergency please contact Georgia.ritchie-wust@ieso.ca.

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

Award memo complex accounting services GBEs for Associate Signature.docx.rtf

From: Petsche, Nadine (TBS) []
To: Hosick, Sarah (TBS) (Sarah.Hosick@ontario.ca) [Sarah.Hosick@ontario.ca]
CC: Bernard, Dena (TBS) [Dena.Bernard@ontario.ca]
Subject: Award memo complex accounting services GBEs for Associate Signature.docx
Date: Monday, May 29, 2017 15:44:57
Attachment 1: Award memo complex accounting services GBEs for Associate Signature.docx
Attachment 2: SOW - KPMG attachment.docx

Sarah,

Please find attached a memo requiring Karen Hughes' signature. I will print a hardcopy for internal signing purposes and walk it over. If it's possible to address this item early this week, that would be much appreciated as we would like to engage the firm to start the control analysis on H1 ASAP.

Thanks in advance.

Nadine

p.s. please note that both docs reflect feedback received from both our Corporate Services area as well as LSD.

Award memo complex accounting services GBEs for Associate Signature.pdf

Treasury Board Secretariat

Office of the Provincial Controller Division
Accounting Policy & Financial Reporting Branch
Frost Building South, 2nd Floor
7 Queen's Park Crescent
Toronto ON M7A 1Y7

Memo | TBS

May 29, 2017

MEMORANDUM TO: Karen Hughes
Associate Deputy Minister of Finance
Treasury Board Secretariat

FROM: Nadine Petsche
Director, Accounting Policy and Financial Reporting
Office of the Provincial Controller Division

SUBJECT: **Memo to Award Contract for Complex Accounting Services**

With this memo, I am updating you on my decision to proceed with awarding a Statement of Work to KPMG LLLP with a ceiling price of $299,000 plus HST.

As you are aware, earlier this year a Request for Services (RFS) was issued for Complex Accounting Services. As part of the competitive process, an RFS was issued to five vendors on the Management Consulting Services VOR for complex accounting support which covered the following support for accounting analysis related to Ontario's energy sector:

- Consolidation of the Province's electricity sector entities,
- Control assessments related to electricity sector entities,
- The impact of accounting changes by consolidated organizations on the Province's consolidated financial statements.

Three submissions were received in response to the RFS process. The three submissions were reviewed independently by myself and a Manager in the APFR section against the criteria outlined in the RFS document, which included experience and qualifications, and pricing.

Based on the results of the assessments, KPMG LLP had the highest overall ranking in both assessments. I will be engaging KPMG LLP to provide actuarial support services to the Office of the Provincial Controller, pending your written agreement.

KPMG's team will be well positioned to support OPCD on energy sector related accounting matters. Their extensive experience includes:

- Experience in preparing technical papers and accounting opinion on the application of PSAB standards related to engagement on advisory services related to the Ontario Fair Hydro Plan Act, 2017

…/2

- Advisory services around interpretation, and application of IFRS related to Hydro One and OPG
- Provided training on the new accounting IFRS 14 *Regulatory Deferral Accounts*
- Deep knowledge in accounting for the effect of rate regulation in the Power and Utilities sector under both IFRS and US GAAP frameworks
- Control assessment related to Hydro One under PSAB standards
- Extensive experience in control assessment under PSAB standards as related to GBEs, government restructuring, crown organizations types and reporting for senior governments including Ontario, Saskatchewan, New Brunswick, and the Government of Canada.
- Experience and knowledge with IPSASB standards.

The attached draft Statement of Work has been drafted to reflect the deliverables and timing associated with the complex accounting services being provided under the Statement of Work.

As per the TBS FDOA for Consulting Services Agreements valued at or above $100,000, prior written approval from the Deputy Head on the selected vendor and the proposed Agreement is required before the proposed Agreement is signed. In TBS for Consulting Services Agreements valued at or above $100,000 and up to $750,000, the Deputy Minister has delegated this authority to the individual who granted the spending authority for the contract, which is the Associate Deputy Minister.

As the Statement of Work is estimated to be less than $299,999 only my approval is required to award the Statement of Work. With this memorandum, I am advising you of my decision and request that you sign this document as evidence of agreement with the vendor selection.

Recommendation:

As the Statement of Work is estimated at $299,000 (tax excluded), I will be awarding the Statement of Work to KPMG LLP for a period of 15 months (June 1, 2017 to August 30, 2018) with a 4 month extension option in favour of the ministry with no increase in Maximum Price.

Regards,

Nadine Petsche
Director, Accounting Policy and Financial Reporting
Office of the Provincial Controller Division

I agree with the vendor selection:

Karen Hughes
Associate Deputy Minister

c. Patrick Laughton

SOW - KPMG attachment.pdf

4STATEMENT OF WORK- MINISTRIES

Statement of Work for Management Consulting Services

This Statement of Work no. **TBS-OTB-OPCD-21** made in duplicate and effective **June 1, 2017**

KPMG LLP (the "Vendor") and Her Majesty the Queen in Right of Ontario (the "Client") as represented by the President of the Treasury Board enter into this Statement of Work pursuant to the Master Agreement for Management Consulting Services made as of **June 16, 2014** between the Vendor and Her Majesty the Queen in Right of Ontario as represented by the Minister of Government and Consumer Services (such Master Agreement, as from time to time amended, is referred to as the "Master Agreement"). This document and the Master Agreement together comprise a separate Statement of Work between the Vendor and the Client.

In consideration of their respective agreements set out below, the parties agree as follows:

1. *Structure* - The terms and conditions of the Master Agreement are hereby incorporated by reference in this Statement of Work to the same effect as if fully set out in this Statement of Work. This document and the Master Agreement together comprise a separate Statement of Work between the Vendor and the Client. All capitalized terms used in this Statement of Work without definition have the meanings ascribed to them in the Master Agreement. In the event of any conflict or inconsistency between any term or provision of this Statement of Work and any term or provision of the Master Agreement, the terms and provisions of the Master Agreement shall govern.

2. *Statement of Work* - The Vendor agrees to provide to the Client, and the Client agrees to acquire from the Vendor, the Services and Deliverables described in this Statement of Work upon and subject to the terms of this Statement of Work.

3. *Maximum Price:* C$**$299,000**

4. *Project Start Date:* **June 1, 2017**

5. *Project End Date:* **August 30, 2018 (with an option to extend 4 months with no increase to the Maximum Price)**

   The Client may, by giving written notice to the Vendor no later than 10 days before the initial Project End Date, extend the agreement for up to 4 additional months, ending December 31, 2018. Additionally, the Client may engage the Vendor in optional follow-on work that will result in changes to the scale and/or scope of the engagement. All additional work will be set out in a mutually agreed upon Change Order in accordance with the terms of the Master Agreement.

6. *Scope of Services and Deliverables* - The Services and Deliverables to be provided by the Vendor under this Statement of Work include the following:

   Working with management of OPCD's Accounting Policy and Financial Reporting Branch (APFR), the consultants will be expected to provide support for accounting analysis related to:

   - Consolidation of the Province's electricity sector entities,
   - Control assessments related to electricity sector entities
   - The impact of accounting changes by consolidated organizations on the Province's consolidated financial statements.
   - If required the service provider will be expected to work with OPCD to present findings and analysis to the Office of the Auditor General.

The consultants may be required to perform the following duties

- Develop issues notes summarizing the analysis and conclusions as input to the Province's financial accounting and reporting processes.
- Collaborate with OPCD and other stakeholders to gather and assess relevant information necessary to inform the analysis
- Present issues paper to senior management
- Support OPCD in presentation of issues analysis and conclusions to the Office of the Auditor General

7. *Ownership and Licences* - **Attachment D** of the Master Agreement forms a part of this Statement of Work.

8. *Communications and Reporting* – The Vendor must keep the Client informed of status, including progress reports and any other types of reports or reporting requirements, as described in the Vendor's submission.

9. *Contingency Plan* – The Vendor must manage potential areas wherein problems may arise in accordance with its contingency planning practices as described in the Vendor's submission.

10. *Work Location* – All meetings will be within Greater Toronto Area.

11. *Working Hours* – The Client's normal working hours are 7.25 hours per day, normal working hours are between 8:15 a.m. to 4:30 p.m., Monday to Friday inclusive. If required, the Vendor must provide Services outside of these normal working hours and on non-Business Day(s).

12. *Administrative Services and Supplies* – All administrative services and supplies used by the Vendor to complete the Services will be provided to the Client at no additional charge.

13. *Billing and Payment Process* - **The Vendor shall provide the Client with quarterly billing statements that outline the Per Diem Charges no later than 10 Business Days after the end of each quarter.**

    Billing statements should include **dates, hours worked and services performed** .

14. Names and Roles of Vendor's Personnel:

Individual's Legal Name	Individual's Role and Experience Level	Service Category
Michel Picard	Senior Consultant	
Bailey Church	Intermediate Consultant	
Andrew Newman	Back-up/Subject Matter Expert	
Janet Allen	Back-up/Subject Matter Expert	

15. *Invoices* - Invoices for payment of any charges under this Statement of Work shall be sent to:

Client: **Treasury Board Secretariat**
Office of the Provincial Controller Division
Branch: **Accounting Policy and Financial Reporting**
Phone number: **416-325-8027**
Email: **Nadine.petsche@ontario.ca**

16. *Knowledge Transfer:* The Vendor will work closely with the client to ensure knowledge transfer to the client's designated staff through each phase of the project and at key milestone opportunities. The Client will also be able to access to the Vendor's Collaboration Site which will help with Knowledge Transfer.

17. *Destruction of Information* - The Vendor shall destroy all information contained on any media, if requested to do so by the Client, except as required to be retained in accordance with professional standards requirements. The Client may choose to witness this destruction. The Vendor shall provide a certificate of destruction to the Client, if requested to do so by the Client.

18. "Future Engagements/Transactions – The information that will be handled by the Vendor under this Statement of Work is highly confidential and can provide the holder with a potential unfair or improper advantage in future engagements/transactions related to Ontario's Cap and Trade policy ("Future Engagement/Transaction") where open competition or negotiation occurs. As a result, the Vendor acknowledges that the firms or persons that have been contracted with or retained to work on this initiative can, depending on the engagement/transaction, become ineligible to submit a submission, assist in the preparation of a submission, or provide advice on any Future Engagement/Transaction that arises from or follows this assignment, where a potential unfair or improper advantage arises as a result of the confidential information obtained under this Statement of Work.

    The names of all advisors to this process may be published in any such Future Transactions to ensure adherence by potential bidders to the above requirement.

19. Indemnity – the indemnity set out in the Master Agreement applies to this assignment.

20. *Client Representative and Receipt of Notices*

Client's address for receipt of notices:	Treasury Board Secretariat Office of the Provincial Controller Division Accounting Policy and Financial Reporting Branch 7 Queen's Park Cres, 2nd Flr Toronto ON M7A 1Y7
Client Representative:	Nadine Petsche
Telephone number:	416-325-8027
E-mail:	Nadine.Petsche@ontario.ca
Backup Client Representative:	Shyrose Virani
Telephone number:	416-325-1448
E-mail:	Shyrose.Virani@ontario.ca

21. *Vendor Representative and Receipt of Notices*

Vendor's address for receipt of notices:	333 Bay Street, Suite 4600 Toronto ON M5H 2S5
Vendor Representative:	Michel Picard, Partner, Accounting Advisory
Telephone number:	416-777-8414
E-mail:	mpicard@KPMG.ca
Backup Vendor Representative:	Bailey Church, Partner, Accounting Advisory
Telephone number:	613-212-3698
E-mail:	bchurch@kpmg.ca

IN WITNESS WHEREOF the parties hereto have executed this Statement of Work as of the date first above written.

HER MAJESTY THE QUEEN in right of Ontario as represented by **the President of the Treasury Board**

Per:

Signature: _____

Name: _____

Title: _____

Pursuant to delegated authority.

[INSTRUCTIONS: INSERT LEGAL NAME OF THE VENDOR]

Per:

Signature: _____

Name: _____

Title: _____

I have the authority to bind the Vendor.

Blakes Comments - Control Assessment_Affordability Fund Mar 20 np BLAKES.doc.rtf

From: Petsche, Nadine (TBS) []
To: Picard, Michel (mpicard@kpmg.ca) [mpicard@kpmg.ca]
Subject: Blakes Comments - Control Assessment_Affordability Fund Mar 20 np BLAKES.doc
Date: Tuesday, March 21, 2017 11:44:44
Attachment 1: Blakes Comments - Control Assessment_Affordability Fund Mar 20 np BLAKES.doc

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Blakes Comments - Control Assessment_Affordability Fund Mar 20 np BLAKES.pdf

BLAKES COMMENTS ADDED IN COMMENT BUBBLES (3/21/2017)

Draft Control Assessment of Affordability Fund Trust (Rev. Mar 20, 2017) for Inclusion in the Government's Reporting Entity

ISSUE

Would the Ministry of Energy's proposed Affordability Fund Trust be assessed as controlled under Public Sector Accounting Board (PSAB) standard on the Government Reporting Entity (PS 1300) and therefore be included in the Province's consolidated financial statements?

RECOMMENDATION

Conclusion outstanding pending confirmation of accuracy of extracts/references in Appendix 1.

Elements of the Trust Declaration and Transfer Payment Agreement have been assessed by OPCD as aligned with both OPCD's One-Time Guidance on Transfers as well as OPCD's Trust Guidance document, both of which are attached as Appendices to this analysis. Both of these documents have been reviewed and concurred to with the Office of the Auditor General in the past and have been important references in ensuring that the public interest will continue to be served through the establishment and administration of the Affordability Fund Trust.

BACKGROUND

The Ministry of Energy plans to transfer $100M to a Trust in relation to a new Affordability Fund for the purpose of providing energy efficiency measures to electricity customers who do not qualify for existing low income conservation programs (e.g. the existing Home Assistance Program (HAP), delivered by LDCs under the Conservation First Framework) and who have difficulty paying their electricity bills.

The Affordability Fund would be available to LDCs who would identify eligible customers in accordance with criteria established by the Trustees and could include customers in frequent arrears or facing disconnection. Priority would be given to homes primarily heated by electricity.

In order to establish the Fund, the Ministry of Energy plans to enter in a Trust Declaration and a Transfer Payment Agreement (TPA) with a non-controlled Trustee (Computershare) which will shortly thereafter be replaced by an independent Board of Trustees based on the advice of an independent Advisory Committee. The Ministry of Energy anticipates entering into the Trust Declaration and TPA with Computershare and flowing the approved funding prior to March 31st.

The Board is expected to be comprised of:

- [six] residents of Ontario who have expressed that they are willing to act as members of the Board of Trustees and who, individually and collectively, satisfy the following criteria (collectively, the "**Selection Factors**"):
  a) each member demonstrates an understanding of the electricity sector including the electricity distribution sector;
  b) each member demonstrates an expertise in conservation and low income programs;
  c) three of the identified individuals will be representatives from separate electricity distributors [not under the control of the Government of Ontario], two individuals will be representatives from

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separate social services agencies [not under the control of the Government of Ontario] and one individual member, who will be anon-voting member, will be an employee or representative of the Government of Ontario; and
d) it is expected that representation by the Government of Ontario will be non-controlling. The Board of Trustees, once selected is expected to include 6 persons (five voting and one non-voting) of individuals from among those individuals who have been recommended for appointment to the Board of Trustees by the Advisory Committee.

The Trustees will have the discretion to hire Hydro One or other entities as service providers to assist with administering the Fund, using Administrative Services Agreements to clearly document services and expectations. The Trust would distribute funds to LDCs across the province (including Hydro One) at the discretion of the Trustees.

The draft TPA includes terms which allow for unfettered control by the Trust to operate in the best interest of the beneficiaries, including making decisions on the administration and distribution of funds to LDCs across the province. The Trustees are expected to conduct themselves in good faith and give regard to guiding principles established by the Province in exercising their duties under the Trust Declaration and TPA in distributing funds to LDCs for the benefit of beneficiaries across the province, including Hydro One.

The Trust Declaration will be subject to further modification based on agreement by both parties, but not unilaterally by either party. The input and involvement of LDCs across the province is anticipated and integral to the success of the Trust in meeting its purpose. The non-compulsory **Principles** of the Fund will be clearly articulated in the Trust Declaration and the TPA. Language in the documents will clearly reflect that the principles are not mandatory requirements.

In addition, a **Permitted Delegation Annex** will be included which refers to expectation between the parties that the Trust would plan to rely on LDCs to assist with achieving its purpose, while maintaining unfettered discretion and power to (a) appoint, employ or retain Administrative Services Agents for the purpose of discharging its duties and obligations under the Declaration; and (b) enter into, perform, enforce and amend Administrative Services Agreements.

Without limiting the Trustee's discretion to negotiate and settle the terms and conditions of the above-mentioned Administrative Services Agreements, the Permitted Delegation Annex also outlines certain terms and conditions that the Trustees might consider for inclusion in the services agreements, recognizing that the ultimate agreements would be subject to the acceptance and agreement of the applicable Electricity Distributor counterparty. While the Annex appears quite specific in nature, it is non-mandatory and intended as guidance only which may be helpful as the Trust seeks to commence discussions with LDCs in the spirit of serving the interests of the primary beneficiaries. As noted, the Trustees are not bound to use the guidance.

Commented [NP1]: But there is a suggestion that they would as referenced in the audit clause which states that the scope of the audit would include review/validation of processes and control related to LDCs.

There is also a requirement under the Declaration that any changes would only be possible if they are in agreement with the Principles.

CONTROL ANALYSIS

In accordance with PSAB, "the Government Reporting Entity should comprise the organizations that are controlled by the government" (PS 1300.07). PSAB defines control as "the power to govern the financial and operating policies of another organization with expected benefits or the risk of loss to the government from the other organizations activities" (PS 1300.08). Benefits may be financial or non-financial, for example, the government may require the organization to cooperate in pursuing the government's public policy objectives.

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PSAB's "indicators of control" are the relevant guidance in determining the degree of control for inclusion of the Affordability Fund Trust in the Government Reporting Entity (GRE). In applying this guidance, it is necessary to determine the substance of the relationship between a government and an organization in addition to its legal form. All relevant aspects and implications of the relationship would be considered in determining whether or not the government controls the organization. In addition to PS 1300, consideration is also given the Trust Guidance and One-Time Transfer Guidance developed by OPCD in conjunction with the Office of the Auditor General which are attached as Appendices.

There are a total of 11 PSAB prescribed control indicators that provide evidence of control: 4 persuasive indicators of control and 7 other control indicators. It is the **preponderance of evidence** that would be considered in assessing whether a government controls an organization.

The following governing documents were reviewed in support of the analysis of the Province's control over the Affordability Fund Trust:

1) Draft Trust Declaration (March 20 5:30 pm), including related schedules (Principles Annex, Delegations Annex)
2) Draft Transfer Payment Agreement (March 20 5:30 pm)
3) OPCD Trust Guidance
4) OPCD Guidance on One-Time Transfers

Appendix I shows the detailed analysis of the PSAB indicators of control. Based on this assessment and the preponderance of evidence, informed by a review of the wording in the draft Trust Declaration and Transfer Payment Agreement, there are a number of features of the proposed arrangements which may be pertinent in assessing whether, an overall basis, the Affordability Fund Trust might be controlled by the Province as at March 31, 2017.

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APPENDIX I

Affordability Fund Trust
Indicators of Control Analysis
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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
Primary (i.e., more persuasive) indicators (CICA PS 1300.18):		
1. Government has the power to unilaterally appoint or remove a majority of the members of the governing body of the organization	• Original Trustee (Computershare) is the governing body of the Trust until the Replacement Board of Trustees is selected. The Declaration describes the process expected to be used to establish the Replacement Board. The government will not control the Original Trustee, the Advisory Committee, or the appointment of the Replacement Board of Trustees.	X
2. Government has ongoing access to the assets of the organization, has the ability to direct the ongoing use of those assets, or has ongoing responsibility for losses	• The government will not have an on-going access to assets transferred to the Trust, and any future access will only be through protective clauses (termination/default for material breach). At the Final Distribution Date, any excess funds will be distributed to a non-controlled Residual Beneficiary in accordance with clause 3.3 of the Trust Declaration. • The government will not have any exposure to losses of the Trust. In addition, section 1.1 (interpretations) of the TPA includes the following: it is intended that the transfer of the Funds to the Recipient will be a transfer made to a "non-controlled trust" (as that term is given meaning in - applicable to the accounting rules and principles applicable to the Province as of the date of the Agreement), and so if a term or condition of the Agreement is determined to conflict with the requirements applicable to the Province recording the transfers to the Recipient of Funds contemplated hereunder as an expense incurred by the Province on the date of the transfer of Funds under the Agreement otherwise in connection with activities undertaken by the Province with such a "non-controlled trust", then such term or condition shall be given a meaning and shall have an effect insofar as it is possible to interpret such term or condition in a manner that eliminates such conflict while preserving the other provisions of the Agreement and furthering the Purpose.	X
3. Government holds the majority of the voting shares or a "golden share" that confers the power to govern the financial and operating policies of the	• Neither in the Trust Declaration or the TPA can the government unilaterally direct the financial and operating policies of the Trust. Any Trustee initiated changes to the Declaration or TPA would need to be consistent with the Principles Annex. • • The Trust Declaration and TPA do not interfere with the	

Commented [JV2]: Blakes

Note that clause 3.3 states that the Residual Beneficiaries will be identified by consulting with and having regard to the recommendations of the Ontario Energy Board.

Commented [JV3]: Blakes

TPA: The TPA is silent on amendments to the TPA.

The TPA states in section 20.2 that the Trustee covenants that it shall not amend, restate or terminate the Declaration without the written consent of the Province, such consent not to be unreasonably withheld.

Trust Declaration:
Section 6.1 of the Trust Declaration states that, subject to the TPA, the Trustee shall have the power in its sole and absolute discretion to amend the Declaration [provided that no amendment shall conflict with the principles set forth in the Principles Annex or as to the scope or effect of the permitted delegations and activities of any Administrative Services Agent pursuant to the Permitted Delegations Annex.]

Section 6.1(e) permits the Trustee to add to or reasonably clarify the principles set forth in the Principles Annex.

Consider:
Consider stating "Any Trustee initiated changes to the Trust Declaration would need to be consistent with the Principles Annex, although the Trustee may amend the Trust Declaration to, among other things, add to or reasonably clarify the principles set forth in the Principles Annex."

Commented [NP4]: Check against Mar 20 (proviso)

INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
organization	unfettered discretion of the Trustees in exercising their fiduciary duties on behalf of the beneficiaries. The 'Principles Annex' describes non-mandatory guiding principles to be considered by the Trustees in applying their discretion in relation to administration of the Trust. The Annex clearly indicates that the Trustees shall **only have regard to** the principles but that they shall not be specifically bound by the listed principles. Furthermore, the declaration and TPA are subject to change. Under the Declaration of Trust, section 1.2 Definitions , "**Declaration of Trust**" means the declaration of trust made as of March [□], 2017, under whi o the Affordability Fund Trust was established, as such declaration of trust may be amended, restated, supplemented or otherwise modified from time to time with the consent of the Province. • The Trust Declaration also includes a schedule which lists 'suggested' initial eligible measures for consideration by the Trustees, and elements for consideration in the Administrative Services Agreements that the Trust may chose to enter into with LDCs. • The Trust Declaration does not direct a specific governance structure, but rather includes the following reference under **2.3 Governance. The Recipient represents, warrants and covenants that it has, and will maintain, in writing for the period during which the Agreement is in effect:** (a) decision-making mechanisms and procedures to enable the Recipient to hold, invest, manage, apply and distribute the Funds in accordance with the Declaration of Trust in furtherance of the Purpose; and (b) procedures to enable the preparation and delivery of all Reports required pursuant to Article 7.0	✓
4. Government has the unilateral power to dissolve the organization and thereby access its assets and become responsible for its obligations	Only after the Final Distribution Date or in the event of default will the government have any power or rights in relation to the remaining funds in the Trust, including the power to redirect distribution of remaining funds and seek remediation for any mis-used funds. **SECTION 7 - TERMINATION** **7.1 Duration** Subject to sections 7.2 and 7.3, the Trust will continue in full force and effect so long as there are any Assets and until all of the debts, liabilities and obligations of the Trust have been paid and satisfied in full. **7.2 Termination and Distribution of Assets** The Trustee shall terminate the Trust and wind up its affairs as soon as practicable after the Final Distribution Date. In connection with the termination of the Trust, the Trustee shall identify the Residual Beneficiaries and distribute or cause to be distributed the remaining Assets, in cash or in kind or partly in each, to the Residual Beneficiaries, in each case in accordance with section	

Commented [NP5]: Not mandatory (will AG have concerns with level of specificity)

Commented [JV6]: **Blakes**

This definition and section reference is from the TPA, not the Trust Declaration.

Commented [NP7]: XXX Mar 20 – no reference to timeliness or not unreasonably withholding (no proviso) see sec. 4.2

Commented [JV8]: **Blakes**

Section 2.3 of the Declaration describes the measures specified in Schedule A as measures that "may initially be considered to be consistent with the Measures Factors (subject to change as contemplated under the Permitted Delegations Annex)".

Consider: Explaining the expectation that the Trustees identify eligible measures (as set out in section 2.1) and stating that Schedule A provides a list of measures which may initially be considered to be consistent with the Measures Factors (which are the factors specified in section 2.1 to identify eligible measures.)

Commented [NP9]: Not mandatory (will AG have concerns with level of specificity)

Commented [JV10]: **Blakes**

Consider: "and a Permitted Delegation Annex which identifies matters that it is expected would be addressed in Administrative Services Agreements that the Trust may choose to enter into with LDCs (without limiting the Trustee's discretion to negotiate and settle the terms and conditions of such agreements).

(for more consistency with language in the Permitted Delegation Annex).

Commented [JV11]: **Blakes**

This is a reference to the TPA, not the Trust Declaration.

Please see section 5.8 of the Trust Declaration for governance provisions regarding the Trust.

Commented [JV12]: **Blakes**

Confirm whether this refers to section 3.3, which provides that the Residual Beneficiaries shall be identified by consulting with and having regard to the recommendations of the Ontario Energy Board.

Commented [JV13]: **Blakes**

Section 11.2(c) of the TPA - This is less of a "remediation for mis-used funds" and more of a right of the Province, on specified event of defaults, to require that the trustees transfer to the Province assets in its possession or under its control that can reasonably be traced or attributed to the funds originally transferred by the Province to the trustee.

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
	3.3. Despite the foregoing, the Trust will only be terminated and wound up date after the Trustee, in its sole and absolute discretion, determines that all debts, liabilities and obligations of the Trust have been paid or otherwise adequately provided for and satisfied and upon receipt of such releases, indemnities and discharges as the Trustee, relying on the opinion of counsel, deems necessary for the protection of the Beneficiaries and for its own protection. **7.3 Distribution of Assets on Final Distribution Date** If the Trust holds Assets on the Final Distribution Date, the Trustee shall pay or provide reserves for the payment, and otherwise shall satisfy, all debts, liabilities and obligations of the Trust and shall provide or arrange to provide such investigations, audits, releases, indemnities and discharges as the Trustee, relying on the opinion of counsel, deems necessary for the protection of the Beneficiaries and for its own protection. Thereafter, any remaining Assets shall be paid to the Residual Beneficiaries in accordance with section 3.3. Right to assets under default (material breach provisions only, and after notice period). **11EVENT OF DEFAULT, CORRECTIVE ACTION AND TERMINATION FOR DEFAULT** **11.1 Events of Default.** An Event of Default will occur if: (a) the Recipient fails to perform or observe any covenant in this Agreement and such failure has and continues to have a material adverse effect on the Province and remains unremedied during any Notice period applicable under section 11.2 after the earlier of (i) actual knowledge thereof by the Recipient, or (ii) receipt by the Recipient of Notice thereof from the Province; (b) any representation or warranty made by the Recipient in the Agreement shall prove to have been incorrect in any material respect when made or deemed made, and, if capable of remedy, continues to be incorrect in any material respect during any Notice period applicable under section 11.2 after the earlier to occur of (i) the actual knowledge thereof by the Recipient or (ii) receipt by the Recipient of Notice thereof from the Province; (c) it is [determined][manifestly demonstrated by the Province] that the Recipient has breached its Standard of Care (within the meaning given in and context of the Declaration of Trust) in discharging its material duties under the Declaration of Trust, with the result that all or a significant part of the Funds have not been or are not being applied in furtherance of the Purpose or are being applied in a manner that is directly contrary or without regard to the Purpose, and, if such breach is capable of remedy, it continues and remains unremedied during any Notice period applicable under section 11.2 after the earlier of (i) actual knowledge thereof by the Recipient, or (ii) receipt by the Recipient of Notice thereof from the Province; (d) an insolvency event shall have occurred and be continuing with respect to the Recipient.	X

Commented [JV14]: Blakes

May want to clarify which provisions are from the Trust Declaration and which are from the TPA.

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
	11.2 Consequences of Events of Default and Corrective Action. If an Event of Default occurs, the Province may, at any time, take one or more of the following actions: (a) provide the Recipient with Notice allowing the Recipient an opportunity to remedy the Event of Default during a specified Notice Period; No right to access assets following Final Date of Distribution: **3.3 Distributions to Residual Beneficiaries** Prior to the Final Distribution Date, the Trustee shall identify the Residual Beneficiary, or if more than one the Residual Beneficiaries and their respective allocations, by consulting with and having regard to the recommendations of the Ontario Energy Board, based on **[Identify criteria that will narrow the scope to charities to those having an energy/social focus]**those charitable organizations which provide support services for Low Income Energy Assistance Program Emergency Financial Assistance (LEAP EFA) and the Ontario Electricity Support Program (OESP) or other charities that OEB may identify as relating to the Purpose. Following the Final Distribution Date, the Trustee shall, subject to compliance with section 7.3,7.3 and completion of a final audit, distribute all remaining Assets (including capital or income) to the Residual Beneficiaries, in each case in the amounts and to the extent determined by the Trustee in its discretion hereunder (having consulted with and having had regard the recommendations of the Ontario Energy Board as aforesaid) and to the exclusion of the other Beneficiaries. The government also cannot unilaterally extend the term of the agreement. Rather, the term of the Agreement can only be extended by further agreement between the Parties. **3.3 Extension of the Declaration of Trust.** If the Province determines that an extension of the Declaration of Trust (beyond the "Final Distribution Date" and time for termination, each as specified or determined thereunder) is consistent with and in furtherance of the Purpose and the Province's original intentions and expectations in establishing the Project, the Province may request that the Recipient extend the Declaration of Trust to a date specified by the Province in a Notice (such date not to be later than •), whereupon the Recipient, so long as the Trustee does not have a reasonable basis to believe that such an extension would be inconsistent with the Purpose or weaken the protections intended for the benefit of the Trustee pursuant to the Declaration of Trust, will undertake such actions as it may consider to be necessary or appropriate to so extend the Declaration of Trust, including by amending the Declaration of Trust to provide for such an extension and to modify any other term or requirement as would be necessary or prudent to conform such term or requirement in light of such extension.	

Commented [JV15]: Blakes

Consider including the other provisions of section 11.2

Commented [JV16]: Blakes

Consider double-checking that this is section 3.3 from the draft of the Trust Declaration dated March 20, 5:30 pm (*which is the draft that is cited for this assessment*)

Consider double-checking other quoted sections in similar manner.

Commented [JV17]: Blakes

Section 3.3 of the TPA (quoted below) refers to the fact that the government cannot unilaterally extend the term of the Trust Declaration – if the Province wishes to extend the Trust Declaration, section 3.3 governs.

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
5. Provide significant input into the appointment of members of the governing body of the organization by appointing a majority of those members from a list of nominees provided by others or being otherwise involved in the appointment or removal of a significant number of members	In accordance with the Trust Declaration and the TPA, the government will not control the Original Trustee, and will not have a controlling interest in either the Advisory Committee nor the Replacement Trustee Board. The process Replacement of the Original Trustee is described in section 5.7 of the Trust Declaration which describes a logical process to select subsequent trustees but which does not result in a Trust that will be controlled by the government (as above). Although the Ministry of Energy provided input to the selection of the Advisory Committee with will help the Trustee to select the Replacement Trustees by nominating candidates based on the selection criteria, the Advisory Committee is not the governing body. As at March 31st, the Original Trustee is the governing body and although selection thereof may have been influenced by the government, the Trust Declaration and Transfer Payment Agreement have been drafted to reflect a non-controlling relationship. PSAS also includes the following guidance w.r.t. government involvement in appointing governing bodies: 20 For each indicator that applies in a particular circumstance, the degree of government influence would determine its importance as evidence of control. In weighing the evidence, it would be necessary to consider the indicators collectively as well as individually. For example, where an organization is governed by a publicly elected board, this is not necessarily, in and of itself, sufficient evidence to conclude that the government does not control the organization. Similarly, where a government appoints a majority of the members of the governing body of an organization, this is not necessarily, in and of itself, sufficient evidence that the government controls the organization In addition, section 1.1 (interpretations) of the TPA includes the following: it is intended that the transfer of the Funds to the Recipient will be a transfer made to a “non-controlled trust” (as that term is given meaning in • applicable to the accounting rules and principles applicable to the Province as of the date of the Agreement), and so if a term or condition of the Agreement is determined to conflict with the requirements applicable to the Province recording the transfers to the Recipient of Funds contemplated hereunder as an expense incurred by the Province on the date of the transfer of Funds under the Agreement otherwise in connection with activities undertaken by the Province with such a “non-controlled trust”, then such term or condition shall be given a meaning and shall have an effect insofar as it is possible to interpret such term or condition in a manner that eliminates such conflict while preserving the other provisions of the Agreement and furthering the Purpose.	X

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
6. Appoint or remove the CEO or other key personnel	Right does not exist. N/A	X
7. Establish or amend the mission or mandate of the organization	Province established the Trust and has provided Principles which help to guide the Trust.	✓
8. Approve the business plans or budgets for the organization and require amendments, either on a net or line-by-line basis	Right does not exist. No intention for province to manage or influence the Trust on a line by line basis.	X
9. Establish borrowing or investment limits or restrict the organization's investments	Trust Declaration references: (j) "***Eligible Investments***" means (i) a deposit receipt, note, certificate or instrument issued, guaranteed or endorsed by a bank listed in Schedule I to the *Bank Act* (Canada), which provides that the principal and any interest shall be fully paid no later than [one year] after the day the investment was made, or (ii) a deposit account at a bank listed in Schedule I to the *Bank Act* (Canada). 4.2 (a) ***Power to Own, Hold and Manage.*** Subject to section 4.2(d), the Trustee shall have the power to own, hold and manage the Assets in such manner as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable. (b) ***Power to Invest in Eligible Investments.*** The Trustee shall have the power to invest the Assets only in Eligible Investments, and to change such Eligible Investments at any time and from time to time, all as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable, but always having regard to the Trustee's expectations regarding the timing of payments to be made to the Beneficiaries hereunder. If an investment of Assets in Eligible Investments would not be authorized under the applicable trust laws of Ontario, the Trustee shall nevertheless be permitted to make an investment of the Assets in such Eligible Investments. The Trustee will have no liability for the diminution in the value of any investment in Eligible Investments made hereunder. *Although some restrictions, given the need for liquidity for the funds and envisioned short term nature of the program, it is unlikely that the Trust would have contemplated investing the funds in any different types of instruments as designated in the Trust docs.*	✓
10.Restrict the revenue-generating capacity of the organization, notably the sources of revenue	There are no revenue generating restrictions in the Trust documents; however, there are references indicating that the Funds are expected to be used for not for profit purposes. It should also be noted that the nature of a Trust is not to generate revenue or make a profit, but to fulfil a fiduciary duty on behalf of the beneficiaries. No explicit restriction mentioned in the Trust Declaration or TPA related to other activities of the trust; however,	X

Commented [JV18]: Blakes

Computershare, as settlor and Computershare as trustee established the trust. Consider stating that the Province contributed funds to the trust.

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
	expectation that funds provided by the province will not be used for profitable purposes by the LDCs.	
11. Establish or amend the policies that the organization uses to manage, such as those relating to accounting, personnel, compensation, collective bargaining or deployment of resources (Suggestions for Admin Services Agreements and Principles in Trust docs are not mandatory. Replacement Board of Trustees can initiate changes which can reasonably be anticipated to be accepted if not contradictory to the Principles. References to provinces procurement directive and meals, entertaining and hospitalitiy directive only state expectation that Trust's processes would align with the principles.)	**NO UNILATERAL GOVT POWER TO MAKE CHANGES**: Trustees would have power to consider change in the policies in the Trust Declaration and/or modify the TPA, subject to provincial approval. Declaration: 1.1 (y) "'***Transfer Payment Agreement***" means the transfer payment agreement dated as of March •, 2017 between the Trustee and Her Majesty the Queen in right of Ontario as represented by the Minister of Energy, as such agreement may be amended, restated, supplemented or otherwise modified by the further agreement of the parties thereto from time to time. **4.2Specifically Enumerated Powers** The Trustee shall have the following specific powers and authorities: (c) ***Transfer Payment Agreement.*** The Trustee shall have the power to enter into, amend, supplement, modify and perform its obligation under the Transfer Payment Agreement. ***NO GOVT CONTROL OVER OPERATING OR FINANCIAL POLICIES*** ***j)Power to Pay Trustee's Fees*** Trustees have general regard to sorts of limitations as are set forth in the "Travel, Meal and Hospitality Expenses Directive of the Province" **5.8 Rules and Procedures of the Board of Trustees** (d) ***Initial Requirements***. As soon as practicable and in any event no later than one month following the Original Trustee Replacement Date, the Board of Trustees shall meet to take such decisions and actions as they deem necessary to ensure the proper management and administration of the Trust. The date (and location if in person) of the initial meeting shall be determined by a majority of the Board of Trustees. 4.2 The Trustee is expected to conduct its activities in a manner that complies in all material respects with the Transfer Payment Agreement, including to:	X

Commented [JV19]: Blakes

Consider that section 6.1 of the Trust Declaration states that, subject to the TPA, the trustee shall have power in its discretion to amend the Trust Declaration provided that no amendment shall conflict with the Principles Annex or as to the scope or effect of the permitted delegations and activities of any Administrative Services Agent pursuant to the Permitted Delegation Annex.

Consider reference to the language in section 20.2 of the TPA - The Trustee covenants that it shall not amend, restate or terminate the Declaration of Trust without obtaining the written consent of the Province in respect of same, such consent not to be unreasonably withheld or delayed

Commented [NP20]: Inconsistent w.r.t expectation of agreement between the two parties

Commented [JV21]: Blakes

This is clause 4.2(a). Consider double-checking sources cited to ensure citation to May 20, 5:30pm version.

This clause speaks to the *power* of the Trustee to amend the TPA – however, it does not necessarily state that, contractually, the Trustee is permitted to amend the TPA unilaterally.

This clause should not be quoted for support that the trustee can make changes to the TPA without consequence.

Commented [NP22]: Supposed to say 'is expected that)

Commented [JV23]: Blakes

This is clause 5.8(a). Consider double-checking sources cited to ensure citation to May 20, 5:30pm version.

Commented [NP24]: Terminology

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
	(a) act prudently and in furtherance of the Purpose; (b) report annually the results of its activities for information purposes to the Province in connection with the Program; (c) comply with the Province's request for any independent verification or audit if determined to be necessary or appropriate by the Province; (d) return of Assets that have not been distributed if it is [determined][by the Province] that the Trustee has breached its Standard of Care in discharging its material duties under the Declaration, and has not cured such material breach despite having been given a reasonable opportunity by the Province to do so in light of the circumstances of such material breach, with the result that all or a significant part of the Assets have not been or are not being applied in furtherance of the Purpose or are being applied in a manner that is directly contrary or without regard to the Purpose.] The Trust Declaration includes a Permitted Delegation Annex, which describes administratively, how the Trust might consider delegating its powers and duties to LDCs (non-controlled by the province) and satisfy the Standard of Care required under the Trust Declaration. Certain sections of the Delegation Annex go beyond general accountability provisions and suggest very specific requirements/expectations in relation to the Trustee's arrangements with LDCs and LDCs own administration of Fund monies. As currently worded, the Delegations Annex, when taken together with the Principles Annex and Listing of Eligible Measures, may be assessed substantively as 'controlling' the trust, regardless of wording which refers to the exercise of Trustee discretion. **5.1RECIPIENT'S ACQUISITION OF GOODS OR SERVICES, AND DISPOSAL OF ASSETS** **Acquisition.** If the Recipient acquires goods, services, or both with or by applying the proceeds of the Funds, it is expected to do so through a process that promotes the best value for money and to take reasonable steps to ensure that its Administrative Services Agents also follow a process that promotes the best value for money when acquiring goods and services with or by applying the proceeds of the Funds. .	

Commented [NP25]: Aligned with OPCD guidance on One-time Transfers and Trust Guidance (previously discussed and agreed to by OAG)

Commented [JV26]: Blakes

Consider: "The Trust Declaration includes a Permitted Delegation Annex, which provides that the Trustee will be permitted, and is expected to seek to delegate its powers and duties to LDCs…."

Commented [JV27]: Blakes

Section 5.1 of the Trust Declaration itself provides that the trustee may satisfy its Standard of Care by delegation, subject to prudent oversight.

Commented [JV28]: Blakes

Consider that these "very specific" sections are descriptions of matters that it is expected an Administrative Services Agreement would be expected to address (without limiting the discretion of the trustee to negotiate and settle the terms and conditions of such agreement).

Commented [NP29]: Some audit risk

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
	PRINCIPLES ANNEX The Trustee shall have regard to **[, but shall not be specifically bound by,]** the following principles in applying its discretion in relation to the administration of the Trust. **DECLARATION OF TRUST** **6.1 Amendments** Subject to the requirements of the Transfer Payment Agreement, the Trustee shall have the power in its sole and absolute discretion from time to time without the approval of any Beneficiary or any court to amend, vary, supplement, replace or restate this Declaration in its entirety or any portion thereof. provided, however, that no amendment shall conflict with the principles set forth in the Principles Annex or as to the scope or effect of the permitted delegations and activities of any Administrative Services Agent pursuant to the Permitted Delegations Annex.] 6. In the event that the Recipient performs any procurements, it is expected that all procurements will reflect the principles of Ontario's Public Service Procurement Directive. From and following the Original Trustee Replacement Date, Reports will be provided [quarterly] on the basis of the government's fiscal year starting at the execution of this Agreement and continuing until conclusion of the Agreement. Annual Reports will be on a fiscal basis starting at the execution of this Agreement and continuing until conclusion of the Agreement. Quarterly Reports and Annual Reports would be expected to be submitted to the Province within one month following the end of the reporting period that they represent. The Province expects that these Reports would be prepared to demonstrate the impact of the Province's funding. **5.0 RECIPIENT'S ACQUISITION OF GOODS OR SERVICES, AND DISPOSAL OF ASSETS** **5.1 Acquisition.** If the Recipient acquires goods, services, or both with or by applying the proceeds of the Funds, it is expected to do so through a process that promotes the best value for money and to take reasonable steps to ensure that its Administrative services Agents also follow a process that promotes the best value for money when acquiring goods and services with or by applying the proceeds of the Funds. **Conduct of the Trust and the Program** 4.1 It is expected that administrative expenses of the Board of Trustees and its members, including any expenses relating to the Trust, to the establishment of the [Trust]and any expenses related to the implementation and operation of the Program, including by or through Electricity Distributors and other relevant entities, will be recognized and subject to reimbursement on a basis that is	

Commented [NP30]: Conflicting with suggestion that the Principles are guidelines only?

Commented [NP31]: No accounting issue, but not sure that this was included in the appendix?

Commented [NP32]: For information purposes, in accordance with OPCD TP Guidance and Trust Guidance.

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
	substantially consistent the principles in the Travel, Meal and Hospitality Expenses Directive, the current form of which attached as Schedule B to this Principles Annex. Permitted Delegation Annex (not mandatory) 4. Accordingly, and without limiting the Trustee's right to delegate under the Declaration and its other rights, powers and discretion as Trustee, the Trustee will be permitted to, and is expected to seek to, enter into Administrative Services Agreements with Electricity Distributors in order to further the Purpose. Without limiting the Trustee's discretion to negotiate and settle the terms and conditions of such Administrative Services Agreements, it is expected that such Administrative Services Agreements will include customary terms and conditions for an administrative services arrangement of this type and, in addition, would (subject to the acceptance and agreement of the applicable Electricity Distributor counterparty) address certain aspects.	

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Appendix II

ACCOUNTING CONSIDERATIONS FOR GOVERNMENT-FUNDED TRUSTS

Purpose:

The purpose of this guidance is to explore accounting-related considerations related to government-funded trusts which are established by the government to fund a specific purpose or activity. This guidance deals specifically with the difference between controlled and non-controlled trusts, the introduction of accountability provisions which can now be reflected in trust agreements, and key timing considerations for trusts contemplated towards year-end. It is important that these factors be taken into account when establishing a trust, in order to achieve the intended fiscal impact and appropriate accountability over the use of public funds.

Introduction:

Trusts are usually established by way of trust declaration or trust agreement, and are one of several means by which the government can direct funding to support key policy initiatives. Simply stated, trustees hold title to property for the benefit of, and stand in a fiduciary relationship to the beneficiaries. Trustees are accountable to third parties (beneficiaries) for the use and disposition of trust assets and for the funds derived from those trust activities. The trust itself is not a separate legal entity. The trustees carry out the activities of the trust in the name of the trustees.

Generally, direct year-end transfers are the preferred alternative over trusts where the province wants to retain ultimate decision-making authority regarding amounts to be transferred to recipients. Direct transfers are more appropriate where the identity of eligible transfer payment recipients is known and the amounts to be transferred to each recipient can be or has been determined.

Year-end transfers to a trust might be considered where the province desires to delegate to third parties ultimate decision-making authority regarding allocation of amounts amongst eligible beneficiaries.

A trust must be valid for legal purposes in order to be recognized for accounting purposes. Key requirements for a trust to be valid include: an intention to create a trust ('certainty of intention'), certainty of subject-matter of the trust ("certainty of subject matter") and the objects of the trust must be certain ('certainty of objects"). There are generally two different types of trust, a trust in which the objects are the "beneficiaries" and trust in which the objects are a "purpose" (e.g. for charitable purposes). Where a trust is under serious consideration, it is imperative that ministries seek legal advice to ensure that the contemplated trust will be valid.

Trustees are obligated to follow the terms of the trust declaration or trust agreement which will usually detail the powers and duties of the trustees including the number of trustees and how decisions will be made by the trustees.

Controlled versus Non-Controlled Government-Funded Trusts

From an accounting perspective, it is important to distinguish whether the design and governance of a particular trust results in the trust being controlled by the Province for accounting purposes. Control stems from the nature of the relationship between the government and the trust. Financial and operating policies are principles that determine how an organization conducts its activities. The ability to govern these policies is an important element of government control.

The means by which a trust is established, the government's representation among the trustees, the government's involvement in the trust's governance processes and ability to impact trustee discretion in decision-making are but some of the factors to be considered in assessing whether a trust is 'controlled' or 'not controlled' by the government.

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In establishing a trust, it is important to achieve the intended relationship between the province and the trust in order to achieve the intended fiscal impact.

Non-Controlled Trusts:

Where trusts are not controlled by the Province, they are excluded from the government reporting entity. For non-controlled trusts, the following accounting would apply to trust funding:

- Where funds provided to the "trust" are unconditional, the Province would record a transfer payment expense for any transfers approved in the current period (and flowed by finalization of public accounts).

- Where funds provided to the "trust" are conditional (i.e. upon the trust completing some specific task or result), the Province would initially record funding to the trust as a prepaid expense until the conditions are met at which time the Province would record a transfer payment expense, with the corresponding credit to prepaid expense. This may occur over a number of fiscal years.

In determining whether a trust is controlled, there are a variety of ways that a government might be perceived to be governing the financial and operating policies of a trust. These include:
- Eliminating or significantly limiting the ability of the trustees to make future decisions
- Directing the financial and operating policies of the trust
- Overruling, modifying or vetoing the financial and operating policies established by the trust.

Specific factors that should be considered in establishing a non-controlled trust include:
- Government representation in the trustees (should be in a minority position), and non-government trustees should be nominated by non-government sources
- Government influence over day-to-day trust governance and trustee discretion to make decisions (e.g. selection of eligibility criteria, selection of recipients).
- degree of influence over how funds are disbursed (i.e. the Declaration of Trust can provide general guidelines but not be overly prescriptive)
- the government's power to unilaterally appoint or remove the majority of trustees
- the government's on-going access to the trust's assets, or right to direct decisions regarding the flow of those assets to specific beneficiaries
- the government's unilateral power to dissolve the trust, except under specified circumstances as stipulated by the trust agreement (i.e. corrective action)
- the government's ability to establish or amend the policies used by the trust to manage accounting, personnel, deployment of resources, etc.

In some cases, it may be advantageous for ministries to provide administrative support to trusts. In these cases it is important that the extent of such support is not so pervasive as to influence or direct the day-to-day financial or operating policies of the trust, otherwise the trust will be deemed controlled and will be subject to consolidation in the government reporting entity.

Controlled Trusts:

If the Province controls the trust (for example, through its power to appoint a majority of the trustees on the board of trustees), the Province would be deemed to have control of the trust, resulting in the trust being accounted for in the same manner as other organizations controlled by the province (i.e. on a consolidated basis). As a result, the Province's contribution to the trust would not be expensed when it is transferred, but rather over time as the funds are disbursed to trust beneficiaries.

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Accountability Related Considerations:

The Auditor General has confirmed that the new accountability provisions developed for one-time transfers can also be applied to trusts without impacting the expense treatment of any transfers to non-controlled trusts.

These new accountability provisions will enable the government and the Legislature to:

- obtain assurance that a trust is spending public funds prudently and for the purposes intended and to take corrective action if it is not;
- ensure ministerial accountability to the Legislative Assembly for the trust's activities; and
- ensure that the province is able to take corrective action where warranted and as stipulated under terms of the trust agreement.

It should also be noted that the Auditor General's Act now allows the Province's Legislative Auditor to conduct special audits of any person or organization receiving transfers from the government, including trusts.

To enhance accountability controls over government transfers to non-controlled trusts, Ministries can consider incorporating some or all of the following accountability provisions as part of their trust agreement/declaration without impacting the accounting treatment of the trust.

The inclusion of any of these provisions should not result in a trust being assessed as 'controlled'. Note that the key determinant in identifying appropriate provisions for any individual trust is a ministry's assessment of the **risk** associated with a particular trust, as per the Transfer Payment Directive.

1. **Description of intended use of trust funds**;
    - specific purpose(s) for which the funds are to be used;
    - description of intended recipients and related eligibility criteria*; and,
    - the nature of eligible expenditures relevant to the transfers.

    *Note: avoid *overly prescriptive* eligibility criteria which would effectively eliminate or significantly limit the trustees' discretion to make funding decisions.

2. **Requirement for information**
    - Information to be provided by the trust at a future date (e.g. requirement for trustees to advise the government of trustee-developed performance criteria, and provide annual assessments against those criteria)

3. **Report-back requirement for Public Accountability**
    - information to be provided by the trust at a future date with respect to the stewardship and payment of transfer funds (e.g. audited financial statements, audited list of recipients and amounts funded).

4. **Right to independent verification/audit**
    - The Province reserves the right to audit any transfer payment recipients. The trust agreement should make reference to this fact.

5. **Right to take corrective action**
    - Where stipulated under the trust agreement, the Province reserves the right to re-direct unused funds where results of a trust assessment (where required by the trust agreement) indicate original purpose of the trust is not being achieved, or if there remain unused funds at the end of the trust term.
    - Province may also reserve the right to extend the term of the trust agreement, where funds remain at the end of the trust period.

To qualify for in-year expense treatment, the non-controlled trusts must satisfy the following:

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- the decision to establish the trust must have been approved by Treasury Board/Management Board of Cabinet and ratified by Cabinet by March 31st;
- the ministry providing the transfer must have approved appropriations and spending authority by March 31st;
- Trustees must have been identified and signed the trust declaration or agreement to establish a valid trust by March 31st ;
- the trust must be set up and ready to receive funds, and a nominal amount transferred to the trust by March 31s;t ; and,
- the government should have communicated publicly (e.g. in the Budget document) the pending or final establishment of the trust.

In addition, all remaining funds beyond those initially transferred at March 31st should be transferred to the trust by June 30th.

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Trusts
Questions and Answers on Trust Guidance

Question: *Where a trust is announced in the Budget document, must the trust be established by March 31st, or could such a trust be established shortly thereafter without impacting the expensing of transfers to the trust in 2007-08?*

Answer: *A trust would have to be established prior to the end of a fiscal period in order to satisfy the recognition criteria for government transfers. If the intended recipient for a government transfer does not exist at March 31st, the province cannot record a payable owing to it under existing accounting standards.*

Question*: Does the transfer of funds to a non-controlled trust need to occur by March 31st or before the date of Public Accounts finalization?*

Answer: *Consistent with the new requirements for one-time transfers, as long as the trust is established by March 31st, the transfer is authorized and a reasonable estimate of the amount can be made, cash payments can be made after year-end.*

Question: *Can beneficiaries of a non-controlled trust include consolidated entities provided that the ultimate selection of recipients is at the discretion of the Trustees?*

Answer: *Any amounts provided to a trust which are in turn be provided to an organization inside the government reporting entity should not be expensed at the time of the transfer to the trust. Any amount that is flowed to a trust with the intention of subsequently flowing the funds to a consolidated entity should not be recorded as an expense to the government.*

Question: *Can a Ministry provide administrative support to a trust without compromising the non-controlled status of the trust?*

Answer: *The government can provide administrative support as long as the extent of government administrative support is <u>not so pervasive</u> so that the government is in substance establishing and managing the trust's policies in the areas of accounting, personnel, compensation, collective bargaining or deployment of resources. Where such administrative support is assessed as pervasive, it could impair the trust's non-controlled trust and the trust will be consolidated onto the province's financial statements.*

Can the following clauses appear in a trust agreement for a non-controlled trust to ensure adequate accountability over public funds without impacting the expense treatment of such trusts?

Question*: Specific description of purpose of the trust (possibly including nominal allocation among various objectives)*
Answer: Yes.

Question: *Can the trust agreement include a specific description of the intended groups of beneficiaries and detailed eligibility criteria.*

Answer: *Specificity should be applied cautiously, so as not to limit the discretion of the trustees in their subsequent grant making processes. For the trust to be considered 'not controlled' it should not be seen as 'establishing the trust's fundamental purpose and eliminating or significantly limiting the ability of the trust to make future decisions by predetermining the financial and operating policies of the trust.*

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Question: *Can trustees stipulate that funding is to be provided to beneficiaries on a cost-sharing basis?*
Answer: *Yes.*

Question: *Can the trust agreement include a requirement for a trust to report back to the province on trustee-established performance criteria and results, audit of financial statements, audited recipients and amounts, confirmation that trustees communicated to beneficiaries the intended purpose of the funding, etc.*
Answer: *Yes.*

Question*: Requirement for Trust to publicly post communications on existence, availability of funds, eligibility criteria, recipients and amounts granted to each recipient.*
Answer: *Yes*

Question: *Inclusion of a 'suggested' drawdown schedule over a period of years, with discretion left to Trustees as to actual results.*
Answer: *The inclusion of a drawdown schedule is not suggested for one-time, up-front transfers.*

Question: *Trust agreement can suggest accountability provisions which might be attached by Trustees to beneficiary payments (e.g. specific purpose of funding, requirement for report-back, right to audit, corrective actions).*
Answer: *Yes*

Question: *Trust agreement to reserve the province's right to re-direct any unspent funds to specified parties (e.g. non-consolidated entities or another non-controlled trust) at the end of the trust term, or alternatively to extend the term of the trust where unspent funds remain.*
Answer: *Yes*

Question*: Can the trust agreement include the requirement for evaluations of the trust at certain times (e.g. years 3, 7, 10 of the trust agreement), with the right for the government to decide either to terminate the trust (corrective action) based on the results of the assessment, or extend the trust beyond the initial term as per the agreement.*
Answer: *Yes.*

Question: *Trust agreement can require Trustees to request as part of the funding process that beneficiaries acknowledge receipt of government funding in their public communications on specific projects.*
Answer: *Yes.*

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Appendix III

ACCOUNTING TREATMENT FOR ONE-TIME TRANSFERS WITH ENHANCED ACCOUNTABILITY PROVISIONS

Purpose:

The purpose of this guidance is to identify the nature of the accountability provisions which may be associated with one-time transfer payments that qualify for immediate expense treatment in the current period.

Definition of One-time transfers:

One-time transfers are defined as lump-sum operating or capital transfers that

- are not advancing currently planned future transfer payments under an existing on-going program, or
- are not identified as being intended to be spent in specified future periods or over a specified period of time.

Background:

Transfer payments are a means by which the government works with third parties to deliver public services. Transfer payment recipients must be held responsible by the government to deliver the provincially-funded services and be accountable for the funds they receive. Consistent with the *Transfer Payment Accountability Directive, August, 2007*, a risk-based approach is to be followed in designing the appropriate accountability and reporting mechanisms for specific funding agreements.

The current *PSAB Handbook Section 3410, Government Transfers requires that a government transfer should be recognized by a transferring government as an expense in the period the transfer is authorized and all eligibility criteria have been met by the recipient.*

To recognize a liability and expense as at year-end:

- the government must create a valid expectation of the recipient by year-end, leaving the government little or no discretion to avoid but to settle its obligation;
- no significant, contingent actions should be outstanding which if unfulfilled by year end might cause the transfer not to occur.

It is understood that the intention of negotiating a transfer payment agreement following the government's commitment to the recipient is to work out the administrative details of the arrangement, not to change any key elements of the government's commitment. As such, any correspondence which indicates that funds will not be flowed until a TPA is signed should make clear that the nature of additional details to be negotiated is logistical and administrative in nature (bank account info, reporting requirements, etc.)

The government should not suggest or direct the recipients to use the funding for future periods.

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To enhance accountability controls over one-time transfers accountability provisions one through five below are required for one-time transfers.

1. **Description of intended use of one-time transfer funds**;
   - specific purpose(s) for which the funds are to be used; and,
   - the nature of eligible expenditures relevant to the transfers.

2. **Report-back requirement for Public Accountability**
   - Periodic reporting on the use of transfer funds, service deliverables, outputs or outcomes achieved.

3. **Right to independent verification/audit**
   - at the discretion of the Province to verify/audit information submitted by the recipient is complete and accurate, and that funds were used for purposes intended.

4. **Right to recover funds (corrective action)**
   - If the funds were not used, or will not be used, for the intended purpose(s), specified services were not delivered, or intended outputs were not achieved, the Province has the right at a future date to recover funds transferred.

5. **Requirement for information** (*this item optional*)
   - information to be provided by the recipient at a future date with respect to the use of transfer funds, service deliverables, outputs or outcomes achieved.

To qualify for in-year expense treatment, the transfers must satisfy the following:

- be approved by Treasury Board / Management Board of Cabinet and then ratified by Cabinet by March 31st;
- the ministry providing the transfer must have approved appropriations and spending authority by March 31st;
- the recipients must be eligible to receive the grant by March 31st (i.e. eligibility criteria have been met prior to March 31st), and the intent to make the transfer payment must be communicated to the recipients by March 31st;
- In addition, funding details including accountability provisions must be communicated to the recipients, and the transfer payments must be made to the recipients prior to the finalization of the Public Accounts (currently June 30th);
- Where funds are flowed to recipients by March 31st, all eligibility criteria are assumed met for accounting purposes[1], and all amounts flowed are recorded as an expense, even where conditions might exist which remain unmet at March 31st.

[1] PS 3410, Government Transfers, states that "no matter how a transfer term is identified in legislation, regulations, by-laws or a transfer agreement (i.e., as an eligibility criterion or a stipulation), the crucial characteristic that distinguishes the substance of these two types of transfer terms is when they are required to be or are met by a recipient. If a term is required to be and is met before the transfer is provided, it is an eligibility criterion for the purposes of this Section. If a transfer term is met after the transfer is provided, it is a stipulation for the purposes of this Section".

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SCHEDULE "C"
PROJECT

For the purposes of this Agreement, the "Project" is the distribution of the Funds in accordance with the Declaration of Trust.

It is intended the Project will be undertaken by the Recipient in furtherance of the Purpose and in accordance with the Declaration of Trust. In this regard, it is expected that the Recipient will undertake the Program having regard to the Budget and the Principles set forth in Annex A.

The following are the Provinces expectations regarding the circumstances in which the Recipient will begin to distribute any Funds to any Beneficiary.

1. The Original Trustee Replacement Date (as defined in the Declaration of Trust) will have occurred.
2. An administrative services agreement will have been entered into between the Recipient and an Administrative Services Agent providing for the administrative services necessary for the Recipient to perform its obligations herein and execute the Project.
3. Administrative procedures will have been developed and implemented under which Electricity Distributors (as defined in the Declaration of Trust) will be invited to assist with (a) the identification and selection of Primary Beneficiaries under the Declaration of Trust, (b) the determination of the amount of Funds to be distributed to particular Primary Beneficiaries, and (c) the distribution of Funds to or for the benefit of such Primary Beneficiaries (in each case substantially on the basis contemplated in the Permitted Delegations Annex).
4. The Recipient will have obtained commercial general liability insurance from insurers having a secure A.M. Best rating of B+ or greater, or the equivalent, that in the opinion of the Recipient a prudent person similar to the Recipient would maintain, and having an inclusive limit of not less than $2,000,000 per occurrence and providing for contractual liability coverage. If requested, the Recipient will provide the Province (for its information purposes) with copies of the certificates of insurance and policies for such insurance coverage.

The Province recognizes that the foregoing may involve the Recipient entering into agreements as may be the Recipient considers to be necessary or expedient, including any required amendment or amendment and restatement of the Declaration of Trust. Funds may be expended to pay the expenses of the Trustee in completing these matters. The Recipient will confirm to the Province once such matters have been completed.

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5.7 Replacement of the Original Trustee

As soon as practicable and in any event on or prior to March 31, 2017, the Original Trustee shall appoint the Persons identified by the Trustee Replacement Annex to comprise the Advisory Committee contemplated therein (once constituted, the "**Advisory Committee**"). As soon as practicable thereafter, the Original Trustee shall request that the Advisory Committee make recommendations with respect to the composition of the "Board of Trustees", as contemplated by the Trustee Replacement Annex. The Trustee shall have no duty or obligation to investigate the basis for any of the Advisory Committee's recommendations and may rely on such recommendations without any duty of enquiry, supervision or oversight with respect to the activities and decision-making processes adopted by the Advisory Committee in its discretion, in full satisfaction of the Original Trustee's Standard of Care with respect to such matters hereunder. Except if the Original Trustee determines that the individuals recommended by the Advisory Committee to become members of such Board of Trustees are disqualified from so acting on the basis of manifest non-compliance with the "Selection Factors" set forth in the Trustee Replacement Annex, the Original Trustee shall appoint, as members of the Board of Trustees, the [six] (five voting and one non-voting) individuals recommended for appointment to the Board of Trustees by the Advisory Committee. Upon the appointment of such [six] individuals pursuant to this provision and their agreement to act as members of the Board of Trustees, the Original Trustee shall be deemed to have resigned and shall cease to be a trustee (such resignation occurring on the "**Original Trustee Replacement Date**").

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Business Case complex accounting service KPMG IAS 14v2.doc.rtf

From: Petsche, Nadine (TBS) []
To: Bernard, Dena (TBS) [Dena.Bernard@ontario.ca]
CC: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]; Lindo, Murray (TBS) [Murray.Lindo@ontario.ca]
Subject: Business Case complex accounting service KPMG IAS 14v2.doc
Date: Wednesday, February 11, 2015 16:58:15
Attachment 1: Business Case complex accounting service KPMG IAS 14v2.doc

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Noticed some edits on Shyrose's desk. Revised version attached. n

Business Case complex accounting service KPMG IAS 14v2.pdf

Business Case
Complex Accounting Services
(KPMG – Rate Regulated Balances)

Objectives

Office of the Treasury Board (OTB), Office of the Provincial Controller Division (OPCD) requires the services of a public accounting firm with expertise in International Financial Reporting Standards (IFRS) as applicable to rate-regulated entities to assist in assessing and documenting the impact of a potential change in accounting for Hydro One and Ontario Power Generation on the Province's 2014/15 Public Accounts.

The assistance of a specialist on interpretation and application of IFRS, specifically as related the Province's rate regulated entities, will be beneficial in managing accounting and audit risks, as well as providing additional insights to OPCD on potential future fiscal impacts on both the Province's balance sheet and statement of operations.

The term of the agreement is to be for a period of 8 months and it is anticipated that the agreement will be executed on or around February 12, 2015.

Deliverables:

Working with management of OPCD's Accounting Policy and Financial Reporting Branch (APFR), the provider of complex accounting services related to IFRS as related to the Province's rate regulated entities, will provide assistance in assessing and documenting key considerations and recommendations for the following:

- The potential impact of IAS14 (transitional standard for rate-regulated entities) on the Province's 2014/15 Public Accounts and future years for Hydro One and Ontario Power Generation.
- The potential impact of IAS 14 on other Provincial entities including OEFC and IESO/OPA.
- The potential impact of an ultimate decision by the International Accounting Standards Board which does not reflect rate regulated activities consistent with past practice under Canadian GAAP or US GAAP.

If required, it is anticipated that the service provider will work with OPCD to present findings and analysis to the Office of the Auditor General in relation to planning for the 2014/15 Public Accounts. The service provider may also be called upon to participate in internal discussions to inform decisions regarding Provincial policy regarding the most appropriate accounting basis for the Province to apply in consolidation of OPG and H1 on the Province's books (i.e. IAS14 vs. US GAAP).

Procurement Methodology

In accordance with the MBC Procurement Directive, and as a Division of TBS, the Office of the Provincial Controller has identified the firm of KPMG from the existing Vendor of Record as the preferred service provider.

Key factors in the decision included familiarity with the Province's rate-regulated entities and reporting thereby through past consultations on IFRS-related matters; experience in having provided advice and guidance to entities in the rate-regulated sector regarding the interpretation of the recently issued transitionary standard, IAS14. In particular, Michel Picard of KPMG has been actively involved in consulting with stakeholders in the Canadian electricity sector regarding rate regulated accounting, and providing support for the IASB's project on rate regulated accounting. OPCD has participated in discussions with Mr. Picard and representatives of OPG and Hydro One on matters related to interpretation of the IASB's interim standard. Mr. Picard is considered to be the best resource available to provide the required level of assistance.

Furthermore, as the consulting services acquired through this procurement are confidential in nature and where their disclosure could reasonably compromise Governments confidentiality and may potentially impact the government's decisions regarding accounting policies impacting the upcoming 2014/15 Public Accounts, the following exception is relevant in the decision to sole-source KPMG for this engagement:

- Where goods, consulting or non-consulting services regarding matters of a confidential or privileged nature are to be purchased and the disclosure of those matters through a competitive procurement process could reasonably be expected to compromise government confidentially, cause economic disruption or otherwise be contrary to the public interest.

As the estimated value of the contract is less than $25K, the Director of Accounting Policy and Financial Reporting will provide necessary authorization.

Ministry Consultation/Co-ordination

Both OEFC and the Ministry of Energy are aware of outstanding issues related to a potential change in basis for accounting for H1 and OPG effective January 1, 2015. OPCD continues to keep these key stakeholders informed of our progress on this matter and to solicit input where appropriate.

Alternative Sources of Information Required

Alternatives were considered, however the nature of services required for this particular purpose are most efficiently, economically and expediently obtained through this method. Internal OPS resources are not able to accommodate this requirement.

Time Lines

February 23, 2015 – February 12, 2016

Cost

These services are estimated to cost approximately $25,000.

Approvals (DOA):

Since the value is estimated to be $25,000, only the approval of the Director, Accounting Policy and Financial Reporting is required.

Client Contact:

Shyrose Virani
Administrative Coordinator
416-325-1448

Submitted by:

Nadine Petsche MBA CPA CA
Director, Accounting Policy and Financial Reporting
Office of the Provincial Controller
Date:

Agreed by:

Murray Lindo
ADM and Provincial Controller
Office of the Provincial Controller
Date:

Can I get 10min sometime tomorrow_.rtf

From: Kim Marshall [Kim.Marshall@ieso.ca]
To: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
Subject: Can I get 10min sometime tomorrow?
Date: Wednesday, February 07, 2018 19:41:04

Morning is best but can be flexible, thx

Sent from my iPad
This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

Canceled_ Grassy Narrows (Accounting for 2016_17 Public Accounts).rtf

From: Virani, Shyrose (TBS) []
To: Keates, James (TBS) [James.Keates@ontario.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; Chiu, Jenny (MOECC) [Jenny.Chiu@ontario.ca]; Johnston, Scott (MOECC) [Scott.Johnston@ontario.ca]; Lau, Lucia (MOECC) [Lucia.Lau@ontario.ca]; Sharp, Tim (MOECC) [Tim.Sharp@ontario.ca]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]
CC: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Taylor, Heather (MOECC) [Heather.Taylor@ontario.ca]; Chen, Doris (MOECC) [Doris.Chen@ontario.ca]; Popov, Stan (MOECC) [Stan.V.Popov@ontario.ca]
Subject: Canceled: Grassy Narrows (Accounting for 2016/17 Public Accounts)
Date: Thursday, June 15, 2017 08:52:19
Attachment 1: 6 -Wabigoon River_PS 3260 criteria assessment_MOECC June 13_For Discussi....docx

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Rescheduled it to Thursday at 1:00 p.m.

Nadine to moderate

The purpose of the meeting will be for MOECC to walk E&Y through the attached document and answer any questions that E & Y might have.

6 -Wabigoon River_PS 3260 criteria assessment_MOECC June 13_For Discussi....pdf

For Discussion Purposes Only – Do Not Distribute

Wabigoon River Remediation Project

Site Description

The Wabigoon River is located in the District of Kenora in Northwestern Ontario. It flows from Raleigh Lake to Wabigoon Lake to join the English River downstream of the City of Dryden. The area of interest is a 150-kilometre stretch of the river between Wabigoon Lake and the English River, and work is underway to determine the extent of contamination and confirm whether there is an ongoing source of contamination. The contaminant of concern is mercury.

The Dryden mill site has the potential to be included as an additional site in this project for reasons described below.

Five PS 3260 Criteria	Evaluation
An environmental standard exists	Sediment: Guidelines for Identifying, Assessing and Managing Contaminated Sediments in Ontario: An Integrated Approach, Ministry of the Environment, 2008 Fish: Guide to Eating Ontario Fish, Ontario Ministry of the Environment and Climate Change, 2017 (consumption advice is based mainly on Health Canada guidelines) Groundwater: Soil, Ground Water and Sediment Standards for Use Under Part XV.1 of the Environmental Protection Act, April 15, 2001, and incorporated by reference into O. Reg. 153/04 Records of Site Condition – Part XV.1 of the Environmental Protection Act, Ministry of the Environment, 2011
Contamination exceeds the environmental standard	**Background** During the 1960s and 1970s, a chlor-alkali plant in Dryden discharged approximately 10 metric tonnes of mercury into the Wabigoon River, affecting both the English and Wabigoon Rivers. In 1970, in response to an order from the province, actions were taken and levels of mercury in wastewater were reduced. The plant was decommissioned in 1975. In 1971, Ontario suspended the commercial fishing licences for walleye, pike and sauger for

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	the Wabigoon and English river systems due to the elevated levels of mercury in fish; the pollution has impacted both the economies and health of the Grassy Narrows First Nation and Wabaseemoong Independent Nations. Studies by the federal and provincial governments were conducted in the 1980s in the English Wabigoon River to determine the location and the extent of contamination. Natural recovery was advised based on consideration of six factors: • Mercury discharges to the system were essentially eliminated. • Background mercury levels in lakes in the immediate area of the English Wabigoon River, but not affected by the discharges, were in most cases higher than the recommended levels for human consumption. • Concerns about the risk of possible remobilization of mercury. • Focus, at the time, was primarily on social and economic agreements and secondarily on drinking water. • Most parties contacted preferred natural recovery. • Northern communities and tourism industry did not want further attention drawn to the river system. In 1985, a settlement agreement was reached between the relevant corporate parties, Wabaseemoong, Grassy Narrows and the provincial and federal governments. The settlement provided $16.67 million in monetary compensation to the First Nations and includes a release of liability from the First Nations to the Crown and the corporate parties. It also includes an indemnification of the corporate parties by Ontario for certain potential future liability. Despite significant declines in mercury levels in fish in some areas of the English Wabigoon River system, mercury levels in fish in other areas remain high and restrictions on consumption remain in place. Grassy Narrows First Nation and Wabaseemoong Independent Nations have treaty rights to fish; the communities rely on fish from the river system for food and have expressed concerns with ongoing methylmercury levels. On May 30, 2016, Grassy Narrows First Nation publically released the report “Advice on Mercury Remediation Options for the Wabigoon-English River System” commissioned by the community and authored by Reed Harris, Dr. Patricia Sellers and Dr. John Rudd.

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- The report called for extensive field work to determine current levels of mercury in the environment and identify the most appropriate approaches for remediation.
- This field work has been identified by the Grassy Narrows Council as their top priority and Ontario is providing funding to the community to support that work.

On September 20, 2016, Dr. Masanori Hanada (Dean of Social Welfare & Policy, Minamata Studies, Kumamoto Gakuen University) and Grassy Narrows Chief Simon Fobister Sr. held a press conference to present Dr. Hanada's research findings that more than 90 per cent of the people tested in 2014, from Grassy Narrows and Wabaseemoong showed signs of mercury poisoning.

Current Status

There is limited data on current environmental conditions in the Wabigoon River, outside of contaminant levels in fish. The ministry working with Grassy Narrows First Nation and Wabaseemoong Independent Nations and stakeholders to identify mercury contaminated sites in the Wabigoon River. This work is in the preliminary stages, steps 2-4, of the 17-step contaminated sites assessment process depicted in the file attached below. The ministry has yet to confirm the extent of contamination in the river or whether there is an ongoing source of contamination from the mill property (e.g. from groundwater).

Contaminated Sites -
from identification to

Recent work indicates that sediment in the Wabigoon River continues to exceed provincial guidelines, fish caught in some areas of the river are not safe to eat due to mercury contamination, and groundwater on the mill property exceeds provincial guidelines for mercury. The following description of exceedances of environmental standards is excerpted from the draft Director's Order to Domtar Inc. as posted on the Environmental Registry on May 29, 2017.

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	Sediment A February 1, 2017 report titled “Evidence that the former chlor-alkali Site in Dryden, Ontario is still leaking mercury into the Wabigoon River” prepared for Grassy Narrows by Sellers et al. provided results of sediment sampling carried out in the Wabigoon River in August 2016. The report concludes mercury levels in sediment increased significantly as the river passed the mill. The sediment concentrations in samples collected adjacent to the mill and downstream of the mill exceed the Severe Effects Level as described in the “Guidelines for Identifying, Assessing and Managing Contaminated Sediments in Ontario: An Integrated Approach.” The report recommends that a “detailed ground water and soil study of the former chlor-alkali plant site and its surroundings” be undertaken to confirm whether the mill property is an ongoing source of mercury to the Wabigoon River. Fish In October 2016, ministry staff collected fish samples from the Wabigoon River system and neighbouring lakes and rivers. Mercury concentrations in tested walleye (40-50 cm) were 2.1 to 2.7 µg/g from Clay Lake and 1.3 to 1.7 µg/g in the Wabigoon River downstream from the mill. The range for Clay Lake exceeds both the general population (1.8 µg/g) and the “do not eat” benchmark for sensitive population (0.5 µg/g). The range for the Wabigoon River downstream from the mill exceeds the “do not eat” benchmark for the sensitive population. Groundwater A July 15, 2016 report titled “Domtar Inc., Summary of Available Monitoring Data, Domtar Dryden Mill, 1 Duke Street, Dryden, Ontario” prepared for Domtar Inc. by True Grit Consulting Ltd. reported that mercury levels at one well located in the vicinity of the former chlor-alkali plant exceeded the values that the ministry currently applies to assess groundwater quality (Table 9 of the “Soil, Ground Water and Sediment Standards for Use Under Part XV.1 of the Environmental Protection Act”, dated April 15, 2001, and incorporated by reference into O. Reg. 153/04 “Records of Site Condition – Part XV.1 of the EPA). In December 2016, the ministry received the results of a re-sampling of these wells, which again identified that the one well located in the vicinity of the former chlor-alkali plant exceeded the values that the ministry

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	currently applies to assess groundwater quality.
The government: *(i) is directly responsible; or* *(ii) accepts responsibility*	While the government may not be directly responsible for remediation, it accepted a degree of responsibility in the February 13, 2017 statement made by Ministers Murray and Zimmer: "we are completely committed to working with all partners to identify all potentially contaminated sites, and to creating and implementing a comprehensive remediation action plan." Additional public and private statements made by Minister Murray to Grassy Narrows First Nation and Wabaseemoong Independent Nations have reiterated this commitment. With respect to the costs of remediating the Wabigoon River, an opinion by the MOECC's Legal Services Branch on May 25, 2017 concludes that there is a moderate risk that a court would find that Ontario has a legal obligation arising from the honour of the Crown to expend funds to remediate the Wabigoon River generally, as well as the Dryden mill site, including leased areas of the Wabigoon River. A moderate risk means that, in light of good arguments on each side, the outcome is not reasonably predictable. Remediation at the Dryden mill site, if deemed required by the ministry, has the potential to be included as an additional site in this project. An opinion by the MOECC's Legal Services Branch on May 25, 2017 concludes that there is a high risk that a court would find that Ontario has a legal obligation to repay costs incurred by Domtar Inc. in respect of the remediation of the Dryden mill site and sites within the leased areas of the Wabigoon River. A high risk means that, while there are credible arguments to dismiss a challenge, the relevant court would very likely find against Ontario. This conclusion is based on the 2016 decision of the Ontario Superior Court of Justice in *Weyerhaeuser v. Ontario (AG),* which applied the 1985 Indemnity to a procedural order issued under the Environmental Protection Act to Weyerhaeuser Company Ltd. ("Weyerhaeuser") and Resolute FP Canada Inc. ("Resolute") in 2011 (the "2011 Director's Order").
It is expected that future economic benefits will be given up	During Question Period on May 2, 2017, Ministry Murray was asked why funding for the English Wabigoon River clean-up was not included in the 2017/18 budget. The minister replied that, "…the money is on its way to Grassy Narrows, as the bills come in. Mr. Speaker, the cost of this may well be far in excess of $84 million. As a matter of fact, I am guessing that this government's commitment to Grassy Narrows is going to exceed that amount of money. Many

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	other projects that were done in-year over last year...that were $150 million and under—were not explicitly stated in the budget. That didn't mean the government is less committed to it." At a meeting with the chiefs of Grassy Narrows First Nation and Wabaseemoong Independent Nations held later that day, Minister Zimmer read an excerpt of the Minister's statement above from the Hansard (attached below) and Minister Murray stated that the ministry would be preparing a Treasury Board submission for the remediation project. Ontario Hansard Issue_ L075_May 2 2
A reasonable estimate of the amount can be made	There is limited data on current environmental conditions in the Wabigoon River, outside of contaminant levels in fish. The ministry is in the preliminary stages of the contaminated sites assessment process and has yet to determine the extent of contamination in the river or whether there is an ongoing source of contamination from the mill property. The 2017 planned fieldwork will better inform the ministry on the contamination source and extent of contamination. This information will allow the ministry to better understand remediation options and next steps. However, the ministry has received and reviewed a proposal that included a cost estimate submitted by Grassy Narrows First Nation and has reviewed comparable riverine contaminated sites and their association remediation costs. **Remediation proposal submitted by Grassy Narrows First Nation, May 2016 (Rudd Report)** In May 2016, Grassy Narrows First Nation provided a cost estimate for remediation in the amount for $80.7 – 85.7M as part of a proposal by their science team to conduct additional assessment. This estimate cannot be relied upon to determine the cost of remediation because the proposal does not provide adequate detail on how the estimate was developed. In addition, the assessment approach outlined in the proposal omits a number of key steps required to determine the extent of contamination. Without sufficient knowledge of the dynamics of the river system (e.g. flow rates, sedimentation rates) and the extent of the contamination, it is not possible to determine the best course of action for remediation.

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	A consultant hired by Grassy Narrows First Nation also reviewed this proposal and stated that “the remedial designs for the different aspects of the program are conceptual in nature” and “need to be validated as being feasible for the English Wabigoon River system prior to progressing to detailed design.” Refer to the file below for a detailed assessment of this cost estimate. Assessment of GNFN Cost Estimate from R
Conclusion	
	The 2017 planned fieldwork will better inform the ministry on the contamination source and extent of contamination. Until this information is available, the ministry is not able to assess remediation options and their associated costs. As a result, a reasonable estimate of the liability cannot be made at this time.

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amendment for extension.rtf

From: Virani, Shyrose (TBS) []
To: suzie.r.gignac@ca.ey.com [suzie.r.gignac@ca.ey.com]
Subject: amendment for extension
Date: Monday, December 18, 2017 14:39:44
Attachment 1: 20171218132851720.pdf

Hi Suzie

Attached, please find an amendment form for extension. We are extending the contract till June 30, 2018. Can you please have the attached paper work sign and return it to me at your earliest.

Thanks
Shyrose

Also, can you please ensure that I receive the invoice for the work done in December by end of December.

Thanks
s

20171218132851720.pdf

AMENDMENT
To Exercise Optional Extension Period

Name of Project:	Complex Accounting Issues and Accounting for Complex Financing Transactions
Original Agreement Date:	October 31, 2016
Name of Vendor:	Ernst & Young LLP
Original Contract Number:	OSS 227152
Date of Amendment:	December 18, 2017
Amendment Number:	001

1) Amendment Details:

1.1 This amendment hereby exercises the Ministry's right to exercise the optional extension period from January 1, 2018 – June 30, 2018

1.2 This amendment is subject to the terms and conditions of the Master Agreement as well as the Statement of Work.

1.3 All other terms and conditions of the Statement of Work between Ernst & Young and the Ministry are unchanged.

HER MAJESTY THE QUEEN in right of Ontario
as represented by the President of the Treasury Board Secretariat

Per: _____

Print Name: Mark Donaldson

Title: Dir, Accounting Policy + Financial Reporting

Ernst & Young LLP

Acknowledged: _____

Print Name: _____

Title: _____

amendment.rtf

From: Virani, Shyrose (TBS) []
To: 'Suzie Gignac' [suzie.r.gignac@ca.ey.com]
Subject: amendment
Date: Wednesday, August 08, 2018 08:34:38
Attachment 1: 20180808083102303.pdf

Hi Suzie:

Initially we have just extended the contract till August 10, 2018, we are trying to extend it further, in the meantime, can you please initial next to Mark Donaldson's initial and send it to me asap.

Thanks
Shyrose

p.s. if you have any further questions, please do not hesitate to call me at 416 325 1448.

20180808083102303.pdf

(19)

AMENDMENT
To Exercise Optional Extension Period

Name of Project:	Complex Accounting Issues and Accounting for Complex Financing Transactions
Original Agreement Date:	October 31, 2016
Name of Vendor:	Ernst & Young LLP
Original Contract Number:	OSS 227152
Date of Amendment:	December 18, 2017
Amendment Number:	001

1) **Amendment Details:**

1.1 This amendment hereby exercises the Ministry's right to exercise the optional extension period from ~~January 1~~, 2018 – ~~June 30~~, 2018
February 10, 2018 – August 10, 2018 MD

1.2 This amendment is subject to the terms and conditions of the Master Agreement as well as the Statement of Work.

1.3 All other terms and conditions of the Statement of Work between Ernst & Young and the Ministry are unchanged.

HER MAJESTY THE QUEEN in right of Ontario
as represented by the President of the Treasury Board Secretariat

Per: [signature]

Print Name: Mark Donaldson

Title: Dir. Accounting Policy + Financial Reporting

Ernst & Young LLP

Acknowledged: [signature]

Print Name: SUZIE GIGNAC

Title: PARTNER

as discussed (impt docs -- see legal context refs).rtf

From: Petsche, Nadine (TBS) []
To: Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]
CC: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
Subject: as discussed (impt docs -- see legal context refs)
Date: Friday, May 26, 2017 08:37:18
Attachment 1: RRA or Legal Letter.PDF
Attachment 2: Memorandum re Recognition of Regulatory Assets Under IFRS.DOC
Attachment 3: OPG IFRS Accounting for rate regulated activities_May27_E&Y Combined.pdf

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RRA or Legal Letter.PDF

TORYS LLP

COPY

Suite 3000
79 Wellington St. W.
Box 270, TD Centre
Toronto, Ontario
M5K 1N2 Canada
Tel 416.865.0040
Fax 416.865.7380

www.torys.com

April 25, 2011

PRIVILEGED AND CONFIDENTIAL

Ontario Power Generation Inc.
700 University Avenue
Toronto, ON
M5G 1X6

Attention: Mr. Carlton Mathias, Law Division

Dear Mr. Mathias:

Re: The Legal Basis of OPG's Regulatory Deferral and Variance Accounts

You have asked us to consider the legal basis of Ontario Power Generation Inc.'s ("OPG's") regulatory deferral and variance accounts in order to assist you in determining whether they are recognizable as "assets" and "liabilities" for financial reporting purposes under International Financial Reporting Standards ("IFRS").

In considering this issue, you have asked us to consider whether deferral and variance account balances are recoverable in a hypothetical circumstance where OPG ceases operations and does not have any energy output from its prescribed facilities. You have also asked us to consider how OPG can be assured that the amounts representing OPG's approved deferral and variance account balances will actually be paid to OPG, as well as whether OPG's ability to collect these amounts is dependent upon the renewal of the licence of the Independent Electricity System Operator.

I. CONCLUSIONS

OPG's deferral and variance accounts are established either by regulation or by orders of the Ontario Energy Board (the "OEB") through the proper exercise of its jurisdiction as the administrative tribunal responsible for regulating the electricity industry in Ontario. The establishing of such an account pursuant to regulation or the granting of approval by the OEB to establish such an account confers upon OPG a right to record amounts in the account and to account for the amounts recorded on the basis that they have been prudently incurred. Courts have found that prudence is deemed to exist until such time as the OEB (in its discretion), at a later date, values or assesses the balance of that account and determines that the recorded balance is wholly recoverable or that certain of the recorded amounts have in fact not been prudently incurred and are not recoverable.

Given that OPG's recovery or payment of the amounts recorded in its deferral and variance accounts, and subsequently disposed of by the OEB, are part of the calculation of OPG's payment amounts under section 78.1 of the *Ontario Energy Board Act, 1998* (the "OEB Act"), OPG is entitled to have recorded amounts assessed and to recover those amounts pursuant to

the OEB's order. Correspondingly, the OEB, as a matter of law, is obligated to establish OPG's payment amounts in accordance with the rules prescribed by the regulations and in accordance with the just and reasonable standard,[1] which standard has been affirmed by the Supreme Court of Canada. In establishing OPG's payment amounts, the OEB must assess the balances in the previously established accounts for prudence and accuracy and issue a Decision and Order on their disposition.

For certain of OPG's deferral and variance accounts, the legal origins of which are found in Ontario Regulation 53/05 ("O. Reg. 53/05"), under the OEB Act, the OEB does not have jurisdiction over whether the account may be established. For at least two of these accounts, the OEB also does not have jurisdiction to undertake a prudence review to determine if any recorded amounts should be excluded.

Once the OEB has approved the balance of an account for recovery, with or without undertaking a prudence review (as applicable), the specific amount or balance that OPG will be allowed to recover will have been determined. The subsequent issuance by the OEB of a payment amounts order will establish the mechanism by which such specific approved amounts will be recovered and remitted to OPG.

The OEB's review and approval of the balance in a deferral or variance account is a process for determining the quantum and timing for the payment to or from OPG in respect of that account, which will be reflected in a Decision and Order of the OEB. As indicated, OPG's legal right to record amounts in an account and to account for the amounts recorded on the basis that they have been prudently incurred, subject to the OEB in its discretion subsequently determining otherwise, is established through the authorization of the account by the OEB or pursuant to regulation. OPG's right to recover prudently incurred amounts therefore arises as and when such amounts are recorded in an approved account, in accordance with the parameters established by the OEB or by regulation for that account, subject to the OEB's subsequent prudence review to assess the value of the account.

In the circumstance where OPG ceases operations and does not have any energy output from its prescribed facilities, it is our opinion that the OEB would have the jurisdiction and the obligation to establish a rate or payment amount that would allow OPG to recover or obligate OPG to disburse prudent amounts recorded in a deferral or variance account. Such a rate or payment amount would not have to be based on dollars per unit of electricity output from the prescribed facilities. This is no different than under normal operating circumstances.

The OEB has broad jurisdiction in setting payment amounts for OPG and it would not be reasonable for the legislature to have given the OEB the legislative power to authorize the establishment of accounts without also giving the OEB the power to dispose of the amounts recorded in such accounts, including in circumstances where there is no future output. Moreover, to interpret the applicable legislation in a manner that only allows for payment

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[1] As described on p. 6, the OEB is required under Subsection 78.1(4) of the *Ontario Energy Board Act* to make payment amount orders in accordance with the rules prescribed under O. Reg. 53/05. Under Subsection 78.1(5) of the *Ontario Energy Board Act*, the OEB may in certain circumstances fix such other payment amounts (i.e. other than those arising from Subsection 78.1(4)) and such other payment amounts must be established in accordance with the just and reasonable standard. Accordingly, payment amounts will need to be established either in accordance with the just and reasonable standard or, if the amounts arise from matters addressed by the rules prescribed by O. Reg. 53/05 then those amounts shall instead be established in accordance with such rules.

amounts on a volumetric basis is in our view unreasonable because it would not be consistent with the rules of statutory interpretation.

Pursuant to Section 78.1 of the OEB Act, the IESO is required to make such payments to OPG in accordance with orders from the OEB. By statute, the IESO is established as a corporation, the business of which, by legislation, is to be carried out without the purpose of gain or profit. As such, all money it collects must be used for the purpose of fulfilling its obligations in respect of the IESO-administered market and the IESO-controlled grid. These purposes include the making of payments to OPG in accordance with orders of the OEB under Section 78.1. Moreover, by entering into participation agreements, the IESO and market participants such as OPG agree to be contractually bound by the Market Rules. To remain revenue neutral, consistent with its not-for-profit status, under the Market Rules, if any market participant fails to make a payment, including in respect of amounts associated with OPG's deferral and variance accounts, then the IESO has various remedies available to ensure it can collect the funds it needs to make the payments it is required to make to OPG and other generators.

In the context of the legislative scheme governing Ontario's electricity system, the IESO's licence is not the only aspect that gives authority to or imposes obligations on the IESO. In fact, the IESO has various statutory obligations which exist independently of the IESO's licence and are not undertaken by the IESO as a condition of the licence. The IESO's obligation to pay the payment amounts to OPG as a prescribed generator under Subsections 78.1(1) and 78.1(2)(b) is a legal obligation that is independent of the IESO's licensing requirements. Likewise, the OEB has a statutory obligation under Section 78.1 of the OEB Act to set payment amounts in accordance with the applicable regulation and the just and reasonable standard[2] and, although the recovery of the OEB-approved payment in accordance with its order is fulfilled by the IESO under Subsections 78.1(1) and 78.1(2)(b), the OEB's obligation to set such payment amounts is legally independent of the existence of the IESO's licence. If the licence ceases to exist, then the obligations of the IESO and the OEB under Section 78.1 would remain. For the OEB to fulfill its obligation to set payment amounts in accordance with the regulation and the just and reasonable standard[3], there is a need for there to be an effective mechanism in place that enables OPG to actually receive its payment amounts. Accordingly, the OEB would only be able to cancel or refuse to renew the IESO's licence (a) if it could find that doing so would be in the public interest, and (b) if it is able to meet its statutory obligations, including its obligations in respect of setting just and reasonable payment amounts that provide for a fair return to OPG. In making such a licensing decision, the OEB would also have to consider that the IESO's obligations under Section 78.1 exist independent of and are outside the scope of the licence from the OEB.

II. BACKGROUND

A. Regulatory Assets and International Financial Reporting Standards

The OEB sets the requirements that regulated utilities in Ontario must meet for *regulatory* accounting, reporting and filing purposes. The Canadian Accounting Standards Board and other standard-setting bodies set the accounting principles required for *financial* reporting. Regulated utilities have separate obligations to adhere to both regulatory accounting and financial accounting requirements. The Canadian Accounting Standards Board has required

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[2] *Supra* Note 1.

[3] *Supra* Note 1.

that Canadian Generally Accepted Accounting Principles ("CGAAP") for publicly accountable enterprises transition to IFRS. Although this transition is generally effective January 1, 2011, a one year deferral in implementation of IFRS is available to eligible rate-regulated enterprises. It is our understanding that OPG is eligible for and has elected to apply this one-year deferral.

The transition to IFRS has raised a variety of issues and concerns for the OEB and rate-regulated utilities in Ontario, as well as for economic regulators and utilities in other Canadian jurisdictions. One significant concern relates to the recognition of regulatory assets and liabilities. As will be described further below, regulatory assets and liabilities arise from positive or negative balances, respectively, in deferral or variance accounts.

It is our understanding that, under CGAAP for publicly accountable enterprises in effect prior to IFRS conversion, regulated entities are permitted to record regulatory assets and liabilities either pursuant to specific guidance issued by the Canadian Accounting Standards Board or as a result of their ability to refer to the specific guidance issued by the Financial Accounting Standards Board in the United States (e.g., Codification Topic 980, *Accounting for the Effects of Certain Types of Regulation*, formerly Financial Accounting Standards No. 71). Under IFRS, there is no specific guidance related to accounting for the effects of rate regulation. As a result, we further understand that the recognition of regulatory assets and liabilities for financial reporting purposes continues to be the subject of discussion and debate among affected utilities, accounting firms and the International Accounting Standards Board ("IASB").

The application of the recognition criteria under IFRS to amounts that are currently being reported by OPG and other regulated utilities as regulatory assets and liabilities under CGAAP is a matter that is strictly for the consideration of accounting experts. However, it is against this background that the balance of this memorandum considers the legal rights and obligations of OPG to recover from or disburse to ratepayers the balances in its deferral and variance accounts under current conditions, as well as in circumstances where OPG ceases operations and does not have any energy output from its prescribed facilities.

III. LEGISLATIVE FRAMEWORK

A. Jurisdiction of the OEB

In Ontario, the OEB is established under the OEB Act as an administrative tribunal responsible for the regulation and supervision of the natural gas and electricity industries. The OEB derives its powers from the Ontario Legislature primarily under the OEB Act and the *Electricity Act, 1998* (the "Electricity Act"), including regulations thereunder, and is further governed by the *Statutory Powers Procedures Act* ("SPPA"). In addition to its legislative sources of power, jurisdiction for the OEB arises from the doctrine of jurisdiction by necessary implication, under which the powers conferred by an enabling statute are construed to include not only those powers that are expressly granted but also, by implication, all powers which are practically necessary for the accomplishment of the object intended to be secured by the statutory regime.[1]

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[1] David M. Brown, *Energy Regulation in Ontario*, Chapter. 2 "OEB Structure, Powers and Jurisdiction" at para 2:30:30; Ruth Sullivan, *Sullivan on the Construction of Statutes* (5th ed.), LexisNexis Canada Inc. 2008 at p. 184.

B. Setting Rates and Payment Amounts

The OEB's jurisdiction to set rates or payment amounts arises from Section 36 of the OEB Act in respect of gas transmission, distribution and storage rates, from Section 78 of the OEB Act in respect of electricity transmission and distribution rates and, of particular relevance to OPG, from Section 78.1 of the OEB Act in respect of payment amounts for prescribed electricity generation. Section 78.1 states (emphasis added):

> **Payments to prescribed generator**
>
> **78.1** (1) The IESO shall make payments to a generator prescribed by the regulations, or to the OPA on behalf of a generator prescribed by the regulations, with respect to output that is generated by a unit at a generation facility prescribed by the regulations.
>
> **Payment amount**
>
> (2) Each payment referred to in subsection (1) shall be the amount determined,
>
> (a) in accordance with the regulations to the extent the payment relates to a period that is on or after the day this section comes into force and before the later of,
>
> (i) the day prescribed for the purposes of this subsection, and
>
> (ii) the effective date of the Board's first order in respect of the generator; and
>
> (b) in accordance with the order of the Board then in effect to the extent the payment relates to a period that is on or after the later of,
>
> (i) the day prescribed for the purposes of this subsection, and
>
> (ii) the effective date of the Board's first order under this section in respect of the generator.
>
> **OPA may act as settlement agent**
>
> (3) The OPA may act as a settlement agent to settle amounts payable to a generator under this section.
>
> **Board orders**
>
> (4) The Board shall make an order under this section in accordance with the rules prescribed by the regulations and may include in the order conditions, classifications or practices, including rules respecting the calculation of the amount of the payment.
>
> **Fixing other prices**
>
> (5) The Board may fix such other payment amounts as it finds to be just and reasonable,
>
> (a) on an application for an order under this section, if the Board is not satisfied that the amount applied for is just and reasonable; or
>
> (b) at any other time, if the Board is not satisfied that the current payment amount is just and reasonable.
>
> **Burden of proof**

(6) Subject to subsection (7), the burden of proof is on the applicant in an application made under this section.

Order

(7) If the Board on its own motion or at the request of the Minister commences a proceeding to determine whether an amount that the Board may approve or fix under this section is just and reasonable,

(a) the burden of establishing that the amount is just and reasonable is on the generator; and

(b) the Board shall make an order approving or fixing an amount that is just and reasonable.

Application

(8) Subsections (4), (5) and (7) apply only on and after the day prescribed by the regulations for the purposes of subsection (2).

For purposes of Subsection 78.1(1), Section 1 of O. Reg. 53/05 establishes that OPG is a "prescribed generator" and Section 2 of O. Reg. 53/05 establishes that the "prescribed generation facilities" are comprised of the five hydroelectric generating stations in OPG's Niagara Plant Group, the R. H. Saunders hydroelectric generating station, the Pickering 'A' and 'B' Nuclear Generating Stations and the Darlington Nuclear Generating Station.

Subsection 78.1(2)(b) requires that each such payment made to OPG by the IESO shall be in accordance with the order of the OEB then in effect. The OEB is required under Subsection 78.1(4) to make such orders in accordance with the rules prescribed by the regulations, most importantly O. Reg. 53/05, and, in discharging its responsibility, include in such orders conditions, classifications or practices, including in respect of the calculation of the payment amount. As part of this jurisdiction, the OEB has the ability to authorize variance and deferral accounts as part of the OEB's rate setting powers.

Under Subsection 78.1(5) the OEB may fix such other payment amounts (i.e. payment amounts other than those arising from Subsection 78.1(4)) as it finds to be just and reasonable in circumstances where either the payment amount applied for is not just and reasonable, or if it finds the current payment amount to be unjust and unreasonable. In either circumstance, where the OEB establishes such other payment amounts, these other payment amounts must be established in accordance with the just and reasonable standard. This is consistent with the setting of rates under Sections 36 and 78 of the OEB Act, where the OEB's determination of payment amounts is on the basis of the "just and reasonable" standard. The Supreme Court of Canada has described just and reasonable rates as "rates, which, under the circumstances, would be fair to the consumer on the one hand, and which, on the other hand, would secure to the company a fair return for the capital invested."[5] These two components of the just and reasonable standard - that rates be fair to the consumer and yield fair compensation to the utility and its owner - are also embodied in the OEB's objects regarding the regulation of

[5] *Northwestern Utilities Ltd. v. Edmonton (City), Board of Public Utility Commissioners of Alberta*, [1929] 2 D.L.R. 4, [1929] S.C.R. 186 at p. 192-193.

electricity, namely through its objectives of protecting consumer interests and facilitating a financially viable electricity industry.[6]

Fair compensation to the utility is comprised of two elements: (1) the right to recover all prudently incurred costs, and (2) the right to a fair return on invested capital. With respect to prudently incurred costs, the Ontario Divisional Court has held that a utility has a right to recover its prudently incurred costs, as follows:

> Essentially, a utility is entitled to recover its prudently incurred costs . . . Expenditures are deemed to be prudent, in the absence of some evidence suggesting the contrary. However, costs that are found to be dishonestly incurred, or which are negligent or wasteful losses, are excluded from the legitimate operating costs of the utility in determining rates that may be charged. The examination of whether an expenditure was prudent must be based on the particular circumstances at the time the decision to incur those costs was made. That is so even if in hindsight it is obvious the decision was a bad one.[7]

It is clear that this presumption of prudence applies in circumstances where the OEB is carrying out an after-the-fact prudence review, such as would be the case for a review that is undertaken for the purpose of determining whether to allow recovery of amounts previously recorded in a deferral or variance account.[8]

With respect to the right to a fair return, the Supreme Court of Canada explains that "by a fair return (it) is meant that the company will be allowed as large a return on the capital invested in its enterprise (which will be net to the company) as it would receive if it were investing the same amount in other securities possessing an attractiveness, stability and certainty equal to that of the company's enterprise."[9] Allowing a utility to earn a fair return has been regarded as essential to the preservation of the financial integrity of a utility, which is of mutual concern to the utility and its customers.[10]

C. Variance and Deferral Accounts

Variance and deferral accounts are tools that the OEB uses to deal with uncertainty, including circumstances that are difficult to forecast and that may be beyond the control of the regulated utility. The use of these accounts protects the interests not only of utilities, but also the interests of ratepayers. Once the deferral or variance accounts are established, either by regulation or OEB order, the amounts recorded in the accounts must be assessed for prudence by the OEB (to the extent the OEB has jurisdiction to do so) and the resulting approved amounts must be paid to or by OPG as the amounts are a part of OPG's just and reasonable payment amounts, as explained above.

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[6] OEB Act, s. 1(1).

[7] *Enbridge Gas Distribution Inc. v. Ontario Energy Board* (2005), 75 O.R. (3d) 72 (Div. Ct.); rev'd on other grounds, (2006), 41 Admin L.R. (4th) 69.

[8] Ontario Energy Board, *Decision With Reasons - Application by Ontario Power Generation Inc. for Payment Amounts for Prescribed Facilities for 2011 and 2012 (EB-2010-0008)*, March 10, 2011 at p. 19.

[9] *Supra* note 5 at p. 193.

[10] *Union Gas Ltd. v. Ontario (Energy Board)* (1983), 1 D.L.R. (4th) 698 (Ont. Div. Ct.) at p. 711, as cited in Brown, *supra* note 4 at 2:40:10.

A "variance account" may be used to track underestimates or overestimates of specific costs or revenues so as to enable the amount of the variance to be disposed of, normally through higher or lower payment amounts established by the OEB in the future. For example, recognizing the uncertainties associated with fluctuating world uranium prices and with a view to protecting OPG and ratepayers, the OEB approved OPG's request in EB-2007-0905 to establish a variance account to capture the differences between forecast and actual nuclear fuel expenses. In this way, if OPG's actual fuel costs proved to be higher than its forecasted costs then OPG would be entitled in the future to receive the shortfall from ratepayers, provided that the shortfall was a result of prudent actions by OPG and has been accurately recorded in the account. Alternatively, if OPG's actual fuel costs proved to be lower than its forecasted costs, then OPG would have over-recovered and would be required by the OEB to disburse such amounts back to ratepayers, subject to the review for prudence and accuracy.

A "deferral account" may be used, for example, to track specific costs incurred by a utility with respect to a project or circumstance until a future date, after which the costs recorded in the account are subject to prudence review by the OEB before the utility will be allowed to begin recovering those costs from ratepayers. For example, O. Reg. 53/05 authorized OPG to establish a deferral account to record non-capital costs associated with a large nuclear project that involved the return-to-service of certain nuclear generating units. The regulation further required that the OEB ensure OPG recover the balance in the account over a certain period of time, which the OEB determined in EB-2007-0905.

The nature of the rights that arise from the authorization of a deferral or variance account by the OEB or under O. Reg. 53/05 are discussed in the analysis section, below. For accounts that have already been authorized, as part of the OEB's rate-setting function and its powers with respect to variance and deferral accounts, the OEB will periodically[11] review a utility's variance and deferral accounts to ensure that the balances reflect amounts that are prudent and have been accurately recorded. Based on such review, the OEB makes a determination as to how much of the recorded balance the utility will recover (or repay) and the period over which such amount shall be recovered (or repaid). This determination will be made by way of a Decision from the OEB. In the normal course (i.e. where the accounts are reviewed in the context of a rate or payment amount application), the utility will then be required to file a draft payment amounts order or draft rate order, which is reviewed by the OEB. Once the final payment amounts order or rate order is approved by the OEB, the IESO will be required to implement the order by paying OPG in accordance with the order.

Where the balance recorded in a variance or deferral account is in a debit position and the OEB has accepted that balance as reflecting costs prudently incurred and accurately recorded, this will be referred to as a "regulatory asset" and will represent the specific amount that the utility will have a right to recover in such manner as is ordered by the OEB. Similarly, where the balance recorded in a variance or deferral account is in a credit position and the OEB has accepted that balance as reflecting costs prudently incurred and accurately recorded, this will be referred to as a "regulatory liability" and will represent the specific amount that the utility will have an obligation to disburse in such manner as is ordered by the OEB.

For the analysis in Section IV below, it is important to set out in some detail the legal origins of OPG's variance and deferral accounts.

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[11] While normally this will be in the context of a rate or payment amount application, OPG could apply to have the OEB undertake such a review at any time through a separate proceeding. Similarly, the OEB has the right to undertake such a review at any time on its own motion. See s. 78.1(5) of the *OEB Act*.

Transitional Accounts

Under O. Reg. 53/05, OPG was required to establish five variance accounts and three deferral accounts in the years prior to OPG's first application to the OEB for determination of payment amounts under Section 78.1 of the OEB Act (the "Transitional Accounts"). OPG recorded amounts in the Transitional Accounts *up to* the effective date of the OEB's first payment amounts order, which was April 1, 2008. The OEB considered the balances accrued in the Transitional Accounts during the course of hearing OPG's first application under Section 78.1 (EB-2007-0905) and determined the amount for each account, recorded up to December 31, 2007, that OPG would be able to recover or would be obligated to repay.[12] The OEB allowed recovery or obligated repayment of these amounts over periods of approximately two, three or four years, depending on the account.

Mandated Continuing Accounts

Under O. Reg. 53/05, OPG was also required to establish one variance account and two deferral accounts which were to be substantially the same as three of the Transition Accounts, but which were for purposes of capturing certain costs incurred *on and after* the effective date of the OEB's first order under Section 78.1 (the "Mandated Continuing Accounts"). OPG continues to be required under O. Reg. 53/05 to keep and track amounts in each of these Mandated Continuing Accounts. The Mandated Continuing Accounts are:

- Section 5(4) - Pickering 'A' Return to Service Deferral Account
- Section 5.2 - Nuclear Liability Deferral Account
- Section 5.4 - Nuclear Development Variance Account

Board Ordered Continuing Accounts

In addition to the Mandated Continuing Accounts, in EB-2007-0905 OPG requested that the OEB authorize the continuation on and after the effective date of the OEB's first order under Section 78.1 of three variance accounts that had been required under O. Reg. 53/05, but for which the regulation did not mandate their continuation beyond the effective date of the OEB's first order (the "Board Ordered Continuing Accounts"). The Board accepted OPG's proposal for the Board Ordered Continuing Accounts, which are:

- Hydroelectric Water Conditions Variance Account
- Ancillary Services Net Revenue Variance Account
- Capacity Refurbishment Variance Account[13]

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[12] Amounts recorded in the Transitional Accounts between January 1, 2007 and March 31, 2008 were considered in EB-2010-0008.

[13] Though not expressly required under O. Reg 53/05, the Board found that the Capacity Refurbishment Variance Account is implicitly required due to the obligation in s. 6(2)4 of the regulation. See *Infra* note 16 at pp. 122-123.

Board Ordered Accounts

Although not expressly mandated by O. Reg. 53/05, the Board determined in its Decision in EB-2007-0905 that it was necessary to give effect to certain provisions of O. Reg. 53/05 that continue to apply on and after the effective date of the OEB's first order. As a result, the OEB authorized OPG to establish the:

- Bruce Lease Net Revenues Variance Account

Another category of accounts arising from the Board's first order under Section 78.1 are new accounts that had not been required at any time under O. Reg. 53/05, but which OPG requested and the OEB approved of in its Decision in EB-2007-0905 (the "Board Ordered Accounts"). In addition to the account above, included in this category are the following variance accounts also approved by the Board:

- Nuclear Fuel Cost Variance Account
- Income and Other Taxes Variance Account
- Hydroelectric Interim Period Shortfall Variance Account
- Nuclear Interim Period Shortfall Variance Account

During a related proceeding (EB-2009-0038) arising from EB-2007-0905, the Board also approved the following:

- Tax Loss Variance Account

In EB-2009-0174, a proceeding dealing with the manner of calculating entries into the deferral and variance accounts after December 31, 2009 until the effective date of the next payment amounts order for OPG, the OEB also established two additional accounts:

- Hydroelectric Deferral and Variance Over/Under Recovery Variance Account
- Nuclear Deferral and Variance Over/Under Recovery Variance Account

In EB-2010-0008, OPG applied for new payment amounts for the 2011 to 2012 period. In its Decision with Reasons dated March 10, 2011, the OEB approved the continuation of existing hydroelectric accounts, nuclear accounts and accounts common to both the regulated hydroelectric and nuclear businesses as proposed by OPG, as well as two new hydroelectric accounts.[14] OPG's accounts for 2011 and 2012 are therefore as follows:

- Existing Common Accounts:
    - Ancillary Services Net Revenue Variance Account

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[14] *Supra* Note 8 at pp. 128-142. On March 30, 2011 OPG filed a Notice of Motion to review and vary the Decision and Order, in which OPG requested the establishment of a Pension and Other Post Employment Benefits Cost Variance Account. The Motion proceeding is in progress.

- Income and Other Taxes Variance Account
- Tax Loss Variance Account

- Existing Hydroelectric Accounts:
  - Hydroelectric Water Conditions Variance Account
  - Hydroelectric Deferral and Variance Over/Under Recovery Variance Account

- Existing Nuclear Accounts:
  - Nuclear Liability Deferral Account (Section 5.2)
  - Nuclear Development Variance Account (Section 5.4)
  - Capacity Refurbishment Variance Account
  - Nuclear Fuel Cost Variance Account
  - Bruce Lease Net Revenues Variance Account
  - Nuclear Deferral and Variance Over/Under Recovery Variance Account

- Existing Accounts to be Continued for Recording of Amortization and Interest Amounts Only and to be Closed Upon Balances Being Recovered:
  - Hydroelectric Interim Period Shortfall Variance Account
  - Pickering 'A' Return to Service Deferral Account (Section 5(4))
  - Transmission Outages and Restrictions Variance Account
  - Nuclear Interim Period Shortfall Variance Account

- New Hydroelectric Accounts:
  - Surplus Baseload Generation (Hydroelectric)
  - Hydroelectric Incentive Mechanism

IV. ANALYSIS

A. Legal Basis for OPG's Regulatory Deferral and Variance Accounts

The legal basis for OPG's regulatory deferral and variance accounts must be considered in the context of the regulatory cycle that OPG is subject to as a rate-regulated utility, as described below.

As with other rate-regulated entities, OPG may apply to the OEB or the OEB may require OPG to apply for new payment amounts from time to time. The OEB then holds an adversarial hearing to consider the application, during which the application is subject to rigorous review and scrutiny by OEB staff members, intervening parties and the OEB panel itself. After considering the evidence and arguments presented, the OEB panel issues a Decision setting out the panel's findings with respect to each of the aspects of the application, including the various requests for cost recovery that normally comprise such an application. The Decision will also set out the OEB panel's determinations with respect to any proposed new deferral or variance accounts, the continuation of existing accounts, and the specific amounts that may be recovered with respect to the balances previously recorded in the existing accounts.

With respect to any new deferral or variance accounts that an applicant *proposes* to establish, the panel of the OEB will make a determination as to whether the applicant shall be permitted to establish such accounts and record amounts in that account. Based on OEB practice, this will generally depend upon whether the OEB is persuaded that the proposed account satisfies the criteria of causation, materiality, management inability to control and prudence. In this context, "causation" refers to the requirement that the amounts to be recorded in the proposed account must be outside of the basis upon which rates will derived for the applicable period; "materiality" refers to the requirement that the amounts expected to be recorded in the proposed account will significantly influence the operation of the regulated business; "management inability to control" refers to the requirement that there be uncertainty associated with the amounts that are expected to be recorded in the account and, due to this uncertainty such amounts are not easily predictable and not easily controlled by the utility's management; and "prudence" refers to the need for the amounts recorded to have been prudently incurred.

If approval to establish a new account is granted by the OEB, then the utility will be obligated to accurately record relevant amounts in the account for the applicable period with the presumption that the balance of the account is accurately recorded and prudently incurred, such that it will be recoverable, subject to review by the Board for the purpose of verifying the presumption. The OEB will then need to conduct a prudence review that will normally, but not necessarily, take place in the course of reviewing a subsequent application for new payment amounts or rates by the utility.

With respect to each *existing* deferral and variance account, the panel will make findings as to whether the amounts recorded in the account have been accurately recorded and whether they are prudent. Based on these findings, the panel will determine how much the utility will recover from or return to ratepayers in respect of each account. The amounts recoverable from deferral and variance accounts may be recovered through one or more separate rate riders or through such other means as the Board approves. The rate mechanism for recovery of amounts from ratepayers or for repayment of amounts to ratepayers, as set out by the OEB, does not alter or limit OPG's right to receive or obligation to disburse prudent and accurately recorded amounts in the accounts.

The prudence review would apply the established regulatory principles referred to earlier, namely, that:

- Amounts will be deemed to be prudent in the absence of reasonable grounds to suggest the contrary;

- Costs that are found to have been dishonestly incurred, or which are negligent or wasteful losses, may be excluded from recovery; and

- The examination of prudence must be carried out without the benefit of hindsight (i.e. based on the particular circumstances at the time the decision to incur those costs was made).

1. Deferral and Variance Account Balances Pending OEB Review

OPG's legal rights in respect of its deferral and variance accounts must be considered in respect of the forgoing.

The circumstance of OPG having account balances pending OEB review arises where pursuant to an Order in a prior proceeding before the OEB, or under O. Reg. 53/05, OPG has been authorized to establish and record amounts in a deferral or variance account, either for a particular period or until such time as the OEB orders otherwise, but the period has not expired or there has not been a subsequent OEB order. While OPG will have recorded amounts in the account during that period of time, the OEB will not yet have reviewed the balances in the accounts to determine if they reflect accurately recorded and prudent amounts. The critical issue in this scenario relates to the nature of the rights conferred on OPG by the granting of approval to establish a deferral or variance account. Where the Board authorizes OPG to establish such an account or if the account is established by regulation, OPG will have acquired a right to record amounts in such an account. These amounts, when recorded, will reflect costs that have been incurred or revenue earned by OPG for the benefit of ratepayers.

Pursuant to established principles governing the Board's obligation to review the prudence of recorded expenditures prior to allowing for their recovery, as discussed above, the expenditures recorded in the account are deemed to have been prudently incurred in the absence of reasonable grounds to suggest the contrary. As such, in our view, the granting of approval to establish a deferral or variance account confers upon OPG a legal right to record amounts in the account and to account for the amounts recorded on the basis that they have been prudently incurred. Courts have found that prudence is deemed to exist until such time as the OEB (in its discretion) may, at a later date, value or assess the balance of that account and determine that the recorded balance is wholly recoverable or that certain of the recorded amounts have in fact not been prudently incurred and are not recoverable. This subsequent assessment of prudence by the Board will therefore only have the effect of confirming or altering the specific amount that shall be recovered or that must be repaid by OPG in respect of the account. The prudence review will not affect the right to record amounts or the recovery of prudently incurred amounts.

We note that any amounts recorded in approved deferral and variance accounts must ultimately be disposed of by the OEB, whether done pursuant to an application brought to the OEB or by the OEB on its own motion. This arises from the OEB's obligation to set just and reasonable rates and payment amounts.[15]

While the focus of discussion in this section has thus far been on the rights associated with deferral and variance accounts that have been established through orders of the OEB, it is important to recognize the specific rights associated with each of OPG's accounts that arise by operation of O. Reg. 53/05.

The Mandated Continuing Accounts are clearly different from the rest of OPG's accounts because, rather than having been established on the basis of an order issued by the Board, OPG

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[15] *Dow Chemical Canada Inc. v. Union Gas Ltd.* (1982), 141 D.L.R. (3d) 641 at pp. 658-9 (Ont. H.C.J.), affirmed 150 D.L.R. (3d) 267 (C.A.).

is required under O. Reg. 53/05 to have established and to maintain from the effective date of the OEB's first order under Section 78.1 of the OEB Act each of the three Mandated Continuing Accounts. OPG thereby acquired its rights resulting from the establishment of these accounts by way of regulation. As such, the OEB has no discretion with respect to the continuation of these accounts.

Moreover, for two of the Mandated Continuing Accounts, it appears that the OEB has no jurisdiction to undertake prudence reviews. These accounts - the Pickering 'A' Return to Service Deferral Account and the Nuclear Liability Deferral Account - are established on the same basis as accounts for which the OEB determined in EB-2007-0905 that it has no discretion to evaluate prudence.[16]

For the Pickering 'A' Return to Service Deferral Account, paragraph 6(2) 3 of O. Reg. 53/05 requires the OEB to ensure that OPG recovers the balance recorded in the deferral account established under subsection 5(4), which requires OPG to establish a deferral account that records certain costs associated with the planned return to service of all units at the Pickering 'A' Nuclear Generating Station. Subsection 5(4) gave rise to a Transitional Account, as well as a Mandated Continuing Account.[17] For the Nuclear Liability Deferral Account, paragraph 6(2)7 of O. Reg. 53/05 requires the OEB to ensure that OPG recovers the balances recorded in the deferral accounts established under subsections 5.1(1) and 5.2(1). These subsections each require OPG to establish a deferral account to record the revenue requirement impacts of changes in its nuclear decommissioning liability, however 5.1(1) applies to the period prior to the OEB's first order and is therefore a Transitional Account while 5.2(1) applies to the period following the OEB's first order and is therefore a Mandated Continuing Account.[18] Based on the OEB's findings in EB-2007-0905 that it had no discretion to evaluate prudence with respect to the Transitional Accounts under subsections 5(4) and 5.1(1), it appears that the Board would similarly have no discretion to evaluate prudence with respect to the Mandated Continuing Accounts established under subsections 5(4) and 5.2(1) of O. Reg. 53/05.

For the Capacity Refurbishment Variance Account, which is a Board Ordered Continuing Account, the OEB notes in its Decision in EB-2007-0905 that this account is required in light of the obligation imposed on the Board by paragraph 6(2)4 of O. Reg. 53/05.[19] Under 6(2)4, the Board is required to ensure that OPG recovers the amounts recorded in this account. If such amounts were within project budgets approved by OPG's Board of Directors prior to the Board's first order under Section 78.1 but where such costs were actually incurred and recorded in the account subsequent to the Board's first order, then it appears based on a reading of 6(2)4 that an argument could be made that the OEB would have no jurisdiction to evaluate prudence. However, if the amounts were not approved by OPG's Board of Directors prior to the first order of the Board, then this argument would not be available.

Finally, special consideration should be given to the Bruce Lease Net Revenues Variance Account. As noted earlier, this account was not expressly mandated by O. Reg. 53/05 but in its Decision the Board determined that it was necessary for OPG to establish this account in order

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[16] Ontario Energy Board, *Decision With Reasons - Application by Ontario Power Generation Inc. for Payment Amounts for Prescribed Facilities (EB-2007-0905)*, November 3, 2008 at p. 9.

[17] Ibid at p. 122.

[18] Ibid.

[19] Ibid at p. 123.

to give effect to certain provisions of O. Reg. 53/05.[29] In particular, the Board directed OPG to establish this account in order to give effect to paragraphs 6(2)9 and 6(2)10 of the regulation. Paragraph 6(2)9 requires the OEB to ensure that OPG recovers all of the costs it incurs with respect to the Bruce Nuclear Generating Stations. Paragraph 6(2)10 provides that if OPG's revenues earned from the Bruce Nuclear Generating Stations exceed OPG's costs in respect of those stations, then the excess shall be applied to reduce OPG's revenue requirement for purposes of the payment amounts under Section 78.1(1) of the OEB Act. Based on its findings in EB-2007-0905, it seems that the Board will be obligated to require that OPG maintain this account for so long as it leases the Bruce Nuclear Generating Stations. In addition, based on paragraph 6(2)9, which does not expressly require the OEB to undertake a prudence review, it appears that an argument could be made that the OEB does not have jurisdiction to carry out a prudence review of costs recorded in this account.

In summary, OPG acquires rights, as described above, in connection with its deferral and variance accounts, either from O. Reg. 53/05 or from the granting of approval by the OEB to establish such accounts. For some of the accounts established under O. Reg. 53/05, it appears that the OEB has no discretion with respect to their continuation. Moreover, for certain of the accounts established under O. Reg. 53/05, as discussed, the OEB has no jurisdiction to evaluate the prudence of recorded amounts.

2. Deferral and Variance Account Balances Approved for Incorporation into Payment Amounts

In the scenario being considered here, OPG has in a prior proceeding or by way of O. Reg. 53/05 been authorized to establish a deferral or variance account. OPG has recorded amounts in the account over the applicable period and it has applied to the OEB, as part of a comprehensive application to determine new payment amounts for its regulated facilities or through a separate proceeding, to dispose of the balance of that account as of a particular date. The OEB has reviewed the balance of the account to ensure that it reflects amounts that are prudent and accurately recorded. Based on its review, the OEB has determined a specific amount as being the balance of the account and has also given approval for OPG to recover that amount over a particular period.

Further to the rights conferred upon OPG on being authorized to establish the account, as described in the previous section, in this scenario, as a result of the OEB having carried out the prudency review (where it has the jurisdiction to do so) and issued its Decision, the specific balance for the account that OPG will be allowed to recover will have been established. Based upon the law set out above, OPG will have a legal right to recover (or legal obligation to repay) that balance, pursuant to a payment amounts order issued by the OEB and the IESO will be required to recover the balance and remit it to OPG (or recover the balance from OPG and repay it to consumers) in accordance with the OEB's order.

B. Regulatory Assets in the Absence of Future Services

As noted, you have asked us to consider whether deferral and variance account balances are recoverable (or payable) in a circumstance where OPG ceases operations and does not have any energy output from its prescribed facilities. Our consideration of this issue is set out below.

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[29] Ibid at p. 112.

It is our opinion based on the analysis below, that the OEB has both the obligation and the jurisdiction to establish a rate or payment amount that would allow OPG to recover prudently incurred and accurately recorded amounts recorded in a deferral or variance account notwithstanding that OPG produces no output. The OEB's obligations with respect to reviewing and disposing of the balances recorded in the accounts are not altered by the fact that there is no future output, as the amounts recorded in the accounts are part of the OEB's determination of "just and reasonable" rates or payment amounts.

A circumstance where there is no output would imply that the current volumetric rate through which OPG recovers costs (dollars per MWh produced) would not permit recovery of costs. As a result, an alternative rate formulation with a fixed charge or a volumetric rate recoverable from energy consumed, rather than produced, would have to be implemented to recover costs prudently incurred, including amounts recorded in variance and deferral accounts. Therefore, the question is whether the OEB can establish a rate or payment amount that is not based on dollars per output and would permit recovery of deferral or variance account balances.

As noted above, whether an expenditure is prudent must be based on the particular circumstances at the time the decision to incur the cost was made.[21] As deferral and variance account balances reflect costs previously incurred or revenues previously earned, it is reasonable to conclude that, based upon a set of facts, once these costs or revenues have been found to be prudent by the OEB, then they will remain prudent and recoverable irrespective of the lack of future output. Likewise, for amounts recorded in a deferral or variance account established by the OEB or under O. Reg. 53/05, but not yet assessed as to whether they are prudent, the amounts recorded are presumed at law to have resulted from prudent actions, unless shown to be otherwise. As discussed above, the Board has the obligation to establish just and reasonable rates, which includes the establishment of deferral and variance accounts and their subsequent disposition. If the Board has the power to direct the segregation of expenditures pending a rate application, it must by necessary implication have the power to direct the applicant to deal with the amounts so separated in a future rate application. Courts have found that:

> It cannot reasonably be presumed that the legislature intended to so truncate the Board's jurisdiction so as to allow it to accomplish only a partial result, with no power to finalize and complete a regulatory order. When legislation attempts to create a comprehensive regulatory framework, the tribunal must have the powers which by practical necessity and necessary implication flow from the regulatory authority explicitly conferred upon it.[22]

The OEB has both the jurisdiction and the obligation to establish a rate or payment amount that allows OPG to recover such prudently incurred amounts in the event that there is no output by OPG's prescribed facilities. The OEB also has jurisdiction to set payment amounts on a non-volumetric basis. Based on Subsections 78.1(4) and (5) of the OEB Act, as well as from section 6(1) of O. Reg. 53/05, the OEB has broad jurisdiction in the setting of payment amounts for OPG's regulated facilities, including the power to set payment amounts on a non-volumetric basis so long as such amounts are consistent with the just and reasonable standard. These provisions are as follows:

- Section 78.1(4) provides that "the Board shall make an order under this section in accordance with the rules prescribed by the regulations and may include in the

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[21] *Supra* note 7.

[22] *Supra* note 15.

order conditions, classifications or practices, including rules respecting the calculation of the amount of the payment. (emphasis added)

- Section 78.1(5) provides that "the Board may fix such other payment amounts as it finds to be just and reasonable, (a) on an application for an order under this section, if the Board is not satisfied that the amount applied for is just and reasonable; or (b) at any other time, if the Board is not satisfied that the current payment amount is just and reasonable. (emphasis added)

- Section 6(1) of O. Reg. 53/05 states that "Subject to subsection (2), the Board may establish the form, methodology, assumptions and calculations used in making an order that determines payment amounts for the purpose of section 78.1 of the Act." (emphasis added)

Therefore, based on the foregoing, the OEB's obligations are twofold. First, the legislature has imposed on the OEB an obligation - pursuant to section 78.1(4) - when making a payment amount order for OPG to follow the rules prescribed by the regulations. Second, the legislature has imposed on the OEB an obligation - pursuant to section 78.1(5)(a) - to set just and reasonable payment amounts in respect of amounts that do not arise from section 78.1(4). More specifically, under section 78.1(4), the OEB is required to make its payment amount order for OPG in accordance with the provisions set out in O. Reg. 53/05. To the extent that there are payment amounts associated with the prescribed facilities but which are outside the scope of O. Reg. 53/05, pursuant to section 78.1(5) the OEB is permitted to establish such other payments so long as those other payment amounts are found to be just and reasonable. The OEB has the authority to establish such other just and reasonable payment amounts either on an application for an order under section 78.1 or at any other time on the OEB's own motion.

Various utilities in Ontario have from time to time levied OEB-approved fixed charges. The OEB has jurisdiction to establish a rate or payment amount permitting the recovery by OPG of a fixed charge if the charge is just and reasonable.

Under the legislative scheme the OEB has jurisdiction to establish the rate or payment amount pursuant to Section 78.1 of the OEB Act. The IESO has the obligation to pay that rate or payment amount to OPG and is subject to the OEB's authority to set the payment amount. Subsection 78.1(2) provides as follows:

> Each payment referred to in Subsection (1) shall be the amount determined, ...
>
> (b) In accordance with the order of the Board then in effect to the extent that payment relates to a period that is on or after the later of,
>
> (i) the date prescribed for the purposes of this subsection, and
>
> (ii) the effective date of the Board's first order under this section in respect of the generator." (emphasis added)

The reference to subsection (1) in Subsection 78.1(2) is in regard to the provision which states:

> The IESO shall make payments to a generator prescribed by the regulations... with respect to output that is generated by a unit at a generation facility prescribed by the regulations. (emphasis added)

We note that Subsection 78.1(1) makes reference to payments to a generator "with respect to output that is generated." However, this language does not imply that the rate or payment amount is to be limited to a volumetric payment on the basis of dollars per MWh produced.

The modern principle of statutory interpretation states that "the words of an act are to be read in their entire context, in their grammatical and ordinary sense harmoniously with the scheme of the act, the object of the act and the intention of parliament."[23] On this basis, in regard to the judicial interpretation of the words "with respect to" found in Subsection 78.1(1), these words have been interpreted to have a similar meaning as terms such as "in relation to", "with reference to" or "in connection with".[24] In *Markevich v. Canada*, Major J. of the Supreme Court of Canada wrote:

> The words "in respect of" have been held by this Court to be words of the broadest scope that convey some link between two subject matters. See *Nowegijick v. The Queen*, [1983] 1 S.C.R. 29, at p. 39, per Dickson J. (as he then was):
>
> > The words "in respect of" are, in my opinion, words of the widest possible scope. They import such meanings as "in relation to", "with reference to" or "in connection with". The phrase "in respect of" is probably the widest of any expression intended to convey some connection between two related subject matters.[25]

As a result, a court would likely interpret Subsection 78.1(1) to mean that the IESO must make payments to OPG that have some connection with output that is generated by the units at OPG's regulated facilities. Payment amounts related to deferral and variance accounts recovered during periods where there are no outputs fit within this interpretation as those balances reflect or have some connection with past output from the prescribed facilities.

In addition, this interpretation is consistent with the presumption, in the interpretation of statutes, against internal conflict. Sullivan in her authoritative text states:

> The parts are presumed to fit together logically to form a rational, internally consistent framework; and because the framework has a purpose, the parts are also presumed to work together dynamically, each contributing something toward accomplishing the intended goal. This presumption is the basis for analyzing legislative schemes, which is often the most persuasive form of analysis. The presumption of coherence is also expressed as a presumption against internal conflict. It is presumed that the body of legislation enacted by a legislature does not contain contradictions or inconsistencies . . .[26]

It is internally consistent to interpret the legislative scheme of Section 78.1 as imposing upon the OEB the obligation to set rates or payment amounts in the manner described above, including the obligation to authorize the recovery of deferral and variance account balances, with full and broad powers to do so and imposing upon the IESO the responsibility for paying to OPG the payment amounts prescribed by the Board's order. In the circumstance where there is no

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[23] Elmer A. Driedger, *The Construction of Statutes* (Toronto: Butterworths, 1974) , at p. 67, as cited in Sullivan, *Supra* note 4 at p. 1.

[24] *Skelly v. Assist Realty Ltd.*, (1991), 16 C.H.R.R. D/1 at D/6, 92 C.L.L.C. 17, 014 (B.C. Human Rights Council).

[25] [2003] S.C.J. No. 8, [2003] 1 S.C.R. 94 (S.C.C.).

[26] Sullivan, *Supra* note 4 at 223.

output from the prescribed facilities, such a payment amount could reflect a fixed charge or some other form of charge not on a volumetric basis for the output of the prescribed facilities so as to allow for the recovery of OPG's deferral and variance account balances.

C. Recovery of Approved Balances

Once the OEB has approved recovery of an account balance, the specific amount OPG will be entitled to recover through payment amounts is approved by the OEB. As noted, the IESO's obligation to pay that rate or payment amount to OPG is subject to the OEB's authority to set the payment amount. In this context, you have asked us to consider how OPG can be assured that the IESO will actually collect and pay those amounts to OPG. In this regard, we will consider the legal requirement for the IESO to collect the amounts on behalf of OPG and whether the IESO has effective mechanisms in place to ensure its ability to collect those amounts in full.

1. Powers and Duties of the IESO

The IESO is established under Part II of the *Electricity Act, 1998* (the "*Electricity Act*") as a corporation without share capital.[27] The business and affairs of the IESO are required by legislation to be carried out without the purpose of gain and any profits must be used by the IESO for the purpose of carrying out its objects.[28] Among other things, the IESO's statutory objects include the exercise of the powers and the performance of the duties assigned to it under the *Electricity Act*, the Market Rules and it's licence.[29]

In accordance with its objects, under the *Electricity Act*, the IESO may make rules governing the IESO controlled-grid. Such rules may include provisions, among other things, authorizing and governing the making of orders by the IESO, including orders imposing financial penalties on electricity market participants, authorizing a person to participate in the IESO-administered market, or terminating, suspending or restricting a person's rights to participate in the IESO-administered markets.[30] The rules made by the IESO under Section 32 of the *Electricity Act* are the *Market Rules for the Ontario Electricity Market* or, more commonly, the "Market Rules".[31]

With respect to the IESO's obligations under Section 5(1) of the *Electricity Act* to exercise the powers and perform the duties assigned to it under it's licence, this refers to the licence that the IESO is required to obtain and hold from the OEB in order to operate the market established by the Market Rules.[32] The IESO's current system operator licence took effect on July 31, 2008 and is currently valid until July 30, 2013.[33] By issuing the licence, the OEB authorizes the IESO to direct the operation of the transmission system in accordance with the Market Rules, applicable agreements and subject to the conditions set out in the licence.[34] The licence also authorizes the IESO to operate the IESO-administered markets and to do such things as may be permitted by the Market Rules or required to be done by the IESO to further the establishment and operation

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[27] *Electricity Act, 1998*, S.O. 1998, c. 15, Sched. A, Subsection 4(1).

[28] *Ibid.* at Subsection 5(2).

[29] *Ibid.* at Subsection 5(1).

[30] *Ibid.* at Section 32.

[31] See http://www.ieso.ca/imoweb/pubs/marketRules/mr_ marketRules.pdf

[32] *Ontario Energy Board Act*, Subsection 57(h).

[33] *Independent Electricity System Operator Licence, EI-2008-0096*, Issued by the Ontario Energy Board June 26, 2008 and corrected October 23, 2008.

[34] *Ibid* at Section 3.1.

of the market.[35] Under the licence, the IESO is required to comply with all applicable provisions of the Market Rules.[36]

Consistent with its status as a not-for-profit corporation, the IESO fulfills its statutory mandate by acting as a clearinghouse to settle the flows of money between persons that are authorized to participate in the IESO-administered electricity market. To understand the flows of money in the market, it is first helpful to understand at a very basic level the flow of electricity in the market. Put simply, electricity generators provide electricity to the IESO-controlled grid. This electricity generally flows from generating stations, along transmission lines operated by transmitters, and then either to loads, such as large industrial facilities, that are directly connected to the transmission system or to distribution systems operated by local distribution companies that deliver the electricity to residential customers, small businesses and other end-users.

With respect to the flow of money in the market, distributors are responsible for collecting payments from their customers based on quantities of electricity consumed, together with any other charges that are required to be collected.[37] The IESO then receives these amounts from distributors, as well as amounts from directly connected loads. From these sources of incoming payments, the IESO is then required to ensure that distributors and transmitters receive the amounts that they are approved to receive pursuant to rates set by the OEB. The IESO must also ensure that generators are paid the amounts that they are entitled to be paid for the injection of electricity into the IESO-controlled grid.. This includes generators under contract with the OPA or Ontario Electricity Financial Corporation ("OEFC"), as well generators, namely OPG, whose payment amounts are established by order of the OEB pursuant to Section 78.1 of the OEB Act. Other than keeping the amounts that the IESO is permitted to keep in accordance with its own rate order from the OEB, which amounts cover the IESO's internal operating costs, the IESO is required to remain not-for-profit: all amounts that it receives from market participants must be paid out to such other market participants who have regulatory or contractual rights to receive payments from those collected amounts.

2. The Market Rules

The Market Rule requirements that apply to persons seeking authorization to participate in the Ontario electricity market are key to the IESO's ability to collect amounts and remit payment to OPG. In accordance with the Market Rules, no person shall participate in the IESO-administered markets unless that person has been authorized by the IESO to do so.[38] Moreover, no person shall be authorized by the IESO to be a market participant unless the IESO is satisfied:

- that the person agrees to be bound by the Market Rules by executing a participation agreement,[39]

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[35] *Ibid* at Section 3.2.

[36] *Ibid* at Section 7.1.

[37] Distributor rights and powers with respect to collection are governed by the *Distribution System Code* and the *Retail Settlement Code*, discussion of which is beyond the scope of this letter.

[38] *Market Rules*, Chapter 2, Section 1.2.1.

[39] *Ibid* at Section 1.2.2.3.

- that the person will satisfy the prudential support requirements of Appendix 2.3 of the Market Rules and any other financial requirements set forth in the Market Rules applicable to all market participants,[40] and

- that the person holds a licence from the Ontario Energy Board permitting them to, among other things, own or operate a distribution system or a transmission system, or permitting them to generate electricity for sale through the IESO-administered market, to retail electricity, to purchase electricity through the IESO-administered market, or to sell electricity through the IESO-administered market.[41]

Once satisfied that the application for participation is complete, the IESO may authorize the applicant to participate in the IESO-administered market, but only if the applicant files an executed participation agreement in such form as established by the IESO.[42] Under the participation agreement, the IESO and the market participant agree, among other things, to be bound by and to comply with the Market Rules.[43] The IESO's established form of participation agreement, which is published as part of the Market Rules, provides as follows:

> **Article 3 - Compliance with Market Rules**
>
> 3.1 **Applicant Compliance:** The Applicant hereby agrees to be bound by and to comply with all of the provisions of the market rules so far as they are applicable to the Applicant once it has been authorized by the IESO as a market participant.
>
> 3.2 **IESO Compliance:** The IESO hereby agrees to be bound by and to comply with all of the provisions of the market rules so far as they are applicable to the IESO.[44]

By virtue of Article 3, the Market Rules are effectively incorporated by reference into and therefore form part of the participation agreement. Indeed, as noted in the recitals set out in the participation agreement, "the market rules contemplate that the market rules will have the effect of a contract between each market participant and the IESO by virtue of the execution of a participation agreement."[45] As an authorized market participant, OPG has entered into a participation agreement with the IESO under which each party has agreed to be bound by and to comply with the Market Rules insofar as they are applicable to one another. Accordingly, by means of the participation agreement, the IESO is contractually obligated to pay OPG the amounts that OPG has a right to receive and, furthermore, to collect such amounts in accordance with the Market Rules in order to meet its payment obligations to OPG. Under this contractual relationship, in the event of non-payment, there would be remedies available to OPG pursuant to the dispute resolution mechanisms under the Market Rules, through the Ontario Energy Board and through the Courts.

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[40] *Ibid* at Section 1.2.2.2.

[41] *Ibid* at Section 1.2.2.4.

[42] *Ibid* at Section 3.1.5.2.

[43] *Ibid*. See also Market Rules, Chapter 11 (Definitions), "participation agreement".

[44] IESO, *Participation Agreement*, Issue 14.0, June 2, 2010.

[45] *Ibid*. at Recital 'D'.

In addition to making such authorization conditional on the filing of an executed participation agreement, the IESO's authorization is conditional upon the person satisfying the prudential support requirements set out in the Market Rules.[46]

Prudential support is financial security to cover financial obligations that a market participant might owe to the market in the event the market participant is unable to pay. Each market participant is required to meet its obligation under the Market Rules to provide and to maintain prudential support by providing to the IESO, and maintaining with the IESO, prudential support in an amount determined in accordance with the Market Rules.[47] The amount of prudential support that must be provided will reflect the market participant's maximum net exposure, less any allowable reductions, as calculated in accordance with Chapter 2 of the Market Rules.[48]

If a market participant does not make a payment in full when due, where such payment is required under the Market Rules, this will be an event of default under the Market Rules.[49] Where such an event of default has been committed by a market participant, the IESO has the right to issue a notice of intent to suspend the market participant unless it remedies the default within the specified period and to immediately draw upon part or all of the market participant's prudential support for any amount owing to the IESO.[50] The market participant may remedy the event of default by satisfying any outstanding financial or other obligations giving rise to the event of default and by satisfying the IESO that the circumstances which constituted the event of default no longer exist.[51] If the market participant has not remedied the event of default within the applicable period or due to persistent breaches of the Market Rules, the IESO may issue a suspension order to the market participant, rendering them ineligible to trade or enter into any transactions in the IESO-administered markets or to cause or permit electricity to be conveyed into, through our out of the IESO-controlled grid.[52]

Where the IESO has issued a suspension order to a defaulting market participant, the IESO has the right to issue a notice of default levy and to take any steps that it has not already taken to realize any prudential support held in respect of that defaulting market participant.[53] The IESO then has the ability to impose one or more default levies on non-defaulting market participants.[54] This power to impose a default levy provides the IESO with the right to recover from all non-defaulting market participants any amounts owing to the IESO and that have not been paid in full by the defaulting market participant, along with any costs and expenses reasonably incurred by the IESO to investigate the default and to realize any prudential support and to implement the default levy.[55]

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[46] *Market Rules*, Chapter 2, Section 1.2.2.2.

[47] *Ibid.* at Section 5.7.1.

[48] See Section 5.3 re calculation of maximum net exposure and Section 5.8 re allowable reductions.

[49] *Market Rules*, Chapter 3, Section 6.3.1.1.

[50] *Ibid.* at Section 6.3.3.

[51] *Ibid.* at Section 6.3.6.

[52] *Ibid.* at Sections 6.3A.1 and 6.3A.3.

[53] *Market Rules*, Chapter 2, Section 8.2.2.

[54] *Ibid.* at Sections 8.3 and 8.4.

[55] *Ibid.* at Section 8.1.1.

The IESO, therefore, does not assume any debt in the circumstances of a market participant defaulting on a payment. Rather, the IESO will first try to recover the full amount of the default, along with related costs and expenses, by realizing on the prudential support provided by the defaulting market participant. To the extent that there are any further amounts owing to the IESO, the IESO will then issue a default levy in order to recover such further amounts from all non-defaulting market participants. If the IESO is subsequently able to recover further amounts from the defaulting market participant, then such amounts will be allocated back to those non-defaulting market participants on whom the default levy was previously imposed.[56] In short, the Market Rules ensure that the IESO remains revenue neutral, while ensuring its ability to make all payments that it is required to make, including payments to generators such as OPG.

Also worth noting is Section 5.4 of the participation agreement, which establishes the ongoing liability of market participants as follows:

> 5.4 **Ongoing Liability:** Notwithstanding the provisions of section 5.2 or 5.3 above, if the Applicant becomes a terminated market participant or otherwise ceases to be a market participant, as the case may be, the Applicant shall remain subject to and liable for all of its obligations and liabilities as a market participant which were incurred or arose under the market rules prior to the date on which the termination order was issued or the date on which it otherwise ceased to be a market participant, as the case may be, regardless of the date on which any claim relating thereto may be made.

Pursuant to Section 78.1 of the OEB Act, the IESO is required to make such payments to OPG in accordance with orders from the OEB. By statute, the IESO is established as a corporation, the business of which, by legislation, is to be carried out without the purpose of gain or profit. As such, all money it collects must be used for the purpose of fulfilling its obligations in respect of the IESO-administered market and the IESO-controlled grid. These purposes include the making of payments to OPG in accordance with orders of the OEB under Section 78.1. Moreover, by entering into participation agreements, the IESO and market participants such as OPG agree to be contractually bound by the Market Rules. To remain revenue neutral, consistent with its not-for-profit status, under the Market Rules, if any market participant fails to make a payment, including in respect of amounts associated with OPG's deferral and variance accounts, then the IESO has various remedies available to ensure it can collect the funds it needs to make the payments it is required to make to OPG and other generators.

3. Significance of IESO's Licence

You have asked us to consider whether OPG's ability to collect amounts recorded in its deferral and variance accounts, pursuant to an order by the OEB under Section 78.1 of the OEB Act, is dependent upon the renewal of the IESO's licence. It is our conclusion that the IESO's obligation to pay the payment amounts to OPG as a prescribed generator under Subsections 78.1(1) and 78.1(2)(b) is a legal obligation that is independent of the IESO's licensing requirements.

As noted, the IESO currently holds an electricity system operator licence (EI-2008-0096), which took effect on July 31, 2008 and is valid until July 30, 2013. The OEB may extend the term of this licence pursuant to section 5.1 of the licence. For the five-year period prior to the effective date of its current licence, the IESO held a similar licence (EI-2003-0088) from the

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[56] *Ibid.* at Section 8.8.2.

OEB. The requirement to hold such a licence arises from Section 57 of the OEB Act, which states, among other things, that "no . . . person shall, unless licensed to do so under this Part, . . . (g) direct the operation of transmission systems in Ontario; (or) (h) operate the market established by the market rules."[57]

By issuing the licence, the OEB licenses the IESO to:

> direct the operation of the transmission system(s) in accordance with Agreements and the Market Rules, subject to the conditions set out in this Licence (and)
>
> operate the IESO administered markets and to do such things as may be permitted by the Market Rules or required to be done by the Licensee in furtherance of the establishment and operation of the market(s) to be administered by the Licensee, subject to the conditions set out in this Licence.[58]

The licence also requires the IESO to comply with all applicable Market Rules.[59]

It is important to place the IESO's licence in context. In the context of the legislative scheme governing Ontario's electricity system, the IESO's licence is not the only aspect that gives authority to or imposes obligations on the IESO. In fact, the IESO has various statutory obligations which exist independently of the IESO's licence and are not undertaken by the IESO as a condition of the licence.

As noted, Subsection 78.1(1) imposes on the IESO the obligation "to make payments to a generator prescribed by regulations" and Subsection 78.1(2)(b) requires that such payment be in accordance with the order of the OEB. These provisions are significant since, based upon the wording of these provisions: (1) the IESO's obligation to pay the prescribed generator, OPG, is not subject to the IESO's licences; and (2) the IESO's obligation to pay is subject to the OEB order, which must discharge the OEB's obligation to set payment amounts in accordance with the regulations and the just and reasonable standard.[60]

As noted above, the licence and the requirement to obtain a licence is limited in its scope to the direction of the operation of the transmission system and the operation of the market established by the market rules. Pursuant to the market rules, the IESO and market participants are bound to those market rules by way of a contractual arrangement, which is established by the participation agreement that is signed by the IESO and all market participants. The IESO's obligations under section 78.1(1) and section 78.1(2)(b) are not governed by the market rules or the contractual arrangement underlying the market rules. Therefore, one can reasonably conclude that the IESO's obligations under section 78.1(1) and section 78.1(2)(b) exist independent of the licence from the OEB. If the licence ceased to exist, the obligations of the IESO and those of the OEB under Section 78.1 would remain.

Similar to the obligation on the IESO under Section 78.1 of the OEB Act, the legislative scheme also establishes obligations for the IESO to make payments under Sections 78.2 to 78.5 of the OEB Act:

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[57] *Ontario Energy Board Act*, Subsections 57(g) and (h).

[58] *Independent Electricity System Operator Licence* (EI-2008-0096), Section 3.

[59] *Ibid.* at Section 4.

[60] *Supra* Note 1.

- Under 78.2, the IESO is required to make payments to the Ontario Electricity Financial Corporation (OEFC) with respect to electricity supply contracts that the OEFC has with generators.

- Under 78.3, the IESO is required to make payments to the OPA with respect to electricity output generated by units at facilities in respect of which the OPA has entered into procurement contracts.

- Under 78.4, the IESO is required to make payments to the OPA with respect to amounts payable to entities with whom the OPA has entered into procurement contracts for electricity generation capacity.

- Under 78.5, the IESO is required to make payments to distributors or the OPA with respect to amounts approved by the OEB for conservation and demand management programs.

In each of these circumstances, the obligation on the IESO is established by legislation and is independent of any obligations that might otherwise be imposed on the IESO under a licence issued by the OEB.

The IESO also has a number of rights, powers and obligations under Parts II.2 and III of the *Electricity Act* in respect of the electricity markets and the management of supply, capacity and demand. One such obligation, which is of particular significance, is the requirement under Section 25.33 of the *Electricity Act* for the IESO, through its billing and settlement systems, to make adjustments in accordance with regulations to ensure that, over time, payments by classes of market participants in Ontario that are prescribed by regulation reflect amounts paid, in accordance with the regulations, to generators, distributors, the OPA and the OEFC, whether the amounts are determined under the Market Rules or under Sections 78.1 to 78.5 of the OEB Act. The adjustments that the IESO is required to make under this provision, which are further described in O. Reg. 429/04, are known as the "Global Adjustment".

The administration of the Global Adjustment is a critical function established by legislation as it results in the collection and payment of amounts which are based on the difference between the total of all market payments for electricity consumed in the province and the total of all rates and payment amounts to which generators under contract with the OPA and regulated generators are entitled. For OPG, the Global Adjustment ensures that the IESO determines, collects and then pays to OPG the differences between the market price for generation from its prescribed facilities and the regulated rates established by the OEB under Section 78.1 for the prescribed facilities. The IESO's obligation to perform the Global Adjustment is imposed by legislation and is detailed in the regulations thereunder. This obligation is legally independent of any obligations that might otherwise be imposed on the IESO under a licence issued by the OEB.

A decision by the OEB to renew or terminate the IESO licence must be considered within the limits of OEB's jurisdiction. The framework within which the OEB is empowered to make decisions was recently summarized by the Ontario Court of Appeal in *Toronto Hydro-Electric System Ltd. v. Ontario (Energy Board)*, as follows:

> The analysis must begin with the legislation that establishes the OEB and gives the OEB its powers. The OEB's objectives in respect of electricity are stated in s. 1 of the *Ontario Energy Board Act*, 1998, S.O. 1998, c. 15, Sch. B (the "Act"):

> *Boards objectives, electricity*
>
> *1.(1) The Board, in carrying out its responsibilities under this or any other Act in relation to electricity, shall be guided by the following objectives:*
>
> 1. *To protect the interests of customers with respect to prices and the adequacy, reliability and quality of electricity service.*
>
> 2. *To promote economic efficiency and cost effectiveness in the generation, transmission, distribution, sale and demand management of electricity and to facilitate the maintenance of a financially viable electricity industry.*

> In short, the OEB is to balance the interests of ratepayers in terms of prices and service while at the same time ensuring a financially viable electricity industry that is both economically efficient and cost effective.[61] (emphasis added)

With respect to the circumstances where a decision of a tribunal, such as the OEB, will be found to be outside of its jurisdiction and therefore invalid, the court goes on to state:

> Courts should hesitate to analyze the decisions of specialized tribunals through the lens of jurisdiction unless it is clear that the tribunal exceeded its statutory powers by entering into an area of inquiry outside of what the legislature intended. If the decision of a specialized tribunal aims to achieve a valid statutory purpose, and the enabling statute includes a broad grant of open-ended power to achieve that purpose, the matter should be considered within the jurisdiction of the tribunal. ...In contrast, where a tribunal is pursuing an illegitimate objective, or is engaging in actions that clearly defy the limits of its statutory authority, then a reviewing court may properly declare its decisions to be *ultra vires* (i.e. beyond its power or authority).[62] (emphasis added)

Based on the foregoing, it is clear that the OEB is required to make decisions, including licensing decisions, in accordance with its mandate to protect the public interest as set out in Section 1(1) of the OEB Act. Statutory objectives imposed on a tribunal, such as those listed in Section 1(1) of the OEB Act, limit the extent of the tribunal's discretion in making decisions, as delegated by the Legislature, and the tribunal has no power to make a decision outside of the limits of the discretion granted to it.[63] Any attempt to do so will, upon review by a court, be deemed *ultra vires* and declared invalid.[64] The OEB's public interest mandate includes the need to protect the interests of ratepayers, as well as to ensure the maintenance of a financially viable electricity industry. To the extent that the OEB makes a decision that is inconsistent with these statutorily mandated objectives, a reviewing court would, therefore, be likely to declare such decision to be invalid on the basis that the OEB acted outside of its jurisdiction in making the decision. The OEB cannot arbitrarily decide to cancel the IESO's licence or to not renew the IESO's licence. Rather, the OEB must make licensing decisions in accordance with its public interest mandate.[65]

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[61] *Toronto Hydro-Electric System Ltd. v. Ontario (Energy Board)*, 99 O.R. (3d) 481, Ont. C.A., Apr. 20, 2010 (leave to appeal to SCC denied, Dec. 2, 2010) at paras 12 to 14.

[62] *Ibid.* at para 24 (parenthesis and emphasis added).

[63] See D. Jones and A. de Villars, *Principles of Administrative Law* (5th ed.), Carswell, 2009 at p. 93-94.

[64] *Ibid.* at 94.

[65] *Toronto Hydro-Electric System Ltd. v. Ontario (Energy Board), Supra* note 62.

In exercising its licensing powers, the OEB's discretion is constrained by the need to fulfill its statutory public interest mandate in conjunction with its obligation to set just and reasonable rates and payment amounts. Under Section 78.1, the OEB is obligated to make payment amount orders in accordance with the regulation and in accordance with the just and reasonable standard[66] in connection with OPG's prescribed facilities. The obligations are not conditional upon the OEB issuing or renewing the IESO's licence. Although the obligation under Subsections 78.1(1) and 78.1(2)(b) is legally independent from the IESO's licence, if the licence is terminated or not renewed, then the obligation under Subsections 78.1(1) and 78.1(2)(b) would continue. However, from a practical perspective, without a valid licence the IESO would not be in a position to carry out the settlement function for the market under the market rules by flowing funds between customers or end-users and generators. Since the underlying obligations in Section 78.1 (and other statutory provisions set out above) are not eliminated as a consequence of licence termination, this appears to be an impractical result.

The OEB has an obligation to act and make decisions in accordance with its public interest mandate, which includes an obligation to establish just and reasonable payment amounts for OPG under Section 78.1. As discussed earlier in this letter, the Supreme Court of Canada has described just and reasonable rates as "rates, which, under the circumstances, would be fair to the consumer on the one hand, and which, on the other hand, would secure to the company a fair return for the capital invested."[67] Fair compensation to a utility is comprised of the right to recover all prudently incurred costs, and the right to a fair return on invested capital. As noted, allowing a utility to earn a fair return has been regarded by the courts as being essential to the preservation of the financial integrity of a utility, which is of mutual concern to the utility and its customers.[68] Accordingly, in the context of its public interest mandate, which includes the objective of facilitating the maintenance of a financially viable electricity industry and establishing just and reasonable rates and payment amounts, it is necessary for there to be an effective mechanism in place that enables OPG to actually receive its payment amounts pursuant to orders of the OEB under Section 78.1.

It would be incumbent on the OEB to consider these significant implications in the course of exercising its licensing authority in accordance with the public interest and its purposes and objects under Section 1 of the OEB Act. A decision to the contrary would be beyond its jurisdiction and could be rendered null and void by a reviewing court.[69]

Accordingly, the OEB would only be able to cancel or refuse to renew the IESO's licence (a) if it could find that doing so would be in the public interest, and (b) if it is able to meet its statutory obligations, including its obligations in respect of setting just and reasonable payment amounts that provide for a fair return to OPG. In exercising its licensing powers, the OEB would also have to consider that, as discussed, the IESO's obligations under Section 78.1 exist independent of and are outside the scope of the licence from the OEB.

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[66] *Supra* Note 1.

[67] *Supra* note 5.

[68] *Supra* note 10.

[69] *Supra* note 63 at 188-189.

D. Reliance

This opinion is given exclusively in connection with the consideration by OPG, as well as OPG's accounting advisors and auditors, of the appropriate treatment of OPG's regulatory deferral and variance accounts for financial reporting purposes under IFRS and for no other purpose. This opinion is addressed to and is solely for the benefit of OPG and may not be relied upon by any other person including, but not limited to, OPG's accounting advisors and auditors.

We trust the forgoing is satisfactory.

Yours truly,

Torys LLP

Memorandum re Recognition of Regulatory Assets Under IFRS.pdf

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April ■, 2011

PRIVILEGED AND CONFIDENTIAL

Ontario Power Generation Inc.
700 University Avenue
Toronto, ON
M5G 1X6

Attention: Mr. Carlton Mathias, Law Division

Dear Mr. Mathias:

Re: The Legal Basis of OPG's Regulatory Deferral and Variance Accounts

You have asked us to consider the legal basis of Ontario Power Generation Inc.'s ("OPG's") regulatory deferral and variance accounts in order to assist you in determining whether they are recognizable as "assets" and "liabilities" for financial reporting purposes under International Financial Reporting Standards ("IFRS").

In considering this issue, you have asked us to consider whether deferral and variance account balances are recoverable in a hypothetical circumstance where OPG ceases operations and does not have any energy output from its prescribed facilities. You have also asked us to consider how OPG can be assured that the amounts representing OPG's approved deferral and variance account balances will actually be paid to OPG, as well as whether OPG's ability to collect these amounts is dependent upon the renewal of the licence of the Independent Electricity System Operator.

I. CONCLUSIONS

OPG's deferral and variance accounts are established either by regulation or by orders of the Ontario Energy Board (the "OEB") through the proper exercise of its jurisdiction as the administrative tribunal responsible for regulating the electricity industry in Ontario. The establishing of such an account pursuant to regulation or the granting of approval by the OEB to establish such an account confers upon OPG a right to record amounts in the account and to account for the amounts recorded on the basis that they have been prudently incurred. Courts have found that prudence is deemed to exist until such time as the OEB (in its discretion), at a later date, values or assesses the balance of that account and determines that the recorded balance is wholly recoverable or that certain of the recorded amounts have in fact not been prudently incurred and are not recoverable.

Given that OPG's recovery or payment of the amounts recorded in its deferral and variance accounts, and subsequently disposed of by the OEB, are part of the calculation of OPG's payment amounts under section 78.1 of the *Ontario Energy Board Act*, *1998* (the "OEB Act"), OPG is entitled to have recorded amounts assessed and to recover those amounts pursuant to

the OEB's order. Correspondingly, the OEB, as a matter of law, is obligated to establish OPG's payment amounts in accordance with the rules prescribed by the regulations in accordance with the just and reasonable standard (as applicable). In doing so, the OEB must assess the balances in the previously established accounts for prudence and accuracy and issue a Decision and Order on their disposition.

For certain of OPG's deferral and variance accounts, the legal origins of which are found in Ontario Regulation 53/05 ("O. Reg. 53/05"), under the OEB Act, the OEB does not have jurisdiction over whether the account may be established. For at least two of these accounts, the OEB also does not have jurisdiction to undertake a prudence review to determine if any recorded amounts should be excluded.

Once the OEB has approved the balance of an account for recovery, with or without undertaking a prudence review (as applicable), the specific amount or balance that OPG will be allowed to recover will have been determined. The subsequent issuance by the OEB of a payment amounts order will establish the mechanism by which such specific approved amounts will be recovered and remitted to OPG.

The OEB's review and approval of the balance in a deferral or variance account is a process for determining the quantum and timing for the payment to or from OPG in respect of that account, which will be reflected in a Decision and Order of the OEB. As indicated, OPG's legal right to record amounts in an account and to account for the amounts recorded on the basis that they have been prudently incurred, subject to the OEB in its discretion subsequently determining otherwise, is established through the authorization of the account by the OEB or pursuant to regulation. OPG's right to recover prudently incurred amounts therefore arises as and when such amounts are recorded in an approved account, in accordance with the parameters established by the OEB or by regulation for that account, subject to the OEB's subsequent prudence review to assess the value of the account.

In the circumstance where OPG ceases operations and does not have any energy output from its prescribed facilities, it is our opinion that the OEB would have the jurisdiction and the obligation to establish a rate or payment amount that would allow OPG to recover or obligate OPG to disburse prudent amounts recorded in a deferral or variance account. Such a rate or payment amount would not have to be based on dollars per unit of electricity output from the prescribed facilities. This is no different than under normal operating circumstances.

The OEB has broad jurisdiction in setting payment amounts for OPG and it would not be reasonable for the legislature to have given the OEB the legislative power to authorize the establishment of accounts without also giving the OEB the power to dispose of the amounts recorded in such accounts, including in circumstances where there is no future output. Moreover, to interpret the applicable legislation in a manner that only allows for payment amounts on a volumetric basis is in our view unreasonable because it would not be consistent with the rules of statutory interpretation.

Pursuant to Section 78.1 of the OEB Act, the IESO is required to make such payments to OPG in accordance with orders from the OEB. By statute, the IESO is established as a corporation, the business of which, by legislation, is to be carried out without the purpose of gain or profit. As such, all money it collects must be used for the purpose of fulfilling its obligations in respect of the IESO-administered market and the IESO-controlled grid. These purposes include the making of payments to OPG in accordance with orders of the OEB under Section 78.1. Moreover, by entering into participation agreements, the IESO and market participants such as OPG agree to be contractually bound by the Market Rules. To remain revenue neutral,

consistent with its not-for-profit status, under the Market Rules, if any market participant fails to make a payment, including in respect of amounts associated with OPG's deferral and variance accounts, then the IESO has various remedies available to ensure it can collect the funds it needs to make the payments it is required to make to OPG and other generators.

In the context of the legislative scheme governing Ontario's electricity system, the IESO's licence is not the only aspect that gives authority to or imposes obligations on the IESO. In fact, the IESO has various statutory obligations which exist independently of the IESO's licence and are not undertaken by the IESO as a condition of the licence. The IESO's obligation to pay the payment amounts to OPG as a prescribed generator under Subsections 78.1(1) and 78.1(2)(b) is a legal obligation that is independent of the IESO's licensing requirements. Likewise, the OEB has a statutory obligation under Section 78.1 of the OEB Act to set payment amounts in accordance with the applicable regulation and the just and reasonable standard (as applicable) and, although the recovery of the OEB-approved payment in accordance with its order is fulfilled by the IESO under Subsections 78.1(1) and 78.1(2)(b), the OEB's obligation to set such payment amounts is legally independent of the existence of the IESO's licence. If the licence ceases to exist, then the obligations of the IESO and the OEB under Section 78.1 would remain. For the OEB to fulfill its obligation to set payment amounts in accordance with the regulation and the just and reasonable standard, there is a need for there to be an effective mechanism in place that enables OPG to actually receive its payment amounts. Accordingly, the OEB would only be able to cancel or refuse to renew the IESO's licence (a) if it could find that doing so would be in the public interest, and (b) if it is able to meet its statutory obligations, including its obligations in respect of setting just and reasonable payment amounts that provide for a fair return to OPG. In making such a licensing decision, the OEB would also have to consider that the IESO's obligations under Section 78.1 exist independent of and are outside the scope of the licence from the OEB.

II. BACKGROUND

A. Regulatory Assets and International Financial Reporting Standards

The OEB sets the requirements that regulated utilities in Ontario must meet for *regulatory* accounting, reporting and filing purposes. The Canadian Accounting Standards Board and other standard-setting bodies set the accounting principles required for *financial* reporting. Regulated utilities have separate obligations to adhere to both regulatory accounting and financial accounting requirements. The Canadian Accounting Standards Board has required that Canadian Generally Accepted Accounting Principles ("CGAAP") for publicly accountable enterprises transition to IFRS. Although this transition is generally effective January 1, 2011, a one year deferral in implementation of IFRS is available to eligible rate-regulated enterprises. It is our understanding that OPG is eligible for and has elected to apply this one-year deferral.

The transition to IFRS has raised a variety of issues and concerns for the OEB and rate-regulated utilities in Ontario, as well as for economic regulators and utilities in other Canadian jurisdictions. One significant concern relates to the recognition of regulatory assets and liabilities. As will be described further below, regulatory assets and liabilities arise from positive or negative balances, respectively, in deferral or variance accounts.

It is our understanding that, under CGAAP for publicly accountable enterprises in effect prior to IFRS conversion, regulated entities are permitted to record regulatory assets and liabilities either pursuant to specific guidance issued by the Canadian Accounting Standards Board or as a result of their ability to refer to the specific guidance issued by the Financial Accounting Standards Board in the United States (e.g., Codification Topic 980, *Accounting for the Effects of*

Certain Types of Regulation, formerly Financial Accounting Standards No. 71). Under IFRS, there is no specific guidance related to accounting for the effects of rate regulation. As a result, we further understand that the recognition of regulatory assets and liabilities for financial reporting purposes continues to be the subject of discussion and debate among affected utilities, accounting firms and the International Accounting Standards Board ("IASB").

The application of the recognition criteria under IFRS to amounts that are currently being reported by OPG and other regulated utilities as regulatory assets and liabilities under CGAAP is a matter that is strictly for the consideration of accounting experts. However, it is against this background that the balance of this memorandum considers the legal rights and obligations of OPG to recover from or disburse to ratepayers the balances in its deferral and variance accounts under current conditions, as well as in circumstances where OPG ceases operations and does not have any energy output from its prescribed facilities.

III. LEGISLATIVE FRAMEWORK

A. Jurisdiction of the OEB

In Ontario, the OEB is established under the OEB Act as an administrative tribunal responsible for the regulation and supervision of the natural gas and electricity industries. The OEB derives its powers from the Ontario Legislature primarily under the OEB Act and the *Electricity Act, 1998* (the "Electricity Act"), including regulations thereunder, and is further governed by the *Statutory Powers Procedures Act* ("SPPA"). In addition to its legislative sources of power, jurisdiction for the OEB arises from the doctrine of jurisdiction by necessary implication, under which the powers conferred by an enabling statute are construed to include not only those powers that are expressly granted but also, by implication, all powers which are practically necessary for the accomplishment of the object intended to be secured by the statutory regime.[1]

B. Setting Rates and Payment Amounts

The OEB's jurisdiction to set rates or payment amounts arises from Section 36 of the OEB Act in respect of gas transmission, distribution and storage rates, from Section 78 of the OEB Act in respect of electricity transmission and distribution rates and, of particular relevance to OPG, from Section 78.1 of the OEB Act in respect of payment amounts for prescribed electricity generation. Section 78.1 states (emphasis added):

> **Payments to prescribed generator**
>
> **78.1** (1) The IESO shall make payments to a generator prescribed by the regulations, or to the OPA on behalf of a generator prescribed by the regulations, with respect to output that is generated by a unit at a generation facility prescribed by the regulations.
>
> **Payment amount**
>
> (2) Each payment referred to in subsection (1) shall be the amount determined,
>
> (a) in accordance with the regulations to the extent the payment relates to a period that is on or after the day this section comes into force and before the later of,

[1] David M. Brown, *Energy Regulation in Ontario*, Chapter. 2 "OEB Structure, Powers and Jurisdiction" at para 2:30:30; Ruth Sullivan, *Sullivan on the Construction of Statutes* (5th ed.), LexisNexis Canada Inc, 2008 at p. 184.

(i) the day prescribed for the purposes of this subsection, and

(ii) the effective date of the Board's first order in respect of the generator; and

(b) in accordance with the order of the Board then in effect to the extent the payment relates to a period that is on or after the later of,

(i) the day prescribed for the purposes of this subsection, and

(ii) the effective date of the Board's first order under this section in respect of the generator.

OPA may act as settlement agent

(3) The OPA may act as a settlement agent to settle amounts payable to a generator under this section.

Board orders

(4) The Board shall make an order under this section in accordance with the rules prescribed by the regulations and may include in the order conditions, classifications or practices, including rules respecting the calculation of the amount of the payment.

Fixing other prices

(5) The Board may fix such other payment amounts as it finds to be just and reasonable,

(a) on an application for an order under this section, if the Board is not satisfied that the amount applied for is just and reasonable; or

(b) at any other time, if the Board is not satisfied that the current payment amount is just and reasonable.

Burden of proof

(6) Subject to subsection (7), the burden of proof is on the applicant in an application made under this section.

Order

(7) If the Board on its own motion or at the request of the Minister commences a proceeding to determine whether an amount that the Board may approve or fix under this section is just and reasonable,

(a) the burden of establishing that the amount is just and reasonable is on the generator; and

(b) the Board shall make an order approving or fixing an amount that is just and reasonable.

Application

(8) Subsections (4), (5) and (7) apply only on and after the day prescribed by the regulations for the purposes of subsection (2).

For purposes of Subsection 78.1(1), Section 1 of O. Reg. 53/05 establishes that OPG is a "prescribed generator" and Section 2 of O. Reg. 53/05 establishes that the "prescribed generation facilities" are comprised of the five hydroelectric generating stations in OPG's Niagara Plant Group, the R. H. Saunders hydroelectric generating station, the Pickering 'A' and 'B' Nuclear Generating Stations and the Darlington Nuclear Generating Station.

Subsection 78.1(2)(b) requires that each such payment made to OPG by the IESO shall be in accordance with the order of the OEB then in effect. The OEB is required under Subsection 78.1(4) to make such orders in accordance with the rules prescribed by the regulations, most importantly O. Reg. 53/05, and, in discharging its responsibility, include in such orders conditions, classifications or practices, including in respect of the calculation of the payment amount. As part of this jurisdiction, the OEB has the ability to authorize variance and deferral accounts as part of the OEB's rate setting powers.

Under Subsection 78.1(5) the OEB may fix such other payment amounts (i.e. payment amounts other than those arising from Subsection 78.1(4)) as it finds to be just and reasonable in circumstances where either the payment amount applied for is not just and reasonable, or if it finds the current payment amount to be unjust and unreasonable. In either circumstance, where the OEB establishes such other payment amounts, these other payment amounts must be established in accordance with the just and reasonable standard. This is consistent with the setting of rates under Sections 36 and 78 of the OEB Act, where the OEB's determination of payment amounts is on the basis of the "just and reasonable" standard. The Supreme Court of Canada has described just and reasonable rates as "rates, which, under the circumstances, would be fair to the consumer on the one hand, and which, on the other hand, would secure to the company a fair return for the capital invested."[2] These two components of the just and reasonable standard - that rates be fair to the consumer and yield fair compensation to the utility and its owner - are also embodied in the OEB's objects regarding the regulation of electricity, namely through its objectives of protecting consumer interests and facilitating a financially viable electricity industry.[3]

Fair compensation to the utility is comprised of two elements: (1) the right to recover all prudently incurred costs, and (2) the right to a fair return on invested capital. With respect to prudently incurred costs, the Ontario Divisional Court has held that a utility has a right to recover its prudently incurred costs, as follows:

> Essentially, a utility is entitled to recover its prudently incurred costs . . . Expenditures are deemed to be prudent, in the absence of some evidence suggesting the contrary. However, costs that are found to be dishonestly incurred, or which are negligent or wasteful losses, are excluded from the legitimate operating costs of the utility in determining rates that may be charged. The examination of whether an expenditure was prudent must be based on the particular circumstances at the time the decision to incur those costs was made. That is so even if in hindsight it is obvious the decision was a bad one.[4]

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[2] *Northwestern Utilities Ltd. v. Edmonton (City), Board of Public Utility Commissioners of Alberta*, [1929] 2 D.L.R. 4, [1929] S.C.R. 186 at p. 192-193.

[3] OEB Act, s. 1(1).

[4] *Enbridge Gas Distribution Inc. v. Ontario Energy Board* (2005), 75 O.R. (3d) 72 (Div. Ct.); rev'd on other grounds, (2006), 41 Admin L.R. (4th) 69.

It is clear that this presumption of prudence applies in circumstances where the OEB is carrying out an after-the-fact prudence review, such as would be the case for a review that is undertaken for the purpose of determining whether to allow recovery of amounts previously recorded in a deferral or variance account.[5]

With respect to the right to a fair return, the Supreme Court of Canada explains that "by a fair return (it) is meant that the company will be allowed as large a return on the capital invested in its enterprise (which will be net to the company) as it would receive if it were investing the same amount in other securities possessing an attractiveness, stability and certainty equal to that of the company's enterprise."[6] Allowing a utility to earn a fair return has been regarded as essential to the preservation of the financial integrity of a utility, which is of mutual concern to the utility and its customers.[7]

C. Variance and Deferral Accounts

Variance and deferral accounts are tools that the OEB uses to deal with uncertainty, including circumstances that are difficult to forecast and that may be beyond the control of the regulated utility. The use of these accounts protects the interests not only of utilities, but also the interests of ratepayers. Once the deferral or variance accounts are established, either by regulation or OEB order, the amounts recorded in the accounts must be assessed for prudence by the OEB (to the extent the OEB has jurisdiction to do so) and the resulting approved amounts must be paid to or by OPG as the amounts are a part of OPG's just and reasonable payment amounts, as explained above.

A "variance account" may be used to track underestimates or overestimates of specific costs or revenues so as to enable the amount of the variance to be disposed of, normally through higher or lower payment amounts established by the OEB in the future. For example, recognizing the uncertainties associated with fluctuating world uranium prices and with a view to protecting OPG and ratepayers, the OEB approved OPG's request in EB-2007-0905 to establish a variance account to capture the differences between forecast and actual nuclear fuel expenses. In this way, if OPG's actual fuel costs proved to be higher than its forecasted costs then OPG would be entitled in the future to receive the shortfall from ratepayers, provided that the shortfall was a result of prudent actions by OPG and has been accurately recorded in the account. Alternatively, if OPG's actual fuel costs proved to be lower than its forecasted costs, then OPG would have over-recovered and would be required by the OEB to disburse such amounts back to ratepayers, subject to the review for prudence and accuracy.

A "deferral account" may be used, for example, to track specific costs incurred by a utility with respect to a project or circumstance until a future date, after which the costs recorded in the account are subject to prudence review by the OEB before the utility will be allowed to begin recovering those costs from ratepayers. For example, O. Reg. 53/05 authorized OPG to establish a deferral account to record non-capital costs associated with a large nuclear project that involved the return-to-service of certain nuclear generating units. The regulation further

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[5] Ontario Energy Board, *Decision With Reasons - Application by Ontario Power Generation Inc. for Payment Amounts for Prescribed Facilities for 2011 and 2012 (EB-2010-0008)*, March 10, 2011 at p. 19.

[6] *Supra* note 2 at p. 193.

[7] *Union Gas Ltd. v. Ontario (Energy Board)* (1983), 1 D.L.R. (4th) 698 (Ont. Div. Ct.) at p. 711, as cited in Brown, *supra* note 6 at 2:40:10.

required that the OEB ensure OPG recover the balance in the account over a certain period of time, which the OEB determined in EB-2007-0905.

The nature of the rights that arise from the authorization of a deferral or variance account by the OEB or under O. Reg. 53/05 are discussed in the analysis section, below. For accounts that have already been authorized, as part of the OEB's rate-setting function and its powers with respect to variance and deferral accounts, the OEB will periodically[8] review a utility's variance and deferral accounts to ensure that the balances reflect amounts that are prudent and have been accurately recorded. Based on such review, the OEB makes a determination as to how much of the recorded balance the utility will recover (or repay) and the period over which such amount shall be recovered (or repaid). This determination will be made by way of a Decision from the OEB. In the normal course (i.e. where the accounts are reviewed in the context of a rate or payment amount application), the utility will then be required to file a draft payment amounts order or draft rate order, which is reviewed by the OEB. Once the final payment amounts order or rate order is approved by the OEB, the IESO will be required to implement the order by paying OPG in accordance with the order.

Where the balance recorded in a variance or deferral account is in a debit position and the OEB has accepted that balance as reflecting costs prudently incurred and accurately recorded, this will be referred to as a "regulatory asset" and will represent the specific amount that the utility will have a right to recover in such manner as is ordered by the OEB. Similarly, where the balance recorded in a variance or deferral account is in a credit position and the OEB has accepted that balance as reflecting costs prudently incurred and accurately recorded, this will be referred to as a "regulatory liability" and will represent the specific amount that the utility will have an obligation to disburse in such manner as is ordered by the OEB.

For the analysis in Section IV below, it is important to set out in some detail the legal origins of OPG's variance and deferral accounts.

Transitional Accounts

Under O. Reg. 53/05, OPG was required to establish five variance accounts and three deferral accounts in the years prior to OPG's first application to the OEB for determination of payment amounts under Section 78.1 of the OEB Act (the "Transitional Accounts"). OPG recorded amounts in the Transitional Accounts *up to* the effective date of the OEB's first payment amounts order, which was April 1, 2008. The OEB considered the balances accrued in the Transitional Accounts during the course of hearing OPG's first application under Section 78.1 (EB-2007-0905) and determined the amount for each account, recorded up to December 31, 2007, that OPG would be able to recover or would be obligated to repay.[9] The OEB allowed recovery or obligated repayment of these amounts over periods of approximately two, three or four years, depending on the account.

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[8] While normally this will be in the context of a rate or payment amount application, OPG could apply to have the OEB undertake such a review at any time through a separate proceeding. Similarly, the OEB has the right to undertake such a review at any time on its own motion. See s. 78.1(5) of the *OEB Act*.

[9] Amounts recorded in the Transitional Accounts between January 1, 2007 and March 31, 2008 were considered in EB-2010-0008.

Mandated Continuing Accounts

Under O. Reg. 53/05, OPG was also required to establish one variance account and two deferral accounts which were to be substantially the same as three of the Transition Accounts, but which were for purposes of capturing certain costs incurred *on and after* the effective date of the OEB's first order under Section 78.1 (the "Mandated Continuing Accounts"). OPG continues to be required under O. Reg. 53/05 to keep and track amounts in each of these Mandated Continuing Accounts. The Mandated Continuing Accounts are:

- Section 5(4) - Pickering 'A' Return to Service Deferral Account
- Section 5.2 - Nuclear Liability Deferral Account
- Section 5.4 - Nuclear Development Variance Account

Board Ordered Continuing Accounts

In addition to the Mandated Continuing Accounts, in EB-2007-0905 OPG requested that the OEB authorize the continuation on and after the effective date of the OEB's first order under Section 78.1 of three variance accounts that had been required under O. Reg. 53/05, but for which the regulation did not mandate their continuation beyond the effective date of the OEB's first order (the "Board Ordered Continuing Accounts"). The Board accepted OPG's proposal for the Board Ordered Continuing Accounts, which are:

- Hydroelectric Water Conditions Variance Account
- Ancillary Services Net Revenue Variance Account
- Capacity Refurbishment Variance Account[10]

Board Ordered Accounts

Although not expressly mandated by O. Reg. 53/05, the Board determined in its Decision in EB-2007-0905 that it was necessary to give effect to certain provisions of O. Reg. 53/05 that continue to apply on and after the effective date of the OEB's first order. As a result, the OEB authorized OPG to establish the:

- Bruce Lease Net Revenues Variance Account

Another category of accounts arising from the Board's first order under Section 78.1 are new accounts that had not been required at any time under O. Reg. 53/05, but which OPG requested and the OEB approved of in its Decision in EB-2007-0905 (the "Board Ordered Accounts"). In addition to the account above, included in this category are the following variance accounts also approved by the Board:

- Nuclear Fuel Cost Variance Account

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[10] Though not expressly required under O. Reg 53/05, the Board found that the Capacity Refurbishment Variance Account is implicitly required due to the obligation in s. 6(2)4 of the regulation. See *Infra* note 13 at pp. 122-123.

- Income and Other Taxes Variance Account
- Hydroelectric Interim Period Shortfall Variance Account
- Nuclear Interim Period Shortfall Variance Account

During a related proceeding (EB-2009-0038) arising from EB-2007-0905, the Board also approved the following:

- Tax Loss Variance Account

In EB-2009-0174, a proceeding dealing with the manner of calculating entries into the deferral and variance accounts after December 31, 2009 until the effective date of the next payment amounts order for OPG, the OEB also established two additional accounts:

- Hydroelectric Deferral and Variance Over/Under Recovery Variance Account
- Nuclear Deferral and Variance Over/Under Recovery Variance Account

In EB-2010-0008, OPG applied for new payment amounts for the 2011 to 2012 period. In its Decision with Reasons dated March 10, 2011, the OEB approved the continuation of existing hydroelectric accounts, nuclear accounts and accounts common to both the regulated hydroelectric and nuclear businesses as proposed by OPG, as well as two new hydroelectric accounts.[11] OPG's accounts for 2011 and 2012 are therefore as follows:

- Existing Common Accounts:
  - Ancillary Services Net Revenue Variance Account
  - Income and Other Taxes Variance Account
  - Tax Loss Variance Account
- Existing Hydroelectric Accounts:
  - Hydroelectric Water Conditions Variance Account
  - Hydroelectric Deferral and Variance Over/Under Recovery Variance Account
- Existing Nuclear Accounts:
  - Nuclear Liability Deferral Account (Section 5.2)
  - Nuclear Development Variance Account (Section 5.4)

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[11] *Supra* Note 5 at pp. 128-142. On March 30, 2011 OPG filed a Notice of Motion to review and vary the Decision and Order, in which OPG requested the establishment of a Pension and Other Post Employment Benefits Cost Variance Account. The Motion proceeding is in progress.

- Capacity Refurbishment Variance Account
- Nuclear Fuel Cost Variance Account
- Bruce Lease Net Revenues Variance Account
- Nuclear Deferral and Variance Over/Under Recovery Variance Account

- Existing Accounts to be Continued for Recording of Amortization and Interest Amounts Only and to be Closed Upon Balances Being Recovered:
  - Hydroelectric Interim Period Shortfall Variance Account
  - Pickering 'A' Return to Service Deferral Account (Section 5(4))
  - Transmission Outages and Restrictions Variance Account
  - Nuclear Interim Period Shortfall Variance Account
- New Hydroelectric Accounts:
  - Surplus Baseload Generation (Hydroelectric)
  - Hydroelectric Incentive Mechanism

IV. ANALYSIS

A. Legal Basis for OPG's Regulatory Deferral and Variance Accounts

The legal basis for OPG's regulatory deferral and variance accounts must be considered in the context of the regulatory cycle that OPG is subject to as a rate-regulated utility, as described below.

As with other rate-regulated entities, OPG may apply to the OEB or the OEB may require OPG to apply for new payment amounts from time to time. The OEB then holds an adversarial hearing to consider the application, during which the application is subject to rigorous review and scrutiny by OEB staff members, intervening parties and the OEB panel itself. After considering the evidence and arguments presented, the OEB panel issues a Decision setting out the panel's findings with respect to each of the aspects of the application, including the various requests for cost recovery that normally comprise such an application. The Decision will also set out the OEB panel's determinations with respect to any proposed new deferral or variance accounts, the continuation of existing accounts, and the specific amounts that may be recovered with respect to the balances previously recorded in the existing accounts.

With respect to any new deferral or variance accounts that an applicant *proposes* to establish, the panel of the OEB will make a determination as to whether the applicant shall be permitted to establish such accounts and record amounts in that account. Based on OEB practice, this will generally depend upon whether the OEB is persuaded that the proposed account satisfies the criteria of causation, materiality, management inability to control and prudence. In this context, "causation" refers to the requirement that the amounts to be recorded in the proposed account must be outside of the basis upon which rates will derived for the applicable period;

"materiality" refers to the requirement that the amounts expected to be recorded in the proposed account will significantly influence the operation of the regulated business; "management inability to control" refers to the requirement that there be uncertainty associated with the amounts that are expected to be recorded in the account and, due to this uncertainty such amounts are not easily predictable and not easily controlled by the utility's management; and "prudence" refers to the need for the amounts recorded to have been prudently incurred.

If approval to establish a new account is granted by the OEB, then the utility will be obligated to accurately record relevant amounts in the account for the applicable period with the presumption that the balance of the account is accurately recorded and prudently incurred, such that it will be recoverable, subject to review by the Board for the purpose of verifying the presumption. The OEB will then need to conduct a prudence review that will normally, but not necessarily, take place in the course of reviewing a subsequent application for new payment amounts or rates by the utility.

With respect to each *existing* deferral and variance account, the panel will make findings as to whether the amounts recorded in the account have been accurately recorded and whether they are prudent. Based on these findings, the panel will determine how much the utility will recover from or return to ratepayers in respect of each account. The amounts recoverable from deferral and variance accounts may be recovered through one or more separate rate riders or through such other means as the Board approves. The rate mechanism for recovery of amounts from ratepayers or for repayment of amounts to ratepayers, as set out by the OEB, does not alter or limit OPG's right to receive or obligation to disburse prudent and accurately recorded amounts in the accounts.

The prudence review would apply the established regulatory principles referred to earlier, namely, that:

- Amounts will be deemed to be prudent in the absence of reasonable grounds to suggest the contrary;

- Costs that are found to have been dishonestly incurred, or which are negligent or wasteful losses, may be excluded from recovery; and

- The examination of prudence must be carried out without the benefit of hindsight (i.e. based on the particular circumstances at the time the decision to incur those costs was made).

1. Deferral and Variance Account Balances Pending OEB Review

OPG's legal rights in respect of its deferral and variance accounts must be considered in respect of the forgoing.

The circumstance of OPG having account balances pending OEB review arises where pursuant to an Order in a prior proceeding before the OEB, or under O. Reg. 53/05, OPG has been authorized to establish and record amounts in a deferral or variance account, either for a particular period or until such time as the OEB orders otherwise, but the period has not expired or there has not been a subsequent OEB order. While OPG will have recorded amounts in the account during that period of time, the OEB will not yet have reviewed the balances in the accounts to determine if they reflect accurately recorded and prudent amounts. The critical issue in this scenario relates to the nature of the rights conferred on OPG by the granting of

approval to establish a deferral or variance account. Where the Board authorizes OPG to establish such an account or if the account is established by regulation, OPG will have acquired a right to record amounts in such an account. These amounts, when recorded, will reflect costs that have been incurred or revenue earned by OPG for the benefit of ratepayers.

Pursuant to established principles governing the Board's obligation to review the prudence of recorded expenditures prior to allowing for their recovery, as discussed above, the expenditures recorded in the account are deemed to have been prudently incurred in the absence of reasonable grounds to suggest the contrary. As such, in our view, the granting of approval to establish a deferral or variance account confers upon OPG a legal right to record amounts in the account and to account for the amounts recorded on the basis that they have been prudently incurred. Courts have found that prudence is deemed to exist until such time as the OEB (in its discretion) may, at a later date, value or assess the balance of that account and determine that the recorded balance is wholly recoverable or that certain of the recorded amounts have in fact not been prudently incurred and are not recoverable. This subsequent assessment of prudence by the Board will therefore only have the effect of confirming or altering the specific amount that shall be recovered or that must be repaid by OPG in respect of the account. The prudence review will not affect the right to record amounts or the recovery of prudently incurred amounts.

We note that any amounts recorded in approved deferral and variance accounts must ultimately be disposed of by the OEB, whether done pursuant to an application brought to the OEB or by the OEB on its own motion. This arises from the OEB's obligation to set just and reasonable rates and payment amounts.[12]

While the focus of discussion in this section has thus far been on the rights associated with deferral and variance accounts that have been established through orders of the OEB, it is important to recognize the specific rights associated with each of OPG's accounts that arise by operation of O. Reg. 53/05.

The Mandated Continuing Accounts are clearly different from the rest of OPG's accounts because, rather than having been established on the basis of an order issued by the Board, OPG is required under O. Reg. 53/05 to have established and to maintain from the effective date of the OEB's first order under Section 78.1 of the OEB Act each of the three Mandated Continuing Accounts. OPG thereby acquired its rights resulting from the establishment of these accounts by way of regulation. As such, the OEB has no discretion with respect to the continuation of these accounts.

Moreover, for two of the Mandated Continuing Accounts, it appears that the OEB has no jurisdiction to undertake prudence reviews. These accounts - the Pickering 'A' Return to Service Deferral Account and the Nuclear Liability Deferral Account - are established on the same basis as accounts for which the OEB determined in EB-2007-0905 that it has no discretion to evaluate prudence.[13]

For the Pickering 'A' Return to Service Deferral Account, paragraph 6(2) 3 of O. Reg. 53/05 requires the OEB to ensure that OPG recovers the balance recorded in the deferral account established under subsection 5(4), which requires OPG to establish a deferral account that

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[12] *Dow Chemical Canada Inc. v. Union Gas Ltd.* (1982), 141 D.L.R. (3d) 641 at pp. 658-9 (Ont. H.C.J.), affirmed 150 D.L.R. (3d) 267 (C.A.).

[13] Ontario Energy Board, *Decision With Reasons - Application by Ontario Power Generation Inc. for Payment Amounts for Prescribed Facilities (EB-2007-0905)*, November 3, 2008 at p. 9.

records certain costs associated with the planned return to service of all units at the Pickering 'A' Nuclear Generating Station. Subsection 5(4) gave rise to a Transitional Account, as well as a Mandated Continuing Account.[14] For the Nuclear Liability Deferral Account, paragraph 6(2)7 of O. Reg. 53/05 requires the OEB to ensure that OPG recovers the balances recorded in the deferral accounts established under subsections 5.1(1) and 5.2(1). These subsections each require OPG to establish a deferral account to record the revenue requirement impacts of changes in its nuclear decommissioning liability, however 5.1(1) applies to the period prior to the OEB's first order and is therefore a Transitional Account while 5.2(1) applies to the period following the OEB's first order and is therefore a Mandated Continuing Account.[15] Based on the OEB's findings in EB-2007-0905 that it had no discretion to evaluate prudence with respect to the Transitional Accounts under subsections 5(4) and 5.1(1), it appears that the Board would similarly have no discretion to evaluate prudence with respect to the Mandated Continuing Accounts established under subsections 5(4) and 5.2(1) of O. Reg. 53/05.

For the Capacity Refurbishment Variance Account, which is a Board Ordered Continuing Account, the OEB notes in its Decision in EB-2007-0905 that this account is required in light of the obligation imposed on the Board by paragraph 6(2)4 of O. Reg. 53/05.[16] Under 6(2)4, the Board is required to ensure that OPG recovers the amounts recorded in this account. If such amounts were within project budgets approved by OPG's Board of Directors prior to the Board's first order under Section 78.1 but where such costs were actually incurred and recorded in the account subsequent to the Board's first order, then it appears based on a reading of 6(2)4 that an argument could be made that the OEB would have no jurisdiction to evaluate prudence. However, if the amounts were not approved by OPG's Board of Directors prior to the first order of the Board, then this argument would not be available.

Finally, special consideration should be given to the Bruce Lease Net Revenues Variance Account. As noted earlier, this account was not expressly mandated by O. Reg. 53/05 but in its Decision the Board determined that it was necessary for OPG to establish this account in order to give effect to certain provisions of O. Reg. 53/05.[17] In particular, the Board directed OPG to establish this account in order to give effect to paragraphs 6(2)9 and 6(2)10 of the regulation. Paragraph 6(2)9 requires the OEB to ensure that OPG recovers all of the costs it incurs with respect to the Bruce Nuclear Generating Stations. Paragraph 6(2)10 provides that if OPG's revenues earned from the Bruce Nuclear Generating Stations exceed OPG's costs in respect of those stations, then the excess shall be applied to reduce OPG's revenue requirement for purposes of the payment amounts under Section 78.1(1) of the OEB Act. Based on its findings in EB-2007-0905, it seems that the Board will be obligated to require that OPG maintain this account for so long as it leases the Bruce Nuclear Generating Stations. In addition, based on paragraph 6(2)9, which does not expressly require the OEB to undertake a prudence review, it appears that an argument could be made that the OEB does not have jurisdiction to carry out a prudence review of costs recorded in this account.

In summary, OPG acquires rights, as described above, in connection with its deferral and variance accounts, either from O. Reg. 53/05 or from the granting of approval by the OEB to establish such accounts. For some of the accounts established under O. Reg. 53/05, it appears that the OEB has no discretion with respect to their continuation. Moreover, for certain of the

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[14] Ibid at p. 122.

[15] Ibid.

[16] Ibid at p. 123.

[17] Ibid at p. 112.

accounts established under O. Reg. 53/05, as discussed, the OEB has no jurisdiction to evaluate the prudence of recorded amounts.

2. Deferral and Variance Account Balances Approved for Incorporation into Payment Amounts

In the scenario being considered here, OPG has in a prior proceeding or by way of O. Reg. 53/05 been authorized to establish a deferral or variance account. OPG has recorded amounts in the account over the applicable period and it has applied to the OEB, as part of a comprehensive application to determine new payment amounts for its regulated facilities or through a separate proceeding, to dispose of the balance of that account as of a particular date. The OEB has reviewed the balance of the account to ensure that it reflects amounts that are prudent and accurately recorded. Based on its review, the OEB has determined a specific amount as being the balance of the account and has also given approval for OPG to recover that amount over a particular period.

Further to the rights conferred upon OPG on being authorized to establish the account, as described in the previous section, in this scenario, as a result of the OEB having carried out the prudency review (where it has the jurisdiction to do so) and issued its Decision, the specific balance for the account that OPG will be allowed to recover will have been established. Based upon the law set out above, OPG will have a legal right to recover (or legal obligation to repay) that balance, pursuant to a payment amounts order issued by the OEB and the IESO will be required to recover the balance and remit it to OPG (or recover the balance from OPG and repay it to consumers) in accordance with the OEB's order.

B. Regulatory Assets in the Absence of Future Services

As noted, you have asked us to consider whether deferral and variance account balances are recoverable (or payable) in a circumstance where OPG ceases operations and does not have any energy output from its prescribed facilities. Our consideration of this issue is set out below.

It is our opinion based on the analysis below, that the OEB has both the obligation and the jurisdiction to establish a rate or payment amount that would allow OPG to recover prudently incurred and accurately recorded amounts recorded in a deferral or variance account notwithstanding that OPG produces no output. The OEB's obligations with respect to reviewing and disposing of the balances recorded in the accounts are not altered by the fact that there is no future output, as the amounts recorded in the accounts are part of the OEB's determination of "just and reasonable" rates or payment amounts.

A circumstance where there is no output would imply that the current volumetric rate through which OPG recovers costs (dollars per MWh produced) would not permit recovery of costs. As a result, an alternative rate formulation with a fixed charge or a volumetric rate recoverable from energy consumed, rather than produced, would have to be implemented to recover costs prudently incurred, including amounts recorded in variance and deferral accounts. Therefore, the question is whether the OEB can establish a rate or payment amount that is not based on dollars per output and would permit recovery of deferral or variance account balances.

As noted above, whether an expenditure is prudent must be based on the particular circumstances at the time the decision to incur the cost was made.[18] As deferral and variance

[18] *Supra* note 4.

account balances reflect costs previously incurred or revenues previously earned, it is reasonable to conclude that, based upon a set of facts, once these costs or revenues have been found to be prudent by the OEB, then they will remain prudent and recoverable irrespective of the lack of future output. Likewise, for amounts recorded in a deferral or variance account established by the OEB or under O. Reg. 53/05, but not yet assessed as to whether they are prudent, the amounts recorded are presumed at law to have resulted from prudent actions, unless shown to be otherwise. As discussed above, the Board has the obligation to establish just and reasonable rates, which includes the establishment of deferral and variance accounts and their subsequent disposition. If the Board has the power to direct the segregation of expenditures pending a rate application, it must by necessary implication have the power to direct the applicant to deal with the amounts so separated in a future rate application. Courts have found that:

> It cannot reasonably be presumed that the legislature intended to so truncate the Board's jurisdiction so as to allow it to accomplish only a partial result, with no power to finalize and complete a regulatory order. When legislation attempts to create a comprehensive regulatory framework, the tribunal must have the powers which by practical necessity and necessary implication flow from the regulatory authority explicitly conferred upon it.[19]

The OEB has both the jurisdiction and the obligation to establish a rate or payment amount that allows OPG to recover such prudently incurred amounts in the event that there is no output by OPG's prescribed facilities. The OEB also has jurisdiction to set payment amounts on a non-volumetric basis. Based on Subsections 78.1(4) and (5) of the OEB Act, as well as from section 6(1) of O. Reg. 53/05, the OEB has broad jurisdiction in the setting of payment amounts for OPG's regulated facilities, including the power to set payment amounts on a non-volumetric basis so long as such amounts are consistent with the just and reasonable standard. These provisions are as follows:

- Section 78.1(4) provides that "the Board shall make an order under this section in accordance with the rules prescribed by the regulations and may include in the order conditions, classifications or practices, including rules respecting the calculation of the amount of the payment. (emphasis added)

- Section 78.1(5) provides that "the Board may fix such other payment amounts as it finds to be just and reasonable, (a) on an application for an order under this section, if the Board is not satisfied that the amount applied for is just and reasonable; or (b) at any other time, if the Board is not satisfied that the current payment amount is just and reasonable. (emphasis added)

- Section 6(1) of O. Reg. 53/05 states that "Subject to subsection (2), the Board may establish the form, methodology, assumptions and calculations used in making an order that determines payment amounts for the purpose of section 78.1 of the Act." (emphasis added)

Therefore, based on the foregoing, the OEB's obligations are twofold. First, the legislature has imposed on the OEB an obligation - pursuant to section 78.1(4) - when making a payment amount order for OPG to follow the rules prescribed by the regulations. Second, the legislature has imposed on the OEB an obligation - pursuant to section 78.1(5)(a) - to set just and reasonable payment amounts in respect of amounts that do not arise from section 78.1(4). More specifically, under section 78.1(4), the OEB is required to make its payment amount order for

[19] *Supra* note 12.

OPG in accordance with the provisions set out in O. Reg. 53/05. To the extent that there are payment amounts associated with the prescribed facilities but which are outside the scope of O. Reg. 53/05, pursuant to section 78.1(5) the OEB is permitted to establish such other payments so long as those other payment amounts are found to be just and reasonable. The OEB will have the opportunity to establish such other just and reasonable payment amounts either on an application for an order under section 78.1 or at any other time on the OEB's own motion.

Various utilities in Ontario have from time to time levied OEB-approved fixed charges. The OEB has jurisdiction to establish a rate or payment amount permitting the recovery by OPG of a fixed charge if the charge is just and reasonable.

Under the legislative scheme the OEB has jurisdiction to establish the rate or payment amount pursuant to Section 78.1 of the OEB Act. The IESO has the obligation to pay that rate or payment amount to OPG and is subject to the OEB's authority to set the payment amount. Subsection 78.1(2) provides as follows:

> Each payment referred to in Subsection (1) shall be the amount determined, ...
>
> (b) In accordance with the order of the Board then in effect to the extent that payment relates to a period that is on or after the later of,
>
> (i) the date prescribed for the purposes of this subsection, and
>
> (ii) the effective date of the Board's first order under this section in respect of the generator." (emphasis added)

The reference to subsection (1) in Subsection 78.1(2) is in regard to the provision which states:

> The IESO shall make payments to a generator prescribed by the regulations... with respect to output that is generated by a unit at a generation facility prescribed by the regulations. (emphasis added)

We note that Subsection 78.1(1) makes reference to payments to a generator "with respect to output that is generated." However, this language does not imply that the rate or payment amount is to be limited to a volumetric payment on the basis of dollars per MWh produced.

The modern principle of statutory interpretation states that "the words of an act are to be read in their entire context, in their grammatical and ordinary sense harmoniously with the scheme of the act, the object of the act and the intention of parliament."[20] On this basis, in regard to the judicial interpretation of the words "with respect to" found in Subsection 78.1(1), these words have been interpreted to have a similar meaning as terms such as "in relation to", "with reference to" or "in connection with".[21] In *Markevich v. Canada*, Major J. of the Supreme Court of Canada wrote:

> The words "in respect of" have been held by this Court to be words of the broadest scope that convey some link between two subject matters. See *Nowegijick v. The Queen*, [1983] 1 S.C.R. 29, at p. 39, per Dickson J. (as he then was):

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[20] Elmer A. Driedger, *The Construction of Statutes* (Toronto: Butterworths, 1974) , at p. 67, as cited in Sullivan, *Supra* note 1 at p. 1.

[21] *Skelly v. Assist Realty Ltd.*, (1991), 16 C.H.R.R. D/1 at D/6, 92 C.L.L.C. 17, 014 (B.C. Human Rights Council).

> The words "in respect of" are, in my opinion, words of the widest possible scope. They import such meanings as "in relation to", "with reference to" or "in connection with". The phrase "in respect of" is probably the widest of any expression intended to convey some connection between two related subject matters.[22]

As a result, a court would likely interpret Subsection 78.1(1) to mean that the IESO must make payments to OPG that have some connection with output that is generated by the units at OPG's regulated facilities. Payment amounts related to deferral and variance accounts recovered during periods where there are no outputs fit within this interpretation as those balances reflect or have some connection with past output from the prescribed facilities.

In addition, this interpretation is consistent with the presumption, in the interpretation of statutes, against internal conflict. Sullivan in her authoritative text states:

> The parts are presumed to fit together logically to form a rational, internally consistent framework; and because the framework has a purpose, the parts are also presumed to work together dynamically, each contributing something toward accomplishing the intended goal. This presumption is the basis for analyzing legislative schemes, which is often the most persuasive form of analysis. The presumption of coherence is also expressed as a presumption against internal conflict. It is presumed that the body of legislation enacted by a legislature does not contain contradictions or inconsistencies . . .[23]

It is internally consistent to interpret the legislative scheme of Section 78.1 as imposing upon the OEB the obligation to set rates or payment amounts in the manner described above, including the obligation to authorize the recovery of deferral and variance account balances, with full and broad powers to do so and imposing upon the IESO the responsibility for paying to OPG the payment amounts prescribed by the Board's order. In the circumstance where there is no output from the prescribed facilities, such a payment amount could reflect a fixed charge or some other form of charge not on a volumetric basis for the output of the prescribed facilities so as to allow for the recovery of OPG's deferral and variance account balances.

C. Recovery of Approved Balances

Once the OEB has approved recovery of an account balance, the specific amount OPG will be entitled to recover through payment amounts is approved by the OEB. As noted, the IESO's obligation to pay that rate or payment amount to OPG is subject to the OEB's authority to set the payment amount. In this context, you have asked us to consider how OPG can be assured that the IESO will actually collect and pay those amounts to OPG. In this regard, we will consider the legal requirement for the IESO to collect the amounts on behalf of OPG and whether the IESO has effective mechanisms in place to ensure its ability to collect those amounts in full.

1. Powers and Duties of the IESO

The IESO is established under Part II of the *Electricity Act, 1998* (the "*Electricity Act*") as a corporation without share capital.[24] The business and affairs of the IESO are required by

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[22] [2003] S.C.J. No. 8, [2003] 1 S.C.R. 94 (S.C.C.).

[23] Sullivan, *Supra* note 1 at 223.

[24] *Electricity Act, 1998*, S.O. 1998, c. 15, Sched. A, Subsection 4(1).

legislation to be carried out without the purpose of gain and any profits must be used by the IESO for the purpose of carrying out its objects.[25] Among other things, the IESO's statutory objects include the exercise of the powers and the performance of the duties assigned to it under the *Electricity Act*, the Market Rules and it's licence.[26]

In accordance with its objects, under the *Electricity Act*, the IESO may make rules governing the IESO controlled-grid. Such rules may include provisions, among other things, authorizing and governing the making of orders by the IESO, including orders imposing financial penalties on electricity market participants, authorizing a person to participate in the IESO-administered market, or terminating, suspending or restricting a person's rights to participate in the IESO-administered markets.[27] The rules made by the IESO under Section 32 of the *Electricity Act* are the *Market Rules for the Ontario Electricity Market* or, more commonly, the "Market Rules".[28]

With respect to the IESO's obligations under Section 5(1) of the *Electricity Act* to exercise the powers and perform the duties assigned to it under it's licence, this refers to the licence that the IESO is required to obtain and hold from the OEB in order to operate the market established by the Market Rules.[29] The IESO's current system operator licence took effect on July 31, 2008 and is currently valid until July 30, 2013.[30] By issuing the licence, the OEB authorizes the IESO to direct the operation of the transmission system in accordance with the Market Rules, applicable agreements and subject to the conditions set out in the licence.[31] The licence also authorizes the IESO to operate the IESO-administered markets and to do such things as may be permitted by the Market Rules or required to be done by the IESO to further the establishment and operation of the market.[32] Under the licence, the IESO is required to comply with all applicable provisions of the Market Rules.[33]

Consistent with its status as a not-for-profit corporation, the IESO fulfills its statutory mandate by acting as a clearinghouse to settle the flows of money between persons that are authorized to participate in the IESO-administered electricity market. To understand the flows of money in the market, it is first helpful to understand at a very basic level the flow of electricity in the market. Put simply, electricity generators provide electricity to the IESO-controlled grid. This electricity generally flows from generating stations, along transmission lines operated by transmitters, and then either to loads, such as large industrial facilities, that are directly connected to the transmission system or to distribution systems operated by local distribution companies that deliver the electricity to residential customers, small businesses and other end-users.

With respect to the flow of money in the market, distributors are responsible for collecting payments from their customers based on quantities of electricity consumed, together with any

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[25] *Ibid*. at Subsection 5(2).

[26] *Ibid*. at Subsection 5(1).

[27] *Ibid*. at Section 32.

[28] See http://www.ieso.ca/imoweb/pubs/marketRules/mr_marketRules.pdf

[29] *Ontario Energy Board Act*, Subsection 57(h).

[30] *Independent Electricity System Operator Licence, EI-2008-0096*, Issued by the Ontario Energy Board June 26, 2008 and corrected October 23, 2008.

[31] *Ibid* at Section 3.1.

[32] *Ibid* at Section 3.2.

[33] *Ibid* at Section 7.1.

other charges that are required to be collected.[34] The IESO then receives these amounts from distributors, as well as amounts from directly connected loads. From these sources of incoming payments, the IESO is then required to ensure that distributors and transmitters receive the amounts that they are approved to receive pursuant to rates set by the OEB. The IESO must also ensure that generators are paid the amounts that they are entitled to be paid for the injection of electricity into the IESO-controlled grid.. This includes generators under contract with the OPA or Ontario Electricity Financial Corporation ("OEFC"), as well generators, namely OPG, whose payment amounts are established by order of the OEB pursuant to Section 78.1 of the OEB Act. Other than keeping the amounts that the IESO is permitted to keep in accordance with its own rate order from the OEB, which amounts cover the IESO's internal operating costs, the IESO is required to remain not-for-profit: all amounts that it receives from market participants must be paid out to such other market participants who have regulatory or contractual rights to receive payments from those collected amounts.

2. The Market Rules

The Market Rule requirements that apply to persons seeking authorization to participate in the Ontario electricity market are key to the IESO's ability to collect amounts and remit payment to OPG. In accordance with the Market Rules, no person shall participate in the IESO-administered markets unless that person has been authorized by the IESO to do so.[35] Moreover, no person shall be authorized by the IESO to be a market participant unless the IESO is satisfied:

- that the person agrees to be bound by the Market Rules by executing a participation agreement,[36]

- that the person will satisfy the prudential support requirements of Appendix 2.3 of the Market Rules and any other financial requirements set forth in the Market Rules applicable to all market participants,[37] and

- that the person holds a licence from the Ontario Energy Board permitting them to, among other things, own or operate a distribution system or a transmission system, or permitting them to generate electricity for sale through the IESO-administered market, to retail electricity, to purchase electricity through the IESO-administered market, or to sell electricity through the IESO-administered market.[38]

Once satisfied that the application for participation is complete, the IESO may authorize the applicant to participate in the IESO-administered market, but only if the applicant files an executed participation agreement in such form as established by the IESO.[39] Under the participation agreement, the IESO and the market participant agree, among other things, to be

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[34] Distributor rights and powers with respect to collection are governed by the *Distribution System Code* and the *Retail Settlement Code*, discussion of which is beyond the scope of this letter.

[35] *Market Rules*, Chapter 2, Section 1.2.1.

[36] *Ibid* at Section 1.2.2.3.

[37] *Ibid* at Section 1.2.2.2.

[38] *Ibid* at Section 1.2.2.4.

[39] *Ibid* at Section 3.1.5.2.

bound by and to comply with the Market Rules.[40] The IESO's established form of participation agreement, which is published as part of the Market Rules, provides as follows:

> **Article 3 - Compliance with Market Rules**
>
> 3.1 **Applicant Compliance:** The Applicant hereby agrees to be bound by and to comply with all of the provisions of the market rules so far as they are applicable to the Applicant once it has been authorized by the IESO as a market participant.
>
> 3.2 **IESO Compliance:** The IESO hereby agrees to be bound by and to comply with all of the provisions of the market rules so far as they are applicable to the IESO.[41]

By virtue of Article 3, the Market Rules are effectively incorporated by reference into and therefore form part of the participation agreement. Indeed, as noted in the recitals set out in the participation agreement, "the market rules contemplate that the market rules will have the effect of a contract between each market participant and the IESO by virtue of the execution of a participation agreement."[42] As an authorized market participant, OPG has entered into a participation agreement with the IESO under which each party has agreed to be bound by and to comply with the Market Rules insofar as they are applicable to one another. Accordingly, by means of the participation agreement, the IESO is contractually obligated to pay OPG the amounts that OPG has a right to receive and, furthermore, to collect such amounts in accordance with the Market Rules in order to meet its payment obligations to OPG. Under this contractual relationship, in the event of non-payment, there would be remedies available to OPG pursuant to the dispute resolution mechanisms under the Market Rules, through the Ontario Energy Board and through the Courts.

In addition to making such authorization conditional on the filing of an executed participation agreement, the IESO's authorization is conditional upon the person satisfying the prudential support requirements set out in the Market Rules.[43]

Prudential support is financial security to cover financial obligations that a market participant might owe to the market in the event the market participant is unable to pay. Each market participant is required to meet its obligation under the Market Rules to provide and to maintain prudential support by providing to the IESO, and maintaining with the IESO, prudential support in an amount determined in accordance with the Market Rules.[44] The amount of prudential support that must be provided will reflect the market participant's maximum net exposure, less any allowable reductions, as calculated in accordance with Chapter 2 of the Market Rules.[45]

If a market participant does not make a payment in full when due, where such payment is required under the Market Rules, this will be an event of default under the Market Rules.[46]

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[40] *Ibid*. See also Market Rules, Chapter 11 (Definitions), "participation agreement".

[41] IESO, *Participation Agreement*, Issue 14.0, June 2, 2010.

[42] *Ibid*. at Recital 'D'.

[43] *Market Rules*, Chapter 2, Section 1.2.2.2.

[44] *Ibid*. at Section 5.7.1.

[45] See Section 5.3 re calculation of maximum net exposure and Section 5.8 re allowable reductions.

[46] *Market Rules*, Chapter 3, Section 6.3.1.1.

Where such an event of default has been committed by a market participant, the IESO has the right to issue a notice of intent to suspend the market participant unless it remedies the default within the specified period and to immediately draw upon part or all of the market participant's prudential support for any amount owing to the IESO.[47] The market participant may remedy the event of default by satisfying any outstanding financial or other obligations giving rise to the event of default and by satisfying the IESO that the circumstances which constituted the event of default no longer exist.[48] If the market participant has not remedied the event of default within the applicable period or due to persistent breaches of the Market Rules, the IESO may issue a suspension order to the market participant, rendering them ineligible to trade or enter into any transactions in the IESO-administered markets or to cause or permit electricity to be conveyed into, through our out of the IESO-controlled grid.[49]

Where the IESO has issued a suspension order to a defaulting market participant, the IESO has the right to issue a notice of default levy and to take any steps that it has not already taken to realize any prudential support held in respect of that defaulting market participant.[50] The IESO then has the ability to impose one or more default levies on non-defaulting market participants.[51] This power to impose a default levy provides the IESO with the right to recover from all non-defaulting market participants any amounts owing to the IESO and that have not been paid in full by the defaulting market participant, along with any costs and expenses reasonably incurred by the IESO to investigate the default and to realize any prudential support and to implement the default levy.[52]

The IESO, therefore, does not assume any debt in the circumstances of a market participant defaulting on a payment. Rather, the IESO will first try to recover the full amount of the default, along with related costs and expenses, by realizing on the prudential support provided by the defaulting market participant. To the extent that there are any further amounts owing to the IESO, the IESO will then issue a default levy in order to recover such further amounts from all non-defaulting market participants. If the IESO is subsequently able to recover further amounts from the defaulting market participant, then such amounts will be allocated back to those non-defaulting market participants on whom the default levy was previously imposed.[53] In short, the Market Rules ensure that the IESO remains revenue neutral, while ensuring its ability to make all payments that it is required to make, including payments to generators such as OPG.

Also worth noting is Section 5.4 of the participation agreement, which establishes the ongoing liability of market participants as follows:

> 5.4 **Ongoing Liability:** Notwithstanding the provisions of section 5.2 or 5.3 above, if the Applicant becomes a terminated market participant or otherwise ceases to be a market participant, as the case may be, the Applicant shall remain subject to and liable for all of its obligations and liabilities as a market participant which were incurred or arose under the market rules prior to the date on which the termination order was issued or the date on

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[47] *Ibid*. at Section 6.3.3.

[48] *Ibid*. at Section 6.3.6.

[49] *Ibid*. at Sections 6.3A.1 and 6.3A.3.

[50] *Market Rules*, Chapter 2, Section 8.2.2.

[51] *Ibid*. at Sections 8.3 and 8.4.

[52] *Ibid*. at Section 8.1.1.

[53] *Ibid*. at Section 8.8.2.

> which it otherwise ceased to be a market participant, as the case may be, regardless of the date on which any claim relating thereto may be made.

Pursuant to Section 78.1 of the OEB Act, the IESO is required to make such payments to OPG in accordance with orders from the OEB. By statute, the IESO is established as a corporation, the business of which, by legislation, is to be carried out without the purpose of gain or profit. As such, all money it collects must be used for the purpose of fulfilling its obligations in respect of the IESO-administered market and the IESO-controlled grid. These purposes include the making of payments to OPG in accordance with orders of the OEB under Section 78.1. Moreover, by entering into participation agreements, the IESO and market participants such as OPG agree to be contractually bound by the Market Rules. To remain revenue neutral, consistent with its not-for-profit status, under the Market Rules, if any market participant fails to make a payment, including in respect of amounts associated with OPG's deferral and variance accounts, then the IESO has various remedies available to ensure it can collect the funds it needs to make the payments it is required to make to OPG and other generators.

3. Significance of IESO's Licence

You have asked us to consider whether OPG's ability to collect amounts recorded in its deferral and variance accounts, pursuant to an order by the OEB under Section 78.1 of the OEB Act, is dependent upon the renewal of the IESO's licence. It is our conclusion that the IESO's obligation to pay the payment amounts to OPG as a prescribed generator under Subsections 78.1(1) and 78.1(2)(b) is a legal obligation that is independent of the IESO's licensing requirements.

As noted, the IESO currently holds an electricity system operator licence (EI-2008-0096), which took effect on July 31, 2008 and is valid until July 30, 2013. The OEB may extend the term of this licence pursuant to section 5.1 of the licence. For the five-year period prior to the effective date of its current licence, the IESO held a similar licence (EI-2003-0088) from the OEB. The requirement to hold such a licence arises from Section 57 of the OEB Act, which states, among other things, that "no . . . person shall, unless licensed to do so under this Part, . . . (g) direct the operation of transmission systems in Ontario; (or) (h) operate the market established by the market rules."[54]

By issuing the licence, the OEB licenses the IESO to:

> direct the operation of the transmission system(s) in accordance with Agreements and the Market Rules, subject to the conditions set out in this Licence (and)
>
> operate the IESO administered markets and to do such things as may be permitted by the Market Rules or required to be done by the Licensee in furtherance of the establishment and operation of the market(s) to be administered by the Licensee, subject to the conditions set out in this Licence.[55]

The licence also requires the IESO to comply with all applicable Market Rules.[56]

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[54] *Ontario Energy Board Act*, Subsections 57(g) and (h).

[55] *Independent Electricity System Operator Licence* (EI-2008-0096), Section 3.

[56] *Ibid*. at Section 4.

It is important to place the IESO's licence in context. In the context of the legislative scheme governing Ontario's electricity system, the IESO's licence is not the only aspect that gives authority to or imposes obligations on the IESO. In fact, the IESO has various statutory obligations which exist independently of the IESO's licence and are not undertaken by the IESO as a condition of the licence.

As noted, Subsection 78.1(1) imposes on the IESO the obligation "to make payments to a generator prescribed by regulations" and Subsection 78.1(2)(b) requires that such payment be in accordance with the order of the OEB. These provisions are significant since, based upon the wording of these provisions: (1) the IESO's obligation to pay the prescribed generator, OPG, is not subject to the IESO's licences; and (2) the IESO's obligation to pay is subject to the OEB order, which must discharge the OEB's obligation to set payment amounts in accordance with the regulations and the just and reasonable standard (as applicable).

As noted above, the licence and the requirement to obtain a licence is limited in its scope to the direction of the operation of the transmission system and the operation of the market established by the market rules. Pursuant to the market rules, the IESO and market participants are bound to those market rules by way of a contractual arrangement, which is established by the participation agreement that is signed by the IESO and all market participants. The IESO's obligations under section 78.1(1) and section 78.1(2)(b) are not governed by the market rules or the contractual arrangement underlying the market rules. Therefore, one can reasonably conclude that the IESO's obligations under section 78.1(1) and section 78.1(2)(b) exist independent of the licence from the OEB. If the licence ceased to exist, the obligations of the IESO and those of the OEB under Section 78.1 would remain.

Similar to the obligation on the IESO under Section 78.1 of the OEB Act, the legislative scheme also establishes obligations for the IESO to make payments under Sections 78.2 to 78.5 of the OEB Act:

- Under 78.2, the IESO is required to make payments to the Ontario Electricity Financial Corporation (OEFC) with respect to electricity supply contracts that the OEFC has with generators.

- Under 78.3, the IESO is required to make payments to the OPA with respect to electricity output generated by units at facilities in respect of which the OPA has entered into procurement contracts.

- Under 78.4, the IESO is required to make payments to the OPA with respect to amounts payable to entities with whom the OPA has entered into procurement contracts for electricity generation capacity.

- Under 78.5, the IESO is required to make payments to distributors or the OPA with respect to amounts approved by the OEB for conservation and demand management programs.

In each of these circumstances, the obligation on the IESO is established by legislation and is independent of any obligations that might otherwise be imposed on the IESO under a licence issued by the OEB.

The IESO also has a number of rights, powers and obligations under Parts II.2 and III of the *Electricity Act* in respect of the electricity markets and the management of supply, capacity and demand. One such obligation, which is of particular significance, is the requirement under

Section 25.33 of the *Electricity Act* for the IESO, through its billing and settlement systems, to make adjustments in accordance with regulations to ensure that, over time, payments by classes of market participants in Ontario that are prescribed by regulation reflect amounts paid, in accordance with the regulations, to generators, distributors, the OPA and the OEFC, whether the amounts are determined under the Market Rules or under Sections 78.1 to 78.5 of the OEB Act. The adjustments that the IESO is required to make under this provision, which are further described in O. Reg. 429/04, are known as the "Global Adjustment".

The administration of the Global Adjustment is a critical function established by legislation as it results in the collection and payment of amounts which are based on the difference between the total of all market payments for electricity consumed in the province and the total of all rates and payment amounts to which generators under contract with the OPA and regulated generators are entitled. For OPG, the Global Adjustment ensures that the IESO determines, collects and then pays to OPG the differences between the market price for generation from its prescribed facilities and the regulated rates established by the OEB under Section 78.1 for the prescribed facilities. The IESO's obligation to perform the Global Adjustment is imposed by legislation and is detailed in the regulations thereunder. This obligation is legally independent of any obligations that might otherwise be imposed on the IESO under a licence issued by the OEB.

A decision by the OEB to renew or terminate the IESO licence must be considered within the limits of OEB's jurisdiction. The framework within which the OEB is empowered to make decisions was recently summarized by the Ontario Court of Appeal in *Toronto Hydro-Electric System Ltd. v. Ontario (Energy Board)*, as follows:

> The analysis must begin with the legislation that establishes the OEB and gives the OEB its powers. The OEB's objectives in respect of electricity are stated in s. 1 of the *Ontario Energy Board Act*, 1998, S.O. 1998, c. 15, Sch. B (the "Act"):
>
> > *Boards objectives, electricity*
> >
> > *1.(1) The Board, in carrying out its responsibilities under this or any other Act in relation to electricity, shall be guided by the following objectives:*
> >
> > *1. To protect the interests of customers with respect to prices and the adequacy, reliability and quality of electricity service.*
> >
> > *2. To promote economic efficiency and cost effectiveness in the generation, transmission, distribution, sale and demand management of electricity and to facilitate the maintenance of a financially viable electricity industry.*
>
> In short, the OEB is to balance the interests of ratepayers in terms of prices and service while at the same time ensuring a financially viable electricity industry that is both economically efficient and cost effective.[57] (emphasis added)

With respect to the circumstances where a decision of a tribunal, such as the OEB, will be found to be outside of its jurisdiction and therefore invalid, the court goes on to state:

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[57] *Toronto Hydro-Electric System Ltd. v. Ontario (Energy Board)*, 99 O.R. (3d) 481, Ont. C.A., Apr. 20, 2010 (leave to appeal to SCC denied, Dec. 2, 2010) at paras 12 to 14.

> Courts should hesitate to analyze the decisions of specialized tribunals through the lens of jurisdiction unless it is clear that the tribunal exceeded its statutory powers by entering into an area of inquiry outside of what the legislature intended. If the decision of a specialized tribunal aims to achieve a valid statutory purpose, and the enabling statute includes a broad grant of open-ended power to achieve that purpose, the matter should be considered within the jurisdiction of the tribunal. ...In contrast, where a tribunal is pursuing an illegitimate objective, or is engaging in actions that clearly defy the limits of its statutory authority, then a reviewing court may properly declare its decisions to be *ultra vires* (i.e. beyond its power or authority).[58] (emphasis added)

Based on the foregoing, it is clear that the OEB is required to make decisions, including licensing decisions, in accordance with its mandate to protect the public interest as set out in Section 1(1) of the OEB Act. Statutory objectives imposed on a tribunal, such as those listed in Section 1(1) of the OEB Act, limit the extent of the tribunal's discretion in making decisions, as delegated by the Legislature, and the tribunal has no power to make a decision outside of the limits of the discretion granted to it.[59] Any attempt to do so will, upon review by a court, be deemed *ultra vires* and declared invalid.[60] The OEB's public interest mandate includes the need to protect the interests of ratepayers, as well as to ensure the maintenance of a financially viable electricity industry. To the extent that the OEB makes a decision that is inconsistent with these statutorily mandated objectives, a reviewing court would, therefore, be likely to declare such decision to be invalid on the basis that the OEB acted outside of its jurisdiction in making the decision. The OEB cannot arbitrarily decide to cancel the IESO's licence or to not renew the IESO's licence. Rather, the OEB must make licensing decisions in accordance with its public interest mandate.[61]

In exercising its licensing powers, the OEB's discretion is constrained by the need to fulfill its statutory public interest mandate in conjunction with its obligation to set just and reasonable rates and payment amounts. Under Section 78.1, the OEB is obligated to make payment amount orders in accordance with the regulation and in accordance with the just and reasonable standard (as applicable) in connection with OPG's prescribed facilities. The obligations are not conditional upon the OEB issuing or renewing the IESO's licence. Although the obligation under Subsections 78.1(1) and 78.1(2)(b) is legally independent from the IESO's licence, if the licence is terminated or not renewed, then the obligation under Subsections 78.1(1) and 78.1(2)(b) would continue. However, from a practical perspective, without a valid licence the IESO would not be in a position to carry out the settlement function for the market under the market rules by flowing funds between customers or end-users and generators. Since the underlying obligations in Section 78.1 (and other statutory provisions set out above) are not eliminated as a consequence of licence termination, this appears to be an impractical result.

The OEB has an obligation to act and make decisions in accordance with its public interest mandate, which includes an obligation to establish just and reasonable payment amounts for OPG under Section 78.1. As discussed earlier in this letter, the Supreme Court of Canada has described just and reasonable rates as "rates, which, under the circumstances, would be fair to the consumer on the one hand, and which, on the other hand, would secure to the company a fair return for the capital invested."[62] Fair compensation to a utility is comprised of the right to recover all prudently incurred costs, and the right to a fair return on invested capital. As noted,

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[58] *Ibid*. at para 24 (parenthesis and emphasis added).

[59] See D. Jones and A. de Villars, *Principles of Administrative Law* (5th ed.), Carswell, 2009 at p. 93-94.

[60] *Ibid*. at 94.

[61] *Toronto Hydro-Electric System Ltd. v. Ontario (Energy Board), Supra* note 58.

[62] *Supra* note 2.

allowing a utility to earn a fair return has been regarded by the courts as being essential to the preservation of the financial integrity of a utility, which is of mutual concern to the utility and its customers.[63] Accordingly, in the context of its public interest mandate, which includes the objective of facilitating the maintenance of a financially viable electricity industry and establishing just and reasonable rates and payment amounts, it is necessary for there to be an effective mechanism in place that enables OPG to actually receive its payment amounts pursuant to orders of the OEB under Section 78.1.

It would be incumbent on the OEB to consider these significant implications in the course of exercising its licensing authority in accordance with the public interest and its purposes and objects under Section 1 of the OEB Act. A decision to the contrary would be beyond its jurisdiction and could be rendered null and void by a reviewing court.[64]

Accordingly, the OEB would only be able to cancel or refuse to renew the IESO's licence (a) if it could find that doing so would be in the public interest, and (b) if it is able to meet its statutory obligations, including its obligations in respect of setting just and reasonable payment amounts that provide for a fair return to OPG. In exercising its licensing powers, the OEB would also have to consider that, as discussed, the IESO's obligations under Section 78.1 exist independent of and are outside the scope of the licence from the OEB.

D. Reliance

This opinion is given exclusively in connection with the consideration by OPG, as well as OPG's accounting advisors and auditors, of the appropriate treatment of OPG's regulatory deferral and variance accounts for financial reporting purposes under IFRS and for no other purpose. This opinion is addressed to and is solely for the benefit of OPG and may not be relied upon by any other person including, but not limited to, OPG's accounting advisors and auditors.

We trust the forgoing is satisfactory.

Yours truly,

Torys LLP

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[63] *Supra* note 7.

[64] *Supra* note 59 at 188-189.

OPG IFRS Accounting for rate regulated activities_May27_E&Y Combined.pdf

The Recognition of Ontario Power Generation Inc.'s Assets and Liabilities Resulting from Rate Regulation

Conclusion

Based on the arguments presented in this paper, OPG is of the opinion that non-recognition of OPG's variance and deferral accounts resulting from rate regulation would not satisfy the requirements of International Financial Reporting Standards (IFRS) to report revenue, expenses, financial assets and financial liabilities.

Management believes that where OPG has under-recovered its revenue from ratepayers and the balances in the Ontario Energy Board (OEB) approved variance and deferral accounts, and those established under Ontario Regulation 53/05 of the OEB Act, 1998, (Reg. 53/05), are in a receivable position that recognition on the statement of financial position meets the International Accounting Standards Board's (IASB) definition of a financial asset under International Accounting Standard (IAS) 32, Financial Instruments: Presentation. The financial asset should be measured at its expected present value.

Management also believes that where OPG has over-recovered amounts from ratepayers and the balances in the OEB approved variance and deferral accounts, and those established under Reg. 53/05, are in a liability position that the recognition on the statement of financial position meets the definition of a financial liability under IAS 32. The financial liability should be measured at its expected present value.

These conclusions are based on OPG's right, as a prescribed generator operating prescribed facilities, to fair compensation. Fair compensation to OPG as set out in the OEB Act is comprised of two elements: (1) the right to recover all prudently incurred costs, and (2) the right to a fair return on invested capital. Accordingly, OPG's revenue is defined as a function of the cost incurred to provide service. These conclusions are also based on the fact that the collection and repayment of amounts in the variance and deferral accounts is not dependent on the provision of future service, and is for electricity already generated, delivered and consumed.

Background

Currently OPG recognizes approximately $850 million of assets and $250 million of liabilities comprised of variance and deferral accounts established under Reg. 53/05 and orders by the OEB. The scope of this paper addresses such accounts.

OPG is to adopt IFRS effective January 1, 2012. Currently under IFRS, there is no specific guidance on accounting for assets and liabilities resulting from rate regulation. Accordingly, under IFRS, recognition of OPG's assets and liabilities resulting from rate regulation will be assessed under the existing accounting guidance.

The purpose of this paper is to identify OPG's legal rights and obligations as a prescribed generator that operates prescribed generation facilities. The paper also identifies relevant IFRS accounting guidance. The paper then demonstrates how OPG can recognize its assets and liabilities resulting from rate regulation within the context of current IFRS guidance.

Legal Context

OPG commissioned Torys LLP to describe the legal basis of OPG's assets and liabilities resulting from rate regulation. A draft copy of the Torys letter is attached. Torys LLP have determined that, under law, the OEB is to set electricity rates on the basis of the "just and reasonable" standard. The Supreme Court of Canada has described just and reasonable rates as those that would be fair to the consumer and would secure the company a fair return on capital invested.

As a prescribed generator that operates prescribed generation facilities, under law, OPG has the right to fair compensation. Fair compensation to OPG is comprised of two elements: (1) the right to recover all prudently incurred costs, and (2) the right to a fair return on invested capital. Accordingly, OPG's revenue is defined as a function of the cost incurred to provide service.

To assist the regulator in fulfilling its mandate to provide utilities of the right to recover prudently incurred costs, the OEB uses variance and deferral accounts as tools to deal with uncertainty, including circumstances that are difficult to forecast and that may be beyond the control of OPG. These accounts are based on the standard of just and reasonable rates. The use of variance and deferral accounts mitigate forecasting risk and, therefore, protects the rights and interests of both the ratepayers and OPG. Ratepayers pay a fair rate and OPG receives fair compensation.

As part of the OEB's rate-setting function and its powers, the OEB can grant the right to OPG for OPG to establish variance and deferral accounts, and the right to OPG for OPG to record underestimates and overestimates of specific costs or revenues in such variance and deferral accounts. With the establishment and use of variance and deferral accounts comes the right to OPG that the OEB will undertake a review of the variance and deferral accounts, and approve, in a decision and order, the amounts OPG has the right to recover or obligated to pay.

In summary, OPG has two fundamental legal rights. OPG has the legal right to revenue by recovering all costs prudently incurred to generate and provide electricity consumed by the ratepayer. OPG also has the legal right to bill and collect all prudently incurred costs as a means of protecting its first legal right to recover revenue defined as a function of such costs. As discussed in the Torys LLP legal letter, OPG would be able to recover or be obligated to disburse prudent amounts recorded in a deferral or variance account either through a rate or via payment of an amount determined by the OEB.

The Rate Setting Process

The OEB has the legal power and responsibility to establish just and reasonable rates for the electricity generated by OPG's prescribed facilities. Normally this is done in the context of the regulatory cycle that OPG is subject to as a prescribed generator.

OPG may apply to the OEB, or the OEB may require OPG to apply, for new payment amounts from time to time. The application is typically based on estimated, forecasted costs and production. The OEB then holds an adversarial hearing to consider the application, during which the application is subject to vigorous review and scrutiny by OEB staff members, intervening parties and the OEB panel itself. After considering the evidence and arguments presented, the OEB panel issues a Decision and Order setting out the panel's decisions with respect to each of the aspects of the application, including the various requests for cost recovery that normally comprise such an application.

The new payment amounts for which OPG applies are for future rates to recover future costs for future production. For example, during 2010 OPG applied to the OEB for rates to recover the estimated, forecasted costs of generating the estimated, forecasted electricity from its prescribed generation facilities in the years 2011 and 2012. A hearing was held and OPG has received the OEB's decision on the 2011 and 2012 rates. Accordingly, the 2011 and 2012 rates established by the OEB are set to recover the estimated costs, not the actual costs, of generating electricity during 2011 and 2012. During 2011 and 2012 OPG may incur actual costs that are greater and/or less than the estimated costs upon which the rates are based. Accordingly, OPG may recover less or more than the costs for which it has a right to recover. As mentioned, variance and deferral accounts are tools used by OPG and the OEB to track these underestimates and overestimates of specific costs so as to enable the amounts of the variances and deferrals to be recovered by OPG or reimbursed to ratepayers. Through the use and disposition of the deferral and variance accounts OPG recovers what it is entitled to recover and/or fulfils its obligation to repay any over-recovery of costs.

The use of variance and deferral accounts ensures that OPG recognizes only the revenue it is entitled to recognize for the electricity generated and consumed by the ratepayers. For example, recognizing the uncertainties associated with fluctuating world uranium prices, and with a view to protecting OPG and ratepayers, the OEB approved the establishment of a variance account to capture the differences between forecast and actual nuclear fuel expenses. In this way, if OPG's actual nuclear fuel costs prove to be higher than the forecasted costs upon which the revenue requirement was set then OPG would be able to track the difference and recognize the higher revenue amount it is entitled to collect to recover its costs to generate the electricity already provided to and consumed by the ratepayers. Alternatively, if OPG's actual nuclear fuel costs proved lower than the forecasted costs upon which the revenue requirement was set then OPG would be able to track the difference and recognize the lower revenue amount it is entitled to collect to recover its actual costs to generate the electricity already provided to and consumed by the ratepayers.

The Accounting Guidance

Currently there is no accounting standard in IFRS that specifically addresses accounting for assets and liabilities resulting from rate regulation. The International Accounting Standards Board's (IASB) Framework for the Preparation and Presentation of Financial Statements (the Framework) defines assets, liabilities, equity, income and expenses. IAS 8, Accounting Policies, Changes in Accounting Estimates and Errors, requires reference be made to the Framework in the absence of a specific standard.

The IASB's Framework states that information must represent faithfully the transactions and other events it either purports to represent or could reasonably be expected to represent. Thus, for example, OPG's statement of financial position should represent faithfully the transactions and other events that result in assets, liabilities and equity of OPG at the reporting date, which meet the recognition criteria.

In addition to the Framework, OPG has referred to other IASB accounting guidance, including IAS 18, Revenue and IAS 32.

Recognition of Revenue

The recognition of OPG's variance and deferral accounts provides for the accrual of unbilled revenue. It is probable that the economic benefits of any unbilled revenue will flow to OPG. And, the recognition of OPG's variance and deferral accounts contributes to the faithful representation of OPG's revenue, and its rights to resources to be received and obligations to be paid in the future. OPG's stakeholders include its shareholder, debt holders, creditors, ratepayers, the OEB, potential investors, and credit analysts. All of these stakeholders have an interest in the amount of costs incurred that OPG has rights to recover and the amount of over-recovery that OPG is obligated to repay.

International Accounting Standard 18, Revenue (IAS 18) provides guidance on the recognition of revenue.

Revenue is defined in IAS 18 as the gross inflow of economic benefits during the period arising in the course of ordinary activities of an entity when those inflows result in increases in equity, other than increases relating to contributions from equity participants. Revenue includes only the gross inflows of economic benefits received and receivable by an entity.
Paragraph 14 sets out five criteria, all of which have to be met, to recognize revenue from the sales of goods. The criteria are:

(a) The entity has transferred to the buyer the significant risks and rewards of ownership of the goods;
(b) The entity retains neither continuing managerial involvement to the degree usually associated with ownership nor effective control over the goods sold;

(c) The amount of revenue can be measured reliably;
(d) It is probable that the economic benefits associated with the transaction will inflow to the entity; and
(e) The costs incurred or to be incurred in respect of the transaction can be measured reliably.

Electricity cannot be stored so it is provided to and consumed by the ratepayer upon generation. Accordingly, the first two criteria are met as the risks and rewards of ownership are transferred and there is no continuing involvement or control by OPG. The amount of electricity generated and provided to the ratepayers is metered and, therefore known. A combination of the electricity generated, the estimated rate established through the rate setting process and the tracking of underestimates and overestimates in the variance and deferral accounts, provides for the reliable measurement of the actual revenue to which OPG is entitled.

For revenue to be recognized it is to be probable that the economic benefits of the transaction will flow to OPG. The electricity industry has existed for more than 100 years with no indication that it will not continue to exist in the future. Society is very much dependent on electricity as a basic essential service. OPG expects to generate electricity indefinitely from its generation facilities and that the related supporting infrastructure will remain in place at its generation facilities for as long as required to do so. OPG's business plan demonstrates the customer demand and cash flows to support these assumptions. OPG can forecast with a high degree of accuracy the consumption of electricity to be generated.

OPG uses approved variance and deferral accounts to record under and over estimates of costs incurred, which measure the additional revenue it is entitled to receive from ratepayers and the additional funds it has collected and obligated to return to ratepayers. The OEB reviews the costs recorded in the variance and deferral accounts for prudency and approves the amounts to be collected and refunded by OPG. Amounts to be collected by OPG are rights to receive cash from ratepayers. Amounts to be refunded to ratepayers are obligations to deliver cash to ratepayers. Any differences between the amounts recorded in the accounts by OPG and the amounts approved by the OEB to be collected and refunded would be measurement differences.

Typically, the collection and refunding of these amounts are through the increase and decrease of future rates for future electricity. However, it is recognized that the collection and payments are not dependent on the provision of future service. The OEB has both the jurisdiction and the obligation to establish a rate or payment amount that allows OPG to recover its costs in the event there is no output by OPG's prescribed facilities. The OEB has jurisdiction to set payment amounts on a non-volumetric basis.

The Independent Electricity System Operator (IESO) fulfills its statutory mandate by acting as a clearinghouse to settle the flows of money among participants in the Ontario electricity market. Distributors collect money from customers. The money is received by the IESO, and the IESO is responsible for ensuring OPG is paid the amounts it is entitled to be paid for the injection of electricity into the IESO-controlled grid. The market rule requirements that apply to persons seeking authorization to participate in the Ontario electricity market are key to the IESO's ability to collect amounts and remit payment to OPG.

The letter from Torys LLP describes in detail the roles and responsibilities of the OEB and the Independent Electricity System Operator (IESO) in ensuring OPG both receives its revenue and repays its obligations. These roles and responsibilities are reinforced through the Market Rules that establish the contractual arrangements for all of the market participants. The Market Rules govern the electricity market in Ontario, including OPG's invoicing the IESO for electricity and the IESO's payment to OPG.

OPG's costs incurred to generate the electricity are reliably measured through its existing accounting systems. The use of variance and deferral accounts enhances the measurement of

these costs and mitigates forecast risk, therefore, protecting the rights of OPG and the ratepayers. The variance and deferral accounts are subjected to a rigorous review process by the OEB and other external parties. Once electricity is generated and consumed there are no further costs to be incurred that are associated with such electricity.

Recognition of Assets

With the recognition of revenue on the income statement there is an associated recognition of an asset on the balance sheet. Under the Framework an asset should be recognized if based on a past event, a probability of future economic benefit exists, and the realization of the future economic benefit is in an entity's control. Furthermore, a financial asset is one that includes a contractual right to receive cash.

OPG believes that, based on the fact pattern outlined in this paper, and that the deferral and variance accounts are established based on a past event, OPG will recover amounts based on a rate or payment mechanism established by the OEB and the contractual arrangements established under the Market Rules. OPG is legally entitled to the recovery of prudent amounts, which is not dependent on providing future service, as indicated by the legal opinion by Torys LLP.

Where OPG has under-collected in relation to a revenue requirement OPG has a legal right to receive cash for the electricity generated and injected into the IESO-controlled grid. Typically, the collection of these amounts is through the increase of future rates for future electricity, and increases OPG's future cash flows. However, it is recognized that the collection is not dependent on the provision of future service. The recognized revenue is unbilled and the corresponding asset is an unbilled receivable. An unbilled receivable is an asset that meets the definition of a financial asset under IAS 32.

Recognition of Liabilities

Under IFRS, liabilities are defined as present legal or constructive obligations arising from a past event, which is probable to result in an outflow of resources to settle the obligation. Furthermore, a financial liability is one that includes a contractual obligation to deliver cash. Provisions are liabilities that have uncertainty as to the timing or amount of settlement and are addressed in IAS 37.

Ratepayers are entitled to just and reasonable rates. As consumers of electricity they are to pay the rates established by the OEB, which include OPG's prudently incurred costs, and a fair return on invested capital. Therefore, if OPG should collect amounts in excess of its prudently incurred costs and a fair return then the ratepayer has a right to be reimbursed in the amount of such excess.

When OPG over-collects its costs it has a present, legal obligation to refund or return amounts to the ratepayers either directly or through a reduction of future rates. The liability has arisen from past events because rates charged for electricity resulted in funds collected being in excess of the costs required to generate and provide the electricity. Typically, the refunding of these amounts is through the decrease of future rates for future electricity and in accordance with the contractual arrangements under the Market Rules. Therefore, the settlement of OPG's obligation will typically result in a reduction in its future cash flows. However, as already noted, the reimbursements are not dependent on the provision of future service.

OPG recognizes that when using variance and deferral accounts there are circumstances when it overestimates its costs. The nuclear fuel cost variance account referred to above is a good example. There can be periods when OPG's actual costs for nuclear fuel are less than the estimated costs upon which its revenue is determined. In such a circumstance OPG over-recovers costs and, therefore, over-collects revenue. Since OPG has the right to recover only its

costs incurred, and a fair return, it is not entitled to recognize the additional funds collected as current period revenue. Instead, OPG is legally obligated to repay the over-collected funds to the ratepayers.

OPG is required by law to refund/reimburse over-recoveries of costs, such as nuclear fuel costs, to customers. This represents a legal obligation to refund amounts to customers in some fashion based on the past generation and consumption of electricity. This is consistent with Paragraph 62(c) of the Framework that states that settlement of a present obligation may occur through the provision of services, presumably for free or at a reduced price and based on future service requirements. This is how OPG typically remits an over-collected amount back to the ratepayers.

OPG can reliably estimate its obligation with a high degree of precision. OPG's costs incurred to generate the electricity, the funds it receives and the revenue it is entitled to earn, are reliably measured through its existing accounting systems. The use of variance and deferral accounts enhances the measurement of these costs, funds received, and revenue.

Recognition of a liability is also consistent with the principles in IAS 18. OPG is entitled to recover only prudently incurred costs in revenue. Since costs have not been incurred, OPG does not have a right to certain amounts collected and has not met the revenue recognition criteria of IAS 18. Payments from ratepayers through the IESO do not reflect the cost of electricity generated and consumed by ratepayers.

Other Matters – dependency on future generation

There have been questions and concerns raised about OPG's ability to realize the assets resulting from rate regulation. The concerns include the realization should not be dependent on the provision of future service. There have also been questions and concerns raised about liabilities resulting from rate regulation should not be recognized where there is no obligation to refund or repay other than through a reduction of rates when providing a future service. The conclusion expressed in the Torys LLP draft letter addresses the issue of future generation. And reads as follows:

"In the circumstance where OPG ceases operations and does not have any energy output from its prescribed facilities, it is our opinion that the OEB would have the jurisdiction and the obligation to establish a rate or payment amount that would allow OPG to recover or obligate OPG to disburse prudent amounts recorded in a deferral or variance account. Such a rate or payment amount would not have to be based on dollars per unit of electricity output from the prescribed facilities. This is no different than under normal operating circumstances."

"The OEB has broad jurisdiction in setting payment amounts for OPG and it would not be reasonable for the legislature to have given the OEB the legislative power to authorize the establishment of accounts without also giving the OEB the power to dispose of the amounts recorded in such accounts, including in circumstances where there is no future output. Moreover, to interpret the applicable legislation in a manner that only allows for payment amounts on a volumetric basis is in our view unreasonable because it would not be consistent with the rules of statutory interpretation."

Accordingly, OPG's right to recover prudently incurred costs and its obligation to repay over-collected amounts are not dependent on future generation and would continue to exist in the absence of future generation

Appendix A

A comparison of how assets and liabilities resulting from rate regulation are generally accounted for under current Canadian generally accepted accounting principles and how they are to be accounted for under IFRSs is contained in Appendix A.

Appendix A

Accounting Under IFRS for Assets and Liabilities Resulting from Rate Regulation

Current Practice

Under current Canadian generally accepted accounting principles, utilities generally account for regulatory assets and liabilities by means of a cost deferral model.

For example, for the test period a utility forecasts expenses at CU1,000 that get accepted by the regulator and included in the price of the product/service provided by the utility. During the test period the utility receives CU1,000 to cover the expenses through the provision of its product/service. The actual expenses incurred as part of providing the product service are CU1,099. The utility has the legal right to receive revenue to cover all of the expenses prudently incurred and the legal right to use a variance account to record the differences between the forecasted and actual expenses.

The utility generally accounts for this event as follows:

Debit Regulatory asset	CU99	
Credit Expense		Cu 99

Should the utility incur actual expenses of CU901 the utility generally accounts for this event as follows:

Debit Revenue	CU99	
Credit Regulatory liability		CU99

The regulator reviews the variance account, accepts the amount as being prudent, and orders the utility to recover the CU99 excess expense on a straight-line basis over three years or to pay back the CU99 over-collection of funds on a straight-line basis over three years. Therefore, the regulatory asset or the regulatory liability is amortized to the P&L over three years at CU33 a year.

Proposed Accounting Under IFRS

Assume the same situation as above. For example, for the test period a utility forecasts expenses at CU1,000 that get accepted by the regulator and included in the price of the product/service provided by the utility. During the test period the utility receives CU1,000 to cover the expenses through the provision of its product/service. The actual expenses incurred as part of providing the product service are CU1,099. The utility has the legal right to receive revenue to recover all of the expenses prudently incurred and the legal right to use a variance account to mitigate forecast risk to record the differences between the forecasted and actual expenses.

The utility accounts for the event as follows:

Debit balance sheet Unbilled Revenue Receivable	CU99	
Credit Income statement Current period revenue		CU99

To record the legal right to revenue in the amount that recovers the expense incurred and the legal right to receive increased future cash flows to collect the current period revenue by means of a legally binding settlement mechanism

Should the utility incur actual expenses of CU901 the utility accounts for this event as follows:

Debit Income statement Current period revenue	CU99	
Credit balance sheet Unbilled Revenue Receivable		CU99

To record the legally binding amount of revenue that the utility has the right to earn and the legally binding obligation that the utility has to pay by means of decreased future cash flows by means of a legally binding settlement mechanism

The regulator reviews the variance account, accepts the amount as being prudent, and orders the utility to recover the CU99, the amount that the actual expense exceeds the estimate, on a straight-line basis over three years or to pay back the CU99, the amount that the actual funds collected exceeds the expense to be recovered, on a straight-line basis over three years. Therefore, the unbilled revenue receivable or liability for over-collected funds is received or repaid over three years at CU33 a year as the increased or decreased cash flows materialize each year. In addition, the revenue is recognized on the basis of changes in assets and liabilities, which is consistent with the IASB's current exposure draft on revenue recognition.

Should the regulator determine that the amounts were not prudently incurred then an impairment of the asset or an increase in the liability would be recognized, and the amounts of future cash flows also would be adjusted accordingly.

as discussed.rtf

From: Petsche, Nadine (TBS) []
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CC: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
Subject: as discussed
Date: Friday, June 23, 2017 11:23:29
Attachment 1: Consultation Draft - OFHPA General Regulation v4.docx

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All,

As discussed, please find attached the draft OFHPA General Regulation for your reference. As discussed, this document will be revised based on feedback provided this week. We will provide the updated version once it is available.

Nadine

Consultation Draft - OFHPA General Regulation v4.pdf

Version 4

This confidential draft document is provided for discussion purposes only. It should not be construed as representing the position adopted by the Government of Ontario on any of the topics included or not included in this document. Any notes included in this document are intended only to help facilitate a discussion of the topics to which they relate.

A PROPOSAL TO CREATE REGULATION

made under the

ONTARIO FAIR HYDRO PLAN ACT, 2017

GENERAL

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DEFINITIONS

Definitions

1. (1) In this Regulation,

[OLC Note re definitions: You'll see that I've removed some of the definitions because I determined they were creating some confusion. Feel free to ask me to explain any of the changes if you have questions but my intention was to communicate concepts in a way that is more direct about the relationship between various types of amounts and the period of time in which they are paid/received etc. So for example in the section dealing with finance amounts, I refer specifically to deposits/withdrawals to the specific accounts and can do so with reference to *when* those deposits/withdrawals are made, right within the section dealing with the determination of the finance amount in respect of a period of time.]

"capital account" means an account established by or on behalf of a financing entity under the governing documents of a funding obligation for the purpose of accumulating funds to be used to make repayments in respect of the funding obligation;

[OLC Note: Just want to confirm that the use of the word "repayment" here is consistent with the defined term "repayment".]

"financing entity expenses" include fees, charges, costs, taxes, indemnities, reimbursements and other amounts incurred or committed to by or on behalf of a financing entity as a result of an activity authorized or permitted under the Act and includes fees charged by the Financial Services Manager;

[OLC Note: Is it necessary to include taxes in this definition, given how the term "expenses" is used in this reg?]

[OLC Note: The examples for the proposed definition of "expenses" to be drafted and would just note that the proposed examples include a reference to a $100 threshold for a reference period which won't work because amounts will have to be determined relative to portions of reference periods as well.]

"finance reserve account" means an account established by or on behalf of a financing entity under the governing documents of a funding obligation for the purposes of pre-funding, collateralizing, over-collateralizing or establishing reserves for the payment of the funding obligation or for related contingencies;

"funding cost" means interest, commitment fees or other financing charge payable by or on behalf of a financing entity [as required under the governing documents of?] funding obligations, including any up-front or periodic amount payable under a derivative [agreement?] entered into by or on behalf of the financing entity to hedge its interest rate or currency exposures or any other form of derivative [agreement?];

[OLC Note: I have highlighted in blue several references to derivatives/interest rates/currency agreements/hedging - Please check throughout the reg to ensure that we are intentionally using different language in various provisions. If we mean the same thing in each place, then let's be consistent. Unfortunately I don't know enough about any of these terms to

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know what would be ideal -- for example I don't know if you are intending something different when you say "derivatives" vs. "derivative agreements".]

[OLC Note: What does "financing charge" mean? This is the only place it is used. Note we also have the term "financing cost". I think we need to be clear about what we are talking about here…. Especially given that "funding cost" is used to determine the "financing cost".]

"governing documents" means, in respect of a funding obligation, the documents governing the terms of the agreement or other matters relating to the funding obligation;
[OLC Note: Does this work?]

"maturity date" means, in respect of a funding obligation, the date occurring after all scheduled payment dates in respect of the funding obligation, on which all outstanding principal, interest and other amounts payable under the governing documents of the funding obligation are payable;

"recovery amount" means the aggregate of all amounts received by or on behalf of financing entities in respect of funding obligations, including any amounts received under an agreement in respect of interest rates or currency or any other form of derivative agreement, but not including the proceeds of the issuance of funding obligations;

"redemption amount" means the amount payable [under the governing documents of a funding obligation?] by or on behalf of a financing entity to redeem, prepay or repurchase a funding obligation incurred by or on behalf of the financing entity, including any premium, make-whole or other amount payable to give effect to the redemption, prepayment or repurchase;
[OLC Note: Is the word "prepay" correct or should it say "repay"? I note that this seems to overlap with the definition of refinancing. [Further consideration is required]. What is different between a redemption and a refinancing?]

"repayment" means the payment by or on behalf of a financing entity or the provision by or on behalf of a financing entity for the payment of all or a portion of the principal amount advanced to the financing entity under a funding obligation, which may include payment of an amount payable on the termination, unwinding or amendment of any related interest rate, currency or other form of derivative agreement;
[OLC Note: What does the underlined phrase mean? An agreement to repay? Just want to confirm that this "agreement to do something" is included for "repayment" but not for other amounts. It also raises some confusion where the term is used in subs. 5 (1) below - would *the provision for the payment* need to specify that the payment would be payable during the specific period of time in order for it to be included in the finance amount in respect of that period of time?]

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"scheduled payment date" means, in respect of a funding obligation, a regular date, set out in the governing documents of the funding obligation, on which a payment [repayment?] is scheduled;

"tax" means [to be completed];

"tax liability" means all tax payable by or on behalf of a financing entity, incurred directly or indirectly by the financing entity or for which the financing entity is otherwise liable as a result of any activity authorized or permitted under the Act, including,

(a) activities related to a financing entity, including its creation, maintenance or reorganization,

(b) activities related to an investment interest and related assets and liabilities, including the acquisition, holding, enforcement or disposition of an investment interest and activities relating to bank accounts to hold reserves and payments received,

(c) activities related to a funding obligation, including its incurrence, performance, redemption, repayment or disposition, and

(d) activities related to an agreement, including the entering into, performance, enforcement, termination or disposition of an agreement in respect of interest rates or currency or any other form of derivative agreement;

"tax refund" means all amounts received by or on behalf of a financing entity as a refund of tax and to which the financing entity is entitled as a result of its engagement in any activity authorized or permitted under the Act, including activities described in clauses (a) to (d) of the definition of "tax liability".

(2) For the purposes of subsection 21 (8) of the Act and this Regulation,

"readjustment amount" means, in respect of a reference period, the amount determined by applying the following steps:

1. Determine the amount, if any, by which the total amount payable by specified consumers for electricity in respect of the reference period is forecasted to be reduced as a result of a determination of the Board under Part II of the Act.

2. Determine the amount, if any, by which the determination under paragraph 1 exceeds the fair allocation amount determined by the Minister under subsection 20 (1) of the Act in respect of the reference period.

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Funding obligation

2. (1) For the purposes of the definition of "funding obligation" in subsection 1 (1) of the Act, a payment obligation in respect of any of the following types of amounts is also a funding obligation if it is incurred by or on behalf of a financing entity:

[OLC Note:[Please explain] why the "without duplication" concept would be necessary here… this is just a list of types of amounts and we aren't adding them up.]

1. A refinancing.

[OLC Note - see below in subs. 3 (2) where it is suggested that a refinancing is a funding obligation… and I think that perhaps "amounts in respect of a refinancing" are covered under subs. 2 (2)? Does this work as intended?]

2. Any amount payable under interest rate swaps or cross-currency swaps or other derivative agreements, including any bonds or loans to finance collateral obligations under the swaps or derivative agreements.

3. Any amount raised for the purposes of a financing entity acquiring and financing an investment interest, including any amounts raised that also constitute, and are recoverable as, a finance amount.

(2) Funding obligations, including the types of amounts set out in paragraphs 1 to 3 of subsection (1), include principal , interest, fees and other amounts owing in respect of the amounts.

Refinancing

3. (1) For the purposes of the definition of "refinancing" in subsection 1 (1) of the Act, a refinancing includes the incurrence of a debt if the following criteria are met:

1. The debt is incurred no earlier than six months before the maturity date of a funding obligation.

2. The proceeds of the debt are designated by the Financial Services Manager to repay the funding obligation mentioned in paragraph 1.

3. The proceeds are applied as designated.

(2) For greater certainty, if the proceeds mentioned in paragraph 2 of subsection (1) are not applied as designated, the debt ceases to be a refinancing but remains a funding obligation.

[NTD to OPG - OPG to consider necessity for this provision]

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Specified consumers, unit sub-meter providers, s. 13 (6) of the Act

4. For the purposes of subsection 13 (6) of the Act, amounts in respect of the clean energy adjustment may be collected by the specified consumer as follows:

1. If an invoice for electricity is issued to a person by the specified consumer, the specified consumer may collect from the person the person's proportionate share of the amount of the clean energy adjustment shown on the invoice for electricity payable by the specified consumer.

2. If an invoice for electricity is issued to a person by a unit sub-meter provider providing unit sub-metering for a specified consumer the unit sub-meter provider may collect from the person the person's proportionate share of the amount of the clean energy adjustment shown on the invoice for electricity payable by the specified consumer.

Finance amount

5. (1) Subject to subsection (2), the finance amount in respect of a period of time shall be determined as follows:

[OLC Note: Because it appears that "finance amounts" and "true-up amounts" may need to be determined in respect of portions of reference periods and not just reference periods, I decided to just make the general rule very general about determinations "in respect of a period of time". This could mean an entire reference period or one small portion of a reference period.]

1. After eliminating any duplication in the following amounts, calculate the sum of the following amounts:

    i. Amounts payable during the period in respect of repayments.

[OLC Note: Consider subpara. i along with the definition of "repayment" above… See my question under that definition about "the provision for the payment of…"]

    ii. Funding costs payable during the period.

    iii. Redemption amounts payable during the period.

    iv. Amounts required, under the governing documents of funding obligations, to be deposited into capital accounts or finance reserve accounts during the period.

    v. Financing entity expenses payable during the period.

    vi. Tax liabilities payable during the period.

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2. After eliminating any duplication in the following amounts, calculate the sum of the following amounts:

    i. Amounts required, under the governing documents of funding obligations, to be withdrawn from capital accounts or finance reserve accounts during the period.

    ii. Amounts payable during the period in respect of funding rebates.

    iii. Recovery amounts received during the period.

    iv. The amount of any debt incurred during the period [as or in relation to?] a refinancing.

[OLC Note: This is now the only place where we were using the term "refinancing amount". I'm having trouble with the proposed defined term for "refinancing amount" when read in conjunction with the definition of "refinancing" in the Act - which already says that it is "the incurrence of debt in connection with a redemption, repayment or repurchase of a funding obligation". Could the "refinancing amount" simply be "amounts in respect of a refinancing"?

Here is the proposed definition - what are we trying to convey here that isn't conveyed in the definition in the Act?
"refinancing amount" means the principal amount of a funding obligation incurred by or on behalf of a financing entity where the proceeds of the funding obligation are not paid to the IESO but instead are used to repay an existing funding obligation in respect of all or any portion of the purchase price of an investment interest;]

    v. Tax refunds received during the period.

3. Subtract the sum calculated under paragraph 2 from the sum calculated under paragraph 1.

(2) Subject to subsection (3), the following rules apply with respect to the determination of the finance amount:

1. The determination shall be made by applying a cash basis accounting method.

[OLC Note: As per my previous notes, please advise regarding the meaning of "cash basis accounting method" and whether there is redundancy between the first four paragraphs here. Now that additional rules have been added and their relationship to para. 1 noted (see subs. (3)'s "despite paragraph 1") it is important that the relationship between paras. 2, 3 and 4 and para. 1 be clarified.

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- Also, now that the itemized list in subs. (1) above is specific about what is paid/received/incurred etc. during the specific period of time in question, consider whether some or all of the rules in this subsection are consistent and/or necessary.]

2. If the determination is in respect of a past period of time, the determination shall reflect cash amounts actually paid, deposited, received or made available during that period of time.

3. If the determination is in respect of a future period of time, the determination shall reflect the estimated cash amounts that will be paid, deposited, received or made available during that period of time.

4. If the determination is in respect of a period of time that includes both past and future dates, the determination may reflect a combination of actual and expected cash finance amounts.

(3) Despite subsection (2), taxes may be estimated in respect of a particular tax reporting period of a financing entity and allocated in respect of various periods of time that occur within the tax reporting period, in such manner as the Financial Services Manager considers to be reasonable, subject to the following rules:

1. The estimated taxes, less any taxes paid by way of instalment or otherwise by or on behalf of the financing entity during the period of time in respect of which the finance amount is determined, shall be deemed to be a tax liability of the financing entity during that period of time.

2. The amount, if any, by which the estimated taxes exceeds the tax liability of the financing entity in respect of the particular tax reporting period shall be deemed to be a tax refund of the financing entity in the first reference period commencing after the particular tax reporting period.

3. The amount, if any, by which the tax liability of the financing entity in respect of the particular tax reporting period exceeds the estimated taxes shall be deemed to be a tax liability of the financing entity in the first reference period commencing after the particular tax reporting period.

4. If a financing entity receives an assessment or reassessment of taxes for a particular tax reporting period that differs from the amount shown on a tax return filed with the applicable governmental authority, the following rules apply once there has been a final determination with respect to the tax liability of the finance entity in respect of the particular tax reporting period:

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i. The amount, if any, by which the tax liability of the financing entity for the tax reporting period is decreased shall be deemed to be a tax refund of the financing entity for the first reference period commencing after the final determination.

ii. The amount, if any, by which the tax liability of the financing entity for the tax reporting period is increased shall be deemed to be a tax liability of the financing entity for the first reference period commencing after the final determination.

(4) For the purposes of paragraph 4 of subsection (3),

"final determination" means a determination made by the applicable governmental authority or court of competent jurisdiction and in respect of which all rights to object to or appeal have been exhausted or have expired.

Determining true-up amount

[NTD to OPG: Ministry concerned about volatility of pricing for rate payers. Ministry to consider further.]

6. (1) Unless all finance amounts are paid in full, the Financial Services Manager shall calculate the true-up amount in respect of each reference period.

[OLC Note to draft: need to check these provisions carefully against the language of subs. 15 (2) of the Act to ensure consistency.]

(2) The Financial Services Manager may, at any time during a reference period, determine the true-up amount in respect of the remaining portion of the reference period if,

(a) the Financial Services Manager reasonably forecasts that there will be a material shortfall in the collection of the clean energy adjustment relative to the estimated finance amount payable in respect of a reference period; and

(b) the Board has determined rates under subsection 15 (4) of the Act in respect of the reference period.

(3) The true-up amount in respect of a reference period or a portion of the reference period may be determined, as follows:

$$T = (A - B) + C$$

Where,

T = the true-up amount in respect of the period of time,

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A = the aggregate of the finance amounts in respect of all reference periods preceding the current reference period and, if the determination is being made at a point in time during the current reference period, in respect of the portion of the current reference period that precedes the point in time,

B = the aggregate of all amounts of the clean energy adjustment remitted by the IESO to or for the benefit of the investment interest owners during all reference periods preceding the current reference period and, if the determination is being made at a point in time during the current reference period, in respect of the portion of the current reference period that precedes the point in time,

C = the amount representing reasonably foreseeable differences between amounts to be invoiced in respect of the clean energy adjustment and the amounts to be remitted by the IESO to the investment interest owners in respect of the invoices due to various factors, including those mentioned in subparagraphs 2 ii and iii of subsection 15 (2) of the Act.

(4) The Financial Services Manager shall, when determining the amounts described in "C" in the formula set out in subsection (3), have regard to amounts payable that were not collected and any amounts in respect of which an overpayment was made, which may include amounts resulting from a default of specified consumers, an electricity vendor or the IESO, whether in its capacity as an electricity vendor or its activities as agent or otherwise under section 16 or 17 of the Act.

(5) If the Financial Services Manager determines that an error in the determination of the clean energy adjustment or any other error relating to the clean energy adjustment requires correction, the Financial Services Manager may reflect the correction in a subsequent determination of the true-up amount.

Notification to Board

7. (1) The Financial Services Manager shall notify the Board of the clean energy adjustment in respect of a reference period or a portion of a reference period in accordance with this section.

(2) Subject to subsection (6), until such time as all finance amounts have been paid in full, the notification in respect of each reference period shall be provided,

(a) in the case of a reference period that begins on May 1, on or before April 1 in the same year; and

(b) in the case of a reference period that begins on November 1, on or before October 1 in the same year.

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(3) In addition to complying with subsection (2), the Financial Services Manager shall, starting on the day after the final scheduled payment date of the funding obligation described in subsection (4) and until such time as all finance amounts have been paid in full, comply with subsection (5).

(4) For the purposes of subsection (3), the relevant funding obligation is the outstanding funding obligation that has the latest maturity date of all outstanding funding obligations.

(5) During the period of time mentioned in subsection (2), the Financial Services Manager shall update its most recent determination of the clean energy adjustment and notify the Board of the updated determination,

(a) on or before January 1 in each year, in respect of the months of February, March and April in the same year; and

(b) on or before July 1 in each year, in respect of the months of August, September and October in the same year.

(6) If the Financial Services Manager determines the true-up amount in respect of the remaining portion of a reference period, the Financial Services Manager shall redetermine the clean energy adjustment in respect of each of the months remaining in the reference period for which the Board has made a determination under subsection 15 (4) of the Act and notify the Board of the redetermination [as soon as possible?].

Board to determine rates, subs. 15 (4) of Act

8. (1) The Board shall, upon receiving a notice of the clean energy adjustment under section 7, determine the rates at which specified consumers are to be invoiced in respect of the period of time in respect of which the notice was given.

[OLC Note: Legislative Counsel has determined that it would not be appropriate to repeat the wording of subs. 15 (4) of the Act - "Without changing the clean energy adjustment" due to drafting principles. ….]

(1.1) The rates shall be expressed as a cent per kWh amount and determined by dividing the clean energy adjustment in respect of the relevant period of time by the forecasted electricity consumption of specified consumers in respect of the period.

(2) For the purposes of subsection (1.1), the forecasted electricity consumption of specified consumers shall be the forecasted electricity consumption as provided to the Board by the IESO.

(3) If notice of a determination is provided under subsection 7 (2), the rate shall be determined by the Board so that the rate takes effect on the first day of the month following the month in which the notice was required to be provided.

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(4) If notice of a redetermination is provided under subsection 7 (5), the rate shall be determined by the Board so that the rate takes effect,

(a) if the notice was provided before the fifteenth day in a month, on the first day of the month following the month in which the notice was provided; or

(b) if the notice was provided on or after the fifteenth day in a month, on the first day of the second month following the month in which the notice was provided.

IESO to receive, remit amounts, s. 16 of the Act

9. (1) The IESO shall ensure that amounts actually received in respect of the clean energy adjustment under subsection 16 (1) of the Act are identifiable as such.

(2) For the purposes of subsection 16 (4) of the Act, the IESO shall remit the amounts in accordance with the requirements of the agreements relating to the sale of the investment interests to the financing entities and agreements relating to the funding obligations.
[OLC note: Subs. (2) raises subdelegation issues. Subs. 16 (4) of the Act contemplates that the LGIC will set out in the regulation how the amounts shall be remitted… if it's really just going to be left to contract, perhaps the contract itself could handle this issue, in which case the regulation would be silent on the matter. For this type of provision to be authorized, I think the regulation would at least have to impose some constraints on the contents of the agreements. Otherwise the determination is being subdelegated entirely to unknown entities.]

Electricity vendors to invoice, collect, s. 17 of the Act

10. (1) Each electricity vendor shall ensure that invoices issued to specified consumers include a separate line item for the amount in respect of the clean energy adjustment.

(2) Each electricity vendor shall ensure that amounts collected from specified consumers in respect of the clean energy adjustment are deposited into a segregated account established for the exclusive purpose of receiving those amounts.
[OLC Note: Previously the language in subs. (2) was drafted for consistency with subs. 16 (2) of the Bill ("an account established for the purposes of receiving those amounts"). You've suggested changes here through the addition of the words "segregated" and "exclusive". Just want to be sure you are aware of the different language which may be interpreted to have been included to achieve a different outcome.]

[NTD to OPG: This obligation poses practical problems for small LDCs. OPG to propose threshold for this obligation. It is not viable to apply universally.]

(3) Each electricity vendor shall maintain separate records with respect to amounts invoiced to specified consumers in respect of clean energy adjustments.

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(4) Subject to [any requirement to the contrary under any Act or regulation?], each electricity vendor shall make the records available, upon request, to the IESO, the Financial Services Manager, financing entities and investment interest owners.

[NTD to OPG re: Appointment, s. 18 of the Act – Ministry does not intend to address replacement of FSM at this time and absent specific circumstances where replacement is required.]

FAIR ALLOCATION AMOUNT

Prescribed period, amount

11. (1) The prescribed period for the purposes of sub-subparagraph 1 ii B of subsection 20 (1) of the Act shall be the period beginning on January 1, 2005 and ending on April 30, 2017.

(2) If the sum of the amounts determined under paragraphs 1 and 2 of subsection 20 (1) of the Act are less than or equal to the amounts determined under paragraph 3 of subsection 20 (1) of the Act, the amount determined by applying the following formula is prescribed for the purposes of paragraph 5 of subsection 20 (1) of the Act:

$$A = B - C$$

Where,

A = the amount prescribed for the purposes of paragraph 5 of subsection 20 (1) of the Act,

B = the sum of the amounts determined under paragraphs 1 and 2 of subsection 20 (1) of the Act, and

C = the amount determined under paragraph 3 of subsection 20 (1) of the Act.

Determination of estimated financing costs

12. (1) For the purposes of paragraph 2 of subsection 20 (1) of the Act, the estimated financing costs in respect of a reference period shall consist of the sum of the following amounts that would become payable during the reference period:

1. Estimated funding costs.

2. Estimated financing entity expenses.

3. Estimated funding rebates.

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(2) In estimating amounts for the purposes of subsection (1), the Minister shall make the following assumptions:

1. The entire amount of the regulatory asset is transferred over time in accordance with section 26 of the Act.

2. The principal owing by a financing entity during a reference period is repaid [paid?] by applying funds expected to be available to it under the Financing Plan after all other forecasted finance amounts for the reference period have been paid or provided for.

[OLC Note: Elsewhere we refer to the finance amounts being "paid in full", not "paid or provided for". Why the difference?]

(3) For the purposes of subsection 20 (2) of the Act, the prescribed circumstances are that the determination under section 9 or 11 of the Act in respect of a reference period resulted in a readjustment amount.

(4) If the circumstances mentioned in subsection (3) apply, the Minister shall, in addition to calculating the sum of the costs set out in paragraphs 1 to 3 of subsection (1), calculate the following amounts and include them in the determination of the estimated financing costs in respect of the reference period:

1. A portion of the readjustment amount that should be attributed to the reference period.

2. The financing costs that should be attributed to the adjustment amount.

(5) For the purposes of paragraph 1 of subsection (4), the Minister shall determine the portion to be attributed to the reference period in such a manner as to ensure that readjustment amounts are recovered proportionally over the remaining reference periods.

Minister's considerations

13. For the purposes of subsection 20 (3) of the Act, the Minister shall have regard to the following matters:

1. Electricity prices.

2. Interest rates.

3. Inflation.

4. Electricity consumption.

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5. The useful life of the assets that are subject to contracts referred to in clause (a) of the definition of "clean energy costs" in subsection 1 (1) of the Act.

FINANCING PLAN

Financing plan, principles and assumptions prescribed under subs. 21 (3) of the Act

14. (1) The Financial Services Manager shall make reasonable assumptions regarding the following matters in preparing the Financing Plan:

1. The determination of the IESO deferral for future months.
2. Future transfers of specified portions of the regulatory asset.
3. The maturities of funding obligations.
4. Cash flow requirements to meet contractual obligations associated with funding obligations.
5. The future availability of refinancings and redemption opportunities.
6. Liquidity terms and conditions.
7. The future availability of currency and interest rate hedging facilities for the purposes of managing currency and interest rate risks that may be associated with funding obligations.
8. Interest rates and financing entity expenses.
9. Future availability of capital markets, including markets outside of Canada, in which funding obligations may be incurred.
10. Fees charged by the Financial Services Manager.
11. The need for and implementation of financing reserve accounts and capital accounts.

(2) In addition to the principles set out in subsection 21 (3) of the Act, the Financial Services Manager shall have regard to the following principles in preparing the Financing Plan: [OLC Note:…[T]he language below [must be further considered/reviewed] to see how it links up with the new content […] added to the reg in Draft 3 and to generally assess consistency.]

[NTD to OPG: Financing plan principles are a governance issue for the Ministry. Ministry to consider further to clarify language and expectations.]

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1. Funding obligations shall be incurred on the best terms available at the time of incurrence for a financing transaction of the size and type contemplated by the Financing Plan.

2. The Financing Plan shall seek to create a stable platform to acquire and finance investment interests.

3. The Financing Plan shall specify the reference capital or finance markets in which the funding obligations are to be incurred, including markets outside Canada if considered by the Financial Services Manger to be appropriate in the circumstances.

4. The Financing Plan shall specify the basis upon which the Financial Services Manager is to select the currency of payments under the funding obligations and shall address measures to be taken to mitigate currency risk, including hedging transactions and adoption of minimum and maximum coverage levels, having regard to the availability of related derivatives with notional amounts corresponding to the repayment and maturity profile of the funding obligations.

5. The Financing Plan shall describe the basis upon which recovery amounts are to be applied.

6. Principal proceeds of a funding obligation must only be applied for the purposes of repaying or redeeming debt or for the purposes of paying the purchase price for investment interests.

7. The Financing Plan shall set out the basis upon which the Financial Services Manager is to select the interest rates for the incurrence of funding obligations.

8. Subject to subsection (2.1), the Financing Plan shall set out the basis upon which the Financial Services Manager is to select the term to maturity of funding obligations.

9. The Financing Plan shall address the need for refinancing.

10. The Financing Plan shall restrict the Financial Services Manager from making any election or decision, including election or decision to redeem any funding obligations, if the consequence would be that the clean energy adjustment would exceed the sum of the fair allocation amount and any readjustment amount in respect of a reference period.

11. The Financing Plan shall address the incurrence of funding obligations for the provision of deposits required as described in subparagraph 1 iv of subsection 5 (1).

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12. Any funding obligation that by its terms may require a payment to be made by the financing entity during a reference period shall limit the amount of the payment to a fixed or determinable amount, which amount shall be deemed to be a finance amount for the purposes of paragraph 1 of subsection 21 (3) of the Act.

[OLC Note: If the highlighted segment in para. 12 is supposed to add something to what constitutes the "finance amount", then this rule should be included above where we explain how the finance amount is calculated. I don't know if that's what this is about.]

13. The Financing Plan shall set out measures to realign costs and finance amounts as a result of any change in the calculation of fair allocation amounts.

14. The Financial Services Manager shall act as any reasonably prudent financial services manager would act in similar circumstances.

15. The Financing Plan shall describe the basis upon which the Financial Services Manager or its agent is to negotiate [in respect of?] and settle [in respect of?] finance amounts.

[OLC Note: "finance amount" is defined as an amount determined in accordance with the regulations -- assuming that the negotiation and settling that you're referring to above is not about actually determining the finance amount so we should clarify what is meant… negotiating payment of?]

16. The Financing Plan shall describe the timing and basis upon which deposits described in subparagraph 1 iv of subsection 5 (1) and withdrawals described in subparagraph 2 i of subsection 5 (1) may be made and shall balance the need to maintain reserves in order to provide for marketable securities with the costs of holding such reserves, including on account of any potential income tax liabilities of the investment interest owners.

17. The Financing Plan shall describe the requirements applicable to any financing entity that is to purchase an investment interest, including proposed capitalization, governance and restrictions on their powers and activities, as well as structural considerations in order to minimize risk and costs, including any tax liabilities that may be recovered as finance amounts.

[OLC Note: I'm not sure about the concept of "tax liabilities being recovered as finance amounts"… as drafted now, tax liabilities are taken into consideration as part of the determination of what is the finance amount. Perhaps this should just say "including any tax liabilities"?]

18. The Financing Plan shall describe the basis upon which fees, charges, financing entity expenses, costs, indemnities, reimbursements and other amounts payable to or for the benefit of the Financial Services Manager or agents and other service providers to the financing entities may be determined, allocated and paid.

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19. Any contract to be entered into by the Financial Services Manager on behalf of a financing entity that provides for a payment to be made to or for the benefit of the Financial Services Manager or any person with whom the Financial Services Manager does not deal at arms' length shall demonstrably reflect on arms' length terms and conditions.

[OLC Note: Please clarify what is meant by the underlined phrase -- the contract has to include terms and conditions that create an arms' length relationship? Is there some precedent language in Ontario legislation that captures this kind of requirement?]

Rule, para. 8 of subs. (2),

(2.1) For the purposes of paragraph 8 of subsection (2), any repayments required to be made under the terms of a funding obligation, other than an obligation incurred for the purposes of refinancing to prudently and cost-effectively manage debt, shall not obligate any financing entity to repay an amount in relation to a reference period that would have the effect of the Financing Plan permitting incurrences of funding obligations payable in the reference period that would exceed the fair allocation amount attributable to the reference period.

(3) The Financial Services Manager shall, no later than 90 days following the end of each fiscal year, submit to the Minister a report with respect to its affairs during the fiscal year, signed by the [xx] of the Financial Services Manager.

(4) Despite subsection (3), for the fiscal year commencing in 2017, the Financial Services Manager shall submit the report by such time as may be specified by the Minister, which time shall be on or after the 30th day following the end of the fiscal year.

The Regulatory Asset

Determination of IESO deferral

15. The IESO may include the following amounts in the IESO deferral for each month:

1. The difference between the following amounts:

    i. The sum of all amounts that would have been payable in the month, if rates had not been determined under Part II of the Act, by electricity vendors and specified consumers under the *Electricity Act, 1998* and the market rules made under section 32 of that Act.

    ii. The sum of all amounts payable in the same month by specified consumers to electricity vendors as a result of the rates determined under sections 7 and 8 of the Act.

2. The costs incurred by the IESO in relation to the financing of the difference between the amounts referred to in subparagraphs 1 i and ii.

[OLC Note: No need to repeat 23 (2) of the Act.]

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Adjustments that may be recorded by IESO

16. For the purposes of paragraph 3 of subsection 24 (1) of the Act, the IESO shall record the following adjustments in the variance account:

1. Any amounts the IESO pays to a financing entity in respect of a reference period [in respect of which no clean energy adjustment is payable?].

2. Any variance account balances in variance accounts established and maintained under subsection 25.33 (5) of the *Electricity Act, 1998* [that remain to be cleared?] [during the period beginning on May 1, 2017 and ending on June 1, 2017?].

[OLC Note: what does "that remain to be cleared" mean?]

FEES

[NTD to OPG: Ministry to consider further to find balance between OEB oversight and OPG requirements re Financial Services Manager fees]

Fees, subs. 19 (3) of the Act

17. (1) For the purposes of this section,

"incremental annual funding obligation" means the aggregate of all funding obligations incurred by [or on behalf of?] all financing entities in a calendar year.

(2) For the purposes of subsection 19 (3) of the Act, the Financial Services Manager may establish fees and charge the fees to financing entities in relation to the following matters:

1. The services provided by the Financial Services Manager to financing entities, which may include services related to planning, financing, negotiation and execution of agreements, front office services and administrative services.

2. The costs of doing anything that the Financial Services Manager is required or permitted to do under the Act.

[OLC Note: here we refer to "required or permitted" but in most places throughout the reg we refer to "authorized or permitted". Please check and confirm intention throughout the reg.]

(3) The fees mentioned in subsection (1) may include both a fixed fee and a variable fee based on performance [of what?].

(4) The fixed fee shall be equal to the cost of services provided to a financing entity plus a reasonable rate of return.

(5) Subject to subsection (6), the variable fee to be charged in respect of a calendar year shall be calculated in accordance with the following formula:

[OLC Note: Check year vs. calendar year throughout reg.]

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$$A \times (B - C) \times D$$

Where,

A = the principal amount of the aggregate of all funding obligations incurred by [or on behalf of?] all financing entities in the year,

B = the forecasted interest rate for "A", as determined by the Financial Services Manager on or before the end of the calendar year prior to the calendar year in respect of which the fee is being determined and based on the term of the aggregate,

C = the weighted average interest rate for "A",

D = 5 per cent or such other per cent that is approved by the Board.
[OLC Note: What is the authority for the Board to determine a different percentage for the purposes of "D"? Shouldn't this be the FSM who does this based on subs. 19 (3) of the Act? The Board is just playing an "approval" role.]

(6) The variable fee payable in respect of a calendar year shall not be,
[OLC Note: subject to change based on what D is going to look like.]

(a) more than 1 per cent of the [value of D] multiplied by A; or

(b) less than -1 per cent of the [value of D] multiplied by A.

(7) If the variable fee is a negative amount, the amount shall be deducted from the fixed fee payable in the following calendar year in twelve equal monthly instalments.

(8) When submitting proposed fees to the Board, the Financial Services Manager shall provide the following:

1. The methodology that the Financial Services Manager has used to calculate the proposed fixed and variable fees.

2. The methodology that the Financial Services Manager has used to benchmark the proposed variable fee.

3. The period of time during which the Financial Services Manager proposes to charge the proposed fees.

4. The identity of the financing entities that would be liable to pay the proposed fees.

5. Such other information as the Board may require.

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(9) This section applies with necessary modifications in respect of a proposal by the Financial Services Manager to amend fees.

[OLC Note: The instructions included the a statement that the Board is not "bound" by a methodology proposed by the Financial Services Manager, but since the Board's function is to "approve", I'm not sure what this is intended to achieve. I'm wondering if this should be included in the subsection below 11xx (4) regarding the Board's recommendations… perhaps "the Board recommend a different methodology" when it refuses to approve?]

Board approval of fees, subs. 19 (4) of the Act

18. (1) The Financial Services Manager shall submit its methodology for determining proposed fees to the Board no later than August 31, 2017.
[ENE NTD: Need to determine how to deal with the 1st fee. Understand that OPG is proposing a fixed fee for this year.]

(2) The Financial Services Manager may, from time to time but not more than once in any twelve month period, submit proposed amendments to its fees to the Board.

(3) If the Financial Services Manager submits proposed amendments, the proposed amendments shall be submitted no later than 120 days before the Financial Services Manager intends for the fees to be charged.

(4) The Board may approve the proposed fees or proposed amendments or may refer the proposal back to the Financial Services Manager for further consideration with the Board's recommendations [which may include recommendations regarding the methodology used to calculate the fees?].

MISCELLANEOUS

Investment asset, s. 29

19. The prescribed accounts referred to in paragraph 3 of subsection 29 (1) of the Act are as follows:

1. Any specifically identified segregated account, regardless of the name in which the account is opened, if it is opened by the IESO or an electricity vendor and if amounts in respect of the clean energy adjustments are deposited into it.

2. Any accounts opened in the name of a financing entity by the Financial Services Manager.

Appointment of agent, invoicing or collection

20. For the purposes of subsection 33 (1) of the Act, the appointment may occur if the electricity vendor is unable or unwilling to perform its obligations under the Act, including if the electricity vendor becomes insolvent, bankrupt or enters into receivership.

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Disclosure in marketing materials, offering documents, etc.

21. For the purposes of section 40 of the Act, a person may include the references in marketing materials or offering documents if,

(a) the inclusion is required by applicable law or is necessary for the purposes of any financing of funding obligations, including any requests for disclosure by rating agencies; or

(b) the Minister has been given written notice of the proposed inclusion of the references and has been given a reasonable opportunity to comment.

Commencement

22. This Regulation comes into force on the day it is filed.

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CICA Research Study.rtf

From: Petsche, Nadine (TBS) []
To: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]
Subject: CICA Research Study
Date: Friday, May 12, 2017 09:28:33
Attachment 1: Financial Reporting by Rate-regulated Enterprises CICA Research Study.pdf

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All,

This is what I have. It may be the complete doc, but not sure.

Take care,

Nadine

Financial Reporting by Rate-regulated Enterprises CICA Research Study.pdf

FINANCIAL REPORTING BY RATE-REGULATED ENTERPRISES

FOREWORD

Rate-regulated industries are core sectors of the Canadian economy. They have a common characteristic in that they provide services that are considered essential to the public. Most rate-regulated enterprises are required to maintain their accounting records in accordance with uniform systems of accounts prescribed by regulatory agencies. This accounting has not always agreed with GAAP as applied to business enterprises in general.

Some maintain that exceptions for rate-regulated enterprises should be permitted. Otherwise, the orderly markets and trading of a rate-regulated enterprise's securities might be seriously disrupted, which could adversely affect the enterprise's ability to maintain and expand its service capability on an economically sound basis. It has also been argued that any refusal to permit rate-regulated enterprises to defer costs for accounting and reporting purposes that are deferred for rate-making purposes might jeopardize the opportunity to recover similar types of costs through revenues established in future rate proceedings. Others have maintained that permitting rate-regulated enterprises to depart from GAAP as applied to other business enterprises when preparing general purpose financial statements — other than in strictly limited circumstances — undermines the credibility of standard setting. They note that regulatory agencies are often inextricably involved in the political process and are subject to short-term pressures. There is the danger that accounting practices might be managed to hide from users of financial statements adverse impacts on an enterprise. The validity of the concerns expressed by both groups needed to be examined.

Exceptions for rate-regulated enterprises from the accounting followed by other types of business enterprises have been advocated for many years. A bulletin issued by the CICA's Accounting and Auditing Research Committee in September 1967 noted that "the general principles of income measurement should be the same in regulated industries as they are in other enterprises, and that the income tax allocation basis should have equal relevance. However, the Committee recognizes that there may be rare cases where compliance with the recommendations of this Bulletin would be inappropriate for the purpose of achieving a proper matching of costs and revenues." Since that time, Canadian accounting standards have permitted the occasional additional exception for rate-regulated enterprises.

It looked as if the tide might be turning when the Accounting Standards Board issued an Exposure Draft on "Income Taxes" in March 1996. The Exposure Draft proposed that rate-regulated enterprises should record future tax liabilities or assets the same way as other

business enterprises do. It stated that "a regulator ... cannot relieve an enterprise of a liability or asset that was not created by the regulator. ... It is appropriate to recognize an asset or liability for amounts that may be recovered or payable under the ... rate formula. That asset or liability is a temporary difference for which a future income tax liability or future income tax asset would be recognized."

Concerns expressed by rate-regulated enterprises persuaded the Accounting Standards Board to back off from this position, at least temporarily. The final standard, issued in December 1997, indicated that "pending further study of accounting for rate regulated enterprises as a whole, rate regulated enterprises are not required to record future income taxes for temporary differences that arise from assets and liabilities relating to their rate regulated activities to the extent that these future income taxes will be included in the rates charged to customers in the future and will be recoverable at that time ..."

In the late 1990s, accounting by public sector rate-regulated enterprises was also raising some concerns for the CICA Public Sector Accounting Board. One of the key issues related to the essential characteristics of a rate-regulated enterprise, in particular, the required degree of independence of the enterprise being regulated from the rate-setting body.

These concerns led to a proposal being presented, for consideration by both the CICA's Accounting Standards Board and its Public Sector Accounting Board, for a project on financial reporting by rate-regulated enterprises, culminating in the publication of a Research Report.

The objective of this project was to address accounting and reporting issues pertinent to rate-regulated enterprises and to propose what specific guidance the Accounting Standards Board (and possibly the Public Sector Accounting Board) should provide to meet the special needs of such enterprises and the users of their general purpose financial reports. Under its terms of reference, the Study Group set up to undertake this project was asked to consider:

1. What constitutes a rate-regulated enterprise for financial reporting purposes? Is the definition in *CICA Handbook – Accounting* paragraph 3465.09 sufficiently clear, or how should it be amended?
2. What criteria must an enterprise meet to be considered rate regulated?
3. What is the nature of rate regulation and to what degree must it be independent of the enterprises being regulated?
4. Should rate regulation over private sector enterprises be distinguished from rate regulation over public sector enterprises? If so, what are the distinguishing criteria?
5. Does rate regulation introduce an economic dimension in some circumstances that should affect what constitutes "generally accepted accounting principles" (GAAP) for the enterprises being regulated?

6. Can accounting prescribed by rate-regulating authorities be considered, in and of itself, GAAP for rate-regulated enterprises and, if so, to what extent?
7. In setting accounting standards, should the Accounting Standards Board focus on rate-regulated enterprises *per se*, or on rate-regulated activities?
8. Are there any differences among the various types of rate-regulated enterprises or regulatory frameworks that would have an impact on the extent to which GAAP, as set out in the *CICA Handbook – Accounting*, should apply?
9. Assuming that the Recommendations in the *CICA Handbook – Accounting* generally apply to rate-regulated enterprises, are any exemptions needed because of their "special circumstances"? What other changes, if any, need to be made?
10. What additional guidance is needed relating to specific accounting and reporting issues encountered by rate-regulated enterprises?
11. What other information specific to the nature of rate-regulated enterprises should be included in general purpose financial statements or elsewhere?

The CICA expresses its appreciation to John Browne, chair, and the members of the Study Group for undertaking this project, and to J. Paul-Émile Roy, Principal, Research Studies, for providing technical support to the Study Group and for drafting the report under the Study Group's direction. Thanks are also expressed to those who assisted the Study Group by providing comments on a draft of the Research Report.

Toronto
December 2001

David J. Moore, CA
Research Studies Director

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EXECUTIVE OVERVIEW

Rate-regulated enterprises are a significant part of the Canadian economy. They include, for example, multi-billion-dollar electric utilities and natural gas pipeline companies, and encompass both the private sector and the public sector. The form of regulation can vary from regulation that is based on the cost of providing services to regulation that is based on performance. For telecommunications companies, much of the industry has been deregulated and now operates in a competitive marketplace. For others, such as the electric utilities, the process of deregulation is just beginning.

In light of the changing regulatory environment, the continued relevance of "special" accounting for rate regulation is currently the subject of considerable debate. There are differing views on whether the impact of rate regulation should be reported. Some feel that it results in artificial income smoothing. Others, including the Study Group, are of the opinion that rate regulation can have a direct bearing on the enterprise's economic resources and that this should be reflected in the financial statements. There are also differing views on the appropriate accounting approach. What constitutes generally accepted accounting principles (GAAP) for rate-regulated enterprises and how the *CICA Handbook – Accounting* requirements should be applied to them need to be clearly established. To provide that guidance, the Accounting Standards Board and the Public Sector Accounting Board are jointly sponsoring this research project:

- to address accounting and reporting issues pertinent to rate-regulated enterprises; and
- to suggest the steps that the two boards should take to meet the special needs of such enterprises and the users of their general purpose financial statements.

To provide much-needed guidance to preparers, practitioners and users, this Report proposes that the Accounting Standards Board issue a new *Handbook* Section on accounting for the effects of rate regulation. The new Section would replace the current *Handbook* material. In addition, it would establish general principles for assessing, in a particular situation, whether, and, if so, the degree to which, rate regulation has an economic impact that should be recognized and how it should be reported in general purpose financial statements. In this regard, it is anticipated that the discussion of general principles and differential accounting treatments set out in this Report will provide a useful reference source.

Because the economic benefits and obligations created by rate regulation are similar for many private and public sector enterprises, the consensus of the Study Group is that the general purpose financial statements of rate-regulated enterprises in the public sector should be prepared on a basis consistent with that of rate-regulated enterprises in the private sector. Accordingly, the Public Sector Accounting Board should specifically recognize in *CICA Public Sector Accounting Handbook* that certain public sector entities should apply, where applicable, the accounting recommendations for rate-regulated enterprises contained in the *CICA Handbook – Accounting*. One of the ten members of the Study Group, however, strongly feels that different criteria are needed for a public sector enterprise to qualify as rate regulated for financial reporting purposes. In his opinion, there is usually no "independent third party regulator" because the government normally controls both the affected enterprise and the regulatory agency.

SUMMARY OF CONCLUSIONS

This Research Report addresses 12 primary issues and a multitude of secondary issues. The following outlines, on a chapter-by-chapter basis, the primary issues and the conclusions reached

by the Study Group that undertook this project. 1(1) Support for those conclusions is provided in the relevant chapters, along with an analysis of any alternative views on the issues.

CHAPTER 1

Issue 1 — Is accounting for the effects of rate regulation still a relevant issue?

Accounting for the effects of rate regulation in the general purpose financial statements of rate-regulated enterprises is an important issue and will remain so for the foreseeable future.

CHAPTER 2

Issue 2 — What is rate regulation?

Under rate regulation, an enterprise's rates are established by, or are subject to approval by, a regulator. There are a number of basic regulatory processes and methodologies and, within each, there can be different applications that vary with the regulator, the entity being regulated and the circumstances faced.

CHAPTER 3

Issue 3 — What is the appropriate accounting approach?

Different approaches have been suggested for accounting for rate regulation. The approach adopted should be based on a framework that recognizes the economic impacts of rate regulation, identifies the financial reporting concepts that should guide the recognition of those impacts to the extent that they exist, and considers existing practice in both Canada and the US.

CHAPTER 4

Issue 4 — What is the current financial reporting environment?

Accounting pronouncements and practices in Canada recognize that, in certain circumstances, rate regulation can affect what should be reported in the financial statements. In the United States, accounting pronouncements also recognize the effects of rate regulation. They establish a comprehensive framework for reporting the economic impact of rate regulation and provide detailed guidance to rate-regulated enterprises. In the United Kingdom, accounting pronouncements do not address the effects of rate regulation. Nonetheless, there is increasing interest in developing a conceptual framework for accounting by regulated industries. Accounting standards that were issued by the International Accounting Standards Committee (IASC) do not address the effects of rate regulation.

Issue 5 — What further guidance should be provided?

General guidance on accounting for the effects of rate regulation should be issued as a new Section in the *CICA Handbook – Accounting*. The new Section would replace the material currently contained in the *Handbook* relating to rate-regulated enterprises and would provide

any additional guidance that is considered necessary. It would set out general principles to provide a "framework" for applying GAAP to rate-regulated enterprises within the boundaries established by "Financial Statement Concepts," Section 1000. The general principles would provide the basis for assessing, in a particular situation, whether rate regulation has an economic impact that should be reported and, if so, how it should be reported in general purpose financial statements.

CHAPTER 5

Issue 6 — Can regulatory authorities establish GAAP?

Regulatory authorities cannot establish GAAP. The Recommendations in the *CICA Handbook – Accounting* constitute GAAP. Although the actions of regulators may affect rates and the resulting economic impact may affect what should be reported in accordance with GAAP, this does not give them the right to determine how that economic impact should be reported in general purpose financial statements.

Issue 7 — Can rate regulation have an economic impact?

Regardless of the rate-setting process or methodology used, from an economic perspective, rate regulation can have a direct bearing on the economic resources, obligations and performance of a rate-regulated enterprise. It can influence rates that, combined with market conditions, can have an economic impact on current and future revenues and cash flows, thereby affecting future economic benefits and obligations.

Issue 8 — Should the effects of rate regulation be reported in general purpose financial statements?

The economic benefits and obligations created by rate regulation and resulting from past transactions or events, and the changes in these amounts, meet the definition of a financial statement element set out in "Financial Statement Concepts," Section 1000 of the *CICA Handbook – Accounting*. Where they also meet the recognition criteria set out in Section 1000, those elements should be reported in the general purpose financial statements of a rate-regulated enterprise as assets, liabilities, revenues, expenses, gains and losses.

CHAPTER 6

Issue 9 — What is a rate-regulated enterprise?

The *CICA Handbook – Accounting* establishes the criteria that must be met if an enterprise is to be considered "rate regulated" for financial reporting purposes. The criteria for qualifying as a "rate-regulated enterprise" in Canada are essentially the same as those in the United States. To eliminate minor differences with US accounting standards, the *Handbook* definition should be amended to conform to the wording used in SFAS 71. For rate regulation to have an impact on what should be reported in accordance with GAAP, it is not a prerequisite for the entire

operations of the enterprise to be subject to rate regulation; it is only necessary that a subset of the enterprise's operations be subject to rate regulation. Consequently, where only some of an enterprise's operations are rate regulated, the financial statements would reflect the economic impact of rate regulation on only that portion of operations. This approach is consistent with current practice and with US GAAP.

CHAPTER 7

Issue 10 — What general principles should be used by rate-regulated enterprises?

Rate-regulated enterprises should use the following general principles when preparing general purpose financial statements in accordance with GAAP:

Application

1. The economic impact of rate regulation should be reflected in the general purpose financial statements of an enterprise that has regulated operations that meet all of the following criteria:
    - The enterprise's rates for regulated services or products provided to its customers are established by, or are subject to approval by, an independent, third-party regulator or by its own governing board empowered by statute or contract to establish rates that bind customers.
    - The regulated rates are designed to recover the specific enterprise's costs of providing the regulated services or products, including a fair return on investment.
    - In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume that rates set at levels that will recover the enterprise's costs can be charged to and collected from customers. This criterion requires consideration of anticipated changes in levels of demand or competition during the recovery period for any capitalized costs.
2. If some of an enterprise's operations are regulated and meet the above criteria, the financial statements should reflect the economic impact of rate regulation on only that portion of operations.
3. When an enterprise that has regulated operations no longer meets the criteria set out in Principle 1, it should discontinue reflecting the economic impact of rate regulation and reflect the effects of discontinuation in its general purpose financial statements.

Recognition of Regulatory Assets and Liabilities

4. Rate-regulated enterprises should recognize a regulatory asset in their financial statements, when all of the following conditions are met:
    - Rate regulation creates an economic benefit in the form of increased future

revenues as a result of a past transaction or event.

- It is probable that the enterprise's regulator will set future rates sufficient to provide the economic benefit.
- Future rates sufficient to provide additional revenue at least equal to the economic benefit will be chargeable and collectible from customers.
- There is an appropriate basis for measuring the asset and a reasonable estimate can be made of the amount involved.

5. A regulatory asset should be valued at the lower of the expected economic benefit and the cost incurred to acquire the economic benefit.
6. Where the economic benefit is increased and the increase meets all of the conditions in Principle 4, or a portion of the economic benefit that previously did not meet all of the conditions in Principle 4 now meets those conditions, the value of the regulatory asset should be increased by the related amount.
7. Where all or a portion of a regulatory asset no longer meets the conditions in Principle 4, the value of the regulatory asset should be reduced by the related amount.
8. Rate-regulated enterprises should recognize a regulatory liability in their financial statements when all of the following conditions are met:
   - Rate regulation creates an economic obligation in the form of decreased future revenues, or payments to customers, as a result of a past transaction or event.
   - It is probable that the enterprise's regulator will set rates sufficient to reduce revenues by the amount of the liability or require payments to customers equal to the liability.
   - There is an appropriate basis for measuring the liability and a reasonable estimate can be made of the amount involved.
9. Where the economic obligation is increased, or a portion of the economic obligation that previously did not meet all of the conditions in Principle 8 now meets the conditions, the value of the regulatory liability should be increased by the related amount.
10. Where all or a portion of a regulatory liability no longer meets the conditions in Principle 8, the value of the regulatory liability should be reduced by the related amount.

Recognition of Revenues, Expenses, Gains and Losses

11. The financial statements of rate-regulated enterprises should report the changes in

regulatory assets and liabilities as revenues, expenses, gains or losses.

Presentation and disclosure

12. Notes to the general purpose financial statements of rate-regulated enterprises should disclose:

    - that the enterprise (or certain of its operations) is rate regulated for financial reporting purposes or, alternatively, that the enterprise was rate regulated in the prior period, but no longer meets the established criteria for a rate-regulated enterprise;
    - the regulator(s) and the jurisdiction(s) covered (even if the enterprise no longer qualifies as rate regulated);
    - that the financial statements are prepared in accordance with Canadian GAAP.

13. Notes to the general purpose financial statements of rate-regulated enterprises should disclose how rate regulation affects the reported values of individual assets and liabilities on a going-forward basis.

CHAPTER 8

Issue 11 — Do the General Principles apply to the public sector?

With respect to the scope of public sector activities that may be considered "rate regulated" for financial reporting purposes, the consensus of the Study Group is that the application of General Principle 1 should be limited to government business enterprises (GBEs) that meet all the criteria for qualifying as a rate-regulated enterprise. In this regard, *CICA Public Sector Accounting Handbook* Recommendations should specifically recognize that only GBEs that qualify as rate-regulated enterprises for financial reporting purposes should apply the accounting recommendations for rate-regulated enterprises contained in the *CICA Handbook – Accounting*. One Study Group member, however, feels strongly that in order for a GBE to qualify as a rate-regulated enterprise for financial reporting purposes, the regulatory agency must be independent of both the GBE and government. The consensus of the Study Group is that the General Principles regarding application, recognition, presentation and disclosure apply equally to all GBEs that meet the criteria in General Principle 1, since the economic benefits and obligations created by rate regulation are similar for many private and public sector enterprises. Therefore, the general purpose financial statements of rate-regulated enterprises in both the public and private sectors should be prepared on a consistent basis. One member would support this position only in the unlikely event that the regulatory agency is independent of both the GBE and the government.

CHAPTER 9

Issue 12 — What additional guidance is needed for specific accounting and reporting

issues encountered by rate-regulated enterprises?

While detailed guidance for recognizing the economic impact of rate regulation on the financial reporting of rate-regulated enterprises is not essential, additional guidance would help avoid any misunderstanding and, at the same time, illustrate how the general principles should be applied in practice. Accordingly, this chapter addresses specific issues that are considered of interest to the regulatory community. Emphasis is given to areas that may have a material impact on general purpose financial statements. Consideration is also given to circumstances that may indicate the need to discontinue accounting for the effects of rate regulation.

Chapter 1

INTRODUCTION

"Rate regulation" is imposed by a government, which creates legislation setting up a regulatory authority and gives it jurisdiction to approve the rates of specific enterprises or categories of enterprises.

OUTLINE OF THE REPORT

The objective of this Research Report is to address accounting and reporting issues pertinent to rate-regulated enterprises and to propose what specific guidance should be provided to meet the special needs of such enterprises and the users of their general purpose financial statements. The terms of reference for this project are set out in the Foreword to this Report.

Chapter 1 provides an overview of the financial reporting environment in which rate-regulated enterprises operate. Chapter 2 examines the nature of rate regulation. Chapter 3 considers the differing viewpoints on accounting by rate-regulated enterprises that have been proposed and explains the approach the Study Group considers the most appropriate and the reasons for its decision. Chapter 4 then reviews accounting standards and financial reporting practices in Canada and elsewhere, and assesses what further accounting guidance should be provided.

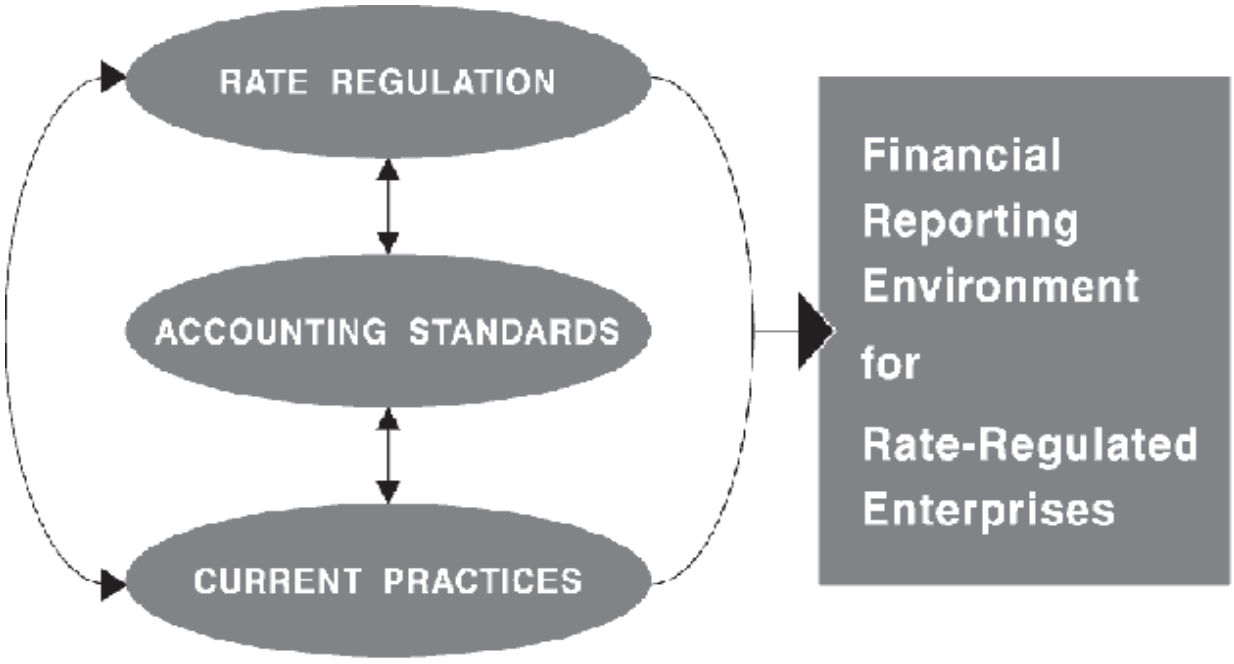
Using the financial reporting environment as the foundation, Chapter 5 discusses whether regulatory authorities can establish GAAP, the relationship of rate regulation to accounting, and the circumstances under which the effects of rate regulation should be reported in general purpose financial statements. Chapter 6 examines the criteria an enterprise must meet to qualify as rate-regulated for financial reporting purposes. Chapter 7 proposes general principles for financial reporting by rate-regulated enterprises in the private sector and Chapter 8 assesses whether those general principles should also be applied to rate-regulated enterprises in the public sector. Chapter 9 illustrates how the general principles can be applied to specific accounting and financial reporting issues.

Several appendices supplement the discussions contained in this Research Report. Appendix A compares the conceptual frameworks in Canada and the United States. Appendix B presents the results of a survey of current disclosure practices by industry and is supplemented by Appendix C, which presents selected illustrative financial statement disclosures. Appendix D reports on a survey of public sector practices. Appendix E provides an overview of rate regulation in the electric power industry. A glossary of terms and a selected bibliography are also included.

FINANCIAL REPORTING ENVIRONMENT

To address accounting and reporting issues pertinent to rate-regulated enterprises, it is important to understand the financial reporting environment in which they operate. Exhibit 1.1 depicts that environment as having three components: rate regulation, accounting standards and current reporting practices. Each of the components interacts significantly with the others. For example, rate regulation can impose requirements that affect accounting and financial reporting. In turn, this will be reflected in the reporting practices of rate-regulated enterprises. The following provides an overview of the three components (they are discussed further in Chapters 2, 3 and 4).

Exhibit 1.1



Rate Regulation

"Rate regulation" is the restriction in the setting of prices that can be charged to customers for services or products. From an economic perspective, rate regulation can have a direct bearing on

the economic resources, obligations and performance of a rate-regulated enterprise. Traditionally, rate regulation has been imposed on essential public services where competition was considered inadequate to protect customers; for example, electric utilities, gas distribution utilities, pipelines, telecommunication companies and transportation companies. In some of these industries, there has been a trend to increasing competition and the removal of rate regulation or movement from cost-based to performance-based rate regulation. This raises questions about whether accounting for the effects of rate regulation will continue to be a significant issue, whether separate accounting standards are warranted for rate-regulated enterprises, and whether such standards should apply equally to the private and pubic sectors. 1(2)

Accounting Standards

Accounting standards and current practices in Canada recognize that, in certain circumstances, rate regulation can affect the future economic benefits and obligations that should be reported in the financial statements. In fact, the *CICA Handbook – Accounting* establishes the criteria that an enterprise must meet to be considered "rate regulated" for financial reporting purposes. 2(3) Unlike the situation under US standards, however, there are relatively few situations where the guidance provided in the *CICA Handbook – Accounting* is specifically directed at rate-regulated enterprises. Consequently, the practice of looking to US standards for guidance has developed. 3(4)

Generally Accepted Accounting Principles

In July 2001, the Accounting Standards Board (AcSB) issued an exposure draft on "Generally Accepted Accounting Principles," a proposed new *Handbook* Section that will describe what constitutes GAAP and its sources. These sources are divided into three levels — Board pronouncements (Level 1), Board authorized pronouncements (Level 2) and other sources of GAAP (Level 3). This proposed new Section addresses the relative status and authority of *Handbook – Accounting* italicized Recommendations, non-italicized paragraphs and appendices, Accounting Guidelines (Level 1), Abstracts of Issues Discussed by the Emerging Issues Committee, board-authorized implementation guidance (Level 2), and other sources of GAAP, such as US (FASB) Financial Accounting Standards and International Accounting Standards, prevalent practice, generally or within a particular industry, and Canadian research reports and studies (Level 3). It includes explanatory paragraphs to help a reader understand where to look fr guidance, especially when the *Handbook* is silent.

The AcSB therefore proposes removing the existing coverage of generally accepted accounting principles in paragraphs .59 and .60 of "Financial Statement Concepts," *Handbook* Section 1000. In light of the clearer definition of GAAP, the AcSB also proposes removing paragraph 1000.61 and paragraph .06 of "General Standards of Financial Statement Presentation," *Handbook* Section 1500, which deal with a departure from *Handbook* Recommendations, and to revise *Handbook* Section 1500, primarily to update the requirements and clarify that anything

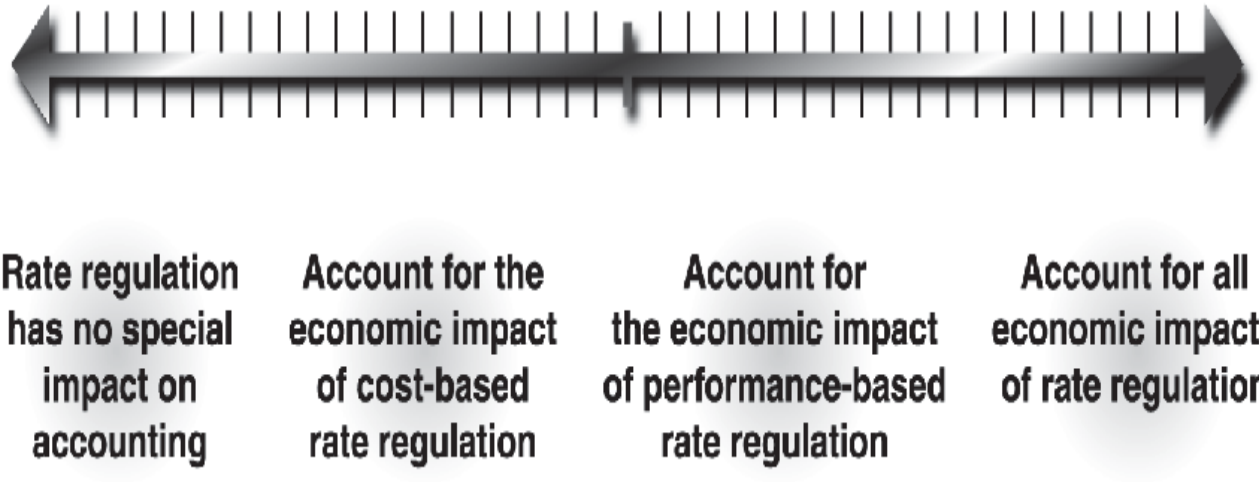
required by GAAP must be incorporated in the financial statements, which includes notes and supporting schedules.

WHY IS GUIDANCE NEEDED?

Widely diverging views have been expressed on the need for the differential treatment in the application of GAAP to rate-regulated enterprises. Exhibit 1.2 outlines the major views as a continuum, with the mileposts reflecting some common points. To keep pace with the new forms of rate regulation, practice is evolving. What is considered to be current practice is approximated by the mid point on the continuum.

Exhibit 1.2

VIEWS ON THE NEED FOR DIFFERENTIAL TREATMENT



There is no special impact of rate regulation for which to account

According to this view, rate regulation does not have an economic impact that should be reported in the financial statements. Those holding this view maintain that accounting for any perceived impact of rate regulation distorts the financial statements and may result in artificial income smoothing.

Account for the economic impact of cost-based regulation

According to this view, there are economic impacts of rate regulation that should be reported in financial statements, but only where rates are cost based. Those holding this view maintain that this is consistent with existing Canadian and US accounting standards that encompass the reporting of economic benefits (regulatory assets) and economic obligations (regulatory

liabilities) by rate-regulated enterprises. They would prefer to maintain the status quo. In other words, entities meeting the definition of "rate-regulated enterprise" in various sections of the Handbook would normally report regulatory assets and liabilities resulting from cost-based rate regulation.

Account for the economic impact of performance-based regulation

This view is similar to the one above, except that it would also encompass the impacts of performance-based regulation. Those holding this view maintain that, in many cases, performance-based regulation is essentially cost-based.

Account for all economic impacts of rate regulation

According to this view, if the actions of a regulator have an economic impact on an enterprise, that economic impact should be reflected in the general purpose financial statements, regardless of the method of regulation employed. Those holding this view maintain that the rate-setting process can affect future revenues and, thereby, create future economic benefits and obligations.

Survey of Canadian Rate-regulated Enterprises and Canadian Practice

Given the alternative views regarding the need for the differential treatment in the application of GAAP to rate-regulated enterprises and to investigate the extent to which rate-regulated enterprises are still prevalent, the following work was undertaken:

- a survey of 25 rate-regulated enterprises across Canada providing hydro-electric, natural gas transmission and distribution, and telecommunications services; 4(5)
- a discussion group meeting of 10 individuals (six from rate-regulated enterprises, one regulator, one consultant to rate-regulated enterprises, an academic and a legislative auditor).

The August 1999 survey posed the question: "Is accounting for rate-regulated enterprises still a relevant issue in light of deregulation or incentive-based regulation?" In the opinion of those responding to the survey (there was a 40% response rate, that is, 10 responses), **the issue of accounting for rate-regulated enterprises is still very relevant**. The lack of response from representatives in the telecommunications industry indicates, however, that it may no longer be a relevant issue in that particular industry because deregulation is occurring.

The discussion group, which met in October 1999, unanimously agreed that **accounting for rate-regulated enterprises is still a relevant issue**. When industry representatives were asked whether they would be concerned if the exceptions for rate-regulated enterprises were removed from the *Handbook*, they indicated that such removal would be a significant issue for their

enterprises.

As part of the above-noted survey, a second question was asked: "What are the significant accounting issues in your enterprise?" Survey respondents identified several significant issues: the definition of rate-regulated enterprises (or activities); the use of accrual versus cash basis of accounting; comparability and consistency of information reported by rate-regulated enterprises; and variations in the application of GAAP. With respect to the need for guidance, they identified a number of significant concerns about accounting for fixed / capital assets, income taxes, intercompany gains and losses, employee future benefits, foreign exchange and financial instruments.

At the above-noted discussion group meeting, all those present confirmed the significance of the accounting concerns raised in the survey. They felt that a research project would be extremely useful for anyone involved with accounting for rate-regulated enterprises, including the enterprises themselves, regulators, auditors, academics and those providing consulting services to such enterprises. Such a project would consider whether the differential treatment provided in the *Handbook* is still relevant and also provide guidance on how the accounting recommendations in the *Handbook* should be applied to rate-regulated enterprises.

While there is a move to allowing competition and relying on competitive forces to replace rate regulation, the prevailing view is that there will continue to be natural monopolies that require rate regulation, at least for the foreseeable future. Monopolies that will continue to be subject to rate regulation represent a significant portion of the Canadian economy. For example, electric transmission and distribution in Québec have an investment base in the range of $23 billion. It was noted that rate regulation has traditionally been, and will continue to be, a necessary instrument for governments to ensure "just and reasonable rates" where effective competition does not exist.

With respect to deregulation, it was observed that:

- Only specific business activities or services of a utility are being deregulated.
- Even with deregulation in some sectors, many monopolies still exist.
- The utilities industry in Canada is facing different forms of regulation as opposed to deregulation.

With respect to incentive-based regulation, it was observed that:

- Incentive-based regulation retains most elements of cost-based regulation and cost recovery from the customer.
- Incentive-based regulation is a variation of cost-of-service regulation, which allows an entity to earn more than its allowed rate of return if it is able to reduce its costs, but increases the risk that it will earn less than its allowed rate of return if it is unable to

manage its costs.

- Accounting issues that are relevant under regulation are still present in incentive-based regulation.

In summary, guidance is needed on accounting for rate-regulated enterprises because:

- Regulation has an impact on what a regulated enterprise reports in its financial statements because rate regulation can create assets and liabilities, and can affect an enterprise's cash flows and what should be reported in accordance with GAAP.
- There is no clear distinction between accounting principles used for rate-setting purposes (sometimes referred to as "regulatory accounting principles" or "RAP") and generally accepted accounting principles or "GAAP".
- There is little specific guidance in Canada on accounting by regulated enterprises, and what is available is somewhat dated.

Other Steps Taken by the Study Group in the Preparation of This Report

In addition to the survey of Canadian rate-regulated enterprises and practice referred to above, other steps taken during the preparation of this report were as follows:

- Reviewing Canadian and US accounting standards and other accounting literature on this subject.
- Monitoring any developments in the United Kingdom on this subject.
- Holding informal discussions with staff at the US Governmental Accounting Standards Board (GASB) regarding US standards and practice on this subject (particularly as they relate to US public sector rate-regulated enterprises).
- Having one of the Study Group members present its preliminary findings at the 2000 conference of legislative auditors.
- Distributing an "associates draft" to colleagues of Study Group members and other interested parties for their comment. The Study Group distributed 34 copies of the draft and received and analyzed 19 responses. Those who responded included rate-regulated enterprises' staff and their auditors, other representatives from public accounting firms, legislative auditors, provincial comptrollers, and consultants in the area of rate regulation.
- Undertaking a survey of federal, provincial and territorial comptrollers regarding current financial reporting practices of public sector rate-regulated enterprises within their jurisdiction. Excerpts from their responses are set out in Appendix D.

CONCLUSION

This chapter states the objective of this research project and sets out an outline of the report. It assesses whether accounting for the effects of rate regulation is still a relevant issue and whether there is a need for guidance.

In the Study Group's view, 5(6) accounting for the effects of rate regulation in the general purpose financial statements of rate-regulated enterprises is an important issue and will remain so for the foreseeable future.

Chapter 2

RATE REGULATION IN CANADA

Rate regulation can have a direct bearing on the economic resources and performance of a rate-regulated enterprise. There are a number of basic methodologies and applications that vary with the regulator, the entity being regulated and the circumstances faced.

INTRODUCTION

Chapter 1 of this Research Report concluded that accounting for the effects of rate regulation in the general purpose financial statements of rate-regulated enterprises is an important issue and will remain so for the foreseeable future. Furthermore, more specific guidance is needed on the application of GAAP to rate-regulated enterprises to meet the needs of both preparers and users of their general purpose financial statements.

Developing appropriate guidance requires a sound understanding of the financial reporting environment in which rate-regulated enterprises currently operate. As noted in Chapter 1 (Exhibit 1.1), that environment encompasses rate regulation, accounting standards and current reporting practices. In this chapter, the Study Group examines the first of these components. It defines "rate regulation" and explains the basic rate-setting processes and methodologies being used in Canada.

RATE REGULATION — WHAT IT IS AND HOW IT OPERATES

Rate regulation is the restriction in the setting of prices that can be charged to customers for services or products. Under rate regulation, an enterprise's rates are established by, or are subject to approval by, a regulator.

The goal of rate regulation is to set "just and reasonable rates." Generally, rate regulation is imposed where an enterprise has a monopoly or a dominant market position that gives it excessive market power. In such situations, there is a lack of effective competition to constrain

the prices that the enterprise can charge. To compensate, governments impose rate regulation.

In most cases, governments impose rate regulation by creating legislation setting up a regulatory authority and giving it jurisdiction to approve the rates of specific enterprises or categories of enterprises (for example, electric distribution utilities). Enterprises falling within the jurisdiction of the regulatory authority are not allowed to charge prices other than those approved by the regulatory authority.

In Canada, both the federal and provincial governments have created regulatory authorities. Whether an enterprise is subject to federal or provincial authority depends on whether its activities are deemed to fall under federal or provincial jurisdiction. For example, telecommunications fall under federal jurisdiction. Telecommunications enterprises that are subject to rate regulation are within the jurisdiction of the Canadian Radio-television Telecommunications Commission (CRTC), which was created under federal legislation. Electric power distribution falls under provincial legislation. Electric distribution utilities subject to rate regulation are within the jurisdiction of provincial regulators, such as the Alberta Energy and Utilities Board. 1(7)

The norm is for a government to create a separate regulatory authority. A government may regulate rates through other means, however, such as empowering the governing body of government-owned utilities to set rates in accordance with a statute. For example, prior to the restructuring of the Ontario electric power industry, the board of directors of Ontario Hydro was given statutory authority to set rates for the utility that would allow it to recover the costs of providing services to customers. 2(8)

In the past, rate regulation tended to be applied to an entire organization. With acquisitions, diversification and deregulation, rate regulation may be applied to only a portion of an organization's operations. In some cases, an organization may have both regulated and non-regulated operations, and the regulated operations may be subject to the authority of different regulators.

There is no universal method of rate regulation. The rate-setting process and the application of that process can vary from one jurisdiction to another. Within a jurisdiction, it can vary from one enterprise to another. In addition, rate regulation is constantly evolving.

Rate-setting Processes

Traditionally, regulatory authorities have convened public hearings to review the rate applications of large utilities. After the utility prepares a submission setting out its proposed rates, and the support for those rates, the regulatory authority may decide to hold a hearing. Usually, three to five members of the regulatory authority form a panel to preside over these proceedings. Prior to the public hearing, the regulatory authority and other interested parties, called "interveners," submit written questions, to which the regulated enterprise must respond.

The questions deal with clarification of the regulated enterprise's submission.

Interveners may also make a submission and, where they do so, they must also respond to written questions from the regulated enterprise, the regulatory authority and other interveners. At the public hearing, any individual who has made a submission on behalf of the regulated enterprise must submit to cross-examination under oath by lawyers representing interveners or, in the case of submissions on behalf of an intervener, lawyers representing the regulated enterprise or other interveners. In some cases, the witnesses may be cross-examined by the members of the regulatory panel. After the hearing is completed, the members of the panel make a decision based on the submissions, the response to the written questions and the testimony given at the public hearing.

As an alternative to a public hearing, a regulatory authority may have a "paper hearing." This is similar to the above process, except that there is no hearing. The regulated enterprise and interveners make written submissions, submit written questions and provide written responses. Based on this written documentation, the regulatory authority makes a decision.

There is currently a trend to negotiated settlements. The regulated enterprise and representatives of its customers negotiate allowed rates, or at least issues that affect the determination of allowed rates. Issues that cannot be settled by negotiation go to the regulator for resolution. Also, the regulator must approve any settlement.

The negotiation process is intended to be more informal and less adversarial than the normal regulatory process. It is expected to be less costly and offers the opportunity for better settlements. In the hearing process, the regulated enterprise and other interested parties put their position to the regulator, who then renders a decision based on the evidence presented. With a negotiated settlement, the regulated enterprise can negotiate rates with the other interested parties, which offers the opportunity for a settlement that is preferred by all parties.

Rate-setting Methodologies

The legislation empowering a regulatory authority usually provides little direction on how rates are to be established, except that the rates must be "just and reasonable" or a similar general statement. Usually, regulatory authorities have significant discretion in deciding the regulatory methodology that will be used in setting allowed rates and how that methodology will be applied.

There are a number of basic regulatory methodologies and, for each, there can be applications that vary with the regulator, the entity being regulated and the circumstances faced. In some cases, a specific rate must be charged; in other cases, a maximum limit is set on the rates.

In the past, the primary regulatory methodology for the major utilities was "cost-of-service" regulation, also referred to as "return-on-rate-base" regulation. Under this approach, rates are set to give the utility the opportunity to recover its costs of providing service plus a fair return.

In recent years, however, there has been a trend to performance-based regulatory methodologies, such as price-cap regulation. With price-cap regulation, initial rates often reflect the cost of service, but are allowed to increase, or are required to decrease, in accordance with a formula over time.

The following provides a brief description of the most common rate-setting methodologies:

- cost of service / return-on-rate base;
- price cap;
- revenue cap;
- hybrid price cap / cost of service;
- benchmarking.

Cost of Service / Return-on-Rate Base

Under cost-of-service regulation, the rates are set to provide a rate-regulated enterprise the opportunity to recover its costs and earn a return on its investment. The regulator establishes the revenues required to cover the expected cost of providing the regulated service, including a fair return on the investment in the regulated operations. This amount is called the "revenue requirement." The regulator then sets rates that will provide the enterprise with a reasonable opportunity to recover its revenue requirement. Exhibit 2.1 shows the equation that is frequently used to determine the revenue requirement.

Exhibit 2.1

DETERMINING THE REVENUE REQUIREMENT

Operating, Maintenance and Administrative Costs (OM&A Costs)

+

Allowed return on investment (rate base)

=

Revenue Requirement

OM&A costs include all office and field operating costs, various taxes, including income taxes, and depreciation. This component of the cost of service is merely a sum of the costs for the period, usually one year. The allowed return is intended to cover interest expense and provide a fair return on equity. It is equal to the allowed rate of return times the investment in

regulated operations, which is referred to as the "rate base." The allowed return reflects the cost of debt and a return on equity. The cost of debt is based on the actual debt outstanding plus the forecast cost of any proposed debt issues for the year. The return on equity is based on what investors require on non-regulated investments of similar risk. Exhibit 2.2 presents a simplified example of the allowed return calculation.

Rates may be set for a short period, such as a year, or may be set until changed. In the latter case, the enterprise seeks new rates when existing rates will not allow it to recover its costs and earn a fair return. Alternatively, the regulator may seek a rate review when allowed rates are considered excessive. As a result, a regulated enterprise's actual return is usually close to its allowed return.

Exhibit 2.2

ALLOWED RETURN CALCULATION

	Amount	Ratio		Cost Rate		Cost
Component	($ millions)					
Long-term debt		70%	X	10%	=	7.0%
Common equity			X	15%	=	4.5%
	200					**11.5%**
Rate Base	**200**					

In this example, the rate-regulated enterprise would have a deemed or actual common equity ratio of 30%, an allowed rate of return on common equity of 15%, and a rate of return on rate base of 11.5%.

Using the example above, if actual revenues and costs equal forecast costs (including a fair return), the following would be the financial statement results:

If the rate base is $200 million, then net income would be:
$200 million x 30% x 15% = $9 million

Interest expense would be:
$200 million x 70% x 10% = $14 million

If OM&A costs are $60 million, then revenues would be:
$60 million + $9 million + $14 million = $83 million

The return on rate base would be:
$200 million x 11.5% = $23 million (or $9 million + $14 million)

With cost-of-service regulation, there is a direct link between the costs that an enterprise is

expected to incur and its expected revenue — rates are set to allow the enterprise to recover its expected costs. Although regulators may follow GAAP in determining the amount of any specific cost to be included in the cost of service, it is not always the case. Regulatory authorities may decide that additional considerations are appropriate in setting "just and reasonable" rates, for example:

- *Cost deferral*
  Where certain specific costs are subject to material variation, are difficult to predict and are largely outside the control of management, a regulator may require a regulated enterprise to place the difference between the expected and actual amount of those costs in a deferral account. The amount in the deferral account may then be used to increase or decrease the future revenue requirement. This results in a portion of the costs (or cost savings) of one period being included in the revenue requirement of another. In some cases, deferral balances may be refunded or recovered in a lump sum and the revenue requirement is not adjusted.
- *Rate smoothing*
  To avoid rate fluctuations or to smooth out an increase in rates, a regulator may defer costs (or cost savings) with the deferred amount to be reflected in future rates.
- *Cost disallowance*
  Where a regulator decides that a cost was not prudently incurred, it may disallow all or part of the cost, thereby reducing (or eliminating) any future recovery of that cost.

In most cases, where a regulator decides to defer the recovery of a cost, it is assumed that the regulated enterprise will recover that cost. With rates set below what would be recoverable in an unregulated market, the enterprise can usually collect any increase in rates required to recover the deferred cost.

Price Cap

With price-cap regulation, prices are capped, with the capped rates changing each period in accordance with a formula. In its simplest form, rates are allowed to increase by a percentage amount equal to the rate of inflation less a productivity factor. Where the measure of productivity is greater than the rate of inflation, rates must be decreased.

Increase in allowed rates = Inflation – Productivity

The formula may include provision for what is sometimes referred to as a "Z" or exogenous factor. This is an adjustment for costs or cost savings not covered by the basic formula. Generally, amounts covered by the "Z" factor must be material and outside the control of

management. A common example is an unexpected change in income tax rates. If income tax rates increase, the rates of the rate-regulated enterprise are allowed to increase beyond what would be allowed by the formula to cover the increase in this cost. The "Z" factor recognizes the difficulty in developing a simple formula that will deal with all economic and other events.

The price-cap methodology may contain deferral accounts. As noted above under cost-of-service regulation, these accounts deal with specific costs that vary significantly, are difficult to predict or are largely outside the control of management. Differences between the expected and actual level of the costs are placed in a deferral account and recovered through an increase in future rates or used to reduce future rates.

With price-cap regulation, there are usually periodic reviews of the formula to ensure that the resulting rates are just and reasonable. These reviews are undertaken every three to six years. The reviews may result in an adjustment to the base rates and/or the formula for increasing (decreasing) rates. In some cases, the formula may have an "off ramp" that will allow for an early review under specific conditions. As with the "Z" factor, the "off ramp" recognizes that a simple formula cannot deal with all possible situations.

It has been argued that price-cap regulation breaks the link between rates and costs; rate increases are based on the price-cap formula and not on changes in the costs of the regulated enterprise. There is rarely a complete break, however, between rates and costs. For example:

- Initial rates will often reflect the cost of service.
- The price cap formula is usually intended to reflect reasonably expected changes in costs.
- In the periodic reviews, rates will often be evaluated against the cost of service.
- The "Z" factor allows for changes in rates to reflect costs, or cost savings, not covered by the price-cap formula.
- Deferral accounts result in an adjustment in rates to reflect differences between the expected and actual level of specific costs.

Revenue Cap

Revenue-cap regulation is essentially the same as price-cap regulation, except that revenues are capped rather than rates (that is, revenues are allowed to increase at a rate equal to inflation less productivity). With price-cap regulation, prices are regulated and total revenues will fluctuate with changes in demand. With revenue-cap regulation, total revenues are regulated and prices will fluctuate with changes in demand. For example, with price-cap regulation, an increase in demand will result in an increase in total revenues whereas, with revenue-cap regulation, rates would fall.

Revenue-cap regulation is applied where costs are essentially fixed. In some cases, the formula may require an adjustment factor to deal with the expected changes in variable costs in response to expected changes in demand. As with price-cap regulation, there is usually not a complete break between rates and costs.

Hybrid — Price Cap / Cost of Service

The hybrid methodology is a modification of the price-cap and cost-of-service methodologies. Rates are set in accordance with a price-cap formula. At the end of the year, the actual return on equity is compared to the allowed return on equity. A portion of earnings in excess of that allowed must be returned to customers through a reduction in future rates. In some cases, a portion of any earnings below those allowed is shared with customers through an increase in future rates. The hybrid methodology increases the link between allowed rates and costs, since a portion of cost savings (and in some cases, cost overages) are passed on to customers through adjustments to future rates.

Benchmarking

With benchmarking, rates are based on prices, or costs, of other organizations. They may be the prices of non-regulated enterprises or regulated enterprises. The use of benchmarking is limited by the difficulty in finding comparable enterprises and situations against which to benchmark rates. Also, the prices against which rates are benchmarked may not be just and reasonable.

The use of rates charged by other regulated enterprises poses additional problems. In effect, the regulator grants rate-setting authority over the enterprise to the regulator of the enterprises against which rates are benchmarked. With benchmarking there is a break between rates and costs, at least the costs of the regulated enterprise.

CONCLUSION

In this chapter, the Study Group defines what is meant by "rate regulation," and discusses the various processes and methodologies that may be used.

Under rate regulation, an enterprise's rates are established by, or are subject to approval by, a regulator. There are a number of basic regulatory processes and methodologies and, within each, there can be different applications that vary with the regulator, the entity being regulated and the circumstances faced.

Chapter 3

ACCOUNTING FOR RATE REGULATION

Views differ on whether, and, if so, the extent to which, differential accounting by rate-regulated enterprises should be permitted. This chapter considers those differing views and sets out the Study Group's view on the approach that should be taken.

INTRODUCTION

Chapter 1 noted that there were differing views on the need for differential treatment in the application of GAAP to rate-regulated enterprises. The major views were set out as a continuum in Exhibit 1.2. As a related issue, there are also differing views on the approaches that should be taken with respect to accounting by such enterprises. This chapter examines some of those approaches.

APPROACHES TO ACCOUNTING FOR RATE REGULATION

Approaches that could be taken with respect to accounting for rate-regulation include the following.

No Differential Treatment

Under this approach, rate-regulated enterprises would be required to follow GAAP as prescribed for other types of business enterprises. No differential treatment would be permitted.

Those supporting this viewpoint believe that the action of a regulator does not, in itself, provide compelling support for altering the timing of recognition of costs and revenues from that otherwise expected under GAAP. As far as they are concerned, no true economic difference exists between regulated and non-regulated enterprises, only a different source for how prices are determined.

In their opinion, it is questionable whether the financial statements, and in particular, the income statement, would truly reflect the operations for a particular period, since certain costs and revenues would not be recognized in the period in which they were incurred or earned. Any changes in rates made by the regulator to permit the recovery or return of such deferred amounts are, in their opinion, properly reflected in subsequent periods in which the revenues are actually received. It is noted that "the goal of accrual accounting for a business enterprise is to account in the periods in which they occur for the effects of transactions and other events and circumstances, to the extent that those financial effects are recognizable and measurable." 1(9) By permitting such transactions, events and circumstances to be reflected in a period in which they do not occur does not reflect the goal of accrual accounting.

Accounting for Rate Regulation Strictly Limited to Those Differences Specifically

Permitted

Under this approach, rate-regulated enterprises would follow GAAP tailored to their particular economic circumstances only where this is expressly permitted by the Accounting Standards Board (AcSB) or the CICA's Emerging Issues Committee (EIC).

Those who support this viewpoint maintain that the *Handbook* already provides comprehensive accounting standards for rate-regulated enterprises. The situations where differential accounting can be applied should be strictly limited to those where such a differential treatment is specifically permitted by an accounting standard in the *Handbook* or by an *Abstract* issued by the EIC. In their opinion, there are few fundamental differences between regulated business enterprises and non-regulated business enterprises. These differences can best be dealt with from a financial reporting point of view on a specific basis when determined necessary as part of the formal accounting standard-setting process.

Current industry practice goes beyond what would be permitted under this approach.

Canada-US GAAP Harmonization

Under this approach, the accounting standards followed by Canadian rate-regulated enterprises would be conformed to those issued by the US FASB.

The AcSB has, for the past few years, been working with major foreign standards-setting bodies toward the convergence of accounting standards. The goal of convergence is to develop a single set of internationally accepted accounting standards. Recognizing that international harmonization will take some years and that Canada's most important foreign market is the United States, the AcSB has also been working on a more accelerated basis to eliminate the major differences between Canadian and US GAAP.

In line with the AcSB's focus on harmonization, some maintain that US standards provide a useful basis for developing Canadian guidance on accounting for rate-regulated enterprises. They note that the US has already codified in standards (such as Statement of Financial Accounting Standards (SFAS) 71, 90 and 101) more principles related to accounting for regulated operations and, therefore, there is no need to re-invent the wheel — US standards should be adopted *verbatim*. Those holding this view maintain that the different business conditions and environment do not warrant a "made-in-Canada" solution.

It was also suggested that, in light of the AcSB's focus on harmonization, the project might review Canadian and US GAAP as it relates to rate-regulated enterprises. In this regard, an evaluation of similarities and differences could provide the basis for adopting US GAAP, except where the different economic environment dictated alternative accounting standards.

Codify Current Canadian Practice

Under this approach, GAAP for rate-regulated enterprises would be governed by current Canadian practice, which has evolved through application of existing *Handbook* sections, industry practice and US GAAP.

Those supporting this viewpoint have noted that a body of GAAP has already been established for rate-regulated enterprises through practices currently followed by such enterprises. In their opinion, these practices are compatible with the provisions of specific *Handbook* sections and reflect the economic impact of rate regulation. Appendix B to this Research Report presents the results of a survey of accounting and financial statement disclosure practices. It shows that almost all financial statements of rate-regulated enterprises recognize the impact of rate regulation and indicate that they are currently being prepared in accordance with GAAP. This suggests that the fundamental issue to be addressed in this Research Report is not **whether**, but **how** GAAP should apply to rate-regulated enterprises.

Current Canadian practice also recognizes the different economic environments in Canada and the US. For example, in the United States, income taxes are accounted for according to the liability method. When a rate-regulated enterprise recovers income taxes on a taxes payable basis, US GAAP permits a corresponding regulatory asset to be recorded, if appropriate. This results in an income statement that reflects the taxes payable charge and a balance sheet grossed up to record both the future taxes and the regulatory asset. This is of little consequence in the United States because balance sheet credits such as future taxes do not attract capital taxes. In Canada, however, future income taxes need not be recorded to the extent that they will be included in rates charged to customers in the future. If the US practice had been prescribed, rate-regulated enterprises would have been subjected to capital taxes.

It was suggested by those who support this approach that this Research Report project might review and codify existing Canadian practices, and then explain that the differential treatment in the application of GAAP merely reflect the economic consequences of the regulator's actions. Such consequences arise because the regulator may use a basis other than GAAP to measure the costs that are to be included in rates.

GAAP Followed by Rate-regulated Enterprises should be Governed by the Economic Impact of Rate Regulation

Under this approach, accounting standards would be included in the *Handbook* to explicitly recognize the economic impact of rate regulation.

Those who support this approach maintain that the consequences of the rate-setting process often create future economic benefits and obligations, which meet the criteria for the recording of assets and liabilities as set out in "Financial Statement Concepts," *Handbook* Section 1000. They maintain that any action of a rate regulator that has an economic impact on a rate-regulated enterprise should be reflected in the financial statements. In their opinion, an

approach that permits no differences from GAAP followed by other business enterprises clearly does not recognize that the actions of a rate regulator often have an economic impact on the enterprise. This is, in their opinion, contrary to the basic accounting concepts set out in Section 1000. They do not agree that this approach is contrary to the requirements of the *Handbook*. In their opinion, it is, in fact, the approach required by Section 1000. Further, the *Handbook* specifically acknowledges that "no rule of genera application can be phrased to suit all circumstances or combination of circumstances that may arise." 2(10) The fact that the application of GAAP, in some situations, may be different simply reflects that statement.

APPROACH TO THE PROJECT

After concluding that guidance is needed on accounting for rate-regulated enterprises and considering the different approaches referred to above, the Study Group decided that a comprehensive foundation is called for. Having considered how rate regulation works (see Chapter 2), it was considered important to look at what current standards require and how the issues are being addressed in current practice in both Canada and the US (see Chapter 4); and what further accounting guidance should be provided in accordance with the mandate set out in the terms of reference for this project (see Chapter 5).

The Study Group also decided that it was essential to review the basic financial statement concepts set out in *Handbook* Section 1000 and the related FASB Concepts Statements in the US to determine whether differential treatment by rate-regulated enterprises is conceptually sound (see Chapter 5 and Appendix A). After all, according to Section 1000, it is expected that the financial statement concepts will be used by preparers of financial statements and accounting practitioners in exercising their professional judgment as to the application of GAAP and in establishing accounting policies in areas in which accounting principles are developing.

With that foundation, general principles could be developed for application to specific accounting issues and appropriate accounting guidance provided to rate-regulated enterprises in both the private sector and the public sector (see Chapters 6 to 9). Without that foundation, it might be very difficult to determine (much less justify) whether and how the impact of rate regulation should be reported under GAAP.

CONCLUSION

This chapter sets out and analyzes some of the approaches that have been suggested for accounting by rate-regulated enterprises. It also sets out the Study Group's views on the approach that should be undertaken. This approach is based on a framework that recognizes the economic impacts of rate regulation, identifies the financial reporting concepts that should guide the recognition of those impacts to the extent that they exist, and considers existing practice in both Canada and the US.

Chapter 4

ACCOUNTING STANDARDS AND FINANCIAL REPORTING PRACTICES

Rate regulation imposes requirements that can have an impact on accounting and financial reporting. In turn, this can have a direct bearing on the current reporting practices of rate-regulated enterprises.

INTRODUCTION

As previously noted, developing appropriate guidance on accounting for the effects of rate regulation requires a sound understanding of the financial reporting environment in which rate-regulated enterprises currently operate. In Chapter 2, the Study Group examined the first component of that environment — rate regulation. In Chapter 3, various approaches that could be taken with regard to accounting by rate-regulated enterprises were considered.

This chapter examines the second and third component of the financial reporting environment depicted in Chapter 1 (Exhibit 1.1) — accounting standards and current financial reporting practices. The first component, "rate regulation" was considered in Chapter 2. The primary focus of this chapter is on standards and practices in Canada and the United States, but the current situation in the United Kingdom is also considered.

ACCOUNTING STANDARDS AND FINANCIAL REPORTING PRACTICES

Canadian accounting pronouncements and practices recognize that, in certain circumstances, rate regulation can affect what should be reported in the financial statements. Accounting standards and practices in the United States also recognize the effects of rate regulation and provide considerable guidance to rate-regulated enterprises. In the United Kingdom, although accounting pronouncements do not address the effects of rate regulation, there is considerable interest in developing a conceptual framework for accounting by regulated industries. Accounting standards that were issued by the International Accounting Standards Committee (IASC) do not address the effects of rate regulation.

Standards and Practices in Canada

In Canada, the *Handbook* establishes the criteria an enterprise must meet in order to be considered "rate regulated" for financial reporting purposes. When those criteria are met, the *Handbook* provides for differential treatment in the application of accounting standards to such

enterprises.

"Income Taxes," *Handbook* Section 3465, paragraph .09, defines a rate-regulated enterprise as:

> an enterprise which meets all of the following criteria:
>
> (i) the rates for regulated services or products provided to customers are established by or are subject to approval by a regulator or a governing body empowered by statute or contract to establish rates to be charged for services or products;
>
> (ii) the regulated rates are designed to recover the cost of providing the services or products; and
>
> (iii) it is reasonable to assume that rates set at levels that will recover the cost can be charged to and collected from customers in view of the demand for the services or products and the level of direct and indirect competition. This criterion requires consideration of expected changes in levels of demand or competition during the recovery period for amounts recorded as recoverable under the rate formula.

The definition of rate-regulated property, plant and equipment in "Property, Plant and Equipment," *Handbook* Section 3061, paragraph .10, is the same, with the exception that, in the last sentence, "for amounts recorded as recoverable under the rate formula" is replaced by "for any capitalized costs."

The following differential treatment in the application of accounting standards to rate regulated enterprises is currently permitted or required in the *Handbook*:

1. "Consolidated Financial Statements," *Handbook* Section 1600, "Intercompany Gains and Losses," states:

   > Where a parent or subsidiary manufactures or constructs facilities for a regulated public utility in the consolidated group, any intercompany gain or loss is deemed to have been realized to the extent that the transfer price on such facilities is recognized for rate-making purposes by a government regulatory body (paragraph 1600.29).

2. "Property, Plant and Equipment," *Handbook* Section 3061, states:

   > For an item of rate-regulated property, plant and equipment, the cost includes the directly attributable allowance for funds used during construction allowed by the regulator (paragraph 3061.23).
   >
   > In determining the net recoverable amount of an item of rate-regulated property, plant and equipment, the enterprise considers the extent to which rates will provide for the recovery of the cost of the asset (paragraph 3061.46).

> For rate-regulated operations, the regulator may require the difference between net carrying amount and the proceeds on disposal of an item of property, plant and equipment to be considered in the determination of future rates charged to customers. In such circumstances the difference is deferred, provided there is reasonable assurance that: (a) any excess of net carrying amount over proceeds on disposal will be recovered through future rates; or (b) any excess of proceeds on disposal over net carrying amount will serve to reduce future rates (paragraph 3061.53).

3. "Income Taxes," *Handbook* Section 3465, states:

> *A rate regulated enterprise need not recognize future income taxes in accordance with the Recommendations of this Section to the extent that future income taxes are expected to be included in the approved rate charged to customers in the future and are expected to be recovered from future customers. If future income taxes are not recognized in accordance with the Recommendations of this Section, the rate regulated enterprise should disclose the following, in addition to the information to be disclosed in accordance with paragraphs 3465.91 and 3465.92:*
>
> *(a) the reason why future income tax liabilities and future income tax assets have not been recognized; and*
>
> *(b) the amount of future income tax liabilities, future income tax assets and future income tax expense that have not been recognized. (paragraph 3465.102)*

Pending further study of accounting for rate regulated enterprises as a whole, rate regulated enterprises are not required to record future income taxes for temporary differences that arise from assets and liabilities relating to their rate regulated activities to the extent that these future income taxes will be included in the rates charged to customers in the future and will be recoverable at that time as set out in paragraph 3465.102. (paragraph 3465.103)

Future income taxes would be recognized in accordance with the remainder of this Section to the extent that future income taxes are not expected to be included in the rates charged to customers in the future. In addition, a rate regulated enterprise that chooses to recognize future income taxes despite the expectation that they will be included in the rates charged to customers in the future would recognize all future income tax liabilities and future income tax assets in accordance with the requirements of this Section. (paragraph 3465.104)

4. "Interest Capitalized," *Handbook* Section 3850, states:

> This Section does not apply to interest capitalized by rate regulated enterprises as part of an allowance for funds used during construction when such enterprises disclose the allowance for funds used during construction in the period. (paragraph 3850.02)

In addition to the above-noted definition and differential treatment, the *Handbook* makes reference to "public utilities" in one other instance — "Segment Disclosures," Section 1701.

Paragraph 1701.18 discusses the aggregation criteria for reportable segments and states:

> Operating segments often exhibit similar long-term financial performance if they have similar economic characteristics. ... Two or more operating segments may be aggregated into a single operating segment if aggregation is consistent with the objective and basic principles of this Section, if the segments have similar economic characteristics, and if the segments are similar in each of the following areas:
>
> - The nature of the products and services.
> - The nature of the production processes.
> - The type or class of customer for their products and services.
> - The methods used to distribute their products or provide their services.
> - If applicable, the nature of the regulatory environment (for example, banking, insurance, or **public utilities**). (emphasis added)

With regard to accounting and reporting practices in Canada, Chapter 1 noted that a 1999 cross-industry survey identified several accounting issues that were significant for rate-regulated enterprises. In view of the large number of issues identified, and to assess the current state of accounting and financial reporting by rate-regulated enterprises, the Study Group undertook a survey of current practices in corporate annual reports. The survey spanned the years 1999 and 2000 and covered 25 rate-regulated enterprises in four sectors: electric, natural gas distribution, natural gas transmission and telecommunications. Appendix B to this Research Report presents the findings. It shows that, for the most part, the survey companies disclosed in notes to the financial statements:

- the names of the regulatory authority or authorities;
- accounting requirements prescribed for regulatory purposes;
- pertinent information on specific issues related to the economic impact of rate-regulation, for example, on income taxes and capital assets; and

- that general purpose financial statements are prepared in accordance with GAAP.

Standards and Practices in the United States

Principles to recognize the economic impact of rate regulation have been applied to US rate-regulated enterprises since at least 1962, when they were authorized by an addendum to *Accounting for the "Investment Credit,"* AICPA Accounting Principles Board Opinion 2. In 1982, *Accounting for the Effects of Certain Types of Regulation*, Statement of Financial Accounting Standards (SFAS) 71, formalized many of those principles, and also modified some of them.

Since its issuance, SFAS 71 has been the principal authoritative source of guidance on accounting and financial reporting requirements for rate-regulated enterprises in the United States. In addition, several other Statements have been issued over the years to provide guidance on specific topics. 1(11) These and other "authoritative pronouncements" issued by the FASB, its Emerging Issues Task Force (EITF), the AICPA and the staff of the Securities and Exchange Commission (SEC) are listed in Exhibit 4.1. For SFAS 71 and some of the more significant Statements, a brief commentary on their application to rate-regulated enterprises is provided below.

SFAS 71 provides guidance on preparing general purpose financial statements for most public utilities. Certain other companies with regulated operations that meet specified criteria are also covered. Although the business activities of utility companies are essentially the same as those of other companies that manufacture products or provide services, their regulated status creates operational and accounting situations that are peculiar to regulated companies. In this regard, SFAS 71 refers to the "economic dimension" that regulation brings to utilities and the need for accounting to reflect that dimension. In general, the type of regulation covered by SFAS 71 requires allowed rates (prices) to be set at levels intended to recover the estimated costs of providing regulated products or services, including the cost of capital.

According to SFAS 71, recovery of certain costs may be provided either before or after the costs are incurred. If regulation provides assurance that incurred costs will be recovered in the future, companies are required to capitalize those costs. If current recovery is provided for costs expected to be incurred in the future, companies are required to recognize a liability equal to the amount received.

A significant conclusion reached in SFAS 71 is that rate regulators can determine the timing of recovery of costs through rates and, therefore, can affect the value of assets and liabilities recognized in accordance with GAAP. Specifically, rate actions of a regulator can provide reasonable assurance of the existence of an asset and can also reduce or eliminate the value of an asset. Furthermore, rate actions of a regulator can impose a liability on a regulated enterprise. A regulator, however, cannot eliminate a liability that it did not impose.

Exhibit 4.1

ACCOUNTING GUIDANCE IN THE UNITED STATES THAT SPECIFICALLY RELATES TO RATE-REGULATED ENTERPRISES

FASB — Statements of Financial Accounting Standards (SFAS)

- SFAS No. 71, Accounting for the Effects of Certain Types of Regulation
- SFAS No. 90, Regulated Enterprises — Accounting for Abandonments and Disallowances of Plant Costs
- SFAS No. 92, Regulated Enterprises — Accounting for Phase-in Plans
- SFAS No. 98, Accounting for Leases (Application, Specific Aspects, Sale-Leaseback Transactions by Regulated Enterprises, paragraphs 58 & 59)
- SFAS No. 101, Regulated Enterprises — Accounting for the Discontinuation of Application of FASB Statement No. 71
- SFAS No. 109, Accounting for Income Taxes, paragraphs 57 & 58 (also, Basis for Conclusions, paragraph 125 and Application, Specific Aspects, paragraphs 252-255)
- SFAS No. 142, Goodwill and Other Intangible Assets (Amendments to Existing Pronouncements, Appendix D, item D8)
- SFAS 143, Accounting for Asset Retirement Obligations, paragraphs 19-21 (also, Basis for Conclusions, paragraphs B67-B73)
- SFAS No. 144, Accounting for the Impairment or Disposal of Long-Lived Assets (Basis for Conclusions, paragraphs B59-B61)
- FASB Technical Bulletin No. 87-2, Computation of a Loss on an Abandonment

Emerging Issues Task Force (EITF)

- EITF Issue 91-6, Revenue Recognition of Long-Term Power Sales Contracts
- EITF Issue 92-7, Accounting by Rate-Regulated Utilities for the Effects of Certain Alternative Revenue Programs
- EITF Issue 92-12, Accounting for OPEB Costs by Rate Regulated Enterprises
- EITF Issue 93-4, Accounting for Regulatory Assets
- EITF Issue 96-17, Revenue Recognition under Long-Term Power Sales Contracts That Contain Both Fixed and Variable Pricing Terms
- EITF Issue 97-4, Deregulation of the Pricing of Electricity — Issues Related to the

Application of FASB Statements No. 71 and 101

Securities and Exchange Commission, Staff Accounting Bulletins (SEC SAB)

SAB 92 Accounting and Disclosures Relating to Loss Contingencies

- Topic 10-A, Financing by Electric Utility Companies Through Use of Construction Intermediaries
- Topic 10-B, Estimated Future Costs Related to Spent Nuclear Fuel and Nuclear Electric Generating Plants
- Topic 10-C, Jointly Owned Electric Utility Plants
- Topic 10-D, Long-Term Contracts for Purchase of Electric Power
- Topic 10-E, Classification of Charges for Abandonments and Disallowances
- Topic 10-F, Presentation of Liabilities for Environmental Costs

SFAS 71, paragraph 5, establishes three criteria for determining whether an entity is covered by the Statement:

- An enterprise's rates for regulated services must be established by or subject to approval by an independent third-party regulator or by its own governing board empowered by statute or contract to establish rates that bind customers. 2(12)
- The regulated rates must be designed to recover the specific enterprise's costs of providing the regulated services or products.
- In view of the demand for the regulated services or products and the level of competition, it must be reasonable to assume that rates set at levels that will recover the enterprise's costs can be charged to and collected from customers.

Regulated Enterprises — Accounting for the Discontinuation of Application of FASB Statement No. 71, SFAS 101, requires that an enterprise whose operations cease to meet the specified criteria should discontinue application of SFAS 71. Generally, that discontinuation would be reported by eliminating from the rate-regulated enterprise's financial statements the effects of rate regulation. The carrying amounts of plant, equipment and inventory measured and reported pursuant to SFAS 71 should not be adjusted, however, unless those assets are impaired, in which case the carrying amounts of those assets should be reduced to reflect that impairment. The net effect of the adjustments should be included in income for the period of discontinuance and classified as an extraordinary item.

Regulated Enterprises — Accounting for Abandonments and Disallowances of Plant Costs, SFAS 90, acknowledges that regulators may partially or totally disallow construction costs from rate base and/or cost of service recovery. SFAS 90 states that, when it becomes probable that

certain plant costs will be disallowed for rate-making purposes, and a reasonable estimate of the amount of the disallowance can be made, that amount should be recognized as a loss. Because of the increased cost of construction and lower demand than originally expected, US electric utilities abandoned plants under construction in the 1980s and, in many cases, regulators disallowed all or a portion of the costs. SFAS 90 requires that the cost of an asset should be removed from construction work in progress or utility plant in service when it becomes probable that the asset will be abandoned. To the extent that the cost of the asset will be recovered in future rates, a separate new asset is recorded. The value of the new asset is dependent upon the amount of return on investment, if any, that the regulator allows on the abandoned plant and the length of the recovery period. This amount is equivalent to the present value of the future revenues expected to be provided to recover the allowable cost of the abandoned plant. The recorded amount of the asset is adjusted as necessary if new information indicates that the estimates used to record the asset have changed and that adjustment is recognized in income as a loss or gain.

Regulated Enterprises — Accounting for Phase-in Plans, SFAS 92, noted that, at the time the Statement was issued in 1987, the cost of some plant construction had been significantly greater than in prior years. To moderate the initial rate increase when a newly completed plant went into service, some regulators had adopted phase-in plans. SFAS 92 applies to the construction of new plants. It defines a phase-in plan as any method of cost recovery for rate-making purposes that defers expense recognition beyond the period such costs would be charged to expense under GAAP applicable to enterprises in general. It essentially eliminated the recognition of phase-in plans for financial reporting purposes.

Some utilities enter into sale and leaseback transactions related to recently completed plants. SFAS 71 requires that the timing of expense recognition and the related amortization of a capital lease obligation and asset be modified to conform to the rate treatment of the lease payment. This generally results in a smaller amortization of the capital lease asset in the earlier years of a lease for a utility than would be recorded by a non-regulated enterprise. As a result, when a utility enters into a capital lease for a newly completed plant that is treated as an operating lease for rate-making purposes, the lease is considered a phase-in plan. For costs to be deferred under the plan, the SFAS 92 criteria must be met. Additionally, if the regulator has not allowed a return on the leased asset or the deferred amounts, this would be considered a disallowance and would be accounted for in accordance with the provisions of SFAS 90.

Accounting for Leases: Sale-Leaseback, Transactions Involving Real Estate, Sales-Type Leases of Real Estate, Definition of the Lease Term, and Initial Direct Costs of Direct Financing Leases, SFAS 98, effectively prohibits recognition of a sale in many sale-leaseback transactions. This is particularly true for nuclear power plants, in which the lessee / utility's continuing responsibility for nuclear decommissioning costs would prohibit sale recognition.

Accounting for Asset Retirement Obligations, SFAS 143, 3(13) applies to all entities and to

legal obligations associated with the retirement of a tangible long-lived asset. If a reasonable estimate can be made, an entity must recognize the fair value of a liability for an asset retirement obligation in the period in which the obligation is incurred. If a reasonable estimate of fair value cannot be made at that time, the liability is to be recognized as soon as a reasonable estimate of fair value can be made. An asset in the same amount will also be established and subsequently allocated to expense using a systematic and rational method over its useful life. SFAS 143 acknowledges that, for rate-regulated enterprises, there may be a difference in the timing of the recognition of period costs for financial reporting and for rate-making purposes, and that it may be necessary to recognize a regulatory asset or liability with respect to such timing difference.

Accounting for the Impairment or Disposal of Long-Lived Assets, SFAS 144, applies to all enterprises, including rate-regulated enterprises. In most cases, rate-regulated enterprises currently operating under traditional cost of service rate-making principles and, therefore, continuing to meet the applicability provisions of SFAS 71 would also comply with SFAS 144. Paragraph 7 of this Statement requires that "an impairment loss shall be recognized only if the carrying amount of a long-lived asset (asset group) is not recoverable [that is, it exceeds the sum of the undiscounted cash flows expected to result from its use and eventual disposition] and exceeds its fair value." Rate-regulated enterprises are therefore required to charge a regulatory asset to earnings when and if recovery is no longer probable.

In summary, a number of authoritative pronouncements issued by the FASB in the US provide detailed guidance to regulated enterprises. They recognize that the economic impact of rate regulation should be reported in the general purpose financial statements of such enterprises. To qualify as a rate-regulated enterprise in the US, such enterprises must meet the criteria set out in SFAS 71.

Standards and Practices in the United Kingdom

In the United Kingdom, there are no specific accounting standards or guidelines for reflecting the effects of rate regulation on financial reporting. In other words, rate-regulated enterprises are obliged to follow the same accounting principles as non-rate-regulated enterprises in preparing their general purpose financial statements. In addition, they must prepare regulatory statements according to the requirements of the relevant regulatory authority. Often, regulatory accounting requirements vary significantly from GAAP for preparing general purpose financial statements.

"How does the existence of industry regulators with price-setting powers affect accounting practices in the telecommunications, gas, airports, electricity and water industries in the United Kingdom?" "What is distinctive about accounting for regulated industries?" These and other pertinent questions were addressed in the 1994 UK report, *Accounting for Regulation in UK Utilities*. 4(14) The principal issues identified in the report included the impact of privatization, the relative lack of conventions and standards surrounding current cost accounting and the

special significance of accounts for price-setting purposes.

The report's principal research findings included the following:

- Regulatory accounting requirements vary significantly between the regulated industries.
- In addition to the regulatory or supplementary accounts prepared by the regulated companies, the regulators appear to keep their own sets of books which seem, at least in some instances, to unravel the effects of certain accounting choices made by the companies.
- Companies have used their discretion in accounting matters immediately before and after privatization to change some of their accounting policies and practices. In certain cases, particularly where there have been changes in asset lives and the basis for charging depreciation, the primary motivation was to bring policies more in line with those of other private sector companies.
- The difference in approach can be attributed to the different regulatory structures in the various industries, the different degree of media and public interest in them and the particular circumstances experienced by the industries during the period covered by the research.

The report recommended that:

- Regulatory standards should be issued by a body under the joint auspices of the Accounting Standards Board (ASB) and the industry regulators or by a body established by the regulators, in which case the standards should be approved by the ASB.
- There should be industry representation on the standard-setting body.
- Regulatory accounts should be brought within the aegis of the Financial Reporting Review Panel.

With regard to the lack of consistency in regulatory accounting, it has been observed that: 5(15)

- Although the regulator may be able to obtain consistent information from businesses by way of specific information requests, this source is not open to other stakeholders who must rely on published information. Informed comment on issues is difficult if regulated industries are not required to publish information in a consistent manner or if key values such as the regulatory asset base are not published at all.
- Accounting for regulation needs to be given a higher policy profile and be seen as an important part of the normal regulatory process, based on a comprehensive accounting framework. Accounting for regulation is important because regulation is designed to

achieve certain objectives. These regulatory objectives need to be clearly stated to, first, achieve a firm basis for public understanding and consent to the regulatory system as a whole and, second, to provide a framework for judging the performance of both regulators and regulated companies.

- Regulated entities in the UK support the preparation of Statements of Recommended Practice (SORPs) which may be developed for specialized industries, such as the regulated sector. The Accounting Standards Board (ASB) in the UK has recognized the requirement for accounting guidance for such specialized industries. For incidences where they have not developed such guidance, the SORP mechanism provides a means for an independent organization to develop specialized accounting guidance that carries a form of ASB endorsement. A SORP cannot override an accounting standard in the UK. The ASB has issued a policy for the development of SORPs, a fundamental feature being that the ASB will recognize bodies for the purpose of issuing SORPs. ASB-recognized bodies must, as a condition of recognition, agree to abide by the ASB's code of practice in producing SORPs. Furthermore, SORPs issued by ASB-recognized bodies will include a negative assurance statement from the ASB. As of January 2001, no SORPs had been issue for the various rate-regulated sectors in the UK.

In summary, there continues to be considerable interest and discussion in the UK about the need to develop a conceptual framework for accounting by regulated industries. It is viewed that, without a framework, the process of regulation will continue to be discretionary, rather than publicly accountable.

WHAT FURTHER GUIDANCE SHOULD BE PROVIDED?

By comparison to the United States, Canadian standards specifically address only a few issues. Consequently, the current reporting practices of Canadian rate-regulated enterprises may vary. Further, rate regulation is evolving rapidly (refer to the analysis in Chapter 2), and additional guidance is being sought on what constitutes GAAP for rate-regulated enterprises and how the *Handbook* requirements should be interpreted by them.

In this regard, the terms of reference for this project ask the Study Group to consider the following question: "Assuming that the Recommendations in the *Handbook* generally apply to rate-regulated enterprises, is differential treatment needed, due to their special circumstances?" The Study Group is of the opinion that rate regulation can influence rates that, combined with market conditions (demand and competition), can have an economic impact on current and future revenues and cash flows, thereby affecting assets (future economic benefits) and liabilities (future obligations). This is discussed further in Chapter 5. Accordingly, the potential economic impact of rate regulation warrants recognition in the general purpose financial statements of rate-regulated enterprises in accordance with GAAP.

In the Study Group's opinion, more guidance is needed, therefore, on the application of GAAP to the unique economic circumstances of rate-regulated enterprises. In this respect, the terms of reference call for the Study Group to suggest what type of guidance the CICA Accounting Standards Board should provide to meet the special needs of rate-regulated enterprises and the users of their general purpose financial statements.

In response to the terms of reference, the Study Group discussed various ways of providing such guidance, including:

- supplementary material to accompany applicable Sections of the *Handbook*;
- new accounting standard(s) with or without removing current differential treatment;
- one or more accounting guidelines; and/or
- making reference only to this CICA research report, when it is published.

The Study Group is of the opinion that general guidance on accounting for the effects of rate regulation should be issued as a new Section to the *Handbook*. The new Section would replace the material currently contained in the *Handbook*, including all of the differential treatments in the application of Accounting Recommendations that are identified in this chapter of the Research Report.

There are a number of reasons why a new *Handbook* Section is the preferred approach to proving guidance. First, accounting standards set out in a *Handbook* Section are at the top of the GAAP hierarchy and, therefore, are the most authoritative source for the exercise of professional judgment. Second, it is automatically subject to due process through exposure drafts for changes to accounting standards. Third, a conceptual framework is necessary to apply GAAP to rate-regulated activities. Fourth, such an approach is consistent with that taken in other situations, for example, insurance companies — a separate *Handbook* Section that deals only with the differential accounting treatments. Fifth, it would ensure that the AcSB considers consequential amendments whenever it is issuing or revising another standard.

In addition, following the traditional approach in developing accounting and reporting standards for rate-regulated enterprises could provide several benefits:

- It could help to minimize the possibility of Canada / US GAAP differences.
- It could facilitate comprehensive consideration, in one place, of issues facing rate-regulated enterprises.
- It could provide a means for disseminating detailed guidance, as needed, to financial statement preparers, auditors and users.

With respect to the nature of the guidance to be included in the new *Handbook* Section, the Study Group reviewed the financial statement concepts and general standards of financial

statement presentation that underlie the development of accounting standards in Canada. 6(16) It also compared the conceptual accounting frameworks of Canada and the United States (refer to Appendix A to this Research Report). Because of the similarities in the conceptual frameworks of Canada and the United States, accounting standards in the United States also provide a useful source of reference for developing Canadian guidance on financial reporting by rate-regulated enterprises.

CONCLUSION

In this chapter, the Study Group completes its review of the current financial reporting environment within which rate-regulated enterprises operate. In the Study Group's view, accounting pronouncements in Canada recognize that, in certain circumstances, rate regulation can affect what should be reported in the financial statements. In the United States, accounting pronouncements also recognize the effects of rate regulation. They establish a comprehensive framework for reporting the economic impact of rate regulation and provide detailed guidance to rate-regulated enterprises. In the United Kingdom, accounting pronouncements do not address the effects of rate regulation. Nonetheless, there is increasing interest in developing a conceptual framework for accounting by regulated industries. Accounting standards that were issued by the International Accounting Standards Committee (IASC) do not address the effects of rate regulation.

The Study Group is of the opinion that general guidance on accounting for the effects of rate regulation should be issued as a new Section in the *Handbook*. The new Section would replace the material currently contained in the *Handbook* relating to rate-regulated enterprises and would provide any additional guidance that is considered necessary.

With respect to the nature of the guidance to be included in the new *Handbook* Section, the Study Group is of the opinion that general principles should be established to provide a "framework" for applying GAAP to rate-regulated enterprises within the boundaries established by "Financial Statement Concepts," *Handbook* Section 1000. It is anticipated that the general principles will provide the basis for assessing, in a particular situation, whether rate regulation has an economic impact that should be reported and, if so, how it should be reported in general purpose financial statements.

Chapter 5

RATE REGULATION AND FINANCIAL REPORTING

The manner in which rate regulation is applied, not its mere existence, is the pervasive economic factor that supports any modification in the application of generally accepted

accounting principles.

INTRODUCTION

Chapter 2 of this Research Report reviewed the nature of rate regulation and how it operates in Canada. Chapter 4 noted that accounting pronouncements in Canada implicitly recognize that, in certain circumstances, rate regulation can affect what should be reported in the financial statements. In this regard, the Study Group proposed that a new Section be included in the *CICA Handbook – Accounting* to provide guidance on reporting the economic impact of rate regulation in financial statements.

The potential for rate regulation to create economic benefits and obligations raises two questions. Can regulatory authorities establish GAAP? Should the economic impact of rate regulation be reflected in the general purpose financial statements of rate-regulated enterprises and, if so, how? In this chapter, the Study Group addresses these and other interrelated matters.

RATE REGULATION AND ACCOUNTING PRINCIPLES

As previously noted in Chapter 1, the distinction between RAP (regulatory accounting principles used for rate-making purposes) and GAAP (generally accepted accounting principles set out in the *Handbook* for preparing general purpose financial statements) needs to be clarified. Accordingly, this chapter begins with brief explanations of RAP and GAAP and then considers whether regulatory authorities can establish GAAP.

Regulatory Accounting Principles

Regulatory authorities often prescribe the accounting principles and procedures that a regulated enterprise must follow for regulatory purposes. In some cases, they develop a detailed uniform system of accounts, while in other cases they make specific rulings dealing with specific costs as the need arises. These accounting principles and procedures are developed to support the calculation of allowed rates and to assist the regulatory authority in reviewing the periodic data submitted by the regulated enterprises. 1(17)

In most cases, the majority of the accounting principles and procedures prescribed by regulatory authorities are consistent with GAAP. The objective of regulatory reports differs, however, from the objective of general purpose financial statements. The key difference is that the regulatory reports are usually intended to support rate regulation.

For rate-making purposes, a regulatory agency may exclude certain of the regulated enterprise's costs. Excluded items typically arise from activities that are not subject to regulation or from projects or activities that the agency does not believe should be recoverable from customers through the rates they pay. On the other hand, a regulatory agency may include certain types of costs, but in different periods than they would be reflected in the general purpose financial

statements of non-regulated businesses. In addition, as discussed in Chapter 2, a regulatory agency may include "return on equity" as part of "costs" for rate-making purposes.

Generally Accepted Accounting Principles (GAAP) 2(18)

GAAP is the term used to describe the basis on which financial statements are normally prepared. GAAP encompasses the conventions, rules and procedures necessary to define accepted accounting practices at a particular time. Pronouncements of the Accounting Standards Board, as set out in the *Handbook*, are the primary source of GAAP. When a matter is not covered by a Board pronouncement, the most relevant "other source of GAAP" referred to in the *Handbook* would be consulted.

Unless the basis of accounting used to prepare general purpose financial statements falls within the range of acceptable choices set out in the *Handbook*, it is unlikely to constitute GAAP.

CAN REGULATORY AUTHORITIES ESTABLISH GAAP?

As noted in Chapter 1, this research project is concerned solely with the effects of rate making on the application of GAAP to general purpose financial statements. In this regard, a key issue raised in the terms of reference is: "Can accounting prescribed by rate-regulating authorities be considered, in and of itself, GAAP for rate-regulated enterprises and, if so, to what extent?" In other words, can regulatory accounting principles (RAP) be considered "generally accepted" for purposes of financial reporting by rate-regulated enterprises?

The Study Group acknowledges that, for regulatory reporting purposes, the regulators have the authority to prescribe accounting principles for the enterprises they regulate. As is clearly indicated in the *Handbook*, however, such principles do not constitute GAAP. They are intended to support the calculation of allowed rates and to assist the regulatory authority in reviewing the periodic data submitted by the regulated enterprises. They are not intended to meet the objectives of general purpose financial statements.

Accounting for the Effects of Certain Types of Regulation, SFAS 71, paragraph 52, indicates that respondents to a Discussion Memorandum on this subject expressed the view that, "unless an accounting order indicates the way a cost will be handled for rate-making purposes, it causes no economic effects that would justify deviation from the generally accepted accounting principles applicable to business enterprises in general. The mere issuance of an accounting order not tied to rate treatment does not change an enterprise's economic resources or obligations. In other words, the economic effect of regulatory decisions — not the mere existence of regulation — is the pervasive factor that determines the application of generally accepted accounting principles." Paragraph 54 of that SFAS indicates that "the Board concluded that regulatory-prescribed accounting should not be generally accepted *per se*, but rather that the Board should specify how generally accepted accounting principles apply in the regulatory

environment."

It has been argued that it would be onerous to require a regulated enterprise to maintain records necessary to prepare financial reports on two bases: one for the regulatory authority and another for the public. In the Study Group's experience, however, differences that exist currently between regulatory accounting principles and GAAP usually are not extensive in number, and adjustments to reconcile any differences should be simple to determine and apply.

In the Study Group's view, regulatory authorities cannot establish GAAP. Under statutory authority, the standards set out in the *Handbook* constitute GAAP. Although the actions of the regulator may affect rates, and the resulting economic impact may affect what should be reported in accordance with GAAP, this does not give regulatory authorities the authority to determine what should be considered in and of itself GAAP for financial reporting purposes by rate-regulated enterprises.

SHOULD THE IMPACT OF RATE REGULATION BE REPORTED?

There are differing viewpoints on whether the impact of rate regulation should be reported.

Impact of Rate Regulation should not be Reported

As noted in Chapter 3, there is a viewpoint that reporting the impact of rate regulation distorts the financial statements and may result in artificial income smoothing. There is also a concern that, in some situations, rate regulators are effectively transferring wealth to existing customers from future customers who are thereby required to absorb, through increased rates, costs incurred in a previous period. For example, rate regulators have, for rate-setting purposes, often prescribed that income taxes should be accounted for on the taxes payable basis. By failing to recognize a future liability for taxable temporary differences, as defined in "Income Taxes," *Handbook* Section 3465, paragraph .09, net income for the related periods is, in the opinion of those who express this concern, not properly reported. While rate regulators unquestionably have the authority to take such action for the purposes of setting rates, it should not be reflected in general purpose financial statements. Employee future benefits is another instance where, for rate-setting purposes, many regulators have required such benefits to be accounted for on a pay-as-you-go basis, whereas accounting standards require them to be accounted for in the period that gives rise to the benefit.

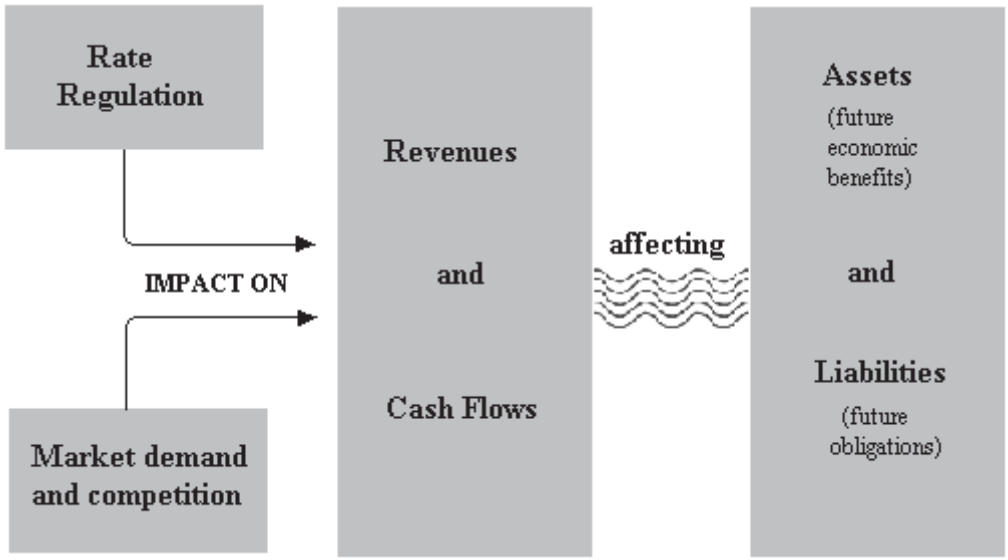
Impact of Rate Regulation should be Reported

The Study Group maintains, however, that, by restricting prices, rate regulation can affect the amount and timing of a rate-regulated enterprise's revenues. Within a period, the economic impact may be related to both current rates and future rates.

Exhibit 5.1 shows that rate regulation, when combined with market conditions (market demand

and competition), can have an economic impact on the revenues and cash flows of an enterprise, thereby affecting assets (future economic benefits) and liabilities (future obligations).

Exhibit 5.1



By changing future rates as a result of transactions or events in the current (or prior) period, rate regulation can create economic benefits and obligations. The benefits would be in the form of higher allowed rates and, therefore, higher revenues and cash flows. The obligations would be in the form of lower allowed rates and, therefore, lower revenues and cash flows. For example:

- A regulator employing cost-of-service regulation may decide that a cost that would normally be expensed in the current period will be deferred and included in the calculation of a future revenue requirement. Therefore, as a result of incurring the cost, the enterprise can expect to have an increase in future rates and an increase in future revenues and cash flows approximately equal to the amount of the deferred cost.
- A regulator may require that an enterprise share with its customers any earnings above a specified threshold. The sharing would be accomplished through a reduction in future rates. Therefore, as a result of having earnings above the threshold in the current period, the enterprise will be required to reduce rates and, therefore, cash flow, in a future period or periods.

A regulator cannot, however, eliminate a liability that it did not create, such as a liability to an enterprise's bondholders.

For rate regulation to have an economic impact, it must be effective, that is, it must restrict rates from what they would be in the absence of rate regulation.

- In the case of an economic benefit, future allowed rates sufficient to provide additional revenue equal to the benefit must be chargeable and collectible from customers. Otherwise, there is no economic benefit. Where market conditions or other factors restrict the rates that an enterprise can charge and collect from customers, the economic benefit would be limited to the additional revenues collectible from customers.
- In the case of an economic obligation, future allowed rates without the reduction to accommodate the obligation must be chargeable and collectible from customers. Where this condition is not met, a reduction in future allowed rates will not reduce revenues and, consequently, will have no economic impact. Therefore, from an economic perspective, where market conditions or other factors restrict the ability of an enterprise to charge and collect rates from customers, the economic obligation would be limited to the reduction in revenues collectible from customers.

Consequently, in the Study Group's opinion, there is no distortion or artificial smoothing where the economic benefits and obligations meet the definition of a financial statement element. On the contrary, a failure to report the economic benefits and obligations would distort the financial statements, at least in those cases where the recognition criteria are met.

Financial Statement Elements

"Financial Statement Concepts," *Handbook* Section 1000, paragraph .25, states that the "elements of financial statements are the basic categories of items portrayed therein in order to meet the objective of financial statements." 3(19) In defining the objective of financial statements, paragraph 1000.15, states that they provide information about:

- an entity's economic resources, obligations and equity / net assets;
- changes in an entity's economic resources, obligations and equity / net assets; and
- the economic performance of the entity.

Paragraph 1000.25 states that "there are two types of elements: those that describe the economic resources, obligations and equity / net assets at a point in time, and those that describe changes in economic resources, obligations and equity / net assets over a period of time. Notes to the financial statements ... are not considered to be an element." *Assets* and *liabilities*, *equity*, *income* and *revenues*, *expenses*, *gains* and *losses*, and *performance* (profit or *earnings*) are identified as the elements of financial statements.

Elements at a point in time — assets and liabilities

Paragraph 1000.29, defines *assets* as "economic resources controlled by an entity as a result of past transactions or events and from which future economic benefits may be obtained." In

situations where a regulator allows an amount to be recovered through an increase in future rates as a result of a past transaction or event, the expectation of receiving that amount will meet the definition of an asset. The increase in rates represents an economic benefit in the form of higher revenues and cash flows. For example, if a regulator permits a cost that would normally be expensed in the period to be recovered in future rates, the rate-regulated enterprise will have an asset once it has incurred the cost. This is based on the assumption that future rates will be increased to provide additional revenues in an amount equal to the asset and that those higher rates will be recoverable from customers.

Paragraph 1000.32 defines *liabilities* as "obligations of an entity arising from past transactions or events, the settlement of which may result in the transfer or use of assets, provision of services or other yielding of economic benefits in the future." In situations where a regulator requires a decrease in future rates as a result of a past transaction or event, the resulting amount will meet the definition of a liability. The reduction in revenue represents the yielding of an economic benefit. For example, if a regulator requires that a portion of excess income be returned to customers through a decrease in future rates, the rate-regulated enterprise would have a liability once the excess income is earned. This is based on the assumption that future rates will be decreased to reduce revenues by an amount equal to the liability and that the rates (without the reduction) would be recoverable from customers.

Elements over a period of time — revenues, expenses, gains and losses

Section 1000 defines revenues, expenses, gains and losses as follows:

> *Revenues* are increases in economic resources, either by way of inflows or enhancements of assets or reductions of liabilities, resulting from the ordinary activities of an entity. Revenues of entities normally arise from the sale of goods, the rendering of services or the use by others of entity resources yielding rent, interest, royalties or dividends. (paragraph 1000.37)
>
> *Expenses* are decreases in economic resources, either by way of outflows or reductions of assets or incurrences of liabilities, resulting from an entity's ordinary revenue generating or service delivery activities. (paragraph 1000.38)
>
> *Gains* are increases in equity / net assets from peripheral or incidental transactions and events affecting an entity and from all other transactions, events and circumstances affecting the entity except those that result from revenues or equity / net assets contributions. (paragraph 1000.39)
>
> *Losses* are decreases in equity / net assets from peripheral or incidental

> transactions and events affecting an entity and from all other transactions, events and circumstances affecting the entity except those that result from expenses or distributions of equity / net assets. (paragraph 1000.40)

The Study Group is of the opinion that, if an economic benefit or obligation resulting from rate regulation meets the definition of an asset or liability, the **change** in the economic benefit or obligation would meet the definition of one of the elements that describes changes in economic resources, obligations and equity / net assets over a period of time. In this regard, revenues, expenses, gains and losses reflect the changes in the assets and liabilities of a rate-regulated enterprise, other than those that result from equity or net asset contributions. Furthermore, if an economic resource or obligation meets the definition of a financial statement element, the economic impact should be reported to meet the above-noted objective of financial statements.

Recognition Criteria

Paragraph 1000.41 states that "recognition is the process of including an item in the financial statements of an entity. Recognition consists of the addition of the amount involved into statement totals together with a narrative description of the item ... in a statement." It does not mean disclosure in the notes to the financial statements.

According to paragraph 1000.44, two criteria must be met before a financial statement element is recognized:

(a) the item has an appropriate basis of measurement and a reasonable estimate can be made of the amount involved; and

(b) for items involving obtaining or giving up future economic benefits, it is probable that such benefits will be obtained or given up.

The economic benefits and obligations created by rate regulation will, in most cases, meet the first criterion. Regulatory authorities generally provide clear direction as to the amount of an economic benefit or obligation, or the formula for determining the amount. For example, where recovery of a cost is deferred to a future period, the regulator will often state the specific amount that is being deferred.

In most cases, the second criterion will also be met. Regulatory authorities are usually consistent in their treatment of a rate-regulated enterprise. Generally, the decisions and past actions of a regulatory authority are a good indicator of what it will allow in the future. For example, if a regulator states that a cost will be deferred, it is highly probable that it will allow an increase in future rates to provide sufficient additional revenues to cover that cost. In addition, where a regulator allows an increase in rates to provide additional revenues, it is likely that the enterprise will be able to charge and collect those rates from customers. Similarly, where a regulator

requires a decrease in rates to reduce revenues by a given amount, it is likely that the enterprise will have a reduction in revenues approximately equal to that amount. 4(20)

As explained in Chapter 2, what a rate-regulated enterprise is allowed to collect from customers (allowed revenues) is usually very close to what it actually collects (actual revenues). Because rate regulation is imposed to restrict rates where a rate-regulated enterprise has excessive market power, the enterprise can usually increase rates up to the amount allowed by the regulator. This assumption would not be valid where market conditions require rates below what the regulator allows. Where market conditions can effectively restrict rates, enterprises may be freed from rate regulation in those markets; if maintained, rate regulation would be ineffective.

In summary, the Study Group is of the opinion that the economic benefits and obligations created by rate regulation and resulting from past transactions or events, and the changes in these amounts, meet the definition of a financial statement element as set out in *Handbook* Section 1000. Where they also meet the recognition criteria set out in that Section, those elements should be reported in the general purpose financial statements of a rate-regulated enterprise as assets, liabilities, revenues, expenses, gains and losses.

As previously noted, the *Handbook* specifies two criteria that must be met before an element is recognized in the financial statements. Nevertheless, some would argue that economic benefits and obligations created by rate regulation should not be recognized in general purpose financial statements unless there is also a contractual commitment associated with them.

According to paragraph 1000.31, it is not essential that access to a benefit be legally enforceable for a resource to be an asset, provided an entity can control the benefit through other means. In the Study Group's view, an enterprise will have adequate control over the use of an economic benefit where it is probable that the regulatory authority will allow an increase in future rates sufficient to provide additional revenue at least equal to the benefit and it is probable that those rates will be recoverable from customers.

In discussing the characteristics of a liability, paragraph 1000.34 states that:

> Liabilities do not have to be legally enforceable provided that they otherwise meet the definition of liabilities; they can be based on equitable or constructive obligations. ... A constructive obligation is one that can be inferred from the facts in a particular situation as opposed to a contractually based obligation. 5(21)

The Study Group is of the opinion that a constructive obligation will exist where it is probable that a regulatory authority will require a reduction in future rates so as to reduce revenues by an amount equal to the obligation and it is probable that, without the reduction, rates would be recoverable from customers.

The Study Group also notes that contractual commitments are not required in recognizing other

assets and liabilities reported in the financial statements. For example:

- The *Handbook* states that the value of an item of property, plant and equipment should be written down by the amount that its carrying value exceeds its net recoverable amount (paragraph 3061.38). In most cases, the net recoverable amount will be represented by future revenues, yet there is no requirement that there be a contractual commitment associated with those future revenues, or even an identification of the customers who will provide those revenues.
- The *Handbook* requires recognition of a future tax liability ("Income Taxes" *Handbook* Section 3465, paragraph .22) even though there is no legal liability to pay the taxes at the time they are recognized. The liability is based on an expectation of what the tax legislation will be at some future date.

CONCLUSION

In this chapter, the Study Group examines the relationship between rate regulation and financial reporting. It considers whether regulatory authorities can establish GAAP for rate-regulated enterprises and whether the effects of rate regulation should be reported in the general purpose financial statements of rate-regulated enterprises.

The Study Group is of the opinion that regulatory authorities cannot establish GAAP. Although the actions of the regulator may affect rates, and the resulting economic impact may affect what should be reported in accordance with GAAP, this does not give them the right to determine how that economic impact should be reported in general purpose financial statements.

Regardless of the rate-setting process or methodology used, it is the opinion of the Study Group that, from an economic perspective, rate regulation can have a direct bearing on the economic resources, obligations and performance of a rate-regulated enterprise. It can influence rates that, combined with market conditions, can have an economic impact on current and future revenues and cash flows, thereby affecting future economic benefits and obligations.

In the Study Group's view, the economic benefits and obligations created by rate regulation and resulting from past transactions or events, and the changes in these amounts, meet the definition of a financial statement element set out in *Handbook* Section 1000. Where they also meet the recognition criteria set out in that Section, those elements should be reported in the general purpose financial statements of a rate-regulated enterprise as assets, liabilities, revenues, expenses, gains and losses.

Chapter 6

DEFINING A RATE-REGULATED ENTERPRISE

FOR FINANCIAL REPORTING PURPOSES

To qualify as a "rate-regulated enterprise" for financial reporting purposes, an organization must be subject to a rate-setting authority, the rates must be based on the costs of service and the rates must be collectible from customers.

INTRODUCTION

In Chapter 5, the Study Group concluded that the effects of rate regulation should be reported in the financial statements of a rate-regulated enterprise. But what constitutes a "rate-regulated enterprise for financial reporting purposes" (hereafter referred to as just "rate-regulated enterprise")? As part of the terms of reference for this research project, the Study Group was asked to consider the following:

- Is the definition in the *CICA Handbook – Accounting* ("Income Taxes," *Handbook* Section 3465 paragraph .09) sufficiently clear, or how should it be amended?
- What criteria must be met for an enterprise to be considered rate regulated?
- In setting accounting standards, should the Accounting Standards Board focus on rate-regulated enterprises *per se*, or on rate-regulated activities? 1(22)

In addressing these questions, the Study Group started with the existing definition of a rate-regulated enterprise in the *Handbook*. Where this definition is met, the *Handbook* currently provides for limited differential treatment in the application of accounting standards. Because of the similarities in both the conceptual frameworks and the economic environments of Canada and the United States, the Study Group concluded that accounting standards in the US provide a useful source of reference for developing Canadian guidance on financial reporting by rate-regulated enterprises. 2(23) Therefore, the Study Group also took into consideration what constitutes a rate-regulated enterprise under US GAAP and whether the existing definitions in Canadian and US accounting standards should be considered as synonymous.

It is important to note that meeting the definition of a rate-regulated enterprise is just the first step in regarding whether an enterprise is entitled to apply differential treatment in the application of accounting standards for recognizing the economic effects of rate regulation. Under the approach proposed by the Study Group, a rate-regulated enterprise must still meet the conditions embodied in the General Principles set out in Chapter 7 of this Research Report for recognizing assets, liabilities and the change in assets and liabilities as a result of rate regulation.

WHAT IS A RATE-REGULATED ENTERPRISE?

The *Handbook* and *Accounting for the Effects of Certain Types of Regulation*, SFAS 71, provide guidance, in Canada and the US respectively, for the preparation of general purpose

financial statements by rate-regulated enterprises. As a first step in applying that guidance, an enterprise has to meet established criteria.

Meeting the criteria, however, does not necessarily mean that the rate-making process will have an economic impact that should be reported in the enterprise's financial statements. According to the *Handbook* (paragraph 3465.09), a rate-regulated enterprise is an enterprise that meets all of the following criteria [emphasis added]:

- The rates for regulated services or products provided to customers are established by or are **subject to approval by a regulator or a governing body** empowered by statute or contract to establish rates to be charged for services or products. (Criterion 1)
- The regulated rates are **designed to recover the cost** of providing the services or products. (Criterion 2)
- It is reasonable to assume that rates set at levels that will recover the cost **can be charged to and collected from customers** in view of the demand for the services or products and the level of direct and indirect competition. This criterion requires consideration of expected changes in levels of demand or competition during the recovery period for amounts recorded as recoverable under the rate formula. (Criterion 3)

Similarly, SFAS 71 states, in paragraph 5, that it applies to general purpose external financial statements of an enterprise that has regulated operations that meet all of the following criteria [emphasis added]:

- The enterprise's rates for regulated services or products provided to its customers are established by or are **subject to approval by an independent, third-party regulator or by its own governing board** empowered by statute or contract to establish rates that bind customers. (Criterion 1)
- The regulated rates are **designed to recover** the specific enterprise's **costs** of providing the regulated services or products. (Criterion 2)
- In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume that rates set at levels that will recover the enterprise's costs **can be charged to and collected from customers**. This criterion requires consideration of anticipated changes in levels of demand or competition during the recovery period for any capitalized costs. (Criterion 3)

Under both definitions, an enterprise must meet all three criteria (and continue to meet them) to qualify as a rate-regulated enterprise for financial reporting purposes. The added emphasis highlights that an enterprise would qualify as a rate-regulated enterprise only if all three conditions are met, namely, it is subject to a rate-setting authority; the objective of rate

regulation is to recover the costs of providing services; **and** the rates are recoverable from customers. At any point in time, if an enterprise fails to meet all three criteria, it would no longer apply the accounting recommendations applicable to rate-regulated enterprises. 3(24)

The following analysis explains, compares and discusses the application of the above-noted criteria to private sector enterprises (Chapter 8 considers the application of the criteria to public sector enterprises). On the basis of that analysis, it is the opinion of the Study Group that the *Handbook* adequately sets out the criteria that an enterprise must meet to be considered rate regulated. Although the specific wording may differ somewhat, the definition in SFAS 71 should be accepted as synonymous with the definition in the *Handbook*. To eliminate any potential differences with US accounting standards, the Study Group concluded that, in its opinion, the *Handbook* definition should be amended to conform to the wording used in SFAS 71.

Rate-setting Authority

As noted in Chapter 2, rate regulation is the restriction in the setting of prices that can be charged to customers for services or products. It is possible, however, that an enterprise may decide to impose restrictions on its own rates. Such self-regulation would raise questions about whether the restrictions would remain in force and, therefore, whether the rate-making process will have an economic impact. Accordingly, the Study Group is of the opinion that the definition of a rate-regulated enterprise should be limited to enterprises where rate regulation is imposed on them by an outside party, or in those rare situations where a governing body is empowered by statute or contract to establish the enterprise's rates. An enterprise whose management unilaterally imposes restrictions on its own rates, without being required to do so by contract or statute, would, therefore, not qualify.

With respect to specific wording differences between Canada and the US, a question was raised about the need to include the words "independent" and "third-party" as qualifiers of the term "regulator." It was noted that independence increases the assurance that economic benefits and obligations created by rate regulation actually exist.

It is the opinion of the Study Group that, for the most part, private sector rate-regulated enterprises in Canada are subject to rate regulation by an independent regulatory authority. In other words, there is a distinct and separate relationship between the rate regulator and the owners of a rate-regulated enterprise. In the private sector, there are a few situations where the governing body of the rate-regulated enterprise has been given the authority by statute or contract to establish rates to be charged for services or products. 4(25)

It must be noted, however, that, to qualify as a rate-regulated enterprise, an enterprise would also have to meet the second and third criteria of the definitions. 5(26) Issues relating to these two criteria are considered in the following paragraphs.

Cost-based Rates

At first glance, the above-noted definitions of a rate-regulated enterprise would seem to cover various types of rate regulation. 6(27) This is, however, not the case. The type of regulation covered by the *Handbook* and SFAS 71 requires that rates be designed to recover the expected costs of providing regulated services or products. To meet this criterion, it would appear that rates *must* be cost based (in light of the changing regulatory environment, this issue is further examined in a later section of this chapter).

With cost-based rates, there is a direct link between cost and revenues (assuming rates are chargeable and collectible from customers). The allowed rates must be set so that, based on forecasted volumes and costs as determined in the regulatory process, revenues will equal costs, including a fair return on investment. 7(28)

An alternative view is that the cost-based requirement should be removed from the definition of a rate-regulated enterprise. According to this view, the impact of rate regulation should be reflected in general purpose financial statements if the conditions set out in *Handbook* Section 1000 are met. In particular, it should be sufficient that rate regulation produces economic benefits or obligations as a result of past transactions or events and that the related amounts meet the recognition criteria, regardless of the regulatory methodology employed. At present, there is nothing in Section 1000 that requires rates to be cost based. Of course, consistent with historical cost accounting, the recognition of any asset would be limited to the cost of acquiring the asset.

As an example, in a case where rates are not cost based, a regulatory authority may allow an increase in rates over a three-year period if the rate-regulated enterprise undertakes a customer education program in the current period. The expected increase in future revenues associated with the rate increase would represent an economic benefit resulting from a past transaction. The enterprise would, therefore, record an asset once it completes the education program and becomes entitled to the increase in future revenues. The asset would be recorded at the lesser of the expected increase in future revenues and the cost of the education program incurred by the rate-regulated enterprise to acquire the additional future revenues. The asset would be amortized over the period in which the associated additional revenues are earned.

Another example is where a rate-regulated enterprise fails to meet certain quality of service standards and the regulatory authority imposes a penalty in the form of a reduction in future rates. Regardless of the method of rate regulation (cost of service, benchmark or any other method), as long as it is reasonable that there will be a decrease in future revenues as a result of the failure to meet the standards in the current or past period, the regulated enterprise would record a liability. This is because the reduction in future rates would represent a yielding of future economic benefits that the regulated enterprise cannot avoid and that resulted from a past event; that is, failure to meet the quality of service standards. 8(29)

The Study Group is of the opinion that, to meet the definition of a rate-regulated enterprise,

rates should cover the costs of providing services, including a fair return. This requirement ensures a link between rates and costs. The link between rates and costs is important because it provides the basis for deferral accounting and differential treatment in the application of accounting standards. In addition:

- It establishes a point of reference, inherited from the cost-based regulation history of rate-regulated enterprises.
- It follows the economics of cost-of-service rate regulation whereby (1) revenues = costs + return and (2) to the extent certain actual costs differ from forecast costs, they are deferred if allowed by the regulator.
- Under the matching principle, there must be a direct cause and effect relationship between revenues and costs.
- Without this link, it may not be possible to establish that an economic benefit or obligation has been created as a result of a past transaction or event, or to measure the amount of that benefit or obligation.
- It is consistent with current practice and with US accounting standards.

After considerable debate, the Study Group decided to take a broad perspective on what constitutes cost-based rates because the traditional cost-of-service form of regulation is increasingly being replaced by performance-based methods of regulation. With cost-of-service regulation, rates are set on the basis of expected costs, but are reviewed on a frequent basis, so that actual revenues are usually very close to the expected cost of service on which the rates are based. With the new methods of regulation, the link between the regulated enterprise's allowed rates and its specific costs may not be as direct. Many of these new methods, however, are in several respects fundamentally cost based.

Price-cap regulation is one of the new forms of performance-based regulation (rate-setting methodologies are discussed in Chapter 2). Under this approach, rates are set for a period of three to six years and allowed to increase each year on the basis of a formula that is independent of the regulated enterprise's actual costs. In most cases, there is still an indirect link between costs and rates. For example, initial rates are often based on the cost of service (which includes a fair return). The price-cap formula is usually intended to provide the regulated enterprise with a reasonable opportunity to cover its cost of service. Every three to six years, there is a review of the pricing formula, which often includes an evaluation of rates against the cost of service. The formula may allow for the recovery of costs not covered by the basic formula. For example, where a regulated enterprise incurs unusual costs outside the control of management, it may seek approval from the regulatory authority to recover the costs in future rates.

The Study Group is of the opinion that the definition of a rate-regulated enterprise should encompass enterprises whose regulated rates are set to reflect the reasonably expected costs of

providing regulated service. It believes that most types of rate regulation would meet this criterion, including certain types of performance-based and incentive-based regulation. As a result, in its opinion, the definition should not be limited to any particular methodology for approval or fixing of rates. The only requirement should be that the methodology adopted by the regulator produces allowed rates so that, based on expected volumes and costs as recognized in the regulatory process, revenues will equal costs, including a fair return on investment.

Recoverability of Costs of Providing Service

The third criterion in the above-noted definitions states that it must be reasonable to assume that rates set to recover the costs of providing service can be charged to and collected from customers. This criterion requires consideration of expected changes in levels of demand or competition during the recovery period.

Where market conditions do not permit an enterprise to charge and collect the rates allowed under regulation, rate regulation will not be effective in restricting the setting of rates. The Study Group is of the opinion that, in such situations, rate regulation will not have an economic impact because it will not affect future revenues and cash flows. Whether an enterprise is subject to effective regulation may change over time because of changing levels of demand and competition. For example, in the case of long-distance telephone services, competition has resulted in prices that are lower than the rates allowed by regulatory authorities. As a result, regulated rates may no longer be collectible from customers. Accordingly, many telecommunications enterprises (such as Bell Canada) now fail to meet the definition of a rate-regulated enterprise and, for financial reporting purposes, they have discontinued accounting for the effects of rate regulation. Assessing the recoverability of rates requires judgment because many of the factors that determine whether regulation is effective change gradually over time as a result of deregulation initiatives, regulatory philosophy, competition and customer demand.

In the Study Group's view, to create an economic benefit, rate regulation must result in an increase in the future revenues that will be collected from customers; to create an economic obligation, rate regulation must result in a decrease in future revenues collected from customers. Therefore, if rate regulation is to affect what is reported in financial statements, it must be likely that rates designed to recover the cost of providing regulated services or products can be charged to and collected from customers.

SHOULD THE FOCUS BE ON ENTERPRISES OR OPERATIONS?

In applying the definition of a rate-regulated enterprise, questions may arise as to whether the three criteria must apply to the entire organization or to just a portion of its operations. The Study Group observed that the existing definitions of a rate-regulated enterprise have not required that the entire enterprise be subject to rate regulation; an explicit statement, however,

would be helpful. In the United States, for example, SFAS 71 specifically states, in paragraph 6, that: "If some of an enterprise's operations are regulated and meet the criteria of paragraph 5, this Statement shall be applied to only that portion of the enterprise's operations."

The Study Group also observed that, with mergers, acquisitions and industry restructuring, part of an enterprise's operations may be opened to competition and deregulated. As a result, it is becoming increasingly common for only parts of a business to be subject to rate regulation or for different parts of a business to be subject to different forms of rate regulation. Even where an entire business is subject to the same rate regulation, it may face different market conditions so that the third criterion in the above-noted definitions will be met for only a portion of its operation.

In the Study Group's view, for rate regulation to have an impact on what should be reported in accordance with GAAP, it is only necessary that a subset of the enterprise's operations be subject to rate regulation. If some of an enterprise's activities are rate regulated, the financial statements should reflect the economic impact on only that portion of operations.

FULL OR PARTIAL COST-BASED RATES?

In applying the second criterion of the definition of a rate-regulated enterprise, situations may arise where only a portion of an enterprise's rates are cost based, that is, a portion of allowed rates is based on certain specific costs of providing service, while the remainder is derived from some other basis.

This issue would become significant if a tight definition of cost-based regulation were employed that excluded performance-based regulation. For example, a gas distribution utility may be regulated under a price-cap formula that includes a deferral of gas price variances. Differences in the cost of gas from a predetermined level are deferred and collected, or rebated, to customers through an adjustment to future rates. Other than the deferral account, it may be deemed that rates are not cost based.

According to one view, to the extent that a portion of the rates is cost based, there could be an economic impact in that future rates could be affected by past transactions or events resulting in future economic benefits or obligations. Also, there would be a direct link between certain specific costs and future rates. Therefore, an enterprise would be deemed to have met the second criterion if a portion of its rates is cost based. Of course, it would recognize regulatory assets and liabilities only where they relate to the cost-based portion of the rates.

An alternative view is that the full amount of the rates must be cost based for an enterprise to meet the definition of a rate-regulated enterprise and recognize any impacts of rate regulation.

The Study Group did not reach a conclusion on this issue.

CONCLUSION

The *Handbook* establishes the criteria that an enterprise must meet to be considered rate regulated for financial reporting purposes. As part of the terms of reference for this research project, the Study Group was asked to reconsider what constitutes a rate-regulated enterprise and whether the definition in *Handbook* should be amended. In other words: "What criteria must be met for an enterprise to be considered rate regulated?" and "Should the focus be on rate-regulated enterprises, *per se*, or on rate-regulated activities?"

In addressing these questions, the Study Group took into consideration the guidance provided in US accounting standards. After considerable discussion and debate, the Study Group concluded that the criteria for qualifying as a rate-regulated enterprise in Canada are essentially the same as those in the US. To eliminate minor differences with US accounting standards, the Study Group concluded that the *Handbook* definition should be amended to conform to the wording used in SFAS 71.

The Study Group also concluded that, for rate regulation to have an impact on what should be reported in accordance with GAAP, it is not a prerequisite for the entire operations of the enterprise to be subject to rate regulation; it is only necessary that a subset of the enterprise's operations be subject to rate regulation. Consequently, where only some of an enterprise's operations are rate regulated, the financial statements would reflect the economic impact of rate regulation on only that portion of operations. This approach is consistent with current practice and with US GAAP.

Chapter 7

GENERAL PRINCIPLES FOR ACCOUNTING AND FINANCIAL REPORTING

General principles provide useful guidance for assessing, in a particular situation, whether rate regulation has an economic impact that should be reported and, if so, how it should be reported in general purpose financial statements.

INTRODUCTION

In Chapter 4, the Study Group proposed that a new Section should be included in the *CICA Handbook – Accounting* to provide guidance on reporting the economic impact of rate regulation in the financial statements. This chapter focuses on general principles that would apply to situations where an enterprise recognizes the impact of rate regulation, and provides the basis on which accounting standards on specific issues, such as those outlined in Chapter 9, should be developed. It is important to establish general principles because it is difficult to

envisage every situation where rate regulation can have an impact on what should be reported in accordance with GAAP or to prescribe the accounting for a specific issue that will be appropriate for all regulatory methodologies in all situations. Also, to cover every situation would require a large number of specific principles that would either be essentially the same or conceptually inconsistent.

In this chapter, the Study Group proposes general principles that specify which enterprises should report the economic impact of rate regulation in their general purpose financial statements, and when assets and liabilities that result from rate regulation, and any changes in them, should be recognized in those financial statements. These principles flow, for the most part, from the Study Group's conclusions in the previous chapters of this Research Report. A question arises, however, about what information should be disclosed in the notes to the financial statements. In response, the Study Group proposes general principles for presentation and disclosure, and provides guidance for applying those principles.

The following provides a four-step framework for applying GAAP to rate-regulated enterprises using the general principles proposed in this chapter:

1. Determine whether the enterprise is rate regulated for financial reporting purposes.
2. Determine the conditions under which assets and liabilities that result from rate regulation should be recognized in the financial statements.
3. Determine the conditions under which changes in the assets and liabilities that result from rate regulation should be recognized in the financial statements.
4. Determine what information should be disclosed in the notes to the financial statements.

IS THE ENTERPRISE RATE REGULATED?

In Chapter 6, the Study Group concluded that the criteria for qualifying as a rate-regulated enterprise for financial reporting purposes are essentially the same in Canada and the US. Accordingly, the *Handbook* definition should be amended to conform to the wording used in *Accounting for the Effects of Certain Types of Regulation*, SFAS 71.

The following general application principles emanate from the analysis in Chapter 6:

Application

1. The economic impact of rate regulation should be reflected in the general purpose financial statements of an enterprise that has regulated operations that meet all of the following criteria:
    - The enterprise's rates for regulated services or products provided to its customers are established by, or are subject to approval by, an independent, third-party

regulator or by its own governing board empowered by statute or contract to establish rates that bind customers.

- The regulated rates are designed to recover the specific enterprise's costs of providing the regulated services or products, including a fair return on investment.
- In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume that rates set at levels that will recover the enterprise's costs can be charged to and collected from customers. This criterion requires consideration of anticipated changes in levels of demand or competition during the recovery period for any capitalized costs.

2. If some of an enterprise's operations are regulated and meet the above criteria, the financial statements should reflect the economic impact of rate regulation on only that portion of operations.
3. When an enterprise that has regulated operations no longer meets the criteria set out in Principle 1, it should discontinue reflecting the economic impact of rate regulation and reflect the effects of discontinuation in its general purpose financial statements.

WHEN SHOULD REGULATORY ASSETS AND LIABILITIES BE RECOGNIZED?

In Chapter 5, the Study Group concluded that the economic benefits and obligations created by rate regulation should be reported in the financial statements as assets and liabilities provided that they meet the recognition criteria set out in "Financial Statement Concepts." *Handbook* Section 1000.

Recognition (as defined in Chapter 5) is the process of incorporating an item in the financial statements of an entity. As noted in the *Handbook*, it consists of the amount and a narrative description of the item, with the amount being included in a financial statement total. Recognition cannot be substituted with notes, disclosure or other similar types of information.

The general criteria for recognition are that there be a reliable and relevant basis of **measurement** and that a **reasonable estimate** can be made. Also, the item must meet the definition of an element of financial statements. Even so, recognition is subject to a cost-benefit constraint 1(30) and a materiality 2(31) threshold.

The following general recognition principles emanate from the analysis in Chapter 5. In the Study Group's view, these principles provide a solid foundation for determining when the economic impact of rate regulation should be recognized in the general purpose financial statements of a rate-regulated enterprise.

Recognition of Regulatory Assets and Liabilities

4. Rate-regulated enterprises should recognize a regulatory asset in their financial statements, when all of the following conditions are met:
    - Rate regulation creates an economic benefit in the form of increased future revenues as a result of a past transaction or event.
    - It is probable that the enterprise's regulator will set future rates sufficient to provide the economic benefit.
    - Future rates sufficient to provide additional revenue at least equal to the economic benefit will be chargeable and collectible from customers.
    - There is an appropriate basis for measuring the asset and a reasonable estimate can be made of the amount involved.
5. A regulatory asset should be valued at the lower of the expected economic benefit and the cost incurred to acquire the economic benefit.
6. Where the economic benefit is increased and the increase meets all of the conditions in Principle 4, or a portion of the economic benefit that previously did not meet all of the conditions in Principle 4 now meets those conditions, the value of the regulatory asset should be increased by the related amount.
7. Where all or a portion of a regulatory asset no longer meets the conditions in Principle 4, the value of the regulatory asset should be reduced by the related amount.
8. Rate-regulated enterprises should recognize a regulatory liability in their financial statements, when all of the following conditions are met:
    - Rate regulation creates an economic obligation in the form of decreased future revenues, or payments to customers, as a result of a past transaction or event.
    - It is probable that the enterprise's regulator will set rates sufficient to reduce revenues by the amount of the liability or require payments to customers equal to the liability.
    - There is an appropriate basis for measuring the liability and a reasonable estimate can be made of the amount involved.
9. Where the economic obligation is increased, or a portion of the economic obligation that previously did not meet all of the conditions in Principle 8 now meets the conditions, the value of the regulatory liability should be increased by the related amount.
10. Where all or a portion of a regulatory liability no longer meets the conditions in Principle 8, the value of the regulatory liability should be reduced by the related

amount.

WHEN SHOULD CHANGES IN REGULATORY ASSETS AND LIABILITIES BE RECOGNIZED?

In Chapter 5, the Study Group concluded that the changes in the economic benefits and obligations created by rate regulation should be reported in the financial statements as revenues, expenses, gains and losses provided that they meet the recognition criteria set out in the *Handbook* Section 1000.

The following general recognition principle emanates from the analysis in Chapter 5.

Recognition of Revenues, Expenses, Gains and Losses

11. The financial statements of rate-regulated enterprises should report the changes in regulatory assets and liabilities as revenues, expenses, gains or losses. 3(32)

WHAT INFORMATION SHOULD BE DISCLOSED IN NOTES TO FINANCIAL STATEMENTS?

In addition to reviewing the financial statement concepts set out in *Handbook* Section 1000, the Study Group also considered financial statement disclosure requirements. In this regard, the Study Group believes that rate-regulated enterprises should provide in their general purpose financial statements any information required for fair presentation of financial position, results of operations, or cash flows in accordance with GAAP. Furthermore, where the basis of valuation of assets is not self-evident, the basis should be explicitly stated.

With respect to disclosure in the notes and supporting schedules, the Study Group assessed the information needs of users of general purpose financial statements. 4(33) It also assessed the current reporting practices of rate-regulated enterprises. 5(34) Because rate regulation will usually limit the revenue-generating ability of an enterprise, and this can result in the creation of economic benefits and obligations, the Study Group is of the opinion that rate regulation is an important consideration for users in evaluating the economic performance of an enterprise.

Furthermore, the economic benefits and obligations created by rate regulation, and the consequential changes in assets and liabilities, can be material. Most enterprises are not subject to rate regulation, however, and even among rate-regulated enterprises the materiality of the economic impact can vary significantly. Therefore, the Study Group is of the opinion that financial statement users should be given information about the extent to which rate regulation has affected the financial position of an enterprise.

In the Study Group's view, the following general presentation and disclosure principles provide a solid foundation for determining what information about rate regulation and its economic effects

should be disclosed in the financial statements of a rate-regulated enterprise.

Presentation and Disclosure

12. Notes to the general purpose financial statements of rate-regulated enterprises should disclose:

    - that the enterprise (or certain of its operations) is rate regulated for financial reporting purposes or, alternatively, that the enterprise was rate regulated in the prior period, but no longer meets the established criteria for a rate-regulated enterprise;
    - the regulator(s) and the jurisdiction(s) covered (even if the enterprise no longer qualifies as rate regulated);
    - that the financial statements are prepared in accordance with Canadian GAAP.

13. Notes to the general purpose financial statements of rate-regulated enterprises should disclose how rate regulation affects the reported values of individual assets and liabilities on a going-forward basis.

Appendix C presents several examples drawn from current practice that illustrate the types of disclosure encompassed by Principle 12. With regard to Principle 13, Exhibit 7.1 provides an example that illustrates one way to disclose the effects of rate regulation on the reported values of assets and liabilities. Alternatively, for specific financial statement items, the impact of rate regulation may be disclosed in individual notes to the financial statements.

CONCLUSION

The objective of this Research Report is to address accounting and reporting issues pertinent to rate-regulated enterprises and to propose what specific guidance should be provided to meet the special needs of such enterprises and the users of their general purpose financial statements. In Chapter 4, the Study Group proposed that a new Section be included in the *Handbook* to provide guidance on reporting the economic impact of rate regulation in the financial statements. It is the opinion of the Study Group that guidance on accounting and reporting by rate-regulated enterprises should focus on general principles that would apply to the reporting of all economic effects of rate regulation rather than on specific principles that would apply to narrowly defined issues, such as income taxes and foreign currency translation.

In this chapter, the Study Group proposes 13 general principles for applying GAAP to rate-regulated enterprises. The principles provide a basis for determining whether an enterprise is rate regulated for financial reporting purposes, the conditions under which assets and liabilities that result from rate regulation should be recognized in the financial statements, the conditions under which changes in the assets and liabilities that result from rate regulation should be

recognized in the financial statements, and what information should be disclosed in the notes to the financial statements.

The general principles set out in this chapter cover three areas: application, recognition, and presentation and disclosure. They take into consideration the current requirements and guidance set out in the *CICA Handbook – Accounting*, the current practices of rate-regulated enterprises in Canada and the authoritative pronouncements issued in the United States.

Exhibit 7.1

DISCLOSING THE EFFECTS OF RATE REGULATION ON THE REPORTED VALUES OF ASSETS AND LIABILITIES

Note X — Regulatory Assets and Liabilities

The economic impact of rate regulation is reported in these financial statements. Regulatory assets represent future revenues associated with certain costs that will be recovered from customers in future periods through the rate-making process. Regulatory liabilities represent future reductions or limitations of increases in revenues associated with amounts that are to be refunded to customers through the rate-making process.

Regulatory assets and liabilities reflected in the financial statements as at December 31, 2001 relate to the following (in thousands):

	Reported	Disclosed In Notes
Future Income Taxes	$ xx,xxx	$ xx,xxx
Debt Financing Costs	x,xxx	
Environmental Costs	x,xxx	x,xxx
Postretirement Benefit Costs	x,xxx	x,xxx
Foreign Exchange	xxx	
Net Regulatory Asset (Liability)	**$ xx,xxx**	**$ xx,xxx**

At December 31, 2001, $xxx,xxx of reported regulatory assets and all regulatory liabilities are scheduled or expected to be recovered through rates charged or refunded to customers over periods ranging from 5 to 25 years. We intend to request recovery of the remaining regulatory assets in a general rate case filing expected in 2002. For additional information regarding future income taxes, debt financing costs, environmental costs, postretirement benefit costs, and related risks and uncertainties, refer to notes 3, 5, 7, 9 and 12 respectively.

Chapter 8

APPLYING GENERAL PRINCIPLES TO THE

PUBLIC SECTOR

Are the economic benefits and obligations created by rate regulation similar for both private and public sector rate-regulated enterprises? If so, are there any reasons why their general purpose financial statements should not be prepared on a consistent basis?

INTRODUCTION

In Chapter 7, the Study Group proposed General Principles for rate-regulated enterprises in the private sector to use when preparing their general purpose financial statements in accordance with GAAP. The General Principles cover three areas: application, recognition, and presentation and disclosure. In this chapter, the Study Group assesses the appropriateness of those principles for certain public sector enterprises.

At the outset, it must be acknowledged that the public sector environment is distinctly different from the private sector environment. Recognizing these differences, the CICA Public Sector Accounting Board (PSAB) was created to develop accounting standards for the public sector. Therefore, in assessing whether the General Principles should apply to the public sector, the Study Group discussed the characteristics of various types of government organizations and looked to the *CICA Public Sector Accounting Handbook* to identify whether certain government organizations are required to follow the private sector accounting standards set out in the *CICA Handbook – Accounting*. For additional guidance, it also considered public sector accounting standards established by the Governmental Accounting Standards Board (GASB) in the US.

After identifying which government organizations are required to follow the *Handbook – Accounting*, the Study Group debated at length whether, and to what extent, the criteria set out in General Principle 1 should apply. In other words, should the criteria for qualifying as a rate-regulated enterprise be the same for public sector enterprises as for private sector enterprises? Because governments own public sector enterprises and also establish the basis of rate regulation, the need for an "independent" rate-setting authority was given particular scrutiny. It also considered whether the other General Principles regarding application, recognition, presentation and disclosure should apply equally to all enterprises that meet General Principle 1. In other words, is rate regulation sufficiently similar in the public and private sectors to apply rate-regulated accounting rules in a consistent manner for both sectors? 1(35)

AUTHORITATIVE PRONOUNCEMENTS IN CANADA AND THE UNITED STATES

For purposes of applying PSAB's Recommendations, "public sector" refers to federal, provincial, territorial and local governments, government organizations, government partnerships, and school boards. "Government organizations" are organizations that are accountable for the administration of their financial affairs and resources either to a minister of

the government or directly to the legislature or local government council, and are owned or controlled by the government. Government organizations are included in the reporting entity. 2(36)

The *Public Sector Accounting Handbook* notes that government organizations include government business enterprises (GBEs) 3(37) and government business-type organizations. 4(38) For purposes of their financial reporting, such organizations should adhere to the Recommendations in *Handbook – Accounting* unless otherwise directed to specific Accounting Recommendations of PSAB. 5(39)

In the United States, the Governmental Accounting Standards Board (GASB) establishes financial reporting standards for state and local governments, including states, cities, towns, villages and special-purpose governments, such as school districts and public utilities. Governmental accounting systems in the US are organized and operated on a fund basis. 6(40) Fund financial statements are used to report detailed information about governmental, fiduciary and proprietary funds.

Accounting and Financial Reporting for Proprietary Funds and Other Governmental Entities That Use Proprietary Fund Accounting, GASB Statement 20, paragraph 2, states that "business-type accounting and financial reporting for state and local governmental entities has generally been defined by pronouncements of the Financial Accounting Standards Board (FASB), Accounting Principles Board (APB) Opinions and Accounting Research Bulletins (ARBs) of the Committee on Accounting Procedure." Statement 20 notes (in paragraphs 6 and 7) that proprietary activities **should** apply the pronouncements of the FASB, APB and ARB issued on or before November 30, 1989. They may also apply **all** FASB Statements and Interpretations issued after November 30, 1989, **except** for those that conflict with GASB pronouncements.

It is noteworthy that GASB Statement No. 20 indicates (in paragraph 9) that "*Accounting for the Effects of Certain Types of Regulation*, SFAS 71, does not specifically exclude state and local governmental entities from its scope, nor does it preclude its application to governmental entities." GASB Statement 20 notes that the FASB modified paragraph 5(a) of SFAS 71 to permit application by governmental utilities with rates set subject to a statute or contract. SFAS 71 and related pronouncements may be applied to proprietary activities that meet the criteria of those pronouncements for reporting as regulated enterprises.

GASB Statement 34, *Basic Financial Statements – and Management's Discussion and Analysis – for State and Local Governments*, notes that GAAP for enterprise funds are those applicable to similar businesses in the private sector. Statement 34 takes a further step, however, by emphasizing (in footnote 12) that "The provisions of FASB Statement No. 71, *Accounting for the Effects of Certain Types of Regulation*, only apply to governments that have *qualifying* enterprise funds." 7(41)

RATE REGULATION AND THE PUBLIC SECTOR

In the "Introduction" to this chapter, the question was raised as to whether rate regulation is sufficiently similar in the public and private sectors to warrant consistent accounting rules for both sectors. There are differing views on this matter, centring on the following two key issues: independence of the rate regulator from the enterprise being regulated; and the types of government organizations that would qualify as rate-regulated enterprises under the definitions set out in Chapter 6 of this Research Report. These differing views are discussed in the remaining sections of this chapter.

NEED FOR AN INDEPENDENT REGULATOR

Required Criteria

General Principle 1 states that the economic impact of rate regulation should be reported in the general purpose financial statements of an enterprise that has regulated operations that meet all of the following criteria:

- The enterprise's rates for regulated services or products provided to its customers are established by, or are subject to approval by, an independent, third-party regulator or by its own governing board empowered by statute or contract to establish rates that bind customers.
- The regulated rates are designed to recover the specific enterprise's costs of providing the regulated services or products.
- In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume that rates set at levels that will recover the enterprise's costs can be charged to and collected from customers. This criterion requires consideration of anticipated changes in levels of demand or competition during the recovery period for any capitalized costs.

All three criteria must be met for either a private sector enterprise or a public sector enterprise to be considered a "rate-regulated enterprise" for financial reporting purposes and, therefore, to be able to account for the economic effects of rate regulation. Meeting the criteria, however, does not automatically mean that the rate-making process will have an economic impact that should be reported in the enterprise's financial statements through the recognition of a regulatory asset or a regulatory liability. Before that can happen, the fact that the rate-making decision will have an economic impact must be clearly demonstrated.

Independence is a Prerequisite 8(42)

There is a view that, with respect to rate regulation in the public sector, there is usually no

"independent, third-party regulator" because the government controls both the enterprise and the regulatory agency. Those who hold this view argue that, unless the regulator is independent, the enterprise cannot be considered as rate regulated for financial reporting purposes. As a result, different criteria are needed if a public sector enterprise is to qualify as rate regulated for financial reporting purposes.

In considering whether different criteria are needed for the public sector, the proponents of this view observed that, as noted in the section on "Scope of Application," set out below, most government enterprises have governing boards and almost all are given the legislative power to set the rates they charge for their services and products. 9(43) They maintain that, in the public sector environment, the uncertainty arising from regular elections, different political party ideologies and occasional minority governments makes it difficult to recognize the economic impact of rate decisions that are other than short term. Further, regular elections and balanced budget legislation may mean that governments face additional pressures to "manage" financial results. In addition, because the decisions of regulators are not necessarily consistent from jurisdiction to jurisdiction, it is, in their opinion, more difficult for legislators and the public to compare the financial results of rate-regulated enterprises in the public sector. A government may also have an incentive to use the regulatory process to create assets and liabilities. For example, it may wish to contain the rates charged by a public sector utility without affecting its financial results. If the government uses the modified equity method of accounting for the utility, any reduction in profitability would flow through to the owning government, possibly turning a surplus into a deficit.

Those who support this view acknowledge that although, other things being equal, it would be highly desirable for accounting for rate regulation in the public sector to be consistent with accounting for rate regulation in the private sector, this is an issue of such significance that such a result is highly unlikely. Whereas, in the vast majority of cases, there is independent third-party rate regulation in the private sector, in that the regulators are independent of both the regulated enterprise and its owners, such is usually not the case for rate-regulated enterprises in the public sector. If the accounting by public sector rate-regulated enterprises is to be consistent with that in the private sector, this same standard or benchmark must apply equally to the public sector. In most cases, however, this is simply not possible.

Proponents of this view also maintain that, in the private sector, the regulator is not accountable for the financial performance of the regulated enterprise. This independence ensures that the regulator can balance and protect the interests of both the investors in the regulated enterprise and the consumer. It allows the regulator to make rate decisions that require the benefits and obligations arising from those decisions to flow through to both the regulated enterprise and the consumer. It is this authority and independence that provide the rigour to allow differential accounting for rate decisions. Without this authority and independence, there is a potential for the differential treatment for rate-regulated enterprises to be used to "manage" financial results. Further, there is insufficient assurance that the economic benefits or obligations of rate decisions

will occur. Furthermore, allowing a self-governing board to "manage" its performance by creating, amending or deleting regulatory assets and liabilities may place that board in a conflict of interest position.

Finally, the proponents of this view note that many private sector rate-regulated enterprises have market mechanisms to provide additional checks and balances that do not exist in the public sector. For example, the shares and or debt of many private sector utilities are publicly traded, bringing the discipline of securities commission accounting and disclosure requirements into play, requirements that may be more onerous than Canadian GAAP. These types of external influences do not usually exist for public rate-regulated enterprises. 10(44) The best way to protect the public interest is to require a regulator to be independent.

Independence *per se* is Not the Key Factor 11(45)

Others are of the opinion that the key issue is not the independence of the regulator *per se*, but the credibility of the regulatory process, in particular, whether it is likely that the regulator will allow or require the future changes in regulated rates necessary to justify the recognition of regulatory assets and liabilities. For example, without independence, it is possible that a regulator may indicate that a cost will be deferred so that a regulatory asset can be recognized, even though there is no intention to allow for a future recovery of the deferred cost. At some future date, the regulator might then reverse that decision, with the result that the deferred cost will have to be written off and income reduced in that future period. In such a situation, there is a trade-off between two risks:

- the risk that an enterprise may recognize regulatory assets and liabilities that do not exist; and
- the risk that an enterprise may fail to recognize regulatory assets and liabilities that do exist.

It is noted that it is not uncommon in other areas of financial accounting for professional judgment to be exercised in determining whether assets or liabilities exist and the values at which they should be reported.

Those who support this view recognize that, in the public sector, it is rare to have a totally independent regulator because the same government that owns the regulated enterprise has legislative responsibility for the regulator. Occasionally, the governing board of the enterprise is empowered by statute or contract to set rates and is, in effect, the regulator. Consequently, if total independence were required, virtually all public sector enterprises would be precluded from qualifying as rate-regulated enterprises for financial reporting purposes.

The possibility that a government may unduly influence the rate-setting process for social or political reasons is acknowledged. 12(46) Nonetheless, this should not be a financial reporting issue as long as real economic benefits and obligations are created by rate regulation. For

example, in the case of a deferred cost, a regulatory asset should be recognized when there are additional future revenues sufficient to recover the amount deferred, regardless of the reason for deferring the cost.

The role of financial reporting is to report on the economic resources and obligations of an enterprise, not to second-guess the motivation that led to the creation of those economic resources and obligations. Furthermore, a government's decisions should not be confused with rate-setting interference. For example, a government, as owner, could instruct the enterprise not to recover a certain cost, thereby creating a loss. Such a loss would be a loss under GAAP because it is created by reducing anticipated future cash flows, not by rate regulation.

With regards to differences in regulatory decisions between jurisdictions, this also happens with private sector rate-regulated enterprises. More important, failing to report the economic impact of differences in regulatory decisions will not enhance comparability, but make it more difficult.

Alternative Scenarios

In addressing the issue of independence, the Study Group debated three alternative scenarios. First, the regulator is an independent third party. Second, the regulator is not an independent third party but operates at arm's length from the management of the enterprise. Third, the governing body of an enterprise is empowered by statute or contract to establish rates.

The regulator is an independent third party

In Chapter 6, the Study Group noted that, for the most part, private sector rate-regulated enterprises in Canada are subject to rate regulation by independent regulatory authorities. This distinct and separate relationship between the rate regulator and the owners of a rate-regulated enterprise establishes the credibility of the regulatory process and justifies the recognition of regulatory assets and liabilities as long as it is likely that the regulator will allow or require the future changes in regulated rates. The same applies to a GBE that is subject to rate regulation by an independent regulatory authority. 13. For example, the Saskatchewan Telecommunications Holding Corporation (SaskTel), a provincial Crown corporation, has an independent third-party regulator, the CRTC, which has been established under federal legislation.13

The regulator is not an independent third party but operates at arm's length from the management of the enterprise

Although independent regulators are the norm in the private sector, this is generally not the case in the public sector. Usually, the same government that owns a rate-regulated enterprise also establishes the regulatory authority for that enterprise and is responsible for the legislation under which the regulator operates. Partly to assist in dealing with this issue, the Study Group undertook a survey of federal provincial and territorial comptrollers. Survey

participants were asked whether their rate-regulated enterprises would continue to meet the first criterion if rates had to be established by an independent, third-party regulator. Most respondents said that, in their jurisdiction, rates were independently established because the regulator was operating at arm's length from the management of the enterprise (survey excerpts are provided in Appendix D to this Research Report). 14(47)

After considerable debate, the consensus of the Study Group 15(48) was that, as long as the regulator is operating at arm's length from the management of the regulated enterprise, the regulator need not be a completely independent third party. In such situations, there is sufficient assurance that the regulatory process is credible and there would be a significant reduction in the risk that the regulator would make decisions so as to "manage" the reported performance of the regulated enterprise. As a result, the risk of recognizing regulatory assets and liabilities that do not exist is outweighed by the risk of failing to recognize regulatory assets and liabilities that do exist. As noted below under "Required Disclosures," the Study Group believes that there should be disclosure of any actual or perceived lack of independence.

When there is no independent third-party regulator, professional judgment would be required to assess the credibility of the regulatory process. In this respect, the following conditions and circumstances merit consideration, either individually or in combination, when assessing whether the regulator is operating at arm's length from the management of the rate-regulated enterprise:

- Is the regulator a separate organization from the regulated enterprise?
- Is the regulator staffed by personnel who are neither employees nor directors of the regulated enterprise?
- Is there a public hearing process with opportunity for interested parties to participate?
- Does the regulator provide justification for its decisions?
- Are the decisions of the regulator public documents?
- Is there a well-defined plan in place for the deferral of costs and/or a history of recovering the related revenues?

If it is evident that the regulator is not operating at arm's length, the regulated enterprise would not meet the required criteria, and could not, therefore, apply the differential treatment for accounting for rate regulation.

A governing body is empowered by statute or contract to establish rates

In some cases, the governing boards of GBEs have been empowered by statute or contract to set rates for the enterprise. For example, in Nova Scotia, two rate-regulated entities are

reported in the Province's summary financial statements, Halifax-Dartmouth Bridge Commission and Highway 104 Western Alignment Corporation. The toll rates of the Halifax-Dartmouth Bridge Commission are subject to approval of the Nova Scotia Utility and Review Board. The toll rates of Highway 104 are set in the agreement with the bondholders and agreed to by the corporation and the Province, but are not regulated by an independent third party, such as the Nova Scotia Utility and Review Board (survey excerpts are provided in Appendix D to this Research Report).

In such circumstances, the regulatory requirements for the setting of rates comes from the statute or contract, and this is in line with the first criterion. It must be emphasized, however, that to meet the definition of a rate-regulated enterprise, the enterprise would still have to meet the other two criteria: rates must be designed to cover the costs of providing service and rates necessary to cover the costs of service will be chargeable and collectible from customers.

Also, meeting the definition of a rate-regulated enterprise does not necessarily mean that rate regulation would have an economic impact that should be recognized in the financial statements. What it does mean is that the rate-regulated enterprise would then apply the General Principles set out in Chapter 7. For example, consistent with General Principle 4, it would recognize a regulatory asset where the following conditions are met, but only if all four conditions are met:

- Rate regulation (in the form of the board setting rates under its statute) creates an economic benefit in the form of increased future revenues as a result of a past transaction or event.
- It is probable that the enterprise's regulator (that is, the board) will set future rates sufficient to provide the economic benefit.
- Future rates sufficient to provide additional revenue at least equal to the economic benefit will be chargeable and collectible from customers.
- There is an appropriate basis for measuring the asset and a reasonable estimate can be made of the amount involved.

Concern regarding the credibility of the regulatory process

One member of the Study Group has expressed concern about the credibility of the regulatory process in the second and third scenarios. In his opinion, if the regulator is not operating at arm's length from the owner of the rate-regulated enterprise, it is irrelevant whether or not the regulator is operating at arm's length from the management of the enterprise. For each jurisdiction, there is only one government and rate-regulated enterprises are part of that government. The government chooses when to carry out its activities through departments, agencies, rate-regulated enterprises or other government business enterprises,

but it controls all of them. Further, recommendations allowing a self-governing board to "manage" its performance by inappropriately creating rate-regulated assets and liabilities may place that board in a conflict-of interest-position. He also indicated that, in his opinion, the majority of statutes provide little guidance on how the rates are to be determined.

The Study Group discussed these issues at length and has addressed them above.

Required Disclosures

In Chapter 7, the Study Group concluded that the notes to the general purpose financial statements of private sector rate-regulated enterprises should disclose the regulator(s) and the jurisdiction(s) covered, even if the enterprise no longer qualifies as rate regulated (see General Principle 12 regarding presentation and disclosure). If a GBE's rates are governed by a statute or contract, this should also be disclosed in the notes.

Furthermore, if there is a perception that the regulator is not independent, the enterprise should provide note disclosure of its relationship with the regulator in accordance with *CICA Handbook – Accounting* Section 3840, "Related Party Transactions." Section 3840 establishes measurement and disclosure standards for related party transactions in the financial statements of profit-oriented enterprises.

In the Study Group's view, information about the related parties of a public sector rate-regulated enterprise is of significance to financial statement users. Related parties exist when one party has the ability to exercise, directly or indirectly, control, joint control or significant influence over the other. Two or more parties are related when they are subject to common control, joint control or common significant influence. The degree of influence that one party may exert on another is a major factor in determining whether they are related. In some cases, the degree of influence may be so remote that they need not be considered related. An explanation of how significant influence, joint control or control is exercised between the reporting enterprise and a related party clarifies the nature of their relationship.

SCOPE OF APPLICATION

With respect to the scope of application, some feel that the criteria set out in Section 3465 of the *Handbook – Accounting* for qualifying as a rate-regulated enterprise are too broad because they could apply to many government organizations. For financial reporting purposes, any government organization that is required to follow the *Handbook – Accounting*, or that chooses to do so, could, in their opinion, potentially qualify for such treatment, if it meets the *Handbook – Accounting* criteria. In addressing this concern, the Study Group compared authoritative pronouncements promulgated by the Public Sector Accounting Board (PSAB) 16(49) and the US Governmental Accounting Standards Board (GASB).

Government Business Enterprises (GBEs)

A GBE is different from other types of government organizations. As its principal activity, a GBE sells goods and services to individuals and organizations outside the government reporting entity 17(50) Public Sector Accounting Handbook, "Financial Reporting Entity," paragraph PS1300.07) and its revenues are to a large degree received from outside sources. In the case of government business-type organizations, 18(51) the goods and services are not sold primarily to individual and organizations outside the government and/or it cannot, in the normal course of its business, maintain its operations and meet its liabilities from revenues received from sources outside the government reporting entity. Since revenues adequate to maintain the organization are not derived from third parties, rate regulation does not apply to these government business-type organizations.

By inference, although it is not specifically stated in the *Public Sector Accounting Handbook*, except for GBEs, rate regulation does not apply to the public sector. To determine whether a government organization is a GBE, several factors should be considered:

- the enterprise's history of maintaining its operations and meeting its liabilities;
- whether the enterprise would continue to maintain its operations and meet its liabilities without relying on sales to, or subsidies from, the government reporting entity;
- past, present and future economic conditions within which the enterprise operates; and
- whether the enterprise has realistic and specific plans that show how it expects to maintain its operations and meet its liabilities in the future.

The *Public Sector Accounting Handbook* makes no specific reference to the types of GBEs that should apply the accounting standards set out in the *Handbook – Accounting*. Nonetheless, "Financial Reporting Entity," Section PS1300, paragraph .27, emphasizes that, because a GBE carries on a business, its financial statements should be prepared on the same basis as those of a private sector business. This basis is most appropriate for measuring the government's investment in the organization and the impact it has on the government's financial position and results. This would seem to imply that there should be consistency in application between public and private rate-regulated enterprises unless there are some good reasons for the contrary.

One Study Group member has noted that there are many GBEs in Canada, and that their business covers a broad range of activities, including casino gaming, lotteries, liquor boards, banking, insurance, housing, etc., as well as publicly owned utilities. In common with most public sector boards, most GBE boards are given the legislative authority to set the rates they charge for their products or services. Also, by definition, GBEs are self-sustaining. Therefore, they fully recover their costs. Accordingly, in his opinion, many GBEs would meet the definition of a rate-regulated enterprise and would be entitled to apply the differential treatment for accounting for rate regulation. In his opinion, the public will therefore have great difficulty in

understanding why such GBEs are considered rate regulated and why they are allowed to use this differential treatment.

The other nine members of the Study Group question the validity of this argument. In their opinion, there are relatively few GBEs in the public sector that meet the criteria set out in the definition of a rate-regulated enterprise.

The preceding discussion and analysis of public sector pronouncements suggests that General Principle 1 should apply only to GBEs. To assess the feasibility of this approach, in the survey of federal, provincial and territorial comptrollers referred to above, participants were asked the following questions:

- In your jurisdiction, what entities that are included in the federal or provincial government's summary financial statements currently follow GAAP for rate-regulated enterprises as set out in the *Handbook – Accounting*?
- The Study Group is proposing to limit application of the above-noted definition of a "rate-regulated enterprise" to "government business enterprises." In your jurisdiction, would this eliminate any of the entities currently following GAAP for rate-regulated enterprises?
- Is it important that the general purpose financial statements of rate-regulated enterprises in the public sector be prepared on a basis consistent with that in the private sector?

In response, survey participants reported that relatively few rate-regulated enterprises form part of the government reporting entity. Most of these enterprises are electric power utilities and all are GBEs. 19(52) They also felt that it is important that the general purpose financial statements of GBEs be prepared on a basis consistent with that of rate-regulated enterprises in the private sector (survey excerpts are provided in Appendix D of this Research Report).

In the Study Group's view, the application of General Principle 1 should be limited to GBEs that meet the criteria for qualifying as a rate-regulated enterprise. This would include having rates designed to cover the enterprise's cost of providing service, that is, rates set so that, based on expected demand and costs as recognized in the regulatory process, revenues will equal the costs of providing service. In line with existing practice, the Study Group is of the opinion that the *Public Sector Accounting Handbook* Recommendations should specifically recognize that only GBEs may qualify for the differential treatment afforded to rate-regulated enterprises by the *Handbook – Accounting*.

CONCLUSION

In this chapter, the Study Group assessed whether the General Principles set out in Chapter 7 are appropriate for the public sector. After examining the public sector environment in both

Canada and the United States, it considered the need for an independent rate-setting authority and the criteria in General Principle 1, as they relate to the scope of public sector activities that may be considered rate regulated for financial reporting purposes. As part of its assessment, the Study Group considered whether the other General Principles regarding application, recognition, presentation and disclosure should apply equally to all enterprises that meet General Principle 1.

With respect to the scope of public sector activities that may be considered "rate regulated" for financial reporting purposes, the consensus of the Study Group is that the application of General Principle 1 should be limited to government business enterprises that meet the criteria for qualifying as a rate-regulated enterprise. This is consistent with the authoritative pronouncements and current practices in both Canada and the United States. In this regard, *Public Sector Accounting Handbook* Recommendations should specifically recognize that, in the public sector, only GBEs are entitled to qualify as rate-regulated enterprises for financial reporting purposes. For GBEs that do qualify, the accounting recommendations for rate-regulated enterprises contained in the *Handbook – Accounting* should be applied. One Study Group member, however, feels strongly that, for a GBE to qualify as a rate-regulated enterprise for financial reporting purposes, the regulatory agency must be independent of both the GBE and government.

Regarding the need for an independent rate-setting authority, nine of the ten Study Group members are of the view that the first criterion in the definition of a rate-regulated enterprise should remain unchanged: the enterprise's rates for regulated services or products provided to its customers should be established by, or subject to approval by, an independent, third-party regulator or by its own governing board empowered by statute or contract to establish rates that bind customers. Also, complete independence of the regulator from a public sector enterprise is not required as long as the regulator operates at arm's length from the enterprise. In this respect, guidance is provided on assessing whether the regulator is operating at arm's length and the credibility of the regulatory process.

Should the other General Principles regarding application, recognition, presentation and disclosure apply equally to all enterprises that meet the criteria in General Principle 1? The Study Group consensus is that the economic benefits and obligations created by rate regulation are similar for many private and public sector enterprises. Therefore, the general purpose financial statements of rate-regulated enterprises in both the public and private sectors should be prepared on a consistent basis. One member, however, would support this position only if the regulatory agency is independent of both the GBE and the government.

Chapter 9

APPLYING GENERAL PRINCIPLES TO SPECIFIC

ISSUES

Detailed guidance is not essential to recognize the economic impact of rate regulation on the financial reporting of rate-regulated enterprises, but it would help avoid any misunderstanding and, at the same time, illustrate how general principles should be applied in practice.

INTRODUCTION

As noted in Chapter 1, the Study Group determined that it would be prudent to review the financial statement concepts set out in "Financial Statement Concepts," *CICA Handbook – Accounting* Section 1000. In this regard, it has concluded that the current accounting and financial reporting practices of rate-regulated enterprises fall well within that conceptual framework. Furthermore, a differential treatment based on the General Principles presented in Chapter 7 is considered appropriate for rate-regulated enterprises. To supplement those principles, the project terms of reference call for the Study Group to consider, "What additional guidance is needed relating to specific accounting and reporting issues encountered by rate-regulated enterprises?"

In this chapter, the Study Group elaborates on the General Principles and provides guidance on their application to specific issues. The specific issues covered in this chapter are capital assets (including interest capitalized), income taxes and inter-company gains and losses. Also included are other areas significant to rate-regulated enterprises, such as the accounting treatment of employee future benefits. For each of these matters, consideration is given as to when assets or liabilities (and changes in them) that result from rate regulation should be recognized in the financial statements (refer to General Principles 4 to 11) and what information should be disclosed in the notes to the financial statements (refer to General Principles 12 and 13).

Several broad issues of particular relevance to rate-regulated enterprises are also addressed in this chapter: (1) application of general principles; (2) recoverability of assets created by rate regulation; and (3) discontinuation of accounting for the economic impact of rate regulation (refer to General Principle 3).

APPLICATION OF GENERAL PRINCIPLES

GAAP in both Canada and the US encompasses reflecting economic benefits (assets) and economic obligations (liabilities) in the balance sheet, and including changes in such benefits and obligations in the income statement. Although applying GAAP to the general purpose financial statements of rate-regulated enterprises works the same way, in the Study Group's opinion, there is an additional consideration — recognizing regulatory assets and liabilities that result from rate-regulation.

Application of the General Principles would result in a rate-regulated enterprise following all of

the standards in the *Handbook*, the same as a non-regulated enterprise would. In addition, a rate-regulated enterprise would recognize the economic impact of rate regulation where that recognition is consistent with the General Principles. This is consistent with the approach usually taken by rate-regulated enterprises in the US.

In applying the General Principles to specific issues, the economic impact of rate regulation is identified; that is, the economic benefit that exceeds the amount that would otherwise be recognized as an asset, or the economic obligation that exceeds the amount that would otherwise be recognized as a liability. This impact is then recognized as a regulatory asset or a regulatory liability to the extent that the General Principles are met. For example, if a regulator allows for the future recovery of costs that would normally be expensed in the current period, the costs would be capitalized if General Principle 4 were met.

In some cases, a regulator may use the cash method (pay-as-you-go) to determine the amount of expenses that are to be recoverable through allowed rates. For example, with regard to accounting for income taxes, many rate-regulated enterprises follow the taxes payable or flow through method, where that method is prescribed by the regulator, and do not follow the method normally required by GAAP, the liability method. Pending further study, the Accounting Standards Board specifically permits the use of the taxes payable or flow-through method in Canada. If this were not the case, and a Canadian rate-regulated enterprise had to record its full tax liability, and also recorded a regulatory asset equal to the expected amount of future income taxes that would be recoverable in future rates, there would be a significant increase in capital taxes and large corporation taxes payable.

In the US, rate-regulated enterprises always use the liability method in preparing their financial statements, even when the regulator prescribes the taxes payable or flow-through method. They record future income tax assets or liabilities on the balance sheet and they also set up a corresponding regulatory asset or liability. The net effect is that income is presented on a taxes payable basis.

Some maintain that there should be an exception to the strict application of the General Principles where a regulator applies the cash method (or some other prescribed method) for determining certain costs to be included in the cost of service. Either the regulatory asset should be netted against the associated liability (or the regulatory liability should be netted against the associated asset) or the rate-regulated enterprise should continue to apply the cash method (or some other prescribed method) of accounting to these specific costs. With either alternative, the end result is that reported income would be the same as if the General Principles were applied.

Although both assets and liabilities would be lower, this impact could be disclosed in the notes to the financial statements, consistent with current practice. More importantly, the base against which capital taxes and large corporation taxes are applied would be reduced, resulting in significant tax savings for the ratepayers or the shareholders of the rate-regulated enterprise. Of the two approaches, those favouring such exceptions prefer the cash method (or some other

prescribed method), as opposed to the netting method, with appropriate note disclosure on the netting of assets and liabilities.

Those who argue for strict application of the General Principles believe that tax regulations should not govern the accounting treatment for rate-regulated enterprises. They also note that, unless specifically sanctioned by the *Handbook*, disclosure in the notes to the financial statements *per se* is not a substitute for proper accounting. Likewise, the netting (or offsetting) of GAAP assets / liabilities with regulatory assets / liabilities does not meet GAAP requirements. Under the General Principles set out in Chapter 7, GAAP methods should be applied to all assets and liabilities reported on the balance sheet, and separate regulatory assets and liabilities should be reported, as appropriate, to reflect the economic impact of rate regulation. 1(53)

Those who argue for exceptions maintain that financial reporting must not only strive for conceptual purity, but must also deal with practical realities. With disclosure in the notes to the financial statements, consistent with current practice, strict adherence to the General Principles, in their opinion, would not significantly improve the quality or transparency of financial reporting by rate-regulated enterprises. It would, however, needlessly increase the tax burden, and that burden would be passed on to customers as part of the cost of service. Or, if the regulator did not allow that cost to be recovered in future rates, that burden would be passed on to shareholders.

There is a difference of opinion in the Study Group on this issue. Some believe that there should be a strict adherence to the General Principles set out in Chapter 7, whereas others are of the view that the differential treatment currently permitted in "Income Taxes," *Handbook* Section 3465, which is also current practice among Canadian rate-regulated enterprises, should continue.

For each issue addressed in this chapter, the accounting treatment that would result from strict application of the General Principles is presented. In light of the above-noted differing views, the practical accounting treatment is also described for the issues where regulators use the cash method to determine the amount of expenses to be included in rates.

RECOVERABILITY OF ASSETS CREATED BY RATE REGULATION

General Principle 4 sets out the conditions for recognizing a regulatory asset in the financial statements. To recognize a regulatory asset, it must be likely that the regulator will change future rates by an amount sufficient to provide an economic benefit. This requires an ongoing assessment of the likelihood of recovery of regulatory assets subsequent to their initial recognition.

With respect to the ongoing recognition of regulatory assets, the following hierarchy of evidence may be helpful in establishing the likelihood of future recovery:

- The enterprise has an order from its regulator that addresses and allows the recovery

of the specific incurred cost.

- The regulator has treated the specific incurred cost as an allowable cost-of-service item in prior regulatory filings of the enterprise.
- The same regulator has treated the specific incurred cost as an allowable cost in connection with another enterprise's filing. Also, it is the regulator's general policy to allow recovery of this incurred cost.
- The regulator has included a similar incurred cost as an allowable cost in prior regulatory filings of the enterprise.
- The same regulator has treated a similar incurred cost as an allowable cost in connection with another enterprise's filing. Also, it is the regulator's general policy to allow the recovery of this incurred cost.
- The enterprise has obtained an "accounting order" or comparable form of communication from the regulator agreeing with the enterprise's proposed accounting for the specific incurred cost, even though such orders often include a qualifier that the letter guidance is not authoritative for rate-making purposes. In a few jurisdictions, such accounting orders may provide the same degree of assurance as a specific rate order. The level of assurance provided by accounting orders must be assessed on a commission-by- commission basis, with particular focus on legal authority, who signs the accounting order, and historical regulatory practices.
- A significant majority of other regulatory authorities has treated a specific incurred cost (or similar incurred cost) as an allowable cost and the enterprise's regulator has not disallowed that cost.
- Representation letters stating that it is likely that the cost will be allowable in future rates are obtained from outside legal counsel with substantive involvement, informed in-house legal counsel and management.

Furthermore, it must be anticipated that the enterprise will request the future recovery no later than that enterprise's next rate case. As well, a determination must be made that the rates, established at levels that would recover the costs, including a fair return on investment, can be charged to and collected from customers.

SPECIFIC ISSUES ADDRESSED IN THE *CICA HANDBOOK – ACCOUNTING*

The following analyses provide guidance for applying the General Principles for rate-regulated enterprises to specific matters covered in the *Handbook*, including the differential treatment for property, plant and equipment, income taxes, and inter-company gains and losses. Guidance is

also provided on employee future benefits, foreign currency translation and financial instruments, although differential treatment is not specifically provided in the *Handbook*.

Property, Plant and Equipment

As noted in Chapter 1, accounting for fixed / capital assets (property, plant and equipment) is a significant issue for the natural gas sector and the hydro-electric industry. In a rate-regulated environment, pertinent considerations include: cost and amortization; allowance for funds used during construction (AFUDC); disallowances; future removal and site restoration costs; and disposal of items of property, plant and equipment. The following analyses cover each of these considerations.

Cost and amortization

Accounting Issue

Current accounting standards for profit-oriented enterprises require that property, plant and equipment be recorded at cost and that amortization be recognized in a rational and systematic manner appropriate to the nature of the item of property, plant and equipment with a limited life and its use by the enterprise. The accounting issue is whether a rate-regulated enterprise should record a regulatory asset or liability for the amount by which depreciation for regulatory purposes is different from the amount acceptable under normal GAAP methods.

Accounting Requirements in Canada

"Property, plant and equipment," *Handbook* Section 3061, paragraph .10, states that:

> Rate-regulated property, plant and equipment are items of property, plant and equipment held for use in operations meeting all of the following criteria: 2(54)
>
> (a) the rates for regulated services or products provided to customers are established by or are subject to approval by a regulator or a governing body empowered by statute or contract to establish rates to be charged for services or products;
>
> (b) the regulated rates are designed to recover the cost of providing the services or products; and
>
> (c) it is reasonable to assume that rates set at levels that will recover the cost can be charged to and collected from customers in view of the demand for the services or products and the level of direct and indirect competition. This criterion requires consideration of expected changes in levels of demand or competition during the recovery period for any capitalized costs.

Where the amount by which depreciation for regulatory purposes differs from the amount acceptable under normal GAAP methods, a regulatory asset or liability should be recognized if the related asset meets the *Handbook* definition of rate-regulated property, plant and equipment and the pertinent recognition criteria (General Principles 4 to 7). In assessing the amount of depreciation acceptable under GAAP, professional judgment should be used in choosing the method that allows amortization to be recognized in a rational and systematic manner appropriate to the nature of the item of property, plant and equipment. The amortization method and estimates of the life and useful life of an item of property, plant and equipment should be reviewed on a regular basis (see *Handbook* paragraph 3061.33).

In addition, rate-regulated enterprises should determine the extent to which their regulatory depreciation methods differ from normal GAAP methods and lives and, if the differences are significant, disclose them in the notes to the financial statements (General Principle 13). 3(55)

Allowance for funds used during construction (AFUDC)

Accounting Issue

Current accounting standards for profit-oriented enterprises allow for the capitalization of certain carrying costs, such as interest costs, that are directly attributable to an acquisition, construction or development activity. Often, regulators set the allowance for funds used during construction on the basis of the regulated enterprise's weighted average cost of capital, which would normally exceed the amount otherwise allowed under GAAP because it includes a cost-of-equity component. The accounting issue is whether a rate-regulated enterprise should be allowed to capitalize an allowance for funds used during construction which exceeds the amount otherwise allowed under GAAP, if that is the method used for rate-making purposes.

Accounting Requirements in Canada and the US

Handbook Section 3061, paragraph .23, states that:

> The cost of an item of property, plant and equipment that is acquired, constructed, or developed over time includes carrying costs directly attributable to the acquisition, construction, or development activity such as interest costs when the enterprise's accounting policy is to capitalize interest costs. For an item of rate-regulated property, plant and equipment, the cost includes the directly attributable allowance for funds used during construction allowed by the regulator.

In the United States, *Accounting for the Effects of Certain Types of Regulation*, SFAS 71, paragraph 15, notes that:

> In some cases, a regulator requires an enterprise subject to its authority to capitalize, as part of the cost of plant and equipment, the cost of financing construction as financed partially by borrowings and partially by equity. A computed interest cost and a designated cost of equity funds are capitalized, and net income for the current period is increased by a corresponding amount. After the construction is completed, the resulting capitalized cost is the basis for depreciation and unrecovered investment for rate-making purposes. In such cases, the amounts capitalized for rate-making purposes as part of the cost of acquiring the assets shall be capitalized for financial reporting purposes instead of the amount of interest that would be capitalized in accordance with FASB Statement No. 34, *Capitalization of Interest Cost*. The income statement shall include an item of other income, a reduction of interest expense, or both, in a manner that indicates the basis for the amount capitalized. 4(56)

Application of General Principles

For regulatory purposes, a regulator may require a rate-regulated enterprise to capitalize an allowance for the funds used during construction (AFUDC) at a rate that assumes the project is financed by debt and shareholders' equity. After the construction is completed, the resulting capitalized cost is the basis for depreciation and unrecovered investment for rate-making purposes. As a result, the rate-regulated enterprise recovers the total cost of the plant, including the AFUDC, through depreciation charges that are part of the cost of service to be recovered from customers over the estimated life of the plant.

The full amount of the AFUDC should be capitalized as a regulatory asset if its subsequent depreciation / amortization is likely to be included in allowable costs for rate-making purposes (General Principle 4). The AFUDC is normally divided into two components: the interest component, or the allowance for borrowed funds, and the equity component, or the allowance for equity funds. In addition, rate-regulated enterprises should disclose, in the notes to the general purpose financial statements, how rate regulation affects the reported values of property, plant and equipment on a going-forward basis. They should also provide pertinent information on the AFUDC, as appropriate (General Principle 13). 5(57)

Disallowances

Accounting Issue

The accounting issue is whether a disallowance should be deducted from the reported cost of the plant, and a loss reported, when it becomes likely that part of the cost will be disallowed

for rate-making purposes.

Accounting Requirements in Canada and the US

In Canada, there are no specific accounting pronouncements that address the issue of disallowances of plant costs of rate-regulated enterprises. It is encompassed, however, by "write downs" in *Handbook* Section 3061, which states that:

> *When the net carrying amount of an item of property, plant and equipment, less related accumulated provision for future removal and site restoration costs and future income taxes, exceeds the net recoverable amount, the excess should be charged to income.* (paragraph .38)
>
> In determining the net recoverable amount of an item of rate-regulated property, plant and equipment, the enterprise considers the extent to which rates will provide for the recovery of the cost of the asset. (paragraph .46)

In the United States, *Regulated Enterprises — Accounting for Abandonments and Disallowances of Plant Costs*, SFAS 90, paragraph 7, states that:

> When it becomes probable that part of the cost of a recently completed plant will be disallowed for rate-making purposes and a reasonable estimate of the amount of the disallowance can be made, the estimated amount of the probable disallowance should be deducted from the reported cost of the plant and recognized as a loss.

According to SFAS 90, if the probable disallowance results from a cap on the plant's cost for rate-making purposes, the loss should be recognized as soon as it becomes probable that the cap will be exceeded. This calculation should be based on the expected total cost of the plant, including all AFUDC and other overheads that would normally be applied. The excess of this amount over the cap should be discounted to present value using the AFUDC rate. (In other words, the future AFUDC is removed from the expected total plant cost.) This discounted amount should be written off as a loss. If part of the cost is explicitly, but indirectly, disallowed (for example, by an explicit disallowance of return on investment on a portion of the plant), an equivalent amount of cost shall be deducted from the reported cost of the plant and recognized as a loss. Calculation of this amount requires use of the best available information. For instance, if the regulator specifies the equivalent amount of the plants cost that is being disallowed, then that amount should probably be used as the loss. Otherwise, it may be necessary to estimate and use the present value of future cash flows that have been disallowed.

Application of General Principles

When it becomes likely that part of the cost of a plant will be disallowed for rate-making purposes, and a reasonable estimate of the amount of the disallowance can be made, the estimated amount of the disallowance should be deducted from the reported cost of the plant and reported as a loss. When the regulator allows the cost, but reduces or eliminates the return, the recovery of the cost should be discounted and the difference between the discounted amount and the cost of the asset should be written down to that discounted amount. This annual cost must be subtracted from the cash flows to establish the amount available to cover the capital cost, which is what discounting does.

In addition, rate-regulated enterprises should disclose, in the notes to the general purpose financial statements, pertinent information on disallowances, as appropriate (General Principle 13). 6(58)

Future removal and site restoration costs

Accounting Issue

Current accounting standards for profit-oriented enterprises require that a provision be made for future removal and site restoration costs in a rational and systematic manner by charges to income. The accounting issue is whether a rate-regulated enterprise should recognize a regulatory asset or liability when the regulator requires that a different method be followed. For example, the regulator may specify that future rates will provide for the recovery of costs when they are paid.

Accounting Requirements in Canada and the US

Handbook Section 3061 states that:

> *When reasonably determinable, provisions should be made for future removal and site restoration costs, net of expected recoveries, in a rational and systematic manner by charges to income.* (paragraph .35)
>
> Future removal and site restoration costs include costs, net of expected recoveries, for dismantling and abandoning a property. Provisions are needed to accrue the liability for future removal and site restoration costs, when the likelihood of their incurrence is established as a result of environmental law, contract, or because the enterprise has established a policy to restore a site, and when such costs can be reasonably determined. Provisions are recorded as liabilities and are not classified with accumulated amortization. (paragraph .36)
>
> When future removal and site restoration costs cannot be reasonably

determined, a contingent liability may exist. (paragraph .37)

In the US, *Environmental Remediation Liabilities*, AICPA Statement of Position (SOP) 96-1, requires an accrual for environmental clean-up or remediation liabilities. That is, a loss must be accrued by a charge to income if it is both probable and can be reasonably estimated. If the loss is a range, the "reasonably estimated" criterion is met. If no value in the range is more likely than any other, the minimum amount should be accrued. SOP 96-1 also includes benchmarks to aid in the determination of when environmental remediation liabilities should be recognized in accordance with *Accounting for Contingencies*, SFAS 5. *Loss Contingencies Assumed in a Business Combination*, Staff Accounting Bulletin (SAB) 92, sets out the SEC staff position that environmental costs meeting the criteria of SFAS 71, paragraph 9, should be recognized on the balance sheet as a regulatory asset and should not be offset against the liability. *Accounting for Asset Retirement Obligations*, SFAS143, requires the recognition (at fair value) of a liability where there is a legal obligation associated with future removal and site restoration costs. An asset in the same amount will also be established and subsequently allocated to expense using a systematic and rational method over its useful life. SFAS 143 also acknowledges that, for rate-regulated enterprises, there may be a difference in timing for financial reporting and rate-making purposes, and that a regulatory asset or liability may have to be recognized. 7(59)

Application of General Principles

When reasonably determinable, provisions should be made for future removal and site restoration costs in a rational and systematic manner by charges to income. In addition, a regulatory asset would be recorded (General Principles 4 to 7) in those cases where the regulator decides that future rates will provide for the recovery of such costs. When future removal and site restoration costs cannot be reasonably determined, a contingent liability may exist and this should be disclosed in the notes to financial statements (General Principle 13). 8(60)

As discussed earlier in the chapter, it must be acknowledged that some are opposed to the strict application of the General Principles because it would result in an increase in large corporations taxes and capital taxes payable by rate-regulated enterprises, an amount that would generally be passed on to shareholders or customers, depending on whether or not the regulator allows the increased cost to be included in the cost of service. They maintain that, where regulators use the cash method (or some other prescribed method) to determine the amount of expenses to be included in rates, future removal and site restoration costs would be recognized in the period when they are recovered through the regulatory process.

Disposal of capital assets

Accounting Issue

Current accounting standards for profit-oriented enterprises require that the difference between the net proceeds on disposal and the net carrying amount be charged to income in the period when the net carrying amount of an item of property, plant and equipment exceeds the net recoverable amount. The accounting issue is whether a rate-regulated enterprise should be allowed to record a regulatory asset equivalent to the deferral of such differences, if that is the method used for rate-making purposes.

Accounting Requirements in Canada and the US

Handbook Section 3061 states that:

> On disposal of an item of property, plant and equipment, whether by sale, destruction, loss, abandonment or expropriation, the difference between the net proceeds on disposal and the net carrying amount is recognized in income in the period unless there are other aspects of the transaction that would prevent recognition. For example, a sale-leaseback transaction accounted for in accordance with LEASES, Section 3065; and certain transactions more appropriately accounted for as financing arrangements or as cost recoveries. (paragraph .52)
>
> For rate-regulated operations, the regulator may require the difference between net carrying amount and the proceeds on disposal of an item of property, plant and equipment to be considered in the determination of future rates charged to customers. In such circumstances the difference is deferred, provided there is reasonable assurance that:
>
> (a) any excess of net carrying amount over proceeds on disposal will be recovered through future rates; or
>
> (b) any excess of proceeds on disposal over net carrying amount will serve to reduce future rates. (paragraph .53)

In the US, when it becomes probable that a rate-regulated enterprise will abandon an operating asset or an asset under construction, SFAS 90 requires that the cost of the asset be removed from work in progress or plant-in-service. The enterprise would determine the likely recovery of the total costs to be provided from future rates, as permitted by the rate regulator. Only the amounts probable of recovery may be deferred; the remainder is recognized as a loss. *Reasonable Estimation of the Amount of a Loss*, FASB Interpretation 14, provides guidance on estimating the amount of a loss, and *Computation of a Loss on an Abandonment*, Technical Bulletin 87-2, provides guidance on computing the loss.

If the rate regulator permits the enterprise to recover the costs of an abandoned plant over a period of time, the enterprise must consider whether it will be allowed to earn a return on the investment. If it is likely that recovery of cost plus a full return will be granted, SFAS 90

requires that the costs be reported as a separate new asset and amortized in the same manner as used for rate-making purposes. Often the rate regulator does not allow the enterprise to earn a return on its investment in abandoned plant. If no return or a partial return is allowed, only the present value of the future revenues expected to be provided is reported as a separate new asset. Any excess of the total cost of the abandonment over the present value of the estimated future revenues is recorded as a loss.

In the US, *Estimated Future Costs Related to Spent Nuclear Fuel and Nuclear Electric Generating Plants*, SAB Topic 10-B, provides guidance on what disclosures should be made concerning the estimated future costs to decommission nuclear generating plants. The SEC requires that the financial statement notes disclose the estimated costs of dismantling or decontaminating nuclear generating plants and whether provision for these costs is being made in current operations and recognized in rates. If such expected costs are not being provided for currently, utilities should disclose any difference between current and expected future costs and the potential impact on the financial statements or future operations.

Application of General Principles

Losses would generally be reported by rate-regulated enterprises in the period when it becomes probable that they would not be recovered from customers (General Principle 11). Nonetheless, a regulatory asset should be recorded for losses on disposals and write-downs of rate-regulated assets if the regulator permits these losses to be recovered from future rates (General Principles 4 to 7). 9(61) In addition, rate-regulated enterprises should disclose, in the notes to the general purpose financial statements, pertinent information on disposal of items of property, plant and equipment, as appropriate (General Principle 13). 10(62)

Income Taxes

Accounting Issue

Current accounting standards require that profit-oriented enterprises report the expected income tax liability associated with the income that they have recognized, whether or not those taxes are currently payable. The taxes paid in the period, plus the change in the tax liability, are reported as income tax expense. This results in future income taxes being recognized in the period that the associated income is recognized. In many cases, however, the rates of regulated enterprises are based on the flow-through method, whereby the taxes recovered in rates equal the taxes currently payable as a result of the income earned in the period. Generally, it is expected that the future income taxes will become recoverable through allowed rates once they become payable. The accounting issue is whether a rate-regulated enterprise should recognize the economic benefit associated with the expectation that it will collect future income taxes through future allowed rates.

Accounting Requirements in Canada and the US

"Income Taxes," *Handbook* Section 3465, establishes standards for the recognition, measurement, presentation and disclosure of income and refundable taxes in an enterprise's financial statements, with limited application for certain rate-regulated enterprises. Section 3465 replaced the concept of **timing differences** with the concept of **temporary differences**. In addition, it replaced deferred tax debits and credits with future income tax assets and future income tax liabilities. 11(63)

Handbook Section 3465 states that:

> *A rate regulated enterprise need not recognize future income taxes in accordance with the Recommendations of this Section to the extent that future income taxes are expected to be included in the approved rate charged to customers in the future and are expected to be recovered from future customers. If future income taxes are not recognized in accordance with the Recommendations of this Section, the rate regulated enterprise should disclose the following, in addition to the information to be disclosed in accordance with paragraphs 3465.91 and 3465.92:*
>
> *(a) the reason why future income tax liabilities and future income tax assets have not been recognized; and*
>
> *(b) the amount of future income tax liabilities, future income tax assets and future income tax expense that have not been recognized. (paragraph .102)*

Pending further study of accounting for rate regulated enterprises as a whole, rate regulated enterprises are not required to record future income taxes for temporary differences that arise from assets and liabilities relating to their rate regulated activities to the extent that these future income taxes will be included in the rates charged to customers in the future and will be recoverable at that time as set out in paragraph 3465.102. (paragraph .103)

Future income taxes would be recognized in accordance with the remainder of this Section to the extent that future income taxes are not expected to be included in the rates charged to customers in the future. In addition, a rate regulated enterprise that chooses to recognize future income taxes despite the expectation that they will be included in the rates charged to customers in the future would recognize all future income tax liabilities and future income tax assets in accordance with the requirements of this Section. (paragraph .104)

In the US, when it was originally issued, SFAS 71, paragraph 18, noted that:

> Items of revenue and expense are sometimes taxable or deductible in periods other than the periods in which those items are recognized for

> financial reporting purposes. In some cases, a regulator does not include the income tax effect of certain transactions in allowable costs in the period in which the transactions are reported but includes income taxes related to those transactions in allowable costs in the period in which the taxes become payable. In such cases, if it is probable that income taxes payable in future years because of net reversal of timing differences will be recovered through rates based on taxes payable at that time, the enterprise shall record neither the deferred income taxes that result from those timing differences nor the related asset (the probable future benefits that will result from payment of the taxes). However, the enterprise shall disclose the cumulative net amount of income tax timing differences for which deferred income taxes have not been provided. That disclosure supplements the requirements of paragraph 63 of Opinion 11 for disclosure of operating loss carryforwards, significant amounts of other unused deductions or credits, and reasons for significant variations in the customary relationships between income tax expense and pretax accounting income. Except as provided in this paragraph, regulated enterprises shall apply the requirements of Opinion 11.

This, however, was replaced by the following when *Accounting for Income Taxes*, SFAS 109 was issued:

> A deferred tax liability or asset shall be recognized for the deferred tax consequences of temporary differences in accordance with FASB Statement No. 109, Accounting For Income Taxes (SFAS 109 paragraph 288 (v))

Historically, most public utilities used the flow-through method of accounting for certain temporary differences. Under this method, income tax expense was recognized on the basis of taxes paid or payable. A small number of differences were accorded deferred tax treatment (commonly called normalization, from a regulatory standpoint), primarily because of tax regulations. Normalization generally results in higher operating expenses for utilities and, therefore, higher revenue requirements. SFAS 71 allowed flow-through accounting to be used for financial reporting if certain criteria were met.

With the required adoption of SFAS 109, utilities changed the way deferred taxes are calculated and use the liability method to record deferred taxes on temporary differences, regardless of their regulatory treatment. In addition, the definition of temporary differences encompasses the equity component of the AFUDC, which utilities historically recorded on a net-of-tax basis. SFAS 109 prohibits recording of net-of-tax amounts and requires that those amounts be grossed up. Many regulators may continue to require flow-through accounting

for income taxes for rate-making purposes. If flow-through accounting is prescribed by the regulator and deferred taxes not currently provided under that method meet the recovery criteria set forth in SFAS 71, the differences between the flow-through method and the liability method would be recorded as regulatory assets or liabilities on the balance sheet. In determining the amount of deferred taxes to be established, SFAS 109 focuses on the probable future revenue to be recovered through rates. SFAS 109 recognizes that the future revenues will include recovery of the tax expense generated on the revenues as well as the deferred tax liability. The tax-on-tax item is recorded as a regulatory asset on the balance sheet, with the offset to the deferred tax liability.

Application of General Principles

Profit-oriented enterprises are required to report the expected income tax liability associated with the income that they have recognized, whether or not those taxes are currently payable. The taxes paid in the period plus the change in the tax liability are reported as income tax expense. This results in future income taxes being recognized in the period that the associated income is recognized. In many cases, however, the rates of regulated enterprises are based on the flow-through method, whereby the taxes recovered in rates are set equal to the taxes currently payable as a result of the income earned in the period. Generally, it is expected that the future income taxes will become recoverable through allowed rates once they become payable.

Application of the General Principles set out in Chapter 7 would result in financial reporting similar to what is required in the US. A rate-regulated enterprise should follow the Recommendations in *Handbook* Section 3465, whether or not rates are based on the flow-through method. That means that the enterprise would report a liability equal to the expected income taxes payable on the income recognized in the current period. Where it is likely that any amount of future income taxes (not necessarily the full amount of future income taxes) would be included in the calculation of future allowed rates, and those rates would be chargeable and collectible from customers, such amounts would be recognized as a regulatory asset. The income tax expense recognized in the period would then be reduced or increased by the change in this regulatory asset (General Principles 4 to 7).

As discussed earlier in this chapter, some are opposed to the strict application of the General Principles because it would result in an increase in large corporations taxes and capital taxes payable by rate-regulated enterprises, an amount that would generally be passed on to shareholders or customers, depending on whether or not the regulator allows the increased cost to be included in the cost of service. They maintain that the current approach used in practice and permitted by the *Handbook* should continue to be used; that is, where rates are based on the flow-through method, this method should also be allowed for financial reporting purposes, with appropriate disclosure in the notes to the financial statements.

In addition, rate-regulated enterprises should disclose, in the notes to the general purpose financial statements, the economic impact of rate-regulation on income taxes on a going-forward basis (General Principle 13). Such disclosures, as required by *Handbook* Section 3465, paragraphs .91, .92 and .102, would be cross-referenced to pertinent information provided in other notes. 12(64)

Intercompany Gains and Losses

Accounting Issue

Current accounting standards for profit-oriented enterprises require that intercompany gains or losses be eliminated in preparing a consolidated income statement. The accounting issue is whether a rate-regulated enterprise should be allowed to realize intercompany gains and losses to the extent that the transfer price is recognized for rate-making purposes.

Accounting Requirements in Canada and the US

"Consolidated Financial Statements," *Handbook* Section 1600, deals with the preparation of consolidated financial statements. To the extent that transactions between the parent and its subsidiaries (intercompany transactions) result in intercompany gains or losses, such gains or losses normally would be eliminated in preparing a consolidated income statement. With regard to rate-regulated enterprises, however, *Handbook* Section 1600, paragraph .29, states that:

> Where a parent or subsidiary manufactures or constructs facilities for a regulated public utility in the consolidated group, any intercompany gain or loss is deemed to have been realized to the extent that the transfer price on such facilities is recognized for rate-making purposes by a government regulatory body.

In the United States, SFAS 71, paragraphs 16 and 17, note that:

> Profit on sales to regulated affiliates shall not be eliminated in general-purpose financial statements if both of the following criteria are met:
>
> (a) the sales price is reasonable.
>
> (b) it is probable that, through the rate-making process, future revenue approximately equal to the sales price will result from the regulated affiliate's use of the products.
>
> The sales price usually shall be considered reasonable if the price is accepted or not challenged by the regulator that governs the regulated affiliate. Otherwise, reasonableness shall be considered in light of the circumstances. For example, reasonableness might be judged by the

return on investment earned by the manufacturing or construction operations or by a comparison of the transfer prices with prices available from other sources.

Application of General Principles

It is important for rate-regulated enterprises to consider whether regulatory agencies will permit any intercompany gains or losses to be included in future rates. Applying the General Principles set out in Chapter 7 (in particular General Principle 11), such enterprises would not eliminate intercompany profits on sales to regulated affiliates if it is likely that, through the rate-making process, future revenues in amounts approximately equal to the intercompany transfer price will be provided. That revenue would result from inclusion of the intercompany profits in the amount used by the regulator as allowable costs for purposes of depreciation and return on investment.

In such cases, a regulated enterprise should recognize profits on sales to a regulated affiliate to the extent that the profits are included in allowable costs in the rate-making process because the profits are validated by the rate actions of the regulator. The regulator's acceptance of the transfer price provides evidence of recoverability. For rate-making purposes, the intercompany profits would be included in the depreciation used as an allowable cost, and the undepreciated amount would be included in the investment on which a return is provided as an allowable cost.

Employee Future Benefits

In an August 1999 survey of rate-regulated enterprises (discussed in Chapter 1), respondents stated that there should be some consideration given to ensuring that accounting requirements — such as "Employee Future Benefits," *Handbook* Section 3461 — do not negatively affect customer rates or investor return.

Accounting Issue

Current accounting standards for profit-oriented enterprises require that an entity recognize the cost of retirement benefits and certain post-employment benefits over the periods in which employees render services to the entity in return for the benefits. The accounting issue is whether a rate-regulated enterprise should recognize a regulatory asset or liability when the regulator requires that the pay-as-you-go (cash method) or some other prescribed method be used to determine rates. For example, the regulator may specify that future rates will provide for the recovery of costs when they are paid or the regulator may specify that costs will be recovered prior to the period in which they would normally be expensed.

Accounting Requirements in Canada and the US

Canadian Accounting and Assurance Reference Service (CAARS)

Handbook Section 3461 establishes standards for the recognition, measurement and disclosure of the cost of employee future benefits, including pension and other retirement benefits, post-employment benefits, compensated absences and termination benefits. Generally, an entity must recognize the cost of retirement benefits and certain post-employment benefits over the periods in which employees render services to the entity in return for the benefits. Other post-employment benefits are recognized when the event that obligates the entity occurs. The standard is in harmonization with the US standard on this subject.

In the US, SFAS 71, paragraph 48, notes that *Accounting for Compensated Absences*, SFAS 43, "specifies criteria for accrual of a liability for employees' compensation for future absences. For rate-making purposes, compensation for employees' absences may be included in allowable costs when the compensation is paid." According to SFAS 71, paragraph 49:

> the liability, if any, would be accrued in accordance with SFAS 43 because rate actions of the regulator cannot eliminate obligations that were not imposed by the regulator. ... By including the accrued compensation in future allowable costs on an as-paid basis, the regulator provides reasonable assurance of the existence of an asset. The asset is the probable future benefit (increased revenue) that will result from the regulatory treatment of the subsequent payment of the liability ... . Accordingly, the enterprise also would record the asset that results from the regulator's actions.

In *Accounting for OPEB Costs by Rate Regulated Enterprises*, EITF Issue 92-12, the task force reached consensus on several issues. For plans providing postretirement benefits other than pensions (OPEB plans), the task force ched a consensus that a regulatory asset related to costs covered by *Employers' Accounting for Postretirement Benefits Other Than Pensions*, SFAS 106:

> should not be recorded if the regulator continues to include OPEB costs in rates on a pay-as-you-go basis. ... For a continuing plan a rate-regulated enterprise should recognize a regulatory asset for the difference between SFAS 106 costs and OPEB costs included in the enterprise's rates if the enterprise (1) determines that it is probable that future revenue in an amount at least equal to the deferred cost (regulatory asset) will be recovered in rates, and (2) meets *all* of the [specified] criteria.

The task force also reached a consensus that:

> a rate-regulated enterprise should disclose in its financial statements a description of the regulatory treatment of OPEB costs, the status of any

> pending regulatory action, the amount of any SFAS 106 costs deferred as a regulatory asset at the balance sheet date, and the period over which the deferred amounts are expected to be recovered in rates.

In addition, the task force concluded in *Accounting for Regulatory Assets*, EITF Issue 93-4, that if a rate-regulated entity initially fails to meet the regulatory asset recognition requirements of the consensus developed in EITF Issue 92-12, but meets those requirements in a subsequent period, a regulatory asset for the cumulative difference between SFAS 106 costs and OPEB costs included in rates since the date of adoption of SFAS 106 should be recognized in the period the requirements are met.

Application of General Principles

Following a strict application of the General Principles, a rate-regulated enterprise should recognize the cost of retirement benefits and certain post-employment benefits over the periods in which employees render services to the entity in return for the benefits in accordance with *Handbook* Section 3461. In addition, the difference between the net periodic pension cost, as recognized in accordance with GAAP, and the amounts of pension cost considered for rate-making purposes would be recognized as a regulatory asset or a regulatory liability (General Principles 4 to 10). The actions of the regulator do not affect the recognition of pension liabilities or assets; what they do is create a regulatory asset or liability in addition to the pension liability or asset. The same applies to the recognition of other postemployment benefits costs and liabilities. In addition, rate-regulated enterprises should disclose, in the notes to the general purpose financial statements, the economic impact o rate-regulation on employee future benefits on a going-forward basis (General Principle 13). Such disclosures, as required by *Handbook* Section 3461, paragraphs .150 to .163 should be cross-referenced to pertinent information provided in other notes. 13(65)

As discussed earlier in this chapter, some are opposed to the strict application of the General Principles because it would result in an increase in large corporations taxes and capital taxes payable by rate-regulated enterprises, an amount that would generally be passed on to shareholders or customers, depending on whether or not the regulator allows the increased cost to be included in the cost of service. They maintain that, where regulators use the pay-as-you-go (cash method) or some other prescribed method to determine the amount of expenses to be included in rates, the costs of employee future benefits would be recognized in the period when they are recovered through the regulatory process. In addition, the notes to the financial statements would disclose the liability relating to the employee future benefits and the expectation of recovery thereof.

Foreign Currency Translation

According to the August 1999 survey of rate-regulated enterprises (discussed in Chapter 1),

respondents stated that there should be some consideration given to ensuring that accounting requirements in "Foreign Currency Translation," *Handbook* Section 1650, and proposed changes in those requirements do not negatively affect customer rates or investor return.

Accounting Issue

Current accounting standards for profit-oriented enterprises require that exchange gains and losses on long-term monetary items be included immediately in income. The accounting issue is whether a rate-regulated enterprise should recognize a regulatory asset for exchange gains and losses on long-term monetary items that are deferred and amortized or recovered in rates when realized for rate-making purposes.

Accounting Requirements in Canada and the US

According to *Handbook* Section 1650, exchange gains and losses arising on translation or settlement of a foreign currency transaction (except those that are (1) related to certain intercompany transactions or (2) transactions designated as, and effective as, economic hedges of net investments and foreign currency commitments) should be included in the determination of net income for the current period. The Canadian standard is in harmonization with the US standard on this subject. 14(66)

In the US, foreign currency transaction gains and losses should be included in the determination of income for the period in which the exchange rate changes except those that are (1) related to certain intercompany transactions, (2) certain amounts related to a derivative instrument that is a cash flow hedge of a forecasted foreign-currency-denominated transaction or a forecasted intercompany foreign-currency-denominated transaction, and (3) an intercompany balance for which settlement is not planned or anticipated in the foreseeable future and that is considered to be part of the net investment in a foreign operation (refer to *Foreign Currency Translation*, SFAS 52, *Accounting for Derivative Instruments and Hedging Activities*, SFAS 133, and *Accounting for Certain Derivative Instruments and Certain Hedging Activities: an amendment of FASB Statement No. 133*, SFAS 138).

Application of General Principles

A rate-regulated enterprise should include exchange gains and losses on long-term monetary items in the determination of net income in accordance with the requirements of *Handbook* Section 1650. A regulatory asset or a regulatory liability, however, would be recognized if such gains and losses are deferred and amortized or recovered when realized for rate-making purposes (General Principles 4 to 10). In addition, rate-regulated enterprises should disclose, in the notes to the general purpose financial statements, the economic impact of rate-regulation on exchange gains and losses on a going-forward basis (General Principle 13).

As discussed earlier in this chapter, some are opposed to the strict application of the General

Principles because it would result in an increase in large corporations taxes and capital taxes payable by rate-regulated enterprises, an amount that would generally be passed on to shareholders or customers, depending on whether or not the regulator allows the increased cost to be included in the cost of service. They maintain that, where regulators use the cash method, or some other prescribed method, to determine the amount of gains and losses to be included in rates, foreign exchange gains and losses would be recognized in the period when they are included in rates, and appropriate disclosure would be provided in the notes to the financial statements.

Financial Instruments

According to the August 1999 survey of rate-regulated enterprises (discussed in Chapter 1), respondents stated that there should be some consideration given to ensuring that accounting requirements in "Financial Instruments," *Handbook* Section 3860, and proposed changes in those requirements, do not negatively affect customer rates or investor return.

Proposal for a comprehensive fair value model

In January 2001, the Canadian Accounting Standards Board and accounting standard setters in nine other international jurisdictions, including the US and IASC, issued an "Invitation to Comment" on proposals for a comprehensive fair value model to account for financial instruments and similar items. The proposals differ from *Accounting for Derivative Instruments and Hedging Activities*, SFAS 133, and *Financial Instruments: Recognition and Measurement*, IAS 39 (the principal two existing accounting standards on the subject), but they build on the same general principles, while avoiding much of the complexity of the interim steps in those standards. The Accounting Standards Board believes that existing Canadian accounting standards for recognition and measurement of financial instruments are inadequate and that the *status quo* cannot continue.

Application of General Principles

If accounting standards were to be issued by the Accounting Standards Board with regard to applying a "fair value" model to financial instruments, such standards would apply to rate-regulated enterprises. In their case, however, a regulatory asset or a regulatory liability would be recognized when the increase or decrease in "fair value" is deferred and amortized for rate-making purposes (General Principles 4 to 10). In addition, rate-regulated enterprises would disclose, in the notes to the general purpose financial statements, the economic impact of rate-regulation on financial instruments on a going-forward basis (General Principle 13).

As discussed earlier in this chapter, some are opposed to the strict application of the General Principles because it would result in an increase in large corporations taxes and capital taxes payable by rate-regulated enterprises, an amount that would generally be passed on to

shareholders or customers, depending on whether or not the regulator allows the increased cost to be included in the cost of service. They maintain that, where regulators use the cash method to determine the gains and losses to be included in rates, the increase or decrease in the "fair value" of financial instruments would be recognized in the period when they are included in rates, and appropriate disclosure would be provided in the notes to the financial statements.

SPECIFIC ISSUES ADDRESSED IN THE UNITED STATES

A brief commentary on the following specific issues covered in SFAS 71 is set out below with a view to providing useful guidance and to serve as the basis for eliminating significant differences in GAAP between Canada and the United States:

- intangible assets;
- accounting changes;
- recovery of costs without return on investment;
- early extinguishment of debt;
- contingencies;
- leases;
- revenue collected subject to refund;
- refunds to customers;
- alternative revenue programs.

Intangible Assets

In Canada, accounting by rate-regulated enterprises for intangible assets is governed by "Goodwill and Other Intangible Assets," *Handbook* Section 3062, which states that an intangible asset should be initially recognized and measured at cost, and amortized over its useful life, unless that life is determined to be indefinite, in which case it will not be amortized until its life is determined to be finite. Intangible assets should be reviewed or tested periodically for impairment. 15(67)

The United States, in *Goodwill and Other Intangible Assets*, SFAS 142, has similar requirements. SFAS 71, paragraph 29, has been amended to note that SFAS 142 states that goodwill shall not be amortized and shall be tested for impairment in accordance with that Statement. Paragraph 29 also notes that, for rate-making purposes, a regulator may permit an enterprise to amortize purchased goodwill over a specified period. In other cases, a regulator may direct an enterprise not to amortize goodwill or to write off that goodwill.

According to SFAS 71, paragraph 30 (as amended):

> if the regulator permits all or a portion of goodwill to be amortized over a specific time period as an allowable cost for rate-making purposes, the regulator's action provides reasonable assurance of the existence of a regulatory asset. ... That regulatory asset would then be amortized for financial reporting purposes over the period during which it will be allowed for rate-making purposes. Otherwise, goodwill shall not be amortized and shall be accounted for in accordance with SFAS 142.

Rate-regulated enterprises should recognize a regulatory asset in their financial statements in accordance with General Principles 4 to 7, to the extent that the amount to be recovered in future rates (ignoring return on the intangible asset) exceeds the amount that would be capitalized by a non-regulated enterprise. Professional judgment should be used in choosing the method that allows amortization to be recognized in a rational and systematic manner appropriate to the nature of the intangible asset. The amortization method should be reviewed on a regular basis. Furthermore, rate-regulated enterprises should disclose, in the notes to the general purpose financial statements, how rate regulation affects the reported values of intangible assets on a going-forward basis (General Principle 13). Rate-regulated enterprises should determine the extent to which their regulatory amortization methods differ from normal GAAP methods and lives and, if the differences are significant, consider disclosing them in the financial statements.

Accounting Changes

"Accounting Changes," *Handbook* Section 1506, establishes standards for the accounting treatment of a change in accounting policy as well as a change in an accounting estimate and a correction of an error relating to prior period financial statements and prior period adjustments.

It is important to note that the appropriate treatment of accounting changes depends not only on the nature of the change, but also on its treatment as prescribed by the regulator. In interpreting GAAP requirements for rate-regulated enterprises, reference is often made to SFAS 71 for guidance. SFAS 71, paragraph 32, offers the following clarification regarding the treatment of accounting changes by a regulated enterprise:

> If a regulated enterprise changes accounting methods and the change does not affect costs that are allowable for rate-making purposes, the regulated enterprise would apply the change in the same manner as would an unregulated enterprise. ... If a regulated enterprise changes accounting methods and the change affects allowable costs for rate-making purposes, the change generally would be implemented in the way that it is implemented for regulatory purposes.

As a result, if a change in accounting policy does not affect costs allowable for rate-making purposes, the rate-regulated enterprise should account for the change in accordance with the Recommendations in *Handbook* Section 1506 (that is, using retroactive restatement, except in specific circumstances). Capitalization of leases with no income statement effect is an example of that type of change.

If a change in accounting policy affects allowable costs for rate-making purposes, however, the change generally would be implemented in the way that it is implemented for regulatory purposes. 16(68) A change in the method of accounting for research and development costs, either from a policy of capitalization and amortization to one of charging those costs to expense as incurred or *vice versa*, is an example of that type of change.

Recovery of Costs without Return on Investment

In Canada, no specific accounting pronouncements address the issue of accounting by rate-regulated enterprises for the recovery of costs without return on investment. In the United States, however, SFAS 71, paragraph 33, states that, "in some cases, a regulator may approve rates that are intended to recover an incurred cost over an extended period without a return on the unrecovered cost during the recovery period." According to SFAS 71, paragraph 34, "the regulator's action provides reasonable assurance of the existence of an asset. ... Accordingly, the regulated enterprise would capitalize the cost and amortize it over the period during which it will be allowed for rate-making purposes. That cost would not be recorded at discounted present value."

If material, appropriate disclosures as specified in SFAS 71, paragraph 20, would be provided, as follows:

> In some cases, a regulator may permit an enterprise to include a cost that would be charged to expense by an unregulated enterprise as an allowable cost over a period of time by amortizing that cost for rate-making purposes, but the regulator does not include the unrecovered amount in the rate base. That procedure does not provide a return on investment during the recovery period. If recovery of such major costs is provided without a return on investment during the recovery period, the enterprise should disclose the remaining amounts of such assets and the remaining recovery period applicable to them.

An expenditure should be recognized as an asset if it meets the *Handbook* definition of a rate-regulated capital asset and the pertinent recognition criteria (General Principles 4 to 7). The regulated enterprise would capitalize an incurred cost and amortize it over the period during which it will be allowed for rate-making purposes. That cost would not be recorded at discounted present value because it will be recovered without a return on investment. Furthermore, rate-regulated enterprises should disclose, in the notes to the general purpose

financial statements, how rate regulation affects the reported values of capital assets on a going-forward basis (General Principle 13).

Early Extinguishment of Debt

In Canada, no specific accounting pronouncements address the issue of accounting for the early extinguishment of debt. In the United States, however, SFAS 71, paragraphs 35-37, note that *Early Extinguishment of Debt*, AICPA Accounting Principles Board Opinion 26, "requires recognition in income of a gain or loss on an early extinguishment of debt in the period in which the debt is extinguished. For rate-making purposes, the difference between the enterprise's net carrying amount of the extinguished debt and the reacquisition price may be amortized as an adjustment of interest expense over some future period."

According to SFAS 71, paragraphs 36 and 37:

> If the debt is reacquired for an amount in excess of the enterprise's net carrying amount, the regulator's decision to increase future rates by amortizing the difference for rate-making purposes provides reasonable assurance of the existence of an asset. ... Accordingly, the regulated enterprise would capitalize the excess cost and amortize it over the period during which it will be allowed for rate-making purposes.
>
> If the debt is reacquired for an amount that is less than the enterprise's net carrying amount, the regulator's decision to reduce future rates by amortizing the difference for rate-making purposes imposes a liability on the regulated enterprise. ... Accordingly, the enterprise would record the difference as a liability and amortize it over the period during which permitted rates will be reduced.

With regard to accounting for the early extinguishment of debt, the difference between the rate-regulated enterprise's net carrying amount of the extinguished debt and the reacquisition price should be recognized as a regulatory asset or liability (depending on the nature of that difference) in accordance with General Principles 4 and 8, respectively, provided it is treated as such for rate-making purposes. 17(69) Furthermore, rate-regulated enterprises should disclose in the notes to the general purpose financial statements, how rate regulation affects the reported values of debt on a going-forward basis (General Principle 13).

Contingencies

In Canada, accounting for contingencies is governed by "Contingencies," *Handbook* Section 3290.

In the United States, SFAS 71, states that:

> [*Accounting for Contingencies*, SFAS 5] specifies criteria for recording estimated losses from loss contingencies. A regulator may direct a regulated enterprise to include an amount for a contingency in allowable costs for rate-making purposes even though the amount does not meet the criteria of SFAS 5 for recording. For example, a regulator may direct a regulated enterprise to include an amount for repairs of expected future uninsured storm damage. (paragraph 38)
>
> If the regulator requires the enterprise to remain accountable for any amounts charged pursuant to such rates and not yet expended for the intended purpose, the resulting increased charges to customers create a liability ... . If a cost to repair storm damage is not subsequently incurred, the increased charges will have to be refunded to customers through future rate reductions. Accordingly, the regulated enterprise would recognize the amounts charged pursuant to such rates as liabilities rather than as revenues. If a cost to repair storm damage is subsequently incurred, the enterprise would charge that cost to expense and reduce the liabilities at that time by recognizing income in amounts equal to the cost. (paragraph 39)

With regard to accounting for estimated losses from loss contingencies, the increased charges to customers create a liability if the conditions set out in General Principle 8 are met. Furthermore, rate-regulated enterprises should disclose in the notes to the general purpose financial statements how rate regulation affects the reported contingencies on a going-forward basis (General Principle 13).

Leases

In Canada, accounting for leases is governed by "Leases," *Handbook* Section 3065. The survey of current practices referred to in Chapter 3 and reported in Appendix B, indicates that five of 25 survey companies provided information on leases in the notes to the financial statements.

In the United States, SFAS 71, paragraph 40, notes that:

> [*Accounting for Leases*, SFAS 13] ... specifies criteria for classification of leases and the method of accounting for each type of lease. For rate-making purposes, a lease may be treated as an operating lease even though the lease would be classified as a capital lease under the criteria of Statement 13. In effect, the amount of the lease payment is included in allowable costs as rental expense in the period it covers. (paragraph 40)
>
> For financial reporting purposes, the classification of the lease is not

> affected by the regulator's actions. The regulator cannot eliminate an obligation that was not imposed by the regulator ... . Also, by including the lease payments as allowable costs, the regulator sets rates that will provide revenue approximately equal to the combined amount of the capitalized leased asset and interest on the lease obligation over the term of the lease and, thus, provides reasonable assurance of the existence of an asset ... . Accordingly, regulated enterprises would classify leases in accordance with Statement 13 ... . (paragraph 41)
>
> The nature of the expense elements related to a capitalized lease (amortization of the leased asset and interest on the lease obligation) is not changed by the regulator's action; however, the timing of expense recognition related to the lease would be modified to conform to the rate treatment. Thus, amortization of the leased asset would be modified so that the total of interest on the lease obligation and amortization of the leased asset would equal the rental expense that was allowed for rate-making purposes. (paragraph 42)
>
> The Board notes that generally accepted accounting principles do not require interest expense or amortization of leased assets to be classified as separate items in an income statement. For example, the amounts of amortization of capitalized leased nuclear fuel and interest on the related lease obligation could be combined with other costs and displayed as "fuel cost." However, the disclosure of total interest cost incurred, required by [*Capitalization of Interest Cost*], Statement 34, would include the interest on that lease obligation; and the disclosure of the total amortization charge, required by Statement 13, would include amortization of that leased asset. (paragraph 43)

With regard to accounting for leases, the classification of the lease is not affected by the regulator's actions. The regulator cannot eliminate an obligation that was not imposed by the regulator. Nonetheless, the timing of expense recognition related to the lease would be modified to conform to the rate treatment and related regulatory asset or liability recognized in the financial statements if the conditions set out in General Principles 4 or 8, respectively, are met. Furthermore, rate-regulated enterprises should disclose, in the notes to the general purpose financial statements, how rate regulation affects the reported values of leases on a going-forward basis (General Principle 13).

As discussed earlier in this chapter, some are opposed to the strict application of the General Principles because it would result in an increase in large corporations taxes and capital taxes payable by rate-regulated enterprises, an amount that would generally be passed on to shareholders or customers, depending on whether or not the regulator allows the increased cost

to be included in the cost of service. They maintain that, where regulators use the cash method, expenses related to the lease would be recognized in the period when they are included in rates and appropriate disclosure would be provided in the notes to the financial statements.

Revenue Collected Subject to Refund

In Canada, no specific accounting pronouncements address the issue of accounting by rate-regulated enterprises for revenue collected subject to refund. In the United States, however, SFAS 71 (paragraph 44) notes that, "in some cases, a regulated enterprise is permitted to bill requested rate increases before the regulator has ruled on the request." In other words, regulated enterprises are granted temporary rate increases by a regulatory authority, subject to the condition that all or a portion of the additional revenues may be refundable to customers. If the rates finally authorized are lower than the temporary rates, usually the utility is required to refund the excess revenues.

According to SFAS 71, paragraph 45, the provisions of *Accounting for Contingencies*, SFAS 5, determine whether a provision for estimated refunds should be accrued for this loss contingency. Generally, a regulated enterprise records a liability to refund revenues previously collected from customers when it is probable that a refund will be due and the amount of the refund is reasonably determinable. In practice, these conditions are often met only when the regulator issues an order for a refund. In some circumstances, however, the conditions of SFAS 5 may be met before a formal rate order is issued. SFAS 71 does not permit refunds to be recognized as prior-period adjustments. Instead, refunds must be recognized in the accounting period in which the requirements of SFAS 5 are met. The enterprise must disclose the effect of the refund on net income of the current year and indicate the years when the refunded revenue was recognized.

With regard to accounting for revenue collected subject to refund, a regulatory liability should be recognized in the financial statements if the conditions set out in General Principle 8 are met. Furthermore, rate-regulated enterprises should disclose, in the notes to the general purpose financial statements, how rate regulation affects the reported values of liabilities on a going-forward basis (General Principle 13).

Refunds to Customers

In Canada, no specific accounting pronouncements address the issue of accounting by rate-regulated enterprises for refunds to customers. In the United States, however, SFAS 71, paragraph 46, notes that *Prior Period Adjustments*, SFAS 16, "limits prior period adjustments (other than those that result from reporting accounting changes) to corrections of errors, and adjustments related to prior interim periods of the current fiscal year."

According to SFAS 71, paragraph 47, "in accordance with Statement 16, estimated refunds that were not previously accrued would be charged to income in the first period in which they meet the criteria for accrual (paragraph 8, Statement 5). If the amounts are material, the disclosures

specified in paragraph 19 of [SFAS 71] would be furnished." That is, for refunds that are recognized in a period other than the period in which the related revenue was recognized and that have a material effect on net income, the enterprise should disclose the effect on net income and indicate the years in which the related revenue was recognized. Such effect may be disclosed by including it, net of related income taxes, as a line item in the income statement. It should not be presented as an extraordinary item.

With regard to accounting for refunds to customers, a regulatory liability should be recognized in the financial statements if the conditions set out in General Principle 8 are met. Furthermore, rate-regulated enterprises should disclose in the notes to the general purpose financial statements, how rate regulation affects the reported values of such liabilities on a going-forward basis (General Principle 13).

Alternative Revenue Programs

In Canada, no specific accounting pronouncements address the issue of accounting by rate-regulated enterprises for alternative revenue programs. In the United States, *Accounting by Rate-Regulated Utilities for the Effects of Certain Alternative Revenue Programs*, EITF Issue 92-7, the consensus of the task force was that once specified events occur that permit billing of additional revenues due to weather abnormalities or to compensate the utility for demand-side management initiatives or reward the utility for achieving certain objectives, the regulated utility should recognize the additional revenues if all of the following conditions are met:

1. The program is established by an order from the utility's regulatory commission that allows for automatic adjustment of future rates. Verification of the adjustment to future rates by the regulator would not preclude the adjustment from being considered automatic.
2. The amount of additional revenues for the period is objectively determinable and is probable of recovery.
3. The additional revenues will be collected within 24 months following the end of the annual period in which they are recognized.

With regard to accounting for alternative revenue programs, a regulatory asset should be recognized in the financial statements if the conditions set out in General Principle 4 are met.

DISCONTINUING ACCOUNTING FOR THE EFFECTS OF RATE REGULATION

General Principle 3 states: "When an enterprise that has regulated operations no longer meets the criteria set out in Principle 1, it should discontinue reporting the economic impact of rate regulation and reflect the effects of discontinuation in its general purpose financial statements."

Whether a rate-regulated enterprise is in the private sector or the public sector, it must be mindful of circumstances that may indicate the need to discontinue accounting for the effects of rate regulation.

In Canada, no specific accounting pronouncements address the issue of discontinuation of accounting for the economic impact of rate regulation. 18(70) In the United States, the FASB issued *Regulated Enterprises — Accounting for the Discontinuation of Application of FASB Statement No. 71*, SFAS 101, in 1988. SFAS 101 specifies that an entity that ceases to meet the criteria for application of SFAS 71 should report that event in its general purpose financial statements.

It is possible for an enterprise to continue to be regulated (and meet the first criterion) and not be able to meet one or both of the other two criteria (cover the costs of providing services through the established rates and recover those costs from customers). As a result, the enterprise would continue to have its rates established by the regulator and would follow regulatory requirements, but would not be able to recognize the impact of the regulator's actions in its general purpose external financial statements.

Changing regulatory practices and alternative forms of rate regulation may raise questions about an enterprise's ability to continue to meet the second criterion. When a regulator departs from the traditional rate-making model, the regulated enterprise must assess whether the new rate regulation is designed to recover the costs of providing the regulated services or products. In this respect, General Principle 3 calls for an ongoing assessment of the likelihood of recovery of regulatory assets subsequent to their initial recognition. At each balance sheet date, management should ensure that sufficient evidence exists to support a recorded regulatory asset. Evidence should be available to demonstrate that the costs in question continually meet the "probable" criteria for creating and continuing to record regulatory assets.

Reporting the Effects of Discontinuation

When an enterprise discontinues accounting for the economic impact of rate regulation, it should eliminate from its balance sheet the effects of any actions of regulators that had been recognized as assets and liabilities, but would not have been recognized as such by business enterprises in general. In accordance with GAAP, the carrying amounts of plant, equipment and inventory would not be adjusted, however, unless their value is impaired. Similarly, an example of a legal liability that would not be written off is an obligation for rate refunds to be distributed to customers based on past sales.

The net income effect of these adjustments would be recognized in the period in which discontinuation occurs. It would be reported as an extraordinary item because it is not in the normal course of operations. As well, the notes to general purpose financial statements would disclose pertinent information regarding the discontinuation of accounting for the effects of rate regulation (refer to General Principle 12 and 13 regarding note disclosures).

Application to Separable Portions of a Business

General Principle 2 states: "If some of an enterprise's operations are regulated and meet the above criteria, the financial statements should reflect the economic impact of rate regulation on only that portion of operations." Accordingly, the discontinuation would be applied to a separable portion of operations within a jurisdiction if the enterprise can establish that its other operations within the jurisdiction continue to meet the established criteria.

This is consistent with the approach taken in the United States, where SFAS 71 applies to separable portions of a regulated enterprise's operations (paragraph 6). SFAS 101 also applies to separable portions of operations, such as a customer class or a functional group of assets within a jurisdiction. In *Deregulation of the Pricing of Electricity — Issues Related to the Application of FASB Statements No. 71 and 101*, Issue 97-4, the EITF considered when an enterprise should cease applying SFAS 71 to a separable portion of its business whose pricing is being deregulated. The consensus was that the appropriate time is when the enterprise can reasonably determine how the transition plan will affect the portion of the business being deregulated. The related regulatory assets and liabilities should be evaluated on the basis of the source of the cash flows that will realize or settle them. SEC staff requires assurance that such regulatory assets have been specifically provided for *via* he collection of regulated cash flows.

CONCLUSION

Chapter 7 of this Research Report sets out General Principles for accounting and financial reporting by rate-regulated enterprises. While detailed guidance is not essential to recognize the economic impact of rate regulation on the financial reporting of rate-regulated enterprises, in the Study Group's opinion additional guidance would help avoid any misunderstanding and, at the same time, illustrate how the general principles should be applied in practice.

Accordingly, this chapter provides specific guidance on accounting issues that are considered of interest to the regulatory community, with emphasis given to those areas that may have a material impact on general purpose financial statements. Also addressed are general considerations with respect to the recording of regulatory assets and liabilities, demonstrating the ongoing recoverability of assets created by rate regulation, and recognizing when it is time to discontinue accounting for the effects of rate regulation.

Appendix A

CONCEPTUAL FRAMEWORKS OF CANADA AND THE UNITED STATES

The accounting standards boards of Canada and the United States have issued conceptual framework statements to create a basis for the development and application of accounting standards. Although the frameworks vary significantly in structure and detail, there are few fundamental differences between them.

The Canadian framework, "Financial Statement Concepts," is set out in Section 1000 of the *CICA Handbook – Accounting*. The US framework is set out in separate, but interrelated, FASB Concepts Statements — *Objectives of Financial Reporting by Business Enterprises, Qualitative Characteristics of Accounting Information, Elements of Financial Statements, Objectives of Financial Reporting by Nonbusiness Organizations, Recognition and Measurement in Financial Statements of Business Enterprises*, and *Using Cash Flow Information and Present Value in Accounting Measurements.*

The Canadian and US frameworks specifically state that the concepts do not, in themselves, establish standards or generally accepted accounting principles but are the tools for solving accounting and reporting problems and for developing standards. In this regard, the Canadian framework notes that the concepts are "to be used by preparers of financial statements and accounting practitioners in exercising their professional judgment as to the application of generally accepted accounting principles and in establishing accounting policies in areas in which accounting principles are developing." 1(71)

The frameworks in the two countries indicate that their purpose is to present concepts that are relevant to the preparation and presentation of financial statements. The Canadian framework applies to general purpose **financial statements**, whereas the US framework applies to general purpose **financial reporting**. Both frameworks identify what is normally included in a set of financial statements: a balance sheet (a statement of financial position), an income statement, a statement of retained earnings (a statement of changes in stockholders' equity) and a statement of changes in financial position (a cash flow statement). The frameworks limit the items recognized in the financial statements to those based on past transactions and events. They also note that the information provided often results from approximate, rather than exact, measures. The US framework further notes that financial reporting is only one source of information needed by users to make economic decisions.

Objective and Users of Financial Statements

In Canada and the United States, the conceptual frameworks state that the objective of **financial statements** is to provide information to users about an entity's financial position and results of operations. 2(72) They emphasize providing information that is useful in making investment, credit and other decisions and in assessing management stewardship.

Specifically, *CICA Handbook – Accounting* Section 1000, "Financial Statement Concepts," states (in paragraph 1000.15) that:

> The objective of financial statements is to communicate information that is useful ... in making ... resource allocation decisions and/or assessing management stewardship. Consequently, financial statements provide information about:
>
> (a) an entity's economic resources, obligations and equity / net assets;
>
> (b) changes in an entity's economic resources, obligations and equity / net assets; and
>
> (c) the economic performance of the entity.

In the United States, FASB Concepts Statement 1, *Objectives of Financial Reporting by Business Enterprises*, sets out objectives and concepts for use in developing standards of financial accounting and reporting. The discussion begins with a broad focus on information that is useful in investment and credit decisions (paragraph 34). It then narrows that focus to investors' and creditors' primary interest in the prospects for receiving cash from their investments in, or loans to, business enterprises and the relation of those prospects to an enterprise's cash flow prospects (paragraph 37). Finally, the discussion focuses on information about the economic resources of an enterprise, the claims to those resources, and the effects of transactions, events and circumstances that change resources and claims to those resources (paragraph 40).

According to FASB Concepts Statement 1, financial reporting should provide the following:

- information about an enterprise's economic resources, obligations, and owners' equity;
- information about an enterprise's performance and earnings;
- information about an enterprise's liquidity, solvency and funds flows;
- information about management's stewardship and performance;
- management's explanations and interpretations.

In both countries, the focus is on users and their information needs. In Canada, the users of general purpose financial statements include those identified in the *CICA Handbook – Accounting* (paragraph 1000.09 lists investors, creditors and their advisers) and in the *CICA Public Sector Accounting Handbook* (PS 1400.09 lists the public, legislators, investors and analysts). Although investors (shareholders) and creditors are considered to be the primary users, it is stated that other users will find the information in financial statements generally useful.

Investors and creditors of profit oriented enterprises are interested, for the purpose of making resource allocation decisions, in predicting the ability of the entity to earn income and generate cash flows in the future to meet its obligations and to generate a return on investment. Investors and creditors also require information about how the management of an entity has discharged its

stewardship responsibility to those who have provided resources to the entity.

FASB Concepts Statement 1 identifies the following potential users of financial information: "owners, lenders, suppliers, potential investors and creditors, employees, management, directors, customers, financial analysts and advisors, brokers, underwriters, stock exchanges, lawyers, economists, taxing authorities, regulatory authorities, legislators, financial press and reporting agencies, labour unions, trade associations, business researchers, teachers and students, and the public" (paragraph 24). Except for management, and to some extent directors, these potential users are "external users" and the focus is on the external aspect of financial reporting.

Among external users, taxing and regulatory agencies have statutory authority to require specific information needed to fulfill their functions. Similarly, some present or potential investors and creditors may be able to require an enterprise to provide specified information as a condition to entering into a particular transaction. This Research Report is concerned primarily with the needs of external users who lack the authority to prescribe the financial information they want from an enterprise and, therefore, must use the information that management communicates to them. This does not mean that regulatory agencies are not users, in the sense of having a legitimate interest in the general purpose financial reporting of enterprises they regulate. Inasmuch as they can prescribe the financial information they require, however, they do not have the same reliance on general purpose financial statements as external users who lack that authority.

Certain government-owned and operated rate-regulated enterprises are equivalent to private-sector businesses. In fact, some may consider them to be business enterprises and regard contributors, customers and citizens as the equivalent of investors in those enterprises. Furthermore, many of those enterprises sell bonds to the public and, hence, have at least some investors in the usual sense of the word; all of those enterprises have creditors.

Qualities and Characteristics of Useful Information

The qualities and characteristics that make information useful for decision making are the criteria for selecting preferable accounting choices from among available alternatives. Both conceptual frameworks refer to *understandability, relevance, reliability, predictive and feedback value, materiality, representational faithfulness, neutrality, conservatism (prudence), completeness, comparability, consistency, timeliness, the benefit versus cost constraint*, and *verifiability* as qualities and characteristics that have an impact on the usefulness of information provided in the financial statements. The emphasis given to some of those qualities and characteristics varies between the two countries, and there are some minor differences in the definition or interpretation of some of those listed.

For example, the US framework sets out a hierarchy that distinguishes between primary and other accounting qualities. It notes, however, that the hierarchy is an exploratory device, whose purpose is to clarify certain relationships rather than assign relative weights or importance to

specific qualities. The Canadian framework notes four principal characteristics (understandability, relevance, reliability and comparability) and identifies other qualities that have an impact on these principal characteristics. It notes that, in practice, a trade-off between qualitative characteristics often is necessary.

The Canadian framework also refers to *substance over form* as a characteristic of financial information, whereby transactions are accounted for and presented in a manner that conveys their substance rather than necessarily their legal form. The US framework notes that this is rather a vague idea that defies precise definition. It considers that *representational faithfulness* leaves no room for accounting representations that subordinate substance to form. Furthermore, the US framework stresses that accounting standards cannot be phrased in such a way that their application can suit all circumstances; therefore, judgmental choices must be made.

Underlying Assumptions

Two basic underlying assumptions are noted in the frameworks: the *accrual basis* and *going concern*. The *accrual basis* recognizes the effect of transactions and other events and circumstances in the period in which they occur, regardless of whether there has been a receipt or payment of cash or its equivalent. The frameworks note that accrual accounting also encompasses *deferrals* (cash payments and receipts that occur prior to fulfilling the criteria for recognition of expense or revenue). *Going concern* relates to the assumption that an entity will continue in operation for the foreseeable future and will be able to realize assets and discharge liabilities in the normal course of operations, unless there is evidence to the contrary.

Elements of Financial Statements

CICA Handbook – Accounting Section 1000 (paragraph 1000.25) states that:

> Elements of financial statements are the basic categories of items portrayed therein in order to meet the objective of financial statements. There are two types of elements: those that describe the economic resources, obligations and equity / net assets of an entity at a point in time, and those that describe changes in economic resources, obligations and equity / net assets over a period of time. Notes to the financial statements ... are not considered to be an element.

Both frameworks identify *assets* and *liabilities*, *equity, income (revenues)* and *expenses, gains* and *losses*, and *performance (profit* or *earnings)* as the elements of financial statements. Although the wording differs somewhat, the various elements may generally be described as follows:

- *Assets* are the economic resources obtained or controlled by an entity as a result of past transactions or events, from which future benefits may be obtained (see *CICA*

Handbook – Accounting paragraph 1000.29).

- *Liabilities* are obligations arising from past transactions and events that may result in future sacrifices of economic benefits through transfer or use of assets or provision of services to other entities (see *CICA Handbook – Accounting* paragraph 1000.32).
- *Equity* is the residual (ownership) interest in the assets of an entity after deducting its liabilities (see *CICA Handbook – Accounting* paragraph 1000.35). 3(73)
- *Income (revenues)* refers to increases in economic resources, by way of inflows or enhancement of assets, or reductions of liabilities, resulting from the ordinary activities of an entity (see *CICA Handbook – Accounting* paragraph 1000.37). 4(74)
- *Expenses* refer to decreases in economic resources, by way of outflows or reduction of assets, or incurrences of liabilities, resulting from the ordinary activities of an entity (see *CICA Handbook – Accounting* paragraph 1000.38). 5(75)
- *Gains* are increases in equity resulting from peripheral or incidental transactions and events of an entity, and from other events, transactions and circumstances affecting the entity, except those resulting from revenues or investments by owners (see *CICA Handbook – Accounting* paragraph 1000.39).
- *Losses* are decreases in equity resulting from peripheral or incidental transactions and events of an entity, and from other events, transactions and circumstances affecting the entity, except those resulting from expenses or distributions to owners (see *CICA Handbook – Accounting* paragraph 1000.40).
- *Performance (profit or earnings)* is a measure of the residual amount after expenses and losses are deducted from revenues and gains during a period.

In addition, the US framework defines "other comprehensive income" as the change in equity from all transactions and other events other than transactions with owners and distinguishes it from earnings in that certain classes of gains and losses are included in comprehensive income that are excluded from earnings.

Recognition and Measurement

Recognition is defined as the process of incorporating an item in the financial statements of an entity. It consists of the amount and a narrative description of the item, with the amount being included in a financial statement total. *Recognition* cannot be substituted with notes, disclosure or other similar types of information.

The general criteria for recognition noted in both frameworks are that there is a reliable and relevant basis of measurement and that a reasonable estimate can be made. The US framework specifically states that the item must meet the definition of an element of financial statements and

that recognition is subject to a cost-benefit constraint 6(76) and a materiality 7(77) threshold. These are implied in other parts of the Canadian framework.

The criteria for recognition of *revenues, expenses, gains* and *losses* are covered in both frameworks. Again, the wording differs, but the criteria generally are as follows:

- *Revenues* are recognized when performance is completed. The Canadian framework also refers to reasonable assurance regarding measurement and collectibility.
- *Expenses* are recognized when an expenditure does not have a future economic benefit.
- *Gains* are recognized when realized. The US framework also permits recognition when realizable.
- *Losses* are recognized when a previously recognized asset does not have a future economic benefit. The US framework also refers to the situation in which a liability has been incurred or increased without associated economic benefits.

Measurement is the process of determining the amount at which an item is recognized in the financial statements. There are a number of bases on which an amount can be measured, but financial statements are prepared primarily using the *historical cost* basis of measurement, whereby transactions and events are recognized in financial statements at the amount of cash or cash equivalents paid or received or the fair value ascribed to them when they took place.

Other bases of measurement include: current cost — United States; current market value — US; net realizable (settlement) value — US; present (or discounted) value of future cash flows — Canada and US; realizable value — Canada; and replacement cost — Canada. These measurement alternatives can be used in limited circumstances only. Although some of these alternatives are not specifically mentioned in the conceptual frameworks, they are being used in Canada and the United States.

Both frameworks mention the financial capital maintenance concept in the preparation of financial statements, stipulating that capital maintenance should be measured in nominal terms. The concept of capital maintenance affects measurement because income in an economic sense exists only after the capital of an enterprise has been maintained. Therefore, income is the increase or decrease in the amount of capital at the end of the period over the amount at the beginning of the period, excluding the effects of capital contributions and distributions.

Appendix B

SURVEY OF FINANCIAL STATEMENT DISCLOSURES BY INDUSTRY

Chapter 4 of the Research Report provides an analysis of the current state of accounting and financial reporting by rate-regulated enterprises in Canada. To supplement that analysis, this Appendix presents the results of a survey of financial statement disclosures in corporate annual reports for 1999 or 2000. The survey covers 25 regulated enterprises in four industries — electric, natural gas distribution and transmission, telecommunications and transportation. A list of the survey companies is provided below followed by a schedule of disclosures provided in their general purpose financial statements.

Electric enterprises	**Year**
1. British Columbia Hydro and Power Authority	2000
2. Canadian Utilities Limited	2000
3. Emera Inc.	2000
4. Epcor Utilities Inc.	2000
5. Hydro One Inc.	1999
6. Hydro Québec	2000
7. New Brunswick Power Corporation	2000
8. Newfoundland and Labrador Hydro	1999
9. Newfoundland Power Inc.	2000
10. Saskatchewan Power Corporation	2000

Natural gas distribution and transmission enterprises	**Year**
11. ATCO Ltd.	2000
12. BC Gas Utility Ltd.	2000
13. Enbridge Inc.	2000
14. Pacific Northern Gas Ltd.	2000
15. The Consumers' Gas Company Ltd.	2000
16. TransCanada Pipelines Limited	2000
17. Westcoast Energy Inc.	2000

Telecommunications enterprises	**Year**
18. Aliant Inc.	2000
19. Bell Canada	2000
20. Manitoba Telecom Services Inc.	2000
21. Saskatchewan Telecommunications Holding Corporation	1999
22. Télébec ltée	2000

23. Telus Corporation	2000

Transportation enterprises	**Year**
24. NAV Canada	2000
25. Halifax-Dartmouth Bridge Commission	2000

RATE-REGULATED ENTERPRISES IN CANADA

Survey of Disclosures in Notes to Financial Statements

Appendix C

ILLUSTRATIVE FINANCIAL STATEMENT DISCLOSURES

This appendix provides examples of disclosures presented in the notes to the general purpose financial statements of selected rate-regulated enterprises. The examples are drawn from the published annual reports of survey companies listed in Appendix B to this Research Report.

The examples are intended to reflect current practices in Canada. Variations may be necessary to meet the requirements of differing circumstances and other typical reporting situations that are not represented in these examples.

Regulator / Impact of Rate Regulation

- Epcor Utilities Inc. — pages 136-137
- Hydro One Inc. — page 138
- Newfoundland Power Inc. — pages 139-141
- Westcoast Energy Inc. — page 142
- Teleses ltée — page 143

Accounting for Capital Assets

- British Columbia Hydro and Power Authority — pages 144-145

Canadian Accounting and Assurance Reference Service (CAARS)

- Enbridge Inc. — page 146

Accounting for Income Taxes

- TransCanada Pipelines Limited — pages 147-149

You will require Adobe Acrobat Reader to view the following. Should you require it, click here to install the program.

Financial Statements

Epcor Utilities Inc.

Hydro One Inc.

Newfoundland Power Inc.

Westcoast Energy Inc.

Télébec ltée

British Columbia Hydro and Power Authority

Enbridge Inc.

TransCanada Pipelines Limited

Appendix D

SURVEY OF PUBLIC SECTOR PRACTICES

With regards to the public sector in Canada, the Study Group is proposing that the application of General Principle 1 should be limited to "government business enterprises." General Principle 1 defines a "rate-regulated enterprise" as an enterprise (i.e., a separate legal entity) that has regulated operations meeting all of the following criteria:

- The enterprise's rates for regulated services or products provided to its customers are established by, or are subject to approval by, an independent, third-party regulator or by its own governing board empowered by statute or contract to establish rates that bind customers.
- The regulated rates are designed to recover the specific enterprise's costs of providing the regulated services or products.
- In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume that rates set at levels that will recover the enterprise's costs can be charged to and collected from customers. This criterion requires consideration of anticipated changes in levels of demand or competition during the recovery period for any capitalized costs.

To assess the feasibility of this proposal, the Study Group undertook a survey of the current financial reporting practices of the federal and provincial governments in Canada. Survey participants were asked the following questions:

- In your jurisdiction, what entities that are included in the federal or provincial government's summary financial statements currently follow GAAP for rate-regulated enterprises as set out in the *CICA Handbook*?
- Do the entities that currently following GAAP for rate-regulated enterprises meet all of the criteria set out in the above-noted definition of a "rate-regulated enterprise?" Which entities do not have rates established by, or subject to approval by, an

independent, third party regulator?

- The Study Group is proposing to limit application of the criteria for qualifying as a "rate-regulated enterprise" to "government business enterprises" because their financial statements should be prepared on the same basis as private sector businesses (refer to Public Sector Handbook, paragraph PS 1300.27). In your jurisdiction, would this eliminate any of the entities currently following GAAP for rate-regulated enterprises?
- Is it important that the general purpose financial statements of rate-regulated enterprises in the public sector be prepared on a basis consistent with that in the private sector?

The following excerpts are drawn from the responses to the survey.

Government of Canada

None of the organizations within the Government of Canada reporting entity fit the definition of a rate-regulated enterprise.

British Columbia

In addition to British Columbia Hydro and Power Authority (BC Hydro), there are several other organizations that meet the definition of rate-regulated, but do not follow GAAP for rate-regulated enterprises. If a new set of guidelines / recommendations come out for rate-regulated enterprises, some of these organizations or their auditors may determine that they should be following rate-regulated GAAP. We note that the definition of rate-regulated is not just that rates be established by an independent, third-party regulator, but that they may be established by the organization's own governing board.

Any accounting treatment determined to be appropriate for rate-regulated enterprises should be applicable to both private sector and public sector enterprises alike. It is important that the general purpose financial statements for rate-regulated enterprises in the public sector be prepared on a basis consistent with that of rate-regulated enterprises in the private sector.

Alberta

The Alberta Government does not have any rate-regulated enterprises that form part of the reporting entity. In general, we agree that the financial statements of rate-regulated enterprises in the public sector should be consistent with those in the private sector.

Saskatchewan

Saskatchewan's largest Crown corporations, SaskEnergy Incorporated (SaskEnergy), Saskatchewan Power Corporation (SPC), and Saskatchewan Telecommunications Holding

Corporation (SaskTel), follow rate-regulated GAAP. All three of the Crown corporations meet the definition of a government business enterprise.

SaskTel is regulated by the Canadian Radio-television and Telecommunications Commission (CRTC). It does not appear that SaskTel would meet the second or third criterion of the proposed definition, as local telephone access is subsidized and, therefore, the rates would not recover the enterprises's costs for that service. As a result, SaskTel would not be considered rate-regulated by the proposed definition. It is likely that this will affect all phone companies regulated by CRTC.

SaskEnergy and SPC's rates are subject to review by the Saskatchewan Rate Review Panel. The rates are then subject to approval by the Crown's Board of Directors, the Crown Investments Corporation's Board and, ultimately, Saskatchewan Cabinet. This rate-approval process meets the proposed definition as the Boards and Cabinet are empowered by statue or policy to establish rates that bind customers. Therefore, SaskEnergy and SPC would be considered rate-regulated. However, this might be an issue of further debate in Saskatchewan. In order to be consistent and comparable to other companies in the same industry, it is important that Crown corporations are allowed to follow rate-regulated accounting.

The main focus of developing financial reporting policies for rate-regulated enterprises is to ensure companies in the same industry have comparable reporting practices. If an accounting treatment is accepted by industry, it should be accepted by all similar companies regardless of who owns the company (i.e., government versus private sector). Therefore, it is important for similar organizations to follow similar accounting policies, whether they are public or private.

Ontario

In the past, Ontario Hydro was the only Crown agency to prepare its general purpose financial statements in accordance with GAAP for rate-regulated enterprises. Prior to the electricity restructuring, the activities of Ontario Hydro were not reflected in the Province's books as the Province had no access to the "retained earnings" of the agency under the Power Corporations Act. With the restructuring, the Province now includes in its accounts, on a modified equity basis, the activities of HYDRO1 and Ontario Power Generation. HYDRO1 meets the definition of a "rate-regulated enterprise" for financial reporting purposes as its rates are established by the Ontario Energy Board (an agency of the Crown whose members are appointed by OIC but operate independently of these enterprises and the government), their rates are designed to recover the costs of providing the regulated services or products, and it is reasonable to assume that their rates can be charged to and collected from customers.

New Brunswick

In New Brunswick, NB Power is the only organization in the government reporting entity that uses rate-regulated accounting. NB Power meets the definition of a rate-regulated enterprise. By

legislation, it has the authority to increase rates by up to 3% in any year on its own — subject to interest coverage rate limits. Any increase outside of this must be approved by the Public Utilities Board, which acts independently but is appointed by government. 1(78) NB Power is a government business enterprise (GBE) so, if rate-regulated enterprises have to be GBEs, it will not have an impact on us. It is important for public sector and private sector rate-regulated operations to be accounted for on a consistent basis.

Nova Scotia

Nova Scotia has two rate-regulated entities that are reported in the Province's summary financial statements, Halifax-Dartmouth Bridge Commission and Highway 104 Western Alignment Corporation. Both of these entities prepare their statements according to GAAP. They are Government Business Enterprises. Therefore, their results are included in the Province's summary statements using the modified equity basis. The toll rates of the Halifax-Dartmouth Bridge Commission are subject to approval of the Nova Scotia Utility and Review Board. The toll rates of Highway 104 are set in the agreement with the bondholders and agreed to by the corporation and the Province, but are not regulated by an independent third party, such as the Nova Scotia Utility and Review Board. We agree that rate-regulated enterprises in the public sector should be prepared on a basis consistent with those of the private sector to accommodate the needs and expectations of other users of their financial statements.

Northwest Territories and Nunavut

The GNWT includes the financial statements of the NWT Power Corporation. The assets of this entity are shared by the Government of the NWT and the Government of Nunavut. The NWT Power Corporation was established after the GNWT purchased the Northern Canada Power Commission and is still trying to align rate structure / revenue requirements with the associated costs within the various rate zones. In addition, the GNWT also provides a direct subsidy to residential and commercial consumers in all rate zones outside Yellowknife. This unique situation would prevent us from meeting all the criteria until we complete realignment of revenues to costs. General Rate Applications are submitted and approved by an independent Public Utilities Board. Limiting application to "government business enterprises" would not prevent NWT Power Corporation from qualifying as a rate-regulated enterprise.

Appendix E

RATE REGULATION IN THE ELECTRIC POWER INDUSTRY

Public utilities are often described as businesses so affected with the public interest that they

must be regulated by government regarding entry into and exit from the market, rate charges to customers, rate of return allowed to owners, and for the requirement to serve all customers within their area of operation. 1(79) With very few exceptions, rate regulation has been imposed on both publicly-owned and privately-owned utilities, or example, in the electric power industry.

Development of the electric power industry in Canada involved a mix of politics, economics, geography and technology. In the early 20th century, demand for electric power was being met by many isolated electric generating plants, both thermal and hydro. Because of the sophisticated technology and significant capital investment, the electric utilities evolved quickly into monopolies. With the growing importance of electricity as a basic need for commerce, industry and domestic life, and the apparent economies offered by large-scale integrated systems, there was a need to make some fundamental choices. Were essential services to be provided by private enterprise or publicly-owned utility? How, and to what extent, were they to be regulated? Depending on such factors as political will, population density and vested interests, intervention by way of government regulation came at different times and in different ways in each province and territory. This is illustrated, in part, by developments in Québec and Ontario.

In Québec, much of the electric power industry was under private control. In 1918, only 20 of the 119 power plants were owned and operated by municipalities. In 1940, five private companies supplied 90 per cent of the power. Largely in response to growing consumer dissatisfaction over high rates, the Québec Hydro-Electric Commission (Hydro-Québec) was created in 1944. It was to supply power to municipalities and commercial enterprises at the lowest possible rate and to generate, transmit and distribute electricity throughout the province. In 1963, a political decision was made to nationalize existing utilities and Hydro-Québec quickly acquired most privately-owned suppliers. By 1984, it had become one of the 10 largest public utilities in North America.

Unlike Québec, most of Ontario's early 20th century history is dominated by a publicly-owned utility. Many municipalities and boards of trade in southern Ontario felt that cheap power was essential to economic growth. In response to public pressure, the Hydro-Electric Power Commission of Ontario (Ontario Hydro) was incorporated in 1905. Ontario Hydro was given the legal authority to control the rates charged for electricity and the right to generate and distribute electrical energy. As a wholesaler of power to municipalities, it also controlled the rates they charged. By 1930, Ontario Hydro was supplying electric power to 550 communities. Despite massive expansion, it needed more power. Additional input came from nuclear-powered thermal generating plants, developed in conjunction with Atomic Energy of Canada Limited.

In Canada, the provinces have jurisdiction over property and, therefore, the electric power industry could not be regulated on a national level. Each province reacted differently to a technology that demanded the creation of a monopoly. As provincial and interprovincial integration became necessary to achieve maximum efficiency through diversification of load and supply, regulation became more important, and the distinction between private and public

utilities became blurred. Today, a variety of approaches continue to exist, with some provinces dominated by a public utility (for example, Ontario and Québec), some having mixed private and public utilities (for example, Alberta and Newfoundland), and one province dominated by a private utility (Prince Edward Island).

Of the major electric utilities in Canada today, eight are provincially owned, seven are investor owned, four are privately-owned and two are territorial Crown corporations. In addition, there are a number of municipally owned utilities, particularly in Ontario. Pubic sector enterprises and private sector enterprises each represent about half of the 21 major electric utilities. According to the Statistics Canada publication *Electric Power Generation, Transmission and Distribution 1998*, however, public utilities generate about 83% of the power in Canada and private utilities about 17%. 2(80) Public utilities account for 90% of the total net fixed assets of $124 billion and about 95% of the total long-term debt of $91 billion. In addition, the account for 87% of the total annual operating revenues of approximately $40 billion.

In contrast to the Canadian environment, where there are a few, relatively large rate-regulated enterprises (e.g., hydro utilities) owned by the provincial governments, the US environment is characterized by many, relatively small rate-regulated enterprises of state and local governments. According to the American Public Power Association's *2000 Annual Directory and Statistical Report*, there are 3,170 electric utilities in the United States. Of these, 2,009 (63%) are publicly owned utilities, 239 (8%) are investor owned utilities, 912 (29%) are cooperatives and 10 (less than 1%) are federal power agencies.

There is no connection, however, between the type of ownership and the capacity to serve the ultimate customers. Although investor-owned utilities comprise only 8% of the total number of utilities, they generate approximately 75% of the power and service approximately 75% of the ultimate customers (1998 revenues exceeded $168 billion). On the other hand, publicly-owned utilities comprise 63% of the total number of utilities, but they generate only 12% of the power and service less than 15% of the ultimate customers (1998 revenues were $30 billion).

In summary, there are relatively few publicly-owned electric power utilities in Canada, but they generate the majority of the total power. This contrasts sharply with the situation in the United States which has many publicly-owned electric power utilities, but they generate only a small fraction of the total power. Nevertheless, both public and private sector utilities are similar in that they carry on a business and prepare their general purpose financial statements in accordance with GAAP for private sector enterprises. This similarity is highlighted by a move in recent years towards unbundling services provided by electric utilities, leading to more and more deregulated or market-oriented rates for the generation services, with transmission and distribution rates remaining regulated.

GLOSSARY

The following terms are used in the Research Report or are commonly used in the regulatory community and may be useful to the reader. Terms in bold within definitions are separately defined in the Glossary. 1(81)

Allowance for funds used during construction (AFUDC)

AFUDC is the amount that a **rate-regulated enterprise** is allowed to earn to recover its cost of financing assets under construction. It is equal to the average cost of the construction work in process, times a financing rate, which is usually equal to the enterprise's **cost of capital** rate. AFUDC is included in the cost of the related assets and recovered in future periods through the depreciation charge. AFUDC is similar to "Interest During Construction" for unregulated industries, except that the **cost of equity** capital is normally taken into account.

Allowed rate of return

The rate of return a regulated enterprise is allowed the opportunity to earn. When applied to the **rate base**, the allowed rate of return provides an amount equal to the forecast cost of financing the investment required for regulated operations. The financing costs include both the **cost of debt** and the **cost of equity**.

Argument

A submission to a regulatory authority at the end of a hearing that summarizes a party's position. Argument may be presented on behalf of the regulated enterprise, each intervenor and, in some cases, the regulator's staff. Argument is usually presented by the party's counsel and draws on the evidence presented in the hearing and legal precedent. At the regulator's discretion, arguments may be presented either orally or in writing, though written submissions are more common.

Avoidable cost

A cost that would be avoided if the cost object did not exist. Avoidable costs will generally be the same as the direct and variable indirect costs.

Capital asset pricing model

A method for estimating the **cost of equity** in which that cost equals a risk-free rate plus a risk premium. The yield on government bonds is usually used as the risk-free rate. The risk premium is equal to the market risk premium times a "Beta" factor, the Beta factor being a measure of the enterprise's risk in relation to the market.

Capital structure

The manner in which an enterprise is financed, which usually includes debt, equity and deferred income tax credits.

Cash working capital

Cash working capital is the investment required by the difference in time between when

cash operating expenses are paid and when the cash to cover the expenses is eventually recovered from customers.

Comparable earnings method

A method for estimating the **cost of equity**. The cost of equity is determined based on the realized return on investments of similar risk to that of the regulated enterprise.

Construction work in process (CWIP)

CWIP refers to the capital assets under construction by a regulated enterprise for its future use. It may or may not be included in the regulated enterprise's **rate base**.

Cost-based pricing

A basis for determining how the **cost of service** will be recovered through individual rates. Rates for each type of service are set to reflect the cost of providing the service.

Cost object

Whatever is being costed, such as a product or service, activity, operating division, etc.

Cost of capital

The cost of financing the **rate base**. It is equal to the weighted average cost of each component in the capital structure. The weight for each component equals the percentage of the total capital structure represented by the component.

Cost of debt

The costs associated with debt financing, including interest payments, plus amortization of issuance expense, any purchase discount / premium and any foreign-exchange losses / gains.

Cost of equity

The cost to equity investors of investing their funds in a regulated enterprise. In regulatory proceedings, it is generally determined in relation to what could be earned on investments of similar risk in unregulated companies.

Cost of service

The total cost of providing service, including operating and maintenance expenses, depreciation, amortization, taxes and cost of capital. The cost of service is also referred to as "**revenue requirements**."

Cost of service study

A study to determine the **cost of service** by class of service and/or customer. These studies are used to help determine how the **revenue requirements** are to be allocated among the rates for the various services / customers.

Cross-subsidization

Increasing the rates for one service or class of customers so that the rates for another

service or class of customers can be reduced below cost.

Current cost

The cost of acquiring an asset or service at current prices.

Deemed capital structure

A capital structure used for rate-making purposes that differs from an enterprise's actual **capital structure**. A regulator may deem a capital structure for an enterprise when it considers its actual capital structure inappropriate.

Deferral account

An account that records the deferral of a cost or revenue until a future date. A deferred asset account records a cost that would normally be expensed and recovered in the current period, but is to be expensed or recovered in a future period. A deferred liability account records an amount recovered in the current period to cover costs of providing service in a future period.

Direct cost

A cost incurred for one specific cost object.

Discounted cash flow method

The discounted cash flow method is one of the methods used for estimating the **cost of equity** using market data. Using this method, the cost of equity is equal to the expected dividend yield (the expected dividend divided by current share price), plus the expected dividend growth rate.

Embedded cost

See "**Historical cost**."

Financial viability

Ability to meet financial obligations.

Fixed cost

A cost that doesn't vary with the provision of a cost object (which would be the same whether or not the cost object existed).

Historical cost

The amount originally paid for assets and services.

Incentive regulation

A form of **rate regulation** where the regulated enterprise has financial incentives to improve its efficiency or achieve other goals. Incentives can include financial rewards for exceeding targets and financial penalties for failing to achieve them. Incentive rate regulation is also referred to as "**performance-based regulation**."

Indirect cost

A cost incurred for two or more cost objects.

Interest coverage

A measure of an enterprise's ability to meet interest charges, this is income available to cover interest charges, divided by interest charges. Income to cover interest charges equals net income plus interest charges and income tax expense.

Information requests

Questions posed to those who provide evidence in a hearing. Information requests and their responses are made prior to the hearing, in writing, and become evidence in the hearing. Information requests are also referred to as "**interrogatories**."

Interrogatories

See "**Information requests**."

Lead-lag study

A lead-lag study is used for estimating **cash working capital**. It is an analysis of the average number of days between the time payment is made for operating expenditures and the time the amounts are collected from customers to recover these costs. The resulting time delay is divided by the number of days in the year, then multiplied by the estimated amount of cash operating expenses to determine the amount of necessary cash working capital.

Negotiated settlement

An agreement between a regulated enterprise and its customers (or their representatives) dealing with allowed rates or an issue that affects their determination. Generally, negotiated settlements must be approved by the regulator.

Non-avoidable cost

A cost that would not be avoided if the cost object did not exist. Non-avoidable costs are generally the same as fixed indirect costs.

Performance-based regulation

See "**Incentive regulation**."

Price-cap regulation

A form of **rate regulation** where the focus is on the prices that can be charged. Limits are set on initial prices and a formula is put in place to allow for future increases in the maximum prices that can be charged.

Purchase premium

An amount paid for assets, or an entire enterprise, in excess of original cost, less depreciation.

Rate-regulated enterprise

For financial reporting purposes, a "rate-regulated" enterprise is an organization which has regulated operations that meet all of the following criteria:

- The enterprise's rates for regulated services or products provided to its customers are established by, or are subject to approval by, an independent, third-party regulator or by its own governing board empowered by statute or contract to establish rates that bind customers.
- The regulated rates are designed to recover the specific enterprise's costs of providing the regulated services or products.
- In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume that rates set at levels that will recover the enterprise's costs can be charged to and collected from customers. This criterion requires consideration of anticipated changes in levels of demand or competition during the recovery period for any capitalized costs.

Rate base

The amount of investment in regulated operations on which a regulated enterprise is allowed to earn a return. It usually consists of the depreciated value of the plant in service required for regulated operations, plus an allowance for working capital and deferred assets.

Rate regulation

The restriction in the setting of prices that can be charged to customers for services or products. Under rate regulation, an enterprise's rates are established by, or are subject to approval by, a regulator.

Rates

The prices at which regulated services are provided.

Rebuttal evidence

Evidence submitted in a hearing in response to evidence provided by another party. Such evidence may address only the evidence that has been submitted by the other party, not a new area.

Reply argument

A submission to a regulatory body addressing another party's argument. A reply argument may address only the other party's previously submitted argument, not a new area.

Return on rate base regulation

A form of **rate regulation** where the focus is on the allowed earnings, in particular the allowed return per dollar of investment (rate base). Under this form of rate regulation, total revenue requirements are set equal to the expected cost of providing service. This expected cost is equal to the operating costs, plus an allowed return where that return is

set equal to the allowed rate base times the allowed rate of return.

Revenue requirements
See "**Cost of service**."

Risk premium method
A method for estimating the **cost of equity** using market data. The cost of equity is determined as the sum of the yield on a debt security (usually the yield on government bonds or the enterprise's bonds), plus an estimate of the equity risk premium (i.e., the required return on the enterprise's equity over the required return on the debt security).

Social contract regulation
A form of **rate regulation** whereby allowed rates are the result of an agreement between the regulated enterprise and the regulatory authority. It is an imprecise form of regulation since it can be argued that almost any form of rate regulation qualifies as social contract regulation.

Test period
The operating period selected to evaluate the **cost of service** and whether proposed rates are adequate to cover costs without providing an excess return. Although the test period is usually a prospective 12-month period, other periods, including historical periods, have been used.

Value-of-service pricing
A basis for determining how the **cost of service** will be recovered through individual rates that reflects the perceived value of the services without regard to the cost of providing them.

Working capital
For regulatory purposes, working capital represents the investment required to finance inventory, plus **cash working capital**.

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- Section 1000, "Financial Statement Concepts."
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Endnotes

1 (Popup - Popup)

1. Where the Research Report presents the views, opinions or conclusions of the Study Group, it refers to the majority of the members and not necessarily to the entire Study Group.

2 (Popup - Popup)

1. The questions were initially raised in May 1999 when the Accounting Standards Board (AcSB) reviewed a draft project proposal on accounting for rate-regulated enterprises. In addition, the Public Sector Accounting Board (PSAB) raised questions about the application to public sector enterprises (see Chapter 8).

3 (Popup - Popup)

2. Chapter 6 examines the criteria that an enterprise must meet to qualify as a rate-regulated enterprise for financial reporting purposes. In short, the rates must be subject to regulation, they must be designed to recover the costs of providing service, and they must be chargeable and collectible from customers.

4 (Popup - Popup)

3. As noted in Chapter 3, there are differing views on the extent to which specific guidance for rate-regulated enterprises should be provided.

5 (Popup - Popup)

4. The survey was undertaken, on the CICA's behalf, by Peggy Coady, Memorial University of Newfoundland.

6 (Popup - Popup)

5. Where the Research Report presents the views, opinions or conclusions of the Study Group, it refers to the majority of the members and not necessarily to the entire Study Group.

7 (Popup - Popup)

1. Appendix E to this Research Report provides a brief overview of rate regulation in the electric power industry in Canada.

8 (Popup - Popup)

2. Circumstances may differ between the public sector and the private sector. Issues of particular relevance to rate-regulated enterprises in the public sector — such as the independence of the regulator and self-regulation — are addressed in Chapter 8 of this Research Report.

9 (Popup - Popup)

1. Statement of Financial Concepts, No. 3, paragraph 85, Financial Accounting Standards Board. A similar view is expressed in "Financial Statement Concepts," *CICA Handbook – Accounting*, paragraph 1000.46.

10 (Popup - Popup)

2. *CICA Handbook – Accounting*, paragraph 1500.06; Exposure Draft "Generally Accepted Accounting Principles" (July 2001), paragraph 19.

11 (Popup - Popup)

1. It is important to understand that Statements issued subsequent to SFAS 71 may amend, interpret, supplement or otherwise affect the provisions of that Statement.

12 (Popup - Popup)

2. It should also be noted that SFAS 71, "Basis for Conclusions," paragraph 64 indicates that this criterion was specifically modified by the Board so as not to preclude application by government-owned utilities with rates set by their own governing board.

13 (Popup - Popup)

3. SFAS 143 is effective for fiscal years commencing after June 15, 2002, although earlier application is encouraged.

14 (Popup - Popup)

4. *Accounting for Regulation in UK Utilities* (London: The Research Board of The Institute of Chartered Accountants in England and Wales, 1994).

15 (Popup - Popup)

5. The observations were drawn from papers presented at a conference, "Accounting for Regulation – A Comparative Assessment," sponsored by the Centre for the Study of Regulated Industries (CRI) of the University of Bath, that took place at the London School of Economics on September 23, 1999. The papers are titled "Reconciling Generally Accepted Accounting Practice (GAAP) and Regulatory Accounts – The Lessons of Reporting in GAS," by M. Duthie; "A

Comprehensive Accounting Model For Regulation," by P. Vass, and "Statements of Recommended Practice (SORPs) – Role and Rules for Development," by Andrew Lennard, Assistant Technical Director, UK ASB.

16 (Popup - Popup)

6. Refer to "Financial Statement Concepts, " *Handbook* Section 1000, and "General Standards of Financial Statement Presentation," *Handbook* Section 1500. As stated in paragraph 1000.02, Section 1000 is to be used in establishing accounting policies in areas in which accounting principles are developing.

17 (Popup - Popup)

1. The rate-setting processes and methodologies are discussed in Chapter 2 of this Research Report.

18 (Popup - Popup)

2. As noted in Chapter 1, in July 2001, the Accounting Standards Board issued an Exposure Draft of a proposed new *Handbook* Section on "Generally Accepted Accounting Principles." The material in this Section is based on that Exposure Draft. Reference should therefore be made to the new *Handbook* Section once it is issued.

19 (Popup - Popup)

3. Financial statement concepts are discussed in Appendix A of this Research Report.

20 (Popup - Popup)

4. "Contingencies," *Handbook* Section 3290, paragraph .06, states that the uncertainty relating to the occurrence of a future event can be expressed by a range of probabilities that provide a basis for establishing the appropriate accounting treatment. The three main areas of this range are likely, unlikely and not determinable.

21 (Popup - Popup)

5. For a liability to be recognized, however, it must be probable that an outflow of resources embodying economic benefits will be required to settle the obligation (paragraph 1000.44). This effectively disqualifies the recognition of most equitable obligations and some constructive obligations.

22 (Popup - Popup)

1. Note that some enterprises carry on both rate-regulated and non-rate-regulated activities.

23 (Popup - Popup)

2. See Appendix A of this Research Report for a comparison of the conceptual frameworks in Canada and the US.

24 (Popup - Popup)

3. As noted later in this chapter, only a subset of an enterprise's operations may be subject to rate regulation. For example, the transmission and distribution activities in the electric power industry may be subject to rate regulation but the power-generating activities may not (see Appendix E for an overview of rate regulation in the electric power industry).

25 (Popup - Popup)

4. For example, NAV Canada is given the exclusive right to provide certain services under the 1996 *Civil Air Navigation Services Commercialization Act* and is empowered by the *Act* to set and collect user charges for air navigation services.

26 (Popup - Popup)

5. Circumstances may differ in the public sector, however, and issues of particular relevance to rate-regulated enterprises in the public sector — such as the independence of the regulator and self-regulation — merit further consideration. These are addressed separately in Chapter 8 of this Research Report.

27 (Popup - Popup)

6. In Chapter 2, it was noted that there are a number of basic regulatory methodologies and, within each basic methodology, there can be different applications that vary with the regulatory authority.

28 (Popup - Popup)

7. Rate regulators usually consider a fair return on investment to be a cost recoverable through rates.

29 (Popup - Popup)

8. Refer to the definition of a liability, *CICA Handbook – Accounting*, paragraph 1000.32.

30 (Popup - Popup)

1. With regard to the "benefit versus cost" constraint, the Study Group maintains that the benefits expected to arise from providing information in financial statements should exceed the cost of doing so. This constraint is also a consideration in the preparation of financial statements in accordance with GAAP (for example, in considering disclosure of information beyond that required by the standards). The benefits and costs may accrue to different parties and, therefore, the evaluation of the nature and amount of benefits and costs is substantially a judgmental process.

31 (Popup - Popup)

2. Materiality is the term used to describe the significance of financial statement information to decision makers. An item of information, or an aggregate of items, is material if it is probable that its omission or misstatement would influence or change a decision. Materiality is a matter of professional judgment in the particular circumstances.

32 (Popup - Popup)

3. It is assumed that any change in regulatory assets or liabilities would not be associated with a gain or loss as a result of a contribution or distribution of equity / net assets.

33 (Popup - Popup)

4. Appendix A compares the conceptual accounting frameworks of Canada and the United States, including users and their general information needs.

34 (Popup - Popup)

5. Appendix B summarizes the disclosure practices of 25 rate-regulated enterprises.

35 (Popup - Popup)

1. In this regard, the terms of reference for this project ask the Study Group to consider the following:

- Should rate regulation over private sector enterprises be distinguished from rate regulation over public sector enterprises? If so, what are the distinguishing criteria?
- What is the nature of rate regulation and to what degree must it be independent of the enterprises being regulated?

36 (Popup - Popup)

2. *PSAB Handbook*, "Introduction to Public Sector Accounting Recommendations," paragraphs

.03 and .04.

37 (Popup - Popup)

3. A government business has all the following characteristics:
(a) it is a separate legal entity with the power to contract in its own name and that can sue and be sued;
(b) it has been delegated the financial and operational authority to carry on a business;
(c) it sells goods and services to individuals and organizations outside of the government reporting entity as its principal activity; and
(d) it can, in the normal course of operations, maintain its operations and meet its liabilities from revenues received from sources outside of the government reporting entity.
(PSAB Handbook, PS 1300.21)

38 (Popup - Popup)

4. A government business-type organization has all of the following characteristics:
(a) it is a separate legal entity with the power to contract in its own name and that can sue and be sued;
(b) it has been delegated the financial and operational authority to carry on a business; and
(c) it sells goods and services to individuals and organizations as its principal activity. (PSAB Handbook, Introduction .10)

39 (Popup - Popup)

5. Appendix 2 of the "Introduction to Public Sector Accounting Recommendations" states that government organizations should adhere to "Solid Waste Landfill Closure and Post-Closure Liability, *PSAB Handbook* PS 3270, regarding accounting for solid waste landfill closure and post-closure liability, and "Government Assistance — application of *CICA Handbook* Section 3800," *PSAB Handbook* PS 3800, regarding accounting for government assistance.

40 (Popup - Popup)

6. A fund is defined as a fiscal and accounting entity with a self-balancing set of accounts recording cash and other financial resources, together with all related liabilities and residual equities or balances, and changes therein, which are segregated for the purpose of carrying on

specific activities or attaining certain objectives in accordance with special regulations, restrictions or limitations.

41 (Popup - Popup)

7. Statement No. 34 (paragraph 67) notes that enterprise funds are those whose principal revenue sources are from activities for which a fee is charged to external users for goods and services. Activities are *required* to be reported as enterprise funds if any one of the following criteria is met:

- The activity is financed with debt that is secured solely by a pledge of the net revenues from fees and charges of the activity.
- Laws or regulatons require that the activity's costs of providing services, including capital costs (such as depreciation or debt service), be recovered with fees and charges, rather than with taxes or similar revenues.
- The pricing policies of the activity establish fees and charges designed to recover its costs, including capital costs (such as depreciation or debt service).

42 (Popup - Popup)

8. This viewpoint is strongly supported by one member of the Study Group, who is a legislative auditor.

43 (Popup - Popup)

9. It should be noted, however, that the first criterion is just one of three criteria for meeting the definition of a rate-regulated enterprise and that all three criteria must be met. Also, meeting the definition of a rate-regulated enterprise does not necessarily mean that the enterprise would recognize any regulatory assets or liabilities. It means that, if there is an economic impact, the enterprise would be entitled to apply the principles for recognizing regulatory assets and liabilities.

44 (Popup - Popup)

10. Some public sector rate-regulated enterprises, however, do have publicly traded debt.

45 (Popup - Popup)

11. This viewpoint is supported by nine of the ten Study Group members.

46 (Popup - Popup)

12. For example, rates may be set to maintain essential services, to effect economies of scale and/or to prevent discriminatory pricing.

47 (Popup - Popup)

14. The Ontario Energy Board and the New Brunswick Public Utilities Board were cited as examples of regulators that operate at arm's length from both the government and the enterprises that they regulate.

48 (Popup - Popup)

15. One of the ten members expressly stated that he did not agree with the other members on this issue.

49 (Popup - Popup)

16. The CICA has authorized the Public Sector Accounting Board to issue Recommendations and guidance with respect to matters of accounting in the public sector.

50 (Popup - Popup)

17. A government reporting entity comprises the organizations that are accountable for the administration of their financial affairs and resources either to a minister of the government or directly to the legislature, or local government council, and are owned or controlled by the government. (*Public Sector Accounting Handbook*,"Financial Reporting Entity," paragraph PS1300.07)

51 (Popup - Popup)

18. See footnote 4 for a definition of this type of organization.

52 (Popup - Popup)

19. For an overview of rate regulation in the electric power industry, see Appendix E to this Research Report.

53 (Popup - Popup)

1. This complements the Accounting Standards Board initiative to harmonize Canada / US GAAP (see Chapter 3).

54 (Popup - Popup)

2. The criteria set out in the definition of rate-regulated property, plant and equipment is essentially the same as the definition of a rate-regulated enterprise in Handbook Section 3465, paragraph .09.

55 (Popup - Popup)

3. The survey of current practices presented in Appendix B shows that all 25 survey companies disclosed, in the significant accounting policies note, the basis of valuation of property, plant and equipment (items of rate-regulated property, plant and equipment were valued at cost) and the basis of depreciation. Additional disclosures in other notes included the depreciation rate(s) and expense for the period (23 companies), accumulated depreciation (25 companies) and net book value (15 companies).

56 (Popup - Popup)

4. SFAS 90 adds a restriction that the AFUDC may be capitalized only if its subsequent inclusion in allowable costs for rate-making purposes is probable. It further limits capitalization of the AFUDC to that recorded during construction or as part of a qualifying phase-in plan.

57 (Popup - Popup)

5. The survey of current practices presented in Appendix B shows that 20 of 25 survey companies disclosed, in the significant accounting policies note, the accounting treatment of the AFUDC. Of these, 16 companies provided additional information on construction work in progress and four provided additional information on the AFUDC in other notes to the financial statements.

58 (Popup - Popup)

6. The survey of current practices showed that none of the survey companies reported disallowances.

59 (Popup - Popup)

7. SFAS 143 is effective for fiscal years commencing after June 15, 2002, although earlier application is encouraged.

60 (Popup - Popup)

8. The survey of current practices presented in Appendix B shows that 15 of 25 survey companies provided information on site restoration and future removal costs in the significant accounting policies note to the financial statements. Seven companies provided additional disclosures on environmental costs in other notes.

61 (Popup - Popup)

9. In practice, losses on disposal are applied to accumulated depreciation unless they are considered extraordinary.

62 (Popup - Popup)

10. The survey of current practices presented in Appendix B shows that 19 of 25 survey companies provided information regarding the treatment of gains or losses on disposal of fixed / capital assets in the significant accounting policies note to the financial statements. Two companies provided additional disclosures on write-offs and three companies provided additional disclosures on decommissioning of capital assets.

63 (Popup - Popup)

11. Since 1992, *Accounting For Income Taxes*, SFAS 109, has required the use of the future income tax asset / liability approach in dealing with interperiod income tax allocation.

64 (Popup - Popup)

12. The survey of current practices presented in Appendix B shows that 18 of 25 survey companies disclosed information on income taxes in the significant accounting policies note to the financial statements (some were exempt from paying income taxes). Twenty-two companies provided additional information disclosures in other notes to the financial statements.

65 (Popup - Popup)

13. According to the survey of current practices presented in Appendix B, 21 of 25 survey companies provided information on pensions and 19 companies provided information on other postemployment benefits in the signification accounting policies note to the financial statements. As well, 24 companies disclosed additional information in other notes to the financial statements.

66 (Popup - Popup)

14. Prior to the new standard being approved in July 2001, exchange gains or losses related to a foreign currency monetary item with a fixed or ascertainable life extending beyond the end of the following fiscal year were required to be deferred and amortized over the remaining life of the monetary item.

67 (Popup - Popup)

15. This new standard is effective for years commencing on or after January 1, 2002, with earlier

adoption permitted in certain circumstances.

68 (Popup - Popup)

16. The survey of current practices presented in Appendix B shows that five if the 25 survey companies disclosed information in the notes to the financial statements about accounting changes such as future income taxes and employee future benefits.

69 (Popup - Popup)

17. This assumes that the enterprise is required to amortize the difference for regulatory purposes and, if it were not regulated, it would have to recognize the difference in the period that the debt was extinguished.

70 (Popup - Popup)

18. Nonetheless, many telecommunications companies have ceased to apply accounting for the economic impact of rate regulation for external reporting. The notes to the general purpose financial statements of such companies disclose that they are still subject to rate regulation and are required to maintain regulatory records.

71 (Popup - Popup)

1. Refer to *CICA Handbook – Accounting*, paragraph 1000.02.

72 (Popup - Popup)

2. Two 1991 CICA publications, *Information to be Included in the Annual Report to Shareholders* (Chapters 2 and 3) and Interim Financial Reporting: A Continuous Process (Chapter 2) discuss the objectives of financial reporting, assess the uses of annual and interim reports and identify users and their information needs.

73 (Popup - Popup)

3. While equity of a profit oriented enterprise in total is a residual, it includes specific categories of items, for example, types of share capital, contributed surplus and retained earnings.

74 (Popup - Popup)

4. Revenues of entities normally arise from the sale of goods, the rendering of services or the use by others of entity resources yielding rent, interest, royalties or dividends.

75 (Popup - Popup)

Canadian Accounting and Assurance Reference Service (CAARS)

5. *CICA Handbook – Accounting* (paragraphs 1000.50 and 1000.51) state that expenses that are not linked with specific revenues are related to a period on the basis of transactions or events occurring in that period or by allocation. Expenses that are linked to revenue generating activities in a cause and effect relationship are normally matched with the revenue in the accounting period in which the revenue is recognized.

76 (Popup - Popup)

6. With regard to the "benefit versus cost" constraint, the benefits expected to arise from providing information in financial statements should exceed the cost of doing so. This constraint is also a consideration in the preparation of financial statements in accordance with GAAP (for example, in considering disclosure of information beyond that required by the standards). The benefits and costs may accrue to different parties and, therefore, the evaluation of the nature and amount of benefits and costs is substantially a judgmental process.

77 (Popup - Popup)

7. Materiality is the term used to describe the significance of financial statement information to decision makers. An item of information, or an aggregate of items, is material if it is probable that its omission or misstatement would influence or change a decision. Materiality is a matter of professional judgment in the particular circumstances.

78 (Popup - Popup)

1. All rates are, however, subject to approval by Cabinet.

79 (Popup - Popup)

1. Businesses engaged in the production and distribution of electricity, the distribution of natural gas, the distribution of water, telecommunications (particularly telephone service), and pipelines (gas, oil and commodities) are generally considered public utilities. In earlier times, railways, grain elevators, ferries and privately owned bridges were also considered public utilities. In the future, highways may be considered public utilities, especially if governments are contractually obligated to take ownership after an elapsed period of time under private ownership.

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2. Statistics Canada compiles data on the supply and disposition of electric energy by approximately 200 producers in Canada. It publishes reports on those statistics in addition to the financial and operating statistics of the major electric utilities.

81 (Popup - Popup)

Canadian Accounting and Assurance Reference Service (CAARS)

1. The terms and definitions used in this Glossary were drawn primarily from *Basics of Canadian Rate Regulation*, John Browne and Charles Perron (Toronto, Deloitte & Touche, 1997), and *Introduction to Public Utility Accounting* (Washington, DC, American Gas Association / Edison Electric Institute, 1992).

CPA Meeting Prep.rtf

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Subject: Canceled: Grassy Narrows (Accounting for 2016/17 Public Accounts)
Date: Thursday, June 15, 2017 08:52:19
Attachment 1: 6 -Wabigoon River_PS 3260 criteria assessment_MOECC June 13_For Discussi....docx

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Rescheduled it to Thursday at 1:00 p.m.

Nadine to moderate

The purpose of the meeting will be for MOECC to walk E&Y through the attached document and answer any questions that E & Y might have.

6 -Wabigoon River_PS 3260 criteria assessment_MOECC June 13_For Discussi....pdf

For Discussion Purposes Only – Do Not Distribute

Wabigoon River Remediation Project

Site Description

The Wabigoon River is located in the District of Kenora in Northwestern Ontario. It flows from Raleigh Lake to Wabigoon Lake to join the English River downstream of the City of Dryden. The area of interest is a 150-kilometre stretch of the river between Wabigoon Lake and the English River, and work is underway to determine the extent of contamination and confirm whether there is an ongoing source of contamination. The contaminant of concern is mercury.

The Dryden mill site has the potential to be included as an additional site in this project for reasons described below.

Five PS 3260 Criteria	Evaluation
An environmental standard exists	Sediment: Guidelines for Identifying, Assessing and Managing Contaminated Sediments in Ontario: An Integrated Approach, Ministry of the Environment, 2008 Fish: Guide to Eating Ontario Fish, Ontario Ministry of the Environment and Climate Change, 2017 (consumption advice is based mainly on Health Canada guidelines) Groundwater: Soil, Ground Water and Sediment Standards for Use Under Part XV.1 of the Environmental Protection Act, April 15, 2001, and incorporated by reference into O. Reg. 153/04 Records of Site Condition – Part XV.1 of the Environmental Protection Act, Ministry of the Environment, 2011
Contamination exceeds the environmental standard	**Background** During the 1960s and 1970s, a chlor-alkali plant in Dryden discharged approximately 10 metric tonnes of mercury into the Wabigoon River, affecting both the English and Wabigoon Rivers. In 1970, in response to an order from the province, actions were taken and levels of mercury in wastewater were reduced. The plant was decommissioned in 1975. In 1971, Ontario suspended the commercial fishing licences for walleye, pike and sauger for

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	the Wabigoon and English river systems due to the elevated levels of mercury in fish; the pollution has impacted both the economies and health of the Grassy Narrows First Nation and Wabaseemoong Independent Nations. Studies by the federal and provincial governments were conducted in the 1980s in the English Wabigoon River to determine the location and the extent of contamination. Natural recovery was advised based on consideration of six factors: • Mercury discharges to the system were essentially eliminated. • Background mercury levels in lakes in the immediate area of the English Wabigoon River, but not affected by the discharges, were in most cases higher than the recommended levels for human consumption. • Concerns about the risk of possible remobilization of mercury. • Focus, at the time, was primarily on social and economic agreements and secondarily on drinking water. • Most parties contacted preferred natural recovery. • Northern communities and tourism industry did not want further attention drawn to the river system. In 1985, a settlement agreement was reached between the relevant corporate parties, Wabaseemoong, Grassy Narrows and the provincial and federal governments. The settlement provided $16.67 million in monetary compensation to the First Nations and includes a release of liability from the First Nations to the Crown and the corporate parties. It also includes an indemnification of the corporate parties by Ontario for certain potential future liability. Despite significant declines in mercury levels in fish in some areas of the English Wabigoon River system, mercury levels in fish in other areas remain high and restrictions on consumption remain in place. Grassy Narrows First Nation and Wabaseemoong Independent Nations have treaty rights to fish; the communities rely on fish from the river system for food and have expressed concerns with ongoing methylmercury levels. On May 30, 2016, Grassy Narrows First Nation publically released the report “Advice on Mercury Remediation Options for the Wabigoon-English River System” commissioned by the community and authored by Reed Harris, Dr. Patricia Sellers and Dr. John Rudd.

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- The report called for extensive field work to determine current levels of mercury in the environment and identify the most appropriate approaches for remediation.
- This field work has been identified by the Grassy Narrows Council as their top priority and Ontario is providing funding to the community to support that work.

On September 20, 2016, Dr. Masanori Hanada (Dean of Social Welfare & Policy, Minamata Studies, Kumamoto Gakuen University) and Grassy Narrows Chief Simon Fobister Sr. held a press conference to present Dr. Hanada's research findings that more than 90 per cent of the people tested in 2014, from Grassy Narrows and Wabaseemoong showed signs of mercury poisoning.

Current Status

There is limited data on current environmental conditions in the Wabigoon River, outside of contaminant levels in fish. The ministry working with Grassy Narrows First Nation and Wabaseemoong Independent Nations and stakeholders to identify mercury contaminated sites in the Wabigoon River. This work is in the preliminary stages, steps 2-4, of the 17-step contaminated sites assessment process depicted in the file attached below. The ministry has yet to confirm the extent of contamination in the river or whether there is an ongoing source of contamination from the mill property (e.g. from groundwater).

Contaminated Sites -
from identification to

Recent work indicates that sediment in the Wabigoon River continues to exceed provincial guidelines, fish caught in some areas of the river are not safe to eat due to mercury contamination, and groundwater on the mill property exceeds provincial guidelines for mercury. The following description of exceedances of environmental standards is excerpted from the draft Director's Order to Domtar Inc. as posted on the Environmental Registry on May 29, 2017.

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	Sediment A February 1, 2017 report titled “Evidence that the former chlor-alkali Site in Dryden, Ontario is still leaking mercury into the Wabigoon River” prepared for Grassy Narrows by Sellers et al. provided results of sediment sampling carried out in the Wabigoon River in August 2016. The report concludes mercury levels in sediment increased significantly as the river passed the mill. The sediment concentrations in samples collected adjacent to the mill and downstream of the mill exceed the Severe Effects Level as described in the “Guidelines for Identifying, Assessing and Managing Contaminated Sediments in Ontario: An Integrated Approach.” The report recommends that a “detailed ground water and soil study of the former chlor-alkali plant site and its surroundings” be undertaken to confirm whether the mill property is an ongoing source of mercury to the Wabigoon River. Fish In October 2016, ministry staff collected fish samples from the Wabigoon River system and neighbouring lakes and rivers. Mercury concentrations in tested walleye (40-50 cm) were 2.1 to 2.7 µg/g from Clay Lake and 1.3 to 1.7 µg/g in the Wabigoon River downstream from the mill. The range for Clay Lake exceeds both the general population (1.8 µg/g) and the “do not eat” benchmark for sensitive population (0.5 µg/g). The range for the Wabigoon River downstream from the mill exceeds the “do not eat” benchmark for the sensitive population. Groundwater A July 15, 2016 report titled “Domtar Inc., Summary of Available Monitoring Data, Domtar Dryden Mill, 1 Duke Street, Dryden, Ontario” prepared for Domtar Inc. by True Grit Consulting Ltd. reported that mercury levels at one well located in the vicinity of the former chlor-alkali plant exceeded the values that the ministry currently applies to assess groundwater quality (Table 9 of the “Soil, Ground Water and Sediment Standards for Use Under Part XV.1 of the Environmental Protection Act”, dated April 15, 2001, and incorporated by reference into O. Reg. 153/04 “Records of Site Condition – Part XV.1 of the EPA). In December 2016, the ministry received the results of a re-sampling of these wells, which again identified that the one well located in the vicinity of the former chlor-alkali plant exceeded the values that the ministry

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	currently applies to assess groundwater quality.
The government: *(i) is directly responsible; or* *(ii) accepts responsibility*	While the government may not be directly responsible for remediation, it accepted a degree of responsibility in the February 13, 2017 statement made by Ministers Murray and Zimmer: "we are completely committed to working with all partners to identify all potentially contaminated sites, and to creating and implementing a comprehensive remediation action plan." Additional public and private statements made by Minister Murray to Grassy Narrows First Nation and Wabaseemoong Independent Nations have reiterated this commitment. With respect to the costs of remediating the Wabigoon River, an opinion by the MOECC's Legal Services Branch on May 25, 2017 concludes that there is a moderate risk that a court would find that Ontario has a legal obligation arising from the honour of the Crown to expend funds to remediate the Wabigoon River generally, as well as the Dryden mill site, including leased areas of the Wabigoon River. A moderate risk means that, in light of good arguments on each side, the outcome is not reasonably predictable. Remediation at the Dryden mill site, if deemed required by the ministry, has the potential to be included as an additional site in this project. An opinion by the MOECC's Legal Services Branch on May 25, 2017 concludes that there is a high risk that a court would find that Ontario has a legal obligation to repay costs incurred by Domtar Inc. in respect of the remediation of the Dryden mill site and sites within the leased areas of the Wabigoon River. A high risk means that, while there are credible arguments to dismiss a challenge, the relevant court would very likely find against Ontario. This conclusion is based on the 2016 decision of the Ontario Superior Court of Justice in *Weyerhaeuser v. Ontario (AG),* which applied the 1985 Indemnity to a procedural order issued under the Environmental Protection Act to Weyerhaeuser Company Ltd. ("Weyerhaeuser") and Resolute FP Canada Inc. ("Resolute") in 2011 (the "2011 Director's Order").
It is expected that future economic benefits will be given up	During Question Period on May 2, 2017, Ministry Murray was asked why funding for the English Wabigoon River clean-up was not included in the 2017/18 budget. The minister replied that, "…the money is on its way to Grassy Narrows, as the bills come in. Mr. Speaker, the cost of this may well be far in excess of $84 million. As a matter of fact, I am guessing that this government's commitment to Grassy Narrows is going to exceed that amount of money. Many

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	other projects that were done in-year over last year...that were $150 million and under—were not explicitly stated in the budget. That didn't mean the government is less committed to it." At a meeting with the chiefs of Grassy Narrows First Nation and Wabaseemoong Independent Nations held later that day, Minister Zimmer read an excerpt of the Minister's statement above from the Hansard (attached below) and Minister Murray stated that the ministry would be preparing a Treasury Board submission for the remediation project. Ontario Hansard Issue_ L075_May 2 2
A reasonable estimate of the amount can be made	There is limited data on current environmental conditions in the Wabigoon River, outside of contaminant levels in fish. The ministry is in the preliminary stages of the contaminated sites assessment process and has yet to determine the extent of contamination in the river or whether there is an ongoing source of contamination from the mill property. The 2017 planned fieldwork will better inform the ministry on the contamination source and extent of contamination. This information will allow the ministry to better understand remediation options and next steps. However, the ministry has received and reviewed a proposal that included a cost estimate submitted by Grassy Narrows First Nation and has reviewed comparable riverine contaminated sites and their association remediation costs. **Remediation proposal submitted by Grassy Narrows First Nation, May 2016 (Rudd Report)** In May 2016, Grassy Narrows First Nation provided a cost estimate for remediation in the amount for $80.7 – 85.7M as part of a proposal by their science team to conduct additional assessment. This estimate cannot be relied upon to determine the cost of remediation because the proposal does not provide adequate detail on how the estimate was developed. In addition, the assessment approach outlined in the proposal omits a number of key steps required to determine the extent of contamination. Without sufficient knowledge of the dynamics of the river system (e.g. flow rates, sedimentation rates) and the extent of the contamination, it is not possible to determine the best course of action for remediation.

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	A consultant hired by Grassy Narrows First Nation also reviewed this proposal and stated that “the remedial designs for the different aspects of the program are conceptual in nature” and “need to be validated as being feasible for the English Wabigoon River system prior to progressing to detailed design.” Refer to the file below for a detailed assessment of this cost estimate. Assessment of GNFN Cost Estimate from R
Conclusion	
	The 2017 planned fieldwork will better inform the ministry on the contamination source and extent of contamination. Until this information is available, the ministry is not able to assess remediation options and their associated costs. As a result, a reasonable estimate of the liability cannot be made at this time.

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From: Virani, Shyrose (TBS) []
To: Keates, James (TBS) [James.Keates@ontario.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; Chiu, Jenny (MOECC) [Jenny.Chiu@ontario.ca]; Johnston, Scott (MOECC) [Scott.Johnston@ontario.ca]; Lau, Lucia (MOECC) [Lucia.Lau@ontario.ca]; Sharp, Tim (MOECC) [Tim.Sharp@ontario.ca]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]
CC: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Taylor, Heather (MOECC) [Heather.Taylor@ontario.ca]; Chen, Doris (MOECC) [Doris.Chen@ontario.ca]; Popov, Stan (MOECC) [Stan.V.Popov@ontario.ca]
Subject: Canceled: Grassy Narrows (Accounting for 2016/17 Public Accounts)
Date: Thursday, June 15, 2017 08:52:19
Attachment 1: 6 -Wabigoon River_PS 3260 criteria assessment_MOECC June 13_For Discussi....docx

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Rescheduled it to Thursday at 1:00 p.m.

Nadine to moderate

The purpose of the meeting will be for MOECC to walk E&Y through the attached document and answer any questions that E & Y might have.

6 -Wabigoon River_PS 3260 criteria assessment_MOECC June 13_For Discussi....pdf

For Discussion Purposes Only – Do Not Distribute

Wabigoon River Remediation Project

Site Description

The Wabigoon River is located in the District of Kenora in Northwestern Ontario. It flows from Raleigh Lake to Wabigoon Lake to join the English River downstream of the City of Dryden. The area of interest is a 150-kilometre stretch of the river between Wabigoon Lake and the English River, and work is underway to determine the extent of contamination and confirm whether there is an ongoing source of contamination. The contaminant of concern is mercury.

The Dryden mill site has the potential to be included as an additional site in this project for reasons described below.

Five PS 3260 Criteria	Evaluation
An environmental standard exists	Sediment: Guidelines for Identifying, Assessing and Managing Contaminated Sediments in Ontario: An Integrated Approach, Ministry of the Environment, 2008 Fish: Guide to Eating Ontario Fish, Ontario Ministry of the Environment and Climate Change, 2017 (consumption advice is based mainly on Health Canada guidelines) Groundwater: Soil, Ground Water and Sediment Standards for Use Under Part XV.1 of the Environmental Protection Act, April 15, 2001, and incorporated by reference into O. Reg. 153/04 Records of Site Condition – Part XV.1 of the Environmental Protection Act, Ministry of the Environment, 2011
Contamination exceeds the environmental standard	**Background** During the 1960s and 1970s, a chlor-alkali plant in Dryden discharged approximately 10 metric tonnes of mercury into the Wabigoon River, affecting both the English and Wabigoon Rivers. In 1970, in response to an order from the province, actions were taken and levels of mercury in wastewater were reduced. The plant was decommissioned in 1975. In 1971, Ontario suspended the commercial fishing licences for walleye, pike and sauger for

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	the Wabigoon and English river systems due to the elevated levels of mercury in fish; the pollution has impacted both the economies and health of the Grassy Narrows First Nation and Wabaseemoong Independent Nations. Studies by the federal and provincial governments were conducted in the 1980s in the English Wabigoon River to determine the location and the extent of contamination. Natural recovery was advised based on consideration of six factors: • Mercury discharges to the system were essentially eliminated. • Background mercury levels in lakes in the immediate area of the English Wabigoon River, but not affected by the discharges, were in most cases higher than the recommended levels for human consumption. • Concerns about the risk of possible remobilization of mercury. • Focus, at the time, was primarily on social and economic agreements and secondarily on drinking water. • Most parties contacted preferred natural recovery. • Northern communities and tourism industry did not want further attention drawn to the river system. In 1985, a settlement agreement was reached between the relevant corporate parties, Wabaseemoong, Grassy Narrows and the provincial and federal governments. The settlement provided $16.67 million in monetary compensation to the First Nations and includes a release of liability from the First Nations to the Crown and the corporate parties. It also includes an indemnification of the corporate parties by Ontario for certain potential future liability. Despite significant declines in mercury levels in fish in some areas of the English Wabigoon River system, mercury levels in fish in other areas remain high and restrictions on consumption remain in place. Grassy Narrows First Nation and Wabaseemoong Independent Nations have treaty rights to fish; the communities rely on fish from the river system for food and have expressed concerns with ongoing methylmercury levels. On May 30, 2016, Grassy Narrows First Nation publically released the report “Advice on Mercury Remediation Options for the Wabigoon-English River System” commissioned by the community and authored by Reed Harris, Dr. Patricia Sellers and Dr. John Rudd.

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- The report called for extensive field work to determine current levels of mercury in the environment and identify the most appropriate approaches for remediation.
- This field work has been identified by the Grassy Narrows Council as their top priority and Ontario is providing funding to the community to support that work.

On September 20, 2016, Dr. Masanori Hanada (Dean of Social Welfare & Policy, Minamata Studies, Kumamoto Gakuen University) and Grassy Narrows Chief Simon Fobister Sr. held a press conference to present Dr. Hanada's research findings that more than 90 per cent of the people tested in 2014, from Grassy Narrows and Wabaseemoong showed signs of mercury poisoning.

Current Status

There is limited data on current environmental conditions in the Wabigoon River, outside of contaminant levels in fish. The ministry working with Grassy Narrows First Nation and Wabaseemoong Independent Nations and stakeholders to identify mercury contaminated sites in the Wabigoon River. This work is in the preliminary stages, steps 2-4, of the 17-step contaminated sites assessment process depicted in the file attached below. The ministry has yet to confirm the extent of contamination in the river or whether there is an ongoing source of contamination from the mill property (e.g. from groundwater).

Contaminated Sites -
from identification to

Recent work indicates that sediment in the Wabigoon River continues to exceed provincial guidelines, fish caught in some areas of the river are not safe to eat due to mercury contamination, and groundwater on the mill property exceeds provincial guidelines for mercury. The following description of exceedances of environmental standards is excerpted from the draft Director's Order to Domtar Inc. as posted on the Environmental Registry on May 29, 2017.

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	Sediment A February 1, 2017 report titled “Evidence that the former chlor-alkali Site in Dryden, Ontario is still leaking mercury into the Wabigoon River” prepared for Grassy Narrows by Sellers et al. provided results of sediment sampling carried out in the Wabigoon River in August 2016. The report concludes mercury levels in sediment increased significantly as the river passed the mill. The sediment concentrations in samples collected adjacent to the mill and downstream of the mill exceed the Severe Effects Level as described in the “Guidelines for Identifying, Assessing and Managing Contaminated Sediments in Ontario: An Integrated Approach.” The report recommends that a “detailed ground water and soil study of the former chlor-alkali plant site and its surroundings” be undertaken to confirm whether the mill property is an ongoing source of mercury to the Wabigoon River. Fish In October 2016, ministry staff collected fish samples from the Wabigoon River system and neighbouring lakes and rivers. Mercury concentrations in tested walleye (40-50 cm) were 2.1 to 2.7 µg/g from Clay Lake and 1.3 to 1.7 µg/g in the Wabigoon River downstream from the mill. The range for Clay Lake exceeds both the general population (1.8 µg/g) and the “do not eat” benchmark for sensitive population (0.5 µg/g). The range for the Wabigoon River downstream from the mill exceeds the “do not eat” benchmark for the sensitive population. Groundwater A July 15, 2016 report titled “Domtar Inc., Summary of Available Monitoring Data, Domtar Dryden Mill, 1 Duke Street, Dryden, Ontario” prepared for Domtar Inc. by True Grit Consulting Ltd. reported that mercury levels at one well located in the vicinity of the former chlor-alkali plant exceeded the values that the ministry currently applies to assess groundwater quality (Table 9 of the “Soil, Ground Water and Sediment Standards for Use Under Part XV.1 of the Environmental Protection Act”, dated April 15, 2001, and incorporated by reference into O. Reg. 153/04 “Records of Site Condition – Part XV.1 of the EPA). In December 2016, the ministry received the results of a re-sampling of these wells, which again identified that the one well located in the vicinity of the former chlor-alkali plant exceeded the values that the ministry

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	currently applies to assess groundwater quality.
The government: *(i) is directly responsible; or* *(ii) accepts responsibility*	While the government may not be directly responsible for remediation, it accepted a degree of responsibility in the February 13, 2017 statement made by Ministers Murray and Zimmer: "we are completely committed to working with all partners to identify all potentially contaminated sites, and to creating and implementing a comprehensive remediation action plan." Additional public and private statements made by Minister Murray to Grassy Narrows First Nation and Wabaseemoong Independent Nations have reiterated this commitment. With respect to the costs of remediating the Wabigoon River, an opinion by the MOECC's Legal Services Branch on May 25, 2017 concludes that there is a moderate risk that a court would find that Ontario has a legal obligation arising from the honour of the Crown to expend funds to remediate the Wabigoon River generally, as well as the Dryden mill site, including leased areas of the Wabigoon River. A moderate risk means that, in light of good arguments on each side, the outcome is not reasonably predictable. Remediation at the Dryden mill site, if deemed required by the ministry, has the potential to be included as an additional site in this project. An opinion by the MOECC's Legal Services Branch on May 25, 2017 concludes that there is a high risk that a court would find that Ontario has a legal obligation to repay costs incurred by Domtar Inc. in respect of the remediation of the Dryden mill site and sites within the leased areas of the Wabigoon River. A high risk means that, while there are credible arguments to dismiss a challenge, the relevant court would very likely find against Ontario. This conclusion is based on the 2016 decision of the Ontario Superior Court of Justice in *Weyerhaeuser v. Ontario (AG),* which applied the 1985 Indemnity to a procedural order issued under the Environmental Protection Act to Weyerhaeuser Company Ltd. ("Weyerhaeuser") and Resolute FP Canada Inc. ("Resolute") in 2011 (the "2011 Director's Order").
It is expected that future economic benefits will be given up	During Question Period on May 2, 2017, Ministry Murray was asked why funding for the English Wabigoon River clean-up was not included in the 2017/18 budget. The minister replied that, "…the money is on its way to Grassy Narrows, as the bills come in. Mr. Speaker, the cost of this may well be far in excess of $84 million. As a matter of fact, I am guessing that this government's commitment to Grassy Narrows is going to exceed that amount of money. Many

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	other projects that were done in-year over last year...that were $150 million and under—were not explicitly stated in the budget. That didn't mean the government is less committed to it." At a meeting with the chiefs of Grassy Narrows First Nation and Wabaseemoong Independent Nations held later that day, Minister Zimmer read an excerpt of the Minister's statement above from the Hansard (attached below) and Minister Murray stated that the ministry would be preparing a Treasury Board submission for the remediation project. Ontario Hansard Issue_ L075_May 2 2
A reasonable estimate of the amount can be made	There is limited data on current environmental conditions in the Wabigoon River, outside of contaminant levels in fish. The ministry is in the preliminary stages of the contaminated sites assessment process and has yet to determine the extent of contamination in the river or whether there is an ongoing source of contamination from the mill property. The 2017 planned fieldwork will better inform the ministry on the contamination source and extent of contamination. This information will allow the ministry to better understand remediation options and next steps. However, the ministry has received and reviewed a proposal that included a cost estimate submitted by Grassy Narrows First Nation and has reviewed comparable riverine contaminated sites and their association remediation costs. **Remediation proposal submitted by Grassy Narrows First Nation, May 2016 (Rudd Report)** In May 2016, Grassy Narrows First Nation provided a cost estimate for remediation in the amount for $80.7 – 85.7M as part of a proposal by their science team to conduct additional assessment. This estimate cannot be relied upon to determine the cost of remediation because the proposal does not provide adequate detail on how the estimate was developed. In addition, the assessment approach outlined in the proposal omits a number of key steps required to determine the extent of contamination. Without sufficient knowledge of the dynamics of the river system (e.g. flow rates, sedimentation rates) and the extent of the contamination, it is not possible to determine the best course of action for remediation.

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	A consultant hired by Grassy Narrows First Nation also reviewed this proposal and stated that “the remedial designs for the different aspects of the program are conceptual in nature” and “need to be validated as being feasible for the English Wabigoon River system prior to progressing to detailed design.” Refer to the file below for a detailed assessment of this cost estimate. Assessment of GNFN Cost Estimate from R
Conclusion	
	The 2017 planned fieldwork will better inform the ministry on the contamination source and extent of contamination. Until this information is available, the ministry is not able to assess remediation options and their associated costs. As a result, a reasonable estimate of the liability cannot be made at this time.

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Canceled_ Questions.rtf

From: Virani, Shyrose (TBS) []
To: Donaldson, Mark (TBS) [Mark.Donaldson@ontario.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; 'mpicard@kpmg.ca' [mpicard@kpmg.ca]; Church, Bailey J (bchurch@kpmg.ca) [bchurch@kpmg.ca]
Subject: Canceled: Questions
Date: Thursday, January 11, 2018 15:02:35

Upon arrival, please call Shyrose Virani at 416-325-1448 to gain the entry into our building

From: Donaldson, Mark (TBS) [mailto:Mark.Donaldson@ontario.ca]
Sent: Friday, December 22, 2017 1:34 PM
To: Church, Bailey J <bchurch@kpmg.ca<mailto:bchurch@kpmg.ca>>
Cc: Picard, Michel <mpicard@kpmg.ca<mailto:mpicard@kpmg.ca>>
Subject: RE: Questions

Hi Bailey,

Hope all is well ... the calculations outlined below are consistent with what we are carrying/forecasting. On the latter question, the answer is yes, the 53.55% should be referenced as common shares.

Hope this helps. Let me know if you want to have a check-in around mid-January to discuss any outstanding items and confirm a timeframe to bring this home.

Much appreciated ... happy holidays!
Mark

Mark Donaldson, CPA, CMA
Director, Accounting Policy and Financial Reporting Office of the Provincial Controller Division, Treasury Board Secretariat
7 Queen's Park Cres, 2nd Floor
Toronto, Ontario
M7A 1Y7
(416) 325-8027

From: Church, Bailey J [mailto:bchurch@kpmg.ca]
Sent: December 19, 2017 4:16 PM
To: Donaldson, Mark (TBS)
Cc: Picard, Michel
Subject: RE: Questions

Hi Mark

Thanks very much for sharing this additional information for our H1 analysis. I just wanted to clarify the document that you provided which outlined the percentage of share ownership for the Province in H1. Based on our calculations, we estimate the Province's ownership interest at 47.3% at March 31st 2018 after distributions for the long term incentive plan, the

Power Workers Union, and potential distributions to First Nation's from the Province's holdings. We have made a number of assumptions for 2019 regarding incentive plan distributions, which would bring the ownership percentage to 42.2%. Does this match your understanding of the Province's position, or are there alternative assumptions we should reflect? The document "Institutional Share Ownership and 3Q17 Buyers/Sellers" references the top 20 institutional investors as having a 53.55% of the shares. Should this be read as 53.55% of total publically owned common shares?

[cid:image001.png@01D38967.B6CB4D10]

Many thanks

Bailey

From: Picard, Michel
Sent: Wednesday, November 29, 2017 6:23 PM
To: Church, Bailey J <bchurch@kpmg.ca<mailto:bchurch@kpmg.ca>>
Subject: FW: Questions

From: Donaldson, Mark (TBS) [mailto:Mark.Donaldson@ontario.ca]
Sent: Wednesday, November 29, 2017 5:23 PM
To: Picard, Michel <mpicard@kpmg.ca<mailto:mpicard@kpmg.ca>>
Cc: Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca<mailto:Cindy.Veinot@ontario.ca>>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca<mailto:Sarah.Hosick@ontario.ca>>
Subject: FW: Questions

Hi Michel,

Attached are several documents which should help to clarify some of the points discussed at our last meeting w.r.t. Hydro One control assessment. If there's any follow-up required, happy to assist.

Regards,
Mark

Mark Donaldson, CPA, CMA
Director, Accounting Policy and Financial Reporting Office of the Provincial Controller Division, Treasury Board Secretariat
7 Queen's Park Cres, 2nd Floor
Toronto, Ontario
M7A 1Y7

416-325-8027

From: Katona, Keley (MOF)
Sent: November 27, 2017 1:59 PM
To: Veinot, Cindy (TBS)
Cc: Nelms, Scott (MOF); Hosick, Sarah (TBS); Donaldson, Mark (TBS)
Subject: FW: Questions

Hi Cindy,

We now have answers and supporting material to the questions below.

Please let us know if you have any questions.

Thanks,
Keley

From: Veinot, Cindy (TBS)
Sent: October 13, 2017 12:33 PM
To: Nelms, Scott (MOF); Katona, Keley (MOF)
Cc: Hosick, Sarah (TBS); Donaldson, Mark (TBS)
Subject: FW: Questions

Scott and Keley - please see below for the questions from KPMG re: the control analysis they are completing for Hydro One.

Thx

From: Picard, Michel [mailto:mpicard@kpmg.ca]
Sent: October 11, 2017 3:25 PM
To: Veinot, Cindy (TBS)
Cc: Church, Bailey J
Subject: Questions

Hi Cindy,

Subsequent to our call of last Thursday, we have the following questions for you.

Questions to be asked of H1 by the Province

1. KPMG would like to obtain a listing of major Hydro One common shareholders. Could investor relations please provide a listing of the top 20 common shareholders? See attached.
2. What process is followed by investor relations to verify that no investor other than the Province of Ontario accumulates a common share position in excess of 10%? Hydro One does not track ownership levels

Questions for the Province

3. During our Thursday meeting we had discussed the question of when voting rights would be granted on common shares provided to First Nations. First Nations in Ontario will obtain up to 15 million common shares directly from the Province's existing share ownership, subject to an agreement in principle pending ratification by affected First Nations. We understand that the share purchases will be financed by loans from the Province, for which the underlying Hydro One shares will serve as collateral. We would like to clarify if the First Nations receive full voting rights on the common shares at the time of transfer, or only upon repayment of the loan from the Province.

Voting rights are immediate, and are not linked to repayment of the loan.

4. Are there any further documents which support the Province's role in establishing the mission of Hydro One prior to the IPO, beyond what is established in the Electricity Act? What do the constating documents include?

We have attached the articles of incorporation and bylaws. Torys has advised that OBCA corporations do not typically include a mission statement in these documents however in Hydro One's case, the Governance Agreement includes key provisions regarding how the company is governed and is relevant. As well, the initial board of directors (which sets strategy and continues to have the same composition today) was appointed by the Province.

Torys has also dug up some previous notes that were developed at the time of the IPO to advise on accounting/consolidation/control in case its helpful, and are happy to help if there's any follow ups on these items.

Best regards,

Michel Picard, CPA, CA

Partner, Accounting Advisory Services

KPMG LLP

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M 416 560 2569
mpicard@kpmg.ca<mailto:mpicard@kpmg.ca>
LinkedIn<https://urldefense.proofpoint.com/v2/url?u=https-3A__www.linkedin.com_in_michel-2Dpicard-2D8b3b942b-3FauthType-3DNAME-5FSEARCH-26authToken-3DoVKr-26locale-3Den-5FUS-26trk-3Dtyah-26trkInfo-3DclickedVertical-253Amynetwork-252CclickedEntityId-253A107441415-252CauthType-253ANAME-5FSEARCH-252Cidx-253A1-2D1-2D1-252CtarId-253A1478640064654-252Ctas-253Amichel-2520pi&d=DwMFAg&c=0TzQCy9lgR5hSW-bDg5HA76y7nf4lvOzvVop5GM3Y80&r=DAOe89GuHpPZrONj_IODm

w&m=w5dA2gwxJa-s_2LLO6fJAsHQI1ytX-_MZP8LjG2buOM&s=sar5sNPbm4HgAphLZc-WGpHzYmAhEA2yH3xAyYfJvkc&e=>

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Our lawyers have recommended that we provide certain disclaimer language with our messages. Rather than including them here, we're drawing your attention to the following links where the full legal wording appears.

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* Disclaimer concerning tax advice<https://home.kpmg.com/ca/en/home/misc/disclaimer-tax.html> (**Error! Hyperlink reference not valid.**>).

If you are unable to access the links above, please cut and paste the URL that follows the link into your browser.

Cindy & Kim - Call.rtf

From: Veinot, Cindy (TBS) []
To: 'kim.marshall@ieso.ca' [kim.marshall@ieso.ca]
Subject: Cindy & Kim - Call
Date: Thursday, February 08, 2018 11:55:09

Hi Kim – are you calling me? 416 325 8017

Comments on IESO paper.rtf

From: Lee Anne Probert [leeanne.probert@ca.ey.com]
To: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
Subject: Comments on IESO paper
Date: Thursday, April 20, 2017 16:38:14
Attachment 1: image001.gif

Hi Nadine,

I will be sending you comment on the IESO paper in the next few hours.

Regards,

Lee Anne

--

LeeAnne Probert | Senior Manager | Assurance Services

Ernst & Young LLP

Ernst & Young Tower, 222 Bay Street, P. O. Box 251, Toronto, ON M5K 1J7, Canada

Office: 416 943 3554 | Cell: 416 888 6997 | leeanne.probert@ca.ey.com

Fax: 416 943 3767 | EY/Comm: 1657762

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image001.pdf

Complex Accounting - pension merger - ONTC to PSPP.rtf

From: Virani, Shyrose (TBS) []
To: Donaldson, Mark (TBS) [Mark.Donaldson@ontario.ca]; Patel, Bharat (TBS) [Bharat.Patel3@ontario.ca]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Fong, Pauline (TBS) [Pauline.Fong@ontario.ca]
Subject: Complex Accounting - pension merger - ONTC to PSPP
Date: Thursday, January 04, 2018 09:37:38
Attachment 1: ONTC Transfer Summary (Dec 27 2017)-BP.DOCX
Attachment 2: ONTC Proposed Entries.xlsx

Happy New Year LeeAnne!

Please find attached revised draft note with proposed JEs on pension merger from ONTC to PSPP for your review/comments . Just let you know, on the bottom of the note we posed some questions on the timing of recognition, past service cost fiscal impact and consolidation impact.

ONTC Transfer Summary (Dec 27 2017)-BP.pdf

TBS

Office of the Provincial Controller Division

Ontario Northland Transportation Commission (ONTC) Pension Plan merger/transfer to Public Service Pension Plan (PSPP)

Issue:

Will the transfer of Ontario Northland Transportation Commission (ONTC) pension plan transfer/merger to the Public Service Pension Plan (PSPP) create a fiscal impact at the consolidated reporting level of the Province?

Background:

The Ontario Northland Transportation Commission (ONTC) is a Crown Agency of the province of Ontario. The agency is consolidated on a line-by-line basis in the Province's consolidated financial statements.

ONTC currently has a single employer defined benefit plan ("the ONTC Plan") that provides pensions to approximately 1300 retirees and 740 active members as well as former employees of Ontera and the Owen Sound Transportation Company. ONTC Plan has been facing funding pressures since 2008 economic downturn due to persistently low interest rates and the agency is now seeking designation as an employer under the Public Service Pension Plan (PSPP) along with all of its members and all new employees of the ONTC that are eligible to become members and to transfer the assets of the ONTC Plan into PSPP.

Highlights of the Propose Transfer/Merger:

- Designate all permanent employees of ONTC as mandatory members in the PSPP effective April 1, 2018 and to designate ONTC as an employer under PSPP with regard to these employees.

- PSPP to be the successor pension plan to the ONTC pension plan in accordance with Section 81 of the *Pension Benefits Act* with respect to:
  - The service of designated ONTC employees on and after April 1, 2018;
  - The credit of ONTC employees accrued prior to April 1, 2018 that is purchased through transfer of assets from the ONTC pension plan to the PSPP; and
  - The payment of pension benefits for ONTC employees who retire prior to April 1, 2018 or any ONTC Member who is entitled to an annual deferred vested pension from ONTC Plan and does not retire prior to April 1, 2018.

- Amend the PSPP to document the transfer of ONTC assets and liabilities into the PSPP with respect to the active plan members and to provide for a new part that would replicate the ONTC pension benefits payable under PSPP to transferred deferred members and retirees effective April 1, 2018.

- Once the asset transfer to PSPP is complete, ONTC would no longer be required to make Special Payments to their Pension Plan or the PSPP. Under the PSPP, ONTC would only be responsible for their current service cost contributions. PSPP unfunded liabilities are the responsibility of the Province.

- Though both PSPP and ONTC are sole sponsor defined benefit pension plans however there are differences in plan design features (see Appendix 1). The most significant benefit for ONTC joining PSPP is that active members service will be fully indexed to pension, while in ONTC it was ad-hoc and discretionary.

- Based on the most recent information provided by the ONTC's actuary, and assuming the pension plan merger occurs at the end of fiscal 2017-18, $44 million cash is required in order to make the service whole for ONTC members when they transfer into PSPP. The Ministry is requesting $44 million funds with this request for designation under the PSPP to fulfill this requirement.

- Timeline: Requesting approval of Treasury Board sometime December 2017/January 2018.

ONTC Plan Funding Status of January 1, 2017 Valuation

- Going concern deficit of $70 million:
  - Assets of $552 million; liabilities of $592 million;
  - discount rate of 4.80%;
  - 29% of liabilities for active and suspended members; 71% liabilities for pensioners/beneficiaries and deferred vested members.
- Solvency deficit: $201 million and solvency ratio of 72.2%

ONTC Accounting Valuation Results December 31, 2016

($ millions)	Actual December 31, 2016 Reported in financial statements of ONTC	Estimated December 31, 2017 including special contribution of $44M
Accrued Benefit Obligation	($553.2)	($572.4)
Plan Assets	523.1	572.4
Fund Plan Deficit	(30.1)	$-
Unamortized net actuarial losses (before curtailment)	71.6	$81.4
Accrued benefit asset	$41.5	$81.4

Commented [PB(1]: Where this amount coming from? $71.6M + ?

Relevant Accounting Principles:

PS3250 Retirement Benefits

Curtailment/Settlement

.074 A plan settlement and a partial plan settlement consist of the discharge, in whole or in part, of a government's obligation existing under a retirement benefit plan. They are irrevocable events by which a government or a plan is relieved of the primary obligation to pay all or some of the benefits promised and is relieved of significant risks in relation to the obligation or the assets used to make settlement. When a full plan settlement occurs, a future actuarial valuation is not required because the government no longer has an obligation related to that plan. Because the cost of discharging the obligation may differ from the related liability recognized previously, a gain or loss may arise.

.075 A plan curtailment is an event that reduces significantly the expected years of future service of present employees or eliminates, for a significant number of employees, the accrual of defined benefits for some or all of their future services. Plan curtailments include termination of a significant number of employees earlier than expected which may involve eliminating a government organization or program; they also include suspension of a plan so that a significant number of employees do not earn additional defined benefits for future services. When a plan curtailment occurs, future actuarial valuations are required because, even though the government's future obligations have been reduced, the government continues to have an obligation related to that plan.

.077 In some circumstances, there will be unamortized actuarial gains and losses incurred prior to the plan settlement or curtailment. The net unamortized balances related to the obligation settled or to the employees affected by the curtailment would be recognized in the period of settlement or curtailment, and is included as part of the gain or loss arising on settlement or curtailment.

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.064 Plan amendments include the inception of a new plan that grants retroactive credit for past service, an increase in benefits related to past service for active employees, or an increase in benefits for former employees already retired.

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PS2500 Principles of Consolidation

.15 Inter-governmental unit gains and losses arising on the sale or transfer of assets and liabilities remaining within the government reporting entity should be eliminated.

.16 Unless items measured at cost or amortized cost are transferred at their carrying value, elimination of unrealized inter-governmental gains and losses on the sale or transfer of assets and liabilities is required to ensure the consolidated financial statements are presented in accordance with paragraph PS 2500.05.

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PS3430 Restructuring Transactions

.20 Individual assets and liabilities received in a restructuring transaction should be recognized by the recipient if they meet the definitions of assets and liabilities and applicable recognition criteria at the restructuring date. [APRIL 2018]

.37 A transferor should derecognize individual assets and liabilities transferred in a restructuring transaction at their carrying amount at the restructuring date. [APRIL 2018]

.38 A recipient should recognize individual assets and liabilities received in a restructuring transaction at their carrying amount with the following adjustments, where applicable, at the restructuring date:

- *(a) to comply with PSA standards;*
- *(b) to align with accounting policies, methods and assumptions to be adopted by the recipient; and*
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.42 The carrying amount of the assets and liabilities received may need to be adjusted to align with the accounting policies, methods and assumptions to be adopted by the recipient to establish consistent basis for reporting subsequent to the restructuring date. For example, the carrying amount of a transferred long-term liability at the restructuring date would be adjusted to reflect a different discount rate to be used by the recipient.

Analysis:

ONTC's agency reporting level:

From ONTC's point of view a merger/transfer of ONTC plan to the PSPP, would fall under *PS3250.74/5*, a plan curtailment and or settlement. As expected future services of active ONTC members will be eliminated under the existing ONTC plan on April 1, 2018 and the agency will have no direct or contractual responsibility for the past service obligations, as both the past service obligations and plan assets will be transferred to PSPP as part of the settlement. However, the timing of the recognition of the curtailment and then settlement is unclear.

One may argue recognition of the curtailment/settlement happens when the merger/transfer decision has been approved by the Province and has been communicated to ONTC as the approval and communication commitment provides Province little discretion to avoid the transaction.

On the other hand, one may argue that recognition should be deferred until an actual merger/transfer agreement is signed. Even though the parties are in agreement in principal, the ONTC may not be willing to agree with the terms (i.e. if there is union push back), and actual terms (including timing) may change with further discussions. One may also argue that the timing of the recognition of curtailment/settlement should be further delayed until when Financial Services Commission of Ontario (FSCO) approves the merger. Mergers are reviewed and approved by FSCO and need to meet the minimum requirements covered under the Pension Benefit Act (PBA). FSCO approval may take up to a year or more. Per TBS pension policy, measures have already been taken into consideration to ensure that minimum requirements will be met under PBA and thus it would be unlikely that FSCO would not provide final approval.

The ultimate decision on how the agency will report the merger/transfer as of March 31, 2018 would be up to the agency and their auditors. However OPCD assessment is that recognition of the curtailment would likely occur once the merger agreement is signed. At that time, a curtailment would occur as the active members expected future service in the ONTC plan will cease as of April 1, 2018, and per *PS3250.077,* net unamortized losses carried by the agency would be recognized immediately.

The actual date of de-recognition of plan assets and accrued benefit obligation by ONTC may be different from the date of curtailment depending on the agreement.

Province's Consolidated Reporting Level:

PS3250 does not address how the government should account for merger/transfer of defined benefit pension plans within the reporting entity.

From a Province reporting perspective, a curtailment and settlement has not occurred as the ONTC employees continue to earn a defined benefit pension after the merger/transfer. As the merger/transfer just shifts pension risk from one part of the reporting entity (ONTC) to another part of the same reporting entity (i.e. PSPP Province itself). The associated risks with the pension benefit obligation and the plan asset still remain within the reporting entity. In accordance with PS2500, inter-

governmental unit gains and losses arising on the sale or transfer of assets and liabilities remaining within the government reporting entity should be eliminated.

As expected future services of active ONTC members will still continue under PSPP, the net unamortized losses balance in ONTC should be continued to be amortized (i.e. not recognized immediately on merger) at the consolidated level. A consolidation elimination entry would be needed to reverse the immediate recognition of net unamortized losses and add the net unamortized losses from ONTC to the PSPP amortization schedules. As the ONTC unamortized amounts are small relative to the PSPP unamortized balances, OPCD recommends to amortize the balances over the expected average remaining service life (EARSL) of the all the active members covered under PSPP which would now cover ONTC members as well.

However, the ONTC plan and PSPP are not entirely the same with respect to benefit structure. For instance active ONTC members will have the benefit of guarantee indexation under PSPP while under ONTC plan they only benefited from ad-hoc indexation. In addition, ONTC will be flowing cash payment into the ONTC plan before transfer (i.e. through transfer payment from the Province), to pay off previous unfunded liability including a portion to bring ONTC members to guarantee indexation values before assets are transferred to PSPP. OPCD has confirmed with Treasury Board Secretariat (TBS) Pension Policy that ONTC active members will be receiving a guaranteed indexation for past service. From a reporting entity point of view, one would expect that Province would incur an expense to granting retroactive increase in benefits and in this case indexation. This past service benefit improvement in substance is similar to prior year service cost of plan amendment under *PS3250.63.*

Cost of plan amendments related to prior period employee services should be accounted for in the period of the plan amendment which in this case would be when the merger agreement is signed. As ONTC itself did not carry net unamortized actuarial gains, there is no offset per *PS3250.60*.

Measurement issues:

Per *PS3450.20 & .37* both the transferor and the recipient would recognized and de-recognize the assets and liabilities on the restructuring date. Based on what has been currently proposed the restructuring date will be April 1, 2018 where by ONTC members will cease earning service in ONTC plan and be designated in the PSPP plan. Though actual transfer of assets and liabilities may not occur until after FSCO approval, the effective date would be April 1, 2018 based on the proposed.

Based on *PS3430.38*, the Province would recognized the pension assets and liabilities at their carrying amount adjusting for PSA standards, aligning with accounting policies, methods and assumptions of the Province. Pension Assets would be transferred to the Province at the fair value of the pension assets as of April 1, 2018, as ONTC would also de-recognize their assets at fair value.

Accrued benefit obligation (ABO) reported by the Province will likely be different from the ABO reported by ONTC before transfer, as the Province's management assumption discount rate for PSPP is different from the discount rate used by ONTC to value the accounting obligation. As the Province discount rate of 5.75% is higher than the ONTC discount rate of 5.25%, the PSPP will likely be

reporting a lower ABO in the transfer than what ONTC's will be de-recognizing. In addition there also maybe other differences due to differences in actuarial assumptions that would be factored in the transfer in as part of the accrued benefit obligation. These differences (including discount rate) would be treated as an experience gain/loss or change in assumptions, and should be included in the net unamortized gains of PSPP and amortized over EARSL. In addition unamortized losses from ONTC that was reversed from consolidation would also be included in the net unamortized gains of PSPP.

Conclusion:

ONTC will recognize a curtailment loss once the merger/transfer agreement is signed, though the ultimate decision on curtailment would the decision between ONTC and its auditor.

At the Province's reporting level, no curtailment has occurred and any curtailment loss would be reversed and included in the PSPP net unamortized gains.

The agency and the Province will recognize and de-recognize the transfer of plan assets/liabilities on the effective date of April 1, 2018. Plan assets/liabilities will be transferred at fair value. Any experience gains or assumption gains on the transfer of ABO would be included in PSPP net unamortized gains and amortized over EARSL.

The Province would likely have to request the actuary to break out the past service cost related to the additional benefit ONTC active members out of the experience gain/loss as this would be recognized immediately similar to a plan amendment. The fiscal impact would equal to the value of the past service cost related to the additional benefit. Based on the preliminary funding analysis from AON Hewitt (page 8 of slide) it would be approximately $21M.

Questions for Ernst & Young:

Timing of recognition:

- Should the recognition of the curtailment by ONTC be once the merger/transfer agreement ultimately signed and not when the Province approve and communicate to ONTC?
- Is there an argument that curtailment will not happen until final FSCO approval?
- Should the restructuring date be April 1, 2018 assuming that would be the final date where ONTC members will be earning benefits in ONTC plan? Or would the date be when FSCO approves the merger/transfer which may be a year later?
-

Consolidation impact:

- Is there an argument that in substance at the reporting level that a curtailment/settlement has not occurred and that losses on ONTC curtailment should be reversed and included in PSPP

unamortized gain/loss sub-ledger?

Past service cost - fiscal impact:

- Should be a past service cost expense related to any benefit improvements ONTC active members will get that is different from what they had in ONTC? If so, should the past service cost need to be recognized immediately upon transfer as there are no net amortized gains on ONTC's side? Is there an argument to offset the past service cost against the net unamortized gains in PSPP?

Journal entries:

- In the draft journals provided (i.e. excel document) which are based on preliminary information provided by ONTC actuary and funding information from PSPP actuary. Does the journal entries provided capture the substance of the transaction and necessary eliminations?

- Are there other items that need to be considered?

ONTC Proposed Entries.pdf

The following is a summary of information provided by ONTC Actuary, with $44M special contribution requirement, and assumed settlement as of March 31, 2017:

Plan Assets (PA)		**Accrued Benefit Obligation (ABO)**		**Unamortized actuarial loss**		
Opening	$521.7	Opening	$553.2	Opening	-$71.6	$40.1 Total Opening Balances
Add: Regular Employer Contributions	$11.4	Add: Current Service Cost	$9.1			
Add: Regular Employee Contributions	$2.7					
Add: Special Contributions one-time	$44.0					
Add: Interest Revenue Earned on PA	$26.9	Add: Interest cost on ABO	$28.6	Amortization for current year	$6.0	
Less: Benefit Payments	-$34.3	Less: Benefit Payments	-$34.3			
		Add: Actuarial loss on ABO	$15.8	Add: actuarial loss on ABO	-$15.8	
				Add: Recognition of actuarial loss on curtailment/Settlement)	$81.4	
MV & MRV of PA at End of period	**$572.4**	**ABO at End of Period**	**$572.4**	**Closing unamortized actuarial loss**	$0.0	

(Assume no gain/loss on assets and earned revenue equals interest revenue)

ONTC Agency

JE #1	Dr. Cash	$55.4 M	
	Cr. Grant from Province		$55.4 M
	(To record the grant provided by the Province for pay for ONTC regular employer Contribution $11.4+ special Contribution $44M)		
	The following are agency pension entries broken down by components based on information provide by actuary:		
JE#2	Dr. Pension Plan Assets	$55.4 M	
	Cr. Cash *(employer regular & special contribution)*		$55.4 M
	(To record regular + special employer contribution requirement to ONTC Pension Plan)		
JE#3	Dr. Pension Plan Assets *(interest revenue + employee Contributions)*	$29.6 M	
	Dr. Pension expense *(CSC, interest cost/revenue, amortization, less employee contr.)*	$14.1 M	
	Dr. Unamortized Actuarial loss *(Actuarial loss on ABO less amortization)*	$9.8 M	
	Cr. Accrued Benefit Obligation *(CSC, Int Cost, actuarial loss on ABO)*		$53.5 M
	(To record annual pension expense and true-up of ABO to equal PA)		
	Dr. Accrued Benefit Obligation	$34.3 M	
JE#4	Cr. Pension Plan Assets		$34.3 M
	(To record benefit payments to retirees)		
JE#5	Dr. Pension Expense - Loss due to Settlement (estimated)	$81.4 M	
	Cr. Unamortized Actuarial losses		$81.4 M
	(To recognize plan settlement as of March 31, 2017)		

Summary

JE#1-#5	Dr. Pension Assets	$50.7 M	
	Dr. Pension Expense (annual)	$14.1 M	
	Dr. Pension Expense - Loss due to settlement	$81.4 M	
	Cr. Accrued Benefit Obligation		$19.2 M
	Cr. Unamortized Actuarial Losses		$71.6 M
	Cr. Grant from Province		$55.4 M
	(Summary of JE #1-#5)		
JE#6	Dr. Accrued Benefit Obligation	$572.4 M	
	Cr. Plan Assets		$572.4 M
	(To de-recognize plan assets and ABO upon transfer - timing either at approval date, effective date or actual transfer date???)		

Province Entries

Dr. Transfer Payment Expense (MNDM)	$55.4 M	
Cr. Cash		$55.4 M
(To record the transfer payment expense to ONTC to pay for employer contributions + Special Payments)		
(Entry booked as part of MNDM)		
Dr. Pension Plan Assets PSPP (as transfer in) - assume same as transferee (A)	$572.4 M	
Dr. Pension Expense - Past Service Cost ** (B)	$21.0 M	
Cr. ABO PSPP with Province assumptions (C)		< $572.4 M
Cr. Experience Gain on Transfer (A)+(B)-(C)		???? M
(To record transfer of Plan Assets & ABO to PSPP using management assumptions for PSPP + Past Service Costs. As discount rate used by the Provicne is higher than ONTC, expectation is the ABO would be lower under PSPP)		
*** Amount is estimated based on AON Financial Analysis (PSPP) on funding basis for impact of 85% Minimum, Additional Service Buy back, 100 Accrued Benefit Guarantee Less Excess ONTC transfer Amounts.*		
(Note the following entries would be booked as part of Treasury Board Secretariat (TBS) as PSPP is included in that ministry)		

Consolidation Agency Pick-up to Province's Books in the Ministry of Ministry Northern Development and Mines (MNDM)

Dr. Pension Expense (annual)	$14.1 M	
Dr. Pension Expense - Loss due to settlement	$81.4 M	
Cr. Grant from Province - ONTC		$55.4 M
Cr. Accumulated Deficit *(Opening Accrued Benefit Asset)*		$40.1 M
(To pick up the impact of pension expense and settlement before eliminations)		
(Note assumption is that as of March 31, 2017 ABO and Plan Assets have been de-recognized)		

Consolidation Elimination Entries

Dr. Grant from Province ONTC	$55.4 M	
Cr. Transfer Payment Expense (MNDM)		$55.4 M
(To eliminate grant revenue recorded by the agency with transfer payment expense reported by the ministry MNDM)		
Dr. Unamortized Losses (ONTC)	$81.4 M	
Cr. Pension Expense (Loss due to settlement) - MNDM		$81.4 M
(To reverse impact of loss due to settlement as it is not plan settlement at the reporting entity/consolidated level)		
Dr. Unamortized Losses (TBS/Province)	$81.4 M	
Cr. Unamortized Losses (ONTC)		$81.4 M
(To transfer unamortized losses to TBS ministry were PSPP is reported - use COG elimination accounts)		

Total impact after pick-up and eliminations would be:

MNDM		
Pension Expense Annual	$14.1 M	
TBS/PSPP		
Pension Expense Past Service	$21.0 M	
Pension Assets	$572.4 M	
ABO Province Assumptions (C)	<$572.4 M	

Unamortized Gain/Loss - The net between $81.4M and the experience gain on transfer picked up by the Province. The net would be amortized using EARSL of PSPP.

Complex Accounting - pension merger - ONTC to PSPP.rtf

From: Patel, Bharat (TBS) []
To: LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]
CC: Donaldson, Mark (TBS) [Mark.Donaldson@ontario.ca]; Fong, Pauline (TBS) [Pauline.Fong@ontario.ca]; Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
Subject: Complex Accounting - pension merger - ONTC to PSPP
Date: Wednesday, January 03, 2018 18:43:36
Attachment 1: ONTC Transfer Summary (Dec 27 2017)-BP.docx
Attachment 2: ONTC Proposed Entries.xlsx

Happy New Year LeeAnne!

Please find attached revised draft note with proposed JEs on pension merger from ONTC to PSPP for your review/comments . Just let you know, on the bottom of the note we posed some questions on the timing of recognition, past service cost fiscal impact and consolidation impact.

Shyrose,

Can you check with LeeAnne and Mark's calendar and set-up teleconference in early next week to discuss these document further in detail?

Thank you,

Bharat

ONTC Transfer Summary (Dec 27 2017)-BP.pdf

TBS

Office of the Provincial Controller Division

Ontario Northland Transportation Commission (ONTC) Pension Plan merger/transfer to Public Service Pension Plan (PSPP)

Issue:

Will the transfer of Ontario Northland Transportation Commission (ONTC) pension plan transfer/merger to the Public Service Pension Plan (PSPP) create a fiscal impact at the consolidated reporting level of the Province?

Background:

The Ontario Northland Transportation Commission (ONTC) is a Crown Agency of the province of Ontario. The agency is consolidated on a line-by-line basis in the Province's consolidated financial statements.

ONTC currently has a single employer defined benefit plan ("the ONTC Plan") that provides pensions to approximately 1300 retirees and 740 active members as well as former employees of Ontera and the Owen Sound Transportation Company. ONTC Plan has been facing funding pressures since 2008 economic downturn due to persistently low interest rates and the agency is now seeking designation as an employer under the Public Service Pension Plan (PSPP) along with all of its members and all new employees of the ONTC that are eligible to become members and to transfer the assets of the ONTC Plan into PSPP.

Highlights of the Propose Transfer/Merger:

- Designate all permanent employees of ONTC as mandatory members in the PSPP effective April 1, 2018 and to designate ONTC as an employer under PSPP with regard to these employees.

- PSPP to be the successor pension plan to the ONTC pension plan in accordance with Section 81 of the *Pension Benefits Act* with respect to:
  - The service of designated ONTC employees on and after April 1, 2018;
  - The credit of ONTC employees accrued prior to April 1, 2018 that is purchased through transfer of assets from the ONTC pension plan to the PSPP; and
  - The payment of pension benefits for ONTC employees who retire prior to April 1, 2018 or any ONTC Member who is entitled to an annual deferred vested pension from ONTC Plan and does not retire prior to April 1, 2018.

- Amend the PSPP to document the transfer of ONTC assets and liabilities into the PSPP with respect to the active plan members and to provide for a new part that would replicate the ONTC pension benefits payable under PSPP to transferred deferred members and retirees effective April 1, 2018.

- Once the asset transfer to PSPP is complete, ONTC would no longer be required to make Special Payments to their Pension Plan or the PSPP. Under the PSPP, ONTC would only be responsible for their current service cost contributions. PSPP unfunded liabilities are the responsibility of the Province.

- Though both PSPP and ONTC are sole sponsor defined benefit pension plans however there are differences in plan design features (see Appendix 1). The most significant benefit for ONTC joining PSPP is that active members service will be fully indexed to pension, while in ONTC it was ad-hoc and discretionary.

- Based on the most recent information provided by the ONTC's actuary, and assuming the pension plan merger occurs at the end of fiscal 2017-18, $44 million cash is required in order to make the service whole for ONTC members when they transfer into PSPP. The Ministry is requesting $44 million funds with this request for designation under the PSPP to fulfill this requirement.

- Timeline: Requesting approval of Treasury Board sometime December 2017/January 2018.

ONTC Plan Funding Status of January 1, 2017 Valuation

- Going concern deficit of $70 million:
  - Assets of $552 million; liabilities of $592 million;
  - discount rate of 4.80%;
  - 29% of liabilities for active and suspended members; 71% liabilities for pensioners/beneficiaries and deferred vested members.
- Solvency deficit: $201 million and solvency ratio of 72.2%

ONTC Accounting Valuation Results December 31, 2016

($ millions)	Actual December 31, 2016 Reported in financial statements of ONTC	Estimated December 31, 2017 including special contribution of $44M
Accrued Benefit Obligation	($553.2)	($572.4)
Plan Assets	523.1	572.4
Fund Plan Deficit	(30.1)	$-
Unamortized net actuarial losses (before curtailment)	71.6	$81.4
Accrued benefit asset	$41.5	$81.4

Commented [PB(1]: Where this amount coming from? $71.6M + ?

Relevant Accounting Principles:

PS3250 Retirement Benefits

Curtailment/Settlement

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.42 The carrying amount of the assets and liabilities received may need to be adjusted to align with the accounting policies, methods and assumptions to be adopted by the recipient to establish consistent basis for reporting subsequent to the restructuring date. For example, the carrying amount of a transferred long-term liability at the restructuring date would be adjusted to reflect a different discount rate to be used by the recipient.

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On the other hand, one may argue that recognition should be deferred until an actual merger/transfer agreement is signed. Even though the parties are in agreement in principal, the ONTC may not be willing to agree with the terms (i.e. if there is union push back), and actual terms (including timing) may change with further discussions. One may also argue that the timing of the recognition of curtailment/settlement should be further delayed until when Financial Services Commission of Ontario (FSCO) approves the merger. Mergers are reviewed and approved by FSCO and need to meet the minimum requirements covered under the Pension Benefit Act (PBA). FSCO approval may take up to a year or more. Per TBS pension policy, measures have already been taken into consideration to ensure that minimum requirements will be met under PBA and thus it would be unlikely that FSCO would not provide final approval.

The ultimate decision on how the agency will report the merger/transfer as of March 31, 2018 would be up to the agency and their auditors. However OPCD assessment is that recognition of the curtailment would likely occur once the merger agreement is signed. At that time, a curtailment would occur as the active members expected future service in the ONTC plan will cease as of April 1, 2018, and per *PS3250.077,* net unamortized losses carried by the agency would be recognized immediately.

The actual date of de-recognition of plan assets and accrued benefit obligation by ONTC may be different from the date of curtailment depending on the agreement.

Province's Consolidated Reporting Level:

PS3250 does not address how the government should account for merger/transfer of defined benefit pension plans within the reporting entity.

From a Province reporting perspective, a curtailment and settlement has not occurred as the ONTC employees continue to earn a defined benefit pension after the merger/transfer. As the merger/transfer just shifts pension risk from one part of the reporting entity (ONTC) to another part of the same reporting entity (i.e. PSPP Province itself). The associated risks with the pension benefit obligation and the plan asset still remain within the reporting entity. In accordance with PS2500, inter-

governmental unit gains and losses arising on the sale or transfer of assets and liabilities remaining within the government reporting entity should be eliminated.

As expected future services of active ONTC members will still continue under PSPP, the net unamortized losses balance in ONTC should be continued to be amortized (i.e. not recognized immediately on merger) at the consolidated level. A consolidation elimination entry would be needed to reverse the immediate recognition of net unamortized losses and add the net unamortized losses from ONTC to the PSPP amortization schedules. As the ONTC unamortized amounts are small relative to the PSPP unamortized balances, OPCD recommends to amortize the balances over the expected average remaining service life (EARSL) of the all the active members covered under PSPP which would now cover ONTC members as well.

However, the ONTC plan and PSPP are not entirely the same with respect to benefit structure. For instance active ONTC members will have the benefit of guarantee indexation under PSPP while under ONTC plan they only benefited from ad-hoc indexation. In addition, ONTC will be flowing cash payment into the ONTC plan before transfer (i.e. through transfer payment from the Province), to pay off previous unfunded liability including a portion to bring ONTC members to guarantee indexation values before assets are transferred to PSPP. OPCD has confirmed with Treasury Board Secretariat (TBS) Pension Policy that ONTC active members will be receiving a guaranteed indexation for past service. From a reporting entity point of view, one would expect that Province would incur an expense to granting retroactive increase in benefits and in this case indexation. This past service benefit improvement in substance is similar to prior year service cost of plan amendment under *PS3250.63.*

Cost of plan amendments related to prior period employee services should be accounted for in the period of the plan amendment which in this case would be when the merger agreement is signed. As ONTC itself did not carry net unamortized actuarial gains, there is no offset per *PS3250.60*.

Measurement issues:

Per *PS3450.20 & .37* both the transferor and the recipient would recognized and de-recognize the assets and liabilities on the restructuring date. Based on what has been currently proposed the restructuring date will be April 1, 2018 where by ONTC members will cease earning service in ONTC plan and be designated in the PSPP plan. Though actual transfer of assets and liabilities may not occur until after FSCO approval, the effective date would be April 1, 2018 based on the proposed.

Based on *PS3430.38*, the Province would recognized the pension assets and liabilities at their carrying amount adjusting for PSA standards, aligning with accounting policies, methods and assumptions of the Province. Pension Assets would be transferred to the Province at the fair value of the pension assets as of April 1, 2018, as ONTC would also de-recognize their assets at fair value.

Accrued benefit obligation (ABO) reported by the Province will likely be different from the ABO reported by ONTC before transfer, as the Province's management assumption discount rate for PSPP is different from the discount rate used by ONTC to value the accounting obligation. As the Province discount rate of 5.75% is higher than the ONTC discount rate of 5.25%, the PSPP will likely be

reporting a lower ABO in the transfer than what ONTC's will be de-recognizing. In addition there also maybe other differences due to differences in actuarial assumptions that would be factored in the transfer in as part of the accrued benefit obligation. These differences (including discount rate) would be treated as an experience gain/loss or change in assumptions, and should be included in the net unamortized gains of PSPP and amortized over EARSL. In addition unamortized losses from ONTC that was reversed from consolidation would also be included in the net unamortized gains of PSPP.

Conclusion:

ONTC will recognize a curtailment loss once the merger/transfer agreement is signed, though the ultimate decision on curtailment would the decision between ONTC and its auditor.

At the Province's reporting level, no curtailment has occurred and any curtailment loss would be reversed and included in the PSPP net unamortized gains.

The agency and the Province will recognize and de-recognize the transfer of plan assets/liabilities on the effective date of April 1, 2018. Plan assets/liabilities will be transferred at fair value. Any experience gains or assumption gains on the transfer of ABO would be included in PSPP net unamortized gains and amortized over EARSL.

The Province would likely have to request the actuary to break out the past service cost related to the additional benefit ONTC active members out of the experience gain/loss as this would be recognized immediately similar to a plan amendment. The fiscal impact would equal to the value of the past service cost related to the additional benefit. Based on the preliminary funding analysis from AON Hewitt (page 8 of slide) it would be approximately $21M.

Questions for Ernst & Young:

Timing of recognition:

- Should the recognition of the curtailment by ONTC be once the merger/transfer agreement ultimately signed and not when the Province approve and communicate to ONTC?
- Is there an argument that curtailment will not happen until final FSCO approval?
- Should the restructuring date be April 1, 2018 assuming that would be the final date where ONTC members will be earning benefits in ONTC plan? Or would the date be when FSCO approves the merger/transfer which may be a year later?
-

Consolidation impact:

- Is there an argument that in substance at the reporting level that a curtailment/settlement has not occurred and that losses on ONTC curtailment should be reversed and included in PSPP

unamortized gain/loss sub-ledger?

Past service cost - fiscal impact:

- Should be a past service cost expense related to any benefit improvements ONTC active members will get that is different from what they had in ONTC? If so, should the past service cost need to be recognized immediately upon transfer as there are no net amortized gains on ONTC's side? Is there an argument to offset the past service cost against the net unamortized gains in PSPP?

Journal entries:

- In the draft journals provided (i.e. excel document) which are based on preliminary information provided by ONTC actuary and funding information from PSPP actuary. Does the journal entries provided capture the substance of the transaction and necessary eliminations?

- Are there other items that need to be considered?

ONTC Proposed Entries.pdf

The following is a summary of information provided by ONTC Actuary, with $44M special contribution requirement, and assumed settlement as of March 31, 2017:

Plan Assets (PA)		**Accrued Benefit Obligation (ABO)**		**Unamortized actuarial loss**		
Opening	$521.7	Opening	$553.2	Opening	-$71.6	$40.1 Total Opening Balances
Add: Regular Employer Contributions	$11.4	Add: Current Service Cost	$9.1			
Add: Regular Employee Contributions	$2.7					
Add: Special Contributions one-time	$44.0					
Add: Interest Revenue Earned on PA	$26.9	Add: Interest cost on ABO	$28.6	Amortization for current year	$6.0	
Less: Benefit Payments	-$34.3	Less: Benefit Payments	-$34.3			
		Add: Actuarial loss on ABO	$15.8	Add: actuarial loss on ABO	-$15.8	
				Add: Recognition of actuarial loss on curtailment/Settlement)	$81.4	
MV & MRV of PA at End of period	**$572.4**	**ABO at End of Period**	**$572.4**	**Closing unamortized actuarial loss**	$0.0	

(Assume no gain/loss on assets and earned revenue equals interest revenue)

ONTC Agency

JE #1	Dr. Cash	$55.4 M	
	Cr. Grant from Province		$55.4 M
	(To record the grant provided by the Province for pay for ONTC regular employer Contribution $11.4+ special Contribution $44M)		
	The following are agency pension entries broken down by components based on information provide by actuary:		
JE#2	Dr. Pension Plan Assets	$55.4 M	
	Cr. Cash *(employer regular & special contribution)*		$55.4 M
	(To record regular + special employer contribution requirement to ONTC Pension Plan)		
JE#3	Dr. Pension Plan Assets *(interest revenue + employee Contributions)*	$29.6 M	
	Dr. Pension expense *(CSC, interest cost/revenue, amortization, less employee contr.)*	$14.1 M	
	Dr. Unamortized Actuarial loss *(Actuarial loss on ABO less amortization)*	$9.8 M	
	Cr. Accrued Benefit Obligation *(CSC, Int Cost, actuarial loss on ABO)*		$53.5 M
	(To record annual pension expense and true-up of ABO to equal PA)		
	Dr. Accrued Benefit Obligation	$34.3 M	
JE#4	Cr. Pension Plan Assets		$34.3 M
	(To record benefit payments to retirees)		
JE#5	Dr. Pension Expense - Loss due to Settlement (estimated)	$81.4 M	
	Cr. Unamortized Actuarial losses		$81.4 M
	(To recognize plan settlement as of March 31, 2017)		

Summary

JE#1-#5	Dr. Pension Assets	$50.7 M	
	Dr. Pension Expense (annual)	$14.1 M	
	Dr. Pension Expense - Loss due to settlement	$81.4 M	
	Cr. Accrued Benefit Obligation		$19.2 M
	Cr. Unamortized Actuarial Losses		$71.6 M
	Cr. Grant from Province		$55.4 M
	(Summary of JE #1-#5)		
JE#6	Dr. Accrued Benefit Obligation	$572.4 M	
	Cr. Plan Assets		$572.4 M
	(To de-recognize plan assets and ABO upon transfer - timing either at approval date, effective date or actual transfer date???)		

Province Entries

Dr. Transfer Payment Expense (MNDM)	$55.4 M	
Cr. Cash		$55.4 M
(To record the transfer payment expense to ONTC to pay for employer contributions + Special Payments)		
(Entry booked as part of MNDM)		
Dr. Pension Plan Assets PSPP (as transfer in) - assume same as transferee (A)	$572.4 M	
Dr. Pension Expense - Past Service Cost ** (B)	$21.0 M	
Cr. ABO PSPP with Province assumptions (C)		< $572.4 M
Cr. Experience Gain on Transfer (A)+(B)-(C)		???? M
(To record transfer of Plan Assets & ABO to PSPP using management assumptions for PSPP + Past Service Costs. As discount rate used by the Provicne is higher than ONTC, expectation is the ABO would be lower under PSPP)		
*** Amount is estimated based on AON Financial Analysis (PSPP) on funding basis for impact of 85% Minimum, Additional Service Buy back, 100 Accrued Benefit Guarantee Less Excess ONTC transfer Amounts.*		
(Note the following entries would be booked as part of Treasury Board Secretariat (TBS) as PSPP is included in that ministry)		

Consolidation Agency Pick-up to Province's Books in the Ministry of Ministry Northern Development and Mines (MNDM)

Dr. Pension Expense (annual)	$14.1 M	
Dr. Pension Expense - Loss due to settlement	$81.4 M	
Cr. Grant from Province - ONTC		$55.4 M
Cr. Accumulated Deficit *(Opening Accrued Benefit Asset)*		$40.1 M
(To pick up the impact of pension expense and settlement before eliminations)		
(Note assumption is that as of March 31, 2017 ABO and Plan Assets have been de-recognized)		

Consolidation Elimination Entries

Dr. Grant from Province ONTC	$55.4 M	
Cr. Transfer Payment Expense (MNDM)		$55.4 M
(To eliminate grant revenue recorded by the agency with transfer payment expense reported by the ministry MNDM)		
Dr. Unamortized Losses (ONTC)	$81.4 M	
Cr. Pension Expense (Loss due to settlement) - MNDM		$81.4 M
(To reverse impact of loss due to settlement as it is not plan settlement at the reporting entity/consolidated level)		
Dr. Unamortized Losses (TBS/Province)	$81.4 M	
Cr. Unamortized Losses (ONTC)		$81.4 M
(To transfer unamortized losses to TBS ministry were PSPP is reported - use COG elimination accounts)		

Total impact after pick-up and eliminations would be:

MNDM		
Pension Expense Annual	$14.1 M	
TBS/PSPP		
Pension Expense Past Service	$21.0 M	
Pension Assets	$572.4 M	
ABO Province Assumptions (C)	<$572.4 M	

Unamortized Gain/Loss - The net between $81.4M and the experience gain on transfer picked up by the Province. The net would be amortized using EARSL of PSPP.

Complex Accounting Work.rtf

From: Petsche, Nadine (TBS) []
To: Ivan.R.Chittenden@ca.ey.com [Ivan.R.Chittenden@ca.ey.com]
CC: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
Subject: Complex Accounting Work
Date: Tuesday, November 29, 2016 14:42:41

Hi Ivan.

I was hoping that you or Suzie Gignac might be available for a brief chat this week. We would like to request E&Y's assistance on a couple of areas in relation to accounting policies for contaminated sites and accounting for government business enterprises.

Please let me know what time would work best for you and/or Suzie Gignac.

Kind regards,

Nadine

Confidentiality Agreement .rtf

From: Virani, Shyrose (TBS) []
To: Colley, Matthew (CA - Toronto) (mcolley@deloitte.ca) [mcolley@deloitte.ca]
CC: Bernard, Dena (TBS) [Dena.Bernard@ontario.ca]
Subject: Confidentiality Agreement
Date: Friday, September 23, 2016 10:36:46
Attachment 1: confidentiality agreement.doc

Hi Matt

Attached, please find the above form. Kindly have Kerry Danyluk and Clair Grindley fill up and send it to me asap. In the meantime, if you can please provide me with their e-mail address as soon as possible.

Thank you

Shyrose

confidentiality agreement.pdf

CONFIDENTIALITY AGREEMENT

Confidentiality Agreement

During and following the term of the Agreement between **Deloitte Inc.** (the "Vendor") and Her Majesty the Queen in right of Ontario as represented by the **Treasury Board Secretariat** and during and following the term of each Statement of Work entered into by the Vendor and pursuant to the Agreement (collectively, the "Agreements"), the undersigned agrees with the Vendor to keep confidential and secure all Confidential Information to which the undersigned may have access to in the course of the performance of services pursuant to any of the Agreements (including requests for services) or otherwise in connection with any of the Agreements (including requests for services). "Confidential Information" means all information of the Ontario Public Service and of the Client's subcontractors at any tier of subcontracting that is confidential by its nature or in the circumstances in which it is received, including all confidential information in the custody or control of the Ontario Public Service, regardless of whether it is identified as confidential or not, and whether recorded or not, and however fixed, stored, expressed or embodied, which comes into the knowledge, possession or control of the Vendor in connection with any of the Agreements. "Ontario Public Service" means the ministries and other administrative units of Her Majesty the Queen in right of Ontario ("Ontario") over which ministers of Ontario preside, and for the purposes of this Confidentiality Agreement, includes Ontario and Ontario's agencies, boards, commissions and Crown corporations, offices of an officer of the Legislative Assembly or of the Ontario Legislature and Listed Entities, and "**OPS**" has the same meaning.

The undersigned acknowledges that the Client is bound to maintain custody of or control over information, material and records, however recorded, within the meaning of the *Freedom of Information and Protection of Privacy Act* ("FIPPA"). The undersigned agrees to comply with the privacy provisions of the Agreements in the course of providing services pursuant to the Agreements.

The undersigned shall not directly or indirectly disclose, destroy, exploit or use any Confidential Information except for the purpose of performing services pursuant to the Agreements. The undersigned shall not copy any Confidential Information, in whole or in part, unless copying is essential for the performance of services pursuant to the Agreements. On each copy, the undersigned must reproduce all notices that appear on the original.

The undersigned acknowledges that the Vendor is obliged to implement and maintain measures to ensure the security and integrity of Confidential Information and to protect it against loss, alteration and destruction and against access by unauthorized persons, and to select, implement, use and maintain the most appropriate products, tools, measures and procedures to do so. The undersigned covenants and agrees to adhere to all of the measures instituted by the Vendor.

The undersigned agrees to return all Confidential Information, including all copies and portions thereof, to the Vendor or to the Client with no copy kept by the undersigned as soon as the need to possess them ends, at the request of the Client, and in any event, prior to concluding the performance of services pursuant to the applicable Agreements.

Name: _____ Signature: _____

Date: _____

Witness: _____ Signature: _____

Date: _____

Consolidation requirements under US GAAP and IFRS.rtf

From: Picard, Michel [mpicard@kpmg.ca]
To: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
Subject: Consolidation requirements under US GAAP and IFRS
Date: Thursday, March 30, 2017 16:57:46

Hi Nadine,

Please find below the consolidation requirements under US GAAP and IFRS.

1. US GAAP

US GAAP: Non VIE

Under US GAAP, it is important to consider whether Hydro One Inc. (HOI) will have a voting interest in the trust or not. If it does, key terms to note are control, majority voting interest, substantive participating rights (more of a concern) and protective rights (less of a concern).

In its most basic form, control (and thus consolidation) of an entity, including a trust, is defined as the continuing power to govern the financial and operating policies of an entity (trust). For "typical legal entities," the usual condition for a "controlling financial interest" is **ownership of a majority voting interest**, and, therefore, as a general rule, ownership by one reporting entity, directly or indirectly, of more than 50 percent of the outstanding voting shares (or trust units or trust votes) of another entity (trust) is a condition pointing toward consolidation.

The power to control may also exist with a lesser percentage of ownership, for example, by contract, agreement with other voteholders, trustees, or by court decree. In such cases, one must be careful in ensuring that various contracts, mandates, trustee agreements and other such arrangements.

It should be noted that a majority voting interest also does not constitute a "controlling financial interest" if control does not rest with the majority owner. The minority shareholder (or trustee) may have **substantive participating rights** such that the majority shareholder (or trustee) through voting interests is unable to exercise control over an investee (trust). Substantive participating rights are those that allow the minority shareholder (trustee) to effectively participate (or control) in significant financial and operating decisions expected to be made in the ordinary course of business. These rights are described as the ability to block significant decisions proposed by the shareholder (or trustee) that has a majority voting interest. If a minority shareholder holds substantive participating rights (whether granted by contract or law), the presumption of control by the majority owner is overcome (and thus, the majority owner would not have *control* over the investee for purposes of applying US GAAP).

Examples of substantive participating rights (whether granted by contract or law) include minority rights that would allow the minority shareholder to effectively participate in:
• Selecting, terminating, and setting the compensation of management responsible for implementing the investee's policies and procedures; and
• Establishing operating and capital decisions of the investee, including budgets, in the ordinary course of business.

It is important to note that the *likelihood* that a veto right will be exercised by a minority shareholder should not be considered in assessing whether a minority right is substantive. The right is determined to be a substantive participating right if the minority shareholders (or trustee) has the ability to block significant decisions proposed by the holder of the majority voting interest.

Not all rights granted to a minority shareholder are deemed to be substantive participating rights for purposes of determining whether control rests with the majority owner. So-called **protective rights** do not allow the minority shareholder to participate in significant decisions expected to be made in the ordinary course of business, and thus do not overcome the presumption of control by the majority owner. Examples of protective rights include amendments to articles of incorporation of the entity and liquidation of the entity. It will not always be clear whether rights granted to minority shareholders are protective or substantive participating rights, and judgment and consideration of the available facts and circumstances, is required to make this determination.

US GAAP: VIE

Under US GAAP, if HOI does not intend to have a voting interest in the trust, consideration under the variable interest ("VIE") model must be assessed.

Under the VIE model, a controlling financial interest requires both of the following:

a. the power to direct the activities that most significantly impact the VIE's economic performance; and,
b. the obligation to absorb losses of the VIE that could potentially be significant to the VIE or the right to receive benefits from the VIE that could potentially be significant to the VIE.

Several factors may be considered by HOI when identifying these activities, including but not limited to:

- the VIE's purpose and design;
- nature and characteristics of the entity's activities and operations;
- risk(s) that the VIE was designed to create and pass along to its variable interest holders;
- rights contained in contractual arrangements and/or the VIE's governing documents; and
- rights provided by management, servicing and/or other arrangements.

Dependent on the design of the activities of the trust, it may be determined that the trust has a limited range of activities, including those with ongoing activities limited to administrative and similar functions that do not significantly affect the trust's economic performance. In this instance, US GAAP has guidance that the activities associated with designing the trust are likely the activities that most significantly impact the entity's economic performance.

Aside from having power, HOI must also have the obligation to absorb losses or receive benefits, that could potentially be significant to a VIE, to be the primary beneficiary of the VIE. When evaluating whether HOI's variable interest obligates it to absorb losses or entitles it to receive benefits that could potentially be significant to the trust, we believe that the terms *losses of the trust* and *benefits from the trust* are not limited only to US GAAP profits or losses but qualitative losses and benefits should also be considered.

Definition of Control

Under U.S. GAAP, ASC 810-10-15-8 defines control or a controlling financial interest as "ownership of a majority voting interest" in another entity. Specifically, the Codification defines a subsidiary in ASC 810-10-20 as an "entity, including an unincorporated entity such as a partnership or trust, in which another entity, known as its parent, holds a controlling financial interest."

On the basis of this definition, under the voting interest model in ASC 810-10, a controlling financial interest is presumed to exist, and consolidation is required, when an investor owns a majority of the voting interests in a

investee. However, if the investee is a VIE and is within the scope of the VIE model in ASC 810-10, consolidation is based on which party has (1) the power to direct the activities of the VIE that most significantly affect the VIE's economic performance and (2) the obligation to absorb losses or the right to receive benefits of the VIE that could potentially be significant to the VIE.
Right to receive benefits: Fees paid to a service provider do not represent a variable interest if the three following conditions are met:

- Service provider's compensation is commensurate with the services provided;
- Arrangement includes only terms, conditions, or amounts that are customary present in arrangements for similar services negotiated on an arm's-length basis; and
- Service provider does not hold other interests in the VIE (including interests held through related parties) that individually, or in aggregate, absorb more than an insignificant amount of the VIE's variability.

- We believe there is a presumption that that if the service provider's only involvement with the entity is the fee or if the service provider holds other interest in the entity but the interest of the same class are held by unrelated parties that do not receive fees these conditions would be met. However, if the fees comprise substantially all of the entity's net income the presumption maybe overcome. If the decision maker holds other interest and no other party holds interest of the same class, further analysis is required.

2. IFRS
Under IFRS 10, Consolidation, "an investor controls an investee when the investor is exposed to, or has rights, to variable returns from its involvement with the investee*, and has the ability to affect those returns through its power over the investee*". Control requires power, exposure to variability of returns and a linkage between the two. The definition of power is based on *ability*, and therefore power does not need to be exercised. Also, where voting rights do not indicate power, power can be obtained through rights arising from other contractual arrangements or decision-making rights. As it relates to exposure, variable returns are returns that are not fixed and have the potential to vary as a result of the performance of an investee.

As discussed, the analysis of every arrangement is subject to facts and circumstances.

Michel Picard, CPA, CA

Partner, Accounting Advisory Services

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Our lawyers have recommended that we provide certain disclaimer language with our messages. Rather than including them here, we're drawing your attention to the following links where the full legal wording appears.

- **Disclaimer concerning confidential and privileged information/unintended recipient** (http://disclaimer.kpmg.ca).
- **Disclaimer concerning tax advice** (http://taxdisclaimer.kpmg.ca).

If you are unable to access the links above, please cut and paste the URL that follows the link into your browser.

Contaminated Sites Policy & Guidelines (For review).rtf

From: []
To:
Subject: Contaminated Sites Policy & Guidelines (For review)
Date:
Attachment 1: Contaminated Sites Policy & Guidelines (For review)

Subject: Contaminated Sites Policy & Guidelines (For review)
Location: teleconference 416 212 8014 passcode 1474532#

Start: Wed 02/15/2017 3:30 PM
End: Wed 02/15/2017 4:00 PM

Recurrence: (none)

Meeting Status: Meeting organizer

Organizer: Virani, Shyrose (TBS)
Required Attendees: Petsche, Nadine (TBS); suzie.r.gignac@ca.ey.com; LeeAnne.Probert@ca.ey.com

----
From: Petsche, Nadine (TBS)
Sent: February 14, 2017 12:04 PM
To: Suzie Gignac; Lee Anne Probert
Cc: Virani, Shyrose (TBS); Veinot, Cindy (TBS); Tam, Nelson (TBS)
Subject: RE: Contaminated Sites Policy & Guidelines (For review)

Thanks Suzie.

We'll be in touch to set up a time to chat tomorrow.

Take care,

Nadine

From: Suzie Gignac [mailto:suzie.r.gignac@ca.ey.com]
Sent: February 14, 2017 12:00 PM
To: Petsche, Nadine (TBS); Lee Anne Probert
Cc: Virani, Shyrose (TBS)
Subject: RE: Contaminated Sites Policy & Guidelines (For review)

Hi Nadine:

Lee Anne and I have started a high level review of the contaminated sites documents. On first read, we do not expect to have significant comments from a policy perspective. I suspect it will be tomorrow before we get through initial read of the documents though so I would suggest a call late afternoon tomorrow. I am available between 2:30-5:30 tomorrow. We will perform a more detailed analysis against the PSAS standard with a goal of providing any further comments by Feb 23.

Lee Anne will follow up with an email on the other issues we have been discussing related to the IESO. Please let me know your availability for a call tomorrow afternoon.

Thanks,

Suzie

cid:image001.gif@01D09D66.7AD0BE70

Suzanne Gignac, Partner, CPA, CA

Ernst & Young LLP / Ernst & Young s.r.l./S.E.N.C.R.L.

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Direct: 1 613 598 4376 | Fax: 1 613 232 5324 | suzie.r.gignac@ca.ey.com

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From: Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]
Sent: Tuesday, February 14, 2017 9:52 AM
To: Suzie Gignac <suzie.r.gignac@ca.ey.com>; Lee Anne Probert <leeanne.probert@ca.ey.com>
Cc: Virani, Shyrose (TBS) <Shyrose.Virani@ontario.ca>
Subject: RE: Contaminated Sites Policy & Guidelines (For review)

Suzie/Lee Anne,

The OAG will be conducting a follow up audit on our Contaminated Sites management in the coming weeks. We are looking forward to your feedback on the draft policy and guidelines in advance of recirculating them to the ministries and the OAG.

Just wondering if you would like to arrange for a call sometime today to walk through your comments? Otherwise, we'll look forward to receiving your feedback via email.

Thanks in advance.

Nadine

From: Petsche, Nadine (TBS)
Sent: February 9, 2017 6:05 AM
To: Suzie Gignac (suzie.r.gignac@ca.ey.com); LeeAnne.Probert@ca.ey.com
Cc: Virani, Shyrose (TBS)
Subject: Contaminated Sites Policy & Guidelines (For review)

Suzie/Lee Anne,

Please find attached a draft copy of OPCD's Accounting Policy and Guidelines for your review, as well as the accompanying template summarizing our request related to this item.

As you'll note from the template, the purpose of this initial request is to seek your general/high level feedback, focusing on any comments you may have based on your experience with interjurisdictional policies and guidelines on contaminated sites (including the Federal Government).

It is our plan to recirculate the draft accounting policy and guidelines with the ministries early next week, and subsequently with the AG for additional feedback.

If it is possible to receive your high level feedback by next Tuesday, it would be much appreciated. With regards to the more detailed feedback, if we could receive additional feedback by Feb. 23rd we could take it into consideration in finalizing the document for release in early March.

Please let us know if this timing will work for you.

Regards,

Nadine

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Contaminated Sites Policy & Guidelines (For review)1.pdf

From: Virani, Shyrose (TBS) []
To: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; 'suzie.r.gignac@ca.ey.com' [suzie.r.gignac@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]
Subject: Contaminated Sites Policy & Guidelines (For review)
Date: Tuesday, February 14, 2017 15:12:43

From: Petsche, Nadine (TBS)
Sent: February 14, 2017 12:04 PM
To: Suzie Gignac; Lee Anne Probert
Cc: Virani, Shyrose (TBS); Veinot, Cindy (TBS); Tam, Nelson (TBS)
Subject: RE: Contaminated Sites Policy & Guidelines (For review)

Thanks Suzie.

We'll be in touch to set up a time to chat tomorrow.

Take care,

Nadine

From: Suzie Gignac [mailto:suzie.r.gignac@ca.ey.com]
Sent: February 14, 2017 12:00 PM
To: Petsche, Nadine (TBS); Lee Anne Probert
Cc: Virani, Shyrose (TBS)
Subject: RE: Contaminated Sites Policy & Guidelines (For review)

Hi Nadine:

Lee Anne and I have started a high level review of the contaminated sites documents. On first read, we do not expect to have significant comments from a policy perspective. I suspect it will be tomorrow before we get through initial read of the documents though so I would suggest a call late afternoon tomorrow. I am available between 2:30-5:30 tomorrow. We will perform a more detailed analysis against the PSAS standard with a goal of providing any further comments by Feb 23.

Lee Anne will follow up with an email on the other issues we have been discussing related to the IESO. Please let me know your availability for a call tomorrow afternoon.

Thanks,

Suzie

cid:image001.gif@01D09D66.7AD0BE70

Suzanne Gignac, Partner, CPA, CA

Ernst & Young LLP / Ernst & Young s.r.l./S.E.N.C.R.L.

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Proudly serving Canada for over 150 years

From: Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]
Sent: Tuesday, February 14, 2017 9:52 AM
To: Suzie Gignac <suzie.r.gignac@ca.ey.com>; Lee Anne Probert <leeanne.probert@ca.ey.com>
Cc: Virani, Shyrose (TBS) <Shyrose.Virani@ontario.ca>
Subject: RE: Contaminated Sites Policy & Guidelines (For review)

Suzie/Lee Anne,

The OAG will be conducting a follow up audit on our Contaminated Sites management in the coming weeks. We are looking forward to your feedback on the draft policy and guidelines in advance of recirculating them to the ministries and the OAG.

Just wondering if you would like to arrange for a call sometime today to walk through your comments? Otherwise, we'll look forward to receiving your feedback via email.

Thanks in advance.

Nadine

From: Petsche, Nadine (TBS)
Sent: February 9, 2017 6:05 AM
To: Suzie Gignac (suzie.r.gignac@ca.ey.com); LeeAnne.Probert@ca.ey.com
Cc: Virani, Shyrose (TBS)
Subject: Contaminated Sites Policy & Guidelines (For review)

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Nadine

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Contaminated Sites Policy & Guidelines (For review).rtf

From: Petsche, Nadine (TBS) []
To: Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]
CC: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
Subject: Contaminated Sites Policy & Guidelines (For review)
Date: Thursday, February 09, 2017 07:05:01
Attachment 1: Contaminated Sites Policy & Guidelines - Feb9 to EY.docx
Attachment 2: EY Request Template for contaminated sites Feb 6.docx

---

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Regards,

Nadine

Contaminated Sites Policy & Guidelines - Feb9 to EY.pdf

Office of the Provincial Controller Division

Financial Management Policy

Environmental Contamination

DRAFT POLICY & GUIDELINES

Release Date: **Proposed**

Effective Date: April 01, 2017

Contact: Accounting Policy and Financial Reporting Branch
Office of the Provincial Controller Division (OPCD)
Office of the Treasury Board
Treasury Board Secretariat

Email: askFMG@ontario.ca
Telephone: (416) 325-8025
Online at: OPS Financial Management Gateway (FMG)

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Objective

Promote effective financial management of environmental contamination, encompassing Accounting, Business Finance and Control / Assurance requirements, with emphasis on recording and reporting.

Scope

This policy and the related guideline:

- *Is intended to provide specific details to support effective interpretation and application of PSAB accounting standards related to environmental contamination.*
- *Is not intended to address every situation but is intended to support consistency in accounting by ministries related to recognition and measurement of liabilities resulting from environmental contamination.*
- *Applies to all contaminated sites, productive and non-productive, regardless of whether a remediation plan exists.*
- *Applies to Government of Ontario.*

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General Application

This guidance deals primarily with matters of recognition and measurement of environmental contamination to support provincial financial reporting. It does not provide guidance on the assessment / determination (scientific or legal) on whether a site is “contaminated” or on policy decisions on prioritization and remediation.

This document is not stand-alone guidance and provides incremental guidance to PSAB standards applicable to contaminated sites which take precedence.

Productive Use

A resource/asset is in productive use if it meets one or all of the following criteria:

(i) It is being used to provide a service;
(ii) It is being occupied;
(iii) It is not available for sale, lease or rent

The definition above relates to the classification of a site with contamination when applying guidance from PS3260, as the standard is applicable only to sites not in productive use, and does not clarify what "productive use" encompasses.

Guidance on the treatment of liabilities on sites in productive use may be found under *Section 2 – Recognition*.

Forfeited Properties/Lands Escheated to the Crown

Contamination discovered on forfeited properties and lands escheated to the Crown will be treated as contingent liabilities and deemed unlikely, unless the government has an approved plan to remediate.

Considerations regarding forfeited properties are around the determination of the responsible party. Often forfeited properties are within a municipality and are forfeited to the province without any intention by the province to hold this property for provincial purposes and would be likely being returned to the municipality.

Given that the number of forfeited properties fluctuate based on land title searches and may be returned to the municipality, as well as lack of site assessment recognition of a liability will be deferred until the legislation on forfeited properties is released or other actions such as approving remediation activity occur.

Ministries should have a business process for the identification of contamination and/or the monitoring of known contamination on forfeited and escheated lands, since they may have a potentially significant fiscal impact in future years.

If the forfeited property is likely to result in the province making expenditures to remediate and the amount is greater than any expected recovery, it should be disclosed in the notes to the financial statements as a contingent liability of the government.

Solid Waste Landfill Sites

Liabilities for solid waste landfill sites should be booked in accordance with PS3270 – Solid Waste Landfill Closure and Post-Closure Liability.

Contamination on such sites that are no longer in productive use, or which results from an unexpected event in the course of regular operations will require an assessment of whether a contaminated sites liability needs to be recognized.

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If contamination exceeding a currently applicable environmental standard occurs on a solid waste landfill site in productive use as the result of an unexpected event (e.g. a major leachate collection system failure), an assessment of the contamination will be required to check whether it meets all PS3260 criteria.

Additionally, if the solid waste landfill site is at capacity (i.e. can no longer accept more waste), and is no longer in productive use, an assessment of the contamination will be required to check whether it meets all PS3260 criteria.

If all PS3260 criteria are met, a remedial obligation will be required to bring the site up to the current minimum standard required prior to the contamination occurring. Otherwise, a remediation liability will be booked in accordance with PS3200.

Requirements

1. Public Sector Accounting Standard (PSAS)

PS 3260 – Liability for Contaminated Sites is the primary source for guidance in the recognition and measurement of the contaminated site liability. The standard applies to fiscal years beginning on or after April 1, 2014.

Additional standards, mentioned in PS 3260, could be referenced to provide additional guidance:

- *PS 3200 – Liabilities*
- *PS 3300 – Contingent Liabilities*
- *PS 3390 – Contractual Obligations*
- *PS 3270 – Solid Waste Landfill Closure and Post-Closure Liability*
- *PS 1000 – Financial Statement Concepts*
- *PS 2130 – Measurement Uncertainty*
- *PS 2400 – Subsequent Events*
- *PS 2120 – Accounting Changes*

2. Recognition

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PS 3260.08 identifies the five components required to recognize a contaminated site liability:

- *An environmental standard exists;*
- *Contamination exceeds the environmental standard;*
- *The government: (i) is directly responsible; or (ii) accepts responsibility;*
- *It is expected that future economic benefits will be given up; and*
- *A reasonable estimate of the amount can be made.*

The liability cannot be recognized unless all the above criteria are met.

Contingent liability disclosure may be required when the above criteria are not met.

Additional guidance can be found in the guidance document.

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General Criteria

Recognition can result in recording a liability on the statement of financial position or providing disclosure in the notes to the financial statements. All types of obligations must be considered when determining if a liability is to be recognized for a contaminated site, including, but not limited to: legal, contractual, contingent and constructive obligations.

For a site where all PS3260 recognition criteria are met, a remedial obligation exists and a liability for remediation will be recognized.

For a site where all PS3260 recognition criteria are not met, the site must be evaluated as to whether it represents a contingent liability for the organization that needs to be recognized or disclosed.

A liability cannot exist based solely on a public sector entity's intent to remediate contamination. In order to establish a liability, the identified contamination must be in violation of current legislation, regulations, common law or contractual agreements.

It the government is funding a recipient to remediate contamination under a TP program, a remediation liability for the contamination is not recognized by government but the funding is accounted for under *PS 3410 – Government Transfers*.

If contamination migrates off-site from a site for which the government is responsible, the government would also recognize the remediation of the other impacted properties either as a contaminated site liability or a contingent liability based on the extent of contamination and the confirmation of responsibility. For example, if a contaminant migrates off-site but the migrated contamination does not exceed environmental standards, there would be no liability for contaminated site; however the damage caused by the migration may result in the recognition of a contingent liability.

Productive Use

On a site in productive use, contamination that exceeds an environmental standard which results from an unexpected event during the course of regular operations would be recorded as a liability.

For sites in productive use, in the absence of significant health, safety and environmental risks which would require normal activities to stop, and there is no intent to restore productive use, contamination exceeding a standard will be considered a maintenance issue, and any remedial costs will either be expensed as period costs, or capitalized as part of the related tangible capital asset.

Normally on sites in productive use, contamination would be dealt with quickly as part of regular operations. This policy supports the situation where contamination remediation occurs over the fiscal year. For example, if contamination occurs during the year, the full cost of the remediation should be accrued at year-end, even though service providers may not have completed the remediation.

Uncertain Responsibility and Contingent Liabilities

Where all recognition criteria are not met, or there is uncertainty in determining who the responsible party is, the site must be evaluated as to whether it represents a contingent liability for the organization that needs to be recognized or disclosed.

The Province is often responsible as a last resort to ensure public health, safety and protection of the environment and may take action but may pursue the responsible party causing the contamination, or whoever has a beneficial interest

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in the property. For recognition criteria, the Province will be determined responsible if:

(i) There is action taken, including approvals to remediate, or
(ii) While evaluating a site as a contingent liability, it is considered likely that the province would be found responsible, or
(iii) The responsible party is not capable of addressing the contamination (such as under bankruptcy protection).

However, responsibility will also be considered in the measurement regarding amount to recover on the provincial expenditure.

3. Measurement

- *The estimate of the liability should be based on information available at the financial statement date.*
- *All direct costs attributable to remediation activities should be included in the estimated liability.*
- *Discounting of long-term liability is permitted if the timing of the cash flow is certain otherwise the liability is based on current costs.*
- *Any potential recoveries should be netted against the liability.*
- *The estimate should be reviewed at each financial statement date*

General Criteria

Organizations which have a liability to recognize resulting from environmental contamination will report a liability based on:

i. Information available at the financial statement date,
ii. Existing environmental standards
iii. Existing remediation technologies and remediation practices
iv. Knowledge of costs for same/similar remediation activities

Information at the financial statement date would be subject to updates based on subsequent events, but does not get impacted by changes to environmental standards enacted subsequent to the financial statement date. Changes to current environmental standards would not result in a change in the measurement but disclosure may be considered.

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A best estimate results from information at the financial statement date. This information can change for specific situations which would require updating the liability estimate. Better knowledge of the extent of contamination, costs from similar work being performed, remediation technologies and remediation practices are drivers to update estimates.

Remediation Levels

The obligation to remediate a contaminated site is associated with reducing the contamination to levels that would not have adverse effects on human health or safety or on the environment, as they would be required under the applicable standard.

Remediation should be based on management's intended future use of the site, but only costs required to bring a site up to the current applicable standard for its use prior to contamination should form the liability estimate.

For example: If a site was used as a gas station, and contamination was discovered to be exceeding the current required environmental standard for gas stations, the remediation liability should be limited to comply with that standard only. Any remedial activities carried out beyond that (e.g. for use as a park) will be considered "betterments" and should either be recorded as PS3200 liabilities or capitalized as part of the related TCA.

Direct Costs

Direct costs can be attributable to activities that will impact the non-compliance to an environmental standard or an obligation to a third party – ask yourself whether this cost impacts the removal and disposal, treatment or containment of contaminants on the site. The costs to "risk manage" or monitor a site should not be recorded as a liability unless the costs are directly related to removing, treating or containing the contamination in order to prevent, minimize or mitigate adverse effects to human health and safety or the environment. Direct costs include, but are not limited to:

- Professional services such as legal, accounting, consulting, engineering and environmental studies in Phase-II of an ESA
- Staffing resources, including payroll and benefits arising from permanent and contracted/temporary staff

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- Facilities and their acquisition
- Assets otherwise considered Tangible Capital Assets, acquired for remediation activities
    - Where assets are determined to have alternative use, only the portion attributable to remediation activities will be included in the liability
    - Where the asset is determined not to have an alternative use, its full value will be included in the liability and expensed
- Machinery and equipment rental and leasing, where the lease would not otherwise result in the recognition of a Tangible Capital Asset
- Materials and small tools
- Ongoing costs where they are an integral part of remediation strategy, including but not limited to maintenance and monitoring activities
- Other costs specified to apply to the remediation present in existing legislation relating to an applicable environmental standard
- Final confirmatory sampling and final report costs
- Environmental regulations compliance costs only if they are an essential part of the remediation strategy. Upon completion of remediation, or if periodic compliance assessments are required by regulators, any future environmental regulations compliance costs will be treated as a period expense.

Natural attenuation is a remediation strategy that generally does not involve direct costs. Monitoring and maintenance costs are generally a critical part of a natural attenuation strategy and would be considered direct costs in measuring a liability.

Indirect Costs

Indirect costs as well as costs which cannot be traced to core remediation activities should be excluded from the liability measurement estimate. Initial site assessment costs, as well as those incurred to determine the presence and extent of contamination before the development of a remedial strategy, should be

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expensed as period costs. Any subsequent site assessment costs after confirmed contamination would be considered a direct cost as it supports the remediation activities and should form a part of the liability estimate only if they are essential elements of a remediation strategy.

Long-term Obligations

Long term/perpetual costs usually relate to scenarios where a contaminant cannot be removed, treated or fully contained. In these cases the costs begin to take on the characteristics of an ongoing program. In such situations, monitoring and maintenance of the contaminated site may become the remediation strategy. The most common example is in water treatment facilities to prevent the contamination of groundwater. These costs will be brought forward to a maximum of 30 years. After30 years after the liability has been settled the costs will be treated as a program costs.

These costs will be updated based on new information on the actual costs.

When long term perpetual costs relate to a site that has been returned to a condition required by a standard, the costs to monitor and maintain the site to ensure ongoing compliance should be expensed in the period incurred.

Management should review long term/perpetual costs estimates at a minimum every 5 years.

The containment of contamination within a site would be indicative of the conclusion of remediation and any monitoring and maintenance costs thereafter will be considered period expenses.

Discounting and Inflation

Liabilities will be capped at 30 years when establishing an initial liability. Due to the degree of uncertainty in cost estimations, liabilities should be estimated using the best available information based on current values, and therefore present value techniques (e.g. discounting) should not be used in estimating the value of the liability. However, a reasonable rate of inflation may be used to escalate costs in order to develop management's best estimate for the costs to be incurred.

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Changes in Estimates

The carrying amount of a liability for remediation should be reviewed at the financial statement date. Changes to the liability estimate must be supported by the receipt of new information in conjunction with management's decision to act on the information acquired.

Any revisions to the amount previously recognized should be accounted for in the period in which revisions are made through expense or prior period recovery.

Changes in liability estimates are to be adjusted on a site-by-site basis

Reduction in the liability of one site cannot be applied against the increase of a liability for another site but would be booked as a recovery in revenue.

Thresholds for Liability Updates

Increases or decreases to the historical liability, as well as for recording new site liabilities, should apply materiality thresholds on a site by site basis. Thresholds for liability updates are:

(i) $100,000 for sites with liabilities less than $1M;
(ii) $200,000 for sites liabilities greater than $1M but less than $5M;
(iii) $500,000 for sites liabilities greater than $5M

Changes to the booked liability will be made only if new information acquired results in increases/decreases to the estimates equal to or greater than the thresholds identified.

Estimating a Liability in the Absence of Environmental Site Assessments

The absence of environmental site assessments does not relieve an entity from the responsibility of estimating remediation costs for reporting purposes. In the absence of environmental site assessments, an entity should develop a cost-estimate range for reporting purposes when the characteristics and criteria of an environmental liability are present.

When a cost-estimate range is developed and no amount within the range can be considered to be better, or more likely than any other amount, the minimum amount should be accrued as a liability.

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Reporting entities should try obtaining estimates from independent service providers or industry experts after considering cost-benefits. In case the reporting entities have in-house technical and engineering expertise, they may base estimates on such expertise and supplement them with market quotes.

A liability is only estimable if there are existing practices/technologies which address the remediation of specific types of contamination. If site-specific information is not available for reliable estimation, the responsible party should compare its contaminated site to properties with similar contamination that are being remediated, and develop liability estimate ranges using that information.

Extrapolation techniques may not be used to definitively determine the extent of contamination, and should only be used as part of liability measurement. By themselves, extrapolation techniques are not sufficient to identify a contaminated site, and additional work will be required to confirm contamination on the site (see Appendix-A for an example of the use of extrapolation in the estimation of a liability).

Recoveries

The remediation liability should be reduced by expected net recoveries if they have an appropriate basis of measurement, the amount may be reasonably estimated, and future economic benefits are expected to be obtained.

Expected net recoveries means 50% or greater (more likely than not) of receiving the benefit of a recovery.

Recoveries are based on the best estimate of the inflow of financial resources restricted to the purpose of remediation activity.

The criteria for reducing a liability estimate for a recovery are as follows:

i. The item has an appropriate basis of measurement (e.g. FMV, historical cost, etc.), and a reasonable estimate can be made of the amount involved; and

ii. It is expected that such benefits will be obtained.

Note that the criteria for including a recovery against the liability for contamination is less stringent than criteria of specific standards for recognizing a standalone asset such as a TP receivable or a contingent asset. For example, for the recognition of a TP receivable, the government will need to meet eligibility

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criteria of the TP agreement; however the reduction of a liability for contaminated sites will not need to meet eligibility criteria as long as there is reasonable expectation that funding will be received to support the remediation costs. Organizations need to document what provides a reasonable expectation to factor in the recovery.

Reasonable expectations of a recovery include past precedents, negotiations in process or the assessment of a legal claim on a third party as being worth pursuing.

Sources of recoveries may include, but are not limited to: litigation, transfer payments from other governments, funding by other organizations, insurance policies, scrap revenue, etc.

Recoveries from within the government reporting entity are not to be included in valuing the liability.

Reduction of the liability account for recoveries will only occur to the extent that the recovery is received, or creates a receivable, based on the asset recognition criteria defined under para .36 of *PS1000 – Financial Statement Concepts*.

De-recognition

Until a liability is settled or otherwise extinguished, it will continue to be recognized in the Province's financial statements. When a previously recognized liability no longer represents an obligation, the amount will be written off and recorded as recovery revenue.

Costs incurred for remedial activities should draw down the liability estimate to the extent they were included in the estimate. Any remediation costs that were not included as part of the liability, including cost variances, should be expensed in-year.

Measurement Uncertainty

As is true for all estimation processes, measurement uncertainty will exist in the development of contaminated sites' liability estimates given the ambiguity in future changes in legislation, site-specific information, technology, discount rates,

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etc. Where possible, ministries reporting a contaminated sites liability should attempt to qualify the degree of measurement uncertainty in their estimate together with adequate supporting documentation.

4. Disclosure

PS3260.65 requires the following disclosures in the financial statements:

- *The nature and source of the liability;*
- *The basis for the estimate of the liability;*
- *When a net present value technique is used, the estimated total undiscounted expenditures and discount rate;*
- *The reasons for not recognizing a liability; and*
- *The estimated recoveries.*

General Requirements

The liability amount, as well as any contingent liabilities for contaminated sites should either be disclosed separately, or in aggregate with other liabilities and contingent liabilities.

To facilitate transparent and accurate reporting and disclosure, ministries should create and maintain adequate supporting documentation on:

(i) quantitative and financial information including, but not limited to, the number of sites identified as contaminated, the amount of the liability accrued, the amount of contingent/potential liabilities, and

(ii) non-financial and qualitative information including, but not limited to, the type of contamination, remedial actions plans and strategies, remediation progress.

Subsequent Events

Changes in environmental legislation subsequent to year end will not be considered a subsequent event as it relates to the reporting of the liability.

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Other information such as on the extent of contamination, assumptions in the liability estimate, etc., will be treated as any other subsequent event and should be reported to the Office of the Provincial Controller Division as soon as the new information is received.

Appendix-A

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Definitions

Contamination

Contamination is the introduction into air, soil, water or sediment of a chemical, organic or radioactive material or live organism that exceeds an environmental standard. A contaminated site is a site at which substances occur in concentrations that exceed the maximum acceptable amounts under an environmental standard. A contaminated site does not include airborne contamination or contaminants in the earth's atmosphere unless such contaminants have been introduced into soil, water bodies or sediment *[PS3260 .04]*

Environmental Standard

An environmental standard refers to any guidelines, objectives, criteria or other kinds of limits placed on the presence or discharge of a contaminant into the natural environment *[PS3260]*

Remediation

Remediation means the improvement of a contaminated site to prevent, minimize or mitigate damage to human health or the environment. Remediation involves the development and application of a planned approach that removes, destroys, contains or otherwise reduces availability of contaminants to receptors of concern *[PS3260]*

Environmental Site Assessment

Environmental Site Assessment (ESA) means any activity to determine the cause, nature or extent of a potential or existing adverse effect that satisfies any prescribed requirements or any requirements. ESA is categorized by two phases, Phase I and Phase II.

The Phase I ESA is a standard research study intended to gather sufficient information to assess the environmental condition of the property and identify actual or potential areas where hazardous substances may have been released to the environment. Activities generally include a review of available information on current site conditions and history of the property, a site inspection and interviews with personnel familiar with the site. Typically a Phase I ESA should be carried out in accordance with the current Canadian Standards Association (CSA) standard, especially if there is likelihood that a Phase II ESA may be required.

The Phase II ESA is an intrusive study where actual physical environmental samples are collected and analyzed to characterize the type, distribution and extent of hazardous substances in the environment. Typically the current CSA Phase II Environmental Site Assessment Standard (CAN/CSA-Z769-00) will be followed.

Extrapolation

Feds example:

Extrapolation can be calculated as follows.

Homogenous sites – Are primarily used when there is a one-to-one reference for sites that have typical or common characteristics and where estimates may be based on an individual site investigation taking into consideration unique site characteristics such as the historical land use, site-specific conditions, and the nature and extent of contamination. In these cases, the (1) known estimated liability for one site divided by (2) the area of known contamination at the same site x (3) the area of suspected contamination for a similar site results in (4) the estimated liability amount of the similar site.

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Example: The known remediation liability for one site is $1 million, and the area of contamination is 50 square meters. What is the estimated liability of another similar site* with an estimated 25 square meters of contamination?

$1,000,000 (1) [divided by] 50m^2 (2) [multiplied by] 25m^2 (3) = $500,000 estimated liability for similar site (4)

*Similar site–Is a site with similar historical land use and site-specific conditions, including the nature and extent of contamination, climate, and geographical location.

Large sites – If 10% of the acreage of a site has been assessed with an estimated liability of $100,000 and analysis and indicators suggest a potential degree of contamination on 60% of the entire site, the total liability for the site can be estimated at $600,000 ($100,000 [divided by] 10% [multiplied by] 60%). The extrapolation amount is $500,000 ($600,000 [minus] $100,000).

DRAFT POLICY & GUIDELINES

EY Request Template for contaminated sites Feb 6.pdf

Call up to EY under contract:
TBS-OTB-OPCD-16

Title/Description:
Comments on OPCD's draft Environmental Contamination Accounting & Reporting Policy and Guidelines

Date (initiated):
December, 2016

Required response time/date: (provide details as applicable)
Anticipated that feedback would be required within 1 week of initial sharing of draft documentation due to internally projected timelines for sharing with ministries.
Proposed 2-phased approach to policy and guidelines:

1. General/high level feedback, esp as compared to experience with interjurisdictional policies and guidelines on Contaminated Sites
2. Substantive review and feedback

In addition, OPCD will require specific analysis from EY in finalizing guidance related to application of discount rates on long-term liabilities, as well as inflation related adjustments.

Nature of request: (click all that apply)

☐ Accounting standards research / analysis

✓ Comments on memo prepared by OPC

☐ Prepare draft memo

☐ Other (please provide details)

Format of response: (click all that apply)

✓ Call / discussion

☐ Informal written response / email

✓ Comments on document(s) prepared by OPC

☐ Formal written response on EY letterhead

☐ CPA Canada s.7600 report (**note that if this is selected, this will require a separate contract, SOW and/or RFS**)

☐ Other (please provide details)

Issue / Background Information:

Building upon experience gained through the implementation of PSAB's new standard on accounting for liabilities for contaminated sites, and taking into account internal efforts related to the establishment of a governance framework for managing contaminated sites, OPCD is developing a policy and related guidelines to formalize accounting and reporting guidance for ministries.

The objective of the policy and guidance is to promote greater consistency among ministries w.r.t. measurement and reporting of contaminated sites.

OPCD has requested that E&Y review the draft documentation to provide additional advice and guidance to enhance the quality of OPCD's deliverable.

Facts & Circumstances:

See above.

Preliminary Views/Desired Outcomes (if any):

As part of this review, OPCD would benefit from Ontario's draft guidance being compared to the Federal Government's approach in order to identify any areas of significant difference or opportunities for improvement, specifically as related to measurement and reporting of contaminated sites in the Public Accounts.

Control Assessment_Affordability Fund Rev Mar 23 np.rtf

From: Petsche, Nadine (TBS) []
To: Picard, Michel (mpicard@kpmg.ca) [mpicard@kpmg.ca]
Subject: Control Assessment_Affordability Fund Rev Mar 23 np
Date: Wednesday, March 22, 2017 22:16:22
Attachment 1: Control Assessment_Affordability Fund Rev Mar 23 np.doc

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Hi Michel.

Can I ask you to review the attached analysis and conclusions. I don't want to be too 'light' in my assessment of #1, and since the analysis will be reviewed by the AG, it should be comprehensive. Any suggestions would be appreciated.

Thanks in advance.

Nadine

Control Assessment_Affordability Fund Rev Mar 23 np.pdf

BLAKES COMMENTS ADDED IN COMMENT BUBBLES (3/21/2017)

REVISED Control Assessment of Affordability Fund Trust (Rev. Mar 23, 2017) for Inclusion in the Government's Reporting Entity

ISSUE

Would the Ministry of Energy's proposed Affordability Fund Trust be assessed as controlled under Public Sector Accounting Board (PSAB) standard on the Government Reporting Entity (PS 1300) and therefore be included in the Province's consolidated financial statements?

RECOMMENDATION

The Affordability Fund Trust is not controlled by the Province based on the analysis in Appendix I. The only two control criteria assessed as indicating control, based on the draft TPA and Trust Declaration were the Province's ability to both establish or amend the mission or mandate of the organization and the establishment of borrowing or investment limits or restricting the organization's investments.
The government established the Affordability Fund to support the Ministry of Energy's rate reduction program and the Trust documents restrict the nature of investments in which the Trust can invest to maintain liquidity and stewardship over the funds, these two criteria are met.

With regards to the government's ability to appoint the governing body of the Trust, as at March 31st, the Trustee and the Advisory Committee will have been appointed, but the Province will not control either party nor will it be able to change either party unilaterally. The government will not control the selection of the Replacement Board of Trustees in accordance with the Trustee selection process.

The Trustees will have unfettered control over the assets and decisions of the Trust, despite the Province's expectation that the Trust consider the principles listed in the Principles Annex and the suggested eligibility measures listed in the Permitted Delegations Annex.

BACKGROUND

The Ministry of Energy plans to transfer $100M to a recently formed, limited purpose Trust in relation to a new Affordability Fund for the purpose of providing energy efficiency measures to electricity customers who do not qualify for existing low income conservation programs (e.g. the existing Home Assistance Program (HAP), delivered by LDCs under the Conservation First Framework) [and who have difficulty paying their electricity bills.

The Affordability Fund would be available for distributions to beneficiaries, to be identified based on recommendations from LDCs based on factors listed in the Declaration of Trust [and could include customers in frequent arrears or facing disconnection. Priority would be given to homes primarily heated by electricity.

In order to provide funding to the Trust, the Ministry of Energy plans to enter in a Transfer Payment Agreement (TPA) with the Trustee of the Trust (Computershare). Computershare will shortly thereafter be replaced by an independent Board of Trustees, to be appointed based on the advice of an independent Advisory Committee. The Ministry of Energy anticipates entering into TPA with Computershare and flowing the approved funding prior to March 31st.

The Board of Trustees is expected to be comprised of:

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- [six] residents of Ontario who have expressed that they are willing to act as members of the Board of Trustees and who, individually and collectively, satisfy the following criteria (collectively, the "Selection Factors"):

  a) each member demonstrates an understanding of the electricity sector including the electricity distribution sector;
  b) each member demonstrates an expertise in conservation and low income programs;
  c) three of the identified individuals will be representatives from separate electricity distributors, two individuals will be representatives from separate social services agencies and one individual member, who will be a non-voting member, will be an employee or representative of the Government of Ontario; and
  d) it is expected that representation by the Government of Ontario will be non-controlling.

In accordance with the Trust Declaration, The Trust will engage with Hydro One as an initial Administrative Services Agent/Implementation Agent and will have the discretion to engage with other entities as service providers to assist with administering the Trust. It is expected that the Trust would consider using administrative services agreements to clearly document services and expectations. The Trust would distribute funds to identified customers of LDCs across the province (including Hydro One) at the discretion of the Trustees, based primarily on the recommendations of the applicable LDCs.

The Declaration of Trust confers broad powers and discretion to the Trustee, to act in the best interest of the beneficiaries. The Trustees are expected to conduct themselves in good faith and give regard to guiding principles set out in the Declaration of Trust (and agreed by the Province in the TPA) in exercising their duties under the Trust Declaration and TPA in distributing funds to LDCs for the benefit of beneficiaries across the province, including Hydro One.

The Trust Declaration will be subject to further modification by the Trustee, subject to the Province's right under the TPA to consent, not to be unreasonably withheld or delayed. The input and involvement of LDCs across the province is anticipated and integral to the success of the Trust in meeting its purpose. The **Principles,** to be considered in the exercise of its discretion**,** will be set out in both the Trust Declaration and the TPA.

In addition, a **Permitted Delegation Annex** forms part of the Declaration of Trust, which refers to an expectation that the Trust would rely on participating LDCs to assist with achieving the purpose of the Trust, including an expectation to (a) appoint, employ or retain Administrative Services Agents for the purpose of discharging its duties and obligations under the Declaration; and (b) enter into, perform, enforce and amend administrative services agreements.

Without limiting the Trustee's discretion to negotiate and settle the terms and conditions of the above-mentioned administrative services agreements, the Permitted Delegation Annex also outlines certain expected components for the Trust to consider for inclusion in the administrative services agreements, recognizing that the ultimate agreements would be subject to negotiation between the Trust and individual Electricity Distributors and the acceptance and agreement of the applicable Electricity Distributor counterparty. The Annex is subject to the Trustee's overall discretion and the Trustees are not bound to use the guidance provided.

CONTROL ANALYSIS

In accordance with PSAB, "the Government Reporting Entity should comprise the organizations that are controlled by the government" (PS 1300.07). PSAB defines control as "the power to govern the financial and operating policies of another organization with expected benefits or the risk of loss to the government

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from the other organizations activities" (PS 1300.08). Benefits may be financial or non-financial, for example, the government may require the organization to cooperate in pursuing the government's public policy objectives.

PSAB's "indicators of control" are the relevant guidance in determining the degree of control for inclusion of the Affordability Fund Trust in the Government Reporting Entity (GRE). In applying this guidance, it is necessary to determine the substance of the relationship between a government and an organization in addition to its legal form. All relevant aspects and implications of the relationship would be considered in determining whether or not the government controls the organization. In addition to PS 1300, consideration is also given the Trust Guidance and One-Time Transfer Guidance developed by OPCD in conjunction with the Office of the Auditor General which are attached as Appendices.

There are a total of 11 PSAB prescribed control indicators that provide evidence of control: 4 persuasive indicators of control and 7 other control indicators. It is the preponderance of evidence that would be considered in assessing whether a government controls an organization.

The following governing documents were reviewed in support of the analysis of the Province's control over the Affordability Fund Trust:

1. Draft Trust Declaration (March 20 5:30 pm), including related schedules
2. Draft Transfer Payment Agreement (March 20 5:30 pm)
3. OPCD Trust Guidance
4. OPCD Guidance on One-Time Transfers

The government's intention not to interfere with the unfettered discretion of the Trustees in exercising their fiduciary duties is clearly communicated in the TPA and the Trust Declaration. In particular, Schedule A, Section 1.1(g) (Interpretations) of the TPA includes the following:

it is intended that the transfer of the Funds to the Recipient will be a transfer made to a trust that is not controlled by the Province (as the term "control" is used in *Government Reporting Entity* at paragraphs PS 1300.07-.24), and so if a term or condition of the Agreement is determined to conflict with the requirements applicable to the Province recording the transfers to the Recipient of Funds contemplated hereunder as an expense incurred by the Province on the date of the transfer of Funds under the Agreement otherwise in connection with activities undertaken by the Province with such a non-controlled trust, then such term or condition shall be given a meaning and shall have an effect insofar as it is possible to interpret such term or condition in a manner that eliminates such conflict while preserving the other provisions of the Agreement and furthering the Purpose.

Appendix I shows the detailed analysis of the Affordability Fund Trust based on a consideration of the of the PSAB indicators of control.

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APPENDIX I

Affordability Fund Trust
Indicators of Control Analysis
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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
Primary (more persuasive) indicators (CICA PS 1300.18):		
i. Government has the power to unilaterally appoint or remove a majority of the members of the governing body of the organization	• Original Trustee (Computershare) is the governing body of the Trust until the Replacement Board of Trustees is selected. As at March 31st, Trustee will hold funds transferred and government will not have power to remove Original Trustee. • The government will not control the Original Trustee, the Advisory Committee, or the Replacement Board of Trustees.	X
ii. Government has <u>ongoing</u> access to the assets of the organization, has the ability to direct the ongoing use of those assets, or has ongoing responsibility for losses	• The government will not have an on-going access to assets transferred to the Trust, and any future access will only be through protective clauses (termination/default for material breach). • At the Final Distribution Date, any excess funds will be distributed to a non-controlled Residual Beneficiary in accordance with clause 3.3 of the Trust Declaration. • The government will not have any exposure to losses. Trust Declaration (sec. 4.2 extracts) ***©Power to Own, Hold and Manage.*** Subject to section 4.2(d), the Trustee shall have the power to own, hold and manage the Assets in such manner as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable. ***€Power to Dispose of Assets.*** The Trustee shall have the power to sell, convey, assign, transfer, exchange and in any other manner dispose of the Assets or any part or parts thereof free and clear of any and all trusts established under this Declaration, by public or private sale, for cash or on credit, with or without advertisement, and subject to such restrictions, stipulations, agreements and reservations as the Trustee in its sole and absolute discretion may consider appropriate or advisable, and to execute and deliver and perform any agreement, deed, conveyance, transfer or other document or instrument in connection with the foregoing. ***(o)Title to Assets.*** The Trustee shall have the power to cause all or any part of the Assets to be held by or registered, in its sole and absolute discretion, in the name of any Person.	X

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
3. Government holds the majority of the voting shares or a "golden share" that confers the power to govern the financial and operating policies of the organization	"**Declaration of Trust**" means the declaration of trust made as of March [•], 2017, under which the Affordability Fund Trust was established, as such declaration of trust may be amended, restated, supplemented or otherwise modified from time to time with the consent of the Province in accordance with Section 20.2. **20.2 Declaration of Trust.** The Recipient covenants that it shall not amend, restate or terminate the Declaration of Trust without obtaining the written consent of the Province in respect of same, such consent not to be unreasonably withheld or delayed. **Trust Declaration:** **6.1Amendments** Subject to the requirements of the Transfer Payment Agreement, the Trustee shall have the power in its sole and absolute discretion from time to time without the approval of any Beneficiary or any court to amend, vary, supplement, replace or restate this Declaration in its entirety or any portion thereof; provided, however that it is expected that any amendment shall be consistent with the intent of the principles set forth in the Principles Annex and with the intended scope and effect of the permitted delegations and activities of any Implementation Agent pursuant to the Permitted Delegations Annex. Without in any way limiting the foregoing, any such amendments, variations, supplements, replacements or restatements **Principles Annex In Trust Declaration:** The Trustee shall have regard to, but shall not be specifically bound by, the following principles in applying its discretion in relation to the administration of the Trust: Schedule A of the Declaration to which it refers lists 'Indicative Eligible Measures' for consideration by the Trustees. In addition, the Permitted Delegation Annex includes non-mandatory elements for consideration by the Trustees in the Administrative Services Agreements that the Trust may choose to enter into with LDCs (without limiting the Trustee's discretion to negotiate and settle the terms and conditions of such agreements). **Governance.** The Recipient covenants that it will develop and maintain in writing until the Agreement is no longer in effect: a) decision-making mechanisms and procedures to enable the Recipient to hold, invest, manage, apply and distribute the Funds in accordance with the Declaration of Trust in furtherance of the Purpose; and b) procedures to enable the preparation and delivery of all Reports required pursuant to Article 7.0. Section 5.8, Rules and Procedures of the Trust Declaration provides further expectations which are typical of a Trust and which do not	X

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
	reflect control by the Province.	
4. Government has the unilateral power to dissolve the organization and thereby access its assets and become responsible for its obligations	Only after the Final Distribution Date or in the event of default will the government have any power or rights in relation to the remaining funds in the Trust. Specific extracts are included below which demonstrate that the province would not have unilateral power to dissolve the organization and access its assets during the normal course of the Trust's existence. With regards to the control criteria's suggestion of dissolving the organization and accessing assets, it should be noted that there are expected to be no assets at the end of the Trust's existence that could be returned back to the Province. The termination of the Trust at the end of the program and following the Final Distribution Date will be an administrative undertaking by the Trustees. The only circumstance that assets might return to the province is contingent and under protective clauses (termination/default) which are not indicative of a unilateral right available to the Province to dissolve the Trust. **<u>Trust Declaration</u>** **7.1 Duration** Subject to sections 7.2 and 7.3, the Trust will continue in full force and effect so long as there are any Assets and until all of the debts, liabilities and obligations of the Trust have been paid and satisfied in full. **7.2 Termination and Distribution of Assets** The Trustee shall terminate the Trust and wind up its affairs as soon as practicable after the Final Distribution Date. In connection with the termination of the Trust, the Trustee shall identify the Residual Beneficiaries and distribute or cause to be distributed the remaining Assets, in cash or in kind or partly in each, to the Residual Beneficiaries, in each case in accordance with section 3.3. Despite the foregoing, the Trust will only be terminated and wound up after the Trustee, in its sole and absolute discretion, determines that all debts, liabilities and obligations of the Trust have been paid or otherwise adequately provided for and satisfied and upon receipt of such releases, indemnities and discharges as the Trustee, relying on the opinion of counsel, deems necessary for the protection of the Beneficiaries and for its own protection. **7.3 Distribution of Assets on Final Distribution Date** If the Trust holds Assets on the Final Distribution Date, the Trustee shall pay or provide reserves for the payment, and otherwise shall satisfy, all debts, liabilities and obligations of the Trust and shall provide or arrange to provide such investigations, audits, releases, indemnities and discharges as the Trustee, relying on the opinion of counsel, deems necessary for the protection of the Beneficiaries and for its own protection. Thereafter, any remaining Assets shall be	X

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
	paid to the Residual Beneficiaries in accordance with section 3.3. **TPA References** **11 EVENT OF DEFAULT, CORRECTIVE ACTION AND TERMINATION FOR DEFAULT** **11.1 Events of Default.** An Event of Default will occur if: a) the Recipient fails to perform or observe any covenant in this Agreement and such failure has and continues to have a material adverse effect on the Province and remains unremedied during any Notice period applicable under section 11.2 after the earlier of (i) actual knowledge thereof by the Recipient, or (ii) receipt by the Recipient of Notice thereof from the Province; b) any representation or warranty made by the Recipient in the Agreement shall prove to have been incorrect in any material respect when made or deemed made, and, if capable of remedy, continues to be incorrect in any material respect during any Notice period applicable under section 11.2 after the earlier to occur of (i) the actual knowledge thereof by the Recipient or (ii) receipt by the Recipient of Notice thereof from the Province; c) it is determined that the Recipient has breached its Standard of Care (within the meaning given in and context of the Declaration of Trust) in discharging its material duties under the Declaration of Trust, with the result that all or a significant part of the Funds have not been or are not being applied in furtherance of the Purpose or are being applied in a manner that is directly contrary or without regard to the Purpose, and, if such breach is capable of remedy, it continues and remains unremedied during any Notice Period applicable under section 11.2 after the earlier of (i) actual knowledge thereof by the Recipient, or (ii) receipt by the Recipient of Notice thereof from the Province; d) an insolvency event shall have occurred and be continuing with respect to the Recipient. **11.2 Consequences of Events of Default and Corrective Action.** If an Event of Default occurs, the Province may, at any time, take one or more of the following actions: (a) provide the Recipient with Notice allowing the Recipient an opportunity to remedy the Event of Default during a specified Notice Period; (b) seek an order of specific performance, including an order that the Recipient pursue its available remedies against third parties; (c) require, by Notice of demand, that the Recipient	

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
	transfer to the Province (without any need for compensation, indemnity or consideration to the Recipient or any Beneficiary or other third party) any and all Assets remaining in the possession or under the control of the Recipient that can reasonably be traced or attributed to the Funds after first providing for the completion and performance by the Recipient of any unperformed contractual obligations of the Recipient undertaken in compliance with the Declaration of Trust on or prior to transfer; and (d) terminate the Agreement, including immediately, without liability, penalty or costs to the Province upon giving Notice to the Recipient. The transfer of Funds in accordance with the Agreement is made by the Province with the expressed intention and reservation that the transferred Funds shall be returned to the Province and the entitlements of the Recipient in remaining Funds shall thereby be revoked with reversion thereof to the Province in the circumstances contemplated in Section 11.2(c). **11.3Opportunity to Remedy.** If, in accordance with section 11.2, the Province provides the Recipient with an opportunity to remedy the Event of Default, the Province will provide Notice to the Recipient of: (a) the particulars of the Event of Default; and (b) the length of time within which the Recipient may cure such Event of Default without the Province pursuing any other remedy (the "Notice Period"). No right to access assets following Final Date of Distribution: **Declaration of Trust** 3.3Distributions to Residual Beneficiaries Prior to the Final Distribution Date, the Trustee shall identify the Residual Beneficiary, or if more than one the Residual Beneficiaries and their respective allocations, by consulting with and having regard to the recommendations of the Ontario Energy Board, based on those charitable organizations which provide support services for Low Income Energy Assistance Program Emergency Financial Assistance (LEAP EFA) and the Ontario Electricity Support Program (OESP) or other charities that OEB may identify as relating to the Purpose. Following the Final Distribution Date, the Trustee shall, subject to compliance with section 7.3 and completion of a final audit, distribute all remaining Assets (including capital or income) to the Residual Beneficiaries, in each case in the amounts and to the extent determined by the Trustee in its discretion hereunder (having consulted with and having had regard to the recommendations of the Ontario Energy Board as aforesaid) and to	

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
	the exclusion of the other Beneficiaries.	
5. Provide significant input into the appointment of members of the governing body of the organization by appointing a majority of those members from a list of nominees provided by others or being otherwise involved in the appointment or removal of a significant number of members	The Original Trustee will establish the Trust and will not be controlled by the Province. In accordance with the Trust Declaration and the TPA, the government will not control the Original Trustee, and will not have a controlling interest in either the Advisory Committee nor the Replacement Trustee Board. The process for Replacement of the Original Trustee by the Replacement Board of Trustees is described in section 5.7 of the Trust Declaration. Although the Original Trustee (Computershare) may have been selected by the Province, and the Advisory Committee members were listed on the Trust Declaration, neither the Original Trustee nor the Advisory Committee will be controlled by the Province. It is relevant to note that PSAB also provides the following guidance with regards to government involvement in appointing governing bodies: 20 For each indicator that applies in a particular circumstance, the degree of government influence would determine its importance as evidence of control. In weighing the evidence, it would be necessary to consider the indicators collectively as well as individually. For example, where an organization is governed by a publicly elected board, this is not necessarily, in and of itself, sufficient evidence to conclude that the government does not control the organization. Similarly, where a government appoints a majority of the members of the governing body of an organization, this is not necessarily, in and of itself, sufficient evidence that the government controls the organization	X
6. Appoint or remove the CEO or other key personnel	Right does not exist. N/A	X
7. Establish or amend the mission or mandate of the organization	Through an agreement with the Trustee (Computershare), it is the entity as settlor and as trustee which will establish the trust. Once established, the Province's Role, under section 4.4 of the TPA is limited to providing funds to the trust. For greater clarity, the Province's role under the Agreement is limited to providing Funds to the Recipient and the Province is not responsible for carrying out or overseeing the terms of the Declaration of Trust.	✓
8. Approve the business plans or budgets for the organization and require	Right does not exist. No intention or documentation demonstrating that province would manage/influence the Trust on a line by line basis. **TPA 4.4 Province's Role Limited to Providing Funds.** For	X

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
amendments, either on a net or line-by-line basis	greater clarity, the Province's role under the Agreement is limited to providing Funds to the Recipient and the Province is not responsible for carrying out or overseeing the terms of the Declaration of Trust.	
9. Establish borrowing or investment limits or restrict the organization's investments	Trust Declaration, Section 1.1 Definitions (j) "***Eligible Investments***" means (i) a deposit receipt, note, certificate or instrument issued, guaranteed or endorsed by a bank listed in Schedule I to the *Bank Act* (Canada), which provides that the principal and any interest shall be fully paid no later than one year after the day the investment was made, or (ii) a deposit account at a bank listed in Schedule I to the *Bank Act* (Canada). ***4.2*** (a) ***Power to Own, Hold and Manage.*** Subject to section 4.2(d), the Trustee shall have the power to own, hold and manage the Assets in such manner as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable. (b) ***Power to Invest in Eligible Investments.*** The Trustee shall have the power to invest the Assets only in Eligible Investments, and to change such Eligible Investments at any time and from time to time, all as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable, but always having regard to the Trustee's expectations regarding the timing of payments to be made to the Beneficiaries hereunder. If an investment of Assets in Eligible Investments would not be authorized under the applicable trust laws of Ontario, the Trustee shall nevertheless be permitted to make an investment of the Assets in such Eligible Investments. The Trustee will have no liability for the diminution in the value of any investment in Eligible Investments made hereunder. *Although some restrictions, given the need for liquidity for the funds and envisioned short term nature of the program, it is unlikely that the Trust would have contemplated investing the funds in any different types of instruments as designated in the Trust docs.*	✓
10. Restrict the revenue-generating capacity of the organization, notably the sources of revenue	There are no revenue generating restrictions in the Trust documents; however, there are references indicating that the Funds are expected to be used for not for profit purposes. It should also be noted that the nature of a Trust is not to generate revenue or make a profit, but to fulfil a fiduciary duty on behalf of the beneficiaries. No explicit restriction mentioned in the Trust Declaration or TPA related to other activities of the trust; however, expectation that funds provided by the province will not be used for profitable purposes by the LDCs.	X
11. Establish or amend the policies that the organization uses to manage, such as	The Trust Declaration and the TPA are not intended to interfere with the discretion of the Trust to establish or amend its own financial and operating policies. However, the Province does provide non-compulsory Principles which are expected to be	

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
those relating to accounting, personnel, compensation, collective bargaining or deployment of resources	considered by the Trustee in executing its administration of the Trust. In addition to the guiding Principles, the Declaration also includes a The Trust Declaration includes a Permitted Delegation Annex, which provides that the Trustee will be permitted, and is expected to seek to delegate its powers and duties to LDCs. These sections are descriptions of matters that would typically be expected in an Administrative Services Agreement (without limiting the discretion of the trustee to negotiate and settle the terms and conditions of such agreements). **Section 4.2 of the Declaration lists the Enumerated Powers of the Declaration, including:** The Trustee shall have the following specific powers and authorities: a) *Transfer Payment Agreement.* b) *Contracts and Undertakings.* c) *Power to Own, Hold and Manage.* . d) *Power to Invest in Eligible Investments.* e) *Power to Dispose of Assets.* f) *Power to Apply Assets and Proceeds to Make Distributions to Beneficiaries.* g) *Power to Delegate and to Appoint Agents, etc.* h) *Power to Operate Accounts.* i) *Power to Collect, etc.* j) *Power to Obtain Insurance*. k) *Power to Pay Trustee's Fees.* l) *Power to Pay Taxes.* m) *Power to Appoint Auditors.* n) *Form of Accounts.* o) *Title to Assets.* p) *Delegation of Discretion*. q) *Additional Powers.* None of the above noted powers are restrictive or suggest that the government is controlling the activities of the Trust. The TPA Extract includes the following reference which does not conflict the non-controlled nature of the Trust and/or are consistent with OPCD's guidance on One-Time Transfer Payments or Trust Guidance reviewed previously with the Office of the Auditor General: 4.2 The Trustee is expected to conduct its activities in a manner that complies in all material respects with the Transfer Payment Agreement, including to: i. act prudently and in furtherance of the Purpose; ii. report not less frequently than annually the results of its activities <u>for information purposes</u> to the Province in	X

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
	connection with the Program; iii. comply with the Province's request for any independent verification or audit if determined to be necessary or appropriate by the Province; iv. return Assets that have not been distributed if it is determined that the Trustee has breached its Standard of Care in discharging its material duties under the Declaration, and has not cured such material breach despite having been given a reasonable opportunity by the Province to do so in light of the circumstances of such material breach, with the result that all or a significant part of the Assets have not been or are not being applied and distributed in furtherance of the Purpose or are being applied and distributed in a manner that is directly contrary or without regard to the Purpose. **5.0RECIPIENT'S ACQUISITION OF GOODS OR SERVICES, AND DISPOSAL OF ASSETS (TPA)** **5.2Acquisition.** If the Recipient acquires goods, services, or both with or by applying the proceeds of the Funds, it is expected to do so through a process that promotes the best value for money and to take reasonable steps to ensure that its Administrative Services Agents and Implementation Agents also follow a process that promotes the best value for money when acquiring goods and services with or by applying the proceeds of the Funds. **Both the TPA and the Trust Declaration include a PRINCIPLES ANNEX** The Trustee is expected to have regard to the Principles, but shall not be specifically bound by the principles in applying its discretion in relation to the administration of the Trust.	

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Appendix II

ACCOUNTING CONSIDERATIONS FOR GOVERNMENT-FUNDED TRUSTS

Purpose:

The purpose of this guidance is to explore accounting-related considerations related to government-funded trusts which are established by the government to fund a specific purpose or activity. This guidance deals specifically with the difference between controlled and non-controlled trusts, the introduction of accountability provisions which can now be reflected in trust agreements, and key timing considerations for trusts contemplated towards year-end. It is important that these factors be taken into account when establishing a trust, in order to achieve the intended fiscal impact and appropriate accountability over the use of public funds.

Introduction:

Trusts are usually established by way of trust declaration or trust agreement, and are one of several means by which the government can direct funding to support key policy initiatives. Simply stated, trustees hold title to property for the benefit of, and stand in a fiduciary relationship to the beneficiaries. Trustees are accountable to third parties (beneficiaries) for the use and disposition of trust assets and for the funds derived from those trust activities. The trust itself is not a separate legal entity. The trustees carry out the activities of the trust in the name of the trustees.

Generally, direct year-end transfers are the preferred alternative over trusts where the province wants to retain ultimate decision-making authority regarding amounts to be transferred to recipients. Direct transfers are more appropriate where the identity of eligible transfer payment recipients is known and the amounts to be transferred to each recipient can be or has been determined.

Year-end transfers to a trust might be considered where the province desires to delegate to third parties ultimate decision-making authority regarding allocation of amounts amongst eligible beneficiaries.

A trust must be valid for legal purposes in order to be recognized for accounting purposes. Key requirements for a trust to be valid include: an intention to create a trust (‘certainty of intention’), certainty of subject-matter of the trust (“certainty of subject matter”) and the objects of the trust must be certain (‘certainty of objects”). There are generally two different types of trust, a trust in which the objects are the “beneficiaries” and trust in which the objects are a “purpose” (e.g. for charitable purposes). Where a trust is under serious consideration, it is imperative that ministries seek legal advice to ensure that the contemplated trust will be valid.

Trustees are obligated to follow the terms of the trust declaration or trust agreement which will usually detail the powers and duties of the trustees including the number of trustees and how decisions will be made by the trustees.

Controlled versus Non-Controlled Government-Funded Trusts

From an accounting perspective, it is important to distinguish whether the design and governance of a particular trust results in the trust being controlled by the Province for accounting purposes. Control stems from the nature of the relationship between the government and the trust. Financial and operating policies are principles that determine how an organization conducts its activities. The ability to govern these policies is an important element of government control.

The means by which a trust is established, the government’s representation among the trustees, the government’s involvement in the trust’s governance processes and ability to impact trustee discretion in decision-making are but some of the factors to be considered in assessing whether a trust is ‘controlled’ or ‘not controlled’ by the government.

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In establishing a trust, it is important to achieve the intended relationship between the province and the trust in order to achieve the intended fiscal impact.

Non-Controlled Trusts:

Where trusts are not controlled by the Province, they are excluded from the government reporting entity. For non-controlled trusts, the following accounting would apply to trust funding:

- Where funds provided to the "trust" are unconditional, the Province would record a transfer payment expense for any transfers approved in the current period (and flowed by finalization of public accounts).

- Where funds provided to the "trust" are conditional (i.e. upon the trust completing some specific task or result), the Province would initially record funding to the trust as a prepaid expense until the conditions are met at which time the Province would record a transfer payment expense, with the corresponding credit to prepaid expense. This may occur over a number of fiscal years.

In determining whether a trust is controlled, there are a variety of ways that a government might be perceived to be governing the financial and operating policies of a trust. These include:
- Eliminating or significantly limiting the ability of the trustees to make future decisions
- Directing the financial and operating policies of the trust
- Overruling, modifying or vetoing the financial and operating policies established by the trust.

Specific factors that should be considered in establishing a non-controlled trust include:
- Government representation in the trustees (should be in a minority position), and non-government trustees should be nominated by non-government sources
- Government influence over day-to-day trust governance and trustee discretion to make decisions (e.g. selection of eligibility criteria, selection of recipients).
- degree of influence over how funds are disbursed (i.e. the Declaration of Trust can provide general guidelines but not be overly prescriptive)
- the government's power to unilaterally appoint or remove the majority of trustees
- the government's on-going access to the trust's assets, or right to direct decisions regarding the flow of those assets to specific beneficiaries
- the government's unilateral power to dissolve the trust, except under specified circumstances as stipulated by the trust agreement (i.e. corrective action)
- the government's ability to establish or amend the policies used by the trust to manage accounting, personnel, deployment of resources, etc.

In some cases, it may be advantageous for ministries to provide administrative support to trusts. In these cases it is important that the extent of such support is not so pervasive as to influence or direct the day-to-day financial or operating policies of the trust, otherwise the trust will be deemed controlled and will be subject to consolidation in the government reporting entity.

Controlled Trusts:

If the Province controls the trust (for example, through its power to appoint a majority of the trustees on the board of trustees), the Province would be deemed to have control of the trust, resulting in the trust being accounted for in the same manner as other organizations controlled by the province (i.e. on a consolidated basis). As a result, the Province's contribution to the trust would not be expensed when it is transferred, but rather over time as the funds are disbursed to trust beneficiaries.

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Accountability Related Considerations:

The Auditor General has confirmed that the new accountability provisions developed for one-time transfers can also be applied to trusts without impacting the expense treatment of any transfers to non-controlled trusts.

These new accountability provisions will enable the government and the Legislature to:

- obtain assurance that a trust is spending public funds prudently and for the purposes intended and to take corrective action if it is not;
- ensure ministerial accountability to the Legislative Assembly for the trust's activities; and
- ensure that the province is able to take corrective action where warranted and as stipulated under terms of the trust agreement.

It should also be noted that the Auditor General's Act now allows the Province's Legislative Auditor to conduct special audits of any person or organization receiving transfers from the government, including trusts.

To enhance accountability controls over government transfers to non-controlled trusts, Ministries can consider incorporating some or all of the following accountability provisions as part of their trust agreement/declaration without impacting the accounting treatment of the trust.

The inclusion of any of these provisions should not result in a trust being assessed as 'controlled'. Note that the key determinant in identifying appropriate provisions for any individual trust is a ministry's assessment of the **risk** associated with a particular trust, as per the Transfer Payment Directive.

1. **Description of intended use of trust funds**;
    - specific purpose(s) for which the funds are to be used;
    - description of intended recipients and related eligibility criteria*; and,
    - the nature of eligible expenditures relevant to the transfers.

    *Note: avoid *overly prescriptive* eligibility criteria which would effectively eliminate or significantly limit the trustees' discretion to make funding decisions.

2. **Requirement for information**
    - Information to be provided by the trust at a future date (e.g. requirement for trustees to advise the government of trustee-developed performance criteria, and provide annual assessments against those criteria)

3. **Report-back requirement for Public Accountability**
    - information to be provided by the trust at a future date with respect to the stewardship and payment of transfer funds (e.g. audited financial statements, audited list of recipients and amounts funded).

4. **Right to independent verification/audit**
    - The Province reserves the right to audit any transfer payment recipients. The trust agreement should make reference to this fact.

5. **Right to take corrective action**
    - Where stipulated under the trust agreement, the Province reserves the right to re-direct unused funds where results of a trust assessment (where required by the trust agreement) indicate original purpose of the trust is not being achieved, or if there remain unused funds at the end of the trust term.
    - Province may also reserve the right to extend the term of the trust agreement, where funds remain at the end of the trust period.

To qualify for in-year expense treatment, the non-controlled trusts must satisfy the following:

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- the decision to establish the trust must have been approved by Treasury Board/Management Board of Cabinet and ratified by Cabinet by March 31st;
- the ministry providing the transfer must have approved appropriations and spending authority by March 31st;
- Trustees must have been identified and signed the trust declaration or agreement to establish a valid trust by March 31st ;
- the trust must be set up and ready to receive funds, and a nominal amount transferred to the trust by March 31s;t ; and,
- the government should have communicated publicly (e.g. in the Budget document) the pending or final establishment of the trust.

In addition, all remaining funds beyond those initially transferred at March 31st should be transferred to the trust by June 30th.

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Trusts
Questions and Answers on Trust Guidance

Question: *Where a trust is announced in the Budget document, must the trust be established by March 31st, or could such a trust be established shortly thereafter without impacting the expensing of transfers to the trust in 2007-08?*

Answer: *A trust would have to be established prior to the end of a fiscal period in order to satisfy the recognition criteria for government transfers. If the intended recipient for a government transfer does not exist at March 31st, the province cannot record a payable owing to it under existing accounting standards.*

Question*: Does the transfer of funds to a non-controlled trust need to occur by March 31st or before the date of Public Accounts finalization?*

Answer: *Consistent with the new requirements for one-time transfers, as long as the trust is established by March 31st, the transfer is authorized and a reasonable estimate of the amount can be made, cash payments can be made after year-end.*

Question: *Can beneficiaries of a non-controlled trust include consolidated entities provided that the ultimate selection of recipients is at the discretion of the Trustees?*

Answer: *Any amounts provided to a trust which are in turn be provided to an organization inside the government reporting entity should not be expensed at the time of the transfer to the trust. Any amount that is flowed to a trust with the intention of subsequently flowing the funds to a consolidated entity should not be recorded as an expense to the government.*

Question: *Can a Ministry provide administrative support to a trust without compromising the non-controlled status of the trust?*

Answer: *The government can provide administrative support as long as the extent of government administrative support is not so pervasive so that the government is in substance establishing and managing the trust's policies in the areas of accounting, personnel, compensation, collective bargaining or deployment of resources. Where such administrative support is assessed as pervasive, it could impair the trust's non-controlled trust and the trust will be consolidated onto the province's financial statements.*

Can the following clauses appear in a trust agreement for a non-controlled trust to ensure adequate accountability over public funds without impacting the expense treatment of such trusts?

Question*: Specific description of purpose of the trust (possibly including nominal allocation among various objectives)*
Answer: Yes.

Question: *Can the trust agreement include a specific description of the intended groups of beneficiaries and detailed eligibility criteria.*

Answer: *Specificity should be applied cautiously, so as not to limit the discretion of the trustees in their subsequent grant making processes. For the trust to be considered 'not controlled' it should not be seen as 'establishing the trust's fundamental purpose and eliminating or significantly limiting the ability of the trust to make future decisions by predetermining the financial and operating policies of the trust.*

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Question: *Can trustees stipulate that funding is to be provided to beneficiaries on a cost-sharing basis?*
Answer: *Yes.*

Question: *Can the trust agreement include a requirement for a trust to report back to the province on trustee-established performance criteria and results, audit of financial statements, audited recipients and amounts, confirmation that trustees communicated to beneficiaries the intended purpose of the funding, etc.*
Answer: *Yes.*

Question*: Requirement for Trust to publicly post communications on existence, availability of funds, eligibility criteria, recipients and amounts granted to each recipient.*
Answer: *Yes*

Question: *Inclusion of a 'suggested' drawdown schedule over a period of years, with discretion left to Trustees as to actual results.*
Answer: *The inclusion of a drawdown schedule is not suggested for one-time, up-front transfers.*

Question: *Trust agreement can suggest accountability provisions which might be attached by Trustees to beneficiary payments (e.g. specific purpose of funding, requirement for report-back, right to audit, corrective actions).*
Answer: *Yes*

Question: *Trust agreement to reserve the province's right to re-direct any unspent funds to specified parties (e.g. non-consolidated entities or another non-controlled trust) at the end of the trust term, or alternatively to extend the term of the trust where unspent funds remain.*
Answer: *Yes*

Question*: Can the trust agreement include the requirement for evaluations of the trust at certain times (e.g. years 3, 7, 10 of the trust agreement), with the right for the government to decide either to terminate the trust (corrective action) based on the results of the assessment, or extend the trust beyond the initial term as per the agreement.*
Answer: *Yes.*

Question: *Trust agreement can require Trustees to request as part of the funding process that beneficiaries acknowledge receipt of government funding in their public communications on specific projects.*
Answer: *Yes.*

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Appendix III

ACCOUNTING TREATMENT FOR ONE-TIME TRANSFERS WITH ENHANCED ACCOUNTABILITY PROVISIONS

Purpose:

The purpose of this guidance is to identify the nature of the accountability provisions which may be associated with one-time transfer payments that qualify for immediate expense treatment in the current period.

Definition of One-time transfers:

One-time transfers are defined as lump-sum operating or capital transfers that

- are not advancing currently planned future transfer payments under an existing on-going program, or
- are not identified as being intended to be spent in specified future periods or over a specified period of time.

Background:

Transfer payments are a means by which the government works with third parties to deliver public services. Transfer payment recipients must be held responsible by the government to deliver the provincially-funded services and be accountable for the funds they receive. Consistent with the *Transfer Payment Accountability Directive, August, 2007*, a risk-based approach is to be followed in designing the appropriate accountability and reporting mechanisms for specific funding agreements.

The current *PSAB Handbook Section 3410, Government Transfers requires that a government transfer should be recognized by a transferring government as an expense in the period the transfer is authorized and all eligibility criteria have been met by the recipient.*

To recognize a liability and expense as at year-end:

- the government must create a valid expectation of the recipient by year-end, leaving the government little or no discretion to avoid but to settle its obligation;
- no significant, contingent actions should be outstanding which if unfulfilled by year end might cause the transfer not to occur.

It is understood that the intention of negotiating a transfer payment agreement following the government's commitment to the recipient is to work out the administrative details of the arrangement, not to change any key elements of the government's commitment. As such, any correspondence which indicates that funds will not be flowed until a TPA is signed should make clear that the nature of additional details to be negotiated is logistical and administrative in nature (bank account info, reporting requirements, etc.)

The government should not suggest or direct the recipients to use the funding for future periods.

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To enhance accountability controls over one-time transfers accountability provisions one through five below are required for one-time transfers.

1. **Description of intended use of one-time transfer funds**;
   - specific purpose(s) for which the funds are to be used; and,
   - the nature of eligible expenditures relevant to the transfers.

2. **Report-back requirement for Public Accountability**
   - Periodic reporting on the use of transfer funds, service deliverables, outputs or outcomes achieved.

3. **Right to independent verification/audit**
   - at the discretion of the Province to verify/audit information submitted by the recipient is complete and accurate, and that funds were used for purposes intended.

4. **Right to recover funds (corrective action)**
   - If the funds were not used, or will not be used, for the intended purpose(s), specified services were not delivered, or intended outputs were not achieved, the Province has the right at a future date to recover funds transferred.

5. **Requirement for information** (*this item optional*)
   - information to be provided by the recipient at a future date with respect to the use of transfer funds, service deliverables, outputs or outcomes achieved.

To qualify for in-year expense treatment, the transfers must satisfy the following:

- be approved by Treasury Board / Management Board of Cabinet and then ratified by Cabinet by March 31st;
- the ministry providing the transfer must have approved appropriations and spending authority by March 31st;
- the recipients must be eligible to receive the grant by March 31st (i.e. eligibility criteria have been met prior to March 31st), and the intent to make the transfer payment must be communicated to the recipients by March 31st;
- In addition, funding details including accountability provisions must be communicated to the recipients, and the transfer payments must be made to the recipients prior to the finalization of the Public Accounts (currently June 30th);
- Where funds are flowed to recipients by March 31st, all eligibility criteria are assumed met for accounting purposes[1], and all amounts flowed are recorded as an expense, even where conditions might exist which remain unmet at March 31st.

[1] PS 3410, Government Transfers, states that "no matter how a transfer term is identified in legislation, regulations, by-laws or a transfer agreement (i.e., as an eligibility criterion or a stipulation), the crucial characteristic that distinguishes the substance of these two types of transfer terms is when they are required to be or are met by a recipient. If a term is required to be and is met before the transfer is provided, it is an eligibility criterion for the purposes of this Section. If a transfer term is met after the transfer is provided, it is a stipulation for the purposes of this Section".

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Control Assessment_Affordability Fund Preliminary Mar 19 pm.rtf

From: Petsche, Nadine (TBS) []
To: Picard, Michel (mpicard@kpmg.ca) [mpicard@kpmg.ca]; samir chhelavda (Samir.Chhelavda@HydroOne.com) [Samir.Chhelavda@HydroOne.com]
Subject: Control Assessment_Affordability Fund Preliminary Mar 19 pm
Date: Sunday, March 19, 2017 21:23:56
Attachment 1: Control Assessment_Affordability Fund Preliminary Mar 19 pm.doc
Attachment 2: TOR_2024-#12887993-v15-Affordability_Fund_Trust__Declaration_of_Trust_-_Blakes_Comments_(March_14__2017)np.docx
Attachment 3: TOR_2024-#12888010-v9-TPA_Draft_Afund__-_Blakes_Comments_(March_14__2017)_np.docx

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Michel/Samir,

Please find attached a 'preliminary' control assessment and marked up copies of the Trust Declaration and TPA (reflecting additional comments for Blakes' consideration).

I have also forwarded these docs to the broader team and they have been advised that you have received calendar invites to tomorrow morning's call.

The hope is that Blakes will work to resolve some of the flagged items as early as possible tomorrow. Stephen and I may be having separate discussions to work through the comments/edits. It would be great to know that you might also be available to be party to those discussions tomorrow, if required.

Thanks again for your help and support on this file.

Nadine

Control Assessment_Affordability Fund Preliminary Mar 19 pm.pdf

Preliminary Control Assessment of Affordability Fund Trust (Mar 19, 2017) for Inclusion in the Government's Reporting Entity

ISSUE

Would the Ministry of Energy's proposed Affordability Fund Trust be assessed as controlled under Public Sector Accounting Board (PSAB) standard on the Government Reporting Entity (PS 1300) and therefore be included in the Province's consolidated financial statements?

RECOMMENDATION (Preliminary)

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Preliminary results would indicate that while there are several elements of the draft Trust Declaration and Transfer Payment Agreement which as currently worded, would be assessed as reflecting provincial control, the overall preponderance of evidence may be assessed as the Province not controlling the Trust.

Despite the results of the analysis as the Province not having overall control of the Trust for accounting purposes, the Auditor General may still assess the Trust as controlled as at March 31st based on the provisions in Schedule C of the Transfer Payment Directive which restricts the Trust from making any payments to the beneficiaries until the listed activities (original trustee replaced, LDCs engaged, insurance in place,etc.) are completed.

A number of suggested edits which may lessen the accounting and audit risk associated with control assessment criteria #3 and #11 have been inserted in the draft TPA and Trust Declaration for consideration.

It should also be noted that the Trust Guidance attached as an Appendix to this analysis was originally discussed and agreed to with the Office of the Auditor General in 2008. Although the guidance has not been recently re-confirmed between OPCD and the OAG, the principles reflected therein with regards to accountability provisions are consistent with those recently discussed and confirmed with regards to one-time transfer payments.

BACKGROUND

The Ministry of Energy plans to transfer $100M to a Trust in relation to a new Affordability Fund for the purpose of providing energy efficiency measures to electricity customers who do not qualify for existing low income conservation programs and who have difficulty paying their electricity bills.

The Affordability Fund would be available to LDCs only and would target those electricity customers who do not qualify for low-income conservation programs (e.g. the existing Home Assistance Program (HAP), delivered by LDCs under the Conservation First Framework) and who have difficulty paying their electricity bills.

Eligible customers would be identified by LDCs in accordance with criteria established by the Trustees and could include customers in frequent arrears or facing disconnection. Priority would be given to homes primarily heated by electricity.

In order to establish the Fund, the Ministry of Energy plans to enter in a Trust Declaration and a Transfer Payment Agreement (TPA) with a non-controlled Trustee (Computershare) which will shortly thereafter

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be replaced by an independent Board of Trustees based on the advice of an independent Advisory Board. The draft TPA includes terms which allow for unfettered control by the Trust to operate in the best interest of the beneficiaries, including making decisions on the administration and distribution of funds to LDCs across the province. The Trustees are expected to give regard to guiding principles established by the Province in exercising their duties under the Trust Declaration and TPA in distributing funds to LDCs for the benefit of beneficiaries across the province, including Hydro One.

The Trust Deed/Declaration will be subject to further modification based on agreement by both parties, including elements related to remuneration of Trustees. The input and involvement of LDCs across the province is anticipated and integral to the success of the Trust in meeting its objectives. The principles of the Fund will be clearly outlined in the Trust Deed and be consistent with the TPA; however, language in the documents will clearly reflect that the principles are not mandatory requirements which must be complied with.

- Once selected, the Board of Trustees will include 6 persons (five voting and one non-voting) of individuals from among those individuals who have been recommended for appointment to the Board of Trustees by the Advisory Committee. Currently contemplated composition includes 1 non-voting government Trustee, 3 LDCs from across the province and other Trustees from the social services sector. The Trustee Board will not be controlled by the Province.
- The Trustees will have the discretion to hire Hydro One or other entities as service providers to assist with administering the Fund, using Administrative Services Agreements to clearly document services and expectations.
- The Trust would distribute funds to LDCs across the province (including Hydro One) at the discretion of the Trustees.
- LDCs would identify their respective eligible electricity customers and deliver the funding in accordance with the program and in accordance with accountability provisions communicated by the Trust which are expected to substantially align with those imposed by the Province through the Transfer Payment Directive.
- The Ministry of Energy anticipates entering into the Trust Declaration with Computershare and flowing the approved funding prior to March 31st.

CONTROL ANALYSIS

In accordance with PSAB, “the Government Reporting Entity should comprise the organizations that are controlled by the government” (PS 1300.07). PSAB defines control as “the power to govern the financial and operating policies of another organization with expected benefits or the risk of loss to the government from the other organizations activities” (PS 1300.08). Benefits may be financial or non-financial, for example, the government may require the organization to cooperate in pursuing the government’s public policy objectives.

PSAB’s “indicators of control” are the relevant guidance in determining the degree of control for inclusion of the Affordability Fund Trust in the Government Reporting Entity (GRE). In applying this guidance, it is necessary to determine the substance of the relationship between a government and an organization in addition to its legal form. All relevant aspects and implications of the relationship would be considered in determining whether or not the government controls the organization. In addition to PS 1300, consideration is also given the Trust Guidance developed by OPCD in conjunction with the Office of the Auditor General which is attached as Appendix A.

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There are a total of 11 PSAB prescribed control indicators that provide evidence of control: 4 persuasive indicators of control and 7 other control indicators. It is the **preponderance of evidence** that would be considered in assessing whether a government controls an organization.

The following governing documents were reviewed in support of the analysis of the Province's control over the Affordability Fund Trust:

1) Draft Trust Declaration (March 19 1 pm), including related schedules (Principles Annex, Delegations Annex)
2) Draft Transfer Payment Agreement (March 19 1 pm)

Appendix I shows the detailed analysis of the PSAB indicators of control. Based on this assessment and the preponderance of evidence, based on a review of the wording in the draft Trust Declaration and Transfer Payment Agreement, there are a number of indicators which may on an overall basis reflect possible control by the Province of the Affordability Fund Trust as at March 31, 2017. The most significant of those factors is Schedule C to the Transfer Payment Agreement.

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APPENDIX I
Affordability Fund Trust
Indicators of Control Analysis

INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
Primary (i.e., more persuasive) indicators (CICA PS 1300.18):		
1. Government has the power to unilaterally appoint or remove a majority of the members of the governing body of the organization	• Original Trustee (Computershare) establishes Trust and remains the governing body of the organization until the subsequent Board of Trustees is selected. The Declaration describes the process expected to establish an Advisory Committee (non-controlled) to assist original Trustee with establishment of subsequent Trustee Board. • An Advisory Committee (to be established by March 31st), would operate independent of government, but would have government representation. Members (TBD) to include limited government representation (IESO, OEB, H1), and 4 others from LDCs. The government will not have control to unilaterally appoint or remove a majority of members of the Advisory Board since it will only have 3 representatives. If any member is unable to act, the remaining members will appoint a replacement (per Trustee Replacement Annex) • Government representation on the subsequent Board of Trustees will not represent a controlling interest.	X
2. Government has ongoing access to the assets of the organization, has the ability to direct the ongoing use of those assets, or has ongoing responsibility for losses	• The government will not have any exposure to losses. • The government will not have an on-going access to assets transferred to the Trust, and any future access will only be through protective clauses (termination/default for material breach) or excess funds will be distributed to a non-controlled residual beneficiary following the Final Distribution Date	X
3. Government holds the majority of the voting shares or a "golden share" that confers the power to govern the financial and operating policies of the organization	• Once the Trust Declaration is signed and the TPA is finalized, the government cannot unilaterally direct the financial and operating policies of the organization, however the agreements do currently require consent of the government where changes are proposed. See comments below. • In general, the Trust Declaration and TPA do not interfere with the unfettered discretion of the Trustees in exercising their fiduciary duties on behalf of the beneficiaries. • The Declaration includes a 'Principles Annex' which describes principles to be considered by the Trustees in applying their discretion in relation to administration of the Trust. The Annex	✓

Commented [NP1]: Blakes to confirm – agreements address liability of Trustee and Beneficiaries, but not the Province. Please confirm that Province would have no ongoing responsibility for losses/liabilities.

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
	clearly indicates that the Trustees shall only have regard to the principles but that they shall not be specifically bound by the listed principles. Furthermore, the declaration and TPA are subject to change where such change can be initiated by the Trustees and endorsed by the province, but such endorsement cannot be unreasonably withheld. • The Trust Declaration also includes a schedule to the Principles Annex which lists 'suggested' initial eligible measures for consideration by the Trustees • TPA 20.2 **Declaration of Trust.** The Trustee covenants that it shall not amend, restate or terminate the Declaration of Trust without obtaining the written consent of the Province in respect of same. It is expected that the Province will respond to such requests on a timely basis and that the Province would not unreasonably withhold such consent. • Schedule C (Suggested wording change in Schedule C to avoid assessment of Provincial Control as at March 31) Notwithstanding anything to the contrary contained in the Agreement or the Declaration of Trust, it is expected that the following actions have been completed prior to the Trust distributing any Funds to any Beneficiary. Schedule D –(Suggested wording change to avoid control over procurement) It is expected any travel, meals and hospitality expenses by the Recipient will be consistent with the Province's Travel, Meal and Hospitality Expenses Directive. For purposes of funding of entities receiving funding from the Recipient, alignment with the Province's Travel, Meal and Hospitality Expenses Directive is expected, including: alcohol and First-Class travel which would not be considered eligible claims and disbursements for hospitality, incidental or food expenses, including the following:	
4. Government has the unilateral power to dissolve the organization and thereby access its assets and become responsible for its obligations	• Only in the event of default will the government have the power to redirect distribution of remaining funds and seek remediation for any mis-used funds.	X
5. Provide significant input into the appointment of members of the governing body of the organization by appointing a majority of those members from a list of nominees provided by	In accordance with the Trust Declaration and the TPA, the government will not have a controlling interest in either the Advisory Committee nor the Trustee Board, and will not control the original Trustee (but may control the funds as at March 31st based on current wording in TPA which restricts payment to beneficiaries until listed conditions are satisfied). The government will not control any of	X

Commented [NP2]: Can the agreement be modified such that the government cannot unreasonably withhold consent.

Commented [NP3]: Wording in schedule should clarify

Commented [A4]: To lessen province's perceived ability to 'control', suggest inserting that the Province will not unreasonably withhold such consent.

Commented [A5]: KPMG Comment: WoW! This is ruling from grave

Commented [A6]: Intent is that funds will be transferred to a non-controlled trust but this requirement reflects funds which are still controlled by the province – restricts actions of the Trustee. Suggest wording change – It is expected that..

Risk is considered low as the trust would not have the necessary information to base decisions until procedures in place and decisions rendered.

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
others or being otherwise involved in the appointment or removal of a significant number of members	these parties, and the terms of the Trust Declaration and TPA do not provide it with unilateral access to appoint or remove a majority of members of the government body. The process Replacement of the Original Trustee is described in section 5.7 of the Trust Declaration which describes a logical process to select subsequent trustees but which does not result in a Trust that will be controlled by the government (as above).	
6. Appoint or remove the CEO or other key personnel	Right does not exist.	X
7. Establish or amend the mission or mandate of the organization	Legal to advise – province is establishing the Trust and flowing initial funds with anticipated end date, but trust will be non-controlled (trust under administration).	✓
8. Approve the business plans or budgets for the organization and require amendments, either on a net or line-by-line basis	Right does not exist.	X
9. Establish borrowing or investment limits or restrict the organization's investments	4.2 (a) ***Power to Own, Hold and Manage.*** Subject to section 4.2(d), the Trustee shall have the power to own, hold and manage the Assets in such manner as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable.[1] (b) ***Power to Invest in Eligible Investments.*** The Trustee shall have the power to invest the Assets only in Eligible Investments, and to change such Eligible Investments at any time and from time to time, all as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable, but always having regard to the Trustee's expectations regarding the timing of payments to be made to the Beneficiaries hereunder. If an investment of Assets in Eligible Investments would not be authorized under the applicable trust laws of Ontario, the Trustee shall nevertheless be permitted to make an investment of the Assets in such Eligible Investments. The Trustee will have no liability for the diminution in the value of any investment in Eligible Investments made hereunder.	✓
10.Restrict the revenue-generating capacity of the organization, notably the sources of revenue	Nature of a Trust is not to generate revenue or make a profit, but to fulfil a fiduciary duty on behalf of the beneficiaries. No explicit restriction mentioned in the Trust Declaration or TPA related to other activities of the trust; however, expectation that funds provided by the province will not be used for profitable purposes by the LDCs.	X
11. Establish or amend the policies that the organization uses to	Trustees would have power to consider change in the policies in the Trust Declaration and/or modify the TPA, subject to provincial	✓

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
manage, such as those relating to accounting, personnel, compensation, collective bargaining or deployment of resources	approval. See comments above w.r.t. proposed wording changes (consider inserting wording to reflect that provincial consent would be considered on timely basis and would not be unreasonably withheld). **4.2 Specifically Enumerated Powers** (c) ***Transfer Payment Agreement.*** The Trustee shall have the power to enter into, amend, supplement, modify and perform its obligation under the Transfer Payment Agreement. ***j) Power to Pay Trustee's Fees*** Trustees have general regard to sorts of limitations as are set forth in the "Travel, Meal and Hospitality Expenses Directive of the Province" **5.8Rules and Procedures of the Board of Trustees** ***Initial Requirements***. *It is expected that* as soon as practicable and in any event no later than [one] month following the Original Trustee Replacement Date, the Board of Trustees shall meet to take such decisions and actions as they deem necessary to ensure the proper management and administration of the Trust. (Administrative only) **5.8Rules and Procedures of the Board of Trustees** (d) ***Initial Requirements***. *It is expected that* as soon as practicable and in any event no later than [one] month following the Original Trustee Replacement Date, the Board of Trustees shall meet to take such decisions and actions as they deem necessary to ensure the proper management and administration of the Trust. The date (and location if in person) of the initial meeting shall be determined by a majority of the Board of Trustees. (e) ***Meetings.*** Subject to the Board of Trustees' discretion to make such rules and procedures that they may deem desirable, meetings of the Board of Trustees may be held at such time and place as the trustee members of the Board of Trustees may agree upon or as they may fix by resolution for the purpose or if the meeting is called as hereinafter mentioned then at such time as may be designated in the notice calling the meeting. A meeting of the Board of Trustees may be called at any time by any two members of the Board of Trustees by two Business Days' notice given to the members of the Board of Trustees. No notice of any Board of Trustees' meeting shall be necessary when a quorum is present if those comprising the quorum consent to the transaction of the affairs of the Trust and the absent trustee or trustees, if any, either before or after the meeting shall waive in writing notice of the meeting. Meetings of the Board of Trustees may be conducted in person, by telephone, or in such other manner as determined by the Board of	

Commented [A7]: Powers extended to amending and modifying the TPA? If Provincial concurrent required, should state so (perhaps with qualification that agreement can't be unreasonably withheld?)

Commented [NP8]: Can we insert this wording?

Commented [NP9]: See above

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
	Trustees. The Board of Trustees may elect a Chairperson. (f) ***Quorum.*** At any meeting of the Board of Trustees, a majority of the members of the Board of Trustees shall be a quorum irrespective of the number of members in office, provided that quorum will not exist if the majority of members voting on a decision are Provincial employees or representatives. The decision of the majority of the members where quorum exists shall govern and shall be binding for all purposes and shall be acted upon and carried out in the same manner and with the same effect as if all the members concurred therein; provided always that in the case of equality of votes the Chairperson, if any, shall not be entitled to cast a second or deciding vote. (g) ***Power to Adopt Rules and Procedures.*** The Board of Trustees may make such rules and procedures not inconsistent herewith as it may deem desirable for the proper management and administration of the Trust and the discharge of the responsibilities of the Board of Trustees. (h) ***Replacement of Members of the Board of Trustees***. The Board of Trustees shall have the power to replace any vacancy arising following the Original Trustee Replacement Date according to such rules and procedures as they deem appropriate, having regard for such considerations necessary to ensure that the composition of the Board of Trustees will be able to discharge its responsibilities in respect of the Declaration. If necessary, the Board of Trustees may fill any vacancy by application to the Courts of Ontario in the event of an unfilled vacancy. (i) ***Decisions of the Board of Trustees.*** Decisions and actions of the Board of Trustees shall be made by voting, with each individual member having one vote. Subject to quorum requirements, a majority vote shall be determinative in respect of such decisions and actions. Subject to quorum requirements, any decision or action taken by the majority of trustees will represent the decision or action of the Trustee, and not any member of the Board of Trustees. (j) ***Conflicts of Interest.*** With respect to any matter before the Board of Trustees, to the extent of a conflict of interest, whether actual, perceived or potential, involving a member of the Board of Trustees' personal interests and a matter concerning the Trust, such member shall abstain from voting on the matter or taking any other discretionary action on the matter. For the purposes of the foregoing, no member of the Board of Trustees shall be deemed to have a conflict by reason only that the member holds any office or position with an Electricity Distributor, social services agency or governmental or quasi-governmental agency or entity (such as the Independent Electricity System Operator); provided, however, that in relation to any decision of the Board of Trustees pertaining specifically to a particular Electricity Distributor, any member of the	

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
	Board of Trustees who is a director, officer or employee of the Electricity Distributor shall recuse himself or herself from participating in deliberations, discussions or voting in respect of such decision. (k) ***Expenses*** and ***Reimbursements to Trustees.*** Members of the Board of Trustees shall be entitled to reimbursement for and in respect of their out-of-pocket expenses reasonably incurred in discharging their duties and obligations as members of the Board of Trustees. The Board of Trustees shall serve without compensation. 4.2 The Trustee is expected to conduct its activities in a manner that complies in all material respects with the Transfer Payment Agreement, including to: (a) act prudently and in furtherance of the Purpose; (b) report annually the results of its activities for information purposes to the Province in connection with the Program; (c) comply with the Province's request for any independent verification or audit if determined to be necessary or appropriate by the Province; (d) return of Assets that have not been distributed if it is [determined][manifestly demonstrated by the Province] that the Trustee has breached its Standard of Care in discharging its material duties under the Declaration, and has not cured such material breach despite having been given a reasonable opportunity by the Province to do so in light of the circumstances of such material breach, with the result that all or a significant part of the Assets have not been or are not being applied in furtherance of the Purpose or are being applied in a manner that is directly contrary or without regard to the Purpose.] The Trust Declaration includes a Permitted Delegation Annex, which describes administratively, how the Trust might delegate its powers and duties to LDCs (non-controlled by the province) and satisfy the Standard of Care required under the Trust Declaration. Certain sections of the Delegation Annex go beyond general accountability provisions and suggest very specific requirements/expectations in relation to the Trustee's arrangements with LDCs and LDCs own administration of Fund monies. As currently worded, the Delegations Annex, when taken together with the Principles Annex and Listing of Eligible Measures, may be assessed substantively as 'controlling' the trust, regardless of wording which refers to the exercise of Trustee discretion.	

Commented [NP10]: Governance established by government in Declaration of Trust. Although government does not have a controlling interest in the Trust, establishing the governance structure (appears mandatory in nature) would be assessed as controlling. Can we modify wording here to reflect an 'expectation that…). Trustees will have ability to modify the declaration and TPA anyway (later) if don't agree, but as at March 31st, these specific, mandatory requirements portray an element of control

Commented [A11]: OPC Comment: Agree- change of wording would be advised so as to avoid perception of Trust being under control of the province.

Commented [A12]: KPMG Comment: Watch wording. Prefer "reports annually the results of its activities for info purposes"

Commented [A13]: Osler comment: Change to "undertaken"

Commented [A14]: Osler comment: control

Commented [A15]: Osler comment: Change to determines

Commented [A16]: KPMG Comment: Delete. This is ruling from grave

Commented [A17]: Osler comment: control

Commented [A18]: OPC Comment: Please see correspondence between OPCD and the OAG on government transfers. Report backs, right to audit and right to recover funds that are spent for purposes other than intended are common and accepted elements of TPs.

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
	TPA 5.1 Acquisition. If the Recipient acquires goods, services, or both with or by applying the proceeds of the Funds, it is expected to do so through a process that promotes the best value for money and is expected to take reasonable steps to ensure that its Administrative Services Agents also follow a process that promotes the best value for money when acquiring goods and services with or by applying the proceeds of the Funds. TPA 6.0 **No Conflict of Interest.** It is expected that he Recipient will carry out the Program and use, apply and distribute the Funds without an actual, potential or perceived conflict of interest. **Disclosure to Province.** The Recipient will disclose to the Province, without delay, any situation that a reasonable person would interpret as an actual, potential or perceived conflict of interest.	

Commented [NP19]: Suggested word changes from current wording 'will'

Commented [NP20]: See suggested word changes in TPA. COI is one consideration for breach, but Province should not control.

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Appendix

ACCOUNTING CONSIDERATIONS FOR GOVERNMENT-FUNDED TRUSTS

Purpose:

The purpose of this guidance is to explore accounting-related considerations related to government-funded trusts which are established by the government to fund a specific purpose or activity. This guidance deals specifically with the difference between controlled and non-controlled trusts, the introduction of accountability provisions which can now be reflected in trust agreements, and key timing considerations for trusts contemplated towards year-end. It is important that these factors be taken into account when establishing a trust, in order to achieve the intended fiscal impact and appropriate accountability over the use of public funds.

Introduction:

Trusts are usually established by way of trust declaration or trust agreement, and are one of several means by which the government can direct funding to support key policy initiatives. Simply stated, trustees hold title to property for the benefit of, and stand in a fiduciary relationship to the beneficiaries. Trustees are accountable to third parties (beneficiaries) for the use and disposition of trust assets and for the funds derived from those trust activities. The trust itself is not a separate legal entity. The trustees carry out the activities of the trust in the name of the trustees.

Generally, direct year-end transfers are the preferred alternative over trusts where the province wants to retain ultimate decision-making authority regarding amounts to be transferred to recipients. Direct transfers are more appropriate where the identity of eligible transfer payment recipients is known and the amounts to be transferred to each recipient can be or has been determined.

Year-end transfers to a trust might be considered where the province desires to delegate to third parties ultimate decision-making authority regarding allocation of amounts amongst eligible beneficiaries.

A trust must be valid for legal purposes in order to be recognized for accounting purposes. Key requirements for a trust to be valid include: an intention to create a trust ('certainty of intention'), certainty of subject-matter of the trust ("certainty of subject matter") and the objects of the trust must be certain ('certainty of objects"). There are generally two different types of trust, a trust in which the objects are the "beneficiaries" and trust in which the objects are a "purpose" (e.g. for charitable purposes). Where a trust is under serious consideration, it is imperative that ministries seek legal advice to ensure that the contemplated trust will be valid.

Trustees are obligated to follow the terms of the trust declaration or trust agreement which will usually detail the powers and duties of the trustees including the number of trustees and how decisions will be made by the trustees.

Controlled versus Non-Controlled Government-Funded Trusts

From an accounting perspective, it is important to distinguish whether the design and governance of a particular trust results in the trust being controlled by the Province for accounting purposes. Control stems from the nature of the relationship between the government and the trust. Financial and operating policies are principles that

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determine how an organization conducts its activities. The ability to govern these policies is an important element of government control.

The means by which a trust is established, the government's representation among the trustees, the government's involvement in the trust's governance processes and ability to impact trustee discretion in decision-making are but some of the factors to be considered in assessing whether a trust is 'controlled' or 'not controlled' by the government.

In establishing a trust, it is important to achieve the intended relationship between the province and the trust in order to achieve the intended fiscal impact.

Non-Controlled Trusts:

Where trusts are not controlled by the Province, they are excluded from the government reporting entity. For non-controlled trusts, the following accounting would apply to trust funding:

- Where funds provided to the "trust" are unconditional, the Province would record a transfer payment expense for any transfers approved in the current period (and flowed by finalization of public accounts).

- Where funds provided to the "trust" are conditional (i.e. upon the trust completing some specific task or result), the Province would initially record funding to the trust as a prepaid expense until the conditions are met at which time the Province would record a transfer payment expense, with the corresponding credit to prepaid expense. This may occur over a number of fiscal years.

In determining whether a trust is controlled, there are a variety of ways that a government might be perceived to be governing the financial and operating policies of a trust. These include:
- Eliminating or significantly limiting the ability of the trustees to make future decisions
- Directing the financial and operating policies of the trust
- Overruling, modifying or vetoing the financial and operating policies established by the trust.

Specific factors that should be considered in establishing a non-controlled trust include:
- Government representation in the trustees (should be in a minority position), and non-government trustees should be nominated by non-government sources
- Government influence over day-to-day trust governance and trustee discretion to make decisions (e.g. selection of eligibility criteria, selection of recipients).
- degree of influence over how funds are disbursed (i.e. the Declaration of Trust can provide general guidelines but not be overly prescriptive)
- the government's power to unilaterally appoint or remove the majority of trustees
- the government's on-going access to the trust's assets, or right to direct decisions regarding the flow of those assets to specific beneficiaries
- the government's unilateral power to dissolve the trust, except under specified circumstances as stipulated by the trust agreement (i.e. corrective action)
- the government's ability to establish or amend the policies used by the trust to manage accounting, personnel, deployment of resources, etc.

In some cases, it may be advantageous for ministries to provide administrative support to trusts. In these cases it is important that the extent of such support is not so pervasive as to influence or direct the day-to-day financial or operating policies of the trust, otherwise the trust will be deemed controlled and will be subject to consolidation in the government reporting entity.

Controlled Trusts:

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If the Province controls the trust (for example, through its power to appoint a majority of the trustees on the board of trustees), the Province would be deemed to have control of the trust, resulting in the trust being accounted for in the same manner as other organizations controlled by the province (i.e. on a consolidated basis). As a result, the Province's contribution to the trust would not be expensed when it is transferred, but rather over time as the funds are disbursed to trust beneficiaries.

Accountability Related Considerations:

The Auditor General has confirmed that the new accountability provisions developed for one-time transfers can also be applied to trusts without impacting the expense treatment of any transfers to non-controlled trusts.

These new accountability provisions will enable the government and the Legislature to:

- obtain assurance that a trust is spending public funds prudently and for the purposes intended and to take corrective action if it is not;
- ensure ministerial accountability to the Legislative Assembly for the trust's activities; and
- ensure that the province is able to take corrective action where warranted and as stipulated under terms of the trust agreement.

It should also be noted that the Auditor General's Act now allows the Province's Legislative Auditor to conduct special audits of any person or organization receiving transfers from the government, including trusts.

To enhance accountability controls over government transfers to non-controlled trusts, Ministries can consider incorporating some or all of the following accountability provisions as part of their trust agreement/declaration without impacting the accounting treatment of the trust.

The inclusion of any of these provisions should not result in a trust being assessed as 'controlled'. Note that the key determinant in identifying appropriate provisions for any individual trust is a ministry's assessment of the **risk** associated with a particular trust, as per the Transfer Payment Directive.

1. **Description of intended use of trust funds**;
    - specific purpose(s) for which the funds are to be used;
    - description of intended recipients and related eligibility criteria*; and,
    - the nature of eligible expenditures relevant to the transfers.

    *Note: avoid *overly prescriptive* eligibility criteria which would effectively eliminate or significantly limit the trustees' discretion to make funding decisions.

2. **Requirement for information**
    - Information to be provided by the trust at a future date (e.g. requirement for trustees to advise the government of trustee-developed performance criteria, and provide annual assessments against those criteria)

3. **Report-back requirement for Public Accountability**
    - information to be provided by the trust at a future date with respect to the stewardship and payment of transfer funds (e.g. audited financial statements, audited list of recipients and amounts funded).

4. **Right to independent verification/audit**
    - The Province reserves the right to audit any transfer payment recipients. The trust agreement should make reference to this fact.

5. **Right to take corrective action**
    - Where stipulated under the trust agreement, the Province reserves the right to re-direct unused funds where results of a trust assessment (where required by the trust agreement) indicate original purpose of the trust is not being achieved, or if there remain unused funds at the end of the trust term.

- Province may also reserve the right to extend the term of the trust agreement, where funds remain at the end of the trust period.

To qualify for in-year expense treatment, the non-controlled trusts must satisfy the following:

- the decision to establish the trust must have been approved by Treasury Board/Management Board of Cabinet and ratified by Cabinet by March 31st;
- the ministry providing the transfer must have approved appropriations and spending authority by March 31st;
- Trustees must have been identified and signed the trust declaration or agreement to establish a valid trust by March 31st ;
- the trust must be set up and ready to receive funds, and a nominal amount transferred to the trust by March 31s;t ; and,
- the government should have communicated publicly (e.g. in the Budget document) the pending or final establishment of the trust.

In addition, all remaining funds beyond those initially transferred at March 31st should be transferred to the trust by June 30th.

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Appendix

Trusts
Questions and Answers

Question: *Where a trust is announced in the Budget document, must the trust be established by March 31st, or could such a trust be established shortly thereafter without impacting the expensing of transfers to the trust in 2007-08?*

Answer: *A trust would have to be established prior to the end of a fiscal period in order to satisfy the recognition criteria for government transfers. If the intended recipient for a government transfer does not exist at March 31st, the province cannot record a payable owing to it under existing accounting standards.*

Question*: Does the transfer of funds to a non-controlled trust need to occur by March 31st or before the date of Public Accounts finalization?*

Answer: *Consistent with the new requirements for one-time transfers, as long as the trust is established by March 31st, the transfer is authorized and a reasonable estimate of the amount can be made, cash payments can be made after year-end.*

Question: *Can beneficiaries of a non-controlled trust include consolidated entities provided that the ultimate selection of recipients is at the discretion of the Trustees?*

Answer: *Any amounts provided to a trust which are in turn be provided to an organization inside the government reporting entity should not be expensed at the time of the transfer to the trust. Any amount that is flowed to a trust with the intention of subsequently flowing the funds to a consolidated entity should not be recorded as an expense to the government.*

Question: *Can a Ministry provide administrative support to a trust without compromising the non-controlled status of the trust?*

Answer: *The government can provide administrative support as long as the extent of government administrative support is <u>not so pervasive</u> so that the government is in substance establishing and managing the trust's policies in the areas of accounting, personnel, compensation, collective bargaining or deployment of resources. Where such administrative support is assessed as pervasive, it could impair the trust's non-controlled trust and the trust will be consolidated onto the province's financial statements.*

Can the following clauses appear in a trust agreement for a non-controlled trust to ensure adequate accountability over public funds without impacting the expense treatment of such trusts?

Question*: Specific description of purpose of the trust (possibly including nominal allocation among various objectives)*
Answer: Yes.

Question: *Can the trust agreement include a specific description of the intended groups of beneficiaries and detailed eligibility criteria.*

Answer: *Specificity should be applied cautiously, so as not to limit the discretion of the trustees in their subsequent grant making processes. For the trust to be considered 'not controlled' it should not be seen as 'establishing the trust's fundamental purpose and eliminating or significantly limiting the ability of the trust to make future decisions by predetermining the financial and operating policies of the trust.*

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Question: *Can trustees stipulate that funding is to be provided to beneficiaries on a cost-sharing basis?*
Answer: *Yes.*

Question: *Can the trust agreement include a requirement for a trust to report back to the province on trustee-established performance criteria and results, audit of financial statements, audited recipients and amounts, confirmation that trustees communicated to beneficiaries the intended purpose of the funding, etc.*
Answer: *Yes.*

Question*: Requirement for Trust to publicly post communications on existence, availability of funds, eligibility criteria, recipients and amounts granted to each recipient.*
Answer: *Yes*

Question: *Inclusion of a 'suggested' drawdown schedule over a period of years, with discretion left to Trustees as to actual results.*
Answer: *The inclusion of a drawdown schedule is not suggested for one-time, up-front transfers.*

Question: *Trust agreement can suggest accountability provisions which might be attached by Trustees to beneficiary payments (e.g. specific purpose of funding, requirement for report-back, right to audit, corrective actions).*
Answer: *Yes*

Question: *Trust agreement to reserve the province's right to re-direct any unspent funds to specified parties (e.g. non-consolidated entities or another non-controlled trust) at the end of the trust term, or alternatively to extend the term of the trust where unspent funds remain.*
Answer: *Yes*

Question*: Can the trust agreement include the requirement for evaluations of the trust at certain times (e.g. years 3, 7, 10 of the trust agreement), with the right for the government to decide either to terminate the trust (corrective action) based on the results of the assessment, or extend the trust beyond the initial term as per the agreement.*
Answer: *Yes.*

Question: *Trust agreement can require Trustees to request as part of the funding process that beneficiaries acknowledge receipt of government funding in their public communications on specific projects.*
Answer: *Yes.*

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DECLARATION OF TRUST

Made as of March •, 2017

by

COMPUTERSHARE TRUST COMPANY OF CANADA

establishing

AFFORDABILITY FUND TRUST

Commented [A1]: KPMG Comment: Province's auditors need to sign off on this

Commented [A2]: OPC Comment: Agree that CFS will be subject to audit by the OAG. It would be helpful for KPMG to clarify the nature of their engagement w.r.t. providing an accounting opinion on whether the Trust would be controlled by either H1 or the Province.

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[RELABEL HEADINGS AND REGENERATE TABLE OF CONTENTS]

DECLARATION OF TRUST

This Declaration of Trust is made as of March •, 2017, by Computershare Trust Company of Canada, a trust company established under the laws of Canada and licensed to carry on business as a trust company in each of the provinces and territories of Canada (together with its successors and assigns and the other trustees (including the Board of Trustees) contemplated herein, the "**Trustee**").

WHEREAS Computershare Trust Company of Canada, as the Trustee, wishes to establish a trust to acquire, hold, manage, invest, apply and dispose of certain property for the benefit of certain Beneficiaries as herein described.

NOW THEREFORE Computershare Trust Company of Canada, as the Trustee, hereby declares that it holds in trust as trustee (a) the sum of ONE HUNDRED DOLLARS ($100) contributed by it on this date and (b) all other property of every type and description which it may hereafter acquire or hold in its capacity as trustee of the Trust and all income therefrom and proceeds thereof, to hold, manage, invest, apply and dispose of same on and subject to the provisions set forth in this Declaration of Trust, including the annexes and schedule attached hereto.

SECTION 1
INTERPRETATION

1.1 Definitions

In this Declaration:

(a) "***Administrative Services Agent***" means each agent, which may include any Electricity Distributor or other Person, appointed from time to time under an Administrative Services Agreement, and its successors and permitted assigns solely in such capacity.

(b) "***Administrative Services Agreement***" means each agreement entered into from time to time by the Trust and one or more Administrative Services Agents or other Persons, in furtherance of the Purpose, under which the Administrative Services Agent would agree to provide specified administrative and other services to and on behalf of the Trustee (including, following the Original Trustee Replacement Date, the Permitted Delegations Annex), as such agreement may be amended, supplemented, restated, renewed or replaced from time to time. [Blakes: A Day 1 Administrative Services Agreement would likely be requested by Computershare to address the possibility of interim administrative issues. It would also be useful to the extent that it is necessary for someone to advise Computershare if an unforeseen event arises or amendments are required to the Declaration, in the event initial changes are necessary to make the Declaration acceptable to potential Board members. All of this is trying to avoid potential gridlock if something comes up and Computershare is unwilling to act without direction.]

Commented [A3]: Osler Comment: There is no need for an initial admin services agreement between Hydro One and Computershare

(c) "***Assets***" means, collectively, the following:

(i) the $100 Canadian referred to above, contributed by Computershare Trust Company of Canada on the date hereof;

(ii) all other property which is now or which at any time in the future may be issued, assigned, transferred, provided, donated, gifted and contributed to the Trustee (including pursuant to the Transfer Payment Agreement) to be held in trust pursuant to this Declaration (and which the Trustee is willing to accept and hold);

(iii) all acquisitions of property made by the Trust;

(iv) all property which may at any time be substituted for or in respect of the property referred to in clauses (i), (ii) and (iii), above;

(v) all income of the Trust, including investment income generated by the investment of the property referred to in clauses (i), (ii), (iii) and (iv), above; and

(vi) all proceeds of disposition of any of the property referred to in clauses (i) through (v) above,

but excludes any property paid out or distributed (whether out of income or capital) pursuant to the provisions of this Declaration.

(d) "***Beneficiary***" means each Primary Beneficiary and each Residual Beneficiary, as applicable.

(e) "***Board of Trustees***" means (i) as of the Original Trustee Replacement Date, the individual trustees appointed by the Original Trustee pursuant to Section 5.7 on the basis described in the Trustee Replacement Annex, and (ii) thereafter, the group of trustees appointed hereunder and acting in such capacity.

Commented [A4]: KPMG Comment:
So critical who appoints Trustees and if they are deemed to be able to act independently

Commented [A5]: OPC Comment: Intent is that the Province would not control either the original Trustee, the Advisory Committee or the Board of Trustees, once established.

(f) "***Business Day***" means any working day, Monday to Friday inclusive, excluding statutory and other holidays, namely: New Year's Day; Family Day; Good Friday; Easter Monday; Victoria Day; Canada Day; Civic Holiday; Labour Day; Thanksgiving Day; Remembrance Day; Christmas Day; Boxing Day [and any other day on which the Province has elected to be closed for business].

(g) "***Declaration***" means this Declaration of Trust, as it may be amended, restated, supplemented or otherwise modified from time to time, and includes each of the annexes and the Schedule attached hereto which constitute and form an integral part of this Declaration.

(h) "***Electricity Distributor***" means, in respect of a designated service area or region in Ontario, the distributor of electricity to residences located in such area or region.

(i) "***Electricity Invoice***" means an invoice issued by an Electricity Distributor in respect of electricity charges and related services and amounts incurred or assessed in respect of a residence located in the Electricity Distributor's designated service area or region in Ontario.

(j) "***Eligible Investments***" means (i) a deposit receipt, note, certificate or instrument issued, guaranteed or endorsed by a bank listed in Schedule I to the *Bank Act* (Canada), which provides that the principal and any interest shall be fully paid no later than [one year] after the day the investment was made, or (ii) a deposit account at a bank listed in Schedule I to the *Bank Act* (Canada).

(k) "***Eligible Measures***" means electricity efficiency and/or conservation measures determined by the Trustee from time to time on the basis contemplated in the Principles Annex and in the manner specified in and having regard to the Permitted Delegations Annex.

(l) "***Final Distribution Date***" means the earlier of (i) the date specified as such or determined pursuant to the Transfer Payment Agreement[1], and (ii) the later of (x) the date (if any) on which the Trustee determines (by a resolution of the Board of Trustees) that no further distributions are likely to be made to any Primary Beneficiary and (y) •, 20[23].

(m) "***HAP Eligible Person***" means an "Eligible Person" as defined in Section 3.1 of the document entitled "Conservation First Framework LDC Took Kit" published by the Independent Electricity System Operator and designated as Final v3.0 – March 11, 2016, as amended in accordance with the Energy Conservation Agreement between the Independent Electricity System Operator and Electricity Distributors.

(n) "***License Agreement***" means any agreement under which the Trust or any Electricity Distributor possesses or acquires rights to use any trademarks, names, logos, copyrights, patents or other intellectual property for use in connection with communications or other dealings undertaken in relation to the Program, including for the purpose of branding, marketing and promoting the availability, terms and benefits of the Program to Primary Beneficiaries.

(o) "***Minister of Energy***" means the Minister of Energy or such other member of the Executive Council as may be assigned primary ministerial responsibility for the administration of the *Ministry of Energy Act, 2011* under the *Executive Council Act*.

(p) "***Original Trustee***" means Computershare Trust Company of Canada, acting in its capacity as trustee hereunder, together with any additional or replacement Trustee appointed hereunder prior to the Original Trustee Replacement Date and any of their respective successors and assigns.

(q) "***Original Trustee Replacement Date***" has the meaning specified in Section 5.7, being the date on which the Original Trustee is replaced as trustee under this Declaration by the Board of Trustees as contemplated under Section 5.7.

(r) "***Person***" includes any individual, sole proprietorship, corporation, partnership, joint venture, association, society, club, board, chamber, joint-stock company, trust, trustee, unincorporated or incorporated organization or entity or government or any entity, agency or political subdivision thereof.

(s) "***Primary Beneficiary***" means each individual that, as of a time of determination, satisfies each of the following criteria:

[1] NTD: The TPA will provide that on an Event of Default (KPMG Comment- No! This is a problem…OPC Comment: Please see correspondence between the Province and the OAG w.r.t. transfer payment accountability provisions.) the remaining Assets will be paid over to the Government, on the basis that the Government's transfer thereunder is subject to such a reservation in circumstances of non-compliance. The TPA should also specify that the Trust will thereafter be wound up, which will tie in to this definition by way of the date so specified in the TPA. Accounting considerations to be discussed.

(i) the individual owns, rents or leases a residence located in Ontario and is the primary or secondary electricity utility account holder named on an Electricity Invoice issued in respect of that residence; and

(ii) the individual is not a HAP Eligible Person.

(t) "***Principles Annex***" means the Principles Annex set forth as an annex to this Declaration.

(u) "***Province***" means the Province of Ontario.

(v) "***Program***" means the establishment, promotion, implementation and administration of a program to achieve the Purpose on the basis contemplated in this Declaration.

(w) "***Permitted Delegations Annex***" means the Permitted Delegations Annex set forth as an annex to this Declaration.

(x) "***Purpose***" means (i) the making of distributions to Primary Beneficiaries who are identified and whose needs are assessed in accordance with section 3.1 and 3.1 of this Declaration, having regard to (x) the principles set forth in the Principles Annex, (y) the manner and basis of implementation and administration of the Program contemplated in the Permitted Delegations Annex, and (z) the other terms, limitations and requirements set forth in this Declaration, and (ii) to the extent that Assets are available following the distributions made to Primary Beneficiaries as contemplated in (i), above, the making of distributions to Residual Beneficiaries who are identified and whose needs are assessed in accordance with section 3.3 and otherwise having regard to the other terms, limitations and requirements set forth in this Declaration.

(y) ***"Residual Beneficiary"*** means each charitable organization identified by the Trustee and specified as a residual beneficiary hereunder from time to time, selected by the Trustee in consultation with and having regard to the recommendations of the Ontario Energy Board in accordance with section 3.3.

(z) "***Transfer Payment Agreement***" means the transfer payment agreement dated as of March •, 2017 between the Trustee and Her Majesty the Queen in right of Ontario as represented by the Minister of Energy, as such agreement may be amended, restated, supplemented or otherwise modified by the further agreement of the parties thereto from time to time.

(aa) "***Trust***" means Affordability Fund Trust, a trust established under and governed by the laws of the Province of Ontario pursuant to this Declaration.

(bb) "***Trustee***" means (i) the Original Trustee and (ii) on and after the Original Trustee Replacement Date, the Board of Trustees acting together in accordance with and subject to Section 5.7 and in accordance with the rules and procedures adopted by the Board of Trustees pursuant to Section 5.8.

(cc) "***Trustee Replacement Annex***" means the Trustee Replacement Annex set forth as an annex to this Declaration.

Commented [A6]: KPMG: Be careful. Terms of TPA could have clauses for "ruling from the grave"

Commented [A7]: OPC Comment: If in the future they change to give the government control, then would be reassessed at that time, but as at March 31st, would not be controlled.

Perhaps the process for amendments could be further discussed (not unilateral by the Province) and not expected to result in 'material' changes.

1.2 Headings and Table of Contents

The insertion of headings and the provision of a table of contents are for convenience of reference only and shall not affect the construction or interpretation of this Declaration.

1.3 References

Unless otherwise specified, all references to Sections are to Sections of this Declaration. The words "hereto", "herein", "hereof", "hereunder" and similar expressions refer to this Declaration and not to any particular Section or other provision of this Declaration.

1.4 Number and Gender

Unless otherwise specified, words importing the singular include the plural and vice versa and words importing gender include all genders.

1.5 Governing Law

This Declaration shall be governed by, and construed and interpreted in accordance with, the laws of the Province of Ontario and of Canada applicable therein.

1.6 Severability

Any provision of this Declaration which is illegal, invalid or unenforceable in any jurisdiction shall not affect the legality, validity or enforceability of the remaining provisions and any such illegality, invalidity or unenforceability in any jurisdiction shall not affect the legality, validity or enforceability of such provision in any other jurisdiction.

1.7 Reference to the Trust and the Trustee

For greater certainty, where any reference is made in this Declaration to an act to be performed by or for or on behalf of the Trust, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Trustee in its capacity as trustee of the Trust, and, where any reference is made in this Declaration to an act to be performed by or for or on behalf of the Trustee, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Trustee solely in its capacity as trustee of the Trust. Except as provided under the Transfer Payment Agreement, no Person dealing with the Trust or the Trustee shall be bound to make any enquiry concerning, or has the right to require production of, any evidence of the validity of any act of, or transaction purporting to be made by, the Trustee.

1.8 Defect in Appointment

No action taken by the Trustee will be invalid or ineffective by reason only of any defect in the appointment of the Trustee or the compliance by the Trustee of any rules or procedures adopted by the Trustee and which is discovered after the taking of such action.

SECTION 2
CONCERNING THE TRUST

2.1 Objectives

The Trust is established to hold, invest, apply and dispose of the Assets for the benefit of the Beneficiaries in furtherance of the Purpose

, as provided for in this Declaration. In furtherance of the Purpose:

(a) the Original Trustee shall hold and invest the Assets as contemplated in this Declaration until the Original Trustee Replacement Date, after which the Board of Trustees shall be duly appointed hereunder; and

(b) the Board of Trustees shall hold, invest, apply and dispose of the Assets in accordance with this Declaration, including by determining the identities of and distributions (if any) to be made to or for the benefit of the Primary Beneficiaries in accordance with Sections 3.1 and 3.2 of this Declaration, having regard to the principles set forth in the Principles Annex and in the manner and on the basis contemplated in the Permitted Delegations Annex, or otherwise by determining the identities of and distributions to be made to or for the benefit of any Residual Beneficiary in accordance with Section 3.3,

in each case and in all respects subject to the terms, limitation and requirements set forth in this Declaration.

Commented [A8]: KPMG Comment: Watch closely

Commented [A9]: OPC Comment: Blakes to share perspective to H1 and KPMG w.r.t. Trustees retaining discretion.

2.2 Name of the Trust

The name of the Trust shall be the "Affordability Fund Trust" or such replacement name as the Trustee shall determine and specify from time to time. The Trustee shall hold the Assets and conduct the activities of the Trust under such name or variation thereof (including any variation of such name in the French language). If the Trustee determines to change the name of the Trust, the Trustee may specify and use such other designation or adopt such other name (including any name in the French language) as it considers appropriate and may hold the Assets and conduct the activities of the Trust under such designation or other name.

2.3 Location

The head office and the situs of the administration of the Trust shall be • or such other address in Ontario as the Trustee may determine from time to time.

2.4 Fiscal Year

The fiscal year of the Trust shall end on December 31 of each year.

SECTION 3
DISTRIBUTIONS

3.1 Distributions to Primary Beneficiaries

Prior to the Final Distribution Date, the Trustee shall distribute the Assets (including capital or income) to the Primary Beneficiaries identified based on the application of the principles specified in the Principles Annex and in the manner and in the amounts determined on the basis contemplated by the Permitted Delegations Annex, in each case in the amounts and to the extent specified herein and therein, subject in all respects to the exercise by the Trustee of its discretion hereunder and to the exclusion of the other Beneficiaries. [Blakes: The intention has been to make the Principles and the Delegations clear and firm, so that MOE has greater certainty. There is scope for the Trustees to add to Principles. Uncertain why firm direction and delegations to LDCs would raise issues for the Trustee.]

Commented [A10]: Same language as 'have regard for'?

Commented [A11]: Osler comment: maybe a trustee issue

OPC Comment:
See comment above re: Blakes (lawyers do not see this as an issue). Note that Oslers has suggested allowing for future changes in the Principles (which are not mandatory but rather guiding principles).

3.2 Amount of Distributions to Primary Beneficiaries

For the purposes of determining the amount of distributions to be made to the Primary Beneficiaries, the Trustee shall have regard to and be entitled to rely on the recommendations of and information provided by Electricity Distributors acting as Administrative Services Agents appointed for the purposes, in the manner and substantially on the terms contemplated in the Permitted Delegations Annex, without any duty or obligation to verify or makes enquiries regarding the basis for or propriety of such recommendations or the accuracy or completeness of such information, except if and to the extent that the Trustee, in its discretion, determines that (i) it has actual knowledge that such recommendations are contrary to the reasonable application of the principles set forth in the Principles Annex or have been made on a basis that is manifestly contrary to such principles or the delegations and activities specified or contemplated to be undertaken under the Permitted Delegations Annex or (b) such information is known by the Trustee to be erroneous, contain a material misrepresentation or is materially incomplete.

Commented [A12]: Osler comment: very uncertain

Commented [A13]: But accountability provisions could allow for, if chose to.

Commented [A14]: KPMG Comment: ok?

OPC Comment:
Would be helpful if KPMG could clarify any concerns.

Confirmed by Blakes as OK.

3.3 Distributions to Residual Beneficiaries

Prior to the Final Distribution Date, the Trustee shall identify the Residual Beneficiaries by consulting with and having regard to the recommendations of the Ontario Energy Board, based on **[Identify criteria that will narrow the scope to charities to those having an energy/social focus]**. On or as soon as practicable following the Final Distribution Date, the Trustee shall distribute all of the Assets (including capital or income) existing at that time to the Residual Beneficiaries, in each case in the amounts and to the extent determined by Trustee in its discretion hereunder[2] and to the exclusion of the other Beneficiaries.

Commented [A15]: Following final audit to confirm amount (taking into account any accrued/contingent liabilities, interest receivable, etc.).

[2] NTD: Consider if principles should be included regarding the maximum amount any particular charity may receive.

SECTION 4
POWERS OF THE TRUSTEE

4.1 General

Subject to and in compliance with the terms, limitations and restrictions of this Declaration and notwithstanding applicable trust legislation, the Trustee shall have, without other or further authorization, full, exclusive and absolute power, control and authority over the Assets and over the affairs and activities of the Trust to the same extent as if the Trustee were not a trustee, but rather the sole and absolute owner of the Assets in its own right, including such power, control and authority to do all such acts and things as in its sole judgment and discretion are necessary, incidental or desirable for carrying on the affairs and activities of the Trust, with such powers of delegation as may be permitted or otherwise contemplated by this Declaration. Except as expressly provided in this Declaration, the enumeration in this Declaration of any specific power or authority shall not be construed as limiting the aforesaid general power or authority or any other specific power or authority set out herein. Subject to the terms, limitations and restrictions of this Declaration, every discretion or power hereby conferred on the Trustee is an absolute and uncontrolled discretion or power.

4.2 Specifically Enumerated Powers

The Trustee shall have the following specific powers and authorities:

(a) ***Transfer Payment Agreement.*** The Trustee shall have the power to enter into, amend, supplement, modify and perform its obligation under the Transfer Payment Agreement.

Commented [A16]: Powers extended to amending and modifying the TPA? If Provincial concurrent required, should state so (perhaps with qualification that agreement can't be unreasonably withheld?)

(b) ***Contracts and Undertakings.*** The Trustee shall have the power to enter into, amend, supplement, modify and perform its obligation under any contract entered into or undertaking given by the Trustee in furtherance of the Purpose, including any Administrative Services Agreement and any License Agreement.

(c) ***Power to Own, Hold and Manage.*** Subject to section 4.2(d), the Trustee shall have the power to own, hold and manage the Assets in such manner as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable.[3]

(d) ***Power to Invest in Eligible Investments.*** The Trustee shall have the power to invest the Assets only in Eligible Investments, and to change such Eligible Investments at any time and from time to time, all as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable, but always having regard to the Trustee's expectations regarding the timing of payments to be made to the Beneficiaries hereunder. If an investment of Assets in Eligible Investments would not be authorized under the applicable trust laws of Ontario, the Trustee shall nevertheless be permitted to make an investment of the Assets in such Eligible Investments. The Trustee will have no liability for the diminution in the value of any investment in Eligible Investments made hereunder.

[3] Consider limiting this broad power. (KPMG Comment: Why? Be careful) OPC Comment: Not sure what these comments refer to, but worth discussing to confirm. . [Blakes: See response as #4 (below) with respect to "manage" the assets.]

(e) ***Power to Dispose of Assets.*** The Trustee shall have the power to sell, convey, assign, transfer, exchange and in any other manner dispose of the Assets or any part or parts thereof free and clear of any and all trusts established under this Declaration, by public or private sale, for cash or on credit, with or without advertisement, and subject to such restrictions, stipulations, agreements and reservations as the Trustee in its sole and absolute discretion may consider appropriate or advisable, and to execute and deliver and perform any agreement, deed, conveyance, transfer or other document or instrument in connection with the foregoing.[4]

(f) ***Power to Apply Assets and Proceeds to Make Distributions to Beneficiaries.*** The Trustee shall have the power to apply the Assets and the proceeds and income derived therefrom to make distributions to the Beneficiaries contemplated by Section 3, and to execute and deliver and perform any agreement, deed, conveyance, transfer or other document or instrument in connection with therewith.

(g) ***Power to Delegate and to Appoint Agents, etc.*** The Trustee shall have the power to appoint, employ or contract with any Person as the Trustee in its sole and absolute discretion may consider appropriate or advisable in connection with the activities of the Trust. Without limiting the generality of the foregoing:

(i) the Trustee will have the power at any time and from time to time to appoint, employ or retain consultants, financial advisers, technical advisers, legal counsel, accountants, administrative services agents, insurers, insurance agents and insurance brokers, as the Trustee may require for the purpose of discharging its duties hereunder and shall not be responsible for or for the actions of any of them, including to:

(A) act for and on behalf of the Trust in connection with any and all matters in any way relating to the negotiation, settlement, entering into, amending, performance and enforcement of the Transfer Payment Agreement, the Administrative Services Agreements, any License Agreement and any other agreements and contracts to which the Trust becomes a party in accordance with this Declaration;

(B) to provide or cause to be provided any or all kinds of administrative services in any way relating to the activities of the Trust;

(C) to act as attorney in fact, agent or trustee in the acquisition, holding, investment, application, sale or other disposition of the Assets and in the handling, prosecuting, defending or settling of any claims of or made against the Trust;

(D) to value the Assets and determine the net income of the Trust; and

[4] Consider limiting this broad power. (KPMG Comment: Why? Be careful) OPC Comment: Not sure what these comments refer to, but worth discussing to confirm. [Blakes: We could not think of a case where the trustee would be required to dispose of assets, and wondered if a broad power should recognize that dispositions are not intended. We are okay if the power is intact, as long as MOE is comfortable with that as a possibility.]

(E) to make any filings, elections and submissions (including in respect of taxation matters) in connection with the Trust's compliance with applicable laws and regulatory requirements; and

(ii) the Trustee may pay remuneration and reimbursements from the Assets for services performed for it or on its behalf in the discharge of the trusts hereof without taxation for costs or fees of any counsel, solicitor or attorney.

Without limiting the foregoing, it is expected that the Board of Trustees will (a) seek to enter into Administrative Services Agreements with Electricity Distributors for the purposes contemplated by the Permitted Delegations Annex, and on such terms and conditions (including terms and conditions as to the payment of reasonable fees and expenses) not inconsistent therewith as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable, and (b) obtain commercial general liability insurance from insurers having a secure A.M. Best rating of B+ or greater, or the equivalent, that in the opinion of the Recipient a prudent person similar to the Recipient would maintain, and having an inclusive limit of not less than $2,000,000 per occurrence and providing for contractual liability coverage.

Commented [A17]: KPMG: Be careful with this

Commented [A18]: With due regard for/it is expected that (if in reference to accountability provisions)

(h) ***Power to Operate Accounts.*** The Trustee shall have the power to (i) open and operate accounts at any chartered bank, trust company or other financial institution in Canada or elsewhere, as the Trustee in its sole and absolute discretion may consider appropriate or advisable; (ii) deposit therein any moneys or securities forming part of the Assets whether or not such deposits will earn interest; (iii) withdraw such deposits at such times and in such manner as the Trustee may determine; (iv) draw, make, endorse, deposit or otherwise deal in cheques, bills of exchange, promissory notes, drafts and other kinds of instruments and securities; and (v) enter into contracts or agreements with any such chartered bank, trust company or other financial institution containing such terms and provisions as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable. In connection therewith, the Trustee shall have no liability or responsibility for any loss which may occur by reason of the failure of any such chartered bank, trust company or other financial institution.

(i) ***Power to Collect, etc.*** The Trustee shall have the power to (i) collect, sue for, receive and give receipts for all sums of money or other property due to the Trust; (ii) consent to extensions of time for payment or to the renewal of any securities or obligations; (iii) engage or intervene in, prosecute, defend, compound, compromise, abandon or adjust by arbitration or otherwise, any demands, claims, actions, suits or proceedings relating to the Trust or the Assets; (iv) exercise any and all remedies available to the Trustee under any agreement or as may otherwise be available, including any power of foreclosure or sale available at law; (v) in connection with any such foreclosure or sale, purchase or otherwise acquire title to any property and to convey good title thereto free of any and all trusts hereby established, or to take or retake possession of any property secured under any agreement or instrument; (vi) extend the time, with or without security, for the payment or delivery of any debts or property; (vii) execute and deliver releases, acquittances, discharges, agreements or other instruments related thereto; and (viii) pay or satisfy any debts or claims upon any evidence that the Trustee, in its sole and absolute discretion, may determine to be sufficient.

(j) ***Power to Pay Trustee's Fees.*** The Original Trustee shall be entitled to be paid and receive the fees set forth in the Original Trustee's schedule of fees delivered as of the date hereof as compensation for its services under this Declaration, and to be reimbursed for its out-of-pocket expenses reasonably incurred, in each case from the Assets and without the approval of any Beneficiary or any court. The Original Trustee shall [Blakes: Someone will need to settle funds to create a valid trust] be entitled, in its sole and absolute discretion, to withdraw funds from time to time for such purpose from any account of the Trust. Members of the Board of Trustees shall be entitled to reimbursement for and in respect of their out-of-pocket expenses reasonably incurred in discharging their respective duties and obligations under this Declaration and any contract of the Trust entered into in accordance with this Declaration, in each case without the approval of any Beneficiary or any court, provided that the members of the Board of Trustees have general regard to sorts of limitations as are set forth in the "Travel, Meal and Hospitality Expenses Directive of the Province" specified and amended by the Province from time to time, a copy of the current version of which is attached as Exhibit 1 to the Principles Annex.

(k) ***Power to Pay Taxes.*** The Trustee shall have the power to (i) pay, deduct, withhold or remit any taxes or assessments which are required by law to be paid, deducted, withheld or remitted together with or from any payment made by the Trustee; (ii) pay all taxes or assessments of whatever kind or nature imposed upon or against the Trust or the Trustee in connection with the Assets or any part thereof; (iii) collect and remit all taxes and assessments of whatever kind or nature required to be collected and remitted by the Trust or the Trustee in connection with their activities or the Assets or any part thereof; (iv) appeal, settle or compromise tax claims or liabilities; and (v) for the foregoing purposes, to make such returns, elections and submissions and do all such other acts and things as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable.

(l) ***Power to Appoint Auditors.*** The Trustee shall have the power to select and appoint and discharge and re-appoint, in its sole and absolute discretion, an auditor or auditors of the Trust and to settle and pay the fees of any such auditor or auditors from any account of the Trust.

(m) ***Form of Accounts.*** The Trustee shall have the power to determine and change from time to time, in its sole and absolute discretion, the method or form in which the accounts of the Trust will be kept and shall not be required to keep or provide accounts in the form usually required by law to be kept or provided by trustees; provided that such method or form reasonably complies with generally accepted accounting principles in effect in Canada to the extent applicable.

(n) ***Title to Assets.*** The Trustee shall have the power to cause all or any part of the Assets to be held by or registered, in its sole and absolute discretion, in the name of any Person.

(o) ***Delegation of Discretion***. The Trustee shall have the power to delegate the right and power to exercise, or concur in the exercise of any discretion or power, conferred on the Trustee in this Declaration or conferred by law to any one or more of its directors, officers, employees, agents, representatives or to such other Person, as the Trustee, in its sole and absolute discretion, may think is appropriate or advisable, including to one or more Administrative Services Agents and their respective employees, officers and directors under a related Administrative Services Agreement entered into by the Trust substantially on the basis contemplated in the Permitted Delegations Annex. In particular, the Trustee shall have the power to accept, rely on and follow the recommendations of an Electricity Distributor made under and in accordance with the

Commented [A19]: OPC Comment: Including original $100? KPMG to provide feedback on original construct (H1 to enter into agreement, no $ to flow from gov/H1), etc.

Commented [A20]: KPMG Comment: Sounds reasonable. I am not concerned

Commented [A21]: OPC Comment: References to Travel and Meals directive were supposed to be 'aligned' with as opposed to mandatory.

Commented [A22]: Permissive vs. directive

Permitted Delegation Annex with respect to a the identification of, and the determination of distributions (if any) to be made to, any Primary Beneficiary, except if and in so far as the Trustee has actual knowledge that (1) such Primary Beneficiary did not in fact satisfy the "Selection Factors" specified in the Principles Annex as of the applicable time of determination; and/or (ii) the amount recommended to be distributed to the Primary Beneficiary was not calculated in substantial compliance with, or was calculated in a manner that is manifestly contrary to the requirements set forth or contemplated in, the Permitted Delegation Annex or the applicable Administrative Services Agreement.

Commented [A23]: KPMG comment: Be careful

(p) ***Additional Powers.*** The Trustee shall have the power to perform and do all such other acts, to take such steps and to execute all such deeds, transfers, assignments, agreements and other documents and instruments as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable for the carrying out of any of its powers hereunder or of any of the activities of the Trust as herein contemplated, or for the carrying out, promotion or advancement of the interests of the Trust, whether or not any of such acts, things, documents or instruments are herein expressly mentioned. Any good faith determination by the Trustee as to what is necessary, desirable or appropriate to carry out its powers or activities of the Trust as contemplated under this Declaration or to carry out, promote or advance the interests of the Trust shall be conclusive. Any construction of this Declaration or any determination as to the activities of the Trust or the existence of any power or authority hereunder made in good faith by the Trustee, relying upon the advice of counsel, shall be conclusive. In construing the provisions of this Declaration, there shall be a presumption in favour of a grant of power to the Trustee.

SECTION 5
CONCERNING THE TRUSTEE

5.1 Duty of Trustee

In performing its duties and exercising its powers under this Declaration, the Trustee shall act honestly, in good faith and with a view to the best interests of the Trust and the Beneficiaries and shall exercise that degree of care, diligence and skill that a reasonably prudent trustee would exercise in comparable circumstances (the "**Standard of Care**"). The Trustee shall observe and act in accordance with the terms of, and shall observe and comply with the limitations and restrictions set forth in, this Declaration, including having due regard to the principles set forth in the Principles Annex. To the extent that the Trustee has so delegated any of its duties or powers, it shall be deemed to have satisfied the Standard of Care in respect of the subject matter of such delegation, subject to the Trustee's overall duty as a trustee to exercise prudent oversight in relation to such delegation. Unless required by law, the Trustee will not be required to give any security, bonds or sureties in any jurisdiction for the performance of any of its duties and obligations under this Declaration. The Trustee (including the individual members of the Board of Trustees) will not be required to devote its entire time to the trust activities.

5.2 Limitation of Liability

Commented [A24]: Confirm – province does not retain any potential liability exposure? (relevant for control assessment). How does the province limit its exposure?

The Trustee shall not be personally liable in tort, contract or otherwise to any Beneficiary or any other Person for any loss or diminution in the value of the Assets, or for any action or failure to act on the part of the Trustee or any of its employees or agents or any other Person, and shall not be subject to any personal liability for any debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses incurred by or against the Trust, howsoever arising, and

resort will be had solely to the Assets for the payment, performance or satisfaction thereof. No property or assets of the Trustee, owned in its personal capacity or otherwise, will be subject to levy, execution or other enforcement procedures with respect to any obligation under this Declaration. However, the foregoing limitations in this Section shall not apply where the Trustee has demonstrated gross negligence, bad faith, fraud or wilful misconduct.

5.3 Liability of Trustee under Contracts

Any document or instrument creating a liability or obligation of the Trust or of the Trustee will be conclusively deemed to have been executed by the Trustee only in its capacity as Trustee of the Trust and will be binding upon the Trustee only in its capacity as trustee hereunder and resort may not be had to, nor recourse or satisfaction be sought from, the property of the Trustee other than the Assets, whether owned by its in its personal capacity or in any other capacity other than in its capacity as Trustee of the Trust, or from its employees or agents, and in all cases resort will be had solely to the Assets for the payment, performance or satisfaction of any such liability or obligation. However, the foregoing limitations in this Section shall not apply where the Trustee has demonstrated gross negligence, bad faith, fraud or wilful misconduct. Each document or instrument creating a liability or obligation of the Trust or of the Trustee shall contain a provision providing for the aforesaid limitation of liability.

5.4 Funds of the Trustee

The Trustee shall not be required to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers.

5.5 Indemnification of Trustee

In addition to and without limiting any other protection hereunder or otherwise by law of the Trustee and its respective employees, agents, representatives and assigns (in this Section 5.5, collectively, the "**Representatives**"), the Trustee and its respective Representatives shall be indemnified, defended and saved harmless out of the Assets from, against and in respect of any and all liabilities arising or related to actions taken or omitted to be taken by any agent of the Trustee, losses, claims (including any claim arising out of the assessment of any tax on income by a taxing authority), damages, penalties, fines, actions, suits, demands, levies, assessments, costs, charges, expenses and disbursements (including, without limitation, any and all legal and advisor fees and disbursements) (in this Section 5.5, collectively, the "**Liabilities**") of whatever kind or nature which may at any time be suffered by, imposed upon, incurred by or asserted against the Trustee and its Representatives, whether groundless or otherwise, howsoever arising from or out of any act, omission or error of the Trustee, in each case made in connection with its acting as Trustee hereunder, in each case except and to the extent that the Liabilities are a result from or are caused by gross negligence, wilful misconduct, bad faith or breach of the Confidentiality obligations described in section 5.9. Further, except as provided in section 5.2, the Trustee shall not be liable to any Beneficiary for any loss or damage relating to any matter regarding the Trust, including any loss or diminution in value of the Assets. Notwithstanding any other provision hereof, the obligations provided for in this section 5.5 shall survive any termination of the Trust, whether by reason of removal or resignation of the Trustee, termination or discharge of this Declaration or otherwise.

5.6 Reliance upon Advice

Subject to section 5.1, in performing its duties and exercising its powers hereunder, the Trustee may rely and may act or not act, and shall be fully protected in relying and acting or not acting, upon (a) any statement, telecopy or other electronic means of communication, writing, notice, resolution, report, opinion or other document or conversation believed by its to be genuine and correct and to have been signed, sent or made by the proper Person; (b) any opinion or advice received or information obtained from auditors, solicitors, or other professional advisers, whether retained by the Trustee or otherwise, and shall not be responsible or held liable for any loss or damage resulting from so relying or acting or not acting; and (c) the advice and actions of any Administrative Services Agent, including in connection with the delegations and reliances contemplated under the Permitted Delegations Annex. For greater certainty, it shall not be necessary for the Trustee to ascertain whether or not the Persons who have executed, signed or otherwise issued, authenticated or receipted such papers, writings or documents (including any Administrative Services Agreement, License Agreement or any other contract entered into by the Trustee) have authority to do so or that they are the same Persons named therein or otherwise to pass upon any requirement of such papers, writing or documents that may be essential for their validity or effectiveness or upon the truth and acceptability.

5.7 Replacement of the Original Trustee

As soon as practicable and in any event prior to •, 2017, the Original Trustee shall appoint the Persons contemplated by the Trustee Replacement Annex to comprise the Advisory Committee contemplated therein (once constituted, the "**Advisory Committee**"). As soon as practicable thereafter, the Original Trustee shall request that the Advisory Board make recommendations with respect to the composition of the "Board of Trustees", as contemplated by the Trustee Replacement Annex. The Trustee shall have no duty or obligation to investigate the basis for any of the Advisory Committee's recommendations and may rely on such recommendations without any duty of enquiry, supervision or oversight with respect to the activities and decision-making processes adopted by the Advisory Committee in its discretion, in full satisfaction of the Original Trustee's Standard of Care with respect to such matters hereunder. Except if the Trustee determines that the individuals recommended by the Advisory Committee to become members of such Board of Trustees are disqualified from so acting on the basis of manifest non-compliance with the "Selection Factors" set forth in the Trustee Replacement Annex, the Original Trustee shall appoint, as members of the Board of Trustees, [six] (five voting and one non-voting) of individuals from among those individuals who have been recommended for appointment to the Board of Trustees by the Advisory Committee. The Original Trustee may exercise its discretion in selecting such individuals for such appointment subject to compliance with the "Selection Factors" set forth in the Trustee Replacement Annex or, in the absence of such exercise, shall select from among individuals who would, if appointed, provide for compliance with the "Selection Factors" set forth in the Trustee Replacement Annex based on the alphabetic order of the their respective surnames. Upon the appointment of [six] individuals pursuant to this provision and their agreement to act as members of the Board of Trustees, the Original Trustee shall be deemed to have resigned and shall cease to be a trustee (such resignation occurring on the "**Original Trustee Replacement Date**").

Commented [A25]: KPMG Comment: Be careful

Commented [A26]: KPMG Comment: Committee? So who is on the AC? This can be a concern that the province appoints non-independent Trustees

Ministry Comment: Advisory Committee will be independent of the government

Commented [A27]: OPC Comment: Advisory Committee concept worthy of more discussion to ensure well understood and agreed to as not impacting non-control.

Commented [A28]: Osler comment: Ac should be appointed by this document

Commented [A29]: Committee vs. Board?

5.8 Rules and Procedures of the Board of Trustees

(a) ***Initial Requirements***. *It is expected that a*~~A~~s soon as practicable and in any event no later than [one] month following the Original Trustee Replacement Date, the Board of Trustees shall meet to take such decisions and actions as they deem necessary to ensure the proper management and administration of the Trust. The date (and location if in person) of the initial meeting shall be determined by a majority of the Board of Trustees.

(b) ***Meetings.*** Subject to the Board of Trustees' discretion to make such rules and procedures that they may deem desirable, meetings of the Board of Trustees may be held at such time and place as the trustee members of the Board of Trustees may agree upon or as they may fix by resolution for the purpose or if the meeting is called as hereinafter mentioned then at such time as may be designated in the notice calling the meeting. A meeting of the Board of Trustees may be called at any time by any two members of the Board of Trustees by two Business Days' notice given to the members of the Board of Trustees. No notice of any Board of Trustees' meeting shall be necessary when a quorum is present if those comprising the quorum consent to the transaction of the affairs of the Trust and the absent trustee or trustees, if any, either before or after the meeting shall waive in writing notice of the meeting. Meetings of the Board of Trustees may be conducted in person, by telephone, or in such other manner as determined by the Board of Trustees. The Board of Trustees may elect a Chairperson.

(c) ***Quorum.*** At any meeting of the Board of Trustees, a majority of the members of the Board of Trustees shall be a quorum irrespective of the number of members in office, provided that quorum will not exist if the majority of members voting on a decision are Provincial employees or representatives. The decision of the majority of the members where quorum exists shall govern and shall be binding for all purposes and shall be acted upon and carried out in the same manner and with the same effect as if all the members concurred therein; provided always that in the case of equality of votes the Chairperson, if any, shall not be entitled to cast a second or deciding vote.

(d) ***Power to Adopt Rules and Procedures.*** The Board of Trustees may make such rules and procedures not inconsistent herewith as it may deem desirable for the proper management and administration of the Trust and the discharge of the responsibilities of the Board of Trustees.

(e) ***Replacement of Members of the Board of Trustees***. The Board of Trustees shall have the power to replace any vacancy arising following the Original Trustee Replacement Date according to such rules and procedures as they deem appropriate, having regard for such considerations necessary to ensure that the composition of the Board of Trustees will be able to discharge its responsibilities in respect of the Declaration. If necessary, the Board of Trustees may fill any vacancy by application to the Courts of Ontario in the event of an unfilled vacancy.

(f) ***Decisions of the Board of Trustees.*** Decisions and actions of the Board of Trustees shall be made by voting, with each individual member having one vote. Subject to quorum requirements, a majority vote shall be determinative in respect of such decisions and actions. Subject to quorum requirements, any decision or action taken by the majority of trustees will represent the decision or action of the Trustee, and not any member of the Board of Trustees.

(g) ***Conflicts of Interest.*** With respect to any matter before the Board of Trustees, to the extent of a conflict of interest, whether actual, perceived or potential, involving a member of the

Board of Trustees' personal interests and a matter concerning the Trust, such member shall abstain from voting on the matter or taking any other discretionary action on the matter. For the purposes of the foregoing, no member of the Board of Trustees shall be deemed to have a conflict by reason only that the member holds any office or position with an Electricity Distributor, social services agency or governmental or quasi-governmental agency or entity (such as the Independent Electricity System Operator); provided, however, that in relation to any decision of the Board of Trustees pertaining specifically to a particular Electricity Distributor, any member of the Board of Trustees who is a director, officer or employee of the Electricity Distributor shall recuse himself or herself from participating in deliberations, discussions or voting in respect of such decision.

(h) ***Expenses*** and ***Reimbursements to Trustees.*** Members of the Board of Trustees shall be entitled to reimbursement for and in respect of their out-of-pocket expenses reasonably incurred in discharging their duties and obligations as members of the Board of Trustees. The Board of Trustees shall serve without compensation.

Commented [A30]: Governance established by government in Declaration of Trust. Although government does not have a controlling interest in the Trust, establishing the governance structure (appears mandatory in nature) would be assessed as controlling. Can we modify wording here to reflect an 'expectation that…)

Commented [A31]: OPC Comment: We all acknowledge that the following will be important to avoid perception of control. Not sure of the reference to previous comms?

5.9 Confidentiality

Notwithstanding the resignation or removal and discharge from the trusts and powers reposed in and conferred on the Trustee by this Declaration, or the termination of this Declaration, the Trustee so resigning or removed shall continue to treat as confidential all information relating to the Trust, the Assets and the Beneficiaries and shall only be entitled to make disclosures concerning such information if disclosure is required in the performance of the functions of the resigning or removed Trustee or is ordered by a court of competent jurisdiction or is otherwise required by law. The Trustee shall not be responsible or liable to any Person for any loss or damage arising out of or in any way sustained or incurred in any way relating to any such required disclosure. The obligations arising under this section 5.9 shall survive the termination of the Trust.

5.10 Vesting in Successor Trustee

Any successor trustee (including any reconstituted Board of Trustees) shall automatically become vested with the Assets and with the same powers, rights, duties, responsibilities and trusts as if it, he or she had originally been named as Trustee under this Declaration, without the requirement of any further instrument or act or conveyance, and the Trustee ceasing to act shall execute all such transfers and other documents and do all such other acts or things as may be necessary or desirable to assign, transfer, deliver to, and vest in, the successor trustee, upon the trusts expressed in this Declaration, all the Assets and all the rights, powers and trusts of the Trustee ceasing to act. The expense of any act, document, deed or other instrument or thing required under this Section 5.10, including for greater certainty, outstanding fees and unreimbursed expenses of the Trustee (including any member of the Board of Trustees) ceasing to act, shall be satisfied from the Assets.

5.11 Execution of Instruments

The Trustee shall have the power to execute all deeds, transfers, agreements, promissory notes and other instruments on behalf of the Trust. Such power may be exercised by any one or more Administrative Services Agents acting in accordance with any delegated right to do so pursuant to an applicable Administrative Services Agreement, and any such execution of instrument by an

Administrative Services Agent, acting in such capacity as agent of the Trust pursuant to the terms and conditions of such Administrative Services Agreement shall be deemed to be a proper execution of such instrument by the Trustee and shall be binding for all purposes on the Trust.

5.12 Decisions by the Trustee

If there is more than one Trustee, decisions of the Trust may be made by a majority of Trustees. Whenever the Trustees are unable to agree in relation to the commission or omission of any act or howsoever in the execution of the Trust, the decision of a majority of the Trustees shall prevail.[5]

SECTION 6
AMENDMENTS AND SUPPLEMENTS

6.1 Amendments

Subject to the requirements of the Transfer Payment Agreement, the Trustee shall have the power in its sole and absolute discretion from time to time without the approval of any Beneficiary or any court to amend, vary, supplement, replace or restate this Declaration in its entirety or any portion thereof. [ADD BACK THE PROVISO?] Without in any way limiting the foregoing, any such amendments, variations, supplements, replacements or restatements may:[Blakes: Discuss MOE certainty of Declaration and why this flexibility/Trustee discretion would be needed or appropriate. Deletion assumes that TPA may include limitations on amendments.]

(a) add provisions for the replacement of or appointment of additional trustees to act with the Original Trustee prior to the Original Trustee Replacement Date;

(b) in the case of the Original Trustee, add provisions to those contemplated in the Trustee Replacement Annex in respect of the appointment of the members and the formation and empowerment of the Board of Trustees;

(c) in the case of the Original Trustee, vary the terms and requirements applicable to the duties, responsibilities, obligations, liabilities, indemnities, protections, limitations, restrictions, compensation, expense reimbursements and such other matters, in each case as the Advisory Committee may indicate are necessary be made in order to attract and receive confirmation of appointment of appropriately qualified individuals that the Advisory Committee specifies are to be appointed as members of the Board of Trustees in accordance with its recommendations;

(d) add additional or replace existing Trustees[6];

(e) add to or reasonably clarify the principles set forth in the Principles Annex;

Commented [A32]: Is this desirable? Can we insert a requirement for provincial agreement which cannot be 'unreasonably' withheld (which would give the province the right to ensure that any changes were warranted and not in conflict with guiding principles'? Province would not be able to initiate changes unilaterally, and could not unreasonably withhold agreement of Trust initiated changes.

Commented [A33]: KPMG Comment: So, what are these? Ruling from grave?

Commented [A34]: OPC Comment: Consider rewording to soften 'alignment' language –that any amendments are substantially aligned with the communicated guiding principles. KPMG to review revised language once drafted.

Commented [A35]: Previous version had MOE appointment replacement. Would be best to be clear that province would not appoint.

[5] NTD: KPMG Comment: Watch carefully OPC Comment: Agree – need to watch the final details as developed.

[6] NTD: Consider and, if retained, integrate with Board concepts.

(f) add to or reasonably clarify the delegations and activities contemplated to be made in the Permitted Delegation Annex;

(g) include provisions for the management of the Trust by the Trustees, including the making of rules, requirements and procedures governing the decision-making of the Board of Trustees;

(h) add provisions for the replacement of members of the Board of Trustees (in addition to those provisions contemplated in section 5.7 and the Trustee Replacement Annex);

(i) provide for the engagement of any Person or Persons as managers, administrators or other service providers to the Trust, including any additional or replacement Administrative Services Agent or representative thereof;

(j) specify supplemental procedures for the identification of Primary Beneficiaries and the exchange of information with Electricity Distributors in connection with identifying such Primary Beneficiaries; or

(k) specify procedures for the transfer and transmission of funds from the Trust or any Administrative Services Agent acting on its behalf and with delegated responsibility over funds constituting Assets, to or for the benefit of, Beneficiaries or their designated representatives, payees or assignees.

6.2 Supplemental Declarations

The Trustee is authorized to execute any supplemental declaration of trust (including one or more amendments and restatements from time to time of this Declaration) to give effect to amendments to this Declaration made pursuant to section 5.1.

SECTION 7
TERMINATION

7.1 Duration

Subject to section 7.2, the Trust will continue in full force and effect so long as there are any Assets and until all of the debts, liabilities and obligations of the Trust have been paid and satisfied in full.[7]

7.2 Termination and Distribution of Assets

Subject as hereinafter provided, the Trustee may terminate the Trust and wind up its affairs on such date as the Trustee, in its sole and absolute discretion, may determine and after paying or adequately providing for the payment and satisfaction of all debts, liabilities and obligations of the Trust and upon receipt of such releases, indemnities and discharges as the Trustee, relying on the opinion of counsel, deems necessary for the protection of the Beneficiaries and for its own protection. Notwithstanding the foregoing, the Trustee shall in any event terminate the Trust and wind up its affairs as soon as practicable after the Final Distribution Date. In connection with the termination of the Trust, the Trustee shall identify the Residual Beneficiaries and distribute or

[7] NTD: Consider early termination scenarios.

cause to be distributed the remaining Assets, in cash or in kind or partly in each, to the Residual Beneficiaries, in each case in accordance with section 3.3.

7.3 Distribution of Assets on Final Distribution Date

If the Trust holds Assets on the Final Distribution Date, such assets shall promptly be paid to the Residual Beneficiaries in accordance with Section 3.3.

Commented [A36]: KPMG Comment: Must not be the Province

Ministry Comment: yes, Residual beneficiary is not the province

SECTION 8
ACCEPTANCE OF TRUSTS

8.1 Acceptance of Trusts

The Trustee hereby accepts the trusts and duties contained in this Declaration and agrees to perform the same upon the terms and conditions hereof until discharged therefrom.

[Signature Page Follows]

The Trustee has executed this Declaration as of the date first written above.

COMPUTERSHARE TRUST COMPANY OF CANADA, as Trustee

By: _____
Name:
Title:

By: _____
Name:
Title:

PRINCIPLES ANNEX

The Trustee shall have regard to [, but shall not be specifically bound by,] the following principles in applying its discretion in relation to the administration of the Trust:

1. Identification of Primary Beneficiary Payees

1.1 [Except in exceptional circumstances,] a Primary Beneficiary would not be expected to receive a benefit from the Trust unless at the time of consideration it satisfies, in addition to the requirements contemplated in the definition of "Primary Beneficiary", each of the following criteria (the "**Selection Factors**"):

(i) it has a participant agreement [with an applicable Electricity Distributor] to undertake measures (its "**Energy Plan**") to improve the electricity efficiency and/or promote the conservation of electricity at its Ontario residence;

(ii) its Energy Plan involves one or more Eligible Measures, as may be designated by the Trustee from time to time from;

(iii) it confirms that:

1. the primary purpose of its Energy Plan is the conservation and efficient use by the Primary Beneficiary of electricity, and is not for the purposes of the Primary Beneficiary making a profit;

2. it would otherwise not have the financial resources to undertake the Eligible Measures included in its Energy Plan; and

3. it would otherwise not be [a HAP Eligible Person][eligible to receive amounts in respect of the Eligible Measures under HAP];

(iv) it has demonstrated a need for financial assistance on the basis that its periodic electricity bills represent a financial burden, relative to its available financial resources; and

(v) such other criteria as the Trustee may determine, including based on the recommendations of Electricity Distributors or other knowledgeable Persons made on the basis and in accordance with the delegations contemplated by the Permitted Delegations Annex or any applicable Administrative Services Agreement.

1.2 It is recognized that, in furthering the Purpose, an efficient basis upon which to allocate funds to the Primary Beneficiaries across different areas and regions within Ontario may be based on the areas and regions serviced by the Electricity Distributors operating within Ontario.

1.3 It would not be contrary to the Purposes if funds are made available by the Trustee to the Primary Beneficiaries unequally across different areas and regions within Ontario, and it

Commented [A37]: KPMG Comment: Province's auditors need to review

Commented [A38]: OPC Comment: Yes, OAG would review transaction as part of Public Accounts audit, against PSAB criteria of control and government transfers standard.

Commented [A39]: KPMG Comment: This is fine

Commented [A40]: OPC Comment: Question for KPMG…Is this language ok?

is expect that in making such an unequal division it would be appropriate to have regard to:

(i) broad economic parameters of economic activity and the specific financial resources of the residents of the areas and regions, in each case as an indication of the relative need of such residents across the areas and regions;

(ii) electricity use and efficiency levels of non-commercial electricity customers across the areas and regions;

(iii) specific regional indicators of economic weakness and need; and

(iv) such other factors as the Trustee may determine are relevant, including based on the submissions, advice and recommendations of Electricity Distributors or other knowledgeable Persons made on the basis and in accordance with the delegations contemplated by the Permitted Delegations Annex or any applicable Administrative Services Agreement.

1.4 It is recognized that, in furthering the Purpose, the designated Electricity Distributor for an area or region in which a Primary Beneficiary resides would be expected to:

(i) be a reliable source for the purpose of assessing and confirming whether the Primary Beneficiary satisfies the Selection Factors;

(ii) be an efficient intermediary for the purpose of communicating with the Primary Beneficiary, including regarding the availability, terms, conditions and intended purposes of Program[8];

(iii) be able to facilitate an efficient payment of distribution determined to be made to or on behalf of the Primary Beneficiary, having regard to the Electricity Distributor's established practices, procedures and systems for dealing with its customers; and

(iv) have established contractual arrangements with the Primary Beneficiary that may apply to the protection and confidentiality of information provided by or respecting the Primary Beneficiary, which information may be useful in the consideration by the Electricity Distributor in its assessment of whether the Primary Beneficiary satisfies the Selection Factors, which information may not otherwise be available or readily accessible or verifiable by the Trustee. [Blakes: These statements are included to substantiate the very significant delegation of decision making (dispositive powers) to and influence of the Electricity Distributors.]

Commented [A41]: Osler comment: Are these obligations, conditions or wishes?

1.5 It is recognized that, in furthering the Purpose, the Electricity Distributor for an area or region in which a Primary Beneficiary resides will have market and utilization information that may be useful in assessing the relative needs of Primary Beneficiaries within its area or region. Such information is expected to be relevant in assessing the

[8] Consider if the Trustees should control the messaging to ensure consistency across the Province.

extent to which one such Primary Beneficiary's financial needs and the merits of its Energy Plan are greater or more compelling than those of another such Primary Beneficiary, which comparison may be relevant to the extent that the funds allocable to the Primary Beneficiaries resident in the area or region are otherwise insufficient to meet the requests for funding by all such Primary Beneficiaries.

1.6 Accordingly, it is recognized that, in furthering the Purpose, it is consistent with the Purpose that the recommendations of Electricity Distributors be utilized and relied upon by the Trustee to guide the process of identifying particular Primary Beneficiaries in making distributions to the Primary Beneficiaries.

1.7 If an Electricity Distributor for a particular area or region is unable or unwilling to assess or confirm the application of the Selection Factors to Primary Beneficiaries residing in the area or region or to make recommendations in relation to such matters, one or more of the following may provide a suitable alternative source of information and for information gathering, assessment and confirmation purposes in relation to such area or region:

(i) other Electricity Distributors operating in adjacent or other areas or regions in Ontario;

(ii) [the Ontario Energy Board];

(iii) the Independent Electricity System Operator; and

(iv) anyone else having relevant expertise and access to information regarding the electricity market of the Province, in each case as may be considered relevant by the Trustee.

Commented [A42]: The Trustees may chose to consider, as options, one or none of the following (otherwise appears directive and a finite list)

1.8 To the extent that privacy law or other legal requirements limit an Electricity Distributor from providing or making available specific information respecting the application of the Selection Factors to a particular Primary Beneficiary or group of Primary Beneficiaries, it is recognized that, in furthering the Purpose, it may be appropriate to redact or make generic affected information regarding such Primary Beneficiary in connection with the identification and confirmation of a Primary Beneficiary's eligibility and participation in the Program. If such limitations or restrictions would limit an Electricity Distributor from providing or confirming the name of a particular Primary Beneficiary to the Trustee, then it should be sufficient that such information may be obtained or disseminated on a confidential basis if and when required by the Trustee for the proper administration of the Trust and on that basis such impediments should not disqualify a Primary Beneficiary from participating in the benefits of the Program, provided that that the confidential record-keeping of the Electricity Distributor would be available in connection with the application of any applicable legal process predicated on the identification of such Primary Beneficiary for the purposes of substantiating its rights as a Primary Beneficiary of the Trust or as to the validity or subsistence of the Trust.

2. Eligible Measures

2.1 It is expected that the Trust will identify eEligible Measures which, taking into consideration the Principles Annex, may ~~shall be identified~~ ~~having~~ have regard to the following (the "**Measures Factors**"):

(i) electricity cost savings [NTD: Insert generic list of considerations relevant to the identification of the applicable spending uses].

(ii) primary home heating sources

[Blakes: MOE may wish to consider:

(iii) is the measure generally expected to result in improved energy conservation by a Primary Beneficiary if properly installed and used;

(iv) is the measure recognized under another Provincial program as being appropriate for achieving electricity conservation among a population analogous to the Primary Beneficiaries;

(v) has an independent source recognized the measure as being (x) energy efficient in design, (y) more energy efficient than similar products available in the market intended for similar usage, or (z) effective in promoting energy conservation;

(vi) does the measure present any unacceptable health or safety considerations, either with respect to the Primary Beneficiary, a party providing or installing the measure, or the physical environment;

(vii) is the measure broadly available to residents across different areas and regions of the Province;

(viii) is it reasonable to expect that the measure would, over its anticipated useful life, generate greater costs savings in respect of electricity efficiency or conservation than the cost of the measure itself; or

(ix) is the measure a requirement or precursor to another measure, the other measure being one which meets any of the other Measures Factors.]

2.2 In identifying and applying the Measures Factors, Electricity Distributors ~~would~~ might be expected to have expertise in assessing the suitability of efficiency and conservation measures in their respective areas and regions, which may differ across areas and regions across the Province based on factors (among other things) such as the climate, geography, density, electricity infrastructure, residential structures, and electricity use rates applicable within such areas or regions.

2.3 ~~Unless otherwise specified by the Board of Trustees,~~ Note that the measures specified in Schedule A to this Principles Annex may initially be considered to be consistent with the Measures Factors (subject to change as contemplated under the Permitted Delegations Annex).

Commented [A43]: Osler comment: It would be much more certain to se HAP + heat pumps

Ministry Comment: Please keep as is

Commented [A44]: Wording appears directive. Consider modifying.

3. Promotion of the Program

3.1 It is expected that the Trustee will undertake or engage others to undertake efforts to promote the availability, terms and benefits of the Program to Primary Beneficiaries.

3.2 [NTD: Insert any expectations of the Province regarding associating the Program to the Government, including in any external communications to or marketing directed at Electricity Distributors and Primary Beneficiaries.]

3.3 [NTD: Indicate that the Trustee would be free to enter into License Agreements with the Province, provided that the terms of such License Agreements are consistent with the Purpose and the Program, and that such License Agreements may permit the sub-license of IP to Electricity Distributors and permit the engagement of the Province to provide services related to the use of related IP rights.

3.4 [NTD: Insert any expectations regarding the observance of License Agreements]

4. Conduct of the Trust and the Program

4.1 It is expected that administrative expenses of the Board of Trustees and its members, including any expenses relating to the Trust, to the establishment of the [Trust][Affordability Fund] and any expenses related to the implementation and operation of the Program, including by or through Electricity Distributors and other relevant entities, will be recognized and subject to reimbursement on a basis that is substantially consistent with the accountability provisions in the Transfer Payment Agreement ~~principles outlined in the [Province's Transfer Payment Accountability Directive~~and the principles in the Province's ~~/~~Travel, Meal and Hospitality Expenses Directive][9], the current form of which attached as Schedule B to this Principles Annex.

4.2 The Trustee is expected to conduct its activities in a manner that complies in all material respects with the Transfer Payment Agreement, including to:

(i) act prudently and in furtherance of the Purpose;

(ii) report annually the results of its activities for information purposes to the Province in connection with the Program;

(iii) comply with the Province's request for any independent verification or audit if determined to be necessary or appropriate by the Province;

(iv) return of Assets that have not been distributed if it is [determined][manifestly demonstrated by the Province] that the Trustee has breached its Standard of Care in discharging its material duties under the Declaration, and has not cured such material breach despite having been given a reasonable opportunity by the Province to do so in light of the circumstances of such material breach, with the result that all or a significant part of the Assets have not been or are not being

[9] NTD: Ministry to confirm applicable Directive(s).

Commented [A45]: MOE (Trillium). Use of 'expectation' advised.

Formatted: Highlight

Commented [A46]: OPC Comment: Agree- change of wording would be advised so as to avoid perception of Trust being under control of the province.

Commented [A47]: KPMG Comment: Watch wording. Prefer "reports annually the results of its activities for info purposes"

Commented [A48]: Osler comment: Change to "undertaken"

Commented [A49]: Osler comment: control

Commented [A50]: Osler comment: Change to determines

Formatted: Highlight

applied in furtherance of the Purpose or are being applied in a manner that is directly contrary or without regard to the Purpose.]

4.3 Electricity Distributors are not intended to directly profit from distributions of funds made from the Trust, although it is recognized that the objectives of electricity efficiency and conservation of Primary Beneficiaries located in the service area or region of an Electricity Distributor, and the cost savings and improved credit worthiness of such Primary Beneficiaries, may be financially beneficial to the Electricity Distributor.

4.4 Distributions from the Trust are intended to allow receiving Primary Beneficiaries to undertake Eligible Measures at no or minimal personal cost.

4.5 Without in any way limiting the discretion of the Board of Trustees to extend the period during which the benefits of the Program may be available to the Primary Beneficiaries, up to and including the Final Distribution Date, it is expected that the Trust Assets would be distributed to Primary Beneficiaries during the period from the Original Trustee Replacement Date to [March 31, 2019].

Commented [A51]: KPMG Comment: Delete. This is ruling from grave

Commented [A52]: Osler comment: control

Commented [A53]: OPC Comment: Please see correspondence between OPCD and the OAG on government transfers. Report backs, right to audit and right to recover funds that are spent for purposes other than intended are common and accepted elements of TPs.

SCHEDULE A TO THE PRINCIPLES ANNEX
INITIAL ELIGIBLE MEASURES[10]

Commented [A54]: Change title to suggested/possible (for consideration)

Initial Specified Measures
Block Heater Timer (just timer) – rated for outdoor use, have at least a 15 amp/1800 watt capacity, be cold weather resistant, bear a C-UL or CSA certification mark
Power bar with integrated timer, and switched power outlets, four each for a total of 8 outlets, have a total capacity of 15 amps. The switched outlets must remain "live", independent of timer settings, so long as the power bar itself remains switched on. The power bar must bear either a C-UL or CSA certification mark.
Efficient Showerheads (standard) - rated at no more than 4.8 Lpm (1.25 U.S. gpm) and be of the laminar flow type (non-aerating).
Efficient Showerhead (handheld) - rated at no more than 4.8 Lpm (1.25 U.S. gpm) and be of the laminar flow type (non-aerating).
Efficient Aerators (kitchen) - rated no more than 5.7 Lpm (1.5 U.S. gpm), dual threaded to allow installation in both thread type faucets, swivel type with pause lever.
Efficient Aerators (bathroom) - rated no more than 3.8 Lpm (1.0 U.S. gpm), be dual threaded to allow installation in both thread type faucets.
Hot Water Tank Pipe Insulation - $^{1}/_{2}$" inside diameter – foam, meets ASTM –C547-00, minimum $^{3}/_{4}$" thick
Hot Water Tank Pipe Insulation - $^{3}/_{4}$ " inside diameter - – foam, meets ASTM –C547-00, minimum $^{3}/_{4}$" thick
Hot Water Tank Insulation - fibreglass R10 (fits up to a 60 gal tank) – not bubble wrap
≤11W ENERGY STAR® Qualified LED A Shape (60W) (minimum 600 Lumen output) (Formerly: 7W – 11W ENERGY STAR® Qualified LED A Shape (60W))

[10] These measures are indicative. Eligible measures added to HAP during the administration of the Trust may also be appropriately considered relevant by the Trustee.

Initial Specified Measures
≤14W ENERGY STAR® Qualified LED A Shape (75W) (minimum 800 Lumen output) (Formerly: 10W – 14W ENERGY STAR® Qualified LED A Shape (75W))
≤23W ENERGY STAR® Qualified LED A Shape (100W) (minimum 1600 Lumen output) (Formerly:17W – 23W ENERGY STAR® Qualified LED A Shape (100W))
≤16W ENERGY STAR® Qualified LED PAR 20 (minimum 600 Lumen output) (Formerly: 8W – 12W ENERGY STAR® Qualified LED PAR 20)
≤16W ENERGY STAR® Qualified LED PAR30 & PAR38 (minimum 600 Lumen output) (Formerly: 8W – 12W ENERGY STAR® Qualified LED PAR 30)
≤23W ENERGY STAR® Qualified LED PAR (minimum 1100 Lumen output) (Formerly: 14W – 18W ENERGY STAR® Qualified LED PAR 38)
≤6W ENERGY STAR® Qualified LED MR 16 / PAR 16 (minimum 250 Lumen output) (Formerly: 7W – 10W ENERGY STAR®
Qualified LED MR 16 / PAR 16 - GU 10 Base)
≤11W ENERGY STAR® Qualified LED MR 16 (minimum 400 Lumen output) (Formerly: 7W – 12W ENERGY STAR® Qualified LED MR 16 GU 5.3 Base)
ENERGY STAR® LED Wet Location Rated PAR lamp ≤ 23 Watt (minimum 1100 Lumen output)
Recessed Downlight Fixture including LED with Light Output >600 and <800 lumens (Retrofit Measure List)
Recessed Downlight Fixture including LED with Light Output >800 lumens (Retrofit Measure List)
Indoor Drying Rack

Extended Measures
Replace refrigerator with ENERGY STAR qualified refrigerator - 15.5 - 16.9 cubic foot top freezer, automatic defrost, refrigerator/ freezer, no through the door ice service
Replace refrigerator with ENERGY STAR qualified refrigerator - 17.0 - 18.4 cubic foot top freezer, automatic defrost, refrigerator/ freezer, no through the door ice service
Replace refrigerator with a refrigerator that has a consumption level of less than 425 kwh, 10 – 12.5 cubic foot top freezer, automatic defrost, refrigerator freezer, no through the door ice service
Replace freezer with ENERGY STAR qualified freezer - 12-14.4 cubic foot freezer
Replace freezer with ENERGY STAR qualified freezer - 14.5 - 16.0 cubic foot freezer
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 6,000 – 7,999 BTU/hr with C-UL or CSA certification mark
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 8,000 – 9,999 BTU/hr with C-UL or CSA certification mark
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 10,000 – 12,000 BTU/hr with C-UL or CSA certification mark
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 14.2 - 21.2 l/day (30-44.9 pints/day) dehumidifier
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 21.3 - 25.4 l/day (45-53.9 pints/day) dehumidifier

Extended Measures
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 25.5 - 35.5 l/day (54-75 pints/day) dehumidifier
Programmable Thermostat – line voltage – meets CAN/CSA-C828-06 standard, minimum performance: Droop: 1.5°C, Differential: 0.5°C, Precision 0% within 0.5°C of the original set point of 22°C
Programmable Thermostat – low voltage - meets CAN/CSA-C828-06 standard, minimum performance: Droop: 1.5°C, Differential: 0.5°C, Precision 0% within 0.5°C of the original set point of 22°C

Weatherization Measures
Comprehensive Draftproofing (caulking, foam and weather stripping, and application of same) – lifespan of 20 years plus If one or two component polyurethane foams are used, the products and installations must conform to: • CAN/ULC-S710.1 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 1: Material Specification. • CAN/ULC-S710.2 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 2: Application. • CAN/ULC-S711.1 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification • CAN/ULC-S711.2 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification, and Part 2: Application. **Attic Insulation (including installation):**
cellulose: CAN/ULC-S703-01 Amendment 1 - Cellulose Fibre Insulation (CFI) for Buildings OR 2) Mineral Fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre

Weatherization Measures
for Buildings **Wall Insulation (including installation):**
cellulose: CAN/ULC-S703-01 Amendment 1 - Cellulose Fibre Insulation (CFI) for Buildings OR 2) Mineral Fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre **Basement Insulation (including installation):**
mineral fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre for Buildings Vapour Barrier: 69009-CAN/CGSB-51.34-m86 If one or two component polyurethane foams are used, the products and installations must conform to: • CAN/ULC-S710.1 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 1: Material Specification. • CAN/ULC-S710.2 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 2: Application. • CAN/ULC-S711.1 Standard for Thermal Insulation – Bead Applied Two-Component
• Polyurethane Air Sealant Foam, Part 1: Material Specification • CAN/ULC-S711.2 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification, and Part 2: Application.

Heat Pumps (Selection of manufacturers and technologies to meet the US federal minimum efficiency standard for ASHPs, as of 2015, is 13.0 SEER and 7.7 HSPF. Energy Star–certified models offer roughly 9 percent more efficiency than most new uncertified ASHPs and 20 percent more efficiency than existing models that may be in place)
Ductless Multiport Heat Pump **[NTD: Add details pertaining to heat pumps]**
Cold Climate Ductless Heat Pump **[NTD: Add details pertaining to heat pumps]**
Cold Climate Multiport Ductless Heat Pump **[NTD: Add details pertaining to heat pumps]**

Cold Climate Ducted Heat Pump **[NTD: Add details pertaining to heat pumps]**

SCHEDULE B TO THE PRINCIPLES ANNEX
PERMITTED EXPENSE REIMBURSEMENTS

[NTD: Insert the Province's Transfer Payment Accountability Directive/Travel, Meal and Hospitality Expenses Directive. Please forward a Word version if available.]

PERMITTED DELEGATION ANNEX

1. Under section 4.2(g) of the Declaration, the Trustee has the power to: [(a) appoint, employ or retain Administrative Services Agents for the purpose of discharging its duties and obligations under the Declaration; and (b) enter into, perform, enforce and amend Administrative Services Agreements].

2. In accordance with section 4.2(g) of the Declaration, consistent with the principles set forth in the Principles Annex, the Trustee or its agent will seek to enter into one or more Administrative Services Agreements with individual Electricity Distributors under which the Electricity Distributors will act as Administrative Service Agents to the Trustee. In this manner, the Trustee will delegate certain of its powers and duties to the Electricity Distributors.

3. Under section 5.1 of the Declaration, to the extent the Trustee has delegated any of its duties or powers, it shall be deemed to have satisfied the Standard of Care in respect of the subject matter of such delegation, subject to the Trustee's overall duty to exercise prudent oversight thereof. The Trustee is entitled to rely on an Electricity Distributor to discharge the duties delegated to it, as Administrative Services Agent, pursuant to an Administrative Services Agreement as described in this Annex.

4. Accordingly, and without limiting the Trustee's right to delegate under the Declaration and its other rights, powers and discretion as Trustee, the Trustee will be permitted to, and is expected to seek to, enter into Administrative Services Agreements with Electricity Distributors in order to further the Purpose. Although at the Trustee's discretion, it is expected that such Administrative Services Agreements will include customary terms and conditions for an administrative services arrangement of this type and, in addition, would be expected (subject to the acceptance and agreement of the applicable Electricity Distributor counterparty) to address the following points in particular:

    a. **Identification of Applicable Primary Beneficiary Payees and Determination of Individual Distribution Amounts**

        i. Each Electricity Distributor would make an initial assessment of the financial needs of Primary Beneficiaries within its designated service area or region, having regard to the Selection Factors set forth in section 1.3 of the Principles Annex, together with applicable economic data, in order to prepare and provide to the Trustee an estimate of the number of Primary Beneficiaries who the Electricity Distributor reasonably expects would satisfy the Selection Factors.

        ii. Each Electricity Distributor would make an initial assessment of the measures it would recommend be included as Eligible Measures, having regard to the Measures Factors set forth in section 2.1 of the Principles Annex, in order to prepare and provide to the Trustee an estimate of the average cost per Primary Beneficiary Payee (as defined below) of such Eligible Measures that the Electricity Distributor reasonably expects would apply in respect of Primary Beneficiaries resident in its service area or region.

Commented [A55]: To lessen perception of 'control' over operating procedures, although Trust Guidance envisions accountability provisions being acceptable. This section, however

iii. Based on the product of (i) and (ii), above, and such other considerations as it considers to be directly relevant, each Electricity Distributor would make a written recommendation to the Trustee regarding the aggregate funding amount that the Electricity Distributor anticipates would be utilized under the Program by the Primary Beneficiaries resident in its service area or region (the "**Local Funding Estimate**"). Such recommendation would be accompanied, when submitted to the Trustee, by a detailed explanation regarding the assumptions, financial parameters, suitability considerations and other information underlying the Local Funding Estimate (including the type of information contemplated by the Selections Factors and the Measures Factors, which would be relied upon by the Trustee in its assessment regarding the allocation of available funding to or for the benefit of the Primary Beneficiaries across the specified areas and regions of Ontario.

iv. The Trustee would inform the Electricity Distributor regarding the aggregate of the amount determined by the Trustee to be made available under the Program for Primary Beneficiaries in the Electricity Distributor's designated service area or region (for each Electricity Distributor, its "**Maximum Electricity Distributor Allocation**") and as to any maximum amount that may be paid to or for the benefit of any single Primary Beneficiary [or group of related Primary Beneficiaries] located in the servicer area or region of the Electricity Distributor (the "**Maximum Primary Beneficiary Amount**"). The Maximum Electricity Distributor Allocation and Maximum Primary Beneficiary Amount may vary between areas and regions, among the Primary Beneficiaries within such areas and regions, and may be increased by the Trustee from time to time in its discretion.

v. Each Electricity Distributor would apply the principles set forth under "Identification of Primary Beneficiary Payees" in the Principles Annex to identify and make recommendations to the Trustee regarding the amount of funds (if any) to be distributed to or for the benefit of Primary Beneficiaries resident within its service area or region from time to time (the "**Primary Beneficiary Payees**").

vi. Each Electricity Distributor would ensure that the aggregate of the amounts it recommends be distributed to or for the benefit of Primary Beneficiary Payees from time to time does not exceed (1) its Maximum Electricity Distributor Allocation and (2) for any single Primary Beneficiary [or group of related Primary Beneficiaries] located in the service area or region of the Electricity Distributor, the lesser of (x) the applicable Maximum Primary Beneficiary Amount and (y) the estimated costs (including any applicable taxes, but excluding any amount payable to the Electricity Distributor by or on behalf of the Primary Beneficiary) to be incurred by or on behalf of such Primary Beneficiary (whether or not such costs have been paid or remain outstanding) in respect of Eligible Measures applied or to be applied in respect of the Primary Beneficiary's Ontario residence.

vii. The Trustee ~~would~~ may chose to provide written confirmation to each Electricity Distributor:

Commented [A56]: OPC Comment: KPMG to comment on specificity.

1. Either (x) that the recommendations specified of the Electricity Distributor in clause (v), above, have been accepted, or (y) as to the specific reasons for any non-acceptance; and

2. The amount of the distributions to be paid to or for the benefit of each Primary Beneficiary Payee that is resident in the Electricity Distributor's service area or region.

viii. With respect to each Primary Beneficiary resident in a Electricity Distributor's service area or region that is confirmed as a Primary Beneficiary Payee, the Electricity Distributor ~~would~~ may chose to provide the Trustee written confirmation as to:

1. The identity of such Primary Beneficiary Payee; and

2. The amount of the distribution paid to or for the benefit of such Primary Beneficiary Payee.

ix. If the amount of a distribution to be made to a Primary Beneficiary Payee is based on the estimated costs to be incurred by or on behalf of such Primary Beneficiary and, prior to making the distribution to the Primary Beneficiary Payee, the Electricity Distributor determines that the actual costs (including any applicable taxes but excluding any amount payable to the Electricity Distributor by or on behalf of the Primary Beneficiary) incurred or to be incurred by or on behalf of such Primary Beneficiary in respect of Eligible Measures applied or to be applied in respect of the Primary Beneficiary's Ontario residence has or would be less than such estimated costs, then the amount to be distributed to the Primary Beneficiary shall be based on such actual costs.

b. **Making of Distributions to Primary Beneficiaries**

i. It is expected that p~~P~~romptly after the Trustee confirms the identity of a Primary Beneficiary Payee resident in an Electricity Distributor's service area or region and the amount of the distribution to be paid to or for the benefit of such Primary Beneficiary Payee, the Trustee would arrange for payment to or on the direction of the Electricity Distributor of an amount equal to the amount of such distribution.

ii. It is expected that p~~P~~romptly upon receipt of funds in respect of a distribution to be made to a Primary Beneficiary Payee, the Electricity Distributor would arrange for payment of the full amount of such distribution to or for the benefit of the Primary Beneficiary Payee (including by direct payment to a third party of, or as a reimbursement or rebate of, the costs of applicable Eligible Measures installed at the residence of and for the benefit of the Primary Beneficiary Payee), without reduction or set-off by the Electricity Distributor.

Commented [A57]: OPC Comment: KPMG to comment on specificity.

Commented [A58]: What if the LDC assesses the actual costs to be higher than the original estimate?

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iii. If the amount paid to an Electricity Distributor in respect of a distribution to be made to a Primary Beneficiary exceeds the actual amount of the distribution made to or on behalf of the Primary Beneficiary, it is expected that the Trustee would require the Electricity Distributor ~~shall~~ to promptly return such excess to the Trustee, whereupon the proceeds of such returned amount shall continue to form part of the Assets.

c. **Promotion of the Program**

i. [NTD: Insert any specific items regarding the use of IP by Electricity Distributors]

d. **Establishment of Operational, Administrative, Record-Keeping and Other Systems and Policies by LDCs to facilitate the Program**

i. It is expected that t~~T~~he Electricity Distributor would establish such operational, administrative, record-keeping and other systems and policies as are necessary to facilitate the Program and perform its duties under the Administrative Services Agreement, including systems or policies to: identify Primary Beneficiary Payees; comply with applicable privacy and regulatory laws; communicate with Primary Beneficiaries on behalf of the Trust; assess Eligible Measures; determine the Local Funding Estimate; monitor its recommendations to the Trustee against its Maximum Electricity Distributor Allocation and the Maximum Primary Beneficiary Amount; receive funds from the Trust in respect of distributions to the Primary Beneficiary Payees and transfer such funds to the appropriate recipients for the benefit of the Primary Beneficiary Payees; preparation and timely delivery to Primary Beneficiary Payees of such documents as are required by the *Income Tax Act* (Canada); and create and maintain records in respect of the foregoing.

ii. The Electricity Distributor would set up a separate bank account for the purpose of receiving funds from the Trust in respect of distributions to the Primary Beneficiary Payees and the transfer of such funds to the appropriate recipients for the benefit of the Primary Beneficiary Payees.

e. **Reporting, Record-Keeping, Inspection and Disclosure and Compliance Matters**

i. The Electricity Distributor would provide record-keeping, clerical and bookkeeping services relating to all matters relating to its recommendations and the performance of its other duties and obligations under its Administrative Services Agreement.

ii. The Electricity Distributor would keep and maintain all financial records and non-financial documents and records relating to the provision of services under its Administrative Services Agreement. [NTD: Consider specifying any particular records regarding individual Primary Beneficiary Payees needed to ensure the proper function of the Trust or the Program]

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Commented [A59]: Not sure why we would have this in the Trust Declaration between the Province and the Trust? Suggest deleting, or modifying to include reference under accountability provisions that Trust would be expected to attached to Admin Service Agreement.

iii. The Electricity Distributor would provide to the Trustee quarterly and annual reports ("**Reports**") for the duration of its Administrative Services Agreement. Such Reports would set out, among other things, the amounts of the distributions paid to or for the benefit of applicable Primary Beneficiary Payees, the average distribution amount per such Primary Beneficiary Payee, the Eligible Measures for which distributions have been made, and the uptake of energy efficiency measures.

iv. The Electricity Distributor would agree to provide to the Trustee such information as is necessary for the Trustee to (v) comply with applicable law; (w) prepare financial statements for the Trust; (x) prepare and submit such documents as are required under the *Income Tax Act* (Canada); (y) comply with the Trust's applicable obligations under the Transfer Payment Agreement; and (z) such other matters as the Trustee reasonably requests.

v. The Trustee, its authorized representatives or an independent auditor would be permitted to, at its own expense, on twenty-four hours' notice to the Electricity Distributor and during normal business hours, inspect the records of and information respecting the Electricity Distributor to confirm its compliance with the Administrative Services Agreement, including regarding its processes for recommending the Primary Beneficiary Payees and their respective distribution amounts and regarding the delivery of Trust funds on behalf of the Trustee to or for the benefit of the Primary Beneficiary Payees.

f. **Standard of Care**

i. The Electricity Distributor would be required to agree to perform its duties provided under the Administrative Services Agreement exercising the degree of care, diligence and skill that a reasonably prudent Person would exercise in comparable circumstances.

ii. In performing its duties under the Administrative Services Agreement (including the recommending of Primary Beneficiary Payees to the Trustee), the Electricity Distributor would be required to agree to seek to avoid actual, potential or perceived conflicts of interest.

iii. The Electricity Distributor would be required to agree to that it would not, in performing its obligations under the Administrative Services Agreement, take any action which it knows or ought reasonably to know would cause the Trustee or the Trust to be in violation of any law, rule or regulation applicable to it.

g. **Expenses**

The Electricity Distributor would be eligible to receive reasonable compensation and reimbursement of its actual out-of-pocket costs associated with the performance of its duties and obligations under the Administrative Services Agreement, subject to compliance with requirements substantially equivalent to the Province's Travel, Meal

and Hospitality Expenses Directive. Such compensation amounts and reimbursement entitlements would be specified in the Administrative Services Agreement.

h. **Representations**

The Electricity Distributor would make customary representations to the Trust regarding, among other things, its legal capacity; authorization; non-contravention of law or material contract to which it is a party; and the enforceability of the Administrative Services Agreement.

i. **Indemnification**

The Electricity Distributor would be required to agree to provide customary indemnities to the Trust and the Trustee from and against claims, damages and liabilities which may the Trust or Trustee may suffer or incur as the result of any breach of the Administrative Services Agreement by the Electricity Distributor or its representatives.

[NTD: MOE, please advise whether you wish to address any of the following matters upfront in an administrative services agreement: (1) LDC compliance with privacy law requirements/ money laundering laws; (2)legal representation if joined in any product warranty claims (i.e., to the extent the Trust is sued in connection with a purchase of Eligible Measures); (3)specific manner of flowing money to manufacturers and suppliers of Eligible Measures;(4) logistics of banking and cash flow mechanics and related record-keeping; (5) production of information for Trustee to satisfy legal requirements applicable to the Trust (i.e., tax; record keeping); (6) preparation of tax remittances for beneficiaries (applicable?);(7) required communications to Primary Beneficiaries on behalf of the Trust (including to comply with applicable laws);(8) preparation and submission of applications, etc., that may be contemplated by the ~~Program;and~~Program; and (9) LDC fault-based termination scenarios]

Commented [A60]: Does this have to be included in the Trust Declaration? Can it be a separate document, not part of the formal Trust Doc? These appear to relate to accountability provisions that the Trustee may require of the Primary Beneficiaries. This level of detail related to a third party arrangement will increase the risk of being perceived as 'controlling'.

TRUSTEE REPLACEMENT ANNEX

1. The Advisory Committee shall consist of the following individuals:

   [Insert Individual Name]

   [Insert Individual Name]

   [Insert Individual Name]

   [Insert Individual Name]

   [Insert Individual Name]

   [Insert Individual Name]

   [Insert Individual Name]

   [NTD: Selection criteria are under consideration, including to address any accounting considerations]

2. In the event any member of the Advisory Committee resigns or is unable to act, it is expected that the remaining members of the Advisory Committee would appoint another resident of Ontario as a replacement.

3. On or before •, 2017, the Advisory Committee shall identify [six] residents of Ontario who have expressed that they are willing to act as members of the Board of Trustees and who, individually and collectively satisfy the following criteria (collectively, the "**Selection Factors**"):

   a) each member demonstrates an understanding of the electricity sector including the electricity distribution sector;

   b) each member demonstrates an expertise in conservation and low income programs;

   c) three of the identified individuals will be representatives from separate electricity distributors, two individuals will be representatives from separate social services agencies and one individual member, who will be a non-voting member, will be a representative of the Government of Ontario; and

   d) it is expected that representation by the Government of Ontario will be non-controlling.

4. If the Advisory Committee determines that changes to the Declaration (including to this Trustee Replacement Annex) are necessary in order to (a) replace, or appoint additional trustees to act with, the Original Trustee prior to the Original Trustee Replacement Date or (b) attract and receive confirmation of appointment of appropriately qualified individuals that the Advisory Committee believes would be suitable candidates to serve as members of the Board of Trustees, the Advisory shall make recommendations regarding such necessary changes, including without

Commented [A61]: OPC Comment: It is expected that vs. shall

Commented [A62]: KPMG Comment: Define! What does this mean? Not sure any provincial representation is a good idea

Commented [A63]: OPC Comment: KPMG is familiar with PSAB's criteria of control. Government representation should be possible without compromising control. Transit trust has government representation.

limitation in respect of (i) any necessary limitations on the nature or scope of the appointment of the members of the Board of Trustees, (ii) the formation and empowerment of the Board of Trustees, and (iii) the duties, responsibilities, obligations, liabilities, indemnities, protections, limitations, restrictions, compensation, expense reimbursement entitlements of members of the Board of Trustees.

5. The Advisory Committee shall recommend that the existing Trustee appoint the individuals so identified to become the initial members of the Board of Trustees pursuant to section 5.7 of the Declaration.

6. If any of the individuals recommended under paragraph 4 or under this paragraph are not accepted and appointed by the existing Trustee pursuant to section 5.7 of the Declaration, the Advisory Committee shall forthwith identify and recommend an alternative individual who is willing to act and who whose presence as a member of the Board of Trustees would result in the Trustee collectively satisfying the criteria in paragraph 2 above.

7. Upon the appointment of [six] trustees (five voting and one non-voting) pursuant to section 5.7 of the Declaration, the Advisory Committee will be functus.

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ONTARIO TRANSFER PAYMENT AGREEMENT

THE AGREEMENT, effective as of the • day of March, 2017 (the **"Effective Date"**)

B E T W E E N :

Her Majesty the Queen in right of Ontario
as represented by the Minister of Energy

(the "Province")

- and -

Computershare Trust Company of Canada, in its capacity as trustee of Affordability Fund Trust

(together with its successors and assigns, the "Recipient" and, together with the Province, the "Parties")

BACKGROUND

Computershare Trust Company of Canada is the original trustee of the Affordability Fund Trust.

The Province wishes to provide Funds to the Recipient to be held, invested, applied and distributed in accordance with the terms of the Declaration of Trust (defined below), in furtherance of the Purpose (as defined in the Declaration of Trust), including having regard to the Principles set forth in Annex A.

Commented [A1]: OPC Comment: Principles seen as too prescriptive? For KPMG

Commented [A2]: KPMG Comment: Be careful to not be over prescriptive

CONSIDERATION

In consideration of the mutual covenants and agreements contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is expressly acknowledged, the Parties agree as follows:

ENTIRE AGREEMENT

This agreement (as amended, restated, supplemented or otherwise modified from time to time, the **"Agreement"**), including:

Schedule "A" - General Terms and Conditions
Schedule "B" - Project Specific Information
Schedule "C" - Project - Certain Obligations of the Recipient
Schedule "D" - Budget
Schedule "E" - Payment Plan
Schedule "F" - Reporting
Annex "A" - Principles, and
any amending agreement entered into as provided for below,

constitutes the entire agreement between the Parties with respect to the subject matter contained in this Agreement and supersedes all prior oral or written representations and agreements.

COUNTERPARTS

The Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

AMENDING THE AGREEMENT

The Agreement may only be amended by a written agreement duly executed by the Parties.

ACKNOWLEDGEMENT

The Recipient:

(a) acknowledges that it has read and understands the provisions contained in the entire Agreement; and

(b) agrees to be bound by the terms and conditions contained in the entire Agreement.

IN WITNESS WHEREOF, the Parties have executed the Agreement on the dates set out below.

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO as represented by Minister of Energy

by:

_____ _____

Date Name: Serge Imbrogno

Title: Deputy Minister

Authorized Signing Officer

COMPUTERSHARE TRUST COMPANY OF CANADA, in its capacity as trustee of AFFORDABILITY FUND TRUST

by:

_____ _____

Date Name:

Title:

by:

_____ _____

Date Name:

Title:

I/We have authority to bind the Recipient.

SCHEDULE "A"
GENERAL TERMS AND CONDITIONS

1.0 INTERPRETATION AND DEFINITIONS

1.1 Interpretation. For the purposes of interpretation:

(a) words in the singular include the plural and vice-versa;

(b) words in one gender include all genders;

(c) the headings do not form part of the Agreement; they are for reference only and will not affect the interpretation of the Agreement;

(d) any reference to dollars or currency will be in Canadian dollars and currency;

(e) "include", "includes" and "including" denote that the subsequent list is not exhaustive;

(f) where any reference is made in the Agreement to an act to be performed by or for or on behalf of the Affordability Fund Trust, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Trustee in its capacity as trustee of the Affordability Fund Trust, and, where any reference is made in the Agreement to an act to be performed by or for or on behalf of the Trustee, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Trustee in its capacity as trustee of the Affordability Fund Trust; and

(g) [it is intended that the transfer of the Funds to the Recipient will be a transfer made to a "non-controlled trust" (as that term is given meaning in • applicable to the accounting rules and principles applicable to the Province as of the date of the Agreement), and so if a term or condition of the Agreement is determined to conflict with the requirements applicable to the Province recording the transfers to the Recipient of Funds contemplated hereunder as an expense incurred by the Province on the date of the transfer of Funds under the Agreement otherwise in connection with activities undertaken by the Province with such a "non-controlled trust", then such term or condition shall be given a meaning and shall have an effect insofar as it is possible to interpret such term or condition in a manner that eliminates such conflict while preserving the other provisions of the Agreement and furthering the Purpose.][1]

1.2 Definitions. In the Agreement, the following terms will have the following meanings:

"Affordability Fund Trust" means the trust established and governed by the Declaration of Trust, and for greater certainty includes such trust operating under any other name that may be designated from time to time by the Trustee in accordance with the Declaration of Trust.

"BPSAA" means the Broader Public Sector Accountability Act, 2010 (Ontario).

"**Beneficiary**" has the meaning given to such term in the Declaration of Trust.

"Budget" means the Recipient's budget attached to the Agreement as Schedule "D".

"Business Day" means any working day, Monday to Friday inclusive, excluding statutory and other holidays, namely: New Year's Day; Family Day; Good Friday; Easter Monday; Victoria Day; Canada Day; Civic Holiday; Labour Day; Thanksgiving Day; Remembrance Day; Christmas Day; Boxing Day and any other day on which the Province has elected to be closed for business.

[1] NTD: Consider if this sort of fail-safe is helpful.

"**Declaration of Trust**" means the declaration of trust made as of March [•], 2017, under which the Affordability Fund Trust was established by the Trustee, as such declaration of trust may be amended, restated, supplemented or otherwise modified from time to time with the consent of the Province.

"Expiration Date" means the date on which this Agreement will expire and is the date set out in Schedule "B".

"Funds" means the money the Province provides to the Recipient pursuant to the Agreement.

"Maximum Funds" means the maximum amount of Funds that the Province will provide the Recipient under the Agreement, as set out in Schedule "B".

"Notice" means any communication given or required to be given pursuant to the Agreement.

"Party" means either the Province or the Recipient.

"**Person**" includes any individual, sole proprietorship, corporation, partnership, joint venture, association, society, club, board, chamber, joint-stock company, trust, trustee, unincorporated or incorporated organization or entity or government or any entity, agency or political subdivision thereof.

"**Program**" has the meaning given to such term in the Declaration of Trust.

"Project" means the undertaking described in Schedule "C".

"**Purpose**" has the meaning given to such term in the Declaration of Trust.

"PSSDA" means the *Public Sector Salary Disclosure Act, 1996* (Ontario).

"Reports" means the reports described in Schedule "F".

"**Trustee**" means, initially, Computershare Trust Company of Canada, and any additional or replacement trustee in its capacity as trustee of the Affordability Fund Trust pursuant to the Declaration of Trust, including the Board of Trustees (as defined in the Declaration of Trust) and each of their respective successors and permitted assigns.

2.0 REPRESENTATIONS, WARRANTIES AND COVENANTS

2.1 General. The Recipient represents, warrants and covenants that:

(a) the Trustee is the trustee of the Affordability Fund Trust; and

(b) the Affordability Fund Trust is, and will continue to be for the term of the Agreement, a trust existing under and governed by the laws of the Province of Ontario.

2.2 Execution of Agreement. The Recipient represents and warrants that it has:

(a) the full power and authority to enter into the Agreement; and

(b) taken all necessary actions to authorize the execution of the Agreement.

2.3 Governance. The Recipient represents, warrants and covenants that it has, and will maintain, in writing for the period during which the Agreement is in effect:

(a) decision-making mechanisms and procedures to enable the Recipient to hold, invest, manage, apply and distribute the Funds in accordance with the Declaration of Trust in furtherance of the Purpose; and

(b) procedures to enable the preparation and delivery of all Reports required pursuant to Article 5.0.

2.4 **Supporting Documentation.** Upon request, the Recipient will provide the Province with proof of the matters referred to in this Article 2.0.

3.0 TERM OF THE AGREEMENT

3.1 **Term.** The term of the Agreement will commence on the Effective Date and will expire on the later of the Expiration Date and the date on which the Affordability Fund Trust is terminated in accordance with the Declaration of Trust.

3.2 **Extension.** The term of the Agreement may be extended by further agreement between the Parties.

3.3 **Extension of the Declaration of Trust.** If the Province determines that an extension of the Declaration of Trust (beyond the "Final Distribution Date" and time for termination, each as specified or determined thereunder) is consistent with and in furtherance of the Purpose and the Province's original intentions and expectations in establishing the Project, the Province may request that the Recipient extend the Declaration of Trust to a date specified by the Province in a Notice (such date not to be later than •), whereupon the Recipient, so long as the Trustee does not have a reasonable basis to believe that such an extension would be inconsistent with the Purpose or weaken the protections intended for the benefit of the Trustee pursuant to the Declaration of Trust, will undertake such actions as it may consider to be necessary or appropriate to so extend the Declaration of Trust, including by amending the Declaration of Trust to provide for such an extension and to modify any other term or requirement as would be necessary or prudent to conform such term or requirement in light of such extension.

4.0 FUNDS AND CARRYING OUT THE PROJECT

4.1 **Funds Provided.** The Province will:

(a) provide the Recipient up to the Maximum Funds to be held, invested, applied and distributed in accordance with the terms of the Project and the Declaration of Trust;

(b) provide the Funds to the Recipient in accordance with the Payment Plan attached to the Agreement as Schedule "E"; and

(c) deposit the Funds into an account designated by the Recipient, provided that the account:

(i) resides at a Canadian financial institution; and

(ii) is in the name of the Recipient.

4.2 **Limitation on Payment of Funds.** Despite section 4.1, the Province is not obligated to provide any Funds to the Recipient until the Requirements (as specified and defined in Schedule C) have been satisfied.

4.3 **Use of Funds and Project.** The Recipient will use, apply and distribute the Funds only for and in furtherance of the Purpose, including having regard to the Principles set forth in Annex A.

4.4 **Province's Role Limited to Providing Funds.** For greater clarity, the Province's role under the Agreement is limited to providing Funds to the Recipient and the Province is not responsible for carrying out or overseeing the terms of the Declaration of Trust.

4.5 **Maximum Funds.** The Recipient acknowledges that the Funds available to it pursuant to the Agreement will not exceed the Maximum Funds.

Commented [A3]: KPMG Comment: Be careful

Commented [A4]: KPMG Comment: Consistent wording

Commented [A5]: KPMG Comment: Too prescriptive- be careful

Commented [A6]: OPC Comment: Not sure how else a trust would work.
We have documented agreement with the OAG that says we can communicate to a TP recipient what the funds can be used for; however, an assessment of whether we control a recipient requires an additional lens be applied. Is this considered too detailed by KPMG?

Ministry comment: Please keep for now

Commented [A7]: KPMG Comment: This is good. But this is really administrative and does not negate the prescriptive terms

4.6 **Funding, Not Procurement.** For greater clarity, the Recipient acknowledges that:

(a) it is receiving funding from the Province for the Project and is not providing goods or services to the Province[2]; and

(b) the funding the Province is providing under the Agreement is funding for the purposes of the PSSDA.

5.0 RECIPIENT'S ACQUISITION OF GOODS OR SERVICES, AND DISPOSAL OF ASSETS

5.1 **Acquisition.** If the Recipient acquires goods, services, or both with or by applying the proceeds of the Funds, it ~~will~~ is expected to do so through a process that promotes the best value for money and ~~will~~ is expected to take reasonable steps to ensure that its Administrative Services Agents also follow a process that promotes the best value for money when acquiring goods and services with or by applying the proceeds of the Funds.

6.0 CONFLICT OF INTEREST

6.1 **No Conflict of Interest.** It is expected that ~~T~~he Recipient will carry out the Program and use, apply and distribute the Funds without an actual, potential or perceived conflict of interest.

6.2 **Conflict of Interest Includes.** For the purposes of this Article, a conflict of interest includes any circumstances where:

(a) the Recipient; or
(b) any person who has the capacity to influence the Recipient's decisions[3],

has outside commitments, relationships or financial interests that could, or could be seen to, interfere with the Recipient's objective, unbiased and impartial judgment relating to the Project, or the Recipient's use, application or distribution of the Funds, or both.

6.3 **Disclosure to Province.** The Recipient will disclose to the Province, without delay, any situation that a reasonable person would interpret as an actual, potential or perceived conflict of interest.

7.0 REPORTING, ACCOUNTING AND REVIEW

7.1 **Preparation and Submission.** The Recipient ~~will~~is expected to:

(a) submit to the Province at the address referred to in Schedule "B", all Reports in accordance with the timelines and content requirements set out in Schedule "F", or in a form as specified by the Province from time to time;

(b) submit to the Province at the address referred to in Schedule "B", any other reports as may be requested by the Province from time to time in accordance with the timelines and content requirements specified by the Province;

[2] NTD: Consider in relation to promotional objectives and in the context of any License Agreement.
[3] NTD: Need to consider how this works in relation to Administrative Services Agents. Is the intention that the Trustee will be in breach of the Agreement if an Administrative Services Agent is itself in a conflict, or should this be recast to require the Trustee to seek remedies (i.e., termination) if an Administrative Agent is determined to be (diligence requirement?) in breach of the conflicts of interest requirements contemplated in the Permitted Delegations Annex?

Commented [A8]: OPC Comment: General enough to not be a control factor? For KPMG

Commented [A9]: KPMG Comment: Don't like this. Why is this needed? Is this not a Trustee issue to discuss?

Commented [A10]: OPC Comment: Comment seems reasonable. Delete, but not major, especially since decisions would be by all of the Trustee board, and not individual trustees.

Ministry Comment: Please delete as per OPC recommendation

Commented [A11]: Why? Perhaps rather include a clause that says that where such a conflict is identified, the recipient is expected to take the necessary steps to resolve/mitigate the conflict? Otherwise, suggests that province is controlling/involved in management. Footnote 3 suggests that a conflict may put the Trust in breach? Discussed 'material' breaches in Declaration. With regards to LDCs, suggested that details of Delegations Annex be removed/segregated from the Declaration. Could include COI considerations in those as well, but again, from the Province's 'non-controlling' perspective any references should likely suggest an expectation that action will be taken to resolve/mitigate conflicts of interest.

Commented [A12]: KPMG Comment Reporting is fine but watch details. Province should not control Trust activities

Commented [A13]: OPC Comment: Report backs and audits are standard inclusions in our TPAs. Consider including an intro that indicates why we need this – to monitor if policy objectives are being met (value for money)

Ministry Comment: Blakes- as per OPC comments, kindly revise

(c) ensure that all Reports and other reports are completed to the satisfaction of the Province; and

(d) ensure that all Reports and other reports are signed on behalf of the Recipient by an authorized signatory.

7.2 Record Maintenance. The Recipient will keep and maintain financial and other records necessary to permit it to satisfy its obligations under section 7.1 and to permit the Province to exercise its rights under section 7.3.

7.3 Inspection. The Province, its authorized representatives or an independent auditor identified by the Province may, at its own expense, upon twenty-four hours' Notice to the Recipient and during normal business hours, inspect the records of and information respecting the Recipient to confirm its compliance with the terms of this Agreement, including to ensure consistency with the Purpose and, for these purposes, the Province, its authorized representatives or an independent auditor identified by the Province may take one or more of the following actions:

(a) inspect and copy the records and documents referred to in section 7.2;

(b) keep any copies made pursuant to section 7.3(a); and

(c) conduct an audit or investigation of the Recipient in respect of the expenditure of the Funds to confirm that the Funds have been used, applied and distributed for and in furtherance of the Purpose, including a review of the Trust's processes, records, documents and information to obtain assurance that ~~ensure that~~ funds disbursed to Electricity Distributors were used, applied and distributed for and in furtherance of the Purpose.

7.4 Disclosure. To assist in respect of the rights set out in section 7.3, the Recipient will disclose any information requested by the Province, its authorized representatives or an independent auditor identified by the Province, and will do so in the form requested by the Province, its authorized representatives or an independent auditor identified by the Province, as the case may be.

7.5 No Control of Records. No provision of the Agreement will be construed so as to give the Province any control whatsoever over the Recipient's records.

7.6 Auditor General. For greater certainty, the Province's rights under this Article are in addition to and do not limit any rights[4] provided to the Auditor General pursuant to section 9.1 of the *Auditor General Act* (Ontario).

8.0 COMMUNICATIONS REQUIREMENTS

8.1 Publication. The Recipient will indicate, in any of its Program -related publications, whether written, oral, or visual, that the views expressed in the publication are the views of the Recipient and do not necessarily reflect those of the Province.[5]

9.0 FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY

9.1 FIPPA. The Recipient acknowledges that the Province is bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province in connection with the Project or otherwise in connection with the Agreement may be subject to

[4] NTD: Does the AG have any authority in respect of ~~an~~a non-controlled trust? If not, this probably needs to be rephrased so that the Trustee agrees to facilitate the Province's compliance with this ~~statutute~~statute.

[5] NTD: Consider in light of possible additions to the Declaration/Principles regarding the promotion of the Program.

Commented [A14]: KPMG: why?

Commented [A15]: KPMG Comment: Be careful here

Commented [A16]: KPMG Comment: This looks like provincial control. Why does not just reporting cover this

Commented [A17]: OPC Comment: Agree that eliminating details w.r.t. audit would be better.

Trust guidance allows for audit- leave for now.

Commented [A18]: KPMG Comment: Why not just say "Trust"

Commented [A19]: AG has the right to 'follow the money'.

Commented [A20]: Expectations re: promotion could be included, but caution on how Trillium will be used (not in relation to the Trust itself to avoid perception of control)

disclosure in accordance with that Act.

10.0 INSURANCE

10.1 Insurance. The Recipient [has made enquiries to confirm][believes] that insurance policies of the type contemplated in Schedule C are generally available in Canada.[6]

11.0 EVENT OF DEFAULT, CORRECTIVE ACTION AND TERMINATION FOR DEFAULT

11.1 Events of Default. An Event of Default will occur if:

(a) the Recipient fails to perform or observe any covenant in this Agreement and such failure has and continues to have a material adverse effect on the Province and remains unremedied during any Notice period applicable under section 11.2 after the earlier of (i) actual knowledge thereof by the Recipient, or (ii) receipt by the Recipient of Notice thereof from the Province;

(b) any representation or warranty made by the Recipient in the Agreement shall prove to have been incorrect in any material respect when made or deemed made, and, if capable of remedy, continues to be incorrect in any material respect during any Notice period applicable under section 11.2 after the earlier to occur of (i) the actual knowledge thereof by the Recipient or (ii) receipt by the Recipient of Notice thereof from the Province;

(c) it is [determined][manifestly demonstrated by the Province] that the Recipient has breached its Standard of Care (within the meaning given in and context of the Declaration of Trust) in discharging its material duties under the Declaration of Trust, with the result that all or a significant part of the Funds have not been or are not being applied in furtherance of the Purpose or are being applied in a manner that is directly contrary or without regard to the Purpose, and, if such breach is capable of remedy, it continues and remains unremedied during any Notice period applicable under section 11.2 after the earlier of (i) actual knowledge thereof by the Recipient, or (ii) receipt by the Recipient of Notice thereof from the Province;

(d) an [Insolvency Event] shall have occurred and be continuing with respect to the Recipient.

11.2 Consequences of Events of Default and Corrective Action. If an Event of Default occurs, the Province may, at any time, take one or more of the following actions:

(a) provide the Recipient with Notice allowing the Recipient an opportunity to remedy the Event of Default during a specified Notice Period[7];

(b) seek an order of specific performance, including an order that the Recipient pursue its available remedies under the Agreement against third parties;

(c) require, by Notice of demand, that the Recipient transfer to the Province (without any need for compensation, indemnity or consideration to the Recipient or any Beneficiary or other third party) any and all Assets remaining in the possession or under the control of the Recipient [that can reasonably be traced or attributed to the Funds][after first providing for the completion and performance by the Recipient of any unperformed contractual obligations of the Recipient undertaken in compliance with the Declaration of Trust on or prior to transfer]; and

Commented [A21]: Ministry Comment: Not needed any more – moved to precondition for funds release, schedule c

Commented [A22]: material

Commented [A23]: Osler comment: Change to determines

Commented [A24]: KPMG Comment: Delete. This is ruling from grave

Commented [A25]: Osler comment: control

Commented [A26]: OPC Comment: Please see correspondence between OPCD and the OAG on government transfers. Report backs, right to audit and right to recover funds that are spent for purposes other than intended are common and accepted elements of TPs.

Commented [A27]: Clarify that 'material'

Commented [A28]: OPC Comment: Fair comment by KPMG as they are not familiar with the Province's practices w.r.t. TPs. For discussion.

[6] NTD: Consider if this is helpful from an accounting perspective.
[7] NTD: Consider whether to provide for a notice period within the specific Events of Default, rather than making cures entirely in the Provinces discretion.

(d) terminate the Agreement, including immediately, without liability, penalty or costs to the Province upon giving Notice to the Recipient.

The transfer of Funds in accordance with the Agreement is made by the Province with the expressed intention and reservation that the transferred Funds shall be returned to the Province and the entitlements of the Recipient in remaining Funds shall thereby be revoked with reversion thereof to the Province in the circumstances contemplated in Section 11.2(c).

11.3 Opportunity to Remedy. If, in accordance with section 11.2, the Province provides the Recipient with an opportunity to remedy the Event of Default, the Province will provide Notice to the Recipient of:

(a) the particulars of the Event of Default; and

(b) the Notice Period.

11.4 Recipient not Remedying. If the Province has provided the Recipient with an opportunity to remedy the Event of Default pursuant to section 11.2(a), and:

(a) the Recipient does not remedy the Event of Default within the Notice Period;

(b) it becomes apparent to the Province that the Recipient cannot adequately remedy the Event of Default within the Notice Period; or

(c) the Recipient is not proceeding to remedy the Event of Default in a way that is satisfactory to the Province,

the Province may extend any Notice period, or initiate any one or more of the actions provided for in section 11.2.

12.0 REPAYMENT

12.1 Debt Due. If, pursuant to the Agreement: the Province demands the payment of any Funds from the Recipient pursuant to section 11.2(c) such Funds or other amount will be deemed to be a debt due and owing to the Province by the Recipient, and the Recipient will pay or return the amount to the Province immediately, unless the Province directs otherwise.

12.2 Interest Rate. The Province may charge the Recipient interest on any money owing by the Recipient at the then current interest rate charged by the Province of Ontario on accounts receivable.

12.3 Payment of Money to Province. The Recipient will pay any money owing to the Province by cheque payable to the "Ontario Minister of Finance" and delivered to the Province at the address referred to in **[Schedule "B"]**.

12.4 Failure to Repay. Without limiting the application of section 43 of the Financial Administration Act (Ontario), if the Recipient fails to repay any amount owing under the Agreement, Her Majesty the Queen in right of Ontario may deduct any unpaid amount from any money payable to the Recipient by Her Majesty the Queen in right of Ontario. [8]

13.0 NOTICE

13.1 Notice in Writing and Addressed. Notice will be in writing and will be delivered by email, postage-prepaid mail, personal delivery or fax, and will be addressed to the Province and the Recipient respectively as set out in Schedule "B", or as either Party later designates to the other by Notice.

Commented [A29]: OPC Comment: Critical – is there a reason that the trust would be privy to different treatment than any other TP recipient?

Ministry Comment: Blakes please keep this language in for now

Commented [A30]: KPMG: Nope! Please delete. This is control

[8] NTD: Discuss.

13.2 **Notice Given.** Notice will be deemed to have been given:

(a) in the case of postage-prepaid mail, five Business Days after the Notice is mailed; or

(b) in the case of email, personal delivery or fax, one Business Day after the Notice is delivered.

13.3 **Postal Disruption.** Despite section 13.2(a), in the event of a postal disruption:

(a) Notice by postage-prepaid mail will not be deemed to be received; and

(b) the Party giving Notice will provide Notice by email, personal delivery or by fax.

14.0 SEVERABILITY OF PROVISIONS

14.1 **Invalidity or Unenforceability of Any Provision.** The invalidity or unenforceability of any provision of the Agreement will not affect the validity or enforceability of any other provision of the Agreement. Any invalid or unenforceable provision will be deemed to be severed.

15.0 WAIVER

15.1 **Waivers in Writing.** If a Party fails to comply with any term of the Agreement, that Party may only rely on a waiver of the other Party if the other Party has provided a written waiver in accordance with the Notice provisions in Article 13.0. Any waiver must refer to a specific failure to comply and will not have the effect of waiving any subsequent failures to comply.

16.0 INDEPENDENT PARTIES

16.1 **Parties Independent.** The Recipient acknowledges that it is not an agent, joint venturer, partner or employee of the Province, and the Recipient will not represent itself in any way that might be taken by a reasonable person to suggest that it is, or take any actions that could establish or imply such a relationship.

17.0 ASSIGNMENT OF AGREEMENT OR FUNDS

17.1 **Agreement Binding.** All rights and obligations contained in the Agreement will extend to and be binding on the Parties' respective heirs, executors, administrators, successors and permitted assigns.

18.0 LIMITATION OF LIABILITY

18.1 This Agreement has been entered into by the Trustee solely in its capacity as trustee of the Recipient and is not binding on the Trustee in any other capacity, whether in tort, contract or otherwise. **The Beneficiaries of the Recipient are not subject to any liability in respect of the Recipient.** Resort may not be had to, nor recourse or satisfaction be sought from, the private property of the Trustee (whether owned by its in its personal capacity or in any other capacity other than in its capacity as Trustee of the Recipient), its directors, officers, employees, or agents, or the private property of any Beneficiary, and resort will be had solely to the property of the Recipient held in trust by the Trustee for the payment, performance or satisfaction of any liability or obligation of the Recipient or the Trustee under this Agreement. However, the foregoing limitations in this section shall not apply where the Trustee has demonstrated gross negligence, bad faith, fraud or wilful misconduct.

19.0 GOVERNING LAW

19.1 **Governing Law.** The Agreement and the rights, obligations and relations of the Parties will be governed by and construed in accordance with the laws of the Province of Ontario and the applicable federal laws of Canada. Any actions or proceedings arising in connection with the

Commented [A31]: KPMG Comment: Is his control? I am not a lawyer so not sure about "control implications". Don't think this is control, but ask

Commented [A32]: Trust may limit Trustees and Beneficiaries from liability. Key to control is whether the Province retains any liability. Not explicitly addressed in the TPA or Trust Declaration, but assume that the Province does not retain any liability?

Agreement will be conducted in the courts of Ontario, which will have exclusive jurisdiction over such proceedings.

20.0 FURTHER ASSURANCES

20.1 Agreement into Effect. The Recipient will provide such further assurances as the Province may request from time to time with respect to any matter to which the Agreement pertains, and will otherwise do or cause to be done all acts or things necessary to implement and carry into effect the terms and conditions of the Agreement to their full extent.

20.2 Declaration of Trust. The Trustee covenants that it shall not amend, restate or terminate the Declaration of Trust without obtaining the written consent of the Province in respect of same. It is expected that the Province will respond to such requests on a timely basis and that the Province would not unreasonably withhold such consent.

21.0 JOINT AND SEVERAL LIABILITY

21.1 Joint and Several Liability. Where the Recipient is comprised of more than one entity, all such entities will be jointly and severally liable to the Province for the fulfillment of the obligations of the Recipient under the Agreement.[9]

22.0 RIGHTS AND REMEDIES CUMULATIVE

22.1 Rights and Remedies Cumulative. The rights and remedies of the Province under the Agreement are cumulative and are in addition to, and not in substitution for, any of its rights and remedies provided by law or in equity.

23.0 ACKNOWLEDGEMENT OF OTHER LEGISLATION AND DIRECTIVES

23.1 Recipient Acknowledges. The Recipient acknowledges that by receiving Funds it may become subject to legislation applicable to organizations that receive funding from the Government of Ontario, including the BPSAA, the PSSDA, and the *Auditor General Act* (Ontario).

24.0 SURVIVAL

24.1 Survival. The following Articles and sections, and all applicable cross-referenced sections and schedules, will continue in full force and effect for a period of seven years from the date of expiry or termination of the Agreement: Article 1.0 and any other applicable definitions, section, 4.5, section 7.1 (to the extent that the Recipient has not provided the Reports to the satisfaction of the Province), sections 7.2, 7.3, 7.4, 7.5, 7.6, Article 8.0, Article 12.0, Article 14.0, Article 16.0, Article 17.0, Article 19.0, Article 20.0, Article 21.0 and Article 24.0. [NTD: References to be update/confirmed.]

- END OF GENERAL TERMS AND CONDITIONS -

Commented [A33]: To lessen province's perceived ability to 'control', suggest inserting that the Province will not unreasonably withhold such consent.

Commented [A34]: KPMG Comment: WoW! This is ruling from grave

Formatted: Highlight

Commented [A35]: KPMG: Check with legal people. This can be control

[9] NTD: Consider further in the context of the Board of Trustees

SCHEDULE "B"

PROJECT SPECIFIC INFORMATION

Maximum Funds	$100 million
Expiration Date	Later of [April 30, 2019] and the Final Distribution Date (as defined in the Declaration of Trust)
Contact information for the purposes of Notice to the Province	**Attention: Usman Syed** **Position: Director** **Address: 77 Grenville St, Toronto, Ontario, M7A 2C1** **Fax: 416-325-6651** **Email: Usman.Syed@ontario.ca**
Contact information for the purposes of Notice to the Recipient	**Attention:** **Position:** **Address:** **Email:**
Contact information for the senior financial person in the Recipient organization (e.g., CFO, CAO) – to respond as required to requests from the Province related to the Agreement	**Attention:** **Position:** **Address:** **Email:**

SCHEDULE "C"

PROJECT

For the purposes of this Agreement, the "Project" is the distribution of the Funds in accordance with the Declaration of Trust.

It is intended the Project will be undertaken by the Recipient in furtherance of the Purpose and in accordance with the Declaration of Trust. In this regard, it is expected that the Recipient will undertake the Program having regard to the Budget and the Principles set forth in Annex A.

Notwithstanding anything to the contrary contained in the Agreement or the Declaration of ~~Trust,~~Trust, it is expected that the following ~~until such time as each of the following conditions~~actions have been completed ~~to the satisfaction of or waived by the Province (the "**Requirements**"), the Recipient shall not~~prior to the Trust distribut~~ing~~e any Funds to any Beneficiary.

1. The Original Trustee Replacement Date (as defined in the Declaration of Trust) shall have occurred.

2. An administrative services agreement[10] shall have been entered into between the Recipient and an Administrative Services Agent providing for the administrative services necessary for the Recipient to perform its obligations herein and execute the Project.

3. Procedures have been developed and implemented under which Electricity Distributors (as defined in the Declaration of Trust) will be invited to assist with (a) the identification and selection of Primary Beneficiaries under the Declaration of Trust, (b) the determination of the amount of Funds to be distributed to particular Primary Beneficiaries, and (c) the distribution of Funds to or for the benefit of such Primary Beneficiaries (in each case on the basis contemplated in the Permitted Delegations Annex).

4. The Recipient has obtained commercial general liability insurance from insurers having a secure A.M. Best rating of B+ or greater, or the equivalent, that in the opinion of the Recipient a prudent person similar to the Recipient would maintain, and having an inclusive limit of not less than $2,000,000 per occurrence and providing for contractual liability coverage. To demonstrate satisfaction, the Recipient will provide the Province with certificates of insurance, or other proof as may be requested by the Province, that confirms such insurance coverage and will make available to the Province a copy of each applicable insurance policy.

Each of the Requirements may be accomplished by the Recipient entering into such agreements as may be necessary or expedient, including any required amendment or amendment and restatement of the Declaration of Trust that the Trustee determines is reasonably required in order to accomplish the Requirements. The Province shall provide notice in writing to the Recipient when the Requirements have been completed to the satisfaction of the Province. Funds may be expended to pay the expenses of the Trustee in completing the Requirements.

Commented [A36]: KPMG Comment: Be careful

Commented [A37]: Intent is that funds will be transferred to a non-controlled trust but this requirement reflects funds which are still controlled by the province – restricts actions of the Trustee. Suggest wording change – It is expected that..

Risk is considered low as the trust would not have the necessary information to base decisions until procedures in place and decisions rendered.

[10] NTD: Consider this in light of the need for individual administrative services agreements with each of the Electricity Distributors. This may relate to the original idea that a single administrative services agreement would be entered into with Hydro One.

SCHEDULE "D"

Recipient's Budget

1. It is expected that the administrative expenses of the Fund, including any administrative expenses of the Recipient (or any administrative services agents or other agents retained by the Recipient), relating to the establishment of the Affordability Fund Trust and satisfying the Requirements (as defined in Schedule "C") and any expenses related to the operation of the Trust and the execution of the Project (including any reimbursable expenses incurred by any Administrative Services Agent (as such terms are defined in the Declaration of Trust), will be no greater than 10 percent of the total Project budget.

2. The only expenditures incurred by the Recipient that are eligible for reimbursement are actual (excluding HST) administrative overhead expenses incurred by or on behalf of the Recipient that directly related to the Recipient or the establishment of the Affordability Fund Trust.

4. Any expenses that have been or may be reimbursed by other parties should not be reimbursed by the Fund.

5. It is expected any travel, meals and hospitality expenses by the Recipient will be consistent with the Province's Travel, Meal and Hospitality Expenses Directive. For purposes of funding of eEntities receiving funding from the Recipient, alignment with the ~~are also expected to adhere to the~~ Province's Travel, Meal and Hospitality Expenses Directive ~~and the Recipient~~ is expected, including: ~~to request the same of such Entities. Alcohol~~ alcohol and First-Class travel which would ~~are~~ not be considered eligible claims and disbursements for hospitality, incidental or food expenses ~~shall not be covered by the Funds~~, including the following:

   - Meals, snacks and beverages
   - Gratuities
   - Laundry or dry cleaning
   - Valet services
   - Dependent care
   - Home management
   - Personal telephone calls

6. In the event that the Recipient performs any procurements, it is expected that all procurements will reflect the principles of Ontario's Public Service Procurement Directive.

SCHEDULE "E"

PAYMENT PLAN

PAYMENT DATE	MAXIMUM FUNDS TO BE DISBURSED BY THE PROVINCE
Within 7 days of signing the Agreement	$ 100,000,000[11]

[11] Investment income and proceeds of the Funds are to be applied for the Purpose in accordance with the Declaration of Trust.

SCHEDULE "F"

REPORTING

Reports will be provided quarterly on the basis of the government's fiscal year starting at the execution of this Agreement and continuing until conclusion of the Agreement. Annual Reports will be provided annually on a fiscal basis starting at the execution of this Agreement and continuing until conclusion of the Agreement. Quarterly Reports and Annual Reports shall be submitted to the Province within one month following the end of the reporting period that they represent.

The Recipient shall prepare six (6) Quarterly Reports and two (2) Annual Report as outlined below. Reports shall explicitly demonstrate impact of Province's funding and address report detail requirements listed below.

NAME OF REPORT	DUE DATE
Quarterly Report #1	July 31, 2017
Quarterly Report #2	October 31, 2017
Quarterly Report #3	January 31, 2018
Annual Report #1	April 30, 2018
Quarterly Report #4	July 31, 2018
Quarterly Report #5	October 31, 2018
Quarterly Report #6	January 31, 2019
Annual Report #2	April 30, 2019

Requirements for Quarterly Reports

- The Recipient will provide Quarterly Reports which will include a report back on the Trustee-developed performance management criteria. Quarterly Report requirements will be determined from time to time by the Province, and initially will include:

25.0 Amounts disbursed by the Recipient in the previous quarter. It is expected that this information will be provided at the electricity distributor level.
26.0 Total Affordability Fund interest accrued to date
27.0 Key activities and achievements from the quarter being reported, including number of participant households per electricity distributor, average participant incentive cost per electricity distributor, and uptake of energy efficiency measures per electricity distributor
28.0 Any challenges or modifications required to the application, funding, or eligibility processes/rules
29.0 Key activities planned for the upcoming quarter

Requirements for Annual Report

- The Recipient will provide an Annual Report to the Province which will include a report back on the Trustee-developed performance management criteria. Annual Report requirements include:

30.0 A description of electricity distributor application process and the criteria used by the Recipient to manage funds.
31.0 Identify and describe any challenges with achieving goals and proposed solutions, if applicable.
32.0 Lesson learned.

Commented [A38]: KPMG Comment: Be careful! If the province no longer controls, this should be light

Commented [A39]: KPMG Comment: Really?

Commented [A40]: KPMG Comment: Would a normal charity agency be asked to do so much?

33.0 Electricity distributor and customer feedback
34.0 Amounts disbursed by the Recipient in the previous year. It is expected that this information will be provided at the electricity distributor level.
35.0 Key activities and achievements from the quarter being reported, including number of participant households per electricity distributor, average participant incentive cost per electricity distributor, and uptake of energy efficiency measures per electricity distributor
36.0 Total Affordability Fund interest accrued to date

- As part of the Annual Report, the Recipient will also provide the Province with an audited financial statement for the previous year.

ANNEX A

Principles

12888010.9

Control Assessment_Affordability Fund new format mar 26F Draft.rtf

From: Petsche, Nadine (TBS) []
To: Picard, Michel (mpicard@kpmg.ca) [mpicard@kpmg.ca]
Subject: Control Assessment_Affordability Fund new format mar 26F Draft
Date: Monday, March 27, 2017 00:34:42
Attachment 1: Control Assessment_Affordability Fund new format mar 26F Draft.doc

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Michel,

Please find attached the final draft accounting analysis for the Affordability Fund which I will share with Cindy. I will be away from the office until Wednesday, at an out of town conference (Women in Leadership and Business).

You will note that the structure of the analysis is based on the outline I had communicated to you on Friday.

If you have any additional comments/edits, I would appreciate hearing them.

Thanks.

Nadine

Control Assessment_Affordability Fund new format mar 26F Draft.pdf

Accounting Analysis of Affordability Fund Trust

ISSUE

Would the proposed Affordability Fund Trust (the Affordability Fund) be consolidated under Public Sector Accounting Board (PSAB) standards in the Province's consolidated financial statements?

RECOMMENDATION

Based on the terms and conditions of the executed Trust Declaration and the Transfer Payment Agreement, the Affordability Fund should be classified as a Trust under Administration and therefore not consolidated as part of the government reporting entity.

To further confirm the economic substance of the relationship between the Province and the Trust, OPCD also assessed relevant terms and conditions of the Trust Declaration and Transfer Payment Agreement in accordance with the control criteria in PS1300 and found that the overall preponderance of evidence indicated that the Trust is not controlled by the government. The results of the detailed analysis is in Appendix I which conclude that only two of PSAB's criteria of control are met, reflecting the Province's ability to (i) establish the mandate of the organization and (ii) the restricting the organization's investments.

With regards to the first criteria, although the Province established the Affordability Fund, it does not have the ability to amend the mandate of the Trust but has a protective right over the amendments.

Regarding the second control criteria noted, the government established the Affordability Fund to support the Ministry of Energy's rate reduction program. While the Trust documents restrict the nature of investments in which the Trust can invest to maintain liquidity and stewardship over the funds, it does not weigh heavily on the control assessment.

BACKGROUND

The Ministry of Energy plans to transfer $100M before year-end to a recently formed, limited purpose Trust to establish a new Affordability Fund that will provide energy efficiency measures to electricity customers. Specifically, the Affordability Fund will provide assistance to customers who do not qualify for existing low income conservation programs (e.g. the existing Home Assistance Program (HAP) delivered by LDCs under the Conservation First Framework) and who have difficulty paying their electricity bills.

The Affordability Fund is intended to be available for distributions to beneficiaries who would be identified based on recommendations from LDCs based on principles and indicative eligible measures listed in Annex A of the Declaration of Trust. Beneficiaries could include customers in frequent arrears or facing disconnection. Priority is expected to be given to homes which are primarily heated by electricity.

In order to provide funding to the Trust, the Ministry of Energy entered into a Transfer Payment Agreement (TPA) with the Trustee of the Trust (Computershare). Computershare will in the near future be replaced by an independent Board of Trustees which will be appointed based on the advice of an independent Advisory Committee. The Ministry of Energy expects to flow the approved funding ($100M) to the Trust account established by Computershare on March XX _, 2017.

The Replacement Board of Trustees (to replace the Original Trustee, Computershare) is expected to be comprised of:

- [six] residents of Ontario who have expressed that they are willing to act as members of the Board of Trustees and who, individually and collectively, satisfy the following criteria (collectively, the "Selection Factors"):

  a) each member demonstrates an understanding of the electricity sector including the electricity distribution sector;
  b) each member demonstrates an expertise in conservation and low income programs;
  c) three of the identified individuals will be representatives from separate electricity distributors, two individuals will be representatives from separate social services agencies and one individual member, who will be a non-voting member, will be an employee or representative of the Government of Ontario; and
  d) it is expected that representation by the Government of Ontario will be non-controlling.

In accordance with the Trust Declaration, the Trust has engaged with Hydro One to provide administrative services and has the discretion to engage with other entities as service providers to assist with administering the Trust. It is expected that the Trust would consider using administrative services agreements to clearly document services and expectations in delegating its authority. The Trust would distribute funds to identified customers of LDCs across the province (including Hydro One's distribution division) at the discretion of the Trustees, based primarily on the recommendations of the applicable LDCs.

The Declaration of Trust confers broad powers and discretion to the Trustee, to act in the best interest of the beneficiaries. The Trustees are expected to conduct themselves in good faith and have regard to guiding principles set out in the Declaration of Trust (and indicated by the Province in the TPA) in exercising their duties under the Trust Declaration and TPA in distributing funds to LDCs for the benefit of beneficiaries across the province.

The Trust Declaration will be subject to further modification by the Trustee, subject to the Province's protective right under the TPA to consent, where such consent is not to be unreasonably withheld or delayed. The input and involvement of LDCs across the province is anticipated and integral to the success of the Trust in meeting its purpose. The **Principles,** to be considered in the exercise of its discretion**,** are set out in both the Trust Declaration and the TPA.

In addition, a **Permitted Delegation Annex** forms part of the Declaration of Trust, which refers to an expectation that the Trust would rely on participating LDCs to assist with achieving the purpose of the Trust, including an expectation to (a) appoint, employ or retain Implementation Agents for the purpose of discharging its duties and obligations under the Declaration; and (b) enter into, perform, enforce and amend implementation agreements.

Without limiting the Trustee's discretion to negotiate and settle the terms and conditions of the above-mentioned implementation agreements, the Permitted Delegation Annex also outlines certain expected components for the Trust to consider for inclusion in the implementation agreements, recognizing that the ultimate agreements would be subject to negotiation between the Trust and individual Electricity Distributors and the acceptance and agreement of the applicable Electricity Distributor counterparty. The Annex is subject to the Trustee's overall discretion and the Trustees are not bound to use the guidance provided.

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ACCOUNTING ANALYSIS

In accordance with PS1300, the Affordability Fund can be considered a trust under administration and should therefore be excluded from the government reporting entity (ref. PS 1300.40). Exclusion from the government entity is appropriate where there is a legal trust, as with the Affordability Fund, as the property transferred by the Ministry of Energy is conveyed to the Trustee (Computershare) to be administered as directed by the Trust Declaration. The Original Trustee, and subsequently the Replacement Trustee Board hold title to the property for the benefit of the beneficiaries.

Under the terms of the Trust Declaration, the Trust fulfills its fiduciary duty and the Province retains no unilateral authority to change the conditions set out in the Trust Declaration. Under PS1300, the assets and activities of Trusts under Administration would therefore be excluded from the government's consolidated financial statements.

Both the Trust Declaration and the Transfer Payment Agreement clearly, and consistently convey the ability of the Trust to act independently in exercising its discretion over entering into agreements with Implementation Agents, funding allocation decisions, and design of eligible measures. The extent to which the government can influence the decisions or activities of the Trust is restricted by the Principles Annex , the suggestions on elements of the administrative/implementation agreements that the Trust is expected to enter into with LDCs, and suggested considerations for eligible measures which might be covered by the program. In none of the documents is the Trust mandated to adopt the government's suggestions.

Control is defined as the ability of one party to govern the financial and operating policies of the other party. According to PS1300, financial and operating policies are principles and practices that determine how an organization conducts its activities which can impact the achievement of its mission and mandate. While the government has established the Trust's fundamental purpose, it has not restricted or limited the ability of the Trustees to make future decisions. Furthermore, the Trust has been established for the benefit of electricity customers. The government does not expect to derive a financial or non-financial benefit from the Trust, nor is the government exposed to the risk of any loss from the Trust.

A number of report-backs requirements are included in the Transfer Payment Agreement which are consistent with OPCD's Trust Guidance, and guidance on One-Time Transfers. In addition, the TPA includes certain audit rights and protective similar to those included in other transfer payment agreements. For example, the government will require the Trust to submit reports for information purposes on the nature and extent of its funding activities, and allow for audits at the discretion of the Province, to provide assurance that the funds have been used for the purposes intended. In accordance with PS1300, such reports are not considered evidence of control because the government's interest in the Trust extends to ensuring that that the Trust is achieving success in satisfying its fiduciary duty and achieving the purposes of the Trust which is to help the most vulnerable electricity customers.

In addition to considering PSAB guidance for Trusts under Administration, OPCD also undertook an assessment of government control over the Trust under PSAB's
"indicators of control". In addition to its legal form as a Trust, OPCD considered the economic substance of the relationship between the government and the Trust. Relevant aspects and implications of the relationship were considered in determining whether or not the government controls the Trust. OPCD's Trust Guidance and One-Time Transfer Guidance developed in conjunction with the Office of the Auditor General are also attached as Appendices.

There are a total of 11 PSAB prescribed control indicators that provide evidence of control: 4 persuasive indicators of control and 7 other control indicators. It is the preponderance of evidence that would be considered in assessing whether a government controls an organization.

The following governing documents were reviewed in support of the analysis of the Province's control over the Affordability Fund Trust:

1. Trust Declaration, including related schedules
2. Transfer Payment Agreement
3. PSAB 1300 (esp. PS1300.40-.46)
4. OPCD Trust Guidance
5. OPCD Guidance on One-Time Transfers

Both the TPA and the Trust Declaration clearly reflect the government's intention not to interfere with the unfettered discretion of the Trustees in exercising their fiduciary duties on behalf of the beneficiaries. In particular, Schedule A, Section 1.1(g) (Interpretations) of the TPA includes the following:

it is intended that the transfer of the Funds to the Recipient will be a transfer made to a trust that is not controlled by the Province (as the term "control" is used in *Government Reporting Entity* at paragraphs PS 1300.07-.24), and so if a term or condition of the Agreement is determined to conflict with the requirements applicable to the Province recording the transfers to the Recipient of Funds contemplated hereunder as an expense incurred by the Province on the date of the transfer of Funds under the Agreement otherwise in connection with activities undertaken by the Province with such a non-controlled trust, then such term or condition shall be given a meaning and shall have an effect insofar as it is possible to interpret such term or condition in a manner that eliminates such conflict while preserving the other provisions of the Agreement and furthering the Purpose.

Appendix I shows the detailed analysis of the Affordability Fund Trust based on a consideration of the of the PSAB indicators of control.

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APPENDIX I

Affordability Fund Trust
Indicators of Control Analysis
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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
Primary (more persuasive) indicators (CICA PS 1300.18):		
i. Government has the power to unilaterally appoint or remove a majority of the members of the governing body of the organization	• Original Trustee (Computershare) is the governing body of the Trust until the Replacement Board of Trustees is selected. As at March 31st, Trustee will hold funds transferred and government will not have power to remove Original Trustee nor have access to the funds transferred. • The government does not control the Original Trustee or the Advisory Committee, and will not control the Replacement Board of Trustees.	X
ii. Government has <u>ongoing</u> access to the assets of the organization, has the ability to direct the ongoing use of those assets, or has ongoing responsibility for losses	• The government does not have an on-going access to assets transferred to the Trust, and any future access will only be through protective clauses (termination/default for material breach). • At the Final Distribution Date, any excess funds will be distributed to a non-controlled Residual Beneficiary in accordance with clause 3.3 of the Trust Declaration. • The government does not have any exposure to losses. **Trust Declaration (sec. 4.2 extracts)** ***(c)Power to Own, Hold and Manage.*** Subject to section 4.2(d), the Trustee shall have the power to own, hold and manage the Assets in such manner as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable. ***(e)Power to Dispose of Assets.*** The Trustee shall have the power to sell, convey, assign, transfer, exchange and in any other manner dispose of the Assets or any part or parts thereof free and clear of any and all trusts established under this Declaration, by public or private sale, for cash or on credit, with or without advertisement, and subject to such restrictions, stipulations, agreements and reservations as the Trustee in its sole and absolute discretion may consider appropriate or advisable, and to execute and deliver and perform any agreement, deed, conveyance, transfer or other document or instrument in connection with the foregoing. ***(o)Title to Assets.*** The Trustee shall have the power to cause all or any part of the Assets to be held by or registered, in its sole and absolute discretion, in the name of any Person.	X

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
3. Government holds the majority of the voting shares or a "golden share" that confers the power to govern the financial and operating policies of the organization	"**Declaration of Trust**" means the declaration of trust made as of March 23, 2017, under which the Affordability Fund Trust was established, as such declaration of trust may be amended, restated, supplemented or otherwise modified from time to time with the consent of the Province in accordance with Section 20.2 (see below). **20.2 Declaration of Trust.** The Recipient covenants that it shall not amend, restate or terminate the Declaration of Trust without obtaining the written consent of the Province in respect of same, such consent not to be unreasonably withheld or delayed. **Note: The right of the Province to consent is a protective right only.** **Trust Declaration:** **6.1Amendments** Subject to the requirements of the Transfer Payment Agreement, the Trustee shall have the power in its sole and absolute discretion from time to time without the approval of any Beneficiary or any court to amend, vary, supplement, replace or restate this Declaration in its entirety or any portion thereof; provided, however that it is expected that any amendment shall be consistent with the intent of the principles set forth in the Principles Annex and with the intended scope and effect of the permitted delegations and activities of any Implementation Agent pursuant to the Permitted Delegations Annex. Without in any way limiting the foregoing, any such amendments, variations, supplements, replacements or restatements **Principles Annex (In Trust Declaration):** The Trustee shall have regard to, but shall not be specifically bound by, the following principles in applying its discretion in relation to the administration of the Trust: Schedule A of the Declaration to which it refers lists 'Indicative Eligible Measures' for consideration by the Trustees. In addition, the Permitted Delegation Annex includes non-mandatory elements for consideration by the Trustees in the Implementation Agreements that the Trust may choose to enter into with LDCs (without limiting the Trustee's discretion to negotiate and settle the terms and conditions of such agreements). **Governance in the TPA.** The Recipient covenants that it will develop and maintain in writing until the Agreement is no longer in effect: a) decision-making mechanisms and procedures to enable the Recipient to hold, invest, manage, apply and distribute the Funds in accordance with the Declaration of Trust in	X

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
	furtherance of the Purpose; and b) procedures to enable the preparation and delivery of all Reports required pursuant to Article 7.0. Section 5.8, Rules and Procedures of the Trust Declaration provides further expectations which are typical of a Trust and which do not reflect control by the Province.	
4. Government has the unilateral power to dissolve the organization and thereby access its assets and become responsible for its obligations	Only after the Final Distribution Date or in the event of default will the government have any power or rights in relation to the remaining funds in the Trust. Specific extracts are included below which demonstrate that the province would not have unilateral power to dissolve the organization and access its assets during the normal course of the Trust's existence. With regards to the control criteria's suggestion of dissolving the organization and accessing assets, it should be noted that there are expected to be no assets at the end of the Trust's existence that could be returned back to the Province. The termination of the Trust at the end of the program and following the Final Distribution Date will be an administrative undertaking by the Trustees. The only circumstance that assets might return to the province is contingent and under protective clauses (termination/default) which are not indicative of a unilateral right available to the Province to dissolve the Trust. **<u>Trust Declaration</u>** **7.1 Duration** Subject to sections 7.2 and 7.3, the Trust will continue in full force and effect so long as there are any Assets and until all of the debts, liabilities and obligations of the Trust have been paid and satisfied in full. **7.2 Termination and Distribution of Assets** The Trustee shall terminate the Trust and wind up its affairs as soon as practicable after the Final Distribution Date. In connection with the termination of the Trust, the Trustee shall identify the Residual Beneficiaries and distribute or cause to be distributed the remaining Assets, in cash or in kind or partly in each, to the Residual Beneficiaries, in each case in accordance with section 3.3. Despite the foregoing, the Trust will only be terminated and wound up after the Trustee, in its sole and absolute discretion, determines that all debts, liabilities and obligations of the Trust have been paid or otherwise adequately provided for and satisfied and upon receipt of such releases, indemnities and discharges as the Trustee, relying on the opinion of counsel, deems necessary for the protection of the Beneficiaries and for its own protection. **7.3 Distribution of Assets on Final Distribution Date**	X

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
	If the Trust holds Assets on the Final Distribution Date, the Trustee shall pay or provide reserves for the payment, and otherwise shall satisfy, all debts, liabilities and obligations of the Trust and shall provide or arrange to provide such investigations, audits, releases, indemnities and discharges as the Trustee, relying on the opinion of counsel, deems necessary for the protection of the Beneficiaries and for its own protection. Thereafter, any remaining Assets shall be paid to the Residual Beneficiaries in accordance with section 3.3. **TPA References** **11 EVENT OF DEFAULT, CORRECTIVE ACTION AND TERMINATION FOR DEFAULT** **11.1 Events of Default.** An Event of Default will occur if: a) the Recipient fails to perform or observe any covenant in this Agreement and such failure has and continues to have a material adverse effect on the Province and remains unremedied during any Notice period applicable under section 11.2 after the earlier of (i) actual knowledge thereof by the Recipient, or (ii) receipt by the Recipient of Notice thereof from the Province; b) any representation or warranty made by the Recipient in the Agreement shall prove to have been incorrect in any material respect when made or deemed made, and, if capable of remedy, continues to be incorrect in any material respect during any Notice period applicable under section 11.2 after the earlier to occur of (i) the actual knowledge thereof by the Recipient or (ii) receipt by the Recipient of Notice thereof from the Province; c) it is determined that the Recipient has breached its Standard of Care (within the meaning given in and context of the Declaration of Trust) in discharging its material duties under the Declaration of Trust, with the result that all or a significant part of the Funds have not been or are not being applied in furtherance of the Purpose or are being applied in a manner that is directly contrary or without regard to the Purpose, and, if such breach is capable of remedy, it continues and remains unremedied during any Notice Period applicable under section 11.2 after the earlier of (i) actual knowledge thereof by the Recipient, or (ii) receipt by the Recipient of Notice thereof from the Province; d) an insolvency event shall have occurred and be continuing with respect to the Recipient. **11.2 Consequences of Events of Default and Corrective Action.** If an Event of Default occurs, the Province may, at any time, take one or more of the following actions: (a) provide the Recipient with Notice allowing the Recipient an opportunity to remedy the Event of	

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
	Default during a specified Notice Period; (b) seek an order of specific performance, including an order that the Recipient pursue its available remedies against third parties; (c) require, by Notice of demand, that the Recipient transfer to the Province (without any need for compensation, indemnity or consideration to the Recipient or any Beneficiary or other third party) any and all Assets remaining in the possession or under the control of the Recipient that can reasonably be traced or attributed to the Funds after first providing for the completion and performance by the Recipient of any unperformed contractual obligations of the Recipient undertaken in compliance with the Declaration of Trust on or prior to transfer; and (d) terminate the Agreement, including immediately, without liability, penalty or costs to the Province upon giving Notice to the Recipient. The transfer of Funds in accordance with the Agreement is made by the Province with the expressed intention and reservation that the transferred Funds shall be returned to the Province and the entitlements of the Recipient in remaining Funds shall thereby be revoked with reversion thereof to the Province in the circumstances contemplated in Section 11.2(c). **11.3 Opportunity to Remedy.** If, in accordance with section 11.2, the Province provides the Recipient with an opportunity to remedy the Event of Default, the Province will provide Notice to the Recipient of: (a) the particulars of the Event of Default; and (b) the length of time within which the Recipient may cure such Event of Default without the Province pursuing any other remedy (the "Notice Period"). No right to access assets following Final Date of Distribution: **Declaration of Trust** 3.3Distributions to Residual Beneficiaries Prior to the Final Distribution Date, the Trustee shall identify the Residual Beneficiary, or if more than one the Residual Beneficiaries and their respective allocations, by consulting with and having regard to the recommendations of the Ontario Energy Board, based on those charitable organizations which provide support services for Low Income Energy Assistance Program Emergency Financial Assistance (LEAP EFA) and the Ontario Electricity Support Program (OESP) or other charities that OEB may identify as relating	

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
	to the Purpose. Following the Final Distribution Date, the Trustee shall, subject to compliance with section 7.3 and completion of a final audit, distribute all remaining Assets (including capital or income) to the Residual Beneficiaries, in each case in the amounts and to the extent determined by the Trustee in its discretion hereunder (having consulted with and having had regard to the recommendations of the Ontario Energy Board as aforesaid) and to the exclusion of the other Beneficiaries.	
5. Provide significant input into the appointment of members of the governing body of the organization by appointing a majority of those members from a list of nominees provided by others or being otherwise involved in the appointment or removal of a significant number of members	The Original Trustee will establish the Trust and will not be controlled by the Province. In accordance with the Trust Declaration and the TPA, the government will not control the Original Trustee, and will not have a controlling interest in either the Advisory Committee nor the Replacement Trustee Board. The process for Replacement of the Original Trustee by the Replacement Board of Trustees is described in section 5.7 of the Trust Declaration. Although the Original Trustee (Computershare) may have been selected by the Province, and the Advisory Committee members were listed on the Trust Declaration, neither the Original Trustee nor the Advisory Committee will be controlled by the Province. It is relevant to note that PSAB also provides the following guidance with regards to government involvement in appointing governing bodies: PS1300.20 For each indicator that applies in a particular circumstance, the degree of government influence would determine its importance as evidence of control. In weighing the evidence, it would be necessary to consider the indicators collectively as well as individually. For example, where an organization is governed by a publicly elected board, this is not necessarily, in and of itself, sufficient evidence to conclude that the government does not control the organization. Similarly, where a government appoints a majority of the members of the governing body of an organization, this is not necessarily, in and of itself, sufficient evidence that the government controls the organization.	X
6. Appoint or remove the CEO or other key personnel	Right does not exist. N/A	X
7. Establish or amend the mission or mandate of the organization	Through an agreement with the Trustee (Computershare), it is the entity as settlor and as Trustee which has established the trust. Once established, the Province's Role, under section 4.4 of the TPA is limited to providing funds to the Trust. For greater clarity, the Province's role under the Agreement is limited to providing Funds to the Trust and the Province is not responsible for carrying out or overseeing the terms of the Declaration of Trust.	✓

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
8. Approve the business plans or budgets for the organization and require amendments, either on a net or line-by-line basis	Right does not exist. No intention or documentation demonstrating that province would manage/influence the Trust on a line by line basis. **TPA 4.4 Province's Role Limited to Providing Funds.** For greater clarity, the Province's role under the Agreement is limited to providing Funds to the Recipient and the Province is not responsible for carrying out or overseeing the terms of the Declaration of Trust.	X
9. Establish borrowing or investment limits or restrict the organization's investments	Trust Declaration, Section 1.1 Definitions (j) "***Eligible Investments***" means (i) a deposit receipt, note, certificate or instrument issued, guaranteed or endorsed by a bank listed in Schedule I to the *Bank Act* (Canada), which provides that the principal and any interest shall be fully paid no later than one year after the day the investment was made, or (ii) a deposit account at a bank listed in Schedule I to the *Bank Act* (Canada). ***4.2*** (a) ***Power to Own, Hold and Manage.*** Subject to section 4.2(d), the Trustee shall have the power to own, hold and manage the Assets in such manner as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable. (b) ***Power to Invest in Eligible Investments.*** The Trustee shall have the power to invest the Assets only in Eligible Investments, and to change such Eligible Investments at any time and from time to time, all as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable, but always having regard to the Trustee's expectations regarding the timing of payments to be made to the Beneficiaries hereunder. If an investment of Assets in Eligible Investments would not be authorized under the applicable trust laws of Ontario, the Trustee shall nevertheless be permitted to make an investment of the Assets in such Eligible Investments. The Trustee will have no liability for the diminution in the value of any investment in Eligible Investments made hereunder. *Although some restrictions, given the need for liquidity for the funds and envisioned short term nature of the program, it is unlikely that the Trust would have contemplated investing the funds in any different types of instruments as designated in the Trust docs.*	✓
10. Restrict the revenue-generating capacity of the organization, notably the sources of revenue	There are no revenue generating restrictions in the Trust documents; however, there are references indicating that the Funds are expected to be used for not for profit purposes. It should also be noted that the nature of a Trust is not to generate revenue or make a profit, but to fulfil a fiduciary duty on behalf of the beneficiaries. No explicit restriction mentioned in the Trust Declaration or TPA related to other activities of the trust; however,	X

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
	expectation that funds provided by the province will not be used for profitable purposes by the LDCs.	
11. Establish or amend the policies that the organization uses to manage, such as those relating to accounting, personnel, compensation, collective bargaining or deployment of resources	The Trust Declaration and the TPA are not intended to interfere with the discretion of the Trust to establish or amend its own financial and operating policies. However, the Province does provide non-compulsory Principles which are expected to be considered by the Trustee in executing its administration of the Trust. In addition to the guiding Principles, the Trust Declaration includes a Permitted Delegation Annex, which provides that the Trustee will be permitted, and is expected to seek to delegate its powers and duties to LDCs. These sections are descriptions of matters that would typically be expected in an Implementation Agreement (without limiting the discretion of the trustee to negotiate and settle the terms and conditions of such agreements). **Section 4.2 of the Declaration lists the Enumerated Powers of the Declaration, including:** The Trustee shall have the following specific powers and authorities: a) *Transfer Payment Agreement.* b) *Contracts and Undertakings.* c) *Power to Own, Hold and Manage.* . d) *Power to Invest in Eligible Investments.* e) *Power to Dispose of Assets.* f) *Power to Apply Assets and Proceeds to Make Distributions to Beneficiaries.* g) *Power to Delegate and to Appoint Agents, etc.* h) *Power to Operate Accounts.* i) *Power to Collect, etc.* j) *Power to Obtain Insurance*. k) *Power to Pay Trustee's Fees.* l) *Power to Pay Taxes.* m) *Power to Appoint Auditors.* n) *Form of Accounts.* o) *Title to Assets.* p) *Delegation of Discretion*. q) *Additional Powers.* None of the above noted powers are restrictive or suggest that the government is controlling the activities of the Trust. The TPA Extract includes the following reference which does not conflict the non-controlled nature of the Trust and/or are consistent with OPCD's guidance on One-Time Transfer Payments or Trust Guidance reviewed previously with the Office of the Auditor General: 4.2 The Trustee is expected to conduct its activities in a manner that complies in all material respects with the Transfer Payment Agreement, including to:	X

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
	i. act prudently and in furtherance of the Purpose; ii. report not less frequently than annually the results of its activities for information purposes to the Province in connection with the Program; iii. comply with the Province's request for any independent verification or audit if determined to be necessary or appropriate by the Province; iv. return Assets that have not been distributed if it is determined that the Trustee has breached its Standard of Care in discharging its material duties under the Declaration, and has not cured such material breach despite having been given a reasonable opportunity by the Province to do so in light of the circumstances of such material breach, with the result that all or a significant part of the Assets have not been or are not being applied and distributed in furtherance of the Purpose or are being applied and distributed in a manner that is directly contrary or without regard to the Purpose. **5.0 RECIPIENT'S ACQUISITION OF GOODS OR SERVICES, AND DISPOSAL OF ASSETS (TPA)** **5.1 Acquisition.** If the Recipient acquires goods, services, or both with or by applying the proceeds of the Funds, it is expected to do so through a process that promotes the best value for money and to take reasonable steps to ensure that its Administrative Services Agents and Implementation Agents also follow a process that promotes the best value for money when acquiring goods and services with or by applying the proceeds of the Funds. **Both the TPA and the Trust Declaration include a PRINCIPLES ANNEX** The Trustee is expected to have regard to the Principles, but shall not be specifically bound by the principles in applying its discretion in relation to the administration of the Trust.	

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Appendix II

Extract from PS1300

TRUSTS UNDER ADMINISTRATION

.40 *Trusts administered by a government or government organization should be excluded from the government reporting entity.* [JUNE 1996]

.41 Trusts are defined as property that has been conveyed or assigned to a trustee to be administered as directed by agreement or statute. In a trust relationship, the trustee holds title to property for the benefit of, and stands in a fiduciary relationship to, the beneficiary.

.42 To meet the definition in paragraph PS 1300.41, the property conveyed or assigned to the government or government organization acting as a trustee, must be provided to fulfill a particular objective of the donor of the property conveyed or assigned. The government or government organization would merely administer the terms and conditions embodied in the agreement and has no unilateral authority to change the conditions set out in the trust indenture. For this reason, the assets and activities of the trust are excluded from the government's reporting entity.

.43 A government or government organization acts as trustee when it administers trusts on behalf of the beneficiaries specified in the agreement or statute. As trustee, the government is accountable to third parties for the use and disposition of trust assets and for the funds derived from those trust activities. Trust assets are not owned by the Crown in right of Canada, a province or territory, or by a local government, and should not be included in the government reporting entity.

.44 *Government financial statements should disclose, in a note or schedule, a description of trusts under administration by a government or government organization, and a summary of trust balances.* [JUNE 1996]

.45 To acknowledge and report on the magnitude of trusts administered by a government or government organization, a note or schedule to government financial statements would describe the trust assets under administration and would set out a summary of trust balances.

.46 Often the term "trusts" is applied to assets earmarked as a result of a government policy decision when no trust liability exists. Such assets are special funds that comprise part of the government reporting entity and would be consolidated.

Appendix III

ACCOUNTING CONSIDERATIONS FOR GOVERNMENT-FUNDED TRUSTS

Purpose:

The purpose of this guidance is to explore accounting-related considerations related to government-funded trusts which are established by the government to fund a specific purpose or activity. This guidance deals specifically with the difference between controlled and non-controlled trusts, the introduction of accountability provisions which can now be reflected in trust agreements, and key timing considerations for trusts contemplated towards year-end. It is important that these factors be taken into account when establishing a trust, in order to achieve the intended fiscal impact and appropriate accountability over the use of public funds.

Introduction:

Trusts are usually established by way of trust declaration or trust agreement, and are one of several means by which the government can direct funding to support key policy initiatives. Simply stated, trustees hold title to property for the benefit of, and stand in a fiduciary relationship to the beneficiaries. Trustees are accountable to third parties (beneficiaries) for the use and disposition of trust assets and for the funds derived from those trust activities. The trust itself is not a separate legal entity. The trustees carry out the activities of the trust in the name of the trustees.

Generally, direct year-end transfers are the preferred alternative over trusts where the province wants to retain ultimate decision-making authority regarding amounts to be transferred to recipients. Direct transfers are more appropriate where the identity of eligible transfer payment recipients is known and the amounts to be transferred to each recipient can be or has been determined.

Year-end transfers to a trust might be considered where the province desires to delegate to third parties ultimate decision-making authority regarding allocation of amounts amongst eligible beneficiaries.

A trust must be valid for legal purposes in order to be recognized for accounting purposes. Key requirements for a trust to be valid include: an intention to create a trust (‘certainty of intention’), certainty of subject-matter of the trust (“certainty of subject matter”) and the objects of the trust must be certain (‘certainty of objects”). There are generally two different types of trust, a trust in which the objects are the “beneficiaries” and trust in which the objects are a “purpose” (e.g. for charitable purposes). Where a trust is under serious consideration, it is imperative that ministries seek legal advice to ensure that the contemplated trust will be valid.

Trustees are obligated to follow the terms of the trust declaration or trust agreement which will usually detail the powers and duties of the trustees including the number of trustees and how decisions will be made by the trustees.

Controlled versus Non-Controlled Government-Funded Trusts

From an accounting perspective, it is important to distinguish whether the design and governance of a particular trust results in the trust being controlled by the Province for accounting purposes. Control stems from the nature of the relationship between the government and the trust. Financial and operating policies are principles that determine how an organization conducts its activities. The ability to govern these policies is an important element of government control.

The means by which a trust is established, the government’s representation among the trustees, the government’s involvement in the trust’s governance processes and ability to impact trustee discretion in decision-making are but some of the factors to be considered in assessing whether a trust is ‘controlled’ or ‘not controlled’ by the government.

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In establishing a trust, it is important to achieve the intended relationship between the province and the trust in order to achieve the intended fiscal impact.

Non-Controlled Trusts:

Where trusts are not controlled by the Province, they are excluded from the government reporting entity. For non-controlled trusts, the following accounting would apply to trust funding:

- Where funds provided to the "trust" are unconditional, the Province would record a transfer payment expense for any transfers approved in the current period (and flowed by finalization of public accounts).

- Where funds provided to the "trust" are conditional (i.e. upon the trust completing some specific task or result), the Province would initially record funding to the trust as a prepaid expense until the conditions are met at which time the Province would record a transfer payment expense, with the corresponding credit to prepaid expense. This may occur over a number of fiscal years.

In determining whether a trust is controlled, there are a variety of ways that a government might be perceived to be governing the financial and operating policies of a trust. These include:
- Eliminating or significantly limiting the ability of the trustees to make future decisions
- Directing the financial and operating policies of the trust
- Overruling, modifying or vetoing the financial and operating policies established by the trust.

Specific factors that should be considered in establishing a non-controlled trust include:
- Government representation in the trustees (should be in a minority position), and non-government trustees should be nominated by non-government sources
- Government influence over day-to-day trust governance and trustee discretion to make decisions (e.g. selection of eligibility criteria, selection of recipients).
- degree of influence over how funds are disbursed (i.e. the Declaration of Trust can provide general guidelines but not be overly prescriptive)
- the government's power to unilaterally appoint or remove the majority of trustees
- the government's on-going access to the trust's assets, or right to direct decisions regarding the flow of those assets to specific beneficiaries
- the government's unilateral power to dissolve the trust, except under specified circumstances as stipulated by the trust agreement (i.e. corrective action)
- the government's ability to establish or amend the policies used by the trust to manage accounting, personnel, deployment of resources, etc.

In some cases, it may be advantageous for ministries to provide administrative support to trusts. In these cases it is important that the extent of such support is not so pervasive as to influence or direct the day-to-day financial or operating policies of the trust, otherwise the trust will be deemed controlled and will be subject to consolidation in the government reporting entity.

Controlled Trusts:

If the Province controls the trust (for example, through its power to appoint a majority of the trustees on the board of trustees), the Province would be deemed to have control of the trust, resulting in the trust being accounted for in the same manner as other organizations controlled by the province (i.e. on a consolidated basis). As a result, the Province's contribution to the trust would not be expensed when it is transferred, but rather over time as the funds are disbursed to trust beneficiaries.

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Accountability Related Considerations:

The Auditor General has confirmed that the new accountability provisions developed for one-time transfers can also be applied to trusts without impacting the expense treatment of any transfers to non-controlled trusts.

These new accountability provisions will enable the government and the Legislature to:

- obtain assurance that a trust is spending public funds prudently and for the purposes intended and to take corrective action if it is not;
- ensure ministerial accountability to the Legislative Assembly for the trust's activities; and
- ensure that the province is able to take corrective action where warranted and as stipulated under terms of the trust agreement.

It should also be noted that the Auditor General's Act now allows the Province's Legislative Auditor to conduct special audits of any person or organization receiving transfers from the government, including trusts.

To enhance accountability controls over government transfers to non-controlled trusts, Ministries can consider incorporating some or all of the following accountability provisions as part of their trust agreement/declaration without impacting the accounting treatment of the trust.

The inclusion of any of these provisions should not result in a trust being assessed as 'controlled'. Note that the key determinant in identifying appropriate provisions for any individual trust is a ministry's assessment of the **risk** associated with a particular trust, as per the Transfer Payment Directive.

1. **Description of intended use of trust funds**;
    - specific purpose(s) for which the funds are to be used;
    - description of intended recipients and related eligibility criteria*; and,
    - the nature of eligible expenditures relevant to the transfers.

    *Note: avoid *overly prescriptive* eligibility criteria which would effectively eliminate or significantly limit the trustees' discretion to make funding decisions.

2. **Requirement for information**
    - Information to be provided by the trust at a future date (e.g. requirement for trustees to advise the government of trustee-developed performance criteria, and provide annual assessments against those criteria)

3. **Report-back requirement for Public Accountability**
    - information to be provided by the trust at a future date with respect to the stewardship and payment of transfer funds (e.g. audited financial statements, audited list of recipients and amounts funded).

4. **Right to independent verification/audit**
    - The Province reserves the right to audit any transfer payment recipients. The trust agreement should make reference to this fact.

5. **Right to take corrective action**
    - Where stipulated under the trust agreement, the Province reserves the right to re-direct unused funds where results of a trust assessment (where required by the trust agreement) indicate original purpose of the trust is not being achieved, or if there remain unused funds at the end of the trust term.
    - Province may also reserve the right to extend the term of the trust agreement, where funds remain at the end of the trust period.

To qualify for in-year expense treatment, the non-controlled trusts must satisfy the following:

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- the decision to establish the trust must have been approved by Treasury Board/Management Board of Cabinet and ratified by Cabinet by March 31st;
- the ministry providing the transfer must have approved appropriations and spending authority by March 31st;
- Trustees must have been identified and signed the trust declaration or agreement to establish a valid trust by March 31st ;
- the trust must be set up and ready to receive funds, and a nominal amount transferred to the trust by March 31s;t ; and,
- the government should have communicated publicly (e.g. in the Budget document) the pending or final establishment of the trust.

In addition, all remaining funds beyond those initially transferred at March 31st should be transferred to the trust by June 30th.

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Trusts
Questions and Answers on Trust Guidance

Question: *Where a trust is announced in the Budget document, must the trust be established by March 31st, or could such a trust be established shortly thereafter without impacting the expensing of transfers to the trust in 2007-08?*

Answer: *A trust would have to be established prior to the end of a fiscal period in order to satisfy the recognition criteria for government transfers. If the intended recipient for a government transfer does not exist at March 31st, the province cannot record a payable owing to it under existing accounting standards.*

Question*: Does the transfer of funds to a non-controlled trust need to occur by March 31st or before the date of Public Accounts finalization?*

Answer: *Consistent with the new requirements for one-time transfers, as long as the trust is established by March 31st, the transfer is authorized and a reasonable estimate of the amount can be made, cash payments can be made after year-end.*

Question: *Can beneficiaries of a non-controlled trust include consolidated entities provided that the ultimate selection of recipients is at the discretion of the Trustees?*

Answer: *Any amounts provided to a trust which are in turn be provided to an organization inside the government reporting entity should not be expensed at the time of the transfer to the trust. Any amount that is flowed to a trust with the intention of subsequently flowing the funds to a consolidated entity should not be recorded as an expense to the government.*

Question: *Can a Ministry provide administrative support to a trust without compromising the non-controlled status of the trust?*

Answer: *The government can provide administrative support as long as the extent of government administrative support is not so pervasive so that the government is in substance establishing and managing the trust's policies in the areas of accounting, personnel, compensation, collective bargaining or deployment of resources. Where such administrative support is assessed as pervasive, it could impair the trust's non-controlled trust and the trust will be consolidated onto the province's financial statements.*

Can the following clauses appear in a trust agreement for a non-controlled trust to ensure adequate accountability over public funds without impacting the expense treatment of such trusts?

Question*: Specific description of purpose of the trust (possibly including nominal allocation among various objectives)*
Answer: Yes.

Question: *Can the trust agreement include a specific description of the intended groups of beneficiaries and detailed eligibility criteria.*

Answer: *Specificity should be applied cautiously, so as not to limit the discretion of the trustees in their subsequent grant making processes. For the trust to be considered 'not controlled' it should not be seen as 'establishing the trust's fundamental purpose and eliminating or significantly limiting the ability of the trust to make future decisions by predetermining the financial and operating policies of the trust.*

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Question: *Can trustees stipulate that funding is to be provided to beneficiaries on a cost-sharing basis?*
Answer: *Yes.*

Question: *Can the trust agreement include a requirement for a trust to report back to the province on trustee-established performance criteria and results, audit of financial statements, audited recipients and amounts, confirmation that trustees communicated to beneficiaries the intended purpose of the funding, etc.*
Answer: *Yes.*

Question*: Requirement for Trust to publicly post communications on existence, availability of funds, eligibility criteria, recipients and amounts granted to each recipient.*
Answer: *Yes*

Question: *Inclusion of a 'suggested' drawdown schedule over a period of years, with discretion left to Trustees as to actual results.*
Answer: *The inclusion of a drawdown schedule is not suggested for one-time, up-front transfers.*

Question: *Trust agreement can suggest accountability provisions which might be attached by Trustees to beneficiary payments (e.g. specific purpose of funding, requirement for report-back, right to audit, corrective actions).*
Answer: *Yes*

Question: *Trust agreement to reserve the province's right to re-direct any unspent funds to specified parties (e.g. non-consolidated entities or another non-controlled trust) at the end of the trust term, or alternatively to extend the term of the trust where unspent funds remain.*
Answer: *Yes*

Question*: Can the trust agreement include the requirement for evaluations of the trust at certain times (e.g. years 3, 7, 10 of the trust agreement), with the right for the government to decide either to terminate the trust (corrective action) based on the results of the assessment, or extend the trust beyond the initial term as per the agreement.*
Answer: *Yes.*

Question: *Trust agreement can require Trustees to request as part of the funding process that beneficiaries acknowledge receipt of government funding in their public communications on specific projects.*
Answer: *Yes.*

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Appendix IV

ACCOUNTING TREATMENT FOR ONE-TIME TRANSFERS WITH ENHANCED ACCOUNTABILITY PROVISIONS

Purpose:

The purpose of this guidance is to identify the nature of the accountability provisions which may be associated with one-time transfer payments that qualify for immediate expense treatment in the current period.

Definition of One-time transfers:

One-time transfers are defined as lump-sum operating or capital transfers that

- are not advancing currently planned future transfer payments under an existing on-going program, or
- are not identified as being intended to be spent in specified future periods or over a specified period of time.

Background:

Transfer payments are a means by which the government works with third parties to deliver public services. Transfer payment recipients must be held responsible by the government to deliver the provincially-funded services and be accountable for the funds they receive. Consistent with the *Transfer Payment Accountability Directive, August, 2007*, a risk-based approach is to be followed in designing the appropriate accountability and reporting mechanisms for specific funding agreements.

The current *PSAB Handbook Section 3410, Government Transfers requires that a government transfer should be recognized by a transferring government as an expense in the period the transfer is authorized and all eligibility criteria have been met by the recipient.*

To recognize a liability and expense as at year-end:

- the government must create a valid expectation of the recipient by year-end, leaving the government little or no discretion to avoid but to settle its obligation;
- no significant, contingent actions should be outstanding which if unfulfilled by year end might cause the transfer not to occur.

It is understood that the intention of negotiating a transfer payment agreement following the government's commitment to the recipient is to work out the administrative details of the arrangement, not to change any key elements of the government's commitment. As such, any correspondence which indicates that funds will not be flowed until a TPA is signed should make clear that the nature of additional details to be negotiated is logistical and administrative in nature (bank account info, reporting requirements, etc.)

The government should not suggest or direct the recipients to use the funding for future periods.

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To enhance accountability controls over one-time transfers accountability provisions one through five below are required for one-time transfers.

1. **Description of intended use of one-time transfer funds**;
   - specific purpose(s) for which the funds are to be used; and,
   - the nature of eligible expenditures relevant to the transfers.

2. **Report-back requirement for Public Accountability**
   - Periodic reporting on the use of transfer funds, service deliverables, outputs or outcomes achieved.

3. **Right to independent verification/audit**
   - at the discretion of the Province to verify/audit information submitted by the recipient is complete and accurate, and that funds were used for purposes intended.

4. **Right to recover funds (corrective action)**
   - If the funds were not used, or will not be used, for the intended purpose(s), specified services were not delivered, or intended outputs were not achieved, the Province has the right at a future date to recover funds transferred.

5. **Requirement for information** (*this item optional*)
   - information to be provided by the recipient at a future date with respect to the use of transfer funds, service deliverables, outputs or outcomes achieved.

To qualify for in-year expense treatment, the transfers must satisfy the following:

- be approved by Treasury Board / Management Board of Cabinet and then ratified by Cabinet by March 31st;
- the ministry providing the transfer must have approved appropriations and spending authority by March 31st;
- the recipients must be eligible to receive the grant by March 31st (i.e. eligibility criteria have been met prior to March 31st), and the intent to make the transfer payment must be communicated to the recipients by March 31st;
- In addition, funding details including accountability provisions must be communicated to the recipients, and the transfer payments must be made to the recipients prior to the finalization of the Public Accounts (currently June 30th);
- Where funds are flowed to recipients by March 31st, all eligibility criteria are assumed met for accounting purposes[1], and all amounts flowed are recorded as an expense, even where conditions might exist which remain unmet at March 31st.

[1] PS 3410, Government Transfers, states that "no matter how a transfer term is identified in legislation, regulations, by-laws or a transfer agreement (i.e., as an eligibility criterion or a stipulation), the crucial characteristic that distinguishes the substance of these two types of transfer terms is when they are required to be or are met by a recipient. If a term is required to be and is met before the transfer is provided, it is an eligibility criterion for the purposes of this Section. If a transfer term is met after the transfer is provided, it is a stipulation for the purposes of this Section".

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Control Assessment_Affordability Fund new format mar 26F MP comments.rtf

From: Petsche, Nadine (TBS) []
To: Picard, Michel (mpicard@kpmg.ca) [mpicard@kpmg.ca]
Subject: Control Assessment_Affordability Fund new format mar 26F MP comments
Date: Wednesday, March 29, 2017 22:28:35
Attachment 1: Control Assessment_Affordability Fund new format mar 26F MP comments.doc
Attachment 2: Administrative Services Agreement - Executed.pdf

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Hi Michel.

Thanks for your comments on the revised draft, and for the interesting suggestion re: H1's role in the arrangement from an accounting perspective. I've inserted a comment for your consideration. Looking forward to your response.

Take care,

Nadine

Control Assessment_Affordability Fund new format mar 26F MP comments.pdf

Accounting Analysis of Affordability Fund Trust

ISSUE

Would the proposed Affordability Fund Trust (the Affordability Fund) be consolidated under Public Sector Accounting Board (PSAB) standards in the Province's consolidated financial statements?

RECOMMENDATION

Based on the terms and conditions of the executed Trust Declaration and the Transfer Payment Agreement, the Affordability Fund should be classified as a Trust under Administration of Hydro One and therefore not consolidated as part of the government reporting entity.

To further confirm the economic substance of the relationship between the Province and the Trust, OPCD also assessed relevant terms and conditions of the Trust Declaration and Transfer Payment Agreement in accordance with the control criteria in PS1300 and found that the overall preponderance of evidence indicated that the Trust is not controlled by the government. The results of the detailed analysis is in Appendix I which conclude that only two of PSAB's criteria of control are met, reflecting the Province's ability to (i) establish the mandate of the organization and (ii) the restricting the organization's investments.

With regards to the first criteria, although the Province established the Affordability Fund, it does not have the ability to amend the mandate of the Trust but has a protective right over the amendments.

Regarding the second control criteria noted, the government established the Affordability Fund to support the Ministry of Energy's rate reduction program. While the Trust documents restrict the nature of investments in which the Trust can invest to maintain liquidity and stewardship over the funds, it does not weigh heavily on the control assessment.

BACKGROUND

The Ministry of Energy ~~plans to transfer~~transferred $100M before year-end to a recently formed, limited purpose Trust to establish a new Affordability Fund that will provide energy efficiency measures to electricity customers. Specifically, the Affordability Fund will provide assistance to customers who do not qualify for existing low income conservation programs (e.g. the existing Home Assistance Program (HAP) delivered by LDCs under the Conservation First Framework) and who have difficulty paying their electricity bills.

The Affordability Fund is intended to be available for distributions to beneficiaries who would be identified based on recommendations from LDCs based on principles and indicative eligible measures listed in Annex A of the Declaration of Trust. Beneficiaries could include customers in frequent arrears or facing disconnection. Priority is expected to be given to homes which are primarily heated by electricity.

In order to provide funding to the Trust, the Ministry of Energy entered into a Transfer Payment Agreement (TPA) with the Trustee of the Trust (Computershare). Computershare will in the near future be replaced by an independent Board of Trustees which will be appointed based on the advice of an independent Advisory Committee. The Ministry of Energy ~~expects to flow~~flowed ~~the~~ approved funding ($100M) to the Trust account established by Computershare on March XX _, 2017.

Commented [m1]: I believe it should be a trust under H1's administration. NPP – Interesting suggestion – what if H1 is replaced by another service provider in the future, the government wouldn't have to report on the Trust as a Trust under Administration? Also, just wondering how US GAAP would treat the arrangement? What additional analysis might have to be undertaken to assess potential accounting risks, if any?

Commented [m2]: Should this be past tense? Reworded as 'if the monies had been transferred' in anticipation of sharing the analysis with the AG.

Commented [m3]: Is it done already?

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Commented [m4]: Inser the date. To be inserted pending MOE update.

The Replacement Board of Trustees (to replace the Original Trustee, Computershare) is expected to be comprised of:

- [six] residents of Ontario who have expressed that they are willing to act as members of the Board of Trustees and who, individually and collectively, satisfy the following criteria (collectively, the "Selection Factors"):

  a) each member demonstrates an understanding of the electricity sector including the electricity distribution sector;
  b) each member demonstrates an expertise in conservation and low income programs;
  c) three of the identified individuals will be representatives from separate electricity distributors, two individuals will be representatives from separate social services agencies and one individual member, who will be a non-voting member, will be an employee or representative of the Government of Ontario; and
  d) it is expected that representation by the Government of Ontario will be non-controlling.

In accordance with the Trust Declaration, the Trust has engaged with Hydro One to provide administrative services and has the discretion to engage with other entities as service providers to assist with administering the Trust. It is expected that the Trust would consider using administrative services agreements to clearly document services and expectations in delegating its authority. The Trust would distribute funds to identified customers of LDCs across the province (including Hydro One's distribution division) at the discretion of the Trustees, based primarily on the recommendations of the applicable LDCs.

The Declaration of Trust confers broad powers and discretion to the Trustee, to act in the best interest of the beneficiaries. The Trustees are expected to conduct themselves in good faith and have regard to guiding principles set out in the Declaration of Trust (and indicated by the Province in the TPA) in exercising their duties under the Trust Declaration and TPA in distributing funds to LDCs for the benefit of beneficiaries across the province.

The Trust Declaration will be subject to further modification by the Trustee, subject to the Province's protective right under the TPA to consent, where such consent is not to be unreasonably withheld or delayed. The input and involvement of LDCs across the province is anticipated and integral to the success of the Trust in meeting its purpose. The **Principles,** to be considered in the exercise of its discretion**,** are set out in both the Trust Declaration and the TPA.

In addition, a **Permitted Delegation Annex** forms part of the Declaration of Trust, which refers to an expectation that the Trust would rely on participating LDCs to assist with achieving the purpose of the Trust, including an expectation to (a) appoint, employ or retain Implementation Agents for the purpose of discharging its duties and obligations under the Declaration; and (b) enter into, perform, enforce and amend implementation agreements.

Without limiting the Trustee's discretion to negotiate and settle the terms and conditions of the above-mentioned implementation agreements, the Permitted Delegation Annex also outlines certain expected components for the Trust to consider for inclusion in the implementation agreements, recognizing that the ultimate agreements would be subject to negotiation between the Trust and individual Electricity Distributors and the acceptance and agreement of the applicable Electricity Distributor counterparty. The Annex is subject to the Trustee's overall discretion and the Trustees are not bound to use the guidance provided.

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ACCOUNTING ANALYSIS

In accordance with PS1300, the Affordability Fund can be considered a trust under administration and should therefore be excluded from the government reporting entity (ref. PS 1300.40). Exclusion from the government entity is appropriate where there is a legal trust, as with the Affordability Fund, as the property transferred by the Ministry of Energy is conveyed to the Trustee (Computershare) to be administered as directed by the Trust Declaration. The Original Trustee, and subsequently the Replacement Trustee Board hold title to the property for the benefit of the beneficiaries.

Under the terms of the Trust Declaration, the Trust fulfills its fiduciary duty and the Province retains no unilateral authority to change the conditions set out in the Trust Declaration. Under PS1300, the assets and activities of Trusts under Administration would therefore be excluded from the government's consolidated financial statements.

Both the Trust Declaration and the Transfer Payment Agreement clearly, and consistently convey the ability of the Trust to act independently in exercising its discretion over entering into agreements with Implementation Agents, funding allocation decisions, and design of eligible measures. The extent to which the government can influence the decisions or activities of the Trust is restricted by the Principles Annex, the suggestions on elements of the administrative/implementation agreements that the Trust is expected to enter into with LDCs, and suggested considerations for eligible measures which might be covered by the program. In none of the documents is the Trust mandated to adopt the government's suggestions.

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Control is defined as the ability of one party to govern the financial and operating policies of the other party. According to PS1300, financial and operating policies are principles and practices that determine how an organization conducts its activities which can impact the achievement of its mission and mandate. While the government has established the Trust's fundamental purpose, it has not restricted or limited the ability of the Trustees to make future decisions. Furthermore, the Trust has been established for the benefit of electricity customers. The government does not expect to derive a financial or non-financial benefit from the Trust, nor is the government exposed to the risk of any loss from the Trust.

A number of report-backs requirements are included in the Transfer Payment Agreement which are consistent with OPCD's Trust Guidance, and guidance on One-Time Transfers. In addition, the TPA includes certain audit rights and protective similar to those included in other transfer payment agreements. For example, the government will require the Trust to submit reports for information purposes on the nature and extent of its funding activities, and allow for audits at the discretion of the Province, to provide assurance that the funds have been used for the purposes intended. In accordance with PS1300, such reports are not considered evidence of control because the government's interest in the Trust extends to ensuring that that the Trust is achieving success in satisfying its fiduciary duty and achieving the purposes of the Trust which is to help the most vulnerable electricity customers.

In addition to considering PSAB guidance for Trusts under Administration, OPCD also undertook an assessment of government control over the Trust under PSAB's
"indicators of control". In addition to its legal form as a Trust, OPCD considered the economic substance of the relationship between the government and the Trust. Relevant aspects and implications of the relationship were considered in determining whether or not the government controls the Trust. OPCD's Trust Guidance and One-Time Transfer Guidance developed in conjunction with the Office of the Auditor General are also attached as Appendices.

There are a total of 11 PSAB prescribed control indicators that provide evidence of control: 4 persuasive indicators of control and 7 other control indicators. It is the preponderance of evidence that would be considered in assessing whether a government controls an organization.

The following governing documents were reviewed in support of the analysis of the Province's control over the Affordability Fund Trust:

1. Trust Declaration, including related schedules
2. Transfer Payment Agreement
3. PSAB 1300 (esp. PS1300.40-.46)
4. OPCD Trust Guidance
5. OPCD Guidance on One-Time Transfers

Both the TPA and the Trust Declaration clearly reflect the government's intention not to interfere with the unfettered discretion of the Trustees in exercising their fiduciary duties on behalf of the beneficiaries. In particular, Schedule A, Section 1.1(g) (Interpretations) of the TPA includes the following:

it is intended that the transfer of the Funds to the Recipient will be a transfer made to a trust that is not controlled by the Province (as the term "control" is used in *Government Reporting Entity* at paragraphs PS 1300.07-.24), and so if a term or condition of the Agreement is determined to conflict with the requirements applicable to the Province recording the transfers to the Recipient of Funds contemplated hereunder as an expense incurred by the Province on the date of the transfer of Funds under the Agreement otherwise in connection with activities undertaken by the Province with such a non-controlled trust, then such term or condition shall be given a meaning and shall have an effect insofar as it is possible to interpret such term or condition in a manner that eliminates such conflict while preserving the other provisions of the Agreement and furthering the Purpose.

Appendix I shows the detailed analysis of the Affordability Fund Trust based on a consideration of the of the PSAB indicators of control.

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APPENDIX I

Affordability Fund Trust
Indicators of Control Analysis
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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
Primary (more persuasive) indicators (CICA PS 1300.18):		
i. Government has the power to unilaterally appoint or remove a majority of the members of the governing body of the organization	• Original Trustee (Computershare) is the governing body of the Trust until the Replacement Board of Trustees is selected. As at March 31st, Trustee will hold funds transferred and government will not have power to remove Original Trustee nor have access to the funds transferred. • The government does not control the Original Trustee or the Advisory Committee, and will not control the Replacement Board of Trustees.	X
ii. Government has ongoing access to the assets of the organization, has the ability to direct the ongoing use of those assets, or has ongoing responsibility for losses	• The government does not have an on-going access to assets transferred to the Trust, and any future access will only be through protective clauses (termination/default for material breach). • At the Final Distribution Date, any excess funds will be distributed to a non-controlled Residual Beneficiary in accordance with clause 3.3 of the Trust Declaration. • The government does not have any exposure to losses. **Trust Declaration (sec. 4.2 extracts)** ***(c)Power to Own, Hold and Manage.*** Subject to section 4.2(d), the Trustee shall have the power to own, hold and manage the Assets in such manner as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable. ***(e)Power to Dispose of Assets.*** The Trustee shall have the power to sell, convey, assign, transfer, exchange and in any other manner dispose of the Assets or any part or parts thereof free and clear of any and all trusts established under this Declaration, by public or private sale, for cash or on credit, with or without advertisement, and subject to such restrictions, stipulations, agreements and reservations as the Trustee in its sole and absolute discretion may consider appropriate or advisable, and to execute and deliver and perform any agreement, deed, conveyance, transfer or other document or instrument in connection with the foregoing. ***(o)Title to Assets.*** The Trustee shall have the power to cause all or any part of the Assets to be held by or registered, in its sole and absolute discretion, in the name of any Person.	X

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
3. Government holds the majority of the voting shares or a "golden share" that confers the power to govern the financial and operating policies of the organization	"**Declaration of Trust**" means the declaration of trust made as of March 23, 2017, under which the Affordability Fund Trust was established, as such declaration of trust may be amended, restated, supplemented or otherwise modified from time to time with the consent of the Province in accordance with Section 20.2 (see below). **20.2 Declaration of Trust.** The Recipient covenants that it shall not amend, restate or terminate the Declaration of Trust without obtaining the written consent of the Province in respect of same, such consent not to be unreasonably withheld or delayed. **Note: The right of the Province to consent is a protective right only.** **Trust Declaration:** **6.1Amendments** Subject to the requirements of the Transfer Payment Agreement, the Trustee shall have the power in its sole and absolute discretion from time to time without the approval of any Beneficiary or any court to amend, vary, supplement, replace or restate this Declaration in its entirety or any portion thereof; provided, however that it is expected that any amendment shall be consistent with the intent of the principles set forth in the Principles Annex and with the intended scope and effect of the permitted delegations and activities of any Implementation Agent pursuant to the Permitted Delegations Annex. Without in any way limiting the foregoing, any such amendments, variations, supplements, replacements or restatements **Principles Annex (In Trust Declaration):** The Trustee shall have regard to, but shall not be specifically bound by, the following principles in applying its discretion in relation to the administration of the Trust: Schedule A of the Declaration to which it refers lists 'Indicative Eligible Measures' for consideration by the Trustees. In addition, the Permitted Delegation Annex includes non-mandatory elements for consideration by the Trustees in the Implementation Agreements that the Trust may choose to enter into with LDCs (without limiting the Trustee's discretion to negotiate and settle the terms and conditions of such agreements). **Governance in the TPA.** The Recipient covenants that it will develop and maintain in writing until the Agreement is no longer in effect: a) decision-making mechanisms and procedures to enable the Recipient to hold, invest, manage, apply and distribute the Funds in accordance with the Declaration of Trust in	X

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
	furtherance of the Purpose; and b) procedures to enable the preparation and delivery of all Reports required pursuant to Article 7.0. Section 5.8, Rules and Procedures of the Trust Declaration provides further expectations which are typical of a Trust and which do not reflect control by the Province.	
4. Government has the unilateral power to dissolve the organization and thereby access its assets and become responsible for its obligations	Only after the Final Distribution Date or in the event of default will the government have any power or rights in relation to the remaining funds in the Trust. Specific extracts are included below which demonstrate that the province would not have unilateral power to dissolve the organization and access its assets during the normal course of the Trust's existence. With regards to the control criteria's suggestion of dissolving the organization and accessing assets, it should be noted that there are expected to be no assets at the end of the Trust's existence that could be returned back to the Province. The termination of the Trust at the end of the program and following the Final Distribution Date will be an administrative undertaking by the Trustees. The only circumstance that assets might return to the province is contingent and under protective clauses (termination/default) which are not indicative of a unilateral right available to the Province to dissolve the Trust. **<u>Trust Declaration</u>** **7.1 Duration** Subject to sections 7.2 and 7.3, the Trust will continue in full force and effect so long as there are any Assets and until all of the debts, liabilities and obligations of the Trust have been paid and satisfied in full. **7.2 Termination and Distribution of Assets** The Trustee shall terminate the Trust and wind up its affairs as soon as practicable after the Final Distribution Date. In connection with the termination of the Trust, the Trustee shall identify the Residual Beneficiaries and distribute or cause to be distributed the remaining Assets, in cash or in kind or partly in each, to the Residual Beneficiaries, in each case in accordance with section 3.3. Despite the foregoing, the Trust will only be terminated and wound up after the Trustee, in its sole and absolute discretion, determines that all debts, liabilities and obligations of the Trust have been paid or otherwise adequately provided for and satisfied and upon receipt of such releases, indemnities and discharges as the Trustee, relying on the opinion of counsel, deems necessary for the protection of the Beneficiaries and for its own protection. **7.3 Distribution of Assets on Final Distribution Date**	X

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
	If the Trust holds Assets on the Final Distribution Date, the Trustee shall pay or provide reserves for the payment, and otherwise shall satisfy, all debts, liabilities and obligations of the Trust and shall provide or arrange to provide such investigations, audits, releases, indemnities and discharges as the Trustee, relying on the opinion of counsel, deems necessary for the protection of the Beneficiaries and for its own protection. Thereafter, any remaining Assets shall be paid to the Residual Beneficiaries in accordance with section 3.3. **TPA References** **11 EVENT OF DEFAULT, CORRECTIVE ACTION AND TERMINATION FOR DEFAULT** **11.1 Events of Default.** An Event of Default will occur if: a) the Recipient fails to perform or observe any covenant in this Agreement and such failure has and continues to have a material adverse effect on the Province and remains unremedied during any Notice period applicable under section 11.2 after the earlier of (i) actual knowledge thereof by the Recipient, or (ii) receipt by the Recipient of Notice thereof from the Province; b) any representation or warranty made by the Recipient in the Agreement shall prove to have been incorrect in any material respect when made or deemed made, and, if capable of remedy, continues to be incorrect in any material respect during any Notice period applicable under section 11.2 after the earlier to occur of (i) the actual knowledge thereof by the Recipient or (ii) receipt by the Recipient of Notice thereof from the Province; c) it is determined that the Recipient has breached its Standard of Care (within the meaning given in and context of the Declaration of Trust) in discharging its material duties under the Declaration of Trust, with the result that all or a significant part of the Funds have not been or are not being applied in furtherance of the Purpose or are being applied in a manner that is directly contrary or without regard to the Purpose, and, if such breach is capable of remedy, it continues and remains unremedied during any Notice Period applicable under section 11.2 after the earlier of (i) actual knowledge thereof by the Recipient, or (ii) receipt by the Recipient of Notice thereof from the Province; d) an insolvency event shall have occurred and be continuing with respect to the Recipient. **11.2 Consequences of Events of Default and Corrective Action.** If an Event of Default occurs, the Province may, at any time, take one or more of the following actions: (a) provide the Recipient with Notice allowing the Recipient an opportunity to remedy the Event of	

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
	Default during a specified Notice Period; (b) seek an order of specific performance, including an order that the Recipient pursue its available remedies against third parties; (c) require, by Notice of demand, that the Recipient transfer to the Province (without any need for compensation, indemnity or consideration to the Recipient or any Beneficiary or other third party) any and all Assets remaining in the possession or under the control of the Recipient that can reasonably be traced or attributed to the Funds after first providing for the completion and performance by the Recipient of any unperformed contractual obligations of the Recipient undertaken in compliance with the Declaration of Trust on or prior to transfer; and (d) terminate the Agreement, including immediately, without liability, penalty or costs to the Province upon giving Notice to the Recipient. The transfer of Funds in accordance with the Agreement is made by the Province with the expressed intention and reservation that the transferred Funds shall be returned to the Province and the entitlements of the Recipient in remaining Funds shall thereby be revoked with reversion thereof to the Province in the circumstances contemplated in Section 11.2(c). **11.3 Opportunity to Remedy.** If, in accordance with section 11.2, the Province provides the Recipient with an opportunity to remedy the Event of Default, the Province will provide Notice to the Recipient of: (a) the particulars of the Event of Default; and (b) the length of time within which the Recipient may cure such Event of Default without the Province pursuing any other remedy (the "Notice Period"). No right to access assets following Final Date of Distribution: **Declaration of Trust** 3.3Distributions to Residual Beneficiaries Prior to the Final Distribution Date, the Trustee shall identify the Residual Beneficiary, or if more than one the Residual Beneficiaries and their respective allocations, by consulting with and having regard to the recommendations of the Ontario Energy Board, based on those charitable organizations which provide support services for Low Income Energy Assistance Program Emergency Financial Assistance (LEAP EFA) and the Ontario Electricity Support Program (OESP) or other charities that OEB may identify as relating	

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
	to the Purpose. Following the Final Distribution Date, the Trustee shall, subject to compliance with section 7.3 and completion of a final audit, distribute all remaining Assets (including capital or income) to the Residual Beneficiaries, in each case in the amounts and to the extent determined by the Trustee in its discretion hereunder (having consulted with and having had regard to the recommendations of the Ontario Energy Board as aforesaid) and to the exclusion of the other Beneficiaries.	
5. Provide significant input into the appointment of members of the governing body of the organization by appointing a majority of those members from a list of nominees provided by others or being otherwise involved in the appointment or removal of a significant number of members	The Original Trustee will establish the Trust and will not be controlled by the Province. In accordance with the Trust Declaration and the TPA, the government will not control the Original Trustee, and will not have a controlling interest in either the Advisory Committee nor the Replacement Trustee Board. The process for Replacement of the Original Trustee by the Replacement Board of Trustees is described in section 5.7 of the Trust Declaration. Although the Original Trustee (Computershare) may have been selected by the Province, and the Advisory Committee members were listed on the Trust Declaration, neither the Original Trustee nor the Advisory Committee will be controlled by the Province. It is relevant to note that PSAB also provides the following guidance with regards to government involvement in appointing governing bodies: PS1300.20 For each indicator that applies in a particular circumstance, the degree of government influence would determine its importance as evidence of control. In weighing the evidence, it would be necessary to consider the indicators collectively as well as individually. For example, where an organization is governed by a publicly elected board, this is not necessarily, in and of itself, sufficient evidence to conclude that the government does not control the organization. Similarly, where a government appoints a majority of the members of the governing body of an organization, this is not necessarily, in and of itself, sufficient evidence that the government controls the organization.	X
6. Appoint or remove the CEO or other key personnel	Right does not exist. N/A	X
7. Establish or amend the mission or mandate of the organization	Through an agreement with the Trustee (Computershare), it is the entity as settlor and as Trustee which has established the trust. Once established, the Province's Role, under section 4.4 of the TPA is limited to providing funds to the Trust. For greater clarity, the Province's role under the Agreement is limited to providing Funds to the Trust and the Province is not responsible for carrying out or overseeing the terms of the Declaration of Trust.	✓

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
8. Approve the business plans or budgets for the organization and require amendments, either on a net or line-by-line basis	Right does not exist. No intention or documentation demonstrating that province would manage/influence the Trust on a line by line basis. **TPA 4.4 Province's Role Limited to Providing Funds.** For greater clarity, the Province's role under the Agreement is limited to providing Funds to the Recipient and the Province is not responsible for carrying out or overseeing the terms of the Declaration of Trust.	X
9. Establish borrowing or investment limits or restrict the organization's investments	Trust Declaration, Section 1.1 Definitions (j) "***Eligible Investments***" means (i) a deposit receipt, note, certificate or instrument issued, guaranteed or endorsed by a bank listed in Schedule I to the *Bank Act* (Canada), which provides that the principal and any interest shall be fully paid no later than one year after the day the investment was made, or (ii) a deposit account at a bank listed in Schedule I to the *Bank Act* (Canada). ***4.2*** (a) ***Power to Own, Hold and Manage.*** Subject to section 4.2(d), the Trustee shall have the power to own, hold and manage the Assets in such manner as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable. (b) ***Power to Invest in Eligible Investments.*** The Trustee shall have the power to invest the Assets only in Eligible Investments, and to change such Eligible Investments at any time and from time to time, all as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable, but always having regard to the Trustee's expectations regarding the timing of payments to be made to the Beneficiaries hereunder. If an investment of Assets in Eligible Investments would not be authorized under the applicable trust laws of Ontario, the Trustee shall nevertheless be permitted to make an investment of the Assets in such Eligible Investments. The Trustee will have no liability for the diminution in the value of any investment in Eligible Investments made hereunder. *Although some restrictions, given the need for liquidity for the funds and envisioned short term nature of the program, it is unlikely that the Trust would have contemplated investing the funds in any different types of instruments as designated in the Trust docs.*	✓
10. Restrict the revenue-generating capacity of the organization, notably the sources of revenue	There are no revenue generating restrictions in the Trust documents; however, there are references indicating that the Funds are expected to be used for not for profit purposes. It should also be noted that the nature of a Trust is not to generate revenue or make a profit, but to fulfil a fiduciary duty on behalf of the beneficiaries. No explicit restriction mentioned in the Trust Declaration or TPA related to other activities of the trust; however,	X

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
	expectation that funds provided by the province will not be used for profitable purposes by the LDCs.	
11. Establish or amend the policies that the organization uses to manage, such as those relating to accounting, personnel, compensation, collective bargaining or deployment of resources	The Trust Declaration and the TPA are not intended to interfere with the discretion of the Trust to establish or amend its own financial and operating policies. However, the Province does provide non-compulsory Principles which are expected to be considered by the Trustee in executing its administration of the Trust. In addition to the guiding Principles, the Trust Declaration includes a Permitted Delegation Annex, which provides that the Trustee will be permitted, and is expected to seek to delegate its powers and duties to LDCs. These sections are descriptions of matters that would typically be expected in an Implementation Agreement (without limiting the discretion of the trustee to negotiate and settle the terms and conditions of such agreements). **Section 4.2 of the Declaration lists the Enumerated Powers of the Declaration, including:** The Trustee shall have the following specific powers and authorities: a) *Transfer Payment Agreement.* b) *Contracts and Undertakings.* c) *Power to Own, Hold and Manage. .* d) *Power to Invest in Eligible Investments.* e) *Power to Dispose of Assets.* f) *Power to Apply Assets and Proceeds to Make Distributions to Beneficiaries.* g) *Power to Delegate and to Appoint Agents, etc.* h) *Power to Operate Accounts.* i) *Power to Collect, etc.* j) *Power to Obtain Insurance.* k) *Power to Pay Trustee's Fees.* l) *Power to Pay Taxes.* m) *Power to Appoint Auditors.* n) *Form of Accounts.* o) *Title to Assets.* p) *Delegation of Discretion.* q) *Additional Powers.* None of the above noted powers are restrictive or suggest that the government is controlling the activities of the Trust. The TPA Extract includes the following reference which does not conflict the non-controlled nature of the Trust and/or are consistent with OPCD's guidance on One-Time Transfer Payments or Trust Guidance reviewed previously with the Office of the Auditor General: 4.2 The Trustee is expected to conduct its activities in a manner that complies in all material respects with the Transfer Payment Agreement, including to:	X

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
	i. act prudently and in furtherance of the Purpose; ii. report not less frequently than annually the results of its activities for information purposes to the Province in connection with the Program; iii. comply with the Province's request for any independent verification or audit if determined to be necessary or appropriate by the Province; iv. return Assets that have not been distributed if it is determined that the Trustee has breached its Standard of Care in discharging its material duties under the Declaration, and has not cured such material breach despite having been given a reasonable opportunity by the Province to do so in light of the circumstances of such material breach, with the result that all or a significant part of the Assets have not been or are not being applied and distributed in furtherance of the Purpose or are being applied and distributed in a manner that is directly contrary or without regard to the Purpose. **5.0 RECIPIENT'S ACQUISITION OF GOODS OR SERVICES, AND DISPOSAL OF ASSETS (TPA)** **5.1 Acquisition.** If the Recipient acquires goods, services, or both with or by applying the proceeds of the Funds, it is expected to do so through a process that promotes the best value for money and to take reasonable steps to ensure that its Administrative Services Agents and Implementation Agents also follow a process that promotes the best value for money when acquiring goods and services with or by applying the proceeds of the Funds. **Both the TPA and the Trust Declaration include a PRINCIPLES ANNEX** The Trustee is expected to have regard to the Principles, but shall not be specifically bound by the principles in applying its discretion in relation to the administration of the Trust.	

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Appendix II

Extract from PS1300

TRUSTS UNDER ADMINISTRATION

.40 *Trusts administered by a government or government organization should be excluded from the government reporting entity.* [JUNE 1996]

.41 Trusts are defined as property that has been conveyed or assigned to a trustee to be administered as directed by agreement or statute. In a trust relationship, the trustee holds title to property for the benefit of, and stands in a fiduciary relationship to, the beneficiary.

.42 To meet the definition in paragraph PS 1300.41, the property conveyed or assigned to the government or government organization acting as a trustee, must be provided to fulfill a particular objective of the donor of the property conveyed or assigned. The government or government organization would merely administer the terms and conditions embodied in the agreement and has no unilateral authority to change the conditions set out in the trust indenture. For this reason, the assets and activities of the trust are excluded from the government's reporting entity.

.43 A government or government organization acts as trustee when it administers trusts on behalf of the beneficiaries specified in the agreement or statute. As trustee, the government is accountable to third parties for the use and disposition of trust assets and for the funds derived from those trust activities. Trust assets are not owned by the Crown in right of Canada, a province or territory, or by a local government, and should not be included in the government reporting entity.

.44 *Government financial statements should disclose, in a note or schedule, a description of trusts under administration by a government or government organization, and a summary of trust balances.* [JUNE 1996]

.45 To acknowledge and report on the magnitude of trusts administered by a government or government organization, a note or schedule to government financial statements would describe the trust assets under administration and would set out a summary of trust balances.

.46 Often the term "trusts" is applied to assets earmarked as a result of a government policy decision when no trust liability exists. Such assets are special funds that comprise part of the government reporting entity and would be consolidated.

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Appendix III

ACCOUNTING CONSIDERATIONS FOR GOVERNMENT-FUNDED TRUSTS

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Purpose:

The purpose of this guidance is to explore accounting-related considerations related to government-funded trusts which are established by the government to fund a specific purpose or activity. This guidance deals specifically with the difference between controlled and non-controlled trusts, the introduction of accountability provisions which can now be reflected in trust agreements, and key timing considerations for trusts contemplated towards year-end. It is important that these factors be taken into account when establishing a trust, in order to achieve the intended fiscal impact and appropriate accountability over the use of public funds.

Introduction:

Trusts are usually established by way of trust declaration or trust agreement, and are one of several means by which the government can direct funding to support key policy initiatives. Simply stated, trustees hold title to property for the benefit of, and stand in a fiduciary relationship to the beneficiaries. Trustees are accountable to third parties (beneficiaries) for the use and disposition of trust assets and for the funds derived from those trust activities. The trust itself is not a separate legal entity. The trustees carry out the activities of the trust in the name of the trustees.

Generally, direct year-end transfers are the preferred alternative over trusts where the province wants to retain ultimate decision-making authority regarding amounts to be transferred to recipients. Direct transfers are more appropriate where the identity of eligible transfer payment recipients is known and the amounts to be transferred to each recipient can be or has been determined.

Year-end transfers to a trust might be considered where the province desires to delegate to third parties ultimate decision-making authority regarding allocation of amounts amongst eligible beneficiaries.

A trust must be valid for legal purposes in order to be recognized for accounting purposes. Key requirements for a trust to be valid include: an intention to create a trust ('certainty of intention'), certainty of subject-matter of the trust ("certainty of subject matter") and the objects of the trust must be certain ('certainty of objects"). There are generally two different types of trust, a trust in which the objects are the "beneficiaries" and trust in which the objects are a "purpose" (e.g. for charitable purposes). Where a trust is under serious consideration, it is imperative that ministries seek legal advice to ensure that the contemplated trust will be valid.

Trustees are obligated to follow the terms of the trust declaration or trust agreement which will usually detail the powers and duties of the trustees including the number of trustees and how decisions will be made by the trustees.

Controlled versus Non-Controlled Government-Funded Trusts

From an accounting perspective, it is important to distinguish whether the design and governance of a particular trust results in the trust being controlled by the Province for accounting purposes. Control stems from the nature of the relationship between the government and the trust. Financial and operating policies are principles that determine how an organization conducts its activities. The ability to govern these policies is an important element of government control.

The means by which a trust is established, the government's representation among the trustees, the government's involvement in the trust's governance processes and ability to impact trustee discretion in decision-making are but some of the factors to be considered in assessing whether a trust is 'controlled' or 'not controlled' by the government.

In establishing a trust, it is important to achieve the intended relationship between the province and the trust in order to achieve the intended fiscal impact.

Non-Controlled Trusts:

Where trusts are not controlled by the Province, they are excluded from the government reporting entity. For non-controlled trusts, the following accounting would apply to trust funding:

- Where funds provided to the "trust" are unconditional, the Province would record a transfer payment expense for any transfers approved in the current period (and flowed by finalization of public accounts).

- Where funds provided to the "trust" are conditional (i.e. upon the trust completing some specific task or result), the Province would initially record funding to the trust as a prepaid expense until the conditions are met at which time the Province would record a transfer payment expense, with the corresponding credit to prepaid expense. This may occur over a number of fiscal years.

In determining whether a trust is controlled, there are a variety of ways that a government might be perceived to be governing the financial and operating policies of a trust. These include:
- Eliminating or significantly limiting the ability of the trustees to make future decisions
- Directing the financial and operating policies of the trust
- Overruling, modifying or vetoing the financial and operating policies established by the trust.

Specific factors that should be considered in establishing a non-controlled trust include:
- Government representation in the trustees (should be in a minority position), and non-government trustees should be nominated by non-government sources
- Government influence over day-to-day trust governance and trustee discretion to make decisions (e.g. selection of eligibility criteria, selection of recipients).
- degree of influence over how funds are disbursed (i.e. the Declaration of Trust can provide general guidelines but not be overly prescriptive)
- the government's power to unilaterally appoint or remove the majority of trustees
- the government's on-going access to the trust's assets, or right to direct decisions regarding the flow of those assets to specific beneficiaries
- the government's unilateral power to dissolve the trust, except under specified circumstances as stipulated by the trust agreement (i.e. corrective action)
- the government's ability to establish or amend the policies used by the trust to manage accounting, personnel, deployment of resources, etc.

In some cases, it may be advantageous for ministries to provide administrative support to trusts. In these cases it is important that the extent of such support is not so pervasive as to influence or direct the day-to-day financial or operating policies of the trust, otherwise the trust will be deemed controlled and will be subject to consolidation in the government reporting entity.

Controlled Trusts:

If the Province controls the trust (for example, through its power to appoint a majority of the trustees on the board of trustees), the Province would be deemed to have control of the trust, resulting in the trust being accounted for in the same manner as other organizations controlled by the province (i.e. on a consolidated basis). As a result, the Province's contribution to the trust would not be expensed when it is transferred, but rather over time as the funds are disbursed to trust beneficiaries.

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Accountability Related Considerations:

The Auditor General has confirmed that the new accountability provisions developed for one-time transfers can also be applied to trusts without impacting the expense treatment of any transfers to non-controlled trusts.

These new accountability provisions will enable the government and the Legislature to:

- obtain assurance that a trust is spending public funds prudently and for the purposes intended and to take corrective action if it is not;
- ensure ministerial accountability to the Legislative Assembly for the trust's activities; and
- ensure that the province is able to take corrective action where warranted and as stipulated under terms of the trust agreement.

It should also be noted that the Auditor General's Act now allows the Province's Legislative Auditor to conduct special audits of any person or organization receiving transfers from the government, including trusts.

To enhance accountability controls over government transfers to non-controlled trusts, Ministries can consider incorporating some or all of the following accountability provisions as part of their trust agreement/declaration without impacting the accounting treatment of the trust.

The inclusion of any of these provisions should not result in a trust being assessed as 'controlled'. Note that the key determinant in identifying appropriate provisions for any individual trust is a ministry's assessment of the **risk** associated with a particular trust, as per the Transfer Payment Directive.

1. **Description of intended use of trust funds**;
    - specific purpose(s) for which the funds are to be used;
    - description of intended recipients and related eligibility criteria*; and,
    - the nature of eligible expenditures relevant to the transfers.

    *Note: avoid *overly prescriptive* eligibility criteria which would effectively eliminate or significantly limit the trustees' discretion to make funding decisions.

2. **Requirement for information**
    - Information to be provided by the trust at a future date (e.g. requirement for trustees to advise the government of trustee-developed performance criteria, and provide annual assessments against those criteria)

3. **Report-back requirement for Public Accountability**
    - information to be provided by the trust at a future date with respect to the stewardship and payment of transfer funds (e.g. audited financial statements, audited list of recipients and amounts funded).

4. **Right to independent verification/audit**
    - The Province reserves the right to audit any transfer payment recipients. The trust agreement should make reference to this fact.

5. **Right to take corrective action**
    - Where stipulated under the trust agreement, the Province reserves the right to re-direct unused funds where results of a trust assessment (where required by the trust agreement) indicate original purpose of the trust is not being achieved, or if there remain unused funds at the end of the trust term.
    - Province may also reserve the right to extend the term of the trust agreement, where funds remain at the end of the trust period.

To qualify for in-year expense treatment, the non-controlled trusts must satisfy the following:

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- the decision to establish the trust must have been approved by Treasury Board/Management Board of Cabinet and ratified by Cabinet by March 31st;
- the ministry providing the transfer must have approved appropriations and spending authority by March 31st;
- Trustees must have been identified and signed the trust declaration or agreement to establish a valid trust by March 31st ;
- the trust must be set up and ready to receive funds, and a nominal amount transferred to the trust by March 31s:t ; and,
- the government should have communicated publicly (e.g. in the Budget document) the pending or final establishment of the trust.

In addition, all remaining funds beyond those initially transferred at March 31st should be transferred to the trust by June 30th.

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Appendix II (continued)

Trusts
Questions and Answers on Trust Guidance

Question: *Where a trust is announced in the Budget document, must the trust be established by March 31st, or could such a trust be established shortly thereafter without impacting the expensing of transfers to the trust in 2007-08?*

Answer: *A trust would have to be established prior to the end of a fiscal period in order to satisfy the recognition criteria for government transfers. If the intended recipient for a government transfer does not exist at March 31st, the province cannot record a payable owing to it under existing accounting standards.*

Question*: Does the transfer of funds to a non-controlled trust need to occur by March 31st or before the date of Public Accounts finalization?*

Answer: *Consistent with the new requirements for one-time transfers, as long as the trust is established by March 31st, the transfer is authorized and a reasonable estimate of the amount can be made, cash payments can be made after year-end.*

Question: *Can beneficiaries of a non-controlled trust include consolidated entities provided that the ultimate selection of recipients is at the discretion of the Trustees?*

Answer: *Any amounts provided to a trust which are in turn be provided to an organization inside the government reporting entity should not be expensed at the time of the transfer to the trust. Any amount that is flowed to a trust with the intention of subsequently flowing the funds to a consolidated entity should not be recorded as an expense to the government.*

Question: *Can a Ministry provide administrative support to a trust without compromising the non-controlled status of the trust?*

Answer: *The government can provide administrative support as long as the extent of government administrative support is <u>not so pervasive</u> so that the government is in substance establishing and managing the trust's policies in the areas of accounting, personnel, compensation, collective bargaining or deployment of resources. Where such administrative support is assessed as pervasive, it could impair the trust's non-controlled trust and the trust will be consolidated onto the province's financial statements.*

Can the following clauses appear in a trust agreement for a non-controlled trust to ensure adequate accountability over public funds without impacting the expense treatment of such trusts?

Question*: Specific description of purpose of the trust (possibly including nominal allocation among various objectives)*
Answer: Yes.

Question: *Can the trust agreement include a specific description of the intended groups of beneficiaries and detailed eligibility criteria.*

Answer: *Specificity should be applied cautiously, so as not to limit the discretion of the trustees in their subsequent grant making processes. For the trust to be considered 'not controlled' it should not be seen as 'establishing the trust's fundamental purpose and eliminating or significantly limiting the ability of the trust to make future decisions by predetermining the financial and operating policies of the trust.*

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Question: *Can trustees stipulate that funding is to be provided to beneficiaries on a cost-sharing basis?*
Answer: *Yes.*

Question: *Can the trust agreement include a requirement for a trust to report back to the province on trustee-established performance criteria and results, audit of financial statements, audited recipients and amounts, confirmation that trustees communicated to beneficiaries the intended purpose of the funding, etc.*
Answer: *Yes.*

Question*: Requirement for Trust to publicly post communications on existence, availability of funds, eligibility criteria, recipients and amounts granted to each recipient.*
Answer: *Yes*

Question: *Inclusion of a 'suggested' drawdown schedule over a period of years, with discretion left to Trustees as to actual results.*
Answer: *The inclusion of a drawdown schedule is not suggested for one-time, up-front transfers.*

Question: *Trust agreement can suggest accountability provisions which might be attached by Trustees to beneficiary payments (e.g. specific purpose of funding, requirement for report-back, right to audit, corrective actions).*
Answer: *Yes*

Question: *Trust agreement to reserve the province's right to re-direct any unspent funds to specified parties (e.g. non-consolidated entities or another non-controlled trust) at the end of the trust term, or alternatively to extend the term of the trust where unspent funds remain.*
Answer: *Yes*

Question*: Can the trust agreement include the requirement for evaluations of the trust at certain times (e.g. years 3, 7, 10 of the trust agreement), with the right for the government to decide either to terminate the trust (corrective action) based on the results of the assessment, or extend the trust beyond the initial term as per the agreement.*
Answer: *Yes.*

Question: *Trust agreement can require Trustees to request as part of the funding process that beneficiaries acknowledge receipt of government funding in their public communications on specific projects.*
Answer: *Yes.*

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Appendix IV

ACCOUNTING TREATMENT FOR ONE-TIME TRANSFERS WITH ENHANCED ACCOUNTABILITY PROVISIONS

Purpose:

The purpose of this guidance is to identify the nature of the accountability provisions which may be associated with one-time transfer payments that qualify for immediate expense treatment in the current period.

Definition of One-time transfers:

One-time transfers are defined as lump-sum operating or capital transfers that

- are not advancing currently planned future transfer payments under an existing on-going program, or
- are not identified as being intended to be spent in specified future periods or over a specified period of time.

Background:

Transfer payments are a means by which the government works with third parties to deliver public services. Transfer payment recipients must be held responsible by the government to deliver the provincially-funded services and be accountable for the funds they receive. Consistent with the *Transfer Payment Accountability Directive, August, 2007*, a risk-based approach is to be followed in designing the appropriate accountability and reporting mechanisms for specific funding agreements.

The current *PSAB Handbook Section 3410, Government Transfers requires that a government transfer should be recognized by a transferring government as an expense in the period the transfer is authorized and all eligibility criteria have been met by the recipient.*

To recognize a liability and expense as at year-end:

- the government must create a valid expectation of the recipient by year-end, leaving the government little or no discretion to avoid but to settle its obligation;
- no significant, contingent actions should be outstanding which if unfulfilled by year end might cause the transfer not to occur.

It is understood that the intention of negotiating a transfer payment agreement following the government's commitment to the recipient is to work out the administrative details of the arrangement, not to change any key elements of the government's commitment. As such, any correspondence which indicates that funds will not be flowed until a TPA is signed should make clear that the nature of additional details to be negotiated is logistical and administrative in nature (bank account info, reporting requirements, etc.)

The government should not suggest or direct the recipients to use the funding for future periods.

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To enhance accountability controls over one-time transfers accountability provisions one through five below are required for one-time transfers.

1. **Description of intended use of one-time transfer funds**;
   - specific purpose(s) for which the funds are to be used; and,
   - the nature of eligible expenditures relevant to the transfers.

2. **Report-back requirement for Public Accountability**
   - Periodic reporting on the use of transfer funds, service deliverables, outputs or outcomes achieved.

3. **Right to independent verification/audit**
   - at the discretion of the Province to verify/audit information submitted by the recipient is complete and accurate, and that funds were used for purposes intended.

4. **Right to recover funds (corrective action)**
   - If the funds were not used, or will not be used, for the intended purpose(s), specified services were not delivered, or intended outputs were not achieved, the Province has the right at a future date to recover funds transferred.

5. **Requirement for information** (*this item optional*)
   - information to be provided by the recipient at a future date with respect to the use of transfer funds, service deliverables, outputs or outcomes achieved.

To qualify for in-year expense treatment, the transfers must satisfy the following:

- be approved by Treasury Board / Management Board of Cabinet and then ratified by Cabinet by March 31st;
- the ministry providing the transfer must have approved appropriations and spending authority by March 31st;
- the recipients must be eligible to receive the grant by March 31st (i.e. eligibility criteria have been met prior to March 31st), and the intent to make the transfer payment must be communicated to the recipients by March 31st;
- In addition, funding details including accountability provisions must be communicated to the recipients, and the transfer payments must be made to the recipients prior to the finalization of the Public Accounts (currently June 30th);
- Where funds are flowed to recipients by March 31st, all eligibility criteria are assumed met for accounting purposes[1], and all amounts flowed are recorded as an expense, even where conditions might exist which remain unmet at March 31st.

[1] PS 3410, Government Transfers, states that "no matter how a transfer term is identified in legislation, regulations, by-laws or a transfer agreement (i.e., as an eligibility criterion or a stipulation), the crucial characteristic that distinguishes the substance of these two types of transfer terms is when they are required to be or are met by a recipient. If a term is required to be and is met before the transfer is provided, it is an eligibility criterion for the purposes of this Section. If a transfer term is met after the transfer is provided, it is a stipulation for the purposes of this Section".

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Administrative Services Agreement - Executed.pdf

ADMINISTRATIVE SERVICES AGREEMENT

Made as of March 23, 2017

Between

AFFORDABILITY FUND TRUST, by its trustee,
COMPUTERSHARE TRUST COMPANY OF CANADA

and

HYDRO ONE LIMITED,
as Administrative Services Agent

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ADMINISTRATIVE SERVICES AGREEMENT

This Agreement is made as of March 23, 2017, between

COMPUTERSHARE TRUST COMPANY OF CANADA, a trust company established under the laws of Canada, as trustee of **AFFORDABILITY FUND TRUST**,
a trust established under and governed by the laws of Ontario,
as the **Trust**

- and -

Hydro One Limited,
as **Administrative Services Agent**

RECITALS

A. The Trust has requested the Administrative Services Agent to provide the services specified in this Agreement.

B. The Administrative Services Agent is willing to provide such services to and on behalf of the Trust, subject to and upon the terms and conditions set forth in this Agreement.

FOR VALUE RECEIVED, the parties agree as follows:

SECTION 1
INTERPRETATION

1.1 Defined Terms

In this Agreement:

(1) "***Agreement***" means this agreement as the same may be amended, supplemented, restated, renewed or replaced from time to time.

(2) "***Declaration of Trust***" means the declaration of trust made as of March 23, 2017, under which the Trust was established, as such declaration of trust may be amended, restated, supplemented or otherwise modified from time to time.

(3) "***Transfer Payment Agreement***" has the meaning given to it in the Declaration of Trust.

(4) "***Trust Contracts***" means the Transfer Payment Agreement and each Implementation Agreement and any related or similar documents.

1.2 Certain Defined Terms

All other capitalized terms used in this Agreement and not otherwise defined in this Agreement have the respective meanings given to them in the Declaration of Trust or the Transfer Payment Agreement, as applicable.

1.3 Headings and Table of Contents

The insertion of headings and the provision of a table of contents are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

1.4 References

Unless otherwise specified, all references to Sections are to Sections of this Agreement. The words "hereto," "herein," "hereof," "hereunder" and similar expressions refer to this Agreement and not to any particular Section or other provision of this Agreement.

1.5 Number and Gender

Unless otherwise specified, words importing the singular include the plural and vice versa and words importing gender include all genders.

1.6 Time of Day

Unless otherwise specified, any reference to a time of day means local time in the City of Toronto, Province of Ontario.

1.7 Governing Law

This Agreement shall be governed by, and construed and interpreted in accordance with, the laws of the Province of Ontario and of Canada applicable therein.

1.8 Severability

Any provision of this Agreement which is illegal, invalid or unenforceable in any jurisdiction shall not affect the legality, validity or enforceability of the remaining provisions and any such illegality, invalidity or unenforceability in any jurisdiction shall not affect the legality, validity or enforceability of such provision in any other jurisdiction.

1.9 Entire Agreement

This Agreement and all other documents contemplated hereby constitute the entire agreement between the parties with respect to the subject matter and supersede all prior negotiations, undertakings, representations, and understandings.

1.10 References to the Trust

For greater certainty, the term "Trust" includes the Trustee and, where any reference is made in this Agreement to an act to be performed by or for or on behalf of the Trust, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Trustee in its capacity as trustee of the Trust, and, where any reference is made in this Agreement to an act to be performed by or for or on behalf of the Trustee, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Trustee in its capacity as trustee of the Trust.

SECTION 2
APPOINTMENT OF ADMINISTRATIVE SERVICES AGENT

2.1 Appointment and Acceptance

(1) The Trust hereby appoints the Administrative Services Agent as its agent to provide the services and to perform the duties set out in this Agreement in connection with the activities of the Trust under the Declaration of Trust subject to the direction and control of the Trustee.

(2) The Administrative Services Agent accepts such appointment and agrees to act in such capacity and to provide or cause to be provided the services and to perform the duties set forth in this Agreement on and subject to the terms and conditions in this Agreement. The Trust hereby grants to the Administrative Services Agent the power and authority to act in the name of and on behalf of the Trust for the sole purpose of providing the services and performing the duties to be provided and performed by the Administrative Services Agent pursuant to this Agreement.

2.2 Access

The Trust authorizes the Administrative Services Agent to have full access to the books and records of the Trust and whatever other information and material of or in respect of the Trust that the Administrative Services Agent, in its opinion, requires to discharge its duties under this Agreement.

2.3 Confidentiality

The Administrative Services Agent will keep confidential all information concerning the business and affairs of the Trust which is obtained by the Administrative Services Agent in providing the services and performing the duties set out in this Agreement; provided that such information may be disclosed:

(1) as required by law;

(2) as required by any governmental or regulatory authorities having jurisdiction over the Administrative Services Agent;

(3) on a confidential basis, to the legal counsel and auditors of the Administrative Services Agent; and

(4) if it has become publicly available other than as a result of a breach of this Section.

SECTION 3
SERVICES PROVIDED BY THE ADMINISTRATIVE SERVICES AGENT

3.1 Relating to the Performance by the Trust of its Obligations

The Administrative Services Agent shall have the authority and the responsibility to provide the following services to, for and on behalf of the Trust in connection with the activities of the Trust:

(1) ***Negotiating Implementation Agreements***. On and after the Original Trustee Replacement Date, negotiating and settling the terms of Implementation Agreements (other than any Implementation Agreement entered into by Hydro One Limited as an Implementation Agent) and related documents and any amendments, restatements, supplements or other modifications of such Implementation Agreements and any waivers thereunder.

(2) ***Bank Accounts***. Arranging for the opening of bank accounts at any Schedule I chartered bank in Canada, the deposit of moneys to such accounts and negotiating agreements with such banks in connection with such accounts.

(3) ***Arranging for the Performance and Enforcement of the Trust Contracts***. Taking all necessary and appropriate action to enable the Trust to exercise or enforce its rights and to perform its obligations under the Trust Contracts (other than any Implementation Agreement entered into by Hydro One Limited as an Implementation Agent) and related documents and acting for and on behalf of the Trust in connection with any and all matters relating to such exercise, enforcement and performance.

(4) ***Eligible Investments***. To the extent Assets are not required to pay the obligations of the Trust or to distribute to Beneficiaries, to invest such Assets in Eligible Investments as contemplated by the Declaration of Trust.

(5) ***Recommendations regarding Amendments.*** If requested by the Trustee, to make recommendations regarding the scope and substance of amendments that may be made to the Declaration of Trust or the Trust Contracts in accordance with their respective terms in order to better accomplish the Purpose, having regard to the Administrative Services Agent's understanding of the Purpose and its views regarding how best to efficiently implement the Program to accomplish the Purpose.

(6) ***Other***. Taking all other action on behalf of the Trust incidental or reasonably necessary to carry out the foregoing services and duties.

3.2 Relating to Services

The Administrative Services Agent shall have the authority and the responsibility to provide the following services related to the services provided under Section 3.1 to, for and on behalf of the Trust in connection with the activities of the Trust:

(1) ***Providing Usual Office Services***. Providing or causing to be provided to the Trust internal accounting and other usual and ordinary office services.

(2) ***Retaining Legal Counsel***. Retaining legal counsel for the Trust as necessary and providing appropriate instructions.

(3) ***Auditors***. Selecting, appointing, retaining and discharging qualified auditors for the Trust as necessary, settling the auditor's fees and providing appropriate instructions.

(4) ***Ensuring Proper Records Maintained***. Maintaining, or retaining accountants and other appropriate advisers to ensure that proper books of account, financial statements and complete records of all transactions of the Trust undertaken or performed by it under this Agreement, the

Declaration of Trust and the Trust Contracts and any other agreements entered into by the Trust are maintained and to render statements or copies thereof from time to time as requested by the Trust, the Trustee or other Persons entitled to such information and to cooperate in all audits of the Trust. The Administrative Services Agent shall permit the Trustee, its authorized representatives or an independent auditor to, at its own expense, on twenty-four hours' notice and during normal business hours, inspect the records of and information respecting the Administrative Services Agreement to confirm its compliance with the Administrative Services Agreement.

(5) ***Ensuring Government Filings Made***. Preparing or causing to be prepared all returns, reports and filings which may be required from time to time by any governmental authority and including, without limitation, such returns, reports and filings which may be required under the *Income Tax Act* (Canada), the *Excise Tax Act* (Canada) and other applicable laws.

(6) ***Ensuring Taxes are Paid***. Ensuring that the Trust pays when due out of the Assets all taxes and related expenses payable by it.

(7) ***Causing Expenses to be Paid***. Depositing funds of the Trust received by the Administrative Services Agent to the bank accounts established by the Administrative Services Agent for the Trust and causing the general operating expenses of the Trust to be paid from such deposited funds on a timely basis.

(8) ***Notice of Non-Performance***. Promptly notifying the Trust in the event that the Administrative Services Agent is unable to perform its duties hereunder.

(9) ***Providing Other Day-to-Day Services***. Providing or causing to be provided to the Trust all services necessary, in addition to those specified in Sections 3.1 and 3.2, to conduct and operate the day-to-day business of the Trust in an efficient manner and take such action, and execute and deliver such further documents as shall be reasonably required in order to fully perform the terms of, and carry out the intention of, this Agreement.

SECTION 4
SERVICE PROVIDERS TO THE ADMINISTRATIVE SERVICES AGENT

4.1 Service Providers

In connection with the services to be performed by it under this Agreement, the Administrative Services Agent may engage or employ any Persons as employees, agents, representatives, independent contractors or otherwise, including, without limitation, accountants, investment advisers, tax advisers, insurance advisers, lawyers, appraisers, bankers, custodians, agents for collection or others in one or more capacities and any other advisers which the Administrative Services Agent deems advisable, and may engage such Persons to assist in the performance of the powers and duties of the Administrative Services Agent upon such terms and conditions as it may determine provided that the Administrative Services Agent shall require such Persons to perform their services to a standard of care which is at least as high as that imposed on the Administrative Services Agent under this Agreement. Any such engagement shall not affect the Administrative Services Agent's liability for performance of its duties and obligations pursuant to the terms hereof.

SECTION 5
RELATIONSHIP BETWEEN THE ADMINISTRATIVE SERVICES AGENT AND THE TRUST

5.1 Directions from the Trust

The Administrative Services Agent agrees to comply with any directions given by the Trust in connection with the performance by the Administrative Services Agent of its duties under this Agreement; provided that before taking any such action, the Trust shall consult with the Administrative Services Agent with respect to any such proposed direction.

5.2 Compliance with Documents

The Administrative Services Agent agrees to act in accordance with, and not take any action which conflicts with, the Declaration of Trust, the Trust Contracts or, to the knowledge of the Administrative Services Agent, any other agreements entered into by the Trust and the covenants of the Trust contained in the Trust Contracts and such agreements.

5.3 Relationship of Parties

This Agreement is not intended to be and shall not be treated as anything other than a services agreement relating to the provision of certain services, with the rights of the parties being none other than the rights given to them under this Agreement. Without limitation, this Agreement shall not be deemed in any way or for any purpose to constitute the Administrative Services Agent a trustee of the Assets or any part thereof or either party a partner of the other party to this Agreement in the conduct of any business or otherwise or a member of a joint venture or joint enterprise with the other party to this Agreement.

5.4 Appointment of Administrative Services Agent as Attorney-in-Fact

The Trustee on behalf of the Trust hereby appoints the Administrative Services Agent as the Trust's attorney-in-fact, with full authority in the place and stead of and in the name of the Trust or otherwise, from time to time in the Administrative Services Agent's discretion or as required by this Agreement to ask, demand, collect, sue for, recover, compound, receive and give acquittance and receipts for moneys due and to become due in connection with Assets owned by the Trust or otherwise owed to the Trust, to receive, endorse, and collect any drafts or other instruments, documents and chattel paper in connection therewith, and to file any claims or take any action or institute any proceedings which the Administrative Services Agent may deem to be necessary or desirable for the collection thereof.

5.5 Reliance on Information Obtained from Third Parties

The Trust acknowledges that the accuracy and completeness of the records maintained and the information supplied by the Administrative Services Agent to the Trust and others is dependent upon the accuracy and completeness of the information obtained by the Administrative Services Agent from the other parties to the Trust Contracts and related documents and other sources. The Administrative Services Agent, to the extent it was reasonable in the circumstances to have relied on any such information provided to it, shall not be responsible for any inaccuracy or incompleteness in the information so obtained or for any inaccuracy in the records maintained by

the Administrative Services Agent under this Agreement which may result from the accuracy and completeness of the information obtained by the Administrative Services Agent from parties to the Trust Contracts other than the Administrative Services Agent.

5.6 Representations

(1) The Trust represents and warrants to the Administrative Services Agent that the execution, delivery and performance by the Trust of this Agreement are within the powers of the Trust and have been duly authorized by all necessary action on the part of the Trust and do not contravene any law or contractual restriction binding on or affecting the Trust and that this Agreement constitutes a legal, valid and binding obligation of the Trust enforceable against the Trust in accordance with its terms, subject to the limitation of liability of the Trustee under the Declaration of Trust, to applicable bankruptcy, insolvency, winding-up, moratorium or reorganization, or other similar laws affecting creditors' rights generally and to the availability of equitable remedies.

(2) The Administrative Services Agent represents and warrants to the Trust that the execution, delivery and performance by the Administrative Services Agent of this Agreement are within the powers of the Administrative Services Agent and have been duly authorized by all necessary corporate action on the part of the Administrative Services Agent and do not contravene any law or contractual restriction binding on or affecting the Administrative Services Agent and that this Agreement constitutes a legal, valid and binding obligation of the Administrative Services Agent enforceable against the Administrative Services Agent in accordance with its terms, subject to applicable bankruptcy, insolvency, winding-up, moratorium or reorganization, or other similar laws affecting creditors' rights generally and to the availability of equitable remedies.

SECTION 6
REPORTING OBLIGATIONS OF THE ADMINISTRATIVE SERVICES AGENT

6.1 Records

The Administrative Services Agent agrees that it shall maintain or cause to be maintained all necessary records of all transactions in respect of the Trust required by law, the Declaration of Trust or any Trust Contract, and to provide or cause to be provided to the Trust on a timely basis such reports as the Trust may reasonably require. The Trust will make available to the Administrative Services Agent all information required for purposes of maintaining such records and preparing such reports to the extent the Trust has such information and the Administrative Services Agent does not.

SECTION 7
FEES AND EXPENSES

7.1 Administrative Services Fees

In consideration of the services provided by the Administrative Services Agent hereunder, for and after the period commencing on the Original Trustee Replacement Date, the Trust shall pay to the Administrative Services Agent regular and periodic fees, the amounts and terms of payment of which shall be agreed upon by the parties from time to time and in any event, not less

frequently than annually. Such fees shall be paid within 90 days after the last day of each quarter of each fiscal year of the Trust, unless otherwise agreed by the Administrative Services Agent.

7.2 Expenses

The Trust is responsible for and there shall be paid out of the Assets, in addition to the fees payable under Section 7.1, all expenses reasonably incurred by the Administrative Services Agent as agent for the Trust, for or on behalf of the Trust, including, but not limited to, taxes (other than taxes on the Administrative Services Agent's capital or net income and taxes payable by the Administrative Services Agent either in respect of any supply of property or services by any person to the Administrative Services Agent or any taxes in respect of persons who are employees of the Administrative Services Agent), registry and transfer agency services, audit, accounting, tax advice and legal fees, custodial and safekeeping fees, expenses and fees relating to the opening and operation of accounts and other bank services and the expenses incurred in the preparation, printing and distribution of financial reports, and other reports required to comply with the laws relating to the Trust and the Trust Contracts and all other expenses properly payable by the Trust. It is agreed that the Administrative Services Agent shall at no time be responsible for any such fees or expenses.

7.3 Disbursements

Where any disbursements on account of the expenses which are properly payable by the Trust are made by the Administrative Services Agent and do not conflict with the requirements set forth in Schedule B to the Principles Annex to the Declaration, the Trust shall promptly reimburse the Administrative Services Agent for such expenses upon receiving a proper account.

SECTION 8
STANDARD OF CARE

8.1 Standard

The Administrative Services Agent shall exercise its powers and authorities hereunder and carry out its duties and functions as Administrative Services Agent under this Agreement honestly and in good faith and in connection therewith, it shall exercise that degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. In performing its duties under the Administrative Services Agreement, the Administrative Services Agent shall seek to avoid actual, potential or perceived conflicts of interest. The Administrative Services Agent shall not, in performing its obligations under the Administrative Services Agreement, take any action which it knows or ought reasonably to know would cause the Trustee or the Trust to be in violation of any law, rule or regulation applicable to it.

SECTION 9
INDEMNIFICATION AND LIABILITY OF THE ADMINISTRATIVE SERVICES AGENT

9.1 Indemnity

The Trust hereby indemnifies and saves harmless the Administrative Services Agent out of the Assets from and against all claims, costs, charges, expenses and liabilities whatsoever (including legal costs on a solicitor and his own client basis), brought, commenced, prosecuted against, sustained by, imposed on, incurred by or assessed against the Administrative Services Agent or any Person employed or engaged by it as permitted under this Agreement for or in respect of any act, deed, matter or thing whatsoever made, done, acquiesced in or omitted to be done in connection with the activities of the Trust and the performance of the services and duties of the Administrative Services Agent under this Agreement.

9.2 Exclusion of Liability

Notwithstanding any other provision in this Agreement other than Section 9.3, the Administrative Services Agent assumes no liability for anything other than to render the services it agrees to provide under this Agreement and neither the Administrative Services Agent nor any of its directors, officers, employees or affiliates shall be responsible for any action of the Trust. The Administrative Services Agent shall not be liable to the Trust or to any Beneficiary or creditor of the Trust for any loss, damage, cost, expense or other liability whatsoever relating to any matter regarding the Trust, or for any loss, damage, cost, expense or other liability whatsoever caused to the Trust through the insufficiency or deficiency of any security in or upon which any of the Assets shall be expended or invested, or for any loss, damage, cost, expense or other liability whatsoever arising from the bankruptcy, insolvency or tortious act of any Person with whom any Assets shall be lodged or deposited, or for any loss resulting from the diminution in value of Eligible Investments, or for any loss, damage, cost, expense or other liability whatsoever occasioned by any act or omission under this Agreement or error in judgment or oversight on the part of the Administrative Services Agent, its directors, officers, employees and agents or for any other loss, damage, cost, expense or other liability whatsoever which may happen in the performance by the Administrative Services Agent of its services and duties under this Agreement.

9.3 Liability for Gross Negligence

(1) Notwithstanding the provisions of Sections 9.1 and 9.2, the Administrative Services Agent shall indemnify and hold harmless the Trust against any claim, loss or expense which the Trust may incur that results from a failure by the Administrative Services Agent to perform its duties and obligations hereunder in compliance with Section 8.1 or the gross negligence or wilful misconduct of the Administrative Services Agent in performing or failing to perform its obligations hereunder. It is, however, expressly understood that the Administrative Services Agent is not agreeing to indemnify or hold the Trust harmless with respect to:

(a) any liabilities resulting from the failure of the Trustee to satisfy the standard of care set out in the Declaration of Trust unless such failure arises directly as a result of a failure by the Administrative Services Agent to perform its obligations hereunder in compliance with Section 8.1 hereunder;

(b) any claim arising out of the assessment of any tax on income or franchise tax by a taxing authority against the Trust;

(c) any liability of the Trust accruing after the termination of this Agreement unless attributable to the actions or omissions of the Administrative Services Agent prior to such termination; or

(d) any claim, loss, expense or other liability representing any amount which the Trust has returned to the Province pursuant to the provisions of the Transfer Payment Agreement for any reason whatsoever.

(2) The Administrative Services Agent shall have the exclusive right to compromise or defend, through counsel selected and retained by the Administrative Services Agent, any such liabilities or related claims at its own expense, which decision shall be binding upon the Trust provided that in compromising or defending any such liabilities or related claims, the Administrative Services Agent will ensure that any settlement agreed to by it will not, without the prior written consent of the Trustee, include any admission of liability on the part of the Trustee in its personal capacity.

9.4 Reliance on Advisers

The Administrative Services Agent shall be entitled to rely and act, and shall be fully protected in relying and acting, upon (1) any statement, electronic communication, writing, notice, resolution, report, opinion or other document or conversation believed by it to be genuine and correct and to have been signed, sent or made by the proper Person; and (2) any advice received from auditors, lawyers, or other professional advisers of the Administrative Services Agent and shall not be responsible or held liable for any loss or damage resulting from so relying thereon.

SECTION 10
TERM AND TERMINATION

10.1 Term

This Agreement shall continue in full force and effect until December 31, 2022 unless terminated in accordance with the provisions of this Agreement.

10.2 Termination

This Agreement may be terminated by the Trustee (1) immediately, upon written notice to the Administrative Services Agent if the Administrative Services Agent is in breach of its duties and obligations hereunder or (2) with effect as of the last day of any calendar month, upon six months prior written notice to the Administrative Services Agent. This Agreement may be terminated by the Administrative Services Agent (1) immediately, upon written notice to the Trust if the Trust is in breach of its duties and obligations hereunder or (2) with effect as of the last day of any calendar month, upon six months prior written notice to the Trust. The provisions of Section 2.3 and Section 9 shall survive the termination of this Agreement.

10.3 Delivery of Records

Upon termination of this Agreement, the Administrative Services Agent shall forthwith deliver to the Trust all records, documents and books of account, and all materials and supplies for which the Administrative Services Agent has been paid by the Trust, which are in the possession or control of the Administrative Services Agent and relate directly or indirectly to the performance by the Administrative Services Agent of its obligations under this Agreement provided, however, that the Administrative Services Agent may retain notarial or other copies of such records, documents and books of account and the Trust shall produce the originals of such records, documents and books of account whenever reasonably required to do so by the Administrative Services Agent for the purpose of legal proceedings or dealings with any governmental authorities.

10.4 Payment of Fees

Upon termination of this Agreement, the Trust shall pay to the Administrative Services Agent such fees and expenses under Sections 7.1 and 7.2 as may be due as of the date of termination and shall reimburse the Administrative Services Agent for its expenses and disbursements to which it is entitled under this Agreement as of the date of such termination.

SECTION 11
MISCELLANEOUS

11.1 Amendments and Waivers

(1) This Agreement may be amended, supplemented, modified, restated or replaced from time to time by written instrument signed by the Trustee on behalf of the Trust and the Administrative Services Agent. The Administrative Services Agent agrees to consider and give timely effect to any reasonable modifications proposed by the Board of Trustees so long as the Administrative Services Agent, in its discretion and acting reasonably, believes that such modifications would not be prejudicial to its interests.

(2) No waiver of any provision of this Agreement, nor consent to any departure by any party therefrom, shall in any event be effective unless the same shall be in writing and signed by such party, and then said waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. No failure on the part of any party to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof.

11.2 Notices

Any notice or other written communication required or permitted to be given hereunder may be delivered by hand, prepaid registered mail or by electronic transmission, addressed in the case of the Trust to:

Computershare Trust Company of Canada,
in its capacity as trustee of Affordability Fund Trust
c/o Computershare Trust Company of Canada
100 University Ave, 11th Floor, Toronto, ON, M5J 2Y1

Attention: Manager, Corporate Trust Services
Email: Corporatetrust.toronto@computershare.com

and in the case of the Administrative Services Agent to:

Hydro One Limited,
as Administrative Services Agent of Affordability Fund Trust
482 Bay St, South Tower, 8th Floor
Toronto, ON, M5G 2P5

Attention: J. Scarlett, Executive Vice President & Chief Legal Officer
Email: JScarlett@hydroone.com

and in any other case, addressed to such other address as a party may have specified by notice in writing given under this Section. Any such notice or other written communication shall be deemed to have been given (1) if delivered by hand, when received; (2) if mailed, on the fifth Business Day following the date of mailing; (3) if sent by electronic transmission on a Business Day before 3:00 p.m. (Toronto time), on that Business Day and if sent after 3:00 p.m. (Toronto time), on the next succeeding Business Day; and (4) if sent by electronic transmission on a day which is not a Business Day, on the next succeeding Business Day.

11.3 Waivers

No failure to exercise and no delay in exercising on the part of either party of any right, remedy, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege preclude the exercise of any other right, remedy, power or privilege.

11.4 Limitation of Liability of the Trustee

This Agreement has been entered into by the Trustee solely in its capacity as trustee of the Trust and is not binding on the Trustee in any other capacity, whether in tort, contract or otherwise. The Beneficiaries of the Trust are not subject to any liability in respect of the Trust. Resort may not be had to, nor recourse or satisfaction be sought from, the private property of the Trustee, its directors, officers, employees, or agents, or the private property of any Beneficiary, and resort will be had solely to the property of the Trust held in trust by the Trustee for the payment, performance or satisfaction of any liability or obligation of the Trust or the Trustee under this Agreement.

11.5 Further Assurances

Each party shall from time to time take such action, and execute and deliver such further documents, as shall be reasonably required in order to fully perform the terms of, and carry out the intention of, this Agreement.

11.6 Assignment

This Agreement shall not be assignable by either party, except to an affiliate as that term is defined in the *Canada Business Corporations Act*, without the express prior written consent of

the other party; provided that the appointment of a successor trustee or trustees of the Trustee in accordance with the Declaration of Trust shall not be considered an assignment of this Agreement.

11.7 Enurement

This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns including, without limitation, any company into which the Trustee may be merged, wound up or with which it may be consolidated or amalgamated, or any company resulting from any merger, consolidation, wind-up or amalgamation to which the Trustee is a party or any company to which all or substantially all (the determination of "substantially all" shall be made by the Trustee in its sole and absolute discretion) of the corporate trust business of the Trustee may be transferred.

11.8 Attornment

Each of the parties irrevocably attorns to the non-exclusive jurisdiction of the courts of the Province of Ontario.

11.9 Counterparts

This Agreement may be executed in any number of counterparts, each of which when executed and delivered is an original and all of which taken together constitute one and the same instrument. This Agreement may be executed and delivered by facsimile transmission or as an image distributed by email of a manually signed counterpart.

[INTENTIONALLY LEFT BLANK]

The parties have executed this Agreement as of the date first written above.

AFFORDABILITY FUND TRUST, by its trustee,
COMPUTERSHARE TRUST COMPANY OF CANADA

By: _____
Name: Morag Abraham
Title: Authorized Signatory Corporate Trust Officer

By: _____
Name: Ann Samuel
Title: Authorized Signatory Associate Trust Officer

HYDRO ONE LIMITED, as Administrative Services Agent

By: _____
Name: Michael Vels
Title: CFO

By: _____
Name: Ali Suleman
Title: VP & Treasurer

Control over Trusts.rtf

From: Petsche, Nadine (TBS) []
To:
CC: Picard, Michel [mpicard@kpmg.ca]
Subject: Control over Trusts
Date: Wednesday, March 15, 2017 10:41:31

Michel,
Trust consolidation is being discussed at the ADG. Andrew is the Chair for the ADG. Just wondering if you have the copies of the working docs for review of potential risks under PSAB for consolidation under PSAB? N

Copy of Electricity rate mitigation model Feb 24 (002) to reflect OPG calculation.xlsx.rtf

From: Petsche, Nadine (TBS) []
To: Picard, Michel (mpicard@kpmg.ca) [mpicard@kpmg.ca]
CC: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
Subject: Copy of Electricity rate mitigation model Feb 24 (002) to reflect OPG calculation.xlsx
Date: Monday, February 27, 2017 21:59:05
Attachment 1: Copy of Electricity rate mitigation model Feb 24 (002) to reflect OPG calculation.xlsx

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Michel,

Attached is the revised spreadsheet including updated amounts to reflect the additional interest components as provided by OPG in the weekend.

As you'll see, the current year's interest expense is recognized by the Trust which also reports an increase in its intangible asset to include the interest component for future recovery.

The additional amount borrowed does not actually flow through to the IESO, but rather is limited in relevance to the Trust and its financing sources.

I assume that this is doable under IFRS? This would not constitute the 'interest on intangible' issue that was raised earlier?

Nadine

Copy of Electricity rate mitigation model Feb 24 (002) to reflect OPG calculation.pdf

Per OPG

Customer Bill			
		New Yr	
	1	2	3
Bill	100	105	95
Bill Deferral	-30.77	-33.89	-32.55
Interest	0.77	2.39	4.05
Total Bill	70	73.5	66.5

Interest expense	5%	5%	5%
Loan #1	0.34	1.05	1.78
Loan #2	0.04	0.12	0.20
External	0.39	1.22	2.06
	0.77	2.39	4.05
Balance			
Loan #1 44%	13.54	14.91	14.32
Accumulated Loan #1	**13.54**	**28.45**	**42.77**
Loan #2 5%	1.54	1.69	1.63
Accumulated Loan #2	**1.54**	**3.23**	**4.86**
External 51%	15.69	17.28	16.60
Accumulated External	**15.69**	**32.98**	**49.58**

Assumptions:

Percentage of deferral:	0.3
Percentage of deferral financed by equity from Province:	0.44
Percentage of deferral financed by equity from OPG	0.05
Percentage of deferral from external financing	0.51

Year 1	
Amount paid to PGs	100
Amount collected from LDCs	70
Amount of deferral	30
Interest rate -- charged to LDCs	0.05
Half year interest rate	0.025
Interest rate -- paid on in debt	0.05
Half year interest rate	0.025
Interest rate -- paid on ex debt	0.05
Half year interest rate	0.025
Year 2	
Amount paid to PGs	105

IESO

Collect cash from LDCs
Dr. Cash
Cr. Due to Power Generators

Pay Power Generators
Dr. Due to Power Generators
Dr. Regulatory asset
Cr. Cash

Sell asset to OPG Trust
Dr. Cash
Cr. Regulatory asset

Amount collected from LDCs	73.5	Outstanding balances at year end:
Amount of deferral	31.5	
Interest rate -- charged to LDCs	0.05	Cash
Interest rate -- paid on debt	0.05	Due to Power Generators
		Regulatory asset
		check

Year 3	
Amount paid to PGs	95
Amount collected from LDCs	66.5
Amount of deferral	28.5
Interest rate -- charged to LDCs	0.05
Interest rate -- paid on debt	0.05

Year 4

OPG Consolidated Financial Statements		Province Fiscal Impact
Cash	0.34	
Intangible asset	30.77	Province interest expe
Loans between Trust and OPG	0	Increase in OPG Net In
Equity from Province	-13.54	Fiscal Impact
Long-term Debt	-17.23	
Interest payable on long-term debt	0.43	
Interest income	-0.77	
	-	
Net Interest Income for OPG	**-0.34**	
Check	-0.34	

		Calculations		
		Accumulated debt		
		Year 1	13.54	
		Province/OFA		
		Borrow to inject equity into OPG		
70		Dr. Cash	13.54	
	-70	Cr. Debt		-13.54
		Invest in OPG		
70		Dr. Investment in GBE	13.54	
30		Cr. Cash		-13.54
	-100			
		Pay interest on debt		
		Dr. interest expense (assume 1/2 year)	0.34	
30		Cr. Cash		-0.34
	-30			

	Outstanding balances at year-end:	
0	Cash	-0.34
0	Investment in OPG	13.54
0	Debt	-13.54
0.00	Interest payable	
	Interest expense	**0.34**
	check	0.00

- Public accounts		Province Net Debt - Public Accounts
nse	0.34	Cash - OFA
come (all else being equal)	-0.34	Investment in GBE (equity injection)
	0.00	Investment in GBE (Increase in OPG NI)
		Public Debt
		Cash- IESO
		Due to Power Gen- IESO
		Regulatory Asset- IESO
		Check
		Net Debt Impact

		OPG Debt	External Debt
Year 1		13.54	1.54
OPG			
Equity injection from OFA		44% of deferral	
Dr. Cash		13.54	
	Cr. Equity		-13.54
Loan to OPG Trust - #1			
Dr. Receivable from OPG Trust		13.54	
	Cr. Cash		-13.54
Borrow from the market		5% of deferral	
Dr. Cash		1.54	
	Cr. Long-term debt		-1.54
Loan to OPG Trust - #2			

Dr. Receivable from OPG Trust	1.54	
Cr. Cash		-1.54
Recognize interest from OPG Trust - #1		
Dr. Cash	0.34	
Cr. Interest income		-0.34
Recognize interest from OPG Trust -- #2		
Dr. Cash	0.04	
Cr. Interest income		-0.04
Recognize interest expense on long-term debt		
Dr. interest expense	0.04	
Cr. Cash		-0.04
Cash	0.34	
Equity	-13.54	
Receivable from OPG Trust	15.08	
Long-term Debt	-1.54	
Interest receivable from OPG Trust		
Interest payable on long term debt		
Interest income	**-0.38**	
Interest expense	**0.04**	
Check	0.00	

-0.34
13.54
0.34
-13.54
0
0
0
0
0

OPG Trust

Loan #1 from OPG

Dr. Cash		13.54	
	Cr. Due to OPG		-13.54

Loan #2 from OPG

Dr. Cash		1.54	
	Cr. Due to OPG		-1.54

External financing		51% of deferral	
Dr. Cash		15.69	
	Cr. Long-term debt		-15.69

Purchase deferred asset from IESO

Dr. Intangible asset	30.77	
Cr. Cash		-30
Cr.Interest Income		-0.77

Interest expense on Loan #1 to OPG		
Dr. Interest expense	0.34	
Cr. Cash		-0.34

Interest expense on Loan #2 to OPG		
Dr. Interest expense	0.04	
Cr. Cash		-0.04

Interest expense on external financing		
Dr. Interest expense	0.39	
Cr. Cash		-0.39

Cash	0.00
Intangible asset	30.77
Loans payable to OPG	-15.08
External Financing	-15.69
Interest income	-0.77
Interest expense	**0.77**
Check	0.00

Decision usefulness of RRA.rtf

From: Petsche, Nadine (TBS) []
To: Picard, Michel [mpicard@kpmg.ca]
Subject: Decision usefulness of RRA
Date: Wednesday, March 08, 2017 07:51:21

Michel,
Just thinking, that the recent communication of AcSB on the decision usefulness of RRA should likely be referenced in any current documentation defending the usefulness and relevance of RRA to private or public sector f/s. N

Declined_ Fair Hydro - Change of Law Agreements at 11_00am.rtf

From: Jack, Shannon (TBS) []
To: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
Subject: Declined: Fair Hydro - Change of Law Agreements at 11:00am
Date: Tuesday, November 21, 2017 10:37:38
Attachment 1: FW: Fair Hydro -- Change of Law Agreements

FW_ Fair Hydro -- Change of Law Agreements.pdf

From: Strathy, Anna (OFA) [Anna.Strathy@ofina.on.ca]
To: Jack, Shannon (TBS) [Shannon.Jack@ontario.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Bernard, Dena (TBS) [Dena.Bernard@ontario.ca]
Subject: FW: Fair Hydro -- Change of Law Agreements
Date: Tuesday, November 21, 2017 10:32:40

-----Original Appointment-----
From: Ramchandani, Rima [mailto:rramchandani@torys.com]
Sent: Tuesday, November 21, 2017 9:26 AM
To: Ramchandani, Rima; Anna Strathy; LEE John -TREASURY; RYFA Ken -TREASURY; 'HAHN PARKER Janet -TREASURY'; MAUTI John -FIN & C CTRL; LAURETA LAPIRA May -TREASURY; Mansoori, Nina; Feldman, Michael; WONG Leslie -LAWDIV; 'Sebastiano, Rocco'; Milligan, Peter; Fullerton, Rick; Gadi Mayman; Mike Manning; Malle Hanslep (MOF); 'ASHBOURNE, STEPHEN'; 'ian.benaiah@rbccm.com'; 'Khan, Nur (nur.khan@rbccm.com)'; 'brent.r.taylor@rbccm.com'; 'katrina.niehaus@gs.com'; 'brian.delaney@gs.com'; Maciel, Andrew; Adalja, Sunil; Persad, Nicole; Persaud, Donnie - Debt Capital Markets
Cc: Ken Kandeepan; LADAK Lubna -TREASURY
Subject: Fwd: Fair Hydro -- Change of Law Agreements
When: Tuesday, November 21, 2017 11:00 AM-2:00 PM (UTC-05:00) Eastern Time (US & Canada).
Where: Torys (79 Wellington Street West, 33rd Floor)

Begin forwarded message:

From: "Ramchandani, Rima" <rramchandani@torys.com>
To: "LEE John -TREASURY" <john.s.lee@opg.com>, "RYFA Ken -TREASURY" <ken.ryfa@opg.com>, "'HAHN PARKER Janet -TREASURY'" <j.hahnparker@opg.com>, "MAUTI John -FIN & C CTRL" <john.mauti@opg.com>, "LAURETA LAPIRA May -TREASURY" <may.lapira@opg.com>, "Mansoori, Nina" <nmansoori@torys.com>, "Feldman, Michael" <mfeldman@torys.com>, "WONG Leslie -LAWDIV" <leslie.wong@opg.com>, "'Sebastiano, Rocco'" <RSebastiano@osler.com>, "Milligan, Peter" <PMilligan@osler.com>, "Fullerton, Rick" <RFullerton@osler.com>, "Gadi Mayman" <Gadi.Mayman@ofina.on.ca>, "Mike Manning" <Mike.Manning@ofina.on.ca>, "Malle Hanslep (MOF)" <Malle.Hanslep@ontario.ca>, "'ASHBOURNE, STEPHEN'" <STEPHEN.ASHBOURNE@blakes.com>, "'ian.benaiah@rbccm.com'" <ian.benaiah@rbccm.com>, "'Khan, Nur (nur.khan@rbccm.com)'" <nur.khan@rbccm.com>, "'brent.r.taylor@rbccm.com'" <brent.r.taylor@rbccm.com>, "'katrina.niehaus@gs.com'" <katrina.niehaus@gs.com>, "'brian.delaney@gs.com'" <brian.delaney@gs.com>, "Maciel, Andrew" <Andrew.Maciel@cibc.com>, "Adalja, Sunil" <Sunil.Adalja@cibc.com>, "Persad, Nicole" <Nicole.Persad@cibc.com>, "Persaud, Donnie - Debt Capital Markets"

<Donnie.Persaud@cibc.com>
Cc: "Ken Kandeepan" <Ken.Kandeepan@ofina.on.ca>, "LADAK Lubna -TREASURY" <lubna.ladak@opg.com>
Subject: Fair Hydro -- Change of Law Agreements

For those unable to participate in person, here's the dial-in:

Dial-in: 1-800-600-0998
Access Code: 8657666#

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Declined_ Fair Hydro Plan.rtf

From: Kim Marshall [Kim.Marshall@ieso.ca]
To: Jack, Shannon (TBS) [Shannon.Jack@ontario.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Bernard, Dena (TBS) [Dena.Bernard@ontario.ca]
Subject: Declined: Fair Hydro Plan
Date: Thursday, October 12, 2017 11:15:48

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Deloitte - Pension file - PO 224544.rtf

From: Feld, Luisa (CA - Toronto) [lfeld@deloitte.ca]
To: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
Subject: Deloitte - Pension file - PO 224544
Date: Thursday, October 27, 2016 10:47:48
Attachment 1: 4195195 Treasury_Board_Secretariat_10-26-16.pdf

---

Good morning,

On behalf of Kerry Danyluk, please find attached our invoice with respect to the above noted matter. It has also been sent by mail.

Regards,

Luisa Feld

Paraprofessional | National Assurance and Advisory

D: +1 (416) 643 8307

lfeld@deloitte.ca | deloitte.ca

--

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of the Canadian Olympic team

Please consider the environment before printing.

From: Virani, Shyrose (TBS) [mailto:Shyrose.Virani@ontario.ca]
Sent: Wednesday, October 19, 2016 9:41 AM
To: Danyluk, Kerry (CA - Toronto) <kdanyluk@deloitte.ca>
Subject: Deloitte - Pension file - PO 224544

Hi Kerry

Can you please send me the billing for the above as of to-date.

Thanks

Shyrose Virani

Administrative Coordinator

Treasury Board Secretariat

416-325-1448

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4195195 Treasury_Board_Secretariat_10-26-16.pdf

Deloitte.

Deloitte LLP
Bay Adelaide East
22 Adelaide Street West
Suite 200
Toronto ON M5H 0A9
Canada

Tel: 416-601-6150
Fax: 416-601-6151
www.deloitte.ca

Private and confidential
Treasury Board Secretariat
Office of the Provincial Controller Division
Attention: **Nadine Petsche**
Director, Accounting Policy and Financial Reporting
7 Queen's Park Crescent
Toronto, ON M7A 1Y7

Date: October 26, 2016
Invoice No: 4195195
Client/Mandate No: 934695.1000024
Billing Partner: Kerry Danyluk

HST Registration No: 133245290

Invoice

Professional Services Rendered:

For professional services rendered for the provision of accounting advisory services and a 7600 report in accordance with the CPA Canada Handbook.

• Kerry Danyluk	Partner	65.0 hrs	@ $737.00	$ 47,905.00
• Clair Grindley	Partner	5.0 hrs	@ $737.00	3,685.00
• Sean Morrison	Partner	5.0 hrs	@ $737.00	3,685.00
• Martin Raymond	Partner	35.0 hrs	@ $630.00	22,050.00
• Matthew Colley	Senior Manager	115.5 hrs	@ $565.00	65,257.50
• Thaksa Sethukavalan	Manager	17.0 hrs	@ $347.00	5,899.00
• James Nakai	Manager	4.0 hrs	@ $347.00	1,388.00
			Our Fee	149,869.50
			HST @ 13%	19,483.04
			Amount Payable	**CAD $169,352.54**

Remittance information on last page

Accounts shall be due and payable when rendered. Interest shall be calculated at a simple daily rate of 0.0493% (equivalent to 18% per annum). Interest shall be charged and payable at this rate on any part of an account which remains unpaid from thirty (30) days after the invoice date to the date on which the entire account is paid.

PAYMENT INSTRUCTION

**** Please note our banking information has changed ****

Use the following payment methods and ensure your payment contains the details provided in the example.

EXAMPLE: Remittance advice from client

Client name	First 6 digits of client #	Invoice Number	Invoice Amount	Comments
John&Jane Doe Ltd.	123456	78910111	$ 1,000.00	*Payment for invoice "78910111"*
John&Jane Doe Ltd.	123456	78910112	$ 2,000.00	*Payment for invoice "78910112"*

CONTACT:

**** If your payment document or submission does not contain the details *above, please* email a payment remittance to:**

receivablesdebiteurs@deloitte.ca

Payment methods:

1. Electronic Funds Transfer Information (remittance email mandatory): PREFERRED METHOD

The Bank of Nova Scotia,
Business Service Centre, 20 Queen Street West, 4th Floor, Toronto, Ontario M5H 3R3

For Canadian Dollar ($) Payments, pay:		For USD Dollar ($) Payments, pay:	
Transit-Institution #:	47696-002	Transit-Institution #:	47696-002
Account#:	1590219	Account#:	1363514

2. Wire Payment Information:

The Bank of Nova Scotia,
Business Service Centre, 20 Queen Street West, 4th Floor, Toronto, Ontario M5H 3R3

For Canadian Dollar ($) Payments, pay:		For USD Dollar ($) Payments, pay:	
Account#:	476961590219	Account#:	476961363514
Swift code:	NOSCCATT	Swift code:	NOSCUS33

3. Online Payment Information:

Select either Deloitte LLP or Deloitte S.E.N.C.R.L./s.r.l. through your financial institution

4. When paying by Cheque, email is not mandatory if cheque contains client # and / or invoice # paid. Please mail your payment to:

For Canadian Dollar ($) Payments, pay:	For USD Dollar ($) Payments, pay:
Deloitte Management Services LP	Deloitte Management Services LP
c/o T04567C	c/o T04567U
PO Box 4567, STN A	PO Box 4567, STN A
Toronto, ON M5W 0J1	Toronto, ON M5W 0J1

Please note we do not accept Interac e-Transfers.

Deloitte Opinion - scanned.pdf

From: Picard, Michel
To: Veinot, Cindy (TBS)
Subject: Deloitte Opinion
Date: July 26, 2017 10:36:04 AM
Attachments: TBS covering letter .pdf
Deloitte Opinion.pdf

Hi Cindy,

Please find enclosed the Deloitte Opinion and our covering letter, which addresses the terms and conditions for the use of the Deloitte Opinion.

Should you have any questions, please do not hesitate to contact me.

Michel Picard, CPA, CA

Partner, Accounting Advisory Services

KPMG LLP

333 Bay Street, Suite 4600

Toronto, Ontario, M5H 2S5

T 416 777 8414

M 416 560 2569

mpicard@kpmg.ca <mailto:mpicard@kpmg.ca>

LinkedIn <https://www.linkedin.com/in/michel-picard-8b3b942b?authType=NAME_SEARCH&authToken=oVKr&locale=en_US&trk=tyah&trkInfo=clickedVertical%3Amynetwork%2CclickedEntityId%3A107441415%2CauthType%3ANAME_SEARCH%2Cidx%3A1-1-1%2CtarId%3A1478640064654%2Ctas%3Amichel%20pi>

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If you are unable to access the links above, please cut and paste the URL that follows the link into your browser.

Discussion Item for IESO Call.rtf

From: Kim Marshall [Kim.Marshall@ieso.ca]
To: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; Picard, Michel [mpicard@kpmg.ca]; leeanne.probert@ca.ey.com [leeanne.probert@ca.ey.com]; Jeannette Briggs [jeannette.briggs@ieso.ca]; Susan Nicholson [susan.nicholson@ieso.ca]
Subject: Discussion Item for IESO Call
Date: Friday, June 23, 2017 10:55:54

The call will commence once Kim signs on as the moderator:

Local Dial In: 416-343-2654

Toll Free Dial In: 1-866-440-8935

Conference ID: 4149199

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Discussion Item for IESO Call.rtf

From: Kim Marshall [Kim.Marshall@ieso.ca]
To: Kim Marshall [Kim.Marshall@ieso.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; Picard, Michel [mpicard@kpmg.ca]; leeanne.probert@ca.ey.com [leeanne.probert@ca.ey.com]; Jeannette Briggs [jeannette.briggs@ieso.ca]; Susan Nicholson [susan.nicholson@ieso.ca]
Subject: Discussion Item for IESO Call
Date: Friday, June 23, 2017 10:55:54

The call will commence once Kim signs on as the moderator:

Local Dial In: 416-343-2654

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Discussion Notes - GA (meetings of Apr 17_17).rtf

From: Petsche, Nadine (TBS) []
To: HARTWICK Ken -FINANCE <ken.hartwick@opg.com> (ken.hartwick@opg.com) [ken.hartwick@opg.com]; MAUTI John -FIN & C CTRL [john.mauti@opg.com]; Kim Marshall (Kim.Marshall@ieso.ca) [Kim.Marshall@ieso.ca]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Picard, Michel (mpicard@kpmg.ca) [mpicard@kpmg.ca]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]
CC: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]
Subject: Discussion Notes - GA (meetings of Apr 17/17)
Date: Tuesday, April 18, 2017 12:23:07

This message has been archived. View the original item
https://ctsbigdcapmvs10.cihs.ad.gov.on.ca/EnterpriseVault/ViewMessage.asp?VaultId=125F1BA62D744314BA6D0E0BA043C1F471110000ctsbigdcapmvs01&SavesetId=201705195166269~20170418162307000~Z~20DFAB82AD45515539CD7DC2D3F88F11
View the original item

All,

Please find below a summary of yesterday’s call (involving OPCD, OPG, IESO, OFA, EY, KPMG) as well as highlights from yesterday afternoon’s meeting to review draft legislation. Please advise

Discussion Notes - GA (meetings of Apr 17_17).rtf

From: Petsche, Nadine (TBS) []
To: HARTWICK Ken -FINANCE <ken.hartwick@opg.com> (ken.hartwick@opg.com) [ken.hartwick@opg.com]; MAUTI John -FIN & C CTRL [john.mauti@opg.com]; Kim Marshall (Kim.Marshall@ieso.ca) [Kim.Marshall@ieso.ca]; Ken Kandeepan (Ken.Kandeepan@ofina.on.ca) [Ken.Kandeepan@ofina.on.ca]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Picard, Michel (mpicard@kpmg.ca) [mpicard@kpmg.ca]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]
CC: Veinot, Cindy (TBS) (Cindy.Veinot@ontario.ca) [Cindy.Veinot@ontario.ca]; Hosick, Sarah (TBS) (Sarah.Hosick@ontario.ca) [Sarah.Hosick@ontario.ca]
Subject: Discussion Notes - GA (meetings of Apr 17/17)
Date: Tuesday, April 18, 2017 12:23:07

All,

Please find below a summary of yesterday's call (involving OPCD, OPG, IESO, OFA, EY, KPMG) as well as highlights from yesterday afternoon's meeting to review draft legislation. Please advise of any corrections/additions. Nadine

Morning call:

Purpose: to discuss status and key actions related to accounting for OPG and IESO.

Highlights:

· Consensus that additional clarity needed on financing and accounting impacts of deferred interest recovery from ratepayers. OFA to lead update of accounting model to help clarify accounting and cash flow impacts on the various parties, both during the initial deferral period (10 years) and the beginning of the recovery period. The intent, as clarified by OFA, is that the OPG Trust would not have a cash flow impact, despite the fact that the clean energy adjustment does not start until 2022.

· OPG accounting considerations -- In order for OPG to defend accounting for the intangible asset, it must be able to demonstrate variability of returns (to demonstrate risk of return +/-). It is important that OPG has the authority to determine the chargeback in order to avoid being assessed as an 'agent' only. Dealers are also interested in clarification of respective roles and risk of ability for others to impact some of the factors relevant to the recovery plan.

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Discussion Notes - GA (meetings of Apr 17_17).rtf

From: Petsche, Nadine (TBS) []
To: HARTWICK Ken -FINANCE <ken.hartwick@opg.com> (ken.hartwick@opg.com) [ken.hartwick@opg.com]; MAUTI John -FIN & C CTRL [john.mauti@opg.com]; Kim Marshall (Kim.Marshall@ieso.ca) [Kim.Marshall@ieso.ca]; Ken Kandeepan (Ken.Kandeepan@ofina.on.ca) [Ken.Kandeepan@ofina.on.ca]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Picard, Michel (mpicard@kpmg.ca) [mpicard@kpmg.ca]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]
CC: Veinot, Cindy (TBS) (Cindy.Veinot@ontario.ca) [Cindy.Veinot@ontario.ca]; Hosick, Sarah (TBS) (Sarah.Hosick@ontario.ca) [Sarah.Hosick@ontario.ca]
Subject: Discussion Notes - GA (meetings of Apr 17/17)
Date: Tuesday, April 18, 2017 12:23:07

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Draft 9.rtf

From: Picard, Michel [mpicard@kpmg.ca]
To: Kim Marshall [Kim.Marshall@ieso.ca]
CC: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
Subject: Draft 9
Date: Monday, February 27, 2017 15:48:56
Attachment 1: IESO white papers draft #9.docx

Kim,

I have addressed Cindy's comments. See track changes. There are a couple of info missing.

Michel Picard, CPA, CA

Partner, Accounting Advisory Services

KPMG LLP

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Our lawyers have recommended that we provide certain disclaimer language with our messages. Rather than including them here, we're drawing your attention to the following links where the full legal wording appears.

- **Disclaimer concerning confidential and privileged information/unintended recipient** (http://disclaimer.kpmg.ca).
- **Disclaimer concerning tax advice** (http://taxdisclaimer.kpmg.ca).

If you are unable to access the links above, please cut and paste the URL that follows the link into your browser.

IESO white papers draft #9.pdf

WHITE PAPERS – WORKING DRAFT #9~~7~~

Independent Electricity System Operator ("IESO" or the "Company") is considering making changes in its accounting policies to reflect the balances of market participants within the IESO-administered markets (see separate technical analysis) and the economic impacts of rate regulation, as the Company believes that the changes would result in a more appropriate presentation of events or transactions in its financial statements.

Issues being considered in this document are:

Issue #1: Can the IESO adopt the guidance in ASC 980 *Regulated Operations (US GAAP in FASB)*?

Issue #2: Can the IESO recognize deferral or variance accounts related to the deferral of the annual Global Adjustment account as a regulatory asset on its statement of financial position?

Issue #3: Can the IESO derecognize the variance accounts related to the deferral of the annual Global Adjustment account upon sale to OPG Trust**?**

1. Adoption of the guidance in ASC 980 Regulated Operations

Background and Assumptions for issues #1 and #2

The facts, circumstances, and assumptions relevant to the specific transactions are as follows:

1. The IESO's legal status is a not-for-profit, non-taxable, corporation established pursuant to Part II of the *Electricity Act, 1998*. IESO is classified as an Other Governmental Organization and prepares its financial statements in accordance with Canadian public sector accounting standards (PSAB).
2. The IESO is required to submit its proposed expenditures, revenue requirements and fees yearly to the OEB for review and approval.
3. IESO is rate regulated by the OEB in accordance with the Electricity Act, 1998 and the Ontario Energy Board ("OEB") Act, 1998 but currently does not recognize the economic impacts of rate regulation in its general purpose financial statements. The IESO is required to obtain approval from the OEB under s. 25(1) of the Electricity Act, 1998 for the approval of its own expenditures, revenue requirement and fees. The last rate approval was obtained on December 29, 2016[1].
4. The OEB issued a Decision and Order on March 28, 2013 that permits IESO to recover the MDMR costs (the Smart Metering Charge) (see Appendix B). *(i.e. Costs incurred in the past will be fully recovered through future rates)*
5. Furthermore, in accordance with the *Electricity Act, 1998* and the *OEB Act, 1998*, the IESO has approved variance accounts to record all amounts payable or receivable by it in connection with the amounts paid to generators, the Financial Corporation, distributors and to entities with whom the IESO has a procurement contract. (i.e. costs incurred in the past will be fully recovered through future rates)
6. The province is contemplating deferring the recovery of a portion of the annual Global Adjustment account (comprised primarily of the electricity costs paid to the generators) over a period of 25-30 years, so that costs incurred would be fully recovered through future rates.
7. The *Electricity Act, 1998* and the *OEB Act, 1998* would be amended through legislation to require the deferral of the recovery of the Global Adjustment account and the future recovery in rates charged to customers.
8. The OEB would grant generic deferral or variance accounts to capture the difference between the amounts paid to generators and others, and the amounts collected in rates. Furthermore, the interest and ancillary costs related to the contemplated transaction would also be included in future rates charged to customers. In summary, the legislation would create a right to collect the incurred cost.

[1] http://www.rds.ontarioenergyboard.ca/webdrawer/webdrawer.dll/webdrawer/rec/556699/view/Dec_Order_IESO_20161229.PDF

Commented [CV1]: To clarify what parts of the IESO's operations are regulated.

Commented [CV2]: To determine if this assumption remains

Commented [m3]: Based on today's discussion, I believe it is correct.

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9. The IESO would change its accounting policies to permit the recognition of the economic impacts of rate regulation as from the 2016 financial year. IESO would adopt the guidance of ASC 980 *Regulated Operations* to better reflect the economic substance of its operations and enhance the transparency and accountability of its financial reporting.

Appropriate Accounting Principle for issue #1

PSAS requires

PS2120.02, "*a change in an accounting policy may be made… if it is considered that the change would result in a more appropriate presentation of events or transactions in the financial statements of the government."*

PS1150.05 "*When the primary sources of GAAP do not deal with the accounting and reporting in financial statements of transactions or events encountered by the public sector reporting entity, or additional guidance is needed to apply a primary source to specific circumstances, the selection of an appropriate accounting policy requires the exercise of professional judgment. In these circumstances, a public sector reporting entity should adopt accounting policies and disclosures that are consistent with:*

(a) the primary sources of GAAP; and

(b) the application of the concepts described in FINANCIAL STATEMENT CONCEPTS, Section PS 1000."

PS1150.19 "*Pronouncements issued by other bodies authorized to issue accounting standards may be useful sources to consult. For example, accounting pronouncements published with the authority of the Canadian Accounting Standards Board (AcSB), International Accounting Standards Board (IASB), US Federal Accounting Standards Advisory Board (FASB), US Governmental Accounting Standards Board (GASB), or International Public Sector Accounting Standards Board (IPSASB) are often important sources to consult on matters not covered by primary sources of GAAP or for assistance in applying a primary source of GAAP to specific circumstances*."

PS1150.08 "A public sector reporting entity consults sources other than primary sources of GAAP to assist in selecting accounting policies and disclosures only when these sources comply with paragraph PS1150.05. The public sector reporting entity evaluates sources in selecting the appropriate accounting policies and disclosures based on all of the following criteria:

(a) The specificity of the source — A source that deals with the specific circumstances is likely to be more relevant than one from which the public sector reporting entity must analogize.

(b) The authority of the issuer or author — A source issued by an accounting standard setter in its own jurisdiction is likely to be more relevant than a source issued by others in the same jurisdiction.

(c) The continued relevance of the source — The passage of time may diminish the relevance of certain sources.

(d) The development process for the source — A source developed after extensive consultation and debate is likely to be more relevant than a source developed without such discipline."

PS1150.10 "PSAB considers a source to be consistent with the concepts in paragraph PS 1150.05(b) when the guidance in that source is compatible with the (i) qualitative characteristics of financial information, (ii) the elements of financial statements, and (iii) the recognition and measurement criteria in paragraph PS 1150.05(b)."

PS1000.58 "In the absence of appropriate public sector recognition and measurement criteria for intangibles, all intangibles, including those that have been purchased, developed, constructed or inherited in right of the Crown, are not recognized as assets in government financial statements. The intangible often called "human capital" that embodies the talent or intellectual capital of government employees is not recognized as an asset under existing accounting principles."

PS3210.03 "*Assets are economic resources controlled by a public sector entity as a result of past transactions or events and from which future economic benefits are expected to be obtained."*

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PS3210.04 "Assets have three essential characteristics:

(a) They embody future economic benefits that involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows, or to reduce cash outflows.

(b) The public sector entity can control the economic resource and access to the future economic benefits.

(c) The transaction or event giving rise to the public sector entity's control has already occurred."

Issue #1: Can the IESO adopt the guidance in ASC 980 *Regulated Operations*?

In accordance with PS2120.02, the IESO can reflect the economic impacts of rate regulation only if it is considered that the change of accounting policy would result in a more appropriate presentation of events or transactions in the financial statements of the government. As mentioned in the Agenda ref. 9A of the IASB meeting of February 2017[2], rRate regulated entities have long argued that, without recognizing regulatory assets and regulatory liabilities, the entity's performance is distorted by the rate regulator's intervention in the imposition of performance obligations on the entity and the timing of cash flows from the ratepayers.. The recognition of regulatory assets and liabilities would better reflect the economic substance of IESO's operations and enhance the transparency and accountability of its financial reporting. For example, in 20XX the IESO incurred a cost relating to the smart meter program amounting to $ million. The cost was expensed and is included in the accumulated deficit, as the IESO did not have the ability to recognize a regulatory asset despite receiving a rate order to recover it over a period from May 1, 2013 to October 31, 2018. As a result of adopting ASC 980, a regulatory asset for the Smart metering Charge would be recognized at December 31, 2016 for an amount of approximately $.

~~Currently, the IESO has received a rate order to recover the Smart Metering Charge over a period from May 1, 2013 to October 31, 2018. The initial costs related to the smart meter program amounting to $ million has been expensed and is included in the accumulated deficit, as the IESO did not recognize a regulatory asset.~~

PSAS does not address accounting concepts in a rate regulated environment. Since there is no guidance in PSAS regarding the recognition and measurement of regulatory assets and liabilities, IESO may consider other sources based upon PSAS 1150.05 in the GAAP hierarchy to determine appropriate accounting policies in a rate regulated environment.

Within AcSB, Accounting Standards for Private Enterprises (ASPE) defines a rate regulated entity but provides no guidance on regulatory assets and liabilities, however requires disclosure of such balances if they are recognized. IASB has not completed their project on rate regulated activities and current standards only include a holding standard based upon what was done under previous GAAP. It will be important for the IESO to monitor the IASB's ongoing project on rate regulated activities as this may affect the recognition, measurement, presentation and disclosures of the regulatory assets and liabilities. Both FASB and GASB have guidance on accounting in a regulatory environment. IPSASB does not provide any guidance on accounting by rate regulated entities.

It is important to note that rate regulated entities in Canada that prepare their general purpose financial statements in accordance ~~with~~with US GAAP, ASPE (e.g. the three Fortis subsidiaries in Ontario), as well as those rate regulated entities that are eligible to elect to apply the requirements of IFRS 14 and elected to do so when they adopted IFRS, generally all recognize regulatory deferral and variance accounts in accordance with US GAAP accounting principles set out ASC 980 *Regulated Operations*.

[2] http://www.ifrs.org/Meetings/MeetingDocs/IASB/2017/February/AP09-Rate-regulated-Activities.pdf

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Commented [CV4]: Are there any documents to reference here – is the AcSB document from September helpful?

Michel- Done

Commented [CV5]: Should this memo also address the regulatory assets/liabilities that will be recognized re: moving the market books on-book?

This was an example to explain the impact.

Commented [CV6]: Should we also add a comment that many rate regulated entities prepare there f/s in accordance with US GAAP and therefore, also follow ASC 980.

Michel Done

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Statement 62 issued by GASB in December 2010 is effective for financial statements for periods beginning after December 15, 2011. The objective of the Statement is to incorporate into the GASB's authoritative literature certain accounting and financial reporting guidance that is included in the Financial Accounting Standards Board (FASB) Statements and Interpretations issued on or before November 30, 1989, which does not conflict with or contradict GASB pronouncements. Paragraphs 476–500 may be applied to activities reported in business-type activities that have regulated operations that meet all of the three criteria in paragraph 476 as follows:

(a) The regulated business-type activity's rates for regulated services provided to its customers are established by or are subject to approval by an independent, third-party regulator or by its own governing board empowered by statute or contract to establish rates that bind customers.

(b) The regulated rates are designed to recover the specific regulated business-type activity's costs of providing the regulated services.

(c) In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume that rates set at levels that will recover the regulated business-type activity's costs can be charged to and collected from customers. This criterion requires consideration of anticipated changes in levels of demand or competition during the recovery period for any capitalized costs.

The criteria above and the guidance in paragraphs 476-500 are based on ASC 980 *Regulated Operations*.

It is also important to note that in its statement of financial position, the Ontario Electricity Financial Corporation ("OEFC") recognizes a net unamortized liability balance for power purchase contracts, as detailed in the summary of significant accounting policies:

"The liability for power purchase contracts was originally calculated by discounting estimated losses over the life of the contracts. Under the *Electricity Restructuring Act, 2004*, OEFC began receiving actual contract prices for power from electricity consumers, effective January 1, 2005, and no longer incurs losses on these power purchase contracts. At that time, the Ministry of Finance estimated that the bulk of the liability would be eliminated over 12 years as existing electricity contracts expire. As a result, the bulk of the liability is being amortized to revenue over that period."

Although this liability is not defined as a regulatory liability in the OEFC's financial statements, the argument can be made that it substantively meets the ~~criteria~~ definition under ASC 980 of a regulatory liability, as the OEFC has no further obligation and should have reversed the liability into income. After consultation with the AG at that time, it was decided to amortize the gain over the remaining term of the contracts.

In summary

Rate regulated entities in North America reporting under ASPE, IFRS (entities which have elected to use IFRS 14) and GASB generally all recognize regulatory deferral and variance accounts in accordance with US GAAP accounting principles based on ASC 980 *Regulated Operations* (see Appendix A for the accounting framework used by the Canadian rate regulated entities).

Evaluation of Other Sources of GAAP

When looking to other sources of GAAP, PSAS requires the other sources of GAAP to be evaluated

1. *as to whether they are consistent with accounting policies and disclosure within PSAS,*
2. *as to whether they are consistent with the application of concepts in PS 1000 and*
3. *as to all of the following criteria:*
   - *(a) Source deals with the specific circumstance*
   - *(b) Source is issued by an accounting standard setter*
   - *(c) Source continues to be relevant*
   - *(d) Source uses a consultative process and deliberation when developing policies*

Commented [CV7]: I'm not sure this is totally accurate – my understanding is the liability that remains related to the NUGs corresponds to the NUG contracts that continue to exist. Also, I think that the liability was calculated as the difference between the contractual rate in the NUG contracts and the fair value of the value of electricity being generated and I suspect this was part of the stranded debt that was booked directly to the accumulated deficit of the Province when Ontario Hydro was split up. How is this a regulatory liability?

Kim – can you check this wording with Ken Kandeepan if you haven't already done that.

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As required by PS 1150.05(b), we need to analyze whether the concepts in the other source (i.e. ASC 980) are compatible with the (i) qualitative characteristics of financial information, (ii) the elements of financial statements, and (iii) the recognition and measurement criteria in PS 1000.

(i) Qualitative Characteristics of Financial Information

FASB	PSAS 1000	Evaluation
Concepts and objectives are for both business and non-business organizations as well as governmental units (Concept #4.3 to 4.5)	Public, legislators, councilors, investors, analysts, other governments (par. 14)	FASB considers governmental units
Financial reporting should: – Be useful in making resource allocation decisions – Be useful in assessing services and ability to provide services – Be useful in assessing management stewardship and performance – Provide information about economic resources, obligations, net resources and changes in them (Concept # 4.33-.54)	Financial statements should be relevant to the needs of the users and reliable. Relevance is achieved through timeliness, predictability and accountability value. Reliable information has the following characteristics: representational faithfulness, completeness, neutrality, conservatism and verifiability. (par. 28-29)	Similar

(ii) Elements of Financial Statements

FASB	PSAS	Evaluation
Assets		
Probable future economic benefits obtained or controlled by the entity as a result of past transactions or events. (Concept #6.25-.34)	Economic resources controlled by a government as a result of past transactions or event and from which future economic benefits are expected to be obtained. (par. 35)	Essential characteristics similar
Liabilities		
Probable future sacrifices of economic benefits arising from present obligations of the entity to transfer assets or provide services in the future as a result of past transactions or events. (Concept #6.35-.43)	Present obligations to others arising from past transactions or events, the settlement of which is expected to result in the future sacrifice of economic benefits with little or no discretion to avoid settlement. (par. 44)	Essential characteristics similar
Revenues		
Inflows from delivering or producing goods, rendering services or other activities that constitute the entity's central operations. (Concept #6.78-.79)	Increases in economic resources resulting from operations, transactions and events of the accounting period. (par. 46)	Similar
Expenses		
Outflows from delivering or producing goods, rendering services or carrying out other activities that constitute the entity's central	Decreases in economic resources resulting from operations, transactions and events of the accounting period. (par. 49)	Similar

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operations. (Concept # 6.80-.81)		

(iii) Recognition Criteria

FASB	PSAS	Evaluation
To be recognized, an item must meet the definition of an element of the financial statements, must be measurable with sufficient reliability, be relevant and be reliable. (Concept # 5.64)	Item must have an appropriate basis of measurement, a reasonable estimate can be made of the amount and if the item involves obtaining or giving up future economic benefits, it is expected those benefits will be obtained or given up. (par. 55)	Similar

(iii) Measurement Criteria

FASB	PSAS	Evaluation
Measurement basis dependent upon nature of item. Historical cost basis, replacement cost, market value. (Concept # 5.65-.70)	Primarily using historical cost basis. Replacement cost and realizable value are also used, but in limited circumstances. (par. 60)	Similar

Criteria of PS 1150.08

Criteria	Evaluation
Source deals with the specific circumstance	Yes, ASC 980 Regulated Operations
Source is issued by an accounting standard setter	Yes, FASB
Source continues to be relevant	Yes, still used by rate regulated entities
Source uses a consultative process and deliberation when developing policies	Yes, comprehensive consultative process and deliberation

Evaluation whether the deferral of the Global Adjustment account meet the definition of Assets as per Section PS3210

PS3210 defines assets as *"economic resources controlled by a public sector entity as a result of past transactions or events and from which future economic benefits are expected to be obtained."* (par. 03)

The analysis of the three essential characteristics as defined by PS3210.4 are analyzed in the next table.

Characteristics	Additional guidance	Comments
They embody future economic benefits that involve a capacity, singly or in combination with other assets, to provide goods and services, to provide	The essence of assets are their future economic benefits. Assets embody future economic benefits that allow public sector entities to achieve their objectives. The future economic benefits embodied in assets involve a capacity, singly or in combination with other assets, to provide goods and	The economic benefit embodied in the variance accounts (i.e regulatory asset) is the right to collect the incurred costs from ratepayers in order to settle the liability for the energy already consumed by the ratepayers. The electricity Act, 1998 ("EA")

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future cash inflows, or to reduce cash outflows. (par. 4(a))	services, to provide future cash inflows or to reduce cash outflows. (par. 11) The future economic benefits embodied in an asset may also be in the form of generating future cash inflows. Cash inflows benefit the public sector entity because cash can be used to purchase or to provide goods and services, redistribute wealth or settle liabilities. (par. 13)	section 25.33(1) states: "*The IESO shall, through its billing and settlement systems, make adjustments in accordance with the regulations that ensure that, over time, payments by classes of market participants in Ontario that are prescribed by regulation reflect,* *a) amounts paid to generators, the Financial Corporation and distributors, whether the amounts are determined under the market rules or under section 78.1, 78.2 or 78.5 of the Ontario Energy Board Act, 1998; and* *b) amounts paid to entities with whom the IESO has a procurement contract, as determined under the procurement contract."*
The public sector entity can control the economic resource and access to the future economic benefits. (par. 4(b))	Economic resources can arise from, but are not limited to, the following: government's own legislation (for example, taxes, fines and penalties); (par. 08(c)) A public sector entity controls the economic resource and access to the future economic benefits when it: a. can benefit from the economic resource through its capacity to provide goods and services, to provide future cash inflows or to reduce cash outflows; b. can deny or regulate access to those benefits by others; and c. is exposed to the risks associated with the economic resource. (par.16)	The economic resources is the right created by the legislation that the energy costs IESO incurs will result in future cash flows. In the regulatory environments, incurring costs creates an enforceable right to set rates at a level that permits IESO to recover those costs. The adjustment of future rates is the mechanism the OEB uses to implement the right. Currently, the EA section 25.33(5) states: *"The IESO shall establish and maintain such variance accounts as may be necessary to record all amounts payable or receivable by it under this section."* The legislation would be amended to permit IESO to collect specifically the deferral of the energy costs and the related interest and administrative costs.
The transaction or event giving rise to the public sector entity's control has already occurred. (par.4(c))	It is the occurrence of a past transaction or event on or before the financial statement date that distinguishes a present economic resource controlled by a public sector entity from an economic resource that may be controlled by a public sector entity in the future. (par. 25)	The past event giving rise to IESO's control occurs as the energy cost is incurred, as IESO has a right to collect it from the ratepayers.

Commented [CV8]: Can we also analyze control from the context of being able to sell the asset – while related party at the initial point, there is private financing that is based on the strength of the legislation which permits the government to monetize the asset (hence control the economic benefits from the asset)

Is there anything in the IFRS14 papers that would be helpful here?

Michel: There is nothing under PSAB, IFRS, US GAAP or conceptual framework that link control and monetize.

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	The past transaction or event that gives rise to control of an economic resource resulting from exchange agreements or contracts usually occurs at the point of exchange. This arises when substantially all the benefits and risks of ownership have been transferred to the public sector entity and normally coincides with the disbursement of funds, exchange of other assets or assumption of liabilities. (par. 26)	
Conclusion: The right to collect the deferral of the energy costs and the related interest and administrative costs meets the definition of assets.		

When concepts are in conflict with PSAS then PSAS prevails (PS 1150.12). For example, PSAS does not recognize intangible assets (PS 3150.03, .14 and PS1000.58). So if regulatory assets are considered to be intangible assets, they would not be allowed to be recognized through another source of GAAP.

It is worth noting that the economic impacts of rate regulation are not recognized under US GAAP as intangible assets as the FASB has specific guidance to deal with this type of asset. It is also worth noting that the IASB has an ongoing project on rate regulated activities and are currently developing an accounting model based on the principles of IFRS 15 *Revenue from contracts with customers* to provide a principle-based framework for recognizing regulatory assets (see Agenda Ref. 9 for the IASB meeting on February 23, 2017). Furthermore, the Summary Comment Letter Analysis related to the ED/2009/8 on Rate Regulated Activities published by the IASB in July 2009 states on page 2 of 50:-

"The International Financial Reporting Interpretations Committee ("IFRIC") observed that it had previously discussed whether a regulatory asset should be recognized in the context of service concession arrangements, either as deferred costs or as an intangible asset to reflect an expectation that the entity will recover these costs as part of the price charged in future periods. It had concluded that entities applying IFRSs should recognize only assets that qualified for recognition in accordance with the IASB's *Framework for the Preparation and Presentation of Financial Statements* and relevant accounting standards, such as IAS 11 *Construction Contracts*, IAS 18 *Revenue*, IAS 16 *Property, Plant and Equipment* and IAS 38 *Intangible Assets*."

Entities that are not eligible to elect to apply the requirements of IFRS 14 do not recognize regulatory assets because in 2009 the IFRIC determined they did not meet the criteria for recognition of an intangible asset under IAS 38?

Therefore, we can conclude that ASC 980 is NOT in conflict with PS 3150.03, .14 and PS1000.58 with respect to intangible assets.

Conclusion:
FASB is appropriate to use as "*other source of GAAP*". FASB standard ASC 980 has extensive guidance for rate regulated entities including the recognition of regulatory assets and use of rate regulated accounting by IESO would be consistent with current reporting practices of H1, OPG and OEFC.

Appropriate Accounting Principle for issue #2

ASC 980 Regulated Operations

- 980-10-15-2 "*The guidance in the Regulated Operations Topic applies to general-purpose external financial statements of an entity that has regulated operations that meet all of the following criteria:*

  (a) The entity's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party regulator or by its own governing

Commented [CV9]: Does this paragraph need an ending -- e.g. are we saying that a reg asset is not an intangible under IFRS because in 2009 the IASB determined they did not meet the criteria for recognition of an intangible asset under IAS 38? I think we're missing that last part.

Michel Done

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Commented [CV10]: This section causes me some concern – any additional ideas re: strengthening it?

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board empowered by statute or contract to establish rates that bind customers.

(b) The regulated rates are designed to recover the specific entity's costs of providing the regulated services or products. This criterion is intended to be applied to the substance of the regulation, rather than its form. If an entity's regulated rates are based on the costs of a group of entities and the entity is so large in relation to the group of entities that its costs are, in essence, the group's costs, the regulation would meet this criterion for that entity.

(c) In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume that rates set at levels that will recover the entity's costs can be charged to and collected from customers. This criterion requires consideration of anticipated changes in levels of demand or competition during the recovery period for any capitalized costs."

- 980-10-20 Glossary, Definition of incurred costs *"A cost arising from cash paid out or obligation to pay for an acquired asset or service, a loss from any cause that has been sustained and has been or must be paid for."*
- 980-10-05-8 "*Unless an accounting order indicates the way a cost will be handled for rate-making purposes, it causes no economic effects that would justify deviation from the GAAP applicable to business entities in general. The mere issuance of an accounting order not tied to rate treatment does not change an entity's economic resources or obligations. In other words, the economic effect of regulatory decisions—not the mere existence of regulation—is the pervasive factor that determines the application of GAAP.980-340 – Other Assets and Deferred Costs."*
- 980-340-25-1 "*Rate actions of a regulator can provide reasonable assurance of the existence of an asset. An entity shall capitalize all or part of an incurred cost that would otherwise be charged to expense if both of the following criteria are met:*

  (a) It is probable (as defined in Topic 450) that future revenue in an amount at least equal to the capitalized cost will result from inclusion of that cost in allowable costs for rate-making purposes.

  (b) Based on available evidence, the future revenue will be provided to permit recovery of the previously incurred cost rather than to provide for expected levels of similar future costs. If the revenue will be provided through an automatic rate-adjustment clause, this criterion requires that the regulator's intent clearly be to permit recovery of the previously incurred cost.

  A cost that does not meet these asset recognition criteria at the date the cost is incurred shall be recognized as a regulatory asset when it does meet those criteria at a later date."
- 980-340-40-1: "*If at any time an entity's incurred cost no longer meets the criteria for the capitalization of an incurred cost (see paragraph 980-340-25-1), that cost shall be charged to earnings."*
- 980-350-50-1: "*In some cases, a regulator may permit an entity to include a cost that would be charged to expense by an unregulated entity as an allowable cost over a period of time by amortizing that cost for rate-making purposes, but the regulator does not include the unrecovered amount in the rate base. That procedure does not provide a return on investment during the recovery period. If recovery of such major costs is provided without a return on investment during the recovery period, the entity shall disclose the remaining amounts of such assets and the remaining recovery period applicable to them."*
- 980-340-55-2: "*In some cases, a regulator may approve rates that are intended to recover an incurred cost over an extended period without a return on the unrecovered cost during the recovery period."*
- 980-340-55-3: "*The regulator's action provides reasonable assurance of the existence of an asset (see paragraph 980-340-25-1). Accordingly, the regulated entity would capitalize the cost and amortize it over the period during which it will be allowed for rate-making purposes. That cost would not be recorded at discounted present value. An exception to this general rule is provided for costs of abandoned plants."*

Issue #2: Can the IESO recognize deferral or variance accounts related to the deferral of the annual

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Global Adjustment account as a regulatory asset on its statement of financial position?

As described in issue #1, US GAAP includes special accounting provisions that are applicable to entities with activities that are subject to rate regulation. The result is that rate regulated entities are required to recognize regulatory assets and liabilities provided the following three criteria are met:

Criteria	Comment	Evaluation
The entity's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party regulator or by its own governing board empowered by statute or contract to establish rates that bind customers.	IESO has unrecognized variance accounts related to the MDMR (smart meters), that have been approved by the OEB in accordance with the Electricity Act and the OEB Act (see Appendix B). It is important to note that Hydro One and OPG are both consolidated into the province's books, are both regulated by the OEB and their respective regulatory assets and liabilities are reported in the province's books.	Met
The regulated rates are designed to recover the specific entity's costs of providing the regulated services or products.	Currently, the rates approved by the OEB are designed to recover the IESO's costs of providing the regulated services and the pass-through related to the energy purchased from the generators. The contemplated transaction is based on the fact that the OEB would grant generic deferral or variance accounts to capture the difference between the amounts paid to generators and others, and the amounts collected in rates. Furthermore, the interest and ancillary costs related to the contemplated transaction would also be included in future rates charged to customers. In summary, the legislation would create a right to collect the incurred costs.	Met
In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume that rates set at levels that will recover the entity's costs can be charged to and collected from customers. This criterion requires consideration of anticipated changes in levels of demand or competition during the recovery period for any capitalized costs."	Since the deferral or variance accounts would be sold to the OPG Trust at least on a monthly basis and cash would be received on the same day, this criteria would be met. This criteria would need to be monitored on a yearly basis to ensure that IESO and the OPG Trust would be able to recover the future deferred amount taking into account the levels of demand or competition during the recovery period.	Met
Conclusion: Since the three criteria are met, IESO should be able to adopt the guidance in ASC 980.		

Conclusion: Based on the assumptions mentioned above, IESO should be able to recognize a regulatory asset for the deferral of the annual Global Adjustment account. As mentioned in the ASC 980 guidance above, it is important that an accounting order be issued by the OEB which indicates the way the incurred costs would be handled for rate-making purposes as the OEB's action provides reasonable assurance of the existence of a

Commented [CV11]: May need to think about this wording given how OPG Trust views the interest revenue

Michel Not sure what to write. I believe this is generic enough to cover all the costs.

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Commented [CV12]: Is this an issue for IESO if the structure remains in place? I'm not sure it's clear what risk IESO has.

Yes for the future deferred amount. IESO may not be able to sell them to OPG if the level of demand has decreased.

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regulatory asset.

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2. Derecognition of the regulatory assets

Background and Assumptions for issue #3

The facts, circumstances, and assumptions relevant to the specific transactions are as follows:

1. The annual Global Adjustment account that would be deferred in the deferral or variance accounts (the "Asset") would be significant.
2. The IESO does not currently have the financial capability to finance the Asset and is contemplating selling the Asset to a Trust to be set-up by OPG (the "OPG Trust").
3. The OPG Trust would be consolidated by OPG.
4. Proposed terms of the sale agreement between the IESO and the OPG Trust:
   - The sale contract would be structured as an absolute sale, which would assign future economic benefits or cash flows related to the Asset exclusively to the OPG Trust.
   - The arrangement would be structured whereby there is no recourse or obligations remaining of IESO related to the Asset.
   - The arrangement is not considered to be a financing transaction as IESO would have no obligations to the OPG Trust after the Asset is sold to the OPG Trust.
   - IESO would not retain any rights or benefits from the Asset.
   - IESO would not have any rights to interest or penalties on the Asset once it has been transferred to the OPG Trust.
   - The contract would be clear that IESO cannot pledge the Asset as collateral to obtain future cash flows or financing.
   - IESO would continue to collect related cash flows on the OPG Trust's behalf and remit those cash flows to the OPG Trust without material delay. In addition, IESO would not be entitled to reinvest such cash flows, except for investments in cash or cash equivalents during the short settlement period from the collection date to the date of required remittance to the OPG Trust, and interest earned on such cash and cash equivalents is passed to the OPG Trust. The contract would define IESO's role strictly as that of agent, under a pass-through arrangement.
   - Servicing, origination, and arrangement fees, would be collected by IESO in rates charged to ratepayers as part of its market dealings.
   - The Asset would be sold to the OPG Trust at least, on a monthly basis and cash would be received on the same day.

Appropriate Accounting Principles for issue #3

Public Sector Accounting Standard ("PSAS") 3210, *Assets*, defines an asset as "…*economic resources controlled by a government as a result of past transactions or events and from which future economic benefits are expected to be obtained*." [par. 3]

.04 *"Assets have three essential characteristics:*

(a) they embody future economic benefits that involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows, or to reduce cash outflows;

(b) the public sector entity can control the economic resource and access to the future economic benefits; and

(c) the transaction or event giving rise to the public sector entity's control has already occurred."

.22 "*Control of an economic resource and of access to the future economic benefits are essential characteristics of an asset, whereas possession or ownership is not.*"

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.24 *"A public sector entity may act as trustee when it administers trusts on behalf of the beneficiaries specified in the agreement or statute. As trustee, the public sector entity merely administers the assets, following the terms and conditions set out in the agreement. It does not control the asset because it does not have access to the future economic benefits. Those benefits flow to the beneficiaries."*

As noted in PS1000 Financial statement concepts:

.37 *"An item is not an asset of a government if it lacks one or more of the essential characteristics listed in the preceding paragraph. Thus, for example, an item does not qualify as an asset of a government if the item involves:*

(a) no future economic benefit;

(b) future economic benefit, but the government cannot obtain it; or

(c) future economic benefit that the government may obtain, but the events or circumstances that give the government control of the benefit have not yet occurred."

As noted in PS3450, derecognition of a financial liability:

.042 *"A government should remove a financial liability (or part of a financial liability) from its statement of financial position when, and only when, it is extinguished (i.e., when the obligation specified in the contract is discharged or cancelled, or expires)."*

.043 *"A financial liability (or part of a financial liability) is extinguished when the debtor either:*

(a) discharges the liability (or part of it) by paying the creditor, normally with cash, other financial assets, goods or services; or

(b) is legally released from primary responsibility for the liability (or part of it) either by process of law or by the creditor. (When the debtor has given a guarantee, this condition may still be met.)"

.046 "*Payment to a third party, including a trust (sometimes called "in-substance defeasance"), does not, by itself, relieve the debtor of its primary obligation to the creditor in the absence of legal release."*

.047 *"If a debtor pays a third party to assume an obligation and notifies its creditor that the third party has assumed its debt obligation, the debtor does not derecognize the debt obligation, unless the condition in paragraph PS 3450.043(b) is met. If the debtor pays a third party to assume an obligation and obtains a legal release from its creditor, the debtor has extinguished the debt. However, if the debtor agrees to make payments on the debt to the third party or direct to the original creditor, the debtor recognizes a new debt obligation to the third party."*

Issue #3: Can the IESO derecognize the variance accounts related to the deferral of the annual Global Adjustment account upon sale to OPG Trust?

PS3210 does not specifically address the derecognition of a regulatory asset as the concept of a regulatory asset does not exist under PSAS.

As mentioned above, regulatory assets do not meet the definition of intangible asset or financial asset. Specifically, regulatory assets do not meet the definition of financial asset because they are imposed on customers through the tariff (i.e., imposed by the OEB) and do not represent a right to receive payments from another party as a result of a contract.

More generally, PSAS.3210.37 suggests that an asset would no longer be recognized when it fails to meet the definition of an asset.

Based on PS1000.37(b), an item does not qualify as an asset of a government if the item involves future economic benefit, but the government cannot obtain it.

Based on the assumptions mentioned above, the legal title of the Asset would be transferred to the OPG Trust, as well as, ALL risks and rewards, including the following:

- the contract would define IESO's role strictly as that of agent, under a pass-through arrangement;

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- all cash flows related to the Asset would be transferred without material delay to the OPG Trust;
- rights to interest or penalties on the Asset would be for the benefits of the OPG Trust;
- IESO cannot pledge the Asset; and
- no recourse or obligations remaining of IESO related to the Asset.

IESO should also evaluate whether the sale of the Asset should in fact be considered as a borrowing arrangement. In the absence of detailed guidance on this subject, we can analogize to the guidance in PS3450 *Financial Instruments* for the derecognition of a financial liability. Par. 43 states that *"A financial liability (or part of a financial liability) is extinguished when the debtor is legally released from primary responsibility for the liability (or part of it) either by process of law or by the creditor. (When the debtor has given a guarantee, this condition may still be met.)"* Based on the assumptions mentioned above, since the legal title of the Asset would be transferred to the OPG Trust, as well as, ALL risks and rewards, it can be concluded that the sale of the Asset is not a borrowing arrangement.

Conclusion: Based on the proposed terms of the sale agreement between the IESO and OPG Trust mentioned above, the deferral or variance accounts would be derecognized at the point where the IESO would derive no future economic benefit from it. This would occur where the IESO ultimately transfers the rights, risk and rewards related to those deferral or variance accounts to the OPG Trust. This would occur on the receiptption of cash from the OPG Trust.

Commented [CV13]: Receipt

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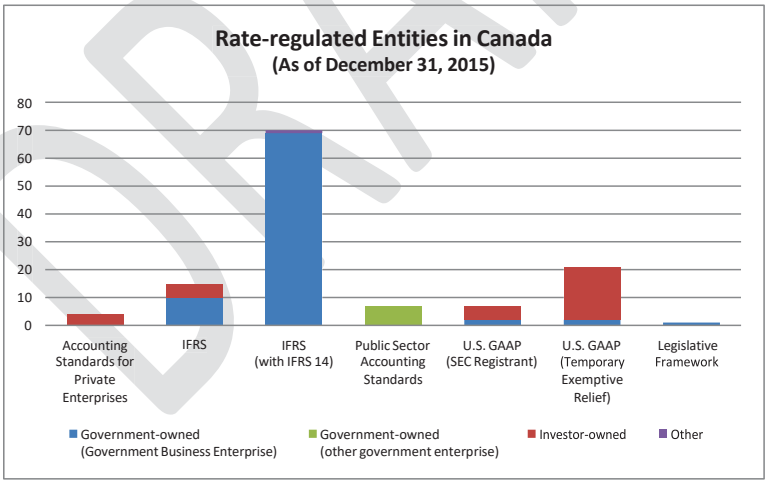
Appendix A:

Extract from the "Accounting Standards Advisory Forum Agenda Ref: 3A dated September 29, 2016" available on the IFRS website

Canadian Rate-regulated Entities

18. The accounting framework landscape for Canadian rate-regulated entities is currently diverse. For annual periods beginning on or after January 1, 2015, rate-regulated entities that are Canadian publicly accountable enterprises are required to apply IFRS. Rate-regulated entities that adopted IFRS for the first time after IFRS 14 *Regulatory Deferral Accounts* was issued continue to recognize these balances. Government Business Enterprises (which operate to generate a profit or on a break-even basis) that are also rate-regulated entities are also directed to apply standards applicable to for-profit entities, and thus apply IFRS. Canadian securities legislation permits dual-listed entities (i.e., Canadian entities also registered with the U.S. Securities and Exchange Commission) to apply U.S. GAAP in the normal course. Temporary exemptive relief is also available from the Canadian Securities Administrators that permits rate-regulated entities that are not dual-listed to apply U.S. GAAP in place of IFRS. If a rate-regulated entity is not a publicly accountable enterprise or a Government Business Enterprise, additional accounting framework options may also include Accounting Standards for Private Enterprises or Public Sector Accounting Standards. A non-GAAP reporting framework is used when legislated by the provincial owner of a government-owned rate-regulated entity.

19. As of December 31, 2015, there were approximately 125 rate-regulated entities in Canada. These entities mainly range in size from small entities owned by municipal governments to large investor-owned entities or entities owned by provincial governments.



Source: Information compiled based on audited financial statements for fiscal year 2015, or information from rate filings that confirmed the accounting framework used by these entities. Due to data collection constraints, the population could be slightly larger.

This document is strictly confidential and intended solely for the information and use of the Board of Directors and management of the Company and the Comptroller of the Province, and is not intended to be and should not be used, circulated, quoted, or otherwise referred to by anyone other than these specified parties or for any other purpose.

20. The chart above highlights two key points:

    (a) The majority of investor-owned entities have chosen U.S. GAAP over IFRS. A few entities that are not reporting issuers apply Accounting Standards for Private Enterprises. Both U.S. GAAP and Accounting Standards for Private Enterprises permit the recognition of balances arising from rate regulation. Several entities that apply U.S. GAAP have told us this choice was influenced by the need to provide their users with financial statements that accurately reflect the economics of their business. Further, some entities presently using the temporary exemptive relief described in paragraph18 have said they are considering incurring the cost and effort necessary to become a registrant of the U.S. Securities and Exchange Commission in order to have the permanent ability to apply U.S. GAAP. While such a decision could be primarily for business reasons such as the entity expanding its operations into the U.S., it could also be attributed to the continuing uncertainty about the ultimate outcome of the IASB's Rate-regulated Activities project and the approaching expiry date of the securities regulators' exemptive relief.

    (b) Public sector entities that are Government Business Enterprises tend to apply IFRS. The majority of these entities is made up of several large provincially-owned utilities, and many small municipally-owned local distribution utilities that do not issue debt or list in the U.S. stock market, and are not subject to Canadian securities legislation. As a result, they cannot apply U.S. GAAP. As shown in the chart, many of these entities adopted IFRS for the first time after the IASB issued IFRS 14, which allowed them to continue their previous accounting practices for rate-regulated activities.

21. Within the pool of government-owned rate-regulated entities, there are entities that do not meet the characteristics of Government Business Enterprises and are required to apply Public Sector Accounting Standards.

22. The data on the different accounting frameworks in Canada is unique. It demonstrates that when given a choice, rate-regulated entities select an accounting framework that captures the effects of rate regulation on their financial position and financial performance in order to communicate more decision-useful information to users.

http://www.ifrs.org/Meetings/MeetingDocs/ASAF/2016/September/1609-ASAF-03A-Rate-regulated-Activities-Canada.pdf

DRAFT

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Appendix B:

Extract from the "DECISION and ORDER issued by the OEB on March 28, 2013" available on the IFRS website

Proceeding on the Ontario Energy Board's own motion to review the options for and ultimately determine the appropriate allocation and recovery of the Smart Metering Charge pursuant to section 19 of the Ontario Energy Board Act, 1998.

THE BOARD ORDERS THAT:

Effective May 1, 2013, the Smart Metering Entity charge to be levied and collected by the Smart Metering Entity from all Distributors identified in the Board's annual Yearbook of Electricity Distributors shall be $0.788 per month for each Residential and General Service <50kW customers for each distributor. The Smart Metering Entity charge shall be in effect from May 1, 2013 to October 31, 2018. The number of Residential and General Service <50kW customers to which the Smart Metering Entity charge will be applied to shall be in accordance with the methodology set forth in the Settlement Agreement attached as Appendix A.

http://www.ontarioenergyboard.ca/oeb/_Documents/EB-2012-0100/dec_order_IESO-SME_20130328.pdf

DRAFT

This document is strictly confidential and intended solely for the information and use of the Board of Directors and management of the Company and the Comptroller of the Province, and is not intended to be and should not be used, circulated, quoted, or otherwise referred to by anyone other than these specified parties or for any other purpose.

Draft Indemnity letter EY_TBS LSB.pdf

From: Veinot, Cindy (TBS)
To: Picard, Michel
Cc: Hosick, Sarah (TBS)
Subject: Draft Indemnity letter EY_TBS LSB
Date: October 5, 2017 12:34:00 PM
Attachments: Draft Indemnity letter EY_TBS LSB.docx

Hi Michel,

Please see attached. There are a few edits that our legal folks have suggested. Please let me know if you are OK with them and if so, I can send the letter to Blake Langill at EY to confirm that he is also ok with the letter.

Thanks,

Cindy

Draft Indemnity letter EY_TBS LSB_1.pdf

KPMG LLP
Chartered Accountants
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Toronto ON
M5H 2S5

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Private & Confidential

Ms. Cindy Veinot
Treasury Board Secretariat, Office of the Provincial Controller
Frost Building South
7 Queen's Park Crescent East
Toronto, Ontario, M7A 1Y7
Canada

August 29, 2017

Dear Madam:

In connection with the preparation of a technical accounting paper by the Office of the Provincial Controller Division, Treasury Board Secretariat ~~Department~~ (the "OPCD") related to the Fair Hydro Plan, 2017, KPMG LLP ("KPMG") understands that the OPCD has requested that a copy of our Memorandum to File dated July 25, 2017 be provided to their accounting adviser, Ernst and Young LLP ("EY"). In regards to this request, the Independent Electricity System Operator ("the IESO") has asked that we allow EY access to our Memorandum to File prepared in connection with our audit of the 2016 financial statements of the IESO. We have received authorization from IESO management to allow EY such access to our Memorandum prepared in the course of the audit.

Our audit of the 2016 financial statements of the IESO was conducted in accordance with generally accepted auditing standards, the objective of which was to form an opinion on whether the financial statements, which are the responsibility and representations of management of the IESO, present fairly, in all material respects, the financial position and results of operations and cash flows of the IESO in conformity with generally accepted accounting principles. Under those standards, we have the responsibility, within the inherent limitations of the auditing process, to design our audit to provide reasonable assurance of detecting errors and irregularities that are material to the financial statements and to exercise due care in the conduct of our audit. The concept of selective testing of the data being audited, which involves judgment regarding both the number of transactions to be audited and the areas to be tested, has been generally accepted as a valid and sufficient basis for an auditor to express an opinion on financial statements. Thus, our audit, based on the concept of selective testing, is subject to the inherent risk that material errors or irregularities, if they exist, will not be detected. In addition, an audit does not address the possibility that material errors or irregularities may occur in the future. The conduct of an audit requires the application of professional judgment and the assessment of materiality in connection with financial statement assertions.

Our audit of the IESO's 2016 financial statements was not planned or conducted in contemplation of the preparation of a technical accounting paper related to the Fair Hydro Plan and may not be appropriate for your purposes. Items of possible interest to OPCD may not have been specifically addressed.

We have not reported on the IESO's financial statements for any period subsequent to December 31, 2016 and significant events may have occurred since that date. Our Memorandum prepared in connection therewith and our responses to EY's questions, should not be taken to supplant other inquiries

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and procedures that OPCD should undertake for the preparation of the technical accounting paper described above or for any other purpose.

We accept no responsibility whatsoever for any reliance that OPCD, EY or any other person or body may place on the information provided by us.

In consideration of our permitting access to the Memorandum referred to above and for providing explanations relating to it if asked, and to the information contained therein, OPCD (on behalf of itself~~, all parties acting for it in the preparation of the technical accounting paper, all recipients of the technical accounting paper, all connected persons and entities and the accounting adviser EY~~ and all parties for which it is legally responsible - "the OPCD Parties") and EY **[NTD: OPCD/TBS cannot agree to these terms on behalf of independent third parties, including EY. Since KPMG has suggested that EY would sign the letter anyway, we have proposed revisions below whereby EY would agree directly to these terms.]** agree~~s~~ that:

a) such access to our Memorandum and provision of information and explanations is not provided pursuant to any agreement or other arrangements of a contractually binding nature between our firm and any of the OPCD Parties or EY;

b) the OPCD Parties and EY do not acquire any rights against our firm or otherwise as a result of such access or as a result of what our Memorandum contain;

c) our firm, our partners and staff do not have any duties, responsibilities, liabilities, or obligations to the OPCD Parties or to EY as a result of permitting such access or providing such information and explanations;

d) the OPCD Parties and EY will not commence any action, suit or proceeding or make any demand, complaint or claim against us arising out of permitting such access or providing such information and explanation, or for any omission therein unless such action, suit or proceeding arises from our willful misconduct or failure to act in good faith in responding to specific questions raised by Ernst and Young.

OPCD also agrees that except as required by law, the information acquired as a result of the review of our Memorandum will be maintained in confidence and will not be disclosed to any third party (except as otherwise permitted herein) and will be used by it and EY in connection with the preparation of the technical accounting paper described above and that it will show this letter to, and secure the commitment to the provisions of this paragraph by EY.

Please confirm your agreement with the foregoing by signing and dating a copy of this letter and returning it to us.

Yours very truly

Michel Picard
Partner
416) 777 -8414

We are in agreement with the terms of this letter ~~and to the release of the information as described~~ [NTD: it seems that the deleted wording may have been copied over from the letter IESO signed – OPCD is not agreeing to the release of any information].

Office of the Provincial Controller Department of the Province of Ontario

by: _____ _____

Signature: Date:

Name: Ms Cindy Veinot

Title: Treasury Board Secretariat, Office of the Provincial Controller

We acknowledge that we have read the foregoing and agree to be bound by the foregoing agreement in connection with our access to KPMG' Memorandum.

Ernst and Young LLP

by: _____ _____

Signature: Date:

Name:

Title:

Draft Leg -- Compare Doc 3 vs. 4.rtf

From: Veinot, Cindy (TBS) []
To: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; Lee Anne Probert [leeanne.probert@ca.ey.com]; Suzie Gignac [suzie.r.gignac@ca.ey.com]; Blake Langill [blake.w.langill@ca.ey.com]; Graham, Helen (TBS) [Helen.Graham@ontario.ca]; Fung, Felix (TBS) [Felix.Fung@ontario.ca]; Proulx, Didem (TBS) [Didem.Proulx@ontario.ca]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Fenton, Shannon (TBS) [Shannon.Fenton@ontario.ca]
CC: Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]
Subject: Draft Leg -- Compare Doc 3 vs. 4
Date: Wednesday, April 26, 2017 12:45:04
Attachment 1: @

This message has been archived. View the original item
https://ctsbigdcapmvs10.cihs.ad.gov.on.ca/EnterpriseVault/ViewMessage.asp?VaultId=125F1BA62D744314BA6D0E0BA043C1F471110000ctsbigdcapmvs01&SavesetId=201705265832242~20170426164506000~Z~D15559AEBEE75BEB4F21307B33468D01View the original item

I ran a compare docs between versions 3 and 4 – attached is the blackline -- Cindy

Attachments:
Draft Leg -- Compare Doc 3 vs. 4.docx (181 KB)
https://ctsbigdcapmvs10.cihs.ad.gov.on.ca/EnterpriseVault/ViewMessage.asp?VaultId=125F1BA62D744314BA6D0E0BA043C1F471110000ctsbigdcapmvs01&SavesetId=201705265832242~20170426164506000~Z~D15559AEBEE75BEB4F21307B33468D01&AttachmentId=1Draft Leg -- Compare Doc 3 vs. 4.docx

Draft Memo - PS 3070_3420.rtf

From: Lee Anne Probert [leeanne.probert@ca.ey.com]
To: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
CC: Blake Langill [blake.w.langill@ca.ey.com]; Suzie Gignac [suzie.r.gignac@ca.ey.com]
Subject: Draft Memo - PS 3070/3420
Date: Thursday, May 18, 2017 09:42:12
Attachment 1: image001.gif
Attachment 2: Ontario Fair Hydro Plan Act - PS 3070 3420 Memo - Draft 18-May-2017.docx

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Cindy/Nadine,

Attached is a draft memo relating to PS 3070/3420 for your consideration.

Please let me know if you would like to discuss.

Regards,

Lee Anne

LeeAnne Probert | Senior Manager | Assurance Services

Ernst & Young LLP

Ernst & Young Tower, 222 Bay Street, P. O. Box 251, Toronto, ON M5K 1J7, Canada

Office: 416 943 3554 | Cell: 416 888 6997 | leeanne.probert@ca.ey.com

Fax: 416 943 3767 | EY/Comm: 1657762

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image001.pdf

Ontario Fair Hydro Plan Act - PS 3070 3420 Memo - Draft 18-May-2017.pdf

Disclaimer

Ernst & Young LLP (“EY”) prepared the attached Report only for the OPCD. EY did not perform its services on behalf of, or to serve the needs of, any other person or entity. Accordingly, EY expressly disclaims any duties or obligations to any other person or entity based its use of the attached Report. Any other person or entity must perform its own due diligence inquiries and procedures for all purposes, including, but not limited to, satisfying itself as to the financial condition and control environment of the Province or any of the other entities involved, as well as the appropriateness of the accounting for any particular situation addressed by the Report.

EY did not perform an audit, review, examination or other form of attestation (as those terms are defined by the CPA Canada) of the financial statements of the Province or any other entities involved. Accordingly, EY did not express any form of assurance on the accounting matters, financial statements, any financial or other information or internal controls of the Province or any of the other entities involved. EY did not conclude on the appropriate accounting treatment based on specific facts or recommend which accounting policy/treatment the Province or any of the other entities involved should select or adopt.

The observations relating to accounting matters that EY provided to the OPCD were designed to assist them in reaching their own conclusions and do not constitute our concurrence with or support of the accounting or reporting of the Province or the other entities involved. The Province and the other entities involved are each responsible for the preparation of their own financial statements, including all of the judgments inherent in preparing them.

The execution of Ontario's Fair Hydro Plan Act, 2017 (the "Act") contemplates Ontario Power Generation ("OPG") creating a trust entity to purchase from the IESO the right to recover the IESO's funding shortfall.

As documented elsewhere (NOTE – INSERT REFERENCE), it is understood that under the structure of the Act, OPG will be considered under IFRS to control, and therefore, will consolidate the trust under IFRS. The remainder of this document assumes this to be the case.

OPG is considered a government business entity ("GBE") under PS 1300 and, accordingly, is accounted for by the Government using the modified equity method in accordance with GOVERNMENT REPORTING ENTITY, Section PS 1300.35. PSAS requires the financial statements of GBEs to be prepared in accordance with IFRS. Since OPG prepares its consolidated financial statements in accordance with US GAAP, adjustments to conform the statements to IFRS must be made prior to the application of the modified equity method. Accordingly, the remainder of the memo assumes OPG's financial statements are in accordance with IFRS.

Guidance on the application of the modified equity method is contained in INVESTMENTS IN GOVERNMENT BUSINESS ENTERPRISES, Section PS 3070.

PS 3070.05 explains the modified equity method as follows:

> *Under the modified equity method, the equity method of accounting is modified only to the extent that the government business enterprise's accounting principles are not adjusted to conform with those of the government. Thus, the government aggregates a government business enterprise's net assets and net income by adjusting the investment shown in the government's consolidated statement of financial position and by presenting the net income as a separate item on the government's consolidated statement of operations.*

Accordingly, the application of the modified equity method effectively results in OPG's net assets and net income being consolidated in the GRE on a one-line basis, ignoring any differences between PSAS and IFRS.

Since the trust is consolidated into OPG on a line-by-line basis, the net assets and net income of the trust will be included in the GRE through the application of the modified equity method on OPG.

As mentioned above, the trust entity will purchase from the IESO the right to recover the IESO's funding shortfall. This document assumes that the proceeds received from the trust will be equal to the funding shortfall. As documented elsewhere (NOTE – INSERT REFERENCE), it is understood that this acquired right meets the criteria to be recognized as an intangible asset under IFRS in the financial statements of the trust. The remainder of this document assumes this to be the case.

Although FINANCIAL STATEMENT CONCEPTS, Section PS 1000.58 precludes the recognition of intangible assets under PSAS, the application of the modified equity method generally permits the indirect recognition of intangible assets owned by a GBE in the financial statements of the GRE through its investment in the GBE. However, the value of the intangible asset held by the trust that can be recognized in the financial statements of the GRE may be impacted by the following guidance in PS 3070.07 that requires the elimination of any unrealized inter-organizational gains and losses on assets remaining within the GRE at the financial statement date:

The investment in a government business enterprise, as reflected in government financial statements under the modified equity method, includes the cost of the government's investment in the government business enterprise, calculated in accordance with paragraphs PS 3070.10-.11, and, subsequent to the date when the use of the modified equity method first became appropriate, also includes adjustments for:

….

(e) the elimination of any unrealized inter-organizational gains and losses on assets remaining within the government reporting entity at the financial statement date;

Unrealized inter-organizational gains and losses relating to the intangible asset purchased by the trust will exist to the extent that purchase price paid by the trust differs from the carrying value of the asset in the IESO's books immediately prior to the sale. Accordingly, as illustrated below, the conclusion as to whether or not the IESO can recognize regulatory assets will significantly impact the accounting for the execution of the Act in the financial statements of the GRE.

The IESO is an other government organization ("OGO"). OGOs are government units and are consolidated on a line-by-line basis in the financial statements of the GRE in accordance with GOVERNMENT REPORTING ENTITY, Section PS 1300.27. OGOs are required to follow PSAS. Under PSAS, the accounting for inter-entity transactions is governed by INTER-ENTITY TRANSACTIONS, PS 3420. In accordance with PS 3420.09, an inter-entity transaction involving the transfer of assets or liabilities requires the provider to remove the assets or liabilities from its financial statements and any difference between the net proceeds received, if any, and the carrying amounts transferred would be accounted for as a revenue or expense in the statement of operations.

Situation #1 – Recognition of Regulatory Assets by IESO Permitted

The shortfall incurred by IESO is recognized as a regulatory asset is as follows:

IESO		
DR	RRA	100
CR	Cash	-100

The sale to OPG trust of the right to recover the shortfall in the future is as follows:

IESO		
DR	Cash	100
CR	RRA	-100

Trust		
DR	Intangible	100
CR	Cash	-100

Since the IESO did not recognize a gain or loss on the sale transaction, there is no unrealized inter-organizational gain or loss relating to the intangible asset held indirectly by the GRE that needs to be eliminated.

Situation #2 – Recognition of Regulatory Assets by IESO Not Permitted

The shortfall incurred by IESO is expensed as follows:

IESO		
DR	Expense	100
CR	Cash	-100

The sale to OPG trust is as follows:

IESO		
DR	Cash	100
CR	Gain on Sale	-100

Trust		
DR	Intangible	100
CR	Cash	-100

The IESO recognizes a gain on the sale transaction equal to the proceeds received. The value of the intangible asset recognized by the trust is equal to the gain recognized by the IESO. In the preparation of the financial statements of the GRE, the gain recognized by the IESO is eliminated against the GRE's investment in the GBE, bringing the value of the intangible asset recognized indirectly in the investment in the GBE to nil.

GRE		
DR	Gain	100
CR	Investment in GBE	-100

Draft assessment results for your review.rtf

From: Sun, Alicia (TBS) []
To: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
Subject: Draft assessment results for your review
Date: Sunday, May 14, 2017 09:39:56
Attachment 1: Individual Evaluation Booklet RFS-TBS-OTB-OPCD-21 deloitte to AS.doc
Attachment 2: Individual Evaluation Booklet RFS-TBS-OTB-OPCD-21 E & Y to AS.doc
Attachment 3: Individual Evaluation Booklet RFS-TBS-OTB-OPCD-21 KPMG to AS.doc

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Hi Nadine,

Please see attached the draft assessment results for your review.

Thanks,

Alicia

Individual Evaluation Booklet RFS-TBS-OTB-OPCD-21 deloitte to AS.pdf

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Individual Evaluation Booklet
Treasury Board Secretariat

RFS TBS-OTB-OPCD-21

Evaluator (Print Name): **Alicia Sun**	**Signature:**
Full Legal Name of Proponent:	**Deloitte LLP**
Rated Criteria **Experience and Qualifications– 70 points** **Pricing – 30 points**	**Experience and qualifications: 63** **Pricing: 18** **Total: 81**

PROPONENT:

Item	Rated Criteria	Points Available	Points Awarded	This section MUST be filled out by Evaluators with qualitative comments to support All scoring		
				Positive Feedback	Pg. #'s	Improvement Feedback
1	A description of the Vendor's current or past experience with similar projects, with examples of successful outcomes, anticipated challenges, and corresponding mitigation strategies that the Vendor would employ. Understanding of the Deliverables: Providing timely advice and guidance to the management of the Office of Provincial Controller on complex accounting transactions with potential impact on the Provincial Budget or Annual Report of the Province or select policy decisions in support of specific ministry initiatives. Demonstrated experience in assessing and documenting sensitive issues related to the preparation and audit of the Province's consolidated financial statements prepared on a Public Sector Accounting Standards basis, including participation in discussions with the Auditor General on such matters	10	8	The submission demonstrates that the vendor has relevant experience in the Ontario hydro sector, and had provided advisory services to OPCD on recent complex and rare transactions such as Hydro One IPO. The vendor also shows strong technical understanding of IFRS 14 and PSAB requirement for consolidation.	18-19	Experiences in assessing control and working with the auditor general community seem limited.

PROPONENT:

Item	Rated Criteria	Points Available	Points Awarded	This section MUST be filled out by Evaluators with qualitative comments to support All scoring		
				Positive Feedback	Pg. #'s	Improvement Feedback
2 a b c d	Demonstrated related knowledge and experience of the Supplier Experience in assessing policy and reporting implications of complex accounting issues and PSAB accounting for complex financing transactions as related to Ontario's electricity sector. Experience in providing advice in PSAB accounting for government business enterprises, capital investments, joint ventures and private-public partnerships. Experience in providing public and private sector accounting advice on acquisitions and divestments, taking into account IFRS and PSAS-related implications; Strong understanding and demonstrated experience in applying PSAB's criteria of control to assessing government control for government business enterprises.	25	23	Demonstrated knowledge and experience in the hydro sector gained through working with OPCD on past Hydro One related engagements and consolidation of GBEs. Had experience related to P3. Had extensive experience in IFRS	20-29	The experience related control assessment under PSAB seems limited in scope and scale.

PROPONENT:

Item	Rated Criteria	Points Available	Points Awarded	This section MUST be filled out by Evaluators with qualitative comments to support All scoring		
				Positive Feedback	Pg. #'s	Improvement Feedback
3	Qualifications and experience of Vendor personnel to undertake the specified Deliverables	**35**	32	Demonstrated that key project team members have extensive experience in IFRS, PSAB, IPSASB, and US GAAP.	31-42	Key personnel for past key OPCD hydro engagements has left the firm.
a	Public Sector Accounting Board (PSAB) standards for accounting and financial reporting as established by CPA Canada					
b	International Public Sector Accounting Standards Board (IPSASB) standards					
c	International Financial Reporting Standards (IFRS) and other relevant standards, including their application to large public sector organizations.					
d	Experience assessing control of government business enterprises against PSAB criteria of control as related to government business enterprises, especially as related to publicly traded entities					
e	Ability to work within tight deadlines					

PROPONENT:

Item	Rated Criteria	Points Available	Points Awarded	This section MUST be filled out by Evaluators with qualitative comments to support All scoring		
				Positive Feedback	Pg. #'s	Improvement Feedback
	Pricing	**30**	18	Being the highest bid Calculation of points: ($142,553/$232,725)*30 = 18		

Individual Evaluation Booklet RFS-TBS-OTB-OPCD-21 E & Y to AS.pdf

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Individual Evaluation Booklet
Treasury Board Secretariat

RFS TBS-OTB-OPCD-21

Evaluator (Print Name): **Alicia Sun**	**Signature:**
Full Legal Name of Proponent:	**Ernst & Young LLP**
Rated Criteria **Experience and Qualifications– 70 points** **Pricing – 30 points**	**Experience and qualifications: 57** **Pricing: 30** **Total: 87**

PROPONENT:

Item	Rated Criteria	Points Available	Points Awarded	This section MUST be filled out by Evaluators with qualitative comments to support All scoring		
				Positive Feedback	Pg. #'s	Improvement Feedback
1	A description of the Vendor's current or past experience with similar projects, with examples of successful outcomes, anticipated challenges, and corresponding mitigation strategies that the Vendor would employ. Understanding of the Deliverables: Providing timely advice and guidance to the management of the Office of Provincial Controller on complex accounting transactions with potential impact on the Provincial Budget or Annual Report of the Province or select policy decisions in support of specific ministry initiatives. Demonstrated experience in assessing and documenting sensitive issues related to the preparation and audit of the Province's consolidated financial statements prepared on a Public Sector Accounting Standards basis, including participation in discussions with the Auditor General on such matters	**10**	8	• Experienced in similar projects on advisory services on complex accounting issues related to the energy sector • Experienced auditor within the power & utilities sector thus have a good understanding on the sector specific complex accounting issues • Long-standing relationship with the Auditor General of Canada and the Office of the Auditor General of Alberta through providing on-call accounting advice. • Advisory services on reporting differences between USGAAP and IFRS. • Past experience with comptroller office with Government of Canada	6-7	May not fully understand potential impact of complex transactions on the Provincial Budget since relevant experience seems limited. Similar experience on selecting policy decisions in support of specific ministry initiatives are not elaborated.

PROPONENT:

Item	Rated Criteria	Points Available	Points Awarded	This section MUST be filled out by Evaluators with qualitative comments to support All scoring		
				Positive Feedback	Pg. #'s	Improvement Feedback
2 a b c d	Demonstrated related knowledge and experience of the Supplier Experience in assessing policy and reporting implications of complex accounting issues and PSAB accounting for complex financing transactions as related to Ontario's electricity sector. Experience in providing advice in PSAB accounting for government business enterprises, capital investments, joint ventures and private-public partnerships. Experience in providing public and private sector accounting advice on acquisitions and divestments, taking into account IFRS and PSAS-related implications; Strong understanding and demonstrated experience in applying PSAB's criteria of control to assessing government control for government business enterprises.	25	18	Have past engagements in the power and utilities sectors for senior governments. Being the auditor of power and utilities companies would demonstrated that the supplier has related knowledge and experience in the hydro sector.	7	No indication of experience in applying PSAB's criteria of control to assessing government control for government organizations. No indication of experience in P3s.

PROPONENT:

Item	Rated Criteria	Points Available	Points Awarded	This section MUST be filled out by Evaluators with qualitative comments to support All scoring		
				Positive Feedback	Pg. #'s	Improvement Feedback
3 **a** **b** **c** **d** **e**	Qualifications and experience of Vendor personnel to undertake the specified Deliverables Public Sector Accounting Board (PSAB) standards for accounting and financial reporting as established by CPA Canada International Public Sector Accounting Standards Board (IPSASB) standards International Financial Reporting Standards (IFRS) and other relevant standards, including their application to large public sector organizations. Experience assessing control of government business enterprises against PSAB criteria of control as related to government business enterprises, especially as related to publicly traded entities Ability to work within tight deadlines	**35**	31	• The proposed project team collectively have a good mix of qualifications in the areas of PSAB, USGAAP, IFRS, and electricity sector. • Demonstrated that the team members would be able to work within tight deadlines.	16-25	No indication on relevant experience in control assessment related to GBEs. No IPSASB experience. Relevant experience seems limited in scope.

PROPONENT:

Item	Rated Criteria	Points Available	Points Awarded	This section MUST be filled out by Evaluators with qualitative comments to support All scoring		
				Positive Feedback	Pg. #'s	Improvement Feedback
	Pricing	**30**	30	• Lowest bid, thus getting the full points		

Individual Evaluation Booklet RFS-TBS-OTB-OPCD-21 KPMG to AS.pdf

Confidential
Individual Evaluation Booklet
Treasury Board Secretariat

RFS TBS-OTB-OPCD-21

Evaluator (Print Name): **Alicia Sun**	**Signature:**
Full Legal Name of Proponent:	**KPMG**
Rated Criteria **Experience and Qualifications– 70 points** **Pricing – 30 points**	**Experience and qualifications: 69** **Pricing: 24** **Total: 93**

PROPONENT:

Item	Rated Criteria	Points Available	Points Awarded	This section MUST be filled out by Evaluators with qualitative comments to support All scoring		
				Positive Feedback	Pg. #'s	Improvement Feedback
1	A description of the Vendor's current or past experience with similar projects, with examples of successful outcomes, anticipated challenges, and corresponding mitigation strategies that the Vendor would employ. Understanding of the Deliverables: Providing timely advice and guidance to the management of the Office of Provincial Controller on complex accounting transactions with potential impact on the Provincial Budget or Annual Report of the Province or select policy decisions in support of specific ministry initiatives. Demonstrated experience in assessing and documenting sensitive issues related to the preparation and audit of the Province's consolidated financial statements prepared on a Public Sector Accounting Standards basis, including participation in discussions with the Auditor General on such matters	**10**	10	The proposed team has rich knowledge and extensive experience in control assessment and consolidation principles of GBEs under PSAB, conversion of Canadian GAAP/US GAAP to IFRS, especially as applicable to the hydro sector. The vendor also has experience working with the audit community across Canada, notably including Ontario's Auditor General, Government of Canada's Auditor General, and New Brunswick's Auditor General on complex accounting transactions/issues.	2, 10-34	None

PROPONENT:

Item	Rated Criteria	Points Available	Points Awarded	This section MUST be filled out by Evaluators with qualitative comments to support All scoring		
				Positive Feedback	Pg. #'s	Improvement Feedback
2 a b c d	Demonstrated related knowledge and experience of the Supplier Experience in assessing policy and reporting implications of complex accounting issues and PSAB accounting for complex financing transactions as related to Ontario's electricity sector. Experience in providing advice in PSAB accounting for government business enterprises, capital investments, joint ventures and private-public partnerships. Experience in providing public and private sector accounting advice on acquisitions and divestments, taking into account IFRS and PSAS-related implications; Strong understanding and demonstrated experience in applying PSAB's criteria of control to assessing government control for government business enterprises.	25	25	Demonstrated related knowledge and experience with specific current/recent/past projects in the hydro sector across Canada: 2.a, 2b, 2c: • Lead advisor for the Independent Electricity System Operator and the OPCD, with respect to complex accounting and reporting matters regarding transactions being considered for the Ontario Fair Hydro Plan Act 2017. • Accounting advisory services around interpretation, and applications of accounting standards related to Hydro One and OPG and to formulate strategies and arguments on appropriate treatment that reflect provincial financial reporting and financial management	2, 10-34	None

PROPONENT:

Item	Rated Criteria	Points Available	Points Awarded	This section MUST be filled out by Evaluators with qualitative comments to support All scoring		
				Positive Feedback	Pg. #'s	Improvement Feedback
				objective. • Accounting advisory service to determine the impact of Hydro One's IPO on the Province's financial reports, budgets, and appropriations. • Advisor to the Government of Nunavut on various complex accounting and reporting matters for the Iqaluit International Airport Improvement Project (P3 arrangement) • Key advisor to the Ontario Energy Board on their IFRS consultations since 2008 2.d • Control assessment of post-IPO Hydro One as the Province reduced its ownership percentage. • Assessment of control indicators to Atomic Energy of Canada Limited,		

PROPONENT:

Item	Rated Criteria	Points Available	Points Awarded	This section MUST be filled out by Evaluators with qualitative comments to support All scoring		
				Positive Feedback	Pg. #'s	Improvement Feedback
				relationship with a special purpose entity.		
3 **a** **b** **c** **d** **e**	Qualifications and experience of Vendor personnel to undertake the specified Deliverables Public Sector Accounting Board (PSAB) standards for accounting and financial reporting as established by CPA Canada International Public Sector Accounting Standards Board (IPSASB) standards International Financial Reporting Standards (IFRS) and other relevant standards, including their application to large public sector organizations. Experience assessing control of government business enterprises against PSAB criteria of control as related to government business enterprises, especially as related to publicly traded entities	**35**	34	Michel Picard, Senior Consultant/Project Lead • Experience in preparing technical papers and accounting opinion on the application of PSAB standards related to engagement on advisory services related to the Ontario Fair Hydro Plan Act, 2017 • Advisory services around interpretation, and application of IFRS related to Hydro One and OPG • Provided training on the new accounting IFRS 14 *Regulatory Deferral Accounts* • Deep knowledge in accounting for the effect of	42-52	IPSASB experience is limited in scope.

PROPONENT:

Item	Rated Criteria	Points Available	Points Awarded	This section MUST be filled out by Evaluators with qualitative comments to support All scoring		
				Positive Feedback	Pg. #'s	Improvement Feedback
	Ability to work within tight deadlines			rate regulation in the Power and Utilities sector under both IFRS and US GAAP frameworks • Control assessment related to Hydro One under PSAB standards Baily Church, Intermediate Consultant/Senior Analyst • Provided advisory services on divestment of Hydro One • Advisory services on complex accounting matters PSAB and IFRS with respect the restructuring of the nuclear laboratories division for Atomic Energy of Canada Limited • More than 15 years experience in serving or working in the public sector with in-depth understanding of all aspects of financial reporting objectives, and deep experience advising		

PROPONENT:

Item	Rated Criteria	Points Available	Points Awarded	This section MUST be filled out by Evaluators with qualitative comments to support All scoring		
				Positive Feedback	Pg. #'s	Improvement Feedback
				on complex accounting matters under PSAB standards. • Extensive experience in control assessment under PSAB standards as related to GBEs, government restructuring, crown organizations types and reporting for senior governments including Ontario, Saskatchewan, New Brunswick, and the Government of Canada. • Experience and knowledge with IPSASB standards.		
	Pricing	**30**	24	• Calculation: (142,553/175,000)*30=24		

Draft of IESO f_s.pdf

From: Veinot, Cindy (TBS)
To: Kim Marshall; Susan Nicholson
Subject: Draft of IESO f/s
Date: March 14, 2018 1:49:00 PM

Hi Kim and Susan – can you send me a draft of your 2017 f/s – I want to mirror some of the language re: rate regulated accounting in our statements and pre-election report. If you could flip me a copy today, that would be great.

Thanks,

Cindy

Electricity -- Accounting discussion call.rtf

From: Veinot, Cindy (TBS) []
To: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; MAUTI John -FIN & C CTRL [john.mauti@opg.com]; CHENG Alec -FIN & C CTRL [alec.cheng@opg.com]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Picard, Michel [mpicard@kpmg.ca]
CC: Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]
Subject: Electricity -- Accounting discussion call
Date: Sunday, February 26, 2017 15:37:59

Hi all – are folks available for a call later this evening to ensure we're on the same page before tomorrow morning's meeting?

I'm going to suggest 8 pm for 30-45 minutes in the hopes that it doesn't disrupt too many family/friend dinner plans.

I'll get a dial in send out.

Thanks,

Electricity -- Update from 8 pm accounting call.rtf

From: Veinot, Cindy (TBS) []
To: Hughes, Karen (TBS) [Karen.Hughes@ontario.ca]; Angus, Helen (TBS) [Helen.Angus@ontario.ca]
CC: Laughton, Patrick (TBS) [Patrick.Laughton@ontario.ca]; MacIntyre, Kyle (TBS) [Kyle.MacIntyre@ontario.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
Subject: Electricity -- Update from 8 pm accounting call
Date: Sunday, February 26, 2017 22:26:21

Call at 8 included – OPCD (Nadine + me), OFA (Ken K), IESO (Kim Marshall) and KPMG (Michel Picard).

We largely focused on the OEB issue as OPG was not available (planning to speak to them at 9:45 this evening).

Michel and Kim M were at one of the OEB meetings on Friday, but not for the entire meeting. Serge mentioned there were two meetings on Friday. We discussed that tomorrow, it would be best for Steen/Scott Nelms to provide an overview of the meetings with the OEB.

With respect to the accounting implications, we discussed that there is some precedent in Canada for entities applying rate regulated accounting when their own Board acts as the governing body in setting rates. Michel is going to provide the examples he is aware of (NAV Canada, a BC Ferries organization and one other). We need to do some additional due diligence on this, but the idea is whether the IESO Board could act as the governing body.

The wording of the accounting criteria that is at risk is:

(a) The regulated business-type activity's rates for regulated services provided to its customers are established by or are subject to approval by an independent, third-party regulator **or by its own governing board empowered by statute or contract to establish rates that bind customers.**

Because the OEB is not considered independent from an accounting perspective (controlled by the Province), the OEB is viewed as meeting the bolded section above (Nadine – feel free to provide more context). The idea being considered is whether there could be two regulators for IESO – OEB for part of their business and IESO Board

another part of their business. I've asked Kim M to speak to this idea tomorrow morning from an accounting perspective re: IESO.

In an already complex transaction structure, it would be simpler for the OEB to regulate the GA smoothing, so in my view, this idea adds complexity and risk to the structure. In addition, as noted, we need to complete our due diligence on the idea (which folks are working on.)

Cindy

CPA Meeting Prep.rtf

From: Kim Marshall [Kim.Marshall@ieso.ca]
To: Kim Marshall [Kim.Marshall@ieso.ca]; Veinot, Cindy (TBS) []; Jack, Shannon (TBS) []; Picard, Michel []
Subject: CPA Meeting Prep
Date: Monday, November 20, 2017 10:51:48

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From: Kim Marshall [Kim.Marshall@ieso.ca]
To: Picard, Michel [mpicard@kpmg.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
Subject: E&Y - IESO - Accounting for Conservation Costs - Revised DRAFT
Date: Tuesday, February 21, 2017 11:27:30
Attachment 1: image001.gif
Attachment 2: IESO - Accounting for Conservation Costs (Revised DRAFT)_February 17 2017.pdf

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FYI, E&Y added a fair amount of discussion re GASB.

Kimberly Marshall | VP, Corporate Services & CFO

Independent Electricity System Operator (IESO) | T: (416) 969-6232 | C: (416) 545-7202

120 Adelaide Street West, Suite 1600, Toronto, ON M5H 1T1

Web: www.ieso.ca | Twitter: IESO_Tweets | LinkedIn: IESO

Corporate Services collaborates with you to deliver solutions and expertise that enable the IESO to achieve its goals.

Conservation: www.saveONenergy.ca | Twitter: saveONenergyOnt | LinkedIn: saveONenergy

From: Shannon O'Mahony [mailto:shannon.omahony@ca.ey.com]
Sent: February 17, 2017 2:52 PM
To: Phil Bosco; Kim Marshall
Cc: Nadira Singh
Subject: IESO - Accounting for Conservation Costs - Revised DRAFT

*** EXTERNAL email. Please be cautious and evaluate before you click on links, open attachments, or provide credentials. ***

Dear Phil and Kim:

Please find attached a draft version of the revised Report. Please let us know if you have any questions or concerns and then we can finalize the Report (remove the watermark and insert EY signature).

Regards,

S.

--

Shannon O'Mahony | Partner | Financial Accounting Advisory Services

Ernst & Young LLP

222 Bay Street, P.O. Box 251, Toronto, Ontario M5K 1J7, Canada

Office: 416-943-2094 | Cell: 416-884-3422 | shannon.omahony@ca.ey.com

Assistant: Amanda Craig | Phone: 416-943-4581 | amanda.craig@ca.ey.com

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image001.pdf

IESO - Accounting for Conservation Costs (Revised DRAFT)_February 17 2017.pdf

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ey.com

Mr. Phil Bosco
Manager, Technical Services Conservation & Corporate Relations
Independent Electricity System Operator
120 Adelaide Street West, Suite 1600
Toronto ON, M5H 1T1

February 17, 2017

Dear Mr. Bosco:

We have completed our engagement to assist you with understanding the accounting treatment for conservation and demand initiative costs. Our engagement was performed in accordance with our Statement of Work dated January 10, 2017 under our Agreement during the period January 13 to February 17, 2017. You requested that we amend the original Report to include consideration of the application of the US Governmental Accounting Standards Board guidance. This Report replaces the previously issued report dated January 19, 2017.

Results of our work

Based on our procedures performed during the period January 13 to February 17, 2017, we prepared the attached Report for your use. Management of the Company reviewed these documents for completeness, accuracy and reasonableness. Decisions regarding the Company's application of CPA Public Sector Accounting Standards ("PSAS") were made solely by the Company's management.

Background

Under the Statement of Work, our scope of services was to assist you with understanding the accounting for conservation incentive costs. The Ministry of Energy is currently exploring a potential financing arrangement for conservation and demand management ("CDM") initiative programs that would see the IESO borrow funds from the Ontario Financing Authority ("OFA") to fund eligible CDM costs.

Scope of our work

In connection with our engagement, we held discussions with and made inquiries of the IESO's personnel. We also obtained and read the Company's financial statements, certain limited accounting records, and certain computations prepared by the IESO.

The procedures performed by us is included in our Statement of Work. There were no differences between the procedures set forth in this Report and those set forth in our Statement of Work.

Our work was performed under the direction of yourself and was based on inquiries of, and discussions with, you. We have not sought to confirm the accuracy of the data or the information and explanations provided by management.

We did not provide a professional opinion on the application of accounting principles pursuant to Chartered Professional Accountants of Canada ("CPA Canada") or the AICPA's Standards for Reports on the Application of Accounting Principles (as amended and interpreted).

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The procedures that we performed were advisory in nature and do not constitute an audit or review in accordance with CPA Canada, PCAOB or AICPA auditing or attestation standards, nor do they constitute an examination of prospective financial statements in accordance with standards established by the American Institute of Certified Public Accountants. Additionally, the procedures do not address the effectiveness of internal controls over financial reporting under National Instrument 52-109 issued by the Canadian Securities Administrators or Section 404 of the Sarbanes-Oxley Act. Accordingly, we express no opinion or any other form of assurance on the historical or prospective financial statements, management representations or other data of the Company included in or underlying the accompanying information. While we believe the information obtained is substantially responsive to your request, we are not in a position to assess its sufficiency for your purposes. In addition, we have no responsibility to update the Report for events or circumstances occurring after the date of the Report.

Our work has been limited in scope and time, and more detailed procedures may reveal issues that this engagement has not.

Restrictions on the use of our Report

This Report is intended solely for the information and use of the management of the IESO, and is not intended to be and should not be used by anyone other than these specified parties. EY therefore assumes no responsibility to any user of the Report other than IESO. Any other persons who choose to rely on our Report do so entirely at their own risk.

We appreciate the cooperation and assistance provided to us during the course of our work. If you have any questions, please call Nadira Singh at (416) 943-3896 or me at (416) 943-2094.

Sincerely,

[Signature will be inserted when report is final]

Shannon O'Mahony, CPA, CA
Partner

DRAFT

IESO – Accounting for Conservation Costs

i. Background

The Independent Electricity System Operator ("IESO") is in the process of evaluating the accounting implications of a potential change to the recovery method of conservation costs.

The IESO is a non-profit entity, owned by the government of Ontario, and is governed by the Ministry of Energy ("Minister") and operates pursuant to a license granted by the Ontario Energy Board ("OEB"). As part of the IESO's operations, it is required to submit its proposed expenditures, revenue requirements and fees for the coming year to the OEB for review and approval. The submission may be made only with the approval of the IESO business plan by the Ministry of Energy.

As part of the IESO's operations, it facilitates conservation and demand management ("CDM") initiatives in Ontario, whereby local distribution companies ("LDC") incur expenditures in accordance with the CDM guidelines prescribed by the IESO. The IESO then reimburses the LDCs on a dollar-for-dollar basis. Currently, the IESO is reimbursed through the global adjustment mechanism in the fiscal year in which the expenditure is incurred as outlined in Ontario regulation 429/04 Adjustments under the Act and as provided by the Minister per the directive dated March 31, 2014, *2015-2020 Conservation First Framework.* The IESO receives this reimbursement from the LDCs who collect the global adjustments directly from ratepayers. The calculation of the global adjustment is the difference between the Hourly Ontario Electricity Price ("HOEP") and:

- Ontario Power Generation's regulated nuclear and hydro generation;
- IESO (including former Ontario Power Authority) contracts with generators and suppliers of conservation;
- Contracted rates administered by the Ontario Electricity Financial Corporation paid to existing generators.

The Ministry of Energy has granted authority to the IESO to collect the CDM incentive costs as part of the global adjustment.

The Ministry of Energy is currently exploring a potential financing arrangement for CDM programs that would see the IESO borrow funds from the Ontario Financing Authority ("OFA") to fund eligible CDM costs. This loan would be recognized as a financial liability by IESO. The CDM costs would then be recovered through the global adjustment over an extended period of time. The accounting alternatives for the underlying CDM costs and the loan interest in accordance with Public Sector Accounting Standards is discussed herein.

ii. Accounting guidance

Presently, the IESO accounts for CDM costs as an asset at the time an invoice is received from the entity that has incurred the CDM expenditure eligible for reimbursement (e.g. DR Asset; CR Accounts Payable to the LDC). At the end of each month, the IESO takes the sum of the amounts requested for reimbursement and includes this sum in its submission in the calculation of the total global adjustment for the month. Once the global adjustment is calculated by the IESO, the amount is charged to customers by the LDCs (on the IESO's behalf) and the IESO receives the funds in the subsequent month.

To address the accounting considerations of the inclusion of the CDM costs in the global adjustment over an extended recovery period (that will be determined by the Minister), the IESO must consider the guidance prescribed by the CPA Public Sector Accounting Standards ("PSAS"). PSAS does not provide specific

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guidance to address the accounting for assets that will be recovered through rates from various customers over future years

In the absence of PSAS that specifically applies to a transaction, professional judgement is required to apply an appropriate accounting policy that is consistent with primary sources and financial statement concepts of PSAS. Other accounting pronouncements may be useful but are not required to be consulted as noted in paragraphs 18 to 22 of PS 1150 *Generally accepted accounting principles* which addresses other sources that may be referenced:

> *.19 Pronouncements issued by other bodies authorized to issue accounting standards may be useful sources to consult. For example, accounting pronouncements published with the authority of the Canadian Accounting Standards Board (AcSB), International Accounting Standards Board (IASB), US Federal Accounting Standards Advisory Board (FASAB), US Governmental Accounting Standards Board (GASB), or International Public Sector Accounting Standards Board (IPSASB) are often important sources to consult on matters not covered by primary sources of GAAP or for assistance in applying a primary source of GAAP to specific circumstances.*
>
> *.20 When a public sector reporting entity chooses to consult a source described in paragraph PS 1150.19, it applies professional judgment and evaluates the source in the context of the relative manner in which the standard setter requires its pronouncements to be applied, as well as in the context of the related pronouncement. When an accounting standard setter does not have a conceptual framework that is similar to the concepts referred to in paragraph PS 1150.05(b), the public sector reporting entity needs to ensure that the selected source is consistent with those concepts.*

Consequently, to evaluate the accounting considerations of the accounting for CDM costs being evaluated by the IESO, other sources of GAAP may be considered. The following sources of GAAP were reviewed to determine whether specific guidance was provided addressing the recognition of assets related to regulatory activities:

1) Accounting Standards for Private Enterprises (“ASPE”) as issued by the Canadian Accounting Standards Board (“AcSB”)/ CPA provides the following guidance:

   AcG 19 *Disclosures by entities subject to rate regulation* provides guidance related to the presentation of financial information related to entities with rate regulated activities *when a separate asset or liability has been recognized solely as a result of the effects of rate regulation (AcG 19* paragraph 7(c)).

2) The guidance issued by the US Governmental Accounting Standards Board (“US GASB”) addresses accounting for regulated operations in GASB S62—*Codification of Accounting and Financial Reporting Guidance Contained in Pre-November 30, 1989 FASB and AICPA* Pronouncements. The GASB S62 standard provides clear guidance that regulatory assets may be recognized to the extent certain criteria are met.

3) US GAAP, as issued by the Financial Accounting Standards Board (“FASB”) does provide guidance to address such activities in ASC 980 *Regulated Operations,* addresses the recognition of regulatory assets.

4) IFRS as issued by the IASB no longer precludes the recognition of regulatory assets and liabilities a rate-regulated entity’s financial statements. Rather, the IASB issued a standard, IFRS 14 *Regulatory deferral accounts*, which provides the following relevant guidance:

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Paragraph 2(a) of IFRS 14 notes that the objective of the Standard was to:

> *limit changes to the accounting policies that were applied in accordance with previous generally accepted accounting principles (previous GAAP) for regulatory deferral account balances, which are primarily related to the presentation of these accounts;*

Additionally, paragraph 10 of IFRS 14 notes:

> *Paragraphs 11–12 of IAS 8 specify sources of requirements and guidance that management is required or permitted to consider in developing an accounting policy for an item, if no relevant Standard applies specifically to that item. This Standard exempts an entity from applying paragraph 11 of IAS 8 to its accounting policies for the recognition, measurement, impairment and derecognition of regulatory deferral account balances. Consequently, entities that recognise regulatory deferral account balances, either as separate items or as part of the carrying value of other assets and liabilities, in accordance with their previous GAAP, are permitted to continue to recognise those balances in accordance with this Standard through the exemption from paragraph 11 of IAS 8, subject to any presentation changes required by paragraphs 18–19 of this Standard.*

This IFRS was issued in response to North American entities potentially transitioning to IFRS, because there was a lack of guidance that permitted the continued separate accounting treatment for regulatory assets and liabilities recognized as a result of rate regulated activities. The guidance above, permits rate-regulated entities upon first-time adoption of IFRS to continue to recognize regulatory assets and liabilities in accordance with the framework that was applied previously (i.e. generally, entities recognized assets in accordance with the guidance of ASC 980 (US entities) or AcG 19 (Canadian entities)).

Given the above-noted guidance, an entity can look to the other accounting frameworks while also ensuring that when judgment is applied, the resulting accounting policy is not inconsistent with the accounting guidance of PSAS. For this reason, the evaluation of accounting considerations in the development of the proposed accounting treatment for the recovery of CDM costs, is considered in the following order:

1) Can an asset be recognized in accordance with PS 1000 *Financial statement concepts* as prescribed by PSAS?

2) Can the IESO reference the guidance of other accounting frameworks to support the recognition of the reimbursement of CDM costs as an asset?

3) Failing the above, is the most appropriate accounting treatment to recognize the reimbursement of CDM costs as an expense of the current period and simply recognize revenue in future periods when the cost is recovered?

1. Qualification of reimbursement of CDM costs as an asset in accordance with PSAS:

Although PSAS does not specifically address the recognition of costs incurred that will be recovered through regulatory operations in future periods, this does not result in the conclusion that such costs cannot be recognized as an asset. In particular, paragraph 5 of PS 1150 notes:

> *.05 When the primary sources of GAAP do not deal with the accounting and reporting in financial statements of transactions or events encountered by the public sector reporting entity, or*

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additional guidance is needed to apply a primary source to specific circumstances, the selection of an appropriate accounting policy requires the exercise of professional judgment. In these circumstances, a public sector reporting entity should adopt accounting policies and disclosures that are consistent with:

(a) the primary sources of GAAP; and

(b) the application of the concepts described in FINANCIAL STATEMENT CONCEPTS, Section PS 1000.

In this case, the IESO would consider whether an asset could be supported by the guidance noted in PS 1000 *Financial statement concepts*, as follows:

Recognition of an asset

Paragraphs 35-37:

.35 Assets are economic resources controlled by a government as a result of past transactions or events and from which future economic benefits are expected to be obtained.

.36 Assets have three essential characteristics:

a) they embody future economic benefits that involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows, or to reduce cash outflows;

b) the public sector entity can control the economic resource and access to the future economic benefits; and

c) the transaction or event giving rise to the public sector entity's control has already occurred. [Former paragraph PS 1000.36 retained in Archived Pronouncements.]

.37 An item is not an asset of a government if it lacks one or more of the essential characteristics listed in the preceding paragraph. Thus, for example, an item does not qualify as an asset of a government if the item involves:

(a) no future economic benefit;

(b) future economic benefit, but the government cannot obtain it; or

(c) future economic benefit that the government may obtain, but the events or circumstances that give the government control of the benefit have not yet occurred.

In evaluating the costs incurred by the IESO to reimburse the LDCs, an argument could be made to support the recognition of the costs as an asset as the costs meet the three essential characteristics prescribed by PS 1000. Particularly:

- ***Future economic benefits*** – the CDM costs incurred by the IESO are made to reimburse eligible expenditures from market participants or third-party delivery agents (e.g. an LDC). The IESO can expect to generate future economic benefits from the reimbursement of these expenditures because: a) it has a license with the OEB to operate as a system operator and recover reasonable costs incurred (as noted below) and b) it is mandated by the Minister to charge ratepayers the global adjustment, which results in future cash inflows to recover the reimbursed costs.

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Paragraph 13 of PS 3210 *Assets* notes:

.13 *The future economic benefits embodied in an asset may also be in the form of generating future cash inflows. Cash inflows benefit the public sector entity because cash can be used to purchase or to provide goods and services, redistribute wealth or settle liabilities. Benefits in the form of cash inflows relate to resources, such as loans receivable, inventory for resale and portfolio investments. Also, some public sector resources generate cash inflows because they have user fees associated with them.*

The global adjustment that is charged to ratepayers and calculated by the IESO is not subject to the review or approval of the Ontario Electricity Board ("OEB"). Accordingly, there is limited risk with respect to the IESO's ability to recover the reimbursement costs incurred – even if the costs are recovered over an extended period of time, as the OEB does not have the ability to reject the recovery of these costs. While risk is limited, the recovery of the CDM expenditures reimbursed by the IESO is dependent on future transactions with electricity customers.

Also, while not specifically governed by the OEB, the IESO's license with the OEB provides that reasonable costs of its activities will be recovered:

> 13 *Fees and Charges*
>
> 13.1 *The Licensee may impose fees and charges to recover the cost of its activities in accordance with an order of the Board, or as permitted by law.*
>
> 14 *Books of Accounts and Financial Reporting*
>
> 14.3 *Unless otherwise provided by law, the Licensee shall, no less than 60 days before the beginning of the Licensee's fiscal year submit the Licensee's proposed expenditure and revenue requirements for the following fiscal year and the fees it proposes to charge during that year to the Board for review and approval. The Licensee's submission shall include a copy of the Licensee's annual business plan for the fiscal year as approved by the Minister under section 24 of the Electricity Act.*

Through its mandate from the Ministry of Energy, which provides the IESO with the right to recover costs, in combination with the IESO's license with the OEB, to the extent that CDM costs are incurred (past transaction) in accordance with the IESO's mandate from the Ministry of Energy, these cash inflows (and thus, future economic benefits) are expected to be recovered.

- ***Public sector entity control's economic resource and access to economic benefits*** – The IESO controls access to the future cash inflows that are generated from the incurrence of the CDM expenditures, as it is the IESO who has the mandate from the Ministry of Energy to incur these CDM costs and it is also the IESO who has the directive from this Minister to recover the CDM costs through the global adjustment mechanism charged to rate payers. Specifically, the Electricity Act 1998 notes the following:

> ***Electricity pricing to reflect costs***
>
> ***IESO to make adjustments***
>
> *25.33 (1) The IESO shall, through its billing and settlement systems, make adjustments in accordance with the regulations that ensure that, over time, payments by classes of market participants in Ontario that are prescribed by regulation reflect,*
>
> *a. amounts paid to generators, the Financial Corporation and distributors, whether the amounts are determined under the market rules or under section 78.1, 78.2 or 78.5 of the Ontario Energy Board Act, 1998; and*

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b. *amounts paid to entities with whom the IESO has a procurement contract, as determined under the procurement contract. 2014, c. 7, Sched. 7, s. 8 (1).*

Paragraph 16 of PS 3210 provides additional guidance regarding control of an economic resource and access to future economic benefits, which notes that the public entity:

a) *Can benefit from the economic resource through its capacity to provide goods and services, to provide future cash inflows or to reduce cash outflows;*

b) *Can deny or regulate access to those benefits by others; and*

c) *Is exposed to the risks associated with the economic resource.*

As outlined previously, the IESO has control over the economic resource, as it is the sole entity that is entitled to the cash inflows from ratepayers[1]. Furthermore, while risk is limited, the IESO is exposed to the risk associated with the economic resource – as the Ministry of Energy could change their directive or calculation of the global adjustment, or there could be a change in the economic environment (as discussed above) and thus, alter the ability of the IESO to recover the costs.

- ***Transaction or event giving rise to public sector entity's control has already occurred*** – When evaluating whether a transaction or event gives rise to control, paragraphs 26 and 27 of PS 3210 provides helpful guidance:

  The past transaction or event that gives rise to control of an economic resource resulting from exchange agreements or contracts usually occurs at the point of exchange. This arises when substantially all the benefits and risks of ownership have been transferred to the public sector entity and normally coincides with the disbursement of funds, exchange of other assets or assumption of liabilities.

  Meeting the eligibility criteria under an authorized transfer often determines the past transaction or event giving rise to control of an economic resource in non-exchange contracts or agreements. Shared cost agreements (reimbursement arrangements) are an example where the control of an economic resource arises when the recipient incurs eligible expenditures.

  Consistent with the guidance in paragraph 26, control over the economic benefits of the IESO's reimbursement via the global adjustment mechanism from the LDC occurs once the IESO has distributed funds to the LDC. At this point in time, the IESO has incurred a cash outflow for which it is entitled to recover through the global adjustment as prescribed by the Ministry of Energy and the Electricity Act 1998.

Based on the characteristics, as prescribed by PS 1000 and the additional guidance of PS 3210, the cash outflows disbursed by the IESO to reimburse CDM costs to LDCs could meet the definition of an asset in PS 1000.

In accordance with the principles of PSAS, there are generally two types of assets that the IESO may consider recognizing 1) financial asset; or 2) non-financial asset. To classify the asset, it must fall into one of the two categories.

[1] Although the administrative framework provides that LDCs invoice the global adjustment to ratepayers on the IESO's behalf, the IESO has sole entitlement to the cash inflows that result from the global adjustment. All global adjustment amounts collected by LDCs are required to be submitted to the IESO.

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Financial asset

.39 ***Financial assets*** *are assets that could be used to discharge existing liabilities or finance future operations and are not for consumption in the normal course of operations.*

.40 *A financial asset is any asset that is:*

a) *cash;*

b) *a realizable asset that is convertible to cash;*

c) *a contractual right to receive cash or another financial asset from another party;*

d) *a contractual right to exchange financial instruments with another party under conditions that are potentially favourable to the government;*

e) *an equity instrument of another entity;*

f) *an investment in a government business enterprise or government business partnership;*

g) *a financial claim on an outside organization or individual; or*

h) *an inventory or item for sale that meets the criteria in FINANCIAL STATEMENT PRESENTATION, paragraph PS 1201.055.*

Based on the guidance of PS 1000, paragraphs 39 and 40, it may be difficult to substantiate the IESO's reimbursement of costs is a financial asset. The costs incurred by the IESO creates a right to recover costs as mandated by the Ministry of Energy. However, there is no contract with a specific ratepayer who ultimately reimburses the IESO for the costs incurred if the IESO calculates the global adjustment (i.e. its recovery mechanism) and this amount is then disbursed to all ratepayers in Ontario (regardless of whether an individual ratepayer benefited from the cost incurred). Furthermore, to the extent that a current ratepayer moves outside of Ontario, it could in fact result in a new ratepayer having to incur the additional charge to permit the IESO to recover its costs. It is difficult to argue that there is a contractual right to receive cash from another party, because legislation and the regulatory framework result in the right to future cash inflows from a pool of ratepayers.

An alternative view may be that the LDCs represent the counterparty to the IESO whereby the LDC is responsible for paying the IESO the global adjustment whether or not payment is ultimately received from the ratepayer. In this circumstance, the IESO can argue that a financial asset should be recognized for its contractual right to receive cash is from each specific LDC. An assessment of who is obligated for the global adjustment (e.g. an assessment of whether the LDC is the agent facilitating cash collection or is the entity obligated to pay the amount) would need to support this alternative.

Non-Financial asset

.41 *Non-financial assets include tangible capital assets, and other assets such as prepaid expenses and inventories of supplies.*

.42 *Non-financial assets are acquired, constructed or developed assets that do not normally provide resources to discharge existing liabilities, but instead:*

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(a) are normally employed to deliver government services;

(b) may be consumed in the normal course of operations; and

(c) are not for sale in the normal course of operations.

Another accounting treatment could be a 'non-financial asset' in accordance with paragraphs 41 and 42 of PS 1000. This accounting treatment may be supportable under the PSAS guidance as an 'other asset'. The reimbursement of CDM costs, results in the incurrence of an upfront cost in which the entity will benefit from economic benefits over a period of time.

Subsequent measurement of a non-financial asset

To the extent that the recognition of an asset is supported under the framework discussed above, the entity would then be required to draw the asset down over the recovery period (i.e. as cash is collected from ratepayers through the global adjustment mechanism). The presentation of the 'draw' down of the asset is dependent upon the IESO's accounting for the global adjustment. To the extent that funds received from the global adjustment are recognized in revenue rather than to directly reduce the asset then the IESO might consider recognizing the draw-down of the asset as a reduction in revenues. Nonetheless, depending on the IESO's view of its role (i.e. principal versus agent) or its view of the nature of costs incurred, an alternative accounting treatment may result. For instance, if the IESO is an agent, then it may reduce the asset balance directly for those amounts collected by way of the global adjustment rather than recording two separate entries for the recognition of revenue (i.e. global adjustment) and reduction of revenue (i.e. over the recovery period). At this time, the IESO has not completed a principal versus agency assessment.

Demonstrating that the CDM costs will meet the definition of a financial or non-financial asset is challenging and the IESO may not be able to support either view and should consider if referencing another accounting framework to inform an accounting policy for these costs may be required as discussed below.

2. Reference to other accounting frameworks:

As previously noted above, other accounting frameworks as issued by the AcSB, GASB, FASB and IASB provide accounting guidance related to the recognition of expenditures as an asset due to rate regulated operations. When referencing the other frameworks, it is important that the costs qualify as an asset under the framework set forth by PSAS to ensure that the principles of PSAS are not violated, and only then can reference to other frameworks be made to record the reimbursement of costs as an asset.

As the IASB and AcSB do not provide detailed guidance, the IESO could explore whether the costs incurred meet the specific criteria established by GASB S62 as note below; however consideration will need to be given to the consistent application of an accounting policy to all similar existing rate regulated assets and whether an established accounting policy is already in place that would require criteria to be met to change this policy:

476. Paragraphs 476–500 may be applied to activities reported in business-type activities that have regulated operations that meet all of the following criteria:

a. The regulated business-type activity's rates for regulated services provided to its customers are established by or are subject to approval by an independent, third-party regulator or by its own governing board empowered by statute or contract to establish rates that bind customers.

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b. The regulated rates are designed to recover the specific regulated business-type activity's costs of providing the regulated services.

c. In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume that rates set at levels that will recover the regulated business-type activity's costs can be charged to and collected from customers. This criterion requires consideration of anticipated changes in levels of demand or competition during the recovery period for any capitalized costs.

To the extent that the criteria of paragraph 476 of GASB S62 are met, paragraph 480 then provides the following guidance:

480. Rate actions of a regulator can provide a business-type activity with reasonable assurance of the existence of an asset. A regulated business-type activity should capitalize all or part of an incurred cost that otherwise would be charged to expense if both of the following criteria are met:

a. It is probable that future revenue in an amount at least equal to the capitalized cost will result from inclusion of that cost in allowable costs for rate-making purposes.

b. Based on available evidence, the future revenue will be provided to permit recovery of the previously incurred cost rather than to provide for expected levels of similar future costs. If the revenue will be provided through an automatic rate-adjustment clause, this criterion requires that the regulator's intent clearly be to permit recovery of the previously incurred cost.

By referencing the guidance of GASB S62, the IESO must first establish that it meets the criteria of paragraph 476. In doing so, the IESO should consider:

a. Established rates for regulated services (GASB S62.474 (a)) - The IESO's business activity rates are regulated services subject to approval. In this particular instance, the IESO's CDM expenditures are governed by legislation, Electricity Act 1998 as noted above, and by its own governing board, being, the Ministry of Energy. The Ministry of Energy has established the calculation of the global adjustment mechanism[2], which in turn, is charged to the ultimate customer who consumes the energy.

b. Regulated rates are designed to recover specific costs (GASB S62.474 (b)) - One element of the global adjustment mechanism is designed to recover the CDM expenditures that the IESO reimburses to the respective LDCs. As the IESO's regulated business activities support the LDCs delivery of energy to customers, these costs form an integral part of the IESO's regulated services to support the transmission and distribution of energy in Ontario.

c. Demand for regulated activities results in reasonable assumption that established rates will be collected and will recover cost of activities (GASB S62.474(c)) - Given that the structure of the IESO is a not-for-profit entity governed by the Electricity Act of 1998 and regulated by the Ontario Energy Board to support the transmission and distribution of energy to customers in Ontario, rates approved to be charged to customers are designed to recover the IESO's costs. Since the reimbursement of CDM expenditures is a program initiated and mandated by the Ministry of Energy, an entity that also controls the Ontario Energy Board, the IESO would need to examine and support whether the CDM expenditures will be recovered through cash inflows from customers through the global adjustment mechanism. For example, the historic demand and dependency and projected demand for electricity could be used to support a judgment or assertion by the IESO that there is no significant risk that future demand levels decline and diminish to the extent that IESO would not be able to recover the reimbursement of CDM expenditures through rates (i.e. global adjustment mechanism).

[2] Section 1.7 of the directive from the Ministry of Energy dated March 31, 2014 titled *2015-2020 Conservation First Framework* provides that the Ontario Power Authority (now merged into the IESO) may "*recover payments made under the Province-Wide Distributor CDM Programs and Local Distributor CDM Programs from the Global Adjustment Mechanism up to the budget established…"*

If the IESO can demonstrate that CDM expenditures meet the criteria as noted above, the fact pattern may support recognition of a regulatory asset in accordance with paragraph 480 of GASB S62. The IESO could consider:

a. Probability of future revenues (GASB S62.480 (a)) - The global adjustment mechanism explicitly includes recovery of the CDM expenditures. The directive from the Ministry of Energy could support the IESO's assertion that it is at least probable that future revenue will be generated in an amount at least equal to the capitalized cost related to the CDM expenditures. The IESO will need to assess if the global adjustment is considered future revenue (i.e. as part of the analysis of principal versus agent).

b. Recovery of previously incurred costs (GASB S62.480 (b)) - The IESO recovers the CDM expenditures through the global adjustment mechanism. The calculation of the portion of the global adjustment mechanism that relates to the CDM expenditures is determined by the amount that the IESO has approved to reimburse the LDC (e.g. the LDC requests reimbursement for costs it has *incurred* related to the CDM Requirement[3] and if all criteria are met, the IESO then approves the costs for reimbursement). For this reason, there is evidence that the future revenue earned from the global adjustment mechanism permits the recovery of previously incurred costs (i.e. not future costs).

Using the GASB S62 accounting guidance, and the related considerations noted above, the IESO may be able to reference GASB S62 to support the recognition of CDM expenditures as an asset by way of the GAAP hierarchy prescribed by PS 1150, paragraph 19, which explicitly references GASB as a secondary source of GAAP in the event that PSAS does not address a particular transaction. However, the IESO would also need to consider whether it is appropriate to refer to the GASB. First, consideration should be given to whether the GASB accounting guidance to capitalize rate regulated assets is consistent with the primary sources and financial statement concepts of PSAS. This may be challenging as it was noted in a paper prepared by the PSAB Conceptual Task Force *Consultation Paper 2: Measuring Financial Performance in Public Sector Financial Statements,* that the existing model in the PSA Handbook takes predominately an asset and liability view whereas standards set by the GASB is a financial statement presentation model based on a revenue and expense view. That said, the definition of an asset is similar under both the PSAS and GASB standards (GASB Concepts Statement 4[4]) and because rate regulated assets are not classified as deferred outflows of resources (GASB S65) but rather assets, it may be possible to use the GAAP hierarchy to refer to GASB to formulate an accounting policy. GASB S65 *Items Previously Recognized as Assets and Liabilities* was applicable for periods beginning after December 15, 2012. In paragraph 48 of GASB S65, rate regulated assets retained the definition of an asset and these assets were not required to be reclassified as a deferred outflow which is defined as the consumption of net assets by the government that is applicable to a future period. Secondly, any existing policy that the IESO currently applies to any other assets that could be considered rate regulated assets would require an evaluation of whether an accounting policy change from expensing to one that capitalizes rate regulated assets meets the criteria that the new accounting policy results in a more appropriate presentation of events or transactions in the IESO's financial statements (PS 2120, paragraph 2).

An alternative view is that it is inappropriate to reference GASB S62 because GASB has provided a special accommodation to permit the capitalization of rate regulated assets when they would otherwise be expensed. If an entity that applies PSAS, determines that the definition of an asset under PS 1000 is not met then for the IESO to use a special accommodation in another framework to avoid expensing the CDM costs would not be appropriate.

[3] The Ministry of Energy issued a CDM Directive as per its letter re: 2015-2020 Conservation First Framework, which instructed the Ontario Energy Board to amend the license of each licensed electricity distributor to add a condition that specifies the distributor would make CDM programs available to customers in its licensed area. The CDM programs are required to achieve reductions in electricity consumption. As part of this, the distributor is required to make province-wide CDM programs, funded by the OPA (now the IESO) available to all customers in its licensed service area.

[4] GASB Concepts Statement 4, paragraph 8, defines assets as '*resources with present service capacity that the government presently controls*.'

If the IESO does adopt an accounting policy to capitalize the CDM costs there are examples of entities that capitalize similar rate regulated assets that prepare their financial statements in accordance with GASB in the United States. For instance, the Long Island Power Authority ("LIPA") is an organization that is responsible for supplying electricity to customers within a specified service area. LIPA recognizes regulatory assets on its statement of net position in accordance with the guidance of GASB S62.

The FASB also includes accounting guidance related to the accounting for regulated activities in ASC 980-340-25-1 as follows:

> *Rate actions of a regulator can provide reasonable assurance of the existence of an asset. An entity shall capitalize all or part of an incurred cost that would otherwise be charged to expense if both of the following criteria are met:*
>
> *a) It is probable (as defined in Topic 450) that future revenue in an amount at least equal to the capitalized cost will result from inclusion of that cost in allowable costs for rate-making purposes.*
>
> *b) Based on available evidence, the future revenue will be provided to permit recovery of the previously incurred cost rather than to provide for expected levels of similar future costs. If the revenue will be provided through an automatic rate-adjustment clause, this criterion requires that the regulator's intent clearly be to permit recovery of the previously incurred cost.*
>
> *A cost that does not meet these asset recognition criteria at the date the cost is incurred shall be recognized as a regulatory asset when it does meet those criteria at a later date.*

The guidance provided by US GAAP notes that to the extent that a regulator provides reasonable assurance of the existence of an asset, then the entity should capitalize the incurred cost that would have otherwise been expensed. In this case, the Ministry of Energy has provided that the IESO will be able to recover its costs through the global adjustment mechanism[5]. As a result, the IESO can support meeting criterion a) of 980-340-25-1 that it is probable that future revenue will equal the cost capitalized as the IESO will include those reimbursed CDM costs in its calculation of the global adjustment charged to rate payers. Furthermore, the IESO can support criterion b) is met, because the future recovery relates only to those costs paid by the IESO to reimburse eligible CDM costs.

To further support this accounting position, there are system operators (i.e. similar to the IESO) in the United States who recognize regulatory assets. As an example, ISO New England Inc., a not-for-profit organization that regulates the flow of transactions in accordance with the Federal Energy Regulatory Commission ("FERC") recognizes regulatory assets for those costs incurred subject to rate recovery mechanisms. The ISO New England Inc. operates in a very similar manner to the IESO, in that both organizations are government regulated, system operators who manage the flow of electricity transactions and are not-for-profit. While ISO New England Inc. prepares its financial statements in accordance with US GAAP, rather than GASB, ISO New England Inc.'s treatment of regulatory items is indicative that the capitalization of expenditures related to regulated activities is not an unreasonable treatment for entities of this nature.

As the application of the hierarchy is a choice and not a requirement, another entity with the same fact pattern could account for the recovery of CDM expenditures differently.

Subsequent measurement of asset

To the extent that the recognition of an asset is supported under one of the frameworks discussed above, the entity would then draw the asset down over the recovery period (i.e. as cash is collected from ratepayers

[5] Section 1.7 of the directive from the Ministry of Energy dated March 31, 2014 titled *2015-2020 Conservation First Framework* provides that the Ontario Power Authority (now merged into the IESO) may "*recover payments made under the Province-Wide Distributor CDM Programs and Local Distributor CDM Programs from the Global Adjustment Mechanism up to the budget established…"*

DRAFT

through the global adjustment mechanism). The presentation of the draw down of the asset is dependent upon the IESO's accounting for the global adjustment. To the extent that funds received from the global adjustment are recognized in revenue then the IESO might consider recognizing the recovery of the asset as a reduction in revenues (contra revenue account). Nonetheless, depending on the IESO's view of its role (i.e. principal vs. agent) or its view of the nature of costs incurred, an alternative accounting treatment may result. For instance, if the IESO is an agent, then it may reduce the asset balance directly for those amounts collected by way of the global adjustment – rather than recording two separate entries for the recognition of revenue (i.e. global adjustment) and reduction of revenue (i.e. recovery of asset).

3. Expensing expenditures as incurred

Failing the ability to support that an asset can be recognized from alternatives (1) and (2) above, the IESO would be required to record the reimbursement of an LDC's eligible CDM expenditures as an expense in the period incurred.

Paragraphs 49 to 51 of PS 1000 provide the following guidance related to expenses:

.49 Expenses, including losses, are decreases in economic resources, either by way of decreases in assets or increases in liabilities, resulting from the operations, transactions and events of the accounting period.

.50 Expenses include the cost of economic resources consumed in and identifiable with the operations of the accounting period. For example, the cost of tangible capital assets is amortized to expenses as the assets are used in delivering government programs (see TANGIBLE CAPITAL ASSETS, Section PS 3150). Expenses do not include debt repayments or transfers to other governmental units in the government reporting entity.

.51 Losses can arise from peripheral or incidental transactions and events affecting a government. Such transactions and events include the disposition of assets purchased for use and not for resale, and the liquidation or refinancing of debt.

By referencing paragraphs 49 to 51, it can be noted that the reimbursement of an LDC's CDM expenditures do indeed result in an immediate decrease in the IESO's economic resources – as noted in paragraph 49. If it cannot be substantiated that an asset can be recorded due to the future economic benefits expected to be received through the global adjustment – these expenditures must be recorded as an expense.

4. Accounting for interest costs

The accounting for interest costs related to the loan being considered to finance the IESO's recovery of CDM costs incurred over an extended period of time would be dependent on how the Ministry of Energy proposes that the IESO will recover these costs. To the extent that the Minister revises the calculation of the global adjustment, then the IESO may be able to recognize an asset for these costs (i.e. see the arguments listed in sections (1) and (2) above).

If the Ministry of Energy proposes that the IESO recover the interest costs through the revenue requirement, the IESO will need to evaluate its ability to recover the interest costs through future rates. To the extent that the there is significant risk associated with recovering these costs, interest costs should be recognized as an expense in the current period. Otherwise, the IESO may be able to capitalize the interest costs as an asset by applying the arguments in sections (1) and (2) noted above.

If a recovery mechanism is not established for the interest costs related to the loan, the interest costs would be recognized as an expense of the current period.

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EY .rtf

From: Picard, Michel [mpicard@kpmg.ca]
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CC: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
Subject: EY
Date: Thursday, June 15, 2017 07:46:19
Attachment 1: EY letter re TBS.pdf

All,

Please find enclosed the amended and signed letter. I would appreciate if you could return a signed copy before the call of today.

Thanks a million.

Michel Picard, CPA, CA

Partner, Accounting Advisory Services

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Private & Confidential

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K1p 6B9

Attention: Suzanne Gignac

June 15, 2017

Re: Independent Electricity System Operator ("IESO")

In connection with the accounting advisory work performed by KPMG LLP ("KPMG") for IESO, IESO has requested that KPMG attend a meeting with IESO, the Province of Ontario's Treasury Board Secretariat ("TBS"), and the Recipient, in your capacity as external advisor to TBS, in order to answer your questions related to:

1. IESO's market related activities and their potential adoption of rate regulated accounting; and

2. the interpretation and application of Generally Accepted Accounting Principles regarding regulator independence

   (collectively, the "Information").

The Information was derived solely in accordance with the specific terms of reference (the "**Engagement Letter**") agreed between ourselves and IESO for their exclusive use and for no other purpose.

The Information should not be regarded as suitable for use by any person or persons other than IESO or for any purpose other than set out in the Engagement Letter. We accept no responsibility or liability for any reliance that the Recipient may place on the Information.

In consideration of our providing to the Recipient the Information the parties hereto agree to the following:

a) No one at KPMG is authorized by KPMG to make any representations to the Recipient with respect to IESO. Nor may anyone at KPMG provide the Recipient with the Information on any basis which is inconsistent with or varies or adds to the terms of this letter;

b) KPMG neither warrants nor represents that the Information is accurate, complete, sufficient or appropriate for any purpose contemplated by the Recipient;

c) The Information is not provided pursuant to any agreement or other arrangement of a contractually binding nature between our firm and the Recipient;

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d) The Recipient does not acquire any rights against our firm or otherwise as a result of our providing the Information;

e) Our firm and personnel do not have any duties, responsibilities, liabilities or obligations to the Recipient as a result of our providing the Information; and

f) The Recipient will not commence any action, suit or proceeding or make any demand, complaint or claim against us as a result of KPMG providing the Information or for any omission thereto.

Further, the Recipient agrees that, except for disclosure to their client, the Information will be maintained by them in strict confidence and not disclosed to any other party without the prior written consent of KPMG, and will be used by them only in connection with purpose described above. The Recipient agrees to notify KPMG promptly of any request received by the Recipient from any court or applicable regulatory authority with respect to the Information.

This letter sets out the entire understanding of the parties in relation to the conditions upon which access to the Information is provided and replaces all prior understandings, if any, made by KPMG.

Please indicate your acceptance to the terms of this letter by signing and returning one copy of this letter to the undersigned.

Yours very truly,

KPMG LLP

Michel Picard
Partner

****

The Recipient hereby acknowledges that it understands and agrees to the conditions upon which the Information is provided.

by: _____ _____
signature Date:

Name:

Title: _____

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From: Picard, Michel
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Cc: Petsche, Nadine (TBS)
Subject: EY
Date: June 15, 2017 7:46:33 AM
Attachments: EY letter re TBS.pdf

All,

Please find enclosed the amended and signed letter. I would appreciate if you could return a signed copy before the call of today.

Thanks a million.

Michel Picard, CPA, CA

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Our lawyers have recommended that we provide certain disclaimer language with our messages. Rather than including them here, we're drawing your attention to the following links where the full legal wording appears.

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If you are unable to access the links above, please cut and paste the URL that follows the link into your browser.

EY letter re TBS.pdf

KPMG LLP
Chartered Accountants
Bay Adelaide Centre
Suite 4600
333 Bay Street
Toronto ON
M5H 2S5

Telephone (416) 777-8500
Fax (416) 777-8818
www.kpmg.ca

Private & Confidential

Ernst & Young LLP (the "Recipient")
99 Bank Street, Suite 1200
Ottawa, ON
K1p 6B9

Attention: Suzanne Gignac

June 15, 2017

Re: Independent Electricity System Operator ("IESO")

In connection with the accounting advisory work performed by KPMG LLP ("KPMG") for IESO, IESO has requested that KPMG attend a meeting with IESO, the Province of Ontario's Treasury Board Secretariat ("TBS"), and the Recipient, in your capacity as external advisor to TBS, in order to answer your questions related to:

1. IESO's market related activities and their potential adoption of rate regulated accounting; and

2. the interpretation and application of Generally Accepted Accounting Principles regarding regulator independence

   (collectively, the "Information").

The Information was derived solely in accordance with the specific terms of reference (the "**Engagement Letter**") agreed between ourselves and IESO for their exclusive use and for no other purpose.

The Information should not be regarded as suitable for use by any person or persons other than IESO or for any purpose other than set out in the Engagement Letter. We accept no responsibility or liability for any reliance that the Recipient may place on the Information.

In consideration of our providing to the Recipient the Information the parties hereto agree to the following:

a) No one at KPMG is authorized by KPMG to make any representations to the Recipient with respect to IESO. Nor may anyone at KPMG provide the Recipient with the Information on any basis which is inconsistent with or varies or adds to the terms of this letter;

b) KPMG neither warrants nor represents that the Information is accurate, complete, sufficient or appropriate for any purpose contemplated by the Recipient;

c) The Information is not provided pursuant to any agreement or other arrangement of a contractually binding nature between our firm and the Recipient;

KPMG LLP is a Canadian limited liability partnership and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. KPMG Canada provides services to KPMG LLP.

d) The Recipient does not acquire any rights against our firm or otherwise as a result of our providing the Information;

e) Our firm and personnel do not have any duties, responsibilities, liabilities or obligations to the Recipient as a result of our providing the Information; and

f) The Recipient will not commence any action, suit or proceeding or make any demand, complaint or claim against us as a result of KPMG providing the Information or for any omission thereto.

Further, the Recipient agrees that, except for disclosure to their client, the Information will be maintained by them in strict confidence and not disclosed to any other party without the prior written consent of KPMG, and will be used by them only in connection with purpose described above. The Recipient agrees to notify KPMG promptly of any request received by the Recipient from any court or applicable regulatory authority with respect to the Information.

This letter sets out the entire understanding of the parties in relation to the conditions upon which access to the Information is provided and replaces all prior understandings, if any, made by KPMG.

Please indicate your acceptance to the terms of this letter by signing and returning one copy of this letter to the undersigned.

Yours very truly,

KPMG LLP

Michel Picard
Partner

****

The Recipient hereby acknowledges that it understands and agrees to the conditions upon which the Information is provided.

by: _____ _____
signature Date:

Name:

Title: _____

EY Access Letter.doc.rtf

From: Suzie Gignac [suzie.r.gignac@ca.ey.com]
To: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
CC: Blake Langill [blake.w.langill@ca.ey.com]; Lee Anne Probert [leeanne.probert@ca.ey.com]
Subject: EY Access Letter.doc
Date: Wednesday, June 14, 2017 17:43:57
Attachment 1: EY Access Letter.doc

Hi Nadine:

We've reviewed and have a few comments which are included in the attached. I'm a little concerned with our timeline to get this signed though given the call is tomorrow at 10.

Assuming we can get acceptable wording in the letter before then (and get an updated version signed and returned), Lee Anne is available and has questions prepared for discussion. I am unfortunately unavailable tomorrow and Blake is not sure if he will be able to join so the alternative would be to postpone to early next week.

Thanks,

Suzie

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EY Access Letter.pdf

[ON KPMG LETTERHEAD]

Commented [SG1]: To be put on KPMG letterhead

Private & Confidential

Ernst & Young LLP (the "Recipient")
99 Bank Street, Suite 1200
Ottawa, ON
K1p 6B9

Attention: Suzanne Gignac

June 12, 2017

Re: Independent Electricity System Operator ("IESO")

In connection with the accounting advisory work performed by KPMG LLP ("KPMG") for IESO, IESO has requested that KPMG attend a meeting with IESO, the Province of Ontario's Treasury Board Secretariat ("TBS"), and the Recipient, in your capacity as external advisor to TBS, in order to answer your questions related to:

1 IESO's market related activities and their potential adoption of rate regulated accounting; and

2 the interpretation and application of Generally Accepted Accounting Principles regarding regulator independence

(collectively, the "Information").

The Information was derived solely in accordance with the specific terms of reference (the "**Engagement Letter**") agreed between ourselves and IESO for their exclusive use and for no other purpose.

The Information should not be regarded as suitable for use by any person or persons other than IESO or for any purpose other than set out in the Engagement Letter. We accept no responsibility or liability for any reliance that the Recipient may place on the Information.

You should note that we have not sought to update the Information for events subsequent to **[X]** and significant events may well have occurred since that date.

Commented [SG2]: Need date - not sure this sentence is relevant for our purposes anyway so could likely just remove.

In consideration of our providing to the Recipient the Information the parties hereto agree to the following:

a) No one at KPMG is authorized by KPMG to make any representations to the Recipient with respect to IESO. Nor may anyone at KPMG provide the Recipient with the Information on any basis which is inconsistent with or varies or adds to the terms of this letter;

b) KPMG neither warrants nor represents that the Information is accurate, complete, sufficient or appropriate for any purpose contemplated by the Recipient;

c) The Information is not provided pursuant to any agreement or other arrangement of a contractually binding nature between our firm and the Recipient;

d) The Recipient does not acquire any rights against our firm or otherwise as a result of our providing the Information;

e) Our firm and personnel do not have any duties, responsibilities, liabilities or obligations to the Recipient as a result of our providing the Information; and

f) The Recipient will not commence any action, suit or proceeding or make any demand, complaint or claim against us as a result of KPMG providing the Information or for any omission thereto.

Further, the Recipient agrees that the Information will be maintained by them in strict confidence and not disclosed to any other party, and will be used by them only in connection with purpose described above. The Recipient agrees to notify KPMG promptly of any request received by the Recipient from any court or applicable regulatory authority with respect to the Information.

Commented [SG3]: We are concerned that this could be difficult to adhere to. Disclosure to other parties would need, at a minimum, to include OPCD (or perhaps the government reporting entity?) as the info may be incorporated into OPCD documents and may be discussed on calls with other parties.

Thoughts?

This letter sets out the entire understanding of the parties in relation to the conditions upon which access to the Information is provided and replaces all prior understandings, if any, made by KPMG.

Please indicate your acceptance to the terms of this letter by signing and returning one copy of this letter to the undersigned.

Yours very truly,

KPMG LLP

Michel Picard
Partner

****

The Recipient hereby acknowledges that it understands and agrees to the conditions upon which the Information is provided.

by: _____ _____
signature Date:

Name:

Title: _____

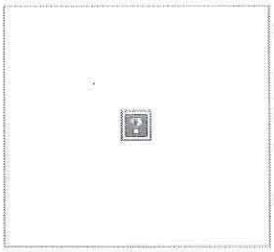
EY Invoice - 19 Sept 2018 - scanned.pdf

From:	Jeannie Kaminski
To:	Donaldson, Mark (TBS)
Cc:	Virani, Shyrose (TBS)
Subject:	EY Invoice - 19 Sept 2018
Date:	September 19, 2018 3:08:19 PM
Attachments:	image001.jpg TBS Invoice - 19 Sept 2018.pdf

Good afternoon,

Attached is our invoice for services rendered to date.

Thank you.



Jeannie Kaminski | Executive Assistant, Assurance Services
to Stephen McIntyre and Suzie Gignac
Ernst & Young LLP
99 Bank Street, Suite 1200, Ottawa, Ontario K1P 6B9, Canada
Office: 1-613-598-4809 | Fax: 1-613-232-5324 |
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Website: http://www.ey.com

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EY_OPCD Status Updates.rtf

From: Donaldson, Mark (TBS) []
To: Lee Anne Probert [leeanne.probert@ca.ey.com]
CC: Blake Langill [blake.w.langill@ca.ey.com]; Suzie Gignac [suzie.r.gignac@ca.ey.com]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
Subject: EY/OPCD Status Updates
Date: Monday, November 27, 2017 12:27:40
Attachment 1: CLPA - Protection Agreement.docx
Attachment 2: -CLPA - Process Agreement(November 22_17).docx

Hi Lee Anne,

Just a quick follow-up from our call Friday, attached are the 'final draft' guarantee agreements. As mentioned, the "protection" is the guarantee arrangement with the dealers, and the "process" is how the financing will work through between the province and OPG.

Happy to discuss,
Mark

CLPA - Protection Agreement.pdf

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY AND THE MINISTER OF FINANCE[1]

AND

COMPUTERSHARE TRUST COMPANY OF CANADA, AS TRUSTEE OF FAIR HYDRO TRUST[2]

AND

ONTARIO POWER GENERATION INC., AS FINANCIAL SERVICES MANAGER AND AS MANAGER OF FAIR HYDRO TRUST

AND

BNY TRUST COMPANY OF CANADA, AS INDENTURE TRUSTEE

CHANGE OF LAW PROTECTION AGREEMENT

Dated as of [■], 2017

[1] This Agreement and the Process Agreement will need to be effective on closing but signed and held in escrow as soon as they are settled and prior to pricing of the term deal.

[2] Please advise if there are any further issues with the Manager signing the Protection Agreement on behalf of the Trust? If so, can you please explain the issue. The Manager is currently signing all Program Agreements on behalf of the Trust and has authority to do so. We would like the Manager to sign this Agreement on behalf of the Trust.

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

RECITALS

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

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

Pursuant to a Declaration of Trust[3] dated as of ■, 2017, the Financing Entity was established as a "financing entity" (as defined in the Act) for the purposes contemplated in the Act.

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

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

---

[3] We are comfortable on this point because OPG has retained Computershare as issuer trustee. The recitals of the Declaration of Trust provide that Computershare has established the Trust at the request of the FSM. We can also provide you with a copy of the Computershare engagement letter upon request.

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

AGREEMENT OF THE PARTIES

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

ARTICLE I
DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

1.01 Interpretation

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

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

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

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

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

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

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

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

and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section, Subsection, Schedule, Exhibit or other subdivision;

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

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

1.02 Trustee to act in accordance with the Trust Indenture

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

1.03 Proof of Approved Obligations

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

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

1.04 Limitation on Rights of and Actions by Specified Creditors

Specified Creditors, as Beneficiaries, shall not have or be permitted to exercise any rights, interests, or elections under this Agreement, other than in the manner and to the extent effected and exercised under, in accordance with and subject to the limitations set forth in the Trust Indenture as of the date of this Agreement.

1.05 Province Retains Rights of Beneficiaries

Without limiting any rights of subrogation or succession that arise pursuant to applicable law or pursuant to the Province's rights as an assignee, subrogee or pursuant to Section 2.01 or Section 5.01, all of the rights, interests, elections and privileges that would arise in favour of a Beneficiary under the Trust Indenture or other Funding Obligation Agreement under which a

related Primary Obligation arises shall automatically arise, vest in and be available to the Province to the extent of the performance by the Province of the Primary Obligation.

1.06 Effect of Headings

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

1.07 Successors and Assigns

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

1.08 Severability

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction will not affect the validity or enforceability of any other provision hereof. To the extent permitted by applicable law, the parties waive any provision of law which renders any provision of this Agreement invalid or unenforceable in any respect.

1.09 Governing Law

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

1.10 Proceedings Against the Crown Act

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

1.11 Attornment

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

1.12 Counterparts; Electronic Delivery

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

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

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

1.14 Non-Business Days

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

1.15 Waiver, Amendment

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

1.16 Interest Act

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

1.17 Currency

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

1.18 References to Acts of the Financing Entity

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

1.19 Judgment Currency

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

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

ARTICLE II
AGREEMENT TO PERFORM APPROVED OBLIGATIONS

2.01 Limited Guarantee

(a) Upon the occurrence of a Protection Event, the Indenture Trustee may deliver a written demand, substantially in the form attached as Exhibit A (a "**Payment Demand**"), to the Province requiring the Province to make payments in respect of the Approved Obligations at the times, in the amounts and subject to the requirements specified in this Agreement. From and after such delivery of a Payment Demand, the Province shall make the following payments in respect of the Approved Obligations (the "**Limited Guarantee**"), and the Financing Entity shall pay, and the Province shall be entitled to be paid, the Subrogation Amounts specified below, on the specified Guarantee Payment Date:

i. Not less than 3 Business Days prior to each day when any payment or payments are to be made in respect of one or more Approved Obligations occurring after such delivery of a Payment Demand and prior to the Assumption Effective Date, if any, (a "**Guarantee Payment Date**"), the Manager shall deliver a written statement setting forth the Aggregate Approved Obligations Amount, if any, in respect of the Approved Obligations that are due and payable on such Guarantee Payment Date, together with a detailed description identifying such Approved Obligations and the nature and amount of payments due and payable thereunder on the Guarantee Payment Date, the aggregate outstanding amount payable by the Financing Entity under such Approved Obligations as of the date of the Guarantor Settlement Statement, and details regarding any default in performance by any party obligated thereunder (a "**Guarantor Settlement Statement**")[4].

ii. On each such Guarantee Payment Date, the Province shall deposit the Aggregate Approved Obligations Amount into the Protection Account.

iii. On each such Guarantee Payment Date, the Financing Entity and the Indenture Trustee shall ensure that the amounts on deposit in the Protection Account are applied to pay each Beneficiary to whom an amount is due and payable under an Approved Obligation on the Guarantee Payment Date the Approved Obligation Amount for such Beneficiary in respect of such Approved Obligation on such Guarantee Payment Date; provided that if the amount deposited pursuant to clause 2.01(a)ii is insufficient to pay all such Approved Obligation Amounts in full, the amount on deposit in the Protection Account on the Guarantee Payment Date shall be applied to pay Beneficiaries in the order of priority in which such Approved Obligations are payable under the payment

[4] Given timing, we would appreciate if the parties did not negotiate this form now.

provisions of the Trust Indenture applicable to the making of such payments on the Guarantee Payment Date (each, a "**Beneficiary Payee**").

iv. On any Guarantee Payment Date on which an amount is paid by the Province pursuant to clause 2.01(a)ii, the applicable payment provisions of the Trust Indenture shall, notwithstanding the express terms of such provisions set forth in the Trust Indenture, be applied and operate on the following basis:

(A) the amount payable to a Beneficiary Payee in respect of an Approved Obligation from amounts available under such payment provisions on such Guarantee Payment Date shall be reduced by the amount paid to the Beneficiary Payee pursuant to clause 2.01(a)iii in respect of such Approved Obligation on such Guarantee Payment Date;

(B) the Province shall be paid the lesser of (x) the amount payable to a Beneficiary Payee in respect of an Approved Obligation from amounts available to pay the Beneficiary Payee under such payment provisions on the Guarantee Payment Date, determined without regard to subclause 2.01(a)iv(A), and (y) the amount paid to the Beneficiary Payee pursuant to clause 2.01(a)iii in respect of such Approved Obligation on the Guarantee Payment Date (such payments to the Province being "**Subrogation Amounts**"); and[5]

(C) no Beneficiary having a right to be paid an amount in respect of an Approved Obligation that ranks equal with or subordinate to an Approved Obligation in respect of which an amount is payable to the Province under subclause 2.01(a)iv(B) shall be entitled to make any claim or assert any right in or to the amounts paid or payable to the Province under such subclause (including any right or reimbursement, contribution or indemnity) and no such Beneficiary shall have any right or interest in, to or under the Collateral or any proceeds therefrom in respect of such amounts.

v. On any Guarantee Payment Date, the Indenture Trustee shall release and pay to the Province free and clear of any Liens any amount remaining on deposit in the Protection Account that has not been applied to pay

[5] We thought this section required tweaking to reflect the intention of the parties.

Beneficiary Payees on the Guarantee Payment Date in accordance with clause 2.01(a)iii.

vi. In preparing any payment instructions under the Trust Indenture, the Manager shall reflect the amounts payable for the Guarantee Payment Date under Section 2.01(a).

(b) The Province shall, as a payee of Subrogation Amounts and any amounts payable under clause 2.01(a)(iv)(B), be a "Specified Creditor" under the Trust Indenture and have the benefit of the Collateral thereunder.

(c) For greater certainty, the Limited Guarantee will not apply to any amount or obligation of the Financing Entity that is not or does not arise under an Approved Obligation and will be limited to the right to receive the Approved Obligation Amounts, if any, for payment to Beneficiary Payees and will be subject to the priorities and to the Province's rights to Subrogation Amounts, set forth in Section 2.01(a).

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

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

(f) The right to deliver a Payment Demand and thereupon enforce the Limited Guarantee shall constitute the only remedy available to the Indenture Trustee (and to the Beneficiaries, to the extent they are permitted to exercise any rights, interests, or elections under and in accordance with the Trust Indenture) under this Agreement. Under no circumstances shall the Province be obligated to pay or indemnify the Indenture Trustee or any Beneficiary for consequential, special or punitive damages, or for economic loss or loss of profits; provided that, for greater certainty, economic loss shall not include any amount in respect of any amount due and payable to a Beneficiary Payee under the Limited Guarantee.

2.02 Intentionally Deleted.

2.03 Absence of Set-off

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

2.04 Payment into Protection Account in Satisfaction

(a) On or before the date of delivery of a Payment Demand to the Province, the Indenture Trustee shall cause to be established and maintained an Eligible Deposit Account (the "**Protection Account**") in the name of the Indenture Trustee, bearing a designation clearly indicating that the funds and other property credited thereto are held for the benefit of the Indenture Trustee and the Beneficiaries. The Protection Account shall be under the control of the Indenture Trustee for the benefit of the Beneficiaries. If, at any time, the institution holding the Protection Account ceases to be an Eligible Institution, the FSM shall notify the Indenture Trustee, and the Indenture Trustee upon being notified in writing of such ineligibility (or the FSM on its behalf) shall within 30 days (or such longer period, not to exceed 45 days, so long as the Rating Agency Condition is satisfied) establish a new Protection Account that is an Eligible Deposit Account and shall transfer any funds or other property from such Protection Account to such new Protection Account. From the date each such new Protection Account is established, it shall be the "Protection Account" for purposes of this Agreement. Funds credited to the Protection Account will be invested and held in accordance with Section **[7.03]** of the Trust Indenture on the basis that it is an Issuer Account.

(b) Notwithstanding the priority of payment requirements set forth in the Trust Indenture and any legal rule concerning the imputation of payments, the Financing Entity and the Indenture Trustee shall ensure that all amounts paid by the Province into the Protection Account on a Guarantee Payment Date in respect of an Approved Obligation are applied to pay the amounts due and payable to the Beneficiaries as and to the extent provided for in Section 2.01(a). Upon a payment having been made by or on behalf of the Province into the Protection Account, the amounts so paid shall for all purposes be considered to have been applied to pay the applicable Beneficiaries as provided for in Section 2.01(a) and thereby reduce the amount due and payable to such Beneficiaries in respect of the applicable Approved Obligations, whereupon an affected Beneficiary shall have no continuing rights, interests or entitlements (including rights as a secured party) in respect of the Approved Obligation to the extent so paid. For greater certainty, the obligations arising in respect of an applicable Approved Obligation shall not be reduced by such payment as the Province shall become entitled to be paid related Subrogation Amounts and the rights contemplated under Section 2.01(a) and Section 5.01 in relation to such continuing obligations.

2.05 Certain Waivers

The Province hereby waives:

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

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

(c) diligence; and

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

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

2.06 Additional Security

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

2.07 Continuing Liability of the Province

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

2.08 Continuance of the Limited Guarantee

Subject to Section 2.07, the Limited Guarantee shall continue in full force and effect until the indefeasible payment, observance and performance in full of the Approved Obligations in accordance with Section 9.01.[6]

2.09 Modifications of Approved Obligations

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

[6] We made this change to be consistent with the termination clause in section 9.01.

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

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

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

ARTICLE III
THE INDENTURE TRUSTEE

3.01 The Indenture Trustee

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

3.02 Acceptance of Trusts

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

ARTICLE IV
APPROVED OBLIGATIONS

4.01 Approval Process

A Primary Obligation shall constitute an Approved Obligation if (i) the Adherence Conditions applicable thereto have been satisfied at the time the Primary Obligation was incurred, or (ii) the Province, in its sole discretion, agrees it is an Approved Obligation.

4.02 Adherence Conditions[7]

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

(a) the Certified Primary Obligation when incurred is an Obligation Secured under the Trust Indenture; and

(b) OPG, as FSM, delivers a certificate signed by the Chief Financial Officer and the Treasurer of OPG, or any two Executive Officers of OPG (for clarity, such certificate is to be provided by such officers in their capacity as officers of OPG acting in its capacity as FSM) and addressed to the Indenture Trustee, on or before the incurrence of a Certified Primary Obligation[8] (provided that delivery may not be more than 5 Business Days before the incurrence of the Certified Primary Obligation), confirming that OPG has provided to the Province all certifications required by the Province in connection with the incurrence of such Certified Primary Obligation; and

(c) in respect of a Certified Primary Obligation other than a Refinancing, the Province has not provided a Suspension Notice to the Indenture Trustee, OPG and the Financing Entity.

For greater certainty, (y) satisfaction of the Adherence Conditions for a Certified Primary Obligation shall be deemed satisfaction of the Adherence Conditions in respect of all principal, interest and other amounts owing under the Certified Primary Obligation, as such Certified Primary Obligation may be amended, restated, supplemented or otherwise modified from time to time, and (z) there shall be no Adherence Conditions applicable in relation to a Primary Obligation that is not a Certified Primary Obligation.

4.03 Evidence of Satisfaction

A closing certificate delivered in accordance with Section 4.02(b) in connection with an incurrence of a Certified Primary Obligation shall be determinative as to whether the applicable Adherence Conditions with respect thereto have been satisfied, notwithstanding that such certificate may include inaccuracies, be incomplete or otherwise be defective or deficient, and such closing certificate may be relied upon by any addressee as conclusive evidence of same. A closing certificate that purports on its face to be signed by officers specified in Section 4.02(b) may be relied upon by any addressee without further enquiry or evidence as to the incumbency

[7] We would propose that the certification in section 4.02(b) of the Protection Agreement track the requirements of section 3.01 of the Process Agreement to ensure that the two sections are consistent. Accordingly, we have revised section 4.02(b) of the Protection Agreement to state the certificate delivered to the Indenture Trustee under this section should confirm that all certifications to the Province required in connection with the incurrence of such Certified Primary Obligations have been delivered to the Province.

[8] We tried to address all parties concerns expressed at our last meeting by this language. The Province can be assured that no certificate earlier than 5 Business Days prior to incurring the Certified Primary Obligation is delivered and the dealers have comfort that the clause is not too prescriptive.

or signatures of such officers. If a closing certificate is not delivered in accordance with the timing requirements of Section 4.02(b), such certificate may be delivered at a later date, and be effective as if it had been delivered in accordance with the timing requirement of Section 4.02(b), if at the time such certificate was required to be delivered OPG had delivered to the Province all certifications required by the Province in connection with the incurrence of a Certified Primary Obligation.[9]

ARTICLE V
PROVINCE MATTERS

5.01 Assignment and Subrogation

(a) Upon paying an amount in respect of an Approved Obligation to or at the direction of the Indenture Trustee in satisfaction of the Limited Guarantee, the Province (in addition to and without prejudice to any rights it otherwise has in law or equity) shall be subrogated and entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Approved Obligation to the extent of such payment, including (i) the right and entitlement to be paid and receive the related Subrogation Amounts, (ii) the benefits of the related Collateral and (iii) all proceeds therefrom. The Province shall have and be entitled to enforce all rights and interests (including as a Specified Creditor under the Trust Indenture on the basis contemplated in Section 5.01(b)), under and in respect of such Approved Obligation to the extent of the payment by the Province in respect of the Approved Obligation as an absolute assignee of the applicable Beneficiary, with effect from and after the time of such payment, without any further requirement for notice to or acceptance by the Financing Entity of such absolute assignment and without any reduction, set-off or counterclaim on account of any amounts that may, at or after the time of payment, be or become owing by the Beneficiary to the Financing Entity and unaffected by any other rights or equities that arise thereafter as between the Beneficiary and the Financing Entity. The Indenture Trustee shall recognize the Province as being entitled to all of the rights, interests and entitlements of the Beneficiary (including as a Specified Creditor under the Trust Indenture on the basis contemplated in Section 5.01(b)) in respect and to the extent of the Approved Obligation so paid, determined as of the time of payment, for all purposes under the Trust Indenture, and the Province shall be treated as a Specified Creditor in respect thereof for all purposes under the Trust Indenture and any other agreement under which the Approved Obligation arises.

(b) The Province (i) acknowledges and agrees in favour of the Indenture Trustee that, upon being subrogated and entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Approved Obligation in accordance with Section 5.01(a), the Province, in its capacity as a Specified Creditor, will be subject to the provisions applicable to Specified Creditors under the Trust Indenture, including **[Sections 7.04 through 7.11 and 8.13 (Payment Priorities),**

[9] This additional language was added to address the concerns of the dealers and Oslers discussed at our last meeting.

Section 7.12 (Payments Held in Trust), Section 8.11 (Control by Controlling Class Creditors), Section 8.12 (Limitation on Suits), Section 8.14 (Limited Recourse), Section 9.14 (Communications to Specified Creditors) and Section 16.01 (No Petition)]; (ii) consents, requests and authorizes the Issuer and the Indenture Trustee to (x) add the Province to the register of Specified Creditors described in subsection **[13.13(b)]** of the Trust Indenture and (y) disseminate the notice details of the Province to other Specified Creditors for the purposes set out in subsection **[9.14(b)]** of the Trust Indenture, and (iii) confirms that the Indenture Trustee shall send notices to the Province, in its capacity as a Specified Creditor, in accordance with Section 9.02.[10]

5.02 Priorities

For greater certainty, the rights, interests and entitlements of the Province as an assignee or subrogee, as applicable, of and with respect to an Approved Obligation shall rank equally with the rights, interests and entitlements of a Beneficiary to whom a Limited Guarantee payment is made in respect of, and to the extent of the payment made to satisfy, the Approved Obligation and the Province shall not be subject to postponement or subordination with respect thereto except to the extent of the priorities established in relation to the Approved Obligation under the Trust Indenture in the manner and to the extent contemplated in Section 2.01.

5.03 Intentionally Deleted

5.04 Representations and Warranties

The Province hereby represents and warrants that:

(a) the execution and delivery of, and the performance of its obligations under, this Agreement by the Province have been authorized by all necessary action on the part of the Province;

(b) the execution and delivery of, and the performance of its obligations under, this Agreement by the Province do not result in the violation of any applicable law; and

(c) this Agreement has been duly executed and delivered by the Province.

[10] These changes were made to conform to the latest draft of the Trust Indenture, a copy of which will be circulated soon.

ARTICLE VI
NOTICE OF ASSUMPTION OF CERTAIN OBLIGATIONS SECURED[11]

6.01 Delivery of Assumption Notice

Following the occurrence of a Protection Event, the Province may (but shall not be obligated to) provide notice (in the form of Exhibit B) to the Indenture Trustee that the Province has elected to assume the Financing Entity's obligations in respect of all Obligations Secured permitted to be assumed by their terms (the "**Assumption Notice**"). The Assumption Notice shall specify the date on which the assignment and assumption of such Obligations Secured will be effective (each such date being an "**Assumption Closing Date**").[12]

6.02 Cooperation to Implement the Assignment and Assumption

The Indenture Trustee, the FSM, the Financing Entity and the Province will cooperate and use best efforts to complete the assignment and assumption of the Obligations Secured referenced in Section 6.01 by and from the Financing Entity to and by the Province by the applicable Assumption Closing Date.

6.03 Effect of Assignment and Assumption

On the date that the assignment and assumption of the Obligations Secured referenced in Section 6.01 by and from the Financing Entity to and by the Province becomes effective (the "**Assumption Effective Date**"), the Province shall no longer be required to provide and perform the Limited Guarantee but will instead become a primary obligor under such Obligations Secured assumed pursuant to and in accordance with an applicable Assumption Agreement. For greater certainty, the obligations of the Province so assumed will not be secured obligations of the Province and the obligees thereof will have no right, interest or claim to or in respect of the Collateral or any proceeds therefrom.

6.04 Interim Period

Until the effective time of the assignment and assumption of the Obligations Secured referenced in Section 6.01 by and from the Financing Entity to and by the Province on the Assumption Effective Date, the Province shall continue to perform and be obligated under the Limited Guarantee with respect to those Obligations Secured.

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[11] Please see Torys' cover email to explain changes made in this Article and the related Article in the Process Agreement. Section 6.05 was deleted since it was not applicable in a context where only some of the Obligations Secured would be assumed.

[12] It is not realistic to think that the assumptions of Secured Obligations will all occur on one day. We think it has to happen on a contract by contract basis. As a Secured Obligation is assumed, the Limited Guarantee falls away with respect to it (it becomes a "zero" item in the waterfalls).

ARTICLE VII
INDENTURE TRUSTEE MATTERS

7.01 Limited Recourse

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

7.02 Not Responsible for Recitals

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

7.03 Representations and Covenants of the Indenture Trustee[13]

The Indenture Trustee represents, warrants and covenants that:

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

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

ARTICLE VIII
SUSPENSION OF ADHERENCE FOR NEW PRIMARY OBLIGATIONS

8.01 Suspension Notice

Upon:

(a) a Program Breach; or

(b) a default in the performance, or breach, of any covenants or representations of the FSM to the Province in connection with an incurrence or amendment of Primary

[13] The Indenture Trustee asked us to delete these representations. They will not provide these types of representations without attaining a legal opinion from outside counsel. To avoid delay, we would ask that the parties agree to this deletion.

Obligations, which continues for thirty (30) days after written notice by the Province to the FSM of such default or breach; or

(c) the FSM no longer being the Manager or actions having been taken by or on behalf of the Indenture Trustee to remove the FSM as the Manager,

the Province may declare that the Limited Guarantee under this Agreement shall not apply to any Primary Obligations incurred[14] on or after such declaration, other than any Refinancing of a Primary Obligation in respect of which the Adherence Conditions had previously been satisfied, by delivering a written notice in the form of Exhibit C (a "**Suspension Notice**") to the Province to the Indenture Trustee, the FSM and the Financing Entity.[15]

8.02 Suspension

If a Suspension Notice has been provided under Section 8.01 (the provision of such notice being a "**Suspension Event**"), the Limited Guarantee shall not apply in respect of any Primary Obligation incurred[16] on or after the time such Suspension Notice is delivered, other than any Refinancing of a Primary Obligation in respect of which the Adherence Conditions had previously been satisfied. For greater certainty, the rights of the Province under Article VI shall apply in respect of the Obligations Secured referenced in Section 6.01, including if incurred on or after the time such Suspension Notice is delivered.[17]

8.03 No Impact on Adherence

For greater certainty, the occurrence of Suspension Event or a failure by the FSM or the Financing Entity to perform its covenants under this Agreement will not invalidate or extinguish the obligations of the Province under the Limited Guarantee in respect of Approved Obligations in existence prior to the occurrence of the Suspension Event or in respect of any Refinancing of a Primary Obligation in respect of which the Adherence Conditions had previously been satisfied, nor will it in any way impact the Obligations Secured which are assumed by the Province in accordance with ARTICLE VI.

[14] We will need the ability to amend the Primary Obligations after a Suspension Notice to deal with the Suspension Notice itself.

[15] OPG has confirmed that it is problematic from an accounting perspective to give the Province a broad right to suspend at any time. As discussed in the meeting, we therefore reintroduced the concept of the Program Breach and Breach Event but we made the breach event generic to ensure we do not have to reference the Process Agreement in this document.

[16] We will need the ability to amend the Primary Obligations after a Suspension Notice to deal with the Suspension Notice itself.

[17] We have deleted the concept of the termination notice since it no longer serves a purpose and is potentially confusing to the reader.

ARTICLE IX
MISCELLANEOUS

9.01 Term of Agreement

This Agreement will continue until the date that no amount is or may become due and payable by the Province under the Limited Guarantee.

9.02 Notices

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

(a) if to the Financing Entity:

Fair Hydro Trust
700 University Avenue
Toronto, Ontario M5G 1X6
Attention: General Counsel
Fax: (416) 592-4189

with copies to:

Computershare Trust Company of Canada, in its capacity as Financing Entity Trustee for Fair Hydro Trust
100 University Avenue, 11th Floor
Toronto, Ontario M5J 2Y1
Attention: Manager, Corporate Trust
Fax: (416) 981-9777
Email: corporatetrust.toronto@computershare.com

(b) if to the FSM:

Ontario Power Generation Inc.
700 University Avenue
Toronto, Ontario M5G 1X6
Attention: General Counsel
Fax: (416) 592-4189

(c) if to the Province:

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

and

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

(d) if to the Indenture Trustee:

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

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

9.03 Assignment

(a) None of the rights or obligations hereunder shall be assignable or transferable by any party without the prior written consent of the other parties, except as otherwise provided for herein.

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

9.04 Enurement

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

9.05 FIPPA

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

9.06 No Petition

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

9.07 Intentionally Deleted

9.08 Third Party Rights

This Agreement is not intended to create rights for any Person not party to this Agreement. Beneficiaries derive their benefits hereunder through the Indenture Trustee and shall be subject to the provisions applicable to Specified Creditors in the Trust Indenture.

9.09 Delivery of Executed Copies

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

[Signature page to follow]

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

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

By: _____
Name:
Title:

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

By: _____
Name:
Title:

ONTARIO POWER GENERATION INC., AS FSM AND AS MANAGER

By: _____
Name:
Title:

By: _____
Name:
Title:

COMPUTERSHARE TRUST COMPANY OF CANADA, IN ITS CAPACITY AS TRUSTEE OF FAIR HYDRO TRUST, AS ISSUER, BY ONTARIO POWER GENERATION INC., NOT IN ITS INDIVIDUAL CAPACITY BUT SOLELY AS MANAGER

By: _____
Name:
Title:

By: _____
Name:
Title:

BNY TRUST COMPANY OF CANADA, AS INDENTURE TRUSTEE AND NOT IN ITS INDIVIDUAL CAPACITY

By: _____
Name:
Title:

By: _____
Name:
Title:

SCHEDULE A
DEFINED TERMS

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

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

"**Action**" has the meaning ascribed thereto under the Trust Indenture.

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

"**Aggregate Approved Obligations Amount**" means, in respect of a Guarantee Payment Date, the aggregate of the Approved Obligation Amounts for such Guarantee Payment Date.

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

"**Approved Obligation Amount**" means, for a Beneficiary in respect of an Approved Obligation under which an amount is due and payable on a Guarantee Payment Date:

(a) if no Acceleration has occurred in respect of any Obligation Secured on or before the Guarantee Payment Date, the amount due and payable to the Beneficiary on such Guarantee Payment Date in respect of the Approved Obligation (for greater certainty, determined on the assumption that there are adequate amounts available under the applicable payment provisions of the Trust Indenture to pay in full all amounts referred to in such payment provisions that are due and payable on the Guarantee Payment Date); and

(b) if an Acceleration has occurred in respect of any Obligations Secured on or before the Guarantee Payment Date, the amount that would be available to be paid to the Beneficiary on such Guarantee Payment Date in respect of the Approved Obligation under the applicable payment provisions of the Trust Indenture, determined on the assumption that the amount available for allocation to Specified Creditors in accordance with such applicable payment provisions of the Trust Indenture in respect of each relevant month during each Reference Period is equal to the estimated Finance Amount determined in respect of such Reference Period for purposes of section 15(1) of the Act (in effect on the date hereof) divided by the number of months in such Reference Period.

"**Assumption Agreement**" means the agreement among the Province, the Indenture Trustee, the Financing Entity and any other person that is party to the applicable Supplemental Indenture or Loan Agreement affected by the assignment and assumption contemplated under Article VI, which agreement shall be in substantially the form of assumption agreement set forth in the applicable Supplemental Indenture or Loan Agreement.

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

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

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

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

"**Beneficiary Payee**" has the meaning ascribed thereto in Section 2.01(a)iii.

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

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

"**Certified Primary Obligations**" means Primary Obligations that are payment obligations that are: (i) incurred by or on behalf of the Financing Entity to fund its ownership of an Investment Interest or to repay payment obligations that were incurred by or on behalf of the Financing Entity to fund its ownership of an Investment Interest,[18] (ii) incurred by or on behalf of the Financing Entity upon the Financing Entity entering into a Derivative Agreement, in which case the Certified Primary Obligation therefor shall be the Master Agreement applicable to such Derivative Agreement and not each individual trade confirmation, or (iii) incurred by or on behalf of the Financing Entity upon entering into a contract that has a term of more than three (3) years which is not terminable by the Financing Entity giving three (3) years' notice or less and aggregate payments by the Financing Entity thereunder during the term of such contract is in excess of C$5,000,000 (that, for greater certainty, is not otherwise captured in clauses (i) and (ii) above).[19]

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

"**Collateral**" has the meaning ascribed thereto in the Trust Indenture.

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

"**Derivative Agreement**" means any rate swap transaction, basis swap, forward rate transaction, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, total return swap transaction, credit default swap transaction or any other similar transaction (including any option with respect to any of those transactions) or any combination of

[18] Query: For a warehouse facility, does the Province want a Certificate for each monthly draw?

[19] This concept reflects what Primary Obligations the parties agreed to be subject to the adherence conditions.

these transactions entered into from time to time by the Financing Entity in connection with or related to Funding Obligations.

"**Eligible Deposit Account**" has the meaning ascribed thereto in the Trust Indenture.

"**Eligible Institution**" has the meaning ascribed thereto in the Trust Indenture.

"**Executive Officer**" has the meaning ascribed thereto in the *Securities Act* (Ontario).

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

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

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

"**Financing Entity Trustee**" has the meaning ascribed thereto in the first paragraph of this Agreement until a successor Financing Entity Trustee shall have become such pursuant to the applicable provisions of the Trust Indenture and the Declaration of Trust, and thereafter "Financing Entity Trustee" means and includes such Person.[20]

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

"**Funding Obligation**" has the meaning ascribed to the term "funding obligation" in the Act as of the date of this Agreement.

"**Funding Obligation Agreement**" has the meaning ascribed thereto in the Trust Indenture.

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

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

"**Guarantor Settlement Statement**" has the meaning ascribed thereto in Section 2.01(a).

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

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

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

[20] We are merely conforming this definition to the definition of Indenture Trustee.

"**Investment Interest**" has the meaning ascribed to the term "investment interest" in the Act as of the date of this Agreement.

"**Issuer Account**" has the meaning ascribed thereto in the Trust Indenture.

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

"**Lien**" has the meaning ascribed thereto in the Trust Indenture.

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

"**Loan Agreement**" has the meaning ascribed thereto in the Trust Indenture.

"**Management Agreement**" means the management agreement dated [■], 2017 between the Manager and the Financing Entity, as amended, supplemented, restated or otherwise modified from time to time.

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

"**Master Agreement**" means an agreement in the form of a 1992 ISDA Master Agreement (Multi-Currency – Cross Border) as published by ISDA or any replacement or substitute or functional equivalent of such agreement.

"**Master Transfer and Servicing Agreement**" means the master transfer and servicing agreement dated [■], 2017 between the Financing Entity and IESO, as amended, supplemented, restated or otherwise modified from time to time.

21

"**Obligations Secured**" has the meaning ascribed thereto in the Trust Indenture.

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

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

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

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

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

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[21] The definition of Notes is not used in the Agreement.

"**Primary Obligations**" means any Obligation Secured (a) that is a Funding Obligation or (b) that otherwise is a payment obligation of the Financing Entity that gives rise to a Finance Amount, in each case other than (i) any amounts required to be deposited by or on behalf of the Financing Entity into any Capital Account or Finance Reserve Account; and (ii) any obligation to pay the Financing Entity or on the Financing Entity's direction any remaining amounts in the Collection Account pursuant to the Trust Indenture.[22]

"**Program Agreements**" has the meaning ascribed thereto in the Trust Indenture.

"**Program Breach**" means an acceleration of Funding Obligations in accordance with the provisions of the Trust Indenture or an event of default, termination event or similar event or circumstance (including any event that with the passage of time or the giving of notice would become such an event) of or in respect of the obligations of any party under any Program Agreement, including under this Agreement, the Trust Indenture, the Master Transfer and Servicing Agreement or any Derivative Agreement.[23]

"**Protection Account**" has the meaning ascribed to such term in Section 2.04(a).

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

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

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

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

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

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

in each case, that materially and adversely affects (a) the ability of the Financing Entity to receive amounts in respect of its Investment Interest so that it can pay

[22] These changes were made to conform to the most current version of the Trust Indenture, a copy of which will be circulated soon. Additionally, money in the Collection Account is required to flow through the waterfall and is not required to be held in the Collection Account otherwise.

[23] We deleted early amortization events because that is no longer a concept used in the Trust Indenture.

Obligations Secured, or (b) this Agreement or any of the agreements under which Obligations Secured arise; or

(b) a court of competent jurisdiction determines that all or a portion of the Act or the regulations made under the Act, as in effect on the date hereof, is *ultra vires* or invalid in a way that materially and adversely affects the ability of the Financing Entity to receive amounts in respect of its Investment Interest so that it can pay Obligations Secured and that has the effect of the Financing Entity not in fact having sufficient funds to pay such Obligations Secured that have become due and payable.

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

"**Rating Agency Condition**" has the meaning ascribed thereto in the Trust Indenture.

"**Reference Period**" has the meaning ascribed thereto in the Act.

"**Refinancing**" means the incurrence of debt where at the time of issuance the use of the proceeds thereof are identified by the Issuer as to be used to repay an existing Approved Obligation.[24]

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

"**Specified Creditors**" has the meaning ascribed thereto in the Trust Indenture.

"**Subrogation Amounts**" has the meaning ascribed thereto in subclause 2.01(a)iv(ii).

"**Supplemental Indenture**" has the meaning ascribed in the Trust Indenture.

"**Supplemental Reserve Account**" has the meaning ascribed in the Trust Indenture.

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

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

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

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

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[24] Refinancings can occur up to six months prior to the application of the refinancing proceeds to the existing obligation. The regulations provide that if the refinancing proceeds are not applied to repay the intended funding obligation, then it is not a Refinancing. Accordingly, we have revised the definition to ensure that Refinancings do not have to be simultaneous with repayment of the existing Approved Obligation (we understand from the dealers that in most circumstances they will not be).

EXHIBIT A
FORM OF PAYMENT DEMAND

TO: Her Majesty the Queen in Right of Ontario, as represented by the Minister of Energy and the Minister of Finance (the "**Province**")

Reference is made to the Change of Law Protection Agreement dated [■], 2017 among the Province, Computershare Trust Company of Canada, as trustee of Fair Hydro Trust (the "**Financing Entity**"), Ontario Power Generation Inc., in its capacity as Manager of the Financing Entity and in its capacity as the Financial Services Manager under the *Fair Hydro Plan Act, 2017*, and the Indenture Trustee (the "**Change of Law Protection Agreement**"). Capitalized terms used and not defined herein shall have the meanings ascribed to such terms in the Change of Law Protection Agreement.

Pursuant to section 2.01(a) of the Change of the Law Protection Agreement, the Indenture Trustee hereby demands payment from the Province in respect of the Approved Obligations at the times, in the amounts and subject to the requirements specified in the Change of Law Protection Agreement.

DATED as of the [■] day of [■], [■].

BNY TRUST COMPANY OF CANADA

By: _____
Name:
Title:

By: _____
Name:
Title:

EXHIBIT B
ASSUMPTION NOTICE

[NTD: Blakes to provide draft]

EXHIBIT C
SUSPENSION NOTICE

[NTD: Blakes to provide draft]

-CLPA - Process Agreement(November 22_17).pdf

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

AND

ONTARIO POWER GENERATION INC.

CHANGE OF LAW PROCESS AGREEMENT[1]

Dated as of [■], 2017

[1] This Agreement and the Protection Agreement will need to be effective on closing but signed and held in escrow as soon as they are settled and prior to pricing of the term deal.

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

RECITALS

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

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

Pursuant to a Declaration of Trust dated as of [■], 2017, the Financing Entity was established as a "financing entity" (as defined in the Act) for the purposes contemplated in the Act.[2]

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

Prior to entering into this Agreement, OPG provided the Province with the proposed forms of the Transaction Documents listed on Exhibit "A", and the Province has not objected to such forms and has confirmed to OPG that such Transaction Documents constitute "Reference Documentation" for purposes of this Agreement.

Prior to entering into this Agreement, OPG, as the FSM, provided the Province with the initial Financing Plan attached hereto as Exhibit "B" (the "**Initial Financing Plan**"), and the Province has not objected to such Initial Financing Plan.

Prior to entering into this Agreement, OPG, as the FSM, provided to the Province (i) the initial forecast attached hereto as Exhibit "C" (the "**Initial Forecast**") setting out OPG's expectations regarding the aggregate maximum amount of Repayments that would arise in the future under Approved Obligations to be incurred during the 24 month period following the date hereof (the "**Initial Forecast Period**"); and (ii) notice of the initial Protection Agreement Maximum of C$■ (the "**Initial Protection Agreement Maximum**").[3]

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[2] We are comfortable on this point because OPG has retained Computershare as issuer trustee. The recitals of the Declaration of Trust provide that Computershare has established the Trust at the request of the FSM. We can also provide you with a copy of the Computershare engagement letter upon request.

[3] Given that this Agreement would now be delivered on or immediately prior to closing, we thought it would be acceptable to reference these initial items as delivered versus as future deliverables. Please note that OPG is working

The Province has not objected to the Initial Forecast and the Initial Protection Agreement Maximum on the basis that (i) there does not appear to be inaccuracies in the Initial Financing Plan or the Initial Forecast, (ii) the Initial Forecast is consistent with the Initial Financing Plan, and (iii) the Initial Protection Agreement Maximum is less than the Initial Forecast.

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

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

AGREEMENT OF THE PARTIES

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

ARTICLE I
DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

1.01 Interpretation

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

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

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

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

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

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with the Province to deliver the initial financing plan and the initial forecast and to confirm the initial protection agreement maximum.

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

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

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

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

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

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

1.02 References to the Financing Entity

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

1.03 Effect of Headings

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

1.04 Successors and Assigns

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

1.05 Severability

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction will not affect the validity or enforceability of any other provision hereof. To the extent permitted by applicable law, the parties waive any provision of law which renders any provision of this Agreement invalid or unenforceable in any respect.

1.06 Governing Law

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

1.07 Proceedings Against the Crown Act

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

1.08 Attornment

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

1.09 Counterparts; Electronic Delivery

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

1.10 Non-Business Days

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

1.11 Waiver, Amendment

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

ARTICLE II
COVENANTS OF OPG

2.01 Deliveries to the Province

(a) OPG shall promptly deliver to the Province a copy of any proposed change to or replacement of the Initial Financing Plan.

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

(c) Promptly following (i) any change, modification, alteration, amendment, supplement, extension, renewal, compromise, novation, replacement, suspension or waiver of the terms of all or any part of the Approved Obligations or any Collateral therefor being made, (ii) any new, additional or replacement instruments, documents, agreements or security being used or granted in connection with all or any part of the Approved Obligations, or (iii) any waiver, release, reconveyance, termination, abandonment, subordination, exchange, substitution, transfer, compound, compromise, liquidation or enforcement of all or any part of the Approved Obligations or any security or guarantee therefor being effected, OPG shall deliver to the Province a detailed description of such event and the reasons for it together with any related documents, agreements and instruments.

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

(including, for greater certainty, any related Disclosure Document) and which have not been previously provided to the Province.

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

2.02 Covenants

(a) OPG shall use commercially reasonable efforts to cause the Financing Entity to:

(i) punctually perform and observe all of the Financing Entity's obligations and agreements contained in the Program Agreements;

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

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

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

(v) not (unless waived by the Province):

(A) amend, supplement, modify, restate or replace or waive or consent to a postponement of compliance with the terms and conditions on the part of any other party to any of the Program Agreements, if any such supplementation, amendment, modification, restatement or replacement or waiver or consent could reasonably be considered to be materially prejudicial to the rights or interests of the Province under the Change of Law Protection Agreement; provided, however, that the foregoing does not apply to any change in particular financial terms, rates and levels;

(B) extend, renew, compromise, novate, replace, suspend, reconvey, terminate, abandon, subordinate, exchange, substitute, transfer, compound, liquidate or enforce the terms of all or any part of the Approved Obligations or any Collateral, if any such action could reasonably be considered to be materially prejudicial to the rights or interests of the Province under the Change of Law Protection Agreement; provided, however, that the foregoing does not apply to the extent that only particular financial terms, rates and levels are affected;

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

(D) allow the Financing Entity to enter into any Supplemental Indenture or Loan Agreement where any penalty or make-whole payment, or any requirement for further consent, approval or agreement, of the Specified Creditor party thereto would be required for the Province to assume the Obligations Secured thereunder.[4]

(b) OPG shall:

(i) comply, and shall use commercially reasonable efforts to cause compliance by the Financing Entity, with the Act, the General Regulation and any other enactment related thereto;

(ii) punctually perform and observe all of its (including as the FSM and as Manager) obligations and agreements contained in the Program Agreements;

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

(iv) after the occurrence of any Protection Event[5], not, without the Province's prior written consent, permit the Financing Entity to exercise any redemption, pre-payment, early termination or extension right in respect of any Approved Obligation or exercise any other election or privilege in respect of any Approved Obligation, in each case if as a result the obligations applicable to the Approved Obligation under the Change of Law Protection Agreement would be accelerated, delayed or otherwise affected.

(c) For greater certainty, the parties hereto acknowledge and agree that OPG's obligations under this Agreement are subject to (i) OPG's obligations as FSM under the Act, and (ii) OPG's obligations under the Management Agreement.[6]

(d) Nothing in this Agreement nor in the Change of Law Protection Agreement[7] shall limit the obligations of the Province under the Indemnity Agreement by the

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[4] Please see our cover note regarding the proposed assumption by the Province. Lawyers to discuss if appropriate mechanics for the first two deals are possible given timing.

[5] OPG is not in a position to be aware of events that may lead to a Protection Event.

[6] We would like to ensure that there is an acknowledgement that OPG has certain obligations under the Act and the Management Agreement.

[7] This language has extra-contractual implications and so its meaning as between only 2 of the parties to the Protection Agreement is uncertain. Torys to explain intention. Torys: This provision is intended to clarify that neither the Protection Agreement nor the Process Agreement supersedes or otherwise amends the Province's obligations under the Provincial Indemnity Agreement. It is effectively an acknowledgment by the Province in **Error! Unknown document property name.**

Province in favour of OPG dated June 1, 2017 (as amended, the "**Indemnity Agreement**") and to the extent of any conflict between this Agreement, the Change of Law Protection Agreement and such Indemnity Agreement, in respect of any matter relating to the Province's obligations to indemnify OPG, the Indemnity Agreement shall prevail.

ARTICLE III
PROCESS CERTIFICATE

3.01 Process Certificate[8]

OPG shall deliver a certificate (the "**Process Certificate**"), signed by the Chief Financial Officer and the Treasurer of OPG or any two Executive Officers of OPG (for clarity, such certificate is to be provided by such officers in their capacity as officers of OPG acting in its capacity as FSM) and addressed to the Province, on or before the incurrence of a Certified Primary Obligation (provided that delivery may not be more than 5 Business Days before the incurrence of the Certified Primary Obligation), setting out the following with respect to such Certified Primary Obligation:

(a) the material terms of the Certified Primary Obligation pertaining to (i) in the case of notes, bonds or other securities, the principal amount, interest or discount rate, third party fees, term to maturity, amortization, redemption or extension features, structure and coupon frequency, as applicable, and (ii) in the case of a Master Agreement[9], events of default, termination events and any amendment to the standard terms of the Master Agreement relating to the calculation of termination amounts (and, for greater certainty, it shall not be necessary to set out the terms of any trade confirmation);

(b) a statement to the effect that: (i) the Certified Primary Obligation to be incurred (1) will arise under terms and conditions that are Substantially in the Form of the Reference Documentation applicable thereto; (2) in the opinion of the signatories to the Process Certificate, are reasonably incurred or effected in compliance with the Act, the General Regulation, any other enactments related thereto and the applicable Financing Plan; (3) are of a type and are on terms that a reasonably prudent financial services manager would incur in similar circumstances; and

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favour of OPG and does not involve the other parties to the Protection Agreement and so we are comfortable including it here only. However, we do not have an issue with putting an equivalent clause in the Protection Agreement if that is preferable from your perspective.

[8] The Process Certificate conforms to the certificate delivered under the Change of Law Protection Agreement including the changes to ensure that the Process Certificate is only provided here when a concurrent certificate is required to be delivered by OPG under the Protection Agreement. Without this consistency, the obligations can become confusing and the intent of the parties of when Primary Obligations are subject to the adherence conditions may not be clear.

[9] Since we agreed at our meeting that OPG only needs to provide a certificate under section 4.02 of the Change of Law Protection Agreement when they enter into a Master Agreement (and not the broader concept of the Derivative Agreement), we had to revise the language here to conform to what would be expected to be found in a Master Agreement.

(4) reflect, in all material respects, arm's length terms and conditions; and (ii) any Disclosure Document used in connection with the offering and sale of notes, bonds or other securities is Substantially in the Form of the Reference Documentation;

(c) a statement confirming that any disclosure made in respect of the Certified Primary Obligation (including any Disclosure Document, press release or other written communication prepared for dissemination to third parties in relation to the Certified Primary Obligation) that refers to or describes the terms, effect or adherence of or to this Agreement or the Change of Law Protection Agreement has been made available to the Province prior to use or dissemination, other than where such disclosure was substantially the same as a disclosure previously made;

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

(e) confirmation that, at the time the Certified Primary Obligation is incurred, the maximum aggregate payment amounts due or becoming due in the future in respect of Repayments under the Certified Primary Obligation, together with all other outstanding amounts due or becoming due in the future in respect of Repayments under all Approved Obligations, do not and will not exceed the then applicable Protection Agreement Maximum; for clarity, Repayments under Obligations Secured owing in currencies other than Canadian dollars will be determined on the date the Process Certificate is delivered hereunder in accordance with the following:

(i) where a Derivative Agreement has been entered into to hedge related currency exposures, Repayments under such obligations shall be valued on the basis of the hedged value expressed in Canadian dollars; and

(ii) where a Derivative Agreement has not been entered into to hedge related currency exposures, Repayments under such obligations shall be valued on the basis of the noon spot rate for conversions of any currencies into Canadian dollars.

3.02 Acknowledgement[10]

The Province acknowledges and agrees that, concurrent with the delivery of the Process Certificate pursuant to Section 3.01 of this Agreement, the Chief Financial Officer and the Treasurer of OPG or any two Executive Officers of OPG (for clarity, such certificate is to be provided by such officers in their capacity as officers of OPG acting in its capacity as FSM) are authorized to deliver the certificate referred to in Subsection **[4.02(b)]** of the Change of Law Protection Agreement to the Indenture Trustee confirming that OPG has delivered all required

[10] OPG needs certainty on the conditions in which it is permitted to deliver the certificate under the Change of Law adherence conditions.

certifications to the Province in connection with the incurrence of the Certified Primary Obligations in respect of which the certificate in Subsection **[4.02(b)]** of the Change of Law Protection Agreement is being delivered; provided that, upon receipt of a Suspension Notice under the Change of Law Protection Agreement, OPG covenants not to deliver any further certificates to the Indenture Trustee under Subsection **[4.02(b)]** of the Change of Law Protection Agreement other than in connection with a Refinancing.[11]

3.03 Meaning of "Reference Documentation"

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

(a) is a Transaction Document provided to, and not objected to by, the Province prior to the making of this Agreement, as contemplated in the fifth recital to this Agreement; or

(b) is a Transaction Document provided to the Province in accordance with Subsection 2.01(b) that has not been objected to by the Province, by delivery of an objection notice in writing delivered to OPG, within 10 Business Days after it is provided to the Province.

3.04 Meaning of "Substantially in the Form"

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

(a) with respect to the Reference Documentation referred to in clauses (i) to (xi) of the definition of "Transaction Documents", that there are no differences between the proposed documents and such Reference Documentation that could result in a change in the material terms or conditions applicable to the applicable Primary Obligation, including regarding the timing of or circumstances under which related payments are or may become due or accrue (including as a result of any default, acceleration, termination, wind-up, liquidation or realization), or that would affect the Province's rights of subrogation or assignment (including pursuant to **[Section 5.01 or Article VI]** of the Change of Law Protection Agreement) or its interests as a subrogee or an assignee, that would arise as a result of performing the Limited Guarantee in respect of the applicable Primary Obligation or upon the assumption of obligations in accordance with **[Article VI]** of the Change of Law Protection Agreement; provided, however, that the foregoing does not apply to any variable terms to be set forth in the proposed documents as are reasonably contemplated in the Reference Documentation, including the particular financial terms, rates and levels set forth in the proposed documents other than to the extent that the forms of Reference Documentation

[11] Since OPG receives a Suspension Notice under the Change of Law Protection Agreement, we removed the concept of such notice here other than to provide the covenant above.

themselves specify specific requirements, limitations or parameters with respect to such financial terms, rates, levels and parameters; and

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

ARTICLE IV
PROTECTION AGREEMENT MAXIMUM

4.01 Protection Agreement Maximum[12]

(a) Between nine (9) and twelve (12) months prior to the end of the Initial Forecast Period, OPG shall, as the FSM, deliver to the Province an updated forecast setting out the sum of (1) the aggregate amount of Repayments that will arise in the future under Approved Obligations that are then outstanding and (2) OPG's expectations regarding the aggregate maximum amount of Repayments that would arise in the future under Approved Obligations to be incurred during the period ending 24 months following the Initial Forecast Period, which expectation shall be consistent with the then applicable Financing Plan. Such updated forecast shall be further updated on a similar basis with respect to each successive 24 month period or more frequently if at any time OPG has knowledge that the most recent forecast is materially inaccurate (the Initial Forecast and each such updated forecast, each a "**Forecast**"). Together with each Forecast, OPG shall also provide a revised Protection Agreement Maximum, which may not exceed such Forecast.

(b) Not more than 10 Business Days, or such lesser period as the Province may agree to in writing, following receipt of any further Forecast and notice of the revised Protection Agreement Maximum from OPG pursuant to Section 4.01(a), the Province may disagree with such further Forecast or revised Protection Agreement Maximum on the basis that (i) there appears to be inaccuracies in the Financing Plan or such further Forecast, (ii) the further Forecast is inconsistent with the Financing Plan, or (iii) the revised Protection Agreement Maximum is more than the further Forecast. If the Province disagrees, OPG shall discuss any discrepancies with the Province, address any inaccuracies and inconsistencies to the reasonable satisfaction of the Province and OPG, and the revised Protection Agreement Maximum will be further revised accordingly and confirmed by an amended notice to the Province.

[12] Per an earlier footnote, the items in previous draft (a) and (b) were moved to the recitals.

(c) For clarity, Repayments under Obligations Secured owing in currencies other than Canadian dollars will be valued at the time to be determined for the purposes of this Section 4.01 in accordance with the following:

(i) where a Derivative Agreement has been entered into to hedge related currency exposures, Repayments under such obligations shall be valued on the basis of the hedged value expressed in Canadian dollars; and

(ii) where a Derivative Agreement has not been entered into to hedge related currency exposures, Repayments under such obligations shall be valued on the basis of the noon spot rate for conversions of any currencies into Canadian dollars.

ARTICLE V
REPRESENTATIONS AND WARRANTIES

5.01 Representations and Warranties of OPG

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

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

(b) OPG is a corporation duly constituted and validly existing under the laws of the Province of Ontario and has the power and authority to enter into and perform its obligations under this Agreement and all instruments and agreements delivered pursuant hereto.

(c) OPG has the power and authority to enter into and perform its obligations as the FSM under the Program Agreements and all instruments and agreements delivered pursuant thereto.

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

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

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

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

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

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

5.02 Representations and Warranties of the Province

The Province hereby represents and warrants that:

(a) the execution and delivery of, and the performance of its obligations under, this Agreement by the Province have been authorized by all necessary action on the part of the Province;

(b) the execution and delivery of, and the performance of its obligations under, this Agreement by the Province do not result in the violation of any applicable law; and

(c) this Agreement has been duly executed and delivered by the Province.

ARTICLE VI
PROCESS FOR ELECTION TO ASSUME APPROVED OBLIGATIONS[13]

6.01 Election by the Province

Pursuant to Section 6.01 of the Change of Law Protection Agreement, at any time following the occurrence of a Protection Event, the Province may (but shall not be obligated) elect to assume the Financing Entity's obligations in respect of all Obligations Secured permitted to be assumed by their terms as obligor and debtor by giving notice to the Indenture Trustee. Prior to determining whether or not to exercise its election, the Province may deliver to OPG a notice in the form of Exhibit "D" (an "**Election Information Notice**"). The Election Information Notice shall, among other things, specify the date or dates on which the Province proposes to assume the Obligations Secured referred to in this Section 6.01, which date or dates shall be no earlier than 60 days[14] following delivery of the Election Information Notice to OPG (with respect to each such Obligation Secured, the "**Proposed Assumption Date**").

6.02 Details regarding Obligations Secured

Within 10 Business Days following the delivery of the Election Information Notice to OPG, OPG shall provide the following information and documentation to the Province:

(a) a summary of the amounts that will be owing under the Obligations Secured referred to in Section 6.01 as of the Proposed Assumption Date, together with a detailed schedule setting out the dates on which such amounts will become due and payable under such Obligations Secured;

(b) a summary of the rights arising under the Obligations Secured referred to in Section 6.01 that permit the Province to assume such Obligations Secured, including details regarding any conditions precedent to such assignment and the related assumption becoming effective and any notices, filings, consents or other actions that will be required in order to implement and effect such assignment and assumption;

(c) current versions of all documentation under which the Obligations Secured referred to in Section 6.01 arise;

[13] Please see Torys' cover email to explain changes made in this Article and the related Article in the Protection Agreement. Section 6.05 was deleted and moved up as a covenant in section 2.02(a)(v)(D).

[14] This process will take time and require appropriate notice to holders of the applicable Obligations Secured.

(d) copies of all correspondence exchanged between OPG, as the FSM, or the Financing Entity, on the one hand, and any Specified Creditor, Rating Agency or the Indenture Trustee, on the other hand, in each case that may reasonably be considered to be material to the assumption and performance of the Obligations Secured referred to in Section 6.01 by the Province; and

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

6.03 Settlement of Terms

Following receipt and consideration by the Province of the information and documentation to be provided under Section 6.02, the Province shall confirm in writing whether or not it expects to proceed with the assignment and assumption of the Obligations Secured referred to in Section 6.01 and, if it will be proceeding with the assignment and assumption, the date on which the Province expects that assignment and assumption will be effected. If it will be proceeding with such assignment and assumption, the Province will deliver an Assumption Notice as contemplated under Section **[6.01]** of the Change of Law Protection Agreement. A decision not to proceed with an election at any time will not limit the Province from proceeding with an election at a later date, including by issuing a further Election Information Notice, and Article VI of this Agreement shall continue to apply unaffected.

6.04 Cooperation to Implement the Assignment and Assumption

OPG shall cooperate with the Province and, as FSM, shall use commercially reasonable efforts to cause the Financing Entity to cooperate, and shall use its commercially reasonable efforts, to complete the assignment and assumption of the Obligations Secured referred to in Section 6.01 by and from the Financing Entity to and by the Province, by the applicable Assumption Closing Date.

ARTICLE VII[15]
MISCELLANEOUS

7.01 Term of Agreement

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

[15] Breach events not required to be listed since OPG receives a Suspension Notice under the Change of Law Protection Agreement. See also the proviso in section 3.02.

7.02 Notices

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

(a) if to OPG:

Ontario Power Generation Inc.
700 University Avenue
Toronto, Ontario M5G 1X6
Attention: General Counsel
Fax: (416) 592-4189

(b) if to the Province:

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

and

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

or to such other addresses as a party may from time to time notify the other parties in accordance with this Section 7.02.

7.03 Assignment

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

(b) Any purported assignment of this Agreement in violation of this Section 7.03 shall be null and void.

7.04 Enurement

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

7.05 FIPPA

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

7.06 Delivery of Executed Copies

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

[Signature page to follow]

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

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

By: _____

Name:
Title:

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

By: _____

Name:
Title:

ONTARIO POWER GENERATION INC.

By: _____

Name:
Title:

By: _____

Name:
Title:

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

COMPUTERSHARE TRUST COMPANY OF CANADA, in its capacity as trustee of **FAIR HYDRO TRUST**, as Issuer, by **ONTARIO POWER GENERATION INC.**, not in its individual capacity but solely as Manager

By: _____

Name:
Title:

By: _____

Name:
Title:

SCHEDULE A
DEFINED TERMS

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

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

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

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

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

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

"**Breach Event**" means the occurrence of an event described in Section **[8.01(b) or (c)]** of the Change of Law Protection Agreement.

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

"**Certified Primary Obligations**" means Primary Obligations that are payment obligations that are: (i) incurred by or on behalf of the Financing Entity to fund its ownership of an Investment Interest or to repay payment obligations that were incurred by or on behalf of the Financing Entity to fund its ownership of an Investment Interest,[16] (ii) incurred by or on behalf of the Financing Entity upon the Financing Entity entering into a Derivative Agreement, in which case the Certified Primary Obligation therefor shall be the Master Agreement applicable to such Derivative Agreement and not each individual trade confirmation, or (iii) incurred by or on behalf of the Financing Entity upon entering into a contract that has a term of more than three (3) years which is not terminable by the Financing Entity giving three (3) years' notice or less and aggregate payments by the Financing Entity thereunder during the term of such contract is in excess of C$5,000,000 (that, for greater certainty, is not otherwise captured in clauses (i) and (ii) above).[17]

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

"**Collateral**" has the meaning ascribed thereto in the Trust Indenture.

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[16] Query: For a warehouse facility, does the Province want a Certificate for each monthly draw?

[17] This concept reflects what Primary Obligations the parties agreed to be subject to the adherence conditions.

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

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

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

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

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

"**Executive Officer**" has the meaning ascribed thereto in the *Securities Act* (Ontario).

"**Financing Entity**" means Fair Hydro Trust, a trust settled by the FSM under the laws of the Province of Ontario and under which the Financing Entity Trustee is the trustee.

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

"**Financing Plan**" has the meaning ascribed thereto in the Act as of the date of this Agreement.

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

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

"**Funding Obligation**" has the meaning ascribed to the term "funding obligation" in the Act as of the date of this Agreement.

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

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

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

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

"**IESO**" has the meaning ascribed thereto in the Act as of the date of this Agreement.

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

"**Initial Financing Plan**" has the meaning ascribed thereto in the recitals of this Agreement.

"**Initial Forecast**" has the meaning ascribed thereto in the recitals of this Agreement.

"**Initial Forecast Period**" has the meaning ascribed thereto in the recitals of this Agreement.

"**Initial Protection Agreement Maximum**" has the meaning ascribed thereto in the recitals of this Agreement.

"**Investment Interest**" has the meaning ascribed to the term "investment interest" in the Act as of the date of this Agreement.

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

"**Loan Agreement**" has the meaning ascribed thereto in the Trust Indenture.

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

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

"**Master Agreement**" means an agreement in the form of a 1992 ISDA Master Agreement (Multi-Currency – Cross Border) as published by ISDA or any replacement or substitute or functional equivalent of such agreement.

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

"**Obligations Secured**" has the meaning ascribed thereto in the Trust Indenture.

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

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

[18] Definition of Legislature not used here.

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

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

"**Program Agreements**" has the meaning ascribed thereto in the Trust Indenture.

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

"**Protection Agreement Maximum**" means the dollar amount referenced as the Program Agreement Maximum and determined in accordance with Article IV.

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

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

"**Rating Agency**" has the meaning ascribed thereto in the Trust Indenture.

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

"**Repayment**" has the meaning ascribed to the term "repayment" in the General Regulation as of the date of this Agreement.

"**Specified Creditors**" has the meaning ascribed thereto in the Trust Indenture.

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

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

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

"**Transaction Document**" means (i) all constating and organizational documents of the Financing Entity, including the Declaration of Trust; (ii) any management, administration or servicing agreement to which the Financing Entity is a party, including any replacement or standby services agreement and the Management Agreement; (iii) the Master Transfer and Servicing Agreement; (iv) Trust Indenture; (v) the form of supplemental indenture (supplemental to the Trust Indenture) governing the terms and conditions of a sample series of notes, bonds or other securities to be issued by the Financing Entity, including the particular allocations, security and priority of the Obligations Secured being serviced by the related Investment Interest and any other related series property; (vi) the form of any note, bond or securities purchase agreement; (vii) the form of underwriting agreement, agency agreement, selling agreement and/or subscription agreement that may be used with respect to a sale of a related series of notes, bonds or securities to be issued under the supplemental indenture referred to in (v), above; (viii) the form of any loan or credit agreement governing the issuance of short term loan obligations by the

Financing Entity; (ix) the form of schedule to a Master Agreement governing derivative transactions that may be entered into the Financing Entity from time to time; (x) the form of any other agreement or instrument under which a Funding Obligation may arise or be effected, including any other agreement under which the Financing Entity incurs a material financial obligation or that affects the Province's subrogation rights and/or subrogee interests, including any standby liquidity arrangements or credit enhancement agreements; (xi) if applicable, a Co-Owner Agreement or any other agreement governing the respective interests of persons having rights or interests in the investment asset or other assets of the Financing Entity, including any other agreement of the sort contemplated in Subsection 29(5) of the Act; and (xii) the form of Disclosure Document.

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

EXHIBIT "A"
INITIAL REFERENCE DOCUMENTATION

- Declaration of Trust;
- Management Agreement;
- Master Transfer and Servicing Agreement;
- Acknowledgement and indemnity agreement dated as of [■], 2017 made by IESO in favour of the Indenture Trustee;
- Security agreement made by IESO in favour of the Financing Entity to secure certain of its obligations under the Master Transfer and Servicing Agreement;
- Trust Indenture;
- Term Senior Series 2017-1 Supplemental Indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017;
- Term Subordinated Series 2017-1 Supplemental Indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017;
- Term Junior Subordinated Series 2017-1 Supplemental Indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017;
- Warehouse Senior Series 2017-1 Supplemental Indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017;
- Warehouse Subordinated Series 2017-1 Supplemental Indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017;
- Warehouse Junior Subordinated Series 2017-1 Supplemental Indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017;
- Schedule to the ISDA Master Agreement governing derivative transactions that may be entered into the Financing Entity from time to time;
- Confidential shelf offering memorandum of the Financing Entity dated as of [■], 2017, including the term sheet incorporated by reference therein; and
- Agency agreement between the Financing Entity, CIBC World Markets Inc., RBC Dominion Securities Inc., Goldman Sachs Canada Inc. and the other agents named therein dated as of [■], 2017.

[NTD: List above to be confirmed.]

EXHIBIT "B"
INITIAL FINANCING PLAN

(see attached)

EXHIBIT "C"
INITIAL FORECAST

(see attached)

EXHIBIT "D"
FORM OF ELECTION INFORMATION NOTICE

[NTD: Blakes to provide draft.]

Emailing_ IESO white papers draft #5michel.rtf

From: Picard, Michel [mpicard@kpmg.ca]
To: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
Subject: Emailing: IESO white papers draft #5michel
Date: Wednesday, February 22, 2017 20:05:59
Attachment 1: IESO white papers draft #5michel.docx

Hey Nadine,

Please find enclosed the draft amended to take into account Cindy and your comments.

It is being reviewed by Lois and Matt.

Any further comments to improve it is welcome.

Michel

This email was sent to you by KPMG (http://info.kpmg.ca). To sign up to receive event invitations and other communications from us (we have some informative publications that may be of interest to you), or to stop receiving electronic messages sent by KPMG, visit the KPMG Online Subscription Centre (http://subscribe.kpmg.ca).
At KPMG we are passionate about earning your trust and building a long-term relationship through service excellence. This extends to our communications with you.
Our lawyers have recommended that we provide certain disclaimer language with our messages. Rather than including them here, we're drawing your attention to the following links where the full legal wording appears.
Disclaimer concerning confidential and privileged information/unintended recipient (http://disclaimer.kpmg.ca). Disclaimer concerning tax advice (http://taxdisclaimer.kpmg.ca).

If you are unable to access the links above, please cut and paste the URL that follows the link into your browser.

IESO white papers draft #5michel.pdf

WHITE PAPERS – WORKING DRAFT

Independent Electricity System Operator ("IESO" or the "Company") is considering making changes in its accounting policies to reflect the balances of market participants within the IESO-administered markets (see separate technical analysis) and the economic impacts of rate regulation, as the Company believes that the changes would result in a more appropriate presentation of events or transactions in its financial statements.

Issues being considered in this document are:

Issue #1: Can the IESO adopt the guidance in ASC 980 *Regulated Operations*?

Issue #2: Can the IESO recognize deferral or variance accounts related to the deferral of the annual Global Adjustment account as a regulatory asset on its statement of financial position?

Issue #3: Can the IESO derecognize the variance accounts related to the deferral of the annual Global Adjustment account**?**

1. Adoption of the guidance in ASC 980 Regulated Operations

Background and Assumptions for issues #1 and #2

The facts, circumstances, and assumptions relevant to the specific transactions are as follows:

1. IESO is rate regulated by the OEB in accordance with the *Electricity Act, 1998* and the *Ontario Energy Board ("OEB") Act, 1998.*
2. The province is contemplating deferring the recovery of a portion of the annual Global Adjustment account (comprised primarily of the electricity costs paid to the generators) over a period of 25-30 years.
3. The *Electricity Act, 1998* and the *OEB Act, 1998* will be amended through legislation to require the deferral of the recovery of the Global Adjustment account and the future recovery in rates charged to customers.
4. The OEB will grant generic deferral or variance accounts to capture the difference between the amounts paid to generators and others, and the amounts collected in rates. Furthermore, the interest and ancillary costs related to the contemplated transaction will also be included in future rates charged to customers. In summary, the legislation will create a right to collect the incurred cost.
5. Currently, in accordance with the *Electricity Act, 1998* and the *OEB Act, 1998*, the IESO has approved variance accounts to record all amounts payable or receivable by it in connection with the amounts paid to generators, the Financial Corporation, distributors and to entities with whom the IESO has a procurement contract.
6. IESO will change its accounting policies to permit the recognition of the economic impacts of rate regulation as from the 2016 financial year. IESO will adopt the guidance of ASC 980 *Regulated Operations*.

Appropriate Accounting Principle for issue #1

PS1150.05 "*When the primary sources of GAAP do not deal with the accounting and reporting in financial statements of transactions or events encountered by the public sector reporting entity, or additional guidance is needed to apply a primary source to specific circumstances, the selection of an appropriate accounting policy requires the exercise of professional judgment. In these circumstances, a public sector reporting entity should adopt accounting policies and disclosures that are consistent with:*

(a) the primary sources of GAAP; and

(b) the application of the concepts described in FINANCIAL STATEMENT CONCEPTS, Section PS 1000."

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PS1150.19 "*Pronouncements issued by other bodies authorized to issue accounting standards may be useful sources to consult. For example, accounting pronouncements published with the authority of the Canadian Accounting Standards Board (AcSB), International Accounting Standards Board (IASB), US Federal Accounting Standards Advisory Board (FASB), US Governmental Accounting Standards Board (GASB), or International Public Sector Accounting Standards Board (IPSASB) are often important sources to consult on matters not covered by primary sources of GAAP or for assistance in applying a primary source of GAAP to specific circumstances*."

PS1150.08 "A public sector reporting entity consults sources other than primary sources of GAAP to assist in selecting accounting policies and disclosures only when these sources comply with paragraph PS1150.05. The public sector reporting entity evaluates sources in selecting the appropriate accounting policies and disclosures based on all of the following criteria:

(a) The specificity of the source — A source that deals with the specific circumstances is likely to be more relevant than one from which the public sector reporting entity must analogize.

(b) The authority of the issuer or author — A source issued by an accounting standard setter in its own jurisdiction is likely to be more relevant than a source issued by others in the same jurisdiction.

(c) The continued relevance of the source — The passage of time may diminish the relevance of certain sources.

(d) The development process for the source — A source developed after extensive consultation and debate is likely to be more relevant than a source developed without such discipline."

PS1150.10 "PSAB considers a source to be consistent with the concepts in paragraph PS 1150.05(b) when the guidance in that source is compatible with the (i) qualitative characteristics of financial information, (ii) the elements of financial statements, and (iii) the recognition and measurement criteria in paragraph PS 1150.05(b)."

PS1000.58 "In the absence of appropriate public sector recognition and measurement criteria for intangibles, all intangibles, including those that have been purchased, developed, constructed or inherited in right of the Crown, are not recognized as assets in government financial statements. The intangible often called "human capital" that embodies the talent or intellectual capital of government employees is not recognized as an asset under existing accounting principles."

PS3210.03 "*Assets are economic resources controlled by a public sector entity as a result of past transactions or events and from which future economic benefits are expected to be obtained."*

PS3210.04 "Assets have three essential characteristics:

(a) They embody future economic benefits that involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows, or to reduce cash outflows.

(b) The public sector entity can control the economic resource and access to the future economic benefits.

(c) The transaction or event giving rise to the public sector entity's control has already occurred."

Issue #1: Can the IESO adopt the guidance in ASC 980 *Regulated Operations*?

PSAS does not address accounting concepts in a rate regulated environment. Since there is no guidance in PSAS regarding the recognition and measurement of regulatory assets and liabilities, IESO may consider other sources based upon PSAS 1150.05 in the GAAP hierarchy to determine appropriate accounting policies in a rate regulated environment.

Within AcSB, Accounting Standards for Private Enterprises (ASPE) defines a rate regulated entity but provides no guidance on regulatory assets and liabilities, however requires disclosure of such balances if they are recognized. IASB has not completed their project on rate regulation and current standards only include a holding standard based upon what was done under previous GAAP. Both FASB and GASB have guidance on accounting in a regulatory environment. IPSASB does not provide any guidance on accounting by rate regulated entities.

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It is important to note that rate regulated entities that prepare their general purpose financial statements in accordance with ASPE (e.g. the three Fortis subsidiaries in Ontario), as well as those rate regulated entities that are eligible to elect to apply the requirements of IFRS 14 and elected to do so when they adopted IFRS, generally all recognize regulatory deferral and variance accounts in accordance with US GAAP accounting principles set out ASC 980 *Regulated Operations.*

Statement 62 issued by GASB in December 2010 is effective for financial statements for periods beginning after December 15, 2011. The objective of the Statement is to incorporate into the GASB's authoritative literature certain accounting and financial reporting guidance that is included in the Financial Accounting Standards Board (FASB) Statements and Interpretations issued on or before November 30, 1989, which does not conflict with or contradict GASB pronouncements. Paragraphs 476–500 may be applied to activities reported in business-type activities that have regulated operations that meet all of the three criteria in paragraph 476 as follows:

(a) The regulated business-type activity's rates for regulated services provided to its customers are established by or are subject to approval by an independent, third-party regulator or by its own governing board empowered by statute or contract to establish rates that bind customers.

(b) The regulated rates are designed to recover the specific regulated business-type activity's costs of providing the regulated services.

(c) In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume that rates set at levels that will recover the regulated business-type activity's costs can be charged to and collected from customers. This criterion requires consideration of anticipated changes in levels of demand or competition during the recovery period for any capitalized costs.

The criteria above and the guidance in paragraphs 476-500 are based on ASC 980 *Regulated Operations*.

It is also important to note that in its statement of financial position, the Ontario Electricity Financial Corporation ("OEFC") recognizes a net unamortized liability balance for power purchase contracts, as detailed in the summary of significant accounting policies:

"The liability for power purchase contracts was originally calculated by discounting estimated losses over the life of the contracts. Under the *Electricity Restructuring Act, 2004*, OEFC began receiving actual contract prices for power from electricity consumers, effective January 1, 2005, and no longer incurs losses on these power purchase contracts. At that time, the Ministry of Finance estimated that the bulk of the liability would be eliminated over 12 years as existing electricity contracts expire. As a result, the bulk of the liability is being amortized to revenue over that period."

Although this liability is not defined as a regulatory liability in the OEFC's financial statements, the argument can be made that it substantively meets the criteria under ASC 980.

In summary

Rate regulated entities in North America reporting under ASPE, IFRS and GASB generally all recognize regulatory deferral and variance accounts in accordance with US GAAP accounting principles based on ASC 980 *Regulated Operations* (see appendix A for the Canadian rate regulated entities).

Evaluation of Other Sources of GAAP

As required by PS 1150.05(b), we need to analyze whether the concepts in the other source (i.e. ASC 980) are compatible with the (i) qualitative characteristics of financial information, (ii) the elements of financial statements, and (iii) the recognition and measurement criteria in PS 1000.

When looking to other sources of GAAP, PSAS requires the other sources of GAAP to be evaluated

1. *as to whether they are consistent with accounting policies and disclosure within PSAS,*
2. *as to whether they are consistent with the application of concepts in PS 1000 and*
3. *as to all of the following criteria:*
    (a) Source deals with the specific circumstance

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(b) Source is issued by an accounting standard setter

(c) Source continues to be relevant

(d) Source uses a consultative process and deliberation when developing policies

(i) Qualitative Characteristics of Financial Information

FASB	PSAS 1000	Evaluation
Concepts and objectives are for both business and non-business organizations as well as governmental units (Concept #4.3 to 4.5)	Public, legislators, councilors, investors, analysts, other governments (par. 14)	FASB considers governmental units
Financial reporting should: – Be useful in making resource allocation decisions – Be useful in assessing services and ability to provide services – Be useful in assessing management stewardship and performance – Provide information about economic resources, obligations, net resources and changes in them (Concept # 4.33-.54)	Financial statements should be relevant to the needs of the users and reliable. Relevance is achieved through timeliness, predictability and accountability value. Reliable information has the following characteristics: representational faithfulness, completeness, neutrality, conservatism and verifiability. (par. 28-29)	Similar

(ii) Elements of Financial Statements

FASB	PSAS	Evaluation
Assets (Concept #6.25-.34)		
Probable future economic benefits obtained or controlled by the entity as a result of past transactions or events.	Economic resources controlled by a government as a result of past transactions or event and from which future economic benefits are expected to be obtained. (par. 35)	Essential characteristics similar
Liabilities (Concept #6.35-.43)		
Probable future sacrifices of economic benefits arising from present obligations of the entity to transfer assets or provide services in the future as a result of past transactions or events.	Present obligations to others arising from past transactions or events, the settlement of which is expected to result in the future sacrifice of economic benefits with little or no discretion to avoid settlement. (par. 44)	Essential characteristics similar
Revenues (Concept #6.78-.79)		
Inflows from delivering or producing goods, rendering services or other activities that constitute the entity's central operations.	Increases in economic resources resulting from operations, transactions and events of the accounting period. (par. 46)	Similar
Expenses (Concept # 6.80-.81)		
Outflows from delivering or producing goods, rendering services or carrying out other activities that constitute the entity's central operations.	Decreases in economic resources resulting from operations, transactions and events of the accounting period. (par. 49)	Similar

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(iii) Recognition Criteria

FASB	PSAS	Evaluation
To be recognized, an item must meet the definition of an element of the financial statements, must be measurable with sufficient reliability, be relevant and be reliable. (Concept # 5.64)	Item must have an appropriate basis of measurement, a reasonable estimate can be made of the amount and if the item involves obtaining or giving up future economic benefits, it is expected those benefits will be obtained or given up. (par. 55)	Similar

(iii) Measurement Criteria

FASB	PSAS	Evaluation
Measurement basis dependent upon nature of item. Historical cost basis, replacement cost, market value. (Concept # 5.65-.70)	Primarily using historical cost basis. Replacement cost and realizable value are also used, but in limited circumstances. (par. 60)	Similar

Criteria of PS 1150.08

Criteria	Evaluation
Source deals with the specific circumstance	Yes, ASC 980 Regulated Operations
Source is issued by an accounting standard setter	Yes, FASB
Source continues to be relevant	Yes, still used by rate regulated entities
Source uses a consultative process and deliberation when developing policies	Yes, comprehensive consultative process and deliberation

Evaluation whether a deferral or variance accounts meet the definition of Assets as per Section PS3120

PS3120 defines assets as *"economic resources controlled by a public sector entity as a result of past transactions or events and from which future economic benefits are expected to be obtained."* (par. 03)

The analysis of the three essential characteristics as defined by PS3120.4 are analyzed in the next table.

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Characteristics	Additional guidance	Comments
They embody future economic benefits that involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows, or to reduce cash outflows. (par. 4(a))	The essence of assets are their future economic benefits. Assets embody future economic benefits that allow public sector entities to achieve their objectives. The future economic benefits embodied in assets involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows or to reduce cash outflows. (par. 11) The future economic benefits embodied in an asset may also be in the form of generating future cash inflows. Cash inflows benefit the public sector entity because cash can be used to purchase or to provide goods and services, redistribute wealth or settle liabilities. (par. 13)	The economic benefits embodied in the regulatory assets is the right to collect the incurred costs from ratepayers in order to settle the liability for the energy already consumed by the ratepayers. The electricity Act, 1998 ("EA") section 25.33(1) states: "*The IESO shall, through its billing and settlement systems, make adjustments in accordance with the regulations that ensure that, over time, payments by classes of market participants in Ontario that are prescribed by regulation reflect,* *a) amounts paid to generators, the Financial Corporation and distributors, whether the amounts are determined under the market rules or under section 78.1, 78.2 or 78.5 of the Ontario Energy Board Act, 1998; and* *b) amounts paid to entities with whom the IESO has a procurement contract, as determined under the procurement contract."*
The public sector entity can control the economic resource and access to the future economic benefits. (par. 4(b))	Economic resources can arise from, but are not limited to, the following: government's own legislation (for example, taxes, fines and penalties); (par. 08(c)) A public sector entity controls the economic resource and access to the future economic benefits when it: a. can benefit from the economic resource through its capacity to provide goods and services, to provide future cash inflows or to reduce cash outflows; b. can deny or regulate access to those benefits by others; and c. is exposed to the risks associated with the economic resource. (par.16)	The economic resources is the right created by the legislation that the energy costs IESO incurs will result in future cash flows. In the regulatory environments, incurring costs creates an enforceable right to set rates at a level that permits IESO to recover those costs. The adjustment of future rates is the mechanism the OEB uses to implement the right. Currently, the EA section 25.33(5) states: *"The IESO shall establish and maintain such variance accounts as may be necessary to record all amounts payable or receivable by it*

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		under this section." The legislation will be amended to permit IESO to collect specifically the deferral of the energy costs and the related interest and administrative costs.
The transaction or event giving rise to the public sector entity's control has already occurred. (par.4(c))	It is the occurrence of a past transaction or event on or before the financial statement date that distinguishes a present economic resource controlled by a public sector entity from an economic resource that may be controlled by a public sector entity in the future. (par. 25) The past transaction or event that gives rise to control of an economic resource resulting from exchange agreements or contracts usually occurs at the point of exchange. This arises when substantially all the benefits and risks of ownership have been transferred to the public sector entity and normally coincides with the disbursement of funds, exchange of other assets or assumption of liabilities. (par. 26)	The past event giving rise to IESO's control occurs as the energy cost is incurred, as IESO has a right to collect it from the ratepayers.
Conclusion: The right to collect the deferral of the energy costs and the related interest and administrative costs meets the definition of assets.		

When concepts are in conflict with PSAS then PSAS prevails (PS 1150.12). For example, PSAS does not recognize intangible assets (PS1000.58). So if regulatory assets are considered to be intangible assets, they would not be allowed to be recognized through another source of GAAP.

It is worth noting that the economic impacts of rate regulation are not recognized under US GAAP as intangible assets as the FASB has specific guidance to deal with this type of asset. The IASB have both concluded that regulatory assets are neither financial assets nor intangible assets.

The ED/2009/8 issued by the IASB in July 2009 states in the Basis for Conclusions

Therefore, we can conclude that ASC 980 is NOT in conflict with PS 3150.03, .14 with respect to intangible assets.

Conclusion:

- FASB is appropriate to use as "*other source of GAAP"*.
- FASB standard ASC 980 has extensive guidance for rate regulated entities including the recognition of regulatory assets.

Appropriate Accounting Principle for issue #2

ASC 980 Regulated Operations

- 980-10-15-2 *"The guidance in the Regulated Operations Topic applies to general-purpose external financial statements of an entity that has regulated operations that meet all of the following criteria:*

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(a) The entity's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party regulator or by its own governing board empowered by statute or contract to establish rates that bind customers.

(b) The regulated rates are designed to recover the specific entity's costs of providing the regulated services or products. This criterion is intended to be applied to the substance of the regulation, rather than its form. If an entity's regulated rates are based on the costs of a group of entities and the entity is so large in relation to the group of entities that its costs are, in essence, the group's costs, the regulation would meet this criterion for that entity.

(c) In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume that rates set at levels that will recover the entity's costs can be charged to and collected from customers. This criterion requires consideration of anticipated changes in levels of demand or competition during the recovery period for any capitalized costs."

- 980-10-20 Glossary, Definition of incurred costs *"A cost arising from cash paid out or obligation to pay for an acquired asset or service, a loss from any cause that has been sustained and has been or must be paid for."*
- 980-10-05-8 "*Unless an accounting order indicates the way a cost will be handled for rate-making purposes, it causes no economic effects that would justify deviation from the GAAP applicable to business entities in general. The mere issuance of an accounting order not tied to rate treatment does not change an entity's economic resources or obligations. In other words, the economic effect of regulatory decisions—not the mere existence of regulation—is the pervasive factor that determines the application of GAAP.980-340 – Other Assets and Deferred Costs."*
- 980-340-25-1 "*Rate actions of a regulator can provide reasonable assurance of the existence of an asset. An entity shall capitalize all or part of an incurred cost that would otherwise be charged to expense if both of the following criteria are met:*

  (a) It is probable (as defined in Topic 450) that future revenue in an amount at least equal to the capitalized cost will result from inclusion of that cost in allowable costs for rate-making purposes.

  (b) Based on available evidence, the future revenue will be provided to permit recovery of the previously incurred cost rather than to provide for expected levels of similar future costs. If the revenue will be provided through an automatic rate-adjustment clause, this criterion requires that the regulator's intent clearly be to permit recovery of the previously incurred cost.

  A cost that does not meet these asset recognition criteria at the date the cost is incurred shall be recognized as a regulatory asset when it does meet those criteria at a later date."
- 980-340-40-1: "*If at any time an entity's incurred cost no longer meets the criteria for the capitalization of an incurred cost (see paragraph 980-340-25-1), that cost shall be charged to earnings."*
- 980-350-50-1: "*In some cases, a regulator may permit an entity to include a cost that would be charged to expense by an unregulated entity as an allowable cost over a period of time by amortizing that cost for rate-making purposes, but the regulator does not include the unrecovered amount in the rate base. That procedure does not provide a return on investment during the recovery period. If recovery of such major costs is provided without a return on investment during the recovery period, the entity shall disclose the remaining amounts of such assets and the remaining recovery period applicable to them."*
- 980-340-55-2: "*In some cases, a regulator may approve rates that are intended to recover an incurred cost over an extended period without a return on the unrecovered cost during the recovery period."*
- 980-340-55-3: "*The regulator's action provides reasonable assurance of the existence of an asset (see paragraph 980-340-25-1). Accordingly, the regulated entity would capitalize the cost and amortize it over the period during which it will be allowed for rate-making purposes. That cost would not be recorded at discounted present value. An exception to this general rule is provided for costs of abandoned plants."*

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Issue #2: Can the IESO recognize deferral or variance accounts related to the deferral of the annual Global Adjustment account as a regulatory asset on its statement of financial position?

As described in issue #1, US GAAP includes special accounting provisions that are applicable to entities with activities that are subject to rate regulation. The result is that rate regulated entities are required to recognize regulatory assets and liabilities provided the following three criteria are met:

Criteria	Comment	Evaluation
The entity's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party regulator or by its own governing board empowered by statute or contract to establish rates that bind customers.	IESO has unrecognized variance accounts related to the MDMR (smart meters), that have been approved by the OEB in accordance with the Electricity Act and the OEB Act (see Appendix B). It is important to note that Hydro One and OPG are both consolidated into the province's books, are both regulated by the OEB and their respective regulatory assets and liabilities are reported in the province's books.	Met
The regulated rates are designed to recover the specific entity's costs of providing the regulated services or products.	Currently, the rates approved by the OEB are designed to recover the IESO's costs of providing the regulated services and the pass-through related to the energy purchased from the generators. The contemplated transaction is based on the fact that the OEB will grant generic deferral or variance accounts to capture the difference between the amounts paid to generators and others, and the amounts collected in rates. Furthermore, the interest and ancillary costs related to the contemplated transaction will also be included in future rates charged to customers. In summary, the legislation will create a right to collect the incurred costs.	Met
In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume that rates set at levels that will recover the entity's costs can be charged to and collected from customers. This criterion requires consideration of anticipated changes in levels of demand or competition during the recovery period for any capitalized costs."	Since the deferral or variance accounts will be sold to the OPG Trust at least on a monthly basis and cash will be received on the same day, this criteria will be met. This criteria will need to be monitored on a yearly basis to ensure that IESO and the OPG Trust will be able to recover the future deferred amount taking into account the levels of demand or competition during the recovery period.	Met
Conclusion: Since the three criteria are met, IESO should be able to adopt the guidance in ASC 980.		

Conclusion: Based on the assumptions mentioned above, IESO should be able to recognize a regulatory asset for the deferral of the annual Global Adjustment account. As mentioned in the ASC 980 guidance above, it is important that an accounting order be issued by the OEB which indicates the way the incurred costs will be

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handled for rate-making purposes as the OEB's action provides reasonable assurance of the existence of a regulatory asset.

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2. Derecognition of the regulatory assets

Background and Assumptions for issue #3

The facts, circumstances, and assumptions relevant to the specific transactions are as follows:

1. The annual Global Adjustment account that will be deferred in the deferral or variance accounts (the "Asset") will be significant.
2. The IESO does not currently have the financial capability to finance the Asset and is contemplating selling the Asset to a Trust to be set-up by OPG (the "OPG Trust").
3. The OPG Trust will be consolidated by OPG.
4. Proposed terms of the sale agreement between the IESO and the OPG Trust:
   - The sale contract will be structured as an absolute sale, which will assign future economic benefits or cash flows related to the Asset exclusively to the OPG Trust.
   - The arrangement will be structured whereby there is no recourse or obligations remaining of IESO related to the Asset.
   - The arrangement is not considered to be a financing transaction as IESO will have no obligations to the OPG Trust after the Asset is sold to the OPG Trust.
   - IESO will not retain any rights or benefits from the Asset.
   - IESO would not have any rights to interest or penalties on the Asset once it has been transferred to the OPG Trust.
   - The contract will be clear that IESO cannot pledge the Asset as collateral to obtain future cash flows or financing.
   - IESO will continue to collect related cash flows on the OPG Trust's behalf and remit those cash flows to the OPG Trust without material delay. In addition, IESO will not be entitled to reinvest such cash flows, except for investments in cash or cash equivalents during the short settlement period from the collection date to the date of required remittance to the OPG Trust, and interest earned on such cash and cash equivalents is passed to the OPG Trust. The contract will define IESO's role strictly as that of agent, under a pass-through arrangement.
   - Servicing, origination, and arrangement fees, will be collected by IESO in rates charged to ratepayers as part of its market dealings.
   - The Asset will be sold to the OPG Trust at least, on a monthly basis and cash will be received on the same day.

Appropriate Accounting Principles for issue #3

Public Sector Accounting Standard ("PSAS") 3210, *Assets*, defines an asset as "…*economic resources controlled by a government as a result of past transactions or events and from which future economic benefits are expected to be obtained*." [par. 3]

.04 "Assets have three essential characteristics:

(a) they embody future economic benefits that involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows, or to reduce cash outflows;

(b) the public sector entity can control the economic resource and access to the future economic benefits; and

(c) the transaction or event giving rise to the public sector entity's control has already occurred."

.22 "Control of an economic resource and of access to the future economic benefits are essential characteristics of an asset, whereas possession or ownership is not."

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.24 "A public sector entity may act as trustee when it administers trusts on behalf of the beneficiaries specified in the agreement or statute. As trustee, the public sector entity merely administers the assets, following the terms and conditions set out in the agreement. It does not control the asset because it does not have access to the future economic benefits. Those benefits flow to the beneficiaries."

As noted in PS1000 Financial statement concepts:

".37 An item is not an asset of a government if it lacks one or more of the essential characteristics listed in the preceding paragraph. Thus, for example, an item does not qualify as an asset of a government if the item involves:

(a) no future economic benefit;

(b) future economic benefit, but the government cannot obtain it; or

(c) future economic benefit that the government may obtain, but the events or circumstances that give the government control of the benefit have not yet occurred."

Issue #3: Can the IESO derecognize the variance accounts related to the deferral of the annual Global Adjustment account?

PS3210 does not specifically address the derecognition of a regulatory asset. The concept of a regulatory asset does not exist under PSAS.

It is also well understood in this industry that regulatory assets do not meet the definition of intangible asset or financial asset. Specifically, regulatory assets do not meet the definition of financial asset because they are imposed on customers through the tariff (i.e., imposed by the OEB) and do not represent a right to receive payments from another party as a result of a contract.

More generally, PSAS.3210.37 suggests that an asset would no longer be recognized when it fails to meet the definition of an asset.

Based on PS1000.37(b), an item does not qualify as an asset of a government if the item involves future economic benefit, but the government cannot obtain it.

Based on the assumptions mentioned above, ALL risks and rewards will be transferred to the OPG Trust including the following:

- the contract will define IESO's role strictly as that of agent, under a pass-through arrangement;
- all cash flows related to the Asset will be transferred without material delay to the OPG Trust;
- rights to interest or penalties on the Asset will be for the benefits of the OPG Trust;
- IESO cannot pledge the Asset; and
- no recourse or obligations remaining of IESO related to the Asset.

Conclusion: Based on the proposed terms of the sale agreement between the IESO and OPG Trust mentioned above, the deferral or variance accounts would be derecognized at the point where the IESO will derive no future economic benefit from it. This would occur where the IESO ultimately transfers the rights, risk and rewards related to those deferral or variance accounts to the OPG Trust.

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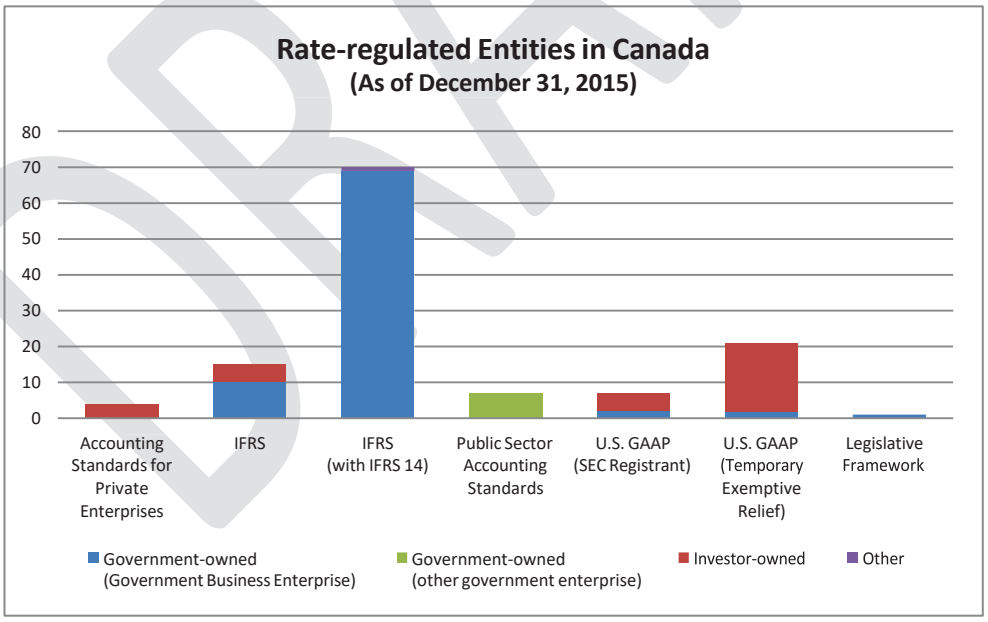
Appendix A:

Extract from the "Accounting Standards Advisory Forum Agenda Ref: 3A dated September 29, 2016" available on the IFRS website

Canadian Rate-regulated Entities

18. The accounting framework landscape for Canadian rate-regulated entities is currently diverse. For annual periods beginning on or after January 1, 2015, rate-regulated entities that are Canadian publicly accountable enterprises are required to apply IFRS. Rate-regulated entities that adopted IFRS for the first time after IFRS 14 *Regulatory Deferral Accounts* was issued continue to recognize these balances. Government Business Enterprises (which operate to generate a profit or on a break-even basis) that are also rate-regulated entities are also directed to apply standards applicable to for-profit entities, and thus apply IFRS. Canadian securities legislation permits dual-listed entities (i.e., Canadian entities also registered with the U.S. Securities and Exchange Commission) to apply U.S. GAAP in the normal course. Temporary exemptive relief is also available from the Canadian Securities Administrators that permits rate-regulated entities that are not dual-listed to apply U.S. GAAP in place of IFRS. If a rate-regulated entity is not a publicly accountable enterprise or a Government Business Enterprise, additional accounting framework options may also include Accounting Standards for Private Enterprises or Public Sector Accounting Standards. A non-GAAP reporting framework is used when legislated by the provincial owner of a government-owned rate-regulated entity.

19. As of December 31, 2015, there were approximately 125 rate-regulated entities in Canada. These entities mainly range in size from small entities owned by municipal governments to large investor-owned entities or entities owned by provincial governments.



Source: Information compiled based on audited financial statements for fiscal year 2015, or information from rate filings that confirmed the accounting framework used by these entities. Due to data collection constraints, the population could be slightly larger.

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20. The chart above highlights two key points:

(a) The majority of investor-owned entities have chosen U.S. GAAP over IFRS. A few entities that are not reporting issuers apply Accounting Standards for Private Enterprises. Both U.S. GAAP and Accounting Standards for Private Enterprises permit the recognition of balances arising from rate regulation. Several entities that apply U.S. GAAP have told us this choice was influenced by the need to provide their users with financial statements that accurately reflect the economics of their business. Further, some entities presently using the temporary exemptive relief described in paragraph18 have said they are considering incurring the cost and effort necessary to become a registrant of the U.S. Securities and Exchange Commission in order to have the permanent ability to apply U.S. GAAP. While such a decision could be primarily for business reasons such as the entity expanding its operations into the U.S., it could also be attributed to the continuing uncertainty about the ultimate outcome of the IASB's Rate-regulated Activities project and the approaching expiry date of the securities regulators' exemptive relief.

(b) Public sector entities that are Government Business Enterprises tend to apply IFRS. The majority of these entities is made up several large provincially-owned utilities, and many small municipally-owned local distribution utilities that do not issue debt or list in the U.S. stock market, and are not subject to Canadian securities legislation. As a result, they cannot apply U.S. GAAP. As shown in the chart, many of these entities adopted IFRS for the first time after the IASB issued IFRS 14, which allowed them to continue their previous accounting practices for rate-regulated activities.

21. Within the pool of government-owned rate-regulated entities, there are entities that do not meet the characteristics of Government Business Enterprises and are required to apply Public Sector Accounting Standards.

22. The data on the different accounting frameworks in Canada is unique. It demonstrates that when given a choice, rate-regulated entities select an accounting framework that captures the effects of rate regulation on their financial position and financial performance in order to communicate more decision-useful information to users.

http://www.ifrs.org/Meetings/MeetingDocs/ASAF/2016/September/1609-ASAF-03A-Rate-regulated-Activities-Canada.pdf

DRAFT

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Appendix B:

Extract from the "DECISION and ORDER issued by the OEB on March 28, 2013" available on the IFRS website

Proceeding on the Ontario Energy Board's own motion to review the options for and ultimately determine the appropriate allocation and recovery of the Smart Metering Charge pursuant to section 19 of the Ontario Energy Board Act, 1998.

THE BOARD ORDERS THAT:

Effective May 1, 2013, the Smart Metering Entity charge to be levied and collected by the Smart Metering Entity from all Distributors identified in the Board's annual Yearbook of Electricity Distributors shall be $0.788 per month for each Residential and General Service <50kW customers for each distributor. The Smart Metering Entity charge shall be in effect from May 1, 2013 to October 31, 2018. The number of Residential and General Service <50kW customers to which the Smart Metering Entity charge will be applied to shall be in accordance with the methodology set forth in the Settlement Agreement Attached as Appendix A.

http://www.ontarioenergyboard.ca/oeb/_Documents/EB-2012-0100/dec_order_IESO-SME_20130328.pdf

DRAFT

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Ernst & Young.rtf

From: Virani, Shyrose (TBS) []
To: Askcontractorscreening (TBS) [Askcontractorscreening@ontario.ca]
Subject: Ernst & Young
Date: Tuesday, November 15, 2016 14:39:05

Hi

Can you please let me know if the following staff from Ernst & Young has clearance:

1. Ivan Chittenden
2. Lee Ann Probert
3. Daniel Mortimer
4. Black Langill
5. Suzie Gignac

Thanks

Shyrose Virani

Ernst & Young.rtf

From: Virani, Shyrose (TBS) []
To: Askcontractorscreening (TBS) [Askcontractorscreening@ontario.ca]
Subject: Ernst & Young
Date: Wednesday, February 08, 2017 14:39:07

Hi

Can you please find out if the following have the clearance:

1. Suzie Gignac
2. LeeAnne Probert
3. Ivan Chittenden

Thanks

shyrose

TBS Invoice - 19 Sept 2018 - scanned.pdf

Ernst & Young LLP
Ottawa, ON

Invoice

Treasury Board Secretariat
Mark Donaldson
Director
777 Bay Street, 25th Floor
Toronto, ON M5G 2E5
Canada

Invoice No.: CA01C100165153
Please include this number with payment

Invoice Date:	19 September 2018
Due Date:	Upon receipt
Client No.:	0011426981
Engagement No.:	E-65062708

Remit To:
P.O. Box 57104, Postal Station A
Toronto, Ontario M5W 5M5
A/R Queries:
EYCanadaInvoiceInquiry@ca.ey.com

Description of Services: RFS-TBS-OTB-OPCD-16.

Time incurred with regards to complex accounting support.

Suzie Gignac - 4.8 hours @ $450
Blake Langill - 3.0 hours @ $450
Lee Ann Probert - 24 hours @ $375

	Net	Tax	Rate	Tax Amount	CAD Total
Fee	12,510.00	HST	13 %	1,626.30	14,136.30
	12,510.00			**1,626.30**	**14,136.30**
Invoice summary	**12,510.00**				
Tax : 13% HST				1,626.30	
Total:	**12,510.00**			**1,626.30**	**14,136.30**

A member of Ernst & Young Global

Terms: Payment due upon receipt. Interest is charged at the rate of 12 % per annum on balances unpaid after 30 days from date of invoice. Any disbursements not charged to your account on the date of this invoice will be billed later.
GST/HST: R130866262 **QST:** 1006241791

Electronic payment instructions:
Send direct and pay to: Bank of Montreal, International Banking, H.O. Montreal, SWIFT BIC Address BOFMCAM2, Ernst & Young LLP, 6 King Street West, Toronto, Ontario, Canada, M5H 1C3.

Wire transfer instructions: Transit #2411 Account #24111000237. Reference the name and address of remitter, invoice number and engagement number.

Electronic fund transfer instructions: Bank ID: 0001 Transit# 24112 Account# 1000237. To ensure accurate allocation of funds, please email gss.canadaaccountsreceivable@xe02.ey.com and include amount paid, invoice number and company name.

debriefing.rtf

From: Virani, Shyrose (TBS) []
To: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]
Subject: debriefing
Date: Monday, June 12, 2017 08:44:37

From: Blake Langill <blake.w.langill@ca.ey.com>
Sent: June 8, 2017 11:30 AM
To: Virani, Shyrose (TBS)
Cc: Petsche, Nadine (TBS)
Subject: TBS-OTB-OPCS-21

Good morning Shyrose.

I would appreciate the opportunity to have a debriefing meeting in respect of our submission to TBS-OTB-OPCS-21.

I'm happy to come to your offices or to have the discussion by phone. I suspect it will not be a long meeting.

Thanks and best regards,

-blake

--

Blake Langill | Partner

Ernst & Young LLP

EY Tower, 100 Adelaide St. W.

P.O. Box 1, Toronto, ON M5H 0B3, Canada

Office: +1-416-943-3556 | blake.w.langill@ca.ey.com

Website: http://www.ey.com

Assistant: Amanda Craig | Phone: +1-416-943-4581 | amanda.craig@ca.ey.com

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debriefing.rtf

From: Virani, Shyrose (TBS) []
To: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]
Subject: debriefing
Date: Monday, June 12, 2017 08:40:44

From: Blake Langill <blake.w.langill@ca.ey.com>
Sent: June 8, 2017 11:30 AM
To: Virani, Shyrose (TBS)
Cc: Petsche, Nadine (TBS)
Subject: TBS-OTB-OPCS-21

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Assistant: Amanda Craig | Phone: +1-416-943-4581 | amanda.craig@ca.ey.com

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debriefing.rtf

From: Virani, Shyrose (TBS) []
To: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]
Subject: debriefing
Date: Friday, June 09, 2017 14:07:25

From: Blake Langill <blake.w.langill@ca.ey.com>
Sent: June 8, 2017 11:30 AM
To: Virani, Shyrose (TBS)
Cc: Petsche, Nadine (TBS)
Subject: TBS-OTB-OPCS-21

Good morning Shyrose.

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-blake

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EY Tower, 100 Adelaide St. W.

P.O. Box 1, Toronto, ON M5H 0B3, Canada

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Assistant: Amanda Craig | Phone: +1-416-943-4581 | amanda.craig@ca.ey.com

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debriefing.rtf

From: Virani, Shyrose (TBS) []
To: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]
Subject: debriefing
Date: Thursday, June 08, 2017 11:36:35

From: Blake Langill <blake.w.langill@ca.ey.com>
Sent: June 8, 2017 11:30 AM
To: Virani, Shyrose (TBS)
Cc: Petsche, Nadine (TBS)
Subject: TBS-OTB-OPCS-21

Good morning Shyrose.

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Thanks and best regards,

-blake

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Blake Langill | Partner

Ernst & Young LLP

EY Tower, 100 Adelaide St. W.

P.O. Box 1, Toronto, ON M5H 0B3, Canada

Office: +1-416-943-3556 | blake.w.langill@ca.ey.com

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Assistant: Amanda Craig | Phone: +1-416-943-4581 | amanda.craig@ca.ey.com

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examples.rtf

From: Petsche, Nadine (TBS) []
To: LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]
Subject: examples
Date: Wednesday, July 26, 2017 07:36:54

Lee Anne,

With regards to classification of RRAs as financial assets, just sending some examples of commoditization (for backpocket)…

https://www.sec.gov/Archives/edgar/data/710182/000095012002000226/txu-form8k_0415.txt

https://www.sec.gov/Archives/edgar/data/1130310/000095012903003121/h06689exv99w2.htm

https://www.puc.texas.gov/agency/rulesnlaws/subrules/electric/25.263/25.263.pdf

http://files.shareholder.com/downloads/HOU/0x0xS1130310-15-8/1130310/filing.pdf

EY Submission RFS TBS-OTB-OPCD-21 - Main Submission.docx.rtf

From: Virani, Shyrose (TBS) []
To: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
Subject: EY Submission RFS TBS-OTB-OPCD-21 - Main Submission.docx
Date: Wednesday, May 10, 2017 14:44:54
Attachment 1: EY Submission RFS TBS-OTB-OPCD-21 - Main Submission.docx

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EY Submission RFS TBS-OTB-OPCD-21 - Main Submission.pdf

Treasury Board Secretariat,
Office of the Provincial Controller

Complex Accounting Services related to Electricity Sector Entities

Response to RFS TBS-OTB-OPCD-21
VOR # OSS-0042661 1

May 5, 2017

Response Submission

Prepared for

Nadine Petsche, Director
Accounting Policy and Financial Reporting Branch
Nadine.Petsche@ontario.ca

Submitted by

Ernst & Young LLP
EY Tower, 222 Bay St.
Toronto, Ontario M5K 1J7

Ernst & Young LLP.
222 Bay Street
P.O. Box 251
Toronto, ON M5K 1J7

Tel: +1 416 864 1234
Fax: +1 416 864 1174
ey.com/ca

May 5, 2017

Nadine Petsche, Director
Accounting Policy and Financial Reporting Branch
Treasury Board Secretariat
Office of the Provincial Controller

nadine.petsche@ontario.ca

Re: Request for Complex Accounting Services related to Electricity Sector Entities

On behalf of EY, we appreciate the opportunity to submit our response to Treasury Board Secretariat's (TBS) request for services to provide complex accounting advice and analysis related to electricity sector entities. TBS is an important and valued client to our firm and we are excited about working with the Accounting Policy and Financial Reporting Branch on this important initiative.

Included as Attachment A is a summary of our qualifications as well as a discussion of our approach to communications, reporting and knowledge transfer as well as contingency planning. Attachment B is our Submission Form and Attachment C contains our resumes together with references. Provided separately is our Pricing Schedule.

While Lee Anne Probert will be our Senior Consultant / Project Lead and your main point of contact, as the engagement partner and senior advisory partner, we will be fully responsible for the successful completion of this engagement, including engaging appropriate firm resources, supervising our service delivery, and monitoring the results of this engagement. If you have any questions regarding our experience, references, or other components of our proposal, please do not hesitate to contact us.

Sincerely,

Ernst & Young LLP

Suzie Gignac
Engagement Partner
(613) 598-4376
suzie.r.gignac@ca.ey.com

Fred Clifford
Engagement Partner
(416) 943-2489
fred.clifford@ca.ey.com

IN THE EVENT YOU RECEIVE AN ACCESS TO INFORMATION OR FREEDOM OF INFORMATION REQUEST THAT COULD REQUIRE DISCLOSURE OF OUR PROPOSAL (OR ANY OTHER INFORMATION PROVIDED BY US IN THIS CONTEXT) PLEASE IMMEDIATELY NOTIFY US SO THAT WE MAY AVAIL OURSELVES OF ANY AVAILABLE PROTECTIONS OR EXEMPTIONS UNDER THE APPLICABLE LEGISLATION. OUR PROPOSAL IS BEING PROVIDED TO YOU IN CONFIDENCE AND INCLUDES COMMERCIALLY SENSITIVE INFORMATION, THE DISCLOSURE OF WHICH, AMONG OTHER THINGS, MAY SIGNIFICANTLY PREJUDICE THE COMPETITIVE POSITION OF EY OR BE OTHERWISE HARMFUL TO OUR BUSINESS INTERESTS.

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"EY" AS USED IN THIS PROPOSAL MEANS THE CANADIAN FIRM OF ERNST & YOUNG LLP OR, AS THE CONTEXT REQUIRES, OTHER MEMBER FIRMS OF THE GLOBAL EY NETWORK, EACH OF WHICH IS A SEPARATE AND INDEPENDENT LEGAL ENTITY.

Attachment A – Our Qualifications

Background and Approach

Given the importance of government and public sector activities in Canada, we have full-time professionals dedicated to serving clients in the public sector and have extensive experience in helping clients deal with complex accounting issues that need to be considered in the context of various financial reporting frameworks (in particular, with PSAS, IFRS, US GAAP, ASPE).

EY's Financial Accounting Advisory Services is a unique group of highly qualified specialists dedicated to providing accounting and regulatory assistance on complex technical issues to clients. The group is comprised of over 50 full time team members in offices located in across Canada. The team members have deep technical expertise in a variety of topics and in monitoring new business, industry and regulatory developments. They are well positioned to provide in-depth research and advice on specialized topics under various accounting standards and to equip our clients with the most up-to-date knowledge. They are experienced in interpreting accounting standards and evaluating accounting alternatives.

We have found through our relationships with, amongst others, the Offices of the Provincial Controller, the Auditor General of Canada and the Auditor General of Alberta that despite being in the public sector, the accounting challenges that arise often are not specifically related to PSAB standards. As such, our proposed team includes individuals who have worked extensively in EY's Financial Accounting Advisory Services group, advising audit teams and external clients on the appropriate accounting treatment of a variety of transactions under IFRS, US GAAP, ASPE and PSAS. This work involves reviewing and preparing analyses, evaluating complex accounting issues, and providing recommendations thereon. The expertise of these individuals spans a broad range of industry groups and accounting topics, and – importantly for you – the team collectively has significant experience working in the power & utilities sector. We specifically highlight Fred Clifford, one of our two engagement partners for this project, who has significant relevant experiences having been involved in the last major restructuring of the energy sector when Hydro One and OPG were created and has worked with most of the major utilities in Ontario.

The skill set that our firm possesses in the public sector sphere is highlighted by the prior secondment of Suzie Gignac (our proposed engagement partner) to the Office of the Comptroller General, Treasury Board Secretariat within the Government of Canada. She held the role of Executive Director, Government Accounting Policy and Reporting for over two years and was responsible for complex accounting related to the Public Accounts of Canada including transactions such as Spectrum license revenue, pension accounting, automotive loans and investments and transfer payments related to the Economic Action Plan. In her role at the Treasury Board, Suzie was actively engaged in discussions related to the accounting implications of departmental and Crown Corporation transactions as well as the federal budget and Suzie was the primary liaison with the Office of the Auditor General related to the audit of the Public Accounts of Canada. Suzie was a member of the Assets task force of the Public Sector Accounting Board and is currently on the Advisory Committee for the annual PSAB conference and is in frequent discussions with government officials, practitioners and other stakeholders on the financial reporting challenges faced by entities in the public sector. As the engagement partner for this project, she is perfectly positioned to provide you with up -to-date thinking on trends and opportunities on how best to deal with the challenges of financial reporting facing the Public Sector.

To ensure we properly manage the vast resources at our disposal, we have designated Lee Anne Probert as your dedicated key contact in her role as the Senior Consultant / Project Lead. As the dedicated key contact, she will be responsible for coordinating our accounting advisory services to you; confirming that all project deliverables are met; and monitoring the quality of our service delivery. She will be supported by Mita Meyers,

Senior Manager in Assurance practice who has had experience both with utilities companies (leading the Hydro Ottawa audit engagement) and with Public Sector accounting. She will also act as engagement lead and be responsible for overseeing the day-to-day activities and ensuring that assignments are progressing according to plan. In the event that Lee Anne is not available, both Suzie Gignac (the project's engagement partner that brings significant PSAS skills) and Fred Clifford (the project's engagement partner that brings significant electricity sector skills) will be available to you to ensure that there is no loss in our responsiveness or quality of services we provide you. Lee Anne has been chosen as your dedicated key contact because it is expected that in most cases she will also have the technical knowledge required to immediately provide answers to you or to seek out the appropriate resource, whether it be specific to the power & utilities industry or to the public sector. In addition to the team noted above, we will also have Blake Langill and Ivan Chittenden, partners in our assurance practice who both have experience working with OPCD and/or supporting our project teams on complex accounting issues and Mita Meyers who has extensive experience with Public sector clients. All of Lee Anne, Suzie, Blake and Ivan are known to you from our prior engagements with you and Fred and Abbas, while new to OPCD, have worked closely with Lee Anne, Blake and Ivan on many engagements and Fred and Mita have worked together with Hydro Ottawa.

You can be assured that our core team is also able to draw on the other resources of our firm to provide additional knowledge and insight as warranted.

Our approach to providing you with advice in respect of your accounting issues is as follows:

- Recognizing that specific questions or issues could span a range of topics, be of differing size and have varying degrees of impact, it is critical for us to understand your needs at the very outset of the engagement. We will meet immediately with the appropriate representatives to discuss the nature of the assignment and the technical topics involved, your goals and objectives, goals and objectives of other stakeholders, degree of involvement of your staff, availability of resources, location of resources, timeline and deadlines, documentation requirements and communication protocols. The co-development of expectations will facilitate a clear understanding of your objectives and minimize the time spent on non-productive activities, as well as facilitate the alignment of our services and resources with your expectations, and enhance the benefits of the services we deliver.

- EY understands your business imperatives. For the on-demand accounting services being offered, our firm has the depth and breadth of resources necessary to carry out the range of services described in the RFS.

- EY understands that our clients have business needs that may require engagements to be started and completed on very short notice with tight deadlines. As part of our commitment to quality, EY strives to respond to these resource requests as expeditiously as possible. We will respond to your requests within one business day to understand both the issue at hand and the next steps, with the purpose of answering your questions quickly and effectively. For many requests, the core team will have the knowledge required to immediately provide answers to you. In all cases, we will clearly understand your timeframe and work to provide a clear and carefully considered response upon which you can rely.

As noted above at the start of the project, we propose to review and agree with you to determine the appropriate on-going reporting protocol that will be best suited for the engagement. For example, we would propose regular and scheduled meetings, weekly or bi-weekly, in person, be held to confirm that all information flows back and forth effortlessly between the project authority and EY engagement team. Standard short status reports combining graphics and text would be used to monitor and document progress, identify and capture issues and resolutions. We would also propose that the engagement partner and/or senior advisory partner meet with your project authority for a formal review at least once a month.

As with all advisory projects, we would also propose to formalize within the first couple of weeks of the start of the assignment a deliverable acceptance protocol. This protocol would specify the nomenclature of various work products, expected turn-around for review, authority to approve, format, draft vs. final etc. to confirm that they meet your quality requirements.

To ensure that there is as much knowledge transfer as possible, Lee Anne will ensure that all memos, analysis and research is shared with your team and that your team has a sufficient understanding of the concepts and analysis contained therein.

Our specific qualifications

EY has extensive experience in helping clients deal with complex accounting issues.

We are currently engaged by the OPC to provide accounting advice on various complex accounting issues as they arise including transactions related to the energy sector and have previously been engaged to provide accounting advice on various complex accounting issues relating to a potential divestiture, with respect to pension accounting and relating to the Province's financial assistance to the auto industry. We believe that our current engagement as well as the success of the engagement related to the potential divestiture are excellent examples that EY can work effectively with the OPC to provide timely and pragmatic advice on complex accounting issues as they arise**.** The latt er of these two engagements included consideration of issues related to the impact of the proposed transaction on the current and future deficit of the Province. It involved a consideration of then PSAB and CICA private sector accounting principles as well as U.S. public sector accounting literature. As part of this assignment, we supported the OPC in preparing for discussions of these complex issues with the Auditor General of Ontario and participated directly in certain discussions with the Auditor General. Ivan Chittenden was responsible for the execution of this engagement and will continue his relationship with OPC as an additional partner resource for the services contemplated by this proposal.

We provide complex accounting advice on an on-going basis in connection with the execution of our financial statement audits and specifically for clients within the power & utilities sector. Our clients over the years have consisted of a number of entities that fall within the public sector such as Hydro One, Toronto Hydro, Hydro Ottawa, Hydro Quebec and Ontario Power Generation and those in the private sector such as Brookfield Renewable Partners, Algonquin Power, Enwave, Fortis, Just Energy and Northland Power.

In recent years, EY has provided extensive advisory services relating to the power & utilities sector specifically. For example, our IFRS advisory services have included the preparation of diagnostic reports that outline differences between ASPE or US GAAP and IFRS, the preparation and review of policy papers on complex accounting issues; discussions, meetings and presentations to clients on complex accounting issues; and training provided to clients on several accounting topics. These services have been provided to audit and non-audit clients, and to both public and private enterprises. Specific examples include: Hydro One, Hydro Quebec, Hydro Ottawa, Toronto Hydro, Ontario Power Generation, Enwave and Northland Power.

We also have long-standing relationships with both the Office of the Auditor General of Canada and the Office of the Auditor General of Alberta to provide on-call accounting advice. These services have generally focused on financial instruments, derivatives, hedging, securitization, leasing and foreign exchange. The renewal of these engagements over a number of years is further evidence that we have the right skills to effectively service the on-call account ing needs of a client in the public sector. As well, in late 2012 / early 2013 we assisted Infrastructure Ontario with their implementation of PSAS 3450.

As noted earlier, the skill set that our firm has developed in the public sector sphere is highlighted by the secondment of Suzie Gignac to the Office of the Comptroller General, Treasury Board Secretariat within the Government of Canada. We believe that the experience she gained in this role, in particular her responsibility for complex accounting matter related to the Public Accounts of Canada, will make her very relevant as

engagement partner on our team and will allow her to provide valuable insights to OPC. In addition, Mita Meyers has worked at Office of the Auditor General (OAG) in the prior years and is currently leading joint audit engagements with the OAG having worked with both IFRS and PSAS frameworks leading complex accounting issues such as transition to IFRS 9 (the new financial instrument standard).

However, in ensuring that you receive the best possible service from us on this project, it is our ability to bring Suzie's background together with the significant power & utilities experience of Fred Clifford that will be a differentiator for you. Further, both of them will utilize Abbas Lakha's industry experiences and the dual PSAS / power & utilities experience of Lee Anne Probert, Blake Langill, Ivan Chittenden and Mita Meyers to ensure that issues can be considered and skills utilized from all three angles – PSAS, private sector GAAP (i.e. IFRS and/or US GAAP) and industry specific issues.

In addition to the experience as outlined above, EY has created proposals and made presentations to senior executives and other stakeholders on complex accounting issues. This experience includes the provision of services to the public sector, for example to Infrastructure Ontario as part of their adoption of PSAS 3450 and to the City of Toronto on new capitalization of asset rules.

Over the years, many of our partners and staff have also assisted the Office of the Auditor General of Canada in the conduct of the audit of the Public Accounts of Canada (PAC). Members of the team have also conducted the audit of the Bank of Canada for many years, CMHC, CORCAN and a number of other entities included in the PAC perimeter.

EY has advised clients in both the private and public sector on the accounting impact of acquisitions and divestments and accounting in the power and utilities sector. This includes accounting issues relating to mergers, spin-offs, carve-outs and purchase price equations.

In terms of government transactions, EY was previously engaged to advise the OPC on a confidential transaction relating to a potential government divestment. Our services included an analysis and evaluation of whether there is scope to structure the transaction so as to achieve sale treatment. EY was also involved in the transactions resulting in the separation of both Ontario Power Generation and Hydro One from Ontario Hydro.

In EY's on-call accounting engagements, our evaluation of a complex accounting issue or t ransaction will often include the implications of decisions on financial reports, budgets and appropriations. For example and as noted earlier, EY was engaged to advise OPC on a confidential transaction involving a potential government divestment and a component of this project includes an evaluation of the consequential impact on the Province's financial statements, including the impact on the Provincial deficit.

Additionally, when providing complex accounting advice in connection with the execution of our financial statement audits, consideration is always given, where appropriate, to the implications on the Province's financial reports, budgets and appropriations. The services provided by EY to the Office of the Auditor General of Canada include reviews of complex financial statements, the interpretation of new standards and the provision of examples of best practices in financial reporting.

The following table summarizes our proposed professionals' accounting standards knowledge and expertise (more details of these individuals are contained in their resumes which are contained elsewhere in this document).

Resource name and role	PSAS	IFRS	US GAAP	Electricity Sector
Suzie Gignac Engagement Partner	√	√		
Fred Clifford Engagement Partner		√	√	√
Lee Anne Probert Senior Manager	√	√	√	√
Mita Meyers Senior Manager	√	√		√
Abbas Lakha Manager		√	√	√
Ivan Chittenden	√	√	√	√
Blake Langill Partner	√	√	√	√

Pricing

We have provided the following information.

In order to arrive at our Pricing Supplement submission (included separately), we have applied the following hourly rates based on the EY-specific roles of the individuals:

Partner	$450
Senior manager	$375
Manager	$200
Staff	$150

For the purposes of the Pricing Supplement, based on our experiences with other longer term on-call accounting advisory engagements that included a high degree of complex accounting issues, we have assumed a staffing mix as follows:

Partner	15%
Senior manager	40%
Manager	35%
Staff	10%

We have quoted the same rate for each role specified in the RFS as we believe that the specific level of the team member(s) providing the services will be a function of the specific issues raised.

Contingency Planning

You are an important client for our firm. We are committed to continuing to build upon our existing relationship. We have successfully maintained the core resource team during the lifecycle of our previous projects with you, where all proposed team members remained active for the entire duration of the engagement. Throughout the engagement we will confirm there is adequate staff allocated to the project. Through this process, we will confirm continuity with the Engagement Partner and other team members for the duration of the assignments during the course of the term of the engagement and, to the best of our ability, we will allocate work to allow the same project team to work on our deliverables.

EY also understands the need for a flexible workforce that can readily respond to the changing needs of our clients and their projects. While our core team of resources is prepared to undertake the work as presented in this proposal, EY is also prepared to supplement resource deficiencies identified within our team to complete this project in accordance with the agreed upon project schedule. EY has a large pool of qualified and experienced professionals to replace any team changes over the period. In addition, EY has included a number of senior resources on the team to be available to share knowledge and guide the other team members and to mitigate any loss of continuity/ knowledge on the engagement. If there is t ransition, the senior members of the team will transfer knowledge and support a smooth and seamless transition for you.

If proposed resources are unavailable for reasons outside of EY's control, or if additional resources are required to deliver the work steps within the proposed timeline, we will work directly with you to approve replacement/ additional resources who meet the required experience standards.

We strive to ensure continuity on all of our engagements as there are tangible benefits to you. We have been very successful in maintaining staff continuity in past years, from the Partner level down to the staff level. We commit to providing staff continuity within our control to this project and to proposing fully qualified resources to you within five days of a request for a replacement resource. Our internal resource management system provides us with real time information on our staff assignments. This system will be used to forecast and schedule staff in a timely manner and to provide up-to-date information on staff changes and reallocations to meet your needs.

Effective issue management is a critical success factor for the management of challenges that are experienced during the project life cycle and allows for the following:

- A visible decision-making process
- A means for reaching consensus on questions concerning the project
- A project documentation t rail

As necessary, an issues log will be maintained to log and track issues by Lee Anne, with the support of her manager, Abbas Lakha. All team members will be responsible for pro-active identification, documentation and resolution of issues. Open issues will be reviewed during project status meetings and escalated, if needed, to the appropriate resources within your organization.

If during the course of the project, an issue is identified by either party, the issue will be raised to Lee Anne. She will discuss the issue and propose a resolution with you. Should the issue not be satisfactorily addressed or resolved, it will be raised to Suzie Gignac and/ or Fred Clifford, who will confirm that the issue is resolved to your sat isfaction.

EY is committed to delivering timely, quality engagements that meet your business objectives. We will communicate swiftly and openly with you on significant issues as they arise. We are committed to maintaining open two-way communication so that feedback and recommendations can flow between our two organizations to maximize efficiencies to the benefit of both organizations. We will establish planning meetings and regular

status meetings throughout the process with management to establish a clear understanding of your expectations and service delivery requirements, including communication protocols.

However, the ultimate mix of individuals that will be utilized in providing these services to the OPC will be a function of the complexity of the issues and thus the level of expertise or specialized skills required of the individuals.

Attachment B – Submission Form

SUPPLEMENT B - SUBMISSION FORM

Request for Services Number: TBS-OTB-OPCD-21

To: HER MAJESTY THE QUEEN in right of Ontario as represented by President of Treasury Board

1. Vendor Information

(a) The full legal name of the Vendor is:

Ernst & Young LLP

(b) Please identify any other relevant name under which the Vendor conducts business:

Ernst & Young
EY

(c) The Vendor's address, telephone and facsimile numbers are:

Ernst & Young LLP
Ernst & Young Tower
222 Bay St.
Toronto, ON
M5K 1J7

Tel: 416-864-1234
Fax: 416-864-1174

Please be advised that effective May 23, 2017, all references to the above address should be replaced with the following:

Ernst & Young LLP
EY Tower
100 Adelaide St. W.
Toronto, ON
M5H 0B3

(d) The name and title of the Vendor's Representative:

Ivan Chittenden, Partner

(e) The mailing address, phone number and e-mail address of the Vendor's Representative:

Ernst & Young LLP
Ernst & Young Tower
222 Bay St.
Toronto, ON
M5K 1J7

Tel: 416-943-3110
Email: Ivan.Chittenden@ca.ey.com

(f) State the name, address, telephone and facsimile numbers and e-mail address of the Company Security Officer (CSO) for the Vendor:

Laarni Tansingco

Ernst & Young LLP
Ernst & Young Tower
222 Bay St.
Toronto, ON
M5K 1J7

Tel: 416-943-5822
Fax: 416-864-1174
Email: Laarni.Tansingco@ca.ey.com

(g) State the name and title of each of the individuals that the Vendor is proposing for this Project:

Suzie Gignac, Partner

Lee Anne Probert, Senior Manager

Abbas Lakha, Manager

Fred Clifford, Partner

Ivan Chittenden, Partner

Blake Langill, Partner

Mita Meyers, Senior Manager

2. Submission Requirements and Accuracy of Information

The Vendor accepts the terms and conditions set out in the RFS. While this submission is provided for evaluation purposes only and is not legally binding before the execution of a SOW, I confirm that the information provided is accurate.

3. Certificate(s) of Insurance

As required in Article 32.4 – Proof of Insurance in the Master Agreement, please identify the status of the Vendor's Certificate(s) of Insurance by placing a check mark (√) in one (1) of the following three (3) boxes:

☐ a) the Vendor has previously submitted a Certificate of Insurance to MGCS, which has been approved

☐ b) the Vendor has included its Certificate of Insurance with this RFS submission (that will be subject to approval by MGCS) prior to the Client issuing a SOW

√ c) the Vendor agrees to submit a Certificate of Insurance (that will be subject to approval by MGCS) prior to the Client issuing a SOW

As required in the Request for Services, the Vendor agrees to submit a Certificate of Insurance (that will be subject to approval by the Client) prior to the Client issuing the SOW to evidence the additional insurance and/or the additional coverage required by the Client.

4. Conflict of Interest

The Vendor must complete the following:

(a) If the box below is left blank, the Vendor will be deemed to declare that: (1) there was no Conflict of Interest in preparing its submission; and (2) there is no foreseeable Conflict of Interest in the Vendor or any of its Personnel performing the contractual obligations contemplated in the Request for Services.

(b) Otherwise, if the statement below applies, check the box.

☐ **The Vendor declares that there is an actual or potential Conflict of Interest relating to the preparation of its submission, and/or the Vendor foresees an actual or potential Conflict of Interest in it and/or its Personnel performing the contractual obligations contemplated in the Request for Services.**

(c) If the Vendor declares an actual or potential Conflict of Interest by marking the box above, the Vendor must set out below details of the actual or potential Conflict of Interest:

_____

_____

(d) The following individuals, as employees, advisors, or in any other capacity (i) participated in the preparation of our submission; **AND** (ii) were employees of the Ontario Public Service ("OPS") and have ceased that employment prior to the Requested Submission Date:

Name of Individual:

Job Classification (of last position with OPS):

Ministry/Agency/office of an officer of the Legislature of Ontario (where last employed with OPS):

Last Date of Employment with OPS:

Name of Last Supervisor with OPS:

Brief Description of Individual's Job Functions (at last position with OPS):

Brief Description of Nature of Individual's Participation in Preparation of Submission:

(Repeat above boxed information for each identified individual)

(e) The following are individuals that: (i) are proposed to be assigned by the Vendor to perform work under the SOW; **AND** (ii) were employees of the Ontario Public Service ("OPS") and have ceased that employment prior to the Requested Submission Date:

Name of Individual:

Job Classification (of last position with OPS):

Ministry/Agency/office of an officer of the Legislature of Ontario (where last employed with OPS):

Last Date of Employment with OPS:

Name of Last Supervisor with OPS:

Brief Description of Individual's Job Functions (at last position with OPS):

(Repeat above boxed information for each identified individual)

(f) We agree that, upon request, we shall provide the Client with a Conflict of Interest Declaration from each individual identified above in the form prescribed by the Client.

5. Schedules

This submission includes the following Schedules:

Schedule A (Pricing Schedule)
Schedule B (Resumes and References)
[Instructions to Vendor: List all other schedules.]

Ernst & Young LLP
I acknowledge that providing my name on the line below in electronic form will constitute a signature for the purposes of the *Electronic Commerce Act, 2000*, S.O. 2000, c. 17.
I have authority to bind the Vendor.

Per:

Signature: _____

Name: **Blake Langill**

Title: **Partner**

Date: **May 5, 2017**

Attachment C – Resumes and References (Schedule B)

Suzie Gignac, CPA, CA
Partner, Engagement Partner
Ottawa

+1 613 598 4376

Suzie.R.Gignac@ca.ey.com

Profile

Suzie Gignac is a dedicated professional and proactive in serving the needs of her clients, providing cohesive, responsive, and integrated service delivery. Her responsibilities as Engagement Partner give her insights into the delivery of all aspects of service quality, as well as deeper knowledge of relevant issues. Suzie has experience working with several public sector entities following PSAS and is currently the Engagement Partner on the City of Ottawa, all related Business Improvement Areas and the Public Library Board. Her experience also includes work with the Province of Ontario, Office of the Conflict of Interest and Ethics Commissioner, Library of Parliament, and The Government of Canada, Treasury Board Secretariat of Canada.

Relevant Accounting Experience

- Suzie took part in the Interchange Canada program for 28 months. During this time, she held the position of Executive Director in Government Accounting Policy and Reporting at the Office of the Comptroller General, Treasury Board Secretariat. In this role, Suzie was responsible for accounting policy development and financial reporting within the federal government. She focused on the development and implementation of policy instruments related to financial accounting and reporting, and managed research efforts on complex accounting issues facing the Government of Canada. Her areas of responsibility included the Public Accounts of Canada, departmental financial statements and quarterly financial reporting.
- Suzie is a member of the EY national public sector group and is regularly consulted on public sector accounting and advisory projects underway throughout the country. Suzie is EY's representative on the intra-firm PSAS working group which discusses current issues related to PSAS and has been instrumental in providing issue papers to the new PSAS Public Sector Accounting Discussion Group (PSADG).
- Suzie serves as the Chair of the Audit Committee and a member of Council for the Standards Council of Canada, a government Crown Corporation following PSAS standards.
- Suzie served as a member of the Public Sector Accounting Board of Canada task force on assets which resulted in three new public sector standards which were approved in March 2015 (PS 3210, Assets, PS 3320, Contingent Assets, and PS 3380, Contractual Rights)
- Suzie has served as a member of the advisory committee and been a regular speaker at the Public Sector Accounting Conference held in Ottawa since 2011.

Education and designations

- Certified Public Accountant, State of Illinois, 2007
- Chartered Accountant, Institute of Chartered Accountants of Ontario, 1997 (Uniform Final Exam - Ontario Bronze Medalist — fifth in Canada)
- Master of Business Administration, University of Toronto, 1995
- Bachelor of Economics, University of Western Ontario, 1991

Fred Clifford, CPA, CA, CPA (Illinois)

Senior Advisory Partner
(416) 943-2489
Fred.Clifford@ca.ey.com

Canadian Leader Financial Accounting Advisory Services Practice

Profile

- 30 years of experience serving a diverse group of companies across the Power and Utilities sector.
- Currently leads a National Advisory group focused on excellence in financial reporting, accounting process enablement, regulation, corporate governance, financial and other audit and att est services.

Relevant experience

- Held responsibility as the co-ordinating Partner for some of Canada's largest utilities including Fortis Inc., Ontario Power Generation, Toronto Hydro, Union Gas, Algonquin Power, Ott awa Hydro and numerous others.
- Assisted a variety of clients in the regulated utility sector with specific matters related to requests and filings with the Ontario Energy Board.
- Assisted clients with the development of approaches to record and report various Ontario Energy Board directives and guidance.
- Completed a cost allocation study for a regulated gas utility
- Audited a cost allocation and capital assets life study for a large electric distribution utility
- Previously Ernst & Young's National Utilities Leader for Canada with many years of professional experience serving energy clients, including electric utilities, regulated natural gas distribution companies, power generation, and other energy market participants
- Advised on a numerous transactions including acquisitions and divestures that included the integration of significant operations both in Canada, the United States and overseas.
- In-depth knowledge with respect to the relevant accounting and internal control issues that must be addressed by public reporting entities in either IFRS or US Gaap.
- Ext ensive knowledge of the capital market transactions

Education and professional credentials

-
-
-

Lee Anne Probert, CPA, CA, CPA (Illinois)
Senior Manager, Senior Accountant
Toronto

+1 416 943 3554

LeeAnne.Probert@ca.ey.com

Profile

Lee Anne Probert is a Senior Manager and has over 20 years of experience providing complex accounting, regulatory and financial reporting consultation services to audit and non-audit clients, previously as a member of EY's National Professional Practice group and currently as a member of EY's Financial Accounting Advisory Services group. She has an aptitude for applying accounting and reporting concepts to complex fact situations and demonstrated success in resolving complex accounting issues.

Relevant Accounting Experience

- Provides services to clients in a variety of industries, including utilities, government, mining, technology and communications, retail, distribution and manufacturing.
- Services provided in the power & utilit ies sector include:
    - Technical accounting advisor to:
        - A provincial electricity generation company converting from US GAAP to IFRS.
        - A gas distribution company converting from Canadian GAAP to US GAAP.
        - Three companies converting from Canadian GAAP to IFRS, including a national gas and electricity distribution and generation company, a local electricity distribution company and a provincial electricity distribution and generation company.
    - Was the audit senior manager for a provincial electricity t ransmission and distribution company.
-
- Clients also include entities impacted by PSAB standards, specifically:
    - Imperial Oil Resources Ventures Limited – Provided accounting advisory services with respect to the application of PSAB accounting standards to a potential guarantee by the federal government.
    - Office of the Provincial Controller - Provided on-call accounting advisory services on a variety of topics, including issues relating to (a) the Province's financial assistance to the auto industry, and (b) changes to the Ontario Teachers' Pension Plan.
    - Infrastructure Ontario – Provided accounting advisory services on a number of projects, including (a) the implementation of PSAB 3450, (b) a potential sale-leaseback transaction, (c) Ontario Place revitalization, and (d) MaRS restructuring.
    - Regional Municipality of Wood Buffalo - Provided accounting advisory services relating to the potential construction and operation of a sports and entertainment centre.
    - Courts Administration Service - Provided accounting advisory services with respect to the capitalization of certain costs.
    - Office of the Auditor General of Canada – Provided accounting advisory services with respect to the accounting for the Superannuation Account.
- Canadian representative on EY's global Leases Subject Matter Group and previously EY's Canadian representative on EY's Income Taxes Subject Matter Group and technical liaison with EY's Canadian Tax Practice.

- Technical lead on several GAAP conversion projects, focusing on identifying the key technical and business implications and working with management and to understand issues and differences.
- Plays an integral role in the creation and delivery of the EY's internal technical t raining across the country.

Education and designations

- Certified Public Accountant - Illinois, 2000
- Certified Public Accountant, Chartered Accountant - Ontario, 1998

Abbas Lakha, CPA, CA

Manager
(416) 943-3938
Abbas.Lakha@ca.ey.com

Bachelor of Commerce - University of Toronto, 1995

Profile

Abbas is a Manager with the Financial Accounting Advisory Services group in Toronto and has been with EY since 2009, with a gap of two years in industry with Toronto Hydro. He has gained IFRS and US GAAP experience by working with public and private companies in a variety of industries, specializing in: power/ utilit ies (specifically electricity), as well as mining, manufacturing, and automotive.

Abbas has also been involved with presenting on key accounting changes, advising companies on complex accounting issues, developing capex and depreciation policies, assisting with regulatory filings, and working directly with the OEB in responding to queries. Further, he has taken a lead role in large internal control improvement projects, implementation of the COSO 2013 framework, SOX implementation and remediation, and has assisted with the development of complex revenue models.

Relevant Experience

- Abbas has been responsible for performing control and risk assessments for a large electricity distributor in Ontario, and re-aligning their control framework to the COSO 2013 Framework. This has involved a deep understanding of the electricity sector, the risks and exposures that exist within the sector, and thorough knowledge of an effective control environment
- Abbas has assisted in the development and risk analysis of an unbilled revenue recognition model that included several presentations to senior management, as well as a presentation to various stakeholders, including the OEB.
- Abbas has assisted with the implementation of the new revenue recognition standard (ASC 606) for a multinational US GAAP client which included presenting to and working with senior management.
- Abbas has been invited to present at upcoming conferences focusing on new accounting standards (IFRS 15 and IFRS 16) within US GAAP and IFRS, including the Canadian Electricity Association Conference in June 2017

- Abbas has provided recommendations to assist a large utility distribution company in better tracking its assets, and creating a formidable capex strategy. This included the presentation of a report, findings, and recommendations to senior management of the company.
- Abbas has led the audit of a large multibillion dollar power and utilities client focusing on generation and distribution of electricity, gas and water in Canada and the United States. This has included a thorough review of complex t ransactions; including but not limited to business acquisitions, control audits, review of the consolidation of financial information and presenting issues and resolutions to senior management.

Education and designations

- Chartered Accountant, Institute of Chartered Accountants of Ontario, 2013
    - Bachelor of Business Administration, Schulich School of Business, 2010

Ivan Chittenden, CPA, CA
Partner
Toronto

+1 416 943 3110

Ivan.Chittenden@ca.ey.com

Profile

- More than 30 years of experience serving the financial reporting and audit needs of both global and North American-based public and private entities.
- Partner in the Professional Practice group of EY Canada providing accounting and regulatory support to the firm's clients.

Accounting and auditing Experience

- Engagement partner responsible for co-ordinating all of EY's on-call accounting advisory services to the Office of the Provincial Controller up to 2015.
- Extensive experience providing accounting advisory services to both audit and non-audit clients, including previous advisory assignments for the Office of the Provincial Controller
- Was the lead engagement partner for Brookfield Renewable Partners for five years

Education and designations

- CPA, CA, 1982
- BBA (Hons) – Wilfird Laurier University, 1983

Blake Langill, CPA, CA

Partner, Engagement Quality Review Partner

+1 416-943-3556

blake.w.langill@ca.ey.com

Profile

Blake is known for his ability to proactively identify technical issues as they arise, and provide meaningful, efficient resolution. He was a part of our Professional Practice Group for three years, providing technical and regulatory advice to audit and non-audit clients. He has experience in advising clients across various industries on the transition to US GAAP and/or IFRS and routinely deals with advising clients with complex accounting matters.

Relevant Accounting Experience

- Blake is a senior assurance partner at EY with more than 20 years of experience.
- Has provided audit and advisory services to many of Canada's leading companies across many industries and across multiple financial reporting frameworks (IFRS, PSAS, US GAAP and ASPE)
- His public sector experience includes working with the Ontario Office of the Provincial Controller and with Infrastructure Ontario on accounting advisory engagements
- Was the lead audit partner for Northland Power for seven years, including during its t ransition to IFRS
- Provided accounting advisory services to Ontario Power Generation and Enwave involving ASPE, US GAAP and IFRS
- Provided accounting support to non-accounting advisory engagements.
- Established understanding of unique risks associated with accounting and report ing issues.
- For three years was a member of EY's Professional Practice group, where he provided technical accounting and regulatory advice to many of the firm's clients.

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Mita Meyers, CPA, CA
Senior Manager
Ottawa
613 598 4307
mita.meyers@ca.ey.com

Profile

Mita is a Senior Manager with EY's Assurance group and has over 13 years of experience providing financial statement audits, financial accounting advisory services, contribution audits, management and financial accounting advisory services to various entities in the public and private sector both IFRS and PSAS. She has worked extensively on IFRS transition approach from the client's and accounting advisor's perspective on both private, crown corporation and regulated entity. As part of her experience at the Office of Auditor General, Mita served as the project leader on a number of crown corporations and other public sector entities. She was involved in analyzing complex auditing and financial accounting issues as they related to the Crown Corporation and departmental work while considering all governing authorities' implications. In addition, often communicated extensively with the Office of the auditor General and dealt with OSFI on a number of complex issues.

Relevant accounting IFRS and PSAS experience

In Progress- IFRS 9 implementation- Canada Mortgage and Housing Corporation (CMHC)

- As part of IFRS 9 assessment team, Mita is directly involved in conducting a high-level analysis of the accounting standard differences including the identification of the various options available under IFRS; had presented the customized training to the employees of the CMHC;
- A business impact analysis outlining how this project plan was integrated with other initiatives specifically an impact on the information technology areas to implement IFRS and an estimation of the conversion resources required as part of the implementation; Liaised with subject matter experts in financial instruments to analyze any accounting implications relevant to CMHC.

Completed - IFRS Conversion in 2015- Hydro Ottawa

- The IFRS Diagnostic Impact Assessment aimed to conduct a high level review designed to identify the main IFRS conversion issues for Hydro Ottawa. Including:
  - Assessed how the current financial reporting and business areas were impacted by IFRS, and developed information to facilitate the structuring of the IFRS conversion project. Evaluated the level of preparation, translated the business and accounting requirements into potential IT system requirements, and identified the main business impacts of adopting IFRS which included any major change management hurdles to conversion.
  - Determination of key Canadian GAAP to IFRS reporting differences and potential impact for Hydro Ottawa; Assessment of the qualitative criteria impacting the transition timing decision; Auditing the quantitat ive impact and disclosure of the differences

Other :

- IFRS Financial Accounting and Advisory Services- Canadian Commercial Corporation (CCC)- Mita also worked on an engagement to assist the Canadian Commercial Corporation (CCC) in the accounting for the foreign

exchange relating to advances, progress payments and deferr ed revenues denominated in non-Canadian currencies in accordance with International Financial Reporting Standards (IFRS) in 2016-17.

- Financial reporting assistance and accounting support for The Regional Municipality of Wood Buffalo (RMWB)- The scope of our engagement is to provide financial accounting advisory assistance in connection to RMWB's Letter of Intent (LOI) regarding the design, construction, operation and financing of the Sports and Entertainment Centre.
- Accounting and financial ad-hoc services to Canadian Payments Association (CPA) – various accounting advisory support including the research on the capitalization of costs and analysis of how it would be applicable to the organization.
- Currently a leads in the development of the financial accounting advisory practice in Ottawa, involved with financial reporting developments; conducted managerial t raining and accounting developments t raining internally and externally.

Other relevant engagement experience:

Lead senior manager on the following audit engagements:

City of Ottawa- Financial Statement Audit (PSAS) where Mita is responsible in leading the audit along with multiple other engagements concurrently. Provided technical assistance to the team and the City's senior management including assessed technical accounting and audit issues in accordance with PSAB guidance; identified "what can go wrong" considerations (similar to risk identification) in the business processes and accounting activities. Reviewed and documented audit procedures related to financial statement reporting, including footnote disclosures and suggested improvements to ensure compliance with accounting standards.

Hydro Ottawa Holding Group of Companies- Financial Audit (IFRS) As a senior manager, Mita was responsible for leading an audit with a team of individuals which included both audit and internal specialists (tax and pension experts). The audit included identifying financial processes and key internal controls relevant to financial reporting upon which we intend to rely. Where internal and financial control deficiencies were noted, we brought these to management's attention. Hydro Ottawa has multiple subsidiaries that require issuing their own separate opinions as well as consolidated into the parent company.

Canada Mortgage and Housing Corporation- Financial Audit (IFRS)Mita has been involved in the joint audit (with the Office of the Auditor General) to conduct the annual financial statement audit for CMHC. She assessed the presentation of the financial statement and disclosures in accordance with IFRS. She is the main contact for accounting and auditing problem resolutions. Currently involved in a Special Exam conducted every 10 yrs for a Crown corporation, acting as a lead Senior Manager from EY (this is done jointly with OAG).

Education and designation

- Certified Public Accountant, Chartered Accountant, Ontario, 2005
- Bachelor of Commerce (Finance and Accounting), Carleton University, 2003

Team References:

Suzie Gignac, Lee Anne Probert, Blake Langill and Ivan Chittenden

Nadine Petsche, Director, Accounting Policy and Financial Reporting Branch, Treasury Board Secretariat, Office of the Provincial Controller (tel: 416-325-8027)

Fred Clifford

Alan Hoverd, CFO, Hydro Ottawa (tel: 613-738-5499 Ext.205)

Abbas Lakha

Laura Foster, Interim CFO, Toronto Hydro (email: lfoster@torontohydro.com)

Mita Meyers

Kathleen Devenny, VP Financial planning and analysis, CMHC (tel: 613-748-2877)

Derek Volrath, Director of Finance, Canadian Payments Association (tel: 613-691-4471)

EY | Assurance | Tax | Transactions | Advisory

About EY
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EY_OPCD Status Updates.rtf

From: Virani, Shyrose (TBS) []
To: Donaldson, Mark (TBS) [Mark.Donaldson@ontario.ca]; Sun, Alicia (TBS) [Alicia.Sun@ontario.ca]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; suzie.r.gignac@ca.ey.com [suzie.r.gignac@ca.ey.com]; Patel, Bharat (TBS) [Bharat.Patel3@ontario.ca]
Subject: EY/OPCD Status Updates
Date: Tuesday, December 19, 2017 15:02:07

EY_OPCD Status Updates.rtf

From: Virani, Shyrose (TBS) []
To: Donaldson, Mark (TBS) [Mark.Donaldson@ontario.ca]; Sun, Alicia (TBS) [Alicia.Sun@ontario.ca]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; suzie.r.gignac@ca.ey.com [suzie.r.gignac@ca.ey.com]; Patel, Bharat (TBS) [Bharat.Patel3@ontario.ca]
Subject: EY/OPCD Status Updates
Date: Tuesday, December 19, 2017 15:02:07

FHP -- Revised Term Sheet & summary slides re_ guarantee.rtf

From: Veinot, Cindy (TBS) []
To: Lee Anne Probert [leeanne.probert@ca.ey.com]; Suzie Gignac [suzie.r.gignac@ca.ey.com]; Blake Langill [blake.w.langill@ca.ey.com]
CC: mark.donaldson@ontario.ca [mark.donaldson@ontario.ca]
Subject: FHP -- Revised Term Sheet & summary slides re: guarantee
Date: Thursday, August 24, 2017 09:52:02
Attachment 1: Term Sheet - Provincial Support Agreement - 08-14-2017.docx
Attachment 2: ATT00001.htm
Attachment 3: Fair Hydro Plan - Guarantee and Other Items v2.pptx
Attachment 4: ATT00002.htm

Hi all – attached is a 2 page deck and the current term sheet on the provincial guarantee – please take a quick look today and we can discuss tomorrow morning.

Thanks,

Cindy

Term Sheet - Provincial Support Agreement - 08-14-2017.pdf

Provincial Protection and Assurances

Indicative Term Sheet

Ontario Fair Hydro Plan Act, 2017

*This term sheet (the "**Term Sheet**") relates to transactions contemplated to be undertaken under the Ontario Fair Hydro Plan Act, 2017 and the regulations to be made thereunder (the "**Act**"). This Term Sheet is to be held confidential. Unless otherwise specified, defined terms used herein have the meanings ascribed to them in the Act.*

Change in Law Guarantee	
Guarantor:	The Province of Ontario
Guarantee Activation Events:	Any of the following would constitute a Guarantee Activation Event: (A) the Legislative Assembly of Ontario repealing (and not replacing on an equivalent basis) the Act or any Regulation made thereunder; (B) the Legislative Assembly of Ontario causing to come into force any statute (including any amendment to the Act or a Regulation made thereunder), or causing to come into force or making any order-in-council or regulation, or causing to come into force any other discriminatory action (including by way of any order by the Ontario Energy Board), in any case, in a way that adversely affects the rights and interests of the Financing Entity under its investment interest, including, for greater certainty, in any manner that is reasonably expected to limit the ability of the Financing Entity to receive amounts on its investment interest such that it can pay its specified creditors, including making payments on its debt obligations on the same basis as before such amendment was effected; (C) the Legislative Assembly of Ontario directly or indirectly amending the Guarantee or any of the financing transaction agreements without the agreement of the Financing Entity; (D) a court of competent jurisdiction (i) declares any funding obligations of the Financing Entity to be invalid or unenforceable or (ii) in a final and non-appealable

	judgement determines that all or a portion of the Act is *ultra vires* in a way that adversely affects the rights and interests of the Financing Entity, including, for greater certainty, in any manner that is reasonably expected to limit the ability of the Financing Entity to receive amounts on its investment interest such that it can pay its specified creditors, including making payments on its funding obligations on the same basis as before such judgement; or (E) there is a change in the organization, structure or operations of the IESO or a change in the electricity market structure or operations in any way that adversely affects the rights and interests of the Financing Entity under its investment interest, including, for greater certainty, in any manner that is reasonably expected to limit the ability of the Financing Entity to receive amounts on its investment interest such that it can pay its specified creditors, including making payments on its debt obligations on the same basis as before such amendment was effected **[NTD: Alternatively, with respect to the IESO servicing obligations, include the Servicing Guarantee language with respect to the IESO that was included in the last mark-up of the term sheet received from the Province.]**
Guarantee:	Upon the occurrence of a Guarantee Activation Event, the Guarantor shall immediately assume and pay when due (without acceleration) all of the obligations of the Financing Entity. The obligations of the Financing Entity include its funding obligations as well as any other obligation the Financing Entity has related to the Fair Hydro program such as payments to service providers (such as trustees, auditors, etc), rating agencies and any fees due to the securities commissions
Term:	The Guarantee will continue for as long as the Financing Entity has any outstanding financing or other contractual obligations and until such obligations have all been paid in full or otherwise satisfied

Approval Requirement:	The guarantee agreement containing the terms and conditions contemplated by this term sheet shall be entered into prior to the Financing Entity incurring its first funding obligation. The Province shall enter into the guarantee based on forms of program and series financing documents required for each financing transaction (e.g., form of supplemental indenture). As long as the financing transaction documents are generally consistent with the agreed upon form, the Province's specific approval for specific funding obligations incurred by the Financing Entity will not be required. Subsequent approval is only needed if the form of such documents are materially changed. For greater certainty, deal specific terms (such as tenor, pricing, etc) shall not be considered a change in the form of transaction and series documents
FIPPA:	The parties will acknowledge that the Guarantor will be bound by the Freedom of Information and Protection of Privacy Act (Ontario) and that any information provided to the Guarantor, or any agent or representative of the Guarantor in connection with the Guarantee may be subject to disclosure in accordance with the act or as otherwise required by law
Representations and Warranties:	To be determined based on what would be customary and appropriate for similar types of arrangements and is acceptable to the Guarantor and the Financing Entity
Confidentiality Obligations:	To be determined based on what would be customary and appropriate for similar types of arrangements and is acceptable to the Guarantor and the Financing Entity
Governing Law:	Province of Ontario

Warehousing Takeout Risk and Servicing (Commingling) Risk *Note – these items are provided for information purposes only as these risks were included in the previous version of the term sheet as items that the Dealers/OPG were looking for the Province for protection against. The current proposals with respect to these items is described below. These do not contain any requirement for the Province to directly backstop these risks.*	
<u>Commingling Risk (applies to Warehouse as well as any Term transactions)</u>	
Commingling Risk Mitigant:	For any LDC which is not investment grade rated by each of the rating agencies which are rating the funding obligations (the "Non-Investment Grade LDCs"), either: (A) The IESO must post a Letter of Credit (L/C), or deposit funds in a Commingling Reserve Account in a quantum equal to the Commingling Risk Amount; or (B) The IESO, for so long as it is rated investment grade by the rating agencies which are rating the funding obligations, will assume responsibility for commingling risk by the LDCs and will agree to remit to the Financing Entity any clean energy adjustment amounts collected by the LDC, regardless of whether the LDC remitted those amounts to the IESO for remittance to the Financing Entity
Commingling Risk Amount:	An amount equal to the sum of the expected Clean Energy Adjustment collections from the Non-Investment Grade LDCs over the next [45-60] days
Commingling Risk Amount Reset Date:	Each settlement date for the Financing Entity (monthly)
Beneficiary:	The beneficiary of the L/C or the Commingling Reserve Account would be the Financing Entity and the Indenture Trustee for the benefit of the creditors of the Financing Entity. The Financing Entity and/or the Indenture Trustee would have the ability to draw down the L/C or draw on the Commingling Reserve Account for any clean energy adjustment amounts expected to be received from the IESO but which were not received due to those funds not being remitted from an LDC to the IESO for that period
L/C Provider:	An entity rated at least A+ (or equivalent)

Approvals:	The approach is subject to approval from the IESO, by the rating agencies rating the funding obligations of the Financing Entity and the risk management areas of the banks providing the warehouse facilities
Warehouse Takeout Risk	
Commitment Period for Warehouse[1]:	Expected to be 12-24 months
Takeout for Warehouse:	Expected to be every 3-6 months
Warehouse Default Event:	One of the events of default for the warehouse will be the failure to repay the warehouse facility at the end of the commitment term
Consequences of Warehouse Default Event:	If the Warehouse Default Event[2] described above occurs, all amounts funded through the warehouse would become immediately due and payable, subject to the Warehouse Default Payment Cap, and Default Pricing will be charged on any amounts funded through the warehouse facility
Default Pricing:	Step up in pricing to [x] until the moratorium period ends and thereafter stepping-up in increments of [y] every six months until the warehouse facility is repaid

[1] Please note that this is not intended to be an exhaustive list of terms for the warehouse facility, but rather is a summary of a few select terms that relate to the warehouse takeout risk.

[2] Note there may be other Warehouse Default Events beyond the takeout risk item described above. The consequences for a breach of these other Warehouse Default Events may be different than the one described above where the default is related to failure to takeout the warehouse facility by the end of the commitment period.

Warehouse Default Payment Cap:	For any given reference period following the occurrence of a Warehouse Default Event, the amount that shall be remitted to the Financing Entity for repayment of the warehouse facilities will be the sum of (x) the interest amount due on the warehouse facilities (which, for greater certainty will include any program fees) and (y) the lessor of: (a) The outstanding amount funded through the warehouse facilities; and (b) The maximum amount that can be charged for that period so that clean energy adjustments are equal to, but do not exceed, the fair allocation amount for such period.
Approval Requirement:	Subject to approval by the risk management areas of the banks providing the warehouse facilities which will in part depend on receipt of information on the fair allocation curve and an understanding of how long the "tail risk" could be following a Warehouse Default Event

ATT00001.pdf

Fair Hydro Plan - Guarantee and Other Items v2.pdf

Provincial Protection and Assurances

Change in Law Risk

- Holders of Fair Hydro Plan debt could be negatively impacted by:
  - Changes to legislation or other discriminatory action by the Province as no government can limit the ability of future governments to amend or enact legislation or take other actions as it may deem appropriate
  - Court decision that the Fair Hydro Plan does not have the authority to levy the charge to consumers or declares any funding obligations to be invalid or unenforceable
  - Changes to the organization, structure or operations of the IESO or the electricity market
- Debt is not financeable without protection for these risks
- Risk is addressed through contractual guarantee that would be triggered upon the occurrence of specified events
- If guarantee is triggered there would not be an acceleration of payment
- If guarantee is triggered the Province would step in to service the obligations of the financing entity
- Guarantee may need to be revised at a future date, or approval from the Province may be required, if the financing entity must access US market as investors in that market will likely require additional compensation if the guarantee is triggered

Risks Not Covered by Provincial Guarantee

Short Term Debt Financing Takeout Risk

- Monthly purchases by the financing entity would initially be financed using short term debt as the financing entity needs to warehouse a larger amount for efficient execution in the term debt markets
  - Short term debt providers are exposed to the risk that takeout funding is not available in term debt markets for a period of time
- If this short term debt is not repaid by the end of the short term debt facility commitment this risk is addressed through an escalation of the pricing of such short term debt:
  - Interest rate for short term debt increases by a specified amount at the time of the event until the moratorium period ends
  - Thereafter, interest rate increases by a further specified amount for every additional 6 month interval during which the short term debt remains unpaid

LDC Commingling Risk

- Clean Energy Adjustment amounts will be collected from consumers by LDCs and held until remitted to the IESO / financing entity. For any LDC which is not rated or non-investment grade rated by each of the rating agencies which are rating the funding obligations, the agencies will require these LDCs to remit collections daily, unless other credit mitigants are established
- The majority of LDCs are not rated and it would be cost prohibitive to establish ratings for these entities; 10 LDCs are collectively rated by S&P, DBRS and Moody's (Moody's only rates Hydro One)
  - It is estimated that LDCs not rated by any agency deliver power to ~25% of the Ontario electricity market
- This risk is addressed through providing the financing entity with a letter of credit:
  - Amount of letter of credit is approximately one to two month's estimated collections from all unrated or non-investment grade LDCs
  - Letter of credit to be provided by the IESO on behalf of the LDCs
  - Cost of the letter of credit and any amounts drawn can be recovered by the IESO through the Global Adjustment
- Alternatively, this risk may be addressed by the IESO depositing funds into a commingling reserve account for a similar amount or the IESO contractually agreeing to assume responsibility for paying the CEA amounts required to be remitted by such LDCs

ATT00002.pdf

FHP Memo - Draft V5 17-Aug-2017_cv.rtf

From: Veinot, Cindy (TBS) []
To: Kim Marshall [Kim.Marshall@ieso.ca]
CC: Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Donaldson, Mark (TBS) [Mark.Donaldson@ontario.ca]
Subject: FHP Memo - Draft V5 17-Aug-2017_cv
Date: Thursday, October 05, 2017 12:26:55
Attachment 1: FHP Memo - Draft V5 17-Aug-2017_cv.docx

Hi Kim,

Attached is the current version of the Province's memo on the FHP. It is not final, but I wanted to share it with you at this point and ask you to read it and let us know if you have any comments. You have our permission to also share it with your advisors.

Could you let us know if you have any comments by next Thursday – October 12.

Thanks,

Cindy

FHP Memo - Draft V5 17-Aug-2017_cv.pdf

Disclaimer

Ernst & Young LLP (“EY”) prepared the attached Report only for the OPCD. EY did not perform its services on behalf of, or to serve the needs of, any other person or entity. Accordingly, EY expressly disclaims any duties or obligations to any other person or entity based its use of the attached Report. Any other person or entity must perform its own due diligence inquiries and procedures for all purposes, including, but not limited to, satisfying itself as to the financial condition and control environment of the Province or any of the other entities involved, as well as the appropriateness of the accounting for any particular situation addressed by the Report.

EY did not perform an audit, review, examination or other form of attestation (as those terms are defined by the CPA Canada) of the financial statements of the Province or any other entities involved. Accordingly, EY did not express any form of assurance on the accounting matters, financial statements, any financial or other information or internal controls of the Province or any of the other entities involved. EY did not conclude on the appropriate accounting treatment based on specific facts or recommend which accounting policy/treatment the Province or any of the other entities involved should select or adopt.

The observations relating to accounting matters that EY provided to the OPCD were designed to assist them in reaching their own conclusions and do not constitute our concurrence with or support of the accounting or reporting of the Province or the other entities involved. The Province and the other entities involved are each responsible for the preparation of their own financial statements, including all of the judgments inherent in preparing them.

Introduction

Ontario's consolidated financial reports are prepared in accordance with the accounting principles for governments recommended by the Public Sector Accounting Board (PSAB) of the Chartered Professional Accountants of Canada (CPA Canada). In order to meet the needs of users, including the legislature and the public, for accountability in government reporting and for decision making, it is essential that public sector financial statements reflect the economic substance of the government's activities.

In March 2017, the Government of Ontario (the Province) announced its Fair Hydro Plan (FHP). In assessing the appropriate accounting treatment for the Global Adjustment refinancing (GA Refinancing) component of the FHP on Ontario's consolidated financial statements, the Office of the Provincial Controller considered the authoritative guidance issued by PSAB, as well as the accounting assessments of the Independent Electricity System Operator (IESO) and Ontario Power Generation (OPG) management and their external auditors and/or advisors. Given the complexity of the GA Refinancing structure, the exercise of professional judgement is necessary to ensure that key financial reporting objectives of transparency and accountability are best served.

Background

The FHP will reduce electricity bills for Regulated Price Plan (RPP) customers (as well as those non-RPP consumers who receive the 8% rebate as specified in the Ontario Rebate for Electricity Act, 2016) by approximately 25% for a period of one year, starting in the summer of 2017, and limit the increase in electricity bills to the rate of inflation over four years.

Because distribution rates vary across the province and customers use different amounts of electricity, the goal in calculating the new RPP electricity prices is to achieve a 25% reduction for a "proxy" customer, which is established under the Fair Hydro Act, 2017 and related regulations (FHP Act) as a residential customer of Toronto Hydro who uses 750 kWh of electricity a month, pays time-of-use RPP electricity prices and has the time-of-use consumption profile of a typical residential customer.

The measures that make up the 25% average reduction include:

1. Spreading the cost of Ontario's clean energy investments over the expected lifecycle of the generation infrastructure assets. This is expected to account for 18-19% of the overall reduction.
2. Shifting the cost of the Ontario Electricity Support Program (OESP) and Rural or Remote Rate Protection (RRRP) program from ratepayers to taxpayer-funded programs.
3. An 8% rebate equal to the provincial portion of the HST, which took effect on January 1, 2017.

Under the first measure, the Province (i.e. the government reporting entity) will borrow funds to pay a portion of current electricity costs, thereby temporarily reducing the amount paid by eligible ratepayers. The deferred amounts, including interest and other costs, will be recoverable from ratepayers through future rates over a future period, ending in 30 years (2047). In other words, the impact of #1 above is

fully borne by the ratepayers – it is a shift in the timing of payment for the clean energy investments, while the impacts of #2 and #3 are reducing the cost to the ratepayer, but at the cost of the taxpayer.

Objective

The objective of this memo is to assess the appropriate accounting for the first measure of the FHP (i.e. deferred recovery of clean energy costs) on the consolidated financial statements of the Province in accordance with PSAS. **[NTD – Consider if document should discuss #2 and #3. This would contrast the different treatment by the Province]**

Background

The Ontario Energy Board (OEB) has been established by the Province to be Ontario's independent energy regulator.

Prior to consideration of the FHP Act, in accordance with Section 78(3.1) of the Ontario Energy Board Act, 1998 (the OEB Act), the OEB is responsible for determining electricity commodity prices for RPP consumers. Section 78(3.3) of the OEB Act requires the OEB to forecast the cost of electricity used by RPP consumers and ensure the prices they are charged reflect that cost. The rate setting process is highly complex and involves numerous forecasts and estimates. As a result, the OEB regulatory framework allows for variances between the actual cost of supplying electricity and the amount collected from RPP consumers.

In setting the rates for RPP consumers, Section 78(3.3) of the OEB Act requires the OEB to settle any such variances through rates over a 12-month period. This is achieved through a price adjustment charged or credited to RPP consumers. This adjustment forms part of the Global Adjustment paid by consumers.

The IESO is the administrator of Ontario's wholesale electricity market. The IESO settles the market with all participants, as an agent.

As part of its role as market administrator, the IESO calculates the market price for electricity (the Market Clearing Price, or MCP) by running the bids and offers of the market participants through an algorithm. The actual cost of supplying electricity, however, is higher or lower than the MCP. The actual cost can be higher than the MCP as certain generators are paid additional amounts relating to the cost of clean energy initiatives they have undertaken. From a government policy perspective, decisions as to what is in the best interest of the public regarding electricity generation in Ontario are not based solely on economics, they are also influenced by environmental, social and political factors. Accordingly, generators may receive compensation for investing in clean energy infrastructure when it is relatively less economical. In these instances, the IESO (and previously the Ontario Power Authority) entered into contracts to pay the generators ther costs (plus a reasonable rate of return thereon) over an extended period of time, typically 20 years. The amounts paid to the generators under the terms of these contracts that are in excess of the MCP are currently included in the rates set by the OEB (as part of the Global Adjustment) with the intention they will be recovered from consumers in the same period they are paid to the generators. As previously noted, the complexity of the rate setting process results in variances between the amount paid to the generators and the amount collected from RPP consumers.

Under existing legislation, the IESO is required to fund any cash shortfall relating to differences arising between the actual cost of supplying electricity and the amount collected from RPP consumers. In

Commented [VC(1]: Agreed – need to have the accounting documented

Commented [VC(2]: ? do we need to document the independence of the regulator – evidence –supreme court case re: OPG

accordance with Section 25.33(5) of the Electricity Act, 1998 (the Electricity Act), the IESO has established and maintains a variance account to track these temporary differences (the original variance account) for subsequent settlement with ratepayers. Cash shortfalls in the IESO arising from the original variance account are funded through financing provided by the OFA.

As described below, once the FHP is implemented, the cost of supplying electricity to RPP consumers that is paid to generators will no longer be fully collected over a 12-month period.

Under the FHP, while generators would continue to be paid over a twenty year period as contracted, the amounts paid by the IESO to the generators would be recovered from ratepayers over a longer period. Deferring the recovery of these costs from the consumers on a longer-term basis would create a significant interim cash shortfall for the IESO.

Section 24(1) of the Ontario Fair Hydro Plan Act (the FHP Act) requires that IESO establish and maintain a variance account (separate from the original variance account described above) to track the cash shortfall specifically resulting from the implementation of the FHP (the FHP variance account). Due to the longer recovery period, and additional recoverable financing and management fee costs, the balance in the account is forecast to increase significantly. The balance in this variance account is defined in Section 1(1) of the FHP Act to be a regulatory asset[1]. The IESO is entitled under Section 25 of the FHP Act to recover the regulatory asset from RPP consumers in the future, which will be achieved through the OEB setting rates to allow for such recovery. This role of the OEB is not dissimilar to its current role with respect to the setting of RPP rates to recover the global adjustment, albeit over 12 months. Section 26 of the FHP Act also permits the IESO to transfer or sell the regulatory asset to a financing entity to fund its cash shortfall, thus commoditizing the future cash flow stream.

The Province has requested that OPG administer the deferral of the Global Adjustment under the FHP because of OPG's participation in the market and the regulatory knowledge OPG possesses. To fulfill this role, OPG intends to establish a financing entity (OPG Trust) to purchase the IESO's regulatory asset on a monthly basis and eliminate any cash shortfall in the IESO. OPG Trust will not be required to purchase the regulatory assets from IESO. Reasons for it deciding not to purchase the regulatory assets could relate to a capital markets disruption such that OPG Trust would not be able to finance the acquisition. OPG Trust intends to finance these purchases through a combination of provincial borrowing (flowed through OPG as an equity investment), amounts advanced from OPG and direct borrowing from capital markets.

Basis of Accounting

In accordance with PSAS 1300.07, the government reporting entity (GRE) for the Province comprises government components and those organizations that are controlled by the government.

As defined in the Introduction to PSAS, the following types of organizations are controlled by the government: (a) government business enterprises (GBE), government non-for profit organizations (GNPO), and other government organizations (OGO).

[1] To avoid confusion in the remainder of this document, the term regulatory asset will refer to the defined term in the FHP Act and the term regulated asset or rate-regulated asset (RRA) will refer to an asset recognized for accounting purposes.

GNPOs and OGOs are considered government units and, in accordance with PSAS 1300.27, are consolidated in the GRE on a line-by-line basis. For consolidation purposes, the financial information of government units is required to be prepared in accordance with PSAS.

GBEs, on the other hand, are accounted for in the GRE using the modified equity method as prescribed by PSAS 1300.35. Under the modified equity method, which is described in detail in PSAS 3070, INVESTMENTS IN GOVERNMENT BUSINESS ENTERPRISES, the equity method of accounting is modified only to the extent that the GBE's accounting principles (which are required to be IFRS in accordance with paragraph 17 of the Introduction to PSAS) are not adjusted to conform to those of the government.

As documented in Schedule 8 to the consolidated financial statements of the Province, the IESO is an OGO and OPG is a GBE. The current accounting for these entities is as follows:

		ENTITY STATEMENTS	GRE STATEMENTS	
ENTITY	**CLASSIFICATION**	**GAAP**	**ACCOUNTING METHOD**	**GAAP**
IESO	OGO	PSAS[1]	Consolidation	PSAS
OPG	GBE	US GAAP[2]	Modified equity method	IFRS[3]

1. For purposes of preparing general purpose financial statements, an OGO applies PSAS unless those standards do not meet the needs of its financial statement users. In that situation, IFRS should be considered and the most appropriate set of standards applied.
2. Although a GBE is required to apply IFRS for purposes of preparing general purpose financial statements, the Ontario Securities Commission has approved an exemption that allows OPG to apply US GAAP up to January 1, 2019 for purposes of filing its financial statements with the OSC. US GAAP to IFRS adjustments are made for the purposes of preparing the consolidated provincial accounts.
3. OPG applies IFRS 14, which permits it to continue to account for rate-regulated activities using US GAAP guidance for purposes of determining the differences between US GAAP and IFRS..

This memo does not reconsider the classification of these existing entities (i.e., such classifications are based on past published Public Accounts).

As discussed in detail in a subsequent section, OPG expects that under IFRS it will be considered to control OPG Trust. As such, OPG Trust will be consolidated by OPG and, therefore, reflected in the GRE through the modified equity accounting of OPG under IFRS.

Example

For simplicity, the following example will be used in this document to illustrate the accounting impact of the FHP on the various entities involved:

- Ratepayer bill is currently $588, and the 17% reduction related to the FHP is $100.
- The Province directly borrows 44%, or $44, to make an equity contribution to OPG, which OPG then loans to OPG Trust.
- OPG directly borrows 5%, or $5, and loans it to OPG Trust.
- OPG Trust directly borrows 51%, or $51, from capital markets.

Analysis

IESO

The IESO is presently classified as an OGO and prepares its standalone, general purpose financial statements in accordance with PSAS based on an assessment of its user needs, which is consistent with the basis of presentation required for purposes of consolidating the IESO into the GRE.

Current State

Effective January 1, 2016, the IESO adopted on a retrospective basis a new accounting policy that requires its market-settlement activities[2] to be reflected in the financial statements. Under the new policy, the assets and liabilities recognized on the IESO's statement of financial position relating to the IESO-administered markets include cash, amounts due from market participants, interest receivable, revolving line of credit, HST receivable, amounts due to market participants and other liabilities. The IESO statement of operations and accumulated surplus does not include the revenue and expenses of the financial transactions of market participants within the IESO-administered markets. This indicates IESO management has taken the position that the IESO is an agent, not a principal, in the IESO-administered markets and, accordingly, records revenue on a net basis.

PSAS does not provide any specific guidance as to how it should be determined whether an entity is acting as a principal or an agent in the context of revenue recognition, but both IFRS and US GAAP do. The relevant guidance in IFRS is as follows:

IAS 18.8

Revenue includes only the gross inflows of economic benefits received and receivable by the entity on its own account. Amounts collected on behalf of third parties such as sales taxes, goods and services taxes and value added taxes are not economic benefits which flow to the entity and do not result in increases in equity. Therefore, they are excluded from revenue. Similarly, in an agency relationship, the gross inflows of economic benefits include amounts collected on behalf of the principal and which do not result in increases in equity for the entity. The amounts collected on behalf of the principal are not revenue. Instead, revenue is the amount of commission.

IAS 18.IE21

Determining whether an entity is acting as a principal or as an agent (2009 amendment).

Paragraph 8 states that 'in an agency relationship, the gross inflows of economic benefits include amounts collected on behalf of the principal and which do not result in increases in equity for the entity. The amounts collected on behalf of the principal are not revenue. Instead, revenue is the amount of commission.' Determining whether an entity is acting as a principal or as an agent requires judgement and consideration of all relevant facts and circumstances.

An entity is acting as a principal when it has exposure to the significant risks and rewards associated with the sale of goods or the rendering of services. Features that indicate that an entity is acting as a principal include:

- *a) the entity has the primary responsibility for providing the goods or services to the customer or for fulfilling the order, for example by being responsible for the acceptability of the products or services ordered or purchased by the customer;*
- *b) the entity has inventory risk before or after the customer order, during shipping or on return;*
- *c) the entity has latitude in establishing prices, either directly or indirectly, for example by providing additional goods or services; and*
- *d) the entity bears the customer's credit risk for the amount receivable from the customer.*

An entity is acting as an agent when it does not have exposure to the significant risks and rewards associated with the sale of goods or the rendering of services. One feature indicating that an entity is acting as an agent is that the amount the entity earns is predetermined, being either a fixed fee per transaction or a stated percentage of the amount billed to the customer.

[2] The IESO administers the wholesale electricity market by authorizing market participants, publishing system forecasts and market information, producing statements and invoices, and performing financial settlement transactions for the markets.

Application of the above IFRS guidance supports the conclusion that the IESO is an agent in the market-settlement process and, therefore, recognizing revenue on a net basis is appropriate. IESO has completed a more thorough analysis of their position that it is an agent in the settlement of the market and reconsideration of that decision is not the topic of this memo.

The IESO is required by legislation to carry out its operations without the purpose of gain or profit. Other than the amounts the IESO is permitted to keep in accordance with its own rate order from the OEB to cover its internal operating costs, which makes it a self-sustaining entity, all amounts the IESO receives from market participants must be paid out to other market participants who have regulatory or contractual rights to receive payments from those collected amounts.

Commented [VC(3]: Does the legislation speak to IESO incurring a loss?

In the context of applying the principal vs. agent guidance, the amounts the IESO is permitted to keep in accordance with its own rate order from the OEB to cover its internal operating costs are recorded as system fee revenue in the IESO financial statements. System fees are not characterized as being part of the IESO-administered markets. Accordingly, any references to the IESO-administered markets in this document exclude system fees.

As stated in the IESO financial statements, the IESO-administered markets is a balancing system, and as such, the net position of market accounts will ultimately settle to a nil balance in accordance with market rules. However, due to settlement timing differences, the net position of market accounts will not be in a nil position from a cash flow perspective at the end of any reporting period.

This raises a question as to how a cash flow deficit related to the market-settlement process should be accounted for in the financial statements of the IESO. Two approaches are as follows:

1. The cash flow deficit is recognized as an asset when it occurs and then derecognized in the period in which it is settled. Under this approach, the net position of market accounts will always be in a nil balance in the IESO's balance sheet and there is no impact on the IESO's income statement.
2. The cash flow deficit is recognized as a charge to income when it occurs and then reversed through income in the period in which it is settled.

IESO management has concluded it is appropriate to recognize existing cash flow deficits arising from the market-settlement process as an asset. This is evidenced by the fact the components of the market accounts net to a nil closing balance at year end in the IESO financial statements for the year ended December 31, 2016. These financial statements also explicitly state there is no impact to the accumulated deficit or revenues and expenses as the IESO is not party to these transactions as per the market rules. This treatment is consistent with the conclusion that the IESO is acting as an agent in the market-settlement process.

Commented [VC(4]: Is there a reference for this statement?

Although the IESO's financial statements include the following accounting policy on regulated assets and liabilities, the asset relating to the cash flow deficit discussed above has not been specifically labeled as a regulated asset:

As a rate-regulated entity, the IESO, in appropriate circumstances establishes regulated assets or liabilities and thereby defers the impact on the statement of operations of certain expenses or revenues because they are probable to be collected or refunded to market participants through future billings. The IESO has applied guidance from United States Generally Accepted Accounting Principles (US GAAP) Topic 980, Regulated Operations, in this policy.

The only two balances specifically labeled as being recognized in the IESO's financial statements under the above policy are (i) unrecovered smart metering expenses, and (ii) unrecovered PSAB transition items. IESO management has, however, indicated in discussions that the cash flow deficit/surplus associated with the original variance account is also considered to be a regulated asset/liability under ASC 980 even though it has been presented as part of the Market Accounts balances in the statement of financial position.

Impact of FHP

The implementation of the FHP results in the IESO establishing and maintaining the FHP variance account to track the resulting cash flow deficit, the balance of which is defined for the purposes of the FHP Act to be a 'regulatory asset'. This variance account is similar in nature to the current variance account established under Section 25.33(5) of the Electricity Act, 1998 , discussed in the Background Section to this memo.

The act of legislating the balance in the FHP variance account to be a regulatory asset does not, in and of itself, result in its recognition as an asset for accounting purposes. Accordingly, the primary issue at hand is whether the legislated regulatory asset is eligible for recognition as an asset in both the standalone financial statements of the IESO and the consolidated financial statements of the GRE. As discussed in a later section, the conclusion reached with respect to the appropriate accounting for the FHP in the standalone financial statements of the IESO as an OGO reporting under PSAS may impact the consolidated financial statements of the GRE.

As noted above, the IESO has adopted a policy to apply the U.S. GAAP guidance in ASC 980 in connection with accounting for rate regulated assets. IESO management has applied this guidance and concluded the regulatory asset created by the FHP can be recognized as a regulated asset for accounting purposes in the financial statements of the IESO. The IESO's auditors, KPMG, concur with this position, as evidenced from the following excerpt from a draft letter issued by KPMG on May 16, 2017 (the KPMG Letter):

We have considered the foregoing analysis and management's conclusion. We concur that the variance account created by Bill 132 will meet the criteria for the recognition of a regulatory asset stated in ASC 980-340-25-1. Furthermore, we have also considered the criteria stated in ASC 980-10-15-2 and believe that IESO should be allowed to continue to use the guidance for regulated operations of Topic 980.

Recognizing the regulatory asset as a regulated asset for accounting purposes in the financial statements of the IESO in accordance with ASC 980 is appropriate only if all of the following conditions are met:

a) the operations of the IESO (or the relevant portion thereof) are within the scope of ASC 980 based on the criteria in ASC 980-10-15-2,
b) the FHP variance account meets the criteria in ASC 980-340-25-1 for capitalization as a regulatory asset, and
c) ASC 980 is an appropriate source of GAAP under PSAS.

Each of these items is addressed in turn:

a) Scope of ASC 980

ASC 980-10-15-2 states the following:

The guidance in the Regulated Operations Topic applies to general-purpose external financial statements of an entity that has regulated operations that meet all of the following criteria:

a) The entity's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party regulator or by its own governing board empowered by statute or contract to establish rates that bind customers.
b) The regulated rates are designed to recover the specific entity's costs of providing the regulated services or products. This criterion is intended to be applied to the substance of the regulation, rather than its form. If an entity's regulated rates are based on the costs of a group of entities and the entity is so large in relation to the group of entities that its costs are, in essence, the group's costs, the regulation would meet this criterion for that entity.
c) In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume that rates set at levels that will recover the entity's costs can be charged to and collected from customers.

The Office of the Auditor General of Ontario (OAGO) has publicly stated that it does not believe the IESO meets the criteria to be within the scope of ASC 980. This is evidenced by the following statement included in *Legislated Accounting Included in Bill 132, Including the Proposed Ontario Fair Hydro Plan Act, 2017 – Submission to Standing Committee on Justice Policy* dated May 25, 2017 (OAGO Submission):

Moreover, IESO is not engaging in rate-regulated activities, and the contracts under its administration were never subject to rate regulation.

Ontario's electricity industry is rate-regulated. Rates paid by electricity consumers are regulated by the OEB such that over time rates equal cost plus, where applicable, a reasonable rate of return. Providing electricity to consumers involves several different parties, including generators, transmitters, distributors and the IESO. Some of these parties engage in rate-regulated activities, some do not.

The IESO serves an important and active role in Ontario's electricity market, irrespective of the fact that it records market transactions on net basis in the financial statements. The IESO balances the supply of and demand for electricity in Ontario and directs its flow across the province's transmission lines, oversees the wholesale electricity market, where the price of energy is determined, and administers the rules that govern the market. In determining whether the IESO has regulated operations, the focus is on whether the rates the IESO charges its customers are regulated and not whether the costs incurred by the IESO are regulated (although a number of them are).

The following supports the position of IESO management that the above criteria are met and the IESO's operations are within the scope of ASC 980:

The entity's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party regulator or by its own governing board empowered by statute or contract to establish rates that bind customers.

As noted in a research paper issued in 2001 by a taskforce established by the CICA (the CICA Research Report), there is a view held by some that, with respect to rate regulation in the public sector, there is usually no *independent, third-party regulator* because the government controls both the enterprise and the regulatory agency. Accordingly, it is important to point out that independence is not required to meet the criteria in ASC 980-10-15-2(a). The requirement is an *independent, third-party regulator* or *its own governing board empowered by statute or contract*. In fact, paragraph 64 of the Basis for Conclusions for FAS 71, ACCOUNTING FOR THE EFFECTS OF CERTAIN TYPES OF REGULATION (which is the pre-codified version of ASC 980), specifically states that the criteria in ASC 980-10-15-2(a) was modified so as not to preclude application by government utilities with rates set by their own governing board.

The OEB has been established by the Province to be Ontario's independent energy regulator and, therefore, is considered the governing board of the IESO. The OEB's mandate and authority come from the *Ontario Energy Board Act, 1998*, the *Electricity Act, 1998*, and a number of other provincial statutes. As described in more detail below, the IESO's rates are established in accordance with these statutes.

In the context of its market-settlement role, the IESO's 'customers' are the Market Participants buying electricity from the IESO-controlled grid. All Market Participants are required to execute a Participation Agreement with the IESO. In accordance with Article 3.1 of the standard Participation Agreement, each Market Participant has agreed to be bound by and to comply with all of the provisions of the Market Rules, which includes the following:

Chapter 9, Section 1.2.3
Notwithstanding any other provision within the market rules, market participants shall remit to the IESO such applicable settlement amounts and other payments as may be required under the relevant provisions of the Electricity Act, 1998, the Ontario Energy Board Act, 1998 and any related regulations, as amended from time to time.

The IESO's operations meet the criteria in ASC 980-10-15-2(a) because the rates charged by the IESO are based on statutes. As discussed in more detail below, the rates are designed to recover the IESO's

expenditure for providing the regulated services and the pass-through costs related to the energy purchased from the generators and to government programs.

The main components of invoices issued by the IESO to Market Participants are as follows:

- Commodity Charges
  - Hourly Ontario Energy Price
  - Global Adjustment
- Wholesale Market Service Charges
  - IESO Administration Fee
  - Uplift Charges
  - Rural and Remote Electricity Rate Protection
- Wholesale Transmission Charges
- Debt Retirement Charge

Each component is determined as follows:

Commodity Charges

In accordance with Section 25.33(1) of the Electricity Act, the IESO is required to price electricity to recover costs:

Electricity pricing to reflect costs

IESO to make adjustments

25.33 (1) The IESO shall, through its billing and settlement systems, make adjustments in accordance with the regulations that ensure that, over time, payments by classes of market participants in Ontario that are prescribed by regulation reflect,

a) amounts paid to generators, the Financial Corporation and distributors, whether the amounts are determined under the market rules or under section 78.1, 78.2 or 78.5 of the Ontario Energy Board Act, 1998;

b) amounts paid to entities with whom the IESO has a procurement contract, as determined under the procurement contract; and

c) such amounts as may be prescribed that are paid or incurred by the IESO in relation to the Ontario Fair Hydro Plan Act, 2017. *2014, c. 7, Sched. 7, s. 8 (1); 2017, c. 16, Sched. 1, s. 43 (2).*

Market Participants are initially invoiced for consumed electricity at the Hourly Ontario Energy Price (HOEP), which is calculated as the average of the twelve market clearing prices set in each hour. In accordance with Section 25.33(5) of the Electricity Act, the IESO is required to track differences between the amounts invoiced to Market Participants at HOEP and actual costs incurred in a variance account:

Variance accounts

(5) The IESO shall establish and maintain such variance accounts as may be necessary to record all amounts payable or receivable by it under this section or under the Ontario Fair Hydro Plan Act, 2017. *2004, c. 23, Sched. A, s. 37; 2014, c. 7, Sched. 7, s. 8 (5); 2017, c. 16, Sched. 1, s. 43 (5).*

Sections 3.1 and 3.3 of the OEB Act require the variance account to be settled over a twelve-month period, which is done through the Global Adjustment on a Market Participant's invoice:

Annual rate plan and separate rates for situations prescribed by regulation

(3.1) The Board shall, in accordance with rules prescribed by the regulations, approve or fix separate rates for the retailing of electricity,

a) to such different classes of consumers as may be prescribed by the regulations; and

b) for such different situations as may be prescribed by the regulations. 2004, c. 23, Sched. B, s. 14 (1).

Rates to reflect cost of electricity

(3.3) In approving or fixing rates under subsection (3.1),

a) the Board shall forecast the cost of electricity to be consumed by the consumers to whom the rates apply, taking into consideration the adjustments required under section 25.33 of the Electricity Act, 1998 *and shall ensure that the rates reflect these costs; and*

b) the Board shall take into account balances in the IESO's variance accounts established under section 25.33 of the Electricity Act, 1998 *and shall make adjustments with a view to eliminating those balances within 12 months or such shorter time periods as the Minister may direct. 2004, c. 23, Sched. B, s. 14 (1); 2014, c. 7, Sched. 23, s. 6 (2).*

Although the implementation of the FHP involves the deferral of costs over an extended period of time, it does not change the IESO's obligation under the OEB Act to price electricity to recover incurred costs in full. The deferral relating to the FHP is tracked in a separate variance account in accordance with Section 24(1) of the Fair Hydro Plan Act, 2017 (the FHP Act):

Variance account to be established, maintained

24 (1) The IESO shall establish and maintain a variance account in which it records the following:

1. The IESO deferral for each month.

2. All payments received by the IESO resulting from the exercise of the right of recovery under section 25 and any transfer under section 26.

3. Such other adjustments as may be prescribed, including adjustments in respect of the period that commences on or after May 1, 2017 and before the day this section comes into force.

The right for the IESO to recover the variance account is set out in Section 25 of the FHP Act:

Regulatory asset established

25 (1) Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Board to set rates

(2) Subject to subsection (3), the Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for the IESO to recover the balance recorded in the variance account.

Limitation

(3) The IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2021.

Wholesale Market Service Charges

The IESO charges Market Participants administrative fees to operate the wholesale electricity market and manage the electric power system in Ontario. These fees are required to be approved by the OEB under Section 25(1) of the Electricity Act on an annual basis.

Review of requirements and fees

25 (1) The IESO shall, at least 60 days before the beginning of each fiscal year, submit its proposed expenditure and revenue requirements for the fiscal year and the fees it proposes to charge during the fiscal year to the Board for review, but shall not do so until after the Minister approves the IESO's proposed business plan for the fiscal year under section 24. 2014, c. 7, Sched. 7, s. 3 (1).

Uplift charges

Need details

RRRP charges

The RRRP program provides a rate subsidy to rural and remote residential customers who face higher distribution costs. Under the FHP Act, the cost of the RRRP program has shifted from ratepayers to

Commented [LAP5]: Uplift charges are comprised of a number of things. To ask IESO for help to summarize succinctly.

Commented [DM(6]: Will provide ASAP (Following up with IESO)

Commented [DM(7]: Understanding is not all costs have shifted; need to confirm where the line is drawn

provincial revenues and, therefore, is no longer a component of the IESO invoice.

Wholesale Transmission Charge
This charge to LDCs and some large consumers covers the cost incurred by transmission companies to construct and maintain the high-voltage transmission lines needed to transport electricity from generating stations to LDCs or consumers. In accordance with Section 78(1) of the OEB Act, the rate for this service is approved by the OEB.

Debt Retirement Charge
When the Ontario electricity sector was restructured in April 1999, the Ontario Electricity Financial Corporation (OEFC) took on $20.9 million of stranded debt from Ontario Hydro. The OEFC services and retires the stranded debt with cash flows from a number of sources in the electricity sector, one of those currently being debt retirement charges paid by certain ratepayers (ratepayers cease paying debt retirement charges April 1, 2018).

Under Regulation 494/01, DEBT RETIREMENT CHARGE – ADMINISTRATION, the IESO is appointed as a collector of debt retirement charges (Section 2) and is required to collect a debt retirement charge on behalf of the OEFA from every entity who withdraws electricity from the IESO-controlled grid (Section 6(2)). The prescribed rate for the debt retirement charge is set out in Regulation 493/01, DEBT RETIREMENT CHARGE – RATES AND EXEMPTIONS.

The regulated rates are designed to recover the specific entity's costs of providing the regulated services or products.

As discussed in detail above, the IESO is required by statute to set prices to recover costs.

In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume that rates set at levels that will recover the entity's costs can be charged to and collected from customers.

As discussed in detail above, the IESO is required by statute to set prices to recover costs.

The majority of the monthly amount invoiced by the IESO to Market Participants represents a direct flow through of costs as they are incurred, but there are certain types of costs for which recovery may be deferred. For those deferred costs, the IESO is dependent on the future consumption of electricity by rate-payers to fully recover costs.

Based on relatively short recovery periods, it is reasonable to assume there will be sufficient demand to recover the deferred costs that currently exist. Specifically:

- RPP and RRRP variance accounts are recovered over twelve months in accordance with Section 3.3(b) of the OEB Act. *(Note - Under the FHP, responsibility for the cost of the RRRP program is being transferred to the Provincial budget and rate-payers will no longer be directly charged)*
- The Smart Metering Entity charge is recovered over the period from May 1, 2013 to October 31, 2018 in accordance with OEB Decision and Order EB-2015-0298.

Under the FHP, responsibility for the cost of the OESP program is being transferred to the Provincial budget and rate-payers will no longer be charged for the cost of this program. The OESP variance account, which is currently in a credit balance, will be used to fund the cost of the program until

Commented [LAP8]: To confirm with Energy if all costs have shifted.

Commented [LAP9]: CV to determine if there is anything else to add from IESO's analysis.

Commented [LAP10]: To confirm with Energy if all costs have shifted.

depleted.

Although the timing of the recovery of the FHP variance account has not yet been established by the OEB, the wording and intent of the proposed legislation is clear that it is intended by law to be recoverable over a period of 30 years. Given the nature and extent of customer demand for the power generated and distributed in Ontario, both at this time and projected in the future, it is reasonable to conclude that there will be sufficient demand to recover the regulatory asset. This conclusion, which is supported by Figure 19: Ontario's Forecast Electricity Production in Achieving Balance – Ontario's Long-Term Energy Plan, will need to be continually evaluated throughout the recovery period. The willingness of unrelated third parties to fund the purchase of the regulatory asset from the IESO by OPG Trust also demonstrates the belief that sufficient demand will exist to permit its future recovery.

In addition to the general scope requirements of ASC 980 discussed above, specific consideration is made as to whether the following scope exception in ASC 980-10-15-7 applies to the FHP:

The guidance in the Regulated Operations Topic does not apply to any of the following transactions:

a) *Accounting for price controls that are imposed by governmental action in times of emergency, high inflation, or other unusual conditions, or accounting for contracts in general. However, if the terms of a contract between an entity and its customer are subject to regulation and the criteria of paragraph 980-10-15-2 are met with respect to that contract, the guidance in this Topic shall apply.*

Based on the discussion below, this scope exemption is not applicable to the FHP.

Electricity cost reductions resulting from the FHP do not represent price controls imposed by the Province in a time of emergency, high inflation, or other unusual conditions. As noted in the 2017 budget speech, the 2017 Ontario Budget – A Stronger, Healthier Ontario, the FHP is a fairer way to share the costs of building a cleaner, more modern and reliable electricity generation system. In particular, the budget speech states:

Commented [LAP11]: Consider Navigant report if/when becomes available

Recognizing that existing electricity infrastructure is expected to last for decades to come, the Province would refinance the cost of those capital investments to ensure that system costs are more equitably distributed over time.

The following paragraph from the Basis for Conclusion for FAS 71 also provides some insight as to the specific concerns relating to government imposed price controls that resulted in the scope exception in ASC 980-10-15-7(a):

70. The first scope limitation of paragraph 8—excluding accounting for price controls imposed by governmental action in times of emergency, high inflation, or other unusual conditions—was included in the Discussion Memorandum. Price controls imposed in periods of unusual conditions are not expected to be applied consistently over an extended period. Indeed, their duration usually is limited by statute. In that environment, assurance of future benefits cannot be provided by probable future actions of the price control regulator because that regulator may not exist at a given future date.

The implementation of the FHP does not create the type of environment described in FAS 71.BC70 as it is governed by the OEB and there is no concern the OEB will not continue to exist.

The second part of the scope exception in ASC 980-10-15-7(a) relating to the accounting for contracts is further explained in the following paragraph from the Basis for Conclusion for FAS 71:

71. Accounting for contracts in general was also excluded from the scope of the Discussion Memorandum. The economic effects of cost reimbursement contracts are in some respects similar to the economic effects of the type of regulation addressed by this Statement. However, most contracts tend to be relatively short-term, whereas regulation of enterprises covered by this Statement is expected to continue beyond the foreseeable future. The Board noted that other authoritative literature addresses contract accounting and concluded that it should exclude the general issue of contract accounting from the scope of this Statement.

Although the impetus for the FHP relates to term of contracts the IESO has entered into with certain generators, the FHP does not change the existing accounting for these contracts.

Application of ASC 980-340-25-1 to the regulatory asset

ASC 980-340-25-1 states the following:

Rate actions of a regulator can provide reasonable assurance of the existence of an asset. An entity shall capitalize all or part of an incurred cost that would otherwise be charged to expense if both of the following criteria are met:

- *a) It is probable (as defined in Topic 450) that future revenue in an amount at least equal to the capitalized cost will result from inclusion of that cost in allowable costs for rate-making purposes.*
- *b) Based on available evidence, the future revenue will be provided to permit recovery of the previously incurred cost rather than to provide for expected levels of similar future costs. If the revenue will be provided through an automatic rate-adjustment clause, this criterion requires that the regulator's intent clearly be to permit recovery of the previously incurred cost.*

A cost that does not meet these asset recognition criteria at the date the cost is incurred shall be recognized as a regulatory asset when it does meet those criteria at a later date.

The following supports the IESO's position that the FHP variance account meets the above criteria for capitalization:

It is probable (as defined in Topic 450) that future revenue in an amount at least equal to the capitalized cost will result from inclusion of that cost in allowable costs for rate-making purposes.
The following excerpts from the FHP Act make it clear that the IESO is entitled to recover the regulatory asset through rates in the future: *Variance account to be established, maintained* *24 (1) The IESO shall establish and maintain a variance account in which it records the following:* *1. The IESO deferral for each month.* *2. All payments received by the IESO resulting from the exercise of the right of recovery under section 25 and any transfer under section 26.* *3. Such other adjustments as may be prescribed, including adjustments in respect of the period that commences on or*

after May 1, 2017 and before the day this section comes into force.

Recording determinative

(2) Subject to the correction of any obvious error by the IESO, its recording of the balance in the variance account is determinative of the balance as of the time of the recording.

Regulatory asset established

25 (1) Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Board to set rates

(2) Subject to subsection (3), the Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for the IESO to recover the balance recorded in the variance account.

Limitation

(3) The IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2021.

The recovery of the regulatory asset is, however, dependent on future consumption of electricity by rate-payers. The recovery period is intended to be 30 years. Given the nature and extent of customer demand for the power generated and distributed in Ontario, both at this time and projected in the future, it is reasonable to conclude that it is probable there will be sufficient demand in the future to recover the regulatory asset. This conclusion, which is supported by Figure 19: Ontario's Forecast Electricity Production in Achieving Balance – Ontario's Long-Term Energy Plan (Appendix B), will need to be continually evaluated throughout the recovery period.

The willingness of unrelated third parties (e.g., investors) to fund the purchase of the regulatory asset from the IESO by OPG Trust also demonstrates the belief that sufficient demand will exist to permit its future recovery.

Based on available evidence, the future revenue will be provided to permit recovery of the previously incurred cost rather than to provide for expected levels of similar future costs. If the revenue will be provided through an automatic rate-adjustment clause, this criterion requires that the regulator's intent clearly be to permit recovery of the previously incurred cost.

Based on the above excerpts from the FHP Act, it is clear the IESO will be recovering costs previously incurred rather than providing for expected levels of similar future costs.

The IESO is considered an agent in the market-settlement process and, therefore, recognizes revenue on a net basis. Although this conclusion impacts whether the recovery of costs through rates are presented as revenue in the financial statements of the IESO, it is not considered to preclude these amounts from being considered 'future revenue' for purposes of assessing the criteria in ASC 980-340-25-1. In fact, the capitalization of the incurred costs in the FHP variance account preserves the treatment of the IESO as an agent (i.e., if these costs are not capitalized, it results the recognition of costs in the period incurred and the recognition of revenue in a subsequent period when electricity is consumed, which, in effect, is gross presentation). To put another way, not capitalizing the costs in FHP variance account treats the IESO as a principal in the transaction by showing costs and revenue.

Commented [VC(12]: Suggest we expand this analysis – not sure this is technically true (the price set would just be very high), but practically, this would probably not be permitted to occur

Commented [LAP13]: Once the terms of the guarantee are finalized, I think we should comment (if true) that the guarantee relates to regulatory changes and does not cover lack of demand.

CV – will share a copy of the current agreement – does not cover lack of demand

Is ASC 980 an acceptable source of guidance under PSAS[3]

In assessing whether ASC 980-340-25-1 is an acceptable source of guidance under PSAS, Paragraph 5 of PSAS 1150, GENERALLY ACCEPTED ACCOUNTED PRINCIPLES, states the following:

When the primary sources of GAAP do not deal with the accounting and reporting in financial statements of transactions or events encountered by the public sector reporting entity, or additional guidance is needed to apply a primary source to specific circumstances, the selection of an appropriate accounting policy requires the exercise of professional judgment. In these circumstances, a public sector reporting entity should adopt accounting policies and disclosures that are consistent with:

a) the primary sources of GAAP; and

b) the application of the concepts described in FINANCIAL STATEMENT CONCEPTS, Section PS 1000.

Related guidance is also provided in PSAS 1150.18-.20:

Paragraphs PS 1150.19-.24 identify some of the other sources that a public sector reporting entity might consult to assist in selecting accounting policies and disclosures that comply with paragraph PS 1150.05.

Pronouncements issued by other bodies authorized to issue accounting standards may be useful sources to consult. For example, accounting pronouncements published with the authority of the Canadian Accounting Standards Board (AcSB), International Accounting Standards Board (IASB), US Federal Accounting Standards Advisory Board (FASAB), US Governmental Accounting Standards Board (GASB), or International Public Sector Accounting Standards Board (IPSASB) are often important sources to consult on matters not covered by primary sources of GAAP or for assistance in applying a primary source of GAAP to specific circumstances.

When a public sector reporting entity chooses to consult a source described in paragraph PS 1150.19, it applies professional judgment and evaluates the source in the context of the relative manner in which the standard setter requires its pronouncements to be applied, as well as in the context of the related pronouncement. When an accounting standard setter does not have a conceptual framework that is similar to the concepts referred to in paragraph PS 1150.05(b), the public sector reporting entity needs to ensure that the selected source is consistent with those concepts.

Since PSAS does not specifically address the treatment of costs incurred that will be recovered through regulatory operations in future periods, the IESO would not be precluded from following the guidance in ASC 980-340-25-1 (i.e., silence under PSAS on this specific topic does not, on its own, mean that such guidance is to be ignored). However, PSAS 1000.05 makes it clear that in order to do so, it must first be demonstrated that such guidance is consistent with the application of the concepts described in PSAS 1000, FINANCIAL STATEMENT CONCEPTS.

The relevant guidance in PSAS 1000 relating to the recognition of an asset is as follows:

PSAS 1000.35

Assets are economic resources controlled by a government as a result of past transactions or events and from which future economic benefits are expected to be obtained.

[3] If the accounting for GBEs were to change in the future such that line by line consolidation is required using PSAS, the importance of this consideration increases significantly.

PSAS 1000.36

Assets have three essential characteristics:

a) *they embody future economic benefits that involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows, or to reduce cash outflows;*
b) *the public sector entity can control the economic resource and access to the future economic benefits; and*
c) *the transaction or event giving rise to the public sector entity's control has already occurred.*

PSAS 1000.37

An item is not an asset of a government if it lacks one or more of the essential characteristics listed in the preceding paragraph. Thus, for example, an item does not qualify as an asset of a government if the item involves:

a) *no future economic benefit;*
b) *future economic benefit, but the government cannot obtain it; or*
c) *future economic benefit that the government may obtain, but the events or circumstances that give the government control of the benefit have not yet occurred*

The following supports the IESO's position that the regulatory asset possesses the three essential characteristics of an asset:

Embody future economic benefits that involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows, or to reduce cash outflows

The following excerpts from the FHP Act make it clear that the IESO is entitled to recover the regulatory asset through rates in the future:

Variance account to be established, maintained

24 (1) The IESO shall establish and maintain a variance account in which it records the following:

1. The IESO deferral for each month.

2. All payments received by the IESO resulting from the exercise of the right of recovery under section 25 and any transfer under section 26.

3. Such other adjustments as may be prescribed, including adjustments in respect of the period that commences on or after May 1, 2017 and before the day this section comes into force.

Recording determinative

(2) Subject to the correction of any obvious error by the IESO, its recording of the balance in the variance account is determinative of the balance as of the time of the recording.

Regulatory asset established

25 (1) Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Board to set rates

(2) Subject to subsection (3), the Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for the IESO to recover the balance recorded in the variance account.

Limitation

(3) The IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2021.

Accordingly, the regulatory asset, by statute, has the capacity to provide future cash inflows.

While perhaps obvious, paragraph 13 of PSAS 3210, ASSETS, confirms the generation of future cash flows represents a future economic benefit:

The future economic benefits embodied in an asset may also be in the form of generating future cash inflows. Cash inflows benefit the public sector entity because cash can be used to purchase or to provide goods and services, redistribute wealth or settle liabilities. Benefits in the form of cash inflows relate to resources, such as loans receivable, inventory for resale and portfolio investments. Also, some public sector resources generate cash inflows because they have user fees associated with them.

The ability of the regulatory asset to generate future cash flows is dependent on the future consumption of electricity by rate-payers. Although the timing of the recovery of the regulatory asset has not yet been established by statute, the recovery period is intended to be 30 years. Given the nature and extent of customer demand for the power generated and distributed in Ontario, both at this time and projected in the future, sufficient demand is expected to exist in the future to recover the regulatory asset. This conclusion, which is supported by Figure 19: Ontario's Forecast Electricity Production in Achieving Balance – Ontario's Long-Term Energy Plan, will need to be continually evaluated throughout the recovery period.

The willingness of unrelated third parties to fund the purchase of the regulatory asset from the IESO by OPG Trust also demonstrates the belief that sufficient demand will exist to permit its future recovery.

The guidance on forgivable loans in PSAS 3050, Loans receivable, provides an example where an asset can be recognized under PSAS based on the existence of sufficient evidence of a reasonable expectation of its recovery.

The public sector entity can control the economic resource and access to the future economic benefits

Paragraph 16 of PSAS 3210, ASSETS, states the following:

A public sector entity controls the economic resource and access to the future economic benefits when it:

- *a) can benefit from the economic resource through its capacity to provide goods and services, to provide future cash inflows or to reduce cash outflows;*
- *b) can deny or regulate access to those benefits by others; and*
- *c) is exposed to the risks associated with the economic resource.*

The IESO can benefit from the regulatory asset through its capacity to provide future cash inflows in one of two ways:

1. *Collection through future rates*

Section 25 of the FHP gives the IESO the right to recover the regulatory asset through future rates:

Regulatory asset established

25 (1) Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Board to set rates

(2) Subject to subsection (3), the Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for the IESO to recover the balance recorded in the variance account.

Commented [VC(14]: To update based on the new LTEP to be issued this fall.

Commented [LAP15]: Once the terms of the guarantee are finalized, I think we should comment (if true) that the guarantee relates to regulatory changes and does not cover lack of demand.

Also need to consider whether a different conclusion is reached on consolidation

CV -- agreed

2. *Sale to a financing entity*

Section 26 of the FHP Act permits the IESO to sell the regulatory asset:

26 (1) The IESO may from time to time, in accordance with this Act and the regulations, transfer a specified portion of the regulatory asset to a financing entity in accordance with this section.

Agreement

(2) An agreement between the IESO and a financing entity in relation to the transfer of a specified portion of the regulatory asset shall provide for consideration of a payment by the financing entity to the IESO in an amount equal to the amount of the specified portion.

Effect of payment

(3) Upon receipt by the IESO of the payment by the financing entity,

(a) the balance in the variance account shall be reduced by the amount of the payment;

(b) the regulatory asset shall be adjusted accordingly;

(c) the financing entity shall acquire a corresponding investment interest; and

(d) the IESO shall retain no further right, title or interest in the corresponding investment interest.

Since (a) the statutory right to recover the regulatory asset belongs solely to the IESO, and (b) the IESO is permitted, but not required, to sell the regulatory asset, the IESO can deny or regulate access to the future economic benefits of the regulatory asset by others.

The IESO is exposed to the risks associated with the regulatory asset, with the primary risk being that collection through the mechanism set out in Section 25 of the FHP Act is dependent on the future consumption of electricity by rate-payers.

The above analysis supports the position that the IESO controls the regulatory asset and access to the future economic benefits.

In reaching this conclusion, consideration was given to the following excerpt included on Page 37 of the 2008 Annual Report of the OAGO:

With regard to the second characteristic, we simply point again to the legacy of the former Ontario Hydro and its stranded debt. This in our view provides concrete evidence that even in monopoly situations governments do not have sufficient assurance that an enterprise will generate enough profits in future years to recover all of its past costs.

Although there needs to be sufficient assurance regarding the recovery of past costs, all relevant facts and circumstances need to be taken into consideration. Accordingly, the stranded debt of Ontario Hydro may be relevant to the analysis, but not determinative on its own. As noted in the previous section, the recoverability of past costs will be continually assessed.

The transaction or event giving rise to the public sector entity's control has already occurred

When evaluating whether a transaction or event gives rise to control, the following guidance from PSAS 3210, ASSETS, provides helpful guidance:

.26
The past transaction or event that gives rise to control of an economic resource resulting from exchange agreements or contracts usually occurs at the point of exchange. This arises when substantially all the benefits and risks of ownership have been transferred to the public sector entity and normally coincides with the disbursement of funds, exchange of other assets or assumption of liabilities.
.28

Commented [LAP16]: Once terms of guarantee are finalized, need to consider if it impacts this discussion. Impact may not be at IESO level, but on consolidation.

Commented [VC(17]: See previous point – to reference to that discussion.

The existence of a law, by-law or policy in relation to a particular program is not a past transaction or event that gives rise to control of an economic resource. Control does not exist until the underlying event occurs.
.29
The past transaction or event giving rise to control of an economic resource must have occurred by the financial statement date. Legislation having retroactive application cannot create a past transaction or event. Any economic resources related to that legislation would be accounted for in the current and relevant future periods, not in the period of the effective date of the legislation.

In the case of the regulatory asset, the above guidance in PSAS 3210 makes it clear that it is not the statute itself that is the transaction or event giving rise to the asset, it is the incurrence of costs for which recovery is provided for under statute. Accordingly, control over the economic benefits of the regulatory asset occurs when the IESO incurs a cash flow deficit that is recorded in the FHP variance account in accordance with Section 24(1) of the FHP Act:

24 (1) The IESO shall establish and maintain a variance account in which it records the following:

1. The IESO deferral for each month.

2. All payments received by the IESO resulting from the exercise of the right of recovery under section 25 and any transfer under section 26.

3. Such other adjustments as may be prescribed, including adjustments in respect of the period that commences on or after May 1, 2017 and before the day this section comes into force.

At this point in time, the IESO has incurred a cash outflow for which it is entitled to recover under Section 25 of the FHP Act:

Regulatory asset established

25 (1) Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Board to set rates

(2) Subject to subsection (3), the Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for the IESO to recover the balance recorded in the variance account.

The following excerpt from the IFRS Staff Paper on Rate-Regulated Activities prepared for discussion at the June 2017 IASB meeting presents a consistent view and dismisses the potential dissenting view that the transaction or event giving rise to the IESO's control is the future consumption of electricity by rate-payers:

A right arises from the rate-adjustment mechanism if the entity has already partially or fully fulfilled a regulatory requirement (past event) but the current regulated rate does not yet reflect the compensation that the entity is entitled to in exchange. Even though the entity cannot compel its customers to buy the regulated goods or services, the entity's right to charge an increased future regulated rate has the potential to produce for the entity an inflow of economic benefits that are not available to other parties. That right will be consumed as the entity includes the rate increase in future regulated rates and will lead to an inflow of economic benefits if customers pay the increased future regulated rate for the future delivery of goods or services.

Another potential dissenting view is contained on page 37 of the 2008 Annual Report of the OAGO:

With regard to the third characteristic, we do not believe that a rate-regulation decision can be considered a transaction or event giving rise to an asset or obligation because, as stated above, from the level of the government's consolidated financial statements such a decision is an internal event between two government-controlled entities. An equivalent analysis for rate-regulated liabilities leads to the same conclusion. PSAB standards preclude the inclusion of both gains and losses from such inter-company transactions. Therefore, our contention is that, at the consolidated financial statement level, rate-regulated assets and liabilities have no place and should be removed upon consolidation of the government's controlled entities.

It should be noted, however, that the OAGO's belief that a rate-regulation decision cannot be considered a transaction or event giving rise to an asset or obligation is not contrary to the IESO position. As noted above, it is not the statute itself that is being considered the transaction or event giving rise to the asset, it is the incurrence of costs for which recovery is provided for under statute.

In addition, one could argue the creation of the relevant statutes is not an internal event from the point of view of the consolidated government. Statutes must be passed by the Legislative Assembly of Ontario to become law. Since the Legislative Assembly is comprised of elected members, it can be viewed as the government's governing body.

Concluding the regulatory asset possesses the three essential characteristics of an asset in PSAS 1000.05 then begs the question as to whether the application of the guidance in ASC 980 is even necessary in this particular situation. Consistent with the statement in ASC 980 –340-25-1 that *rate actions of a regulator can provide reasonable assurance of the existence of an asset,* ASC 980 provides guidance as to how to apply the primary source of PSAS in the regulatory environment.

In a letter from the OAGO to the Board of Directors of the IESO dated June 22, 2017 (the OAGO Letter), the OAGO makes the following statement:

The definitions of an asset in the PSAS and FASB Conceptual Framework are similar. Similar to PSAS, rate regulated deferral accounts do not generally meet the definition of an asset in the FASB's Conceptual Framework.

However, the following excerpts from the Basis for Conclusions for FAS 71 (paragraph 58 in particular), clearly support that ASC 980 is an application of, not an exception from, the basic definition of an asset in the Conceptual Framework:

Economic Effects of Regulation

56. The second threshold issue in the Discussion Memorandum was: "Does rate regulation introduce an economic dimension in some circumstances that should affect the application of generally accepted accounting principles to rate-regulated enterprises?"

57. Most respondents to the Discussion Memorandum indicated that rate regulation does introduce such an economic dimension in some circumstances. Respondents cited the cause-and-effect relationship of costs and revenues as the principal economic effect of regulation that affects accounting for regulated enterprises. They noted that cost might be one factor used by unregulated enterprises to establish prices, but it would often not be the most important factor. Usually, prices are limited by the market. An unregulated enterprise might desire to price its goods or services at a level that would recover all costs and a reasonable profit; however, the market might not permit that price. Alternatively, an unregulated enterprise might be able to increase its prices and its profit if competition does not limit its prices. In either case, cost often is not the principal determinant of prices. In contrast, for an enterprise with prices regulated on the basis of its costs, allowable costs are the principal factor that influences its prices.

58. The economic effect cited by most respondents is the ability of a regulatory action to create a future economic benefit—the essence of an asset. For example, consider a regulated enterprise that incurs costs to repair damage caused by a major storm. If the regulator approves recovery of the costs through rates over some future period or is expected to do so, the rate action of the regulator creates a new asset that offsets the reduction in the damaged asset. The enterprise has probable future economic

benefits—the additional revenue that will result from including the cost in allowable costs for rate-making purposes. The future benefits are obtained or controlled by the enterprise as a result of a past event—incurring the cost that results in the rate order. Thus, the criteria of Concepts Statement 3 for an asset are met.

The fact that many Canadian rate-regulated entities recognized regulated assets under Part V of the CPA Canada Handbook – *Pre-changeover Accounting Standards* (Part V GAAP) further supports the position that regulated assets do meet the basic definition of an asset under PSAS. Although Part V GAAP refers to rate regulation in several standards, it does not include cost capitalization guidance equivalent to ASC 980-340-25-1. It does, however, specify in paragraph 32B of Section 1100, *Generally accepted accounting principles*, that Section 1100 applies to the recognition and measurement of assets and liabilities arising from rate regulation beginning January 1, 2009. Since Section 1100.04 only permits the use of an alternate source of GAAP if it is consistent with Part V GAAP, regulated assets need to meet the basic definition of an asset under Part V GAAP in order to be recognized. The Part V GAAP definition of an asset in Section 1000, *Financial Statement Concepts* is consistent with the PSAS definition.

The CICA Research Report also concluded regulated assets meet the basic definition of an asset under Part V GAAP:

In the Study Group's view, the economic benefits and obligations created by rate regulation and resulting from past transactions or events, and the changes in these amounts, meet the definition of a financial statement element set out in Handbook Section 1000.

The OAGO Letter suggests that IFRS should be consulted prior to referring to ASC 980 under PSAS's GAAP hierarchy in PSAS 1150 and points out the following:

- In 2005 the International Financial Reporting Interpretations Committee (IFRIC) indicated the US GAAP recognition criteria for regulated assets were not fully consistent with IFRS and could not be applied by analogy.
- When the question of rate regulated accounting was posed to the IFRIC again in 2008, the IFRIC noted the topic had been previously addressed and there was a well-established practice of first time IFRS adopters ceasing rate regulated accounting and removing regulatory deferral accounts from their financial statements.
- In the Basis for Conclusions on IFRS 14, IFRS 14.BC30 noted the differences in the recognition criteria between IFRS and ASC 980 resulted in almost all existing regulatory deferral accounts being derecognized upon transition to IFRS.

While PSAS does not prescribe an ordering of consideration for sources other than primary sources, the statements made with respect to IFRS by the OAG have been considered. It should be noted, however, that the IASB's project on rate-regulated activities is still in progress and the OAGO Letter does not reference more recent and relevant activity. In September 2014, the IASB issued Discussion Paper DP/2014/02, *Reporting the Financial Effects of Rate Regulation*. The Discussion Paper presents the opposing views as to whether regulatory deferral account balances meet the definitions of an asset or a liability and specifically states the following in paragraph 5.09:

Consequently, the IASB has not formed a preliminary view on whether regulatory deferral account balances meet either the current or proposed revised Conceptual Framework definitions of an asset and a liability. It will use the input received from the responses to this Discussion Paper and the Conceptual Framework project to help it assess whether to develop any specific accounting guidance or requirements for rate-regulated activities.

In addition, the most recent paper issued by the IASB staff in June 2017 includes the following:

17. During the May 2017 Board meeting we also considered the interaction between the definitions of assets and liabilities and the characteristics of defined rate regulation (see paragraphs 5 and 6). We concluded that a combination of those characteristics suggested that the rights and obligations created by the rate-adjustment mechanism are assets and liabilities, as those terms are expected to be defined in the forthcoming revised Conceptual Framework for Financial Reporting.

The Exposure Draft ED/2015/3, *Conceptual Framework for Financial Reporting*, defines an asset as follows:

4.5 An asset is a present economic resource controlled by the entity as a result of past events.
4.6 An economic resource is a right that has the potential to produce economic benefits.

This recent activity suggests that it would be premature to assume that the IASB will conclude that regulatory deferral account balances will not meet the definitions of an asset or a liability.

Once it is determined that the regulatory asset meets the basic characteristics of an asset in PSAS 1000.36, consideration also needs to be made as to what type of asset it is. This is important because PSAS 1000.58 does not permit the recognition of intangible assets:

In the absence of appropriate public sector recognition and measurement criteria for intangibles, all intangibles, including those that have been purchased, developed, constructed or inherited in right of the Crown, are not recognized as assets in government financial statements. The intangible often called "human capital" that embodies the talent or intellectual capital of government employees is not recognized as an asset under existing accounting principles.

PSAS 1000 identifies two types of assets: financial assets and non-financial assets and provides the following commentary:

.39 Financial assets are assets that could be used to discharge existing liabilities or finance future operations and are not for consumption in the normal course of operations.

.40 A financial asset is any asset that is:

- *a) Cash*
- *b) a realizable asset that is convertible to cash;*
- *c) a contractual right to receive cash or another financial asset from another party;*
- *d) a contractual right to exchange financial instruments with another party under conditions that are potentially favourable to the government;*
- *e) an equity instrument of another entity;*
- *f) an investment in a government business enterprise or government business partnership;*
- *g) a financial claim on an outside organization or individual; or*
- *h) an inventory or item for sale that meets the criteria in FINANCIAL STATEMENT PRESENTATION, paragraph PS 1201.055.*

.41 Non-financial assets include tangible capital assets, and other assets such as prepaid expenses and inventories of supplies.

.42 Non-financial assets are acquired, constructed or developed assets that do not normally provide resources to discharge existing liabilities, but instead:

- *a) are normally employed to deliver government services;*
- *b) may be consumed in the normal course of operations; and*
- *c) are not for sale in the normal course of operations.*

PSAS 3210, ASSETS, also provides some relevant guidance:

.24 Non-financial resources include all items of a fixed or permanent nature (such as tangible capital property), claims to goods and services (such as prepaid items) and consumable goods (such as inventories of supplies). Non-financial resources also include intangibles, Crown lands and natural resources.

.25 Certain non-financial resources are, however, not given accounting recognition as assets in government financial statements. For example, all government intangibles, and all natural resources and Crown lands that have not been purchased by the government, are not given accounting recognition in government financial statements. A government's non-financial assets, as defined in FINANCIAL STATEMENT CONCEPTS, Section PS 1000, comprise the recognized non-financial resources of a government.

Although PSAS does not permit the recognition of intangibles, it also does not provide a definition of intangibles. In absence of specific guidance in PSAS as to what constitutes an intangible, U.S. GAAP is probably the most appropriate source to consult, in light of the fact that it deals specifically with regulated assets. Under U.S. GAAP, a regulated asset is not treated as an intangible. ASC 980 contains separate subsections for 'Intangibles – Goodwill and Other' and 'Other Assets and Deferred Costs' and regulated assets are included in the guidance on 'Other Assets and Deferred Costs'.

In accordance with PSAS 1201.040(a), financial assets are presented separately on the statement of financial position. The IESO classifies its regulated assets (i.e., the original variance account and the regulated assets relating to unrecovered smart metering expenses and unrecovered PSAB transition items) as financial assets.

Although the regulatory asset created under the FHP does not clearly meet the definition of either a financial asset or a non-financial asset under PSAS, it possesses characteristics more consistent with that of a financial asset since it will be available to discharge existing liabilities or finance future operations and is not for consumption in the normal course of operations.

Commented [LAP18]: Consider need to specifically address PS 3450.

The FHP is expected to be executed in a manner such that the regulatory asset will be available to discharge existing liabilities or finance future operations in the short term through its commoditization (i.e., transfer to the OPG Trust). However, even if not commoditized, the regulatory asset will be available to discharge existing liabilities or finance future operations in the future similar to, for example, a long-term receivable.

By recognizing the regulatory asset in a manner consistent with that of a financial asset, the FHP will have a neutral impact on both the Province's net debt and accumulated deficit, which appears appropriate and aligned with the intent of guidance in PSAS 1100, Financial statement objectives:

Financial statements should present information to describe the government's financial position at the end of the accounting period. Such information should be useful in evaluating:

a) *the government's ability to finance its activities and to meet its liabilities and contractual obligations; and*
b) *the government's ability to provide future services.*

A government's net debt is an important indicator of a government's financial position, highlighting the financial affordability of future government service provision. A net debt position represents a "lien" on the ability of the government to apply financial resources and future revenues to provide services. Non-financial assets are added to net debt to calculate the other indicator of a government's financial position — its accumulated surplus or deficit. Non-financial assets are "prepaid service potential". Reporting a government's recognized non-financial resources as part of its financial position provides information necessary for a more complete understanding of a government's debt position, financial position and future operating requirements.

Governments provide public services and redistribute wealth for a variety of social and economic purposes. To meet those objectives, governments need information about the cost of services and the affordability of services. An understanding of the extent of the financial "lien" the government has on its ability to provide future services as a result of past transactions and events is essential information. Governments also need to have an appreciation of the magnitude of the total economic resources they have on hand to deliver services. A government's net financial resources / net debt position, assessed in combination with the non-financial resources position of the government, provides a measure of the net recognized economic resources available to the government at the financial statement date to provide services in the future.

If the regulatory asset is not recognized in a manner consistent with that of a financial asset by the GRE, the Province's net debt will increase significantly, suggesting that the Province has a much higher future revenue requirement. This would be inaccurate, however, since the regulatory asset is going to be recovered under statute from electricity consumers, not taxpayers.

Commented [LAP19]: Consider if Balanced Budget Legislation should be addressed

Additionally, while an increase in net debt and/or accumulated deficit in the financial statements of the GRE would be an indicator the Province's financial position has deteriorated in accordance with PSAS 1200.036, the FHP is designed to, in substance, have a neutral impact on the Province's financial position.

Sale of the Regulatory Asset [NTD – Need to consider impact of guarantee when finalized, but may only impact at consolidated level if IESO not a party to guarantee]

Commented [VC(20]: To add

As discussed above, IESO management has concluded the regulatory asset created by the FHP can be recognized as a regulated asset for accounting purposes in the financial statements of the IESO in accordance with the guidance in ASC 980.

Since the IESO does not have the financial capability to finance the regulatory asset, OPG intends to establish a financing entity (OPG Trust) to purchase the IESO's regulatory asset on a monthly basis to eliminate any cash shortfall in the IESO. Through this arrangement, OPG Trust will finance these purchases through a combination of provincial borrowing (flowed through OPG as an equity investment), amounts advanced from OPG and direct borrowing from capital markets.

The sale of the regulatory asset to OPG Trust is permitted under Section 26 of the FHP Act:

> *26 (1) The IESO may from time to time, in accordance with this Act and the regulations, transfer a specified portion of the regulatory asset to a financing entity in accordance with this section.*
>
> *Agreement*
>
> *(2) An agreement between the IESO and a financing entity in relation to the transfer of a specified portion of the regulatory asset shall provide for consideration of a payment by the financing entity to the IESO in an amount equal to the amount of the specified portion.*
>
> *Effect of payment*
>
> *(3) Upon receipt by the IESO of the payment by the financing entity,*
>
> *(a) the balance in the variance account shall be reduced by the amount of the payment;*
>
> *(b) the regulatory asset shall be adjusted accordingly;*
>
> *(c) the financing entity shall acquire a corresponding investment interest; and*
>
> *(d) the IESO shall retain no further right, title or interest in the corresponding investment interest.*

Consideration needs to be made as to whether the sale of the regulatory asset is accounted for as a sale transaction or a financing transaction. If treated as a sale transaction, the existing regulated asset is derecognized (DR Expense, CR Regulated Asset) and the cash received is recognized as sales proceeds

Commented [VC(21]: Do you think IESO should recognize revenue and expense – vs. a gain of NIL?

(DR Cash, CR Revenue). Since the cash proceeds received are equal to the book value of the regulated asset, there is no net impact to income. If treated as a financing transaction, the existing regulated asset continues to be recognized and the cash proceeds received are treated as a loan (DR Cash, CR Payable).

IESO management has concluded the sale of the regulatory asset to OPG Trust will result in the derecognition of the regulated asset (i.e., sale transaction). The IESO's auditors, KPMG, concur with this position, as evidenced from the following excerpt from the KPMG Letter:

We have considered the foregoing analysis and management's conclusion. We concur that the regulatory asset should be derecognized on transfer to the OPG Trust as IESO no longer has rights or future economic benefits associated with the asset.

PSAS provides little guidance relating to the derecognition of an asset. In particular, PSAS 1000, *Financial statement concepts*, PSAS 3210, *Assets*, and PSAS 3450, *Financial instruments*, are all silent on the topic. Although the transfer of the regulatory asset is not within the scope of PSAS 3430, *Restructuring Transactions*, the following derecognition guidance in this standard provides some relevant insight:

.21 Individual assets and liabilities transferred in a restructuring transaction should be derecognized by the transferor if they no longer meet the definitions of assets and liabilities and applicable recognition criteria at the restructuring date.

.24 When a transferor continues to be involved in the individual assets and/or liabilities it transferred to a recipient subsequent to the restructuring date, it would assess the nature and extent of its continued involvement against the definitions of assets and liabilities and applicable recognition criteria to evaluate whether:

(a) derecognition of the asset and liability transferred would be appropriate; and
(b) its continued involvement gives rise to a new asset or new liability that needs to be recognized.

.25 A new asset or new liability may arise from a restructuring due to a transferor's continued involvement in the individual assets and liabilities transferred (for example, if it agrees to guarantee repayment of all or a portion of a transferred liability or leases back a portion of a transferred asset). As the new asset or new liability is not transferred, together with related program or operating responsibilities, they are not part of the restructuring transaction. They would be accounted for in accordance with individual Sections of the PSA Handbook by both the transferors and recipients.

The IESO should derecognize the regulated asset when transferred to OPG Trust if it no longer meets the definition of an asset in PSAS 1000.35-.36. However, consideration should also be made as to whether the IESO has any continued involvement in the regulatory asset that would result in the recognition of a new asset and/or a new liability (i.e. financing transaction).

The following supports the IESO's position that subsequent to the transfer to OPG Trust, the regulatory asset no longer possesses the three essential characteristics of an asset in PSAS 1000.36 and, therefore, should be derecognized:

Embody future economic benefits that involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows, or to reduce cash outflows
The future economic benefits embodied in the regulated asset are realized by the IESO through the transfer of the regulatory asset to OPG Trust in exchange for cash. As noted above, under Section

26(2)(d) of the FHP, the IESO retains no further right, title or interest in the regulatory asset transferred to OPG Trust. Accordingly, there is no remaining future economic benefit to the IESO.

The public sector entity can control the economic resource and access to the future economic benefits

Although the IESO will collect funds on behalf of OPG Trust, the following sections of the FHP support that control of and access to the future economic benefits of the regulatory asset pass to OPG Trust:

Section 16 - IESO to receive amounts

2) *The IESO shall, as agent of the investment interest owners, receive amounts in respect of the clean energy adjustment paid to it from electricity vendors in accordance with the market rules made under section 32 of the Electricity Act, 1998 or the regulations.*
4) *All amounts received by the IESO in respect of the clean energy adjustment shall, until remitted to or for the benefit of the investment interest owner, be held in trust by the IESO for the investment interest owners.*
5) *The IESO shall remit amounts received by it in respect of the clean energy adjustment, inclusive of interest earned on the amounts referred to in subsection (1), to or for the benefit of the investment interest owners in accordance with the regulations.*

Section 29 - Irrevocable rights and interests

1) *The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests of investment interest owners:*
    1. *The right and interest to impose, invoice, collect, receive and recover the clean energy adjustment from specified consumers, including the right to determine the clean energy adjustment in accordance with this Act.*
    2. *The right to receive, collect and recover the clean energy adjustment that is imposed, invoiced and recoverable under this Act, including any amounts in respect of the clean energy adjustment that are held by electricity vendors, IESO and other prescribed parties.*

The transaction or event giving rise to the public sector entity's control has already occurred

Not applicable as IESO does not control.

As previously noted, the IESO relinquishes its rights, title and interest in the regulatory asset upon transfer to OPG Trust. Subsequent to the transfer, the IESO's only continuing involvement is to act as agent of OPG Trust, which involves receiving funds and holding them in trust on behalf of OPG Trust. This level of continuing involvement does not result in the recognition of a new asset and/or a new liability by the IESO. Accordingly, it is appropriate to account for the transfer of the regulatory asset as a sale and derecognize the regulated asset.

Derecognition of the regulated asset is also consistent with ASC 980. ASC 980-340-40-1 provides the following guidance on the derecognition of an asset that has been recognized in accordance with ASC 980-340-25-1:

If at any time an entity's incurred cost no longer meets the criteria for the capitalization of an incurred cost (see paragraph 980-340-25-1), that cost shall be charged to earnings.

In order for an incurred cost to be capitalized, ASC 980-340-25-1(a) requires the following:

It is probable (as defined in Topic 450) that future revenue in an amount at least equal to the capitalized cost will result from inclusion of that cost in allowable costs for rate-making purposes.

The capitalization criterion in ASC 980-340-25-1(a) is no longer met after the regulatory asset is transferred to OPG Trust because there are no future cash inflows that benefit the IESO. As mentioned above, the IESO realized the economic benefits associated with the regulatory asset upon the transfer. In accordance with Section 16 of the FHP, any future cash collected by the IESO is on behalf of OPG Trust.

Debits and Credits

Based on the example provided earlier, the IESO pays the contracted power generator $400 for electricity used by the ratepayer and collects $300 from the ratepayer through their local distribution company (LDC). The $100 recovery shortfall is recorded in a variance account created by Bill 132 and deemed to be a regulatory asset. The IESO sells the regulatory asset to OPG Trust for $100 to obtain cash to make up the shortfall.

The accounting for the above transactions in the financial statements of the IESO, which are prepared in accordance with PSAS are set out in Scenario A in the table below. For comparison purposes, Scenario B in the table below sets out the accounting if it is determined the regulatory asset is not eligible for recognition as an asset under PSAS.

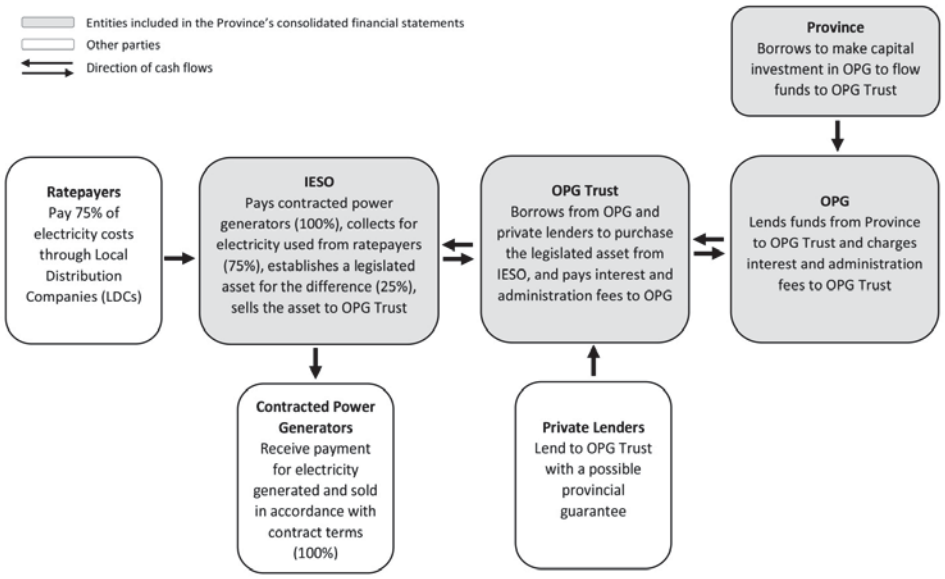
Scenario A – Regulated Asset			**Scenario B – Not a Regulated Asset**		
Market Settlement					
DR	Cash	300	DR	Cash	300
DR	Asset	100	DR	Expense	100
CR	Cash	(400)	CR	Cash	(400)
Sale of Regulatory Asset to OPG Trust					
DR	Cash	100	DR	Cash	100
CR	Revenue	(100)	CR	Gain	(100)
DR	Expense	100			
CR	Asset	(100)			

Commented [LAP22]: Maybe better to do once we add the consolidation section which would reverse the gain.

At any given point in time, the accounting result will be the same under both scenarios provided the cash shortfall has been fully funded. If a funding deficit exists, however, the deficit would be recognized as an asset under Scenario A and recognized as an expense under Scenario B. A funding deficit may arise due to, for example, temporary timing differences between the creation and sale of a regulatory asset. A funding deficit may also arise if OPG Trust (or another financing entity) ceases to purchase the IESO's regulatory assets on an on-going basis.

APPENDIX A

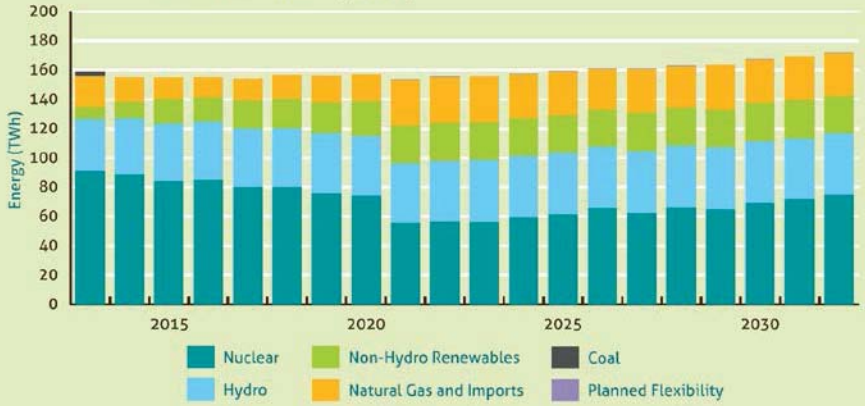
Proposed Legislated Transaction Structure
Prepared by the Office of the Auditor General of Ontario



Commented [OPCD23]: Can chart be expanded to include impact on CFS (consolidation of IESO reflecting RRA on CFS, Interest Income from OPG through revenue of GBE will help to offset borrowing costs incurred by Province on equity injection).

APPENDIX B

Figure 19: Ontario's Forecast Electricity Production (TWh)



Notes: The Planned Flexibility identified in Figure 19 is required to meet peak requirements and represents less than 1 TWh of energy per year. Forecasting of electricity production includes the expectation of imports and exports of electricity in all years. Imports and exports are an important component in managing the operation of the electricity system. As a result, electricity production forecast exceeds the forecast Ontario consumer demand.

FHP Memo - Draft V5 17-Aug-2017_cv.pdf

From: Veinot, Cindy (TBS)
To: Kim Marshall
Cc: Hosick, Sarah (TBS); Donaldson, Mark (TBS)
Subject: FHP Memo - Draft V5 17-Aug-2017_cv
Date: October 5, 2017 12:26:00 PM
Attachments: FHP Memo - Draft V5 17-Aug-2017_cv.docx

Hi Kim,

Attached is the current version of the Province's memo on the FHP. It is not final, but I wanted to share it with you at this point and ask you to read it and let us know if you have any comments. You have our permission to also share it with your advisors.

Could you let us know if you have any comments by next Thursday – October 12.

Thanks,

Cindy

FHP Memo - Draft V5 17-Aug-2017_cv_1.pdf

Disclaimer

Ernst & Young LLP (“EY”) prepared the attached Report only for the OPCD. EY did not perform its services on behalf of, or to serve the needs of, any other person or entity. Accordingly, EY expressly disclaims any duties or obligations to any other person or entity based its use of the attached Report. Any other person or entity must perform its own due diligence inquiries and procedures for all purposes, including, but not limited to, satisfying itself as to the financial condition and control environment of the Province or any of the other entities involved, as well as the appropriateness of the accounting for any particular situation addressed by the Report.

EY did not perform an audit, review, examination or other form of attestation (as those terms are defined by the CPA Canada) of the financial statements of the Province or any other entities involved. Accordingly, EY did not express any form of assurance on the accounting matters, financial statements, any financial or other information or internal controls of the Province or any of the other entities involved. EY did not conclude on the appropriate accounting treatment based on specific facts or recommend which accounting policy/treatment the Province or any of the other entities involved should select or adopt.

The observations relating to accounting matters that EY provided to the OPCD were designed to assist them in reaching their own conclusions and do not constitute our concurrence with or support of the accounting or reporting of the Province or the other entities involved. The Province and the other entities involved are each responsible for the preparation of their own financial statements, including all of the judgments inherent in preparing them.

Introduction

Ontario's consolidated financial reports are prepared in accordance with the accounting principles for governments recommended by the Public Sector Accounting Board (PSAB) of the Chartered Professional Accountants of Canada (CPA Canada). In order to meet the needs of users, including the legislature and the public, for accountability in government reporting and for decision making, it is essential that public sector financial statements reflect the economic substance of the government's activities.

In March 2017, the Government of Ontario (the Province) announced its Fair Hydro Plan (FHP). In assessing the appropriate accounting treatment for the Global Adjustment refinancing (GA Refinancing) component of the FHP on Ontario's consolidated financial statements, the Office of the Provincial Controller considered the authoritative guidance issued by PSAB, as well as the accounting assessments of the Independent Electricity System Operator (IESO) and Ontario Power Generation (OPG) management and their external auditors and/or advisors. Given the complexity of the GA Refinancing structure, the exercise of professional judgement is necessary to ensure that key financial reporting objectives of transparency and accountability are best served.

Background

The FHP will reduce electricity bills for Regulated Price Plan (RPP) customers (as well as those non-RPP consumers who receive the 8% rebate as specified in the Ontario Rebate for Electricity Act, 2016) by approximately 25% for a period of one year, starting in the summer of 2017, and limit the increase in electricity bills to the rate of inflation over four years.

Because distribution rates vary across the province and customers use different amounts of electricity, the goal in calculating the new RPP electricity prices is to achieve a 25% reduction for a "proxy" customer, which is established under the Fair Hydro Act, 2017 and related regulations (FHP Act) as a residential customer of Toronto Hydro who uses 750 kWh of electricity a month, pays time-of-use RPP electricity prices and has the time-of-use consumption profile of a typical residential customer.

The measures that make up the 25% average reduction include:

1. Spreading the cost of Ontario's clean energy investments over the expected lifecycle of the generation infrastructure assets. This is expected to account for 18-19% of the overall reduction.
2. Shifting the cost of the Ontario Electricity Support Program (OESP) and Rural or Remote Rate Protection (RRRP) program from ratepayers to taxpayer-funded programs.
3. An 8% rebate equal to the provincial portion of the HST, which took effect on January 1, 2017.

Under the first measure, the Province (i.e. the government reporting entity) will borrow funds to pay a portion of current electricity costs, thereby temporarily reducing the amount paid by eligible ratepayers. The deferred amounts, including interest and other costs, will be recoverable from ratepayers through future rates over a future period, ending in 30 years (2047). In other words, the impact of #1 above is

fully borne by the ratepayers – it is a shift in the timing of payment for the clean energy investments, while the impacts of #2 and #3 are reducing the cost to the ratepayer, but at the cost of the taxpayer.

Objective

The objective of this memo is to assess the appropriate accounting for the first measure of the FHP (i.e. deferred recovery of clean energy costs) on the consolidated financial statements of the Province in accordance with PSAS. **[NTD – Consider if document should discuss #2 and #3. This would contrast the different treatment by the Province]**

Background

The Ontario Energy Board (OEB) has been established by the Province to be Ontario's independent energy regulator.

Prior to consideration of the FHP Act, in accordance with Section 78(3.1) of the Ontario Energy Board Act, 1998 (the OEB Act), the OEB is responsible for determining electricity commodity prices for RPP consumers. Section 78(3.3) of the OEB Act requires the OEB to forecast the cost of electricity used by RPP consumers and ensure the prices they are charged reflect that cost. The rate setting process is highly complex and involves numerous forecasts and estimates. As a result, the OEB regulatory framework allows for variances between the actual cost of supplying electricity and the amount collected from RPP consumers.

In setting the rates for RPP consumers, Section 78(3.3) of the OEB Act requires the OEB to settle any such variances through rates over a 12-month period. This is achieved through a price adjustment charged or credited to RPP consumers. This adjustment forms part of the Global Adjustment paid by consumers.

The IESO is the administrator of Ontario's wholesale electricity market. The IESO settles the market with all participants, as an agent.

As part of its role as market administrator, the IESO calculates the market price for electricity (the Market Clearing Price, or MCP) by running the bids and offers of the market participants through an algorithm. The actual cost of supplying electricity, however, is higher or lower than the MCP. The actual cost can be higher than the MCP as certain generators are paid additional amounts relating to the cost of clean energy initiatives they have undertaken. From a government policy perspective, decisions as to what is in the best interest of the public regarding electricity generation in Ontario are not based solely on economics, they are also influenced by environmental, social and political factors. Accordingly, generators may receive compensation for investing in clean energy infrastructure when it is relatively less economical. In these instances, the IESO (and previously the Ontario Power Authority) entered into contracts to pay the generators ther costs (plus a reasonable rate of return thereon) over an extended period of time, typically 20 years. The amounts paid to the generators under the terms of these contracts that are in excess of the MCP are currently included in the rates set by the OEB (as part of the Global Adjustment) with the intention they will be recovered from consumers in the same period they are paid to the generators. As previously noted, the complexity of the rate setting process results in variances between the amount paid to the generators and the amount collected from RPP consumers.

Under existing legislation, the IESO is required to fund any cash shortfall relating to differences arising between the actual cost of supplying electricity and the amount collected from RPP consumers. In

Commented [VC(1]: Agreed – need to have the accounting documented

Commented [VC(2]: ? do we need to document the independence of the regulator – evidence –supreme court case re: OPG

accordance with Section 25.33(5) of the Electricity Act, 1998 (the Electricity Act), the IESO has established and maintains a variance account to track these temporary differences (the original variance account) for subsequent settlement with ratepayers. Cash shortfalls in the IESO arising from the original variance account are funded through financing provided by the OFA.

As described below, once the FHP is implemented, the cost of supplying electricity to RPP consumers that is paid to generators will no longer be fully collected over a 12-month period.

Under the FHP, while generators would continue to be paid over a twenty year period as contracted, the amounts paid by the IESO to the generators would be recovered from ratepayers over a longer period. Deferring the recovery of these costs from the consumers on a longer-term basis would create a significant interim cash shortfall for the IESO.

Section 24(1) of the Ontario Fair Hydro Plan Act (the FHP Act) requires that IESO establish and maintain a variance account (separate from the original variance account described above) to track the cash shortfall specifically resulting from the implementation of the FHP (the FHP variance account). Due to the longer recovery period, and additional recoverable financing and management fee costs, the balance in the account is forecast to increase significantly. The balance in this variance account is defined in Section 1(1) of the FHP Act to be a regulatory asset[1]. The IESO is entitled under Section 25 of the FHP Act to recover the regulatory asset from RPP consumers in the future, which will be achieved through the OEB setting rates to allow for such recovery. This role of the OEB is not dissimilar to its current role with respect to the setting of RPP rates to recover the global adjustment, albeit over 12 months. Section 26 of the FHP Act also permits the IESO to transfer or sell the regulatory asset to a financing entity to fund its cash shortfall, thus commoditizing the future cash flow stream.

The Province has requested that OPG administer the deferral of the Global Adjustment under the FHP because of OPG's participation in the market and the regulatory knowledge OPG possesses. To fulfill this role, OPG intends to establish a financing entity (OPG Trust) to purchase the IESO's regulatory asset on a monthly basis and eliminate any cash shortfall in the IESO. OPG Trust will not be required to purchase the regulatory assets from IESO. Reasons for it deciding not to purchase the regulatory assets could relate to a capital markets disruption such that OPG Trust would not be able to finance the acquisition. OPG Trust intends to finance these purchases through a combination of provincial borrowing (flowed through OPG as an equity investment), amounts advanced from OPG and direct borrowing from capital markets.

Basis of Accounting

In accordance with PSAS 1300.07, the government reporting entity (GRE) for the Province comprises government components and those organizations that are controlled by the government.

As defined in the Introduction to PSAS, the following types of organizations are controlled by the government: (a) government business enterprises (GBE), government non-for profit organizations (GNPO), and other government organizations (OGO).

[1] To avoid confusion in the remainder of this document, the term regulatory asset will refer to the defined term in the FHP Act and the term regulated asset or rate-regulated asset (RRA) will refer to an asset recognized for accounting purposes.

GNPOs and OGOs are considered government units and, in accordance with PSAS 1300.27, are consolidated in the GRE on a line-by-line basis. For consolidation purposes, the financial information of government units is required to be prepared in accordance with PSAS.

GBEs, on the other hand, are accounted for in the GRE using the modified equity method as prescribed by PSAS 1300.35. Under the modified equity method, which is described in detail in PSAS 3070, INVESTMENTS IN GOVERNMENT BUSINESS ENTERPRISES, the equity method of accounting is modified only to the extent that the GBE's accounting principles (which are required to be IFRS in accordance with paragraph 17 of the Introduction to PSAS) are not adjusted to conform to those of the government.

As documented in Schedule 8 to the consolidated financial statements of the Province, the IESO is an OGO and OPG is a GBE. The current accounting for these entities is as follows:

		ENTITY STATEMENTS	GRE STATEMENTS	
ENTITY	**CLASSIFICATION**	**GAAP**	**ACCOUNTING METHOD**	**GAAP**
IESO	OGO	PSAS[1]	Consolidation	PSAS
OPG	GBE	US GAAP[2]	Modified equity method	IFRS[3]

1. For purposes of preparing general purpose financial statements, an OGO applies PSAS unless those standards do not meet the needs of its financial statement users. In that situation, IFRS should be considered and the most appropriate set of standards applied.
2. Although a GBE is required to apply IFRS for purposes of preparing general purpose financial statements, the Ontario Securities Commission has approved an exemption that allows OPG to apply US GAAP up to January 1, 2019 for purposes of filing its financial statements with the OSC. US GAAP to IFRS adjustments are made for the purposes of preparing the consolidated provincial accounts.
3. OPG applies IFRS 14, which permits it to continue to account for rate-regulated activities using US GAAP guidance for purposes of determining the differences between US GAAP and IFRS..

This memo does not reconsider the classification of these existing entities (i.e., such classifications are based on past published Public Accounts).

As discussed in detail in a subsequent section, OPG expects that under IFRS it will be considered to control OPG Trust. As such, OPG Trust will be consolidated by OPG and, therefore, reflected in the GRE through the modified equity accounting of OPG under IFRS.

Example

For simplicity, the following example will be used in this document to illustrate the accounting impact of the FHP on the various entities involved:

- Ratepayer bill is currently $588, and the 17% reduction related to the FHP is $100.
- The Province directly borrows 44%, or $44, to make an equity contribution to OPG, which OPG then loans to OPG Trust.
- OPG directly borrows 5%, or $5, and loans it to OPG Trust.
- OPG Trust directly borrows 51%, or $51, from capital markets.

Analysis

IESO

The IESO is presently classified as an OGO and prepares its standalone, general purpose financial statements in accordance with PSAS based on an assessment of its user needs, which is consistent with the basis of presentation required for purposes of consolidating the IESO into the GRE.

Current State

Effective January 1, 2016, the IESO adopted on a retrospective basis a new accounting policy that requires its market-settlement activities[2] to be reflected in the financial statements. Under the new policy, the assets and liabilities recognized on the IESO's statement of financial position relating to the IESO-administered markets include cash, amounts due from market participants, interest receivable, revolving line of credit, HST receivable, amounts due to market participants and other liabilities. The IESO statement of operations and accumulated surplus does not include the revenue and expenses of the financial transactions of market participants within the IESO-administered markets. This indicates IESO management has taken the position that the IESO is an agent, not a principal, in the IESO-administered markets and, accordingly, records revenue on a net basis.

PSAS does not provide any specific guidance as to how it should be determined whether an entity is acting as a principal or an agent in the context of revenue recognition, but both IFRS and US GAAP do. The relevant guidance in IFRS is as follows:

IAS 18.8

Revenue includes only the gross inflows of economic benefits received and receivable by the entity on its own account. Amounts collected on behalf of third parties such as sales taxes, goods and services taxes and value added taxes are not economic benefits which flow to the entity and do not result in increases in equity. Therefore, they are excluded from revenue. Similarly, in an agency relationship, the gross inflows of economic benefits include amounts collected on behalf of the principal and which do not result in increases in equity for the entity. The amounts collected on behalf of the principal are not revenue. Instead, revenue is the amount of commission.

IAS 18.IE21

Determining whether an entity is acting as a principal or as an agent (2009 amendment).

Paragraph 8 states that 'in an agency relationship, the gross inflows of economic benefits include amounts collected on behalf of the principal and which do not result in increases in equity for the entity. The amounts collected on behalf of the principal are not revenue. Instead, revenue is the amount of commission.' Determining whether an entity is acting as a principal or as an agent requires judgement and consideration of all relevant facts and circumstances.

An entity is acting as a principal when it has exposure to the significant risks and rewards associated with the sale of goods or the rendering of services. Features that indicate that an entity is acting as a principal include:

- *a) the entity has the primary responsibility for providing the goods or services to the customer or for fulfilling the order, for example by being responsible for the acceptability of the products or services ordered or purchased by the customer;*
- *b) the entity has inventory risk before or after the customer order, during shipping or on return;*
- *c) the entity has latitude in establishing prices, either directly or indirectly, for example by providing additional goods or services; and*
- *d) the entity bears the customer's credit risk for the amount receivable from the customer.*

An entity is acting as an agent when it does not have exposure to the significant risks and rewards associated with the sale of goods or the rendering of services. One feature indicating that an entity is acting as an agent is that the amount the entity earns is predetermined, being either a fixed fee per transaction or a stated percentage of the amount billed to the customer.

[2] The IESO administers the wholesale electricity market by authorizing market participants, publishing system forecasts and market information, producing statements and invoices, and performing financial settlement transactions for the markets.

Application of the above IFRS guidance supports the conclusion that the IESO is an agent in the market-settlement process and, therefore, recognizing revenue on a net basis is appropriate. IESO has completed a more thorough analysis of their position that it is an agent in the settlement of the market and reconsideration of that decision is not the topic of this memo.

The IESO is required by legislation to carry out its operations without the purpose of gain or profit. Other than the amounts the IESO is permitted to keep in accordance with its own rate order from the OEB to cover its internal operating costs, which makes it a self-sustaining entity, all amounts the IESO receives from market participants must be paid out to other market participants who have regulatory or contractual rights to receive payments from those collected amounts.

Commented [VC(3]: Does the legislation speak to IESO incurring a loss?

In the context of applying the principal vs. agent guidance, the amounts the IESO is permitted to keep in accordance with its own rate order from the OEB to cover its internal operating costs are recorded as system fee revenue in the IESO financial statements. System fees are not characterized as being part of the IESO-administered markets. Accordingly, any references to the IESO-administered markets in this document exclude system fees.

As stated in the IESO financial statements, the IESO-administered markets is a balancing system, and as such, the net position of market accounts will ultimately settle to a nil balance in accordance with market rules. However, due to settlement timing differences, the net position of market accounts will not be in a nil position from a cash flow perspective at the end of any reporting period.

This raises a question as to how a cash flow deficit related to the market-settlement process should be accounted for in the financial statements of the IESO. Two approaches are as follows:

1. The cash flow deficit is recognized as an asset when it occurs and then derecognized in the period in which it is settled. Under this approach, the net position of market accounts will always be in a nil balance in the IESO's balance sheet and there is no impact on the IESO's income statement.
2. The cash flow deficit is recognized as a charge to income when it occurs and then reversed through income in the period in which it is settled.

IESO management has concluded it is appropriate to recognize existing cash flow deficits arising from the market-settlement process as an asset. This is evidenced by the fact the components of the market accounts net to a nil closing balance at year end in the IESO financial statements for the year ended December 31, 2016. These financial statements also explicitly state there is no impact to the accumulated deficit or revenues and expenses as the IESO is not party to these transactions as per the market rules. This treatment is consistent with the conclusion that the IESO is acting as an agent in the market-settlement process.

Commented [VC(4]: Is there a reference for this statement?

Although the IESO's financial statements include the following accounting policy on regulated assets and liabilities, the asset relating to the cash flow deficit discussed above has not been specifically labeled as a regulated asset:

As a rate-regulated entity, the IESO, in appropriate circumstances establishes regulated assets or liabilities and thereby defers the impact on the statement of operations of certain expenses or revenues because they are probable to be collected or refunded to market participants through future billings. The IESO has applied guidance from United States Generally Accepted Accounting Principles (US GAAP) Topic 980, Regulated Operations, in this policy.

The only two balances specifically labeled as being recognized in the IESO's financial statements under the above policy are (i) unrecovered smart metering expenses, and (ii) unrecovered PSAB transition items. IESO management has, however, indicated in discussions that the cash flow deficit/surplus associated with the original variance account is also considered to be a regulated asset/liability under ASC 980 even though it has been presented as part of the Market Accounts balances in the statement of financial position.

Impact of FHP

The implementation of the FHP results in the IESO establishing and maintaining the FHP variance account to track the resulting cash flow deficit, the balance of which is defined for the purposes of the FHP Act to be a 'regulatory asset'. This variance account is similar in nature to the current variance account established under Section 25.33(5) of the Electricity Act, 1998 , discussed in the Background Section to this memo.

The act of legislating the balance in the FHP variance account to be a regulatory asset does not, in and of itself, result in its recognition as an asset for accounting purposes. Accordingly, the primary issue at hand is whether the legislated regulatory asset is eligible for recognition as an asset in both the standalone financial statements of the IESO and the consolidated financial statements of the GRE. As discussed in a later section, the conclusion reached with respect to the appropriate accounting for the FHP in the standalone financial statements of the IESO as an OGO reporting under PSAS may impact the consolidated financial statements of the GRE.

As noted above, the IESO has adopted a policy to apply the U.S. GAAP guidance in ASC 980 in connection with accounting for rate regulated assets. IESO management has applied this guidance and concluded the regulatory asset created by the FHP can be recognized as a regulated asset for accounting purposes in the financial statements of the IESO. The IESO's auditors, KPMG, concur with this position, as evidenced from the following excerpt from a draft letter issued by KPMG on May 16, 2017 (the KPMG Letter):

We have considered the foregoing analysis and management's conclusion. We concur that the variance account created by Bill 132 will meet the criteria for the recognition of a regulatory asset stated in ASC 980-340-25-1. Furthermore, we have also considered the criteria stated in ASC 980-10-15-2 and believe that IESO should be allowed to continue to use the guidance for regulated operations of Topic 980.

Recognizing the regulatory asset as a regulated asset for accounting purposes in the financial statements of the IESO in accordance with ASC 980 is appropriate only if all of the following conditions are met:

a) the operations of the IESO (or the relevant portion thereof) are within the scope of ASC 980 based on the criteria in ASC 980-10-15-2,
b) the FHP variance account meets the criteria in ASC 980-340-25-1 for capitalization as a regulatory asset, and
c) ASC 980 is an appropriate source of GAAP under PSAS.

Each of these items is addressed in turn:

a) Scope of ASC 980

ASC 980-10-15-2 states the following:

The guidance in the Regulated Operations Topic applies to general-purpose external financial statements of an entity that has regulated operations that meet all of the following criteria:

a) The entity's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party regulator or by its own governing board empowered by statute or contract to establish rates that bind customers.
b) The regulated rates are designed to recover the specific entity's costs of providing the regulated services or products. This criterion is intended to be applied to the substance of the regulation, rather than its form. If an entity's regulated rates are based on the costs of a group of entities and the entity is so large in relation to the group of entities that its costs are, in essence, the group's costs, the regulation would meet this criterion for that entity.
c) In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume that rates set at levels that will recover the entity's costs can be charged to and collected from customers.

The Office of the Auditor General of Ontario (OAGO) has publicly stated that it does not believe the IESO meets the criteria to be within the scope of ASC 980. This is evidenced by the following statement included in *Legislated Accounting Included in Bill 132, Including the Proposed Ontario Fair Hydro Plan Act, 2017 – Submission to Standing Committee on Justice Policy* dated May 25, 2017 (OAGO Submission):

Moreover, IESO is not engaging in rate-regulated activities, and the contracts under its administration were never subject to rate regulation.

Ontario's electricity industry is rate-regulated. Rates paid by electricity consumers are regulated by the OEB such that over time rates equal cost plus, where applicable, a reasonable rate of return. Providing electricity to consumers involves several different parties, including generators, transmitters, distributors and the IESO. Some of these parties engage in rate-regulated activities, some do not.

The IESO serves an important and active role in Ontario's electricity market, irrespective of the fact that it records market transactions on net basis in the financial statements. The IESO balances the supply of and demand for electricity in Ontario and directs its flow across the province's transmission lines, oversees the wholesale electricity market, where the price of energy is determined, and administers the rules that govern the market. In determining whether the IESO has regulated operations, the focus is on whether the rates the IESO charges its customers are regulated and not whether the costs incurred by the IESO are regulated (although a number of them are).

The following supports the position of IESO management that the above criteria are met and the IESO's operations are within the scope of ASC 980:

The entity's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party regulator or by its own governing board empowered by statute or contract to establish rates that bind customers.

As noted in a research paper issued in 2001 by a taskforce established by the CICA (the CICA Research Report), there is a view held by some that, with respect to rate regulation in the public sector, there is usually no *independent, third-party regulator* because the government controls both the enterprise and the regulatory agency. Accordingly, it is important to point out that independence is not required to meet the criteria in ASC 980-10-15-2(a). The requirement is an *independent, third-party regulator* or *its own governing board empowered by statute or contract*. In fact, paragraph 64 of the Basis for Conclusions for FAS 71, ACCOUNTING FOR THE EFFECTS OF CERTAIN TYPES OF REGULATION (which is the pre-codified version of ASC 980), specifically states that the criteria in ASC 980-10-15-2(a) was modified so as not to preclude application by government utilities with rates set by their own governing board.

The OEB has been established by the Province to be Ontario's independent energy regulator and, therefore, is considered the governing board of the IESO. The OEB's mandate and authority come from the *Ontario Energy Board Act, 1998*, the *Electricity Act, 1998*, and a number of other provincial statutes. As described in more detail below, the IESO's rates are established in accordance with these statutes.

In the context of its market-settlement role, the IESO's 'customers' are the Market Participants buying electricity from the IESO-controlled grid. All Market Participants are required to execute a Participation Agreement with the IESO. In accordance with Article 3.1 of the standard Participation Agreement, each Market Participant has agreed to be bound by and to comply with all of the provisions of the Market Rules, which includes the following:

Chapter 9, Section 1.2.3
Notwithstanding any other provision within the market rules, market participants shall remit to the IESO such applicable settlement amounts and other payments as may be required under the relevant provisions of the Electricity Act, 1998, the Ontario Energy Board Act, 1998 and any related regulations, as amended from time to time.

The IESO's operations meet the criteria in ASC 980-10-15-2(a) because the rates charged by the IESO are based on statutes. As discussed in more detail below, the rates are designed to recover the IESO's

expenditure for providing the regulated services and the pass-through costs related to the energy purchased from the generators and to government programs.

The main components of invoices issued by the IESO to Market Participants are as follows:

- Commodity Charges
  - Hourly Ontario Energy Price
  - Global Adjustment
- Wholesale Market Service Charges
  - IESO Administration Fee
  - Uplift Charges
  - Rural and Remote Electricity Rate Protection
- Wholesale Transmission Charges
- Debt Retirement Charge

Each component is determined as follows:

Commodity Charges

In accordance with Section 25.33(1) of the Electricity Act, the IESO is required to price electricity to recover costs:

Electricity pricing to reflect costs

IESO to make adjustments

25.33 (1) The IESO shall, through its billing and settlement systems, make adjustments in accordance with the regulations that ensure that, over time, payments by classes of market participants in Ontario that are prescribed by regulation reflect,

a) amounts paid to generators, the Financial Corporation and distributors, whether the amounts are determined under the market rules or under section 78.1, 78.2 or 78.5 of the Ontario Energy Board Act, 1998;

b) amounts paid to entities with whom the IESO has a procurement contract, as determined under the procurement contract; and

c) such amounts as may be prescribed that are paid or incurred by the IESO in relation to the Ontario Fair Hydro Plan Act, 2017. *2014, c. 7, Sched. 7, s. 8 (1); 2017, c. 16, Sched. 1, s. 43 (2).*

Market Participants are initially invoiced for consumed electricity at the Hourly Ontario Energy Price (HOEP), which is calculated as the average of the twelve market clearing prices set in each hour. In accordance with Section 25.33(5) of the Electricity Act, the IESO is required to track differences between the amounts invoiced to Market Participants at HOEP and actual costs incurred in a variance account:

Variance accounts

(5) The IESO shall establish and maintain such variance accounts as may be necessary to record all amounts payable or receivable by it under this section or under the Ontario Fair Hydro Plan Act, 2017. *2004, c. 23, Sched. A, s. 37; 2014, c. 7, Sched. 7, s. 8 (5); 2017, c. 16, Sched. 1, s. 43 (5).*

Sections 3.1 and 3.3 of the OEB Act require the variance account to be settled over a twelve-month period, which is done through the Global Adjustment on a Market Participant's invoice:

Annual rate plan and separate rates for situations prescribed by regulation

(3.1) The Board shall, in accordance with rules prescribed by the regulations, approve or fix separate rates for the retailing of electricity,

a) to such different classes of consumers as may be prescribed by the regulations; and

b) for such different situations as may be prescribed by the regulations. 2004, c. 23, Sched. B, s. 14 (1).

Rates to reflect cost of electricity

(3.3) In approving or fixing rates under subsection (3.1),

a) the Board shall forecast the cost of electricity to be consumed by the consumers to whom the rates apply, taking into consideration the adjustments required under section 25.33 of the Electricity Act, 1998 *and shall ensure that the rates reflect these costs; and*

b) the Board shall take into account balances in the IESO's variance accounts established under section 25.33 of the Electricity Act, 1998 *and shall make adjustments with a view to eliminating those balances within 12 months or such shorter time periods as the Minister may direct. 2004, c. 23, Sched. B, s. 14 (1); 2014, c. 7, Sched. 23, s. 6 (2).*

Although the implementation of the FHP involves the deferral of costs over an extended period of time, it does not change the IESO's obligation under the OEB Act to price electricity to recover incurred costs in full. The deferral relating to the FHP is tracked in a separate variance account in accordance with Section 24(1) of the Fair Hydro Plan Act, 2017 (the FHP Act):

Variance account to be established, maintained

24 (1) The IESO shall establish and maintain a variance account in which it records the following:

1. The IESO deferral for each month.

2. All payments received by the IESO resulting from the exercise of the right of recovery under section 25 and any transfer under section 26.

3. Such other adjustments as may be prescribed, including adjustments in respect of the period that commences on or after May 1, 2017 and before the day this section comes into force.

The right for the IESO to recover the variance account is set out in Section 25 of the FHP Act:

Regulatory asset established

25 (1) Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Board to set rates

(2) Subject to subsection (3), the Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for the IESO to recover the balance recorded in the variance account.

Limitation

(3) The IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2021.

Wholesale Market Service Charges

The IESO charges Market Participants administrative fees to operate the wholesale electricity market and manage the electric power system in Ontario. These fees are required to be approved by the OEB under Section 25(1) of the Electricity Act on an annual basis.

Review of requirements and fees

25 (1) The IESO shall, at least 60 days before the beginning of each fiscal year, submit its proposed expenditure and revenue requirements for the fiscal year and the fees it proposes to charge during the fiscal year to the Board for review, but shall not do so until after the Minister approves the IESO's proposed business plan for the fiscal year under section 24. 2014, c. 7, Sched. 7, s. 3 (1).

Uplift charges

Need details

RRRP charges

The RRRP program provides a rate subsidy to rural and remote residential customers who face higher distribution costs. Under the FHP Act, the cost of the RRRP program has shifted from ratepayers to

Commented [LAP5]: Uplift charges are comprised of a number of things. To ask IESO for help to summarize succinctly.

Commented [DM(6]: Will provide ASAP (Following up with IESO)

Commented [DM(7]: Understanding is not all costs have shifted; need to confirm where the line is drawn

provincial revenues and, therefore, is no longer a component of the IESO invoice.

Wholesale Transmission Charge
This charge to LDCs and some large consumers covers the cost incurred by transmission companies to construct and maintain the high-voltage transmission lines needed to transport electricity from generating stations to LDCs or consumers. In accordance with Section 78(1) of the OEB Act, the rate for this service is approved by the OEB.

Debt Retirement Charge
When the Ontario electricity sector was restructured in April 1999, the Ontario Electricity Financial Corporation (OEFC) took on $20.9 million of stranded debt from Ontario Hydro. The OEFC services and retires the stranded debt with cash flows from a number of sources in the electricity sector, one of those currently being debt retirement charges paid by certain ratepayers (ratepayers cease paying debt retirement charges April 1, 2018).

Under Regulation 494/01, DEBT RETIREMENT CHARGE – ADMINISTRATION, the IESO is appointed as a collector of debt retirement charges (Section 2) and is required to collect a debt retirement charge on behalf of the OEFA from every entity who withdraws electricity from the IESO-controlled grid (Section 6(2)). The prescribed rate for the debt retirement charge is set out in Regulation 493/01, DEBT RETIREMENT CHARGE – RATES AND EXEMPTIONS.

The regulated rates are designed to recover the specific entity's costs of providing the regulated services or products.

As discussed in detail above, the IESO is required by statute to set prices to recover costs.

In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume that rates set at levels that will recover the entity's costs can be charged to and collected from customers.

As discussed in detail above, the IESO is required by statute to set prices to recover costs.

The majority of the monthly amount invoiced by the IESO to Market Participants represents a direct flow through of costs as they are incurred, but there are certain types of costs for which recovery may be deferred. For those deferred costs, the IESO is dependent on the future consumption of electricity by rate-payers to fully recover costs.

Based on relatively short recovery periods, it is reasonable to assume there will be sufficient demand to recover the deferred costs that currently exist. Specifically:

- RPP and RRRP variance accounts are recovered over twelve months in accordance with Section 3.3(b) of the OEB Act. *(Note - Under the FHP, responsibility for the cost of the RRRP program is being transferred to the Provincial budget and rate-payers will no longer be directly charged)*
- The Smart Metering Entity charge is recovered over the period from May 1, 2013 to October 31, 2018 in accordance with OEB Decision and Order EB-2015-0298.

Under the FHP, responsibility for the cost of the OESP program is being transferred to the Provincial budget and rate-payers will no longer be charged for the cost of this program. The OESP variance account, which is currently in a credit balance, will be used to fund the cost of the program until

Commented [LAP8]: To confirm with Energy if all costs have shifted.

Commented [LAP9]: CV to determine if there is anything else to add from IESO's analysis.

Commented [LAP10]: To confirm with Energy if all costs have shifted.

depleted.

Although the timing of the recovery of the FHP variance account has not yet been established by the OEB, the wording and intent of the proposed legislation is clear that it is intended by law to be recoverable over a period of 30 years. Given the nature and extent of customer demand for the power generated and distributed in Ontario, both at this time and projected in the future, it is reasonable to conclude that there will be sufficient demand to recover the regulatory asset. This conclusion, which is supported by Figure 19: Ontario's Forecast Electricity Production in Achieving Balance – Ontario's Long-Term Energy Plan, will need to be continually evaluated throughout the recovery period. The willingness of unrelated third parties to fund the purchase of the regulatory asset from the IESO by OPG Trust also demonstrates the belief that sufficient demand will exist to permit its future recovery.

In addition to the general scope requirements of ASC 980 discussed above, specific consideration is made as to whether the following scope exception in ASC 980-10-15-7 applies to the FHP:

The guidance in the Regulated Operations Topic does not apply to any of the following transactions:

a) *Accounting for price controls that are imposed by governmental action in times of emergency, high inflation, or other unusual conditions, or accounting for contracts in general. However, if the terms of a contract between an entity and its customer are subject to regulation and the criteria of paragraph 980-10-15-2 are met with respect to that contract, the guidance in this Topic shall apply.*

Based on the discussion below, this scope exemption is not applicable to the FHP.

Electricity cost reductions resulting from the FHP do not represent price controls imposed by the Province in a time of emergency, high inflation, or other unusual conditions. As noted in the 2017 budget speech, the 2017 Ontario Budget – A Stronger, Healthier Ontario, the FHP is a fairer way to share the costs of building a cleaner, more modern and reliable electricity generation system. In particular, the budget speech states:

Commented [LAP11]: Consider Navigant report if/when becomes available

Recognizing that existing electricity infrastructure is expected to last for decades to come, the Province would refinance the cost of those capital investments to ensure that system costs are more equitably distributed over time.

The following paragraph from the Basis for Conclusion for FAS 71 also provides some insight as to the specific concerns relating to government imposed price controls that resulted in the scope exception in ASC 980-10-15-7(a):

70. The first scope limitation of paragraph 8—excluding accounting for price controls imposed by governmental action in times of emergency, high inflation, or other unusual conditions—was included in the Discussion Memorandum. Price controls imposed in periods of unusual conditions are not expected to be applied consistently over an extended period. Indeed, their duration usually is limited by statute. In that environment, assurance of future benefits cannot be provided by probable future actions of the price control regulator because that regulator may not exist at a given future date.

The implementation of the FHP does not create the type of environment described in FAS 71.BC70 as it is governed by the OEB and there is no concern the OEB will not continue to exist.

The second part of the scope exception in ASC 980-10-15-7(a) relating to the accounting for contracts is further explained in the following paragraph from the Basis for Conclusion for FAS 71:

71. Accounting for contracts in general was also excluded from the scope of the Discussion Memorandum. The economic effects of cost reimbursement contracts are in some respects similar to the economic effects of the type of regulation addressed by this Statement. However, most contracts tend to be relatively short-term, whereas regulation of enterprises covered by this Statement is expected to continue beyond the foreseeable future. The Board noted that other authoritative literature addresses contract accounting and concluded that it should exclude the general issue of contract accounting from the scope of this Statement.

Although the impetus for the FHP relates to term of contracts the IESO has entered into with certain generators, the FHP does not change the existing accounting for these contracts.

Application of ASC 980-340-25-1 to the regulatory asset

ASC 980-340-25-1 states the following:

Rate actions of a regulator can provide reasonable assurance of the existence of an asset. An entity shall capitalize all or part of an incurred cost that would otherwise be charged to expense if both of the following criteria are met:

- *a) It is probable (as defined in Topic 450) that future revenue in an amount at least equal to the capitalized cost will result from inclusion of that cost in allowable costs for rate-making purposes.*
- *b) Based on available evidence, the future revenue will be provided to permit recovery of the previously incurred cost rather than to provide for expected levels of similar future costs. If the revenue will be provided through an automatic rate-adjustment clause, this criterion requires that the regulator's intent clearly be to permit recovery of the previously incurred cost.*

A cost that does not meet these asset recognition criteria at the date the cost is incurred shall be recognized as a regulatory asset when it does meet those criteria at a later date.

The following supports the IESO's position that the FHP variance account meets the above criteria for capitalization:

It is probable (as defined in Topic 450) that future revenue in an amount at least equal to the capitalized cost will result from inclusion of that cost in allowable costs for rate-making purposes.
The following excerpts from the FHP Act make it clear that the IESO is entitled to recover the regulatory asset through rates in the future: *Variance account to be established, maintained* *24 (1) The IESO shall establish and maintain a variance account in which it records the following:* *1. The IESO deferral for each month.* *2. All payments received by the IESO resulting from the exercise of the right of recovery under section 25 and any transfer under section 26.* *3. Such other adjustments as may be prescribed, including adjustments in respect of the period that commences on or*

after May 1, 2017 and before the day this section comes into force.

Recording determinative

(2) Subject to the correction of any obvious error by the IESO, its recording of the balance in the variance account is determinative of the balance as of the time of the recording.

Regulatory asset established

25 (1) Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Board to set rates

(2) Subject to subsection (3), the Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for the IESO to recover the balance recorded in the variance account.

Limitation

(3) The IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2021.

The recovery of the regulatory asset is, however, dependent on future consumption of electricity by rate-payers. The recovery period is intended to be 30 years. Given the nature and extent of customer demand for the power generated and distributed in Ontario, both at this time and projected in the future, it is reasonable to conclude that it is probable there will be sufficient demand in the future to recover the regulatory asset. This conclusion, which is supported by Figure 19: Ontario's Forecast Electricity Production in Achieving Balance – Ontario's Long-Term Energy Plan (Appendix B), will need to be continually evaluated throughout the recovery period.

The willingness of unrelated third parties (e.g., investors) to fund the purchase of the regulatory asset from the IESO by OPG Trust also demonstrates the belief that sufficient demand will exist to permit its future recovery.

Based on available evidence, the future revenue will be provided to permit recovery of the previously incurred cost rather than to provide for expected levels of similar future costs. If the revenue will be provided through an automatic rate-adjustment clause, this criterion requires that the regulator's intent clearly be to permit recovery of the previously incurred cost.

Based on the above excerpts from the FHP Act, it is clear the IESO will be recovering costs previously incurred rather than providing for expected levels of similar future costs.

The IESO is considered an agent in the market-settlement process and, therefore, recognizes revenue on a net basis. Although this conclusion impacts whether the recovery of costs through rates are presented as revenue in the financial statements of the IESO, it is not considered to preclude these amounts from being considered 'future revenue' for purposes of assessing the criteria in ASC 980-340-25-1. In fact, the capitalization of the incurred costs in the FHP variance account preserves the treatment of the IESO as an agent (i.e., if these costs are not capitalized, it results the recognition of costs in the period incurred and the recognition of revenue in a subsequent period when electricity is consumed, which, in effect, is gross presentation). To put another way, not capitalizing the costs in FHP variance account treats the IESO as a principal in the transaction by showing costs and revenue.

Commented [VC(12]: Suggest we expand this analysis – not sure this is technically true (the price set would just be very high), but practically, this would probably not be permitted to occur

Commented [LAP13]: Once the terms of the guarantee are finalized, I think we should comment (if true) that the guarantee relates to regulatory changes and does not cover lack of demand.

CV – will share a copy of the current agreement – does not cover lack of demand

Is ASC 980 an acceptable source of guidance under PSAS[3]

In assessing whether ASC 980-340-25-1 is an acceptable source of guidance under PSAS, Paragraph 5 of PSAS 1150, GENERALLY ACCEPTED ACCOUNTED PRINCIPLES, states the following:

When the primary sources of GAAP do not deal with the accounting and reporting in financial statements of transactions or events encountered by the public sector reporting entity, or additional guidance is needed to apply a primary source to specific circumstances, the selection of an appropriate accounting policy requires the exercise of professional judgment. In these circumstances, a public sector reporting entity should adopt accounting policies and disclosures that are consistent with:

a) the primary sources of GAAP; and

b) the application of the concepts described in FINANCIAL STATEMENT CONCEPTS, Section PS 1000.

Related guidance is also provided in PSAS 1150.18-.20:

Paragraphs PS 1150.19-.24 identify some of the other sources that a public sector reporting entity might consult to assist in selecting accounting policies and disclosures that comply with paragraph PS 1150.05.

Pronouncements issued by other bodies authorized to issue accounting standards may be useful sources to consult. For example, accounting pronouncements published with the authority of the Canadian Accounting Standards Board (AcSB), International Accounting Standards Board (IASB), US Federal Accounting Standards Advisory Board (FASAB), US Governmental Accounting Standards Board (GASB), or International Public Sector Accounting Standards Board (IPSASB) are often important sources to consult on matters not covered by primary sources of GAAP or for assistance in applying a primary source of GAAP to specific circumstances.

When a public sector reporting entity chooses to consult a source described in paragraph PS 1150.19, it applies professional judgment and evaluates the source in the context of the relative manner in which the standard setter requires its pronouncements to be applied, as well as in the context of the related pronouncement. When an accounting standard setter does not have a conceptual framework that is similar to the concepts referred to in paragraph PS 1150.05(b), the public sector reporting entity needs to ensure that the selected source is consistent with those concepts.

Since PSAS does not specifically address the treatment of costs incurred that will be recovered through regulatory operations in future periods, the IESO would not be precluded from following the guidance in ASC 980-340-25-1 (i.e., silence under PSAS on this specific topic does not, on its own, mean that such guidance is to be ignored). However, PSAS 1000.05 makes it clear that in order to do so, it must first be demonstrated that such guidance is consistent with the application of the concepts described in PSAS 1000, FINANCIAL STATEMENT CONCEPTS.

The relevant guidance in PSAS 1000 relating to the recognition of an asset is as follows:

PSAS 1000.35

Assets are economic resources controlled by a government as a result of past transactions or events and from which future economic benefits are expected to be obtained.

[3] If the accounting for GBEs were to change in the future such that line by line consolidation is required using PSAS, the importance of this consideration increases significantly.

PSAS 1000.36

Assets have three essential characteristics:

a) *they embody future economic benefits that involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows, or to reduce cash outflows;*
b) *the public sector entity can control the economic resource and access to the future economic benefits; and*
c) *the transaction or event giving rise to the public sector entity's control has already occurred.*

PSAS 1000.37

An item is not an asset of a government if it lacks one or more of the essential characteristics listed in the preceding paragraph. Thus, for example, an item does not qualify as an asset of a government if the item involves:

a) *no future economic benefit;*
b) *future economic benefit, but the government cannot obtain it; or*
c) *future economic benefit that the government may obtain, but the events or circumstances that give the government control of the benefit have not yet occurred*

The following supports the IESO's position that the regulatory asset possesses the three essential characteristics of an asset:

Embody future economic benefits that involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows, or to reduce cash outflows

The following excerpts from the FHP Act make it clear that the IESO is entitled to recover the regulatory asset through rates in the future:

Variance account to be established, maintained

24 (1) The IESO shall establish and maintain a variance account in which it records the following:

1. The IESO deferral for each month.

2. All payments received by the IESO resulting from the exercise of the right of recovery under section 25 and any transfer under section 26.

3. Such other adjustments as may be prescribed, including adjustments in respect of the period that commences on or after May 1, 2017 and before the day this section comes into force.

Recording determinative

(2) Subject to the correction of any obvious error by the IESO, its recording of the balance in the variance account is determinative of the balance as of the time of the recording.

Regulatory asset established

25 (1) Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Board to set rates

(2) Subject to subsection (3), the Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for the IESO to recover the balance recorded in the variance account.

Limitation

(3) The IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2021.

Accordingly, the regulatory asset, by statute, has the capacity to provide future cash inflows.

While perhaps obvious, paragraph 13 of PSAS 3210, ASSETS, confirms the generation of future cash flows represents a future economic benefit:

The future economic benefits embodied in an asset may also be in the form of generating future cash inflows. Cash inflows benefit the public sector entity because cash can be used to purchase or to provide goods and services, redistribute wealth or settle liabilities. Benefits in the form of cash inflows relate to resources, such as loans receivable, inventory for resale and portfolio investments. Also, some public sector resources generate cash inflows because they have user fees associated with them.

The ability of the regulatory asset to generate future cash flows is dependent on the future consumption of electricity by rate-payers. Although the timing of the recovery of the regulatory asset has not yet been established by statute, the recovery period is intended to be 30 years. Given the nature and extent of customer demand for the power generated and distributed in Ontario, both at this time and projected in the future, sufficient demand is expected to exist in the future to recover the regulatory asset. This conclusion, which is supported by Figure 19: Ontario's Forecast Electricity Production in Achieving Balance – Ontario's Long-Term Energy Plan, will need to be continually evaluated throughout the recovery period.

The willingness of unrelated third parties to fund the purchase of the regulatory asset from the IESO by OPG Trust also demonstrates the belief that sufficient demand will exist to permit its future recovery.

The guidance on forgivable loans in PSAS 3050, Loans receivable, provides an example where an asset can be recognized under PSAS based on the existence of sufficient evidence of a reasonable expectation of its recovery.

The public sector entity can control the economic resource and access to the future economic benefits

Paragraph 16 of PSAS 3210, ASSETS, states the following:

A public sector entity controls the economic resource and access to the future economic benefits when it:

- *a) can benefit from the economic resource through its capacity to provide goods and services, to provide future cash inflows or to reduce cash outflows;*
- *b) can deny or regulate access to those benefits by others; and*
- *c) is exposed to the risks associated with the economic resource.*

The IESO can benefit from the regulatory asset through its capacity to provide future cash inflows in one of two ways:

1. *Collection through future rates*

Section 25 of the FHP gives the IESO the right to recover the regulatory asset through future rates:

Regulatory asset established

25 (1) Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Board to set rates

(2) Subject to subsection (3), the Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for the IESO to recover the balance recorded in the variance account.

Commented [VC(14]: To update based on the new LTEP to be issued this fall.

Commented [LAP15]: Once the terms of the guarantee are finalized, I think we should comment (if true) that the guarantee relates to regulatory changes and does not cover lack of demand.

Also need to consider whether a different conclusion is reached on consolidation

CV -- agreed

2. *Sale to a financing entity*

Section 26 of the FHP Act permits the IESO to sell the regulatory asset:

26 (1) The IESO may from time to time, in accordance with this Act and the regulations, transfer a specified portion of the regulatory asset to a financing entity in accordance with this section.

Agreement

(2) An agreement between the IESO and a financing entity in relation to the transfer of a specified portion of the regulatory asset shall provide for consideration of a payment by the financing entity to the IESO in an amount equal to the amount of the specified portion.

Effect of payment

(3) Upon receipt by the IESO of the payment by the financing entity,

(a) the balance in the variance account shall be reduced by the amount of the payment;

(b) the regulatory asset shall be adjusted accordingly;

(c) the financing entity shall acquire a corresponding investment interest; and

(d) the IESO shall retain no further right, title or interest in the corresponding investment interest.

Since (a) the statutory right to recover the regulatory asset belongs solely to the IESO, and (b) the IESO is permitted, but not required, to sell the regulatory asset, the IESO can deny or regulate access to the future economic benefits of the regulatory asset by others.

The IESO is exposed to the risks associated with the regulatory asset, with the primary risk being that collection through the mechanism set out in Section 25 of the FHP Act is dependent on the future consumption of electricity by rate-payers.

The above analysis supports the position that the IESO controls the regulatory asset and access to the future economic benefits.

In reaching this conclusion, consideration was given to the following excerpt included on Page 37 of the 2008 Annual Report of the OAGO:

With regard to the second characteristic, we simply point again to the legacy of the former Ontario Hydro and its stranded debt. This in our view provides concrete evidence that even in monopoly situations governments do not have sufficient assurance that an enterprise will generate enough profits in future years to recover all of its past costs.

Although there needs to be sufficient assurance regarding the recovery of past costs, all relevant facts and circumstances need to be taken into consideration. Accordingly, the stranded debt of Ontario Hydro may be relevant to the analysis, but not determinative on its own. As noted in the previous section, the recoverability of past costs will be continually assessed.

The transaction or event giving rise to the public sector entity's control has already occurred

When evaluating whether a transaction or event gives rise to control, the following guidance from PSAS 3210, ASSETS, provides helpful guidance:

.26
The past transaction or event that gives rise to control of an economic resource resulting from exchange agreements or contracts usually occurs at the point of exchange. This arises when substantially all the benefits and risks of ownership have been transferred to the public sector entity and normally coincides with the disbursement of funds, exchange of other assets or assumption of liabilities.
.28

Commented [LAP16]: Once terms of guarantee are finalized, need to consider if it impacts this discussion. Impact may not be at IESO level, but on consolidation.

Commented [VC(17]: See previous point – to reference to that discussion.

The existence of a law, by-law or policy in relation to a particular program is not a past transaction or event that gives rise to control of an economic resource. Control does not exist until the underlying event occurs.
.29
The past transaction or event giving rise to control of an economic resource must have occurred by the financial statement date. Legislation having retroactive application cannot create a past transaction or event. Any economic resources related to that legislation would be accounted for in the current and relevant future periods, not in the period of the effective date of the legislation.

In the case of the regulatory asset, the above guidance in PSAS 3210 makes it clear that it is not the statute itself that is the transaction or event giving rise to the asset, it is the incurrence of costs for which recovery is provided for under statute. Accordingly, control over the economic benefits of the regulatory asset occurs when the IESO incurs a cash flow deficit that is recorded in the FHP variance account in accordance with Section 24(1) of the FHP Act:

24 (1) The IESO shall establish and maintain a variance account in which it records the following:

1. The IESO deferral for each month.

2. All payments received by the IESO resulting from the exercise of the right of recovery under section 25 and any transfer under section 26.

3. Such other adjustments as may be prescribed, including adjustments in respect of the period that commences on or after May 1, 2017 and before the day this section comes into force.

At this point in time, the IESO has incurred a cash outflow for which it is entitled to recover under Section 25 of the FHP Act:

Regulatory asset established

25 (1) Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Board to set rates

(2) Subject to subsection (3), the Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for the IESO to recover the balance recorded in the variance account.

The following excerpt from the IFRS Staff Paper on Rate-Regulated Activities prepared for discussion at the June 2017 IASB meeting presents a consistent view and dismisses the potential dissenting view that the transaction or event giving rise to the IESO's control is the future consumption of electricity by rate-payers:

A right arises from the rate-adjustment mechanism if the entity has already partially or fully fulfilled a regulatory requirement (past event) but the current regulated rate does not yet reflect the compensation that the entity is entitled to in exchange. Even though the entity cannot compel its customers to buy the regulated goods or services, the entity's right to charge an increased future regulated rate has the potential to produce for the entity an inflow of economic benefits that are not available to other parties. That right will be consumed as the entity includes the rate increase in future regulated rates and will lead to an inflow of economic benefits if customers pay the increased future regulated rate for the future delivery of goods or services.

Another potential dissenting view is contained on page 37 of the 2008 Annual Report of the OAGO:

With regard to the third characteristic, we do not believe that a rate-regulation decision can be considered a transaction or event giving rise to an asset or obligation because, as stated above, from the level of the government's consolidated financial statements such a decision is an internal event between two government-controlled entities. An equivalent analysis for rate-regulated liabilities leads to the same conclusion. PSAB standards preclude the inclusion of both gains and losses from such inter-company transactions. Therefore, our contention is that, at the consolidated financial statement level, rate-regulated assets and liabilities have no place and should be removed upon consolidation of the government's controlled entities.

It should be noted, however, that the OAGO's belief that a rate-regulation decision cannot be considered a transaction or event giving rise to an asset or obligation is not contrary to the IESO position. As noted above, it is not the statute itself that is being considered the transaction or event giving rise to the asset, it is the incurrence of costs for which recovery is provided for under statute.

In addition, one could argue the creation of the relevant statutes is not an internal event from the point of view of the consolidated government. Statutes must be passed by the Legislative Assembly of Ontario to become law. Since the Legislative Assembly is comprised of elected members, it can be viewed as the government's governing body.

Concluding the regulatory asset possesses the three essential characteristics of an asset in PSAS 1000.05 then begs the question as to whether the application of the guidance in ASC 980 is even necessary in this particular situation. Consistent with the statement in ASC 980 –340-25-1 that *rate actions of a regulator can provide reasonable assurance of the existence of an asset,* ASC 980 provides guidance as to how to apply the primary source of PSAS in the regulatory environment.

In a letter from the OAGO to the Board of Directors of the IESO dated June 22, 2017 (the OAGO Letter), the OAGO makes the following statement:

The definitions of an asset in the PSAS and FASB Conceptual Framework are similar. Similar to PSAS, rate regulated deferral accounts do not generally meet the definition of an asset in the FASB's Conceptual Framework.

However, the following excerpts from the Basis for Conclusions for FAS 71 (paragraph 58 in particular), clearly support that ASC 980 is an application of, not an exception from, the basic definition of an asset in the Conceptual Framework:

Economic Effects of Regulation

56. The second threshold issue in the Discussion Memorandum was: "Does rate regulation introduce an economic dimension in some circumstances that should affect the application of generally accepted accounting principles to rate-regulated enterprises?"

57. Most respondents to the Discussion Memorandum indicated that rate regulation does introduce such an economic dimension in some circumstances. Respondents cited the cause-and-effect relationship of costs and revenues as the principal economic effect of regulation that affects accounting for regulated enterprises. They noted that cost might be one factor used by unregulated enterprises to establish prices, but it would often not be the most important factor. Usually, prices are limited by the market. An unregulated enterprise might desire to price its goods or services at a level that would recover all costs and a reasonable profit; however, the market might not permit that price. Alternatively, an unregulated enterprise might be able to increase its prices and its profit if competition does not limit its prices. In either case, cost often is not the principal determinant of prices. In contrast, for an enterprise with prices regulated on the basis of its costs, allowable costs are the principal factor that influences its prices.

58. The economic effect cited by most respondents is the ability of a regulatory action to create a future economic benefit—the essence of an asset. For example, consider a regulated enterprise that incurs costs to repair damage caused by a major storm. If the regulator approves recovery of the costs through rates over some future period or is expected to do so, the rate action of the regulator creates a new asset that offsets the reduction in the damaged asset. The enterprise has probable future economic

benefits—the additional revenue that will result from including the cost in allowable costs for rate-making purposes. The future benefits are obtained or controlled by the enterprise as a result of a past event—incurring the cost that results in the rate order. Thus, the criteria of Concepts Statement 3 for an asset are met.

The fact that many Canadian rate-regulated entities recognized regulated assets under Part V of the CPA Canada Handbook – *Pre-changeover Accounting Standards* (Part V GAAP) further supports the position that regulated assets do meet the basic definition of an asset under PSAS. Although Part V GAAP refers to rate regulation in several standards, it does not include cost capitalization guidance equivalent to ASC 980-340-25-1. It does, however, specify in paragraph 32B of Section 1100, *Generally accepted accounting principles*, that Section 1100 applies to the recognition and measurement of assets and liabilities arising from rate regulation beginning January 1, 2009. Since Section 1100.04 only permits the use of an alternate source of GAAP if it is consistent with Part V GAAP, regulated assets need to meet the basic definition of an asset under Part V GAAP in order to be recognized. The Part V GAAP definition of an asset in Section 1000, *Financial Statement Concepts* is consistent with the PSAS definition.

The CICA Research Report also concluded regulated assets meet the basic definition of an asset under Part V GAAP:

In the Study Group's view, the economic benefits and obligations created by rate regulation and resulting from past transactions or events, and the changes in these amounts, meet the definition of a financial statement element set out in Handbook Section 1000.

The OAGO Letter suggests that IFRS should be consulted prior to referring to ASC 980 under PSAS's GAAP hierarchy in PSAS 1150 and points out the following:

- In 2005 the International Financial Reporting Interpretations Committee (IFRIC) indicated the US GAAP recognition criteria for regulated assets were not fully consistent with IFRS and could not be applied by analogy.
- When the question of rate regulated accounting was posed to the IFRIC again in 2008, the IFRIC noted the topic had been previously addressed and there was a well-established practice of first time IFRS adopters ceasing rate regulated accounting and removing regulatory deferral accounts from their financial statements.
- In the Basis for Conclusions on IFRS 14, IFRS 14.BC30 noted the differences in the recognition criteria between IFRS and ASC 980 resulted in almost all existing regulatory deferral accounts being derecognized upon transition to IFRS.

While PSAS does not prescribe an ordering of consideration for sources other than primary sources, the statements made with respect to IFRS by the OAG have been considered. It should be noted, however, that the IASB's project on rate-regulated activities is still in progress and the OAGO Letter does not reference more recent and relevant activity. In September 2014, the IASB issued Discussion Paper DP/2014/02, *Reporting the Financial Effects of Rate Regulation*. The Discussion Paper presents the opposing views as to whether regulatory deferral account balances meet the definitions of an asset or a liability and specifically states the following in paragraph 5.09:

Consequently, the IASB has not formed a preliminary view on whether regulatory deferral account balances meet either the current or proposed revised Conceptual Framework definitions of an asset and a liability. It will use the input received from the responses to this Discussion Paper and the Conceptual Framework project to help it assess whether to develop any specific accounting guidance or requirements for rate-regulated activities.

In addition, the most recent paper issued by the IASB staff in June 2017 includes the following:

17. During the May 2017 Board meeting we also considered the interaction between the definitions of assets and liabilities and the characteristics of defined rate regulation (see paragraphs 5 and 6). We concluded that a combination of those characteristics suggested that the rights and obligations created by the rate-adjustment mechanism are assets and liabilities, as those terms are expected to be defined in the forthcoming revised Conceptual Framework for Financial Reporting.

The Exposure Draft ED/2015/3, *Conceptual Framework for Financial Reporting*, defines an asset as follows:

4.5 An asset is a present economic resource controlled by the entity as a result of past events.
4.6 An economic resource is a right that has the potential to produce economic benefits.

This recent activity suggests that it would be premature to assume that the IASB will conclude that regulatory deferral account balances will not meet the definitions of an asset or a liability.

Once it is determined that the regulatory asset meets the basic characteristics of an asset in PSAS 1000.36, consideration also needs to be made as to what type of asset it is. This is important because PSAS 1000.58 does not permit the recognition of intangible assets:

In the absence of appropriate public sector recognition and measurement criteria for intangibles, all intangibles, including those that have been purchased, developed, constructed or inherited in right of the Crown, are not recognized as assets in government financial statements. The intangible often called "human capital" that embodies the talent or intellectual capital of government employees is not recognized as an asset under existing accounting principles.

PSAS 1000 identifies two types of assets: financial assets and non-financial assets and provides the following commentary:

.39 Financial assets are assets that could be used to discharge existing liabilities or finance future operations and are not for consumption in the normal course of operations.

.40 A financial asset is any asset that is:

- *a) Cash*
- *b) a realizable asset that is convertible to cash;*
- *c) a contractual right to receive cash or another financial asset from another party;*
- *d) a contractual right to exchange financial instruments with another party under conditions that are potentially favourable to the government;*
- *e) an equity instrument of another entity;*
- *f) an investment in a government business enterprise or government business partnership;*
- *g) a financial claim on an outside organization or individual; or*
- *h) an inventory or item for sale that meets the criteria in FINANCIAL STATEMENT PRESENTATION, paragraph PS 1201.055.*

.41 Non-financial assets include tangible capital assets, and other assets such as prepaid expenses and inventories of supplies.

.42 Non-financial assets are acquired, constructed or developed assets that do not normally provide resources to discharge existing liabilities, but instead:

- *a) are normally employed to deliver government services;*
- *b) may be consumed in the normal course of operations; and*
- *c) are not for sale in the normal course of operations.*

PSAS 3210, ASSETS, also provides some relevant guidance:

.24 Non-financial resources include all items of a fixed or permanent nature (such as tangible capital property), claims to goods and services (such as prepaid items) and consumable goods (such as inventories of supplies). Non-financial resources also include intangibles, Crown lands and natural resources.

.25 Certain non-financial resources are, however, not given accounting recognition as assets in government financial statements. For example, all government intangibles, and all natural resources and Crown lands that have not been purchased by the government, are not given accounting recognition in government financial statements. A government's non-financial assets, as defined in FINANCIAL STATEMENT CONCEPTS, Section PS 1000, comprise the recognized non-financial resources of a government.

Although PSAS does not permit the recognition of intangibles, it also does not provide a definition of intangibles. In absence of specific guidance in PSAS as to what constitutes an intangible, U.S. GAAP is probably the most appropriate source to consult, in light of the fact that it deals specifically with regulated assets. Under U.S. GAAP, a regulated asset is not treated as an intangible. ASC 980 contains separate subsections for 'Intangibles – Goodwill and Other' and 'Other Assets and Deferred Costs' and regulated assets are included in the guidance on 'Other Assets and Deferred Costs'.

In accordance with PSAS 1201.040(a), financial assets are presented separately on the statement of financial position. The IESO classifies its regulated assets (i.e., the original variance account and the regulated assets relating to unrecovered smart metering expenses and unrecovered PSAB transition items) as financial assets.

Although the regulatory asset created under the FHP does not clearly meet the definition of either a financial asset or a non-financial asset under PSAS, it possesses characteristics more consistent with that of a financial asset since it will be available to discharge existing liabilities or finance future operations and is not for consumption in the normal course of operations.

Commented [LAP18]: Consider need to specifically address PS 3450.

The FHP is expected to be executed in a manner such that the regulatory asset will be available to discharge existing liabilities or finance future operations in the short term through its commoditization (i.e., transfer to the OPG Trust). However, even if not commoditized, the regulatory asset will be available to discharge existing liabilities or finance future operations in the future similar to, for example, a long-term receivable.

By recognizing the regulatory asset in a manner consistent with that of a financial asset, the FHP will have a neutral impact on both the Province's net debt and accumulated deficit, which appears appropriate and aligned with the intent of guidance in PSAS 1100, Financial statement objectives:

Financial statements should present information to describe the government's financial position at the end of the accounting period. Such information should be useful in evaluating:

a) *the government's ability to finance its activities and to meet its liabilities and contractual obligations; and*
b) *the government's ability to provide future services.*

A government's net debt is an important indicator of a government's financial position, highlighting the financial affordability of future government service provision. A net debt position represents a "lien" on the ability of the government to apply financial resources and future revenues to provide services. Non-financial assets are added to net debt to calculate the other indicator of a government's financial position — its accumulated surplus or deficit. Non-financial assets are "prepaid service potential". Reporting a government's recognized non-financial resources as part of its financial position provides information necessary for a more complete understanding of a government's debt position, financial position and future operating requirements.

Governments provide public services and redistribute wealth for a variety of social and economic purposes. To meet those objectives, governments need information about the cost of services and the affordability of services. An understanding of the extent of the financial "lien" the government has on its ability to provide future services as a result of past transactions and events is essential information. Governments also need to have an appreciation of the magnitude of the total economic resources they have on hand to deliver services. A government's net financial resources / net debt position, assessed in combination with the non-financial resources position of the government, provides a measure of the net recognized economic resources available to the government at the financial statement date to provide services in the future.

If the regulatory asset is not recognized in a manner consistent with that of a financial asset by the GRE, the Province's net debt will increase significantly, suggesting that the Province has a much higher future revenue requirement. This would be inaccurate, however, since the regulatory asset is going to be recovered under statute from electricity consumers, not taxpayers.

Commented [LAP19]: Consider if Balanced Budget Legislation should be addressed

Additionally, while an increase in net debt and/or accumulated deficit in the financial statements of the GRE would be an indicator the Province's financial position has deteriorated in accordance with PSAS 1200.036, the FHP is designed to, in substance, have a neutral impact on the Province's financial position.

Sale of the Regulatory Asset [NTD – Need to consider impact of guarantee when finalized, but may only impact at consolidated level if IESO not a party to guarantee]

Commented [VC(20]: To add

As discussed above, IESO management has concluded the regulatory asset created by the FHP can be recognized as a regulated asset for accounting purposes in the financial statements of the IESO in accordance with the guidance in ASC 980.

Since the IESO does not have the financial capability to finance the regulatory asset, OPG intends to establish a financing entity (OPG Trust) to purchase the IESO's regulatory asset on a monthly basis to eliminate any cash shortfall in the IESO. Through this arrangement, OPG Trust will finance these purchases through a combination of provincial borrowing (flowed through OPG as an equity investment), amounts advanced from OPG and direct borrowing from capital markets.

The sale of the regulatory asset to OPG Trust is permitted under Section 26 of the FHP Act:

> *26 (1) The IESO may from time to time, in accordance with this Act and the regulations, transfer a specified portion of the regulatory asset to a financing entity in accordance with this section.*
>
> *Agreement*
>
> *(2) An agreement between the IESO and a financing entity in relation to the transfer of a specified portion of the regulatory asset shall provide for consideration of a payment by the financing entity to the IESO in an amount equal to the amount of the specified portion.*
>
> *Effect of payment*
>
> *(3) Upon receipt by the IESO of the payment by the financing entity,*
>
> *(a) the balance in the variance account shall be reduced by the amount of the payment;*
>
> *(b) the regulatory asset shall be adjusted accordingly;*
>
> *(c) the financing entity shall acquire a corresponding investment interest; and*
>
> *(d) the IESO shall retain no further right, title or interest in the corresponding investment interest.*

Consideration needs to be made as to whether the sale of the regulatory asset is accounted for as a sale transaction or a financing transaction. If treated as a sale transaction, the existing regulated asset is derecognized (DR Expense, CR Regulated Asset) and the cash received is recognized as sales proceeds

Commented [VC(21]: Do you think IESO should recognize revenue and expense – vs. a gain of NIL?

(DR Cash, CR Revenue). Since the cash proceeds received are equal to the book value of the regulated asset, there is no net impact to income. If treated as a financing transaction, the existing regulated asset continues to be recognized and the cash proceeds received are treated as a loan (DR Cash, CR Payable).

IESO management has concluded the sale of the regulatory asset to OPG Trust will result in the derecognition of the regulated asset (i.e., sale transaction). The IESO's auditors, KPMG, concur with this position, as evidenced from the following excerpt from the KPMG Letter:

We have considered the foregoing analysis and management's conclusion. We concur that the regulatory asset should be derecognized on transfer to the OPG Trust as IESO no longer has rights or future economic benefits associated with the asset.

PSAS provides little guidance relating to the derecognition of an asset. In particular, PSAS 1000, *Financial statement concepts*, PSAS 3210, *Assets*, and PSAS 3450, *Financial instruments*, are all silent on the topic. Although the transfer of the regulatory asset is not within the scope of PSAS 3430, *Restructuring Transactions*, the following derecognition guidance in this standard provides some relevant insight:

.21 Individual assets and liabilities transferred in a restructuring transaction should be derecognized by the transferor if they no longer meet the definitions of assets and liabilities and applicable recognition criteria at the restructuring date.

.24 When a transferor continues to be involved in the individual assets and/or liabilities it transferred to a recipient subsequent to the restructuring date, it would assess the nature and extent of its continued involvement against the definitions of assets and liabilities and applicable recognition criteria to evaluate whether:

(a) derecognition of the asset and liability transferred would be appropriate; and
(b) its continued involvement gives rise to a new asset or new liability that needs to be recognized.

.25 A new asset or new liability may arise from a restructuring due to a transferor's continued involvement in the individual assets and liabilities transferred (for example, if it agrees to guarantee repayment of all or a portion of a transferred liability or leases back a portion of a transferred asset). As the new asset or new liability is not transferred, together with related program or operating responsibilities, they are not part of the restructuring transaction. They would be accounted for in accordance with individual Sections of the PSA Handbook by both the transferors and recipients.

The IESO should derecognize the regulated asset when transferred to OPG Trust if it no longer meets the definition of an asset in PSAS 1000.35-.36. However, consideration should also be made as to whether the IESO has any continued involvement in the regulatory asset that would result in the recognition of a new asset and/or a new liability (i.e. financing transaction).

The following supports the IESO's position that subsequent to the transfer to OPG Trust, the regulatory asset no longer possesses the three essential characteristics of an asset in PSAS 1000.36 and, therefore, should be derecognized:

Embody future economic benefits that involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows, or to reduce cash outflows
The future economic benefits embodied in the regulated asset are realized by the IESO through the transfer of the regulatory asset to OPG Trust in exchange for cash. As noted above, under Section

26(2)(d) of the FHP, the IESO retains no further right, title or interest in the regulatory asset transferred to OPG Trust. Accordingly, there is no remaining future economic benefit to the IESO.

The public sector entity can control the economic resource and access to the future economic benefits

Although the IESO will collect funds on behalf of OPG Trust, the following sections of the FHP support that control of and access to the future economic benefits of the regulatory asset pass to OPG Trust:

Section 16 - IESO to receive amounts

2) *The IESO shall, as agent of the investment interest owners, receive amounts in respect of the clean energy adjustment paid to it from electricity vendors in accordance with the market rules made under section 32 of the Electricity Act, 1998 or the regulations.*
4) *All amounts received by the IESO in respect of the clean energy adjustment shall, until remitted to or for the benefit of the investment interest owner, be held in trust by the IESO for the investment interest owners.*
5) *The IESO shall remit amounts received by it in respect of the clean energy adjustment, inclusive of interest earned on the amounts referred to in subsection (1), to or for the benefit of the investment interest owners in accordance with the regulations.*

Section 29 - Irrevocable rights and interests

1) *The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests of investment interest owners:*
    1. *The right and interest to impose, invoice, collect, receive and recover the clean energy adjustment from specified consumers, including the right to determine the clean energy adjustment in accordance with this Act.*
    2. *The right to receive, collect and recover the clean energy adjustment that is imposed, invoiced and recoverable under this Act, including any amounts in respect of the clean energy adjustment that are held by electricity vendors, IESO and other prescribed parties.*

The transaction or event giving rise to the public sector entity's control has already occurred

Not applicable as IESO does not control.

As previously noted, the IESO relinquishes its rights, title and interest in the regulatory asset upon transfer to OPG Trust. Subsequent to the transfer, the IESO's only continuing involvement is to act as agent of OPG Trust, which involves receiving funds and holding them in trust on behalf of OPG Trust. This level of continuing involvement does not result in the recognition of a new asset and/or a new liability by the IESO. Accordingly, it is appropriate to account for the transfer of the regulatory asset as a sale and derecognize the regulated asset.

Derecognition of the regulated asset is also consistent with ASC 980. ASC 980-340-40-1 provides the following guidance on the derecognition of an asset that has been recognized in accordance with ASC 980-340-25-1:

If at any time an entity's incurred cost no longer meets the criteria for the capitalization of an incurred cost (see paragraph 980-340-25-1), that cost shall be charged to earnings.

In order for an incurred cost to be capitalized, ASC 980-340-25-1(a) requires the following:

It is probable (as defined in Topic 450) that future revenue in an amount at least equal to the capitalized cost will result from inclusion of that cost in allowable costs for rate-making purposes.

The capitalization criterion in ASC 980-340-25-1(a) is no longer met after the regulatory asset is transferred to OPG Trust because there are no future cash inflows that benefit the IESO. As mentioned above, the IESO realized the economic benefits associated with the regulatory asset upon the transfer. In accordance with Section 16 of the FHP, any future cash collected by the IESO is on behalf of OPG Trust.

Debits and Credits

Based on the example provided earlier, the IESO pays the contracted power generator $400 for electricity used by the ratepayer and collects $300 from the ratepayer through their local distribution company (LDC). The $100 recovery shortfall is recorded in a variance account created by Bill 132 and deemed to be a regulatory asset. The IESO sells the regulatory asset to OPG Trust for $100 to obtain cash to make up the shortfall.

The accounting for the above transactions in the financial statements of the IESO, which are prepared in accordance with PSAS are set out in Scenario A in the table below. For comparison purposes, Scenario B in the table below sets out the accounting if it is determined the regulatory asset is not eligible for recognition as an asset under PSAS.

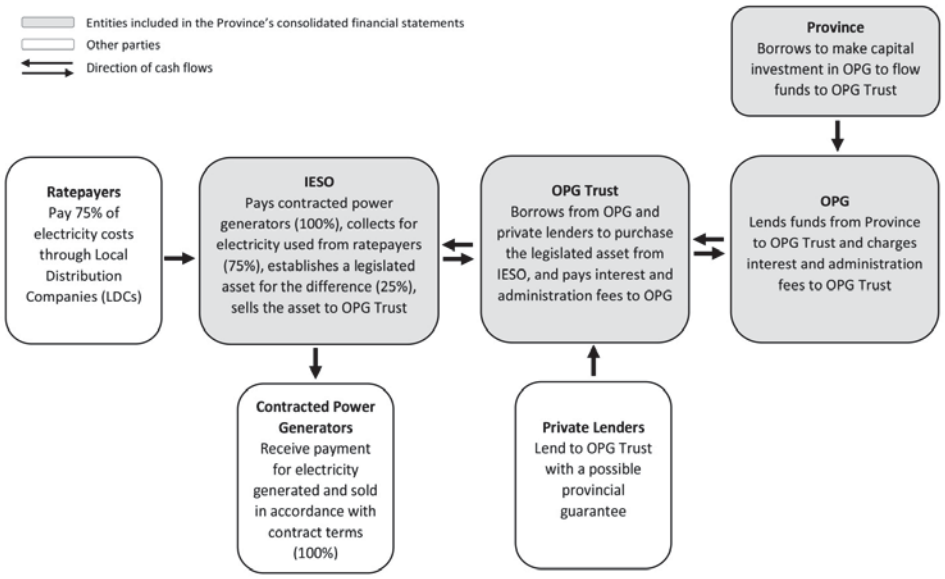
Scenario A – Regulated Asset			**Scenario B – Not a Regulated Asset**		
Market Settlement					
DR	Cash	300	DR	Cash	300
DR	Asset	100	DR	Expense	100
CR	Cash	(400)	CR	Cash	(400)
Sale of Regulatory Asset to OPG Trust					
DR	Cash	100	DR	Cash	100
CR	Revenue	(100)	CR	Gain	(100)
DR	Expense	100			
CR	Asset	(100)			

Commented [LAP22]: Maybe better to do once we add the consolidation section which would reverse the gain.

At any given point in time, the accounting result will be the same under both scenarios provided the cash shortfall has been fully funded. If a funding deficit exists, however, the deficit would be recognized as an asset under Scenario A and recognized as an expense under Scenario B. A funding deficit may arise due to, for example, temporary timing differences between the creation and sale of a regulatory asset. A funding deficit may also arise if OPG Trust (or another financing entity) ceases to purchase the IESO's regulatory assets on an on-going basis.

APPENDIX A

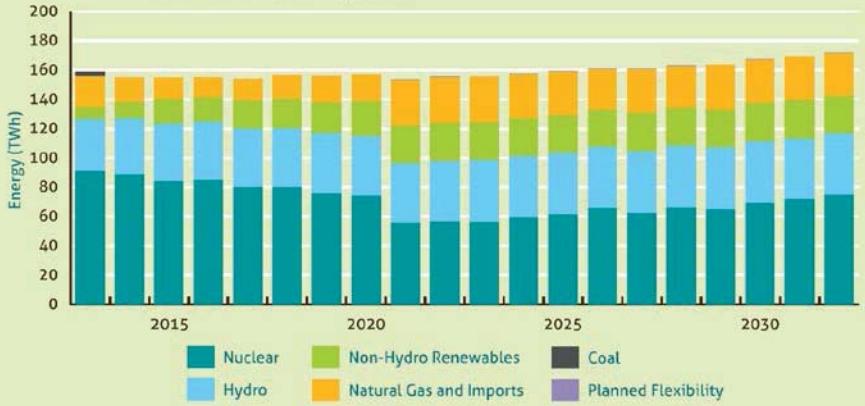
Proposed Legislated Transaction Structure
Prepared by the Office of the Auditor General of Ontario



Commented [OPCD23]: Can chart be expanded to include impact on CFS (consolidation of IESO reflecting RRA on CFS, Interest Income from OPG through revenue of GBE will help to offset borrowing costs incurred by Province on equity injection).

APPENDIX B

Figure 19: Ontario's Forecast Electricity Production (TWh)



Notes: The Planned Flexibility identified in Figure 19 is required to meet peak requirements and represents less than 1 TWh of energy per year. Forecasting of electricity production includes the expectation of imports and exports of electricity in all years. Imports and exports are an important component in managing the operation of the electricity system. As a result, electricity production forecast exceeds the forecast Ontario consumer demand.

FHP Memo V6.rtf

From: Lee Anne Probert [leeanne.probert@ca.ey.com]
To: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Donaldson, Mark (TBS) [Mark.Donaldson@ontario.ca]
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Subject: FHP Memo V6
Date: Thursday, November 16, 2017 02:29:22
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View the original item

For your review.

Mark – can we also please add the following to the outstanding list:

· Navigant report

· Summary of Uplift charges

Regards,

Lee Anne

Attachments:
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Fair Hydro - Change of Law Protection Agreement.rtf

From: Milligan, Peter [PMilligan@osler.com]
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Subject: Fair Hydro - Change of Law Protection Agreement
Date: Thursday, December 07, 2017 19:43:40
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All,

Attached is a revised comment draft of the Change of Low Protection Agreement reflecting comments from Torys and Osler. In order to meet this transaction’s timeline, this comment draft h

Attachments:

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https://ctsbigdcapmvs05.cihs.ad.gov.on.ca/EnterpriseVault/ViewMessage.asp?VaultId=184971630C5FAB646A01170AFB6CF78EC1110000ctsbigdcapmvs01&SavesetId=201801095534032~201712072344220000~Z~E098E8458BF919BA56BCF3A2B5628F51&AttachmentId=1image002.gif

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Compare Protection Agreement (Dec 4 (Province) v Dec 7 (Osler_Torys)).PDF (395 KB)
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Change of Law Protection Agreement - Dec 7 (Osler_Torys).DOCX (97 KB)
https://ctsbigdcapmvs05.cihs.ad.gov.on.ca/EnterpriseVault/ViewMessage.asp?VaultId=184971630C5FAB646A01170AFB6CF78EC1110000ctsbigdcapmvs01&SavesetId=201801095534032~201712072344220000~Z~E098E8458BF919BA56BCF3A2B5628F51&AttachmentId=6Change of Law Protection Agreement - Dec 7 (Osler_Torys).DOCX

Fair Hydro - Change of Law Protection Agreement.rtf

From: Milligan, Peter [PMilligan@osler.com]
To: ASHBOURNE, STEPHEN [STEPHEN.ASHBOURNE@blakes.com]; Sebastiano, Rocco [RSebastiano@osler.com]; Mansoori, Nina [nmansoori@torys.com]
CC: Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; 'LADAK Lubna -TREASURY' [lubna.ladak@opg.com]; Strathy, Anna (OFA) [Anna.Strathy@ofina.on.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; McKinlay, Tom (MAG) [Tom.McKinlay@ontario.ca]; Donaldson, Mark (TBS) [Mark.Donaldson@ontario.ca]; Cayley, Daniel (ENERGY) [Daniel.Cayley@ontario.ca]; Thouin, Alena (ENERGY) [Alena.Thouin@ontario.ca]; Ramchandani, Rima [rramchandani@torys.com]; 'LEE John -TREASURY' [john.s.lee@opg.com]; 'RYFA Ken -TREASURY' [ken.ryfa@opg.com]; 'HAHN PARKER Janet -TREASURY' [j.hahnparker@opg.com]; 'MAUTI John -FIN & C CTRL' [john.mauti@opg.com]; 'LAURETA LAPIRA May -TREASURY' [may.lapira@opg.com]; Feldman, Michael [mfeldman@torys.com]; 'WONG Leslie -LAWDIV' [leslie.wong@opg.com]; Fullerton, Rick [RFullerton@osler.com]; Mayman, Gadi (OFA) [Gadi.Mayman@ofina.on.ca]; Manning, Mike (OFA) [Mike.Manning@ofina.on.ca]; Hanslep, Malle (MOF) [Malle.Hanslep@ontario.ca]; 'ian.benaiah@rbccm.com' [ian.benaiah@rbccm.com]; 'Khan, Nur (nur.khan@rbccm.com)' [nur.khan@rbccm.com]; 'brent.r.taylor@rbccm.com' [brent.r.taylor@rbccm.com]; 'katrina.niehaus@gs.com' [katrina.niehaus@gs.com]; 'brian.delaney@gs.com' [brian.delaney@gs.com]; 'Maciel, Andrew' [Andrew.Maciel@cibc.com]; 'Adalja, Sunil' [Sunil.Adalja@cibc.com]; 'Persad, Nicole' [Nicole.Persad@cibc.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Saulnier, Brett [bsaulnier@torys.com]; Olusoga, Yinka [yolusoga@torys.com]; Whitfield, Tobias P. (MOF) [Tobias.Whitfield@ontario.ca]; PALMER, AARON [AARON.PALMER@blakes.com]; VINER, JON [JON.VINER@blakes.com]; PRESTAGE, JA [JA.PRESTAGE@blakes.com]
Subject: Fair Hydro - Change of Law Protection Agreement
Date: Thursday, December 07, 2017 19:43:40
Attachment 1: image002.gif
Attachment 2: image003.gif
Attachment 3: image004.gif
Attachment 4: image005.jpg
Attachment 5: Compare Protection Agreement (Dec 4 (Province) v Dec 7 (Osler_Torys)).PDF
Attachment 6: Change of Law Protection Agreement - Dec 7 (Osler_Torys).DOCX

All,

Attached is a revised comment draft of the Change of Low Protection Agreement reflecting comments from Torys and Osler. In order to meet this transaction's timeline, this comment draft has not been reviewed by OPG or the Dealers and is delivered subject to any comments they may have.

Peter

Peter Milligan

416.862.6634

DIRECT

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FACSIMILE

pmilligan@osler.com

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From: ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
Sent: Thursday, December 07, 2017 4:27 PM
To: Sebastiano, Rocco <RSebastiano@osler.com>; Mansoori, Nina <nmansoori@torys.com>
Cc: 'Ken Kandeepan' <Ken.Kandeepan@ofina.on.ca>; 'LADAK Lubna -TREASURY' <lubna.ladak@opg.com>; 'Anna Strathy' <Anna.Strathy@ofina.on.ca>; 'Veinot, Cindy (TBS)' <Cindy.Veinot@ontario.ca>; 'McKinlay, Tom (MAG)' <Tom.McKinlay@ontario.ca>; 'Donaldson, Mark (TBS)' <Mark.Donaldson@ontario.ca>; 'Cayley, Daniel (ENERGY) (Daniel.Cayley@ontario.ca)' <Daniel.Cayley@ontario.ca>; 'Thouin, Alena (ENERGY) (Alena.Thouin@ontario.ca)' <Alena.Thouin@ontario.ca>; Ramchandani, Rima <rramchandani@torys.com>; 'LEE John -TREASURY' <john.s.lee@opg.com>; 'RYFA Ken -TREASURY' <ken.ryfa@opg.com>; 'HAHN PARKER Janet -TREASURY' <j.hahnparker@opg.com>; 'MAUTI John -FIN & C CTRL' <john.mauti@opg.com>; 'LAURETA LAPIRA May -TREASURY' <may.lapira@opg.com>; Feldman, Michael <mfeldman@torys.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; Milligan, Peter <PMilligan@osler.com>; Fullerton, Rick <RFullerton@osler.com>; 'Mayman, Gadi (OFA)' <Gadi.Mayman@ofina.on.ca>; 'Manning, Mike (OFA)' <Mike.Manning@ofina.on.ca>; 'Hanslep, Malle (MOF)' <Malle.Hanslep@ontario.ca>; 'ian.benaiah@rbccm.com' <ian.benaiah@rbccm.com>; 'Khan, Nur (nur.khan@rbccm.com)' <nur.khan@rbccm.com>; 'brent.r.taylor@rbccm.com' <brent.r.taylor@rbccm.com>; 'katrina.niehaus@gs.com' <katrina.niehaus@gs.com>; 'brian.delaney@gs.com' <brian.delaney@gs.com>; 'Maciel, Andrew' <Andrew.Maciel@cibc.com>; 'Adalja, Sunil' <Sunil.Adalja@cibc.com>; 'Persad, Nicole' <Nicole.Persad@cibc.com>; 'Persaud, Donnie - Debt Capital Markets' <Donnie.Persaud@cibc.com>; 'Steen Hume (CAB)' <Steen.Hume@ontario.ca>; Saulnier, Brett <bsaulnier@torys.com>; Olusoga, Yinka <yolusoga@torys.com>; Whitfield, Tobias P. (MOF) (Tobias.Whitfield@ontario.ca)

<Tobias.Whitfield@ontario.ca>; PALMER, AARON <AARON.PALMER@blakes.com>; VINER, JON <JON.VINER@blakes.com>; PRESTAGE, JA <JA.PRESTAGE@blakes.com>
Subject: RE: Fair Hydro -- Change of Law Process Agreement

Hi,

Please find (attached) a further turn of the Change of Law Process Agreement, reflecting the Province's comments on the mark-up of the Agreement circulated yesterday afternoon by Torys. The attached blackline shows changes made to yesterday's Torys mark-up.

This version addresses concerns Rocco raised last night, to the extent the Province feels that the issues can be accommodated. For your information, I have set out below responses to Rocco's comments/observations (in CAPs).

The Province would like to proceed with the Ministers briefing early next week, on the basis that this version (minus the explanatory notes) is now in final form. If there are any critical revisions that the other parties believe reflect 'must have' priority, then the Province would like to have a call to discuss them as soon as possible.

<u>Responses to Rocco's Points</u>:

1. The change of the definition of Breach Event in Section 6.01 (i.e., the change to clause (a) and the addition of clause (b)) will result in an inconsistency with section 7.01(b) of the Change of Law Protection Agreement. This will require further consideration. [AGREED. 7.01(b) and 7.01(c) will need to mirror the cure language we settle on in the Process Agreement (see my earlier comments). Perhaps the "which continues …" language in 7.01(B) can be revised to read: "to the extent that the Province would be entitled to provide a Suspension Notice in accordance with the terms of the agreement or agreements between the Province and OPG under which such obligations, requirements and processes arise". SIMILAR CHANGE FOR 7.01(C).

2. The right of the Province to issue an objection notice under Section 3.04(b) in connection with a Transaction Document provided to the Province which is required for a Refinancing of an Approved Obligation remains an outstanding issue. Clearly, this will depend upon what Adherence Conditions will be required under Section 4.02 of the Change of Law Protection Agreement in order to permit such Refinancing to become an Approved Obligation. If the Adherence Conditions set out in Section 4.02(a) of the Province's draft of the Change of Law Protection Agreement of December 4 were to apply to such Refinancing, to the extent that such refinancing required a change to a Transaction Document (e.g., as a result of a change to some rating agency condition or criteria), the Province's ability to issue an objection notice and thereby prevent the issuance of a Process Certificate under Section 3.01 (by virtue of Section 3.04) would have the effect of preventing a Refinancing. We trust that this was an unintended outcome of the drafting of Section 3.04 and/or the Adherence Conditions applicable to Refinancings. [THAT IS THE INTENDED EFFECT. THE ADHERENCE CONDITIONS WOULD APPLY TO THE REFINANCING, SO IF THE REFINANCING TERMS DEVIATED MATERIALLY (BASED ON THE SUBSTANTIALLY IN THE FORM" THRESHOLD"), THEN OPG WOULD REQUIRE THE PROVINCE NOT TO OBJECT IN ORDER TO PROCEED WITH THOSE NEW TERMS. OTHERWISE, THE REFINANCING COULD INCORPORATE TERMS AND CONDITIONS, WHICH WOULD BIND THE PROVINCE UNDER THE LIMITED GUARANTEE, THAT WOULD BE UNCONSTRAINED AND WITHOUT ANY ACCOUNTABILITY TO THE PROVINCE. IN ROCCO'S EXAMPLE, THAT MIGHT MEAN THAT OPG WOULD NEED TO RESORT TO UNRATED DEBT, IF THE PROVINCE WAS UNWILLING TO ACCEPT THE NEW TERMS. PRESUMABLY EVERYONE WOULD ACT RATIONALLY. HOWEVER, AS A FAILSAFE, OPG COULD OFFER INCREASED PRICING IN ORDER TO ATTRACT INVESTORS TO ACCEPT THE EARLIER VETTED TERMS (BASED ON THE THEN ACCEPTED REVIEWED DOCUMENTATION).]

3. Given that the Indenture Trustee is not a party to the Change of Law Process Agreement, the Province and OPG can amend the terms and conditions of this agreement without the consent of the indenture Trustee. Specified Creditors under an Approved Obligation need to be assured that the Province cannot prevent a Refinancing of an Approved Obligation either by virtue of the objection notice discussed in point #2 above or as a result of a future amendment to the agreement. There are a couple of ways to deal with this point. The first is to a add a beneficiary/third party rights clause in the Change of Law Process Agreement which acknowledges that the Indenture Trustee is a beneficiary of certain provisions of this agreement and as a result, the agreement cannot be amended without the consent of the Indenture Trustee. The second is to ensure that the Adherence Conditions relating to Refinancings under the Change of Law Protection Agreement are not dependent upon the terms of the Change of Law Process Agreement. In light of the desire to not disclose the terms and conditions of the Change of Law Process Agreement to the rating agencies, especially at this late stage in the process, we would expect that the latter approach would be

preferable. [THE SUGGESTION REGARDING THE PROVINCE PREVENTING A REFINANCING IS ADDRESSED IN #2. IF THE REFINANCING TERMS WOULD EXCEED THE SCOPE OF THE TRANSACTION DOCUMENTS REVIEWED AND NOT OBJECTED TO BY THE PROVINCE, THEN THAT SUGGESTS THERE IS A MATERIAL EFFECT ON THE PROVINCE AND SO THE PROVINCE WOULD NEED THE ABILITY TO REVIEW AND CONSIDER THE PROPRIETY OF THOSE NEW TERMS FROM ITS PERSPECTIVE. AS FOR THE STANDALONE NATURE OF THE PROCESS AGREEMENT, THE INTENTION IS THAT THE PROCESS AGREEMENT BE UNCOUPLED AND NOT PART OF THE COLLATERAL, AND AS MICHAEL FELDMAN HAS EXPLAINED, LEAVE FUTURE FLEXIBILITY FOR THIS LONG-TERM STRUCTURE. TO ADDRESS ROCCO'S CONCERN THAT THE PROVINCE AND OPG COULD CHANGE THE UNDERLYING OBLIGATIONS APPLICABLE TO ADHERENCE IN RELATION TO A NEW OBLIGATION, REQUIREMENT OR PROCESS IN THE PROCESS AGREEMENT THAT WOULD MAKE A REFINANCING LESS LIKELY TO OCCUR, WE HAVE ADDED AND USED IN THE ATTACHED VERSION A NEW DEFFINTION:

"Approved Refinancing" means a Certified Primary Obligation proposed to be incurred as a Refinancing of an existing Certified Primary Obligation in respect of which the Adherence Conditions had been satisfied on the date such existing Certified Primary Obligation was incurred, that, at the time of incurrence, satisfies each of each of the Adherence Conditions except that the certificate contemplated to be delivered under Section 4.02(b) shall instead confirm that OPG has delivered to the Province a certificate by its applicable officers confirming that OPG would be in compliance with all obligations to the Province and internal requirements and processes in connection with the adherence of the Limited Guarantee to the proposed Certified Primary Obligation that applied as between the Province and OPG on the date of issuance of such existing Certified Primary Obligation." Various references to "Refinancing" in the Protection Agreement can also be revised to refer to "Approved Refinancing", as required.

Regards, Steve

Stephen R. Ashbourne

Partner

stephen.ashbourne@blakes.com

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Blake, Cassels & Graydon LLP | Barristers & Solicitors | Patent & Trade-mark Agents
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From: Sebastiano, Rocco [mailto:RSebastiano@osler.com]
Sent: Wednesday, December 06, 2017 7:45 PM
To: Mansoori, Nina; ASHBOURNE, STEPHEN; VINER, JON; PRESTAGE, JA
Cc: 'Ken Kandeepan'; 'LADAK Lubna -TREASURY'; 'Anna Strathy'; 'Veinot, Cindy (TBS)'; 'McKinlay, Tom (MAG)'; 'Donaldson, Mark (TBS)'; 'Cayley, Daniel (ENERGY) (Daniel.Cayley@ontario.ca)'; 'Thouin, Alena (ENERGY) (Alena.Thouin@ontario.ca)'; Ramchandani, Rima; 'LEE John -TREASURY'; 'RYFA Ken -TREASURY'; 'HAHN PARKER Janet -TREASURY'; 'MAUTI John -FIN & C CTRL'; 'LAURETA LAPIRA May -TREASURY'; Feldman, Michael; 'WONG Leslie -LAWDIV'; Milligan, Peter; Fullerton, Rick; 'Mayman, Gadi (OFA)'; 'Manning, Mike (OFA)'; 'Hanslep, Malle (MOF)'; 'ian.benaiah@rbccm.com'; 'Khan, Nur (nur.khan@rbccm.com)'; 'brent.r.taylor@rbccm.com'; 'katrina.niehaus@gs.com'; 'brian.delaney@gs.com'; 'Maciel, Andrew'; 'Adalja, Sunil'; 'Persad, Nicole'; 'Persaud, Donnie - Debt Capital Markets'; 'Steen Hume (CAB)'; Saulnier, Brett; Olusoga, Yinka
Subject: RE: Fair Hydro -- Change of Law Process Agreement

I have reviewed the revised draft of the Change of Law Process Agreement that Torys has prepared and would like to pass along the following comments/observations:

1. The change of the definition of Breach Event in Section 6.01 (i.e., the change to clause (a) and the addition of clause (b)) will result in an inconsistency with section 7.01(b) of the Change of Law Protection Agreement. This will require further consideration.

2. The right of the Province to issue an objection notice under Section 3.04(b) in connection with a Transaction Document provided to the Province which is required for a Refinancing of an Approved Obligation remains an outstanding issue. Clearly, this will depend upon what Adherence Conditions will be required under Section 4.02 of the Change of Law Protection Agreement in order to permit such Refinancing to become an Approved Obligation. If the Adherence Conditions set out in Section 4.02(a) of the Province's draft of the Change of Law Protection Agreement of December 4 were to apply to such Refinancing, to the extent that such refinancing required a change to a Transaction Document (e.g., as a result of a change to some rating agency condition or criteria), the Province's ability to issue an objection notice and thereby prevent the issuance of a Process Certificate under Section 3.01 (by virtue of Section 3.04) would have the effect of preventing a Refinancing. We trust that this was an unintended outcome of the drafting of Section 3.04 and/or the Adherence Conditions applicable to Refinancings.

3. Given that the Indenture Trustee is not a party to the Change of Law Process Agreement, the Province and OPG can amend the terms and conditions of this agreement without the consent of the indenture Trustee. Specified Creditors under an Approved Obligation need to be assured that the Province cannot prevent a Refinancing of an Approved Obligation either by virtue of the objection notice discussed in point #2 above or as a result of a future amendment to the agreement. There are a couple of ways to deal with this point. The first is to a add a beneficiary/third party rights clause in the Change of Law Process Agreement which acknowledges that the Indenture Trustee is a beneficiary of certain provisions of this agreement and as a result, the agreement cannot be amended without the consent of the Indenture Trustee. The second is to ensure that the Adherence Conditions relating to Refinancings under the Change of Law Protection Agreement are not dependent upon the terms of the Change of Law Process Agreement. In light of the desire to not disclose the terms and conditions of the Change of Law Process Agreement to the rating agencies, especially at this late stage in the process, we would expect that the latter approach would be preferable.

Regards, Rocco

From: Mansoori, Nina [mailto:nmansoori@torys.com]
Sent: Wednesday, December 06, 2017 4:38 PM
To: 'ASHBOURNE, STEPHEN' <STEPHEN.ASHBOURNE@blakes.com>; 'JON.VINER@blakes.com' <JON.VINER@blakes.com>; 'JA.PRESTAGE@blakes.com' <JA.PRESTAGE@blakes.com>
Cc: 'Ken Kandeepan' <Ken.Kandeepan@ofina.on.ca>; 'LADAK Lubna -TREASURY' <lubna.ladak@opg.com>; 'Anna Strathy' <Anna.Strathy@ofina.on.ca>; 'Veinot, Cindy (TBS)' <Cindy.Veinot@ontario.ca>; 'McKinlay, Tom (MAG)' <Tom.McKinlay@ontario.ca>; 'Donaldson, Mark (TBS)' <Mark.Donaldson@ontario.ca>; 'Cayley, Daniel (ENERGY) (Daniel.Cayley@ontario.ca)' <Daniel.Cayley@ontario.ca>; 'Thouin, Alena (ENERGY) (Alena.Thouin@ontario.ca)' <Alena.Thouin@ontario.ca>; Ramchandani, Rima <rramchandani@torys.com>; 'LEE John -TREASURY' <john.s.lee@opg.com>; 'RYFA Ken -TREASURY' <ken.ryfa@opg.com>; 'HAHN PARKER Janet -TREASURY' <j.hahnparker@opg.com>; 'MAUTI John -FIN & C CTRL' <john.mauti@opg.com>; 'LAURETA LAPIRA May -TREASURY' <may.lapira@opg.com>; Feldman, Michael <mfeldman@torys.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; Sebastiano, Rocco <RSebastiano@osler.com>; Milligan, Peter <PMilligan@osler.com>; Fullerton, Rick <RFullerton@osler.com>; 'Mayman, Gadi (OFA)' <Gadi.Mayman@ofina.on.ca>; 'Manning, Mike (OFA)' <Mike.Manning@ofina.on.ca>; 'Hanslep, Malle (MOF)' <Malle.Hanslep@ontario.ca>; 'ian.benaiah@rbccm.com' <ian.benaiah@rbccm.com>; 'Khan, Nur (nur.khan@rbccm.com)' <nur.khan@rbccm.com>; 'brent.r.taylor@rbccm.com' <brent.r.taylor@rbccm.com>; 'katrina.niehaus@gs.com' <katrina.niehaus@gs.com>; 'brian.delaney@gs.com' <brian.delaney@gs.com>; 'Maciel, Andrew' <Andrew.Maciel@cibc.com>; 'Adalja, Sunil' <Sunil.Adalja@cibc.com>; 'Persad, Nicole' <Nicole.Persad@cibc.com>; 'Persaud, Donnie - Debt Capital Markets' <Donnie.Persaud@cibc.com>; 'Steen Hume (CAB)' <Steen.Hume@ontario.ca>; Mansoori, Nina <nmansoori@torys.com>; Saulnier, Brett <bsaulnier@torys.com>; Olusoga, Yinka <yolusoga@torys.com>
Subject: Fair Hydro -- Change of Law Process Agreement

Blakes team,

Please find attached OPG and Torys' comments on the Process Agreement reflecting our discussions from yesterday's call. Please note that this draft is subject to continuing

review and comment by Osler and the dealers. As discussed at the tail end of our call yesterday, the section in the Process Agreement that gives the Province the right to object to new and material changes to transaction documents dovetails with the Protection Agreement so additional comments from Oslers may be forthcoming on this draft.

We are working on getting you a revised draft of the Protection Agreement either later today or tomorrow. In the meantime, please let us know if you have any comments or questions on the Process Agreement.

Best Regards,

Nina

Nina Mansoori

P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

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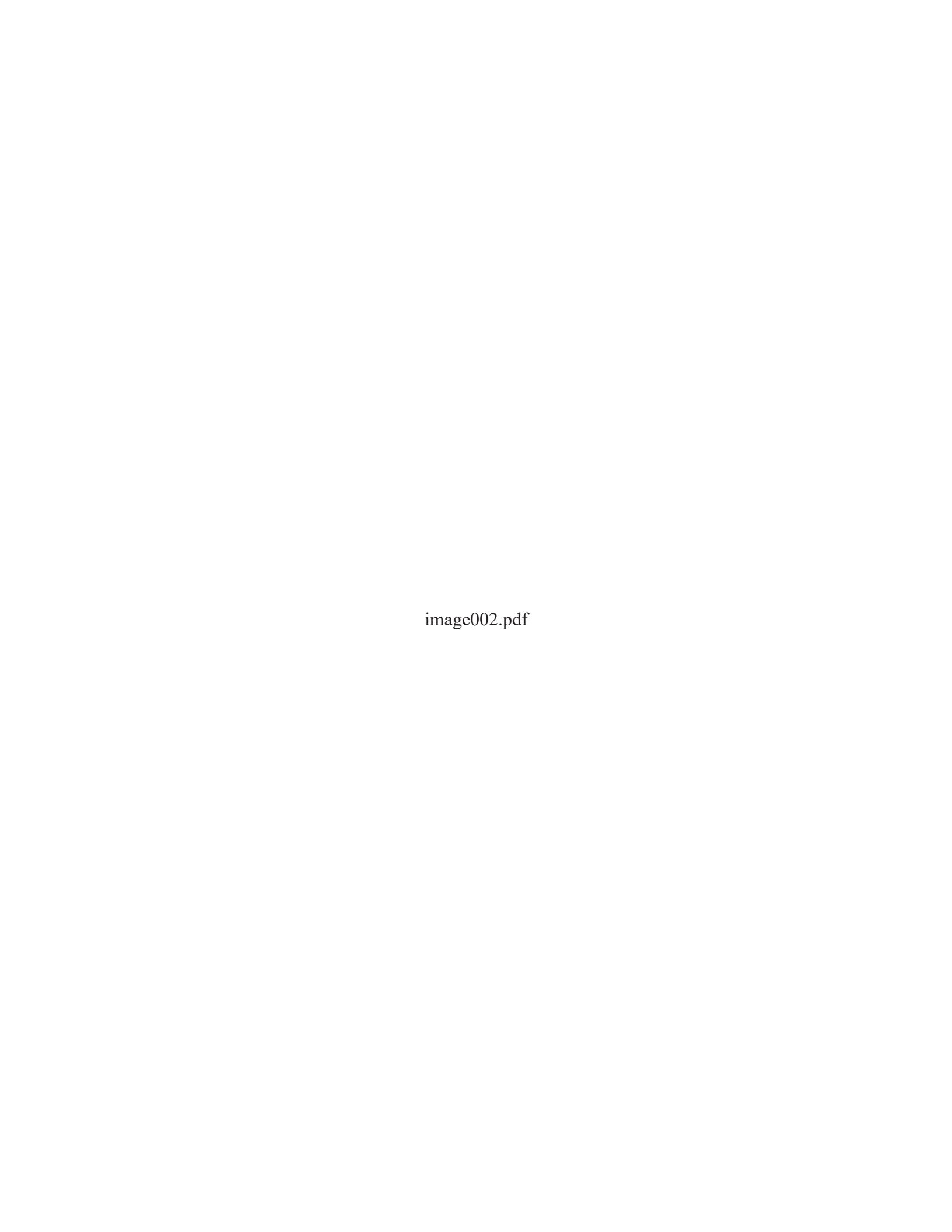
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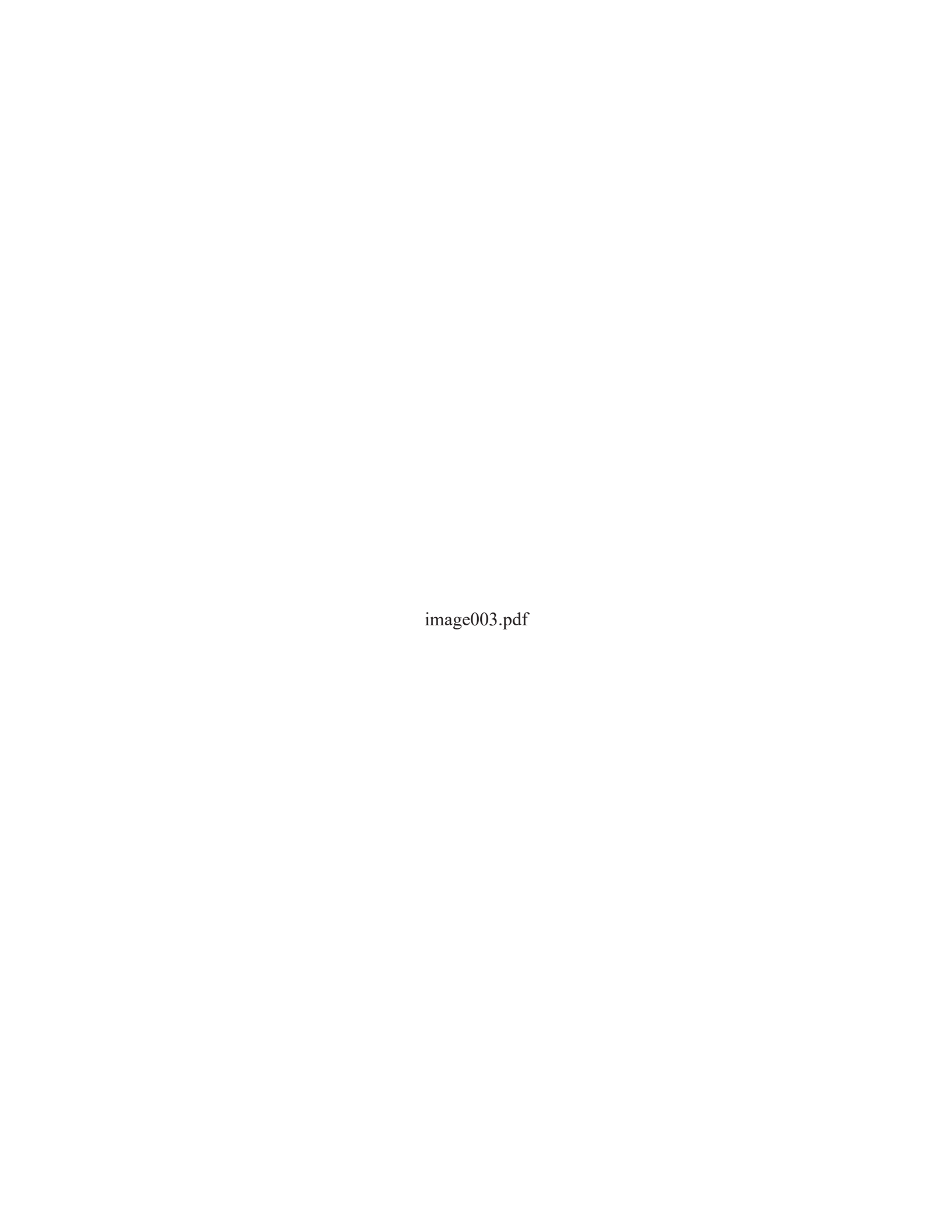
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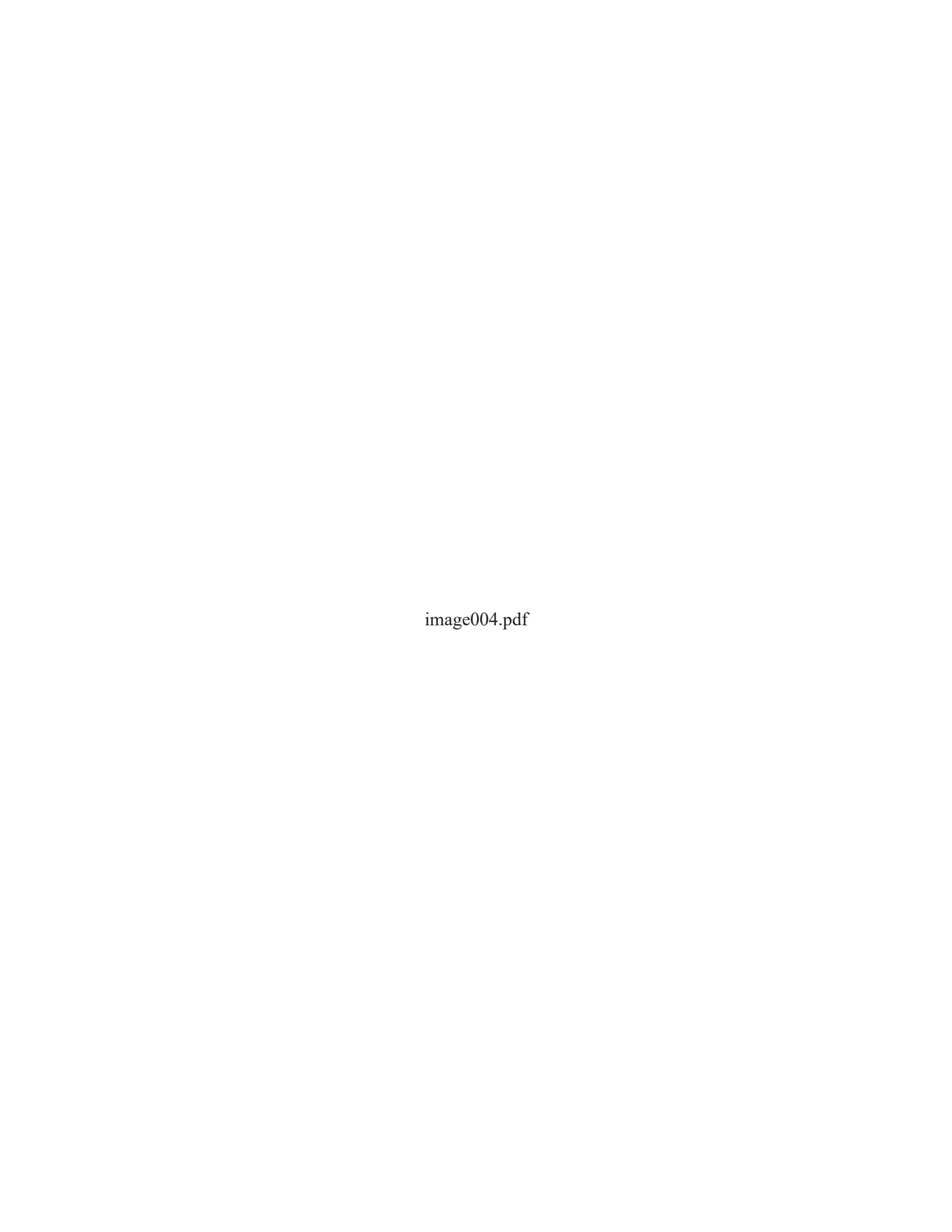
image004.pdf

Blakes

image005.pdf

TORYS
LLP

Compare Protection Agreement (Dec 4 (Province) v Dec 7 (Osler_Torys)).PDF

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY AND THE MINISTER OF FINANCE[1]

AND

COMPUTERSHARE TRUST COMPANY OF CANADA, AS TRUSTEE OF FAIR HYDRO TRUST

AND

ONTARIO POWER GENERATION INC., AS FINANCIAL SERVICES MANAGER AND AS MANAGER OF FAIR HYDRO TRUST

AND

BNY TRUST COMPANY OF CANADA, AS INDENTURE TRUSTEE

CHANGE OF LAW PROTECTION AGREEMENT

Dated as of [■], 2017

[1] Explanatory Note: Logistics of closing are under consideration by the Province.

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

RECITALS

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

Pursuant to an Order in Council ~~dated as of~~ 1981/2017 (the "**OIC**"), the Lieutenant Governor in Council has, among other things, authorized the Minister of Energy and the Minister of Finance, acting together on behalf of the Province of Ontario, to enter into one or more agreements to guarantee or indemnify the debts, obligations, securities or undertakings of one or more financing entities established or caused to be established pursuant to Subsection 22(2) of the Act by the FSM and that may incur Funding Obligations in connection with one or more Investment Interests.

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

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

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

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

AGREEMENT OF THE PARTIES

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

ARTICLE I
DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

1.01 Interpretation

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

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

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

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

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

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

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

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

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

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

1.02 Trustee to act in accordance with the Trust Indenture

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

1.03 ~~Intentionally Deleted~~Proof of Approved Obligations

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

Each statement delivered by the Manager under Section 2.01(a)i shall constitute *prima facie* evidence of the amount which, as at the date of the statement so prepared, is due and payable by the Financing Entity to the Beneficiaries and/or the Indenture Trustee and the Province hereby acknowledges and agrees that, absent manifest error, it shall be bound by each such statement. The Manager agrees to provide the Province with the computations and calculations used by the Manager to prepare each such statement promptly following a request therefor.[2]

1.04 Limitation on Rights of and Actions by Specified Creditors

Specified Creditors, as Beneficiaries, shall not have or be permitted to exercise any rights, interests, or elections under this Agreement, other than in the manner and to the extent effected and exercised under, in accordance with and subject to the limitations set forth in the Trust Indenture as of the date of this Agreement.

1.05 Province Retains Rights of Beneficiaries

Without limiting any rights of subrogation or succession that arise pursuant to applicable law or pursuant to the Province's rights as an assignee, subrogee or pursuant to Section 2.01 or Section 5.01, all of the rights, interests, elections and privileges that would arise in favour of a Beneficiary under the Trust Indenture or other Funding Obligation Agreement under which a related Primary Obligation arises shall automatically arise, vest in and be available to the Province to the extent of the performance by the Province of the Primary Obligation.

[2] This language was reinserted as the guarantee statements required to be delivered by the Manager should be binding on the Province.

1.06 Effect of Headings

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

1.07 Successors and Assigns

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

1.08 Severability

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction will not affect the validity or enforceability of any other provision hereof. To the extent permitted by applicable law, the parties waive any provision of law which renders any provision of this Agreement invalid or unenforceable in any respect.

1.09 Governing Law

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

1.10 Proceedings Against the Crown Act

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

1.11 Attornment

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

1.12 Counterparts; Electronic Delivery

This Agreement may be executed in any number of counterparts, each of which so executed will be deemed to be an original, but all such counterparts will together constitute one

and the same instrument. Delivery of an executed signature page to this Agreement by a party by electronic transmission will be as effective as delivery of a manually executed copy of the Agreement by such party.

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

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

1.14 Non-Business Days

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

1.15 Waiver, Amendment

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

1.16 Interest Act

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

1.17 Currency

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

1.18 References to Acts of the Financing Entity

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

1.19 Judgment Currency

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

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

ARTICLE II
AGREEMENT TO PERFORM APPROVED OBLIGATIONS

2.01 Limited Guarantee

(a) Upon the occurrence of a Protection Event, the Indenture Trustee ~~shall (unless the Rating Agency Condition has been satisfied with respect to a demand not being made as a result of the Protection Event),~~may deliver a written demand, substantially in the form attached as Exhibit A (a "**Payment Demand**"), to the Province requiring the Province to make payments in respect of the Approved Obligations at the times, in the amounts and subject to the requirements specified in this Agreement. From and after such delivery of a Payment Demand, the Province shall make the following payments in respect of the Approved Obligations (the "**Limited Guarantee**"), and the Financing Entity shall pay, and the Province shall be entitled to be paid, the Subrogation Entitlements specified below:

i. Not less than 3 Business Days prior to each day when any payment or payments are to be made in respect of one or more Approved Obligations occurring after such delivery of a Payment Demand (each such day, a "**Guarantee Payment Date**"), the Manager shall deliver a written statement setting forth the Aggregate Approved Obligations Amount, if any, in respect of the Approved Obligations that are due and payable on such Guarantee Payment Date, together with a detailed description identifying such Approved Obligations and the nature and amount of payments due and payable thereunder on the Guarantee Payment Date, the aggregate outstanding amount payable by the Financing Entity under such Approved Obligations as of the date of such written statement, and details regarding any default in performance by any party obligated thereunder.

ii. On each such Guarantee Payment Date, the Province shall deposit the Aggregate Approved Obligations Amount into the Protection Account.

iii. On each such Guarantee Payment Date, the Financing Entity and the Indenture Trustee shall ensure that the amounts on deposit in the Protection Account are applied to pay each Beneficiary to whom an amount is due and payable under an Approved Obligation on the Guarantee Payment Date the Approved Obligation Amount for such Beneficiary in respect of such Approved Obligation on such Guarantee Payment Date; provided that if the amount deposited pursuant to clause 2.01(a)ii is insufficient to pay all such Approved Obligation Amounts in full, the

amount on deposit in the Protection Account on the Guarantee Payment Date shall be applied to pay Beneficiaries in the order of priority in which such Approved Obligations are payable under the payment provisions of the Trust Indenture applicable to the making of such payments on the Guarantee Payment Date (each, a "**Beneficiary Payee**" and each payment made to a Beneficiary Payee on a Guarantee Payment Date, a "**Guarantee Payment**").

iv. On any Guarantee Payment Date on which an amount is paid by the Province pursuant to clause 2.01(a)ii, the applicable payment provisions of the Trust Indenture shall, notwithstanding the express terms of such provisions set forth in the Trust Indenture, be applied and operate on the following basis:

(A) [2]the amount payable to a Beneficiary Payee in respect of an Approved Obligation from amounts available under such payment provisions on such Guarantee Payment Date shall be reduced by the amount of the Guarantee Payment paid to the Beneficiary Payee pursuant to clause 2.01(a)iii in respect of such Approved Obligation on such Guarantee Payment Date;

(B) the Province shall be paid the amount payable to a Beneficiary Payee in respect of an Approved Obligation from amounts available to pay the Beneficiary Payee under such payment provisions on the Guarantee Payment Date, determined without regard to the Guarantee Payment paid on such Guarantee Payment Date and the corresponding reduction of the amount owing to the Beneficiary Payee pursuant to subclause 2.01(a)iv(A) (each such amount payable to the Province being a "**Subrogation Amount**");

(C) no Beneficiary having a right to be paid an amount in respect of an Approved Obligation, and no other Person entitled under an Obligation Secured, in each case that ranks equal with or subordinate to an Approved Obligation in respect of which a Subrogation Amount is payable to the Province

~~[2] Explanatory Note: In a particular period, the cash available from CEAs may exceed the aggregate Finance Amounts payable - for example, as a result of the "true-up" under the Act, which will determine the actual amount of cash available. The basic structure is that the Province will pay all Approved Obligation Amounts, and will be entitled to receive all cash flows available to the Beneficiary Payees. Limiting the subrogation amounts to the lesser of such available cash and the Guarantee Payments could result in leakage of the cash that the Province looks to under this arrangement.~~

under subclause 2.01(a)iv(B), shall be entitled to make any claim or assert any right in or to the amounts paid or payable to the Province under such subclause (including any right of reimbursement, contribution or indemnity) and no such Beneficiary or other Person shall have any right or interest in, to or under the Collateral or any proceeds therefrom in respect of any such Subrogation Amount;

(D) [3]on the first day when any payment or payments are to be made in respect of Obligations Secured that occurs ~~on or~~ after the date on which all amounts payable under all Approved Obligations have been paid in full, whether pursuant to Guarantee Payments or payments made pursuant to the payment provisions of the Trust Indenture or any combination thereof, the Province shall be entitled to be paid from amounts available to pay Obligations Secured on such day (and thereafter on each subsequent day when any payment or payments are to be made in respect of Obligations Secured, until paid in full), in each case in accordance with the applicable payment provisions of the Trust Indenture on such day, the following amounts ~~(each, a "**Final Subrogation Amount**")~~, in each case in the priorities specified below:

(I) as an amount ranking equally with ~~[~~principal amounts of Senior Funding Obligations~~]~~[4], the amount by which (1) the sum of (x) all Guarantee Payments paid by the Province up to and including such day in respect of Approved Obligations ranking equally with or prior to ~~[~~principal amounts of Senior Funding Obligations~~]~~, plus (y) the sum of amounts determined in respect of interest on each such Guarantee Payment from and including the date of its payment by the Province to but excluding the date a Subrogation Amount is paid to the Province

[3] ~~Explanatory Note: The Province will be entitled to receive subrogation cash flows after satisfaction of all Approved Obligations. This provision provides how that these amounts will be payable from available cash flows, based on priorities that address cash entitlements opposite non-guaranteed obligations secured (e.g., after a suspension event). Conforming changes will need to be made to the Trust Indenture once these mechanics have been settled.~~

[4] ~~Explanatory Note: Nomenclature to be conformed, once the corresponding provisions of the Trust Indenture have been settled.~~

in respect of such Guarantee Payment, as attributed to such Guarantee Payment in accordance with the Trust Indenture and calculated based on the applicable interest rate borne by the Approved Obligation to which such Guarantee Payment related[5], exceeds (2) the sum of all Subrogation Amounts paid to the Province up to and including such day (such amount, the "**Senior Final Subrogation Amount**");

(II) as an amount ranking equally with [principal amounts of Subordinated Funding Obligations], the amount by which (1) the sum of (x) all Guarantee Payments paid by the Province up to and including such day in respect of Approved Obligations ranking equally with or prior to [principal amounts of Subordinated Funding Obligations], plus (y) the sum of amounts determined in respect of interest on each such Guarantee Payment from and including the date of its payment by the Province to but excluding the date a Subrogation Amount is paid to the Province in respect of such Guarantee Payment, as attributed to such Guarantee Payment in accordance with the Trust Indenture and calculated based on the applicable interest rate borne by the Approved Obligation to which such Guarantee Payment related, exceeds (2) the sum of (x) all Subrogation Amounts paid to the Province up to and including such day, plus (y) the amount determined under (I) (such amount, the "**Subordinated Final Subrogation Amount**"); and

(III) as an amount ranking equally with [principal amounts of Junior Subordinated Obligations], the amount by which (1) the sum of (x) all Guarantee Payments paid by the Province up to and including such day in respect of Approved Obligations ranking equally with or prior to [principal amounts of

[5] Explanatory Note: Nomenclature to be conformed, once the corresponding provisions of the Trust Indenture have been settled.

Junior Subordinated Funding Obligations], plus (y) the sum of amounts determined in respect of interest on each such Guarantee Payment from and including the date of its payment by the Province to but excluding the date a Subrogation Amount is paid to the Province in respect of such Guarantee Payment, as attributed to such Guarantee Payment in accordance with the Trust Indenture and calculated based on the applicable interest rate borne by the Approved Obligation to which such Guarantee Payment related, exceeds (2) the sum of (x) all Subrogation Amounts paid to the Province up to and including such day, plus (y) the sum of the amounts determined under (I) plus (z) the sum of the amounts determined under (II) (such amount, the "**Junior Subordinated Final Subrogation Amount**" and, together with the Senior Final Subrogation Amount and the Subordinated Final Subrogation Amount, the "**Final Subrogation Amounts**")[3]; and

(E) no Person entitled under an Obligation Secured that ranks equal with or subordinate to a Final Subrogation Amount shall be entitled to make any claim or assert any right in or to the amounts paid or payable to the Province in respect of such Final Subrogation Amount and no such Person shall have any right or interest in, to or under the Collateral or any proceeds therefrom in respect of any such Final Subrogation Amount.

v. On any Guarantee Payment Date, the Indenture Trustee shall release and pay to the Province free and clear of any Liens any amount remaining on deposit in the Protection Account that has not been applied to pay Guarantee Payments to Beneficiary Payees on the Guarantee Payment Date in accordance with clause 2.01(a)iiiiii.

[3] Separate definitions were included to facilitate inserting these amounts into Trust Indenture priority of payment provisions.

vi. In preparing any payment instructions under the Trust Indenture, the Manager shall reflect the amounts payable under Section 2.01(a).

(b) The Province shall, as a payee of Subrogation Amounts under clause 2.01(a)~~(~~iv~~)~~(B), as a payee of each Final Subrogation Amount under clause 2.01(a)(iv)(~~B~~D) and as a payee of any amounts payable under clause 2.01(a)~~(~~v~~)~~, be a "Specified Creditor" under the Trust Indenture and have the benefit of the Collateral thereunder.

(c) For greater certainty, the Limited Guarantee will not apply to any amount or obligation of the Financing Entity that is not or does not arise under an Approved Obligation and will be limited to the right to receive the Approved Obligation Amounts, if any, for payment to Beneficiary Payees and will be subject to the priorities and to the Province's rights to Subrogation Entitlements, set forth in Section 2.01(a).

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

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

(f) The right to deliver a Payment Demand and thereupon enforce the Limited Guarantee shall constitute the only remedy available to the Indenture Trustee (and to the Beneficiaries, to the extent they are permitted to exercise any rights, interests, or elections under and in accordance with the Trust Indenture) under this Agreement. Under no circumstances shall the Province be obligated to pay or indemnify the Indenture Trustee or any Beneficiary for consequential, special or punitive damages, or for economic loss or loss of profits; provided that, for greater certainty, economic loss shall not include any amount in respect of any amount due and payable to a Beneficiary Payee under the Limited Guarantee.

2.02 Intentionally Deleted.

2.03 Absence of Set-off

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

2.04 Payment into Protection Account in Satisfaction

(a) On or before the date of delivery of a Payment Demand to the Province, the Indenture Trustee shall cause to be established and maintained an Eligible Deposit Account (the "**Protection Account**") in the name of the Indenture Trustee, bearing a designation clearly indicating that the funds and other property credited thereto are held for the benefit of the Indenture Trustee and the Beneficiaries. The Protection Account shall be under the control of the Indenture Trustee for the benefit of the Beneficiaries. If, at any time, the institution holding the Protection Account ceases to be an Eligible Institution, the FSM shall notify the Indenture Trustee, and the Indenture Trustee upon being notified in writing of such ineligibility (or the FSM on its behalf) shall within 30 days (or such longer period, not to exceed 45 days, so long as the Rating Agency Condition is satisfied) establish a new Protection Account that is an Eligible Deposit Account and shall transfer any funds or other property from such Protection Account to such new Protection Account. From the date each such new Protection Account is established, it shall be the "Protection Account" for purposes of this Agreement. Funds credited to the Protection Account will be invested and held in accordance with Section **[7.03]** of the Trust Indenture on the basis that it is an Issuer Account.

(b) Notwithstanding the priority of payment requirements set forth in the Trust Indenture and any legal rule concerning the imputation of payments, the Financing Entity and the Indenture Trustee shall ensure that all amounts paid by the Province into the Protection Account on a Guarantee Payment Date in respect of an Approved Obligation are applied to pay the amounts due and payable to the Beneficiaries as and to the extent provided for in Section 2.01(a). Upon a payment having been made by or on behalf of the Province into the Protection Account, the amounts so paid shall for all purposes be considered to have been applied to pay the applicable Beneficiaries as provided for in Section 2.01(a) and thereby reduce the amount due and payable to such Beneficiaries in respect of the applicable Approved Obligations, whereupon an affected Beneficiary shall have no continuing rights, interests or entitlements (including rights as a secured party) in respect of the Approved Obligation to the extent so paid. For greater certainty, the obligations arising in respect of an applicable Approved Obligation shall not be reduced by such payment as the Province shall become entitled to be paid related Subrogation Entitlements and the rights contemplated under Section 2.01(a) and Section 5.01 in relation to such continuing obligations.

2.05 Certain Waivers

The Province hereby waives:

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

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

(c) diligence; and

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

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

2.06 Additional Security

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

2.07 Continuing Liability of the Province

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

2.08 Continuance of the Limited Guarantee

Subject to Section 2.07, the Limited Guarantee shall continue in full force and effect until the indefeasible payment, observance and performance in full of the Approved Obligations in accordance with Section 8.01.

2.09 Modifications of Approved Obligations

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

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

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

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

ARTICLE III
THE INDENTURE TRUSTEE

3.01 The Indenture Trustee

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

3.02 Acceptance of Trusts

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

ARTICLE IV
APPROVED OBLIGATIONS

4.01 Approval Process

A Primary Obligation shall constitute an Approved Obligation if (i) the Adherence Conditions applicable thereto have been satisfied at the time the Primary Obligation was incurred, or (ii) the Province, in its sole discretion, designates in writing that it is an Approved Obligation.

4.02 Adherence Conditions

(a) The following shall be the Adherence Conditions applicable in relation to each Certified Primary Obligation:

i. ~~(a)~~ the Certified Primary Obligation when incurred is an Obligation Secured under the Trust Indenture; and

ii. ~~(b)~~ OPG, as FSM, delivers ~~a certificate~~an Adherence Compliance Certificate in the form attached hereto as Exhibit B-1 signed by the Chief Financial Officer and the Treasurer of OPG, or any two Executive Officers of OPG (for clarity, such certificate is to be provided by such officers in their capacity as officers of OPG acting in its capacity as FSM) and addressed to the Indenture Trustee, on or before the incurrence of a Certified Primary Obligation (provided that delivery may not be more than 5 Business Days before the incurrence of the Certified Primary Obligation)~~, confirming that OPG has delivered to the Province a certificate signed by the Chief Financial Officer and the Treasurer of OPG, or any two Executive Officers of OPG (for clarity, such certificate is to be~~* ~~provided by such officers in their capacity as officers of OPG acting in its capacity as FSM) confirming that OPG has complied with all of its obligations to the Province and internal requirements and processes in connection with the adherence of the Limited Guarantee to the Certified Primary Obligation~~*;[4] and

iii. ~~(c) in respect of a Certified Primary Obligation other than a Refinancing of a Primary Obligation in respect of which the Adherence Conditions had been satisfied,~~ the Province has not provided a Suspension Notice to the Indenture Trustee, OPG and the Financing Entity.

(b) The following shall be the Adherence Conditions applicable in relation to each Refinancing:

i. such Refinancing when incurred is an Obligation Secured under the Trust Indenture; and

ii. OPG, as FSM, delivers an Adherence Compliance Certificate in the form attached hereto as Exhibit B-2 signed by the Chief Financial Officer and the Treasurer of OPG, or any two Executive Officers of OPG (for clarity, such certificate is to be provided by such officers in their capacity as officers of OPG acting in its capacity as FSM) and addressed to the Indenture Trustee and the Province, on or before the incurrence of the Refinancing (provided that delivery may not be more than 5 Business Days before the incurrence of such Refinancing).[5]

[4] Given the importance of this certificate, the form of the Adherence Compliance Certificate is set out in Exhibit B-1 to this Agreement and accordingly this language has been deleted from this para (ii) and is reproduced in the form of certificate attached as Exhibit B-1.

[5] Given the importance of this certificate, the form of the Adherence Compliance Certificate is set out in Exhibit B-2 to this Agreement.

For greater certainty, (y) satisfaction of the Adherence Conditions for a Certified Primary Obligation or a Refinancing shall be deemed satisfaction of the Adherence Conditions in respect of all principal, interest and other amounts owing under the Certified Primary Obligation or the Refinancing, as applicable, as such Certified Primary Obligation or Refinancing may be amended, restated, supplemented or otherwise modified from time to time, and (z) there shall be no Adherence Conditions applicable in relation to a Primary Obligation that is not a Certified Primary Obligation or a Refinancing.

4.03 Evidence of Satisfaction

~~A closing certificate~~An Adherence Compliance Certificate delivered in accordance with Section 4.02(~~b) in connection with an incurrence of a Certified Primary Obligation~~a)ii or in accordance with Section 4.02(b)ii, as the case may be, shall be determinative as to whether the applicable Adherence Conditions with respect thereto have been satisfied, notwithstanding that such certificate may include inaccuracies, be incomplete or otherwise be defective or deficient, and such closing certificate may be relied upon by any addressee as conclusive evidence of same. ~~A closing certificate~~An Adherence Compliance Certificate that purports on its face to be signed by officers specified in Section 4.02(~~b~~)a)ii or Section 4.02(b)ii, as applicable, may be relied upon by any addressee without further enquiry or evidence as to the incumbency or signatures of such officers. If ~~a closing certificate~~an Adherence Compliance Certificate is not delivered in accordance with the timing requirements of Section 4.02(~~b) in respect of a Certified Primary Obligation~~a)ii or Section 4.02(b)ii, as applicable, such certificate may be delivered at a later date, and be effective as if it had been delivered in accordance with the timing requirement of Section 4.02(~~b~~)a)ii or Section 4.02(b)ii, as applicable, if at the time such certificate was required to be delivered OPG had delivered to the Province all certifications required by the Province in connection with the adherence of the Limited Guarantee to the Certified Primary Obligation or the Refinancing.

ARTICLE V
PROVINCE MATTERS

5.01 Assignment and Subrogation

(a) Upon paying an amount in respect of an Approved Obligation to or at the direction of the Indenture Trustee in satisfaction of the Limited Guarantee, the Province (in addition to and without prejudice to any rights it otherwise has in law or equity) shall be subrogated and entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Approved Obligation to the extent of such payment, including (i) the right and entitlement to be paid and receive the related Subrogation Entitlements, (ii) the benefits of the related Collateral and (iii) all proceeds therefrom. The Province shall have and be entitled to enforce all rights and interests (including as a Specified Creditor under the Trust Indenture on the basis contemplated in Section 5.01(b)), under and in respect of such Approved Obligation to the extent of the payment by the Province in

respect of the Approved Obligation as an absolute assignee of the applicable Beneficiary, with effect from and after the time of such payment, without any further requirement for notice to or acceptance by the Financing Entity of such absolute assignment and without any reduction, set-off or counterclaim on account of any amounts that may, at or after the time of payment, be or become owing by the Beneficiary to the Financing Entity and unaffected by any other rights or equities that arise thereafter as between the Beneficiary and the Financing Entity. The Indenture Trustee shall recognize the Province as being entitled to all of the rights, interests and entitlements of the Beneficiary (including as a Specified Creditor under the Trust Indenture on the basis contemplated in Section 5.01(b)) in respect and to the extent of the Approved Obligation so paid, determined as of the time of payment, for all purposes under the Trust Indenture, and the Province shall be treated as a Specified Creditor in respect thereof for all purposes under the Trust Indenture and any other agreement under which the Approved Obligation arises.

(b) The Province (i) acknowledges and agrees in favour of the Indenture Trustee that, upon being subrogated and entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Approved Obligation in accordance with Section 5.01(a), the Province, in its capacity as a Specified Creditor, will be subject to the provisions applicable to Specified Creditors under the Trust Indenture, including ~~[~~Sections **[7.04]** through **[7.11]** and **[8.13]** (Payment Priorities), Section **[7.12]** (Payments Held in Trust), Section **[8.11]** (Control by Controlling Class Creditors), Section **[8.12]** (Limitation on Suits), Section **[8.14]** (Limited Recourse), Article IX (The Indenture Trustee), including all limitations of liability thereunder, Section **[9.14]** (Communications to Specified Creditors) and Section **[16.01]** (No Petition)~~]~~; (ii) consents, requests and authorizes the Issuer and the Indenture Trustee to (x) add the Province to the register of Specified Creditors described in subsection **[13.13(b)]** of the Trust Indenture and (y) disseminate the notice details of the Province to other Specified Creditors for the purposes set out in subsection **[9.14(b)]** of the Trust Indenture, and (iii) confirms that it will execute and deliver, or cause to be executed and delivered, all such further agreements, documents and instruments in connection with this Section 5.01 as the Indenture Trustee may request from time to time for the purpose of giving effect to the terms of this Section ~~5.01.~~5.01.

5.02 Priorities

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

extent of the priorities established in relation to the Approved Obligation under the Trust Indenture in the manner and to the extent contemplated in Section [**7.10**~~(d)~~] of the Trust Indenture.

5.03 Intentionally Deleted

5.04 Representations and Warranties

The Province hereby represents and warrants that:

(a) the execution and delivery of, and the performance of its obligations under, this Agreement by the Province have been authorized by all necessary action on the part of the Province;

(b) the execution and delivery of, and the performance of its obligations under, this Agreement by the Province do not result in the violation of any applicable law; and

(c) this Agreement has been duly executed and delivered by the Province.

ARTICLE VI
INDENTURE TRUSTEE MATTERS

6.01 Limited Recourse

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

6.02 Not Responsible for Recitals

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

6.03 Representations and Covenants of the Indenture Trustee[6]

The Indenture Trustee represents, warrants and covenants that:

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

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

(c) this Agreement has been duly executed and delivered by the Indenture Trustee and constitutes its legal, valid and binding obligation in accordance with its terms; and

(d) ~~(b)~~ the Indenture Trustee is authorized to carry on the business of a trust company in each of the provinces and territories of Canada. If, notwithstanding the provisions of this subsection 6.03(d), the Indenture Trustee ceases to be so authorized to carry on business, the validity and enforceability of this Agreement shall not be affected in any manner whatsoever by reason only of such event.

ARTICLE VII
SUSPENSION OF ADHERENCE FOR NEW PRIMARY OBLIGATIONS

7.01 Suspension Notice

Upon:

(a) a Program Breach;

(b) a default in the performance, or breach, of any covenants of OPG, as FSM, or OPG, in its corporate capacity, in each case to the Province in connection with its obligations to the Province pursuant to internal requirements and processes in connection with the ~~provision~~adherence of the Limited Guarantee~~, which continues for thirty (30) days after written notice by the Province to OPG of such default or breach~~ to the Certified Primary Obligations and the expiration of any applicable cure period;

(c) a representation or warranty made by OPG or a certification made by one or more officers of OPG, in each case whether as FSM or in its corporate capacity, to the Province in connection with its obligations to the Province pursuant to internal requirements and processes in connection with the ~~provision~~adherence of the Limited Guarantee to the Certified Primary Obligations, proves to be incorrect in

[6] Explanatory Note: ~~The Province is content to receive the same~~Indenture Trustee representations ~~as are provided~~have been conformed to the MTI and are subject to review and sign off by the Indenture Trustee ~~should be under the Trust Indenture. Please conform.~~

any material respect on the date made and, if curable, is not cured within thirty (30) days after written notice by the Province to OPG of such misrepresentation; or

(d) the FSM no longer being the Manager or actions having been taken by or on behalf of the Indenture Trustee to remove the FSM as the Manager,

the Province may declare that the Limited Guarantee under this Agreement shall not apply to any Primary Obligations incurred on or after such declaration, other than any Refinancing of a Primaryan Approved Obligation in respect of which the Adherence Conditions had previously been satisfied (provided that theor if such Refinancing is otherwise an Approved Obligation), by delivering a written notice in the form of Exhibit BC (a "**Suspension Notice**") to the Indenture Trustee, the FSM and the Financing Entity.[7]

The Limited Guarantee shall apply to any Certified Primary Obligation incurred after a Suspension Event on the basis that it is a Refinancing (provided that such Refinancing is an Approved Obligation) only if the FSM certifies to the Province in writing prior to the incurrence that the proceeds of such incurrence* will be used solely for the *purposes of repaying one or more Certified Primary Obligations incurred prior to the Suspension Event and to which the Limited Guarantee adhered as of the time the Suspension Event occurred, and the delivery of such written certification by the FSM to the Province shall be determinative for the purposes of concluding that such incurrence is a Refinancing for the purposes of Sections 7.01, 7.02 and 7.03.

7.02 Suspension

If a Suspension Notice has been provided under Section 7.01 (the provision of such notice being a "**Suspension Event**"), the Limited Guarantee shall not apply in respect of: (i) any Primary Obligation incurred or amended(ii) any amendment of any Primary Obligation that results in an increase to the principal amount of such Primary Obligation, in each case, on or after the time such Suspension Notice is delivered, other than any Refinancing of a Primaryan Approved Obligation in respect of which the Adherence Conditions had previously been satisfied (provided that theor if such Refinancing is otherwise an Approved Obligation).

7.03 No Impact on Adherence

For greater certainty, the occurrence of a Suspension Event or a failure by the FSM or the Financing Entity to perform its covenants under this Agreement will not invalidate or extinguish the obligations of the Province under the Limited Guarantee in respect of Approved Obligations in existence prior to the occurrence of the Suspension Event or in respect of any Refinancing of a Primaryan Approved Obligation in respect of which the Adherence Conditions had previously been satisfied (provided that theor if such Refinancing is otherwise an Approved Obligation).

[7] The paragraph that was deleted from Section 7.01 was modified slightly and moved to the form of the Adherence Compliance Certificate set out in Exhibit B-2 as the Adherence Condition for the Refinancing so that it is clear what conditions have to be satisfied for a Refinancing to be an Approved Obligation. As discussed in our meeting with the principals and in response to the DBRS comments, debt issued on a refinancing of protected debt should continue to be protected debt.

ARTICLE VIII
MISCELLANEOUS

8.01 Term of Agreement

This Agreement will continue until the date that no amount is or may become due and payable by the Province under the Limited Guarantee.

8.02 Notices

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

(a) if to the Financing Entity:

Fair Hydro Trust

700 University Avenue

Toronto, Ontario M5G 1X6
Attention: General Counsel
Fax: (416) 592-4189

with copies to:

Computershare Trust Company of Canada, in its capacity as Financing Entity Trustee for Fair Hydro Trust
100 University Avenue, 11th Floor
Toronto, Ontario M5J 2Y1
Attention: Manager, Corporate Trust
Fax: (416) 981-9777
Email: corporatetrust.toronto@computershare.com

(b) if to the FSM:

Ontario Power Generation Inc.

700 University Avenue

Toronto, Ontario M5G 1X6

Attention: General Counsel
Fax: (416) 592-4189

(c) if to the Province:

Ministry of Finance

[Address]

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

and

Ministry of Energy

[Address]

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

(d) if to the Indenture Trustee:

[Address]

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

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

8.03 Assignment

(a) None of the rights or obligations hereunder shall be assignable or transferable by any party without the prior written consent of the other parties, except as otherwise provided for herein.

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

8.04 Enurement

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

8.05 FIPPA

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

8.06 No Petition

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

8.07 Notice to Rating Agencies

OPG, as FSM, shall deliver prompt written notice to the Rating Agencies ~~on~~of the occurrence of (i) a Protection Event; (ii) receipt of a Suspension Notice delivered by the Province pursuant to Section 7.01; and (iii) an assignment of this Agreement by any party pursuant to Section 8.03.

8.08 Third Party Rights

This Agreement is not intended to create rights for any Person not party to this Agreement. Beneficiaries derive their benefits hereunder through the Indenture Trustee and shall be subject to the provisions applicable to Specified Creditors in the Trust Indenture.

8.09 Delivery of Executed Copies

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

[Signature page to follow]

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

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

By: _____
Name:
Title:

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

By: _____
Name:
Title:

ONTARIO POWER GENERATION INC., AS FSM AND AS MANAGER

By: _____
Name:
Title:
By: _____
Name:
Title:

COMPUTERSHARE TRUST COMPANY OF CANADA, IN ITS CAPACITY AS TRUSTEE OF FAIR HYDRO TRUST, AS ISSUER, BY ONTARIO POWER GENERATION INC., NOT IN ITS INDIVIDUAL CAPACITY BUT SOLELY AS MANAGER

By: _____
Name:
Title:
By: _____
Name:
Title:

BNY TRUST COMPANY OF CANADA, AS INDENTURE TRUSTEE AND NOT IN ITS INDIVIDUAL CAPACITY

By: _____
Name:
Title:

By: _____
Name:
Title:

SCHEDULE A
DEFINED TERMS

"**Acceleration**" has the meaning ascribed to the term "acceleration of a funding obligation" in the General Regulation.

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

"**Action**" has the meaning ascribed thereto under the Trust Indenture.

"**Adherence Compliance Certificate**" means a certificate in the form attached hereto as Exhibit B-1 or Exhibit B-2, as applicable, delivered by the FSM in accordance with Section 4.02(a)ii or Section 4.02(b)ii.

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

"**Aggregate Approved Obligations Amount**" means, in respect of a Guarantee Payment Date, the aggregate of the Approved Obligation Amounts for such Guarantee Payment Date.

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

"**Approved Obligation Amount**" means, for a Beneficiary in respect of an Approved Obligation under which an amount is due and payable on a Guarantee Payment Date:

(a) if no Acceleration has occurred in respect of any Obligation Secured on or before the Guarantee Payment Date, the amount due and payable to the Beneficiary on such Guarantee Payment Date in respect of the Approved Obligation (for greater certainty, determined on the assumption that there are adequate amounts available under the applicable payment provisions of the Trust Indenture to pay in full all amounts referred to in such payment provisions that are due and payable on the Guarantee Payment Date); and

(b) if an Acceleration has occurred in respect of any Obligations Secured on or before the Guarantee Payment Date, the amount that would be available to be paid to the Beneficiary on such Guarantee Payment Date in respect of the Approved Obligation under the applicable payment provisions of the Trust Indenture, determined on the assumption that the amount available for allocation to Specified Creditors in accordance with such applicable payment provisions of the Trust Indenture in respect of each relevant month during each Reference Period is equal to the estimated Finance Amount determined in respect of such Reference Period for purposes of section 15(1) of the Act (in effect on the date hereof), including section 6.1 of the General Regulation (in effect on the date hereof), divided by the number of months in such Reference Period.

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

"**Beneficiary Payee**" has the meaning ascribed thereto in Section 2.01(a)iii.

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

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

"**Certified Primary Obligations**" means Primary Obligations that are: (i) incurred by or on behalf of the Financing Entity to fund its ownership of an Investment Interest~~ or to repay payment obligations that were incurred by or on behalf of the Financing Entity to fund its ownership of an Investment Interest,~~[7], in which case the Certified Primary Obligation therefor shall be the Funding Obligation Agreement applicable to such Funding Obligation and not each individual borrowing or utilization thereunder, (ii) incurred by or on behalf of the Financing Entity upon the Financing Entity entering into a Derivative Agreement, in which case the Certified Primary Obligation therefor shall be the Master Agreement applicable to such Derivative Agreement and not each individual trade confirmation, or (iii) incurred by or on behalf of the Financing Entity upon entering into a contract that has a term of more than three (3) years which is not terminable by the Financing Entity giving three (3) years' notice or less and aggregate minimum payments by the Financing Entity thereunder during the term of such contract is in excess of C$5,000,000 (that, for greater certainty, is not otherwise captured in clauses (i) and (ii) above); provided that "**Certified Primary Obligations**" shall not include any Refinancing.

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

"**Collateral**" has the meaning ascribed thereto in the Trust Indenture.

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

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

"**Eligible Deposit Account**" has the meaning ascribed thereto in the Trust Indenture.

"**Eligible Institution**" has the meaning ascribed thereto in the Trust Indenture.

[7] ~~Explanatory Note: Province requires a Process Certificate for each monthly draw.~~

"**Executive Officer**" has the meaning ascribed to the term "executive officer" in National Instrument 51-102 – *Continuous Disclosure Obligations* of the Canadian Securities Administrators.

"**Final Subrogation Amount**" has the meaning ascribed thereto in subclause 2.01(a)iv(D).

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

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

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

"**Financing Entity Trustee**" has the meaning ascribed thereto in the first paragraph of this Agreement until a successor Financing Entity Trustee shall have become such pursuant to the applicable provisions of the Trust Indenture and the Declaration of Trust, and thereafter "Financing Entity Trustee" means and includes such Person.

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

"**Funding Obligation**" has the meaning ascribed to the term "funding obligation" in the Act as of the date of this Agreement.

"**Funding Obligation Agreement**" has the meaning ascribed thereto in the Trust Indenture.

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

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

"**Guarantee Payment Date**" has the meaning ascribed thereto in Section 2.01(a)i.

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

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

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

"**Investment Interest**" has the meaning ascribed to the term "investment interest" in the Act as of the date of this Agreement.

"**Issuer Account**" has the meaning ascribed thereto in the Trust Indenture.

"**Issuer Funding Obligation**" has the meaning ascribed thereto in the Trust Indenture.

"**Junior Subordinated Final Subrogation Amount**" has the meaning ascribed thereto in subclause 2.01(a)iv(D).

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

"**Lien**" has the meaning ascribed thereto in the Trust Indenture.

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

"**Management Agreement**" means the management agreement dated [■], 2017 between the Manager and the Financing Entity, as amended, supplemented, restated or otherwise modified from time to time.

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

"**Master Agreement**" means an agreement in the form of ~~an ISDA~~a Master Agreement as published by ISDA or any replacement or substitute or functional equivalent of such agreement.

"**Master Transfer and Servicing Agreement**" means the master transfer and servicing agreement dated [■], 2017 between the Financing Entity and IESO, as amended, supplemented, restated or otherwise modified from time to time.

"**Obligations Secured**" has the meaning ascribed thereto in the Trust Indenture.

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

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

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

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

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

"**Primary Obligations**" means any Obligation Secured (a) that is a Funding Obligation or (b) that otherwise is a payment obligation of the Financing Entity that gives rise to a Finance Amount, in each case other than (i) any amounts required to be deposited by or on behalf of the Financing Entity into any Capital Account or Finance Reserve Account ~~or required to be held in~~

~~the Collection Account after the application of amounts under the applicable payment provision of the Trust Indenture on an applicable payment date~~[8]; and (ii) any obligation to pay the Financing Entity or on the Financing Entity's direction any remaining amounts in the Collection Account pursuant to the Trust Indenture.

"**Program Agreements**" has the meaning ascribed thereto in the Trust Indenture.

"**Program Breach**" means an acceleration of Funding Obligations in accordance with the provisions of the Trust Indenture or an event of default, early amortization event[98], termination event or similar event or circumstance (including any event that with the passage of time or the giving of notice would become such an event) of or in respect of the obligations of any party under any Program Agreement, including under this Agreement, the Trust Indenture, the Master Transfer and Servicing Agreement or any Derivative Agreement.

"**Protection Account**" has the meaning ascribed to such term in Section 2.04(a).

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

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

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

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

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

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

in each case, that materially and adversely affects (a) the ability of the Financing Entity to receive amounts in respect of its Investment Interest so that it can pay Obligations Secured, or (b) this Agreement or any of the agreements under which Obligations Secured arise; or

[8] ~~Explanatory Note: The Trust Indenture states that if extra cash is available in the Collections Account, it can be held until a subsequent Payment Date.~~

[98] Explanatory Note: Early amortization events may be included in a supplemental indenture, so retaining that concept makes sense.

(b) a court of competent jurisdiction determines that all or a portion of the Act or the regulations made under the Act, as in effect on the date hereof, is *ultra vires* or invalid in a way that materially and adversely affects the ability of the Financing Entity to receive amounts in respect of its Investment Interest so that it can pay Obligations Secured and that has the effect of the Financing Entity not in fact having sufficient funds to pay such Obligations Secured that have become due and payable.

For clarity, for purposes of the definition of "Protection Event", the occurrence of an event described in any of clauses (i) to (v) of paragraph (a) or a determination by a court of competent jurisdiction described in paragraph (b) which (x) results, or could reasonably be expected to result, in a rating downgrade or withdrawal of a rating by a Rating Agency, or (y) results in a Rating Agency publicly announcing that it has placed under surveillance or review, with possible negative implications, its rating of any Approved Obligation in effect prior to the occurrence of such event or court determination shall be sufficient to establish the required "materially and adversely" threshold.

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

"**Rating Agency**" has the meaning ascribed thereto in the Trust Indenture, except that the reference to "Issuer Funding Obligation" in the definition of "Rating Agency" in the Trust Indenture shall be replaced with a reference to an Issuer Funding Obligation that is an Approved Obligation.

"**Rating Agency Condition**" has the meaning ascribed thereto in the Trust Indenture, except that the reference to "Issuer Funding Obligation" in the definition of "Rating Agency Condition" in the Trust Indenture shall be replaced with a reference to an Issuer Funding Obligation that is an Approved Obligation.

"**Reference Period**" has the meaning ascribed thereto in the Act.

"**Refinancing**"~~10~~[9] has the meaning ascribed to the term "refinancing" in the Act as of the date hereof, as more particularly described and given meaning in the General Regulation as of the date hereof.~~11~~[10]

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

"**Senior Final Subrogation Amount**" has the meaning ascribed thereto in subclause 2.01(a)iv(D).

~~10~~[9] Explanatory Note: This relates to a refinancing of an existing debt obligation; not an undrawn commitment to fund.

~~11~~[10] Explanatory Note: The General Regulation provides that debt can be considered a "Refinancing" when incurred within the 6 months prior to the maturity date of a funding obligation. The Act/Regulation's definition doesn't require that "Refinancings" be simultaneous with the repayment of existing Approved Obligations. We have added a certificate mechanic in 7.01 by which there can be certainty when an obligation is incurred that if the obligation is intended to be a refinancing, it will be covered by the guarantee.

"**Specified Creditors**" has the meaning ascribed thereto in the Trust Indenture.

"**Subordinated Final Subrogation Amount**" has the meaning ascribed thereto in subclause 2.01(a)iv(D).

"**Subrogation Entitlement**" means each Subrogation Amount and each Final Subrogation Amount.

"**Subrogation Amount**" has the meaning ascribed thereto in subclause 2.01(a)iv(B).

"**Supplemental Indenture**" has the meaning ascribed in the Trust Indenture.

"**Supplemental Reserve Account**" has the meaning ascribed in the Trust Indenture.

"**Suspension Event**" has the meaning ascribed thereto in Section 7.02.

"**Suspension Notice**" has the meaning ascribed thereto in Section 7.01.

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

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

EXHIBIT A
FORM OF PAYMENT DEMAND

TO: Her Majesty the Queen in Right of Ontario, as represented by the Minister of Energy and the Minister of Finance (the "**Province**")

Reference is made to the Change of Law Protection Agreement dated [■], 2017 among the Province, Computershare Trust Company of Canada, as trustee of Fair Hydro Trust (the "**Financing Entity**"), Ontario Power Generation Inc., in its capacity as Manager of the Financing Entity and in its capacity as the Financial Services Manager under the *Fair Hydro Plan Act, 2017*, and the Indenture Trustee (the "**Change of Law Protection Agreement**"). Capitalized terms used and not defined herein shall have the meanings ascribed to such terms in the Change of Law Protection Agreement.

Pursuant to and in accordance with section 2.01(a) of the Change of the Law Protection Agreement, the Indenture Trustee hereby demands payment from the Province in respect of the Approved Obligations at the times, in the amounts and subject to the requirements specified in the Change of Law Protection Agreement.

DATED as of the [■] day of [■], [■].

BNY TRUST COMPANY OF CANADA

By:
Name:
Title:

By:
Name:
Title:

EXHIBIT B-1

FORM OF ADHERENCE COMPLIANCE CERTIFICATE UNDER SECTION 4.02(a)

TO: **BNY TRUST COMPANY OF CANADA**, in its capacity as Indenture Trustee (the "**Indenture Trustee**") under the Master Trust Indenture dated as of December ●, 2017 between Fair Hydro Trust and the Indenture Trustee (the "**Master Trust Indenture**")

Reference is made to the Change of Law Protection Agreement dated [■], 2017 among the Province of Ontario, Computershare Trust Company of Canada, as trustee of Fair Hydro Trust, Ontario Power Generation Inc., in its capacity as Manager of the Financing Entity and in its capacity as the Financial Services Manager under the *Fair Hydro Plan Act, 2017*, and the Indenture Trustee (the "**Change of Law Protection Agreement**"). Capitalized terms used and not defined herein shall have the meanings ascribed to such terms in the Change of Law Protection Agreement.

Each of the undersigned, being the ● and ● of OPG acting in its capacity as FSM and holding the offices set forth under their names and signatures below, pursuant to and accordance with section 4.02(a)ii of the Change of Law Protection Agreement, hereby certifies for and on behalf of OPG, in its capacity as Financial Services Manager, and not in such officer's personal capacity and intending that this certificate may be relied on by the addressees hereof without independent inquiry, that:

1. I have read and understand the provisions of the Change of Law Protection Agreement, the Master Trust Indenture and all other documents and materials necessary to enable me to deliver this certificate.
2. OPG has delivered to the Province a certificate signed by the Chief Financial Officer and the Treasurer of OPG, or any two Executive Officers of OPG (for clarity, such certificate was* provided by such officers in their capacity as officers of OPG acting in its capacity as FSM) confirming that OPG has complied with all of its obligations to the Province and internal requirements and processes in connection with the adherence of the Limited Guarantee to the Certified Primary Obligation*.

DATED as of the [■] day of [■], [■].

Name: [11]	Name:
Office:	Office:

[11] This certificate must be signed by two officers of OPG being either (i) the Chief Financial Officer and the Treasurer, or (ii) any two Executive Officers (as defined in the Change of Law Protection Agreement) of OPG.

EXHIBIT B-2
FORM OF ADHERENCE COMPLIANCE CERTIFICATE UNDER SECTION 4.02(b)

TO: **BNY TRUST COMPANY OF CANADA**, in its capacity as Indenture Trustee (the "**Indenture Trustee**") under the Master Trust Indenture dated as of December ●, 2017 between Fair Hydro Trust and the Indenture Trustee (the "**Master Trust Indenture**")

AND TO: Her Majesty the Queen in Right of Ontario, as represented by the Minister of Energy and the Minister of Finance (the "**Province**")

Reference is made to the Change of Law Protection Agreement dated [■], 2017 among the Province, Computershare Trust Company of Canada, as trustee of Fair Hydro Trust, Ontario Power Generation Inc., in its capacity as Manager of the Financing Entity and in its capacity as the Financial Services Manager under the *Fair Hydro Plan Act, 2017*, and the Indenture Trustee (the "**Change of Law Protection Agreement**"). Capitalized terms used and not defined herein shall have the meanings ascribed to such terms in the Change of Law Protection Agreement.

Each of the undersigned, being the ● and ● of OPG acting in its capacity as FSM and holding the offices set forth under their names and signatures below, pursuant to and accordance with section 4.02(b)ii of the Change of Law Protection Agreement, hereby certifies for and on behalf of OPG, in its capacity as Financial Services Manager, and not in such officer's personal capacity and intending that this certificate may be relied on by the addressees hereof without independent inquiry, that:

1. I have read and understand the provisions of the Change of Law Protection Agreement, the Master Trust Indenture and all other documents and materials necessary to enable me to deliver this certificate.
2. The proceeds of the Refinancing* will be used solely for the *purpose of repaying one or more Certified Primary Obligations in respect of which the Adherence Conditions in Section 4.02(a) of the Change of Law Protection Agreement had been satisfied or one or more Refinancings in respect of which the Adherence Conditions in section 4.02(b) of the Change of Law Protection Agreement had been satisfied.

DATED as of the [■] day of [■], [■].

Name: [12]	Name:
Office:	Office:

[12] This certificate must be signed by two officers of OPG being either (i) the Chief Financial Officer and the Treasurer, or (ii) any two Executive Officers (as defined in the Change of Law Protection Agreement) of OPG.

EXHIBIT C
SUSPENSION NOTICE

TO: Ontario Power Generation Inc., in its capacity as Financial Services Manager

AND TO: Fair Hydro Trust

AND TO: Computershare Trust Company of Canada, in its capacity as trustee of Fair Hydro Trust

BNY Trust Company of Canada, as Indenture Trustee

AND TO:

Reference is made to the Change of Law Protection Agreement dated [■], 2017 among the Province, Computershare Trust Company of Canada, as trustee of Fair Hydro Trust (the "**Financing Entity**"), Ontario Power Generation Inc., in its capacity as Manager of the Financing Entity and in its capacity as the Financial Services Manager under the *Fair Hydro Plan Act, 2017*, and the Indenture Trustee (the "**Change of Law Protection Agreement**"). Capitalized terms used and not defined herein shall have the meanings ascribed to such terms in the Change of Law Protection Agreement. All references in this Suspension Notice to "Articles" or "Sections" refer to Articles or Sections of the Change of Law Protection Agreement.

The Province has a reasonable basis for concluding that an event described in clauses (a) to (d) of Section 7.01 has occurred. Pursuant to Section ~~7.01,~~7.01, the Province hereby declares that the Limited Guarantee shall not apply in respect of any Primary Obligation incurred or amended on or after the delivery of this Suspension Notice, other than any Refinancing~~ of a Primary Obligation~~ in respect of which the Adherence Conditions had previously been satisfied, in accordance with the terms and conditions in Article VII.

The Limited Guarantee shall hereby not apply in respect of (i) any Primary Obligation incurred or ~~amended~~(ii) any amendment of any Primary Obligation that results in an increase to the principal amount of such Primary Obligation, in each case, on or after delivery of this Suspension Notice, other than any Refinancing of ~~a Primary~~an Approved Obligation in respect of which the Adherence Conditions had previously been satisfied of if such Refinancing is otherwise an Approved Obligation.

This Suspension Notice is hereby delivered to the FSM, the Financing Entity and the Indenture Trustee in accordance with Section 8.02 of the Change of Law Protection Agreement.

* * * *

DATED as of the [■] day of [■], [■].

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

By: _____
Name:
Title:

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

By: _____
Name:
Title:

Change of Law Protection Agreement - Dec 7 (Osler_Torys).pdf

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY AND THE MINISTER OF FINANCE[1]

AND

COMPUTERSHARE TRUST COMPANY OF CANADA, AS TRUSTEE OF FAIR HYDRO TRUST

AND

ONTARIO POWER GENERATION INC., AS FINANCIAL SERVICES MANAGER AND AS MANAGER OF FAIR HYDRO TRUST

AND

BNY TRUST COMPANY OF CANADA, AS INDENTURE TRUSTEE

CHANGE OF LAW PROTECTION AGREEMENT

Dated as of [■], 2017

[1] Explanatory Note: Logistics of closing are under consideration by the Province.

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

RECITALS

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

Pursuant to an Order in Council 1981/2017 (the "**OIC**"), the Lieutenant Governor in Council has, among other things, authorized the Minister of Energy and the Minister of Finance, acting together on behalf of the Province of Ontario, to enter into one or more agreements to guarantee or indemnify the debts, obligations, securities or undertakings of one or more financing entities established or caused to be established pursuant to Subsection 22(2) of the Act by the FSM and that may incur Funding Obligations in connection with one or more Investment Interests.

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

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

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

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

AGREEMENT OF THE PARTIES

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

ARTICLE I
DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

1.01 Interpretation

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

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

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

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

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

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

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

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

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

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

1.02 Trustee to act in accordance with the Trust Indenture

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

1.03 Proof of Approved Obligations

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

Each statement delivered by the Manager under Section 2.01(a)i shall constitute *prima facie* evidence of the amount which, as at the date of the statement so prepared, is due and payable by the Financing Entity to the Beneficiaries and/or the Indenture Trustee and the Province hereby acknowledges and agrees that, absent manifest error, it shall be bound by each such statement. The Manager agrees to provide the Province with the computations and calculations used by the Manager to prepare each such statement promptly following a request therefor.[2]

1.04 Limitation on Rights of and Actions by Specified Creditors

Specified Creditors, as Beneficiaries, shall not have or be permitted to exercise any rights, interests, or elections under this Agreement, other than in the manner and to the extent effected and exercised under, in accordance with and subject to the limitations set forth in the Trust Indenture as of the date of this Agreement.

1.05 Province Retains Rights of Beneficiaries

Without limiting any rights of subrogation or succession that arise pursuant to applicable law or pursuant to the Province's rights as an assignee, subrogee or pursuant to Section 2.01 or Section 5.01, all of the rights, interests, elections and privileges that would arise in favour of a Beneficiary under the Trust Indenture or other Funding Obligation Agreement under which a related Primary Obligation arises shall automatically arise, vest in and be available to the Province to the extent of the performance by the Province of the Primary Obligation.

[2] This language was reinserted as the guarantee statements required to be delivered by the Manager should be binding on the Province.

1.06 Effect of Headings

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

1.07 Successors and Assigns

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

1.08 Severability

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction will not affect the validity or enforceability of any other provision hereof. To the extent permitted by applicable law, the parties waive any provision of law which renders any provision of this Agreement invalid or unenforceable in any respect.

1.09 Governing Law

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

1.10 Proceedings Against the Crown Act

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

1.11 Attornment

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

1.12 Counterparts; Electronic Delivery

This Agreement may be executed in any number of counterparts, each of which so executed will be deemed to be an original, but all such counterparts will together constitute one

and the same instrument. Delivery of an executed signature page to this Agreement by a party by electronic transmission will be as effective as delivery of a manually executed copy of the Agreement by such party.

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

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

1.14 Non-Business Days

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

1.15 Waiver, Amendment

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

1.16 Interest Act

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

1.17 Currency

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

1.18 References to Acts of the Financing Entity

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

1.19 Judgment Currency

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

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

ARTICLE II
AGREEMENT TO PERFORM APPROVED OBLIGATIONS

2.01 Limited Guarantee

(a) Upon the occurrence of a Protection Event, the Indenture Trustee may deliver a written demand, substantially in the form attached as Exhibit A (a "**Payment Demand**"), to the Province requiring the Province to make payments in respect of the Approved Obligations at the times, in the amounts and subject to the requirements specified in this Agreement. From and after such delivery of a Payment Demand, the Province shall make the following payments in respect of the Approved Obligations (the "**Limited Guarantee**"), and the Financing Entity shall pay, and the Province shall be entitled to be paid, the Subrogation Entitlements specified below:

i. Not less than 3 Business Days prior to each day when any payment or payments are to be made in respect of one or more Approved Obligations occurring after such delivery of a Payment Demand (each such day, a "**Guarantee Payment Date**"), the Manager shall deliver a written statement setting forth the Aggregate Approved Obligations Amount, if any, in respect of the Approved Obligations that are due and payable on such Guarantee Payment Date, together with a detailed description identifying such Approved Obligations and the nature and amount of payments due and payable thereunder on the Guarantee Payment Date, the aggregate outstanding amount payable by the Financing Entity under such Approved Obligations as of the date of such written statement, and details regarding any default in performance by any party obligated thereunder.

ii. On each such Guarantee Payment Date, the Province shall deposit the Aggregate Approved Obligations Amount into the Protection Account.

iii. On each such Guarantee Payment Date, the Financing Entity and the Indenture Trustee shall ensure that the amounts on deposit in the Protection Account are applied to pay each Beneficiary to whom an amount is due and payable under an Approved Obligation on the Guarantee Payment Date the Approved Obligation Amount for such Beneficiary in respect of such Approved Obligation on such Guarantee Payment Date; provided that if the amount deposited pursuant to clause 2.01(a)ii is insufficient to pay all such Approved Obligation Amounts in full, the amount on deposit in the Protection Account on the Guarantee Payment Date shall be applied to pay Beneficiaries in the order of priority in which such Approved Obligations are payable under the payment provisions of the Trust Indenture applicable to the making of such payments on the Guarantee Payment Date (each, a "**Beneficiary Payee**" and each payment made to a Beneficiary Payee on a Guarantee Payment Date, a "**Guarantee Payment**").

iv. On any Guarantee Payment Date on which an amount is paid by the Province pursuant to clause 2.01(a)ii, the applicable payment provisions of the Trust Indenture shall, notwithstanding the express terms of such provisions set forth in the Trust Indenture, be applied and operate on the following basis:

(A) the amount payable to a Beneficiary Payee in respect of an Approved Obligation from amounts available under such payment provisions on such Guarantee Payment Date shall be reduced by the amount of the Guarantee Payment paid to the Beneficiary Payee pursuant to clause 2.01(a)iii in respect of such Approved Obligation on such Guarantee Payment Date;

(B) the Province shall be paid the amount payable to a Beneficiary Payee in respect of an Approved Obligation from amounts available to pay the Beneficiary Payee under such payment provisions on the Guarantee Payment Date, determined without regard to the Guarantee Payment paid on such Guarantee Payment Date and the corresponding reduction of the amount owing to the Beneficiary Payee pursuant to subclause 2.01(a)iv(A) (each such amount payable to the Province being a "**Subrogation Amount**");

(C) no Beneficiary having a right to be paid an amount in respect of an Approved Obligation, and no other Person entitled under an Obligation Secured, in each case that ranks equal with or subordinate to an Approved Obligation in respect of which a Subrogation Amount is payable to the Province under subclause 2.01(a)iv(B), shall be entitled to make any claim or assert any right in or to the amounts paid or payable to the Province under such subclause (including any right of reimbursement, contribution or indemnity) and no such Beneficiary or other Person shall have any right or interest in, to or under the Collateral or any proceeds therefrom in respect of any such Subrogation Amount;

(D) on the first day when any payment or payments are to be made in respect of Obligations Secured that occurs after the date on which all amounts payable under all Approved Obligations have been paid in full, whether pursuant to Guarantee Payments or payments made pursuant to the payment provisions of the Trust Indenture or any combination thereof, the Province shall be entitled to be

paid from amounts available to pay Obligations Secured on such day (and thereafter on each subsequent day when any payment or payments are to be made in respect of Obligations Secured, until paid in full), in each case in accordance with the applicable payment provisions of the Trust Indenture on such day, the following amounts, in each case in the priorities specified below:

(I) as an amount ranking equally with principal amounts of Senior Funding Obligations, the amount by which (1) the sum of (x) all Guarantee Payments paid by the Province up to and including such day in respect of Approved Obligations ranking equally with or prior to principal amounts of Senior Funding Obligations, plus (y) the sum of amounts determined in respect of interest on each such Guarantee Payment from and including the date of its payment by the Province to but excluding the date a Subrogation Amount is paid to the Province in respect of such Guarantee Payment, as attributed to such Guarantee Payment in accordance with the Trust Indenture and calculated based on the applicable interest rate borne by the Approved Obligation to which such Guarantee Payment related, exceeds (2) the sum of all Subrogation Amounts paid to the Province up to and including such day (such amount, the "**Senior Final Subrogation Amount**");

(II) as an amount ranking equally with principal amounts of Subordinated Funding Obligations, the amount by which (1) the sum of (x) all Guarantee Payments paid by the Province up to and including such day in respect of Approved Obligations ranking equally with or prior to principal amounts of Subordinated Funding Obligations, plus (y) the sum of amounts determined in respect of interest on each such Guarantee Payment from and including the date of its payment by the Province to but excluding the date a Subrogation Amount is paid to the Province in respect of such Guarantee Payment, as attributed to such Guarantee Payment in accordance with the Trust Indenture and calculated based on the applicable interest rate

borne by the Approved Obligation to which such Guarantee Payment related, exceeds (2) the sum of (x) all Subrogation Amounts paid to the Province up to and including such day, plus (y) the amount determined under (I) (such amount, the "**Subordinated Final Subrogation Amount**"); and

(III) as an amount ranking equally with principal amounts of Junior Subordinated Obligations, the amount by which (1) the sum of (x) all Guarantee Payments paid by the Province up to and including such day in respect of Approved Obligations ranking equally with or prior to principal amounts of Junior Subordinated Funding Obligations, plus (y) the sum of amounts determined in respect of interest on each such Guarantee Payment from and including the date of its payment by the Province to but excluding the date a Subrogation Amount is paid to the Province in respect of such Guarantee Payment, as attributed to such Guarantee Payment in accordance with the Trust Indenture and calculated based on the applicable interest rate borne by the Approved Obligation to which such Guarantee Payment related, exceeds (2) the sum of (x) all Subrogation Amounts paid to the Province up to and including such day, plus (y) the sum of the amounts determined under (I) plus (z) the sum of the amounts determined under (II) (such amount, the "**Junior Subordinated Final Subrogation Amount**" and, together with the Senior Final Subrogation Amount and the Subordinated Final Subrogation Amount, the "**Final Subrogation Amounts**")[3]; and

(E) no Person entitled under an Obligation Secured that ranks equal with or subordinate to a Final Subrogation Amount shall be entitled to make any claim or assert any right in or to the amounts paid or payable to the Province in respect of such Final Subrogation Amount and no such Person shall have any right or interest in, to or under the

[3] Separate definitions were included to facilitate inserting these amounts into Trust Indenture priority of payment provisions.

Collateral or any proceeds therefrom in respect of any such Final Subrogation Amount.

v. On any Guarantee Payment Date, the Indenture Trustee shall release and pay to the Province free and clear of any Liens any amount remaining on deposit in the Protection Account that has not been applied to pay Guarantee Payments to Beneficiary Payees on the Guarantee Payment Date in accordance with clause 2.01(a)iii.

vi. In preparing any payment instructions under the Trust Indenture, the Manager shall reflect the amounts payable under Section 2.01(a).

(b) The Province shall, as a payee of Subrogation Amounts under clause 2.01(a)iv(B), as a payee of each Final Subrogation Amount under clause 2.01(a)(iv)(D) and as a payee of any amounts payable under clause 2.01(a)v, be a "Specified Creditor" under the Trust Indenture and have the benefit of the Collateral thereunder.

(c) For greater certainty, the Limited Guarantee will not apply to any amount or obligation of the Financing Entity that is not or does not arise under an Approved Obligation and will be limited to the right to receive the Approved Obligation Amounts, if any, for payment to Beneficiary Payees and will be subject to the priorities and to the Province's rights to Subrogation Entitlements, set forth in Section 2.01(a).

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

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

(f) The right to deliver a Payment Demand and thereupon enforce the Limited Guarantee shall constitute the only remedy available to the Indenture Trustee (and to the Beneficiaries, to the extent they are permitted to exercise any rights, interests, or elections under and in accordance with the Trust Indenture) under this Agreement. Under no circumstances shall the Province be obligated to pay or indemnify the Indenture Trustee or any Beneficiary for consequential, special or punitive damages, or for economic loss or loss of profits; provided that, for greater certainty, economic loss shall not include any amount in respect of any amount due and payable to a Beneficiary Payee under the Limited Guarantee.

2.02 Intentionally Deleted.

2.03 Absence of Set-off

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

2.04 Payment into Protection Account in Satisfaction

(a) On or before the date of delivery of a Payment Demand to the Province, the Indenture Trustee shall cause to be established and maintained an Eligible Deposit Account (the "**Protection Account**") in the name of the Indenture Trustee, bearing a designation clearly indicating that the funds and other property credited thereto are held for the benefit of the Indenture Trustee and the Beneficiaries. The Protection Account shall be under the control of the Indenture Trustee for the benefit of the Beneficiaries. If, at any time, the institution holding the Protection Account ceases to be an Eligible Institution, the FSM shall notify the Indenture Trustee, and the Indenture Trustee upon being notified in writing of such ineligibility (or the FSM on its behalf) shall within 30 days (or such longer period, not to exceed 45 days, so long as the Rating Agency Condition is satisfied) establish a new Protection Account that is an Eligible Deposit Account and shall transfer any funds or other property from such Protection Account to such new Protection Account. From the date each such new Protection Account is established, it shall be the "Protection Account" for purposes of this Agreement. Funds credited to the Protection Account will be invested and held in accordance with Section **[7.03]** of the Trust Indenture on the basis that it is an Issuer Account.

(b) Notwithstanding the priority of payment requirements set forth in the Trust Indenture and any legal rule concerning the imputation of payments, the Financing Entity and the Indenture Trustee shall ensure that all amounts paid by the Province into the Protection Account on a Guarantee Payment Date in respect of an Approved Obligation are applied to pay the amounts due and payable to the Beneficiaries as and to the extent provided for in Section 2.01(a). Upon a payment having been made by or on behalf of the Province into the Protection Account, the amounts so paid shall for all purposes be considered to have been applied to pay the applicable Beneficiaries as provided for in Section 2.01(a) and thereby reduce the amount due and payable to such Beneficiaries in respect of the applicable Approved Obligations, whereupon an affected Beneficiary shall have no continuing rights, interests or entitlements (including rights as a secured party) in respect of the Approved Obligation to the extent so paid. For greater certainty, the obligations arising in respect of an applicable Approved Obligation shall not be reduced by such payment as the Province shall become entitled to be paid related Subrogation Entitlements and the rights contemplated under Section 2.01(a) and Section 5.01 in relation to such continuing obligations.

2.05 Certain Waivers

The Province hereby waives:

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

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

(c) diligence; and

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

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

2.06 Additional Security

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

2.07 Continuing Liability of the Province

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

2.08 Continuance of the Limited Guarantee

Subject to Section 2.07, the Limited Guarantee shall continue in full force and effect until the indefeasible payment, observance and performance in full of the Approved Obligations in accordance with Section 8.01.

2.09 Modifications of Approved Obligations

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

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

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

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

ARTICLE III
THE INDENTURE TRUSTEE

3.01 The Indenture Trustee

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

3.02 Acceptance of Trusts

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

ARTICLE IV
APPROVED OBLIGATIONS

4.01 Approval Process

A Primary Obligation shall constitute an Approved Obligation if (i) the Adherence Conditions applicable thereto have been satisfied at the time the Primary Obligation was incurred, or (ii) the Province, in its sole discretion, designates in writing that it is an Approved Obligation.

4.02 Adherence Conditions

(a) The following shall be the Adherence Conditions applicable in relation to each Certified Primary Obligation:

i. the Certified Primary Obligation when incurred is an Obligation Secured under the Trust Indenture; and

ii. OPG, as FSM, delivers an Adherence Compliance Certificate in the form attached hereto as Exhibit B-1 signed by the Chief Financial Officer and the Treasurer of OPG, or any two Executive Officers of OPG (for clarity, such certificate is to be provided by such officers in their capacity as officers of OPG acting in its capacity as FSM) and addressed to the Indenture Trustee, on or before the incurrence of a Certified Primary Obligation (provided that delivery may not be more than 5 Business Days before the incurrence of the Certified Primary Obligation);[4] and

iii. the Province has not provided a Suspension Notice to the Indenture Trustee, OPG and the Financing Entity.

(b) The following shall be the Adherence Conditions applicable in relation to each Refinancing:

i. such Refinancing when incurred is an Obligation Secured under the Trust Indenture; and

ii. OPG, as FSM, delivers an Adherence Compliance Certificate in the form attached hereto as Exhibit B-2 signed by the Chief Financial Officer and the Treasurer of OPG, or any two Executive Officers of OPG (for clarity, such certificate is to be provided by such officers in their capacity as officers of OPG acting in its capacity as FSM) and addressed to the Indenture Trustee and the Province, on or before the incurrence of the Refinancing (provided that delivery may not be more than 5 Business Days before the incurrence of such Refinancing).[5]

For greater certainty, (y) satisfaction of the Adherence Conditions for a Certified Primary Obligation or a Refinancing shall be deemed satisfaction of the Adherence Conditions in respect of all principal, interest and other amounts owing under the Certified Primary Obligation or the Refinancing, as applicable, as such Certified Primary Obligation or Refinancing may be amended, restated, supplemented or otherwise modified from time to

[4] Given the importance of this certificate, the form of the Adherence Compliance Certificate is set out in Exhibit B-1 to this Agreement and accordingly this language has been deleted from this para (ii) and is reproduced in the form of certificate attached as Exhibit B-1.

[5] Given the importance of this certificate, the form of the Adherence Compliance Certificate is set out in Exhibit B-2 to this Agreement.

time, and (z) there shall be no Adherence Conditions applicable in relation to a Primary Obligation that is not a Certified Primary Obligation or a Refinancing.

4.03 Evidence of Satisfaction

An Adherence Compliance Certificate delivered in accordance with Section 4.02(a)ii or in accordance with Section 4.02(b)ii, as the case may be, shall be determinative as to whether the applicable Adherence Conditions with respect thereto have been satisfied, notwithstanding that such certificate may include inaccuracies, be incomplete or otherwise be defective or deficient, and such closing certificate may be relied upon by any addressee as conclusive evidence of same. An Adherence Compliance Certificate that purports on its face to be signed by officers specified in Section 4.02(a)ii or Section 4.02(b)ii, as applicable, may be relied upon by any addressee without further enquiry or evidence as to the incumbency or signatures of such officers. If an Adherence Compliance Certificate is not delivered in accordance with the timing requirements of Section 4.02(a)ii or Section 4.02(b)ii, as applicable, such certificate may be delivered at a later date, and be effective as if it had been delivered in accordance with the timing requirement of Section 4.02(a)ii or Section 4.02(b)ii, as applicable, if at the time such certificate was required to be delivered OPG had delivered to the Province all certifications required by the Province in connection with the adherence of the Limited Guarantee to the Certified Primary Obligation or the Refinancing.

ARTICLE V
PROVINCE MATTERS

5.01 Assignment and Subrogation

(a) Upon paying an amount in respect of an Approved Obligation to or at the direction of the Indenture Trustee in satisfaction of the Limited Guarantee, the Province (in addition to and without prejudice to any rights it otherwise has in law or equity) shall be subrogated and entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Approved Obligation to the extent of such payment, including (i) the right and entitlement to be paid and receive the related Subrogation Entitlements, (ii) the benefits of the related Collateral and (iii) all proceeds therefrom. The Province shall have and be entitled to enforce all rights and interests (including as a Specified Creditor under the Trust Indenture on the basis contemplated in Section 5.01(b)), under and in respect of such Approved Obligation to the extent of the payment by the Province in respect of the Approved Obligation as an absolute assignee of the applicable Beneficiary, with effect from and after the time of such payment, without any further requirement for notice to or acceptance by the Financing Entity of such absolute assignment and without any reduction, set-off or counterclaim on account of any amounts that may, at or after the time of payment, be or become owing by the Beneficiary to the Financing Entity and unaffected by any other rights or equities that arise thereafter as between the Beneficiary and the Financing Entity. The Indenture Trustee shall recognize the Province as being entitled to all of the rights, interests and entitlements of the Beneficiary (including as a Specified Creditor under the

Trust Indenture on the basis contemplated in Section 5.01(b)) in respect and to the extent of the Approved Obligation so paid, determined as of the time of payment, for all purposes under the Trust Indenture, and the Province shall be treated as a Specified Creditor in respect thereof for all purposes under the Trust Indenture and any other agreement under which the Approved Obligation arises.

(b) The Province (i) acknowledges and agrees in favour of the Indenture Trustee that, upon being subrogated and entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Approved Obligation in accordance with Section 5.01(a), the Province, in its capacity as a Specified Creditor, will be subject to the provisions applicable to Specified Creditors under the Trust Indenture, including Sections **[7.04]** through **[7.11]** and **[8.13]** (Payment Priorities), Section **[7.12]** (Payments Held in Trust), Section **[8.11]** (Control by Controlling Class Creditors), Section **[8.12]** (Limitation on Suits), Section **[8.14]** (Limited Recourse), Article IX (The Indenture Trustee), including all limitations of liability thereunder, Section **[9.14]** (Communications to Specified Creditors) and Section **[16.01]** (No Petition); (ii) consents, requests and authorizes the Issuer and the Indenture Trustee to (x) add the Province to the register of Specified Creditors described in subsection **[13.13(b)]** of the Trust Indenture and (y) disseminate the notice details of the Province to other Specified Creditors for the purposes set out in subsection **[9.14(b)]** of the Trust Indenture, and (iii) confirms that it will execute and deliver, or cause to be executed and delivered, all such further agreements, documents and instruments in connection with this Section 5.01 as the Indenture Trustee may request from time to time for the purpose of giving effect to the terms of this Section 5.01.

5.02 Priorities

For greater certainty, the rights, interests and entitlements of the Province as an assignee and subrogee of and with respect to an Approved Obligation shall rank equally with the rights, interests and entitlements of a Beneficiary to whom a Limited Guarantee payment is made in respect of, and to the extent of the payment made to satisfy, the Approved Obligation and the Province shall not be subject to postponement or subordination with respect thereto except to the extent of the priorities established in relation to the Approved Obligation under the Trust Indenture in the manner and to the extent contemplated in Section **[7.10]** of the Trust Indenture.

5.03 Intentionally Deleted

5.04 Representations and Warranties

The Province hereby represents and warrants that:

(a) the execution and delivery of, and the performance of its obligations under, this Agreement by the Province have been authorized by all necessary action on the part of the Province;

(b) the execution and delivery of, and the performance of its obligations under, this Agreement by the Province do not result in the violation of any applicable law; and

(c) this Agreement has been duly executed and delivered by the Province.

ARTICLE VI
INDENTURE TRUSTEE MATTERS

6.01 Limited Recourse

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

6.02 Not Responsible for Recitals

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

6.03 Representations and Covenants of the Indenture Trustee[6]

The Indenture Trustee represents, warrants and covenants that:

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

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

(c) this Agreement has been duly executed and delivered by the Indenture Trustee and constitutes its legal, valid and binding obligation in accordance with its terms; and

[6] Explanatory Note: Indenture Trustee representations have been conformed to the MTI and are subject to review and sign off by the Indenture Trustee.

(d) the Indenture Trustee is authorized to carry on the business of a trust company in each of the provinces and territories of Canada. If, notwithstanding the provisions of this subsection 6.03(d), the Indenture Trustee ceases to be so authorized to carry on business, the validity and enforceability of this Agreement shall not be affected in any manner whatsoever by reason only of such event.

ARTICLE VII
SUSPENSION OF ADHERENCE FOR NEW PRIMARY OBLIGATIONS

7.01 Suspension Notice

Upon:

(a) a Program Breach;

(b) a default in the performance, or breach, of any covenants of OPG, as FSM, or OPG, in its corporate capacity, in each case to the Province in connection with its obligations to the Province pursuant to internal requirements and processes in connection with the adherence of the Limited Guarantee to the Certified Primary Obligations and the expiration of any applicable cure period;

(c) a representation or warranty made by OPG or a certification made by one or more officers of OPG, in each case whether as FSM or in its corporate capacity, to the Province in connection with its obligations to the Province pursuant to internal requirements and processes in connection with the adherence of the Limited Guarantee to the Certified Primary Obligations, proves to be incorrect in any material respect on the date made and, if curable, is not cured within thirty (30) days after written notice by the Province to OPG of such misrepresentation; or

(d) the FSM no longer being the Manager or actions having been taken by or on behalf of the Indenture Trustee to remove the FSM as the Manager,

the Province may declare that the Limited Guarantee under this Agreement shall not apply to any Primary Obligations incurred on or after such declaration, other than any Refinancing of an Approved Obligation in respect of which the Adherence Conditions had previously been satisfied or if such Refinancing is otherwise an Approved Obligation, by delivering a written notice in the form of Exhibit C (a "**Suspension Notice**") to the Indenture Trustee, the FSM and the Financing Entity.[7]

[7] The paragraph that was deleted from Section 7.01 was modified slightly and moved to the form of the Adherence Compliance Certificate set out in Exhibit B-2 as the Adherence Condition for the Refinancing so that it is clear what conditions have to be satisfied for a Refinancing to be an Approved Obligation. As discussed in our meeting with the principals and in response to the DBRS comments, debt issued on a refinancing of protected debt should continue to be protected debt.

7.02 Suspension

If a Suspension Notice has been provided under Section 7.01 (the provision of such notice being a "**Suspension Event**"), the Limited Guarantee shall not apply in respect of: (i) any Primary Obligation incurred or (ii) any amendment of any Primary Obligation that results in an increase to the principal amount of such Primary Obligation, in each case, on or after the time such Suspension Notice is delivered, other than any Refinancing of an Approved Obligation in respect of which the Adherence Conditions had previously been satisfied or if such Refinancing is otherwise an Approved Obligation.

7.03 No Impact on Adherence

For greater certainty, the occurrence of a Suspension Event or a failure by the FSM or the Financing Entity to perform its covenants under this Agreement will not invalidate or extinguish the obligations of the Province under the Limited Guarantee in respect of Approved Obligations in existence prior to the occurrence of the Suspension Event or in respect of any Refinancing of an Approved Obligation in respect of which the Adherence Conditions had previously been satisfied or if such Refinancing is otherwise an Approved Obligation.

ARTICLE VIII
MISCELLANEOUS

8.01 Term of Agreement

This Agreement will continue until the date that no amount is or may become due and payable by the Province under the Limited Guarantee.

8.02 Notices

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

(a) if to the Financing Entity:

Fair Hydro Trust
700 University Avenue
Toronto, Ontario M5G 1X6
Attention: General Counsel
Fax: (416) 592-4189

with copies to:

Computershare Trust Company of Canada, in its capacity as Financing Entity Trustee for Fair Hydro Trust
100 University Avenue, 11th Floor
Toronto, Ontario M5J 2Y1
Attention: Manager, Corporate Trust
Fax: (416) 981-9777
Email: corporatetrust.toronto@computershare.com

(b) if to the FSM:

Ontario Power Generation Inc.
700 University Avenue
Toronto, Ontario M5G 1X6
Attention: General Counsel
Fax: (416) 592-4189

(c) if to the Province:

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

and

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

(d) if to the Indenture Trustee:

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

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

8.03 Assignment

(a) None of the rights or obligations hereunder shall be assignable or transferable by any party without the prior written consent of the other parties, except as otherwise provided for herein.

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

8.04 Enurement

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

8.05 FIPPA

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

8.06 No Petition

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

8.07 Notice to Rating Agencies

OPG, as FSM, shall deliver prompt written notice to the Rating Agencies of the occurrence of (i) a Protection Event; (ii) receipt of a Suspension Notice delivered by the Province pursuant to Section 7.01; and (iii) an assignment of this Agreement by any party pursuant to Section 8.03.

8.08 Third Party Rights

This Agreement is not intended to create rights for any Person not party to this Agreement. Beneficiaries derive their benefits hereunder through the Indenture Trustee and shall be subject to the provisions applicable to Specified Creditors in the Trust Indenture.

8.09 Delivery of Executed Copies

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

[Signature page to follow]

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

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

By: _____
Name:
Title:

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

By: _____
Name:
Title:

ONTARIO POWER GENERATION INC., AS FSM AND AS MANAGER

By: _____
Name:
Title:
By: _____
Name:
Title:

COMPUTERSHARE TRUST COMPANY OF CANADA, IN ITS CAPACITY AS TRUSTEE OF FAIR HYDRO TRUST, AS ISSUER, BY ONTARIO POWER GENERATION INC., NOT IN ITS INDIVIDUAL CAPACITY BUT SOLELY AS MANAGER

By: _____
Name:
Title:
By: _____
Name:
Title:

BNY TRUST COMPANY OF CANADA, AS INDENTURE TRUSTEE AND NOT IN ITS INDIVIDUAL CAPACITY

By: _____
Name:
Title:

By: _____
Name:
Title:

SCHEDULE A
DEFINED TERMS

"**Acceleration**" has the meaning ascribed to the term "acceleration of a funding obligation" in the General Regulation.

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

"**Action**" has the meaning ascribed thereto under the Trust Indenture.

"**Adherence Compliance Certificate**" means a certificate in the form attached hereto as Exhibit B-1 or Exhibit B-2, as applicable, delivered by the FSM in accordance with Section 4.02(a)ii or Section 4.02(b)ii.

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

"**Aggregate Approved Obligations Amount**" means, in respect of a Guarantee Payment Date, the aggregate of the Approved Obligation Amounts for such Guarantee Payment Date.

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

"**Approved Obligation Amount**" means, for a Beneficiary in respect of an Approved Obligation under which an amount is due and payable on a Guarantee Payment Date:

(a) if no Acceleration has occurred in respect of any Obligation Secured on or before the Guarantee Payment Date, the amount due and payable to the Beneficiary on such Guarantee Payment Date in respect of the Approved Obligation (for greater certainty, determined on the assumption that there are adequate amounts available under the applicable payment provisions of the Trust Indenture to pay in full all amounts referred to in such payment provisions that are due and payable on the Guarantee Payment Date); and

(b) if an Acceleration has occurred in respect of any Obligations Secured on or before the Guarantee Payment Date, the amount that would be available to be paid to the Beneficiary on such Guarantee Payment Date in respect of the Approved Obligation under the applicable payment provisions of the Trust Indenture, determined on the assumption that the amount available for allocation to Specified Creditors in accordance with such applicable payment provisions of the Trust Indenture in respect of each relevant month during each Reference Period is equal to the estimated Finance Amount determined in respect of such Reference Period for purposes of section 15(1) of the Act (in effect on the date hereof), including section 6.1 of the General Regulation (in effect on the date hereof), divided by the number of months in such Reference Period.

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

"**Beneficiary Payee**" has the meaning ascribed thereto in Section 2.01(a)iii.

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

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

"**Certified Primary Obligations**" means Primary Obligations that are: (i) incurred by or on behalf of the Financing Entity to fund its ownership of an Investment Interest, in which case the Certified Primary Obligation therefor shall be the Funding Obligation Agreement applicable to such Funding Obligation and not each individual borrowing or utilization thereunder, (ii) incurred by or on behalf of the Financing Entity upon the Financing Entity entering into a Derivative Agreement, in which case the Certified Primary Obligation therefor shall be the Master Agreement applicable to such Derivative Agreement and not each individual trade confirmation, or (iii) incurred by or on behalf of the Financing Entity upon entering into a contract that has a term of more than three (3) years which is not terminable by the Financing Entity giving three (3) years' notice or less and aggregate minimum payments by the Financing Entity thereunder during the term of such contract is in excess of C$5,000,000 (that, for greater certainty, is not otherwise captured in clauses (i) and (ii) above); provided that "**Certified Primary Obligations**" shall not include any Refinancing.

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

"**Collateral**" has the meaning ascribed thereto in the Trust Indenture.

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

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

"**Eligible Deposit Account**" has the meaning ascribed thereto in the Trust Indenture.

"**Eligible Institution**" has the meaning ascribed thereto in the Trust Indenture.

"**Executive Officer**" has the meaning ascribed to the term "executive officer" in National Instrument 51-102 – *Continuous Disclosure Obligations* of the Canadian Securities Administrators.

"**Final Subrogation Amount**" has the meaning ascribed thereto in subclause 2.01(a)iv(D).

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

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

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

"**Financing Entity Trustee**" has the meaning ascribed thereto in the first paragraph of this Agreement until a successor Financing Entity Trustee shall have become such pursuant to the applicable provisions of the Trust Indenture and the Declaration of Trust, and thereafter "Financing Entity Trustee" means and includes such Person.

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

"**Funding Obligation**" has the meaning ascribed to the term "funding obligation" in the Act as of the date of this Agreement.

"**Funding Obligation Agreement**" has the meaning ascribed thereto in the Trust Indenture.

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

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

"**Guarantee Payment Date**" has the meaning ascribed thereto in Section 2.01(a)i.

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

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

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

"**Investment Interest**" has the meaning ascribed to the term "investment interest" in the Act as of the date of this Agreement.

"**Issuer Account**" has the meaning ascribed thereto in the Trust Indenture.

"**Issuer Funding Obligation**" has the meaning ascribed thereto in the Trust Indenture.

"**Junior Subordinated Final Subrogation Amount**" has the meaning ascribed thereto in subclause 2.01(a)iv(D).

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

"**Lien**" has the meaning ascribed thereto in the Trust Indenture.

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

"**Management Agreement**" means the management agreement dated [■], 2017 between the Manager and the Financing Entity, as amended, supplemented, restated or otherwise modified from time to time.

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

"**Master Agreement**" means an agreement in the form of a Master Agreement as published by ISDA or any replacement or substitute or functional equivalent of such agreement.

"**Master Transfer and Servicing Agreement**" means the master transfer and servicing agreement dated [■], 2017 between the Financing Entity and IESO, as amended, supplemented, restated or otherwise modified from time to time.

"**Obligations Secured**" has the meaning ascribed thereto in the Trust Indenture.

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

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

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

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

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

"**Primary Obligations**" means any Obligation Secured (a) that is a Funding Obligation or (b) that otherwise is a payment obligation of the Financing Entity that gives rise to a Finance Amount, in each case other than (i) any amounts required to be deposited by or on behalf of the Financing Entity into any Capital Account or Finance Reserve Account; and (ii) any obligation to pay the Financing Entity or on the Financing Entity's direction any remaining amounts in the Collection Account pursuant to the Trust Indenture.

"**Program Agreements**" has the meaning ascribed thereto in the Trust Indenture.

"**Program Breach**" means an acceleration of Funding Obligations in accordance with the provisions of the Trust Indenture or an event of default, early amortization event[8], termination event or similar event or circumstance (including any event that with the passage of time or the giving of notice would become such an event) of or in respect of the obligations of any party under any Program Agreement, including under this Agreement, the Trust Indenture, the Master Transfer and Servicing Agreement or any Derivative Agreement.

"**Protection Account**" has the meaning ascribed to such term in Section 2.04(a).

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

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

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

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

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

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

in each case, that materially and adversely affects (a) the ability of the Financing Entity to receive amounts in respect of its Investment Interest so that it can pay Obligations Secured, or (b) this Agreement or any of the agreements under which Obligations Secured arise; or

(b) a court of competent jurisdiction determines that all or a portion of the Act or the regulations made under the Act, as in effect on the date hereof, is *ultra vires* or invalid in a way that materially and adversely affects the ability of the Financing Entity to receive amounts in respect of its Investment Interest so that it can pay Obligations Secured and that has the effect of the Financing Entity not in fact having sufficient funds to pay such Obligations Secured that have become due and payable.

[8] Explanatory Note: Early amortization events may be included in a supplemental indenture, so retaining that concept makes sense.

For clarity, for purposes of the definition of "Protection Event", the occurrence of an event described in any of clauses (i) to (v) of paragraph (a) or a determination by a court of competent jurisdiction described in paragraph (b) which (x) results, or could reasonably be expected to result, in a rating downgrade or withdrawal of a rating by a Rating Agency, or (y) results in a Rating Agency publicly announcing that it has placed under surveillance or review, with possible negative implications, its rating of any Approved Obligation in effect prior to the occurrence of such event or court determination shall be sufficient to establish the required "materially and adversely" threshold.

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

"**Rating Agency**" has the meaning ascribed thereto in the Trust Indenture, except that the reference to "Issuer Funding Obligation" in the definition of "Rating Agency" in the Trust Indenture shall be replaced with a reference to an Issuer Funding Obligation that is an Approved Obligation.

"**Rating Agency Condition**" has the meaning ascribed thereto in the Trust Indenture, except that the reference to "Issuer Funding Obligation" in the definition of "Rating Agency Condition" in the Trust Indenture shall be replaced with a reference to an Issuer Funding Obligation that is an Approved Obligation.

"**Reference Period**" has the meaning ascribed thereto in the Act.

"**Refinancing**"[9] has the meaning ascribed to the term "refinancing" in the Act as of the date hereof, as more particularly described and given meaning in the General Regulation as of the date hereof.[10]

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

"**Senior Final Subrogation Amount**" has the meaning ascribed thereto in subclause 2.01(a)iv(D).

"**Specified Creditors**" has the meaning ascribed thereto in the Trust Indenture.

"**Subordinated Final Subrogation Amount**" has the meaning ascribed thereto in subclause 2.01(a)iv(D).

"**Subrogation Entitlement**" means each Subrogation Amount and each Final Subrogation Amount.

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[9] Explanatory Note: This relates to a refinancing of an existing debt obligation; not an undrawn commitment to fund.

[10] Explanatory Note: The General Regulation provides that debt can be considered a "Refinancing" when incurred within the 6 months prior to the maturity date of a funding obligation. The Act/Regulation's definition doesn't require that "Refinancings" be simultaneous with the repayment of existing Approved Obligations. We have added a certificate mechanic in 7.01 by which there can be certainty when an obligation is incurred that if the obligation is intended to be a refinancing, it will be covered by the guarantee.

"**Subrogation Amount**" has the meaning ascribed thereto in subclause 2.01(a)iv(B).

"**Supplemental Indenture**" has the meaning ascribed in the Trust Indenture.

"**Supplemental Reserve Account**" has the meaning ascribed in the Trust Indenture.

"**Suspension Event**" has the meaning ascribed thereto in Section 7.02.

"**Suspension Notice**" has the meaning ascribed thereto in Section 7.01.

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

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

EXHIBIT A
FORM OF PAYMENT DEMAND

TO: Her Majesty the Queen in Right of Ontario, as represented by the Minister of Energy and the Minister of Finance (the "**Province**")

Reference is made to the Change of Law Protection Agreement dated [■], 2017 among the Province, Computershare Trust Company of Canada, as trustee of Fair Hydro Trust (the "**Financing Entity**"), Ontario Power Generation Inc., in its capacity as Manager of the Financing Entity and in its capacity as the Financial Services Manager under the *Fair Hydro Plan Act, 2017*, and the Indenture Trustee (the "**Change of Law Protection Agreement**"). Capitalized terms used and not defined herein shall have the meanings ascribed to such terms in the Change of Law Protection Agreement.

Pursuant to and in accordance with section 2.01(a) of the Change of the Law Protection Agreement, the Indenture Trustee hereby demands payment from the Province in respect of the Approved Obligations at the times, in the amounts and subject to the requirements specified in the Change of Law Protection Agreement.

DATED as of the [■] day of [■], [■].

BNY TRUST COMPANY OF CANADA

By: _____
Name:
Title:

By: _____
Name:
Title:

EXHIBIT B-1
FORM OF ADHERENCE COMPLIANCE CERTIFICATE UNDER SECTION 4.02(a)

TO: **BNY TRUST COMPANY OF CANADA**, in its capacity as Indenture Trustee (the "**Indenture Trustee**") under the Master Trust Indenture dated as of December ●, 2017 between Fair Hydro Trust and the Indenture Trustee (the "**Master Trust Indenture**")

Reference is made to the Change of Law Protection Agreement dated [■], 2017 among the Province of Ontario, Computershare Trust Company of Canada, as trustee of Fair Hydro Trust, Ontario Power Generation Inc., in its capacity as Manager of the Financing Entity and in its capacity as the Financial Services Manager under the *Fair Hydro Plan Act, 2017*, and the Indenture Trustee (the "**Change of Law Protection Agreement**"). Capitalized terms used and not defined herein shall have the meanings ascribed to such terms in the Change of Law Protection Agreement.

Each of the undersigned, being the ● and ● of OPG acting in its capacity as FSM and holding the offices set forth under their names and signatures below, pursuant to and accordance with section 4.02(a)ii of the Change of Law Protection Agreement, hereby certifies for and on behalf of OPG, in its capacity as Financial Services Manager, and not in such officer's personal capacity and intending that this certificate may be relied on by the addressees hereof without independent inquiry, that:

1. I have read and understand the provisions of the Change of Law Protection Agreement, the Master Trust Indenture and all other documents and materials necessary to enable me to deliver this certificate.
2. OPG has delivered to the Province a certificate signed by the Chief Financial Officer and the Treasurer of OPG, or any two Executive Officers of OPG (for clarity, such certificate was provided by such officers in their capacity as officers of OPG acting in its capacity as FSM) confirming that OPG has complied with all of its obligations to the Province and internal requirements and processes in connection with the adherence of the Limited Guarantee to the Certified Primary Obligation.

DATED as of the [■] day of [■], [■].

Name: [11]	Name:
Office:	Office:

[11] This certificate must be signed by two officers of OPG being either (i) the Chief Financial Officer and the Treasurer, or (ii) any two Executive Officers (as defined in the Change of Law Protection Agreement) of OPG.

EXHIBIT B-2
FORM OF ADHERENCE COMPLIANCE CERTIFICATE UNDER SECTION 4.02(b)

TO: **BNY TRUST COMPANY OF CANADA**, in its capacity as Indenture Trustee (the "**Indenture Trustee**") under the Master Trust Indenture dated as of December ●, 2017 between Fair Hydro Trust and the Indenture Trustee (the "**Master Trust Indenture**")

AND TO: Her Majesty the Queen in Right of Ontario, as represented by the Minister of Energy and the Minister of Finance (the "**Province**")

Reference is made to the Change of Law Protection Agreement dated [■], 2017 among the Province, Computershare Trust Company of Canada, as trustee of Fair Hydro Trust, Ontario Power Generation Inc., in its capacity as Manager of the Financing Entity and in its capacity as the Financial Services Manager under the *Fair Hydro Plan Act, 2017*, and the Indenture Trustee (the "**Change of Law Protection Agreement**"). Capitalized terms used and not defined herein shall have the meanings ascribed to such terms in the Change of Law Protection Agreement.

Each of the undersigned, being the ● and ● of OPG acting in its capacity as FSM and holding the offices set forth under their names and signatures below, pursuant to and accordance with section 4.02(b)ii of the Change of Law Protection Agreement, hereby certifies for and on behalf of OPG, in its capacity as Financial Services Manager, and not in such officer's personal capacity and intending that this certificate may be relied on by the addressees hereof without independent inquiry, that:

1. I have read and understand the provisions of the Change of Law Protection Agreement, the Master Trust Indenture and all other documents and materials necessary to enable me to deliver this certificate.
2. The proceeds of the Refinancing will be used solely for the purpose of repaying one or more Certified Primary Obligations in respect of which the Adherence Conditions in Section 4.02(a) of the Change of Law Protection Agreement had been satisfied or one or more Refinancings in respect of which the Adherence Conditions in section 4.02(b) of the Change of Law Protection Agreement had been satisfied.

DATED as of the [■] day of [■], [■].

Name: [12]	Name:
Office:	Office:

[12] This certificate must be signed by two officers of OPG being either (i) the Chief Financial Officer and the Treasurer, or (ii) any two Executive Officers (as defined in the Change of Law Protection Agreement) of OPG.

EXHIBIT C
SUSPENSION NOTICE

TO: Ontario Power Generation Inc., in its capacity as Financial Services Manager

AND TO: Fair Hydro Trust

AND TO: Computershare Trust Company of Canada, in its capacity as trustee of Fair Hydro Trust

AND TO: BNY Trust Company of Canada, as Indenture Trustee

Reference is made to the Change of Law Protection Agreement dated [■], 2017 among the Province, Computershare Trust Company of Canada, as trustee of Fair Hydro Trust (the "**Financing Entity**"), Ontario Power Generation Inc., in its capacity as Manager of the Financing Entity and in its capacity as the Financial Services Manager under the *Fair Hydro Plan Act, 2017*, and the Indenture Trustee (the "**Change of Law Protection Agreement**"). Capitalized terms used and not defined herein shall have the meanings ascribed to such terms in the Change of Law Protection Agreement. All references in this Suspension Notice to "Articles" or "Sections" refer to Articles or Sections of the Change of Law Protection Agreement.

The Province has a reasonable basis for concluding that an event described in clauses (a) to (d) of Section 7.01 has occurred. Pursuant to Section 7.01, the Province hereby declares that the Limited Guarantee shall not apply in respect of any Primary Obligation incurred or amended on or after the delivery of this Suspension Notice, other than any Refinancing in respect of which the Adherence Conditions had previously been satisfied, in accordance with the terms and conditions in Article VII.

The Limited Guarantee shall hereby not apply in respect of (i) any Primary Obligation incurred or (ii) any amendment of any Primary Obligation that results in an increase to the principal amount of such Primary Obligation, in each case, on or after delivery of this Suspension Notice, other than any Refinancing of an Approved Obligation in respect of which the Adherence Conditions had previously been satisfied of if such Refinancing is otherwise an Approved Obligation.

This Suspension Notice is hereby delivered to the FSM, the Financing Entity and the Indenture Trustee in accordance with Section 8.02 of the Change of Law Protection Agreement.

* * * *

DATED as of the [■] day of [■], [■].

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

By: _____
Name:
Title:

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

By: _____
Name:
Title:

Fair Hydro -- Change of Law Process Agreement.rtf

From: Mansoori, Nina [nmansoori@torys.com]
To: 'ASHBOURNE, STEPHEN' [STEPHEN.ASHBOURNE@blakes.com]; 'JON.VINER@blakes.com' [JON.VINER@blakes.com]; 'JA.PRESTAGE@blakes.com' [JA.PRESTAGE@blakes.com]
CC: Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; 'LADAK Lubna -TREASURY' [lubna.ladak@opg.com]; Strathy, Anna (OFA) [Anna.Strathy@ofina.on.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; McKinlay, Tom (MAG) [Tom.McKinlay@ontario.ca]; Donaldson, Mark (TBS) [Mark.Donaldson@ontario.ca]; Cayley, Daniel (ENERGY) [Daniel.Cayley@ontario.ca]; Thouin, Alena (ENERGY) [Alena.Thouin@ontario.ca]; Ramchandani, Rima [rramchandani@torys.com]; 'LEE John -TREASURY' [john.s.lee@opg.com]; 'RYFA Ken -TREASURY' [ken.ryfa@opg.com]; 'HAHN PARKER Janet -TREASURY' [j.hahnparker@opg.com]; 'MAUTI John -FIN & C CTRL' [john.mauti@opg.com]; 'LAURETA LAPIRA May -TREASURY' [may.lapira@opg.com]; Feldman, Michael [mfeldman@torys.com]; 'WONG Leslie -LAWDIV' [leslie.wong@opg.com]; 'Sebastiano, Rocco' [RSebastiano@osler.com]; 'Milligan, Peter' [PMilligan@osler.com]; 'Fullerton, Rick' [RFullerton@osler.com]; Mayman, Gadi (OFA) [Gadi.Mayman@ofina.on.ca]; Manning, Mike (OFA) [Mike.Manning@ofina.on.ca]; Hanslep, Malle (MOF) [Malle.Hanslep@ontario.ca]; 'ian.benaiah@rbccm.com' [ian.benaiah@rbccm.com]; 'Khan, Nur (nur.khan@rbccm.com)' [nur.khan@rbccm.com]; 'brent.r.taylor@rbccm.com' [brent.r.taylor@rbccm.com]; 'katrina.niehaus@gs.com' [katrina.niehaus@gs.com]; 'brian.delaney@gs.com' [brian.delaney@gs.com]; 'Maciel, Andrew' [Andrew.Maciel@cibc.com]; 'Adalja, Sunil' [Sunil.Adalja@cibc.com]; 'Persad, Nicole' [Nicole.Persad@cibc.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Mansoori, Nina [nmansoori@torys.com]; Saulnier, Brett [bsaulnier@torys.com]; Olusoga, Yinka [yolusoga@torys.com]
Subject: Fair Hydro -- Change of Law Process Agreement
Date: Wednesday, December 06, 2017 17:38:10
Attachment 1: @

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Blakes team,

Please find attached OPG and Torys’ comments on the Process Agreement reflecting our discussions from yesterday’s call. Please note that this draft is subject to continuing revie

Attachments:

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Fair Hydro -- Change of Law Process Agreement.rtf

From: Mansoori, Nina [nmansoori@torys.com]
To: 'ASHBOURNE, STEPHEN' [STEPHEN.ASHBOURNE@blakes.com]; 'JON.VINER@blakes.com' [JON.VINER@blakes.com]; 'JA.PRESTAGE@blakes.com' [JA.PRESTAGE@blakes.com]
CC: Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; 'LADAK Lubna -TREASURY' [lubna.ladak@opg.com]; Strathy, Anna (OFA) [Anna.Strathy@ofina.on.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; McKinlay, Tom (MAG) [Tom.McKinlay@ontario.ca]; Donaldson, Mark (TBS) [Mark.Donaldson@ontario.ca]; Cayley, Daniel (ENERGY) [Daniel.Cayley@ontario.ca]; Thouin, Alena (ENERGY) [Alena.Thouin@ontario.ca]; Ramchandani, Rima [rramchandani@torys.com]; 'LEE John -TREASURY' [john.s.lee@opg.com]; 'RYFA Ken -TREASURY' [ken.ryfa@opg.com]; 'HAHN PARKER Janet -TREASURY' [j.hahnparker@opg.com]; 'MAUTI John -FIN & C CTRL' [john.mauti@opg.com]; 'LAURETA LAPIRA May -TREASURY' [may.lapira@opg.com]; Feldman, Michael [mfeldman@torys.com]; 'WONG Leslie -LAWDIV' [leslie.wong@opg.com]; 'Sebastiano, Rocco' [RSebastiano@osler.com]; 'Milligan, Peter' [PMilligan@osler.com]; 'Fullerton, Rick' [RFullerton@osler.com]; Mayman, Gadi (OFA) [Gadi.Mayman@ofina.on.ca]; Manning, Mike (OFA) [Mike.Manning@ofina.on.ca]; Hanslep, Malle (MOF) [Malle.Hanslep@ontario.ca]; 'ian.benaiah@rbccm.com' [ian.benaiah@rbccm.com]; 'Khan, Nur (nur.khan@rbccm.com)' [nur.khan@rbccm.com]; 'brent.r.taylor@rbccm.com' [brent.r.taylor@rbccm.com]; 'katrina.niehaus@gs.com' [katrina.niehaus@gs.com]; 'brian.delaney@gs.com' [brian.delaney@gs.com]; 'Maciel, Andrew' [Andrew.Maciel@cibc.com]; 'Adalja, Sunil' [Sunil.Adalja@cibc.com]; 'Persad, Nicole' [Nicole.Persad@cibc.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Mansoori, Nina [nmansoori@torys.com]; Saulnier, Brett [bsaulnier@torys.com]; Olusoga, Yinka [yolusoga@torys.com]
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Attachment 3: Blackline_24592518v1 - 24592518v4.pdf

Blakes team,

Please find attached OPG and Torys' comments on the Process Agreement reflecting our discussions from yesterday's call. Please note that this draft is subject to continuing review and comment by Osler and the dealers. As discussed at the tail end of our call yesterday, the section in the Process Agreement that gives the Province the right to object to new and material changes to transaction documents dovetails with the Protection Agreement so additional comments from Oslers may be forthcoming on this draft.

We are working on getting you a revised draft of the Protection Agreement either later today or tomorrow. In the meantime, please let us know if you have any comments or questions on the Process Agreement.

Best Regards,

Nina

Nina Mansoori

P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

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http://www.torys.com/

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TORYS
LLP

Change of Law Process Agreement (Dec 6).pdf

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

AND

ONTARIO POWER GENERATION INC.

CHANGE OF LAW PROCESS AGREEMENT[1]

Dated as of [■], 2017

[1] Explanatory Note: Closing mechanics under consideration by the Province. Province to advise what is under consideration.

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

RECITALS

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

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

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

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

Prior to entering into this Agreement, OPG provided the Province with the proposed forms of certain of the Transaction Documents listed on Exhibit "A", and the Province has not objected to such forms and has confirmed to OPG that such Transaction Documents constitute "Reference Documentation" for purposes of this Agreement.

Prior to entering into this Agreement, OPG, as the FSM, provided the Province with the initial Financing Plan, which includes the initial forecast (the "**Initial Forecast**") setting out OPG's expectations regarding the aggregate maximum amount of Repayments that would arise in the future under Approved Obligations to be incurred during the 24 month period from December 1, 2017 to November 30, 2019 (the "**Initial Forecast Period**") and the initial Protection Agreement Maximum (the "**Initial Protection Agreement Maximum**"). The Province has acknowledged receipt of the initial Financing Plan and has not objected to the Initial Forecast or the Initial Protection Agreement Maximum.

This Agreement sets out the obligations OPG has agreed to perform and assurances OPG has agreed to provide and on which the Province will rely in entering into and implementing the Change of Law Protection Agreement, including for the purposes of determining whether the Adherence Conditions have been satisfied and maintaining information related to the Program Agreements and the Approved Obligations.

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

AGREEMENT OF THE PARTIES

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

ARTICLE I
DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

1.01 Interpretation

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

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

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

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

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

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

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

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

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

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

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

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

1.02 References to the Financing Entity

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

1.03 Effect of Headings

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

1.04 Successors and Assigns

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

1.05 Severability

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction will not affect the validity or enforceability of any other provision hereof. To the extent permitted by applicable law, the parties waive any provision of law which renders any provision of this Agreement invalid or unenforceable in any respect.

1.06 Governing Law

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

1.07 Proceedings Against the Crown Act

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

1.08 Attornment

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

1.09 Counterparts; Electronic Delivery

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

1.10 Non-Business Days

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

1.11 Waiver, Amendment

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

ARTICLE II
COVENANTS OF OPG

2.01 Deliveries to the Province

(a) OPG shall promptly deliver to the Province a copy of any proposed change to or replacement of the Financing Plan.

(b) Not less than 10 Business Days, or such lesser period as the Province may agree to in writing, prior to:

(i) any proposed change in the material terms or conditions applicable to a Primary Obligation in a previously provided Transaction Document becoming effective or otherwise being used, including regarding the timing of or circumstances under which related payments are or may become due or accrue (including as a result of any default, acceleration, termination, wind-up, liquidation or realization), or that would affect the Province's rights of subrogation or assignment (including pursuant to Sections 1.05, 2.01 or 5.01 of the Change of Law Protection Agreement) or its interests as a subrogee or an assignee, that would arise as a result of performing the Limited Guarantee in respect of the applicable Primary Obligation; provided, however, that the foregoing does not apply to any proposed change in particular financial terms, rates and levels, and

(ii) any additional or replacement Transaction Document becoming effective or otherwise being used,

OPG shall deliver to the Province a copy of such proposed change to the Transaction Document and any such additional or replacement Transaction Document.

(c) Promptly following (i) any change, modification, alteration, amendment, supplement, extension, renewal, compromise, novation, replacement, suspension or waiver of the terms of all or any part of the Approved Obligations or any Collateral therefor being made, (ii) any new, additional or replacement instruments, documents, agreements or security being used or granted in connection with all or any part of the Approved Obligations, or (iii) any waiver, release, reconveyance, termination, abandonment, subordination, exchange, substitution, transfer, compound, compromise, liquidation or enforcement of all or any part of the Approved Obligations or any security or guarantee therefor being effected, OPG shall deliver to the Province a detailed description of such event and the reasons for it together with any related documents, agreements and instruments.

(d) Promptly following any incurrence of a Funding Obligation or any amendment of a Funding Obligation, OPG shall provide the Province with electronic copies of all related Governing Documents and all other closing documents executed by or on behalf of the Financing Entity in connection with such incurrence or amendment that would affect the Financing Entity's assets or obligations (including, for greater certainty, any related Disclosure Document) and which have not been previously provided to the Province.

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

2.02 Covenants

(a) OPG shall use commercially reasonable efforts to cause the Financing Entity to:

(i) punctually perform and observe all of the Financing Entity's obligations and agreements contained in the Program Agreements;

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

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

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

(v) not (unless waived in writing by the Province):

(A) amend, supplement, modify, restate or replace or waive or consent to a postponement of compliance with the terms and conditions on the part of any other party to any of the Program Agreements, if any such supplementation, amendment, modification, restatement or replacement or waiver or consent could reasonably be considered to be materially prejudicial to the rights or interests of the Province under the Change of Law Protection Agreement; provided, however, that the foregoing does not apply to any change in particular financial terms, rates and levels;

(B) extend, renew, compromise, novate, replace, suspend, reconvey, terminate, abandon, subordinate, exchange, substitute, transfer, compound, liquidate or enforce the terms of all or any part of the Approved Obligations or any Collateral, if any such action could reasonably be considered to be materially prejudicial to the rights or interests of the Province under the Change of Law Protection Agreement; provided, however, that the foregoing does not apply to the extent that only particular financial terms, rates and levels are affected; or

(C) permit the validity or effectiveness of the Change of Law Protection Agreement to be impaired.

[NTD: As discussed, para (D) was deleted as a consequence of the Province's assumption right being deleted.]

(b) OPG shall:

(i) comply, and shall use commercially reasonable efforts to cause compliance by the Financing Entity, with the Act, the General Regulation and any other enactment related thereto;

(ii) punctually perform and observe all of its (including as the FSM and as Manager) obligations and agreements contained in the Program Agreements;

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

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

(c) The Province and OPG acknowledge that their obligations to each other under the Indemnity Agreement between the Province and OPG dated June 1, 2017 (as amended, the "**Indemnity Agreement**") are not amended by this Agreement and continue in full force and effect, notwithstanding that this Agreement is entered into subsequent to the Indemnity Agreement. ***[NTD: Torys and Blakes have mutually agreed to this language.]***

(d) The Province and OPG acknowledge that their obligations to each other under the Indemnity Agreement are not amended by the Change of Law Protection Agreement and continue in full force and effect, notwithstanding that the Change of Law Protection Agreement was entered into subsequent to the Indemnity Agreement. ***[NTD: Torys and Blakes have mutually agreed to this language.]***

ARTICLE III
PROCESS CERTIFICATE

3.01 Process Certificate

OPG shall deliver a certificate (the "**Process Certificate**"), signed by the Chief Financial Officer and the Treasurer of OPG or any two Executive Officers of OPG (for clarity, such certificate is to be provided by such officers in their capacity as officers of OPG acting in its capacity as FSM) and addressed to the Province, on or before the incurrence or any amendment of a Funding Obligation, other than any Funding Obligation under which not more than $5,000,000 in the aggregate may become payable by the Financing Entity (provided that delivery

may not be more than 5 Business Days before the incurrence or amendment of the Funding Obligation), setting out the following with respect to such Funding Obligation:

(a) the material terms of the Funding Obligation pertaining to (i) in the case of notes, bonds or other securities, the principal amount, interest or discount rate, third party fees, term to maturity, amortization, redemption or extension features, structure and coupon frequency, as applicable, and (ii) in the case of a Derivative Agreement, OPG's best estimate of the expected notional amount, financial terms and pricing, benchmarks, payment structures and early termination rights; ***[NTD: OPG can only provide an estimate of these matters and the actual pricing may be different than what is provided in the certificate since the price is based on the spot market and subject to change.]***

(b) if an existing Funding Obligation is proposed to be amended, material details respecting such amendment, including regarding the applicable details set forth in Subsection 3.01(a), as the context requires;

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

(d) a statement confirming that any disclosure made in respect of the Funding Obligation (including any Disclosure Document, press release or other written communication prepared for dissemination to third parties in relation to the Funding Obligation) that refers to or describes the terms, effect or adherence of or to this Agreement or the Change of Law Protection Agreement has been made available to the Province prior to use or dissemination, other than where such disclosure was substantially the same as a disclosure previously made;

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

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

Agreement Maximum applicable on the date that the Process Certificate is delivered; for clarity, Repayments under Obligations Secured owing in currencies other than Canadian dollars will be determined on the date the Process Certificate is delivered hereunder in accordance with the following:

(i) where a Derivative Agreement has been entered into to hedge related currency exposures, Repayments under such obligations shall be valued on the basis of the hedged value expressed in Canadian dollars; and

(ii) where a Derivative Agreement has not been entered into to hedge related currency exposures, Repayments under such obligations shall be valued on the basis of the noon spot rate for conversions of any currencies into Canadian dollars.

3.02 Acknowledgement regarding delivery of certificate under Change of Law Protection Agreement

The Province acknowledges and agrees that, concurrent with the delivery of the Process Certificate pursuant to Section 3.01 of this Agreement, the Chief Financial Officer and the Treasurer of OPG or any two Executive Officers of OPG (for clarity, such certificate is to be provided by such officers in their capacity as officers of OPG acting in its capacity as FSM) are authorized to deliver the certificate referred to in Subsection 4.02(a)(ii) of the Change of Law Protection Agreement to the Indenture Trustee confirming that OPG has complied with all of its obligations to the Province and internal requirements and processes in connection with adherence of the Limited Guarantee to the incurrence of the Certified Primary Obligations in respect of which the certificate in Subsection 4.02(a)(ii) of the Change of Law Protection Agreement is being delivered; provided that, upon receipt of a Suspension Notice under the Change of Law Protection Agreement, OPG covenants not to deliver any further certificates to the Indenture Trustee under Subsection 4.02(a)(ii) of the Change of Law Protection Agreement but, for greater certainty, OPG, as FSM, may deliver a certificate referred to in Subsection 4.02(b)(ii) of the Change of Law Protection Agreement to the Indenture Trustee and the Province in connection with a Refinancing of a Primary Obligation in respect of which the Adherence Conditions in Subsection 4.02(a) of the Change of Law Protection Agreement had been satisfied at the time such Primary Obligation was incurred. ***[NTD: Conforming changes made to line up with Change of Law Protection Agreement.]***

3.03 Acknowledgement regarding delivery of Suspension Notice

The parties acknowledge and agree that the Province is entitled to deliver a Suspension Notice under Section 7.01 of the Change of Law Protection Agreement if a Program Breach or Breach Event has occurred. The Province agrees not to deliver a Suspension Notice pursuant to Section 7.01 of the Change of Law Protection Agreement unless a Program Breach or a Breach Event has occurred.

3.04 Meaning of "Reference Documentation"

For the purposes of Subsection 3.01(c), the term "Reference Documentation" shall mean each Transaction Document that, at the relevant time:

(a) is a Transaction Document listed on Exhibit "A"; or

(b) is a Transaction Document provided to the Province in accordance with Subsection 2.01(b) that has not been objected to by the Province, by delivery of an objection notice in writing delivered to OPG, within 10 Business Days after it is provided to the Province.

3.05 Meaning of "Substantially in the Form"

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

(a) with respect to the Reference Documentation referred to in clauses (i) to (xi) of the definition of "Transaction Documents", that there are no differences between the proposed documents and such Reference Documentation that could result in a change in the material terms or conditions applicable to the applicable Primary Obligation, including regarding the timing of or circumstances under which related payments are or may become due or accrue (including as a result of any default, acceleration, termination, wind-up, liquidation or realization), or that would affect the Province's rights of subrogation or assignment (including pursuant to Sections 1.05, 2.01 or 5.01 of the Change of Law Protection Agreement) or its interests as a subrogee or an assignee, that would arise as a result of performing the Limited Guarantee in respect of the applicable Primary Obligation; provided, however, that the foregoing does not apply to any variable terms to be set forth in the proposed documents as are reasonably contemplated in the Reference Documentation, including the particular financial terms, rates and levels set forth in the proposed documents other than to the extent that the forms of Reference Documentation themselves specify specific requirements, limitations or parameters with respect to such financial terms, rates, levels and parameters; and

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

ARTICLE IV
PROTECTION AGREEMENT MAXIMUM

4.01 Protection Agreement Maximum

(a) Between nine (9) and twelve (12) months prior to the end of the Initial Forecast Period, OPG shall, as the FSM, deliver to the Province an updated forecast setting out the sum of (1) the aggregate amount of Repayments that will arise in the future under Approved Obligations that are then outstanding and (2) OPG's expectations regarding the aggregate maximum amount of Repayments that would arise in the future under Approved Obligations to be incurred during the period ending 24 months following the Initial Forecast Period, which expectation shall be consistent with the then applicable Financing Plan. Such updated forecast shall be further updated on a similar basis with respect to each successive 24 month period or more frequently if at any time OPG has knowledge that the most recent forecast is materially inaccurate (the Initial Forecast and each such updated forecast, each a "**Forecast**"). Together with each Forecast, OPG shall also provide a revised Protection Agreement Maximum, which may not exceed such Forecast.

(b) Not more than 10 Business Days, or such lesser period as the Province may agree to in writing, following receipt of any further Forecast and notice of the revised Protection Agreement Maximum from OPG pursuant to Section 4.01(a), the Province may disagree with such further Forecast or revised Protection Agreement Maximum on the basis that (i) there appears to be inaccuracies in the Financing Plan or such further Forecast, (ii) the further Forecast is inconsistent with the Financing Plan, or (iii) the revised Protection Agreement Maximum is more than the further Forecast. If the Province disagrees, OPG shall discuss any discrepancies with the Province, address any inaccuracies and inconsistencies to the reasonable satisfaction of the Province and OPG, and the revised Protection Agreement Maximum will be further revised accordingly and confirmed by an amended notice to the Province.

(c) For clarity, Repayments under Obligations Secured owing in currencies other than Canadian dollars will be valued at the time to be determined for the purposes of this Section 4.01 in accordance with the following:

(i) where a Derivative Agreement has been entered into to hedge related currency exposures, Repayments under such obligations shall be valued on the basis of the hedged value expressed in Canadian dollars; and

(ii) where a Derivative Agreement has not been entered into to hedge related currency exposures, Repayments under such obligations shall be valued on the basis of the noon spot rate for conversions of any currencies into Canadian dollars.

ARTICLE V
REPRESENTATIONS AND WARRANTIES

5.01 Representations and Warranties of OPG

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

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

(b) OPG is a corporation duly constituted and validly existing under the laws of the Province of Ontario and has the power and authority to enter into and perform its obligations under this Agreement and all instruments and agreements delivered pursuant hereto.

(c) OPG has the power and authority to enter into and perform its obligations as the FSM under the Program Agreements and all instruments and agreements delivered pursuant thereto.

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

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

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

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

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

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

5.02 Representations and Warranties of the Province

The Province hereby represents and warrants that:

(a) the execution and delivery of, and the performance of its obligations under, this Agreement by the Province have been authorized by all necessary action on the part of the Province;

(b) the execution and delivery of, and the performance of its obligations under, this Agreement by the Province do not result in the violation of any applicable law; and

(c) this Agreement has been duly executed and delivered by the Province.

ARTICLE VI
BREACH EVENTS

6.01 Breach Events

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

(a) a default in the performance, or breach, of any covenants of OPG under this Agreement, excluding Section 2.01(b)(i), which continues for thirty (30) days after written notice by the Province to OPG of such default or breach;

(b) a default in the performance, or breach, by OPG of Section 2.01(b)(i);

(c) any representation or warranty made by OPG in this Agreement, any certification made in a Process Certificate, or any certification made in a certificate contemplated by Subsection 4.02 of the Change of Law Protection Agreement, proves to be incorrect on the date made and, if curable, is not cured within thirty (30) days after written notice by the Province to OPG of such misrepresentation; or

(d) OPG is no longer the Manager or actions have been taken by or on behalf of the Indenture Trustee to remove OPG as the Manager.

ARTICLE VII
MISCELLANEOUS

7.01 Term of Agreement

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

7.02 Notices

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

(a) if to OPG:

Ontario Power Generation Inc.
700 University Avenue
Toronto, Ontario M5G 1X6
Attention: General Counsel

Fax: (416) 592-4189

(b) if to the Province:

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

and

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

or to such other addresses as a party may from time to time notify the other parties in accordance with this Section 7.02.

7.03 Assignment

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

(b) Any purported assignment of this Agreement in violation of this Section 7.03 shall be null and void.

7.04 Enurement

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

7.05 FIPPA

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

7.06 Delivery of Executed Copies

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

[Signature page to follow]

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

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

By: _____

Name:
Title:

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

By: _____

Name:
Title:

ONTARIO POWER GENERATION INC.

By: _____

Name:
Title:

By: _____

Name:
Title:

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

COMPUTERSHARE TRUST COMPANY OF CANADA, in its capacity as trustee of **FAIR HYDRO TRUST**, as Issuer, by **ONTARIO POWER GENERATION INC.**, not in its individual capacity but solely as Manager

By: _____

Name:
Title:

By: _____

Name:
Title:

SCHEDULE A
DEFINED TERMS

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

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

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

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

"**Breach Event**" has the meaning ascribed thereto in Section 6.01.

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

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

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

"**Collateral**" has the meaning ascribed thereto in the Trust Indenture.

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

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

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

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

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

"**Financing Entity**" means Fair Hydro Trust, a trust settled by the FSM under the laws of the Province of Ontario and under which the Financing Entity Trustee is the trustee.

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

"**Financing Plan**" has the meaning ascribed thereto in the Act as of the date of this Agreement.

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

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

"**Funding Obligation**" has the meaning ascribed to the term "funding obligation" in the Act as of the date of this Agreement.

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

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

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

"**IESO**" has the meaning ascribed thereto in the Act as of the date of this Agreement.

"**IESO Security Agreement**" has the meaning ascribed thereto in the Trust Indenture.

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

"**Initial Forecast**" has the meaning ascribed thereto in the recitals of this Agreement.

"**Initial Forecast Period**" has the meaning ascribed thereto in the recitals of this Agreement.

"**Initial Protection Agreement Maximum**" has the meaning ascribed thereto in the recitals of this Agreement.

"**Investment Interest**" has the meaning ascribed to the term "investment interest" in the Act as of the date of this Agreement.

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

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

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

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

"**Obligations Secured**" has the meaning ascribed thereto in the Trust Indenture.

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

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

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

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

"**Program Agreements**" has the meaning ascribed thereto in the Trust Indenture.

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

"**Protection Agreement Maximum**" means the dollar amount referenced as the Program Agreement Maximum and determined in accordance with Article IV.

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

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

"**Rating Agency**" has the meaning ascribed thereto in the Trust Indenture.

"**Reference Documentation**" has the meaning ascribed thereto in Section 3.04.

"**Repayment**" has the meaning ascribed to the term "repayment" in the General Regulation as of the date of this Agreement.

"**Specified Creditors**" has the meaning ascribed thereto in the Trust Indenture.

"**Substantially in the Form**" has the meaning ascribed thereto in Section 3.05.

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

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

"**Transaction Document**" means (i) all constating and organizational documents of the Financing Entity, including the Declaration of Trust; (ii) any management, administration or servicing agreement to which the Financing Entity is a party, including any replacement or standby services agreement and the Management Agreement; (iii) the Master Transfer and Servicing Agreement; (iv) Trust Indenture; (v) the form of supplemental indenture (supplemental to the Trust Indenture) governing the terms and conditions of a sample series of notes, bonds or other securities to be issued by the Financing Entity, including the particular allocations, security and priority of the Obligations Secured being serviced by the related Investment Interest and any other related series property; (vi) the form of any note, bond or securities purchase agreement; (vii) the form of underwriting agreement, agency agreement, selling agreement and/or subscription agreement that may be used with respect to a sale of a related series of notes, bonds or securities to be issued under the supplemental indenture referred to in (v), above; (viii) the form of any loan or credit agreement governing the issuance of short term loan obligations by the Financing Entity; (ix) the form of schedule to an ISDA Master Agreement governing derivative transactions that may be entered into the Financing Entity from time to time; (x) the form of any other agreement or instrument under which a Funding Obligation may arise or be effected, including any other agreement under which the Financing Entity incurs a material financial obligation or that affects the Province's subrogation rights and/or subrogee interests, including any standby liquidity arrangements or credit enhancement agreements; (xi) if applicable, a Co-Owner Agreement or any other agreement governing the respective interests of persons having rights or interests in the investment asset or other assets of the Financing Entity, including any other agreement of the sort contemplated in Subsection 29(5) of the Act; and (xii) the form of Disclosure Document.

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

EXHIBIT "A"
INITIAL REFERENCE DOCUMENTATION

- Declaration of Trust;
- Management Agreement;
- Master Transfer and Servicing Agreement;
- Acknowledgement and indemnity agreement dated as of [■], 2017 made by IESO in favour of the Indenture Trustee;
- IESO Security Agreement;
- Trust Indenture;
- Warehouse Senior Series 2017-1 Supplemental Indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017;
- Warehouse Subordinated Series 2017-1 Supplemental Indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017; and
- Warehouse Junior Subordinated Series 2017-1 Supplemental Indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017.
- Term Senior Series 2017-1 Supplemental Indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017;
- Term Subordinated Series 2017-1 Supplemental Indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017;
- Term Junior Subordinated Series 2017-1 Supplemental Indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017;
- [Confidential shelf offering memorandum of the Financing Entity dated as of [■], 2017, including the term sheet incorporated by reference therein; and
- Agency agreement between the Financing Entity, CIBC World Markets Inc., RBC Dominion Securities Inc., Goldman Sachs Canada Inc. and the other agents named therein dated as of [■], 2017.] ***[NTD: OM and Agency Agreement will be removed from Schedule A if not provided to the Province sufficiently in advance of execution of the Process Agreement.]***

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

AND

ONTARIO POWER GENERATION INC.

CHANGE OF LAW PROCESS AGREEMENT[1]

Dated as of [■], 2017

[1] Explanatory Note: Closing mechanics under consideration by the Province. Province to advise what is under consideration.

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

RECITALS

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

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

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

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

Prior to entering into this Agreement, OPG provided the Province with the proposed forms of certain of the Transaction Documents **listed on Exhibit "A"**, and the Province has not objected to such forms **and has confirmed to OPG that such Transaction Documents constitute "Reference Documentation" for purposes of this Agreement.**

Prior to entering into this Agreement, OPG, as the FSM, provided the Province with the initial Financing Plan, which includes the initial forecast (the "Initial Forecast")> *setting out OPG's expectations regarding the aggregate maximum amount of Repayments that would arise in the future under Approved Obligations to be incurred during the* <**24 month period from December 1, 2017 to November 30, 2019**> *(the "**Initial Forecast Period**")*< **and**> *the initial Protection Agreement Maximum*< **(the "Initial Protection Agreement Maximum"). The Province has acknowledged receipt of the initial Financing Plan and has not objected to the Initial Forecast or the Initial Protection Agreement Maximum**.

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

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

AGREEMENT OF THE PARTIES

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

ARTICLE I
DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

1.01 Interpretation

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

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

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

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

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

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

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

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

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

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

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

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

1.02 References to the Financing Entity

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

1.03 Effect of Headings

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

1.04 Successors and Assigns

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

1.05 Severability

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction will not affect the validity or enforceability of any other provision hereof. To the extent permitted by applicable law, the parties waive any provision of law which renders any provision of this Agreement invalid or unenforceable in any respect.

1.06 Governing Law

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

1.07 Proceedings Against the Crown Act

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

1.08 Attornment

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

1.09 Counterparts; Electronic Delivery

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

1.10 Non-Business Days

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

1.11 Waiver, Amendment

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

ARTICLE II
COVENANTS OF OPG

2.01 Deliveries to the Province

(a) ~~Not less than 15 Business Days, or such lesser period as the Province may agree to in writing, prior to the initial issuance of any Funding Obligation by the Financing Entity, OPG shall deliver to the Province a copy of the initial Financing Plan. Thereafter,~~ OPG shall promptly deliver to the Province a copy of any proposed change to or replacement of the Financing Plan.

(b) Not less than 10 Business Days, or such lesser period as the Province may agree to in writing, prior to ~~(i)~~ **:**

(i) any proposed change ~~or supplement to~~**in the material terms or conditions applicable to a Primary Obligation in** a previously provided Transaction Document becoming effective or otherwise being used, ~~(ii)~~ **including regarding the timing of or circumstances under which related payments are or may become due or accrue (including as a result of any default, acceleration, termination, wind-up, liquidation or realization), or that would affect the Province's rights of subrogation or assignment (including pursuant to Sections 1.05, 2.01 or 5.01 of the Change of Law Protection Agreement) or its interests as a subrogee or an assignee, that would arise as a result of performing the Limited Guarantee in respect of the applicable Primary Obligation; provided, however, that the foregoing does not apply to any proposed change in particular financial terms, rates and levels, and**

(ii) any additional or replacement Transaction Document becoming effective or otherwise being used,

OPG shall deliver to the Province a copy of such proposed change ~~or supplement~~ to the Transaction Document and any such additional or replacement Transaction Document.

(c) Promptly following (i) any change, modification, alteration, amendment, supplement, extension, renewal, compromise, novation, replacement, suspension or waiver of the terms of all or any part of the Approved Obligations or any Collateral therefor being made, (ii) any new, additional or replacement instruments, documents, agreements or security being used or granted in connection with all or any part of the Approved Obligations, or (iii) any waiver, release, reconveyance, termination, abandonment, subordination, exchange, substitution, transfer, compound, compromise, liquidation or enforcement of all or any part of the Approved Obligations or any security or guarantee therefor being effected, OPG shall deliver to the Province a detailed description of such event and the reasons for it together with any related documents, agreements and instruments.

(d) Promptly following any incurrence of a Funding Obligation or any amendment of a Funding Obligation, OPG shall provide the Province with electronic copies of all related Governing Documents and all other closing documents executed by or on behalf of the Financing Entity in connection with such incurrence or amendment that would affect the Financing Entity's assets or obligations (including, for greater certainty, any related Disclosure Document) and which have not been previously provided to the Province.

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

2.02 Covenants

(a) OPG shall use commercially reasonable efforts to cause the Financing Entity to:

(i) punctually perform and observe all of the Financing Entity's obligations and agreements contained in the Program Agreements;

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

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

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

(v) not (unless waived in writing by the Province):

(A) amend, supplement, modify, restate or replace or waive or consent to a postponement of compliance with the terms and conditions on the part of any other party to any of the Program Agreements, if any such supplementation, amendment, modification, restatement or replacement or waiver or consent could reasonably be considered to be materially prejudicial to the rights or interests of the Province under the Change of Law Protection Agreement; provided, however, that the foregoing does not apply to any change in particular financial terms, rates and levels;

(B) extend, renew, compromise, novate, replace, suspend, reconvey, terminate, abandon, subordinate, exchange, substitute, transfer, compound, liquidate or enforce the terms of all or any part of the Approved Obligations or any Collateral, if any such action could reasonably be considered to be materially prejudicial to the rights

or interests of the Province under the Change of Law Protection Agreement; provided, however, that the foregoing does not apply to the extent that only particular financial terms, rates and levels are affected; **or**

(C) permit the validity or effectiveness of the Change of Law Protection Agreement to be impaired~~; or~~**.**

~~(D) allow the Financing Entity to enter into any Supplemental Indenture or Loan Agreement where any penalty or make whole payment, or any requirement for further consent, approval or agreement, of the Specified Creditor party thereto would be required for the Province to assume the Obligations Secured thereunder.~~

[NTD: As discussed, para (D) was deleted as a consequence of the Province's assumption right being deleted.]

(b) OPG shall:

(i) comply, and shall use commercially reasonable efforts to cause compliance by the Financing Entity, with the Act, the General Regulation and any other enactment related thereto;

(ii) punctually perform and observe all of its (including as the FSM and as Manager) obligations and agreements contained in the Program Agreements;

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

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

(c) ~~Nothing in this Agreement shall limit the~~**The Province and OPG acknowledge that their** obligations ~~of the Province~~**to each other** under the Indemnity Agreement ~~by~~**between** the Province ~~in favour of~~**and** OPG dated June 1, 2017 (as amended, the "**Indemnity Agreement**") ~~and to the extent of any conflict between this Agreement and such Indemnity Agreement, in respect of any matter relating to the Province's obligations to indemnify OPG, the Indemnity Agreement shall~~

~~prevail.~~**are not amended by this Agreement and continue in full force and effect, notwithstanding that this Agreement is entered into subsequent to the Indemnity Agreement.** ***[NTD: Torys and Blakes have mutually agreed to this language.]***

(d) **The Province and OPG acknowledge that their obligations to each other under the Indemnity Agreement are not amended by the Change of Law Protection Agreement and continue in full force and effect, notwithstanding that the Change of Law Protection Agreement was entered into subsequent to the Indemnity Agreement.** ***[NTD: Torys and Blakes have mutually agreed to this language.]***

ARTICLE III
PROCESS CERTIFICATE

3.01 Process Certificate

OPG shall deliver a certificate (the "**Process Certificate**"), signed by the Chief Financial Officer and the Treasurer of OPG or any two Executive Officers of OPG (for clarity, such certificate is to be provided by such officers in their capacity as officers of OPG acting in its capacity as FSM) and addressed to the Province, on or before the incurrence or any amendment of a Funding Obligation, other than any Funding Obligation under which not more than $~~[~~5,000,000~~]~~ in the aggregate may become payable by the Financing Entity (provided that delivery may not be more than 5 Business Days before the incurrence or amendment of the Funding Obligation), setting out the following with respect to such Funding Obligation:

(a) the material terms of the Funding Obligation pertaining to (i) in the case of notes, bonds or other securities, the principal amount, interest or discount rate, third party fees, term to maturity, amortization, redemption or extension features, structure and coupon frequency, as applicable, and (ii) in the case of a Derivative Agreement, ~~the~~**OPG's best estimate of the expected** notional amount, financial terms and pricing, benchmarks, payment structures and early termination rights; ***[NTD: OPG can only provide an estimate of these matters and the actual pricing may be different than what is provided in the certificate since the price is based on the spot market and subject to change.]***

(b) if an existing Funding Obligation is proposed to be amended, material details respecting such amendment, including regarding the applicable details set forth in Subsection 3.01(a), as the context requires;

(c) a statement to the effect that: (i) the Funding Obligation to be incurred or amended (1) will arise under terms and conditions that are Substantially in the Form of the Reference Documentation applicable thereto; (2) in the opinion of the signatories to the Process Certificate, are reasonably incurred or effected in compliance with the Act, the General Regulation, any other enactments related thereto and the applicable Financing Plan; (3) are of a type and are on terms that a

reasonably prudent financial services manager would incur in similar circumstances; and (4) reflect, in all material respects, arm's length terms and conditions; and (ii) any Disclosure Document used in connection with the offering and sale of notes, bonds or other securities is Substantially in the Form of the Reference Documentation;

(d) a statement confirming that any disclosure made in respect of the Funding Obligation (including any Disclosure Document, press release or other written communication prepared for dissemination to third parties in relation to the Funding Obligation) that refers to or describes the terms, effect or adherence of or to this Agreement or the Change of Law Protection Agreement has been made available to the Province prior to use or dissemination, other than where such disclosure was substantially the same as a disclosure previously made;

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

(f) confirmation that, at the time the Funding Obligation is incurred or amended, the maximum aggregate payment amounts due or becoming due in the future in respect of Repayments under the Funding Obligation, together with all other outstanding amounts due or becoming due in the future in respect of Repayments under all Approved Obligations, do not and will not exceed the Protection Agreement Maximum applicable on the date that the Process Certificate is delivered; for clarity, Repayments under Obligations Secured owing in currencies other than Canadian dollars will be determined on the date the Process Certificate is delivered hereunder in accordance with the following:

(i) where a Derivative Agreement has been entered into to hedge related currency exposures, Repayments under such obligations shall be valued on the basis of the hedged value expressed in Canadian dollars; and

(ii) where a Derivative Agreement has not been entered into to hedge related currency exposures, Repayments under such obligations shall be valued on the basis of the noon spot rate for conversions of any currencies into Canadian dollars.

3.02 Acknowledgement regarding delivery of certificate under Change of Law ~~protection~~Protection Agreement

The Province acknowledges and agrees that, concurrent with the delivery of the Process Certificate pursuant to Section 3.01 of this Agreement, the Chief Financial Officer and the Treasurer of OPG or any two Executive Officers of OPG (for clarity, such certificate is to be provided by such officers in their capacity as officers of OPG acting in its capacity as FSM) are authorized to deliver the certificate referred to in Subsection 4.02(~~b~~a)(ii) of the Change of Law Protection Agreement to the Indenture Trustee confirming that OPG has ~~delivered all required certifications~~complied with all of its obligations to the Province and internal requirements

and processes in connection with adherence of the Limited Guarantee to the incurrence of the Certified Primary Obligations in respect of which the certificate in Subsection 4.02(~~b~~a)(ii) of the Change of Law Protection Agreement is being delivered; provided that, upon receipt of a Suspension Notice under the Change of Law Protection Agreement, OPG covenants not to deliver any further certificates to the Indenture Trustee under Subsection 4.02(~~b~~a)(ii) of the Change of Law Protection Agreement ~~other than~~**but, for greater certainty, OPG, as FSM, may deliver a certificate referred to in Subsection 4.02(b)(ii) of the Change of Law Protection Agreement to the Indenture Trustee and the Province** in connection with a Refinancing of a Primary Obligation in respect of which the Adherence Conditions **in Subsection 4.02(a) of the Change of Law Protection Agreement** had been satisfied at the time such Primary Obligation was incurred. ***[NTD: Conforming changes made to line up with Change of Law Protection Agreement.]***

3.03 Acknowledgement regarding delivery of Suspension Notice

The parties acknowledge and agree that the Province is entitled to deliver a Suspension Notice under Section 7.01 of the Change of Law Protection Agreement if a Program Breach or Breach Event has occurred. The Province agrees not to deliver a Suspension Notice pursuant to Section 7.01 of the Change of Law Protection Agreement unless a Program Breach or a Breach Event has occurred.

3.04 Meaning of "Reference Documentation"

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

(a) is a Transaction Document ~~provided to, and not objected to by, the Province prior to the making of this Agreement, as contemplated in the fifth recital to this Agreement~~**listed on Exhibit "A"**; or

(b) is a Transaction Document provided to the Province in accordance with Subsection 2.01(b) that has not been objected to by the Province, by delivery of an objection notice in writing delivered to OPG, within 10 Business Days after it is provided to the Province.

3.05 Meaning of "Substantially in the Form"

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

(a) with respect to the Reference Documentation referred to in clauses (i) to (xi) of the definition of "Transaction Documents", that there are no differences between the proposed documents and such Reference Documentation that could result in a change in the material terms or conditions applicable to the applicable Primary Obligation, including regarding the timing of or circumstances under which related payments are or may become due or accrue (including as a result of any default, acceleration, termination, wind-up, liquidation or realization), or that

would affect the Province's rights of subrogation or assignment (including pursuant to Sections 1.05, 2.01 or 5.01 of the Change of Law Protection Agreement) or its interests as a subrogee or an assignee, that would arise as a result of performing the Limited Guarantee in respect of the applicable Primary Obligation; provided, however, that the foregoing does not apply to any variable terms to be set forth in the proposed documents as are reasonably contemplated in the Reference Documentation, including the particular financial terms, rates and levels set forth in the proposed documents other than to the extent that the forms of Reference Documentation themselves specify specific requirements, limitations or parameters with respect to such financial terms, rates, levels and parameters; and

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

ARTICLE IV
PROTECTION AGREEMENT MAXIMUM

4.01 Protection Agreement Maximum

~~(a) Not less than 15 Business Days, or such lesser period as the Province may agree to in writing, prior to the proposed incurrence of the first Funding Obligation, OPG shall, as the FSM, deliver to the Province: (i) a forecast< *setting out OPG's expectations regarding the aggregate maximum amount of Repayments that would arise in the future under Approved Obligations to be incurred during the* >next following 24 month period< *(the "**Initial Forecast Period**")*>, which expectations shall be consistent with the Financing Plan (the "**Initial Forecast**"); and (ii) notice of< *the initial Protection Agreement Maximum*>, which may not exceed the Initial Forecast.~~

~~(b) Not more than 10 Business Days, or such lesser period as the Province may agree to in writing, following receipt of the Initial Forecast and notice of the initial Protection Agreement Maximum from OPG pursuant to Section 4.01(a), the Province may disagree with the Initial Forecast and the initial Protection Agreement Maximum on the basis that (i) there appears to be inaccuracies in the Financing Plan or the Initial Forecast, (ii) the Initial Forecast is inconsistent with the Financing Plan, or (iii) the initial Protection Agreement Maximum is more than the Initial Forecast. If the Province disagrees, OPG shall discuss any discrepancies with the Province, address any inaccuracies and inconsistencies to the reasonable satisfaction of the Province and OPG, and the initial Protection Agreement Maximum will be revised accordingly and confirmed by an amended notice to the Province.~~

(a) ~~(c)~~ Between nine (9) and twelve (12) months prior to the end of the Initial Forecast Period, OPG shall, as the FSM, deliver to the Province an updated forecast setting out the sum of (1) the aggregate amount of Repayments that will arise in the future under Approved Obligations that are then outstanding and (2) OPG's expectations regarding the aggregate maximum amount of Repayments that would arise in the future under Approved Obligations to be incurred during the period ending 24 months following the Initial Forecast Period, which expectation shall be consistent with the then applicable Financing Plan. Such updated forecast shall be further updated on a similar basis with respect to each successive 24 month period or more frequently if at any time OPG has knowledge that the most recent forecast is materially inaccurate (the Initial Forecast and each such updated forecast, each a "**Forecast**"). Together with each Forecast, OPG shall also provide a revised Protection Agreement Maximum, which may not exceed such Forecast.

(b) ~~(d)~~ Not more than 10 Business Days, or such lesser period as the Province may agree to in writing, following receipt of any further Forecast and notice of the revised Protection Agreement Maximum from OPG pursuant to Section 4.01(~~c~~**a**), the Province may disagree with such further Forecast or revised Protection Agreement Maximum on the basis that (i) there appears to be inaccuracies in the Financing Plan or such further Forecast, (ii) the further Forecast is inconsistent with the Financing Plan, or (iii) the revised Protection Agreement Maximum is more than the further Forecast. If the Province disagrees, OPG shall discuss any discrepancies with the Province, address any inaccuracies and inconsistencies to the reasonable satisfaction of the Province and OPG, and the revised Protection Agreement Maximum will be further revised accordingly and confirmed by an amended notice to the Province.

(c) ~~(e)~~ For clarity, Repayments under Obligations Secured owing in currencies other than Canadian dollars will be valued at the time to be determined for the purposes of this Section 4.01 in accordance with the following:

(i) where a Derivative Agreement has been entered into to hedge related currency exposures, Repayments under such obligations shall be valued on the basis of the hedged value expressed in Canadian dollars; and

(ii) where a Derivative Agreement has not been entered into to hedge related currency exposures, Repayments under such obligations shall be valued on the basis of the noon spot rate for conversions of any currencies into Canadian dollars.

ARTICLE V
REPRESENTATIONS AND WARRANTIES

5.01 Representations and Warranties of OPG

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

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

(b) OPG is a corporation duly constituted and validly existing under the laws of the Province of Ontario and has the power and authority to enter into and perform its obligations under this Agreement and all instruments and agreements delivered pursuant hereto.

(c) OPG has the power and authority to enter into and perform its obligations as the FSM under the Program Agreements and all instruments and agreements delivered pursuant thereto.

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

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

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

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

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

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

5.02 Representations and Warranties of the Province

The Province hereby represents and warrants that:

(a) the execution and delivery of, and the performance of its obligations under, this Agreement by the Province have been authorized by all necessary action on the part of the Province;

(b) the execution and delivery of, and the performance of its obligations under, this Agreement by the Province do not result in the violation of any applicable law; and

(c) this Agreement has been duly executed and delivered by the Province.

ARTICLE VI
BREACH EVENTS

6.01 Breach Events

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

(a) a default in the performance, or breach, of any covenants of OPG under this Agreement, **excluding Section 2.01(b)(i),** which continues for thirty (30) days after written notice by the Province to OPG of such default or breach;

(b) **a default in the performance, or breach, by OPG of Section 2.01(b)(i);**

(c) ~~(b)~~ any representation or warranty made by OPG in this Agreement, any certification made in a Process Certificate, or any certification made in a certificate contemplated by Subsection 4.02~~(b)~~ of the Change of Law Protection Agreement, proves to be incorrect on the date made and, if curable, is not cured within thirty (30) days after written notice by the Province to OPG of such misrepresentation; or

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

ARTICLE VII
MISCELLANEOUS

7.01 Term of Agreement

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

7.02 Notices

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

(a) if to OPG:

Ontario Power Generation Inc.
700 University Avenue
Toronto, Ontario M5G 1X6
Attention: General Counsel

Fax: (416) 592-4189

(b) if to the Province:

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

and

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

or to such other addresses as a party may from time to time notify the other parties in accordance with this Section 7.02.

7.03 Assignment

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

(b) Any purported assignment of this Agreement in violation of this Section 7.03 shall be null and void.

7.04 Enurement

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

7.05 FIPPA

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

7.06 Delivery of Executed Copies

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

[Signature page to follow]

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

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

By: _____

Name:
Title:

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

By: _____

Name:
Title:

ONTARIO POWER GENERATION INC.

By: _____

Name:
Title:

By: _____

Name:
Title:

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

COMPUTERSHARE TRUST COMPANY OF CANADA, in its capacity as trustee of **FAIR HYDRO TRUST**, as Issuer, by **ONTARIO POWER GENERATION INC.**, not in its individual capacity but solely as Manager

By: _____

Name:
Title:

By: _____

Name:
Title:

SCHEDULE A
DEFINED TERMS

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

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

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

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

"**Breach Event**" has the meaning ascribed thereto in Section 6.01.

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

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

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

"**Collateral**" has the meaning ascribed thereto in the Trust Indenture.

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

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

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

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

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

"**Financing Entity**" means Fair Hydro Trust, a trust settled by the FSM under the laws of the Province of Ontario and under which the Financing Entity Trustee is the trustee.

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

"**Financing Plan**" has the meaning ascribed ~~thereto in the Act as of the date of this Agreement~~.

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

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

"**Funding Obligation**" has the meaning ascribed to the term "funding obligation" in the Act as of the date of this Agreement.

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

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

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

"**IESO**" has the meaning ascribed thereto in the Act as of the date of this Agreement.

"IESO Security> ***Agreement*** *" has the meaning ascribed thereto in the Trust Indenture.*<

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

"**Initial Forecast**" has the meaning ascribed thereto in ~~Section 4.01(a)~~**the recitals of this Agreement.**

"**Initial Forecast Period**" has the meaning ascribed thereto in ~~Section 4.01(a)~~**the recitals of this Agreement.**

"~~**Investment Interest**~~**Initial Protection Agreement Maximum**" has the meaning ascribed **thereto in the recitals of this Agreement.**

"Investment Interest" has the meaning ascribed to the term "investment interest" in the Act as of the date of this Agreement.

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

~~"**Loan**< ***Agreement*** *" has the meaning ascribed thereto in the Trust Indenture.*>~~

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

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

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

"**Obligations Secured**" has the meaning ascribed thereto in the Trust Indenture.

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

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

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

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

"**Program Agreements**" has the meaning ascribed thereto in the Trust Indenture.

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

"**Protection Agreement Maximum**" means the dollar amount referenced as the Program Agreement Maximum and determined in accordance with Article IV.

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

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

"**Rating Agency**" has the meaning ascribed thereto in the Trust Indenture.

"**Reference Documentation**" has the meaning ascribed thereto in Section 3.04.

"**Repayment**" has the meaning ascribed to the term "repayment" in the General Regulation as of the date of this Agreement.

"**Specified Creditors**" has the meaning ascribed thereto in the Trust Indenture.

"**Substantially in the Form**" has the meaning ascribed thereto in Section 3.05.

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

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

"**Transaction Document**" means (i) all constating and organizational documents of the Financing Entity, including the Declaration of Trust; (ii) any management, administration or servicing agreement to which the Financing Entity is a party, including any replacement or standby services agreement and the Management Agreement; (iii) the Master Transfer and Servicing Agreement; (iv) Trust Indenture; (v) the form of supplemental indenture (supplemental to the Trust Indenture) governing the terms and conditions of a sample series of notes, bonds or other securities to be issued by the Financing Entity, including the particular allocations, security and priority of the Obligations Secured being serviced by the related Investment Interest and any other related series property; (vi) the form of any note, bond or securities purchase agreement; (vii) the form of underwriting agreement, agency agreement, selling agreement and/or subscription agreement that may be used with respect to a sale of a related series of notes, bonds or securities to be issued under the supplemental indenture referred to in (v), above; (viii) the form of any loan or credit agreement governing the issuance of short term loan obligations by the Financing Entity; (ix) the form of schedule to an ISDA Master Agreement governing derivative transactions that may be entered into the Financing Entity from time to time; (x) the form of any other agreement or instrument under which a Funding Obligation may arise or be effected, including any other agreement under which the Financing Entity incurs a material financial obligation or that affects the Province's subrogation rights and/or subrogee interests, including any standby liquidity arrangements or credit enhancement agreements; (xi) if applicable, a Co-Owner Agreement or any other agreement governing the respective interests of persons having rights or interests in the investment asset or other assets of the Financing Entity, including any other agreement of the sort contemplated in Subsection 29(5) of the Act; and (xii) the form of Disclosure Document.

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

EXHIBIT "A"
INITIAL REFERENCE DOCUMENTATION

- **Declaration of Trust;**
- **Management Agreement;**
- **Master Transfer and Servicing Agreement;**
- **Acknowledgement and indemnity agreement dated as of [■], 2017 made by IESO in favour of the Indenture Trustee;**
- **IESO Security Agreement;**
- **Trust Indenture;**
- **Warehouse Senior Series 2017-1 Supplemental Indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017;**
- **Warehouse Subordinated Series 2017-1 Supplemental Indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017; and**
- **Warehouse Junior Subordinated Series 2017-1 Supplemental Indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017.**
- **Term Senior Series 2017-1 Supplemental Indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017;**
- **Term Subordinated Series 2017-1 Supplemental Indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017;**
- **Term Junior Subordinated Series 2017-1 Supplemental Indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017;**
- **[Confidential shelf offering memorandum of the Financing Entity dated as of [■], 2017, including the term sheet incorporated by reference therein; and**
- **Agency agreement between the Financing Entity, CIBC World Markets Inc., RBC Dominion Securities Inc., Goldman Sachs Canada Inc. and the other agents named therein dated as of [■], 2017.]** ***[NTD: OM and Agency Agreement will be removed from Schedule A if not provided to the Province sufficiently in advance of execution of the Process Agreement.]***

Document comparison by Workshare Compare on December-06-17 4:23:37 PM

Input:	
Document 1 ID	interwovenSite://INVENTORYS1/TorysAtWork/24592518/1
Description	#24592518v1<TorysAtWork> - Change of Law Process Agreement (Dec 4)
Document 2 ID	interwovenSite://INVENTORYS1/TorysAtWork/24592518/4
Description	#24592518v4<TorysAtWork> - Change of Law Process Agreement (Dec 6)
Rendering set	strikeout-colour

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

Statistics:	
	Count
Insertions	87
Deletions	46
Moved from	4
Moved to	4
Style change	0
Format changed	0
Total changes	141

Fair Hydro -- Change of Law Protection Agreement - Sign off.rtf

From: Saulnier, Brett [bsaulnier@torys.com]
To: Saulnier, Brett [bsaulnier@torys.com]; ASHBOURNE, STEPHEN []; Milligan, Peter []; Sebastiano, Rocco []; Mansoori, Nina []; Kandeepan, Ken (OFA) []; 'LADAK Lubna -TREASURY' []; Strathy, Anna (OFA) []; Veinot, Cindy (TBS) []; McKinlay, Tom (MAG) []; Donaldson, Mark (TBS) []; Cayley, Daniel (ENERGY) []; Thouin, Alena (ENERGY) []; Ramchandani, Rima []; 'LEE John -TREASURY' []; 'RYFA Ken -TREASURY' []; 'HAHN PARKER Janet -TREASURY' []; 'MAUTI John -FIN & C CTRL' []; 'LAURETA LAPIRA May -TREASURY' []; Feldman, Michael []; 'WONG Leslie -LAWDIV' []; Fullerton, Rick []; Mayman, Gadi (OFA) []; Manning, Mike (OFA) []; Hanslep, Malle (MOF) []; 'ian.benaiah@rbccm.com' []; 'Khan, Nur (nur.khan@rbccm.com)' []; 'brent.r.taylor@rbccm.com' []; 'katrina.niehaus@gs.com' []; 'brian.delaney@gs.com' []; 'Maciel, Andrew' []; 'Adalja, Sunil' []; 'Persad, Nicole' []; 'Persaud, Donnie - Debt Capital Markets' []; Hume, Steen (ENERGY) []; Olusoga, Yinka []; Whitfield, Tobias P. (MOF) []; PALMER, AARON []; VINER, JON []; PRESTAGE, JA []
Subject: Fair Hydro -- Change of Law Protection Agreement - Sign off
Date: Tuesday, December 12, 2017 00:39:07

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From: Saulnier, Brett [bsaulnier@torys.com]
To: Saulnier, Brett [bsaulnier@torys.com]; 'ASHBOURNE, STEPHEN' []; Milligan, Peter []; Sebastiano, Rocco []; Mansoori, Nina []; Kandeepan, Ken (OFA) []; 'LADAK Lubna -TREASURY' []; Strathy, Anna (OFA) []; Veinot, Cindy (TBS) []; McKinlay, Tom (MAG) []; Donaldson, Mark (TBS) []; Cayley, Daniel (ENERGY) []; Thouin, Alena (ENERGY) []; Ramchandani, Rima []; 'LEE John -TREASURY' []; 'RYFA Ken -TREASURY' []; 'HAHN PARKER Janet -TREASURY' []; 'MAUTI John -FIN & C CTRL' []; 'LAURETA LAPIRA May -TREASURY' []; Feldman, Michael []; 'WONG Leslie -LAWDIV' []; Fullerton, Rick []; Mayman, Gadi (OFA) []; Manning, Mike (OFA) []; Hanslep, Malle (MOF) []; 'ian.benaiah@rbccm.com' []; 'Khan, Nur (nur.khan@rbccm.com)' []; 'brent.r.taylor@rbccm.com' []; Delaney, Brian []; 'Maciel, Andrew' []; 'Adalja, Sunil' []; 'Persad, Nicole' []; 'Persaud, Donnie - Debt Capital Markets' []; Hume, Steen (ENERGY) []; Olusoga, Yinka []; Whitfield, Tobias P. (MOF) []; PALMER, AARON []; VINER, JON []; PRESTAGE, JA []; Wadhwani, Tejal []; Conner, Robbin []; Sabri, Salina []
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Fair Hydro Plan Question.pdf

From: Veinot, Cindy (TBS)
To: Kim Marshall
Cc: Hosick, Sarah (TBS)
Subject: Fair Hydro Plan Question
Date: March 28, 2018 9:06:00 AM

Hi Kim -- can you send me the expected amount of regulatory asset that will be recorded/sold to OPG Trust each year for the next three years. I'm looking to quantify what the AG will say our deficit is in each of the next three years. I have a schedule that shows the difference between the amount paid to the generator and the amount collected from customers (which is about $2.2B next year), but I'm assuming that doesn't include the interest paid to OPG Trust during those years.

Thanks,

Fair Hydro Trust - Disclosure Documents.rtf

From: VINER, JON [JON.VINER@blakes.com]
To: LEE John -TREASURY [john.s.lee@opg.com]; 'ken.ryfa@opg.com' [ken.ryfa@opg.com]; WONG Leslie -LAWDIV [leslie.wong@opg.com]; LADAK Lubna -TREASURY [lubna.ladak@opg.com]; Mansoori, Nina [nmansoori@torys.com]; Saulnier, Brett [bsaulnier@torys.com]; Ramchandani, Rima [rramchandani@torys.com]
CC: Thouin, Alena (ENERGY) [Alena.Thouin@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Cayley, Daniel (ENERGY) [Daniel.Cayley@ontario.ca]; Manning, Mike (OFA) [Mike.Manning@ofina.on.ca]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Strathy, Anna (OFA) [Anna.Strathy@ofina.on.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Donaldson, Mark (TBS) [Mark.Donaldson@ontario.ca]; Hanslep, Malle (MOF) [Malle.Hanslep@ontario.ca]; Whitfield, Tobias P. (MOF) [Tobias.Whitfield@ontario.ca]; ASHBOURNE, STEPHEN [STEPHEN.ASHBOURNE@blakes.com]; Kwan, Ronald (OFA) [Ronald.Kwan@ofina.on.ca]; Huang, Jackson (MEDG/MRIS) [Jackson.Huang@ontario.ca]; Sawwaf, Khareem (ENERGY) [Khareem.Sawwaf@ontario.ca]; Lightbody, Ava (ENERGY) [Ava.Lightbody@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Mayman, Gadi (OFA) [Gadi.Mayman@ofina.on.ca]
Subject: Fair Hydro Trust - Disclosure Documents
Date: Tuesday, January 16, 2018 11:47:57
Attachment 1: imagefde43e.GIF
Attachment 2: 23291241-v2-Fair Hydro Trust Investor Presentation - Comments.DOCX
Attachment 3: Fair Hydro Trust OM - Comments of the Province.pdf
Attachment 4: 2018-1 Senior Notes Term Sheet - Comments of the Province.pdf

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All,

Please find attached the Province's comments on the offering memorandum, investor presentation and term sheet. We do not have comments on the additional documents circulated on January 5th.

Please let us know if you would like to discuss.

Kind regards,

Jon

Jon Viner

Associate

jon.viner@blakes.com

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Blakes

23291241-v2-Fair Hydro Trust Investor Presentation - Comments.pdf

Fair Hydro Trust
Investor Presentation

January [xx], 2018

General Comments:

A. **Please consider adding an executive summary given the density of the presentation.**

B. **Please consider focusing on the mechanics of the FHPA.**

23291241.2

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Presenters

ONTARIO POWER GENERATION

Ken Hartwick
Chief Financial Officer & Senior Vice President – Finance

John Lee
Vice President, Treasurer

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VIII. Investment Highlights

I. Introduction and Transaction Overview

Introduction

Ontario's Fair Hydro Plan

- ~~The Province of Ontario announced its Fair Hydro Plan (FHP) on March 2, 2017, which proposed to lower the average electricity bill for eligible customers1 (referred to as Specified Consumers) by 25% (the Fair Adjustment)~~
- ~~The 25% reduction includes an 8% rebate equivalent to the provincial portion of the harmonized sales tax granted by the Ontario government in January 2017~~
- ~~It is expected that the rate reduction will be in effect until April 30, 2021, with any rate increases until that date limited to the rate of inflation in Ontario~~
- **[Rather introduce by focusing on the enacted legislation. Earlier plan and announcement were superceded by the more detailed context of the legislation.]**

Legislation

- On June 1, 2017, the Ontario government passed the *Ontario Fair Hydro Plan Act, 2017* (~~together, with the regulations promulgated thereunder,~~ the "FHPA" or "Act") to give effect to the FHP~~, legislation that reallocates certain electricity costs over time and provides immediate rate relief contemplated by the Fair Hydro Plan to Specified Consumers~~. **[Track the purpose language in s. 3 OFHPA. Rate reduction is incidental and need not be emphasized.]**
- The FHPA is supplemented by regulations related to the implementation of the FHPA (the "Regulations" and (together, with the FHPA, the "[Legislation]").
- The FHPA imposes an irrevocable and non-bypassable charge recoverable from Specified Consumers and referred to as the Clean Energy Adjustment (CEA). The CEA for a period ~~that~~ will be determined in accordance with the Legislation by Ontario Power Generation (OPG) in its role as Financial Services Manager under the Act.
- The CEA will be determined for each month during successive six month reference periods and will be ~~period and~~ converted by the Ontario Energy Board (OEB) into a cent per ~~$/~~kWh rate and added to electricity invoices sent to Specified Consumers ~~commencing on May 1, 2021~~.
- From [July 1, 2017] to April 30, 2021 (the "Moratorium Period"), no payments in respect of the CEA are expected to be collected. During the Moratorium Period and until July 31, 2021, ~~CEA will be collected; during this period~~ the Independent Electricity System Operator (IESO) is obligated to pay all funding and [other expenses] of the [Trust][Financing Entities] (excluding principal) (referred to as "Carrying Costs") under the Regulations. **[Confirm square bracketed information.]**

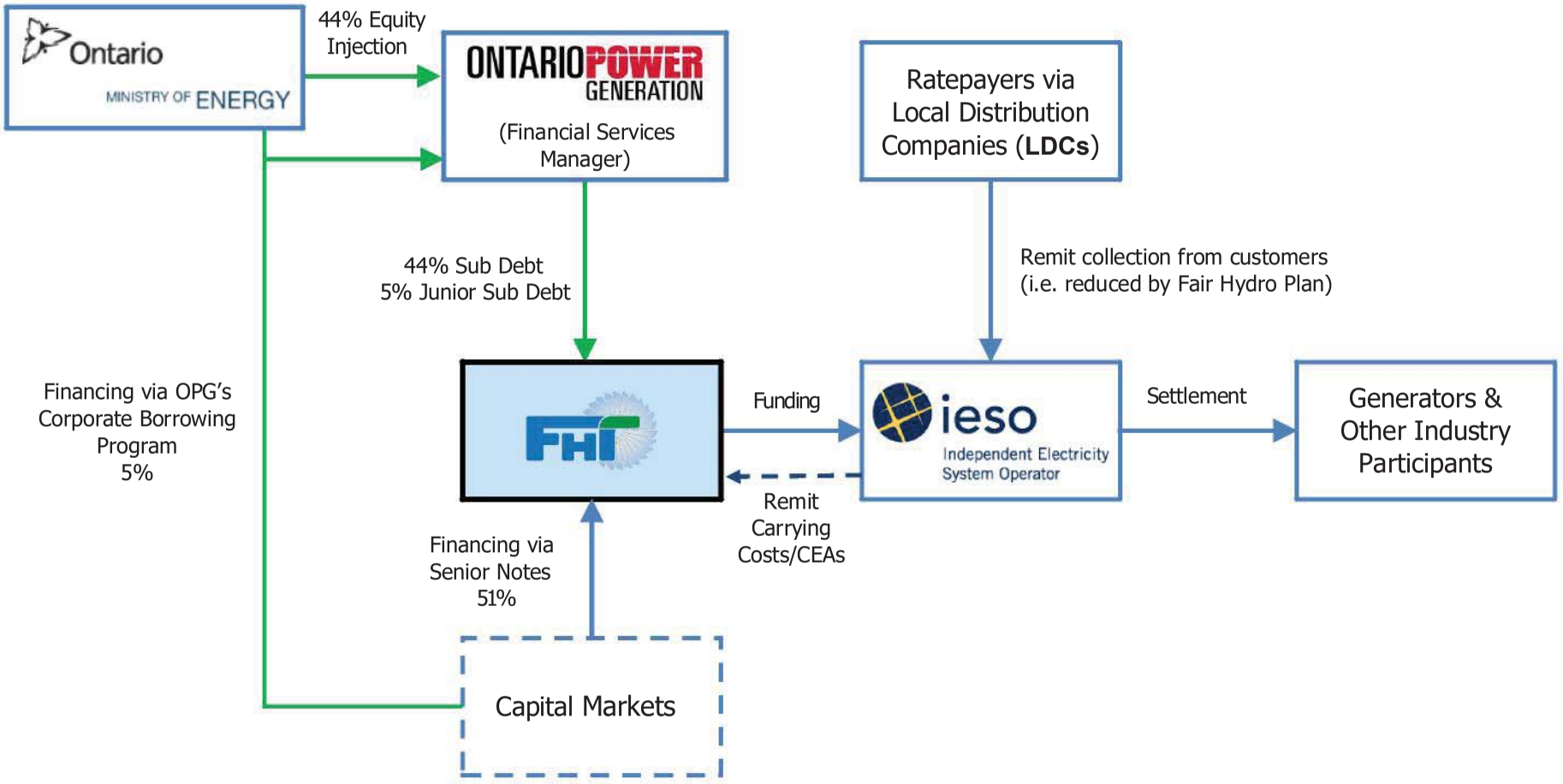
Fair Hydro Trust

- The implementation of the Fair Hydro Plan will be financed by the Fair Hydro Trust ("FHT", the "Trust" or the "Issuer") **[Consider other financing entities?]**through the issuance of senior, subordinated and junior subordinated notes.
- Structured to be bankruptcy remote and even though consolidated by OPG on an accounting basis is ring fenced from OPG's other creditors
- The FHT term notes will be repaid through the CEA payments received from Specified Consumers or from the proceeds of one or more refinancings.

1 Primarily Regulated Price Plan-eligible customers.

Transaction Structure

- Concurrent with every issuance of senior notes, it is expected that OPG will purchase subordinated debt and junior subordinated debt of the Trust in an aggregate amount not to exceed 49% of all outstanding debt



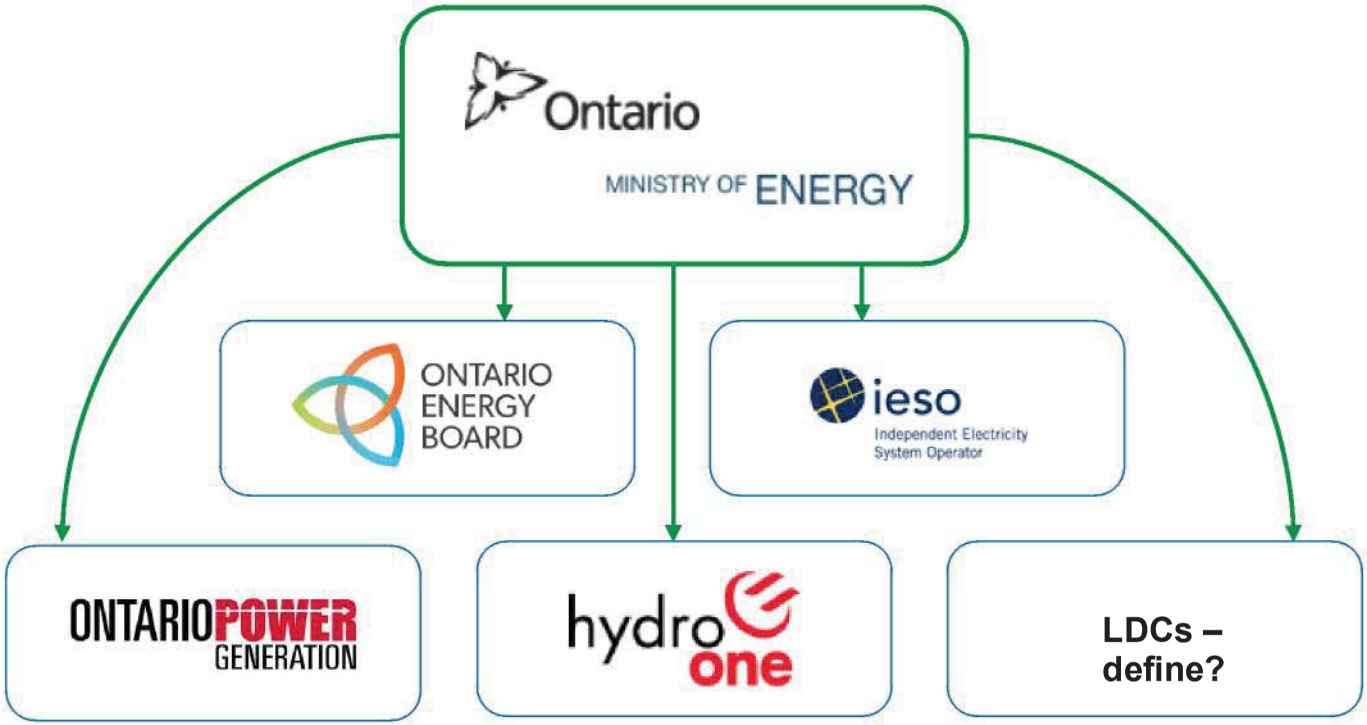
Note: The diagram above is based on subordinated debt of 49% of all outstanding debt; under the Master Trust Indenture, the Trust covenants to maintain the level of subordinated debt plus junior subordinated debt at not less than [35% of all outstanding debt] **[Elaborate]**

Note: The assets and liabilities of the Trust are deemed, under the *Electricity Act, 1998* to exclude the assets and liabilities of OPG, and vice versa. **[Needed?]**

II. Ontario Electricity Market

Overview of Ontario's Electricity Market

- Highly regulated electricity market comprised primarily of three components: generation, transmission and distribution; ~$22 billion in average annual cash flows[1]
- Transmission rates, distribution rates, and OPG's regulated rates are set by the OEB
- Rates for the majority of the remaining generation supply are set by direct contracts with the IESO (e.g. wind, solar, hydroelectric)



[1] Source: "Ontario Planning Outlook – A technical report on the electricity system prepared by the IESO" dated September 1, 2016. The amount represents the mathematical average of the system costs on page 44 in the appendix to the technical report, entitled "Data Tables for the OPO Technical Report".

Key Industry Participants

Participants	Credit Ratings (DBRS / S&P / Moody's)	Description
Ontario Ministry of Energy	AA (l) / A+ / Aa2 [1]	• The Province of Ontario through the Ministry of Energy sets the policy for the electricity system
Ontario Energy Board	--	• Independent public regulatory agency established under the *Ontario Energy Board Act, 1998* and has the authority to regulate Ontario's electricity market, including the activities of transmitters and distributors • Sets the regulated price for the commodity cost charged to most residential electricity customers via the Regulated Price Plan (RPP); RPP rates are set twice a year (May and November)
IESO Independent Electricity System Operator	A(h) / -- / Aa2	• Not-for-profit corporation established under the *Electricity Act, 1998 (Ontario)* • Manages the operation and reliability of Ontario's bulk power system and administers the wholesale electricity market
Ontario Power Generation	A(l) / BBB+ / --	• Corporation formed under the *Business Corporation Act (Ontario)*, whose sole shareholder is the Province of Ontario • Principal business is the generation and sale of electricity in Ontario and is Ontario's largest clean energy electricity generator, providing approximately half of the province's electricity
Hydro One	A(h) / A / A3	• Ontario's largest electricity transmission and distribution company, delivering electricity to over 1.3 million customers across the province, and to large industrial customers and municipal utilities **[Relevance? Not named in OM.]**

[1] The credit ratings noted are for the Province of Ontario.

Key Industry Participants – LDC Overview

- As part of the restructuring of Ontario's electricity industry under the *Energy Competition Act, 1998*, the municipal electricity utilities became municipally-owned business corporations, including LDCs. The majority of LDCs continue to be municipally-owned, while others have been sold to or acquired by Hydro One or private-sector owners
- An LDC is responsible for distributing electricity to customers in its OEB-licensed service territory, and in some cases to other distributors

Select Aggregate Market Stats[1]

Number of LDCs in Ontario	65
Residential & Small Commercial[2] Revenue	$18.89 billion
Residential & Small Commercial[2] Metered Usage (kWh)	52.39 billion
Residential Customers	4.61 million
Small Commercial[2] Usage Customers	0.44 million
Total Residential & Small Commercial[2] Customers	5.05 million

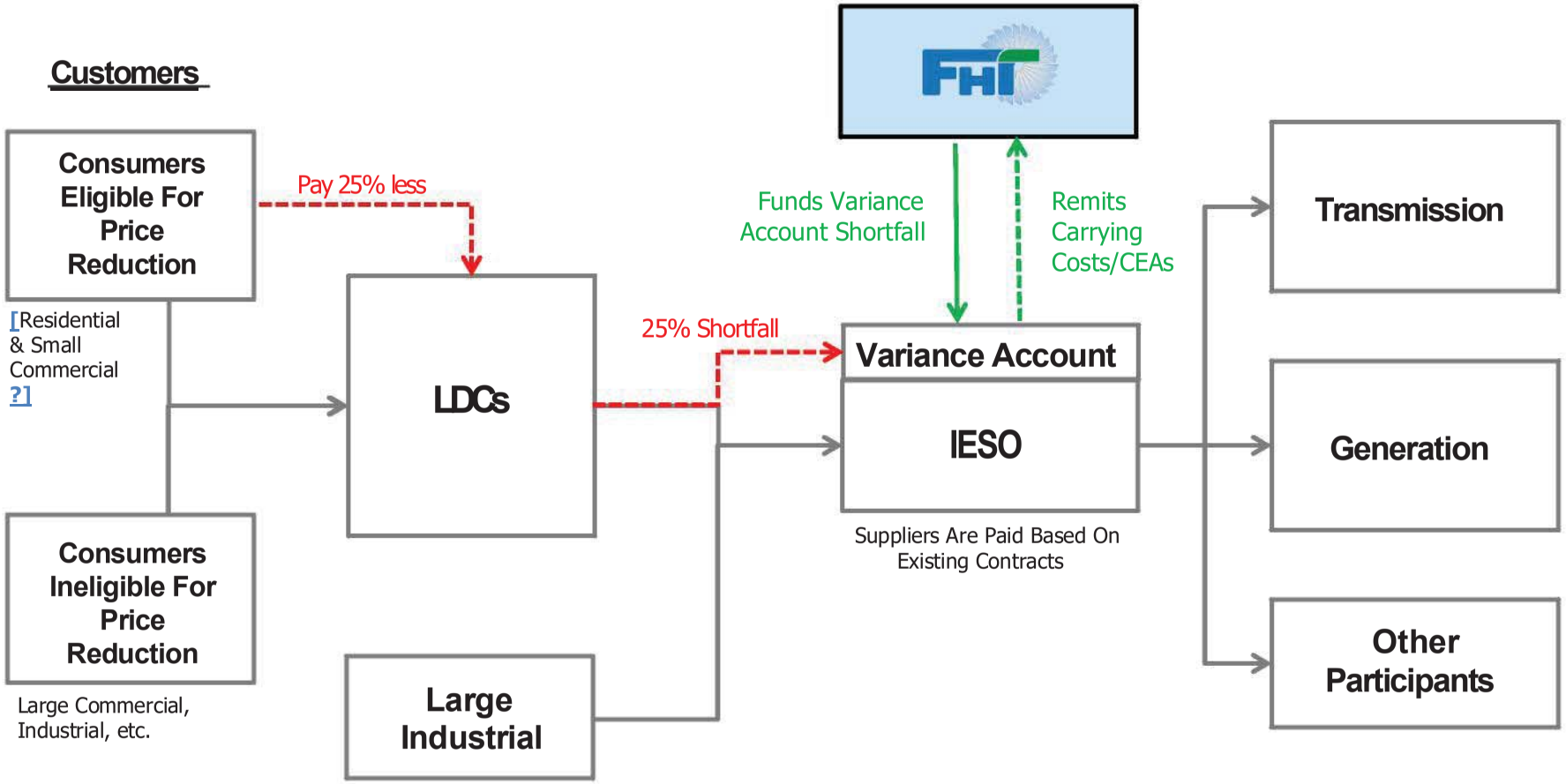
Top 5 LDCs by Customer Base[1]

	Rating[3] *(S&P/DBRS/Moody's)*	Customers[4] *(MM)*	Revenue[4] *(C$MM)*
hydro one	A / A(h) / A3	1.30	$4,533
alectra utilities	A / A / --	0.96	$3,642
TORONTO HYDRO	A / A / --	0.75	$3,886
HydroOttawa	BBB+ / A / --	0.32	$1,130
London Hydro	A / -- / --	0.15	$488
		3.49	$13,680

1 Source: OEB 2016 Yearbook of Electricity Distributors **[Update?]**
2 Small Commercial includes General Service <50kW Customers
3 Most recent rating reports from S&P, DBRS and Moody's
4 Residential and Small Commercial customers **[Compare to Specified Consumers?]**

Electricity Market with FHT

- Under the FHPA, each month the IESO determines the shortfall that [results from the Fair Adjustment]**[Please consider more precisions. See the statutory definition of "IESO deferral".]** and records this amount, together with financing costs, in a variance account
- FHT will [acquire the Investment Interest to be financed by…] ~~finance the shortfall and is entitled to recover~~ The acquired Investment Interest entitles FHT to be paid an amount determined by reference to its costs and the principal and interest on its debt, through CEAs from Specified Consumers



III. Legislative and Regulatory Framework

Legislation Overview

Purpose	• The FHPA was enacted to ensure that clean energy costs and clean energy benefits are fairly allocated among present and future Specified Consumers • Clean energy costs are costs allocated to consumers as a result of Ontario's clean energy initiatives; clean energy benefits are benefits that accrue to both present and future electricity consumers
Specified Consumers	• A category of consumers that generally is comprised of residential consumers, small businesses and farms • Includes consumers with a demand for electricity of 50 kW or less or those that use not more than 250,000 kWh of electricity annually
Rate Reduction Period	• **July 1, 2017 – April 30, 2018** – Specified Consumers charged an invoice amount that is 25%[1] less than the regulated rate that would otherwise have been determined by the OEB; the 25% reduction includes an 8% rebate equivalent to the provincial portion of the HST previously granted by the Ontario government • **May 1, 2018 – April 30, 2019** - regulated rate established in the first year of the Rate Reduction Period anticipated to increase by the rate of inflation in Ontario • **May 1, 2019 – April 30, 2021** - rate reductions [will be established by future regulation] but anticipated to increase by the rate of inflation in Ontario

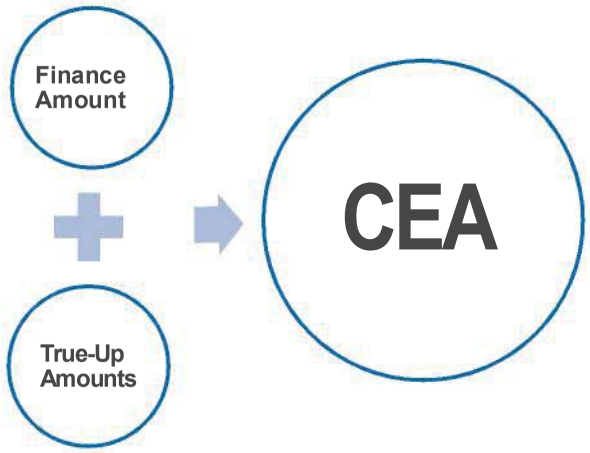
1 Based on a typical Toronto Hydro customer; the amount of the reduction for any given Specified Consumer may vary from this account.

Legislation Overview, cont'd

Regulatory Asset	• Each month the IESO determines [the shortfall that results from the Fair Adjustment] **[Replace with concept of IESO deferral]** and records this amount, together with the costs of financing the shortfall, in a variance account • The IESO has the right to recover the balance recorded in the variance account from Specified Consumers (such right is the "Regulatory Asset") • The IESO may transfer a specified portion of the Regulatory Asset to [the Trust] for a cash purchase price equal to the corresponding amount recorded in the variance account
Investment Asset and Investment Interests	• The Trust is not obligated to purchase Regulatory Assets from the IESO • If the IESO and the Trust agree to the transfer of a specified portion of the Regulatory Asset, such transfer results in the creation of a current and irrevocable property right that is immediately vested in the Trust (such right is an "Investment Interest") • By acquiring an Investment Interest, [the Trust] will be entitled to recover all of its associated financing costs and acquires the right to impose, invoice, collect, receive and recover CEAs from Specified Consumers in accordance with the Legislation
Moratorium Period *(July 1, 2017 to April 30, 2021)*	• CEAs are [not permitted to be collected from Specified Consumers during this period] **[Conform to Legislation]** • The IESO is obligated to pay [the Trust all Carrying Costs], excluding repayment of principal on any debt obligations, during the Moratorium Period and extending to July 31, 2021. The Carrying Costs incurred by the IESO will be added to its Regulatory Asset variance account pursuant to Regulations • As security for the performance of its obligations, the IESO has granted the Trust a first-priority security interest in all of its accounts receivable owing by Electricity Vendors to the IESO • The IESO has a $2 billion general credit facility from the Ontario Financing Authority (OFA) which can be used to pay the Carrying Costs **[Suggestive that OFA line will necessarily be available to cover varying costs?]**

Clean Energy Adjustments

- Under the FHPA, the CEA is the amount payable by Specified Consumers to cover the [cost of financing the shortfall from the Fair Adjustment] **[consider precision/alignment with Legislation]** and the associated costs of the financing, including payment of principal, operating costs of the Trust and funding of reserve accounts
- CEAs shown on an invoice issued to Specified Consumers represents the amount of the consumers' indebtedness and may not be set off or bypassed

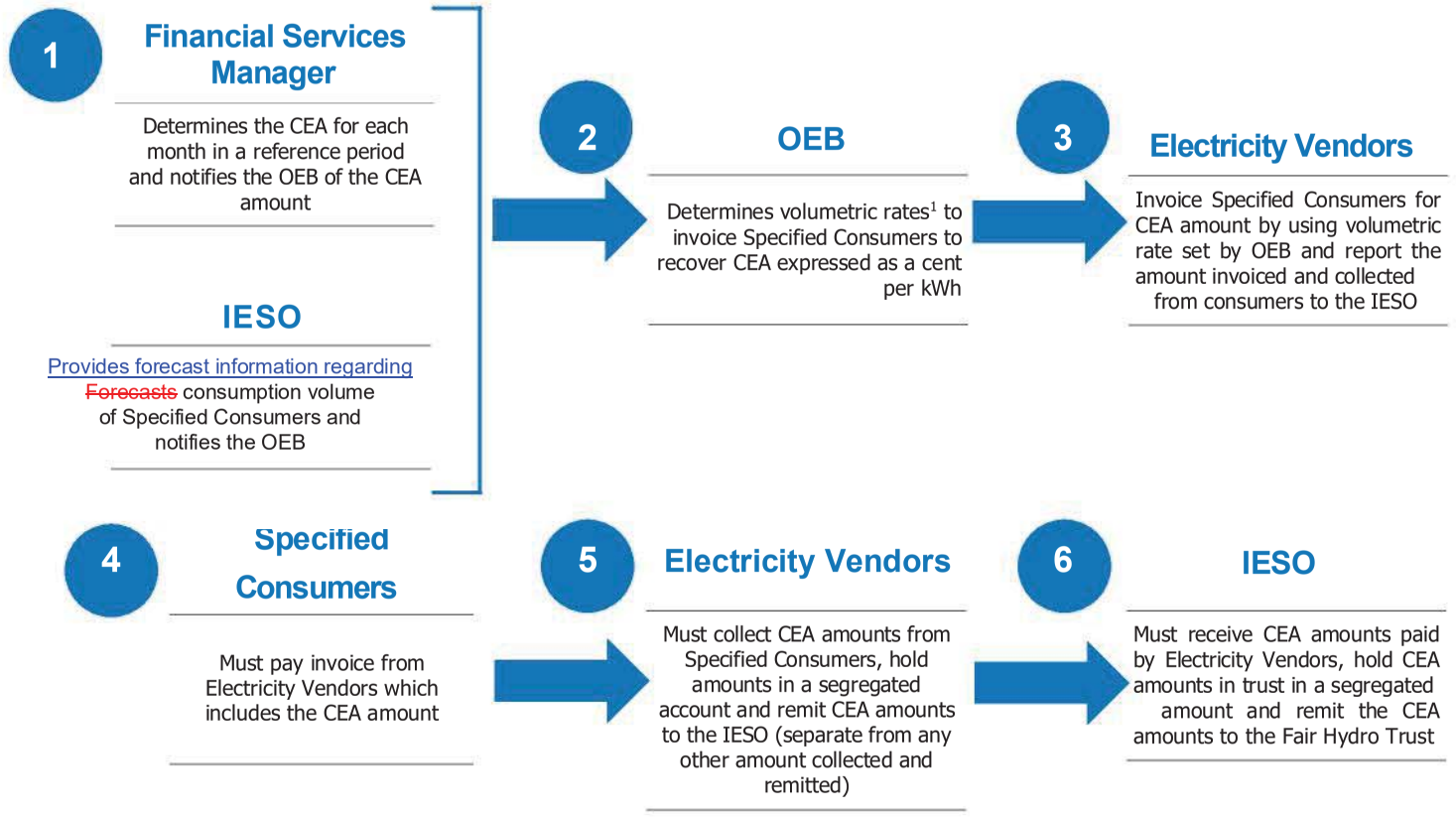


Finance amount = estimate of the amount payable by the Trust mainly in respect of principal payments, interest costs, Trust expenses and taxes, reserve account deposits and derivative payments

True-up amounts capture the difference between the finance amounts incurred by the Trust and the CEAs collected from Specified Consumers and also include other anticipated shortfalls and differences due to various factors (e.g. consumer defaults and delays, billing lags, write-offs and variations in electricity consumption)

Billing and Collection of CEAs

- CEA amounts for billing and collection purposes will be managed outside of the IESO's current settlement processes set out in the Market Rules for electricity invoice amounts
- Collection risk for CEA amounts are mitigated through statutory rights in the FHPA, the collection obligations of the IESO under the Master Transfer & Servicing Agreement (MTSA), and the ability to include amounts into the true up mechanism
- IESO is allowed to commingle the CEAs during a monthly period before remitting to FHT. If the IESO's rating is downgraded below investment grade, it will not be allowed to commingle CEAs and will remit within two business days of receipt



[1] The rates will be determined by dividing the CEA amount by the forecasted energy consumption in the reference period by Specified Consumers.

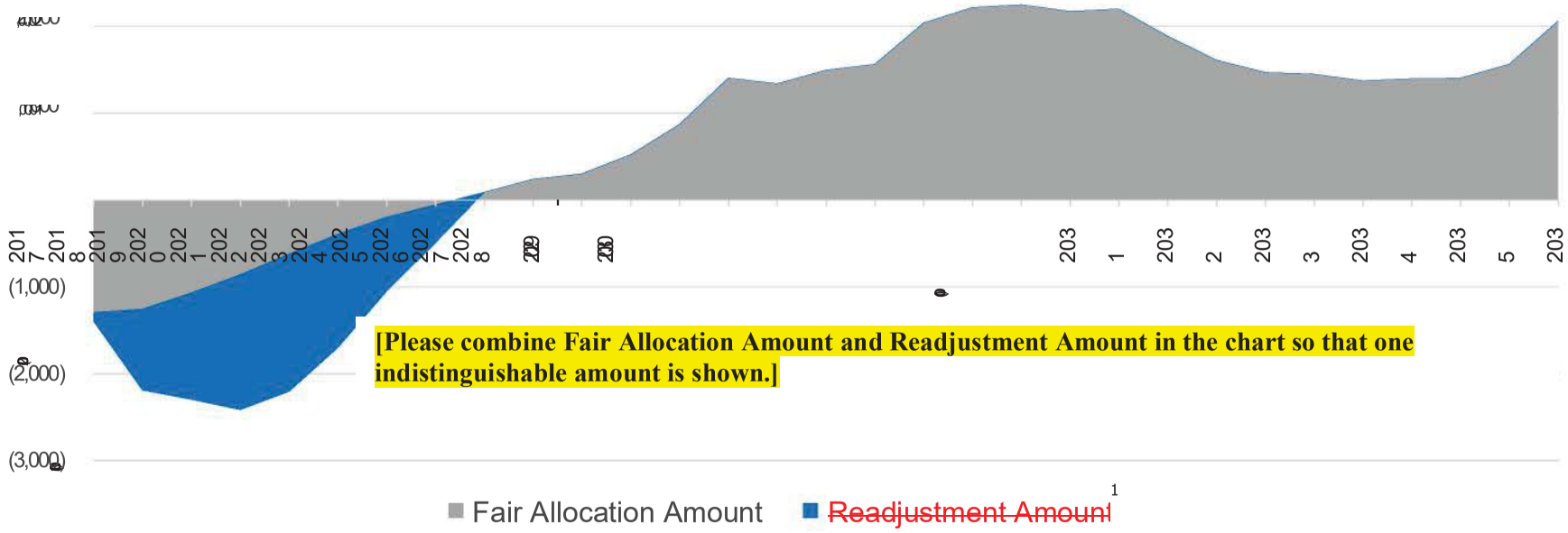
III. Legislative and Regulatory Framework

[Please note that the graph on this slide was distorted in converting the pdf to Word to insert comments.]

[Please delete the text on this slide. Fair allocation amount is a calculation amount. It is not based on an expectation – it is an absolute value at a point in time.]

[Please revise the chart to aggregate the Fair Allocation Amount and Readjustment Amount such that only one indistinguishable amount is shown.]

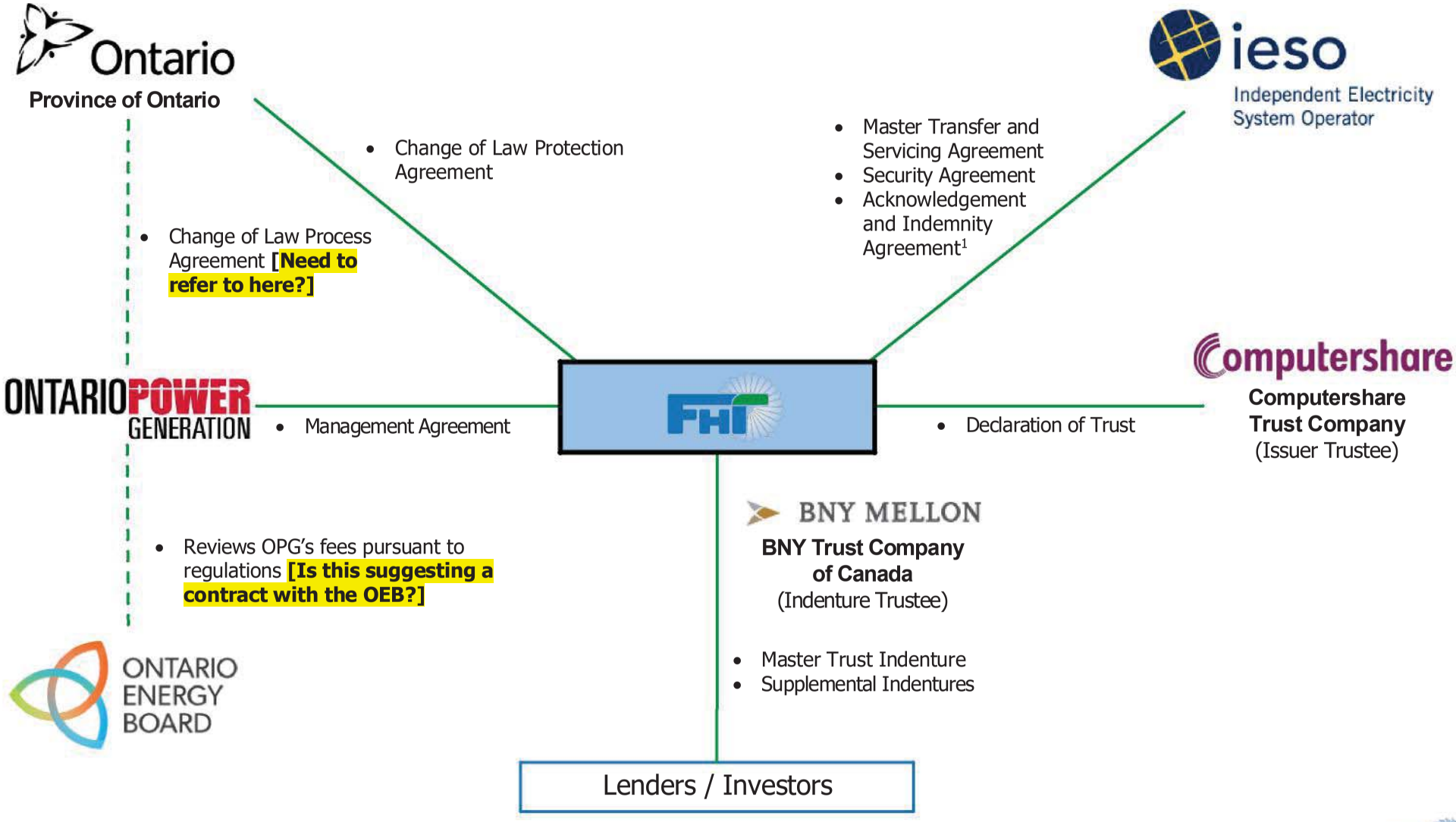
- ~~The Fair Allocation Amount (FAA) is the estimated clean energy costs without the FHP compared to these same costs reallocated on the basis of estimated clean energy benefits to Specified Consumers in respect of each reference period and includes operating and financing costs of the FHT~~
- ~~If the FAA is negative, this means that the Minister of Energy has determined that current Specified Consumers have borne more than their fair share of clean energy costs (with the consequent rate reduction for current Specified Consumers); the FAA is expected to be negative until at least May 2024~~
- ~~The Ministry of Energy may provide updated FAAs to OPG from time to time~~



[Please combine Fair Allocation Amount and Readjustment Amount in the chart so that one indistinguishable amount is shown.]

IV. Contractual Framework

Simplified Contractual Structure



[1] Agreement between IESO and Indenture Trustee.

Key Agreements

Change of Law Protection Agreement

Parties	• (1) Province of Ontario and (2) Indenture Trustee, ~~as Trustee of the Issuer, on behalf of Specified Creditors~~[1] as trustee for Specified Creditors1, and (3) OPG as Financial Services Manager (FSM) and as Manager
Purpose	• Provides assurance to Specified Creditors that upon the occurrence of a Protection Event referred to below, the Province of Ontario will pay all Approved Obligations on behalf of the Trust, with limited rights of acceleration
Key Terms	• **Term**: Continues for as long as any protected obligations of the Trust that are secured under the Master Trust Indenture (MTI) remain outstanding **[Conform to agreement]** • Limited Guarantee ~~**Mandatory Payment**~~: Upon the occurrence of a Protection Event, the Indenture Trustee has the right to require the Province to pay all Approved Obligations when due and payable (subject to limits on payment obligations following an acceleration) • **Priority of Payments**: The priority application of guarantee payments is governed by the waterfall provision under the MTI • **Adherence Conditions**: For the Limited Guarantee to apply to an obligation of the Trust, OPG as FSM is required to comply with certain conditions, including the delivery of an Adherence Compliance Certificate, prior to the incurrence of such obligation (such obligation called an ~~issuance of debt which is to benefit from the Change of Law Protection Agreement from the Province (such debt~~ "Approved Obligation~~s~~") • **Suspension Notice**: The Province may deliver a suspension notice upon the occurrence of the acceleration of any indebtedness of the Trust or other [Program Breach] or a default in performance or misrepresentation by OPG as FSM pursuant to certain internal reporting and other requirements contained in a change of law process agreement between OPG and the Province. Any ~~, and any~~ new funding obligations that are incurred during a suspension period will not have the benefit of the Limited Guarantee ~~Change of Law Protection Agreement,~~ except that the Change of Law Protection Agreement applies to Post-Suspension Refinancing of previously issued Pre-Approved Refinancing

[1] **Specified Creditors** are any other Person that is owed a payment obligation by the Issuer that gives rise to a Finance Amount in respect of the Issuer.

Key Agreements

Change of Law Protection Agreement (cont'd)

Protection Events

The occurrence of any of the following events:

(1)

- The Legislature repeals (and does not replace on an equivalent basis) or amends the Act or any portion thereof as in effect on the date hereof
- The Legislature enacts or amends any other statute
- The Lieutenant Governor in Council repeals (and does not replace on an equivalent basis) the regulations made under the Act or any portion thereof as in effect on the date hereof
- The Lieutenant Governor in Council, a minister of the Crown, an official of the government or a board or commission all the members of which are appointed by the Lieutenant Governor in Council makes or amends any "Regulation" (as defined in Part III of the Legislation Act, 2006) as in effect on the date hereof
- The implementation of a change in the organization or structure of the IESO or Ontario's electricity market undertaken at the initiative of the Province or an entity controlled by the Province

in each case that adversely affects the ability of the Trust to pay its obligations when due and payable, taking into account any funds available in reserve accounts, any credit enhancement available and any reasonably expected potential effect of a true-up amount

(2)

- A court of competent jurisdiction determines that all or a portion of the Act or the regulations made under the Act, is *ultra vires* or invalid in a way that adversely affects the ability of the Trust to receive amounts in respect of its Investment Interest so that it can pay Approved Obligations when due and payable

Key Agreements (cont'd)

Master Transfer and Servicing Agreement

Parties	• (1) IESO, as transferor and servicer; (2) Trust
Purpose	• Provides for the transfer, by the IESO to [the Trust] of the Regulatory Asset, and upon such transfer the Trust acquires an Investment Interest and describes the servicing obligations of IESO
Key Terms	• **Transfer of Regulatory Asset**: The IESO may offer, no more frequently than monthly, to transfer the specified portions of the Regulatory Asset to the Trust. The Trust has the right, but not the obligation, to accept IESO's offer. • **Servicing Duties:** The IESO will be responsible for servicing the Investment Interest under the regulations **[Consider distinguishing MTSA and regulations]**, including collecting CEA amounts from Electricity Vendors and remitting the same to the [Trust], including: – Establishing a segregated account for collecting CEAs and use reasonable efforts to cause Electricity Vendors to do the same; – Collect CEAs from Electricity Vendors; – Remit CEAs monthly to [the Trust] (unless downgraded below investment grade in which case it will remit daily); – Prepare monthly servicer reports; and – Forecast electricity consumption of Specified Consumers • **Moratorium Period:** During the Moratorium Period (until April 30, 2021) and extending to July 31, 2021, the IESO is required by regulation to fund all Carrying Costs of the Trust. The Carrying Costs incurred by the IESO will be added to its Regulatory Asset variance account pursuant to regulation. • **IESO Letter of Credit:** After the Moratorium Period, the IESO will provide the Trust, a letter of credit or other form of security, as security for the commingling risk of CEAs collected by non-rated or non-investment grade rated Electricity Vendors and not yet remitted to the IESO

Key Agreements (cont'd)

Management Agreement

Parties	• (1) Issuer Trustee, on behalf of the Trust, and (2) OPG, as Manager and acknowledged and accepted by the Indenture Trustee, as trustee for ~~on behalf of~~ Specified Creditors
Purpose	• Issuer Trustee delegates to the Manager all powers and duties of managing the Trust
Key Terms	• **Duties Include**: – Negotiating and executing program agreements; – Preparing, in accordance with applicable securities laws, any offering documents to be furnished by the Trust to prospective purchasers of funding obligations; – Review or cause to be reviewed, records of electricity vendors on an annual basis with respect to CEAs (or less frequently in certain circumstances); – Preparing monthly portfolio reports; – Preparing financial statements; and – [Paying taxes on behalf of the Trust]**[Confirm OPG's obligation re tax]** • **Incurrence of Funding Obligations**: Manager will determine how and when to incur funding obligations to acquire Investment Interests **[Or is this the FSM?]** • **Standard of Care**: Manager will perform its duties diligently and in conformity with the Trust's obligations under the program agreements • **Resignation/ Termination:** Manager may not resign from its duties or terminate the Management Agreement as long as funding obligations of the Trust are outstanding • **Management Fees:** OPG is entitled to charge the Issuer a fee to earn a return and to recover costs and expenditures incurred by OPG on behalf of the Issuer

Key Agreements (cont'd)

Other Key Agreements

Security Agreement	• As security for the performance of its obligations under the Regulations to pay the Trust's carrying cost during the Moratorium Period, IESO has granted the Trust a first priority security interest in all of its accounts receivable owing by Electricity Vendors
Acknowledgement and Indemnity Agreement (IESO)	• IESO, as servicer under the MTSA, acknowledges that a security interest has been granted to the Indenture Trustee thereby assigning as security the rights and benefits of the Issuer under the MTSA to the Indenture Trustee, including the right to enforce the indemnities provided to the issuer with respect to IESO's duties and obligations under the MTSA
Change of Law Process Agreement	• Outlines procedural requirements between the Province and OPG with respect to issuing debt that benefits from the Limited Guarantee under the Change of Law Protection Agreement • Among other things, OPG is required to deliver to the Province a process certificate, outlining the material terms of proposed debt issues and confirm such debt offerings will not cause the protection agreement maximum (as updated from time to time in the Financing Plan) to be exceeded
Declaration of Trust	• Establishes FHT to carry out activities for the exclusive benefit of its unitholders • Specifies the rights and powers of the Issuer Trustee (Computershare) • The Issuer Trustee has delegated substantially all of [the powers and] **[Confirm]** duties of managing the Trust to OPG under the Management Agreement

Allocation of Servicing Role and Responsibilities

- The shared responsibilities of servicing and management roles are summarized below

	OPG	IESO	LDC
Review Records of LDCs with Respect to CEAs (annually or less frequently in certain circumstances)	✓		
Determination of CEA for a Reference Period, including the True-Up Amount	✓		
Ongoing Reporting for Trust and Reporting to the Rating Agencies	✓		
Management of Ongoing Debt Issuances	✓		
Cash Management	✓	✓	
Preparation of Monthly Servicer Reports		✓	
Remittance of CEA to IESO and to the Trust		✓	✓
Responding to inquiries by customers if practicable, or forwarding such inquiries to OPG		✓	✓
Customer Billing			✓
Customer Collections			✓
Customer Meter Reading			✓

V. Financing Program

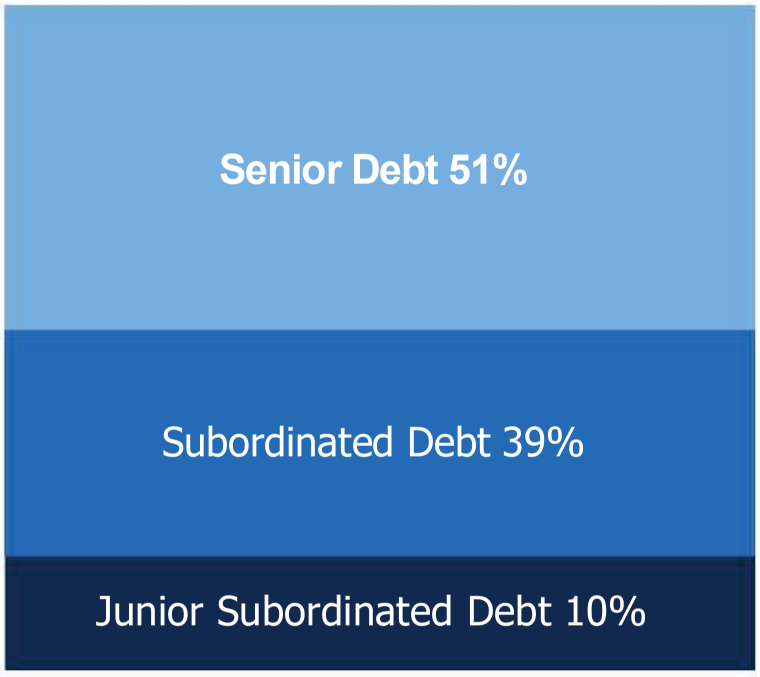
Financing Plan / Strategy

- OPG is responsible for administering the FHT financing program, as the initial FSM appointed under the Act
- Given the size (~[$20][**Confirm**] billion) and longevity (~[10][**Confirm**] years) of the FHT financing program, the funding strategy has been designed to provide flexibility
- Initial Warehouse financing (ABCP conduit and bank funded senior debt) and subordinated warehouse debt and junior subordinated warehouse debt funded by OPG will be used to fund monthly [Regulatory Asset purchases] from the IESO
  - Periodically refinance the warehouse facility through the issuance of term debt (likely access the market 2-3 times per year)
- For example, term debt can take the form of bullet bonds or could be issued as amortizing bonds

Initial Warehouse	• ABCP conduit and bank funded senior debt and subordinated debt funded by OPG will be used by the Trust to fund monthly Regulatory Asset purchases from the IESO
Term Debt	• Term debt issuances will be used to refinance warehouse financing and the subordinated debt and junior subordinated debt funded by OPG • Both Canadian term debt [and U.S. term debt market will be considered] **[Confirm]** • Maturity profiles will be structured to ensure reasonable alignment with the FAA (bullet bonds with sinking funds or amortizing bonds) **[Describe possible refinancings of shorter maturing debt?]**
Subordinated Debt	• Subordinated debt provides credit enhancement for senior debt (ranks behind senior debt in cash flow waterfall **[Principal only?]**)

Financing Structure

- The Trust will fund Regulatory Asset purchases through the issuance of senior, subordinated and junior subordinated secured debt
- Senior debt (51%) will be sourced monthly from committed warehouse facilities, and the periodic issuance of term debt
- Subordinated debt (49% anticipated; minimum of 35% required) will be **[Incurrence or maintenance requirement?]** purchased by OPG, primarily funded by equity injections from the Province (44% of the 49%) and the remaining portion from OPG (5% of 49%)



Senior Notes
Warehouse facilities and term debt issuances (in Canada and/or the U.S.)

Subordinated Notes
Provided to Trust by OPG via equity injection from the Province

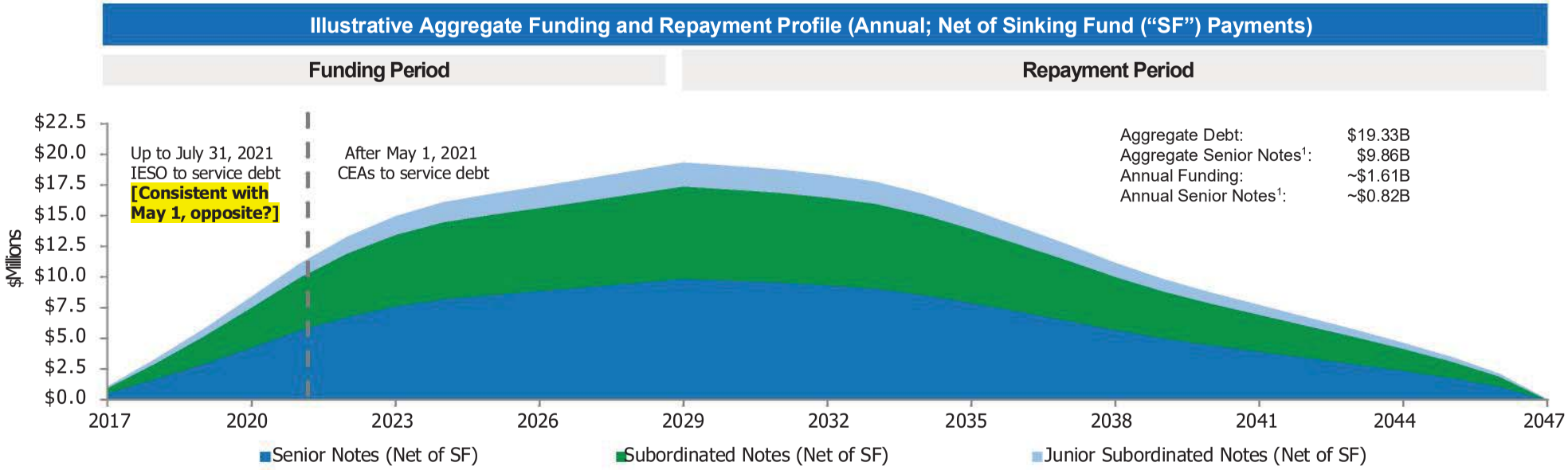
Junior Subordinated Debt
- OPG equity injection (5%) via its corporate borrowing program
- Provided to Trust by OPG via the Province (5%)

Note: Assumes 49% Subordinated Debt.

Aggregate Financing Program

Illustrative Debt Summary - Funding & Repayment Period (Annual)

- Based on the Fair Allocation Amount **[repayments, but not incurrences]** and the Province's electricity bill reduction targets the following debt profile for the program is expected, peaking at just under $20 billion by 2029 **[Confirm]**
- Various tranches of debts will be issued periodically during the period of 2017 - 2028, which are expected to mature over a period after 2029 **[Confirm. Consider refinancings or shorter maturities?]**

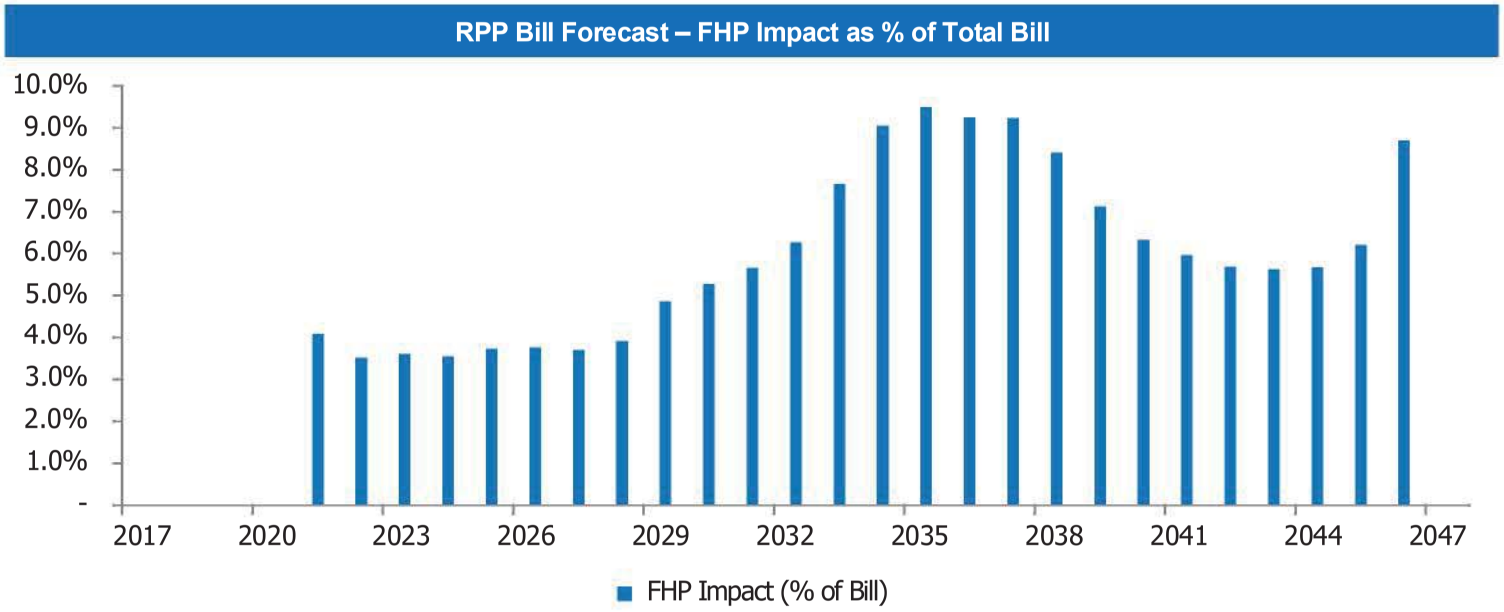


1 Assumes 51% Senior Notes

Consumer Bill Forecast with FHP

RPP Bill Forecast - FHP Impact % of Total Bill (C$ per Month)

- Over the duration of the Fair Hydro Program, the CEA for the average residential customer is anticipated to remain below 10% of the total electricity bill
- Max CEA as a percent of the total bill is forecast to be 10.1%
- Average CEA as a percent of the total bill is forecast to be 6.9%



Capital Markets Platform

Master Trust Indenture

Parties	• (1) Computershare Trust Company (Issuer Trustee), on behalf of the Trust, acting through OPG as the Manager; (2) BNY Trust Company (Indenture Trustee) on behalf of Specified Creditors
Purpose	• Governs the terms of the debt issued by FHT and cash flow waterfall and collateral structure for all Trust obligations to all Specified Creditors

Key Terms

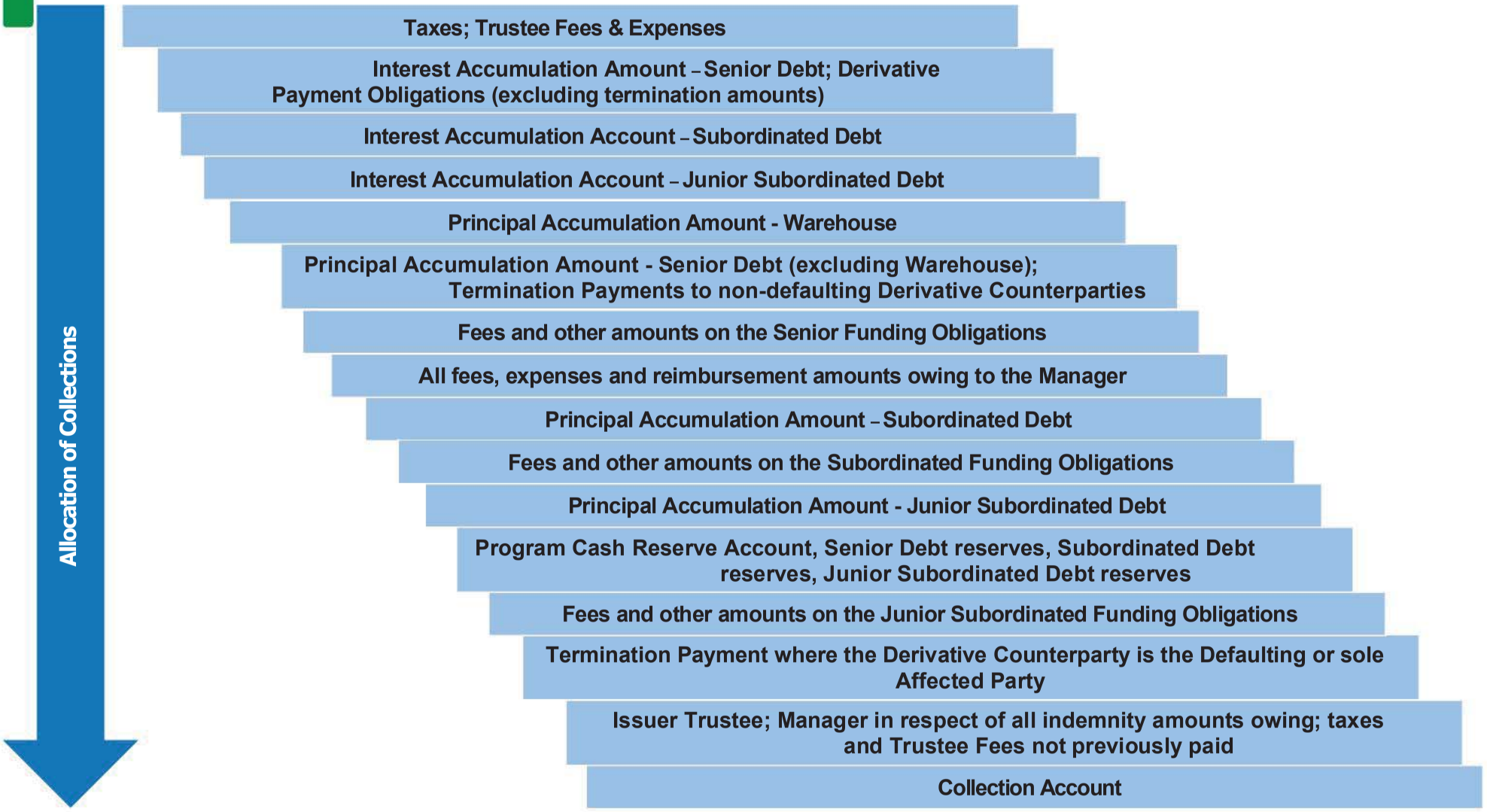
Incurrence of Funding Obligations	• Trust may incur funding obligations under a variety of instruments, including: – Note issuances under supplemental indentures – Borrowings under future credit agreements – Sales of notes under note purchase agreements – Letters of Credit/Guarantees under credit enhancement agreements – Liquidity loans under liquidity agreements backing short term notes
Conditions Precedent	• Prior to incurring additional funding obligations, the Trust confirms to the Indenture Trustee and each rating agency that: – the incurrence of such additional obligations will not cause an adverse effect – the incurrence of such additional obligations is materially consistent with the Financing Plan • It will also be a condition precedent that (i) each rating agency confirm that the issuance of such additional funding obligations will not result in a reduction or withdrawal of any existing ratings of outstanding funding obligations and (ii) the Indenture Trustee has received certain assurances as to the applicability of the Change of Law Protection Agreement to such funding obligations

Capital Markets Platform

Master Trust Indenture – Key Terms (cont'd)

Security	• Granted over all assets of the Trust, including the Trust's investment interest, all collections under the MTSA and all accounts
Subordination	• Provides for three different classes of funding obligations – (i) senior – (ii) subordinated – (iii) junior subordinated
Events of Default	• Include payment defaults, representation and covenant breaches, insolvency and Change of Law Protection Agreement ceasing to be in full force and effect against the Province
Acceleration	• Upon an acceleration, CEAs may be insufficient to repay all amounts becoming due in a period. CEAs for a period will be capped ~~CEAs cannot be increased to the level required to immediately repay all outstanding principal following acceleration. The increase in CEAs is limited~~ under the Regulation at the otherwise scheduled amounts, plus an additional amount if the aggregate of those otherwise scheduled amounts would be less than ~~to the amount available per~~ the FAA for the period • However, the amounts received from CEAs after an acceleration will be allocated to pay senior indebtedness before principal amounts owing on subordinated and junior subordinated indebtedness ~~CEAs are allocated to paying the senior indebtedness first~~. Accordingly, the subordination of debt across all series of debt should ~~would~~ advance the repayment of the principal amount for senior funding obligations • After an acceleration, all **[Confirm. Can a series elect to defer payment on acceleration?]** Senior Term Notes will be paid pa~~r~~ri passu

Waterfall



Note: This waterfall indicates the priority of payment prior to an Event of Default and acceleration; additional information on the priority of payments after an Event of Default and acceleration can be found in the Offering Memorandum.
Note: After paying interest on the senior debt, no interest payments will be made on the subordinated debt unless there will be sufficient amounts remaining in the Interest Accumulation Account for what should be accumulated for the Senior Notes after making such payments.

VI. Summary of Offering

Summary of Indicative Terms

Initial Fair Hydro Term Issuance	**Class**	**Size**	**% of Trust**	**Expected Maturity**	**Principal Payment Default Date**	**Rating (DBRS / Moody's)**
	Senior Term Notes	$[ ] mm	[ ]%	[ ]	[ ]	AAA (sf) / Aa2 (sf)
	Subordinated Notes	$[ ] mm (Not Offered)	[ ]%	[ ]	[ ]	[ ]
	Jr. Subordinated Notes	$[ ] mm (Not Offered)	[ ]%	[ ]	[ ]	[ ]
ssuer	Fair Hydro Trust, a single purpose, bankruptcy-remote wholly-owned subsidiary of the Financial Services Manager					
Financial Services Manager	Ontario Power Generation, Inc.					
Servicer	Independent Electricity System Operator					
Source of Repayment	• Moratorium Period: Statutorily mandated remittances (not including principal) from IESO (Up to July 31, 2021) • Post Moratorium Period: Non-bypassable charge from certain residential and commercial customers in Ontario, related collections and reserve accounts (After May 1, 2021)					
Principal Accumulation Date(s) and Principal Accumulation Amount(s):	Principal Accumulation Date ● , 20●			Principal Accumulation Amount $●		
Payment Frequency	Semi-annual					
Interest	Fixed rate					
Senior Note Credit Enhancements	• Semi-annual (or more frequent) True-up • Reserve Account • Subordination					
Program Cash Reserve Account	After Moratorium period, an amount equal to 0.50% of the aggregate amount of all outstanding Senior, Subordinated and Junior Subordinated funding obligations					
True-up	Calculated on at least a semi-annual basis post-moratorium period					
Subordination	Subordinated and Junior Subordinated Notes will be retained by OPG					
Additional Issuance	Master Trust Indenture allows for the issuance of additional notes subject to satisfaction of Rating Agency Condition					

VII. Key Risks and Mitigants

Risk Mitigation

Risk	Description of Risk	Mitigants
Political Risk	• Future legislative action to change or challenge/invalidate the Act or the Change of Law Protection Agreement might materially adversely affect a holder's investment in the Notes	• Limited Guarantee provided by the Province of Ontario via the Change of Law Protection Agreement in favour of the Indenture Trustee for lenders/investors in these circumstances
Under Collection	• If the IESO inaccurately forecasts electricity consumption or if OPG uses inaccurate consumer delinquency or write-off data when setting the CEA, there could be a shortfall in collections, which might result in missed or delayed payments of principal and interest on the Notes	• True up mechanism may result in a delay, but will be corrected in next True up **[Frequency?]** • Cash reserve and 35%-49% subordination which would first absorb any shortfalls **[Maintenance vs Incurrence?]** • 6-month reference period • Any shortfall in collections are recoverable from all Specified Consumers
Reliance on IESO and LDCs	• During the Moratorium Period, the Trust is dependent on the IESO to pay for all Carrying Costs **[Suggests that IESO will pay; not provide cash for Trust to pay]** • Receipt of CEAs dependent on the performance of LDCs and IESO • Limited ability to enforce against or replace an ~~on~~ LDC	• Highly regulated industry and LDC and IESO are required under law and regulation to perform duties under FHP • IESO has a very strong credit profile and [very low losses] **[Any? Socialized?]** and grants security over all of its accounts receivables as security during the Moratorium Period • IESO will provide a letter of credit/other security to mitigate commingling risks for CEAs held ~~for the commingling of CEAs~~ by non-rated or below investment grade rated LDCs until they are remitted to IESO • LDCs collect security deposits and, when permitted, have the ability to disconnect service for non-payment **[Sensitive?]** • $2 billion general credit facility from the OFA which can be used to pay the Carrying Costs
Size of Charge vs. Bill	• If the charge applied to bills becomes too high, there could be a consumer and/or political backlash	• 20-year repayment period allows for gradual rate increases • Max CEAs as a percent of the total bill is forecast to be ~10%

VIII. Investment Highlights

Investment Highlights

- Protection against political risk through the Change of Law Protection Agreement
- Irrevocable & non-bypassable rate payer charge, recoverable from Specified Consumers across the Province of Ontario
- Repayment risk spread across all Specified Consumers. Full cross-collateralization; collection shortfalls allocated among all Specified Consumers (Joint and Several Liability)
- Robust ~~Enhanced~~ true-up mechanism **[If this is comparing to a precedent deal, should indicate the comparison]**
- Credit enhancement for senior debt provided via subordinated debt
- Highly regulated market with experienced operating agents (OPG, IESO, and LDCs)
- Strong service territory **[Meaning?]**
- No large user industrial risk exposure **[Meaning?]**

Fair Hydro Trust OM - Comments of the Province.pdf

This confidential shelf offering memorandum constitutes an offering of these securities only in those jurisdictions and to those persons where and to whom they may be lawfully offered for sale. This confidential shelf offering memorandum is not, and in no circumstances is to be construed as, a prospectus or advertisement or public offering of these securities. ***No securities commission or similar authority in Canada or in any other jurisdiction has reviewed this material or in any way passed upon the merits of the securities offered hereunder and any representation to the contrary is an offence.*** *Persons who acquire securities pursuant to this confidential shelf offering memorandum will not have the benefit of the review of this material by any securities commission or similar authority. The information contained in this confidential shelf offering memorandum has been furnished or supplied by the Issuer based on the most accurate information available as at the date hereof and there is no representation or warranty by the Agents as to the accuracy or completeness of such information. These securities have not been and will not be registered under the United States Securities Act of 1933, as amended (the "****U.S. Securities Act****") or any state securities laws and may not be offered or sold within the United States or to, or for the account of, U.S. persons (within the meaning of Regulation S under the U.S. Securities Act) unless registered under the U.S. Securities Act and applicable state securities laws or an exemption from such registration is available. See "Plan of Distribution". This confidential shelf offering memorandum is confidential and contains certain information not publicly disclosed. No one is authorized to make any representation or give any warranty on behalf of the Issuer other than those representations and warranties made or referred to in this confidential shelf offering memorandum.*

The information contained in this confidential shelf offering memorandum and delivered in connection with the private placement of the Senior Notes by the Issuer is confidential, is for the confidential use of only those persons to whom it is delivered in connection with the offering solely for the purpose of considering the purchase of the Senior Notes and its use for any other purpose is prohibited. By accepting this confidential shelf offering memorandum, each prospective purchaser agrees that it will not transmit, reproduce or make available to anyone, other than their respective advisors (so long as they advise such advisors of the confidential nature of such document), this confidential shelf offering memorandum (including any Term Sheets) or any information contained herein, and will not use such information (or permit its advisors to use such information) for any purpose other than to evaluate an investment in the Senior Notes pursuant to an Offering.

CONFIDENTIAL SHELF OFFERING MEMORANDUM

New Issue By Way of Private Placement

January ■, 2018

FAIR HYDRO TRUST
Senior Secured Notes

Fair Hydro Trust (the "**Issuer**"), a special purpose trust ~~established under~~governed by the laws of the Province of Ontario, established by Computershare Trust Company of Canada, acting as trustee of the Issuer, and caused to be established by Ontario Power Generation Inc. ("**OPG**"), as Financial Services Manager (as hereinafter defined), has created a program providing for the offering and issuance of senior secured notes (the "**Senior Notes**"), in one or several offerings. The Issuer was established in connection with the *Ontario Fair Hydro Plan Act, 2017* (the "**FHPA**"), legislation [that reallocates certain electricity costs over time and provides immediate rate relief to Specified Consumers (a category of consumers that generally is comprised of residential consumers, small businesses and farms).][1] Under the FHPA, ~~Ontario Power Generation Inc. ("**OPG**")~~OPG is appointed as the initial financial services manager (in such capacity, the "**Financial Services Manager**") and is given the authority to, among other things, establish, or cause to be established, one or more financing entities (each, a "**Financing Entity**") to incur payment obligations (referred to as "**Funding Obligations**") for the purposes of the FHPA.[2] The Issuer is a Financing Entity under the FHPA and the Senior Notes are Funding Obligations being offered for the purposes of the FHPA.

The Senior Notes do not constitute a debt, liability or other obligation of, or interest in, OPG or any of its other affiliates (other than the Issuer). The Senior Notes are not a debt, liability or ~~general~~ obligation of the Province of Ontario or any of its political subdivisions, agencies or instrumentalities. The Senior Notes will not be insured or guaranteed by the Province of Ontario, OPG or any of their respective affiliates or any other person or entity, except that the Province of Ontario has agreed to provide a limited guarantee in respect of the Senior Notes following the occurrence of certain events. See *"Change of Law Protection Agreement"*. The Senior Notes will be ~~nonrecourse~~limited recourse obligations, secured only by the collateral described in this confidential shelf offering memorandum. See *"Capital Markets Platform — Acceleration and Remedies — Limited Recourse"* and *"Risk Factors"*.

[1] **Note:** This narrative should be removed or, if necessary, it should track the purposes of the FHPA set out in Section 3 of the Act.
[2] **Note:** The statutory definition of "funding obligation" provides that the funding obligations have the purpose of funding ownership in an investment interest. Please consider revising the definition of "funding obligation" to more closely track that in the Act.

The specific terms of any offering of Senior Notes, including, without limitation, the aggregate principal amount of Senior Notes being offered, the currency of the Senior Notes, the issue price (at par, at a discount or at a premium), the issue, delivery and maturity dates, any redemption or repayment provisions, the rating of the Senior Notes at the time of such offering, the interest (either fixed or floating and the circumstances, if any, under which the rate may be adjusted), the interest rate basis and interest payment dates, will be established by the Issuer and set forth in a term sheet (a "**Term Sheet**") that will accompany, be incorporated by reference in and form an integral part of this confidential shelf offering memorandum. Unless otherwise specified in a Term Sheet, the Senior Notes will not be listed on any securities exchange.

The offering of Senior Notes from time to time (each, an "**Offering**") will be made pursuant to exemptions from the prospectus requirements of applicable securities laws in each of the provinces of Canada only to "accredited investors" (as such term is defined in National Instrument 45-106 – *Prospectus Exemptions* ("**NI 45-106**") and, in the case of a purchaser resident in Ontario, section 73.3(1) of the *Securities Act* (Ontario)) that are purchasing the Senior Notes as principal and that are not individuals unless those individuals are also "permitted clients" (as such term is defined in National Instrument 31-103 – *Registration Requirements, Exemptions and Ongoing Registrant Obligations* ("**NI 31-103**")). Purchasers of Senior Notes will be obliged to establish their qualification to invest in accordance with the requirements of the securities laws of the jurisdiction in which they reside. See *"Representations and Agreements of Purchasers"*. As each Offering will be made pursuant to exemptions from prospectus requirements of applicable securities laws, there will be restrictions on the resale of the Senior Notes. See *"Risk Factors"* and *"Restrictions on Resale"*.

The Senior Notes may be sold by the Issuer directly pursuant to applicable statutory exemptions or through agents designated by the Issuer from time to time (the "**Agents**"). See *"Plan of Distribution"*. Each Term Sheet will identify the Agents engaged to conditionally offer the Senior Notes for sale on a best efforts basis, subject to prior sale, in connection with the applicable Offering of Senior Notes and will also set forth the terms of such Offering of Senior Notes, including the net proceeds to the Issuer and, to the extent applicable, any fees payable to the Agents.

Subscriptions for the Senior Notes will be received subject to rejection or allotment in whole or in part and the right is reserved to close the subscription books at any time without notice. The Senior Notes will be delivered and recorded in book-entry form through CDS Clearing and Depository Services Inc. ("**CDS**") or another depository selected by the Issuer in accordance with the master trust indenture governing the Senior Notes. The Senior Notes will be represented by fully registered book-entry notes held by, or on behalf of, such depository, or a successor thereof, as the custodian of the book-entry notes, in its name or the name of its nominee.

The Senior Notes will be issued under and will be entitled to the benefits of a master trust indenture dated as of December 21, 2017 between the Issuer, as issuer, and BNY Trust Company of Canada, as indenture trustee, as amended or supplemented by supplemental indentures thereto.

In making an investment decision, prospective investors acknowledge that they have not relied on the Agents or any person affiliated with the Agents for investment or other advice and are relying on their own examination of the terms of an Offering, including the merits and risks involved and creditworthiness of the Issuer. Prospective investors are not to construe the contents of this document as legal, tax, accounting or investment advice. Prior to investing in the Senior Notes, prospective investors should consult with their legal, tax, accounting and investment advisors to determine the consequences of an investment in the Senior Notes. See *"Risk Factors"* for a discussion of certain factors that should be considered by prospective purchasers of Senior Notes.

The Issuer is not a "reporting issuer" (as such term is defined under applicable Canadian securities laws) in any jurisdiction. The Issuer will only distribute the Senior Notes in Canada under exemptions from the prospectus requirements of the securities laws of the provinces where they are sold. The Senior Notes may only be traded in Canada under exemptions from the prospectus requirements of the securities laws of the provinces in which they are traded and only through dealers registered or exempt from the dealer registration requirements of applicable Canadian securities laws. See *"Restrictions on Resale"*.

There is currently no secondary market for the Senior Notes. There can be no assurance that a secondary market will develop or, if a secondary market does develop, that it will provide holders of Senior Notes with

liquidity for their investment or that it will continue for the term of the applicable Senior Notes. Accordingly, purchasers of the Senior Notes may be required to bear the financial risk of investing in such Senior Notes until the maturity date of such Senior Notes.

No person is authorized to give any information or make any representation other than those contained in this confidential shelf offering memorandum in connection with an Offering and any decision to purchase Senior Notes should be based solely on the information contained herein. The Term Sheet applicable to such Offering and the investor presentation (the "**Investor Presentation**"), attached hereto as Exhibit 1, are incorporated by reference and included in, respectively, and form an integral part of, this confidential shelf offering memorandum. The information contained in the Investor Presentation is current only as of the date thereof. The Investor Presentation may be updated and replaced by the Issuer in connection with an Offering and such updated Investor Presentation will be attached as Exhibit 1, and will be included in, and form an integral part of, this confidential shelf offering memorandum delivered in respect of such Offering.

This confidential shelf offering memorandum, including the Investor Presentation attached hereto, and any Term Sheets, are provided on a confidential basis to prospective investors for informational use solely in connection with their consideration of the purchase of Senior Notes. Use for any other purpose is not authorized. Each Offering will be made solely on the basis of the information contained herein or incorporated by reference which has been furnished by the Issuer. No Agent makes any representation or warranty, express or implied, as to the accuracy, adequacy or completeness of such information. Furthermore, no Agent has independently verified the information in this confidential shelf offering memorandum and has no responsibility for the accuracy, adequacy or completeness of any such information.

This confidential shelf offering memorandum does not contain all of the information that would normally appear in a prospectus qualified under applicable Canadian securities laws. Neither the delivery of this confidential shelf offering memorandum, at any time, nor any sales made pursuant hereto, will imply that the information contained herein is correct as of any time subsequent to the date set forth on the face page hereof and the Issuer and the Agents will not update such information except as may be required by applicable law.

Capitalized terms used and not otherwise defined in this confidential shelf offering memorandum have the meanings ascribed to them in the glossary starting on page [92] of this confidential shelf offering memorandum. All figures in this confidential shelf offering memorandum are in Canadian dollars unless otherwise noted.

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CAUTION REGARDING FORWARD-LOOKING INFORMATION

Some of the statements contained in this confidential shelf offering memorandum, including those relating to the Issuer's expectations, forecasts, strategic and other statements, are forward-looking information within the meaning of securities laws. Forward-looking information is contained in the summary and in the sections titled *"Ontario's Fair Hydro Plan — Fair Allocation Amount & Financing Plan"*, *"Subordinated Debt"*, *"■"*[3] and *"Risk Factors"* of this confidential shelf offering memorandum and *"Financing Plan / Strategy"*, *"Financing Structure"*, *Aggregate Financing Program"*, *"■"*[4] and *"Consumer Bill Forecast with FHP"* of the Investor Presentation. The forward-looking statements contained in this confidential shelf offering memorandum are presented for the purposes of assisting potential purchasers in making an investment decision regarding the Senior Notes and may not be appropriate for other purposes.

Often, but not always, forward-looking information can be identified by the use of forward-looking terminology such as "may", "will", "expect", "believe", "estimate", "plan", "could", "should", "would", "outlook", "forecast", "anticipate", "foresee", "continue" or the negative of these terms or variations of them or similar terminology. Forward-looking information is based on the reasonable assumptions, estimates, analysis and opinions of management of the Issuer made in light of its experience and perception of trends, current conditions and expected developments, as well as other factors that the Issuer believes to be relevant and reasonable at the date that such statements are made. A variety of factors, many of which are beyond the Issuer's control, may cause actual results to differ materially from the expectations expressed in the forward-looking statements. These factors include, but are not limited to, the following risks:

Judicial, Legislative or Regulatory Risks:

- Future legal action might challenge or invalidate the FHPA or the Regulations and materially adversely affect a holder's investment in the Senior Notes.
- Future legislative action to change the FHPA, the Regulations, the Change of Law Protection Agreement or the electricity market might materially adversely affect a holder's investment in the Senior Notes.
- Future regulatory action to change the rules applicable to the operation of the electricity market might materially adversely affect a holder's investment in the Senior Notes.
- Future judicial action could reduce the value of a holder's investment in the Senior Notes.
- Potential difficulties in enforcing civil liabilities against the Province of Ontario may arise.

Risks Associated with the Unusual Nature of the Investment Asset:

- Clean Energy Adjustments will not be payable until May 1, 2021 and until such time the IESO will be the sole source of funds for payment on the Senior Notes.
- The Issuer's ability to enforce security granted by the IESO may be ~~significantly~~ impaired or delayed.
- A holder of Senior Notes may experience material payment delays because the source of funds for payment after the Moratorium Period is limited.
- The Clean Energy Adjustment may not be billed after April 30, 2047, unless further regulations to extend that date are passed.
- Foreclosure of the Indenture Trustee's lien on the Investment Interest securing the Senior Notes might not be practical and acceleration of the Senior Notes before maturity might have little practical effect.
- The Issuer may issue multiple Series of Senior Notes secured by the Investment Interest and some decisions affecting holders of Senior Notes may require approval by resolution of the holders of all Series of Senior Notes.
- If a Series of Senior Notes or all Senior Notes are accelerated, a holder of Senior Notes might receive payment of principal sooner or later than expected.
- The Issuer may have a co-ownership interest in the Investment Asset with other Financing Entities.

[3] **Note:** Please complete.
[4] **Note:** Please complete.

- If the Clean Energy Adjustment amounts and other funds held in the Issuer Accounts results in investment losses or the investments become illiquid, a holder of Senior Notes might receive payment of principal of and interest on the Senior Notes later than expected.

Servicing, Operating and Consumer Risks

- Payments on the Senior Notes depend on the performance of Electricity Vendors and the IESO.
- Payments on the Senior Notes depend on the performance of OPG as Financial Services Manager and as Manager of the Issuer.
- Inaccurate consumption forecasting or unanticipated delinquencies or write-offs might reduce or delay scheduled payments on the Senior Notes.
- Changes to billing and collection practices may reduce the amount of funds available for payments on the Senior Notes.
- Limits on rights to terminate service to Specified Consumers might make it more difficult to collect the Clean Energy Adjustment.
- It might be difficult for the Issuer to collect the Clean Energy Adjustment from Specified Consumers.
- Indemnification obligations of OPG and the IESO are limited and might not be sufficient to protect the investments in the Senior Notes.
- Delinquent or partial payments of electricity bills may make principal payments on the Senior Notes occur later than expected.
- Power outages could impair payment of the Senior Notes.[5]
- Technological changes that make alternative energy sources more attractive in the future or significant population fluctuations may result in fewer Specified Consumers from whom to collect the Clean Energy Adjustment.

Insolvency-Related Risks

- If the Issuer were to become subject to Canadian Insolvency and Restructuring Laws, the Indenture Trustee's ability to enforce security granted by the Issuer may be significantly impaired or delayed.
- If the IESO or any Electricity Vendor were to become subject to Canadian Insolvency and Restructuring Laws, collections that have been commingled may be unrecoverable and the Issuer's ability to enforce its rights against the IESO may be significantly impaired or delayed.
- If OPG were to become subject to Canadian Insolvency and Restructuring Laws, the Issuer's ability to enforce its rights against OPG may be significantly impaired or delayed and the Issuer's assets and liabilities may be substantively consolidated with those of OPG.
- If the Issuer Trustee were to become subject to Canadian Insolvency and Restructuring Laws, the assets and liabilities of the Issuer may be substantively consolidated with the Issuer Trustee.
- If a Specified Consumer were to become subject to Canadian Insolvency and Restructuring Laws, the Issuer's ability to collect Clean Energy Adjustment amounts from such Specified Consumer may be adversely affected.
- If amounts in the Issuer Accounts for any Series are invested with entities that become subject to insolvency proceedings, the Issuer's ability to make payments to holders of Senior Notes may be adversely affected.

Other Risks:

- The credit ratings are not an indication of the expected rate of payment of principal on the Senior Notes.
- If the ratings on the Senior Notes are withdrawn or revised downward, the value of a holder's investment in the Senior Notes may be adversely affected.
- The credit ratings of the IESO, OPG and the Province of Ontario might affect the market value of the Senior Notes.
- The absence of an established market for the Senior Notes might limit the ability to resell or refinance the Senior Notes.
- Restrictions on resale might limit the ability to resell the Senior Notes.

[5] Is this relevant? Is the concern that the CEA would be spread across a relatively smaller base due to lower usage in a period?

Please also see *"Risk Factors"*.

The Issuer does not intend, or assume any obligation, to update any forward-looking information except as may be required by applicable law.

CONFIDENTIALITY

PRIOR TO RECEIVING THIS CONFIDENTIAL SHELF OFFERING MEMORANDUM, EACH PROSPECTIVE PURCHASER MUST HAVE ENTERED INTO A CONFIDENTIALITY UNDERTAKING WITH THE ISSUER (IN A FORM ACCEPTABLE TO THE ISSUER) WHICH PROVIDES THAT BY ACCEPTING A COPY OF THIS CONFIDENTIAL SHELF OFFERING MEMORANDUM, EACH PROSPECTIVE PURCHASER AGREES THAT ALL INFORMATION CONTAINED HEREIN, ALL DOCUMENTS DELIVERED IN CONNECTION HEREWITH AND ALL OTHER INFORMATION OBTAINED BY PROSPECTIVE PURCHASERS IN RELATION TO THE ISSUER (COLLECTIVELY, THE "**CONFIDENTIAL INFORMATION**") IS CONFIDENTIAL, THAT NONE OF THE CONFIDENTIAL INFORMATION WILL BE COPIED, TRANSCRIBED, RECORDED OR TRANSMITTED BY THE RECIPIENT FOR ANY REASON OR USED FOR ANY PURPOSE OTHER THAN EVALUATING AN INVESTMENT IN THE NOTES, AND THAT THE RECIPIENT WILL HOLD ALL OF THE CONFIDENTIAL INFORMATION IN CONFIDENCE AND WILL NOT PROVIDE ANY OF IT TO ANY THIRD PARTIES OTHER THAN PERSONS RETAINED TO ADVISE THE RECIPIENT WITH RESPECT TO THE PURCHASE OF THE NOTES (SO LONG AS THEY ADVISE SUCH PERSONS OF THE CONFIDENTIAL NATURE OF SUCH CONFIDENTIAL INFORMATION), WITHOUT THE PRIOR WRITTEN CONSENT OF THE ISSUER. ***[NTD: Logistics to be discussed between Dealers and OPG.]***

DOCUMENTS INCORPORATED BY REFERENCE

A Term Sheet containing the specific variable terms in respect of an Offering will be delivered to prospective purchasers of Senior Notes together with this confidential shelf offering memorandum and will be deemed to be incorporated into this confidential shelf offering memorandum as of the date of such Term Sheet, solely for the purposes of the Senior Notes issued under such Term Sheet.

The information contained in the Investor Presentation is current only as of the date thereof. The Investor Presentation may be updated and replaced by the Issuer in connection with an Offering and such updated Investor Presentation will be attached as Exhibit 1, and will be included in, and form an integral part of, this confidential shelf offering memorandum delivered in respect of such Offering.

Any statement contained in the confidential shelf offering memorandum or in any document incorporated or deemed to be incorporated by reference in the confidential shelf offering memorandum shall be deemed to be modified or superseded, to the extent that a statement contained herein or in any other subsequent document which is or is deemed to be incorporated by reference in the confidential shelf offering memorandum, modifies or supersedes such prior statement. The modifying or superseding statement need not state that it has modified or superseded a prior statement or include any other information set forth in the document which it modifies or supersedes. The making of such a modifying or superseding statement shall not be deemed an admission for any purposes that the modified or superseded statement, when made, constituted a misrepresentation, an untrue statement of a material fact or an omission to state a material fact that is required to be stated or that is necessary to make a statement not misleading in light of the circumstances in which it was made. Any statement so modified or superseded shall not constitute a part of the confidential shelf offering memorandum, except as so modified or superseded.

MARKET AND INDUSTRY DATA

Certain of the information contained herein concerning the electricity industry in Ontario is based upon or derived from information provided by third party sources, including industry publications and other publicly available industry sources. Neither the Issuer nor the Agents guarantee the accuracy of such information and neither the Issuer nor the Agents have independently verified the assumptions upon which projections of future trends and performance are based. This information and data is subject to change and cannot always be verified with complete

certainty due to limits on the availability and reliability of raw data, the voluntary nature of the data gathering process and other limitations and uncertainties inherent in any statistical survey of market or industry data. As a result, prospective purchasers should be aware that the information and data set forth herein, and estimates and beliefs based on such information and data, may not be reliable.

REFERENCES TO THE FHPA AND RELATED REGULATIONS

This confidential shelf offering memorandum describes certain provisions of the *Ontario Fair Hydro Plan Act, 2017* and the regulations made pursuant to that Act. These descriptions include simplified and summary descriptions of the terms and requirements of the legislation and do not purport to be comprehensive, definitive or determinative. All references in this confidential shelf offering memorandum to the terms and requirements of the *Ontario Fair Hydro Plan Act, 2017* and the regulations made pursuant to that Act are qualified in their entirety by reference to the specific terms and requirements set forth in such legislation, copies of which are available at https://www.ontario.ca/laws/statute/17o16.

SUMMARY

This summary does not contain all the information prospective purchasers should consider before investing in the Senior Notes. Prospective purchasers should read this entire confidential shelf offering memorandum carefully, including the section entitled "Risk Factors". Capitalized terms used and not otherwise defined in this summary have the meanings ascribed to them in the glossary starting on page [92] of this confidential shelf offering memorandum.

Issuer:	Fair Hydro Trust, a special purpose trust ~~established under~~governed by the laws of the Province of Ontario.
Manager:	Ontario Power Generation Inc. ("**OPG**"), pursuant to the terms of the Management Agreement.
Limitations:	The Senior Notes do not constitute a debt, liability or other obligation of, or interest in, OPG or any of its other affiliates (other than the Issuer). The Senior Notes are not a debt, liability or obligation of the Province of Ontario or any of its political subdivisions, agencies or instrumentalities. The Senior Notes will not be insured or guaranteed by the Province of Ontario, OPG or any of their respective affiliates or any other person or entity, except that the Province of Ontario has agreed to provide a limited guarantee in respect of the Senior Notes following the occurrence of certain events. See "*— Change of Law Protection Agreement*".
Ontario~~'s~~ Fair Hydro Plan Act:	~~On March 2, 2017, the Province of Ontario announced its Fair Hydro Plan, proposing to lower the average electricity bill for certain eligible customers.~~ On June 1, 2017, the Ontario ~~government~~Legislature passed the Ontario Fair Hydro Plan Act, 2017 (the "**FHPA**")~~, legislation that reallocates certain electricity costs over time and provides immediate rate relief to~~. The FHPA was enacted to: (i) ensure that Clean Energy Costs and Clean Energy Benefits are fairly allocated among present and future Specified Consumers (a category of consumers that generally is comprised of residential consumers, small businesses and farms)~~. From~~; (ii) recognize that Clean Energy Benefits have accrued and will accrue over time and will continue to benefit present and future electricity consumers in Ontario; and (iii) align Clean Energy Costs with Clean Energy Benefits, in order to provide fairness for Specified Consumers over time. As a result, from July 1, 2017 until April 30, 2018, electricity rates payable by Specified Consumers will in effect be the rate that would result in a representative consumer being charged an invoice amount that is 25%~~1~~[6] less than the rate that would otherwise have been determined by the Ontario Energy Board (the "**OEB**") under its Regulated Price Plan[7] for that period. Under the FHPA, OPG is appointed as the initial financial services manager (in such capacity, the "**Financial Services Manager**") and is given the authority to, among other things, establish, or cause to be established, one or more financing entities (each, a "**Financing Entity**") to incur payment obligations (referred to as "**Funding**

~~1~~[6] The 25% reduction includes an 8% rebate equivalent to the provincial portion of the harmonized sales tax previously granted by the Ontario government.

[7] Specified Consumers, as a class, are not a one-to-one equivalent class to the RPP consumer class.

	Obligations") for the purposes of the FHPA and the Regulations.[8] The Issuer is a Financing Entity[9] under the FHPA and the Regulations and the Notes are Funding Obligations being offered for the purposes of the FHPA and the Regulations. See *"Ontario's Fair Hydro Plan — Background"*.
Summary of the Fair Hydro Financing Program:	The implementation of the Fair Hydro Plan is intended to be financed by the Issuer through the Fair Hydro financing program. The program provides for the offering and issuance by the Issuer of Senior Notes, in any number of series (each a "**Series**"), in one or several offerings (each, an "**Offering**"). A Term Sheet will describe particulars of the terms of each Series of Senior Notes and will be incorporated by reference and form an integral part of this confidential shelf offering memorandum. Each Series of Senior Notes will be issued under the master trust indenture dated as of December 21, 2017 (as amended, supplemented, restated or otherwise modified from time to time, the "**Master Trust Indenture**") between the Issuer, as issuer, and BNY Trust Company of Canada, as indenture trustee (the "**Indenture Trustee**"), as supplemented by a supplemental indenture dated the date of the issuance of such Series between the Issuer and the Indenture Trustee (a "**Supplemental Indenture**" and collectively with the Master Trust Indenture, the "**Indenture**") authorizing that Series.
Transferor and Servicer:	The Independent Electricity System Operator (the "**IESO**") is a not-for-profit corporation established under the *Electricity Act, 1998* (Ontario). The IESO manages the operation and reliability of Ontario's bulk power system and administers the wholesale electricity market.[10] Each month, the IESO will determine the shortfall resulting from the rate reduction mandated by the FHPA and record the amount in a variance account. The IESO has the right, exercisable in accordance with the FHPA and the Regulations, to recover the balance recorded in the variance account from Specified Consumers (such right, the "**Regulatory Asset**"). However, the FHPA provides that the IESO is not permitted to exercise such right before May 1, 2021 is limited under the FHPA. The IESO has entered into a master transfer and servicing agreement with the Issuer dated as of December 21, 2017 (as amended, supplemented, restated or otherwise modified from time to time, the "**Master Transfer and Servicing Agreement**") pursuant to which the IESO may, on a monthly basis, offer to transfer a specified portion of the Regulatory Asset to the Issuer in accordance with the FHPA. See *"Transferor and Servicer"*.
Investment Interest:	Upon acceptance of the transfer by the IESO of a specified portion of the Regulatory Asset, the Issuer will acquire an Investment Interest in the Investment Asset, which is a current and irrevocable property right consisting of the ~~right~~rights specified in the FHPA, including the right and interest to impose, invoice, collect, receive and recover the Clean Energy Adjustment from Specified Consumers in accordance with the

[8] **Note:** The statutory definition of "funding obligation" provides that the funding obligations have the purpose of funding ownership in an investment interest. Please consider revising the definition of "funding obligation" to more closely track that in the Act.

[9] **Note**: Elsewhere, the disclosure refers only to the Issuer without adverting to the possibility of other future Financing Entities. To the extent that this simplification suggests in a particular context that other future Financing Entities would not be permitted or similarly treated, references to the Trust should be broadened to encompass the possibility of future Financing Entities.

[10] **Note:** Consider also referring to IESO's planning and procurement functions. They may be meaningful here to the extent they impact IESO objectives and governance generally.

FHPA and the Regulations. See *"— Clean Energy Adjustment"* below and *"Ontario's Fair Hydro Plan — Regulatory Asset"*, *"Ontario's Fair Hydro Plan — Investment Interest"* and *"The Transferor and Servicer"*.

Clean Energy Adjustment:

The FHPA and the Regulations impose an irrevocable and non-bypassable charge referred to as the Clean Energy Adjustment that will be determined by the Financial Services Manager ~~and will be converted by the OEB into a $/kWh rate and added to the electricity invoices sent to~~based on the calculations and parameters set out in the FHPA. The OEB is required to determine the rates at which Specified Consumers are to be invoiced in order to recover the Clean Energy Adjustment in respected of a specified Reference Period (which is generally a six month period, or a shorter period in certain circumstances). The rates are to be determined by reference to forecasted electricity consumption of Specified Consumers for a period and are expressed as a cent per KWh rate. See *"— Statutory Duties of the OEB"* below.

The required Clean Energy Adjustment ~~is an amount~~will be determined by the Financial Services Manager for each month in a Reference Period ~~(which is generally a six month period, subject to more frequent determinations in certain circumstances)~~ and consists of the sum (without duplication) of: (i) the estimated Finance Amount in respect of the Reference Period, which ~~includes all financing and other expenses of the Issuer for~~will include an estimate of all repayments, redemptions, funding costs, derivative payments, required deposits, Issuer expenses and taxes, and other amounts paid or payable during such Reference Period, and (ii) the True-up Amount for such Reference Period, all divided by the number of months in the applicable Reference Period.

The "**True-up Amount**" is ~~comprised of~~required to be calculated by the Financial Services manager in accordance with the Regulations. In principle, the True-up Amount should serve to ensure that the collection of the Clean Energy Adjustment is sufficient to pay the Finance Amount when it is due, by capturing any Finance Amounts not previously received in respect of the Clean Energy Adjustment during preceding Reference Periods ~~plus other anticipated shortfalls.~~ .

The True-up Amount ~~accounts for~~may also reflect historical and reasonably foreseeable differences between the ~~required Clean Energy Adjustment~~estimated and actual Finance Amount; between amounts invoiced and amounts collected due to various factors, including applicable taxes, consumer defaults and delays, billing lags and write-offs~~,~~; and variations in billings due to variations in electricity consumption ~~and~~. In determining such differences, the Financial Services Manager is required to have regard to amounts payable that were not collected and any amounts in respect of which an overpayment was made, which may include amounts resulting from a default of Specified Consumers, an Electricity Vendor or the IESO, whether in its capacity as an Electricity Vendor or its activities as agent or otherwise under the FHPA and the Regulations. The Financial Services Manager is obligated to calculate the True-up Amount in respect of each Reference Period so long as all Funding Obligations and other Finance Amounts have not ~~be~~been paid in full. The

Financial Services Manager may also, at any time during a Reference Period, determine an interim True-up Amount if, among other things, it reasonably forecasts that the collection of the Clean Energy Adjustment will be insufficient to pay the estimated Finance Amount for ~~such~~a Reference Period.

[Commencing May 1, 2021, a charge in respect of the Clean Energy Adjustment will be included on invoices sent to Specified Consumers, and collected and remitted to the Issuer to pay amounts owing on the Senior Notes and all other administrative and other financing expenses of the Issuer. From July 1, 2017 until April 30, 2021 (the "**Moratorium Period**"), no Clean Energy Adjustment amounts are permitted to be collected from Specified Consumers. During the Moratorium Period, the sole source of funds for payment on the Senior Notes, and the Issuer's other ~~carrying costs~~Carrying Costs, will be the amounts the IESO is obligated to pay under the Regulations during such period. See *"Ontario's Fair Hydro Plan — Clean Energy Adjustment"*.][11]

Non-bypassability:

The FHPA mandates that an amount in respect of the Clean Energy Adjustment shown on an invoice issued to a Specified Consumer is determinative of the amount of the consumer's indebtedness resulting from the Clean Energy Adjustment, and is irrevocable on invoicing such Specified Consumer and may not be set off or bypassed. See *"Ontario's Fair Hydro Plan — Clean Energy Adjustment"*.

Payment of Carrying Costs during the Moratorium Period:

During the Moratorium Period and extending to July 31, ~~2021,~~2021,[12] the IESO, which is rated A(high) by DBRS Limited ("**DBRS**") and Aa2 by Moody's Investors Services, Inc. ("**Moody's**"), is required under the Regulations to pay and remit to the Issuer any amounts charged to the IESO by the Issuer in respect of its ~~carrying costs~~Carrying Costs. Under the Regulations, ~~"carrying costs"~~Carrying Costs include all funding costs, such as interest on the Senior Notes, and other expenses of the Issuer, other than repayment of principal on any debt obligations of the Issuer (such as principal on the Senior Notes).[13]

Pursuant to the Master Transfer and Servicing Agreement, on or before the fourth business day of each calendar month, the Issuer will submit a carrying costs statement to the IESO certifying the amount of ~~carrying costs~~Carrying Costs estimated to be incurred by the Issuer in the following month. On or before the 14th business day following receipt of the Issuer's carrying costs statement,[14] the IESO is required to deliver the amount specified therein to the Issuer. See *"The Transferor and Servicer"*. The IESO has a $2 billion unsecured credit facility provided by the Ontario Financing Authority, expiring ■, 20■,

[11] **Note:** This narrative should more precisely track the FHPA. The relevant provisions are Section 25(3) [*the IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2021*] and Section 21(4) [*limitation on the Financial Services Manager incurring funding obligations payable through Clean Energy Adjustments from July 1, 2017 to April 30, 2021*]. In particular, the suggestion that CEAs cannot be collected in any circumstance during the Moratorium Period goes beyond 21(4) and presumes that there will be no Readjustment.

[12] **Note:** Please clarify this disclosure for consistency with Section 9.1(1) of the General Regulation. This provision states that the IESO shall pay financing entity carrying costs in respect of the period beginning June 1, 2017 (before the Moratorium Period) and ending on July 31, 2021.

[13] **Note:** Consider revising to conform with Section 9.3(3) of the General Regulation. This Section provides that "carrying costs" also include derivative payments, etc.

[14] **Note:** Not sure how this lines up with fee recovery.

which ~~can~~is permitted to be used to pay the Issuer's ~~carrying costs~~Carrying Costs. The amounts paid by the IESO to fund these ~~carrying costs~~Carrying Costs will be recorded by the IESO in a variance account and form part of the Regulatory Asset that the IESO is expected to transfer to the Issuer in a subsequent period and, upon such transfer, will become part of the Issuer's Investment Interest pursuant to the Regulations.

As security for the performance of its obligation under the Regulations to pay the Issuer's ~~carrying costs~~Carrying Costs, the IESO has granted the Issuer a first-priority security interest in all of its accounts receivable, which includes the amounts receivable by the IESO from Electricity Vendors with respect to the global adjustment charge. See *"The Transferor and Servicer"*. For a further description of the global adjustment charge, see *"The Electricity Industry in Ontario — Electricity Prices"*.

Acceleration of Indebtedness:

A holder of Senior Notes must rely solely on the Clean Energy Adjustment amounts collected and any available reserve accounts for repayment of principal on the Senior Notes. Accordingly, if all or any portion of the principal amount of any indebtedness of the Issuer (including one or more Series of Senior Notes) becomes due and payable during the Moratorium Period and before its scheduled payment date, maturity date or redemption date, the source of funds for repayment of principal may be limited.

If all or any portion of the principal amount of any indebtedness of the Issuer (including one or more Series of Senior Notes) becomes due and payable after the Moratorium Period and before its scheduled payment date, maturity date or redemption date, then the estimated Finance Amount used by the Financial Services Manager to determine the Clean Energy Adjustment ~~after such time shall~~for a period will be determined without regard to the fact that such amount has become ~~immediately~~ due and payable, unless and only to the extent that the amount of the Clean Energy Adjustment is capable of being increased based on the Fair Allocation Amount for such period. See *"— Fair Allocation Amount and Financing Plan"* below. However, upon such acceleration, all accelerated Senior Notes will be repaid in full before any further payments of principal are made to holders of subordinated indebtedness, including the subordinated debt held by OPG; therefore, collections of the Clean Energy Adjustment that would otherwise have been available to repay the principal amount of subordinated indebtedness in the absence of acceleration of the Senior Notes will instead be applied to repay accelerated Senior Notes. See *"— Subordinated Debt"* below.[15]

Statutory Duties of the OEB:

The OEB is an independent public regulatory agency established under the *Ontario Energy Board Act, 1998*. The *Ontario Energy Board Act, 1998* provides the OEB with the authority to regulate participants (e.g. OEB licensees) in Ontario's [electricity market][16], including the activities of transmitters and distributors as well as the IESO (all Electricity Vendors for the purposes of the FHPA).

[15] **Note:** Add detailed descriptions to correspond to the limitation on cashflows during acceleration in the applicable detailed portions of the OM and specifically address in Risk Factors.

[16] **Note:** Technically, the IESO administers (supervises) the IESO-administered markets. There is no definition for "electricity market".

Under the Regulations, the OEB is responsible for determining the rates at which Specified Consumers are to be invoiced to recover the Clean Energy Adjustment. The rates are expressed ~~in $/~~as a cent per kWh rate and are determined by the OEB by dividing (i) the aggregate Clean Energy Adjustment ~~in respect of the relevant period of time~~ as determined by the Financial Services Manager in respect of the relevant period of time by (ii) the forecast ~~provided by the IESO~~ of electricity consumption of Specified Consumers in respect of such period, based on forecast information provided to the OEB by the IESO. See *"— Statutory and Servicing Duties of the IESO"* below.

Statutory Duties of Electricity Vendors:

Electricity is distributed to almost all Specified Consumers in Ontario through a network of local distributors. See "*Electricity Industry in Ontario*" and the Investor Presentation attached as Exhibit 1 to this confidential shelf offering memorandum for more details regarding the Ontario electricity market and these local distributors.

The FHPA and the Regulations require Electricity Vendors to invoice their Specified Consumers for a charge in respect of the Clean Energy Adjustment ~~commencing May 1, 2021,~~ as determined by applying the rate set by the OEB, which is required to be included as a separate line item on each invoice sent to Specified Consumers. Electricity Vendors are also required to collect, as agent of [the Issuer][17], amounts in respect of the Clean Energy Adjustment, deposit such amounts into a segregated account established for the purpose of receiving those amounts, and hold such amounts in trust for the benefit of [the Issuer][18] until ~~deposited with the IESO and remit such amounts~~remitted to the IESO for the benefit of [the owners of Investment Interests (initially, only the Issuer)].[19] If an Electricity Vendor does not receive payment in full of an invoice issued to a Specified Consumer, the Electricity Vendor shall allocate ~~the~~any payment received on a *pro rata* basis to the Clean Energy Adjustment and the other amounts payable under the particular invoice.[20] It is a deemed condition of their distribution license issued by the OEB that Electricity Vendors comply with the FHPA.[21]

As security for any failure of an Electricity Vendor that does not have an investment grade rating from DBRS and Moody's to remit Clean Energy Adjustment amounts collected under the FHPA, the IESO is required, pursuant to the Master Transfer and Servicing Agreement, to provide to the Issuer on or prior to the first day of the first billing period when the Clean Energy Adjustment is being invoiced to Specified Consumers, a letter of credit from a provider that satisfies the Rating Agency Condition or a performance guarantee or such other form of security that is acceptable to the Issuer and that satisfies the Rating Agency Condition. The amount of the security required from the IESO is based on a formula as set out in the Master Transfer and Servicing Agreement and will equal: (i) 50% of forecasted Clean Energy Adjustment amounts that are to be collected by such non-investment grade rated Electricity Vendors and held for 45 days

[17] **Note:** This and similar references to the Issuer should instead refer to Financing Entities (Investment Interest owners), of which the Trust is the first, and then cross-refer to the concept of co-ownership in order to facilitate additional financings in the future.
[18] **Note:** Please see note 17.
[19] **Note:** Please see note 17.
[20] **Note:** Please consider revising this to conform more closely to Section 17(4) of the FHPA.
[21] **Note:** Please confirm.

prior to the funds being remitted to the Issuer; or (ii) such other amount that satisfies the Rating Agency Condition. See *"The Transferor and Servicer."*

Management Duties of OPG:

OPG has entered into a management agreement (the "**Management Agreement**") with the Issuer pursuant to which the Issuer has delegated to OPG, as manager (the "**Manager**"), all of the powers and duties of managing the Issuer, including determining whether to incur Funding Obligations (including Offerings of Senior Notes) to acquire an Investment Interest or refinance existing Funding Obligations; negotiating and executing, on behalf of the Issuer, all agreements; maintaining accounts and banking records; preparing any offering documents to be furnished by the Issuer to prospective purchasers of Funding Obligations (including the Senior Notes); and preparing financial statements and tax filings on behalf of the Issuer. See *"The Manager"*.

In addition to the powers and duties delegated to the Manager under the Management Agreement, OPG is also required to comply with its duties as Financial Services Manager under the FHPA and the Regulations, including preparing the Financing Plan to evaluate whether potential Funding Obligations should be incurred for the purposes of Financing Entities acquiring and financing an Investment Interest, determining the amount of the Clean Energy Adjustment inclusive of the calculation of any True-up Amount, notifying the OEB of the Clean Energy Adjustment inclusive of any True-up Amount and ensuring that Funding Obligations are incurred in a manner consistent with the Financing Plan. OPG may also administer the Investment Interest on behalf of the Issuer and any other Financing Entities. Subject to OEB approval and as provided for in the FHPA and the Regulations, OPG is entitled to charge the Issuer a fee, comprised of a base fee and a variable fee, to earn a return and to recover costs and expenditures incurred by OPG on behalf of the Issuer or in relation to the establishment, management and administration of the Issuer and its Investment Interest. The priority of the Manager's entitlement to fees is subject to the payment priorities set forth in the Master Trust Indenture. See *"The Manager"*.

Statutory and Servicing Duties of the IESO:

Following the Moratorium Period, the IESO is required, as agent of [the Issuer][22], to receive Clean Energy Adjustment amounts paid to it from Electricity Vendors, deposit such amounts promptly into a segregated account established for the purpose of receiving amounts in respect of the Clean Energy Adjustment, hold such amounts in trust on behalf of [the Issuer] and remit such amounts to [the Issuer] [on a monthly basis, subject to daily remittance being required in certain limited circumstances.][23] In addition, the IESO will provide certain reporting and other servicing duties in favour of the Issuer, including ~~forecasting~~providing forecast information regarding electricity consumption of Specified Consumers and providing such forecast information to the OEB and the Issuer, making commercially reasonable efforts to cause Electricity Vendors to establish segregated accounts into which Clean Energy Adjustment amounts are deposited, remitting such amounts to [the Issuer] and fulfilling certain additional

[22] **Note:** Please see note 17 regarding bracketed references to the "Issuer" in this paragraph..

[23] **Note:** Please consider disclosing which IESO duties are statutory and which arise under the MTSA. For instance, in this sentence, these time requirements arise from the MTSA. Section 9(2) of the General Regulation requires that the IESO remit within a reasonable period of time.

reporting requirements. [Generally, all servicing duties provided by the IESO to the Issuer are provided at no cost to the Issuer.][24] However, the Issuer will reimburse the IESO for certain direct costs relating to the performance by the IESO of its duties and obligations under the Master Transfer and Servicing Agreement that are otherwise not recovered or recoverable by the IESO under the *Electricity Act, 1998* (Ontario). See *"The Transferor and Servicer."*

Change of Law Protection Agreement:

Pursuant to the Change of Law Protection Agreement in favour of the ~~Issuer and the~~ Indenture Trustee, upon a Protection Event and delivery by the Indenture Trustee of a written payment demand, the Province of Ontario is required to make payments in respect of all "Approved Obligations" ~~under~~when due and payable into the ~~Change of Law~~ Protection ~~Agreement and which~~Account (which, provided that the Notes are Approved Obligations, includes payments of amounts that are due and payable in respect of ~~the~~ Notes), although the amount of Province of Ontario's payment obligations in a particular period will differ depending on whether an Acceleration has occurred. See "*Change of Law Protection Agreement*". The Issuer and Indenture Trustee must ensure that amounts deposited into the Protection Account are applied to pay each Specified Creditor to whom an amount is due and payable under an Approved Obligation.

Generally, an "Approved Obligation" under the Change of Law Protection Agreement includes all obligations of the Issuer (except for amounts required to be deposited into any capital account or finance reserve account, or any obligation for the Issuer to pay itself any remaining amounts in the Collection Account pursuant to the Master Trust Indenture), including obligations of the Issuer under the Notes, subject to the satisfaction of certain adherence conditions for those obligations that constitute "Certified Primary Obligations", as defined in the Change of Law Protection Agreement. Subject to certain limited exceptions for refinancings, a "Certified Primary Obligation" includes all Notes, as well as certain other obligations of the Issuer under derivative agreements or under contracts with terms of greater than three years ~~and which~~that are not terminable by the Issuer on less than three years' notice ~~and on payment~~under which the Manager, acting reasonably, expects aggregate payments by the Issuer ~~of~~during the term of the contract in an amount ~~equal to or less than~~in excess of $5,000,000.

Protection Event:

Each of the following constitutes a "**Protection Event**" for purposes of the Change of Law Protection Agreement:

(a)

(i) the Ontario legislature repeals, and does not replace on an equivalent basis, or amends, the FHPA~~, in whole~~ or ~~in part~~any portion thereof, as in effect on the date hereof;

(ii) the Ontario legislature enacts or amends any other statute;

(iii) the Lieutenant Governor in Council repeals, and does not

[24] **Note:** Please confirm.

replace on an equivalent basis, the regulations made under ~~or in connection with,~~ the FHPA~~, in whole~~ or ~~in part~~any portion thereof, as in effect on the date hereof;

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

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

in each case, that (X) adversely affects the ability of the Issuer to receive amounts in respect of its Investment Interest so that it can pay Approved Obligations when due and payable, in each case determined after taking into account and having regard to (i) any funds available at such time to apply to such Approved Obligations, including in any finance reserve account, capital account or collateral posting account applicable under a derivative agreement, (ii) the availability of any credit enhancement agreement to which the Issuer is a party and (iii) any reasonably expected potential effect of a True-up Amount in the Reference Period immediately following the occurrence of an event described in any of clauses (~~a~~i) to (~~e~~v) above, or (Y) adversely affects the enforceability of, or adversely changes, the terms and conditions of the Change of Law Protection Agreement or of any of the agreements under which Approved Obligations arise; or

(b) a court of competent jurisdiction determines that all or a portion of the FHPA or the Regulations, as in effect on the date hereof, is *ultra vires* or invalid in a way that adversely affects the ability of the Issuer to receive amounts in respect of its Investment Interest so that it can pay Approved Obligations when due and payable and that has the effect of the Issuer not in fact having sufficient funds to pay such Approved Obligations that have become due and payable, in each case determined after taking into account and having regard to (i) any funds available at such time to apply to such Approved Obligations, including in any finance reserve account, capital account or collateral posting account applicable under a derivative agreement, (ii) the availability of any credit enhancement agreement to which the Issuer is a party and (iii) any reasonably expected potential effect of a True-up Amount in the Reference Period immediately following the occurrence of an event described in this paragraph (b).

The occurrence of a Protection Event in and of itself will not result in the acceleration of the Senior Notes.

The Province of Ontario's obligation to make payments under the Change of Law Protection Agreement upon a Protection Event and subsequent delivery of a written payment demand by the Indenture

Trustee is referred to as the "**Limited Guarantee**".

Upon paying amounts ~~in respect of Approved Obligations, including the Senior Notes, the~~when due and payable in respect of Approved Obligations, including the Senior Notes, into the Protection Account, the Province of Ontario will be subrogated and entitled to all of the rights and interests of applicable Specified Creditors (including Noteholders) under and in respect of the Approved Obligations to the extent of the amounts paid. The Province of Ontario will have ~~a right of subrogation that includes the entitlement to all rights and interests under and in respect of such Approved Obligations, including the security interest in each related Investment Interest and any related property of the Issuer.~~the right to be paid from the Issuer the amounts that the Province of Ontario paid in respect of the Approved Obligations, such amounts being payable in the same order of priority and with the same entitlements accruing to the Province of Ontario as applied to the amounts in respect of the Approved Obligations previously owing to Specified Creditors that the Province of Ontario has paid. The Province of Ontario will also be entitled to the benefit of the Collateral and proceeds therefrom.

Under the Change of Law Protection Agreement, the right to deliver a written payment demand on occurrence of a Protection Event to enforce the Limited Guarantee is the only remedy available to the Indenture Trustee (and to Specified Creditors, to the extent they are permitted to exercise any rights, interests or elections under and in accordance with the Master Trust Indenture). Specified Creditors are not permitted to exercise any rights, interests, or elections under the Change of Law Protection Agreement, other than in the manner and to the extent effected and exercised under, in accordance with and subject to the limitations set forth in the Master Trust Indenture as at December 21, 2017.

Approved Obligations & Adherence Conditions:

Under the Management Agreement, the Manager is required to ensure that all obligations of the Issuer are and remain Approved Obligations under the Change of Law Protection Agreement.

The Limited Guarantee shall apply to all Certified Primary Obligations that meet the following adherence conditions:

(a) the Certified Primary Obligation when incurred is an Obligation Secured under the Master Trust Indenture;

(b) OPG, as Financial Services Manager, delivers a certificate to the Indenture Trustee ~~prior to~~on or before the incurrence of such obligation certifying that it has complied with all of its obligations to the Province of Ontario and internal requirements and processes in connection with the adherence of the Limited Guarantee to the Certified Primary Obligation; and

(c) the Province of Ontario has not provided a Suspension Notice to the Indenture Trustee, OPG and the Issuer.

All Senior Notes shall constitute Obligations Secured under the Master

Trust Indenture and therefore condition (a) above will be satisfied for all Offerings of Senior Notes. It will be a condition to any Offering of Senior Notes that OPG deliver the adherence certificate required pursuant to (b) above or that the Province of Ontario designates in writing that the Senior Notes are Approved Obligations. The Change of Law Protection Agreement provides that delivery of an adherence certificate shall be determinative of satisfaction of this adherence condition, notwithstanding that such certificate may include inaccuracies, be incomplete or otherwise be defective or deficient, and such certificate may be relied upon as conclusive evidence of same.

Suspension Notice & Post-Suspension Refinancing

The Change of Law Protection Agreement will remain in full force and effect ~~for as long as any Senior Notes remain outstanding~~until the indefeasible payment, observance and performance in full of the Approved Obligations.

However, in the following limited circumstances, the Province of Ontario may deliver a Suspension Notice under the Change of Law Protection Agreement: (i) if there has been an acceleration of Funding Obligations in accordance with the provisions of the Master Trust Indenture or an event of default, early amortization event, termination event or similar event or circumstance (including any event that with the passage of time or the giving of notice would become such an event) of or in respect of the obligations of any party under any Program Agreement; (ii) if there has been an uncured breach of covenant ~~or representation of OPG~~, uncured default in performance, or uncured representation, warranty or certification that proves to be incorrect in any material respect on the date made, in each case of OPG (or its officers, in the case of a certification) to the Province of Ontario in connection with its obligations to the Province of Ontario pursuant to internal requirements and processes in connection with the provision or adherence of the Limited Guarantee to or in respect of any Certified Primary Obligations; or (iii) if the Financial Services Manager is no longer the Manager or actions ~~having~~have been taken by or on behalf of the Indenture Trustee to remove the Financial Services Manager as the Manager.

Upon delivery of a Suspension Notice, the Limited Guarantee shall ~~cease to~~not apply ~~only~~ in respect of obligations incurred by the Issuer (excluding certain refinancings of Approved Obligations as described below) and certain material amendments of outstanding obligations of the Issuer~~, in each case following delivery of a Suspension Notice~~.

Notwithstanding delivery of a Suspension Notice, the Limited Guarantee shall continue to apply to: (i) any Approved Obligations that were incurred prior to the suspension and (ii) any Funding Obligations incurred by the Issuer following a suspension ~~if~~that satisfy the terms and conditions of the Change of Law Protection Agreement, provided that the proceeds of such incurrence are to be used for the purpose of repaying one or more series of Approved Obligations. Accordingly, subject to compliance with the Change of Law Protection Agreement, any Senior Notes or other Funding Obligations that may be issued following a suspension to refinance Senior Notes that were Approved Obligations issued prior to a suspension will continue to have the benefit of the Limited Guarantee.

See *"Change of Law Protection Agreement"*.

Fair Allocation Amount & Financing Plan:

The Fair Allocation Amount is an amount calculated under the FHPA and the Regulations by the Minister of Energy in respect of each Reference Period that, among other things, allocates the estimated value of certain costs allocated to Specified Consumers in respect of the Ontario government's clean energy initiatives ("**Clean Energy Costs**")[25] in proportion to the relative attribution of the value of benefits determined to be derived by or accruing to Specified Consumers as a result of such clean energy initiatives ("**Clean Energy Benefits**") among Specified Consumers. See *"Ontario's Fair Hydro Plan"*.[26]

The Financial Services Manager is required to prepare a Financing Plan under the FHPA to evaluate whether potential Funding Obligations should be incurred by the Issuer or other Financing Entities ~~and having~~for the purposes of acquiring an Investment Interest or for the purposes of a Refinancing. In preparing the Financing Plan, the Financial Services Manager must have regard to certain principles, including that Funding Obligations should be incurred ~~so that~~such that, along with any Funding Obligations already incurred, the estimated Finance Amount that would, subject to any Refinancing, become due and payable during a Reference Period will reasonably align with the Fair Allocation Amount determined in respect of such Reference Period as of the date the Funding Obligations were incurred, after reducing the Fair Allocation Amount by the Readjustment Amount, if any, in respect of the Reference Period.

In other words, the Financing Plan should contemplate the issuance of Funding Obligations from time to time, with terms that would result in Clean Energy Adjustments being payable by Specified Consumers that align with the purposes of the FHPA~~, namely, to ensure that present and future Specified Consumers are bearing their share of the costs of providing Clean Energy Benefits~~.[27] Notwithstanding the above, the FHPA provides that each Funding Obligation is deemed to be consistent with the Financing Plan and to provide for the reasonable alignment of the estimated Finance Amount with the Fair Allocation Amount.

~~Currently, the Clean Energy Costs have been determined to exceed the Clean Energy Benefits, with the result that the Fair Allocation Amount is negative. This means that the Minister of Energy has determined that current Specified Consumers have borne more than their fair share of Clean Energy Costs (with the consequent rate reduction for current Specified Consumers). The Fair Allocation Amount is expected to be negative until at least May 2024. Accordingly, the~~[28] The Financing Plan does not currently contemplate the issuance of any Senior Notes maturing prior to May 2024. The Financial Services Manager may, however, determine to refinance Senior Notes maturing after May

[25] **Note:** Consider that "Clean Energy Costs" is more thoroughly defined in the Glossary. Through the OM, reconsider instances where there are two different definitions.
[26] **Note:** The description of the fair allocation amount should more closely align to Section 20(1) of the FHPA.
[27] **Note:** We have omitted narrative regarding the purposes of the legislation that is not a strict recital of section 3 of the FHPA. The deleted language is not precise and draws a connection to clean energy benefits that is not in the FHPA nor entirely accurate.
[28] **Note:** Fair allocation amount is a calculation amount. It is not based on an expectation – it is an absolute value at a point in time. We recommend deleting this language as it is inappropriate.

	2024 through the issuance of another Series of Senior Notes. If Senior Notes cannot be refinanced on or before the applicable Principal Payment Default Date, holders of such Senior Notes will have the [ability to accelerate][29] their Senior Notes resulting in Clean Energy Adjustments that would otherwise be used to pay the principal amount on subordinated indebtedness to holders of subordinated Notes being used to pay holders of accelerated Senior Notes. The Financing Plan allows for the issuance of a variety of short and long term debt. See the Investor Presentation attached as Exhibit 1 to this confidential shelf offering memorandum for more details regarding the Financing Plan and the Fair Allocation Amount.
Subordinated Debt:	Concurrent with every issuance of senior debt by the Issuer, including any Offering of Senior Notes, it is expected that OPG will subscribe for subordinated debt and junior subordinated debt of the Issuer in an amount equal to no more than 49% of all of the Issuer's Funding Obligations, approximately 44% of which is expected to be funded through equity investments in OPG by the Province of Ontario with the remaining 5% being funded from OPG's available funds, including all or a portion of the proceeds of any offerings by OPG of medium term notes. Under the Master Trust Indenture, the Issuer will be required at all times to ensure that: (i) the aggregate outstanding principal amount of all subordinated debt and junior subordinated debt be not less than 35% of the aggregate outstanding principal amount of all of the Issuer's Funding Obligations; and (ii) the aggregate outstanding principal amount of all junior subordinated debt be not less than 10% of the aggregate outstanding principal amount of all of the Issuer's Funding Obligations.
Use of Proceeds:	The proceeds from each Offering may be used to (i) acquire an Investment Interest from the IESO pursuant to the Master Transfer and Servicing Agreement, (ii) refinance indebtedness of the Issuer (including other Series of Senior Notes), (iii) pay Offering and related costs of the Issuer and (iv) fund specific reserve accounts as required. The Term Sheet for each Offering of Senior Notes will identify the amount of proceeds that will be used for such specified purposes.
Interest Rate:	Fixed, floating or otherwise, as determined by the Issuer and as set out in the Term Sheet applicable to such Offering.
Interest Payment Dates:	As determined from time to time by the Issuer and as set out in the Term Sheet applicable to such Offering.
Principal Accumulation Date(s) and Principal Accumulation Amount(s):	As determined from time to time by the Issuer and as set out in the Term Sheet applicable to such Offering.
Principal Payment Date(s) and Principal Payment Amount(s):	As determined from time to time by the Issuer and as set out in the Term Sheet applicable to such Offering.

[29] **Note:** CEAs will automatically step up at the original maturity date without the need to accelerate assuming a refinancing cannot be completed.

Principal Payment Default Date:	As determined from time to time by the Issuer and as set out in the Term Sheet applicable to such Offering.
Ranking:	Subject to the applicable payment waterfalls set out in the Master Trust Indenture, the Senior Notes will be direct, secured and unsubordinated obligations of the Issuer, and will at all times rank equally and proportionately with each other and all other senior indebtedness issued by the Issuer from time to time pursuant to the Indenture, without discrimination or preference. See "*Capital Markets Platform — Subordination Provisions*", "*Capital Markets Platform — Acceleration and Remedies — Payment Waterfall Upon Acceleration*".
Security:	All indebtedness and other obligations of the Issuer, including the Senior Notes, will be secured by a first ranking charge against all property and assets of the Issuer, including each Issuer Account (and all funds and property credited thereto), all rights and benefits, and powers of the Issuer under the FHPA and all rights, benefits and power under all Program Agreements, including under the Limited Guarantee. Under the Master Trust Indenture, the Issuer is required to maintain certain reserves: the IESO Cash Reserve Deposit Amount (an amount equal to the aggregate of (i) 0.50% of the aggregate amount of all outstanding senior, subordinated and junior subordinated funding obligations determined as of April 15, 2021, and (ii) an amount estimated as the amount of ~~carrying costs~~Carrying Costs payable during May, June and July 2021, provided such amount in (ii) satisfies the Rating Agency Condition) will be deposited by the IESO by April 30, 2021. There is also a Program Cash Reserve Account which will begin to be funded from Clean Energy Adjustments following the Moratorium Period until it reaches the Program Cash Reserve Required Amount (on each Payment Date on and after May 15, 2021, an amount equal to 0.50% of the aggregate amount of all outstanding senior, subordinated and junior subordinated funding obligations determined as of such date, or such lesser amount that satisfies the Rating Agency Condition). Funds in the IESO Cash Reserve Account will be applied to pay ~~carrying costs~~Carrying Costs after April 2021 to the extent that funds can be so applied such that the aggregate amount of funds in the IESO Cash Reserve Account and Program Cash Reserve Account is maintained at the Program Cash Reserve Required Amount. In connection with the incurrence of any Series of Notes, the Issuer may (i) establish a Series Account for purposes of accumulating funds used to make principal payments or for purposes of reserving funds to pay finance charges, and/or (ii) enter into a credit enhancement agreement or liquidity agreement. Whether a Series of Senior Notes has the benefit of a Series Account or any credit enhancement agreement or liquidity agreement will be determined from time to time by the Issuer and set out in the Term Sheet applicable to such Offering. See "*Capital Markets Platform — Security*".

Priority of Payments:

Prior to an Event of Default and acceleration of the Issuer Funding Obligations (other than Derivative Funding Obligations), amounts available for disbursement will generally be applied in the following order of priority:

- taxes;
- trustee fees, expenses and reimbursement amounts (up to a specified cap);
- payment of or accumulations in respect of interest for senior obligations, *pari passu* with payments under derivative agreements (other than termination payments);
- payment of or accumulations in respect of interest for subordinated obligations;
- payments of or accumulations in respect of interest for junior subordinated obligations;
- payment of or accumulations in respect of principal for warehouse obligations (see *"Warehouse Facilities"*);
- accumulations in respect of principal for senior obligations (other than warehouse obligations), *pari passu* with termination payments under derivative agreements (other than as provided below);
- fees and other amounts (other than principal and interest) on senior obligations;
- the Manager's fees, expenses and reimbursement amounts;
- payment of or accumulations in respect of principal for subordinated obligations;
- fees and other amounts (other than principal and interest) on subordinated obligations;
- payment of or accumulations in respect of principal for junior subordinated obligations;
- replenishment of Program Cash Reserve Account;
- replenishment of Series Accounts (other than accounts established for subordinated obligations or junior subordinated obligations);
- replenishment of Series Accounts established for subordinated obligations;
- fees and other amounts (other than principal and interest) on junior subordinated obligations;
- replenishment of Series Accounts established for junior subordinated obligations;
- termination payments under derivative agreements where the counterparty is the defaulting party or sole affected party;
- beneficiaries of the Issuer;
- indemnity amounts owing to the Manager; and
- all other obligations not specifically dealt with above.

After an Event of Default and acceleration of the Issuer Funding Obligations (other than Derivative Funding Obligations), amounts available to the Issuer or otherwise held by the Indenture Trustee will generally be applied in the following order of priority:

- taxes;
- trustee fees, expenses and reimbursement amounts;
- interest, fees and other amounts (other than principal) on senior obligations and payments under derivative agreements (other than termination payments), *pari passu*, then

subordinated obligations (other than principal) and then junior subordinated obligations (other than principal);
- principal for warehouse obligations;
- *pari passu*, principal on senior obligations (other than warehouse obligations) and termination payments under derivative agreements (other than where the counterparty is the defaulting party or sole affected party);
- the Manager's fees, expenses and reimbursement amounts;
- principal for subordinated obligations and then junior subordinated obligations; and
- all other obligations not specifically dealt with above.

Notwithstanding the above, amounts held in a Series Account will be applied in accordance with the relevant Funding Obligation Agreement and amounts held in the Protection Account will be applied in accordance with the specific written payment statement and would not otherwise modify the provisions of the applicable payment waterfalls set out in the Master Trust Indenture.

See "*Capital Markets Platform — Payment Waterfall Prior to Acceleration*" and "*Capital Markets Platform — Acceleration and Remedies — Payment Waterfall Upon Acceleration*".

Currency: Senior Notes may be denominated in any currency. The currency for a particular Series of Senior Notes will be set out in the Term Sheet applicable to such Offering.

Minimum Subscription: Minimum principal amount of 100,000 units of the applicable currency and integral multiple of 1,000 of the applicable currency. The minimum subscription and denomination of the Senior Notes may be varied as set out in the Term Sheet applicable to such Offering.

Optional Redemption: Senior Notes may be subject to redemption prior to maturity at the times and redemption price set out in the Term Sheet applicable to such Offering.

Purchase for Cancellation: The Issuer may, at any time, purchase at any price all or any of the Senior Notes in the market or by invitation for tenders or by private contract. Any Senior Notes so purchased shall be cancelled.

Distribution Method: The Senior Notes may be offered and sold by the Issuer on a private placement basis in Canada to "accredited investors" (as such term is defined in NI 45-106 and, in the case of a purchaser resident in Ontario, section 73.3(1) of the *Securities Act* (Ontario)) who purchase the Senior Notes as principal and that are not individuals unless those individuals are also "permitted clients" (as such term is defined in NI 31-103).

By purchasing Senior Notes and accepting a purchase confirmation in respect thereof, a purchaser will be agreeing with and representing to the Issuer and any Agent participating in the trade that the purchaser is an accredited investor purchasing as principal along with certain other matters. See *"Representations and Agreements of Purchasers"*.

Book-Entry Form:	The Senior Notes will be delivered and recorded in book-entry form only through CDS or another depository selected by the Issuer in accordance with the Master Trust Indenture. Each Series of Senior Notes will be evidenced by a global note held by such depository, registered in its name or the name of its nominee, on behalf of all holders of such Series of Senior Notes. Subject to limited exceptions, no purchasers of Senior Notes will be entitled to a certificate or other instrument from the Issuer or CDS evidencing that purchaser's ownership thereof, and no holder of a Senior Note will be shown on the records maintained by CDS except through book-entry accounts of a participant of CDS acting on behalf of owners. See *"Depository Services"*.
Resale Restrictions:	Resale of the Senior Notes will be subject to restrictions under applicable securities legislation which vary depending on the relevant jurisdictions. **The Senior Notes may only be sold on a basis that is in accordance with, or pursuant to an exemption from, the prospectus requirements of applicable provincial securities laws and only through an appropriately registered dealer or pursuant to an exemption from the dealer registration requirements of applicable provincial securities laws.** See *"Restrictions on Resale"*.
Risk Factors:	The purchase of the Senior Notes is subject to risks. Prospective investors should carefully consider the risk factors and other information in this confidential shelf offering memorandum and the Term Sheet for each Offering before purchasing Senior Notes, including the discussion set forth under *"Risk Factors"*, and any additional disclosure set out in the Term Sheet for each Offering.
Indenture Trustee:	BNY Trust Company of Canada.
Issuer Trustee:	Computershare Trust Company of Canada.

THE ELECTRICITY INDUSTRY IN ONTARIO

General Overview

The Ontario electricity industry is principally comprised of three components:

- *Generation*: the production of electricity from various forms of energy, such as wind, solar, hydropower, natural gas and nuclear;
- *Transmission*: the transfer of electricity across high-voltage power lines from generating facilities to local areas; and
- *Distribution*: the delivery of electricity within local areas to homes and businesses using lower voltage power lines.

The structure of Ontario's electricity industry underwent significant changes in the late 1990s and early 2000s. Prior to April 1, 1999, Ontario Hydro, a Crown corporation, supplied most of Ontario's electricity generation and transmission needs. Consistent with initiatives taken in other electricity markets in North America at the time, the electricity industry was restructured in order to encourage greater competition. Ontario's competitive electricity market was opened by the IESO on May 1, 2002 and the market is used to administer the purchase and sale of wholesale electricity in Ontario.

Since the opening of the competitive market, Ontario's power supply mix has experienced significant change. As a result of provincial government policy, coal-fired generation has been eliminated and a significant amount of new capacity has been added as a result of new natural gas powered capacity, new wind and solar capacity and additional baseload nuclear generation capacity. These changes have resulted in significantly increased costs of electricity to consumers in Ontario.

While electricity supply in Ontario has increased, the province's electricity demand as reported by the IESO has fallen over the last decade, largely due to changes in economic conditions and conservation measures. Moreover, the addition of small scale solar generation embedded in the distribution system has reduced the level of demand that is supplied by transmission-connected generation. Reducing electricity demand by encouraging conservation and demand management has been a key part of the Government of Ontario's plan to reduce greenhouse gas emissions from the province's electricity sector. Shorter-term fluctuations in electricity demand are impacted by variations in seasonal weather conditions.

Real-time energy supply needs are met through the wholesale electricity market administered by the IESO. Generators offer their generation into this real-time energy market, or "spot market", to be dispatched by the IESO. The IESO receives hourly offers from electricity generators and importers to provide energy, along with bids to withdraw energy from a few flexible loads and exporters, and then schedules the lowest-cost offers and bids needed to meet demand. Virtually all generators in Ontario also have bilateral contracts with the IESO or receive regulated prices, or payment amounts, that provide for payments in addition to the market price of electricity that is paid to generators.

Key Industry Participants

Ontario Power Generation Inc.

OPG is a corporation formed under the *Business Corporation Act* (Ontario), whose sole shareholder is the Province of Ontario. In 1999, when Ontario Hydro was split up in anticipation of deregulation, OPG was formed to hold all of the generation assets. OPG has divested itself of certain of those assets, but remains the largest generator in Ontario.

OPG is Ontario's largest clean energy generator. As at the date hereof, OPG operated two nuclear generating stations, 66 hydroelectric generating stations, three thermal generating stations, and one wind power turbine. OPG's mission is to provide low cost power in a safe, clean, reliable and sustainable manner for the benefit

of its customers and its sole shareholder, the Province of Ontario. OPG's electricity generation accounts for almost half of the total energy generated and injected into Ontario's electricity transmission system, as reported by the IESO. OPG is one of the most experienced and largest generating companies in Canada with a broad set of relationships and capabilities. OPG is also experienced in successful complex financing arrangements of large capital projects, including the recently completed Lower Mattagami project.

Additional information about OPG is provided in the Investor Presentation attached as Exhibit 1 to this confidential shelf offering memorandum and is available at www.opg.com.

The IESO

The IESO is a non-share capital corporation created under the *Electricity Act, 1998* (Ontario). It was created as an amalgamation of two predecessor entities, one of which was also called the IESO ("**Predecessor IESO**") and the other of which was called the Ontario Power Authority ("**OPA**"). Predecessor IESO was responsible for operating the real-time electricity markets in Ontario, as well as administering the market rules. The OPA was the counterparty that entered into bilateral power or capacity purchase contracts with generators. These two entities were merged statutorily on January 1, 2015 into the IESO, which now carries out all of these functions. As a non-share capital corporation, the IESO does not have any shareholders or owners, but it is governed by an independent Board of Directors whose chair and directors are appointed by the Minister of Energy.

Additional information about the IESO is provided in the Investor Presentation attached as Exhibit 1 to this confidential shelf offering memorandum and is available at www.ieso.ca.

The Ontario Energy Board

The OEB is a non-share capital corporation created under the *Ontario Energy Board Act, 1998*. The OEB is an independent and impartial public regulatory agency. The *Ontario Energy Board Act, 1998* provides the OEB with the authority to license and regulate the participants in Ontario's electricity market, including the activities of the IESO, transmitters and distributors which are also Electricity Vendors for the purposes of the FHPA.

The OEB has the following objectives in relation to the electricity industry:

(a) to protect the interests of consumers with respect to prices and the adequacy, reliability and quality of electricity service;

(b) to promote the education of consumers;

(c) to promote economic efficiency and cost effectiveness in the generation, transmission, distribution, sale and demand management of electricity and to facilitate the maintenance of a financially viable electricity industry;

(d) to promote electricity conservation and demand management in a manner consistent with the policies of the Province of Ontario, including having regard to the consumer's economic circumstances;

(e) to facilitate the implementation of a smart grid in Ontario; and

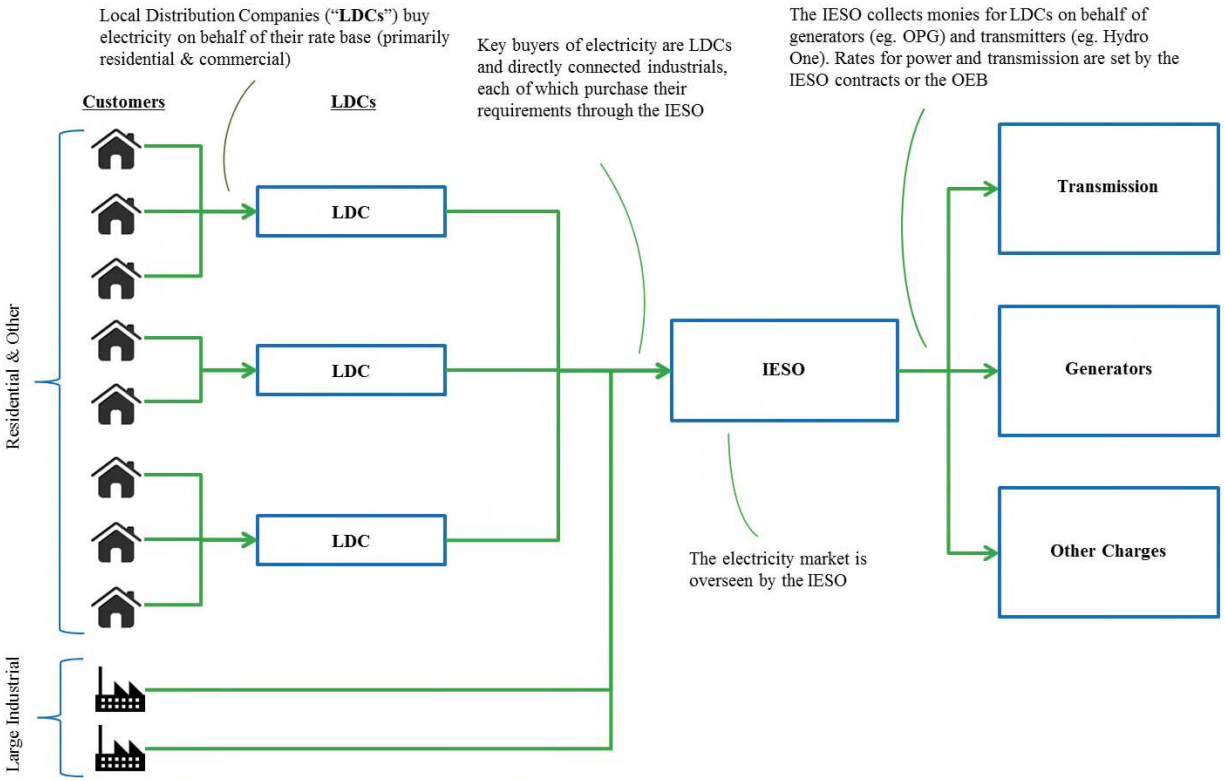
(f) to promote the use and generation of electricity from renewable energy sources in a manner consistent with the policies of the Ontario government, including the timely expansion or reinforcement of transmission systems and distribution systems to accommodate the connection of renewable energy generation facilities.

The OEB is responsible for, among other things, approving transmission and distribution rates in Ontario, as well as payment amounts for OPG's nuclear and hydroelectric generation. It also approves the construction, expansion, or reinforcement of transmission lines greater than two kilometres in length, as well as mergers,

acquisitions, amalgamations and divestitures involving distributors, transmitters and other entities which it licenses. The activities of transmitters and distributors are subject to the conditions of their transmission and distribution licenses, as applicable, which require compliance with a number of industry codes issued by the OEB, as well as with the market rules that are administered by the IESO. These codes and other requirements prescribe minimum standards of conduct and service for licensed participants in the electricity market.

Electricity Vendors

As part of the restructuring of Ontario's electricity industry, the province's municipally-owned electricity distributors were reorganized into separate business corporations. These distributors are typically referred to in Ontario as local distribution companies, or "**LDCs**". An LDC is responsible for distributing electricity to customers in its OEB-licensed service territory, and in some cases to other distributors. A service territory may cover large portions or all of a particular municipality, or an otherwise-defined geographic area. Distribution customers include residential, commercial and industrial end-users, such as governments, schools and hospitals. At multi-unit buildings within an LDC's service territory, there may be a unit sub-metering service provider that provides metering services for each individual unit. These sub-metering service providers are also licensed by the OEB. The following diagram depicts a simplified flow of funds between the key industry participants:[30]



See the Investor Presentation attached as Exhibit 1 to this confidential shelf offering memorandum for more details regarding LDCs.

Electricity Prices

There are two ~~main~~ components that make up the commodity cost of electricity in Ontario, the ~~hourly~~Hourly Ontario ~~energy price~~Energy Price ("**HOEP**") and the ~~global adjustment~~Global Adjustment charge.

[30] **Note:** Proposed revisions to the text in the chart: (i) "The electricity market is ~~overseen~~ administered by the IESO"; (ii) "~~Rates for power and transmission are set by the IESO contracts or the OEB~~ Prices paid to generators are determined by IESO contracts or approved by the OEB. Transmission rates are approved by the OEB."

- The HOEP is set by the IESO ~~on an hourly basis~~ based on bids and offers in the real-time energy market that is administered by the IESO.

- The global adjustment charge is ~~also~~ paid by ~~loads~~all consumers. It is established monthly by the IESO in accordance with regulations and is used to collect funds used by the IESO to pay certain "out of market" costs that are not compensated by the HOEP, including the cost of energy supply contracts with generators and payments made to certain generators, including OPG, that are entitled to a regulated rate of return based on OEB-established payment amounts. For ~~all loads with a peak demand under 500 kW (in other words,~~ all Specified Consumers~~),~~[31] the global adjustment charge is based on electricity usage on a per unit basis.

Prior to the FHPA being passed, the amount collected by the IESO on account of the HOEP and global adjustment charge was approximately equal to the IESO's liabilities in this regard, subject to certain periodic true-ups and adjustments to keep the IESO whole.

At the request of the Minister of Energy in 2004, and in accordance with amendments to legislation, the OEB created the "**Regulated Price Plan**" or "**RPP**", which establishes time-of-use and tiered commodity prices for residential, farm and small commercial customers. Prior to the introduction of the FHPA, the RPP prices were reviewed and changed every six months based on an updated forecast and any accumulated differences between the amounts collected from RPP consumers and the amount paid to generators in ~~the~~ previous ~~period~~periods. RPP prices are now established in accordance with the FHPA. Most Specified Consumers are billed for electricity based on the Regulated Price Plan, although some Specified Consumers may be invoiced the HOEP and the global adjustment charge by their LDC for electricity they have consumed. The IESO has also stated that there is one Specified Consumer connected directly to the transmission system and settled by the IESO, not an LDC.

While most residential and small commercial consumers in Ontario choose to purchase their electricity under the RPP, consumers in Ontario may instead choose to buy their electricity from a licensed retailer pursuant to a retail contract that provides a fixed rate for electricity over a specified period. These customers are also required to pay the global adjustment charge in addition to the rate under their retail contract.

In addition to the HOEP and global adjustment charges, or RPP prices, as the case may be, electricity consumers pay a number of other uplifts and charges, such as transmission and distribution tariffs.

ONTARIO'S FAIR HYDRO PLAN

Background

On June 1, 2017, the Ontario ~~government~~Legislature passed the *Ontario Fair Hydro Plan Act, 2017*[32] (the "**FHPA**")[, legislation that reallocates certain electricity costs over time and provides immediate rate relief to consumers][33]. From July 1, 2017 until April 30, 2018, electricity rates payable by Specified Consumers (a category of consumers that generally is comprised of residential consumers, small businesses and farms) will ~~in effect~~ be the ~~rate~~rates that ~~would~~ result in a representative consumer being charged an invoice amount that is 25%~~[2]~~[34] less than the rate that would otherwise have been determined by the OEB for that period (the "**Fair Adjustment**") absent Ontario's Fair Hydro Plan.

Under the FHPA, a "**Specified Consumer**" is:

(a) a person who has an account with an Electricity Vendor for the supply of electricity in the Province of Ontario and meets any one of the following criteria:

[31] **Note:** Some consumers below 500 kw are not Specified Consumers.
[32] **Note:** The FHPA was Schedule 1 to omnibus legislation entitled the *Fair Hydro Act, 2017*. Further, already defined as the FHPA above.
[33] **Note:** This narrative should be removed, or if necessary, the description of the FHPA should track the purposes of the Act as set out in Section 3 to the Act.
~~[2]~~[34] The 25% reduction includes an 8% rebate equivalent to the provincial portion of the harmonized sales tax previously granted by the Ontario government and the shifting of certain support program costs from the rate base to the tax base.

(i) the person has a demand for electricity of 50 kilowatts or less, or such other amount as may be prescribed by the Regulations;

(ii) the person annually uses not more than 250,000 kilowatt hours of electricity, or such other amount as may be prescribed by the Regulations;

(iii) the person carries on a business that is a farming business for the purposes of the *Farm Registration and Farm Organizations Funding Act, 1993* and either holds a valid registration number assigned under that Act or has had the obligation to file a farming business registration form waived pursuant to an order made under subsection 22(6) of that Act;

(iv) the person's account with the Electricity Vendor relates to

(A) a dwelling;

(B) a property within the meaning of the *Condominium Act, 1998*;

(C) a residential complex within the meaning of subsection 2(1) of the *Residential Tenancies Act, 2006*, without regard to section 5 of that Act; or

(D) a property that includes one ~~of~~or more housing units and that is owned or leased by a co-operative within the meaning of the *Co-operative Corporations Act*; or

(v) the person satisfies such criteria as may be prescribed by the Regulations; or

(b) such other person as may be prescribed by the Regulations.

Electricity bills for Specified Consumers for the period between May 1, 2018 and April 30, 2019 are to increase by the rate of inflation (or remain unchanged in the event inflation is negative). Permitted increases after April 30, 2019 will be determined by the Ontario government through additional regulations, though the Ontario government has indicated its intention that rate increases will be held to the rate of inflation until 2021.

Under the FHPA, OPG is appointed as the initial Financial Services Manager and given the authority to, among other things, establish, or cause to be established, one or more financing entities (each, a "**Financing Entity**") to incur payment obligations (such obligations, "**Funding Obligations**") to fund the acquisition of an Investment Interest. The Issuer is a Financing Entity under the FHPA and the Senior Notes are Funding Obligations under the FHPA.

Regulatory Asset

Under the FHPA, each month the IESO determines the shortfall that results from the Fair Adjustment as compared to what the IESO would have been entitled to receive without the Fair Adjustment and records this amount, together with the costs of financing the shortfall, in a variance account.[35] The IESO has the right, exercisable in accordance with the FHPA and the Regulations, to recover the balance recorded in the variance account from Specified Consumers (such right, the "**Regulatory Asset**"). However, in accordance with the FHPA, the IESO is not entitled to collect all or part of the balance recorded in the variance account (which is the basis of the Regulatory Asset) from specified consumers before May 1, 2021. The IESO may, in accordance with the FHPA, transfer a specified portion of the Regulatory Asset to a Financing Entity for a cash purchase price equal to the amount recorded in the variance account in respect of such specified portion of the Regulatory Asset. Upon receipt by the IESO of payment by the Financing Entity, the IESO retains no further right, title or interest in the corresponding Investment Interest.

[35] **Note:** Please consider disclosure of further details as to what is recorded in the variance account. For instance, paragraph 3 of Section 15 in the General Regulation states that amounts incurred by the IESO on or after May 1, 2017 but before the FHPA came into force may be recorded in the IESO deferral.

Investment Interest

By acquiring an Investment Interest, the Financing Entity is financing a portion of the shortfall that results from the Fair Adjustment and, as an owner of the Investment Interest, will be entitled to recover ~~all~~ its "Finance Amount" (the costs of such financing). While a Financing Entity may choose to acquire an Investment Interest from the IESO, it is under no obligation to do so.

If the IESO and a Financing Entity agree to the transfer of a specified portion of the Regulatory Asset from the IESO, such transfer results in the creation of a current and irrevocable property right that is immediately vested in the Financing Entity, free and clear of any adverse claim (such right, the "**Investment Asset**", and ~~the Issuer's~~an ownership interest therein, an "**Investment Interest**"). The Investment ~~Interest consists of,~~ Asset consists, collectively, of the following rights and interests of Investment Interest owners (among other things):[36]

(a) the right and interest to impose, invoice, collect, receive and recover the Clean Energy Adjustment from Specified Consumers, including the right to determine the Clean Energy Adjustment in accordance with the FHPA;

(b) the right to receive, collect and recover the Clean Energy Adjustment that is imposed, invoiced and recoverable under the FHPA, including any amounts in respect of the Clean Energy Adjustment that are held by Electricity Vendors or the IESO;

(c) the right to enforce the duties and obligations under the FHPA of each Electricity Vendor to impose, attribute, charge and invoice for the Clean Energy Adjustment;

(d) the right to enforce the duties and obligations under the FHPA of each Electricity Vendor and the IESO to collect, receive and remit amounts received by it in respect of the Clean Energy Adjustment, including all collections and the proceeds of any enforcement action undertaken by any Electricity Vendor to recover payment of the Clean Energy Adjustment;

(e) all rights of any kind related to any of the other property rights or interests that comprise the Investment Interest, including any rights to receive a payment obligation incurred by the IESO as part of the transfer of the Regulatory Asset (such payment obligations incurred by the IESO being "**Funding Rebates**"); and

(f) all revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs (a) to (e), regardless of whether it is invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

Clean Energy Adjustment

The "**Clean Energy Adjustment**" is the amount calculated in accordance with the FHPA and payable by Specified Consumers [to cover the cost of financing the shortfall that results from the Fair Adjustment].[37] The Financial Services Manager will determine the amount of the Clean Energy Adjustment payable by Specified Consumers for each month of a Reference Period. The Clean Energy Adjustment is based on an estimate of the amount payable by a Financing Entity in a Reference Period in respect of the Finance Amount and the True-up Amount (each as described below).

The "**Finance Amount**" in respect of the Issuer for a ~~Reference Period~~period of time is an amount determined by the Financial Services Manager as follows:

[36] **Note:** Please consider disclosing in this section that the Investment Asset is a collective right of the Investment Interest owners. While this is explained in a risk factor ("The Issuer may have a co-ownership interest in the Investment Asset with other Financing Entities), additional explanation/ disclosure may be warranted here.

[37] **Note:** Consider that the statutory definition of "Clean Energy Adjustment" states that it is "the amount determined under section 15 [of the FHPA] and payable by specified consumers". The FHPA does not expressly state the purpose of the Clean Energy Adjustment.

(a) after eliminating any duplication in the following amounts, calculating the sum of the following amounts:

(i) amounts paid or payable during the ~~Reference Period~~period in respect of the payment by or on behalf of the Issuer or the provision by or on behalf of the Issuer for the payment of all or a portion of the principal amount advanced to the Issuer under a Funding Obligation;

(ii) interest, commitment fees or other similar costs payable by or on behalf of the Issuer in respect of Funding Obligations that are paid or payable during the ~~Reference Period~~period;

(iii) amounts payable by or on behalf of the Issuer to redeem, prepay or repurchase Funding Obligations incurred by or on behalf of the Issuer, including any premium, make-whole or other amount payable to give effect to the prepayment, redemption or repurchase, that are paid or payable during the ~~Reference Period~~period;

(iv) payments required to be made in respect of any derivative agreements during the ~~Reference Period~~period, including ordinary course payments, payments on termination and payments made in connection with margining or collateral arrangements;

(v) amounts deposited, as required under the governing documents of Funding Obligations, into capital accounts or finance reserve accounts during the Reference Period;

(vi) ~~fees~~Issuer expenses, including fees (including fees charged by the Financial Services Manager), charges, costs, indemnities, reimbursements and other amounts incurred or committed to by or on behalf of the Issuer as a result of an activity authorized or permitted under the FHPA, and any taxes on such amounts, in each case that are paid or payable during the ~~Reference Period; and~~period;

(vii) taxes paid or payable by ~~the Issuer~~or on behalf of the Issuer, incurred directly or indirectly by the Issuer, or for which the Issuer is otherwise liable as a result of any activity, undertaking, transaction or event authorized or permitted under the FHPA that ~~are paid or~~ payable during the ~~Reference Period;~~period; and

(viii) amounts paid or payable by or on behalf of the Issuer during the period to any guarantor or surety that made a payment of an amount due and payable under a funding obligation, including pursuant to a guarantee, indemnity, contract of insurance or agreement entered into under subsection 5(2) or (3) of the FHPA;

(b) after eliminating any duplication in the following amounts, calculating the sum of the following amounts:

(i) amounts withdrawn, as required under the governing documents of Funding Obligations, from capital accounts or finance reserve accounts during the ~~Reference Period~~period;

(ii) for any period before May 1, 2021, amounts received during the ~~Reference Period in respect of funding rebates~~period in respect of Carrying Costs and Funding Rebates and for any period on and after May 1, 2021, amounts received during the period in respect of Funding Rebates;

(iii) the aggregate of all amounts received by or on behalf of the Issuer in respect of Funding Obligations during the ~~Reference Period~~period;

(iv) the principal amount of Funding Obligations incurred by the Issuer that are applied to refinance existing Funding Obligation during the ~~Reference Period~~period;

(v) any payments received in connection with a derivative agreement, including ordinary course receipts, payments received on termination and payments received in connection with margining or collateral arrangements, in each case during the ~~Reference Period~~period;

(vi) amounts received by or on behalf of the Issuer as a refund of tax ~~during the Reference Period~~and to which the Issuer is entitled as a result of any activity, undertaking, transaction or event authorized or permitted under the FHPA during the period; and

(c) subtracting the sum calculated under (~~a~~b) from the sum calculated under (~~b~~a).

~~The Clean Energy Adjustment will also take into account a true up comprised of~~In determining the Clean Energy Adjustment, the Financial Services Manager must also calculate a "**True-up Amount**" in accordance with the Regulations. In principle, the True-up Amount should serve to ensure that the collection of the Clean Energy Adjustments is sufficient to pay the Finance Amount when it is due, by capturing any Finance Amounts not previously received in respect of the Clean Energy Adjustment ~~plus other anticipated shortfalls (the "**True-up Amount**")~~during the preceding Reference Periods. The True-up Amount ~~accounts for~~may also reflect historical and reasonably foreseeable differences between the ~~required Clean Energy Adjustment~~estimated and actual Finance Amount; between amounts invoiced and amounts collected due to various factors, including applicable taxes, consumer defaults and delays, billing lags and write-offs~~,~~; and variations in billings due to variations in electricity consumption~~ and~~. In determining such differences, the Financial Services Manager is required to have regard to amounts payable that were not collected and any amounts in respect of which an overpayment was made, which may include amounts resulting from a default of Specified Consumers, an Electricity Vendor or the IESO, whether in its capacity as an Electricity Vendor or its activities as agent or otherwise under the FHPA and the Regulations. The Regulations obligate the Financial Services Manager to calculate the True-up Amount in respect of each Reference Period so long as all Funding Obligations and other Finance Amounts have not been paid in full. ~~After the final scheduled payment date of the Funding Obligation that has the latest maturity date of all outstanding Funding Obligations, the Financial Services Manager will calculate the True-up Amount quarterly.~~ The Financial Services Manager may also at any time during a Reference Period determine an interim True-up Amount if, among other things, it reasonably forecasts that the collection of the Clean Energy Adjustment will be insufficient to pay the estimated Finance Amount for a Reference Period.

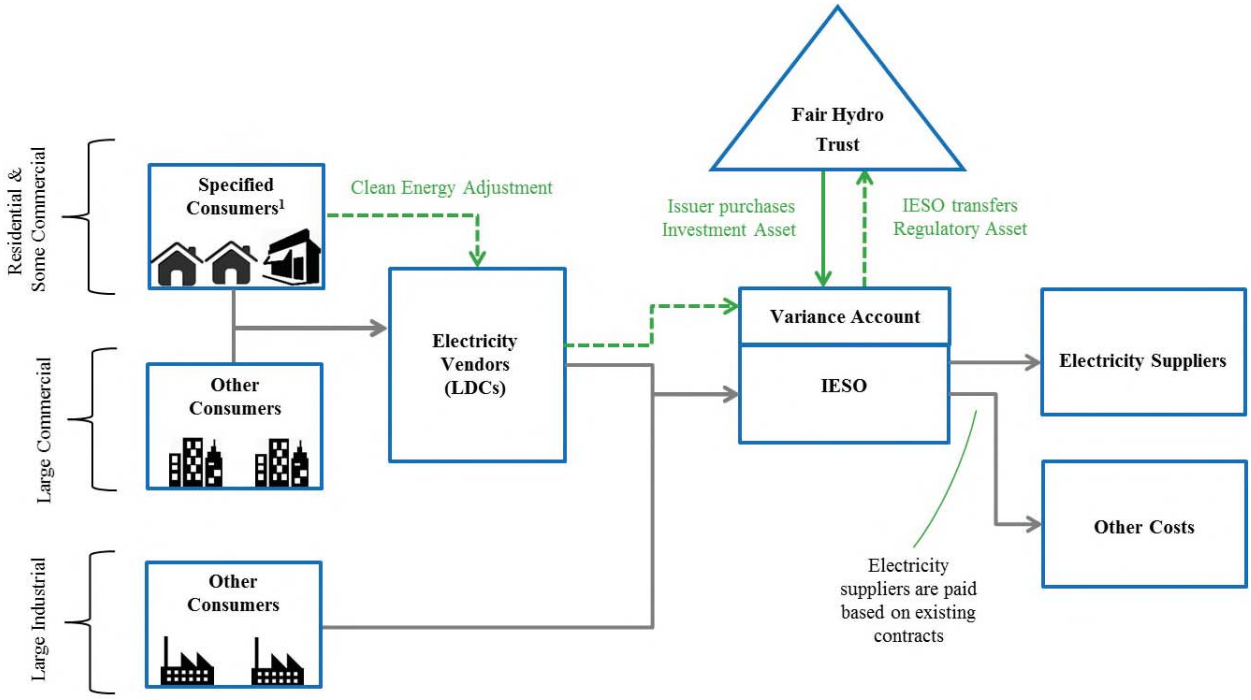
The Financial Services Manager must notify the OEB of the Clean Energy Adjustment for each Reference Period. The OEB must accept this amount and will determine the rates at which Specified Consumers are to be invoiced to recover the Clean Energy Adjustment. The rates are expressed as a ~~$/~~cent per kWh amount and are determined by the OEB by dividing (i) the Clean Energy Adjustment ~~in respect of the relevant period of time~~ provided by the Financial Services Manager in respect of the relevant period of time by (ii) the forecast of electricity consumption ~~provided by the IESO~~ of Specified ~~Consumers~~Creditors in respect of ~~the period~~such period, based on forecast information provided to the OEB by the IESO. Electricity Vendors are required to invoice their Specified Consumers for the Clean Energy Adjustment, as determined by applying the rate set by the OEB, which is required to be included as a separate line item on each invoice. Electricity Vendors are required to collect, as agent of the [Issuer],[38] amounts in respect of the Clean Energy Adjustment, deposit such amounts into a segregated account established for the purpose of receiving those amounts, and hold such amounts in trust for the benefit of the [Issuer] until ~~deposited with the IESO and remit such amounts~~remitted to the IESO for the benefit of the [the owners of Investment Interests (initially, only the Issuer)]. If an Electricity Vendor does not receive payment in full of an invoice issued to a Specified Consumer, the Electricity Vendor shall allocate ~~the~~any payment received on a *pro rata* basis to the Clean Energy Adjustment and the other amounts payable under the particular invoice.[39] It is a deemed condition of their licenses that Electricity Vendors comply with their obligations under the FHPA.[40] If there are any

[38] **Note:** Please see note 17 regarding the placement of square brackets around "the Issuer" in this paragraph. The disclosure should indicate that amounts are collected for the Investment Interests owners (and that, as at the date of the OM, the Issuer is the only Investment Interest owner).
[39] **Note:** Please consider revising to conform more closely to Section 17(4) of the FHPA.
[40] **Note:** Please confirm.

amounts that are collected by the Electricity Vendor, but not remitted to the IESO to remit to [the Issuer] during a Reference Period, such shortfall will be included in the True-up Amount for the subsequent period.

An amount in respect of the Clean Energy Adjustment shown on an invoice issued to a Specified Consumer is determinative of the amount of such Specified Consumer's indebtedness resulting from the Clean Energy Adjustment and is irrevocable upon invoicing and may not be set off or bypassed, except to the extent that the invoice reflects a clerical, typographical or calculation-related error. [Commencing May 1, 2021, a charge in respect of the Clean Energy Adjustment will be included on invoices sent to Specified Consumers, and collected and remitted to the Issuer to pay amounts owing on the Senior Notes and all other administrative and other financing expenses of the Issuer. From July 1, 2017 until April 30, 2021 (the "**Moratorium Period**"), no Clean Energy Adjustments are permitted to be collected from Specified Consumers. During the Moratorium Period, the sole source of funds for payment on the Senior Notes, and the Issuer's other ~~carrying costs~~Carrying Costs, will be the amounts the IESO is obligated to pay under the Regulations during such period.][41] See *"— IESO Payment of Carrying Costs during the Moratorium Period"* below. Once it starts being included on such invoices, the Clean Energy Adjustment will be collected until all outstanding Funding Obligations and other Finance Amounts have been repaid in full. Subject to the FHPA, the Clean Energy Adjustment will be collected and remitted to the Issuer to pay the Finance Amount, including the principal and interest on the Senior Notes and all other administrative and other financing expenses of the Issuer.

The following diagram illustrates the flow of funds under the Fair Hydro Plan.



[1] There is currently one Specified Consumer that is directly connected to the IESO and, accordingly, makes payments, including in respect of the Clean Energy Adjustment, directly to the IESO.

Fair Allocation Amount and Financing Plan

The FHPA was enacted to: (i) ensure that Clean Energy Costs and Clean Energy Benefits are fairly allocated among present and future Specified Consumers; (ii) recognize that Clean Energy Benefits have accrued and

[41] **Note:** This narrative should more precisely track the FHPA. The relevant provisions are Section 25(3) [*the IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2021*] and Section 21(4) [*limitation on the Financial Services Manager incurring funding obligations payable through Clean Energy Adjustments from July 1, 2017 to April 30, 2021*].

will accrue over time and will continue to benefit present and future electricity consumers in Ontario; and (iii) align Clean Energy Costs with Clean Energy Benefits, in order to provide fairness for Specified Consumers over time. Under the FHPA, the Minister of Energy calculates a "**Fair Allocation Amount**", which is an amount for every Reference Period that, among other things, allocates the estimated Clean Energy Costs in proportion to the relative attribution of Clean Energy Benefits among Specified Consumers.[42] Under the FHPA, the Minister of Energy is responsible for determining the Fair Allocation Amount prior to the incurrence of ~~any~~the first Funding ~~Obligations and the~~Obligation. The Fair Allocation Amount may be changed from time to time in accordance with the FHPA, provided that no change of the Fair Allocation Amount shall affect any Clean Energy Adjustment that arises as a result of a Funding Obligation that has been incurred prior to such change.

OPG, as Financial Services Manager, is required to prepare a Financing Plan to evaluate whether and when potential Funding Obligations should be incurred by a Financing Entity to acquire an Investment Interest or for the purposes of a Refinancing. The Financial Services Manager is required to prepare the Financing Plan having regard to certain prescribed principles, including that Funding Obligations should be incurred ~~so that~~such that, along with any Funding Obligations already incurred, the estimated Finance Amount that would, subject to any Refinancing, become due and payable during a Reference Period will reasonably align with the Fair Allocation Amount determined in respect of such Reference Period as of the date the Funding Obligations were incurred, after reducing the Fair Allocation Amount by the Readjustment Amount, if any, in respect of the Reference Period. In other words, the Financing Plan should contemplate the issuance of Funding Obligations from time to time, with terms that would result in Clean Energy Adjustments being payable by Specified Consumers that align with the purposes of the FHPA~~, namely, to ensure that present and future Specified Consumers are bearing their share of the costs of providing Clean Energy Benefits~~. Notwithstanding the above, the FHPA provides that each Funding Obligation is deemed to be consistent with the Financing Plan and to provide for the reasonable alignment of the estimated Finance Amount with the Fair Allocation Amount.

~~Currently, the Clean Energy Costs have been determined to exceed the Clean Energy Benefits, with the result that the Fair Allocation Amount is negative. This means that the Minister of Energy has determined that current Specified Consumers have borne more than their fair share of Clean Energy Costs (with the consequent rate reduction for current Specified Consumers). The Fair Allocation Amount is expected to be negative until at least May 2024. Accordingly, the~~The Financing Plan does not currently contemplate the issuance of any Senior Notes maturing prior to May 2024. The Financial Services Manager may, however, determine to refinance Senior Notes maturing after May 2024 through the issuance of another Series of Senior Notes. If Senior Notes cannot be refinanced on or before the applicable Principal Payment Default Date, holders of such Senior Notes will have the ability to accelerate their Senior Notes resulting in Clean Energy Adjustments that would otherwise be used to pay the principal amount of subordinated indebtedness to holders of subordinated Notes being used to pay holders of accelerated Senior Notes.

The Financing Plan allows for the issuance of a variety of short and long term debt. See the Investor Presentation attached as Exhibit 1 to this confidential shelf offering memorandum for more details regarding the Financing Plan and the Fair Allocation Amount.

IESO Payment of Carrying Costs During the Moratorium Period

Commencing May 1, 2021, a charge in respect of the Clean Energy Adjustment will be included on invoices sent to Specified Consumers, and collected and remitted to the Issuer to pay amounts owing on the Senior Notes and all other administrative and financing expenses of the Issuer. During the Moratorium Period and extending to July 31, 2021,[43] the IESO, which is rated A(high) by DBRS Limited ("**DBRS**") and Aa2 by Moody's Investors Services, Inc. ("**Moody's**"), is required under the Regulations to pay and remit to the Issuer amounts charged to the IESO by the Issuer in respect of its ~~"carrying costs". "~~Carrying Costs. Carrying ~~costs"~~Costs include all funding costs (such as interest on the Senior Notes) and other expenses of the Issuer, other than repayment of principal on any debt obligations of the Issuer (including repayment of principal on the Senior Notes).[44] The amounts paid by the IESO to fund these ~~carrying costs~~Carrying Costs will be recorded by the IESO in a variance account and form part of the

[42] **Note:** Please consider a description of the fair allocation amount that more closely aligns to Section 20(1) of the FHPA.
[43] **Note:** Please clarify this disclosure for consistency with Section 9.1(1) of the General Regulation. This provision states that the IESO shall pay financing entity carrying costs in respect of the period beginning June 1, 2017 (before the Moratorium Period) and ending July 31, 2021.
[44] **Note:** Consider revising to conform with the definition of "carrying costs" in Section 9.1(3) of the General Regulation.

Regulatory Asset that the IESO is expected to transfer to the Issuer in a subsequent period and, upon such transfer, will become part of the Issuer's Investment Interest pursuant to the Regulations.

Pursuant to the Master Transfer and Servicing Agreement, on or before the fourth business day of each calendar month, the Issuer will submit a carrying costs statement to the IESO certifying the amount of ~~carrying costs~~Carrying Costs estimated to be incurred by the Issuer in the following month. On or before the 14th business day following receipt of the Issuer's statement, the IESO is required to deliver the amount specified in the carrying costs statement to the Issuer. See *"The Transferor and Servicer"*. The IESO has a $2 billion unsecured credit facility provided by the Ontario Financing Authority, expiring ■, 20■, which ~~can~~is permitted to be used to pay the Issuer's ~~carrying costs~~Carrying Costs. Furthermore, as security for the performance of its obligations under the Regulations to pay the Issuer's ~~carrying costs~~Carrying Costs, the IESO has granted the Issuer a first-priority security interest in all of its accounts receivable, which includes the amounts receivable by the IESO from Electricity Vendors with respect to the global adjustment charge. See *"The Transferor and Servicer"*.

Other Statutory Protections

The FHPA provides certain protection and assurances in respect of the obligations of Specified Consumers to pay amounts in respect of the Clean Energy Adjustment. Generally, no action or omission by the OEB, the Minister of Energy or the ~~Ontario government~~Crown, and no regulation under the FHPA, will be effective to reduce, impair, postpone or terminate the obligations of Specified Consumers to pay amounts in respect of the Clean Energy Adjustment or to impair or postpone the invoicing, collection or remittance of the Clean Energy Adjustment. If an Electricity Vendor, the IESO or the Financial Services Manager, has failed, or will fail, to comply with the FHPA or the Regulations, the Issuer may apply to an Ontario court to make an order directing such party to comply and requiring compensation to be provided to the Issuer by such non-compliant party. Additional contractual protections are provided in the Change of Law Protection Agreement described below.

CHANGE OF LAW PROTECTION AGREEMENT

The following brief summary of certain provisions of the Change of Law Protection Agreement does not purport to be comprehensive or definitive. All references in this confidential shelf offering memorandum to the Change of Law Protection Agreement are qualified in their entirety by reference to the Change of Law Protection Agreement and the detailed provisions thereof. The Change of Law Protection Agreement may be reviewed at the principal office of the Issuer Trustee in Toronto, Ontario during normal business hours while any Senior Notes are outstanding.

Pursuant to the Change of Law Protection Agreement in favour of the ~~Issuer and~~Indenture Trustee, upon a Protection Event and delivery by the Indenture Trustee~~, upon a Protection Event~~ of a written payment demand, the Province of Ontario is required to make payments of amounts that are due and payable in respect of all Approved Obligations when due and payable into the Protection Account (as hereinafter defined). The Issuer and Indenture Trustee must ensure that amounts deposited into the Protection Account are applied to pay each Specified Creditor to whom an amount is due and payable under an Approved Obligation. The Province of Ontario's obligation to make such payments under the Change of Law Protection Agreement upon a Protection Event and delivery by the Indenture Trustee of a written payment demand is referred to as the "**Limited Guarantee**".

The payment obligations of the Province of Ontario under the Limited Guarantee differ depending on whether an Acceleration has occurred. If no Acceleration has occurred in respect of any Obligation Secured on or before a date on which the Province of Ontario is to perform the Limited Guarantee, the Change of Law Protection Agreement provides that the Province of Ontario is to pay the amounts due and payable on such date in respect of Approved Obligations. If an Acceleration has occurred in respect of any Obligation Secured on or before a date on which the Province of Ontario is to perform the Limited Guarantee, the Province of Ontario is to pay the amounts that would be available to be paid on such date in respect of the Approved Obligation on an applicable payment date in respect of the Approved Obligation under the applicable payment provisions of the Master Trust Indenture, determined on the assumption that the amount available for allocation to Specified Creditors in accordance with such applicable payment provisions of the Master Trust Indenture in respect of each relevant month during each Reference Period is equal to the estimated Finance Amount determined in respect of such Reference Period for purposes of [section 15(1) of the FHPA (in effect as at December 21, 2017), including section 6.1 of the General

Regulation under the FHPA (in effect as at December 21, 2017)][45], divided by the number of months in such Reference Period.

The Province of Ontario is not obligated to pay or indemnify the Indenture Trustee or any Specified Creditor for consequential, special or punitive damages, or for economic loss or loss of profits (provided that economic loss does not include payments of amounts that are due and payable in respect of the Notes).

Under the Change of Law Protection Agreement, the right to deliver a written payment demand on occurrence of a Protection Event to enforce the Limited Guarantee is the only remedy available to the Indenture Trustee (and to Specified Creditors, to the extent they are permitted to exercise any rights, interests or elections under and in accordance with the Master Trust Indenture). Specified Creditors are not permitted to exercise any rights, interests, or elections under the Change of Law Protection Agreement, other than in the manner and to the extent effected and exercised under, in accordance with and subject to the limitations set forth in the Master Trust Indenture as at December 21, 2017.

In connection with the provision of the Limited Guarantee, OPG, as Financial Services Manager, has entered into a process agreement with the Province of Ontario pursuant to which OPG is required to satisfy certain reporting and other requirements regarding the Issuer's incurrence of, and material amendments to, any Issuer Funding Obligations.

Protection Event

Each of the following constitutes a "**Protection Event**" under the Change of Law Protection Agreement:

(a)

(i) the Ontario legislature repeals, and does not replace on an equivalent basis, or amends, the FHPA, in whole or in part, as in effect on the date hereof;

(ii) the Ontario legislature enacts or amends any other statute;

(iii) the Lieutenant Governor in Council repeals, and does not replace on an equivalent basis, the regulations made under ~~or in connection with,~~ the FHPA, in whole or in part, as in effect on the date hereof;

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

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

in each case, that (X) adversely affects the ability of the Issuer to receive amounts in respect of its Investment Interest so that it can pay Approved Obligations when due and payable, in each case determined after taking into account and having regard to (i) any funds available at such time to apply to such Approved Obligations, including in any finance reserve account, capital account or collateral posting account applicable under a derivative agreement, (ii) the availability of any credit enhancement agreement to which the Issuer is a party and (iii) any reasonably expected potential effect of a True-up Amount in the Reference Period immediately following the occurrence of an event described in any of clauses (~~a~~i) to (~~e~~v) above, or (Y) adversely affects the enforceability of, or adversely changes, the terms and conditions of the

[45] Perhaps this should instead cross-reference a more detailed description and explanation of the "Acceleration" mechanics under 6.1 of the Regulation.

Change of Law Protection Agreement or of any of the agreements under which Approved Obligations arise; or

(b) a court of competent jurisdiction determines that all or a portion of the FHPA or the Regulations, as in effect on the date hereof, is *ultra vires* or invalid in a way that adversely affects the ability of the Issuer to receive amounts in respect of its Investment Interest so that it can pay Approved Obligations when due and payable and that has the effect of the Issuer not in fact having sufficient funds to pay such Approved Obligations that have become due and payable, in each case determined after taking into account and having regard to (i) any funds available at such time to apply to such Approved Obligations, including in any finance reserve account, capital account or collateral posting account applicable under a derivative agreement, (ii) the availability of any credit enhancement agreement to which the Issuer is a party and (iii) any reasonably expected potential effect of a True-up Amount in the Reference Period immediately following the occurrence of an event described in this paragraph (b).

The occurrence of a Protection Event in and of itself will not result in the acceleration of the Senior Notes.

~~The priority of payments made~~

On a Protection Event and payment by the Province of Ontario ~~under the Change of Law Protection Agreement is governed by the Master Trust Indenture. Upon paying amounts in respect of the Approved Obligations, the Province of Ontario will have a right of subrogation that includes the entitlement to all rights and interests under and in respect of such Approved Obligations, including the security interest in each related Investment Interest and any related property of the Issuer.~~of amounts in respect of Approved Obligations that are due and payable into the Protection Account, such deposited amounts are applied by the Issuer and Indenture Trustee in the priority of payments governed by the Master Trust Indenture.

Upon the Province of Ontario's payment of amounts in respect of Approved Obligations that are due and payable into the Protection Account, the Province of Ontario will be subrogated and entitled to all of the rights and interests of applicable Specified Creditors (including Noteholders) under and in respect of the Approved Obligations to the extent of the amounts paid. Applicable Specified Creditors in respect of whom amounts were deposited into the Protection Account will not have continuing rights, interests or entitlements (including rights as a secured party) in respect of Approved Obligations to the extent so paid; the Province of Ontario will be the absolute assignee of such rights. The Province of Ontario will have the right to be paid from the Issuer the amounts that the Province of Ontario paid in respect of the Approved Obligations ("**Subrogation Amounts**"), such Subrogation Amounts being payable in the same order of priority and with the same entitlements accruing to the Province of Ontario as applied to the amounts in respect of the Approved Obligations previously owing to Specified Creditors that the Province of Ontario has paid. The Province of Ontario will also be entitled to the benefit of the Collateral (as hereinafter defined) and proceeds therefrom to the extent of the amounts paid under the Limited Guarantee.

As payee of Subrogation Amounts, the Province of Ontario will be a Specified Creditor under the Master Trust Indenture and no person entitled under any Obligation Secured (including a Specified Creditor) that ranks equal with or subordinate to the Approved Obligation in respect of which the Province of Ontario is owed a Subrogation Amount will be entitled to make any claim or assert any right in or to the amounts paid or payable to the Province of Ontario, and no such person will have any right to the Collateral or any proceeds therefrom in respect of any Subrogation Amount. Further, the entitlements of the Province of Ontario to Subrogation Amounts arising in respect of Approved Obligations that are interest and principal obligations on Notes will be treated for all purposes of the Master Trust Indenture as interest and principal obligations, respectively, arising under Notes, having the same priority and any applicable voting rights as under the related Approved Obligations, and accordingly the Province of Ontario will be entitled to all of the rights, entitlements, interests and privileges of a holder of such Notes in accordance with the Master Trust Indenture, as supplemented by the supplemental indenture or other indenture document under which the related Approved Obligations were issued.

Approved Obligations & Adherence Conditions

Under the Management Agreement, the Manager is required to ensure that all obligations of the Issuer are and remain Approved Obligations under the Change of Law Protection Agreement.

An "**Approved Obligation**" under the Change of Law Protection Agreement means: (i) a Certified Primary Obligation if the adherence conditions applicable thereto have been satisfied at the time such obligation was incurred; (ii) all other Primary Obligations that are not Certified Primary Obligations (except any Primary Obligation to which the Limited Guarantee will not apply on or after delivery of a Suspension Notice as described below); and (iii) all Certified Primary Obligations that the Province of Ontario, in its sole discretion, designates in writing is an Approved Obligation.

A "**Primary Obligation**" under the Change of Law Protection Agreements means any Obligation Secured under the Master Trust Indenture (i) that is a Funding Obligation or (ii) that otherwise is a payment obligation of the Issuer that gives rise to a Finance Amount, in each case other than (x) any amounts required to be deposited by or on behalf of the Issuer into any capital account or finance reserve account; and (y) any obligation to pay the Issuer or on the Issuer's direction any remaining amounts in the Collection Account pursuant to the Master Trust Indenture.

A "**Certified Primary Obligation**" means a Primary Obligation: (i) incurred by or on behalf of the Issuer to fund its ownership of an Investment Interest, including any ~~refinancing of a Certified Primary Obligation~~Refinancing, other than a Post-Suspension Refinancing or a Pre-Approved Refinancing (each as defined below), of such a Primary Obligation (for greater certainty, including, in the case of any Certified Primary Obligation permitting funding transactions pursuant to a Funding Obligation Agreement applicable to the Certified Primary Obligation, each individual borrowing or funding utilization thereunder), (ii) incurred by or on behalf of the Issuer upon the Issuer entering into a derivative agreement, in which case the Certified Primary Obligation therefor shall be the Master Agreement applicable to such derivative agreement and not any individual trade confirmation other than a trade confirmation that modifies or purports to override the express terms or conditions of the related Master Agreement, or (iii) incurred by or on behalf of the Issuer upon entering into a contract that has a term of more than three (3) years which is not terminable by the Issuer giving three (3) years' notice or less and expected (as determined by the Manager, acting reasonably) aggregate payments by the Issuer thereunder during the term of such contract are or would be in excess of $5,000,000 (that, for greater certainty, is not otherwise captured in clauses (i) and (ii) above).

The Limited Guarantee shall apply to all Certified Primary Obligations that meet the following adherence conditions:

(a) the Certified Primary Obligation when incurred is an Obligation Secured under the Master Trust Indenture;

(b) OPG, as Financial Services Manager, delivers a certificate to the Indenture Trustee ~~prior to~~on or before the incurrence of such obligation certifying ~~that it~~, among other things, that OPG has delivered a certificate to the Province of Ontario confirming that OPG has complied with all of its obligations to the Province of Ontario and internal requirements and processes in connection with the adherence of the Limited Guarantee to the Certified Primary Obligation (an "**Adherence Compliance Certificate**"); and

(c) the Province of Ontario has not provided a Suspension Notice to the Indenture Trustee, OPG and the Issuer.

All Senior Notes shall constitute Obligations Secured under the Master Trust Indenture and therefore condition (a) above will be satisfied for all Offerings of Senior Notes. It will be a condition to any Offering of Senior Notes that OPG deliver the adherence certificate required pursuant to (b) above or that the Province of Ontario designates in writing that the Senior Notes are Approved Obligations. The Change of Law Protection Agreement provides that delivery of an adherence certificate shall be determinative of satisfaction of this adherence condition,

notwithstanding that such certificate may include inaccuracies, be incomplete or otherwise be defective or deficient, and such certificate may be relied upon as conclusive evidence of same.

Suspension Notice & Post-Suspension Refinancings

The Change of Law Protection Agreement will remain in full force and effect ~~for as long as any Senior Notes remain outstanding~~until the indefeasible payment, observance and performance in full of the Approved Obligations.

However, in the following limited circumstances, the Province of Ontario may deliver a written notice (a "**Suspension Notice**") to the Indenture Trustee, the Financial Services Manager and the Issuer:

(a) an acceleration of Funding Obligations in accordance with the provisions of the Master Trust Indenture or an event of default, early amortization event, termination event or similar event or circumstance (including any event that with the passage of time or the giving of notice would become such an event) of or in respect of the obligations of any party under any Program Agreement;

(b) a default in the performance, or breach, of any covenants of OPG, as Financial Services Manager, or OPG, in its corporate capacity, in each case to the Province of Ontario in connection with its obligations to the Province of Ontario pursuant to internal requirements and processes in connection with the provision or adherence of the Limited Guarantee to or in respect of any Certified Primary Obligation and the expiration of any applicable cure period;

(c) a representation or warranty made by OPG or a certification made by one or more officers of OPG, in each case whether as Financial Services Manager or in its corporate capacity, to the Province of Ontario in connection with its obligations to the Province of Ontario and its internal requirements and processes in connection with the provision or adherence of the Limited Guarantee to or in respect of any Certified Primary Obligations, proves to be incorrect in any material respect on the date made and the expiration of any applicable cure period; or

(d) the Financial Services Manager no longer being the Manager or actions having been taken by or on behalf of the Indenture Trustee to remove the Financial Services Manager as the Manager;

If a Suspension Notice has been provided under the Change of Law Protection Agreement (the provision of such notice being a "**Suspension Event**"), the Limited Guarantee shall not apply in respect of: (i) any Primary Obligation incurred, excluding any Post-Suspension Refinancing, or (ii) any amendment of any Primary Obligation that has a Material Effect, unless otherwise agreed to by the Province of Ontario, in each case, on or after the time such Suspension Notice is delivered.

Following the occurrence of a Suspension Event, the Limited Guarantee shall continue to apply in respect of any Post-Suspension Refinancing; provided that prior to the Financing Entity incurring any Primary Obligation constituting a Post-Suspension Refinancing, the Manager shall provide the Province of Ontario with at least 30 days' notice of its intention to seek a Post-Suspension Refinancing and during such 30-day period the Province of Ontario may, but is not obligated to, offer to fund such Post-Suspension Refinancing or arrange for another Person to fund such Post-Suspension Refinancing on the same terms as set out in the notice or on such other terms as may be considered by the Province of Ontario to be not more onerous on the Financing Entity and that are acceptable on that basis to the Financing Entity, acting reasonably.

A "**Post-Suspension Refinancing**" means a Funding Obligation that is an Obligation Secured and that is incurred on or after the occurrence of a Suspension Event in compliance with the requirements of the Change of Law Protection Agreement, as a ~~refinancing~~Refinancing of one or more Series of Approved Obligations (including any Pre-Approved Refinancing incurred on or after the occurrence of a Suspension Event), in each case the proceeds of which, together with any other funds that may be available, are used solely for the purpose of paying in full such Series of Approved Obligations and any costs and expenses associated with such ~~refinancing~~Refinancing.

A "**Pre-Approved Refinancing**" means a ~~refinancing~~Refinancing of a Certified Primary Obligation in respect of which the Province of Ontario has, prior to the incurrence of such Certified Primary Obligation, agreed shall be an Approved Obligation, subject to compliance with such conditions and requirements as may be specified in such agreement.

A "**Material Effect**" means a material adverse effect on the obligations or the rights of the Province of Ontario under the Limited Guarantee that relates to, and in each case, differs in any material respect from the terms or conditions applicable to any transaction document ~~to which the Limited Guarantee applies and~~ which was previously provided to the Province of Ontario, the following: (i) the timing of or circumstances under which Primary Obligations would or may become due or accrue (including as a result of any default, acceleration, termination, wind-up, liquidation or realization) that, in each case, is inconsistent with the Fair Allocation Amount; (ii) the appointment, obligations or duties of OPG as the Manager; (iii) the existence, powers or authority of the Issuer or the Issuer Trustee; (iv) the obligations of the Indenture Trustee to or in respect of the Province of Ontario as a Specified Creditor; (v) the payment provisions and associated priorities set forth in the Master Trust Indenture; (vi) compliance by the Financial Services Manager with the then applicable Financing Plan; (vii) compliance by the Financial Services Manager or the Issuer with the FHPA or the Regulations; or (viii) the Province of Ontario's rights of subrogation or assignment or its interests as a subrogee or an assignee, that would arise as a result of performing the Limited Guarantee in respect of the applicable Primary Obligation.

Accordingly, notwithstanding delivery of a Suspension Notice, the Limited Guarantee shall continue to apply to: (i) any Approved Obligations that were incurred prior to the Suspension Event and (ii) any Funding Obligations incurred by the Issuer following a Suspension Event if the terms and conditions of the Change of Law Protection Agreement are satisfied and the proceeds of such incurrence are to be used for the purpose of repaying one or more series of Approved Obligations. Accordingly, subject to compliance with the Change of Law Protection Agreement, any Senior Notes or other Funding Obligations that may be issued following a Suspension Event to refinance Senior Notes that were Approved Obligations issued prior to a Suspension Event will continue to have the benefit of the Limited Guarantee.

THE ISSUER

The Issuer is an unincorporated open-ended unit trust ~~established under~~governed by the laws of the Province of Ontario pursuant to a declaration of trust made December 20, 2017 (the "**Declaration of Trust**"). Computershare Trust Company of Canada (the "**Issuer Trustee**") is the sole trustee of the Issuer, which is a Financing Entity established to incur Funding Obligations for the purpose of acquiring Investment Interests pursuant to the FHPA. The principal business address and head office of the Issuer is in Ontario, in the care of the Issuer Trustee at the following address: 100 University Avenue, 11th Floor, Toronto, Ontario M5J 2Y1.

The following brief summary of certain provisions of the Declaration of Trust does not purport to be comprehensive or definitive. All references in this confidential shelf offering memorandum to the Declaration of Trust are qualified in their entirety by reference to the Declaration of Trust and the detailed provisions thereof. The Declaration of Trust may be reviewed at the principal office of the Issuer Trustee in Toronto, Ontario during normal business hours while any Senior Notes are outstanding.

The Declaration of Trust establishes the Issuer to carry on activities for the exclusive benefit of its unitholders, FHP2017 Inc., a wholly-owned subsidiary of OPG, and BNY Trust Company of Canada, the Indenture Trustee under the Master Trust Indenture (collectively, the "**Unitholders**"). The beneficial interest and rights generally of the Unitholders in the Issuer are limited to the right to participate in distributions when and as declared by the Issuer Trustee and distributions upon the termination of the Issuer. The legal ownership of the trust property and the right to conduct the activities of the Issuer are vested exclusively in the Issuer Trustee and no Unitholder has any right of ownership in any of the trust property. Except in limited circumstances provided in the Declaration of Trust, no Unitholder is entitled to interfere with or give any direction to the Issuer Trustee with respect to the affairs of the Issuer or in connection with the exercise of any powers or authorities conferred upon the Issuer Trustee under the Declaration of Trust. The Issuer Trustee will generally have, free from any power or control on the part of the Unitholders, full authority over the trust property and the activities of the Issuer to the same extent as if the Issuer Trustee were the sole and absolute owner thereof. The Unitholders will also not be subject to any liability arising out of the activities of the Issuer.

The Issuer Trustee, on behalf of the Issuer, has entered into a management agreement with OPG, as Manager, whereby all of the powers and duties of managing the Issuer have been delegated to the Manager. See *"The Manager."*

The permitted activities of the Issuer are limited to:

(a) acquiring, owning, holding, administering or entering into agreements regarding the acquisition and servicing of Investment Interests, along with certain other related assets;

(b) managing, selling, assigning, pledging and collecting amounts due on or otherwise dealing with Investment Interests and certain other related assets in accordance with the terms of the Program Agreements;

(c) negotiating, authorizing, executing, delivering, assuming the obligations under and performing its duties under the Program Agreements;

(d) filing with any applicable securities commission one or more prospectuses, offering memoranda, registration statements or documents necessary or desirable to register one or more series of Funding Obligations under the securities laws of any applicable jurisdiction;

(e) authorizing, executing, delivering, issuing and registering one or more series of Funding Obligations;

(f) making payments on Funding Obligations;

(g) pledging its interest in Investment Interests and related assets to the Indenture Trustee in order to secure Funding Obligations; and

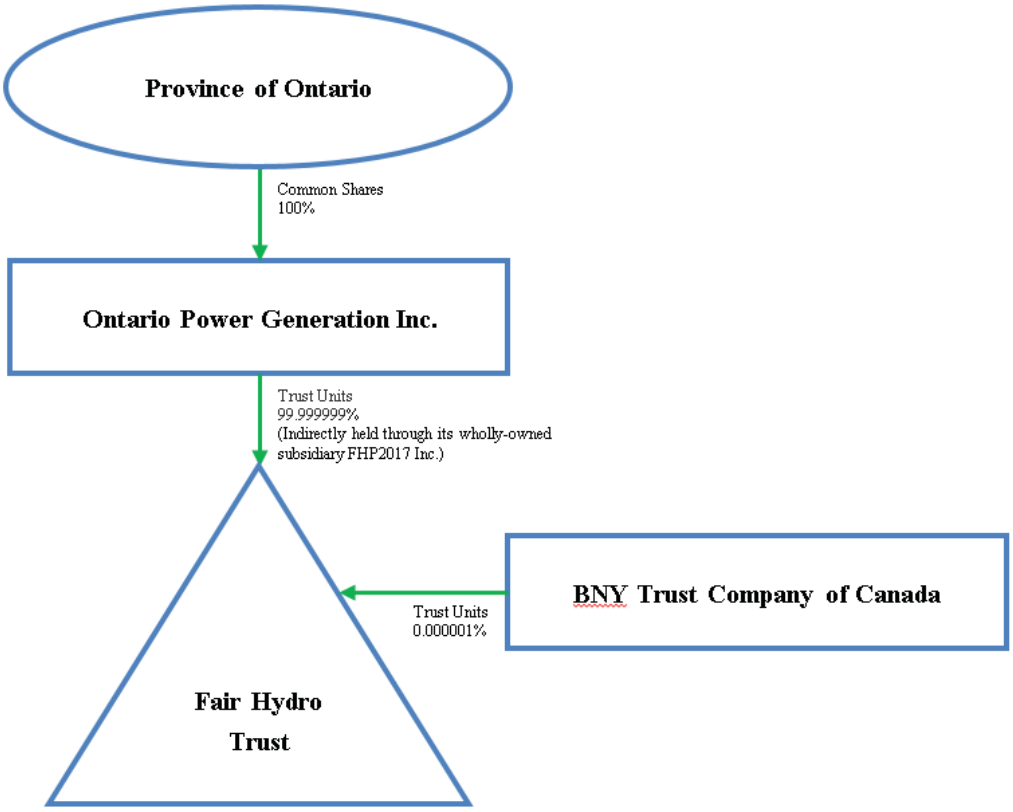
(h) engaging in any lawful act or activity that is incidental to the above-mentioned purposes.

The Issuer Trustee may amend the Declaration of Trust under specified circumstances without the consent of Unitholders provided (i) the amendment will not materially adversely affect the interest of any Unitholder, unless that Unitholder has approved of the amendment in writing, and (ii) in respect of any material amendment, the Rating Agency Condition has been satisfied. The Issuer Trustee is required to provide the Rating Agencies and the Indenture Trustee with a copy of any amendment, variation, supplement, replacement or restatement of the Declaration of Trust.

The consent of the Indenture Trustee, in addition to all other Unitholders, will be required to wind up the Issuer or voluntarily institute or consent to insolvency proceedings against the Issuer while any Funding Obligations remain outstanding. The Issuer Trustee may be removed by the Unitholders at any time by notice in writing delivered to the Issuer Trustee not less than 90 days prior to the date such removal is to take effect. The Issuer Trustee may also be removed by the Unitholders with no prior written notice if it becomes bankrupt or insolvent or it is unable to exercise its duties under the Declaration of Trust. The Issuer Trustee may resign on 120 days' prior written notice to the Unitholders, the Indenture Trustee and the Rating Agencies. No such resignation will be effective until a replacement issuer trustee acceptable to the Unitholders and the Indenture Trustee has been appointed and the Rating Agency Condition has been satisfied.

Each of the Issuer Trustee and its directors, officers, agents, representatives and employees will be indemnified from and against all claims (including any claim arising out of the assessment of any tax on income by a taxing authority), demands, levies, penalties, suits, losses, actions, causes of action, costs, charges, fees and expenses, damages and liabilities whatsoever arising out of, among other things, any action or omission in relation to the execution of the duties of the Issuer Trustee or in relation to the trust property or the activities of the Issuer, except, in each case, for wilful misconduct, gross negligence or failure to comply with the standard of care established by the Declaration of Trust.

The following diagram illustrates the structure of the Issuer and its affiliates.



THE MANAGER

OPG has entered into a management agreement with the Issuer dated as of December 20, 2017 (the "**Management Agreement**") pursuant to which the Issuer has delegated to OPG, as Manager, all of the powers and duties of managing the Issuer. The following brief summary of certain provisions of the Management Agreement does not purport to be comprehensive or definitive. All references in this confidential shelf offering memorandum to the Management Agreement are qualified in their entirety by reference to the Management Agreement and the detailed provisions thereof. The Management Agreement may be reviewed at the principal office of the Issuer Trustee in Toronto, Ontario during normal business hours while any Senior Notes are outstanding.

The powers and duties delegated to the Manager under the Management Agreement include, among others:

(a) negotiating and executing, on behalf of the Issuer, the Program Agreements;

(b) maintaining accounts and banking records;

(c) enforcing the rights of the Issuer under the Program Agreements and the FHPA;

(d) determining, in accordance with the Financing Plan, when it is appropriate for the Issuer to incur Funding Obligations;

(e) ensuring that all Primary Obligations of the Issuer are and remain Approved Obligations;

(f) administering all activities of the Issuer in connection with the issuance, sale, payment, repurchase and redemption of the Issuer's Funding Obligations;

(g) preparing, in accordance with applicable securities laws, any offering documents to be furnished by the Issuer to prospective purchasers of Funding Obligations, including the Senior Notes, and ensuring that all statements of the Issuer made therein are at all times true and correct in all material respects;

(h) arranging for compliance by the Issuer with any continuous disclosure obligations;

(i) arranging for the retention of legal counsel, accountants and an auditor for the Issuer;

(j) preparing financial statements and paying taxes on behalf of the Issuer;

(k) preparing a monthly portfolio report setting out information regarding incoming and outgoing cash flows; and

(l) providing such other services as are incidental to the foregoing or as may be agreed upon between the Issuer and the Manager.

The Manager is also required to work with the IESO to develop, on or before January 31, 2020, a written implementation plan identifying the actions to be taken by the IESO and the Issuer to facilitate the OEB, the Issuer, the IESO and Electricity Vendors being prepared to perform their obligations under the FHPA and the Regulations when setting, invoicing and collecting the Clean Energy Adjustment. The Manager will deliver written progress reports to the Issuer and the Indenture Trustee on the status of the implementation plan on or before June 30, 2020, October 31, 2020 and January 31, 2021.

Following the Moratorium Period, the Manager will review a monthly servicer report required to be delivered to the Issuer by the IESO under the Master Transfer and Servicing Agreement and make commercially reasonable efforts to resolve any Electricity Vendor failures or discrepancies identified in such report that have not been remedied or adequately explained by Electricity Vendors. The Manager is obligated to institute any proceedings necessary to compel performance by Electricity Vendors of any obligations or duties under the FHPA and the Regulations, including with respect to the invoicing, collection and remittance of Clean Energy Adjustment amounts. Commencing May 1, 2021 and pursuant to its rights under the Regulations,[46] the Manager shall review, or cause to be reviewed, on an annual basis, or less frequently as may be determined by the Manager and subject to satisfaction of the Rating Agency Condition, the records maintained by Electricity Vendors with respect to the Clean Energy Adjustment and if there is evidence of material non-compliance by an Electricity Vendor, the Manager will promptly review or cause to be reviewed the records of such Electricity Vendor.

The Manager is obligated to perform its duties under the Management Agreement diligently and in conformity with the Issuer's obligations under each of the Program Agreements and with the FHPA and the Regulations, as applicable, and honestly, in good faith and in the best interest of the Issuer. The Manager must exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

In addition to the powers and duties delegated to OPG pursuant to the Management Agreement, OPG has also agreed to comply with its duties under the FHPA in its capacity as Financial Services Manager, including:

(a) preparing the Financing Plan to evaluate whether potential Funding Obligations should be incurred by Financing Entities for the purposes of acquiring Investment Interests in accordance with the FHPA or for the purposes of a Refinancing;

(b) determining the amounts of the Clean Energy Adjustment, inclusive of any True-up Amount;

(c) calculating the True-up Amount;

[46] Please confirm the source of the right to review electricity vendor records under the Regulations. If this refers to Section 10(4) of the General Regulation, the right is that of the Issuer or the FSM.

(d) notifying the OEB of the Clean Energy Adjustment, inclusive of any True-up Amount;

(e) administering the Investment Interests on behalf of Financing Entities in accordance with the Program Agreements;

(f) ensuring that Funding Obligations are incurred in a manner that is consistent with the Financing Plan; and

(g) establishing and charging fees for the services provided under the Management Agreement.

Subject to OEB approval and the Regulations, OPG is entitled to charge the Issuer a fee, comprised of a base fee and a variable fee, to earn a return and to recover costs and expenditures incurred by OPG on behalf of the Issuer or in relation to the establishment, management and administration of the Issuer and its Investment Interest. The priority of the Manager's entitlement to fees is subject to the payment priorities set forth in the Master Trust Indenture.

The Manager is not entitled to resign from its duties or terminate the Management Agreement as long as Funding Obligations remain outstanding. The Manager may be terminated by the Issuer Trustee, with the consent of the Indenture Trustee, or by the Indenture Trustee in accordance with the Master Trust Indenture. No termination of the Manager will be effective until a replacement manager that satisfies the Rating Agency Condition has been approved and has entered into a management agreement with the Issuer whereby the replacement manager agrees to assume, in substance, the obligations of the Manager under the Management Agreement. If the Manager ceases to perform, or inadequately performs, its management duties under the Management Agreement, it might be difficult to find a replacement for the Manager or a successor manager. See "*Risk Factors – Payments on the Senior Notes depend on the performance of OPG as Financial Services Manager and Manager of the Issuer.*"

The Manager shall provide to the Issuer Trustee an annual certificate confirming compliance with certain matters, including: (i) accurate maintenance of the books and records of the Issuer; (ii) all debt obligations and expenses due and payable by the Issuer have been paid to date; (iii) all required filings with tax and regulatory authorities have been completed to date; and (iv) all material statements and reports to be delivered by the Issuer under the Program Agreements have been delivered and all material statements and reports to be received by the Issuer under the Program Agreements have been received.

The Manager indemnifies the Issuer under the Management Agreement for any losses incurred by the Issuer as a result of the failure of the Manager to perform its obligations under the Management Agreement or any breach by the Manager of its representations and warranties under the Management Agreement or any other Program Agreement to which it is a party, except to the extent such losses result from the willful misconduct, bad faith or gross negligence of the Issuer. Notwithstanding the foregoing, the Manager is not obligated to indemnify the Issuer under the Management Agreement for any losses resulting from: (i) a breach or failure to perform by a third party under any Program Agreement, the FHPA or the Regulations (excluding any delegation by the Manager under the Management Agreement to a third party); (ii) changes in law, (iii) the validity or applicability of the Change of Law Protection Agreement; (iv) the collectability or sufficiency of the Clean Energy Adjustment or ~~carrying costs~~Carrying Costs to satisfy the Issuer Funding Obligations, including the Senior Notes; or (v) any liability of the Issuer incurred after termination of the Management Agreement unless attributable to the actions or omissions of the Manager prior to such termination or in respect of a representation, warranty or covenant that survives such termination.

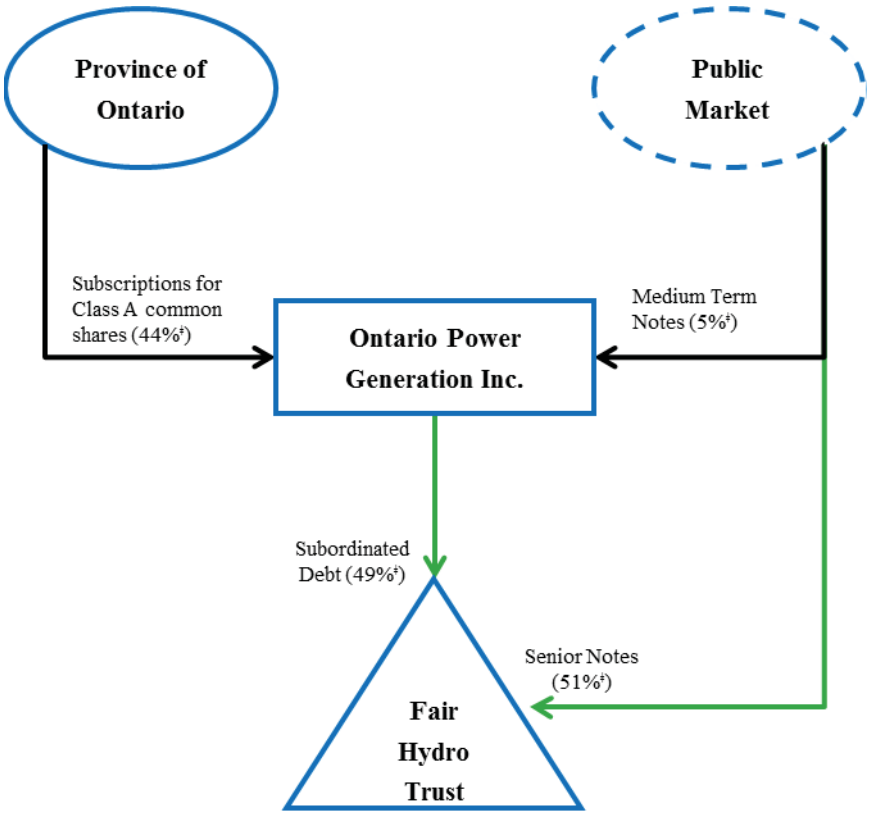
SUBORDINATED DEBT

Concurrent with every issuance of senior debt by the Issuer, including any Offering of Senior Notes, it is expected that OPG will subscribe for subordinated debt and junior subordinated debt of the Issuer in an amount of no more than 49% of all of the Issuer's Funding Obligations, approximately 44% of which is expected to be funded through equity investments in OPG by the Province of Ontario with the remaining approximate 5% being funded from OPG's available funds, including all or a portion of the proceeds of any offerings by OPG of medium term notes).

Under the Master Trust Indenture, the Issuer will be required at all times to ensure that: (i) the aggregate outstanding principal amount of all subordinated debt and junior subordinated debt be equal to not less than 35% of the aggregate outstanding principal amount of all of the Issuer's Funding Obligations; and (ii) the aggregate outstanding principal amount of all junior subordinated debt be equal to not less than 10% of the aggregate outstanding principal amount of all of the Issuer's Funding Obligations.

The Issuer is structured to be bankruptcy remote from OPG insofar as none of OPG, its subsidiaries or holders of its indebtedness will have any recourse whatsoever against the Issuer or its assets other than OPG's rights and remedies as a holder of subordinated debt of the Issuer in accordance with the provisions of that indebtedness. From an accounting perspective, however, the Issuer will be consolidated with OPG.

The following diagram illustrates the expected structure of OPG's investments in subordinated debt of the Issuer.



‡ OPG will acquire up to 49% of the Issuer's outstanding debt in the form of subordinated debt. Actual amounts may vary if OPG acquires less than 49% of the Issuer's outstanding debt.

SHORT TERM INDEBTEDNESS

On December 21, 2017, the Issuer entered into the following supplemental indentures under the Master Trust Indenture for the provision of an aggregate of approximately $1.56 billion in short term indebtedness (collectively, the "**Warehouse Facilities**"), of which a total of $1.179 billion is drawn as of the date hereof:

(i) a warehouse senior series 2017-1 supplemental indenture with, among others, Royal Bank of Canada, as administrative agent for certain commercial paper conduit purchasers and financial institutions named therein, for the provision of an aggregate maximum principal amount of $800,000,000 floating rate variable funding Senior Notes, Series 2017-1 ("**Senior Notes, Series 2017-1**"), of which $601,290,000 is drawn;

(ii) a warehouse subordinated series 2017-1 supplemental indenture with, among others, OPG for the provision of an aggregate maximum principal amount of $611,764,705.88 floating rate variable funding Subordinated Notes, Series 2017-1 ("**Subordinated Notes, Series 2017-1**"), of which $459,810,000 is drawn; and

(iii) a warehouse junior subordinated series 2017-1 supplemental indenture with, among others, OPG for the provision of an aggregate maximum principal amount of $156,862,745.10 floating rate variable funding Junior Subordinated Notes, Series 2017-1 ("**Junior Subordinated Notes, Series 2017-1**"), of which $117,900,000 is drawn.

The issuance of Senior Notes, Series 2017-1, Subordinated Notes, Series 2017-1 and Junior Subordinated Notes, Series 2017-1 under the Warehouse Facilities described above were used to acquire a $1.179 billion Investment Interest from the IESO on December 21, 2017.

THE TRANSFEROR AND SERVICER

The IESO has entered into a master transfer and servicing agreement with the Issuer dated as of December 21, 2017 (the "**Master Transfer and Servicing Agreement**") pursuant to which the IESO may periodically transfer specified portions of the Regulatory Asset to the Issuer. Additional information regarding the IESO, including its most recently published financial statements, is available at www.ieso.ca. Such information does not form part of this confidential shelf offering memorandum and neither the Issuer nor the Agents guarantee the accuracy of such information or has independently verified the accuracy or completeness of any such information or to determine if there has been any omission by the IESO to disclose any facts, information or events which may affect the significance or accuracy of any such financial statements or other information.

The following brief summary of certain provisions of the Master Transfer and Servicing Agreement does not purport to be comprehensive or definitive. All references in this confidential shelf offering memorandum to the Master Transfer and Servicing Agreement are qualified in their entirety by reference to the Master Transfer and Servicing Agreement and the detailed provisions thereof. The Master Transfer and Servicing Agreement may be reviewed at the principal office of the Issuer Trustee in Toronto, Ontario during normal business hours while any Senior Notes are outstanding.

Under the Master Transfer and Servicing Agreement, the IESO may offer, no more frequently than monthly, to transfer to the Issuer its right, title and interest in, to and under a specified portion of the Regulatory Asset. The Issuer has the right, but not the obligation, to accept the IESO's offer. The IESO is responsible for servicing the Issuer's Investment Interest in accordance with the Regulations and the Master Transfer and Servicing Agreement. Its responsibilities including, among others:

(a) establishing a segregated account to be used for the sole purpose of collecting the Clean Energy Adjustment in respect of the Issuer's Investment Interest and making commercially reasonable efforts to cause Electricity Vendors to do the same;

(b) making commercially reasonable efforts to cause each Electricity Vendor to establish procedures for the invoicing of amounts in respect of the Clean Energy Adjustment;

(c) responding to inquiries by Electricity Vendors with respect to the Clean Energy Adjustment and amounts payable in respect thereof;

(d) reviewing reports submitted to the IESO by Electricity Vendors regarding the collection of Clean Energy Adjustment amounts for material manifest discrepancies;

(e) contacting Electricity Vendors on the occurrence of certain events;

(f) holding Clean Energy Adjustment amounts collected in respect of the Issuer's Investment Interest in trust for the benefit of the Issuer and remitting such amounts to the Issuer on a monthly basis, subject to daily remittance being required in certain limited circumstances;

(g) together with the Issuer, settling a form of monthly servicer report to be provided to the Issuer; and

(h) forecasting the electricity consumption of Specified Consumers and providing such forecast information to the OEB and the Issuer.

While the IESO provides no guarantee that collections of the Clean Energy Adjustment from Electricity Vendors will equal amounts invoiced or that the Clean Energy Adjustment amounts will be sufficient to satisfy the Issuer's Funding Obligations, the IESO must follow standards, policies and procedures in performing its servicing duties that are customary for an electricity market operator and administrator that regularly performs settlement functions.

The IESO is required to work with the Manager to develop, on or before January 31, 2020, a written implementation plan identifying the actions to be taken by the IESO and the Issuer to facilitate the OEB, the Issuer, the IESO and Electricity Vendors being prepared to perform their obligations under the FHPA and the Regulations when setting, invoicing and collecting Clean Energy Adjustment amounts. The IESO and the Manager will deliver to the Issuer written progress reports on the status of the implementation plan on or before June 30, 2020, October 31, 2020 and January 31, 2021. The IESO is also required to work with the Issuer to settle a form of monthly servicer report, which will be provided to the Manager on or before the 20th business day after the end of each month in which Clean Energy Adjustment amounts are collected by Electricity Vendors from Specified Consumers, and which report is expected to contain available information regarding the Clean Energy Adjustment amounts billed, collected and remitted by Electricity Vendors, actual electricity consumption compared to forecast electricity consumption and such other information as may be agreed to by the IESO.

Generally, all servicing duties provided by the IESO to the Issuer are provided at no cost to the Issuer.[47] However, the Issuer will reimburse the IESO for its direct costs relating to the performance by the IESO of its duties and obligations under the Master Transfer and Servicing Agreement that are not otherwise recovered by the IESO under the *Electricity Act, 1998* (Ontario), excluding any costs relating to the performance of the IESO's duties and obligations under the FHPA or the Regulations, including its obligation to pay the Issuer's ~~carrying costs~~Carrying Costs.

During the Moratorium Period and extending to July 31, 2021, the IESO, which is rated A(high) by DBRS and Aa2 by Moody's is required under the Regulations to pay and remit to the Issuer amounts charged to the IESO by the Issuer in respect of its ~~carrying costs~~Carrying Costs. Under the Regulations ~~"carrying costs"~~, Carrying Costs include all funding costs, such as interest on the Senior Notes, and other expenses of the Issuer, other than repayment of principal on any debt obligations of the Issuer, including repayment of principal on the Senior Notes.[48] Pursuant to the Master Transfer and Servicing Agreement, on or before the fourth business day of each calendar month, the Issuer will submit a carrying costs statement to the IESO certifying the amount of ~~carrying costs~~Carrying Costs estimated to be incurred by the Issuer in the following month. On or before the 14th business day following receipt of the Issuer's carry costs statement, the IESO is required to deliver the amount specified therein to the Issuer. The IESO has a $2 billion unsecured credit facility provided by the Ontario Financing Authority, expiring ■, 20■, which ~~can~~is permitted to be used to pay the Issuer's ~~carrying costs~~Carrying Costs.

As security for the performance of its obligation to pay the Issuer's ~~carrying costs~~Carrying Costs, the IESO has granted the Issuer a first-priority security interest in all of its accounts receivable, which includes the amounts receivable by the IESO with respect to the global adjustment charge. The amounts paid by the IESO to fund these ~~carrying costs~~Carrying Costs will be recorded by the IESO in a variance account and form part of the Regulatory Asset which is expected to be offered by the IESO for transfer to the Issuer in a subsequent period and, upon completion of such transfer, shall become part of the Issuer's Investment Interest pursuant to the Regulations.

[47] **Note:** Please confirm.

[48] **Note:** Consider a description of "carrying costs" that conforms to the definition set out in Section 9.1(3) of the General Regulation. Also note that the Glossary defines "Carrying Costs" as having the meaning ascribed to the term in the Regulations.

As security for any failure of Non-Investment Grade Rated Electricity Vendors to remit Clean Energy Adjustment amounts collected under the FHPA, the IESO is required, pursuant to the Master Transfer and Servicing Agreement, to provide to the Issuer on or prior to the first day of the first billing period when the Clean Energy Adjustment is being invoiced to Specified Consumers, a letter of credit from a provider that satisfies the Rating Agency Condition or a performance guarantee or such other form of security that is acceptable to the Issuer and that satisfies the Rating Agency Condition. A "**Non-Investment Grade Rated Electricity Vendor**" means any Electricity Vendor that does not have a rating of: (i) "Baa3" or higher by Moody's, unless otherwise agreed to by Moody's; and (ii) "BBB(low)" or higher by DBRS, unless otherwise agreed to by DBRS.

The amount of security required from the IESO will be calculated on an annual basis and will be equal to the amount determined by the following formula:

((A / B) x C x D / 365 x E)

where A, B, C, D and E are as follows:

A = for the most recently completed twelve-month period, the aggregate amount of energy consumed by Specified Consumers of all Non-Investment Grade Rated Electricity Vendors.

B = for the same twelve-month period used for A, the aggregate amount of energy consumed by all Specified Consumers.

C = for the most current twelve-month forecast period available, the Clean Energy Adjustment amounts estimated to be payable by all Specified Consumers.

D = 45, representing the estimated number of days that total Clean Energy Adjustment amounts are expected to be held by Electricity Vendors.

E = 0.50 or another value as mutually agreed to in writing by the Issuer and the IESO and that satisfies the Rating Agency Condition.

The Master Transfer and Servicing Agreement sets out specific servicer defaults. Upon the occurrence of a servicer default, the Issuer will be entitled to appoint a replacement servicer that will perform the IESO's duties as servicer under the Master Transfer and Servicing Agreement. Any replacement servicer must be permitted under the FHPA to perform the duties of servicer, the Rating Agency Condition must be satisfied and the replacement servicer must enter into a master transfer and servicing agreement with the Issuer having substantially the same terms as the Master Transfer and Servicing Agreement.

The IESO has agreed to indemnify the Issuer for any losses incurred by the Issuer as a result of the failure of the IESO to perform its obligations under the Master Transfer and Servicing Agreement or any other Program Agreement to which it is a party or the breach by the IESO of any of its representations or warranties under the Master Transfer and Servicing Agreement or any other Program Agreement to which the IESO is a party, except to the extent such losses result from the willful misconduct, bad faith or gross negligence of the Issuer. Notwithstanding the foregoing, the IESO is not obligated to indemnify the Issuer under the Master Transfer and Servicing Agreement for any losses resulting from: (i) a breach or failure to perform by a third party under any Program Agreement, the FHPA or the Regulations (excluding any delegation by the IESO under the Master Transfer and Servicing Agreement to a third party); (ii) changes in law, (iii) the collectability or sufficiency of the Clean Energy Adjustment to satisfy the Issuer's Funding Obligations, including the Senior Notes; or (iv) any liability of the Issuer incurred after termination of the Master Transfer and Servicing Agreement unless attributable to the actions or omissions of the IESO prior to such termination or in respect of a representation, warranty or covenant that survives such termination.

CREDIT RATINGS

Credit ratings are intended to provide investors with an independent measure of the credit quality of securities and are indicators of the likelihood of the payment capacity and willingness of an issuer to meet its financial commitment on an obligation in accordance with the terms of such obligation. The credit ratings accorded to the Senior Notes are not recommendations to purchase, hold or sell such securities inasmuch as such ratings are not a comment upon the market price of the securities or their suitability for a particular investor. There is no assurance that any rating will remain in effect for any given period of time or that any rating will not be revised or withdrawn entirely by a rating agency in the future if, in its judgment, circumstances so warrant.

The Term Sheet for each Offering will identify the rating of the applicable Senior Notes at the time of such Offering.

RATING AGENCY CONDITION

The Program Agreements provide that certain actions are subject to the "**Rating Agency Condition**". In each such case, satisfaction of the Rating Agency Condition requires: (a) that the Issuer has delivered written notice of the proposed action to the Rating Agencies at least ten business days prior to the effective date of such action; and (b) that the Rating Agencies shall have informed the Issuer prior to the effective date of such action that such action will not result in the reduction or withdrawal of the rating in effect with respect to the Notes immediately before the taking of such action. If the Rating Agency Condition is to be satisfied without specifying one or more specific Series or Tranches of Notes, the Rating Agency Condition must be satisfied with respect to all outstanding Series or Tranches of Notes.

CAPITAL MARKETS PLATFORM

The Financial Services Manager has developed a Financing Plan for the Issuer which encompasses an ongoing program which allows for the issuance of a variety of short and long term debt, as well as interest rate and currency swaps and other hedging instruments.

The Master Trust Indenture establishes common security and a set of common covenants given by the Issuer for the benefit of all of its creditors. Notes are issued under Supplemental Indentures and in certain cases, Terms Documents. Borrowings are incurred pursuant to liquidity agreements or loan agreements. Notes and Borrowings incurred by the Issuer are Issuer Funding Obligations. Each Issuer Funding Obligation will be part of a Class and Series of Issuer Funding Obligations, and may include one or more Tranches. A Class designation determines the relative seniority for receipt of cash flows. See *"— Subordination Provisions"*, "*— Payment Waterfalls Prior to Acceleration*" and "*— Acceleration and Remedies — Payment Waterfall Upon Acceleration*". Tranches of Issuer Funding Obligations may differ from each other as to the interest rate, maturity and the timing, sequential order and amount of payments of principal or interest, or both.

The following summary of the principal provisions contained in the Master Trust Indenture does not purport to be comprehensive or definitive. This overview summarizes certain provisions of the Master Trust Indenture and omits descriptions of many provisions which may be considered to be of a customary nature. All references in this confidential shelf offering memorandum to the Master Trust Indenture are qualified in their entirety by reference to the Master Trust Indenture and the detailed provisions thereof. The Master Trust Indenture may be reviewed at the principal office of the Issuer Trustee in Toronto, Ontario during normal business hours while any Notes are outstanding.

Indenture Trustee

BNY Trust Company of Canada, a trust company governed by the laws of Canada, is the Indenture Trustee under the Master Trust Indenture.

Under the terms of the Master Trust Indenture, the Issuer has agreed to pay the Indenture Trustee reasonable compensation for the performance of its duties under the Master Trust Indenture. The Indenture Trustee

has agreed to perform only those duties expressly set forth in the Master Trust Indenture. Many of the duties of the Indenture Trustee are described throughout this confidential shelf offering memorandum. Under the terms of the Master Trust Indenture, the Indenture Trustee's limited responsibilities include the following:

- to authenticate, deliver, cancel and otherwise administer the Notes;
- to serve as the registrar in respect of the Notes;
- to establish and maintain all Issuer Accounts and to maintain accurate records of activity in those accounts;
- to serve as the Paying Agent and distribute and transfer funds at the direction of the Manager in accordance with the terms of the Master Trust Indenture;
- to invest funds in the Issuer Accounts at the direction of the Manager (or its agent);
- to deliver to Specified Creditors notice of any Default, Event of Default, Acceleration Event, Protection Event or Servicer Default of which it has received notice, as required under the Master Trust Indenture; and
- to perform certain other administrative functions identified in the Master Trust Indenture.

In the exercise of its duties, the Indenture Trustee will use the same degree of care and skill as a reasonably prudent person would use in comparable circumstances. When all Issuer Funding Obligations have been satisfied and discharged (see "— *Satisfaction and Discharge*"), the Indenture Trustee will no longer act as Indenture Trustee and will have no fiduciary responsibilities to any remaining Specified Creditors and will act only as security agent for those remaining Specified Creditors. The Indenture Trustee is not liable for any errors of judgment as long as the errors are made in good faith and the Indenture Trustee was not negligent. Furthermore, the Indenture Trustee will not be liable for any action taken or not taken by it in good faith if directed to do so by Extraordinary Resolution. The Indenture Trustee is not required to expend or risk its own funds, or incur any financial liability in the exercise of its duties under the Master Trust Indenture and it will not be obliged to exercise any of its rights under the Master Trust Indenture at the request of any Controlling Class Creditor unless such Controlling Class Creditor has provided it with security or an indemnity reasonably satisfactory to it.

In addition to the Indenture Trustee's compensation and the reimbursement of the Indenture Trustee's expenses in connection with the Master Trust Indenture, the Issuer will indemnify the Indenture Trustee for any loss, liability or expense incurred without negligence or bad faith on its part, arising out of or in connection with the administration of the trusts under the Master Trust Indenture. The payment of all such amounts will be subject to the payment waterfalls set out in the Master Trust Indenture and in certain instances, such amounts will be higher in priority than payments to Noteholders. See "— *Payment Waterfalls Prior to Acceleration — Collection Account*", "— *Payment Waterfalls Prior to Acceleration — Protection Account*" and "— *Acceleration and Remedies — Payment Waterfall Upon Acceleration*".

The Indenture Trustee may resign at any time by giving written notice to the Issuer and it may be removed for any reason by Ordinary Resolution of Controlling Class Creditors. The Indenture Trustee must resign if a material conflict of interest arises in its role as an Indenture Trustee under the Master Trust Indenture and such conflict of interest is not eliminated within 90 days after the Indenture Trustee becomes aware of such material conflict of interest. The Issuer may remove, or any Controlling Class Creditor who has been a *bona fide* Controlling Class Creditor for at least six months may, on behalf of itself and all other Debtholders, petition any court of competent jurisdiction for the removal of the Indenture Trustee if (i) the Indenture Trustee is no longer eligible to act as trustee under the Master Trust Indenture (and any Supplemental Indenture) and fails to resign after it has received a written request to do so by the Issuer or by any Controlling Class Creditor, (ii) the Indenture Trustee becomes incapable of acting, or (iii) the Indenture Trustee becomes subject to any bankruptcy or insolvency related events. In all such circumstances, the Issuer must appoint a successor Indenture Trustee. Any resignation or removal of the Indenture Trustee and appointment of a successor Indenture Trustee will not become effective until the successor

Indenture Trustee accepts the appointment. If an instrument of acceptance by a successor Indenture Trustee has not been delivered to the Indenture Trustee within 30 days of giving notice of resignation or removal, the Indenture Trustee may petition a court of competent jurisdiction to appoint a successor Indenture Trustee.

Any successor Indenture Trustee will execute and deliver to the Issuer and its predecessor Indenture Trustee an instrument accepting such appointment. The successor Indenture Trustee must be a bank, a trust company or a corporation organized and doing business under the laws of Canada or of any province or territory thereof, authorized under such laws to carry on a trust business in each of the provinces and territories of Canada. The Issuer may not, nor may any person directly or indirectly controlling, controlled by, or under common control with the Issuer, serve as Indenture Trustee.

The Indenture Trustee may become the owner or pledgee of Notes and may otherwise deal with the Issuer with the same rights it would have if it were not the Indenture Trustee (subject to its obligation to resign if there is a material conflict).

Conditions Precedent to Incurrence of Obligations Secured

There is no limit on the aggregate amount of indebtedness or other obligations which may be secured under the Master Trust Indenture. However, the Issuer will not be permitted to incur any Issuer Funding Obligations or other obligations unless the Issuer meets the conditions described below under *"— Issuer Funding Obligations"* and *"— Other Obligations Secured"*.

Issuer Funding Obligations

The Issuer may not incur any new Issuer Funding Obligations, or renew or extend any existing Issuer Funding Obligations (in each case, other than Derivative Funding Obligations), unless the conditions described below are met on or prior to the date that the Issuer enters into a definitive agreement in respect of such Issuer Funding Obligations:

(a) the Issuer delivers to the Indenture Trustee and each Rating Agency notice of such incurrence;

(b) the Issuer delivers to the Indenture Trustee and each Rating Agency a certificate to the effect that:

(i) the Issuer reasonably believes that such incurrence will not cause an Adverse Effect; an "**Adverse Effect**" means that such action will at the time of its occurrence (a) result in the occurrence of an Event of Default or any event which with the giving of notice or passage of time, or both, would become an Event of Default, (b) adversely affect the amount or timing of any payment to be made to any Debtholder or Derivative Counterparty pursuant to the Master Trust Indenture or any Program Agreement, (c) materially adversely affect the amount or timing of payments to be made to the Specified Creditors (other than Debtholders and Derivative Counterparties) pursuant to this Indenture or any Program Agreement, or (d) adversely affect the security interest and the rights and remedies of the Indenture Trustee in respect thereof;

(ii) all instruments furnished to the Indenture Trustee conform to the requirements of the Master Trust Indenture and constitute sufficient authority under the Master Trust Indenture for the Indenture Trustee to (A) in the case of an issuance of Notes only, authenticate and deliver such Notes, and (B) in the case of all other Issuer Funding Obligations, execute and deliver the applicable Funding Obligation Agreement;

(iii) in the case of an issuance of Notes only, the form and terms of the Notes have been established in conformity with the provisions of the Master Trust Indenture;

(iv) the incurrence of such Issuer Funding Obligation is consistent in all material respects with the Financing Plan; see *"Ontario Fair Hydro Plan — Fair Allocation Amount and Financing Plan"*;

(v) the conditions set out in clauses (c), (d), (g) and (k) below are met; and

(vi) such other matters as the Indenture Trustee may reasonably request;

(c) the representations and warranties of the Issuer in the Master Trust Indenture are true and correct in all material respects;

(d) the Rating Agency Condition is satisfied with respect to all outstanding Series or Tranches of Issuer Funding Obligations;

(e) the Indenture Trustee receives either:

(i) a certified copy of the instrument whereby the Province of Ontario designated in writing that such Issuer Funding Obligation is an Approved Obligation as contemplated by the Change of Law Protection Agreement; or

(ii) both (A) an Adherence Compliance Certificate addressed to the Indenture Trustee with respect to such Issuer Funding Obligation delivered in accordance with the Change of Law Protection Agreement; and (B) a certificate signed by the Manager certifying that the Province of Ontario has not provided a Suspension Notice;

(f) the Issuer delivers to the Indenture Trustee copies of the applicable Funding Obligation Agreement, including in the case of Notes, a Supplemental Indenture relating to the applicable Series or Tranche of Notes and, if applicable, a Terms Document relating to the applicable Tranche of Notes;

(g) in the case of Senior Funding Obligations only, the Issuer has Subordinated Funding Obligations and Junior Subordinated Funding Obligations in an aggregate outstanding principal amount equal to not less than 35% of the aggregate outstanding principal amount of the aggregate Senior Funding Obligations, Subordinated Funding Obligations and Junior Subordinated Funding Obligations (after giving effect to such incurrence) and in the case of Subordinated Funding Obligations only, the Issuer has Junior Subordinated Funding Obligations in an aggregate outstanding principal amount equal to not less than 10% of the aggregate outstanding principal amount of the aggregate Senior Funding Obligations, Subordinated Funding Obligations and Junior Subordinated Funding Obligations (after giving effect to such incurrence);

(h) except in the case of Notes, the Issuer delivers to the Indenture Trustee an updated list of the Specified Creditors;

(i) each Debtholder in respect of such Issuer Funding Obligation (or an authorized agent on their behalf) has made the acknowledgements and agreements described below under "— *Acknowledgements of Specified Creditors*";

(j) the Change of Law Protection Agreement is in full force and effect against the Province of Ontario or has been replaced with a new agreement that is in form and substance satisfactory to Controlling Class Creditors pursuant to an Ordinary Resolution;

(k) the conditions precedent, if any, specified in the applicable Funding Obligation Agreement are satisfied; and

(l) in the case of an issuance of Notes only:

(i) the Indenture Trustee receives a certificate for the certification and delivery of the Notes and specifying the particulars relating to such Notes;

(ii) in the case of Notes described in section 163(f)(2)(A) of the United States Internal Revenue Code~~,~~ of 1986, if such Notes are not in registered form (including by reason of a book entry system described in section 163(f) of the United States Internal Revenue Code of 1986), then such Notes are described in section 4701(b)(1)(B) of the United States Internal Revenue Code of 1986 and such section will apply to such Notes; and

(iii) in the case of foreign currency Notes, the Issuer appoints one or more Paying Agents in the appropriate countries, if requested by the Indenture Trustee.

Periodic drawdowns under existing Funding Obligation Agreements will not constitute a new incurrence of Issuer Funding Obligations. However, an increase in the aggregate commitment under an existing Funding Obligation Agreement or the issuance of additional Notes of an outstanding Series or Tranche of Notes will constitute a new incurrence of Issuer Funding Obligations.

The Indenture Trustee is not required to and, except as otherwise provided in a Funding Obligation Agreement, the Issuer is not required to, provide prior notice to or obtain the consent of any Debtholder or any other Specified Creditor to issue any Issuer Funding Obligations.

Other Obligations Secured

The Issuer may incur other obligations (including Derivative Funding Obligations) so long as:

(a) the Issuer delivers to the Indenture Trustee a copy of the agreement giving rise to such obligations;

(b) the Issuer delivers to the Indenture Trustee an updated list of the Specified Creditors;

(c) the counterparty to the agreement giving rise to such obligations makes the acknowledgements and agreements described below under "— *Acknowledgements of Specified Creditors*";

(d) if the obligations are Certified Primary Obligations, the Indenture Trustee receives either:

(i) a certified copy of the instrument whereby the Province of Ontario designated in writing that such obligation is an Approved Obligation as contemplated by the Change of Law Protection Agreement; or

(ii) both (A) an Adherence Compliance Certificate addressed to the Indenture Trustee with respect to such obligation delivered in accordance with the Change of Law Protection Agreement; and (B) a certificate signed by the Manager certifying that the Province of Ontario has not provided a Suspension Notice;

provided that, in respect of derivative agreements, the Issuer will provide notice to each Rating Agency of the identity of the Derivative Counterparty and the terms of any applicable master agreement and schedule.

Derivative Agreements

The Issuer may, from time to time, enter into one or more derivative agreements, which would consist of a currency swap or interest rate swap, a cap (obligating a Derivative Counterparty to make payments if a reference rate is greater than a specified rate), a floor (obligating a Derivative Counterparty to make payments if a reference rate is less than a specified rate), or a collar (obligating a Derivative Counterparty to make payments if a reference rate is greater than a specified rate and entitling the Derivative Counterparty to receive payments if the same reference rate is less than a lower specified rate), with various counterparties. In general, the Issuer will receive payments from the

Derivative Counterparty in exchange for the Issuer's payments to them, to the extent required under the derivative agreements. Payments received by the Issuer will constitute Available Collections.

Acknowledgements of Specified Creditors

Each Specified Creditor must acknowledge and agree in favour of the Indenture Trustee that it is a Specified Creditor under the Master Trust Indenture and that its entitlements as a Specified Creditor are subject to the provisions applicable to Specified Creditors under the Master Trust Indenture including, without limitation, those described under "*— Indenture Trustee*", "*— Payment Waterfalls Prior to Acceleration*", "*— Debtholder Approvals and Meetings — Access to Debtholder Lists*", "*— Acceleration and Remedies — Payment Waterfall Upon Acceleration*", "*— Acceleration and Remedies — Rights of Specified Creditors*", "*— Acceleration and Remedies — Limited Recourse*" and "*— Acceleration and Remedies — No Petition*".

Subordination Provisions

Under the Master Trust Indenture, the Issuer can issue the following classes of Issuer Funding Obligations: "Senior Funding Obligations", "Subordinated Funding Obligations" or "Junior Subordinated Funding Obligations" (each, a "**Class**"). The payment of interest on Subordinated Funding Obligations shall be subordinate and rank junior to the payment of interest on Senior Funding Obligations and Derivative Funding Obligations. The payment of interest on Junior Subordinated Funding Obligations shall be subordinate and rank junior to the payment of interest on Senior Funding Obligations, Derivative Funding Obligations and Subordinated Funding Obligations. The payment of principal on Subordinated Funding Obligations shall be subordinate and rank junior to the payment of principal on Senior Funding Obligations and Derivative Funding Obligations. The payment of principal on Junior Subordinated Funding Obligations shall be subordinate and rank junior to the payment of principal on Senior Funding Obligations, Derivative Funding Obligations and Subordinated Funding Obligations. In each case, the subordinations are the to the extent and in the manner set forth in the Master Trust Indenture and described under "*— Payment Waterfalls Prior to Acceleration*" and "*— Acceleration and Remedies — Payment Waterfall Upon Acceleration*".

Subject to the applicable payment waterfall, (i) all Senior Funding Obligations will in all respects be equally and ratably entitled to the benefits of the Master Trust Indenture with respect to such Series or Tranche without preference, priority or distinction on account, (ii) all Subordinated Funding Obligations will in all respects be equally and ratably entitled to the benefits of the Master Trust Indenture with respect to such Series or Tranche without preference, priority or distinction and (iii) all Junior Subordinated Funding Obligations of each Series or Tranche will in all respects be equally and ratably entitled to the benefits of the Master Trust Indenture with respect to such Series or Tranche without preference, priority or distinction, in each case, except as set out in a related Funding Obligation Agreement.

Security

To secure the payment of all Obligations Secured, including principal of and interest on the Issuer Funding Obligations, the Issuer has granted to the Indenture Trustee a security interest in all of its right, title and interest (whether now owned or hereafter acquired or arising) in and to the following property: (i) the Investment Interest acquired by the Issuer; (ii) each Issuer Account (including all sub-accounts); (iii) all Eligible Investments and all investment property, money and other property held in any Issuer Accounts (including all sub-accounts); (iv) all rights, benefits and powers of the Issuer under any Program Agreement; (v) all rights, benefits and powers of the Issuer under the FHPA; (vi) all present and future claims, demands, causes of and choses in action in respect of any of the foregoing and all interest, principal, payments and distributions of any nature or type on any of the foregoing; (vii) all accounts, general intangibles, chattel paper, instruments, documents, goods, money, investment property, deposit accounts, letters of credit and letter-of-credit rights consisting of, arising from, or relating to any of the foregoing; (viii) all debts, accounts, claims, monies and choses in action due or to become due with respect to all of the foregoing and also all securities, bills, notes, evidences of deposits of money, and other documents now held or owned or which may be hereafter taken, held or owned by the Issuer, or anyone on behalf of the Issuer, and all renewals thereof, accretions thereto, substitutions therefor and all interest, income and revenue arising therefrom or

by virtue thereof; (ix) all amounts received with respect to all of the foregoing; and (x) all proceeds of the foregoing (collectively, the "**Collateral**").[49]

Issuer Accounts

Pursuant to the Master Trust Indenture, the Issuer will establish various accounts ("**Issuer Accounts**") – Program Accounts, Series Accounts and Securities Accounts. Each Issuer Account will be under the sole dominion and exclusive control of the Indenture Trustee. Each Program Account and each Series Account will be established as a segregated trust account with an Eligible Institution (an "**Eligible Deposit Account**"). If the institution holding any Program Account or Series Account ceases to be an Eligible Institution, the Issuer will establish a new Program Account or Series Account that is an Eligible Deposit Account and transfer any funds or other property from such existing Program Account or Series Account to such new Program Account or Series Account. Each Securities Account will be established as a segregated securities trust account with an affiliate of an Eligible Institution, which affiliate is licensed to maintain securities accounts (an "**Eligible Securities Account**"). If the institution holding any Securities Account ceases to be an affiliate of an Eligible Institution, the Issuer will establish a new Securities Account that is an Eligible Securities Account and transfer any funds or other property from such existing Securities Account to such new Securities Account. The Indenture Trustee has no obligation to reconcile any Issuer Account against another Issuer Accounts or against the Program Agreements.

Program Accounts

Collection Account

Pursuant to the Master Trust Indenture, the Issuer has established an Eligible Deposit Account in the name of the Indenture Trustee (the "**Collection Account**"). The Indenture Trustee will hold the Collection Account for the benefit of the Indenture Trustee and the Specified Creditors. All Available Collections received by the Issuer will be credited to the Collection Account. "**Available Collections**" means: (i) all amounts received by the Servicer in respect of the Clean Energy Adjustment from Specified Consumers, (ii) IESO Carrying Cost payments (other than the IESO Cash Reserve Deposit Amount); and (iii) amounts received by the Issuer pursuant to derivative agreements. See *"Ontario Fair Hydro Plan"* and *"The Transferor and Servicer"*.

Interest Accumulation Account

Pursuant to the Master Trust Indenture, the Issuer has established an Eligible Deposit Account in the name of the Indenture Trustee (the "**Interest Accumulation Account**"). The Indenture Trustee will hold the Interest Accumulation Account for the benefit of the Indenture Trustee and the Specified Creditors. The Interest Accumulation Account has been established for the purposes of pre-funding, collateralizing, over-collateralizing or establishing reserves for the payment of interest in respect of all Issuer Funding Obligations.

Principal Accumulation Account

Pursuant to the Master Trust Indenture, the Issuer has established an Eligible Deposit Account in the name of the Indenture Trustee (the "**Principal Accumulation Account**"). The Indenture Trustee will hold the Principal Accumulation Account for the benefit of the Indenture Trustee and the Specified Creditors. The Principal Accumulation Account has ~~an~~ been established for the purpose of accumulating funds to be used to make repayments in respect of all Issuer Funding Obligations.

IESO Cash Reserve Account

Pursuant to the Master Trust Indenture, the Issuer has established an Eligible Deposit Account in the name of the Indenture Trustee (the "**IESO Cash Reserve Account**"). The Indenture Trustee will hold the IESO Cash Reserve Account for the benefit of the Indenture Trustee and the Specified Creditors. The Issuer will deposit the

[49] **Note:** Consider also including the floating charge in all of the property, assets and undertaking now owned or hereafter acquired by the Issuer in the definition of Collateral. (s. 2.01(b) of the Master Trust Indenture).

IESO Cash Reserve Deposit Amount in the IESO Cash Reserve Account on the earlier of (x) April 30, 2021, and (y) the receipt by the Issuer of the IESO Cash Reserve Deposit Amount from the IESO.

Program Cash Reserve Account

Pursuant to the Master Trust Indenture, the Issuer has established an Eligible Deposit Account in the name of the Indenture Trustee (the "**Program Cash Reserve Account**"). The Indenture Trustee will hold the Program Cash Reserve Account for the benefit of the Indenture Trustee and the Specified Creditors. The Issuer will deposit the Program Cash Reserve Required Amount in the Program Cash Reserve Account during the Reference Period commencing May 1, 2021 pursuant to the application of amounts available therefor under the Collection Account Waterfall.

Refinancing Account

Pursuant to the Master Trust Indenture, the Issuer has established an Eligible Deposit Account in the name of the Indenture Trustee (the "**Refinancing Account**"). The Indenture Trustee will hold the Refinancing Account for the benefit of the Indenture Trustee and the Specified Creditors. All proceeds arising from Notes and Borrowings related to Refinancings will be credited to the Refinancing Account.

Protection Account

Pursuant to the Master Trust Indenture, before the making of any demand for payment under the Change of Law Protection Agreement, the Issuer will establish an Eligible Deposit Account in the name of the Indenture Trustee (the "**Protection Account**"). The Indenture Trustee will hold the ~~Collection~~Protection Account for the benefit of the Indenture Trustee and the Specified Creditors. ~~All~~On the occurrence of a Protection Event and a written payment demand from the Indenture Trustee to the Province of Ontario, all payments received from the Province of Ontario ~~pursuant to~~under the Change of Law Protection Agreement will be credited to the Protection Account.

Series Accounts

Series Capital Reserve Account

In connection with the creation of a Series of Issuer Funding Obligations, the Issuer may establish an Eligible Deposit Account in the name of the Indenture Trustee (a "**Series Capital Reserve Account**"). The Indenture Trustee will hold each Series Capital Reserve Account for the benefit of the Indenture Trustee and the applicable Debtholders or Derivative Counterparties. A Series Capital Reserve Account may be established for the sole purpose of allowing the Issuer to accumulate funds to be used to make repayments in respect of a Series of Issuer Funding Obligations. Details of any period of accumulation and the amounts to be accumulated will be specified in the applicable Funding Obligation Agreement.

Series Finance Reserve Account

In connection with the creation of a Series of Issuer Funding Obligations, the Issuer may establish an Eligible Deposit Account in the name of the Indenture Trustee (a "**Series Finance Reserve Account**"). The Series Finance Reserve Account will be under the sole dominion and exclusive control of the Indenture Trustee. The Indenture Trustee will hold each Series Finance Reserve Account for the benefit of the applicable Debtholders or Derivative Counterparties. A Series Finance Reserve Account may be established for the sole purpose of allowing the Issuer to reserve funds to pay finance charges for a Series of Issuer Funding Obligations. Details of any reserve requirements will be specified in the applicable Funding Obligation Agreement.

Securities Accounts

In connection with the establishment of any Program Account (other than the Protection Account) or Series Account, the Issuer may establish an Eligible Securities Account in the name of the Indenture Trustee (a "**Securities**

Account"). The Indenture Trustee will hold each Securities Account for the benefit of the applicable Specified Creditors. A Securities Account may be established for the purpose of allowing the Issuer to invest funds held in any Program Account or Series Account in Eligible Investments. Each Securities Account may relate to only one Program Account or Series Account. Funds in each Program Account and Series Account will be invested in Eligible Investments at the direction of the Manager using the associated Securities Account. Additionally, neither the Indenture Trustee nor the Manager will ~~not~~ be responsible for any losses incurred in the investment of any funds in any Eligible Investments and any insufficiency in an Issuer Account resulting from any loss on Eligible Investments.

Credit Enhancement Agreements and Liquidity Agreements

A Series or Tranche of Issuer Funding Obligations may have the benefit of one or more additional forms of credit enhancement—referred to herein as credit enhancement agreements—such as a letter of credit, surety bond or loan facility. In addition, a Series or Tranche of Notes may have the benefit of one or more forms of liquidity agreements—referred to herein as liquidity agreements—such as a liquidity facility. Whether a Series or Tranche of Issuer Funding Obligations has the benefit of a credit enhancement agreement or a liquidity agreement, including how any payments made pursuant to such agreement will be applied, will be set out in the applicable Funding Obligation Agreement and the related Term Sheet (where applicable).

Payment Waterfalls Prior to Acceleration

All amounts received by the Issuer and all amounts to be paid by the Issuer from a Program Account or Series Account will be made in accordance with the payment waterfalls described below. All payments or transfers described in the sections below will be made by the Paying Agent based on payment instructions provided by the Manager. See "— *Covenants of the Issuer — Payment Instructions*".

Collection Account

Subject to the paragraph below, on each Payment Date (after giving effect to the distributions described in the first paragraph under "— *IESO Cash Reserve Account*"), all amounts on deposit in the Collection Account will be distributed in the following order of priority (*pro rata* in proportion to the claims represented by each paragraph below except as otherwise noted) (the "**Collection Account Waterfall**"):

(a) first, to the payment or remittance of taxes for which a governmental authority is given priority over the Specified Creditors under the laws of the applicable jurisdiction;

(b) second, to pay fees, expenses and reimbursement amounts owing to the Issuer Trustee and the Indenture Trustee up to a maximum aggregate amount equal to (i) $150,000, multiplied by (ii) the number of Series of Senior Funding Obligations outstanding on such Payment Date, divided by (iii) 12;

(c) third, *pari passu* (i) to transfer to the Interest Accumulation Account, the Interest Accrual Amount (Senior) for such Payment Date, and (ii) to pay all Derivative Funding Obligations (other than termination payments);

(d) fourth, to transfer to the Interest Accumulation Account, the Interest Accrual Amount (Subordinated) for such Payment Date;

(e) fifth, to transfer to the Interest Accumulation Account, the Interest Accrual Amount (Junior Subordinated) for such Payment Date;

(f) sixth, to transfer to the Principal Accumulation Account, the Principal Accumulation Amount (Warehouse) for such Payment Date;

(g) seventh, *pari passu* (i) to transfer to the Principal Accumulation Account, the Principal Accumulation Amount (Senior) for such Payment Date, and (ii) to pay termination payments

owing to Derivative Counterparties where the Derivative Counterparty is not the defaulting party or the sole affected party;

(h) eighth, to pay all fees and other amounts (other than principal or interest) owing in respect of Senior Funding Obligations;

(i) ninth, to pay fees, expenses and reimbursement amounts owing to the Manager;

(j) tenth, to transfer to the Principal Accumulation Account, the Principal Accumulation Amount (Subordinated) for such Payment Date;

(k) eleventh, to pay all fees and other amounts (other than principal or interest) owing in respect of Subordinated Funding Obligations;

(l) twelfth, to transfer to the Principal Accumulation Account, the Principal Accumulation Amount (Junior Subordinated) for such Payment Date;

(m) thirteenth, to transfer to the Program Cash Reserve Account, the amount, if any, by which the amount on deposit in the Program Cash Reserve Account is less than the Program Cash Reserve Required Amount;

(n) fourteenth, to transfer to any Series Account (other than any Series Account related solely to Subordinated Funding Obligations or Junior Subordinated Funding Obligations), the amount required to replenish such Series Account as required by any related Funding Obligation Agreement;

(o) fifteenth, to transfer to any Series Account related solely to Subordinated Funding Obligations, the amount required to replenish such Series Account as required by any related Funding Obligation Agreement;

(p) sixteenth, to pay all fees and other amounts (other than principal or interest) owing in respect of Junior Subordinated Funding Obligations;

(q) seventeenth, to transfer to any Series Account related solely to Junior Subordinated Funding Obligations, the amount required to replenish such Series Account as required by any related Funding Obligation Agreement;

(r) eighteenth, to pay termination payments owing to Derivative Counterparties where the Derivative Counterparty is the defaulting party or the sole affected party;

(s) nineteenth, to pay the amount required pursuant to the Declaration of Trust to the Issuer Trustee for the account of the beneficiaries of the Issuer;

(t) twentieth, to pay all indemnity amounts owing to the Manager;

(u) twenty-first, *pari passu* (i) to pay fees, expenses, reimbursement and indemnity amounts owing to the Issuer Trustee and the Indenture Trustee not previously paid pursuant to paragraph (b), (ii) to the payment or remittance of taxes not previously paid pursuant to paragraph (a), and (iii) to pay all amounts owing to Specified Creditors not specifically referred to above; in each case, including, for each referenced party, any amounts payable to their respective affiliates under the terms of any relevant indemnity; and

(v) twenty-second, any amounts remaining (i) to be held in the Collection Account for distribution in the above order of priority on the next Payment Date; or (ii) after all Issuer Funding Obligations

have been paid in full and discharged, and all other amounts have been paid in full, to pay to the Issuer.

Notwithstanding the foregoing, (i) the transfer of any amounts deposited by the IESO into the Collection Account on account of the IESO Cash Reserve Deposit Amount to the IESO Cash Reserve Account, and (ii) the transfer of any amounts deposited in the Collection Account on account of one-time transaction costs and expenses in connection with the incurrence of Issuer Funding Obligations on or within three business days of the closing date of such transaction, will, in each case, be made without reserving for or paying amounts which are senior in priority to such obligation under the Collection Account Waterfall.

Interest Accumulation Account

On each Interest Payment Date, the Paying Agent will distribute all amounts on deposit in the Interest Accumulation Account in the following order of priority (*pro rata* in proportion to the claims represented by each paragraph below except as otherwise noted):

(a) first, to pay all interest that is due and payable on Senior Funding Obligations on such Interest Payment Date;

(b) second, to pay all interest that is due and payable on Subordinated Funding Obligations on such Interest Payment Date, so long as after making this payment, the amount remaining on deposit in the Interest Accumulation Account at least equals the amount of accrued and unpaid interest on Senior Funding Obligations as of such Interest Payment Date; and

(c) third, to pay all interest that is due and payable on Junior Subordinated Funding Obligations on such Interest Payment Date, so long as after making this payment, the amount remaining in the Interest Accumulation Account at least equals the amount of accrued and unpaid interest on Senior Funding Obligations and Subordinated Funding Obligations as of such Interest Payment Date.

Any amounts remaining after the applications referred to above: (i) to be held in the Interest Accumulation Account for distribution in the above order of priority on the next Interest Payment Date; or (ii) after all Issuer Funding Obligations have been paid in full, to be transferred to the Collection Account.

Principal Accumulation Account

On each Interest Payment Date (after making the applications provided for in the waterfall under "—*Interest Accumulation Account*"), if any interest that is due and payable on Senior Funding Obligations, Subordinated Funding Obligations or Junior Subordinated Funding Obligations has not been paid, an amount equal to such deficiency will be withdrawn from the Principal Accumulation Account and applied to the payment of interest due and payable on such Interest Payment Date, provided that if the amount to be applied pursuant to this paragraph is insufficient to pay all such interest, the application of such amounts will be made first to Senior Funding Obligations, then to Subordinated Funding Obligations, and finally to Junior Subordinated Funding Obligations, in each case, on a *pro rata* basis.

On each Principal Payment Date (after making the applications provided for in the previous paragraph), the Paying Agent will distribute all amounts on deposit in the Principal Accumulation Account in the following order of priority (*pro rata* in proportion to the claims represented by each paragraph below except as otherwise noted):

(a) first, to pay all principal that is due and payable on Warehouse Obligations on such Principal Payment Date;

(b) second, to pay all principal that is due and payable on Senior Funding Obligations (other than Warehouse Obligations) on such Principal Payment Date;

(c) third, to pay all principal that is due and payable on Subordinated Funding Obligations on such Principal Payment Date, so long as after making this payment, the amount remaining in the Principal Accumulation Account at least equals the Required Principal Accumulation Amount (Senior) as of such Principal Payment Date; and

(d) fourth, to pay all principal that is due and payable on Junior Subordinated Funding Obligations on such Principal Payment Date, so long as after making this payment, the amount remaining in the Principal Accumulation Account at least equals the sum of the Required Principal Accumulation Amount (Senior) and the Required Principal Accumulation Amount (Subordinated) as of such Principal Payment Date.

Any amounts remaining after the applications referred to above: (i) to be held in the Principal Accumulation Account for distribution in the above order of priority on the next Interest Payment Date or Principal Payment Date; or (ii) after all Issuer Funding Obligations have been paid in full, to be transferred to the Collection Account.

IESO Cash Reserve Account

On each Payment Date beginning in November, 2021, an amount equal to the lesser of (i) the amounts to be paid or transferred pursuant to items (a) through (e) of the Collection Account Waterfall, and (ii) the amount, if any, by which the amount on deposit in the IESO Cash Reserve Account exceeds the IESO Cash Reserve Required Amount will be withdrawn from the IESO Cash Reserve Account and applied to the making of such payments or transfers in the order provided for in the Collection Account Waterfall.

On each Payment Date, if the amounts available for distribution from the Collection Account and from the preceding sentence are insufficient to pay or transfer items (a) through (e) of the Collection Account Waterfall, an amount equal to such deficiency will be withdrawn from the IESO Cash Reserve Account and applied to the making of such payments or transfers in the order provided for in the Collection Account Waterfall. Once all funds in the IESO Cash Reserve Account have been paid out, the IESO Cash Reserve Account will be closed.

Program Cash Reserve Account

If, on any Payment Date, the amount on deposit in the Interest Accumulation Account is less than the sum of the Interest Accrual Amount (Senior), the Interest Accrual Amount (Subordinated) and the Interest Accrual Amount (Junior Subordinated), an amount equal to such deficiency will be withdrawn from the Program Cash Reserve Account and deposited in the Interest Accumulation Account.

If, on any Principal Payment Date, the amount available in the Principal Accumulation Account (in accordance with the provisions applicable thereto) is insufficient to pay all principal that is due and payable on Warehouse Obligations, other Senior Funding Obligations, Subordinated Funding Obligations or Junior Subordinated Funding Obligations, as applicable (see "— *Principal Accumulation Account*"), on such Principal Payment Date (after making the applications provided for in the previous paragraph), amounts on deposit in the Program Cash Reserve Account will be used in the following order of priority (*pro rata* in proportion to the claims represented by each paragraph below except as otherwise noted):

(a) first, to pay the deficiency on principal that is due and payable on Warehouse Obligations on such Principal Payment Date;

(b) second, to pay the deficiency on principal that is due and payable on Senior Funding Obligations (other than Warehouse Obligations) on such Principal Payment Date;

(c) third, to pay the deficiency on principal that is due and payable on Subordinated Funding Obligations on such Principal Payment Date; and

(d) fourth, to pay the deficiency on principal that is due and payable on Junior Subordinated Funding Obligations on such Principal Payment Date.

Any amounts remaining after the applications referred to above: (i) to be held in the Program Cash Reserve Account for distribution in the above order of priority on the next Interest Payment Date or Principal Payment Date; or (ii) after all Issuer Funding Obligations have been paid in full, to be transferred to the Collection Account.

Refinancing Account

On each Principal Payment Date, the Paying Agent will transfer from the Refinancing Account to the Principal Accumulation Account the lesser of (i) the amount on deposit in the Refinancing Account, and (ii) the amount by which the sum of the Principal Accumulation Amounts for all Senior Funding Obligations, Subordinated Funding Obligations and Junior Subordinated Funding Obligations on such Principal Payment Date (without reference to any refinancing notice) exceeds the amount on deposit in the Principal Accumulation Account. After all Issuer Funding Obligations have been paid in full, any amounts remaining in the Refinancing Account will be transferred to the Collection Account.

Protection Account

On each date in respect of which the Province of Ontario makes a payment pursuant to the Change of Law Protection Agreement, the Paying Agent will, prior to making any payments under any other payment waterfall, distribute all amounts in the Protection Account solely to satisfy payments in respect of Approved Obligations as set out in the written payment statement delivered by the Manager to the Province of Ontario under the Change of Law Protection Agreement in the order of priority the applicable Obligation Secured has under the applicable payment waterfall.

On the Province of Ontario paying any amount in respect of an Approved Obligation into the Protection Account, the Province of Ontario will be subrogated and entitled to each applicable Specified Creditor's rights and interests under and in respect of the Approved Obligation to the extent of the amounts paid to the Specified Creditor out of the Protection Account, and shall be entitled to the right to be paid the applicable Subrogation Amount, the benefits of the Collateral, and all proceeds therefrom.

Series Accounts

If, after giving effect to payments made on any Payment Date, the amount in the Collection Account is insufficient to make all required payments to Specified Creditors on such date, amounts on deposit in any Series Account may be withdrawn from such Series Account and allocated to the applicable Specified Creditors in accordance with the related Funding Obligation Agreement.

Covenants of the Issuer

Payment of Principal and Interest

The Issuer will duly and punctually pay the principal of and interest due on the Issuer Funding Obligations in the manner specified in the Master Trust Indenture and any related Funding Obligation Agreement.

Use of Proceeds

The Issuer will use the proceeds of such indebtedness solely for: (i) the acquisition by the Issuer of an Investment Interest; (ii) the redemption, repayment or repurchase of any existing Issuer Funding Obligations; (iii) the funding of Issuer Accounts; and (iv) the payment of transaction fees and expenses in connection with the incurrence of Issuer Funding Obligations.

Legal Existence

The Issuer will do or cause to be done all things necessary to preserve its existence and maintain its status as a Financing Entity.

Separateness Covenants

The Issuer will take all reasonable steps to maintain its identity as a distinct entity with assets and liabilities distinct from those of the Manager and any of its affiliates. Such steps include: (i) conducting all transactions with the Manager strictly on an arm's length basis and in good faith; (ii) allocating all overhead expenses for items shared between the Issuer and the Manager on the basis of actual use to the extent practicable; (iii) conducting its affairs strictly in accordance with the Declaration of Trust; (iv) maintaining its books and records separate from those of the Manager or any affiliate thereof; (v) preparing its financial statements separately from those of the Manager and ensuring that any consolidated financial statements of the Manager that include the Issuer have notes clearly stating that the Issuer is a separate entity; (vi) only maintaining bank accounts or other depository accounts to which the Issuer alone is the account party and from which only the Issuer or its agent has the power to make withdrawals; (vii) paying its operating expenses from its own assets (including, reimbursing the Manager for any such expenses); (viii) maintaining its property in such a manner that it is not costly or difficult to segregate, ascertain or otherwise identify its individual assets from or against those of the Manager or any affiliate thereof; and (ix) not becoming liable to any person for any obligations of the Manager or any affiliate thereof.

Performance of Obligations

The Issuer agrees that it will (i) perform and observe all of its obligations and agreements contained in the Master Trust Indenture, the Declaration of Trust, the Master Transfer and Servicing Agreement, the other Program Agreements and in the instruments and agreements relating to the Collateral; (ii) diligently pursue any and all actions to enforce its rights each instrument or agreement included in the Collateral except as expressly provided in ~~the~~ any Program Agreement; and (iii) enforce the Servicer's material obligations under the Master Transfer and Servicing Agreement and the Manager's material obligations under the Management Agreement.

Funding Obligations

The Issuer will ensure that all indebtedness is incurred pursuant to and in accordance with the provisions of the Master Trust Indenture, as described under "— *Conditions Precedent to Incurrence of Obligations Secured — Issuer Funding Obligations*". The Issuer will not enter into any Funding Obligation Agreement (other than a Funding Obligation Agreement relating to Warehouse Obligations) that the Manager believes, acting reasonably, would likely require the Issuer to pay principal on such Issuer Funding Obligation by means of a Refinancing (other than a Pre-Approved Refinancing).

Financial Statements; Statement as to Compliance

The Issuer will deliver, or cause to be delivered to the Indenture Trustee and the Rating Agencies: (i) within 140 days after the end of each fiscal year, audited financial statements of the Issuer; (ii) within 90 days after the end of each fiscal quarter (other than the last fiscal quarter of each fiscal year), unaudited financial statements of the Issuer; and (iii) on an annual basis on or before March 31 of each year, a written statement concerning compliance with the conditions and covenants contained in the Master Trust Indenture and confirming that no Default or Event of Default has occurred or if a material Default or Event of Default has occurred, specifying the details thereof.

Payment Instructions

The Issuer will deliver to the Indenture Trustee and the Paying Agent (if the Paying Agent is not the Indenture Trustee) on a monthly basis, a payment instruction in respect of the Collection Account, which instruction shall set out the payments to be made on the following Payment Date and setting forth, among other things, (i) the amount of the payment to Debtholders (including a breakdown of principal and interest), (ii) any other transfers and payments to be made on such Payment Date, including amounts paid to the Indenture Trustee, the Issuer Trustee and the Manager, and (iii) the amounts on deposit in the Collection Account after giving effect to the foregoing payments. Similar payment instructions will also be delivered in respect of each other Program Account and Series Account, as and when payments are to be made from those accounts.

Notice of Certain Events; Protection Event

The Issuer will give the Indenture Trustee and each Rating Agency prompt written notice of (i) each Event of Default, (ii) each breach on the part of the Issuer or the Servicer of its respective obligations under the Master Transfer and Servicing Agreement (including any Servicer Default), (iii) each breach on the part of the Manager of its obligations under the Management Agreement, (iv) any default of the Issuer or a Derivative Counterparty under a derivative agreement, and (v) any Protection Event.

No Other Business

The Issuer will not engage in any activity other than the activities set forth in the Declaration of Trust or the other Program Agreements, the material provisions of which are described in this confidential shelf offering memorandum under "The Issuer".

Amendments to Program Agreements

Unless the Rating Agency Condition is satisfied, the Issuer will not make any material amendments to any Program Agreement (other than the Master Trust Indenture and individual trade confirmations under derivative agreements), or enter into any Co-Owner Agreement. Without limiting the foregoing sentence, the Issuer will not:

(a) enter into any Co-Owner Agreement without the consent of Controlling Class Creditors by Ordinary Resolution;

(b) amend, supplement, modify, restate or replace, or waive or consent to a postponement of compliance with the terms and conditions on the part of any other party to, any of the Program Agreements (other than the Master Trust Indenture, the derivative agreements and the Declaration of Trust) if any such amendment, supplement, modification, restatement or replacement, or waiver or consent, could reasonably be considered to be materially prejudicial to the rights or interests of any Specified Creditor(s), except as expressly permitted by such Specified Creditor(s) and subject to the Province of Ontario having been given prior notice;

(c) consent, if consent is required, to the resignation of the Manager under the Management Agreement; or

(d) amend the Declaration of Trust if such amendment would have or reasonably be expected to have an Adverse Effect; provided that if such amendment would have such result, such amendment may only be made if the Issuer has obtained the consent of the Debtholders affected by such amendment by Ordinary Resolution.

Regarding amendments to the Master Trust Indenture or a Supplemental Indenture, see "— *Amendments to Master Trust Indenture*".

Consolidation; Sale of Assets

The Issuer may not consolidate with or merge into any other person, or sell, convey, exchange, transfer or otherwise dispose of any of its properties or assets included in the Collateral to any person (each, a "**transaction**"), unless:

(a) the entity formed by or surviving the consolidation or merger (if other than the Issuer) or the entity that acquires by conveyance or transfer formed by or surviving the consolidation or merger, by conveyance or transfer, as applicable: (i) is a financing entity; (ii) is organized under the laws of Canada or any province or territory thereof; (iii) is not a non-resident for purposes of the *Income Tax Act* (Canada); (iv) is not subject to regulation as an "investment company" under the Investment Company Act, (v) expressly assumes, pursuant to an assignment and/or assumption agreement or supplement, the due and punctual payment of all Obligations Secured then

outstanding and the performance or observance of all of the Issuer's agreements and covenants under each of the Program Agreements to which the Issuer is a party; and (vi) in the case of a conveyance or transfer only, expressly agrees, pursuant to such assignment and/or assumption agreement or supplement, that (A) all right, title and interest conveyed or transferred is subject and subordinate to the security interest of the Indenture Trustee and (B) it will make all filings required by applicable securities laws in connection with any Notes;

(b) no Event of Default has occurred and is continuing immediately after the transaction;

(c) the Issuer has delivered to the Indenture Trustee an officer's certificate and an opinion of counsel ~~of external counsel~~,[50] each stating that (i) such transaction and the agreements delivered in connection with such transaction comply with the terms and conditions in the Master Trust Indenture, (ii) all conditions precedent in the Master Trust Indenture relating to the transaction have been complied with, and (iii) each agreement delivered in connection with such transaction has been duly authorized, executed and delivered, and are valid, binding and enforceable against the surviving entity or transferee, as applicable;

(d) the Rating Agency Condition has been satisfied with respect to such transaction; and

(e) any action as is necessary to maintain the first priority perfected security interest in the Collateral has been taken.

No Borrowing; Guarantees, Loans; Restricted Payments

The Issuer will not issue, incur, assume, guarantee or otherwise become liable for any indebtedness except for Funding Obligations. Additionally, the Issuer will not, except as contemplated by the Master Trust Indenture or the Declaration of Trust, make any loan or advance or credit to, or guarantee, endorse or otherwise become contingently liable in connection with the obligations of, or own, purchase or acquire any stock, obligations, assets or securities of, or any other interest in, or make any capital contribution to, any other person.

The Issuer is permitted to declare or make payable any amounts to the owner of units in the Issuer as permitted by and in accordance with the Declaration of Trust, and redeem, purchase, retire or otherwise acquire for value any units in the Issuer, provided that the Issuer may only satisfy the distribution declared or made payable, or the redemption or purchase price of such units to the extent that cash or property is available for such purpose, subject to the payment waterfalls provided for in the Master Trust Indenture. If the Issuer is restricted from satisfying the foregoing amounts in cash or property, then the Issuer will satisfy such amounts through the issuance of additional units and/or a promissory note to its unitholders in accordance with the Declaration of Trust.

Subordinated Funding Obligations and Junior Subordinated Funding Obligations

Notwithstanding anything in a Funding Obligation Agreement to the contrary, the Issuer may not redeem any Series or Tranche of Subordinated Funding Obligations or Junior Subordinated Funding Obligations unless the following conditions are satisfied: (i) no Default or Event of Default has occurred and is continuing; (ii) all Issuer Accounts are fully funded in accordance with the Master Trust Indenture and any applicable Funding Obligation Agreement; and (iii) the aggregate outstanding principal amount of Subordinated Funding Obligations and Junior Subordinated Funding Obligations after giving effect to such redemption will not be less than 35% of the aggregate outstanding principal amount of Senior Funding Obligations, Subordinated Funding Obligations and Junior Subordinated Funding Obligations.

The Issuer will not permit (i) the aggregate outstanding principal amount of Subordinated Funding Obligations and Junior Subordinated Funding Obligations to be less than 35% of the aggregate outstanding principal amount of Senior Funding Obligations, Subordinated Funding Obligations and Junior Subordinated Funding Obligations, or (ii) the aggregate outstanding principal amount of Junior Subordinated Funding Obligations to be less

[50] **Note:** Please confirm deletion of "external counsel". Please see definition of "Opinion of Counsel" and s. 13.19(c) in Master Trust Indenture.

than 10% of the aggregate outstanding principal amount of Senior Funding Obligations, Subordinated Funding Obligations and Junior Subordinated Funding Obligations.

Security Matters

The Issuer will not (i) permit any lien, charge, excise, claim, security interest, mortgage or other encumbrance (other than permitted liens) to be created on or extend to the Collateral, (ii) release any security or guarantee in respect of the Collateral, (iii) sell, transfer, exchange or otherwise dispose of any of the Collateral except as expressly permitted under the Master Trust Indenture, or (vi) change its name, jurisdiction of formation or type of organization, unless it has provided the Indenture Trustee and each Rating Agency with prior written notice and it has first made all filings and taken all actions necessary to continue and maintain the Indenture Trustee's first priority security interest in the Collateral.

Other Covenants

In addition to the covenants contained in any Supplemental Indenture or any other Funding Obligation Agreement and the other covenants described in this section, the Issuer agrees that:

- upon the written request of the Indenture Trustee, it will use reasonable commercial efforts, following any (i) termination or resignation of the Servicer, the Manager or the Paying Agent, or (ii) termination, non-renewal or expiry of a liquidity agreement or a credit enhancement agreement, to appoint and enter into an agreement with a successor to such Servicer, Manager or Paying Agent, or replace or renew such liquidity agreement or credit enhancement agreement, in form and substance the same as the previously existing Program Agreement;

- it will not claim any credit on or make any deduction from the principal and interest payable on the Notes or Borrowings (other than amounts withheld or deducted in accordance with the Master Trust Indenture); or

- it will not take any action that would cause it to be treated as engaged in a "trade or business within the United States" for U.S. federal income tax purposes.

Amendments to Master Trust Indenture

Amendments not Requiring Consent of Specified Creditors

The Issuer and the Indenture Trustee may amend, supplement or otherwise modify the Master Trust Indenture or any Supplemental Indenture without the consent of any Specified Creditor upon prior notice to each Rating Agency and the Province of Ontario and delivery by the Issuer to the Indenture Trustee of an officer's certificate to the effect that the Issuer reasonably believes that such amendment will not and is not reasonably expected to have an Adverse Effect. Such amendments to the Master Trust Indenture or any Supplemental Indenture may:

- evidence the succession or successive successions of another Financing Entity to the Issuer, and the assumption by such successor of the covenants of the Issuer in the Master Trust Indenture and the Notes;

- add to the covenants of the Issuer, or have the Issuer surrender any of its rights or powers under the Master Trust Indenture (or any Supplemental Indenture), for the benefit of the Debtholders of any or all Classes, Series or Tranches of Issuer Funding Obligations;

- cure any ambiguity, correct or supplement any provision in the Master Trust Indenture which may be inconsistent with any other provision in the Master Trust Indenture (or any Supplemental Indenture), to correct a clear clerical or administrative error, or make any other provisions for matters or questions arising under the Master Trust Indenture;

- provide for the issuance of any Series or Tranche of Notes and to set forth the terms thereof, and/or to add to the rights of the Noteholders of any Class, Series or Tranche;
- provide for the acceptance of a successor Indenture Trustee under the Master Trust Indenture;
- add any Events of Default relating to any or all Classes, Series or Tranches of Issuer Funding Obligations;
- provide for the consolidation of any financing entity and the Issuer into a single entity or the transfer of assets in any financing entity to the Issuer;
- if the IESO is replaced under the Master Transfer and Servicing Agreement, make any necessary changes to the Master Trust Indenture;
- provide for additional forms of credit enhancement for any Class, Series or Tranche of Issuer Funding Obligations;
- facilitate the issuance of foreign currency Issuer Funding Obligations;
- comply with any regulatory, accounting or tax laws, or changes to any ratings criteria;
- enable the Issuer to file a registration statement for the offering of securities registered under the Securities Act and to comply with Regulation AB thereunder; or
- qualify for sale treatment under generally accepted accounting principles.

The Master Trust Indenture or any Supplemental Indenture may also be amended by the Issuer and the Indenture Trustee without the consent of any Specified Creditor (but with prior notice to each Rating Agency and the Province of Ontario) in the following circumstances, provided that the Issuer delivers to the Indenture Trustee an officer's certificate to the effect that (i) the Issuer reasonably believes that such amendment will not and is not reasonably expected to have an Adverse Effect, and (ii) such amendment is required to comply with law, or to conform or be consistent with the statements contained in this confidential shelf offering memorandum:

- to facilitate compliance with changes in laws or regulations applicable to the Issuer or the transactions governed by the Program Agreements; or
- to cause the provisions of the Master Trust Indenture to conform to or be consistent with or in furtherance of the statements made in this confidential shelf offering memorandum with respect to the Master Trust Indenture or any Supplemental Indenture.

Additionally, the Master Trust Indenture or any Supplemental Indenture may also be amended by the Issuer and the Indenture Trustee without the consent of any Specified Creditor (but with prior notice to each Rating Agency and the Province of Ontario) in the following circumstances, provided that (i) the Issuer delivers to the Indenture Trustee an officer's certificate to the effect that the Issuer reasonably believes that such amendment will not and is not reasonably expected to have an Adverse Effect and (ii) the Rating Agency Condition is satisfied with respect to such amendment:

- to add provisions to, or change in any manner or eliminate any of the provisions of, the Master Trust Indenture or any Supplemental Indenture;
- to modify in any manner the rights of the Specified Creditors under the Master Trust Indenture or any Supplemental Indenture; or
- to provide for those changes necessary for compliance with securities law requirements or banking laws or regulations.

The Indenture Trustee may, but is not obligated to, enter into any amendment which adversely affects its rights, duties, benefits, protections, privileges or immunities under the Master Trust Indenture (or any Supplemental Indenture).

Amendments Requiring Consent of Debtholders

The Issuer and the Indenture Trustee may amend, supplement or otherwise modify and amend the Master Trust Indenture or any Supplemental Indenture for reasons other than those stated in the prior section ("*— Amendments not Requiring Consent of Specified Creditors*"), with prior notice to each Rating Agency and the Province of Ontario, the consent of Debtholders of each Class, Series or Tranche of Issuer Funding Obligations affected by that amendment, supplement or other modification by Ordinary Resolution, and satisfaction of the Rating Agency Condition. However, if the amendment, supplement or other modification would result in any of the following events occurring, it may be made only with the consent of each Debtholder of Issuer Funding Obligations affected thereby and satisfaction of the Rating Agency Condition:

- a change in an Interest Payment Date, Principal Payment Date or Principal Payment Default Date for any Issuer Funding Obligation;
- a reduction in the principal amount of, or interest rate on, any Note, or a change in the method of computing the outstanding principal amount in a manner that is adverse to any Debtholder;
- a reduction in the amount of a discount note payable upon its acceleration;
- a reduction in the percentage in outstanding principal amount of Issuer Funding Obligations of any Class, Series or Tranche, the consent of whose holders is required for modification or amendment of the Master Trust Indenture, any Supplemental Indenture or any related agreement or for waiver of compliance with provisions of the Master Trust Indenture or for waiver of defaults and their consequences provided for in the Master Trust Indenture;
- a modification of any of the provisions governing the amendment of the Master Trust Indenture or any Supplemental Indenture, or waivers of past defaults, except to increase any percentage of Debtholders required to consent to any such amendment or waiver, or to provide that certain other provisions of the Master Trust Indenture cannot be modified or waived without the consent of each Debtholder affected by such modification;
- a change in the city or political subdivision so designated with respect to any Class, Series or Tranche of Notes where any principal of, or interest on, any Note is payable; or
- a change in the method of computing the amount of principal of, or interest on, any Note on any date.

Debtholder Approvals and Meetings

Access to Debtholder Lists

The Indenture Trustee will preserve the names and addresses of all Specified Creditors received by it in its capacity as Note registrar and those which it has received from the Issuer in accordance with the Master Trust Indenture. Three or more Debtholders of any Series or Tranche, each of whom has owned an Issuer Funding Obligation of such Series or Tranche for at least six months, may, by application to the Indenture Trustee in the prescribed form, obtain access to the current list of Debtholders held by the Indenture Trustee for purposes of communicating with other Debtholders concerning their rights under the Master Trust Indenture (or any Supplemental Indenture) or under the applicable Program Agreement.

Debtholder Meetings

The Master Trust Indenture sets out the mechanics for meetings of Debtholders. The Master Trust Indenture provides for meetings of Debtholders of any Class, Series or Tranche of Issuer Funding Obligations, of all Issuer Funding Obligations, of Controlling Class Obligations of a Series or of all Controlling Class Obligations (each of such groups of Debtholders being a "**Debtholder Group**"). The Indenture Trustee will call a meeting of a Debtholder Group upon request of the Issuer or Debtholders of at least 25% in aggregate outstanding principal amount of the applicable Issuer Funding Obligations. If the Indenture Trustee fails to convene, or cause to be convened, such a meeting after 30 days, the Issuer or those Debtholders may convene the meeting. The Indenture Trustee may call a meeting of a Debtholder Group at any time for any purpose. The quorum for any meeting is one or more persons holding (personally or as proxies) not less than 25% of the outstanding principal amount of the Issuer Funding Obligations of the Debtholder Group entitled to vote at such meeting. Each Debtholder who is present, whether in person or by proxy, will have one vote for every $1,000 of outstanding principal amount of applicable Issuer Funding Obligations of which he or she shall be the holder.

Every question submitted to a meeting, except those matters requiring an Extraordinary Resolution, shall be decided by a majority of the votes (an "**Ordinary Resolution**"). Any matter requiring an Extraordinary Resolution shall be decided by the affirmative vote of Controlling Class Creditors holding not less than 66⅔% of the outstanding principal amount of all Controlling Class Obligations (an "**Extraordinary Resolution**"). Such matters include:

- after the security has become enforceable, authorizing the Indenture Trustee to accept, in satisfaction or partial satisfaction, all or any part of the Collateral;
- after the security has become enforceable, sanctioning the selling of the Collateral or any part thereof or interest therein;
- after the security has become enforceable, authorizing the Indenture Trustee or any other person to bid or tender at any sale of the Collateral or any part thereof and take such actions in connection with such sale as it determines to be in the best interests of all Controlling Class Creditors;
- consenting to any compromise or arrangement by the Issuer with any creditor, creditors or class or classes of creditors or with the holders of any securities of the Issuer whose claims are payable from the Collateral;
- restraining any Debtholder from taking or instituting any suit, action or proceeding for the purpose of realizing on the Collateral or for the execution of any trust or power hereunder or for the appointment of a liquidator, receiver or trustee in bankruptcy or to have the Issuer liquidated or for any other remedy hereunder and to direct such Debtholder to waive any Event of Default on which any suit or proceeding is founded;
- requiring the Indenture Trustee (subject to receipt by the Indenture Trustee of reasonable funding and indemnity) to exercise or refrain from exercising any other powers conferred upon it by the Master Trust Indenture of general application to all Classes of Issuer Funding Obligations, including the exercise of any rights of the Issuer under any of the Program Agreements upon the occurrence and during the continuance of an Event of Default, or cancel any declaration of acceleration made pursuant to the Master Trust Indenture upon such terms and/or conditions as may be decided;
- authorizing the Indenture Trustee, for and on behalf of all Debtholders, to file and prove a claim or debt against the Issuer or its property for an amount equivalent to the aggregate amount which may be payable in respect of all Issuer Funding Obligations, to value the Collateral, and to vote such claim or debt at meetings of creditors and generally act for and on behalf of all Debtholders in such proceedings as such Extraordinary Resolution may provide; and

- appointing a committee to exercise, on behalf of all Controlling Class Creditors, any powers of such Controlling Class Creditors as are exercisable by Extraordinary Resolution or other resolution (as specified in the Extraordinary Resolution appointing such committee).

Any resolution or instrument signed by the requisite number of Debtholders or Controlling Class Creditors, as applicable, shall have the same force and effect as a resolution duly passed at a meeting of such Debtholders or Controlling Class Creditors.

Any action or vote taken at a meeting (including by way of written instrument) of Debtholders of a Debtholder Group duly held in accordance with the Master Trust Indenture will be binding on all Debtholders of that Debtholder Group. An Extraordinary Resolution shall bind all Debtholders and all other Specified Creditors.

In determining whether Noteholders of the requisite principal amount have taken any action under the Master Trust Indenture, (i) Senior Notes owned by the Issuer, the Manager or any affiliate of either of them, and (ii) any Class of Notes (or portion thereof) in which the Province of Ontario has an interest will, in each case, be disregarded and deemed not to be outstanding at any time that a Specified Creditor other than the Province of Ontario has an interest in such Class of Notes. In determining whether the Indenture Trustee will be protected in relying upon any such action, only Senior Notes (or, in the case of the Province of Ontario, any Notes) which a responsible officer of the Indenture Trustee knows to be owned by the Issuer, OPG or any affiliate of either of them, or with respect to which the Province of Ontario has an interest pursuant to the Change of Law Protection Agreement, will be so disregarded.

Whenever an action may be taken by Debtholders of a specified percentage of outstanding principal amount of Issuer Funding Obligations and at such time there are outstanding Issuer Funding Obligations of any relevant Series denominated in a foreign currency, then the principal amount of the Issuer Funding Obligations of such Series which will be deemed to be outstanding for purposes of taking such action will be the amount of Canadian dollars which could be obtained for such principal amount at the market exchange rate on the applicable date.

Events of Default

General

Each of the following events is an "**Event of Default**":

(a) the Issuer's failure, for a period of 5 days, to pay interest on any Controlling Class Obligations when such interest becomes due and payable;

(b) the Issuer's failure to pay the principal of any Controlling Class Obligations at the Principal Payment Default Date;

(c) any representation or warranty in the Master Trust Indenture proves to be incorrect in any material respect when made and if capable of remedy, such incorrect representation or warranty is not remedied for a period of 60 days after the Indenture Trustee or Controlling Class Creditors holding at least 25% of the outstanding principal amount of all Controlling Class Obligations have provided written notice to the Issuer requesting remedy of that default and stating that as a result of such default, the interests of such Controlling Class Creditors are materially and adversely affected and continue to be materially and adversely affected during the 60-day period;

(d) the Issuer's default in the performance, or breach, of any other of its covenants or warranties in the Master Trust Indenture, for a period of 60 days after the Indenture Trustee or Controlling Class Creditors holding at least 25% of the outstanding principal amount of all Controlling Class Obligations have provided written notice to the Issuer requesting remedy of that default and stating that as a result of such default, the interests of such Controlling Class Creditors are materially and adversely affected and continue to be materially and adversely affected during the 60-day period;

(e) certain events of bankruptcy or insolvency of the Issuer, or the Issuer fails to maintain its existence or status as a Financing Entity;

(f) the Change of Law Protection Agreement ceases to be in full force and effect against the Province of Ontario, or the validity thereof, or the applicability thereof to the Province of Ontario or any Controlling Class Obligations is disaffirmed by the Province of Ontario;

(g) an Acceleration Event has occurred and Controlling Class Creditors holding at least 25% of the outstanding principal amount of all Controlling Class Obligations have provided written notice to the Issuer and the Indenture Trustee specifying the default;

(h) the Issuer's default in the performance of its covenant to deliver payment instructions for a period of three days after the Indenture Trustee has provided written notice thereof;

(i) at any time, the amounts withdrawn from the Program Cash Reserve Account prior to such time exceed the aggregate of (x) 0.50% of the largest outstanding principal amount of all Senior Funding Obligations, Subordinated Funding Obligations and Junior Subordinated Funding Obligations on or prior to such time, (y) the sum of all amounts deposited to the Program Cash Reserve Account, and (z) all interest and earnings (net of losses and investment expenses), if any, on funds credited to the Program Cash Reserve Account; or

(j) a Servicer Default occurs.

If Controlling Class Obligations constituting 25% or more of the outstanding principal amount of all Controlling Class Obligations have been accelerated in accordance with their Funding Obligation Agreements, the thresholds required in clauses (c), (d) or (g) will be deemed to have been met.

Waiver of Default

Subject to the summary provided for below under "— *Acceleration and Remedies — General*", Controlling Class Creditors may, by Ordinary Resolution, waive any past Default under the Master Trust Indenture so long as the Rating Agency Condition in respect of each Series or Tranche of Controlling Class Obligations has been satisfied.

Acceleration and Remedies

General

If an Event of Default (other than an Event of Default described in paragraph (e) or (f)) occurs and is continuing, either the Indenture Trustee or Controlling Class Creditors holding not less than 50% of the outstanding principal amount of all Controlling Class Obligations (treated as one class) may declare the outstanding principal amount of all Issuer Funding Obligations (other than Derivative Funding Obligations) to be immediately due and payable. If Controlling Class Obligations constituting 50% or more of the outstanding principal amount of all Controlling Class Obligations have been accelerated in accordance with their Funding Obligation Agreements, the 50% threshold required will be deemed to have been met. The occurrence of an Event of Default described in paragraph (e) or (f) results in an automatic acceleration of all Issuer Funding Obligations (other than Derivative Funding Obligations).

A declaration of acceleration or an automatic acceleration may be rescinded by Extraordinary Resolution if (i) the Issuer has paid all overdue interest, principal that has become due (other by reason of acceleration) on Controlling Class Obligations and other amounts set out in the Master Trust Indenture, and (ii) all Events of Default (other than non-payment of principal) have been cured or waived.

If Controlling Class Obligations are accelerated, the Indenture Trustee may amongst other things, (i) apply to a court for an order of sequestration and payment of amounts in respect of the Clean Energy Adjustment in accordance with the FHPA, (ii) take possession of the Collateral, (iii) appoint a receiver with respect to the

Collateral, (iv) initiate proceedings in any court for the appointment of a receiver or for sale or foreclosure, (v) exercise rights, remedies, powers, privileges and claims under any Program Agreement, including the right to terminate and replace the Manager or the Servicer, or (vi) take any other action, suit, remedy or proceeding authorized or permitted by the Master Trust Indenture or by applicable law. The Indenture Trustee is not obligated to exercise any of its rights or powers under the Master Trust Indenture at the request or direction of any Controlling Class Creditors unless Controlling Class Creditors offer the Indenture Trustee a reasonable indemnity.

See *"Risk Factors — Risks Associated with the Unusual Nature of the Investment Asset" and "Risk Factors — Insolvency-Related Risks Relating to the Issuer"*.

Limitation on Available Amounts on Acceleration

If all or any portion of the principal amount of any indebtedness of the Issuer (including one or more Series of Senior Notes) becomes due and payable after the Moratorium Period and before its scheduled payment date, maturity date or redemption date, then the estimated Finance Amount used by the Financial Services Manager to determine the Clean Energy Adjustment for a period will be determined without regard to the fact that such amount has become due and payable, unless and only to the extent that the amount of the Clean Energy Adjustment is capable of being increased based on the Fair Allocation Amount for such period. See *"Ontario's Fair Hydro Plan — Fair Allocation Amount and Financing Plan"*. However, upon such acceleration, all accelerated Senior Notes will be repaid in full before any further payments of principal are made to holders of subordinated indebtedness, including the subordinated debt held by OPG; therefore, collections of the Clean Energy Adjustment that would otherwise have been available to repay the principal amount of subordinated indebtedness in the absence of acceleration of the Senior Notes will instead be applied to repay accelerated Senior Notes. See *"Capital Markets Platform"*.[51]

Payment Waterfall Upon Acceleration

After acceleration of the Issuer Funding Obligations (other than derivative agreements), any money or other property standing to the credit of an Issuer Account (except as set out below) or otherwise collected by the Indenture Trustee will be applied in the following priority:

(a) first, to the payment or remittance of taxes for which a governmental authority is given priority over the Specified Creditors under the laws of the applicable jurisdiction;

(b) second, to pay fees, expenses and reimbursement amounts owing to the Issuer Trustee and the Indenture Trustee;

(c) third, *pari passu* (i) to pay interest, fees and other amounts (other than principal) owing in respect of Senior Funding Obligations and (ii) to pay all Derivative Funding Obligations (other than termination payments);

(d) fourth, to pay interest, fees and other amounts (other than principal) owing in respect of Subordinated Funding Obligations;

(e) fifth, to pay interest, fees and other amounts (other than principal) owing in respect of Junior Subordinated Funding Obligations;

(f) sixth, to pay principal owing in respect of Warehouse Obligations;

(g) seventh, *pari passu* (A) to pay principal owing in respect of Senior Funding Obligations (other than Warehouse Obligations) and (B) to pay termination payments owing to Derivative Counterparties where the Derivative Counterparty is not the defaulting party or the sole affected party;

[51] **Note:** Please consider tracking the specific terms of section 6.1 of the General Regulation, and add detailed descriptions to correspond to the limitation on cashflows during acceleration in the applicable detailed portions of the OM and Risk Factors.

(h) eighth, to pay fees, expenses and reimbursement amounts owing to the Manager;

(i) ninth, to pay principal owing in respect of Subordinated Funding Obligations;

(j) tenth, to pay principal owing in respect of Junior Subordinated Funding Obligations;

(k) eleventh, to pay termination payments owing to Derivative Counterparties where the Derivative Counterparty is the defaulting party or the sole affected party;

(l) twelfth, to pay all indemnity amounts owing to the Manager;

(m) thirteenth, *pari passu* (i) to the payment or remittance of taxes not previously paid pursuant to paragraph (a), and (ii) to pay all amounts owing to Specified Creditors not specifically referred to above; in each case, including, for each referenced party, any amounts payable to their respective affiliates under the terms of any relevant indemnity; and

(n) fourteenth, to pay any remaining amounts to the Issuer.

However, amounts on deposit in a Series Account will first be used to satisfy all obligations owing to the Debtholders or Derivative Counterparties for whom such Series Account was established. Thereafter, such amounts will be applied in accordance with the priorities set out above. In addition, amounts on deposit in the Protection Account will only be used to satisfy the obligations for which those amounts were deposited.

Rights of Specified Creditors

No Specified Creditor will have the right to institute any proceeding, judicial or otherwise, with respect to the Master Trust Indenture, or for the appointment of a receiver or trustee or similar official, or for any other remedy under the Master Trust Indenture. A Controlling Class Creditor may exercise such rights if:

(a) the Issuer or a Controlling Class Creditor has previously given to the Indenture Trustee written notice of a continuing Event of Default;

(b) Controlling Class Creditors, by Ordinary Resolution, have made written request of the Indenture Trustee to institute the proceeding in its own name as Indenture Trustee;

(c) Controlling Class Creditors have offered the Indenture Trustee a satisfactory indemnity; and

(d) the Indenture Trustee has, for 60 days, failed to institute the proceeding.

Subject to certain powers which may only be exercised by Extraordinary Resolution, Controlling Class Creditors, by Ordinary Resolution, will have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Indenture Trustee, or exercising any trust or power conferred on the Indenture Trustee with respect to all Issuer Funding Obligations. However, the Indenture Trustee may decline to follow such direction if it determines (based on advice from counsel) that such direction (i) conflicts with applicable law or the Master Trust Indenture, (ii) has a substantial likelihood of involving the Indenture Trustee in personal liability or (iii) is unjustly prejudicial to Controlling Class Creditors not taking part such direction. See "— *Debtholder Approvals and Meetings — Debtholder Meetings*" for a description of certain powers which may only be exercised by Extraordinary Resolution. Specified Creditors (other than Debtholders) do not have any right to direct the time, method and place of conducting any proceeding for any remedy available to the Indenture Trustee, or exercising any trust or power conferred on the Indenture Trustee. Specified Creditors (other than Debtholders) will only have the right to receive proceeds following an Event of Default.

Limited Recourse

The obligation of the Issuer to pay principal of and interest on the Issuer Funding Obligations or any other amount payable to any Specified Creditor is subject to the allocation and payment provisions in the Master Trust Indenture and the applicable Funding Obligation Agreement and limited to amounts available from the Collateral. Neither the Indenture Trustee, the Manager nor the Issuer Trustee in its individual capacity, nor any holder of any unit in the Issuer, nor any of their respective owners, beneficiaries, agents, officers, directors, employees, successors or assigns will, in the absence of an express agreement to the contrary, be personally liable for the payment of the principal of or interest on the Notes or any other Issuer Funding Obligation, or for the Issuer's covenants and agreements contained in the Master Trust Indenture.

No Petition

Each Specified Creditor, by accepting its rights as a beneficiary under the Master Trust Indenture, agrees that until one year and one day following repayment in full of all Issuer Funding Obligations, it will not commence (or join in commencing) a bankruptcy, insolvency or similar proceeding under the laws of any jurisdiction against the Issuer.

Force Majeure

The Indenture Trustee and the Issuer Trustee will not be responsible or liable for any failure or delay in the performance of their obligations under the Master Trust Indenture arising out of or caused by, directly or indirectly, forces beyond their control, including loss or malfunctions of utilities, communications or computer services.

Satisfaction and Discharge

The Master Trust Indenture will cease to be of further effect with respect to any Class, Series or Tranche of Issuer Funding Obligations when:

(a) (x) in the case of Notes, all Notes of that Class, Series or Tranche which had been outstanding, with certain exceptions set forth in the Master Trust Indenture, have been delivered to the Indenture Trustee for cancellation or been cancelled, or (y) in the case of all other Issuer Funding Obligations, all Issuer Funding Obligations of that Class, Series or Tranche have been paid in full, as certified by the Issuer;

(b) the Issuer has paid all other sums payable by it under the Master Trust Indenture with respect to that Class, Series or Tranche of Issuer Funding Obligations; and

(c) the Issuer has delivered to the Indenture Trustee an officer's certificate and an opinion of external counsel each stating that the conditions precedent in the Master Trust Indenture relating to the satisfaction and discharge with respect to that Class, Series or Tranche of Issuer Funding Obligations have been complied with.

The Master Trust Indenture will cease to be of further effect when all Issuer Funding Obligations have been satisfied and discharged in accordance with the previous paragraph and all other Obligations Secured have been paid in full, as certified by the Issuer.

DESCRIPTION OF NOTES

The following description of the Senior Notes is a summary of certain of their material attributes and characteristics, and does not purport to be complete. The terms and conditions set forth in this "Description of the Senior Notes" section will apply to each Senior Note unless otherwise specified in the Term Sheet applicable to such

Offering. For further particulars, reference should be made to the Master Trust Indenture and the Supplemental Indenture and Terms Document, if any, relating to the particular Series or Tranche of Senior Notes.

General

The Senior Notes will be issued under the Master Trust Indenture and will be Funding Obligations issued in connection with the financing program described under the heading "*Capital Markets Platform*". The specific terms and conditions of each Series of Senior Notes will be set forth in the Supplemental Indenture authorizing that Series and the specific terms and conditions of any Tranche of Senior Notes will be set forth in the Supplemental Indenture or the Terms Document authorizing that Tranche.

Under the Master Trust Indenture, the Issuer may issue an unlimited principal amount of Senior Notes. See "*Capital Markets Platform — Conditions Precedent to Incurrence of Obligations Secured — Issuer Funding Obligations*". The Senior Notes will be direct obligations of the Issuer and secured in the manner provided for under the Master Trust Indenture. See "*Capital Markets Platform — Security*".

The Supplemental Indenture or Terms Document will describe the following terms of the Senior Notes:

- the Series designation;
- stated principal amount of the Senior Notes;
- whether such Senior Notes are of a particular Tranche of Senior Notes;
- the currency or currencies in which such Senior Notes will be denominated and in which payments of principal of, and interest on, such Senior Notes will or may be payable;
- the price at which such Series or Tranche of Senior Notes will be issued;
- the times at which such Series or Tranche of Senior Notes may, pursuant to any optional redemption provisions, be redeemed, and the other terms and provisions of any such redemption;
- the rate per annum at which such Series or Tranche of Senior Notes will bear interest, if any, or the formula or index on which such rate will be determined;
- each Interest Payment Date, each Principal Payment Date and the Principal Payment Default Date for such Series or Tranche of Senior Notes;
- the Principal Accumulation Date(s) and Principal Accumulation Amount(s) for such Series of Senior Notes;
- the initial principal amount of such Senior Notes, and the means for calculating the outstanding principal amount of such Series or Tranche of Senior Notes;
- whether or not application will be made to list such Series or Tranche of Notes on any securities exchange;
- any events of default with respect to such Series or Tranche of Senior Notes;
- if such Series or Tranche of Senior Notes will be issued in whole or in part in the form of a global note, the terms and conditions, if any, upon which such global note may be exchanged for other individual Senior Notes, and the depository for such global note;
- if such Class, Series or Tranche of Senior Notes will be issued in whole or in part in registered form, bearer form or both, and if such Senior Notes will be issued with or without coupons;

- if such Class, Series or Tranche will have the benefit of a credit enhancement agreement or liquidity agreement, and the terms and provisions of the applicable agreement;

- the record date for any Interest Payment Date or Principal Payment Date of such Series or Tranche of Senior Notes, if different from the last of the month before the related Interest Payment Date or Principal Payment Date; and

- whether and under what conditions, additional amounts will be payable to Noteholders of such Series or Tranche of Notes.

Limitations

The Senior Notes do not constitute a debt, liability or other obligation of, or interest in, OPG or any of its other affiliates (other than the Issuer). The Senior Notes are not a debt, liability or obligation of the Province of Ontario or any of its political subdivisions, agencies or instrumentalities. The Senior Notes will not be insured or guaranteed by the Province of Ontario, OPG or any of their respective affiliates or any other person or entity, except that the Province of Ontario has agreed to provide a limited guarantee in respect of the Senior Notes following the occurrence of certain events. See *"Change of Law Protection Agreement"*.

Payments of Principal and Interest

Interest will accrue on the principal balance of each Series or Tranche of Senior Note at the interest rate specified in the related Term Sheet and will be payable on the Interest Payment Date(s) specified in the related Term Sheet. Principal of each Series or Tranche of Senior Notes will be payable in the amounts and on the Principal Payment Date(s) specified in the related Term Sheet. The Term Sheet applicable to a Series or Tranche of Senior Notes will also set out the Principal Payment Default Date for such Senior Notes, which is the date on which failure to pay the principal amount of such Senior Notes will result in an Event of Default.

On each Payment Date, the Issuer will, to the extent funds are available therefor from the Collection Account (see "*Capital Markets Platform — Payment Waterfalls Prior to Acceleration — Collection Account*"), transfer to the Interest Accumulation Account the aggregate amount of interest that has accrued on each Series of Senior Notes (together with all other amounts to be accrued for other Issuer Funding Obligations). On each Interest Payment Date for a Series or Tranche of Senior Notes, the Paying Agent will pay to the holders of such Senior Notes interest then due on such Senior Notes using amounts available therefor from the Interest Accumulation Account, the Principal Accumulation Account, the IESO Cash Reserve Account, the Program Cash Reserve Account and the Protection Account. See "*Change of Law Protection Agreement*" and "*Capital Markets Platform — Payment Waterfalls Prior to Acceleration*".

On each Payment Date, the Issuer will, to the extent funds are available therefor from the Collection Account (see "*Capital Markets Platform — Payment Waterfalls Prior to Acceleration — Collection Account*"), transfer to the Principal Accumulation Account the aggregate of the amounts the Issuer is required to accumulate for each Series of Senior Notes (together with all other amounts to be accumulated for other Issuer Funding Obligations). The Term Sheet applicable to a Series or Tranche of Senior Notes will set out the Principal Accumulation Amount(s) and the Principal Accumulation Date(s) for such Senior Notes. On each Principal Payment Date for a Series or Tranche of Senior Notes, the Paying Agent will pay to the holders of such Senior Notes the principal then due on such Senior Notes using amounts available therefor from the Principal Accumulation Account, the Program Cash Reserve Account and the Protection Account. See "*Change of Law Protection Agreement*" and "*Capital Markets Platform — Payment Waterfalls Prior to Acceleration*". Holders of Senior Notes may receive principal payments earlier than a Principal Payment Date if an optional redemption occurs and may receive principal payments later than a Principal Payment Date if there are insufficient Available Collections. See "*Risk Factors*" for a discussion of factors that may affect the timing of principal payments on a Series or Tranche of Senior Notes. It is not an Event of Default if the stated principal amount of a Series or Tranche of Senior Notes is not paid in full on a Principal Payment Date. If the stated principal amount of a Senior Note is not paid in full by its Principal Payment Default Date, an Event of Default will occur. See "*Capital Markets Platform — Events of Default*".

Unless otherwise specified in a Term Sheet, the Issuer has designated the Indenture Trustee as its Paying Agent for all Senior Notes having a place of payment in Toronto, Ontario.

Optional Redemption of Senior Notes

If a Supplemental Indenture for any Series or Tranche of Senior Notes states that such Senior Notes will be redeemable, in whole at any time or in part from time to time, such Senior Notes will be redeemable at the option of the Issuer at the redemption price specified in the Supplemental Indenture. If less than all the Senior Notes of any Series or Tranche are to be redeemed at one time, the Senior Notes of such Series or Tranche to be redeemed will be selected by the Indenture Trustee on a pro rata basis according to the principal amount of such Senior Notes registered in the name of each holder thereof, or in such other manner as the Indenture Trustee may consider equitable.

Notice of any redemption will be delivered to each holder of the Senior Notes to be redeemed, electronically or by mail (postage prepaid) at the address of such holder appearing in the Note register (or published in an authorized newspaper in the case of Senior Notes held in bearer form) or otherwise in accordance with the procedures of the depository, at least 15 days but not more than 30 days before the redemption date, except that redemption notices may be delivered more than 30 days prior to the redemption date if the notice is issued in connection with a satisfaction and discharge of the Master Trust Indenture with respect to such Series or Tranche of Senior Notes. The notice of redemption will state (i) the portion of the principal amount thereof to be redeemed (provided that no Senior Notes in an aggregate principal amount of 1,000 units of the applicable currency or less will be redeemed in part), (ii) the redemption date and (iii) the redemption price. Unless the Issuer defaults in payment of the redemption price, on and after the redemption date, interest will cease to accrue on the Senior Notes or portions of the Senior Notes called for redemption. A replacement note in principal amount equal to the unredeemed portion thereof will be issued in the name of the holder thereof upon cancellation of the original note; provided, however, that, in the case of a global note, an appropriate notation may instead be made on such note to decrease the principal amount thereof to an amount equal to the unredeemed portion thereof.

The Term Sheet for each Offering will identify the redemption provisions of the applicable Notes at the time of such Offering.

Purchase for Cancellation

The Issuer may purchase or otherwise acquire, at any time or from time to time, all or any of the outstanding Senior Notes of any Series or Tranche in the market or by invitation for tenders or by private contract at such prices as it may determine in its sole discretion. All such Senior Notes purchased by the Issuer will be cancelled. If, upon a tender, more Senior Notes of a Series or Tranche are tendered at the same lowest price than the Issuer is prepared to accept, the Senior Notes of such Series or Tranche to be purchased will be selected by the Indenture Trustee on a pro rata basis according to the principal amount of such Senior Notes registered in the name of each holder thereof, or in such other manner as the Indenture Trustee may consider equitable.

DEPOSITORY SERVICES

Except as otherwise provided below, the Senior Notes will be issued in "book-entry only" form and must be purchased, transferred, redeemed or exchanged through participants ("**Participants**") in the depository service of a depository chosen by the Issuer (the "~~**depository**~~**Depository**") or its nominee, which include securities brokers and dealers, banks and trust companies. On the closing date of an Offering, the Issuer will cause a global certificate representing the Senior Notes to be delivered to, and registered in the name of, the ~~depository~~Depository or its nominee. Except as described below, no purchaser of Senior Notes will be entitled to a certificate or other instrument from the Issuer or the ~~depository~~Depository evidencing that purchaser's ownership thereof, and no purchaser will be shown on the records maintained by the ~~depository~~Depository except through a book-entry account of a Participant acting on behalf of such purchaser. Each purchaser of Senior Notes will typically receive a customer confirmation of purchase from the registered dealer from which the Senior Notes are purchased in accordance with the practices and procedures of that registered dealer. The practices of registered dealers may vary, but generally, customer confirmations are issued promptly after execution of a customer order. The ~~depository~~Depository will be responsible for establishing and maintaining book-entry accounts for its Participants having interests in the Senior Notes.

Neither the Issuer, the Indenture Trustee nor the Agents will assume any liability for: (i) any aspect of the records relating to the beneficial ownership of the Senior Notes held by the ~~depository~~Depository or the payments relating thereto; (ii) maintaining, supervising or reviewing any records relating to the Senior Notes; or (iii) any advice or representation made by or with respect to the ~~depository~~Depository or those contained in this confidential shelf offering memorandum and relating to the rules governing the ~~depository~~Depository or any action to be taken by the ~~depository~~Depository or at the direction of its Participants. The rules governing the ~~depository~~Depository provide that it acts as the agent and ~~depository~~Depository for the Participants. As a result, Participants must look solely to the depository and persons, other than Participants, having an interest in the Senior Notes must look solely to Participants for payments made by or on behalf of the Issuer to the ~~depository~~Depository in respect of the Senior Notes.

If: (i) required by applicable law; (ii) the ~~depository~~Depository notifies the Issuer in writing that the ~~depository~~Depository is no longer willing or able to discharge properly the responsibilities of a depository with respect to the Senior Notes and the Issuer is unable to locate a qualified successor; (iii) the Issuer determines the Senior Notes in book-entry only form should be exchanged for definitive certificates and the Issuer delivers a written notice to such effect to the Indenture Trustee; (iv) an Event of Default has occurred and Noteholders holding more than 50% of the Controlling Class Obligations of any Series of Senior Notes determine such book-entry system is no longer in the best interests of the holders of that Series; or (v) the book-entry system is terminated, then certificates representing the Senior Notes will be issued to the beneficial owners of Senior Notes.

Interest on the Senior Notes will be paid directly to CDS while the book-entry only system is in effect. If definitive certificates are issued, interest will be paid by wire transfer of immediately available funds to the accounts specified by the holders thereof or, if no such account is specified, by mailing a cheque to each such holder's registered address. Payment of principal, and the interest due, at maturity, will be paid directly to CDS while the book-entry only system is in effect. If definitive certificates are issued, payment of principal, and interest due, at maturity, will be paid upon surrender thereof at any office of the Trustee or as otherwise specified in the Indenture.

Manner of Effecting Transfer or Redemption

A transfer or redemption of Senior Notes held in "book-entry form" only will be effected through records maintained by the ~~depository~~Depository or its nominee with respect to interests of Participants, and on the records of Participants with respect to interests of persons other than Participants. Purchasers of such Senior Notes who are not Participants, but who desire to purchase, sell or otherwise transfer ownership of or other interests in the Senior Notes, may do so only through Participants.

DTC, Euroclear and Clearstream, Luxembourg

Where CDS acts as depository for a series of Senior Notes, to the extent the Issuer makes such series of Senior Notes eligible with The Depositary Trust Company ("**DTC**"), Euroclear Bank S.A./N.V., as operator of the Euroclear System ("**Euroclear**") and Clearstream Banking, société anonyme ("**Clearstream, Luxembourg**"), and the Issuer specifies as such in the Term Sheet with respect to the particular series of Senior Notes, holders may hold such series of Senior Notes through the accounts maintained by DTC, Euroclear or Clearstream, Luxembourg, as applicable, as participants in CDS only if they are participants of those systems, or indirectly through organizations which are participants of those systems.

In such case, DTC, Euroclear and Clearstream, Luxembourg will hold omnibus book-entry positions on behalf of their participants through customers' securities accounts in their respective depositaries which in turn will hold such positions in customers' securities accounts in the names of the nominees of the depositaries on the books of CDS. All securities in DTC, Euroclear and Clearstream, Luxembourg are held on a fungible basis without attribution of specific certificates to specific securities clearance accounts.

Transfers of such Senior Notes by persons holding through Euroclear or Clearstream, Luxembourg participants, as applicable, will be effected through CDS, in accordance with CDS rules, on behalf of the relevant European international clearing system by its depositaries; however, such transactions will require delivery of transfer instructions to the relevant European international clearing system by the participant in such system in accordance with its rules and procedures and within its established deadlines (European time). The relevant

European international clearing system will, if the transfer meets its requirements, deliver instructions to its depositaries to take action to effect the transfer of the Senior Notes on its behalf by delivering Senior Notes through CDS and receiving payment in accordance with its normal procedures for next-day funds settlement. Payments with respect to the Senior Notes held through Euroclear or Clearstream, Luxembourg will be credited to the cash accounts of Euroclear participants or Clearstream, Luxembourg participants in accordance with the relevant system's rules and procedures, to the extent received by its depositaries.

All information in this confidential shelf offering memorandum concerning CDS, DTC, Euroclear and Clearstream, Luxembourg, reflects the Issuer's understanding of the policies of such organizations which may change at any time without notice.

PLAN OF DISTRIBUTION

The Senior Notes may be sold by the Issuer directly pursuant to applicable statutory exemptions or through agents designated by the Issuer from time to time. Each Term Sheet will identify the Agents engaged in connection with the applicable Offering of Senior Notes and will also set forth the terms of the Offering of Senior Notes, including the net proceeds to the Issuer and, to the extent applicable, any fees payable to the Agents. The Agents will conditionally offer the Senior Notes for sale on a "best efforts" basis, if, as and when issued and delivered by the Issuer in accordance with the conditions contained in an agency agreement (the "**Agency Agreement**") between the Issuer, OPG and the Agents to be entered into on or about the date of each Term Sheet. The Agents will be paid a fee by the Issuer for their services rendered to the Issuer in connection with the offering, issue and sale of the Senior Notes. The obligations of the Agents under the Agency Agreement may be terminated upon the occurrence of certain stated events. The Agents may over-allot or effect transactions which stabilize or maintain the market price of the Senior Notes at a level different than that which might otherwise prevail in the open market. Such transactions, if commenced, may be discontinued at any time.

The Senior Notes may not be offered or sold, directly or indirectly, in Canada or to or for the account of any Canadian resident except, in the case of sales made in any province of Canada, pursuant to an exemption from the prospectus requirements in Section 2.3 of NI 45-106 and, in the case of a purchaser resident in Ontario, section 73.3(2) of the *Securities Act* (Ontario), also known as the "accredited investor" exemption. In addition, Senior Notes will not be offered or sold, directly or indirectly, to individuals unless those individuals are also "permitted clients" within the meaning of NI 31-103.

Resale of the Senior Notes will be subject to restrictions under applicable securities legislation which vary depending on the relevant jurisdictions. **The Senior Notes may only be sold on a basis that is exempt from the prospectus requirements of applicable securities legislation through an appropriately registered dealer or pursuant to an exemption from the registration requirements of applicable securities legislation**. See *"Restrictions on Resale"*.

This confidential shelf offering memorandum does not constitute an offer to sell or a solicitation of an offer to buy any of the Senior Notes in the United States. The Senior Notes have not been and will not be registered under the U.S. Securities Act or any state securities laws and may not be offered or sold within the United States or to, or for the account or benefit of, U.S. persons (as such term is defined in Regulation S under the U.S. Securities Act) unless the Senior Notes are registered under the U.S. Securities Act and applicable state securities laws or an exemption therefrom is available. In addition, until 40 days after the commencement of an Offering, any offer or sale of the Senior Notes within the United States by any dealer (whether or not participating in an Offering) may violate the registration requirements of the U.S. Securities Act if such offer or sale is made otherwise than in accordance with an exemption from the registration requirements of the U.S. Securities Act. Each Agent has agreed that, except as permitted by an Agency Agreement, it will not offer or sell the Senior Notes as part of the distribution of the Senior Notes at any time within the United States or to, or for the account or benefit of, U.S. persons.

RISK FACTORS

An investment in Senior Notes involves certain risks. Prospective investors in the Senior Notes should carefully consider all the information included in this confidential shelf offering memorandum, including the risks described below, before deciding to invest in the Senior Notes. This section does not describe all risks applicable to the Issuer

and is intended only as a summary of certain material risks. In addition, prospective investors should consult their own financial and other legal and tax advisors, and should carefully consider, among other matters, the following discussion of risks before deciding whether to purchase Senior Notes.

Judicial, Legislative or Regulatory Risks

Future legal action might challenge or invalidate the FHPA or the Regulations and materially adversely affect a holder's investment in the Senior Notes.

The Investment Asset is a creation of the FHPA, which became effective on June 1, 2017. The Issuer will be the first Financing Entity under the FHPA to issue Funding Obligations as contemplated under the FHPA. The FHPA, the Regulations or any provisions thereof might be directly contested in courts or otherwise become the subject of litigation. The FHPA is novel legislation in Canada and therefore there are no precedents to rely on to support the validity of the FHPA or the Regulations.

As of the date of this confidential shelf offering memorandum, no such litigation has arisen; however, there can be no assurance that a lawsuit challenging the validity of some portion or all of the FHPA or the Regulations will not be filed in the future or that, if filed, such lawsuit will not be successful. If such a lawsuit ~~were successful, it would likely be a Protection Event and the provisions of the Change of Law Protection Agreement would apply. See "Change of Law Protection Agreement". If such successful lawsuit was not, however, a Protection Event~~was successful, and an invalidation of any relevant underlying legislative or regulatory provision were to result that did not constitute a Protection Event under the Change of Law Protection Agreement, a holder of Senior Notes may lose some or all of their investment in the Senior Notes or experience significant delays in recovering their investment in the Senior Notes. Even if the successful lawsuit constitutes a Protection Event, under the terms of the Change of Law Protection Agreement, the Province of Ontario is not obligated to pay or indemnify the Indenture Trustee or any Specified Creditor for consequential, special or punitive damages, or for economic loss or loss of profits (provided that economic loss does not include any amount in respect of an amount due and payable to a Specified Creditor under the Limited Guarantee).

Future legislative action to change the FHPA, the Regulations, the Change of Law Protection Agreement or the electricity market might materially adversely affect a holder's investment in the Senior Notes.

The FHPA provides that no act or omission of the ~~Province of Ontario~~Crown shall be effective to reduce, impair, postpone or terminate the obligations of Specified Consumers to pay amounts in respect of the Clean Energy Adjustment or to impair or postpone the invoicing, collection or remittance of the Clean Energy Adjustment. Ontario does not have a referendum or initiative process by which the FHPA may be amended or ~~revoked~~repealed. Therefore, the only way for such provisions of the FHPA to be amended or ~~revoked~~repealed would be through a subsequent legislative action by the Province of Ontario. A determination by the Province of Ontario that, for political or other reasons, the FHPA or the Regulations should no longer be law in Ontario or that the FHPA or Regulations should be amended to limit or delay the recovery of Clean Energy Adjustments, could result in a decision to make such an amendment, repeal or revocation. Any such action that ~~materially and~~ adversely ~~effects~~affects the ability of the Issuer to receive amounts in respect of the Investment Interest so that it can pay ~~its obligations under the Senior Notes~~Approved Obligations when due and payable (determined after taking into account certain factors described above in the definition of "Protection Event") would be subject to the Change of Law Protection Agreement. Under the Change of Law Protection Agreement, the Province of Ontario is not obligated to pay or indemnify the Indenture Trustee or any Specified Creditor for consequential, special or punitive damages, or for economic loss or loss of profits (provided that economic loss does not include any amount in respect of an amount due and payable to a Specified Creditor under the Limited Guarantee). See *"Change of Law Protection Agreement"*. However, future legislative action by the Province of Ontario could also be taken that would have the effect of voiding or otherwise rendering invalid the Change of Law Protection Agreement.

Canada does not have any constitutional protection of property rights. While an adverse impact of statutory measures on private property has, in some circumstances, been judicially held to entitle property owners to compensation, such entitlements themselves can also be extinguished by legislation. Accordingly, if the provisions of the FHPA or the Regulations referenced in the previous paragraph were amended or revoked through subsequent legislative action of the Province of Ontario and future legislative action was also taken by the Province of Ontario that had the effect of

voiding or otherwise rendering invalid the Change of Law Protection Agreement, a holder of Senior Notes may lose some or all of their investment in the Senior Notes or experience significant delays in recovering their investment in the Senior Notes.

Future judicial action could reduce the value of a holder's investment in the Senior Notes.

The Investment Asset is the creation of the FHPA. There is uncertainty associated with investing in Senior Notes payable from an interest in an asset that depends on legislation for its existence because there is no juridical or regulatory experience implementing and interpreting the legislation or similar legislation in Canada. Because the Investment Asset is a creation of the FHPA, any judicial determination interpreting the FHPA or the Investment Asset might have an adverse effect on a holder of Senior Notes' investment in the Senior Notes.

Potential difficulties in enforcing civil liabilities against the Province of Ontario may arise.

Under the *Proceedings Against the Crown Act* (Ontario), the remedies of injunction and specific performance are not available against the Province of Ontario, although the remedy of damages is available.[52] Nothing in the Change of Law Protection Agreement or the Program Agreements affects the rights, protections and immunities of the Crown under the *Proceedings Against the Crown Act* (Ontario). As a result, if the Province of Ontario fails to comply with the Change of Law Protection Agreement, the Indenture Trustee's ability to obtain an effective remedy against the Province of Ontario is limited and holders of Senior Notes may lose some or all of their investments in the Senior Notes or experience significant delays in recovering their investments.[53]

Risks Associated with the Unusual Nature of the Investment Asset

Clean Energy Adjustments will not be payable until May 1, 2021 and until such time the IESO will be the sole source of funds for payment on the Senior Notes.

During the Moratorium Period, no Clean Energy Adjustments are permitted to be collected from Specified Consumers. During the Moratorium Period, a holder of Senior Notes must rely for payment of interest on the Senior Notes, and the Issuer must rely for payment of all of its other ~~carrying costs~~Carrying Costs, solely upon the IESO who is obligated under the Regulations to pay these ~~carrying costs~~Carrying Costs. The IESO has granted the Issuer a first-priority security interest in all its accounts receivable from Electricity Vendors, which includes the amounts receivable by the IESO from Electricity Vendors with respect to the global adjustment charge, as security for the performance of its regulatory obligation to pay the Issuer's ~~carrying costs~~Carrying Costs. The IESO also has a $2 billion unsecured credit facility agreement with the Ontario Financing Authority, expiring ■, 20■, which ~~can~~is permitted to be used to pay the Issuer's ~~carrying costs~~Carrying Costs. ***[NTD: IESO credit facility description to be confirmed.]***[54] There can be no assurance that the IESO will continue to have sufficient funds available to pay interest on the Senior Notes or to pay the Issuer's other ~~carrying costs~~Carrying Costs during the Moratorium Period. If the Issuer enforces the security granted to the Issuer by the IESO during this period, there can be no assurance that the IESO's accounts receivable from Electricity Vendors will be sufficient to pay interest on the Senior Notes or the Issuer's other ~~carrying costs~~Carrying Costs and a holder of Senior Notes may suffer material payment delay on the Senior Notes during the Moratorium Period.

The Issuer's ability to enforce security granted by the IESO may be significantly impaired or delayed.

Under various Canadian bankruptcy, insolvency and restructuring statutes or Canadian federal or provincial receivership laws, including the *Bankruptcy and Insolvency Act* (Canada), the *Companies' Creditors Arrangement Act* (Canada), the *Canada Business Corporations Act*, the *Winding-up and Restructuring Act*, and various provincial corporate statutes (collectively, "**Canadian Insolvency and Restructuring Laws**"), the Issuer's ability to enforce security granted by the IESO may be significantly impaired or delayed. In view of the broad discretionary powers of

[52] **Note:** Consider mentioning that section 21 of the *Proceedings Against the Crown Act* (Ontario) prohibits execution, attachment and process against the Province.

[53] **Note:** Consider mentioning, as a mitigant, that section 22 of the *Proceedings Against the Crown Act* (Ontario), which states that "the Minister of Finance shall pay out of the Consolidated Revenue Fund the amount payable by the Crown, (a) under an order of a court that is final and not subject to appeal; (b) under a settlement of a proceeding in a court…".

[54] **Note:** Is there any other information to be added apart from the expiry date?

courts under Canadian Insolvency and Restructuring Laws, it is not possible to predict how long payments of ~~carrying costs~~Carrying Costs by the IESO or enforcement of any letter of credit or performance guarantee provided by the IESO could be delayed following commencement of a proceeding under Canadian Insolvency and Restructuring Laws by the IESO or whether or when the Issuer would be able to repossess or dispose of the assets over which it holds a security interest. Canadian Insolvency and Restructuring Laws also contemplate the granting of super priority security interests or charges (which could be in priority to the security of existing secured creditors) on the assets of the debtor company to secure the repayment of any amounts to be borrowed to facilitate the insolvency proceeding, any amounts owing for the fees and costs of professionals involved in the insolvency proceeding, obligations of directors of the company with respect to their statutory liabilities and sometimes other amounts.

Canadian Insolvency and Restructuring Laws also contain provisions enabling an obligor to prepare and file a proposal or a plan of arrangement or reorganization for consideration by all or some of its creditors, to be voted on by the various classes of creditors affected thereby. Such a restructuring proposal or plan of arrangement or reorganization, if accepted by the requisite majority of each class of affected creditors and if approved by the relevant Canadian court, would be binding on all creditors of the applicable obligor within the affected classes, including the Issuer, whether or not the Issuer votes in favour of the restructuring proposal or plan of arrangement or reorganization. Such a proposal or plan of arrangement or reorganization may have the effect of compromising certain rights available to the Issuer with respect to the payment of ~~carrying costs~~Carrying Costs or enforcement of any security provided by the IESO under the Master Transfer and Servicing Agreement.

A holder of Senior Notes may experience material payment delays because the source of funds for payment after the Moratorium Period is limited.

A holder of Senior Notes may suffer material payment delays on the Senior Notes if the collateral securing the Senior Notes is insufficient to pay the accrued interest on and the principal amount of those Senior Notes in full. During the Moratorium Period, a holder of Senior Notes must rely for payment of interest on the Senior Notes, and the Issuer must rely for payment of all of its other ~~carrying costs~~Carrying Costs, solely upon the IESO who is obligated under the Regulations to pay these ~~carrying costs~~Carrying Costs. After the Moratorium Period, the only source of funds for payments of interest on and principal of the Senior Notes will be the collateral. The collateral for the Senior Notes will include:

- the Investment Interest, including the right to impose, bill, collect and receive Clean Energy Adjustment amounts, inclusive of the True-up Amount;
- the cash and investments on deposit in the accounts held by the Indenture Trustee; and
- the Issuer's rights under various contracts described in this confidential shelf offering memorandum and under the FHPA and the Regulations.

The Senior Notes will not be insured or guaranteed by the Province of Ontario, the IESO, OPG or any of their respective affiliates, the Indenture Trustee or any other person or entity, except pursuant to the Limited Guarantee provided by the Province of Ontario upon the occurrence of a Protection Event and delivery by the Indenture Trustee to the Province of Ontario of a written payment demand. See *"Change of Law Protection Agreement"*. The Senior Notes will be ~~nonrecourse~~limited recourse obligations, secured only by the collateral. See "*Capital Markets Platform — Acceleration and Remedies — Limited Recourse*". Delays in payment on the Senior Notes might result in a reduction in the market value of the Senior Notes and, therefore, the value of a holder's investment in the Senior Notes.

The Senior Notes do not constitute a debt, liability or other obligation of, or interest in, OPG or any of its other affiliates (other than the Issuer). The Senior Notes are not a debt, liability or ~~general~~other obligation of the Province of Ontario or any of its political subdivisions, agencies or instrumentalities. ~~However, insofar as the Province of Ontario or any such political subdivision, agency or instrumentality is a Specified Consumer, such governmental entity will be obligated, in its capacity as a Specified Consumer, to pay Clean Energy Adjustment amounts that will be collected and remitted to the Issuer in respect of its Investment Interest securing the Senior Notes.~~

A holder of Senior Notes must rely for payment of principal of and interest on the Senior Notes solely upon the FHPA and the Regulations, rights to enforcement of the FHPA, the Regulations and of various agreements described in this confidential shelf offering memorandum, collections of Clean Energy Adjustment amounts and cash and investments on deposit in the related accounts held pursuant to the Master Trust Indenture.

The Clean Energy Adjustment may not be billed after April 30, 2047, unless further regulations to extend that date are passed.

The Clean Energy Adjustment may not be billed to Specified Consumers after April 30, 2047, unless further regulations to extend that date are passed. If Clean Energy Adjustment amounts billed through this period are not sufficient to repay the Senior Notes in full and further regulations to extend this date are not passed, apart from amounts in the capital accounts, if any, no other funds will be available to pay the unpaid balance due on the Senior Notes.

Foreclosure of the Indenture Trustee's lien on the Investment Interest securing the Senior Notes might not be practical and acceleration of the Senior Notes before maturity might have little practical effect.

Under the Master Trust Indenture, the Indenture Trustee on behalf of the holders of Senior Notes and other creditors has the right to foreclose or otherwise enforce the lien granted to the Indenture Trustee by the Issuer on the collateral securing the Senior Notes. However, in the event of foreclosure, there is likely to be a limited market, if any, for the collateral. Therefore, foreclosure might not be a realistic or practical remedy. Moreover, although principal of the Senior Notes will be due and payable upon acceleration of the Senior Notes before maturity, under the Regulations, the amount of the Clean Energy Adjustment may not be increased to take into account such acceleration (subject to limited exceptions depending on the Fair Allocation Amount at the time). As a result, this limitation on increases to the Clean Energy Adjustment at the time of any acceleration of the Senior Notes prior to maturity will result in principal of the Senior Notes being paid on acceleration as funds become available. However, upon such acceleration, the priority of principal payments to creditors of the Issuer will result in all accelerated Senior Notes being repaid in full before any further payments of principal are made to holders of subordinated indebtedness of the Issuer. In the event of an acceleration, holders of Senior Notes may be paid sooner or later than originally expected.

The Issuer may issue multiple Series of Senior Notes secured by the Investment Interest and some decisions affecting holders of Senior Notes may require the approval of all Series.

The Issuer may issue multiple Series of Senior Notes all of which will be secured by the collateral securing the Senior Notes. The Issuer may not issue additional Series of Senior Notes if the issuance would not satisfy the Rating Agency Condition and certain other conditions precedent in the Master Trust Indenture. See *"Capital Markets Platform — Conditions Precedent to Incurrence of Obligations Secured — Issuer Funding Obligations"*. If additional Series of Senior Notes are issued, Clean Energy Adjustment amounts collected by or for the benefit of the Issuer will be prorated among the Series of Senior Notes based on the respective amounts of interest and principal due and payable or required to be accumulated in respect of each Series of Senior Notes. Any issuance of additional Series of Senior Notes by the Issuer could cause reductions or delays in payment on the Senior Notes. In addition, some matters relating to the Senior Notes issued by the Issuer may require the vote of the holders of all Series of Senior Notes. The interests of holders of a particular Series of Senior Notes in these votes might conflict with the interests of the holders of another Series of Senior Notes. Thus, these votes could result in an outcome that is materially unfavorable to holders of a particular Series of Senior Notes.

The Master Trust Indenture contains Events of Default (other than those pertaining to the insolvency of the Issuer or invalidity of the Change of Law Protection Agreement) that can only be declared by Debtholders who hold at least 25% of the outstanding Controlling Class Obligations. If any such Event of Default has occurred and is continuing, Debtholders who hold at least 50% of the outstanding Controlling Class Obligations may accelerate all Issuer Funding Obligations (other than Derivative Funding Obligations). However, it is possible for individual Series of Senior Notes to have their own acceleration events such that those individual Series of Senior Notes may be accelerated while other Series of Issuer Funding Obligations would not be accelerated. In such a case, (i) the allocation of Available Collections to the holders of accelerated Series of Issuer Funding Obligations in a Class would be higher relative to the non-accelerated Series of Issuer Funding Obligations of that Class than it would otherwise be, and (ii) after payment in full of accelerated Senior Notes and other Senior Funding Obligations and

once all amounts due and payable on non-accelerated Senior Notes and other Senior Funding Obligations have been satisfied on any principal payment date, amounts remaining for payment of principal would be allocated to the repayment of principal on both accelerated and non-accelerated subordinated debt, as applicable. In certain cases, a declaration of acceleration or an automatic acceleration may also be rescinded by Extraordinary Resolution if (i) the Issuer has paid all overdue interest, principal that has become due (other than by reason of acceleration) on Controlling Class Obligations and other amounts set out in the Master Trust Indenture, and (ii) all Events of Default (other than non-payment of principal) have been cured or waived. See *"Capital Markets Platform — Acceleration and Remedies — General"*.

If a Series of Senior Notes or all Senior Notes are accelerated, a holder of Senior Notes might receive payment of principal sooner or later than expected.

Under certain circumstances it is possible that all outstanding Senior Notes will be accelerated as a Class or that certain Series of Senior Notes will be accelerated while other Series of Senior Notes will not be accelerated. See *"Capital Markets Platform – Acceleration and Remedies"*. The possibility of certain Series of Senior Notes accelerating while other Series of Senior Notes do not accelerate would arise if (i) an Event of Default occurs but Noteholders holding at least 50% of all outstanding Senior Notes do not approve the acceleration of all outstanding Senior Notes, and (ii) holders of Senior Notes of a particular Series approve the acceleration of the Senior Notes of that Series by the requisite majority of holders of that Series as set out in the applicable supplemental indenture for that Series.

If all Senior Notes are accelerated the application of available funds will be as described under *"Capital Markets Platform — Acceleration and Remedies"* for all Senior Notes. It is possible that holders of 50% or more of the outstanding principal balance of all Senior Notes will approve the acceleration of all Senior Notes even if holders of a particular Series of Senior Notes do not vote in favour of the acceleration of the Senior Notes of that Series.

If only certain Series of Senior Notes are accelerated, then the outstanding principal balance of those Series of Senior Notes will become immediately due and payable but the payment due dates of those Series of Senior Notes that have not been accelerated will not change. In this case, the application of available funds will continue as described under *"Capital Markets Platform -- Payment Waterfalls Prior to Acceleration"*.

Where all Series of Senior Notes or only certain Series of Senior Notes are accelerated, available funds that would otherwise be used to pay the principal amount of subordinated indebtedness will be applied to repay principal of the accelerated Senior Notes. This could result in a holder of Senior Notes that have been accelerated receiving payment of principal sooner than expected. If a Series of Senior Notes has not been accelerated, the payment of principal on such Senior Notes should not occur earlier than expected as the payment due dates for such Senior Notes will not have been accelerated.

Where all Series of Senior Notes or only certain Series of Senior Notes are accelerated, available funds that would otherwise be used to pay the principal amount of the Senior Notes in accordance with the original repayment schedules of such Senior Notes may be applied to repay principal of the accelerated Senior Notes *pari passu* with the principal due on all outstanding Senior Notes (subject to the payment priority given to Warehouse Funding Obligations). If accelerated Senior Notes were not expected to be repaid before a particular Series of Senior Notes at the time the accelerated Senior Notes were issued, the acceleration of such Senior Notes could result in the holder of a particular Series of Senior Notes receiving payment of principal later than expected.

The Issuer may have a co-ownership interest in the Investment Asset with other Financing Entities.

The FHPA authorizes the establishment of one or more Financing Entities that may incur Funding Obligations for the purpose of acquiring an Investment Interest. The Master Trust Indenture does not contain any restrictions on the establishment of other Financing Entities or any restrictions on the transfer by the IESO of a specified portion of the Regulatory Asset to other Financing Entities. If additional Funding Obligations are incurred by other Financing Entities to acquire an Investment Interest, Clean Energy Adjustment amounts collected by or for the benefit of the Issuer will be prorated among all Investment Interest owners based on the respective amounts of Clean Energy

Adjustment amounts invoiced and not yet paid. Any issuance of Funding Obligations by other Financing Entities could cause reductions or delays in payment on the Senior Notes.[55]

If the Clean Energy Adjustment amounts and other funds held in the Issuer Accounts results in investment losses or the investments become illiquid, a holder of Senior Notes might receive payment of principal of and interest on the Senior Notes later than expected.

Funds held in the Issuer Accounts will be invested in Eligible Investments. Eligible Investments include, among other categories, money market funds having a rating in the highest investment category from each applicable Rating Agency. Although investments in these money market funds have traditionally been viewed as highly liquid with a low probability of principal loss, illiquidity and principal losses have been experienced by investors in certain of these funds as a result of disruptions in the financial markets in recent years. If investment losses or illiquidity are experienced, a holder of Senior Notes might experience a delay in payments of principal and interest and a decrease in the value of their investment in the Senior Notes.

Servicing, Operating and Consumer Risks

Payments on the Senior Notes depend on the performance of Electricity Vendors and the IESO.

The Issuer's receipt of Clean Energy Adjustment amounts, which will be used to make payments on the Senior Notes, will depend in part on the skill and diligence of Electricity Vendors and the IESO and their respective successors in performing their respective duties under the FHPA, the Regulations and, with respect to the IESO, the Master Transfer and Servicing Agreement.

The FHPA, the Regulations and the Program Agreements impose new duties and obligations of the IESO and Electricity Vendors. There can be no assurances that the new duties and obligations of the IESO and the Electricity Vendors will be assumed and implemented without difficulty and in accordance with the provisions of the FHPA, the Regulations and the Program Agreements. If the IESO ceases to perform, or inadequately performs, its collection, remittance, forecasting and other functions under the terms of the FHPA, the Regulations and the Master Transfer and Servicing Agreement, it might be difficult to enforce these obligations against the IESO. While the Indenture Trustee has the right to replace the IESO, as servicer, on an Event of Default upon receipt of an Ordinary Resolution, it might be difficult to find a replacement for the IESO or a successor servicer. Also, any successor servicer might have less experience and ability than the IESO and might experience difficulties in collecting Clean Energy Adjustment amounts or forecasting consumption, resulting in delays or disruptions to the setting and collection of the Clean Energy Adjustment. Any successor servicer would likely charge fees for the provision of such services and such fees could be material.

If an Electricity Vendor or the IESO fails to collect or remit sufficient Clean Energy Adjustment amounts for any reason, then the IESO's payments to the Issuer in respect of the Clean Energy Adjustments might be delayed or reduced. In that event, payments on the Senior Notes might be delayed or reduced. In addition, any person into which the IESO may be merged, converted or amalgamated or that may succeed to the properties and assets of the IESO substantially as a whole will assume the role of servicer under the Master Transfer and Servicing Agreement, subject only to the satisfaction of the conditions set forth therein. These conditions do not include either the consent of holders of Senior Notes or satisfaction of the Rating Agency Condition.

Payments on the Senior Notes depend on the performance of OPG as Financial Services Manager and as Manager of the Issuer.

The FHPA, the Regulations and the Program Agreements impose new duties and obligations of OPG, as Financial Services Manager and as Manager of the Issuer. There can be no assurances that the new duties and obligations of OPG will be assumed and implemented without difficulty and in accordance with the provisions of the FHPA, the Regulations and the Program Agreements. If OPG, as Financial Services Manager, ceases to perform, or inadequately performs, its statutory duties under the FHPA and the Regulations, including determining the Clean

[55] **Note:** Consider explaining under this risk factor that the Investment Asset is a bundle of rights and interests held collectively by all investment interest owners.

Energy Adjustment (inclusive of the True-Up Amount), the Indenture Trustee will have no right to replace OPG as Financial Services Manager. If OPG ceases to perform, or inadequately performs, its management duties under the Management Agreement, the Indenture Trustee has the right to replace the Manager on an Event of Default upon receipt of an Ordinary Resolution but it might be difficult to find a replacement for OPG or a successor manager. Also, any successor manager might have less experience and ability than OPG, resulting in delays or disruptions to the setting and collection of the Clean Energy Adjustment. Any successor manager would likely charge fees for the provision of such services and such fees could be materially higher than the fees charged by OPG.

Inaccurate consumption forecasting or unanticipated delinquencies or write-offs might reduce or delay scheduled payments on the Senior Notes.

Clean Energy Adjustment amounts will be calculated in part based upon a forecast of Specified Consumer usage to be newly developed by the IESO[, adjusted for expected billing lags and charge-offs] [including the effect of delinquencies and write-offs] ***[Confirm whether the IESO forecast takes into account items noted in square brackets.]***. Under the ~~FHPA~~Regulations, the IESO is required to provide to the OEB forecast information regarding electricity consumption of Specified Consumers. The amount and the rate of the Clean Energy Adjustment will depend in part on actual electricity usage and the amount of collections and write-offs for Specified Consumers.[56] If the IESO or a successor inaccurately forecasts electricity consumption or if OPG uses inaccurate consumer delinquency or write-off data when setting or adjusting the Clean Energy Adjustment, there could be a shortfall or material delay in collections, which might result in missed or delayed payments of principal and interest on the Senior Notes.

Inaccurate forecasting of electricity consumption by the IESO might result from, among other things unanticipated weather, resulting in less electricity consumption than forecast; general economic conditions being worse than expected, causing Specified Consumers to reduce their electricity consumption; the occurrence of a natural disaster, wind storm or an act of terrorism, cyber-attack or other catastrophic event unexpectedly disrupting electrical service and reducing electricity consumption; unanticipated changes in the market structure of the electric industry; Specified Consumers unexpectedly ceasing business or departing from the Province of Ontario; dramatic and unexpected changes in energy prices resulting in decreased electricity consumption; Specified Consumers consuming less electricity than anticipated because of increased energy prices, unanticipated increases in conservation efforts or unanticipated increases in electricity consumption efficiency; differences or changes in forecasting methodology; or Specified Consumers switching to alternative sources of energy, including self-generation or co-generation of electric power in some cases without using Ontario's transmission or distribution system. Self-generators that receive no transmission or distribution service from the Province of Ontario are not liable for the Clean Energy Adjustment. Neither the FHPA nor the Regulations require exit fees to be charged to any Specified Consumers that might leave the grid to self-generate.

Inaccurate forecasting of delinquencies or write-offs by OPG could result from, among other things unexpected deterioration of the economy, the occurrence of a natural disaster, an act of war or terrorism or other catastrophic events causing greater write-offs than expected or forcing Electricity Vendors to grant additional payment relief to Specified Consumers; the failure of Electricity Vendors to submit accurate and timely information to the IESO regarding their collections and write-offs; an unexpected change in law that makes it more difficult for Electricity Vendors to terminate service to nonpaying Specified Consumers, or that requires Electricity Vendors to apply more lenient credit standards for Specified Consumers.

Changes to billing and collection practices may reduce the amount of funds available for payments on the Senior Notes.

The methodology for determining the amount of the Clean Energy Adjustment invoiced to each Specified Consumer is specified in the FHPA and the Regulations. None of OPG, the IESO or any Electricity Vendor, as it performs its billing and collection functions on the Issuer's behalf, may change this methodology. However, subject to applicable law, tariff and regulatory requirements, billing and collection arrangements with each Specified Consumer may be changed in a manner that delays or reduces the payments to the Issuer in respect of the Clean Energy Adjustment. For example, an Electricity Vendor's conditions of service may permit it to offer equal monthly billing plans to its

[56] **Note:** Please confirm.

consumers thereby delaying payments from one month to the next during the year or to enter into arrangements for the payment of arrears. In that event, collection of the Clean Energy Adjustment may be delayed or reduced until an adjustment is made.

Limits on rights to terminate service to Specified Consumers might make it more difficult to collect the Clean Energy Adjustment.

To the extent that Specified Consumers do not pay for their electricity service, Electricity Vendors will not be able to collect the Clean Energy Adjustment from these Specified Consumers. Electricity Vendors have the ability to terminate service for non-payment subject to the terms of their conditions of service, which conditions must be consistent with the OEB's rules regarding disconnection. Under OEB rules, Electricity Vendors are prohibited from disconnecting or threatening to disconnect homes for non-payment during the winter from November 15 to April 30 every year. Historical rates of non-payment are included in the calculations of the Clean Energy Adjustment, but increases in the rates of non-payment would reduce the Clean Energy Adjustment until it is adjusted through the True-up Amount in a subsequent Reference Period.

It might be difficult for the Issuer to collect the Clean Energy Adjustment from Specified Consumers

Under the FHPA, the Issuer may bring an action against a Specified Consumer for non-payment of the Clean Energy Adjustment, but only an Electricity Vendor may terminate service for failure to pay the Clean Energy Adjustment.[57] The FHPA provides that partial payment of electricity invoices shall be allocated pro rata among the Clean Energy Adjustment and other charges on the invoice. Since the Issuer does not have the threat of termination of service available to enforce payment of the Clean Energy Adjustment, it would need to rely on the Electricity Vendor to threaten to terminate service for nonpayment of other portions of the electricity invoice. This inability might reduce the value of a holder's investment in the Senior Notes.

Indemnification obligations of OPG and the IESO are limited and might not be sufficient to protect the investments in the Senior Notes.

OPG will be obligated under the Management Agreement to indemnify the Issuer and the Indenture Trustee, for itself and on behalf of the holders of Senior Notes and other creditors, only in specified circumstances. Likewise, the IESO will be obligated under the Master Transfer and Servicing Agreement and the Acknowledgement and Indemnity Agreement to indemnify the Issuer and the Indenture Trustee, for itself and on behalf of the holders of Senior Notes and other creditors, only in specified circumstances.

Furthermore, neither OPG nor the IESO may have sufficient funds available to satisfy its indemnification obligations, and the amount of any indemnification paid by OPG or the IESO, as applicable, might not be sufficient for holders of Senior Notes to recover all of their investment in the Senior Notes. In addition, if OPG or the IESO becomes obligated to indemnify holders of Senior Notes, the ratings on the Senior Notes might be downgraded as a result of the circumstances causing the breach and the fact that holders of Senior Notes will be unsecured creditors of OPG or the IESO, as applicable, with respect to any of these indemnification amounts. Neither OPG nor the IESO will indemnify any person for any loss, damages, liability, obligation, claim, action, suit or payment resulting solely from a downgrade in the ratings on the Senior Notes, or for any consequential damages, including any loss of market value of the Senior Notes resulting from a default or a downgrade of the ratings of the Senior Notes.

Delinquent or partial payments of electricity bills may make payments on the Senior Notes occur later than expected.

The amount and the rate of collection of the Clean Energy Adjustment, including the True-up Amount, will impact whether there is a delay in the scheduled payments on the Senior Notes. If the Clean Energy Adjustment amounts are collected at a slower rate than expected, OPG might have to make adjustments to the Clean Energy Adjustment for a subsequent Reference Period through the True-Up Amount. If those adjustments are not timely and accurate, there may be a delay in payments of principal and interest and a decrease in the value of the Senior Notes.

[57] **Note:** Please confirm source/ conform to wording in FHPA.

Power outages could impair payment of the Senior Notes.

Ontario experiences seasonal conditions typical of southeastern Canada. Summers are usually hot with high temperatures in excess of 20°C. Winters include snow and icing conditions that can be damaging to overhead power lines. Transmission and/or distribution and generation facilities could be damaged depending on weather conditions and usage of electricity could be interrupted temporarily or for long periods of time, reducing the Clean Energy Adjustment amounts collected in one or more Reference Periods.

Technological changes that make alternative energy sources more attractive in the future or significant population fluctuations may result in fewer Specified Consumers from whom to collect the Clean Energy Adjustment.

Technological developments and/or tax or other economic incentives might result in the introduction of economically attractive, more fuel-efficient, more environmentally-friendly and/or more cost-effective alternatives to purchasing electricity through Electricity Vendors for increasing numbers of Specified Consumers. Manufacturers of self-generation facilities may develop smaller-scale, more fuel-efficient on-site generating and/or storage units that can be cost-effective options for a greater number of Specified Consumers. Moreover, an increase in self-service power may result if extreme weather conditions result in regular shortages of grid-supplied energy or if other factors cause grid-supplied energy to be less reliable. Specified Consumers who self-generate their electricity may use it to offset, or eliminate, their consumption from the grid thereby reducing, or eliminating, the Clean Energy Adjustment amounts payable by such Specified Consumers. Technological developments might allow greater numbers of Specified Consumers to reduce or even altogether avoid the payment of Clean Energy Adjustment amounts under such provisions through on-site generation, including where coupled with on-site storage capacity. This might reduce the kilowatt-hours of electric energy delivered to Specified Consumers by means of an Electricity Vendor's system, thereby causing Clean Energy Adjustment charges to the remaining Specified Consumers to increase. Such increases may reduce the collectability of the Clean Energy Adjustment.

Unexpected significant population decreases in the Province of Ontario or Specified Consumers unexpectedly ceasing business or departing from the Province of Ontario may adversely affect the amount of the Clean Energy Adjustment to be invoiced, collected and recovered from Specified Consumers. The decrease in the population of the Province of Ontario may result in fewer Specified Consumers from whom to collect the Clean Energy Adjustment. The increased impact on the remaining Specified Consumers could lead to increased potential consumer defaults and delays, billing lags and write-offs or variations in billing due to variations in electricity consumption.

Insolvency-Related Risks

If the Issuer were to become subject to Canadian Insolvency and Restructuring Laws, the Indenture Trustee's ability to enforce security granted by the Issuer may be significantly impaired or delayed.

Trusts such as the Issuer ordinarily cannot seek protection under the principal Canadian Insolvency and Restructuring Laws (other than a receivership). However, in view of the broad discretionary powers of courts under Canadian Insolvency and Restructuring Laws, the courts' inherent jurisdiction and otherwise, it is not possible to state with certainty that the Issuer could not become subject to Canadian Insolvency and Restructuring Laws. If the Issuer were to become subject to Canadian Insolvency and Restructuring Laws, the Indenture Trustee's ability to enforce security granted by the Issuer may be significantly impaired or delayed. It is not possible to predict how long payments under the Senior Notes could be delayed following commencement of a proceeding under Canadian Insolvency and Restructuring Laws by the Issuer or whether or when the Indenture Trustee would be able to enforce upon or dispose of the assets over which it holds a security interest. Canadian Insolvency and Restructuring Laws also contemplate the granting of super priority security interests or charges (which could be in priority to the security of existing secured creditors) on the assets of the debtor company to secure the repayment of any amounts to be borrowed to facilitate the insolvency proceeding, any amounts owing for the fees and costs of professionals involved in the insolvency proceeding, obligations of directors of the company with respect to their statutory liabilities and sometimes other amounts.

Canadian Insolvency and Restructuring Laws also contain provisions enabling an obligor to prepare and file a proposal or a plan of arrangement or reorganization for consideration by all or some of its creditors, to be voted on by the various classes of creditors affected thereby. Such a restructuring proposal or plan of arrangement or

reorganization, if accepted by the requisite majority of each class of affected creditors and if approved by the relevant Canadian court, would be binding on all creditors of the applicable obligor within the affected classes, including the Indenture Trustee and the Noteholders, whether or not the Indenture Trustee or any holders of Senior Notes votes in favour of the restructuring proposal or plan of arrangement or reorganization. Such a proposal or plan of arrangement or reorganization may have the effect of compromising certain rights available to the Indenture Trustee and the holders of Senior Notes under the Master Trust Indenture or in respect of the collateral.

If the IESO were to become subject to Canadian Insolvency and Restructuring Laws, the transfers between the IESO and the Issuer pursuant to the Master Transfer and Servicing Agreement may not be respected as true sales of the Investment Interest.

Ordinarily, the interests of the Issuer as transferee of the Investment Interest may be subordinate to statutory deemed trusts and other non-consensual liens, trusts and claims created or imposed by statute or rule of law on the property of the IESO arising prior to the time an Investment Interest is transferred to the Issuer, which could reduce the amounts that may be available to the Issuer and, consequently, the holders of Senior Notes. Section 27(3) of the FHPA provides that at the time of the transfer to a Financing Entity under the FHPA, such transfer shall be deemed to have been perfected, vested, valid and binding against the IESO and all other persons who have claims of any kind against the IESO. Section 27(4) of the FHPA provides that section 27(3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the transferee shall have priority over any liens in favour of those persons. However, in the event that the IESO becomes insolvent, its insolvency would be subject to federal bankruptcy and insolvency legislation and the effect of these provisions of the FHPA in such circumstances is untested. The IESO will treat the transactions described herein as a transfer of the Regulatory Asset to the Issuer. Such transfers will be made in accordance with Section 26 of the FHPA. Section 27(1) of the FHPA provides that a transfer of a specified portion of the Regulatory Asset under section 26 constitutes a valid and enforceable absolute assignment, conveyance and sale of the corresponding Investment Interest to the transferee. As a transfer, the Investment Interest would not form part of the assets of the IESO and would not be available to the creditors of the IESO. However, with respect to certain insolvency events relating to the IESO, it is possible that an insolvency administrator or a creditor of the IESO may attempt to argue that the transactions between the IESO and the Issuer are not true sales of the Investment Interest. This position, if accepted by a court applying federal bankruptcy and insolvency laws, could prevent timely or ultimate payment of amounts due to the Issuer and, consequently, due from the Issuer to holders of Senior Notes.

These risks are in addition to the insolvency risks of the IESO noted above under *"Risks Associated with the Unusual Nature of the Investment Asset"*.

If the IESO or any Electricity Vendor were to become subject to Canadian Insolvency and Restructuring Laws, collections that have been commingled may be unrecoverable and the Issuer's ability to enforce its rights against the IESO may be significantly impaired or delayed.

While the IESO is the servicer under the Master Transfer and Servicing Agreement, collections held by the IESO are to be held by the IESO in a segregated account. Until Clean Energy Adjustments are remitted to the IESO by Electricity Vendors, amounts collected by the Electricity Vendors are to be held by Electricity Vendors in segregated accounts. If the IESO or any Electricity Vendor fails to hold collections in a segregated account, then to the extent that funds are commingled and used for the benefit of the IESO or such Electricity Vendor prior to making required deposits, in the event of the liquidation, insolvency, receivership or administration or other proceeding under Canadian Insolvency and Restructuring Laws of the IESO or the Electricity Vendor, the ability of the Issuer to enforce its rights to the collections in a timely manner may be adversely affected and collections that have been commingled may be unrecoverable. In the event of the insolvency of the IESO, the right of the Issuer under the Master Transfer and Servicing Agreement to appoint a replacement servicer may be stayed or prevented.

These risks are in addition to the insolvency risks of the IESO noted above under *"Risks Associated with the Unusual Nature of the Investment Asset"*.

If OPG were to become subject to Canadian Insolvency and Restructuring Laws, the Issuer's ability to enforce its rights against the Manager may be significantly impaired or delayed and the Issuer's assets and liabilities may be substantively consolidated with those of OPG.

Section 53.1 of the *Electricity Act, 1998* (Ontario), as amended by the FHPA, provides that, regardless of whether a Financing Entity is or is not a subsidiary of OPG: (a) the assets and liabilities of the Financing Entity shall not form part of the assets and liabilities of OPG or any of its subsidiaries (excluding the Financing Entity if it is a subsidiary); and (b) the assets and liabilities of OPG or any of its subsidiaries (excluding the Financing Entity if it is a subsidiary) shall not form part of the assets and liabilities of the Financing Entity. However, in the event that OPG becomes insolvent, its insolvency would be subject to federal bankruptcy and insolvency legislation and the effect of these provisions of the *Electricity Act, 1998* (Ontario), as amended by the ~~FHPA,~~*Fair Hydro Act, 2017*,[58] in such circumstances is untested. In particular, in the event of the liquidation, insolvency, receivership or administration or other proceeding under Canadian Insolvency and Restructuring Laws of OPG, the ability of the Issuer to enforce certain of its rights in and to the Investment Interest in a timely manner may be adversely affected. Such affected rights may include the right to appoint a replacement Manager. It is possible that the creditors of OPG may attempt to substantively consolidate the assets and liabilities of OPG and the Issuer. The Issuer and OPG have taken steps to minimize this risk. However, no assurance can be given that, in the case of the insolvency of OPG, a court would not order that the Issuer's assets and liabilities be substantively consolidated with those of OPG. Such substantive consolidation would result in all creditors of OPG and the Issuer being paid out of a common pool of assets, with no distinction as to which assets are property of OPG and which assets are property of the Issuer, and could cause payment of the claims of the beneficial owners of the Senior Notes to be subject to substantial delay and to adjustment in timing and amount.

If the Issuer Trustee were to become subject to Canadian Insolvency and Restructuring Laws, the assets and liabilities of the Issuer may be substantively consolidated with the Issuer Trustee.

In the case of the insolvency of the Issuer Trustee, it is possible that the creditors of the Issuer Trustee may attempt to argue that the assets of the Issuer are held by the Issuer Trustee in its personal capacity (and not as trustee of the Issuer) and are to be available to the creditors of the Issuer Trustee. Assuming that the Issuer Trustee deals with the assets of the Issuer in accordance with the provisions of the Declaration of Trust, the assets of the Issuer would not constitute property of the Issuer Trustee available for distribution to the creditors of the Issuer Trustee. An insolvency administrator appointed with respect to the Issuer Trustee may be able to recover from the property of the Issuer a portion of its costs that are incurred until a replacement for the Issuer Trustee, as trustee of the Issuer, is appointed or pending any proceeding in respect of the property of the Issuer. Such costs may exceed the compensation provided for in the Declaration of Trust.

If a Specified Consumer were to become subject to Canadian Insolvency and Restructuring Laws, the Issuer's ability to collect Clean Energy Adjustment amounts from such Specified Consumer may be adversely affected.

The application to a Specified Consumer of Canadian Insolvency and Restructuring Laws and related provincial laws could also affect the ability to collect the Clean Energy Adjustments due for the period prior to the insolvency. Federal bankruptcy laws would generally discharge bankrupt Specified Consumers who are individuals of their obligation to pay Clean Energy Adjustment amounts due for the period prior to the individual being discharged from bankruptcy.

If amounts in the Issuer Accounts for any Series are invested with entities that become subject to insolvency proceedings, the Issuer's ability to make payments to holders of Senior Notes may be adversely affected.

Amounts that are on deposit from time to time in the Issuer Accounts for any Series may be invested in Eligible Investments. If insolvency proceedings were to be commenced by or against any entity with which an Eligible Investment is made or which is an issuer, obligor or ~~guarantee~~guarantor of any Eligible Investment, the ability of the Indenture Trustee to enforce its rights in respect of any such Eligible Investment and the ability of the Issuer to make payments to holders of Senior Notes in a timely manner may be adversely affected. In order to reduce this risk, the Eligible Investments must satisfy certain ratings criteria. See *"Rating Agency Condition"*.

[58] The *Fair Hydro Act, 2017* (Ontario), which provided in Schedule 1 the *Ontario Fair Hydro Plan Act, 2017*, amends two other statutes: the *Electricity Act, 1998* (see section 43) and the *Ontario Energy Board Act, 1998* (see section 44).

Other Risks

The credit ratings are not an indication of the expected rate of payment of principal on the Senior Notes.

The Senior Notes will be rated by one or more established rating agencies. A rating is not a recommendation to buy, sell or hold the Senior Notes. The ratings merely analyze the probability that the Issuer will repay the total principal amount of each series of Senior Notes at its final principal payment date (which is later than the Principal Payment Date(s)) and will make timely interest payments. The ratings are not an indication that the rating agencies believe that principal payments are likely to be paid on time according to any expected sinking fund schedule. Thus, the Issuer might repay the principal of a holder of Senior Notes later than expected, which might materially reduce the value of a holder's investment in the Senior Notes.

If the ratings on the Senior Notes are withdrawn or revised downward, the value of a holder's investment in the Senior Notes may be adversely affected.

There is no assurance that any credit rating will remain in effect for any given period of time. The ratings on the Senior Notes may be withdrawn or revised downward at any time without notice, which may have an adverse effect on the market price of the Senior Notes. A rating is not a recommendation to buy, sell or hold the Senior Notes. The ratings merely analyze the probability that the Issuer will repay the total principal amount of each series of Senior Notes at its final principal payment date (which is later than the Principal Payment Date(s)) and will make timely interest payments. The ratings are not an indication that the rating agencies believe that principal payments are likely to be paid on time according to any expected sinking fund schedule. Ratings on the Senior Notes may be lowered, qualified or withdrawn at any time without notice.

The credit ratings of the IESO, OPG and the Province of Ontario might affect the market value of the Senior Notes.

The Senior Notes will not be insured or guaranteed by the Province of Ontario, IESO, OPG or any of their respective affiliates or any other person or entity, except that the Province of Ontario has agreed to provide a limited guarantee in respect of the Senior Notes following the occurrence of certain events. See *"Change of Law Protection Agreement"*. Although neither the IESO nor OPG are obligors in respect of the Senior Notes, a downgrading of the current credit ratings of the IESO, OPG or the Province of Ontario might have an adverse effect on the market value of the Senior Notes, particularly, with respect to the IESO, during the Moratorium Period when no Clean Energy Adjustments are permitted to be collected from Specified Consumers. Credit ratings might change at any time. A rating agency has the authority to revise or withdraw its rating based solely upon its own judgment.

The absence of an established market for the Senior Notes might limit the ability to resell or refinance the Senior Notes.

There is no public market for the Senior Notes, and the Issuer does not intend to apply for a listing of the Senior Notes on any stock exchange. There can be no assurance as to the liquidity of the trading market for the Senior Notes or that a trading market for the Senior Notes will develop.

There is currently no secondary market for the Senior Notes. There can be no assurance that a secondary market will develop or, if a secondary market does develop, that it will provide holders of such Senior Notes with liquidity for their investment or that it will continue for the term of such Senior Notes. Accordingly, purchasers of the Senior Notes may be required to bear the financial risk of investing in the Senior Notes until the maturity date of the Senior Notes.

If an active market does develop for the Senior Notes, the market price on the Senior Notes will depend on many factors including, but not limited to, (i) the Issuer's credit rating and the credit rating of the Senior Notes; (ii) the prevailing interest rates being paid on similar securities; (iii) the Issuer's financial condition and future prospects; and (iv) the overall condition of the economy and the financial markets. The condition of the financial markets and prevailing interest rates have fluctuated in the past and are likely to fluctuate in the future. Fluctuations could have an adverse effect on the market price of the Senior Notes.

The Financial Services Manager has the ability to determine whether to refinance Senior Notes maturing after May 2024 through the issuance of another Series of Senior Notes. However, there can be no assurance that Senior Notes can be refinanced on or before their applicable Principal Payment Default Date.

Restrictions on resale might limit the ability to resell the Senior Notes.

The Senior Notes may not be offered or sold, directly or indirectly, in Canada or to or for the account of any Canadian resident except, in the case of sales made in any province of Canada, pursuant to an exemption from the prospectus requirements under applicable securities laws. The Issuer currently does not intend to file a prospectus or similar document with any securities regulatory authority in Canada qualifying the resale of the Senior Notes to the public in any province of Canada in connection with any Offering of Senior Notes. As a result, the Senior Notes purchased pursuant to this confidential shelf offering memorandum will be subject to restrictions on resale, and may only be resold if a further statutory exemption may be relied upon by the investor or if an appropriate discretionary order or consent is obtained pursuant to applicable securities laws. See "Restrictions on Resale".

REPRESENTATIONS AND AGREEMENTS OF PURCHASERS

The distribution of the Senior Notes in Canada is being made on a private placement basis. By purchasing Senior Notes and accepting a purchase confirmation in respect thereof, a purchaser in Canada will be deemed to have represented to the Issuer and the Agents that, as at the date of such purchaser's purchase of Senior Notes:

(a) none of the Issuer, the Agents or any person representing the Issuer or the Agents has made any representations to it (written or oral) with respect to the Issuer, any Offering or sale of the Senior Notes, other than the information contained in this confidential shelf offering memorandum which has been delivered to it;

(b) it is resident in a province of Canada (each an "**Offering Jurisdiction**") and is entitled under applicable securities laws of such Offering Jurisdiction to purchase the Senior Notes without the benefit of a prospectus qualified under those securities laws and any act, solicitation, conduct or negotiation directly or indirectly in furtherance of such purchase and sale has occurred only in one of the provinces of Canada;

(c) the purchaser has been provided the opportunity to receive a copy of the Master Trust Indenture and each of the Supplemental Indentures;

(d) the purchaser has reviewed and acknowledges the terms referred to below under the section entitled "Restrictions on Resale";

(e) it is basing its investment decision solely on this confidential shelf offering memorandum and not on any other information or statement concerning the Issuer or any Offering and it has not become aware of any advertisement in printed media of general and regular paid circulation (or other printed public media), radio, television or telecommunications or other form of advertisement (including electronic display) with respect to the distribution of the Senior Notes;

(f) it has been independently advised as to restrictions with respect to trading in the Senior Notes imposed by applicable securities laws in the jurisdiction in which it resides, confirms that no representation (written or oral) has been made to it by or on behalf of the Issuer or an Agent with respect thereto, acknowledges that it is aware of the characteristics of the Senior Notes, the risks relating to an investment in the Senior Notes and of the fact that it may not be able to resell the Senior Notes except in accordance with limited exemptions under applicable securities legislation and regulatory policy and compliance with the other requirements of applicable law; and it agrees that any certificates representing the Senior Notes will bear a legend indicating that the resale of such Senior Notes is restricted; the purchaser further acknowledges that it has been advised to consult its own legal counsel in its jurisdiction of residence for full particulars of the resale restrictions applicable to it and has reviewed and acknowledges the terms referred to under the

heading "Restrictions on Resale"; and the purchaser further acknowledges that if it resells the Senior Notes in compliance with applicable law it will give notice to the subsequent transferee during the restricted period noted under the heading "Restrictions on Resale" of such restrictions;

(g) it acknowledges the risks relating to an investment in the Senior Notes and it has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of its prospective investment in the Senior Notes, it and any accounts for which it is acting have the ability to bear the economic risks of the prospective investment and can afford the complete loss of such investment and it acknowledges that it and any accounts for which it is acting may be required to bear the financial risks of this investment for an indefinite period of time;

(h) it acknowledges that: (i) no securities commission or similar regulatory authority has reviewed or passed on the merits of the Senior Notes; and (ii) there is no government or other insurance covering the Senior Notes;

(i) it acknowledges that no person has made any oral or written representation to it that any person will re-sell or re-purchase the Senior Notes, or refund any part or all of the purchase price of the Senior Notes, or that the Senior Notes will be listed on any exchange or quoted on any quotation and trade reporting system, or that any application has been or will be made to list the Senior Notes on any exchange or quote the notes on any quotation and trade reporting system, and no person has given any undertaking to such purchaser relating to the future value or price of the Senior Notes;

(j) none of the funds being used to purchase the Senior Notes are, to the best of the purchaser's knowledge, (i) proceeds obtained by or derived, directly or indirectly, as a result of illegal activities, or (ii) being tendered on behalf of a person or entity who has not been identified to the purchaser;

(k) the funds being used to purchase the Senior Notes and advanced by or on behalf of the purchaser to the Agents do not represent proceeds of crime for the purposes of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Canada);

(l) the purchaser is responsible to obtain independent investment, legal and tax advice with respect to its purchase of the Senior Notes and accordingly has had the opportunity to acquire an understanding of the transaction described in this confidential shelf offering memorandum and the meanings of all the terms contained herein relevant to such purchase for the purpose of giving acknowledgements, representations and agreements under this confidential shelf offering memorandum;

(m) it (i) is an "accredited investor" (as such term is defined in NI 45-106 and, in the case of a purchaser resident in Ontario, section 73.3(1) of the *Securities Act* (Ontario)) that is not an individual, unless such individual is also a "permitted client" (as such term is defined in NI 31-103); (ii) is either (A) purchasing the Senior Notes as principal, (B) a trust company or trust corporation registered or authorized to carry on business under the *Trust and Loan Companies Act* (Canada) or under comparable legislation of a jurisdiction of Canada (other than a trust company or trust corporation registered solely under the laws of the Province of Prince Edward Island) or a foreign jurisdiction, acting on behalf of a fully managed account managed by the trust company or trust corporation, as the case may be, or (C) a person acting on behalf of a fully managed account managed by that person, if that person is registered or authorized to carry on business as an adviser or the equivalent under the securities legislation of a jurisdiction of Canada or foreign jurisdiction; and (iii) was not created or used solely to purchase or hold securities as an accredited investor as described in paragraph (m) of the definition of "accredited investor" in NI 45-106;

(n) the purchaser has provided applicable certifications and/or other information or documentation to the Agents and the Issuer to evidence its status and criteria for compliance with the relevant category of "accredited investor," understands that the Agents and the Issuer may be required to

verify that the purchaser satisfies such criteria, and that the purchaser may be required to provide additional information or documentation to the Agents and the Issuer to evidence such compliance;

(o) the purchaser, if resident in the Province of Québec, has agreed that all documents relating to such purchase be in English only, as more particularly described under the heading "Language of Documents". *L'acquéreur, s'il réside dans la Province de Québec, accepte que tous les documents liés à son acquisition soient en langue anglaise uniquement, tel qu'il est plus amplement décrit sous la rubrique «Langue des documents»*;

(p) it will execute, deliver and file such reports, undertakings and other documents relating to his, her or its purchase of the Senior Notes as may be required by applicable securities laws, regulations and rules, or assist the Issuer and the Agents, as applicable, in obtaining and filing such reports, undertakings and other documents;

(q) it is not a U.S. person (as such term is defined in Regulation S under the U.S. Securities Act), none of the Senior Notes are being or will be acquired, directly or indirectly, for the account or benefit of a U.S. person, the purchaser was not offered any of the Senior Notes in the United States, the purchaser did not execute or deliver any agreement in connection herewith in the United States, and the purchaser is aware that the Senior Notes have not been and will not be registered under the U.S. Securities Act or the securities laws of any State of the United States and that the Senior Notes may not be offered or sold in the United States without registration under the U.S. Securities Act or except in compliance with the requirements of an exemption from registration;

(r) if the purchaser is acquiring any Senior Notes as a fiduciary or agent for one or more investor accounts, it represents that it has sole investment discretion with respect to each such account and that it has full power to make the acknowledgements, representations and agreements contained herein on behalf of each such account;

(s) the offer and sale of the Senior Notes is conditional upon the offer and sale being exempt from the prospectus filing requirements of applicable securities law;

(t) the purchaser acknowledges that the Issuer may be required to disclose to applicable securities regulatory authorities the identity of the purchaser and any person with a beneficial interest in the Senior Notes;

(u) except for any rating reports that may have been issued by the applicable Rating Agencies, no agency, governmental authority, regulatory body, stock exchange or other entity has made any finding or determination as to the merit for investment of, nor have any such agencies or governmental authorities, regulatory bodies, stock exchanges or other entities made any recommendation or endorsement with respect to the Senior Notes;

(v) if the purchaser is:

(i) a corporation, it is duly incorporated and is validly subsisting under the laws of its jurisdiction of incorporation and has all requisite legal and corporate power and authority to purchase the Senior Notes and to make such representations and agreements as contemplated herein and has obtained all necessary approvals in respect thereof;

(ii) a partnership, syndicate or other form of unincorporated organization, it has the necessary legal capacity and authority to purchase the Senior Notes and to make such representations and agreements as contemplated herein and has obtained all necessary approvals in respect thereof; or

(iii) an individual, he or she is of the full age of majority, is a "permitted client" as such term is defined in NI 31-103 and is legally competent to purchase the Senior Notes and to make such representations and agreements as contemplated herein;

(w) the purchaser is not an "insider" of the Issuer (within the meaning of Canadian securities laws) and is not registered or required to be registered as a dealer, adviser or otherwise under the securities laws of any province of Canada (unless in either case it has specifically provided written advice to the contrary to the Issuer and to the Agents);

(x) it will, if requested by the Issuer or the Agent from whom the purchase confirmation is received, provide evidence of the basis of its above representations; and

(y) the Issuer, the Agents and others will rely upon the truth and accuracy of the foregoing acknowledgements, representations and agreements and it agrees that if any of the acknowledgements, representations or agreements deemed to have been made by its purchase of the Senior Notes are no longer accurate, it shall promptly notify the Issuer and the Agents for the applicable Offering of Senior Notes.

In addition, each purchaser of Senior Notes, by purchasing Senior Notes and accepting a purchase confirmation in respect thereof, represents to the Issuer and the Agents for the applicable Offering of Senior Notes that the purchaser:

(a) has been notified by the Issuer:

(i) that the Issuer is required to provide information pertaining to the purchaser of Senior Notes required to be disclosed in Schedule 1 of Form 45-106F1 under NI 45-l06 (including its name, address, telephone number and the number and value of securities purchased), which Form 45-106F1 the Issuer is required to file under NI 45-106;

(ii) that such personal information will be delivered to the applicable Canadian securities regulatory authorities (the "**Commissions**") in accordance with NI 45-106;

(iii) that such personal information is being collected indirectly by the applicable Commission under the authority granted to it in securities legislation;

(iv) that such personal information is being collected for the purposes of the administration and enforcement of securities legislation; and

(v) that the public official in the provinces of Canada who can answer questions about the indirect collection of such personal information is set out in Schedule A of this confidential shelf offering memorandum, and

(b) has authorized the indirect collection of the personal information by the applicable Commission.

By purchasing Senior Notes, the purchaser also acknowledges that its name and other specified information, including the number of Senior Notes it has purchased, may be disclosed to other Canadian securities regulatory authorities and become available to the public in accordance with the requirements of applicable laws and consents to the disclosure of that information. Furthermore, by purchasing the Senior Notes, the purchaser acknowledges that certain information as to its status as an "accredited investor" that the purchaser may have provided to any Agent involved in the trade may be required to be delivered by such Agent to the Issuer under the terms of an Agency Agreement between the Issuer, OPG and the Agents referred to under "Plan of Distribution". By purchasing the Senior Notes, the purchaser consents to the disclosure of such information.

LANGUAGE OF DOCUMENTS

Upon receipt of this confidential shelf offering memorandum, each purchaser hereby confirms that it has expressly requested that all documents evidencing or relating in any way to the sale of the Senior Notes described herein (including for greater certainty any purchase confirmation or any notice) be drawn up in the English language only. *En recevant le présent document, chaque acquéreur confirme par les présentes qu'il a expressément demandé que tous les documents qui attestent la vente des débentures décrites dans les présentes ou qui s'y rapportent de quelque manière que ce soit (y compris, plus particulièrement, une confirmation d'achat ou un avis) soient rédigés en langue anglais seulement.*

RESTRICTIONS ON RESALE

The distribution of the Senior Notes in the provinces of Canada is being made on a private placement basis and is therefore exempt from the requirement that the Issuer prepare and file a prospectus with the relevant Canadian securities regulatory authorities. Accordingly, any resale of the Senior Notes must be made: (a) through an appropriately registered dealer or pursuant to an exemption from the dealer registration requirements of applicable provincial securities laws; and (b) in accordance with, or pursuant to an exemption from, the prospectus requirements of applicable provincial securities laws. These resale restrictions may in some circumstances apply to resales made outside of Canada. Purchasers are advised to seek legal advice prior to any resale of the Senior Notes.

Purchasers are advised that the Issuer does not intend to file a prospectus or similar document with any securities regulatory authority in Canada qualifying the resale of the Senior Notes to the public in any province of Canada in connection with any Offering.

Furthermore, each purchaser of Senior Notes, by its purchase thereof, will be deemed to have represented, acknowledged or confirmed, as the case may be, to the Issuer and any dealer who is involved in the sale of the Senior Notes to such purchaser that such purchaser understands that the Senior Notes are subject to transfer and resale restrictions in Canada and that the certificates representing the Senior Notes (or the relevant ownership statement under a direct registration system or other book-entry system) or other applicable document or notice (including this document) will bear or will notify the purchaser of the following legend:

> "EXCEPT IN THE PROVINCE OF MANITOBA, IN ACCORDANCE WITH NATIONAL INSTRUMENT 45-102 — RESALE OF SECURITIES, UNLESS OTHERWISE PERMITTED UNDER CANADIAN SECURITIES LEGISLATION, THE HOLDER OF THIS SECURITY MUST NOT TRADE THE SECURITY BEFORE THE DATE THAT IS FOUR MONTHS AND A DAY AFTER THE LATER OF (I) THE DATE ON WHICH THE SECURITY IS ISSUED; AND (II) THE DATE THE ISSUER BECOMES A REPORTING ISSUER IN ANY PROVINCE OR TERRITORY OF CANADA.
>
> IN THE PROVINCE OF MANITOBA, UNLESS OTHERWISE PERMITTED UNDER APPLICABLE CANADIAN SECURITIES LAWS OR WITH THE PRIOR WRITTEN CONSENT OF THE APPLICABLE REGULATORS, THE HOLDER OF THIS SECURITY MUST NOT TRADE THE SECURITY BEFORE THE DATE THAT IS TWELVE MONTHS AND A DAY AFTER THE DATE THE PURCHASER ACQUIRED THE SECURITY."

The Issuer is not and does not intend to become a reporting issuer.

There is currently no secondary market for the Senior Notes. There can be no assurance that a secondary market will develop or, if a secondary market does develop, that it will provide holders of such Series of Senior Notes with liquidity for their investment or that it will continue for the life of such Senior Notes. Accordingly, purchasers of the Senior Notes may be required to bear the financial risk of investing in the Senior Notes until the maturity date.

REPORTING REQUIREMENTS

The Issuer is not a reporting issuer or the equivalent thereof under the securities legislation in any jurisdiction. Accordingly, the Issuer is not subject to the continuous reporting and disclosure requirements prescribed by such securities legislation. Therefore, there is no requirement that the Issuer comply with such requirements, including, without limitation, the requirements to provide prompt notification of material changes by way of press releases, to formally file disclosure documents with applicable securities regulatory authorities or to prepare and file annual audited financial statements or quarterly unaudited financial statements. However, the Issuer will provide audited annual financial statements and unaudited quarterly financial statements in accordance with the terms of the Master Trust Indenture. See *"Description of Senior Notes — Reporting Requirements of Senior Notes"*.

STATUTORY RIGHTS OF ACTION

Securities legislation in certain of the provinces of Canada provides purchasers, in addition to any other rights they may have at law, with a remedy for rescission or damages where an offering memorandum or any amendment to it, and in some cases, advertising and sales literature used in connection therewith, contains a misrepresentation. These remedies, or notice with respect thereto, must be exercised or delivered, as the case may be, by the purchaser within the time limit prescribed, and are subject to the defences contained, in the applicable securities legislation. Purchasers should refer to the applicable provisions of the securities legislation of their province for the particulars of these rights or consult with a legal advisor. The following is a summary of the rights of rescission or rights to damages available to purchasers of the Senior Notes.

Rights for Purchasers in Ontario

Section 5.2 of Ontario Securities Commission Rule 45-501 — *Ontario Prospectus and Registration Exemptions* provides that when an offering memorandum, such as this confidential shelf offering memorandum, is delivered to an investor to whom securities are distributed in reliance upon the "accredited investor" prospectus exemption in section 73.3 of the *Securities Act* (Ontario) or a predecessor exemption to section 73.3 of the *Securities Act* (Ontario) the right of action referred to in section 130.1 of the *Securities Act* (Ontario) ("**Section 130.1**") is applicable, unless the prospective purchaser is:

(a) an association governed by the *Cooperative Credit Associations Act* (Canada) or a central cooperative credit society for which an order has been made under section 473(1) of that Act;

(b) a bank, loan corporation, trust company, trust corporation, insurance company, treasury branch, credit union, caisse populaire, financial services cooperative, or league that, in each case, is authorized by an enactment of Canada or a jurisdiction of Canada to carry on business in Canada or a jurisdiction of Canada;

(c) a Schedule III bank, meaning an authorized foreign bank named in Schedule III of the *Bank Act* (Canada);

(d) the Business Development Bank of Canada incorporated under the *Business Development Bank of Canada Act* (Canada); or

(e) a subsidiary of any person referred to in paragraphs (a), (b), (c) or (d), if the person owns all of the voting securities of the subsidiary, except the voting securities required by law to be owned by the directors of the subsidiary.

Section 130.1(1) provides such investors who purchase securities offered by an offering memorandum with a statutory right of action against the Issuer of securities for rescission or damages in the event that the offering memorandum and any amendment to it contains a "misrepresentation". The term "misrepresentation" is defined to mean an untrue statement of a material fact or an omission to state a material fact that is required to be stated or that is necessary to make any statement not misleading in the light of the circumstances in which it was made. These

remedies, or notice with respect to these remedies, must be exercised or delivered, as the case may be, by the purchaser within the time limits prescribed by applicable securities laws.

Where this confidential shelf offering memorandum is delivered to a prospective purchaser of Senior Notes in connection with a trade made in reliance on section 73.3 of the *Securities Act* (Ontario), and this document contains a misrepresentation, the purchaser will have, without regard to whether the purchaser relied on the misrepresentation, a statutory right of action against the Issuer for damages or, while still the owner of Senior Notes, for rescission, in which case, if the purchaser elects to exercise the right of rescission, the purchaser will have no right of action for damages, provided that the right of action for rescission will be exercisable by the purchaser only if the purchaser commences the action not more than 180 days after the date of the transaction that gave rise to the cause of action; or, in the case of any action other than an action for rescission, the earlier of: (i) 180 days after the plaintiff first had knowledge of the facts giving rise to the cause of action, or (ii) three years after the date of the transaction that gave rise to the cause of action.

The Issuer will not be liable for a misrepresentation if it proves that the purchaser purchased the Senior Notes with knowledge of the misrepresentation.

In an action for damages, the Issuer will not be liable for all or any portion of the damages that the Issuer proves do not represent the depreciation in value of the Senior Notes as a result of the misrepresentation relied upon.

In no case will the amount recoverable for the misrepresentation exceed the price at which the Senior Notes were offered.

The liability of all persons and companies referred to above is joint and several. The Issuer, however, shall not be liable where it is not receiving any proceeds from the distribution of the securities being distributed and the misrepresentation was not based on information provided by the Issuer, unless the misrepresentation, (a) was based on information that was previously publicly disclosed by the Issuer, (b) was a misrepresentation at the time of its previous public disclosure and (c) was not subsequently publicly corrected or superseded by the Issuer prior to the completion of the distribution of the securities being distributed.

The foregoing statutory right of action for rescission or damages conferred is in addition to and without derogation from any other right the purchaser may have at law.

This summary is subject to the express provisions of the *Securities Act* (Ontario) and the regulations and rules made under it, and prospective investors should refer to the complete text of those provisions.

Rights for Purchasers in Saskatchewan

Section 138 of *The Securities Act, 1988* (Saskatchewan), as amended (the "**Saskatchewan Act**") provides that where an offering memorandum (such as this confidential shelf offering memorandum) or any amendment to it is sent or delivered to a purchaser and it contains a misrepresentation (as defined in the Saskatchewan Act), a purchaser who purchases a security covered by the offering memorandum or any amendment to it has, without regard to whether the purchaser relied on the misrepresentation, a right of action for rescission against the Issuer or a selling security holder on whose behalf the distribution is made or has a right of action for damages against:

(a) the Issuer or a selling security holder on whose behalf the distribution is made;

(b) every promoter and trustee of the Issuer or the selling security holder, as the case may be, at the time the offering memorandum or any amendment to it was sent or delivered;

(c) every person or company whose consent has been filed respecting the offering, but only with respect to reports, opinions or statements that have been made by them;

(d) every person who or company that, in addition to the persons or companies mentioned in (a) to (c) above, signed the offering memorandum or the amendment to the offering memorandum; and

(e) every person who or company that sells securities on behalf of the Issuer or selling security holder under the offering memorandum or amendment to the offering memorandum.

Such rights of rescission and damages are subject to certain limitations including the following:

(a) if the purchaser elects to exercise its right of rescission against the Issuer or selling security holder, it will have no right of action for damages against that party;

(b) in an action for damages, a defendant will not be liable for all or any portion of the damages that he, she or it proves do not represent the depreciation in value of the securities resulting from the misrepresentation relied on;

(c) no person or company, other than the Issuer or a selling security holder, will be liable for any part of the offering memorandum or any amendment to it not purporting to be made on the authority of an expert and not purporting to be a copy of, or an extract from, a report, opinion or statement of an expert, unless the person or company failed to conduct a reasonable investigation sufficient to provide reasonable grounds for a belief that there had been no misrepresentation or believed that there had been a misrepresentation;

(d) in no case will the amount recoverable exceed the price at which the securities were offered; and

(e) no person or company is liable in an action for rescission or damages if that person or company proves that the purchaser purchased the securities with knowledge of the misrepresentation.

In addition, no person or company, other than the Issuer or selling security holder, will be liable if the person or company proves that:

(a) the offering memorandum or any amendment to it was sent or delivered without the person's or company's knowledge or consent and that, on becoming aware of it being sent or delivered, that person or company immediately gave reasonable general notice that it was so sent or delivered; or

(b) with respect to any part of the offering memorandum or any amendment to it purporting to be made on the authority of an expert, or purporting to be a copy of, or an extract from, a report, an opinion or a statement of an expert, that person or company had no reasonable grounds to believe and did not believe that: (i) there had been a misrepresentation, or (ii) the part of the offering memorandum or any amendment to it did not fairly represent the report, opinion or statement of the expert, or was not a fair copy of, or an extract from, the report, opinion or statement of the expert.

Not all defences upon which the Issuer or others may rely are described herein. Please refer to the full text of the Saskatchewan Act for a complete listing.

The liability of all persons and companies referred to above is joint and several.

Similar rights of action for damages and rescission are provided in section 138.1 of the Saskatchewan Act in respect of a misrepresentation in advertising and sales literature disseminated in connection with an offering of securities.

Section 138.2 of the Saskatchewan Act also provides that, subject to certain limitations and defences, where an individual makes a verbal statement to a purchaser that contains a misrepresentation relating to the security purchased and the verbal statement is made either before or contemporaneously with the purchase of the security, the purchaser has, without regard to whether the purchaser relied on the misrepresentation, a right of action for damages against the individual who made the verbal statement.

Section 141(1) of the Saskatchewan Act provides a purchaser with the right to void the purchase agreement and to recover all money and other consideration paid by the purchaser for the securities if the securities are sold in contravention of the Saskatchewan Act, the regulations to the Saskatchewan Act or a decision of the Saskatchewan Financial Services Commission.

Section 141(2) of the Saskatchewan Act also provides a right of action for rescission or damages to a purchaser of securities to whom an offering memorandum or any amendment to it was not sent or delivered prior to or at the same time as the purchaser enters into an agreement to purchase the securities, as required by Section 80.1 of the Saskatchewan Act.

The rights of action for damages or rescission under the Saskatchewan Act are in addition to and do not derogate from any other right which a purchaser may have at law.

Section 147 of the Saskatchewan Act provides that no action will be commenced to enforce any of the foregoing rights more than:

(a) in the case of an action for rescission or cancellation, 180 days after the date of the transaction that gave rise to the cause of action; or

(b) in the case of any other action, other than an action for rescission or cancellation, the earlier of:

  (i) one year after the plaintiff first had knowledge of the facts giving rise to the cause of action; or

  (ii) six years after the date of the transaction that gave rise to the cause of action.

The Saskatchewan Act also provides that a purchaser who has received an amended offering memorandum delivered in accordance with subsection 80.1(3) of the Saskatchewan Act has a right to withdraw from the agreement to purchase the securities by delivering a notice to the person who or company that is selling the securities, indicating the purchaser's intention not to be bound by the purchase agreement, provided such notice is delivered by the purchaser within two business days of receiving the amended offering memorandum.

This summary is subject to the express provisions of the Saskatchewan Act and the regulations and rules made under it, and prospective investors should refer to the complete text of those provisions.

Rights for Purchasers in Nova Scotia

The right of action for rescission or damages described herein is conferred by section 138 of the *Securities Act* (Nova Scotia). Section 138 provides, in the relevant part, that in the event that this confidential shelf offering memorandum, together with any amendments hereto, or any advertising or sales literature (as defined in the *Securities Act* (Nova Scotia)) contains an untrue statement of material fact or omits to state a material fact that is required to be stated or that is necessary in order to make any statements contained herein or therein not misleading in light of the circumstances in which it was made (a "**misrepresentation**"), a purchaser of Senior Notes is deemed to have relied upon such misrepresentation if it was a misrepresentation at the time of purchase and has, subject to certain limitations and defences, a statutory right of action for damages against the Issuer, its trustees, any person who signed this confidential shelf offering memorandum, any selling security holder and the directors of any such selling security holder at the date of this confidential shelf offering memorandum or, alternatively, while still the owner of the Senior Notes, may elect instead to exercise a statutory right of rescission against the Issuer, in which case the purchaser will have no right of action for damages against any person listed above, including the Issuer, provided that, among other limitations:

(a) no action will be commenced to enforce the right of action for rescission or damages by a purchaser resident in Nova Scotia under Section 138 later than 120 days after the date payment was made for the Senior Notes (or after the date on which initial payment was made for the Senior

Notes where payments subsequent to the initial payment are made pursuant to a contractual commitment assumed prior to, or concurrently with, the initial payment);

(b) no person will be liable if it proves that the purchaser purchased the Senior Notes with knowledge of the misrepresentation;

(c) no person or company, other than the Issuer, is liable under Section 138 if the person or company proves that:

(i) this confidential shelf offering memorandum, or any amendment hereto, was sent or delivered to the purchaser without the person's or company's knowledge or consent and that, on becoming aware of its delivery, the person or company gave reasonable general notice that it was delivered without the person's or company's knowledge or consent;

(ii) after delivery of this confidential shelf offering memorandum, or the amendment hereto, and before the purchase of the Senior Notes by the purchaser, on becoming aware of any misrepresentation in this confidential shelf offering memorandum, or the amendment hereto, or any record incorporated or deemed incorporated by reference therein, the person or company withdrew the person's or company's consent to this confidential shelf offering memorandum, or amendment hereto, or such record, and gave reasonable general notice of the withdrawal and the reason for it; or

(iii) with respect to any part of this confidential shelf offering memorandum, or amendment hereto, or any record incorporated or deemed to be incorporated by reference therein, purporting to be made on the authority of an expert, or to be a copy of, or an extract from a report, an opinion or a statement of an expert, the person or company had no reasonable grounds to believe and did not believe that there had been a misrepresentation, or that the relevant part of this confidential shelf offering memorandum, or amendment hereto, or such record, did not fairly represent the report, opinion or statement of the expert, or was not a fair copy of, or extract from, the report, opinion or statement of the expert;

(d) no person or company, other than the Issuer, is liable under Section 138 with respect to any part of this confidential shelf offering memorandum, or amendment hereto, or any record incorporated or deemed incorporated by reference therein, not purporting to be made on the authority of an expert, or to be a copy of or an extract from, a report, opinion or statement of an expert, unless the person or company failed to conduct a reasonable investigation to provide reasonable grounds for a belief that there had been no misrepresentation, or believed that there had been a misrepresentation;

(e) in the case of an action for damages, no person will be liable for all or any portion of the damages that it proves do not represent the depreciation in value of the Senior Notes resulting from the misrepresentation; and

(f) in no case will the amount recoverable under Section 138 in any action exceed the price at which the Senior Notes were offered to the purchaser.

The liability of all persons or companies referred to above is joint and several with respect to the same cause of action. A defendant who is found liable to pay a sum in damages may recover a contribution, in whole or in part, from a person or company who is jointly and severally liable to make the same payment in the same cause of action unless, in all the circumstances of the case, the court is satisfied that it would not be just and equitable.

The foregoing statutory right of action for rescission or damages conferred by Section 138 of the Securities Act (Nova Scotia) is in addition to and without derogation from any other right or remedy available at law or otherwise to the purchaser. This summary is subject to the express provisions of the *Securities Act* (Nova Scotia) and the regulations and rules made under it, and prospective investors should refer to the complete text of those provisions may have at law.

Rights for Purchasers in New Brunswick

Section 2.1 of New Brunswick Securities Commission Rule 45-802 provides that the statutory rights of action in rescission or damages referred to in Section 150 of the *Securities Act* (New Brunswick) ("**Section 150**") apply to information relating to an offering memorandum, such as this confidential shelf offering memorandum, that is provided to a purchaser of securities in connection with a distribution made in reliance on the "accredited investor" prospectus exemption in Section 2.3 of NI 45-106. Section 150 provides investors who purchase securities offered for sale in reliance on an exemption from the prospectus requirements of the *Securities Act* (New Brunswick) with a statutory right of action for damages against (i) the Issuer; (ii) the selling security holder on whose behalf the distribution was made; (iii) every person who was a director of the Issuer as at the date of the offering memorandum; and (iv) every person who signed the offering memorandum in the event that an offering memorandum provided to such investor contains a "misrepresentation". Alternatively, if the investor purchased the securities from a person referred to in (i) or (ii) above, an investor may elect a right of rescission, in which case the investor shall have no right of action for damages. "Misrepresentation" means an untrue statement of a material fact or an omission to state a material fact that is required to be stated or that is necessary to make a statement not misleading in the light of the circumstances in which it was made.

Where this confidential shelf offering memorandum is delivered to a prospective purchaser of Senior Notes in connection with a trade made in reliance on Section 2.3 of NI 45-106, and this document (including any documentation incorporated or deemed to be incorporated by reference) contains a misrepresentation, a purchaser who purchases the securities will be deemed to have relied on the misrepresentation and will have, subject to certain limitations and defences, a statutory right of action against the Issuer for damages or, while still the owner of Senior Notes, for rescission. If the purchaser elects to exercise the right of rescission, the purchaser will have no right of action for damages. The right of action for rescission will be exercisable by the purchaser only if the purchaser commences the action against the defendant, not more than 180 days after the date of the transaction that gave rise to the cause of action; or, in the case of any action other than an action for rescission, the earlier of: (i) one year after the plaintiff first had knowledge of the facts giving rise to the cause of action, or (ii) six years after the date of the transaction that gave rise to the cause of action.

No person other than the Issuer or the selling security holder is liable under Section 150 if the person proves that:

(a) the offering memorandum was delivered to the purchaser without the person's knowledge or consent and that, on becoming aware of its delivery, the person gave written notice to the Issuer that it was delivered without the person's knowledge or consent;

(b) upon becoming aware of a misrepresentation in the offering memorandum the person withdrew the person's consent to the offering memorandum and gave written notice to the Issuer of the withdrawal and the reason for the withdrawal; or

(c) with respect to any part of the offering memorandum purporting to be made on the authority of an expert or purporting to be a copy of, or an extract from, a report, opinion or statement of an expert, the person had no reasonable grounds to believe and did not believe there had been a misrepresentation or that the relevant part of the offering memorandum did not fairly represent the report, opinion or statement of the expert or was not a fair copy of, or extract from, the report, opinion or statement of the expert.

In addition, no person other than the Issuer or the selling security holder is liable under Section 150 with respect to any part of an offering memorandum not purporting to be made on the authority of an expert and not purporting to be a copy of, or an extract from, a report, opinion or statement of an expert unless (i) the person failed to conduct such reasonable investigations as to provide reasonable grounds for a belief that there had been no misrepresentation or (ii) the person believed that there had been misrepresentation.

The defendant will not be liable for a misrepresentation if it proves that the purchaser purchased the Senior Notes with knowledge of the misrepresentation.

In an action for damages, the defendant will not be liable for all or any portion of the damages that the defendant proves do not represent the depreciation in value of the Senior Notes as a result of the misrepresentation relied upon.

In no case will the amount recoverable for the misrepresentation exceed the price at which the Senior Notes were offered.

The liability of all persons referred to above is joint and several.

The foregoing statutory right of action for rescission or damages conferred is in addition to and without derogation from any other right the purchaser may have at law.

This summary is subject to the express provisions of the Securities Act (New Brunswick) and the regulations and rules made under it, and prospective investors should refer to the complete text of those provisions.

Rights for Purchasers in Prince Edward Island

The right of action for rescission or damages described herein is conferred by Section 112 of the *Securities Act* (Prince Edward Island). Section 112 provides, that in the event that this confidential shelf offering memorandum contains a "misrepresentation", a purchaser who purchased the Senior Notes during the period of distribution, without regard to whether the purchaser relied upon such misrepresentation, has a statutory right of action for damages against the Issuer, the selling security holder on whose behalf the distribution was made, every trustee of the Issuer as at the date of the confidential shelf offering memorandum, and every person who signed the confidential shelf offering memorandum. Alternatively, the purchaser while still the owner of the Senior Notes may elect to exercise a statutory right of action for rescission against the Issuer. "Misrepresentation" means an untrue statement of material fact, or an omission to state a material fact that is required to be stated by the *Securities Act* (Prince Edward Island), or an omission to state a material fact that needs to be stated so that a statement is not false or misleading in light of the circumstances in which it is made. Statutory rights of action for rescission or damages by a purchaser are subject to the following limitations:

(a) no action will be commenced to enforce the right of action for rescission by a purchaser, resident in Prince Edward Island, later than 180 days after the date of the transaction that gave rise to the cause of action;

(b) in the case of any action other than an action for rescission, the earlier of;

  (i) 180 days after the purchaser first had knowledge of the facts given rise to the cause of action; or

  (ii) three years after the date of the transaction giving rise to the cause of action;

(c) no person will be liable if the person proves that the purchaser purchased the security with knowledge of the misrepresentation;

(d) no person other than the Issuer will be liable if the person proves that

  (i) the confidential shelf offering memorandum was sent to the purchaser without the person's knowledge or consent and that, on becoming aware of it being sent, the person had promptly given reasonable notice to the Issuer that it had been sent without the knowledge and consent of the person;

  (ii) the person, on becoming aware of the misrepresentation in the confidential shelf offering memorandum, had withdrawn the person's consent to the confidential shelf offering memorandum and had given reasonable notice to the Issuer of the withdrawal and the reason for it; or

(iii) with respect to any part of the confidential shelf offering memorandum purporting to be made on the authority of an expert or purporting to be a copy of, or an extract from, a report, statement or opinion of an expert, the person had no reasonable grounds to believe, and did not believe that;

(A) there had been a misrepresentation; or

(B) the relevant part of the confidential shelf offering memorandum:

a. did not fairly represent the report, statement or opinion of the expert, or

b. was not a fair copy of, or an extract from, the report, statement, or opinion of the expert.

Not all defences upon which the Issuer or others may rely are described herein. Please refer to the full text of the *Securities Act* (Prince Edward Island) for a complete listing.

If the purchaser elects to exercise a right of action for rescission, the purchaser will have no right of action for damages.

In no case will the amount recoverable in any action exceed the price at which the Senior Notes were offered to the purchaser.

In an action for damages, the defendant will not be liable for any damages that the defendant proves do not represent the depreciation in value of the Senior Notes as a result of the misrepresentation.

The foregoing statutory right of action for rescission or damages conferred is in addition to and without derogation from any other right the purchaser may have at law.

This summary is subject to the express conditions of the *Securities Act* (Prince Edward Island) and the regulations and rules made under it, and prospective investors should refer to the complete text of those provisions.

Rights for Purchasers in Manitoba

Pursuant to section 141.1(1) of *The Securities Act* (Manitoba) (the "**Manitoba Act**"), where this confidential shelf offering memorandum, or any amendment to this confidential shelf offering memorandum, is sent or delivered to a purchaser in the Province of Manitoba and such document contains a misrepresentation, a purchaser who purchases Senior Notes offered by this confidential shelf offering memorandum or any amendment to this confidential shelf offering memorandum is deemed to have relied on that misrepresentation, if it was a misrepresentation at the time of purchase and, subject to the defenses described in the Manitoba Act, has:

(a) a right of action for damages against:

(i) the Issuer;

(ii) each of its trustees at the date of this confidential shelf offering memorandum or any amendment to this confidential shelf offering memorandum; and

(iii) every person or company who signed this confidential shelf offering memorandum or any amendment to this confidential shelf offering memorandum; and

(b) a right of rescission against the Issuer;

provided that:

(c) no person or company is liable if the person or company proves that the purchaser purchased the Senior Notes with knowledge of the misrepresentation;

(d) in an action for damages, the defendant is not liable for all or any portion of the damages that he, she or it proves do not represent the depreciation in value of the Senior Notes resulting from the misrepresentation relied on; and

(e) in no case will the amount recovered exceed the price at which the Senior Notes were offered to the public.

Where a purchaser elects to exercise a right of rescission against the Issuer, the purchaser will have no right of action for damages against the Issuer or against a person or company referred to in (a)(ii) or (iii) above.

No person or company other than the Issuer is liable:

(a) if the person or company proves that this confidential shelf offering memorandum or any amendment to this confidential shelf offering memorandum was sent without the person's or company's knowledge or consent and that, after becoming aware of its being sent, the person or company promptly gave reasonable notice to the Issuer that it was so sent;

(b) if the person or company proves that after becoming aware of any misrepresentation in this confidential shelf offering memorandum or any amendment to this confidential shelf offering memorandum, the person or company withdrew the person's or company's consent to it and gave reasonable notice to the Issuer of the person's or company's withdrawal and the reason for it;

(c) if the person or company proves that with respect to any part of this confidential shelf offering memorandum or of any amendment to this confidential shelf offering memorandum purporting to be made on the authority of an expert or purporting to be a copy of or an extract from a report, opinion or statement of an expert, the person or company had no reasonable grounds to believe and did not believe that:

(i) there had been a misrepresentation; or

(ii) the relevant part of this confidential shelf offering memorandum or of the amendment to this confidential shelf offering memorandum:

(A) did not fairly represent the report, opinion or statement of the expert; or

(B) was not a fair copy of or extract from the report, opinion or statement of the expert; or

(d) with respect to any part of this confidential shelf offering memorandum or of the amendment to this confidential shelf offering memorandum not purporting to be made on an expert's authority and not purporting to be a copy of, or an extract from, the expert's report, opinion or statement, unless the person or company:

(i) did not conduct an investigation, sufficient to provide reasonable grounds for a belief that there had been no misrepresentation; or

(ii) believed that there had been a misrepresentation.

Pursuant to section 141.4 of the Manitoba Act, but subject to the other provisions thereof, no action shall be commenced to enforce any of the foregoing rights more than:

(a) in the case of an action for rescission, 180 days from the date of the transaction that gave rise to the cause of action, or

(b) in the case of an action for damages, the earlier of:

(i) 180 days after the date that the plaintiff first had knowledge of the facts giving rise to the cause of action, or

(ii) two years after the date of the transaction that gave rise to the cause of action.

In an action for damages, the Issuer will not be liable for all or any part of the damages that the Issuer proves do not represent the depreciation in value of the Senior Notes as a result of the misrepresentation relied upon.

The rights of action for rescission or damages under the Manitoba Act are in addition to and do not derogate from any other right that the purchaser may have at law.

This summary is subject to the express provisions of the Manitoba Act and the regulations and rules made under it, and prospective investors should refer to the complete text of those provisions.

Rights for purchasers in Newfoundland and Labrador

In accordance with section 130.1 of the *Securities Act* (Newfoundland and Labrador, hereinafter the "**NL Act**"), in the event this confidential shelf offering memorandum contains a misrepresentation, a purchaser who purchases Senior Notes shall be deemed to have relied upon such misrepresentation if it was a misrepresentation at the time of purchase, in which event the purchaser has, subject to the defences and limitations set out in the NL Act: (a) a right of action for damages against the Issuer and, every trustee of the Issuer at the date of this confidential shelf offering memorandum and every person or company who has signed this confidential shelf offering memorandum; and (b) a right of rescission against the Issuer. Where a right of rescission is exercised, a purchaser shall have no right of action for damages against any other person or company.

For the purposes of the NL Act "misrepresentation" means: (a) an untrue statement of material fact, or (b) an omission to state a material fact that is required to be stated or that is necessary to make a statement not misleading in the light of the circumstances in which it was made.

A person or company is not liable under section 130.1 of the NL Act: (a) if the person or company proves the purchaser had knowledge of the misrepresentation; or (b) in an action for damages, for all or any portion of the damages that the person or company proves do not represent the depreciation in value of the security as a result of the misrepresentation. Additionally, in an action for damages, the amount recoverable under the right of action shall not exceed the purchase price at which the security was offered.

In addition no person or company, other than the Issuer, is liable under section 130.1 of the NL Act if:

(a) the person or company proves that this confidential shelf offering memorandum was sent to the purchaser without the person's or company's knowledge or consent and that, on becoming aware of its being sent, the person or company promptly gave reasonable notice to the Issuer that it was sent without the person's or company's knowledge or consent;

(b) the person or company proves that on becoming aware of any misrepresentation in this confidential shelf offering memorandum, the person or company withdrew the person's or company's consent to this confidential shelf offering memorandum, and gave reasonable notice to the Issuer of the withdrawal and the reason for it;

(c) with respect to any part of this confidential shelf offering memorandum purporting to be made on the authority of an expert (or purporting to be a copy of or an extract from a report, opinion or statement of an expert), the person or company proves they had no reasonable grounds to believe

and did not believe that: (i) there had been a misrepresentation; or (ii) the relevant part of this confidential shelf offering memorandum did not fairly represent the report, opinion or statement of the expert, or was not a fair copy of, or an extract from, the report, opinion or statement of the expert; or

(d) with respect to any part of this confidential shelf offering memorandum not purporting to be made on the authority of an expert (and not purporting to be a copy of or an extract from a report, opinion or statement of an expert), unless the person or company: (i) did not conduct an investigation sufficient to provide reasonable grounds for a belief that there had been no misrepresentation; (ii) or believed there had been a misrepresentation.

If a misrepresentation is contained in a record incorporated by reference in, or deemed incorporated into this confidential shelf offering memorandum, the misrepresentation is deemed to be contained in this confidential shelf offering memorandum.

The foregoing statutory right of action for rescission or damages conferred is in addition to and without derogation from any other right the purchaser may have at law. The liability of all persons and companies referred to above is joint and several.

Pursuant to section 138 of the NL Act, no action shall be commenced to enforce the rights conferred by section 130.1 thereof unless commenced:

(a) in the case of an action for rescission, 180 days after the date of the transaction that gave rise to the cause of action; or

(b) in the case of an action, other than an action for rescission, the earlier of:

(i) 180 days after the plaintiff first had knowledge of the facts giving rise to the cause of action; or

(ii) three years after the date of the transaction that gave rise to the cause of action.

Rights for Purchasers in Alberta, British Columbia, and Québec

By purchasing Senior Notes hereunder, purchasers in Alberta, British Columbia and Québec not entitled to the statutory rights described above, in consideration of their purchase of Senior Notes and upon accepting a purchase confirmation in respect thereof, are hereby granted a contractual right of action for damages or rescission that is the same as the statutory right of action, if any, provided to residents of Ontario who purchase Senior Notes.

General

The foregoing summaries are subject to the express provisions of the applicable securities law of each jurisdiction, and the regulations, rules and policy statements thereunder and reference is made thereto for the complete text of such provisions.

The rights of action described in this confidential shelf offering memorandum are in addition to and without derogation from any other right or remedy that the purchaser may have at law.

INDENTURE TRUSTEE

The Indenture Trustee, BNY Trust Company of Canada, will be the registrar for the Senior Notes, and the register for the transfer of Senior Notes will be kept at its principal office in Toronto, Ontario.

LEGAL MATTERS

Certain Canadian legal matters in connection with the offering of Senior Notes will be passed upon by Torys LLP on behalf of the Issuer and by Osler, Hoskin & Harcourt LLP on behalf of the Agents.

GLOSSARY

[NTD: Glossary in progress. For ease of reference, Torys is considering adding an index or replacing glossary with an index for terms that are defined in the body.]

The following glossary contains definitions of certain terms that are used throughout this confidential shelf offering memorandum.

"**Acceleration**" means, (a) a portion of the principal amount owing in respect of the Funding Obligation has become due and payable by a Financing Entity before the scheduled payment date, maturity date or redemption date, or (b) a party to a derivative agreement in respect of the Funding Obligation has elected to close-out or terminate the agreement, resulting in an obligation on a Financing Entity to pay a termination amount, close-out amount or similar amount.

"**Acceleration Event**" means the acceleration of any Series of Controlling Class Obligations pursuant to and in accordance with its Funding Obligation Agreement.

"**Adherence Compliance Certificate**" has the meaning set out under *"Change of Law Protection Agreement — Approved Obligations & Adherence Conditions"*.

"**Adverse Effect**" has the meaning set out under *"Capital Markets Platform — Conditions Precedent to Incurrence of Obligations Secured — Issuer Funding Obligations"*.

"**Agency Agreement**" has the meaning set out under *"Plan of Distribution"*.

"**Agents**" means the agents designated by the Issuer from time to time and identified in the Term Sheet applicable to such Offering to sell the Senior Notes as described under *"Plan of Distribution"*.

"**Approved Obligation**" has the meaning set out under *"Change of Law Protection Agreement — Approved Obligations & Adherence Conditions"*.

"**Available Collections**" has the meaning set out under *"Capital Markets Platform — Security — Issuer Accounts — Program Accounts — Collection Account"*.

"**Borrowing**" means a borrowing or drawing by the Issuer pursuant to a liquidity agreement, a loan agreement or a credit enhancement agreement.

"**Canadian Insolvency and Restructuring Laws**" has the meaning set out under *"Risk Factors — Risks Associated with the Unusual Nature of the Investment Asset"*.

"**Carrying Costs**" has the meaning ascribed to the term "carrying costs" in the Regulations.

"**CDS**" means CDS Clearing and Depository Services Inc.

"**Certified Primary Obligation**" has the meaning set out under *"Change of Law Protection Agreement — Approved Obligations & Adherence Conditions"*.

"**Class**" has the meaning set out under *"Capital Markets Platform — Subordination Provisions"*.

"**Clean Energy Adjustment**" has the meaning set out under *"Ontario's Fair Hydro Plan — Clean Energy Adjustment"*.

"**Clean Energy Benefits**" means the value of the benefits determined to be derived by or accruing to Specified

Consumers as a result of the Clean Energy Initiative, including as a result of Clean Energy Costs.

"**Clean Energy Costs**" means the value of the costs allocated to Specified Consumers as a result of the Clean Energy Initiative, including as a result of past, present and expected costs incurred in respect of

(a) the amounts to be paid or reflected by the IESO in adjustments made under section 25.33 of the *Electricity Act, 1998* (Ontario) or any provision that is the successor to that provision, which relate to contracts or amounts for

(i) renewable energy generation or capacity;

(ii) conservation and demand management;

(iii) energy storage;

(iv) energy efficiency; and

(v) natural gas generation and capacity, excluding contracts relating to amounts payable by the IESO under section 78.2 of the *Ontario Energy Board Act, 1998* and excluding such other contracts as may be prescribed;

(b) payments made or expected to be made under section 78.5 of the *Ontario Energy Board Act, 1998*; and

(c) such other costs or estimated costs as may be prescribed by the Regulations.

"**Clean Energy Initiative**" means the policies of the Government of Ontario ~~government~~ related to

(a) eliminating coal generation and fostering the growth of and investment in clean, modern and reliable energy sources and technologies;

(b) removing barriers to and promoting opportunities for clean and renewable energy sources and technologies;

(c) promoting conservation, demand management and energy efficiency; and

(d) investing in energy infrastructure to ensure a clean, modern and reliable system.

"**Clearstream, Luxembourg**" means Clearstream Banking, société anonyme.

"**Collateral**" has the meaning set out under *"Capital Markets Platform — Security"*.

"**Collection Account**" has the meaning set out under *"Capital Markets Platform — Security — Issuer Accounts — Program Accounts — Collection Account"*.

"**Collection Account Waterfall**" has the meaning set out under *"Capital Markets Platform — Payment Waterfalls Prior to Acceleration — Collection Account"*.

"**Commission**" has the meaning set out under *"Representations and Agreements of Purchasers"*.

"**Confidential Information**" has the meaning set out under *"Confidentiality"*.

"**Controlling Class Creditors**" means the Debtholders holding Controlling Class Obligations.

"**Controlling Class Obligations**" means: (a) Senior Funding Obligations until such time as all Senior Funding Obligations have been paid in full; then (b) if all Senior Funding Obligations have been paid in full, Subordinated Funding Obligations until such time as all Subordinated Funding Obligations have been paid in full; and finally (c) if all Senior Funding Obligations and Subordinated Funding Obligations have been paid in full, Junior Subordinated Funding Obligations until such time as all Junior Subordinated Funding Obligations have been paid in full.

"**Co-Owner Agreement**" means any agreement between, *inter alia*, the Issuer and any other owner or owners of an Investment Interest as contemplated by the FHPA.

"**DBRS**" means DBRS Limited and its successors.

"**Debtholder**" means a Noteholder or a Lender.

"**Debtholder Group**" has the meaning set out under *"Capital Markets Platform — Debtholder Approvals and Meetings — Debtholder Meetings"*.

"**Declaration of Trust**" has the meaning set out under *"The Issuer"*.

"**Default**" means the occurrence of any event which, after the passage of time, the required notification to the Indenture Trustee and, if required, approval by the required Controlling Class Creditors, would become an Event of Default.

"~~**depository**~~**Depository**" has the meaning set out under *"Depository Services"*.

"**Derivative Counterparty**" means any party to any derivative agreement other than the Issuer or the Indenture Trustee.

"**Derivative Funding Obligations**" means Funding Obligations arising under, or in connection with, derivative agreements.

"**DTC**" means The Depositary Trust Company.

"**Electricity Vendor**" means

(a) a person licensed under Part V of the *Ontario Energy Board Act, 1998* to own or operate a "distribution system" within the meaning of that Act;

(b) a person licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity;

(c) the IESO in circumstances where it directly invoices a Specified Consumer for electricity used in Ontario; or

(d) such other person as may be prescribed by the Regulations.

"**Eligible Deposit Account**" has the meaning set out under *"Capital Markets Platform — Security — Issuer Accounts"*.

"**Eligible Institution**" means (a) a trust company or Schedule I chartered bank (or an affiliate thereof) incorporated under the laws of Canada or any province thereof (i) which has either (x) a long-term unsecured debt rating of "A" or better by DBRS, or (y) a short-term deposit rating of "R-1 (low)" or better by DBRS, and (ii) which has either (x) a long-term unsecured debt rating of "A2" or better by Moody's, or (y) a short-term deposit rating of "P-1" or better by Moody's, or (b) any institution that otherwise satisfies the Rating Agency Condition.

"**Eligible Investments**" means instruments or investment property that evidence:

(a) direct obligations of, or obligations fully and unconditionally guaranteed as to timely payment by, Canada or the United States of America;

(b) demand or time deposits of, unsecured certificates of deposit of, money market deposit accounts of, bank deposit products of or bankers' acceptances issued by, any depository institution (including, but not limited to, bank deposit products of the Indenture Trustee, acting in its commercial capacity) incorporated or organized under the laws of the United States of America, Canada or any state or province thereof and subject to supervision and examination by applicable banking authorities, so long as the commercial paper or other short-term debt obligations of such depository institution are, at the time of deposit, rated at least "R-1 (low)" and "P 1" by each of DBRS and Moody's, or such lower rating as will not result in the downgrading or withdrawal of the ratings of the Issuer or any of the Issuer Funding Obligations;

(c) commercial paper (including commercial paper of the Indenture Trustee, acting in its commercial capacity), which at the time of purchase is rated at least "R-1 (low)" and "P-1" by each of DBRS and Moody's, or such lower rating as will not result in the downgrading or withdrawal of the ratings of the Issuer or any of the Issuer Funding Obligations;

(d) investments in money market funds having a rating in the highest investment category granted thereby (including funds for which the Indenture Trustee or any of its affiliates is investment manager or advisor) from DBRS and Moody's;

(e) repurchase obligations with respect to any security that is a direct obligation of, or fully guaranteed by, the United States of America, Canada or their respective agencies or instrumentalities, entered into with Eligible

Institutions;

(f) repurchase obligations with respect to any security or whole loan entered into with an Eligible Institution or with a registered broker/dealer acting as principal and that meets the ratings criteria set forth below:

(i) a broker/dealer (acting as principal) registered as a broker or dealer under the *Securities Act* (Ontario) (any such broker/dealer being referred to in this definition as a "**broker/dealer**"), the unsecured short-term debt obligations of which are rated at least "P-1" by Moody's and "R-1" by DBRS at the time of entering into such repurchase obligation; or

(ii) an unrated broker/dealer, acting as principal, that is a wholly-owned subsidiary of a non-bank or bank holding company the unsecured short-term debt obligations of which are rated at least "P-1" by Moody's and "R-1" by DBRS at the time of purchase so long as the obligations of such unrated broker/dealer are unconditionally guaranteed by such non-bank or bank holding company; and

(g) any other investment permitted by each of the Rating Agencies;

in each case maturing not later than the business day preceding the next Payment Date, Interest Payment Date or Principal Payment Date, as applicable (for the avoidance of doubt, investments in money market funds or similar instruments that are redeemable on demand shall be deemed to satisfy the foregoing requirement). Notwithstanding the foregoing, no securities or investments that mature in 30 days or more shall be "Eligible Investments" unless the issuer thereof has (x) either a short-term unsecured debt rating of at least "P-1" from Moody's or a long-term unsecured debt rating of at least "A2" from Moody's and also has (y) either a short-term unsecured debt rating of at least "R-1 (low)" from DBRS or a long-term unsecured debt rating of at least "A" from DBRS.

"**Eligible Securities Account**" has the meaning set out under *"Capital Markets Platform — Security — Issuer Accounts"*.

"**Euroclear**" means Euroclear Bank S.A./N.V., as operator of the Euroclear System.

"**Event of Default**" has the meaning set out under *"Capital Markets Platform — Event of Default"*.

"**Extraordinary Resolution**" has the meaning set out under *"Capital Markets Platform — Debtholder Approvals and Meetings — Debtholder Meetings"*.

"**Fair Adjustment**" has the meaning set out under *"Ontario's Fair Hydro Plan — Background"*.[59]

"**Fair Allocation Amount**" has the meaning set out under *"Ontario's Fair Hydro Plan — Fair Allocation Amount and Financing Plan"*.[60]

"**FHPA**" means the *Ontario Fair Hydro Plan Act, 2017*.

"**Finance Amount**" has the meaning set out under *"Ontario's Fair Hydro Plan — Clean Energy Adjustment"*.

"**Financial Services Manager**" means OPG, in its capacity as financial services manager appointed under the FHPA to perform the duties assigned to it thereunder.[61]

"**Financing Entity**" has the meaning set out under *"Ontario's Fair Hydro Plan — Background"*.

"**Financing Plan**" means the written plan entitled "Financing Plan" prepared by the Financial Services Manager as

[59] **Note:** Please consider revising the definition of "Fair Adjustment" if this concept is to be used in the OM. The definition of the "Fair Adjustment" indicates that this term only refers to the rate reduction from July 1, 2017 until April 30, 2018. When the term is then later used in narrative [ex. "…the Financing Entity is financing a portion of the shortfall that results from the Fair Adjustment…"] it refers to the electricity rates that result from the entire fair hydro program.

[60] **Note:** Please consider a description of the Fair Allocation Amount that more closely aligns to Section 20(1) of the FHPA.

[61] **Note:** Please consider whether there should be disclosure indicating that the FSM is a statutory role from which OPG may be removed.

required under the FHPA to be used by the Financial Services Manager to evaluate whether potential Funding Obligations should be incurred for the purposes of a Financing Entity acquiring and financing an Investment ~~Interests, including~~Interest in accordance with the FHPA or for the purposes of a Refinancing, and includes any amendments thereto.

"**Funding Obligation**" has the meaning set out under *"Ontario's Fair Hydro Plan — Background"*.

"**Funding Obligation Agreement**" means any Note, any Supplemental Indenture (including any Terms Document), ~~any liquidity agreement,~~ any liquidity agreement, any credit enhancement agreement or any derivative agreement.

"**Funding Rebate**" has the meaning set out under *"Ontario's Fair Hydro Plan — Investment Interest"*.

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

"**HOEP**" has the meaning set out under *"The Electricity Industry in Ontario — Electricity Prices"*.

"**IESO**" means the Independent Electricity System Operator.

"**IESO Cash Reserve Account**" has the meaning set out under *"Capital Markets Platform — Security — Issuer Accounts — Program Accounts — IESO Cash Reserve Account"*.

"**IESO Cash Reserve Deposit Amount**" means an amount equal to the aggregate of:

(a) 0.50% of the aggregate outstanding principal amount of the Senior Funding Obligations, Subordinated Funding Obligations and Junior Subordinated Funding Obligations determined as of the Payment Date occurring in April, 2021; and

(b) an amount estimated by the Manager, acting reasonably, as the amount of Carrying Costs payable by the Issuer during May, June and July, 2021 on outstanding Issuer Funding Obligations and any Issuer Funding Obligations to be issued in accordance with the Financing Plan, provided that such estimate satisfies the Rating Agency Condition.

"**IESO Cash Reserve Required Amount**" means, on any Payment Date on or after the Payment Date in November, 2021, the amount, if any, by which (a) an amount equal to 0.50% of the aggregate outstanding principal amount of the Senior Funding Obligations, Subordinated Funding Obligations and Junior Subordinated Funding Obligations, exceeds (b) the amount on deposit in the Program Cash Reserve Account, determined after giving effect to all settlements on such Payment Date.

"**IESO Security Agreement**" means the security agreement made by the IESO in favour of the Issuer to secure its obligations to pay the Issuer's Carrying Costs pursuant to the Master Transfer and Servicing Agreement.

"**Indemnity Agreement**" means the Indemnity Agreement dated December 21, 2017 by OPG in favour of the Indenture Trustee.

"**Indenture**" means the Master Trust Indenture, as supplemented by any Supplemental Indenture.

"**Indenture Trustee**" means BNY Trust Company of Canada and its successors.

"**Interest Accrual Amount (Junior Subordinated)**" means, in respect of any Payment Date and all Junior Subordinated Funding Obligations, the amount of interest that accrued on such Junior Subordinated Funding Obligations during the period from and including the issuance date of such Junior Subordinated Funding Obligations or the last date to which interest has been paid in respect of such Junior Subordinated Funding

Obligations, as applicable, to such Payment Date less any amounts deposited to the Interest Accumulation Account in respect of such interest accruing during such period pursuant to the Collection Account Waterfall and the payment waterfall applicable to the IESO Cash Reserve Account.

"**Interest Accrual Amount (Senior)**" means, in respect of any Payment Date and all Senior Funding Obligations, the amount of interest that accrued on such Senior Funding Obligations during the period from and including the issuance date of such Senior Funding Obligations or the last date to which interest has been paid in respect of such Senior Funding Obligations, as applicable, to such Payment Date less any amounts deposited to the Interest Accumulation Account in respect of such interest accruing during such period pursuant to the Collection Account Waterfall and the payment waterfall applicable to the IESO Cash Reserve Account.

"**Interest Accrual Amount (Subordinated)**" means, in respect of any Payment Date and all Subordinated Funding Obligations, the amount of interest that accrued on such Subordinated Funding Obligations during the period from and including the issuance date of such Subordinated Funding Obligations or the last date to which interest has been paid in respect of such Subordinated Funding Obligations, as applicable, to such Payment Date less any amounts deposited to the Interest Accumulation Account in respect of such interest accruing during such period pursuant to the Collection Account Waterfall and the payment waterfall applicable to the IESO Cash Reserve Account.

"**Interest Accumulation Account**" has the meaning set out under *"Capital Markets Platform — Security — Issuer Accounts — Program Accounts — Interest Accumulation Account"*.

"**Interest Payment Date**" means each business day on which interest is due and payable in respect of Senior Funding Obligations, Subordinated Funding Obligations or Junior Subordinated Funding Obligations, as set out in the related Funding Obligation Agreement.

"**Investment Asset**" has the meaning set out under *"Ontario's Fair Hydro Plan — Investment Interest"*.

"**Investment Interest**" has the meaning set out under *"Ontario's Fair Hydro Plan — Investment Interest"*.

"**Investor Presentation**" has the meaning set out on the face page of this confidential shelf offering memorandum.

"**Issuer**" means Fair Hydro Trust, a special purpose trust ~~established under~~governed by the laws of the Province of Ontario.

"**Issuer Account**" has the meaning set out under *"Capital Markets Platform — Security — Issuer Accounts"*.

"**Issuer Funding Obligation**" means Funding Obligations of the Issuer.

"**Issuer Trustee**" means Computershare Trust Company of Canada.

"**Junior Subordinated Funding Obligations**" means Funding Obligations arising under, or in connection with, Notes and Borrowings that have been designated as "Junior Subordinated" in the related Funding Obligation Agreement.

"**Junior Subordinated Notes, Series 2017-1**" has the meaning set out under *"Short Term Indebtedness"*.

"**LDCs**" has the meaning set out under *"The Electricity Industry in Ontario"*.

"**Lender**" means any Person providing credit facilities, note purchase facilities or advances under a liquidity agreement, liquidity agreement or credit enhancement agreement, as applicable.

"**Limited Guarantee**" has the meaning set out under *"Change of Law Protection Agreement"*.

"**Management Agreement**" has the meaning set out under *"The Manager"*.

"**Manager**" means OPG, as manager of the Issuer appointed under the Management Agreement.

"**Manitoba Act**" means *The Securities Act* (Manitoba).

"**Master Agreement**" means an agreement in the form of a Master Agreement as published by ISDA or any replacement or substitute or functional equivalent of such agreement.

"**Master Transfer and Servicing Agreement**" means the master transfer and servicing agreement dated as of December 21, 2017 between the Issuer and the IESO, as amended, supplemented, restated or otherwise modified from time to time.

"**Master Trust Indenture**" means the trust indenture dated as of December 21, 2017 between the Issuer, as issuer, and the Indenture Trustee, as amended, supplemented, restated or otherwise modified from time to time.

"**Material Effect**" has the meaning set out under *"Change of Law Protection Agreement — Suspension Notice & Post-Suspension Refinancings"*.

"**Moody's**" means Moody's Investors Service, Inc. and its successors.

"**Moratorium Period**" has the meaning set out under *"Ontario's Fair Hydro Plan — Clean Energy Adjustment"*.

"**MTSA Acknowledgement**" means the acknowledgement and indemnity agreement dated December 21, 2017 by the IESO in favour of the Indenture Trustee.

"**MW**" means megawatts.[62]

"**NI 31-103**" means National Instrument 31-103 — *Registration Requirements, Exemptions and Ongoing Registrant Obligations*.

"**NI 45-106**" means National Instrument 45-106 — *Prospectus Exemptions*.

"**NL Act**" means the *Securities Act* (Newfoundland and Labrador).

"**Non-Investment Grade Rated Electricity Vendor**" has the meaning set out under *"The Transferor and Servicer"*.

"**Note**" means any note of any Class, Series or Tranche created pursuant to a Supplemental ~~Indentures~~Indenture and authenticated and delivered from time to time under the Master Trust Indenture.

"**Noteholders**" means a Person in whose name a Note is registered in the Note register or the bearer of any Note held in bearer form (including a global note in bearer form), as the case may be.

"**Obligations Secured**" means all present and future debts, expenses and liabilities, direct or indirect, absolute or contingent, due, owing or accruing due or owing from time to time by the Issuer to the Specified Creditors in their capacity as such. For greater certainty, amounts owing to any Specified Creditors by the Issuer at any time shall include (a) the unpaid face amount of any Notes issued on a discount basis; (b) the principal amount owing at such time, together with the accrued and unpaid interest on interest bearing Notes or Borrowings; (c) accrued fees, whether or not then due and payable; and (d) any evidence of indebtedness issued pursuant to or in respect of an amount owing under a Program Agreement (other than amounts payable by the Issuer to its beneficiaries pursuant to the Declaration of Trust or a promissory note issued by the Issuer to a beneficiary as contemplated in the Declaration of Trust).

[62] **Note:** Definition not used.

"**OEB**" means the Ontario Energy Board.

"**Offering**" means an offering of senior secured notes pursuant to this confidential shelf offering memorandum and the related Term Sheet as described under *"Plan of Distribution"*.

"**Offering Jurisdiction**" means each of the provinces of Canada.

"**OPA**" means Ontario Power Authority.

"**OPG**" means Ontario Power Generation Inc.

"**Ordinary Resolution**" has the meaning set out under *"Capital Markets Platform — Debtholder Approvals and Meetings — Debtholder Meetings"*.

"**Participants**" has the meaning set out under *"Depository Services"*.

"**Paying Agent**" means any Person authorized by the Issuer to pay any Obligations Secured on behalf of the Issuer.

"**Payment Date**" means the 15th day of each calendar month.

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

"**Post-Suspension Refinancing**" has the meaning set out under *"Change of Law Protection Agreement — Suspension Notice & Post-Suspension Refinancings"*.

"**Pre-Approved Refinancing**" has the meaning set out under *"Change of Law Protection Agreement — Suspension Notice & Post-Suspension Refinancings"*.

"**Predecessor IESO**" has the meaning set out under *"The Electricity Industry in Ontario — The IESO"*.

"**Primary Obligation**" has the meaning set out under *"Change of Law Protection Agreement — Approved Obligations & Adherence Conditions"*.

"**Principal Accumulation Account**" has the meaning set out under *"Capital Markets Platform — Security — Issuer Accounts — Program Accounts — Principal Accumulation Account"*.

"**Principal Accumulation Amount**" means, in respect of any Series of Senior Funding Obligations, Subordinated Funding Obligations or Junior Subordinated Funding Obligations and a Payment Date occurring on or after the Principal Accumulation Date for such Series, the amount specified for such Payment Date in the related Funding Obligation Agreement plus any amounts specified in the related Funding Obligation Agreement in respect of prior Payment Dates after the Principal Accumulation Date for such Series which were not deposited to the Principal Accumulation Account; provided that if the Issuer has delivered a refinancing notice in respect of such Series, the Principal Accumulation Amounts in respect of such Series shall be adjusted as provided for in such refinancing notice.

"**Principal Accumulation Date**" means, in respect of any Series of Issuer Funding Obligations, other than Derivative Funding Obligations, the date, if any, specified in the related Funding Obligation Agreement.

"**Principal Payment Date**" means each business day on which principal is due and payable in respect of Senior Funding Obligations, Subordinated Funding Obligations or Junior Subordinated Funding Obligations, as set out in the related Funding Obligation Agreement.

"**Principal Payment Default Date**" has, with respect to any Issuer Funding Obligation, the meaning specified in

the related Funding Obligation Agreement.

"**Program Account**" means each of the Collection Account, the Principal Accumulation Account, the Interest Accumulation Account, the Program Cash Reserve Account, the IESO Cash Reserve Account, the Refinancing Account and the Protection Account.

"**Program Agreements**" means the Master Trust Indenture, each Supplemental Indenture, the Declaration of Trust, the Management Agreement, the Master Transfer and Servicing Agreement, the MTSA Acknowledgement, the Indemnity Agreement, each transfer notice delivered under the Master Transfer and Servicing Agreement, any Co-Owner Agreements, the IESO Security Agreement, the Change of Law Protection Agreement, the Notes, any derivative agreements, credit enhancement agreements, liquidity agreements, loan agreements, underwriting agreements, agency agreements or note purchase agreements and all other documents and certificates delivered in connection therewith.

"**Program Cash Reserve Account**" has the meaning set out under *"Capital Markets Platform — Security — Issuer Accounts — Program Accounts — Program Cash Reserve Account"*.

"**Program Cash Reserve Required Amount**" means (a) on each Payment Date prior to the Payment Date in May, 2021, nil, and (b) on each Payment Date thereafter, an amount equal to 0.50% of the aggregate outstanding principal amount of the Senior Funding Obligations, Subordinated Funding Obligations and Junior Subordinated Funding Obligations after giving effect to all settlements on such Payment Date, or such lesser amount proposed by the Manager that satisfies the Rating Agency Condition.

"**Protection Account**" has the meaning set out under *"Capital Markets Platform — Security — Issuer Accounts — Program Accounts — Protection Account"*.

"**Protection Event**" has the meaning set out under *"Change of Law Protection Agreement — Protection Event"*.

"**Rating Agency**" means, with respect to any Issuer Funding Obligation, each nationally recognized statistical rating organization or designated rating organization, as specified in the related Funding Obligation Agreement, selected by the Manager to rate such Issuer Funding Obligation.

"**Rating Agency Condition**" has the meaning set out under *"Rating Agency Condition"*.

"**Readjustment amount**" has the meaning ascribed to the term "readjustment amount" in the FHPA and Regulations.

"**Reference Period**" means:

(a) the period beginning on July 1, 2017 and ending on October 31, 2017; and

(b) during the period beginning on November 1, 2017 and ending on either April 30, 2047 or such later day as may be prescribed by the Regulations

(i) every six-month period following the period mentioned in (a);

(ii) any period shorter than six months, as may be prescribed by the Regulations.

"**Refinancing**" has the meaning ascribed to the term "refinancing" in the FHPA.

"**Refinancing Account**" has the meaning set out under *"Capital Markets Platform — Security — Issuer Accounts — Program Accounts — Refinancing Account"*.

"**Regulated Price Plan**" or "**RPP**" has the meaning set out under *"The Electricity Industry in Ontario — Electricity Prices*.

"**Regulations**" means the regulations promulgated under the FHPA.

"**Regulatory Asset**" has the meaning set out under *"Ontario's Fair Hydro Plan — Regulatory Asset"*.

"**Required Principal Accumulation Amount (Senior)**" means, in respect of any Principal Payment Date, the aggregate of the Principal Accumulation Amounts in respect of all Senior Funding Obligations for all Payment Dates up to and including such Principal Payment Date, less all amounts that have been applied to principal repayments of Senior Funding Obligations on or prior to such Principal Payment Date.

"**Required Principal Accumulation Amount (Subordinated)**" means, in respect of any Principal Payment Date, the aggregate of the Principal Accumulation Amounts in respect of all Subordinated Funding Obligations for all Payment Dates up to and including such Principal Payment Date, less all amounts that have been applied to principal repayments of Subordinated Funding Obligations on or prior to such Principal Payment Date.

"**Saskatchewan Act**" means *The Securities Act, 1988* (Saskatchewan).

"**Section 130.1**" means section 130.1 of the *Securities Act* (Ontario).

"**Section 150**" means section 150 of the *Securities Act* (New Brunswick).

"**Securities Account**" has the meaning set out under *"Capital Markets Platform — Security — Issuer Accounts — Securities Account"*.

"**Senior Funding Obligation**" means Funding Obligations arising under, or in connection with, Notes and

Borrowings that have been designated as "Senior" in the related Funding Obligation Agreement.

"**Senior Notes**" has the meaning set out on the face page of this confidential shelf offering memorandum.

"**Senior Notes, Series 2017-1**" has the meaning set out under *"Short Term Indebtedness"*.

"**Series**" means, with respect to any Class of Issuer Funding Obligations, the Series of the Class specified in the related Funding Obligation Agreement.

"**Series Account**" means each Series Finance Reserve Account and each Series Capital Reserve Account.

"**Series Capital Reserve Account**" has the meaning set out under *"Capital Markets Platform — Security — Issuer Accounts — Series Accounts — Series Capital Reserve Account"*.

"**Series Finance Reserve Account**" has the meaning set out under *"Capital Markets Platform — Security — Issuer Accounts — Series Accounts — Series Finance Reserve Account"*.

"**Servicer**" means the IESO, as servicer under the Master Transfer and Servicing Agreement.

"**Servicer Default**" means:

(a) any failure by the Servicer to remit to the Collection Account any required remittance that shall continue unremedied for a period of three business days after written notice of such failure is received by the Servicer from the Issuer or after discovery of such failure by a responsible officer of the Servicer;

(b) any failure on the part of the Servicer or, so long as the Servicer is the IESO, any failure on the part of the IESO, as the case may be, to duly observe or to perform in any respect any covenants or agreements of the Servicer or the IESO, as the case may be, set forth in the Master Transfer and Servicing Agreement or in any other Program Agreement to which it is a party (other than as provided in (a) above), which failure shall (i) materially and adversely affect the rights of the Specified Creditors and (ii) continue unremedied for a period of 30 days after the date on which (A) written notice of such failure, requiring the same to be remedied, shall have been given to the Servicer or the IESO, as the case may be, by the Issuer or (B) such failure is discovered by a responsible officer of the Servicer;

(c) any representation or warranty made by the Servicer in the Master Transfer and Servicing Agreement, any other Program Agreement to which it is a party, any transfer notice or any monthly servicer report shall prove to have been incorrect when made, which has a material adverse effect on the Issuer and which remains unremedied for a period of 30 days after the date on which (i) written notice thereof, requiring the same to be remedied, shall have been delivered to the Servicer by the Issuer or (ii) such failure is discovered by a responsible officer of the Servicer;

(d) an insolvency event occurs with respect to the Servicer or the IESO; or

(e) any additional "Servicer Default" as specified in any Co-Owner Agreement occurs.

"**Specified Claims**" has the meaning set out under *"Change of Law Protection Agreement"*.

"**Specified Consumer**" has the meaning set out under *"Ontario's Fair Hydro Plan — Background"*.

"**Specified Creditors**" means, collectively, Noteholders, Lenders, the Paying Agent, the Indenture Trustee, the Issuer Trustee, the Manager, the Servicer, the Province of Ontario, Derivative Counterparties, credit enhancers, Rating Agencies and counterparties to underwriting agreements, agency agreements or note purchase agreements, in each case, to the extent of their claims related to Program Agreements, and any other Person that is owed a payment obligation by the Issuer that gives rise to a Finance Amount in respect of the Issuer.

"**Subordinated Funding Obligations**" means Funding Obligations arising under, or in connection with, Notes and Borrowings that have been designated as "Subordinated" in the related Funding Obligation Agreement.

"**Subordinated Notes, Series 2017-1**" has the meaning set out under *"Short Term Indebtedness"*.

"**Subrogation Amounts**" has the meaning set out under "*Change of Law Protection Agreement — Protection Event*".

"**Supplemental Indenture**" means a supplemental indenture to the Master Trust Indenture between the Issuer and the Indenture Trustee.

"**Suspension Event**" has the meaning set out under *"Change of Law Protection Agreement — Suspension Notice & Post-Suspension Refinancings"*.

"**Suspension Notice**" has the meaning set out under *"Change of Law Protection Agreement — Suspension Notice & Post-Suspension Refinancings"*.

"**Term Sheet**" has the meaning set out on the face page of this confidential shelf offering memorandum.

"**Terms Document**" means, with respect to any Tranche of Notes, a supplement to the related Supplemental Indenture.

"**Tranche**" means, with respect to any Series of Notes, Notes of such Series which have identical terms, conditions and Tranche designation. Notes of a single Tranche may be issued on different dates.

"**True-up Amount**" has the meaning set out under *"Ontario's Fair Hydro Plan — Clean Energy Adjustment"*.

"**Unitholders**" means FHP2017 Inc., a wholly-owned subsidiary of OPG, and the Indenture Trustee.

"**Warehouse Facilities**" has the meaning set out under *"Short Term Indebtedness"*.

"**Warehouse Obligations**" means Senior Funding Obligations incurred pursuant to a Funding Obligation Agreement that provide the Issuer with a revolving facility under which principal amounts can be advanced, repaid and again advanced during a committed revolving period and does not provide any other type of credit facility.

SCHEDULE A – CANADIAN PROVINCIAL SECURITIES REGULATORY AUTHORITIES

Alberta Securities Commission
Suite 600, 250 – 5th Street SW
Calgary, Alberta T2P 0R4
Telephone: (403) 297-6454
Toll free in Canada: 1-877-355-0585
Facsimile: (403) 297-2082
Public official contact regarding indirect collection of information: FOIP Coordinator

British Columbia Securities Commission
P.O. Box 10142, Pacific Centre
701 West Georgia Street
Vancouver, British Columbia V7Y 1L2
Inquiries: (604) 899-6854
Toll free in Canada: 1-800-373-6393
Facsimile: (604) 899-6581
Email: FOI-privacy@bcsc.bc.ca
Public official contact regarding indirect collection of information: FOI Inquiries

The Manitoba Securities Commission
500 – 400 St. Mary Avenue
Winnipeg, Manitoba R3C 4K5
Telephone: (204) 945-2561
Toll free in Manitoba 1-800-655-5244
Facsimile: (204) 945-0330
Public official contact regarding indirect collection of information: Director

Financial and Consumer Services Commission (New Brunswick)
85 Charlotte Street, Suite 300
Saint John, New Brunswick E2L 2J2
Telephone: (506) 658-3060
Toll free in Canada: 1-866-933-2222
Facsimile: (506) 658-3059
Email: info@fcnb.ca
Public official contact regarding indirect collection of information: Chief Executive Officer and Privacy Officer

Government of Newfoundland and Labrador Financial Services Regulation Division
P.O. Box 8700
Confederation Building
2nd Floor, West Block
Prince Philip Drive
St. John's, Newfoundland and Labrador A1B 4J6
Attention: Director of Securities
Telephone: (709) 729-4189
Facsimile: (709) 729-6187
Public official contact regarding indirect collection of

Nova Scotia Securities Commission
Suite 400, 5251 Duke Street
Duke Tower
P.O. Box 458
Halifax, Nova Scotia B3J 2P8
Telephone: (902) 424-7768
Facsimile: (902) 424-4625
Public official contact regarding indirect collection of information: Executive Director

Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, Ontario M5H 3S8
Telephone: (416) 593-8314
Toll free in Canada: 1-877-785-1555
Facsimile: (416) 593-8122
Email: exemptmarketfilings@osc.gov.on.ca
Public official contact regarding indirect collection of information: Inquiries Officer

Prince Edward Island Securities Office
95 Rochford Street, 4th Floor Shaw Building
P.O. Box 2000
Charlottetown, Prince Edward Island C1A 7N8
Telephone: (902) 368-4569
Facsimile: (902) 368-5283
Public official contact regarding indirect collection of information: Superintendent of Securities

Autorité des marchés financiers
800, Square Victoria, 22e étage
C.P. 246, Tour de la Bourse
Montréal, Québec H4Z 1G3
Telephone: (514) 395-0337 or 1-877-525-0337
Facsimile: (514) 873-6155 (For filing purposes only)
Facsimile: (514) 864-6381 (For privacy requests only)
Email: financementdessocietes@lautorite.qc.ca (For corporate finance issuers)
Public official contact regarding indirect collection of information: Corporate Secretary

Financial and Consumer Affairs Authority of Saskatchewan
Suite 601 - 1919 Saskatchewan Drive
Regina, Saskatchewan S4P 4H2
Telephone: (306) 787-5842
Facsimile: (306) 787-5899
Public official contact regarding indirect collection of information: Director

information: Superintendent of Securities

EXHIBIT 1

INVESTOR PRESENTATION

(See attached.)

Document comparison by Workshare Compare on Tuesday, January 16, 2018 10:31:42 AM

Input:	
Document 1 ID	PowerDocs://TOR_2528/23287504/1
Description	TOR_2528-#23287504-v1-Fair_Hydro_OM_-_Comments_of_the_Province
Document 2 ID	PowerDocs://TOR_2528/23287504/7
Description	TOR_2528-#23287504-v7-Fair_Hydro_OM_-_Comments_of_the_Province
Rendering set	standard

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

Statistics:	
	Count
Insertions	521
Deletions	269
Moved from	11
Moved to	11
Style change	0
Format changed	0
Total changes	812

2018-1 Senior Notes Term Sheet - Comments of the Province.pdf

This indicative term sheet accompanies, is incorporated by reference in and forms part of the confidential shelf offering memorandum (the "confidential shelf offering memorandum") dated January ●, 2018 of Fair Hydro Trust (the "Issuer") and is subject to all of the restrictions, conditions and limitations set out in the confidential shelf offering memorandum. This term sheet and the confidential shelf offering memorandum constitute an offering of these securities only in those jurisdictions and to those persons where and to whom they may be lawfully offered for sale. The Issuer is not obligated to accept an offer to purchase the securities described herein.

The summary below describes the principal terms of the Series 2018-1 Senior Notes (as defined below). Certain of the terms summarized below are subject to important limitations and exceptions. The following is not intended to be complete. Prospective investors should review the "Description of Notes" section of the confidential shelf offering memorandum which contains a more detailed description of certain terms of the Series 2018-1 Senior Notes and the master trust indenture (the "Master Trust Indenture") between the Issuer and BNY Trust Company of Canada, acting as trustee, dated December 21, 2017 (and to which the Series 2018-1 Senior Notes will be subject), as supplemented by the term senior series 2018-1 supplemental indenture to the Master Trust Indenture pursuant to which the Series 2018-1 Senior Notes will be issued (together with the Master Trust Indenture, the "Indenture"). In the event of any inconsistency between this indicative term sheet and the confidential shelf offering memorandum, the terms of this indicative term sheet apply. Certain capitalized terms used and not otherwise defined in the summary below have the meanings given thereto in the confidential shelf offering memorandum.

New Issue by Way of Private Placement *January ●, 2018*

FAIR HYDRO TRUST

●% SENIOR NOTES DUE ●, Series 2018-1

Indicative Term Sheet

Issuer:	Fair Hydro Trust, a special purpose trust ~~established under~~governed by the laws of the Province of Ontario.
Issue:	●% Senior Notes due ●, Series 2018-1 (the "**Series 2018-1 Senior Notes**").
Credit Ratings:	DBRS: ● (●) Moody's: ● (●)
Principal Amount:	$●
Term:	● years[1]
Launch Date:	●, 2018
Pricing Date:	●, 2018
Settlement Date:	●, 2018 (T+3)
Interest Rate:	●%
Issue Spread:	+● bps (+/-● bps) versus Government of Canada curve interpolated between CAN ●% due ● and CAN ●% due ● +● bps (including a ● bps curve adjustment) versus the CAN ●% due ● (priced at $● to yield ●%)

[1] Please confirm if a single principal payment date is contemplated. Does this need to be reconciled with the "legal final maturity date" concept?

Issue Yield: ●%

Issue Price: $● for each $1,000 principal amount of Series 2018-1 Senior Notes sold.

Agents Commission: **$●**

Net Proceeds: $●

Interest Payment Dates: Interest on the Series 2018-1 Senior Notes shall be payable in equal (except the initial interest payment) semi-annual instalments in arrears on April 15 and October 15 of each year, commencing April 15, 2018 (short first coupon). The first interest payment on the Series 2018-1 Senior Notes will include accrued and unpaid interest for the period from, and including, the closing date of this Offering (the "**Series 2018-1 Senior Notes Offering**") to, but excluding, the first interest payment date for the Series 2018-1 Senior Notes. The first interest payment will be in an amount equal to $● per $1,000 principal amount of Series 2018-1 Senior Notes.

If an interest payment date is not a business day in Toronto, then the payment will be made on the next business day with no adjustment. For any period less than a full semi-annual interest period, interest will be calculated on an actual/365 basis.

Principal Accumulation Date(s) and Principal Accumulation Amount(s):

Principal Accumulation Dates	**Principal Accumulation Amounts**
●, 20●	$●

Principal Payment Date(s) and Principal Payment Amount(s):

Principal Payment Date	**Principal Payment Amount**
●, 20●	$●

Principal Payment Default Date: ●, 20●

Optional Redemption: The Series 2018-1 Senior Notes will be redeemable at the option of the Issuer, in whole or in part, at any time and from time to time, on not less than 15 nor more than 60 days' notice at the redemption price specified below. At any time prior to the Par Call Date, the redemption price will be equal to the greater of (i) the Series 2018-1 Canada Yield Price and (ii) par, plus, in each case, accrued and unpaid interest to, but not including, the date of redemption. On or after the Par Call Date, the redemption price will be equal to par, plus accrued and unpaid interest to, but not including, the date of redemption.

"**Par Call Date**" means ●, 20●.

"**Series 2018-1 Canada Yield Price**" means a price equal to the price of the Series 2018-1 Senior Notes calculated to provide a yield to the Par Call Date, compounded semi-annually and calculated in accordance with generally accepted Canadian financial practice, equal to the Government of Canada Yield calculated at 10:00 a.m. (Toronto time) on the third Business Day preceding the date of redemption, plus ●% per annum.

"**Government of Canada Yield**" on any date means, in respect of the Series 2018-1 Senior Notes being redeemed, the yield from the redemption date to the Par Call Date compounded semi-annually and calculated in accordance with generally accepted Canadian financial practice, which a non-callable

	Government of Canada bond would carry if issued in Canadian dollars in Canada at 100% of its principal amount on such date with a term to maturity equal to, or if no Government of Canada bond having an equal term to maturity exists, as close as possible to, the Par Call Date (calculated from the date of redemption), such yield being expressed as a per annum rate equal to the average of the per annum yields provided by two major Canadian investment dealers specified by the Issuer.
Limited Recourse:	The Series 2018-1 Senior Notes do not constitute a debt, liability or other obligation of, or interest in, OPG or any of its other affiliates (other than the Issuer). The Series 2018-1 Senior Notes are not a debt, liability or obligation of the Province of Ontario or any of its political subdivisions, agencies or instrumentalities. The Series 2018-1 Senior Notes will not be insured or guaranteed by the Province of Ontario, OPG or any of their respective affiliates or any other person or entity, except that the Province of Ontario has agreed to provide a limited guarantee in respect of the Series 2018-1 Senior Notes following the occurrence of certain events. See the confidential shelf offering memorandum under *"Change of Law Protection Agreement"*. The Series 2018-1 Senior Notes will be limited recourse obligations, secured only by the collateral described in the confidential shelf offering memorandum. See the confidential shelf offering memorandum under "*Capital Markets Platform — Acceleration and Remedies — Limited Recourse*" and *"Risk Factors"*.
Use of Proceeds:	The net proceeds from the Series 2018-1 Senior Notes Offering will be used as follows: **[(i) to refinance $● of indebtedness of the Issuer originally incurred to purchase an Investment Interest from the IESO pursuant to the Master Transfer and Servicing Agreement and (ii) to pay the Series 2018-1 Senior Notes Offering and related costs of the Issuer in an approximate amount of $●. See *"Consolidated Capitalization"*.]**
Ranking:	Subject to the applicable payment waterfalls in the Master Trust Indenture, the Series 2018-1 Senior Notes will be direct, secured and unsubordinated obligations of the Issuer, and will at all times rank equally and proportionately with each other and all other senior indebtedness issued by the Issuer from time to time pursuant to the Indenture, without discrimination or preference.
Additional Security:	No Series Account will be established for the Series 2018-1 Senior Notes. No credit enhancement agreement or liquidity agreement has been entered into for the benefit of the Series 2018-1 Noteholders.
Currency:	Canadian dollars.
Minimum Subscription:	Minimum principal amount of $150,000.
Form and Denomination:	Book entry only through participants in CDS. The Series 2018-1 Senior Notes will be issued in multiples of $1,000.
CUSIP/ISIN:	CUSIP – ● ISIN – ●
Agents:	**[CIBC World Markets Inc., Goldman Sachs Canada Inc., RBC Dominion Securities Inc. (as co-leads and co-bookrunners)]**, ●, ●, and ●.

Any statement contained in the confidential shelf offering memorandum or in any document incorporated or deemed to be incorporated by reference in the confidential shelf offering memorandum shall be deemed to be modified or superseded, to the extent that a statement contained herein or in any other subsequent document which is or is deemed to be incorporated by reference in the confidential shelf offering memorandum, modifies or supersedes such prior statement. The modifying or superseding statement need not state that it has modified or superseded a prior statement or include any other information set forth in the document which it modifies or supersedes. The making of such a modifying or superseding statement shall not be deemed an admission for any purposes that the modified or superseded statement, when made, constituted a misrepresentation, an untrue statement of a material fact or an omission to state a material fact that is required to be stated or that is necessary to make a statement not misleading in light of the circumstances in which it was made. Any statement so modified or superseded shall not constitute a part of the confidential shelf offering memorandum, except as so modified or superseded.

CIBC World Markets Inc., RBC Dominion Securities Inc. and Goldman Sachs Canada Inc. are each, directly or indirectly, a wholly-owned or majority-owned subsidiary or affiliate of a financial institution which is a lender to the Issuer and to which the Issuer is currently indebted under the terms of the Warehouse Facilities (as described herein). The Issuer may use a portion of the net proceeds of the Series 2018-1 Senior Notes Offering to repay certain indebtedness under the Warehouse Facilities. Consequently, the Issuer may be considered to be a "connected issuer", of certain of the Agents for the purposes of securities regulations in certain provinces. See "Relationship between the Issuer and the Agents".

CAPITALIZATION

On December 21, 2017, the Issuer entered into the following supplemental indentures under the Master Trust Indenture for the provision of an aggregate of approximately $1.56 billion in short term indebtedness (collectively, the "**Warehouse Facilities**"), of which a total of $1.179 billion is drawn as of the date hereof:

(i) a warehouse senior series 2017-1 supplemental indenture with, among others, Royal Bank of Canada, as administrative agent for certain commercial paper conduit purchasers and financial institutions named therein, for the provision of an aggregate maximum principal amount of $800,000,000 floating rate variable funding Senior Notes, Series 2017-1 ("**Senior Notes, Series 2017-1**"), of which $601,290,000 is drawn. See "*Relationship between the Issuer and the Agents*";

(ii) a warehouse subordinated series 2017-1 supplemental indenture with, among others, OPG for the provision of an aggregate maximum principal amount of $611,764,705.88 floating rate variable funding Subordinated Notes, Series 2017-1 ("**Subordinated Notes, Series 2017-1**"), of which $459,810,000 is drawn; and

(iii) a warehouse junior subordinated series 2017-1 supplemental indenture with, among others, OPG for the provision of an aggregate maximum principal amount of $156,862,745.10 floating rate variable funding Junior Subordinated Notes, Series 2017-1 ("**Junior Subordinated Notes, Series 2017-1**"), of which $117,900,000 is drawn.

The issuance of Senior Notes, Series 2017-1, Subordinated Notes, Series 2017-1 and Junior Subordinated Notes, Series 2017-1 under the Warehouse Facilities described above were used to acquire a $1.179 billion Investment Interest from the IESO on December 21, 2017.

[NTD: If there are subsequent draws on the warehouse before the launch of the Series 2018-1 Senior Notes Offering, this section to be updated.]

Concurrently with the issuance of the Series 2018-1 Senior Notes, OPG will also subscribe for:

(i) $● of ●% subordinated notes due ●, Series 2018-1; and
(ii) $● of ●% subordinated junior notes due ●, Series 2018-1.

The following table summarizes the capitalization of the Issuer as at the dates indicated before and after completion of the Series 2018-1 Senior Notes Offering.

	As at December 31, 2017 before giving effect to the Series 2018-1 Senior Notes Offering	**As at December 31, 2017 after giving effect to the Series 2018-1 Senior Notes Offering**
Cash and Cash Equivalents……..	Nil	Nil
Debt		
Long-term debt, including current portion……	Nil	$●
Short-term debt……...	**$[1,179,000,000.00]**(1)	**$[1,179,000,000.00]**
Bank indebtedness……..	Nil	Nil
Total Debt……	**$[1,179,000,000.00]**(1)	$●
Equity		
Equity……	$10,000.01	$10,000.01

Total Capitalization.....	**$[1,179,010,000.01]**[(1)]	$●

(1) Representing Notes outstanding as of the date hereof under the Warehouse Facilities as follows: (i) $601,290,000, or 51% of all short-term debt, represented by Senior Notes, Series 2017-1; (ii) $459,810,000, or 39% of all short term debt, represented by Subordinated Notes, Series 2017-1 held by OPG; and (iii) $117,900,000 of which, or 10% of all short term debt, represented by Junior Subordinated Notes held by OPG.

CERTAIN CANADIAN FEDERAL INCOME TAX CONSIDERATIONS

In the opinion of Torys LLP and Osler, Hoskin & Harcourt LLP, the following summary describes the principal Canadian federal income tax considerations generally applicable under the Income Tax Act (Canada) (the "**Tax Act**") to a holder who acquires Series 2018-1 Senior Notes as beneficial owner pursuant to the Series 2018-1 Senior Notes Offering and who, for purposes of the Tax Act and at all relevant times, deals at arm's length and is not affiliated with the Issuer, and holds Series 2018-1 Senior Notes as capital property (a "**Holder**"). Generally, the Series 2018-1 Senior Notes will be capital property to a Holder provided that the Holder does not acquire or hold the Series 2018-1 Senior Notes in the course of carrying on a business or as part of an adventure or concern in the nature of trade. Certain holders who might not otherwise be considered to hold their Series 2018-1 Senior Notes as capital property may, in certain circumstances, be entitled to treat their Series 2018-1 Senior Notes and any other "Canadian security" (as defined in the Tax Act) owned by them in the taxation year of the election and all subsequent taxation years as capital property by making the irrevocable election permitted by subsection 39(4) of the Tax Act. Such holders are advised to consult their own tax advisors to determine whether such an election is available and desirable in their particular circumstances.

This summary is not applicable to a holder: (i) that is a "financial institution" (as defined in the Tax Act for purposes of the "mark to market property" and "specified debt obligation" rules); (ii) an interest in which is a "tax shelter investment" (as defined in the Tax Act); (iii) that reports its "Canadian tax results" (as defined in the Tax Act) in a currency other than Canadian dollars; or (iv) that has entered into or will enter into a "derivative forward agreement" as defined in the Tax Act in respect of the Series 2018-1 Senior Notes. Any such holders should consult their own tax advisors with respect to an investment in the Series 2018-1 Senior Notes. In addition, this summary does not address the deductibility of interest by a holder who has borrowed money to acquire Series 2018-1 Senior Notes.

On July 18, 2017, the Minister of Finance (Canada) released a consultation paper that included an announcement of its intention to amend the Tax Act to increase the amount of tax applicable to passive investment income earned through a private corporation. No specific amendments to the Tax Act were proposed in connection with this announcement and this summary does not consider the implications of this announcement. On October 18, 2017, the Minister of Finance (Canada) announced that the government intends to move forward with the planned amendments subject to further developments to address concerns of business owners the details of which are not yet available. Holders that are private corporations should consult their own tax advisors regarding the implications of these announcements with respect to their particular circumstances.

This summary is based upon the facts set out in the confidential shelf offering memorandum, the current provisions of the Tax Act and the regulations thereunder (the "**Regulations**"), all specific proposals to amend the Tax Act and the Regulations publicly announced by or on behalf of the Minister of Finance (Canada) prior to the date hereof (the "**Tax Proposals**") and counsel's understanding of the current published administrative policies and practices of the Canada Revenue Agency. There can be no assurance that any Tax Proposals will be implemented in their current form or at all. This summary does not otherwise take into account or anticipate any changes in law or administrative policies and practices, whether by legislative, administrative or judicial action nor does it take into account provincial, territorial or foreign tax legislation or considerations, which may differ significantly from those discussed herein.

This summary is not exhaustive of all possible Canadian federal income tax considerations applicable to an investment in the Series 2018-1 Senior Notes. Moreover, the income and other tax consequences of acquiring, holding or disposing of the Series 2018-1 Senior Notes will vary depending on the Holder's particular circumstances, including the province or territory, or provinces or territories, in which the Holder resides or carries on business. Accordingly, this summary is of a general nature only and is not intended to be legal or tax advice to any particular Holder, and no representations with respect to the income tax consequences to any Holder are made. Investors should consult their own tax advisors for advice with respect to the tax consequences of an investment in the Series 2018-1 Senior Notes based on

their particular circumstances. This summary does not address any tax considerations applicable to persons other than Holders and such persons should consult their own tax advisors regarding the consequences of acquiring, holding and disposing of Series 2018-1 Senior Notes under the Tax Act and any jurisdiction in which they may be subject to tax.

Foreign Exchange

For purposes of the Tax Act, all amounts relating to the acquisition, holding or disposition of Series 2018-1 Senior Notes must be expressed in Canadian dollars, including any interest, adjusted cost base and proceeds of disposition. For purposes of the Tax Act, amounts denominated in a currency other than the Canadian dollar generally must be converted into Canadian dollars in accordance with the Tax Act on the date such amounts first arose. A Holder may realize a capital gain or a capital loss on the disposition or deemed disposition of a Series 2018-1 Senior Note by virtue of fluctuations in the value of the U.S. dollar relative to the Canadian dollar. The amount of interest or other amounts required to be included in computing the Holder's income for a taxation year will also be affected by fluctuations in the U.S. dollar relative to the Canadian dollar.

Interest on Series 2018-1 Senior Notes

A Holder that is a corporation, partnership, unit trust or any trust of which a corporation or partnership is a beneficiary will be required to include in computing its income for a taxation year all interest on the Series 2018-1 Senior Notes that accrues or is deemed to accrue to such Holder to the end of the particular taxation year or that becomes receivable or is received by the Holder before the end of that taxation year, including on a redemption or repayment on maturity, except to the extent that such interest was included in computing the Holder's income for a preceding taxation year.

Any other Holder, including an individual, will be required to include in computing its income for a taxation year all interest on the Series 2018-1 Senior Notes that is received or receivable by the Holder in that taxation year (depending upon the method regularly followed by the Holder in computing income), including on a redemption, purchase for cancellation, or repayment on maturity, except to the extent that the interest was included in the Holder's income for a preceding taxation year.

Any premium paid by the Issuer to a Holder on the redemption of a Series 2018-1 Senior Note or a purchase for cancellation of a Series 2018-1 Senior Note (other than in the open market in the manner any such obligation would normally be purchased in the open market by any member of the public), will generally be deemed to be interest received at the time by the Holder to the extent that such premium can reasonably be considered to relate to, and does not exceed the value at the time of the redemption of or purchase for cancellation of, the interest that, would have been paid or payable by the Issuer on the Series 2018-1 Senior Note for a taxation year ending after the redemption or purchase for cancellation, and to the extent such premium was not otherwise included in computing the Holder's income for that taxation year or a previous taxation year.

Where a Holder is required to include in income interest on a Series 2018-1 Senior Note that accrued before such Series 2018-1 Senior Note was acquired by the Holder, the Holder will be entitled to a deduction in computing income of an equivalent amount. The adjusted cost base to the Holder of the Series 2018-1 Senior Note will be reduced by the amount which is so deductible.

If a Series 2018-1 Senior Note is purchased by a Holder at a discount from its face value, the Holder may be required to include an amount equal to such discount in computing income, either in accordance with the deemed interest accrual rules contained in the Tax Act and Regulations or in the taxation year in which an amount in respect of the discount is received or receivable by the Holder. Holders should consult their own tax advisors in these circumstances as the treatment of the discount may vary with the facts and circumstances giving rise to the discount.

Disposition of Series 2018-1 Senior Notes

On a disposition or deemed disposition of a Series 2018-1 Senior Note (including a redemption, purchase for cancellation or repayment at maturity), a Holder will generally be required to include in income any premium deemed to be interest and the amount of interest accrued, or deemed to have accrued, on the Series 2018-1 Senior Note from the

date of the last interest payment to the date of disposition to the extent that such amount has not otherwise been included in the Holder's income for the taxation year or a previous taxation year.

A disposition or deemed disposition by a Holder of a Series 2018-1 Senior Note will generally result in the Holder realizing a capital gain (or capital loss) equal to the amount by which the proceeds of disposition, net of any accrued interest or any amount deemed to be interest, exceed (or are exceeded by) the aggregate of the Holder's adjusted cost base thereof and any reasonable costs of disposition.

One half of any capital gain (a "**taxable capital gain**") generally must be included in the Holder's income for the taxation year of the disposition, and one half of any capital loss (an "**allowable capital loss**") realized in a taxation year must be deducted from taxable capital gains realized in that year. Allowable capital losses in excess of taxable capital gains realized in a taxation year may be deducted from net taxable capital gains realized in the three preceding taxation years or any subsequent taxation year, subject to detailed rules contained in the Tax Act in this regard. A capital gain realized by an individual (other than certain specified trusts) may give rise to a liability for alternative minimum tax.

Eligibility for Investment

The Series 2018-1 Senior Notes would, if acquired on the date hereof and if they (i) are issued as part of a single issue of debt of at least $25 million and (ii) have an investment grade rating with certain rating agencies prescribed under the Tax Act, be qualified investments under the Tax Act for a trust governed by a registered retirement savings plan ("**RRSP**"), registered retirement income fund ("**RRIF**"), registered education savings plan ("**RESP**"), registered disability savings plan ("**RDSP**"), tax free savings account ("**TFSA**") and deferred profit sharing plan ("**DPSP**") (except for a trust governed by a DPSP to which the Issuer has made a contribution).

Even if the Series 2018-1 Senior Notes may be qualified investments for a trust governed by an RRSP, RRIF, RESP, RDSP or TFSA, if the Series 2018-1 Senior Notes are "prohibited investments" (as defined in section 207.01 of the Tax Act) for an RRSP, RRIF, RESP, RDSP or TFSA, then a holder of the TFSA or RDSP, a subscriber of the RESP or an annuitant of the RRSP or RRIF, as the case may be, will be subject to a penalty tax as set out in the Tax Act. The Series 2018-1 Senior Notes would not be prohibited investments on the date hereof, provided (i) the holder of the TFSA or RDSP, the subscriber of the RESP or the annuitant of the RRSP or RRIF, as the case may be, deals at arm's length with the Issuer within the meaning of the Tax Act, and (ii) does not have a "significant interest" within the meaning of subsection 207.01(4) of the Tax Act in the Issuer. Investors intending to hold the Series 2018-1 Senior Notes in a TFSA, RRSP, RRIF, RESP or RDSP should consult their own advisors as to whether the Series 2018-1 Senior Notes would be a prohibited investment in their particular circumstances.

RELATIONSHIP BETWEEN THE ISSUER AND THE AGENTS

CIBC World Markets Inc., RBC Dominion Securities Inc. and Goldman Sachs Canada Inc. are each, directly or indirectly, a wholly-owned or majority-owned subsidiary or affiliate of a financial institution which is a lender to the Issuer and to which the Issuer is currently indebted under the terms of the Warehouse Facilities. The Issuer may use a portion of the net proceeds of the Series 2018-1 Senior Notes Offering to repay certain indebtedness under the Warehouse Facilities. Consequently, the Issuer may be considered to be a "connected issuer", of certain of the Agents under applicable Canadian securities legislation. As of the date of this Term Sheet, the Issuer is in compliance with the terms of its indebtedness under the Warehouse Facilities. Since the indebtedness under the Warehouse Facilities was incurred, the financial position of the Issuer has not materially changed. As of ●, the Issuer had approximately $● billion outstanding under the Warehouse Facilities. CIBC World Markets Inc., RBC Dominion Securities Inc. and Goldman Sachs Canada Inc. have each advised that the decision to act as Agents for the Series 2018-1 Senior Notes Offering was made independently of the lenders under the Warehouse Facilities and the lenders had no influence as to the determination of the terms of the distribution. None of CIBC World Markets Inc., RBC Dominion Securities Inc. and Goldman Sachs Canada Inc. will receive any benefit in connection with the Series 2018-1 Senior Notes Offering other than its respective portion of the Agents' fee payable by the Issuer

LEGAL MATTERS

Certain Canadian legal matters in connection with the Series 2018-1 Senior Notes Offering will be passed upon by Torys LLP on behalf of the Issuer and by Osler, Hoskin & Harcourt LLP on behalf of the Agents.

Document comparison by Workshare Compare on Tuesday, January 16, 2018 10:37:28 AM

Input:	
Document 1 ID	PowerDocs://TOR_2024/12928826/1
Description	TOR_2024-#12928826-v1-Form_of_Series_2018-1_Senior_Notes_Term_Sheet_(Fair_Hydro_Trust)
Document 2 ID	PowerDocs://TOR_2024/12928826/2
Description	TOR_2024-#12928826-v2-Form_of_Series_2018-1_Senior_Notes_Term_Sheet_(Fair_Hydro_Trust)
Rendering set	standard

Legend:	
Insertion	
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Style change	
Format change	
~~Moved deletion~~	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	12
Deletions	4
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	16

Feedback requested (procurement related).rtf

From: Petsche, Nadine (TBS) []
To: Lo, Tom (TBS) [Tom.Lo@ontario.ca]; Monteiro, Belinda (TBS) [Belinda.Monteiro@ontario.ca]
CC: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
Subject: Feedback requested (procurement related)
Date: Friday, May 26, 2017 12:24:24
Attachment 1: award memo complex accounting services GBEs to LSB.docx
Attachment 2: KPMG TBS-OTB-OPCD 21.docx

Tom/Belinda,

Attached are documents related to a procurement of external services related to complex accounting matters. I would like to submit for Karen's signature on Monday, so that we can engage the firm on June 1st as planned. The work to be done is fairly time-sensitive and related to the electricity sector. Please advise of any issues/concerns.

Thanks in advance.

Nadine

award memo complex accounting services GBEs to LSB.pdf

Treasury Board Secretariat

Office of the Provincial Controller Division
Accounting Policy & Financial Reporting Branch
Frost Building South, 2nd Floor
7 Queen's Park Crescent
Toronto ON M7A 1Y7

Memo | TBS

May 26, 2017

MEMORANDUM TO: Karen Hughes
Associate Deputy Minister of Finance
Treasury Board Secretariat

FROM: Nadine Petsche
Director, Accounting Policy and Financial Reporting
Office of the Provincial Controller Division

SUBJECT: **Memo to Award Contract for Complex Accounting Services**

With this memo, I am updating you on my decision to proceed with awarding a contract to KPMG LP with a ceiling price of $299,000 plus HST.

As you are aware, earlier this year a Request for Services (RFS) was issued for Complex Accounting Services. As part of the competitive process, an RFS was issued to five vendors on the Management Consulting Services VOR for complex accounting support which covered the following support for accounting analysis related to Ontario's energy sector:

- Consolidation of the Province's electricity sector entities,
- Control assessments related to electricity sector entities,
- The impact of accounting changes by consolidated organizations on the Province's consolidated financial statements.

Three submissions were received in response to the invitation to quote. The three submissions were reviewed independently by myself and a Manager in the APFR section against the criteria outlined in the RFS document, which included experience and qualifications, and pricing.

Based on the results of the assessments, KPMG LP had the highest overall ranking in both assessments. I will be engaging KPMG LP to provide actuarial support services to the Office of the Provincial Controller, pending your written agreement.

KPMG's team will be well positioned to support OPCD on energy sector related accounting matters. Their extensive experience includes:

- Experience in preparing technical papers and accounting opinion on the application of PSAB standards related to engagement on advisory services related to the Ontario Fair Hydro Plan Act, 2017

…/2

- Advisory services around interpretation, and application of IFRS related to Hydro One and OPG
- Provided training on the new accounting IFRS 14 *Regulatory Deferral Accounts*
- Deep knowledge in accounting for the effect of rate regulation in the Power and Utilities sector under both IFRS and US GAAP frameworks
- Control assessment related to Hydro One under PSAB standards
- Extensive experience in control assessment under PSAB standards as related to GBEs, government restructuring, crown organizations types and reporting for senior governments including Ontario, Saskatchewan, New Brunswick, and the Government of Canada.
- Experience and knowledge with IPSASB standards.

The attached draft Statement of Work has been drafted to reflect the deliverables and timing associated with the complex accounting services under this contract.

As per the TBS FDOA for Consulting Services Agreements valued at or above $100,000, prior written approval from the Deputy Head on the selected vendor and the proposed Agreement is required before the proposed Agreement is signed. In TBS for Consulting Services Agreements valued at or above $100,000 and up to $750,000, the Deputy Minister has delegated this authority to the individual who granted the spending authority for the contract, which is the Associate Deputy Minister.

As the contract is estimated to be less than $299,999 only my approval is required to award the contract. With this memorandum, I am advising you of my decision and request that you sign this document as evidence of agreement with the vendor selection.

Recommendation:

As the contract is estimated at $299,000 (tax excluded) your approval is requested to award the contract to KPMG LP for a period of 15 months (June 1, 2017 to August 30, 2018) with a 3 month extension option in favour of the ministry with no increase in ceiling price.

Regards,

Nadine Petsche
Director, Accounting Policy and Financial Reporting
Office of the Provincial Controller Division

I agree with the vendor selection:

Karen Hughes
Associate Deputy Minister

c. Patrick Laughton

CAUTION - THIS FILE RELATES TO A MATTER IN WHICH CINDY VEINOT MAY HAVE HAD A CONFLICT OF INTEREST IN THE PERIOD BEFORE SHE BECAME A PUBLIC SERVANT.

THIS FILE MUST NOT BE SHOWN TO OR DISCUSSED WITH CINDY VEINOT.

KPMG TBS-OTB-OPCD 21.pdf

STATEMENT OF WORK- MINISTRIES

Statement of Work for Management Consulting Services

This Statement of Work no. **TBS-OTB-OPCD-21** made in duplicate and effective **June 1, 2017**

KPMG LLP (the "Vendor") and Her Majesty the Queen in Right of Ontario (the "Client") as represented by the President of the Treasury Board enter into this Statement of Work pursuant to the Master Agreement for Management Consulting Services made as of **June 16, 2014** between the Vendor and Her Majesty the Queen in Right of Ontario as represented by the Minister of Government and Consumer Services (such Master Agreement, as from time to time amended, is referred to as the "Master Agreement"). This document and the Master Agreement together comprise a separate Statement of Work between the Vendor and the Client.

In consideration of their respective agreements set out below, the parties agree as follows:

1. *Structure* - The terms and conditions of the Master Agreement are hereby incorporated by reference in this Statement of Work to the same effect as if fully set out in this Statement of Work. This document and the Master Agreement together comprise a separate Statement of Work between the Vendor and the Client. All capitalized terms used in this Statement of Work without definition have the meanings ascribed to them in the Master Agreement. In the event of any conflict or inconsistency between any term or provision of this Statement of Work and any term or provision of the Master Agreement, the terms and provisions of the Master Agreement shall govern.

2. *Statement of Work* - The Vendor agrees to provide to the Client, and the Client agrees to acquire from the Vendor, the Services and Deliverables described in this Statement of Work upon and subject to the terms of this Statement of Work.

3. *Maximum Price:* C$**$299,000**

4. *Project Start Date:* **June 1, 2017**

5. *Project End Date:* **August 30, 2018 (with an option to extend 3 months with no increase to the ceiling price)**

   The Client may, by giving written notice to the Vendor no later than 10 days before the initial Project End Date, extend the agreement for up to 4 additional months, ending December 31, 2018. Additionally, the Client may engage the Vendor in optional follow-on work that will result in changes to the scale and/or scope of the engagement. All additional work will be set out in a mutually agreed upon Change Order in accordance with the terms of the Master Agreement.

6. *Scope of Services and Deliverables* - The Services and Deliverables to be provided by the Vendor under this Statement of Work include the following:

   Working with management of OPCD's Accounting Policy and Financial Reporting Branch (APFR), the consultants will be expected to provide support for accounting analysis related to:

   - Consolidation of the Province's electricity sector entities,
   - Control assessments related to electricity sector entities
   - The impact of accounting changes by consolidated organizations on the Province's consolidated financial statements.
   - If required the service provider will be expected to work with OPCD to present findings and analysis to the Office of the Auditor General.

The consultants may be required to perform the following duties

- Develop issues notes summarizing the analysis and conclusions as input to the Province's financial accounting and reporting processes.
- Collaborate with OPCD and other stakeholders to gather and assess relevant information necessary to inform the analysis
- Present issues paper to senior management
- Support OPCD in presentation of issues analysis and conclusions to the Office of the Auditor General

7. *Ownership and Licences* - **Attachment D** of the Master Agreement forms a part of this Statement of Work.

8. *Communications and Reporting* - The Vendor must describe its process for keeping the Client informed of status, including progress reports and any other types of reports or reporting requirements, and the frequency of reporting.

9. *Contingency Plan* – The Vendor must identify potential areas where problems may arise, and the plan for minimizing risk to the Client.

10. *Work Location* – All meetings will be within Greater Toronto Area.

11. *Working Hours* – The Client's normal working hours are 7.25 hours per day, normal working hours are between 8:15 a.m. to 4:30 p.m., Monday to Friday inclusive. If required, the Vendor must provide Services outside of these normal working hours and on non-Business Day(s).

12. *Administrative Services and Supplies* – All administrative services and supplies used by the Vendor to complete the Services will be provided to the Client at no additional charge.

13. *Billing and Payment Process* - **The Vendor shall provide the Client with quarterly billing statements that outline the per diem charges no later than 10 Billing Days after the end of each quarter.**

    Billing statements should include all billing information as set out in the Master Agreement.

14. Names and Roles of Vendor's Personnel:

Individual's Legal Name	Individual's Role and Experience Level	Service Category
Michel Picard	Senior Consultant	
Bailey Church	Intermediate Consultant	
Andrew Newman	Back-up/Subject Matter Expert	
Janet Allen	Back-up/Subject Matter Expert	

15. *Invoices* - Invoices for payment of any charges under this Statement of Work shall be sent to:

Client: **Treasury Board Secretariat**
Office of the Provincial Controller Division
Branch: **Accounting Policy and Financial Reporting**
Phone number: **416-325-8027**
Email: **Nadine.petsche@ontario.ca**

16. *Knowledge Transfer:* The Vendor will work closely with the client to ensure knowledge transfer to the client's designated staff through each phase of the project and at key milestone opportunities. The Client will also be able to access to the Vendor's Collaboration Site which will help with Knowledge Transfer.

17. *Destruction of Information* - The Vendor shall destroy all information contained on any media, if requested to do so by the Client, except as required to be retained in accordance with professional standards requirements. The Client may choose to witness this destruction. The Vendor shall provide a certificate of destruction to the Client, if requested to do so by the Client.

18. "Future Engagements/Transactions – The information that will be handled by the Vendor under this Statement of Work is highly confidential and can provide the holder with a potential unfair or improper advantage in future engagements/transactions related to Ontario's Cap and Trade policy ("Future Engagement/Transaction") where open competition or negotiation occurs. As a result, the Vendor acknowledges that the firms or persons that have been contracted with or retained to work on this initiative can, depending on the engagement/transaction, become ineligible to submit a submission, assist in the preparation of a submission, or provide advice on any Future Engagement/Transaction that arises from or follows this assignment, where a potential unfair or improper advantage arises as a result of the confidential information obtained under this Statement of Work.

    The names of all advisors to this process may be published in any such Future Transactions to ensure adherence by potential bidders to the above requirement.

19. Indemnity – the indemnity set out in the Master Agreement applies to this assignment.

20. *Client Representative and Receipt of Notices*

Client's address for receipt of notices:	Treasury Board Secretariat Office of the Provincial Controller Division Accounting Policy and Financial Reporting Branch 7 Queen's Park Cres, 2nd Flr Toronto ON M7A 1Y7
Client Representative:	Nadine Petsche
Telephone number:	416-325-8027
E-mail:	Nadine.Petsche@ontario.ca
Backup Client Representative:	Shyrose Virani
Telephone number:	416-325-1448
E-mail:	Shyrose.Virani@ontario.ca

21. *Vendor Representative and Receipt of Notices*

Vendor's address for receipt of notices:	333 Bay Street, Suite 4600 Toronto ON M5H 2S5
Vendor Representative:	Michel Picard, Partner, Accounting Advisory
Telephone number:	416-777-8414
E-mail:	mpicard@KPMG.ca
Backup Vendor Representative:	Bailey Church, Partner, Accounting Advisory
Telephone number:	613-212-3698
E-mail:	bchurch@kpmg.ca

IN WITNESS WHEREOF the parties hereto have executed this Statement of Work as of the date first above written.

HER MAJESTY THE QUEEN in right of Ontario as represented by **the President of the Treasury Board**

Per:

Signature:

Name: _____

Title: _____

Pursuant to delegated authority.

[INSTRUCTIONS: INSERT LEGAL NAME OF THE VENDOR]

Per:

Signature:

Name: _____

Title: _____

I have the authority to bind the Vendor.

Feedback requested (procurement related).rtf

From: Petsche, Nadine (TBS) []
To: Lo, Tom (TBS) [Tom.Lo@ontario.ca]; Monteiro, Belinda (TBS) [Belinda.Monteiro@ontario.ca]
CC: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
Subject: Feedback requested (procurement related)
Date: Friday, May 26, 2017 12:24:24
Attachment 1: award memo complex accounting services GBEs to LSB.docx
Attachment 2: KPMG TBS-OTB-OPCD 21.docx

Tom/Belinda,

Attached are documents related to a procurement of external services related to complex accounting matters. I would like to submit for Karen's signature on Monday, so that we can engage the firm on June 1st as planned. The work to be done is fairly time-sensitive and related to the electricity sector. Please advise of any issues/concerns.

Thanks in advance.

Nadine

award memo complex accounting services GBEs to LSB.pdf

Treasury Board Secretariat

Office of the Provincial Controller Division
Accounting Policy & Financial Reporting Branch
Frost Building South, 2nd Floor
7 Queen's Park Crescent
Toronto ON M7A 1Y7

Memo | TBS

May 26, 2017

MEMORANDUM TO: Karen Hughes
Associate Deputy Minister of Finance
Treasury Board Secretariat

FROM: Nadine Petsche
Director, Accounting Policy and Financial Reporting
Office of the Provincial Controller Division

SUBJECT: **Memo to Award Contract for Complex Accounting Services**

With this memo, I am updating you on my decision to proceed with awarding a contract to KPMG LP with a ceiling price of $299,000 plus HST.

As you are aware, earlier this year a Request for Services (RFS) was issued for Complex Accounting Services. As part of the competitive process, an RFS was issued to five vendors on the Management Consulting Services VOR for complex accounting support which covered the following support for accounting analysis related to Ontario's energy sector:

- Consolidation of the Province's electricity sector entities,
- Control assessments related to electricity sector entities,
- The impact of accounting changes by consolidated organizations on the Province's consolidated financial statements.

Three submissions were received in response to the invitation to quote. The three submissions were reviewed independently by myself and a Manager in the APFR section against the criteria outlined in the RFS document, which included experience and qualifications, and pricing.

Based on the results of the assessments, KPMG LP had the highest overall ranking in both assessments. I will be engaging KPMG LP to provide actuarial support services to the Office of the Provincial Controller, pending your written agreement.

KPMG's team will be well positioned to support OPCD on energy sector related accounting matters. Their extensive experience includes:

- Experience in preparing technical papers and accounting opinion on the application of PSAB standards related to engagement on advisory services related to the Ontario Fair Hydro Plan Act, 2017

…/2

- Advisory services around interpretation, and application of IFRS related to Hydro One and OPG
- Provided training on the new accounting IFRS 14 *Regulatory Deferral Accounts*
- Deep knowledge in accounting for the effect of rate regulation in the Power and Utilities sector under both IFRS and US GAAP frameworks
- Control assessment related to Hydro One under PSAB standards
- Extensive experience in control assessment under PSAB standards as related to GBEs, government restructuring, crown organizations types and reporting for senior governments including Ontario, Saskatchewan, New Brunswick, and the Government of Canada.
- Experience and knowledge with IPSASB standards.

The attached draft Statement of Work has been drafted to reflect the deliverables and timing associated with the complex accounting services under this contract.

As per the TBS FDOA for Consulting Services Agreements valued at or above $100,000, prior written approval from the Deputy Head on the selected vendor and the proposed Agreement is required before the proposed Agreement is signed. In TBS for Consulting Services Agreements valued at or above $100,000 and up to $750,000, the Deputy Minister has delegated this authority to the individual who granted the spending authority for the contract, which is the Associate Deputy Minister.

As the contract is estimated to be less than $299,999 only my approval is required to award the contract. With this memorandum, I am advising you of my decision and request that you sign this document as evidence of agreement with the vendor selection.

Recommendation:

As the contract is estimated at $299,000 (tax excluded) your approval is requested to award the contract to KPMG LP for a period of 15 months (June 1, 2017 to August 30, 2018) with a 3 month extension option in favour of the ministry with no increase in ceiling price.

Regards,

Nadine Petsche
Director, Accounting Policy and Financial Reporting
Office of the Provincial Controller Division

I agree with the vendor selection:

Karen Hughes
Associate Deputy Minister

c. Patrick Laughton

CAUTION - THIS FILE RELATES TO A MATTER IN WHICH CINDY VEINOT MAY HAVE HAD A CONFLICT OF INTEREST IN THE PERIOD BEFORE SHE BECAME A PUBLIC SERVANT.

THIS FILE MUST NOT BE SHOWN TO OR DISCUSSED WITH CINDY VEINOT.

KPMG TBS-OTB-OPCD 21.pdf

STATEMENT OF WORK- MINISTRIES

Statement of Work for Management Consulting Services

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KPMG LLP (the "Vendor") and Her Majesty the Queen in Right of Ontario (the "Client") as represented by the President of the Treasury Board enter into this Statement of Work pursuant to the Master Agreement for Management Consulting Services made as of **June 16, 2014** between the Vendor and Her Majesty the Queen in Right of Ontario as represented by the Minister of Government and Consumer Services (such Master Agreement, as from time to time amended, is referred to as the "Master Agreement"). This document and the Master Agreement together comprise a separate Statement of Work between the Vendor and the Client.

In consideration of their respective agreements set out below, the parties agree as follows:

1. *Structure* - The terms and conditions of the Master Agreement are hereby incorporated by reference in this Statement of Work to the same effect as if fully set out in this Statement of Work. This document and the Master Agreement together comprise a separate Statement of Work between the Vendor and the Client. All capitalized terms used in this Statement of Work without definition have the meanings ascribed to them in the Master Agreement. In the event of any conflict or inconsistency between any term or provision of this Statement of Work and any term or provision of the Master Agreement, the terms and provisions of the Master Agreement shall govern.

2. *Statement of Work* - The Vendor agrees to provide to the Client, and the Client agrees to acquire from the Vendor, the Services and Deliverables described in this Statement of Work upon and subject to the terms of this Statement of Work.

3. *Maximum Price:* C$**$299,000**

4. *Project Start Date:* **June 1, 2017**

5. *Project End Date:* **August 30, 2018 (with an option to extend 3 months with no increase to the ceiling price)**

   The Client may, by giving written notice to the Vendor no later than 10 days before the initial Project End Date, extend the agreement for up to 4 additional months, ending December 31, 2018. Additionally, the Client may engage the Vendor in optional follow-on work that will result in changes to the scale and/or scope of the engagement. All additional work will be set out in a mutually agreed upon Change Order in accordance with the terms of the Master Agreement.

6. *Scope of Services and Deliverables* - The Services and Deliverables to be provided by the Vendor under this Statement of Work include the following:

   Working with management of OPCD's Accounting Policy and Financial Reporting Branch (APFR), the consultants will be expected to provide support for accounting analysis related to:

   - Consolidation of the Province's electricity sector entities,
   - Control assessments related to electricity sector entities
   - The impact of accounting changes by consolidated organizations on the Province's consolidated financial statements.
   - If required the service provider will be expected to work with OPCD to present findings and analysis to the Office of the Auditor General.

The consultants may be required to perform the following duties

- Develop issues notes summarizing the analysis and conclusions as input to the Province's financial accounting and reporting processes.
- Collaborate with OPCD and other stakeholders to gather and assess relevant information necessary to inform the analysis
- Present issues paper to senior management
- Support OPCD in presentation of issues analysis and conclusions to the Office of the Auditor General

7. *Ownership and Licences* - **Attachment D** of the Master Agreement forms a part of this Statement of Work.

8. *Communications and Reporting* - The Vendor must describe its process for keeping the Client informed of status, including progress reports and any other types of reports or reporting requirements, and the frequency of reporting.

9. *Contingency Plan* – The Vendor must identify potential areas where problems may arise, and the plan for minimizing risk to the Client.

10. *Work Location* – All meetings will be within Greater Toronto Area.

11. *Working Hours* – The Client's normal working hours are 7.25 hours per day, normal working hours are between 8:15 a.m. to 4:30 p.m., Monday to Friday inclusive. If required, the Vendor must provide Services outside of these normal working hours and on non-Business Day(s).

12. *Administrative Services and Supplies* – All administrative services and supplies used by the Vendor to complete the Services will be provided to the Client at no additional charge.

13. *Billing and Payment Process* - **The Vendor shall provide the Client with quarterly billing statements that outline the per diem charges no later than 10 Billing Days after the end of each quarter.**

    Billing statements should include all billing information as set out in the Master Agreement.

14. Names and Roles of Vendor's Personnel:

Individual's Legal Name	Individual's Role and Experience Level	Service Category
Michel Picard	Senior Consultant	
Bailey Church	Intermediate Consultant	
Andrew Newman	Back-up/Subject Matter Expert	
Janet Allen	Back-up/Subject Matter Expert	

15. *Invoices* - Invoices for payment of any charges under this Statement of Work shall be sent to:

Client: **Treasury Board Secretariat**
Office of the Provincial Controller Division
Branch: **Accounting Policy and Financial Reporting**
Phone number: **416-325-8027**
Email: **Nadine.petsche@ontario.ca**

16. *Knowledge Transfer:* The Vendor will work closely with the client to ensure knowledge transfer to the client's designated staff through each phase of the project and at key milestone opportunities. The Client will also be able to access to the Vendor's Collaboration Site which will help with Knowledge Transfer.

17. *Destruction of Information* - The Vendor shall destroy all information contained on any media, if requested to do so by the Client, except as required to be retained in accordance with professional standards requirements. The Client may choose to witness this destruction. The Vendor shall provide a certificate of destruction to the Client, if requested to do so by the Client.

18. "Future Engagements/Transactions – The information that will be handled by the Vendor under this Statement of Work is highly confidential and can provide the holder with a potential unfair or improper advantage in future engagements/transactions related to Ontario's Cap and Trade policy ("Future Engagement/Transaction") where open competition or negotiation occurs. As a result, the Vendor acknowledges that the firms or persons that have been contracted with or retained to work on this initiative can, depending on the engagement/transaction, become ineligible to submit a submission, assist in the preparation of a submission, or provide advice on any Future Engagement/Transaction that arises from or follows this assignment, where a potential unfair or improper advantage arises as a result of the confidential information obtained under this Statement of Work.

    The names of all advisors to this process may be published in any such Future Transactions to ensure adherence by potential bidders to the above requirement.

19. Indemnity – the indemnity set out in the Master Agreement applies to this assignment.

20. *Client Representative and Receipt of Notices*

Client's address for receipt of notices:	Treasury Board Secretariat Office of the Provincial Controller Division Accounting Policy and Financial Reporting Branch 7 Queen's Park Cres, 2nd Flr Toronto ON M7A 1Y7
Client Representative:	Nadine Petsche
Telephone number:	416-325-8027
E-mail:	Nadine.Petsche@ontario.ca
Backup Client Representative:	Shyrose Virani
Telephone number:	416-325-1448
E-mail:	Shyrose.Virani@ontario.ca

21. *Vendor Representative and Receipt of Notices*

Vendor's address for receipt of notices:	333 Bay Street, Suite 4600 Toronto ON M5H 2S5
Vendor Representative:	Michel Picard, Partner, Accounting Advisory
Telephone number:	416-777-8414
E-mail:	mpicard@KPMG.ca
Backup Vendor Representative:	Bailey Church, Partner, Accounting Advisory
Telephone number:	613-212-3698
E-mail:	bchurch@kpmg.ca

IN WITNESS WHEREOF the parties hereto have executed this Statement of Work as of the date first above written.

HER MAJESTY THE QUEEN in right of Ontario as represented by **the President of the Treasury Board**

Per:

Signature:

Name: _____

Title: _____

Pursuant to delegated authority.

[INSTRUCTIONS: INSERT LEGAL NAME OF THE VENDOR]

Per:

Signature:

Name: _____

Title: _____

I have the authority to bind the Vendor.

Feedback requested on Alternative IFRS Assurance for AG.rtf

From: Petsche, Nadine (TBS) []
To: CHENG Alec -FIN & C CTRL [alec.cheng@opg.com]; karen.newman@HydroOne.com [karen.newman@HydroOne.com]; 'Samir.Chhelavda@HydroOne.com' [Samir.Chhelavda@HydroOne.com]; MAUTI John -FIN & C CTRL [john.mauti@opg.com]; KOGAN Alex -FIN & C CTRL [alexander.kogan@opg.com]; Picard, Michel (mpicard@kpmg.ca) [mpicard@kpmg.ca]; 'Rob Scullion' [rob.c.scullion@ca.ey.com]; 'Sabrina Fabina' [sabrina.b.fabina@ca.ey.com]
CC: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
Subject: Feedback requested on Alternative IFRS Assurance for AG
Date: Thursday, March 03, 2016 11:53:08
Attachment 1: DRAFT - Specified Procedures Report - IFRS-for review Feb 22 rev Mar3.docx

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Good morningl!

As we look forward to our upcoming meeting with the AG and her staff on March 24th, we wanted to close some loose ends related to our alternative approach. It would be helpful if you could provide feedback on the revised procedures (attached) at your earliest convenience (by end of day Monday at the latest would be great).

Please note that I have included specific questions/comments for your attention in the comment bubbles as well, some which refer back to the AG's original request letters.

Once I have received your feedback, I will prepare a generic list of procedures and accompanying proposed introductory comments which we can plan to provide to the OAG in advance of our March 25th meeting. To allow sufficient time for consideration of the proposed approach, we would like to send the proposed approach to the OAG by the end of next week (March 11th). Receiving your comments by end of day Monday will be critical to meeting next week's target deadline.

I would also like to suggest another teleconference to finalize the package. Please confirm if next Thursday, March 10th 9:30-10:30am works for you.

Best regards,
Nadine

p.s. Rob - your suggestions w.r.t. materials to present in advance to the AG regarding the threshold level would be appreciated. Nadine

-----Original Message-----
From: Petsche, Nadine (TBS)
Sent: February 22, 2016 1:11 PM
To: 'CHENG Alec -FIN & C CTRL'; karen.newman@HydroOne.com; 'Samir.Chhelavda@HydroOne.com'; MAUTI John -FIN & C CTRL; KOGAN Alex -FIN & C CTRL; Picard, Michel (mpicard@kpmg.ca); 'Rob Scullion'; 'Sabrina Fabina'
Subject: Draft IFRS specified procedures (revised for your review)

All,
Please find attached a copy of the draft procedures document reflecting changes based on our discussion last week. Since the two approaches were quite similar to begin with, the suggested revisions focus on further aligning the proposals w.r.t. terminology and scope. You will note that the proposed $450M threshold amount is also referenced within the document.

Rob -- Quebec's Comptrollership has advised that the materiality for the March/15 Public Accounts was around $700M (similar to Ontario's). Hoping you can help us build a good case for using the higher $450M threshold as opposed to the individual materiality level for OPG/H1 or the threshold used by Hydro Quebec.

Subject to feedback on the revised draft procedures, I think we're in a reasonably good position to engage with the AG to share this alternative approach. Thanks again for all of your input.

Regards,

Nadine

DRAFT - Specified Procedures Report - IFRS-for review Feb 22 rev Mar3.pdf

DRAFT Procedures to Address AG Assurance Requirements for US GAAP vs. IFRS

Rev: February 22, 2016

Attention: Auditor General of Ontario

Results of the procedures put in place regarding the adjustments from United States Generally Accepted Accounting Principles ("US GAAP") to International Financial Reporting Standards ("IFRS") for the reporting purposes of Ontario Power Generation Inc. ("OPG")/Hydro One ("H1") prepared for the consolidation in the financial statements of the Government of Ontario as at March 31, 2016, as related to the entity's 12 month external reporting period ended December 31, 2015.

In connection with your audit of the financial statements of the Government of Ontario as at March 31, 2016, in accordance with your instructions dated XXXX, we performed the agreed upon audit procedures as set out below regarding the financial reporting of Ontario Power Generation Inc. adjustments to transition from US GAAP to IFRS for the year ended December 31, 2015.

Following is a summary of the agreed audit procedures and our findings/conclusions

DRAFT Procedures (OPG)	DRAFT Procedures (H1)
1) Obtain from OPG the US GAAP to IFRS reconciliations (by financial reporting item disclosed in Schedule 9 to the financial statements of the Government of Ontario – see Appendix 1) for: a) The year ended December 31, 2015; b) The period of 12 months ended March 31, 2016; c) The period of three months ended March 31, 2015; d) The period of three months ended March 31, 2016.	1) Obtain from Hydro One the US GAAP to IFRS reconciliations (by financial reporting item disclosed in Schedule 9 to the financial statements of the Government of Ontario – see Appendix 1): a) The year ended December 31, 2015; b) The period of 12 months ended March 31, 2016; c) The period of three months ended March 31, 2015; d) The period of three months ended March 31, 2016.

Commented [np1]: ALL : Please explain why the level of detail requested by the AG in Appendix A of her letter is NOT possible. Need to defend why Schedule 9 is the best we can do.

Commented [np2]: OPG/H1 to confirm ability to provide IFRS related details in format disclosed in Schedule 9. (Consider level of materiality, and potential to modify line items (i.e. Fixed Assets and Deferreds)

Commented [np3]: ALL : Please confirm that the format requested by the AG in Schedule 2, with accompanying narrative explanations is possible.

DRAFT

2) Obtain the analyses and documents prepared by OPG supporting each of the adjustments identified in procedures 1(a) and 1(b) for which the amount by reporting item exceeds $450 million.	2) Obtain the analyses and documentation prepared by Hydro One supporting each of the adjustments identified in the procedures 1.a) and 1.b) for which the amount by reporting item exceeds $450 million.
3) Obtain OPG's analysis of its elections under IFRS 1, *First-time Adoption of International Financial Reporting Standards*. Ensure that those elections are properly reflected in reconciliation 1(a).	3) Obtain Hydro One's analysis of its elections under IFRS 1, *First-time Adoption of International Financial Reporting Standards*. Ensure that those elections are properly reflected in reconciliation 1(a).
4) Apply the following procedures to the adjustments identified in procedure 2:	4) Apply the following procedures to the adjustments identified in procedure 2:
4.1 Trace the various opening balances to OPG's accounting records; 4.2 Adjustment to the AROs for ~~fiscal 2015~~ December 31, 2015: (a) Validate that the calculation files and all of the inputs correspond to those used by OPG for the calculation of the AROs as at December 31, 2014 and 2015 in accordance with US GAAP and traced back to our audit files for those periods, except for the discount rate; (b) Validate the single discount rate used by OPG in its calculation files for the AROs, which consists of [TO ADD DESCRIPTION OF RATE USED]; (c) Recalculate the AROs as at January 1, 2015 and December 31, 2015 as well as the change in the statement of operations for the year ended	4.1 Trace the different opening balances to Hydro One's accounting records;

Commented [np4]: Significantly higher than HQ threshold, but may be technically acceptable under CAS per E&Y. Provincial materiality ~$650M. Note that Province of Quebec's materiality for Public Accounts purposes is ~$700M.

DRAFT

December 31, 2015 using data (a) and (b); (d) Recalculate the AROs as at April 1, 2015 and March 31, 2016 as well as the change in the statement of operations for the 12-month period ended March 31, 2016 using (c) data; (e) Recalculate the difference between the amounts determined in (c) and the amounts recognized in accordance with US GAAP and agree those differences with the IFRS adjustments in reconciliation 1(a).		
4.4 Adjustment – Retirement benefits for fiscal 2015 (a) Obtain confirmation directly from the actuaries for the amounts as at January 1, 2015 and for the year ended December 31, 2015 determined in accordance with IFRS and using the same assumptions as those used by OPG in the US GAAP calculations as at December 31, 2014 and 2015 and traced back to our audit files for those periods; (b) Recalculate the amount of the quarterly expense determined under IFRS for 2015 and 2016 to recalculate the annual expense for the 12-month period ended March 31, 2016; and (c) Recalculate the difference between the amounts confirmed in (a) and the amounts accounted for under US GAAP and ensure that those differences match with the IFRS adjustments in reconciliation 1(a).	4.2): Adjustment – Pension and OPEB costs for the year 2015 a) Obtain a confirmation directly from the actuaries for the amounts as at January 1, 2015 and for the period ended December 31, 2015 determined in accordance with IFRS and using the same assumptions and estimates used by Hydro One for the calculations of the Pension and OPEB costs under US GAAP for the financial year ended December 31, 2015. Trace these assumptions and estimates to our audit files for these periods; b) Recalculate the amount of the quarterly expense determined under IFRS for 2015 and 2016 to recalculate the annual expense for the 12-month period ended March 31, 2016; and c) Recalculate the difference between the amounts confirmed in a) and the amounts recognized under US GAAP and ensure that the differences correspond to the IFRS adjustments in the IFRS adjustments in the reconciliation in 1a).	

Commented [np6]: Information as at December 31/2014 as proxy for balances as at April 1, 2015 (date of transition) for CFS.

Commented [np7]: Added for H1

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(d) Obtain the rationale of any new regulatory assets and liabilities (over $450M?)and ensure that they meet the recognition and measurement requirement of IFRS 14 *Regulatory Deferral Accounts*.	4.3 Obtain the rationale of any new regulatory assets and liabilities (over $450M?)and ensure that they meet the recognition and measurement requirement of IFRS 14 *Regulatory Deferral Accounts*. [As the Ontario Energy Board confirmed that Hydro One can use US GAAP for regulatory reporting and filling, many, if not all, of the IFRS adjustments mentioned in 2) will be offset by a regulatory assets or liabilities.]
5) Complete the Ernst & Young [INPUT OFFICIAL NAME OF DOCUMENT] Checklist for differences between Canadian GAAP and IFRS to identify significant differences (estimated to exceed $450 million) between the two bases of accounting. Ensure that these differences have been considered by OPG.	5) Complete the KPMG [INPUT OFFICIAL NAME OF DOCUMENT] Checklist for differences between Canadian GAAP and IFRS to identify significant differences (estimated to exceed $450 million) between the two bases of accounting. Ensure that these differences have been considered by Hydro One.
6) Prepare a summary of uncorrected IFRS misstatements exceeding $30 million identified in connection with procedures 1–6 for reconciliations 1(a) and 1(b) obtained in procedure 1.	6) Prepare a summary of uncorrected IFRS adjustments exceeding $30 million identified in the procedures above to the reconciliations 1 (a) and 1(b) obtained in the procedure 1).

Commented [np5]: Added for OPG

Commented [np8]: inserted (appropriate?)

Commented [np9]: Added for H1

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Our report is intended solely for the use of the Auditor General of Ontario, in connection with the audit of the consolidated financial statements of the Government of Ontario as at March 31, 2016 and for the year then ended, and should not be used by parties other than the Auditor General of Ontario and must not be used for any other purpose.

Yours truly,

DRAFT

feedback .rtf

From: Petsche, Nadine (TBS) []
To: LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]
CC: Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
Subject: feedback
Date: Friday, July 07, 2017 12:50:44
Attachment 1: FHP Memo - ey Draft V1 6-Jul-2017 np.docx

Hi Lee Anne.

Attached are my comments and suggested edits for the draft paper, for your consideration. Note that I have not had a chance to discuss my comments/edits with Cindy, and that she may offer further edits/comments later.

Have a great weekend.

Nadine

FHP Memo - ey Draft V1 6-Jul-2017 np.pdf

Disclaimer

Ernst & Young LLP ("EY") prepared the attached Report only for the OPCD. EY did not perform its services on behalf of, or to serve the needs of, any other person or entity. Accordingly, EY expressly disclaims any duties or obligations to any other person or entity based its use of the attached Report. Any other person or entity must perform its own due diligence inquiries and procedures for all purposes, including, but not limited to, satisfying itself as to the financial condition and control environment of the Province or any of the other entities involved, as well as the appropriateness of the accounting for any particular situation addressed by the Report.

EY did not perform an audit, review, examination or other form of attestation (as those terms are defined by the CPA Canada) of the financial statements of the Province or any other entities involved. Accordingly, EY did not express any form of assurance on the accounting matters, financial statements, any financial or other information or internal controls of the Province or any of the other entities involved. EY did not conclude on the appropriate accounting treatment based on specific facts or recommend which accounting policy/treatment the Province or any of the other entities involved should select or adopt.

The observations relating to accounting matters that EY provided to the OPCD were designed to assist them in reaching their own conclusions and do not constitute our concurrence with or support of the accounting or reporting of the Province or the other entities involved. The Province and the other entities involved are each responsible for the preparation of their own financial statements, including all of the judgments inherent in preparing them.

Introduction

Ontario's consolidated financial reports are prepared in accordance with the accounting principles for governments recommended by the Public Sector Accounting Board (PSAB) of the Chartered Professional Accountants of Canada (CPA Canada). In order to meet the needs of users, including the legislature and the public, for accountability in government reporting and decision making, it is essential that public sector financial statements reflect the economic substance of the government's activities.

In assessing the appropriate accounting treatment for the Fair Hydro Plan on the Province's consolidated financial reports, the Office of the Provincial Controller considered the authoritative guidance issued by PSAB, as well as the accounting assessments of IESO and OPG management, including the accounting opinions of their external accounting advisors. Given the complexity of the FHP model, the exercise of professional judgement is necessary to ensure that key financial reporting objectives of transparency and accountability are best served. At this time, accounting standards, both domestically and internationally, continue to evolve. This accounting analysis considers currently available information, including efforts underway by the International Accounting Standards Board as related to rate regulated accounting. It also draws upon publicly available information including previous studies and bases for conclusions dealing with rate-regulated accounting, both in the public sector and the private sector.

Background:

In March 2017, the Government of Ontario (the Province) announced its Fair Hydro Plan (FHP). The FHP will reduce electricity bills for Regulated Price Plan (RPP) customers (~~*as well as*~~including consumers who receive the 8% rebate as specified in the Ontario Rebate for Electricity Act, 2016) by approximately 25% for a period of one year, starting in the summer of 2017, and limit the increase in electricity bills to the rate of inflation over the following four years.

The measures that make up the 25% average reduction include:

1. Spreading the cost of Ontario's clean energy ~~electricity~~ investments over the expected lifecycle of the generation infrastructure assets. This is expected to account for 15-17% of the overall reduction.
2. Shifting the cost of the Ontario Electricity Support Program (OESP) and Rural or Remote Rate Protection (RRRP) program from ratepayers to ~~provincial revenues~~taxpayer-funded programs.
3. An 8% rebate equal to the provincial portion of the HST, which took effect on January 1, 2017.

Under the first measure, the Province will borrow funds to pay a portion of current Global Adjustment related costs which are included in electricity costs, thereby temporarily reducing the amount paid by eligible ratepayers. The deferred amounts will be recoverable through future rates~~,~~. ~~Province will recover the borrowed funds,~~ including interest and other costs~~,~~ from ratepayers over an estimated 18-year period starting in approximately 2028.

Objective

The objective of this memo is to assess the impact of the first measure of the FHP (~~ie.~~i.e. ~~Deferred~~deferred recovery of clean energy costs) on the consolidated financial statements of the Province. **[NTD – Consider if document should discuss #2 and #3. This would contrast the different treatment by the Province]**

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Commented [NPP1]: *Insert ref to calc of 25% average based on Tor Hydro customer bill?*

Background

The Ontario Energy Board (OEB) has been established by the Province to be Ontario's independent energy regulator.

In accordance with Section 78(3.1) of the Ontario Energy Board Act, 1998 (the OEB Act), the OEB is responsible for determining electricity commodity prices for RPP consumers. Section 78(3.3) of the OEB Act requires the OEB to forecast the cost of electricity used by RPP consumers and ensure the prices they are charged reflect that cost. The forecasting process is highly complex and involves numerous estimates. As a result, the OEB regulatory framework allows for variances ~~differences arise~~ between the actual cost of supplying electricity and the amount collected from RPP consumers.

In setting the rates for RPP consumers, Section 78(3.3) of the OEB Act requires the OEB to ~~clear~~ allow for recovery of any such differences through rates over a 12-month period. This is achieved through a price adjustment charged or credited to RPP consumers. This adjustment forms part of the Global Adjustment paid by consumers.

The Independent Electricity System Operator (IESO) is the administrator of Ontario's wholesale electricity market. The IESO settles the market with all participants, both buyers and sellers, but it does not buy or sell electricity itself.

Commented [NPP2]: Is the counterparty to the energy contracts

Under existing legislation, ~~It is~~ the IESO ~~that experiences and, therefore,~~ is required to fund~~,~~ any cash shortfall relating to differences arising between the actual cost of supplying electricity and the amount collected from RPP consumers. In accordance with Section 25.33(5) of the Electricity Act, 1998 (the Electricity Act), the IESO ~~is required to~~has established and maintains a variance account to track these temporary differences (the original variance account) for subsequent recovery from ratepayers. Cash shortfalls in the IESO arising from the original variance account are funded through financing provided by the OFA~~by XXX~~.

As described below, once the FHP is implemented, the timing associated with recovery of IESO costs to purchase generation which is supplied ~~cost of supplying electricity~~ to RPP consumers will no longer be fully collected over a 12-month period, but over the longer period defined by legislation.

As part of its role as market administrator, the IESO calculates the market price for electricity (the Market Clearing Price, or MCP) by running the bids and offers of the market participants through an algorithm. The actual cost of supplying (clean energy) electricity, however, is greater than the MCP. From a government policy perspective, it is understood that d~~D~~ecisions of what is in the public interest regarding electricity generation in Ontario are not based solely on economics, but rather they are also influenced by environmental, social and political factors. ~~as well.~~ When the costs associated with generation of ~~a~~ clean energy ~~generator invests in~~are ~~arelatively~~are relatively less economic, ~~facility, the~~ excess costs (including a reasonable rate of return thereon) are ~~currently being~~ recovered from consumers and paid to generators over ~~a~~ the ~~twenty year~~ contract period (e.g. 20 years).

Under the FHP, while generators would continue to be paid over a twenty year period as contracted, ~~but~~ the amounts paid by the IESO to the generators would be ~~are~~ recovered from ~~the consumers~~ratepayers over a longer thirty year period. Deferring the recovery of these costs from the consumers on a longer-term basis would ~~ccreates~~create a ~~significant~~ significant interim cash shortfall ~~in~~ for the IESO.

Similar to the existing variance account which tracks the variance between price paid and recovered for the clean energy generation purchased by the IESO, Section 24(1) of the Ontario Fair Hydro Plan Act (the FHP Act) requires the IESO to establish and maintain a separate variance account to track the cash shortfall specifically resulting from the implementation of the FHP (the FHP variance account). Due to the longer recovery period, and additional recoverable financing and management fee costs, the balance in the account is forecast to increase significantly. The balance in this variance account is defined in Section 1(1) of the FHP Act to be a regulatory asset[1]. The IESO is entitled under Section 25 of the FHP Act to recover the regulatory asset from RPP consumers in the future, which will be achieved through the OEB setting rates to allow for such recovery. Section 26 of the FHP Act also permits the IESO to transfer or sell the regulatory asset to a financing entity to fund its cash shortfall, thus commoditizing the future cash flow stream. ~~.~~

~~.~~The Province has requested that OPG administer the GAC deferral, because of OPG's participation in the market, regulatory knowledge and the potential ability to consolidate the activity and accounting with OPG. To fulfill this role, OPG intends to establish a financing entity (OPG Trust) to purchase the IESO's regulatory asset on a monthly basis, thus helping to ~~and~~ eliminate any cash shortfall in the IESO. Through this arrangement, OPG Trust will finance these purchases through a combination of provincial borrowing (flowed through OPG), amounts advanced from OPG and direct borrowing from capital markets.

Basis of Accounting

In accordance with PSAS 1300.07, the government reporting entity (GRE) for the Province comprises government components and those organizations that are controlled by the government.

As defined in the Introduction to PSAS, the following types of organizations are controlled by the government: (a) government business enterprises (GBE), government non-for profit organizations (GNPO), and other government organizations (OGO).

GNPOs and OGOs are considered government units and, in accordance with PSAS 1300.27, are consolidated in the GRE on a line-by-line basis. For consolidation purposes, the financial information of government units is required to be prepared in accordance with PSAS.

GBEs, on the other hand, are accounted for in the GRE using the modified equity method as prescribed by PSAS 1300.35. Under the modified equity method, which is described in detail in PSAS 3070, INVESTMENTS IN GOVERNMENT BUSINESS ENTERPRISES, the equity method of accounting is modified only to the extent that the GBE's accounting principles (which are required to be IFRS in accordance with paragraph 17 of the Introduction to PSAS) are not adjusted to conform to those of the government.

As documented in Schedule 8 to the consolidated financial statements of the Province, the IESO is an OGO and OPG is a GBE. Accordingly, the accounting for these entities in the GRE is as follows:

ENTITY	CLASSIFICATION	ACCOUNTING METHOD	Entity f/s GAAP	Provincial CFS
IESO	OGO	Consolidation	PSAS or IFRS	PSAS

[1] To avoid confusion in the remainder of this document, the term regulatory asset will refer to the defined term in the FHP Act and the term regulated asset or rate-regulated asset (RRA) will refer to an asset recognized for accounting purposes.

Commented [NPP3]: Confirm consistent with IESO analysis

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Commented [NPP4]: Insert reference to equity investment by the province?

Commented [NPP5]: OGOs have a choice of reporting under IFRS or PSAS. For consolidation purposes, would if reported on IFRS, would have to be converted to PSAS

OPG	GBE	Modified equity method	IFRS (reports on US GAAP)	IFRS (IFRS14)

This memo does not reconsider the classification of these existing entities.

As discussed in detail in a subsequent section, OPG expects that it will control OPG Trust. If this is the case, OPG Trust will be consolidated by OPG and, therefore, reflected in the GRE through the modified equity accounting of OPG under IFRS. If, however, it is determined that OPG Trust is controlled by the Province, OPG Trust will be consolidated in the GRE on a line-by-line basis under PSAS.

Commented [NPP6]: Might the trust be considered a GBE? It would be a publicly accountable enterprise and self-sustaining. See chapter 9 (?) of Y2K report – referenced by Cindy as increasing relevance to IESO situation (self-sustaining).

Example

For simplicity, the following example will be used in this document to illustrate the accounting impact of the FHP on the various entities involved:

- Ratepayer bill is currently $588, and the 17% reduction related to the FHP is $100.
- The Province directly borrows 44%, or $44, to make an equity contribution to OPG, which OPG then loans to OPG Trust.
- OPG directly borrows 5%, or $5, and loans it to OPG Trust.
- OPG Trust directly borrows 51%, or $51, from capital markets.

Analysis

IESO

The IESO is presently classified as an OGO and has elected to prepare~~s~~ its standalone, general purpose financial statements in accordance with PSAS, which is consistent with the basis of presentation required for purposes of consolidating the IESO into the GRE. Under PSAS, the IESO would also have the option of reporting based on IFRS. If the IESO were classified as a GBE, it would also report based on IFRS. Since the IESO has rate regulated balances, it would likely report using IFRS14, consistent with the IFRS related information provided by both Hydro One and OPG which are rate regulated.

Current State

Effective January 1, 2016, the IESO adopted on a retrospective basis a new accounting policy that requires its market-settlement activities to be reflected in the financial statements. Under the new policy, the IESO's financial statements do not include the revenue and expenses of the financial transactions of market participants within the IESO-administered markets. This indicates IESO management has taken the position that the IESO is an agent, not a principal, in the IESO-administered markets and, accordingly, records revenue on a net basis.

PSAS doesn't provide any specific guidance as to how it should be determined whether an entity is acting as a principal or an agent in the context of revenue recognition, but IFRS and both US GAAP do. The relevant guidance in IFRS is as follows:

IAS 18.8

Revenue includes only the gross inflows of economic benefits received and receivable by the entity on its own account. Amounts collected on behalf of third parties such as sales taxes, goods and services taxes and value added taxes are not economic benefits which flow to the entity and do not result in increases in equity. Therefore, they are excluded from revenue. Similarly, in

an agency relationship, the gross inflows of economic benefits include amounts collected on behalf of the principal and which do not result in increases in equity for the entity. The amounts collected on behalf of the principal are not revenue. Instead, revenue is the amount of commission.

IAS 18.IE21

Determining whether an entity is acting as a principal or as an agent (2009 amendment).

Paragraph 8 states that 'in an agency relationship, the gross inflows of economic benefits include amounts collected on behalf of the principal and which do not result in increases in equity for the entity. The amounts collected on behalf of the principal are not revenue. Instead, revenue is the amount of commission.' Determining whether an entity is acting as a principal or as an agent requires judgement and consideration of all relevant facts and circumstances.

An entity is acting as a principal when it has exposure to the significant risks and rewards associated with the sale of goods or the rendering of services. Features that indicate that an entity is acting as a principal include:

- *a) the entity has the primary responsibility for providing the goods or services to the customer or for fulfilling the order, for example by being responsible for the acceptability of the products or services ordered or purchased by the customer;*
- *b) the entity has inventory risk before or after the customer order, during shipping or on return;*
- *c) the entity has latitude in establishing prices, either directly or indirectly, for example by providing additional goods or services; and*
- *d) the entity bears the customer's credit risk for the amount receivable from the customer.*

An entity is acting as an agent when it does not have exposure to the significant risks and rewards associated with the sale of goods or the rendering of services. One feature indicating that an entity is acting as an agent is that the amount the entity earns is predetermined, being either a fixed fee per transaction or a stated percentage of the amount billed to the customer.

Application of the above IFRS guidance supports the conclusion that the IESO is an agent in the market-settlement process and, therefore, recognizing revenue on a net basis is appropriate.

The IESO is required by legislation to carry out its operations without the purpose of gain or profit, making the IESO a self-sustaining entity. ~~So, generally speaking, O~~other than the amounts the IESO is permitted to keep in accordance with its own rate order from the OEB to cover its internal operating costs, all amounts the IESO receives from market participants must be paid out to other market participants who have regulatory or contractual rights to receive payments from those collected amounts.

Commented [npp7]: I had understood that the IESO was recovering for costs already incurred vs. pre-collecting.

In the context of applying the principal vs. agent guidance, the amounts the IESO is permitted to keep in accordance with its own rate order from the OEB to cover its internal operating costs are recorded as system fee revenue in the IESO's financial statements. System fees are not characterized as being part of the IESO-administered markets. Accordingly, any references to the IESO-administered markets in this document exclude system fees.

Commented [npp8]: IESO earns revenue from outside parties (not within the e GRE except for OPG and then it is at commercial terms). The definition of a GBE does not require independence nor profit, but rather self-sustaining. In fact, a case might be made for the IESO to be accounted for as a GBE.

As stated in the IESO financial statements, the IESO-administered markets is a balancing system, and as such, the net position of market accounts will ultimately settle to a nil balance in accordance with market rules. However, due to settlement timing differences, the net position of market accounts will not be in a nil position from a cash flow perspective at the end of any reporting period.

This raises a question as to how a cash flow deficit related to the market-settlement process should be accounted for in the financial statements of the IESO. Two approaches are as follows:

1. The cash flow deficit is recognized as an asset when it occurs and then derecognized in the period in which it is settled. Under this approach, the net position of market accounts will always be in a nil balance in the IESO's balance sheet and there is no impact on the IESO's income statement.
2. The cash flow deficit is recognized as a charge to income when it occurs and then reversed through income in the period in which it is settled.

IESO management has concluded it is appropriate to recognize existing cash flow deficits arising from the market-settlement process as an asset. This is evidenced by the fact the components of the market accounts net to a nil closing balance at year end in the IESO's financial statements for the year ended December 31, 2016. These financial statements also explicitly state there is no impact to the accumulated deficit or revenues and expenses as the IESO is not party to these transactions as per the market rules.

Although the IESO's financial statements include the following accounting policy on regulated assets and liabilities, the asset relating to the cash flow deficit discussed above has not been specifically identified as a regulated asset:

As a rate-regulated entity, the IESO, in appropriate circumstances establishes regulated assets or liabilities and thereby defers the impact on the statement of operations of certain expenses or revenues because they are probable to be collected or refunded to market participants through future billings. The IESO has applied guidance from United States Generally Accepted Accounting Principles (US GAAP) Topic 980, Regulated Operations, in this policy.

The only two balances specifically identified as being recognized in the IESO's financial statements under the above policy are (i) unrecovered smart metering expenses, and (ii) unrecovered PSAB transition items. IESO management has, however, indicated in discussions that the cash flow deficit/surplus associated with the original variance account is also considered to be a regulated asset/liability under ASC 980 even though it has been recorded as part of the Market Accounts balances in the statement of financial position.

Impact of FHP

The implementation of the FHP results in the IESO establishing and maintaining the FHP variance account to track the resulting cash flow deficit, the balance of which is defined for the purposes of ~~under~~ the FHP Act to be a 'regulatory asset'.

The act of legislating the balance in the FHP variance account to be a regulatory asset does not, in and of itself, ~~support~~ result in its recognition as an asset for accounting purposes. Accordingly, the primary issue at hand is whether the legislated regulatory asset is eligible for recognition as an asset in the financial statements of the IESO ~~under PSAS~~ and subsequently on the Province's consolidated financial statements which are also prepared on a PSAS basis..

When the standalone financial statements of the IESO are considered in isolation, the impact of the conclusion reached on this issue ~~is~~ would be eliminated to the extent the regulatory asset has been sold to OPG Trust at the end of the reporting period. The conclusion remains significant, however, due to its impact on the consolidated financial statements of the GRE, which is discussed in a later section.

Commented [npp9]: Could include reference that this same basis is used by OPG, H1 and many other rate regulated entities in Canada (including those which report based on IFRS14).

Commented [npp10]: In other words, the Province has not 'legislated' the accounting for the deferred amounts as regulatory assets on the Province's books. (The AG has suggested such, so this may be the source of her confusion).

Commented [npp11]: Deleted the 'PSAS' reference given that under different circumstances the entity might report on IFRS (as an OGO, or as a GBE) and report the assets as RRA under IFRS14.

Commented [NPP12]: Didn't it have to be a regulatory asset in order for OPG Trust to buy it and account for it as an intangible asset.

As noted above, the IESO has adopted a policy to apply the U.S. GAAP guidance in ASC 980. IESO management has applied this guidance and concluded the regulatory asset created by the FHP can be recognized as a regulated asset for accounting purposes in the financial statements of the IESO. The IESO's auditors, KPMG, concur with this position, as evidenced from the following excerpt from a draft letter issued by KPMG on May 16, 2017 (the KPMG Letter):

We have considered the foregoing analysis and management's conclusion. We concur that the variance account created by Bill 132 will meet the criteria for the recognition of a regulatory asset stated in ASC 980-340-25-1. Furthermore, we have also considered the criteria stated in ASC 980-10-15-2 and believe that IESO should be allowed to continue to use the guidance for regulated operations of Topic 980.

Recognizing the regulatory asset as a regulated asset for accounting purposes in the financial statements of the IESO in accordance with ASC 980 is appropriate only if all of the following conditions are met:

a) the operations of the IESO (or the relevant portion thereof) are within the scope of ASC 980 based on the criteria in ASC 980-10-15-2,
b) the FHP variance account meets the criteria in ASC 980-340-25-1 for capitalization as a regulatory asset, and
c) ASC 980 is an appropriate source of GAAP under PSAS.

Each of these items is addressed in turn:

a) Scope of ASC 980

ASC 980-10-15-2 states the following:

The guidance in the Regulated Operations Topic applies to general-purpose external financial statements of an entity that has regulated operations that meet all of the following criteria:

a) The entity's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party regulator or by its own governing board empowered by statute or contract to establish rates that bind customers.
b) The regulated rates are designed to recover the specific entity's costs of providing the regulated services or products. This criterion is intended to be applied to the substance of the regulation, rather than its form. If an entity's regulated rates are based on the costs of a group of entities and the entity is so large in relation to the group of entities that its costs are, in essence, the group's costs, the regulation would meet this criterion for that entity.
c) In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume that rates set at levels that will recover the entity's costs can be charged to and collected from customers.

The Office of the Auditor General of Ontario (OAGO) does not believe the IESO meets the criteria to be within the scope of ASC 980. This is evidenced by the following statement included in *Legislated Accounting Included in Bill 132, Including the Proposed Ontario Fair Hydro Plan Act, 2017 – Submission to Standing Committee on Justice Policy* dated May 25, 2017 (OAGO Submission):

Moreover, IESO is not engaging in rate-regulated activities, and the contracts under its administration were never subject to rate regulation.

Commented [NPP13]: Insert ref to GAAP hierarchy.

Commented [npp14]: The OPA had also accounted for the balances as assets (consistency w.r.t. the CFS treatment).

OPA Accounting Treatment for Regula

Commented [NPP15]: Insert reference to consistency with previous treatment of OPA (2013 Terry Gabriel email).

The statement made by the OAG does not appear to be a fair reflection of the facts. Ontario's electricity industry is rate-regulated. Rates paid by electricity consumers are regulated by the OEB such that over time rates equal cost plus, where applicable, a reasonable rate of return. Providing electricity to consumers involves several different parties, including generators, transmitters, distributors and the IESO. Some of these parties engage in rate-regulated activities, some do not.

The IESO serves an important and active role in Ontario's electricity market, irrespective of the fact that it records market transactions on net basis in the financial statements. The IESO balances the supply of and demand for electricity in Ontario and directs its flow across the province's transmission lines, oversees the wholesale electricity market, where the price of energy is determined, and administers the rules that govern the market. In determining whether the IESO has regulated operations, the focus is on whether the rates the IESO charges its customers are regulated and not whether the costs incurred by the IESO are regulated (although a number of them are).

The following supports the position of IESO management that the above criteria are met and the IESO's operations are within the scope of ASC 980:

The entity's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party regulator or by its own governing board empowered by statute or contract to establish rates that bind customers.
As noted in a research paper issued in 2001 by a taskforce established by the CICA (the CICA Research Report), there is a view held by some that, with respect to rate regulation in the public sector, there is usually no *independent, third-party regulator* because the government controls both the enterprise and the regulatory agency. Accordingly, it is important to point out that independence is not required to meet the criteria in ASC 980-10-15-2(a). The requirement is an *independent, third-party regulator* or *its own governing board empowered by statute or contract*. In fact, paragraph 64 of the Basis for Conclusions for FAS 71, ACCOUNTING FOR THE EFFECTS OF CERTAIN TYPES OF REGULATION (which is the pre-codified version of ASC 980), specifically states that the criteria in ASC 980-10-15-2(a) was modified so as not to preclude application by government utilities with rates set by their own governing board. The OEB has been established by the Province to be Ontario's independent energy regulator and, therefore, is considered the governing board of the IESO. The OEB's mandate and authority come from the *Ontario Energy Board Act, 1998*, the *Electricity Act, 1998*, and a number of other provincial statutes. As described in more detail below, the IESO's rates are established in accordance with these statutes. In the context of its market-settlement role, the IESO's 'customers' are the Market Participants buying electricity from the IESO-controlled grid. All Market Participants are required to execute a Participation Agreement with the IESO. In accordance with Article 3.1 of the standard Participation Agreement, each Market Participant has agreed to be bound by and to comply with all of the provisions of the Market Rules, which includes the following: *Chapter 9, Section 1.2.3* *Notwithstanding any other provision within the market rules, market participants shall remit to the IESO such applicable settlement amounts and other payments as may be required under the relevant provisions of the Electricity Act, 1998, the Ontario Energy Board Act, 1998 and any related regulations, as amended from time to time.* The IESO's operations meet the criteria in ASC 980-10-15-2(a) because the rates charged by the IESO

are based on statutes. As discussed in more detail below, the rates are designed to recover the IESO's expenditure for providing the regulated services and the pass-through costs related to the energy purchased from the generators and to government programs.

The main components of invoices issued by the IESO to Market Participants are as follows:

- Commodity Charges
  - Hourly Ontario Energy Price
  - Global Adjustment
- Wholesale Market Service Charges
  - IESO Administration Fee
  - Uplift Charges
  - Rural and Remote Electricity Rate Protection
- Wholesale Transmission Charges
- Debt Retirement Charge

Each component is determined as follows:

Commodity Charges

In accordance with Section 25.33(1) of the Electricity Act, the IESO is required to price electricity to recover costs:

Electricity pricing to reflect costs

IESO to make adjustments

25.33 (1) The IESO shall, through its billing and settlement systems, make adjustments in accordance with the regulations that ensure that, over time, payments by classes of market participants in Ontario that are prescribed by regulation reflect,

a) amounts paid to generators, the Financial Corporation and distributors, whether the amounts are determined under the market rules or under section 78.1, 78.2 or 78.5 of the Ontario Energy Board Act, 1998;

b) amounts paid to entities with whom the IESO has a procurement contract, as determined under the procurement contract; and

c) such amounts as may be prescribed that are paid or incurred by the IESO in relation to the Ontario Fair Hydro Plan Act, 2017. *2014, c. 7, Sched. 7, s. 8 (1); 2017, c. 16, Sched. 1, s. 43 (2).*

Market Participants are initially invoiced for consumed electricity at the Hourly Ontario Energy Price (HOEP), which is calculated as the average of the twelve market clearing prices set in each hour. In accordance with Section 25.33(5) of the Electricity Act, the IESO is required to track differences between the amounts invoiced to Market Participants at HOEP and actual costs incurred in a variance account:

Variance accounts

(5) The IESO shall establish and maintain such variance accounts as may be necessary to record all amounts payable or receivable by it under this section or under the Ontario Fair Hydro Plan Act, 2017. *2004, c. 23, Sched. A, s. 37; 2014, c. 7, Sched. 7, s. 8 (5); 2017, c. 16, Sched. 1, s. 43 (5).*

Sections 3.1 and 3.3 of the OEB Act require the variance account to be settled over a twelve-month period, which is done through the Global Adjustment on a Market Participant's invoice:

Annual rate plan and separate rates for situations prescribed by regulation

(3.1) The Board shall, in accordance with rules prescribed by the regulations, approve or fix separate rates for the retailing of electricity,

a) to such different classes of consumers as may be prescribed by the regulations; and

b) for such different situations as may be prescribed by the regulations. 2004, c. 23, Sched. B, s. 14 (1).

Rates to reflect cost of electricity

(3.3) In approving or fixing rates under subsection (3.1),

a) the Board shall forecast the cost of electricity to be consumed by the consumers to whom the rates apply, taking into consideration the adjustments required under section 25.33 of the Electricity Act, 1998 *and shall ensure that the rates reflect these costs; and*

b) the Board shall take into account balances in the IESO's variance accounts established under section 25.33 of the Electricity Act, 1998 *and shall make adjustments with a view to eliminating those balances within 12 months or such shorter time periods as the Minister may direct. 2004, c. 23, Sched. B, s. 14 (1); 2014, c. 7, Sched. 23, s. 6 (2).*

Although the implementation of the FHP involves the deferral of costs over an extended period of time, it does not change the IESO's obligation under the OEB Act to price electricity to recover incurred costs in full. The deferral relating to the FHP is tracked in a separate variance account in accordance with Section 24(1) of the Fair Hydro Plan Act, 2017 (the FHP Act):

Variance account to be established, maintained

24 (1) The IESO shall establish and maintain a variance account in which it records the following:

1. The IESO deferral for each month.

2. All payments received by the IESO resulting from the exercise of the right of recovery under section 25 and any transfer under section 26.

3. Such other adjustments as may be prescribed, including adjustments in respect of the period that commences on or after May 1, 2017 and before the day this section comes into force.

The right for the IESO to recover the variance account is set out in Section 25 of the FHP Act:

Regulatory asset established

25 (1) Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Board to set rates

(2) Subject to subsection (3), the Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for the IESO to recover the balance recorded in the variance account.

Limitation

(3) The IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2021.

Wholesale Market Service Charges

The IESO charges Market Participants administrative fees to operate the wholesale electricity market and manage the electric power system in Ontario. These fees are required to be approved by the OEB under Section 25(1) of the Electricity Act on an annual basis.

Review of requirements and fees

25 (1) The IESO shall, at least 60 days before the beginning of each fiscal year, submit its proposed expenditure and revenue requirements for the fiscal year and the fees it proposes to charge during the fiscal year to the Board for review, but shall not do so until after the Minister approves the IESO's proposed business plan for the fiscal year under section 24. 2014, c. 7, Sched. 7, s. 3 (1).

Uplift charges

Need details

Commented [NPP16]: Not sure what these are. Ask IESO?

RRRP charges

The RRRP program provides a rate subsidy to rural and remote residential customers who face higher

distribution costs. Under the FHP Act, the cost of the RRRP program has shifted from ratepayers to provincial revenues and, therefore, is no longer a component of the IESO's invoice.

Wholesale Transmission Charge
This charge to LDCs and some large consumers covers the cost incurred by transmission companies to construct and maintain the high-voltage transmission lines needed to transport electricity from generating stations to LDCs or consumers. In accordance with Section 78(1) of the OEB Act, the rate for this service is approved by the OEB.

Debt Retirement Charge
When the Ontario electricity sector was restructured in April 1999, the Ontario Electricity Financial Corporation (OEFC) inherited $20.9 million of stranded debt from Ontario Hydro. The OEFC services and retires the stranded debt with cash flows from a number of sources in the electricity sector, one of those currently being debt retirement charges paid by certain ratepayers (ratepayers cease paying debt retirement charges April 1, 2018).

Under Regulation 494/01, DEBT RETIREMENT CHARGE – ADMINISTRATION, the IESO is appointed as a collector of debt retirement charges (Section 2) and is required to collect a debt retirement charge on behalf of the OEFA from every entity who withdraws electricity from the IESO-controlled grid (Section 6(2)). The prescribed rate for the debt retirement charge is set out in Regulation 493/01, DEBT RETIREMENT CHARGE – RATES AND EXEMPTIONS.

The regulated rates are designed to recover the specific entity's costs of providing the regulated services or products.

As discussed in detail above, the IESO is required by statute to set prices to recover costs.

In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume that rates set at levels that will recover the entity's costs can be charged to and collected from customers.

As discussed in detail above, the IESO is required by statute to set prices to recover costs.

The majority of the monthly amount invoiced by the IESO to Market Participants represents a direct flow through of costs as they are incurred, but there are certain types of costs for which recovery may be deferred. For those deferred costs, the IESO is dependent on the future consumption of electricity by rate-payers to fully recover costs.

Based on relatively short recovery periods, it is reasonable to assume there will be sufficient demand to recover the deferred costs that currently exist. Specifically:

- RPP and RRRP variance accounts are recovered over twelve months in accordance with Section 3.3(b) of the OEB Act. *(Note - Under the FHP, responsibility for the cost of the RRRP program is being transferred to the Provincial budget and rate-payers will no longer be directly charged)*
- The Smart Metering Entity charge is recovered over the period from May 1, 2013 to October 31, 2018 in accordance with XX.

Under the FHP, responsibility for the cost of the OESP program is being transferred to the Provincial budget and rate-payers will no longer be directly charged. The OESP variance account, which is

currently in a credit balance, will be used to fund the cost of the program until depleted.

Although the timing of the recovery of the FHP variance account has not yet been established by the OEB, the wording and intent of the proposed legislation is clear that it is intended by law to be recoverable over a period of 30 years. Given the nature and extent of customer demand for the power generated and distributed in Ontario, both at this time and projected in the future, it is reasonable to conclude that there will be sufficient demand to recover the regulatory asset. As with the other criteria, this will need to be continually evaluated throughout the recovery period.

Commented [npp17]: Insert reference to LTEP or the Ontario Planning Outlook. Ontario-Planning-Outlook-September2016.pdf Could also seek narrative from IESO.

In addition to the general scope requirements of ASC 980 discussed above, specific consideration is made as to whether the following scope exception in ASC 980-10-15-7 applies to the FHP:

The guidance in the Regulated Operations Topic does not apply to any of the following transactions:

a) *Accounting for price controls that are imposed by governmental action in times of emergency, high inflation, or other unusual conditions, or accounting for contracts in general. However, if the terms of a contract between an entity and its customer are subject to regulation and the criteria of paragraph 980-10-15-2 are met with respect to that contract, the guidance in this Topic shall apply.*

Based on the discussion below, this scope exemption is not applicable to the FHP.

Electricity cost reductions resulting from the FHP do not represent price controls imposed by the Province in a time of emergency, high inflation, or other unusual conditions. As noted in the 2017 budget speech, the 2017 Ontario Budget – A Stronger, Healthier Ontario, the FHP is a fairer way to share the costs of building a cleaner, more modern and reliable electricity generation system. In particular, the budget speech states:

Commented [NPP18]: Navigant report/other support

Recognizing that existing electricity infrastructure is expected to last for decades to come, the Province would refinance the cost of those capital investments to ensure that system costs are more equitably distributed over time.

The following paragraph from the Basis for Conclusion for FAS 71 also provides some insight as to the specific concerns relating to government imposed price controls that resulted in the scope exception in ASC 980-10-15-7(a):

70. The first scope limitation of paragraph 8—excluding accounting for price controls imposed by governmental action in times of emergency, high inflation, or other unusual conditions—was included in the Discussion Memorandum. Price controls imposed in periods of unusual conditions are not expected to be applied consistently over an extended period. Indeed, their duration usually is limited by statute. In that environment, assurance of future benefits cannot be provided by probable future actions of the price control regulator because that regulator may not exist at a given future date.

The implementation of the FHP does not create the type of environment described in FAS 71.BC70 as it is governed by the OEB and there is no concern the OEB will not continue to exist.

The second part of the scope exception in ASC 980-10-15-7(a) relating to the accounting for contracts is further explained in the following paragraph from the Basis for Conclusion for FAS 71:

71. Accounting for contracts in general was also excluded from the scope of the Discussion Memorandum. The economic effects of cost reimbursement contracts are in some respects similar to the economic effects of the type of regulation addressed by this Statement. However, most contracts tend to be relatively short-term, whereas regulation of enterprises covered by this Statement is expected to continue beyond the foreseeable future. The Board noted that other authoritative literature addresses contract accounting and concluded that it should exclude the general issue of contract accounting from the scope of this Statement.

Although the impetus for the FHP relates to term of contracts the IESO has entered into with certain generators, the FHP does not change the existing accounting for these contracts.

Application of ASC 980-340-25-1 to the regulatory asset

ASC 980-340-25-1 states the following:

Rate actions of a regulator can provide reasonable assurance of the existence of an asset. An entity shall capitalize all or part of an incurred cost that would otherwise be charged to expense if both of the following criteria are met:

Field Code Changed

Field Code Changed

- *a) It is probable (as defined in Topic 450) that future revenue in an amount at least equal to the capitalized cost will result from inclusion of that cost in allowable costs for rate-making purposes.*
- *b) Based on available evidence, the future revenue will be provided to permit recovery of the previously incurred cost rather than to provide for expected levels of similar future costs. If the revenue will be provided through an automatic rate-adjustment clause, this criterion requires that the regulator's intent clearly be to permit recovery of the previously incurred cost.*

A cost that does not meet these asset recognition criteria at the date the cost is incurred shall be recognized as a regulatory asset when it does meet those criteria at a later date.

The following supports the IESO's position that the FHP variance account meets the above criteria for capitalization:

It is probable (as defined in Topic 450) that future revenue in an amount at least equal to the capitalized cost will result from inclusion of that cost in allowable costs for rate-making purposes.
The following excerpts from the FHP Act make it clear that the IESO is entitled to recover the regulatory asset through rates in the future: *Variance account to be established, maintained* *24 (1) The IESO shall establish and maintain a variance account in which it records the following:* *1. The IESO deferral for each month.* *2. All payments received by the IESO resulting from the exercise of the right of recovery under section 25 and any transfer under section 26.* *3. Such other adjustments as may be prescribed, including adjustments in respect of the period that commences on or after May 1, 2017 and before the day this section comes into force.* *Recording determinative* *(2) Subject to the correction of any obvious error by the IESO, its recording of the balance in the variance account is determinative of the balance as of the time of the recording.* *Regulatory asset established*

25 (1) Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Board to set rates

(2) Subject to subsection (3), the Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for the IESO to recover the balance recorded in the variance account.

Limitation

(3) The IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2021.

The recovery of the regulatory asset is, however, dependent on future consumption of electricity by rate-payers. Although the timing of the recovery of the regulatory asset has not yet been established by statute, the recovery period is intended to be 30 years. Given the nature and extent of customer demand for the power generated and distributed in Ontario, both at this time and projected in the future, it is reasonable to conclude that it is probable there will be sufficient demand in the future to recover the regulatory asset. This conclusion, which is supported by Figure 19: Ontario's Forecast Electricity Production in Achieving Balance – Ontario's Long-Term Energy Plan, will need to be continually evaluated throughout the recovery period. The willingness of unrelated third parties to fund the purchase of the regulatory asset from the IESO by OPG Trust also demonstrates the belief that sufficient demand will exist to permit its future recovery.

Based on available evidence, the future revenue will be provided to permit recovery of the previously incurred cost rather than to provide for expected levels of similar future costs. If the revenue will be provided through an automatic rate-adjustment clause, this criterion requires that the regulator's intent clearly be to permit recovery of the previously incurred cost.

Based on the above excerpts from the FHP Act, it is clear the IESO will be recovering costs previously incurred rather than providing for expected levels of similar future costs.

ASC 980 is an acceptable source of guidance under PSAS

In assessing whether ASC 980-340-25-1 is an acceptable source of guidance under PSAS, Paragraph 5 of PSAS 1150, GENERALLY ACCEPTED ACCOUNTED PRINCIPLES, states the following:

When the primary sources of GAAP do not deal with the accounting and reporting in financial statements of transactions or events encountered by the public sector reporting entity, or additional guidance is needed to apply a primary source to specific circumstances, the selection of an appropriate accounting policy requires the exercise of professional judgment. In these circumstances, a public sector reporting entity should adopt accounting policies and disclosures that are consistent with:

a) the primary sources of GAAP; and

b) the application of the concepts described in FINANCIAL STATEMENT CONCEPTS, Section PS 1000.

Related guidance is also provided in PSAS 1150.18-.20:

Paragraphs PS 1150.19-.24 identify some of the other sources that a public sector reporting entity might consult to assist in selecting accounting policies and disclosures that comply with paragraph PS 1150.05.

Commented [NPP19]: Important consideration if GBEs were ever consolidated on a line by line basis. Other RR entities in Canada use US GAAP (recognized under auditing standards as a fair presentation framework--- companies receive clean audit opinions. Companies reporting RRA under IFRS14 are reporting based on ASC 980))

Pronouncements issued by other bodies authorized to issue accounting standards may be useful sources to consult. For example, accounting pronouncements published with the authority of the Canadian Accounting Standards Board (AcSB), International Accounting Standards Board (IASB), US Federal Accounting Standards Advisory Board (FASAB), US Governmental Accounting Standards Board (GASB), or International Public Sector Accounting Standards Board (IPSASB) are often important sources to consult on matters not covered by primary sources of GAAP or for assistance in applying a primary source of GAAP to specific circumstances.

When a public sector reporting entity chooses to consult a source described in paragraph PS 1150.19, it applies professional judgment and evaluates the source in the context of the relative manner in which the standard setter requires its pronouncements to be applied, as well as in the context of the related pronouncement. When an accounting standard setter does not have a conceptual framework that is similar to the concepts referred to in paragraph PS 1150.05(b), the public sector reporting entity needs to ensure that the selected source is consistent with those concepts.

Since PSAS does not specifically address the treatment of costs incurred that will be recovered through regulatory operations in future periods, the IESO would not be precluded from following the guidance in ASC 980-340-25-1. However, PSAS 1000.05 makes it clear that in order to do so, it must first be demonstrated that such guidance is consistent with the application of the concepts described in PSAS 1000, FINANCIAL STATEMENT CONCEPTS.

The relevant guidance in PSAS 1000 relating to the recognition of an asset is as follows:

PSAS 1000.35

Assets are economic resources controlled by a government as a result of past transactions or events and from which future economic benefits are expected to be obtained.

PSAS 1000.36

Assets have three essential characteristics:

a) *they embody future economic benefits that involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows, or to reduce cash outflows;*
b) *the public sector entity can control the economic resource and access to the future economic benefits; and*
c) *the transaction or event giving rise to the public sector entity's control has already occurred.*

Commented [npp20]: Economic inflows will be generated through rates, not taxes. Not reflecting the RRA on the books of the government would distort the relevance of the financial reports of the Province.

PSAS 1000.37

An item is not an asset of a government if it lacks one or more of the essential characteristics listed in the preceding paragraph. Thus, for example, an item does not qualify as an asset of a government if the item involves:

a) *no future economic benefit;*
b) *future economic benefit, but the government cannot obtain it; or*
c) *future economic benefit that the government may obtain, but the events or circumstances that give the government control of the benefit have not yet occurred*

The following supports the IESO's position that the regulatory asset possesses the three essential characteristics of an asset:

Embody future economic benefits that involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows, or to reduce cash outflows

The following excerpts from the FHP Act make it clear that the IESO is entitled to recover the regulatory asset through rates in the future:

Variance account to be established, maintained

24 (1) The IESO shall establish and maintain a variance account in which it records the following:

1. The IESO deferral for each month.

2. All payments received by the IESO resulting from the exercise of the right of recovery under section 25 and any transfer under section 26.

3. Such other adjustments as may be prescribed, including adjustments in respect of the period that commences on or after May 1, 2017 and before the day this section comes into force.

Recording determinative

(2) Subject to the correction of any obvious error by the IESO, its recording of the balance in the variance account is determinative of the balance as of the time of the recording.

Regulatory asset established

25 (1) Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Board to set rates

(2) Subject to subsection (3), the Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for the IESO to recover the balance recorded in the variance account.

Limitation

(3) The IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2021.

Accordingly, the regulatory asset, by statute, has the capacity to provide future cash inflows.

Commented [npp21]: Similarly the Y2K report concluded that the RRA/Ls met the definitions of assets and liabilities.

While perhaps obvious, paragraph 13 of PSAS 3210, ASSETS, confirms the generation of future cash flows represents a future economic benefit:

The future economic benefits embodied in an asset may also be in the form of generating future cash inflows. Cash inflows benefit the public sector entity because cash can be used to purchase or to provide goods and services, redistribute wealth or settle liabilities. Benefits in the form of cash inflows relate to resources, such as loans receivable, inventory for resale and portfolio investments. Also, some public sector resources generate cash inflows because they have user fees associated with them.

The ability of the regulatory asset to generate future cash flows is dependent on the future consumption of electricity by rate-payers. Although the timing of the recovery of the regulatory asset has not yet been established by statute, the recovery period is intended to be 30 years. Given the nature and extent of customer demand for the power generated and distributed in Ontario, both at this time and projected in the future, sufficient demand is expected to exist in the future to recover the regulatory asset. This conclusion, which is supported by Figure 19: Ontario's Forecast Electricity Production in Achieving Balance – Ontario's Long-Term Energy Plan, will need to be continually evaluated throughout the recovery period. The willingness of unrelated third parties to fund the purchase of the regulatory asset from the IESO by OPG Trust also demonstrates the belief that sufficient demand will exist to permit its future recovery.

The public sector entity can control the economic resource and access to the future economic benefits

Paragraph 16 of PSAS 3210, ASSETS, states the following:

A public sector entity controls the economic resource and access to the future economic benefits when it:

a) can benefit from the economic resource through its capacity to provide goods and services, to provide future cash inflows or to reduce cash outflows;
b) can deny or regulate access to those benefits by others; and
c) is exposed to the risks associated with the economic resource.

The IESO can benefit from the regulatory asset through its capacity to provide future cash inflows in one of two ways:

1. *Collection through future rates*

Section 25 of the FHP gives the IESO the right to recover the regulatory asset through future rates:

Regulatory asset established

25 (1) Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Board to set rates

(2) Subject to subsection (3), the Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for the IESO to recover the balance recorded in the variance account.

2. *Sale to a financing entity*

Section 26 of the FHP Act permits the IESO to sell the regulatory asset:

26 (1) The IESO may from time to time, in accordance with this Act and the regulations, transfer a specified portion of the regulatory asset to a financing entity in accordance with this section.

Agreement

(2) An agreement between the IESO and a financing entity in relation to the transfer of a specified portion of the regulatory asset shall provide for consideration of a payment by the financing entity to the IESO in an amount equal to the amount of the specified portion.

Effect of payment

(3) Upon receipt by the IESO of the payment by the financing entity,

(a) the balance in the variance account shall be reduced by the amount of the payment;

(b) the regulatory asset shall be adjusted accordingly;

(c) the financing entity shall acquire a corresponding investment interest; and

(d) the IESO shall retain no further right, title or interest in the corresponding investment interest.

Since (a) the statutory right to recover the regulatory asset belongs solely to the IESO, and (b) the IESO is permitted, but not required, to sell the regulatory asset, the IESO can deny or regulate access to the future economic benefits of the regulatory asset by others.

The IESO is exposed to the risks associated with the regulatory asset, with the primary risk being that collection through the mechanism set out in Section 25 of the FHP Act is dependent on the future consumption of electricity by rate-payers.

The above analysis supports the position that the IESO controls the regulatory asset and access to the future economic benefits.

In reaching this conclusion, consideration was given to the following excerpt included on Page 37 of the 2008 Annual Report of the OAGO:

With regard to the second characteristic, we simply point again to the legacy of the former Ontario Hydro and its stranded debt. This in our view provides concrete evidence that even in monopoly situations governments do not have sufficient assurance that an enterprise will generate enough profits in future years to recover all of its past costs.

Although there needs to be sufficient assurance regarding the recovery of past costs, all relevant facts and circumstances need to be taken into consideration. Accordingly, the stranded debt of Ontario Hydro can be a relevant to the analysis, but not determinative on its own.

Commented [npp22]: Consider expanding to acknowledge that regular assessments of probable recovery would be necessary, and that if facts revealed risk, then an appropriate revaluation would be undertaken

The transaction or event giving rise to the public sector entity's control has already occurred

When evaluating whether a transaction or event gives rise to control, the following guidance from PSAS 3210, ASSETS, provides helpful guidance:

.26
The past transaction or event that gives rise to control of an economic resource resulting from exchange agreements or contracts usually occurs at the point of exchange. This arises when substantially all the benefits and risks of ownership have been transferred to the public sector entity and normally coincides with the disbursement of funds, exchange of other assets or assumption of liabilities.
.28
The existence of a law, by-law or policy in relation to a particular program is not a past transaction or event that gives rise to control of an economic resource. Control does not exist until the underlying event occurs.
.29
The past transaction or event giving rise to control of an economic resource must have occurred by the financial statement date. Legislation having retroactive application cannot create a past transaction or event. Any economic resources related to that legislation would be accounted for in the current and relevant future periods, not in the period of the effective date of the legislation.

In the case of the regulatory asset, the above guidance in PSAS 3210 makes it clear that it is not the statute itself that is the transaction or event giving rise to the asset, it is the incurrence of costs for which recovery is provided for under statute. Accordingly, control over the economic benefits of the regulatory asset occurs when the IESO incurs a cash flow deficit that is recorded in the FHP variance account in accordance with Section 24(1) of the FHP Act:

Commented [npp23]: Similar position in Tory's letter.

24 (1) The IESO shall establish and maintain a variance account in which it records the following:

1. The IESO deferral for each month.

2. All payments received by the IESO resulting from the exercise of the right of recovery under section 25 and any transfer under section 26.

3. Such other adjustments as may be prescribed, including adjustments in respect of the period that commences on or after May 1, 2017 and before the day this section comes into force.

At this point in time, the IESO has incurred a cash outflow for which it is entitled to recover under Section 25 of the FHP Act:

Regulatory asset established

25 (1) Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Board to set rates

(2) Subject to subsection (3), the Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for the IESO to recover the balance recorded in the variance account.

The following excerpt from the IFRS Staff Paper on Rate-Regulated Activities prepared for discussion at

the June 2017 IASB meeting presents a consistent view and dismisses the potential dissenting view that the transaction or event giving rise to the IESO's control is the future consumption of electricity by rate-payers:

A right arises from the rate-adjustment mechanism if the entity has already partially or fully fulfilled a regulatory requirement (past event) but the current regulated rate does not yet reflect the compensation that the entity is entitled to in exchange. Even though the entity cannot compel its customers to buy the regulated goods or services, the entity's right to charge an increased future regulated rate has the potential to produce for the entity an inflow of economic benefits that are not available to other parties. That right will be consumed as the entity includes the rate increase in future regulated rates and will lead to an inflow of economic benefits if customers pay the increased future regulated rate for the future delivery of goods or services.

Another potential dissenting view is contained on page 37 of the 2008 Annual Report of the OAGO:

With regard to the third characteristic, we do not believe that a rate-regulation decision can be considered a transaction or event giving rise to an asset or obligation because, as stated above, from the level of the government's consolidated financial statements such a decision is an internal event between two government-controlled entities. An equivalent analysis for rate-regulated liabilities leads to the same conclusion. PSAB standards preclude the inclusion of both gains and losses from such inter-company transactions. Therefore, our contention is that, at the consolidated financial statement level, rate-regulated assets and liabilities have no place and should be removed upon consolidation of the government's controlled entities.

It should be noted, however, that the OAGO's belief that a rate-regulation decision cannot be considered a transaction or event giving rise to an asset or obligation is not contrary to the IESO's position. As noted above, it is not the statute itself that is being considered the transaction or event giving rise to the asset, it is the incurrence of costs for which recovery is provided for under statute.

In addition, one could argue the creation of the relevant statutes is not an internal event from the point of view of the consolidated government. Statutes must be passed by the Legislative Assembly of Ontario to become law. Since the Legislative Assembly is comprised of elected members, it can be viewed as the government's governing body.

Concluding the regulatory asset possesses the three essential characteristics of an asset in PSAS 1000.05 then begs the question as to whether the application of the guidance in ASC 980 is even necessary in this particular situation. Consistent with the statement in ASC 980 –340-25-1 that *rate actions of a regulator can provide reasonable assurance of the existence of an asset,* ASC 980 provides guidance as to how to apply the primary source of PSAS in the regulatory environment.

In a letter from the OAGO to the Board of Directors of the IESO dated June 22, 2017 (the OAGO Letter), the OAGO makes the following statement:

The definitions of an asset in the PSAS and FASB Conceptual Framework are similar. Similar to PSAS, rate regulated deferral accounts do not generally meet the definition of an asset in the FASB's Conceptual Framework.

However, the following excerpts from the Basis for Conclusions for FAS 71 (paragraph 58 in particular), clearly support that ASC 980 is an application of, not an exception from, the basic definition of an asset in the Conceptual Framework:

Economic Effects of Regulation

56. The second threshold issue in the Discussion Memorandum was: "Does rate regulation introduce an economic dimension in some circumstances that should affect the application of generally accepted accounting principles to rate-regulated enterprises?"

57. Most respondents to the Discussion Memorandum indicated that rate regulation does introduce such an economic dimension in some circumstances. Respondents cited the cause-and-effect relationship of costs and revenues as the principal economic effect of regulation that affects accounting for regulated enterprises. They noted that cost might be one factor used by unregulated enterprises to establish prices, but it would often not be the most important factor. Usually, prices are limited by the market. An unregulated enterprise might desire to price its goods or services at a level that would recover all costs and a reasonable profit; however, the market might not permit that price. Alternatively, an unregulated enterprise might be able to increase its prices and its profit if competition does not limit its prices. In either case, cost often is not the principal determinant of prices. In contrast, for an enterprise with prices regulated on the basis of its costs, allowable costs are the principal factor that influences its prices.

58. The economic effect cited by most respondents is the ability of a regulatory action to create a future economic benefit—the essence of an asset. For example, consider a regulated enterprise that incurs costs to repair damage caused by a major storm. If the regulator approves recovery of the costs through rates over some future period or is expected to do so, the rate action of the regulator creates a new asset that offsets the reduction in the damaged asset. The enterprise has probable future economic benefits—the additional revenue that will result from including the cost in allowable costs for rate-making purposes. The future benefits are obtained or controlled by the enterprise as a result of a past event—incurring the cost that results in the rate order. Thus, the criteria of Concepts Statement 3 for an asset are met.

The fact that many Canadian rate-regulated entities recognized regulated assets under Part V of the CPA Canada Handbook – *Pre-changeover Accounting Standards* (Part V GAAP) further supports the position that regulated assets do meet the basic definition of an asset under PSAS. Although Part V GAAP refers to rate regulation in several standards, it does not include cost capitalization guidance equivalent to ASC 980-340-25-1. It does, however, specify in paragraph 32B of Section 1100, *Generally accepted accounting principles*, that Section 1100 applies to the recognition and measurement of assets and liabilities arising from rate regulation beginning January 1, 2009. Since Section 1100.04 only permits the use of an alternate source of GAAP if it is consistent with Part V GAAP, regulated assets need to meet the basic definition of an asset under Part V GAAP in order to be recognized. The Part V GAAP definition of an asset in Section 1000, *Financial Statement Concepts* is consistent with the PSAS definition.

Commented [npp24]: And where reporting under IFRS14, ASC980 continues to be the basis for reporting such assets.

The OAGO Letter suggests that IFRS should be consulted prior to referring to ASC 980 under PSAS's GAAP hierarchy in PSAS 1150 and points out the following:

- In 2005 the International Financial Reporting Interpretations Committee (IFRIC) indicated the US GAAP recognition criteria for regulated assets were not fully consistent with IFRS and could not be applied by analogy.
- When the question of rate regulated accounting was posed to the IFRIC again in 2008, the IFRIC noted the topic had been previously addressed and there was a well-established practice of first time IFRS adopters ceasing rate regulated accounting and removing regulatory deferral accounts from their financial statements.
- In the Basis for Conclusions on IFRS 14, IFRS 14.BC30 noted the differences in the recognition criteria between IFRS and ASC 980 resulted in almost all existing regulatory deferral accounts being derecognized upon transition to IFRS.

It should be noted, however, that the IASB's project on rate-regulated activities is still in progress and the OAGO Letter does not reference more recent and relevant activity. In September 2014, the IASB issued Discussion Paper DP/2014/02, *Reporting the Financial Effects of Rate Regulation*. The Discussion Paper presents the opposing views as to whether regulatory deferral account balances meet the definitions of an asset or a liability and specifically states the following in paragraph 5.09:

Consequently, the IASB has not formed a preliminary view on whether regulatory deferral account balances meet either the current or proposed revised Conceptual Framework definitions of an asset and a liability. It will use the input received from the responses to this Discussion Paper and the Conceptual Framework project to help it assess whether to develop any specific accounting guidance or requirements for rate-regulated activities.

In addition, the most recent paper issued by the IASB staff in June 2017 includes the following:

17. During the May 2017 Board meeting we also considered the interaction between the definitions of assets and liabilities and the characteristics of defined rate regulation (see paragraphs 5 and 6). We concluded that a combination of those characteristics suggested that the rights and obligations created by the rate-adjustment mechanism are assets and liabilities, as those terms are expected to be defined in the forthcoming revised Conceptual Framework for Financial Reporting.

The Exposure Draft ED/2015/3, *Conceptual Framework for Financial Reporting*, defines an asset as follows:

4.5 An asset is a present economic resource controlled by the entity as a result of past events.
4.6 An economic resource is a right that has the potential to produce economic benefits.

This recent activity suggests that it would be premature to assume that the IASB will conclude that regulatory deferral account balances will not meet the definitions of an asset or a liability.

Once it is determined that the regulatory asset meets the basic characteristics of an asset in PSAS 1000.36, consideration also needs to be made as to what type of asset it is. This is important because PSAS 1000.58 does not permit the recognition of intangible assets:

In the absence of appropriate public sector recognition and measurement criteria for intangibles, all intangibles, including those that have been purchased, developed, constructed or inherited in right of the Crown, are not recognized as assets in government financial statements. The intangible often called "human capital" that embodies the talent or intellectual capital of government employees is not recognized as an asset under existing accounting principles.

PSAS 1000 identifies two types of assets: financial assets and non-financial assets and provides the following commentary:

.39 Financial assets are assets that could be used to discharge existing liabilities or finance future operations and are not for consumption in the normal course of operations.

.40 A financial asset is any asset that is:

- *a) Cash*
- *b) a realizable asset that is convertible to cash;*
- *c) a contractual right to receive cash or another financial asset from another party;*
- *d) a contractual right to exchange financial instruments with another party under conditions that are potentially favourable to the government;*
- *e) an equity instrument of another entity;*

f) an investment in a government business enterprise or government business partnership;
g) a financial claim on an outside organization or individual; or
h) an inventory or item for sale that meets the criteria in FINANCIAL STATEMENT PRESENTATION, paragraph PS 1201.055.

.41 Non-financial assets include tangible capital assets, and other assets such as prepaid expenses and inventories of supplies.

.42 Non-financial assets are acquired, constructed or developed assets that do not normally provide resources to discharge existing liabilities, but instead:

a) are normally employed to deliver government services;
b) may be consumed in the normal course of operations; and
c) are not for sale in the normal course of operations.

PSAS 3210, ASSETS, also provides some relevant guidance:

.24 Non-financial resources include all items of a fixed or permanent nature (such as tangible capital property), claims to goods and services (such as prepaid items) and consumable goods (such as inventories of supplies). Non-financial resources also include intangibles, Crown lands and natural resources.

.25 Certain non-financial resources are, however, not given accounting recognition as assets in government financial statements. For example, all government intangibles, and all natural resources and Crown lands that have not been purchased by the government, are not given accounting recognition in government financial statements. A government's non-financial assets, as defined in FINANCIAL STATEMENT CONCEPTS, Section PS 1000, comprise the recognized non-financial resources of a government.

The regulatory asset does not meet the criteria in PSAS 1000.40 to be a financial asset as it does not represent a current contractual right to receive cash. Accordingly, the regulatory asset is a non-financial resource. As noted above, to be recognized as an asset in the financial statements a non-financial resource cannot be an intangible.

Although PSAS does not permit the recognition of intangibles, it also does not provide a definition of intangibles. While PSAS 1000.40 provides a finite list of items that represent financial assets, the guidance in PSAS 1000.41-.42 on non-financial assets is less definitive, using words like “such as” and “normally”. In absence of specific guidance in PSAS as to what constitutes an intangible, U.S. GAAP is probably the most appropriate source to consult, in light of the fact that it deals specifically with regulated assets.

Under U.S. GAAP, a regulated asset is not treated as an intangible. ASC 980 contains separate subsections for ‘Intangibles – Goodwill and Other’ and ‘Other Assets and Deferred Costs’ and regulated assets are included in the guidance on ‘Other Assets and Deferred Costs’. Consistent with the treatment under U.S. GAAP, the regulatory asset is categorized as an other asset under PSAS and recognized in the financial statements.

……

Debits and Credits

Based on the example provided earlier, the IESO pays the contracted power generator $400 for electricity used by the ratepayer and collects $300 from the ratepayer through their local distribution company (LDC). The $100 recovery shortfall is recorded in a variance account created by Bill 132 and deemed to be a regulatory asset. The IESO sells the regulatory asset to OPG Trust for $100 to obtain cash to make up the shortfall.

The accounting for the above transactions in the financial statements of the IESO, which are prepared in accordance with PSAS, depends on whether the regulatory asset is eligible for recognition as an asset for accounting purposes under PSAS. To avoid confusion in the remainder of this document, the term regulatory asset will refer to the defined term in the FHP Act and the term regulated asset or rate-regulated asset (RRA) will refer to an asset recognized for accounting purposes. The following table illustrates the journal entries to be booked by the IESO under both scenarios:

Scenario A – Regulated Asset			**Scenario B – Not a Regulated Asset**		
Market Settlement					
DR	Cash	300	DR	Cash	300
DR	Asset	100	DR	Expense	100
CR	Cash	(400)	CR	Cash	(400)
Sale of Regulatory Asset to OPG Trust					
DR	Cash	100	DR	Cash	100
CR	Asset	(100)	CR	Gain	(100)

At any given point in time, the accounting result will be the same under both scenarios provided the cash shortfall has been fully funded. If a funding deficit exists, however, the deficit would be recognized as an asset under Scenario A and recognized as an expense under Scenario B. A funding deficit may arise due to, for example, temporary timing differences between the creation and sale of a regulatory asset. A funding deficit may also arise if OPG Trust (or another financing entity) ceases to purchase the IESO's regulatory assets on an on-going basis.

FHP Memo V6.rtf

From: Lee Anne Probert [leeanne.probert@ca.ey.com]
To: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Donaldson, Mark (TBS) [Mark.Donaldson@ontario.ca]
CC: Suzie Gignac [suzie.r.gignac@ca.ey.com]; Blake Langill [blake.w.langill@ca.ey.com]
Subject: FHP Memo V6
Date: Thursday, November 16, 2017 02:29:22
Attachment 1: image001.gif
Attachment 2: FHP Memo - Draft V6 15-Nov-2017.docx

For your review.

Mark – can we also please add the following to the outstanding list:

- Navigant report
- Summary of Uplift charges

Regards,

Lee Anne

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EY did not perform an audit, review, examination or other form of attestation (as those terms are defined by the CPA Canada) of the financial statements of the Province or any other entities involved. Accordingly, EY did not express any form of assurance on the accounting matters, financial statements, any financial or other information or internal controls of the Province or any of the other entities involved. EY did not conclude on the appropriate accounting treatment based on specific facts or recommend which accounting policy/treatment the Province or any of the other entities involved should select or adopt.

The observations relating to accounting matters that EY provided to the OPCD were designed to assist them in reaching their own conclusions and do not constitute our concurrence with or support of the accounting or reporting of the Province or the other entities involved. The Province and the other entities involved are each responsible for the preparation of their own financial statements, including all of the judgments inherent in preparing them. This Report was prepared under management's direction and with management's active participation and the conclusions in this Report are those of management of OPCD. This Report does not express or imply EY's views with respect to the accounting.

Internal Memo

From: Office of the Provincial Controller Division, Government of Ontario

Date: DD MMM, 2017

Introduction

Ontario's consolidated financial reports are prepared in accordance with the accounting principles for governments recommended by the Public Sector Accounting Board (PSAB) of the Chartered Professional Accountants of Canada (CPA Canada). In order to meet the needs of users, including the legislature and the public, for accountability in government reporting and for decision making, it is essential that public sector financial statements reflect the economic substance of the government's activities.

In March 2017, the Government of Ontario (the Province) announced its Fair Hydro Plan (FHP). In assessing the appropriate accounting treatment for the Global Adjustment refinancing (GA Refinancing) component of the FHP on Ontario's consolidated financial statements, the Office of the Provincial Controller considered the authoritative guidance issued by PSAB, as well as the accounting assessments of the Independent Electricity System Operator (IESO) and Ontario Power Generation (OPG) management and their external auditors and/or advisors. Given the complexity of the GA Refinancing structure, the exercise of professional judgement is necessary to ensure that key financial reporting objectives of transparency and accountability are best served.

Commented [LAP1]: Does this concept need to be repeated/reinforced elsewhere?

~~**Background**~~

The FHP ~~will~~ reduces electricity bills for Regulated Price Plan (RPP) customers (as well as those non-RPP consumers who receive the 8% rebate as specified in the Ontario Rebate for Electricity Act, 2016) by approximately 25%[1] for a period of one year, starting in the summer of 2017, and limit the increase in electricity bills to the rate of inflation over the next four years.

~~Because distribution rates vary across the province and customers use different amounts of electricity, the goal in calculating the new RPP electricity prices is to achieve a 25% reduction for a "proxy" customer, which is established under the Fair Hydro Act, 2017 and related regulations (FHP Act) as a residential customer of Toronto Hydro who uses 750 kWh of electricity a month, pays time-of-use RPP electricity prices and has the time-of-use consumption profile of a typical residential customer.~~

The measures that make up the 25% average reduction include:

[1] Because distribution rates vary across the province and customers use different amounts of electricity, the goal in calculating the new RPP electricity prices was to achieve a 25% reduction for a "proxy" customer, which is established under the Fair Hydro Act, 2017 and related regulations (FHP Act) as a residential customer of Toronto Hydro who uses 750 kWh of electricity a month, pays time-of-use RPP electricity prices and has the time-of-use consumption profile of a typical residential customer. From this analysis, an adjustment for non-RPP consumers to achieve similar savings was also established.

1. Spreading the cost of Ontario's clean energy investments over the expected lifecycle of the generation infrastructure assets. This is expected to account for 18-19% of the overall reduction.
2. Shifting the cost of the Ontario Electricity Support Program (OESP) and most of the Rural or Remote Rate Protection (RRRP) program costs from ratepayers to taxpayer-funded programs.
3. An 8% rebate equal to the provincial portion of the HST, which took effect on January 1, 2017.

Prior to the introduction of the FHP, ratepayers were already obligated under legislation to pay for the cost of Ontario's clean energy investments. This obligation continues to exist under the FHP, but the ratepayers settle their obligation over a much longer period of time. Under the first measure, t~~Under the first measure, t~~he Province ~~(i.e. the government reporting entity) will~~ borrows ~~funds~~ money to ~~pay~~ temporarily fund a portion of current clean energy investment ~~electricity~~ costs, thereby ~~temporarily reducing~~deferring a portion of the amount required to be paid by eligible ratepayers to future periods. The deferred amounts, including interest and other costs, ~~will~~ are legislated under the FHP to be ~~be recoverable~~ recovered from ratepayers through future rates over a future period, ending in 30 years (2047~~)~~. ~~In other words, the impact of #1~~

While the first measure represents ~~above is fully borne by the ratepayers – it is~~ a temporary reduction in the amount paid by the ratepayer by shifting ~~in the timing of~~ payments ~~for the clean energy investments~~to a later point in time, ~~while t~~the second and third measures represent permanent reductions in ~~impacts of #2 and #3 are reducing~~ the cost to the ratepayer, but at the cost of the taxpayer.

Objective

The objective of this memo is to assess the appropriate accounting for the first measure of the FHP (i.e. deferred recovery of clean energy costs) on the consolidated financial statements of the Province in accordance with PSAS.

Although not documented in this memo, it has been concluded that the second and third measures of the FHP have a direct impact on the current fiscal framework since the cost is borne by the taxpayer. ~~**[NTD – Consider if document should discuss #2 and #3. This would contrast the different treatment by the Province]**~~

Commented [LAP2]: To discuss extent/nature of discussion desired.

In October 2017, the Office of the Auditor General of Ontario (the OAGO) issued a special report, "The Fair Hydro Plan: Concerns About Fiscal Transparency, Accountability and Value For Money." It is worth noting that many of concerns raised in the report, which include the following, relate to the government's policy decision itself and not how the legislation implementing the policy decision is accounted for:

- The accounting/financing structure is unnecessarily complex and considerable funds were spent on accounting and legal advisers to put it in place.
- Applying the complex accounting/financing structure could result in Ontarians incurring extra interest costs over 30 years that could total up to $4 billion more than necessary
- The accounting inappropriately transfers long-term accountability for significantly higher electricity bills to future governments. Future governments will have to explain to ratepayers why electricity rates charged in 2028 and beyond exceed the actual cost of electricity.

This scope of this memo is limited to how the legislation implementing the policy decision is accounted for.

Background

The Ontario Energy Board (OEB) has been established by the Province to be Ontario's independent energy regulator.

Prior to consideration of the Ontario Fair Hydro Plan Act (FHP Act), in accordance with Section 78(3.1) of the Ontario Energy Board Act, 1998 (the OEB Act), the OEB is responsible for determining ~~electricity commodity prices for~~ RPP prices for consumers. Section 78(3.3) of the OEB Act requires the OEB to forecast the cost of electricity (commodity charge) used by RPP consumers ~~and ensure the prices they are charged reflect that cost~~in the rate setting. The rate setting process is highly complex and involves numerous forecasts and estimates. As a result, the OEB regulatory framework allows for variances between the actual ~~cost~~ commodity charge of supplying electricity and the amount collected from RPP consumers.

In setting the rates for RPP consumers, Section 78(3.3) of the OEB Act requires the OEB to settle any such variances through rates over a 12-month period. This is achieved through a price adjustment charged or credited ~~to~~ when setting the next RPP rate to be paid by RPP consumers. The monthly accumulated variance account balance is maintained by the Independent Electricity System Operator (IESO). ~~This adjustment forms part of the Global Adjustment paid by consumers.~~

The IESO is the administrator of Ontario's wholesale electricity market. The IESO settles the market with all participants, as an agent.

As part of its role as market administrator, the IESO ~~calculates~~ oversees the market price for electricity (the Market Clearing Price, or MCP) by running the bids and offers of the market participants through an algorithm. The ~~actual~~ total commodity cost of ~~supplying~~ electricity, however, is ~~higher or lower than~~not simply the MCP. ~~The actual cost can be higher than the MCP as~~For example, certain generators are paid additional amounts relating to the cost of clean energy initiatives they have undertaken. From a government policy perspective, decisions as to what is in the best interest of the public regarding electricity generation in Ontario are not based solely on economics, they are also influenced by environmental, social and political factors. Accordingly, generators may receive compensation for investing in clean energy infrastructure ~~when it is relatively less economical~~. In these instances, the IESO (and previously the Ontario Power Authority) entered into contracts to pay the generators their costs (plus a reasonable rate of return thereon) over an extended period of time, typically 20 years. The amounts paid to the generators under the terms of these contracts that are in excess of the MCP are currently included in the RPP rates set by the OEB (as part of the ~~Global Adjustment~~commodity charges) with the intention they will be recovered from RPP consumers ~~in the same period they are paid to the generators~~within twelve months. ~~As previously noted, the complexity of the rate setting process results in variances between the amount paid to the generators and the amount collected from RPP consumers.~~

Under existing legislation, the IESO is ~~required~~ permitted to fund any cash shortfall relating to differences arising between the actual commodity cost ~~of supplying electricity~~ and the amount collected from RPP consumers. In accordance with Section 25.33(5) of the Electricity Act, 1998 (the Electricity Act), the IESO has established and maintains a variance account to track these temporary differences

Commented [VC(3]: Do we need to document the independence of the regulator (evidence - supreme court case re: OPG)

Commented [LAP4R3]: I'm thinking no b/c OPG court case doesn't support independence from perspective of Province and we discuss later in the memo that independence is not required. Let's discuss.

(the original variance account) for subsequent ~~settlement with ratepayers~~RPP rate setting by the OEB. Cash shortfalls in the IESO arising from the original variance account are funded through financing provided by the OFA.

As described below, once the FHP is implemented, the total commodity cost of ~~supplying~~ electricity to RPP consumers ~~that is paid to generators~~ will no longer be fully collected over a 12-month period. As well, FHP includes non-RPP consumers who receive the 8% rebate as specified in the Ontario Rebate for Electricity Act, 2016). Together these ratepayers are called specified consumers.

Under the FHP, while generators would continue to be paid over a twenty year period as contracted, the amounts paid by the IESO to the generators would be recovered from ~~ratepayers~~ specified consumers over a longer period. Deferring the recovery of these costs from the consumers on a longer-term basis would create a significant interim cash shortfall for the IESO.

Section 24(1) of the ~~Ontario Fair Hydro Plan Act (the~~ FHP Act~~)~~ requires that IESO establish and maintain a variance account (separate from the original variance account described above) to track the cash shortfall specifically resulting from the implementation of the FHP (the FHP variance account). Due to the longer recovery period, and additional recoverable financing and management fee costs, the balance in the FHP variance account is forecast to increase significantly. The balance in ~~this~~ the FHP variance account is defined in Section 1(1) of the FHP Act ~~to be~~ as a "regulatory asset"[2]. The IESO is entitled under Section 25 of the FHP Act to recover the regulatory asset from ~~RPP~~ specified consumers in the future, which will be achieved through the OEB setting rates to allow for such recovery. This role of the OEB is not dissimilar to its ~~current~~ past role with respect to the setting of RPP rates to recover the ~~global adjustment~~commodity charge of supplying electricity, albeit over 12 months. Section 26 of the FHP Act also permits the IESO to transfer ~~or sell~~ the regulatory asset from time to time to a financing entity to fund its cash shortfall, thus commoditizing the future cash flow stream. The portion of the regulatory asset transferred to a financing entity is referred to as the investment asset.

The Province has ~~requested that~~appointed OPG to administer the ~~deferral of the Global Adjustment under the FHP because of OPG's participation in the market and the regulatory knowledge OPG possesses~~investment asset. To fulfill this role as outlined in the FHP Act, OPG ~~intends to~~must establish a financing entity (OPG Trust) to purchase the IESO's regulatory asset ~~on a monthly basis~~ and eliminate any cash shortfall in the IESO. OPG Trust will not be required to purchase the regulatory assets from IESO. ~~Reasons for it deciding not to purchase the regulatory assets could relate to a capital markets disruption such that OPG Trust would not be able to finance the acquisition~~. OPG Trust ~~intends to~~will be ~~finance~~ financing these purchases through a combination of provincial borrowing (flowed through OPG as an equity investment), amounts advanced from OPG and direct borrowing from capital markets.

Basis of Accounting

In accordance with PSAS 1300.07, the government reporting entity (GRE) for the Province comprises government components and those organizations that are controlled by the government.

[2] To avoid confusion in the remainder of this document, the term regulatory asset will refer to the defined term in the FHP Act and the term regulated asset or rate-regulated asset (RRA) will refer to an asset recognized for accounting purposes. For greater clarity and as discussed later in this memo, "regulatory asset" is simply a defined term in the FHP Act and does not on its own necessarily represent an asset for financial reporting purposes.

As defined in the Introduction to PSAS, the following types of organizations are controlled by the government: (a) government business enterprises (GBE), government non-for profit organizations (GNPO), and other government organizations (OGO).

GNPOs and OGOs are considered government units and, in accordance with PSAS 1300.27, are consolidated in the GRE on a line-by-line basis. For consolidation purposes, the financial information of government units is required to be prepared in accordance with PSAS.

GBEs, on the other hand, are accounted for in the GRE using the modified equity method as prescribed by PSAS 1300.35. Under the modified equity method, which is described in detail in PSAS 3070, INVESTMENTS IN GOVERNMENT BUSINESS ENTERPRISES, the equity method of accounting is modified only to the extent that the GBE's accounting principles (which are required to be IFRS in accordance with paragraph 17 of the Introduction to PSAS) are not adjusted to conform to those of the government.

As documented in Schedule 8 to the consolidated financial statements of the Province, the IESO is an OGO and OPG is a GBE. The current accounting for these entities is as follows:

		ENTITY STATEMENTS	GRE STATEMENTS	
ENTITY	**CLASSIFICATION**	**GAAP**	**ACCOUNTING METHOD**	**GAAP**
IESO	OGO	PSAS[1]	Consolidation	PSAS
OPG	GBE	US GAAP[2]	Modified equity method	IFRS[3]

1. For purposes of preparing general purpose financial statements, an OGO applies PSAS unless those standards do not meet the needs of its financial statement users. In that situation, IFRS should be considered and the most appropriate set of standards applied.
2. Although a GBE is required to apply IFRS for purposes of preparing general purpose financial statements, the Ontario Securities Commission has approved an exemption that allows OPG to apply US GAAP up to January 1, 2019 for purposes of filing its financial statements with the OSC. US GAAP to IFRS adjustments are made for the purposes of preparing the consolidated provincial accounts.
3. OPG applies IFRS 14, which permits it to continue to account for rate-regulated activities using US GAAP guidance for purposes of determining the differences between US GAAP and IFRS.

This memo does not reconsider the classification of these existing entities (i.e., such classifications are based on past published Public Accounts).

As discussed in detail in a subsequent section, OPG expects that under IFRS it will be considered to control OPG Trust. As such, OPG Trust will be consolidated by OPG and, therefore, reflected in the GRE through the modified equity accounting of OPG under IFRS.

Example

For simplicity, the following example will be used in this document to illustrate the accounting impact of the FHP on the various entities involved:

- Ratepayer bill is currently $588, and the 17% reduction related to the FHP is $100.
- The Province directly borrows 44%, or $44, to make an equity contribution to OPG, which OPG then loans to OPG Trust.
- OPG directly borrows 5%, or $5, and loans it to OPG Trust.
- OPG Trust directly borrows 51%, or $51, from capital markets.

Analysis

ACCOUNTING BY THE IESO

The IESO is presently classified as an OGO and prepares its standalone, general purpose financial statements in accordance with PSAS based on an assessment of its user needs, which is consistent with the basis of presentation required for purposes of consolidating the IESO into the GRE.

Current State

Effective January 1, 2016, the IESO adopted on a retrospective basis a new accounting policy that requires its market-settlement activities[3] to be reflected in the financial statements. Support for the change in policy is documented by the IESO in a report dated XX. This memo does not reconsider the conclusions reached by the IESO.

Commented [LAP5]: To discuss proposed changes by the IESO relating to activities versus accounts.

Commented [LAP6]: Given the AG's explicit opposition to the change in policy, is this sufficient?

Under the new policy, the assets and liabilities recognized on the IESO's statement of financial position relating to the IESO-administered markets include cash, amounts due from market participants, interest receivable, revolving line of credit, HST receivable, amounts due to market participants and other liabilities. The IESO statement of operations and accumulated surplus does not include the revenue and expenses of the financial transactions of market participants within the IESO-administered markets. This indicates IESO management has taken the position that the IESO is an agent, not a principal, in the IESO-administered markets and, accordingly, records revenue on a net basis.

PSAS does not provide any specific guidance as to how it should be determined whether an entity is acting as a principal or an agent in the context of revenue recognition, but both IFRS and US GAAP do. The relevant guidance in IFRS is as follows:

IAS 18.8

Revenue includes only the gross inflows of economic benefits received and receivable by the entity on its own account. Amounts collected on behalf of third parties such as sales taxes, goods and services taxes and value added taxes are not economic benefits which flow to the entity and do not result in increases in equity. Therefore, they are excluded from revenue. Similarly, in an agency relationship, the gross inflows of economic benefits include amounts collected on behalf of the principal and which do not result in increases in equity for the entity. The amounts collected on behalf of the principal are not revenue. Instead, revenue is the amount of commission.

IAS 18.IE21

Determining whether an entity is acting as a principal or as an agent (2009 amendment).

Paragraph 8 states that 'in an agency relationship, the gross inflows of economic benefits include amounts collected on behalf of the principal and which do not result in increases in equity for the entity. The amounts collected on behalf of the principal are not revenue. Instead, revenue is the amount of commission.' Determining whether an entity is acting as a principal or as an agent requires judgement and consideration of all relevant facts and circumstances.

An entity is acting as a principal when it has exposure to the significant risks and rewards associated with the sale of goods or the rendering of services. Features that indicate that an entity is acting as a principal include:

a) the entity has the primary responsibility for providing the goods or services to the customer or for fulfilling the order, for example by being responsible for the acceptability of the products or services ordered or purchased by the customer;

b) the entity has inventory risk before or after the customer order, during shipping or on return;

[3] The IESO administers the wholesale electricity market by authorizing market participants, publishing system forecasts and market information, producing statements and invoices, and performing financial settlement transactions for the markets.

c) the entity has latitude in establishing prices, either directly or indirectly, for example by providing additional goods or services; and

d) the entity bears the customer's credit risk for the amount receivable from the customer.

An entity is acting as an agent when it does not have exposure to the significant risks and rewards associated with the sale of goods or the rendering of services. One feature indicating that an entity is acting as an agent is that the amount the entity earns is predetermined, being either a fixed fee per transaction or a stated percentage of the amount billed to the customer.

Application of the above IFRS guidance supports the conclusion that the IESO is an agent in the market-settlement process and, therefore, recognizing revenue on a net basis is appropriate. IESO has completed a more thorough analysis of their position that it is an agent in the settlement of the market and reconsideration of that decision is not the topic of this memo.

The IESO is required by legislation to carry out its operations without the purpose of gain or profit. Other than the amounts the IESO is permitted to keep in accordance with its own rate order from the OEB to cover its internal operating costs, which makes it a self-sustaining entity, all amounts the IESO receives from market participants must be paid out to other market participants who have regulatory or contractual rights to receive payments from those collected amounts.

Commented [VC(7]: Does the legislation speak to IESO incurring a loss?

Commented [LAP8]: Part II, 6(2) of the Electricity Act states no gain or profit. I couldn't find anything that specifically addresses the IESO incurring a loss.

In the context of applying the principal vs. agent guidance, the amounts the IESO is permitted to keep in accordance with its own rate order from the OEB to cover its internal operating costs are recorded as system fee revenue in the IESO financial statements. System fees are not characterized as being part of the IESO-administered markets. Accordingly, any references to the IESO-administered markets in this document exclude system fees.

As stated in the IESO financial statements, the IESO-administered markets is a balancing system, and as such, the net position of market accounts will ultimately settle to a nil balance in accordance with market rules. However, due to settlement timing differences, the net position of market accounts will not be in a nil position from a cash flow perspective at the end of any reporting period.

This raises a question as to how a cash flow deficit related to the market-settlement process should be accounted for in the financial statements of the IESO. Two approaches are as follows:

1. The cash flow deficit is recognized as an asset when it occurs and then derecognized in the period in which it is settled. Under this approach, the net position of market accounts will always be in a nil balance in the IESO's balance sheet and there is no impact on the IESO's income statement.
2. The cash flow deficit is recognized as a charge to income when it occurs and then reversed through income in the period in which it is settled.

IESO management has concluded it is appropriate to recognize existing cash flow deficits arising from the market-settlement process as an asset. This is evidenced by the fact the components of the market accounts net to a nil closing balance at year end in the IESO financial statements for the year ended December 31, 2016. Note 3 to ~~These~~ these financial statements also explicitly state there is no impact to the accumulated deficit or revenues and expenses as the IESO is not party to these transactions as per the market rules. This treatment is consistent with the conclusion that the IESO is acting as an agent in the market-settlement process.

Although the IESO's financial statements include the following accounting policy on regulated assets and liabilities, the asset relating to the cash flow deficit discussed above has not been specifically labeled as a regulated asset:

As a rate-regulated entity, the IESO, in appropriate circumstances establishes regulated assets or liabilities and thereby defers the impact on the statement of operations of certain expenses or revenues because they are probable to be collected or refunded to market participants through future billings. The IESO has applied guidance from United States Generally Accepted Accounting Principles (US GAAP) Topic 980, Regulated Operations, in this policy.

The only two balances specifically labeled as being recognized in the IESO's financial statements under the above policy are (i) unrecovered smart metering expenses, and (ii) unrecovered PSAB transition items. IESO management has, however, indicated in discussions that the cash flow deficit/surplus associated with the original variance account is also considered to be a regulated asset/liability under ASC 980 even though it has been presented as part of the Market Accounts balances in the statement of financial position.

Impact of FHP

The ~~implementation of the FHP results in the~~ IESO is legislated by the FHP Act to establish~~ing~~ and maintain~~ing~~ the FHP variance account to track the resulting cash flow deficit~~, the balance of which is defined for the purposes of the FHP Act to be a 'regulatory asset'~~. This variance account is similar in nature to the current variance account established under Section 25.33(5) of the Electricity Act, 1998, discussed in the Background Section to this memo. In the FHP Act, the FHP variance account is defined to be a 'regulatory asset' (but, as discussed below this does not on its own mean that it necessarily qualifies as an asset for financial reporting purposes).

As evidenced by the following excerpt from the Independent Auditor's Report of the consolidated financial statements of the Province as at and for the year ended March 31, 2017, the Auditor General is suggesting the FHP Act is legislating the recognition of an asset in the financial statements that is not eligible for recognition under PSAS:

Use of Rate-regulated Accounting May Cause a Material Misstatement on the Consolidated Financial Statements of the Province of Ontario

I draw attention to Note 16c to these consolidated financial statements, which describes the Independent Electricity System Operator's retroactive adoption of rate-regulated accounting during the year. The recognition of rate regulated assets on the consolidated financial statements of the Province of Ontario is not permitted when applying Canadian public sector accounting standards. This departure does not have a material impact on the Province of Ontario's consolidated financial statements for the year ended March 31, 2017 and my opinion is not modified in respect of this matter. However, the consolidated financial statements may become materially misstated in future periods, as a result of the legislated accounting prescribed under the Ontario Fair Hydro Plan Act, 2017 (Fair Hydro Plan) and its related regulations as it is not in accordance with Canadian public sector accounting standards.

It is important to clarify that the FHP Act does not create accounting rules or legislate accounting. The act of legislating the ~~balance in~~tracking and recovery of the FHP variance account ~~to be a regulatory asset~~ does not, in and of itself, result in its recognition as an asset for accounting purposes. Accordingly, the primary issue at hand is whether the legislated regulatory asset is eligible for recognition as an asset in both the standalone financial statements of the IESO and the consolidated financial statements of the GRE. As discussed in a later section, the conclusion reached with respect to the appropriate accounting for the FHP in the standalone financial statements of the IESO as an OGO reporting under PSAS may impact the consolidated financial statements of the GRE.

Commented [LAP9]: Delete if we delete Scenario B

As noted above, the IESO has adopted a policy to apply the U.S. GAAP guidance in ASC 980 in connection with accounting for rate regulated assets. IESO management has applied this guidance and concluded the regulatory asset created by the FHP can be recognized as a regulated asset for accounting purposes in the financial statements of the IESO. The IESO's auditors, KPMG, concur with this position, as evidenced from the following excerpt from a draft letter issued by KPMG on May 16, 2017 (the KPMG Letter):

We have considered the foregoing analysis and management's conclusion. We concur that the variance account created by Bill 132 will meet the criteria for the recognition of a regulatory asset stated in ASC 980-340-25-1. Furthermore, we have also considered the criteria stated in ASC 980-10-15-2 and believe that IESO should be allowed to continue to use the guidance for regulated operations of Topic 980.

Recognizing the regulatory asset as a regulated asset for accounting purposes in the financial statements of the IESO in accordance with ASC 980 is appropriate only if all of the following conditions are met:

a) the operations of the IESO (or the relevant portion thereof) are within the scope of ASC 980 based on the criteria in ASC 980-10-15-2,
b) the FHP variance account meets the criteria in ASC 980-340-25-1 for capitalization as a regulatory asset, and
c) ASC 980 is an appropriate source of GAAP under PSAS.

Each of these items is addressed in turn:

a) Scope of ASC 980

ASC 980-10-15-2 states the following:

The guidance in the Regulated Operations Topic applies to general-purpose external financial statements of an entity that has regulated operations that meet all of the following criteria:

a) The entity's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party regulator or by its own governing board empowered by statute or contract to establish rates that bind customers.
b) The regulated rates are designed to recover the specific entity's costs of providing the regulated services or products. This criterion is intended to be applied to the substance of the regulation, rather than its form. If an entity's regulated rates are based on the costs of a group of entities and the entity is so large in relation to the group of entities that its costs are, in essence, the group's costs, the regulation would meet this criterion for that entity.
c) In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume that rates set at levels that will recover the entity's costs can be charged to and collected from customers.

The Office of the Auditor General of Ontario (OAGO) has publicly stated that it does not believe the IESO meets the criteria to be within the scope of ASC 980. This is evidenced by the following statement included in *Legislated Accounting Included in Bill 132, Including the Proposed Ontario Fair Hydro Plan Act, 2017 – Submission to Standing Committee on Justice Policy* dated May 25, 2017 (OAGO Submission):

Moreover, IESO is not engaging in rate-regulated activities, and the contracts under its administration were never subject to rate regulation.

Ontario's electricity industry is rate-regulated. Rates paid by electricity consumers are regulated by the OEB such that over time rates equal cost plus, where applicable, a reasonable rate of return. Providing electricity to consumers involves several different parties, including generators, transmitters, distributors and the IESO. Some of these parties engage in rate-regulated activities, some do not.

The IESO serves an important and active role in Ontario's electricity market, irrespective of the fact that it records market transactions on net basis in the financial statements. The IESO balances the supply of and demand for electricity in Ontario and directs its flow across the province's transmission lines, oversees the wholesale electricity market, where the price of energy is determined, and administers the rules that govern the market. In determining whether the IESO has regulated operations, the focus is on whether the rates the IESO charges its customers are regulated and not whether the costs incurred by the IESO are regulated (although a number of them are).

The following supports the position of IESO management that the above criteria are met and the IESO's operations are within the scope of ASC 980:

The entity's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party regulator or by its own governing board empowered by statute or contract to establish rates that bind customers.
As noted in a research paper issued in 2001 by a taskforce established by the CICA (the CICA Research Report), there is a view held by some that, with respect to rate regulation in the public sector, there is usually no *independent, third-party regulator* because the government controls both the enterprise and the regulatory agency. Accordingly, it is important to point out that independence is not required to meet the criteria in ASC 980-10-15-2(a). The requirement is an *independent, third-party regulator* or *its own governing board empowered by statute or contract*. In fact, paragraph 64 of the Basis for Conclusions for FAS 71, ACCOUNTING FOR THE EFFECTS OF CERTAIN TYPES OF REGULATION (which is the pre-codified version of ASC 980), specifically states that the criteria in ASC 980-10-15-2(a) was modified so as not to preclude application by government utilities with rates set by their own governing board. The OEB has been established by the Province to be Ontario's independent energy regulator and, therefore, is considered the governing board of the IESO. The OEB's mandate and authority come from the *Ontario Energy Board Act, 1998*, the *Electricity Act, 1998*, and a number of other provincial statutes. As described in more detail below, the IESO's rates are established in accordance with these statutes. In the context of its market-settlement role, the IESO's 'customers' are the Market Participants buying electricity from the IESO-controlled grid. All Market Participants are required to execute a Participation Agreement with the IESO. In accordance with Article 3.1 of the standard Participation Agreement, each Market Participant has agreed to be bound by and to comply with all of the provisions of the Market Rules, which includes the following: *Chapter 9, Section 1.2.3* *Notwithstanding any other provision within the market rules, market participants shall remit to the IESO such applicable settlement amounts and other payments as may be required under the relevant provisions of the Electricity Act, 1998, the Ontario Energy Board Act, 1998 and any related regulations, as amended from time to time.* The IESO's operations meet the criteria in ASC 980-10-15-2(a) because the rates charged by the IESO are based on statutes. As discussed in more detail below, the rates are designed to recover the IESO's

expenditure for providing the regulated services and the pass-through costs related to the energy purchased from the generators and to government programs.

The main components of invoices issued by the IESO to Market Participants are as follows:

- Commodity Charges
  - Hourly Ontario Energy Price
  - Global Adjustment
- Wholesale Market Service Charges
  - IESO Administration Fee
  - Uplift Charges
  - Rural and Remote Electricity Rate Protection
- Wholesale Transmission Charges
- Debt Retirement Charge

Each component is determined as follows:

Commodity Charges

In accordance with Section 25.33(1) of the Electricity Act, the IESO is required to price electricity to recover costs:

Electricity pricing to reflect costs

IESO to make adjustments

25.33 (1) The IESO shall, through its billing and settlement systems, make adjustments in accordance with the regulations that ensure that, over time, payments by classes of market participants in Ontario that are prescribed by regulation reflect,

a) amounts paid to generators, the Financial Corporation and distributors, whether the amounts are determined under the market rules or under section 78.1, 78.2 or 78.5 of the Ontario Energy Board Act, 1998;

b) amounts paid to entities with whom the IESO has a procurement contract, as determined under the procurement contract; and

c) such amounts as may be prescribed that are paid or incurred by the IESO in relation to the Ontario Fair Hydro Plan Act, 2017. *2014, c. 7, Sched. 7, s. 8 (1); 2017, c. 16, Sched. 1, s. 43 (2).*

Market Participants are initially invoiced for consumed electricity at the Hourly Ontario Energy Price (HOEP), which is calculated as the average of the twelve market clearing prices set in each hour. In accordance with Section 25.33(5) of the Electricity Act, the IESO is required to track differences between the amounts invoiced to Market Participants at HOEP and actual costs incurred in a variance account:

Variance accounts

(5) The IESO shall establish and maintain such variance accounts as may be necessary to record all amounts payable or receivable by it under this section or under the Ontario Fair Hydro Plan Act, 2017. *2004, c. 23, Sched. A, s. 37; 2014, c. 7, Sched. 7, s. 8 (5); 2017, c. 16, Sched. 1, s. 43 (5).*

Sections 3.1 and 3.3 of the OEB Act require the variance account to be settled over a twelve-month period, which is done through the Global Adjustment on a Market Participant's invoice:

Annual rate plan and separate rates for situations prescribed by regulation

(3.1) The Board shall, in accordance with rules prescribed by the regulations, approve or fix separate rates for the retailing of electricity,

a) to such different classes of consumers as may be prescribed by the regulations; and

b) for such different situations as may be prescribed by the regulations. 2004, c. 23, Sched. B, s. 14 (1).

Rates to reflect cost of electricity

(3.3) In approving or fixing rates under subsection (3.1),

a) the Board shall forecast the cost of electricity to be consumed by the consumers to whom the rates apply, taking into consideration the adjustments required under section 25.33 of the Electricity Act, 1998 *and shall ensure that the rates reflect these costs; and*

b) the Board shall take into account balances in the IESO's variance accounts established under section 25.33 of the Electricity Act, 1998 *and shall make adjustments with a view to eliminating those balances within 12 months or such shorter time periods as the Minister may direct. 2004, c. 23, Sched. B, s. 14 (1); 2014, c. 7, Sched. 23, s. 6 (2).*

Although the implementation of the FHP involves the deferral of costs over an extended period of time, it does not change the IESO's obligation under the OEB Act to price electricity to recover incurred costs in full. The deferral relating to the FHP is tracked in a separate variance account in accordance with Section 24(1) of the Fair Hydro Plan Act, 2017 (the FHP Act):

Variance account to be established, maintained

24 (1) The IESO shall establish and maintain a variance account in which it records the following:

1. The IESO deferral for each month.

2. All payments received by the IESO resulting from the exercise of the right of recovery under section 25 and any transfer under section 26.

3. Such other adjustments as may be prescribed, including adjustments in respect of the period that commences on or after May 1, 2017 and before the day this section comes into force.

The right for the IESO to recover the variance account is set out in Section 25 of the FHP Act:

Regulatory asset established

25 (1) Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Board to set rates

(2) Subject to subsection (3), the Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for the IESO to recover the balance recorded in the variance account.

Limitation

(3) The IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2021.

Wholesale Market Service Charges

The IESO charges Market Participants an ~~administrative~~ administration fee~~s~~ to operate the wholesale electricity market and manage the electric power system in Ontario. ~~These~~ This fee~~s~~ ~~are~~ is required to be approved by the OEB under Section 25(1) of the Electricity Act on an annual basis.

Review of requirements and fees

25 (1) The IESO shall, at least 60 days before the beginning of each fiscal year, submit its proposed expenditure and revenue requirements for the fiscal year and the fees it proposes to charge during the fiscal year to the Board for review, but shall not do so until after the Minister approves the IESO's proposed business plan for the fiscal year under section 24. 2014, c. 7, Sched. 7, s. 3 (1).

Uplift charges

Commented [LAP10]: Uplift charges are comprised of a number of things. To ask IESO for help to summarize succinctly.

Need details

RRRP charges

The RRRP program provides a rate subsidy to rural and remote residential customers who face higher distribution costs. As required by Ontario Regulation 442/01, the RRRP program cost is recovered from all electricity customers in the province through a charge that is reviewed annually and approved by the OEB.~~Under the FHP Act, the cost of the RRRP program has shifted from ratepayers to provincial revenues and, therefore, is no longer a component of the IESO invoice.~~

Wholesale Transmission Charge

This charge to LDCs and some large consumers covers the cost incurred by transmission companies to construct and maintain the high-voltage transmission lines needed to transport electricity from generating stations to LDCs or consumers. In accordance with Section 78(1) of the OEB Act, the rate for this service is approved by the OEB.

Debt Retirement Charge

When the Ontario electricity sector was restructured in April 1999, the Ontario Electricity Financial Corporation (OEFC) took on $20.9 million of stranded debt from Ontario Hydro. The OEFC services and retires the stranded debt with cash flows from a number of sources in the electricity sector, one of those currently being debt retirement charges paid by certain ratepayers (ratepayers cease paying debt retirement charges April 1, 2018).

Under Regulation 494/01, DEBT RETIREMENT CHARGE – ADMINISTRATION, the IESO is appointed as a collector of debt retirement charges (Section 2) and is required to collect a debt retirement charge on behalf of the OEFA from every entity who withdraws electricity from the IESO-controlled grid (Section 6(2)). The prescribed rate for the debt retirement charge is set out in Regulation 493/01, DEBT RETIREMENT CHARGE – RATES AND EXEMPTIONS.

The regulated rates are designed to recover the specific entity's costs of providing the regulated services or products.

As discussed in detail above, the IESO is required by statute to set prices to recover costs.

In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume that rates set at levels that will recover the entity's costs can be charged to and collected from customers.

As discussed in detail above, the IESO is required by statute to set prices to recover costs.

The majority of the monthly amount invoiced by the IESO to Market Participants represents a direct flow through of costs as they are incurred, but there are certain types of costs for which recovery may be deferred. For those deferred costs, the IESO is dependent on the future consumption of electricity by rate-payers to fully recover costs.

Based on relatively short recovery periods, it is reasonable to assume there will be sufficient demand to recover the deferred costs that currently exist. Specifically:

- RPP and RRRP variance accounts are recovered over twelve months in accordance with Section 3.3(b) of the OEB Act. ~~(Note - Under the FHP, responsibility for the cost of the RRRP~~

Commented [DM(11]: Will provide ASAP (Following up with IESO)

Commented [LAP12]: Cindy – You previously indicated you wanted to determine if there is anything else to add from IESO's analysis. Are you still considering or can this point be removed?

~~program is being transferred to the Provincial budget and rate-payers will no longer be directly charged)~~

- The Smart Metering Entity charge is recovered over the period from May 1, 2013 to October 31, 2018 in accordance with OEB Decision and Order EB-2015-0298.

Under the FHP, responsibility for the cost of the OESP program is being transferred to the Provincial budget and rate-payers will no longer be charged for the cost of this program. The OESP variance account, which is currently in a credit balance, will be used to fund the cost of the program until depleted.

Although the timing of the recovery of the FHP variance account has not yet been established by the OEB, the wording and intent of the proposed legislation is clear that it is intended by law to be recoverable over a period of 30 years. Given the nature and extent of customer demand for the power generated and distributed in Ontario, both at this time and projected in the future, it is reasonable to conclude that there will be sufficient demand to recover the regulatory asset. This conclusion, which is supported by Figure 19: Ontario's Forecast Electricity Production in Achieving Balance – Ontario's Long-Term Energy Plan, will need to be continually evaluated throughout the recovery period. The willingness of unrelated third parties to fund the purchase of the regulatory asset from the IESO by OPG Trust also demonstrates the belief that sufficient demand will exist to permit its future recovery.

Commented [LAP13]: Removed because not all costs transferred.

In addition to the general scope requirements of ASC 980 discussed above, specific consideration is made as to whether the following scope exception in ASC 980-10-15-7 applies to the FHP:

The guidance in the Regulated Operations Topic does not apply to any of the following transactions:

a) *Accounting for price controls that are imposed by governmental action in times of emergency, high inflation, or other unusual conditions, or accounting for contracts in general. However, if the terms of a contract between an entity and its customer are subject to regulation and the criteria of paragraph 980-10-15-2 are met with respect to that contract, the guidance in this Topic shall apply.*

Based on the discussion below, this scope exemption is not applicable to the FHP.

Electricity cost reductions resulting from the FHP do not represent price controls imposed by the Province in a time of emergency, high inflation, or other unusual conditions. As noted in the 2017 budget speech, the 2017 Ontario Budget – A Stronger, Healthier Ontario, the FHP is a fairer way to share the costs of building a cleaner, more modern and reliable electricity generation system. In particular, the budget speech states:

Commented [LAP14]: Consider Navigant report if/when becomes available

Recognizing that existing electricity infrastructure is expected to last for decades to come, the Province would refinance the cost of those capital investments to ensure that system costs are more equitably distributed over time.

The following paragraph from the Basis for Conclusion for FAS 71 also provides some insight as to the specific concerns relating to government imposed price controls that resulted in the scope exception in ASC 980-10-15-7(a):

70. The first scope limitation of paragraph 8—excluding accounting for price controls imposed by governmental action in times of emergency, high inflation, or other unusual conditions—was included in the Discussion Memorandum. Price controls imposed in periods of unusual conditions are not expected to be applied consistently over an extended period. Indeed, their duration usually is limited by statute. In that environment, assurance of future benefits cannot be provided by probable future actions of the price control regulator because that regulator may not exist at a given future date.

The implementation of the FHP does not create the type of environment described in FAS 71.BC70 as it is governed by the OEB and there is no concern the OEB will not continue to exist.

The second part of the scope exception in ASC 980-10-15-7(a) relating to the accounting for contracts is further explained in the following paragraph from the Basis for Conclusion for FAS 71:

71. Accounting for contracts in general was also excluded from the scope of the Discussion Memorandum. The economic effects of cost reimbursement contracts are in some respects similar to the economic effects of the type of regulation addressed by this Statement. However, most contracts tend to be relatively short-term, whereas regulation of enterprises covered by this Statement is expected to continue beyond the foreseeable future. The Board noted that other authoritative literature addresses contract accounting and concluded that it should exclude the general issue of contract accounting from the scope of this Statement.

Although the impetus for the FHP relates to term of contracts the IESO has entered into with certain generators, the FHP does not change the existing accounting for these contracts.

Application of ASC 980-340-25-1 to the regulatory asset

ASC 980-340-25-1 states the following:

Rate actions of a regulator can provide reasonable assurance of the existence of an asset. An entity shall capitalize all or part of an incurred cost that would otherwise be charged to expense if both of the following criteria are met:

- *a) It is probable (as defined in Topic 450) that future revenue in an amount at least equal to the capitalized cost will result from inclusion of that cost in allowable costs for rate-making purposes.*
- *b) Based on available evidence, the future revenue will be provided to permit recovery of the previously incurred cost rather than to provide for expected levels of similar future costs. If the revenue will be provided through an automatic rate-adjustment clause, this criterion requires that the regulator's intent clearly be to permit recovery of the previously incurred cost.*

A cost that does not meet these asset recognition criteria at the date the cost is incurred shall be recognized as a regulatory asset when it does meet those criteria at a later date.

The following supports the IESO's position that the FHP variance account meets the above criteria for capitalization:

It is probable (as defined in Topic 450) that future revenue in an amount at least equal to the capitalized cost will result from inclusion of that cost in allowable costs for rate-making purposes.
The following excerpts from the FHP Act make it clear that the IESO is entitled to recover the regulatory asset through rates in the future:

Variance account to be established, maintained

24 (1) The IESO shall establish and maintain a variance account in which it records the following:

1. The IESO deferral for each month.

2. All payments received by the IESO resulting from the exercise of the right of recovery under section 25 and any transfer under section 26.

3. Such other adjustments as may be prescribed, including adjustments in respect of the period that commences on or after May 1, 2017 and before the day this section comes into force.

Recording determinative

(2) Subject to the correction of any obvious error by the IESO, its recording of the balance in the variance account is determinative of the balance as of the time of the recording.

Regulatory asset established

25 (1) Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Board to set rates

(2) Subject to subsection (3), the Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for the IESO to recover the balance recorded in the variance account.

Limitation

(3) The IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2021.

If demand for electricity declines, the rate per unit must increase in order to recover the regulatory asset. Theoretically, the regulatory asset will be recovered as long as some level of demand exists. However, from a practical perspective, if demand drops too much the rate per unit may become prohibitively high to allow for full recovery. Accordingly, ~~The~~ the recovery of the regulatory asset is~~, however,~~ effectively dependent on sufficient future consumption of electricity by rate-payers. The recovery period is intended to be 30 years. Given the nature and extent of customer demand for the power generated and distributed in Ontario, both at this time and projected in the future, it is reasonable to conclude that it is probable there will be sufficient demand in the future to recover the regulatory asset. This conclusion, which is supported by Figure 19: Ontario's Forecast Electricity Production in Achieving Balance – Ontario's Long-Term Energy Plan (Appendix B), will need to be continually evaluated throughout the recovery period.

The willingness of unrelated third parties (e.g., investors) to fund the purchase of the regulatory asset from the IESO by OPG Trust also demonstrates the belief that sufficient demand will exist to permit its future recovery. Although the sale of the regulatory asset will be accompanied by a guarantee by the Province, the scope of the guarantee will be limited to regulatory changes (e.g., a statute or regulation being enacted, changed or repealed) and changes in the organization or structure of the IESO or Ontario's electricity market initiated by the Province that materially and adversely affect the ability of OPG Trust to satisfy its payment obligations and will not provide protection relating to lack of sufficient demand.

Based on available evidence, the future revenue will be provided to permit recovery of the previously incurred cost rather than to provide for expected levels of similar future costs. If the revenue will be provided through an automatic rate-adjustment clause, this criterion requires that the regulator's intent clearly be to permit recovery of the previously incurred cost.

Based on the above excerpts from the FHP Act, it is clear the IESO will be recovering costs previously incurred rather than providing for expected levels of similar future costs.

The IESO is considered an agent in the market-settlement process and, therefore, recognizes revenue on a net basis. Although this conclusion impacts whether the recovery of costs through rates are presented as revenue in the financial statements of the IESO, it is not considered to preclude these amounts from being considered 'future revenue' for purposes of assessing the criteria in ASC 980-340-25-1. In fact, the capitalization of the incurred costs in the FHP variance account preserves the treatment of the IESO as an agent (i.e., if these costs are not capitalized, it results the recognition of costs in the period incurred and the recognition of revenue in a subsequent period when electricity is consumed, which, in effect, is gross presentation). To put another way, not capitalizing the costs in FHP variance account treats the IESO as a principal in the transaction by showing costs and revenue.

Is ASC 980 an acceptable source of guidance under PSAS[4]

In assessing whether ASC 980-340-25-1 is an acceptable source of guidance under PSAS, Paragraph 5 of PSAS 1150, GENERALLY ACCEPTED ACCOUNTED PRINCIPLES, states the following:

When the primary sources of GAAP do not deal with the accounting and reporting in financial statements of transactions or events encountered by the public sector reporting entity, or additional guidance is needed to apply a primary source to specific circumstances, the selection of an appropriate accounting policy requires the exercise of professional judgment. In these circumstances, a public sector reporting entity should adopt accounting policies and disclosures that are consistent with:

a) the primary sources of GAAP; and

b) the application of the concepts described in FINANCIAL STATEMENT CONCEPTS, Section PS 1000.

Related guidance is also provided in PSAS 1150.18-.20:

Paragraphs PS 1150.19-.24 identify some of the other sources that a public sector reporting entity might consult to assist in selecting accounting policies and disclosures that comply with paragraph PS 1150.05.

Pronouncements issued by other bodies authorized to issue accounting standards may be useful sources to consult. For example, accounting pronouncements published with the authority of the Canadian Accounting Standards Board (AcSB), International Accounting Standards Board (IASB), US Federal Accounting Standards Advisory Board (FASAB), US Governmental Accounting Standards Board (GASB), or International Public Sector Accounting Standards Board (IPSASB) are often important sources to consult on matters not covered by primary sources of GAAP or for assistance in applying a primary source of GAAP to specific circumstances.

When a public sector reporting entity chooses to consult a source described in paragraph PS 1150.19, it applies professional judgment and evaluates the source in the context of the relative manner in which the standard setter requires its pronouncements to be applied, as well as in the context of the related pronouncement. When an accounting standard setter does not have a conceptual framework that is

[4] If the accounting for GBEs were to change in the future such that line by line consolidation is required using PSAS, the importance of this consideration increases significantly.

similar to the concepts referred to in paragraph PS 1150.05(b), the public sector reporting entity needs to ensure that the selected source is consistent with those concepts.

Since PSAS does not specifically address the treatment of costs incurred that will be recovered through regulatory operations in future periods, the IESO would not be precluded from following the guidance in ASC 980-340-25-1 (i.e., silence under PSAS on this specific topic does not, on its own, mean that such guidance is to be ignored). However, PSAS 1000.05 makes it clear that in order to do so, it must first be demonstrated that such guidance is consistent with the application of the concepts described in PSAS 1000, FINANCIAL STATEMENT CONCEPTS.

The relevant guidance in PSAS 1000 relating to the recognition of an asset is as follows:

PSAS 1000.35

Assets are economic resources controlled by a government as a result of past transactions or events and from which future economic benefits are expected to be obtained.

PSAS 1000.36

Assets have three essential characteristics:

a) *they embody future economic benefits that involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows, or to reduce cash outflows;*
b) *the public sector entity can control the economic resource and access to the future economic benefits; and*
c) *the transaction or event giving rise to the public sector entity's control has already occurred.*

PSAS 1000.37

An item is not an asset of a government if it lacks one or more of the essential characteristics listed in the preceding paragraph. Thus, for example, an item does not qualify as an asset of a government if the item involves:

a) *no future economic benefit;*
b) *future economic benefit, but the government cannot obtain it; or*
c) *future economic benefit that the government may obtain, but the events or circumstances that give the government control of the benefit have not yet occurred*

The following supports the IESO's position that the regulatory asset possesses the three essential characteristics of an asset:

Embody future economic benefits that involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows, or to reduce cash outflows
The following excerpts from the FHP Act make it clear that the IESO is entitled to recover the regulatory asset through rates in the future:

Variance account to be established, maintained

24 (1) The IESO shall establish and maintain a variance account in which it records the following:

1. The IESO deferral for each month.

2. All payments received by the IESO resulting from the exercise of the right of recovery under section 25 and any transfer under section 26.

3. Such other adjustments as may be prescribed, including adjustments in respect of the period that commences on or after May 1, 2017 and before the day this section comes into force.

Recording determinative

(2) Subject to the correction of any obvious error by the IESO, its recording of the balance in the variance account is determinative of the balance as of the time of the recording.

Regulatory asset established

25 (1) Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Board to set rates

(2) Subject to subsection (3), the Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for the IESO to recover the balance recorded in the variance account.

Limitation

(3) The IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2021.

Accordingly, the regulatory asset, by statute, has the capacity to provide future cash inflows.

While perhaps obvious, paragraph 13 of PSAS 3210, ASSETS, confirms the generation of future cash flows represents a future economic benefit:

The future economic benefits embodied in an asset may also be in the form of generating future cash inflows. Cash inflows benefit the public sector entity because cash can be used to purchase or to provide goods and services, redistribute wealth or settle liabilities. Benefits in the form of cash inflows relate to resources, such as loans receivable, inventory for resale and portfolio investments. Also, some public sector resources generate cash inflows because they have user fees associated with them.

The ability of the regulatory asset to generate future cash flows is dependent on the future consumption of electricity by rate-payers. Although the timing of the recovery of the regulatory asset has not yet been established by statute, the recovery period is intended to be 30 years. Given the nature and extent of customer demand for the power generated and distributed in Ontario, both at this time and projected in the future, sufficient demand is expected to exist in the future to recover the regulatory asset. This conclusion, which is supported by Figure 19: Ontario's Forecast Electricity Production in Achieving Balance – Ontario's Long-Term Energy Plan, will need to be continually evaluated throughout the recovery period.

The willingness of unrelated third parties to fund the purchase of the regulatory asset from the IESO by OPG Trust also demonstrates the belief that sufficient demand will exist to permit its future recovery. Although the sale of the regulatory asset will be accompanied by a guarantee by the Province, the scope of the guarantee will be limited to regulatory changes (e.g., a statute or regulation being enacted, changed or repealed) and changes in the organization or structure of the IESO or Ontario's electricity market initiated by the Province that materially and adversely affect the ability of OPG Trust to satisfy its payment obligations and will not provide protection relating to lack of sufficient demand.

Commented [VC(15]: To update based on the new LTEP to be issued this fall.

Commented [LAP16R15]: Reviewed LTEP, but didn't find anything specific to include

The guidance on forgivable loans in PSAS 3050, Loans receivable, provides an example where an asset can be recognized under PSAS based on the existence of sufficient evidence of a reasonable expectation of its recovery.

The public sector entity can control the economic resource and access to the future economic benefits

Paragraph 16 of PSAS 3210, ASSETS, states the following:

A public sector entity controls the economic resource and access to the future economic benefits when it:

- *a) can benefit from the economic resource through its capacity to provide goods and services, to provide future cash inflows or to reduce cash outflows;*
- *b) can deny or regulate access to those benefits by others; and*
- *c) is exposed to the risks associated with the economic resource.*

The IESO can benefit from the regulatory asset through its capacity to provide future cash inflows in one of two ways:

1. *Collection through future rates*

Section 25 of the FHP gives the IESO the right to recover the regulatory asset through future rates:

Regulatory asset established

25 (1) Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Board to set rates

(2) Subject to subsection (3), the Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for the IESO to recover the balance recorded in the variance account.

2. *Sale to a financing entity*

Section 26 of the FHP Act permits the IESO to sell the regulatory asset:

26 (1) The IESO may from time to time, in accordance with this Act and the regulations, transfer a specified portion of the regulatory asset to a financing entity in accordance with this section.

Agreement

(2) An agreement between the IESO and a financing entity in relation to the transfer of a specified portion of the regulatory asset shall provide for consideration of a payment by the financing entity to the IESO in an amount equal to the amount of the specified portion.

Effect of payment

(3) Upon receipt by the IESO of the payment by the financing entity,

- *(a) the balance in the variance account shall be reduced by the amount of the payment;*
- *(b) the regulatory asset shall be adjusted accordingly;*
- *(c) the financing entity shall acquire a corresponding investment interest; and*
- *(d) the IESO shall retain no further right, title or interest in the corresponding investment interest.*

Since (a) the statutory right to recover the regulatory asset belongs solely to the IESO, and (b) the IESO is permitted, but not required, to sell the regulatory asset, the IESO can deny or regulate access to the future economic benefits of the regulatory asset by others.

The IESO is exposed to the risks associated with the regulatory asset, with the primary risk being that collection through the mechanism set out in Section 25 of the FHP Act is dependent on the future consumption of electricity by rate-payers. If demand for electricity declines, the rate per unit must

increase in order to recover the regulatory asset. Theoretically, the regulatory asset will be recovered as long as some level of demand exists. However, from a practical perspective, if demand drops too much the rate per unit may become prohibitively high to allow for full recovery. Although the sale of the regulatory asset will be accompanied by a guarantee by the Province, the scope of the guarantee will be limited to regulatory changes (e.g., a statute or regulation being enacted, changed or repealed) and changes in the organization or structure of the IESO or Ontario's electricity market initiated by the Province that materially and adversely affect the ability of OPG Trust to satisfy its payment obligations and will not provide protection relating to lack of sufficient demand.

The above analysis supports the position that the IESO controls the regulatory asset and access to the future economic benefits.

In reaching this conclusion, consideration was given to the following excerpt included on Page 37 of the 2008 Annual Report of the OAGO:

With regard to the second characteristic, we simply point again to the legacy of the former Ontario Hydro and its stranded debt. This in our view provides concrete evidence that even in monopoly situations governments do not have sufficient assurance that an enterprise will generate enough profits in future years to recover all of its past costs.

Although there needs to be sufficient assurance regarding the recovery of past costs, all relevant facts and circumstances need to be taken into consideration. Accordingly, the stranded debt of Ontario Hydro may be relevant to the analysis, but not determinative on its own. As noted in the previous section, the recoverability of past costs will be continually assessed.

The transaction or event giving rise to the public sector entity's control has already occurred

When evaluating whether a transaction or event gives rise to control, the following guidance from PSAS 3210, ASSETS, provides helpful guidance:

.26
The past transaction or event that gives rise to control of an economic resource resulting from exchange agreements or contracts usually occurs at the point of exchange. This arises when substantially all the benefits and risks of ownership have been transferred to the public sector entity and normally coincides with the disbursement of funds, exchange of other assets or assumption of liabilities.
.28
The existence of a law, by-law or policy in relation to a particular program is not a past transaction or event that gives rise to control of an economic resource. Control does not exist until the underlying event occurs.
.29
The past transaction or event giving rise to control of an economic resource must have occurred by the financial statement date. Legislation having retroactive application cannot create a past transaction or event. Any economic resources related to that legislation would be accounted for in the current and relevant future periods, not in the period of the effective date of the legislation.

In the case of the regulatory asset, the above guidance in PSAS 3210 makes it clear that it is not the statute itself that is the transaction or event giving rise to the asset, it is the incurrence of costs for which recovery is provided for under statute. Accordingly, control over the economic benefits of the regulatory asset occurs when the IESO incurs a cash flow deficit that is recorded in the FHP variance account in accordance with Section 24(1) of the FHP Act:

24 (1) The IESO shall establish and maintain a variance account in which it records the following:

1. The IESO deferral for each month.

2. All payments received by the IESO resulting from the exercise of the right of recovery under section 25 and any transfer under section 26.

3. Such other adjustments as may be prescribed, including adjustments in respect of the period that commences on or after May 1, 2017 and before the day this section comes into force.

At this point in time, the IESO has incurred a cash outflow for which it is entitled to recover under Section 25 of the FHP Act:

Regulatory asset established

25 (1) Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Board to set rates

(2) Subject to subsection (3), the Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for the IESO to recover the balance recorded in the variance account.

The following excerpt from the IFRS Staff Paper on Rate-Regulated Activities prepared for discussion at the June 2017 IASB meeting presents a consistent view and dismisses the potential dissenting view that the transaction or event giving rise to the IESO's control is the future consumption of electricity by rate-payers:

A right arises from the rate-adjustment mechanism if the entity has already partially or fully fulfilled a regulatory requirement (past event) but the current regulated rate does not yet reflect the compensation that the entity is entitled to in exchange. Even though the entity cannot compel its customers to buy the regulated goods or services, the entity's right to charge an increased future regulated rate has the potential to produce for the entity an inflow of economic benefits that are not available to other parties. That right will be consumed as the entity includes the rate increase in future regulated rates and will lead to an inflow of economic benefits if customers pay the increased future regulated rate for the future delivery of goods or services.

Another potential dissenting view is contained on page 37 of the 2008 Annual Report of the OAGO:

With regard to the third characteristic, we do not believe that a rate-regulation decision can be considered a transaction or event giving rise to an asset or obligation because, as stated above, from the level of the government's consolidated financial statements such a decision is an internal event between two government-controlled entities. An equivalent analysis for rate-regulated liabilities leads to the same conclusion. PSAB standards preclude the inclusion of both gains and losses from such inter-company transactions. Therefore, our contention is that, at the consolidated financial statement level, rate-regulated assets and liabilities have no place and should be removed upon consolidation of the government's controlled entities.

It should be noted, however, that the OAGO's belief that a rate-regulation decision cannot be considered a transaction or event giving rise to an asset or obligation is not contrary to the IESO position. As noted above, it is not the statute itself that is being considered the transaction or event giving rise to the asset, it is the incurrence of costs for which recovery is provided for under statute.

In addition, one could argue the creation of the relevant statutes is not an internal event from the point of view of the consolidated government. Statutes must be passed by the Legislative Assembly of Ontario to become law. Since the Legislative Assembly is comprised of elected members, it can be viewed as the government's governing body.

Concluding the regulatory asset possesses the three essential characteristics of an asset in PSAS 1000.05 then begs the question as to whether the application of the guidance in ASC 980 is even necessary in this particular situation. Consistent with the statement in ASC 980 –340-25-1 that *rate actions of a regulator can provide reasonable assurance of the existence of an asset,* ASC 980 provides guidance as to how to apply the primary source of PSAS in the regulatory environment.

In a letter from the OAGO to the Board of Directors of the IESO dated June 22, 2017 (the OAGO Letter), the OAGO makes the following statement:

The definitions of an asset in the PSAS and FASB Conceptual Framework are similar. Similar to PSAS, rate regulated deferral accounts do not generally meet the definition of an asset in the FASB's Conceptual Framework.

However, the following excerpts from the Basis for Conclusions for FAS 71 (paragraph 58 in particular), clearly support that ASC 980 is an application of, not an exception from, the basic definition of an asset in the Conceptual Framework:

Economic Effects of Regulation

56. The second threshold issue in the Discussion Memorandum was: "Does rate regulation introduce an economic dimension in some circumstances that should affect the application of generally accepted accounting principles to rate-regulated enterprises?"

57. Most respondents to the Discussion Memorandum indicated that rate regulation does introduce such an economic dimension in some circumstances. Respondents cited the cause-and-effect relationship of costs and revenues as the principal economic effect of regulation that affects accounting for regulated enterprises. They noted that cost might be one factor used by unregulated enterprises to establish prices, but it would often not be the most important factor. Usually, prices are limited by the market. An unregulated enterprise might desire to price its goods or services at a level that would recover all costs and a reasonable profit; however, the market might not permit that price. Alternatively, an unregulated enterprise might be able to increase its prices and its profit if competition does not limit its prices. In either case, cost often is not the principal determinant of prices. In contrast, for an enterprise with prices regulated on the basis of its costs, allowable costs are the principal factor that influences its prices.

58. The economic effect cited by most respondents is the ability of a regulatory action to create a future economic benefit—the essence of an asset. For example, consider a regulated enterprise that incurs costs to repair damage caused by a major storm. If the regulator approves recovery of the costs through rates over some future period or is expected to do so, the rate action of the regulator creates a new asset that offsets the reduction in the damaged asset. The enterprise has probable future economic benefits—the additional revenue that will result from including the cost in allowable costs for rate-making purposes. The future benefits are obtained or controlled by the enterprise as a result of a past event—incurring the cost that results in the rate order. Thus, the criteria of Concepts Statement 3 for an asset are met.

The fact that many Canadian rate-regulated entities recognized regulated assets under Part V of the CPA Canada Handbook – *Pre-changeover Accounting Standards* (Part V GAAP) further supports the position that regulated assets do meet the basic definition of an asset under PSAS. Although Part V GAAP refers to rate regulation in several standards, it does not include cost capitalization guidance equivalent to ASC 980-340-25-1. It does, however, specify in paragraph 32B of Section 1100, *Generally accepted accounting principles*, that Section 1100 applies to the recognition and measurement of assets and liabilities arising from rate regulation beginning January 1, 2009. Since Section 1100.04 only permits the

use of an alternate source of GAAP if it is consistent with Part V GAAP, regulated assets need to meet the basic definition of an asset under Part V GAAP in order to be recognized. The Part V GAAP definition of an asset in Section 1000, *Financial Statement Concepts* is consistent with the PSAS definition.

The CICA Research Report also concluded regulated assets meet the basic definition of an asset under Part V GAAP:

In the Study Group's view, the economic benefits and obligations created by rate regulation and resulting from past transactions or events, and the changes in these amounts, meet the definition of a financial statement element set out in Handbook Section 1000.

The OAGO Letter suggests that IFRS should be consulted prior to referring to ASC 980 under PSAS's GAAP hierarchy in PSAS 1150 and points out the following:

- In 2005 the International Financial Reporting Interpretations Committee (IFRIC) indicated the US GAAP recognition criteria for regulated assets were not fully consistent with IFRS and could not be applied by analogy.
- When the question of rate regulated accounting was posed to the IFRIC again in 2008, the IFRIC noted the topic had been previously addressed and there was a well-established practice of first time IFRS adopters ceasing rate regulated accounting and removing regulatory deferral accounts from their financial statements.
- In the Basis for Conclusions on IFRS 14, IFRS 14.BC30 noted the differences in the recognition criteria between IFRS and ASC 980 resulted in almost all existing regulatory deferral accounts being derecognized upon transition to IFRS.

While PSAS does not prescribe an ordering of consideration for sources other than primary sources, the statements made with respect to IFRS by the OAG have been considered. It should be noted, however, that the IASB's project on rate-regulated activities is still in progress and the OAGO Letter does not reference more recent and relevant activity. In September 2014, the IASB issued Discussion Paper DP/2014/02, *Reporting the Financial Effects of Rate Regulation*. The Discussion Paper presents the opposing views as to whether regulatory deferral account balances meet the definitions of an asset or a liability and specifically states the following in paragraph 5.09:

Consequently, the IASB has not formed a preliminary view on whether regulatory deferral account balances meet either the current or proposed revised Conceptual Framework definitions of an asset and a liability. It will use the input received from the responses to this Discussion Paper and the Conceptual Framework project to help it assess whether to develop any specific accounting guidance or requirements for rate-regulated activities.

In addition, the most recent paper issued by the IASB staff in June 2017 includes the following:

17. During the May 2017 Board meeting we also considered the interaction between the definitions of assets and liabilities and the characteristics of defined rate regulation (see paragraphs 5 and 6). We concluded that a combination of those characteristics suggested that the rights and obligations created by the rate-adjustment mechanism are assets and liabilities, as those terms are expected to be defined in the forthcoming revised Conceptual Framework for Financial Reporting.

The Exposure Draft ED/2015/3, *Conceptual Framework for Financial Reporting*, defines an asset as follows:

4.5 An asset is a present economic resource controlled by the entity as a result of past events.
4.6 An economic resource is a right that has the potential to produce economic benefits.

This recent activity suggests that it would be premature to assume that the IASB will conclude that regulatory deferral account balances will not meet the definitions of an asset or a liability.

Once it is determined that the regulatory asset meets the basic characteristics of an asset in PSAS 1000.36, consideration also needs to be made as to what type of asset it is. This is important because PSAS 1000.58 does not permit the recognition of intangible assets:

In the absence of appropriate public sector recognition and measurement criteria for intangibles, all intangibles, including those that have been purchased, developed, constructed or inherited in right of the Crown, are not recognized as assets in government financial statements. The intangible often called "human capital" that embodies the talent or intellectual capital of government employees is not recognized as an asset under existing accounting principles.

PSAS 1000 identifies two types of assets: financial assets and non-financial assets and provides the following commentary:

.39 Financial assets are assets that could be used to discharge existing liabilities or finance future operations and are not for consumption in the normal course of operations.

.40 A financial asset is any asset that is:

- *a) Cash*
- *b) a realizable asset that is convertible to cash;*
- *c) a contractual right to receive cash or another financial asset from another party;*
- *d) a contractual right to exchange financial instruments with another party under conditions that are potentially favourable to the government;*
- *e) an equity instrument of another entity;*
- *f) an investment in a government business enterprise or government business partnership;*
- *g) a financial claim on an outside organization or individual; or*
- *h) an inventory or item for sale that meets the criteria in FINANCIAL STATEMENT PRESENTATION, paragraph PS 1201.055.*

.41 Non-financial assets include tangible capital assets, and other assets such as prepaid expenses and inventories of supplies.

.42 Non-financial assets are acquired, constructed or developed assets that do not normally provide resources to discharge existing liabilities, but instead:

- *a) are normally employed to deliver government services;*
- *b) may be consumed in the normal course of operations; and*
- *c) are not for sale in the normal course of operations.*

PSAS 3210, ASSETS, also provides some relevant guidance:

.24 Non-financial resources include all items of a fixed or permanent nature (such as tangible capital property), claims to goods and services (such as prepaid items) and consumable goods (such as inventories of supplies). Non-financial resources also include intangibles, Crown lands and natural resources.

.25 Certain non-financial resources are, however, not given accounting recognition as assets in government financial statements. For example, all government intangibles, and all natural resources and Crown lands that have not been purchased by the government, are not given accounting recognition in government financial statements. A government's non-financial assets, as defined in FINANCIAL STATEMENT CONCEPTS, Section PS 1000, comprise the recognized non-financial resources of a government.

Although PSAS does not permit the recognition of intangibles, it also does not provide a definition of intangibles. In absence of specific guidance in PSAS as to what constitutes an intangible, U.S. GAAP is probably the most appropriate source to consult, in light of the fact that it deals specifically with regulated assets. Under U.S. GAAP, a regulated asset is not treated as an intangible. ASC 980 contains

separate subsections for ‘Intangibles – Goodwill and Other’ and ‘Other Assets and Deferred Costs’ and regulated assets are included in the guidance on ‘Other Assets and Deferred Costs’.

In accordance with PSAS 1201.040(a), financial assets are presented separately on the statement of financial position. The IESO classifies its regulated assets (i.e., the original variance account and the regulated assets relating to unrecovered smart metering expenses and unrecovered PSAB transition items) as financial assets.

Although the regulatory asset created under the FHP does not clearly meet the definition of either a financial asset or a non-financial asset under PSAS, it possesses characteristics more consistent with that of a financial asset since it will be available to discharge existing liabilities or finance future operations and is not for consumption in the normal course of operations.

The FHP is expected to be executed in a manner such that the regulatory asset will be available to discharge existing liabilities or finance future operations in the short term through its commoditization (i.e., transfer to the OPG Trust). However, even if not commoditized, the regulatory asset will be available to discharge existing liabilities or finance future operations in the future similar to, for example, a long-term receivable.

By recognizing the regulatory asset in a manner consistent with that of a financial asset, the FHP will have a neutral impact on both the Province’s net debt and accumulated deficit, which appears appropriate and aligned with the intent of guidance in PSAS 1100, Financial statement objectives:

Financial statements should present information to describe the government's financial position at the end of the accounting period. Such information should be useful in evaluating:

a) *the government's ability to finance its activities and to meet its liabilities and contractual obligations; and*
b) *the government's ability to provide future services.*

A government's net debt is an important indicator of a government's financial position, highlighting the financial affordability of future government service provision. A net debt position represents a "lien" on the ability of the government to apply financial resources and future revenues to provide services. Non-financial assets are added to net debt to calculate the other indicator of a government's financial position — its accumulated surplus or deficit. Non-financial assets are "prepaid service potential". Reporting a government's recognized non-financial resources as part of its financial position provides information necessary for a more complete understanding of a government's debt position, financial position and future operating requirements.

Governments provide public services and redistribute wealth for a variety of social and economic purposes. To meet those objectives, governments need information about the cost of services and the affordability of services. An understanding of the extent of the financial "lien" the government has on its ability to provide future services as a result of past transactions and events is essential information. Governments also need to have an appreciation of the magnitude of the total economic resources they have on hand to deliver services. A government's net financial resources / net debt position, assessed in combination with the non-financial resources position of the government, provides a measure of the net recognized economic resources available to the government at the financial statement date to provide services in the future.

If the regulatory asset is not recognized in a manner consistent with that of a financial asset by the GRE, the Province’s net debt will increase significantly, suggesting that the Province has a much higher future

revenue requirement. This would be inaccurate, however, since the regulatory asset is going to be recovered under statute from electricity consumers, not taxpayers.

Additionally, while an increase in net debt and/or accumulated deficit in the financial statements of the GRE would be an indicator the Province's financial position has deteriorated in accordance with PSAS 1200.036, the FHP is designed to, in substance, have a neutral impact on the Province's financial position.

Sale of the Regulatory Asset

As discussed above, IESO management has concluded the regulatory asset created by the FHP can be recognized as a regulated asset for accounting purposes in the financial statements of the IESO in accordance with the guidance in ASC 980.

Since the IESO does not have the financial capability to finance the regulatory asset, OPG intends to establish a financing entity (OPG Trust) to purchase the IESO's regulatory asset on a monthly basis to eliminate any cash shortfall in the IESO. Through this arrangement, OPG Trust will finance these purchases through a combination of provincial borrowing (flowed through OPG as an equity investment), amounts advanced from OPG and direct borrowing from capital markets.

The sale of the regulatory asset to OPG Trust is permitted under Section 26 of the FHP Act:

> *26 (1) The IESO may from time to time, in accordance with this Act and the regulations, transfer a specified portion of the regulatory asset to a financing entity in accordance with this section.*
>
> *Agreement*
>
> *(2) An agreement between the IESO and a financing entity in relation to the transfer of a specified portion of the regulatory asset shall provide for consideration of a payment by the financing entity to the IESO in an amount equal to the amount of the specified portion.*
>
> *Effect of payment*
>
> *(3) Upon receipt by the IESO of the payment by the financing entity,*
>
> *(a) the balance in the variance account shall be reduced by the amount of the payment;*
>
> *(b) the regulatory asset shall be adjusted accordingly;*
>
> *(c) the financing entity shall acquire a corresponding investment interest; and*
>
> *(d) the IESO shall retain no further right, title or interest in the corresponding investment interest.*

Consideration needs to be made as to whether the sale of the regulatory asset is accounted for as a sale transaction or a financing transaction. If treated as a sale transaction, the existing regulated asset is derecognized ~~(DR Expense, CR Regulated Asset)~~ and offset by the cash received ~~is recognized as sales proceeds~~ (DR Cash, CR ~~Revenue~~Regulated Asset). Since the cash proceeds received are equal to the book value of the regulated asset, there is no net impact to income (i.e., no gain or loss on the sale). If treated as a financing transaction, the existing regulated asset continues to be recognized and the cash proceeds received are treated as a loan (DR Cash, CR Payable).

IESO management has concluded the sale of the regulatory asset to OPG Trust will result in the derecognition of the regulated asset (i.e., sale transaction). The IESO's auditors, KPMG, concur with this position, as evidenced from the following excerpt from the KPMG Letter:

We have considered the foregoing analysis and management's conclusion. We concur that the regulatory asset should be derecognized on transfer to the OPG Trust as IESO no longer has rights or future economic benefits associated with the asset.

PSAS provides little guidance relating to the derecognition of an asset. In particular, PSAS 1000, *Financial statement concepts*, PSAS 3210, *Assets*, and PSAS 3450, *Financial instruments*, are all silent on the topic. Although the transfer of the regulatory asset is not within the scope of PSAS 3430, *Restructuring Transactions*, the following derecognition guidance in this standard provides some relevant insight:

.21 Individual assets and liabilities transferred in a restructuring transaction should be derecognized by the transferor if they no longer meet the definitions of assets and liabilities and applicable recognition criteria at the restructuring date.

.24 When a transferor continues to be involved in the individual assets and/or liabilities it transferred to a recipient subsequent to the restructuring date, it would assess the nature and extent of its continued involvement against the definitions of assets and liabilities and applicable recognition criteria to evaluate whether:

(a) derecognition of the asset and liability transferred would be appropriate; and
(b) its continued involvement gives rise to a new asset or new liability that needs to be recognized.

.25 A new asset or new liability may arise from a restructuring due to a transferor's continued involvement in the individual assets and liabilities transferred (for example, if it agrees to guarantee repayment of all or a portion of a transferred liability or leases back a portion of a transferred asset). As the new asset or new liability is not transferred, together with related program or operating responsibilities, they are not part of the restructuring transaction. They would be accounted for in accordance with individual Sections of the PSA Handbook by both the transferors and recipients.

The IESO should derecognize the regulated asset when transferred to OPG Trust if it no longer meets the definition of an asset in PSAS 1000.35-.36. However, consideration should also be made as to whether the IESO has any continued involvement in the regulatory asset that would result in the recognition of a new asset and/or a new liability (i.e. financing transaction).

The following supports the IESO's position that subsequent to the transfer to OPG Trust, the regulatory asset no longer possesses the three essential characteristics of an asset in PSAS 1000.36 and, therefore, should be derecognized:

Embody future economic benefits that involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows, or to reduce cash outflows
The future economic benefits embodied in the regulated asset are realized by the IESO through the transfer of the regulatory asset to OPG Trust in exchange for cash. As noted above, under Section 26(2)(d) of the FHP, the IESO retains no further right, title or interest in the regulatory asset transferred to OPG Trust. Accordingly, there is no remaining future economic benefit to the IESO.
The public sector entity can control the economic resource and access to the future economic benefits
Although the IESO will collect funds on behalf of OPG Trust, the following sections of the FHP support that control of and access to the future economic benefits of the regulatory asset pass to OPG Trust: *Section 16 - IESO to receive amounts*

2) The IESO shall, as agent of the investment interest owners, receive amounts in respect of the clean energy adjustment paid to it from electricity vendors in accordance with the market rules made under section 32 of the Electricity Act, 1998 or the regulations. *4) All amounts received by the IESO in respect of the clean energy adjustment shall, until remitted to or for the benefit of the investment interest owner, be held in trust by the IESO for the investment interest owners.* *5) The IESO shall remit amounts received by it in respect of the clean energy adjustment, inclusive of interest earned on the amounts referred to in subsection (1), to or for the benefit of the investment interest owners in accordance with the regulations.* *Section 29 - Irrevocable rights and interests* *1) The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests of investment interest owners:* *1. The right and interest to impose, invoice, collect, receive and recover the clean energy adjustment from specified consumers, including the right to determine the clean energy adjustment in accordance with this Act.* *2. The right to receive, collect and recover the clean energy adjustment that is imposed, invoiced and recoverable under this Act, including any amounts in respect of the clean energy adjustment that are held by electricity vendors, IESO and other prescribed parties.*
The transaction or event giving rise to the public sector entity's control has already occurred
Not applicable as IESO does not control.

As previously noted, the IESO relinquishes its rights, title and interest in the regulatory asset upon transfer to OPG Trust. Subsequent to the transfer, the IESO's ~~only~~ continuing involvement is as follows:

- The IESO ~~to~~ acts as agent of OPG Trust, which involves receiving funds and holding them in trust on behalf of OPG Trust. This level of continuing involvement does not result in the recognition of a new asset and/or a new liability by the IESO.
- The IESO will provide OPG Trust a letter of credit equal to approximately one to two month's estimated Clean Energy Adjustment collections from all unrated or non-investment grade LDCs. It is estimated that LDCs not rated by any agency deliver power to approximately 25% of the Ontario electricity market. This level of continuing involvement also does not result in the recognition of a new asset and/or a new liability by the IESO. **[NEED TO INSERT/REFERENCE IESO/KPMG ANALYSIS OF LETTER OF CREDIT]**

Accordingly, it is appropriate to account for the transfer of the regulatory asset as a sale and derecognize the regulated asset.

Derecognition of the regulated asset is also consistent with ASC 980. ASC 980-340-40-1 provides the following guidance on the derecognition of an asset that has been recognized in accordance with ASC 980-340-25-1:

If at any time an entity's incurred cost no longer meets the criteria for the capitalization of an incurred cost (see paragraph 980-340-25-1), that cost shall be charged to earnings.

In order for an incurred cost to be capitalized, ASC 980-340-25-1(a) requires the following:

It is probable (as defined in Topic 450) that future revenue in an amount at least equal to the capitalized cost will result from inclusion of that cost in allowable costs for rate-making purposes.

The capitalization criterion in ASC 980-340-25-1(a) is no longer met after the regulatory asset is transferred to OPG Trust because there are no future cash inflows that benefit the IESO. As mentioned above, the IESO realized the economic benefits associated with the regulatory asset upon the transfer. In accordance with Section 16 of the FHP, any future cash collected by the IESO is on behalf of OPG Trust.

Debits and Credits

Based on the example provided earlier, the IESO pays the contracted power generator $400 for electricity used by the ratepayer and collects $300 from the ratepayer through their local distribution company (LDC). The $100 recovery shortfall is recorded in a variance account created by Bill 132 and deemed to be a regulatory asset. The IESO sells the regulatory asset to OPG Trust for $100 to obtain cash to make up the shortfall.

The accounting for the above transactions in the financial statements of the IESO, which are prepared in accordance with PSAS are set out in Scenario A in the table below. For comparison purposes, Scenario B in the table below sets out the accounting if it is determined the regulatory asset is not eligible for recognition as an asset under PSAS.

Scenario A – Regulated Asset			**Scenario B – Not a Regulated Asset**		
Market Settlement					
DR	Cash	300	DR	Cash	300
DR	Asset	100	DR	Expense	100
CR	Cash	(400)	CR	Cash	(400)
Sale of Regulatory Asset to OPG Trust					
DR	Cash	100	DR	Cash	100
CR	Revenue	(100)	CR	Gain	(100)
DR	Expense	100			
CR	Asset	(100)			

At any given point in time, the accounting result will be the same under both scenarios provided the cash shortfall has been fully funded. If a funding deficit exists, however, the deficit would be recognized as an asset under Scenario A and recognized as an expense under Scenario B. A funding deficit may arise due to, for example, temporary timing differences between the creation and sale of a regulatory asset. A funding deficit may also arise if OPG Trust (or another financing entity) ceases to purchase the IESO's regulatory assets on an on-going basis.

Commented [LAP17]: Consider removing Scenario B. Focus the memo on supporting the Province's position. Don't include the "what if we're wrong" scenarios.

ACCOUNTING BY OPG

When final, insert or reference OPG's analysis supporting consolidation of OPG Trust by OPG.

ACCOUNTING BY OPG TRUST

When available, insert or reference OPG's analysis supporting recognition of intangible asset by OPG Trust.

ACCOUNTING BY THE PROVINCE

While it is generally expected that conclusions reached in the preparation of the standalone financial statements of IESO, OPG and OPG Trust will remain unchanged when those entities are included in the financial statements of the GRE, specific consideration has been given to the following three questions:

Commented [LAP18]: Does this need to also be said earlier?

1. ***Does the Provincial Guarantee represent a form of continuing involvement in the regulatory asset that would preclude sale treatment when transferred to OPG Trust?***

As previously noted, the sale of the regulatory asset will be accompanied by a guarantee by the Province. As documented in The Provincial Protections and Assurances Indicative Term Sheet dated September 18, 2017, the scope of the guarantee will be limited to regulatory changes (e.g., a statute or regulation being enacted, changed or repealed) and/or changes in the organization or structure of the IESO or Ontario's electricity market initiated by the Province that both materially and adversely affect the ability of OPG Trust to satisfy its payment obligations (referred to as Protection Events).

Although the guarantee represents a form of continuing involvement in the regulatory asset by the Province, its existence would only preclude sale treatment if the guarantee requires recognition as a liability in the financial statements of the GRE.

Until a Protection Event occurs, the guarantee will meet the definition of a contingent liability in PSAS 3300, *Contingent Liabilities*:

Contingent liabilities are possible obligations that may result in the future sacrifice of economic benefits arising from existing conditions or situations involving uncertainty. That uncertainty will ultimately be resolved when one or more future events not wholly within the government's control occurs or fails to occur. Resolution of the uncertainty will confirm the incurrence or non-incurrence of a liability.

In accordance with PSAS 3300.15, a contingent liability is recognized in the financial statements when:

(a) it is likely that a future event will confirm that a liability has been incurred at the date of the financial statements; and
(b) the amount can be reasonably estimated.

Accordingly, unless the occurrence of a Protection Event is considered likely, liability recognition is not required and the existence of the guarantee would not preclude sale treatment when the regulatory asset is transferred from IESO to OPG Trust.

The likelihood of a Protection Event will need to be continually assessed to determine if the recognition criteria is subsequently met.

2. Is OPG Trust controlled directly by IESO or the Province (as opposed to being controlled indirectly by the Province through OPG) requiring it to be consolidated on a line-by-line basis in the GRE?

Under IFRS, OPG Trust is controlled and consolidated by OPG. As a GBE, PSAS requires OPG to be accounted for in the financial statements of the GRE using the modified equity method. Under the modified equity method, the financial results of OPG (which includes the financial results of OPG Trust) are neither reconciled from IFRS to PSAS, nor consolidated on a line-by-line basis in the financial statements of the GRE.

However, since control is defined differently under IFRS and PSAS, consideration has been made as to which party controls OPG Trust under PSAS. If controlled directly by either the Province or IESO under PSAS, OPG Trust would likely need to be consolidated on a line-by-line basis in the financial statements of the GRE and excluded from the equity accounted financial results of OPG in the GRE accounts.

PSAS 1300.18 identifies certain indicators that provide more persuasive evidence of control. The following supports the conclusion that the Province indirectly controls OPG Trust through OPG under PSAS based on these indicators:

Commented [LAP19]: This table needs to be updated once the OPG memo on consolidation is finalized.

Power to unilaterally appoint or remove a majority of the members of the governing body of the organization
Ongoing access to the assets of the organization, has the ability to direct the ongoing use of those assets, or has ongoing responsibility for losses
Holds the majority of the voting shares or a "golden share" that confers the power to govern the financial and operating policies of the organization ***"Golden share" refers to a class of share that entitles the holder to specified powers or rights generally exceeding those normally associated with the holder's ownership interest or representation on the governing body***
Has the unilateral power to dissolve the organization and thereby access its assets and become responsible for its obligations

ONCE REGULATIONS/LEGISLATION FINALIZED, DETERMINE IF NECESSARY TO ADDRESS OTHER INDICATORS IN PSAS 1300.19

3. Does the OEB need to be considered independent from the Province in order to meet the scope requirements of ASC 980 and/or the characteristics of an asset in PSAS 1000.36?

ASC 980

To be in the scope of ASC 980, ASC 980-10-15-2(a) requires the following:

The entity's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party regulator or by its own governing board empowered by statute or contract to establish rates that bind customers.

As previously discussed, independence is **not** required to meet the criteria in ASC 980-10-15-2(a). The requirement is an *independent, third-party regulator* **or** *its own governing board empowered by statute or contract*.

The OEB has been established by the Province to be Ontario's independent energy regulator and, therefore, is considered the governing board of the IESO. The OEB's mandate and authority come from the *Ontario Energy Board Act, 1998*, the *Electricity Act, 1998*, and a number of other provincial statutes. As detailed in previous sections, the IESO's rates are established in accordance with these statutes. Accordingly, the requirement of ASC 980-10-15-2(a) is met irrespective of whether the OEB is considered independent.

As evidenced by the following excerpt from page 15 of the special report issued by the OAGO in October 2017, the OAGO appears to erroneously conclude that the OEB needs to be independent in order for ASC 980 to apply:

The regulator of the electricity sector in Ontario is the Ontario Energy Board (OEB). However, the Province has the power, through legislation, regulations and Ministerial directions, to dictate the activities of the OEB. In fact, the OEB has been legislated in the Fair Hydro Act to follow a course of action. This reinforces the OEB's lack of independence over this transaction. If there is no independent regulator establishing electricity rates for consumers, neither can there be a rate-regulated asset.

PSAS 1000.36

The third criteria in PSAS 1000.36 requires the transaction or event giving rise to the public sector entity's control to have already occurred. As previously discussed, the following view contained on page 37 of the 2008 Annual Report of the OAGO states a decision by the OEB cannot be considered to be a transaction or event giving rise to an asset:

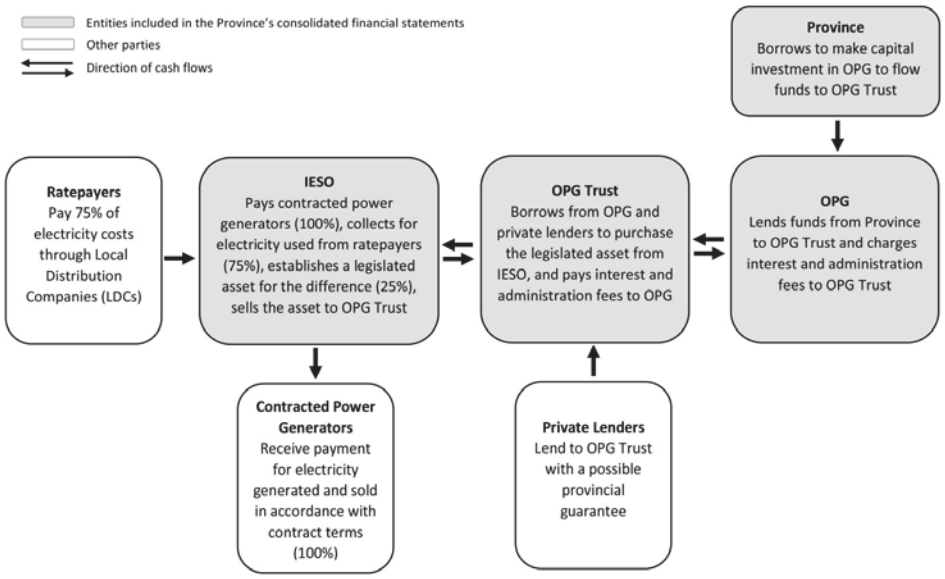
With regard to the third characteristic, we do not believe that a rate-regulation decision can be considered a transaction or event giving rise to an asset or obligation because, as stated above, from the level of the government's consolidated financial statements such a decision is an internal event between two government-controlled entities. An equivalent analysis for rate-regulated liabilities leads to the same conclusion. PSAB standards preclude the inclusion of both gains and losses from such inter-company transactions. Therefore, our contention is that, at the consolidated financial statement level, rate-regulated assets and liabilities have no place and should be removed upon consolidation of the government's controlled entities.

However, to reiterate, it is not the statute itself that is being considered the transaction or event giving rise to the asset, it is the incurrence of costs for which recovery is provided for under statute. The incurrence of such costs is not an internal event between two government-controlled entities.

Further, one could argue the creation of the relevant statutes is not an internal event from the point of view of the consolidated government. Statutes must be passed by the Legislative Assembly of Ontario to become law. Since the Legislative Assembly is comprised of elected members, it can be viewed as the government's governing body.

APPENDIX A

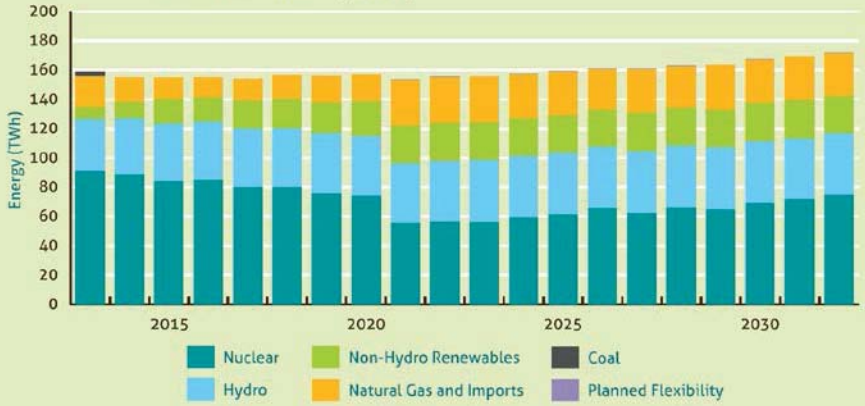
Proposed Legislated Transaction Structure
Prepared by the Office of the Auditor General of Ontario



Commented [OPCD20]: Can chart be expanded to include impact on CFS (consolidation of IESO reflecting RRA on CFS, Interest Income from OPG through revenue of GBE will help to offset borrowing costs incurred by Province on equity injection).

APPENDIX B

Figure 19: Ontario's Forecast Electricity Production (TWh)



Notes: The Planned Flexibility identified in Figure 19 is required to meet peak requirements and represents less than 1 TWh of energy per year. Forecasting of electricity production includes the expectation of imports and exports of electricity in all years. Imports and exports are an important component in managing the operation of the electricity system. As a result, electricity production forecast exceeds the forecast Ontario consumer demand.

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From: Veinot, Cindy (TBS)
To: Picard, Michel; "Kim Marshall"
Cc: Donaldson, Mark (TBS); Hosick, Sarah (TBS)
Subject: FHP Nov 21_cv review_v2 8 pm.pptx
Date: November 20, 2017 8:03:00 PM
Attachments: FHP Nov 21_cv review_v2 8 pm.pptx

Hi Michel and Kim – attached is the current version of the deck. There may be some minor tweaks to this, but it is substantially complete. If you review and notice anything that should be changed, please reply to all and we'll make the change in the morning before the meeting.

Thanks all,

Cindy

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Office of the Provincial Controller Division

Ontario Fair Hydro Plan – Accounting for Market Accounts and Rate-regulated balances under Public Sector Accounting Standards

November 21, 2017

CONFIDENTIAL – FOR DISCUSSION WITH PSAB/ACSB STAFF AT
21/11/17 MEETING ONLY – NOT FOR DISTRIBUTION

Agenda

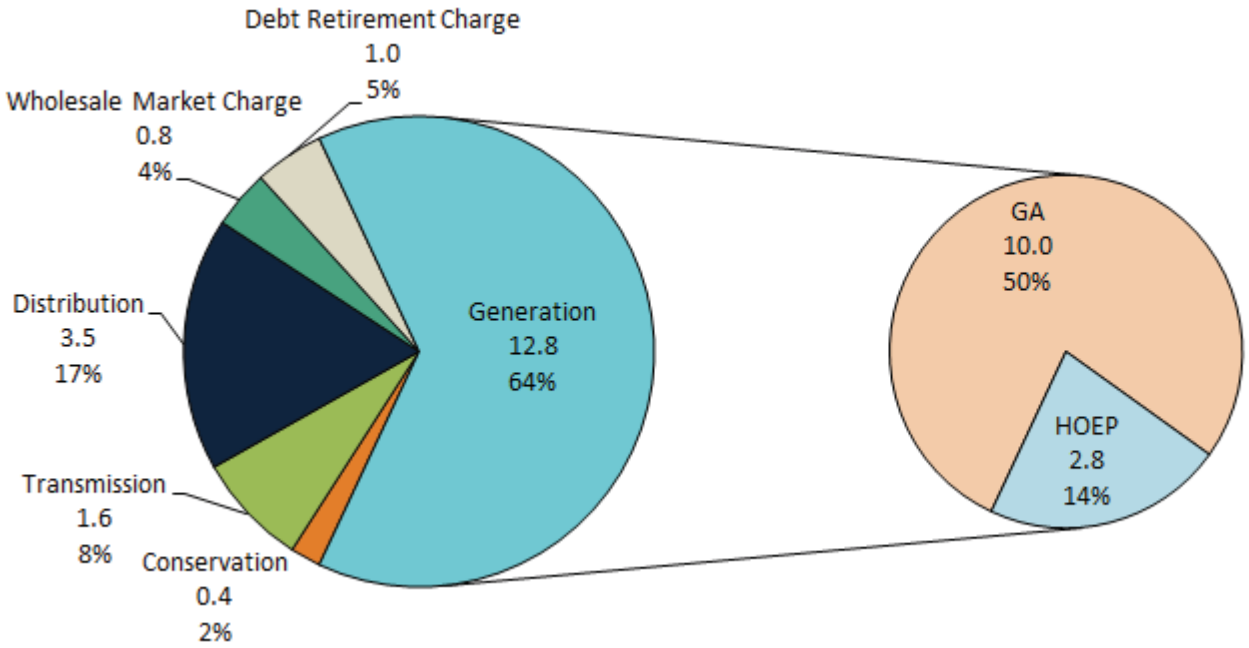
- Ontario's Electricity Market – Background and Context
- Ontario's Fair Hydro Plan
- IESO – Accounting policy changes
  - Accounting for the Market Accounts of IESO
  - Use of Rate Regulated Accounting under PSAS
- Impact to Province's financial statements

ONTARIO'S ELECTRICITY MARKET – BACKGROUND AND CONTEXT

Ontario's Electricity Market

- In 2015, generation accounted for 64% of total electricity system costs. Total system costs in 2015 were $20 billion.

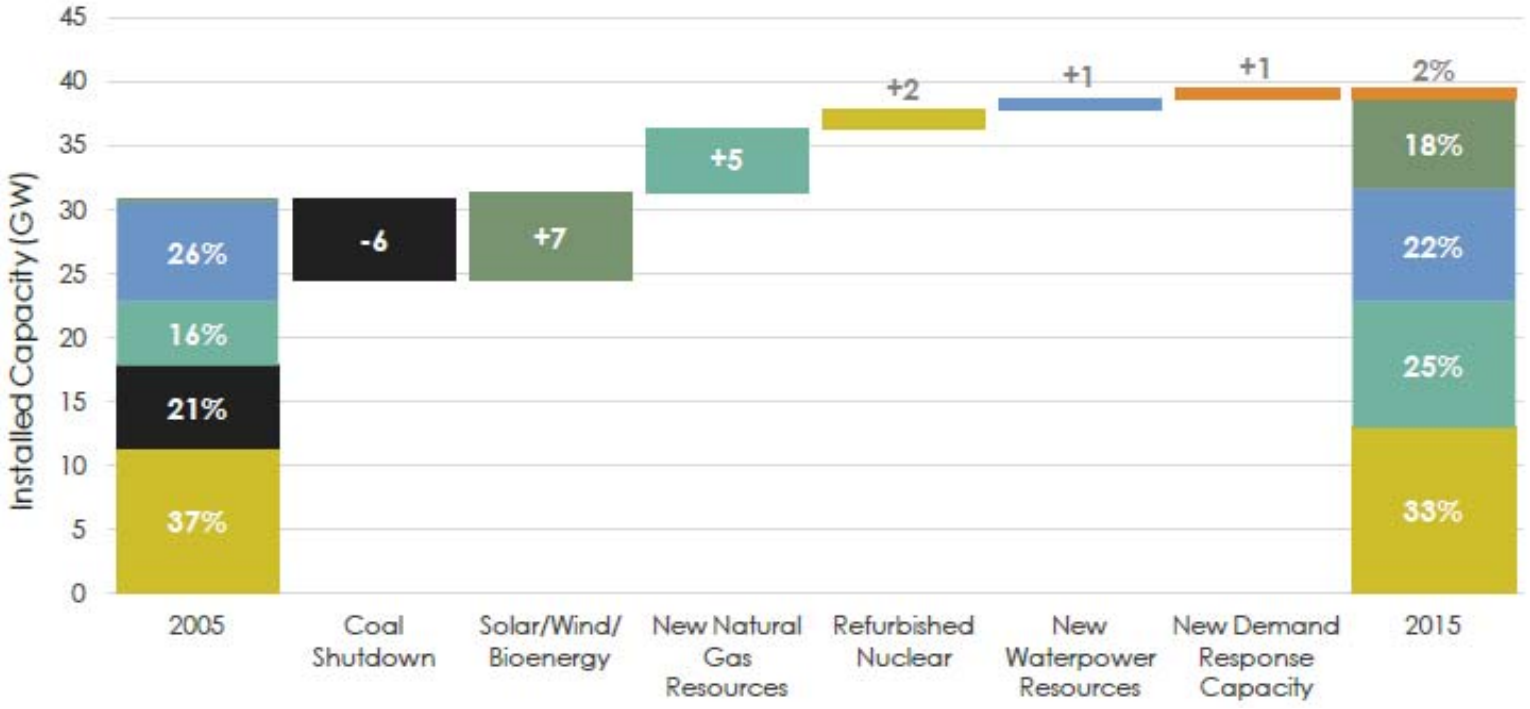
2015 Electricity System Cost
$ billion



Source: IESO

Significant Change in Supply Mix

- Between 2005 and 2015, government invested more than $50 billion in the electricity system, including $35 billion in electricity generation to restore reliability, replace coal and meet environmental objectives.
  - Electricity costs are increasing as necessary investments are made to decarbonize and modernize the province's electricity infrastructure.



Source: *IESO*

Electricity Prices Have Increased

- Since 2010, electricity prices have increased at a rate higher than the Consumer Price Index (CPI).

Typical Residential Electricity Bills
in $ per month, 750 kWh consumption

Source: *Ministry of Energy*

Actions To Mitigate Electricity Rates

- Following the 2016 Throne Speech, several actions were announced to further reduce electricity costs.
  - As of January 1, 2017, Ontario is rebating an amount equal to the provincial portion of the HST to reduce eligible residential, small business and farm electricity bills by 8%.
  - Expanded support available to eligible rural ratepayers by updating Rural or Remote Rate Protection (RRRP) with additional relief, decreasing total electricity bills by an average of $45 each month when combined with the 8% rebate.
  - Expanding the Industrial Conservation Initiative (ICI) – up to one-third savings for participants.
  - Suspending the LRP II and the Energy from Waste Standard Offer Program (EFWSOP) – up to $3.8 billion in cost savings.
  - Limiting the Feed-In Tariff (FIT) 5 procurement target to 150 MW and suspending future FIT procurements – up to $129 million in cost savings.

ONTARIO'S FAIR HYDRO PLAN

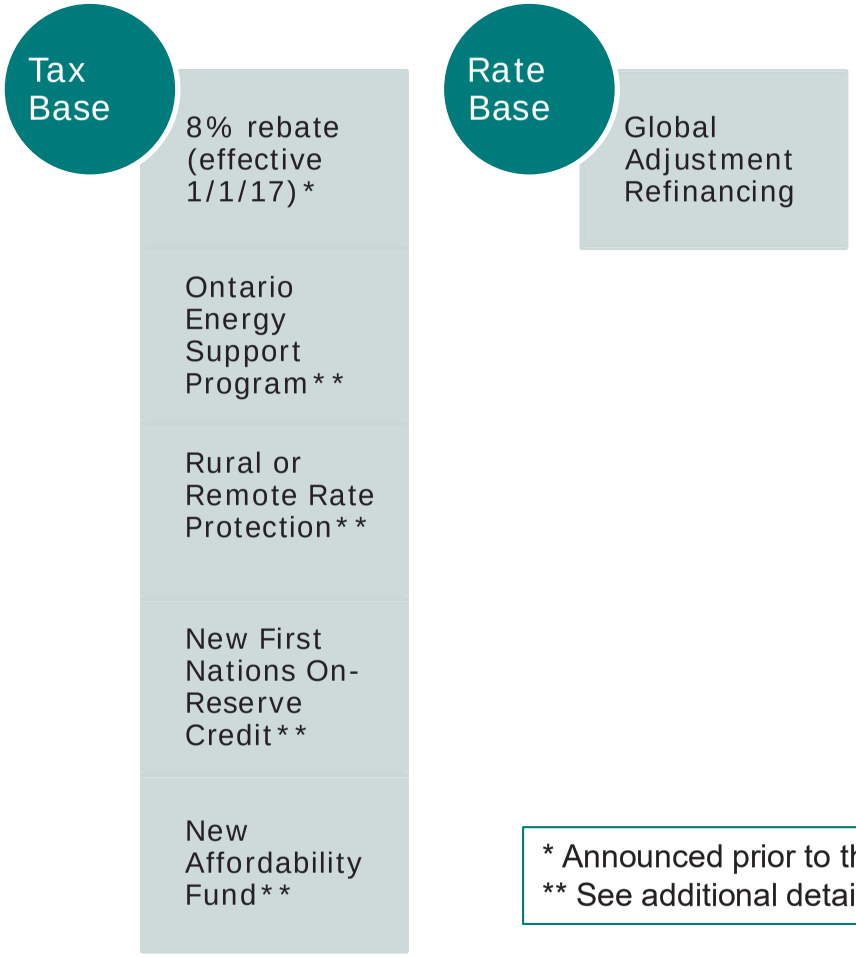
Ontario's Fair Hydro Plan – Announced March 2, 2017

- The Ontario Fair Hydro Plan Act ("OFHPA") provides Ontario ratepayers with an average 25% reduction in their electricity bills effective July 1, 2017 by way of:
  1. Spreading the cost of Ontario's clean energy investments over the expected lifecycle of the generation infrastructure assets (i.e. global adjustment); this is expected to account for 18-19% of the overall reduction,
  2. Shifting the cost of the Ontario Electricity Support Program (OESP) and most of the Rural or Remote Rate Protection (RRRP) social program costs from ratepayers to taxpayer-funded programs,
  3. An 8% rebate equal to the provincial portion of the HST, which took effect on January 1, 2017.

- The OFHPA requires the IESO to create and maintain a variance account for the global adjustment (referred to in the OFHPA as a 'regulatory asset') to be recovered from the ratepayers, but the OFHPA does not establish any accounting definitions for this variance for financial reporting purposes

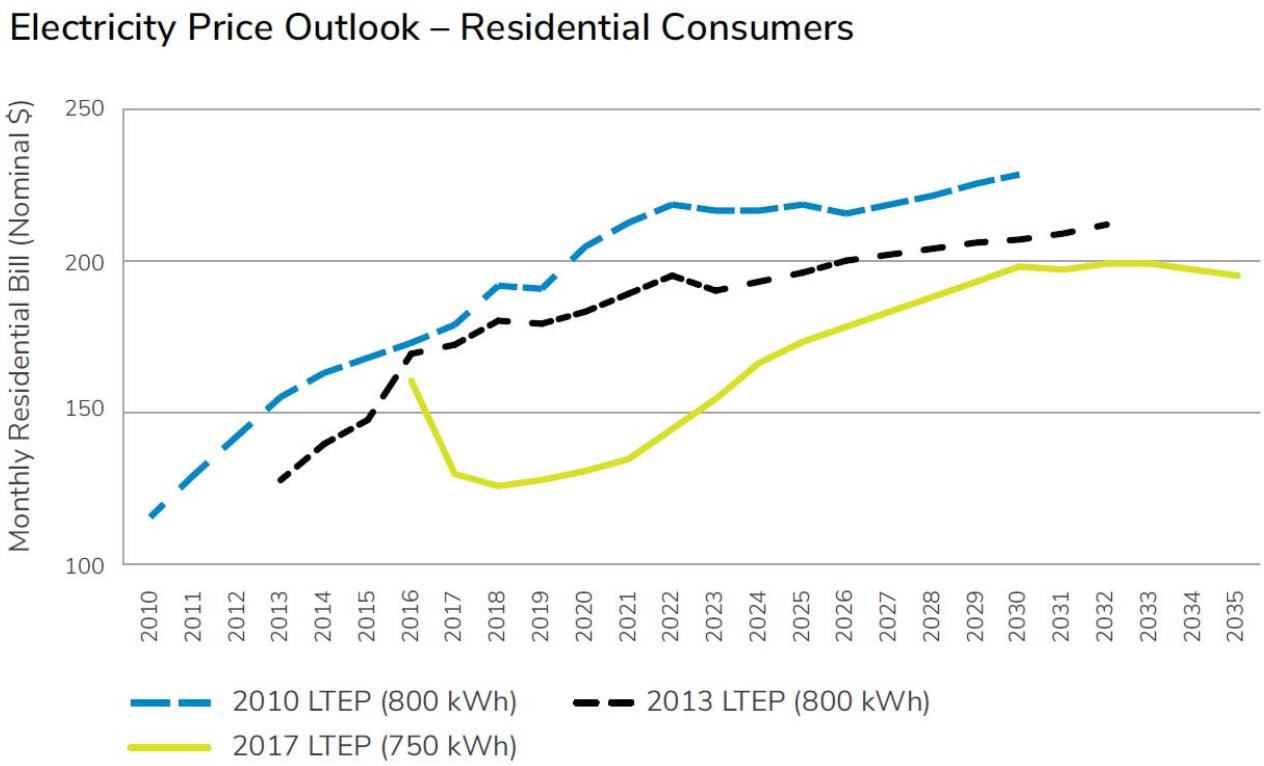
- By way of this government's policy decision, the 8% rebate and the social programs will be funded from the tax-base (not the rate-base); costs incurred, starting in 2016-17, have been accounted for as an expense in the Province's consolidated financial statements.

Ontario's Fair Hydro Plan



* Announced prior to the Fair Hydro Plan
** See additional detail on social programs in Appendix

2017 Long-term Energy Plan



Source: IESO, Ministry of Energy

Note: Forecasts used in *Delivering Fairness and Choice* reflect prevailing patterns of consumption. Between late-2009 and mid-2016, the OEB defined the typical residential customer as a household that consumed 800 kWh of electricity per month. As of May 2016, the OEB changed their typical residential consumption to 750 kWh per month, due to declining household consumption.

Global Adjustment (GA) Refinancing

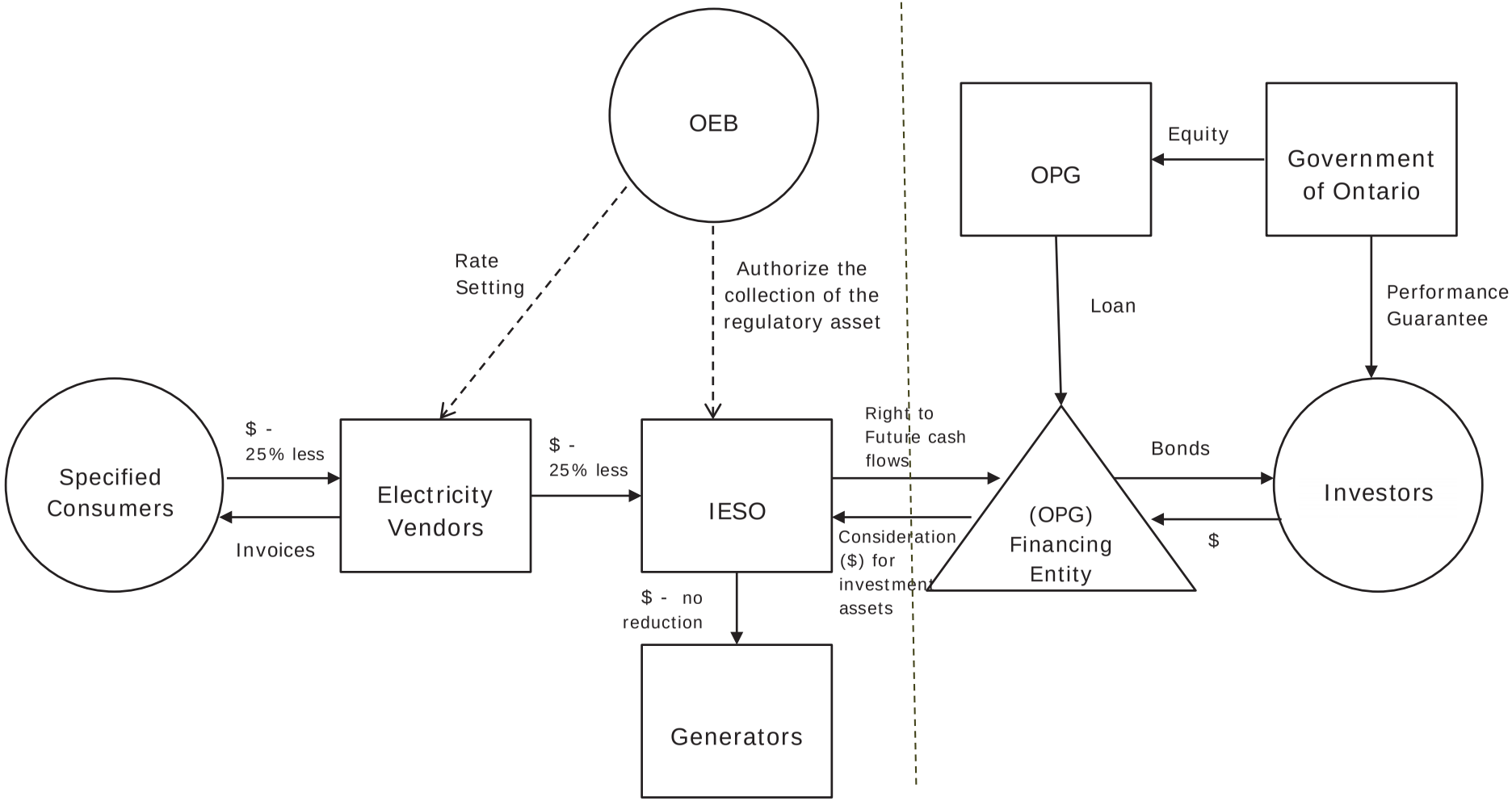
- Under the OFHPA, while the majority of generators are under 20-year contracts, the amounts paid by the IESO to the generators will be recovered from specified ratepayers over a longer period to reflect the expected period of benefits derived from these generating assets (as confirmed by analysis by external parties)
  - Electricity consumers will benefit from the ongoing useful life of these generating assets, and will be responsible for the costs of these assets over the same timeframe

- Refinancing the GA, which pays for the bulk of the recent investments in the electricity system, provides significant and immediate rate relief by matching the cost of electricity investments with the expected useful life of the generation that has been built.

- Rate increases are capped at inflation until 2021, after which rates will be recovered by including a component charge to cover the refinancing of the GA (principal and interest) over the following 25 years.

- The GA refinancing program ensures that costs are borne by the rate-base, as the beneficiaries of the electricity system, and not the tax-base.

Global Adjustment (GA) Refinancing (during initial years)



GA Refinancing Concepts & Impacts

- IESO
  - Collects less from the specified consumers through the LDCs, than it otherwise would have absent the OFHPA
  - Pays the same amount to the generators, thereby creating a “shortfall”
  - Has the right to collect the “shortfall” from the specified ratepayers in the future
  - Has the right to sell the “shortfall” to another party

- OPG Trust (consolidated by OPG)
  - Purchases the right to collect cash from the specified ratepayers in the future (the “shortfall”) from IESO
  - Finances the purchase of the “shortfall” from a combination of the debt and an equity injection from the Province
  - Recognizes an intangible asset (purchase of shortfall), as well as an increase in debt and equity

- Province
  - Consolidates IESO on a line-by-line basis – expects to have a small regulatory asset at each year-end
  - Has an increase in Provincial debt for equity injection to OPG offset by increase in investment in OPG

IESO – ACCOUNTING POLICY CHANGES

Role of the Independent Electricity System Operator

- The IESO is a corporation established pursuant to Part II of the Electricity Act, 1998, and administers $17 billion of the $20 billion annual electricity system, settling transactions between generators and consumers of electricity.

- One of IESO's roles is to settle the market accounts, which are the amounts due to the entities who provide electricity to the market (e.g. power generators) and due from those who consume electricity (e.g. local distribution companies on behalf of their consumers).

- The IESO is rate-regulated under the Electricity Act (1998) and the Ontario Energy Board Act (1998) by virtue of its right to recover the following costs from future ratepayers as determined by the Ontario Energy Board:
  - Revenue, expenditure requirement and fees
  - Smart meter expenses
  - PSAB transition items
  - Market settlements (Rate Protection Price (RPP), Ontario Electricity Support Program (OESP), Rural or Remote Rate Protection (RRRP))

IESO Changes in Accounting Policy

- In 2016, IESO made two changes in its accounting policies:
  - reflected the “market accounts” in its statement of financial position
  - adopted rate-regulated accounting

- KPMG LLP audits IESO’s financial statements and issued an unqualified opinion on the December 31, 2016 financial statements.

- The Ontario Power Authority, which merged with the IESO on January 1, 2015, presented in its unqualified, audited financial statements under PSAS, a segment of the market accounts for settlement with generators under contracts and referred to the use of rate regulated accounting

Accounting for IESO Market Accounts

- The IESO is a party to agreements with each market participant, and each market participant either owes an amount to the IESO or is owed an amount from the IESO. For example:
  - Ontario Power Generation has a receivable from IESO recorded on its financial statements related to power generated, and historically, IESO did not have a payable recorded to Ontario Power Generation – now it does
  - Hydro One has a payable to IESO recorded on its financial statements related to power purchases, and historically, IESO did not have a receivable recorded from Hydro One – now it does
- The amounts due from market participants meet the definition of an asset and the amounts due to market participants meet the definition of a liability under PSAB standards
- In connection with this change, the accounting for eight other independent system operators in North America were reviewed, and all but one recognize market accounts in the financial statements
- IESO management, their Audit Committee, their Board of Directors, their external auditor and the Office of the Provincial Controller support the change in accounting as being more transparent.
- A qualified opinion was issued by the Office of the Auditor General on the 2016-17 consolidated financial statements regarding the change in Independent Electricity System Operator's accounting for the "market accounts".

Rate Regulated Accounting under PSAS

- Public Sector Accounting Standards are silent on the use of rate-regulated accounting; the standards neither explicitly permit nor prohibit its recognition, measurement, presentation or disclosures

- PS1150.19 provides examples (not an exhaustive list) of other sources of GAAP, while PS1150.20 emphasizes that “it applies professional judgment and evaluates the source in the context of the relative manner in which the standard setter requires its pronouncements to be applied”.

- In applying professional judgment, a review of the PSAB concepts described in paragraph PS 1150.05(b) has been completed to ensure proper application of the GAAP hierarchy

- In looking to other standards, the recognition of the economic effects of rate regulation are required under FASB, and permitted under IASB (through IFRS 14), ASPE and GASB when an entity meets defined criteria
  - FASB has the only developed standard on rate-regulated accounting
  - IASB’s project on rate-regulated activities is still in progress and it would be premature to assume any final conclusions by the IASB on regulatory deferral account balances

Rate-regulated Accounting

- Recognizing the regulatory variance account, which is tracked as a result of the OFHPA and its regulations, as an asset in the Statement of Financial Position is appropriate in both the financial statements of the IESO and Province is appropriate if all of the following criteria are met:
  - the regulated operations of the IESO (or the relevant portion thereof) are within the scope of ASC 980 based on the criteria in ASC 980-10-15-2,
  - the variance account (under the Fair Hydro Plan) meets the criteria in ASC 980-340-25-1 for capitalization as a regulatory asset, and
  - ASC 980 is an appropriate source of GAAP under PSAS.

Scope of ASC 980

- ASC 980-10-15-2 states the following:

  The guidance in the Regulated Operations Topic applies to general-purpose external financial statements of an entity that has regulated operations that meet all of the following criteria:

  - The entity's **rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party regulator or by its own governing board empowered by statute** or contract to establish rates that bind customers.
  - The regulated rates are designed to **recover the specific entity's costs of providing the regulated services or products**. This criterion is intended to be applied to the substance of the regulation, rather than its form. If an entity's regulated rates are based on the costs of a group of entities and the entity is so large in relation to the group of entities that its costs are, in essence, the group's costs, the regulation would meet this criterion for that entity.
  - In view of the demand for the regulated services or products and the level of competition, direct and indirect, **it is reasonable to assume that rates set at levels that will recover the entity's costs** can be charged to and collected from customers.

- The IESO is 1) regulated by the OEB as a governing board which provides for it to 2) recover its costs based on 3) rates pursuant to the on-going demand for electricity in the marketplace

Role of the Ontario Energy Board

- The OEB has been established by the Province to be Ontario's independent energy regulator; its mandate and authority come from the Ontario Energy Board Act, 1998, the Electricity Act, 1998, and a number of other provincial statutes.

- As noted previously, the rates charged by the IESO to electricity consumers are determined by the OEB, and therefore, it is considered the governing board of the IESO.

- While both the IESO and the OEB are controlled by the Province, this does not negate the role the OEB plays with respect the electricity market nor the determination of the IESO as a rate-regulated entity
  - Under US GAAP, the requirement is an independent, third-party regulator or its own governing board empowered by statute or contract.

Criteria for Capitalization

- ASC 980-340-25-1 states the following:

  Rate actions of a regulator can provide reasonable assurance of the existence of an asset. An entity shall capitalize all or part of an incurred cost that would otherwise be charged to expense if both of the following criteria are met:

  a) It is probable (as defined in Topic 450) that future revenue in an amount at least equal to the capitalized cost will result from inclusion of that cost in allowable costs for rate-making purposes.

  b) Based on available evidence, the future revenue will be provided to permit recovery of the previously incurred cost rather than to provide for expected levels of similar future costs. If the revenue will be provided through an automatic rate-adjustment clause, this criterion requires that the regulator's intent clearly be to permit recovery of the previously incurred cost.

- The OFHPA and its regulations (the "Act") entitle the IESO to recover the amounts that have been deferred, including interest and carrying costs
- The rate per unit of electricity that is collected from the specified ratepayers will be determined based on the amount of electricity consumed in the future, not whether electricity is consumed in the future – the 2017 Long-term Energy Plan predicts that the demand for energy will be fairly steady over the planning period (to 2035)
- The IESO is able to sell the regulatory asset

Appropriate GAAP under PSAS

- The application of ASC 980 under US GAAP was assessed to ensure it's consistency with the concept of assets as described in PS3210 and PS1000.36:

  (a) they embody future economic benefits that involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows, or to reduce cash outflows;

  (b) the public sector entity can control the economic resource and access to the future economic benefits; and

  (c) the transaction or event giving rise to the public sector entity's control has already occurred.

- By establishing that ASC 980 is consistent with the concepts under PSAS, it provides guidance as to how to apply the primary source of PSAS in the regulatory environment.

(a) Future economic benefit – Future recovery from ratepayers

- The regulatory asset, by statute, has the capacity to provide future cash inflows.

  Sec 25 (1) Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

- 2017 Long-term Energy Plan predicts that the demand for energy will be fairly steady over the planning period (to 2035), supporting that sufficient demand is expected to exist in the future to recover the regulatory asset at a reasonable unit price

- IESO has the right to sell the asset

(b) Controlling the Resource

- As noted in Sec 25 of the OFHPA, the IESO holds the sole right to collect the variance account from ratepayers under statute

- As well, the OFHPA also provides for the IESO to realize it's collection through the transfer and sale of the variance account:

  26 (1) The IESO may from time to time, in accordance with this Act and the regulations, transfer a specified portion of the regulatory asset to a financing entity in accordance with this section.

  (2) An agreement between the IESO and a financing entity in relation to the transfer of a specified portion of the regulatory asset shall provide for consideration of a payment by the financing entity to the IESO in an amount equal to the amount of the specified portion.

- Access to future economic benefits is by way of collection from ratepayers or sale and transfer to a financing entity, and all associated risks are extinguished or transferred at that time.

(c) Occurrence of a Past Event

- Upon the transfer of electricity into the grid by the generators, a recoverable amount is due from ratepayers related to their portion of consumption that must be settled by way of the IESO.

- PS3210 supports that the point of exchange at which risk transfers gives rise to an asset under PSAS:

  .26 The past transaction or event that gives rise to control of an economic resource resulting from exchange agreements or contracts usually occurs at the point of exchange. This arises when substantially all the benefits and risks of ownership have been transferred to the public sector entity and normally coincides with the disbursement of funds, exchange of other assets or assumption of liabilities.

- The incurrence of the cost that is to be settled with power generators is the event for which there is a right to recovery from ratepayers under statute, not the statute itself:

  .32 The past transaction or event giving rise to control of an economic resource must have occurred by the financial statement date. Legislation having retroactive application cannot create a past transaction or event. Any economic resources related to that legislation would be accounted for in the current and relevant future periods, not in the period of the effective date of the legislation.

Additional Evidence from GAAP

- Additional evidence supporting the classification of rate-regulated assets as assets in other frameworks is contained within the Basis for Conclusions for FAS 71:

> *58. The economic effect cited by most respondents is the ability of a regulatory action to create a future economic benefit—the essence of an asset. For example, consider a regulated enterprise that incurs costs to repair damage caused by a major storm. If the regulator approves recovery of the costs through rates over some future period or is expected to do so, the rate action of the regulator creates a new asset that offsets the reduction in the damaged asset. The enterprise has probable future economic benefits—the additional revenue that will result from including the cost in allowable costs for rate-making purposes. The future benefits are obtained or controlled by the enterprise as a result of a past event—incurring the cost that results in the rate order. Thus, the criteria of Concepts Statement 3 for an asset are met.*

IMPACT TO THE PROVINCE

Impact on Net Debt

- The GA refinancing is a transaction that will be recovered through a charge to ratepayers through their electricity bills over the service life of the power generating assets; it is not a transaction that has recourse to the tax-base.

- Under the PSAB Handbook, net debt is a measure of “the government's future revenue requirements and on its ability to finance its activities and meet its liabilities and contractual obligations”.

- Absent the recognition of the variance account under the OFHPA as an asset, the Province’s net debt would increase significantly, suggesting that the Province has a much higher future revenue requirement, while the recovery of the variance account is from the ratepayers

- Since the OFHPA regulatory asset is going to be recovered under statute from electricity consumers, not taxpayers, such an increase in net debt would be misleading and inaccurate to financial statement users based on the substance of the transaction.

Addressing Transparency

- The GA refinancing will be carried out by Ontario Power Generation Trust (OPG Trust) which will issue debt on the open market for approximately ½ of the projected variance, and in exchange will receive the right to future revenues from consumers due to IESO under the OFHPA

- As a government business enterprise, OPG is reflected in the Province's consolidated financial statements on a modified-equity basis, such that it's assets and liabilities are not comingled with those of the Province

- The financial statements of OPG are publicly available and will contain all required presentation and disclosure of all material transactions undertaken during the fiscal year.

- The IESO financial statements are also available publicly.

- Given the materiality, additional voluntary disclosures are also under consideration in the Province's consolidated financial statements.

Conclusion

- IESO's management, their Audit Committee, their Board of Directors, their external auditor and the Office of the Provincial Controller support the changes in accounting policy adopted by the IESO in 2016 as a more transparent reflection of their operation.

- The OFHPA is a legislative vehicle to invoke the mechanics of a policy decision to provide electricity consumers with a rate reduction by extending the period of recovery of clean energy investments to align with the productive life of those assets, as opposed to the contract duration, and does not provide any guidance on the accounting for the variance account

- In evaluating the proper accounting for balances under the OFHPA, in the absence of guidance under PSAS, the application of US GAAP for rate-regulated activities is the most appropriate guidance, and is consistent with the primary sources of GAAP.

- The financial statement presentation of the Province best reflects the economic substance of the financial components of this government policy by reflecting assets, liabilities and net debt in accordance with the principles under PSAS.

APPENDIX – ONTARIO FAIR HYDRO PLAN – SOCIAL PROGRAMS

Helping Vulnerable Electricity Consumers

- Fair Hydro Plan initiatives to help vulnerable consumers include:
  - Enhancing the Ontario Electricity Support Program (OESP) and working to ensure the program uptake is as close as possible to 100%.
  - Broadening Rural or Remote Rate Protection (RRRP) program to provide distribution charge relief for the customers of the costliest local distribution companies (LDCs).
  - Establishing a new First Nations On-Reserve Delivery Credit.
  - Establishing a new Affordability Fund which would support Ontarians who have difficulty paying their electricity bills to be able to access energy efficiency improvements.

Enhancing the Ontario Electricity Support Program (OESP)

- The OESP has been enhanced by increasing its monthly credits by 50%, expanded to cover more low-income Ontarians, and increasing uptake to as close to 100% as possible.
  - Sliding Scale #1 outlines basic program benefits, and Sliding Scale #2 outlines enhanced benefits for Indigenous households, electrically heated households, and households with certain medically intensive medical equipment.
- The government passed legislation to enhance the OESP and to have OESP costs be funded by provincial revenues, reducing regulatory charges for all Ontario ratepayers.

Existing OESP Credit Scales

Sliding Scale #1	Household Size						
Income Bracket	1	2	3	4	5	6	7 +
< $28,000	$30	$30	$34	$38	$42	$50	$50
$28,001 - $39,000			$30	$34	$38	$42	$50
$39,001 - $48,000					$30	$34	$38
$48,001 - $52,000							$30

Sliding Scale #2	Household Size						
Income Bracket	1	2	3	4	5	6	7 +
< $28,000	$45	$45	$50	$55	$60	$75	$75
$28,001 - $39,000			$45	$50	$55	$60	$75
$39,001 - $48,000					$45	$50	$55
$48,001 - $52,000							$45

Proposed +50% OESP Credit Increase*

Sliding Scale #1	Household Size						
Income Bracket	1	2	3	4	5	6	7 +
< $28,000	$45	$45	$51	$57	$63	$75	$75
$28,001 - $39,000		$40	$45	$51	$57	$63	$75
$39,001 - $48,000			$35	$40	$45	$51	$57
$48,001 - $52,000					$35	$40	$45

Sliding Scale #2	Household Size						
Income Bracket	1	2	3	4	5	6	7 +
< $28,000	$68	$68	$75	$83	$90	$113	$113
$28,001 - $39,000		$60	$68	$75	$83	$90	$113
$39,001 - $48,000			$52	$60	$68	$75	$83
$48,001 - $52,000					$52	$60	$68

Broadening Rural or Remote Electricity Rate Protection (RRRP)

- Rural or Remote Rate Protection (RRRP) provides a rate subsidy to rural or remote residential customers who are faced with higher distribution costs compared to urban areas.
  - The RRRP is currently provided to approximately 350,000 Hydro One R2 residential customers in Ontario.

- The Province expanded the RRRP to provide distribution charge relief to additional hydro customers served by local distribution companies (LDCs) with the highest distribution rates, including: Hydro One R1, Northern Ontario Wires Inc., Lakeland Parry Sound, Chapleau PUC, Sioux Lookout Hydro, InnPower, Atikokan Hydro and Algoma Power. This extends RRRP availability to about 800,000 customers.

- The government passed legislation to broaden the RRRP and to have RRRP costs be funded by provincial revenues, reducing regulatory charges for all Ontario ratepayers.

First Nations On-Reserve Delivery Credit

- In 2016, the Minister of Energy asked the Ontario Energy Board (OEB) to develop options for a First Nation delivery credit for households.

- The OEB, engaging with First Nations, including remote communities, the distributors serving them, and consumer groups, developed the following recommendations:
  - Eliminating the delivery charge for all on-reserve First Nations households and removing the monthly service charge for customers of licensed distributors which charge a bundled rate. The OEB estimates this would provide residential customers an average monthly benefit of $85.
  - Automatically qualify on-reserve First Nations households (~21,500 customers).

- The government passed legislation to create the First Nations On-Reserve Delivery Credit have its costs be funded by provincial revenues, reducing regulatory charges for all Ontario ratepayers.

Establishing a New Affordability Fund

- The Affordability Fund will assist electricity customers who cannot qualify for low-income conservation programs and need financial assistance to undertake energy efficiency improvements.

- The Affordability Fund provides LDCs with an additional tool to help customers in need. LDCs would use the Fund to provide support to customers for energy efficiency improvements to help reduce their future electricity bills.

- The Province will pay for the Fund through provincial revenues.

FW_ _Fair Hydro Act_ Legislative Summary (Discussion Draft).rtf

From: Petsche, Nadine (TBS) []
To: Kim Marshall (Kim.Marshall@ieso.ca) [Kim.Marshall@ieso.ca]
Subject: FW: "Fair Hydro Act" Legislative Summary (Discussion Draft)
Date: Tuesday, April 11, 2017 13:50:44
Attachment 1: image5983e9.GIF
Attachment 2: TOR_2528-#23107566-v9-_Fair_Hydro_Act_.DOCX
Attachment 3: TOR_2528-#23107566-vpdf-_Fair_Hydro_Act_.PDF

Kim,

Just wanted to make sure that you had a copy of the latest draft?

Nadine

From: Calwell, Carolyn (ENERGY/MEDEI/MRI)
Sent: April-11-17 6:56 AM
To: Hume, Steen (ENERGY); Nelms, Scott (MOF); Veinot, Cindy (TBS)
Cc: Shear, Dan (ENERGY); Rehob, James (ENERGY); Kacaba, Jennifer (ENERGY); Huang, Jackson (MEDG/MRIS)
Subject: Fw: "Fair Hydro Act" Legislative Summary (Discussion Draft)

Please review critically and provide your input. Please feel free to call me if you wish to discuss. I will make myself available.

Carolyn

From: ASHBOURNE, STEPHEN <STEPHEN.ASHBOURNE@blakes.com>

Sent: Monday, April 10, 2017 11:15 PM

To: Feldman, Michael; JACKSON, ADAM; Peter Hamilton (PHamilton@stikeman.com); LEE John -TREASURY; RYFA Ken -TREASURY; WONG Leslie -LAWDIV; MCAULEY Tyler -LAWDIV; WILSON, JUDY; STOKES, BRYSON; Hill, Krista; Ramchandani, Rima; Keizer, Charles; Myers, Jonathan; Emes, Aaron; Mansoori, Nina; Wortsman, Jerald; Bomhof, Scott; Estey, Bill; Watson, Gwen; Rehob, James (ENERGY); Alan Hibben; Shear, Dan (ENERGY); Calwell, Carolyn (ENERGY/MEDEI/MRI); O'Brian, Adam; Fitzpatrick, Michael F.; STOKES, BRYSON; VINER, JON; Brad.Purkis@tdsecurities.com; Nelms, Scott (MOF); ESmith@osler.com; RSebastiano@osler.com; Michael.Boll@ieso.ca; GZacher@stikeman.com; aobrian@hunton.com; Christie, Tim (ENERGY); Calwell, Carolyn (ENERGY/MEDEI/MRI); Johnson, Paul (ENERGY/MEDEI/MRI); Shear, Dan

(ENERGY); Rehob, James (ENERGY); Kwan, Ronald (OFA); He, Gavin (OFA); Veinot, Cindy (TBS); Hosick, Sarah (TBS); Nelms, Scott (MOF); kim.marshall@ieso.ca; 'LEE John -TREASURY' (john.s.lee@opg.com); Cox, Hilary (ENERGY); Hilloowala, Maharukh; Wolff, Michael; Holloway, Harold; Akman, Steven; Manii, David; Nevison, Gary

Subject: RE: "Fair Hydro Act" Legislative Summary (Discussion Draft)

Hi. Here is a revised draft of the legislative summary, for your consideration. Please provide your comments at your earliest opportunity. We will reflect comments received by 2ET tomorrow (Tuesday) in a further group circulation, for discussion on Wednesday. Regards, Steve

Stephen R. Ashbourne

Partner

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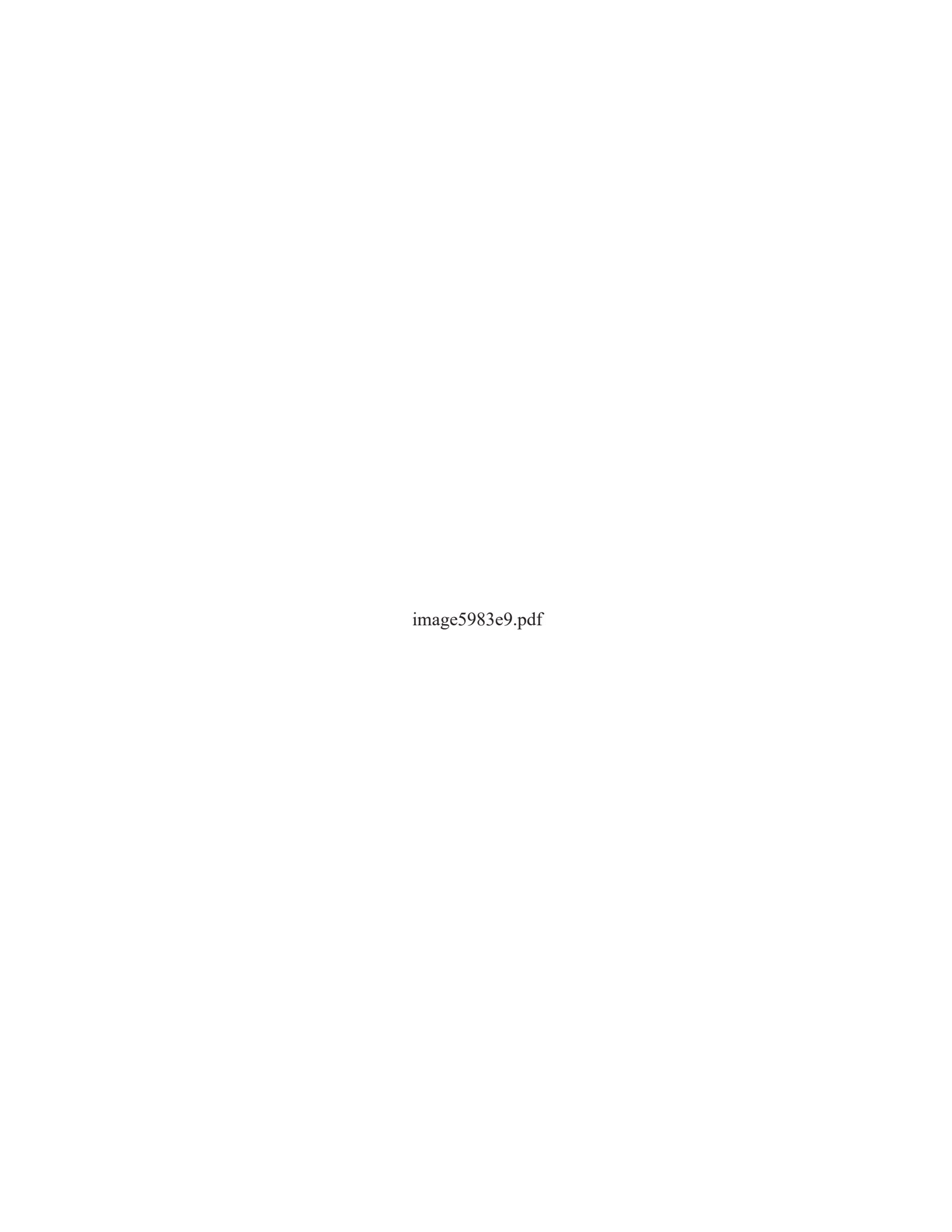
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Preliminary Draft for Discussion Purposes Only

"Fair Hydro Act"

Article 1 – Purpose

The Province has and continues to encourage the construction and development of facilities for the long-term operation and generation of electricity in the Province using sustainable, lower carbon-based technologies such as new gas-fired generation, renewable facilities, energy from waste and biomass, including under the Province's various procurement, standard offer, feed in tariff and other similar programs (the "Green Generation Initiative"). The long-term benefits of the Green Generation Initiative accrue over time and have benefited and will benefit present and future electricity consumers in the Province.

The imputed costs of the Green Generation Initiative are currently passed through to electricity consumers by way of a monthly adjustment amount (the "Green Costs Adjustment"), which in turn forms part of the overall adjustment calculated by the Independent Electricity System Operator ("IESO") pursuant to section 25.33 of, and O.Reg. 429/4 under, the *Electricity Act* (the "Global Adjustment"). The Global Adjustment is included as a charge billed to electricity consumers in their monthly electricity invoices.

The Green Costs Adjustment is currently determined each month by reference to the amounts paid by IESO to the generators of electricity in the Province under the Green Generation Initiative, which may be higher than prevailing market price for electricity. These differences arise because IESO has entered into long-term procurement contracts with such generators in order to provide them with long-term price certainty for electricity, and in turn to encourage the generators to develop technologies and to construct and develop facilities consistent with the Green Generation Initiative. In general, whenever amounts payable under these procurement contracts exceed the market price for electricity, the Green Costs Adjustment passes through the amount of such differences as part of the monthly charge to electricity consumers. Such amount then becomes available to IESO to meet its obligations under the procurement contracts. It has been determined that the useful lives of many of the assets encouraged by the Green Generation Initiative will be well in excess of the respective terms of the related procurement contracts, and in many cases may extend over more than one generation of electricity consumers.

Since the benefits to past, present and future electricity consumers from the Green Generation Initiative will not necessarily coincide with the costs currently attributed through the Green Costs Adjustment, based on the respective durations of the procurement contracts, it has been determined that the rate at which the costs associated with the Green Generation Initiative should be passed through to Retail Consumers (as defined in Article 2) should be more closely aligned with the benefits that such Retail Consumers have derived and are expected to derive from the Green Generation Initiative over time. This realignment will be based on principles and parameters that establish a reasonable basis for measuring and allocating the relative costs and benefits of the Green Generation Initiative equitably across present and future Retail Consumers (the "Fair Allocation Plan").

If the Fair Allocation Plan determines that the equitable allocation of the costs associated with the Green Generation Initiative to the Retail Consumers of a particular time period should be reduced below the amount that currently would be charged based on the Green Costs

Adjustment, then the amount payable by such Retail Consumers and in turn available to IESO will, in the aggregate, be less than the amount payable by the IESO to the generators in respect of such period. In this case IESO will need to obtain funding from another source to cover such a shortfall. If a funding obligation is incurred by IESO to cover such a shortfall during one period, the repayment of such funding obligation will be required in a future period, and any related repayments, finance costs, hedging costs and other transaction costs incurred will become payable in one or more future periods. In order for IESO to obtain a reliable and committed source of cash flows to enable IESO to repay such funding amounts when they become due and payable, this Act imposes irrevocable and non-bypassable financial obligations on Retail Consumers to pay amounts incurred in respect of such funding obligations when they become due and payable and establishes a right to invoice and collect such amounts. The right and interest in and to collect such financial obligations will take the form of the Regulatory Asset contemplated in this Act, which will constitute property rights and interests. Interests in the Regulatory Asset may be sold and absolutely assigned by IESO to one or more financing entities, which in turn will finance their acquired interests by incurring funding obligations. The incurrence and payment of such funding obligations will be administered on behalf such financing entities by a financial services agent under the Financing Plan contemplated in this Act. The Financing Plan will seek to reasonably match the payment obligations arising under such funding obligations, to be borne by the future Retail Consumers of the period in which such payment obligations become due, with the benefits of the Green Generation Initiative allocated to such future Retail Consumers under the Fair Allocation Plan.

The purpose of this Act is to establish the basis upon which intergenerational fairness can be achieved by charging the costs and benefits of the Green Generation Initiative to present and future Retail Consumers on an equitable and cost effective basis.

Article 2 - Definitions

In this Act:

> “Absolute Assignee” means a person to whom a Regulatory Asset Owner effects a Disposition.
>
> “Actual” means, in relation to costs, expenses or payments in respect of Funding Obligations during a Reference Period, the actual amount of such costs, expenses or payments paid or made (net of any Finance Reserve Withdrawals applied to pay such amounts), which amounts shall be recorded by the Financial Services Agent whose records shall be determinative for the purposes of this Act except to the extent of a manifest calculation error.
>
> “Additional Funding Charges” means, for a Reference Period in respect of an Absolute Assignee, the fees, charges, expenses, costs, indemnities, reimbursements and other amounts (including any applicable tax amounts) that are or become payable by or on behalf of the Absolute Assignee during the Reference Period and that were incurred or committed to directly or indirectly by the Absolute Assignee in connection with the incurrence of Funding Obligations under the Financing Plan (whether at the time of such incurrence or over the term of the Funding Obligation and whether directly or indirectly), including (without duplication and without limitation): (a) any payment required under an ancillary agreement entered into by, or by the Financial Services Agent on behalf of, the Absolute Assignee under the Financing Plan; (b) any federal, provincial or local taxes, payments in lieu of taxes, franchise fees or license fees imposed on the Absolute

Assignee or incurred by on behalf of the Absolute Assignee under any obligation to pay tax gross-up amounts to counterparties under Funding Obligations; (c) any amounts payable to the Financial Services Agent, including amounts payable to its advisors and outside counsel; (d) any amounts incurred to prepare, confirm, amend and implement the Financing Plan; (e) any amounts payable to any Alternative Collection Agent or Alternative Servicer, including amounts payable to each's advisors and outside counsel; (f) any amounts incurred to make the calculations, determinations or confirmations to be made by or on behalf of the Absolute Assignee; (g) any servicing fees and expenses; (h) any trustee fees and expenses; (i) any legal fees, expenses and disbursements; (j) any accounting fees and expenses; (k) any administrative fees and expenses; (l) any manager or director fees of a Financing Entity; (m) any registration fees and expenses; (n) any placement fees, underwriting fees, fees and related issuing expenses; (o) any rating agency fees; and (p) any other related fees, charges, expenses, costs, indemnities, reimbursements and other amounts that are approved in good faith by the Financial Services Agent for recovery and payment under the Financing Plan.

"Allocation Factor" means, in respect of a Retail Consumer for a Reference Period, the number (expressed as a percentage) determined in respect of the Retail Consumer by the OEB based on the application of the Attribution Methodology in respect of the Reference Period.[1]

"Alternative Collection Agent" means a person appointed under Section 5(11) and in compliance with the requirements set out in Schedule 2 to assume the collection activities and activities of any Electricity Distributor or IESO under Article 5, as agent for and on behalf of the Regulatory Asset Owners.

"Alternative Servicer" means a person appointed under Section 4(8) to assume the obligations of the Servicer under Article 4, as agent for and on behalf of the Regulatory Asset Owners.

"Assessed Past Green Transition Costs" means, in respect of a Measurement Date, the aggregate of the imputed costs of the Green Generation Initiative (expressed as an equivalent to current dollars), as reflected in the calculation of the Green Costs Adjustment, which have been charged to Retail Customers through the Global Adjustment on or prior to the Measurement Date.

"Attribution Methodology"[2] means the methodology specified in the Fair Allocation Plan for allocating the Period Transition Charges for a Reference Period to individual Retail Consumers of the applicable Retail Consumer Group based on its Allocation Factor.

"Collected Amount Adjustment" means, in respect of a True-Up Period, the amount (which may be a negative amount) calculated by the Servicer or the Financial Services

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[1] Confirm that this will be based on forecast volumes of demand (like RPP). To the extent amounts do not get recovered due to differences between forecast and actual, those may be identified and caught by the True-Up.

[2] This allocation may be volumetric or some combination of a flat amount and a volumetric charge. Further discussion is required. H&W has raised a concern regarding possible adverse changes after the fact and rating agency considerations. Consider whether hard-coding in the legislation makes sense.

Agent, as applicable, equal to (a) the Estimate of the Finance Amount for the True-Up Period, minus (b) the sum of all Transition Charge Collections for the True-Up Period.[3]

"Collective Rights Agreement" means an agreement among all of the Regulatory Asset Owners (including each Absolute Assignee) and each Pledgee that governs the enforcement of their respective rights and interests in, to and under the Regulatory Asset on a coordinated and collective basis.[4]

"Delegate" means the person or persons designated in writing from time to time by the Minister of Energy to undertake the actions and perform the responsibilities ascribed to the "Delegate" under this Act.

"Disposition" means an assignment, transfer, conveyance, sale, contribution, set-over, exchange or other disposition of an Investment Interest to an Absolute Assignee pursuant to a Disposition Document.

"Disposition Document" means the agreement, deed, conveyance, instrument or other document under which a Regulatory Asset Owner effects a Disposition to an Absolute Assignee.

"Electricity Distributor" means, in respect of a Service Area, the rate regulated distributor licensed under Part V of the *Ontario Energy Board Act, 1998* in respect of such Service Area, together with and its successors.

"Electricity Distributor Remittances" means, for an Electricity Distributor on a Remittance Date, all Transition Charge Collections received or deemed to be received by the Electricity Distributor prior to the Remittance Date and that have not otherwise been remitted to IESO or if applicable the Alternative Collection Agent in accordance with Section 5(3), including the proceeds of any enforcement action undertaken by the Electricity Distributor or if applicable the Alternative Collection Agent to recover payment of Transition Charges in accordance with Article 5.

"Electricity Invoice" means an invoice issued by any of a Electricity Distributor (or in its stead, by an Alternative Servicer), by the Servicer or by a Retailer, in each case to a Retail Consumer that is served by the Electricity Distributor's distribution system in respect of electricity charges, including the cost of electricity, delivery and regulatory charges and related services and amounts incurred, assessed or charged in respect of connectivity to a distribution network in the Electricity Distributor's designated Service Area and in respect of applicable Transition Charges to be charged to the Retail Consumer under this Act.

"Estimate" means (a) in relation to costs, expenses or payments in respect of Funding Obligations or any Finance Amount for a Reference Period, the estimated amount of such costs, expenses or payments determined by the Financial Services Agent; and (b) in relation to an assessment of the benefits of the Green Generation Initiative to any

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[3] This would pick up adjustments based on actual collection experience, changes in the retail consumer base, changes in the actual costs (versus earlier estimates) included in the Transition Charge calculation, etc.

[4] Consider adding the Financial Services Agent and the Servicer as parties.

Retail Consumer Group, the estimated value (in current dollars) of such benefits determined by the Delegate, in each case having regard to the applicable principles and parameters set out in Schedule 1, which estimated amounts shall be determinative as the applicable estimate for the purposes of this Act except to the extent of a manifest calculation error.

"Estimated Future Green Transition Benefits" means, in respect of a Measurement Date, the Estimate set forth in the Fair Allocation Plan prepared in accordance with Article 7 of the aggregate value (measured in current dollars) of the benefits that are expected to accrue to Retail Consumers from the establishment and implementation of the Green Generation Initiative during the period from the Measurement Date to the Program-End Date.

"Estimated Past Green Transition Benefits" means, in respect of a Measurement Date, the Estimate set forth in the Fair Allocation Plan prepared in accordance with Article 7 of the aggregate value (measured in current dollars) of the benefits that have accrued to Retail Consumers from the establishment and implementation of the Green Generation Initiative up to and including the Measurement Date.

"Fair Allocation Plan" has the meaning given in Article 1.

"Finance Amount" means, for a Reference Period in respect of an Absolute Assignee, the sum (without duplication) of the following amounts that are or become payable during the Reference Period in respect of the Absolute Assignee: (a) Repayments; (b) Funding Costs; (c) Redemption Amounts; (d) Finance Reserve Deposits; and (e) Additional Funding Charges.

"Finance Reserve Deposits" means, for a Reference Period, the amount by which (a) deposits made or to be made during the Reference Period in order to pre-fund, collateralize, over-collateralize or establish reserves for the ultimate payment of Funding Obligations or for related contingencies specified in the Financing Plan, exceed (b) any Finance Reserve Withdrawals.

"Finance Reserve Withdrawals" means, for a Reference Period, the amount withdrawn during the Reference Period from deposits previously made to pre-fund, collateralize, over-collateralize or establish reserves for the payment of Funding Obligations or to pay amounts in respect of related contingencies that had been specified in the Financing Plan.

"Financial Services Agent" means OPG or, following any Replacement Event, such other person or persons who may be appointed as the Financial Services Agent of the Absolute Assignees under the Financing Plan in compliance with the requirements set out in Schedule 2.[5]

[5] Discuss whether to accommodate multiple Financial Services Agents. MOE to consider.

"Financing Entity" means an entity established in accordance with the Financing Plan to acquire all or an interest in the Regulatory Asset as an Absolute Assignee and to enter into Funding Obligations to finance such acquisition under the Financing Plan.[6]

"Financing Plan" means the written plan prepared by the Financial Services Agent on behalf of each Absolute Assignee in compliance with Article 9 to set forth the basis upon which, among other things: (a) any Disposition may be made to, financed by or effected by an Absolute Assignee; (b) any Funding Obligations may be incurred by an Absolute Assignee, including any Refinancing; (c) any Pledge may be given or effected; (d) any Funding Obligations may be redeemed, prepaid, repurchased, amended or otherwise effected; (e) any obligations for Additional Funding Charges may be incurred and paid; (f) any Repayments, Funding Costs and Redemption Amounts may be paid or provided for; (g) any Finance Reserve Deposits may be made; (h) any Finance Reserve Withdrawals may be made; (i) the establishment and operation of any Financing Entity may be effected; and (j) the cash flows arising from time to time or otherwise derived from an Investment Interest may otherwise be applied, as the same may be amended, amended and restated or terminated by the Financial Services Agent in compliance with Article 9 from time to time.

"Funding Costs" means, for a Reference Period in respect of an Absolute Assignee, the amount by which (a) the aggregate of all interest and other periodic finance charges accruing due and becoming payable or paid by or on behalf of the Absolute Assignee during the Reference Period in respect of its Funding Obligations, including any standby commitment fees or charges paid to any lender, credit enhancement fees or charges paid to any credit enhancer, liquidity fees or charges paid to any liquidity provider, amounts (including any termination payments) paid under derivatives and any deposit amount made or required to fund or replenish a debt service reserve account or other account established under any indenture, ancillary agreement or other financing document relating to its Funding Obligations, exceeds (b) the aggregate of all amounts received by or on behalf of the Absolute Assignee during the Reference Period in respect of a Funding Obligation, including from any reimbursement of standby commitment fees or charges paid by a lender, any reimbursement of credit enhancement fees or charges paid by any credit enhancer, any reimbursement of liquidity fees or charges paid by any liquidity provider, any amounts (including any termination payments) paid to the Absolute Assignee under derivatives and any Finance Reserve Withdrawal made or required to be made from a debt service reserve account or other account established under any indenture, ancillary agreement or other financing document relating to the payment of the Funding Costs payable in respect of a Funding Obligation for the Reference Period.

"Funding Obligation" means, in respect of an Absolute Assignee, each payment obligation (including each obligation to pay: principal, interest, premiums and other

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[6] MOE to confirm that the legislation will provide that any Financing Entity that is a wholly-owned subsidiary of OPG (1) would not be subject to Part VI of the *Electricity Act* (Ontario) and (2) in the case of any Financing Entity that is a trust, any income of such trust (for purposes of the *Income Tax Act* (Canada) or the *Taxation Act, 2007* Ontario)) which is paid or made payable to OPG or a wholly-owned subsidiary of OPG as a beneficiary of such trust will not be taken into account in calculating the amount of a payment required to be made by OPG (or such subsidiary) by section 89 or 90 of the Electricity Act.

financing charge payments; pass-through payments; payment obligations arising under or in respect of derivatives; payment obligations owing to service providers, Financial Services Agents, finance entity intermediaries, capital markets intermediaries, advisors, lenders, credit enhancement providers, liquidity providers, disbursement counterparties, regulatory agencies and rating agencies; and all Additional Funding Charges incurred by or on behalf of the Absolute Assignee under the Financing Plan, including any Refinancing of another such payment obligation incurred by or on behalf of such Absolute Assignee.

"Future Fair Share of Green Transition Benefits" means, in respect of a Measurement Date, the sum of (a) the Over-Assessed Amount; and (b) the Estimated Future Green Transition Benefits, in each case as of the Measurement Date.

"Generator" means a generator of electricity that is subject to the *Electricity Act, 1998*.

"Global Adjustment" has the meaning given in Article 1.

"Green Costs Adjustment" has the meaning given in Article 1.

"Green Generation Initiative" has the meaning given in Article 1.

"IESO" means the Independent Electricity System Operator created pursuant to Part II of the *Electricity Act, 1998*.

"IESO Available Amount" means, for a Reference Period, the lesser of (a) the amount (if any) by which (i) the Maximum Transition Charge Amount for the Reference Period, exceeds (ii) Period Finance Amount for the Reference Period, and (b) the IESO Retained Interest Amount as of the [35th] day prior to the first day of a Reference Period plus any IESO Financing Costs that are due and payable and remain unpaid as of the [35th] day prior to the first day of a Reference Period.

"IESO Electricity Distribution Receipts" means, for a month, the sum of all amounts payable by Electricity Distributors to IESO during the month pursuant to section • of the *Electricity Act*.

"IESO Financing Costs" means, for a Reference Period, the financing costs (if any) incurred by IESO pursuant to Section 8(4) in order to finance its ownership of the IESO Retained Interest during the Reference Period.

"IESO Funding Shortfall" means, for a month, the amount, if any, by which (a) the IESO Electricity Distribution Receipts that would be payable to IESO for the month if determined without regard to this Act and without regard to the changes made to section 25.33 of, and O.Reg. 429/4 under, the *Electricity Act* with respect to the Global Adjustment concurrently with this Act, exceeds (b) the IESO Electricity Distribution Receipts payable to IESO for the month[7]; provided that if the amount of any such shortfall is determined to have been based on incomplete information, variances or

[7] This has been recast to recognize that the shortfall in the first 4.5 years could exceed the entire GA amount. A more refined approach to describing the concept may be considered.

estimates that were inaccurate, an adjustment shall be made in determining the amount of any subsequent shortfall for the month in which the inaccuracy is identified.

"IESO Recovery" means each amount remitted to IESO (including by IESO retaining such amount) in respect of the IESO Retained Interest pursuant to Section 5(6)(b), and "IESO Recoveries" means, collectively, all such amounts received by IESO.

"IESO Remittances" means, for a Settlement Date, all Electricity Distributor Remittances received by IESO or if applicable the Alternative Collection Agent prior to the Settlement Date and that have not otherwise been remitted to the Regulatory Asset Owners (each with respect to its Regulatory Asset) in accordance with Section 5(6), including the proceeds of any enforcement action undertaken by IESO or if applicable the Alternative Collection Agent to recover payment of amounts payable by Electricity Distributors to IESO in accordance with Article 5.

"IESO Retained Interest" means IESO's right, title and ownership interest (if any) in, to and under the Regulatory Asset, which shall exclude each Investment Interest.

"IESO Retained Interest Amount" means, on a day, (a) the sum of all IESO Funding Shortfalls incurred prior to the day, plus (b) the sum of all IESO Funding Costs incurred prior to the day in accordance with Section 8(4), minus (c) the net proceeds received by IESO from or on behalf of each Absolute Assignee as consideration for the Disposition of each Investment Interest paid to IESO by or on behalf of such Absolute Assignee prior to the day, and minus (d) the IESO Recoveries received by IESO prior to the day.

"IESO Successor" means the entity appointed by the Province to succeed to the rights and obligations of IESO as the entity responsible for managing the Province's electricity system.

"Investment Interest" means an ownership interest in, to or under the Regulatory Asset that is acquired by an Absolute Assignee pursuant to a Disposition, which ownership interest may include (without limitation) ownership of a specified portion on a divided basis of the assets comprising the Regulatory Asset and ownership of an undivided ownership interest in the Regulatory Asset, in each case as may be described in the applicable Disposition Document.

"Investment Remittance" means, for a month, the lesser of (a) the aggregate amount of all IESO Remittances for the month, and (b) the sum of the Finance Amounts due and payable by all Absolute Assignees in respect of the month.

"Maximum IESO Recovery" means, for a month, the amount (if any) by which (a) the IESO Remittances for the month, exceed (b) the sum of all Finance Amounts that are due and payable by Absolute Assignees in respect of the month.

"Maximum Transition Charge Amount" means, for a Reference Period, (a) the aggregate amount of Future Fair Share of Green Transition Benefits that are allocable to the applicable Retail Consumer Group in accordance with the Fair Allocation Plan, divided by (b) the applicable Reference Period Length.

"Measurement Date" means [Insert relevant date around the Legislation Implementation Date] and any other date specified as such under the Fair Allocation Plan.

"OEB" means the Ontario Energy Board, together with its successors.

"OPG" means the corporation incorporated as Ontario Power Generation Inc. under the *Business Corporations Act* on December 1, 1998, together with its successors.

"Over-Assessed Amount" means, in respect of a Measurement Date, the amount (if any) by which (a) the Assessed Past Green Transition Costs, exceeds (b) the Estimated Past Green Transition Benefits, each as determined as of the Measurement Date.

"Period Finance Charges" means, for a Reference Period, the sum of (a) the Estimate of the Finance Amount and (b) the True-Up Amount in respect of the immediately preceding Reference Period.

"Period Transition Charges" means, for a Reference Period, the sum of (a) the Period Finance Charges for the Reference Period and (b) the IESO Available Amount for the Reference Period.

"Pledge" means, in respect of an Investment Interest of an Absolute Assignee, a lien, mortgage, charge or security interest granted to or in favour of a Pledgee by the Absolute Assignee in, to and over all or a specified portion (including a specified portion on a divided basis or by way of an undivided interest) of the Investment Interest.

"Pledgee" means a person to whom an Absolute Assignee grants a Pledge.

"Program End Date" means •, [2047].

"Province" means the Province of Ontario.

"Redemption Amount" means the amount payable by or on behalf of an Absolute Assignee to redeem, prepay or repurchase a Funding Obligation incurred by or on behalf of the Absolute Assignee, including any premium, make-whole or other additional amount becoming payable under the Funding Obligation to give effect to such redemption, prepayment or repurchase.

"Reference Period" means (a) the period from (and including) the Measurement Date to (and including) June 30, 2017, (b) each six month period commencing [May 1st and November 1st] thereafter and (c) any other period specified as such in the Fair Allocation Plan.

"Reference Period Length" means, for a Reference Period, the number of months in the Reference Period.

"Refinancing" means, in respect of a Funding Obligation incurred by or on behalf of an Absolute Assignee, that the Funding Obligation is repaid or repurchased for cancellation by or on behalf of the Absolute Assignee by applying the net proceeds obtained by the Absolute Assignee incurring one or more other Funding Obligations.

"Regulatory Asset" means the property rights and interests described in Section 6(1), which collectively is comprised of the IESO Retained Interest and each Investment Interest.

"Regulatory Asset Account" means (a) for an Electricity Distributor, any bank account into which the Electricity Distributor deposits or receives Transition Charge Collections; (b) for the Servicer, any bank account into which IESO deposits or receives Transition Charges, Electricity Distributor Remittances or IESO Remittances; and (c) if applicable, for the Alternative Collection Agent, any bank account into which the Alternative Collection Agent deposits or receives Transition Charge Collections, Electricity Distributor Remittances or IESO Remittances.

"Regulatory Asset Owner" means each of (a) IESO, as owner of (and to the extent of) the IESO Retained Interest and (b) each Absolute Assignee, as owner of its Investment Interest or Investment Interests, and "Regulatory Asset Owners" means collectively IESO and each such Absolute Assignee, who together own the entirety of the Regulatory Asset and are required to exercise their individual rights of ownership in accordance with Section 6(7).

"Related Rights" means all rights of any kind (whether in tort, contract or otherwise) that attach or are attendant or incidental to any of the other property rights or interests that comprise such Regulatory Asset.

"Remittance Date" means, in respect of an Electricity Distributor, each day on which it is required to remit Electricity Distribution Remittances to IESO or if applicable the Alternative Collection Agent as specified in accordance with any Funding Obligation or, if no such day is specified in accordance with any Funding Obligation, then the Business Day preceding each Settlement Date.

"Repayment Obligation" means an obligation to repay, redeem or repurchase, or to provide for the repayment, redemption or repurchase (including by making a related Finance Reserve Deposit) of, all or a portion of the amount advanced to the Absolute Assignee under a Funding Obligation.

"Repayment" means a payment by an Absolute Assignee made to satisfy a Repayment Obligation, other than to the extent that the payment is made by applying the proceeds of a Refinancing or from Finance Reserve Withdrawals.

"Replacement Event" means any event specified as such in a Funding Obligation.

"Retail Consumer" means:

(a) present and future consumers of electricity in the Province who are (i) consumers designated under section 79.16 of[, and O.Reg 95/05 under,] the *Ontario Energy Board Act, 1998*, or (ii) hold or are deemed to hold an "eligible account" under the *Ontario Rebate for Electricity Consumers Act, 2016*, other than any such consumer who has a contract with a Retailer who uses Retailer Consolidated Billing; and

(b) present and future Retailers who use Retailer Consolidated Billing,

and each case includes all such consumers and Retailers who are connected, directly or indirectly and whether a customer of an Electricity Distributor or not, to the transmission and distribution system assets located in the Province and who are taking electric delivery service within the Province, whether or not such retail consumers produce their

own electricity or purchase electric generation services from a provider of electric generation services other than the owner of the Province's transmission and distribution system assets and whether or not the transmission and distribution system assets continue to be owned or operated by Electricity Distributors or operated by IESO.

"Retail Consumer Group" means, in relation to a Reference Period, the Retail Consumers who receive Electricity Invoices during the Reference Period.

"Retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity.

"Retailer Consolidated Billing" has the same meaning as in the *Retail Settlement Code* issued by the Ontario Energy Board.

"Service Area" means, in respect of an Electricity Distributor, the geographic area or region in which it is licensed to distribute electricity in accordance with the *Electricity Act, 1998*.

"Servicer" means IESO or IESO Successor, as agent for and on behalf of the Regulatory Asset Owners, for the purposes set forth in Article 4.

"Settlement Date" means the [last Business Day of any month].

"Transition Charge" means, for a Retail Consumer in respect of a Reference Period, (a) the Period Transition Charge, (b) multiplied by its Allocation Factor in respect of the Reference Period, divided by (c) the applicable Reference Period Length.

"Transition Charge Collection" means any amount received or deemed by this Act to have been received upon the collection of a Transition Charge paid by or on behalf of a Retail Consumer, including any proceeds arising from the exercise and enforcement of any related rights and interests under or in respect of the Regulatory Asset.

"True-Up Amount" means, in respect of a Reference Period, the amount (which may be a negative amount) calculated by the Financial Services Agent equal to (a) the Estimate of the Finance Amount for the related True-Up Period, minus (b) the Actual Finance Amount for such related True-Up Period, plus (c) the Collected Amount Adjustment for such related True-Up Period.

"True-Up Period" means, in relation to a Reference Period, the period from and including the [30th] day immediately preceding the first day of the Reference Period, to but excluding the [30th] day immediately preceding the last day of the Reference Period.

"Undertaking of the Lieutenant Governor in Council" means the undertaking of the Lieutenant Governor in Council given under Section 11(2).

Article 3 – Transition Charges

(1) **Retail Consumer Obligation to Pay a Transition Charge** – Each Retail Consumer shall pay each Transition Charge charged to it in any Electricity Invoice issued to such Retail Consumer by its Electricity Distributor or by an Alternative Servicer under Section 4(1), in each case on the terms of payment specified in the related Electricity Invoice.

(2) **Indebtedness of Retail Consumers** – Until paid, a Transition Charge charged to a Retail Consumer in an Electricity Invoice shall, together with any applicable late payment fees and finance charges arising under the terms of the Electricity Invoice with respect to such Transition Charge, constitute non-bypassable indebtedness of the Retail Consumer to the Regulatory Asset Owners, each with respect to its respective interest in the Regulatory Asset. Such indebtedness shall constitute a single and separate[8] debt obligation owing by the Retail Consumer, which subject to Article 5 may be enforced independently from any other payment obligation or indebtedness owing by the Retail Consumer under the Electricity Invoice or otherwise.[9]

(3) **No Set-Off or Reduction** – A Retail Consumer may not set-off or reduce (by counterclaim, defense or otherwise) the amount payable by it in respect of any Transition Charge, including any set-off against or in respect of any amount owing or becoming payable to such Retail Consumer by its Electricity Distributor, any Regulatory Asset Owner or any other person.

(4) **Allocation of Retail Consumer Payments** – If an Electricity Distributor receives a payment made by or on behalf of a Retail Consumer in respect of amounts due and payable under one or more Electricity Invoices that is less than the total amount payable thereunder, such payment shall be allocated on a *pro rata* basis to the payment of related Transition Charges and other invoiced amounts and the amount so allocated as a payment of related Transition Charges shall be deemed to constitute a Transition Charge Collection.

(5) **Transition Charges are Irrevocable** – The Transition Charges arising under or in respect of Funding Obligations incurred under the Financing Plan (including any adjustments based on modifications to such Funding Obligations made in compliance with the Financing Plan or as a result of amendments to the Financing Plan made in accordance with Section 9(3)) are deemed to be irrevocable, final and effective without any further action, except to the extent of manifest calculation error. For greater certainty, a Transition Charge may include Finance Amounts for a Reference Period whether or not the payment of such Finance Amounts are inconsistent with the Fair Allocation Plan applicable at the time such payments are due and payable, whether or not the related Funding Obligation was properly incurred under the Financing Plan. In no case shall a Funding Obligation incurred under the Financing Plan be affected by a subsequent amendment to the Fair Allocation Plan.

Article 4 – Invoicing of Transition Charges

(1) **Inclusion of Transition Charges in Electricity Invoices** – Each Electricity Distributor and if applicable any Alternative Servicer shall, as an agent of the Regulatory Asset Owners, specify the Transition Charge to be charged to a Retail Consumer pursuant to Section 4(4) in respect of a related Reference Period in each Electricity Invoice issued

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[8] Determine if this is critical for rating and markets. Logistics under consideration.

[9] Torys has also suggested that deemed conditions of licenses for distributors, retailers and unit sub-metering providers, could be included as conditions, to require them to collect and remit amounts in accordance with this legislation. Consider if it is helpful to integrate the existing regulatory scheme for invoicing and collections (regarding RPP) in the legislation.

by the Electricity Distributor or if applicable by the Alternative Servicer to the Retail Consumer in respect of such Reference Period. Upon the inclusion of a Transition Charge in an Electricity Invoice, the obligation to pay such amount shall be binding on the applicable Retail Consumer.

(2) **Calculation of the Period Transition Charge** – Not later than [35] days prior to the first day of a Reference Period, each Absolute Assignee (or the Financial Services Agent on its behalf) shall provide the OEB with written notice of each Estimate of a Finance Amount payable by it or on its behalf in respect of the Reference Period. [35] days prior to the first day of a Reference Period, IESO or Successor IESO if applicable shall specify the IESO Retained Interest Amount and any IESO Financing Costs that are due and payable and remain unpaid on such day. Not later than one month prior to the first day of a Reference Period, the OEB shall calculate the Period Transition Charge applicable to the Reference Period based on the calculations and information set forth in such written notices received from the Absolute Assignees and based on such amounts specified by IESO or Successor IESO, which calculations, information and amounts shall be determinative, except to the extent of manifest calculation error or misstatement.

(3) **Calculation and Attribution of Transition Charges** – Not later than 25 days prior to the first day of a Reference Period, the OEB shall apply the Attribution Methodology to determine the Allocation Factor for each Retail Consumer of the applicable Retail Consumer Group.

(4) **Notice of Transition Charges** – Not later than 20 days prior to the first day of a Reference Period, the OEB shall inform each Electricity Distributor and if applicable any Alternative Servicer of the Transition Charges to be specified in the Electricity Invoices to be issued to each Retail Consumer of the applicable Retail Consumer Group who has a billing address in the Electricity Distributor's Service Area.

(5) **Adjustments** – The amount of any Transition Charge charged to a Retail Consumer and specified as such in an Electricity Invoice shall be determinative of the amount of indebtedness created thereby and owing in respect of such Transition Charge, except to the extent of any manifest calculation error.

(6) **Successors of Electricity Distributors** – Any successor of an Electricity Distributor shall be bound by the requirements of Article 4 and shall perform and satisfy all duties and obligations of such Electricity Distributor under Article 4 in the same manner and to the same extent as such Electricity Distributor, including the obligation under Article 4 to impose, attribute, charge, bill and invoice the Transition Charges.

(7) **IESO Successor** – Any IESO Successor shall be bound by the requirements of Article 4 and shall perform and satisfy all duties and obligations of IESO under Article 4 in the same manner and to the same extent as IESO, including the obligation to calculate and provide notice of Transition Charges.

(8) **Appointment of an Alternative Servicer** – If a Replacement Event occurs in respect of any Electricity Distributor, the Absolute Assignees shall, in accordance with the Collective Rights Agreement, be permitted, by an instrument in writing, to appoint an Alternative Servicer to perform some or all of the obligations and duties required to be undertaken by such Electricity Distributor under this Article 4, as and to the extent specified in such appointment. Upon acceptance of such appointment, the Alternative

Servicer shall become obligated to perform such assumed obligations in replacement of such Electricity Distributor. Any Electricity Distributor that is replaced under this Section 4(8) shall promptly transfer all rights, powers, privileges and property interests in its possession or within its control in the performance of such obligations and duties to the Alternative Servicer and shall take such further actions, including the execution of instruments, necessary to give full and final effect to such transfer and to permit the Alternative Servicer to perform such obligations and duties on behalf of the Regulatory Asset Owners.

(9) **Absolute Assignees have Standing** – The Absolute Assignees, acting together in accordance with the Collective Action Agreement, may bring actions against any Electricity Distributor, IESO, the Servicer, Alternative Servicer or any other person who may be authorized to issue Electricity Invoices to Retail Consumers for a failure to impose, attribute, charge, bill or invoice Transition Charges. Any court of the Province shall have jurisdiction over any actions brought before it by the Absolute Assignees in relation to any such failure.

(10) **No Set-Off or Reduction –** No Servicer or Electricity Distributor may set off or reduce (by counterclaim, defence or otherwise) the amount payable by it pursuant to this Article 4.

(11) **Regulations** – Regulations may be enacted for the purpose of specifying further rights, powers, privileges, duties and obligations that shall apply to IESO, any Electricity Distributor or any Alternative Servicer to ensure that Transition Charges are properly charged to Retail Consumers and specified as such in Electricity Invoices.

Article 5 – Collections and Remittances

(1) **Duty to Collect as Agent** – Electricity Distributors or if applicable any Alternative Collection Agent shall, as an agent of the Regulatory Asset Owners, undertake [diligent][reasonable][10] efforts to collect amounts owing by Retail Consumers in respect of Transition Charges charged to such Retail Consumers in Electricity Invoices issued by the Electricity Distributor or if applicable such Alternative Collection Agent.

(2) **Segregation of Transition Charge Collections** – An Electricity Distributor or if applicable any Alternative Collection Agent shall promptly segregate Transition Charge Collections from other payments received by it from Retail Consumers and deposit such Transition Charge Collections into its Regulatory Asset Account.[11] Prior to and following a deposit of Transition Charge Collections having been made into its Regulatory Asset Account, the Electricity Distributor or if applicable any Alternative Collection Agent shall hold such amounts in trust for the Regulatory Asset Owners.

(3) **Electricity Distributor Remittances** – On each applicable Remittance Date, an Electricity Distributor shall remit all Transition Charge Collections received by it from Retail Consumers in respect of the related Reference Period to or to the account of IESO or if applicable the Alternative Collection Agent.

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[10] Mirror collection “standard of care” under applicable legislation.

[11] Consider trying to attach to existing LDC credit enhancements and provide parallel coverage for customer losses.

(4) **Duty to Collect Electricity Distributor Remittances** – IESO or if applicable any Alternative Collection Agent shall, as an agent of the Regulatory Asset Owners, undertake [diligent][reasonable] efforts to accept and collect Electricity Distributor Remittances from Electricity Distributors and Transition Charge Collections from Retail Consumers that pay their Electricity Invoices directly to IESO.[12]

(5) **Segregation of Electricity Distributor Remittances** – IESO and if applicable the Alternative Collection Agent shall promptly segregate Electricity Distributor Remittances from other payments received or held by it and deposit such Electricity Distributor Remittances into its Regulatory Asset Account. Prior to and following a deposit of Electricity Distributor Remittances having been made into its Regulatory Asset Account, IESO or if applicable any Alternative Collection Agent shall hold such amounts in trust for the Regulatory Asset Owners.

(6) **IESO Remittances** – On each Settlement Date[13], IESO and if applicable the Alternative Collection Agent shall remit all amounts on deposit in its Regulatory Asset Account (a) first, to or to the account of the Absolute Assignees an amount equal to the Investment Remittance for the related month and (b) second, to IESO (including by IESO retaining such amount) an amount equal to the lesser of (i) the Maximum IESO Recovery for the related month and (ii) the IESO Retained Interest Amount as of the Settlement Date.

(7) **Successors of Electricity Distributors** – Any successor of an Electricity Distributor shall be bound by the requirements of Article 5 and shall perform and satisfy all duties and obligations of such Electricity Distributor under Article 5 in the same manner and to the same extent as such Electricity Distributor, including the obligation under Article 5 to collect Transition Charges and make remittances of Electricity Distributor Remittances.

(8) **IESO Successor** – IESO Successor shall be bound by the requirements of Article 5 and shall perform and satisfy all duties and obligations of IESO under Article 5 in the same manner and to the same extent as IESO, including the obligation to collect Transition Charge Collections, Electricity Distributor Remittances and to remit IESO Remittances.

(9) **Owners of Distribution Assets** - If any person other than an Electricity Distributor acquires distribution system assets in the Province or invoices or collects electricity distribution rates in the Province[14], then such person shall, if requested by the Absolute Assignees, be obligated to act diligently to (a) facilitate the invoicing and collection of any Transition Charges applicable to Retail Consumers in its applicable service area, including all consumers connected to the electricity distribution system assets and taking electric delivery service located within such service area; (b) allocate partial payments by Retail Consumers as provided in this Act; (c) exercise all enforcement rights of the Absolute Assignees for the benefit of an Absolute Assignee; and (d) remit any Transition Charge Collections to the Absolute Assignees or Pledgees, as applicable, each in accordance with its Investment Interest.

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[12] Consider building this obligation into a deemed condition of licence for the IESO.

[13] Consider frequency of remittances in light of rating requirements. US rating agencies favour daily remittances.

[14] This is in anticipation of a possible future restructuring of the distribution system.

(10) **Absolute Assignees have Standing** – The Absolute Assignees, acting together in accordance with the Collective Action Agreement, may bring actions against any Electricity Distributor, IESO, the Alternative Collection Agent, any owner of electricity distribution system assets in the Province or any other person who may be authorized to collect electricity distribution and use charges from Retail Consumers for a failure to collect Transition Charges, remit or collect Electricity Distributor Remittances or remit IESO Remittances, as and to the extent applicable under Article 5. Any court of the Province shall have jurisdiction over any actions brought before it by the Absolute Assignees in relation to any such failure.

(11) **Appointment of an Alternative Collection Agent** – If a Replacement Event occurs in respect of any Electricity Distributor or IESO, the Absolute Assignees shall, in accordance with the Collective Rights Agreement, be permitted, by an instrument in writing, to appoint an Alternative Collection Agent to perform some or all of the collection, segregation and remittance obligations otherwise required to be undertaken by such Electricity Distributor or IESO, as applicable, under Article 5, as and to the extent specified in such appointment. Upon acceptance of such appointment, the Alternative Collection Agent shall become obligated to perform such assumed obligations in replacement of such Electricity Distributor or IESO, as applicable. Any Electricity Distributor or IESO, as applicable, that is replaced under this Section 5(11) shall promptly transfer all rights, powers, privileges and property interests in its possession or within its control in, to and over the Regulatory Asset, including its Regulatory Asset Account, to the Alternative Collection Agent and shall take such further actions, including the execution of instruments, necessary to give full and final effect to such transfer and to permit the Alternative Collection Agent to enforce the Regulatory Asset on behalf of the Absolute Assignees.

(12) **No Set-off, etc.** - The Regulatory Asset, including rights in Transition Charges, Transition Charge Collections, and the interests of a Regulatory Asset Owner, an Absolute Assignee and a Pledgee therein, may not be setoff or reduced (including by counterclaim, surcharge or defense) by any Retail Consumer, any Electricity Distributor, IESO, Alternative Collection Agent or any owner of distribution system assets in the Province or any other person or in connection with any default, bankruptcy, reorganization or other insolvency proceeding of any Electricity Distributor, IESO, Alternative Collection Agent or any owner of distribution system assets in the Province, any affiliate or successor thereof or any other entity or otherwise.[15]

(13) **Sequestration** – If any Electricity Distributor, IESO, the Alternative Collection Agent or any owner of distribution system assets in the Province or any other person or entity authorized to collect Transition Charges, defaults on any required remittance of Transition Charge Collections, Electricity Distribution Remittances or IESO Remittances under Article 5, any court in the Province, upon application by and of the Absolute Assignees acting collectively under the Collective Action Agreement and without limiting any other remedies otherwise available to the Absolute Assignees or Pledgees, shall order the sequestration and payment of the Transition Charge Collections, Electricity

[15] Consider whether it makes sense to create a "deemed collection" payment obligation on Electricity Distributors to the extent a Retail Consumer reduces its payment of Transition Charges, despite this language. Same for Electricity Distributor Remittances and IESO Remittances.

Distribution Remittances and IESO Remittances, as applicable, for the benefit of the Absolute Assignees, each with respect to its Investment Interest, and the Pledgees as applicable.[16]

(14) **Regulations** – Regulations may be enacted for the purpose of specifying further rights, powers, privileges, duties and obligations that shall apply to IESO, any Electricity Distributor or any Alternative Collection Agent to ensure that rights, interests, entitlements, benefits and proceeds in, to, under and from the Regulatory Asset are of fully realized by some or all of the Absolute Assignees and Pledgees.

Article 6 – The Regulatory Asset

(1) **Composition** – The Regulatory Asset shall constitute a current and irrevocable property right and interest consisting, collectively, of the following rights and interests (without duplication):

a. the right of IESO (i) to record its IESO Retained Interest in its accounts in accordance with Section 8(1), having a stated amount from time to time equal to the IESO Retained Interest Amount; and (ii) to receive IESO Recoveries from time to time in accordance with Section 5(6)(b);

b. the right to impose, bill, invoice, collect and receive Transition Charges from Retail Consumers, including the right to determine the amount of Transition Charges in accordance with this Act;

c. the right to enforce the obligations and indebtedness of each Retail Consumer to pay the Transition Charges charged to the Retail Consumer from time to time in accordance with Article 3, together with all related late payment fees or interest charges arising in respect thereof under the related Electricity Invoices;

d. the right to enforce the duties and obligations of each Electricity Distributor and if applicable the Alternative Servicer to impose, attribute, charge, bill and invoice the Transition Charges in accordance with Article 4;

e. the right to enforce the duties and obligations of each Electricity Distributor and if applicable the Alternative Collection Agent to collect, receive and remit amounts received by it in respect of Transition Charges as Electricity Distributor Remittances to or to the account of IESO or if applicable the Alternative Collection Agent in accordance with Article 5, including all collections and the proceeds of any enforcement action undertaken by the Electricity Distributor or if applicable the Alternative Collection Agent to recover payment of Transition Charges in accordance with Article 5;

f. the right to enforce the duties and obligations of IESO and if applicable the Alternative Collection Agent to collect and receive Electricity Distributor Remittances and to remit IESO Remittances to or to the accounts of the

[16] Consider adding or substituting this provision for a right to appoint a receiver.

Regulatory Asset Owners, each with respect to its respective interest in the Regulatory Asset, in each case in accordance with Article 5, including all collections and the proceeds of any enforcement action undertaken by it to recover payment of Electricity Distributor Remittances in accordance with Article 5;

g. the right to receive and collect all Transition Charge Collections, all Electricity Distributor Remittances and all IESO Remittances in accordance with Article 5;

h. all rights and entitlements under each Regulatory Asset Account and all amounts on deposit in any such Regulatory Asset Account;

i. all Related Rights; and

j. all revenue, collections, claims, payments, money and proceeds of or derived from the rights described in (a) through (i), regardless of whether such revenue, collections, claims, payments and proceeds are imposed, invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

A Regulatory Asset and the property rights and interests therein shall exist whether or not Transition Charges have been imposed, charged, invoiced, accrued or collected and notwithstanding that the imposition, attribution, invoicing and collection of Transition Charges will depend on further actions that may not have occurred.

(2) **Validity of Dispositions** – Despite any limitations or restrictions on a Disposition that may arise by contract or by operation of any applicable law of the Province or any consent requirement applicable to a Disposition that may arise by operation of any applicable law of the Province, a Disposition by IESO to an Absolute Assignee made under the Financing Plan, or by one Absolute Assignee to another Absolute Assignee made under the Financing Plan, shall be permitted and when made shall be valid and enforceable in accordance with the terms of the related Disposition Document and shall be effective to confer upon the Absolute Assignee thereof a valid property right and interest in, to and under the applicable Investment Interest (or relevant portion thereof) in accordance with the terms of such Disposition, provided that the parties to the applicable Disposition Document have expressly stated therein that such Disposition is a sale or other absolute transfer. Without limiting the foregoing, any Disposition that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as a true sale and absolute transfer of the Regulatory Asset Owner's applicable right, title, and interest in, to and under the Regulatory Asset (or relevant portion thereof), and not merely as a Pledge thereof, and upon such Disposition the assigner or seller under the applicable Disposition Document shall retain no right, title or interest in the Investment Interest subject to the Disposition, including all rights under the Investment Interest arising after such Disposition.

(3) **Perfection and Priority of Dispositions** – Any Disposition of an interest in a Regulatory Asset shall be vested, valid, binding and perfected from the time when such Disposition is made. Such Disposition shall be perfected, vested, valid and binding as against the transferring Regulatory Asset Owner and all other persons who have claims of any kind (whether in tort, contract or otherwise) against the transferring Regulatory Asset Owner, irrespective of whether such persons have notice of the Disposition and

the property rights and interests acquired by the Absolute Assignee under such Disposition shall be free and clear of any liens in favour of such other persons.

(4) **Validity of Pledges** – Despite any limitations or restriction on a Pledge that may arise by contract or by operation of any applicable law of the Province or any consent requirement applicable to a Pledge that may arise by operation of any applicable law of the Province, a Pledge by an Absolute Assignee may be made to secure any related Funding Obligation and when made shall be valid and enforceable in accordance with its terms and shall be effective to confer upon the Pledgee a valid security interest in, to and in respect of the related Investment Interest in accordance with the terms of the Pledge. Other than as required by the Financing Plan, no consent of any person shall be required to give effect to a Pledge made to secure any Funding Obligation.

(5) **Perfection and Priority of Pledges** - For purposes of the *Personal Property Security Act* (the "PPSA"), the Regulatory Asset shall be intangible personal property and any Pledge made by an Absolute Assignee in respect of a Funding Obligation may be perfected by filing a financing statement under the PPSA on that basis. All proceeds of a related Investment Interest that are subject to such a Pledge that are received by the Absolute Assignee shall immediately be subject to the such Pledge, and the security interest in such proceeds shall be perfected pursuant to the PPSA.[17] A Pledge perfected under the PPSA shall be a continuously perfected security interest and shall have priority over any other lien or security interest, created by operation of law or otherwise, that may attach to the property rights and interests in the Investment Interest subject to the Pledge unless the Pledgee has otherwise agreed in writing. Subject to the terms of the Collective Action Agreement, a Pledgee shall have a perfected security interest in a related Investment Interest, including the Absolute Assignee's rights and interests in and to Transition Charge Collections or other related proceeds in respect of the Investment Interest and that are deposited in any Regulatory Asset Account or other account of any Electricity Distributor, IESO, Alternative Collection Agent or other person who may have commingled such Transition Charge Collections or such other proceeds with other funds. All provisions of the PPSA shall apply to the Regulatory Asset on the basis that it is intangible personal property, except to the extent otherwise provided in this Section 6(5).

(6) **Enforcement of Property Rights** – The rights of any Regulatory Asset Owner to collect and enforce its rights and interests in, to or in respect of the Regulatory Asset shall be exercised in the manner set forth in Article 5.

(7) **Owners of a Specified Portion of the Regulatory Asset** – A Regulatory Asset Owner may effect a Disposition to an Absolute Assignee of a specified portion of its rights and interests in the Regulatory Asset, including by way of a Disposition of a divided or an undivided interest therein as specified in a related Disposition Document, in each case under the Financing Plan. In no circumstance may the specified portions of the rights and interests in the Regulatory Asset owned by all Regulatory Asset Owners be greater than all of the rights and interests that comprise the Regulatory Asset in the aggregate.

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[17] Consider whether to simply leave this and have a financing statement be filed under the PPSA. This would normalize the security interest and reduce any adverse suggestion that security would not otherwise arise.

(8) **Collective Action Required** – If a Regulatory Asset Owner's rights and interests in the Regulatory Asset comprises less than the entire property right and interest constituted by the Regulatory Asset, such Regulatory Asset Owner shall only enforce such right and interest on a collective and coordinated basis with each other Regulatory Asset Owner in accordance with the Collective Rights Agreement.

Article 7 – Establishment of the Fair Allocation Plan[18]

(1) Adoption of the Fair Allocation Plan – The Delegate may, [by written declaration,] designate and adopt a Fair Allocation Plan in compliance with Article 7. The Fair Allocation Plan so designated and adopted shall be the Fair Allocation Plan for all purposes of this Act, except if amended, amended and restated or terminated by a further written declaration made by the Delegate in compliance with Section 7(4).

(2) Principles and Parameters – A Fair Allocation Plan shall seek to allocate Future Fair Share of Green Transition Benefits across present and future Retail Consumer Groups on a basis that the Delegate, in its sole and absolute discretion, determines to be equitable, having regard to the following principles and parameters:

1. Future Fair Share of Green Transition Benefits should be allocated over the period ending on the Program End Date.

2. The Fair Allocation Plan should specify the Reference Periods for the purpose of identifying applicable Retail Consumer Groups and allocating Future Fair Share of Green Transition Benefits among them on a relative basis over time.

3. The share of Future Fair Share of Green Transition Benefits allocable to a particular Retail Consumer Group in respect of a Reference Period should be proportionate to a reasonable assessment of the benefits of the Green Generation Initiative to the Retail Consumer Group over such Reference Period.

4. The share of Future Fair Share of Green Transition Benefits to be allocated to a Retail Consumer Group and any future Retail Consumer Group at a particular time should not exceed the Estimated Future Green Transition Benefits, measured in respect of the Reference Periods following such particular time and to the Program End Date.

5. No future Retail Consumer Group should be allocated an unreasonably disproportionate share of Estimated Future Green Transition Benefits. Except in exceptional circumstances or in the case of any reallocation of an Over-Assessed Amount as contemplated in 7, below, the Future Fair Share of Green Transition Benefits to be allocated under a Fair Allocation Plan to any future

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18 The idea is that the Fair Allocation Plan will be set once at the outset based on the principles and parameters described here, all as applied based on information available and the reasonable expectations and discretion of the delegate at such time. If the expectations are not fulfilled (e.g., generators may choose to retire their facilities at the end of their current procurement contracts and not invest in extending service lives to secure further procurement contracts), the Fair Allocation Plan will be unaffected, unless it is specifically amended (assuming amendments will be permitted by the legislation).

Retail Consumer Group should have regard to *[Insert formula if a year-over-year maximum amount is determined to be appropriate]*.

6. The time value of money should be reflected in the Fair Allocation Plan, in order to equate the relative values of the nominal allocations of Future Fair Share of Green Transition Benefits, calculated in current dollars, to future Retail Consumer Groups over time.

7. To the extent there has been an Over-Assessed Amount, the Fair Allocation Plan may determine that an adjustment should fairly be made to rebate Retail Consumers for such an amount, by reducing the costs otherwise attributable under the Act to such Retail Consumers. The relative costs of the Green Generation Initiative are reflected under the Act by the attribution of Transition Charges to such Consumer Groups, based on the Financing Plan seeking to track the allocations of benefits under the Fair Allocation Plan. Accordingly, the Maximum Transition Charge Amount determined for one or more Retail Consumer Groups having regard to the Fair Allocation Plan otherwise applicable may be appropriately reduced to recognize the effect of the Over-Assessed Amount. In such a case, a determination to reduce the Maximum Transition Charge Amount applicable for certain related Reference Periods should have regard to the principle that the corresponding rebate should be extended to benefit the Consumer Group or Consumer Groups in closest proximity to the Legislative Implementation Date.

(3) **Attribution Methodology** – The Fair Allocation Plan shall specify the Attribution Methodology for the purposes of allocating the Period Transition Charges across the Retail Consumers of a particular Retail Consumer Group. The Attribution Methodology shall result in an attribution of such Transition Charges that is considered by the Delegate to be equitable, and may have regard to such principles and parameters as may be further set forth in a Regulation.

(4) **Amendments of the Fair Allocation Plan** – The Fair Allocation Plan may be amended, amended and restated or terminated by the Delegate, provided that such amendment, amendment and restatement or termination shall (a) not be inconsistent with the principles and parameters set forth in (2) or (3), above, or the Regulation and (b) comply with any restrictions or limitations specified with respect thereto in any Funding Obligation.

Article 8 – The IESO Retained Interest

(1) **Maintain Books of Account** – IESO may maintain books of account to record the IESO Retained Interest Amount and all adjustments thereto from time to time. Such books of account shall be determinative with respect to the amount of IESO's related regulatory asset.

(2) **Limitation on Additions** – IESO shall not record additions to the IESO Retained Interest Amount in respect of IESO Funding Shortfalls (a) if such additions are restricted by the terms of any Disposition Document or the Collective Action Agreement, or (b) on or after •, 2017.

(3) **Dispositions** – IESO may effect a Disposition to an Absolute Assignee if (a) the Absolute Assignee has or will concurrently become bound by the Collective Rights Agreement; (b) the Disposition is effected pursuant to a Disposition Agreement duly executed by IESO; (c) the Financial Services Agent confirms in writing that the Disposition is permitted under the Financing Plan; and (d) the net proceeds payable to IESO from the sale of the related Investment Interest would not exceed the IESO Retained Interest Amount immediately before the time of such Disposition.

(4) **No Continuing Interest in any Investment Interest** – IESO shall have no continuing right or interest in any Investment Interest subject to a Disposition effected by IESO under a Disposition Document to which IESO is a party and IESO shall not assert any such right or interest or take or omit to take any action to exercise or enforce its rights or interests under the IESO Retained Interest if such action or omission would impede or obstruct the rights of any Absolute Assignee or a Pledgee to enforce its rights and interests in any Investment Interest, except if IESO is expressly permitted to take or omit to take such action, respectively, under the related Disposition Document or the Collective Rights Agreement.

(5) **IESO Financing Costs** – IESO shall be entitled in good faith to incur reasonable financing costs (including interest and other reasonable financing charges) reflecting market terms and conditions and which are payable in arrears, in order to finance its ownership of the IESO Retained Interest from time to time.

(6) **IESO Recoveries** – IESO shall, in respect of a month, be entitled to receive from IESO Remittances on a related Settlement Date the amount (if any) available to IESO under Section 5(6)(b).

Article 9 – The Financing Plan

(1) **Power to Prepare, Implement and Amend the Financing Plan** – The Financial Services Agent shall be authorized to prepare, implement and amend the Financing Plan. If the Financial Services Agent is unwilling or unable to prepare and propose the adoption of the Financing Plan, the Delegate may by written declaration designate one or more other persons who shall be authorized to prepare, implement and amend the Financing Plan.

(2) **Terms and Conditions of the Financing Plan** – The Financing Plan shall establish the basis for each Absolute Assignee's funding decisions. The Financing Plan shall have regard to the principles and parameters set forth in Schedule 3 and such other conditions and requirements as may be specified in a written declaration of the Delegate or in accordance with the Regulation.

(3) **OEB Approval** – Any Additional Funding Charge payable to or for the benefit of the Financial Services Agent shall be subject to review and approval by the OEB.

(4) **OEB Review** – The OEB [shall] undertake an annual review of the records maintained by the Financial Services Agent for the purpose of confirming that the Funding Obligations incurred and the Finance Amounts paid by or on behalf of the Absolute Assignees were incurred and paid, respectively, in material conformity with the Financing Plan.

(5) **Replacement of the Administrative Agent** – If the OEB identifies deficiencies or makes recommendations in its review under Section 9(4), the Administrative Agent shall take reasonable measures to remedy such deficiencies if remediable, and shall in any event have regard to the recommendations of the OEB in relation to further actions undertaken by the Financial Services Agent under the Financing Plan. If the Financial Services Agent is unwilling or unable to reflect such recommendations in relation to such further actions, the Delegate may by written declaration designate one or more other persons who shall thereafter become the Financial Services.

(6) **Obligation to Apply IESO Remittances** – The Financial Services Agent shall ensure that amounts transferred to it under Article 5, as agent for and on behalf of the Absolute Assignees, or otherwise in respect of or as proceeds from an applicable Investment Interest shall only be applied or used to pay related Finance Amounts when they are due and payable and for no other purpose.

(7) **Non-Recourse** – The Financing Plan shall be implemented so that Funding Obligations incurred shall be without recourse to or to any assets of the Electricity Distributors, IESO, any Alternative Servicer, any Alternative Collection Agent, the Financial Services Agent, the OEB, the Province or the Lieutenant Governor in Council, other than if and to the extent that such persons or entities are liable for the performance of obligations or duties arising under this Act or expressly agree to become liable pursuant to any Funding Obligation or obligation in relation to a Finance Amount. [All Funding Obligations shall contain a statement to the following effect: "Neither the full faith and credit nor the taxing power of the Province of Ontario is pledged to the payment of the principal of, or interest on, this [obligation].]

(8) **Incurrences are Binding** – Notwithstanding anything to the contrary in this Act, each Disposition made to or by an Absolute Assignee and all amounts payable or becoming due and payable by or on behalf of an Absolute Assignee under or in connection with any obligation purporting to be a Funding Obligation, shall be binding for the purposes of this Act, including in determining the amount of related Transition Charges, despite any impairment or defect resulting from such failure.

[Article 10 – Compliance Matters[19]

(1) **Right of the [OEB] to Inspect Books and Records** - For the purpose of investigating compliance with the provisions of this Act, the OEB shall have the right, jurisdiction, power and authority to examine the books and records of *[Insert names if any]*.

(2) **[OPG's Rate Settings** – When setting other rates for or in respect of OPG, the OEB shall not take into account (a) the administrative or servicing fees charged by OPG as Financial Services Agent [in excess of the actual incremental costs incurred by such person of providing administrative or servicing services]; (b) the cost consequences to OPG of being the Financial Services Agent; or (c) the consequence of OPG

[19] As noted above, the outcome of any regulatory action undertaken by the OEB will not affect Funding Obligations that have been incurred under the Financing Plan. This Article and any potential role for the Auditor General is still under consideration.

consolidating the assets and liabilities of any Financing Entity for OPG's accounting purposes, in each case in setting any regulated payment amounts for OPG.][20]

Article 11 – Undertaking of the Lieutenant Governor in Council[21]

(1) **No Action to limit, alter, or impair or terminate Transition Charges, the Regulatory Asset or Collections** – The [Lieutenant Governor in Council] shall not in any way take or permit any action to reduce, impair, postpone or terminate the obligation of Retail Consumers to pay Transition Charges or to impair the Regulatory Asset or the collection or recovery of Transition Charge Collections, Electricity Distributor Remittances or IESO Remittances, either directly or indirectly, including through the introduction of any bill or the passing of any legislation or regulation having such effect. The amount of Transition Charges determined under this Act shall not be subject in any way to reduction, impairment, postponement or termination as a result of any action taken or failure by the Lieutenant Governor in Council, including through the introduction of any bill or the passing of any legislation or regulation having such effect.

(2) **Undertaking and Agreement** – The [Lieutenant Governor in Council] shall not:

(a) in any way take or permit any action that limits, alters or impairs the value of any Investment Interest;

(b) except as required by the estimates and adjustments made in determining the True-up Amount, reduce, alter or impair Transition Charges that are imposed, billed, invoiced, collected and remitted for the benefit of the Absolute Assignees or any Pledgee from time to time;

(c) permit the amendment, amendment and restatement or termination of the Fair Allocation Plan if such amendment , amendment and restatement or termination would adversely affect the validity or enforceability of any Funding Obligation or the rights of an Absolute Assignee or Pledgee thereunder,

in each case including through the introduction of any bill or the passing of any legislation or regulation having such effect.

(3) **Successor IESO** – If IESO is restructured, dissolved or becomes insolvent or is otherwise incapable of performing its obligations under this Act, Successor IESO shall be established to perform such obligations.

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[20] As an alternative to this provision, consider clarifying under s. 78.1(4) of the OEB Act (which currently gives the OEB discretion in setting payment amounts subject to O. Reg. 53/05) that the OEB in setting OPG payment amounts for prescribed generation shall not consider OPG's role as Administrative Agent of any Financing Entities associated with the Fair Hydro initiative, perhaps with the exception of any operating fees that may be received by OPG for performing that role.

[21] Under consideration, including the dealers' request for a "servicer guarantee" and a "contractual guarantee" to address a "Change of Law" or if all or a portion of the legislation is *ultra vires*, requiring (at the lenders option), the Province to pay principal and interest on the outstanding debt until maturity or payout the entire debt including any make-wholes.

(4) **Compensation for Failure** – Absolute Assignees shall be compensated for any losses suffered by them as a result of any failure by the Lieutenant Governor in Council to comply with its undertakings and agreements in this Article 11.[22]

(5) **No Wind-up of Financing Entity**. No Financing Entity may be voluntarily wound up, liquidated or dissolved until one year after all of its Funding Obligations are repaid.

(6) **References to the Undertaking and Agreement** – Any non-confidential reference to the Undertaking of the Lieutenant Governor in Council, including in marketing materials and other documentation authorized for use by the Administrative in connection with any Funding Obligation, may be made provided that [*Add conditions to protect the Province*].

Article 12 – Regulations

Regulations may be made under this Act for the purposes described in Sections •,•,• and • and may be promulgated for any of the following purposes:

(a) to set standards and measures regarding the commercially reasonable requirements of the Province associated with an Absolute Assignee incurring Funding Obligations or becoming obligated to pay any Finance Amount, including to establish guidelines regarding all-in funding costs; permitted Additional Funding Charges; required maturities and redemption and termination rights of Funding Obligations; liquidity requirements, in each case to a Financing Plan that is consistent in its effect with the Fair Allocation Plan;

(b) to establish and empower one or more regulated entities to undertake decision-making activities with respect to this Act;

(c) to set out reasonable requirements regarding the appointment or retention of advisors, agents, service providers, contract counterparties, including in relation to 'market terms and conditions' parameters;

(d) to provide for audit and compliance standards applicable to those persons who are or may become obligated or have duties that arise under this Act [or under any Funding Obligation];

(e) to provide for any pre-vetting and approval requirements in relation to any incurrence by an Absolute Assignee of any Funding Obligation or obligation to pay any Finance Amount; and

(f) to provide for appeal and due process considerations in connection with the establishment, adoption, implementation and review of the Fair Allocation Plan or the Financing Plan.

Article 13- Miscellaneous[23]

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[22] Requested by Torys. For discussion.

[23] OPG would like the specific amendments related to OPG to be included in the Bill.]

(1) **Choice of law** – The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the Regulatory Asset, any Transition Charge or the Undertaking of the Province shall be the laws of the Province.

(2) **Conflict of law** – In the event of conflict between this Act and any other law of the Province regarding the attachment, assignment or perfection, or the effect of perfection, or priority of any Disposition or Pledge, this Act shall govern to the extent of the conflict.

(3) **No further acts or approvals required** - Notwithstanding any provisions of any law of the Province to the contrary, no approvals, notices or authorizations other than those specified in this Act shall be required with respect to the actions to be taken in compliance with this Act, including under the Financing Plan or in relation to the establishment of the Fair Allocation Plan, and the transactions and contracts authorized in or contemplated by this Act or the Financing Plan, including the incurrence of any Funding Obligation, any Disposition, any Pledge or in the payment and performance of any attendant or incidental contract and any related expenses incurred to facilitate the preparation and implementation of the Financing Plan.

(4) **Effect of invalidity after the Incurrence of any Funding Obligation** - Effective on the date that a Funding Obligation is incurred under this Act, if any provision of this Act is held to be invalid or is invalidated, superseded, replaced, repealed or expires for any reason, that occurrence shall not affect any action allowed under this Act that is taken by any person who is or may become obligated or have duties that arise under this Act and any such action shall remain in full force and effect.

(5) **Severability** - If any Article, Section, paragraph or subparagraph of this Act or the application thereof to any person, circumstance or transaction is held by a court of competent jurisdiction to be unconstitutional or invalid, the unconstitutionality or invalidity shall not affect the constitutionality or validity of any other Article, Section, paragraph or subparagraph of this act or its application or validity to any person, circumstance or transaction, including the irrevocability of Transition Charges, the validity of the Regulatory Asset, the incurrence of any Funding Obligation, any Disposition, any Pledge, or the collection and recovery of Transition Charge Collections. To these ends, the Legislature hereby declares that the provisions of this Act are intended to be severable and that the Legislature would have enacted this Act even if any Article, Section, paragraph or subparagraph of this Act held to be unconstitutional or invalid had not been included in this Act.

Schedule 1

Guidelines for Estimates

[To be considered.]

Schedule 2

Requirements Applicable to Alternative Invoicing Agent/ Alternative Collection Agent

[To be considered.]

Schedule 3[24]

Principles and Parameters for Establishing the Financing Plan

The following principles and parameters provide a guideline as to what a Financing Plan should address:

(1) in respect of each Reference Period, make reference to the allocations of Future Fair Share of Green Transition Benefits to each Reference Group contemplated by the Fair Allocation Plan;

(2) estimate IESO Funding Shortfalls for each Reference Period;

(3) consider alternative funding arrangements suitable to fund the estimated IESO Funding Shortfalls, including short term and/or long term Funding Obligations;

(9) consider quantities, maturities, payment obligations, prepayment or redemption rights and such other features of Funding Obligations so that payments made for a Reference Period reasonably correspond to the allocations of Future Fair Share of Green Transition Benefits to the applicable Reference Group under the Fair Allocation Plan;

(4) if the anticipated amount of any Repayment (together with payments of other Finance Amounts) to be made in respect of a Reference Period would materially exceed the allocation of the costs and benefits of the Green Generation Initiative to the applicable Retail Consumer Group under the then current Fair Allocation Plan, diligent efforts should be made to determine whether a Refinancing or deferral of such Repayment may be reasonably and cost-effectively effected based on then prevailing market terms, conditions an circumstances;

(5) reflect the assumptions and requirements specified in any contemplated Funding Obligation (e.g., any limit on the maximum amount of Transition Charges charged to a hypothetical Retail Consumer relative to his or her monthly electricity bill, as prescribed by any rating agency that ascribes its credit rating to or in respect of the Funding Obligation having regard to the application of the Allocation Methodology);

(6) incur Funding Obligations from time to time on the best terms available at such time for a financing transaction of the size and type contemplated, and having regarding to the following parameters:

a. whether the Absolute Assignees will require committed access to short term liquidity to cover estimated IESO Funding Shortfalls prior to incurring fixed term Funding Obligations, and the amount and repayment terms of any such required liquidity; provided that any Repayment required to be made under the terms of such short-term liquidity would not obligate an Absolute Assignee to repay an amount in relation to a Reference Period that would have the effect of the Financing Plan permitting incurrences of Funding Obligations payable in such Reference Period that would exceed the allocations of Future Fair Share of

[24] Awaiting input from Torys based on OPG mark-up of Financing Plan sections.

Green Transition Benefits to the applicable Reference Group under the Fair Allocation Plan;

b. the basis upon which the Financial Services Agent will select the term to maturity of any other Funding Obligations; provided that any Repayments required to be made under the terms of such Funding Obligations should not obligate an Absolute Assignee to repay an amount in relation to a Reference Period that would have the effect of the Financing Plan permitting incurrences of Funding Obligations payable in such Reference Period that would exceed the allocations of Future Fair Share of Green Transition Benefits to the applicable Reference Group under the Fair Allocation Plan;

c. the basis upon which the interest rates applicable to such Funding Obligations would be determined;

d. the reference capital or finance market in which such Funding Obligation would be incurred, including markets outside of Canada if considered by the Financial Services Agent to be appropriate in the circumstances;

e. the currency of payments under such Funding Obligations and, if the Funding Obligations are denominated in a currency other than Canadian dollars, the basis upon which the Financial Services Agent shall cause the applicable Absolute Assignee to enter into hedging transactions to mitigate currency risk, including acceptable minimum and maximum coverage levels, having regard to the availability of related derivatives having notional amounts corresponding to the repayment and maturity profile of such Funding Obligations;

f. the basis upon which the Financial Services Agent will select counterparties under any transaction to be entered into by an Absolute Assignee, including any paying agent, servicer, cash manager, liquidity provider, hedge counterparty, account bank, lender, note trustee, security trustee, paying agent, registrar/transfer agent, financial services agent, arranger or manager;

g. the basis upon which the Financial Services Agent will manage counterparty risk, including by providing for maximum counterparty exposure limits having regard to concentration, credit and other identified risks with respect to individual counterparties or countries;

h. the basis upon which the Financial Services Agent will negotiate and settle Finance Amounts, including the amount of any Redemption Amounts, Finance Reserve Deposits and Additional Funding Charges;

(7) the basis upon which Funding Obligations may be redeemed, prepaid, repurchased or otherwise affected, having regard for the need to minimize debt service charges and other Funding Costs, and the need to maintain a stable funding platform to finance the IESO Funding Shortfalls from time to time on a basis that is consistent with the allocations of Future Fair Share of Green Transition Benefits to applicable Reference Groups under the Fair Allocation Plan;

(8) the basis upon which any Repayments, Funding Costs and Redemption Amounts will be paid, including any defeasance, sinking fund or through other reserves or liquidity facilities;

(9) the basis upon which fees, charges, expenses, costs, indemnities, reimbursements and other amounts payable to or for the benefit of the Financial Services Agent and other agents and service providers to the Absolute Assignees may be determined, allocated and paid;

(10) the timing and basis upon which Finance Reserve Deposits and Finance Reserve Withdrawals may be made;

(11) the basis upon which any obligations for any other Additional Funding Charges may be incurred and paid;

(12) the basis upon which the cash flows arising from time to time or otherwise derived from the Regulatory Asset may otherwise be applied, including in relation to any counterparty enforcement and realization scenario;

(13) the transmittal to [the IESO] of information related to the amounts to be included in the determination of the Period Transition Charge for a Reference Period;

(14) the basis upon which any Disposition may be made or effected by an Absolute Assignee, including parameters for determining the purchase price for the interest in the Regulatory Asset that is the subject matter of such Disposition, and any consents and releases that may be usefully obtained in connection with such Disposition;

(15) describe the requirements applicable to any special purchase entity that will purchase an Investment Interest, including proposed capitalization, governance, and restrictions on their powers and activities; and

(16) the basis on which any Pledge may be given or effected.

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CONFIDENTIAL AND PRIVILEGED

Preliminary Draft for Discussion Purposes Only

"Fair Hydro Act" ~~– Part V.2~~

Article 1 – Purpose[1]

~~IESO has entered into Power Contracts with Generators. The agreed-upon reference prices and quantities set out therein were determined based on commitments made by IESO to provide Generators with long-term price certainty, so as~~The Province has and continues to encourage the construction and development of facilities for the ~~purpose of~~ long-term operation and generation of electricity in the Province using sustainable, lower carbon-based technologies such as new gas-fired generation, renewable facilities, energy from waste and biomass, including under the Province's various procurement, standard offer ~~and~~, feed in tariff and other similar programs (the "Green Generation Initiative"). ~~[The terms of the Power Contracts were intended to approximate the anticipated useful life of the related generation assets]; however, it has been determined that the useful life of many of these assets will be well in excess of the actual term of the related Power Contracts and will extend over more than one generation of ratepayers.~~ The long-term benefits of the Green Generation Initiative accrue over time and have benefited and will benefit present and future ~~ratepayers of the Province. Currently, market prices for electricity are less than the reference prices set out in the Power Contracts, leaving a gap in funding which is funded by charging consumers a "Global Adjustment" (part of which is available to IESO to pay this shortfall).~~electricity consumers in the Province.

The imputed costs of the Green Generation Initiative are currently passed through to electricity consumers by way of a monthly adjustment amount (the "Green Costs Adjustment"), which in turn forms part of the overall adjustment calculated by the Independent Electricity System Operator ("IESO") pursuant to section 25.33 of, and O.Reg. 429/4 under, the *Electricity Act* (the "Global Adjustment"). The Global Adjustment is included as a charge billed to electricity consumers in their monthly electricity invoices.

~~Each month, the IESO determines the Global Adjustment payable by consumers for the consumption~~The Green Costs Adjustment is currently determined each month by reference to the amounts paid by IESO to the generators of electricity in the Province~~. A component of the Global Adjustment is the amount by which the reference prices in the Power Contracts~~ under the Green Generation Initiative, which may be higher than prevailing market price for electricity. These differences arise because IESO has entered into long-term procurement contracts with such generators in order to provide them with long-term price certainty for electricity, and in turn to encourage the generators to develop technologies and to construct and develop facilities consistent with the Green Generation Initiative. In general, whenever amounts payable under these procurement contracts exceed the market price for electricity~~ for the quantities of electricity specified under the Power Contracts for the relevant period[2]. The relationship between the past, present and future benefits to Ratepayers from~~, the Green Costs Adjustment passes through the amount of such differences as part of the monthly charge to electricity consumers. Such amount then becomes available to IESO to meet its obligations under the procurement contracts. It has been determined that the useful lives of many of the assets encouraged by the Green Generation Initiative~~, on the one hand, and the costs of~~ will be well in

[1] ~~Consider the scope and breadth of the Purpose section. This text is considered to be useful to establish the legislative basis for the statute, which text will be useful in the event of a challenge.~~

[2] ~~Consider modifying this to also refer to gas contracts and hydroelectric contracts, which provide for mechanics that are not based on contracts for differences.~~

excess of the respective terms of the related procurement contracts, and in many cases may extend over more than one generation of electricity consumers.

Since the benefits to past, present and future electricity consumers from the Green Generation Initiative ~~borne by past, present and future Ratepayers through their respective allocations of the Global Adjustment, on the other hand, do not necessarily reflect an equitable allocation of such benefits and costs over time, with the result that an adjustment may be appropriate to address inter-generational fairness considerations. Such an adjustment should reflect~~will not necessarily coincide with the costs currently attributed through the Green Costs Adjustment, based on the respective durations of the procurement contracts, it has been determined that the rate at which the costs associated with the Green Generation Initiative should be passed through to Retail Consumers (as defined in Article 2) should be more closely aligned with the benefits that such Retail Consumers have derived and are expected to derive from the Green Generation Initiative over time. This realignment will be based on principles and parameters that ~~can be applied from time to time in order to~~ establish a reasonable basis for measuring and allocating the relative costs and benefits of the Green Generation Initiative ~~across present and future Ratepayers. A plan to allocate such costs and benefits~~ equitably across present and future ~~Ratepayers may be developed based on those principles and parameters (a~~Retail Consumers (the "Fair Allocation Plan").

If ~~a~~the Fair Allocation Plan determines that the equitable allocation of the ~~Global Adjustment to the Ratepayers~~costs associated with the Green Generation Initiative to the Retail Consumers of a particular time period ~~in respect of the Power Contracts~~ should be reduced below the amount ~~otherwise determined,~~that currently would be charged based on the Green Costs Adjustment, then the amount payable by such ~~Ratepayers to Electricity Distributors in respect of such period,~~Retail Consumers and in turn ~~by the Electricity Distributors to the~~available to IESO~~, would~~ will, in the aggregate, be less than the amount payable by the IESO to the ~~Generators under the Power Contracts~~generators in respect of such period. ~~If the difference is greater than any net Power Contract surpluses available to IESO from earlier periods, IESO will have a funding shortfall.[3] In order for IESO to cover such a funding shortfall for a period,~~In this case IESO will need to obtain funding from another source~~, which could include funding from third party sources operating in public and private capital markets~~ to cover such a shortfall. If a funding obligation is incurred ~~in order to enable the~~by IESO to cover such a ~~funding~~ shortfall during one period, the repayment of such funding obligation will be required in a future period, and any related repayments, finance costs, hedging costs and other transaction costs ~~will be~~ incurred ~~and may~~will become payable in one or more ~~other~~future periods. ~~It will be necessary to provide~~In order for IESO to obtain a reliable and committed source of cash flows to enable IESO to repay such funding ~~obligations and to pay related funding costs with certainty when the funding obligations~~amounts when they become due and payable~~. This Part~~, this Act imposes irrevocable and non-bypassable financial obligations ~~of Ratepayers~~on Retail Consumers to pay amounts incurred in respect of such funding obligations when they become due and payable and establishes a right to invoice and collect such amounts . The right and interest in and to collect such financial obligations~~, which~~ will take the form of the Regulatory Asset contemplated in this ~~Part and~~Act, which will constitute property rights and interests. ~~The~~Interests in the Regulatory Asset ~~will~~may be sold and absolutely assigned ~~and will belong~~by IESO to one or more ~~newly created~~ financing entities, which in turn will finance their ~~purchase of such Regulatory Asset~~acquired interests by incurring funding obligations. The incurrence and payment of such funding obligations will be administered on behalf ~~the~~such financing entities by ~~an administrative~~a financial services agent ~~(initially OPG),~~ under the Financing Plan

[3] ~~Confirm whether any RPP forecasting variance is to be included in (i) a funding shortfall; and (ii) related IESO financing costs to be included in Transition Charges.]~~

contemplated in this ~~Part~~Act. The Financing Plan will seek to reasonably match the payment obligations arising under such funding obligations ~~and~~, to be borne by the future ~~Ratepayers~~Retail Consumers of the period in which such payment obligations become due, with the ~~costs and~~ benefits of the Green Generation Initiative ~~charged~~allocated to such future ~~Ratepayers~~Retail Consumers under the Fair Allocation Plan.

The purpose of this ~~Part~~Act is to establish the basis upon which intergenerational fairness can be achieved by charging the costs and benefits of the Green Generation Initiative to present and future ~~Ratepayers~~Retail Consumers on an equitable and cost effective basis.

Article 2 - Definitions

In this ~~Part~~Act:

> "Absolute Assignee" means a person to whom a Regulatory Asset Owner effects a Disposition.
>
> "Actual" means, in relation to costs, expenses or payments in respect of Funding Obligations during a Reference Period, the actual amount of such costs, expenses or payments paid or made (net of any Finance Reserve Withdrawals applied to pay such amounts), which amounts shall be recorded by the ~~Administrative~~Financial Services Agent whose records shall be determinative for the purposes of this ~~Part in~~Act except to the ~~absence~~extent of a manifest calculation error.
>
> "Additional Funding Charges" means, for a Reference Period in respect of an Absolute Assignee, the fees, charges, expenses, costs, indemnities, reimbursements and other amounts (including any applicable tax amounts) that are or become payable by ~~the Regulatory Asset Owners~~or on behalf of the Absolute Assignee during the Reference Period and that were incurred or committed to directly or indirectly by the Absolute Assignee in connection with the incurrence of Funding Obligations under the Financing Plan (whether at the time of such incurrence or over the term of the Funding Obligation and whether directly or indirectly), including (without duplication and without limitation): (a) any payment required under an ancillary agreement entered into by, or by the ~~Administrative~~Financial Services Agent on behalf of, ~~a Regulatory Asset Owner~~the Absolute Assignee under the Financing Plan; (b) any federal, provincial or local taxes, payments in lieu of taxes, franchise fees or license fees imposed on ~~a Regulatory Asset Owner~~the Absolute Assignee or incurred by on behalf of ~~a Regulatory Asset Owner~~the Absolute Assignee under any obligation to pay tax gross-up amounts to counterparties under Funding Obligations; (c) any amounts payable to the ~~Administrative~~Financial Services Agent, including amounts payable to its advisors and outside counsel; (d) any amounts incurred to prepare, confirm, amend and implement the Financing Plan; (e) any amounts payable to any Alternative Collection Agent or Alternative Servicer, including amounts payable to each's advisors and outside counsel; (f) any amounts incurred to make the calculations, determinations or confirmations to be made by or on behalf of ~~a Regulatory Asset Owner~~the Absolute Assignee; (g) any servicing fees and expenses; (h) any trustee fees and expenses; (i) any legal fees, expenses and disbursements; (j) any accounting fees and expenses; (k) any administrative fees and expenses; (l) any manager ~~of~~or director fees of a Financing Entity; (m) any registration fees and expenses; (n) any placement fees, underwriting fees, fees and related issuing expenses; (o) any rating agency fees; and (p) any other related fees, charges, expenses, costs, indemnities, reimbursements and other amounts that are approved in

good faith by the Financial Services Agent for recovery and payment under the Financing Plan.

~~"Administrative Agent" means [OPG] or, following any Replacement Event, such other person or persons who may be appointed as the administrative agent of the Regulatory Asset Owner under the Financing Plan in compliance with the requirements set out in Schedule 2.~~

"Allocation Factor" means, in respect of a ~~Ratepayer~~Retail Consumer for a Reference Period, the number (expressed as a percentage) determined in respect of the ~~Ratepayer~~Retail Consumer by ~~[IESO]~~the OEB based on the application of the Attribution Methodology in respect of the Reference Period.[4][1]

"Alternative Collection Agent" means a person appointed under Section 5(11) and in compliance with the requirements set out in Schedule 2 to assume the collection activities and activities of any Electricity Distributor or IESO under Article 5, as agent for and on behalf of the Regulatory Asset Owners.

"Alternative Servicer" means a person appointed under Section 4(8) to assume the obligations of the Servicer under Article 4, as agent for and on behalf of the Regulatory Asset Owners.

"Assessed Past Green Transition Costs" means, in respect of a Measurement Date, the aggregate of the imputed costs of the Green Generation Initiative (expressed as an equivalent to current dollars), as reflected in the calculation of the Green Costs Adjustment, which have been charged to Retail Customers through the Global Adjustment on or prior to the Measurement Date.

"Attribution Methodology"[5][2] means the methodology specified in the Fair Allocation Plan for allocating the Period Transition Charges for a Reference Period to ~~the~~ individual ~~Ratepayers~~Retail Consumers of the applicable ~~Ratepayer~~Retail Consumer Group based on its Allocation Factor.

~~"Bypass Charge" means [To be developed].~~[6]

"Collected Amount Adjustment" means, in respect of a ~~Reference~~True-Up Period, the amount (which may be a negative amount) calculated by the Servicer or the ~~Administrative~~Financial Services Agent, as applicable, equal to (a) the Estimate of the

[4] ~~Consider basing~~[1] Confirm that this will be based on forecast volumes of demand (like RPP). To the extent amounts do not get recovered due to differences between forecast and actual, those ~~would~~may be identified and ~~rolled into~~caught by the True-Up.

[5] ~~A key question will be how the overall costs will be spread across the rate base. For example, the~~[2] This allocation may be volumetric ~~or not,~~ or some combination of a flat amount and a volumetric charge. ~~This will also impact any discussion regarding any bypass (e.g., grid exit) charge in connection with the bypass discussion~~Further discussion is required. H&W has raised a concern regarding possible adverse changes after the fact and rating agency considerations. Consider whether hard-coding in the legislation makes sense.

[6] ~~Consideration needs to be given to any amount that will be charged to a ratepayer who successfully bypasses (e.g., leaves the grid). In allocating Transition Charges, considerations would include whether to reserve Bypass Charges and spread them over the life of the program, and correspondingly how to factor those into the calculation of Transition Charges.~~

Finance Amount for the True-Up Period, minus (b) the sum of all Transition Charge Collections for the True-Up Period.~~7~~[3]

"Collective Rights Agreement" means an agreement among all of the Regulatory Asset Owners (including each Absolute Assignee) and each Pledgee that governs the enforcement of their respective rights and interests in, to and under the Regulatory Asset on a coordinated and collective basis.[4]

"Delegate" means the person or persons designated in writing from time to time by the Minister of Energy to undertake the actions and perform the responsibilities ascribed to the "Delegate" under this Act.

"Disposition" means an assignment, transfer, conveyance, sale, contribution, set-over, exchange or other disposition of ~~all or a specified portion (including a specified portion on a divided basis or by way of an undivided interest) of a Regulatory Asset Owner's right, title and interest in, to and under the Regulatory Asset~~an Investment Interest to an Absolute Assignee pursuant to a Disposition Document.

"Disposition Document" means the agreement, deed, conveyance, instrument or other document under which a Regulatory Asset Owner effects a Disposition to an Absolute Assignee.

"Electricity Distributor" means, in respect of a Service Area, the rate regulated distributor licensed ~~by the OEB~~under Part V of the *Ontario Energy Board Act, 1998* in respect of such Service Area, together with and its successors.

"Electricity Distributor Remittances" means, for an Electricity Distributor on a Remittance Date, all Transition Charge Collections received or deemed to be received by the Electricity Distributor prior to the Remittance Date and that have not otherwise been remitted to IESO or if applicable the Alternative Collection Agent in accordance with Section 5(3) , including the proceeds of any enforcement action undertaken by the Electricity Distributor or if applicable the Alternative Collection Agent to recover payment of Transition Charges in accordance with Article 5.

"Electricity Invoice" means an invoice issued by ~~an~~any of a Electricity Distributor (or in its stead, by an Alternative Servicer)~~ or~~, by the Servicer or by a Retailer, in each case to a Retail Consumer that is served by the Electricity Distributor's distribution system in respect of electricity charges, including the cost of electricity, delivery and regulatory charges and related services and amounts incurred, assessed or charged in respect of connectivity to a distribution network in the Electricity Distributor's designated Service Area and in respect of applicable Transition Charges to be charged to the Retail Consumer under this Act.

"Estimate" means~~,~~ (a) in relation to costs, expenses or payments in respect of Funding Obligations or any Finance Amount for a Reference Period, the estimated amount of such costs, expenses or payments determined by the ~~Administrative Agent~~Financial Services Agent; and (b) in relation to an assessment of the benefits of the Green Generation Initiative to any Retail Consumer Group, the estimated value (in current

[3] This would pick up adjustments based on actual collection experience, changes in the ~~Consumer Base~~retail consumer base, changes in the actual costs (versus earlier estimates) included in the Transition Charge calculation, etc.

[4] Consider adding the Financial Services Agent and the Servicer as parties.

dollars) of such benefits determined by the Delegate, in each case having regard to the applicable principles and parameters set out in Schedule 1, which estimated amounts shall be determinative as the applicable estimate for the purposes of this ~~Part in~~Act except to the ~~absence~~extent of a manifest calculation error.

"~~Fair Allocation Plan" [has the meaning given in Article 1].~~Estimated Future Green Transition Benefits" means, in respect of a Measurement Date, the Estimate set forth in the Fair Allocation Plan prepared in accordance with Article 7 of the aggregate value (measured in current dollars) of the benefits that are expected to accrue to Retail Consumers from the establishment and implementation of the Green Generation Initiative during the period from the Measurement Date to the Program-End Date.

"Estimated Past Green Transition Benefits" means, in respect of a Measurement Date, the Estimate set forth in the Fair Allocation Plan prepared in accordance with Article 7 of the aggregate value (measured in current dollars) of the benefits that have accrued to Retail Consumers from the establishment and implementation of the Green Generation Initiative up to and including the Measurement Date.

"Fair Allocation Plan" has the meaning given in Article 1.

"Finance Amount" means, ~~in respect of~~for a Reference Period in respect of an Absolute Assignee, the sum (without duplication) of the following amounts ~~for~~that are or become payable during the Reference Period in respect of the Absolute Assignee: (a) Repayments; (b) Funding Costs; (c) Redemption Amounts; (d) Finance Reserve Deposits; and (e) Additional Funding Charges.~~"Finance Receipts" means, for a Reference Period, all amounts received by or on behalf of the Regulatory Asset Owners during the Reference Period in respect of a Funding Obligation, including from any reimbursement of standby commitment fees or charges paid by a lender, any reimbursement of credit enhancement fees or charges paid by any credit enhancer, any reimbursement of liquidity fees or charges paid by any liquidity provider, any amounts (including any termination payments) paid to the Regulatory Asset Owners under derivatives and any withdrawal made or required to be made from a debt service reserve account or other account established under any indenture, ancillary agreement or other financing document relating to a Funding Obligation.~~

"Finance Reserve Deposits" means, for a Reference Period, the amount by which (a) deposits made or to be made during the Reference Period in order to pre-fund, collateralize, over-collateralize or establish reserves for the ultimate payment of Funding Obligations or for related contingencies specified in the Financing Plan, exceed (b) any Finance Reserve Withdrawals.

"Finance Reserve Withdrawals" means, for a Reference Period, the amount withdrawn during the Reference Period from deposits previously made to pre-fund, collateralize, over-collateralize or establish reserves for the payment of Funding Obligations or to pay amounts in respect of related contingencies that had been specified in the Financing Plan.

"Financial Services Agent" means OPG or, following any Replacement Event, such other person or persons who may be appointed as the Financial Services Agent of the

Absolute Assignees under the Financing Plan in compliance with the requirements set out in Schedule 2.[5]

"Financing Entity" means an entity established in accordance with the Financing Plan to acquire all or an interest in the Regulatory Asset as an Absolute Assignee and to enter into Funding Obligations to finance such acquisition.[8] under the Financing Plan.[6]

"Financing Plan" means the written plan [prepared by the Administrative Agent]Financial Services Agent on behalf of each Absolute Assignee in compliance with Article 89 to set forth the basis upon which, among other things: (a) any Disposition may be made to, financed by or effected by an Absolute Assignee; (b) any Funding Obligations may be incurred in order to fund a Funding Shortfallby an Absolute Assignee, including any Refinancing; (c) any Pledge may be given or effected; (d) any Funding Obligations may be redeemed, prepaid, repurchased, amended or otherwise effected; (e) any obligations for Additional Funding Charges may be incurred and paid; (f) any Repayments, Funding Costs and Redemption Amounts may be paid or provided for; (g) any Finance Reserve Deposits may be made; (h) any Finance Reserve Withdrawals may be made; (i) the establishment and operation of any Financing Entity may be effected; and (ij) the cash flows arising from time to time or otherwise derived from the Regulatory Assetan Investment Interest may otherwise be applied, as the same may be amended, amended and restated or terminated by the Financial Services Agent in compliance with Article 9 from time to time.

"Funding Costs" means, for a Reference Period in respect of an Absolute Assignee, the amount by which (a) the aggregate of all interest and other periodic finance charges accruing due and becoming payable or paid by or on behalf of the Regulatory Asset OwnerAbsolute Assignee during the Reference Period in respect of allits Funding Obligations, including any standby commitment fees or charges paid to any lender, credit enhancement fees or charges paid to any credit enhancer, liquidity fees or charges paid to any liquidity provider, amounts (including any termination payments) paid under derivatives and any deposit amount made or required to fund or replenish a debt service reserve account or other account established under any indenture, ancillary agreement or other financing document relating to aits Funding ObligationObligations, exceeds (b) the aggregate of all Finance Receiptsamounts received by or on behalf of the Absolute Assignee during the Reference Period in respect of a Funding Obligation, including from any reimbursement of standby commitment fees or charges paid by a lender, any reimbursement of credit enhancement fees or charges paid by any credit enhancer, any reimbursement of liquidity fees or charges paid by any liquidity provider, any amounts (including any termination payments) paid to the Absolute Assignee under derivatives and any Finance Reserve Withdrawal made or required to be made from a debt service reserve account or other account established under any indenture, ancillary agreement or other financing document relating to the payment of the Funding Costs payable in respect of a Funding Obligation for the Reference Period.

[5] Discuss whether to accommodate multiple Financial Services Agents. MOE to consider.

[8] OPG has suggested[6] MOE to confirm that the legislation will provide that any Financing Entity that is a wholly-owned subsidiary of OPG (1) would not be subject to Part VI of the *Electricity Act* (Ontario) and (2) in the case of any Financing Entity that is a trust, any income of such trust (for purposes of the *Income Tax Act* (Canada) or the *Taxation Act, 2007* Ontario)) which is paid or made payable to OPG or a wholly-owned subsidiary of OPG as a beneficiary of such trust will not be taken into account in calculating the amount of a payment required to be made by OPG (or such subsidiary) by section 89 or 90 of the Electricity Act. These raise issues for consideration by the stakeholders.

"Funding Obligation" means, in respect of an Absolute Assignee, each payment obligation (including each obligation to pay: principal, interest, premiums and other financing ~~charges, indebtedness,~~charge payments; pass-through payments; payment obligations arising under or in respect of derivatives~~,~~; payment obligations owing to service providers, ~~administrative agents~~Financial Services Agents, finance entity intermediaries, capital markets intermediaries, advisors, lenders, credit enhancement providers, liquidity providers, disbursement counterparties, regulatory agencies and rating agencies; and all ~~taxes payable in connection with the foregoing)~~Additional Funding Charges incurred by or on behalf of ~~a Regulatory Asset Owner~~the Absolute Assignee under the Financing Plan ~~in order to fund a Funding Shortfall for a Reference Period~~, including any Refinancing of another such payment obligation incurred by or on behalf of such Absolute Assignee.[9]

~~"Funding Shortfall" means, for a Reference Period, (a) the amount, if any, by which (i) the IESO Power Contract Net Payment for the Reference Periods, exceeds (ii) the GA Power Contract Contribution for Reference Period, minus (b) the IESO Applied Surplus for the Reference Period.~~[10]Future Fair Share of Green Transition Benefits" means, in respect of a Measurement Date, the sum of (a) the Over-Assessed Amount; and (b) the Estimated Future Green Transition Benefits, in each case as of the Measurement Date.

~~"GA Power Contract Contribution" means, for a Reference Period, the aggregate of the payments to be made by the applicable Ratepayer Group in respect of the portion of the Global Adjustment [attributable to the Power Contracts] in accordance with the Fair Allocation Plan.~~[11]

"Generator" means a generator of electricity that is subject to ~~[this~~the *Electricity Act*~~]~~[12]~~.~~, *1998*.

"Global Adjustment" ~~means the amount calculated from time to time under [Section • of the *Electricity Act*], which includes among other things an amount determined in respect of the costs associated with the Green Generation Initiative, including amounts attributable to the Power Contracts.~~[13]has the meaning given in Article 1.

"Green Costs Adjustment" has the meaning given in Article 1.

"Green Generation Initiative" ~~[~~has the meaning given in Article ~~1]~~.1.

~~[9] OPG has asked whether this should include IESO finance arrangements.~~

~~[10] Consider whether to simplify by referring to the calculations of GA, with vs. without Fair. The issue would be that Fair is then linked into the GA calculation specifically, rather than to the specific assets that are subject to revised amortization under Fair. The constitutional position requires a clear nexus to the assets. Also, confirm whether RPP forecasting variances are to be included.~~

~~[11] IESO to confirm its ability to allocate a shortfall in a given month between what it receives and what it owes under the GA, in order to calculate (a) existing volume-based variances which are rolled into subsequent month GA and trued-up every 6 months under RPP, (b) existing variances attributable to OREC which are funded by the Province, and (c) new variances attributable to Fair Hydro program.]~~

~~[12] Revise once determine whether this will be a standalone Act or remain part of the *Electricity Act*. "Generator is a defined term in other legislation (OEB Act, Electricity Act) so this should ultimately be a distinct term such as "FH Generator" to avoid confusion.~~

~~[13] Note that if adjustments for Fair Hydro program are to be applied after existing GA adjustments, then this may need a new name (such as "FH Adjustment").~~

"IESO" means the Independent Electricity System Operator created pursuant to ~~[insert].~~Part II of the *Electricity Act, 1998*.

"IESO ~~Applied Surplus~~Available Amount" means, for a Reference Period, the lesser of (a) the amount~~,~~ (if any~~,~~) by which (i) the ~~IESO Power Contract Net Payment~~Maximum Transition Charge Amount for the Reference Period, exceeds (ii) ~~the GA Power Contract Contribution~~Period Finance Amount for the Reference Period, and (b) the IESO ~~Unapplied Surplus on the last day of the immediately preceding Reference Period.~~ Retained Interest Amount as of the [35th] day prior to the first day of a Reference Period plus any IESO Financing Costs that are due and payable and remain unpaid as of the [35th] day prior to the first day of a Reference Period.

"IESO Electricity Distribution Receipts" means, for a month, the sum of all amounts payable by Electricity Distributors to IESO during the month pursuant to section • of the *Electricity Act*.

"IESO Financing Costs" means, for a Reference Period, the financing costs (if any) incurred by IESO pursuant to Section 8(4) in order to finance its ownership of the IESO Retained Interest during the Reference Period.

"IESO Funding Shortfall" means, for a month, the amount, if any, by which (a) the IESO Electricity Distribution Receipts that would be payable to IESO for the month if determined without regard to this Act and without regard to the changes made to section 25.33 of, and O.Reg. 429/4 under, the *Electricity Act* with respect to the Global Adjustment concurrently with this Act, exceeds (b) the IESO Electricity Distribution Receipts payable to IESO for the month[7]; provided that if the amount of any such shortfall is determined to have been based on incomplete information, variances or estimates that were inaccurate, an adjustment shall be made in determining the amount of any subsequent shortfall for the month in which the inaccuracy is identified.

"IESO ~~Power Contract Net Payment" means, for a Reference Period, the amount by which (a) the sum of amounts payable by IESO to the Generators under all Power Contracts for the Reference Period, exceeds (b) the sum of amounts payable by the Generators to IESO under all Power Contracts for the Reference Period.~~Recovery" means each amount remitted to IESO (including by IESO retaining such amount) in respect of the IESO Retained Interest pursuant to Section 5(6)(b), and "IESO Recoveries" means, collectively, all such amounts received by IESO.

~~"IESO Power Contract Net Receipt" means, for a Reference Period, the amount by which (a) the sum of amounts payable by the Generators to IESO under all Power Contracts for the Reference Period, exceeds (b) the sum of amounts payable by IESO to the Generators under all Power Contracts for the Reference Period.~~

"IESO Remittances" means, for a Settlement Date, all Electricity Distributor Remittances received by IESO or if applicable the Alternative Collection Agent prior to the Settlement Date and that have not otherwise been remitted to the Regulatory Asset Owners (each with respect to its Regulatory Asset) in accordance with Section 5(6), including the proceeds of any enforcement action undertaken by IESO or if applicable the Alternative

[7] This has been recast to recognize that the shortfall in the first 4.5 years could exceed the entire GA amount. A more refined approach to describing the concept may be considered.

Collection Agent to recover payment of amounts payable by Electricity Distributors to IESO in accordance with Article 5.

"IESO ~~Successor" means the entity appointed by the Province to succeed to the rights and obligations of IESO as the entity responsible for [managing the Province's power system].~~Retained Interest" means IESO's right, title and ownership interest (if any) in, to and under the Regulatory Asset, which shall exclude each Investment Interest.

"IESO Retained Interest Amount" means, on a day, (a) the sum of all IESO Funding Shortfalls incurred prior to the day, plus (b) the sum of all IESO Funding Costs incurred prior to the day in accordance with Section 8(4), minus (c) the net proceeds received by IESO from or on behalf of each Absolute Assignee as consideration for the Disposition of each Investment Interest paid to IESO by or on behalf of such Absolute Assignee prior to the day, and minus (d) the IESO Recoveries received by IESO prior to the day.

"IESO Successor" means the entity appointed by the Province to succeed to the rights and obligations of IESO as the entity responsible for managing the Province's electricity system.

"Investment Interest" means an ownership interest in, to or under the Regulatory Asset that is acquired by an Absolute Assignee pursuant to a Disposition, which ownership interest may include (without limitation) ownership of a specified portion on a divided basis of the assets comprising the Regulatory Asset and ownership of an undivided ownership interest in the Regulatory Asset, in each case as may be described in the applicable Disposition Document.

"Investment Remittance" means, for a month, the lesser of (a) the aggregate amount of all IESO Remittances for the month, and (b) the sum of the Finance Amounts due and payable by all Absolute Assignees in respect of the month.

"Maximum IESO Recovery" means, for a month, the amount (if any) by which (a) the IESO Remittances for the month, exceed (b) the sum of all Finance Amounts that are due and payable by Absolute Assignees in respect of the month.

"Maximum Transition Charge Amount" means, for a Reference Period, (a) the aggregate amount of Future Fair Share of Green Transition Benefits that are allocable to the applicable Retail Consumer Group in accordance with the Fair Allocation Plan, divided by (b) the applicable Reference Period Length.

"Measurement Date" means [Insert relevant date around the Legislation Implementation Date] and any other date specified as such under the Fair Allocation Plan.

"OEB" means the Ontario Energy Board, together with its successors.

"OPG" means the corporation incorporated as Ontario Power Generation Inc. under the *Business Corporations Act* on December 1, 1998, together with its successors.

~~"IESO Unapplied Surplus" means, at a particular time, the amount, if any, by which (a) the sum of (i) all IESO Power Contract Net Receipts for Reference Periods occurring prior to the time, and (ii) all GA Power Contract Contributions for Reference Periods occurring prior to the time, exceeds (b) the sum of (i) all IESO Power Contract Net~~

~~Payments for Reference Periods occurring prior to the time, and (ii) all IESO Applied Surpluses for Reference Periods occurring prior to the time.~~ Over-Assessed Amount" means, in respect of a Measurement Date, the amount (if any) by which (a) the Assessed Past Green Transition Costs, exceeds (b) the Estimated Past Green Transition Benefits, each as determined as of the Measurement Date.

"Period ~~Transition Charge~~Finance Charges" means, for a Reference Period, the sum of (a) the Estimate of the Finance Amount and (b) the True-Up Amount in respect of the immediately preceding Reference Period.

"Period Transition Charges" means, for a Reference Period, the sum of (a) the Period Finance Charges for the Reference Period and (b) the IESO Available Amount for the Reference Period.

"Pledge" means, in respect of an Investment Interest of an Absolute Assignee, a lien, mortgage, charge or security interest granted to or in favour of a Pledgee by ~~a Regulatory Asset Owner~~the Absolute Assignee in, to and over all or a specified portion (including a specified portion on a divided basis or by way of an undivided interest) of the ~~Regulatory Asset~~Investment Interest.

"Pledgee" means a person to whom ~~a Regulatory Asset Owner~~an Absolute Assignee grants a Pledge.

~~"Power Contracts" means long-term power contracts entered into by IESO with certain Generators, under which IESO has agreed to pay such Generators amounts, determined in respect of quantities of electricity over specified periods, to the extent that applicable market prices for such quantities of electricity during a specified period are less than specified reference prices for such quantities of electricity, and, correspondingly, Generators have agreed to pay IESO amounts if the market prices for such quantities exceed the applicable reference prices for such quantities.~~[14]Program End Date" means •, [2047].

"Province" means the Province of Ontario.

~~"Ratepayer" means present and future [retail] consumers of electricity [in the Province] who are [RPP][or OREC-eligible] consumers, which shall include all such retail consumers who are connected, directly or indirectly and whether a customer of an Electricity Distributor or not, to the transmission and distribution system assets located in the Province and who are taking electric delivery service within the Province, whether or not such retail consumers produce their own electricity or purchase electric generation services from a provider of electric generation services other than the owner of the Province's transmission and distribution system assets and whether or not the transmission and distribution system assets continue to be owned or operated by Electricity Distributors or operated by IESO.~~[15]

~~[14] Consider expanding to include PPAs that are not contracts for differences. Should this contemplate the possibility of additional or amended power contracts?~~

~~[15] Need to describe consumers in a fashion that is broad and not weakened by a bypass risk. Consider terminology to align with the description of the eligible customer class provided by the Ministry, e.g., same as OREC-eligible consumers except for consumers served by Independent Power Authorities (who do not pay GA). Also, consider use of the word "retail", to avoid limiting to customers of retailers and confirm removal of reference to transmission-connected customers.~~

~~"Ratepayer Group" means, in relation to a Reference Period, the Ratepayers who receive Electricity Invoices[16] during the Reference Period.~~

"Redemption Amount" means the amount payable by or on behalf of ~~a Regulatory Asset Owner~~an Absolute Assignee to redeem, prepay or repurchase a Funding Obligation incurred by or on behalf of the Absolute Assignee, including any premium, make-whole or other additional amount becoming payable under the Funding Obligation to give effect to such redemption, prepayment or repurchase.

"Reference Period" means (a) the period from (and including) the ~~[Legislation Implementation~~Measurement Date~~]~~ to (and including) June 30, 2017, (b) each six month period commencing [May 1st and November 1st] thereafter and (c) any other period specified as such in the Fair Allocation Plan.

"Reference Period Length" means, for a Reference Period, the number of months in the Reference Period.

"Refinancing" means ~~that a~~, in respect of a Funding Obligation incurred by or on behalf of an Absolute Assignee, that the Funding Obligation is repaid or repurchased for cancellation by or on behalf of ~~a Regulatory Asset Owner~~the Absolute Assignee by applying the net proceeds obtained by the ~~Regulatory Asset Owner~~Absolute Assignee incurring one or more other Funding Obligations.

"Regulatory Asset" means the property ~~right~~rights and ~~interest~~interests described in Section 6(1), ~~or if the context requires, a specified portion or undivided interest in such property right and interest that is described in the applicable Disposition Document~~which collectively is comprised of the IESO Retained Interest and each Investment Interest.

"Regulatory Asset Account" means (a) for an Electricity Distributor, any bank account into which the Electricity Distributor deposits or receives Transition Charge Collections; (b) for the Servicer, any bank account into which ~~the Servicer~~IESO deposits or receives Transition Charges, Electricity Distributor Remittances or IESO Remittances; and (c) if applicable, for the Alternative Collection Agent, any bank account into which the Alternative Collection Agent deposits or receives Transition Charge Collections, Electricity Distributor Remittances or IESO Remittances.

"Regulatory Asset Owner" means each of (a) IESO, as owner of (and to the extent ~~that it has retained any ownership interest in, to or under the Regulatory Asset~~of) the IESO Retained Interest and (b) each Absolute Assignee, ~~to the extent that it has acquired and owns any ownership interest (including a specified portion on a divided basis or by way of an undivided interest) in, to or under the Regulatory Asset~~as owner of its Investment Interest or Investment Interests, and "Regulatory Asset Owners" means collectively ~~all of the Regulatory Asset Owners~~IESO and each such Absolute Assignee, who together own the entirety of the Regulatory Asset and are required to exercise their individual rights of ownership in accordance with Section 6(7). ~~For greater certainty, where one Regulatory Asset Owner owns the entirety of the Regulatory Asset, "Regulatory Asset Owners" refers to this Regulatory Asset Owner.~~

[16] ~~Expand to include eligible consumers who are not customers of Electricity Distributors (e.g., suite-metered customers).~~

~~"Related Generation Assets" means the [facilities, plants and equipment] constructed, acquired or developed in connection with the Green Generation Initiative.~~

"Related Rights" means~~, with respect to a Regulatory Asset Owner's Regulatory Asset,~~ all rights of any kind (whether in tort, contract or otherwise) that attach or are attendant or incidental to any of the other property rights or interests that comprise such Regulatory Asset.

"Remittance Date" means, in respect of an Electricity Distributor, each day on which it is required to remit Electricity Distribution Remittances to IESO or if applicable the Alternative Collection Agent as specified in accordance with any Funding Obligation or, if no such day is specified in ~~relation to~~accordance with any Funding Obligation, then the Business Day preceding each Settlement Date.

"Repayment Obligation" means an obligation to repay, redeem or repurchase, or to provide for the repayment, redemption or repurchase (including by making a related Finance Reserve Deposit) of, all or a portion of the amount advanced to the ~~Regulatory Asset Owner~~Absolute Assignee under a Funding Obligation.

"Repayment" means a payment by ~~a Regulatory Asset Owner~~an Absolute Assignee made to satisfy a Repayment Obligation, other than to the extent that the payment is made by applying the proceeds of a Refinancing or from Finance Reserve Withdrawals.

"Replacement Event" means any event specified as such in a Funding Obligation.

"Retail Consumer" means:

(a) present and future consumers of electricity in the Province who are (i) consumers designated under section 79.16 of[, and O.Reg 95/05 under,] the *Ontario Energy Board Act, 1998*, or (ii) hold or are deemed to hold an "eligible account" under the *Ontario Rebate for Electricity Consumers Act, 2016*, other than any such consumer who has a contract with a Retailer who uses Retailer Consolidated Billing; and

(b) present and future Retailers who use Retailer Consolidated Billing,

and each case includes all such consumers and Retailers who are connected, directly or indirectly and whether a customer of an Electricity Distributor or not, to the transmission and distribution system assets located in the Province and who are taking electric delivery service within the Province, whether or not such retail consumers produce their own electricity or purchase electric generation services from a provider of electric generation services other than the owner of the Province's transmission and distribution system assets and whether or not the transmission and distribution system assets continue to be owned or operated by Electricity Distributors or operated by IESO.

"Retail Consumer Group" means, in relation to a Reference Period, the Retail Consumers who receive Electricity Invoices during the Reference Period.

"Retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity.

"Retailer Consolidated Billing" has the same meaning as in the *Retail Settlement Code* issued by the Ontario Energy Board.

"Service Area" means, in respect of an Electricity Distributor, the geographic area or region in which it is licensed to distribute electricity in accordance with ~~[this~~the *Electricity Act*[17]~~]~~, *1998*.

"Servicer" means ~~[To be determined]~~IESO or IESO Successor, as agent for and on behalf of the Regulatory Asset ~~Owner [To be determined – collective invoicing agent, and consider expanding].~~Owners, for the purposes set forth in Article 4.

"Settlement Date" means the [last Business Day of any month].

"Transition Charge" means, for a ~~Ratepayer~~Retail Consumer in respect of a Reference Period, ~~the sum of~~ (a) ~~[one sixth] of~~ the Period Transition Charge, (b) multiplied by its Allocation Factor ~~and (b) any Bypass Charge charged to the Ratepayer~~ in respect of the Reference Period, divided by (c) the applicable Reference Period Length.

"Transition Charge Collection" means any amount received or deemed by this ~~Part~~Act to have been received upon the collection of a Transition Charge paid by or on behalf of a ~~Ratepayer~~Retail Consumer, including any proceeds arising from the exercise and enforcement of any related rights and interests under or in respect of the Regulatory Asset.

"True-Up Amount" means, in respect of a Reference Period, the amount (which may be a negative amount) calculated by the ~~Administrative~~Financial Services Agent equal to (a) the Estimate of the Finance Amount for the related True-Up Period, minus (b) the Actual Finance Amount for such related True-Up Period, plus (c) the Collected Amount Adjustment for such related True-Up Period.

"True-Up Period" means, in relation to a Reference Period, the period from and including the [30th] day immediately preceding the first day of the Reference Period, to but excluding the [30th] day immediately preceding the last day of the Reference Period.

"Undertaking of the Lieutenant Governor in Council" means the undertaking of the Lieutenant Governor in Council given under Section ~~10~~11(2).

~~"Unrecovered Transition Costs" means the [unrecovered][unamortized] costs incurred in connection with the creation, adoption and implementation of the Green Generation Initiative, including any negative value of the Power Contracts and [other].~~[18]

Article 3 – Transition Charges

(1) **~~Ratepayer~~Retail Consumer Obligation to Pay a Transition Charge** – Each ~~Ratepayer~~Retail Consumer shall pay each Transition Charge charged to it in any Electricity Invoice issued to such ~~Ratepayer~~Retail Consumer by its Electricity Distributor or by an Alternative Servicer under Section 4(1), in each case on the terms of payment specified in the related Electricity Invoice.

~~[17] Revise once determine whether this will be a standalone Act or remain part of the *Electricity Act*.~~
~~[18] Note that this is the term that describes the "asset" that we are amortizing over a longer period of time.~~

(2) **Indebtedness of ~~Ratepayers~~Retail Consumers** – Until paid, a Transition Charge charged to a ~~Ratepayer~~Retail Consumer in an Electricity Invoice shall, together with any applicable late payment fees and finance charges arising under the terms of the Electricity Invoice with respect to such Transition Charge, constitute non-bypassable indebtedness of the ~~Ratepayer~~Retail Consumer to the Regulatory Asset Owners, ~~(~~each with respect to its respective interest in the Regulatory Asset~~)~~. Such indebtedness shall constitute a single and separate[8] debt obligation owing by the ~~Ratepayer~~Retail Consumer, which subject to Article 5 may be enforced independently from any other payment obligation or indebtedness owing by the ~~Ratepayer~~Retail Consumer under the Electricity Invoice or otherwise.~~[19]~~[9]

(3) **No Set-Off or Reduction** – A ~~Ratepayer~~Retail Consumer may not set-off or reduce (by counterclaim, defense or otherwise) the amount payable by it in respect of any Transition Charge, including any set-off against or in respect of any amount owing or becoming payable to such ~~Ratepayer~~Retail Consumer by its Electricity Distributor, any Regulatory Asset Owner or any other person.

(4) **Allocation of ~~Ratepayer~~Retail Consumer Payments** – If an Electricity Distributor receives a payment made by or on behalf of a ~~Ratepayer~~Retail Consumer in respect of amounts due and payable under one or more Electricity Invoices that is less than the total amount payable thereunder, such payment shall be allocated on a *pro rata* basis to the payment of related Transition Charges and other invoiced amounts and the amount so allocated as a payment of related Transition Charges shall be deemed to constitute a Transition Charge Collection.

(5) **Transition Charges are Irrevocable** – The Transition Charges arising under or in respect of Funding Obligations incurred under the Financing Plan (including any adjustments based on modifications to such Funding Obligations made in compliance with the Financing Plan or as a result of amendments to the Financing Plan made in accordance with Section ~~8~~9(3)) are deemed to be irrevocable, final and effective without any further action, ~~in~~except to the ~~absence~~extent of manifest calculation error. For greater certainty, a Transition Charge may include Finance Amounts for a Reference Period whether or not the payment of such Finance Amounts are inconsistent with the Fair Allocation Plan applicable at the time such payments are due and payable, whether or not the related Funding Obligation was properly incurred under the Financing Plan. In no case shall a Funding Obligation incurred under the Financing Plan be affected by a subsequent amendment to the Fair Allocation Plan.

[8] Determine if this is critical for rating and markets. Logistics under consideration.

~~[19] Torys suggests that we not create a debtor/creditor relationship between ratepayers and regulatory asset owners. Instead, ratepayers would only have relationships with electricity distributors and the Fair program would rely on consumers paying distributors and distributors to collecting those amounts and remitting them to IESO. The current draft goes further to bridge the investors more directly with ratepayers. There are differences in the approaches, including reliance from a credit perspective on the LDCs (rather than an ability to replace the individual LDCs with the investors choice). This depends on the credit analysis, and comfort that a later requirement will not be accommodated without a change in the legislation.~~[9] Torys has also suggested that deemed conditions of licenses for distributors, retailers and unit sub-metering providers, could be included as conditions, to require them to collect and remit amounts in accordance with this legislation. ~~Consideration should be given to whether that achieves the same direct relationship and whether the effectiveness of the current regulatory licensing regime should be suggested as the basis~~Consider if it is helpful to integrate the existing regulatory scheme for ~~a market based credit decision.~~invoicing and collections (regarding RPP) in the legislation.

~~(6)~~ ~~**[Anti-avoidance; No-by-pass** – Transition Charges charged to a Ratepayer in respect of any Finance Amount incurred under with the Financing Plan applicable at the time the related Funding Obligation was incurred may not be avoided and shall be [non-by-passable].]~~

Article 4 – Invoicing of Transition Charges[20]

(1) **Inclusion of Transition Charges in Electricity Invoices** – Each Electricity Distributor and if applicable any Alternative Servicer shall, as an agent of the Regulatory Asset Owners, specify the Transition Charge to be charged to a ~~Ratepayer~~Retail Consumer pursuant to Section 4(4) in respect of a related Reference Period in each Electricity Invoice issued by the Electricity Distributor or if applicable by the Alternative Servicer to the ~~Ratepayer~~Retail Consumer in respect of such Reference Period. Upon the inclusion of a Transition Charge in an Electricity Invoice, the obligation to pay such amount shall be binding on the applicable ~~Ratepayer~~Retail Consumer.

(2) **Calculation of the Period Transition Charge** – Not later than [35] days prior to the first day of a Reference Period, each ~~Regulatory Asset Owner~~Absolute Assignee (or the ~~Administrative~~Financial Services Agent on its behalf) shall provide the ~~Servicer~~OEB with written notice of each Estimate of a Finance Amount payable by it or on its behalf in respect of the Reference Period. [35] days prior to the first day of a Reference Period, IESO or Successor IESO if applicable shall specify the IESO Retained Interest Amount and any IESO Financing Costs that are due and payable and remain unpaid on such day. Not later than one month prior to the first day of a Reference Period, the ~~Servicer or if applicable the Alternative Servicer~~[21]OEB shall calculate the Period Transition Charge applicable to the Reference Period based on the calculations and information set forth in such written notices received from the ~~Regulatory Asset Owners, which~~Absolute Assignees and based on such amounts specified by IESO or Successor IESO, which calculations, information and amounts shall be determinative ~~in~~, except to the ~~absence~~extent of manifest calculation error or misstatement.

(3) **Calculation and Attribution of Transition Charges** – Not later than 25 days prior to the first day of a Reference Period, the ~~Servicer or if applicable the Alternative Servicer~~OEB shall apply the Attribution Methodology to determine the Allocation Factor for each ~~Ratepayer~~Retail Consumer of the applicable ~~Ratepayer~~Retail Consumer Group.

(4) **Notice of Transition Charges** – Not later than 20 days prior to the first day of a Reference Period, the ~~Servicer or if applicable the Alternative Servicer~~OEB shall inform each Electricity Distributor and if applicable any Alternative Servicer of the Transition Charges to be specified in the Electricity Invoices to be issued to each ~~Ratepayer~~Retail Consumer of the applicable ~~Ratepayer~~Retail Consumer Group who has a billing address in the Electricity Distributor's Service Area.

(5) **Adjustments** – The amount of any Transition Charge charged to a ~~Ratepayer by the Servicer~~Retail Consumer and specified as such in an Electricity Invoice shall be

~~[20] Details concerning Invoicing of Transition Charges (Article 4) and Collections and Remittances (Article 5) are complex. Consider how much of this can be addressed through regulations, or if acceptable based on existing OEB license conditions/codes, IESO market rules/manuals, etc.~~

~~[21] Should this be a designated government official, rather than an agent appointed by investors?~~

determinative of the amount of indebtedness created thereby and owing in respect of such Transition Charge, ~~in~~except to the ~~absence~~extent of any manifest calculation error.

(6) **Successors of Electricity Distributors** – Any successor of an Electricity Distributor shall be bound by the requirements of Article 4 and shall perform and satisfy all duties and obligations of such Electricity Distributor under Article 4 in the same manner and to the same extent as such Electricity Distributor, including the obligation under Article 4 to impose, attribute, charge, bill and invoice the Transition Charges.

(7) **IESO Successor** – Any IESO Successor shall be bound by the requirements of Article 4 and shall perform and satisfy all duties and obligations of IESO under Article 4 in the same manner and to the same extent as IESO, including the obligation to calculate and provide notice of Transition Charges.

(8) **Appointment of an Alternative Servicer** – If a Replacement Event occurs in respect of any Electricity Distributor, the ~~Regulatory Asset Owners~~Absolute Assignees shall, in accordance with the Collective Rights Agreement, be permitted, by an instrument in writing, to appoint an Alternative Servicer to perform some or all of the obligations and duties required to be undertaken by such Electricity Distributor under this Article 4, as and to the extent specified in such appointment. Upon acceptance of such appointment, the Alternative Servicer shall become obligated to perform such assumed obligations in replacement of such Electricity Distributor. Any Electricity Distributor that is replaced under this Section 4(8) shall promptly transfer all rights, powers, privileges and property interests in its possession or within its control in the performance of such obligations and duties to the Alternative Servicer and shall take such further actions, including the execution of instruments, necessary to give full and final effect to such transfer and to permit the Alternative Servicer to perform such obligations and duties on behalf of the Regulatory Asset Owners.

(9) ~~**Regulatory Asset Owners**~~**Absolute Assignees have Standing** – The ~~Regulatory Asset Owners~~Absolute Assignees, acting together in accordance with the Collective Action Agreement, may bring actions against any Electricity Distributor, IESO, the Servicer, Alternative Servicer or any other person who may be authorized to issue Electricity Invoices to ~~Ratepayers~~Retail Consumers for a failure to impose, attribute, charge, bill or invoice Transition Charges. Any court of the Province ~~[and the OEB]~~ shall have jurisdiction over any actions brought before it by the ~~Regulatory Asset Owners~~Absolute Assignees in relation to any such failure.[22]

(10) **No Set-Off or Reduction –** No Servicer or Electricity Distributor may set off or reduce (by counterclaim, defence or otherwise) the amount payable by it pursuant to this Article 4.

(11) **Regulations** – Regulations may be enacted for the purpose of specifying further rights, powers, privileges, duties and obligations that shall apply to IESO, any Electricity Distributor~~,~~ or any Alternative Servicer ~~or any [Alternative Collection Agent]~~ to ensure that Transition Charges are properly charged to ~~Ratepayers~~Retail Consumers and specified as such in Electricity Invoices.

[22] ~~Consider having such matters first go through the OEB, particularly if the obligation to bill, collect or remit is deemed to be a condition of license for distributors, IESO, retailers and unit sub-metering providers, which would be enforceable provisions under the OEB Act and within OEB jurisdiction to enforce.~~

Article 5 – Collections and Remittances

(1) **Duty to Collect as Agent** – Electricity Distributors or if applicable any Alternative Collection Agent shall, as an agent of the Regulatory Asset Owners, undertake [diligent][reasonable][10] efforts~~]~~ to collect amounts owing by ~~Ratepayers~~Retail Consumers in respect of Transition Charges charged to such ~~Ratepayers~~Retail Consumers in Electricity Invoices issued by the Electricity Distributor or if applicable such Alternative Collection Agent.

(2) **Segregation of Transition Charge Collections** – An Electricity Distributor or if applicable any Alternative Collection Agent shall promptly segregate Transition Charge Collections from other payments received by it from ~~Ratepayers~~Retail Consumers and deposit such Transition Charge Collections into its Regulatory Asset Account.[11] Prior to and following a deposit of Transition Charge Collections having been made into its Regulatory Asset Account, the Electricity Distributor or if applicable any Alternative Collection Agent shall hold such amounts in trust for ~~each~~the Regulatory Asset ~~Owner~~Owners.

(3) **Electricity Distributor Remittances** – On each ~~[~~applicable Remittance Date~~]~~, an Electricity Distributor shall remit all Transition Charge Collections received by it from ~~Ratepayers~~Retail Consumers in respect of the related Reference Period to or to the account of IESO or if applicable the Alternative Collection Agent.

(4) **Duty to Collect Electricity Distributor Remittances** – IESO or if applicable any Alternative Collection Agent shall, as an agent of the Regulatory Asset Owners, undertake [diligent][reasonable] efforts to accept and collect Electricity Distributor Remittances from Electricity Distributors and Transition Charge Collections from ~~Ratepayers~~Retail Consumers that pay their Electricity Invoices directly to ~~the Servicer.~~[23]IESO.[12]

(5) **Segregation of Electricity Distributor Remittances** – IESO and if applicable the Alternative Collection Agent shall ~~[~~promptly~~]~~ segregate Electricity Distributor Remittances from other payments received or held by it and deposit such Electricity Distributor Remittances into its Regulatory Asset Account. Prior to and following a deposit of Electricity Distributor Remittances having been made into its Regulatory Asset Account, IESO or if applicable any Alternative Collection Agent shall hold such amounts in trust for ~~each~~the Regulatory Asset ~~Owner~~Owners.

(6) **IESO Remittances** – On each ~~[~~Settlement Date~~]~~[24][13], IESO and if applicable the Alternative Collection Agent shall remit all amounts on deposit in its Regulatory Asset Account (a) first, to or to the account of the ~~Regulatory Asset Owner~~Absolute Assignees an amount equal to the Investment Remittance for the related month and (b) second, to IESO (including by IESO retaining such amount) an amount equal to the lesser of (i) the Maximum IESO Recovery for the related month and (ii) the IESO Retained Interest Amount as of the Settlement Date.

[10] Mirror collection "standard of care" under applicable legislation.
[11] Consider trying to attach to existing LDC credit enhancements and provide parallel coverage for customer losses.
~~[23]~~[12] Consider building this obligation into a deemed condition of licence for the IESO.
~~[24]~~[13] Consider frequency of remittances in light of rating requirements. US rating agencies favour daily remittances.

(7) **Successors of Electricity Distributors** – Any successor of an Electricity Distributor shall be bound by the requirements of Article 5 and shall perform and satisfy all duties and obligations of such Electricity Distributor under Article 5 in the same manner and to the same extent as such Electricity Distributor, including the obligation under Article 5 to collect Transition Charges and make remittances of Electricity Distributor Remittances.

(8) **~~Successors of~~ IESO Successor** – ~~Any successor of~~ IESO Successor shall be bound by the requirements of Article 5 and shall perform and satisfy all duties and obligations of IESO under Article 5 in the same manner and to the same extent as IESO, including the obligation to collect Transition Charge Collections, Electricity Distributor Remittances and to remit IESO Remittances.

(9) **Owners of Distribution Assets** - If any person other than an Electricity Distributor acquires distribution system assets in the Province or invoices or collects electricity distribution rates in the Province~~25~~14, then such person shall, if requested by the ~~Regulatory Asset Owners~~Absolute Assignees, be obligated to act diligently to (a) facilitate the invoicing and collection of any Transition Charges applicable to ~~Ratepayers~~Retail Consumers in its applicable service area, including all consumers connected to the electricity distribution system assets and taking electric delivery service located within such service area; (b) allocate partial payments by ~~Ratepayers~~Retail Consumers as provided in this ~~Part; (c) terminate service to non-paying Ratepayers on the same basis as termination of service is permitted for non-payment of electricity transmission and distribution rates; (d~~Act; (c) exercise all enforcement rights of the ~~Regulatory Asset Owners or Pledgee~~Absolute Assignees for the benefit of ~~a Regulatory Asset Owner or Pledgee~~an Absolute Assignee; and (~~e~~d) remit any Transition Charge Collections to the ~~Regulatory Asset Owner or Pledgee~~Absolute Assignees or Pledgees, as applicable, each in accordance with its ~~Regulatory Asset~~Investment Interest.

(10) **~~Regulatory Asset Owners~~Absolute Assignees have Standing** – The ~~Regulatory Asset Owners and any Pledgee~~Absolute Assignees, acting together in accordance with the Collective Action Agreement, may bring actions against any Electricity Distributor, IESO, the Alternative ~~Servicer~~Collection Agent, any owner of electricity distribution system assets in the Province or any other person who may be authorized to collect electricity distribution and use charges from ~~Ratepayers~~Retail Consumers for a failure to collect Transition Charges, remit or collect Electricity Distributor Remittances or remit IESO Remittances, as and to the extent applicable under Article 5. Any court of the Province ~~[and the OEB]~~ shall have jurisdiction over any actions brought before it by the ~~Regulatory Asset Owners~~Absolute Assignees in relation to any such failure. ~~26~~

(11) **Appointment of an Alternative Collection Agent** – If a Replacement Event occurs in respect of any Electricity Distributor or IESO, the ~~Regulatory Asset Owners~~Absolute Assignees shall, in accordance with the Collective Rights Agreement, be permitted, by an instrument in writing, to appoint an Alternative Collection Agent to perform some or all of the collection, segregation and remittance obligations otherwise required to be undertaken by such Electricity Distributor or IESO, as applicable, under Article 5, as and to the extent specified in such appointment. Upon acceptance of such appointment, the

~~25~~14 This is in anticipation of a possible future restructuring of the distribution system. ~~Also, this would cover any OREC-eligible customer (market participant) of IESO.~~

~~26 Consider having such matters first go through the OEB, particularly if the obligation to bill, collect or remit is deemed to be a condition of license for distributors, IESO, retailers and unit sub-metering providers, which would be enforceable provisions under the OEB Act and within OEB jurisdiction to enforce.~~

Alternative Collection Agent shall become obligated to perform such assumed obligations in replacement of such Electricity Distributor or IESO, as applicable. Any Electricity Distributor or IESO, as applicable, that is replaced under this Section 5(11) shall promptly transfer all rights, powers, privileges and property interests in its possession or within its control in, to and over the Regulatory Asset, including its Regulatory Asset Account, to the Alternative Collection Agent and shall take such further actions, including the execution of instruments, necessary to give full and final effect to such transfer and to permit the Alternative Collection Agent to enforce the Regulatory Asset on behalf of the ~~Regulatory Asset Owners~~Absolute Assignees.

(12) **No Set-off, etc.** - The Regulatory Asset, including rights in Transition Charges, Transition Charge Collections, and the interests of a Regulatory Asset Owner, an Absolute Assignee and a Pledgee therein, may not be setoff or reduced (including by counterclaim, surcharge or defense) by any ~~Ratepayer~~Retail Consumer, any Electricity Distributor, IESO, Alternative Collection Agent or any owner of distribution system assets in the Province or any other person or in connection with any default, bankruptcy, reorganization or other insolvency proceeding of any Electricity Distributor, IESO, Alternative Collection Agent or any owner of distribution system assets in the Province, any affiliate or successor thereof or any other entity or otherwise.~~27~~15

(13) **Sequestration** – If any Electricity Distributor, IESO, the Alternative Collection Agent or any owner of distribution system assets in the Province or any other person or entity authorized to collect Transition Charges, defaults on any required remittance of Transition Charge Collections, Electricity Distribution Remittances or IESO Remittances under Article 5, any court in the Province, upon application by ~~the Regulatory Asset Owners or Pledgee~~and of the Absolute Assignees acting collectively under the Collective Action Agreement and without limiting any other remedies otherwise available to the ~~applying party~~Absolute Assignees or Pledgees, shall order the sequestration and payment of the Transition Charge Collections, Electricity Distribution Remittances and IESO Remittances, as applicable, for the benefit of the ~~Regulatory Asset Owners or Pledgee~~Absolute Assignees, each with respect to its ~~Regulatory Asset.~~ Investment Interest, and the Pledgees as applicable.[16]

(14) Regulations – Regulations may be enacted for the purpose of specifying further rights, powers, privileges, duties and obligations that shall apply to IESO, any Electricity Distributor or any Alternative Collection Agent to ensure that rights, interests, entitlements, benefits and proceeds in, to, under and from the Regulatory Asset are of fully realized by ~~the Regulatory Asset Owner~~some or all of the Absolute Assignees and Pledgees.

Article 6 – The Regulatory Asset

(1) **Composition** – The Regulatory Asset shall constitute ~~an existing, present~~a current and irrevocable property right and interest consisting, collectively, of the following rights and interests ~~of a Regulatory Asset Owner in the following~~ (without duplication):

~~27~~15 Consider whether it makes sense to create a "deemed collection" payment obligation on Electricity Distributors to the extent a ~~Ratepayer~~Retail Consumer reduces its payment of Transition Charges, despite this language~~, and same~~. Same for Electricity Distributor Remittances and IESO Remittances.

[16] Consider adding or substituting this provision for a right to appoint a receiver.

a. the right of ~~a Regulatory Asset Owner to record its portion of the Regulatory Asset in its accounts~~IESO (i) to record its IESO Retained Interest in its accounts in accordance with Section 8(1), having a stated amount from time to time equal to the IESO Retained Interest Amount; and (ii) to receive IESO Recoveries from time to time in accordance with Section 5(6)(b);

b. the right to impose, bill, invoice, collect and receive Transition Charges from ~~Ratepayers~~Retail Consumers, including the right to determine the amount of Transition Charges in accordance with this ~~Part~~Act;

c. the right to enforce the obligations and indebtedness of each ~~Ratepayer~~Retail Consumer to pay the Transition Charges charged to the ~~Ratepayer~~Retail Consumer from time to time in accordance with Article ~~2~~,3, together with all related late payment fees or interest charges arising in respect thereof under the related Electricity Invoices;

d. the right to enforce the duties and obligations of each Electricity Distributor and if applicable the Alternative Servicer to impose, attribute, charge, bill and invoice the Transition Charges in accordance with Article 4;

e. the right to enforce the duties and obligations of each Electricity Distributor and if applicable the Alternative Collection Agent to collect, receive and remit amounts received by it in respect of Transition Charges as Electricity Distributor Remittances to or to the account of IESO or if applicable the Alternative Collection Agent in accordance with Article 5, including all collections and the proceeds of any enforcement action undertaken by the Electricity Distributor or if applicable the Alternative Collection Agent to recover payment of Transition Charges in accordance with Article ~~4~~5;

f. the right to enforce the duties and obligations of IESO and if applicable the Alternative Collection Agent to collect and receive Electricity Distributor Remittances and to remit IESO Remittances to or to the accounts of the Regulatory Asset Owners, each with respect to its respective interest in the Regulatory Asset, in each case in accordance with Article 5, including all collections and the proceeds of any enforcement action undertaken by it to recover payment of Electricity Distributor Remittances in accordance with Article ~~4~~5;

g. the right to receive and collect all Transition Charge Collections, all Electricity Distributor Remittances and all IESO Remittances in accordance with Article 5;

h. all rights and entitlements under each Regulatory Asset Account and all amounts on deposit in any such Regulatory Asset Account;

i. all Related Rights; and

j. all revenue, collections, claims, payments, money and proceeds of or derived from the rights described in (a) through (i), regardless of whether such revenue, collections, claims, payments and proceeds are imposed, invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

A Regulatory Asset and the property rights and interests therein shall exist whether or not Transition Charges have been imposed, charged, invoiced, accrued or collected and notwithstanding that the imposition, attribution, invoicing and collection of Transition Charges will depend on further actions that may not have occurred.

(2) **Validity of Dispositions** – Despite any limitations or restrictions on a Disposition that may arise by contract or by operation of any applicable law of the Province ~~[~~or any consent requirement applicable to a Disposition that may arise by ~~contract or by~~ operation of any applicable law of the Province~~]~~, a Disposition by ~~a Regulatory Asset Owner~~IESO to an Absolute Assignee made under the Financing Plan ~~pursuant to a Disposition Document~~, or by one Absolute Assignee to another Absolute Assignee made under the Financing Plan, shall be permitted and when made shall be valid and enforceable in accordance with ~~its~~the terms of the related Disposition Document and shall be effective to confer upon the Absolute Assignee thereof a valid property right and interest in, to and under the ~~Regulatory Asset~~applicable Investment Interest (or relevant portion thereof) in accordance with the terms of such Disposition, provided that the parties to the applicable Disposition Document have expressly stated therein that such Disposition is a sale or other absolute transfer. Without limiting the foregoing, any Disposition that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as a true sale and absolute transfer of the Regulatory Asset Owner's applicable right, title, and interest in, to and under the Regulatory Asset (or relevant portion thereof), and not merely as a Pledge thereof~~. [A Disposition shall not be subject to recharacterization or challenge on any other basis and the validity of a Disposition shall not be affected or impaired by: (a) the commingling of Transition Charge Collections or other proceeds from Transition Charges with other amounts; (b) the retention of any interest (including any partial, residual or subordinated interest, whether direct or indirect) in the Regulatory Asset by the transferring Regulatory Asset Owner; (c) any right to repurchase the Regulatory Asset in favour of the transferring Regulatory Asset Owner; (d) any recourse that an Absolute Assignee may have against the transferring Regulatory Asset Owner; (e) any indemnification rights or obligations provided by the transferring Regulatory Asset Owner; (f) any obligation of the transferring Regulatory Asset Owner to collect and remit Transition Charge Collections on behalf of an Absolute Assignee, including but not limited to, any retention by the transferring Regulatory Asset Owner to bare legal title for the purpose of collecting Transition Charges; or (g) the ascribed or intended treatment of the Disposition by the transferring Regulatory Asset Owner or the Absolute Assignee on any different basis including for tax, financial reporting or other purposes.]~~[28], and upon such Disposition the assigner or seller under the applicable Disposition Document shall retain no right, title or interest in the Investment Interest subject to the Disposition, including all rights under the Investment Interest arising after such Disposition.

(3) **Perfection and Priority of Dispositions** – Any Disposition of an interest in a Regulatory Asset shall be vested, valid, binding and perfected from the time when such Disposition is made. Such Disposition shall be perfected, vested, valid and binding as against the transferring Regulatory Asset Owner and all other persons who have claims of any kind (whether in tort, contract or otherwise) against the transferring Regulatory Asset Owner, irrespective of whether such persons have notice of the Disposition and the property rights and interests acquired by the Absolute Assignee under such Disposition shall be free and clear of any liens in favour of such other persons.

~~[28] Consider if helpful to investors, or delete.~~

(4) **Validity of Pledges** – Despite any limitations or restriction on a Pledge that may arise by contract or by operation of any applicable law of the Province ~~[~~or any consent requirement applicable to a Pledge that may arise by ~~contract or by~~ operation of any applicable law of the Province~~]~~, a Pledge by ~~a Regulatory Asset Owner~~an Absolute Assignee may be made to secure any related Funding Obligation and when made shall be valid and enforceable in accordance with its terms and shall be effective to confer upon the Pledgee a valid security interest in, to and in respect of the ~~Regulatory Asset~~related Investment Interest in accordance with the terms of the Pledge. Other than as required by the Financing Plan, no consent of any person shall be required to give effect to a Pledge made to secure any Funding Obligation.

(5) **Perfection and Priority of Pledges** - ~~Any Pledge made by a~~For purposes of the *Personal Property Security Act* (the "PPSA"), the Regulatory Asset ~~Owner~~shall be intangible personal property and any Pledge made by an Absolute Assignee in respect of a Funding Obligation ~~incurred under the Financing Plan shall be perfected, valid and binding from the time when the Pledge is made and shall be valid and binding as against the Regulatory Asset, the Regulatory Asset Owner making the Pledge and all other persons who have claims of any kind (whether in tort, contract or otherwise) against the Regulatory Asset or the pledging Regulatory Asset Owner, irrespective of whether such persons have notice of the Pledge and the security interests of the Pledgee under such Pledge shall have priority over any liens in favour of such other persons. All proceeds of the Regulatory Asset~~may be perfected by filing a financing statement under the PPSA on that basis. All proceeds of a related Investment Interest that are subject to such a Pledge that are received by the ~~Regulatory Asset Owner~~Absolute Assignee shall immediately be subject to the such Pledge, and the security interest in such proceeds shall be perfected~~, without any physical delivery thereof, registration of any financing statement with respect thereto~~ pursuant to the ~~[~~PPSA~~]~~ ~~or any other further act.~~[29].[17] A Pledge perfected under the PPSA shall be a continuously perfected security interest and shall have priority over any other lien or security interest, created by operation of law or otherwise, that may ~~subsequently~~ attach to the property rights and interests in the ~~Regulatory Asset~~Investment Interest subject to the Pledge unless the Pledgee has otherwise agreed in writing. ~~Any~~Subject to the terms of the Collective Action Agreement, a Pledgee shall have a perfected security interest in a related Investment Interest, including the Absolute Assignee's rights and interests in and to Transition Charge Collections or other related proceeds in respect of the Investment Interest and that are deposited in any Regulatory Asset Account or other account of any Electricity Distributor, IESO, Alternative Collection Agent or other person who may have commingled such Transition Charge Collections or such other proceeds with other funds. ~~[A Pledgee~~All provisions of the PPSA shall ~~cause a financing statement to be filed in respect of a Pledge on the basis that~~apply to the Regulatory Asset on the basis that it is ~~"~~intangible~~"~~ personal property, ~~for informational purposes only under the [PPSA].~~except to the extent otherwise provided in this Section 6(5).

(6) **Enforcement of Property Rights** – The rights of any Regulatory Asset Owner to collect and enforce its rights and interests in, to or in respect of the Regulatory Asset shall be exercised in the manner set forth in Article 5.

(7) **Owners of a Specified Portion of the Regulatory Asset** – A Regulatory Asset Owner may effect a Disposition to an Absolute Assignee of a specified portion of its rights and

~~29~~17 Consider whether to simply leave this and have a financing statement be filed under the PPSA. This would normalize the security interest and reduce any adverse suggestion that security would not otherwise arise.

interests in the Regulatory Asset, including by way of a Disposition of a divided or an undivided interest therein as specified in a related Disposition Document, in each case under the Financing Plan. In no circumstance may the specified portions of the rights and interests in the Regulatory Asset owned by all Regulatory Asset Owners be greater than all of the rights and interests that comprise the Regulatory Asset in the aggregate.

(8) **Collective Action Required** – If a Regulatory Asset Owner's ~~right~~rights and ~~interest~~interests in the Regulatory Asset comprises less than the entire property right and interest constituted by the Regulatory Asset, such Regulatory Asset Owner shall only enforce such right and interest on a collective ~~[~~and ~~joint]~~coordinated basis with each other Regulatory Asset Owner in accordance with the Collective Rights Agreement.[30]

Article 7 – Establishment of the Fair Allocation Plan[31][18]

(1) Adoption of the Fair Allocation Plan – The ~~[Minister of Energy]~~[32]Delegate may , [by written ~~order~~declaration,] designate and adopt a Fair Allocation Plan in compliance with Article 7. The Fair Allocation Plan so designated and adopted shall be the Fair Allocation Plan for all purposes of this ~~Part~~Act, ~~[~~except if amended, amended and restated or terminated by a further written ~~order issued~~declaration made by the ~~Minister of Energy~~Delegate in compliance with Section ~~•]~~7(4).

(2) Principles and Parameters[33] – A Fair Allocation Plan shall seek to allocate ~~Unrecovered~~Future Fair Share of Green Transition ~~Costs~~Benefits across present and future ~~Ratepayer~~Retail Consumer Groups on a basis that the ~~Minister of Energy~~Delegate, in its sole and absolute discretion, determines to be equitable, having regard to the following principles and parameters[34]:

1. ~~Unrecovered~~Future Fair Share of Green Transition ~~Costs~~Benefits should be allocated over ~~a period not to exceed the later of (a) the estimated remaining useful life of the Related Generating Assets and (b) the remaining term of IESO's commitments under the Power Contracts~~the period ending on the Program End Date.

2. The Fair Allocation Plan should specify the Reference Periods ~~(e.g., 6 month periods),~~ for the purpose of identifying applicable ~~Ratepayer~~Retail Consumer Groups and allocating ~~among them responsibility to bear the Unrecovered~~Future Fair Share of Green Transition ~~Costs~~Benefits among them on a relative basis over time.

[30] ~~This is necessary to ensure that if there are multiple regulatory asset owners and pledgees, they will be coordinated in the application of their rights of enforcement, etc.~~

[31][18] The idea is that the Fair Allocation Plan will be set once at the outset based on the principles and parameters described here, all as applied based on information available and the reasonable expectations and discretion of the delegate at such time. If the expectations are not fulfilled (e.g., generators may choose to retire their facilities at the end of their current ~~Power Contracts~~procurement contracts and not invest in extending service lives to secure further ~~power~~procurement contracts), the Fair Allocation Plan will be unaffected, unless it is specifically amended (assuming amendments will be permitted by the legislation).

[32] ~~Input required. If the MOE is given this power, conform to applicable authorities (e.g., plans and directives).~~

[33] ~~Consideration will be given as to whether these details should be included in the Regulation.~~

[34] ~~We have provided a few examples of what could be the basic principles. These will depend on market considerations, the Province's decision on the required amount of detail and the ability to sustain the legal basis for the program. These examples are not meant to suggest the appropriate balance – just illustrative to advance a discussion among the stakeholders.~~

3. The share of ~~Unrecovered~~Future Fair Share of Green Transition ~~Costs~~Benefits allocable to a particular ~~Ratepayer~~Retail Consumer Group in respect of a Reference Period should be proportionate to a reasonable assessment of the benefits of the Green Generation Initiative to the ~~Ratepayer~~Retail Consumer Group over such Reference Period.

4. The ~~estimated Unrecovered~~share of Future Fair Share of Green Transition ~~Costs~~Benefits to be allocated to a ~~Ratepayer~~Retail Consumer Group and any future ~~Ratepayer~~Retail Consumer Group at a particular time should not exceed the ~~estimated value of the Related Generating Assets based on their remaining useful lives or terms~~Estimated Future Green Transition Benefits, measured in respect of the ~~period~~Reference Periods following such particular time and to the Program End Date.

5. No future ~~Ratepayer~~Retail Consumer Group should ~~bear~~be allocated an unreasonably disproportionate share of ~~the Unrecovered~~Estimated Future Green Transition ~~Costs~~Benefits. Except in exceptional circumstances or in the case of any ~~backward-looking adjustment made~~reallocation of an Over-Assessed Amount as contemplated in 7, below, the ~~share of the Unrecovered~~Future Fair Share of Green Transition ~~Costs~~Benefits to be allocated under a Fair Allocation Plan to any future ~~Ratepayer~~Retail Consumer Group should have regard to *[Insert formula if a year-over-year maximum amount is determined to be appropriate]*[35].

6. ~~A reasonable estimate of the rate of inflation~~The time value of money should be ~~applied~~reflected in the Fair Allocation Plan, in order to equate the relative values of the nominal ~~amount of Unrecovered Transition Costs to be allocable to Ratepayer~~allocations of Future Fair Share of Green Transition Benefits, calculated in current dollars, to future Retail Consumer Groups over time.

7. ~~Backward-looking adjustments to a~~To the extent there has been an Over-Assessed Amount, the Fair Allocation Plan may ~~be made to achieve a fair distribution among Ratepayers of the benefits of the Green Generation Initiative.~~determine that an adjustment should fairly be made to rebate Retail Consumers for such an amount, by reducing the costs otherwise attributable under the Act to such Retail Consumers. The relative costs of the Green Generation Initiative are reflected under the Act by the attribution of Transition Charges to such Consumer Groups, based on the Financing Plan seeking to track the allocations of benefits under the Fair Allocation Plan. Accordingly, the Maximum Transition Charge Amount determined for one or more Retail Consumer Groups having regard to the Fair Allocation Plan otherwise applicable may be appropriately reduced to recognize the effect of the Over-Assessed Amount. In such a case, a determination to reduce the Maximum Transition Charge Amount applicable for certain related Reference Periods should have regard to the principle that the corresponding rebate should be extended to benefit the Consumer Group or Consumer Groups in closest proximity to the Legislative Implementation Date.

(3) Attribution Methodology – The Fair Allocation Plan ~~[~~shall~~]~~ specify ~~an objective methodology (~~the "~~Attribution Methodology~~")~~ for the purposes of allocating the Period

~~[35] Consider if a quantitative limit needs to be included in the legislation.~~

Transition Charges across ~~all of~~ the ~~Ratepayers~~Retail Consumers of a particular ~~Ratepayer~~Retail Consumer Group. The Attribution Methodology shall result in an attribution of such Transition Charges that ~~are~~is considered by the ~~Minister of Energy~~Delegate to be equitable, and may have regard to such principles and parameters as may be further set forth in a Regulation.

(4) ~~**[Confirmation][Review] of the Fair Allocation Plan** – [OEB?][36]~~**Amendments of the Fair Allocation Plan** – The Fair Allocation Plan may be amended, amended and restated or terminated by the Delegate, provided that such amendment, amendment and restatement or termination shall (a) not be inconsistent with the principles and parameters set forth in (2) or (3), above, or the Regulation and (b) comply with any restrictions or limitations specified with respect thereto in any Funding Obligation.

Article 8 – The ~~Financing Plan~~[37]IESO Retained Interest

(1) **Maintain Books of Account** – IESO may maintain books of account to record the IESO Retained Interest Amount and all adjustments thereto from time to time. Such books of account shall be determinative with respect to the amount of IESO's related regulatory asset.

(2) **Limitation on Additions** – IESO shall not record additions to the IESO Retained Interest Amount in respect of IESO Funding Shortfalls (a) if such additions are restricted by the terms of any Disposition Document or the Collective Action Agreement, or (b) on or after •, 2017.

(3) **Dispositions** – IESO may effect a Disposition to an Absolute Assignee if (a) the Absolute Assignee has or will concurrently become bound by the Collective Rights Agreement; (b) the Disposition is effected pursuant to a Disposition Agreement duly executed by IESO; (c) the Financial Services Agent confirms in writing that the Disposition is permitted under the Financing Plan; and (d) the net proceeds payable to IESO from the sale of the related Investment Interest would not exceed the IESO Retained Interest Amount immediately before the time of such Disposition.

(4) **No Continuing Interest in any Investment Interest** – IESO shall have no continuing right or interest in any Investment Interest subject to a Disposition effected by IESO under a Disposition Document to which IESO is a party and IESO shall not assert any such right or interest or take or omit to take any action to exercise or enforce its rights or interests under the IESO Retained Interest if such action or omission would impede or obstruct the rights of any Absolute Assignee or a Pledgee to enforce its rights and interests in any Investment Interest, except if IESO is expressly permitted to take or omit to take such action, respectively, under the related Disposition Document or the Collective Rights Agreement.

(5) **IESO Financing Costs** – IESO shall be entitled in good faith to incur reasonable financing costs (including interest and other reasonable financing charges) reflecting

~~[36] Any approvals or consents by the OEB will be obtained before any Funding Obligation that is dependent on such approval or consent is incurred. Any such approval or consent will be irrevocable and non-appealable. Any regulatory action occurring after any incurrence will not affect the related Funding Obligation or underlying rights in the Regulatory Asset.~~

~~[37] Consideration will be given as to whether these details should be included in the Regulation.~~

market terms and conditions and which are payable in arrears, in order to finance its ownership of the IESO Retained Interest from time to time.

(6) **IESO Recoveries** – IESO shall, in respect of a month, be entitled to receive from IESO Remittances on a related Settlement Date the amount (if any) available to IESO under Section 5(6)(b).

Article 9 – The Financing Plan

(1) **Power to Prepare ~~and~~, Implement and Amend the Financing Plan** – ~~In compliance with a [written order][***MOE to confirm process.***] of the Minister of Energy, the Administrative Agent shall~~The Financial Services Agent shall be authorized to prepare, implement and ~~propose~~amend the~~ adoption of a~~ Financing Plan. If the ~~Administrative~~Financial Services Agent is unwilling or unable to prepare and propose the adoption of ~~a~~the Financing Plan, the ~~Minister of Energy~~Delegate may by written ~~order~~declaration designate one or more other persons who shall be authorized to prepare ~~and~~, implement ~~such a~~and amend the Financing Plan.

(2) ~~**Required**~~ **Terms and Conditions of the Financing Plan** – The Financing Plan shall establish the basis for each Absolute Assignee's funding decisions ~~that have the effect of allocating the Unrecovered Transition Costs across present and future Ratepayer Groups on a basis that is consistent with the Fair Allocation Plan~~. The Financing Plan shall ~~be consistent with~~have regard to the principles~~,~~ and parameters~~, requirements and conditions~~ set forth in Schedule 3 and such other conditions and requirements as may be specified in a written ~~order~~declaration of the ~~Minister of Energy [~~Delegate or in accordance with the Regulation~~]~~.

(3) ~~**Power to Review and Approve the Financing Plan** – The Minister of Energy may, by written order, designate one or more persons to review the Financing Plan and to review and assess the consistency of the Funding Obligations incurred with such Financing Plan, and the Minister of Energy may specify requirements in respect of such review in such written order. The Administrative Agent, or such other person(s) as may be designated by written order of the Minister of Energy made pursuant to Section 8(1), shall make any such amendments to the Financing Plan, and submit a revised Financing Plan to the designated reviewer for approval within [the time period specified in such written order]/[[•] days of such written order].[***Consider periodic amendments to the Financing Plan following an annual review; provided that amendments cannot affect the existing Funding Obligations. Consider the level of oversight the MoE/OEB will have over this process?***]~~**OEB Approval** – Any Additional Funding Charge payable to or for the benefit of the Financial Services Agent shall be subject to review and approval by the OEB.

(4) ~~**Approval of Financing Plan –** The **[OEB]** shall have the power to and shall approve or disapprove of the Financing Plan based solely on whether the Financing Plan is consistent with (i) the principles, parameters, requirements and conditions set forth in Schedule 3, (ii) such other conditions and requirements as may be specified in a written order of the Minister of Energy [or in accordance with the Regulation] [and (iii) the Fair Allocation Plan]. If the **[OEB]** approves the Financing Plan, then such Financing Plan shall be implemented by the Administrative Agent. If the OEB disapproves of the Financing Plan or otherwise fails to approve the Financing Plan, then the Administrative Agent shall re-submit the Financing Plan with such amendments as the Administrative~~

Agent shall consider necessary for the Financing Plan to be approved by the OEB.[38] **OEB Review** – The OEB [shall] undertake an annual review of the records maintained by the Financial Services Agent for the purpose of confirming that the Funding Obligations incurred and the Finance Amounts paid by or on behalf of the Absolute Assignees were incurred and paid, respectively, in material conformity with the Financing Plan.

(5) **Consistency with the Fair Allocation Plan** – Funding Obligations should only be incurred if Repayments and Funding Costs would be borne by present and future Designated Ratepayers on a basis that is [generally] consistent with their respective allocations of the costs and benefits of the Green Generation Initiative contemplated in the Fair Allocation Plan. In that regard, at the time of setting the Fair Allocation Plan for any particular period, the aggregate amount payable during future Reference Periods on account of Funding Obligations incurred on or before the date on which a new Funding Obligation is incurred should not exceed the allocation of the costs and benefits of the Green Generation Initiative to the applicable Ratepayer Group contemplated in the Fair Allocation Plan. If, despite the foregoing, the Administrative Agent determines that the anticipated amount of any Repayment (together with payments of other Finance Amounts) to be made in respect of a Reference Period would materially exceed the allocation of the costs and benefits of the Green Generation Initiative to the applicable Ratepayer Group under the then current Fair Allocation Plan, the Financing Plan shall require the Administrative Agent to make diligent efforts to determine whether a Refinancing or deferral of such Repayment may be reasonably and cost-effectively effected based on then prevailing market terms, conditions an circumstances, if such a Refinancing or deferral is determined to be available the Financing Plan shall require the Administrative Agent to make diligent efforts to implement such Refinancing or deferral on a basis that is consistent with the Fair Allocation Plan.

(5) **(6) Establishment of Special Purpose Entities** – If the implementation of the Financing Plan contemplates the establishment of one or more special purpose finance entities to incur Funding Obligations as a Financing Entity under the Financing Plan, as an Absolute Assignee and on a basis that limits the recourse for the payment of such Funding Obligations to such Absolute Assignee's interest in, to and under the Regulatory Asset, the Administrative Agent shall have regard to the characteristics specified in Schedule 4 in establishing such special purpose entity.]**Replacement of the Administrative Agent** – If the OEB identifies deficiencies or makes recommendations in its review under Section 9(4), the Administrative Agent shall take reasonable measures to remedy such deficiencies if remediable, and shall in any event have regard to the recommendations of the OEB in relation to further actions undertaken by the Financial Services Agent under the Financing Plan. If the Financial Services Agent is unwilling or unable to reflect such recommendations in relation to such further actions, the Delegate may by written declaration designate one or more other persons who shall thereafter become the Financial Services.

(6) **(7) Obligation to Apply IESO Remittances** – The AdministrativeFinancial Services Agent shall ensure that amounts transferred to it under Article 5, as agent for and on behalf of the Regulatory Asset OwnersAbsolute Assignees, or otherwise in respect of or

[38] Once the Financing Plan is reviewed and approved there would be no further OEB review. If there is opportunity for further review, such review will have no impact on prior issued debt. Any further financings would be put on hold until such review is completed (during which time the IESO would again need to fund the shortfall on an interim basis and obtain necessary funding).

as proceeds from ~~the Regulatory Asset~~an applicable Investment Interest shall only be applied or used to pay related Finance Amounts when they are due and payable and for no other purpose.[39]

(7) ~~(8)~~ **Non-Recourse** – The Financing Plan shall be implemented so that Funding Obligations incurred shall be without recourse to or to any assets of the Electricity Distributors, IESO, any Alternative Servicer, ~~and~~any Alternative Collection Agent, the ~~Administrative~~Financial Services Agent, the OEB, the Province or the Lieutenant Governor in Council, other than if and to the extent that such persons or entities are liable for the performance of obligations or duties arising under this ~~Part~~Act or expressly agree to become liable pursuant to any Funding Obligation or obligation in relation to a Finance Amount. [All Funding Obligations shall contain a statement to the following effect: "Neither the full faith and credit nor the taxing power of the Province of Ontario is pledged to the payment of the principal of, or interest on, this [obligation].]

(8) ~~(9)~~ **Incurrences are Binding** – ~~Despite any failure to adhere to the Financing Plan or to comply with any requirement of this Part,~~Notwithstanding anything to the contrary in this Act, each Disposition made to or by an Absolute Assignee and all amounts payable or becoming due and payable by or on behalf of ~~a Regulatory Asset Owner~~an Absolute Assignee under or in connection with any obligation purporting to be a Funding Obligation, shall be binding for the purposes of this ~~Part~~Act, including in determining the amount of related Transition Charges, despite any impairment or defect resulting from such failure.

[Article ~~9~~10 – Compliance Matters[40~~19~~]

(1) **Right of the [OEB] to Inspect Books and Records** - For the purpose of investigating compliance with the provisions of this ~~Part~~Act, the ~~[~~OEB~~]~~ shall have the right, jurisdiction, power and authority to examine the books and records of ~~any person who is or may become obligated or have duties that arise under this Part or any Funding Obligation~~*[Insert names if any]*.

~~(2) **Power to Investigate Compliance and Impose Regulatory Sanctions** - Subject to the limitations set forth regarding the irrevocability of Transition Charges and the Undertaking of the Lieutenant Governor in Council, nothing in this Part shall (a) prevent or preclude the [OEB] from investigating the compliance of any person who is or may become obligated or have duties that arise under this Part [or any Funding Obligation] with the terms and conditions of this Part and requiring compliance by such person therewith; or (b) prevent or preclude the [OEB] or any successor regulator from imposing regulatory sanctions against any person who is or may become obligated or have duties that arise under this Part for its failure to comply with the terms and conditions of this Part[41].~~

(2) ~~(3)~~ **[~~Other Rating~~OPG's Rate Settings** – When setting other rates for or in respect of ~~any person who is or may become obligated or have duties that arise under this Part,~~

[39] ~~We need to work in the idea that there may be Finance Reserve Deposits or other amounts that remain after paying Finance Amounts. Those surplus amounts should be credited back to Ratepayers.~~

[40~~19~~] As noted above, the outcome of any regulatory action undertaken by the OEB will not affect Funding Obligations that have been incurred under the Financing Plan. This Article ~~is~~and any potential role for the Auditor General is still under consideration.

[41] ~~Consider scope of OEB regulation and whether a Financing Entity should be subject to this sort of provision in any event.~~

~~including any Electricity Distributor, IESO, Generator or the Administrative Agent, nothing in this Part shall prevent the [OEB] or any successor regulator from taking~~OPG, the OEB shall not take into account (a) the ~~collection by or attribution to such person of~~ administrative or servicing fees charged by OPG as Financial Services Agent [in excess of the actual incremental costs incurred by such person of providing administrative or servicing services.~~]~~[42]; (b) the cost consequences to OPG of being the Financial Services Agent; or (c) the consequence of OPG consolidating the assets and liabilities of any Financing Entity for OPG's accounting purposes, in each case in setting any regulated payment amounts for OPG.][20]

Article ~~10~~11 – Undertaking of the Lieutenant Governor in Council[43][21]

(1) No Action to limit, alter, or impair or terminate Transition Charges, the Regulatory Asset or Collections – The [Lieutenant Governor in Council] shall not in any way take or permit any action to reduce, impair, postpone or terminate the obligation of ~~Ratepayers~~Retail Consumers to pay Transition Charges or to impair the Regulatory Asset or the collection or recovery of Transition Charge Collections, Electricity Distributor Remittances or IESO Remittances, either directly or indirectly~~[~~, including through the introduction of any bill or the passing of any legislation or regulation~~]~~ having such effect. The amount of Transition Charges determined ~~hereunder~~under this Act shall not be subject in any way to reduction, impairment, postponement or termination as a result of any action taken or failure by the Lieutenant Governor in Council~~[~~, including through the introduction of any bill or the passing of any legislation or regulation~~]~~ having such effect.

(2) Undertaking and Agreement – The [Lieutenant Governor in Council] shall not:

(a) in any way take or permit any action that limits, alters or impairs the value of any Investment Interest;

(b) ~~**(2) Undertaking and Agreement** – The Lieutenant Governor in Council shall not in any way take or permit any action that limits, alters or impairs the value of the Regulatory Asset or,~~ except as required by the estimates and adjustments made in determining the True-up Amount, reduce, alter or impair Transition Charges that are imposed, billed, invoiced, collected and remitted for the benefit of the ~~Regulatory Asset Owners, including any~~ Absolute ~~Assignee from time to time, and~~Assignees or any Pledgee from time to time~~[~~,~~including through the introduction of any bill or the passing of any legislation or regulation~~]~~.;

(c) permit the amendment, amendment and restatement or termination of the Fair Allocation Plan if such amendment , amendment and restatement or termination

[42] ~~OPG has indicated that the risks and cost consequences to OPG of being an~~[20] As an alternative to this provision, consider clarifying under s. 78.1(4) of the OEB Act (which currently gives the OEB discretion in setting payment amounts subject to O. Reg. 53/05) that the OEB in setting OPG payment amounts for prescribed generation shall not consider OPG's role as Administrative Agent ~~or of consolidating a Financing Entity for accounting purposes should not be considered by the OEB in setting the regulated payment amounts for~~of any Financing Entities associated with the Fair Hydro initiative, perhaps with the exception of any operating fees that may be received by OPG for performing that role. ~~To be discussed.]~~

[43] ~~Under consideration~~[21] Under consideration, including the dealers' request for a "servicer guarantee" and a "contractual guarantee" to address a "Change of Law" or if all or a portion of the legislation is *ultra vires*, requiring (at the lenders option), the Province to pay principal and interest on the outstanding debt until maturity or payout the entire debt including any make-wholes.

would adversely affect the validity or enforceability of any Funding Obligation or the rights of an Absolute Assignee or Pledgee thereunder,

in each case including through the introduction of any bill or the passing of any legislation or regulation having such effect.

(3) **Successor IESO** – If IESO is restructured, dissolved or becomes insolvent or is otherwise incapable of performing its obligations under this Act, Successor IESO shall be established to perform such obligations.

(4) ~~[If IESO becomes insolvent or otherwise incapable of performing its obligations under this Part, an IESO Successor will be established that is capable of performing such obligations in order that the Regulatory Asset Owners may appoint the IESO Successor as an Alternative Servicer or Alternative Collection Agent. Regulatory Asset Owners shall be fully~~**Compensation for Failure** – Absolute Assignees shall be compensated for any losses suffered by them as a result of any failure by the Lieutenant Governor in Council to comply with its undertakings and agreements in this Article ~~10(2) for any loss suffered by the Regulatory Asset Owner as a result of such failure.[44]~~11.[22]~~]~~

(5) **No Wind-up of Financing Entity**. No Financing Entity may be voluntarily wound up, liquidated or dissolved until one year after all of its Funding Obligations are repaid.

(6) ~~**(3)**~~ **References to the Undertaking and Agreement** – Any non-confidential reference to the Undertaking of the Lieutenant Governor in Council, including in marketing materials and other documentation authorized for use by the Administrative in connection with any Funding Obligation, may be made provided that [*Add conditions to protect the Province*].

Article ~~11~~12 – Regulations

Regulations may be made under this ~~Part~~Act for the purposes described in Sections •,•,• and • and may be promulgated for any of the following purposes:

(a) to set standards and measures regarding the commercially reasonable requirements of the Province associated with ~~a Regulatory Asset Owner~~an Absolute Assignee incurring Funding Obligations or becoming obligated to pay any Finance Amount, including to establish guidelines regarding all-in funding costs; permitted Additional Funding ~~Costs~~Charges; required maturities and redemption and termination rights of Funding Obligations; liquidity requirements, in each case to a Financing Plan that is consistent in its effect with the Fair Allocation Plan;

(b) to establish and empower one or more regulated entities to undertake decision-making activities with respect to this ~~Part~~Act;

(c) to set out reasonable requirements regarding the appointment or retention of advisors, agents, service providers, contract counterparties, including in relation to 'market terms and conditions' parameters;

[44]22 Requested by Torys. For discussion.

(d) to provide for audit and compliance standards applicable to those persons who are or may become obligated or have duties that arise under this ~~Part~~Act [or under any Funding Obligation];

(e) to provide for any pre-vetting and approval requirements in relation to any incurrence by ~~a Regulatory Asset Owner~~an Absolute Assignee of any Funding Obligation or obligation to pay any Finance Amount; and

(f) to provide for appeal and due process considerations in connection with the establishment, adoption, implementation and review of the Fair Allocation Plan or the Financing Plan.

Article ~~12~~13- Miscellaneous~~45~~23

(1) **Choice of law** – The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the Regulatory Asset, any Transition Charge or the Undertaking of the Province shall be the laws of the Province.

(2) **Conflict of law** – In the event of conflict between this ~~Part~~Act and any other law of the Province regarding the attachment, assignment or perfection, or the effect of perfection, or priority of any Disposition or Pledge, this ~~Part~~Act shall govern to the extent of the conflict.

(3) **No further acts or approvals required** - Notwithstanding any provisions of any law of the Province to the contrary, no approvals, notices or authorizations other than those specified in this ~~Part~~Act shall be required with respect to the actions to be taken in compliance with this ~~Part~~Act, including under the Financing Plan or in relation to the establishment of the Fair Allocation Plan, and the transactions and contracts authorized in or contemplated by this ~~Part~~Act or the Financing Plan, including the incurrence of any Funding Obligation, any Disposition, any Pledge or in the payment and performance of any attendant or incidental contract and any related expenses incurred to facilitate the preparation and implementation of the Financing Plan.

(4) **Effect of invalidity after the Incurrence of any Funding Obligation** - Effective on the date that a Funding Obligation is incurred under this ~~Part~~Act, if any provision of this ~~Part~~Act is held to be invalid or is invalidated, superseded, replaced, repealed or expires for any reason, that occurrence shall not affect any action allowed under this ~~Part~~Act that is taken by any person who is or may become obligated or have duties that arise under this ~~Part~~Act and any such action shall remain in full force and effect.

(5) **Severability** - If any Article, Section, paragraph or subparagraph of this ~~Part~~Act or the application thereof to any person, circumstance or transaction is held by a court of competent jurisdiction to be unconstitutional or invalid, the unconstitutionality or invalidity shall not affect the constitutionality or validity of any other Article, Section, paragraph or subparagraph of this act or its application or validity to any person, circumstance or transaction, including the irrevocability of Transition Charges, the validity of the Regulatory Asset, the incurrence of any Funding Obligation, any Disposition, any Pledge, or the collection and recovery of Transition Charge Collections. To these ends, the Legislature hereby declares that the provisions of this ~~Part~~Act are intended to be

~~45~~23 OPG would like the specific amendments related to OPG to be included in the Bill.]

severable and that the Legislature would have enacted this ~~Part~~Act even if any Article, Section, paragraph or subparagraph of this ~~Part~~Act held to be unconstitutional or invalid had not been included in this ~~Part~~Act.

Schedule 1

Guidelines for Estimates

[To be considered.]

Schedule 2

Requirements Applicable to Alternative Invoicing Agent/ Alternative Collection Agent

[To be considered.]

Schedule 3[24]

Principles, and Parameters, Requirements and Conditions for Establishing the Financing Plan

The Financing Plan shall have regard to the following principles, and parameters, requirements and conditions:[***Consider others.***] provide a guideline as to what a Financing Plan should address:

(1) the Financing Plan shall, in respect of each Reference Period, describemake reference to the allocations of UnrecoveredFuture Fair Share of Green Transition CostsBenefits to each Reference Group as contemplated by the Fair Allocation Plan;

(2) the Administrative Agent shall make a good faith estimate of theIESO Funding Shortfalls for each Reference Period, based on the terms of the Power Contracts and assumptions considered to be reasonable respecting forward market prices for electricity;

(3) the Administrative Agent shall describeconsider alternative funding arrangements considered to be suitable for the purpose of fundingto fund the estimated IESO Funding Shortfalls, including by reference to short term and/or long term Funding Obligations that could reasonably be incurred by the Regulatory Asset Owners for such purpose;

(9) **(4)** such Funding Obligations shall reflectconsider quantities, maturities, payment obligations, prepayment or redemption rights and such other features of Funding Obligations so that the effect of incurring such Funding Obligations would be that the payments made thereunder in respect of eachfor a Reference Period (including the anticipated Finance Amounts becoming payable in relation to such Funding Obligations) would reasonably correspond to the allocations of UnrecoveredFuture Fair Share of Green Transition CostsBenefits to the applicable Reference Group under the Fair Allocation Plan;

(4) if the anticipated amount of any Repayment (together with payments of other Finance Amounts) to be made in respect of a Reference Period would materially exceed the allocation of the costs and benefits of the Green Generation Initiative to the applicable Retail Consumer Group under the then current Fair Allocation Plan, diligent efforts should be made to determine whether a Refinancing or deferral of such Repayment may be reasonably and cost-effectively effected based on then prevailing market terms, conditions an circumstances;

(5) the Financing Plan shall reflect the outcome of a financial model that incorporatesreflect the assumptions and requirements specified in any contemplated Funding Obligation (e.g., any limit on the maximum amount of Transition Charges charged to a hypothetical RatepayerRetail Consumer relative to his or her monthly electricity bill, as prescribed by any rating agency that ascribes its credit rating to or in respect of the Funding Obligation having regard to the application of the Allocation Methodology); [***Consider what outputs from OPG will be tested by the OEB and when. The modelling in the Financing Plan may permit the OEB to check progress against the model from***

[24] Awaiting input from Torys based on OPG mark-up of Financing Plan sections.

~~*time to time, which may provide a basis for the MoE/OEB to require a review/amendment to the Financing Plan if the ongoing operation of the program results in significant deviation from the model. Consider whether this flexibility is desirable.*~~]

(6) ~~the Administrative Agent, for and on behalf of each Regulatory Asset Owner, shall seek to~~ incur Funding Obligations from time to time on the best terms available at such time for a financing transaction of the size and type contemplated, and having regarding to the following parameters:

a. whether the ~~Regulatory Asset Owners~~Absolute Assignees will require committed access to short term liquidity to cover estimated IESO Funding Shortfalls prior to incurring fixed term Funding Obligations, and the amount and repayment terms of any such required liquidity; provided that any Repayment required to be made under the terms of such short-term liquidity would not obligate ~~a Regulatory Asset Owner~~an Absolute Assignee to repay an amount in relation to a Reference Period that would have the effect of the Financing Plan permitting incurrences of Funding Obligations payable in such Reference Period that would exceed the allocations of ~~Unrecovered~~Future Fair Share of Green Transition ~~Costs~~Benefits to the applicable Reference Group under the Fair Allocation Plan;

b. the basis upon which the ~~Administrative~~Financial Services Agent will select the term to maturity of any other Funding Obligations; provided that any Repayments required to be made under the terms of such Funding Obligations ~~shall~~should not obligate ~~a Regulatory Asset Owner~~an Absolute Assignee to repay an amount in relation to a Reference Period that would have the effect of the Financing Plan permitting incurrences of Funding Obligations payable in such Reference Period that would exceed the allocations of ~~Unrecovered~~Future Fair Share of Green Transition ~~Costs~~Benefits to the applicable Reference Group under the Fair Allocation Plan;

c. the basis upon which the interest rates applicable to such Funding Obligations would be determined;

d. the reference capital or finance market in which such Funding Obligation would be incurred, including markets outside of Canada if considered by the ~~Administrative~~Financial Services Agent to be appropriate in the circumstances;

e. the currency of payments under such Funding Obligations and, if the Funding Obligations are denominated in a currency other than Canadian dollars, the basis upon which the ~~Administrative~~Financial Services Agent shall cause the applicable ~~Regulatory Asset Owner~~Absolute Assignee to enter into hedging transactions to mitigate currency risk, including acceptable minimum and maximum coverage levels, having regard to the availability of related derivatives having notional amounts corresponding to the repayment and maturity profile of such Funding Obligations;

f. the basis upon which the ~~Administrative~~Financial Services Agent will select counterparties under any transaction to be entered into by ~~a Regulatory Asset Owner~~an Absolute Assignee, including any paying agent, servicer, cash manager, liquidity provider, hedge counterparty, account bank, lender, note

trustee, security trustee, paying agent, registrar/transfer agent, financial services agent, arranger or manager;

g. the basis upon which the ~~Administrative~~Financial Services Agent will manage counterparty risk, including by providing for maximum counterparty exposure limits having regard to concentration, credit and other identified risks with respect to individual counterparties or countries;

h. the basis upon which the ~~Administrative~~Financial Services Agent will negotiate and settle Finance Amounts, including the amount of any Redemption Amounts, Finance Reserve Deposits and Additional Funding Charges;

(7) the basis upon which Funding Obligations may be redeemed, prepaid, repurchased or otherwise affected, having regard for the need to minimize debt service charges and other Funding Costs, and the need to maintain a stable funding platform to finance the IESO Funding ~~Shortfall~~Shortfalls from time to time on a basis that is consistent with the allocations of ~~Unrecovered~~Future Fair Share of Green Transition ~~Costs~~Benefits to applicable Reference Groups under the Fair Allocation Plan;

(8) the basis upon which any Repayments, Funding Costs and Redemption Amounts will be paid, including any defeasance, sinking fund or through other reserves or liquidity facilities;

(9) the basis upon which fees, charges, expenses, costs, indemnities, reimbursements and other amounts payable to or for the benefit of the ~~Administrative~~Financial Services Agent and other agents and service providers to the ~~Regulatory Asset Owners~~Absolute Assignees may be determined, allocated and paid;

(10) the timing and basis upon which Finance Reserve Deposits and Finance Reserve Withdrawals may be made;

(11) the basis upon which any obligations for any other Additional Funding Charges may be incurred and paid;

(12) the basis upon which the cash flows arising from time to time or otherwise derived from the Regulatory Asset may otherwise be applied, including in relation to any counterparty enforcement and realization scenario;

(13) the transmittal to [the IESO] of information related to the amounts to be included in the determination of the Period Transition Charge for a Reference Period;

(14) the basis upon which any Disposition may be made or effected by ~~a Regulatory Asset Owner~~an Absolute Assignee, including parameters for determining the purchase price for the interest in the Regulatory Asset that is the subject matter of such Disposition, and any consents and releases that may be usefully obtained in connection with such Disposition;

(15) ~~a description of each~~describe the requirements applicable to any special purchase entity that will purchase ~~the Regulatory Asset from the IESO~~an Investment Interest, including proposed capitalization, governance, and restrictions on their powers and activities ~~having regard to the parameters in Schedule 4~~; and

(16) the basis on which any Pledge may be given or effected.

~~Schedule 4~~

~~Creation of any Special Purpose Entity to become a Regulatory Asset Owner]~~

~~(1) **Powers and Abilities**:~~

~~a. No part of the revenue or assets of a Regulatory Asset Owner shall enure to the benefit or be distributable to its trustees, officers or directors, as the case may be, or any other private persons, except as may be provided for actual services rendered;~~

~~b. Each Regulatory Asset Owner shall be authorized to:~~

~~i. incur the Funding Obligations contemplated by a Financing Plan and use the proceeds thereof to purchase or acquire, and to own, hold and use the Regulatory Asset;~~

~~ii. contract for servicing of the Restructuring Asset and any bonds contemplated by a Financing Plan and for administrative services; and~~

~~iii. pledge the Regulatory Asset to secure the Funding Obligations incurred by the Regulatory Asset Owner;~~

~~c. So long as any Funding Obligations contemplated under a Financing Plan are outstanding, a Regulatory Asset Owner shall not be authorized to merge or consolidate, directly or indirectly, with any person or entity;~~

~~d. a Regulatory Asset Owner shall not have the power or authority to incur or guarantee or otherwise become obligated to pay any debt or obligations other than what is contemplated under a Financing Plan;~~

~~e. a Regulatory Asset Owner shall cause the proceeds obtained by incurring any Funding Obligation to be placed in one or more separate accounts and used only to purchase the Regulatory Asset and pay any costs as provided for in a Financing Plan; and~~

~~f. so long as the Regulatory Asset is pledged to secure Funding Obligations, the Regulatory Asset Owner must apply revenues from the collection of Transition Charges only to repay such Funding Obligations and other costs as provided for in a Financing Plan.~~

~~(2) **Governance of Regulatory Asset Owner –** A Regulatory Asset Owner shall be created having regard to the following principles:[***OPG to confirm if SPE will be a trust or another type of entity.***]~~

~~a. [Number of trustees]~~

~~b. [Replacement of trustees; vacancies; appointment of successors]~~

~~c. [Removal of trustees for neglect of duty or misconduct]~~

~~d. [Quorum and meetings]~~

~~e. [Fiduciary duty]~~

~~f. [Isolation, separateness and other "non-consolidation" and "bankruptcy remoteness" criteria]~~

~~g. [Delegation of powers and duties to administrative agents]~~

~~h. [Delegation of powers and duties to administrative agents]~~

(17)

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Description	TOR_2528-#23107566-v8-"Fair_Hydro_Act"
Document 2 ID	PowerDocs://TOR_2528/23107566/9
Description	TOR_2528-#23107566-v9-"Fair_Hydro_Act"
Rendering set	Standard

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

Statistics:	
	Count
Insertions	596
Deletions	610
Moved from	25
Moved to	25
Style change	0
Format changed	0
Total changes	1256

FW_ _Fair Hydro Act_ Legislative Summary (Discussion Draft).rtf

From: Veinot, Cindy (TBS) []
To: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; Suzie Gignac [suzie.r.gignac@ca.ey.com]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]
Subject: FW: "Fair Hydro Act" Legislative Summary (Discussion Draft)
Date: Wednesday, April 12, 2017 12:35:49
Attachment 1: Blackline_Summary.pdf
Attachment 2: Fair_Hydro_Act Torys_Osler Mark-up April 11 2017 Draft (Torys-Oslers_Apr....docx

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Base document for today's 2 pm call

-----Original Message-----
From: Calwell, Carolyn (ENERGY/MEDEI/MRI)
Sent: April-12-17 12:30 PM
To: Hume, Steen (ENERGY); Nelms, Scott (MOF); Veinot, Cindy (TBS); Cox, Hilary (ENERGY); Christie, Tim (ENERGY)
Cc: Rehob, James (ENERGY); Shear, Dan (ENERGY); Kacaba, Jennifer (ENERGY); Huang, Jackson (MEDG/MRIS)
Subject: FW: "Fair Hydro Act" Legislative Summary (Discussion Draft)
Importance: High

Here is the document, just received, that we will work from this afternoon.

-----Original Message-----
From: Mansoori, Nina [mailto:nmansoori@torys.com]
Sent: April-12-17 12:16 PM
To: WILSON, JUDY; STOKES, BRYSON; JACKSON, ADAM; Peter Hamilton (PHamilton@stikeman.com); Rehob, James (ENERGY); Alan Hibben; Shear, Dan (ENERGY); Calwell, Carolyn (ENERGY/MEDEI/MRI); Michael.Boll@ieso.ca; Feldman, Michael; LEE John -TREASURY; RYFA Ken -TREASURY; WONG Leslie -LAWDIV; Hill, Krista; Ramchandani, Rima; Keizer, Charles; Myers, Jonathan; Emes, Aaron; Wortsman, Jerald; Bomhof, Scott; Estey, Bill; Watson, Gwen; O'Brian, Adam; Fitzpatrick, Michael F.; VINER, JON; Brad.Purkis@tdsecurities.com; Nelms, Scott (MOF); Sebastiano, Rocco; GZacher@stikeman.com; Christie, Tim (ENERGY); Johnson, Paul (ENERGY/MEDEI/MRI); Kwan, Ronald (OFA); He, Gavin (OFA); Veinot, Cindy (TBS); Hosick, Sarah (TBS); kim.marshall@ieso.ca; Cox, Hilary (ENERGY); Hilloowala, Maharukh; Wolff, Michael; Holloway, Harold; Akman, Steven; Manii, David; Nevison, Gary; Niehaus, Katrina; Maciel, Andrew; Persaud, Donnie - Debt Capital Markets; Adalja, Sunil; Alvi, Shariq; Benaiah, Ian; Fullerton, Rick; Collins, Patrick J; Mullen, Max M.; Delaney, Brian; Hong, Yoomin; Raman, Akila; King, Richard; Innes, Michael; Milligan, Peter; 'Smith, Elliot'; ASHBOURNE, STEPHEN
Subject: RE: "Fair Hydro Act" Legislative Summary (Discussion Draft)
Importance: High

All - please find attached a revised draft of the summary legislation circulated by Blakes on April 10 which reflects consolidated comments from OPG and the dealers (and their respective counsel). Please note that the attached remains subject to the continuing review of OPG and the dealers. We will have printed copies of the blackline available at today's meeting.

Best Regards,
Nina

Nina Mansoori

P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

Torys LLP

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

-----Original Message-----
From: Smith, Elliot [mailto:ESmith@osler.com]
Sent: April-12-17 12:39 AM
To: ASHBOURNE, STEPHEN <STEPHEN.ASHBOURNE@blakes.com>
Cc: Feldman, Michael <mfeldman@torys.com>; JACKSON, ADAM <ADAM.JACKSON@blakes.com>; Peter Hamilton (PHamilton@stikeman.com) <PHamilton@stikeman.com>; LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; WONG Leslie -LAWDIV <leslie.wong@opg.com>; MCAULEY Tyler -LAWDIV <tyler.mcauley@opg.com>; WILSON, JUDY <JUDY.WILSON@blakes.com>; STOKES, BRYSON <BRYSON.STOKES@blakes.com>; Hill, Krista <khill@torys.com>; Ramchandani, Rima <rramchandani@torys.com>; Keizer, Charles <ckeizer@torys.com>; Myers, Jonathan <jmyers@torys.com>; Emes, Aaron <aemes@torys.com>; Mansoori, Nina <nmansoori@torys.com>; Wortsman, Jerald <jwortsman@torys.com>; Bomhof, Scott <sbomhof@torys.com>; Estey, Bill <bestey@torys.com>; Watson, Gwen <gwatson@torys.com>; James.Rehob@ontario.ca; Alan Hibben <alan.hibben@rogers.com>; Shear, Dan (ENERGY) <Dan.Shear@ontario.ca>; Carolyn.Calwell@ontario.ca; O'Brian, Adam <aobrian@hunton.com>; Fitzpatrick, Michael F. <MFitzpatrick@hunton.com>; VINER, JON <JON.VINER@blakes.com>; Brad.Purkis@tdsecurities.com; Nelms, Scott (MOF) (Scott.Nelms@ontario.ca) <Scott.Nelms@ontario.ca>; Sebastiano, Rocco <RSebastiano@osler.com>; Michael.Boll@ieso.ca; GZacher@stikeman.com; Christie, Tim (ENERGY) <Tim.Christie@ontario.ca>; Johnson, Paul (ENERGY/MEDEI/MRI) <Paul.Johnson3@ontario.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>; kim.marshall@ieso.ca; Cox, Hilary (ENERGY) <Hilary.Cox@ontario.ca>; Hilloowala, Maharukh <Maharukh.Hilloowala@tdsecurities.com>; Wolff, Michael <Michael.Wolff@tdsecurities.com>; Holloway, Harold <Harold.Holloway@tdsecurities.com>; Akman, Steven <Steven.Akman@tdsecurities.com>; Manii, David <david.manii@tdsecurities.com>; Nevison, Gary <Gary.Nevison@tdsecurities.com>; Niehaus, Katrina <Katrina.Niehaus@gs.com>; Maciel, Andrew <Andrew.Maciel@cibc.com>; Persaud, Donnie - Debt Capital Markets <Donnie.Persaud@cibc.com>; Adalja, Sunil <Sunil.Adalja@cibc.com>; Alvi, Shariq <Shariq.Alvi@cibc.com>; Benaiah, Ian <ian.benaiah@rbccm.com>; Fullerton, Rick <RFullerton@osler.com>; Collins, Patrick J <Patrick.Collins@gs.com>; Mullen, Max M. <Max.Mullen@gs.com>; Delaney, Brian <Brian.Delaney@gs.com>; Hong, Yoomin <yoomin.hong@gs.com>; Raman, Akila <Akila.Raman@gs.com>; King, Richard <rking@osler.com>; Innes, Michael <MInnes@osler.com>; Milligan, Peter <PMilligan@osler.com>
Subject: RE: "Fair Hydro Act" Legislative Summary (Discussion Draft)

Steve,
We have been corresponding with Torys today and are in the process of preparing a consolidated mark-up reflecting comments from the Dealers and OPG, which will also incorporate some of the comments received this evening from the IESO/Stikemans. We will circulate the consolidated mark-up before tomorrow's meeting.

Elliot

Elliot Smith
Partner - Energy, Construction & Infrastructure

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-----Original Message-----
From: ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
Sent: Tuesday, April 11, 2017 1:54 PM
To: Smith, Elliot <ESmith@osler.com>
Cc: Feldman, Michael <mfeldman@torys.com>; JACKSON, ADAM <ADAM.JACKSON@blakes.com>; Peter Hamilton (PHamilton@stikeman.com) <PHamilton@stikeman.com>; LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; WONG Leslie -LAWDIV <leslie.wong@opg.com>; MCAULEY Tyler -LAWDIV <tyler.mcauley@opg.com>; WILSON, JUDY <JUDY.WILSON@blakes.com>; STOKES, BRYSON <BRYSON.STOKES@blakes.com>; Hill, Krista <khill@torys.com>; Ramchandani, Rima <rramchandani@torys.com>; Keizer, Charles <ckeizer@torys.com>; Myers, Jonathan <jmyers@torys.com>; Emes, Aaron <aemes@torys.com>; Mansoori, Nina <nmansoori@torys.com>; Wortsman, Jerald <jwortsman@torys.com>; Bomhof, Scott <sbomhof@torys.com>; Estey, Bill <bestey@torys.com>; Watson, Gwen <gwatson@torys.com>; James.Rehob@ontario.ca; Alan Hibben <alan.hibben@rogers.com>; Shear, Dan (ENERGY) <Dan.Shear@ontario.ca>; Carolyn.Calwell@ontario.ca; O'Brian, Adam <aobrian@hunton.com>; Fitzpatrick, Michael F. <MFitzpatrick@hunton.com>; VINER, JON <JON.VINER@blakes.com>; Brad.Purkis@tdsecurities.com; Nelms, Scott (MOF) (Scott.Nelms@ontario.ca) <Scott.Nelms@ontario.ca>; Sebastiano, Rocco <RSebastiano@osler.com>; Michael.Boll@ieso.ca; GZacher@stikeman.com; Christie, Tim (ENERGY) <Tim.Christie@ontario.ca>; Johnson, Paul (ENERGY/MEDEI/MRI) <Paul.Johnson3@ontario.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>; kim.marshall@ieso.ca; Cox, Hilary (ENERGY) <Hilary.Cox@ontario.ca>; Hilloowala, Maharukh <Maharukh.Hilloowala@tdsecurities.com>; Wolff, Michael <Michael.Wolff@tdsecurities.com>; Holloway, Harold <Harold.Holloway@tdsecurities.com>; Akman, Steven <Steven.Akman@tdsecurities.com>; Manii, David <david.manii@tdsecurities.com>; Nevison, Gary <Gary.Nevison@tdsecurities.com>; Niehaus, Katrina <Katrina.Niehaus@gs.com>; Maciel, Andrew <Andrew.Maciel@cibc.com>; Persaud, Donnie - Debt Capital Markets <Donnie.Persaud@cibc.com>; Adalja, Sunil <Sunil.Adalja@cibc.com>; Alvi, Shariq <Shariq.Alvi@cibc.com>; Benaiah, Ian <ian.benaiah@rbccm.com>; Fullerton, Rick <RFullerton@osler.com>; Collins, Patrick J <Patrick.Collins@gs.com>; Mullen, Max M. <Max.Mullen@gs.com>; Delaney, Brian <Brian.Delaney@gs.com>; Hong, Yoomin <yoomin.hong@gs.com>; Raman, Akila <Akila.Raman@gs.com>; King, Richard <rking@osler.com>; Innes, Michael <MInnes@osler.com>; Milligan, Peter <PMilligan@osler.com>
Subject: Re: "Fair Hydro Act" Legislative Summary (Discussion Draft)

Elliot, in the interest of time, it may make sense for me to walk you through where your items have been addressed. Steve

Stephen R. Ashbourne
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On Apr 11, 2017, at 1:19 PM, Smith, Elliot <ESmith@osler.com<mailto:ESmith@osler.com>> wrote:

Stephen,
This version does not reflect the top issues raised by the Dealers. We are sitting down with the Dealers now working on a comprehensive mark-up that we will send later today, but it will not be ready by 2 PM. We would like to use tomorrow's meeting to discuss the mark-up we are preparing rather than a further revised version that will not reflect our feedback.

Elliot
<image002.gif>

Elliot Smith
Partner - Energy, Construction & Infrastructure

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<image003.gif><http://www.osler.com/>
<image004.jpg>

From: ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
Sent: Monday, April 10, 2017 11:16 PM
To: Feldman, Michael <mfeldman@torys.com<mailto:mfeldman@torys.com>>; JACKSON, ADAM <ADAM.JACKSON@blakes.com<mailto:ADAM.JACKSON@blakes.com>>; Peter Hamilton (PHamilton@stikeman.com<mailto:PHamilton@stikeman.com>) <PHamilton@stikeman.com<mailto:PHamilton@stikeman.com>>; LEE John -TREASURY <john.s.lee@opg.com<mailto:john.s.lee@opg.com>>; RYFA Ken -TREASURY <ken.ryfa@opg.com<mailto:ken.ryfa@opg.com>>; WONG Leslie -LAWDIV <leslie.wong@opg.com<mailto:leslie.wong@opg.com>>; MCAULEY Tyler -LAWDIV <tyler.mcauley@opg.com<mailto:tyler.mcauley@opg.com>>; WILSON, JUDY <JUDY.WILSON@blakes.com<mailto:JUDY.WILSON@blakes.com>>; STOKES, BRYSON <BRYSON.STOKES@blakes.com<mailto:BRYSON.STOKES@blakes.com>>; Hill, Krista <khill@torys.com<mailto:khill@torys.com>>; Ramchandani, Rima <rramchandani@torys.com<mailto:rramchandani@torys.com>>; Keizer, Charles <ckeizer@torys.com<mailto:ckeizer@torys.com>>; Myers, Jonathan <jmyers@torys.com<mailto:jmyers@torys.com>>; Emes, Aaron

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Subject: RE: "Fair Hydro Act" Legislative Summary (Discussion Draft)

Hi. Here is a revised draft of the legislative summary, for your consideration. Please provide your comments at your earliest opportunity. We will reflect comments received by 2ET tomorrow (Tuesday) in a further group circulation, for discussion on Wednesday. Regards, Steve

Stephen R. Ashbourne
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_____

<image001.gif>

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Blackline_Summary.pdf

CONFIDENTIAL AND PRIVILEGED

Preliminary Draft for Discussion Purposes Only

"Fair Hydro Act"

Article 1 – Purpose

The Province has and continues to encourage the construction and development of facilities for the long-term operation and generation of electricity in the Province using sustainable, lower carbon-based technologies such as new gas-fired generation, renewable facilities, energy from waste and biomass, including under the Province's various procurement, standard offer, feed in tariff and other similar programs (the "Green Generation Initiative"). The long-term benefits of the Green Generation Initiative accrue over time and have benefited and will **continue to** benefit present and future electricity consumers in the Province.

The ~~imputed~~**out-of-market** costs of the Green Generation Initiative are currently passed through to electricity consumers by way of a monthly adjustment amount (the "Green Costs Adjustment"), which in turn forms part of the overall adjustment calculated by the Independent Electricity System Operator ("IESO") pursuant to section 25.33 of, and O.Reg. 429/4 under, the *Electricity Act* (the "Global Adjustment"). ~~The Global Adjustment is included as a charge billed to electricity consumers in their monthly electricity invoices.~~

The Green Costs Adjustment is currently determined each month by reference to the amounts paid by IESO to the generators of electricity in the Province under the Green Generation Initiative~~, which may be higher than prevailing market price for electricity. These differences~~**. These amounts paid by the IESO** arise because IESO has entered into long-term procurement contracts with such generators in order to provide them with ~~long-term price~~**revenue** certainty ~~for electricity~~, and in turn to encourage the generators to develop technologies and to construct and develop facilities consistent with the Green Generation Initiative. ~~In general, whenever amounts payable under these procurement contracts exceed the market price for electricity, the Green Costs Adjustment passes through the amount of such differences as part of the monthly charge to electricity consumers. Such amount then becomes available to IESO to meet its obligations under the~~ **[NTD: This statement is not correct in respect of all IESO procurement contracts.]** It has been determined that the useful lives of many of the assets ~~encouraged by~~**developed under** the Green Generation Initiative will be ~~well~~ in excess of the respective terms of ~~the related~~**their respective** procurement contracts~~, and in many cases may extend over more than one generation of electricity consumers~~.

Since the benefits to past, present and future electricity consumers from the Green Generation Initiative will not necessarily coincide with the costs currently attributed through the Green Costs Adjustment, based on the respective ~~durations~~**terms** of the **applicable** procurement contracts, it has been determined that the rate at which the costs associated with the Green Generation Initiative should be passed through to ~~Retail~~**Regulated** Consumers (as defined in Article 2) should be more closely aligned with the benefits that such ~~Retail~~**Regulated** Consumers have derived and are expected to derive from the Green Generation Initiative over time. This realignment will be based on **general** principles and parameters that establish a reasonable basis for measuring and allocating the relative costs and benefits of the Green Generation Initiative equitably across present and future ~~Retail~~**Regulated** Consumers (the "Fair Allocation

Plan"). **[NTD: There is no explanation as to why realignment is limited to Regulated Consumers.]**

If the Fair Allocation Plan determines that the equitable allocation of the costs associated with the Green Generation Initiative to the ~~Retail~~**Regulated** Consumers of a particular time period should be reduced below the amount that currently would be charged based on the Green Costs Adjustment, then the amount payable by such ~~Retail~~**Regulated** Consumers and in turn available to IESO will, in the aggregate, be less than the amount payable by the IESO to the generators in respect of such period. In this case**,** IESO will need to obtain funding from another source to cover such a shortfall. If a funding obligation is incurred ~~by IESO~~ to cover such a shortfall during ~~one~~**any** period, the repayment of such funding obligation will be required in a future period, and any related repayments, finance costs, hedging costs and other transaction costs incurred will become payable in ~~one or more~~ future periods. In order for IESO to obtain a reliable and committed source of cash flows to enable IESO to repay such funding amounts when they become due and payable, this Act imposes irrevocable and non-bypassable financial obligations on ~~Retail~~**Regulated** Consumers to pay amounts incurred in respect of such funding obligations when they become due and payable and establishes a right to invoice and collect such amounts. The right and interest in and to collect such financial obligations will take the form of the Regulatory Asset contemplated in this Act, which will constitute property rights and interests. Interests in the Regulatory Asset may be sold and absolutely assigned by IESO to one or more financing entities, which in turn will finance their acquired interests by incurring funding obligations. The incurrence and payment of such funding obligations will be administered on behalf **of** such financing entities by a financial services ~~agent~~**manager** under the Financing Plan contemplated in this Act. ~~The Financing Plan will seek to reasonably match the payment obligations arising under such funding obligations, to be borne by the future Retail Consumers of the period in which such payment obligations become due, with the benefits of the Green Generation Initiative allocated to such future Retail Consumers under the Fair Allocation Plan.~~

[NTD: Our strong preference is to limit the introduction to the next paragraph and move defined terms from the previous paragraphs to Article 2]

The purpose of this Act is to establish the basis upon which intergenerational fairness can be achieved by charging the costs and benefits of the Green Generation Initiative to present and future ~~Retail~~**Regulated** Consumers on an equitable and cost effective basis.

Article 2 ~~–~~ Definitions

In this Act: **[NTD: It would be preferable to use plain language definitions in the legislation and leave the more detailed definitions to either the regulations or the agreements contemplated hereunder.]**

"Absolute Assignee" means a person to whom a Regulatory Asset Owner effects a Disposition **other than as security**.

"Actual" means, in relation to costs, expenses or payments in respect of Funding Obligations during a Reference Period, the actual amount of such costs, expenses or payments paid or made (net of any Finance Reserve Withdrawals applied to pay such amounts), which amounts shall be recorded by the Financial Services ~~Agent~~**Manager**

whose records shall be determinative for the purposes of this Act except to the extent of a manifest calculation error.

"Additional Funding Charges" means, for a Reference Period ~~in respect of an Absolute Assignee~~, the fees, charges, expenses, costs, indemnities, reimbursements and other amounts (including any applicable tax amounts) that are or become payable by or on behalf of the Absolute Assignee during the Reference Period and that were incurred or committed to directly or indirectly by the Absolute Assignee in connection with the incurrence of Funding Obligations under the Financing Plan (whether at the time of such incurrence or over the term of the Funding Obligation and whether directly or indirectly), including ~~(without duplication and without limitation): (a) any payment required under an ancillary agreement entered into by, or by the Financial Services Agent on behalf of, the Absolute Assignee under the Financing Plan; (b) any federal, provincial or local taxes, payments in lieu of taxes, franchise fees or license fees imposed on the Absolute Assignee or incurred by on behalf of the Absolute Assignee under any obligation to pay tax gross-up amounts to counterparties under Funding Obligations; (c) any amounts payable to the Financial Services Agent, including amounts payable to its advisors and outside counsel; (d) any amounts incurred to prepare, confirm, amend and implement the Financing Plan; (e) any amounts payable to any Alternative Collection Agent or Alternative Servicer, including amounts payable to each's advisors and outside counsel; (f) any amounts incurred to make the calculations, determinations or confirmations to be made by or on behalf of the Absolute Assignee; (g) any servicing fees and expenses; (h) any trustee fees and expenses; (i) any legal fees, expenses and disbursements; (j) any accounting fees and expenses; (k) any administrative fees and expenses; (l) any manager or director fees of a Financing Entity; (m) any registration fees and expenses; (n) any placement fees, underwriting fees, fees and related issuing expenses; (o) any rating agency fees; and (p) any other related fees, charges, expenses, costs, indemnities, reimbursements and other amounts that are approved in good faith by the Financial Services Agent for recovery and payment under the Financing Plan~~**without limitation such amounts as may be prescribed**.

~~"Allocation Factor" means, in respect of a Retail Consumer for a Reference Period, the number (expressed as a percentage) determined in respect of the Retail Consumer by the OEB based on the application of< *the Attribution Methodology* >in respect of the Reference Period.[1]~~

~~"Alternative Collection Agent" means a person appointed under Section 5(11) and in compliance with the requirements set out in Schedule 2 to assume the collection activities and activities of any Electricity Distributor or IESO under Article 5, as agent for and on behalf of the Regulatory Asset Owners.~~ **[NTD: See section 5(11). Remove this concept globally.]**

"Alternative Servicer" means a person appointed under Section 4(8) to assume the obligations of the Servicer under Article 4, as agent for and on behalf of the Regulatory Asset Owners. **[NTD: We see this, in effect, as the same thing as the IESO Successor; that is, replacement of the master Servicer.]**

[1] ~~Confirm that this will be based on forecast volumes of demand (like RPP). To the extent amounts do not get recovered due to differences between forecast and actual, those may be identified and caught by the True-Up.~~

"Assessed Past Green Transition Costs" means, in respect of a Measurement Date, the aggregate of the imputed costs of the Green Generation Initiative (expressed as an equivalent to current dollars), as reflected in the calculation of the Green Costs Adjustment, which have been charged to Retail Customers through the Global Adjustment on or prior to the Measurement Date.

"Attribution Methodology"[21] means the methodology specified in the Fair Allocation Plan for allocating the Period ~~Transition~~**Finance** Charges for a Reference Period to ~~individual Retail Consumers of the applicable Retail Consumer Group based on its Allocation Factor.~~**Regulated Consumers. [NTD: We understood that the Ministry accepted that the transition charge would be a volumetric rate.][NTD: Can be moved to Regulations.]**

"Collected Amount Adjustment" means, in respect of a True-Up Period, the amount (which may be a negative amount) calculated by the Servicer or the Financial Services ~~Agent~~**Manager**, as applicable, equal to (a) the Estimate of the Finance Amount for the True-Up Period, minus (b) the sum of all Transition Charge Collections for the True-Up Period.[32]

"Collective Rights Agreement" means an agreement among all of the Regulatory Asset Owners (including each Absolute Assignee) ~~and~~**,** each Pledgee**, and the Financial Services Manager** that governs the enforcement of their respective rights and interests in, to and under the Regulatory Asset on a coordinated and collective basis.[4] **[NTD: Move to Regulations.]**

"Delegate" means **any of** the **following** person or persons designated in writing from time to time by the Minister of Energy to undertake the actions and perform the responsibilities ascribed to the "Delegate" under this Act~~.~~**: ●. [NTD: Why is this delegation of authority necessary? This requires further discussion and clarity as to which entity or entities that the Province can select as the Delegate; for example, it would not be acceptable for the Province to select the OEB to be the Delegate. If this is required, an acceptable delegate would be a stakeholder committee comprised of representatives from the Ministry of Energy, the OEB, the IESO, and OPG. In addition, the regulation should prescribe how the stakeholder committee would operate.]**

"Disposition" means an assignment, transfer, conveyance, sale, contribution, set-over, exchange or other disposition of **(a) IESO's right to recover all or any portion of an IESO Funding Shortfall or (b)** an Investment Interest to an Absolute Assignee**, in each case** pursuant to a Disposition Document.

"Disposition Document" means the agreement, deed, conveyance, instrument or other document under which ~~a Regulatory Asset Owner~~**IESO or an Absolute Assignee** effects a Disposition to an Absolute Assignee.

[21] This allocation may be volumetric or some combination of a flat amount and a volumetric charge. Further discussion is required. H&W has raised a concern regarding possible adverse changes after the fact and rating agency considerations. Consider whether hard-coding in the legislation makes sense.

[32] This would pick up adjustments based on actual collection experience, changes in the ~~retail consumer~~**Regulated Consumer** base, changes in the actual costs (versus earlier estimates) included in the Transition Charge calculation, etc.

[4] ~~Consider adding the Financial Services Agent and the Servicer as parties.~~

"Electricity Distributor" means~~, in respect of a Service Area, the~~ **a** rate regulated distributor licensed under Part V of the *Ontario Energy Board Act, ~~1998~~* ~~in respect of such Service Area,~~***1998,*** together with and its successors.

"Electricity Distributor Remittances" means, for an Electricity Distributor on a Remittance Date, all Transition Charge Collections received or deemed to be received **[NTD: estimated to be received? will each Electricity Distributor know?]** by the Electricity Distributor prior to the Remittance Date and that have not otherwise been remitted to ~~IESO~~**Servicer** or if applicable the Alternative Collection Agent in accordance with Section 5(3), including the proceeds of any enforcement action undertaken by the Electricity Distributor or if applicable the Alternative Collection Agent to recover payment of Transition Charges in accordance with Article 5.

"Electricity Invoice" means an invoice issued by ~~any of a~~**an** Electricity Distributor (or in its stead, by an Alternative ~~Servicer~~**Collection Agent**), by the Servicer or by a Retailer, in each case to a ~~Retail~~**Regulated** Consumer that is served by the Electricity Distributor's distribution system in respect of electricity charges, including the cost of electricity, delivery and regulatory charges and related services and amounts incurred, assessed or charged in respect of connectivity to ~~a distribution network in the~~**such** Electricity Distributor's ~~designated Service Area~~**distribution system** and in respect of applicable Transition Charges to be charged to the ~~Retail~~**Regulated** Consumer under this Act. **[NTD: The Alternative Servicer should only invoice for Transition Charges, not the entire invoice. Also, to avoid confusion, we suggest using the word "invoice" in reference to what the IESO sends out to distributors, and "bills" in reference to what distributors send out to consumers.]**

"Estimate" means (a) in relation to costs, expenses or payments in respect of Funding Obligations or any Finance Amount for a Reference Period, the estimated amount of such costs, expenses or payments determined by the Financial Services ~~Agent~~**Manager**; and (b) in relation to an assessment of the benefits of the Green Generation Initiative to ~~any Retail Consumer Group~~**Regulated Consumers**, the estimated value (in current dollars) of such benefits determined by the Delegate, in each case having regard to the applicable principles and parameters set out in Schedule 1, which estimated amounts shall be determinative as the applicable estimate for the purposes of this Act except to the extent of a manifest calculation error.

"Estimated Future Green Transition Benefits" means, in respect of a Measurement Date, the Estimate set forth in the Fair Allocation Plan prepared in accordance with Article 7 of the aggregate value (measured in current dollars) of the benefits that are expected to accrue to ~~Retail~~**Regulated** Consumers from the establishment and implementation of the Green Generation Initiative during the period from the Measurement Date to the Program-End Date.

"Estimated Past Green Transition Benefits" means, in respect of a Measurement Date, the Estimate set forth in the Fair Allocation Plan prepared in accordance with Article 7 of the aggregate value (measured in current dollars) of the benefits that have accrued to ~~Retail~~**Regulated** Consumers from the establishment and implementation of the Green Generation Initiative up to and including the Measurement Date.

"Fair Allocation Plan" has the meaning given in Article 1.

"Finance Amount" means, for a Reference Period ~~in respect of an Absolute Assignee~~, the sum (without duplication) of the following amounts that are or become payable during the Reference Period in respect of ~~the~~**all** Absolute ~~Assignee~~**Assignees**: (a) Repayments; (b) **Net** Funding Costs; (c) Redemption Amounts; (d) Finance Reserve Deposits; and (e) Additional Funding Charges.

"Finance Reserve Deposits" means, for a Reference Period, the amount by which (a) deposits made or to be made during the Reference Period in order to pre-fund, collateralize, over-collateralize or establish reserves for the ultimate payment of Funding Obligations or for related contingencies specified in the Financing Plan, exceed (b) any Finance Reserve Withdrawals. **[NTD: Move this to regulation.]**

"Finance Reserve Withdrawals" means, for a Reference Period, the amount withdrawn during the Reference Period from deposits previously made to pre-fund, collateralize, over-collateralize or establish reserves for the payment of Funding Obligations or to pay amounts in respect of related contingencies that had been specified in the Financing Plan. **[NTD: Move this to regulation.]**

"Financial Services ~~Agent~~**Manager**" means OPG or, following any Replacement Event **involving OPG**, such other person ~~or persons~~ who may be appointed as the ~~Financial Services Agent~~**financial services manager** of the Absolute Assignees under the Financing Plan in compliance with the requirements set out in Schedule 2.[5]~~3~~

"Financing Entity" means ~~an entity established in accordance with the Financing Plan to acquire all or an interest in the Regulatory Asset as an Absolute Assignee and to enter into Funding Obligations to finance such acquisition under the Financing Plan.~~[6]**any entity established at the initiative of and managed by the Financial Services Manager to support the Financing Plan.**[4]

"Financing Plan" means the written plan prepared by the Financial Services ~~Agent on behalf of each Absolute Assignee in compliance with Article 9 to set forth the basis upon which, among other things: (a) any Disposition may be made to, financed by or effected by an Absolute Assignee; (b) any Funding Obligations may be incurred by an Absolute Assignee, including any Refinancing; (c) any Pledge may be given or effected; (d) any Funding Obligations may be redeemed, prepaid, repurchased, amended or otherwise effected; (e) any obligations for Additional Funding Charges may be incurred and paid; (f) any Repayments, Funding Costs and Redemption Amounts may be paid or provided for; (g) any Finance Reserve Deposits may be made; (h) any Finance Reserve Withdrawals may be made; (i) the establishment and operation of any Financing Entity may be effected; and (j) the cash flows arising from time to time or otherwise derived from an Investment Interest may otherwise be applied,~~**Manager in accordance with Article 9,** as the same may be amended, amended and restated or terminated by the

[5] ~~Discuss whether to accommodate multiple~~[3] **There must only be one** Financial Services ~~Agents. MOE to consider~~**Manager**.

[6]4 MOE to confirm that the legislation will provide that any Financing Entity that is a wholly-owned subsidiary of OPG (1) would not be subject to Part VI of the *Electricity Act* (Ontario) and (2) in the case of any Financing Entity that is a trust, any income of such trust (for purposes of the *Income Tax Act* (Canada) or the *Taxation Act, 2007* Ontario)) which is paid or made payable to OPG or a wholly-owned subsidiary of OPG as a beneficiary of such trust will not be taken into account in calculating the amount of a payment required to be made by OPG (or such subsidiary) by section 89 or 90 of the Electricity Act.

Financial Services ~~Agent~~**Manager** in ~~compliance~~**accordance** with Article 9 from time to time.

~~"Funding Costs" means, for a Reference Period in respect of an Absolute Assignee, the amount by which (a) the aggregate of all interest< *and other periodic finance charges accruing due and becoming payable or paid by or on behalf of the Absolute Assignee during the Reference Period in respect of its Funding Obligations, including* >any standby commitment fees or charges paid to any lender, credit enhancement fees or charges paid to any credit enhancer, liquidity fees or charges paid to any liquidity provider, amounts (including any termination payments) paid under derivatives and any deposit amount made or required to fund or replenish a debt service reserve account or other account established under any indenture, ancillary agreement or other financing document relating to its Funding Obligations, exceeds (b) the aggregate of all amounts received by or on behalf of the Absolute Assignee during the Reference Period in respect of a Funding Obligation, including from any reimbursement of standby commitment fees or charges paid by a lender, any reimbursement of credit enhancement fees or charges paid by any credit enhancer, any reimbursement of liquidity fees or charges paid by any liquidity provider, any amounts (including any termination payments) paid to the Absolute Assignee under derivatives and any Finance Reserve Withdrawal made or required to be made from a debt service reserve account or other account established under any indenture, ancillary agreement or other financing document relating to the payment of the Funding Costs payable in respect of a Funding Obligation for the Reference Period.~~

"Funding Obligation" means, in respect of an Absolute Assignee, each payment obligation (including**, without limitation,** each obligation to pay: principal, interest, premiums and other financing charge payments; pass-through payments; payment obligations arising under or in respect of derivatives; payment obligations owing to service providers, Financial Services ~~Agents~~**Managers**, finance entity intermediaries, capital markets intermediaries, advisors, lenders, credit enhancement providers, liquidity providers, disbursement counterparties, regulatory agencies and rating agencies; and all Additional Funding Charges**)** incurred by or on behalf of the Absolute Assignee under the Financing Plan, including any Refinancing of another such payment obligation incurred by or on behalf of such Absolute Assignee.

"Future Fair Share of Green Transition Benefits" means, in respect of a Measurement Date, the sum of (a) the Over-Assessed Amount; and (b) the Estimated Future Green Transition Benefits, in each case as of the Measurement Date.

~~"Generator" means a generator of electricity that is subject to the *Electricity Act, 1998*.~~

"Global Adjustment" has the meaning given in Article 1.

"Green Costs Adjustment" has the meaning given in Article 1.

"Green Generation Initiative" has the meaning given in Article 1.

"IESO" means the Independent Electricity System Operator created pursuant to Part II of the *Electricity Act, 1998*.

"IESO Available Amount" means, for a Reference Period, the lesser of (a) the amount (if any) by which (i) the Maximum Transition Charge Amount for the Reference Period, exceeds (ii) Period Finance Amount for the Reference Period, and (b) the IESO Retained Interest Amount as of the [35th] day prior to the first day of a Reference Period plus any IESO Financing Costs that are due and payable and remain unpaid as of the [35th] day prior to the first day of a Reference Period.

"IESO Electricity Distribution Receipts" means, for a month, the sum of all amounts payable by Electricity Distributors to IESO , during the month pursuant to section • of the *Electricity Act* in respect of Regulated Consumers. [NTD: IESO indicates that it likely does not work to express in regards to "amounts payable by the LDCs" because settlement between the IESO and LDCs entails payments by LDCs to the IESO and then credits/debits by the IESO to LDCs to reflect RPP shortfalls/overages.]

"IESO Financing Costs" means, for a Reference Period, the financing costs (if any) incurred by IESO pursuant to Section 8(4) in order to finance its ownership of the IESO Retained Interest during the Reference Period.

"IESO Funding Shortfall" means, for a month, the amount, if any, by which (a) the IESO Electricity Distribution Receipts that would be payable to IESO for the month if determined without regard to this Act and without regard to the changes made to section 25.33 of, and O.Reg. 429/4 under, the *Electricity Act* with respect to the Global Adjustment concurrently with this Act, exceeds (b) the IESO Electricity Distribution Receipts payable to IESO for the month[75]; provided that if the amount of any such shortfall is determined to have been based on incomplete information, variances or estimates that were inaccurate, an adjustment shall be made in determining the amount of any subsequent shortfall for the month in which the inaccuracy is identified. .To the extent reasonably necessary to give effect to this Act, or any transaction contemplated hereby, IESO shall calculate the IESO Funding Shortfall for any month taking into account information provided by the Electricity Distributors and (i) such calculation shall be binding for all purposes; and (ii) any demonstrated inaccuracy in the calculation for any month (including any such resulting from inaccuracies in the information provided by Electricity Distributors) shall be accounted for by adjusting the IESO Funding Shortfall for a subsequent month. [NTD: Need to add the mechanism for IESO to record this shortfall because without that there is no Regulatory Asset. This IESO Funding Shortfall is the regulatory asset owned by IESO.]

"IESO Recovery" means each amount remitted to IESO (including by IESO retaining such amount) in respect of the IESO Retained Interest pursuant to Section 5(6)(b), and "IESO Recoveries" means, collectively, all such amounts received by IESO.

"IESO Remittances" means, for a Settlement Date, all Electricity Distributor Remittances received by IESO or if applicable the Alternative Collection Agent prior to the Settlement Date and that have not otherwise been remitted to the Regulatory Asset Owners (each with respect to its Regulatory Asset) in accordance with Section 5(6), including the proceeds of any enforcement action undertaken by IESO or if applicable the Alternative

[75] This has been recast to recognize that the shortfall in the first 4.5 years could exceed the entire GA amount. A more refined approach to describing the concept may be considered.

Collection Agent to recover payment of amounts payable by Electricity Distributors to IESO in accordance with Article 5.

~~"IESO Retained Interest" means IESO's right, title and ownership interest (if any) in, to and under the Regulatory Asset, which shall exclude each Investment Interest.~~

~~"IESO Retained Interest Amount" means, on a day, (a) the sum of all IESO Funding Shortfalls incurred prior to the day, plus (b) the sum of all IESO Funding Costs incurred prior to the day in accordance with Section 8(4), minus (c) the net proceeds received by IESO from or on behalf of each Absolute Assignee as consideration for the Disposition of each Investment Interest paid to IESO by or on behalf of such Absolute Assignee prior to the day, and minus (d) the IESO Recoveries received by IESO prior to the day.~~

"IESO Successor" means the entity appointed by the Province to succeed to the rights and obligations of IESO as the entity responsible for managing the Province's electricity system.

"Investment Interest" means an ownership interest in, to or under the Regulatory Asset that is acquired by an Absolute Assignee pursuant to a Disposition~~, which ownership interest may include (without limitation) ownership of a specified portion on a divided basis of the assets comprising the Regulatory Asset and ownership of an undivided ownership interest in the Regulatory Asset, in each case as may be described in the applicable Disposition Document~~.

"Investment Remittance" means, for a month, the lesser of (a) the aggregate amount of all IESO Remittances for the month, and (b) the sum of the ~~Finance Amounts~~**Funding Obligations** due and payable by all Absolute Assignees in respect of the month.

~~"Maximum IESO Recovery" means, for a month, the amount (if any) by which (a) the IESO Remittances for the month, exceed (b) the sum of all Finance Amounts that are due and payable by Absolute Assignees in respect of the month.~~

~~"Maximum Transition Charge Amount" means, for a Reference Period, (a) the aggregate amount of Future Fair Share of Green Transition Benefits that are allocable to the applicable Retail Consumer Group in accordance with the Fair Allocation Plan, divided by (b) the applicable Reference Period Length.~~

"Measurement Date" means [Insert relevant date around the Legislation Implementation Date] and any other date specified as such under the Fair Allocation Plan.

"Net Funding Costs" means, for a Reference Period in respect of a Financing Entity, the amount by which (a) the aggregate of all interest, scheduled principal> *and other periodic finance charges accruing due and becoming payable or paid by or on behalf of the Absolute Assignee during the Reference Period in respect of its Funding Obligations, including* <**such amounts as may be prescribed, exceeds (b) the aggregate of all amounts received by or on behalf of the Absolute Assignee during the Reference Period in respect of the Funding Obligations referred to in (a), including such amounts as may be prescribed.**

"OEB" means the Ontario Energy Board, together with its successors.

"OPG" means the corporation incorporated as Ontario Power Generation Inc. under the *Business Corporations Act* on December 1, 1998, together with its successors.

"Over-Assessed Amount" means, in respect of a Measurement Date, the amount (if any) by which (a) the Assessed Past Green Transition Costs, exceeds (b) the Estimated Past Green Transition Benefits, each as determined as of the Measurement Date.

"Period Finance Charges" means, for a Reference Period, the sum of (a) the Estimate of the Finance Amount ~~and~~ (b) the True-Up Amount in respect of the ~~immediately preceding Reference Period. "Period Transition Charges" means, for a Reference Period, the sum of (a) the Period Finance Charges for the Reference Period and (b) the IESO Available Amount for the Reference Period.~~ **applicable True-Up Period and (c) an adjustment amount as may be prescribed to account for estimated collection shortfalls and collection delays in respect of amounts under (a) and (b).**

"Pledge" means, in respect of an Investment Interest of an Absolute Assignee, a lien, mortgage, charge or security interest granted to or in favour of a Pledgee by the Absolute Assignee in, to and over all or a specified portion (including a specified portion on a divided basis or by way of an undivided interest) of the Investment Interest.

"Pledgee" means a person to whom an Absolute Assignee grants a Pledge.

"Program End Date" means •, [2047].

"Province" means the Province of Ontario.

"Redemption Amount" means the amount payable by or on behalf of an Absolute Assignee to redeem, prepay or repurchase a Funding Obligation incurred by or on behalf of the Absolute Assignee, including any premium, make-whole or other additional amount becoming payable under the Funding Obligation to give effect to such redemption, prepayment or repurchase.

"Reference Period" means (a) the period from (and including) the Measurement Date to (and including) ~~June~~**October** 30, 2017, (b) each six month period commencing [May 1st and November 1st] thereafter and (c) any other period specified as such in the Fair Allocation Plan.

~~"Reference Period Length" means, for a Reference Period, the number of months in the Reference Period.~~

"Refinancing" means, in respect of a Funding Obligation incurred by or on behalf of an Absolute Assignee, that the Funding Obligation is repaid or repurchased for cancellation by or on behalf of the Absolute Assignee by applying the net proceeds obtained by the Absolute Assignee incurring one or more other Funding Obligations.

"Regulated Consumer" means consumers of electricity in the Province as prescribed.

[NTD: There are a number of issues with this definition. First, the word "Retail" is a source of confusion as it implies customers of licensed retailers. Really, the purpose of the term is to define the group of consumers that are eligible to receive the benefit of the Fair Hydro program and who will bear the cost of the program over the long term. We have proposed "Regulated Consumer" but you could also use the term "Eligible Consumer" or "Fair Hydro Eligible Consumer" and for purposes of the legislation to say that it is a member of a class of consumers prescribed by the regulations for purposes of the relevant section of the legislation. The regulation would then describe who is in the class. Second, it may not be appropriate to rely on the class of consumers prescribed for the purposes of s. 79.16 or under the OREC Act. Section 79.16 is the section that defines the class of RPP consumers. We understand that the "Fair Hydro Eligible Consumers" are not an identical class to that which is eligible for the RPP or for> ***the Ontario Rebate for Electricity Consumers***<. For example, we have heard that Fair Hydro Eligible Consumers will (a) exclude consumers served by independent power authorities (certain remote communities not served by Hydro One Remotes), and (b) include consumers served by licensed unit sub-metering providers, licensed retailers and certain consumers served directly by the IESO (which may or may not be captured by the classes under 79.16 or OREC). Third, it is not clear why consumers with contracts with retailers who use retailer consolidated billing are removed from the first part of the definition but then added back into the second part of the definition. Fourth, Retailers do not necessarily have physical electricity assets that would be connected to the grid. Some just sell or offer contracts for electricity. As such, the first few lines after (b) are problematic. Fifth, the phrase "purchase electric generation services from a provider of electric generation services other than the owner of the Province's transmission and distribution system assets" does not make sense. A consumer does not purchase generation services from a transmitter or distributor. Rather, a consumer receives distribution services from a distributor. In addition to charging for its distribution services, the distributor also charges the associated transmission costs and commodity costs associated with the volumes delivered. Those commodity costs are the price of the electricity itself and are almost entirely made up of the amounts determined under the global adjustment. Sixth, the phrase "**>*whether or not the transmission and distribution system assets continue to be owned or operated by Electricity Distributors or operated by IESO*<**" does not make sense. Transmission assets are owned and operated by transmitters. Distribution assets are owned and operated by distributors. The IESO does not own but does administer and direct the operation of the transmission system.]

"Regulatory Asset" means the property rights and interests described in Section 6(1), which collectively is comprised of ~~the IESO Retained Interest and~~ each Investment Interest.

"Regulatory Asset Account" means (a) for an Electricity Distributor, any bank account into which the Electricity Distributor deposits or receives Transition Charge Collections; and (b) for the Servicer, any bank account into which ~~IESO~~Servicer deposits or receives Transition Charges~~, Electricity Distributor Remittances or IESO Remittances; and (c) if applicable, for the Alternative Collection Agent, any bank account into which~~

the Alternative Collection Agent deposits or receives Transition Charge Collections, Electricity Distributor Remittances or IESO Remittances.

"Regulatory Asset Owner" means each of (a) IESO, as owner of (and to the extent of) the IESO Retained Interest and (b) each Absolute Assignee, as owner of its Investment Interest or Investment Interests, and "Regulatory Asset Owners" means collectively IESO and each such Absolute Assignee, who together own the entirety of the Regulatory Asset and are required to exercise their individual rights of ownership in accordance with Section 6(7).

"Related Rights" means**, with respect to a Regulatory Asset Owner's Investment Interest,** all rights of any kind (whether in tort, contract or otherwise) that attach or are attendant or incidental to any of the other property rights or interests that comprise such Regulatory Asset**Investment Interest**.

"Remittance Date" means, in respect of an Electricity Distributor, each day on which it is required to remit Electricity Distribution Remittances to IESO**Servicer** or if applicable the Alternative Collection Agent as specified in accordance with any Funding Obligation or, if no such day is specified in accordance with any Funding Obligation, then the Business Day **[NTD: Not defined.]** preceding each Settlement Date. **[NTD: Move to Regulations. Remittances will be in accordance with the current rules.]**

"Repayment Obligation" means an obligation to repay, redeem or repurchase, or to provide for the repayment, redemption or repurchase (including by making a related Finance Reserve Deposit) of, all or a portion of the amount advanced to the Absolute Assignee under a Funding Obligation.

"Repayment" means a payment by an Absolute Assignee made to satisfy a Repayment Obligation, other than to the extent that the payment is made by applying the proceeds of a Refinancing or from Finance Reserve Withdrawals.

"Replacement Event" means any event specified as such in a Funding Obligation.

"Retail Consumer" means:

(a) present and future consumers of electricity in the Province who are (i) consumers designated under section 79.16 of[, and O.Reg 95/05 under,] the *Ontario Energy Board Act, 1998*, or (ii) hold or are deemed to hold an "eligible account" under< *the Ontario Rebate for Electricity Consumers*> *Act, 2016*, other than any such consumer who has a contract with a Retailer who uses Retailer Consolidated Billing; and

(b) present and future Retailers who use Retailer Consolidated Billing,

and each case includes all such consumers and Retailers who are connected, directly or indirectly and whether a customer of an Electricity Distributor or not, to the transmission and distribution system assets located in the Province and who are taking electric delivery service within the Province, whether or not such retail consumers produce their own electricity or purchase electric generation services from a provider of electric generation services other than the owner of the Province's transmission and distribution

~~system assets and <*whether or not the transmission and distribution system assets continue to be owned or operated by Electricity Distributors or operated by IESO*>.~~

~~"Retail Consumer Group" means, in relation to a Reference Period, the Retail Consumers who receive Electricity Invoices during the Reference Period.~~

"Retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity.

"Retailer Consolidated Billing" has the same meaning as in the *Retail Settlement Code* issued by the Ontario Energy Board.

~~"Service Area" means, in respect of an Electricity Distributor, the geographic area or region in which it is licensed to distribute electricity in accordance with the *Electricity Act, 1998*.~~

"Servicer" means IESO or IESO Successor, as agent for and on behalf of the Regulatory Asset Owners, for the purposes set forth in Article 4.

"Settlement Date" means the [last Business Day of any month].

"Transition Charge" means, ~~for a Retail~~**the amount recoverable from a Regulated** Consumer in respect of a Reference Period, ~~(a) the Period Transition Charge, (b) multiplied by its Allocation Factor in respect of the Reference Period, divided by (c) the applicable Reference Period Length.~~ **being the Period Finance Charge as allocated to such Regulated Consumer in accordance with Article 4(3) on a monthly basis. [NTD: This needs to be grossed up to account for variability associated with expected uncollectables and remittance delays.] [NTD: Do not need to create parallel process. The definition should be linked to the OEB process for determining the volumetric rate as part of the RPP process (see s. 4(2)). The OEB will determine volumetric rate based on forecast consumption, number of consumers, etc. to recover the Period Finance Charges.]**

"Transition Charge Collection" means any amount received **[or deemed by this Act to have been received] by the Absolute Assignees** upon the collection of a Transition Charge paid by or on behalf of a ~~Retail~~**Regulated** Consumer, including any proceeds arising from the exercise and enforcement of any related rights and interests under or in respect of the Regulatory Asset.

"True-Up Amount" means, in respect of a Reference Period, the amount (which may be a negative amount) calculated by the Financial Services ~~Agent~~**Manager** equal to (a) the >*Actual Finance Amount for such related True-Up Period*<**, minus (b) the** Estimate of the Finance Amount for the related True-Up Period, ~~minus (b) the <*Actual Finance Amount for such related True-Up Period*>~~, plus (c) the Collected Amount Adjustment for such related True-Up Period. **[NTD: need to discuss how this will work for our true-up. What about prior period shortages? An example of how this works needs to be provided.]**

"True-Up Period" means, in relation to a Reference Period, the period from and including the [30th] day immediately preceding the first day of the Reference Period, to but excluding the [30th] day immediately preceding the last day of the Reference Period.

"Undertaking of the Lieutenant Governor in CouncilHer Majesty in right of Ontario" means the undertaking of the Lieutenant Governor in CouncilHer Majesty in right of Ontario given under Section 11(2).

Article 3 – Transition Charges

(1) **RetailRegulated Consumer Obligation to Pay a Transition Charge** – Each RetailRegulated Consumer shall pay each Transition Charge charged to it in any Electricity Invoice issued to such RetailRegulated Consumer by its Electricity Distributor or by an Alternative Servicer under Section 4(1), in each case on the terms of payment specified in the related Electricity Invoice.

(2) **Indebtedness of RetailRegulated Consumers** – Until paid, a Transition Charge charged to a RetailRegulated Consumer in an Electricity Invoice shall, together with any applicable late payment fees and finance charges arising under the terms of the Electricity Invoice with respect to such Transition Charge, constitute non-bypassable indebtedness of the RetailRegulated Consumer to the Regulatory Asset Owners, each with respect to its respective interest in the Regulatory Asset. Such indebtedness shall constitute a single and separate[86] debt obligation owing by the RetailRegulated Consumer, which subject to Article 5 may be enforced independently from any other payment obligation or indebtedness owing by the RetailRegulated Consumer under the Electricity Invoice or otherwise.[97]

(3) **No Set-Off or Reduction** – A RetailRegulated Consumer may not set-off or reduce (by counterclaim, defense or otherwise) the amount payable by it in respect of any Transition Charge, including any set-off against or in respect of any amount owing or becoming payable to such RetailRegulated Consumer by its Electricity Distributor, any Regulatory Asset Owner or any other person.

(4) **Allocation of RetailRegulated Consumer Payments** – If an Electricity Distributor receives a payment made by or on behalf of a RetailRegulated Consumer in respect of amounts due and payable under one or more Electricity Invoices that is less than the total amount payable thereunder, such payment shall be allocated on a *pro rata* basis to the payment of related Transition Charges and other invoiced amounts and the amount so allocated as a payment of related Transition Charges shall be deemed to constitute a Transition Charge Collectionsubject to rights and benefits that are no less favourable than the treatment accorded to other amounts payable to the IESO by the Electricity Distributor.

(5) **Transition Charges are Irrevocable** – The Transition Charges arising under or in respect of Funding Obligations incurred under the Financing Plan (including any

[86] Determine if this is critical for rating and markets. Logistics under consideration.

[97] Torys has also suggested that deemed conditions of licenses for distributors, retailers and unit sub-metering providers, could be included as conditions, to require them to collect and remit amounts in accordance with this legislation. Consider if it is helpful to integrate the existing regulatory scheme for invoicing and collections (regarding RPP) in the legislation.

adjustments based on modifications to such Funding Obligations made in compliance with the Financing Plan or as a result of amendments to the Financing Plan made in accordance with Section 9(3)) are deemed to be irrevocable, final and effective without any further action, except to the extent of manifest calculation error. For greater certainty, a Transition Charge may include Finance Amounts for a Reference Period regardless of whether or not the payment of such Finance Amounts are inconsistent with the Fair Allocation Plan applicable at the time such payments are due and payable, and regardless of whether or not the related Funding Obligation was properly incurred under the Financing Plan. In no case shall a Funding Obligation incurred under the Financing Plan be affected by a subsequent amendment to the Fair Allocation Plan.

(6) True-Up of Transition Charges? – [NTD: Include specifics regarding the true-up of the charges and the process for the true-up, but move to Regulations. The True-Up Mechanism should require the Transition Charges to be reviewed and adjusted semi-annually to ensure the expected recovery of amounts sufficient to timely provide all payments in respect of Funding Obligations, provided that in some cases it may need to be adjusted more frequently than semi-annually, e.g., as part of a refinancing.]

(7) Commencement of Invoicing and Collection of Transition Charges – [NTD: Please confirm that as drafted, Transition Charges will begin on the Measurement Date.]

Article 4 – Invoicing of Transition Charges [NTD: Move Article 4 sections (1) to (4) to Regulations. Also note, these sections remain subject to further due diligence by the Dealers.]

(1) **Inclusion of Transition Charges in Electricity Invoices** – Each Electricity Distributor and if applicable any Alternative Servicer shall, as an agent of the Regulatory Asset Owners, specify the Transition Charge to be charged to a ~~Retail~~Regulated Consumer pursuant to Section 4(4) in respect of a related Reference Period in each Electricity Invoice issued by the Electricity Distributor or if applicable by the Alternative Servicer to the ~~Retail~~Regulated Consumer in respect of such Reference Period. Upon the inclusion of a Transition Charge in an Electricity Invoice, the obligation to pay such amount shall be binding on the applicable ~~Retail Consumer.~~Regulated Consumer. [NTD: Must capture bills issued to eligible consumers served by unit sub-metering providers, retailers and the IESO – not just distributors][NTD: This provision also needs to address the inclusion of Transition Charges in invoices from the IESO to the LDC, consistent with the current process of how the IESO bills LDCs.]

(2) **Calculation of the Period ~~Transition~~Finance Charge** – Not later than [35] days prior to the first day of a Reference Period, each Absolute Assignee (or the Financial Services ~~Agent~~Manager on its behalf) shall provide the OEB with written notice of each Estimate of a Finance Amount payable by it or on its behalf in respect of the Reference Period. ~~[35] days prior to the first day of a Reference Period, IESO or Successor IESO if applicable shall specify the IESO Retained Interest Amount and any IESO Financing Costs that are due and payable and remain unpaid on such day.~~ Not later than one month prior to the first day of a Reference Period, ~~the OEB~~each Absolute Assignee (or the Financial Services Manager on its behalf) shall calculate the Period ~~Transition~~Finance Charge applicable to the Reference Period ~~based on the calculations and information set forth in such written notices received from the Absolute Assignees~~

and based onhaving regard to such amounts specified by IESO or Successor IESOthe Servicer, which calculations, information and amounts shall be accepted by the OEB and shall be determinative, except to the extent of manifest calculation error or misstatement.

(3) **Calculation and Attribution of Transition Charges** – Not later than 25 days prior to the first day of a Reference Period, the OEB shall apply the Attribution Methodology to determine the Allocation Factorallocation of the Transition Charge for each RetailRegulated Consumer of the applicable Retail Consumer Group. **[NTD: We think the OEB would be determining the Fair Hydro recovery rate (on a volumetric basis) that distributors would then be required to charge to consumers]**

(4) **Notice of Transition Charges** – Not later than 20 days prior to the first day of a Reference Period, the OEB shall inform each Electricity Distributor and if applicable any Alternative Servicer of the Transition Charges to be specified in the Electricity Invoices to be issued to each RetailRegulated Consumer of the applicable Retail Consumer Group who has a billing address inwho is served by the Electricity Distributor's Service Area.

(5) **Adjustments** – The amount of any Transition Charge charged to a RetailRegulated Consumer and specified as such in an Electricity Invoice shall be determinative of the amount of indebtedness created thereby and owing in respect of such Transition Charge, except to the extent of any manifest calculation error.

(6) **Successors of Electricity Distributors** – Any successor of an Electricity Distributor shall be bound by the requirements of Article 4 and shall perform and satisfy all duties and obligations of such Electricity Distributor under Article 4 in the same manner and to the same extent as such Electricity Distributor, including the obligation under Article 4 to impose, attribute, charge, bill and invoice the Transition Charges.

(7) **IESO Successor** – Any IESO Successor shall be bound by the requirements of Article 4 and shall perform and satisfy all duties and obligations of IESO under Article 4 in the same manner and to the same extent as IESO, including the obligation to calculate and provide notice of Transition Charges.

(8) **Appointment of an Alternative Servicer** – If a Replacement Event occurs in respect of any Electricity Distributor, the Absolute Assignees shall, in accordance with the Collective Rights Agreement, be permitted, by an instrument in writing, to appoint an Alternative Servicer to perform some or all of the obligations and duties required to be undertaken by such Electricity Distributor under this Article 4, as and to the extent specified in such appointment. Upon acceptance of such appointment, the Alternative Servicer shall become obligated to perform such assumed obligations in replacement of such Electricity Distributor. Any Electricity Distributor that is replaced under this Section 4(8) shall promptly transfer all rights, powers, privileges and property interests in its possession or within its control in the performance of such obligations and duties to the Alternative Servicer and shall take such further actions, including the execution of instruments, necessary to give full and final effect to such transfer and to permit the Alternative Servicer to perform such obligations and duties on behalf of the Regulatory Asset Owners. **[NTD: We would expect the IESO to manage this in accordance with its normal business practices.]**

(9) Absolute Assignees have Standing – The Absolute Assignees, acting together in accordance with the Collective Action Agreement, may bring actions against any Electricity Distributor, IESO, the Servicer, Alternative Servicer or any other person who may be authorized to issue Electricity Invoices to ~~Retail~~**Regulated** Consumers for a failure to impose, attribute, charge, bill or invoice Transition Charges **or to otherwise comply with this Act**. Any court of the Province shall have jurisdiction over any actions brought before it by the Absolute Assignees in relation to any such failure~~.~~ **and may make any interim or final order it thinks fit in this regard. [NTD: We would like to see the sections on "Standing" to bring an action to remain in the legislation (as opposed to being moved to the regulations as we believe we previously suggested) as we see those provisions as part of ensuring a rigorous enforcement scheme for the Financing Entity (and so something that should be difficult for the Province to change going forward).]**

(10) No Set-Off or Reduction – No Servicer or Electricity Distributor may set off or reduce (by counterclaim, defence or otherwise) the amount payable by it pursuant to this Article 4.

(11) Regulations – Regulations may be enacted for the purpose of specifying further rights, powers, privileges, duties and obligations that shall apply to IESO, any Electricity Distributor or any Alternative Servicer to ensure that Transition Charges are properly charged to ~~Retail~~**Regulated** Consumers and specified as such in Electricity Invoices.

Article 5 – Collections and Remittances [NTD: Move Article 5 sections (3), (6), (9), (12), (13) and (14) to Regulations.]

(1) **Duty to Collect as Agent** – Electricity Distributors or if applicable any Alternative Collection Agent shall, as an agent of the ~~Regulatory Asset Owners, undertake [diligent][reasonable][10] efforts to~~**Servicer,** collect amounts owing by ~~Retail~~**Regulated** Consumers in respect of Transition Charges charged to such ~~Retail~~**Regulated** Consumers in Electricity Invoices issued by the Electricity Distributor or if applicable such Alternative Collection Agent~~.~~ **all in accordance with the Regulations. [NTD: The obligation to collect and remit the Transition Charge should be included as a deemed condition of license for electricity distributors (and retailers and unit sub-metering providers).]**

(2) **Segregation of Transition Charge Collections** – An Electricity Distributor or if applicable any Alternative Collection Agent shall promptly segregate Transition Charge Collections from other payments received by it from ~~Retail~~**Regulated** Consumers and deposit such Transition Charge Collections into its Regulatory Asset Account.[11][8] **[NTD: Determine if this is critical for rating and markets or if segregation can occur in the hands of the IESO]** Prior to and following a deposit of Transition Charge Collections having been made into its Regulatory Asset Account, the Electricity Distributor or if applicable any Alternative Collection Agent shall hold such amounts in trust for the Regulatory Asset Owners **or its Pledgee**.

(3) **Electricity Distributor Remittances** – On each applicable Remittance Date, an Electricity Distributor shall remit all **amounts invoiced by the IESO on account of the**

[10] ~~Mirror collection "standard of care" under applicable legislation.~~

[11][8] Consider trying to attach to existing LDC credit enhancements and provide parallel coverage for customer losses.

Transition Charge ~~Collections received by it from Retail Consumers~~ in respect of the related Reference Period to or to the account of ~~IESO~~**Servicer** or if applicable the Alternative Collection Agent. **[NTD: It is the Dealers expectation that the Transition Charge will be paid on the same basis as other amounts invoiced by the IESO, failing which, they will need to be remitted daily.]**

(4) **Duty to Collect Electricity Distributor Remittances** – ~~IESO~~**Servicer** or if applicable any Alternative ~~Collection Agent~~**Servicer** shall, as an agent of the Regulatory Asset Owners, ~~undertake [diligent][reasonable] efforts to~~ accept and collect Electricity Distributor Remittances from Electricity Distributors and Transition Charge Collections from ~~Retail~~**Regulated** Consumers that pay their Electricity Invoices directly to IESO~~.~~[12] **on the same basis as it accepts and collects other charges from such Regulated Consumers.**[9]

(5) **Segregation of Electricity Distributor Remittances** – ~~IESO~~**Servicer** and if applicable the Alternative Collection Agent shall promptly segregate Electricity Distributor Remittances from other payments received or held by it and deposit such Electricity Distributor Remittances into its Regulatory Asset Account. Prior to and following a deposit of Electricity Distributor Remittances having been made into its Regulatory Asset Account, ~~IESO~~**Servicer** or if applicable any Alternative Collection Agent shall hold such amounts in trust for the Regulatory Asset Owners **or Pledgee**.

(6) ~~**IESO**~~**Servicer Remittances** – On each Settlement Date[13]10, ~~IESO and if applicable the Alternative Collection Agent~~**Servicer** shall remit all amounts on deposit in its Regulatory Asset Account ~~(a) first,~~ to or to the account of the Absolute Assignees an amount equal to the Investment Remittance for the related month ~~and (b) second, to IESO (including by IESO retaining such amount) an amount equal to the lesser of (i) the Maximum IESO Recovery for the related month and (ii) the IESO Retained Interest Amount as of the Settlement Date~~.

(7) **Successors of Electricity Distributors** – Any successor of an Electricity Distributor shall be bound by the requirements of Article 5 and shall perform and satisfy all duties and obligations of such Electricity Distributor under Article 5 in the same manner and to the same extent as such Electricity Distributor, including the obligation under Article 5 to collect Transition Charges and make remittances of Electricity Distributor Remittances.

(8) **IESO** ~~**Successor**~~**Successors** – IESO ~~Successor~~**Successors** shall be bound by the requirements of Article 5 and shall perform and satisfy all duties and obligations of IESO under Article 5 in the same manner and to the same extent as IESO, including the obligation to collect Transition Charge Collections, Electricity Distributor Remittances and to remit IESO Remittances.

(9) **Owners of Distribution Assets** - If any person other than an Electricity Distributor acquires distribution system assets in the Province or invoices or collects electricity distribution rates in the Province[14]11, then such person shall, if requested by the Absolute Assignees, be obligated to act diligently to (a) facilitate the invoicing and collection of any Transition Charges applicable to ~~Retail~~**Regulated** Consumers ~~in its~~

[12]9 Consider building this obligation into a deemed condition of licence for the IESO.
[13]10 Consider frequency of remittances in light of rating requirements. US rating agencies favour daily remittances.
[14]11 This is in anticipation of a possible future restructuring of the distribution system.

applicable service area, including all consumers connected to the electricitysuch person's distribution system assets and taking electric delivery service located within such service area; (b) allocate partial payments by RetailRegulated Consumers as provided in this Act; (c) exercise all enforcement rights of the Absolute Assignees for the benefit of an Absolute Assignee; and (d) remit any Transition Charge Collections to the Absolute Assignees or Pledgees, as applicable, each in accordance with its Investment Interest. [NTD: Such acquisition of a distribution system would require the person to be an electricity distributor; consider deleting since this is covered off by Section 5(7).]

(10) **Absolute Assignees have Standing** – The Absolute Assignees, acting together in accordance with the Collective Action Agreement, may bring actions against any Electricity Distributor, IESOServicer, the Alternative Collection Agent, any owner of electricity distribution system assets in the Province or any other person who may be authorized to collect electricity distribution and use charges from RetailRegulated Consumers for a failure to collect Transition Charges, remit or collect Electricity Distributor Remittances or remit IESO Remittances, as and to the extent applicable under Article 5.5, or to otherwise comply with this Act. Any court of the Province shall have jurisdiction over any actions brought before it by the Absolute Assignees in relation to any such failure and may make any interim or final order it thinks fit in this regard.

(11) **Appointment of an Alternative Collection Agent –** If a Replacement Event occurs in respect of any Electricity Distributor or IESO, the Absolute Assignees shall, in accordance with the Collective Rights Agreement, be permitted, by an instrument in writing, to appoint an Alternative Collection Agent to perform some or all of the collection, segregation and remittance obligations otherwise required to be undertaken by such Electricity Distributor or IESO, as applicable, under Article 5, as and to the extent specified in such appointment. Upon acceptance of such appointment, the Alternative Collection Agent shall become obligated to perform such assumed obligations in replacement of such Electricity Distributor or IESO, as applicable. Any Electricity Distributor or IESO, as applicable, that is replaced under this Section 5(11) shall promptly transfer all rights, powers, privileges and property interests in its possession or within its control in, to and over the Regulatory Asset, including its Regulatory Asset Account, to the Alternative Collection Agent and shall take such further actions, including the execution of instruments, necessary to give full and final effect to such transfer and to permit the Alternative Collection Agent to enforce the Regulatory Asset on behalf of the Absolute Assignees.Not Used. [NTD: The Servicer should manage this process.]

(12) **No Set-off, etc.** - The Regulatory Asset, including rights in Transition Charges, Transition Charge Collections, and the interests of a Regulatory Asset Owner, an Absolute Assignee and a Pledgee therein, may not be setoff or reduced (including by counterclaim, surcharge or defense) by any RetailRegulated Consumer, any Electricity Distributor, IESOServicer, Alternative Collection Agent or any owner of distribution system assets in the Province or any other person or in connection with any default, bankruptcy, reorganization or other insolvency proceeding of any Electricity Distributor,

~~IESO~~Servicer, Alternative Collection Agent or any owner of distribution system assets in the Province, any affiliate or successor thereof or any other entity or otherwise.[~~15~~12]

(13) **Sequestration** – If any Electricity Distributor, ~~IESO~~Servicer, the Alternative Collection Agent or any owner of distribution system assets in the Province or any other person or entity authorized to collect Transition Charges, defaults on any required remittance of Transition Charge Collections, Electricity Distribution Remittances or IESO Remittances under Article 5, any court in the Province, upon application by and of the Absolute Assignees acting collectively under the Collective Action Agreement and without limiting any other remedies otherwise available to the Absolute Assignees or Pledgees, shall order the sequestration and payment of the Transition Charge Collections, Electricity Distribution Remittances and IESO Remittances, as applicable, for the benefit of the Absolute Assignees, each with respect to its Investment Interest, and the Pledgees as applicable.[~~16~~13]

[NTD: Suggest considering a more typical remedy such as the ability to appoint a receiver. Concept should be moved to Regulations.]

(14) Regulations – Regulations may be enacted for the purpose of specifying further rights, powers, privileges, duties and obligations that shall apply to ~~IESO~~Servicer, any Electricity Distributor or any Alternative Collection Agent to ensure that rights, interests, entitlements, benefits and proceeds in, to, under and from the Regulatory Asset are of fully realized by some or all of the Absolute Assignees and Pledgees.

Article 6 – The Regulatory Asset

[NTD: We believe that the statute should impose a time limit on the ability of IESO to create additional Regulatory Assets under this Act. It is our expectation that this will be no later than 10 years after the commencement of the program.]

[NTD: In addition, additional language is required to address the acquisition of the Regulatory Asset by the Financing Entity, including reference to the consideration being provided for it, funding upfront costs.]

[NTD: The sale of Regulatory Assets must be restricted to Financing Entities controlled by a single entity (initially, OPG).]

[NTD: For greater certainty, a Financing Entity will not be required to purchase Regulatory Assets from IESO.]

(1) **Composition** – The Regulatory Asset shall constitute a current and irrevocable property right and interest consisting, collectively, of the following rights and interests (without duplication):

[~~15~~12] Consider whether it makes sense to create a "deemed collection" payment obligation on Electricity Distributors to the extent a ~~Retail~~Regulated Consumer reduces its payment of Transition Charges, despite this language. Same for Electricity Distributor Remittances and IESO Remittances.

[~~16~~13] Consider adding or substituting this provision for a right to appoint a receiver.

a. the right of ~~IESO (i)~~**a Regulatory Asset Owner** to record its ~~IESO Retained Interest in its accounts in accordance with Section 8(1), having a stated amount from time to time equal to the IESO Retained Interest Amount; and (ii) to receive IESO Recoveries from time to time in accordance with Section 5(6)(b)~~**portion of the Regulatory Asset in its accounts**;

b. the right to impose, bill, invoice, collect and receive Transition Charges from ~~Retail~~**Regulated** Consumers, including the right to determine the amount of Transition Charges in accordance with this Act;

c. the right to enforce the obligations and indebtedness of each ~~Retail~~**Regulated** Consumer to pay the Transition Charges charged to the ~~Retail~~**Regulated** Consumer from time to time in accordance with Article 3, together with all related late payment fees or interest charges arising in respect thereof under the related Electricity Invoices; **[NTD: Do we really want and need the ability for the Financing Entities to chase after individual consumers?] [NTD: This should be the right to provide notices to the OEB of the amounts required for recovery, which the OEB would then be required to accept for purposes of determining the amount of Transition Charges to be charged to consumers]**

d. the right to enforce the duties and obligations of each Electricity Distributor and if applicable the Alternative Servicer to impose, attribute, charge, bill and invoice the Transition Charges in accordance with Article 4;

e. the right to enforce the duties and obligations of each Electricity Distributor and if applicable the Alternative Collection Agent to collect, receive and remit amounts received by it in respect of Transition Charges as Electricity Distributor Remittances to or to the account of ~~IESO~~**Servicer** or if applicable the Alternative Collection Agent in accordance with Article 5, including all collections and the proceeds of any enforcement action undertaken by the Electricity Distributor or if applicable the Alternative Collection Agent to recover payment of Transition Charges in accordance with Article 5;

f. the right to enforce the duties and obligations of ~~IESO~~**Servicer** and if applicable the Alternative Collection Agent to collect and receive Electricity Distributor Remittances and to remit IESO Remittances to or to the accounts of the Regulatory Asset Owners, each with respect to its respective interest in the Regulatory Asset, in each case in accordance with Article 5, including all collections and the proceeds of any enforcement action undertaken by it to recover payment of Electricity Distributor Remittances in accordance with Article 5;

g. the right to receive and collect all Transition Charge Collections, all Electricity Distributor Remittances and all IESO Remittances in accordance with Article 5;

h. all rights and entitlements under each Regulatory Asset Account and all amounts on deposit in any such Regulatory Asset Account;

i. all Related Rights; and

j. all revenue, collections, claims, payments, money and proceeds of or derived from the rights described in (a) through (i), regardless of whether such revenue, collections, claims, payments and proceeds are imposed, invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

A Regulatory Asset and the property rights and interests therein shall exist whether or not Transition Charges have been imposed, charged, invoiced, accrued or collected and notwithstanding that the imposition, attribution, invoicing and collection of Transition Charges will depend on further actions that may not have occurred. **The Regulatory Asset shall continue to exist until all Funding Obligations and Additional Funding Charges have been paid in full.**

(2) **Validity of Dispositions** – ~~Despite any limitations or restrictions on a Disposition that may arise by contract or by operation of any applicable law of the Province or any consent requirement applicable to a Disposition that may arise by operation of any applicable law of the Province, a~~**A** Disposition by IESO **of all or any part of the IESO Funding Shortfall** to an Absolute Assignee ~~made under the Financing Plan~~, or **a Disposition of all or any part of an Investment Interest** by one Absolute Assignee to another Absolute Assignee made under the Financing Plan, shall be permitted and when made shall be valid and enforceable in accordance with the terms of the related Disposition Document and shall be effective to confer upon the Absolute Assignee thereof a valid property right and interest in, to and under the ~~applicable~~**IESO Funding Shortfall or** Investment Interest**, as applicable** (or relevant portion thereof) in accordance with the terms of such Disposition, provided that the parties to the applicable Disposition Document have expressly stated therein that such Disposition is a sale or other absolute transfer. Without limiting the foregoing, any Disposition that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as a true sale and absolute transfer of the ~~Regulatory Asset Owner's applicable~~**IESO Funding Shortfall or an Absolute Assignee's** right, title~~,~~ and interest in, to and under ~~the Regulatory Asset~~**an Investment Interest, as applicable** (or relevant portion thereof), and not merely as a Pledge thereof, and upon such Disposition the assigner or seller under the applicable Disposition Document shall retain no right, title or interest in the **IESO Funding Shortfall or** Investment Interest **(or relevant portion thereof)** subject to the Disposition, including all rights under the **IESO Funding Shortfall or** Investment Interest arising after such Disposition. **[NTD: Subject to review by Osler/dealers.]**

(3) **Perfection and Priority of Dispositions** – Any Disposition of an interest in a Regulatory Asset shall be vested, valid, binding and perfected from the time when such Disposition is made. Such Disposition shall be perfected, vested, valid and binding as against the **IESO or** transferring Regulatory Asset Owner**, as applicable,** and all other persons who have claims of any kind (whether in tort, contract or otherwise) against **IESO or** the transferring Regulatory Asset Owner, **as the case may be,** irrespective of whether such persons have notice of the Disposition and the property rights and interests acquired by the Absolute Assignee under such Disposition shall be free and clear of any liens in favour of such other persons.

(4) **Validity of Pledges** – ~~Despite any limitations or restriction on a Pledge that may arise by contract or by operation of any applicable law of the Province or any consent~~

~~requirement applicable to a Pledge that may arise by operation of any applicable law of the Province, a~~**A** Pledge by an Absolute Assignee may be made to secure any ~~related~~ Funding Obligation and when made shall be valid and enforceable in accordance with its terms and shall be effective to confer upon the Pledgee a valid security interest in, to and in respect of the related Investment Interest in accordance with the terms of the Pledge. ~~Other than as required by the Financing Plan, no~~**No** consent of**, or notice to,** any person shall be required to give effect to a Pledge made to secure any Funding Obligation.

(5) **Perfection and Priority of Pledges** - For purposes of the *Personal Property Security Act* (the "PPSA"), the Regulatory Asset shall be intangible personal property and any Pledge made by an Absolute Assignee in respect of a Funding Obligation **shall, subject to the terms thereof, give rise to a security interest of which the PPSA applies, and** may be perfected by filing a financing statement under the PPSA on that basis. All proceeds of a related Investment Interest that are subject to such a Pledge that are received by the Absolute Assignee shall immediately be subject to the such Pledge, and the security interest in such proceeds shall be perfected pursuant to the PPSA.~~17~~**14** A Pledge perfected under the PPSA shall be a continuously perfected security interest and shall have priority over any other lien or security interest, created by operation of law or otherwise, that may attach to the property rights and interests in the Investment Interest subject to the Pledge unless the Pledgee has otherwise agreed in writing. ~~Subject to the terms of the Collective Action Agreement, a~~**A** Pledgee shall have a perfected security interest in a related Investment Interest, including the Absolute Assignee's rights and interests in and to Transition Charge Collections or other related proceeds in respect of the Investment Interest and that are deposited in any Regulatory Asset Account or other account of any Electricity Distributor, IESO, Alternative Collection Agent or other person who may have commingled such Transition Charge Collections or such other proceeds with other funds. All provisions of the PPSA shall apply to the Regulatory Asset on the basis that it is intangible personal property, except to the extent otherwise provided in this Section 6(5).

(6) **Enforcement of Property Rights** – The rights of any Regulatory Asset Owner to collect and enforce its rights and interests in, to or in respect of the Regulatory Asset shall be exercised in the manner set forth in Article 5.

(7) **Owners of a Specified Portion of the Regulatory Asset** – A Regulatory Asset Owner may effect a Disposition to an Absolute Assignee of a specified portion of its rights and interests in the Regulatory Asset, including by way of a Disposition of a divided or an undivided interest therein as specified in a related Disposition Document~~, in each case under the Financing Plan~~. In no circumstance may the specified portions of the rights and interests in the Regulatory Asset owned by all Regulatory Asset Owners be greater than all of the rights and interests that comprise the Regulatory Asset in the aggregate.

(8) **Collective Action Required** – If a Regulatory Asset Owner's rights and interests in the Regulatory Asset comprises less than the entire property right and interest constituted by the Regulatory Asset, such Regulatory Asset Owner shall only enforce such right and interest on a collective and coordinated basis with each other Regulatory Asset Owner in accordance with the Collective Rights Agreement. **[NTD: Move to Regulations.]**

~~17~~**14** Consider whether to simply leave this and have a financing statement be filed under the PPSA. This would normalize the security interest and reduce any adverse suggestion that security would not otherwise arise.

Article 7 – Establishment of the Fair Allocation Plan[1815] **[NTD: Move entire Article 7 to Regulations, other than 7(1) and 7(2).]**

(1) **Adoption of the Fair Allocation Plan** – The Delegate may, [by written declaration,] designate and adopt a Fair Allocation Plan in compliance with Article 7. The Fair Allocation Plan so designated and adopted shall be the Fair Allocation Plan for all purposes of this Act, except if amended, amended and restated or terminated by a further written declaration made by the Delegate in compliance with Section 7(4).**[the Regulations]**

(2) **Principles and Parameters** – A Fair Allocation Plan shall seek to allocate Future Fair Share of Green Transition Benefits across present and future Retail Consumer Groups**Regulated Consumers** on a basis that the Delegate, in its sole and absolute discretion, determines to be equitable, having regard to the following principles and parameters:

[NTD: E&Y will need to see the guidelines of the Fair Allocation Plan set in reference to parameters that will allow it to establish a modeling curve]

- **[Inflation period: (between November 2017 – and April 2022) bill increases need to be capped at inflation (assumed at 2% for modeling purposes)]**
- **[Transition Period: (May 2022- April 2027) bills increased at a consistent rate which is set so that the borrowing will not exceed the Trust's capacity, which is determined by the Finance Service Manager]**
- **[Amortization Period: (May 2027-April 2047) equitable distribution of Finance Amount among Regulated Consumers]**

1. Future Fair Share of Green Transition Benefits should be allocated over the period ending on the Program End Date.

2. <*The Fair Allocation Plan should specify the Reference Periods for the purpose of* >identifying applicable Retail Consumer Groups and <*allocating Future Fair Share of Green Transition Benefits among* >them< *on a relative basis over time.* >

2. 3. The share of Future Fair Share of Green Transition Benefits allocable to a particular Retail**Regulated** Consumer Group in respect of a Reference Period should be proportionate to a reasonable assessment of the benefits of the Green Generation Initiative to the Retail**such Regulated** Consumer Group over such Reference Period**, other than**> *in exceptional circumstances*<**.**

[1815] The idea is that the Fair Allocation Plan will be set once at the outset based on the principles and parameters described here, all as applied based on information available and the reasonable expectations and discretion of the delegate at such time. If the expectations are not fulfilled (e.g., generators may choose to retire their facilities at the end of their current procurement contracts and not invest in extending service lives to secure further procurement contracts), the Fair Allocation Plan will be unaffected, unless it is specifically amended (assuming amendments will be permitted by the legislation).

4. The share of Future Fair Share of Green Transition Benefits to be allocated to a Retail Consumer Group and any future Retail Consumer Group at a particular time should not exceed the Estimated Future Green Transition Benefits, measured in respect of the Reference Periods following such particular time and to the Program End Date.

5. No future Retail Consumer Group should be allocated an unreasonably disproportionate share of Estimated Future Green Transition Benefits. Except<- *in exceptional circumstances*> or in the case of any reallocation of an Over-Assessed Amount as contemplated in 7, below, the Future Fair Share of Green Transition Benefits to be allocated under a Fair Allocation Plan to any future Retail Consumer Group should have regard to *[Insert formula if a year-over-year maximum amount is determined to be appropriate].*

3. 6. The time value of money should be reflected in the Fair Allocation Plan, in order to equate the relative values of the nominal allocations of Future Fair Share of Green Transition Benefits, calculated in current dollars, to future Retail Consumer Groups over time.>*The Fair Allocation Plan should specify the Reference Periods for the purpose of* <>*allocating Future Fair Share of Green Transition Benefits among* <**Regulated Consumers**> *on a relative basis over time.* <

7. To the extent there has been an Over-Assessed Amount, the Fair Allocation Plan may determine that an adjustment should fairly be made to rebate Retail Consumers for such an amount, by reducing the costs otherwise attributable under the Act to such Retail Consumers. The relative costs of the Green Generation Initiative are reflected under the Act by the attribution of Transition Charges to such Consumer Groups, based on the Financing Plan seeking to track the allocations of benefits under the Fair Allocation Plan. Accordingly, the Maximum Transition Charge Amount determined for one or more Retail Consumer Groups having regard to the Fair Allocation Plan otherwise applicable may be appropriately reduced to recognize the effect of the Over-Assessed Amount. In such a case, a determination to reduce the Maximum Transition Charge Amount applicable for certain related Reference Periods should have regard to the principle that the corresponding rebate should be extended to benefit the Consumer Group or Consumer Groups in closest proximity to the Legislative Implementation Date.

(3) Attribution Methodology – The Fair Allocation Plan shall specify the Attribution Methodology for the purposes of allocating the Period Transition**Finance** Charges across the Retail**Regulated** Consumers of a particular Retail Consumer Group. The Attribution Methodology shall result in an attribution of such Transition Charges that is considered by the Delegate to be equitable, and may have regard to such principles and parameters as may be further set forth in a Regulation.; **provided that**> *the Attribution Methodology* <**shall not be used to limit the recovery of Transition Charges. [NTD: Can the methodology be adjusted outside an amendment? If so, the rating agencies need to understand the limits of any adjustment.]**

(4) Amendments of the Fair Allocation Plan – The Fair Allocation Plan may be amended, amended and restated or terminated by the Delegate, provided that such amendment, amendment and restatement or termination shall (a) not be inconsistent with the principles and parameters set forth in (2) or (3), above, or the Regulation ~~and~~, (b) comply with any restrictions or limitations specified with respect thereto in any Funding Obligation~~.~~**, and (c) not impair any Regulatory Asset, outstanding Funding Obligation or any Transition Charges. [NTD: If the Fair Allocation Plan is amended, there should be no further Regulatory Assets until the revised Fair Allocation Plan and corresponding Financing Plan have been approved.]**

Article 8 – The IESO ~~Retained Interest~~Funding Shortfall

(1) ~~Maintain Books of Account~~ ~~– IESO may maintain books of account to record the IESO Retained Interest Amount and all adjustments thereto from time to time. Such books of account shall be determinative with respect to the amount of IESO's related regulatory asset.~~**Recording of IESO Funding Shortfall -- IESO will record any IESO Funding Shortfall in its books.**

~~**(2) Limitation on Additions** – IESO shall not record additions to the IESO Retained Interest Amount in respect of IESO Funding Shortfalls (a) if such additions are restricted by the terms of any Disposition Document or the Collective Action Agreement, or (b) on or after •, 2017.~~

(2) ~~**(3)**~~ **Dispositions** – IESO may effect a Disposition **of all or any part of the IESO Funding Shortfall** to an Absolute Assignee if (a) the ~~Absolute Assignee has or will concurrently become bound by the Collective Rights Agreement; (b) the~~ Disposition is effected pursuant to a Disposition Agreement duly executed by IESO; **and** (~~c~~**b**) the Financial Services ~~Agent~~**Manager** confirms in writing that the Disposition **complies with any restrictions or limitations specified with respect thereto in any documents evidencing the Funding Obligations and** is permitted under the Financing Plan~~; and (d) the net proceeds payable to IESO from the sale of the related Investment Interest would not exceed the IESO Retained Interest Amount immediately before the time of such Disposition~~.

(3) ~~**(4)**~~ **No Continuing Interest in any Investment Interest** – IESO shall have no continuing right or interest in any ~~Investment Interest~~**IESO Funding Shortfall** subject to a Disposition effected by IESO under a Disposition Document to which IESO is a party~~and IESO shall not assert any such right or interest or take or omit to take any action to exercise or enforce its rights or interests under the IESO Retained Interest if such action or omission would impede or obstruct the rights of any Absolute Assignee or a Pledgee to enforce its rights and interests in any Investment Interest, except if IESO is expressly permitted to take or omit to take such action, respectively, under the related Disposition Document or the Collective Rights Agreement.~~

~~**(5) IESO Financing Costs** – IESO shall be entitled in good faith to incur reasonable financing costs (including interest and other reasonable financing charges) reflecting market terms and conditions and which are payable in arrears, in order to finance its ownership of the IESO Retained Interest from time to time. **(6) IESO Recoveries** –~~

IESO shall, in respect of a month, be entitled to receive from IESO Remittances on a related Settlement Date the amount (if any) available to IESO under Section 5(6)(b).

Article 9 – The Financing Plan [NTD: Move all of Article 9 to Regulations other than 9(1).]

(1) Power to Prepare, Implement and Amend the Financing Plan – The Financial Services AgentManager shall be authorized to prepare, implement and amend a financing plan for the Financing Entities> *and propose the adoption*< of such financing plan as the Financing Plan. If the Financial Services Agent is unwilling or unable to prepare< *and propose the adoption*> of the Financing Plan, the Delegate may by written declaration designate one or more other persons who shall be authorized to prepare, implement and amend the Financing Plan for the purposes of this Act. The Financial Services Manager shall have the right to withdraw its financing plan as the Financing Plan at any time if it determines that implementing the Financing Plan in such manner would not be in the best interests of a Financing Entity.

(2) TermsPrinciples and ConditionsParameters of the Financing Plan – The Financing Plan shall establish the basis for each Absolute Assignee's funding decisions. The Financing Plan shall have having regard to the principles and parameters set forth in Schedule 3 and such other conditions and requirements as may be specified in a written declaration of the Delegate or in accordance with the Regulation.3.

(3) OEB Approval – Any Additional Funding Charge payable to or for the benefit of the Financial Services AgentManager in respect of services provided by the Financial Services Manager (other than third party costs) shall be subject to review and approval by the OEB.

(4) OEB Review of Financing Plan – The [OEB] [shall] undertake an annual review of the records maintained by the Financial Services AgentManager for the purpose of confirming that the Funding Obligations incurred and the Finance Amounts paid by or on behalf of the Absolute Assignees were incurred and paid, respectively, in material conformity with the Financing Plan. [NTD: We would prefer that this be dealt with by an attestation prepared by an officer of the Financial Services Manager.]

(5) Replacement of the Administrative AgentFinancial Services Manager – If the OEB identifies deficiencies or makes recommendations in its review under Section 9(4), the Administrative AgentFinancial Services Manager shall take reasonable measures to remedy such deficiencies if remediable, and shall in any event have regard to the recommendations of the OEB in relation to further actions undertaken by the Financial Services AgentManager under the Financing Plan. If the Financial Services AgentManager is unwilling or unable to reflect such recommendations in relation to such further actions, the Delegate may by written declaration designate one or more other persons who shall thereafter become the Financial Services. Manager. Any replacement must comply with the restrictions and limitations specified in the documents evidencing the Funding Obligations.

(6) Obligation to Apply IESO Remittances – The Financial Services AgentManager shall ensure that amounts transferred to it under Article 5, as agent for and on behalf of the Absolute Assignees, or otherwise in respect of or as proceeds from an applicable Investment Interest shall only be applied or used to pay related Finance Amounts when

they are due and payable and for no other purpose. **[NTD: This can be dealt with by contract.]**

(7) Non-Recourse – The Financing Plan shall be implemented so that Funding Obligations incurred shall be without recourse to or to any assets of the Electricity Distributors, IESO, any Alternative Servicer, any Alternative Collection Agent, the Financial Services Agent**Manager**, the OEB, the Province or the Lieutenant Governor in Council **or Her Majesty in right of Ontario**, other than if and to the extent that such persons or entities are liable for the performance of obligations or duties arising under this Act or expressly agree to become liable pursuant to any Funding Obligation or obligation in relation to a Finance Amount. [All Funding Obligations shall contain a statement to the following effect: "Neither the full faith and credit nor the taxing power of the Province of Ontario is pledged to the payment of the principal of, or interest on, this [obligation].]

(8) Incurrences are Binding – Notwithstanding anything to the contrary in this Act, each**Each** Disposition made to or by an Absolute Assignee and**,** all amounts payable or becoming due and payable by or on behalf of an Absolute Assignee under or in connection with any obligation purporting to be a Funding Obligation **and each Pledge entered into by an Absolute Assignee**, shall be **valid and** binding for the purposes of this Act, including in determining the amount of related Transition Charges, despite**notwithstanding** any impairment or defect resulting from such failure**defect in the manner in incurrence or any inconsistency with the Fair Allocation Plan or the Financing Plan**.

[Article 10 – Compliance Matters[19][16]

(1) Right of the [OEB] to Inspect Books and Records - For the purpose of investigating compliance with the provisions of this Act, the OEB shall have the right, jurisdiction, power and authority to examine the books and records of *[Insert names if any]*.

(2) [OPG's Rate Settings – When setting other rates for or in respect of OPG, the OEB shall not take into account (a) the administrative or servicing fees charged by OPG as Financial Services Agent**Manager** [in excess of the actual incremental costs incurred by such person of providing administrative or servicing services]; (b) the cost consequences to OPG of being the Financial Services Agent**Manager**; or (c) the consequence of OPG consolidating the assets and liabilities of any Financing Entity for OPG's accounting purposes, in each case in setting any regulated payment amounts for OPG.][20][17]

[19][16] As noted above, the outcome of any regulatory action undertaken by the OEB will not affect Funding Obligations that have been incurred under the Financing Plan. This Article and any potential role for the Auditor General is still under consideration.

[20][17] As an alternative to this provision, consider clarifying under s. 78.1(4) of the OEB Act (which currently gives the OEB discretion in setting payment amounts subject to O. Reg. 53/05) that the OEB in setting OPG payment amounts for prescribed generation shall not consider OPG's role as Administrative Agent**Financial Services Manager** of any Financing Entities associated with the Fair Hydro initiative, perhaps with the exception of any operating fees that may be received by OPG for performing that role.

Article 11 – Undertaking of the ~~Lieutenant Governor in Council~~[21]Her Majesty in right of Ontario[18]

(1) No Action to limit, alter, or impair or terminate Transition Charges, the Regulatory Asset or Collections – ~~The [Lieutenant Governor in Council]~~**Her Majesty in right of Ontario** shall not in any way take or permit **(including by any agency or administrative body)** any action to reduce, impair, postpone or terminate the obligation of ~~Retail~~**Regulated** Consumers to pay Transition Charges or to impair the Regulatory Asset or the collection or recovery of Transition Charge Collections, Electricity Distributor Remittances or IESO Remittances, either directly or indirectly, including through the introduction of any bill or the passing of any legislation or regulation having such effect. The amount of Transition Charges determined under this Act shall not be subject in any way to reduction, impairment, postponement or termination as a result of any action taken or failure by ~~the Lieutenant Governor in Council~~**Her Majesty in right of Ontario (including by any agency or administrative body)**, including through the introduction of any bill or the passing of any legislation or regulation having such effect.

(2) Undertaking and Agreement – ~~The [Lieutenant Governor in Council]~~**Her Majesty in right of Ontario** shall not:

(a) in any way take or permit any action that limits, alters or impairs the value of any Investment Interest;

(b) except as required by the estimates and adjustments made in determining the True-up Amount, reduce, alter or impair Transition Charges that are imposed, billed, invoiced, collected and remitted for the benefit of the Absolute Assignees or any Pledgee from time to time;

(c) permit the amendment, amendment and restatement or termination of the Fair Allocation Plan if such amendment , amendment and restatement or termination would adversely affect the validity or enforceability of any Funding Obligation or the rights of an Absolute Assignee or Pledgee thereunder, **or would not otherwise comply with the restrictions and limitations specified in the documents evidencing the Funding Obligations,**

in each case including through the introduction of any bill or the passing of any legislation or regulation having such effect.

(3) Successor IESO – If IESO is restructured, dissolved or becomes insolvent or is otherwise incapable of performing its obligations under this Act, **an IESO** Successor ~~IESO~~ shall **immediately** be established **by Her Majesty in right of Ontario** to perform such obligations.

~~21~~[18] Under consideration, including the dealers' request for a "servicer guarantee" and a "contractual guarantee" to address a "Change of Law" or if all or a portion of the legislation is *ultra vires*, requiring (at the lenders option), the Province to pay principal and interest on the outstanding debt until maturity or payout the entire debt including any make-wholes. ⊥
In the event of a market disruption that renders it impossible to refinance debt when required (or where financing of amounts required to service the debt is not available because of a market disruption where the Financing Entity was relying on such further issuance of debt until the recovery is set to begin to fund interest), either the Province must step in and payout the debt or there must be the right to recover the debt from ratepayers as it becomes due, notwithstanding the intended rate cut.

(4) Compensation for Failure – Absolute Assignees shall be compensated by Her Majesty in right of Ontario for any losses suffered by them as a result of any failure by ~~the Lieutenant Governor in Council~~Her Majesty in right of Ontario to comply with its undertakings and agreements in this Article 11.~~22~~19

(5) No Wind-up of Financing Entity. No Financing Entity may be voluntarily wound up, liquidated or dissolved until one year after all of its Funding Obligations are repaid. [NTD: This concept can be contained in the Regulations.]

(6) References to the Undertaking and Agreement – Any non-confidential reference to the Undertaking of the ~~Lieutenant Governor in Council~~Her Majesty in right of Ontario, including in marketing materials and other documentation authorized for use by the Administrative in connection with any Funding Obligation, may be made provided that [*Add conditions to protect the Province*].

Article 12 – Regulations

Regulations may be made under this Act for the purposes described in Sections •,•,• and • and may be promulgated for any of the following purposes:

(a) to set standards and measures regarding the commercially reasonable requirements of the Province associated with an Absolute Assignee incurring Funding Obligations or becoming obligated to pay any Finance Amount, including to establish guidelines regarding all-in funding costs; permitted Additional Funding Charges; required maturities and redemption and termination rights of Funding Obligations; liquidity requirements, in each case to a Financing Plan that is consistent in its effect with the Fair Allocation Plan;

(b) to establish and empower one or more regulated entities to undertake decision-making activities with respect to this Act;

(c) to set out reasonable requirements regarding the appointment or retention of advisors, agents, service providers, contract counterparties, including in relation to 'market terms and conditions' parameters;

(d) to provide for audit and compliance standards applicable to those persons who are or may become obligated or have duties that arise under this Act [or under any Funding Obligation];

(e) to provide for any pre-vetting and approval requirements in relation to any incurrence by an Absolute Assignee of any Funding Obligation or obligation to pay any Finance Amount; and

(f) to provide for appeal and due process considerations in connection with the establishment, adoption, implementation and review of the Fair Allocation Plan or the Financing Plan.

Article 13- Miscellaneous~~23~~20

~~22~~19 Requested by ~~Torys~~Dealers. For discussion.

~~23~~20 OPG would like the specific amendments related to OPG to be included in the Bill.]

(1) **Choice of law** – The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the Regulatory Asset, any Transition Charge or the Undertaking of the Province shall be the laws of the Province.

(2) **Conflict of law** – In the event of conflict between this Act and any other law of the Province regarding the attachment, assignment or perfection, or the effect of perfection, or priority of any Disposition or Pledge, this Act shall govern to the extent of the conflict.

(3) **No further acts or approvals required** - Notwithstanding any provisions of any law of the Province to the contrary, no approvals, notices or authorizations other than those specified in this Act shall be required with respect to the actions to be taken in compliance with this Act, including under the Financing Plan or in relation to the establishment of the Fair Allocation Plan, and the transactions and contracts authorized in or contemplated by this Act or the Financing Plan, including the incurrence of any Funding Obligation, any Disposition, any Pledge or in the payment and performance of any attendant or incidental contract and any related expenses incurred to facilitate the preparation and implementation of the Financing Plan.

(4) **Effect of invalidity after the Incurrence of any Funding Obligation** - Effective on the date that a Funding Obligation is incurred under this Act, if any provision of this Act is held to be invalid or is invalidated, superseded, replaced, repealed or expires for any reason, that occurrence shall not affect any action allowed under this Act that is taken by any person who is or may become obligated or have duties that arise under this Act and any such action shall remain in full force and effect.

(5) **Severability** - If any Article, Section, paragraph or subparagraph of this Act or the application thereof to any person, circumstance or transaction is held by a court of competent jurisdiction to be unconstitutional or invalid, the unconstitutionality or invalidity shall not affect the constitutionality or validity of any other Article, Section, paragraph or subparagraph of this act or its application or validity to any person, circumstance or transaction, including the irrevocability of Transition Charges, the validity of the Regulatory Asset, the incurrence of any Funding Obligation, any Disposition, any Pledge, or the collection and recovery of Transition Charge Collections. To these ends, the Legislature hereby declares that the provisions of this Act are intended to be severable and that the Legislature would have enacted this Act even if any Article, Section, paragraph or subparagraph of this Act held to be unconstitutional or invalid had not been included in this Act.

Schedule 1

Guidelines for Estimates

[To be considered.]

Schedule 2

Requirements Applicable to Alternative Invoicing Agent/ Alternative Collection Agent

[To be considered.]

Schedule 3[24]

Principles and Parameters for Establishing the Financing Plan

The following principles and parameters provide a guideline as to what a Financing Plan should address:

~~(1)~~ ~~in respect of each Reference Period, make reference to the allocations of Future Fair Share of Green Transition Benefits to each Reference Group contemplated by the Fair Allocation Plan;~~

~~(2)~~ ~~estimate IESO Funding Shortfalls for each Reference Period;~~

~~(3)~~ ~~consider alternative funding arrangements suitable to fund the estimated IESO Funding Shortfalls, including short term and/or long term Funding Obligations;~~

(1) ~~(9)~~ consider quantities, maturities, payment obligations, prepayment or redemption rights and such other features of Funding Obligations so that payments made for a Reference Period reasonably correspond to the allocations of Future Fair Share of Green Transition Benefits to the applicable Reference Group under the Fair Allocation Plan;

(2) ~~(4)~~ if the anticipated amount of any Repayment (together with payments of other Finance Amounts) to be made in respect of a Reference Period would materially exceed the allocation of the costs and benefits of the Green Generation Initiative to the applicable ~~Retail Consumer Group~~**Regulated Consumers** under the then current Fair Allocation Plan, diligent efforts should be made to determine whether a Refinancing or deferral of such Repayment may be reasonably and cost-effectively effected based on then prevailing market terms, conditions an circumstances;

(3) ~~(5)~~ reflect the assumptions and requirements specified in any contemplated Funding Obligation (e.g., any limit on the maximum amount of Transition Charges charged to a hypothetical ~~Retail~~**Regulated** Consumer relative to his or her monthly electricity bill, as prescribed by any rating agency that ascribes its credit rating to or in respect of the Funding Obligation **[having regard to the application of the ~~Allocation~~Attribution Methodology][NTD: Are the words in square brackets necessary?]**);

(4) require the Financial Services Manager, for and on behalf of each Regulatory Asset Owner, to use diligent efforts to manage Finance Amounts to be borne by Ratepayers;

(5) include a proposal regarding the compensation of the Financial Services Manager that reflects market terms and conditions; and

(6) ~~incur Funding Obligations from time to time on the best terms available at such time for a financing transaction of the size and type contemplated, and having regarding to the following parameters:~~**require that the Financial Services Manager report annually to**

[24] ~~Awaiting input from Torys based on OPG mark-up of Financing Plan sections.~~

the Ministry of Energy on the operation of the Financing Plan including, in particular, with respect to the amount and terms of the Funding Obligations incurred and the sufficiency of such Funding Obligations for the purpose of funding the estimated Funding Shortfalls in accordance with the Fair Allocation Plan.

~~a. whether the Absolute Assignees will require committed access to short term liquidity to cover estimated IESO Funding Shortfalls prior to incurring fixed term Funding Obligations, and the amount and repayment terms of any such required liquidity; provided that any Repayment required to be made under the terms of such short term liquidity would not obligate an Absolute Assignee to repay an amount in relation to a Reference Period that would have the effect of the Financing Plan permitting incurrences of Funding Obligations payable in such Reference Period that would exceed the allocations of Future Fair Share of Green Transition Benefits to the applicable Reference Group under the Fair Allocation Plan;~~

~~b. the basis upon which the Financial Services Agent will select the term to maturity of any other Funding Obligations; provided that any Repayments required to be made under the terms of such Funding Obligations should not obligate an Absolute Assignee to repay an amount in relation to a Reference Period that would have the effect of the Financing Plan permitting incurrences of Funding Obligations payable in such Reference Period that would exceed the allocations of Future Fair Share of Green Transition Benefits to the applicable Reference Group under the Fair Allocation Plan;~~

~~c. the basis upon which the interest rates applicable to such Funding Obligations would be determined;~~

~~d. the reference capital or finance market in which such Funding Obligation would be incurred, including markets outside of Canada if considered by the Financial Services Agent to be appropriate in the circumstances;~~

~~e. the currency of payments under such Funding Obligations and, if the Funding Obligations are denominated in a currency other than Canadian dollars, the basis upon which the Financial Services Agent shall cause the applicable Absolute Assignee to enter into hedging transactions to mitigate currency risk, including acceptable minimum and maximum coverage levels, having regard to the availability of related derivatives having notional amounts corresponding to the repayment and maturity profile of such Funding Obligations;~~

~~f. the basis upon which the Financial Services Agent will select counterparties under any transaction to be entered into by an Absolute Assignee, including any paying agent, servicer, cash manager, liquidity provider, hedge counterparty, account bank, lender, note trustee, security trustee, paying agent, registrar/transfer agent, financial services agent, arranger or manager;~~

~~g. the basis upon which the Financial Services Agent will manage counterparty risk, including by providing for maximum counterparty exposure limits having regard~~

to concentration, credit and other identified risks with respect to individual counterparties or countries;

h. the basis upon which the Financial Services Agent will negotiate and settle Finance Amounts, including the amount of any Redemption Amounts, Finance Reserve Deposits and Additional Funding Charges;

(7) the basis upon which Funding Obligations may be redeemed, prepaid, repurchased or otherwise affected, having regard for the need to minimize debt service charges and other Funding Costs, and the need to maintain a stable funding platform to finance the IESO Funding Shortfalls from time to time on a basis that is consistent with the allocations of Future Fair Share of Green Transition Benefits to applicable Reference Groups under the Fair Allocation Plan;

(8) the basis upon which any Repayments, Funding Costs and Redemption Amounts will be paid, including any defeasance, sinking fund or through other reserves or liquidity facilities;

(9) the basis upon which fees, charges, expenses, costs, indemnities, reimbursements and other amounts payable to or for the benefit of the Financial Services Agent and other agents and service providers to the Absolute Assignees may be determined, allocated and paid;

(10) the timing and basis upon which Finance Reserve Deposits and Finance Reserve Withdrawals may be made;

(11) the basis upon which any obligations for any other Additional Funding Charges may be incurred and paid;

(12) the basis upon which the cash flows arising from time to time or otherwise derived from the Regulatory Asset may otherwise be applied, including in relation to any counterparty enforcement and realization scenario;

(13) the transmittal to [the IESO] of information related to the amounts to be included in the determination of the Period Transition Charge for a Reference Period;

(14) the basis upon which any Disposition may be made or effected by an Absolute Assignee, including parameters for determining the purchase price for the interest in the Regulatory Asset that is the subject matter of such Disposition, and any consents and releases that may be usefully obtained in connection with such Disposition;

(15) describe the requirements applicable to any special purchase entity that will purchase an Investment Interest, including proposed capitalization, governance, and restrictions on their powers and activities; and

(16) the basis on which any Pledge may be given or effected.

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CONFIDENTIAL AND PRIVILEGED

Preliminary Draft for Discussion Purposes Only

"Fair Hydro Act"

Article 1 – Purpose

The Province has and continues to encourage the construction and development of facilities for the long-term operation and generation of electricity in the Province using sustainable, lower carbon-based technologies such as new gas-fired generation, renewable facilities, energy from waste and biomass, including under the Province's various procurement, standard offer, feed in tariff and other similar programs (the "Green Generation Initiative"). The long-term benefits of the Green Generation Initiative accrue over time and have benefited and will continue to benefit present and future electricity consumers in the Province.

The out-of-market costs of the Green Generation Initiative are currently passed through to electricity consumers by way of a monthly adjustment amount (the "Green Costs Adjustment"), which in turn forms part of the overall adjustment calculated by the Independent Electricity System Operator ("IESO") pursuant to section 25.33 of, and O.Reg. 429/4 under, the *Electricity Act* (the "Global Adjustment").

The Green Costs Adjustment is currently determined each month by reference to the amounts paid by IESO to the generators of electricity in the Province under the Green Generation Initiative. These amounts paid by the IESO arise because IESO has entered into long-term procurement contracts with such generators in order to provide them with revenue certainty, and in turn to encourage the generators to develop technologies and to construct and develop facilities consistent with the Green Generation Initiative. **[NTD: This statement is not correct in respect of all IESO procurement contracts.]** It has been determined that the useful lives of many of the assets developed under the Green Generation Initiative will be in excess of the respective terms of their respective procurement contracts.

Since the benefits to past, present and future electricity consumers from the Green Generation Initiative will not necessarily coincide with the costs currently attributed through the Green Costs Adjustment, based on the respective terms of the applicable procurement contracts, it has been determined that the rate at which the costs associated with the Green Generation Initiative should be passed through to Regulated Consumers (as defined in Article 2) should be more closely aligned with the benefits that such Regulated Consumers have derived and are expected to derive from the Green Generation Initiative over time. This realignment will be based on general principles and parameters that establish a reasonable basis for measuring and allocating the relative costs and benefits of the Green Generation Initiative equitably across present and future Regulated Consumers (the "Fair Allocation Plan"). **[NTD: There is no explanation as to why realignment is limited to Regulated Consumers.]**

If the Fair Allocation Plan determines that the equitable allocation of the costs associated with the Green Generation Initiative to the Regulated Consumers of a particular time period should be reduced below the amount that currently would be charged based on the Green Costs Adjustment, then the amount payable by such Regulated Consumers and in turn available to IESO will, in the aggregate, be less than the amount payable by the IESO to the generators in

respect of such period. In this case, IESO will need to obtain funding from another source to cover such a shortfall. If a funding obligation is incurred to cover such a shortfall during any period, the repayment of such funding obligation will be required in a future period, and any related repayments, finance costs, hedging costs and other transaction costs incurred will become payable in future periods. In order for IESO to obtain a reliable and committed source of cash flows to enable IESO to repay such funding amounts when they become due and payable, this Act imposes irrevocable and non-bypassable financial obligations on Regulated Consumers to pay amounts incurred in respect of such funding obligations when they become due and payable and establishes a right to invoice and collect such amounts. The right and interest in and to collect such financial obligations will take the form of the Regulatory Asset contemplated in this Act, which will constitute property rights and interests. Interests in the Regulatory Asset may be sold and absolutely assigned by IESO to one or more financing entities, which in turn will finance their acquired interests by incurring funding obligations. The incurrence and payment of such funding obligations will be administered on behalf of such financing entities by a financial services manager under the Financing Plan contemplated in this Act.

[NTD: Our strong preference is to limit the introduction to the next paragraph and move defined terms from the previous paragraphs to Article 2]

The purpose of this Act is to establish the basis upon which intergenerational fairness can be achieved by charging the costs and benefits of the Green Generation Initiative to present and future Regulated Consumers on an equitable and cost effective basis.

Article 2 – Definitions

In this Act: **[NTD: It would be preferable to use plain language definitions in the legislation and leave the more detailed definitions to either the regulations or the agreements contemplated hereunder.]**

> "Absolute Assignee" means a person to whom a Regulatory Asset Owner effects a Disposition other than as security.
>
> "Actual" means, in relation to costs, expenses or payments in respect of Funding Obligations during a Reference Period, the actual amount of such costs, expenses or payments paid or made (net of any Finance Reserve Withdrawals applied to pay such amounts), which amounts shall be recorded by the Financial Services Manager whose records shall be determinative for the purposes of this Act except to the extent of a manifest calculation error.
>
> "Additional Funding Charges" means, for a Reference Period, the fees, charges, expenses, costs, indemnities, reimbursements and other amounts (including any applicable tax amounts) that are or become payable by or on behalf of the Absolute Assignee during the Reference Period and that were incurred or committed to directly or indirectly by the Absolute Assignee in connection with the incurrence of Funding Obligations under the Financing Plan (whether at the time of such incurrence or over the term of the Funding Obligation and whether directly or indirectly), including without limitation such amounts as may be prescribed.
>
> **[NTD: See section 5(11). Remove this concept globally.]**

"Alternative Servicer" means a person appointed under Section 4(8) to assume the obligations of the Servicer under Article 4, as agent for and on behalf of the Regulatory Asset Owners. **[NTD: We see this, in effect, as the same thing as the IESO Successor; that is, replacement of the master Servicer.]**

"Assessed Past Green Transition Costs" means, in respect of a Measurement Date, the aggregate of the imputed costs of the Green Generation Initiative (expressed as an equivalent to current dollars), as reflected in the calculation of the Green Costs Adjustment, which have been charged to Retail Customers through the Global Adjustment on or prior to the Measurement Date.

"Attribution Methodology"[1] means the methodology specified in the Fair Allocation Plan for allocating the Period Finance Charges for a Reference Period to Regulated Consumers. **[NTD: We understood that the Ministry accepted that the transition charge would be a volumetric rate.][NTD: Can be moved to Regulations.]**

"Collected Amount Adjustment" means, in respect of a True-Up Period, the amount (which may be a negative amount) calculated by the Servicer or the Financial Services Manager, as applicable, equal to (a) the Estimate of the Finance Amount for the True-Up Period, minus (b) the sum of all Transition Charge Collections for the True-Up Period.[2]

"Collective Rights Agreement" means an agreement among all of the Regulatory Asset Owners (including each Absolute Assignee), each Pledgee, and the Financial Services Manager that governs the enforcement of their respective rights and interests in, to and under the Regulatory Asset on a coordinated and collective basis. **[NTD: Move to Regulations.]**

"Delegate" means any of the following person or persons designated in writing from time to time by the Minister of Energy to undertake the actions and perform the responsibilities ascribed to the "Delegate" under this Act: ●. **[NTD: Why is this delegation of authority necessary? This requires further discussion and clarity as to which entity or entities that the Province can select as the Delegate; for example, it would not be acceptable for the Province to select the OEB to be the Delegate. If this is required, an acceptable delegate would be a stakeholder committee comprised of representatives from the Ministry of Energy, the OEB, the IESO, and OPG. In addition, the regulation should prescribe how the stakeholder committee would operate.]**

"Disposition" means an assignment, transfer, conveyance, sale, contribution, set-over, exchange or other disposition of (a) IESO's right to recover all or any portion of an IESO Funding Shortfall or (b) an Investment Interest to an Absolute Assignee, in each case pursuant to a Disposition Document.

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[1] This allocation may be volumetric or some combination of a flat amount and a volumetric charge. Further discussion is required. H&W has raised a concern regarding possible adverse changes after the fact and rating agency considerations. Consider whether hard-coding in the legislation makes sense.

[2] This would pick up adjustments based on actual collection experience, changes in the Regulated Consumer base, changes in the actual costs (versus earlier estimates) included in the Transition Charge calculation, etc.

"Disposition Document" means the agreement, deed, conveyance, instrument or other document under which IESO or an Absolute Assignee effects a Disposition to an Absolute Assignee.

"Electricity Distributor" means a rate regulated distributor licensed under Part V of the *Ontario Energy Board Act, 1998*, together with and its successors.

"Electricity Distributor Remittances" means, for an Electricity Distributor on a Remittance Date, all Transition Charge Collections received or deemed to be received **[NTD: estimated to be received? will each Electricity Distributor know?]** by the Electricity Distributor prior to the Remittance Date and that have not otherwise been remitted to Servicer or if applicable the Alternative Collection Agent in accordance with Section 5(3), including the proceeds of any enforcement action undertaken by the Electricity Distributor or if applicable the Alternative Collection Agent to recover payment of Transition Charges in accordance with Article 5.

"Electricity Invoice" means an invoice issued by an Electricity Distributor (or in its stead, by an Alternative Collection Agent), by the Servicer or by a Retailer, in each case to a Regulated Consumer that is served by the Electricity Distributor's distribution system in respect of electricity charges, including the cost of electricity, delivery and regulatory charges and related services and amounts incurred, assessed or charged in respect of connectivity to such Electricity Distributor's distribution system and in respect of applicable Transition Charges to be charged to the Regulated Consumer under this Act. **[NTD: The Alternative Servicer should only invoice for Transition Charges, not the entire invoice. Also, to avoid confusion, we suggest using the word "invoice" in reference to what the IESO sends out to distributors, and "bills" in reference to what distributors send out to consumers.]**

"Estimate" means (a) in relation to costs, expenses or payments in respect of Funding Obligations or any Finance Amount for a Reference Period, the estimated amount of such costs, expenses or payments determined by the Financial Services Manager; and (b) in relation to an assessment of the benefits of the Green Generation Initiative to Regulated Consumers, the estimated value (in current dollars) of such benefits determined by the Delegate, in each case having regard to the applicable principles and parameters set out in Schedule 1, which estimated amounts shall be determinative as the applicable estimate for the purposes of this Act except to the extent of a manifest calculation error.

"Estimated Future Green Transition Benefits" means, in respect of a Measurement Date, the Estimate set forth in the Fair Allocation Plan prepared in accordance with Article 7 of the aggregate value (measured in current dollars) of the benefits that are expected to accrue to Regulated Consumers from the establishment and implementation of the Green Generation Initiative during the period from the Measurement Date to the Program-End Date.

"Estimated Past Green Transition Benefits" means, in respect of a Measurement Date, the Estimate set forth in the Fair Allocation Plan prepared in accordance with Article 7 of the aggregate value (measured in current dollars) of the benefits that have accrued to Regulated Consumers from the establishment and implementation of the Green Generation Initiative up to and including the Measurement Date.

"Fair Allocation Plan" has the meaning given in Article 1.

"Finance Amount" means, for a Reference Period, the sum (without duplication) of the following amounts that are or become payable during the Reference Period in respect of all Absolute Assignees: (a) Repayments; (b) Net Funding Costs; (c) Redemption Amounts; (d) Finance Reserve Deposits; and (e) Additional Funding Charges.

"Finance Reserve Deposits" means, for a Reference Period, the amount by which (a) deposits made or to be made during the Reference Period in order to pre-fund, collateralize, over-collateralize or establish reserves for the ultimate payment of Funding Obligations or for related contingencies specified in the Financing Plan, exceed (b) any Finance Reserve Withdrawals. **[NTD: Move this to regulation.]**

"Finance Reserve Withdrawals" means, for a Reference Period, the amount withdrawn during the Reference Period from deposits previously made to pre-fund, collateralize, over-collateralize or establish reserves for the payment of Funding Obligations or to pay amounts in respect of related contingencies that had been specified in the Financing Plan. **[NTD: Move this to regulation.]**

"Financial Services Manager" means OPG or, following any Replacement Event involving OPG, such other person who may be appointed as the financial services manager of the Absolute Assignees under the Financing Plan in compliance with the requirements set out in Schedule 2.[3]

"Financing Entity" means any entity established at the initiative of and managed by the Financial Services Manager to support the Financing Plan.[4]

"Financing Plan" means the written plan prepared by the Financial Services Manager in accordance with Article 9, as the same may be amended, amended and restated or terminated by the Financial Services Manager in accordance with Article 9 from time to time.

"Funding Obligation" means, in respect of an Absolute Assignee, each payment obligation (including, without limitation, each obligation to pay: principal, interest, premiums and other financing charge payments; pass-through payments; payment obligations arising under or in respect of derivatives; payment obligations owing to service providers, Financial Services Managers, finance entity intermediaries, capital markets intermediaries, advisors, lenders, credit enhancement providers, liquidity providers, disbursement counterparties, regulatory agencies and rating agencies; and all Additional Funding Charges) incurred by or on behalf of the Absolute Assignee under

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[3] There must only be one Financial Services Manager.

[4] MOE to confirm that the legislation will provide that any Financing Entity that is a wholly-owned subsidiary of OPG (1) would not be subject to Part VI of the *Electricity Act* (Ontario) and (2) in the case of any Financing Entity that is a trust, any income of such trust (for purposes of the *Income Tax Act* (Canada) or the *Taxation Act, 2007* Ontario)) which is paid or made payable to OPG or a wholly-owned subsidiary of OPG as a beneficiary of such trust will not be taken into account in calculating the amount of a payment required to be made by OPG (or such subsidiary) by section 89 or 90 of the Electricity Act.

the Financing Plan, including any Refinancing of another such payment obligation incurred by or on behalf of such Absolute Assignee.

"Future Fair Share of Green Transition Benefits" means, in respect of a Measurement Date, the sum of (a) the Over-Assessed Amount; and (b) the Estimated Future Green Transition Benefits, in each case as of the Measurement Date.

"Global Adjustment" has the meaning given in Article 1.

"Green Costs Adjustment" has the meaning given in Article 1.

"Green Generation Initiative" has the meaning given in Article 1.

"IESO" means the Independent Electricity System Operator created pursuant to Part II of the *Electricity Act, 1998*.

"IESO Electricity Distribution Receipts" means, for a month, the sum of all amounts payable by Electricity Distributors to IESO , during the month pursuant to section • of the *Electricity Act* in respect of Regulated Consumers. **[NTD: IESO indicates that it likely does not work to express in regards to "amounts payable by the LDCs" because settlement between the IESO and LDCs entails payments by LDCs to the IESO and then credits/debits by the IESO to LDCs to reflect RPP shortfalls/overages.]**

"IESO Funding Shortfall" means, for a month, the amount, if any, by which (a) the IESO Electricity Distribution Receipts that would be payable to IESO for the month if determined without regard to this Act and without regard to the changes made to section 25.33 of, and O.Reg. 429/4 under, the *Electricity Act* with respect to the Global Adjustment concurrently with this Act, exceeds (b) the IESO Electricity Distribution Receipts payable to IESO for the month[5].To the extent reasonably necessary to give effect to this Act, or any transaction contemplated hereby, IESO shall calculate the IESO Funding Shortfall for any month taking into account information provided by the Electricity Distributors and (i) such calculation shall be binding for all purposes; and (ii) any demonstrated inaccuracy in the calculation for any month (including any such resulting from inaccuracies in the information provided by Electricity Distributors) shall be accounted for by adjusting the IESO Funding Shortfall for a subsequent month. **[NTD: Need to add the mechanism for IESO to record this shortfall because without that there is no Regulatory Asset. This IESO Funding Shortfall is the regulatory asset owned by IESO.]**

"IESO Remittances" means, for a Settlement Date, all Electricity Distributor Remittances received by IESO or if applicable the Alternative Collection Agent prior to the Settlement Date and that have not otherwise been remitted to the Regulatory Asset Owners (each with respect to its Regulatory Asset) in accordance with Section 5(6), including the proceeds of any enforcement action undertaken by IESO or if applicable the Alternative

[5] This has been recast to recognize that the shortfall in the first 4.5 years could exceed the entire GA amount. A more refined approach to describing the concept may be considered.

Collection Agent to recover payment of amounts payable by Electricity Distributors to IESO in accordance with Article 5.

"IESO Successor" means the entity appointed by the Province to succeed to the rights and obligations of IESO as the entity responsible for managing the Province's electricity system.

"Investment Interest" means an ownership interest in, to or under the Regulatory Asset that is acquired by an Absolute Assignee pursuant to a Disposition.

"Investment Remittance" means, for a month, the lesser of (a) the aggregate amount of all IESO Remittances for the month, and (b) the sum of the Funding Obligations due and payable by all Absolute Assignees in respect of the month.

"Measurement Date" means [Insert relevant date around the Legislation Implementation Date] and any other date specified as such under the Fair Allocation Plan.

"Net Funding Costs" means, for a Reference Period in respect of a Financing Entity, the amount by which (a) the aggregate of all interest, scheduled principal and other periodic finance charges accruing due and becoming payable or paid by or on behalf of the Absolute Assignee during the Reference Period in respect of its Funding Obligations, including such amounts as may be prescribed, exceeds (b) the aggregate of all amounts received by or on behalf of the Absolute Assignee during the Reference Period in respect of the Funding Obligations referred to in (a), including such amounts as may be prescribed.

"OEB" means the Ontario Energy Board, together with its successors.

"OPG" means the corporation incorporated as Ontario Power Generation Inc. under the *Business Corporations Act* on December 1, 1998, together with its successors.

"Over-Assessed Amount" means, in respect of a Measurement Date, the amount (if any) by which (a) the Assessed Past Green Transition Costs, exceeds (b) the Estimated Past Green Transition Benefits, each as determined as of the Measurement Date.

"Period Finance Charges" means, for a Reference Period, the sum of (a) the Estimate of the Finance Amount (b) the True-Up Amount in respect of the applicable True-Up Period and (c) an adjustment amount as may be prescribed to account for estimated collection shortfalls and collection delays in respect of amounts under (a) and (b).

"Pledge" means, in respect of an Investment Interest of an Absolute Assignee, a lien, mortgage, charge or security interest granted to or in favour of a Pledgee by the Absolute Assignee in, to and over all or a specified portion (including a specified portion on a divided basis or by way of an undivided interest) of the Investment Interest.

"Pledgee" means a person to whom an Absolute Assignee grants a Pledge.

"Program End Date" means •, [2047].

"Province" means the Province of Ontario.

"Redemption Amount" means the amount payable by or on behalf of an Absolute Assignee to redeem, prepay or repurchase a Funding Obligation incurred by or on behalf of the Absolute Assignee, including any premium, make-whole or other additional amount becoming payable under the Funding Obligation to give effect to such redemption, prepayment or repurchase.

"Reference Period" means (a) the period from (and including) the Measurement Date to (and including) October 30, 2017, (b) each six month period commencing [May 1st and November 1st] thereafter and (c) any other period specified as such in the Fair Allocation Plan.

"Refinancing" means, in respect of a Funding Obligation incurred by or on behalf of an Absolute Assignee, that the Funding Obligation is repaid or repurchased for cancellation by or on behalf of the Absolute Assignee by applying the net proceeds obtained by the Absolute Assignee incurring one or more other Funding Obligations.

"Regulated Consumer" means consumers of electricity in the Province as prescribed.

[NTD: There are a number of issues with this definition. First, the word "Retail" is a source of confusion as it implies customers of licensed retailers. Really, the purpose of the term is to define the group of consumers that are eligible to receive the benefit of the Fair Hydro program and who will bear the cost of the program over the long term. We have proposed "Regulated Consumer" but you could also use the term "Eligible Consumer" or "Fair Hydro Eligible Consumer" and for purposes of the legislation to say that it is a member of a class of consumers prescribed by the regulations for purposes of the relevant section of the legislation. The regulation would then describe who is in the class. Second, it may not be appropriate to rely on the class of consumers prescribed for the purposes of s. 79.16 or under the OREC Act. Section 79.16 is the section that defines the class of RPP consumers. We understand that the "Fair Hydro Eligible Consumers" are not an identical class to that which is eligible for the RPP or for the Ontario Rebate for Electricity Consumers. For example, we have heard that Fair Hydro Eligible Consumers will (a) exclude consumers served by independent power authorities (certain remote communities not served by Hydro One Remotes), and (b) include consumers served by licensed unit sub-metering providers, licensed retailers and certain consumers served directly by the IESO (which may or may not be captured by the classes under 79.16 or OREC). Third, it is not clear why consumers with contracts with retailers who use retailer consolidated billing are removed from the first part of the definition but then added back into the second part of the definition. Fourth, Retailers do not necessarily have physical electricity assets that would be connected to the grid. Some just sell or offer contracts for electricity. As such, the first few lines after (b) are problematic. Fifth, the phrase "purchase electric generation services from a provider of electric generation services other than the owner of the Province's transmission and distribution system assets" does not make sense. A consumer does not purchase generation services from a transmitter or distributor. Rather, a consumer receives distribution services from a distributor. In addition to charging for its distribution services, the distributor also charges the associated

transmission costs and commodity costs associated with the volumes delivered. Those commodity costs are the price of the electricity itself and are almost entirely made up of the amounts determined under the global adjustment. Sixth, the phrase "whether or not the transmission and distribution system assets continue to be owned or operated by Electricity Distributors or operated by IESO" does not make sense. Transmission assets are owned and operated by transmitters. Distribution assets are owned and operated by distributors. The IESO does not own but does administer and direct the operation of the transmission system.]

"Regulatory Asset" means the property rights and interests described in Section 6(1), which collectively is comprised of each Investment Interest.

"Regulatory Asset Account" means (a) for an Electricity Distributor, any bank account into which the Electricity Distributor deposits or receives Transition Charge Collections; and (b) for the Servicer, any bank account into which Servicer deposits or receives Transition Charges, Electricity Distributor Remittances or IESO Remittances.

"Regulatory Asset Owner" means each Absolute Assignee, as owner of its Investment Interest or Investment Interests, and "Regulatory Asset Owners" means collectively each such Absolute Assignee, who together own the entirety of the Regulatory Asset and are required to exercise their individual rights of ownership in accordance with Section 6(7).

"Related Rights" means, with respect to a Regulatory Asset Owner's Investment Interest, all rights of any kind (whether in tort, contract or otherwise) that attach or are attendant or incidental to any of the other property rights or interests that comprise such Investment Interest.

"Remittance Date" means, in respect of an Electricity Distributor, each day on which it is required to remit Electricity Distribution Remittances to Servicer or if applicable the Alternative Collection Agent as specified in accordance with any Funding Obligation or, if no such day is specified in accordance with any Funding Obligation, then the Business Day **[NTD: Not defined.]** preceding each Settlement Date. **[NTD: Move to Regulations. Remittances will be in accordance with the current rules.]**

"Repayment Obligation" means an obligation to repay or to provide for the repayment (including by making a related Finance Reserve Deposit) of, all or a portion of the amount advanced to the Absolute Assignee under a Funding Obligation.

"Repayment" means a payment by an Absolute Assignee made to satisfy a Repayment Obligation, other than to the extent that the payment is made by applying the proceeds of a Refinancing or from Finance Reserve Withdrawals.

"Replacement Event" means any event specified as such in a Funding Obligation.

"Retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity.

"Retailer Consolidated Billing" has the same meaning as in the *Retail Settlement Code* issued by the Ontario Energy Board.

"Servicer" means IESO or IESO Successor, as agent for and on behalf of the Regulatory Asset Owners, for the purposes set forth in Article 4.

"Settlement Date" means the [last Business Day of any month].

"Transition Charge" means, the amount recoverable from a Regulated Consumer in respect of a Reference Period, being the Period Finance Charge as allocated to such Regulated Consumer in accordance with Article 4(3) on a monthly basis. **[NTD: This needs to be grossed up to account for variability associated with expected uncollectables and remittance delays.]** **[NTD: Do not need to create parallel process. The definition should be linked to the OEB process for determining the volumetric rate as part of the RPP process (see s. 4(2)). The OEB will determine volumetric rate based on forecast consumption, number of consumers, etc. to recover the Period Finance Charges.]**

"Transition Charge Collection" means any amount received **[or deemed by this Act to have been received]** by the Absolute Assignees upon the collection of a Transition Charge paid by or on behalf of a Regulated Consumer, including any proceeds arising from the exercise and enforcement of any related rights and interests under or in respect of the Regulatory Asset.

"True-Up Amount" means, in respect of a Reference Period, the amount (which may be a negative amount) calculated by the Financial Services Manager equal to (a) the Actual Finance Amount for such related True-Up Period, minus (b) the Estimate of the Finance Amount for the related True-Up Period, , plus (c) the Collected Amount Adjustment for such related True-Up Period. **[NTD: need to discuss how this will work for our true-up. What about prior period shortages? An example of how this works needs to be provided.]**

"True-Up Period" means, in relation to a Reference Period, the immediately preceding Reference Period.

"Undertaking of Her Majesty in right of Ontario" means the undertaking of Her Majesty in right of Ontario given under Section 11(2).

Article 3 – Transition Charges

(1) **Regulated Consumer Obligation to Pay a Transition Charge** – Each Regulated Consumer shall pay each Transition Charge charged to it in any Electricity Invoice issued to such Regulated Consumer by its Electricity Distributor or by an Alternative Servicer under Section 4(1), in each case on the terms of payment specified in the related Electricity Invoice.

(2) **Indebtedness of Regulated Consumers** – Until paid, a Transition Charge charged to a Regulated Consumer in an Electricity Invoice shall, together with any applicable late payment fees and finance charges arising under the terms of the Electricity Invoice with respect to such Transition Charge, constitute non-bypassable indebtedness of the

Regulated Consumer to the Regulatory Asset Owners, each with respect to its respective interest in the Regulatory Asset. Such indebtedness shall constitute a single and separate[6] debt obligation owing by the Regulated Consumer, which subject to Article 5 may be enforced independently from any other payment obligation or indebtedness owing by the Regulated Consumer under the Electricity Invoice or otherwise.[7]

(3) No Set-Off or Reduction – A Regulated Consumer may not set-off or reduce (by counterclaim, defense or otherwise) the amount payable by it in respect of any Transition Charge, including any set-off against or in respect of any amount owing or becoming payable to such Regulated Consumer by its Electricity Distributor, any Regulatory Asset Owner or any other person.

(4) Allocation of Regulated Consumer Payments – If an Electricity Distributor receives a payment made by or on behalf of a Regulated Consumer in respect of amounts due and payable under one or more Electricity Invoices that is less than the total amount payable thereunder, such payment shall be subject to rights and benefits that are no less favourable than the treatment accorded to other amounts payable to the IESO by the Electricity Distributor.

(5) Transition Charges are Irrevocable – The Transition Charges arising under or in respect of Funding Obligations (including any adjustments based on modifications to such Funding Obligations made in compliance with the Financing Plan or as a result of amendments to the Financing Plan made in accordance with Section 9(3)) are deemed to be irrevocable, final and effective without any further action, except to the extent of manifest calculation error. For greater certainty, a Transition Charge may include Finance Amounts for a Reference Period regardless of whether the payment of such Finance Amounts are inconsistent with the Fair Allocation Plan applicable at the time such payments are due and payable, and regardless of whether the related Funding Obligation was properly incurred under the Financing Plan. In no case shall a Funding Obligation incurred under the Financing Plan be affected by a subsequent amendment to the Fair Allocation Plan.

(6) True-Up of Transition Charges? – [NTD: Include specifics regarding the true-up of the charges and the process for the true-up, but move to Regulations. The True-Up Mechanism should require the Transition Charges to be reviewed and adjusted semi-annually to ensure the expected recovery of amounts sufficient to timely provide all payments in respect of Funding Obligations, provided that in some cases it may need to be adjusted more frequently than semi-annually, e.g., as part of a refinancing.]

(7) Commencement of Invoicing and Collection of Transition Charges – [NTD: Please confirm that as drafted, Transition Charges will begin on the Measurement Date.]

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[6] Determine if this is critical for rating and markets. Logistics under consideration.

[7] Torys has also suggested that deemed conditions of licenses for distributors, retailers and unit sub-metering providers, could be included as conditions, to require them to collect and remit amounts in accordance with this legislation. Consider if it is helpful to integrate the existing regulatory scheme for invoicing and collections (regarding RPP) in the legislation.

Article 4 – Invoicing of Transition Charges [NTD: Move Article 4 sections (1) to (4) to Regulations. Also note, these sections remain subject to further due diligence by the Dealers.]

(1) **Inclusion of Transition Charges in Electricity Invoices** – Each Electricity Distributor and if applicable any Alternative Servicer shall, as an agent of the Regulatory Asset Owners, specify the Transition Charge to be charged to a Regulated Consumer pursuant to Section 4(4) in respect of a related Reference Period in each Electricity Invoice issued by the Electricity Distributor or if applicable by the Alternative Servicer to the Regulated Consumer in respect of such Reference Period. Upon the inclusion of a Transition Charge in an Electricity Invoice, the obligation to pay such amount shall be binding on the applicable Regulated Consumer. **[NTD: Must capture bills issued to eligible consumers served by unit sub-metering providers, retailers and the IESO – not just distributors][NTD: This provision also needs to address the inclusion of Transition Charges in invoices from the IESO to the LDC, consistent with the current process of how the IESO bills LDCs.]**

(2) **Calculation of the Period Finance Charge** – Not later than [35] days prior to the first day of a Reference Period, each Absolute Assignee (or the Financial Services Manager on its behalf) shall provide the OEB with written notice of each Estimate of a Finance Amount payable by it or on its behalf in respect of the Reference Period. Not later than one month prior to the first day of a Reference Period, each Absolute Assignee (or the Financial Services Manager on its behalf) shall calculate the Period Finance Charge applicable to the Reference Period having regard to such amounts specified by the Servicer, which calculations, information and amounts shall be accepted by the OEB and shall be determinative, except to the extent of manifest calculation error or misstatement.

(3) **Calculation and Attribution of Transition Charges** – Not later than 25 days prior to the first day of a Reference Period, the OEB shall apply the Attribution Methodology to determine the allocation of the Transition Charge for each Regulated Consumer. **[NTD: We think the OEB would be determining the Fair Hydro recovery rate (on a volumetric basis) that distributors would then be required to charge to consumers]**

(4) **Notice of Transition Charges** – Not later than 20 days prior to the first day of a Reference Period, the OEB shall inform each Electricity Distributor and if applicable any Alternative Servicer of the Transition Charges to be specified in the Electricity Invoices to be issued to each Regulated Consumer who is served by the Electricity Distributor.

(5) **Adjustments** – The amount of any Transition Charge charged to a Regulated Consumer and specified as such in an Electricity Invoice shall be determinative of the amount of indebtedness created thereby and owing in respect of such Transition Charge, except to the extent of any manifest calculation error.

(6) **Successors of Electricity Distributors** – Any successor of an Electricity Distributor shall be bound by the requirements of Article 4 and shall perform and satisfy all duties and obligations of such Electricity Distributor under Article 4 in the same manner and to the same extent as such Electricity Distributor, including the obligation under Article 4 to impose, attribute, charge, bill and invoice the Transition Charges.

(7) **IESO Successor** – Any IESO Successor shall be bound by the requirements of Article 4 and shall perform and satisfy all duties and obligations of IESO under Article 4 in the same manner and to the same extent as IESO, including the obligation to calculate and provide notice of Transition Charges.

(8) **Appointment of an Alternative Servicer** – If a Replacement Event occurs in respect of any Electricity Distributor, the Absolute Assignees shall, in accordance with the Collective Rights Agreement, be permitted, by an instrument in writing, to appoint an Alternative Servicer to perform some or all of the obligations and duties required to be undertaken by such Electricity Distributor under this Article 4, as and to the extent specified in such appointment. Upon acceptance of such appointment, the Alternative Servicer shall become obligated to perform such assumed obligations in replacement of such Electricity Distributor. Any Electricity Distributor that is replaced under this Section 4(8) shall promptly transfer all rights, powers, privileges and property interests in its possession or within its control in the performance of such obligations and duties to the Alternative Servicer and shall take such further actions, including the execution of instruments, necessary to give full and final effect to such transfer and to permit the Alternative Servicer to perform such obligations and duties on behalf of the Regulatory Asset Owners. **[NTD: We would expect the IESO to manage this in accordance with its normal business practices.]**

(9) **Absolute Assignees have Standing** – The Absolute Assignees, acting together in accordance with the Collective Action Agreement, may bring actions against any Electricity Distributor, IESO, the Servicer, Alternative Servicer or any other person who may be authorized to issue Electricity Invoices to Regulated Consumers for a failure to impose, attribute, charge, bill or invoice Transition Charges or to otherwise comply with this Act. Any court of the Province shall have jurisdiction over any actions brought before it by the Absolute Assignees in relation to any such failure and may make any interim or final order it thinks fit in this regard. **[NTD: We would like to see the sections on "Standing" to bring an action to remain in the legislation (as opposed to being moved to the regulations as we believe we previously suggested) as we see those provisions as part of ensuring a rigorous enforcement scheme for the Financing Entity (and so something that should be difficult for the Province to change going forward).]**

(10) **No Set-Off or Reduction –** No Servicer or Electricity Distributor may set off or reduce (by counterclaim, defence or otherwise) the amount payable by it pursuant to this Article 4.

(11) **Regulations** – Regulations may be enacted for the purpose of specifying further rights, powers, privileges, duties and obligations that shall apply to IESO, any Electricity Distributor or any Alternative Servicer to ensure that Transition Charges are properly charged to Regulated Consumers and specified as such in Electricity Invoices.

Article 5 – Collections and Remittances [NTD: Move Article 5 sections (3), (6), (9), (12), (13) and (14) to Regulations.]

(1) **Duty to Collect as Agent** – Electricity Distributors or if applicable any Alternative Collection Agent shall, as an agent of the Servicer, collect amounts owing by Regulated Consumers in respect of Transition Charges charged to such Regulated Consumers in

Electricity Invoices issued by the Electricity Distributor or if applicable such Alternative Collection Agent all in accordance with the Regulations. **[NTD: The obligation to collect and remit the Transition Charge should be included as a deemed condition of license for electricity distributors (and retailers and unit sub-metering providers).]**

(2) **Segregation of Transition Charge Collections** – An Electricity Distributor or if applicable any Alternative Collection Agent shall promptly segregate Transition Charge Collections from other payments received by it from Regulated Consumers and deposit such Transition Charge Collections into its Regulatory Asset Account.[8] **[NTD: Determine if this is critical for rating and markets or if segregation can occur in the hands of the IESO]** Prior to and following a deposit of Transition Charge Collections having been made into its Regulatory Asset Account, the Electricity Distributor or if applicable any Alternative Collection Agent shall hold such amounts in trust for the Regulatory Asset Owners or its Pledgee.

(3) **Electricity Distributor Remittances** – On each applicable Remittance Date, an Electricity Distributor shall remit all amounts invoiced by the IESO on account of the Transition Charge in respect of the related Reference Period to or to the account of Servicer or if applicable the Alternative Collection Agent. **[NTD: It is the Dealers expectation that the Transition Charge will be paid on the same basis as other amounts invoiced by the IESO, failing which, they will need to be remitted daily.]**

(4) **Duty to Collect Electricity Distributor Remittances** – Servicer or if applicable any Alternative Servicer shall, as an agent of the Regulatory Asset Owners, accept and collect Electricity Distributor Remittances from Electricity Distributors and Transition Charge Collections from Regulated Consumers that pay their Electricity Invoices directly to IESO on the same basis as it accepts and collects other charges from such Regulated Consumers.[9]

(5) **Segregation of Electricity Distributor Remittances** – Servicer and if applicable the Alternative Collection Agent shall promptly segregate Electricity Distributor Remittances from other payments received or held by it and deposit such Electricity Distributor Remittances into its Regulatory Asset Account. Prior to and following a deposit of Electricity Distributor Remittances having been made into its Regulatory Asset Account, Servicer or if applicable any Alternative Collection Agent shall hold such amounts in trust for the Regulatory Asset Owners or Pledgee.

(6) **Servicer Remittances** – On each Settlement Date[10], Servicer shall remit all amounts on deposit in its Regulatory Asset Account to or to the account of the Absolute Assignees an amount equal to the Investment Remittance for the related month.

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[8] Consider trying to attach to existing LDC credit enhancements and provide parallel coverage for customer losses.

[9] Consider building this obligation into a deemed condition of licence for the IESO.

[10] Consider frequency of remittances in light of rating requirements. US rating agencies favour daily remittances.

(7) **Successors of Electricity Distributors** – Any successor of an Electricity Distributor shall be bound by the requirements of Article 5 and shall perform and satisfy all duties and obligations of such Electricity Distributor under Article 5 in the same manner and to the same extent as such Electricity Distributor, including the obligation under Article 5 to collect Transition Charges and make remittances of Electricity Distributor Remittances.

(8) **IESO Successors** – IESO Successors shall be bound by the requirements of Article 5 and shall perform and satisfy all duties and obligations of IESO under Article 5 in the same manner and to the same extent as IESO, including the obligation to collect Transition Charge Collections, Electricity Distributor Remittances and to remit IESO Remittances.

(9) **Owners of Distribution Assets** - If any person other than an Electricity Distributor acquires distribution system assets in the Province or invoices or collects electricity distribution rates in the Province[11], then such person shall, if requested by the Absolute Assignees, be obligated to act diligently to (a) facilitate the invoicing and collection of any Transition Charges applicable to Regulated Consumers connected to such person's distribution system assets; (b) allocate partial payments by Regulated Consumers as provided in this Act; (c) exercise all enforcement rights of the Absolute Assignees for the benefit of an Absolute Assignee; and (d) remit any Transition Charge Collections to the Absolute Assignees or Pledgees, as applicable, each in accordance with its Investment Interest. **[NTD: Such acquisition of a distribution system would require the person to be an electricity distributor; consider deleting since this is covered off by Section 5(7).]**

(10) **Absolute Assignees have Standing** – The Absolute Assignees, acting together in accordance with the Collective Action Agreement, may bring actions against any Electricity Distributor, Servicer, the Alternative Collection Agent, any owner of electricity distribution system assets in the Province or any other person who may be authorized to collect electricity distribution and use charges from Regulated Consumers for a failure to collect Transition Charges, remit or collect Electricity Distributor Remittances or remit IESO Remittances, as and to the extent applicable under Article 5, or to otherwise comply with this Act. Any court of the Province shall have jurisdiction over any actions brought before it by the Absolute Assignees in relation to any such failure and may make any interim or final order it thinks fit in this regard.

(11) **Not Used. [NTD: The Servicer should manage this process.**]

(12) **No Set-off, etc.** - The Regulatory Asset, including rights in Transition Charges, Transition Charge Collections, and the interests of a Regulatory Asset Owner, an Absolute Assignee and a Pledgee therein, may not be setoff or reduced (including by counterclaim, surcharge or defense) by any Regulated Consumer, any Electricity Distributor, Servicer, Alternative Collection Agent or any owner of distribution system assets in the Province or any other person or in connection with any default, bankruptcy, reorganization or other insolvency proceeding of any Electricity Distributor, Servicer,

[11] This is in anticipation of a possible future restructuring of the distribution system.

Alternative Collection Agent or any owner of distribution system assets in the Province, any affiliate or successor thereof or any other entity or otherwise.[12]

(13) **Sequestration** – If any Electricity Distributor, Servicer, the Alternative Collection Agent or any owner of distribution system assets in the Province or any other person or entity authorized to collect Transition Charges, defaults on any required remittance of Transition Charge Collections, Electricity Distribution Remittances or IESO Remittances under Article 5, any court in the Province, upon application by and of the Absolute Assignees acting collectively under the Collective Action Agreement and without limiting any other remedies otherwise available to the Absolute Assignees or Pledgees, shall order the sequestration and payment of the Transition Charge Collections, Electricity Distribution Remittances and IESO Remittances, as applicable, for the benefit of the Absolute Assignees, each with respect to its Investment Interest, and the Pledgees as applicable.[13]

[NTD: Suggest considering a more typical remedy such as the ability to appoint a receiver. Concept should be moved to Regulations.]

(14) Regulations – Regulations may be enacted for the purpose of specifying further rights, powers, privileges, duties and obligations that shall apply to Servicer, any Electricity Distributor or any Alternative Collection Agent to ensure that rights, interests, entitlements, benefits and proceeds in, to, under and from the Regulatory Asset are of fully realized by some or all of the Absolute Assignees and Pledgees.

Article 6 – The Regulatory Asset

[NTD: We believe that the statute should impose a time limit on the ability of IESO to create additional Regulatory Assets under this Act. It is our expectation that this will be no later than 10 years after the commencement of the program.]

[NTD: In addition, additional language is required to address the acquisition of the Regulatory Asset by the Financing Entity, including reference to the consideration being provided for it, funding upfront costs.]

[NTD: The sale of Regulatory Assets must be restricted to Financing Entities controlled by a single entity (initially, OPG).]

[NTD: For greater certainty, a Financing Entity will not be required to purchase Regulatory Assets from IESO.]

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[12] Consider whether it makes sense to create a "deemed collection" payment obligation on Electricity Distributors to the extent a Regulated Consumer reduces its payment of Transition Charges, despite this language. Same for Electricity Distributor Remittances and IESO Remittances.

[13] Consider adding or substituting this provision for a right to appoint a receiver.

(1) **Composition** – The Regulatory Asset shall constitute a current and irrevocable property right and interest consisting, collectively, of the following rights and interests (without duplication):

a. the right of a Regulatory Asset Owner to record its portion of the Regulatory Asset in its accounts;

b. the right to impose, bill, invoice, collect and receive Transition Charges from Regulated Consumers, including the right to determine the amount of Transition Charges in accordance with this Act;

c. the right to enforce the obligations and indebtedness of each Regulated Consumer to pay the Transition Charges charged to the Regulated Consumer from time to time in accordance with Article 3, together with all related late payment fees or interest charges arising in respect thereof under the related Electricity Invoices; **[NTD: Do we really want and need the ability for the Financing Entities to chase after individual consumers?] [NTD: This should be the right to provide notices to the OEB of the amounts required for recovery, which the OEB would then be required to accept for purposes of determining the amount of Transition Charges to be charged to consumers]**

d. the right to enforce the duties and obligations of each Electricity Distributor and if applicable the Alternative Servicer to impose, attribute, charge, bill and invoice the Transition Charges in accordance with Article 4;

e. the right to enforce the duties and obligations of each Electricity Distributor and if applicable the Alternative Collection Agent to collect, receive and remit amounts received by it in respect of Transition Charges as Electricity Distributor Remittances to or to the account of Servicer or if applicable the Alternative Collection Agent in accordance with Article 5, including all collections and the proceeds of any enforcement action undertaken by the Electricity Distributor or if applicable the Alternative Collection Agent to recover payment of Transition Charges in accordance with Article 5;

f. the right to enforce the duties and obligations of Servicer and if applicable the Alternative Collection Agent to collect and receive Electricity Distributor Remittances and to remit IESO Remittances to or to the accounts of the Regulatory Asset Owners, each with respect to its respective interest in the Regulatory Asset, in each case in accordance with Article 5, including all collections and the proceeds of any enforcement action undertaken by it to recover payment of Electricity Distributor Remittances in accordance with Article 5;

g. the right to receive and collect all Transition Charge Collections, all Electricity Distributor Remittances and all IESO Remittances in accordance with Article 5;

h. all rights and entitlements under each Regulatory Asset Account and all amounts on deposit in any such Regulatory Asset Account;

i. all Related Rights; and

j. all revenue, collections, claims, payments, money and proceeds of or derived from the rights described in (a) through (i), regardless of whether such revenue, collections, claims, payments and proceeds are imposed, invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

A Regulatory Asset and the property rights and interests therein shall exist whether or not Transition Charges have been imposed, charged, invoiced, accrued or collected and notwithstanding that the imposition, attribution, invoicing and collection of Transition Charges will depend on further actions that may not have occurred. The Regulatory Asset shall continue to exist until all Funding Obligations and Additional Funding Charges have been paid in full.

(2) **Validity of Dispositions** – A Disposition by IESO of all or any part of the IESO Funding Shortfall to an Absolute Assignee, or a Disposition of all or any part of an Investment Interest by one Absolute Assignee to another Absolute Assignee made under the Financing Plan, shall be permitted and when made shall be valid and enforceable in accordance with the terms of the related Disposition Document and shall be effective to confer upon the Absolute Assignee thereof a valid property right and interest in, to and under the IESO Funding Shortfall or Investment Interest, as applicable (or relevant portion thereof) in accordance with the terms of such Disposition, provided that the parties to the applicable Disposition Document have expressly stated therein that such Disposition is a sale or other absolute transfer. Without limiting the foregoing, any Disposition that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as a true sale and absolute transfer of the IESO Funding Shortfall or an Absolute Assignee's right, title and interest in, to and under an Investment Interest, as applicable (or relevant portion thereof), and not merely as a Pledge thereof, and upon such Disposition the assigner or seller under the applicable Disposition Document shall retain no right, title or interest in the IESO Funding Shortfall or Investment Interest (or relevant portion thereof) subject to the Disposition, including all rights under the IESO Funding Shortfall or Investment Interest arising after such Disposition. **[NTD: Subject to review by Osler/dealers.]**

(3) **Perfection and Priority of Dispositions** – Any Disposition of an interest in a Regulatory Asset shall be vested, valid, binding and perfected from the time when such Disposition is made. Such Disposition shall be perfected, vested, valid and binding as against the IESO or transferring Regulatory Asset Owner, as applicable, and all other persons who have claims of any kind (whether in tort, contract or otherwise) against IESO or the transferring Regulatory Asset Owner, as the case may be, irrespective of whether such persons have notice of the Disposition and the property rights and interests acquired by the Absolute Assignee under such Disposition shall be free and clear of any liens in favour of such other persons.

(4) **Validity of Pledges** – A Pledge by an Absolute Assignee may be made to secure any Funding Obligation and when made shall be valid and enforceable in accordance with its terms and shall be effective to confer upon the Pledgee a valid security interest in, to and in respect of the related Investment Interest in accordance with the terms of the

Pledge. No consent of, or notice to, any person shall be required to give effect to a Pledge made to secure any Funding Obligation.

(5) **Perfection and Priority of Pledges** - For purposes of the *Personal Property Security Act* (the "PPSA"), the Regulatory Asset shall be intangible personal property and any Pledge made by an Absolute Assignee in respect of a Funding Obligation shall, subject to the terms thereof, give rise to a security interest of which the PPSA applies, and may be perfected by filing a financing statement under the PPSA on that basis. All proceeds of a related Investment Interest that are subject to such a Pledge that are received by the Absolute Assignee shall immediately be subject to the such Pledge, and the security interest in such proceeds shall be perfected pursuant to the PPSA.[14] A Pledge perfected under the PPSA shall be a continuously perfected security interest and shall have priority over any other lien or security interest, created by operation of law or otherwise, that may attach to the property rights and interests in the Investment Interest subject to the Pledge unless the Pledgee has otherwise agreed in writing. A Pledgee shall have a perfected security interest in a related Investment Interest, including the Absolute Assignee's rights and interests in and to Transition Charge Collections or other related proceeds in respect of the Investment Interest and that are deposited in any Regulatory Asset Account or other account of any Electricity Distributor, IESO, Alternative Collection Agent or other person who may have commingled such Transition Charge Collections or such other proceeds with other funds. All provisions of the PPSA shall apply to the Regulatory Asset on the basis that it is intangible personal property, except to the extent otherwise provided in this Section 6(5).

(6) **Enforcement of Property Rights** – The rights of any Regulatory Asset Owner to collect and enforce its rights and interests in, to or in respect of the Regulatory Asset shall be exercised in the manner set forth in Article 5.

(7) **Owners of a Specified Portion of the Regulatory Asset** – A Regulatory Asset Owner may effect a Disposition to an Absolute Assignee of a specified portion of its rights and interests in the Regulatory Asset, including by way of a Disposition of a divided or an undivided interest therein as specified in a related Disposition Document. In no circumstance may the specified portions of the rights and interests in the Regulatory Asset owned by all Regulatory Asset Owners be greater than all of the rights and interests that comprise the Regulatory Asset in the aggregate.

(8) **Collective Action Required** – If a Regulatory Asset Owner's rights and interests in the Regulatory Asset comprises less than the entire property right and interest constituted by the Regulatory Asset, such Regulatory Asset Owner shall only enforce such right and interest on a collective and coordinated basis with each other Regulatory Asset Owner in accordance with the Collective Rights Agreement. **[NTD: Move to Regulations.]**

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[14] Consider whether to simply leave this and have a financing statement be filed under the PPSA. This would normalize the security interest and reduce any adverse suggestion that security would not otherwise arise.

Article 7 – Establishment of the Fair Allocation Plan[15] [NTD: Move entire Article 7 to Regulations, other than 7(1) and 7(2).]

(1) **Adoption of the Fair Allocation Plan** – The Delegate may, by written declaration, designate and adopt a Fair Allocation Plan in compliance with Article 7. The Fair Allocation Plan so designated and adopted shall be the Fair Allocation Plan for all purposes of this Act, except if amended, amended and restated or terminated by a further written declaration made by the Delegate in compliance with **[the Regulations]**

(2) **Principles and Parameters** – A Fair Allocation Plan shall seek to allocate Future Fair Share of Green Transition Benefits across present and future Regulated Consumers on a basis that the Delegate, in its sole and absolute discretion, determines to be equitable, having regard to the following principles and parameters:

[NTD: E&Y will need to see the guidelines of the Fair Allocation Plan set in reference to parameters that will allow it to establish a modeling curve]

- [**Inflation period**: (between November 2017 – and April 2022) bill increases need to be capped at inflation (assumed at 2% for modeling purposes)]

- [**Transition Period**: (May 2022- April 2027) bills increased at a consistent rate which is set so that the borrowing will not exceed the Trust's capacity, which is determined by the Finance Service Manager]

- [**Amortization Period**: (May 2027-April 2047) equitable distribution of Finance Amount among Regulated Consumers]

1. Future Fair Share of Green Transition Benefits should be allocated over the period ending on the Program End Date.

2. The share of Future Fair Share of Green Transition Benefits allocable to a particular Regulated Consumer in respect of a Reference Period should be proportionate to a reasonable assessment of the benefits of the Green Generation Initiative to such Regulated Consumer over such Reference Period, other than in exceptional circumstances.

3. The Fair Allocation Plan should specify the Reference Periods for the purpose of allocating Future Fair Share of Green Transition Benefits among Regulated Consumers on a relative basis over time.

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15 The idea is that the Fair Allocation Plan will be set once at the outset based on the principles and parameters described here, all as applied based on information available and the reasonable expectations and discretion of the delegate at such time. If the expectations are not fulfilled (e.g., generators may choose to retire their facilities at the end of their current procurement contracts and not invest in extending service lives to secure further procurement contracts), the Fair Allocation Plan will be unaffected, unless it is specifically amended (assuming amendments will be permitted by the legislation).

(3) **Attribution Methodology** – The Fair Allocation Plan shall specify the Attribution Methodology for the purposes of allocating the Period Finance Charges across the Regulated Consumers. The Attribution Methodology shall result in an attribution of such Transition Charges that is considered by the Delegate to be equitable, and may have regard to such principles and parameters as may be further set forth in a Regulation; provided that the Attribution Methodology shall not be used to limit the recovery of Transition Charges. **[NTD: Can the methodology be adjusted outside an amendment? If so, the rating agencies need to understand the limits of any adjustment.]**

(4) **Amendments of the Fair Allocation Plan** – The Fair Allocation Plan may be amended, amended and restated or terminated by the Delegate, provided that such amendment, amendment and restatement or termination shall (a) not be inconsistent with the principles and parameters set forth in (2) or (3), above, or the Regulation, (b) comply with any restrictions or limitations specified with respect thereto in any Funding Obligation, and (c) not impair any Regulatory Asset, outstanding Funding Obligation or any Transition Charges. **[NTD: If the Fair Allocation Plan is amended, there should be no further Regulatory Assets until the revised Fair Allocation Plan and corresponding Financing Plan have been approved.]**

Article 8 – The IESO Funding Shortfall

(1) **Recording of IESO Funding Shortfall** -- IESO will record any IESO Funding Shortfall in its books.

(2) **Dispositions** – IESO may effect a Disposition of all or any part of the IESO Funding Shortfall to an Absolute Assignee if (a) the Disposition is effected pursuant to a Disposition Agreement duly executed by IESO; and (b) the Financial Services Manager confirms in writing that the Disposition complies with any restrictions or limitations specified with respect thereto in any documents evidencing the Funding Obligations and is permitted under the Financing Plan.

(3) **No Continuing Interest in any Investment Interest** – IESO shall have no continuing right or interest in any IESO Funding Shortfall subject to a Disposition effected by IESO under a Disposition Document to which IESO is a party.

Article 9 – The Financing Plan [NTD: Move all of Article 9 to Regulations other than 9(1).]

(1) **Power to Prepare, Implement and Amend the Financing Plan** – The Financial Services Manager shall be authorized to prepare, implement and amend a financing plan for the Financing Entities and propose the adoption of such financing plan as the Financing Plan for the purposes of this Act. The Financial Services Manager shall have the right to withdraw its financing plan as the Financing Plan at any time if it determines that implementing the Financing Plan in such manner would not be in the best interests of a Financing Entity.

(2) Principles and Parameters of the Financing Plan – The Financing Plan shall establish the basis for each Absolute Assignee's funding decisions having regard to the principles and parameters set forth in Schedule 3.

(3) OEB Approval – Any Additional Funding Charge payable to the Financial Services Manager in respect of services provided by the Financial Services Manager (other than third party costs) shall be subject to review and approval by the OEB.

(4) Review of Financing Plan – The [OEB] shall undertake an annual review of the records maintained by the Financial Services Manager for the purpose of confirming that the Funding Obligations incurred and the Finance Amounts paid by or on behalf of the Absolute Assignees were incurred and paid, respectively, in material conformity with the Financing Plan. **[NTD: We would prefer that this be dealt with by an attestation prepared by an officer of the Financial Services Manager.]**

(5) Replacement of the Financial Services Manager – If the OEB identifies deficiencies or makes recommendations in its review under Section 9(4), the Financial Services Manager shall take reasonable measures to remedy such deficiencies if remediable, and shall in any event have regard to the recommendations of the OEB in relation to further actions undertaken by the Financial Services Manager under the Financing Plan. If the Financial Services Manager is unwilling or unable to reflect such recommendations in relation to such further actions, the Delegate may by written declaration designate one or more other persons who shall thereafter become the Financial Services Manager. Any replacement must comply with the restrictions and limitations specified in the documents evidencing the Funding Obligations.

(6) Obligation to Apply IESO Remittances – The Financial Services Manager shall ensure that amounts transferred to it under Article 5, as agent for and on behalf of the Absolute Assignees, or otherwise in respect of or as proceeds from an applicable Investment Interest shall only be applied or used to pay related Finance Amounts when they are due and payable and for no other purpose. **[NTD: This can be dealt with by contract.]**

(7) Non-Recourse – The Financing Plan shall be implemented so that Funding Obligations incurred shall be without recourse to or to any assets of the Electricity Distributors, IESO, any Alternative Servicer, any Alternative Collection Agent, the Financial Services Manager, the OEB or Her Majesty in right of Ontario, other than if and to the extent that such persons or entities are liable for the performance of obligations or duties arising under this Act or expressly agree to become liable pursuant to any Funding Obligation or obligation in relation to a Finance Amount.

(8) Incurrences are Binding – Each Disposition made to or by an Absolute Assignee, all amounts payable or becoming due and payable by or on behalf of an Absolute Assignee under or in connection with any obligation purporting to be a Funding Obligation and each Pledge entered into by an Absolute Assignee, shall be valid and binding, including in determining the amount of related Transition Charges, notwithstanding any defect in the manner in incurrence or any inconsistency with the Fair Allocation Plan or the Financing Plan.

[Article 10 – Compliance Matters[16]

(1) Right of the [OEB] to Inspect Books and Records - For the purpose of investigating compliance with the provisions of this Act, the OEB shall have the right, jurisdiction, power and authority to examine the books and records of *[Insert names if any]*.

(2) [OPG's Rate Settings – When setting other rates for or in respect of OPG, the OEB shall not take into account (a) the administrative or servicing fees charged by OPG as Financial Services Manager [in excess of the actual incremental costs incurred by such person of providing administrative or servicing services]; (b) the cost consequences to OPG of being the Financial Services Manager; or (c) the consequence of OPG consolidating the assets and liabilities of any Financing Entity for OPG's accounting purposes, in each case in setting any regulated payment amounts for OPG.][17]

Article 11 – Undertaking of the Her Majesty in right of Ontario[18]

(1) No Action to limit, alter, or impair or terminate Transition Charges, the Regulatory Asset or Collections – Her Majesty in right of Ontario shall not in any way take or permit (including by any agency or administrative body) any action to reduce, impair, postpone or terminate the obligation of Regulated Consumers to pay Transition Charges or to impair the Regulatory Asset or the collection or recovery of Transition Charge Collections, Electricity Distributor Remittances or IESO Remittances, either directly or indirectly, including through the introduction of any bill or the passing of any legislation or regulation having such effect. The amount of Transition Charges determined under this Act shall not be subject in any way to reduction, impairment, postponement or termination as a result of any action taken or failure by Her Majesty in right of Ontario (including by any agency or administrative body), including through the introduction of any bill or the passing of any legislation or regulation having such effect.

(2) Undertaking and Agreement – Her Majesty in right of Ontario shall not:

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[16] As noted above, the outcome of any regulatory action undertaken by the OEB will not affect Funding Obligations that have been incurred under the Financing Plan. This Article and any potential role for the Auditor General is still under consideration.

[17] As an alternative to this provision, consider clarifying under s. 78.1(4) of the OEB Act (which currently gives the OEB discretion in setting payment amounts subject to O. Reg. 53/05) that the OEB in setting OPG payment amounts for prescribed generation shall not consider OPG's role as Financial Services Manager of any Financing Entities associated with the Fair Hydro initiative, perhaps with the exception of any operating fees that may be received by OPG for performing that role.

[18] Under consideration, including the dealers' request for a "servicer guarantee" and a "contractual guarantee" to address a "Change of Law" or if all or a portion of the legislation is *ultra vires*, requiring (at the lenders option), the Province to pay principal and interest on the outstanding debt until maturity or payout the entire debt including any make-wholes.

In the event of a market disruption that renders it impossible to refinance debt when required (or where financing of amounts required to service the debt is not available because of a market disruption where the Financing Entity was relying on such further issuance of debt until the recovery is set to begin to fund interest), either the Province must step in and payout the debt or there must be the right to recover the debt from ratepayers as it becomes due, notwithstanding the intended rate cut.

(a) in any way take or permit any action that limits, alters or impairs the value of any Investment Interest;

(b) except as required by the estimates and adjustments made in determining the True-up Amount, reduce, alter or impair Transition Charges that are imposed, billed, invoiced, collected and remitted for the benefit of the Absolute Assignees or any Pledgee from time to time;

(c) permit the amendment, amendment and restatement or termination of the Fair Allocation Plan if such amendment, amendment and restatement or termination would adversely affect the validity or enforceability of any Funding Obligation or the rights of an Absolute Assignee or Pledgee thereunder, or would not otherwise comply with the restrictions and limitations specified in the documents evidencing the Funding Obligations,

in each case including through the introduction of any bill or the passing of any legislation or regulation having such effect.

(3) **Successor IESO** – If IESO is restructured, dissolved or becomes insolvent or is otherwise incapable of performing its obligations under this Act, an IESO Successor shall immediately be established by Her Majesty in right of Ontario to perform such obligations.

(4) **Compensation for Failure** – Absolute Assignees shall be compensated by Her Majesty in right of Ontario for any losses suffered by them as a result of any failure by Her Majesty in right of Ontario to comply with its undertakings and agreements in this Article 11.[19]

(5) **No Wind-up of Financing Entity**. No Financing Entity may be voluntarily wound up, liquidated or dissolved until one year after all of its Funding Obligations are repaid. **[NTD: This concept can be contained in the Regulations.]**

(6) **References to the Undertaking and Agreement** – Any non-confidential reference to the Undertaking of the Her Majesty in right of Ontario, including in marketing materials and other documentation authorized for use by the Administrative in connection with any Funding Obligation, may be made provided that [*Add conditions to protect the Province*].

Article 12 – Regulations

Regulations may be made under this Act for the purposes described in Sections •,•,• and • and may be promulgated for any of the following purposes:

(a) to set standards and measures regarding the commercially reasonable requirements of the Province associated with an Absolute Assignee incurring Funding Obligations or becoming obligated to pay any Finance Amount, including to establish guidelines regarding all-in funding costs; permitted Additional

[19] Requested by Dealers. For discussion.

Funding Charges; required maturities and redemption and termination rights of Funding Obligations; liquidity requirements, in each case to a Financing Plan that is consistent in its effect with the Fair Allocation Plan;

(b) to establish and empower one or more regulated entities to undertake decision-making activities with respect to this Act;

(c) to set out reasonable requirements regarding the appointment or retention of advisors, agents, service providers, contract counterparties, including in relation to 'market terms and conditions' parameters;

(d) to provide for audit and compliance standards applicable to those persons who are or may become obligated or have duties that arise under this Act [or under any Funding Obligation];

(e) to provide for any pre-vetting and approval requirements in relation to any incurrence by an Absolute Assignee of any Funding Obligation or obligation to pay any Finance Amount; and

(f) to provide for appeal and due process considerations in connection with the establishment, adoption, implementation and review of the Fair Allocation Plan or the Financing Plan.

Article 13- Miscellaneous[20]

(1) **Choice of law** – The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the Regulatory Asset, any Transition Charge or the Undertaking of the Province shall be the laws of the Province.

(2) **Conflict of law** – In the event of conflict between this Act and any other law of the Province regarding the attachment, assignment or perfection, or the effect of perfection, or priority of any Disposition or Pledge, this Act shall govern to the extent of the conflict.

(3) **No further acts or approvals required** - Notwithstanding any provisions of any law of the Province to the contrary, no approvals, notices or authorizations other than those specified in this Act shall be required with respect to the actions to be taken in compliance with this Act, including under the Financing Plan or in relation to the establishment of the Fair Allocation Plan, and the transactions and contracts authorized in or contemplated by this Act or the Financing Plan, including the incurrence of any Funding Obligation, any Disposition, any Pledge or in the payment and performance of any attendant or incidental contract and any related expenses incurred to facilitate the preparation and implementation of the Financing Plan.

---

[20] OPG would like the specific amendments related to OPG to be included in the Bill.]

(4) **Effect of invalidity after the Incurrence of any Funding Obligation** - Effective on the date that a Funding Obligation is incurred under this Act, if any provision of this Act is held to be invalid or is invalidated, superseded, replaced, repealed or expires for any reason, that occurrence shall not affect any action allowed under this Act that is taken by any person who is or may become obligated or have duties that arise under this Act and any such action shall remain in full force and effect.

(5) **Severability** - If any Article, Section, paragraph or subparagraph of this Act or the application thereof to any person, circumstance or transaction is held by a court of competent jurisdiction to be unconstitutional or invalid, the unconstitutionality or invalidity shall not affect the constitutionality or validity of any other Article, Section, paragraph or subparagraph of this act or its application or validity to any person, circumstance or transaction, including the irrevocability of Transition Charges, the validity of the Regulatory Asset, the incurrence of any Funding Obligation, any Disposition, any Pledge, or the collection and recovery of Transition Charge Collections. To these ends, the Legislature hereby declares that the provisions of this Act are intended to be severable and that the Legislature would have enacted this Act even if any Article, Section, paragraph or subparagraph of this Act held to be unconstitutional or invalid had not been included in this Act.

Schedule 1

Guidelines for Estimates

[To be considered.]

Schedule 2

Requirements Applicable to Alternative Invoicing Agent/ Alternative Collection Agent

[To be considered.]

Schedule 3

Principles and Parameters for Establishing the Financing Plan

The following principles and parameters provide a guideline as to what a Financing Plan should address:

(1) consider quantities, maturities, payment obligations, prepayment or redemption rights and such other features of Funding Obligations so that payments made for a Reference Period reasonably correspond to the allocations of Future Fair Share of Green Transition Benefits to the applicable Reference Group under the Fair Allocation Plan;

(2) if the anticipated amount of any Repayment (together with payments of other Finance Amounts) to be made in respect of a Reference Period would materially exceed the allocation of the costs and benefits of the Green Generation Initiative to the applicable Regulated Consumers under the then current Fair Allocation Plan, diligent efforts should be made to determine whether a Refinancing or deferral of such Repayment may be reasonably and cost-effectively effected based on then prevailing market terms, conditions an circumstances;

(3) reflect the assumptions and requirements specified in any contemplated Funding Obligation (e.g., any limit on the maximum amount of Transition Charges charged to a hypothetical Regulated Consumer relative to his or her monthly electricity bill, as prescribed by any rating agency that ascribes its credit rating to or in respect of the Funding Obligation **[having regard to the application of the Attribution Methodology][NTD: Are the words in square brackets necessary?]**);

(4) require the Financial Services Manager, for and on behalf of each Regulatory Asset Owner, to use diligent efforts to manage Finance Amounts to be borne by Ratepayers;

(5) include a proposal regarding the compensation of the Financial Services Manager that reflects market terms and conditions; and

(6) require that the Financial Services Manager report annually to the Ministry of Energy on the operation of the Financing Plan including, in particular, with respect to the amount and terms of the Funding Obligations incurred and the sufficiency of such Funding Obligations for the purpose of funding the estimated Funding Shortfalls in accordance with the Fair Allocation Plan.

FW_ _Fair Hydro Act_ Legislative Summary (Discussion Draft).rtf

From: Veinot, Cindy (TBS) []
To: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; 'Suzie Gignac' [suzie.r.gignac@ca.ey.com]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]
Subject: FW: "Fair Hydro Act" Legislative Summary (Discussion Draft)
Date: Wednesday, April 12, 2017 12:35:49
Attachment 1: Blackline_Summary.pdf
Attachment 2: Fair_Hydro_Act Torys_Osler Mark-up April 11 2017 Draft (Torys-Oslers_Apr....docx

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Base document for today's 2 pm call

-----Original Message-----
From: Calwell, Carolyn (ENERGY/MEDEI/MRI)
Sent: April-12-17 12:30 PM
To: Hume, Steen (ENERGY); Nelms, Scott (MOF); Veinot, Cindy (TBS); Cox, Hilary (ENERGY); Christie, Tim (ENERGY)
Cc: Rehob, James (ENERGY); Shear, Dan (ENERGY); Kacaba, Jennifer (ENERGY); Huang, Jackson (MEDG/MRIS)
Subject: FW: "Fair Hydro Act" Legislative Summary (Discussion Draft)
Importance: High

Here is the document, just received, that we will work from this afternoon.

-----Original Message-----
From: Mansoori, Nina [mailto:nmansoori@torys.com]
Sent: April-12-17 12:16 PM
To: WILSON, JUDY; STOKES, BRYSON; JACKSON, ADAM; Peter Hamilton (PHamilton@stikeman.com); Rehob, James (ENERGY); Alan Hibben; Shear, Dan (ENERGY); Calwell, Carolyn (ENERGY/MEDEI/MRI); Michael.Boll@ieso.ca; Feldman, Michael; LEE John -TREASURY; RYFA Ken -TREASURY; WONG Leslie -LAWDIV; Hill, Krista; Ramchandani, Rima; Keizer, Charles; Myers, Jonathan; Emes, Aaron; Wortsman, Jerald; Bomhof, Scott; Estey, Bill; Watson, Gwen; O'Brian, Adam; Fitzpatrick, Michael F.; VINER, JON; Brad.Purkis@tdsecurities.com; Nelms, Scott (MOF); Sebastiano, Rocco; GZacher@stikeman.com; Christie, Tim (ENERGY); Johnson, Paul (ENERGY/MEDEI/MRI); Kwan, Ronald (OFA); He, Gavin (OFA); Veinot, Cindy (TBS); Hosick, Sarah (TBS); kim.marshall@ieso.ca; Cox, Hilary (ENERGY); Hilloowala, Maharukh; Wolff, Michael; Holloway, Harold; Akman, Steven; Manii, David; Nevison, Gary; Niehaus, Katrina; Maciel, Andrew; Persaud, Donnie - Debt Capital Markets; Adalja, Sunil; Alvi, Shariq; Benaiah, Ian; Fullerton, Rick; Collins, Patrick J; Mullen, Max M.; Delaney, Brian; Hong, Yoomin; Raman, Akila; King, Richard; Innes, Michael; Milligan, Peter; 'Smith, Elliot'; ASHBOURNE, STEPHEN
Subject: RE: "Fair Hydro Act" Legislative Summary (Discussion Draft)
Importance: High

All - please find attached a revised draft of the summary legislation circulated by Blakes on April 10 which reflects consolidated comments from OPG and the dealers (and their respective counsel). Please note that the attached remains subject to the continuing review of OPG and the dealers. We will have printed copies of the blackline available at today's meeting.

Best Regards,
Nina

Nina Mansoori

P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

Torys LLP

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-----Original Message-----
From: Smith, Elliot [mailto:ESmith@osler.com]
Sent: April-12-17 12:39 AM
To: ASHBOURNE, STEPHEN <STEPHEN.ASHBOURNE@blakes.com>
Cc: Feldman, Michael <mfeldman@torys.com>; JACKSON, ADAM <ADAM.JACKSON@blakes.com>; Peter Hamilton (PHamilton@stikeman.com) <PHamilton@stikeman.com>; LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; WONG Leslie -LAWDIV <leslie.wong@opg.com>; MCAULEY Tyler -LAWDIV <tyler.mcauley@opg.com>; WILSON, JUDY <JUDY.WILSON@blakes.com>; STOKES, BRYSON <BRYSON.STOKES@blakes.com>; Hill, Krista <khill@torys.com>; Ramchandani, Rima <rramchandani@torys.com>; Keizer, Charles <ckeizer@torys.com>; Myers, Jonathan <jmyers@torys.com>; Emes, Aaron <aemes@torys.com>; Mansoori, Nina <nmansoori@torys.com>; Wortsman, Jerald <jwortsman@torys.com>; Bomhof, Scott <sbomhof@torys.com>; Estey, Bill <bestey@torys.com>; Watson, Gwen <gwatson@torys.com>; James.Rehob@ontario.ca; Alan Hibben <alan.hibben@rogers.com>; Shear, Dan (ENERGY) <Dan.Shear@ontario.ca>; Carolyn.Calwell@ontario.ca; O'Brian, Adam <aobrian@hunton.com>; Fitzpatrick, Michael F. <MFitzpatrick@hunton.com>; VINER, JON <JON.VINER@blakes.com>; Brad.Purkis@tdsecurities.com; Nelms, Scott (MOF) (Scott.Nelms@ontario.ca) <Scott.Nelms@ontario.ca>; Sebastiano, Rocco <RSebastiano@osler.com>; Michael.Boll@ieso.ca; GZacher@stikeman.com; Christie, Tim (ENERGY) <Tim.Christie@ontario.ca>; Johnson, Paul (ENERGY/MEDEI/MRI) <Paul.Johnson3@ontario.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>; kim.marshall@ieso.ca; Cox, Hilary (ENERGY) <Hilary.Cox@ontario.ca>; Hilloowala, Maharukh <Maharukh.Hilloowala@tdsecurities.com>; Wolff, Michael <Michael.Wolff@tdsecurities.com>; Holloway, Harold <Harold.Holloway@tdsecurities.com>; Akman, Steven <Steven.Akman@tdsecurities.com>; Manii, David <david.manii@tdsecurities.com>; Nevison, Gary <Gary.Nevison@tdsecurities.com>; Niehaus, Katrina <Katrina.Niehaus@gs.com>; Maciel, Andrew <Andrew.Maciel@cibc.com>; Persaud, Donnie - Debt Capital Markets <Donnie.Persaud@cibc.com>; Adalja, Sunil <Sunil.Adalja@cibc.com>; Alvi, Shariq <Shariq.Alvi@cibc.com>; Benaiah, Ian <ian.benaiah@rbccm.com>; Fullerton, Rick <RFullerton@osler.com>; Collins, Patrick J <Patrick.Collins@gs.com>; Mullen, Max M. <Max.Mullen@gs.com>; Delaney, Brian <Brian.Delaney@gs.com>; Hong, Yoomin <yoomin.hong@gs.com>; Raman, Akila <Akila.Raman@gs.com>; King, Richard <rking@osler.com>; Innes, Michael <MInnes@osler.com>; Milligan, Peter <PMilligan@osler.com>
Subject: RE: "Fair Hydro Act" Legislative Summary (Discussion Draft)

Steve,
We have been corresponding with Torys today and are in the process of preparing a consolidated mark-up reflecting comments from the Dealers and OPG, which will also incorporate some of the comments received this evening from the IESO/Stikemans. We will circulate the consolidated mark-up before tomorrow's meeting.

Elliot

Elliot Smith
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-----Original Message-----
From: ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
Sent: Tuesday, April 11, 2017 1:54 PM
To: Smith, Elliot <ESmith@osler.com>
Cc: Feldman, Michael <mfeldman@torys.com>; JACKSON, ADAM <ADAM.JACKSON@blakes.com>; Peter Hamilton (PHamilton@stikeman.com) <PHamilton@stikeman.com>; LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; WONG Leslie -LAWDIV <leslie.wong@opg.com>; MCAULEY Tyler -LAWDIV <tyler.mcauley@opg.com>; WILSON, JUDY <JUDY.WILSON@blakes.com>; STOKES, BRYSON <BRYSON.STOKES@blakes.com>; Hill, Krista <khill@torys.com>; Ramchandani, Rima <rramchandani@torys.com>; Keizer, Charles <ckeizer@torys.com>; Myers, Jonathan <jmyers@torys.com>; Emes, Aaron <aemes@torys.com>; Mansoori, Nina <nmansoori@torys.com>; Wortsman, Jerald <jwortsman@torys.com>; Bomhof, Scott <sbomhof@torys.com>; Estey, Bill <bestey@torys.com>; Watson, Gwen <gwatson@torys.com>; James.Rehob@ontario.ca; Alan Hibben <alan.hibben@rogers.com>; Shear, Dan (ENERGY) <Dan.Shear@ontario.ca>; Carolyn.Calwell@ontario.ca; O'Brian, Adam <aobrian@hunton.com>; Fitzpatrick, Michael F. <MFitzpatrick@hunton.com>; VINER, JON <JON.VINER@blakes.com>; Brad.Purkis@tdsecurities.com; Nelms, Scott (MOF) (Scott.Nelms@ontario.ca) <Scott.Nelms@ontario.ca>; Sebastiano, Rocco <RSebastiano@osler.com>; Michael.Boll@ieso.ca; GZacher@stikeman.com; Christie, Tim (ENERGY) <Tim.Christie@ontario.ca>; Johnson, Paul (ENERGY/MEDEI/MRI) <Paul.Johnson3@ontario.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>; kim.marshall@ieso.ca; Cox, Hilary (ENERGY) <Hilary.Cox@ontario.ca>; Hilloowala, Maharukh <Maharukh.Hilloowala@tdsecurities.com>; Wolff, Michael <Michael.Wolff@tdsecurities.com>; Holloway, Harold <Harold.Holloway@tdsecurities.com>; Akman, Steven <Steven.Akman@tdsecurities.com>; Manii, David <david.manii@tdsecurities.com>; Nevison, Gary <Gary.Nevison@tdsecurities.com>; Niehaus, Katrina <Katrina.Niehaus@gs.com>; Maciel, Andrew <Andrew.Maciel@cibc.com>; Persaud, Donnie - Debt Capital Markets <Donnie.Persaud@cibc.com>; Adalja, Sunil <Sunil.Adalja@cibc.com>; Alvi, Shariq <Shariq.Alvi@cibc.com>; Benaiah, Ian <ian.benaiah@rbccm.com>; Fullerton, Rick <RFullerton@osler.com>; Collins, Patrick J <Patrick.Collins@gs.com>; Mullen, Max M. <Max.Mullen@gs.com>; Delaney, Brian <Brian.Delaney@gs.com>; Hong, Yoomin <yoomin.hong@gs.com>; Raman, Akila <Akila.Raman@gs.com>; King, Richard <rking@osler.com>; Innes, Michael <MInnes@osler.com>; Milligan, Peter <PMilligan@osler.com>
Subject: Re: "Fair Hydro Act" Legislative Summary (Discussion Draft)

Elliot, in the interest of time, it may make sense for me to walk you through where your items have been addressed. Steve

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On Apr 11, 2017, at 1:19 PM, Smith, Elliot <ESmith@osler.com<mailto:ESmith@osler.com>> wrote:

Stephen,
This version does not reflect the top issues raised by the Dealers. We are sitting down with the Dealers now working on a comprehensive mark-up that we will send later today, but it will not be ready by 2 PM. We would like to use tomorrow's meeting to discuss the mark-up we are preparing rather than a further revised version that will not reflect our feedback.

Elliot
<image002.gif>

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Partner - Energy, Construction & Infrastructure

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From: ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
Sent: Monday, April 10, 2017 11:16 PM
To: Feldman, Michael <mfeldman@torys.com<mailto:mfeldman@torys.com>>; JACKSON, ADAM <ADAM.JACKSON@blakes.com<mailto:ADAM.JACKSON@blakes.com>>; Peter Hamilton (PHamilton@stikeman.com<mailto:PHamilton@stikeman.com>) <PHamilton@stikeman.com<mailto:PHamilton@stikeman.com>>; LEE John -TREASURY <john.s.lee@opg.com<mailto:john.s.lee@opg.com>>; RYFA Ken -TREASURY <ken.ryfa@opg.com<mailto:ken.ryfa@opg.com>>; WONG Leslie -LAWDIV <leslie.wong@opg.com<mailto:leslie.wong@opg.com>>; MCAULEY Tyler -LAWDIV <tyler.mcauley@opg.com<mailto:tyler.mcauley@opg.com>>; WILSON, JUDY <JUDY.WILSON@blakes.com<mailto:JUDY.WILSON@blakes.com>>; STOKES, BRYSON <BRYSON.STOKES@blakes.com<mailto:BRYSON.STOKES@blakes.com>>; Hill, Krista <khill@torys.com<mailto:khill@torys.com>>; Ramchandani, Rima <rramchandani@torys.com<mailto:rramchandani@torys.com>>; Keizer, Charles <ckeizer@torys.com<mailto:ckeizer@torys.com>>; Myers, Jonathan <jmyers@torys.com<mailto:jmyers@torys.com>>; Emes, Aaron

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Subject: RE: "Fair Hydro Act" Legislative Summary (Discussion Draft)

Hi. Here is a revised draft of the legislative summary, for your consideration. Please provide your comments at your earliest opportunity. We will reflect comments received by 2ET tomorrow (Tuesday) in a further group circulation, for discussion on Wednesday. Regards, Steve

Stephen R. Ashbourne
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_____

<image001.gif>

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Blackline_Summary.pdf

CONFIDENTIAL AND PRIVILEGED

Preliminary Draft for Discussion Purposes Only

"Fair Hydro Act"

Article 1 – Purpose

The Province has and continues to encourage the construction and development of facilities for the long-term operation and generation of electricity in the Province using sustainable, lower carbon-based technologies such as new gas-fired generation, renewable facilities, energy from waste and biomass, including under the Province's various procurement, standard offer, feed in tariff and other similar programs (the "Green Generation Initiative"). The long-term benefits of the Green Generation Initiative accrue over time and have benefited and will **continue to** benefit present and future electricity consumers in the Province.

The ~~imputed~~**out-of-market** costs of the Green Generation Initiative are currently passed through to electricity consumers by way of a monthly adjustment amount (the "Green Costs Adjustment"), which in turn forms part of the overall adjustment calculated by the Independent Electricity System Operator ("IESO") pursuant to section 25.33 of, and O.Reg. 429/4 under, the *Electricity Act* (the "Global Adjustment"). ~~The Global Adjustment is included as a charge billed to electricity consumers in their monthly electricity invoices.~~

The Green Costs Adjustment is currently determined each month by reference to the amounts paid by IESO to the generators of electricity in the Province under the Green Generation Initiative~~, which may be higher than prevailing market price for electricity. These differences~~**. These amounts paid by the IESO** arise because IESO has entered into long-term procurement contracts with such generators in order to provide them with ~~long-term price~~**revenue** certainty ~~for electricity~~, and in turn to encourage the generators to develop technologies and to construct and develop facilities consistent with the Green Generation Initiative. ~~In general, whenever amounts payable under these procurement contracts exceed the market price for electricity, the Green Costs Adjustment passes through the amount of such differences as part of the monthly charge to electricity consumers. Such amount then becomes available to IESO to meet its obligations under the~~ **[NTD: This statement is not correct in respect of all IESO procurement contracts.]** It has been determined that the useful lives of many of the assets ~~encouraged by~~**developed under** the Green Generation Initiative will be ~~well~~ in excess of the respective terms of ~~the related~~**their respective** procurement contracts~~, and in many cases may extend over more than one generation of electricity consumers~~.

Since the benefits to past, present and future electricity consumers from the Green Generation Initiative will not necessarily coincide with the costs currently attributed through the Green Costs Adjustment, based on the respective ~~durations~~**terms** of the **applicable** procurement contracts, it has been determined that the rate at which the costs associated with the Green Generation Initiative should be passed through to ~~Retail~~**Regulated** Consumers (as defined in Article 2) should be more closely aligned with the benefits that such ~~Retail~~**Regulated** Consumers have derived and are expected to derive from the Green Generation Initiative over time. This realignment will be based on **general** principles and parameters that establish a reasonable basis for measuring and allocating the relative costs and benefits of the Green Generation Initiative equitably across present and future ~~Retail~~**Regulated** Consumers (the "Fair Allocation

Plan"). **[NTD: There is no explanation as to why realignment is limited to Regulated Consumers.]**

If the Fair Allocation Plan determines that the equitable allocation of the costs associated with the Green Generation Initiative to the ~~Retail~~**Regulated** Consumers of a particular time period should be reduced below the amount that currently would be charged based on the Green Costs Adjustment, then the amount payable by such ~~Retail~~**Regulated** Consumers and in turn available to IESO will, in the aggregate, be less than the amount payable by the IESO to the generators in respect of such period. In this case**,** IESO will need to obtain funding from another source to cover such a shortfall. If a funding obligation is incurred ~~by IESO~~ to cover such a shortfall during ~~one~~**any** period, the repayment of such funding obligation will be required in a future period, and any related repayments, finance costs, hedging costs and other transaction costs incurred will become payable in ~~one or more~~ future periods. In order for IESO to obtain a reliable and committed source of cash flows to enable IESO to repay such funding amounts when they become due and payable, this Act imposes irrevocable and non-bypassable financial obligations on ~~Retail~~**Regulated** Consumers to pay amounts incurred in respect of such funding obligations when they become due and payable and establishes a right to invoice and collect such amounts. The right and interest in and to collect such financial obligations will take the form of the Regulatory Asset contemplated in this Act, which will constitute property rights and interests. Interests in the Regulatory Asset may be sold and absolutely assigned by IESO to one or more financing entities, which in turn will finance their acquired interests by incurring funding obligations. The incurrence and payment of such funding obligations will be administered on behalf **of** such financing entities by a financial services ~~agent~~**manager** under the Financing Plan contemplated in this Act. ~~The Financing Plan will seek to reasonably match the payment obligations arising under such funding obligations, to be borne by the future Retail Consumers of the period in which such payment obligations become due, with the benefits of the Green Generation Initiative allocated to such future Retail Consumers under the Fair Allocation Plan.~~

[NTD: Our strong preference is to limit the introduction to the next paragraph and move defined terms from the previous paragraphs to Article 2]

The purpose of this Act is to establish the basis upon which intergenerational fairness can be achieved by charging the costs and benefits of the Green Generation Initiative to present and future ~~Retail~~**Regulated** Consumers on an equitable and cost effective basis.

Article 2 ~~–~~ Definitions

In this Act: **[NTD: It would be preferable to use plain language definitions in the legislation and leave the more detailed definitions to either the regulations or the agreements contemplated hereunder.]**

"Absolute Assignee" means a person to whom a Regulatory Asset Owner effects a Disposition **other than as security**.

"Actual" means, in relation to costs, expenses or payments in respect of Funding Obligations during a Reference Period, the actual amount of such costs, expenses or payments paid or made (net of any Finance Reserve Withdrawals applied to pay such amounts), which amounts shall be recorded by the Financial Services ~~Agent~~**Manager**

whose records shall be determinative for the purposes of this Act except to the extent of a manifest calculation error.

"Additional Funding Charges" means, for a Reference Period ~~in respect of an Absolute Assignee~~, the fees, charges, expenses, costs, indemnities, reimbursements and other amounts (including any applicable tax amounts) that are or become payable by or on behalf of the Absolute Assignee during the Reference Period and that were incurred or committed to directly or indirectly by the Absolute Assignee in connection with the incurrence of Funding Obligations under the Financing Plan (whether at the time of such incurrence or over the term of the Funding Obligation and whether directly or indirectly), including ~~(without duplication and without limitation): (a) any payment required under an ancillary agreement entered into by, or by the Financial Services Agent on behalf of, the Absolute Assignee under the Financing Plan; (b) any federal, provincial or local taxes, payments in lieu of taxes, franchise fees or license fees imposed on the Absolute Assignee or incurred by on behalf of the Absolute Assignee under any obligation to pay tax gross-up amounts to counterparties under Funding Obligations; (c) any amounts payable to the Financial Services Agent, including amounts payable to its advisors and outside counsel; (d) any amounts incurred to prepare, confirm, amend and implement the Financing Plan; (e) any amounts payable to any Alternative Collection Agent or Alternative Servicer, including amounts payable to each's advisors and outside counsel; (f) any amounts incurred to make the calculations, determinations or confirmations to be made by or on behalf of the Absolute Assignee; (g) any servicing fees and expenses; (h) any trustee fees and expenses; (i) any legal fees, expenses and disbursements; (j) any accounting fees and expenses; (k) any administrative fees and expenses; (l) any manager or director fees of a Financing Entity; (m) any registration fees and expenses; (n) any placement fees, underwriting fees, fees and related issuing expenses; (o) any rating agency fees; and (p) any other related fees, charges, expenses, costs, indemnities, reimbursements and other amounts that are approved in good faith by the Financial Services Agent for recovery and payment under the Financing Plan~~**without limitation such amounts as may be prescribed**.

~~"Allocation Factor" means, in respect of a Retail Consumer for a Reference Period, the number (expressed as a percentage) determined in respect of the Retail Consumer by the OEB based on the application of< *the Attribution Methodology* >in respect of the Reference Period.[1]~~

~~"Alternative Collection Agent" means a person appointed under Section 5(11) and in compliance with the requirements set out in Schedule 2 to assume the collection activities and activities of any Electricity Distributor or IESO under Article 5, as agent for and on behalf of the Regulatory Asset Owners.~~ **[NTD: See section 5(11). Remove this concept globally.]**

"Alternative Servicer" means a person appointed under Section 4(8) to assume the obligations of the Servicer under Article 4, as agent for and on behalf of the Regulatory Asset Owners. **[NTD: We see this, in effect, as the same thing as the IESO Successor; that is, replacement of the master Servicer.]**

[1] ~~Confirm that this will be based on forecast volumes of demand (like RPP). To the extent amounts do not get recovered due to differences between forecast and actual, those may be identified and caught by the True-Up.~~

"Assessed Past Green Transition Costs" means, in respect of a Measurement Date, the aggregate of the imputed costs of the Green Generation Initiative (expressed as an equivalent to current dollars), as reflected in the calculation of the Green Costs Adjustment, which have been charged to Retail Customers through the Global Adjustment on or prior to the Measurement Date.

"Attribution Methodology"[21] means the methodology specified in the Fair Allocation Plan for allocating the Period ~~Transition~~**Finance** Charges for a Reference Period to ~~individual Retail Consumers of the applicable Retail Consumer Group based on its Allocation Factor.~~**Regulated Consumers. [NTD: We understood that the Ministry accepted that the transition charge would be a volumetric rate.][NTD: Can be moved to Regulations.]**

"Collected Amount Adjustment" means, in respect of a True-Up Period, the amount (which may be a negative amount) calculated by the Servicer or the Financial Services ~~Agent~~**Manager**, as applicable, equal to (a) the Estimate of the Finance Amount for the True-Up Period, minus (b) the sum of all Transition Charge Collections for the True-Up Period.[32]

"Collective Rights Agreement" means an agreement among all of the Regulatory Asset Owners (including each Absolute Assignee) ~~and~~**,** each Pledgee**, and the Financial Services Manager** that governs the enforcement of their respective rights and interests in, to and under the Regulatory Asset on a coordinated and collective basis.[4] **[NTD: Move to Regulations.]**

"Delegate" means **any of** the **following** person or persons designated in writing from time to time by the Minister of Energy to undertake the actions and perform the responsibilities ascribed to the "Delegate" under this Act~~.~~**: ●. [NTD: Why is this delegation of authority necessary? This requires further discussion and clarity as to which entity or entities that the Province can select as the Delegate; for example, it would not be acceptable for the Province to select the OEB to be the Delegate. If this is required, an acceptable delegate would be a stakeholder committee comprised of representatives from the Ministry of Energy, the OEB, the IESO, and OPG. In addition, the regulation should prescribe how the stakeholder committee would operate.]**

"Disposition" means an assignment, transfer, conveyance, sale, contribution, set-over, exchange or other disposition of **(a) IESO's right to recover all or any portion of an IESO Funding Shortfall or (b)** an Investment Interest to an Absolute Assignee**, in each case** pursuant to a Disposition Document.

"Disposition Document" means the agreement, deed, conveyance, instrument or other document under which ~~a Regulatory Asset Owner~~**IESO or an Absolute Assignee** effects a Disposition to an Absolute Assignee.

[21] This allocation may be volumetric or some combination of a flat amount and a volumetric charge. Further discussion is required. H&W has raised a concern regarding possible adverse changes after the fact and rating agency considerations. Consider whether hard-coding in the legislation makes sense.

[32] This would pick up adjustments based on actual collection experience, changes in the ~~retail consumer~~**Regulated Consumer** base, changes in the actual costs (versus earlier estimates) included in the Transition Charge calculation, etc.

[4] ~~Consider adding the Financial Services Agent and the Servicer as parties.~~

"Electricity Distributor" means~~, in respect of a Service Area, the~~ **a** rate regulated distributor licensed under Part V of the *Ontario Energy Board Act, ~~1998~~* ~~in respect of such Service Area,~~***1998,*** together with and its successors.

"Electricity Distributor Remittances" means, for an Electricity Distributor on a Remittance Date, all Transition Charge Collections received or deemed to be received **[NTD: estimated to be received? will each Electricity Distributor know?]** by the Electricity Distributor prior to the Remittance Date and that have not otherwise been remitted to ~~IESO~~**Servicer** or if applicable the Alternative Collection Agent in accordance with Section 5(3), including the proceeds of any enforcement action undertaken by the Electricity Distributor or if applicable the Alternative Collection Agent to recover payment of Transition Charges in accordance with Article 5.

"Electricity Invoice" means an invoice issued by ~~any of a~~**an** Electricity Distributor (or in its stead, by an Alternative ~~Servicer~~**Collection Agent**), by the Servicer or by a Retailer, in each case to a ~~Retail~~**Regulated** Consumer that is served by the Electricity Distributor's distribution system in respect of electricity charges, including the cost of electricity, delivery and regulatory charges and related services and amounts incurred, assessed or charged in respect of connectivity to ~~a distribution network in the~~**such** Electricity Distributor's ~~designated Service Area~~**distribution system** and in respect of applicable Transition Charges to be charged to the ~~Retail~~**Regulated** Consumer under this Act. **[NTD: The Alternative Servicer should only invoice for Transition Charges, not the entire invoice. Also, to avoid confusion, we suggest using the word "invoice" in reference to what the IESO sends out to distributors, and "bills" in reference to what distributors send out to consumers.]**

"Estimate" means (a) in relation to costs, expenses or payments in respect of Funding Obligations or any Finance Amount for a Reference Period, the estimated amount of such costs, expenses or payments determined by the Financial Services ~~Agent~~**Manager**; and (b) in relation to an assessment of the benefits of the Green Generation Initiative to ~~any Retail Consumer Group~~**Regulated Consumers**, the estimated value (in current dollars) of such benefits determined by the Delegate, in each case having regard to the applicable principles and parameters set out in Schedule 1, which estimated amounts shall be determinative as the applicable estimate for the purposes of this Act except to the extent of a manifest calculation error.

"Estimated Future Green Transition Benefits" means, in respect of a Measurement Date, the Estimate set forth in the Fair Allocation Plan prepared in accordance with Article 7 of the aggregate value (measured in current dollars) of the benefits that are expected to accrue to ~~Retail~~**Regulated** Consumers from the establishment and implementation of the Green Generation Initiative during the period from the Measurement Date to the Program-End Date.

"Estimated Past Green Transition Benefits" means, in respect of a Measurement Date, the Estimate set forth in the Fair Allocation Plan prepared in accordance with Article 7 of the aggregate value (measured in current dollars) of the benefits that have accrued to ~~Retail~~**Regulated** Consumers from the establishment and implementation of the Green Generation Initiative up to and including the Measurement Date.

"Fair Allocation Plan" has the meaning given in Article 1.

"Finance Amount" means, for a Reference Period ~~in respect of an Absolute Assignee~~, the sum (without duplication) of the following amounts that are or become payable during the Reference Period in respect of ~~the~~**all** Absolute ~~Assignee~~**Assignees**: (a) Repayments; (b) **Net** Funding Costs; (c) Redemption Amounts; (d) Finance Reserve Deposits; and (e) Additional Funding Charges.

"Finance Reserve Deposits" means, for a Reference Period, the amount by which (a) deposits made or to be made during the Reference Period in order to pre-fund, collateralize, over-collateralize or establish reserves for the ultimate payment of Funding Obligations or for related contingencies specified in the Financing Plan, exceed (b) any Finance Reserve Withdrawals. **[NTD: Move this to regulation.]**

"Finance Reserve Withdrawals" means, for a Reference Period, the amount withdrawn during the Reference Period from deposits previously made to pre-fund, collateralize, over-collateralize or establish reserves for the payment of Funding Obligations or to pay amounts in respect of related contingencies that had been specified in the Financing Plan. **[NTD: Move this to regulation.]**

"Financial Services ~~Agent~~**Manager**" means OPG or, following any Replacement Event **involving OPG**, such other person ~~or persons~~ who may be appointed as the ~~Financial Services Agent~~**financial services manager** of the Absolute Assignees under the Financing Plan in compliance with the requirements set out in Schedule 2.[5]~~3~~

"Financing Entity" means ~~an entity established in accordance with the Financing Plan to acquire all or an interest in the Regulatory Asset as an Absolute Assignee and to enter into Funding Obligations to finance such acquisition under the Financing Plan.~~[6]**any entity established at the initiative of and managed by the Financial Services Manager to support the Financing Plan.**[4]

"Financing Plan" means the written plan prepared by the Financial Services ~~Agent on behalf of each Absolute Assignee in compliance with Article 9 to set forth the basis upon which, among other things: (a) any Disposition may be made to, financed by or effected by an Absolute Assignee; (b) any Funding Obligations may be incurred by an Absolute Assignee, including any Refinancing; (c) any Pledge may be given or effected; (d) any Funding Obligations may be redeemed, prepaid, repurchased, amended or otherwise effected; (e) any obligations for Additional Funding Charges may be incurred and paid; (f) any Repayments, Funding Costs and Redemption Amounts may be paid or provided for; (g) any Finance Reserve Deposits may be made; (h) any Finance Reserve Withdrawals may be made; (i) the establishment and operation of any Financing Entity may be effected; and (j) the cash flows arising from time to time or otherwise derived from an Investment Interest may otherwise be applied,~~**Manager in accordance with Article 9,** as the same may be amended, amended and restated or terminated by the

[5] ~~Discuss whether to accommodate multiple~~[3] **There must only be one** Financial Services ~~Agents. MOE to consider~~**Manager**.

[6]4 MOE to confirm that the legislation will provide that any Financing Entity that is a wholly-owned subsidiary of OPG (1) would not be subject to Part VI of the *Electricity Act* (Ontario) and (2) in the case of any Financing Entity that is a trust, any income of such trust (for purposes of the *Income Tax Act* (Canada) or the *Taxation Act, 2007* Ontario)) which is paid or made payable to OPG or a wholly-owned subsidiary of OPG as a beneficiary of such trust will not be taken into account in calculating the amount of a payment required to be made by OPG (or such subsidiary) by section 89 or 90 of the Electricity Act.

Financial Services ~~Agent~~**Manager** in ~~compliance~~**accordance** with Article 9 from time to time.

~~"Funding Costs" means, for a Reference Period in respect of an Absolute Assignee, the amount by which (a) the aggregate of all interest< *and other periodic finance charges accruing due and becoming payable or paid by or on behalf of the Absolute Assignee during the Reference Period in respect of its Funding Obligations, including* >any standby commitment fees or charges paid to any lender, credit enhancement fees or charges paid to any credit enhancer, liquidity fees or charges paid to any liquidity provider, amounts (including any termination payments) paid under derivatives and any deposit amount made or required to fund or replenish a debt service reserve account or other account established under any indenture, ancillary agreement or other financing document relating to its Funding Obligations, exceeds (b) the aggregate of all amounts received by or on behalf of the Absolute Assignee during the Reference Period in respect of a Funding Obligation, including from any reimbursement of standby commitment fees or charges paid by a lender, any reimbursement of credit enhancement fees or charges paid by any credit enhancer, any reimbursement of liquidity fees or charges paid by any liquidity provider, any amounts (including any termination payments) paid to the Absolute Assignee under derivatives and any Finance Reserve Withdrawal made or required to be made from a debt service reserve account or other account established under any indenture, ancillary agreement or other financing document relating to the payment of the Funding Costs payable in respect of a Funding Obligation for the Reference Period.~~

"Funding Obligation" means, in respect of an Absolute Assignee, each payment obligation (including**, without limitation,** each obligation to pay: principal, interest, premiums and other financing charge payments; pass-through payments; payment obligations arising under or in respect of derivatives; payment obligations owing to service providers, Financial Services ~~Agents~~**Managers**, finance entity intermediaries, capital markets intermediaries, advisors, lenders, credit enhancement providers, liquidity providers, disbursement counterparties, regulatory agencies and rating agencies; and all Additional Funding Charges**)** incurred by or on behalf of the Absolute Assignee under the Financing Plan, including any Refinancing of another such payment obligation incurred by or on behalf of such Absolute Assignee.

"Future Fair Share of Green Transition Benefits" means, in respect of a Measurement Date, the sum of (a) the Over-Assessed Amount; and (b) the Estimated Future Green Transition Benefits, in each case as of the Measurement Date.

~~"Generator" means a generator of electricity that is subject to the *Electricity Act, 1998*.~~

"Global Adjustment" has the meaning given in Article 1.

"Green Costs Adjustment" has the meaning given in Article 1.

"Green Generation Initiative" has the meaning given in Article 1.

"IESO" means the Independent Electricity System Operator created pursuant to Part II of the *Electricity Act, 1998*.

"IESO Available Amount" means, for a Reference Period, the lesser of (a) the amount (if any) by which (i) the Maximum Transition Charge Amount for the Reference Period, exceeds (ii) Period Finance Amount for the Reference Period, and (b) the IESO Retained Interest Amount as of the [35th] day prior to the first day of a Reference Period plus any IESO Financing Costs that are due and payable and remain unpaid as of the [35th] day prior to the first day of a Reference Period.

"IESO Electricity Distribution Receipts" means, for a month, the sum of all amounts payable by Electricity Distributors to IESO , during the month pursuant to section • of the *Electricity Act* in respect of Regulated Consumers. [NTD: IESO indicates that it likely does not work to express in regards to "amounts payable by the LDCs" because settlement between the IESO and LDCs entails payments by LDCs to the IESO and then credits/debits by the IESO to LDCs to reflect RPP shortfalls/overages.]

"IESO Financing Costs" means, for a Reference Period, the financing costs (if any) incurred by IESO pursuant to Section 8(4) in order to finance its ownership of the IESO Retained Interest during the Reference Period.

"IESO Funding Shortfall" means, for a month, the amount, if any, by which (a) the IESO Electricity Distribution Receipts that would be payable to IESO for the month if determined without regard to this Act and without regard to the changes made to section 25.33 of, and O.Reg. 429/4 under, the *Electricity Act* with respect to the Global Adjustment concurrently with this Act, exceeds (b) the IESO Electricity Distribution Receipts payable to IESO for the month[75]; provided that if the amount of any such shortfall is determined to have been based on incomplete information, variances or estimates that were inaccurate, an adjustment shall be made in determining the amount of any subsequent shortfall for the month in which the inaccuracy is identified. .To the extent reasonably necessary to give effect to this Act, or any transaction contemplated hereby, IESO shall calculate the IESO Funding Shortfall for any month taking into account information provided by the Electricity Distributors and (i) such calculation shall be binding for all purposes; and (ii) any demonstrated inaccuracy in the calculation for any month (including any such resulting from inaccuracies in the information provided by Electricity Distributors) shall be accounted for by adjusting the IESO Funding Shortfall for a subsequent month. [NTD: Need to add the mechanism for IESO to record this shortfall because without that there is no Regulatory Asset. This IESO Funding Shortfall is the regulatory asset owned by IESO.]

"IESO Recovery" means each amount remitted to IESO (including by IESO retaining such amount) in respect of the IESO Retained Interest pursuant to Section 5(6)(b), and "IESO Recoveries" means, collectively, all such amounts received by IESO.

"IESO Remittances" means, for a Settlement Date, all Electricity Distributor Remittances received by IESO or if applicable the Alternative Collection Agent prior to the Settlement Date and that have not otherwise been remitted to the Regulatory Asset Owners (each with respect to its Regulatory Asset) in accordance with Section 5(6), including the proceeds of any enforcement action undertaken by IESO or if applicable the Alternative

[75] This has been recast to recognize that the shortfall in the first 4.5 years could exceed the entire GA amount. A more refined approach to describing the concept may be considered.

Collection Agent to recover payment of amounts payable by Electricity Distributors to IESO in accordance with Article 5.

~~"IESO Retained Interest" means IESO's right, title and ownership interest (if any) in, to and under the Regulatory Asset, which shall exclude each Investment Interest.~~

~~"IESO Retained Interest Amount" means, on a day, (a) the sum of all IESO Funding Shortfalls incurred prior to the day, plus (b) the sum of all IESO Funding Costs incurred prior to the day in accordance with Section 8(4), minus (c) the net proceeds received by IESO from or on behalf of each Absolute Assignee as consideration for the Disposition of each Investment Interest paid to IESO by or on behalf of such Absolute Assignee prior to the day, and minus (d) the IESO Recoveries received by IESO prior to the day.~~

"IESO Successor" means the entity appointed by the Province to succeed to the rights and obligations of IESO as the entity responsible for managing the Province's electricity system.

"Investment Interest" means an ownership interest in, to or under the Regulatory Asset that is acquired by an Absolute Assignee pursuant to a Disposition~~, which ownership interest may include (without limitation) ownership of a specified portion on a divided basis of the assets comprising the Regulatory Asset and ownership of an undivided ownership interest in the Regulatory Asset, in each case as may be described in the applicable Disposition Document~~.

"Investment Remittance" means, for a month, the lesser of (a) the aggregate amount of all IESO Remittances for the month, and (b) the sum of the ~~Finance Amounts~~**Funding Obligations** due and payable by all Absolute Assignees in respect of the month.

~~"Maximum IESO Recovery" means, for a month, the amount (if any) by which (a) the IESO Remittances for the month, exceed (b) the sum of all Finance Amounts that are due and payable by Absolute Assignees in respect of the month.~~

~~"Maximum Transition Charge Amount" means, for a Reference Period, (a) the aggregate amount of Future Fair Share of Green Transition Benefits that are allocable to the applicable Retail Consumer Group in accordance with the Fair Allocation Plan, divided by (b) the applicable Reference Period Length.~~

"Measurement Date" means [Insert relevant date around the Legislation Implementation Date] and any other date specified as such under the Fair Allocation Plan.

"Net Funding Costs" means, for a Reference Period in respect of a Financing Entity, the amount by which (a) the aggregate of all interest, scheduled principal> *and other periodic finance charges accruing due and becoming payable or paid by or on behalf of the Absolute Assignee during the Reference Period in respect of its Funding Obligations, including* <**such amounts as may be prescribed, exceeds (b) the aggregate of all amounts received by or on behalf of the Absolute Assignee during the Reference Period in respect of the Funding Obligations referred to in (a), including such amounts as may be prescribed.**

"OEB" means the Ontario Energy Board, together with its successors.

"OPG" means the corporation incorporated as Ontario Power Generation Inc. under the *Business Corporations Act* on December 1, 1998, together with its successors.

"Over-Assessed Amount" means, in respect of a Measurement Date, the amount (if any) by which (a) the Assessed Past Green Transition Costs, exceeds (b) the Estimated Past Green Transition Benefits, each as determined as of the Measurement Date.

"Period Finance Charges" means, for a Reference Period, the sum of (a) the Estimate of the Finance Amount ~~and~~ (b) the True-Up Amount in respect of the ~~immediately preceding Reference Period. "Period Transition Charges" means, for a Reference Period, the sum of (a) the Period Finance Charges for the Reference Period and (b) the IESO Available Amount for the Reference Period.~~ **applicable True-Up Period and (c) an adjustment amount as may be prescribed to account for estimated collection shortfalls and collection delays in respect of amounts under (a) and (b).**

"Pledge" means, in respect of an Investment Interest of an Absolute Assignee, a lien, mortgage, charge or security interest granted to or in favour of a Pledgee by the Absolute Assignee in, to and over all or a specified portion (including a specified portion on a divided basis or by way of an undivided interest) of the Investment Interest.

"Pledgee" means a person to whom an Absolute Assignee grants a Pledge.

"Program End Date" means •, [2047].

"Province" means the Province of Ontario.

"Redemption Amount" means the amount payable by or on behalf of an Absolute Assignee to redeem, prepay or repurchase a Funding Obligation incurred by or on behalf of the Absolute Assignee, including any premium, make-whole or other additional amount becoming payable under the Funding Obligation to give effect to such redemption, prepayment or repurchase.

"Reference Period" means (a) the period from (and including) the Measurement Date to (and including) ~~June~~**October** 30, 2017, (b) each six month period commencing [May 1st and November 1st] thereafter and (c) any other period specified as such in the Fair Allocation Plan.

~~"Reference Period Length" means, for a Reference Period, the number of months in the Reference Period.~~

"Refinancing" means, in respect of a Funding Obligation incurred by or on behalf of an Absolute Assignee, that the Funding Obligation is repaid or repurchased for cancellation by or on behalf of the Absolute Assignee by applying the net proceeds obtained by the Absolute Assignee incurring one or more other Funding Obligations.

"Regulated Consumer" means consumers of electricity in the Province as prescribed.

[NTD: There are a number of issues with this definition. First, the word "Retail" is a source of confusion as it implies customers of licensed retailers. Really, the purpose of the term is to define the group of consumers that are eligible to receive the benefit of the Fair Hydro program and who will bear the cost of the program over the long term. We have proposed "Regulated Consumer" but you could also use the term "Eligible Consumer" or "Fair Hydro Eligible Consumer" and for purposes of the legislation to say that it is a member of a class of consumers prescribed by the regulations for purposes of the relevant section of the legislation. The regulation would then describe who is in the class. Second, it may not be appropriate to rely on the class of consumers prescribed for the purposes of s. 79.16 or under the OREC Act. Section 79.16 is the section that defines the class of RPP consumers. We understand that the "Fair Hydro Eligible Consumers" are not an identical class to that which is eligible for the RPP or for> ***the Ontario Rebate for Electricity Consumers***<. For example, we have heard that Fair Hydro Eligible Consumers will (a) exclude consumers served by independent power authorities (certain remote communities not served by Hydro One Remotes), and (b) include consumers served by licensed unit sub-metering providers, licensed retailers and certain consumers served directly by the IESO (which may or may not be captured by the classes under 79.16 or OREC). Third, it is not clear why consumers with contracts with retailers who use retailer consolidated billing are removed from the first part of the definition but then added back into the second part of the definition. Fourth, Retailers do not necessarily have physical electricity assets that would be connected to the grid. Some just sell or offer contracts for electricity. As such, the first few lines after (b) are problematic. Fifth, the phrase "purchase electric generation services from a provider of electric generation services other than the owner of the Province's transmission and distribution system assets" does not make sense. A consumer does not purchase generation services from a transmitter or distributor. Rather, a consumer receives distribution services from a distributor. In addition to charging for its distribution services, the distributor also charges the associated transmission costs and commodity costs associated with the volumes delivered. Those commodity costs are the price of the electricity itself and are almost entirely made up of the amounts determined under the global adjustment. Sixth, the phrase "**>*whether or not the transmission and distribution system assets continue to be owned or operated by Electricity Distributors or operated by IESO*<**" does not make sense. Transmission assets are owned and operated by transmitters. Distribution assets are owned and operated by distributors. The IESO does not own but does administer and direct the operation of the transmission system.]

"Regulatory Asset" means the property rights and interests described in Section 6(1), which collectively is comprised of ~~the IESO Retained Interest and~~ each Investment Interest.

"Regulatory Asset Account" means (a) for an Electricity Distributor, any bank account into which the Electricity Distributor deposits or receives Transition Charge Collections; and (b) for the Servicer, any bank account into which ~~IESO~~Servicer deposits or receives Transition Charges~~, Electricity Distributor Remittances or IESO Remittances; and (c) if applicable, for the Alternative Collection Agent, any bank account into which~~

the Alternative Collection Agent deposits or receives Transition Charge Collections, Electricity Distributor Remittances or IESO Remittances.

"Regulatory Asset Owner" means each of (a) IESO, as owner of (and to the extent of) the IESO Retained Interest and (b) each Absolute Assignee, as owner of its Investment Interest or Investment Interests, and "Regulatory Asset Owners" means collectively IESO and each such Absolute Assignee, who together own the entirety of the Regulatory Asset and are required to exercise their individual rights of ownership in accordance with Section 6(7).

"Related Rights" means**, with respect to a Regulatory Asset Owner's Investment Interest,** all rights of any kind (whether in tort, contract or otherwise) that attach or are attendant or incidental to any of the other property rights or interests that comprise such Regulatory Asset**Investment Interest**.

"Remittance Date" means, in respect of an Electricity Distributor, each day on which it is required to remit Electricity Distribution Remittances to IESO**Servicer** or if applicable the Alternative Collection Agent as specified in accordance with any Funding Obligation or, if no such day is specified in accordance with any Funding Obligation, then the Business Day **[NTD: Not defined.]** preceding each Settlement Date. **[NTD: Move to Regulations. Remittances will be in accordance with the current rules.]**

"Repayment Obligation" means an obligation to repay, redeem or repurchase, or to provide for the repayment, redemption or repurchase (including by making a related Finance Reserve Deposit) of, all or a portion of the amount advanced to the Absolute Assignee under a Funding Obligation.

"Repayment" means a payment by an Absolute Assignee made to satisfy a Repayment Obligation, other than to the extent that the payment is made by applying the proceeds of a Refinancing or from Finance Reserve Withdrawals.

"Replacement Event" means any event specified as such in a Funding Obligation.

"Retail Consumer" means:

(a) present and future consumers of electricity in the Province who are (i) consumers designated under section 79.16 of[, and O.Reg 95/05 under,] the *Ontario Energy Board Act, 1998*, or (ii) hold or are deemed to hold an "eligible account" under< *the Ontario Rebate for Electricity Consumers*> *Act, 2016*, other than any such consumer who has a contract with a Retailer who uses Retailer Consolidated Billing; and

(b) present and future Retailers who use Retailer Consolidated Billing,

and each case includes all such consumers and Retailers who are connected, directly or indirectly and whether a customer of an Electricity Distributor or not, to the transmission and distribution system assets located in the Province and who are taking electric delivery service within the Province, whether or not such retail consumers produce their own electricity or purchase electric generation services from a provider of electric generation services other than the owner of the Province's transmission and distribution

~~system assets and <*whether or not the transmission and distribution system assets continue to be owned or operated by Electricity Distributors or operated by IESO*>.~~

~~"Retail Consumer Group" means, in relation to a Reference Period, the Retail Consumers who receive Electricity Invoices during the Reference Period.~~

"Retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity.

"Retailer Consolidated Billing" has the same meaning as in the *Retail Settlement Code* issued by the Ontario Energy Board.

~~"Service Area" means, in respect of an Electricity Distributor, the geographic area or region in which it is licensed to distribute electricity in accordance with the *Electricity Act, 1998*.~~

"Servicer" means IESO or IESO Successor, as agent for and on behalf of the Regulatory Asset Owners, for the purposes set forth in Article 4.

"Settlement Date" means the [last Business Day of any month].

"Transition Charge" means, ~~for a Retail~~**the amount recoverable from a Regulated** Consumer in respect of a Reference Period, ~~(a) the Period Transition Charge, (b) multiplied by its Allocation Factor in respect of the Reference Period, divided by (c) the applicable Reference Period Length.~~ **being the Period Finance Charge as allocated to such Regulated Consumer in accordance with Article 4(3) on a monthly basis. [NTD: This needs to be grossed up to account for variability associated with expected uncollectables and remittance delays.] [NTD: Do not need to create parallel process. The definition should be linked to the OEB process for determining the volumetric rate as part of the RPP process (see s. 4(2)). The OEB will determine volumetric rate based on forecast consumption, number of consumers, etc. to recover the Period Finance Charges.]**

"Transition Charge Collection" means any amount received **[or deemed by this Act to have been received] by the Absolute Assignees** upon the collection of a Transition Charge paid by or on behalf of a ~~Retail~~**Regulated** Consumer, including any proceeds arising from the exercise and enforcement of any related rights and interests under or in respect of the Regulatory Asset.

"True-Up Amount" means, in respect of a Reference Period, the amount (which may be a negative amount) calculated by the Financial Services ~~Agent~~**Manager** equal to (a) the >*Actual Finance Amount for such related True-Up Period*<**, minus (b) the** Estimate of the Finance Amount for the related True-Up Period, ~~minus (b) the <*Actual Finance Amount for such related True-Up Period*>~~, plus (c) the Collected Amount Adjustment for such related True-Up Period. **[NTD: need to discuss how this will work for our true-up. What about prior period shortages? An example of how this works needs to be provided.]**

"True-Up Period" means, in relation to a Reference Period, the period from and including the [30th] day immediately preceding the first day of the Reference Period, to but excluding the [30th] day immediately preceding the last day of the Reference Period.

"Undertaking of the Lieutenant Governor in CouncilHer Majesty in right of Ontario" means the undertaking of the Lieutenant Governor in CouncilHer Majesty in right of Ontario given under Section 11(2).

Article 3 – Transition Charges

(1) **RetailRegulated Consumer Obligation to Pay a Transition Charge** – Each RetailRegulated Consumer shall pay each Transition Charge charged to it in any Electricity Invoice issued to such RetailRegulated Consumer by its Electricity Distributor or by an Alternative Servicer under Section 4(1), in each case on the terms of payment specified in the related Electricity Invoice.

(2) **Indebtedness of RetailRegulated Consumers** – Until paid, a Transition Charge charged to a RetailRegulated Consumer in an Electricity Invoice shall, together with any applicable late payment fees and finance charges arising under the terms of the Electricity Invoice with respect to such Transition Charge, constitute non-bypassable indebtedness of the RetailRegulated Consumer to the Regulatory Asset Owners, each with respect to its respective interest in the Regulatory Asset. Such indebtedness shall constitute a single and separate[86] debt obligation owing by the RetailRegulated Consumer, which subject to Article 5 may be enforced independently from any other payment obligation or indebtedness owing by the RetailRegulated Consumer under the Electricity Invoice or otherwise.[97]

(3) **No Set-Off or Reduction** – A RetailRegulated Consumer may not set-off or reduce (by counterclaim, defense or otherwise) the amount payable by it in respect of any Transition Charge, including any set-off against or in respect of any amount owing or becoming payable to such RetailRegulated Consumer by its Electricity Distributor, any Regulatory Asset Owner or any other person.

(4) **Allocation of RetailRegulated Consumer Payments** – If an Electricity Distributor receives a payment made by or on behalf of a RetailRegulated Consumer in respect of amounts due and payable under one or more Electricity Invoices that is less than the total amount payable thereunder, such payment shall be allocated on a *pro rata* basis to the payment of related Transition Charges and other invoiced amounts and the amount so allocated as a payment of related Transition Charges shall be deemed to constitute a Transition Charge Collectionsubject to rights and benefits that are no less favourable than the treatment accorded to other amounts payable to the IESO by the Electricity Distributor.

(5) **Transition Charges are Irrevocable** – The Transition Charges arising under or in respect of Funding Obligations incurred under the Financing Plan (including any

[86] Determine if this is critical for rating and markets. Logistics under consideration.

[97] Torys has also suggested that deemed conditions of licenses for distributors, retailers and unit sub-metering providers, could be included as conditions, to require them to collect and remit amounts in accordance with this legislation. Consider if it is helpful to integrate the existing regulatory scheme for invoicing and collections (regarding RPP) in the legislation.

adjustments based on modifications to such Funding Obligations made in compliance with the Financing Plan or as a result of amendments to the Financing Plan made in accordance with Section 9(3)) are deemed to be irrevocable, final and effective without any further action, except to the extent of manifest calculation error. For greater certainty, a Transition Charge may include Finance Amounts for a Reference Period regardless of whether or not the payment of such Finance Amounts are inconsistent with the Fair Allocation Plan applicable at the time such payments are due and payable, and regardless of whether or not the related Funding Obligation was properly incurred under the Financing Plan. In no case shall a Funding Obligation incurred under the Financing Plan be affected by a subsequent amendment to the Fair Allocation Plan.

(6) True-Up of Transition Charges? – [NTD: Include specifics regarding the true-up of the charges and the process for the true-up, but move to Regulations. The True-Up Mechanism should require the Transition Charges to be reviewed and adjusted semi-annually to ensure the expected recovery of amounts sufficient to timely provide all payments in respect of Funding Obligations, provided that in some cases it may need to be adjusted more frequently than semi-annually, e.g., as part of a refinancing.]

(7) Commencement of Invoicing and Collection of Transition Charges – [NTD: Please confirm that as drafted, Transition Charges will begin on the Measurement Date.]

Article 4 – Invoicing of Transition Charges [NTD: Move Article 4 sections (1) to (4) to Regulations. Also note, these sections remain subject to further due diligence by the Dealers.]

(1) **Inclusion of Transition Charges in Electricity Invoices** – Each Electricity Distributor and if applicable any Alternative Servicer shall, as an agent of the Regulatory Asset Owners, specify the Transition Charge to be charged to a ~~Retail~~Regulated Consumer pursuant to Section 4(4) in respect of a related Reference Period in each Electricity Invoice issued by the Electricity Distributor or if applicable by the Alternative Servicer to the ~~Retail~~Regulated Consumer in respect of such Reference Period. Upon the inclusion of a Transition Charge in an Electricity Invoice, the obligation to pay such amount shall be binding on the applicable ~~Retail Consumer.~~Regulated Consumer. [NTD: Must capture bills issued to eligible consumers served by unit sub-metering providers, retailers and the IESO – not just distributors][NTD: This provision also needs to address the inclusion of Transition Charges in invoices from the IESO to the LDC, consistent with the current process of how the IESO bills LDCs.]

(2) **Calculation of the Period ~~Transition~~Finance Charge** – Not later than [35] days prior to the first day of a Reference Period, each Absolute Assignee (or the Financial Services ~~Agent~~Manager on its behalf) shall provide the OEB with written notice of each Estimate of a Finance Amount payable by it or on its behalf in respect of the Reference Period. ~~[35] days prior to the first day of a Reference Period, IESO or Successor IESO if applicable shall specify the IESO Retained Interest Amount and any IESO Financing Costs that are due and payable and remain unpaid on such day.~~ Not later than one month prior to the first day of a Reference Period, ~~the OEB~~each Absolute Assignee (or the Financial Services Manager on its behalf) shall calculate the Period ~~Transition~~Finance Charge applicable to the Reference Period ~~based on the calculations and information set forth in such written notices received from the Absolute Assignees~~

and based onhaving regard to such amounts specified by IESO or Successor IESOthe Servicer, which calculations, information and amounts shall be accepted by the OEB and shall be determinative, except to the extent of manifest calculation error or misstatement.

(3) **Calculation and Attribution of Transition Charges** – Not later than 25 days prior to the first day of a Reference Period, the OEB shall apply the Attribution Methodology to determine the Allocation Factorallocation of the Transition Charge for each RetailRegulated Consumer of the applicable Retail Consumer Group. **[NTD: We think the OEB would be determining the Fair Hydro recovery rate (on a volumetric basis) that distributors would then be required to charge to consumers]**

(4) **Notice of Transition Charges** – Not later than 20 days prior to the first day of a Reference Period, the OEB shall inform each Electricity Distributor and if applicable any Alternative Servicer of the Transition Charges to be specified in the Electricity Invoices to be issued to each RetailRegulated Consumer of the applicable Retail Consumer Group who has a billing address inwho is served by the Electricity Distributor's Service Area.

(5) **Adjustments** – The amount of any Transition Charge charged to a RetailRegulated Consumer and specified as such in an Electricity Invoice shall be determinative of the amount of indebtedness created thereby and owing in respect of such Transition Charge, except to the extent of any manifest calculation error.

(6) **Successors of Electricity Distributors** – Any successor of an Electricity Distributor shall be bound by the requirements of Article 4 and shall perform and satisfy all duties and obligations of such Electricity Distributor under Article 4 in the same manner and to the same extent as such Electricity Distributor, including the obligation under Article 4 to impose, attribute, charge, bill and invoice the Transition Charges.

(7) **IESO Successor** – Any IESO Successor shall be bound by the requirements of Article 4 and shall perform and satisfy all duties and obligations of IESO under Article 4 in the same manner and to the same extent as IESO, including the obligation to calculate and provide notice of Transition Charges.

(8) **Appointment of an Alternative Servicer** – If a Replacement Event occurs in respect of any Electricity Distributor, the Absolute Assignees shall, in accordance with the Collective Rights Agreement, be permitted, by an instrument in writing, to appoint an Alternative Servicer to perform some or all of the obligations and duties required to be undertaken by such Electricity Distributor under this Article 4, as and to the extent specified in such appointment. Upon acceptance of such appointment, the Alternative Servicer shall become obligated to perform such assumed obligations in replacement of such Electricity Distributor. Any Electricity Distributor that is replaced under this Section 4(8) shall promptly transfer all rights, powers, privileges and property interests in its possession or within its control in the performance of such obligations and duties to the Alternative Servicer and shall take such further actions, including the execution of instruments, necessary to give full and final effect to such transfer and to permit the Alternative Servicer to perform such obligations and duties on behalf of the Regulatory Asset Owners. **[NTD: We would expect the IESO to manage this in accordance with its normal business practices.]**

(9) Absolute Assignees have Standing – The Absolute Assignees, acting together in accordance with the Collective Action Agreement, may bring actions against any Electricity Distributor, IESO, the Servicer, Alternative Servicer or any other person who may be authorized to issue Electricity Invoices to ~~Retail~~**Regulated** Consumers for a failure to impose, attribute, charge, bill or invoice Transition Charges **or to otherwise comply with this Act**. Any court of the Province shall have jurisdiction over any actions brought before it by the Absolute Assignees in relation to any such failure~~.~~ **and may make any interim or final order it thinks fit in this regard. [NTD: We would like to see the sections on "Standing" to bring an action to remain in the legislation (as opposed to being moved to the regulations as we believe we previously suggested) as we see those provisions as part of ensuring a rigorous enforcement scheme for the Financing Entity (and so something that should be difficult for the Province to change going forward).]**

(10) No Set-Off or Reduction – No Servicer or Electricity Distributor may set off or reduce (by counterclaim, defence or otherwise) the amount payable by it pursuant to this Article 4.

(11) Regulations – Regulations may be enacted for the purpose of specifying further rights, powers, privileges, duties and obligations that shall apply to IESO, any Electricity Distributor or any Alternative Servicer to ensure that Transition Charges are properly charged to ~~Retail~~**Regulated** Consumers and specified as such in Electricity Invoices.

Article 5 – Collections and Remittances [NTD: Move Article 5 sections (3), (6), (9), (12), (13) and (14) to Regulations.]

(1) **Duty to Collect as Agent** – Electricity Distributors or if applicable any Alternative Collection Agent shall, as an agent of the ~~Regulatory Asset Owners, undertake [diligent][reasonable][10] efforts to~~**Servicer,** collect amounts owing by ~~Retail~~**Regulated** Consumers in respect of Transition Charges charged to such ~~Retail~~**Regulated** Consumers in Electricity Invoices issued by the Electricity Distributor or if applicable such Alternative Collection Agent~~.~~ **all in accordance with the Regulations. [NTD: The obligation to collect and remit the Transition Charge should be included as a deemed condition of license for electricity distributors (and retailers and unit sub-metering providers).]**

(2) **Segregation of Transition Charge Collections** – An Electricity Distributor or if applicable any Alternative Collection Agent shall promptly segregate Transition Charge Collections from other payments received by it from ~~Retail~~**Regulated** Consumers and deposit such Transition Charge Collections into its Regulatory Asset Account.[11][8] **[NTD: Determine if this is critical for rating and markets or if segregation can occur in the hands of the IESO]** Prior to and following a deposit of Transition Charge Collections having been made into its Regulatory Asset Account, the Electricity Distributor or if applicable any Alternative Collection Agent shall hold such amounts in trust for the Regulatory Asset Owners **or its Pledgee**.

(3) **Electricity Distributor Remittances** – On each applicable Remittance Date, an Electricity Distributor shall remit all **amounts invoiced by the IESO on account of the**

[10] ~~Mirror collection "standard of care" under applicable legislation.~~

[11][8] Consider trying to attach to existing LDC credit enhancements and provide parallel coverage for customer losses.

Transition Charge ~~Collections received by it from Retail Consumers~~ in respect of the related Reference Period to or to the account of ~~IESO~~**Servicer** or if applicable the Alternative Collection Agent. **[NTD: It is the Dealers expectation that the Transition Charge will be paid on the same basis as other amounts invoiced by the IESO, failing which, they will need to be remitted daily.]**

(4) **Duty to Collect Electricity Distributor Remittances** – ~~IESO~~**Servicer** or if applicable any Alternative ~~Collection Agent~~**Servicer** shall, as an agent of the Regulatory Asset Owners, ~~undertake [diligent][reasonable] efforts to~~ accept and collect Electricity Distributor Remittances from Electricity Distributors and Transition Charge Collections from ~~Retail~~**Regulated** Consumers that pay their Electricity Invoices directly to IESO~~.~~[12] **on the same basis as it accepts and collects other charges from such Regulated Consumers.**[9]

(5) **Segregation of Electricity Distributor Remittances** – ~~IESO~~**Servicer** and if applicable the Alternative Collection Agent shall promptly segregate Electricity Distributor Remittances from other payments received or held by it and deposit such Electricity Distributor Remittances into its Regulatory Asset Account. Prior to and following a deposit of Electricity Distributor Remittances having been made into its Regulatory Asset Account, ~~IESO~~**Servicer** or if applicable any Alternative Collection Agent shall hold such amounts in trust for the Regulatory Asset Owners **or Pledgee**.

(6) ~~**IESO**~~**Servicer Remittances** – On each Settlement Date[13]10, ~~IESO and if applicable the Alternative Collection Agent~~**Servicer** shall remit all amounts on deposit in its Regulatory Asset Account ~~(a) first,~~ to or to the account of the Absolute Assignees an amount equal to the Investment Remittance for the related month ~~and (b) second, to IESO (including by IESO retaining such amount) an amount equal to the lesser of (i) the Maximum IESO Recovery for the related month and (ii) the IESO Retained Interest Amount as of the Settlement Date~~.

(7) **Successors of Electricity Distributors** – Any successor of an Electricity Distributor shall be bound by the requirements of Article 5 and shall perform and satisfy all duties and obligations of such Electricity Distributor under Article 5 in the same manner and to the same extent as such Electricity Distributor, including the obligation under Article 5 to collect Transition Charges and make remittances of Electricity Distributor Remittances.

(8) **IESO** ~~**Successor**~~**Successors** – IESO ~~Successor~~**Successors** shall be bound by the requirements of Article 5 and shall perform and satisfy all duties and obligations of IESO under Article 5 in the same manner and to the same extent as IESO, including the obligation to collect Transition Charge Collections, Electricity Distributor Remittances and to remit IESO Remittances.

(9) **Owners of Distribution Assets** - If any person other than an Electricity Distributor acquires distribution system assets in the Province or invoices or collects electricity distribution rates in the Province[14]11, then such person shall, if requested by the Absolute Assignees, be obligated to act diligently to (a) facilitate the invoicing and collection of any Transition Charges applicable to ~~Retail~~**Regulated** Consumers ~~in its~~

[12]9 Consider building this obligation into a deemed condition of licence for the IESO.
[13]10 Consider frequency of remittances in light of rating requirements. US rating agencies favour daily remittances.
[14]11 This is in anticipation of a possible future restructuring of the distribution system.

applicable service area, including all consumers connected to the electricitysuch person's distribution system assets and taking electric delivery service located within such service area; (b) allocate partial payments by RetailRegulated Consumers as provided in this Act; (c) exercise all enforcement rights of the Absolute Assignees for the benefit of an Absolute Assignee; and (d) remit any Transition Charge Collections to the Absolute Assignees or Pledgees, as applicable, each in accordance with its Investment Interest. [NTD: Such acquisition of a distribution system would require the person to be an electricity distributor; consider deleting since this is covered off by Section 5(7).]

(10) **Absolute Assignees have Standing** – The Absolute Assignees, acting together in accordance with the Collective Action Agreement, may bring actions against any Electricity Distributor, IESOServicer, the Alternative Collection Agent, any owner of electricity distribution system assets in the Province or any other person who may be authorized to collect electricity distribution and use charges from RetailRegulated Consumers for a failure to collect Transition Charges, remit or collect Electricity Distributor Remittances or remit IESO Remittances, as and to the extent applicable under Article 5.5, or to otherwise comply with this Act. Any court of the Province shall have jurisdiction over any actions brought before it by the Absolute Assignees in relation to any such failure and may make any interim or final order it thinks fit in this regard.

(11) **Appointment of an Alternative Collection Agent –** If a Replacement Event occurs in respect of any Electricity Distributor or IESO, the Absolute Assignees shall, in accordance with the Collective Rights Agreement, be permitted, by an instrument in writing, to appoint an Alternative Collection Agent to perform some or all of the collection, segregation and remittance obligations otherwise required to be undertaken by such Electricity Distributor or IESO, as applicable, under Article 5, as and to the extent specified in such appointment. Upon acceptance of such appointment, the Alternative Collection Agent shall become obligated to perform such assumed obligations in replacement of such Electricity Distributor or IESO, as applicable. Any Electricity Distributor or IESO, as applicable, that is replaced under this Section 5(11) shall promptly transfer all rights, powers, privileges and property interests in its possession or within its control in, to and over the Regulatory Asset, including its Regulatory Asset Account, to the Alternative Collection Agent and shall take such further actions, including the execution of instruments, necessary to give full and final effect to such transfer and to permit the Alternative Collection Agent to enforce the Regulatory Asset on behalf of the Absolute Assignees.Not Used. [NTD: The Servicer should manage this process.]

(12) **No Set-off, etc.** - The Regulatory Asset, including rights in Transition Charges, Transition Charge Collections, and the interests of a Regulatory Asset Owner, an Absolute Assignee and a Pledgee therein, may not be setoff or reduced (including by counterclaim, surcharge or defense) by any RetailRegulated Consumer, any Electricity Distributor, IESOServicer, Alternative Collection Agent or any owner of distribution system assets in the Province or any other person or in connection with any default, bankruptcy, reorganization or other insolvency proceeding of any Electricity Distributor,

~~IESO~~Servicer, Alternative Collection Agent or any owner of distribution system assets in the Province, any affiliate or successor thereof or any other entity or otherwise.[~~15~~12]

(13) **Sequestration** – If any Electricity Distributor, ~~IESO~~Servicer, the Alternative Collection Agent or any owner of distribution system assets in the Province or any other person or entity authorized to collect Transition Charges, defaults on any required remittance of Transition Charge Collections, Electricity Distribution Remittances or IESO Remittances under Article 5, any court in the Province, upon application by and of the Absolute Assignees acting collectively under the Collective Action Agreement and without limiting any other remedies otherwise available to the Absolute Assignees or Pledgees, shall order the sequestration and payment of the Transition Charge Collections, Electricity Distribution Remittances and IESO Remittances, as applicable, for the benefit of the Absolute Assignees, each with respect to its Investment Interest, and the Pledgees as applicable.[~~16~~13]

[NTD: Suggest considering a more typical remedy such as the ability to appoint a receiver. Concept should be moved to Regulations.]

(14) Regulations – Regulations may be enacted for the purpose of specifying further rights, powers, privileges, duties and obligations that shall apply to ~~IESO~~Servicer, any Electricity Distributor or any Alternative Collection Agent to ensure that rights, interests, entitlements, benefits and proceeds in, to, under and from the Regulatory Asset are of fully realized by some or all of the Absolute Assignees and Pledgees.

Article 6 – The Regulatory Asset

[NTD: We believe that the statute should impose a time limit on the ability of IESO to create additional Regulatory Assets under this Act. It is our expectation that this will be no later than 10 years after the commencement of the program.]

[NTD: In addition, additional language is required to address the acquisition of the Regulatory Asset by the Financing Entity, including reference to the consideration being provided for it, funding upfront costs.]

[NTD: The sale of Regulatory Assets must be restricted to Financing Entities controlled by a single entity (initially, OPG).]

[NTD: For greater certainty, a Financing Entity will not be required to purchase Regulatory Assets from IESO.]

(1) **Composition** – The Regulatory Asset shall constitute a current and irrevocable property right and interest consisting, collectively, of the following rights and interests (without duplication):

[~~15~~12] Consider whether it makes sense to create a "deemed collection" payment obligation on Electricity Distributors to the extent a ~~Retail~~Regulated Consumer reduces its payment of Transition Charges, despite this language. Same for Electricity Distributor Remittances and IESO Remittances.

[~~16~~13] Consider adding or substituting this provision for a right to appoint a receiver.

a. the right of ~~IESO (i)~~**a Regulatory Asset Owner** to record its ~~IESO Retained Interest in its accounts in accordance with Section 8(1), having a stated amount from time to time equal to the IESO Retained Interest Amount; and (ii) to receive IESO Recoveries from time to time in accordance with Section 5(6)(b)~~**portion of the Regulatory Asset in its accounts**;

b. the right to impose, bill, invoice, collect and receive Transition Charges from ~~Retail~~**Regulated** Consumers, including the right to determine the amount of Transition Charges in accordance with this Act;

c. the right to enforce the obligations and indebtedness of each ~~Retail~~**Regulated** Consumer to pay the Transition Charges charged to the ~~Retail~~**Regulated** Consumer from time to time in accordance with Article 3, together with all related late payment fees or interest charges arising in respect thereof under the related Electricity Invoices; **[NTD: Do we really want and need the ability for the Financing Entities to chase after individual consumers?] [NTD: This should be the right to provide notices to the OEB of the amounts required for recovery, which the OEB would then be required to accept for purposes of determining the amount of Transition Charges to be charged to consumers]**

d. the right to enforce the duties and obligations of each Electricity Distributor and if applicable the Alternative Servicer to impose, attribute, charge, bill and invoice the Transition Charges in accordance with Article 4;

e. the right to enforce the duties and obligations of each Electricity Distributor and if applicable the Alternative Collection Agent to collect, receive and remit amounts received by it in respect of Transition Charges as Electricity Distributor Remittances to or to the account of ~~IESO~~**Servicer** or if applicable the Alternative Collection Agent in accordance with Article 5, including all collections and the proceeds of any enforcement action undertaken by the Electricity Distributor or if applicable the Alternative Collection Agent to recover payment of Transition Charges in accordance with Article 5;

f. the right to enforce the duties and obligations of ~~IESO~~**Servicer** and if applicable the Alternative Collection Agent to collect and receive Electricity Distributor Remittances and to remit IESO Remittances to or to the accounts of the Regulatory Asset Owners, each with respect to its respective interest in the Regulatory Asset, in each case in accordance with Article 5, including all collections and the proceeds of any enforcement action undertaken by it to recover payment of Electricity Distributor Remittances in accordance with Article 5;

g. the right to receive and collect all Transition Charge Collections, all Electricity Distributor Remittances and all IESO Remittances in accordance with Article 5;

h. all rights and entitlements under each Regulatory Asset Account and all amounts on deposit in any such Regulatory Asset Account;

i. all Related Rights; and

j. all revenue, collections, claims, payments, money and proceeds of or derived from the rights described in (a) through (i), regardless of whether such revenue, collections, claims, payments and proceeds are imposed, invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

A Regulatory Asset and the property rights and interests therein shall exist whether or not Transition Charges have been imposed, charged, invoiced, accrued or collected and notwithstanding that the imposition, attribution, invoicing and collection of Transition Charges will depend on further actions that may not have occurred. **The Regulatory Asset shall continue to exist until all Funding Obligations and Additional Funding Charges have been paid in full.**

(2) **Validity of Dispositions** – ~~Despite any limitations or restrictions on a Disposition that may arise by contract or by operation of any applicable law of the Province or any consent requirement applicable to a Disposition that may arise by operation of any applicable law of the Province, a~~**A** Disposition by IESO **of all or any part of the IESO Funding Shortfall** to an Absolute Assignee ~~made under the Financing Plan~~, or **a Disposition of all or any part of an Investment Interest** by one Absolute Assignee to another Absolute Assignee made under the Financing Plan, shall be permitted and when made shall be valid and enforceable in accordance with the terms of the related Disposition Document and shall be effective to confer upon the Absolute Assignee thereof a valid property right and interest in, to and under the ~~applicable~~**IESO Funding Shortfall or** Investment Interest**, as applicable** (or relevant portion thereof) in accordance with the terms of such Disposition, provided that the parties to the applicable Disposition Document have expressly stated therein that such Disposition is a sale or other absolute transfer. Without limiting the foregoing, any Disposition that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as a true sale and absolute transfer of the ~~Regulatory Asset Owner's applicable~~**IESO Funding Shortfall or an Absolute Assignee's** right, title~~,~~ and interest in, to and under ~~the Regulatory Asset~~**an Investment Interest, as applicable** (or relevant portion thereof), and not merely as a Pledge thereof, and upon such Disposition the assigner or seller under the applicable Disposition Document shall retain no right, title or interest in the **IESO Funding Shortfall or** Investment Interest **(or relevant portion thereof)** subject to the Disposition, including all rights under the **IESO Funding Shortfall or** Investment Interest arising after such Disposition. **[NTD: Subject to review by Osler/dealers.]**

(3) **Perfection and Priority of Dispositions** – Any Disposition of an interest in a Regulatory Asset shall be vested, valid, binding and perfected from the time when such Disposition is made. Such Disposition shall be perfected, vested, valid and binding as against the **IESO or** transferring Regulatory Asset Owner**, as applicable,** and all other persons who have claims of any kind (whether in tort, contract or otherwise) against **IESO or** the transferring Regulatory Asset Owner, **as the case may be,** irrespective of whether such persons have notice of the Disposition and the property rights and interests acquired by the Absolute Assignee under such Disposition shall be free and clear of any liens in favour of such other persons.

(4) **Validity of Pledges** – ~~Despite any limitations or restriction on a Pledge that may arise by contract or by operation of any applicable law of the Province or any consent~~

~~requirement applicable to a Pledge that may arise by operation of any applicable law of the Province, a~~**A** Pledge by an Absolute Assignee may be made to secure any ~~related~~ Funding Obligation and when made shall be valid and enforceable in accordance with its terms and shall be effective to confer upon the Pledgee a valid security interest in, to and in respect of the related Investment Interest in accordance with the terms of the Pledge. ~~Other than as required by the Financing Plan, no~~**No** consent of**, or notice to,** any person shall be required to give effect to a Pledge made to secure any Funding Obligation.

(5) **Perfection and Priority of Pledges** - For purposes of the *Personal Property Security Act* (the "PPSA"), the Regulatory Asset shall be intangible personal property and any Pledge made by an Absolute Assignee in respect of a Funding Obligation **shall, subject to the terms thereof, give rise to a security interest of which the PPSA applies, and** may be perfected by filing a financing statement under the PPSA on that basis. All proceeds of a related Investment Interest that are subject to such a Pledge that are received by the Absolute Assignee shall immediately be subject to the such Pledge, and the security interest in such proceeds shall be perfected pursuant to the PPSA.~~17~~**14** A Pledge perfected under the PPSA shall be a continuously perfected security interest and shall have priority over any other lien or security interest, created by operation of law or otherwise, that may attach to the property rights and interests in the Investment Interest subject to the Pledge unless the Pledgee has otherwise agreed in writing. ~~Subject to the terms of the Collective Action Agreement, a~~**A** Pledgee shall have a perfected security interest in a related Investment Interest, including the Absolute Assignee's rights and interests in and to Transition Charge Collections or other related proceeds in respect of the Investment Interest and that are deposited in any Regulatory Asset Account or other account of any Electricity Distributor, IESO, Alternative Collection Agent or other person who may have commingled such Transition Charge Collections or such other proceeds with other funds. All provisions of the PPSA shall apply to the Regulatory Asset on the basis that it is intangible personal property, except to the extent otherwise provided in this Section 6(5).

(6) **Enforcement of Property Rights** – The rights of any Regulatory Asset Owner to collect and enforce its rights and interests in, to or in respect of the Regulatory Asset shall be exercised in the manner set forth in Article 5.

(7) **Owners of a Specified Portion of the Regulatory Asset** – A Regulatory Asset Owner may effect a Disposition to an Absolute Assignee of a specified portion of its rights and interests in the Regulatory Asset, including by way of a Disposition of a divided or an undivided interest therein as specified in a related Disposition Document~~, in each case under the Financing Plan~~. In no circumstance may the specified portions of the rights and interests in the Regulatory Asset owned by all Regulatory Asset Owners be greater than all of the rights and interests that comprise the Regulatory Asset in the aggregate.

(8) **Collective Action Required** – If a Regulatory Asset Owner's rights and interests in the Regulatory Asset comprises less than the entire property right and interest constituted by the Regulatory Asset, such Regulatory Asset Owner shall only enforce such right and interest on a collective and coordinated basis with each other Regulatory Asset Owner in accordance with the Collective Rights Agreement. **[NTD: Move to Regulations.]**

~~17~~**14** Consider whether to simply leave this and have a financing statement be filed under the PPSA. This would normalize the security interest and reduce any adverse suggestion that security would not otherwise arise.

Article 7 – Establishment of the Fair Allocation Plan[1815] **[NTD: Move entire Article 7 to Regulations, other than 7(1) and 7(2).]**

(1) **Adoption of the Fair Allocation Plan** – The Delegate may, [by written declaration,] designate and adopt a Fair Allocation Plan in compliance with Article 7. The Fair Allocation Plan so designated and adopted shall be the Fair Allocation Plan for all purposes of this Act, except if amended, amended and restated or terminated by a further written declaration made by the Delegate in compliance with Section 7(4).**[the Regulations]**

(2) **Principles and Parameters** – A Fair Allocation Plan shall seek to allocate Future Fair Share of Green Transition Benefits across present and future Retail Consumer Groups**Regulated Consumers** on a basis that the Delegate, in its sole and absolute discretion, determines to be equitable, having regard to the following principles and parameters:

[NTD: E&Y will need to see the guidelines of the Fair Allocation Plan set in reference to parameters that will allow it to establish a modeling curve]

- **[Inflation period: (between November 2017 – and April 2022) bill increases need to be capped at inflation (assumed at 2% for modeling purposes)]**
- **[Transition Period: (May 2022- April 2027) bills increased at a consistent rate which is set so that the borrowing will not exceed the Trust's capacity, which is determined by the Finance Service Manager]**
- **[Amortization Period: (May 2027-April 2047) equitable distribution of Finance Amount among Regulated Consumers]**

1. Future Fair Share of Green Transition Benefits should be allocated over the period ending on the Program End Date.

2. <*The Fair Allocation Plan should specify the Reference Periods for the purpose of* >identifying applicable Retail Consumer Groups and <*allocating Future Fair Share of Green Transition Benefits among* >them< *on a relative basis over time.* >

2. 3. The share of Future Fair Share of Green Transition Benefits allocable to a particular Retail**Regulated** Consumer Group in respect of a Reference Period should be proportionate to a reasonable assessment of the benefits of the Green Generation Initiative to the Retail**such Regulated** Consumer Group over such Reference Period**, other than**> *in exceptional circumstances*<**.**

[1815] The idea is that the Fair Allocation Plan will be set once at the outset based on the principles and parameters described here, all as applied based on information available and the reasonable expectations and discretion of the delegate at such time. If the expectations are not fulfilled (e.g., generators may choose to retire their facilities at the end of their current procurement contracts and not invest in extending service lives to secure further procurement contracts), the Fair Allocation Plan will be unaffected, unless it is specifically amended (assuming amendments will be permitted by the legislation).

4. The share of Future Fair Share of Green Transition Benefits to be allocated to a Retail Consumer Group and any future Retail Consumer Group at a particular time should not exceed the Estimated Future Green Transition Benefits, measured in respect of the Reference Periods following such particular time and to the Program End Date.

5. No future Retail Consumer Group should be allocated an unreasonably disproportionate share of Estimated Future Green Transition Benefits. Except<- *in exceptional circumstances*> or in the case of any reallocation of an Over-Assessed Amount as contemplated in 7, below, the Future Fair Share of Green Transition Benefits to be allocated under a Fair Allocation Plan to any future Retail Consumer Group should have regard to *[Insert formula if a year-over-year maximum amount is determined to be appropriate].*

3. 6. The time value of money should be reflected in the Fair Allocation Plan, in order to equate the relative values of the nominal allocations of Future Fair Share of Green Transition Benefits, calculated in current dollars, to future Retail Consumer Groups over time.>*The Fair Allocation Plan should specify the Reference Periods for the purpose of* <>*allocating Future Fair Share of Green Transition Benefits among* <**Regulated Consumers**> *on a relative basis over time.* <

7. To the extent there has been an Over-Assessed Amount, the Fair Allocation Plan may determine that an adjustment should fairly be made to rebate Retail Consumers for such an amount, by reducing the costs otherwise attributable under the Act to such Retail Consumers. The relative costs of the Green Generation Initiative are reflected under the Act by the attribution of Transition Charges to such Consumer Groups, based on the Financing Plan seeking to track the allocations of benefits under the Fair Allocation Plan. Accordingly, the Maximum Transition Charge Amount determined for one or more Retail Consumer Groups having regard to the Fair Allocation Plan otherwise applicable may be appropriately reduced to recognize the effect of the Over-Assessed Amount. In such a case, a determination to reduce the Maximum Transition Charge Amount applicable for certain related Reference Periods should have regard to the principle that the corresponding rebate should be extended to benefit the Consumer Group or Consumer Groups in closest proximity to the Legislative Implementation Date.

(3) Attribution Methodology – The Fair Allocation Plan shall specify the Attribution Methodology for the purposes of allocating the Period Transition**Finance** Charges across the Retail**Regulated** Consumers of a particular Retail Consumer Group. The Attribution Methodology shall result in an attribution of such Transition Charges that is considered by the Delegate to be equitable, and may have regard to such principles and parameters as may be further set forth in a Regulation.; **provided that**> *the Attribution Methodology* <**shall not be used to limit the recovery of Transition Charges. [NTD: Can the methodology be adjusted outside an amendment? If so, the rating agencies need to understand the limits of any adjustment.]**

(4) Amendments of the Fair Allocation Plan – The Fair Allocation Plan may be amended, amended and restated or terminated by the Delegate, provided that such amendment, amendment and restatement or termination shall (a) not be inconsistent with the principles and parameters set forth in (2) or (3), above, or the Regulation ~~and~~, (b) comply with any restrictions or limitations specified with respect thereto in any Funding Obligation~~.~~**, and (c) not impair any Regulatory Asset, outstanding Funding Obligation or any Transition Charges. [NTD: If the Fair Allocation Plan is amended, there should be no further Regulatory Assets until the revised Fair Allocation Plan and corresponding Financing Plan have been approved.]**

Article 8 – The IESO ~~Retained Interest~~Funding Shortfall

(1) ~~Maintain Books of Account~~ ~~– IESO may maintain books of account to record the IESO Retained Interest Amount and all adjustments thereto from time to time. Such books of account shall be determinative with respect to the amount of IESO's related regulatory asset.~~**Recording of IESO Funding Shortfall -- IESO will record any IESO Funding Shortfall in its books.**

~~**(2) Limitation on Additions** – IESO shall not record additions to the IESO Retained Interest Amount in respect of IESO Funding Shortfalls (a) if such additions are restricted by the terms of any Disposition Document or the Collective Action Agreement, or (b) on or after •, 2017.~~

(2) ~~**(3)**~~ **Dispositions** – IESO may effect a Disposition **of all or any part of the IESO Funding Shortfall** to an Absolute Assignee if (a) the ~~Absolute Assignee has or will concurrently become bound by the Collective Rights Agreement; (b) the~~ Disposition is effected pursuant to a Disposition Agreement duly executed by IESO; **and** (~~c~~**b**) the Financial Services ~~Agent~~**Manager** confirms in writing that the Disposition **complies with any restrictions or limitations specified with respect thereto in any documents evidencing the Funding Obligations and** is permitted under the Financing Plan~~; and (d) the net proceeds payable to IESO from the sale of the related Investment Interest would not exceed the IESO Retained Interest Amount immediately before the time of such Disposition~~.

(3) ~~**(4)**~~ **No Continuing Interest in any Investment Interest** – IESO shall have no continuing right or interest in any ~~Investment Interest~~**IESO Funding Shortfall** subject to a Disposition effected by IESO under a Disposition Document to which IESO is a party~~and IESO shall not assert any such right or interest or take or omit to take any action to exercise or enforce its rights or interests under the IESO Retained Interest if such action or omission would impede or obstruct the rights of any Absolute Assignee or a Pledgee to enforce its rights and interests in any Investment Interest, except if IESO is expressly permitted to take or omit to take such action, respectively, under the related Disposition Document or the Collective Rights Agreement.~~

~~**(5) IESO Financing Costs** – IESO shall be entitled in good faith to incur reasonable financing costs (including interest and other reasonable financing charges) reflecting market terms and conditions and which are payable in arrears, in order to finance its ownership of the IESO Retained Interest from time to time. **(6) IESO Recoveries** –~~

IESO shall, in respect of a month, be entitled to receive from IESO Remittances on a related Settlement Date the amount (if any) available to IESO under Section 5(6)(b).

Article 9 – The Financing Plan [NTD: Move all of Article 9 to Regulations other than 9(1).]

(1) Power to Prepare, Implement and Amend the Financing Plan – The Financial Services AgentManager shall be authorized to prepare, implement and amend a financing plan for the Financing Entities> *and propose the adoption*< of such financing plan as the Financing Plan. If the Financial Services Agent is unwilling or unable to prepare< *and propose the adoption*> of the Financing Plan, the Delegate may by written declaration designate one or more other persons who shall be authorized to prepare, implement and amend the Financing Plan for the purposes of this Act. The Financial Services Manager shall have the right to withdraw its financing plan as the Financing Plan at any time if it determines that implementing the Financing Plan in such manner would not be in the best interests of a Financing Entity.

(2) TermsPrinciples and ConditionsParameters of the Financing Plan – The Financing Plan shall establish the basis for each Absolute Assignee's funding decisions. The Financing Plan shall have having regard to the principles and parameters set forth in Schedule 3 and such other conditions and requirements as may be specified in a written declaration of the Delegate or in accordance with the Regulation.3.

(3) OEB Approval – Any Additional Funding Charge payable to or for the benefit of the Financial Services AgentManager in respect of services provided by the Financial Services Manager (other than third party costs) shall be subject to review and approval by the OEB.

(4) OEB Review of Financing Plan – The [OEB] [shall] undertake an annual review of the records maintained by the Financial Services AgentManager for the purpose of confirming that the Funding Obligations incurred and the Finance Amounts paid by or on behalf of the Absolute Assignees were incurred and paid, respectively, in material conformity with the Financing Plan. [NTD: We would prefer that this be dealt with by an attestation prepared by an officer of the Financial Services Manager.]

(5) Replacement of the Administrative AgentFinancial Services Manager – If the OEB identifies deficiencies or makes recommendations in its review under Section 9(4), the Administrative AgentFinancial Services Manager shall take reasonable measures to remedy such deficiencies if remediable, and shall in any event have regard to the recommendations of the OEB in relation to further actions undertaken by the Financial Services AgentManager under the Financing Plan. If the Financial Services AgentManager is unwilling or unable to reflect such recommendations in relation to such further actions, the Delegate may by written declaration designate one or more other persons who shall thereafter become the Financial Services. Manager. Any replacement must comply with the restrictions and limitations specified in the documents evidencing the Funding Obligations.

(6) Obligation to Apply IESO Remittances – The Financial Services AgentManager shall ensure that amounts transferred to it under Article 5, as agent for and on behalf of the Absolute Assignees, or otherwise in respect of or as proceeds from an applicable Investment Interest shall only be applied or used to pay related Finance Amounts when

they are due and payable and for no other purpose. **[NTD: This can be dealt with by contract.]**

(7) Non-Recourse – The Financing Plan shall be implemented so that Funding Obligations incurred shall be without recourse to or to any assets of the Electricity Distributors, IESO, any Alternative Servicer, any Alternative Collection Agent, the Financial Services Agent**Manager**, the OEB, the Province or the Lieutenant Governor in Council **or Her Majesty in right of Ontario**, other than if and to the extent that such persons or entities are liable for the performance of obligations or duties arising under this Act or expressly agree to become liable pursuant to any Funding Obligation or obligation in relation to a Finance Amount. [All Funding Obligations shall contain a statement to the following effect: "Neither the full faith and credit nor the taxing power of the Province of Ontario is pledged to the payment of the principal of, or interest on, this [obligation].]

(8) Incurrences are Binding – Notwithstanding anything to the contrary in this Act, each**Each** Disposition made to or by an Absolute Assignee and**,** all amounts payable or becoming due and payable by or on behalf of an Absolute Assignee under or in connection with any obligation purporting to be a Funding Obligation **and each Pledge entered into by an Absolute Assignee**, shall be **valid and** binding for the purposes of this Act, including in determining the amount of related Transition Charges, despite**notwithstanding** any impairment or defect resulting from such failure**defect in the manner in incurrence or any inconsistency with the Fair Allocation Plan or the Financing Plan**.

[Article 10 – Compliance Matters[19][16]

(1) Right of the [OEB] to Inspect Books and Records - For the purpose of investigating compliance with the provisions of this Act, the OEB shall have the right, jurisdiction, power and authority to examine the books and records of *[Insert names if any]*.

(2) [OPG's Rate Settings – When setting other rates for or in respect of OPG, the OEB shall not take into account (a) the administrative or servicing fees charged by OPG as Financial Services Agent**Manager** [in excess of the actual incremental costs incurred by such person of providing administrative or servicing services]; (b) the cost consequences to OPG of being the Financial Services Agent**Manager**; or (c) the consequence of OPG consolidating the assets and liabilities of any Financing Entity for OPG's accounting purposes, in each case in setting any regulated payment amounts for OPG.][20][17]

[19][16] As noted above, the outcome of any regulatory action undertaken by the OEB will not affect Funding Obligations that have been incurred under the Financing Plan. This Article and any potential role for the Auditor General is still under consideration.

[20][17] As an alternative to this provision, consider clarifying under s. 78.1(4) of the OEB Act (which currently gives the OEB discretion in setting payment amounts subject to O. Reg. 53/05) that the OEB in setting OPG payment amounts for prescribed generation shall not consider OPG's role as Administrative Agent**Financial Services Manager** of any Financing Entities associated with the Fair Hydro initiative, perhaps with the exception of any operating fees that may be received by OPG for performing that role.

Article 11 – Undertaking of the ~~Lieutenant Governor in Council~~[21]Her Majesty in right of Ontario[18]

(1) No Action to limit, alter, or impair or terminate Transition Charges, the Regulatory Asset or Collections – ~~The [Lieutenant Governor in Council]~~**Her Majesty in right of Ontario** shall not in any way take or permit **(including by any agency or administrative body)** any action to reduce, impair, postpone or terminate the obligation of ~~Retail~~**Regulated** Consumers to pay Transition Charges or to impair the Regulatory Asset or the collection or recovery of Transition Charge Collections, Electricity Distributor Remittances or IESO Remittances, either directly or indirectly, including through the introduction of any bill or the passing of any legislation or regulation having such effect. The amount of Transition Charges determined under this Act shall not be subject in any way to reduction, impairment, postponement or termination as a result of any action taken or failure by ~~the Lieutenant Governor in Council~~**Her Majesty in right of Ontario (including by any agency or administrative body)**, including through the introduction of any bill or the passing of any legislation or regulation having such effect.

(2) Undertaking and Agreement – ~~The [Lieutenant Governor in Council]~~**Her Majesty in right of Ontario** shall not:

(a) in any way take or permit any action that limits, alters or impairs the value of any Investment Interest;

(b) except as required by the estimates and adjustments made in determining the True-up Amount, reduce, alter or impair Transition Charges that are imposed, billed, invoiced, collected and remitted for the benefit of the Absolute Assignees or any Pledgee from time to time;

(c) permit the amendment, amendment and restatement or termination of the Fair Allocation Plan if such amendment , amendment and restatement or termination would adversely affect the validity or enforceability of any Funding Obligation or the rights of an Absolute Assignee or Pledgee thereunder, **or would not otherwise comply with the restrictions and limitations specified in the documents evidencing the Funding Obligations,**

in each case including through the introduction of any bill or the passing of any legislation or regulation having such effect.

(3) Successor IESO – If IESO is restructured, dissolved or becomes insolvent or is otherwise incapable of performing its obligations under this Act, **an IESO** Successor ~~IESO~~ shall **immediately** be established **by Her Majesty in right of Ontario** to perform such obligations.

~~21~~[18] Under consideration, including the dealers' request for a "servicer guarantee" and a "contractual guarantee" to address a "Change of Law" or if all or a portion of the legislation is *ultra vires*, requiring (at the lenders option), the Province to pay principal and interest on the outstanding debt until maturity or payout the entire debt including any make-wholes. ⊥
In the event of a market disruption that renders it impossible to refinance debt when required (or where financing of amounts required to service the debt is not available because of a market disruption where the Financing Entity was relying on such further issuance of debt until the recovery is set to begin to fund interest), either the Province must step in and payout the debt or there must be the right to recover the debt from ratepayers as it becomes due, notwithstanding the intended rate cut.

(4) Compensation for Failure – Absolute Assignees shall be compensated by Her Majesty in right of Ontario for any losses suffered by them as a result of any failure by ~~the Lieutenant Governor in Council~~Her Majesty in right of Ontario to comply with its undertakings and agreements in this Article 11.~~22~~19

(5) No Wind-up of Financing Entity. No Financing Entity may be voluntarily wound up, liquidated or dissolved until one year after all of its Funding Obligations are repaid. [NTD: This concept can be contained in the Regulations.]

(6) References to the Undertaking and Agreement – Any non-confidential reference to the Undertaking of the ~~Lieutenant Governor in Council~~Her Majesty in right of Ontario, including in marketing materials and other documentation authorized for use by the Administrative in connection with any Funding Obligation, may be made provided that [*Add conditions to protect the Province*].

Article 12 – Regulations

Regulations may be made under this Act for the purposes described in Sections •,•,• and • and may be promulgated for any of the following purposes:

(a) to set standards and measures regarding the commercially reasonable requirements of the Province associated with an Absolute Assignee incurring Funding Obligations or becoming obligated to pay any Finance Amount, including to establish guidelines regarding all-in funding costs; permitted Additional Funding Charges; required maturities and redemption and termination rights of Funding Obligations; liquidity requirements, in each case to a Financing Plan that is consistent in its effect with the Fair Allocation Plan;

(b) to establish and empower one or more regulated entities to undertake decision-making activities with respect to this Act;

(c) to set out reasonable requirements regarding the appointment or retention of advisors, agents, service providers, contract counterparties, including in relation to 'market terms and conditions' parameters;

(d) to provide for audit and compliance standards applicable to those persons who are or may become obligated or have duties that arise under this Act [or under any Funding Obligation];

(e) to provide for any pre-vetting and approval requirements in relation to any incurrence by an Absolute Assignee of any Funding Obligation or obligation to pay any Finance Amount; and

(f) to provide for appeal and due process considerations in connection with the establishment, adoption, implementation and review of the Fair Allocation Plan or the Financing Plan.

Article 13- Miscellaneous~~23~~20

~~22~~19 Requested by ~~Torys~~Dealers. For discussion.

~~23~~20 OPG would like the specific amendments related to OPG to be included in the Bill.]

(1) **Choice of law** – The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the Regulatory Asset, any Transition Charge or the Undertaking of the Province shall be the laws of the Province.

(2) **Conflict of law** – In the event of conflict between this Act and any other law of the Province regarding the attachment, assignment or perfection, or the effect of perfection, or priority of any Disposition or Pledge, this Act shall govern to the extent of the conflict.

(3) **No further acts or approvals required** - Notwithstanding any provisions of any law of the Province to the contrary, no approvals, notices or authorizations other than those specified in this Act shall be required with respect to the actions to be taken in compliance with this Act, including under the Financing Plan or in relation to the establishment of the Fair Allocation Plan, and the transactions and contracts authorized in or contemplated by this Act or the Financing Plan, including the incurrence of any Funding Obligation, any Disposition, any Pledge or in the payment and performance of any attendant or incidental contract and any related expenses incurred to facilitate the preparation and implementation of the Financing Plan.

(4) **Effect of invalidity after the Incurrence of any Funding Obligation** - Effective on the date that a Funding Obligation is incurred under this Act, if any provision of this Act is held to be invalid or is invalidated, superseded, replaced, repealed or expires for any reason, that occurrence shall not affect any action allowed under this Act that is taken by any person who is or may become obligated or have duties that arise under this Act and any such action shall remain in full force and effect.

(5) **Severability** - If any Article, Section, paragraph or subparagraph of this Act or the application thereof to any person, circumstance or transaction is held by a court of competent jurisdiction to be unconstitutional or invalid, the unconstitutionality or invalidity shall not affect the constitutionality or validity of any other Article, Section, paragraph or subparagraph of this act or its application or validity to any person, circumstance or transaction, including the irrevocability of Transition Charges, the validity of the Regulatory Asset, the incurrence of any Funding Obligation, any Disposition, any Pledge, or the collection and recovery of Transition Charge Collections. To these ends, the Legislature hereby declares that the provisions of this Act are intended to be severable and that the Legislature would have enacted this Act even if any Article, Section, paragraph or subparagraph of this Act held to be unconstitutional or invalid had not been included in this Act.

Schedule 1

Guidelines for Estimates

[To be considered.]

Schedule 2

Requirements Applicable to Alternative Invoicing Agent/ Alternative Collection Agent

[To be considered.]

Schedule 3[24]

Principles and Parameters for Establishing the Financing Plan

The following principles and parameters provide a guideline as to what a Financing Plan should address:

~~(1)~~ ~~in respect of each Reference Period, make reference to the allocations of Future Fair Share of Green Transition Benefits to each Reference Group contemplated by the Fair Allocation Plan;~~

~~(2)~~ ~~estimate IESO Funding Shortfalls for each Reference Period;~~

~~(3)~~ ~~consider alternative funding arrangements suitable to fund the estimated IESO Funding Shortfalls, including short term and/or long term Funding Obligations;~~

(1) ~~(9)~~ consider quantities, maturities, payment obligations, prepayment or redemption rights and such other features of Funding Obligations so that payments made for a Reference Period reasonably correspond to the allocations of Future Fair Share of Green Transition Benefits to the applicable Reference Group under the Fair Allocation Plan;

(2) ~~(4)~~ if the anticipated amount of any Repayment (together with payments of other Finance Amounts) to be made in respect of a Reference Period would materially exceed the allocation of the costs and benefits of the Green Generation Initiative to the applicable ~~Retail Consumer Group~~**Regulated Consumers** under the then current Fair Allocation Plan, diligent efforts should be made to determine whether a Refinancing or deferral of such Repayment may be reasonably and cost-effectively effected based on then prevailing market terms, conditions an circumstances;

(3) ~~(5)~~ reflect the assumptions and requirements specified in any contemplated Funding Obligation (e.g., any limit on the maximum amount of Transition Charges charged to a hypothetical ~~Retail~~**Regulated** Consumer relative to his or her monthly electricity bill, as prescribed by any rating agency that ascribes its credit rating to or in respect of the Funding Obligation **[having regard to the application of the ~~Allocation~~Attribution Methodology][NTD: Are the words in square brackets necessary?]**);

(4) require the Financial Services Manager, for and on behalf of each Regulatory Asset Owner, to use diligent efforts to manage Finance Amounts to be borne by Ratepayers;

(5) include a proposal regarding the compensation of the Financial Services Manager that reflects market terms and conditions; and

(6) ~~incur Funding Obligations from time to time on the best terms available at such time for a financing transaction of the size and type contemplated, and having regarding to the following parameters:~~**require that the Financial Services Manager report annually to**

[24] ~~Awaiting input from Torys based on OPG mark-up of Financing Plan sections.~~

the Ministry of Energy on the operation of the Financing Plan including, in particular, with respect to the amount and terms of the Funding Obligations incurred and the sufficiency of such Funding Obligations for the purpose of funding the estimated Funding Shortfalls in accordance with the Fair Allocation Plan.

~~a. whether the Absolute Assignees will require committed access to short term liquidity to cover estimated IESO Funding Shortfalls prior to incurring fixed term Funding Obligations, and the amount and repayment terms of any such required liquidity; provided that any Repayment required to be made under the terms of such short term liquidity would not obligate an Absolute Assignee to repay an amount in relation to a Reference Period that would have the effect of the Financing Plan permitting incurrences of Funding Obligations payable in such Reference Period that would exceed the allocations of Future Fair Share of Green Transition Benefits to the applicable Reference Group under the Fair Allocation Plan;~~

~~b. the basis upon which the Financial Services Agent will select the term to maturity of any other Funding Obligations; provided that any Repayments required to be made under the terms of such Funding Obligations should not obligate an Absolute Assignee to repay an amount in relation to a Reference Period that would have the effect of the Financing Plan permitting incurrences of Funding Obligations payable in such Reference Period that would exceed the allocations of Future Fair Share of Green Transition Benefits to the applicable Reference Group under the Fair Allocation Plan;~~

~~c. the basis upon which the interest rates applicable to such Funding Obligations would be determined;~~

~~d. the reference capital or finance market in which such Funding Obligation would be incurred, including markets outside of Canada if considered by the Financial Services Agent to be appropriate in the circumstances;~~

~~e. the currency of payments under such Funding Obligations and, if the Funding Obligations are denominated in a currency other than Canadian dollars, the basis upon which the Financial Services Agent shall cause the applicable Absolute Assignee to enter into hedging transactions to mitigate currency risk, including acceptable minimum and maximum coverage levels, having regard to the availability of related derivatives having notional amounts corresponding to the repayment and maturity profile of such Funding Obligations;~~

~~f. the basis upon which the Financial Services Agent will select counterparties under any transaction to be entered into by an Absolute Assignee, including any paying agent, servicer, cash manager, liquidity provider, hedge counterparty, account bank, lender, note trustee, security trustee, paying agent, registrar/transfer agent, financial services agent, arranger or manager;~~

~~g. the basis upon which the Financial Services Agent will manage counterparty risk, including by providing for maximum counterparty exposure limits having regard~~

to concentration, credit and other identified risks with respect to individual counterparties or countries;

h. the basis upon which the Financial Services Agent will negotiate and settle Finance Amounts, including the amount of any Redemption Amounts, Finance Reserve Deposits and Additional Funding Charges;

(7) the basis upon which Funding Obligations may be redeemed, prepaid, repurchased or otherwise affected, having regard for the need to minimize debt service charges and other Funding Costs, and the need to maintain a stable funding platform to finance the IESO Funding Shortfalls from time to time on a basis that is consistent with the allocations of Future Fair Share of Green Transition Benefits to applicable Reference Groups under the Fair Allocation Plan;

(8) the basis upon which any Repayments, Funding Costs and Redemption Amounts will be paid, including any defeasance, sinking fund or through other reserves or liquidity facilities;

(9) the basis upon which fees, charges, expenses, costs, indemnities, reimbursements and other amounts payable to or for the benefit of the Financial Services Agent and other agents and service providers to the Absolute Assignees may be determined, allocated and paid;

(10) the timing and basis upon which Finance Reserve Deposits and Finance Reserve Withdrawals may be made;

(11) the basis upon which any obligations for any other Additional Funding Charges may be incurred and paid;

(12) the basis upon which the cash flows arising from time to time or otherwise derived from the Regulatory Asset may otherwise be applied, including in relation to any counterparty enforcement and realization scenario;

(13) the transmittal to [the IESO] of information related to the amounts to be included in the determination of the Period Transition Charge for a Reference Period;

(14) the basis upon which any Disposition may be made or effected by an Absolute Assignee, including parameters for determining the purchase price for the interest in the Regulatory Asset that is the subject matter of such Disposition, and any consents and releases that may be usefully obtained in connection with such Disposition;

(15) describe the requirements applicable to any special purchase entity that will purchase an Investment Interest, including proposed capitalization, governance, and restrictions on their powers and activities; and

(16) the basis on which any Pledge may be given or effected.

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CONFIDENTIAL AND PRIVILEGED

Preliminary Draft for Discussion Purposes Only

"Fair Hydro Act"

Article 1 – Purpose

The Province has and continues to encourage the construction and development of facilities for the long-term operation and generation of electricity in the Province using sustainable, lower carbon-based technologies such as new gas-fired generation, renewable facilities, energy from waste and biomass, including under the Province's various procurement, standard offer, feed in tariff and other similar programs (the "Green Generation Initiative"). The long-term benefits of the Green Generation Initiative accrue over time and have benefited and will continue to benefit present and future electricity consumers in the Province.

The out-of-market costs of the Green Generation Initiative are currently passed through to electricity consumers by way of a monthly adjustment amount (the "Green Costs Adjustment"), which in turn forms part of the overall adjustment calculated by the Independent Electricity System Operator ("IESO") pursuant to section 25.33 of, and O.Reg. 429/4 under, the *Electricity Act* (the "Global Adjustment").

The Green Costs Adjustment is currently determined each month by reference to the amounts paid by IESO to the generators of electricity in the Province under the Green Generation Initiative. These amounts paid by the IESO arise because IESO has entered into long-term procurement contracts with such generators in order to provide them with revenue certainty, and in turn to encourage the generators to develop technologies and to construct and develop facilities consistent with the Green Generation Initiative. **[NTD: This statement is not correct in respect of all IESO procurement contracts.]** It has been determined that the useful lives of many of the assets developed under the Green Generation Initiative will be in excess of the respective terms of their respective procurement contracts.

Since the benefits to past, present and future electricity consumers from the Green Generation Initiative will not necessarily coincide with the costs currently attributed through the Green Costs Adjustment, based on the respective terms of the applicable procurement contracts, it has been determined that the rate at which the costs associated with the Green Generation Initiative should be passed through to Regulated Consumers (as defined in Article 2) should be more closely aligned with the benefits that such Regulated Consumers have derived and are expected to derive from the Green Generation Initiative over time. This realignment will be based on general principles and parameters that establish a reasonable basis for measuring and allocating the relative costs and benefits of the Green Generation Initiative equitably across present and future Regulated Consumers (the "Fair Allocation Plan"). **[NTD: There is no explanation as to why realignment is limited to Regulated Consumers.]**

If the Fair Allocation Plan determines that the equitable allocation of the costs associated with the Green Generation Initiative to the Regulated Consumers of a particular time period should be reduced below the amount that currently would be charged based on the Green Costs Adjustment, then the amount payable by such Regulated Consumers and in turn available to IESO will, in the aggregate, be less than the amount payable by the IESO to the generators in

respect of such period. In this case, IESO will need to obtain funding from another source to cover such a shortfall. If a funding obligation is incurred to cover such a shortfall during any period, the repayment of such funding obligation will be required in a future period, and any related repayments, finance costs, hedging costs and other transaction costs incurred will become payable in future periods. In order for IESO to obtain a reliable and committed source of cash flows to enable IESO to repay such funding amounts when they become due and payable, this Act imposes irrevocable and non-bypassable financial obligations on Regulated Consumers to pay amounts incurred in respect of such funding obligations when they become due and payable and establishes a right to invoice and collect such amounts. The right and interest in and to collect such financial obligations will take the form of the Regulatory Asset contemplated in this Act, which will constitute property rights and interests. Interests in the Regulatory Asset may be sold and absolutely assigned by IESO to one or more financing entities, which in turn will finance their acquired interests by incurring funding obligations. The incurrence and payment of such funding obligations will be administered on behalf of such financing entities by a financial services manager under the Financing Plan contemplated in this Act.

[NTD: Our strong preference is to limit the introduction to the next paragraph and move defined terms from the previous paragraphs to Article 2]

The purpose of this Act is to establish the basis upon which intergenerational fairness can be achieved by charging the costs and benefits of the Green Generation Initiative to present and future Regulated Consumers on an equitable and cost effective basis.

Article 2 – Definitions

In this Act: **[NTD: It would be preferable to use plain language definitions in the legislation and leave the more detailed definitions to either the regulations or the agreements contemplated hereunder.]**

> "Absolute Assignee" means a person to whom a Regulatory Asset Owner effects a Disposition other than as security.
>
> "Actual" means, in relation to costs, expenses or payments in respect of Funding Obligations during a Reference Period, the actual amount of such costs, expenses or payments paid or made (net of any Finance Reserve Withdrawals applied to pay such amounts), which amounts shall be recorded by the Financial Services Manager whose records shall be determinative for the purposes of this Act except to the extent of a manifest calculation error.
>
> "Additional Funding Charges" means, for a Reference Period, the fees, charges, expenses, costs, indemnities, reimbursements and other amounts (including any applicable tax amounts) that are or become payable by or on behalf of the Absolute Assignee during the Reference Period and that were incurred or committed to directly or indirectly by the Absolute Assignee in connection with the incurrence of Funding Obligations under the Financing Plan (whether at the time of such incurrence or over the term of the Funding Obligation and whether directly or indirectly), including without limitation such amounts as may be prescribed.
>
> **[NTD: See section 5(11). Remove this concept globally.]**

"Alternative Servicer" means a person appointed under Section 4(8) to assume the obligations of the Servicer under Article 4, as agent for and on behalf of the Regulatory Asset Owners. **[NTD: We see this, in effect, as the same thing as the IESO Successor; that is, replacement of the master Servicer.]**

"Assessed Past Green Transition Costs" means, in respect of a Measurement Date, the aggregate of the imputed costs of the Green Generation Initiative (expressed as an equivalent to current dollars), as reflected in the calculation of the Green Costs Adjustment, which have been charged to Retail Customers through the Global Adjustment on or prior to the Measurement Date.

"Attribution Methodology"[1] means the methodology specified in the Fair Allocation Plan for allocating the Period Finance Charges for a Reference Period to Regulated Consumers. **[NTD: We understood that the Ministry accepted that the transition charge would be a volumetric rate.][NTD: Can be moved to Regulations.]**

"Collected Amount Adjustment" means, in respect of a True-Up Period, the amount (which may be a negative amount) calculated by the Servicer or the Financial Services Manager, as applicable, equal to (a) the Estimate of the Finance Amount for the True-Up Period, minus (b) the sum of all Transition Charge Collections for the True-Up Period.[2]

"Collective Rights Agreement" means an agreement among all of the Regulatory Asset Owners (including each Absolute Assignee), each Pledgee, and the Financial Services Manager that governs the enforcement of their respective rights and interests in, to and under the Regulatory Asset on a coordinated and collective basis. **[NTD: Move to Regulations.]**

"Delegate" means any of the following person or persons designated in writing from time to time by the Minister of Energy to undertake the actions and perform the responsibilities ascribed to the "Delegate" under this Act: ●. **[NTD: Why is this delegation of authority necessary? This requires further discussion and clarity as to which entity or entities that the Province can select as the Delegate; for example, it would not be acceptable for the Province to select the OEB to be the Delegate. If this is required, an acceptable delegate would be a stakeholder committee comprised of representatives from the Ministry of Energy, the OEB, the IESO, and OPG. In addition, the regulation should prescribe how the stakeholder committee would operate.]**

"Disposition" means an assignment, transfer, conveyance, sale, contribution, set-over, exchange or other disposition of (a) IESO's right to recover all or any portion of an IESO Funding Shortfall or (b) an Investment Interest to an Absolute Assignee, in each case pursuant to a Disposition Document.

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[1] This allocation may be volumetric or some combination of a flat amount and a volumetric charge. Further discussion is required. H&W has raised a concern regarding possible adverse changes after the fact and rating agency considerations. Consider whether hard-coding in the legislation makes sense.

[2] This would pick up adjustments based on actual collection experience, changes in the Regulated Consumer base, changes in the actual costs (versus earlier estimates) included in the Transition Charge calculation, etc.

"Disposition Document" means the agreement, deed, conveyance, instrument or other document under which IESO or an Absolute Assignee effects a Disposition to an Absolute Assignee.

"Electricity Distributor" means a rate regulated distributor licensed under Part V of the *Ontario Energy Board Act, 1998*, together with and its successors.

"Electricity Distributor Remittances" means, for an Electricity Distributor on a Remittance Date, all Transition Charge Collections received or deemed to be received **[NTD: estimated to be received? will each Electricity Distributor know?]** by the Electricity Distributor prior to the Remittance Date and that have not otherwise been remitted to Servicer or if applicable the Alternative Collection Agent in accordance with Section 5(3), including the proceeds of any enforcement action undertaken by the Electricity Distributor or if applicable the Alternative Collection Agent to recover payment of Transition Charges in accordance with Article 5.

"Electricity Invoice" means an invoice issued by an Electricity Distributor (or in its stead, by an Alternative Collection Agent), by the Servicer or by a Retailer, in each case to a Regulated Consumer that is served by the Electricity Distributor's distribution system in respect of electricity charges, including the cost of electricity, delivery and regulatory charges and related services and amounts incurred, assessed or charged in respect of connectivity to such Electricity Distributor's distribution system and in respect of applicable Transition Charges to be charged to the Regulated Consumer under this Act. **[NTD: The Alternative Servicer should only invoice for Transition Charges, not the entire invoice. Also, to avoid confusion, we suggest using the word "invoice" in reference to what the IESO sends out to distributors, and "bills" in reference to what distributors send out to consumers.]**

"Estimate" means (a) in relation to costs, expenses or payments in respect of Funding Obligations or any Finance Amount for a Reference Period, the estimated amount of such costs, expenses or payments determined by the Financial Services Manager; and (b) in relation to an assessment of the benefits of the Green Generation Initiative to Regulated Consumers, the estimated value (in current dollars) of such benefits determined by the Delegate, in each case having regard to the applicable principles and parameters set out in Schedule 1, which estimated amounts shall be determinative as the applicable estimate for the purposes of this Act except to the extent of a manifest calculation error.

"Estimated Future Green Transition Benefits" means, in respect of a Measurement Date, the Estimate set forth in the Fair Allocation Plan prepared in accordance with Article 7 of the aggregate value (measured in current dollars) of the benefits that are expected to accrue to Regulated Consumers from the establishment and implementation of the Green Generation Initiative during the period from the Measurement Date to the Program-End Date.

"Estimated Past Green Transition Benefits" means, in respect of a Measurement Date, the Estimate set forth in the Fair Allocation Plan prepared in accordance with Article 7 of the aggregate value (measured in current dollars) of the benefits that have accrued to Regulated Consumers from the establishment and implementation of the Green Generation Initiative up to and including the Measurement Date.

"Fair Allocation Plan" has the meaning given in Article 1.

"Finance Amount" means, for a Reference Period, the sum (without duplication) of the following amounts that are or become payable during the Reference Period in respect of all Absolute Assignees: (a) Repayments; (b) Net Funding Costs; (c) Redemption Amounts; (d) Finance Reserve Deposits; and (e) Additional Funding Charges.

"Finance Reserve Deposits" means, for a Reference Period, the amount by which (a) deposits made or to be made during the Reference Period in order to pre-fund, collateralize, over-collateralize or establish reserves for the ultimate payment of Funding Obligations or for related contingencies specified in the Financing Plan, exceed (b) any Finance Reserve Withdrawals. **[NTD: Move this to regulation.]**

"Finance Reserve Withdrawals" means, for a Reference Period, the amount withdrawn during the Reference Period from deposits previously made to pre-fund, collateralize, over-collateralize or establish reserves for the payment of Funding Obligations or to pay amounts in respect of related contingencies that had been specified in the Financing Plan. **[NTD: Move this to regulation.]**

"Financial Services Manager" means OPG or, following any Replacement Event involving OPG, such other person who may be appointed as the financial services manager of the Absolute Assignees under the Financing Plan in compliance with the requirements set out in Schedule 2.[3]

"Financing Entity" means any entity established at the initiative of and managed by the Financial Services Manager to support the Financing Plan.[4]

"Financing Plan" means the written plan prepared by the Financial Services Manager in accordance with Article 9, as the same may be amended, amended and restated or terminated by the Financial Services Manager in accordance with Article 9 from time to time.

"Funding Obligation" means, in respect of an Absolute Assignee, each payment obligation (including, without limitation, each obligation to pay: principal, interest, premiums and other financing charge payments; pass-through payments; payment obligations arising under or in respect of derivatives; payment obligations owing to service providers, Financial Services Managers, finance entity intermediaries, capital markets intermediaries, advisors, lenders, credit enhancement providers, liquidity providers, disbursement counterparties, regulatory agencies and rating agencies; and all Additional Funding Charges) incurred by or on behalf of the Absolute Assignee under

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[3] There must only be one Financial Services Manager.

[4] MOE to confirm that the legislation will provide that any Financing Entity that is a wholly-owned subsidiary of OPG (1) would not be subject to Part VI of the *Electricity Act* (Ontario) and (2) in the case of any Financing Entity that is a trust, any income of such trust (for purposes of the *Income Tax Act* (Canada) or the *Taxation Act, 2007* Ontario)) which is paid or made payable to OPG or a wholly-owned subsidiary of OPG as a beneficiary of such trust will not be taken into account in calculating the amount of a payment required to be made by OPG (or such subsidiary) by section 89 or 90 of the Electricity Act.

the Financing Plan, including any Refinancing of another such payment obligation incurred by or on behalf of such Absolute Assignee.

"Future Fair Share of Green Transition Benefits" means, in respect of a Measurement Date, the sum of (a) the Over-Assessed Amount; and (b) the Estimated Future Green Transition Benefits, in each case as of the Measurement Date.

"Global Adjustment" has the meaning given in Article 1.

"Green Costs Adjustment" has the meaning given in Article 1.

"Green Generation Initiative" has the meaning given in Article 1.

"IESO" means the Independent Electricity System Operator created pursuant to Part II of the *Electricity Act, 1998*.

"IESO Electricity Distribution Receipts" means, for a month, the sum of all amounts payable by Electricity Distributors to IESO , during the month pursuant to section • of the *Electricity Act* in respect of Regulated Consumers. **[NTD: IESO indicates that it likely does not work to express in regards to "amounts payable by the LDCs" because settlement between the IESO and LDCs entails payments by LDCs to the IESO and then credits/debits by the IESO to LDCs to reflect RPP shortfalls/overages.]**

"IESO Funding Shortfall" means, for a month, the amount, if any, by which (a) the IESO Electricity Distribution Receipts that would be payable to IESO for the month if determined without regard to this Act and without regard to the changes made to section 25.33 of, and O.Reg. 429/4 under, the *Electricity Act* with respect to the Global Adjustment concurrently with this Act, exceeds (b) the IESO Electricity Distribution Receipts payable to IESO for the month[5].To the extent reasonably necessary to give effect to this Act, or any transaction contemplated hereby, IESO shall calculate the IESO Funding Shortfall for any month taking into account information provided by the Electricity Distributors and (i) such calculation shall be binding for all purposes; and (ii) any demonstrated inaccuracy in the calculation for any month (including any such resulting from inaccuracies in the information provided by Electricity Distributors) shall be accounted for by adjusting the IESO Funding Shortfall for a subsequent month. **[NTD: Need to add the mechanism for IESO to record this shortfall because without that there is no Regulatory Asset. This IESO Funding Shortfall is the regulatory asset owned by IESO.]**

"IESO Remittances" means, for a Settlement Date, all Electricity Distributor Remittances received by IESO or if applicable the Alternative Collection Agent prior to the Settlement Date and that have not otherwise been remitted to the Regulatory Asset Owners (each with respect to its Regulatory Asset) in accordance with Section 5(6), including the proceeds of any enforcement action undertaken by IESO or if applicable the Alternative

[5] This has been recast to recognize that the shortfall in the first 4.5 years could exceed the entire GA amount. A more refined approach to describing the concept may be considered.

Collection Agent to recover payment of amounts payable by Electricity Distributors to IESO in accordance with Article 5.

"IESO Successor" means the entity appointed by the Province to succeed to the rights and obligations of IESO as the entity responsible for managing the Province's electricity system.

"Investment Interest" means an ownership interest in, to or under the Regulatory Asset that is acquired by an Absolute Assignee pursuant to a Disposition.

"Investment Remittance" means, for a month, the lesser of (a) the aggregate amount of all IESO Remittances for the month, and (b) the sum of the Funding Obligations due and payable by all Absolute Assignees in respect of the month.

"Measurement Date" means [Insert relevant date around the Legislation Implementation Date] and any other date specified as such under the Fair Allocation Plan.

"Net Funding Costs" means, for a Reference Period in respect of a Financing Entity, the amount by which (a) the aggregate of all interest, scheduled principal and other periodic finance charges accruing due and becoming payable or paid by or on behalf of the Absolute Assignee during the Reference Period in respect of its Funding Obligations, including such amounts as may be prescribed, exceeds (b) the aggregate of all amounts received by or on behalf of the Absolute Assignee during the Reference Period in respect of the Funding Obligations referred to in (a), including such amounts as may be prescribed.

"OEB" means the Ontario Energy Board, together with its successors.

"OPG" means the corporation incorporated as Ontario Power Generation Inc. under the *Business Corporations Act* on December 1, 1998, together with its successors.

"Over-Assessed Amount" means, in respect of a Measurement Date, the amount (if any) by which (a) the Assessed Past Green Transition Costs, exceeds (b) the Estimated Past Green Transition Benefits, each as determined as of the Measurement Date.

"Period Finance Charges" means, for a Reference Period, the sum of (a) the Estimate of the Finance Amount (b) the True-Up Amount in respect of the applicable True-Up Period and (c) an adjustment amount as may be prescribed to account for estimated collection shortfalls and collection delays in respect of amounts under (a) and (b).

"Pledge" means, in respect of an Investment Interest of an Absolute Assignee, a lien, mortgage, charge or security interest granted to or in favour of a Pledgee by the Absolute Assignee in, to and over all or a specified portion (including a specified portion on a divided basis or by way of an undivided interest) of the Investment Interest.

"Pledgee" means a person to whom an Absolute Assignee grants a Pledge.

"Program End Date" means •, [2047].

"Province" means the Province of Ontario.

"Redemption Amount" means the amount payable by or on behalf of an Absolute Assignee to redeem, prepay or repurchase a Funding Obligation incurred by or on behalf of the Absolute Assignee, including any premium, make-whole or other additional amount becoming payable under the Funding Obligation to give effect to such redemption, prepayment or repurchase.

"Reference Period" means (a) the period from (and including) the Measurement Date to (and including) October 30, 2017, (b) each six month period commencing [May 1st and November 1st] thereafter and (c) any other period specified as such in the Fair Allocation Plan.

"Refinancing" means, in respect of a Funding Obligation incurred by or on behalf of an Absolute Assignee, that the Funding Obligation is repaid or repurchased for cancellation by or on behalf of the Absolute Assignee by applying the net proceeds obtained by the Absolute Assignee incurring one or more other Funding Obligations.

"Regulated Consumer" means consumers of electricity in the Province as prescribed.

[NTD: There are a number of issues with this definition. First, the word "Retail" is a source of confusion as it implies customers of licensed retailers. Really, the purpose of the term is to define the group of consumers that are eligible to receive the benefit of the Fair Hydro program and who will bear the cost of the program over the long term. We have proposed "Regulated Consumer" but you could also use the term "Eligible Consumer" or "Fair Hydro Eligible Consumer" and for purposes of the legislation to say that it is a member of a class of consumers prescribed by the regulations for purposes of the relevant section of the legislation. The regulation would then describe who is in the class. Second, it may not be appropriate to rely on the class of consumers prescribed for the purposes of s. 79.16 or under the OREC Act. Section 79.16 is the section that defines the class of RPP consumers. We understand that the "Fair Hydro Eligible Consumers" are not an identical class to that which is eligible for the RPP or for the Ontario Rebate for Electricity Consumers. For example, we have heard that Fair Hydro Eligible Consumers will (a) exclude consumers served by independent power authorities (certain remote communities not served by Hydro One Remotes), and (b) include consumers served by licensed unit sub-metering providers, licensed retailers and certain consumers served directly by the IESO (which may or may not be captured by the classes under 79.16 or OREC). Third, it is not clear why consumers with contracts with retailers who use retailer consolidated billing are removed from the first part of the definition but then added back into the second part of the definition. Fourth, Retailers do not necessarily have physical electricity assets that would be connected to the grid. Some just sell or offer contracts for electricity. As such, the first few lines after (b) are problematic. Fifth, the phrase "purchase electric generation services from a provider of electric generation services other than the owner of the Province's transmission and distribution system assets" does not make sense. A consumer does not purchase generation services from a transmitter or distributor. Rather, a consumer receives distribution services from a distributor. In addition to charging for its distribution services, the distributor also charges the associated

transmission costs and commodity costs associated with the volumes delivered. Those commodity costs are the price of the electricity itself and are almost entirely made up of the amounts determined under the global adjustment. Sixth, the phrase "whether or not the transmission and distribution system assets continue to be owned or operated by Electricity Distributors or operated by IESO" does not make sense. Transmission assets are owned and operated by transmitters. Distribution assets are owned and operated by distributors. The IESO does not own but does administer and direct the operation of the transmission system.]

"Regulatory Asset" means the property rights and interests described in Section 6(1), which collectively is comprised of each Investment Interest.

"Regulatory Asset Account" means (a) for an Electricity Distributor, any bank account into which the Electricity Distributor deposits or receives Transition Charge Collections; and (b) for the Servicer, any bank account into which Servicer deposits or receives Transition Charges, Electricity Distributor Remittances or IESO Remittances.

"Regulatory Asset Owner" means each Absolute Assignee, as owner of its Investment Interest or Investment Interests, and "Regulatory Asset Owners" means collectively each such Absolute Assignee, who together own the entirety of the Regulatory Asset and are required to exercise their individual rights of ownership in accordance with Section 6(7).

"Related Rights" means, with respect to a Regulatory Asset Owner's Investment Interest, all rights of any kind (whether in tort, contract or otherwise) that attach or are attendant or incidental to any of the other property rights or interests that comprise such Investment Interest.

"Remittance Date" means, in respect of an Electricity Distributor, each day on which it is required to remit Electricity Distribution Remittances to Servicer or if applicable the Alternative Collection Agent as specified in accordance with any Funding Obligation or, if no such day is specified in accordance with any Funding Obligation, then the Business Day **[NTD: Not defined.]** preceding each Settlement Date. **[NTD: Move to Regulations. Remittances will be in accordance with the current rules.]**

"Repayment Obligation" means an obligation to repay or to provide for the repayment (including by making a related Finance Reserve Deposit) of, all or a portion of the amount advanced to the Absolute Assignee under a Funding Obligation.

"Repayment" means a payment by an Absolute Assignee made to satisfy a Repayment Obligation, other than to the extent that the payment is made by applying the proceeds of a Refinancing or from Finance Reserve Withdrawals.

"Replacement Event" means any event specified as such in a Funding Obligation.

"Retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity.

"Retailer Consolidated Billing" has the same meaning as in the *Retail Settlement Code* issued by the Ontario Energy Board.

"Servicer" means IESO or IESO Successor, as agent for and on behalf of the Regulatory Asset Owners, for the purposes set forth in Article 4.

"Settlement Date" means the [last Business Day of any month].

"Transition Charge" means, the amount recoverable from a Regulated Consumer in respect of a Reference Period, being the Period Finance Charge as allocated to such Regulated Consumer in accordance with Article 4(3) on a monthly basis. **[NTD: This needs to be grossed up to account for variability associated with expected uncollectables and remittance delays.]** **[NTD: Do not need to create parallel process. The definition should be linked to the OEB process for determining the volumetric rate as part of the RPP process (see s. 4(2)). The OEB will determine volumetric rate based on forecast consumption, number of consumers, etc. to recover the Period Finance Charges.]**

"Transition Charge Collection" means any amount received **[or deemed by this Act to have been received]** by the Absolute Assignees upon the collection of a Transition Charge paid by or on behalf of a Regulated Consumer, including any proceeds arising from the exercise and enforcement of any related rights and interests under or in respect of the Regulatory Asset.

"True-Up Amount" means, in respect of a Reference Period, the amount (which may be a negative amount) calculated by the Financial Services Manager equal to (a) the Actual Finance Amount for such related True-Up Period, minus (b) the Estimate of the Finance Amount for the related True-Up Period, , plus (c) the Collected Amount Adjustment for such related True-Up Period. **[NTD: need to discuss how this will work for our true-up. What about prior period shortages? An example of how this works needs to be provided.]**

"True-Up Period" means, in relation to a Reference Period, the immediately preceding Reference Period.

"Undertaking of Her Majesty in right of Ontario" means the undertaking of Her Majesty in right of Ontario given under Section 11(2).

Article 3 – Transition Charges

(1) **Regulated Consumer Obligation to Pay a Transition Charge** – Each Regulated Consumer shall pay each Transition Charge charged to it in any Electricity Invoice issued to such Regulated Consumer by its Electricity Distributor or by an Alternative Servicer under Section 4(1), in each case on the terms of payment specified in the related Electricity Invoice.

(2) **Indebtedness of Regulated Consumers** – Until paid, a Transition Charge charged to a Regulated Consumer in an Electricity Invoice shall, together with any applicable late payment fees and finance charges arising under the terms of the Electricity Invoice with respect to such Transition Charge, constitute non-bypassable indebtedness of the

Regulated Consumer to the Regulatory Asset Owners, each with respect to its respective interest in the Regulatory Asset. Such indebtedness shall constitute a single and separate[6] debt obligation owing by the Regulated Consumer, which subject to Article 5 may be enforced independently from any other payment obligation or indebtedness owing by the Regulated Consumer under the Electricity Invoice or otherwise.[7]

(3) No Set-Off or Reduction – A Regulated Consumer may not set-off or reduce (by counterclaim, defense or otherwise) the amount payable by it in respect of any Transition Charge, including any set-off against or in respect of any amount owing or becoming payable to such Regulated Consumer by its Electricity Distributor, any Regulatory Asset Owner or any other person.

(4) Allocation of Regulated Consumer Payments – If an Electricity Distributor receives a payment made by or on behalf of a Regulated Consumer in respect of amounts due and payable under one or more Electricity Invoices that is less than the total amount payable thereunder, such payment shall be subject to rights and benefits that are no less favourable than the treatment accorded to other amounts payable to the IESO by the Electricity Distributor.

(5) Transition Charges are Irrevocable – The Transition Charges arising under or in respect of Funding Obligations (including any adjustments based on modifications to such Funding Obligations made in compliance with the Financing Plan or as a result of amendments to the Financing Plan made in accordance with Section 9(3)) are deemed to be irrevocable, final and effective without any further action, except to the extent of manifest calculation error. For greater certainty, a Transition Charge may include Finance Amounts for a Reference Period regardless of whether the payment of such Finance Amounts are inconsistent with the Fair Allocation Plan applicable at the time such payments are due and payable, and regardless of whether the related Funding Obligation was properly incurred under the Financing Plan. In no case shall a Funding Obligation incurred under the Financing Plan be affected by a subsequent amendment to the Fair Allocation Plan.

(6) True-Up of Transition Charges? – [NTD: Include specifics regarding the true-up of the charges and the process for the true-up, but move to Regulations. The True-Up Mechanism should require the Transition Charges to be reviewed and adjusted semi-annually to ensure the expected recovery of amounts sufficient to timely provide all payments in respect of Funding Obligations, provided that in some cases it may need to be adjusted more frequently than semi-annually, e.g., as part of a refinancing.]

(7) Commencement of Invoicing and Collection of Transition Charges – [NTD: Please confirm that as drafted, Transition Charges will begin on the Measurement Date.]

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[6] Determine if this is critical for rating and markets. Logistics under consideration.

[7] Torys has also suggested that deemed conditions of licenses for distributors, retailers and unit sub-metering providers, could be included as conditions, to require them to collect and remit amounts in accordance with this legislation. Consider if it is helpful to integrate the existing regulatory scheme for invoicing and collections (regarding RPP) in the legislation.

Article 4 – Invoicing of Transition Charges [NTD: Move Article 4 sections (1) to (4) to Regulations. Also note, these sections remain subject to further due diligence by the Dealers.]

(1) **Inclusion of Transition Charges in Electricity Invoices** – Each Electricity Distributor and if applicable any Alternative Servicer shall, as an agent of the Regulatory Asset Owners, specify the Transition Charge to be charged to a Regulated Consumer pursuant to Section 4(4) in respect of a related Reference Period in each Electricity Invoice issued by the Electricity Distributor or if applicable by the Alternative Servicer to the Regulated Consumer in respect of such Reference Period. Upon the inclusion of a Transition Charge in an Electricity Invoice, the obligation to pay such amount shall be binding on the applicable Regulated Consumer. **[NTD: Must capture bills issued to eligible consumers served by unit sub-metering providers, retailers and the IESO – not just distributors][NTD: This provision also needs to address the inclusion of Transition Charges in invoices from the IESO to the LDC, consistent with the current process of how the IESO bills LDCs.]**

(2) **Calculation of the Period Finance Charge** – Not later than [35] days prior to the first day of a Reference Period, each Absolute Assignee (or the Financial Services Manager on its behalf) shall provide the OEB with written notice of each Estimate of a Finance Amount payable by it or on its behalf in respect of the Reference Period. Not later than one month prior to the first day of a Reference Period, each Absolute Assignee (or the Financial Services Manager on its behalf) shall calculate the Period Finance Charge applicable to the Reference Period having regard to such amounts specified by the Servicer, which calculations, information and amounts shall be accepted by the OEB and shall be determinative, except to the extent of manifest calculation error or misstatement.

(3) **Calculation and Attribution of Transition Charges** – Not later than 25 days prior to the first day of a Reference Period, the OEB shall apply the Attribution Methodology to determine the allocation of the Transition Charge for each Regulated Consumer. **[NTD: We think the OEB would be determining the Fair Hydro recovery rate (on a volumetric basis) that distributors would then be required to charge to consumers]**

(4) **Notice of Transition Charges** – Not later than 20 days prior to the first day of a Reference Period, the OEB shall inform each Electricity Distributor and if applicable any Alternative Servicer of the Transition Charges to be specified in the Electricity Invoices to be issued to each Regulated Consumer who is served by the Electricity Distributor.

(5) **Adjustments** – The amount of any Transition Charge charged to a Regulated Consumer and specified as such in an Electricity Invoice shall be determinative of the amount of indebtedness created thereby and owing in respect of such Transition Charge, except to the extent of any manifest calculation error.

(6) **Successors of Electricity Distributors** – Any successor of an Electricity Distributor shall be bound by the requirements of Article 4 and shall perform and satisfy all duties and obligations of such Electricity Distributor under Article 4 in the same manner and to the same extent as such Electricity Distributor, including the obligation under Article 4 to impose, attribute, charge, bill and invoice the Transition Charges.

(7) **IESO Successor** – Any IESO Successor shall be bound by the requirements of Article 4 and shall perform and satisfy all duties and obligations of IESO under Article 4 in the same manner and to the same extent as IESO, including the obligation to calculate and provide notice of Transition Charges.

(8) **Appointment of an Alternative Servicer** – If a Replacement Event occurs in respect of any Electricity Distributor, the Absolute Assignees shall, in accordance with the Collective Rights Agreement, be permitted, by an instrument in writing, to appoint an Alternative Servicer to perform some or all of the obligations and duties required to be undertaken by such Electricity Distributor under this Article 4, as and to the extent specified in such appointment. Upon acceptance of such appointment, the Alternative Servicer shall become obligated to perform such assumed obligations in replacement of such Electricity Distributor. Any Electricity Distributor that is replaced under this Section 4(8) shall promptly transfer all rights, powers, privileges and property interests in its possession or within its control in the performance of such obligations and duties to the Alternative Servicer and shall take such further actions, including the execution of instruments, necessary to give full and final effect to such transfer and to permit the Alternative Servicer to perform such obligations and duties on behalf of the Regulatory Asset Owners. **[NTD: We would expect the IESO to manage this in accordance with its normal business practices.]**

(9) **Absolute Assignees have Standing** – The Absolute Assignees, acting together in accordance with the Collective Action Agreement, may bring actions against any Electricity Distributor, IESO, the Servicer, Alternative Servicer or any other person who may be authorized to issue Electricity Invoices to Regulated Consumers for a failure to impose, attribute, charge, bill or invoice Transition Charges or to otherwise comply with this Act. Any court of the Province shall have jurisdiction over any actions brought before it by the Absolute Assignees in relation to any such failure and may make any interim or final order it thinks fit in this regard. **[NTD: We would like to see the sections on "Standing" to bring an action to remain in the legislation (as opposed to being moved to the regulations as we believe we previously suggested) as we see those provisions as part of ensuring a rigorous enforcement scheme for the Financing Entity (and so something that should be difficult for the Province to change going forward).]**

(10) **No Set-Off or Reduction –** No Servicer or Electricity Distributor may set off or reduce (by counterclaim, defence or otherwise) the amount payable by it pursuant to this Article 4.

(11) **Regulations** – Regulations may be enacted for the purpose of specifying further rights, powers, privileges, duties and obligations that shall apply to IESO, any Electricity Distributor or any Alternative Servicer to ensure that Transition Charges are properly charged to Regulated Consumers and specified as such in Electricity Invoices.

Article 5 – Collections and Remittances [NTD: Move Article 5 sections (3), (6), (9), (12), (13) and (14) to Regulations.]

(1) **Duty to Collect as Agent** – Electricity Distributors or if applicable any Alternative Collection Agent shall, as an agent of the Servicer, collect amounts owing by Regulated Consumers in respect of Transition Charges charged to such Regulated Consumers in

Electricity Invoices issued by the Electricity Distributor or if applicable such Alternative Collection Agent all in accordance with the Regulations. **[NTD: The obligation to collect and remit the Transition Charge should be included as a deemed condition of license for electricity distributors (and retailers and unit sub-metering providers).]**

(2) **Segregation of Transition Charge Collections** – An Electricity Distributor or if applicable any Alternative Collection Agent shall promptly segregate Transition Charge Collections from other payments received by it from Regulated Consumers and deposit such Transition Charge Collections into its Regulatory Asset Account.[8] **[NTD: Determine if this is critical for rating and markets or if segregation can occur in the hands of the IESO]** Prior to and following a deposit of Transition Charge Collections having been made into its Regulatory Asset Account, the Electricity Distributor or if applicable any Alternative Collection Agent shall hold such amounts in trust for the Regulatory Asset Owners or its Pledgee.

(3) **Electricity Distributor Remittances** – On each applicable Remittance Date, an Electricity Distributor shall remit all amounts invoiced by the IESO on account of the Transition Charge in respect of the related Reference Period to or to the account of Servicer or if applicable the Alternative Collection Agent. **[NTD: It is the Dealers expectation that the Transition Charge will be paid on the same basis as other amounts invoiced by the IESO, failing which, they will need to be remitted daily.]**

(4) **Duty to Collect Electricity Distributor Remittances** – Servicer or if applicable any Alternative Servicer shall, as an agent of the Regulatory Asset Owners, accept and collect Electricity Distributor Remittances from Electricity Distributors and Transition Charge Collections from Regulated Consumers that pay their Electricity Invoices directly to IESO on the same basis as it accepts and collects other charges from such Regulated Consumers.[9]

(5) **Segregation of Electricity Distributor Remittances** – Servicer and if applicable the Alternative Collection Agent shall promptly segregate Electricity Distributor Remittances from other payments received or held by it and deposit such Electricity Distributor Remittances into its Regulatory Asset Account. Prior to and following a deposit of Electricity Distributor Remittances having been made into its Regulatory Asset Account, Servicer or if applicable any Alternative Collection Agent shall hold such amounts in trust for the Regulatory Asset Owners or Pledgee.

(6) **Servicer Remittances** – On each Settlement Date[10], Servicer shall remit all amounts on deposit in its Regulatory Asset Account to or to the account of the Absolute Assignees an amount equal to the Investment Remittance for the related month.

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[8] Consider trying to attach to existing LDC credit enhancements and provide parallel coverage for customer losses.

[9] Consider building this obligation into a deemed condition of licence for the IESO.

[10] Consider frequency of remittances in light of rating requirements. US rating agencies favour daily remittances.

(7) **Successors of Electricity Distributors** – Any successor of an Electricity Distributor shall be bound by the requirements of Article 5 and shall perform and satisfy all duties and obligations of such Electricity Distributor under Article 5 in the same manner and to the same extent as such Electricity Distributor, including the obligation under Article 5 to collect Transition Charges and make remittances of Electricity Distributor Remittances.

(8) **IESO Successors** – IESO Successors shall be bound by the requirements of Article 5 and shall perform and satisfy all duties and obligations of IESO under Article 5 in the same manner and to the same extent as IESO, including the obligation to collect Transition Charge Collections, Electricity Distributor Remittances and to remit IESO Remittances.

(9) **Owners of Distribution Assets** - If any person other than an Electricity Distributor acquires distribution system assets in the Province or invoices or collects electricity distribution rates in the Province[11], then such person shall, if requested by the Absolute Assignees, be obligated to act diligently to (a) facilitate the invoicing and collection of any Transition Charges applicable to Regulated Consumers connected to such person's distribution system assets; (b) allocate partial payments by Regulated Consumers as provided in this Act; (c) exercise all enforcement rights of the Absolute Assignees for the benefit of an Absolute Assignee; and (d) remit any Transition Charge Collections to the Absolute Assignees or Pledgees, as applicable, each in accordance with its Investment Interest. **[NTD: Such acquisition of a distribution system would require the person to be an electricity distributor; consider deleting since this is covered off by Section 5(7).]**

(10) **Absolute Assignees have Standing** – The Absolute Assignees, acting together in accordance with the Collective Action Agreement, may bring actions against any Electricity Distributor, Servicer, the Alternative Collection Agent, any owner of electricity distribution system assets in the Province or any other person who may be authorized to collect electricity distribution and use charges from Regulated Consumers for a failure to collect Transition Charges, remit or collect Electricity Distributor Remittances or remit IESO Remittances, as and to the extent applicable under Article 5, or to otherwise comply with this Act. Any court of the Province shall have jurisdiction over any actions brought before it by the Absolute Assignees in relation to any such failure and may make any interim or final order it thinks fit in this regard.

(11) **Not Used. [NTD: The Servicer should manage this process.**]

(12) **No Set-off, etc.** - The Regulatory Asset, including rights in Transition Charges, Transition Charge Collections, and the interests of a Regulatory Asset Owner, an Absolute Assignee and a Pledgee therein, may not be setoff or reduced (including by counterclaim, surcharge or defense) by any Regulated Consumer, any Electricity Distributor, Servicer, Alternative Collection Agent or any owner of distribution system assets in the Province or any other person or in connection with any default, bankruptcy, reorganization or other insolvency proceeding of any Electricity Distributor, Servicer,

[11] This is in anticipation of a possible future restructuring of the distribution system.

Alternative Collection Agent or any owner of distribution system assets in the Province, any affiliate or successor thereof or any other entity or otherwise.[12]

(13) **Sequestration** – If any Electricity Distributor, Servicer, the Alternative Collection Agent or any owner of distribution system assets in the Province or any other person or entity authorized to collect Transition Charges, defaults on any required remittance of Transition Charge Collections, Electricity Distribution Remittances or IESO Remittances under Article 5, any court in the Province, upon application by and of the Absolute Assignees acting collectively under the Collective Action Agreement and without limiting any other remedies otherwise available to the Absolute Assignees or Pledgees, shall order the sequestration and payment of the Transition Charge Collections, Electricity Distribution Remittances and IESO Remittances, as applicable, for the benefit of the Absolute Assignees, each with respect to its Investment Interest, and the Pledgees as applicable.[13]

[NTD: Suggest considering a more typical remedy such as the ability to appoint a receiver. Concept should be moved to Regulations.]

(14) Regulations – Regulations may be enacted for the purpose of specifying further rights, powers, privileges, duties and obligations that shall apply to Servicer, any Electricity Distributor or any Alternative Collection Agent to ensure that rights, interests, entitlements, benefits and proceeds in, to, under and from the Regulatory Asset are of fully realized by some or all of the Absolute Assignees and Pledgees.

Article 6 – The Regulatory Asset

[NTD: We believe that the statute should impose a time limit on the ability of IESO to create additional Regulatory Assets under this Act. It is our expectation that this will be no later than 10 years after the commencement of the program.]

[NTD: In addition, additional language is required to address the acquisition of the Regulatory Asset by the Financing Entity, including reference to the consideration being provided for it, funding upfront costs.]

[NTD: The sale of Regulatory Assets must be restricted to Financing Entities controlled by a single entity (initially, OPG).]

[NTD: For greater certainty, a Financing Entity will not be required to purchase Regulatory Assets from IESO.]

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[12] Consider whether it makes sense to create a "deemed collection" payment obligation on Electricity Distributors to the extent a Regulated Consumer reduces its payment of Transition Charges, despite this language. Same for Electricity Distributor Remittances and IESO Remittances.

[13] Consider adding or substituting this provision for a right to appoint a receiver.

(1) **Composition** – The Regulatory Asset shall constitute a current and irrevocable property right and interest consisting, collectively, of the following rights and interests (without duplication):

a. the right of a Regulatory Asset Owner to record its portion of the Regulatory Asset in its accounts;

b. the right to impose, bill, invoice, collect and receive Transition Charges from Regulated Consumers, including the right to determine the amount of Transition Charges in accordance with this Act;

c. the right to enforce the obligations and indebtedness of each Regulated Consumer to pay the Transition Charges charged to the Regulated Consumer from time to time in accordance with Article 3, together with all related late payment fees or interest charges arising in respect thereof under the related Electricity Invoices; **[NTD: Do we really want and need the ability for the Financing Entities to chase after individual consumers?] [NTD: This should be the right to provide notices to the OEB of the amounts required for recovery, which the OEB would then be required to accept for purposes of determining the amount of Transition Charges to be charged to consumers]**

d. the right to enforce the duties and obligations of each Electricity Distributor and if applicable the Alternative Servicer to impose, attribute, charge, bill and invoice the Transition Charges in accordance with Article 4;

e. the right to enforce the duties and obligations of each Electricity Distributor and if applicable the Alternative Collection Agent to collect, receive and remit amounts received by it in respect of Transition Charges as Electricity Distributor Remittances to or to the account of Servicer or if applicable the Alternative Collection Agent in accordance with Article 5, including all collections and the proceeds of any enforcement action undertaken by the Electricity Distributor or if applicable the Alternative Collection Agent to recover payment of Transition Charges in accordance with Article 5;

f. the right to enforce the duties and obligations of Servicer and if applicable the Alternative Collection Agent to collect and receive Electricity Distributor Remittances and to remit IESO Remittances to or to the accounts of the Regulatory Asset Owners, each with respect to its respective interest in the Regulatory Asset, in each case in accordance with Article 5, including all collections and the proceeds of any enforcement action undertaken by it to recover payment of Electricity Distributor Remittances in accordance with Article 5;

g. the right to receive and collect all Transition Charge Collections, all Electricity Distributor Remittances and all IESO Remittances in accordance with Article 5;

h. all rights and entitlements under each Regulatory Asset Account and all amounts on deposit in any such Regulatory Asset Account;

i. all Related Rights; and

j. all revenue, collections, claims, payments, money and proceeds of or derived from the rights described in (a) through (i), regardless of whether such revenue, collections, claims, payments and proceeds are imposed, invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

A Regulatory Asset and the property rights and interests therein shall exist whether or not Transition Charges have been imposed, charged, invoiced, accrued or collected and notwithstanding that the imposition, attribution, invoicing and collection of Transition Charges will depend on further actions that may not have occurred. The Regulatory Asset shall continue to exist until all Funding Obligations and Additional Funding Charges have been paid in full.

(2) **Validity of Dispositions** – A Disposition by IESO of all or any part of the IESO Funding Shortfall to an Absolute Assignee, or a Disposition of all or any part of an Investment Interest by one Absolute Assignee to another Absolute Assignee made under the Financing Plan, shall be permitted and when made shall be valid and enforceable in accordance with the terms of the related Disposition Document and shall be effective to confer upon the Absolute Assignee thereof a valid property right and interest in, to and under the IESO Funding Shortfall or Investment Interest, as applicable (or relevant portion thereof) in accordance with the terms of such Disposition, provided that the parties to the applicable Disposition Document have expressly stated therein that such Disposition is a sale or other absolute transfer. Without limiting the foregoing, any Disposition that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as a true sale and absolute transfer of the IESO Funding Shortfall or an Absolute Assignee's right, title and interest in, to and under an Investment Interest, as applicable (or relevant portion thereof), and not merely as a Pledge thereof, and upon such Disposition the assigner or seller under the applicable Disposition Document shall retain no right, title or interest in the IESO Funding Shortfall or Investment Interest (or relevant portion thereof) subject to the Disposition, including all rights under the IESO Funding Shortfall or Investment Interest arising after such Disposition. **[NTD: Subject to review by Osler/dealers.]**

(3) **Perfection and Priority of Dispositions** – Any Disposition of an interest in a Regulatory Asset shall be vested, valid, binding and perfected from the time when such Disposition is made. Such Disposition shall be perfected, vested, valid and binding as against the IESO or transferring Regulatory Asset Owner, as applicable, and all other persons who have claims of any kind (whether in tort, contract or otherwise) against IESO or the transferring Regulatory Asset Owner, as the case may be, irrespective of whether such persons have notice of the Disposition and the property rights and interests acquired by the Absolute Assignee under such Disposition shall be free and clear of any liens in favour of such other persons.

(4) **Validity of Pledges** – A Pledge by an Absolute Assignee may be made to secure any Funding Obligation and when made shall be valid and enforceable in accordance with its terms and shall be effective to confer upon the Pledgee a valid security interest in, to and in respect of the related Investment Interest in accordance with the terms of the

Pledge. No consent of, or notice to, any person shall be required to give effect to a Pledge made to secure any Funding Obligation.

(5) **Perfection and Priority of Pledges** - For purposes of the *Personal Property Security Act* (the "PPSA"), the Regulatory Asset shall be intangible personal property and any Pledge made by an Absolute Assignee in respect of a Funding Obligation shall, subject to the terms thereof, give rise to a security interest of which the PPSA applies, and may be perfected by filing a financing statement under the PPSA on that basis. All proceeds of a related Investment Interest that are subject to such a Pledge that are received by the Absolute Assignee shall immediately be subject to the such Pledge, and the security interest in such proceeds shall be perfected pursuant to the PPSA.[14] A Pledge perfected under the PPSA shall be a continuously perfected security interest and shall have priority over any other lien or security interest, created by operation of law or otherwise, that may attach to the property rights and interests in the Investment Interest subject to the Pledge unless the Pledgee has otherwise agreed in writing. A Pledgee shall have a perfected security interest in a related Investment Interest, including the Absolute Assignee's rights and interests in and to Transition Charge Collections or other related proceeds in respect of the Investment Interest and that are deposited in any Regulatory Asset Account or other account of any Electricity Distributor, IESO, Alternative Collection Agent or other person who may have commingled such Transition Charge Collections or such other proceeds with other funds. All provisions of the PPSA shall apply to the Regulatory Asset on the basis that it is intangible personal property, except to the extent otherwise provided in this Section 6(5).

(6) **Enforcement of Property Rights** – The rights of any Regulatory Asset Owner to collect and enforce its rights and interests in, to or in respect of the Regulatory Asset shall be exercised in the manner set forth in Article 5.

(7) **Owners of a Specified Portion of the Regulatory Asset** – A Regulatory Asset Owner may effect a Disposition to an Absolute Assignee of a specified portion of its rights and interests in the Regulatory Asset, including by way of a Disposition of a divided or an undivided interest therein as specified in a related Disposition Document. In no circumstance may the specified portions of the rights and interests in the Regulatory Asset owned by all Regulatory Asset Owners be greater than all of the rights and interests that comprise the Regulatory Asset in the aggregate.

(8) **Collective Action Required** – If a Regulatory Asset Owner's rights and interests in the Regulatory Asset comprises less than the entire property right and interest constituted by the Regulatory Asset, such Regulatory Asset Owner shall only enforce such right and interest on a collective and coordinated basis with each other Regulatory Asset Owner in accordance with the Collective Rights Agreement. **[NTD: Move to Regulations.]**

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[14] Consider whether to simply leave this and have a financing statement be filed under the PPSA. This would normalize the security interest and reduce any adverse suggestion that security would not otherwise arise.

Article 7 – Establishment of the Fair Allocation Plan[15] [NTD: Move entire Article 7 to Regulations, other than 7(1) and 7(2).]

(1) **Adoption of the Fair Allocation Plan** – The Delegate may, by written declaration, designate and adopt a Fair Allocation Plan in compliance with Article 7. The Fair Allocation Plan so designated and adopted shall be the Fair Allocation Plan for all purposes of this Act, except if amended, amended and restated or terminated by a further written declaration made by the Delegate in compliance with **[the Regulations]**

(2) **Principles and Parameters** – A Fair Allocation Plan shall seek to allocate Future Fair Share of Green Transition Benefits across present and future Regulated Consumers on a basis that the Delegate, in its sole and absolute discretion, determines to be equitable, having regard to the following principles and parameters:

[NTD: E&Y will need to see the guidelines of the Fair Allocation Plan set in reference to parameters that will allow it to establish a modeling curve]

- [**Inflation period**: (between November 2017 – and April 2022) bill increases need to be capped at inflation (assumed at 2% for modeling purposes)]

- [**Transition Period**: (May 2022- April 2027) bills increased at a consistent rate which is set so that the borrowing will not exceed the Trust's capacity, which is determined by the Finance Service Manager]

- [**Amortization Period**: (May 2027-April 2047) equitable distribution of Finance Amount among Regulated Consumers]

1. Future Fair Share of Green Transition Benefits should be allocated over the period ending on the Program End Date.

2. The share of Future Fair Share of Green Transition Benefits allocable to a particular Regulated Consumer in respect of a Reference Period should be proportionate to a reasonable assessment of the benefits of the Green Generation Initiative to such Regulated Consumer over such Reference Period, other than in exceptional circumstances.

3. The Fair Allocation Plan should specify the Reference Periods for the purpose of allocating Future Fair Share of Green Transition Benefits among Regulated Consumers on a relative basis over time.

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15 The idea is that the Fair Allocation Plan will be set once at the outset based on the principles and parameters described here, all as applied based on information available and the reasonable expectations and discretion of the delegate at such time. If the expectations are not fulfilled (e.g., generators may choose to retire their facilities at the end of their current procurement contracts and not invest in extending service lives to secure further procurement contracts), the Fair Allocation Plan will be unaffected, unless it is specifically amended (assuming amendments will be permitted by the legislation).

(3) **Attribution Methodology** – The Fair Allocation Plan shall specify the Attribution Methodology for the purposes of allocating the Period Finance Charges across the Regulated Consumers. The Attribution Methodology shall result in an attribution of such Transition Charges that is considered by the Delegate to be equitable, and may have regard to such principles and parameters as may be further set forth in a Regulation; provided that the Attribution Methodology shall not be used to limit the recovery of Transition Charges. **[NTD: Can the methodology be adjusted outside an amendment? If so, the rating agencies need to understand the limits of any adjustment.]**

(4) **Amendments of the Fair Allocation Plan** – The Fair Allocation Plan may be amended, amended and restated or terminated by the Delegate, provided that such amendment, amendment and restatement or termination shall (a) not be inconsistent with the principles and parameters set forth in (2) or (3), above, or the Regulation, (b) comply with any restrictions or limitations specified with respect thereto in any Funding Obligation, and (c) not impair any Regulatory Asset, outstanding Funding Obligation or any Transition Charges. **[NTD: If the Fair Allocation Plan is amended, there should be no further Regulatory Assets until the revised Fair Allocation Plan and corresponding Financing Plan have been approved.]**

Article 8 – The IESO Funding Shortfall

(1) **Recording of IESO Funding Shortfall** -- IESO will record any IESO Funding Shortfall in its books.

(2) **Dispositions** – IESO may effect a Disposition of all or any part of the IESO Funding Shortfall to an Absolute Assignee if (a) the Disposition is effected pursuant to a Disposition Agreement duly executed by IESO; and (b) the Financial Services Manager confirms in writing that the Disposition complies with any restrictions or limitations specified with respect thereto in any documents evidencing the Funding Obligations and is permitted under the Financing Plan.

(3) **No Continuing Interest in any Investment Interest** – IESO shall have no continuing right or interest in any IESO Funding Shortfall subject to a Disposition effected by IESO under a Disposition Document to which IESO is a party.

Article 9 – The Financing Plan [NTD: Move all of Article 9 to Regulations other than 9(1).]

(1) **Power to Prepare, Implement and Amend the Financing Plan** – The Financial Services Manager shall be authorized to prepare, implement and amend a financing plan for the Financing Entities and propose the adoption of such financing plan as the Financing Plan for the purposes of this Act. The Financial Services Manager shall have the right to withdraw its financing plan as the Financing Plan at any time if it determines that implementing the Financing Plan in such manner would not be in the best interests of a Financing Entity.

(2) Principles and Parameters of the Financing Plan – The Financing Plan shall establish the basis for each Absolute Assignee's funding decisions having regard to the principles and parameters set forth in Schedule 3.

(3) OEB Approval – Any Additional Funding Charge payable to the Financial Services Manager in respect of services provided by the Financial Services Manager (other than third party costs) shall be subject to review and approval by the OEB.

(4) Review of Financing Plan – The [OEB] shall undertake an annual review of the records maintained by the Financial Services Manager for the purpose of confirming that the Funding Obligations incurred and the Finance Amounts paid by or on behalf of the Absolute Assignees were incurred and paid, respectively, in material conformity with the Financing Plan. **[NTD: We would prefer that this be dealt with by an attestation prepared by an officer of the Financial Services Manager.]**

(5) Replacement of the Financial Services Manager – If the OEB identifies deficiencies or makes recommendations in its review under Section 9(4), the Financial Services Manager shall take reasonable measures to remedy such deficiencies if remediable, and shall in any event have regard to the recommendations of the OEB in relation to further actions undertaken by the Financial Services Manager under the Financing Plan. If the Financial Services Manager is unwilling or unable to reflect such recommendations in relation to such further actions, the Delegate may by written declaration designate one or more other persons who shall thereafter become the Financial Services Manager. Any replacement must comply with the restrictions and limitations specified in the documents evidencing the Funding Obligations.

(6) Obligation to Apply IESO Remittances – The Financial Services Manager shall ensure that amounts transferred to it under Article 5, as agent for and on behalf of the Absolute Assignees, or otherwise in respect of or as proceeds from an applicable Investment Interest shall only be applied or used to pay related Finance Amounts when they are due and payable and for no other purpose. **[NTD: This can be dealt with by contract.]**

(7) Non-Recourse – The Financing Plan shall be implemented so that Funding Obligations incurred shall be without recourse to or to any assets of the Electricity Distributors, IESO, any Alternative Servicer, any Alternative Collection Agent, the Financial Services Manager, the OEB or Her Majesty in right of Ontario, other than if and to the extent that such persons or entities are liable for the performance of obligations or duties arising under this Act or expressly agree to become liable pursuant to any Funding Obligation or obligation in relation to a Finance Amount.

(8) Incurrences are Binding – Each Disposition made to or by an Absolute Assignee, all amounts payable or becoming due and payable by or on behalf of an Absolute Assignee under or in connection with any obligation purporting to be a Funding Obligation and each Pledge entered into by an Absolute Assignee, shall be valid and binding, including in determining the amount of related Transition Charges, notwithstanding any defect in the manner in incurrence or any inconsistency with the Fair Allocation Plan or the Financing Plan.

[Article 10 – Compliance Matters[16]

(1) Right of the [OEB] to Inspect Books and Records - For the purpose of investigating compliance with the provisions of this Act, the OEB shall have the right, jurisdiction, power and authority to examine the books and records of *[Insert names if any]*.

(2) [OPG's Rate Settings – When setting other rates for or in respect of OPG, the OEB shall not take into account (a) the administrative or servicing fees charged by OPG as Financial Services Manager [in excess of the actual incremental costs incurred by such person of providing administrative or servicing services]; (b) the cost consequences to OPG of being the Financial Services Manager; or (c) the consequence of OPG consolidating the assets and liabilities of any Financing Entity for OPG's accounting purposes, in each case in setting any regulated payment amounts for OPG.][17]

Article 11 – Undertaking of the Her Majesty in right of Ontario[18]

(1) No Action to limit, alter, or impair or terminate Transition Charges, the Regulatory Asset or Collections – Her Majesty in right of Ontario shall not in any way take or permit (including by any agency or administrative body) any action to reduce, impair, postpone or terminate the obligation of Regulated Consumers to pay Transition Charges or to impair the Regulatory Asset or the collection or recovery of Transition Charge Collections, Electricity Distributor Remittances or IESO Remittances, either directly or indirectly, including through the introduction of any bill or the passing of any legislation or regulation having such effect. The amount of Transition Charges determined under this Act shall not be subject in any way to reduction, impairment, postponement or termination as a result of any action taken or failure by Her Majesty in right of Ontario (including by any agency or administrative body), including through the introduction of any bill or the passing of any legislation or regulation having such effect.

(2) Undertaking and Agreement – Her Majesty in right of Ontario shall not:

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[16] As noted above, the outcome of any regulatory action undertaken by the OEB will not affect Funding Obligations that have been incurred under the Financing Plan. This Article and any potential role for the Auditor General is still under consideration.

[17] As an alternative to this provision, consider clarifying under s. 78.1(4) of the OEB Act (which currently gives the OEB discretion in setting payment amounts subject to O. Reg. 53/05) that the OEB in setting OPG payment amounts for prescribed generation shall not consider OPG's role as Financial Services Manager of any Financing Entities associated with the Fair Hydro initiative, perhaps with the exception of any operating fees that may be received by OPG for performing that role.

[18] Under consideration, including the dealers' request for a "servicer guarantee" and a "contractual guarantee" to address a "Change of Law" or if all or a portion of the legislation is *ultra vires*, requiring (at the lenders option), the Province to pay principal and interest on the outstanding debt until maturity or payout the entire debt including any make-wholes.

In the event of a market disruption that renders it impossible to refinance debt when required (or where financing of amounts required to service the debt is not available because of a market disruption where the Financing Entity was relying on such further issuance of debt until the recovery is set to begin to fund interest), either the Province must step in and payout the debt or there must be the right to recover the debt from ratepayers as it becomes due, notwithstanding the intended rate cut.

(a) in any way take or permit any action that limits, alters or impairs the value of any Investment Interest;

(b) except as required by the estimates and adjustments made in determining the True-up Amount, reduce, alter or impair Transition Charges that are imposed, billed, invoiced, collected and remitted for the benefit of the Absolute Assignees or any Pledgee from time to time;

(c) permit the amendment, amendment and restatement or termination of the Fair Allocation Plan if such amendment, amendment and restatement or termination would adversely affect the validity or enforceability of any Funding Obligation or the rights of an Absolute Assignee or Pledgee thereunder, or would not otherwise comply with the restrictions and limitations specified in the documents evidencing the Funding Obligations,

in each case including through the introduction of any bill or the passing of any legislation or regulation having such effect.

(3) **Successor IESO** – If IESO is restructured, dissolved or becomes insolvent or is otherwise incapable of performing its obligations under this Act, an IESO Successor shall immediately be established by Her Majesty in right of Ontario to perform such obligations.

(4) **Compensation for Failure** – Absolute Assignees shall be compensated by Her Majesty in right of Ontario for any losses suffered by them as a result of any failure by Her Majesty in right of Ontario to comply with its undertakings and agreements in this Article 11.[19]

(5) **No Wind-up of Financing Entity**. No Financing Entity may be voluntarily wound up, liquidated or dissolved until one year after all of its Funding Obligations are repaid. **[NTD: This concept can be contained in the Regulations.]**

(6) **References to the Undertaking and Agreement** – Any non-confidential reference to the Undertaking of the Her Majesty in right of Ontario, including in marketing materials and other documentation authorized for use by the Administrative in connection with any Funding Obligation, may be made provided that [*Add conditions to protect the Province*].

Article 12 – Regulations

Regulations may be made under this Act for the purposes described in Sections •,•,• and • and may be promulgated for any of the following purposes:

(a) to set standards and measures regarding the commercially reasonable requirements of the Province associated with an Absolute Assignee incurring Funding Obligations or becoming obligated to pay any Finance Amount, including to establish guidelines regarding all-in funding costs; permitted Additional

[19] Requested by Dealers. For discussion.

Funding Charges; required maturities and redemption and termination rights of Funding Obligations; liquidity requirements, in each case to a Financing Plan that is consistent in its effect with the Fair Allocation Plan;

(b) to establish and empower one or more regulated entities to undertake decision-making activities with respect to this Act;

(c) to set out reasonable requirements regarding the appointment or retention of advisors, agents, service providers, contract counterparties, including in relation to 'market terms and conditions' parameters;

(d) to provide for audit and compliance standards applicable to those persons who are or may become obligated or have duties that arise under this Act [or under any Funding Obligation];

(e) to provide for any pre-vetting and approval requirements in relation to any incurrence by an Absolute Assignee of any Funding Obligation or obligation to pay any Finance Amount; and

(f) to provide for appeal and due process considerations in connection with the establishment, adoption, implementation and review of the Fair Allocation Plan or the Financing Plan.

Article 13- Miscellaneous[20]

(1) **Choice of law** – The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the Regulatory Asset, any Transition Charge or the Undertaking of the Province shall be the laws of the Province.

(2) **Conflict of law** – In the event of conflict between this Act and any other law of the Province regarding the attachment, assignment or perfection, or the effect of perfection, or priority of any Disposition or Pledge, this Act shall govern to the extent of the conflict.

(3) **No further acts or approvals required** - Notwithstanding any provisions of any law of the Province to the contrary, no approvals, notices or authorizations other than those specified in this Act shall be required with respect to the actions to be taken in compliance with this Act, including under the Financing Plan or in relation to the establishment of the Fair Allocation Plan, and the transactions and contracts authorized in or contemplated by this Act or the Financing Plan, including the incurrence of any Funding Obligation, any Disposition, any Pledge or in the payment and performance of any attendant or incidental contract and any related expenses incurred to facilitate the preparation and implementation of the Financing Plan.

---

[20] OPG would like the specific amendments related to OPG to be included in the Bill.]

(4) **Effect of invalidity after the Incurrence of any Funding Obligation** - Effective on the date that a Funding Obligation is incurred under this Act, if any provision of this Act is held to be invalid or is invalidated, superseded, replaced, repealed or expires for any reason, that occurrence shall not affect any action allowed under this Act that is taken by any person who is or may become obligated or have duties that arise under this Act and any such action shall remain in full force and effect.

(5) **Severability** - If any Article, Section, paragraph or subparagraph of this Act or the application thereof to any person, circumstance or transaction is held by a court of competent jurisdiction to be unconstitutional or invalid, the unconstitutionality or invalidity shall not affect the constitutionality or validity of any other Article, Section, paragraph or subparagraph of this act or its application or validity to any person, circumstance or transaction, including the irrevocability of Transition Charges, the validity of the Regulatory Asset, the incurrence of any Funding Obligation, any Disposition, any Pledge, or the collection and recovery of Transition Charge Collections. To these ends, the Legislature hereby declares that the provisions of this Act are intended to be severable and that the Legislature would have enacted this Act even if any Article, Section, paragraph or subparagraph of this Act held to be unconstitutional or invalid had not been included in this Act.

Schedule 1

Guidelines for Estimates

[To be considered.]

Schedule 2

Requirements Applicable to Alternative Invoicing Agent/ Alternative Collection Agent

[To be considered.]

Schedule 3

Principles and Parameters for Establishing the Financing Plan

The following principles and parameters provide a guideline as to what a Financing Plan should address:

(1) consider quantities, maturities, payment obligations, prepayment or redemption rights and such other features of Funding Obligations so that payments made for a Reference Period reasonably correspond to the allocations of Future Fair Share of Green Transition Benefits to the applicable Reference Group under the Fair Allocation Plan;

(2) if the anticipated amount of any Repayment (together with payments of other Finance Amounts) to be made in respect of a Reference Period would materially exceed the allocation of the costs and benefits of the Green Generation Initiative to the applicable Regulated Consumers under the then current Fair Allocation Plan, diligent efforts should be made to determine whether a Refinancing or deferral of such Repayment may be reasonably and cost-effectively effected based on then prevailing market terms, conditions an circumstances;

(3) reflect the assumptions and requirements specified in any contemplated Funding Obligation (e.g., any limit on the maximum amount of Transition Charges charged to a hypothetical Regulated Consumer relative to his or her monthly electricity bill, as prescribed by any rating agency that ascribes its credit rating to or in respect of the Funding Obligation **[having regard to the application of the Attribution Methodology][NTD: Are the words in square brackets necessary?]**);

(4) require the Financial Services Manager, for and on behalf of each Regulatory Asset Owner, to use diligent efforts to manage Finance Amounts to be borne by Ratepayers;

(5) include a proposal regarding the compensation of the Financial Services Manager that reflects market terms and conditions; and

(6) require that the Financial Services Manager report annually to the Ministry of Energy on the operation of the Financing Plan including, in particular, with respect to the amount and terms of the Funding Obligations incurred and the sufficiency of such Funding Obligations for the purpose of funding the estimated Funding Shortfalls in accordance with the Fair Allocation Plan.

FW_ _Fair Hydro Act_ Legislative Summary (Discussion Draft).rtf

From: Veinot, Cindy (TBS) []
To: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; 'Suzie Gignac' [suzie.r.gignac@ca.ey.com]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]
Subject: FW: "Fair Hydro Act" Legislative Summary (Discussion Draft)
Date: Wednesday, April 12, 2017 12:35:49
Attachment 1: Blackline_Summary.pdf
Attachment 2: Fair_Hydro_Act Torys_Osler Mark-up April 11 2017 Draft (Torys-Oslers_Apr....docx

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Base document for today's 2 pm call

-----Original Message-----
From: Calwell, Carolyn (ENERGY/MEDEI/MRI)
Sent: April-12-17 12:30 PM
To: Hume, Steen (ENERGY); Nelms, Scott (MOF); Veinot, Cindy (TBS); Cox, Hilary (ENERGY); Christie, Tim (ENERGY)
Cc: Rehob, James (ENERGY); Shear, Dan (ENERGY); Kacaba, Jennifer (ENERGY); Huang, Jackson (MEDG/MRIS)
Subject: FW: "Fair Hydro Act" Legislative Summary (Discussion Draft)
Importance: High

Here is the document, just received, that we will work from this afternoon.

-----Original Message-----
From: Mansoori, Nina [mailto:nmansoori@torys.com]
Sent: April-12-17 12:16 PM
To: WILSON, JUDY; STOKES, BRYSON; JACKSON, ADAM; Peter Hamilton (PHamilton@stikeman.com); Rehob, James (ENERGY); Alan Hibben; Shear, Dan (ENERGY); Calwell, Carolyn (ENERGY/MEDEI/MRI); Michael.Boll@ieso.ca; Feldman, Michael; LEE John -TREASURY; RYFA Ken -TREASURY; WONG Leslie -LAWDIV; Hill, Krista; Ramchandani, Rima; Keizer, Charles; Myers, Jonathan; Emes, Aaron; Wortsman, Jerald; Bomhof, Scott; Estey, Bill; Watson, Gwen; O'Brian, Adam; Fitzpatrick, Michael F.; VINER, JON; Brad.Purkis@tdsecurities.com; Nelms, Scott (MOF); Sebastiano, Rocco; GZacher@stikeman.com; Christie, Tim (ENERGY); Johnson, Paul (ENERGY/MEDEI/MRI); Kwan, Ronald (OFA); He, Gavin (OFA); Veinot, Cindy (TBS); Hosick, Sarah (TBS); kim.marshall@ieso.ca; Cox, Hilary (ENERGY); Hilloowala, Maharukh; Wolff, Michael; Holloway, Harold; Akman, Steven; Manii, David; Nevison, Gary; Niehaus, Katrina; Maciel, Andrew; Persaud, Donnie - Debt Capital Markets; Adalja, Sunil; Alvi, Shariq; Benaiah, Ian; Fullerton, Rick; Collins, Patrick J; Mullen, Max M.; Delaney, Brian; Hong, Yoomin; Raman, Akila; King, Richard; Innes, Michael; Milligan, Peter; 'Smith, Elliot'; ASHBOURNE, STEPHEN
Subject: RE: "Fair Hydro Act" Legislative Summary (Discussion Draft)
Importance: High

All - please find attached a revised draft of the summary legislation circulated by Blakes on April 10 which reflects consolidated comments from OPG and the dealers (and their respective counsel). Please note that the attached remains subject to the continuing review of OPG and the dealers. We will have printed copies of the blackline available at today's meeting.

Best Regards,
Nina

Nina Mansoori

P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

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-----Original Message-----
From: Smith, Elliot [mailto:ESmith@osler.com]
Sent: April-12-17 12:39 AM
To: ASHBOURNE, STEPHEN <STEPHEN.ASHBOURNE@blakes.com>
Cc: Feldman, Michael <mfeldman@torys.com>; JACKSON, ADAM <ADAM.JACKSON@blakes.com>; Peter Hamilton (PHamilton@stikeman.com) <PHamilton@stikeman.com>; LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; WONG Leslie -LAWDIV <leslie.wong@opg.com>; MCAULEY Tyler -LAWDIV <tyler.mcauley@opg.com>; WILSON, JUDY <JUDY.WILSON@blakes.com>; STOKES, BRYSON <BRYSON.STOKES@blakes.com>; Hill, Krista <khill@torys.com>; Ramchandani, Rima <rramchandani@torys.com>; Keizer, Charles <ckeizer@torys.com>; Myers, Jonathan <jmyers@torys.com>; Emes, Aaron <aemes@torys.com>; Mansoori, Nina <nmansoori@torys.com>; Wortsman, Jerald <jwortsman@torys.com>; Bomhof, Scott <sbomhof@torys.com>; Estey, Bill <bestey@torys.com>; Watson, Gwen <gwatson@torys.com>; James.Rehob@ontario.ca; Alan Hibben <alan.hibben@rogers.com>; Shear, Dan (ENERGY) <Dan.Shear@ontario.ca>; Carolyn.Calwell@ontario.ca; O'Brian, Adam <aobrian@hunton.com>; Fitzpatrick, Michael F. <MFitzpatrick@hunton.com>; VINER, JON <JON.VINER@blakes.com>; Brad.Purkis@tdsecurities.com; Nelms, Scott (MOF) (Scott.Nelms@ontario.ca) <Scott.Nelms@ontario.ca>; Sebastiano, Rocco <RSebastiano@osler.com>; Michael.Boll@ieso.ca; GZacher@stikeman.com; Christie, Tim (ENERGY) <Tim.Christie@ontario.ca>; Johnson, Paul (ENERGY/MEDEI/MRI) <Paul.Johnson3@ontario.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>; kim.marshall@ieso.ca; Cox, Hilary (ENERGY) <Hilary.Cox@ontario.ca>; Hilloowala, Maharukh <Maharukh.Hilloowala@tdsecurities.com>; Wolff, Michael <Michael.Wolff@tdsecurities.com>; Holloway, Harold <Harold.Holloway@tdsecurities.com>; Akman, Steven <Steven.Akman@tdsecurities.com>; Manii, David <david.manii@tdsecurities.com>; Nevison, Gary <Gary.Nevison@tdsecurities.com>; Niehaus, Katrina <Katrina.Niehaus@gs.com>; Maciel, Andrew <Andrew.Maciel@cibc.com>; Persaud, Donnie - Debt Capital Markets <Donnie.Persaud@cibc.com>; Adalja, Sunil <Sunil.Adalja@cibc.com>; Alvi, Shariq <Shariq.Alvi@cibc.com>; Benaiah, Ian <ian.benaiah@rbccm.com>; Fullerton, Rick <RFullerton@osler.com>; Collins, Patrick J <Patrick.Collins@gs.com>; Mullen, Max M. <Max.Mullen@gs.com>; Delaney, Brian <Brian.Delaney@gs.com>; Hong, Yoomin <yoomin.hong@gs.com>; Raman, Akila <Akila.Raman@gs.com>; King, Richard <rking@osler.com>; Innes, Michael <MInnes@osler.com>; Milligan, Peter <PMilligan@osler.com>
Subject: RE: "Fair Hydro Act" Legislative Summary (Discussion Draft)

Steve,
We have been corresponding with Torys today and are in the process of preparing a consolidated mark-up reflecting comments from the Dealers and OPG, which will also incorporate some of the comments received this evening from the IESO/Stikemans. We will circulate the consolidated mark-up before tomorrow's meeting.

Elliot

Elliot Smith
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-----Original Message-----
From: ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
Sent: Tuesday, April 11, 2017 1:54 PM
To: Smith, Elliot <ESmith@osler.com>
Cc: Feldman, Michael <mfeldman@torys.com>; JACKSON, ADAM <ADAM.JACKSON@blakes.com>; Peter Hamilton (PHamilton@stikeman.com) <PHamilton@stikeman.com>; LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; WONG Leslie -LAWDIV <leslie.wong@opg.com>; MCAULEY Tyler -LAWDIV <tyler.mcauley@opg.com>; WILSON, JUDY <JUDY.WILSON@blakes.com>; STOKES, BRYSON <BRYSON.STOKES@blakes.com>; Hill, Krista <khill@torys.com>; Ramchandani, Rima <rramchandani@torys.com>; Keizer, Charles <ckeizer@torys.com>; Myers, Jonathan <jmyers@torys.com>; Emes, Aaron <aemes@torys.com>; Mansoori, Nina <nmansoori@torys.com>; Wortsman, Jerald <jwortsman@torys.com>; Bomhof, Scott <sbomhof@torys.com>; Estey, Bill <bestey@torys.com>; Watson, Gwen <gwatson@torys.com>; James.Rehob@ontario.ca; Alan Hibben <alan.hibben@rogers.com>; Shear, Dan (ENERGY) <Dan.Shear@ontario.ca>; Carolyn.Calwell@ontario.ca; O'Brian, Adam <aobrian@hunton.com>; Fitzpatrick, Michael F. <MFitzpatrick@hunton.com>; VINER, JON <JON.VINER@blakes.com>; Brad.Purkis@tdsecurities.com; Nelms, Scott (MOF) (Scott.Nelms@ontario.ca) <Scott.Nelms@ontario.ca>; Sebastiano, Rocco <RSebastiano@osler.com>; Michael.Boll@ieso.ca; GZacher@stikeman.com; Christie, Tim (ENERGY) <Tim.Christie@ontario.ca>; Johnson, Paul (ENERGY/MEDEI/MRI) <Paul.Johnson3@ontario.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>; kim.marshall@ieso.ca; Cox, Hilary (ENERGY) <Hilary.Cox@ontario.ca>; Hilloowala, Maharukh <Maharukh.Hilloowala@tdsecurities.com>; Wolff, Michael <Michael.Wolff@tdsecurities.com>; Holloway, Harold <Harold.Holloway@tdsecurities.com>; Akman, Steven <Steven.Akman@tdsecurities.com>; Manii, David <david.manii@tdsecurities.com>; Nevison, Gary <Gary.Nevison@tdsecurities.com>; Niehaus, Katrina <Katrina.Niehaus@gs.com>; Maciel, Andrew <Andrew.Maciel@cibc.com>; Persaud, Donnie - Debt Capital Markets <Donnie.Persaud@cibc.com>; Adalja, Sunil <Sunil.Adalja@cibc.com>; Alvi, Shariq <Shariq.Alvi@cibc.com>; Benaiah, Ian <ian.benaiah@rbccm.com>; Fullerton, Rick <RFullerton@osler.com>; Collins, Patrick J <Patrick.Collins@gs.com>; Mullen, Max M. <Max.Mullen@gs.com>; Delaney, Brian <Brian.Delaney@gs.com>; Hong, Yoomin <yoomin.hong@gs.com>; Raman, Akila <Akila.Raman@gs.com>; King, Richard <rking@osler.com>; Innes, Michael <MInnes@osler.com>; Milligan, Peter <PMilligan@osler.com>
Subject: Re: "Fair Hydro Act" Legislative Summary (Discussion Draft)

Elliot, in the interest of time, it may make sense for me to walk you through where your items have been addressed. Steve

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On Apr 11, 2017, at 1:19 PM, Smith, Elliot <ESmith@osler.com<mailto:ESmith@osler.com>> wrote:

Stephen,
This version does not reflect the top issues raised by the Dealers. We are sitting down with the Dealers now working on a comprehensive mark-up that we will send later today, but it will not be ready by 2 PM. We would like to use tomorrow's meeting to discuss the mark-up we are preparing rather than a further revised version that will not reflect our feedback.

Elliot
<image002.gif>

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From: ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
Sent: Monday, April 10, 2017 11:16 PM
To: Feldman, Michael <mfeldman@torys.com<mailto:mfeldman@torys.com>>; JACKSON, ADAM <ADAM.JACKSON@blakes.com<mailto:ADAM.JACKSON@blakes.com>>; Peter Hamilton (PHamilton@stikeman.com<mailto:PHamilton@stikeman.com>) <PHamilton@stikeman.com<mailto:PHamilton@stikeman.com>>; LEE John -TREASURY <john.s.lee@opg.com<mailto:john.s.lee@opg.com>>; RYFA Ken -TREASURY <ken.ryfa@opg.com<mailto:ken.ryfa@opg.com>>; WONG Leslie -LAWDIV <leslie.wong@opg.com<mailto:leslie.wong@opg.com>>; MCAULEY Tyler -LAWDIV <tyler.mcauley@opg.com<mailto:tyler.mcauley@opg.com>>; WILSON, JUDY <JUDY.WILSON@blakes.com<mailto:JUDY.WILSON@blakes.com>>; STOKES, BRYSON <BRYSON.STOKES@blakes.com<mailto:BRYSON.STOKES@blakes.com>>; Hill, Krista <khill@torys.com<mailto:khill@torys.com>>; Ramchandani, Rima <rramchandani@torys.com<mailto:rramchandani@torys.com>>; Keizer, Charles <ckeizer@torys.com<mailto:ckeizer@torys.com>>; Myers, Jonathan <jmyers@torys.com<mailto:jmyers@torys.com>>; Emes, Aaron

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Subject: RE: "Fair Hydro Act" Legislative Summary (Discussion Draft)

Hi. Here is a revised draft of the legislative summary, for your consideration. Please provide your comments at your earliest opportunity. We will reflect comments received by 2ET tomorrow (Tuesday) in a further group circulation, for discussion on Wednesday. Regards, Steve

Stephen R. Ashbourne
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_____

<image001.gif>

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CONFIDENTIAL AND PRIVILEGED

Preliminary Draft for Discussion Purposes Only

"Fair Hydro Act"

Article 1 – Purpose

The Province has and continues to encourage the construction and development of facilities for the long-term operation and generation of electricity in the Province using sustainable, lower carbon-based technologies such as new gas-fired generation, renewable facilities, energy from waste and biomass, including under the Province's various procurement, standard offer, feed in tariff and other similar programs (the "Green Generation Initiative"). The long-term benefits of the Green Generation Initiative accrue over time and have benefited and will **continue to** benefit present and future electricity consumers in the Province.

The ~~imputed~~**out-of-market** costs of the Green Generation Initiative are currently passed through to electricity consumers by way of a monthly adjustment amount (the "Green Costs Adjustment"), which in turn forms part of the overall adjustment calculated by the Independent Electricity System Operator ("IESO") pursuant to section 25.33 of, and O.Reg. 429/4 under, the *Electricity Act* (the "Global Adjustment"). ~~The Global Adjustment is included as a charge billed to electricity consumers in their monthly electricity invoices.~~

The Green Costs Adjustment is currently determined each month by reference to the amounts paid by IESO to the generators of electricity in the Province under the Green Generation Initiative~~, which may be higher than prevailing market price for electricity. These differences~~**. These amounts paid by the IESO** arise because IESO has entered into long-term procurement contracts with such generators in order to provide them with ~~long-term price~~**revenue** certainty ~~for electricity~~, and in turn to encourage the generators to develop technologies and to construct and develop facilities consistent with the Green Generation Initiative. ~~In general, whenever amounts payable under these procurement contracts exceed the market price for electricity, the Green Costs Adjustment passes through the amount of such differences as part of the monthly charge to electricity consumers. Such amount then becomes available to IESO to meet its obligations under the~~ **[NTD: This statement is not correct in respect of all IESO procurement contracts.]** It has been determined that the useful lives of many of the assets ~~encouraged by~~**developed under** the Green Generation Initiative will be ~~well~~ in excess of the respective terms of ~~the related~~**their respective** procurement contracts~~, and in many cases may extend over more than one generation of electricity consumers~~.

Since the benefits to past, present and future electricity consumers from the Green Generation Initiative will not necessarily coincide with the costs currently attributed through the Green Costs Adjustment, based on the respective ~~durations~~**terms** of the **applicable** procurement contracts, it has been determined that the rate at which the costs associated with the Green Generation Initiative should be passed through to ~~Retail~~**Regulated** Consumers (as defined in Article 2) should be more closely aligned with the benefits that such ~~Retail~~**Regulated** Consumers have derived and are expected to derive from the Green Generation Initiative over time. This realignment will be based on **general** principles and parameters that establish a reasonable basis for measuring and allocating the relative costs and benefits of the Green Generation Initiative equitably across present and future ~~Retail~~**Regulated** Consumers (the "Fair Allocation

Plan"). **[NTD: There is no explanation as to why realignment is limited to Regulated Consumers.]**

If the Fair Allocation Plan determines that the equitable allocation of the costs associated with the Green Generation Initiative to the ~~Retail~~**Regulated** Consumers of a particular time period should be reduced below the amount that currently would be charged based on the Green Costs Adjustment, then the amount payable by such ~~Retail~~**Regulated** Consumers and in turn available to IESO will, in the aggregate, be less than the amount payable by the IESO to the generators in respect of such period. In this case**,** IESO will need to obtain funding from another source to cover such a shortfall. If a funding obligation is incurred ~~by IESO~~ to cover such a shortfall during ~~one~~**any** period, the repayment of such funding obligation will be required in a future period, and any related repayments, finance costs, hedging costs and other transaction costs incurred will become payable in ~~one or more~~ future periods. In order for IESO to obtain a reliable and committed source of cash flows to enable IESO to repay such funding amounts when they become due and payable, this Act imposes irrevocable and non-bypassable financial obligations on ~~Retail~~**Regulated** Consumers to pay amounts incurred in respect of such funding obligations when they become due and payable and establishes a right to invoice and collect such amounts. The right and interest in and to collect such financial obligations will take the form of the Regulatory Asset contemplated in this Act, which will constitute property rights and interests. Interests in the Regulatory Asset may be sold and absolutely assigned by IESO to one or more financing entities, which in turn will finance their acquired interests by incurring funding obligations. The incurrence and payment of such funding obligations will be administered on behalf **of** such financing entities by a financial services ~~agent~~**manager** under the Financing Plan contemplated in this Act. ~~The Financing Plan will seek to reasonably match the payment obligations arising under such funding obligations, to be borne by the future Retail Consumers of the period in which such payment obligations become due, with the benefits of the Green Generation Initiative allocated to such future Retail Consumers under the Fair Allocation Plan.~~

[NTD: Our strong preference is to limit the introduction to the next paragraph and move defined terms from the previous paragraphs to Article 2]

The purpose of this Act is to establish the basis upon which intergenerational fairness can be achieved by charging the costs and benefits of the Green Generation Initiative to present and future ~~Retail~~**Regulated** Consumers on an equitable and cost effective basis.

Article 2 ~~–~~ Definitions

In this Act: **[NTD: It would be preferable to use plain language definitions in the legislation and leave the more detailed definitions to either the regulations or the agreements contemplated hereunder.]**

"Absolute Assignee" means a person to whom a Regulatory Asset Owner effects a Disposition **other than as security**.

"Actual" means, in relation to costs, expenses or payments in respect of Funding Obligations during a Reference Period, the actual amount of such costs, expenses or payments paid or made (net of any Finance Reserve Withdrawals applied to pay such amounts), which amounts shall be recorded by the Financial Services ~~Agent~~**Manager**

whose records shall be determinative for the purposes of this Act except to the extent of a manifest calculation error.

"Additional Funding Charges" means, for a Reference Period ~~in respect of an Absolute Assignee~~, the fees, charges, expenses, costs, indemnities, reimbursements and other amounts (including any applicable tax amounts) that are or become payable by or on behalf of the Absolute Assignee during the Reference Period and that were incurred or committed to directly or indirectly by the Absolute Assignee in connection with the incurrence of Funding Obligations under the Financing Plan (whether at the time of such incurrence or over the term of the Funding Obligation and whether directly or indirectly), including ~~(without duplication and without limitation): (a) any payment required under an ancillary agreement entered into by, or by the Financial Services Agent on behalf of, the Absolute Assignee under the Financing Plan; (b) any federal, provincial or local taxes, payments in lieu of taxes, franchise fees or license fees imposed on the Absolute Assignee or incurred by on behalf of the Absolute Assignee under any obligation to pay tax gross-up amounts to counterparties under Funding Obligations; (c) any amounts payable to the Financial Services Agent, including amounts payable to its advisors and outside counsel; (d) any amounts incurred to prepare, confirm, amend and implement the Financing Plan; (e) any amounts payable to any Alternative Collection Agent or Alternative Servicer, including amounts payable to each's advisors and outside counsel; (f) any amounts incurred to make the calculations, determinations or confirmations to be made by or on behalf of the Absolute Assignee; (g) any servicing fees and expenses; (h) any trustee fees and expenses; (i) any legal fees, expenses and disbursements; (j) any accounting fees and expenses; (k) any administrative fees and expenses; (l) any manager or director fees of a Financing Entity; (m) any registration fees and expenses; (n) any placement fees, underwriting fees, fees and related issuing expenses; (o) any rating agency fees; and (p) any other related fees, charges, expenses, costs, indemnities, reimbursements and other amounts that are approved in good faith by the Financial Services Agent for recovery and payment under the Financing Plan~~**without limitation such amounts as may be prescribed**.

~~"Allocation Factor" means, in respect of a Retail Consumer for a Reference Period, the number (expressed as a percentage) determined in respect of the Retail Consumer by the OEB based on the application of< *the Attribution Methodology* >in respect of the Reference Period.[1]~~

~~"Alternative Collection Agent" means a person appointed under Section 5(11) and in compliance with the requirements set out in Schedule 2 to assume the collection activities and activities of any Electricity Distributor or IESO under Article 5, as agent for and on behalf of the Regulatory Asset Owners.~~ **[NTD: See section 5(11). Remove this concept globally.]**

"Alternative Servicer" means a person appointed under Section 4(8) to assume the obligations of the Servicer under Article 4, as agent for and on behalf of the Regulatory Asset Owners. **[NTD: We see this, in effect, as the same thing as the IESO Successor; that is, replacement of the master Servicer.]**

[1] ~~Confirm that this will be based on forecast volumes of demand (like RPP). To the extent amounts do not get recovered due to differences between forecast and actual, those may be identified and caught by the True-Up.~~

"Assessed Past Green Transition Costs" means, in respect of a Measurement Date, the aggregate of the imputed costs of the Green Generation Initiative (expressed as an equivalent to current dollars), as reflected in the calculation of the Green Costs Adjustment, which have been charged to Retail Customers through the Global Adjustment on or prior to the Measurement Date.

"Attribution Methodology"[21] means the methodology specified in the Fair Allocation Plan for allocating the Period ~~Transition~~**Finance** Charges for a Reference Period to ~~individual Retail Consumers of the applicable Retail Consumer Group based on its Allocation Factor.~~**Regulated Consumers. [NTD: We understood that the Ministry accepted that the transition charge would be a volumetric rate.][NTD: Can be moved to Regulations.]**

"Collected Amount Adjustment" means, in respect of a True-Up Period, the amount (which may be a negative amount) calculated by the Servicer or the Financial Services ~~Agent~~**Manager**, as applicable, equal to (a) the Estimate of the Finance Amount for the True-Up Period, minus (b) the sum of all Transition Charge Collections for the True-Up Period.[32]

"Collective Rights Agreement" means an agreement among all of the Regulatory Asset Owners (including each Absolute Assignee) ~~and~~**,** each Pledgee**, and the Financial Services Manager** that governs the enforcement of their respective rights and interests in, to and under the Regulatory Asset on a coordinated and collective basis.[4] **[NTD: Move to Regulations.]**

"Delegate" means **any of** the **following** person or persons designated in writing from time to time by the Minister of Energy to undertake the actions and perform the responsibilities ascribed to the "Delegate" under this Act~~.~~**: ●. [NTD: Why is this delegation of authority necessary? This requires further discussion and clarity as to which entity or entities that the Province can select as the Delegate; for example, it would not be acceptable for the Province to select the OEB to be the Delegate. If this is required, an acceptable delegate would be a stakeholder committee comprised of representatives from the Ministry of Energy, the OEB, the IESO, and OPG. In addition, the regulation should prescribe how the stakeholder committee would operate.]**

"Disposition" means an assignment, transfer, conveyance, sale, contribution, set-over, exchange or other disposition of **(a) IESO's right to recover all or any portion of an IESO Funding Shortfall or (b)** an Investment Interest to an Absolute Assignee**, in each case** pursuant to a Disposition Document.

"Disposition Document" means the agreement, deed, conveyance, instrument or other document under which ~~a Regulatory Asset Owner~~**IESO or an Absolute Assignee** effects a Disposition to an Absolute Assignee.

[21] This allocation may be volumetric or some combination of a flat amount and a volumetric charge. Further discussion is required. H&W has raised a concern regarding possible adverse changes after the fact and rating agency considerations. Consider whether hard-coding in the legislation makes sense.

[32] This would pick up adjustments based on actual collection experience, changes in the ~~retail consumer~~**Regulated Consumer** base, changes in the actual costs (versus earlier estimates) included in the Transition Charge calculation, etc.

[4] ~~Consider adding the Financial Services Agent and the Servicer as parties.~~

"Electricity Distributor" means~~, in respect of a Service Area, the~~ **a** rate regulated distributor licensed under Part V of the *Ontario Energy Board Act, ~~1998~~* ~~in respect of such Service Area,~~***1998,*** together with and its successors.

"Electricity Distributor Remittances" means, for an Electricity Distributor on a Remittance Date, all Transition Charge Collections received or deemed to be received **[NTD: estimated to be received? will each Electricity Distributor know?]** by the Electricity Distributor prior to the Remittance Date and that have not otherwise been remitted to ~~IESO~~**Servicer** or if applicable the Alternative Collection Agent in accordance with Section 5(3), including the proceeds of any enforcement action undertaken by the Electricity Distributor or if applicable the Alternative Collection Agent to recover payment of Transition Charges in accordance with Article 5.

"Electricity Invoice" means an invoice issued by ~~any of a~~**an** Electricity Distributor (or in its stead, by an Alternative ~~Servicer~~**Collection Agent**), by the Servicer or by a Retailer, in each case to a ~~Retail~~**Regulated** Consumer that is served by the Electricity Distributor's distribution system in respect of electricity charges, including the cost of electricity, delivery and regulatory charges and related services and amounts incurred, assessed or charged in respect of connectivity to ~~a distribution network in the~~**such** Electricity Distributor's ~~designated Service Area~~**distribution system** and in respect of applicable Transition Charges to be charged to the ~~Retail~~**Regulated** Consumer under this Act. **[NTD: The Alternative Servicer should only invoice for Transition Charges, not the entire invoice. Also, to avoid confusion, we suggest using the word "invoice" in reference to what the IESO sends out to distributors, and "bills" in reference to what distributors send out to consumers.]**

"Estimate" means (a) in relation to costs, expenses or payments in respect of Funding Obligations or any Finance Amount for a Reference Period, the estimated amount of such costs, expenses or payments determined by the Financial Services ~~Agent~~**Manager**; and (b) in relation to an assessment of the benefits of the Green Generation Initiative to ~~any Retail Consumer Group~~**Regulated Consumers**, the estimated value (in current dollars) of such benefits determined by the Delegate, in each case having regard to the applicable principles and parameters set out in Schedule 1, which estimated amounts shall be determinative as the applicable estimate for the purposes of this Act except to the extent of a manifest calculation error.

"Estimated Future Green Transition Benefits" means, in respect of a Measurement Date, the Estimate set forth in the Fair Allocation Plan prepared in accordance with Article 7 of the aggregate value (measured in current dollars) of the benefits that are expected to accrue to ~~Retail~~**Regulated** Consumers from the establishment and implementation of the Green Generation Initiative during the period from the Measurement Date to the Program-End Date.

"Estimated Past Green Transition Benefits" means, in respect of a Measurement Date, the Estimate set forth in the Fair Allocation Plan prepared in accordance with Article 7 of the aggregate value (measured in current dollars) of the benefits that have accrued to ~~Retail~~**Regulated** Consumers from the establishment and implementation of the Green Generation Initiative up to and including the Measurement Date.

"Fair Allocation Plan" has the meaning given in Article 1.

"Finance Amount" means, for a Reference Period ~~in respect of an Absolute Assignee~~, the sum (without duplication) of the following amounts that are or become payable during the Reference Period in respect of ~~the~~**all** Absolute ~~Assignee~~**Assignees**: (a) Repayments; (b) **Net** Funding Costs; (c) Redemption Amounts; (d) Finance Reserve Deposits; and (e) Additional Funding Charges.

"Finance Reserve Deposits" means, for a Reference Period, the amount by which (a) deposits made or to be made during the Reference Period in order to pre-fund, collateralize, over-collateralize or establish reserves for the ultimate payment of Funding Obligations or for related contingencies specified in the Financing Plan, exceed (b) any Finance Reserve Withdrawals. **[NTD: Move this to regulation.]**

"Finance Reserve Withdrawals" means, for a Reference Period, the amount withdrawn during the Reference Period from deposits previously made to pre-fund, collateralize, over-collateralize or establish reserves for the payment of Funding Obligations or to pay amounts in respect of related contingencies that had been specified in the Financing Plan. **[NTD: Move this to regulation.]**

"Financial Services ~~Agent~~**Manager**" means OPG or, following any Replacement Event **involving OPG**, such other person ~~or persons~~ who may be appointed as the ~~Financial Services Agent~~**financial services manager** of the Absolute Assignees under the Financing Plan in compliance with the requirements set out in Schedule 2.[5]~~3~~

"Financing Entity" means ~~an entity established in accordance with the Financing Plan to acquire all or an interest in the Regulatory Asset as an Absolute Assignee and to enter into Funding Obligations to finance such acquisition under the Financing Plan.~~[6]**any entity established at the initiative of and managed by the Financial Services Manager to support the Financing Plan.**[4]

"Financing Plan" means the written plan prepared by the Financial Services ~~Agent on behalf of each Absolute Assignee in compliance with Article 9 to set forth the basis upon which, among other things: (a) any Disposition may be made to, financed by or effected by an Absolute Assignee; (b) any Funding Obligations may be incurred by an Absolute Assignee, including any Refinancing; (c) any Pledge may be given or effected; (d) any Funding Obligations may be redeemed, prepaid, repurchased, amended or otherwise effected; (e) any obligations for Additional Funding Charges may be incurred and paid; (f) any Repayments, Funding Costs and Redemption Amounts may be paid or provided for; (g) any Finance Reserve Deposits may be made; (h) any Finance Reserve Withdrawals may be made; (i) the establishment and operation of any Financing Entity may be effected; and (j) the cash flows arising from time to time or otherwise derived from an Investment Interest may otherwise be applied,~~**Manager in accordance with Article 9,** as the same may be amended, amended and restated or terminated by the

[5] ~~Discuss whether to accommodate multiple~~[3] **There must only be one** Financial Services ~~Agents. MOE to consider~~**Manager**.

[6]4 MOE to confirm that the legislation will provide that any Financing Entity that is a wholly-owned subsidiary of OPG (1) would not be subject to Part VI of the *Electricity Act* (Ontario) and (2) in the case of any Financing Entity that is a trust, any income of such trust (for purposes of the *Income Tax Act* (Canada) or the *Taxation Act, 2007* Ontario)) which is paid or made payable to OPG or a wholly-owned subsidiary of OPG as a beneficiary of such trust will not be taken into account in calculating the amount of a payment required to be made by OPG (or such subsidiary) by section 89 or 90 of the Electricity Act.

Financial Services ~~Agent~~**Manager** in ~~compliance~~**accordance** with Article 9 from time to time.

~~"Funding Costs" means, for a Reference Period in respect of an Absolute Assignee, the amount by which (a) the aggregate of all interest< *and other periodic finance charges accruing due and becoming payable or paid by or on behalf of the Absolute Assignee during the Reference Period in respect of its Funding Obligations, including* >any standby commitment fees or charges paid to any lender, credit enhancement fees or charges paid to any credit enhancer, liquidity fees or charges paid to any liquidity provider, amounts (including any termination payments) paid under derivatives and any deposit amount made or required to fund or replenish a debt service reserve account or other account established under any indenture, ancillary agreement or other financing document relating to its Funding Obligations, exceeds (b) the aggregate of all amounts received by or on behalf of the Absolute Assignee during the Reference Period in respect of a Funding Obligation, including from any reimbursement of standby commitment fees or charges paid by a lender, any reimbursement of credit enhancement fees or charges paid by any credit enhancer, any reimbursement of liquidity fees or charges paid by any liquidity provider, any amounts (including any termination payments) paid to the Absolute Assignee under derivatives and any Finance Reserve Withdrawal made or required to be made from a debt service reserve account or other account established under any indenture, ancillary agreement or other financing document relating to the payment of the Funding Costs payable in respect of a Funding Obligation for the Reference Period.~~

"Funding Obligation" means, in respect of an Absolute Assignee, each payment obligation (including**, without limitation,** each obligation to pay: principal, interest, premiums and other financing charge payments; pass-through payments; payment obligations arising under or in respect of derivatives; payment obligations owing to service providers, Financial Services ~~Agents~~**Managers**, finance entity intermediaries, capital markets intermediaries, advisors, lenders, credit enhancement providers, liquidity providers, disbursement counterparties, regulatory agencies and rating agencies; and all Additional Funding Charges**)** incurred by or on behalf of the Absolute Assignee under the Financing Plan, including any Refinancing of another such payment obligation incurred by or on behalf of such Absolute Assignee.

"Future Fair Share of Green Transition Benefits" means, in respect of a Measurement Date, the sum of (a) the Over-Assessed Amount; and (b) the Estimated Future Green Transition Benefits, in each case as of the Measurement Date.

~~"Generator" means a generator of electricity that is subject to the *Electricity Act, 1998*.~~

"Global Adjustment" has the meaning given in Article 1.

"Green Costs Adjustment" has the meaning given in Article 1.

"Green Generation Initiative" has the meaning given in Article 1.

"IESO" means the Independent Electricity System Operator created pursuant to Part II of the *Electricity Act, 1998*.

"IESO Available Amount" means, for a Reference Period, the lesser of (a) the amount (if any) by which (i) the Maximum Transition Charge Amount for the Reference Period, exceeds (ii) Period Finance Amount for the Reference Period, and (b) the IESO Retained Interest Amount as of the [35th] day prior to the first day of a Reference Period plus any IESO Financing Costs that are due and payable and remain unpaid as of the [35th] day prior to the first day of a Reference Period.

"IESO Electricity Distribution Receipts" means, for a month, the sum of all amounts payable by Electricity Distributors to IESO , during the month pursuant to section • of the *Electricity Act* in respect of Regulated Consumers. [NTD: IESO indicates that it likely does not work to express in regards to "amounts payable by the LDCs" because settlement between the IESO and LDCs entails payments by LDCs to the IESO and then credits/debits by the IESO to LDCs to reflect RPP shortfalls/overages.]

"IESO Financing Costs" means, for a Reference Period, the financing costs (if any) incurred by IESO pursuant to Section 8(4) in order to finance its ownership of the IESO Retained Interest during the Reference Period.

"IESO Funding Shortfall" means, for a month, the amount, if any, by which (a) the IESO Electricity Distribution Receipts that would be payable to IESO for the month if determined without regard to this Act and without regard to the changes made to section 25.33 of, and O.Reg. 429/4 under, the *Electricity Act* with respect to the Global Adjustment concurrently with this Act, exceeds (b) the IESO Electricity Distribution Receipts payable to IESO for the month[75]; provided that if the amount of any such shortfall is determined to have been based on incomplete information, variances or estimates that were inaccurate, an adjustment shall be made in determining the amount of any subsequent shortfall for the month in which the inaccuracy is identified. .To the extent reasonably necessary to give effect to this Act, or any transaction contemplated hereby, IESO shall calculate the IESO Funding Shortfall for any month taking into account information provided by the Electricity Distributors and (i) such calculation shall be binding for all purposes; and (ii) any demonstrated inaccuracy in the calculation for any month (including any such resulting from inaccuracies in the information provided by Electricity Distributors) shall be accounted for by adjusting the IESO Funding Shortfall for a subsequent month. [NTD: Need to add the mechanism for IESO to record this shortfall because without that there is no Regulatory Asset. This IESO Funding Shortfall is the regulatory asset owned by IESO.]

"IESO Recovery" means each amount remitted to IESO (including by IESO retaining such amount) in respect of the IESO Retained Interest pursuant to Section 5(6)(b), and "IESO Recoveries" means, collectively, all such amounts received by IESO.

"IESO Remittances" means, for a Settlement Date, all Electricity Distributor Remittances received by IESO or if applicable the Alternative Collection Agent prior to the Settlement Date and that have not otherwise been remitted to the Regulatory Asset Owners (each with respect to its Regulatory Asset) in accordance with Section 5(6), including the proceeds of any enforcement action undertaken by IESO or if applicable the Alternative

[75] This has been recast to recognize that the shortfall in the first 4.5 years could exceed the entire GA amount. A more refined approach to describing the concept may be considered.

Collection Agent to recover payment of amounts payable by Electricity Distributors to IESO in accordance with Article 5.

~~"IESO Retained Interest" means IESO's right, title and ownership interest (if any) in, to and under the Regulatory Asset, which shall exclude each Investment Interest.~~

~~"IESO Retained Interest Amount" means, on a day, (a) the sum of all IESO Funding Shortfalls incurred prior to the day, plus (b) the sum of all IESO Funding Costs incurred prior to the day in accordance with Section 8(4), minus (c) the net proceeds received by IESO from or on behalf of each Absolute Assignee as consideration for the Disposition of each Investment Interest paid to IESO by or on behalf of such Absolute Assignee prior to the day, and minus (d) the IESO Recoveries received by IESO prior to the day.~~

"IESO Successor" means the entity appointed by the Province to succeed to the rights and obligations of IESO as the entity responsible for managing the Province's electricity system.

"Investment Interest" means an ownership interest in, to or under the Regulatory Asset that is acquired by an Absolute Assignee pursuant to a Disposition~~, which ownership interest may include (without limitation) ownership of a specified portion on a divided basis of the assets comprising the Regulatory Asset and ownership of an undivided ownership interest in the Regulatory Asset, in each case as may be described in the applicable Disposition Document~~.

"Investment Remittance" means, for a month, the lesser of (a) the aggregate amount of all IESO Remittances for the month, and (b) the sum of the ~~Finance Amounts~~**Funding Obligations** due and payable by all Absolute Assignees in respect of the month.

~~"Maximum IESO Recovery" means, for a month, the amount (if any) by which (a) the IESO Remittances for the month, exceed (b) the sum of all Finance Amounts that are due and payable by Absolute Assignees in respect of the month.~~

~~"Maximum Transition Charge Amount" means, for a Reference Period, (a) the aggregate amount of Future Fair Share of Green Transition Benefits that are allocable to the applicable Retail Consumer Group in accordance with the Fair Allocation Plan, divided by (b) the applicable Reference Period Length.~~

"Measurement Date" means [Insert relevant date around the Legislation Implementation Date] and any other date specified as such under the Fair Allocation Plan.

"Net Funding Costs" means, for a Reference Period in respect of a Financing Entity, the amount by which (a) the aggregate of all interest, scheduled principal> *and other periodic finance charges accruing due and becoming payable or paid by or on behalf of the Absolute Assignee during the Reference Period in respect of its Funding Obligations, including* <**such amounts as may be prescribed, exceeds (b) the aggregate of all amounts received by or on behalf of the Absolute Assignee during the Reference Period in respect of the Funding Obligations referred to in (a), including such amounts as may be prescribed.**

"OEB" means the Ontario Energy Board, together with its successors.

"OPG" means the corporation incorporated as Ontario Power Generation Inc. under the *Business Corporations Act* on December 1, 1998, together with its successors.

"Over-Assessed Amount" means, in respect of a Measurement Date, the amount (if any) by which (a) the Assessed Past Green Transition Costs, exceeds (b) the Estimated Past Green Transition Benefits, each as determined as of the Measurement Date.

"Period Finance Charges" means, for a Reference Period, the sum of (a) the Estimate of the Finance Amount ~~and~~ (b) the True-Up Amount in respect of the ~~immediately preceding Reference Period. "Period Transition Charges" means, for a Reference Period, the sum of (a) the Period Finance Charges for the Reference Period and (b) the IESO Available Amount for the Reference Period.~~ **applicable True-Up Period and (c) an adjustment amount as may be prescribed to account for estimated collection shortfalls and collection delays in respect of amounts under (a) and (b).**

"Pledge" means, in respect of an Investment Interest of an Absolute Assignee, a lien, mortgage, charge or security interest granted to or in favour of a Pledgee by the Absolute Assignee in, to and over all or a specified portion (including a specified portion on a divided basis or by way of an undivided interest) of the Investment Interest.

"Pledgee" means a person to whom an Absolute Assignee grants a Pledge.

"Program End Date" means •, [2047].

"Province" means the Province of Ontario.

"Redemption Amount" means the amount payable by or on behalf of an Absolute Assignee to redeem, prepay or repurchase a Funding Obligation incurred by or on behalf of the Absolute Assignee, including any premium, make-whole or other additional amount becoming payable under the Funding Obligation to give effect to such redemption, prepayment or repurchase.

"Reference Period" means (a) the period from (and including) the Measurement Date to (and including) ~~June~~**October** 30, 2017, (b) each six month period commencing [May 1st and November 1st] thereafter and (c) any other period specified as such in the Fair Allocation Plan.

~~"Reference Period Length" means, for a Reference Period, the number of months in the Reference Period.~~

"Refinancing" means, in respect of a Funding Obligation incurred by or on behalf of an Absolute Assignee, that the Funding Obligation is repaid or repurchased for cancellation by or on behalf of the Absolute Assignee by applying the net proceeds obtained by the Absolute Assignee incurring one or more other Funding Obligations.

"Regulated Consumer" means consumers of electricity in the Province as prescribed.

[NTD: There are a number of issues with this definition. First, the word "Retail" is a source of confusion as it implies customers of licensed retailers. Really, the purpose of the term is to define the group of consumers that are eligible to receive the benefit of the Fair Hydro program and who will bear the cost of the program over the long term. We have proposed "Regulated Consumer" but you could also use the term "Eligible Consumer" or "Fair Hydro Eligible Consumer" and for purposes of the legislation to say that it is a member of a class of consumers prescribed by the regulations for purposes of the relevant section of the legislation. The regulation would then describe who is in the class. Second, it may not be appropriate to rely on the class of consumers prescribed for the purposes of s. 79.16 or under the OREC Act. Section 79.16 is the section that defines the class of RPP consumers. We understand that the "Fair Hydro Eligible Consumers" are not an identical class to that which is eligible for the RPP or for> ***the Ontario Rebate for Electricity Consumers***<. For example, we have heard that Fair Hydro Eligible Consumers will (a) exclude consumers served by independent power authorities (certain remote communities not served by Hydro One Remotes), and (b) include consumers served by licensed unit sub-metering providers, licensed retailers and certain consumers served directly by the IESO (which may or may not be captured by the classes under 79.16 or OREC). Third, it is not clear why consumers with contracts with retailers who use retailer consolidated billing are removed from the first part of the definition but then added back into the second part of the definition. Fourth, Retailers do not necessarily have physical electricity assets that would be connected to the grid. Some just sell or offer contracts for electricity. As such, the first few lines after (b) are problematic. Fifth, the phrase "purchase electric generation services from a provider of electric generation services other than the owner of the Province's transmission and distribution system assets" does not make sense. A consumer does not purchase generation services from a transmitter or distributor. Rather, a consumer receives distribution services from a distributor. In addition to charging for its distribution services, the distributor also charges the associated transmission costs and commodity costs associated with the volumes delivered. Those commodity costs are the price of the electricity itself and are almost entirely made up of the amounts determined under the global adjustment. Sixth, the phrase "**>*whether or not the transmission and distribution system assets continue to be owned or operated by Electricity Distributors or operated by IESO*<**" does not make sense. Transmission assets are owned and operated by transmitters. Distribution assets are owned and operated by distributors. The IESO does not own but does administer and direct the operation of the transmission system.]

"Regulatory Asset" means the property rights and interests described in Section 6(1), which collectively is comprised of ~~the IESO Retained Interest and~~ each Investment Interest.

"Regulatory Asset Account" means (a) for an Electricity Distributor, any bank account into which the Electricity Distributor deposits or receives Transition Charge Collections; and (b) for the Servicer, any bank account into which ~~IESO~~Servicer deposits or receives Transition Charges~~, Electricity Distributor Remittances or IESO Remittances; and (c) if applicable, for the Alternative Collection Agent, any bank account into which~~

the Alternative Collection Agent deposits or receives Transition Charge Collections, Electricity Distributor Remittances or IESO Remittances.

"Regulatory Asset Owner" means each of (a) IESO, as owner of (and to the extent of) the IESO Retained Interest and (b) each Absolute Assignee, as owner of its Investment Interest or Investment Interests, and "Regulatory Asset Owners" means collectively IESO and each such Absolute Assignee, who together own the entirety of the Regulatory Asset and are required to exercise their individual rights of ownership in accordance with Section 6(7).

"Related Rights" means**, with respect to a Regulatory Asset Owner's Investment Interest,** all rights of any kind (whether in tort, contract or otherwise) that attach or are attendant or incidental to any of the other property rights or interests that comprise such Regulatory Asset**Investment Interest**.

"Remittance Date" means, in respect of an Electricity Distributor, each day on which it is required to remit Electricity Distribution Remittances to IESO**Servicer** or if applicable the Alternative Collection Agent as specified in accordance with any Funding Obligation or, if no such day is specified in accordance with any Funding Obligation, then the Business Day **[NTD: Not defined.]** preceding each Settlement Date. **[NTD: Move to Regulations. Remittances will be in accordance with the current rules.]**

"Repayment Obligation" means an obligation to repay, redeem or repurchase, or to provide for the repayment, redemption or repurchase (including by making a related Finance Reserve Deposit) of, all or a portion of the amount advanced to the Absolute Assignee under a Funding Obligation.

"Repayment" means a payment by an Absolute Assignee made to satisfy a Repayment Obligation, other than to the extent that the payment is made by applying the proceeds of a Refinancing or from Finance Reserve Withdrawals.

"Replacement Event" means any event specified as such in a Funding Obligation.

"Retail Consumer" means:

(a) present and future consumers of electricity in the Province who are (i) consumers designated under section 79.16 of[, and O.Reg 95/05 under,] the *Ontario Energy Board Act, 1998*, or (ii) hold or are deemed to hold an "eligible account" under< *the Ontario Rebate for Electricity Consumers*> *Act, 2016*, other than any such consumer who has a contract with a Retailer who uses Retailer Consolidated Billing; and

(b) present and future Retailers who use Retailer Consolidated Billing,

and each case includes all such consumers and Retailers who are connected, directly or indirectly and whether a customer of an Electricity Distributor or not, to the transmission and distribution system assets located in the Province and who are taking electric delivery service within the Province, whether or not such retail consumers produce their own electricity or purchase electric generation services from a provider of electric generation services other than the owner of the Province's transmission and distribution

~~system assets and <*whether or not the transmission and distribution system assets continue to be owned or operated by Electricity Distributors or operated by IESO*>.~~

~~"Retail Consumer Group" means, in relation to a Reference Period, the Retail Consumers who receive Electricity Invoices during the Reference Period.~~

"Retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity.

"Retailer Consolidated Billing" has the same meaning as in the *Retail Settlement Code* issued by the Ontario Energy Board.

~~"Service Area" means, in respect of an Electricity Distributor, the geographic area or region in which it is licensed to distribute electricity in accordance with the *Electricity Act, 1998*.~~

"Servicer" means IESO or IESO Successor, as agent for and on behalf of the Regulatory Asset Owners, for the purposes set forth in Article 4.

"Settlement Date" means the [last Business Day of any month].

"Transition Charge" means, ~~for a Retail~~**the amount recoverable from a Regulated** Consumer in respect of a Reference Period, ~~(a) the Period Transition Charge, (b) multiplied by its Allocation Factor in respect of the Reference Period, divided by (c) the applicable Reference Period Length.~~ **being the Period Finance Charge as allocated to such Regulated Consumer in accordance with Article 4(3) on a monthly basis. [NTD: This needs to be grossed up to account for variability associated with expected uncollectables and remittance delays.] [NTD: Do not need to create parallel process. The definition should be linked to the OEB process for determining the volumetric rate as part of the RPP process (see s. 4(2)). The OEB will determine volumetric rate based on forecast consumption, number of consumers, etc. to recover the Period Finance Charges.]**

"Transition Charge Collection" means any amount received **[or deemed by this Act to have been received] by the Absolute Assignees** upon the collection of a Transition Charge paid by or on behalf of a ~~Retail~~**Regulated** Consumer, including any proceeds arising from the exercise and enforcement of any related rights and interests under or in respect of the Regulatory Asset.

"True-Up Amount" means, in respect of a Reference Period, the amount (which may be a negative amount) calculated by the Financial Services ~~Agent~~**Manager** equal to (a) the >*Actual Finance Amount for such related True-Up Period*<**, minus (b) the** Estimate of the Finance Amount for the related True-Up Period, ~~minus (b) the <*Actual Finance Amount for such related True-Up Period*>~~, plus (c) the Collected Amount Adjustment for such related True-Up Period. **[NTD: need to discuss how this will work for our true-up. What about prior period shortages? An example of how this works needs to be provided.]**

"True-Up Period" means, in relation to a Reference Period, the period from and including the [30th] day immediately preceding the first day of the Reference Period, to but excluding the [30th] day immediately preceding the last day of the Reference Period.

"Undertaking of the Lieutenant Governor in CouncilHer Majesty in right of Ontario" means the undertaking of the Lieutenant Governor in CouncilHer Majesty in right of Ontario given under Section 11(2).

Article 3 – Transition Charges

(1) **RetailRegulated Consumer Obligation to Pay a Transition Charge** – Each RetailRegulated Consumer shall pay each Transition Charge charged to it in any Electricity Invoice issued to such RetailRegulated Consumer by its Electricity Distributor or by an Alternative Servicer under Section 4(1), in each case on the terms of payment specified in the related Electricity Invoice.

(2) **Indebtedness of RetailRegulated Consumers** – Until paid, a Transition Charge charged to a RetailRegulated Consumer in an Electricity Invoice shall, together with any applicable late payment fees and finance charges arising under the terms of the Electricity Invoice with respect to such Transition Charge, constitute non-bypassable indebtedness of the RetailRegulated Consumer to the Regulatory Asset Owners, each with respect to its respective interest in the Regulatory Asset. Such indebtedness shall constitute a single and separate[86] debt obligation owing by the RetailRegulated Consumer, which subject to Article 5 may be enforced independently from any other payment obligation or indebtedness owing by the RetailRegulated Consumer under the Electricity Invoice or otherwise.[97]

(3) **No Set-Off or Reduction** – A RetailRegulated Consumer may not set-off or reduce (by counterclaim, defense or otherwise) the amount payable by it in respect of any Transition Charge, including any set-off against or in respect of any amount owing or becoming payable to such RetailRegulated Consumer by its Electricity Distributor, any Regulatory Asset Owner or any other person.

(4) **Allocation of RetailRegulated Consumer Payments** – If an Electricity Distributor receives a payment made by or on behalf of a RetailRegulated Consumer in respect of amounts due and payable under one or more Electricity Invoices that is less than the total amount payable thereunder, such payment shall be allocated on a *pro rata* basis to the payment of related Transition Charges and other invoiced amounts and the amount so allocated as a payment of related Transition Charges shall be deemed to constitute a Transition Charge Collectionsubject to rights and benefits that are no less favourable than the treatment accorded to other amounts payable to the IESO by the Electricity Distributor.

(5) **Transition Charges are Irrevocable** – The Transition Charges arising under or in respect of Funding Obligations incurred under the Financing Plan (including any

[86] Determine if this is critical for rating and markets. Logistics under consideration.

[97] Torys has also suggested that deemed conditions of licenses for distributors, retailers and unit sub-metering providers, could be included as conditions, to require them to collect and remit amounts in accordance with this legislation. Consider if it is helpful to integrate the existing regulatory scheme for invoicing and collections (regarding RPP) in the legislation.

adjustments based on modifications to such Funding Obligations made in compliance with the Financing Plan or as a result of amendments to the Financing Plan made in accordance with Section 9(3)) are deemed to be irrevocable, final and effective without any further action, except to the extent of manifest calculation error. For greater certainty, a Transition Charge may include Finance Amounts for a Reference Period regardless of whether or not the payment of such Finance Amounts are inconsistent with the Fair Allocation Plan applicable at the time such payments are due and payable, and regardless of whether or not the related Funding Obligation was properly incurred under the Financing Plan. In no case shall a Funding Obligation incurred under the Financing Plan be affected by a subsequent amendment to the Fair Allocation Plan.

(6) True-Up of Transition Charges? – [NTD: Include specifics regarding the true-up of the charges and the process for the true-up, but move to Regulations. The True-Up Mechanism should require the Transition Charges to be reviewed and adjusted semi-annually to ensure the expected recovery of amounts sufficient to timely provide all payments in respect of Funding Obligations, provided that in some cases it may need to be adjusted more frequently than semi-annually, e.g., as part of a refinancing.]

(7) Commencement of Invoicing and Collection of Transition Charges – [NTD: Please confirm that as drafted, Transition Charges will begin on the Measurement Date.]

Article 4 – Invoicing of Transition Charges [NTD: Move Article 4 sections (1) to (4) to Regulations. Also note, these sections remain subject to further due diligence by the Dealers.]

(1) **Inclusion of Transition Charges in Electricity Invoices** – Each Electricity Distributor and if applicable any Alternative Servicer shall, as an agent of the Regulatory Asset Owners, specify the Transition Charge to be charged to a ~~Retail~~Regulated Consumer pursuant to Section 4(4) in respect of a related Reference Period in each Electricity Invoice issued by the Electricity Distributor or if applicable by the Alternative Servicer to the ~~Retail~~Regulated Consumer in respect of such Reference Period. Upon the inclusion of a Transition Charge in an Electricity Invoice, the obligation to pay such amount shall be binding on the applicable ~~Retail Consumer.~~Regulated Consumer. [NTD: Must capture bills issued to eligible consumers served by unit sub-metering providers, retailers and the IESO – not just distributors][NTD: This provision also needs to address the inclusion of Transition Charges in invoices from the IESO to the LDC, consistent with the current process of how the IESO bills LDCs.]

(2) **Calculation of the Period ~~Transition~~Finance Charge** – Not later than [35] days prior to the first day of a Reference Period, each Absolute Assignee (or the Financial Services ~~Agent~~Manager on its behalf) shall provide the OEB with written notice of each Estimate of a Finance Amount payable by it or on its behalf in respect of the Reference Period. ~~[35] days prior to the first day of a Reference Period, IESO or Successor IESO if applicable shall specify the IESO Retained Interest Amount and any IESO Financing Costs that are due and payable and remain unpaid on such day.~~ Not later than one month prior to the first day of a Reference Period, ~~the OEB~~each Absolute Assignee (or the Financial Services Manager on its behalf) shall calculate the Period ~~Transition~~Finance Charge applicable to the Reference Period ~~based on the calculations and information set forth in such written notices received from the Absolute Assignees~~

and based onhaving regard to such amounts specified by IESO or Successor IESOthe Servicer, which calculations, information and amounts shall be accepted by the OEB and shall be determinative, except to the extent of manifest calculation error or misstatement.

(3) **Calculation and Attribution of Transition Charges** – Not later than 25 days prior to the first day of a Reference Period, the OEB shall apply the Attribution Methodology to determine the Allocation Factorallocation of the Transition Charge for each RetailRegulated Consumer of the applicable Retail Consumer Group. **[NTD: We think the OEB would be determining the Fair Hydro recovery rate (on a volumetric basis) that distributors would then be required to charge to consumers]**

(4) **Notice of Transition Charges** – Not later than 20 days prior to the first day of a Reference Period, the OEB shall inform each Electricity Distributor and if applicable any Alternative Servicer of the Transition Charges to be specified in the Electricity Invoices to be issued to each RetailRegulated Consumer of the applicable Retail Consumer Group who has a billing address inwho is served by the Electricity Distributor's Service Area.

(5) **Adjustments** – The amount of any Transition Charge charged to a RetailRegulated Consumer and specified as such in an Electricity Invoice shall be determinative of the amount of indebtedness created thereby and owing in respect of such Transition Charge, except to the extent of any manifest calculation error.

(6) **Successors of Electricity Distributors** – Any successor of an Electricity Distributor shall be bound by the requirements of Article 4 and shall perform and satisfy all duties and obligations of such Electricity Distributor under Article 4 in the same manner and to the same extent as such Electricity Distributor, including the obligation under Article 4 to impose, attribute, charge, bill and invoice the Transition Charges.

(7) **IESO Successor** – Any IESO Successor shall be bound by the requirements of Article 4 and shall perform and satisfy all duties and obligations of IESO under Article 4 in the same manner and to the same extent as IESO, including the obligation to calculate and provide notice of Transition Charges.

(8) **Appointment of an Alternative Servicer** – If a Replacement Event occurs in respect of any Electricity Distributor, the Absolute Assignees shall, in accordance with the Collective Rights Agreement, be permitted, by an instrument in writing, to appoint an Alternative Servicer to perform some or all of the obligations and duties required to be undertaken by such Electricity Distributor under this Article 4, as and to the extent specified in such appointment. Upon acceptance of such appointment, the Alternative Servicer shall become obligated to perform such assumed obligations in replacement of such Electricity Distributor. Any Electricity Distributor that is replaced under this Section 4(8) shall promptly transfer all rights, powers, privileges and property interests in its possession or within its control in the performance of such obligations and duties to the Alternative Servicer and shall take such further actions, including the execution of instruments, necessary to give full and final effect to such transfer and to permit the Alternative Servicer to perform such obligations and duties on behalf of the Regulatory Asset Owners. **[NTD: We would expect the IESO to manage this in accordance with its normal business practices.]**

(9) Absolute Assignees have Standing – The Absolute Assignees, acting together in accordance with the Collective Action Agreement, may bring actions against any Electricity Distributor, IESO, the Servicer, Alternative Servicer or any other person who may be authorized to issue Electricity Invoices to ~~Retail~~**Regulated** Consumers for a failure to impose, attribute, charge, bill or invoice Transition Charges **or to otherwise comply with this Act**. Any court of the Province shall have jurisdiction over any actions brought before it by the Absolute Assignees in relation to any such failure~~.~~ **and may make any interim or final order it thinks fit in this regard. [NTD: We would like to see the sections on "Standing" to bring an action to remain in the legislation (as opposed to being moved to the regulations as we believe we previously suggested) as we see those provisions as part of ensuring a rigorous enforcement scheme for the Financing Entity (and so something that should be difficult for the Province to change going forward).]**

(10) No Set-Off or Reduction – No Servicer or Electricity Distributor may set off or reduce (by counterclaim, defence or otherwise) the amount payable by it pursuant to this Article 4.

(11) Regulations – Regulations may be enacted for the purpose of specifying further rights, powers, privileges, duties and obligations that shall apply to IESO, any Electricity Distributor or any Alternative Servicer to ensure that Transition Charges are properly charged to ~~Retail~~**Regulated** Consumers and specified as such in Electricity Invoices.

Article 5 – Collections and Remittances [NTD: Move Article 5 sections (3), (6), (9), (12), (13) and (14) to Regulations.]

(1) **Duty to Collect as Agent** – Electricity Distributors or if applicable any Alternative Collection Agent shall, as an agent of the ~~Regulatory Asset Owners, undertake [diligent][reasonable][10] efforts to~~**Servicer,** collect amounts owing by ~~Retail~~**Regulated** Consumers in respect of Transition Charges charged to such ~~Retail~~**Regulated** Consumers in Electricity Invoices issued by the Electricity Distributor or if applicable such Alternative Collection Agent~~.~~ **all in accordance with the Regulations. [NTD: The obligation to collect and remit the Transition Charge should be included as a deemed condition of license for electricity distributors (and retailers and unit sub-metering providers).]**

(2) **Segregation of Transition Charge Collections** – An Electricity Distributor or if applicable any Alternative Collection Agent shall promptly segregate Transition Charge Collections from other payments received by it from ~~Retail~~**Regulated** Consumers and deposit such Transition Charge Collections into its Regulatory Asset Account.[11][8] **[NTD: Determine if this is critical for rating and markets or if segregation can occur in the hands of the IESO]** Prior to and following a deposit of Transition Charge Collections having been made into its Regulatory Asset Account, the Electricity Distributor or if applicable any Alternative Collection Agent shall hold such amounts in trust for the Regulatory Asset Owners **or its Pledgee**.

(3) **Electricity Distributor Remittances** – On each applicable Remittance Date, an Electricity Distributor shall remit all **amounts invoiced by the IESO on account of the**

[10] ~~Mirror collection "standard of care" under applicable legislation.~~

[11][8] Consider trying to attach to existing LDC credit enhancements and provide parallel coverage for customer losses.

Transition Charge ~~Collections received by it from Retail Consumers~~ in respect of the related Reference Period to or to the account of ~~IESO~~**Servicer** or if applicable the Alternative Collection Agent. **[NTD: It is the Dealers expectation that the Transition Charge will be paid on the same basis as other amounts invoiced by the IESO, failing which, they will need to be remitted daily.]**

(4) **Duty to Collect Electricity Distributor Remittances** – ~~IESO~~**Servicer** or if applicable any Alternative ~~Collection Agent~~**Servicer** shall, as an agent of the Regulatory Asset Owners, ~~undertake [diligent][reasonable] efforts to~~ accept and collect Electricity Distributor Remittances from Electricity Distributors and Transition Charge Collections from ~~Retail~~**Regulated** Consumers that pay their Electricity Invoices directly to IESO~~.~~[12] **on the same basis as it accepts and collects other charges from such Regulated Consumers.**[9]

(5) **Segregation of Electricity Distributor Remittances** – ~~IESO~~**Servicer** and if applicable the Alternative Collection Agent shall promptly segregate Electricity Distributor Remittances from other payments received or held by it and deposit such Electricity Distributor Remittances into its Regulatory Asset Account. Prior to and following a deposit of Electricity Distributor Remittances having been made into its Regulatory Asset Account, ~~IESO~~**Servicer** or if applicable any Alternative Collection Agent shall hold such amounts in trust for the Regulatory Asset Owners **or Pledgee**.

(6) ~~**IESO**~~**Servicer Remittances** – On each Settlement Date[13]10, ~~IESO and if applicable the Alternative Collection Agent~~**Servicer** shall remit all amounts on deposit in its Regulatory Asset Account ~~(a) first,~~ to or to the account of the Absolute Assignees an amount equal to the Investment Remittance for the related month ~~and (b) second, to IESO (including by IESO retaining such amount) an amount equal to the lesser of (i) the Maximum IESO Recovery for the related month and (ii) the IESO Retained Interest Amount as of the Settlement Date~~.

(7) **Successors of Electricity Distributors** – Any successor of an Electricity Distributor shall be bound by the requirements of Article 5 and shall perform and satisfy all duties and obligations of such Electricity Distributor under Article 5 in the same manner and to the same extent as such Electricity Distributor, including the obligation under Article 5 to collect Transition Charges and make remittances of Electricity Distributor Remittances.

(8) **IESO** ~~**Successor**~~**Successors** – IESO ~~Successor~~**Successors** shall be bound by the requirements of Article 5 and shall perform and satisfy all duties and obligations of IESO under Article 5 in the same manner and to the same extent as IESO, including the obligation to collect Transition Charge Collections, Electricity Distributor Remittances and to remit IESO Remittances.

(9) **Owners of Distribution Assets** - If any person other than an Electricity Distributor acquires distribution system assets in the Province or invoices or collects electricity distribution rates in the Province[14]11, then such person shall, if requested by the Absolute Assignees, be obligated to act diligently to (a) facilitate the invoicing and collection of any Transition Charges applicable to ~~Retail~~**Regulated** Consumers ~~in its~~

[12]9 Consider building this obligation into a deemed condition of licence for the IESO.
[13]10 Consider frequency of remittances in light of rating requirements. US rating agencies favour daily remittances.
[14]11 This is in anticipation of a possible future restructuring of the distribution system.

applicable service area, including all consumers connected to the electricitysuch person's distribution system assets and taking electric delivery service located within such service area; (b) allocate partial payments by RetailRegulated Consumers as provided in this Act; (c) exercise all enforcement rights of the Absolute Assignees for the benefit of an Absolute Assignee; and (d) remit any Transition Charge Collections to the Absolute Assignees or Pledgees, as applicable, each in accordance with its Investment Interest. [NTD: Such acquisition of a distribution system would require the person to be an electricity distributor; consider deleting since this is covered off by Section 5(7).]

(10) **Absolute Assignees have Standing** – The Absolute Assignees, acting together in accordance with the Collective Action Agreement, may bring actions against any Electricity Distributor, IESOServicer, the Alternative Collection Agent, any owner of electricity distribution system assets in the Province or any other person who may be authorized to collect electricity distribution and use charges from RetailRegulated Consumers for a failure to collect Transition Charges, remit or collect Electricity Distributor Remittances or remit IESO Remittances, as and to the extent applicable under Article 5.5, or to otherwise comply with this Act. Any court of the Province shall have jurisdiction over any actions brought before it by the Absolute Assignees in relation to any such failure and may make any interim or final order it thinks fit in this regard.

(11) **Appointment of an Alternative Collection Agent –** If a Replacement Event occurs in respect of any Electricity Distributor or IESO, the Absolute Assignees shall, in accordance with the Collective Rights Agreement, be permitted, by an instrument in writing, to appoint an Alternative Collection Agent to perform some or all of the collection, segregation and remittance obligations otherwise required to be undertaken by such Electricity Distributor or IESO, as applicable, under Article 5, as and to the extent specified in such appointment. Upon acceptance of such appointment, the Alternative Collection Agent shall become obligated to perform such assumed obligations in replacement of such Electricity Distributor or IESO, as applicable. Any Electricity Distributor or IESO, as applicable, that is replaced under this Section 5(11) shall promptly transfer all rights, powers, privileges and property interests in its possession or within its control in, to and over the Regulatory Asset, including its Regulatory Asset Account, to the Alternative Collection Agent and shall take such further actions, including the execution of instruments, necessary to give full and final effect to such transfer and to permit the Alternative Collection Agent to enforce the Regulatory Asset on behalf of the Absolute Assignees.Not Used. [NTD: The Servicer should manage this process.]

(12) **No Set-off, etc.** - The Regulatory Asset, including rights in Transition Charges, Transition Charge Collections, and the interests of a Regulatory Asset Owner, an Absolute Assignee and a Pledgee therein, may not be setoff or reduced (including by counterclaim, surcharge or defense) by any RetailRegulated Consumer, any Electricity Distributor, IESOServicer, Alternative Collection Agent or any owner of distribution system assets in the Province or any other person or in connection with any default, bankruptcy, reorganization or other insolvency proceeding of any Electricity Distributor,

~~IESO~~Servicer, Alternative Collection Agent or any owner of distribution system assets in the Province, any affiliate or successor thereof or any other entity or otherwise.[~~15~~12]

(13) **Sequestration** – If any Electricity Distributor, ~~IESO~~Servicer, the Alternative Collection Agent or any owner of distribution system assets in the Province or any other person or entity authorized to collect Transition Charges, defaults on any required remittance of Transition Charge Collections, Electricity Distribution Remittances or IESO Remittances under Article 5, any court in the Province, upon application by and of the Absolute Assignees acting collectively under the Collective Action Agreement and without limiting any other remedies otherwise available to the Absolute Assignees or Pledgees, shall order the sequestration and payment of the Transition Charge Collections, Electricity Distribution Remittances and IESO Remittances, as applicable, for the benefit of the Absolute Assignees, each with respect to its Investment Interest, and the Pledgees as applicable.[~~16~~13]

[NTD: Suggest considering a more typical remedy such as the ability to appoint a receiver. Concept should be moved to Regulations.]

(14) Regulations – Regulations may be enacted for the purpose of specifying further rights, powers, privileges, duties and obligations that shall apply to ~~IESO~~Servicer, any Electricity Distributor or any Alternative Collection Agent to ensure that rights, interests, entitlements, benefits and proceeds in, to, under and from the Regulatory Asset are of fully realized by some or all of the Absolute Assignees and Pledgees.

Article 6 – The Regulatory Asset

[NTD: We believe that the statute should impose a time limit on the ability of IESO to create additional Regulatory Assets under this Act. It is our expectation that this will be no later than 10 years after the commencement of the program.]

[NTD: In addition, additional language is required to address the acquisition of the Regulatory Asset by the Financing Entity, including reference to the consideration being provided for it, funding upfront costs.]

[NTD: The sale of Regulatory Assets must be restricted to Financing Entities controlled by a single entity (initially, OPG).]

[NTD: For greater certainty, a Financing Entity will not be required to purchase Regulatory Assets from IESO.]

(1) **Composition** – The Regulatory Asset shall constitute a current and irrevocable property right and interest consisting, collectively, of the following rights and interests (without duplication):

[~~15~~12] Consider whether it makes sense to create a "deemed collection" payment obligation on Electricity Distributors to the extent a ~~Retail~~Regulated Consumer reduces its payment of Transition Charges, despite this language. Same for Electricity Distributor Remittances and IESO Remittances.

[~~16~~13] Consider adding or substituting this provision for a right to appoint a receiver.

a. the right of ~~IESO (i)~~**a Regulatory Asset Owner** to record its ~~IESO Retained Interest in its accounts in accordance with Section 8(1), having a stated amount from time to time equal to the IESO Retained Interest Amount; and (ii) to receive IESO Recoveries from time to time in accordance with Section 5(6)(b)~~**portion of the Regulatory Asset in its accounts**;

b. the right to impose, bill, invoice, collect and receive Transition Charges from ~~Retail~~**Regulated** Consumers, including the right to determine the amount of Transition Charges in accordance with this Act;

c. the right to enforce the obligations and indebtedness of each ~~Retail~~**Regulated** Consumer to pay the Transition Charges charged to the ~~Retail~~**Regulated** Consumer from time to time in accordance with Article 3, together with all related late payment fees or interest charges arising in respect thereof under the related Electricity Invoices; **[NTD: Do we really want and need the ability for the Financing Entities to chase after individual consumers?] [NTD: This should be the right to provide notices to the OEB of the amounts required for recovery, which the OEB would then be required to accept for purposes of determining the amount of Transition Charges to be charged to consumers]**

d. the right to enforce the duties and obligations of each Electricity Distributor and if applicable the Alternative Servicer to impose, attribute, charge, bill and invoice the Transition Charges in accordance with Article 4;

e. the right to enforce the duties and obligations of each Electricity Distributor and if applicable the Alternative Collection Agent to collect, receive and remit amounts received by it in respect of Transition Charges as Electricity Distributor Remittances to or to the account of ~~IESO~~**Servicer** or if applicable the Alternative Collection Agent in accordance with Article 5, including all collections and the proceeds of any enforcement action undertaken by the Electricity Distributor or if applicable the Alternative Collection Agent to recover payment of Transition Charges in accordance with Article 5;

f. the right to enforce the duties and obligations of ~~IESO~~**Servicer** and if applicable the Alternative Collection Agent to collect and receive Electricity Distributor Remittances and to remit IESO Remittances to or to the accounts of the Regulatory Asset Owners, each with respect to its respective interest in the Regulatory Asset, in each case in accordance with Article 5, including all collections and the proceeds of any enforcement action undertaken by it to recover payment of Electricity Distributor Remittances in accordance with Article 5;

g. the right to receive and collect all Transition Charge Collections, all Electricity Distributor Remittances and all IESO Remittances in accordance with Article 5;

h. all rights and entitlements under each Regulatory Asset Account and all amounts on deposit in any such Regulatory Asset Account;

i. all Related Rights; and

j. all revenue, collections, claims, payments, money and proceeds of or derived from the rights described in (a) through (i), regardless of whether such revenue, collections, claims, payments and proceeds are imposed, invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

A Regulatory Asset and the property rights and interests therein shall exist whether or not Transition Charges have been imposed, charged, invoiced, accrued or collected and notwithstanding that the imposition, attribution, invoicing and collection of Transition Charges will depend on further actions that may not have occurred. **The Regulatory Asset shall continue to exist until all Funding Obligations and Additional Funding Charges have been paid in full.**

(2) **Validity of Dispositions** – ~~Despite any limitations or restrictions on a Disposition that may arise by contract or by operation of any applicable law of the Province or any consent requirement applicable to a Disposition that may arise by operation of any applicable law of the Province, a~~**A** Disposition by IESO **of all or any part of the IESO Funding Shortfall** to an Absolute Assignee ~~made under the Financing Plan~~, or **a Disposition of all or any part of an Investment Interest** by one Absolute Assignee to another Absolute Assignee made under the Financing Plan, shall be permitted and when made shall be valid and enforceable in accordance with the terms of the related Disposition Document and shall be effective to confer upon the Absolute Assignee thereof a valid property right and interest in, to and under the ~~applicable~~**IESO Funding Shortfall or** Investment Interest**, as applicable** (or relevant portion thereof) in accordance with the terms of such Disposition, provided that the parties to the applicable Disposition Document have expressly stated therein that such Disposition is a sale or other absolute transfer. Without limiting the foregoing, any Disposition that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as a true sale and absolute transfer of the ~~Regulatory Asset Owner's applicable~~**IESO Funding Shortfall or an Absolute Assignee's** right, title~~,~~ and interest in, to and under ~~the Regulatory Asset~~**an Investment Interest, as applicable** (or relevant portion thereof), and not merely as a Pledge thereof, and upon such Disposition the assigner or seller under the applicable Disposition Document shall retain no right, title or interest in the **IESO Funding Shortfall or** Investment Interest **(or relevant portion thereof)** subject to the Disposition, including all rights under the **IESO Funding Shortfall or** Investment Interest arising after such Disposition. **[NTD: Subject to review by Osler/dealers.]**

(3) **Perfection and Priority of Dispositions** – Any Disposition of an interest in a Regulatory Asset shall be vested, valid, binding and perfected from the time when such Disposition is made. Such Disposition shall be perfected, vested, valid and binding as against the **IESO or** transferring Regulatory Asset Owner**, as applicable,** and all other persons who have claims of any kind (whether in tort, contract or otherwise) against **IESO or** the transferring Regulatory Asset Owner, **as the case may be,** irrespective of whether such persons have notice of the Disposition and the property rights and interests acquired by the Absolute Assignee under such Disposition shall be free and clear of any liens in favour of such other persons.

(4) **Validity of Pledges** – ~~Despite any limitations or restriction on a Pledge that may arise by contract or by operation of any applicable law of the Province or any consent~~

~~requirement applicable to a Pledge that may arise by operation of any applicable law of the Province, a~~**A** Pledge by an Absolute Assignee may be made to secure any ~~related~~ Funding Obligation and when made shall be valid and enforceable in accordance with its terms and shall be effective to confer upon the Pledgee a valid security interest in, to and in respect of the related Investment Interest in accordance with the terms of the Pledge. ~~Other than as required by the Financing Plan, no~~**No** consent of**, or notice to,** any person shall be required to give effect to a Pledge made to secure any Funding Obligation.

(5) **Perfection and Priority of Pledges** - For purposes of the *Personal Property Security Act* (the "PPSA"), the Regulatory Asset shall be intangible personal property and any Pledge made by an Absolute Assignee in respect of a Funding Obligation **shall, subject to the terms thereof, give rise to a security interest of which the PPSA applies, and** may be perfected by filing a financing statement under the PPSA on that basis. All proceeds of a related Investment Interest that are subject to such a Pledge that are received by the Absolute Assignee shall immediately be subject to the such Pledge, and the security interest in such proceeds shall be perfected pursuant to the PPSA.~~17~~**14** A Pledge perfected under the PPSA shall be a continuously perfected security interest and shall have priority over any other lien or security interest, created by operation of law or otherwise, that may attach to the property rights and interests in the Investment Interest subject to the Pledge unless the Pledgee has otherwise agreed in writing. ~~Subject to the terms of the Collective Action Agreement, a~~**A** Pledgee shall have a perfected security interest in a related Investment Interest, including the Absolute Assignee's rights and interests in and to Transition Charge Collections or other related proceeds in respect of the Investment Interest and that are deposited in any Regulatory Asset Account or other account of any Electricity Distributor, IESO, Alternative Collection Agent or other person who may have commingled such Transition Charge Collections or such other proceeds with other funds. All provisions of the PPSA shall apply to the Regulatory Asset on the basis that it is intangible personal property, except to the extent otherwise provided in this Section 6(5).

(6) **Enforcement of Property Rights** – The rights of any Regulatory Asset Owner to collect and enforce its rights and interests in, to or in respect of the Regulatory Asset shall be exercised in the manner set forth in Article 5.

(7) **Owners of a Specified Portion of the Regulatory Asset** – A Regulatory Asset Owner may effect a Disposition to an Absolute Assignee of a specified portion of its rights and interests in the Regulatory Asset, including by way of a Disposition of a divided or an undivided interest therein as specified in a related Disposition Document~~, in each case under the Financing Plan~~. In no circumstance may the specified portions of the rights and interests in the Regulatory Asset owned by all Regulatory Asset Owners be greater than all of the rights and interests that comprise the Regulatory Asset in the aggregate.

(8) **Collective Action Required** – If a Regulatory Asset Owner's rights and interests in the Regulatory Asset comprises less than the entire property right and interest constituted by the Regulatory Asset, such Regulatory Asset Owner shall only enforce such right and interest on a collective and coordinated basis with each other Regulatory Asset Owner in accordance with the Collective Rights Agreement. **[NTD: Move to Regulations.]**

~~17~~**14** Consider whether to simply leave this and have a financing statement be filed under the PPSA. This would normalize the security interest and reduce any adverse suggestion that security would not otherwise arise.

Article 7 – Establishment of the Fair Allocation Plan[1815] **[NTD: Move entire Article 7 to Regulations, other than 7(1) and 7(2).]**

(1) **Adoption of the Fair Allocation Plan** – The Delegate may, [by written declaration,] designate and adopt a Fair Allocation Plan in compliance with Article 7. The Fair Allocation Plan so designated and adopted shall be the Fair Allocation Plan for all purposes of this Act, except if amended, amended and restated or terminated by a further written declaration made by the Delegate in compliance with Section 7(4).**[the Regulations]**

(2) **Principles and Parameters** – A Fair Allocation Plan shall seek to allocate Future Fair Share of Green Transition Benefits across present and future Retail Consumer Groups**Regulated Consumers** on a basis that the Delegate, in its sole and absolute discretion, determines to be equitable, having regard to the following principles and parameters:

[NTD: E&Y will need to see the guidelines of the Fair Allocation Plan set in reference to parameters that will allow it to establish a modeling curve]

- **[Inflation period: (between November 2017 – and April 2022) bill increases need to be capped at inflation (assumed at 2% for modeling purposes)]**
- **[Transition Period: (May 2022- April 2027) bills increased at a consistent rate which is set so that the borrowing will not exceed the Trust's capacity, which is determined by the Finance Service Manager]**
- **[Amortization Period: (May 2027-April 2047) equitable distribution of Finance Amount among Regulated Consumers]**

1. Future Fair Share of Green Transition Benefits should be allocated over the period ending on the Program End Date.

2. <*The Fair Allocation Plan should specify the Reference Periods for the purpose of* >identifying applicable Retail Consumer Groups and <*allocating Future Fair Share of Green Transition Benefits among* >them< *on a relative basis over time.* >

2. 3. The share of Future Fair Share of Green Transition Benefits allocable to a particular Retail**Regulated** Consumer Group in respect of a Reference Period should be proportionate to a reasonable assessment of the benefits of the Green Generation Initiative to the Retail**such Regulated** Consumer Group over such Reference Period**, other than**> *in exceptional circumstances*<**.**

[1815] The idea is that the Fair Allocation Plan will be set once at the outset based on the principles and parameters described here, all as applied based on information available and the reasonable expectations and discretion of the delegate at such time. If the expectations are not fulfilled (e.g., generators may choose to retire their facilities at the end of their current procurement contracts and not invest in extending service lives to secure further procurement contracts), the Fair Allocation Plan will be unaffected, unless it is specifically amended (assuming amendments will be permitted by the legislation).

4. The share of Future Fair Share of Green Transition Benefits to be allocated to a Retail Consumer Group and any future Retail Consumer Group at a particular time should not exceed the Estimated Future Green Transition Benefits, measured in respect of the Reference Periods following such particular time and to the Program End Date.

5. No future Retail Consumer Group should be allocated an unreasonably disproportionate share of Estimated Future Green Transition Benefits. Except<- *in exceptional circumstances*> or in the case of any reallocation of an Over-Assessed Amount as contemplated in 7, below, the Future Fair Share of Green Transition Benefits to be allocated under a Fair Allocation Plan to any future Retail Consumer Group should have regard to *[Insert formula if a year-over-year maximum amount is determined to be appropriate].*

3. 6. The time value of money should be reflected in the Fair Allocation Plan, in order to equate the relative values of the nominal allocations of Future Fair Share of Green Transition Benefits, calculated in current dollars, to future Retail Consumer Groups over time.>*The Fair Allocation Plan should specify the Reference Periods for the purpose of* <>*allocating Future Fair Share of Green Transition Benefits among* <**Regulated Consumers**> *on a relative basis over time.* <

7. To the extent there has been an Over-Assessed Amount, the Fair Allocation Plan may determine that an adjustment should fairly be made to rebate Retail Consumers for such an amount, by reducing the costs otherwise attributable under the Act to such Retail Consumers. The relative costs of the Green Generation Initiative are reflected under the Act by the attribution of Transition Charges to such Consumer Groups, based on the Financing Plan seeking to track the allocations of benefits under the Fair Allocation Plan. Accordingly, the Maximum Transition Charge Amount determined for one or more Retail Consumer Groups having regard to the Fair Allocation Plan otherwise applicable may be appropriately reduced to recognize the effect of the Over-Assessed Amount. In such a case, a determination to reduce the Maximum Transition Charge Amount applicable for certain related Reference Periods should have regard to the principle that the corresponding rebate should be extended to benefit the Consumer Group or Consumer Groups in closest proximity to the Legislative Implementation Date.

(3) Attribution Methodology – The Fair Allocation Plan shall specify the Attribution Methodology for the purposes of allocating the Period Transition**Finance** Charges across the Retail**Regulated** Consumers of a particular Retail Consumer Group. The Attribution Methodology shall result in an attribution of such Transition Charges that is considered by the Delegate to be equitable, and may have regard to such principles and parameters as may be further set forth in a Regulation.; **provided that**> *the Attribution Methodology* <**shall not be used to limit the recovery of Transition Charges. [NTD: Can the methodology be adjusted outside an amendment? If so, the rating agencies need to understand the limits of any adjustment.]**

(4) Amendments of the Fair Allocation Plan – The Fair Allocation Plan may be amended, amended and restated or terminated by the Delegate, provided that such amendment, amendment and restatement or termination shall (a) not be inconsistent with the principles and parameters set forth in (2) or (3), above, or the Regulation ~~and~~, (b) comply with any restrictions or limitations specified with respect thereto in any Funding Obligation~~.~~**, and (c) not impair any Regulatory Asset, outstanding Funding Obligation or any Transition Charges. [NTD: If the Fair Allocation Plan is amended, there should be no further Regulatory Assets until the revised Fair Allocation Plan and corresponding Financing Plan have been approved.]**

Article 8 – The IESO ~~Retained Interest~~Funding Shortfall

(1) ~~Maintain Books of Account~~ ~~– IESO may maintain books of account to record the IESO Retained Interest Amount and all adjustments thereto from time to time. Such books of account shall be determinative with respect to the amount of IESO's related regulatory asset.~~**Recording of IESO Funding Shortfall -- IESO will record any IESO Funding Shortfall in its books.**

~~**(2) Limitation on Additions** – IESO shall not record additions to the IESO Retained Interest Amount in respect of IESO Funding Shortfalls (a) if such additions are restricted by the terms of any Disposition Document or the Collective Action Agreement, or (b) on or after •, 2017.~~

(2) ~~**(3)**~~ **Dispositions** – IESO may effect a Disposition **of all or any part of the IESO Funding Shortfall** to an Absolute Assignee if (a) the ~~Absolute Assignee has or will concurrently become bound by the Collective Rights Agreement; (b) the~~ Disposition is effected pursuant to a Disposition Agreement duly executed by IESO; **and** (~~c~~**b**) the Financial Services ~~Agent~~**Manager** confirms in writing that the Disposition **complies with any restrictions or limitations specified with respect thereto in any documents evidencing the Funding Obligations and** is permitted under the Financing Plan~~; and (d) the net proceeds payable to IESO from the sale of the related Investment Interest would not exceed the IESO Retained Interest Amount immediately before the time of such Disposition~~.

(3) ~~**(4)**~~ **No Continuing Interest in any Investment Interest** – IESO shall have no continuing right or interest in any ~~Investment Interest~~**IESO Funding Shortfall** subject to a Disposition effected by IESO under a Disposition Document to which IESO is a party~~and IESO shall not assert any such right or interest or take or omit to take any action to exercise or enforce its rights or interests under the IESO Retained Interest if such action or omission would impede or obstruct the rights of any Absolute Assignee or a Pledgee to enforce its rights and interests in any Investment Interest, except if IESO is expressly permitted to take or omit to take such action, respectively, under the related Disposition Document or the Collective Rights Agreement.~~

~~**(5) IESO Financing Costs** – IESO shall be entitled in good faith to incur reasonable financing costs (including interest and other reasonable financing charges) reflecting market terms and conditions and which are payable in arrears, in order to finance its ownership of the IESO Retained Interest from time to time. **(6) IESO Recoveries** –~~

IESO shall, in respect of a month, be entitled to receive from IESO Remittances on a related Settlement Date the amount (if any) available to IESO under Section 5(6)(b).

Article 9 – The Financing Plan [NTD: Move all of Article 9 to Regulations other than 9(1).]

(1) Power to Prepare, Implement and Amend the Financing Plan – The Financial Services AgentManager shall be authorized to prepare, implement and amend a financing plan for the Financing Entities> *and propose the adoption*< of such financing plan as the Financing Plan. If the Financial Services Agent is unwilling or unable to prepare< *and propose the adoption*> of the Financing Plan, the Delegate may by written declaration designate one or more other persons who shall be authorized to prepare, implement and amend the Financing Plan for the purposes of this Act. The Financial Services Manager shall have the right to withdraw its financing plan as the Financing Plan at any time if it determines that implementing the Financing Plan in such manner would not be in the best interests of a Financing Entity.

(2) TermsPrinciples and ConditionsParameters of the Financing Plan – The Financing Plan shall establish the basis for each Absolute Assignee's funding decisions. The Financing Plan shall have having regard to the principles and parameters set forth in Schedule 3 and such other conditions and requirements as may be specified in a written declaration of the Delegate or in accordance with the Regulation.3.

(3) OEB Approval – Any Additional Funding Charge payable to or for the benefit of the Financial Services AgentManager in respect of services provided by the Financial Services Manager (other than third party costs) shall be subject to review and approval by the OEB.

(4) OEB Review of Financing Plan – The [OEB] [shall] undertake an annual review of the records maintained by the Financial Services AgentManager for the purpose of confirming that the Funding Obligations incurred and the Finance Amounts paid by or on behalf of the Absolute Assignees were incurred and paid, respectively, in material conformity with the Financing Plan. [NTD: We would prefer that this be dealt with by an attestation prepared by an officer of the Financial Services Manager.]

(5) Replacement of the Administrative AgentFinancial Services Manager – If the OEB identifies deficiencies or makes recommendations in its review under Section 9(4), the Administrative AgentFinancial Services Manager shall take reasonable measures to remedy such deficiencies if remediable, and shall in any event have regard to the recommendations of the OEB in relation to further actions undertaken by the Financial Services AgentManager under the Financing Plan. If the Financial Services AgentManager is unwilling or unable to reflect such recommendations in relation to such further actions, the Delegate may by written declaration designate one or more other persons who shall thereafter become the Financial Services. Manager. Any replacement must comply with the restrictions and limitations specified in the documents evidencing the Funding Obligations.

(6) Obligation to Apply IESO Remittances – The Financial Services AgentManager shall ensure that amounts transferred to it under Article 5, as agent for and on behalf of the Absolute Assignees, or otherwise in respect of or as proceeds from an applicable Investment Interest shall only be applied or used to pay related Finance Amounts when

they are due and payable and for no other purpose. **[NTD: This can be dealt with by contract.]**

(7) Non-Recourse – The Financing Plan shall be implemented so that Funding Obligations incurred shall be without recourse to or to any assets of the Electricity Distributors, IESO, any Alternative Servicer, any Alternative Collection Agent, the Financial Services Agent**Manager**, the OEB, the Province or the Lieutenant Governor in Council **or Her Majesty in right of Ontario**, other than if and to the extent that such persons or entities are liable for the performance of obligations or duties arising under this Act or expressly agree to become liable pursuant to any Funding Obligation or obligation in relation to a Finance Amount. [All Funding Obligations shall contain a statement to the following effect: "Neither the full faith and credit nor the taxing power of the Province of Ontario is pledged to the payment of the principal of, or interest on, this [obligation].]

(8) Incurrences are Binding – Notwithstanding anything to the contrary in this Act, each**Each** Disposition made to or by an Absolute Assignee and**,** all amounts payable or becoming due and payable by or on behalf of an Absolute Assignee under or in connection with any obligation purporting to be a Funding Obligation **and each Pledge entered into by an Absolute Assignee**, shall be **valid and** binding for the purposes of this Act, including in determining the amount of related Transition Charges, despite**notwithstanding** any impairment or defect resulting from such failure**defect in the manner in incurrence or any inconsistency with the Fair Allocation Plan or the Financing Plan**.

[Article 10 – Compliance Matters[19][16]

(1) Right of the [OEB] to Inspect Books and Records - For the purpose of investigating compliance with the provisions of this Act, the OEB shall have the right, jurisdiction, power and authority to examine the books and records of *[Insert names if any]*.

(2) [OPG's Rate Settings – When setting other rates for or in respect of OPG, the OEB shall not take into account (a) the administrative or servicing fees charged by OPG as Financial Services Agent**Manager** [in excess of the actual incremental costs incurred by such person of providing administrative or servicing services]; (b) the cost consequences to OPG of being the Financial Services Agent**Manager**; or (c) the consequence of OPG consolidating the assets and liabilities of any Financing Entity for OPG's accounting purposes, in each case in setting any regulated payment amounts for OPG.][20][17]

[19][16] As noted above, the outcome of any regulatory action undertaken by the OEB will not affect Funding Obligations that have been incurred under the Financing Plan. This Article and any potential role for the Auditor General is still under consideration.

[20][17] As an alternative to this provision, consider clarifying under s. 78.1(4) of the OEB Act (which currently gives the OEB discretion in setting payment amounts subject to O. Reg. 53/05) that the OEB in setting OPG payment amounts for prescribed generation shall not consider OPG's role as Administrative Agent**Financial Services Manager** of any Financing Entities associated with the Fair Hydro initiative, perhaps with the exception of any operating fees that may be received by OPG for performing that role.

Article 11 – Undertaking of the ~~Lieutenant Governor in Council~~[21]Her Majesty in right of Ontario[18]

(1) No Action to limit, alter, or impair or terminate Transition Charges, the Regulatory Asset or Collections – ~~The [Lieutenant Governor in Council]~~**Her Majesty in right of Ontario** shall not in any way take or permit **(including by any agency or administrative body)** any action to reduce, impair, postpone or terminate the obligation of ~~Retail~~**Regulated** Consumers to pay Transition Charges or to impair the Regulatory Asset or the collection or recovery of Transition Charge Collections, Electricity Distributor Remittances or IESO Remittances, either directly or indirectly, including through the introduction of any bill or the passing of any legislation or regulation having such effect. The amount of Transition Charges determined under this Act shall not be subject in any way to reduction, impairment, postponement or termination as a result of any action taken or failure by ~~the Lieutenant Governor in Council~~**Her Majesty in right of Ontario (including by any agency or administrative body)**, including through the introduction of any bill or the passing of any legislation or regulation having such effect.

(2) Undertaking and Agreement – ~~The [Lieutenant Governor in Council]~~**Her Majesty in right of Ontario** shall not:

(a) in any way take or permit any action that limits, alters or impairs the value of any Investment Interest;

(b) except as required by the estimates and adjustments made in determining the True-up Amount, reduce, alter or impair Transition Charges that are imposed, billed, invoiced, collected and remitted for the benefit of the Absolute Assignees or any Pledgee from time to time;

(c) permit the amendment, amendment and restatement or termination of the Fair Allocation Plan if such amendment , amendment and restatement or termination would adversely affect the validity or enforceability of any Funding Obligation or the rights of an Absolute Assignee or Pledgee thereunder, **or would not otherwise comply with the restrictions and limitations specified in the documents evidencing the Funding Obligations,**

in each case including through the introduction of any bill or the passing of any legislation or regulation having such effect.

(3) Successor IESO – If IESO is restructured, dissolved or becomes insolvent or is otherwise incapable of performing its obligations under this Act, **an IESO** Successor ~~IESO~~ shall **immediately** be established **by Her Majesty in right of Ontario** to perform such obligations.

~~21~~[18] Under consideration, including the dealers' request for a "servicer guarantee" and a "contractual guarantee" to address a "Change of Law" or if all or a portion of the legislation is *ultra vires*, requiring (at the lenders option), the Province to pay principal and interest on the outstanding debt until maturity or payout the entire debt including any make-wholes. ⊥
In the event of a market disruption that renders it impossible to refinance debt when required (or where financing of amounts required to service the debt is not available because of a market disruption where the Financing Entity was relying on such further issuance of debt until the recovery is set to begin to fund interest), either the Province must step in and payout the debt or there must be the right to recover the debt from ratepayers as it becomes due, notwithstanding the intended rate cut.

(4) Compensation for Failure – Absolute Assignees shall be compensated by Her Majesty in right of Ontario for any losses suffered by them as a result of any failure by ~~the Lieutenant Governor in Council~~Her Majesty in right of Ontario to comply with its undertakings and agreements in this Article 11.~~22~~19

(5) No Wind-up of Financing Entity. No Financing Entity may be voluntarily wound up, liquidated or dissolved until one year after all of its Funding Obligations are repaid. [NTD: This concept can be contained in the Regulations.]

(6) References to the Undertaking and Agreement – Any non-confidential reference to the Undertaking of the ~~Lieutenant Governor in Council~~Her Majesty in right of Ontario, including in marketing materials and other documentation authorized for use by the Administrative in connection with any Funding Obligation, may be made provided that [*Add conditions to protect the Province*].

Article 12 – Regulations

Regulations may be made under this Act for the purposes described in Sections •,•,• and • and may be promulgated for any of the following purposes:

(a) to set standards and measures regarding the commercially reasonable requirements of the Province associated with an Absolute Assignee incurring Funding Obligations or becoming obligated to pay any Finance Amount, including to establish guidelines regarding all-in funding costs; permitted Additional Funding Charges; required maturities and redemption and termination rights of Funding Obligations; liquidity requirements, in each case to a Financing Plan that is consistent in its effect with the Fair Allocation Plan;

(b) to establish and empower one or more regulated entities to undertake decision-making activities with respect to this Act;

(c) to set out reasonable requirements regarding the appointment or retention of advisors, agents, service providers, contract counterparties, including in relation to 'market terms and conditions' parameters;

(d) to provide for audit and compliance standards applicable to those persons who are or may become obligated or have duties that arise under this Act [or under any Funding Obligation];

(e) to provide for any pre-vetting and approval requirements in relation to any incurrence by an Absolute Assignee of any Funding Obligation or obligation to pay any Finance Amount; and

(f) to provide for appeal and due process considerations in connection with the establishment, adoption, implementation and review of the Fair Allocation Plan or the Financing Plan.

Article 13- Miscellaneous~~23~~20

~~22~~19 Requested by ~~Torys~~Dealers. For discussion.

~~23~~20 OPG would like the specific amendments related to OPG to be included in the Bill.]

(1) **Choice of law** – The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the Regulatory Asset, any Transition Charge or the Undertaking of the Province shall be the laws of the Province.

(2) **Conflict of law** – In the event of conflict between this Act and any other law of the Province regarding the attachment, assignment or perfection, or the effect of perfection, or priority of any Disposition or Pledge, this Act shall govern to the extent of the conflict.

(3) **No further acts or approvals required** - Notwithstanding any provisions of any law of the Province to the contrary, no approvals, notices or authorizations other than those specified in this Act shall be required with respect to the actions to be taken in compliance with this Act, including under the Financing Plan or in relation to the establishment of the Fair Allocation Plan, and the transactions and contracts authorized in or contemplated by this Act or the Financing Plan, including the incurrence of any Funding Obligation, any Disposition, any Pledge or in the payment and performance of any attendant or incidental contract and any related expenses incurred to facilitate the preparation and implementation of the Financing Plan.

(4) **Effect of invalidity after the Incurrence of any Funding Obligation** - Effective on the date that a Funding Obligation is incurred under this Act, if any provision of this Act is held to be invalid or is invalidated, superseded, replaced, repealed or expires for any reason, that occurrence shall not affect any action allowed under this Act that is taken by any person who is or may become obligated or have duties that arise under this Act and any such action shall remain in full force and effect.

(5) **Severability** - If any Article, Section, paragraph or subparagraph of this Act or the application thereof to any person, circumstance or transaction is held by a court of competent jurisdiction to be unconstitutional or invalid, the unconstitutionality or invalidity shall not affect the constitutionality or validity of any other Article, Section, paragraph or subparagraph of this act or its application or validity to any person, circumstance or transaction, including the irrevocability of Transition Charges, the validity of the Regulatory Asset, the incurrence of any Funding Obligation, any Disposition, any Pledge, or the collection and recovery of Transition Charge Collections. To these ends, the Legislature hereby declares that the provisions of this Act are intended to be severable and that the Legislature would have enacted this Act even if any Article, Section, paragraph or subparagraph of this Act held to be unconstitutional or invalid had not been included in this Act.

Schedule 1

Guidelines for Estimates

[To be considered.]

Schedule 2

Requirements Applicable to Alternative Invoicing Agent/ Alternative Collection Agent

[To be considered.]

Schedule 3[24]

Principles and Parameters for Establishing the Financing Plan

The following principles and parameters provide a guideline as to what a Financing Plan should address:

~~(1)~~ ~~in respect of each Reference Period, make reference to the allocations of Future Fair Share of Green Transition Benefits to each Reference Group contemplated by the Fair Allocation Plan;~~

~~(2)~~ ~~estimate IESO Funding Shortfalls for each Reference Period;~~

~~(3)~~ ~~consider alternative funding arrangements suitable to fund the estimated IESO Funding Shortfalls, including short term and/or long term Funding Obligations;~~

(1) ~~(9)~~ consider quantities, maturities, payment obligations, prepayment or redemption rights and such other features of Funding Obligations so that payments made for a Reference Period reasonably correspond to the allocations of Future Fair Share of Green Transition Benefits to the applicable Reference Group under the Fair Allocation Plan;

(2) ~~(4)~~ if the anticipated amount of any Repayment (together with payments of other Finance Amounts) to be made in respect of a Reference Period would materially exceed the allocation of the costs and benefits of the Green Generation Initiative to the applicable ~~Retail Consumer Group~~**Regulated Consumers** under the then current Fair Allocation Plan, diligent efforts should be made to determine whether a Refinancing or deferral of such Repayment may be reasonably and cost-effectively effected based on then prevailing market terms, conditions an circumstances;

(3) ~~(5)~~ reflect the assumptions and requirements specified in any contemplated Funding Obligation (e.g., any limit on the maximum amount of Transition Charges charged to a hypothetical ~~Retail~~**Regulated** Consumer relative to his or her monthly electricity bill, as prescribed by any rating agency that ascribes its credit rating to or in respect of the Funding Obligation **[having regard to the application of the ~~Allocation~~Attribution Methodology][NTD: Are the words in square brackets necessary?]**);

(4) require the Financial Services Manager, for and on behalf of each Regulatory Asset Owner, to use diligent efforts to manage Finance Amounts to be borne by Ratepayers;

(5) include a proposal regarding the compensation of the Financial Services Manager that reflects market terms and conditions; and

(6) ~~incur Funding Obligations from time to time on the best terms available at such time for a financing transaction of the size and type contemplated, and having regarding to the following parameters:~~**require that the Financial Services Manager report annually to**

[24] ~~Awaiting input from Torys based on OPG mark-up of Financing Plan sections.~~

the Ministry of Energy on the operation of the Financing Plan including, in particular, with respect to the amount and terms of the Funding Obligations incurred and the sufficiency of such Funding Obligations for the purpose of funding the estimated Funding Shortfalls in accordance with the Fair Allocation Plan.

~~a. whether the Absolute Assignees will require committed access to short term liquidity to cover estimated IESO Funding Shortfalls prior to incurring fixed term Funding Obligations, and the amount and repayment terms of any such required liquidity; provided that any Repayment required to be made under the terms of such short term liquidity would not obligate an Absolute Assignee to repay an amount in relation to a Reference Period that would have the effect of the Financing Plan permitting incurrences of Funding Obligations payable in such Reference Period that would exceed the allocations of Future Fair Share of Green Transition Benefits to the applicable Reference Group under the Fair Allocation Plan;~~

~~b. the basis upon which the Financial Services Agent will select the term to maturity of any other Funding Obligations; provided that any Repayments required to be made under the terms of such Funding Obligations should not obligate an Absolute Assignee to repay an amount in relation to a Reference Period that would have the effect of the Financing Plan permitting incurrences of Funding Obligations payable in such Reference Period that would exceed the allocations of Future Fair Share of Green Transition Benefits to the applicable Reference Group under the Fair Allocation Plan;~~

~~c. the basis upon which the interest rates applicable to such Funding Obligations would be determined;~~

~~d. the reference capital or finance market in which such Funding Obligation would be incurred, including markets outside of Canada if considered by the Financial Services Agent to be appropriate in the circumstances;~~

~~e. the currency of payments under such Funding Obligations and, if the Funding Obligations are denominated in a currency other than Canadian dollars, the basis upon which the Financial Services Agent shall cause the applicable Absolute Assignee to enter into hedging transactions to mitigate currency risk, including acceptable minimum and maximum coverage levels, having regard to the availability of related derivatives having notional amounts corresponding to the repayment and maturity profile of such Funding Obligations;~~

~~f. the basis upon which the Financial Services Agent will select counterparties under any transaction to be entered into by an Absolute Assignee, including any paying agent, servicer, cash manager, liquidity provider, hedge counterparty, account bank, lender, note trustee, security trustee, paying agent, registrar/transfer agent, financial services agent, arranger or manager;~~

~~g. the basis upon which the Financial Services Agent will manage counterparty risk, including by providing for maximum counterparty exposure limits having regard~~

to concentration, credit and other identified risks with respect to individual counterparties or countries;

h. the basis upon which the Financial Services Agent will negotiate and settle Finance Amounts, including the amount of any Redemption Amounts, Finance Reserve Deposits and Additional Funding Charges;

(7) the basis upon which Funding Obligations may be redeemed, prepaid, repurchased or otherwise affected, having regard for the need to minimize debt service charges and other Funding Costs, and the need to maintain a stable funding platform to finance the IESO Funding Shortfalls from time to time on a basis that is consistent with the allocations of Future Fair Share of Green Transition Benefits to applicable Reference Groups under the Fair Allocation Plan;

(8) the basis upon which any Repayments, Funding Costs and Redemption Amounts will be paid, including any defeasance, sinking fund or through other reserves or liquidity facilities;

(9) the basis upon which fees, charges, expenses, costs, indemnities, reimbursements and other amounts payable to or for the benefit of the Financial Services Agent and other agents and service providers to the Absolute Assignees may be determined, allocated and paid;

(10) the timing and basis upon which Finance Reserve Deposits and Finance Reserve Withdrawals may be made;

(11) the basis upon which any obligations for any other Additional Funding Charges may be incurred and paid;

(12) the basis upon which the cash flows arising from time to time or otherwise derived from the Regulatory Asset may otherwise be applied, including in relation to any counterparty enforcement and realization scenario;

(13) the transmittal to [the IESO] of information related to the amounts to be included in the determination of the Period Transition Charge for a Reference Period;

(14) the basis upon which any Disposition may be made or effected by an Absolute Assignee, including parameters for determining the purchase price for the interest in the Regulatory Asset that is the subject matter of such Disposition, and any consents and releases that may be usefully obtained in connection with such Disposition;

(15) describe the requirements applicable to any special purchase entity that will purchase an Investment Interest, including proposed capitalization, governance, and restrictions on their powers and activities; and

(16) the basis on which any Pledge may be given or effected.

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CONFIDENTIAL AND PRIVILEGED

Preliminary Draft for Discussion Purposes Only

"Fair Hydro Act"

Article 1 – Purpose

The Province has and continues to encourage the construction and development of facilities for the long-term operation and generation of electricity in the Province using sustainable, lower carbon-based technologies such as new gas-fired generation, renewable facilities, energy from waste and biomass, including under the Province's various procurement, standard offer, feed in tariff and other similar programs (the "Green Generation Initiative"). The long-term benefits of the Green Generation Initiative accrue over time and have benefited and will continue to benefit present and future electricity consumers in the Province.

The out-of-market costs of the Green Generation Initiative are currently passed through to electricity consumers by way of a monthly adjustment amount (the "Green Costs Adjustment"), which in turn forms part of the overall adjustment calculated by the Independent Electricity System Operator ("IESO") pursuant to section 25.33 of, and O.Reg. 429/4 under, the *Electricity Act* (the "Global Adjustment").

The Green Costs Adjustment is currently determined each month by reference to the amounts paid by IESO to the generators of electricity in the Province under the Green Generation Initiative. These amounts paid by the IESO arise because IESO has entered into long-term procurement contracts with such generators in order to provide them with revenue certainty, and in turn to encourage the generators to develop technologies and to construct and develop facilities consistent with the Green Generation Initiative. **[NTD: This statement is not correct in respect of all IESO procurement contracts.]** It has been determined that the useful lives of many of the assets developed under the Green Generation Initiative will be in excess of the respective terms of their respective procurement contracts.

Since the benefits to past, present and future electricity consumers from the Green Generation Initiative will not necessarily coincide with the costs currently attributed through the Green Costs Adjustment, based on the respective terms of the applicable procurement contracts, it has been determined that the rate at which the costs associated with the Green Generation Initiative should be passed through to Regulated Consumers (as defined in Article 2) should be more closely aligned with the benefits that such Regulated Consumers have derived and are expected to derive from the Green Generation Initiative over time. This realignment will be based on general principles and parameters that establish a reasonable basis for measuring and allocating the relative costs and benefits of the Green Generation Initiative equitably across present and future Regulated Consumers (the "Fair Allocation Plan"). **[NTD: There is no explanation as to why realignment is limited to Regulated Consumers.]**

If the Fair Allocation Plan determines that the equitable allocation of the costs associated with the Green Generation Initiative to the Regulated Consumers of a particular time period should be reduced below the amount that currently would be charged based on the Green Costs Adjustment, then the amount payable by such Regulated Consumers and in turn available to IESO will, in the aggregate, be less than the amount payable by the IESO to the generators in

respect of such period. In this case, IESO will need to obtain funding from another source to cover such a shortfall. If a funding obligation is incurred to cover such a shortfall during any period, the repayment of such funding obligation will be required in a future period, and any related repayments, finance costs, hedging costs and other transaction costs incurred will become payable in future periods. In order for IESO to obtain a reliable and committed source of cash flows to enable IESO to repay such funding amounts when they become due and payable, this Act imposes irrevocable and non-bypassable financial obligations on Regulated Consumers to pay amounts incurred in respect of such funding obligations when they become due and payable and establishes a right to invoice and collect such amounts. The right and interest in and to collect such financial obligations will take the form of the Regulatory Asset contemplated in this Act, which will constitute property rights and interests. Interests in the Regulatory Asset may be sold and absolutely assigned by IESO to one or more financing entities, which in turn will finance their acquired interests by incurring funding obligations. The incurrence and payment of such funding obligations will be administered on behalf of such financing entities by a financial services manager under the Financing Plan contemplated in this Act.

[NTD: Our strong preference is to limit the introduction to the next paragraph and move defined terms from the previous paragraphs to Article 2]

The purpose of this Act is to establish the basis upon which intergenerational fairness can be achieved by charging the costs and benefits of the Green Generation Initiative to present and future Regulated Consumers on an equitable and cost effective basis.

Article 2 – Definitions

In this Act: **[NTD: It would be preferable to use plain language definitions in the legislation and leave the more detailed definitions to either the regulations or the agreements contemplated hereunder.]**

> "Absolute Assignee" means a person to whom a Regulatory Asset Owner effects a Disposition other than as security.
>
> "Actual" means, in relation to costs, expenses or payments in respect of Funding Obligations during a Reference Period, the actual amount of such costs, expenses or payments paid or made (net of any Finance Reserve Withdrawals applied to pay such amounts), which amounts shall be recorded by the Financial Services Manager whose records shall be determinative for the purposes of this Act except to the extent of a manifest calculation error.
>
> "Additional Funding Charges" means, for a Reference Period, the fees, charges, expenses, costs, indemnities, reimbursements and other amounts (including any applicable tax amounts) that are or become payable by or on behalf of the Absolute Assignee during the Reference Period and that were incurred or committed to directly or indirectly by the Absolute Assignee in connection with the incurrence of Funding Obligations under the Financing Plan (whether at the time of such incurrence or over the term of the Funding Obligation and whether directly or indirectly), including without limitation such amounts as may be prescribed.
>
> **[NTD: See section 5(11). Remove this concept globally.]**

"Alternative Servicer" means a person appointed under Section 4(8) to assume the obligations of the Servicer under Article 4, as agent for and on behalf of the Regulatory Asset Owners. **[NTD: We see this, in effect, as the same thing as the IESO Successor; that is, replacement of the master Servicer.]**

"Assessed Past Green Transition Costs" means, in respect of a Measurement Date, the aggregate of the imputed costs of the Green Generation Initiative (expressed as an equivalent to current dollars), as reflected in the calculation of the Green Costs Adjustment, which have been charged to Retail Customers through the Global Adjustment on or prior to the Measurement Date.

"Attribution Methodology"[1] means the methodology specified in the Fair Allocation Plan for allocating the Period Finance Charges for a Reference Period to Regulated Consumers. **[NTD: We understood that the Ministry accepted that the transition charge would be a volumetric rate.][NTD: Can be moved to Regulations.]**

"Collected Amount Adjustment" means, in respect of a True-Up Period, the amount (which may be a negative amount) calculated by the Servicer or the Financial Services Manager, as applicable, equal to (a) the Estimate of the Finance Amount for the True-Up Period, minus (b) the sum of all Transition Charge Collections for the True-Up Period.[2]

"Collective Rights Agreement" means an agreement among all of the Regulatory Asset Owners (including each Absolute Assignee), each Pledgee, and the Financial Services Manager that governs the enforcement of their respective rights and interests in, to and under the Regulatory Asset on a coordinated and collective basis. **[NTD: Move to Regulations.]**

"Delegate" means any of the following person or persons designated in writing from time to time by the Minister of Energy to undertake the actions and perform the responsibilities ascribed to the "Delegate" under this Act: ●. **[NTD: Why is this delegation of authority necessary? This requires further discussion and clarity as to which entity or entities that the Province can select as the Delegate; for example, it would not be acceptable for the Province to select the OEB to be the Delegate. If this is required, an acceptable delegate would be a stakeholder committee comprised of representatives from the Ministry of Energy, the OEB, the IESO, and OPG. In addition, the regulation should prescribe how the stakeholder committee would operate.]**

"Disposition" means an assignment, transfer, conveyance, sale, contribution, set-over, exchange or other disposition of (a) IESO's right to recover all or any portion of an IESO Funding Shortfall or (b) an Investment Interest to an Absolute Assignee, in each case pursuant to a Disposition Document.

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[1] This allocation may be volumetric or some combination of a flat amount and a volumetric charge. Further discussion is required. H&W has raised a concern regarding possible adverse changes after the fact and rating agency considerations. Consider whether hard-coding in the legislation makes sense.

[2] This would pick up adjustments based on actual collection experience, changes in the Regulated Consumer base, changes in the actual costs (versus earlier estimates) included in the Transition Charge calculation, etc.

"Disposition Document" means the agreement, deed, conveyance, instrument or other document under which IESO or an Absolute Assignee effects a Disposition to an Absolute Assignee.

"Electricity Distributor" means a rate regulated distributor licensed under Part V of the *Ontario Energy Board Act, 1998*, together with and its successors.

"Electricity Distributor Remittances" means, for an Electricity Distributor on a Remittance Date, all Transition Charge Collections received or deemed to be received **[NTD: estimated to be received? will each Electricity Distributor know?]** by the Electricity Distributor prior to the Remittance Date and that have not otherwise been remitted to Servicer or if applicable the Alternative Collection Agent in accordance with Section 5(3), including the proceeds of any enforcement action undertaken by the Electricity Distributor or if applicable the Alternative Collection Agent to recover payment of Transition Charges in accordance with Article 5.

"Electricity Invoice" means an invoice issued by an Electricity Distributor (or in its stead, by an Alternative Collection Agent), by the Servicer or by a Retailer, in each case to a Regulated Consumer that is served by the Electricity Distributor's distribution system in respect of electricity charges, including the cost of electricity, delivery and regulatory charges and related services and amounts incurred, assessed or charged in respect of connectivity to such Electricity Distributor's distribution system and in respect of applicable Transition Charges to be charged to the Regulated Consumer under this Act. **[NTD: The Alternative Servicer should only invoice for Transition Charges, not the entire invoice. Also, to avoid confusion, we suggest using the word "invoice" in reference to what the IESO sends out to distributors, and "bills" in reference to what distributors send out to consumers.]**

"Estimate" means (a) in relation to costs, expenses or payments in respect of Funding Obligations or any Finance Amount for a Reference Period, the estimated amount of such costs, expenses or payments determined by the Financial Services Manager; and (b) in relation to an assessment of the benefits of the Green Generation Initiative to Regulated Consumers, the estimated value (in current dollars) of such benefits determined by the Delegate, in each case having regard to the applicable principles and parameters set out in Schedule 1, which estimated amounts shall be determinative as the applicable estimate for the purposes of this Act except to the extent of a manifest calculation error.

"Estimated Future Green Transition Benefits" means, in respect of a Measurement Date, the Estimate set forth in the Fair Allocation Plan prepared in accordance with Article 7 of the aggregate value (measured in current dollars) of the benefits that are expected to accrue to Regulated Consumers from the establishment and implementation of the Green Generation Initiative during the period from the Measurement Date to the Program-End Date.

"Estimated Past Green Transition Benefits" means, in respect of a Measurement Date, the Estimate set forth in the Fair Allocation Plan prepared in accordance with Article 7 of the aggregate value (measured in current dollars) of the benefits that have accrued to Regulated Consumers from the establishment and implementation of the Green Generation Initiative up to and including the Measurement Date.

"Fair Allocation Plan" has the meaning given in Article 1.

"Finance Amount" means, for a Reference Period, the sum (without duplication) of the following amounts that are or become payable during the Reference Period in respect of all Absolute Assignees: (a) Repayments; (b) Net Funding Costs; (c) Redemption Amounts; (d) Finance Reserve Deposits; and (e) Additional Funding Charges.

"Finance Reserve Deposits" means, for a Reference Period, the amount by which (a) deposits made or to be made during the Reference Period in order to pre-fund, collateralize, over-collateralize or establish reserves for the ultimate payment of Funding Obligations or for related contingencies specified in the Financing Plan, exceed (b) any Finance Reserve Withdrawals. **[NTD: Move this to regulation.]**

"Finance Reserve Withdrawals" means, for a Reference Period, the amount withdrawn during the Reference Period from deposits previously made to pre-fund, collateralize, over-collateralize or establish reserves for the payment of Funding Obligations or to pay amounts in respect of related contingencies that had been specified in the Financing Plan. **[NTD: Move this to regulation.]**

"Financial Services Manager" means OPG or, following any Replacement Event involving OPG, such other person who may be appointed as the financial services manager of the Absolute Assignees under the Financing Plan in compliance with the requirements set out in Schedule 2.[3]

"Financing Entity" means any entity established at the initiative of and managed by the Financial Services Manager to support the Financing Plan.[4]

"Financing Plan" means the written plan prepared by the Financial Services Manager in accordance with Article 9, as the same may be amended, amended and restated or terminated by the Financial Services Manager in accordance with Article 9 from time to time.

"Funding Obligation" means, in respect of an Absolute Assignee, each payment obligation (including, without limitation, each obligation to pay: principal, interest, premiums and other financing charge payments; pass-through payments; payment obligations arising under or in respect of derivatives; payment obligations owing to service providers, Financial Services Managers, finance entity intermediaries, capital markets intermediaries, advisors, lenders, credit enhancement providers, liquidity providers, disbursement counterparties, regulatory agencies and rating agencies; and all Additional Funding Charges) incurred by or on behalf of the Absolute Assignee under

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[3] There must only be one Financial Services Manager.

[4] MOE to confirm that the legislation will provide that any Financing Entity that is a wholly-owned subsidiary of OPG (1) would not be subject to Part VI of the *Electricity Act* (Ontario) and (2) in the case of any Financing Entity that is a trust, any income of such trust (for purposes of the *Income Tax Act* (Canada) or the *Taxation Act, 2007* Ontario)) which is paid or made payable to OPG or a wholly-owned subsidiary of OPG as a beneficiary of such trust will not be taken into account in calculating the amount of a payment required to be made by OPG (or such subsidiary) by section 89 or 90 of the Electricity Act.

the Financing Plan, including any Refinancing of another such payment obligation incurred by or on behalf of such Absolute Assignee.

"Future Fair Share of Green Transition Benefits" means, in respect of a Measurement Date, the sum of (a) the Over-Assessed Amount; and (b) the Estimated Future Green Transition Benefits, in each case as of the Measurement Date.

"Global Adjustment" has the meaning given in Article 1.

"Green Costs Adjustment" has the meaning given in Article 1.

"Green Generation Initiative" has the meaning given in Article 1.

"IESO" means the Independent Electricity System Operator created pursuant to Part II of the *Electricity Act, 1998*.

"IESO Electricity Distribution Receipts" means, for a month, the sum of all amounts payable by Electricity Distributors to IESO , during the month pursuant to section • of the *Electricity Act* in respect of Regulated Consumers. **[NTD: IESO indicates that it likely does not work to express in regards to "amounts payable by the LDCs" because settlement between the IESO and LDCs entails payments by LDCs to the IESO and then credits/debits by the IESO to LDCs to reflect RPP shortfalls/overages.]**

"IESO Funding Shortfall" means, for a month, the amount, if any, by which (a) the IESO Electricity Distribution Receipts that would be payable to IESO for the month if determined without regard to this Act and without regard to the changes made to section 25.33 of, and O.Reg. 429/4 under, the *Electricity Act* with respect to the Global Adjustment concurrently with this Act, exceeds (b) the IESO Electricity Distribution Receipts payable to IESO for the month[5].To the extent reasonably necessary to give effect to this Act, or any transaction contemplated hereby, IESO shall calculate the IESO Funding Shortfall for any month taking into account information provided by the Electricity Distributors and (i) such calculation shall be binding for all purposes; and (ii) any demonstrated inaccuracy in the calculation for any month (including any such resulting from inaccuracies in the information provided by Electricity Distributors) shall be accounted for by adjusting the IESO Funding Shortfall for a subsequent month. **[NTD: Need to add the mechanism for IESO to record this shortfall because without that there is no Regulatory Asset. This IESO Funding Shortfall is the regulatory asset owned by IESO.]**

"IESO Remittances" means, for a Settlement Date, all Electricity Distributor Remittances received by IESO or if applicable the Alternative Collection Agent prior to the Settlement Date and that have not otherwise been remitted to the Regulatory Asset Owners (each with respect to its Regulatory Asset) in accordance with Section 5(6), including the proceeds of any enforcement action undertaken by IESO or if applicable the Alternative

[5] This has been recast to recognize that the shortfall in the first 4.5 years could exceed the entire GA amount. A more refined approach to describing the concept may be considered.

Collection Agent to recover payment of amounts payable by Electricity Distributors to IESO in accordance with Article 5.

"IESO Successor" means the entity appointed by the Province to succeed to the rights and obligations of IESO as the entity responsible for managing the Province's electricity system.

"Investment Interest" means an ownership interest in, to or under the Regulatory Asset that is acquired by an Absolute Assignee pursuant to a Disposition.

"Investment Remittance" means, for a month, the lesser of (a) the aggregate amount of all IESO Remittances for the month, and (b) the sum of the Funding Obligations due and payable by all Absolute Assignees in respect of the month.

"Measurement Date" means [Insert relevant date around the Legislation Implementation Date] and any other date specified as such under the Fair Allocation Plan.

"Net Funding Costs" means, for a Reference Period in respect of a Financing Entity, the amount by which (a) the aggregate of all interest, scheduled principal and other periodic finance charges accruing due and becoming payable or paid by or on behalf of the Absolute Assignee during the Reference Period in respect of its Funding Obligations, including such amounts as may be prescribed, exceeds (b) the aggregate of all amounts received by or on behalf of the Absolute Assignee during the Reference Period in respect of the Funding Obligations referred to in (a), including such amounts as may be prescribed.

"OEB" means the Ontario Energy Board, together with its successors.

"OPG" means the corporation incorporated as Ontario Power Generation Inc. under the *Business Corporations Act* on December 1, 1998, together with its successors.

"Over-Assessed Amount" means, in respect of a Measurement Date, the amount (if any) by which (a) the Assessed Past Green Transition Costs, exceeds (b) the Estimated Past Green Transition Benefits, each as determined as of the Measurement Date.

"Period Finance Charges" means, for a Reference Period, the sum of (a) the Estimate of the Finance Amount (b) the True-Up Amount in respect of the applicable True-Up Period and (c) an adjustment amount as may be prescribed to account for estimated collection shortfalls and collection delays in respect of amounts under (a) and (b).

"Pledge" means, in respect of an Investment Interest of an Absolute Assignee, a lien, mortgage, charge or security interest granted to or in favour of a Pledgee by the Absolute Assignee in, to and over all or a specified portion (including a specified portion on a divided basis or by way of an undivided interest) of the Investment Interest.

"Pledgee" means a person to whom an Absolute Assignee grants a Pledge.

"Program End Date" means •, [2047].

"Province" means the Province of Ontario.

"Redemption Amount" means the amount payable by or on behalf of an Absolute Assignee to redeem, prepay or repurchase a Funding Obligation incurred by or on behalf of the Absolute Assignee, including any premium, make-whole or other additional amount becoming payable under the Funding Obligation to give effect to such redemption, prepayment or repurchase.

"Reference Period" means (a) the period from (and including) the Measurement Date to (and including) October 30, 2017, (b) each six month period commencing [May 1st and November 1st] thereafter and (c) any other period specified as such in the Fair Allocation Plan.

"Refinancing" means, in respect of a Funding Obligation incurred by or on behalf of an Absolute Assignee, that the Funding Obligation is repaid or repurchased for cancellation by or on behalf of the Absolute Assignee by applying the net proceeds obtained by the Absolute Assignee incurring one or more other Funding Obligations.

"Regulated Consumer" means consumers of electricity in the Province as prescribed.

[NTD: There are a number of issues with this definition. First, the word "Retail" is a source of confusion as it implies customers of licensed retailers. Really, the purpose of the term is to define the group of consumers that are eligible to receive the benefit of the Fair Hydro program and who will bear the cost of the program over the long term. We have proposed "Regulated Consumer" but you could also use the term "Eligible Consumer" or "Fair Hydro Eligible Consumer" and for purposes of the legislation to say that it is a member of a class of consumers prescribed by the regulations for purposes of the relevant section of the legislation. The regulation would then describe who is in the class. Second, it may not be appropriate to rely on the class of consumers prescribed for the purposes of s. 79.16 or under the OREC Act. Section 79.16 is the section that defines the class of RPP consumers. We understand that the "Fair Hydro Eligible Consumers" are not an identical class to that which is eligible for the RPP or for the Ontario Rebate for Electricity Consumers. For example, we have heard that Fair Hydro Eligible Consumers will (a) exclude consumers served by independent power authorities (certain remote communities not served by Hydro One Remotes), and (b) include consumers served by licensed unit sub-metering providers, licensed retailers and certain consumers served directly by the IESO (which may or may not be captured by the classes under 79.16 or OREC). Third, it is not clear why consumers with contracts with retailers who use retailer consolidated billing are removed from the first part of the definition but then added back into the second part of the definition. Fourth, Retailers do not necessarily have physical electricity assets that would be connected to the grid. Some just sell or offer contracts for electricity. As such, the first few lines after (b) are problematic. Fifth, the phrase "purchase electric generation services from a provider of electric generation services other than the owner of the Province's transmission and distribution system assets" does not make sense. A consumer does not purchase generation services from a transmitter or distributor. Rather, a consumer receives distribution services from a distributor. In addition to charging for its distribution services, the distributor also charges the associated

transmission costs and commodity costs associated with the volumes delivered. Those commodity costs are the price of the electricity itself and are almost entirely made up of the amounts determined under the global adjustment. Sixth, the phrase "whether or not the transmission and distribution system assets continue to be owned or operated by Electricity Distributors or operated by IESO" does not make sense. Transmission assets are owned and operated by transmitters. Distribution assets are owned and operated by distributors. The IESO does not own but does administer and direct the operation of the transmission system.]

"Regulatory Asset" means the property rights and interests described in Section 6(1), which collectively is comprised of each Investment Interest.

"Regulatory Asset Account" means (a) for an Electricity Distributor, any bank account into which the Electricity Distributor deposits or receives Transition Charge Collections; and (b) for the Servicer, any bank account into which Servicer deposits or receives Transition Charges, Electricity Distributor Remittances or IESO Remittances.

"Regulatory Asset Owner" means each Absolute Assignee, as owner of its Investment Interest or Investment Interests, and "Regulatory Asset Owners" means collectively each such Absolute Assignee, who together own the entirety of the Regulatory Asset and are required to exercise their individual rights of ownership in accordance with Section 6(7).

"Related Rights" means, with respect to a Regulatory Asset Owner's Investment Interest, all rights of any kind (whether in tort, contract or otherwise) that attach or are attendant or incidental to any of the other property rights or interests that comprise such Investment Interest.

"Remittance Date" means, in respect of an Electricity Distributor, each day on which it is required to remit Electricity Distribution Remittances to Servicer or if applicable the Alternative Collection Agent as specified in accordance with any Funding Obligation or, if no such day is specified in accordance with any Funding Obligation, then the Business Day **[NTD: Not defined.]** preceding each Settlement Date. **[NTD: Move to Regulations. Remittances will be in accordance with the current rules.]**

"Repayment Obligation" means an obligation to repay or to provide for the repayment (including by making a related Finance Reserve Deposit) of, all or a portion of the amount advanced to the Absolute Assignee under a Funding Obligation.

"Repayment" means a payment by an Absolute Assignee made to satisfy a Repayment Obligation, other than to the extent that the payment is made by applying the proceeds of a Refinancing or from Finance Reserve Withdrawals.

"Replacement Event" means any event specified as such in a Funding Obligation.

"Retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity.

"Retailer Consolidated Billing" has the same meaning as in the *Retail Settlement Code* issued by the Ontario Energy Board.

"Servicer" means IESO or IESO Successor, as agent for and on behalf of the Regulatory Asset Owners, for the purposes set forth in Article 4.

"Settlement Date" means the [last Business Day of any month].

"Transition Charge" means, the amount recoverable from a Regulated Consumer in respect of a Reference Period, being the Period Finance Charge as allocated to such Regulated Consumer in accordance with Article 4(3) on a monthly basis. **[NTD: This needs to be grossed up to account for variability associated with expected uncollectables and remittance delays.]** **[NTD: Do not need to create parallel process. The definition should be linked to the OEB process for determining the volumetric rate as part of the RPP process (see s. 4(2)). The OEB will determine volumetric rate based on forecast consumption, number of consumers, etc. to recover the Period Finance Charges.]**

"Transition Charge Collection" means any amount received **[or deemed by this Act to have been received]** by the Absolute Assignees upon the collection of a Transition Charge paid by or on behalf of a Regulated Consumer, including any proceeds arising from the exercise and enforcement of any related rights and interests under or in respect of the Regulatory Asset.

"True-Up Amount" means, in respect of a Reference Period, the amount (which may be a negative amount) calculated by the Financial Services Manager equal to (a) the Actual Finance Amount for such related True-Up Period, minus (b) the Estimate of the Finance Amount for the related True-Up Period, , plus (c) the Collected Amount Adjustment for such related True-Up Period. **[NTD: need to discuss how this will work for our true-up. What about prior period shortages? An example of how this works needs to be provided.]**

"True-Up Period" means, in relation to a Reference Period, the immediately preceding Reference Period.

"Undertaking of Her Majesty in right of Ontario" means the undertaking of Her Majesty in right of Ontario given under Section 11(2).

Article 3 – Transition Charges

(1) **Regulated Consumer Obligation to Pay a Transition Charge** – Each Regulated Consumer shall pay each Transition Charge charged to it in any Electricity Invoice issued to such Regulated Consumer by its Electricity Distributor or by an Alternative Servicer under Section 4(1), in each case on the terms of payment specified in the related Electricity Invoice.

(2) **Indebtedness of Regulated Consumers** – Until paid, a Transition Charge charged to a Regulated Consumer in an Electricity Invoice shall, together with any applicable late payment fees and finance charges arising under the terms of the Electricity Invoice with respect to such Transition Charge, constitute non-bypassable indebtedness of the

Regulated Consumer to the Regulatory Asset Owners, each with respect to its respective interest in the Regulatory Asset. Such indebtedness shall constitute a single and separate[6] debt obligation owing by the Regulated Consumer, which subject to Article 5 may be enforced independently from any other payment obligation or indebtedness owing by the Regulated Consumer under the Electricity Invoice or otherwise.[7]

(3) No Set-Off or Reduction – A Regulated Consumer may not set-off or reduce (by counterclaim, defense or otherwise) the amount payable by it in respect of any Transition Charge, including any set-off against or in respect of any amount owing or becoming payable to such Regulated Consumer by its Electricity Distributor, any Regulatory Asset Owner or any other person.

(4) Allocation of Regulated Consumer Payments – If an Electricity Distributor receives a payment made by or on behalf of a Regulated Consumer in respect of amounts due and payable under one or more Electricity Invoices that is less than the total amount payable thereunder, such payment shall be subject to rights and benefits that are no less favourable than the treatment accorded to other amounts payable to the IESO by the Electricity Distributor.

(5) Transition Charges are Irrevocable – The Transition Charges arising under or in respect of Funding Obligations (including any adjustments based on modifications to such Funding Obligations made in compliance with the Financing Plan or as a result of amendments to the Financing Plan made in accordance with Section 9(3)) are deemed to be irrevocable, final and effective without any further action, except to the extent of manifest calculation error. For greater certainty, a Transition Charge may include Finance Amounts for a Reference Period regardless of whether the payment of such Finance Amounts are inconsistent with the Fair Allocation Plan applicable at the time such payments are due and payable, and regardless of whether the related Funding Obligation was properly incurred under the Financing Plan. In no case shall a Funding Obligation incurred under the Financing Plan be affected by a subsequent amendment to the Fair Allocation Plan.

(6) True-Up of Transition Charges? – [NTD: Include specifics regarding the true-up of the charges and the process for the true-up, but move to Regulations. The True-Up Mechanism should require the Transition Charges to be reviewed and adjusted semi-annually to ensure the expected recovery of amounts sufficient to timely provide all payments in respect of Funding Obligations, provided that in some cases it may need to be adjusted more frequently than semi-annually, e.g., as part of a refinancing.]

(7) Commencement of Invoicing and Collection of Transition Charges – [NTD: Please confirm that as drafted, Transition Charges will begin on the Measurement Date.]

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[6] Determine if this is critical for rating and markets. Logistics under consideration.

[7] Torys has also suggested that deemed conditions of licenses for distributors, retailers and unit sub-metering providers, could be included as conditions, to require them to collect and remit amounts in accordance with this legislation. Consider if it is helpful to integrate the existing regulatory scheme for invoicing and collections (regarding RPP) in the legislation.

Article 4 – Invoicing of Transition Charges [NTD: Move Article 4 sections (1) to (4) to Regulations. Also note, these sections remain subject to further due diligence by the Dealers.]

(1) **Inclusion of Transition Charges in Electricity Invoices** – Each Electricity Distributor and if applicable any Alternative Servicer shall, as an agent of the Regulatory Asset Owners, specify the Transition Charge to be charged to a Regulated Consumer pursuant to Section 4(4) in respect of a related Reference Period in each Electricity Invoice issued by the Electricity Distributor or if applicable by the Alternative Servicer to the Regulated Consumer in respect of such Reference Period. Upon the inclusion of a Transition Charge in an Electricity Invoice, the obligation to pay such amount shall be binding on the applicable Regulated Consumer. **[NTD: Must capture bills issued to eligible consumers served by unit sub-metering providers, retailers and the IESO – not just distributors][NTD: This provision also needs to address the inclusion of Transition Charges in invoices from the IESO to the LDC, consistent with the current process of how the IESO bills LDCs.]**

(2) **Calculation of the Period Finance Charge** – Not later than [35] days prior to the first day of a Reference Period, each Absolute Assignee (or the Financial Services Manager on its behalf) shall provide the OEB with written notice of each Estimate of a Finance Amount payable by it or on its behalf in respect of the Reference Period. Not later than one month prior to the first day of a Reference Period, each Absolute Assignee (or the Financial Services Manager on its behalf) shall calculate the Period Finance Charge applicable to the Reference Period having regard to such amounts specified by the Servicer, which calculations, information and amounts shall be accepted by the OEB and shall be determinative, except to the extent of manifest calculation error or misstatement.

(3) **Calculation and Attribution of Transition Charges** – Not later than 25 days prior to the first day of a Reference Period, the OEB shall apply the Attribution Methodology to determine the allocation of the Transition Charge for each Regulated Consumer. **[NTD: We think the OEB would be determining the Fair Hydro recovery rate (on a volumetric basis) that distributors would then be required to charge to consumers]**

(4) **Notice of Transition Charges** – Not later than 20 days prior to the first day of a Reference Period, the OEB shall inform each Electricity Distributor and if applicable any Alternative Servicer of the Transition Charges to be specified in the Electricity Invoices to be issued to each Regulated Consumer who is served by the Electricity Distributor.

(5) **Adjustments** – The amount of any Transition Charge charged to a Regulated Consumer and specified as such in an Electricity Invoice shall be determinative of the amount of indebtedness created thereby and owing in respect of such Transition Charge, except to the extent of any manifest calculation error.

(6) **Successors of Electricity Distributors** – Any successor of an Electricity Distributor shall be bound by the requirements of Article 4 and shall perform and satisfy all duties and obligations of such Electricity Distributor under Article 4 in the same manner and to the same extent as such Electricity Distributor, including the obligation under Article 4 to impose, attribute, charge, bill and invoice the Transition Charges.

(7) **IESO Successor** – Any IESO Successor shall be bound by the requirements of Article 4 and shall perform and satisfy all duties and obligations of IESO under Article 4 in the same manner and to the same extent as IESO, including the obligation to calculate and provide notice of Transition Charges.

(8) **Appointment of an Alternative Servicer** – If a Replacement Event occurs in respect of any Electricity Distributor, the Absolute Assignees shall, in accordance with the Collective Rights Agreement, be permitted, by an instrument in writing, to appoint an Alternative Servicer to perform some or all of the obligations and duties required to be undertaken by such Electricity Distributor under this Article 4, as and to the extent specified in such appointment. Upon acceptance of such appointment, the Alternative Servicer shall become obligated to perform such assumed obligations in replacement of such Electricity Distributor. Any Electricity Distributor that is replaced under this Section 4(8) shall promptly transfer all rights, powers, privileges and property interests in its possession or within its control in the performance of such obligations and duties to the Alternative Servicer and shall take such further actions, including the execution of instruments, necessary to give full and final effect to such transfer and to permit the Alternative Servicer to perform such obligations and duties on behalf of the Regulatory Asset Owners. **[NTD: We would expect the IESO to manage this in accordance with its normal business practices.]**

(9) **Absolute Assignees have Standing** – The Absolute Assignees, acting together in accordance with the Collective Action Agreement, may bring actions against any Electricity Distributor, IESO, the Servicer, Alternative Servicer or any other person who may be authorized to issue Electricity Invoices to Regulated Consumers for a failure to impose, attribute, charge, bill or invoice Transition Charges or to otherwise comply with this Act. Any court of the Province shall have jurisdiction over any actions brought before it by the Absolute Assignees in relation to any such failure and may make any interim or final order it thinks fit in this regard. **[NTD: We would like to see the sections on "Standing" to bring an action to remain in the legislation (as opposed to being moved to the regulations as we believe we previously suggested) as we see those provisions as part of ensuring a rigorous enforcement scheme for the Financing Entity (and so something that should be difficult for the Province to change going forward).]**

(10) **No Set-Off or Reduction –** No Servicer or Electricity Distributor may set off or reduce (by counterclaim, defence or otherwise) the amount payable by it pursuant to this Article 4.

(11) **Regulations** – Regulations may be enacted for the purpose of specifying further rights, powers, privileges, duties and obligations that shall apply to IESO, any Electricity Distributor or any Alternative Servicer to ensure that Transition Charges are properly charged to Regulated Consumers and specified as such in Electricity Invoices.

Article 5 – Collections and Remittances [NTD: Move Article 5 sections (3), (6), (9), (12), (13) and (14) to Regulations.]

(1) **Duty to Collect as Agent** – Electricity Distributors or if applicable any Alternative Collection Agent shall, as an agent of the Servicer, collect amounts owing by Regulated Consumers in respect of Transition Charges charged to such Regulated Consumers in

Electricity Invoices issued by the Electricity Distributor or if applicable such Alternative Collection Agent all in accordance with the Regulations. **[NTD: The obligation to collect and remit the Transition Charge should be included as a deemed condition of license for electricity distributors (and retailers and unit sub-metering providers).]**

(2) **Segregation of Transition Charge Collections** – An Electricity Distributor or if applicable any Alternative Collection Agent shall promptly segregate Transition Charge Collections from other payments received by it from Regulated Consumers and deposit such Transition Charge Collections into its Regulatory Asset Account.[8] **[NTD: Determine if this is critical for rating and markets or if segregation can occur in the hands of the IESO]** Prior to and following a deposit of Transition Charge Collections having been made into its Regulatory Asset Account, the Electricity Distributor or if applicable any Alternative Collection Agent shall hold such amounts in trust for the Regulatory Asset Owners or its Pledgee.

(3) **Electricity Distributor Remittances** – On each applicable Remittance Date, an Electricity Distributor shall remit all amounts invoiced by the IESO on account of the Transition Charge in respect of the related Reference Period to or to the account of Servicer or if applicable the Alternative Collection Agent. **[NTD: It is the Dealers expectation that the Transition Charge will be paid on the same basis as other amounts invoiced by the IESO, failing which, they will need to be remitted daily.]**

(4) **Duty to Collect Electricity Distributor Remittances** – Servicer or if applicable any Alternative Servicer shall, as an agent of the Regulatory Asset Owners, accept and collect Electricity Distributor Remittances from Electricity Distributors and Transition Charge Collections from Regulated Consumers that pay their Electricity Invoices directly to IESO on the same basis as it accepts and collects other charges from such Regulated Consumers.[9]

(5) **Segregation of Electricity Distributor Remittances** – Servicer and if applicable the Alternative Collection Agent shall promptly segregate Electricity Distributor Remittances from other payments received or held by it and deposit such Electricity Distributor Remittances into its Regulatory Asset Account. Prior to and following a deposit of Electricity Distributor Remittances having been made into its Regulatory Asset Account, Servicer or if applicable any Alternative Collection Agent shall hold such amounts in trust for the Regulatory Asset Owners or Pledgee.

(6) **Servicer Remittances** – On each Settlement Date[10], Servicer shall remit all amounts on deposit in its Regulatory Asset Account to or to the account of the Absolute Assignees an amount equal to the Investment Remittance for the related month.

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[8] Consider trying to attach to existing LDC credit enhancements and provide parallel coverage for customer losses.

[9] Consider building this obligation into a deemed condition of licence for the IESO.

[10] Consider frequency of remittances in light of rating requirements. US rating agencies favour daily remittances.

(7) **Successors of Electricity Distributors** – Any successor of an Electricity Distributor shall be bound by the requirements of Article 5 and shall perform and satisfy all duties and obligations of such Electricity Distributor under Article 5 in the same manner and to the same extent as such Electricity Distributor, including the obligation under Article 5 to collect Transition Charges and make remittances of Electricity Distributor Remittances.

(8) **IESO Successors** – IESO Successors shall be bound by the requirements of Article 5 and shall perform and satisfy all duties and obligations of IESO under Article 5 in the same manner and to the same extent as IESO, including the obligation to collect Transition Charge Collections, Electricity Distributor Remittances and to remit IESO Remittances.

(9) **Owners of Distribution Assets** - If any person other than an Electricity Distributor acquires distribution system assets in the Province or invoices or collects electricity distribution rates in the Province[11], then such person shall, if requested by the Absolute Assignees, be obligated to act diligently to (a) facilitate the invoicing and collection of any Transition Charges applicable to Regulated Consumers connected to such person's distribution system assets; (b) allocate partial payments by Regulated Consumers as provided in this Act; (c) exercise all enforcement rights of the Absolute Assignees for the benefit of an Absolute Assignee; and (d) remit any Transition Charge Collections to the Absolute Assignees or Pledgees, as applicable, each in accordance with its Investment Interest. **[NTD: Such acquisition of a distribution system would require the person to be an electricity distributor; consider deleting since this is covered off by Section 5(7).]**

(10) **Absolute Assignees have Standing** – The Absolute Assignees, acting together in accordance with the Collective Action Agreement, may bring actions against any Electricity Distributor, Servicer, the Alternative Collection Agent, any owner of electricity distribution system assets in the Province or any other person who may be authorized to collect electricity distribution and use charges from Regulated Consumers for a failure to collect Transition Charges, remit or collect Electricity Distributor Remittances or remit IESO Remittances, as and to the extent applicable under Article 5, or to otherwise comply with this Act. Any court of the Province shall have jurisdiction over any actions brought before it by the Absolute Assignees in relation to any such failure and may make any interim or final order it thinks fit in this regard.

(11) **Not Used. [NTD: The Servicer should manage this process.**]

(12) **No Set-off, etc.** - The Regulatory Asset, including rights in Transition Charges, Transition Charge Collections, and the interests of a Regulatory Asset Owner, an Absolute Assignee and a Pledgee therein, may not be setoff or reduced (including by counterclaim, surcharge or defense) by any Regulated Consumer, any Electricity Distributor, Servicer, Alternative Collection Agent or any owner of distribution system assets in the Province or any other person or in connection with any default, bankruptcy, reorganization or other insolvency proceeding of any Electricity Distributor, Servicer,

[11] This is in anticipation of a possible future restructuring of the distribution system.

Alternative Collection Agent or any owner of distribution system assets in the Province, any affiliate or successor thereof or any other entity or otherwise.[12]

(13) **Sequestration** – If any Electricity Distributor, Servicer, the Alternative Collection Agent or any owner of distribution system assets in the Province or any other person or entity authorized to collect Transition Charges, defaults on any required remittance of Transition Charge Collections, Electricity Distribution Remittances or IESO Remittances under Article 5, any court in the Province, upon application by and of the Absolute Assignees acting collectively under the Collective Action Agreement and without limiting any other remedies otherwise available to the Absolute Assignees or Pledgees, shall order the sequestration and payment of the Transition Charge Collections, Electricity Distribution Remittances and IESO Remittances, as applicable, for the benefit of the Absolute Assignees, each with respect to its Investment Interest, and the Pledgees as applicable.[13]

[NTD: Suggest considering a more typical remedy such as the ability to appoint a receiver. Concept should be moved to Regulations.]

(14) Regulations – Regulations may be enacted for the purpose of specifying further rights, powers, privileges, duties and obligations that shall apply to Servicer, any Electricity Distributor or any Alternative Collection Agent to ensure that rights, interests, entitlements, benefits and proceeds in, to, under and from the Regulatory Asset are of fully realized by some or all of the Absolute Assignees and Pledgees.

Article 6 – The Regulatory Asset

[NTD: We believe that the statute should impose a time limit on the ability of IESO to create additional Regulatory Assets under this Act. It is our expectation that this will be no later than 10 years after the commencement of the program.]

[NTD: In addition, additional language is required to address the acquisition of the Regulatory Asset by the Financing Entity, including reference to the consideration being provided for it, funding upfront costs.]

[NTD: The sale of Regulatory Assets must be restricted to Financing Entities controlled by a single entity (initially, OPG).]

[NTD: For greater certainty, a Financing Entity will not be required to purchase Regulatory Assets from IESO.]

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[12] Consider whether it makes sense to create a "deemed collection" payment obligation on Electricity Distributors to the extent a Regulated Consumer reduces its payment of Transition Charges, despite this language. Same for Electricity Distributor Remittances and IESO Remittances.

[13] Consider adding or substituting this provision for a right to appoint a receiver.

(1) **Composition** – The Regulatory Asset shall constitute a current and irrevocable property right and interest consisting, collectively, of the following rights and interests (without duplication):

a. the right of a Regulatory Asset Owner to record its portion of the Regulatory Asset in its accounts;

b. the right to impose, bill, invoice, collect and receive Transition Charges from Regulated Consumers, including the right to determine the amount of Transition Charges in accordance with this Act;

c. the right to enforce the obligations and indebtedness of each Regulated Consumer to pay the Transition Charges charged to the Regulated Consumer from time to time in accordance with Article 3, together with all related late payment fees or interest charges arising in respect thereof under the related Electricity Invoices; **[NTD: Do we really want and need the ability for the Financing Entities to chase after individual consumers?] [NTD: This should be the right to provide notices to the OEB of the amounts required for recovery, which the OEB would then be required to accept for purposes of determining the amount of Transition Charges to be charged to consumers]**

d. the right to enforce the duties and obligations of each Electricity Distributor and if applicable the Alternative Servicer to impose, attribute, charge, bill and invoice the Transition Charges in accordance with Article 4;

e. the right to enforce the duties and obligations of each Electricity Distributor and if applicable the Alternative Collection Agent to collect, receive and remit amounts received by it in respect of Transition Charges as Electricity Distributor Remittances to or to the account of Servicer or if applicable the Alternative Collection Agent in accordance with Article 5, including all collections and the proceeds of any enforcement action undertaken by the Electricity Distributor or if applicable the Alternative Collection Agent to recover payment of Transition Charges in accordance with Article 5;

f. the right to enforce the duties and obligations of Servicer and if applicable the Alternative Collection Agent to collect and receive Electricity Distributor Remittances and to remit IESO Remittances to or to the accounts of the Regulatory Asset Owners, each with respect to its respective interest in the Regulatory Asset, in each case in accordance with Article 5, including all collections and the proceeds of any enforcement action undertaken by it to recover payment of Electricity Distributor Remittances in accordance with Article 5;

g. the right to receive and collect all Transition Charge Collections, all Electricity Distributor Remittances and all IESO Remittances in accordance with Article 5;

h. all rights and entitlements under each Regulatory Asset Account and all amounts on deposit in any such Regulatory Asset Account;

i. all Related Rights; and

j. all revenue, collections, claims, payments, money and proceeds of or derived from the rights described in (a) through (i), regardless of whether such revenue, collections, claims, payments and proceeds are imposed, invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

A Regulatory Asset and the property rights and interests therein shall exist whether or not Transition Charges have been imposed, charged, invoiced, accrued or collected and notwithstanding that the imposition, attribution, invoicing and collection of Transition Charges will depend on further actions that may not have occurred. The Regulatory Asset shall continue to exist until all Funding Obligations and Additional Funding Charges have been paid in full.

(2) **Validity of Dispositions** – A Disposition by IESO of all or any part of the IESO Funding Shortfall to an Absolute Assignee, or a Disposition of all or any part of an Investment Interest by one Absolute Assignee to another Absolute Assignee made under the Financing Plan, shall be permitted and when made shall be valid and enforceable in accordance with the terms of the related Disposition Document and shall be effective to confer upon the Absolute Assignee thereof a valid property right and interest in, to and under the IESO Funding Shortfall or Investment Interest, as applicable (or relevant portion thereof) in accordance with the terms of such Disposition, provided that the parties to the applicable Disposition Document have expressly stated therein that such Disposition is a sale or other absolute transfer. Without limiting the foregoing, any Disposition that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as a true sale and absolute transfer of the IESO Funding Shortfall or an Absolute Assignee's right, title and interest in, to and under an Investment Interest, as applicable (or relevant portion thereof), and not merely as a Pledge thereof, and upon such Disposition the assigner or seller under the applicable Disposition Document shall retain no right, title or interest in the IESO Funding Shortfall or Investment Interest (or relevant portion thereof) subject to the Disposition, including all rights under the IESO Funding Shortfall or Investment Interest arising after such Disposition. **[NTD: Subject to review by Osler/dealers.]**

(3) **Perfection and Priority of Dispositions** – Any Disposition of an interest in a Regulatory Asset shall be vested, valid, binding and perfected from the time when such Disposition is made. Such Disposition shall be perfected, vested, valid and binding as against the IESO or transferring Regulatory Asset Owner, as applicable, and all other persons who have claims of any kind (whether in tort, contract or otherwise) against IESO or the transferring Regulatory Asset Owner, as the case may be, irrespective of whether such persons have notice of the Disposition and the property rights and interests acquired by the Absolute Assignee under such Disposition shall be free and clear of any liens in favour of such other persons.

(4) **Validity of Pledges** – A Pledge by an Absolute Assignee may be made to secure any Funding Obligation and when made shall be valid and enforceable in accordance with its terms and shall be effective to confer upon the Pledgee a valid security interest in, to and in respect of the related Investment Interest in accordance with the terms of the

Pledge. No consent of, or notice to, any person shall be required to give effect to a Pledge made to secure any Funding Obligation.

(5) **Perfection and Priority of Pledges** - For purposes of the *Personal Property Security Act* (the "PPSA"), the Regulatory Asset shall be intangible personal property and any Pledge made by an Absolute Assignee in respect of a Funding Obligation shall, subject to the terms thereof, give rise to a security interest of which the PPSA applies, and may be perfected by filing a financing statement under the PPSA on that basis. All proceeds of a related Investment Interest that are subject to such a Pledge that are received by the Absolute Assignee shall immediately be subject to the such Pledge, and the security interest in such proceeds shall be perfected pursuant to the PPSA.[14] A Pledge perfected under the PPSA shall be a continuously perfected security interest and shall have priority over any other lien or security interest, created by operation of law or otherwise, that may attach to the property rights and interests in the Investment Interest subject to the Pledge unless the Pledgee has otherwise agreed in writing. A Pledgee shall have a perfected security interest in a related Investment Interest, including the Absolute Assignee's rights and interests in and to Transition Charge Collections or other related proceeds in respect of the Investment Interest and that are deposited in any Regulatory Asset Account or other account of any Electricity Distributor, IESO, Alternative Collection Agent or other person who may have commingled such Transition Charge Collections or such other proceeds with other funds. All provisions of the PPSA shall apply to the Regulatory Asset on the basis that it is intangible personal property, except to the extent otherwise provided in this Section 6(5).

(6) **Enforcement of Property Rights** – The rights of any Regulatory Asset Owner to collect and enforce its rights and interests in, to or in respect of the Regulatory Asset shall be exercised in the manner set forth in Article 5.

(7) **Owners of a Specified Portion of the Regulatory Asset** – A Regulatory Asset Owner may effect a Disposition to an Absolute Assignee of a specified portion of its rights and interests in the Regulatory Asset, including by way of a Disposition of a divided or an undivided interest therein as specified in a related Disposition Document. In no circumstance may the specified portions of the rights and interests in the Regulatory Asset owned by all Regulatory Asset Owners be greater than all of the rights and interests that comprise the Regulatory Asset in the aggregate.

(8) **Collective Action Required** – If a Regulatory Asset Owner's rights and interests in the Regulatory Asset comprises less than the entire property right and interest constituted by the Regulatory Asset, such Regulatory Asset Owner shall only enforce such right and interest on a collective and coordinated basis with each other Regulatory Asset Owner in accordance with the Collective Rights Agreement. **[NTD: Move to Regulations.]**

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[14] Consider whether to simply leave this and have a financing statement be filed under the PPSA. This would normalize the security interest and reduce any adverse suggestion that security would not otherwise arise.

Article 7 – Establishment of the Fair Allocation Plan[15] [NTD: Move entire Article 7 to Regulations, other than 7(1) and 7(2).]

(1) **Adoption of the Fair Allocation Plan** – The Delegate may, by written declaration, designate and adopt a Fair Allocation Plan in compliance with Article 7. The Fair Allocation Plan so designated and adopted shall be the Fair Allocation Plan for all purposes of this Act, except if amended, amended and restated or terminated by a further written declaration made by the Delegate in compliance with **[the Regulations]**

(2) **Principles and Parameters** – A Fair Allocation Plan shall seek to allocate Future Fair Share of Green Transition Benefits across present and future Regulated Consumers on a basis that the Delegate, in its sole and absolute discretion, determines to be equitable, having regard to the following principles and parameters:

[NTD: E&Y will need to see the guidelines of the Fair Allocation Plan set in reference to parameters that will allow it to establish a modeling curve]

- [**Inflation period**: (between November 2017 – and April 2022) bill increases need to be capped at inflation (assumed at 2% for modeling purposes)]

- [**Transition Period**: (May 2022- April 2027) bills increased at a consistent rate which is set so that the borrowing will not exceed the Trust's capacity, which is determined by the Finance Service Manager]

- [**Amortization Period**: (May 2027-April 2047) equitable distribution of Finance Amount among Regulated Consumers]

1. Future Fair Share of Green Transition Benefits should be allocated over the period ending on the Program End Date.

2. The share of Future Fair Share of Green Transition Benefits allocable to a particular Regulated Consumer in respect of a Reference Period should be proportionate to a reasonable assessment of the benefits of the Green Generation Initiative to such Regulated Consumer over such Reference Period, other than in exceptional circumstances.

3. The Fair Allocation Plan should specify the Reference Periods for the purpose of allocating Future Fair Share of Green Transition Benefits among Regulated Consumers on a relative basis over time.

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15 The idea is that the Fair Allocation Plan will be set once at the outset based on the principles and parameters described here, all as applied based on information available and the reasonable expectations and discretion of the delegate at such time. If the expectations are not fulfilled (e.g., generators may choose to retire their facilities at the end of their current procurement contracts and not invest in extending service lives to secure further procurement contracts), the Fair Allocation Plan will be unaffected, unless it is specifically amended (assuming amendments will be permitted by the legislation).

(3) **Attribution Methodology** – The Fair Allocation Plan shall specify the Attribution Methodology for the purposes of allocating the Period Finance Charges across the Regulated Consumers. The Attribution Methodology shall result in an attribution of such Transition Charges that is considered by the Delegate to be equitable, and may have regard to such principles and parameters as may be further set forth in a Regulation; provided that the Attribution Methodology shall not be used to limit the recovery of Transition Charges. **[NTD: Can the methodology be adjusted outside an amendment? If so, the rating agencies need to understand the limits of any adjustment.]**

(4) **Amendments of the Fair Allocation Plan** – The Fair Allocation Plan may be amended, amended and restated or terminated by the Delegate, provided that such amendment, amendment and restatement or termination shall (a) not be inconsistent with the principles and parameters set forth in (2) or (3), above, or the Regulation, (b) comply with any restrictions or limitations specified with respect thereto in any Funding Obligation, and (c) not impair any Regulatory Asset, outstanding Funding Obligation or any Transition Charges. **[NTD: If the Fair Allocation Plan is amended, there should be no further Regulatory Assets until the revised Fair Allocation Plan and corresponding Financing Plan have been approved.]**

Article 8 – The IESO Funding Shortfall

(1) **Recording of IESO Funding Shortfall** -- IESO will record any IESO Funding Shortfall in its books.

(2) **Dispositions** – IESO may effect a Disposition of all or any part of the IESO Funding Shortfall to an Absolute Assignee if (a) the Disposition is effected pursuant to a Disposition Agreement duly executed by IESO; and (b) the Financial Services Manager confirms in writing that the Disposition complies with any restrictions or limitations specified with respect thereto in any documents evidencing the Funding Obligations and is permitted under the Financing Plan.

(3) **No Continuing Interest in any Investment Interest** – IESO shall have no continuing right or interest in any IESO Funding Shortfall subject to a Disposition effected by IESO under a Disposition Document to which IESO is a party.

Article 9 – The Financing Plan [NTD: Move all of Article 9 to Regulations other than 9(1).]

(1) **Power to Prepare, Implement and Amend the Financing Plan** – The Financial Services Manager shall be authorized to prepare, implement and amend a financing plan for the Financing Entities and propose the adoption of such financing plan as the Financing Plan for the purposes of this Act. The Financial Services Manager shall have the right to withdraw its financing plan as the Financing Plan at any time if it determines that implementing the Financing Plan in such manner would not be in the best interests of a Financing Entity.

(2) Principles and Parameters of the Financing Plan – The Financing Plan shall establish the basis for each Absolute Assignee's funding decisions having regard to the principles and parameters set forth in Schedule 3.

(3) OEB Approval – Any Additional Funding Charge payable to the Financial Services Manager in respect of services provided by the Financial Services Manager (other than third party costs) shall be subject to review and approval by the OEB.

(4) Review of Financing Plan – The [OEB] shall undertake an annual review of the records maintained by the Financial Services Manager for the purpose of confirming that the Funding Obligations incurred and the Finance Amounts paid by or on behalf of the Absolute Assignees were incurred and paid, respectively, in material conformity with the Financing Plan. **[NTD: We would prefer that this be dealt with by an attestation prepared by an officer of the Financial Services Manager.]**

(5) Replacement of the Financial Services Manager – If the OEB identifies deficiencies or makes recommendations in its review under Section 9(4), the Financial Services Manager shall take reasonable measures to remedy such deficiencies if remediable, and shall in any event have regard to the recommendations of the OEB in relation to further actions undertaken by the Financial Services Manager under the Financing Plan. If the Financial Services Manager is unwilling or unable to reflect such recommendations in relation to such further actions, the Delegate may by written declaration designate one or more other persons who shall thereafter become the Financial Services Manager. Any replacement must comply with the restrictions and limitations specified in the documents evidencing the Funding Obligations.

(6) Obligation to Apply IESO Remittances – The Financial Services Manager shall ensure that amounts transferred to it under Article 5, as agent for and on behalf of the Absolute Assignees, or otherwise in respect of or as proceeds from an applicable Investment Interest shall only be applied or used to pay related Finance Amounts when they are due and payable and for no other purpose. **[NTD: This can be dealt with by contract.]**

(7) Non-Recourse – The Financing Plan shall be implemented so that Funding Obligations incurred shall be without recourse to or to any assets of the Electricity Distributors, IESO, any Alternative Servicer, any Alternative Collection Agent, the Financial Services Manager, the OEB or Her Majesty in right of Ontario, other than if and to the extent that such persons or entities are liable for the performance of obligations or duties arising under this Act or expressly agree to become liable pursuant to any Funding Obligation or obligation in relation to a Finance Amount.

(8) Incurrences are Binding – Each Disposition made to or by an Absolute Assignee, all amounts payable or becoming due and payable by or on behalf of an Absolute Assignee under or in connection with any obligation purporting to be a Funding Obligation and each Pledge entered into by an Absolute Assignee, shall be valid and binding, including in determining the amount of related Transition Charges, notwithstanding any defect in the manner in incurrence or any inconsistency with the Fair Allocation Plan or the Financing Plan.

[Article 10 – Compliance Matters[16]

(1) Right of the [OEB] to Inspect Books and Records - For the purpose of investigating compliance with the provisions of this Act, the OEB shall have the right, jurisdiction, power and authority to examine the books and records of *[Insert names if any]*.

(2) [OPG's Rate Settings – When setting other rates for or in respect of OPG, the OEB shall not take into account (a) the administrative or servicing fees charged by OPG as Financial Services Manager [in excess of the actual incremental costs incurred by such person of providing administrative or servicing services]; (b) the cost consequences to OPG of being the Financial Services Manager; or (c) the consequence of OPG consolidating the assets and liabilities of any Financing Entity for OPG's accounting purposes, in each case in setting any regulated payment amounts for OPG.][17]

Article 11 – Undertaking of the Her Majesty in right of Ontario[18]

(1) No Action to limit, alter, or impair or terminate Transition Charges, the Regulatory Asset or Collections – Her Majesty in right of Ontario shall not in any way take or permit (including by any agency or administrative body) any action to reduce, impair, postpone or terminate the obligation of Regulated Consumers to pay Transition Charges or to impair the Regulatory Asset or the collection or recovery of Transition Charge Collections, Electricity Distributor Remittances or IESO Remittances, either directly or indirectly, including through the introduction of any bill or the passing of any legislation or regulation having such effect. The amount of Transition Charges determined under this Act shall not be subject in any way to reduction, impairment, postponement or termination as a result of any action taken or failure by Her Majesty in right of Ontario (including by any agency or administrative body), including through the introduction of any bill or the passing of any legislation or regulation having such effect.

(2) Undertaking and Agreement – Her Majesty in right of Ontario shall not:

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[16] As noted above, the outcome of any regulatory action undertaken by the OEB will not affect Funding Obligations that have been incurred under the Financing Plan. This Article and any potential role for the Auditor General is still under consideration.

[17] As an alternative to this provision, consider clarifying under s. 78.1(4) of the OEB Act (which currently gives the OEB discretion in setting payment amounts subject to O. Reg. 53/05) that the OEB in setting OPG payment amounts for prescribed generation shall not consider OPG's role as Financial Services Manager of any Financing Entities associated with the Fair Hydro initiative, perhaps with the exception of any operating fees that may be received by OPG for performing that role.

[18] Under consideration, including the dealers' request for a "servicer guarantee" and a "contractual guarantee" to address a "Change of Law" or if all or a portion of the legislation is *ultra vires*, requiring (at the lenders option), the Province to pay principal and interest on the outstanding debt until maturity or payout the entire debt including any make-wholes.

In the event of a market disruption that renders it impossible to refinance debt when required (or where financing of amounts required to service the debt is not available because of a market disruption where the Financing Entity was relying on such further issuance of debt until the recovery is set to begin to fund interest), either the Province must step in and payout the debt or there must be the right to recover the debt from ratepayers as it becomes due, notwithstanding the intended rate cut.

(a) in any way take or permit any action that limits, alters or impairs the value of any Investment Interest;

(b) except as required by the estimates and adjustments made in determining the True-up Amount, reduce, alter or impair Transition Charges that are imposed, billed, invoiced, collected and remitted for the benefit of the Absolute Assignees or any Pledgee from time to time;

(c) permit the amendment, amendment and restatement or termination of the Fair Allocation Plan if such amendment, amendment and restatement or termination would adversely affect the validity or enforceability of any Funding Obligation or the rights of an Absolute Assignee or Pledgee thereunder, or would not otherwise comply with the restrictions and limitations specified in the documents evidencing the Funding Obligations,

in each case including through the introduction of any bill or the passing of any legislation or regulation having such effect.

(3) **Successor IESO** – If IESO is restructured, dissolved or becomes insolvent or is otherwise incapable of performing its obligations under this Act, an IESO Successor shall immediately be established by Her Majesty in right of Ontario to perform such obligations.

(4) **Compensation for Failure** – Absolute Assignees shall be compensated by Her Majesty in right of Ontario for any losses suffered by them as a result of any failure by Her Majesty in right of Ontario to comply with its undertakings and agreements in this Article 11.[19]

(5) **No Wind-up of Financing Entity**. No Financing Entity may be voluntarily wound up, liquidated or dissolved until one year after all of its Funding Obligations are repaid. **[NTD: This concept can be contained in the Regulations.]**

(6) **References to the Undertaking and Agreement** – Any non-confidential reference to the Undertaking of the Her Majesty in right of Ontario, including in marketing materials and other documentation authorized for use by the Administrative in connection with any Funding Obligation, may be made provided that [*Add conditions to protect the Province*].

Article 12 – Regulations

Regulations may be made under this Act for the purposes described in Sections •,•,• and • and may be promulgated for any of the following purposes:

(a) to set standards and measures regarding the commercially reasonable requirements of the Province associated with an Absolute Assignee incurring Funding Obligations or becoming obligated to pay any Finance Amount, including to establish guidelines regarding all-in funding costs; permitted Additional

[19] Requested by Dealers. For discussion.

Funding Charges; required maturities and redemption and termination rights of Funding Obligations; liquidity requirements, in each case to a Financing Plan that is consistent in its effect with the Fair Allocation Plan;

(b) to establish and empower one or more regulated entities to undertake decision-making activities with respect to this Act;

(c) to set out reasonable requirements regarding the appointment or retention of advisors, agents, service providers, contract counterparties, including in relation to 'market terms and conditions' parameters;

(d) to provide for audit and compliance standards applicable to those persons who are or may become obligated or have duties that arise under this Act [or under any Funding Obligation];

(e) to provide for any pre-vetting and approval requirements in relation to any incurrence by an Absolute Assignee of any Funding Obligation or obligation to pay any Finance Amount; and

(f) to provide for appeal and due process considerations in connection with the establishment, adoption, implementation and review of the Fair Allocation Plan or the Financing Plan.

Article 13- Miscellaneous[20]

(1) **Choice of law** – The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the Regulatory Asset, any Transition Charge or the Undertaking of the Province shall be the laws of the Province.

(2) **Conflict of law** – In the event of conflict between this Act and any other law of the Province regarding the attachment, assignment or perfection, or the effect of perfection, or priority of any Disposition or Pledge, this Act shall govern to the extent of the conflict.

(3) **No further acts or approvals required** - Notwithstanding any provisions of any law of the Province to the contrary, no approvals, notices or authorizations other than those specified in this Act shall be required with respect to the actions to be taken in compliance with this Act, including under the Financing Plan or in relation to the establishment of the Fair Allocation Plan, and the transactions and contracts authorized in or contemplated by this Act or the Financing Plan, including the incurrence of any Funding Obligation, any Disposition, any Pledge or in the payment and performance of any attendant or incidental contract and any related expenses incurred to facilitate the preparation and implementation of the Financing Plan.

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[20] OPG would like the specific amendments related to OPG to be included in the Bill.]

(4) **Effect of invalidity after the Incurrence of any Funding Obligation** - Effective on the date that a Funding Obligation is incurred under this Act, if any provision of this Act is held to be invalid or is invalidated, superseded, replaced, repealed or expires for any reason, that occurrence shall not affect any action allowed under this Act that is taken by any person who is or may become obligated or have duties that arise under this Act and any such action shall remain in full force and effect.

(5) **Severability** - If any Article, Section, paragraph or subparagraph of this Act or the application thereof to any person, circumstance or transaction is held by a court of competent jurisdiction to be unconstitutional or invalid, the unconstitutionality or invalidity shall not affect the constitutionality or validity of any other Article, Section, paragraph or subparagraph of this act or its application or validity to any person, circumstance or transaction, including the irrevocability of Transition Charges, the validity of the Regulatory Asset, the incurrence of any Funding Obligation, any Disposition, any Pledge, or the collection and recovery of Transition Charge Collections. To these ends, the Legislature hereby declares that the provisions of this Act are intended to be severable and that the Legislature would have enacted this Act even if any Article, Section, paragraph or subparagraph of this Act held to be unconstitutional or invalid had not been included in this Act.

Schedule 1

Guidelines for Estimates

[To be considered.]

Schedule 2

Requirements Applicable to Alternative Invoicing Agent/ Alternative Collection Agent

[To be considered.]

Schedule 3

Principles and Parameters for Establishing the Financing Plan

The following principles and parameters provide a guideline as to what a Financing Plan should address:

(1) consider quantities, maturities, payment obligations, prepayment or redemption rights and such other features of Funding Obligations so that payments made for a Reference Period reasonably correspond to the allocations of Future Fair Share of Green Transition Benefits to the applicable Reference Group under the Fair Allocation Plan;

(2) if the anticipated amount of any Repayment (together with payments of other Finance Amounts) to be made in respect of a Reference Period would materially exceed the allocation of the costs and benefits of the Green Generation Initiative to the applicable Regulated Consumers under the then current Fair Allocation Plan, diligent efforts should be made to determine whether a Refinancing or deferral of such Repayment may be reasonably and cost-effectively effected based on then prevailing market terms, conditions an circumstances;

(3) reflect the assumptions and requirements specified in any contemplated Funding Obligation (e.g., any limit on the maximum amount of Transition Charges charged to a hypothetical Regulated Consumer relative to his or her monthly electricity bill, as prescribed by any rating agency that ascribes its credit rating to or in respect of the Funding Obligation **[having regard to the application of the Attribution Methodology][NTD: Are the words in square brackets necessary?]**);

(4) require the Financial Services Manager, for and on behalf of each Regulatory Asset Owner, to use diligent efforts to manage Finance Amounts to be borne by Ratepayers;

(5) include a proposal regarding the compensation of the Financial Services Manager that reflects market terms and conditions; and

(6) require that the Financial Services Manager report annually to the Ministry of Energy on the operation of the Financing Plan including, in particular, with respect to the amount and terms of the Funding Obligations incurred and the sufficiency of such Funding Obligations for the purpose of funding the estimated Funding Shortfalls in accordance with the Fair Allocation Plan.

FW_ _Fair Hydro Act_ Legislative Summary (Discussion Draft).rtf

From: Veinot, Cindy (TBS) []
To: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; Suzie Gignac [suzie.r.gignac@ca.ey.com]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]
Subject: FW: "Fair Hydro Act" Legislative Summary (Discussion Draft)
Date: Wednesday, April 12, 2017 12:35:49
Attachment 1: Blackline_Summary.pdf
Attachment 2: Fair_Hydro_Act Torys_Osler Mark-up April 11 2017 Draft (Torys-Oslers_Apr....docx

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Base document for today's 2 pm call

-----Original Message-----
From: Calwell, Carolyn (ENERGY/MEDEI/MRI)
Sent: April-12-17 12:30 PM
To: Hume, Steen (ENERGY); Nelms, Scott (MOF); Veinot, Cindy (TBS); Cox, Hilary (ENERGY); Christie, Tim (ENERGY)
Cc: Rehob, James (ENERGY); Shear, Dan (ENERGY); Kacaba, Jennifer (ENERGY); Huang, Jackson (MEDG/MRIS)
Subject: FW: "Fair Hydro Act" Legislative Summary (Discussion Draft)
Importance: High

Here is the document, just received, that we will work from this afternoon.

-----Original Message-----
From: Mansoori, Nina [mailto:nmansoori@torys.com]
Sent: April-12-17 12:16 PM
To: WILSON, JUDY; STOKES, BRYSON; JACKSON, ADAM; Peter Hamilton (PHamilton@stikeman.com); Rehob, James (ENERGY); Alan Hibben; Shear, Dan (ENERGY); Calwell, Carolyn (ENERGY/MEDEI/MRI); Michael.Boll@ieso.ca; Feldman, Michael; LEE John -TREASURY; RYFA Ken -TREASURY; WONG Leslie -LAWDIV; Hill, Krista; Ramchandani, Rima; Keizer, Charles; Myers, Jonathan; Emes, Aaron; Wortsman, Jerald; Bomhof, Scott; Estey, Bill; Watson, Gwen; O'Brian, Adam; Fitzpatrick, Michael F.; VINER, JON; Brad.Purkis@tdsecurities.com; Nelms, Scott (MOF); Sebastiano, Rocco; GZacher@stikeman.com; Christie, Tim (ENERGY); Johnson, Paul (ENERGY/MEDEI/MRI); Kwan, Ronald (OFA); He, Gavin (OFA); Veinot, Cindy (TBS); Hosick, Sarah (TBS); kim.marshall@ieso.ca; Cox, Hilary (ENERGY); Hilloowala, Maharukh; Wolff, Michael; Holloway, Harold; Akman, Steven; Manii, David; Nevison, Gary; Niehaus, Katrina; Maciel, Andrew; Persaud, Donnie - Debt Capital Markets; Adalja, Sunil; Alvi, Shariq; Benaiah, Ian; Fullerton, Rick; Collins, Patrick J; Mullen, Max M.; Delaney, Brian; Hong, Yoomin; Raman, Akila; King, Richard; Innes, Michael; Milligan, Peter; 'Smith, Elliot'; ASHBOURNE, STEPHEN
Subject: RE: "Fair Hydro Act" Legislative Summary (Discussion Draft)
Importance: High

All - please find attached a revised draft of the summary legislation circulated by Blakes on April 10 which reflects consolidated comments from OPG and the dealers (and their respective counsel). Please note that the attached remains subject to the continuing review of OPG and the dealers. We will have printed copies of the blackline available at today's meeting.

Best Regards,
Nina

Nina Mansoori

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-----Original Message-----
From: Smith, Elliot [mailto:ESmith@osler.com]
Sent: April-12-17 12:39 AM
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Cc: Feldman, Michael <mfeldman@torys.com>; JACKSON, ADAM <ADAM.JACKSON@blakes.com>; Peter Hamilton (PHamilton@stikeman.com) <PHamilton@stikeman.com>; LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; WONG Leslie -LAWDIV <leslie.wong@opg.com>; MCAULEY Tyler -LAWDIV <tyler.mcauley@opg.com>; WILSON, JUDY <JUDY.WILSON@blakes.com>; STOKES, BRYSON <BRYSON.STOKES@blakes.com>; Hill, Krista <khill@torys.com>; Ramchandani, Rima <rramchandani@torys.com>; Keizer, Charles <ckeizer@torys.com>; Myers, Jonathan <jmyers@torys.com>; Emes, Aaron <aemes@torys.com>; Mansoori, Nina <nmansoori@torys.com>; Wortsman, Jerald <jwortsman@torys.com>; Bomhof, Scott <sbomhof@torys.com>; Estey, Bill <bestey@torys.com>; Watson, Gwen <gwatson@torys.com>; James.Rehob@ontario.ca; Alan Hibben <alan.hibben@rogers.com>; Shear, Dan (ENERGY) <Dan.Shear@ontario.ca>; Carolyn.Calwell@ontario.ca; O'Brian, Adam <aobrian@hunton.com>; Fitzpatrick, Michael F. <MFitzpatrick@hunton.com>; VINER, JON <JON.VINER@blakes.com>; Brad.Purkis@tdsecurities.com; Nelms, Scott (MOF) (Scott.Nelms@ontario.ca) <Scott.Nelms@ontario.ca>; Sebastiano, Rocco <RSebastiano@osler.com>; Michael.Boll@ieso.ca; GZacher@stikeman.com; Christie, Tim (ENERGY) <Tim.Christie@ontario.ca>; Johnson, Paul (ENERGY/MEDEI/MRI) <Paul.Johnson3@ontario.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>; kim.marshall@ieso.ca; Cox, Hilary (ENERGY) <Hilary.Cox@ontario.ca>; Hilloowala, Maharukh <Maharukh.Hilloowala@tdsecurities.com>; Wolff, Michael <Michael.Wolff@tdsecurities.com>; Holloway, Harold <Harold.Holloway@tdsecurities.com>; Akman, Steven <Steven.Akman@tdsecurities.com>; Manii, David <david.manii@tdsecurities.com>; Nevison, Gary <Gary.Nevison@tdsecurities.com>; Niehaus, Katrina <Katrina.Niehaus@gs.com>; Maciel, Andrew <Andrew.Maciel@cibc.com>; Persaud, Donnie - Debt Capital Markets <Donnie.Persaud@cibc.com>; Adalja, Sunil <Sunil.Adalja@cibc.com>; Alvi, Shariq <Shariq.Alvi@cibc.com>; Benaiah, Ian <ian.benaiah@rbccm.com>; Fullerton, Rick <RFullerton@osler.com>; Collins, Patrick J <Patrick.Collins@gs.com>; Mullen, Max M. <Max.Mullen@gs.com>; Delaney, Brian <Brian.Delaney@gs.com>; Hong, Yoomin <yoomin.hong@gs.com>; Raman, Akila <Akila.Raman@gs.com>; King, Richard <rking@osler.com>; Innes, Michael <MInnes@osler.com>; Milligan, Peter <PMilligan@osler.com>
Subject: RE: "Fair Hydro Act" Legislative Summary (Discussion Draft)

Steve,
We have been corresponding with Torys today and are in the process of preparing a consolidated mark-up reflecting comments from the Dealers and OPG, which will also incorporate some of the comments received this evening from the IESO/Stikemans. We will circulate the consolidated mark-up before tomorrow's meeting.

Elliot

Elliot Smith
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-----Original Message-----
From: ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
Sent: Tuesday, April 11, 2017 1:54 PM
To: Smith, Elliot <ESmith@osler.com>
Cc: Feldman, Michael <mfeldman@torys.com>; JACKSON, ADAM <ADAM.JACKSON@blakes.com>; Peter Hamilton (PHamilton@stikeman.com) <PHamilton@stikeman.com>; LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; WONG Leslie -LAWDIV <leslie.wong@opg.com>; MCAULEY Tyler -LAWDIV <tyler.mcauley@opg.com>; WILSON, JUDY <JUDY.WILSON@blakes.com>; STOKES, BRYSON <BRYSON.STOKES@blakes.com>; Hill, Krista <khill@torys.com>; Ramchandani, Rima <rramchandani@torys.com>; Keizer, Charles <ckeizer@torys.com>; Myers, Jonathan <jmyers@torys.com>; Emes, Aaron <aemes@torys.com>; Mansoori, Nina <nmansoori@torys.com>; Wortsman, Jerald <jwortsman@torys.com>; Bomhof, Scott <sbomhof@torys.com>; Estey, Bill <bestey@torys.com>; Watson, Gwen <gwatson@torys.com>; James.Rehob@ontario.ca; Alan Hibben <alan.hibben@rogers.com>; Shear, Dan (ENERGY) <Dan.Shear@ontario.ca>; Carolyn.Calwell@ontario.ca; O'Brian, Adam <aobrian@hunton.com>; Fitzpatrick, Michael F. <MFitzpatrick@hunton.com>; VINER, JON <JON.VINER@blakes.com>; Brad.Purkis@tdsecurities.com; Nelms, Scott (MOF) (Scott.Nelms@ontario.ca) <Scott.Nelms@ontario.ca>; Sebastiano, Rocco <RSebastiano@osler.com>; Michael.Boll@ieso.ca; GZacher@stikeman.com; Christie, Tim (ENERGY) <Tim.Christie@ontario.ca>; Johnson, Paul (ENERGY/MEDEI/MRI) <Paul.Johnson3@ontario.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>; kim.marshall@ieso.ca; Cox, Hilary (ENERGY) <Hilary.Cox@ontario.ca>; Hilloowala, Maharukh <Maharukh.Hilloowala@tdsecurities.com>; Wolff, Michael <Michael.Wolff@tdsecurities.com>; Holloway, Harold <Harold.Holloway@tdsecurities.com>; Akman, Steven <Steven.Akman@tdsecurities.com>; Manii, David <david.manii@tdsecurities.com>; Nevison, Gary <Gary.Nevison@tdsecurities.com>; Niehaus, Katrina <Katrina.Niehaus@gs.com>; Maciel, Andrew <Andrew.Maciel@cibc.com>; Persaud, Donnie - Debt Capital Markets <Donnie.Persaud@cibc.com>; Adalja, Sunil <Sunil.Adalja@cibc.com>; Alvi, Shariq <Shariq.Alvi@cibc.com>; Benaiah, Ian <ian.benaiah@rbccm.com>; Fullerton, Rick <RFullerton@osler.com>; Collins, Patrick J <Patrick.Collins@gs.com>; Mullen, Max M. <Max.Mullen@gs.com>; Delaney, Brian <Brian.Delaney@gs.com>; Hong, Yoomin <yoomin.hong@gs.com>; Raman, Akila <Akila.Raman@gs.com>; King, Richard <rking@osler.com>; Innes, Michael <MInnes@osler.com>; Milligan, Peter <PMilligan@osler.com>
Subject: Re: "Fair Hydro Act" Legislative Summary (Discussion Draft)

Elliot, in the interest of time, it may make sense for me to walk you through where your items have been addressed. Steve

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On Apr 11, 2017, at 1:19 PM, Smith, Elliot <ESmith@osler.com<mailto:ESmith@osler.com>> wrote:

Stephen,
This version does not reflect the top issues raised by the Dealers. We are sitting down with the Dealers now working on a comprehensive mark-up that we will send later today, but it will not be ready by 2 PM. We would like to use tomorrow's meeting to discuss the mark-up we are preparing rather than a further revised version that will not reflect our feedback.

Elliot
<image002.gif>

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<image003.gif><http://www.osler.com/>
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From: ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
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Subject: RE: "Fair Hydro Act" Legislative Summary (Discussion Draft)

Hi. Here is a revised draft of the legislative summary, for your consideration. Please provide your comments at your earliest opportunity. We will reflect comments received by 2ET tomorrow (Tuesday) in a further group circulation, for discussion on Wednesday. Regards, Steve

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Preliminary Draft for Discussion Purposes Only

"Fair Hydro Act"

Article 1 – Purpose

The Province has and continues to encourage the construction and development of facilities for the long-term operation and generation of electricity in the Province using sustainable, lower carbon-based technologies such as new gas-fired generation, renewable facilities, energy from waste and biomass, including under the Province's various procurement, standard offer, feed in tariff and other similar programs (the "Green Generation Initiative"). The long-term benefits of the Green Generation Initiative accrue over time and have benefited and will **continue to** benefit present and future electricity consumers in the Province.

The ~~imputed~~**out-of-market** costs of the Green Generation Initiative are currently passed through to electricity consumers by way of a monthly adjustment amount (the "Green Costs Adjustment"), which in turn forms part of the overall adjustment calculated by the Independent Electricity System Operator ("IESO") pursuant to section 25.33 of, and O.Reg. 429/4 under, the *Electricity Act* (the "Global Adjustment"). ~~The Global Adjustment is included as a charge billed to electricity consumers in their monthly electricity invoices.~~

The Green Costs Adjustment is currently determined each month by reference to the amounts paid by IESO to the generators of electricity in the Province under the Green Generation Initiative~~, which may be higher than prevailing market price for electricity. These differences~~**. These amounts paid by the IESO** arise because IESO has entered into long-term procurement contracts with such generators in order to provide them with ~~long-term price~~**revenue** certainty ~~for electricity~~, and in turn to encourage the generators to develop technologies and to construct and develop facilities consistent with the Green Generation Initiative. ~~In general, whenever amounts payable under these procurement contracts exceed the market price for electricity, the Green Costs Adjustment passes through the amount of such differences as part of the monthly charge to electricity consumers. Such amount then becomes available to IESO to meet its obligations under the~~ **[NTD: This statement is not correct in respect of all IESO procurement contracts.]** It has been determined that the useful lives of many of the assets ~~encouraged by~~**developed under** the Green Generation Initiative will be ~~well~~ in excess of the respective terms of ~~the related~~**their respective** procurement contracts~~, and in many cases may extend over more than one generation of electricity consumers~~.

Since the benefits to past, present and future electricity consumers from the Green Generation Initiative will not necessarily coincide with the costs currently attributed through the Green Costs Adjustment, based on the respective ~~durations~~**terms** of the **applicable** procurement contracts, it has been determined that the rate at which the costs associated with the Green Generation Initiative should be passed through to ~~Retail~~**Regulated** Consumers (as defined in Article 2) should be more closely aligned with the benefits that such ~~Retail~~**Regulated** Consumers have derived and are expected to derive from the Green Generation Initiative over time. This realignment will be based on **general** principles and parameters that establish a reasonable basis for measuring and allocating the relative costs and benefits of the Green Generation Initiative equitably across present and future ~~Retail~~**Regulated** Consumers (the "Fair Allocation

Plan"). **[NTD: There is no explanation as to why realignment is limited to Regulated Consumers.]**

If the Fair Allocation Plan determines that the equitable allocation of the costs associated with the Green Generation Initiative to the ~~Retail~~**Regulated** Consumers of a particular time period should be reduced below the amount that currently would be charged based on the Green Costs Adjustment, then the amount payable by such ~~Retail~~**Regulated** Consumers and in turn available to IESO will, in the aggregate, be less than the amount payable by the IESO to the generators in respect of such period. In this case**,** IESO will need to obtain funding from another source to cover such a shortfall. If a funding obligation is incurred ~~by IESO~~ to cover such a shortfall during ~~one~~**any** period, the repayment of such funding obligation will be required in a future period, and any related repayments, finance costs, hedging costs and other transaction costs incurred will become payable in ~~one or more~~ future periods. In order for IESO to obtain a reliable and committed source of cash flows to enable IESO to repay such funding amounts when they become due and payable, this Act imposes irrevocable and non-bypassable financial obligations on ~~Retail~~**Regulated** Consumers to pay amounts incurred in respect of such funding obligations when they become due and payable and establishes a right to invoice and collect such amounts. The right and interest in and to collect such financial obligations will take the form of the Regulatory Asset contemplated in this Act, which will constitute property rights and interests. Interests in the Regulatory Asset may be sold and absolutely assigned by IESO to one or more financing entities, which in turn will finance their acquired interests by incurring funding obligations. The incurrence and payment of such funding obligations will be administered on behalf **of** such financing entities by a financial services ~~agent~~**manager** under the Financing Plan contemplated in this Act. ~~The Financing Plan will seek to reasonably match the payment obligations arising under such funding obligations, to be borne by the future Retail Consumers of the period in which such payment obligations become due, with the benefits of the Green Generation Initiative allocated to such future Retail Consumers under the Fair Allocation Plan.~~

[NTD: Our strong preference is to limit the introduction to the next paragraph and move defined terms from the previous paragraphs to Article 2]

The purpose of this Act is to establish the basis upon which intergenerational fairness can be achieved by charging the costs and benefits of the Green Generation Initiative to present and future ~~Retail~~**Regulated** Consumers on an equitable and cost effective basis.

Article 2 ~~–~~ Definitions

In this Act: **[NTD: It would be preferable to use plain language definitions in the legislation and leave the more detailed definitions to either the regulations or the agreements contemplated hereunder.]**

"Absolute Assignee" means a person to whom a Regulatory Asset Owner effects a Disposition **other than as security**.

"Actual" means, in relation to costs, expenses or payments in respect of Funding Obligations during a Reference Period, the actual amount of such costs, expenses or payments paid or made (net of any Finance Reserve Withdrawals applied to pay such amounts), which amounts shall be recorded by the Financial Services ~~Agent~~**Manager**

whose records shall be determinative for the purposes of this Act except to the extent of a manifest calculation error.

"Additional Funding Charges" means, for a Reference Period ~~in respect of an Absolute Assignee~~, the fees, charges, expenses, costs, indemnities, reimbursements and other amounts (including any applicable tax amounts) that are or become payable by or on behalf of the Absolute Assignee during the Reference Period and that were incurred or committed to directly or indirectly by the Absolute Assignee in connection with the incurrence of Funding Obligations under the Financing Plan (whether at the time of such incurrence or over the term of the Funding Obligation and whether directly or indirectly), including ~~(without duplication and without limitation): (a) any payment required under an ancillary agreement entered into by, or by the Financial Services Agent on behalf of, the Absolute Assignee under the Financing Plan; (b) any federal, provincial or local taxes, payments in lieu of taxes, franchise fees or license fees imposed on the Absolute Assignee or incurred by on behalf of the Absolute Assignee under any obligation to pay tax gross-up amounts to counterparties under Funding Obligations; (c) any amounts payable to the Financial Services Agent, including amounts payable to its advisors and outside counsel; (d) any amounts incurred to prepare, confirm, amend and implement the Financing Plan; (e) any amounts payable to any Alternative Collection Agent or Alternative Servicer, including amounts payable to each's advisors and outside counsel; (f) any amounts incurred to make the calculations, determinations or confirmations to be made by or on behalf of the Absolute Assignee; (g) any servicing fees and expenses; (h) any trustee fees and expenses; (i) any legal fees, expenses and disbursements; (j) any accounting fees and expenses; (k) any administrative fees and expenses; (l) any manager or director fees of a Financing Entity; (m) any registration fees and expenses; (n) any placement fees, underwriting fees, fees and related issuing expenses; (o) any rating agency fees; and (p) any other related fees, charges, expenses, costs, indemnities, reimbursements and other amounts that are approved in good faith by the Financial Services Agent for recovery and payment under the Financing Plan~~**without limitation such amounts as may be prescribed**.

~~"Allocation Factor" means, in respect of a Retail Consumer for a Reference Period, the number (expressed as a percentage) determined in respect of the Retail Consumer by the OEB based on the application of< *the Attribution Methodology* >in respect of the Reference Period.[1]~~

~~"Alternative Collection Agent" means a person appointed under Section 5(11) and in compliance with the requirements set out in Schedule 2 to assume the collection activities and activities of any Electricity Distributor or IESO under Article 5, as agent for and on behalf of the Regulatory Asset Owners.~~ **[NTD: See section 5(11). Remove this concept globally.]**

"Alternative Servicer" means a person appointed under Section 4(8) to assume the obligations of the Servicer under Article 4, as agent for and on behalf of the Regulatory Asset Owners. **[NTD: We see this, in effect, as the same thing as the IESO Successor; that is, replacement of the master Servicer.]**

[1] ~~Confirm that this will be based on forecast volumes of demand (like RPP). To the extent amounts do not get recovered due to differences between forecast and actual, those may be identified and caught by the True-Up.~~

"Assessed Past Green Transition Costs" means, in respect of a Measurement Date, the aggregate of the imputed costs of the Green Generation Initiative (expressed as an equivalent to current dollars), as reflected in the calculation of the Green Costs Adjustment, which have been charged to Retail Customers through the Global Adjustment on or prior to the Measurement Date.

"Attribution Methodology"[21] means the methodology specified in the Fair Allocation Plan for allocating the Period ~~Transition~~**Finance** Charges for a Reference Period to ~~individual Retail Consumers of the applicable Retail Consumer Group based on its Allocation Factor.~~**Regulated Consumers. [NTD: We understood that the Ministry accepted that the transition charge would be a volumetric rate.][NTD: Can be moved to Regulations.]**

"Collected Amount Adjustment" means, in respect of a True-Up Period, the amount (which may be a negative amount) calculated by the Servicer or the Financial Services ~~Agent~~**Manager**, as applicable, equal to (a) the Estimate of the Finance Amount for the True-Up Period, minus (b) the sum of all Transition Charge Collections for the True-Up Period.[32]

"Collective Rights Agreement" means an agreement among all of the Regulatory Asset Owners (including each Absolute Assignee) ~~and~~**,** each Pledgee**, and the Financial Services Manager** that governs the enforcement of their respective rights and interests in, to and under the Regulatory Asset on a coordinated and collective basis.[4] **[NTD: Move to Regulations.]**

"Delegate" means **any of** the **following** person or persons designated in writing from time to time by the Minister of Energy to undertake the actions and perform the responsibilities ascribed to the "Delegate" under this Act~~.~~**: ●. [NTD: Why is this delegation of authority necessary? This requires further discussion and clarity as to which entity or entities that the Province can select as the Delegate; for example, it would not be acceptable for the Province to select the OEB to be the Delegate. If this is required, an acceptable delegate would be a stakeholder committee comprised of representatives from the Ministry of Energy, the OEB, the IESO, and OPG. In addition, the regulation should prescribe how the stakeholder committee would operate.]**

"Disposition" means an assignment, transfer, conveyance, sale, contribution, set-over, exchange or other disposition of **(a) IESO's right to recover all or any portion of an IESO Funding Shortfall or (b)** an Investment Interest to an Absolute Assignee**, in each case** pursuant to a Disposition Document.

"Disposition Document" means the agreement, deed, conveyance, instrument or other document under which ~~a Regulatory Asset Owner~~**IESO or an Absolute Assignee** effects a Disposition to an Absolute Assignee.

[21] This allocation may be volumetric or some combination of a flat amount and a volumetric charge. Further discussion is required. H&W has raised a concern regarding possible adverse changes after the fact and rating agency considerations. Consider whether hard-coding in the legislation makes sense.

[32] This would pick up adjustments based on actual collection experience, changes in the ~~retail consumer~~**Regulated Consumer** base, changes in the actual costs (versus earlier estimates) included in the Transition Charge calculation, etc.

[4] ~~Consider adding the Financial Services Agent and the Servicer as parties.~~

"Electricity Distributor" means~~, in respect of a Service Area, the~~ **a** rate regulated distributor licensed under Part V of the *Ontario Energy Board Act, ~~1998~~* ~~in respect of such Service Area,~~***1998,*** together with and its successors.

"Electricity Distributor Remittances" means, for an Electricity Distributor on a Remittance Date, all Transition Charge Collections received or deemed to be received **[NTD: estimated to be received? will each Electricity Distributor know?]** by the Electricity Distributor prior to the Remittance Date and that have not otherwise been remitted to ~~IESO~~**Servicer** or if applicable the Alternative Collection Agent in accordance with Section 5(3), including the proceeds of any enforcement action undertaken by the Electricity Distributor or if applicable the Alternative Collection Agent to recover payment of Transition Charges in accordance with Article 5.

"Electricity Invoice" means an invoice issued by ~~any of a~~**an** Electricity Distributor (or in its stead, by an Alternative ~~Servicer~~**Collection Agent**), by the Servicer or by a Retailer, in each case to a ~~Retail~~**Regulated** Consumer that is served by the Electricity Distributor's distribution system in respect of electricity charges, including the cost of electricity, delivery and regulatory charges and related services and amounts incurred, assessed or charged in respect of connectivity to ~~a distribution network in the~~**such** Electricity Distributor's ~~designated Service Area~~**distribution system** and in respect of applicable Transition Charges to be charged to the ~~Retail~~**Regulated** Consumer under this Act. **[NTD: The Alternative Servicer should only invoice for Transition Charges, not the entire invoice. Also, to avoid confusion, we suggest using the word "invoice" in reference to what the IESO sends out to distributors, and "bills" in reference to what distributors send out to consumers.]**

"Estimate" means (a) in relation to costs, expenses or payments in respect of Funding Obligations or any Finance Amount for a Reference Period, the estimated amount of such costs, expenses or payments determined by the Financial Services ~~Agent~~**Manager**; and (b) in relation to an assessment of the benefits of the Green Generation Initiative to ~~any Retail Consumer Group~~**Regulated Consumers**, the estimated value (in current dollars) of such benefits determined by the Delegate, in each case having regard to the applicable principles and parameters set out in Schedule 1, which estimated amounts shall be determinative as the applicable estimate for the purposes of this Act except to the extent of a manifest calculation error.

"Estimated Future Green Transition Benefits" means, in respect of a Measurement Date, the Estimate set forth in the Fair Allocation Plan prepared in accordance with Article 7 of the aggregate value (measured in current dollars) of the benefits that are expected to accrue to ~~Retail~~**Regulated** Consumers from the establishment and implementation of the Green Generation Initiative during the period from the Measurement Date to the Program-End Date.

"Estimated Past Green Transition Benefits" means, in respect of a Measurement Date, the Estimate set forth in the Fair Allocation Plan prepared in accordance with Article 7 of the aggregate value (measured in current dollars) of the benefits that have accrued to ~~Retail~~**Regulated** Consumers from the establishment and implementation of the Green Generation Initiative up to and including the Measurement Date.

"Fair Allocation Plan" has the meaning given in Article 1.

"Finance Amount" means, for a Reference Period ~~in respect of an Absolute Assignee~~, the sum (without duplication) of the following amounts that are or become payable during the Reference Period in respect of ~~the~~**all** Absolute ~~Assignee~~**Assignees**: (a) Repayments; (b) **Net** Funding Costs; (c) Redemption Amounts; (d) Finance Reserve Deposits; and (e) Additional Funding Charges.

"Finance Reserve Deposits" means, for a Reference Period, the amount by which (a) deposits made or to be made during the Reference Period in order to pre-fund, collateralize, over-collateralize or establish reserves for the ultimate payment of Funding Obligations or for related contingencies specified in the Financing Plan, exceed (b) any Finance Reserve Withdrawals. **[NTD: Move this to regulation.]**

"Finance Reserve Withdrawals" means, for a Reference Period, the amount withdrawn during the Reference Period from deposits previously made to pre-fund, collateralize, over-collateralize or establish reserves for the payment of Funding Obligations or to pay amounts in respect of related contingencies that had been specified in the Financing Plan. **[NTD: Move this to regulation.]**

"Financial Services ~~Agent~~**Manager**" means OPG or, following any Replacement Event **involving OPG**, such other person ~~or persons~~ who may be appointed as the ~~Financial Services Agent~~**financial services manager** of the Absolute Assignees under the Financing Plan in compliance with the requirements set out in Schedule 2.[5]~~3~~

"Financing Entity" means ~~an entity established in accordance with the Financing Plan to acquire all or an interest in the Regulatory Asset as an Absolute Assignee and to enter into Funding Obligations to finance such acquisition under the Financing Plan.~~[6]**any entity established at the initiative of and managed by the Financial Services Manager to support the Financing Plan.**[4]

"Financing Plan" means the written plan prepared by the Financial Services ~~Agent on behalf of each Absolute Assignee in compliance with Article 9 to set forth the basis upon which, among other things: (a) any Disposition may be made to, financed by or effected by an Absolute Assignee; (b) any Funding Obligations may be incurred by an Absolute Assignee, including any Refinancing; (c) any Pledge may be given or effected; (d) any Funding Obligations may be redeemed, prepaid, repurchased, amended or otherwise effected; (e) any obligations for Additional Funding Charges may be incurred and paid; (f) any Repayments, Funding Costs and Redemption Amounts may be paid or provided for; (g) any Finance Reserve Deposits may be made; (h) any Finance Reserve Withdrawals may be made; (i) the establishment and operation of any Financing Entity may be effected; and (j) the cash flows arising from time to time or otherwise derived from an Investment Interest may otherwise be applied,~~**Manager in accordance with Article 9,** as the same may be amended, amended and restated or terminated by the

[5] ~~Discuss whether to accommodate multiple~~[3] **There must only be one** Financial Services ~~Agents. MOE to consider~~**Manager**.

[6]4 MOE to confirm that the legislation will provide that any Financing Entity that is a wholly-owned subsidiary of OPG (1) would not be subject to Part VI of the *Electricity Act* (Ontario) and (2) in the case of any Financing Entity that is a trust, any income of such trust (for purposes of the *Income Tax Act* (Canada) or the *Taxation Act, 2007* Ontario)) which is paid or made payable to OPG or a wholly-owned subsidiary of OPG as a beneficiary of such trust will not be taken into account in calculating the amount of a payment required to be made by OPG (or such subsidiary) by section 89 or 90 of the Electricity Act.

Financial Services ~~Agent~~**Manager** in ~~compliance~~**accordance** with Article 9 from time to time.

~~"Funding Costs" means, for a Reference Period in respect of an Absolute Assignee, the amount by which (a) the aggregate of all interest< *and other periodic finance charges accruing due and becoming payable or paid by or on behalf of the Absolute Assignee during the Reference Period in respect of its Funding Obligations, including* >any standby commitment fees or charges paid to any lender, credit enhancement fees or charges paid to any credit enhancer, liquidity fees or charges paid to any liquidity provider, amounts (including any termination payments) paid under derivatives and any deposit amount made or required to fund or replenish a debt service reserve account or other account established under any indenture, ancillary agreement or other financing document relating to its Funding Obligations, exceeds (b) the aggregate of all amounts received by or on behalf of the Absolute Assignee during the Reference Period in respect of a Funding Obligation, including from any reimbursement of standby commitment fees or charges paid by a lender, any reimbursement of credit enhancement fees or charges paid by any credit enhancer, any reimbursement of liquidity fees or charges paid by any liquidity provider, any amounts (including any termination payments) paid to the Absolute Assignee under derivatives and any Finance Reserve Withdrawal made or required to be made from a debt service reserve account or other account established under any indenture, ancillary agreement or other financing document relating to the payment of the Funding Costs payable in respect of a Funding Obligation for the Reference Period.~~

"Funding Obligation" means, in respect of an Absolute Assignee, each payment obligation (including**, without limitation,** each obligation to pay: principal, interest, premiums and other financing charge payments; pass-through payments; payment obligations arising under or in respect of derivatives; payment obligations owing to service providers, Financial Services ~~Agents~~**Managers**, finance entity intermediaries, capital markets intermediaries, advisors, lenders, credit enhancement providers, liquidity providers, disbursement counterparties, regulatory agencies and rating agencies; and all Additional Funding Charges**)** incurred by or on behalf of the Absolute Assignee under the Financing Plan, including any Refinancing of another such payment obligation incurred by or on behalf of such Absolute Assignee.

"Future Fair Share of Green Transition Benefits" means, in respect of a Measurement Date, the sum of (a) the Over-Assessed Amount; and (b) the Estimated Future Green Transition Benefits, in each case as of the Measurement Date.

~~"Generator" means a generator of electricity that is subject to the *Electricity Act, 1998*.~~

"Global Adjustment" has the meaning given in Article 1.

"Green Costs Adjustment" has the meaning given in Article 1.

"Green Generation Initiative" has the meaning given in Article 1.

"IESO" means the Independent Electricity System Operator created pursuant to Part II of the *Electricity Act, 1998*.

"IESO Available Amount" means, for a Reference Period, the lesser of (a) the amount (if any) by which (i) the Maximum Transition Charge Amount for the Reference Period, exceeds (ii) Period Finance Amount for the Reference Period, and (b) the IESO Retained Interest Amount as of the [35th] day prior to the first day of a Reference Period plus any IESO Financing Costs that are due and payable and remain unpaid as of the [35th] day prior to the first day of a Reference Period.

"IESO Electricity Distribution Receipts" means, for a month, the sum of all amounts payable by Electricity Distributors to IESO , during the month pursuant to section • of the *Electricity Act* in respect of Regulated Consumers. [NTD: IESO indicates that it likely does not work to express in regards to "amounts payable by the LDCs" because settlement between the IESO and LDCs entails payments by LDCs to the IESO and then credits/debits by the IESO to LDCs to reflect RPP shortfalls/overages.]

"IESO Financing Costs" means, for a Reference Period, the financing costs (if any) incurred by IESO pursuant to Section 8(4) in order to finance its ownership of the IESO Retained Interest during the Reference Period.

"IESO Funding Shortfall" means, for a month, the amount, if any, by which (a) the IESO Electricity Distribution Receipts that would be payable to IESO for the month if determined without regard to this Act and without regard to the changes made to section 25.33 of, and O.Reg. 429/4 under, the *Electricity Act* with respect to the Global Adjustment concurrently with this Act, exceeds (b) the IESO Electricity Distribution Receipts payable to IESO for the month[75]; provided that if the amount of any such shortfall is determined to have been based on incomplete information, variances or estimates that were inaccurate, an adjustment shall be made in determining the amount of any subsequent shortfall for the month in which the inaccuracy is identified. .To the extent reasonably necessary to give effect to this Act, or any transaction contemplated hereby, IESO shall calculate the IESO Funding Shortfall for any month taking into account information provided by the Electricity Distributors and (i) such calculation shall be binding for all purposes; and (ii) any demonstrated inaccuracy in the calculation for any month (including any such resulting from inaccuracies in the information provided by Electricity Distributors) shall be accounted for by adjusting the IESO Funding Shortfall for a subsequent month. [NTD: Need to add the mechanism for IESO to record this shortfall because without that there is no Regulatory Asset. This IESO Funding Shortfall is the regulatory asset owned by IESO.]

"IESO Recovery" means each amount remitted to IESO (including by IESO retaining such amount) in respect of the IESO Retained Interest pursuant to Section 5(6)(b), and "IESO Recoveries" means, collectively, all such amounts received by IESO.

"IESO Remittances" means, for a Settlement Date, all Electricity Distributor Remittances received by IESO or if applicable the Alternative Collection Agent prior to the Settlement Date and that have not otherwise been remitted to the Regulatory Asset Owners (each with respect to its Regulatory Asset) in accordance with Section 5(6), including the proceeds of any enforcement action undertaken by IESO or if applicable the Alternative

[75] This has been recast to recognize that the shortfall in the first 4.5 years could exceed the entire GA amount. A more refined approach to describing the concept may be considered.

Collection Agent to recover payment of amounts payable by Electricity Distributors to IESO in accordance with Article 5.

~~"IESO Retained Interest" means IESO's right, title and ownership interest (if any) in, to and under the Regulatory Asset, which shall exclude each Investment Interest.~~

~~"IESO Retained Interest Amount" means, on a day, (a) the sum of all IESO Funding Shortfalls incurred prior to the day, plus (b) the sum of all IESO Funding Costs incurred prior to the day in accordance with Section 8(4), minus (c) the net proceeds received by IESO from or on behalf of each Absolute Assignee as consideration for the Disposition of each Investment Interest paid to IESO by or on behalf of such Absolute Assignee prior to the day, and minus (d) the IESO Recoveries received by IESO prior to the day.~~

"IESO Successor" means the entity appointed by the Province to succeed to the rights and obligations of IESO as the entity responsible for managing the Province's electricity system.

"Investment Interest" means an ownership interest in, to or under the Regulatory Asset that is acquired by an Absolute Assignee pursuant to a Disposition~~, which ownership interest may include (without limitation) ownership of a specified portion on a divided basis of the assets comprising the Regulatory Asset and ownership of an undivided ownership interest in the Regulatory Asset, in each case as may be described in the applicable Disposition Document~~.

"Investment Remittance" means, for a month, the lesser of (a) the aggregate amount of all IESO Remittances for the month, and (b) the sum of the ~~Finance Amounts~~**Funding Obligations** due and payable by all Absolute Assignees in respect of the month.

~~"Maximum IESO Recovery" means, for a month, the amount (if any) by which (a) the IESO Remittances for the month, exceed (b) the sum of all Finance Amounts that are due and payable by Absolute Assignees in respect of the month.~~

~~"Maximum Transition Charge Amount" means, for a Reference Period, (a) the aggregate amount of Future Fair Share of Green Transition Benefits that are allocable to the applicable Retail Consumer Group in accordance with the Fair Allocation Plan, divided by (b) the applicable Reference Period Length.~~

"Measurement Date" means [Insert relevant date around the Legislation Implementation Date] and any other date specified as such under the Fair Allocation Plan.

"Net Funding Costs" means, for a Reference Period in respect of a Financing Entity, the amount by which (a) the aggregate of all interest, scheduled principal> *and other periodic finance charges accruing due and becoming payable or paid by or on behalf of the Absolute Assignee during the Reference Period in respect of its Funding Obligations, including* <**such amounts as may be prescribed, exceeds (b) the aggregate of all amounts received by or on behalf of the Absolute Assignee during the Reference Period in respect of the Funding Obligations referred to in (a), including such amounts as may be prescribed.**

"OEB" means the Ontario Energy Board, together with its successors.

"OPG" means the corporation incorporated as Ontario Power Generation Inc. under the *Business Corporations Act* on December 1, 1998, together with its successors.

"Over-Assessed Amount" means, in respect of a Measurement Date, the amount (if any) by which (a) the Assessed Past Green Transition Costs, exceeds (b) the Estimated Past Green Transition Benefits, each as determined as of the Measurement Date.

"Period Finance Charges" means, for a Reference Period, the sum of (a) the Estimate of the Finance Amount ~~and~~ (b) the True-Up Amount in respect of the ~~immediately preceding Reference Period. "Period Transition Charges" means, for a Reference Period, the sum of (a) the Period Finance Charges for the Reference Period and (b) the IESO Available Amount for the Reference Period.~~ **applicable True-Up Period and (c) an adjustment amount as may be prescribed to account for estimated collection shortfalls and collection delays in respect of amounts under (a) and (b).**

"Pledge" means, in respect of an Investment Interest of an Absolute Assignee, a lien, mortgage, charge or security interest granted to or in favour of a Pledgee by the Absolute Assignee in, to and over all or a specified portion (including a specified portion on a divided basis or by way of an undivided interest) of the Investment Interest.

"Pledgee" means a person to whom an Absolute Assignee grants a Pledge.

"Program End Date" means •, [2047].

"Province" means the Province of Ontario.

"Redemption Amount" means the amount payable by or on behalf of an Absolute Assignee to redeem, prepay or repurchase a Funding Obligation incurred by or on behalf of the Absolute Assignee, including any premium, make-whole or other additional amount becoming payable under the Funding Obligation to give effect to such redemption, prepayment or repurchase.

"Reference Period" means (a) the period from (and including) the Measurement Date to (and including) ~~June~~**October** 30, 2017, (b) each six month period commencing [May 1st and November 1st] thereafter and (c) any other period specified as such in the Fair Allocation Plan.

~~"Reference Period Length" means, for a Reference Period, the number of months in the Reference Period.~~

"Refinancing" means, in respect of a Funding Obligation incurred by or on behalf of an Absolute Assignee, that the Funding Obligation is repaid or repurchased for cancellation by or on behalf of the Absolute Assignee by applying the net proceeds obtained by the Absolute Assignee incurring one or more other Funding Obligations.

"Regulated Consumer" means consumers of electricity in the Province as prescribed.

[NTD: There are a number of issues with this definition. First, the word "Retail" is a source of confusion as it implies customers of licensed retailers. Really, the purpose of the term is to define the group of consumers that are eligible to receive the benefit of the Fair Hydro program and who will bear the cost of the program over the long term. We have proposed "Regulated Consumer" but you could also use the term "Eligible Consumer" or "Fair Hydro Eligible Consumer" and for purposes of the legislation to say that it is a member of a class of consumers prescribed by the regulations for purposes of the relevant section of the legislation. The regulation would then describe who is in the class. Second, it may not be appropriate to rely on the class of consumers prescribed for the purposes of s. 79.16 or under the OREC Act. Section 79.16 is the section that defines the class of RPP consumers. We understand that the "Fair Hydro Eligible Consumers" are not an identical class to that which is eligible for the RPP or for> ***the Ontario Rebate for Electricity Consumers***<. For example, we have heard that Fair Hydro Eligible Consumers will (a) exclude consumers served by independent power authorities (certain remote communities not served by Hydro One Remotes), and (b) include consumers served by licensed unit sub-metering providers, licensed retailers and certain consumers served directly by the IESO (which may or may not be captured by the classes under 79.16 or OREC). Third, it is not clear why consumers with contracts with retailers who use retailer consolidated billing are removed from the first part of the definition but then added back into the second part of the definition. Fourth, Retailers do not necessarily have physical electricity assets that would be connected to the grid. Some just sell or offer contracts for electricity. As such, the first few lines after (b) are problematic. Fifth, the phrase "purchase electric generation services from a provider of electric generation services other than the owner of the Province's transmission and distribution system assets" does not make sense. A consumer does not purchase generation services from a transmitter or distributor. Rather, a consumer receives distribution services from a distributor. In addition to charging for its distribution services, the distributor also charges the associated transmission costs and commodity costs associated with the volumes delivered. Those commodity costs are the price of the electricity itself and are almost entirely made up of the amounts determined under the global adjustment. Sixth, the phrase "**>*whether or not the transmission and distribution system assets continue to be owned or operated by Electricity Distributors or operated by IESO*<**" does not make sense. Transmission assets are owned and operated by transmitters. Distribution assets are owned and operated by distributors. The IESO does not own but does administer and direct the operation of the transmission system.]

"Regulatory Asset" means the property rights and interests described in Section 6(1), which collectively is comprised of ~~the IESO Retained Interest and~~ each Investment Interest.

"Regulatory Asset Account" means (a) for an Electricity Distributor, any bank account into which the Electricity Distributor deposits or receives Transition Charge Collections; and (b) for the Servicer, any bank account into which ~~IESO~~Servicer deposits or receives Transition Charges~~, Electricity Distributor Remittances or IESO Remittances; and (c) if applicable, for the Alternative Collection Agent, any bank account into which~~

the Alternative Collection Agent deposits or receives Transition Charge Collections, Electricity Distributor Remittances or IESO Remittances.

"Regulatory Asset Owner" means each of (a) IESO, as owner of (and to the extent of) the IESO Retained Interest and (b) each Absolute Assignee, as owner of its Investment Interest or Investment Interests, and "Regulatory Asset Owners" means collectively IESO and each such Absolute Assignee, who together own the entirety of the Regulatory Asset and are required to exercise their individual rights of ownership in accordance with Section 6(7).

"Related Rights" means**, with respect to a Regulatory Asset Owner's Investment Interest,** all rights of any kind (whether in tort, contract or otherwise) that attach or are attendant or incidental to any of the other property rights or interests that comprise such Regulatory Asset**Investment Interest**.

"Remittance Date" means, in respect of an Electricity Distributor, each day on which it is required to remit Electricity Distribution Remittances to IESO**Servicer** or if applicable the Alternative Collection Agent as specified in accordance with any Funding Obligation or, if no such day is specified in accordance with any Funding Obligation, then the Business Day **[NTD: Not defined.]** preceding each Settlement Date. **[NTD: Move to Regulations. Remittances will be in accordance with the current rules.]**

"Repayment Obligation" means an obligation to repay, redeem or repurchase, or to provide for the repayment, redemption or repurchase (including by making a related Finance Reserve Deposit) of, all or a portion of the amount advanced to the Absolute Assignee under a Funding Obligation.

"Repayment" means a payment by an Absolute Assignee made to satisfy a Repayment Obligation, other than to the extent that the payment is made by applying the proceeds of a Refinancing or from Finance Reserve Withdrawals.

"Replacement Event" means any event specified as such in a Funding Obligation.

"Retail Consumer" means:

(a) present and future consumers of electricity in the Province who are (i) consumers designated under section 79.16 of[, and O.Reg 95/05 under,] the *Ontario Energy Board Act, 1998*, or (ii) hold or are deemed to hold an "eligible account" under< *the Ontario Rebate for Electricity Consumers*> *Act, 2016*, other than any such consumer who has a contract with a Retailer who uses Retailer Consolidated Billing; and

(b) present and future Retailers who use Retailer Consolidated Billing,

and each case includes all such consumers and Retailers who are connected, directly or indirectly and whether a customer of an Electricity Distributor or not, to the transmission and distribution system assets located in the Province and who are taking electric delivery service within the Province, whether or not such retail consumers produce their own electricity or purchase electric generation services from a provider of electric generation services other than the owner of the Province's transmission and distribution

~~system assets and <*whether or not the transmission and distribution system assets continue to be owned or operated by Electricity Distributors or operated by IESO*>.~~

~~"Retail Consumer Group" means, in relation to a Reference Period, the Retail Consumers who receive Electricity Invoices during the Reference Period.~~

"Retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity.

"Retailer Consolidated Billing" has the same meaning as in the *Retail Settlement Code* issued by the Ontario Energy Board.

~~"Service Area" means, in respect of an Electricity Distributor, the geographic area or region in which it is licensed to distribute electricity in accordance with the *Electricity Act, 1998*.~~

"Servicer" means IESO or IESO Successor, as agent for and on behalf of the Regulatory Asset Owners, for the purposes set forth in Article 4.

"Settlement Date" means the [last Business Day of any month].

"Transition Charge" means, ~~for a Retail~~**the amount recoverable from a Regulated** Consumer in respect of a Reference Period, ~~(a) the Period Transition Charge, (b) multiplied by its Allocation Factor in respect of the Reference Period, divided by (c) the applicable Reference Period Length.~~ **being the Period Finance Charge as allocated to such Regulated Consumer in accordance with Article 4(3) on a monthly basis. [NTD: This needs to be grossed up to account for variability associated with expected uncollectables and remittance delays.] [NTD: Do not need to create parallel process. The definition should be linked to the OEB process for determining the volumetric rate as part of the RPP process (see s. 4(2)). The OEB will determine volumetric rate based on forecast consumption, number of consumers, etc. to recover the Period Finance Charges.]**

"Transition Charge Collection" means any amount received **[or deemed by this Act to have been received] by the Absolute Assignees** upon the collection of a Transition Charge paid by or on behalf of a ~~Retail~~**Regulated** Consumer, including any proceeds arising from the exercise and enforcement of any related rights and interests under or in respect of the Regulatory Asset.

"True-Up Amount" means, in respect of a Reference Period, the amount (which may be a negative amount) calculated by the Financial Services ~~Agent~~**Manager** equal to (a) the >*Actual Finance Amount for such related True-Up Period*<**, minus (b) the** Estimate of the Finance Amount for the related True-Up Period, ~~minus (b) the <*Actual Finance Amount for such related True-Up Period*>~~, plus (c) the Collected Amount Adjustment for such related True-Up Period. **[NTD: need to discuss how this will work for our true-up. What about prior period shortages? An example of how this works needs to be provided.]**

"True-Up Period" means, in relation to a Reference Period, the period from and including the [30th] day immediately preceding the first day of the Reference Period, to but excluding the [30th] day immediately preceding the last day of the Reference Period.

"Undertaking of the Lieutenant Governor in CouncilHer Majesty in right of Ontario" means the undertaking of the Lieutenant Governor in CouncilHer Majesty in right of Ontario given under Section 11(2).

Article 3 – Transition Charges

(1) **RetailRegulated Consumer Obligation to Pay a Transition Charge** – Each RetailRegulated Consumer shall pay each Transition Charge charged to it in any Electricity Invoice issued to such RetailRegulated Consumer by its Electricity Distributor or by an Alternative Servicer under Section 4(1), in each case on the terms of payment specified in the related Electricity Invoice.

(2) **Indebtedness of RetailRegulated Consumers** – Until paid, a Transition Charge charged to a RetailRegulated Consumer in an Electricity Invoice shall, together with any applicable late payment fees and finance charges arising under the terms of the Electricity Invoice with respect to such Transition Charge, constitute non-bypassable indebtedness of the RetailRegulated Consumer to the Regulatory Asset Owners, each with respect to its respective interest in the Regulatory Asset. Such indebtedness shall constitute a single and separate[86] debt obligation owing by the RetailRegulated Consumer, which subject to Article 5 may be enforced independently from any other payment obligation or indebtedness owing by the RetailRegulated Consumer under the Electricity Invoice or otherwise.[97]

(3) **No Set-Off or Reduction** – A RetailRegulated Consumer may not set-off or reduce (by counterclaim, defense or otherwise) the amount payable by it in respect of any Transition Charge, including any set-off against or in respect of any amount owing or becoming payable to such RetailRegulated Consumer by its Electricity Distributor, any Regulatory Asset Owner or any other person.

(4) **Allocation of RetailRegulated Consumer Payments** – If an Electricity Distributor receives a payment made by or on behalf of a RetailRegulated Consumer in respect of amounts due and payable under one or more Electricity Invoices that is less than the total amount payable thereunder, such payment shall be allocated on a *pro rata* basis to the payment of related Transition Charges and other invoiced amounts and the amount so allocated as a payment of related Transition Charges shall be deemed to constitute a Transition Charge Collectionsubject to rights and benefits that are no less favourable than the treatment accorded to other amounts payable to the IESO by the Electricity Distributor.

(5) **Transition Charges are Irrevocable** – The Transition Charges arising under or in respect of Funding Obligations incurred under the Financing Plan (including any

[86] Determine if this is critical for rating and markets. Logistics under consideration.

[97] Torys has also suggested that deemed conditions of licenses for distributors, retailers and unit sub-metering providers, could be included as conditions, to require them to collect and remit amounts in accordance with this legislation. Consider if it is helpful to integrate the existing regulatory scheme for invoicing and collections (regarding RPP) in the legislation.

adjustments based on modifications to such Funding Obligations made in compliance with the Financing Plan or as a result of amendments to the Financing Plan made in accordance with Section 9(3)) are deemed to be irrevocable, final and effective without any further action, except to the extent of manifest calculation error. For greater certainty, a Transition Charge may include Finance Amounts for a Reference Period regardless of whether or not the payment of such Finance Amounts are inconsistent with the Fair Allocation Plan applicable at the time such payments are due and payable, and regardless of whether or not the related Funding Obligation was properly incurred under the Financing Plan. In no case shall a Funding Obligation incurred under the Financing Plan be affected by a subsequent amendment to the Fair Allocation Plan.

(6) True-Up of Transition Charges? – [NTD: Include specifics regarding the true-up of the charges and the process for the true-up, but move to Regulations. The True-Up Mechanism should require the Transition Charges to be reviewed and adjusted semi-annually to ensure the expected recovery of amounts sufficient to timely provide all payments in respect of Funding Obligations, provided that in some cases it may need to be adjusted more frequently than semi-annually, e.g., as part of a refinancing.]

(7) Commencement of Invoicing and Collection of Transition Charges – [NTD: Please confirm that as drafted, Transition Charges will begin on the Measurement Date.]

Article 4 – Invoicing of Transition Charges [NTD: Move Article 4 sections (1) to (4) to Regulations. Also note, these sections remain subject to further due diligence by the Dealers.]

(1) **Inclusion of Transition Charges in Electricity Invoices** – Each Electricity Distributor and if applicable any Alternative Servicer shall, as an agent of the Regulatory Asset Owners, specify the Transition Charge to be charged to a ~~Retail~~Regulated Consumer pursuant to Section 4(4) in respect of a related Reference Period in each Electricity Invoice issued by the Electricity Distributor or if applicable by the Alternative Servicer to the ~~Retail~~Regulated Consumer in respect of such Reference Period. Upon the inclusion of a Transition Charge in an Electricity Invoice, the obligation to pay such amount shall be binding on the applicable ~~Retail Consumer.~~Regulated Consumer. [NTD: Must capture bills issued to eligible consumers served by unit sub-metering providers, retailers and the IESO – not just distributors][NTD: This provision also needs to address the inclusion of Transition Charges in invoices from the IESO to the LDC, consistent with the current process of how the IESO bills LDCs.]

(2) **Calculation of the Period ~~Transition~~Finance Charge** – Not later than [35] days prior to the first day of a Reference Period, each Absolute Assignee (or the Financial Services ~~Agent~~Manager on its behalf) shall provide the OEB with written notice of each Estimate of a Finance Amount payable by it or on its behalf in respect of the Reference Period. ~~[35] days prior to the first day of a Reference Period, IESO or Successor IESO if applicable shall specify the IESO Retained Interest Amount and any IESO Financing Costs that are due and payable and remain unpaid on such day.~~ Not later than one month prior to the first day of a Reference Period, ~~the OEB~~each Absolute Assignee (or the Financial Services Manager on its behalf) shall calculate the Period ~~Transition~~Finance Charge applicable to the Reference Period ~~based on the calculations and information set forth in such written notices received from the Absolute Assignees~~

and based onhaving regard to such amounts specified by IESO or Successor IESOthe Servicer, which calculations, information and amounts shall be accepted by the OEB and shall be determinative, except to the extent of manifest calculation error or misstatement.

(3) **Calculation and Attribution of Transition Charges** – Not later than 25 days prior to the first day of a Reference Period, the OEB shall apply the Attribution Methodology to determine the Allocation Factorallocation of the Transition Charge for each RetailRegulated Consumer of the applicable Retail Consumer Group. **[NTD: We think the OEB would be determining the Fair Hydro recovery rate (on a volumetric basis) that distributors would then be required to charge to consumers]**

(4) **Notice of Transition Charges** – Not later than 20 days prior to the first day of a Reference Period, the OEB shall inform each Electricity Distributor and if applicable any Alternative Servicer of the Transition Charges to be specified in the Electricity Invoices to be issued to each RetailRegulated Consumer of the applicable Retail Consumer Group who has a billing address inwho is served by the Electricity Distributor's Service Area.

(5) **Adjustments** – The amount of any Transition Charge charged to a RetailRegulated Consumer and specified as such in an Electricity Invoice shall be determinative of the amount of indebtedness created thereby and owing in respect of such Transition Charge, except to the extent of any manifest calculation error.

(6) **Successors of Electricity Distributors** – Any successor of an Electricity Distributor shall be bound by the requirements of Article 4 and shall perform and satisfy all duties and obligations of such Electricity Distributor under Article 4 in the same manner and to the same extent as such Electricity Distributor, including the obligation under Article 4 to impose, attribute, charge, bill and invoice the Transition Charges.

(7) **IESO Successor** – Any IESO Successor shall be bound by the requirements of Article 4 and shall perform and satisfy all duties and obligations of IESO under Article 4 in the same manner and to the same extent as IESO, including the obligation to calculate and provide notice of Transition Charges.

(8) **Appointment of an Alternative Servicer** – If a Replacement Event occurs in respect of any Electricity Distributor, the Absolute Assignees shall, in accordance with the Collective Rights Agreement, be permitted, by an instrument in writing, to appoint an Alternative Servicer to perform some or all of the obligations and duties required to be undertaken by such Electricity Distributor under this Article 4, as and to the extent specified in such appointment. Upon acceptance of such appointment, the Alternative Servicer shall become obligated to perform such assumed obligations in replacement of such Electricity Distributor. Any Electricity Distributor that is replaced under this Section 4(8) shall promptly transfer all rights, powers, privileges and property interests in its possession or within its control in the performance of such obligations and duties to the Alternative Servicer and shall take such further actions, including the execution of instruments, necessary to give full and final effect to such transfer and to permit the Alternative Servicer to perform such obligations and duties on behalf of the Regulatory Asset Owners. **[NTD: We would expect the IESO to manage this in accordance with its normal business practices.]**

(9) Absolute Assignees have Standing – The Absolute Assignees, acting together in accordance with the Collective Action Agreement, may bring actions against any Electricity Distributor, IESO, the Servicer, Alternative Servicer or any other person who may be authorized to issue Electricity Invoices to ~~Retail~~**Regulated** Consumers for a failure to impose, attribute, charge, bill or invoice Transition Charges **or to otherwise comply with this Act**. Any court of the Province shall have jurisdiction over any actions brought before it by the Absolute Assignees in relation to any such failure~~.~~ **and may make any interim or final order it thinks fit in this regard. [NTD: We would like to see the sections on "Standing" to bring an action to remain in the legislation (as opposed to being moved to the regulations as we believe we previously suggested) as we see those provisions as part of ensuring a rigorous enforcement scheme for the Financing Entity (and so something that should be difficult for the Province to change going forward).]**

(10) No Set-Off or Reduction – No Servicer or Electricity Distributor may set off or reduce (by counterclaim, defence or otherwise) the amount payable by it pursuant to this Article 4.

(11) Regulations – Regulations may be enacted for the purpose of specifying further rights, powers, privileges, duties and obligations that shall apply to IESO, any Electricity Distributor or any Alternative Servicer to ensure that Transition Charges are properly charged to ~~Retail~~**Regulated** Consumers and specified as such in Electricity Invoices.

Article 5 – Collections and Remittances [NTD: Move Article 5 sections (3), (6), (9), (12), (13) and (14) to Regulations.]

(1) **Duty to Collect as Agent** – Electricity Distributors or if applicable any Alternative Collection Agent shall, as an agent of the ~~Regulatory Asset Owners, undertake [diligent][reasonable][10] efforts to~~**Servicer,** collect amounts owing by ~~Retail~~**Regulated** Consumers in respect of Transition Charges charged to such ~~Retail~~**Regulated** Consumers in Electricity Invoices issued by the Electricity Distributor or if applicable such Alternative Collection Agent~~.~~ **all in accordance with the Regulations. [NTD: The obligation to collect and remit the Transition Charge should be included as a deemed condition of license for electricity distributors (and retailers and unit sub-metering providers).]**

(2) **Segregation of Transition Charge Collections** – An Electricity Distributor or if applicable any Alternative Collection Agent shall promptly segregate Transition Charge Collections from other payments received by it from ~~Retail~~**Regulated** Consumers and deposit such Transition Charge Collections into its Regulatory Asset Account.[11][8] **[NTD: Determine if this is critical for rating and markets or if segregation can occur in the hands of the IESO]** Prior to and following a deposit of Transition Charge Collections having been made into its Regulatory Asset Account, the Electricity Distributor or if applicable any Alternative Collection Agent shall hold such amounts in trust for the Regulatory Asset Owners **or its Pledgee**.

(3) **Electricity Distributor Remittances** – On each applicable Remittance Date, an Electricity Distributor shall remit all **amounts invoiced by the IESO on account of the**

[10] ~~Mirror collection "standard of care" under applicable legislation.~~

[11][8] Consider trying to attach to existing LDC credit enhancements and provide parallel coverage for customer losses.

Transition Charge ~~Collections received by it from Retail Consumers~~ in respect of the related Reference Period to or to the account of ~~IESO~~**Servicer** or if applicable the Alternative Collection Agent. **[NTD: It is the Dealers expectation that the Transition Charge will be paid on the same basis as other amounts invoiced by the IESO, failing which, they will need to be remitted daily.]**

(4) **Duty to Collect Electricity Distributor Remittances** – ~~IESO~~**Servicer** or if applicable any Alternative ~~Collection Agent~~**Servicer** shall, as an agent of the Regulatory Asset Owners, ~~undertake [diligent][reasonable] efforts to~~ accept and collect Electricity Distributor Remittances from Electricity Distributors and Transition Charge Collections from ~~Retail~~**Regulated** Consumers that pay their Electricity Invoices directly to IESO~~.~~[12] **on the same basis as it accepts and collects other charges from such Regulated Consumers.**[9]

(5) **Segregation of Electricity Distributor Remittances** – ~~IESO~~**Servicer** and if applicable the Alternative Collection Agent shall promptly segregate Electricity Distributor Remittances from other payments received or held by it and deposit such Electricity Distributor Remittances into its Regulatory Asset Account. Prior to and following a deposit of Electricity Distributor Remittances having been made into its Regulatory Asset Account, ~~IESO~~**Servicer** or if applicable any Alternative Collection Agent shall hold such amounts in trust for the Regulatory Asset Owners **or Pledgee**.

(6) ~~**IESO**~~**Servicer Remittances** – On each Settlement Date[13]10, ~~IESO and if applicable the Alternative Collection Agent~~**Servicer** shall remit all amounts on deposit in its Regulatory Asset Account ~~(a) first,~~ to or to the account of the Absolute Assignees an amount equal to the Investment Remittance for the related month ~~and (b) second, to IESO (including by IESO retaining such amount) an amount equal to the lesser of (i) the Maximum IESO Recovery for the related month and (ii) the IESO Retained Interest Amount as of the Settlement Date~~.

(7) **Successors of Electricity Distributors** – Any successor of an Electricity Distributor shall be bound by the requirements of Article 5 and shall perform and satisfy all duties and obligations of such Electricity Distributor under Article 5 in the same manner and to the same extent as such Electricity Distributor, including the obligation under Article 5 to collect Transition Charges and make remittances of Electricity Distributor Remittances.

(8) **IESO** ~~**Successor**~~**Successors** – IESO ~~Successor~~**Successors** shall be bound by the requirements of Article 5 and shall perform and satisfy all duties and obligations of IESO under Article 5 in the same manner and to the same extent as IESO, including the obligation to collect Transition Charge Collections, Electricity Distributor Remittances and to remit IESO Remittances.

(9) **Owners of Distribution Assets** - If any person other than an Electricity Distributor acquires distribution system assets in the Province or invoices or collects electricity distribution rates in the Province[14]11, then such person shall, if requested by the Absolute Assignees, be obligated to act diligently to (a) facilitate the invoicing and collection of any Transition Charges applicable to ~~Retail~~**Regulated** Consumers ~~in its~~

[12]9 Consider building this obligation into a deemed condition of licence for the IESO.
[13]10 Consider frequency of remittances in light of rating requirements. US rating agencies favour daily remittances.
[14]11 This is in anticipation of a possible future restructuring of the distribution system.

applicable service area, including all consumers connected to the electricitysuch person's distribution system assets and taking electric delivery service located within such service area; (b) allocate partial payments by RetailRegulated Consumers as provided in this Act; (c) exercise all enforcement rights of the Absolute Assignees for the benefit of an Absolute Assignee; and (d) remit any Transition Charge Collections to the Absolute Assignees or Pledgees, as applicable, each in accordance with its Investment Interest. [NTD: Such acquisition of a distribution system would require the person to be an electricity distributor; consider deleting since this is covered off by Section 5(7).]

(10) **Absolute Assignees have Standing** – The Absolute Assignees, acting together in accordance with the Collective Action Agreement, may bring actions against any Electricity Distributor, IESOServicer, the Alternative Collection Agent, any owner of electricity distribution system assets in the Province or any other person who may be authorized to collect electricity distribution and use charges from RetailRegulated Consumers for a failure to collect Transition Charges, remit or collect Electricity Distributor Remittances or remit IESO Remittances, as and to the extent applicable under Article 5.5, or to otherwise comply with this Act. Any court of the Province shall have jurisdiction over any actions brought before it by the Absolute Assignees in relation to any such failure and may make any interim or final order it thinks fit in this regard.

(11) **Appointment of an Alternative Collection Agent –** If a Replacement Event occurs in respect of any Electricity Distributor or IESO, the Absolute Assignees shall, in accordance with the Collective Rights Agreement, be permitted, by an instrument in writing, to appoint an Alternative Collection Agent to perform some or all of the collection, segregation and remittance obligations otherwise required to be undertaken by such Electricity Distributor or IESO, as applicable, under Article 5, as and to the extent specified in such appointment. Upon acceptance of such appointment, the Alternative Collection Agent shall become obligated to perform such assumed obligations in replacement of such Electricity Distributor or IESO, as applicable. Any Electricity Distributor or IESO, as applicable, that is replaced under this Section 5(11) shall promptly transfer all rights, powers, privileges and property interests in its possession or within its control in, to and over the Regulatory Asset, including its Regulatory Asset Account, to the Alternative Collection Agent and shall take such further actions, including the execution of instruments, necessary to give full and final effect to such transfer and to permit the Alternative Collection Agent to enforce the Regulatory Asset on behalf of the Absolute Assignees.Not Used. [NTD: The Servicer should manage this process.]

(12) **No Set-off, etc.** - The Regulatory Asset, including rights in Transition Charges, Transition Charge Collections, and the interests of a Regulatory Asset Owner, an Absolute Assignee and a Pledgee therein, may not be setoff or reduced (including by counterclaim, surcharge or defense) by any RetailRegulated Consumer, any Electricity Distributor, IESOServicer, Alternative Collection Agent or any owner of distribution system assets in the Province or any other person or in connection with any default, bankruptcy, reorganization or other insolvency proceeding of any Electricity Distributor,

~~IESO~~Servicer, Alternative Collection Agent or any owner of distribution system assets in the Province, any affiliate or successor thereof or any other entity or otherwise.[~~15~~12]

(13) **Sequestration** – If any Electricity Distributor, ~~IESO~~Servicer, the Alternative Collection Agent or any owner of distribution system assets in the Province or any other person or entity authorized to collect Transition Charges, defaults on any required remittance of Transition Charge Collections, Electricity Distribution Remittances or IESO Remittances under Article 5, any court in the Province, upon application by and of the Absolute Assignees acting collectively under the Collective Action Agreement and without limiting any other remedies otherwise available to the Absolute Assignees or Pledgees, shall order the sequestration and payment of the Transition Charge Collections, Electricity Distribution Remittances and IESO Remittances, as applicable, for the benefit of the Absolute Assignees, each with respect to its Investment Interest, and the Pledgees as applicable.[~~16~~13]

[NTD: Suggest considering a more typical remedy such as the ability to appoint a receiver. Concept should be moved to Regulations.]

(14) Regulations – Regulations may be enacted for the purpose of specifying further rights, powers, privileges, duties and obligations that shall apply to ~~IESO~~Servicer, any Electricity Distributor or any Alternative Collection Agent to ensure that rights, interests, entitlements, benefits and proceeds in, to, under and from the Regulatory Asset are of fully realized by some or all of the Absolute Assignees and Pledgees.

Article 6 – The Regulatory Asset

[NTD: We believe that the statute should impose a time limit on the ability of IESO to create additional Regulatory Assets under this Act. It is our expectation that this will be no later than 10 years after the commencement of the program.]

[NTD: In addition, additional language is required to address the acquisition of the Regulatory Asset by the Financing Entity, including reference to the consideration being provided for it, funding upfront costs.]

[NTD: The sale of Regulatory Assets must be restricted to Financing Entities controlled by a single entity (initially, OPG).]

[NTD: For greater certainty, a Financing Entity will not be required to purchase Regulatory Assets from IESO.]

(1) **Composition** – The Regulatory Asset shall constitute a current and irrevocable property right and interest consisting, collectively, of the following rights and interests (without duplication):

[~~15~~12] Consider whether it makes sense to create a "deemed collection" payment obligation on Electricity Distributors to the extent a ~~Retail~~Regulated Consumer reduces its payment of Transition Charges, despite this language. Same for Electricity Distributor Remittances and IESO Remittances.

[~~16~~13] Consider adding or substituting this provision for a right to appoint a receiver.

a. the right of ~~IESO (i)~~**a Regulatory Asset Owner** to record its ~~IESO Retained Interest in its accounts in accordance with Section 8(1), having a stated amount from time to time equal to the IESO Retained Interest Amount; and (ii) to receive IESO Recoveries from time to time in accordance with Section 5(6)(b)~~**portion of the Regulatory Asset in its accounts**;

b. the right to impose, bill, invoice, collect and receive Transition Charges from ~~Retail~~**Regulated** Consumers, including the right to determine the amount of Transition Charges in accordance with this Act;

c. the right to enforce the obligations and indebtedness of each ~~Retail~~**Regulated** Consumer to pay the Transition Charges charged to the ~~Retail~~**Regulated** Consumer from time to time in accordance with Article 3, together with all related late payment fees or interest charges arising in respect thereof under the related Electricity Invoices; **[NTD: Do we really want and need the ability for the Financing Entities to chase after individual consumers?] [NTD: This should be the right to provide notices to the OEB of the amounts required for recovery, which the OEB would then be required to accept for purposes of determining the amount of Transition Charges to be charged to consumers]**

d. the right to enforce the duties and obligations of each Electricity Distributor and if applicable the Alternative Servicer to impose, attribute, charge, bill and invoice the Transition Charges in accordance with Article 4;

e. the right to enforce the duties and obligations of each Electricity Distributor and if applicable the Alternative Collection Agent to collect, receive and remit amounts received by it in respect of Transition Charges as Electricity Distributor Remittances to or to the account of ~~IESO~~**Servicer** or if applicable the Alternative Collection Agent in accordance with Article 5, including all collections and the proceeds of any enforcement action undertaken by the Electricity Distributor or if applicable the Alternative Collection Agent to recover payment of Transition Charges in accordance with Article 5;

f. the right to enforce the duties and obligations of ~~IESO~~**Servicer** and if applicable the Alternative Collection Agent to collect and receive Electricity Distributor Remittances and to remit IESO Remittances to or to the accounts of the Regulatory Asset Owners, each with respect to its respective interest in the Regulatory Asset, in each case in accordance with Article 5, including all collections and the proceeds of any enforcement action undertaken by it to recover payment of Electricity Distributor Remittances in accordance with Article 5;

g. the right to receive and collect all Transition Charge Collections, all Electricity Distributor Remittances and all IESO Remittances in accordance with Article 5;

h. all rights and entitlements under each Regulatory Asset Account and all amounts on deposit in any such Regulatory Asset Account;

i. all Related Rights; and

j. all revenue, collections, claims, payments, money and proceeds of or derived from the rights described in (a) through (i), regardless of whether such revenue, collections, claims, payments and proceeds are imposed, invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

A Regulatory Asset and the property rights and interests therein shall exist whether or not Transition Charges have been imposed, charged, invoiced, accrued or collected and notwithstanding that the imposition, attribution, invoicing and collection of Transition Charges will depend on further actions that may not have occurred. **The Regulatory Asset shall continue to exist until all Funding Obligations and Additional Funding Charges have been paid in full.**

(2) **Validity of Dispositions** – ~~Despite any limitations or restrictions on a Disposition that may arise by contract or by operation of any applicable law of the Province or any consent requirement applicable to a Disposition that may arise by operation of any applicable law of the Province, a~~**A** Disposition by IESO **of all or any part of the IESO Funding Shortfall** to an Absolute Assignee ~~made under the Financing Plan~~, or **a Disposition of all or any part of an Investment Interest** by one Absolute Assignee to another Absolute Assignee made under the Financing Plan, shall be permitted and when made shall be valid and enforceable in accordance with the terms of the related Disposition Document and shall be effective to confer upon the Absolute Assignee thereof a valid property right and interest in, to and under the ~~applicable~~**IESO Funding Shortfall or** Investment Interest**, as applicable** (or relevant portion thereof) in accordance with the terms of such Disposition, provided that the parties to the applicable Disposition Document have expressly stated therein that such Disposition is a sale or other absolute transfer. Without limiting the foregoing, any Disposition that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as a true sale and absolute transfer of the ~~Regulatory Asset Owner's applicable~~**IESO Funding Shortfall or an Absolute Assignee's** right, title~~,~~ and interest in, to and under ~~the Regulatory Asset~~**an Investment Interest, as applicable** (or relevant portion thereof), and not merely as a Pledge thereof, and upon such Disposition the assigner or seller under the applicable Disposition Document shall retain no right, title or interest in the **IESO Funding Shortfall or** Investment Interest **(or relevant portion thereof)** subject to the Disposition, including all rights under the **IESO Funding Shortfall or** Investment Interest arising after such Disposition. **[NTD: Subject to review by Osler/dealers.]**

(3) **Perfection and Priority of Dispositions** – Any Disposition of an interest in a Regulatory Asset shall be vested, valid, binding and perfected from the time when such Disposition is made. Such Disposition shall be perfected, vested, valid and binding as against the **IESO or** transferring Regulatory Asset Owner**, as applicable,** and all other persons who have claims of any kind (whether in tort, contract or otherwise) against **IESO or** the transferring Regulatory Asset Owner, **as the case may be,** irrespective of whether such persons have notice of the Disposition and the property rights and interests acquired by the Absolute Assignee under such Disposition shall be free and clear of any liens in favour of such other persons.

(4) **Validity of Pledges** – ~~Despite any limitations or restriction on a Pledge that may arise by contract or by operation of any applicable law of the Province or any consent~~

~~requirement applicable to a Pledge that may arise by operation of any applicable law of the Province, a~~**A** Pledge by an Absolute Assignee may be made to secure any ~~related~~ Funding Obligation and when made shall be valid and enforceable in accordance with its terms and shall be effective to confer upon the Pledgee a valid security interest in, to and in respect of the related Investment Interest in accordance with the terms of the Pledge. ~~Other than as required by the Financing Plan, no~~**No** consent of**, or notice to,** any person shall be required to give effect to a Pledge made to secure any Funding Obligation.

(5) **Perfection and Priority of Pledges** - For purposes of the *Personal Property Security Act* (the "PPSA"), the Regulatory Asset shall be intangible personal property and any Pledge made by an Absolute Assignee in respect of a Funding Obligation **shall, subject to the terms thereof, give rise to a security interest of which the PPSA applies, and** may be perfected by filing a financing statement under the PPSA on that basis. All proceeds of a related Investment Interest that are subject to such a Pledge that are received by the Absolute Assignee shall immediately be subject to the such Pledge, and the security interest in such proceeds shall be perfected pursuant to the PPSA.~~17~~**14** A Pledge perfected under the PPSA shall be a continuously perfected security interest and shall have priority over any other lien or security interest, created by operation of law or otherwise, that may attach to the property rights and interests in the Investment Interest subject to the Pledge unless the Pledgee has otherwise agreed in writing. ~~Subject to the terms of the Collective Action Agreement, a~~**A** Pledgee shall have a perfected security interest in a related Investment Interest, including the Absolute Assignee's rights and interests in and to Transition Charge Collections or other related proceeds in respect of the Investment Interest and that are deposited in any Regulatory Asset Account or other account of any Electricity Distributor, IESO, Alternative Collection Agent or other person who may have commingled such Transition Charge Collections or such other proceeds with other funds. All provisions of the PPSA shall apply to the Regulatory Asset on the basis that it is intangible personal property, except to the extent otherwise provided in this Section 6(5).

(6) **Enforcement of Property Rights** – The rights of any Regulatory Asset Owner to collect and enforce its rights and interests in, to or in respect of the Regulatory Asset shall be exercised in the manner set forth in Article 5.

(7) **Owners of a Specified Portion of the Regulatory Asset** – A Regulatory Asset Owner may effect a Disposition to an Absolute Assignee of a specified portion of its rights and interests in the Regulatory Asset, including by way of a Disposition of a divided or an undivided interest therein as specified in a related Disposition Document~~, in each case under the Financing Plan~~. In no circumstance may the specified portions of the rights and interests in the Regulatory Asset owned by all Regulatory Asset Owners be greater than all of the rights and interests that comprise the Regulatory Asset in the aggregate.

(8) **Collective Action Required** – If a Regulatory Asset Owner's rights and interests in the Regulatory Asset comprises less than the entire property right and interest constituted by the Regulatory Asset, such Regulatory Asset Owner shall only enforce such right and interest on a collective and coordinated basis with each other Regulatory Asset Owner in accordance with the Collective Rights Agreement. **[NTD: Move to Regulations.]**

~~17~~**14** Consider whether to simply leave this and have a financing statement be filed under the PPSA. This would normalize the security interest and reduce any adverse suggestion that security would not otherwise arise.

Article 7 – Establishment of the Fair Allocation Plan[1815] **[NTD: Move entire Article 7 to Regulations, other than 7(1) and 7(2).]**

(1) **Adoption of the Fair Allocation Plan** – The Delegate may, [by written declaration,] designate and adopt a Fair Allocation Plan in compliance with Article 7. The Fair Allocation Plan so designated and adopted shall be the Fair Allocation Plan for all purposes of this Act, except if amended, amended and restated or terminated by a further written declaration made by the Delegate in compliance with Section 7(4).**[the Regulations]**

(2) **Principles and Parameters** – A Fair Allocation Plan shall seek to allocate Future Fair Share of Green Transition Benefits across present and future Retail Consumer Groups**Regulated Consumers** on a basis that the Delegate, in its sole and absolute discretion, determines to be equitable, having regard to the following principles and parameters:

[NTD: E&Y will need to see the guidelines of the Fair Allocation Plan set in reference to parameters that will allow it to establish a modeling curve]

- **[Inflation period: (between November 2017 – and April 2022) bill increases need to be capped at inflation (assumed at 2% for modeling purposes)]**
- **[Transition Period: (May 2022- April 2027) bills increased at a consistent rate which is set so that the borrowing will not exceed the Trust's capacity, which is determined by the Finance Service Manager]**
- **[Amortization Period: (May 2027-April 2047) equitable distribution of Finance Amount among Regulated Consumers]**

1. Future Fair Share of Green Transition Benefits should be allocated over the period ending on the Program End Date.

2. <*The Fair Allocation Plan should specify the Reference Periods for the purpose of* >identifying applicable Retail Consumer Groups and <*allocating Future Fair Share of Green Transition Benefits among* >them< *on a relative basis over time.* >

2. 3. The share of Future Fair Share of Green Transition Benefits allocable to a particular Retail**Regulated** Consumer Group in respect of a Reference Period should be proportionate to a reasonable assessment of the benefits of the Green Generation Initiative to the Retail**such Regulated** Consumer Group over such Reference Period**, other than**> *in exceptional circumstances*<**.**

[1815] The idea is that the Fair Allocation Plan will be set once at the outset based on the principles and parameters described here, all as applied based on information available and the reasonable expectations and discretion of the delegate at such time. If the expectations are not fulfilled (e.g., generators may choose to retire their facilities at the end of their current procurement contracts and not invest in extending service lives to secure further procurement contracts), the Fair Allocation Plan will be unaffected, unless it is specifically amended (assuming amendments will be permitted by the legislation).

4. The share of Future Fair Share of Green Transition Benefits to be allocated to a Retail Consumer Group and any future Retail Consumer Group at a particular time should not exceed the Estimated Future Green Transition Benefits, measured in respect of the Reference Periods following such particular time and to the Program End Date.

5. No future Retail Consumer Group should be allocated an unreasonably disproportionate share of Estimated Future Green Transition Benefits. Except<- *in exceptional circumstances*> or in the case of any reallocation of an Over-Assessed Amount as contemplated in 7, below, the Future Fair Share of Green Transition Benefits to be allocated under a Fair Allocation Plan to any future Retail Consumer Group should have regard to *[Insert formula if a year-over-year maximum amount is determined to be appropriate].*

3. 6. The time value of money should be reflected in the Fair Allocation Plan, in order to equate the relative values of the nominal allocations of Future Fair Share of Green Transition Benefits, calculated in current dollars, to future Retail Consumer Groups over time.>*The Fair Allocation Plan should specify the Reference Periods for the purpose of* <>*allocating Future Fair Share of Green Transition Benefits among* <**Regulated Consumers**> *on a relative basis over time.* <

7. To the extent there has been an Over-Assessed Amount, the Fair Allocation Plan may determine that an adjustment should fairly be made to rebate Retail Consumers for such an amount, by reducing the costs otherwise attributable under the Act to such Retail Consumers. The relative costs of the Green Generation Initiative are reflected under the Act by the attribution of Transition Charges to such Consumer Groups, based on the Financing Plan seeking to track the allocations of benefits under the Fair Allocation Plan. Accordingly, the Maximum Transition Charge Amount determined for one or more Retail Consumer Groups having regard to the Fair Allocation Plan otherwise applicable may be appropriately reduced to recognize the effect of the Over-Assessed Amount. In such a case, a determination to reduce the Maximum Transition Charge Amount applicable for certain related Reference Periods should have regard to the principle that the corresponding rebate should be extended to benefit the Consumer Group or Consumer Groups in closest proximity to the Legislative Implementation Date.

(3) Attribution Methodology – The Fair Allocation Plan shall specify the Attribution Methodology for the purposes of allocating the Period Transition**Finance** Charges across the Retail**Regulated** Consumers of a particular Retail Consumer Group. The Attribution Methodology shall result in an attribution of such Transition Charges that is considered by the Delegate to be equitable, and may have regard to such principles and parameters as may be further set forth in a Regulation.; **provided that**> *the Attribution Methodology* <**shall not be used to limit the recovery of Transition Charges. [NTD: Can the methodology be adjusted outside an amendment? If so, the rating agencies need to understand the limits of any adjustment.]**

(4) Amendments of the Fair Allocation Plan – The Fair Allocation Plan may be amended, amended and restated or terminated by the Delegate, provided that such amendment, amendment and restatement or termination shall (a) not be inconsistent with the principles and parameters set forth in (2) or (3), above, or the Regulation ~~and~~, (b) comply with any restrictions or limitations specified with respect thereto in any Funding Obligation~~.~~**, and (c) not impair any Regulatory Asset, outstanding Funding Obligation or any Transition Charges. [NTD: If the Fair Allocation Plan is amended, there should be no further Regulatory Assets until the revised Fair Allocation Plan and corresponding Financing Plan have been approved.]**

Article 8 – The IESO ~~Retained Interest~~Funding Shortfall

(1) ~~Maintain Books of Account~~ ~~– IESO may maintain books of account to record the IESO Retained Interest Amount and all adjustments thereto from time to time. Such books of account shall be determinative with respect to the amount of IESO's related regulatory asset.~~**Recording of IESO Funding Shortfall -- IESO will record any IESO Funding Shortfall in its books.**

~~**(2) Limitation on Additions** – IESO shall not record additions to the IESO Retained Interest Amount in respect of IESO Funding Shortfalls (a) if such additions are restricted by the terms of any Disposition Document or the Collective Action Agreement, or (b) on or after •, 2017.~~

(2) ~~**(3)**~~ **Dispositions** – IESO may effect a Disposition **of all or any part of the IESO Funding Shortfall** to an Absolute Assignee if (a) the ~~Absolute Assignee has or will concurrently become bound by the Collective Rights Agreement; (b) the~~ Disposition is effected pursuant to a Disposition Agreement duly executed by IESO; **and** (~~c~~**b**) the Financial Services ~~Agent~~**Manager** confirms in writing that the Disposition **complies with any restrictions or limitations specified with respect thereto in any documents evidencing the Funding Obligations and** is permitted under the Financing Plan~~; and (d) the net proceeds payable to IESO from the sale of the related Investment Interest would not exceed the IESO Retained Interest Amount immediately before the time of such Disposition~~.

(3) ~~**(4)**~~ **No Continuing Interest in any Investment Interest** – IESO shall have no continuing right or interest in any ~~Investment Interest~~**IESO Funding Shortfall** subject to a Disposition effected by IESO under a Disposition Document to which IESO is a party~~and IESO shall not assert any such right or interest or take or omit to take any action to exercise or enforce its rights or interests under the IESO Retained Interest if such action or omission would impede or obstruct the rights of any Absolute Assignee or a Pledgee to enforce its rights and interests in any Investment Interest, except if IESO is expressly permitted to take or omit to take such action, respectively, under the related Disposition Document or the Collective Rights Agreement.~~

~~**(5) IESO Financing Costs** – IESO shall be entitled in good faith to incur reasonable financing costs (including interest and other reasonable financing charges) reflecting market terms and conditions and which are payable in arrears, in order to finance its ownership of the IESO Retained Interest from time to time. **(6) IESO Recoveries** –~~

IESO shall, in respect of a month, be entitled to receive from IESO Remittances on a related Settlement Date the amount (if any) available to IESO under Section 5(6)(b).

Article 9 – The Financing Plan [NTD: Move all of Article 9 to Regulations other than 9(1).]

(1) Power to Prepare, Implement and Amend the Financing Plan – The Financial Services AgentManager shall be authorized to prepare, implement and amend a financing plan for the Financing Entities> *and propose the adoption*< of such financing plan as the Financing Plan. If the Financial Services Agent is unwilling or unable to prepare< *and propose the adoption*> of the Financing Plan, the Delegate may by written declaration designate one or more other persons who shall be authorized to prepare, implement and amend the Financing Plan for the purposes of this Act. The Financial Services Manager shall have the right to withdraw its financing plan as the Financing Plan at any time if it determines that implementing the Financing Plan in such manner would not be in the best interests of a Financing Entity.

(2) TermsPrinciples and ConditionsParameters of the Financing Plan – The Financing Plan shall establish the basis for each Absolute Assignee's funding decisions. The Financing Plan shall have having regard to the principles and parameters set forth in Schedule 3 and such other conditions and requirements as may be specified in a written declaration of the Delegate or in accordance with the Regulation.3.

(3) OEB Approval – Any Additional Funding Charge payable to or for the benefit of the Financial Services AgentManager in respect of services provided by the Financial Services Manager (other than third party costs) shall be subject to review and approval by the OEB.

(4) OEB Review of Financing Plan – The [OEB] [shall] undertake an annual review of the records maintained by the Financial Services AgentManager for the purpose of confirming that the Funding Obligations incurred and the Finance Amounts paid by or on behalf of the Absolute Assignees were incurred and paid, respectively, in material conformity with the Financing Plan. [NTD: We would prefer that this be dealt with by an attestation prepared by an officer of the Financial Services Manager.]

(5) Replacement of the Administrative AgentFinancial Services Manager – If the OEB identifies deficiencies or makes recommendations in its review under Section 9(4), the Administrative AgentFinancial Services Manager shall take reasonable measures to remedy such deficiencies if remediable, and shall in any event have regard to the recommendations of the OEB in relation to further actions undertaken by the Financial Services AgentManager under the Financing Plan. If the Financial Services AgentManager is unwilling or unable to reflect such recommendations in relation to such further actions, the Delegate may by written declaration designate one or more other persons who shall thereafter become the Financial Services. Manager. Any replacement must comply with the restrictions and limitations specified in the documents evidencing the Funding Obligations.

(6) Obligation to Apply IESO Remittances – The Financial Services AgentManager shall ensure that amounts transferred to it under Article 5, as agent for and on behalf of the Absolute Assignees, or otherwise in respect of or as proceeds from an applicable Investment Interest shall only be applied or used to pay related Finance Amounts when

they are due and payable and for no other purpose. **[NTD: This can be dealt with by contract.]**

(7) Non-Recourse – The Financing Plan shall be implemented so that Funding Obligations incurred shall be without recourse to or to any assets of the Electricity Distributors, IESO, any Alternative Servicer, any Alternative Collection Agent, the Financial Services Agent**Manager**, the OEB, the Province or the Lieutenant Governor in Council **or Her Majesty in right of Ontario**, other than if and to the extent that such persons or entities are liable for the performance of obligations or duties arising under this Act or expressly agree to become liable pursuant to any Funding Obligation or obligation in relation to a Finance Amount. [All Funding Obligations shall contain a statement to the following effect: "Neither the full faith and credit nor the taxing power of the Province of Ontario is pledged to the payment of the principal of, or interest on, this [obligation].]

(8) Incurrences are Binding – Notwithstanding anything to the contrary in this Act, each**Each** Disposition made to or by an Absolute Assignee and**,** all amounts payable or becoming due and payable by or on behalf of an Absolute Assignee under or in connection with any obligation purporting to be a Funding Obligation **and each Pledge entered into by an Absolute Assignee**, shall be **valid and** binding for the purposes of this Act, including in determining the amount of related Transition Charges, despite**notwithstanding** any impairment or defect resulting from such failure**defect in the manner in incurrence or any inconsistency with the Fair Allocation Plan or the Financing Plan**.

[Article 10 – Compliance Matters[19][16]

(1) Right of the [OEB] to Inspect Books and Records - For the purpose of investigating compliance with the provisions of this Act, the OEB shall have the right, jurisdiction, power and authority to examine the books and records of *[Insert names if any]*.

(2) [OPG's Rate Settings – When setting other rates for or in respect of OPG, the OEB shall not take into account (a) the administrative or servicing fees charged by OPG as Financial Services Agent**Manager** [in excess of the actual incremental costs incurred by such person of providing administrative or servicing services]; (b) the cost consequences to OPG of being the Financial Services Agent**Manager**; or (c) the consequence of OPG consolidating the assets and liabilities of any Financing Entity for OPG's accounting purposes, in each case in setting any regulated payment amounts for OPG.][20][17]

[19][16] As noted above, the outcome of any regulatory action undertaken by the OEB will not affect Funding Obligations that have been incurred under the Financing Plan. This Article and any potential role for the Auditor General is still under consideration.

[20][17] As an alternative to this provision, consider clarifying under s. 78.1(4) of the OEB Act (which currently gives the OEB discretion in setting payment amounts subject to O. Reg. 53/05) that the OEB in setting OPG payment amounts for prescribed generation shall not consider OPG's role as Administrative Agent**Financial Services Manager** of any Financing Entities associated with the Fair Hydro initiative, perhaps with the exception of any operating fees that may be received by OPG for performing that role.

Article 11 – Undertaking of the ~~Lieutenant Governor in Council~~[21]Her Majesty in right of Ontario[18]

(1) No Action to limit, alter, or impair or terminate Transition Charges, the Regulatory Asset or Collections – ~~The [Lieutenant Governor in Council]~~**Her Majesty in right of Ontario** shall not in any way take or permit **(including by any agency or administrative body)** any action to reduce, impair, postpone or terminate the obligation of ~~Retail~~**Regulated** Consumers to pay Transition Charges or to impair the Regulatory Asset or the collection or recovery of Transition Charge Collections, Electricity Distributor Remittances or IESO Remittances, either directly or indirectly, including through the introduction of any bill or the passing of any legislation or regulation having such effect. The amount of Transition Charges determined under this Act shall not be subject in any way to reduction, impairment, postponement or termination as a result of any action taken or failure by ~~the Lieutenant Governor in Council~~**Her Majesty in right of Ontario (including by any agency or administrative body)**, including through the introduction of any bill or the passing of any legislation or regulation having such effect.

(2) Undertaking and Agreement – ~~The [Lieutenant Governor in Council]~~**Her Majesty in right of Ontario** shall not:

(a) in any way take or permit any action that limits, alters or impairs the value of any Investment Interest;

(b) except as required by the estimates and adjustments made in determining the True-up Amount, reduce, alter or impair Transition Charges that are imposed, billed, invoiced, collected and remitted for the benefit of the Absolute Assignees or any Pledgee from time to time;

(c) permit the amendment, amendment and restatement or termination of the Fair Allocation Plan if such amendment , amendment and restatement or termination would adversely affect the validity or enforceability of any Funding Obligation or the rights of an Absolute Assignee or Pledgee thereunder, **or would not otherwise comply with the restrictions and limitations specified in the documents evidencing the Funding Obligations,**

in each case including through the introduction of any bill or the passing of any legislation or regulation having such effect.

(3) Successor IESO – If IESO is restructured, dissolved or becomes insolvent or is otherwise incapable of performing its obligations under this Act, **an IESO** Successor ~~IESO~~ shall **immediately** be established **by Her Majesty in right of Ontario** to perform such obligations.

~~21~~[18] Under consideration, including the dealers' request for a "servicer guarantee" and a "contractual guarantee" to address a "Change of Law" or if all or a portion of the legislation is *ultra vires*, requiring (at the lenders option), the Province to pay principal and interest on the outstanding debt until maturity or payout the entire debt including any make-wholes. ⊥
In the event of a market disruption that renders it impossible to refinance debt when required (or where financing of amounts required to service the debt is not available because of a market disruption where the Financing Entity was relying on such further issuance of debt until the recovery is set to begin to fund interest), either the Province must step in and payout the debt or there must be the right to recover the debt from ratepayers as it becomes due, notwithstanding the intended rate cut.

(4) Compensation for Failure – Absolute Assignees shall be compensated by Her Majesty in right of Ontario for any losses suffered by them as a result of any failure by ~~the Lieutenant Governor in Council~~Her Majesty in right of Ontario to comply with its undertakings and agreements in this Article 11.~~22~~19

(5) No Wind-up of Financing Entity. No Financing Entity may be voluntarily wound up, liquidated or dissolved until one year after all of its Funding Obligations are repaid. [NTD: This concept can be contained in the Regulations.]

(6) References to the Undertaking and Agreement – Any non-confidential reference to the Undertaking of the ~~Lieutenant Governor in Council~~Her Majesty in right of Ontario, including in marketing materials and other documentation authorized for use by the Administrative in connection with any Funding Obligation, may be made provided that [*Add conditions to protect the Province*].

Article 12 – Regulations

Regulations may be made under this Act for the purposes described in Sections •,•,• and • and may be promulgated for any of the following purposes:

(a) to set standards and measures regarding the commercially reasonable requirements of the Province associated with an Absolute Assignee incurring Funding Obligations or becoming obligated to pay any Finance Amount, including to establish guidelines regarding all-in funding costs; permitted Additional Funding Charges; required maturities and redemption and termination rights of Funding Obligations; liquidity requirements, in each case to a Financing Plan that is consistent in its effect with the Fair Allocation Plan;

(b) to establish and empower one or more regulated entities to undertake decision-making activities with respect to this Act;

(c) to set out reasonable requirements regarding the appointment or retention of advisors, agents, service providers, contract counterparties, including in relation to 'market terms and conditions' parameters;

(d) to provide for audit and compliance standards applicable to those persons who are or may become obligated or have duties that arise under this Act [or under any Funding Obligation];

(e) to provide for any pre-vetting and approval requirements in relation to any incurrence by an Absolute Assignee of any Funding Obligation or obligation to pay any Finance Amount; and

(f) to provide for appeal and due process considerations in connection with the establishment, adoption, implementation and review of the Fair Allocation Plan or the Financing Plan.

Article 13- Miscellaneous~~23~~20

~~22~~19 Requested by ~~Torys~~Dealers. For discussion.

~~23~~20 OPG would like the specific amendments related to OPG to be included in the Bill.]

(1) **Choice of law** – The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the Regulatory Asset, any Transition Charge or the Undertaking of the Province shall be the laws of the Province.

(2) **Conflict of law** – In the event of conflict between this Act and any other law of the Province regarding the attachment, assignment or perfection, or the effect of perfection, or priority of any Disposition or Pledge, this Act shall govern to the extent of the conflict.

(3) **No further acts or approvals required** - Notwithstanding any provisions of any law of the Province to the contrary, no approvals, notices or authorizations other than those specified in this Act shall be required with respect to the actions to be taken in compliance with this Act, including under the Financing Plan or in relation to the establishment of the Fair Allocation Plan, and the transactions and contracts authorized in or contemplated by this Act or the Financing Plan, including the incurrence of any Funding Obligation, any Disposition, any Pledge or in the payment and performance of any attendant or incidental contract and any related expenses incurred to facilitate the preparation and implementation of the Financing Plan.

(4) **Effect of invalidity after the Incurrence of any Funding Obligation** - Effective on the date that a Funding Obligation is incurred under this Act, if any provision of this Act is held to be invalid or is invalidated, superseded, replaced, repealed or expires for any reason, that occurrence shall not affect any action allowed under this Act that is taken by any person who is or may become obligated or have duties that arise under this Act and any such action shall remain in full force and effect.

(5) **Severability** - If any Article, Section, paragraph or subparagraph of this Act or the application thereof to any person, circumstance or transaction is held by a court of competent jurisdiction to be unconstitutional or invalid, the unconstitutionality or invalidity shall not affect the constitutionality or validity of any other Article, Section, paragraph or subparagraph of this act or its application or validity to any person, circumstance or transaction, including the irrevocability of Transition Charges, the validity of the Regulatory Asset, the incurrence of any Funding Obligation, any Disposition, any Pledge, or the collection and recovery of Transition Charge Collections. To these ends, the Legislature hereby declares that the provisions of this Act are intended to be severable and that the Legislature would have enacted this Act even if any Article, Section, paragraph or subparagraph of this Act held to be unconstitutional or invalid had not been included in this Act.

Schedule 1

Guidelines for Estimates

[To be considered.]

Schedule 2

Requirements Applicable to Alternative Invoicing Agent/ Alternative Collection Agent

[To be considered.]

Schedule 3[24]

Principles and Parameters for Establishing the Financing Plan

The following principles and parameters provide a guideline as to what a Financing Plan should address:

~~(1)~~ ~~in respect of each Reference Period, make reference to the allocations of Future Fair Share of Green Transition Benefits to each Reference Group contemplated by the Fair Allocation Plan;~~

~~(2)~~ ~~estimate IESO Funding Shortfalls for each Reference Period;~~

~~(3)~~ ~~consider alternative funding arrangements suitable to fund the estimated IESO Funding Shortfalls, including short term and/or long term Funding Obligations;~~

(1) ~~(9)~~ consider quantities, maturities, payment obligations, prepayment or redemption rights and such other features of Funding Obligations so that payments made for a Reference Period reasonably correspond to the allocations of Future Fair Share of Green Transition Benefits to the applicable Reference Group under the Fair Allocation Plan;

(2) ~~(4)~~ if the anticipated amount of any Repayment (together with payments of other Finance Amounts) to be made in respect of a Reference Period would materially exceed the allocation of the costs and benefits of the Green Generation Initiative to the applicable ~~Retail Consumer Group~~**Regulated Consumers** under the then current Fair Allocation Plan, diligent efforts should be made to determine whether a Refinancing or deferral of such Repayment may be reasonably and cost-effectively effected based on then prevailing market terms, conditions an circumstances;

(3) ~~(5)~~ reflect the assumptions and requirements specified in any contemplated Funding Obligation (e.g., any limit on the maximum amount of Transition Charges charged to a hypothetical ~~Retail~~**Regulated** Consumer relative to his or her monthly electricity bill, as prescribed by any rating agency that ascribes its credit rating to or in respect of the Funding Obligation **[having regard to the application of the ~~Allocation~~Attribution Methodology][NTD: Are the words in square brackets necessary?]**);

(4) require the Financial Services Manager, for and on behalf of each Regulatory Asset Owner, to use diligent efforts to manage Finance Amounts to be borne by Ratepayers;

(5) include a proposal regarding the compensation of the Financial Services Manager that reflects market terms and conditions; and

(6) ~~incur Funding Obligations from time to time on the best terms available at such time for a financing transaction of the size and type contemplated, and having regarding to the following parameters:~~**require that the Financial Services Manager report annually to**

[24] ~~Awaiting input from Torys based on OPG mark-up of Financing Plan sections.~~

the Ministry of Energy on the operation of the Financing Plan including, in particular, with respect to the amount and terms of the Funding Obligations incurred and the sufficiency of such Funding Obligations for the purpose of funding the estimated Funding Shortfalls in accordance with the Fair Allocation Plan.

~~a. whether the Absolute Assignees will require committed access to short term liquidity to cover estimated IESO Funding Shortfalls prior to incurring fixed term Funding Obligations, and the amount and repayment terms of any such required liquidity; provided that any Repayment required to be made under the terms of such short term liquidity would not obligate an Absolute Assignee to repay an amount in relation to a Reference Period that would have the effect of the Financing Plan permitting incurrences of Funding Obligations payable in such Reference Period that would exceed the allocations of Future Fair Share of Green Transition Benefits to the applicable Reference Group under the Fair Allocation Plan;~~

~~b. the basis upon which the Financial Services Agent will select the term to maturity of any other Funding Obligations; provided that any Repayments required to be made under the terms of such Funding Obligations should not obligate an Absolute Assignee to repay an amount in relation to a Reference Period that would have the effect of the Financing Plan permitting incurrences of Funding Obligations payable in such Reference Period that would exceed the allocations of Future Fair Share of Green Transition Benefits to the applicable Reference Group under the Fair Allocation Plan;~~

~~c. the basis upon which the interest rates applicable to such Funding Obligations would be determined;~~

~~d. the reference capital or finance market in which such Funding Obligation would be incurred, including markets outside of Canada if considered by the Financial Services Agent to be appropriate in the circumstances;~~

~~e. the currency of payments under such Funding Obligations and, if the Funding Obligations are denominated in a currency other than Canadian dollars, the basis upon which the Financial Services Agent shall cause the applicable Absolute Assignee to enter into hedging transactions to mitigate currency risk, including acceptable minimum and maximum coverage levels, having regard to the availability of related derivatives having notional amounts corresponding to the repayment and maturity profile of such Funding Obligations;~~

~~f. the basis upon which the Financial Services Agent will select counterparties under any transaction to be entered into by an Absolute Assignee, including any paying agent, servicer, cash manager, liquidity provider, hedge counterparty, account bank, lender, note trustee, security trustee, paying agent, registrar/transfer agent, financial services agent, arranger or manager;~~

~~g. the basis upon which the Financial Services Agent will manage counterparty risk, including by providing for maximum counterparty exposure limits having regard~~

to concentration, credit and other identified risks with respect to individual counterparties or countries;

h. the basis upon which the Financial Services Agent will negotiate and settle Finance Amounts, including the amount of any Redemption Amounts, Finance Reserve Deposits and Additional Funding Charges;

(7) the basis upon which Funding Obligations may be redeemed, prepaid, repurchased or otherwise affected, having regard for the need to minimize debt service charges and other Funding Costs, and the need to maintain a stable funding platform to finance the IESO Funding Shortfalls from time to time on a basis that is consistent with the allocations of Future Fair Share of Green Transition Benefits to applicable Reference Groups under the Fair Allocation Plan;

(8) the basis upon which any Repayments, Funding Costs and Redemption Amounts will be paid, including any defeasance, sinking fund or through other reserves or liquidity facilities;

(9) the basis upon which fees, charges, expenses, costs, indemnities, reimbursements and other amounts payable to or for the benefit of the Financial Services Agent and other agents and service providers to the Absolute Assignees may be determined, allocated and paid;

(10) the timing and basis upon which Finance Reserve Deposits and Finance Reserve Withdrawals may be made;

(11) the basis upon which any obligations for any other Additional Funding Charges may be incurred and paid;

(12) the basis upon which the cash flows arising from time to time or otherwise derived from the Regulatory Asset may otherwise be applied, including in relation to any counterparty enforcement and realization scenario;

(13) the transmittal to [the IESO] of information related to the amounts to be included in the determination of the Period Transition Charge for a Reference Period;

(14) the basis upon which any Disposition may be made or effected by an Absolute Assignee, including parameters for determining the purchase price for the interest in the Regulatory Asset that is the subject matter of such Disposition, and any consents and releases that may be usefully obtained in connection with such Disposition;

(15) describe the requirements applicable to any special purchase entity that will purchase an Investment Interest, including proposed capitalization, governance, and restrictions on their powers and activities; and

(16) the basis on which any Pledge may be given or effected.

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CONFIDENTIAL AND PRIVILEGED

Preliminary Draft for Discussion Purposes Only

"Fair Hydro Act"

Article 1 – Purpose

The Province has and continues to encourage the construction and development of facilities for the long-term operation and generation of electricity in the Province using sustainable, lower carbon-based technologies such as new gas-fired generation, renewable facilities, energy from waste and biomass, including under the Province's various procurement, standard offer, feed in tariff and other similar programs (the "Green Generation Initiative"). The long-term benefits of the Green Generation Initiative accrue over time and have benefited and will continue to benefit present and future electricity consumers in the Province.

The out-of-market costs of the Green Generation Initiative are currently passed through to electricity consumers by way of a monthly adjustment amount (the "Green Costs Adjustment"), which in turn forms part of the overall adjustment calculated by the Independent Electricity System Operator ("IESO") pursuant to section 25.33 of, and O.Reg. 429/4 under, the *Electricity Act* (the "Global Adjustment").

The Green Costs Adjustment is currently determined each month by reference to the amounts paid by IESO to the generators of electricity in the Province under the Green Generation Initiative. These amounts paid by the IESO arise because IESO has entered into long-term procurement contracts with such generators in order to provide them with revenue certainty, and in turn to encourage the generators to develop technologies and to construct and develop facilities consistent with the Green Generation Initiative. **[NTD: This statement is not correct in respect of all IESO procurement contracts.]** It has been determined that the useful lives of many of the assets developed under the Green Generation Initiative will be in excess of the respective terms of their respective procurement contracts.

Since the benefits to past, present and future electricity consumers from the Green Generation Initiative will not necessarily coincide with the costs currently attributed through the Green Costs Adjustment, based on the respective terms of the applicable procurement contracts, it has been determined that the rate at which the costs associated with the Green Generation Initiative should be passed through to Regulated Consumers (as defined in Article 2) should be more closely aligned with the benefits that such Regulated Consumers have derived and are expected to derive from the Green Generation Initiative over time. This realignment will be based on general principles and parameters that establish a reasonable basis for measuring and allocating the relative costs and benefits of the Green Generation Initiative equitably across present and future Regulated Consumers (the "Fair Allocation Plan"). **[NTD: There is no explanation as to why realignment is limited to Regulated Consumers.]**

If the Fair Allocation Plan determines that the equitable allocation of the costs associated with the Green Generation Initiative to the Regulated Consumers of a particular time period should be reduced below the amount that currently would be charged based on the Green Costs Adjustment, then the amount payable by such Regulated Consumers and in turn available to IESO will, in the aggregate, be less than the amount payable by the IESO to the generators in

respect of such period. In this case, IESO will need to obtain funding from another source to cover such a shortfall. If a funding obligation is incurred to cover such a shortfall during any period, the repayment of such funding obligation will be required in a future period, and any related repayments, finance costs, hedging costs and other transaction costs incurred will become payable in future periods. In order for IESO to obtain a reliable and committed source of cash flows to enable IESO to repay such funding amounts when they become due and payable, this Act imposes irrevocable and non-bypassable financial obligations on Regulated Consumers to pay amounts incurred in respect of such funding obligations when they become due and payable and establishes a right to invoice and collect such amounts. The right and interest in and to collect such financial obligations will take the form of the Regulatory Asset contemplated in this Act, which will constitute property rights and interests. Interests in the Regulatory Asset may be sold and absolutely assigned by IESO to one or more financing entities, which in turn will finance their acquired interests by incurring funding obligations. The incurrence and payment of such funding obligations will be administered on behalf of such financing entities by a financial services manager under the Financing Plan contemplated in this Act.

[NTD: Our strong preference is to limit the introduction to the next paragraph and move defined terms from the previous paragraphs to Article 2]

The purpose of this Act is to establish the basis upon which intergenerational fairness can be achieved by charging the costs and benefits of the Green Generation Initiative to present and future Regulated Consumers on an equitable and cost effective basis.

Article 2 – Definitions

In this Act: **[NTD: It would be preferable to use plain language definitions in the legislation and leave the more detailed definitions to either the regulations or the agreements contemplated hereunder.]**

> "Absolute Assignee" means a person to whom a Regulatory Asset Owner effects a Disposition other than as security.
>
> "Actual" means, in relation to costs, expenses or payments in respect of Funding Obligations during a Reference Period, the actual amount of such costs, expenses or payments paid or made (net of any Finance Reserve Withdrawals applied to pay such amounts), which amounts shall be recorded by the Financial Services Manager whose records shall be determinative for the purposes of this Act except to the extent of a manifest calculation error.
>
> "Additional Funding Charges" means, for a Reference Period, the fees, charges, expenses, costs, indemnities, reimbursements and other amounts (including any applicable tax amounts) that are or become payable by or on behalf of the Absolute Assignee during the Reference Period and that were incurred or committed to directly or indirectly by the Absolute Assignee in connection with the incurrence of Funding Obligations under the Financing Plan (whether at the time of such incurrence or over the term of the Funding Obligation and whether directly or indirectly), including without limitation such amounts as may be prescribed.
>
> **[NTD: See section 5(11). Remove this concept globally.]**

"Alternative Servicer" means a person appointed under Section 4(8) to assume the obligations of the Servicer under Article 4, as agent for and on behalf of the Regulatory Asset Owners. **[NTD: We see this, in effect, as the same thing as the IESO Successor; that is, replacement of the master Servicer.]**

"Assessed Past Green Transition Costs" means, in respect of a Measurement Date, the aggregate of the imputed costs of the Green Generation Initiative (expressed as an equivalent to current dollars), as reflected in the calculation of the Green Costs Adjustment, which have been charged to Retail Customers through the Global Adjustment on or prior to the Measurement Date.

"Attribution Methodology"[1] means the methodology specified in the Fair Allocation Plan for allocating the Period Finance Charges for a Reference Period to Regulated Consumers. **[NTD: We understood that the Ministry accepted that the transition charge would be a volumetric rate.][NTD: Can be moved to Regulations.]**

"Collected Amount Adjustment" means, in respect of a True-Up Period, the amount (which may be a negative amount) calculated by the Servicer or the Financial Services Manager, as applicable, equal to (a) the Estimate of the Finance Amount for the True-Up Period, minus (b) the sum of all Transition Charge Collections for the True-Up Period.[2]

"Collective Rights Agreement" means an agreement among all of the Regulatory Asset Owners (including each Absolute Assignee), each Pledgee, and the Financial Services Manager that governs the enforcement of their respective rights and interests in, to and under the Regulatory Asset on a coordinated and collective basis. **[NTD: Move to Regulations.]**

"Delegate" means any of the following person or persons designated in writing from time to time by the Minister of Energy to undertake the actions and perform the responsibilities ascribed to the "Delegate" under this Act: ●. **[NTD: Why is this delegation of authority necessary? This requires further discussion and clarity as to which entity or entities that the Province can select as the Delegate; for example, it would not be acceptable for the Province to select the OEB to be the Delegate. If this is required, an acceptable delegate would be a stakeholder committee comprised of representatives from the Ministry of Energy, the OEB, the IESO, and OPG. In addition, the regulation should prescribe how the stakeholder committee would operate.]**

"Disposition" means an assignment, transfer, conveyance, sale, contribution, set-over, exchange or other disposition of (a) IESO's right to recover all or any portion of an IESO Funding Shortfall or (b) an Investment Interest to an Absolute Assignee, in each case pursuant to a Disposition Document.

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[1] This allocation may be volumetric or some combination of a flat amount and a volumetric charge. Further discussion is required. H&W has raised a concern regarding possible adverse changes after the fact and rating agency considerations. Consider whether hard-coding in the legislation makes sense.

[2] This would pick up adjustments based on actual collection experience, changes in the Regulated Consumer base, changes in the actual costs (versus earlier estimates) included in the Transition Charge calculation, etc.

"Disposition Document" means the agreement, deed, conveyance, instrument or other document under which IESO or an Absolute Assignee effects a Disposition to an Absolute Assignee.

"Electricity Distributor" means a rate regulated distributor licensed under Part V of the *Ontario Energy Board Act, 1998*, together with and its successors.

"Electricity Distributor Remittances" means, for an Electricity Distributor on a Remittance Date, all Transition Charge Collections received or deemed to be received **[NTD: estimated to be received? will each Electricity Distributor know?]** by the Electricity Distributor prior to the Remittance Date and that have not otherwise been remitted to Servicer or if applicable the Alternative Collection Agent in accordance with Section 5(3), including the proceeds of any enforcement action undertaken by the Electricity Distributor or if applicable the Alternative Collection Agent to recover payment of Transition Charges in accordance with Article 5.

"Electricity Invoice" means an invoice issued by an Electricity Distributor (or in its stead, by an Alternative Collection Agent), by the Servicer or by a Retailer, in each case to a Regulated Consumer that is served by the Electricity Distributor's distribution system in respect of electricity charges, including the cost of electricity, delivery and regulatory charges and related services and amounts incurred, assessed or charged in respect of connectivity to such Electricity Distributor's distribution system and in respect of applicable Transition Charges to be charged to the Regulated Consumer under this Act. **[NTD: The Alternative Servicer should only invoice for Transition Charges, not the entire invoice. Also, to avoid confusion, we suggest using the word "invoice" in reference to what the IESO sends out to distributors, and "bills" in reference to what distributors send out to consumers.]**

"Estimate" means (a) in relation to costs, expenses or payments in respect of Funding Obligations or any Finance Amount for a Reference Period, the estimated amount of such costs, expenses or payments determined by the Financial Services Manager; and (b) in relation to an assessment of the benefits of the Green Generation Initiative to Regulated Consumers, the estimated value (in current dollars) of such benefits determined by the Delegate, in each case having regard to the applicable principles and parameters set out in Schedule 1, which estimated amounts shall be determinative as the applicable estimate for the purposes of this Act except to the extent of a manifest calculation error.

"Estimated Future Green Transition Benefits" means, in respect of a Measurement Date, the Estimate set forth in the Fair Allocation Plan prepared in accordance with Article 7 of the aggregate value (measured in current dollars) of the benefits that are expected to accrue to Regulated Consumers from the establishment and implementation of the Green Generation Initiative during the period from the Measurement Date to the Program-End Date.

"Estimated Past Green Transition Benefits" means, in respect of a Measurement Date, the Estimate set forth in the Fair Allocation Plan prepared in accordance with Article 7 of the aggregate value (measured in current dollars) of the benefits that have accrued to Regulated Consumers from the establishment and implementation of the Green Generation Initiative up to and including the Measurement Date.

"Fair Allocation Plan" has the meaning given in Article 1.

"Finance Amount" means, for a Reference Period, the sum (without duplication) of the following amounts that are or become payable during the Reference Period in respect of all Absolute Assignees: (a) Repayments; (b) Net Funding Costs; (c) Redemption Amounts; (d) Finance Reserve Deposits; and (e) Additional Funding Charges.

"Finance Reserve Deposits" means, for a Reference Period, the amount by which (a) deposits made or to be made during the Reference Period in order to pre-fund, collateralize, over-collateralize or establish reserves for the ultimate payment of Funding Obligations or for related contingencies specified in the Financing Plan, exceed (b) any Finance Reserve Withdrawals. **[NTD: Move this to regulation.]**

"Finance Reserve Withdrawals" means, for a Reference Period, the amount withdrawn during the Reference Period from deposits previously made to pre-fund, collateralize, over-collateralize or establish reserves for the payment of Funding Obligations or to pay amounts in respect of related contingencies that had been specified in the Financing Plan. **[NTD: Move this to regulation.]**

"Financial Services Manager" means OPG or, following any Replacement Event involving OPG, such other person who may be appointed as the financial services manager of the Absolute Assignees under the Financing Plan in compliance with the requirements set out in Schedule 2.[3]

"Financing Entity" means any entity established at the initiative of and managed by the Financial Services Manager to support the Financing Plan.[4]

"Financing Plan" means the written plan prepared by the Financial Services Manager in accordance with Article 9, as the same may be amended, amended and restated or terminated by the Financial Services Manager in accordance with Article 9 from time to time.

"Funding Obligation" means, in respect of an Absolute Assignee, each payment obligation (including, without limitation, each obligation to pay: principal, interest, premiums and other financing charge payments; pass-through payments; payment obligations arising under or in respect of derivatives; payment obligations owing to service providers, Financial Services Managers, finance entity intermediaries, capital markets intermediaries, advisors, lenders, credit enhancement providers, liquidity providers, disbursement counterparties, regulatory agencies and rating agencies; and all Additional Funding Charges) incurred by or on behalf of the Absolute Assignee under

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[3] There must only be one Financial Services Manager.

[4] MOE to confirm that the legislation will provide that any Financing Entity that is a wholly-owned subsidiary of OPG (1) would not be subject to Part VI of the *Electricity Act* (Ontario) and (2) in the case of any Financing Entity that is a trust, any income of such trust (for purposes of the *Income Tax Act* (Canada) or the *Taxation Act, 2007* Ontario)) which is paid or made payable to OPG or a wholly-owned subsidiary of OPG as a beneficiary of such trust will not be taken into account in calculating the amount of a payment required to be made by OPG (or such subsidiary) by section 89 or 90 of the Electricity Act.

the Financing Plan, including any Refinancing of another such payment obligation incurred by or on behalf of such Absolute Assignee.

"Future Fair Share of Green Transition Benefits" means, in respect of a Measurement Date, the sum of (a) the Over-Assessed Amount; and (b) the Estimated Future Green Transition Benefits, in each case as of the Measurement Date.

"Global Adjustment" has the meaning given in Article 1.

"Green Costs Adjustment" has the meaning given in Article 1.

"Green Generation Initiative" has the meaning given in Article 1.

"IESO" means the Independent Electricity System Operator created pursuant to Part II of the *Electricity Act, 1998*.

"IESO Electricity Distribution Receipts" means, for a month, the sum of all amounts payable by Electricity Distributors to IESO , during the month pursuant to section • of the *Electricity Act* in respect of Regulated Consumers. **[NTD: IESO indicates that it likely does not work to express in regards to "amounts payable by the LDCs" because settlement between the IESO and LDCs entails payments by LDCs to the IESO and then credits/debits by the IESO to LDCs to reflect RPP shortfalls/overages.]**

"IESO Funding Shortfall" means, for a month, the amount, if any, by which (a) the IESO Electricity Distribution Receipts that would be payable to IESO for the month if determined without regard to this Act and without regard to the changes made to section 25.33 of, and O.Reg. 429/4 under, the *Electricity Act* with respect to the Global Adjustment concurrently with this Act, exceeds (b) the IESO Electricity Distribution Receipts payable to IESO for the month[5].To the extent reasonably necessary to give effect to this Act, or any transaction contemplated hereby, IESO shall calculate the IESO Funding Shortfall for any month taking into account information provided by the Electricity Distributors and (i) such calculation shall be binding for all purposes; and (ii) any demonstrated inaccuracy in the calculation for any month (including any such resulting from inaccuracies in the information provided by Electricity Distributors) shall be accounted for by adjusting the IESO Funding Shortfall for a subsequent month. **[NTD: Need to add the mechanism for IESO to record this shortfall because without that there is no Regulatory Asset. This IESO Funding Shortfall is the regulatory asset owned by IESO.]**

"IESO Remittances" means, for a Settlement Date, all Electricity Distributor Remittances received by IESO or if applicable the Alternative Collection Agent prior to the Settlement Date and that have not otherwise been remitted to the Regulatory Asset Owners (each with respect to its Regulatory Asset) in accordance with Section 5(6), including the proceeds of any enforcement action undertaken by IESO or if applicable the Alternative

[5] This has been recast to recognize that the shortfall in the first 4.5 years could exceed the entire GA amount. A more refined approach to describing the concept may be considered.

Collection Agent to recover payment of amounts payable by Electricity Distributors to IESO in accordance with Article 5.

"IESO Successor" means the entity appointed by the Province to succeed to the rights and obligations of IESO as the entity responsible for managing the Province's electricity system.

"Investment Interest" means an ownership interest in, to or under the Regulatory Asset that is acquired by an Absolute Assignee pursuant to a Disposition.

"Investment Remittance" means, for a month, the lesser of (a) the aggregate amount of all IESO Remittances for the month, and (b) the sum of the Funding Obligations due and payable by all Absolute Assignees in respect of the month.

"Measurement Date" means [Insert relevant date around the Legislation Implementation Date] and any other date specified as such under the Fair Allocation Plan.

"Net Funding Costs" means, for a Reference Period in respect of a Financing Entity, the amount by which (a) the aggregate of all interest, scheduled principal and other periodic finance charges accruing due and becoming payable or paid by or on behalf of the Absolute Assignee during the Reference Period in respect of its Funding Obligations, including such amounts as may be prescribed, exceeds (b) the aggregate of all amounts received by or on behalf of the Absolute Assignee during the Reference Period in respect of the Funding Obligations referred to in (a), including such amounts as may be prescribed.

"OEB" means the Ontario Energy Board, together with its successors.

"OPG" means the corporation incorporated as Ontario Power Generation Inc. under the *Business Corporations Act* on December 1, 1998, together with its successors.

"Over-Assessed Amount" means, in respect of a Measurement Date, the amount (if any) by which (a) the Assessed Past Green Transition Costs, exceeds (b) the Estimated Past Green Transition Benefits, each as determined as of the Measurement Date.

"Period Finance Charges" means, for a Reference Period, the sum of (a) the Estimate of the Finance Amount (b) the True-Up Amount in respect of the applicable True-Up Period and (c) an adjustment amount as may be prescribed to account for estimated collection shortfalls and collection delays in respect of amounts under (a) and (b).

"Pledge" means, in respect of an Investment Interest of an Absolute Assignee, a lien, mortgage, charge or security interest granted to or in favour of a Pledgee by the Absolute Assignee in, to and over all or a specified portion (including a specified portion on a divided basis or by way of an undivided interest) of the Investment Interest.

"Pledgee" means a person to whom an Absolute Assignee grants a Pledge.

"Program End Date" means •, [2047].

"Province" means the Province of Ontario.

"Redemption Amount" means the amount payable by or on behalf of an Absolute Assignee to redeem, prepay or repurchase a Funding Obligation incurred by or on behalf of the Absolute Assignee, including any premium, make-whole or other additional amount becoming payable under the Funding Obligation to give effect to such redemption, prepayment or repurchase.

"Reference Period" means (a) the period from (and including) the Measurement Date to (and including) October 30, 2017, (b) each six month period commencing [May 1st and November 1st] thereafter and (c) any other period specified as such in the Fair Allocation Plan.

"Refinancing" means, in respect of a Funding Obligation incurred by or on behalf of an Absolute Assignee, that the Funding Obligation is repaid or repurchased for cancellation by or on behalf of the Absolute Assignee by applying the net proceeds obtained by the Absolute Assignee incurring one or more other Funding Obligations.

"Regulated Consumer" means consumers of electricity in the Province as prescribed.

[NTD: There are a number of issues with this definition. First, the word "Retail" is a source of confusion as it implies customers of licensed retailers. Really, the purpose of the term is to define the group of consumers that are eligible to receive the benefit of the Fair Hydro program and who will bear the cost of the program over the long term. We have proposed "Regulated Consumer" but you could also use the term "Eligible Consumer" or "Fair Hydro Eligible Consumer" and for purposes of the legislation to say that it is a member of a class of consumers prescribed by the regulations for purposes of the relevant section of the legislation. The regulation would then describe who is in the class. Second, it may not be appropriate to rely on the class of consumers prescribed for the purposes of s. 79.16 or under the OREC Act. Section 79.16 is the section that defines the class of RPP consumers. We understand that the "Fair Hydro Eligible Consumers" are not an identical class to that which is eligible for the RPP or for the Ontario Rebate for Electricity Consumers. For example, we have heard that Fair Hydro Eligible Consumers will (a) exclude consumers served by independent power authorities (certain remote communities not served by Hydro One Remotes), and (b) include consumers served by licensed unit sub-metering providers, licensed retailers and certain consumers served directly by the IESO (which may or may not be captured by the classes under 79.16 or OREC). Third, it is not clear why consumers with contracts with retailers who use retailer consolidated billing are removed from the first part of the definition but then added back into the second part of the definition. Fourth, Retailers do not necessarily have physical electricity assets that would be connected to the grid. Some just sell or offer contracts for electricity. As such, the first few lines after (b) are problematic. Fifth, the phrase "purchase electric generation services from a provider of electric generation services other than the owner of the Province's transmission and distribution system assets" does not make sense. A consumer does not purchase generation services from a transmitter or distributor. Rather, a consumer receives distribution services from a distributor. In addition to charging for its distribution services, the distributor also charges the associated

transmission costs and commodity costs associated with the volumes delivered. Those commodity costs are the price of the electricity itself and are almost entirely made up of the amounts determined under the global adjustment. Sixth, the phrase "whether or not the transmission and distribution system assets continue to be owned or operated by Electricity Distributors or operated by IESO" does not make sense. Transmission assets are owned and operated by transmitters. Distribution assets are owned and operated by distributors. The IESO does not own but does administer and direct the operation of the transmission system.]

"Regulatory Asset" means the property rights and interests described in Section 6(1), which collectively is comprised of each Investment Interest.

"Regulatory Asset Account" means (a) for an Electricity Distributor, any bank account into which the Electricity Distributor deposits or receives Transition Charge Collections; and (b) for the Servicer, any bank account into which Servicer deposits or receives Transition Charges, Electricity Distributor Remittances or IESO Remittances.

"Regulatory Asset Owner" means each Absolute Assignee, as owner of its Investment Interest or Investment Interests, and "Regulatory Asset Owners" means collectively each such Absolute Assignee, who together own the entirety of the Regulatory Asset and are required to exercise their individual rights of ownership in accordance with Section 6(7).

"Related Rights" means, with respect to a Regulatory Asset Owner's Investment Interest, all rights of any kind (whether in tort, contract or otherwise) that attach or are attendant or incidental to any of the other property rights or interests that comprise such Investment Interest.

"Remittance Date" means, in respect of an Electricity Distributor, each day on which it is required to remit Electricity Distribution Remittances to Servicer or if applicable the Alternative Collection Agent as specified in accordance with any Funding Obligation or, if no such day is specified in accordance with any Funding Obligation, then the Business Day **[NTD: Not defined.]** preceding each Settlement Date. **[NTD: Move to Regulations. Remittances will be in accordance with the current rules.]**

"Repayment Obligation" means an obligation to repay or to provide for the repayment (including by making a related Finance Reserve Deposit) of, all or a portion of the amount advanced to the Absolute Assignee under a Funding Obligation.

"Repayment" means a payment by an Absolute Assignee made to satisfy a Repayment Obligation, other than to the extent that the payment is made by applying the proceeds of a Refinancing or from Finance Reserve Withdrawals.

"Replacement Event" means any event specified as such in a Funding Obligation.

"Retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity.

"Retailer Consolidated Billing" has the same meaning as in the *Retail Settlement Code* issued by the Ontario Energy Board.

"Servicer" means IESO or IESO Successor, as agent for and on behalf of the Regulatory Asset Owners, for the purposes set forth in Article 4.

"Settlement Date" means the [last Business Day of any month].

"Transition Charge" means, the amount recoverable from a Regulated Consumer in respect of a Reference Period, being the Period Finance Charge as allocated to such Regulated Consumer in accordance with Article 4(3) on a monthly basis. **[NTD: This needs to be grossed up to account for variability associated with expected uncollectables and remittance delays.]** **[NTD: Do not need to create parallel process. The definition should be linked to the OEB process for determining the volumetric rate as part of the RPP process (see s. 4(2)). The OEB will determine volumetric rate based on forecast consumption, number of consumers, etc. to recover the Period Finance Charges.]**

"Transition Charge Collection" means any amount received **[or deemed by this Act to have been received]** by the Absolute Assignees upon the collection of a Transition Charge paid by or on behalf of a Regulated Consumer, including any proceeds arising from the exercise and enforcement of any related rights and interests under or in respect of the Regulatory Asset.

"True-Up Amount" means, in respect of a Reference Period, the amount (which may be a negative amount) calculated by the Financial Services Manager equal to (a) the Actual Finance Amount for such related True-Up Period, minus (b) the Estimate of the Finance Amount for the related True-Up Period, , plus (c) the Collected Amount Adjustment for such related True-Up Period. **[NTD: need to discuss how this will work for our true-up. What about prior period shortages? An example of how this works needs to be provided.]**

"True-Up Period" means, in relation to a Reference Period, the immediately preceding Reference Period.

"Undertaking of Her Majesty in right of Ontario" means the undertaking of Her Majesty in right of Ontario given under Section 11(2).

Article 3 – Transition Charges

(1) **Regulated Consumer Obligation to Pay a Transition Charge** – Each Regulated Consumer shall pay each Transition Charge charged to it in any Electricity Invoice issued to such Regulated Consumer by its Electricity Distributor or by an Alternative Servicer under Section 4(1), in each case on the terms of payment specified in the related Electricity Invoice.

(2) **Indebtedness of Regulated Consumers** – Until paid, a Transition Charge charged to a Regulated Consumer in an Electricity Invoice shall, together with any applicable late payment fees and finance charges arising under the terms of the Electricity Invoice with respect to such Transition Charge, constitute non-bypassable indebtedness of the

Regulated Consumer to the Regulatory Asset Owners, each with respect to its respective interest in the Regulatory Asset. Such indebtedness shall constitute a single and separate[6] debt obligation owing by the Regulated Consumer, which subject to Article 5 may be enforced independently from any other payment obligation or indebtedness owing by the Regulated Consumer under the Electricity Invoice or otherwise.[7]

(3) No Set-Off or Reduction – A Regulated Consumer may not set-off or reduce (by counterclaim, defense or otherwise) the amount payable by it in respect of any Transition Charge, including any set-off against or in respect of any amount owing or becoming payable to such Regulated Consumer by its Electricity Distributor, any Regulatory Asset Owner or any other person.

(4) Allocation of Regulated Consumer Payments – If an Electricity Distributor receives a payment made by or on behalf of a Regulated Consumer in respect of amounts due and payable under one or more Electricity Invoices that is less than the total amount payable thereunder, such payment shall be subject to rights and benefits that are no less favourable than the treatment accorded to other amounts payable to the IESO by the Electricity Distributor.

(5) Transition Charges are Irrevocable – The Transition Charges arising under or in respect of Funding Obligations (including any adjustments based on modifications to such Funding Obligations made in compliance with the Financing Plan or as a result of amendments to the Financing Plan made in accordance with Section 9(3)) are deemed to be irrevocable, final and effective without any further action, except to the extent of manifest calculation error. For greater certainty, a Transition Charge may include Finance Amounts for a Reference Period regardless of whether the payment of such Finance Amounts are inconsistent with the Fair Allocation Plan applicable at the time such payments are due and payable, and regardless of whether the related Funding Obligation was properly incurred under the Financing Plan. In no case shall a Funding Obligation incurred under the Financing Plan be affected by a subsequent amendment to the Fair Allocation Plan.

(6) True-Up of Transition Charges? – [NTD: Include specifics regarding the true-up of the charges and the process for the true-up, but move to Regulations. The True-Up Mechanism should require the Transition Charges to be reviewed and adjusted semi-annually to ensure the expected recovery of amounts sufficient to timely provide all payments in respect of Funding Obligations, provided that in some cases it may need to be adjusted more frequently than semi-annually, e.g., as part of a refinancing.]

(7) Commencement of Invoicing and Collection of Transition Charges – [NTD: Please confirm that as drafted, Transition Charges will begin on the Measurement Date.]

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[6] Determine if this is critical for rating and markets. Logistics under consideration.

[7] Torys has also suggested that deemed conditions of licenses for distributors, retailers and unit sub-metering providers, could be included as conditions, to require them to collect and remit amounts in accordance with this legislation. Consider if it is helpful to integrate the existing regulatory scheme for invoicing and collections (regarding RPP) in the legislation.

Article 4 – Invoicing of Transition Charges [NTD: Move Article 4 sections (1) to (4) to Regulations. Also note, these sections remain subject to further due diligence by the Dealers.]

(1) **Inclusion of Transition Charges in Electricity Invoices** – Each Electricity Distributor and if applicable any Alternative Servicer shall, as an agent of the Regulatory Asset Owners, specify the Transition Charge to be charged to a Regulated Consumer pursuant to Section 4(4) in respect of a related Reference Period in each Electricity Invoice issued by the Electricity Distributor or if applicable by the Alternative Servicer to the Regulated Consumer in respect of such Reference Period. Upon the inclusion of a Transition Charge in an Electricity Invoice, the obligation to pay such amount shall be binding on the applicable Regulated Consumer. **[NTD: Must capture bills issued to eligible consumers served by unit sub-metering providers, retailers and the IESO – not just distributors][NTD: This provision also needs to address the inclusion of Transition Charges in invoices from the IESO to the LDC, consistent with the current process of how the IESO bills LDCs.]**

(2) **Calculation of the Period Finance Charge** – Not later than [35] days prior to the first day of a Reference Period, each Absolute Assignee (or the Financial Services Manager on its behalf) shall provide the OEB with written notice of each Estimate of a Finance Amount payable by it or on its behalf in respect of the Reference Period. Not later than one month prior to the first day of a Reference Period, each Absolute Assignee (or the Financial Services Manager on its behalf) shall calculate the Period Finance Charge applicable to the Reference Period having regard to such amounts specified by the Servicer, which calculations, information and amounts shall be accepted by the OEB and shall be determinative, except to the extent of manifest calculation error or misstatement.

(3) **Calculation and Attribution of Transition Charges** – Not later than 25 days prior to the first day of a Reference Period, the OEB shall apply the Attribution Methodology to determine the allocation of the Transition Charge for each Regulated Consumer. **[NTD: We think the OEB would be determining the Fair Hydro recovery rate (on a volumetric basis) that distributors would then be required to charge to consumers]**

(4) **Notice of Transition Charges** – Not later than 20 days prior to the first day of a Reference Period, the OEB shall inform each Electricity Distributor and if applicable any Alternative Servicer of the Transition Charges to be specified in the Electricity Invoices to be issued to each Regulated Consumer who is served by the Electricity Distributor.

(5) **Adjustments** – The amount of any Transition Charge charged to a Regulated Consumer and specified as such in an Electricity Invoice shall be determinative of the amount of indebtedness created thereby and owing in respect of such Transition Charge, except to the extent of any manifest calculation error.

(6) **Successors of Electricity Distributors** – Any successor of an Electricity Distributor shall be bound by the requirements of Article 4 and shall perform and satisfy all duties and obligations of such Electricity Distributor under Article 4 in the same manner and to the same extent as such Electricity Distributor, including the obligation under Article 4 to impose, attribute, charge, bill and invoice the Transition Charges.

(7) **IESO Successor** – Any IESO Successor shall be bound by the requirements of Article 4 and shall perform and satisfy all duties and obligations of IESO under Article 4 in the same manner and to the same extent as IESO, including the obligation to calculate and provide notice of Transition Charges.

(8) **Appointment of an Alternative Servicer** – If a Replacement Event occurs in respect of any Electricity Distributor, the Absolute Assignees shall, in accordance with the Collective Rights Agreement, be permitted, by an instrument in writing, to appoint an Alternative Servicer to perform some or all of the obligations and duties required to be undertaken by such Electricity Distributor under this Article 4, as and to the extent specified in such appointment. Upon acceptance of such appointment, the Alternative Servicer shall become obligated to perform such assumed obligations in replacement of such Electricity Distributor. Any Electricity Distributor that is replaced under this Section 4(8) shall promptly transfer all rights, powers, privileges and property interests in its possession or within its control in the performance of such obligations and duties to the Alternative Servicer and shall take such further actions, including the execution of instruments, necessary to give full and final effect to such transfer and to permit the Alternative Servicer to perform such obligations and duties on behalf of the Regulatory Asset Owners. **[NTD: We would expect the IESO to manage this in accordance with its normal business practices.]**

(9) **Absolute Assignees have Standing** – The Absolute Assignees, acting together in accordance with the Collective Action Agreement, may bring actions against any Electricity Distributor, IESO, the Servicer, Alternative Servicer or any other person who may be authorized to issue Electricity Invoices to Regulated Consumers for a failure to impose, attribute, charge, bill or invoice Transition Charges or to otherwise comply with this Act. Any court of the Province shall have jurisdiction over any actions brought before it by the Absolute Assignees in relation to any such failure and may make any interim or final order it thinks fit in this regard. **[NTD: We would like to see the sections on "Standing" to bring an action to remain in the legislation (as opposed to being moved to the regulations as we believe we previously suggested) as we see those provisions as part of ensuring a rigorous enforcement scheme for the Financing Entity (and so something that should be difficult for the Province to change going forward).]**

(10) **No Set-Off or Reduction –** No Servicer or Electricity Distributor may set off or reduce (by counterclaim, defence or otherwise) the amount payable by it pursuant to this Article 4.

(11) **Regulations** – Regulations may be enacted for the purpose of specifying further rights, powers, privileges, duties and obligations that shall apply to IESO, any Electricity Distributor or any Alternative Servicer to ensure that Transition Charges are properly charged to Regulated Consumers and specified as such in Electricity Invoices.

Article 5 – Collections and Remittances [NTD: Move Article 5 sections (3), (6), (9), (12), (13) and (14) to Regulations.]

(1) **Duty to Collect as Agent** – Electricity Distributors or if applicable any Alternative Collection Agent shall, as an agent of the Servicer, collect amounts owing by Regulated Consumers in respect of Transition Charges charged to such Regulated Consumers in

Electricity Invoices issued by the Electricity Distributor or if applicable such Alternative Collection Agent all in accordance with the Regulations. **[NTD: The obligation to collect and remit the Transition Charge should be included as a deemed condition of license for electricity distributors (and retailers and unit sub-metering providers).]**

(2) **Segregation of Transition Charge Collections** – An Electricity Distributor or if applicable any Alternative Collection Agent shall promptly segregate Transition Charge Collections from other payments received by it from Regulated Consumers and deposit such Transition Charge Collections into its Regulatory Asset Account.[8] **[NTD: Determine if this is critical for rating and markets or if segregation can occur in the hands of the IESO]** Prior to and following a deposit of Transition Charge Collections having been made into its Regulatory Asset Account, the Electricity Distributor or if applicable any Alternative Collection Agent shall hold such amounts in trust for the Regulatory Asset Owners or its Pledgee.

(3) **Electricity Distributor Remittances** – On each applicable Remittance Date, an Electricity Distributor shall remit all amounts invoiced by the IESO on account of the Transition Charge in respect of the related Reference Period to or to the account of Servicer or if applicable the Alternative Collection Agent. **[NTD: It is the Dealers expectation that the Transition Charge will be paid on the same basis as other amounts invoiced by the IESO, failing which, they will need to be remitted daily.]**

(4) **Duty to Collect Electricity Distributor Remittances** – Servicer or if applicable any Alternative Servicer shall, as an agent of the Regulatory Asset Owners, accept and collect Electricity Distributor Remittances from Electricity Distributors and Transition Charge Collections from Regulated Consumers that pay their Electricity Invoices directly to IESO on the same basis as it accepts and collects other charges from such Regulated Consumers.[9]

(5) **Segregation of Electricity Distributor Remittances** – Servicer and if applicable the Alternative Collection Agent shall promptly segregate Electricity Distributor Remittances from other payments received or held by it and deposit such Electricity Distributor Remittances into its Regulatory Asset Account. Prior to and following a deposit of Electricity Distributor Remittances having been made into its Regulatory Asset Account, Servicer or if applicable any Alternative Collection Agent shall hold such amounts in trust for the Regulatory Asset Owners or Pledgee.

(6) **Servicer Remittances** – On each Settlement Date[10], Servicer shall remit all amounts on deposit in its Regulatory Asset Account to or to the account of the Absolute Assignees an amount equal to the Investment Remittance for the related month.

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[8] Consider trying to attach to existing LDC credit enhancements and provide parallel coverage for customer losses.

[9] Consider building this obligation into a deemed condition of licence for the IESO.

[10] Consider frequency of remittances in light of rating requirements. US rating agencies favour daily remittances.

(7) **Successors of Electricity Distributors** – Any successor of an Electricity Distributor shall be bound by the requirements of Article 5 and shall perform and satisfy all duties and obligations of such Electricity Distributor under Article 5 in the same manner and to the same extent as such Electricity Distributor, including the obligation under Article 5 to collect Transition Charges and make remittances of Electricity Distributor Remittances.

(8) **IESO Successors** – IESO Successors shall be bound by the requirements of Article 5 and shall perform and satisfy all duties and obligations of IESO under Article 5 in the same manner and to the same extent as IESO, including the obligation to collect Transition Charge Collections, Electricity Distributor Remittances and to remit IESO Remittances.

(9) **Owners of Distribution Assets** - If any person other than an Electricity Distributor acquires distribution system assets in the Province or invoices or collects electricity distribution rates in the Province[11], then such person shall, if requested by the Absolute Assignees, be obligated to act diligently to (a) facilitate the invoicing and collection of any Transition Charges applicable to Regulated Consumers connected to such person's distribution system assets; (b) allocate partial payments by Regulated Consumers as provided in this Act; (c) exercise all enforcement rights of the Absolute Assignees for the benefit of an Absolute Assignee; and (d) remit any Transition Charge Collections to the Absolute Assignees or Pledgees, as applicable, each in accordance with its Investment Interest. **[NTD: Such acquisition of a distribution system would require the person to be an electricity distributor; consider deleting since this is covered off by Section 5(7).]**

(10) **Absolute Assignees have Standing** – The Absolute Assignees, acting together in accordance with the Collective Action Agreement, may bring actions against any Electricity Distributor, Servicer, the Alternative Collection Agent, any owner of electricity distribution system assets in the Province or any other person who may be authorized to collect electricity distribution and use charges from Regulated Consumers for a failure to collect Transition Charges, remit or collect Electricity Distributor Remittances or remit IESO Remittances, as and to the extent applicable under Article 5, or to otherwise comply with this Act. Any court of the Province shall have jurisdiction over any actions brought before it by the Absolute Assignees in relation to any such failure and may make any interim or final order it thinks fit in this regard.

(11) **Not Used. [NTD: The Servicer should manage this process.**]

(12) **No Set-off, etc.** - The Regulatory Asset, including rights in Transition Charges, Transition Charge Collections, and the interests of a Regulatory Asset Owner, an Absolute Assignee and a Pledgee therein, may not be setoff or reduced (including by counterclaim, surcharge or defense) by any Regulated Consumer, any Electricity Distributor, Servicer, Alternative Collection Agent or any owner of distribution system assets in the Province or any other person or in connection with any default, bankruptcy, reorganization or other insolvency proceeding of any Electricity Distributor, Servicer,

[11] This is in anticipation of a possible future restructuring of the distribution system.

Alternative Collection Agent or any owner of distribution system assets in the Province, any affiliate or successor thereof or any other entity or otherwise.[12]

(13) **Sequestration** – If any Electricity Distributor, Servicer, the Alternative Collection Agent or any owner of distribution system assets in the Province or any other person or entity authorized to collect Transition Charges, defaults on any required remittance of Transition Charge Collections, Electricity Distribution Remittances or IESO Remittances under Article 5, any court in the Province, upon application by and of the Absolute Assignees acting collectively under the Collective Action Agreement and without limiting any other remedies otherwise available to the Absolute Assignees or Pledgees, shall order the sequestration and payment of the Transition Charge Collections, Electricity Distribution Remittances and IESO Remittances, as applicable, for the benefit of the Absolute Assignees, each with respect to its Investment Interest, and the Pledgees as applicable.[13]

[NTD: Suggest considering a more typical remedy such as the ability to appoint a receiver. Concept should be moved to Regulations.]

(14) Regulations – Regulations may be enacted for the purpose of specifying further rights, powers, privileges, duties and obligations that shall apply to Servicer, any Electricity Distributor or any Alternative Collection Agent to ensure that rights, interests, entitlements, benefits and proceeds in, to, under and from the Regulatory Asset are of fully realized by some or all of the Absolute Assignees and Pledgees.

Article 6 – The Regulatory Asset

[NTD: We believe that the statute should impose a time limit on the ability of IESO to create additional Regulatory Assets under this Act. It is our expectation that this will be no later than 10 years after the commencement of the program.]

[NTD: In addition, additional language is required to address the acquisition of the Regulatory Asset by the Financing Entity, including reference to the consideration being provided for it, funding upfront costs.]

[NTD: The sale of Regulatory Assets must be restricted to Financing Entities controlled by a single entity (initially, OPG).]

[NTD: For greater certainty, a Financing Entity will not be required to purchase Regulatory Assets from IESO.]

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[12] Consider whether it makes sense to create a "deemed collection" payment obligation on Electricity Distributors to the extent a Regulated Consumer reduces its payment of Transition Charges, despite this language. Same for Electricity Distributor Remittances and IESO Remittances.

[13] Consider adding or substituting this provision for a right to appoint a receiver.

(1) **Composition** – The Regulatory Asset shall constitute a current and irrevocable property right and interest consisting, collectively, of the following rights and interests (without duplication):

a. the right of a Regulatory Asset Owner to record its portion of the Regulatory Asset in its accounts;

b. the right to impose, bill, invoice, collect and receive Transition Charges from Regulated Consumers, including the right to determine the amount of Transition Charges in accordance with this Act;

c. the right to enforce the obligations and indebtedness of each Regulated Consumer to pay the Transition Charges charged to the Regulated Consumer from time to time in accordance with Article 3, together with all related late payment fees or interest charges arising in respect thereof under the related Electricity Invoices; **[NTD: Do we really want and need the ability for the Financing Entities to chase after individual consumers?] [NTD: This should be the right to provide notices to the OEB of the amounts required for recovery, which the OEB would then be required to accept for purposes of determining the amount of Transition Charges to be charged to consumers]**

d. the right to enforce the duties and obligations of each Electricity Distributor and if applicable the Alternative Servicer to impose, attribute, charge, bill and invoice the Transition Charges in accordance with Article 4;

e. the right to enforce the duties and obligations of each Electricity Distributor and if applicable the Alternative Collection Agent to collect, receive and remit amounts received by it in respect of Transition Charges as Electricity Distributor Remittances to or to the account of Servicer or if applicable the Alternative Collection Agent in accordance with Article 5, including all collections and the proceeds of any enforcement action undertaken by the Electricity Distributor or if applicable the Alternative Collection Agent to recover payment of Transition Charges in accordance with Article 5;

f. the right to enforce the duties and obligations of Servicer and if applicable the Alternative Collection Agent to collect and receive Electricity Distributor Remittances and to remit IESO Remittances to or to the accounts of the Regulatory Asset Owners, each with respect to its respective interest in the Regulatory Asset, in each case in accordance with Article 5, including all collections and the proceeds of any enforcement action undertaken by it to recover payment of Electricity Distributor Remittances in accordance with Article 5;

g. the right to receive and collect all Transition Charge Collections, all Electricity Distributor Remittances and all IESO Remittances in accordance with Article 5;

h. all rights and entitlements under each Regulatory Asset Account and all amounts on deposit in any such Regulatory Asset Account;

i. all Related Rights; and

j. all revenue, collections, claims, payments, money and proceeds of or derived from the rights described in (a) through (i), regardless of whether such revenue, collections, claims, payments and proceeds are imposed, invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

A Regulatory Asset and the property rights and interests therein shall exist whether or not Transition Charges have been imposed, charged, invoiced, accrued or collected and notwithstanding that the imposition, attribution, invoicing and collection of Transition Charges will depend on further actions that may not have occurred. The Regulatory Asset shall continue to exist until all Funding Obligations and Additional Funding Charges have been paid in full.

(2) **Validity of Dispositions** – A Disposition by IESO of all or any part of the IESO Funding Shortfall to an Absolute Assignee, or a Disposition of all or any part of an Investment Interest by one Absolute Assignee to another Absolute Assignee made under the Financing Plan, shall be permitted and when made shall be valid and enforceable in accordance with the terms of the related Disposition Document and shall be effective to confer upon the Absolute Assignee thereof a valid property right and interest in, to and under the IESO Funding Shortfall or Investment Interest, as applicable (or relevant portion thereof) in accordance with the terms of such Disposition, provided that the parties to the applicable Disposition Document have expressly stated therein that such Disposition is a sale or other absolute transfer. Without limiting the foregoing, any Disposition that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as a true sale and absolute transfer of the IESO Funding Shortfall or an Absolute Assignee's right, title and interest in, to and under an Investment Interest, as applicable (or relevant portion thereof), and not merely as a Pledge thereof, and upon such Disposition the assigner or seller under the applicable Disposition Document shall retain no right, title or interest in the IESO Funding Shortfall or Investment Interest (or relevant portion thereof) subject to the Disposition, including all rights under the IESO Funding Shortfall or Investment Interest arising after such Disposition. **[NTD: Subject to review by Osler/dealers.]**

(3) **Perfection and Priority of Dispositions** – Any Disposition of an interest in a Regulatory Asset shall be vested, valid, binding and perfected from the time when such Disposition is made. Such Disposition shall be perfected, vested, valid and binding as against the IESO or transferring Regulatory Asset Owner, as applicable, and all other persons who have claims of any kind (whether in tort, contract or otherwise) against IESO or the transferring Regulatory Asset Owner, as the case may be, irrespective of whether such persons have notice of the Disposition and the property rights and interests acquired by the Absolute Assignee under such Disposition shall be free and clear of any liens in favour of such other persons.

(4) **Validity of Pledges** – A Pledge by an Absolute Assignee may be made to secure any Funding Obligation and when made shall be valid and enforceable in accordance with its terms and shall be effective to confer upon the Pledgee a valid security interest in, to and in respect of the related Investment Interest in accordance with the terms of the

Pledge. No consent of, or notice to, any person shall be required to give effect to a Pledge made to secure any Funding Obligation.

(5) **Perfection and Priority of Pledges** - For purposes of the *Personal Property Security Act* (the "PPSA"), the Regulatory Asset shall be intangible personal property and any Pledge made by an Absolute Assignee in respect of a Funding Obligation shall, subject to the terms thereof, give rise to a security interest of which the PPSA applies, and may be perfected by filing a financing statement under the PPSA on that basis. All proceeds of a related Investment Interest that are subject to such a Pledge that are received by the Absolute Assignee shall immediately be subject to the such Pledge, and the security interest in such proceeds shall be perfected pursuant to the PPSA.[14] A Pledge perfected under the PPSA shall be a continuously perfected security interest and shall have priority over any other lien or security interest, created by operation of law or otherwise, that may attach to the property rights and interests in the Investment Interest subject to the Pledge unless the Pledgee has otherwise agreed in writing. A Pledgee shall have a perfected security interest in a related Investment Interest, including the Absolute Assignee's rights and interests in and to Transition Charge Collections or other related proceeds in respect of the Investment Interest and that are deposited in any Regulatory Asset Account or other account of any Electricity Distributor, IESO, Alternative Collection Agent or other person who may have commingled such Transition Charge Collections or such other proceeds with other funds. All provisions of the PPSA shall apply to the Regulatory Asset on the basis that it is intangible personal property, except to the extent otherwise provided in this Section 6(5).

(6) **Enforcement of Property Rights** – The rights of any Regulatory Asset Owner to collect and enforce its rights and interests in, to or in respect of the Regulatory Asset shall be exercised in the manner set forth in Article 5.

(7) **Owners of a Specified Portion of the Regulatory Asset** – A Regulatory Asset Owner may effect a Disposition to an Absolute Assignee of a specified portion of its rights and interests in the Regulatory Asset, including by way of a Disposition of a divided or an undivided interest therein as specified in a related Disposition Document. In no circumstance may the specified portions of the rights and interests in the Regulatory Asset owned by all Regulatory Asset Owners be greater than all of the rights and interests that comprise the Regulatory Asset in the aggregate.

(8) **Collective Action Required** – If a Regulatory Asset Owner's rights and interests in the Regulatory Asset comprises less than the entire property right and interest constituted by the Regulatory Asset, such Regulatory Asset Owner shall only enforce such right and interest on a collective and coordinated basis with each other Regulatory Asset Owner in accordance with the Collective Rights Agreement. **[NTD: Move to Regulations.]**

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[14] Consider whether to simply leave this and have a financing statement be filed under the PPSA. This would normalize the security interest and reduce any adverse suggestion that security would not otherwise arise.

Article 7 – Establishment of the Fair Allocation Plan[15] [NTD: Move entire Article 7 to Regulations, other than 7(1) and 7(2).]

(1) **Adoption of the Fair Allocation Plan** – The Delegate may, by written declaration, designate and adopt a Fair Allocation Plan in compliance with Article 7. The Fair Allocation Plan so designated and adopted shall be the Fair Allocation Plan for all purposes of this Act, except if amended, amended and restated or terminated by a further written declaration made by the Delegate in compliance with **[the Regulations]**

(2) **Principles and Parameters** – A Fair Allocation Plan shall seek to allocate Future Fair Share of Green Transition Benefits across present and future Regulated Consumers on a basis that the Delegate, in its sole and absolute discretion, determines to be equitable, having regard to the following principles and parameters:

[NTD: E&Y will need to see the guidelines of the Fair Allocation Plan set in reference to parameters that will allow it to establish a modeling curve]

- [**Inflation period**: (between November 2017 – and April 2022) bill increases need to be capped at inflation (assumed at 2% for modeling purposes)]

- [**Transition Period**: (May 2022- April 2027) bills increased at a consistent rate which is set so that the borrowing will not exceed the Trust's capacity, which is determined by the Finance Service Manager]

- [**Amortization Period**: (May 2027-April 2047) equitable distribution of Finance Amount among Regulated Consumers]

1. Future Fair Share of Green Transition Benefits should be allocated over the period ending on the Program End Date.

2. The share of Future Fair Share of Green Transition Benefits allocable to a particular Regulated Consumer in respect of a Reference Period should be proportionate to a reasonable assessment of the benefits of the Green Generation Initiative to such Regulated Consumer over such Reference Period, other than in exceptional circumstances.

3. The Fair Allocation Plan should specify the Reference Periods for the purpose of allocating Future Fair Share of Green Transition Benefits among Regulated Consumers on a relative basis over time.

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15 The idea is that the Fair Allocation Plan will be set once at the outset based on the principles and parameters described here, all as applied based on information available and the reasonable expectations and discretion of the delegate at such time. If the expectations are not fulfilled (e.g., generators may choose to retire their facilities at the end of their current procurement contracts and not invest in extending service lives to secure further procurement contracts), the Fair Allocation Plan will be unaffected, unless it is specifically amended (assuming amendments will be permitted by the legislation).

(3) **Attribution Methodology** – The Fair Allocation Plan shall specify the Attribution Methodology for the purposes of allocating the Period Finance Charges across the Regulated Consumers. The Attribution Methodology shall result in an attribution of such Transition Charges that is considered by the Delegate to be equitable, and may have regard to such principles and parameters as may be further set forth in a Regulation; provided that the Attribution Methodology shall not be used to limit the recovery of Transition Charges. **[NTD: Can the methodology be adjusted outside an amendment? If so, the rating agencies need to understand the limits of any adjustment.]**

(4) **Amendments of the Fair Allocation Plan** – The Fair Allocation Plan may be amended, amended and restated or terminated by the Delegate, provided that such amendment, amendment and restatement or termination shall (a) not be inconsistent with the principles and parameters set forth in (2) or (3), above, or the Regulation, (b) comply with any restrictions or limitations specified with respect thereto in any Funding Obligation, and (c) not impair any Regulatory Asset, outstanding Funding Obligation or any Transition Charges. **[NTD: If the Fair Allocation Plan is amended, there should be no further Regulatory Assets until the revised Fair Allocation Plan and corresponding Financing Plan have been approved.]**

Article 8 – The IESO Funding Shortfall

(1) **Recording of IESO Funding Shortfall** -- IESO will record any IESO Funding Shortfall in its books.

(2) **Dispositions** – IESO may effect a Disposition of all or any part of the IESO Funding Shortfall to an Absolute Assignee if (a) the Disposition is effected pursuant to a Disposition Agreement duly executed by IESO; and (b) the Financial Services Manager confirms in writing that the Disposition complies with any restrictions or limitations specified with respect thereto in any documents evidencing the Funding Obligations and is permitted under the Financing Plan.

(3) **No Continuing Interest in any Investment Interest** – IESO shall have no continuing right or interest in any IESO Funding Shortfall subject to a Disposition effected by IESO under a Disposition Document to which IESO is a party.

Article 9 – The Financing Plan [NTD: Move all of Article 9 to Regulations other than 9(1).]

(1) **Power to Prepare, Implement and Amend the Financing Plan** – The Financial Services Manager shall be authorized to prepare, implement and amend a financing plan for the Financing Entities and propose the adoption of such financing plan as the Financing Plan for the purposes of this Act. The Financial Services Manager shall have the right to withdraw its financing plan as the Financing Plan at any time if it determines that implementing the Financing Plan in such manner would not be in the best interests of a Financing Entity.

(2) Principles and Parameters of the Financing Plan – The Financing Plan shall establish the basis for each Absolute Assignee's funding decisions having regard to the principles and parameters set forth in Schedule 3.

(3) OEB Approval – Any Additional Funding Charge payable to the Financial Services Manager in respect of services provided by the Financial Services Manager (other than third party costs) shall be subject to review and approval by the OEB.

(4) Review of Financing Plan – The [OEB] shall undertake an annual review of the records maintained by the Financial Services Manager for the purpose of confirming that the Funding Obligations incurred and the Finance Amounts paid by or on behalf of the Absolute Assignees were incurred and paid, respectively, in material conformity with the Financing Plan. **[NTD: We would prefer that this be dealt with by an attestation prepared by an officer of the Financial Services Manager.]**

(5) Replacement of the Financial Services Manager – If the OEB identifies deficiencies or makes recommendations in its review under Section 9(4), the Financial Services Manager shall take reasonable measures to remedy such deficiencies if remediable, and shall in any event have regard to the recommendations of the OEB in relation to further actions undertaken by the Financial Services Manager under the Financing Plan. If the Financial Services Manager is unwilling or unable to reflect such recommendations in relation to such further actions, the Delegate may by written declaration designate one or more other persons who shall thereafter become the Financial Services Manager. Any replacement must comply with the restrictions and limitations specified in the documents evidencing the Funding Obligations.

(6) Obligation to Apply IESO Remittances – The Financial Services Manager shall ensure that amounts transferred to it under Article 5, as agent for and on behalf of the Absolute Assignees, or otherwise in respect of or as proceeds from an applicable Investment Interest shall only be applied or used to pay related Finance Amounts when they are due and payable and for no other purpose. **[NTD: This can be dealt with by contract.]**

(7) Non-Recourse – The Financing Plan shall be implemented so that Funding Obligations incurred shall be without recourse to or to any assets of the Electricity Distributors, IESO, any Alternative Servicer, any Alternative Collection Agent, the Financial Services Manager, the OEB or Her Majesty in right of Ontario, other than if and to the extent that such persons or entities are liable for the performance of obligations or duties arising under this Act or expressly agree to become liable pursuant to any Funding Obligation or obligation in relation to a Finance Amount.

(8) Incurrences are Binding – Each Disposition made to or by an Absolute Assignee, all amounts payable or becoming due and payable by or on behalf of an Absolute Assignee under or in connection with any obligation purporting to be a Funding Obligation and each Pledge entered into by an Absolute Assignee, shall be valid and binding, including in determining the amount of related Transition Charges, notwithstanding any defect in the manner in incurrence or any inconsistency with the Fair Allocation Plan or the Financing Plan.

[Article 10 – Compliance Matters[16]

(1) Right of the [OEB] to Inspect Books and Records - For the purpose of investigating compliance with the provisions of this Act, the OEB shall have the right, jurisdiction, power and authority to examine the books and records of *[Insert names if any]*.

(2) [OPG's Rate Settings – When setting other rates for or in respect of OPG, the OEB shall not take into account (a) the administrative or servicing fees charged by OPG as Financial Services Manager [in excess of the actual incremental costs incurred by such person of providing administrative or servicing services]; (b) the cost consequences to OPG of being the Financial Services Manager; or (c) the consequence of OPG consolidating the assets and liabilities of any Financing Entity for OPG's accounting purposes, in each case in setting any regulated payment amounts for OPG.][17]

Article 11 – Undertaking of the Her Majesty in right of Ontario[18]

(1) No Action to limit, alter, or impair or terminate Transition Charges, the Regulatory Asset or Collections – Her Majesty in right of Ontario shall not in any way take or permit (including by any agency or administrative body) any action to reduce, impair, postpone or terminate the obligation of Regulated Consumers to pay Transition Charges or to impair the Regulatory Asset or the collection or recovery of Transition Charge Collections, Electricity Distributor Remittances or IESO Remittances, either directly or indirectly, including through the introduction of any bill or the passing of any legislation or regulation having such effect. The amount of Transition Charges determined under this Act shall not be subject in any way to reduction, impairment, postponement or termination as a result of any action taken or failure by Her Majesty in right of Ontario (including by any agency or administrative body), including through the introduction of any bill or the passing of any legislation or regulation having such effect.

(2) Undertaking and Agreement – Her Majesty in right of Ontario shall not:

---

[16] As noted above, the outcome of any regulatory action undertaken by the OEB will not affect Funding Obligations that have been incurred under the Financing Plan. This Article and any potential role for the Auditor General is still under consideration.

[17] As an alternative to this provision, consider clarifying under s. 78.1(4) of the OEB Act (which currently gives the OEB discretion in setting payment amounts subject to O. Reg. 53/05) that the OEB in setting OPG payment amounts for prescribed generation shall not consider OPG's role as Financial Services Manager of any Financing Entities associated with the Fair Hydro initiative, perhaps with the exception of any operating fees that may be received by OPG for performing that role.

[18] Under consideration, including the dealers' request for a "servicer guarantee" and a "contractual guarantee" to address a "Change of Law" or if all or a portion of the legislation is *ultra vires*, requiring (at the lenders option), the Province to pay principal and interest on the outstanding debt until maturity or payout the entire debt including any make-wholes.

In the event of a market disruption that renders it impossible to refinance debt when required (or where financing of amounts required to service the debt is not available because of a market disruption where the Financing Entity was relying on such further issuance of debt until the recovery is set to begin to fund interest), either the Province must step in and payout the debt or there must be the right to recover the debt from ratepayers as it becomes due, notwithstanding the intended rate cut.

(a) in any way take or permit any action that limits, alters or impairs the value of any Investment Interest;

(b) except as required by the estimates and adjustments made in determining the True-up Amount, reduce, alter or impair Transition Charges that are imposed, billed, invoiced, collected and remitted for the benefit of the Absolute Assignees or any Pledgee from time to time;

(c) permit the amendment, amendment and restatement or termination of the Fair Allocation Plan if such amendment, amendment and restatement or termination would adversely affect the validity or enforceability of any Funding Obligation or the rights of an Absolute Assignee or Pledgee thereunder, or would not otherwise comply with the restrictions and limitations specified in the documents evidencing the Funding Obligations,

in each case including through the introduction of any bill or the passing of any legislation or regulation having such effect.

(3) **Successor IESO** – If IESO is restructured, dissolved or becomes insolvent or is otherwise incapable of performing its obligations under this Act, an IESO Successor shall immediately be established by Her Majesty in right of Ontario to perform such obligations.

(4) **Compensation for Failure** – Absolute Assignees shall be compensated by Her Majesty in right of Ontario for any losses suffered by them as a result of any failure by Her Majesty in right of Ontario to comply with its undertakings and agreements in this Article 11.[19]

(5) **No Wind-up of Financing Entity**. No Financing Entity may be voluntarily wound up, liquidated or dissolved until one year after all of its Funding Obligations are repaid. **[NTD: This concept can be contained in the Regulations.]**

(6) **References to the Undertaking and Agreement** – Any non-confidential reference to the Undertaking of the Her Majesty in right of Ontario, including in marketing materials and other documentation authorized for use by the Administrative in connection with any Funding Obligation, may be made provided that [*Add conditions to protect the Province*].

Article 12 – Regulations

Regulations may be made under this Act for the purposes described in Sections •,•,• and • and may be promulgated for any of the following purposes:

(a) to set standards and measures regarding the commercially reasonable requirements of the Province associated with an Absolute Assignee incurring Funding Obligations or becoming obligated to pay any Finance Amount, including to establish guidelines regarding all-in funding costs; permitted Additional

[19] Requested by Dealers. For discussion.

Funding Charges; required maturities and redemption and termination rights of Funding Obligations; liquidity requirements, in each case to a Financing Plan that is consistent in its effect with the Fair Allocation Plan;

(b) to establish and empower one or more regulated entities to undertake decision-making activities with respect to this Act;

(c) to set out reasonable requirements regarding the appointment or retention of advisors, agents, service providers, contract counterparties, including in relation to 'market terms and conditions' parameters;

(d) to provide for audit and compliance standards applicable to those persons who are or may become obligated or have duties that arise under this Act [or under any Funding Obligation];

(e) to provide for any pre-vetting and approval requirements in relation to any incurrence by an Absolute Assignee of any Funding Obligation or obligation to pay any Finance Amount; and

(f) to provide for appeal and due process considerations in connection with the establishment, adoption, implementation and review of the Fair Allocation Plan or the Financing Plan.

Article 13- Miscellaneous[20]

(1) **Choice of law** – The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the Regulatory Asset, any Transition Charge or the Undertaking of the Province shall be the laws of the Province.

(2) **Conflict of law** – In the event of conflict between this Act and any other law of the Province regarding the attachment, assignment or perfection, or the effect of perfection, or priority of any Disposition or Pledge, this Act shall govern to the extent of the conflict.

(3) **No further acts or approvals required** - Notwithstanding any provisions of any law of the Province to the contrary, no approvals, notices or authorizations other than those specified in this Act shall be required with respect to the actions to be taken in compliance with this Act, including under the Financing Plan or in relation to the establishment of the Fair Allocation Plan, and the transactions and contracts authorized in or contemplated by this Act or the Financing Plan, including the incurrence of any Funding Obligation, any Disposition, any Pledge or in the payment and performance of any attendant or incidental contract and any related expenses incurred to facilitate the preparation and implementation of the Financing Plan.

---

[20] OPG would like the specific amendments related to OPG to be included in the Bill.]

(4) **Effect of invalidity after the Incurrence of any Funding Obligation** - Effective on the date that a Funding Obligation is incurred under this Act, if any provision of this Act is held to be invalid or is invalidated, superseded, replaced, repealed or expires for any reason, that occurrence shall not affect any action allowed under this Act that is taken by any person who is or may become obligated or have duties that arise under this Act and any such action shall remain in full force and effect.

(5) **Severability** - If any Article, Section, paragraph or subparagraph of this Act or the application thereof to any person, circumstance or transaction is held by a court of competent jurisdiction to be unconstitutional or invalid, the unconstitutionality or invalidity shall not affect the constitutionality or validity of any other Article, Section, paragraph or subparagraph of this act or its application or validity to any person, circumstance or transaction, including the irrevocability of Transition Charges, the validity of the Regulatory Asset, the incurrence of any Funding Obligation, any Disposition, any Pledge, or the collection and recovery of Transition Charge Collections. To these ends, the Legislature hereby declares that the provisions of this Act are intended to be severable and that the Legislature would have enacted this Act even if any Article, Section, paragraph or subparagraph of this Act held to be unconstitutional or invalid had not been included in this Act.

Schedule 1

Guidelines for Estimates

[To be considered.]

Schedule 2

Requirements Applicable to Alternative Invoicing Agent/ Alternative Collection Agent

[To be considered.]

Schedule 3

Principles and Parameters for Establishing the Financing Plan

The following principles and parameters provide a guideline as to what a Financing Plan should address:

(1) consider quantities, maturities, payment obligations, prepayment or redemption rights and such other features of Funding Obligations so that payments made for a Reference Period reasonably correspond to the allocations of Future Fair Share of Green Transition Benefits to the applicable Reference Group under the Fair Allocation Plan;

(2) if the anticipated amount of any Repayment (together with payments of other Finance Amounts) to be made in respect of a Reference Period would materially exceed the allocation of the costs and benefits of the Green Generation Initiative to the applicable Regulated Consumers under the then current Fair Allocation Plan, diligent efforts should be made to determine whether a Refinancing or deferral of such Repayment may be reasonably and cost-effectively effected based on then prevailing market terms, conditions an circumstances;

(3) reflect the assumptions and requirements specified in any contemplated Funding Obligation (e.g., any limit on the maximum amount of Transition Charges charged to a hypothetical Regulated Consumer relative to his or her monthly electricity bill, as prescribed by any rating agency that ascribes its credit rating to or in respect of the Funding Obligation **[having regard to the application of the Attribution Methodology][NTD: Are the words in square brackets necessary?]**);

(4) require the Financial Services Manager, for and on behalf of each Regulatory Asset Owner, to use diligent efforts to manage Finance Amounts to be borne by Ratepayers;

(5) include a proposal regarding the compensation of the Financial Services Manager that reflects market terms and conditions; and

(6) require that the Financial Services Manager report annually to the Ministry of Energy on the operation of the Financing Plan including, in particular, with respect to the amount and terms of the Funding Obligations incurred and the sufficiency of such Funding Obligations for the purpose of funding the estimated Funding Shortfalls in accordance with the Fair Allocation Plan.

Follow up to our recent discussion (IFRS impact analysis).rtf

From: Petsche, Nadine (TBS) []
To: Picard, Michel (mpicard@kpmg.ca) [mpicard@kpmg.ca]
CC: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
Subject: Follow up to our recent discussion (IFRS impact analysis)
Date: Thursday, December 03, 2015 15:37:21

Hi Michel.

Further to our recent discussion, I was hoping you could confirm the expected accounting impact on the Province's books if OPG's results were to be reported on an IFRS (IFRS14) basis. In particular, I have received the following response from OPG regarding the impact of ARO related differences. Perhaps I am taking too simplistic approach, but I would have thought that certain accounting differences between USGAAP and IFRS would be 'cushioned' by the fact that OPG would still expect to be able to recover the costs under a USGAAP basis.

I am currently out of the office, but perhaps we can set up a short call for early next week to discuss?

Thanks in advance.

Nadine

Can you provide clarification regarding OPG's ability to continue rate regulated asset treatment for non-discount rate changes in the year of an ONFA update? You mentioned that IFRS is more rigid in its application of rate regulated accounting, but I would have thought that as long as the types of costs are recoverable under US GAAP (regardless of timing), that they would continue to be reflected on OPG's balance sheet.

By way of recap, the two categories of ARO-related differences for OPG between IFRS and US GAAP are 1) discount rates, and 2) treatment of certain lifecycle costs capitalized under US GAAP that are either expensed in the same period or recognized at a later date under IFRS.

In applying IFRS 14 as part of the IFRS analysis for Provincial consolidation purposes, OPG can include regulatory assets and liabilities only to the extent that: 1) there are differences between IFRS accounting and US GAAP-based cost recovery methodology authorized by the OEB, and 2) these differences are recoverable from ratepayers. Because the costs of the Bruce facilities are determined by the OEB under US GAAP, it is generally expected that the full amount of IFRS-US GAAP accounting differences for ARO related to these stations would be captured by a regulatory balance. However, this

is not the case for some differences related to the Pickering and Darlington facilities because the OEB recovery methodology for these stations does not include an accounting accretion expense component for the time value of money.

Non-discount rate changes can include changes in economic assumptions (e.g., escalation rates), operating assumptions, timing of cash flows, used fuel or waste volumes, and the like. All of these are revaluated in a comprehensive manner in conjunction with each ONFA reference plan update. It has also been OPG's practice under US GAAP (and IFRS) to adjust the accounting ARO for certain non-discount rate changes if they occur between ONFA reference plan updates, provided the change is known, material and identifiable. An example of this would be the anticipated change to the accounting service lives of the Bruce B units following announcement of a contract for their refurbishment. As noted in response to Question 2, in and of itself, making a change between ONFA reference plan updates for a factor such as station end-of-life dates is not expected to trigger a change to OPG's IFRS discount rate established at the time of the most recent ONFA reference plan update.

Whether part of a comprehensive revaluation in conjunction with the ONFA reference plan update or not, where non-discount rate changes impact ARO lifecycle costs that are accounted for differently under IFRS and US GAAP, the full value of the differences for Pickering and Darlington is not expected to be offset by a regulatory balance. The regulatory balance recognized for these stations would be the US GAAP value expected to be recovered from, or repaid to ratepayers in the future.

For example, under IFRS, a change in certain lifecycle costs associated with previously generated nuclear waste or fuel would be expensed in full in the current period, whereas these costs would be capitalized by OPG under US GAAP. The IFRS expense would be measured using the IFRS discount rate; the US GAAP capitalized costs would be calculated using the US GAAP discount rate. Given that the accounting accretion expense for Pickering and Darlington is not recoverable under the OEB methodology, the IFRS regulatory balance would be recorded based on the US GAAP recoverable amount (i.e. the amount capitalized under US GAAP). This means that the portion of IFRS expense equal to the difference between IFRS and US GAAP amounts due to different discount rates would not be offset by a regulatory balance, resulting in income statement volatility under IFRS.

Followup.rtf

From: Petsche, Nadine (TBS) []
To: Suzie Gignac [suzie.r.gignac@ca.ey.com]; Lee Anne Probert [LeeAnne.Probert@ca.ey.com]; Blake Langill [blake.w.langill@ca.ey.com]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
Subject: Followup
Date: Thursday, June 08, 2017 16:15:36

All,
This afternoon's meeting focused primarily on the regs related to the social programs, although we did briefly walk through the Part II reg on the FHP that was circulated for review. There aren't any accounting related issues with the social programs that would warrant your review of those regs at this time.
The ministry advised that a General reg for the FHP would be forthcoming and that there is an IESO borrowing reg (very short) as well (but it doesn't sound like it would raise any acctg issues).
If we receive additional info, we'll pass it along.
Thanks.
Nadine

For your attention (time sensitive) Access letter.rtf

From: Petsche, Nadine (TBS) []
To: LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]
CC: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
Subject: For your attention (time sensitive) Access letter
Date: Wednesday, June 14, 2017 12:56:01
Attachment 1: EY Access Letter.doc
Attachment 2: ATT00001.htm

All,

Please find a letter which needs to be completed and signed prior to tomorrow's call with KPMG.

Thanks.

Nadine

From: Kim Marshall <Kim.Marshall@ieso.ca>

Sent: Tuesday, June 13, 2017 3:35 PM

To: Petsche, Nadine (TBS)

Cc: Michel Picard

Subject: Fwd: Access letter

Nadine a letter for you to forward to e&y

Sent from my iPhone

Begin forwarded message:

> **From:** "Picard, Michel" <mpicard@kpmg.ca>
> **Date:** June 12, 2017 at 1:22:41 PM EDT
> **To:** Kim Marshall <Kim.Marshall@ieso.ca>
> **Subject: Access letter**
>
> Hi Kim,

Please find enclosed the access letters to be signed by IESO and EY in relation to our meeting on Thursday. These letters need to be signed before we meet with them.

Thanks in advance,

Michel Picard, CPA, CA

Partner, Accounting Advisory Services

KPMG LLP

333 Bay Street, Suite 4600

Toronto, Ontario, M5H 2S5

T 416 777 8414

M 416 560 2569

mpicard@kpmg.ca

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EY Access Letter.pdf

[ON KPMG LETTERHEAD]

Private & Confidential

Ernst & Young LLP (the "Recipient")
[Address]

Attention: [X]

June 12, 2017

Re: Independent Electricity System Operator ("IESO")

In connection with the accounting advisory work performed by KPMG LLP ("KPMG") for IESO, IESO has requested that KPMG attend a meeting with IESO, the Province of Ontario's Treasury Board Secretariat ("TBS"), and the Recipient, in your capacity as external advisor to TBS, in order to answer your questions related to:

1 IESO's market related activities and their potential adoption of rate regulated accounting; and

2 the interpretation and application of Generally Accepted Accounting Principles regarding regulator independence

(collectively, the "Information").

The Information was derived solely in accordance with the specific terms of reference (the "**Engagement Letter**") agreed between ourselves and IESO for their exclusive use and for no other purpose.

The Information should not be regarded as suitable for use by any person or persons other than IESO or for any purpose other than set out in the Engagement Letter. We accept no responsibility or liability for any reliance that the Recipient may place on the Information.

You should note that we have not sought to update the Information for events subsequent to **[X]** and significant events may well have occurred since that date.

In consideration of our providing to the Recipient the Information the parties hereto agree to the following:

a) No one at KPMG is authorized by KPMG to make any representations to the Recipient with respect to IESO. Nor may anyone at KPMG provide the Recipient with the Information on any basis which is inconsistent with or varies or adds to the terms of this letter;

b) KPMG neither warrants nor represents that the Information is accurate, complete, sufficient or appropriate for any purpose contemplated by the Recipient;

c) The Information is not provided pursuant to any agreement or other arrangement of a contractually binding nature between our firm and the Recipient;

d) The Recipient does not acquire any rights against our firm or otherwise as a result of our providing the Information;

e) Our firm and personnel do not have any duties, responsibilities, liabilities or obligations to the Recipient as a result of our providing the Information; and

f) The Recipient will not commence any action, suit or proceeding or make any demand, complaint or claim against us as a result of KPMG providing the Information or for any omission thereto.

Further, the Recipient agrees that the Information will be maintained by them in strict confidence and not disclosed to any other party, and will be used by them only in connection with purpose described above. The Recipient agrees to notify KPMG promptly of any request received by the Recipient from any court or applicable regulatory authority with respect to the Information.

This letter sets out the entire understanding of the parties in relation to the conditions upon which access to the Information is provided and replaces all prior understandings, if any, made by KPMG.

Please indicate your acceptance to the terms of this letter by signing and returning one copy of this letter to the undersigned.

Yours very truly,

KPMG LLP

Michel Picard
Partner

****

The Recipient hereby acknowledges that it understands and agrees to the conditions upon which the Information is provided.

by: _____ _____
signature Date:

Name:

Title: _____

ATT00001.pdf

For your attention (time sensitive) Access letter.rtf

From: Petsche, Nadine (TBS) []
To: LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]
CC: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
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Michel Picard, CPA, CA

Partner, Accounting Advisory Services

KPMG LLP

333 Bay Street, Suite 4600

Toronto, Ontario, M5H 2S5

T 416 777 8414

M 416 560 2569

mpicard@kpmg.ca

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EY Access Letter.pdf

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Private & Confidential

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[Address]

Attention: [X]

June 12, 2017

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(collectively, the "Information").

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You should note that we have not sought to update the Information for events subsequent to **[X]** and significant events may well have occurred since that date.

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b) KPMG neither warrants nor represents that the Information is accurate, complete, sufficient or appropriate for any purpose contemplated by the Recipient;

c) The Information is not provided pursuant to any agreement or other arrangement of a contractually binding nature between our firm and the Recipient;

d) The Recipient does not acquire any rights against our firm or otherwise as a result of our providing the Information;

e) Our firm and personnel do not have any duties, responsibilities, liabilities or obligations to the Recipient as a result of our providing the Information; and

f) The Recipient will not commence any action, suit or proceeding or make any demand, complaint or claim against us as a result of KPMG providing the Information or for any omission thereto.

Further, the Recipient agrees that the Information will be maintained by them in strict confidence and not disclosed to any other party, and will be used by them only in connection with purpose described above. The Recipient agrees to notify KPMG promptly of any request received by the Recipient from any court or applicable regulatory authority with respect to the Information.

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Please indicate your acceptance to the terms of this letter by signing and returning one copy of this letter to the undersigned.

Yours very truly,

KPMG LLP

Michel Picard
Partner

****

The Recipient hereby acknowledges that it understands and agrees to the conditions upon which the Information is provided.

by: _____ _____
signature Date:

Name:

Title: _____

ATT00001.pdf

Friday meeting is a ’go’.rtf

From: Petsche, Nadine (TBS) []
To: MAUTI John -FIN & C CTRL (john.mauti@opg.com) [john.mauti@opg.com]
CC: Picard, Michel (mpicard@kpmg.ca) [mpicard@kpmg.ca]; Patel, Bharat (TBS) [Bharat.Patel3@ontario.ca]; Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]; alec.cheng@opg.com [alec.cheng@opg.com]
Subject: Friday meeting is a 'go'
Date: Wednesday, April 22, 2015 14:57:35

Hi John.

Michel has confirmed his available to meet on Friday. Please advise of time and location. We can meet here at our offices if you would like, or head over to 700 University.

Regards,

Nadine

Funding from the OFA to the IESO.pdf

From: Veinot, Cindy (TBS)
To: Kim Marshall
Subject: Funding from the OFA to the IESO
Date: February 21, 2018 6:42:00 PM

Hi Kim – just thinking about one of the questions from the session earlier today – prior to the Fair Hydro Act, what rate did the OFA lend to the IESO re: the financing used by the IESO to bridge the difference between payments made to the generators and payments received from the LDCs (e.g. the variance account that had to be settled within 12 months). – Was it at market or the provincial cost of borrowing, or something in between?

Thx

Fw_ .rtf

From: Veinot, Cindy (TBS) []
To: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; Lee Anne Probert [leeanne.probert@ca.ey.com]; Suzie Gignac [suzie.r.gignac@ca.ey.com]; Blake Langill [blake.w.langill@ca.ey.com]
Subject: Fw:
Date: Monday, July 17, 2017 08:16:04
Attachment 1: FHP Memo - ey Draft V1 6-Jul-2017 np_cv.docx

My comments and suggested edits. Cindy

Sent from my BlackBerry 10 smartphone on the Rogers network.

FHP Memo - ey Draft V1 6-Jul-2017 np_cv.pdf

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The observations relating to accounting matters that EY provided to the OPCD were designed to assist them in reaching their own conclusions and do not constitute our concurrence with or support of the accounting or reporting of the Province or the other entities involved. The Province and the other entities involved are each responsible for the preparation of their own financial statements, including all of the judgments inherent in preparing them.

Introduction

Ontario's consolidated financial reports are prepared in accordance with the accounting principles for governments recommended by the Public Sector Accounting Board (PSAB) of the Chartered Professional Accountants of Canada (CPA Canada). In order to meet the needs of users, including the legislature and the public, for accountability in government reporting and decision making, it is essential that public sector financial statements reflect the economic substance of the government's activities.

In assessing the appropriate accounting treatment for the Fair Hydro Plan, as it relates to the Global Adjustment Refinancing (GA Refinancing) on the Province's consolidated financial ~~reports~~statements, the Office of the Provincial Controller considered the authoritative guidance issued by PSAB, as well as the accounting assessments of IESO and OPG management, including the accounting opinions of their external accounting advisors. Given the complexity of the ~~FHP model~~GA Refinancing structure, the exercise of professional judgement is necessary to ensure that key financial reporting objectives of transparency and accountability are best served. ~~At this time, accounting standards, both domestically and internationally, continue to evolve.~~ This accounting analysis considers currently available information, including efforts underway by the International Accounting Standards Board as related to rate regulated accounting. It also draws upon publicly available information including previous studies and bases for conclusions dealing with rate-regulated accounting, both in the public sector and the private sector.

Background:

In March 2017, the Government of Ontario (the Province) announced its Fair Hydro Plan (FHP). The FHP will reduce electricity bills for Regulated Price Plan (RPP) customers ~~(*as well as*including consumers who receive the 8% rebate as specified in the Ontario Rebate for Electricity Act, 2016)~~ by approximately 25% for a period of one year, starting in the summer of 2017, and limit the increase in electricity bills to the rate of inflation over the following four years.

The measures that make up the 25% average reduction include:

1. Spreading the cost of Ontario's clean energy ~~electricity~~ investments over the expected lifecycle of the generation infrastructure assets. This is expected to account for 15-17% of the overall reduction.
2. Shifting the cost of the Ontario Electricity Support Program (OESP) and Rural or Remote Rate Protection (RRRP) program from ratepayers to ~~provincial revenues~~taxpayer-funded programs.
3. An 8% rebate equal to the provincial portion of the HST, which took effect on January 1, 2017.

Under the first measure, the Province will borrow funds to pay a portion of current Global Adjustment related costs which are included in electricity costs, thereby temporarily reducing the amount paid by eligible ratepayers. The deferred amounts will be recoverable through future rates~~,~~ ~~Province will recover the borrowed funds,~~ including interest and other costs~~,~~ from ratepayers over an estimated 18-year period starting in approximately 2028. In other words, the impact of the #1 above is fully borne by the ratepayers – it is a shift in the timing of payment for the clean energy investments, while the impacts of #2 and #3 are reducing the cost to the ratepayer, but at the cost of the taxpayer.

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Commented [CV1]: I believe this program is for direct connects as well – let's confirm with Energy.

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Commented [NPP2]: *Insert ref to calc of 25% average based on Tor Hydro customer bill?*

Commented [CV3]: I think this might be a bit higher based on the way the math works as the 8% is a rebate on the net bill (after the reduction of 1 and 2)

Objective

The objective of this memo is to assess the impact of the first measure of the FHP (~~ie~~ i.e. ~~Deferred~~deferred recovery of clean energy costs) on the consolidated financial statements of the Province. **[NTD – Consider if document should discuss #2 and #3. This would contrast the different treatment by the Province]**

Background

The Ontario Energy Board (OEB) has been established by the Province to be Ontario's independent energy regulator.

In accordance with Section 78(3.1) of the Ontario Energy Board Act, 1998 (the OEB Act), the OEB is responsible for determining electricity commodity prices for RPP consumers. Section 78(3.3) of the OEB Act requires the OEB to forecast the cost of electricity used by RPP consumers and ensure the prices they are charged reflect that cost. The forecasting process is highly complex and involves numerous estimates. As a result, the OEB regulatory framework allows for variances ~~differences arise~~ between the actual cost of supplying electricity and the amount collected from RPP consumers.

In setting the rates for RPP consumers, Section 78(3.3) of the OEB Act requires the OEB to ~~clear~~ allow for recovery of any such differences through rates over a 12-month period. This is achieved through a price adjustment charged or credited to RPP consumers. This adjustment forms part of the Global Adjustment paid by consumers.

The Independent Electricity System Operator (IESO) is the administrator of Ontario's wholesale electricity market. The IESO settles the market with all participants, both buyers and sellers, ~~but it does not buy or sell electricity itself~~as an agent.

Under existing legislation, ~~It is~~ the IESO ~~that experiences and, therefore,~~ is required to fund~~,~~ any cash shortfall relating to differences arising between the actual cost of supplying electricity and the amount collected from RPP consumers. In accordance with Section 25.33(5) of the Electricity Act, 1998 (the Electricity Act), the IESO ~~is required to~~has established and maintains a variance account to track these temporary differences (the original variance account) for subsequent recovery from ratepayers. Cash shortfalls in the IESO arising from the original variance account are funded through financing provided by the OFA~~by XXX~~.

As described below, once the FHP is implemented, the timing associated with recovery of IESO costs to purchase generation which is supplied ~~cost of supplying electricity~~ to RPP consumers will no longer be fully collected over a 12-month period, but over the longer period defined by legislation.

As part of its role as market administrator, the IESO calculates the market price for electricity (the Market Clearing Price, or MCP) by running the bids and offers of the market participants through an algorithm. The actual cost of supplying (clean energy) electricity, however, is generally greater than the MCP. From a government policy perspective, it is understood that d~~D~~ecisions of what is in the public interest ~~-~~regarding electricity generation in Ontario are not based solely on economics, but rather they are also influenced by environmental, social and political factors. ~~as well.~~ When the costs associated with generation of ~~a~~ clean energy ~~generator invests in~~are ~~a~~relatively~~are~~ relatively less economic, ~~facility, the~~ excess costs (including a reasonable rate of return thereon) are ~~currently being~~ recovered from

Commented [NPP4]: Is the counterparty to the energy contracts

Commented [CV5]: To confirm if it is ever less – its theoretically possible, but I'm not sure it has ever happened.

consumers and paid to generators ~~over a the twenty year contract period (e.g. 20 years).~~based on the terms of the contract with the generator (e.g. 20 years).

Under the FHP, while generators would continue to be paid over ~~a twenty year~~the period as contracted, ~~but~~ the amounts paid by the IESO to the generators would be ~~are~~ recovered from ~~the consumers~~ratepayers over a longer thirty year period. Deferring the recovery of these costs from the consumers on a longer-term basis would ~~creates~~create a ~~significant~~ significant interim cash shortfall ~~in~~ for the IESO.

Similar to the existing variance account which tracks the variance between price paid and recovered for the clean energy generation purchased by the IESO, Section 24(1) of the Ontario Fair Hydro Plan Act (the FHP Act) requires the IESO to establish and maintain a separate variance account to track the cash shortfall specifically resulting from the implementation of the FHP (the FHP variance account). Due to the longer recovery period, and additional recoverable financing and management fee costs, the balance in the account is forecast to increase significantly. The balance in this variance account is defined in Section 1(1) of the FHP Act to be a regulatory asset[1]. The IESO is entitled under Section 25 of the FHP Act to recover the regulatory asset from RPP consumers in the future, which will be achieved through the OEB setting rates to allow for such recovery. Section 26 of the FHP Act also permits the IESO to transfer or sell the regulatory asset to a financing entity to fund its cash shortfall, thus commoditizing the future cash flow stream. ~~.~~

~~-~~The Province has requested that OPG administer the GA~~C~~ deferral, because of OPG's participation in the market, regulatory knowledge and the potential ability to consolidate the activity and accounting with OPG. To fulfill this role, OPG intends to establish a financing entity (OPG Trust) to purchase the IESO's regulatory asset on a monthly basis, ~~thus helping to and~~to eliminate any cash shortfall in the IESO. Through this arrangement, OPG Trust will finance these purchases through a combination of provincial borrowing (flowed through OPG as an equity investment), amounts advanced from OPG and direct borrowing from capital markets.

Basis of Accounting

In accordance with PSAS 1300.07, the government reporting entity (GRE) for the Province comprises government components and those organizations that are controlled by the government.

As defined in the Introduction to PSAS, the following types of organizations are controlled by the government: (a) government business enterprises (GBE), government non-for profit organizations (GNPO), and other government organizations (OGO).

GNPOs and OGOs are considered government units and, in accordance with PSAS 1300.27, are consolidated in the GRE on a line-by-line basis. For consolidation purposes, the financial information of government units is required to be prepared in accordance with PSAS.

GBEs, on the other hand, are accounted for in the GRE using the modified equity method as prescribed by PSAS 1300.35. Under the modified equity method, which is described in detail in PSAS 3070, INVESTMENTS IN GOVERNMENT BUSINESS ENTERPRISES, the equity method of accounting is modified

[1] To avoid confusion in the remainder of this document, the term regulatory asset will refer to the defined term in the FHP Act and the term regulated asset or rate-regulated asset (RRA) will refer to an asset recognized for accounting purposes.

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Commented [CV8]: Let's add a diagram in an appendix – either the one from the cabinet submission, the one from the OPG doc or the one from the OAG submission.

Commented [NPP9]: Insert reference to equity investment by the province?

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Commented [NPP10]: OGOs have a choice of reporting under IFRS or PSAS. For consolidation purposes, would if reported on IFRS, would have to be converted to PSAS
CV – I think this is OK because it is only dealing with consolidation

only to the extent that the GBE's accounting principles (which are required to be IFRS in accordance with paragraph 17 of the Introduction to PSAS) are not adjusted to conform to those of the government.

As documented in Schedule 8 to the consolidated financial statements of the Province, the IESO is an OGO and OPG is a GBE. Accordingly, the accounting for these entities in the GRE is as follows:

ENTITY	CLASSIFICATION	ACCOUNTING METHOD	Stand-alone entity f/s GAAP	Provincial CFS
IESO	OGO	Consolidation	PSAS ~~or IFRS~~	PSAS
OPG	GBE	Modified equity method	~~IFRS (reports on~~ US GAAP~~)~~	IFRS (including IFRS14)

This memo does not reconsider the classification of these existing entities.

As discussed in detail in a subsequent section, OPG expects that it will control OPG Trust. If this is the case, OPG Trust will be consolidated by OPG and, therefore, reflected in the GRE through the modified equity accounting of OPG under IFRS. If, however, it is determined that OPG Trust is controlled by the Province, OPG Trust will be consolidated in the GRE on a line-by-line basis under PSAS.

Commented [NPP11]: Might the trust be considered a GBE? It would be a publicly accountable enterprise and self-sustaining. See chapter 9 (?) of Y2K report – referenced by Cindy as increasing relevance to IESO situation (self-sustaining).CV – as a trust, I'm not sure it will meet the criteria.

Example

For simplicity, the following example will be used in this document to illustrate the accounting impact of the FHP on the various entities involved:

- Ratepayer bill is currently $588, and the 17% reduction related to the FHP is $100.
- The Province directly borrows 44%, or $44, to make an equity contribution to OPG, which OPG then loans to OPG Trust.
- OPG directly borrows 5%, or $5, and loans it to OPG Trust.
- OPG Trust directly borrows 51%, or $51, from capital markets.

Analysis

IESO

The IESO is presently classified as an OGO and has elected to prepare~~s~~ its standalone, general purpose financial statements in accordance with PSAS, which is consistent with the basis of presentation required for purposes of consolidating the IESO into the GRE. Under PSAS, the IESO would also have the option of reporting based on IFRS. If the IESO were classified as a GBE, it would also report based on IFRS. Since the IESO has rate regulated balances, it would likely report using IFRS14, consistent with the IFRS related information provided by both Hydro One and OPG which are rate regulated.

Commented [CV12]: Nadine – let's discuss – not sure this is necessary and could be confusing as to why we are adding this.

Current State

Effective January 1, 2016, the IESO adopted on a retrospective basis a new accounting policy that requires its market-settlement activities to be reflected in the financial statements. Under the new policy, the IESO's financial statements do not include the revenue and expenses of the financial

Commented [CV13]: We should provide some additional context to this statement – e.g. what the market settlement activities are

transactions of market participants within the IESO-administered markets. This indicates IESO management has taken the position that the IESO is an agent, not a principal, in the IESO-administered markets and, accordingly, records revenue on a net basis.

PSAS doesn't provide any specific guidance as to how it should be determined whether an entity is acting as a principal or an agent in the context of revenue recognition, but both IFRS and ~~both~~ US GAAP do. The relevant guidance in IFRS is as follows:

IAS 18.8

Revenue includes only the gross inflows of economic benefits received and receivable by the entity on its own account. Amounts collected on behalf of third parties such as sales taxes, goods and services taxes and value added taxes are not economic benefits which flow to the entity and do not result in increases in equity. Therefore, they are excluded from revenue. Similarly, in an agency relationship, the gross inflows of economic benefits include amounts collected on behalf of the principal and which do not result in increases in equity for the entity. The amounts collected on behalf of the principal are not revenue. Instead, revenue is the amount of commission.

IAS 18.IE21

Determining whether an entity is acting as a principal or as an agent (2009 amendment).

Paragraph 8 states that 'in an agency relationship, the gross inflows of economic benefits include amounts collected on behalf of the principal and which do not result in increases in equity for the entity. The amounts collected on behalf of the principal are not revenue. Instead, revenue is the amount of commission.' Determining whether an entity is acting as a principal or as an agent requires judgement and consideration of all relevant facts and circumstances.

An entity is acting as a principal when it has exposure to the significant risks and rewards associated with the sale of goods or the rendering of services. Features that indicate that an entity is acting as a principal include:

- *a) the entity has the primary responsibility for providing the goods or services to the customer or for fulfilling the order, for example by being responsible for the acceptability of the products or services ordered or purchased by the customer;*
- *b) the entity has inventory risk before or after the customer order, during shipping or on return;*
- *c) the entity has latitude in establishing prices, either directly or indirectly, for example by providing additional goods or services; and*
- *d) the entity bears the customer's credit risk for the amount receivable from the customer.*

An entity is acting as an agent when it does not have exposure to the significant risks and rewards associated with the sale of goods or the rendering of services. One feature indicating that an entity is acting as an agent is that the amount the entity earns is predetermined, being either a fixed fee per transaction or a stated percentage of the amount billed to the customer.

Application of the above IFRS guidance supports the conclusion that the IESO is an agent in the market-settlement process and, therefore, recognizing revenue on a net basis is appropriate. IESO has completed a more thorough analysis of their position that it is an agent in the settlement of the market and reconsideration of that decision is not the topic of this memo.

The IESO is required by legislation to carry out its operations without the purpose of gain or profit, making the IESO a self-sustaining entity. ~~So, generally speaking,~~ O~~o~~ther than the amounts the IESO is permitted to keep in accordance with its own rate order from the OEB to cover its internal operating costs, all amounts the IESO receives from market participants must be paid out to other market participants who have regulatory or contractual rights to receive payments from those collected amounts.

In the context of applying the principal vs. agent guidance, the amounts the IESO is permitted to keep in accordance with its own rate order from the OEB to cover its internal operating costs are recorded as system fee revenue in the IESO's financial statements. System fees are not characterized as being part

Commented [CV14]: We need to deal with its ability to recover costs and not incur a lost re: the addition of the concept of self-sustaining.

Commented [npp15]: I had understood that the IESO was recovering for costs already incurred vs. pre-collecting.

Commented [npp16]: IESO earns revenue from outside parties (not within the e GRE except for OPG and then it is at commercial terms). The definition of a GBE does not require independence nor profit, but rather self-sustaining. In fact, a case might be made for the IESO to be accounted for as a GBE.

of the IESO-administered markets. Accordingly, any references to the IESO-administered markets in this document exclude system fees.

As stated in the IESO financial statements, the IESO-administered markets is a balancing system, and as such, the net position of market accounts will ultimately settle to a nil balance in accordance with market rules. However, due to settlement timing differences, the net position of market accounts will not be in a nil position from a cash flow perspective at the end of any reporting period.

This raises a question as to how a cash flow deficit related to the market-settlement process should be accounted for in the financial statements of the IESO. Two approaches are as follows:

1. The cash flow deficit is recognized as an asset when it occurs and then derecognized in the period in which it is settled. Under this approach, the net position of market accounts will always be in a nil balance in the IESO's balance sheet and there is no impact on the IESO's income statement.
2. The cash flow deficit is recognized as a charge to income when it occurs and then reversed through income in the period in which it is settled.

IESO management has concluded it is appropriate to recognize existing cash flow deficits arising from the market-settlement process as an asset. This is evidenced by the fact the components of the market accounts net to a nil closing balance at year end in the IESO's financial statements for the year ended December 31, 2016. These financial statements also explicitly state there is no impact to the accumulated deficit or revenues and expenses as the IESO is not party to these transactions as per the market rules.

Commented [CV17]: Is this a direct quote from the IESO f/s?

Although the IESO's financial statements include the following accounting policy on regulated assets and liabilities, the asset relating to the cash flow deficit discussed above has not been specifically ~~identified~~ labeled as a regulated asset:

As a rate-regulated entity, the IESO, in appropriate circumstances establishes regulated assets or liabilities and thereby defers the impact on the statement of operations of certain expenses or revenues because they are probable to be collected or refunded to market participants through future billings. The IESO has applied guidance from United States Generally Accepted Accounting Principles (US GAAP) Topic 980, Regulated Operations, in this policy.

Commented [npp18]: Could include reference that this same basis is used by OPG, H1 and many other rate regulated entities in Canada (including those which report based on IFRS14).

The only two balances specifically ~~identified~~ labeled as being recognized in the IESO's financial statements under the above policy are (i) unrecovered smart metering expenses, and (ii) unrecovered PSAB transition items. IESO management has, however, indicated in discussions that the cash flow deficit/surplus associated with the original variance account is also considered to be a regulated asset/liability under ASC 980 even though it has been ~~recorded~~ presented as part of the Market Accounts balances in the statement of financial position.

Impact of FHP

The implementation of the FHP results in the IESO establishing and maintaining the FHP variance account to track the resulting cash flow deficit, the balance of which is defined for the purposes of ~~under~~ the FHP Act to be a 'regulatory asset'.

The act of legislating the balance in the FHP variance account to be a regulatory asset does not, in and of itself, ~~support~~ result in its recognition as an asset for accounting purposes. Accordingly, the primary issue at hand is whether the legislated regulatory asset is eligible for recognition as an asset in the financial statements of the IESO and subsequently ~~on~~in the Province's consolidated financial statements both of which are ~~also~~ prepared on a PSAS basis.~~.~~

Commented [npp19]: In other words, the Province has not 'legislated' the accounting for the deferred amounts as regulatory assets on the Province's books. (The AG has suggested such, so this may be the source of her confusion).

Commented [npp20]: Deleted the 'PSAS' reference given that under different circumstances the entity might report on IFRS (as an OGO, or as a GBE) and report the assets as RRA under IFRS14.

When the standalone financial statements of the IESO are considered in isolation, the impact of the conclusion reached on this issue ~~is~~ would be eliminated to the extent the regulatory asset has been sold to OPG Trust ~~at~~by the end of the reporting period. The conclusion remains significant, however, due to its impact on the consolidated financial statements of the GRE, which is discussed in a later section.

Commented [CV21]: Is this true – if there were no RRA at the onset, I don't think the accounting in the IESO would be the same.

Commented [NPP22]: Didn't it have to be a regulatory asset in order for OPG Trust to buy it and account for it as an intangible asset.

As noted above, the IESO has adopted a policy to apply the U.S. GAAP guidance in ASC 980 in connection with accounting for rate regulated assets. IESO management has applied this guidance and concluded the regulatory asset created by the FHP can be recognized as a regulated asset for accounting purposes in the financial statements of the IESO. The IESO's auditors, KPMG, concur with this position, as evidenced from the following excerpt from a draft letter issued by KPMG on May 16, 2017 (the KPMG Letter):

We have considered the foregoing analysis and management's conclusion. We concur that the variance account created by Bill 132 will meet the criteria for the recognition of a regulatory asset stated in ASC 980-340-25-1. Furthermore, we have also considered the criteria stated in ASC 980-10-15-2 and believe that IESO should be allowed to continue to use the guidance for regulated operations of Topic 980.

Recognizing the regulatory asset as a regulated asset for accounting purposes in the financial statements of the IESO in accordance with ASC 980 is appropriate only if all of the following conditions are met:

a) the operations of the IESO (or the relevant portion thereof) are within the scope of ASC 980 based on the criteria in ASC 980-10-15-2,
b) the FHP variance account meets the criteria in ASC 980-340-25-1 for capitalization as a regulatory asset, and
c) ASC 980 is an appropriate source of GAAP under PSAS.

Each of these items is addressed in turn:

a) Scope of ASC 980

ASC 980-10-15-2 states the following:

The guidance in the Regulated Operations Topic applies to general-purpose external financial statements of an entity that has regulated operations that meet all of the following criteria:

a) The entity's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party regulator or by its own governing board empowered by statute or contract to establish rates that bind customers.
b) The regulated rates are designed to recover the specific entity's costs of providing the regulated services or products. This criterion is intended to be applied to the substance of the regulation, rather than its form. If an entity's regulated rates are based on the costs of a group of entities and the entity is so large in relation to the group of entities that its costs are, in essence, the group's costs, the regulation would meet this criterion for that entity.
c) In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume that rates set at levels that will recover the entity's costs can be charged to and collected from customers.

The Office of the Auditor General of Ontario (OAGO) does not believe the IESO meets the criteria to be within the scope of ASC 980. This is evidenced by the following statement included in *Legislated Accounting Included in Bill 132, Including the Proposed Ontario Fair Hydro Plan Act, 2017 – Submission to Standing Committee on Justice Policy* dated May 25, 2017 (OAGO Submission):

Moreover, IESO is not engaging in rate-regulated activities, and the contracts under its administration were never subject to rate regulation.

Commented [NPP23]: Insert ref to GAAP hierarchy.

Commented [npp24]: The OPA had also accounted for the balances as assets (consistency w.r.t. the CFS treatment).

OPA Accounting Treatment for Regula

Commented [CV25R24]: Not sure this is as relevant as the OPA had a receivable from the IESO at that time.

Commented [NPP26]: Insert reference to consistency with previous treatment of OPA (2013 Terry Gabriel email).

~~The statement made by the OAG does not appear to be a fair reflection of the facts.~~ Ontario's electricity industry is rate-regulated. Rates paid by electricity consumers are regulated by the OEB such that over time rates equal cost plus, where applicable, a reasonable rate of return. Providing electricity to consumers involves several different parties, including generators, transmitters, distributors and the IESO. Some of these parties engage in rate-regulated activities, some do not.

The IESO serves an important and active role in Ontario's electricity market, irrespective of the fact that it records market transactions on net basis in the financial statements. The IESO balances the supply of and demand for electricity in Ontario and directs its flow across the province's transmission lines, oversees the wholesale electricity market, where the price of energy is determined, and administers the rules that govern the market. In determining whether the IESO has regulated operations, the focus is on whether the rates the IESO charges its customers are regulated and not whether the costs incurred by the IESO are regulated (although a number of them are).

The following supports the position of IESO management that the above criteria are met and the IESO's operations are within the scope of ASC 980:

The entity's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party regulator or by its own governing board empowered by statute or contract to establish rates that bind customers.
As noted in a research paper issued in 2001 by a taskforce established by the CICA (the CICA Research Report), there is a view held by some that, with respect to rate regulation in the public sector, there is usually no *independent, third-party regulator* because the government controls both the enterprise and the regulatory agency. Accordingly, it is important to point out that independence is not required to meet the criteria in ASC 980-10-15-2(a). The requirement is an *independent, third-party regulator* or *its own governing board empowered by statute or contract*. In fact, paragraph 64 of the Basis for Conclusions for FAS 71, ACCOUNTING FOR THE EFFECTS OF CERTAIN TYPES OF REGULATION (which is the pre-codified version of ASC 980), specifically states that the criteria in ASC 980-10-15-2(a) was modified so as not to preclude application by government utilities with rates set by their own governing board. The OEB has been established by the Province to be Ontario's independent energy regulator and, therefore, is considered the governing board of the IESO. The OEB's mandate and authority come from the *Ontario Energy Board Act, 1998*, the *Electricity Act, 1998*, and a number of other provincial statutes. As described in more detail below, the IESO's rates are established in accordance with these statutes. In the context of its market-settlement role, the IESO's 'customers' are the Market Participants buying electricity from the IESO-controlled grid. All Market Participants are required to execute a Participation Agreement with the IESO. In accordance with Article 3.1 of the standard Participation Agreement, each Market Participant has agreed to be bound by and to comply with all of the provisions of the Market Rules, which includes the following: *Chapter 9, Section 1.2.3* *Notwithstanding any other provision within the market rules, market participants shall remit to the IESO such applicable settlement amounts and other payments as may be required under the relevant provisions of the Electricity Act, 1998, the Ontario Energy Board Act, 1998 and any related regulations, as amended from time to time.*

The IESO's operations meet the criteria in ASC 980-10-15-2(a) because the rates charged by the IESO are based on statutes. As discussed in more detail below, the rates are designed to recover the IESO's expenditure for providing the regulated services and the pass-through costs related to the energy purchased from the generators and to government programs.

The main components of invoices issued by the IESO to Market Participants are as follows:

- Commodity Charges
  - Hourly Ontario Energy Price
  - Global Adjustment
- Wholesale Market Service Charges
  - IESO Administration Fee
  - Uplift Charges
  - Rural and Remote Electricity Rate Protection
- Wholesale Transmission Charges
- Debt Retirement Charge

Each component is determined as follows:

Commodity Charges

In accordance with Section 25.33(1) of the Electricity Act, the IESO is required to price electricity to recover costs:

Electricity pricing to reflect costs

IESO to make adjustments

25.33 (1) The IESO shall, through its billing and settlement systems, make adjustments in accordance with the regulations that ensure that, over time, payments by classes of market participants in Ontario that are prescribed by regulation reflect,

a) amounts paid to generators, the Financial Corporation and distributors, whether the amounts are determined under the market rules or under section 78.1, 78.2 or 78.5 of the Ontario Energy Board Act, 1998;

b) amounts paid to entities with whom the IESO has a procurement contract, as determined under the procurement contract; and

c) such amounts as may be prescribed that are paid or incurred by the IESO in relation to the Ontario Fair Hydro Plan Act, 2017. *2014, c. 7, Sched. 7, s. 8 (1); 2017, c. 16, Sched. 1, s. 43 (2).*

Market Participants are initially invoiced for consumed electricity at the Hourly Ontario Energy Price (HOEP), which is calculated as the average of the twelve market clearing prices set in each hour. In accordance with Section 25.33(5) of the Electricity Act, the IESO is required to track differences between the amounts invoiced to Market Participants at HOEP and actual costs incurred in a variance account:

Variance accounts

(5) The IESO shall establish and maintain such variance accounts as may be necessary to record all amounts payable or receivable by it under this section or under the Ontario Fair Hydro Plan Act, 2017. *2004, c. 23, Sched. A, s. 37; 2014, c. 7, Sched. 7, s. 8 (5); 2017, c. 16, Sched. 1, s. 43 (5).*

Sections 3.1 and 3.3 of the OEB Act require the variance account to be settled over a twelve-month period, which is done through the Global Adjustment on a Market Participant's invoice:

Annual rate plan and separate rates for situations prescribed by regulation

(3.1) The Board shall, in accordance with rules prescribed by the regulations, approve or fix separate rates for the retailing of electricity,

a) to such different classes of consumers as may be prescribed by the regulations; and

b) for such different situations as may be prescribed by the regulations. 2004, c. 23, Sched. B, s. 14 (1).

Rates to reflect cost of electricity

(3.3) In approving or fixing rates under subsection (3.1),

a) the Board shall forecast the cost of electricity to be consumed by the consumers to whom the rates apply, taking into consideration the adjustments required under section 25.33 of the Electricity Act, 1998 *and shall ensure that the rates reflect these costs; and*

b) the Board shall take into account balances in the IESO's variance accounts established under section 25.33 of the Electricity Act, 1998 *and shall make adjustments with a view to eliminating those balances within 12 months or such shorter time periods as the Minister may direct. 2004, c. 23, Sched. B, s. 14 (1); 2014, c. 7, Sched. 23, s. 6 (2).*

Although the implementation of the FHP involves the deferral of costs over an extended period of time, it does not change the IESO's obligation under the OEB Act to price electricity to recover incurred costs in full. The deferral relating to the FHP is tracked in a separate variance account in accordance with Section 24(1) of the Fair Hydro Plan Act, 2017 (the FHP Act):

Variance account to be established, maintained

24 (1) The IESO shall establish and maintain a variance account in which it records the following:

1. The IESO deferral for each month.

2. All payments received by the IESO resulting from the exercise of the right of recovery under section 25 and any transfer under section 26.

3. Such other adjustments as may be prescribed, including adjustments in respect of the period that commences on or after May 1, 2017 and before the day this section comes into force.

The right for the IESO to recover the variance account is set out in Section 25 of the FHP Act:

Regulatory asset established

25 (1) Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Board to set rates

(2) Subject to subsection (3), the Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for the IESO to recover the balance recorded in the variance account.

Limitation

(3) The IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2021.

Wholesale Market Service Charges

The IESO charges Market Participants administrative fees to operate the wholesale electricity market and manage the electric power system in Ontario. These fees are required to be approved by the OEB under Section 25(1) of the Electricity Act on an annual basis.

Review of requirements and fees

25 (1) The IESO shall, at least 60 days before the beginning of each fiscal year, submit its proposed expenditure and revenue requirements for the fiscal year and the fees it proposes to charge during the fiscal year to the Board for review, but shall not do so until after the Minister approves the IESO's proposed business plan for the fiscal year under section 24. 2014, c. 7, Sched. 7, s. 3 (1).

Uplift charges

Need details

RRRP charges

The RRRP program provides a rate subsidy to rural and remote residential customers who face higher distribution costs. Under the FHP Act, the cost of the RRRP program has shifted from ratepayers to provincial revenues and, therefore, is no longer a component of the IESO's invoice.

Wholesale Transmission Charge

This charge to LDCs and some large consumers covers the cost incurred by transmission companies to construct and maintain the high-voltage transmission lines needed to transport electricity from generating stations to LDCs or consumers. In accordance with Section 78(1) of the OEB Act, the rate for this service is approved by the OEB.

Debt Retirement Charge

When the Ontario electricity sector was restructured in April 1999, the Ontario Electricity Financial Corporation (OEFC) ~~inherited~~ took on $20.9 million of stranded debt from Ontario Hydro. The OEFC services and retires the stranded debt with cash flows from a number of sources in the electricity sector, one of those currently being debt retirement charges paid by certain ratepayers (ratepayers cease paying debt retirement charges April 1, 2018).

Under Regulation 494/01, DEBT RETIREMENT CHARGE – ADMINISTRATION, the IESO is appointed as a collector of debt retirement charges (Section 2) and is required to collect a debt retirement charge on behalf of the OEFA from every entity who withdraws electricity from the IESO-controlled grid (Section 6(2)). The prescribed rate for the debt retirement charge is set out in Regulation 493/01, DEBT RETIREMENT CHARGE – RATES AND EXEMPTIONS.

The regulated rates are designed to recover the specific entity's costs of providing the regulated services or products.

As discussed in detail above, the IESO is required by statute to set prices to recover costs.

In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume that rates set at levels that will recover the entity's costs can be charged to and collected from customers.

As discussed in detail above, the IESO is required by statute to set prices to recover costs.

The majority of the monthly amount invoiced by the IESO to Market Participants represents a direct flow through of costs as they are incurred, but there are certain types of costs for which recovery may be deferred. For those deferred costs, the IESO is dependent on the future consumption of electricity by rate-payers to fully recover costs.

Based on relatively short recovery periods, it is reasonable to assume there will be sufficient demand to recover the deferred costs that currently exist. Specifically:

- RPP and RRRP variance accounts are recovered over twelve months in accordance with Section 3.3(b) of the OEB Act. *(Note - Under the FHP, responsibility for the cost of the RRRP program is being transferred to the Provincial budget and rate-payers will no longer be directly charged)*

Commented [NPP27]: Not sure what these are. Ask IESO?

Commented [CV28]: I'm not sure that all of these costs have shifted –certainly the new aspect has – there was an RRRP program previously -- we will confirm with Energy

Commented [CV29]: To determine if there is anything else to add from IESO's analysis.

Also – to confirm whether we want to add any content re: the regulatory

Commented [CV30]: See previous comment – we will confirm with Energy whether all of the RRRP is transferred or just some of it.

- The Smart Metering Entity charge is recovered over the period from May 1, 2013 to October 31, 2018 in accordance with XX.

Under the FHP, responsibility for the cost of the OESP program is being transferred to the Provincial budget and rate-payers will no longer be ~~directly~~ charged for the cost of this program. The OESP variance account, which is currently in a credit balance, will be used to fund the cost of the program until depleted.

Although the timing of the recovery of the FHP variance account has not yet been established by the OEB, the wording and intent of the proposed legislation is clear that it is intended by law to be recoverable over a period of 30 years. Given the nature and extent of customer demand for the power generated and distributed in Ontario, both at this time and projected in the future, it is reasonable to conclude that there will be sufficient demand to recover the regulatory asset. As with the other criteria, this will need to be continually evaluated throughout the recovery period.

Commented [CV31]: To confirm what we are adding – the statute reference?

Commented [npp32]: Insert reference to LTEP or the Ontario Planning Outlook. Ontario-Planning-Outlook-September2016.pdf Could also seek narrative from IESO.

In addition to the general scope requirements of ASC 980 discussed above, specific consideration is made as to whether the following scope exception in ASC 980-10-15-7 applies to the FHP:

The guidance in the Regulated Operations Topic does not apply to any of the following transactions:

a) Accounting for price controls that are imposed by governmental action in times of emergency, high inflation, or other unusual conditions, or accounting for contracts in general. However, if the terms of a contract between an entity and its customer are subject to regulation and the criteria of paragraph 980-10-15-2 are met with respect to that contract, the guidance in this Topic shall apply.

Based on the discussion below, this scope exemption is not applicable to the FHP.

Electricity cost reductions resulting from the FHP do not represent price controls imposed by the Province in a time of emergency, high inflation, or other unusual conditions. As noted in the 2017 budget speech, the 2017 Ontario Budget – A Stronger, Healthier Ontario, the FHP is a fairer way to share the costs of building a cleaner, more modern and reliable electricity generation system. In particular, the budget speech states:

Commented [NPP33]: Navigant report/other support

Recognizing that existing electricity infrastructure is expected to last for decades to come, the Province would refinance the cost of those capital investments to ensure that system costs are more equitably distributed over time.

The following paragraph from the Basis for Conclusion for FAS 71 also provides some insight as to the specific concerns relating to government imposed price controls that resulted in the scope exception in ASC 980-10-15-7(a):

70. The first scope limitation of paragraph 8—excluding accounting for price controls imposed by governmental action in times of emergency, high inflation, or other unusual conditions—was included in the Discussion Memorandum. Price controls imposed in periods of unusual conditions are not expected to be applied consistently over an extended period. Indeed, their duration usually is limited by statute. In that environment, assurance of future benefits cannot be provided by probable future actions of the price control regulator because that regulator may not exist at a given future date.

The implementation of the FHP does not create the type of environment described in FAS 71.BC70 as it is governed by the OEB and there is no concern the OEB will not continue to exist.

The second part of the scope exception in ASC 980-10-15-7(a) relating to the accounting for contracts is further explained in the following paragraph from the Basis for Conclusion for FAS 71:

71. Accounting for contracts in general was also excluded from the scope of the Discussion Memorandum. The economic effects of cost reimbursement contracts are in some respects similar to the economic effects of the type of regulation addressed by this Statement. However, most contracts tend to be relatively short-term, whereas regulation of enterprises covered by this Statement is expected to continue beyond the foreseeable future. The Board noted that other authoritative literature addresses contract accounting and concluded that it should exclude the general issue of contract accounting from the scope of this Statement.

Although the impetus for the FHP relates to term of contracts the IESO has entered into with certain generators, the FHP does not change the existing accounting for these contracts.

Application of ASC 980-340-25-1 to the regulatory asset

ASC 980-340-25-1 states the following:

Rate actions of a regulator can provide reasonable assurance of the existence of an asset. An entity shall capitalize all or part of an incurred cost that would otherwise be charged to expense if both of the following criteria are met:

Field Code Changed

Field Code Changed

- *a) It is probable (as defined in Topic 450) that future revenue in an amount at least equal to the capitalized cost will result from inclusion of that cost in allowable costs for rate-making purposes.*
- *b) Based on available evidence, the future revenue will be provided to permit recovery of the previously incurred cost rather than to provide for expected levels of similar future costs. If the revenue will be provided through an automatic rate-adjustment clause, this criterion requires that the regulator's intent clearly be to permit recovery of the previously incurred cost.*

A cost that does not meet these asset recognition criteria at the date the cost is incurred shall be recognized as a regulatory asset when it does meet those criteria at a later date.

The following supports the IESO's position that the FHP variance account meets the above criteria for capitalization:

It is probable (as defined in Topic 450) that future revenue in an amount at least equal to the capitalized cost will result from inclusion of that cost in allowable costs for rate-making purposes.
The following excerpts from the FHP Act make it clear that the IESO is entitled to recover the regulatory asset through rates in the future:

Variance account to be established, maintained

24 (1) The IESO shall establish and maintain a variance account in which it records the following:

1. The IESO deferral for each month.

2. All payments received by the IESO resulting from the exercise of the right of recovery under section 25 and any transfer under section 26.

3. Such other adjustments as may be prescribed, including adjustments in respect of the period that commences on or after May 1, 2017 and before the day this section comes into force.

Recording determinative

(2) Subject to the correction of any obvious error by the IESO, its recording of the balance in the variance account is determinative of the balance as of the time of the recording.

Regulatory asset established

25 (1) Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Board to set rates

(2) Subject to subsection (3), the Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for the IESO to recover the balance recorded in the variance account.

Limitation

(3) The IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2021.

The recovery of the regulatory asset is, however, dependent on future consumption of electricity by rate-payers. Although the timing of the recovery of the regulatory asset has not yet been established by statute, the recovery period is intended to be 30 years. Given the nature and extent of customer demand for the power generated and distributed in Ontario, both at this time and projected in the future, it is reasonable to conclude that it is probable there will be sufficient demand in the future to recover the regulatory asset. This conclusion, which is supported by Figure 19: Ontario's Forecast Electricity Production in Achieving Balance – Ontario's Long-Term Energy Plan, will need to be continually evaluated throughout the recovery period. The willingness of unrelated third parties (e.g. investors) to fund the purchase of the regulatory asset from the IESO by OPG Trust also demonstrates the belief that sufficient demand will exist to permit its future recovery.

Commented [CV34]: Are we including this Figure in this memo

Based on available evidence, the future revenue will be provided to permit recovery of the previously incurred cost rather than to provide for expected levels of similar future costs. If the revenue will be provided through an automatic rate-adjustment clause, this criterion requires that the regulator's intent clearly be to permit recovery of the previously incurred cost.

Based on the above excerpts from the FHP Act, it is clear the IESO will be recovering costs previously incurred rather than providing for expected levels of similar future costs.

ASC 980 is an acceptable source of guidance under PSAS

Commented [NPP35]: Important consideration if GBEs were ever consolidated on a line by line basis. Other RR entities in Canada use US GAAP (recognized under auditing standards as a fair presentation framework--- companies receive clean audit opinions. Companies reporting RRA under IFRS14 are reporting based on ASC 980))

In assessing whether ASC 980-340-25-1 is an acceptable source of guidance under PSAS, Paragraph 5 of PSAS 1150, GENERALLY ACCEPTED ACCOUNTED PRINCIPLES, states the following:

When the primary sources of GAAP do not deal with the accounting and reporting in financial statements of transactions or events encountered by the public sector reporting entity, or additional guidance is needed to apply a primary source to specific circumstances, the selection of an appropriate accounting

policy requires the exercise of professional judgment. In these circumstances, a public sector reporting entity should adopt accounting policies and disclosures that are consistent with:

a) the primary sources of GAAP; and

b) the application of the concepts described in FINANCIAL STATEMENT CONCEPTS, Section PS 1000.

Related guidance is also provided in PSAS 1150.18-.20:

Paragraphs PS 1150.19-.24 identify some of the other sources that a public sector reporting entity might consult to assist in selecting accounting policies and disclosures that comply with paragraph PS 1150.05.

Pronouncements issued by other bodies authorized to issue accounting standards may be useful sources to consult. For example, accounting pronouncements published with the authority of the Canadian Accounting Standards Board (AcSB), International Accounting Standards Board (IASB), US Federal Accounting Standards Advisory Board (FASAB), US Governmental Accounting Standards Board (GASB), or International Public Sector Accounting Standards Board (IPSASB) are often important sources to consult on matters not covered by primary sources of GAAP or for assistance in applying a primary source of GAAP to specific circumstances.

When a public sector reporting entity chooses to consult a source described in paragraph PS 1150.19, it applies professional judgment and evaluates the source in the context of the relative manner in which the standard setter requires its pronouncements to be applied, as well as in the context of the related pronouncement. When an accounting standard setter does not have a conceptual framework that is similar to the concepts referred to in paragraph PS 1150.05(b), the public sector reporting entity needs to ensure that the selected source is consistent with those concepts.

Since PSAS does not specifically address the treatment of costs incurred that will be recovered through regulatory operations in future periods, the IESO would not be precluded from following the guidance in ASC 980-340-25-1. However, PSAS 1000.05 makes it clear that in order to do so, it must first be demonstrated that such guidance is consistent with the application of the concepts described in PSAS 1000, FINANCIAL STATEMENT CONCEPTS.

The relevant guidance in PSAS 1000 relating to the recognition of an asset is as follows:

PSAS 1000.35

Assets are economic resources controlled by a government as a result of past transactions or events and from which future economic benefits are expected to be obtained.

PSAS 1000.36

Assets have three essential characteristics:

a) they embody future economic benefits that involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows, or to reduce cash outflows;
b) the public sector entity can control the economic resource and access to the future economic benefits; and
c) the transaction or event giving rise to the public sector entity's control has already occurred.

PSAS 1000.37

Commented [npp36]: Economic inflows will be generated through rates, not taxes. Not reflecting the RRA on the books of the government would distort the relevance of the financial reports of the Province.

An item is not an asset of a government if it lacks one or more of the essential characteristics listed in the preceding paragraph. Thus, for example, an item does not qualify as an asset of a government if the item involves:

- *a) no future economic benefit;*
- *b) future economic benefit, but the government cannot obtain it; or*
- *c) future economic benefit that the government may obtain, but the events or circumstances that give the government control of the benefit have not yet occurred*

The following supports the IESO's position that the regulatory asset possesses the three essential characteristics of an asset:

Embody future economic benefits that involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows, or to reduce cash outflows

The following excerpts from the FHP Act make it clear that the IESO is entitled to recover the regulatory asset through rates in the future:

Variance account to be established, maintained

24 (1) The IESO shall establish and maintain a variance account in which it records the following:

1. The IESO deferral for each month.

2. All payments received by the IESO resulting from the exercise of the right of recovery under section 25 and any transfer under section 26.

3. Such other adjustments as may be prescribed, including adjustments in respect of the period that commences on or after May 1, 2017 and before the day this section comes into force.

Recording determinative

(2) Subject to the correction of any obvious error by the IESO, its recording of the balance in the variance account is determinative of the balance as of the time of the recording.

Regulatory asset established

25 (1) Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Board to set rates

(2) Subject to subsection (3), the Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for the IESO to recover the balance recorded in the variance account.

Limitation

(3) The IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2021.

Accordingly, the regulatory asset, by statute, has the capacity to provide future cash inflows.

Commented [npp37]: Similarly the Y2K report concluded that the RRA/Ls met the definitions of assets and liabilities.

While perhaps obvious, paragraph 13 of PSAS 3210, ASSETS, confirms the generation of future cash flows represents a future economic benefit:

The future economic benefits embodied in an asset may also be in the form of generating future cash inflows. Cash inflows benefit the public sector entity because cash can be used to purchase or to provide goods and services, redistribute wealth or settle liabilities. Benefits in the form of cash inflows relate to resources, such as loans receivable, inventory for resale and portfolio investments. Also, some public sector resources generate cash inflows because they have user fees associated with them.

The ability of the regulatory asset to generate future cash flows is dependent on the future consumption of electricity by rate-payers. Although the timing of the recovery of the regulatory asset

has not yet been established by statute, the recovery period is intended to be 30 years. Given the nature and extent of customer demand for the power generated and distributed in Ontario, both at this time and projected in the future, sufficient demand is expected to exist in the future to recover the regulatory asset. This conclusion, which is supported by Figure 19: Ontario's Forecast Electricity Production in Achieving Balance – Ontario's Long-Term Energy Plan, will need to be continually evaluated throughout the recovery period. The willingness of unrelated third parties to fund the purchase of the regulatory asset from the IESO by OPG Trust also demonstrates the belief that sufficient demand will exist to permit its future recovery.

Commented [CV38]: Are there other examples to provide as analogies – anything in tangible capital assets?

The public sector entity can control the economic resource and access to the future economic benefits

Paragraph 16 of PSAS 3210, ASSETS, states the following:

A public sector entity controls the economic resource and access to the future economic benefits when it:

- *a) can benefit from the economic resource through its capacity to provide goods and services, to provide future cash inflows or to reduce cash outflows;*
- *b) can deny or regulate access to those benefits by others; and*
- *c) is exposed to the risks associated with the economic resource.*

The IESO can benefit from the regulatory asset through its capacity to provide future cash inflows in one of two ways:

1. *Collection through future rates*

Section 25 of the FHP gives the IESO the right to recover the regulatory asset through future rates:

Regulatory asset established

25 (1) Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Board to set rates

(2) Subject to subsection (3), the Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for the IESO to recover the balance recorded in the variance account.

2. *Sale to a financing entity*

Section 26 of the FHP Act permits the IESO to sell the regulatory asset:

26 (1) The IESO may from time to time, in accordance with this Act and the regulations, transfer a specified portion of the regulatory asset to a financing entity in accordance with this section.

Agreement

(2) An agreement between the IESO and a financing entity in relation to the transfer of a specified portion of the regulatory asset shall provide for consideration of a payment by the financing entity to the IESO in an amount equal to the amount of the specified portion.

Effect of payment

(3) Upon receipt by the IESO of the payment by the financing entity,

(a) the balance in the variance account shall be reduced by the amount of the payment;

(b) the regulatory asset shall be adjusted accordingly;

(c) the financing entity shall acquire a corresponding investment interest; and

(d) the IESO shall retain no further right, title or interest in the corresponding investment interest.

Since (a) the statutory right to recover the regulatory asset belongs solely to the IESO, and (b) the IESO is permitted, but not required, to sell the regulatory asset, the IESO can deny or regulate access to the future economic benefits of the regulatory asset by others.

The IESO is exposed to the risks associated with the regulatory asset, with the primary risk being that collection through the mechanism set out in Section 25 of the FHP Act is dependent on the future consumption of electricity by rate-payers.

The above analysis supports the position that the IESO controls the regulatory asset and access to the future economic benefits.

In reaching this conclusion, consideration was given to the following excerpt included on Page 37 of the 2008 Annual Report of the OAGO:

With regard to the second characteristic, we simply point again to the legacy of the former Ontario Hydro and its stranded debt. This in our view provides concrete evidence that even in monopoly situations governments do not have sufficient assurance that an enterprise will generate enough profits in future years to recover all of its past costs.

Although there needs to be sufficient assurance regarding the recovery of past costs, all relevant facts and circumstances need to be taken into consideration. Accordingly, the stranded debt of Ontario Hydro can be a relevant to the analysis, but not determinative on its own.

The transaction or event giving rise to the public sector entity's control has already occurred

When evaluating whether a transaction or event gives rise to control, the following guidance from PSAS 3210, ASSETS, provides helpful guidance:

.26
The past transaction or event that gives rise to control of an economic resource resulting from exchange agreements or contracts usually occurs at the point of exchange. This arises when substantially all the benefits and risks of ownership have been transferred to the public sector entity and normally coincides with the disbursement of funds, exchange of other assets or assumption of liabilities.
.28
The existence of a law, by-law or policy in relation to a particular program is not a past transaction or event that gives rise to control of an economic resource. Control does not exist until the underlying event occurs.
.29
The past transaction or event giving rise to control of an economic resource must have occurred by the financial statement date. Legislation having retroactive application cannot create a past transaction or event. Any economic resources related to that legislation would be accounted for in the current and relevant future periods, not in the period of the effective date of the legislation.

In the case of the regulatory asset, the above guidance in PSAS 3210 makes it clear that it is not the statute itself that is the transaction or event giving rise to the asset, it is the incurrence of costs for which recovery is provided for under statute. Accordingly, control over the economic benefits of the regulatory asset occurs when the IESO incurs a cash flow deficit that is recorded in the FHP variance account in accordance with Section 24(1) of the FHP Act:

Commented [CV39]: What was the context of this excerpt?

Commented [npp40]: Consider expanding to acknowledge that regular assessments of probable recovery would be necessary, and that if facts revealed risk, then an appropriate revaluation would be undertaken

Commented [npp41]: Similar position in Tory's letter.

24 (1) The IESO shall establish and maintain a variance account in which it records the following:

1. The IESO deferral for each month.

2. All payments received by the IESO resulting from the exercise of the right of recovery under section 25 and any transfer under section 26.

3. Such other adjustments as may be prescribed, including adjustments in respect of the period that commences on or after May 1, 2017 and before the day this section comes into force.

At this point in time, the IESO has incurred a cash outflow for which it is entitled to recover under Section 25 of the FHP Act:

Regulatory asset established

25 (1) Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Board to set rates

(2) Subject to subsection (3), the Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for the IESO to recover the balance recorded in the variance account.

The following excerpt from the IFRS Staff Paper on Rate-Regulated Activities prepared for discussion at the June 2017 IASB meeting presents a consistent view and dismisses the potential dissenting view that the transaction or event giving rise to the IESO's control is the future consumption of electricity by rate-payers:

A right arises from the rate-adjustment mechanism if the entity has already partially or fully fulfilled a regulatory requirement (past event) but the current regulated rate does not yet reflect the compensation that the entity is entitled to in exchange. Even though the entity cannot compel its customers to buy the regulated goods or services, the entity's right to charge an increased future regulated rate has the potential to produce for the entity an inflow of economic benefits that are not available to other parties. That right will be consumed as the entity includes the rate increase in future regulated rates and will lead to an inflow of economic benefits if customers pay the increased future regulated rate for the future delivery of goods or services.

Another potential dissenting view is contained on page 37 of the 2008 Annual Report of the OAGO:

With regard to the third characteristic, we do not believe that a rate-regulation decision can be considered a transaction or event giving rise to an asset or obligation because, as stated above, from the level of the government's consolidated financial statements such a decision is an internal event between two government-controlled entities. An equivalent analysis for rate-regulated liabilities leads to the same conclusion. PSAB standards preclude the inclusion of both gains and losses from such inter-company transactions. Therefore, our contention is that, at the consolidated financial statement level, rate-regulated assets and liabilities have no place and should be removed upon consolidation of the government's controlled entities.

It should be noted, however, that the OAGO's belief that a rate-regulation decision cannot be considered a transaction or event giving rise to an asset or obligation is not contrary to the IESO's position. As noted above, it is not the statute itself that is being considered the transaction or event giving rise to the asset, it is the incurrence of costs for which recovery is provided for under statute.

In addition, one could argue the creation of the relevant statutes is not an internal event from the point of view of the consolidated government. Statutes must be passed by the Legislative Assembly of Ontario to become law. Since the Legislative Assembly is comprised of elected members, it can be viewed as the government's governing body.

Concluding the regulatory asset possesses the three essential characteristics of an asset in PSAS 1000.05 then begs the question as to whether the application of the guidance in ASC 980 is even necessary in this particular situation. Consistent with the statement in ASC 980 –340-25-1 that *rate actions of a regulator can provide reasonable assurance of the existence of an asset,* ASC 980 provides guidance as to how to apply the primary source of PSAS in the regulatory environment.

In a letter from the OAGO to the Board of Directors of the IESO dated June 22, 2017 (the OAGO Letter), the OAGO makes the following statement:

The definitions of an asset in the PSAS and FASB Conceptual Framework are similar. Similar to PSAS, rate regulated deferral accounts do not generally meet the definition of an asset in the FASB's Conceptual Framework.

However, the following excerpts from the Basis for Conclusions for FAS 71 (paragraph 58 in particular), clearly support that ASC 980 is an application of, not an exception from, the basic definition of an asset in the Conceptual Framework:

Economic Effects of Regulation

56. The second threshold issue in the Discussion Memorandum was: "Does rate regulation introduce an economic dimension in some circumstances that should affect the application of generally accepted accounting principles to rate-regulated enterprises?"

57. Most respondents to the Discussion Memorandum indicated that rate regulation does introduce such an economic dimension in some circumstances. Respondents cited the cause-and-effect relationship of costs and revenues as the principal economic effect of regulation that affects accounting for regulated enterprises. They noted that cost might be one factor used by unregulated enterprises to establish prices, but it would often not be the most important factor. Usually, prices are limited by the market. An unregulated enterprise might desire to price its goods or services at a level that would recover all costs and a reasonable profit; however, the market might not permit that price. Alternatively, an unregulated enterprise might be able to increase its prices and its profit if competition does not limit its prices. In either case, cost often is not the principal determinant of prices. In contrast, for an enterprise with prices regulated on the basis of its costs, allowable costs are the principal factor that influences its prices.

58. The economic effect cited by most respondents is the ability of a regulatory action to create a future economic benefit—the essence of an asset. For example, consider a regulated enterprise that incurs costs to repair damage caused by a major storm. If the regulator approves recovery of the costs through rates over some future period or is expected to do so, the rate action of the regulator creates a new asset that offsets the reduction in the damaged asset. The enterprise has probable future economic benefits—the additional revenue that will result from including the cost in allowable costs for rate-making purposes. The future benefits are obtained or controlled by the enterprise as a result of a past event—incurring the cost that results in the rate order. Thus, the criteria of Concepts Statement 3 for an asset are met.

The fact that many Canadian rate-regulated entities recognized regulated assets under Part V of the CPA Canada Handbook – *Pre-changeover Accounting Standards* (Part V GAAP) further supports the position that regulated assets do meet the basic definition of an asset under PSAS. Although Part V GAAP refers to rate regulation in several standards, it does not include cost capitalization guidance equivalent to ASC 980-340-25-1. It does, however, specify in paragraph 32B of Section 1100, *Generally accepted accounting principles*, that Section 1100 applies to the recognition and measurement of assets and liabilities arising from rate regulation beginning January 1, 2009. Since Section 1100.04 only permits the

Commented [npp42]: And where reporting under IFRS14, ASC980 continues to be the basis for reporting such assets.

use of an alternate source of GAAP if it is consistent with Part V GAAP, regulated assets need to meet the basic definition of an asset under Part V GAAP in order to be recognized. The Part V GAAP definition of an asset in Section 1000, *Financial Statement Concepts* is consistent with the PSAS definition.

The OAGO Letter suggests that IFRS should be consulted prior to referring to ASC 980 under PSAS's GAAP hierarchy in PSAS 1150 and points out the following:

- In 2005 the International Financial Reporting Interpretations Committee (IFRIC) indicated the US GAAP recognition criteria for regulated assets were not fully consistent with IFRS and could not be applied by analogy.
- When the question of rate regulated accounting was posed to the IFRIC again in 2008, the IFRIC noted the topic had been previously addressed and there was a well-established practice of first time IFRS adopters ceasing rate regulated accounting and removing regulatory deferral accounts from their financial statements.
- In the Basis for Conclusions on IFRS 14, IFRS 14.BC30 noted the differences in the recognition criteria between IFRS and ASC 980 resulted in almost all existing regulatory deferral accounts being derecognized upon transition to IFRS.

It should be noted, however, that the IASB's project on rate-regulated activities is still in progress and the OAGO Letter does not reference more recent and relevant activity. In September 2014, the IASB issued Discussion Paper DP/2014/02, *Reporting the Financial Effects of Rate Regulation*. The Discussion Paper presents the opposing views as to whether regulatory deferral account balances meet the definitions of an asset or a liability and specifically states the following in paragraph 5.09:

Consequently, the IASB has not formed a preliminary view on whether regulatory deferral account balances meet either the current or proposed revised Conceptual Framework definitions of an asset and a liability. It will use the input received from the responses to this Discussion Paper and the Conceptual Framework project to help it assess whether to develop any specific accounting guidance or requirements for rate-regulated activities.

In addition, the most recent paper issued by the IASB staff in June 2017 includes the following:

17. During the May 2017 Board meeting we also considered the interaction between the definitions of assets and liabilities and the characteristics of defined rate regulation (see paragraphs 5 and 6). We concluded that a combination of those characteristics suggested that the rights and obligations created by the rate-adjustment mechanism are assets and liabilities, as those terms are expected to be defined in the forthcoming revised Conceptual Framework for Financial Reporting.

The Exposure Draft ED/2015/3, *Conceptual Framework for Financial Reporting*, defines an asset as follows:

4.5 An asset is a present economic resource controlled by the entity as a result of past events.
4.6 An economic resource is a right that has the potential to produce economic benefits.

This recent activity suggests that it would be premature to assume that the IASB will conclude that regulatory deferral account balances will not meet the definitions of an asset or a liability.

Once it is determined that the regulatory asset meets the basic characteristics of an asset in PSAS 1000.36, consideration also needs to be made as to what type of asset it is. This is important because PSAS 1000.58 does not permit the recognition of intangible assets:

In the absence of appropriate public sector recognition and measurement criteria for intangibles, all intangibles, including those that have been purchased, developed, constructed or inherited in right of the Crown, are not recognized as assets in government financial statements. The intangible often called "human capital" that embodies the talent or intellectual capital of government employees is not recognized as an asset under existing accounting principles.

PSAS 1000 identifies two types of assets: financial assets and non-financial assets and provides the following commentary:

.39 Financial assets are assets that could be used to discharge existing liabilities or finance future operations and are not for consumption in the normal course of operations.

.40 A financial asset is any asset that is:

- *a) Cash*
- *b) a realizable asset that is convertible to cash;*
- *c) a contractual right to receive cash or another financial asset from another party;*
- *d) a contractual right to exchange financial instruments with another party under conditions that are potentially favourable to the government;*
- *e) an equity instrument of another entity;*
- *f) an investment in a government business enterprise or government business partnership;*
- *g) a financial claim on an outside organization or individual; or*
- *h) an inventory or item for sale that meets the criteria in FINANCIAL STATEMENT PRESENTATION, paragraph PS 1201.055.*

.41 Non-financial assets include tangible capital assets, and other assets such as prepaid expenses and inventories of supplies.

.42 Non-financial assets are acquired, constructed or developed assets that do not normally provide resources to discharge existing liabilities, but instead:

- *a) are normally employed to deliver government services;*
- *b) may be consumed in the normal course of operations; and*
- *c) are not for sale in the normal course of operations.*

PSAS 3210, ASSETS, also provides some relevant guidance:

.24 Non-financial resources include all items of a fixed or permanent nature (such as tangible capital property), claims to goods and services (such as prepaid items) and consumable goods (such as inventories of supplies). Non-financial resources also include intangibles, Crown lands and natural resources.

.25 Certain non-financial resources are, however, not given accounting recognition as assets in government financial statements. For example, all government intangibles, and all natural resources and Crown lands that have not been purchased by the government, are not given accounting recognition in government financial statements. A government's non-financial assets, as defined in FINANCIAL STATEMENT CONCEPTS, Section PS 1000, comprise the recognized non-financial resources of a government.

The regulatory asset does not meet the criteria in PSAS 1000.40 to be a financial asset as it does not represent a current contractual right to receive cash. Accordingly, the regulatory asset is a non-financial resource. As noted above, to be recognized as an asset in the financial statements a non-financial resource cannot be an intangible.

Commented [CV43]: To discuss – non financial assets are quite narrowly defined as well.

Although PSAS does not permit the recognition of intangibles, it also does not provide a definition of intangibles. While PSAS 1000.40 provides a finite list of items that represent financial assets, the guidance in PSAS 1000.41-.42 on non-financial assets is less definitive, using words like “such as” and “normally”. In absence of specific guidance in PSAS as to what constitutes an intangible, U.S. GAAP is

probably the most appropriate source to consult, in light of the fact that it deals specifically with regulated assets.

Under U.S. GAAP, a regulated asset is not treated as an intangible. ASC 980 contains separate subsections for 'Intangibles – Goodwill and Other' and 'Other Assets and Deferred Costs' and regulated assets are included in the guidance on 'Other Assets and Deferred Costs'. Consistent with the treatment under U.S. GAAP, the regulatory asset is categorized as an other asset under PSAS and recognized in the financial statements.

……

Debits and Credits

Based on the example provided earlier, the IESO pays the contracted power generator $400 for electricity used by the ratepayer and collects $300 from the ratepayer through their local distribution company (LDC). The $100 recovery shortfall is recorded in a variance account created by Bill 132 and deemed to be a regulatory asset. The IESO sells the regulatory asset to OPG Trust for $100 to obtain cash to make up the shortfall.

The accounting for the above transactions in the financial statements of the IESO, which are prepared in accordance with PSAS, depends on whether the regulatory asset is eligible for recognition as an asset for accounting purposes under PSAS. To avoid confusion in the remainder of this document, the term regulatory asset will refer to the defined term in the FHP Act and the term regulated asset or rate-regulated asset (RRA) will refer to an asset recognized for accounting purposes. The following table illustrates the journal entries to be booked by the IESO under both scenarios:

Scenario A – Regulated Asset			**Scenario B – Not a Regulated Asset**		
Market Settlement					
DR	Cash	300	DR	Cash	300
DR	Asset	100	DR	Expense	100
CR	Cash	(400)	CR	Cash	(400)
Sale of Regulatory Asset to OPG Trust					
DR	Cash	100	DR	Cash	100
CR	Asset	(100)	CR	Gain	(100)

At any given point in time, the accounting result will be the same under both scenarios provided the cash shortfall has been fully funded. If a funding deficit exists, however, the deficit would be recognized as an asset under Scenario A and recognized as an expense under Scenario B. A funding deficit may arise due to, for example, temporary timing differences between the creation and sale of a regulatory asset. A funding deficit may also arise if OPG Trust (or another financing entity) ceases to purchase the IESO's regulatory assets on an on-going basis.

final Business Cases _$25 KPMG and Deloitte.rtf

From: Petsche, Nadine (TBS) []
To: Bernard, Dena (TBS) [Dena.Bernard@ontario.ca]
CC: Lindo, Murray (TBS) [Murray.Lindo@ontario.ca]; Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
Subject: final Business Cases <$25 KPMG and Deloitte
Date: Wednesday, February 11, 2015 17:15:14
Attachment 1: Business Case complex accounting service KPMG IAS 14F.doc
Attachment 2: Business Case complex accounting service Deloitte Inc GBE and CL Final.doc

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Copies of the versions submitted for Murray's approval. Nadine

Business Case complex accounting service KPMG IAS 14F.pdf

Business Case
Complex Accounting Services
(KPMG – Rate Regulated Balances)

Objectives

Office of the Treasury Board (OTB), Office of the Provincial Controller Division (OPCD) requires the services of a public accounting firm with expertise in International Financial Reporting Standards (IFRS) as applicable to rate-regulated entities to assist in assessing and documenting the impact of a potential change in accounting for Hydro One and Ontario Power Generation on the Province's 2014/15 Public Accounts.

The assistance of a specialist on interpretation and application of IFRS, specifically as related the Province's rate regulated entities, will be beneficial in managing accounting and audit risks, as well as providing additional insights to OPCD on potential future fiscal impacts on both the Province's balance sheet and statement of operations.

The term of the agreement is to be for a period of 8 months and it is anticipated that the agreement will be executed on or around February 12, 2015.

Deliverables:

Working with management of OPCD's Accounting Policy and Financial Reporting Branch (APFR), the provider of complex accounting services related to IFRS as related to the Province's rate regulated entities, will provide assistance in assessing and documenting key considerations and recommendations for the following:

- The potential impact of IAS14 (transitional standard for rate-regulated entities) on the Province's 2014/15 Public Accounts and future years for Hydro One and Ontario Power Generation.
- The potential impact of IAS 14 on other Provincial entities including OEFC and IESO/OPA.
- The potential impact of an ultimate decision by the International Accounting Standards Board which does not reflect rate regulated activities consistent with past practice under Canadian GAAP or US GAAP.

If required, it is anticipated that the service provider will work with OPCD to present findings and analysis to the Office of the Auditor General in relation to planning for the 2014/15 Public Accounts. The service provider may also be called upon to participate in internal discussions to inform decisions regarding Provincial policy regarding the most appropriate accounting basis for the Province to apply in consolidation of OPG and H1 on the Province's books (i.e. IAS14 vs. US GAAP).

Procurement Methodology

In accordance with the MBC Procurement Directive, and as a Division of TBS, the Office of the Provincial Controller has identified the firm of KPMG from the existing General Management Vendor of Record as the preferred service provider.

Key factors in the decision included familiarity with the Province's rate-regulated entities and reporting thereby through past consultations on IFRS-related matters; experience in having provided advice and guidance to entities in the rate-regulated sector regarding the interpretation of the recently issued transitionary standard, IAS14. In particular, Michel Picard of KPMG has been actively involved in consulting with stakeholders in the Canadian electricity sector regarding rate regulated accounting, and providing support for the IASB's project on rate regulated accounting. OPCD has participated in discussions with Mr. Picard and representatives of OPG and Hydro One on matters related to interpretation of the IASB's interim standard. Mr. Picard is considered to be the best resource available to provide the required level of assistance.

As the estimated value of the contract is less than $25K, the Director of Accounting Policy and Financial Reporting will provide necessary authorization.

Ministry Consultation/Co-ordination

Both OEFC and the Ministry of Energy are aware of outstanding issues related to a potential change in basis for accounting for H1 and OPG effective January 1, 2015. OPCD continues to keep these key stakeholders informed of our progress on this matter and to solicit input where appropriate.

Alternative Sources of Information Required

Alternatives were considered, however the nature of services required for this particular purpose are most efficiently, economically and expediently obtained through this method. Internal OPS resources are not able to accommodate this requirement.

Time Lines

February 23, 2015 – February 12, 2016

Cost

These services are estimated to cost approximately $25,000.

Approvals (DOA):

Since the value is estimated to be $25,000, only the approval of the Director, Accounting Policy and Financial Reporting is required.

Client Contact:

Shyrose Virani
Administrative Coordinator
416-325-1448

Submitted by:

Nadine Petsche MBA CPA CA
Director, Accounting Policy and Financial Reporting
Office of the Provincial Controller
Date:

Agreed by:

Murray Lindo
ADM and Provincial Controller
Office of the Provincial Controller
Date:

Business Case complex accounting service Deloitte Inc GBE and CL Final.pdf

Business Case
Complex Accounting Services
(Deloitte Inc. – GBE Consolidation and Contaminated Sites)

Objectives

Office of the Treasury Board (OTB), Office of the Provincial Controller Division (OPCD) requires the services of a public accounting firm to assist in assessing and documenting positions on accounting for the Province's government business enterprises under Public Sector Accounting Standards, including consideration of potential legislative options. In addition, OPCD may require specialized assistance to proactively address potential accounting and/or audit risks associated with implementing the public sector accounting board's (PSAB) new standard on contaminated land.

Timing of this engagement is critical to provide input to OPCD's analysis of risks and alternatives to help inform decisions, and to best positioned OPCD to defend a position to the AG and other stakeholders once it has been decided upon. In particular, the results of this engagement will help to inform decisions on potential regulations to address:

- The basis upon which GBEs should be consolidated (modified equity)
- The basis of reporting to be applied in consolidation of GBEs (especially as related to Hydro One and OPG)
- Dealing with accounting policy changes for GBEs with different reporting year-ends than the Province (i.e. December 31st) on the Province's financial reports.

In addition, OPCD may require assistance to help inform and defend positions to the AG in regards to implementation of PSAB's new standard on contaminated land.

The term of the agreement is to be for a period of 12 months and it is anticipated that the agreement will be executed on or around February 12, 2015.

Deliverables:

Working with management of OPCD's Accounting Policy and Financial Reporting Branch (APFR), the provider of complex accounting services related to:

1. Consolidation of the Province's GBEs will provide assistance in assessing and documenting key considerations and recommendations for each of the following:

    - The basis upon which GBEs should be consolidated (modified equity)
    - The basis of reporting to be applied in consolidation of GBEs (especially as related to Hydro One and OPG)
    - Dealing with accounting policy changes for GBEs with different reporting year-ends than the Province (i.e. December 31st) on the Province's financial reports.

2. Interpretation and implementation of PSAB's new standard on contaminated land as it relates to reporting in the Province's consolidated financial statements.

If required, it is anticipated that the service provider will work with OPCD to present findings and analysis to the Office of the Auditor General in relation to planning for the 2014/15 Public Accounts.

Procurement Methodology

In accordance with the MBC Procurement Directive, and as a Division of TBS, the Office of the Provincial Controller has selected Deloitte Inc. from the existing General Management Vendor of Record as the preferred service provider.

Key factors in the decision included familiarity with public sector accounting standards (PSAB), the province's accounting policies and in particular complexities related to the accounting for the Province's rate-regulated entities on the Province's consolidated financial statements.

Deloitte Inc.'s previous work on a complex accounting assignment related to consolidation of various electricity sector entities (OEFC, OPA, H1 and OPG) will be valuable in assessing the impact of various options on the reported results of various electricity sector entities (e.g. dedicated revenue for OEFC).

Deloitte Inc. has also been engaged by the Office of the Internal Auditor to provide advice and assurance on practical aspects related to implementation of PSAB's new standard on contaminated land as well as implementation of a centralized management process of land remediation. Engagement of Deloitte Inc. to provide potential support to OPCD on accounting and financial reporting matters related to PSAB's new standard is considered the most effective and economical alternative.

As the estimated value of the contract is less than $25K, the Director of Accounting Policy and Financial Reporting will provide necessary authorization.

Ministry Consultation/Co-ordination

Both OEFC and the Ministry of Energy are aware of outstanding issues related to a potential change in basis for accounting for H1 and OPG effective January 1, 2015. OPCD continues to keep these key stakeholders informed of our progress on this matter and to solicit input where appropriate.

Alternative Sources of Information Required

Alternatives were considered, however the nature of services required for this particular purpose are most efficiently, economically and expediently obtained through this method. Internal OPS resources are not able to accommodate this requirement.

Time Lines

February 12, 2015 – February 12, 2016

Cost

These services are estimated to cost approximately $25,000.

Approvals (DOA):

Since the value is estimated to be $25,000, only the approval of the Director, Accounting Policy and Financial Reporting is required.

Client Contact:

Shyrose Virani
Administrative Coordinator
416-325-1448

Submitted by:

Nadine Petsche MBA CPA CA
Director, Accounting Policy and Financial Reporting
Office of the Provincial Controller
Date:

Agreed by:

Murray Lindo
ADM and Provincial Controller
Office of the Provincial Controller
Date:

FW_ Change of Law Protection Agreement and Change of Law Process Agreement.rtf

From: Hanslep, Malle (MOF) []
To: Manning, Mike (OFA) [Mike.Manning@ofina.on.ca]; Mayman, Gadi (OFA) [Gadi.Mayman@ofina.on.ca]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Strathy, Anna (OFA) [Anna.Strathy@ofina.on.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Kwan, Ronald (OFA) [Ronald.Kwan@ofina.on.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Devine, James (OFA) [James.Devine@ofina.on.ca]; Yep, Carlos (OFA) [Carlos.Yep@ofina.on.ca]; Cengarle, John (MOF) [John.Cengarle@ontario.ca]; Katona, Keley (MOF) [Keley.Katona@ontario.ca]; Donaldson, Mark (TBS) [Mark.Donaldson@ontario.ca]; Zahid, Usman (OFA) [Usman.Zahid@ofina.on.ca]; Hirani, Anis (OFA) [Anis.Hirani@ofina.on.ca]; Kim, John (OFA) [John.Kim@ofina.on.ca]; McKinlay, Tom (ENERGY) [Tom.McKinlay2@ontario.ca]; Thouin, Alena (ENERGY) [Alena.Thouin@ontario.ca]; Gavaris, Hresa (OFA) [Hresa.Gavaris@ofina.on.ca]; John Psinas (John.Psinas@ofina.on.ca) [John.Psinas@ofina.on.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Cayley, Daniel (ENERGY) [Daniel.Cayley@ontario.ca]
CC: ASHBOURNE, STEPHEN (STEPHEN.ASHBOURNE@blakes.com) [STEPHEN.ASHBOURNE@blakes.com]
Subject: FW: Change of Law Protection Agreement and Change of Law Process Agreement
Date: Wednesday, November 15, 2017 10:26:32
Attachment 1: image001.gif
Attachment 2: image002.gif
Attachment 3: image003.gif
Attachment 4: 23239360-vpdf-CLPA - Protection Agreement.pdf
Attachment 5: 23239360-vpdf-CLPA - Protection Agreement.pdf
Attachment 6: 23239361-vpdf-CLPA - Process Agreement.PDF
Attachment 7: 23239361-v10-CLPA - Process Agreement.DOCX
Attachment 8: 23239361-vpdf-CLPA - Process Agreement.PDF
Attachment 9: 23239360-v12-CLPA - Protection Agreement.DOCX

Hi all,

These revisions were sent out by Steve last evening. Please review to ensure all the comments at the meeting yesterday were captured. Also, please review s. 4.01 in particular as based on discussions with Steve last evening the language was modified a bit to change it so the Province may disagree with the amount for the protection agreement maximum proposed by OPG on reasons related to the inconsistencies or inaccuracies as opposed to agreeing as opposed to confirming agreement. Please let us know if you have comments on this. Thanks.

Malle

From: ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
Sent: November 14, 2017 8:30 PM
To: Sebastiano, Rocco; Ramchandani, Rima; VINER, JON; PRESTAGE, JA; Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); McKinlay, Tom (MAG); Thouin, Alena (ENERGY)
Cc: Feldman, Michael; Mansoori, Nina; Saulnier, Brett; 'WONG Leslie -LAWDIV'; LEE John -TREASURY; RYFA Ken -TREASURY; Milligan, Peter; Fullerton, Rick; 'Persaud,

Donnie - Debt Capital Markets'; Adalja, Sunil; Maciel, Andrew; 'Benaiah, Ian'; 'Khan, Nur (nur.khan@rbccm.com)'; 'brent.r.taylor@rbccm.com'; Niehaus, Katrina; Delaney, Brian; Conner, Robbin
Subject: RE: Change of Law Protection Agreement and Change of Law Process Agreement

Please find attached revised versions of the Protection and Process Agreements. The blacklines show changes to the November 2nd (Province/Blakes) and November 8th (OPG/Dealers/Osler/Torys) circulated versions. In the interest of time, these versions are being circulated at the same time to the Province and so remain subject to comment. Please let us know if you have any comments or concerns. Regards, Steve

Stephen R. Ashbourne

Partner

stephen.ashbourne@blakes.com

Dir: 416-863-3086

From: Sebastiano, Rocco [mailto:RSebastiano@osler.com]
Sent: Thursday, November 09, 2017 2:11 AM
To: Ramchandani, Rima; ASHBOURNE, STEPHEN; VINER, JON; PRESTAGE, JA; Malle.Hanslep@ontario.ca; Tobias.Whitfield@ontario.ca; tom.mckinlay@ontario.ca; Alena.Thouin@ontario.ca
Cc: Feldman, Michael; Mansoori, Nina; Saulnier, Brett; 'WONG Leslie -LAWDIV'; LEE John -TREASURY; RYFA Ken -TREASURY; Milligan, Peter; Fullerton, Rick; 'Persaud, Donnie - Debt Capital Markets'; Adalja, Sunil; Maciel, Andrew; 'Benaiah, Ian'; 'Khan, Nur (nur.khan@rbccm.com)'; 'brent.r.taylor@rbccm.com'; Niehaus, Katrina; Delaney, Brian; Conner, Robbin
Subject: RE: Change of Law Protection Agreement and Change of Law Process Agreement

Please find enclosed revised drafts of the Change of Law Protection Agreement and the Change of Law Process Agreement. I have also enclosed redlines to the drafts which Stephen circulated on November 2nd. The revised drafts and comments contained in these two agreements are a consolidation of comments from Osler and Torys. Please note that we have not had an opportunity to discuss all of the revisions and comments

contained in these revised drafts with OPG and the Dealers and therefore, are subject to any further comments which the Dealers and OPG may have.

The initial drafts of these two agreement have not been provided to the rating agencies for their review and therefore, further revisions may be required following their review and comment once drafts have been provided to them to review.

Regards, Rocco

Rocco Sebastiano
Partner

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DIRECT

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From: ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
Sent: November-02-17 9:02 PM
To: Feldman, Michael <mfeldman@torys.com>; Ramchandani, Rima <rramchandani@torys.com>; Mansoori, Nina <nmansoori@torys.com>; Hill, Krista

<khill@torys.com>
Cc: Hanslep, Malle (MOF) (Malle.Hanslep@ontario.ca) <Malle.Hanslep@ontario.ca>; Whitfield, Tobias P. (MOF) (Tobias.Whitfield@ontario.ca) <Tobias.Whitfield@ontario.ca>; tom.mckinlay@ontario.ca; Thouin, Alena (ENERGY) (Alena.Thouin@ontario.ca) <Alena.Thouin@ontario.ca>; VINER, JON <JON.VINER@blakes.com>; PRESTAGE, JA <JA.PRESTAGE@blakes.com>
Subject: Change of Law Protection Agreement and Change of Law Process Agreement

Rima, Krista, Nina and Michael,

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

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

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

Regards, Steve

Stephen R. Ashbourne

Partner

stephen.ashbourne@blakes.com

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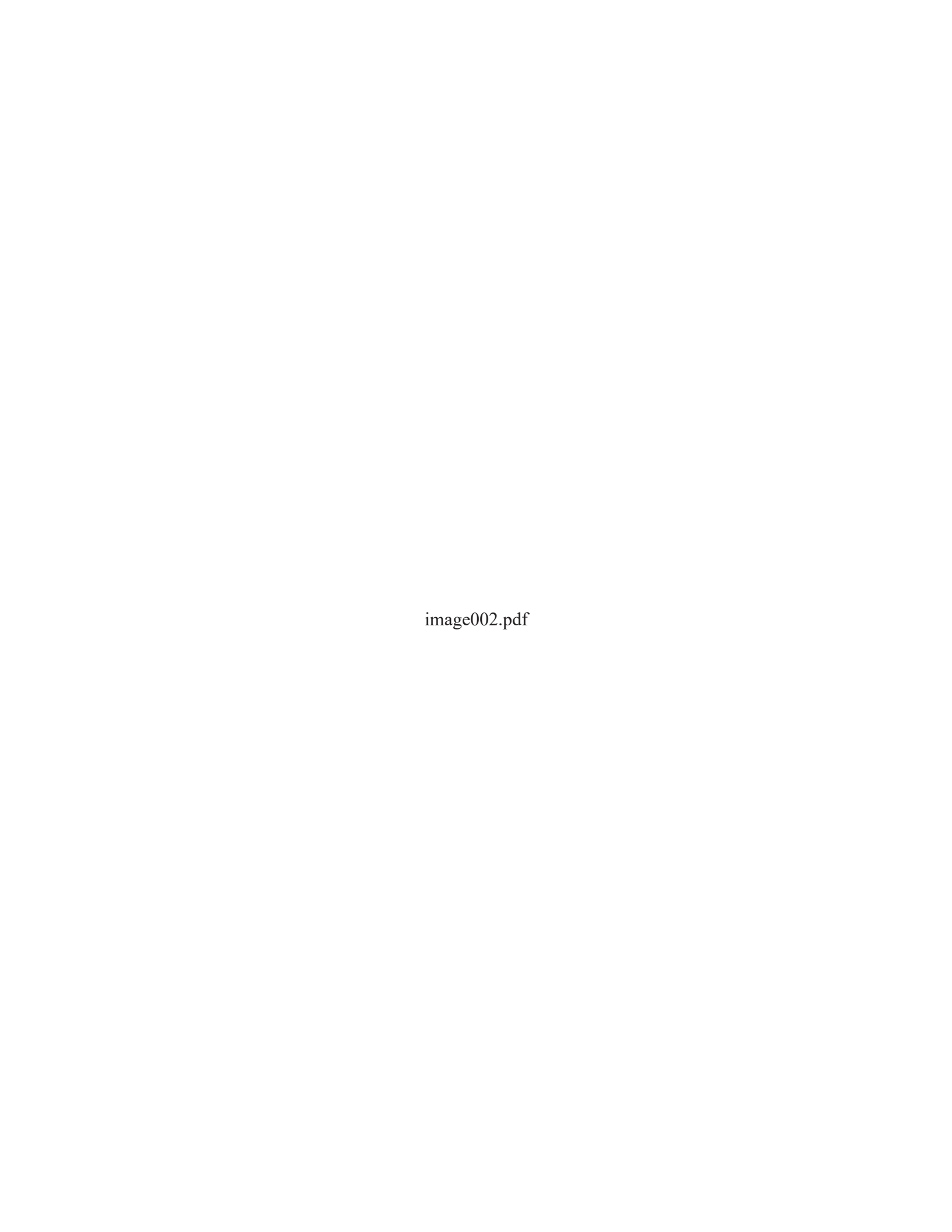
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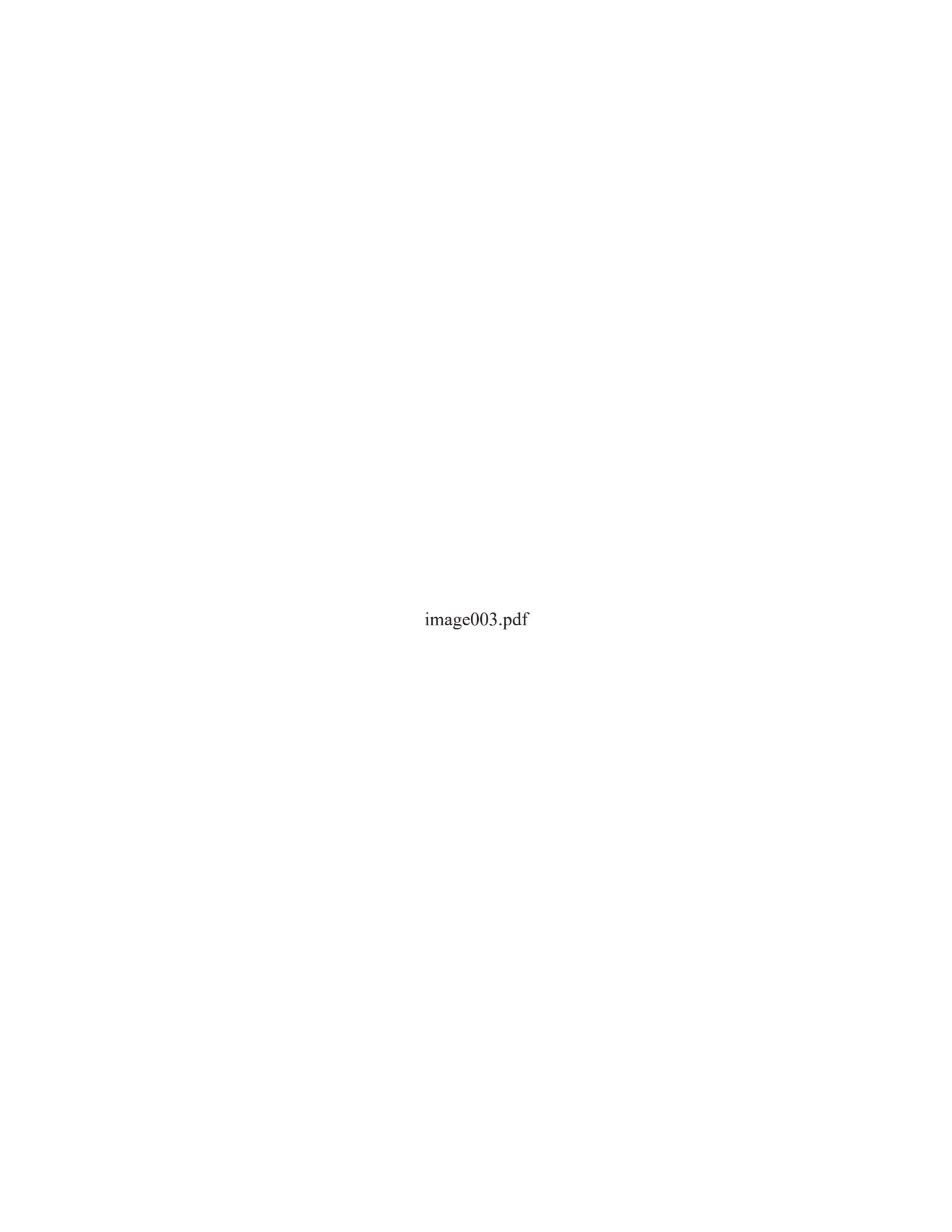
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Blakes

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

AND

~~[FINANCING ENTITY TRUSTEE] IN ITS CAPACITY AS TRUSTEE OF THE [FINANCING ENTITY]~~COMPUTERSHARE TRUST COMPANY OF CANADA, AS TRUSTEE OF FAIR HYDRO TRUST

AND

ONTARIO POWER GENERATION INC., AS FINANCIAL SERVICES MANAGER

AND

~~[NAME OF INDENTURE TRUSTEE]~~BNY TRUST COMPANY OF CANADA, AS INDENTURE TRUSTEE

CHANGE OF LAW PROTECTION AGREEMENT

Dated as of [■], 2017

This **AGREEMENT**, among Her Majesty the Queen in Right of Ontario, as represented by the Minister of Energy and the Minister of Finance (the "**Province**"), ~~**[FINANCING ENTITY TRUSTEE]**, as the Financing Entity Trustee and~~Computershare Trust Company of Canada, in its capacity as trustee ~~of the **[FINANCING ENTITY]**, a trust settled by the FSM~~(the "**Financing Entity Trustee**") of Fair Hydro Trust, a trust under the laws of the Province of Ontario (the "**Financing Entity**")[1], Ontario Power Generation Inc., in its capacity as Manager of the Financing Entity and in its capacity as the Financial Services Manager in accordance with the Act (the "**FSM**") and ~~**[INDENTURE TRUSTEE]**~~BNY Trust Company of Canada, a trust company existing under the laws of Canada, as ~~Indenture Trustee and in its capacity as trustee for the in accordance with the Trust~~ Indenture Trustee, is made and entered into as of [■], 2017.

RECITALS

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

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

Pursuant to a Declaration of Trust[2] dated as of ■, 2017, the ~~FSM established the~~ Financing Entity was established as a "financing entity" (as defined in the Act) for the purposes contemplated in the Act.

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

The Minister of Energy and the Minister of Finance, acting together on behalf of the Province of Ontario, have determined to provide protections and assurances to the Indenture Trustee, for the benefit of the Beneficiaries, in respect of Obligations Secured that constitute Approved Obligations, in order to address concerns that would arise from a change or adverse determination of law, subject in each case to the satisfaction of the Adherence Conditions at the

[1] Province needs the Trust as a party to be assured of its rights of subrogation, step-in, etc.

[2] Torys to confirm that Trust is a "financing entity" under OFHPA. Under definition, FSM to establish or cause to be established. DofT indicates Computershare declares trust. Need to have this confirmed for purposes of authority under OFHPA 5(3), among other things.

time the Approved Obligation is incurred or amended. This Agreement sets out the terms and conditions of such protections and assurances.

~~OPG~~The FSM and the Province will concurrently enter into the Process Agreement, under which ~~OPG~~the FSM will agree to perform certain related activities and to provide certain assurances on which the Province will rely, including for the purposes of determining whether the Adherence Conditions have been satisfied in connection with the incurrence or amendment of an Approved Obligation and ensuring that the Province's assumption right may be exercised without impediment on the terms and conditions contemplated in this Agreement.

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

AGREEMENT OF THE PARTIES

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

ARTICLE I
DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

1.01 Interpretation

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

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

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

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

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

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

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

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

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

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

1.02 Trustee to act in accordance with the Trust Indenture

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

1.03 Proof of Approved Obligations

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

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

1.04 Limitation on Rights of and Actions by Specified Creditors

Specified Creditors, as Beneficiaries, shall not have or be permitted to exercise any rights, interests, or elections under this Agreement, other than in the manner and to the extent effected

and exercised through the Indenture Trustee under, in accordance with and subject to the limitations set forth in the Trust Indenture. No Specified Creditor will have any right to institute any proceeding, judicial or otherwise, with respect to this Agreement.

1.05 Province Retains Rights of Beneficiaries

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

1.06 Effect of Headings

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

1.07 Successors and Assigns

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

1.08 Severability

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

1.09 Governing Law

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

1.10 Proceedings Against the Crown Act

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

1.11 Attornment

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

1.12 Counterparts; Electronic Delivery

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

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

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

1.14 Non-Business Days

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

1.15 Waiver, Amendment

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

1.16 Interest Act

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

1.17 Currency

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

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

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

1.19 Judgment Currency

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

Second Currency, the Indenture Trustee may, in accordance with normal banking procedures, purchase in the New York foreign exchange market the Original Currency with the amount of the Second Currency so paid or so adjudged to be due; and if the amount of the Original Currency so purchased is less than the amount originally due in the Original Currency, the ~~Financing Entity~~Province shall indemnify the Indenture Trustee against such loss.

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

ARTICLE II
AGREEMENT TO PERFORM APPROVED OBLIGATIONS

2.01 Limited Guarantee

(a) Upon the occurrence of a Protection Event, the Indenture Trustee may provide a written demand, in the form attached as Exhibit A (a "**Payment Demand**"), to the Province requiring the Province to pay the amount of the Approved Obligations ~~owing~~that would have been payable from Available Collections had the Protection Event not occurred[3] from time to time by the Financing Entity to the Indenture Trustee as and when they become due and payable, without Acceleration[1]. A Payment Demand will not be valid with respect to an Approved Obligation until the amount claimed becomes due and payable in respect of the Approved Obligation, ~~(~~without Acceleration~~)~~, in accordance with the Trust Indenture and has not otherwise been paid by the Financing Entity.

(b) Following receipt of a valid Payment Demand under Subsection 2.01(a), the Province shall pay the amounts ~~owing~~that would have been payable from Available Collections had the Protection Event not occurred by the Financing Entity to the Indenture Trustee, on behalf of the applicable Beneficiaries, in respect of each Approved Obligation[2], in each case as and when the Approved Obligation becomes due and payable in accordance with its terms and on its scheduled, specified or determined

[3] The amount "owing" under an obligation (i.e., balloon) will different from the amount available to be paid in respect of such owed amount (based on Available Collections). The Province is not obligated to pay more than the obligations that would have been paid from CEAs had they been collected.

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

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

payment date, as determined without regard to any Acceleration or rights of Acceleration arising under the Approved Obligation, in each case by the Province depositing or causing the deposit of the applicable payment amount into the ~~Collection Account~~ Protection Account[4] on or before the day on which the applicable Approved Obligation becomes due and payable in accordance with its terms (the "**Limited Guarantee**"). For greater certainty, the Limited Guarantee will not apply to any amount or obligation of the Financing Entity that is not or does not arise under an Approved Obligation~~, including (i) any amounts that are or become payable as a result of the exercise of an option of the Financing Entity following a Protection Event, and (ii) amounts required to be deposited by or on behalf of the Financing Entity into any Capital Account, Finance Reserve Account or a Supplemental Reserve Account~~.

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

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

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

2.02 ~~Gross-up~~Intentionally Deleted.

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

[4] Province needs to see how the Trust Indenture will be modified to address addition of Protection Account (i.e., payment mechanics; Protection Account to be part of the Collateral; mechanics of how funds move to Collection Account; absence of equitable claims; etc.). Province will need to know that all amounts will be applied for their intended purposes without undermining Province's step-in and subrogation rights.

[3] ~~Under consideration.~~

2.03 Absence of Set-off

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

2.04 Payment into ~~Collection~~Protection Account[5] in Satisfaction

(a) On or before the date of delivery of a Payment Demand to the Province, the Indenture Trustee shall cause to be established and maintained an Eligible Deposit Account (the "**Protection Account**") in the name of the Indenture Trustee, bearing a designation clearly indicating that the funds and other property credited thereto are held for the benefit of the Indenture Trustee and the Beneficiaries. The Protection Account shall be under the control of the Indenture Trustee for the benefit of the Beneficiaries. If, at any time, the institution holding the Protection Account ceases to be an Eligible Institution, the FSM shall notify the Indenture Trustee, and the Indenture Trustee upon being notified in writing of such ineligibility (or the FSM on its behalf) shall within 30 days (or such longer period, not to exceed 45 days, so long as the Rating Agency Condition is satisfied) establish a new Protection Account that is an Eligible Deposit Account and shall transfer any funds or other property from such Protection Account to such new Protection Account. From the date each such new Protection Account is established, it shall be the "Protection Account." for purposes of this Agreement. Funds credited to the Protection Account will be invested and held in accordance with Section 7.03 of the Trust Indenture on the basis that it is an Issuer Account.

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

[5] Use of Protection Account to be considered by Province after required modifications to Trust Indenture have been provided.

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

Obligation to the extent so paid[5]6. For greater certainty, the obligations arising in respect of the Approved Obligation shall not be reduced by such payment as the Province shall become entitled to the rights contemplated under Section 5.01 in relation to such continuing obligations.

2.05 Certain Waivers

The Province hereby waives:

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

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

(c) diligence; and

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

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

2.06 Additional Security

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

2.07 Continuing Liability of the Province

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

[5] ~~Consider how Beneficiary rights under Obligations Secured will be amended under an agreement to which a Beneficiary is not directly a party. To achieve a binding relationship, a~~[6] A corresponding provision ~~should appear in~~needs to be added to the Trust Indenture and each other contract under which the Obligation Secured arises, ~~to the effect~~so that the Beneficiaries ~~will be deemed to be~~are bound by these applications and the agreement of the Indenture Trustee under this Agreement.

decree or order of any court or Governmental Authority, by any plan of reorganization or by settlement or compromise by any of the Beneficiaries (whether or not consented to by the Financing Entity or the Province) of any claim for any such recovery or payment over.

2.08 Continuance of the Limited Guarantee

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

2.09 Modifications of Approved Obligations

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

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

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

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

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

ARTICLE III
THE INDENTURE TRUSTEE

3.01 The Indenture Trustee

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

3.02 Acceptance of Trusts

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

ARTICLE IV
APPROVED OBLIGATIONS

4.01 Approval Process

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

4.02 Adherence Conditions

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

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

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

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

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

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

has delivered to the Province a Process Certificate in accordance with Section **[3.01]** of the Process Agreement; and

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

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

(c) ~~(c)~~ the Province has not provided a Suspension Notice to the Indenture Trustee, the FSM and the Financing Entity in accordance with the terms of this Agreement.[7]

4.03 Evidence of Satisfaction

A closing certificate ~~signed by at least two executive officers of OPG~~delivered in accordance with Section 4.02 in connection with an incurrence or amendment of a Primary Obligation shall be determinative as to whether the applicable Adherence Conditions with respect thereto have been satisfied, notwithstanding that such certificate may include inaccuracies, be incomplete or otherwise be ~~defect~~defective or deficient, and such closing certificate may be relied upon by any addressee as conclusive evidence of same.

ARTICLE V
~~RIGHTS OF THE~~ PROVINCE MATTERS

5.01 Assignment and Subrogation

~~Upon paying an amount in respect of an Approved Obligation:~~

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

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

(a) Upon paying an amount in respect of an Approved Obligation to or at the direction of the Indenture Trustee in satisfaction of the Limited Guarantee, the

[7] Province wants this mechanic embedded in the adherence conditions so it is explicitly understood and mechanically contemplated as the way the Province be sure future Limited Guarantees are cut-off opposite the indenture trustee.

Province (in addition to and without prejudice to any rights it otherwise has in law or equity) shall be subrogated and entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Approved Obligation to the extent of such payment, including (i) the right and entitlement to be paid and receive distributions of such amount by the Financing Entity in accordance with and in the priority applicable to the Approved Obligation applicable in respect of the payment under the Trust Indenture, (ii) the benefits of the related Collateral and (iii) all proceeds therefrom. The Province shall have and be entitled to enforce all rights and interests (including as a ~~secured party~~Specified Creditor under the Trust Indenture~~)~~ on the basis contemplated in Section 5.01(b)), under and in respect of such Approved Obligation as an absolute assignee of the applicable Beneficiary, with effect from and after the time of such payment, without any further requirement for notice to or acceptance by the Financing Entity of such absolute assignment and without any reduction, set-off or counterclaim on account of any amounts that may, at or after the time of payment, be or become owing by the Beneficiary to the Financing Entity and unaffected by any other rights or equities that arise thereafter as between the Beneficiary and the Financing Entity. The Indenture Trustee shall recognize the Province as being entitled to all of the rights, interests and entitlements of the Beneficiary (including~~, if applicable, as a Noteholder~~ as a Specified Creditor under the Trust Indenture on the basis contemplated in Section 5.01(b)) in respect and to the extent of the Approved Obligation so paid, determined as of the time of payment, for all purposes under the Trust Indenture, and the Province shall be treated as a Specified Creditor in respect thereof for all purposes under the Trust Indenture and any other agreement under which the Approved Obligation arises.

(a) The Province (i) acknowledges and agrees in favour of the Indenture Trustee that, upon being subrogated and entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Approved Obligation in accordance with Section 5.01(a), the Province, in its capacity as a Specified Creditor, will be subject to the provisions applicable to Specified Creditors under the Trust Indenture, including **[Section 7.11 (Payments Held in Trust), Section 8.12 (Limitation on Suits), Sections 7.04 and 8.13 (Payment Priorities), Section 8.14 (Limited Recourse) and Section 16.01 (No Petition) thereof]** and (ii) confirms that the Indenture Trustee shall send notices to the Province, in its capacity as a Specified Creditor, in accordance with Section 9.02.

5.02 Priorities

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

~~5.03 Voting Rights under "Outstanding Notes"~~

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

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

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

5.03 ~~5.04~~ Province May Perform Other Program Agreement Covenants.

If the Financing Entity fails to perform any covenant under any Program Agreement, the Province may (but, except as expressly provided for under this Agreement, shall not be obligated to) perform such covenant on behalf of the Financing Entity. If the Province performs such a covenant on behalf of the Financing Entity, all sums expended or advanced by the Province in so performing the covenant will bear interest at the rate of interest determined by the Province to reflect market terms and conditions for a borrowing made by the Province at the relevant time from the date of expenditure until repayment by the Financing Entity and will (together with such interest) be paid by the Financing Entity upon demand and will until paid form part of the Obligations Secured subject to Sections **[7.04 and 8.13]** of the Trust Indenture and constitute a Finance Amount.[8]

5.04 Representations and Warranties

The Province hereby represents and warrants that:

(a) the execution, delivery and performance of this Agreement by the Province have been authorized by all necessary action on the part of the Province;

(b) the execution, delivery and performance of this Agreement by the Province do not result in the violation of any applicable law; and

(c) this Agreement has been duly executed and delivered by the Province.

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

[8] ~~General Regulation to be revised such that "Finance Amount" picks up guarantor amounts. Under consideration by MOE~~ Payments to be addressed in the Trust Indenture like servicer advances under the waterfall provisions.

ARTICLE VI
NOTICE OF ASSUMPTION OF OBLIGATIONS SECURED

6.01 Delivery of Assumption Notice

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

6.02 Cooperation to Implement the Assignment and Assumption

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

6.03 Effect of Assumption

On the date that the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province becomes effective (the "**Assumption Effective Date**"), the Province shall no longer be required to provide and perform the Limited Guarantee~~.~~ but will instead become a primary obligor under the Obligations Secured assumed pursuant to and in accordance with an applicable Assumption Agreement. For greater certainty, the obligations of the Province so assumed will not be secured obligations of the Province and the obligees thereof will have no right, interest or claim to or in respect of the Collateral or any proceeds therefrom. **[NTD: Need to move Article VI of the Change of Law Process Agreement into this Article VI and amend accordingly.[10] Also, we will need to attach the form of Assumption Agreement as an Exhibit to this Agreement that will be used for the assignment and assumption of all Obligations Secured. Contrary to the statement in Section 6.02(f) of the Change of Law Protection Agreement, there will not be a separate form of Assumption Agreement for each Obligation Secured.[11]]**

6.04 Interim Period

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

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

[10] The idea was to not burden the external agreement with the necessary steps for the Province to be in a position to step-in. If the preference is to include more in this external agreement, the Province will not object subject to further consideration of drafting issues.

[11] It has been assumed that there may be variations depending on the nature of the underlying obligations. A root form of Assumption Agreement, modified to conform substantially to that form in connection with a particular obligation, was the idea. To be further discussed.

6.05 Rights in respect of the Assets Comprising the Collateral

Upon assuming the Financing Entity's obligations in respect of all Obligations Secured under Article VI, the Province (in addition to and without prejudice to any rights it otherwise has in law or equity) shall be subrogated and entitled to all of the Financing Entity's rights and interests under and in respect of the assets, property and undertaking comprising the Collateral and all proceeds therefrom, free and clear of any liens, encumbrances or restrictions arising under or as a result of the Trust Indenture. The Province shall have and be entitled to enforce all such rights and interests as an absolute assignee of the Financing Entity, with effect from and after the time of such assumption, without any further requirement for notice to or acceptance by the Financing Entity of such absolute assignment and without any reduction, set-off or counterclaim on account of any amounts that may, at or after the time of payment, be or become owing to the Financing Entity and unaffected by any other rights, interests or equities that arise thereafter in respect of the assets, property and undertaking comprising the Collateral as between the Beneficiaries and the Financing Entity. The Indenture Trustee shall thereupon recognize the Province as the absolute owner of the assets, property and undertaking comprising the Collateral.

ARTICLE VII
INDENTURE TRUSTEE MATTERS

7.01 Limited Recourse

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

7.02 Not Responsible for Recitals or Issuance of Notes

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

7.03 Representations and Covenants of the Indenture Trustee

The Indenture Trustee represents, warrants and covenants that:

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

(b) the Indenture Trustee has full power and authority to execute, deliver and perform this Agreement and has taken all necessary action to authorize

the execution, delivery and performance by it of this Agreement and other documents to which it is a party;

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

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

~~7.04 Release of all Collateral~~

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

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

~~7.05 Right to Notice and Attend Meetings~~

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

ARTICLE VIII
SUSPENSION OF ADHERENCE FOR NEW PRIMARY OBLIGATIONS

8.01 ~~Suspension Notice~~Suspension Notice

A written notice in the form of Exhibit C (a "**Suspension Notice**") may be provided by the Province to the Indenture Trustee, the FSM and the Financing Entity:

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

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

8.02 Suspension

If a Suspension Notice has been provided under Section 8.01 (the provision of such notice being a "**Suspension Event**"), the ~~Financing Entity~~Limited Guarantee shall not ~~incur~~apply in respect of any ~~new or additional Obligation Secured and shall not amend or terminate any existing Obligation Secured except with the prior written consent of the Province~~Obligation Secured incurred on or after the time such Suspension Notice is delivered. For greater certainty, the rights of the Province under Article VI shall apply in respect of all Obligations Secured, including if incurred on or after the time such Suspension Notice is delivered.

8.03 Termination Notice

On (a) the occurrence of a Suspension Event or (b) the Assumption Effective Date, the Province may provide to the Indenture Trustee, the FSM and the Financing Entity a notice in the form of Exhibit D (a "**Termination Notice**").[12]

8.04 No Impact on Adherence

For greater certainty, the occurrence of Suspension Event or a failure by the FSM or the Financing Entity to perform its covenants under this Agreement will not invalidate or extinguish the obligations of the Province under the Limited Guarantee in respect of Approved Obligations in existence prior to the occurrence of the Suspension Event, nor will it in any way impact the Obligations Secured which are assumed by the Province in accordance with Article VI.

ARTICLE IX
MISCELLANEOUS

9.01 Term of Agreement

This Agreement will continue until the later of:

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

(b) the date that a Termination Notice delivered in accordance with Section 8.03 is received by the Indenture Trustee, the FSM and the Financing Entity.

[12] The suspension right in favour of the Province is intended to allow the Province to cut-off future obligations under this Agreement, but not affect rights that have arisen prior to the suspension notice. The termination notice is a further step that allows the Province to bring this agreement to an end, but that only happens (under section 9.01) after all amounts capable of becoming due under the Limited Guarantee have been paid (i.e., the last obligation incurred prior to the suspension notice has been satisfied), including as a result of an assumption under Art VI.

9.02 Notices

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

(a) if to the Financing Entity:

~~[Financing Entity]~~

~~c/o Ontario Power Generation Inc.~~

Fair Hydro Trust

700 University Avenue

Toronto, Ontario M5G 1X6
Attention: [■]
Fax: (416) [■]
Email: [■]

with copies to:

~~[Financing Entity Trustee]~~Computershare Trust Company of Canada, in its capacity as Financing Entity Trustee for ~~[Financing Entity]~~
~~[Address]~~Fair Hydro Trust
100 University Avenue, 11th Floor
Toronto, Ontario M5J 2Y1
Attention: [■]
Fax: (416) [■]
Email: [■]

[■]

(b) if to the FSM:

Ontario Power Generation Inc.

700 University Avenue

Toronto, Ontario M5G 1X6

Attention: [■]

Fax: (416) [■]

Email: [■]

(c) if to the Province:

Ministry of Finance

[Address]

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

and

Ministry of Energy

[Address]

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

(d) if to the Indenture Trustee:

[Address]

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

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

9.03 Assignment

(a) None of the rights or obligations hereunder shall be assignable or transferable by any party without the prior written consent of the other parties, except as otherwise provided for herein.

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

9.04 Enurement

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

9.05 FIPPA

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

9.06 No Petition

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

9.07 ~~Force Majeure~~Intentionally Deleted

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

9.08 Third Party Rights

This Agreement is not intended to create rights for any Person not party to this Agreement. Beneficiaries are not parties to this Agreement and accordingly any benefits derived hereunder shall arise exclusively through the Indenture Trustee and shall be subject to the provisions applicable to Specified Creditors in the Trust Indenture.

9.09 ~~9.08~~ Delivery of Executed Copies

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

[Signature page to follow]

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

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

By: _____
Name:
Title:

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

By: _____
Name:
Title:

ONTARIO POWER GENERATION INC., AS FSM

By: _____
Name:
Title:
By: _____
Name:
Title:

~~**[FINANCING ENTITY TRUSTEE], IN ITS CAPACITY AS FINANCING ENTITY**~~**COMPUTERSHARE TRUST COMPANY OF CANADA, AS TRUSTEE** ~~**FOR [FINANCING ENTITY]**~~**OF FAIR HYDRO TRUST**

By: _____
Name:
Title:

~~**[INDENTURE TRUSTEE]**~~**BNY TRUST COMPANY OF CANADA, AS INDENTURE TRUSTEE AND NOT IN ITS INDIVIDUAL**

CAPACITY

By: _____
Name:
Title:

SCHEDULE A
DEFINED TERMS

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

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

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

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

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

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

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

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

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

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

"**Available Collections**" has the meaning ascribed thereto in the Trust Indenture.

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

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

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

~~[11] Note: To be confirmed if required.~~

the FSM~~, the Administrative Agent~~ or the Manager.][has the meaning ascribed thereto in the Process Agreement.][13]

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

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

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

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

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

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

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

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

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

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

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

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

[13] Consider this longer version to avoid hard-coding Process Agreement into this Agreement.

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

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

"**Funding Obligation**" has the meaning ascribed to the term "funding obligation" in the Act as of the date of this Agreement.

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

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

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

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

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

"**Investment Interest**" has the meaning ascribed to the term "~~Investment Interest~~investment interest" in the Act as of the date of this Agreement.

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

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

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

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

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

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

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

~~accepted by~~as may be amended prior to the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

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

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

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

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

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

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

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

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

"**Primary Obligations**" means any Obligation Secured (a) that is a Funding Obligation~~,~~ or (b) that otherwise is a payment obligation of the Financing Entity that gives rise to a Finance Amount, in each case other than (~~a~~i) any amounts that are or become payable as a result of the exercise of an option of the Financing Entity following a Protection Event; ~~and~~ (~~b~~ii) any amounts required to be deposited by or on behalf of the Financing Entity into any Capital Account, Finance Reserve Account, or Supplemental Reserve Account; (iii) any amounts that would be remaining amounts of Available Collections required by the to be held in the Collection Account for distribution on a succeeding Payment Date pursuant to the Trust Indenture; (iv) any amount payable under a Derivative Agreement in respect of a "termination payment" where the Financing Entity's counterparty under the Derivative Agreement is a "defaulting party" or the sole "affected party" (as such terms are given meaning under the Derivative Agreement); and (v) any obligation to pay the Trust or on the Trust's direction any remaining amounts of Available Collections.

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

["**Process Certificate**" has the meaning ascribed thereto in Section 3.01 of the Process Agreement.]

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

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

"**Protection ~~Agreement Maximum"~~** ~~means the dollar amount determined by the Province and of which OPG is provided notice in accordance with the Process Agreement.~~**Account**" has the meaning ascribed to such term in Section 2.04(a).

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

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

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

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

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

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

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

(b) a court of competent jurisdiction (i) determines that all or a portion of the Act or the regulations made under the Act, as in effect on the date hereof, is *ultra vires* or invalid in a way that materially and adversely affects the ability of the Financing Entity~~'s receipt of~~ to receive amounts in respect of its Investment Interest so that it can pay Obligations Secured, and (ii)

issues a decision or an order preventing the Financing Entity from receiving amounts on its Investment Interest, in each case that results in the Financing Entity not having sufficient funds to pay Obligations Secured that have become due and payable.

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

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

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

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

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

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

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

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

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

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

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

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

EXHIBIT A
FORM OF PAYMENT DEMAND

EXHIBIT B
ASSUMPTION NOTICE

EXHIBIT C
SUSPENSION NOTICE

EXHIBIT D
TERMINATION NOTICE

EXHIBIT E

FORM OF ASSUMPTION AGREEMENT

Document comparison by Workshare Compare on Tuesday, November 14, 2017 7:59:23 PM

Input:	
Document 1 ID	PowerDocs://TOR_2528/23239360/9
Description	TOR_2528-#23239360-v9-CLPA_-_Protection_Agreement
Document 2 ID	PowerDocs://TOR_2528/23239360/12
Description	TOR_2528-#23239360-v12-CLPA_-_Protection_Agreement
Rendering set	Standard

Legend:	
Insertion	
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Style change	
Format change	
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Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	164
Deletions	150
Moved from	6
Moved to	6
Style change	0
Format changed	0
Total changes	326

23239360-vpdf-CLPA - Protection Agreement1.pdf

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

AND

COMPUTERSHARE TRUST COMPANY OF CANADA, AS TRUSTEE OF FAIR HYDRO TRUST~~, BY ITS MANAGER, ONTARIO POWER GENERATION INC.~~

AND

ONTARIO POWER GENERATION INC., AS FINANCIAL SERVICES MANAGER

AND

BNY TRUST COMPANY OF CANADA, AS INDENTURE TRUSTEE

CHANGE OF LAW PROTECTION AGREEMENT

Dated as of [■], 2017

This **AGREEMENT**, among Her Majesty the Queen in Right of Ontario, as represented by the Minister of Energy and the Minister of Finance (the "**Province**"), ~~Ontario Power Generation Inc., as the Manager and~~Computershare Trust Company of Canada, in its capacity as ~~Manager~~trustee (the "**Financing Entity Trustee**") of Fair Hydro Trust, a trust ~~settled by the FSM~~ under the laws of the Province of Ontario (the "**Financing Entity**")[1], Ontario Power Generation Inc., in its capacity as Manager of the Financing Entity~~"), Ontario Power Generation Inc.~~ and in its capacity as the Financial Services Manager in accordance with the Act (the "**FSM**") and BNY Trust Company of Canada, a trust company existing under the laws of Canada, as Indenture Trustee ~~and in its capacity as trustee for the Beneficiaries in accordance with the Trust Indenture~~, is made and entered into as of [■], 2017.

RECITALS

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

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

Pursuant to a Declaration of Trust[2] dated as of ■, 2017, the Financing Entity was established as a "financing entity" (as defined in the Act) for the purposes contemplated in the Act.

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

The Minister of Energy and the Minister of Finance, acting together on behalf of the Province of Ontario, have determined to provide protections and assurances to the Indenture Trustee, for the benefit of the Beneficiaries, in respect of Obligations Secured that constitute Approved Obligations, in order to address concerns that would arise from a change or adverse determination of law, subject in each case to the satisfaction of the Adherence Conditions at the

[1] Province needs the Trust as a party to be assured of its rights of subrogation, step-in, etc.

[2] Torys to confirm that Trust is a "financing entity" under OFHPA. Under definition, FSM to establish or cause to be established. DofT indicates Computershare declares trust. Need to have this confirmed for purposes of authority under OFHPA 5(3), among other things.

time the Approved Obligation is incurred or amended. This Agreement sets out the terms and conditions of such protections and assurances.

The FSM and the Province will concurrently enter into the Process Agreement, under which the FSM will agree to perform certain related activities and to provide certain assurances on which the Province will rely, including for the purposes of determining whether the Adherence Conditions have been satisfied in connection with the incurrence or amendment of an Approved Obligation and ensuring that the Province's assumption right may be exercised without impediment on the terms and conditions contemplated in this Agreement.

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

AGREEMENT OF THE PARTIES

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

ARTICLE I
DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

1.01 Interpretation

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

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

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

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

(d) references to any law, rule, regulation or order of a Governmental Authority (including, for greater certainty, references to the Act and the General Regulation) shall include such law, rule, regulation or order as from time to time in effect, including any amendment, modification, codification, replacement or reenactment thereof or any substitution therefor~~, except in each case as referenced in the definition of Protection Event~~;

(e) the word "will" shall be construed to have the same meaning and effect as the word "shall". The word "or" is not exclusive;

(f) any reference to this Agreement or any other agreement, document or instrument shall be construed as a reference to this Agreement or, as the case may be, such other agreement, document or instrument as the same may have been, or may from time to time be, amended, varied, replaced, amended and restated, supplemented or otherwise modified;

(g) all references in this Agreement to designated "Articles", "Sections", "Subsections", "Schedules", "Exhibits" and other subdivisions are to the designated Articles, Sections, Subsections, Schedules, Exhibits and other subdivisions of this Agreement as originally executed. The words "herein", "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section, Subsection, Schedule, Exhibit or other subdivision;

(h) "including" and words of similar import will be deemed to be followed by "without limitation"; and

(i) with respect to the computation of periods of time from a specified date to a later specified date, unless otherwise expressly stated, the word "from" means "from and including" and the words "to" and "until" each mean "to but excluding".

1.02 Trustee to act in accordance with the Trust Indenture

Any action taken, required to be taken or permitted to be taken by the Indenture Trustee under this Agreement shall only be taken in the manner, at the times, for the purposes, subject to the prerequisites, conditions, requirements and limitations, and with the benefits, exculpations, indemnities and protections that are provided to the Indenture Trustee, in each case in respect of such action taken, required to be taken or permitted to be taken by it under the Trust Indenture.

1.03 ~~1.02~~ Proof of Approved Obligations

The efficacy of any agreement, instrument or writing evidencing a Primary Obligation may, in the absence of manifest error, be conclusively proved in any manner that the Indenture Trustee deems to be sufficient.

Any statement of account prepared by the Indenture Trustee as regards the Primary Obligations shall constitute *prima facie* evidence of the amount which, as at the date of the statement so prepared, is due and payable by the Financing Entity to the Beneficiaries and/or the Indenture Trustee and the Province hereby acknowledges and agrees that, absent manifest error, it shall be bound by each such statement. The Indenture Trustee agrees to provide the Province with the computations and calculations used by the Indenture Trustee to prepare each such statement of account promptly following a request therefor.

1.04 ~~1.03~~ Limitation on Rights of and Actions by Specified Creditors

Specified Creditors, as Beneficiaries, shall not have or be permitted to exercise any rights, interests, or elections under this Agreement, other than in the manner and to the extent effected

and exercised through the Indenture Trustee under, in accordance with and subject to the limitations set forth in the Trust Indenture. No Specified Creditor will have any right to institute any proceeding, judicial or otherwise, with respect to this Agreement.

1.05 ~~1.04~~ Province Retains Rights of Beneficiaries

Without limiting any rights of subrogation or succession that arise pursuant to applicable law or pursuant to the Province's rights as an assignee, subrogee or pursuant to Section 5.01, all of the rights, interests, elections and privileges that would arise in favour of a Beneficiary under the Trust Indenture or other Funding Obligation Agreement under which a related Primary Obligation arises shall automatically arise, vest in and be available to the Province ~~upon~~to the extent of the performance by the Province of the Primary Obligation. ~~To the extent of any conflict between this Agreement and the Indemnity Agreement by the Province in favour of OPG dated June 1, 2017 in respect of any matter relating to the Province's obligations to indemnify the FSM or the Financing Entity, the latter shall prevail.~~

1.06 ~~1.05~~ Effect of Headings

The Article and Section headings herein are for convenience only and will not affect the construction hereof.

1.07 ~~1.06~~ Successors and Assigns

All covenants and agreements in this Agreement by the parties will bind their respective successors and permitted assigns, whether so expressed or not. All covenants and agreements of the Indenture Trustee, the Financing Entity, the Financing Entity Trustee or the FSM in this Agreement shall bind their respective successors, co-trustees and agents.

1.08 ~~1.07~~ Severability

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction will not affect the validity or enforceability of any other provision hereof. To the extent permitted by applicable law, the parties waive any provision of law which renders any provision of this Agreement invalid or unenforceable in any respect. The parties will engage in good faith negotiations to replace any provision which is declared invalid or unenforceable with a valid and enforceable provision, the economic effect of which comes as close as possible to that of the invalid or unenforceable provision which it replaces.

1.09 ~~1.08~~ Governing Law

THIS AGREEMENT WILL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE PROVINCE OF ONTARIO AND THE FEDERAL LAWS OF CANADA APPLICABLE THEREIN, AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.

1.10 ~~1.09~~ Proceedings Against the Crown Act

NOTHING IN THIS AGREEMENT OR THE PROGRAM AGREEMENTS AFFECTS THE RIGHTS, PROTECTIONS AND IMMUNITIES OF THE CROWN UNDER THE PROCEEDINGS AGAINST THE CROWN ACT.

1.11 ~~1.10~~ Attornment

EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY ONTARIO COURTS SITTING IN TORONTO IN ANY ACTION, APPLICATION, REFERENCE OR OTHER PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT. THE PARTIES HERETO HEREBY WAIVE ANY RIGHT THEY MAY HAVE TO REQUIRE A TRIAL BY JURY OF ANY PROCEEDING COMMENCED IN CONNECTION WITH THIS AGREEMENT.

1.12 ~~1.11~~ Counterparts; Electronic Delivery

This Agreement may be executed in any number of counterparts, each of which so executed will be deemed to be an original, but all such counterparts will together constitute one and the same instrument. Delivery of an executed signature page to this Agreement by a party by electronic transmission will be as effective as delivery of a manually executed copy of the Agreement by such party.

1.13 ~~1.12~~ Change of Law Protection Agreement Referred to in the Trust Indenture

This Agreement is the "Change of Law Protection Agreement" referred to in the Trust Indenture.

1.14 ~~1.13~~ Non-Business Days

Whenever any payment to be made hereunder shall be stated to be due, any period of time would begin or end, any calculation is to be made or any other action to be taken hereunder shall be stated to be required to be taken, on a day other than a Business Day, then (notwithstanding any other provision of this Agreement) such payment shall be made, such period of time shall begin or end, such calculations shall be made and such other action shall be taken on the next succeeding Business Day.

1.15 ~~1.14~~ Waiver, Amendment

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement will be binding unless executed in writing by the party to be bound thereby. No waiver of any provision of this Agreement will constitute a waiver of any other provision nor will any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided. A party's failure or delay in exercising any right under this Agreement will not operate as a waiver of that right. A single or partial exercise of any right will not preclude a party from any other or further exercise of that right or the exercise of any other right.

1.16 ~~1.15~~ Interest Act

For the purpose of disclosure pursuant to the *Interest Act* (Canada), the yearly rate of interest to which any rate of interest payable under this Agreement that is calculated on any basis other than a full calendar year is equivalent may be determined by multiplying such rate by a fraction, the numerator of which is the actual number of days in the calendar year in which such yearly rate of interest is to be ascertained and the denominator of which is the number of days comprising such other basis. The parties further agree that for the purposes of the *Interest Act* (Canada), (i) the principle of deemed reinvestment of interest shall not apply to any interest calculation under this Agreement, and (ii) the rates of interest stipulated in this Agreement are intended to be nominal rates and not effective rates or yields.

1.17 ~~1.16~~ Currency

Unless stated otherwise, all amounts herein are stated in Canadian Dollars.

1.18 ~~1.17~~ References to Acts of the Financing Entity

For greater certainty, where any reference is made in this Agreement, or in any other instrument executed pursuant hereto or contemplated hereby to which the Financing Entity or the Financing Entity Trustee, as trustee of the Financing Entity, is party, to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against, or a covenant, representation or warranty (other than relating to the constitution or existence of the Financing Entity) by or with respect to (i) the Financing Entity or (ii) the Financing Entity Trustee, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against or a covenant, representation or warranty (other than relating to the constitution or existence of the Financing Entity) by or with respect to, ~~the FSM as agent for~~ the Financing Entity Trustee ~~(in its capacity~~ as trustee of the Financing Entity~~). [NTD: Discuss whether the Financing Entity Trustee should be a party to this Agreement and references to the Financing Entity Trustee re-inserted into this section and others.]~~.

1.19 ~~1.18~~ Judgment Currency

(a) If for the purpose of obtaining judgment in any court or for any other purposes (other than conversions specifically provided for in the agreement under which an Approved Obligation arises), it is necessary to convert any amount due under this Agreement from the currency in which it is due (the "**Original Currency**") into another currency (the "**Second Currency**"), the rate of exchange applied shall be that at which, in accordance with normal banking procedures, the purchaser could purchase, in the New York foreign exchange market, the Original Currency with the Second Currency on the date on which judgment is given. The obligation of the Province in respect of any Original Currency due from it to the Indenture Trustee under this Agreement shall,

notwithstanding any judgment or payment in such other currency, be discharged only to the extent that, on the Business Day following receipt of any sum so paid or adjudged to be due under this Agreement in the Second Currency, the Indenture Trustee may, in accordance with normal banking procedures, purchase in the New York foreign exchange market the Original Currency with the amount of the Second Currency so paid or so adjudged to be due; and if the amount of the Original Currency so purchased is less than the amount originally due in the Original Currency, the Province shall indemnify the Indenture Trustee against such loss.

(b) The term "rate of exchange" in this Section 1.19 means the spot rate at which the Indenture Trustee, in accordance with normal practice, is able on the relevant date to purchase the Original Currency with the Second Currency and includes any premium and costs of exchange payable in connection with such purchase.

ARTICLE II
AGREEMENT TO PERFORM APPROVED OBLIGATIONS

2.01 Limited Guarantee

(a) Upon the occurrence of a Protection Event, the Indenture Trustee may provide a written demand, in the form attached as Exhibit A (a "**Payment Demand**"), to the Province requiring the Province to pay the amount of the Approved Obligations ~~owing~~that would have been payable from Available Collections had the Protection Event not occurred[3] from time to time by the Financing Entity to the Indenture Trustee as and when they become due and payable[1], without Acceleration. A Payment Demand will not be valid with respect to an Approved Obligation until the amount claimed becomes due and payable in respect of the Approved Obligation, ~~,~~ without Acceleration, in accordance with the Trust Indenture and has not otherwise been paid by the Financing Entity.

(b) Following receipt of a valid Payment Demand under Subsection 2.01(a), the Province shall pay the amounts ~~owing~~that would have been payable from Available Collections had the Protection Event not occurred by the Financing Entity to the Indenture Trustee, on behalf of the applicable Beneficiaries, in respect of each Approved Obligation[2], in each case as

[3] The amount "owing" under an obligation (i.e., balloon) will different from the amount available to be paid in respect of such owed amount (based on Available Collections). The Province is not obligated to pay more than the obligations that would have been paid from CEAs had they been collected.

[1] ~~Consider mechanics for notifying the Province regarding the specific amounts payable and their due dates. Consider attaching a detailed schedule of payments under the Payment Demand and the respective due date of each payment.~~

[2] ~~Under Subsection 5(3) of the Act, the Province can guarantee only obligations "associated with an investment interest". The guarantee in Section 2.01 of the draft agreement guarantees "Approved Obligations", which in turn relies on the definition of Primary Obligations. The connection between a Primary Obligations and an "investment interest" is therefore crucial. Blakes is considering how to more precisely connect these concepts.~~

and when the Approved Obligation becomes due and payable in accordance with its terms and on its scheduled, specified or determined payment date, as determined without regard to any Acceleration or rights of Acceleration arising under the Approved Obligation, in each case by the Province depositing or causing the deposit of the applicable payment amount into the Protection Account ~~5 Business Days prior to the fifteen day of each calendar month~~[4] on or before the day on which the applicable Approved Obligation becomes due and payable in accordance with its terms (the "**Limited Guarantee**"). For greater certainty, the Limited Guarantee will not apply to any amount or obligation of the Financing Entity that is not or does not arise under an Approved Obligation.

(c) Except as expressly provided in this Agreement, the Province's obligation to provide and perform the Limited Guarantee shall be irrevocable, absolute and unconditional.

(d) Any amount payable by the Province under the Limited Guarantee in respect of an Approved Obligation that is not paid when required herein shall bear interest from the applicable due date until paid in full at the rate or rates expressed to be payable on the Approved Obligation.

(e) The right to deliver a Payment Demand and thereupon enforce the Limited Guarantee shall constitute the only remedy available to the Indenture Trustee under this Agreement. Under no circumstances shall the Province be obligated to pay or indemnify the Indenture Trustee or any Beneficiary for consequential, special or punitive damages, or for economic loss or loss of profits.

2.02 ~~Gross-up~~Intentionally Deleted.

~~All amounts payable by the Province under this Agreement shall be made free and clear of and without deduction for or on account of any present or future taxes, charges, fees, levies, duties or withholdings of any kind. If the Province is obliged to deduct or withhold an amount in respect of any such taxes, charges, fees, levies, duties or withholdings, then in such event the Province shall deposit into the Protection Account such additional amount as is necessary to ensure that the Indenture Trustee receives (on an after tax basis, after payment of any and all income taxes on such additional amounts) an amount equal to the full amount otherwise due and payable in respect of the related Approved Obligation, net of any such taxes, charges, fees, levies, duties or withholdings.~~

2.03 Absence of Set-off

~~The~~Subject to applicable law, the Province acknowledges and agrees that each payment to be made by the Province hereunder in respect of an Approved Obligation shall be made as

[4] Province needs to see how the Trust Indenture will be modified to address addition of Protection Account (i.e., payment mechanics; Protection Account to be part of the Collateral; mechanics of how funds move to Collection Account; absence of equitable claims; etc.). Province will need to know that all amounts will be applied for their intended purposes without undermining Province's step-in and subrogation rights.

required in whole, without application of any right of set-off and without regard to any equities as between or among any of the Province, the Beneficiaries and/or the Indenture Trustee.

2.04 Payment into Protection Account[5] in Satisfaction

(a) On or before the date of delivery of a Payment Demand to the Province, the Indenture Trustee shall cause to be established and maintained an Eligible Deposit Account (the "**Protection Account**") in the name of the Indenture Trustee, bearing a designation clearly indicating that the funds and other property credited thereto are held for the benefit of the Indenture Trustee and the Beneficiaries. The Protection Account shall be under the control of the Indenture Trustee for the benefit of the Beneficiaries. If, at any time, the institution holding the Protection Account ceases to be an Eligible Institution, the FSM shall notify the Indenture Trustee, and the Indenture Trustee upon being notified in writing of such ineligibility (or the FSM on its behalf) shall within 30 days (or such longer period, not to exceed 45 days, so long as the Rating Agency Condition is satisfied) establish a new Protection Account that is an Eligible Deposit Account and shall transfer any funds or other property from such Protection Account to such new Protection Account. From the date each such new Protection Account is established, it shall be the "Protection Account." for purposes of this Agreement. Funds credited to the Protection Account will be invested and held in accordance with Section 7.03 of the Trust Indenture ~~as if~~on the basis that it ~~were~~is an Issuer Account.

(b) Notwithstanding the priority of payment requirements set forth in the Trust Indenture and any legal rule concerning the imputation of payments, the Indenture Trustee shall apply the full amount paid by the Province into the Protection Account in respect of an Approved Obligation to pay the corresponding amount due and payable to the applicable Beneficiaries under the Approved Obligation. Upon a payment having been made by or on behalf of the Province into the Protection Account in respect of an Approved Obligation, the amount so paid shall for all purposes be considered to have been applied to pay the applicable Beneficiaries and thereby reduce the amount due and payable ~~under~~to such Beneficiaries in respect of the Approved Obligation, whereupon an affected Beneficiary shall have no continuing rights, interests or entitlements (including rights as a secured party) in respect of the Approved Obligation to the extent so paid~~3~~[6]. For greater certainty, the obligations arising in respect of the Approved Obligation shall not be reduced by such payment as the Province shall become

[5] Use of Protection Account to be considered by Province after required modifications to Trust Indenture have been provided.

~~3 Consider how Beneficiary rights under Obligations Secured will be amended under an agreement to which a Beneficiary is not directly a party. To achieve a binding relationship, a~~[6] A corresponding provision ~~should appear in~~needs to be added to the Trust Indenture and each other contract under which the Obligation Secured arises, ~~to the effect~~so that the Beneficiaries ~~will be deemed to be~~are bound by these applications and the agreement of the Indenture Trustee under this Agreement. ~~Please see our addition in Section 9.08. The Specified Creditors already make the necessary acknowledgement in Article 5 of the Trust Indenture. Isn't this also addressed in section 1.03 above?~~

entitled to the rights contemplated under Section 5.01 in relation to such continuing obligations.

2.05 Certain Waivers

The Province hereby waives:

(a) any requirement, and any right to require, that any power be exercised or any action be taken against the Financing Entity or any Collateral for any of the Approved Obligations;

(b) all notices which may be required by applicable law to preserve any rights against the Province hereunder, including any notice of default, demand, dishonour, presentment and protest;

(c) diligence; and

(d) any defence based upon, arising out of or in any way related to any claim that any election of remedies by the Beneficiaries impaired, reduced, released or extinguished any rights that the Province might otherwise have had against the Financing Entity or any other surety. ~~**[NTD: Further consideration required as to whether there should be a waiver of any other equitable defences.]**~~

The Province agrees that each such waiver is made with full knowledge of its significance and consequences and if any such waiver is determined to be contrary to any applicable law or public policy, such waiver shall be effective only to the maximum extent permitted by applicable law.

2.06 Additional Security

This Agreement shall be in addition to and without prejudice to any other security by whomsoever given, held at any time by the Indenture Trustee or for the benefit of any of the Beneficiaries.

2.07 Continuing Liability of the Province

The Approved Obligations shall be deemed not to have been paid, observed or performed, and the liability of the Province hereunder in respect thereof shall continue and not be discharged, to the extent that any payment, observance or performance thereof by the Financing Entity, or out of the proceeds of any Collateral, is recovered from or reimbursed by or for the account of any of the Beneficiaries for any reason, including a preference or fraudulent transfer or by virtue of any subordination (whether present or future or contractual or otherwise) of the Approved Obligations, whether such recovery or payment over is effected by any judgment, decree or order of any court or Governmental Authority, by any plan of reorganization or by settlement or compromise by any of the Beneficiaries (whether or not consented to by the Financing Entity or the Province) of any claim for any such recovery or payment over.

2.08 Continuance of the Limited Guarantee

Subject to Section 2.07, the Limited Guarantee shall continue in full force and effect until the indefeasible payment, observance and performance in full of the Approved Obligations ~~and termination of the Trust Indenture~~, or until the Province is no longer required to provide and perform the Limited Guarantee in accordance with Section 6.03.

2.09 Modifications of Approved Obligations

The Province expressly authorizes the Indenture Trustee, at any time and from time to time, without notice and without affecting the liability of the Province hereunder, but subject to compliance with the requirements of the Program Agreements and this Agreement, to:

(a) accept new, additional or replacement instruments, documents, agreements or security in connection with all or any part of the Approved Obligations;

(b) accept partial payments on the Approved Obligations; and

(c) waive, release, reconvey, terminate, abandon, subordinate, exchange, substitute, transfer, compound, compromise, liquidate and enforce all or any part of the Approved Obligations and any security or guarantee therefor, and apply any such security and direct the order or manner of sale thereof as the Indenture Trustee (for the benefit of the Beneficiaries) in its discretion may determine~~.~~,

provided, however, that the Indenture Trustee shall not permit any change, modification, alteration, amendment, supplement, extension, renewal, compromise, novation, replacement, suspension or waiver of the terms of all or any part of the Approved Obligations or any Collateral therefor expect with the prior written consent of the Province having first been obtained.

ARTICLE III
THE INDENTURE TRUSTEE

3.01 The Indenture Trustee

This Agreement is made in favour of the Indenture Trustee in its capacity as trustee under the Trust Indenture. Accordingly, in the event of a new trustee being appointed under the Trust Indenture, such new trustee shall thereupon become and be the Indenture Trustee hereunder, but nevertheless, the Indenture Trustee shall forthwith assign, transfer and make over to the new trustee hereunder this Agreement. All provisions of the Trust Indenture for the protection of the Indenture Trustee or for facilitating the administration of the trusts or otherwise relating to the Indenture Trustee solely as to its holding of the rights thereunder shall apply *mutatis mutandis* to this Agreement and the Indenture Trustee's duties hereunder.

3.02 Acceptance of Trusts

The Indenture Trustee hereby accepts the trusts hereof and agrees to carry out and discharge the same unless and until a new trustee shall be appointed as contemplated in Section 3.01.

ARTICLE IV
APPROVED OBLIGATIONS

4.01 Approval Process

A Primary Obligation shall constitute an Approved Obligation if the Adherence Conditions applicable thereto have been satisfied.

4.02 Adherence Conditions

The following shall be the Adherence Conditions applicable in relation to a Primary Obligation:

(a) the Primary Obligation is contemplated under the Trust Indenture as an Obligation Secured; and

~~(b) [NTD: already covered in process certificate in section 3.01 of the Process Agreement]~~

~~(c) [NTD: already covered under Process Agreement.]~~

(b) ~~(d)~~ the FSM delivers a certificate signed by the Chief Financial Officer and the Treasurer of OPG (or their respective designees, provided that such designees are executive officers of OPG and, for clarity, such certificate is to be provided ~~in OPG's~~by such officers in their capacity as officers of OPG acting in its capacity as FSM) and addressed to the Indenture Trustee, ~~one Business Day~~ prior to the earlier of (i) one Business Day prior to the incurrence or any amendment of the Primary Obligation, and (ii) on the Business Day on which the financial terms of the Primary Obligation are definitively determined (including the interest or discount rate applicable to any notes, bonds or other securities), confirming that the FSM has delivered to the Province a Process Certificate in accordance with Section **[3.01]** of the Process Agreement; and

(c) ~~(e) [NTD: This is more properly dealt with in Section 8.02~~the Province has not provided a Suspension Notice to the Indenture Trustee, the FSM and the Financing Entity in accordance with the terms of this Agreement.~~]~~ [7]

[7] Province wants this mechanic embedded in the adherence conditions so it is explicitly understood and mechanically contemplated as the way the Province be sure future Limited Guarantees are cut-off opposite the indenture trustee.

4.03 Evidence of Satisfaction

A closing certificate delivered in accordance with Section 4.02 in connection with an incurrence or amendment of a Primary Obligation shall be determinative as to whether the applicable Adherence Conditions with respect thereto have been satisfied, notwithstanding that such certificate may include inaccuracies, be incomplete or otherwise be defective or deficient, and such closing certificate may be relied upon by any addressee as conclusive evidence of same.

ARTICLE V
PROVINCE MATTERS

5.01 Assignment and Subrogation

~~(a) Upon paying an amount in respect of an Approved Obligation:~~

~~i. to or at the direction of the Indenture Trustee in satisfaction of the Limited Guarantee; or~~

~~ii. [as a result of assuming the Financing Entity's obligations in respect of all Obligations Secured under Article VI,] [NTD: This requires further discussion depending on the terms of the assignment and assumption agreement. If the Obligations Secured are assigned and assumed by the Province under Article VI, how would the Province be subrogated and entitled to the Beneficiary's rights and interests under the Approved Obligation? Consider limiting the application of this section 5.01 to the Limited Guarantee.]~~

(a) Upon paying an amount in respect of an Approved Obligation to or at the direction of the Indenture Trustee in satisfaction of the Limited Guarantee, the Province (in addition to and without prejudice to any rights it otherwise has in law or equity) shall be subrogated and entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Approved Obligation to the extent of such payment, including (i) the right and entitlement to be paid and receive distributions of such amount by the Financing Entity in accordance with and in the priority applicable to the Approved Obligation applicable in respect of the payment under the Trust Indenture, (ii) the benefits of the related Collateral and (iii) all proceeds therefrom. ~~Subject to Section 5.01(b), the~~The Province shall have and be entitled to enforce all rights and interests (including as a Specified Creditor under the Trust Indenture~~)~~ on the basis contemplated in Section 5.01(b)), under and in respect of such Approved Obligation as an absolute assignee of the applicable Beneficiary, with effect from and after the time of such payment, without any further requirement for notice to or acceptance by the Financing Entity of such absolute assignment and without any reduction, set-off or counterclaim on account of any amounts that may, at or after the time of payment, be or become owing by the Beneficiary to the Financing Entity and unaffected by any other rights or equities that arise thereafter as between the Beneficiary and the

Financing Entity. ~~Subject to Section 5.01(b), the~~The Indenture Trustee shall recognize the Province as being entitled to all of the rights, interests and entitlements of the Beneficiary (including~~, if applicable, as a Noteholder~~ as a Specified Creditor under the Trust Indenture on the basis contemplated in Section 5.01(b)) in respect and to the extent of the Approved Obligation so paid, determined as of the time of payment, for all purposes under the Trust Indenture, and the Province shall be treated as a Specified Creditor in respect thereof for all purposes under the Trust Indenture and any other agreement under which the Approved Obligation arises.

(a) ~~(b) the~~The Province (i) acknowledges and agrees in favour of the Indenture Trustee that, upon being subrogated and entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Approved Obligation in accordance with Section 5.01(a), the Province ~~will be a Specified Creditor hereunder and its entitlements~~, in its capacity as a Specified Creditor ~~are~~, will be subject to the provisions applicable to Specified Creditors under the Trust Indenture, including~~, without limitation,~~ **[Section 7.11 (Payments Held in Trust), Section 8.12 (Limitation on Suits), Sections 7.04 and 8.13 (Payment Priorities), Section 8.14 (Limited Recourse) and Section 16.01 (No Petition) thereof]**~~, (ii) irrevocably authorizes and directs the Indenture Trustee on its behalf to take such action (including the execution and delivery of documents of subordination) as may be necessary or appropriate to further assure the priority arrangements provided for in **[Article VI and Sections 7.04 and 8.13 of the Trust Indenture]**, (iii) appoints the Indenture Trustee as its agent for any and all such purposes, and (iv~~ and (ii) confirms that the Indenture Trustee shall send notices to the Province, in its capacity as a Specified Creditor, in accordance with Section 9.02.

5.02 Priorities

For greater certainty, the rights, interests and entitlements of the Province as an assignee and subrogee of and with respect to an Approved Obligation shall rank equally with the rights, interests and entitlements of a Beneficiary for whom a Limited Guarantee payment is made in respect of, and to the extent of the payment made to satisfy, the Approved Obligation and the Province shall not be subject to postponement or subordination with respect thereto except to the extent of the priorities established in relation to the Approved Obligation under the Trust Indenture.

~~5.03 Voting Rights under "Outstanding Notes"~~

~~**[Notwithstanding the last three sentences of the definition of "Outstanding" in the Trust Indenture[4]:**~~

~~[4] This concept needs to be reflected in the Trust Indenture. This requires further discussion (see NTD above).~~

(a) **Notes in connection with Approved Obligations in respect of which the Province has rights and interest pursuant to Section 5.01 shall be regarded as "Outstanding" within the meaning of the Trust Indenture; and**

(b) **in determining whether Noteholders of the requisite principal amount of Notes that are Outstanding (as defined in the Trust Indenture) have taken any Action under the Trust Indenture, and for the purposes of Article X of the Trust Indenture, the Province shall be deemed to have the amount of Outstanding (as defined in the Trust Indenture) Notes in proportion to its interest in such Notes based on the amounts that the Province has paid in respect of Approved Obligations under this Agreement.] [NTD: To be discussed. Giving these voting rights to the Province may affect the marketability of the debt under this program.]**

5.03 5.04 Province May Perform Other Program Agreement Covenants.

If the Financing Entity fails to perform any covenant under any Program Agreement, the Province may (but, except as expressly provided for under this Agreement, shall not be obligated to) perform such covenant on behalf of the Financing Entity. If the Province performs such a covenant on behalf of the Financing Entity, all sums expended or advanced by the Province in so performing the covenant will bear interest at the rate of interest determined by the Province to reflect market terms and conditions for a borrowing made by the Province at the relevant time from the date of expenditure until repayment by the Financing Entity and will (together with such interest) be paid by the Financing Entity upon demand and will until paid form part of the Obligations Secured subject to Sections **[7.04 and 8.13]** of the Trust Indenture and constitute a Finance Amount.[5][8] **[NTD: Discussion required as to how these repayments will be dealt with under the MTI, and in particular, under the waterfall provisions.]**

5.04 5.05 Representations and Warranties

The Province hereby represents and warrants that:

(a) the Province has the necessary power, authority and capacity to execute and perform its obligations under this Agreement;

(a) (b) the execution, delivery and performance by the Province of this Agreement and the completion of the transactions contemplated hereby do not and will not result in a violation of any applicable law;of this Agreement by the Province have been authorized by all necessary action on the part of the Province;

(b) (c) all necessary action has been taken by the Province including, without limitation, under sections 5(2) and 5(3) of the Act and section 28(1.1) of the *Financial Administration Act*, R.S.O. 1990 c. F. 12, to authorize the

[5] General Regulation to be revised such that "Finance Amount" picks up guarantor amounts. Under consideration by MOE[8] Payments to be addressed in the Trust Indenture like servicer advances under the waterfall provisions.

execution andthe execution, delivery and performance of this Agreement by the Province and the performance by the Province of its obligations hereunderdo not result in the violation of any applicable law; and

(c) (d) this Agreement has been duly authorized, executed and delivered on behalf ofby the Province and is a legal, valid and binding obligation of the Province, enforceable against it in accordance with its terms.

ARTICLE VI
NOTICE OF ASSUMPTION OF OBLIGATIONS SECURED

6.01 Delivery of Assumption Notice

Following the occurrence of a Protection Event, the Province may provide notice (in the form of Exhibit B) to the Indenture Trustee, in accordance with the terms of the Process Agreement, that the Province has elected to assume the Financing Entity's obligations in respect of all Obligations Secured, as obligor and debtor (the "**Assumption Notice**"). The Assumption Notice shall specify the date on which the assignment and assumption of the Obligations Secured will be effective (the "**Assumption Closing Date**").

6.02 Cooperation to Implement the Assignment and Assumption

The Indenture Trustee, the FSM, the Financing Entity and the Province will cooperate and use best efforts to complete the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province, by the Assumption Closing Date.[69]

6.03 Effect of Assumption

On the date that the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province becomes effective (the "**Assumption Effective Date**"), the Province shall no longer be required to provide and perform the Limited Guarantee but will instead bebecome a primary obligor under the Obligations Secured assumed pursuant to and in accordance with an applicable Assumption Agreement. For greater certainty, the obligations of the Province so assumed will not be secured obligations of the Province and the obligees thereof will have no right, interest or claim to or in respect of the Collateral or any proceeds therefrom. **[NTD: Need to move Article VI of the Change of Law Process Agreement into this Article VI and amend accordingly.[10] Also, we will need to attach the form of Assumption Agreement as an Exhibit to this Agreement that will be used for the assignment and assumption of all Obligations Secured. Contrary to the statement in**

[69] Further details regarding obtaining of third party consents and rating agency approvals to be consideredprovided by OPG.

[10] The idea was to not burden the external agreement with the necessary steps for the Province to be in a position to step-in. If the preference is to include more in this external agreement, the Province will not object subject to further consideration of drafting issues.

Section 6.02(f) of the Change of Law Protection Agreement, there will not be a separate form of Assumption Agreement for each Obligation Secured.[11]]

6.04 Interim Period

Until the effective time of the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province on the Assumption Effective Date, the Province shall continue to perform and be obligated under the Limited Guarantee.

6.05 Rights in respect of the Assets Comprising the Collateral

Upon assuming the Financing Entity's obligations in respect of all Obligations Secured under Article VI, the Province (in addition to and without prejudice to any rights it otherwise has in law or equity) shall be subrogated and entitled to all of the Financing Entity's rights and interests under and in respect of the assets, property and undertaking comprising the Collateral and all proceeds therefrom, free and clear of any liens, encumbrances or restrictions arising under or as a result of the Trust Indenture. The Province shall have and be entitled to enforce all such rights and interests as an absolute assignee of the Financing Entity, with effect from and after the time of such assumption, without any further requirement for notice to or acceptance by the Financing Entity of such absolute assignment and without any reduction, set-off or counterclaim on account of any amounts that may, at or after the time of payment, be or become owing to the Financing Entity and unaffected by any other rights, interests or equities that arise thereafter in respect of the assets, property and undertaking comprising the Collateral as between the Beneficiaries and the Financing Entity. The Indenture Trustee shall thereupon recognize the Province as the absolute owner of the assets, property and undertaking comprising the Collateral.

ARTICLE VII
INDENTURE TRUSTEE MATTERS

7.01 Limited Recourse

No recourse may be taken, directly or indirectly, with respect to the obligations of the Financing Entity under this Agreement, or any certificate or other writing delivered in connection herewith or therewith, against (a) the Financing Entity Trustee in its individual capacity, (b) any owner of a beneficial interest in the Financing Entity or (c) any partner, owner, beneficiary, agent, officer, director, employee or agent of the Financing Entity Trustee in its individual capacity, any holder of a beneficial interest in the Financing Entity or the Financing Entity Trustee or of any successor or assign of the Financing Entity Trustee in its individual capacity, except as any such Person may have expressly agreed (it being understood that the Financing Entity Trustee has no such obligations in its individual capacity).

[11] It has been assumed that there may be variations depending on the nature of the underlying obligations. A root form of Assumption Agreement, modified to conform substantially to that form in connection with a particular obligation, was the idea. To be further discussed.

7.02 Not Responsible for Recitals or Issuance of Notes

The recitals contained herein will be taken as the statements of the Province and the FSM, and the Indenture Trustee assumes no responsibility for their correctness. The Indenture Trustee makes no representations as to the validity or sufficiency of this Agreement.

7.03 Representations and Covenants of the Indenture Trustee

The Indenture Trustee represents, warrants and covenants that:

(a) the Indenture Trustee is a trust company organized, existing and in good standing under the laws of Canada;

(b) the Indenture Trustee has full power and authority to execute, deliver and perform this Agreement and has taken all necessary action to authorize the execution, delivery and performance by it of this Agreement and other documents to which it is a party;

(c) each of this Agreement and the other documents to which it is a party has been duly executed and delivered by the Indenture Trustee and constitutes its legal, valid and binding obligation in accordance with its terms; and

(d) the Indenture Trustee is authorized to carry on the business of a trust company in each of the provinces and territories of Canada.

~~**[Note: Any right to such matters will be the general rights of Specified Creditors as set out in the Trust Indenture.]**~~

ARTICLE VIII
SUSPENSION OF ADHERENCE FOR NEW PRIMARY OBLIGATIONS

8.01 ~~Suspension Notice~~Suspension Notice

A written notice in the form of Exhibit C (a "**Suspension Notice**") may be provided by the Province to the Indenture Trustee, the FSM and the Financing Entity:

(a) ~~shall be provided by the Province to the Indenture Trustee promptly following~~upon the Province becoming aware of the occurrence of a Program Breach; and

(b) ~~may be provided by the Province to the Indenture Trustee, the FSM and the Financing Entity~~ following the occurrence of a Breach Event that has not been waived in writing by the Province.

8.02 Suspension

If a Suspension Notice has been provided under Section 8.01 (the provision of such notice being a "**Suspension Event**"), ~~this Change of Law Protection Agreement~~the Limited Guarantee shall not apply in respect of any ~~new Primary~~ Obligation ~~following~~Secured incurred on or after the ~~date of~~time such Suspension Notice~~. [NTD: Deletion of "or additional" is address the situation where a then current Primary Obligation requires an additional Primary Obligation in accordance with its terms of the MTI.]~~ is delivered. For greater certainty, the rights of the Province under Article VI shall apply in respect of all Obligations Secured, including if incurred on or after the time such Suspension Notice is delivered.

8.03 Termination Notice

On (a) the occurrence of a Suspension Event or (b) the Assumption Effective Date, the Province may provide to the Indenture Trustee, the FSM and the Financing Entity a notice in the form of Exhibit D (a "**Termination Notice**"). ~~Upon the delivery of such Termination Notice, the Province shall assume the Obligations Secured of the Financing Entity as primary obligor pursuant to ARTICLE VI [NTD: If the Province terminates the program, it must assume the obligations of the Financing Entity.]~~[12]

8.04 No Impact on Adherence

For greater certainty, the occurrence of Suspension Event or a failure by the FSM or the Financing Entity to perform its covenants under this Agreement will not invalidate or extinguish the obligations of the Province under the Limited Guarantee in respect of Approved Obligations in existence prior to the occurrence of the Suspension Event, nor will it in any way impact the Obligations Secured which are assumed by the Province in accordance with ~~this Agreement~~Article VI.

ARTICLE IX
MISCELLANEOUS

9.01 Term of Agreement

This Agreement will continue until the ~~[~~later~~]~~ of:

(a) the date that no amount is or may become due and payable by the Province under the Limited Guarantee; and ~~the Trust Indenture has been terminated;~~

(b) ~~[subject to Section 8.04,] [NTD: Should this clause subject to section 8.04?] following receipt of~~the date that a Termination Notice ~~from the~~

[12] The suspension right in favour of the Province is intended to allow the Province to cut-off future obligations under this Agreement, but not affect rights that have arisen prior to the suspension notice. The termination notice is a further step that allows the Province to bring this agreement to an end, but that only happens (under section 9.01) after all amounts capable of becoming due under the Limited Guarantee have been paid (i.e., the last obligation incurred prior to the suspension notice has been satisfied), including as a result of an assumption under Art VI.

~~Province~~delivered in accordance with Section 8.03 is received by the Indenture Trustee, the FSM and the Financing Entity~~, the Assumption Effective Date being the date that the Province has assumed the Obligations Secured of the Financing Entity as primary obligor pursuant to ARTICLE VI; and~~.

~~(c) [subject to Section 8.04,] [NTD: Should this clause subject to section 8.04?] following receipt of an Assumption Notice from the Province by the Indenture Trustee, the Assumption Effective Date being the date that the Province has assumed the Obligations Secured of the Financing Entity as primary obligor pursuant to ARTICLE VI.~~

9.02 Notices

Any notice or other communication required or permitted to be given hereunder will be in writing and will be given by prepaid first-class mail, by facsimile or other means of electronic communication or by hand-delivery as hereinafter provided. Any such notice or other communication, if mailed by prepaid first-class mail at any time other than during a general discontinuance of postal service due to strike, lockout or otherwise, will be deemed to have been received on the fourth Business Day after the post-marked date thereof, or if sent by facsimile or other means of electronic communication, will be deemed to have been received on the Business Day following the sending, or if delivered by hand will be deemed to have been received at the time it is delivered to the applicable address noted below either to the individual designated below or to an individual at such address having apparent authority to accept deliveries on behalf of the addressee. Notice of change of address will also be governed by this Section. In the event of a general discontinuance of postal service due to strike, lock-out or otherwise, notices or other communications will be delivered by hand or sent by facsimile or other means of electronic communication and will be deemed to have been received in accordance with this Section. Notices and other communications will be addressed as follows:

(a) if to the Financing Entity:

Fair Hydro Trust

700 University Avenue

Toronto, Ontario M5G 1X6
Attention: [■]
Fax: (416) [■]
Email: [■]

with copies to:

Computershare Trust Company of Canada, in its capacity as Financing Entity Trustee for Fair Hydro Trust
100 University Avenue, 11th Floor
Toronto, Ontario M5J 2Y1
Attention: [■]

Fax: (416) [■]
Email: [■]

[■]

(b) if to the FSM:

Ontario Power Generation Inc.

700 University Avenue

Toronto, Ontario M5G 1X6

Attention: [■]

Fax: (416) [■]

Email: [■]

(c) if to the Province:

Ministry of Finance

[Address]

Attention: [■]
Fax: (416) [■]
Email: [■]

and

Ministry of Energy

[Address]

Attention: [■]
Fax: (416) [■]
Email: [■]

(d) if to the Indenture Trustee:

[Address]

Attention: [■]
Fax: (416) [■]
Email: [■]

or to such other addresses as a party may from time to time notify the other parties in accordance with this Section 9.02.

9.03 Assignment

(a) None of the rights or obligations hereunder shall be assignable or transferable by any party without the prior written consent of the other parties, except as otherwise provided for herein.

(b) Any purported assignment of this Agreement in violation of this Section 9.03 shall be null and void.

9.04 Enurement

This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

9.05 FIPPA

The parties acknowledge that the Province will be bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province, or any agent or representative of the Province in connection with this Agreement may be subject to disclosure in accordance with the act or as otherwise required by law.

9.06 No Petition

The Province agrees, to the fullest extent permitted by applicable law, that at no time until one year and one day following repayment in full of all Primary Obligations shall it commence, or join in commencing, a bankruptcy case or other insolvency or similar proceeding under the laws of any jurisdiction against the Financing Entity.

9.07 Intentionally Deleted

9.08 Third Party Rights

This Agreement is not intended to create rights for any Person not party to this Agreement~~ and all such Persons who are Beneficiaries derive their rights~~. Beneficiaries are not parties to this Agreement and accordingly any benefits derived hereunder shall arise exclusively through the Indenture Trustee and ~~such rights are~~shall be subject to the provisions applicable to Specified Creditors in the Trust Indenture. ~~**[NTD: Consider merging this section 9.08 with section 1.03.]**~~

9.09 Delivery of Executed Copies

Each party acknowledges delivery of a fully executed copy of this Agreement.

[Signature page to follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF FINANCE

By: _____
Name:
Title:

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY

By: _____
Name:
Title:

ONTARIO POWER GENERATION INC., AS FSM

By: _____
Name:
Title:

By: _____
Name:
Title:

COMPUTERSHARE TRUST COMPANY OF CANADA, AS TRUSTEE OF FAIR HYDRO TRUST~~, BY ITS MANAGER, ONTARIO POWER GENERATION INC.~~

By: _____
Name:
Title:

BNY TRUST COMPANY OF CANADA, AS INDENTURE TRUSTEE AND NOT IN ITS INDIVIDUAL CAPACITY

By: _____
Name:
Title:

SCHEDULE A
DEFINED TERMS

"**Acceleration**" has the meaning ascribed to the term "acceleration"[7] in the General Regulation.

"**Act**" has the meaning ascribed thereto in the first paragraph of the recitals in this Agreement.

"**Action**" has the meaning ascribed thereto under the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Adherence Conditions**", in respect of a Primary Obligation, means the conditions set out in Section 4.02.

"**Approved Obligation**" means a Primary Obligation that constitutes an Approved Obligation pursuant to Section 4.01.

"**Assumption Closing Date**" has the meaning ascribed thereto in Section 6.01.

"**Assumption Effective Date**" has the meaning ascribed thereto in Section 6.03.

"**Assumption Notice**" has the meaning ascribed thereto in Section 6.01.

"**Available Collections**" has the meaning ascribed thereto in the Trust Indenture.

"**Beneficiaries**" means the Specified Creditors to whom the Financing Entity owes a payment obligation pursuant to one or more Approved Obligations from time to time.

"**Breach Event**" [means the occurrence or existence of any one or more of the following: (a) a default in the performance, or breach, of any covenants of the FSM under the Process Agreement; or (b) any representation or warranty made by the FSM, any certification made by the FSM under the Process Agreement, or any certification made by the FSM in a certificate contemplated by Section 4.03 of this Agreement, proves to be incorrect in any material respect on the date made; or (c) OPG is no longer the FSM or the Manager or actions have been taken by or on behalf of the Indenture Trustee to remove OPG as the FSM or the Manager.][has the meaning ascribed thereto in the Process Agreement.][13]

"**Business Day**" means any day other than a Saturday, a Sunday or a day on which banking institutions in Toronto, Ontario are authorized or obligated by applicable law, regulation or executive order to be closed.

"**Capital Account**" has the meaning ascribed to the term "capital account" in the General Regulation.

[7] Note: A proposal to add this concept into the Regulation is under consideration by MOE. Further modifications to follow, depending on that process.

[13] Consider this longer version to avoid hard-coding Process Agreement into this Agreement.

"**Change of Law Protection Agreement**" means this Agreement.

"**Collateral**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Declaration of Trust**" means the declaration of trust made as of [■], 2017 under which the Financing Entity was established.

"**Derivative Agreement**" means any rate swap transaction, basis swap, forward rate transaction, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, total return swap transaction, credit default swap transaction or any other similar transaction (including any option with respect to any of those transactions) or any combination of these transactions entered into from time to time by the Financing Entity in connection with or related to Funding Obligations.

"**Eligible Deposit Account**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Eligible Institution**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Finance Amount**" has the meaning ascribed to the term "finance amount" in the Act as of the date of this Agreement.

"**Finance Reserve Account**" has the meaning ascribed to the term "finance reserve account" in the General Regulation.

"**Financing Entity**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Financing Entity Trustee**" means, at any time, the Person who is, in accordance with the Declaration of Trust, the trustee of the Financing Entity at such time.

"**FSM**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Funding Obligation**" has the meaning ascribed to the term "funding obligation" in the Act as of the date of this Agreement.

"**Funding Obligation Agreement**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**General Regulation**" means O. Reg. 206/17 made under the Act.

"**Governmental Authority**" means any nation or government, any federal, state, provincial, local or other political subdivision thereof and any court, administrative agency or other instrumentality or entity exercising executive, legislative, judicial, regulatory or administrative functions of government.

"**IESO**" has the meaning ascribed thereto in the Act.

"**Indenture Trustee**" means the Person named as the Indenture Trustee in the first paragraph of this Agreement until a successor Indenture Trustee shall have become such pursuant to the applicable provisions of the Trust Indenture and this Agreement, and thereafter "Indenture Trustee" means and includes such Person.

"**Investment Interest**" has the meaning ascribed to the term "investment interest" in the Act as of the date of this Agreement.

"**Issuer Account**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Legislature**" means the Legislature of the Province of Ontario.

"**Limited Guarantee**" has the meaning ascribed thereto in Section 2.01(b).

"**Management Agreement**" means the management agreement dated [■], 2017 between the Manager and the Financing Entity.

"**Manager**" means OPG, in its capacity as manager of the Financing Entity under the Management Agreement.

"**Master Transfer and Servicing Agreement**" means the master transfer and servicing agreement dated [■], 2017 between the Financing Entity and IESO, as may be amended prior to the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Note**" or "**Notes**" has the meaning ascribed thereto under the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Noteholder**" has the meaning ascribed thereto under the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Obligations Secured**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**OIC**" has the meaning ascribed thereto in the second paragraph of the recitals in this Agreement.

"**OPG**" means Ontario Power Generation Inc., a corporation established under the laws of the Province of Ontario.

"**Original Currency**" has the meaning ascribed thereto in Section 1.19(a).

"**Payment Demand**" has the meaning ascribed thereto in Section 2.01(a).

"**Person**" means any individual, corporation, limited liability company, estate, partnership, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization or Governmental Authority.

"**Primary Obligations**" means any Obligation Secured ~~that is a Funding Obligation or otherwise constitutes a Finance Amount.~~(a) that is a Funding Obligation or (b) that otherwise is a payment obligation of the Financing Entity that gives rise to a Finance Amount, in each case other than (i) any amounts that are or become payable as a result of the exercise of an option of the Financing Entity following a Protection Event; (ii) any amounts required to be deposited by or on behalf of the Financing Entity into any Capital Account, Finance Reserve Account, or Supplemental Reserve Account; (iii) any amounts that would be remaining amounts of Available Collections required by the to be held in the Collection Account for distribution on a succeeding Payment Date pursuant to the Trust Indenture; (iv) any amount payable under a Derivative Agreement in respect of a "termination payment" where the Financing Entity's counterparty under the Derivative Agreement is a "defaulting party" or the sole "affected party" (as such terms are given meaning under the Derivative Agreement); and (v) any obligation to pay the Trust or on the Trust's direction any remaining amounts of Available Collections.

"**Process Agreement**" means the Change of Law Process Agreement dated [■], 2017 between the Province and [the FSM].

[**"Process Certificate**" has the meaning ascribed thereto in Section 3.01 of the Process Agreement.]

"**Program Agreements**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Program Breach**" means ~~[~~an acceleration of Funding Obligations in accordance with the provisions of the Trust Indenture~~]~~ or an event of default, early amortization event, termination event or similar event or circumstance (including any event that with the passage of time or the giving of notice would become such an event) of or in respect of the obligations of any party under any Program Agreement, including under this Agreement, the Trust Indenture, the Master Transfer and Servicing Agreement or any Derivative Agreement.~~] [NTD: To be discussed.]~~

"**Protection Account**" has the meaning ascribed to such term in Section 2.04(a).

"**Protection Event**" means the occurrence of any of the following events:

(a) (i) the Legislature repeals (and does not replace on an equivalent basis) or amends the Act or any portion thereof as in effect on the date hereof;

(ii) the Legislature enacts or amends any other statute;

(iii) the Lieutenant Governor in Council repeals (and does not replace on an equivalent basis) the regulations made under the Act or any portion thereof as in effect on the date hereof; or

(iv) the Lieutenant Governor in Council, a minister of the [Crown], an official of the government or a board or commission all the members of which are appointed by the Lieutenant Governor in Council makes or amends any "regulation" (as defined in Part III of the *Legislation Act, 2006*) as in effect on the date hereof;

(v) the implementation of a change in the organization or structure of the IESO or Ontario's electricity market undertaken at the initiative of the Province or an entity controlled by the Province, ~~**[NTD: Further discussion required as to whether the Province controls the OEB for purposes of a Protection Event.]**~~

in each case, that materially and adversely affects (a) the ability of the Financing Entity to receive amounts in respect of its Investment Interest so that it can pay Obligations Secured, or (b) this Agreement or any of the agreements under which Obligations Secured arise, other than if the Indenture Trustee has confirmed in writing that the effect under such agreements is otherwise acceptable; or

(b) a court of competent jurisdiction (i) determines that all or a portion of the Act or the regulations made under the Act, as in effect on the date hereof, is *ultra vires* or invalid in a way that materially and adversely affects the ability of the Financing Entity to receive amounts in respect of its Investment Interest so that it can pay Obligations Secured, ~~or~~and (ii) issues a decision or an order preventing the Financing Entity from receiving amounts on its Investment Interest, in each case that results in the Financing Entity not having sufficient funds to pay Obligations Secured that have become due and payable.

"**Province**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Rating Agency Condition**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Repayment**" has the meaning ascribed thereto in the General Regulation.

"**Second Currency**" has the meaning ascribed thereto in Section 1.19(b).

"**Security Interest**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Specified Creditors**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Supplemental Reserve Account**" has the meaning ascribed in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Suspension Event**" has the meaning ascribed thereto in Section 8.02.

"**Suspension Notice**" has the meaning ascribed thereto in Section 8.01.

"**Termination Notice**" has the meaning ascribed thereto in Section 8.03.

"**this Agreement**" means this agreement, as amended, supplemented, restated or otherwise modified from time to time.

"**Trust Indenture**" means the trust indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017, as amended, supplemented, restated or otherwise modified from time to time.

EXHIBIT A
FORM OF PAYMENT DEMAND

EXHIBIT B
ASSUMPTION NOTICE

EXHIBIT C
SUSPENSION NOTICE

EXHIBIT D
TERMINATION NOTICE

EXHIBIT E

FORM OF ASSUMPTION AGREEMENT

Document comparison by Workshare Compare on Tuesday, November 14, 2017 8:00:39 PM

Input:	
Document 1 ID	PowerDocs://TOR_2528/23239360/10
Description	TOR_2528-#23239360-v10-CLPA_-_Protection_Agreement
Document 2 ID	PowerDocs://TOR_2528/23239360/12
Description	TOR_2528-#23239360-v12-CLPA_-_Protection_Agreement
Rendering set	Standard

Legend:	
Insertion	
~~Deletion~~	
~~Moved from~~	
Moved to	
Style change	
Format change	
~~Moved deletion~~	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	155
Deletions	161
Moved from	8
Moved to	8
Style change	0
Format changed	0
Total changes	332

23239361-vpdf-CLPA - Process Agreement.PDF

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY AND THE MINISTER OF FINANCE

AND

ONTARIO POWER GENERATION INC.[, AS FINANCIAL SERVICES MANAGER[1]]

CHANGE OF LAW PROCESS AGREEMENT

Dated as of [■], 2017

[1] OPG to consider if this agreement should form part of the overall covenant pattern (Program Agreement). We assume not. If OPG signs as FSM, consider the potential impact on the Trust, if the FSM is considered to be contracting on behalf of the Trust as principal. The intention was to keep these terms 'behind the scenes' and as between OPG and the Province.

This **CHANGE OF LAW PROCESS AGREEMENT**, between Her Majesty the Queen in Right of Ontario, as represented by the Minister of Energy and the Minister of Finance (the "**Province**"), and Ontario Power Generation Inc. ("**OPG**")[, as Financial Services Manager for the Financing Entity in accordance with the Act,] is made and entered into as of [■], 2017.

RECITALS

OPG is appointed as the Financial Services Manager under Section 18 of the *Ontario Fair Hydro Plan Act, 2017* (the "**Act**").

Pursuant to Section 22(2) of the Act, OPG, in its capacity as the Financial Services Manager (the "**FSM**"), may establish or cause to be established one or more financing entities (as defined in the Act), which may incur Funding Obligations in accordance with the Act.

Pursuant to a Declaration of Trust dated as of [■], 2017, the Financing Entity was established as a "financing entity" (as defined in the Act) for the purposes contemplated in the Act.[1]

Concurrent with this Agreement, the Province, the FSM, the Financing Entity and the Indenture Trustee will enter into the Change of Law Protection Agreement under which the Province will agree to provide protections and assurances to the Indenture Trustee, for the benefit of the Beneficiaries, in respect of Obligations Secured that constitute Approved Obligations, in order to address concerns that would arise from a change or adverse determination of law, subject in each case to the satisfaction of the Adherence Conditions at the time the Approved Obligation is incurred or amended.

Prior to entering into this Agreement, the [FSM] provided the Province with copies of certain of the Transaction Documents, and the Province has confirmed by a notice delivered to [the FSM] that the reviewed forms (as further described in such notice) shall be Reviewed Documentation for the purposes of this Agreement.

This Agreement sets out the obligations [the FSM] has agreed to perform and assurances [the FSM] has agreed to provide and on which the Province will rely in entering into and implementing the Change of Law Protection Agreement, including for the purposes of determining whether the Adherence Conditions have been satisfied in connection with the incurrence or amendment of an Approved Obligation, maintaining information related to the Program Agreements and the Approved Obligations, and ensuring that the Province's assumption rights pursuant to Article VI of the Change of Law Protection Agreement may be exercised without impediment on the terms and conditions contemplated in this Agreement and the Change of Law Protection Agreement.

All things necessary to make this Agreement a valid and legally binding agreement of [the FSM], and of the Province in accordance with the Act, have been done.

[1] ~~Note: This draft only addresses the first Financing Entity. If additional financing entities are established, revisions to this Agreement may be made at that time, in context. Any additional financing entities contemplated should be as contemplated in the Financing Plan.~~

AGREEMENT OF THE PARTIES

In consideration of the respective agreements herein contained, the parties hereto covenant and agree as follows:

ARTICLE I
DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

1.01 Interpretation

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) the terms used in this Agreement that are defined in Schedule A have the meanings assigned to them in Schedule A;

(b) the terms used in this Agreement that are not defined in this Agreement shall have the meanings assigned to them in the Change of Law Protection Agreement;

(c) words importing the singular shall include the plural and vice versa, words importing general shall include all genders or the neuter, and words importing the neuter shall include all genders;

(d) all references to any Person shall include such Person's permitted successors and assigns, and any reference to a Person in a particular capacity excludes such Person in other capacities;

(e) references to any law, rule, regulation or order of a Governmental Authority (including, for greater certainty, references to the Act and the General Regulation) shall include such law, rule, regulation or order as from time to time in effect, including any amendment, modification, codification, replacement or reenactment thereof or any substitution therefor~~, except in each case as referenced in the definition of Protection Event~~;

(f) the word "will" shall be construed to have the same meaning and effect as the word "shall". The word "or" is not exclusive;

(g) any reference to this Agreement or any other agreement, document or instrument shall be construed as a reference to this Agreement or, as the case may be, such other agreement, document or instrument as the same may have been, or may from time to time be, amended, varied, replaced, amended and restated, supplemented or otherwise modified;

(h) all references in this Agreement to designated "Articles", "Sections", "Subsections" "Schedules", "Exhibits" and other subdivisions are to the designated Articles, Sections, Subsections, Schedules, Exhibits and other subdivisions of this Agreement as originally executed. The words "herein", "hereof" and "hereunder" and other words of similar import refer to this

Agreement as a whole and not to any particular Article, Section, Subsection, Schedule, Exhibit or other subdivision;

(i) "including" and words of similar import will be deemed to be followed by "without limitation"; and

(j) with respect to the computation of periods of time from a specified date to a later specified date, unless otherwise expressly stated, the word "from" means "from and including" and the words "to" and "until" each mean "to but excluding".

1.02 References to the Financing Entity

For greater certainty, each reference to the Financing Entity shall be construed as a reference to ~~the FSM, as agent of~~ the Financing Entity Trustee, as trustee of the Financing Entity.

1.03 Effect of Headings

The Article and Section headings herein and are for convenience only and will not affect the construction hereof.

1.04 Successors and Assigns

All covenants and agreements in this Agreement by the parties will bind their respective successors and permitted assigns, whether so expressed or not.

1.05 Severability

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction will not affect the validity or enforceability of any other provision hereof. To the extent permitted by applicable law, the parties waive any provision of law which renders any provision of this Agreement invalid or unenforceable in any respect. The parties will engage in good faith negotiations to replace any provision which is declared invalid or unenforceable with a valid and enforceable provision, the economic effect of which comes as close as possible to that of the invalid or unenforceable provision which it replaces.

1.06 Governing Law

THIS AGREEMENT WILL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE PROVINCE OF ONTARIO AND THE FEDERAL LAWS OF CANADA APPLICABLE THEREIN, AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.

1.07 Proceedings Against the Crown Act

NOTHING IN THIS AGREEMENT OR THE PROGRAM AGREEMENTS AFFECTS THE RIGHTS, PROTECTIONS AND IMMUNITIES OF THE CROWN UNDER THE PROCEEDINGS AGAINST THE CROWN ACT.

1.08 Attornment

EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY ONTARIO COURTS SITTING IN TORONTO IN ANY ACTION, APPLICATION, REFERENCE OR OTHER PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT. THE PARTIES HERETO HEREBY WAIVE ANY RIGHT THEY MAY HAVE TO REQUIRE A TRIAL BY JURY OF ANY PROCEEDING COMMENCED IN CONNECTION WITH THIS AGREEMENT.

1.09 Counterparts; Electronic Delivery

This Agreement may be executed in any number of counterparts, each of which so executed will be deemed to be an original, but all such counterparts will together constitute one and the same instrument. Delivery of an executed signature page to this Agreement by a party by electronic transmission will be as effective as delivery of a manually executed copy of the Agreement by such party.

1.10 ~~1.01~~ Change of Law Process Agreement Referred to in the Change of Law Protection Agreement

This Agreement is the "Change of Law Process Agreement" referred to in the Change of Law Protection Agreement.

1.11 ~~1.10~~ Non-Business Days

Whenever any period of time would begin or end or any other action to be taken hereunder shall be stated to be required to be taken, on a day other than a Business Day, then (notwithstanding any other provision of this Agreement) such period of time shall begin or end, and such other action shall be taken on the next succeeding Business Day.

1.12 ~~1.11~~ Waiver, Amendment

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement will be binding unless executed in writing by the party to be bound thereby. No waiver of any provision of this Agreement will constitute a waiver of any other provision nor will any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided. A party's failure or delay in exercising any right under this Agreement will not operate as a waiver of that right. A single or partial exercise of any right will not preclude a party from any other or further exercise of that right or the exercise of any other right.

ARTICLE II
COVENANTS OF [THE FSM]

2.01 Deliveries to the Province

(a) Not less than [15 Business Days] prior to the initial issuance of any Funding Obligation by the Financing Entity, [the FSM] shall deliver to the Province a copy of the initial Financing Plan. Thereafter, [the FSM] shall promptly deliver to the Province a copy of any proposed change to or replacement of the Financing Plan.

(b) Not less than 10 Business Days prior to (i) any proposed change or supplement to a previously provided Transaction Document becoming effective or otherwise being used or (ii) any additional or replacement Transaction Document becoming effective or otherwise being used, [the FSM] shall deliver to the Province a copy of such proposed change or, supplement to the Transaction Document and any such additional or replacement Transaction Document.

(c) Promptly following any incurrence of a Funding Obligation or any amendment of a Funding Obligation, [the FSM] shall provide the Province with electronic copies of all related Governing Documents and all other closing documents executed by or on behalf of the Financing Entity in connection with such incurrence or amendment that would affect the Financing Entity's assets or obligations (including, for greater certainty, any related Disclosure Document) and which have not been previously provided to the Province.

(d) Promptly upon request, [the FSM] shall provide the Province with such additional information and documentation as the Province reasonably requests in order to enable the Province to assess the nature and extent of its obligations under the Change of Law Protection Agreement.

2.02 Covenants

(a) [The FSM] shall use commercially reasonable efforts to cause the Financing Entity to:

(i) punctually perform and observe all of its obligations and agreements contained in the Program Agreements;

(ii) ensure that all Obligations Secured are incurred pursuant to and in accordance with the terms and conditions of the Trust Indenture;

(iii) ensure that no obligations other than the Obligations Secured are incurred by or on behalf of the Financing Entity;

(iv) not engage in any business other than as permitted under the Declaration of Trust or the other Program Agreements and activities ancillary thereto; and

(v) not:

(A) amend, supplement, modify, restate or replace or waive or consent to a postponement of compliance with the terms and conditions on the part of any other party to any of the Program Agreements, if any such supplementation, amendment, modification, restatement or replacement or waiver or consent could reasonably be considered to be materially prejudicial to the rights or interests of the Province under the Change of Law Protection Agreement;

(B) consent to the resignation of the Manager under the Management Agreement; or

(C) ~~(B)~~ permit the validity or effectiveness of the Change of Law Protection Agreement to be impaired.

(b) [The FSM ~~shall use commercially reasonable efforts~~] shall:

(i) comply, and shall use commercially reasonable efforts to cause compliance by the Financing Entity, with the Act, the General Regulation and any other enactment related thereto; ~~and~~

(ii) promptly notify the Province of the creation of any Funding Obligation that is not or would not be an Approved Obligation; and

(iii) ~~(ii) to,~~ after the occurrence of any Protection Event (or any event that with the passage of time or the giving of notice would be a Protection Event), not, without the Province's prior written consent, permit the Financing Entity to exercise any redemption, pre-payment, early termination or extension right in respect of any Approved Obligation or exercise any other election or privilege in respect of any Approved Obligation, in each case if as a result the obligations applicable to the Approved Obligation under the Change of Law Protection Agreement would be accelerated, delayed or otherwise affected.

(c) Nothing in this Agreement shall limit the obligations of the Province under the Indemnity Agreement by the Province in favour of OPG dated June 1, 2017 and to the extent of any conflict between this Agreement and such Indemnity Agreement, in respect of any matter relating to the Province's obligations to indemnify the FSM ~~or the Financing Entity~~, the latter shall prevail. [For clarity, OPG's obligations under this Agreement are solely in its capacity as the FSM.]

ARTICLE III
PROCESS CERTIFICATE

3.01 Process Certificate

[The FSM] shall deliver a certificate (the "**Process Certificate**"), signed by the Chief Financial Officer and the Treasurer of ~~the FSM~~OPG (or their respective designees, provided that such designees are also executive officers of ~~the FSM~~OPG) and addressed to the Province, on the earlier of (i) one Business Day prior to the incurrence or any amendment of a Primary Obligation, and (ii) on the Business Day on which the financial terms of such Primary Obligation are definitively determined (including the interest or discount rate applicable to any notes, bonds or other securities), setting out the following with respect to such Primary Obligation:

(a) the material terms of the Primary Obligation pertaining to (i) in the case of notes, bonds or other securities, the principal amount, interest or discount rate, third party fees, term to maturity, amortization, redemption or extension features, structure and coupon frequency, as applicable, and (ii) in the case of a Derivative Agreement, the notional amount, financial terms and pricing, benchmarks, payment structures and early termination rights;

(b) if an existing Primary Obligation is proposed to be amended, material details respecting such amendment, including regarding the applicable details set forth in Subsection 3.01(a), as the context requires;

(c) a statement to the effect that: (i) the Primary Obligation to be incurred or amended (1) will arise under terms and conditions that are Substantially in the Form of the Reviewed Documentation applicable thereto; (2) in the opinion of the signatories to the Process Certificate, are reasonably incurred or effected in compliance with the Act, the General Regulation, any other enactments related thereto and the applicable Financing Plan; (3) are of a type and are on terms that a reasonably prudent financial services manager would incur in similar circumstances; and (4) reflect, in all material respects, arm's length terms and conditions; and (ii) any Disclosure Document used in connection with the offering and sale of notes, bonds or other securities is Substantially in the Form of the Reviewed Documentation;

(d) a statement confirming that any disclosure made in respect of the Primary Obligation (including any Disclosure Document, press release or other written communication prepared for dissemination to third parties in relation to the Primary Obligation) that refers to or describes the terms, effect or adherence of or to this Agreement or the Change of Law Protection Agreement has been made available for review to the Province prior to use or dissemination and the Province provided its written consent to such use or dissemination, other than where such disclosure was substantially the same as a disclosure previously made and for which the Province had previously provided its written consent;

(e) ~~(d)~~ a statement that no Breach Event has occurred on or prior to the date of the Process Certificate, unless such Breach Event has been waived by the Province in writing; and

(f) ~~(e)~~ confirmation that, at the time the Primary Obligation is incurred or amended, the maximum aggregate payment amounts due or becoming due in the future in respect of Repayments under the Primary Obligation, together with all other outstanding amounts due or becoming due in the future in respect of Repayments under all Approved Obligations, do not and will not exceed the Protection Agreement Maximum; for clarity, Repayments ~~shall not include any payments or outstanding amounts due or becoming dues in the future in respect of any Primary Obligations arising under or in connection with a Derivative Agreement~~under Obligations Secured owing in currencies other than Canadian dollars and in respect of which a Derivative Agreement has been entered into to hedge related currency exposures shall be valued for this purpose on the basis of the hedged value expressed in Canadian dollars for so long as such Derivative Agreement is in good standing.

3.02 Acknowledgment

The parties acknowledge that the Process Certificate is the "process certificate" referred to in Subsection 4.02(~~d~~b) of the Change of Law Protection Agreement.

3.03 Meaning of "Reviewed Documentation"

For the purposes of Subsection 3.01(c), the term "Reviewed Documentation" shall mean each Transaction Document (including any change, addition or supplement thereto) that, at the relevant time:

(a) is a Transaction Document provided to the Province prior to the making of this Agreement and in respect of which the notice contemplated in the fifth recital to this Agreement has been delivered by the Province to [the FSM]; ~~and~~or

(b) is a Transaction Document provided to the Province in accordance with Subsection 2.01(b) that has been accepted by the Province, as confirmed by way of a written notice of acceptance from the Province delivered to [the FSM].

3.04 Meaning of "Substantially in the Form"

For the purposes of Subsection 3.01(c), the term "Substantially in the Form" shall mean:

(a) with respect to the Reviewed Documentation referred to in clauses (i) to (xi) of the definition of "Transaction Documents", that there are no differences between the proposed documents and such Reviewed Documentation that could result in a change in the material terms or conditions applicable to the applicable Primary Obligation ~~that would be adverse to the Issuer~~, including regarding the timing of or circumstances under which related payments are or may become due or accrue (including as a result of any default, acceleration, termination, wind-up,

liquidation or realization), or that would affect the Province's rights of subrogation or assignment (including pursuant to Section 5.01 or Article VI of the Change of Law Protection Agreement) or its interests as a subrogee or an assignee, that would arise as a result of performing the Limited Guarantee in respect of the applicable Primary Obligation or upon the assumption of obligations in accordance with Article VI of the Change of Law Protection Agreement; provided, however, that the foregoing does not apply to any variable terms to be set forth in the proposed documents as are reasonably contemplated in the Reviewed Documentation, including the particular financial terms, rates and levels set forth in the proposed documents other than to the extent that the forms of Reviewed Documentation themselves specify specific requirements, limitations or parameters with respect to such financial terms, rates, levels and parameters; and

(b) with respect to the Reviewed Documentation referred to in clause (xii) of the definition of "Transaction Documents", that there are no material differences between the form and substance of the proposed Disclosure Document and such form of Disclosure Document and that the proposed Disclosure Document complies in all material respects with all applicable securities disclosure requirements relating to the Primary Obligation subject to distribution thereunder.

ARTICLE IV
PROTECTION AGREEMENT MAXIMUM

4.01 Protection Agreement Maximum

(a) [Not less than [■]15 Business Days prior to the proposed incurrence of the first Funding Obligation, OPG shall, as the FSM, deliver to the Province: (i) a forecast setting out OPG's expectations regarding the aggregate maximum amount of Repayments that would arise in the future under Approved Obligations to be incurred during the next following 24 month period (the "**Initial Forecast Period**"), which expectations shall be consistent with the Financing Plan (the "**Initial Forecast**"); and (ii) notice of the initial Protection Agreement Maximum, which shall be based onmay not exceed the Initial Forecast.

(b) Not more than [■]10 Business Days following receipt of the Initial Forecast and notice of the initial Protection Agreement Maximum from OPG pursuant to Section 4.01(a), the Province shall confirm its agreement with the initial Protection Agreement Maximum or if the Province does not agree with the determination of the initial Protection Agreement Maximum, which disagreement may only be on the basis that the Initial Forecast does not accord with the Financing Plan and not on any other basis, the Province andmay disagree with the Initial Forecast and the initial Protection Agreement Maximum on the basis that (i) there appears to be inaccuracies in the Financing Plan or the Initial Forecast, (ii) the Initial Forecast is inconsistent with the Financing Plan, or (iii) the initial Protection Agreement Maximum is not less than the Initial Forecast. If the Province disagrees, OPG willshall discuss andany discrepancies with the

Province, address any inaccuracies ~~in the Financing Plan~~ and inconsistencies to the reasonable satisfaction of ~~both parties~~the Province, and the initial Protection Agreement Maximum will be revised accordingly and confirmed by an amended notice to the Province.~~]~~

(c) Between nine (9) and twelve (12) months prior to the end of the Initial Forecast Period, OPG shall, as the FSM, deliver to the Province an updated forecast setting out the sum of (1) the aggregate amount of Repayments that will arise in the future under Approved Obligations that are then outstanding and (2) OPG's expectations regarding the aggregate maximum amount of Repayments that would arise in the future under Approved Obligations to be incurred during the period ending 24 months following the Initial Forecast Period, which expectation shall be consistent with the then applicable Financing Plan. Such updated forecast shall be further updated on a similar basis with respect to each successive 24 month period or more frequently with the consent of the Province if at any time OPG has knowledge that the most recent forecast is materially inaccurate (the Initial Forecast and each such updated forecast, each a "**Forecast**"). Together with each Forecast, OPG shall also provide a revised Protection Agreement Maximum ~~based on~~, which may not exceed such Forecast.

(d) Not more than ~~[■]~~10 Business Days following receipt of any further Forecast and notice of the revised Protection Agreement Maximum from OPG pursuant to Section 4.01(c), the Province ~~shall confirm its agreement with the revised Protection Agreement Maximum or if the Province does not agree with the determination of the revised Protection Agreement Maximum, which disagreement may only be on the basis that the further Forecast does not accord with the Financing Plan and not on any other basis, the Province and OPG will~~may disagree with such further Forecast or revised Protection Agreement Maximum on the basis that (i) there appears to be inaccuracies in the Financing Plan or such further Forecast, (ii) the further Forecast is inconsistent with the Financing Plan, or (iii) the revised Protection Agreement Maximum is not less than the further Forecast. If the Province disagrees, OPG shall discuss ~~and~~any discrepancies with the Province, address any inaccuracies ~~in the Financing Plan~~ and inconsistencies to the reasonable satisfaction of ~~both parties~~the Province, and the revised Protection Agreement Maximum will be further revised accordingly and confirmed by an amended notice to the Province.

(e) For clarity, Repayments under Obligations Secured owing in currencies other than Canadian dollars and in respect of which a Derivative Agreement has been entered into to hedge related currency exposures shall be valued for the purposes of this Section 4.01 on the basis of the hedged value expressed in Canadian dollars for so long as such Derivative Agreement is in good standing.

ARTICLE V
REPRESENTATIONS AND WARRANTIES

5.01 Representations and Warranties of [the FSM]

[The FSM] represents and warrants that on the date hereof and on each day that a Primary Obligation is incurred or amended:

(a) The Financing Entity is a trust duly constituted and validly existing under the laws of the Province of Ontario, is duly qualified to carry on its business in each jurisdiction in which it carries on business, and has the power and authority to perform the acts that OPG, as the FSM, ~~shall use commercially reasonable efforts to~~may cause it to perform pursuant to this Agreement and to own its property and carry on its business in accordance with the Program Agreements.

(b) OPG is a corporation duly constituted and validly existing under the laws of the Province of Ontario and has the power and authority to enter into and perform its obligations under this Agreement and all instruments and agreements delivered pursuant hereto.

(c) OPG has been validly appointed, and has irrecovably accepted such appointment, as the FSM in accordance with the Act. OPG has the power and authority to enter into and perform its obligations as the FSM under the Program Agreements and all instruments and agreements delivered pursuant thereto.

(d) ~~(c)~~ The execution, delivery and performance of this Agreement and every instrument or agreement delivered pursuant hereto or in its capacity as the FSM has been or will be duly authorized by all requisite action by OPG and constitute a valid and binding obligation~~ of the Financing Entity enforceable against the Financing Entity~~ in accordance with its terms subject to (i) applicable bankruptcy, insolvency, moratorium and similar laws at the time in effect affecting the rights of creditors generally, and (ii) equitable principles which may limit the availability of certain remedies, including the remedy of specific performance.

(e) ~~(d)~~ There are no actions, suits or proceedings pending or, to the knowledge of OPG, threatened against or affecting the Financing Entity at law or in equity or before or by any Governmental Authority, or before any arbitrator of any kind, which would result in any material adverse change in the business, operations, prospects, properties, assets or condition, financial or otherwise, of the Financing Entity or in the ability of the Financing Entity to perform its obligations under the Program Agreements.

(f) There are no actions, suits or proceedings pending or, to the knowledge of OPG, threatened against or affecting OPG at law or in equity or before or by any Governmental Authority, or before any arbitrator of any kind, which would result in any material adverse change in the business, operations, prospects, properties, assets or condition, financial or otherwise, of OPG or in the ability of the OPG to perform its obligations under this Agreement or any Program Agreements.

(g) ~~(e)~~ The performance by the Financing Entity of the Program Agreements does not conflict with, will not conflict with, does not result in, and will not result in, any breach of, and does not constitute, a default under, the Declaration of Trust or any agreements or instruments to which the Financing Entity is a party or by which it or any of its property and assets are bound.

(h) Neither the execution nor delivery of this Agreement, the Program Agreements nor any agreements or instruments delivered pursuant hereto or thereto, the consummation of the transactions herein or therein, nor compliance with the terms, conditions and provisions hereof or thereof conflicts with or will conflict with, or results or will result in any breach of, or constitutes a default under, any of the provisions of the constating documents of OPG or any agreements or instruments to which OPG is a party or by which it or any of its property and assets are bound.

(i) No consent, approval or authorization of, or declaration, registration, filing or qualification with, or giving of notice to, or taking of any other action in respect of, any Governmental Authority on the part of OPG is required in connection with the execution and delivery of this Agreement, the Program Agreements or any agreements or instruments delivered pursuant hereto or thereto or the consummation of any of the transactions contemplated hereby or thereby or in connection with the enforcement of this Agreement, the Program Agreements or any agreements or instruments delivered pursuant hereto or thereto, except those which have been obtained.

5.02 Representations and Warranties of the Province

The Province hereby represents and warrants that:

~~(a) the Province has the necessary power, authority and capacity to execute and perform its obligations under this Agreement;~~

(a) ~~(b)~~ the execution, delivery and performance ~~by the Province~~ of this Agreement ~~does not and will not result in a violation of any applicable law;~~by the Province have been authorized by all necessary action on the part of the Province;

(b) ~~(c) all necessary action has been taken by the Province including, without limitation, under sections 5(2) and 5(3) of the Act and section 28(1.1) of the *Financial Administration Act*, R.S.O. 1990 c. F. 12, to authorize the execution and~~the execution, delivery and performance of this Agreement by the Province ~~and the performance by the Province of its obligations hereunder~~do not result in the violation of any applicable law; and

(c) ~~(d)~~ this Agreement has been duly ~~authorized,~~ executed and delivered ~~on behalf of~~by the Province ~~and is a legal, valid and binding obligation of the Province, enforceable against it in accordance with its terms~~.

ARTICLE VI
ELECTION[2] TO ASSUME APPROVED OBLIGATIONS~~[2]~~

6.01 Election by the Province

At any time following the occurrence of a Protection Event, the Province may (but shall not be obligated) elect to assume the Financing Entity's obligations in respect of all Obligations Secured, as obligor and debtor. To make such election, the Province shall duly complete and deliver to [the FSM] a notice in the form of Exhibit A (an "**Election Notice**"), which in turn will set forth the form of agreement (an "**Assumption Agreement**") setting forth the material terms and conditions under which the Province would assume and become obligated under each of the Obligations Secured. The Election Notice shall, among other things, specify the date on which the Province proposes to assume the Obligations Secured, which date shall be no earlier than 20 Business Days following delivery of the Election Notice to [the FSM] (the "**Proposed Assumption Date**").

6.02 Details regarding Obligations Secured

Promptly following the delivery of the Election Notice to [the FSM], [the FSM] shall provide the following information and documentation to the Province:

(a) a summary of the amounts that will be owing under all Obligations Secured as of the Proposed Assumption Date, together with a detailed schedule setting out the dates on which such amounts will become due and payable under the Obligations Secured;

(b) a summary of the rights arising under the Obligations Secured that permit the Financing Entity to assign the Obligations Secured to the Province, including details regarding any conditions precedent to such assignment and the related assumption becoming effective and any notices, filings, consents or other actions that will be required in order to implement and effect such assignment and assumption;

(c) current versions of all documentation under which the Obligations Secured arise;

(d) copies of all correspondence exchanged between OPG, as the FSM, or the Financing Entity, on the one hand, and any Specified Creditor, Rating Agency or the Indenture Trustee, on the other hand, in each case that may reasonably be considered to be material to the assumption and performance of the Obligations Secured by the Province;

[2] OPG's proposal to move Art VI to the Protection Agreement is not consistent with the original basis for the Process Agreement - to keep the details and plumbing out of the "external" document. If we move toward putting all of this into the Protection Agreement, it will raise additional drafting issues (e.g., we will have to have a parallel "Breach Event" concept in the Protection Agreement that will deal with these sorts of undertakings and allow for a suspension of the Limited Guarantee). OPG to advise if that approach is preferred.

~~[2] Note to Province/Blakes: Article 6 to be moved and merged with Article 6 of the Change of Law Protection Agreement with appropriate revisions. It is more appropriate in that agreement. See also the comments in Article 6 of the Change of Law Protection Agreement.~~

(e) all income tax returns and assessments, financial statements and notices of proceedings of or pertaining to the Financing Entity or its business and any documentation related thereto, including any pleadings, appeals, objections, qualifications or other similar materials in respect of the Financing Entity or any Program Agreement; and

(f) the form of Assumption Agreement in respect of the assignment and assumption of all Obligations Secured ~~is~~ attached as Exhibit E to the Change of Law Protection Agreement.[3]

6.03 Settlement of Terms

Within ~~20~~30 Business Days following receipt by the Province of the information and documentation to be provided under Section 6.02, the Province shall confirm in writing whether or not it will proceed with the assignment and assumption of the Obligations Secured and, if it will be proceeding with the assignment and assumption, the date on which the Province intends that assignment and assumption will be effected, which may not be earlier than the Proposed Assumption Date. If it will be proceeding with such assignment and assumption, the Province will deliver an Assumption Notice as contemplated under Section 6.01 of the Change of Law Protection Agreement, which will specify such date as the "Assumption Closing Date" for the purposes thereof.

6.04 Cooperation to Implement the Assignment and Assumption

[The FSM] shall cooperate with the Province and will use commercially reasonable efforts to cause the Financing Entity to cooperate, and shall use its commercially reasonable efforts, to complete the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province, by the applicable Assumption Closing Date.[4]

6.05 Terms of Obligations Secured

In order to permit the Province to assume the Obligations Secured in the circumstances contemplated herein, [the FSM ~~will use commercially reasonable efforts to~~] shall cause the Financing Entity ~~to, use commercially reasonably efforts~~ to ensure that all Obligations Secured permit such an assignment to and assumption by the Province substantially in accordance with the terms and on the basis contemplated in the Assumption Agreement, without any penalty or make-whole payment, or any requirement for further consent, approval or agreement, or alternatively, in the case of any Obligations Secured entered into by or on behalf of the Financing Entity for the provision of on-going services to the Financing Entity permitting the satisfaction and termination of such Obligations Secured on or prior to the effective time of such assumption without any acceleration of future fees, profits or other like amounts~~; provided that, this Section 6.05 shall not apply to any Obligations Secured~~, other than to the extent of payment obligations

[3] ~~Note to Province: A~~Torys to provide a draft of the proposed form of global Assumption Agreement for all Obligations Secured ~~is required. It is impractical to have an~~. The Province may be guided by OPG on this, but we note that it seems simplistic to think that the same assumption agreement ~~for each type of Obligation Secured~~will work for swaps, debt and service obligations.

[4] ~~Note: Further details regarding obtaining of third party consents and rating agency approvals to be considered.~~

arise under market standard mark-to-market payment terms and conditions included on a commercially reasonable basis under a Derivative Agreement.[~~5~~4]

ARTICLE VII
BREACH EVENTS

7.01 Breach Events

"**Breach Event**" shall mean the occurrence or existence of any one or more of the following:

(a) a default in the performance, or breach, of any covenants of [the FSM] under this Agreement, which continues for ~~sixty~~thirty (~~60~~30) days after written notice by the Province to [the FSM] of such default or breach;

(b) any representation or warranty made by [the FSM] in this Agreement, any certification made in a Process Certificate, or any certification made in a certificate contemplated by Section ~~4.03~~4.02 of the Change of Law Protection Agreement, proves to be incorrect on the date made and, if curable, is not cured within ~~sixty~~thirty (~~60~~30) days after written notice by the Province to [the FSM] of such misrepresentation; or

(c) OPG is no longer the Manager or actions have been taken by or on behalf of the Indenture Trustee to remove OPG as the Manager. ~~**[NTD: The FSM is a statutory role and OPG can only be removed as FSM by the Province.]**~~

7.02 Notice on Breach Event

If any Breach Event shall have occurred and not been waived in writing by the Province, the Province shall have the right at its option, upon written notice to [the FSM], and in addition to and not in substitution for any other remedies available hereunder at law or equity, to provide a Suspension Notice to the Indenture Trustee, [the FSM] and the Financing Entity in accordance with the terms of the Change of Law Protection Agreement.

[~~5~~] ~~Note:~~ [4]The Trust Indenture will need to ~~include a clause providing that~~permit the obligations of the Financing Entity to the Indenture Trustee and the Noteholders ~~may~~to be assigned to and assumed by the Province in accordance with an assumption agreement, substantially in ~~the~~a form of agreement to be set out in an exhibit to the Trust Indenture. ~~**[NTD: The form of Assumption Agreement shall**~~The Province agrees that the same form of the assumption agreement should also be an exhibit to the Change of Law Protection Agreement ~~**(consistent with our comment to move Article 6 here to the Change of Law Protection Agreement). We**~~, The Trust Indenture will need to be revised to ensure that the Province's assignment and assumption right is fully contemplated and may be implemented without any requirement for further Specified Creditor or other third party consents. Among other changes, it is contemplated that Torys will add the following to the MTI to ~~**otherwise**~~ address ~~**your comment**~~this requirement: (i) Specified Creditors will be required to acknowledge the rights of the Province to assume the Obligations Secured ~~**pursuant to Sections 5.01(f) and 5.03(b) of the MTI, and (ii) we will add language in section 11.01 of the MTI that allows**~~on the basis contemplated in the form of assumption agreement, and (ii) the Indenture Trustee will be permitted to enter into and give effect to the global Assumption Agreement without the consent of Specified Creditors or any other third parties.~~**]**

ARTICLE VIII
MISCELLANEOUS

8.01 Term of Agreement

This Agreement will continue for the term of the Change of Law Protection Agreement.

8.02 Notices

Any notice or other communication required or permitted to be given hereunder will be in writing and will be given by prepaid first-class mail, by facsimile or other means of electronic communication or by hand-delivery as hereinafter provided. Any such notice or other communication, if mailed by prepaid first-class mail at any time other than during a general discontinuance of postal service due to strike, lockout or otherwise, will be deemed to have been received on the fourth Business Day after the post-marked date thereof, or if sent by facsimile or other means of electronic communication, will be deemed to have been received on the Business Day following the sending, or if delivered by hand will be deemed to have been received at the time it is delivered to the applicable address noted below either to the individual designated below or to an individual at such address having apparent authority to accept deliveries on behalf of the addressee. Notice of change of address will also be governed by this Section. In the event of a general discontinuance of postal service due to strike, lock-out or otherwise, notices or other communications will be delivered by hand or sent by facsimile or other means of electronic communication and will be deemed to have been received in accordance with this Section. Notices and other communications will be addressed as follows:

(a) if to the FSM:

Ontario Power Generation Inc.
700 University Avenue
Toronto, Ontario M5G 1X6
Attention: [■]
Fax: (416) [■]
Email: [■]

(b) if to the Province:

Ministry of Finance
[Address]
Attention: [■]
Fax: (416) [■]
Email: [■]

and

Ministry of Energy
[Address]

Attention: [■]
Fax: (416) [■]
Email: [■]

or to such other addresses as a party may from time to time notify the other parties in accordance with this Section 8.02.

8.03 Assignment

(a) None of the rights or obligations hereunder shall be assignable or transferable by any party without the prior written consent of the other parties.

(b) Any purported assignment of this Agreement in violation of this Section 8.03 shall be null and void.

8.04 Enurement

This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

8.05 FIPPA

The parties acknowledge that the Province will be bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province, or any agent or representative of the Province in connection with this Agreement may be subject to disclosure in accordance with the act or as otherwise required by law.

~~8.06 Intentionally Deleted~~[6]

8.06 ~~8.07~~ Delivery of Executed Copies

Each party acknowledges delivery of a fully executed copy of this Agreement.

[Signature page to follow]

[6] ~~To be considered based on what would be customary and appropriate for similar types of arrangements and would be acceptable to the Province. **[NTD: The existence and details of this Agreement and the Change of Law Protection Agreement cannot be confidential. It will need to be disclosed to the Rating Agencies and to potential investors.]**~~

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF FINANCE

By: _____

Name:
Title:

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY

By: _____

Name:
Title:

ONTARIO POWER GENERATION INC., ~~SOLELY~~ [AS FINANCIAL SERVICES MANAGER TO THE FINANCING ENTITY]

By: _____

Name:
Title:

By: _____

Name:
Title:

Each of the undersigned hereby acknowledge the foregoing as of the day and year first above written.

COMPUTERSHARE TRUST COMPANY OF CANADA, AS TRUSTEE OF FAIR HYDRO TRUST~~, BY ITS MANAGER, ONTARIO POWER GENERATION INC.~~

By: _____
Name:
Title:

BNY TRUST COMPANY OF CANADA, AS INDENTURE TRUSTEE AND NOT IN ITS INDIVIDUAL CAPACITY

By: _____
Name:
Title:

SCHEDULE A
DEFINED TERMS

"**Act**" has the meaning ascribed thereto in the first paragraph of the recitals in this Agreement.

"**Adherence Conditions**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Approved Obligation**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Assumption Agreement**" has the meaning ascribed thereto in Section 6.01.

"**Assumption Closing Date**" has the meaning ascribed thereto in Section 6.03.

"**Beneficiaries**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Breach Event**" has the meaning ascribed thereto in Section 7.01.

"**Business Day**" means any day other than a Saturday, a Sunday or a day on which banking institutions in Toronto, Ontario are authorized or obligated by applicable law, regulation or executive order to be closed.

"**Change of Law Protection Agreement**" means the Change of Law Protection Agreement dated [■], 2017 among the Province, the FSM on behalf of the Financing Entity and the Indenture Trustee.

"**Collateral**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Co-Owner Agreement**" means any agreement between, *inter alia*, the Financing Entity and any other owner or owners of an Investment Interest as contemplated by Subsection 29(5) of the Act.

"**Declaration of Trust**" means the declaration of trust made as of [■], 2017 under which the Financing Entity was established.

"**Derivative Agreement**" means any rate swap transaction, basis swap, forward rate transaction, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, total return swap transaction, credit default swap transaction or any other similar transaction (including any option with respect to any of those transactions) or any combination of these transactions entered into from time to time by the Financing Entity in connection with or related to Funding Obligations.

"**Disclosure Document**" means a disclosure document (including any offering circular, prospectus or other investor disclosure statement) describing the material terms of the notes, bonds or securities to be issued pursuant to a supplemental indenture under the Trust Indenture, together with any related material information;

"**Election Notice**" has the meaning ascribed thereto in Section 6.01.

"**Financing Entity**" means Fair Hydro Trust, a trust settled by the FSM under the laws of the Province of Ontario and under which the Financing Entity Trustee is the trustee.

"**Financing Entity Trustee**" means, at any time, the Person who is, in accordance with the Declaration of Trust, the trustee of the Financing Entity at such time.

"**Financing Plan**" has the meaning ascribed thereto in the Act as of the date of this Agreement.

"**Forecast**" has the meaning ascribed thereto in Section 4.01(c).

"**FSM**" has the meaning ascribed thereto in the second paragraph of the recitals of this Agreement.

"**Funding Obligation**" has the meaning ascribed to the term "funding obligation" in the Act as of the date of this Agreement.

"**General Regulation**" means O. Reg. 206/17 made under the Act.

"**Governing Document**" has the meaning ascribed to the term "governing document" in the General Regulation.

"**Governmental Authority**" means any nation or government, any federal, state, provincial, local or other political subdivision thereof and any court, administrative agency or other instrumentality or entity exercising executive, legislative, judicial, regulatory or administrative functions of government.

"**IESO**" has the meaning ascribed thereto in the Act as of the date of this Agreement.

"**Indenture Trustee**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Initial Forecast**" has the meaning ascribed thereto in Section 4.01(a).

"**Initial Forecast Period**" has the meaning ascribed thereto in Section 4.01(a).

"**Investment Interest**" has the meaning ascribed to the term "investment interest" in the Act as of the date of this Agreement.

"**Legislature**" means the Legislature of the Province of Ontario.

"**Limited Guarantee**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Management Agreement**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Manager**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Master Transfer and Servicing Agreement**" means the master transfer and servicing agreement dated [■], 2017 between the Financing Entity and IESO.

"**Obligations Secured**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**OPG**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Person**" means any individual, corporation, limited liability company, estate, partnership, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization or Governmental Authority.

"**Primary Obligations**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Process Certificate**" has the meaning ascribed thereto in Section 3.01.

"**Program Agreements**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Proposed Assumption Date**" has the meaning ascribed thereto in Section 6.01.

"**Protection Agreement Maximum**" means the dollar amount [referenced as the Program Agreement Maximum in accordance with Article IV].

"**Protection Event**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Province**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Rating Agency**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Reviewed Documentation**" has the meaning ascribed thereto in Section 3.03.

"**Repayment**" has the meaning ascribed to the term "repayment" in the General Regulation as of the date of this Agreement.

"**Security Interest**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Specified Creditors**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Substantially in the Form**" has the meaning ascribed thereto in Section 3.04.

"**Suspension Notice**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**this Agreement**" means this agreement, as amended, supplemented, restated or otherwise modified from time to time.

"**Transaction Document**" means (i) all constating and organizational documents of the Financing Entity, including the Declaration of Trust; (ii) any management, administration or servicing agreement to which the Financing Entity is a party, including any replacement or standby services agreement and the Management Agreement; (iii) the Master Transfer and Servicing Agreement; (iv) Trust Indenture; (v) the form of supplemental indenture (supplemental to the Trust Indenture) governing the terms and conditions of a sample series of notes, bonds or other securities to be issued by the Financing Entity, including the particular allocations, security and priority of the Obligations Secured being serviced by the related Investment Interest and any other related series property; (vi) the form of any note, bond or securities purchase agreement; (vii) the form of underwriting agreement, agency agreement, selling agreement and/or subscription agreement that may be used with respect to a sale of a related series of notes, bonds or securities to be issued under the supplemental indenture referred to in (v), above; (viii) the form of any loan or credit agreement governing the issuance of short term loan obligations by the Financing Entity; (ix) the form of schedule to an ISDA Master Agreement governing derivative transactions that may be entered into the Financing Entity from time to time; (x) the form of any other agreement or instrument under which a Funding Obligation may arise or be effected, including any other agreement under which the Financing Entity incurs a material financial obligation or that affects the Province's subrogation rights and/or subrogee interests, including any standby liquidity arrangements or credit enhancement agreements; (xi) if applicable, a Co-Owner Agreement or any other agreement governing the respective interests of persons having rights or interests in the investment asset or other assets of the Financing Entity, including any other agreement of the sort contemplated in Subsection 29(5) of the Act; and (xii) the form of Disclosure Document.

"**Trust Indenture**" means the trust indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017.

EXHIBIT A
FORM OF ELECTION NOTICE

Document comparison by Workshare Compare on Tuesday, November 14, 2017 8:22:37 PM

Input:	
Document 1 ID	PowerDocs://TOR_2528/23239361/8
Description	TOR_2528-#23239361-v8-CLPA_-_Process_Agreement
Document 2 ID	PowerDocs://TOR_2528/23239361/10
Description	TOR_2528-#23239361-v10-CLPA_-_Process_Agreement
Rendering set	Standard

Legend:	
Insertion	
~~Deletion~~	
~~Moved from~~	
Moved to	
Style change	
Format change	
~~Moved deletion~~	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	173
Deletions	108
Moved from	5
Moved to	5
Style change	0
Format changed	0
Total changes	291

23239361-v10-CLPA - Process Agreement.pdf

Draft: November 14, 2017

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY AND THE MINISTER OF FINANCE

AND

ONTARIO POWER GENERATION INC.[, AS FINANCIAL SERVICES MANAGER[1]]

CHANGE OF LAW PROCESS AGREEMENT

Dated as of [■], 2017

[1] OPG to consider if this agreement should form part of the overall covenant pattern (Program Agreement). We assume not. If OPG signs as FSM, consider the potential impact on the Trust, if the FSM is considered to be contracting on behalf of the Trust as principal. The intention was to keep these terms 'behind the scenes' and as between OPG and the Province.

This **CHANGE OF LAW PROCESS AGREEMENT**, between Her Majesty the Queen in Right of Ontario, as represented by the Minister of Energy and the Minister of Finance (the "**Province**"), and Ontario Power Generation Inc. ("**OPG**")[, as Financial Services Manager for the Financing Entity in accordance with the Act,] is made and entered into as of [■], 2017.

RECITALS

OPG is appointed as the Financial Services Manager under Section 18 of the *Ontario Fair Hydro Plan Act, 2017* (the "**Act**").

Pursuant to Section 22(2) of the Act, OPG, in its capacity as the Financial Services Manager (the "**FSM**"), may establish or cause to be established one or more financing entities (as defined in the Act), which may incur Funding Obligations in accordance with the Act.

Pursuant to a Declaration of Trust dated as of [■], 2017, the Financing Entity was established as a "financing entity" (as defined in the Act) for the purposes contemplated in the Act.

Concurrent with this Agreement, the Province, the FSM, the Financing Entity and the Indenture Trustee will enter into the Change of Law Protection Agreement under which the Province will agree to provide protections and assurances to the Indenture Trustee, for the benefit of the Beneficiaries, in respect of Obligations Secured that constitute Approved Obligations, in order to address concerns that would arise from a change or adverse determination of law, subject in each case to the satisfaction of the Adherence Conditions at the time the Approved Obligation is incurred or amended.

Prior to entering into this Agreement, the [FSM] provided the Province with copies of certain of the Transaction Documents, and the Province has confirmed by a notice delivered to [the FSM] that the reviewed forms (as further described in such notice) shall be Reviewed Documentation for the purposes of this Agreement.

This Agreement sets out the obligations [the FSM] has agreed to perform and assurances [the FSM] has agreed to provide and on which the Province will rely in entering into and implementing the Change of Law Protection Agreement, including for the purposes of determining whether the Adherence Conditions have been satisfied in connection with the incurrence or amendment of an Approved Obligation, maintaining information related to the Program Agreements and the Approved Obligations, and ensuring that the Province's assumption rights pursuant to Article VI of the Change of Law Protection Agreement may be exercised without impediment on the terms and conditions contemplated in this Agreement and the Change of Law Protection Agreement.

All things necessary to make this Agreement a valid and legally binding agreement of [the FSM], and of the Province in accordance with the Act, have been done.

AGREEMENT OF THE PARTIES

In consideration of the respective agreements herein contained, the parties hereto covenant and agree as follows:

ARTICLE I
DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

1.01 Interpretation

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) the terms used in this Agreement that are defined in Schedule A have the meanings assigned to them in Schedule A;

(b) the terms used in this Agreement that are not defined in this Agreement shall have the meanings assigned to them in the Change of Law Protection Agreement;

(c) words importing the singular shall include the plural and vice versa, words importing general shall include all genders or the neuter, and words importing the neuter shall include all genders;

(d) all references to any Person shall include such Person's permitted successors and assigns, and any reference to a Person in a particular capacity excludes such Person in other capacities;

(e) references to any law, rule, regulation or order of a Governmental Authority (including, for greater certainty, references to the Act and the General Regulation) shall include such law, rule, regulation or order as from time to time in effect, including any amendment, modification, codification, replacement or reenactment thereof or any substitution therefor;

(f) the word "will" shall be construed to have the same meaning and effect as the word "shall". The word "or" is not exclusive;

(g) any reference to this Agreement or any other agreement, document or instrument shall be construed as a reference to this Agreement or, as the case may be, such other agreement, document or instrument as the same may have been, or may from time to time be, amended, varied, replaced, amended and restated, supplemented or otherwise modified;

(h) all references in this Agreement to designated "Articles", "Sections", "Subsections" "Schedules", "Exhibits" and other subdivisions are to the designated Articles, Sections, Subsections, Schedules, Exhibits and other subdivisions of this Agreement as originally executed. The words "herein", "hereof" and "hereunder" and other words of similar import refer to this

Agreement as a whole and not to any particular Article, Section, Subsection, Schedule, Exhibit or other subdivision;

(i) "including" and words of similar import will be deemed to be followed by "without limitation"; and

(j) with respect to the computation of periods of time from a specified date to a later specified date, unless otherwise expressly stated, the word "from" means "from and including" and the words "to" and "until" each mean "to but excluding".

1.02 References to the Financing Entity

For greater certainty, each reference to the Financing Entity shall be construed as a reference to the Financing Entity Trustee, as trustee of the Financing Entity.

1.03 Effect of Headings

The Article and Section headings herein and are for convenience only and will not affect the construction hereof.

1.04 Successors and Assigns

All covenants and agreements in this Agreement by the parties will bind their respective successors and permitted assigns, whether so expressed or not.

1.05 Severability

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction will not affect the validity or enforceability of any other provision hereof. To the extent permitted by applicable law, the parties waive any provision of law which renders any provision of this Agreement invalid or unenforceable in any respect. The parties will engage in good faith negotiations to replace any provision which is declared invalid or unenforceable with a valid and enforceable provision, the economic effect of which comes as close as possible to that of the invalid or unenforceable provision which it replaces.

1.06 Governing Law

THIS AGREEMENT WILL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE PROVINCE OF ONTARIO AND THE FEDERAL LAWS OF CANADA APPLICABLE THEREIN, AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.

1.07 Proceedings Against the Crown Act

NOTHING IN THIS AGREEMENT OR THE PROGRAM AGREEMENTS AFFECTS THE RIGHTS, PROTECTIONS AND IMMUNITIES OF THE CROWN UNDER THE PROCEEDINGS AGAINST THE CROWN ACT.

1.08 Attornment

EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY ONTARIO COURTS SITTING IN TORONTO IN ANY ACTION, APPLICATION, REFERENCE OR OTHER PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT. THE PARTIES HERETO HEREBY WAIVE ANY RIGHT THEY MAY HAVE TO REQUIRE A TRIAL BY JURY OF ANY PROCEEDING COMMENCED IN CONNECTION WITH THIS AGREEMENT.

1.09 Counterparts; Electronic Delivery

This Agreement may be executed in any number of counterparts, each of which so executed will be deemed to be an original, but all such counterparts will together constitute one and the same instrument. Delivery of an executed signature page to this Agreement by a party by electronic transmission will be as effective as delivery of a manually executed copy of the Agreement by such party.

1.10 Change of Law Process Agreement Referred to in the Change of Law Protection Agreement

This Agreement is the "Change of Law Process Agreement" referred to in the Change of Law Protection Agreement.

1.11 Non-Business Days

Whenever any period of time would begin or end or any other action to be taken hereunder shall be stated to be required to be taken, on a day other than a Business Day, then (notwithstanding any other provision of this Agreement) such period of time shall begin or end, and such other action shall be taken on the next succeeding Business Day.

1.12 Waiver, Amendment

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement will be binding unless executed in writing by the party to be bound thereby. No waiver of any provision of this Agreement will constitute a waiver of any other provision nor will any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided. A party's failure or delay in exercising any right under this Agreement will not operate as a waiver of that right. A single or partial exercise of any right will not preclude a party from any other or further exercise of that right or the exercise of any other right.

ARTICLE II
COVENANTS OF [THE FSM]

2.01 Deliveries to the Province

(a) Not less than [15 Business Days] prior to the initial issuance of any Funding Obligation by the Financing Entity, [the FSM] shall deliver to the Province a copy of the initial Financing Plan. Thereafter, [the FSM] shall promptly deliver to the Province a copy of any proposed change to or replacement of the Financing Plan.

(b) Not less than 10 Business Days prior to (i) any proposed change or supplement to a previously provided Transaction Document becoming effective or otherwise being used or (ii) any additional or replacement Transaction Document becoming effective or otherwise being used, [the FSM] shall deliver to the Province a copy of such proposed change or, supplement to the Transaction Document and any such additional or replacement Transaction Document.

(c) Promptly following any incurrence of a Funding Obligation or any amendment of a Funding Obligation, [the FSM] shall provide the Province with electronic copies of all related Governing Documents and all other closing documents executed by or on behalf of the Financing Entity in connection with such incurrence or amendment that would affect the Financing Entity's assets or obligations (including, for greater certainty, any related Disclosure Document) and which have not been previously provided to the Province.

(d) Promptly upon request, [the FSM] shall provide the Province with such additional information and documentation as the Province reasonably requests in order to enable the Province to assess the nature and extent of its obligations under the Change of Law Protection Agreement.

2.02 Covenants

(a) [The FSM] shall use commercially reasonable efforts to cause the Financing Entity to:

(i) punctually perform and observe all of its obligations and agreements contained in the Program Agreements;

(ii) ensure that all Obligations Secured are incurred pursuant to and in accordance with the terms and conditions of the Trust Indenture;

(iii) ensure that no obligations other than the Obligations Secured are incurred by or on behalf of the Financing Entity;

(iv) not engage in any business other than as permitted under the Declaration of Trust or the other Program Agreements and activities ancillary thereto; and

(v) not:

(A) amend, supplement, modify, restate or replace or waive or consent to a postponement of compliance with the terms and conditions on the part of any other party to any of the Program Agreements, if any such supplementation, amendment, modification, restatement or replacement or waiver or consent could reasonably be considered to be materially prejudicial to the rights or interests of the Province under the Change of Law Protection Agreement;

(B) consent to the resignation of the Manager under the Management Agreement; or

(C) permit the validity or effectiveness of the Change of Law Protection Agreement to be impaired.

(b) [The FSM] shall:

(i) comply, and shall use commercially reasonable efforts to cause compliance by the Financing Entity, with the Act, the General Regulation and any other enactment related thereto;

(ii) promptly notify the Province of the creation of any Funding Obligation that is not or would not be an Approved Obligation; and

(iii) after the occurrence of any Protection Event (or any event that with the passage of time or the giving of notice would be a Protection Event), not, without the Province's prior written consent, permit the Financing Entity to exercise any redemption, pre-payment, early termination or extension right in respect of any Approved Obligation or exercise any other election or privilege in respect of any Approved Obligation, in each case if as a result the obligations applicable to the Approved Obligation under the Change of Law Protection Agreement would be accelerated, delayed or otherwise affected.

(c) Nothing in this Agreement shall limit the obligations of the Province under the Indemnity Agreement by the Province in favour of OPG dated June 1, 2017 and to the extent of any conflict between this Agreement and such Indemnity Agreement, in respect of any matter relating to the Province's obligations to indemnify the FSM, the latter shall prevail. [For clarity, OPG's obligations under this Agreement are solely in its capacity as the FSM.]

ARTICLE III
PROCESS CERTIFICATE

3.01 Process Certificate

[The FSM] shall deliver a certificate (the "**Process Certificate**"), signed by the Chief Financial Officer and the Treasurer of OPG (or their respective designees, provided that such designees are also executive officers of OPG) and addressed to the Province, on the earlier of (i) one Business Day prior to the incurrence or any amendment of a Primary Obligation, and (ii) on the Business Day on which the financial terms of such Primary Obligation are definitively determined (including the interest or discount rate applicable to any notes, bonds or other securities), setting out the following with respect to such Primary Obligation:

(a) the material terms of the Primary Obligation pertaining to (i) in the case of notes, bonds or other securities, the principal amount, interest or discount rate, third party fees, term to maturity, amortization, redemption or extension features, structure and coupon frequency, as applicable, and (ii) in the case of a Derivative Agreement, the notional amount, financial terms and pricing, benchmarks, payment structures and early termination rights;

(b) if an existing Primary Obligation is proposed to be amended, material details respecting such amendment, including regarding the applicable details set forth in Subsection 3.01(a), as the context requires;

(c) a statement to the effect that: (i) the Primary Obligation to be incurred or amended (1) will arise under terms and conditions that are Substantially in the Form of the Reviewed Documentation applicable thereto; (2) in the opinion of the signatories to the Process Certificate, are reasonably incurred or effected in compliance with the Act, the General Regulation, any other enactments related thereto and the applicable Financing Plan; (3) are of a type and are on terms that a reasonably prudent financial services manager would incur in similar circumstances; and (4) reflect, in all material respects, arm's length terms and conditions; and (ii) any Disclosure Document used in connection with the offering and sale of notes, bonds or other securities is Substantially in the Form of the Reviewed Documentation;

(d) a statement confirming that any disclosure made in respect of the Primary Obligation (including any Disclosure Document, press release or other written communication prepared for dissemination to third parties in relation to the Primary Obligation) that refers to or describes the terms, effect or adherence of or to this Agreement or the Change of Law Protection Agreement has been made available for review to the Province prior to use or dissemination and the Province provided its written consent to such use or dissemination, other than where such disclosure was substantially the same as a disclosure previously made and for which the Province had previously provided its written consent;

(e) a statement that no Breach Event has occurred on or prior to the date of the Process Certificate, unless such Breach Event has been waived by the Province in writing; and

(f) confirmation that, at the time the Primary Obligation is incurred or amended, the maximum aggregate payment amounts due or becoming due in the future in respect of Repayments under the Primary Obligation, together with all other outstanding amounts due or becoming due in the future in respect of Repayments under all Approved Obligations, do not and will not exceed the Protection Agreement Maximum; for clarity, Repayments under Obligations Secured owing in currencies other than Canadian dollars and in respect of which a Derivative Agreement has been entered into to hedge related currency exposures shall be valued for this purpose on the basis of the hedged value expressed in Canadian dollars for so long as such Derivative Agreement is in good standing.

3.02 Acknowledgment

The parties acknowledge that the Process Certificate is the "process certificate" referred to in Subsection 4.02(b) of the Change of Law Protection Agreement.

3.03 Meaning of "Reviewed Documentation"

For the purposes of Subsection 3.01(c), the term "Reviewed Documentation" shall mean each Transaction Document (including any change, addition or supplement thereto) that, at the relevant time:

(a) is a Transaction Document provided to the Province prior to the making of this Agreement and in respect of which the notice contemplated in the fifth recital to this Agreement has been delivered by the Province to [the FSM]; or

(b) is a Transaction Document provided to the Province in accordance with Subsection 2.01(b) that has been accepted by the Province, as confirmed by way of a written notice of acceptance from the Province delivered to [the FSM].

3.04 Meaning of "Substantially in the Form"

For the purposes of Subsection 3.01(c), the term "Substantially in the Form" shall mean:

(a) with respect to the Reviewed Documentation referred to in clauses (i) to (xi) of the definition of "Transaction Documents", that there are no differences between the proposed documents and such Reviewed Documentation that could result in a change in the material terms or conditions applicable to the applicable Primary Obligation, including regarding the timing of or circumstances under which related payments are or may become due or accrue (including as a result of any default, acceleration, termination, wind-up, liquidation or realization), or that would affect the Province's rights of subrogation or assignment (including pursuant to Section 5.01 or Article VI of the Change of Law Protection Agreement) or its interests as a subrogee or an assignee, that would arise as a

result of performing the Limited Guarantee in respect of the applicable Primary Obligation or upon the assumption of obligations in accordance with Article VI of the Change of Law Protection Agreement; provided, however, that the foregoing does not apply to any variable terms to be set forth in the proposed documents as are reasonably contemplated in the Reviewed Documentation, including the particular financial terms, rates and levels set forth in the proposed documents other than to the extent that the forms of Reviewed Documentation themselves specify specific requirements, limitations or parameters with respect to such financial terms, rates, levels and parameters; and

(b) with respect to the Reviewed Documentation referred to in clause (xii) of the definition of "Transaction Documents", that there are no material differences between the form and substance of the proposed Disclosure Document and such form of Disclosure Document and that the proposed Disclosure Document complies in all material respects with all applicable securities disclosure requirements relating to the Primary Obligation subject to distribution thereunder.

ARTICLE IV
PROTECTION AGREEMENT MAXIMUM

4.01 Protection Agreement Maximum

(a) Not less than 15 Business Days prior to the proposed incurrence of the first Funding Obligation, OPG shall, as the FSM, deliver to the Province: (i) a forecast setting out OPG's expectations regarding the aggregate maximum amount of Repayments that would arise in the future under Approved Obligations to be incurred during the next following 24 month period (the "**Initial Forecast Period**"), which expectations shall be consistent with the Financing Plan (the "**Initial Forecast**"); and (ii) notice of the initial Protection Agreement Maximum, which may not exceed the Initial Forecast.

(b) Not more than 10 Business Days following receipt of the Initial Forecast and notice of the initial Protection Agreement Maximum from OPG pursuant to Section 4.01(a), the Province may disagree with the Initial Forecast and the initial Protection Agreement Maximum on the basis that (i) there appears to be inaccuracies in the Financing Plan or the Initial Forecast, (ii) the Initial Forecast is inconsistent with the Financing Plan, or (iii) the initial Protection Agreement Maximum is not less than the Initial Forecast. If the Province disagrees, OPG shall discuss any discrepancies with the Province, address any inaccuracies and inconsistencies to the reasonable satisfaction of the Province, and the initial Protection Agreement Maximum will be revised accordingly and confirmed by an amended notice to the Province.

(c) Between nine (9) and twelve (12) months prior to the end of the Initial Forecast Period, OPG shall, as the FSM, deliver to the Province an updated forecast setting out the sum of (1) the aggregate amount of Repayments that will arise in the future under Approved Obligations that are then outstanding and (2) OPG's

expectations regarding the aggregate maximum amount of Repayments that would arise in the future under Approved Obligations to be incurred during the period ending 24 months following the Initial Forecast Period, which expectation shall be consistent with the then applicable Financing Plan. Such updated forecast shall be further updated on a similar basis with respect to each successive 24 month period or more frequently with the consent of the Province if at any time OPG has knowledge that the most recent forecast is materially inaccurate (the Initial Forecast and each such updated forecast, each a "**Forecast**"). Together with each Forecast, OPG shall also provide a revised Protection Agreement Maximum, which may not exceed such Forecast.

(d) Not more than 10 Business Days following receipt of any further Forecast and notice of the revised Protection Agreement Maximum from OPG pursuant to Section 4.01(c), the Province may disagree with such further Forecast or revised Protection Agreement Maximum on the basis that (i) there appears to be inaccuracies in the Financing Plan or such further Forecast, (ii) the further Forecast is inconsistent with the Financing Plan, or (iii) the revised Protection Agreement Maximum is not less than the further Forecast. If the Province disagrees, OPG shall discuss any discrepancies with the Province, address any inaccuracies and inconsistencies to the reasonable satisfaction of the Province, and the revised Protection Agreement Maximum will be further revised accordingly and confirmed by an amended notice to the Province.

(e) For clarity, Repayments under Obligations Secured owing in currencies other than Canadian dollars and in respect of which a Derivative Agreement has been entered into to hedge related currency exposures shall be valued for the purposes of this Section 4.01 on the basis of the hedged value expressed in Canadian dollars for so long as such Derivative Agreement is in good standing.

ARTICLE V
REPRESENTATIONS AND WARRANTIES

5.01 Representations and Warranties of [the FSM]

[The FSM] represents and warrants that on the date hereof and on each day that a Primary Obligation is incurred or amended:

(a) The Financing Entity is a trust duly constituted and validly existing under the laws of the Province of Ontario, is duly qualified to carry on its business in each jurisdiction in which it carries on business, and has the power and authority to perform the acts that OPG, as the FSM, may cause it to perform pursuant to this Agreement and to own its property and carry on its business in accordance with the Program Agreements.

(b) OPG is a corporation duly constituted and validly existing under the laws of the Province of Ontario and has the power and authority to enter into and perform its

obligations under this Agreement and all instruments and agreements delivered pursuant hereto.

(c) OPG has been validly appointed, and has irrecovably accepted such appointment, as the FSM in accordance with the Act. OPG has the power and authority to enter into and perform its obligations as the FSM under the Program Agreements and all instruments and agreements delivered pursuant thereto.

(d) The execution, delivery and performance of this Agreement and every instrument or agreement delivered pursuant hereto or in its capacity as the FSM has been or will be duly authorized by all requisite action by OPG and constitute a valid and binding obligation in accordance with its terms subject to (i) applicable bankruptcy, insolvency, moratorium and similar laws at the time in effect affecting the rights of creditors generally, and (ii) equitable principles which may limit the availability of certain remedies, including the remedy of specific performance.

(e) There are no actions, suits or proceedings pending or, to the knowledge of OPG, threatened against or affecting the Financing Entity at law or in equity or before or by any Governmental Authority, or before any arbitrator of any kind, which would result in any material adverse change in the business, operations, prospects, properties, assets or condition, financial or otherwise, of the Financing Entity or in the ability of the Financing Entity to perform its obligations under the Program Agreements.

(f) There are no actions, suits or proceedings pending or, to the knowledge of OPG, threatened against or affecting OPG at law or in equity or before or by any Governmental Authority, or before any arbitrator of any kind, which would result in any material adverse change in the business, operations, prospects, properties, assets or condition, financial or otherwise, of OPG or in the ability of the OPG to perform its obligations under this Agreement or any Program Agreements.

(g) The performance by the Financing Entity of the Program Agreements does not conflict with, will not conflict with, does not result in, and will not result in, any breach of, and does not constitute, a default under, the Declaration of Trust or any agreements or instruments to which the Financing Entity is a party or by which it or any of its property and assets are bound.

(h) Neither the execution nor delivery of this Agreement, the Program Agreements nor any agreements or instruments delivered pursuant hereto or thereto, the consummation of the transactions herein or therein, nor compliance with the terms, conditions and provisions hereof or thereof conflicts with or will conflict with, or results or will result in any breach of, or constitutes a default under, any of the provisions of the constating documents of OPG or any agreements or instruments to which OPG is a party or by which it or any of its property and assets are bound.

(i) No consent, approval or authorization of, or declaration, registration, filing or qualification with, or giving of notice to, or taking of any other action in respect of, any Governmental Authority on the part of OPG is required in connection with the execution and delivery of this Agreement, the Program Agreements or any agreements or instruments delivered pursuant hereto or thereto or the consummation of any of the transactions contemplated hereby or thereby or in connection with the enforcement of this Agreement, the Program Agreements or any agreements or instruments delivered pursuant hereto or thereto, except those which have been obtained.

5.02 Representations and Warranties of the Province

The Province hereby represents and warrants that:

(a) the execution, delivery and performance of this Agreement by the Province have been authorized by all necessary action on the part of the Province;

(b) the execution, delivery and performance of this Agreement by the Province do not result in the violation of any applicable law; and

(c) this Agreement has been duly executed and delivered by the Province.

ARTICLE VI
ELECTION[2] TO ASSUME APPROVED OBLIGATIONS

6.01 Election by the Province

At any time following the occurrence of a Protection Event, the Province may (but shall not be obligated) elect to assume the Financing Entity's obligations in respect of all Obligations Secured, as obligor and debtor. To make such election, the Province shall duly complete and deliver to [the FSM] a notice in the form of Exhibit A (an "**Election Notice**"), which in turn will set forth the form of agreement (an "**Assumption Agreement**") setting forth the material terms and conditions under which the Province would assume and become obligated under each of the Obligations Secured. The Election Notice shall, among other things, specify the date on which the Province proposes to assume the Obligations Secured, which date shall be no earlier than 20 Business Days following delivery of the Election Notice to [the FSM] (the "**Proposed Assumption Date**").

6.02 Details regarding Obligations Secured

Promptly following the delivery of the Election Notice to [the FSM], [the FSM] shall provide the following information and documentation to the Province:

[2] OPG's proposal to move Art VI to the Protection Agreement is not consistent with the original basis for the Process Agreement - to keep the details and plumbing out of the "external" document. If we move toward putting all of this into the Protection Agreement, it will raise additional drafting issues (e.g., we will have to have a parallel "Breach Event" concept in the Protection Agreement that will deal with these sorts of undertakings and allow for a suspension of the Limited Guarantee). OPG to advise if that approach is preferred.

(a) a summary of the amounts that will be owing under all Obligations Secured as of the Proposed Assumption Date, together with a detailed schedule setting out the dates on which such amounts will become due and payable under the Obligations Secured;

(b) a summary of the rights arising under the Obligations Secured that permit the Financing Entity to assign the Obligations Secured to the Province, including details regarding any conditions precedent to such assignment and the related assumption becoming effective and any notices, filings, consents or other actions that will be required in order to implement and effect such assignment and assumption;

(c) current versions of all documentation under which the Obligations Secured arise;

(d) copies of all correspondence exchanged between OPG, as the FSM, or the Financing Entity, on the one hand, and any Specified Creditor, Rating Agency or the Indenture Trustee, on the other hand, in each case that may reasonably be considered to be material to the assumption and performance of the Obligations Secured by the Province;

(e) all income tax returns and assessments, financial statements and notices of proceedings of or pertaining to the Financing Entity or its business and any documentation related thereto, including any pleadings, appeals, objections, qualifications or other similar materials in respect of the Financing Entity or any Program Agreement; and

(f) the form of Assumption Agreement in respect of the assignment and assumption of all Obligations Secured attached as Exhibit E to the Change of Law Protection Agreement.[3]

6.03 Settlement of Terms

Within 30 Business Days following receipt by the Province of the information and documentation to be provided under Section 6.02, the Province shall confirm in writing whether or not it will proceed with the assignment and assumption of the Obligations Secured and, if it will be proceeding with the assignment and assumption, the date on which the Province intends that assignment and assumption will be effected, which may not be earlier than the Proposed Assumption Date. If it will be proceeding with such assignment and assumption, the Province will deliver an Assumption Notice as contemplated under Section 6.01 of the Change of Law Protection Agreement, which will specify such date as the "Assumption Closing Date" for the purposes thereof.

[3] Torys to provide a draft of the proposed form of global Assumption Agreement for all Obligations Secured. The Province may be guided by OPG on this, but we note that it seems simplistic to think that the same assumption agreement will work for swaps, debt and service obligations.

6.04 Cooperation to Implement the Assignment and Assumption

[The FSM] shall cooperate with the Province and will use commercially reasonable efforts to cause the Financing Entity to cooperate, and shall use its commercially reasonable efforts, to complete the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province, by the applicable Assumption Closing Date.

6.05 Terms of Obligations Secured

In order to permit the Province to assume the Obligations Secured in the circumstances contemplated herein, [the FSM] shall cause the Financing Entity to ensure that all Obligations Secured permit such an assignment to and assumption by the Province substantially in accordance with the terms and on the basis contemplated in the Assumption Agreement, without any penalty or make-whole payment, or any requirement for further consent, approval or agreement, or alternatively, in the case of any Obligations Secured entered into by or on behalf of the Financing Entity for the provision of on-going services to the Financing Entity permitting the satisfaction and termination of such Obligations Secured on or prior to the effective time of such assumption without any acceleration of future fees, profits or other like amounts, other than to the extent of payment obligations arise under market standard mark-to-market payment terms and conditions included on a commercially reasonable basis under a Derivative Agreement.[4]

ARTICLE VII
BREACH EVENTS

7.01 Breach Events

"**Breach Event**" shall mean the occurrence or existence of any one or more of the following:

(a) a default in the performance, or breach, of any covenants of [the FSM] under this Agreement, which continues for thirty (30) days after written notice by the Province to [the FSM] of such default or breach;

(b) any representation or warranty made by [the FSM] in this Agreement, any certification made in a Process Certificate, or any certification made in a certificate contemplated by Section 4.02 of the Change of Law Protection Agreement, proves to be incorrect on the date made and, if curable, is not cured

[4]The Trust Indenture will need to permit the obligations of the Financing Entity to the Indenture Trustee and the Noteholders to be assigned to and assumed by the Province in accordance with an assumption agreement, substantially in a form of agreement to be set out in an exhibit to the Trust Indenture. The Province agrees that the same form of the assumption agreement should also be an exhibit to the Change of Law Protection Agreement. The Trust Indenture will need to be revised to ensure that the Province's assignment and assumption right is fully contemplated and may be implemented without any requirement for further Specified Creditor or other third party consents. Among other changes, it is contemplated that Torys will add the following to the MTI to address this requirement: (i) Specified Creditors will be required to acknowledge the rights of the Province to assume the Obligations Secured on the basis contemplated in the form of assumption agreement, and (ii) the Indenture Trustee will be permitted to enter into and give effect to the global Assumption Agreement without the consent of Specified Creditors or any other third parties.

within thirty (30) days after written notice by the Province to [the FSM] of such misrepresentation; or

(c) OPG is no longer the Manager or actions have been taken by or on behalf of the Indenture Trustee to remove OPG as the Manager.

7.02 Notice on Breach Event

If any Breach Event shall have occurred and not been waived in writing by the Province, the Province shall have the right at its option, upon written notice to [the FSM], and in addition to and not in substitution for any other remedies available hereunder at law or equity, to provide a Suspension Notice to the Indenture Trustee, [the FSM] and the Financing Entity in accordance with the terms of the Change of Law Protection Agreement.

ARTICLE VIII
MISCELLANEOUS

8.01 Term of Agreement

This Agreement will continue for the term of the Change of Law Protection Agreement.

8.02 Notices

Any notice or other communication required or permitted to be given hereunder will be in writing and will be given by prepaid first-class mail, by facsimile or other means of electronic communication or by hand-delivery as hereinafter provided. Any such notice or other communication, if mailed by prepaid first-class mail at any time other than during a general discontinuance of postal service due to strike, lockout or otherwise, will be deemed to have been received on the fourth Business Day after the post-marked date thereof, or if sent by facsimile or other means of electronic communication, will be deemed to have been received on the Business Day following the sending, or if delivered by hand will be deemed to have been received at the time it is delivered to the applicable address noted below either to the individual designated below or to an individual at such address having apparent authority to accept deliveries on behalf of the addressee. Notice of change of address will also be governed by this Section. In the event of a general discontinuance of postal service due to strike, lock-out or otherwise, notices or other communications will be delivered by hand or sent by facsimile or other means of electronic communication and will be deemed to have been received in accordance with this Section. Notices and other communications will be addressed as follows:

(a) if to the FSM:

Ontario Power Generation Inc.
700 University Avenue
Toronto, Ontario M5G 1X6
Attention: [■]
Fax: (416) [■]
Email: [■]

(b) if to the Province:

Ministry of Finance
[Address]
Attention: [■]
Fax: (416) [■]
Email: [■]

and

Ministry of Energy
[Address]
Attention: [■]
Fax: (416) [■]
Email: [■]

or to such other addresses as a party may from time to time notify the other parties in accordance with this Section 8.02.

8.03 Assignment

(a) None of the rights or obligations hereunder shall be assignable or transferable by any party without the prior written consent of the other parties.

(b) Any purported assignment of this Agreement in violation of this Section 8.03 shall be null and void.

8.04 Enurement

This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

8.05 FIPPA

The parties acknowledge that the Province will be bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province, or any agent or representative of the Province in connection with this Agreement may be subject to disclosure in accordance with the act or as otherwise required by law.

8.06 Delivery of Executed Copies

Each party acknowledges delivery of a fully executed copy of this Agreement.

[Signature page to follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF FINANCE

By: _____

Name:
Title:

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY

By: _____

Name:
Title:

ONTARIO POWER GENERATION INC., [AS FINANCIAL SERVICES MANAGER TO THE FINANCING ENTITY]

By: _____

Name:
Title:

By: _____

Name:
Title:

Each of the undersigned hereby acknowledge the foregoing as of the day and year first above written.

COMPUTERSHARE TRUST COMPANY OF CANADA, AS TRUSTEE OF FAIR HYDRO TRUST

By: _____
Name:
Title:

BNY TRUST COMPANY OF CANADA, AS INDENTURE TRUSTEE AND NOT IN ITS INDIVIDUAL CAPACITY

By: _____
Name:
Title:

SCHEDULE A
DEFINED TERMS

"**Act**" has the meaning ascribed thereto in the first paragraph of the recitals in this Agreement.

"**Adherence Conditions**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Approved Obligation**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Assumption Agreement**" has the meaning ascribed thereto in Section 6.01.

"**Assumption Closing Date**" has the meaning ascribed thereto in Section 6.03.

"**Beneficiaries**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Breach Event**" has the meaning ascribed thereto in Section 7.01.

"**Business Day**" means any day other than a Saturday, a Sunday or a day on which banking institutions in Toronto, Ontario are authorized or obligated by applicable law, regulation or executive order to be closed.

"**Change of Law Protection Agreement**" means the Change of Law Protection Agreement dated [■], 2017 among the Province, the FSM on behalf of the Financing Entity and the Indenture Trustee.

"**Collateral**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Co-Owner Agreement**" means any agreement between, *inter alia*, the Financing Entity and any other owner or owners of an Investment Interest as contemplated by Subsection 29(5) of the Act.

"**Declaration of Trust**" means the declaration of trust made as of [■], 2017 under which the Financing Entity was established.

"**Derivative Agreement**" means any rate swap transaction, basis swap, forward rate transaction, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, total return swap transaction, credit default swap transaction or any other similar transaction (including any option with respect to any of those transactions) or any combination of these transactions entered into from time to time by the Financing Entity in connection with or related to Funding Obligations.

"**Disclosure Document**" means a disclosure document (including any offering circular, prospectus or other investor disclosure statement) describing the material terms of the notes, bonds or securities to be issued pursuant to a supplemental indenture under the Trust Indenture, together with any related material information;

"**Election Notice**" has the meaning ascribed thereto in Section 6.01.

"**Financing Entity**" means Fair Hydro Trust, a trust settled by the FSM under the laws of the Province of Ontario and under which the Financing Entity Trustee is the trustee.

"**Financing Entity Trustee**" means, at any time, the Person who is, in accordance with the Declaration of Trust, the trustee of the Financing Entity at such time.

"**Financing Plan**" has the meaning ascribed thereto in the Act as of the date of this Agreement.

"**Forecast**" has the meaning ascribed thereto in Section 4.01(c).

"**FSM**" has the meaning ascribed thereto in the second paragraph of the recitals of this Agreement.

"**Funding Obligation**" has the meaning ascribed to the term "funding obligation" in the Act as of the date of this Agreement.

"**General Regulation**" means O. Reg. 206/17 made under the Act.

"**Governing Document**" has the meaning ascribed to the term "governing document" in the General Regulation.

"**Governmental Authority**" means any nation or government, any federal, state, provincial, local or other political subdivision thereof and any court, administrative agency or other instrumentality or entity exercising executive, legislative, judicial, regulatory or administrative functions of government.

"**IESO**" has the meaning ascribed thereto in the Act as of the date of this Agreement.

"**Indenture Trustee**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Initial Forecast**" has the meaning ascribed thereto in Section 4.01(a).

"**Initial Forecast Period**" has the meaning ascribed thereto in Section 4.01(a).

"**Investment Interest**" has the meaning ascribed to the term "investment interest" in the Act as of the date of this Agreement.

"**Legislature**" means the Legislature of the Province of Ontario.

"**Limited Guarantee**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Management Agreement**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Manager**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Master Transfer and Servicing Agreement**" means the master transfer and servicing agreement dated [■], 2017 between the Financing Entity and IESO.

"**Obligations Secured**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**OPG**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Person**" means any individual, corporation, limited liability company, estate, partnership, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization or Governmental Authority.

"**Primary Obligations**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Process Certificate**" has the meaning ascribed thereto in Section 3.01.

"**Program Agreements**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Proposed Assumption Date**" has the meaning ascribed thereto in Section 6.01.

"**Protection Agreement Maximum**" means the dollar amount [referenced as the Program Agreement Maximum in accordance with Article IV].

"**Protection Event**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Province**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Rating Agency**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Reviewed Documentation**" has the meaning ascribed thereto in Section 3.03.

"**Repayment**" has the meaning ascribed to the term "repayment" in the General Regulation as of the date of this Agreement.

"**Security Interest**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Specified Creditors**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Substantially in the Form**" has the meaning ascribed thereto in Section 3.04.

"**Suspension Notice**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**this Agreement**" means this agreement, as amended, supplemented, restated or otherwise modified from time to time.

"**Transaction Document**" means (i) all constating and organizational documents of the Financing Entity, including the Declaration of Trust; (ii) any management, administration or servicing agreement to which the Financing Entity is a party, including any replacement or standby services agreement and the Management Agreement; (iii) the Master Transfer and Servicing Agreement; (iv) Trust Indenture; (v) the form of supplemental indenture (supplemental to the Trust Indenture) governing the terms and conditions of a sample series of notes, bonds or other securities to be issued by the Financing Entity, including the particular allocations, security and priority of the Obligations Secured being serviced by the related Investment Interest and any other related series property; (vi) the form of any note, bond or securities purchase agreement; (vii) the form of underwriting agreement, agency agreement, selling agreement and/or subscription agreement that may be used with respect to a sale of a related series of notes, bonds or securities to be issued under the supplemental indenture referred to in (v), above; (viii) the form of any loan or credit agreement governing the issuance of short term loan obligations by the Financing Entity; (ix) the form of schedule to an ISDA Master Agreement governing derivative transactions that may be entered into the Financing Entity from time to time; (x) the form of any other agreement or instrument under which a Funding Obligation may arise or be effected, including any other agreement under which the Financing Entity incurs a material financial obligation or that affects the Province's subrogation rights and/or subrogee interests, including any standby liquidity arrangements or credit enhancement agreements; (xi) if applicable, a Co-Owner Agreement or any other agreement governing the respective interests of persons having rights or interests in the investment asset or other assets of the Financing Entity, including any other agreement of the sort contemplated in Subsection 29(5) of the Act; and (xii) the form of Disclosure Document.

"**Trust Indenture**" means the trust indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017.

EXHIBIT A
FORM OF ELECTION NOTICE

23239361-vpdf-CLPA - Process Agreement1.PDF

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY AND THE MINISTER OF FINANCE

AND

ONTARIO POWER GENERATION INC.[, AS FINANCIAL SERVICES MANAGER[1]]

CHANGE OF LAW PROCESS AGREEMENT

Dated as of [■], 2017

[1] OPG to consider if this agreement should form part of the overall covenant pattern (Program Agreement). We assume not. If OPG signs as FSM, consider the potential impact on the Trust, if the FSM is considered to be contracting on behalf of the Trust as principal. The intention was to keep these terms 'behind the scenes' and as between OPG and the Province.

This **CHANGE OF LAW PROCESS AGREEMENT**, between Her Majesty the Queen in Right of Ontario, as represented by the Minister of Energy and the Minister of Finance (the "**Province**"), and Ontario Power Generation Inc. ("**OPG**")~~,~~[, as Financial Services Manager for the Financing Entity in accordance with the Act,] is made and entered into as of [■], 2017.

RECITALS

OPG is appointed as the Financial Services Manager under Section 18 of the *Ontario Fair Hydro Plan Act, 2017* (the "**Act**").

Pursuant to Section 22(2) of the Act, OPG, in its capacity as the Financial Services Manager (the "**FSM**"), may establish or cause to be established one or more financing entities (as defined in the Act), which may incur Funding Obligations in accordance with the Act.

Pursuant to a Declaration of Trust dated as of [■], 2017, ~~the FSM established~~ the Financing Entity was established as a "financing entity" (as defined in the Act) for the purposes contemplated in the Act.[1]

Concurrent with this Agreement, the Province, the FSM, the Financing Entity and the Indenture Trustee will enter into the Change of Law Protection Agreement under which the Province will agree to provide protections and assurances to the Indenture Trustee, for the benefit of the Beneficiaries, in respect of Obligations Secured that constitute Approved Obligations, in order to address concerns that would arise from a change or adverse determination of law, subject in each case to the satisfaction of the Adherence Conditions at the time the Approved Obligation is incurred or amended.

Prior to entering into this Agreement, ~~OPG~~the [FSM] provided the Province with copies of certain of the Transaction Documents, and the Province has confirmed by a notice delivered to ~~OPG~~[the FSM] that the reviewed forms (as further described in such notice) shall be Reviewed Documentation for the purposes of this Agreement.

This Agreement sets out the obligations ~~OPG~~[the FSM] has agreed to perform and assurances ~~OPG~~[the FSM] has agreed to provide and on which the Province will rely in entering into and implementing the Change of Law Protection Agreement, including for the purposes of determining whether the Adherence Conditions have been satisfied in connection with the incurrence or amendment of an Approved Obligation, maintaining information related to the Program Agreements and the Approved Obligations, and ensuring that the Province's assumption rights pursuant to Article VI of the Change of Law Protection Agreement may be exercised without impediment on the terms and conditions contemplated in this Agreement and the Change of Law Protection Agreement.

All things necessary to make this Agreement a valid and legally binding agreement of ~~OPG~~[the FSM], and of the Province in accordance with the Act, have been done.

[1] ~~Note: This draft only addresses the first Financing Entity. If additional financing entities are established, revisions to this Agreement may be made at that time, in context. Any additional financing entities contemplated should be as contemplated in the Financing Plan.~~

AGREEMENT OF THE PARTIES

In consideration of the respective agreements herein contained, the parties hereto covenant and agree as follows:

ARTICLE I
DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

1.01 Interpretation

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) the terms used in this Agreement that are defined in Schedule A have the meanings assigned to them in Schedule A;

(b) the terms used in this Agreement that are not defined in this Agreement shall have the meanings assigned to them in the Change of Law Protection Agreement;

(c) words importing the singular shall include the plural and vice versa, words importing general shall include all genders or the neuter, and words importing the neuter shall include all genders;

(d) all references to any Person shall include such Person's permitted successors and assigns, and any reference to a Person in a particular capacity excludes such Person in other capacities;

(e) references to any law, rule, regulation or order of a Governmental Authority (including, for greater certainty, references to the Act and the General Regulation) shall include such law, rule, regulation or order as from time to time in effect, including any amendment, modification, codification, replacement or reenactment thereof or any substitution therefor;

(f) the word "will" shall be construed to have the same meaning and effect as the word "shall". The word "or" is not exclusive;

(g) any reference to this Agreement or any other agreement, document or instrument shall be construed as a reference to this Agreement or, as the case may be, such other agreement, document or instrument as the same may have been, or may from time to time be, amended, varied, replaced, amended and restated, supplemented or otherwise modified;

(h) all references in this Agreement to designated "Articles", "Sections", "Subsections" "Schedules", "Exhibits" and other subdivisions are to the designated Articles, Sections, Subsections, Schedules, Exhibits and other subdivisions of this Agreement as originally executed. The words "herein", "hereof" and "hereunder" and other words of similar import refer to this

Agreement as a whole and not to any particular Article, Section, Subsection, Schedule, Exhibit or other subdivision;

(i) "including" and words of similar import will be deemed to be followed by "without limitation"; and

(j) with respect to the computation of periods of time from a specified date to a later specified date, unless otherwise expressly stated, the word "from" means "from and including" and the words "to" and "until" each mean "to but excluding".

1.02 References to the ~~Financing Entity or the~~ Financing Entity ~~Trustee~~

For greater certainty, each reference to the Financing Entity ~~or to the Financing Entity Trustee~~ shall be construed as a reference to the Financing Entity Trustee, as trustee of the Financing Entity.

1.03 Effect of Headings

The Article and Section headings herein and are for convenience only and will not affect the construction hereof.

1.04 Successors and Assigns

All covenants and agreements in this Agreement by the parties will bind their respective successors and permitted assigns, whether so expressed or not.

1.05 Severability

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction will not affect the validity or enforceability of any other provision hereof. To the extent permitted by applicable law, the parties waive any provision of law which renders any provision of this Agreement invalid or unenforceable in any respect. The parties will engage in good faith negotiations to replace any provision which is declared invalid or unenforceable with a valid and enforceable provision, the economic effect of which comes as close as possible to that of the invalid or unenforceable provision which it replaces.

1.06 Governing Law

THIS AGREEMENT WILL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE PROVINCE OF ONTARIO AND THE FEDERAL LAWS OF CANADA APPLICABLE THEREIN, AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.

1.07 Proceedings Against the Crown Act

NOTHING IN THIS AGREEMENT OR THE PROGRAM AGREEMENTS AFFECTS THE RIGHTS, PROTECTIONS AND IMMUNITIES OF THE CROWN UNDER THE PROCEEDINGS AGAINST THE CROWN ACT.

1.08 Attornment

EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY ONTARIO COURTS SITTING IN TORONTO IN ANY ACTION, APPLICATION, REFERENCE OR OTHER PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT. THE PARTIES HERETO HEREBY WAIVE ANY RIGHT THEY MAY HAVE TO REQUIRE A TRIAL BY JURY OF ANY PROCEEDING COMMENCED IN CONNECTION WITH THIS AGREEMENT.

1.09 Counterparts; Electronic Delivery

This Agreement may be executed in any number of counterparts, each of which so executed will be deemed to be an original, but all such counterparts will together constitute one and the same instrument. Delivery of an executed signature page to this Agreement by a party by electronic transmission will be as effective as delivery of a manually executed copy of the Agreement by such party.

1.10 ~~1.01~~ Change of Law Process Agreement Referred to in the Change of Law Protection Agreement

This Agreement is the "Change of Law Process Agreement" referred to in the Change of Law Protection Agreement.

1.11 ~~1.10~~ Non-Business Days

Whenever any period of time would begin or end or any other action to be taken hereunder shall be stated to be required to be taken, on a day other than a Business Day, then (notwithstanding any other provision of this Agreement) such period of time shall begin or end, and such other action shall be taken on the next succeeding Business Day.

1.12 ~~1.11~~ Waiver, Amendment

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement will be binding unless executed in writing by the party to be bound thereby. No waiver of any provision of this Agreement will constitute a waiver of any other provision nor will any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided. A party's failure or delay in exercising any right under this Agreement will not operate as a waiver of that right. A single or partial exercise of any right will not preclude a party from any other or further exercise of that right or the exercise of any other right.

ARTICLE II
COVENANTS OF ~~OPG~~[THE FSM]

2.01 Deliveries to the Province

(a) Not less than [15 Business Days] prior to the initial issuance of any Funding Obligation by the Financing Entity, ~~OPG~~[the FSM] shall deliver to the Province a copy of the initial Financing Plan. Thereafter, ~~OPG~~[the FSM] shall promptly deliver to the Province a copy of any proposed change to or replacement of the Financing Plan.

~~(b) Unless the Financing Entity is subject to the PILs Regime, not less than 15 Business Days prior to the initial issuance of any Funding Obligation by the Financing Entity, OPG shall deliver to the Province an analysis and assessment of the tax position of the Financing Entity. In addition, OPG shall promptly deliver written notice to the Province of any change in the Financing Entity's eligibility status under the PILs Regime and an analysis and assessment of any material change in the tax position of the Financing Entity.~~

(b) ~~(c)~~ Not less than 10 Business Days prior to (i) any proposed change or supplement to a previously provided Transaction Document becoming effective or otherwise being used or (ii) any additional or replacement Transaction Document becoming effective or otherwise being used, ~~OPG~~[the FSM] shall deliver to the Province a copy of such proposed change or, supplement to the Transaction Document and any such additional ~~of~~or replacement Transaction Document.

(c) ~~(d)~~ Promptly following any incurrence of a Funding Obligation or any amendment of a Funding Obligation, ~~OPG~~[the FSM] shall provide the Province with electronic copies of all related Governing Documents and all other closing documents executed by or on behalf of the Financing Entity in connection with such incurrence or amendment that would affect the Financing Entity's assets or obligations (including, for greater certainty, any related Disclosure Document) and which have not been previously provided to the Province.

(d) ~~(e)~~ Promptly upon request, ~~OPG~~[the FSM] shall provide the Province with such additional information and documentation as the Province reasonably requests in order to enable the Province to assess the nature and extent of its obligations under the Change of Law Protection Agreement.

~~(f) OPG shall, as the FSM, cause the Financing Entity to deliver to the Province copies of the Financing Entity's annual tax returns (if any) and any related tax assessments not more than 10 Business Days after such a tax return or tax assessment is required to be filed under applicable law.[2]~~

~~[2] Note: The tax documents to be provided to the Province are under consideration.~~

2.02 Covenants

(a) ~~OPG shall, as the FSM,~~[The FSM] shall use commercially reasonable efforts to cause the Financing Entity to:

(i) punctually perform and observe all of its obligations and agreements contained in the Program Agreements;

(ii) ensure that all Obligations Secured are incurred pursuant to and in accordance with the terms and conditions of the Trust Indenture;

(iii) ensure that no obligations other than the Obligations Secured are incurred by or on behalf of the Financing Entity;

(iv) not engage in any business other than as permitted under the Declaration of Trust or the other Program Agreements and activities ancillary thereto; and

(v) not~~, without the prior written consent of the Province~~:

(A) amend, supplement, modify, restate or replace or waive or consent to a postponement of compliance with the terms and conditions on the part of any other party to any of the Program Agreements, if any such supplementation, amendment, modification, restatement or replacement or waiver or consent could reasonably be considered to be materially prejudicial to the rights or interests of the Province under the Change of Law Protection Agreement;

(B) consent to the resignation of ~~(1) the Administrative Agent under the Administrative Services Agreement; or (2)~~ the Manager under the Management Agreement; or

~~(C) consolidate or merge with or into any other Person;~~

(C) ~~(D)~~ permit the validity or effectiveness of the Change of Law Protection Agreement to be impaired~~;~~.

~~(E) permit any Lien (other than the Security Interest) to be created on or extend to or otherwise arise upon or burden the Collateral or any part thereof or any interest therein or the proceeds thereof;~~

~~(F) sell, transfer, exchange or otherwise dispose of any of the Collateral, other than as expressly permitted by the Trust Indenture;~~

~~(G) release any security or guarantee in respect of the Collateral other than as expressly permitted by the Trust Indenture; or~~

~~(H) voluntarily dissolve or liquidate.~~

(b) ~~OPG~~[The FSM] shall:

(i) comply, and ~~as the FSM~~shall use commercially reasonable efforts to cause compliance by the Financing Entity, with the Act, the General Regulation and any other enactment related thereto;

(ii) promptly notify the Province of the creation of any Funding Obligation that is not or would not be an Approved Obligation; and

(iii) after the occurrence of any Protection Event (or any event that with the passage of time or the giving of notice would be a Protection Event), not, without the Province's prior written consent, permit the Financing Entity to exercise any redemption, pre-payment, early termination or extension right in respect of any Approved Obligation or exercise any other election or privilege in respect of any Approved Obligation, in each case if as a result the obligations applicable to the Approved Obligation under ~~this~~the Change of Law Protection Agreement would be accelerated, delayed or otherwise affected~~; and~~.

~~(iv) ensure that any disclosure (including any Disclosure Document, press release or other written communication intended for dissemination to third parties) that refers to or describes the terms, effect or adherence of or to this Agreement or the Change of Law Protection Agreement will be subject to the prior review of the Province and such disclosure will not be made (and any such Disclosure Document shall not be used and any such press release or other written communication shall not be issued) without the prior written consent of the Province, in each case unless such disclosure is substantially the same as a disclosure previously made and for which the Province had previously provided its written consent under this Subsection 2.02(b)(iv).~~

(c) Nothing in this Agreement shall limit the obligations of the Province under the Indemnity Agreement by the Province in favour of OPG dated June 1, 2017 and to the extent of any conflict between this Agreement and such Indemnity Agreement, in respect of any matter relating to the Province's obligations to indemnify the FSM, the latter shall prevail. [For clarity, OPG's obligations under this Agreement are solely in its capacity as the FSM.]

ARTICLE III
PROCESS CERTIFICATE

3.01 Process Certificate

~~OPG~~[The FSM] shall deliver a certificate (the "**Process Certificate**"), signed by the Chief Financial Officer and the Treasurer of OPG (or their respective designees, provided that such designees are also executive officers of OPG) and addressed to the Province, on the earlier of (i) one Business Day prior to the incurrence or any amendment of a Primary Obligation, and

(ii) on the Business Day on which the financial terms of such Primary Obligation are definitively determined (including the interest or discount rate applicable to any notes, bonds or other securities), setting out the following with respect to such Primary Obligation:

(a) the material terms of the Primary Obligation pertaining to (i) in the case of notes, bonds or other securities, the principal amount, interest or discount rate, third party fees, term to maturity, amortization, redemption or extension features, structure and coupon frequency, as applicable, and (ii) in the case of a Derivative Agreement, the notional amount, financial terms and pricing, benchmarks, payment structures and early termination rights;

(b) if an existing Primary Obligation is proposed to be amended, material details respecting such amendment ~~and the anticipated effect of the amendment on or in relation to the affected terms and conditions of the Primary Obligation~~, including regarding the applicable details set forth in Subsection 3.01(a), as the context requires;

(c) a statement to the effect that: (i) the Primary Obligation to be incurred or amended (1) will arise under terms and conditions that are Substantially in the Form of the Reviewed Documentation applicable thereto; (2) in the opinion of the signatories to the Process Certificate, are reasonably incurred or effected in compliance with the Act, the General Regulation, any other enactments related thereto and the applicable Financing Plan; (3) are of a type and are on terms that a reasonably prudent financial services manager would incur in similar circumstances; and (4) reflect, in all material respects, arm's length terms and conditions; and (ii) any Disclosure Document used in connection with the offering and sale of notes, bonds or other securities is Substantially in the Form of the Reviewed Documentation;

(d) a statement confirming that any disclosure made in respect of the Primary Obligation (including any Disclosure Document, press release or other written communication prepared for dissemination to third parties in relation to the Primary Obligation) that refers to or describes the terms, effect or adherence of or to this Agreement or the Change of Law Protection Agreement has been made available for review to the Province prior to use or dissemination and the Province provided its written consent to such use or dissemination, other than where such disclosure was substantially the same as a disclosure previously made and for which the Province had previously provided its written consent;

(e) ~~(d)~~ a statement that no Breach Event has occurred on or prior to the date of the Process Certificate, unless such Breach Event has been waived by the Province in writing; and

(f) ~~(e)~~ confirmation that, at the time the Primary Obligation is incurred or amended, the maximum aggregate payment amounts due or becoming due in the future in respect of Repayments under the Primary Obligation, together with all other outstanding amounts due or becoming due in the future in respect of Repayments

under all Approved Obligations, do not and will not exceed the Protection Agreement Maximum; for clarity, Repayments under Obligations Secured owing in currencies other than Canadian dollars and in respect of which a Derivative Agreement has been entered into to hedge related currency exposures shall be valued for this purpose on the basis of the hedged value expressed in Canadian dollars for so long as such Derivative Agreement is in good standing.

3.02 Acknowledgment

The parties acknowledge that the Process Certificate is the "process certificate" referred to in Subsection 4.02(~~d)(ii~~b) of the Change of Law Protection Agreement.

3.03 Meaning of "Reviewed Documentation"

For the purposes of Subsection 3.01(c), the term "Reviewed Documentation" shall mean each Transaction Document (including any change, addition or supplement thereto) that, at the relevant time:

(a) is a Transaction Document provided to the Province prior to the making of this Agreement and in respect of which the notice contemplated in the fifth recital to this Agreement has been delivered by the Province to ~~OPG~~[the FSM]; ~~and~~or

(b) is a Transaction Document provided to the Province in accordance with Subsection 2.01(~~e~~b) that has been accepted by the Province, as confirmed by way of a written notice of acceptance from the Province delivered to ~~OPG~~[the FSM].

3.04 Meaning of "Substantially in the Form"

For the purposes of Subsection 3.01(c), the term "Substantially in the Form" shall mean:

(a) with respect to the Reviewed Documentation referred to in clauses (i) to (xi) of the definition of "Transaction Documents", that there are no differences between the proposed documents and such Reviewed Documentation that could result in a change in the material terms or conditions applicable to the applicable Primary Obligation, including regarding the timing of or circumstances under which related payments are or may become due or accrue (including as a result of any default, acceleration, termination, wind-up, liquidation or realization), or that would affect the Province's rights of subrogation or assignment (including pursuant to Section 5.01 or Article VI of the Change of Law Protection Agreement) or its interests as a subrogee or an assignee, that would arise as a result of performing the Limited Guarantee in respect of the applicable Primary Obligation~~;~~ or upon the assumption of obligations in accordance with Article VI of the Change of Law Protection Agreement; provided, however, that the foregoing does not apply to any variable terms to be set forth in the proposed documents as are reasonably contemplated in the Reviewed Documentation, including the particular financial terms, rates and levels set forth in the proposed documents other than to the extent that the forms of Reviewed Documentation

themselves specify specific requirements, limitations or parameters with respect to such financial terms, rates, levels and parameters; and

~~(b) with respect to the Reviewed Documentation referred to in clauses (v) to (ix) of the definition of "Transaction Documents", and, where applicable, clauses (x) and (xi) of the definition of "Transaction Documents" as the context requires, that the variable terms to be set forth in the proposed documents are as reasonably contemplated in the Reviewed Documentation, as to the type, scope and extent of the Primary Obligations arising thereunder and as to the timing, conditions and circumstances in which payment obligations under such Primary Obligations may arise, but without regard to the particular financial terms, rates and levels set forth in the proposed documents other than to the extent that the forms of Reviewed Documentation themselves specify specific requirements, limitations or parameters with respect to such financial terms, rates, levels and parameters; and~~

(b) ~~(c)~~ with respect to the Reviewed Documentation referred to in clause (xii) of the definition of "Transaction Documents", that there are no material differences between the form and substance of the proposed Disclosure Document and such form of Disclosure Document and that the proposed Disclosure Document complies in all material respects with all applicable securities disclosure requirements relating to the Primary Obligation subject to distribution thereunder.

ARTICLE IV
PROTECTION AGREEMENT MAXIMUM

4.01 Protection Agreement Maximum

~~(a) The initial Protection Agreement Maximum shall be determined by the Province prior to the initial issuance of the first Funding Obligation. The initial Protection Agreement Maximum will be confirmed by the Province by notice in writing to OPG, as the FSM.~~

(a) ~~(b)~~ Not less than ~~■~~15 Business Days prior to the proposed incurrence of the first Funding Obligation, OPG shall, as the FSM, deliver to the Province: (i) a forecast setting out OPG's expectations regarding the aggregate maximum amount of Repayments that would arise in the future under Approved Obligations to be incurred during the next following 24 month period (the "**Initial Forecast Period**"), which expectations shall be consistent with the ~~applicable~~ Financing Plan (the "**Initial Forecast**"). ~~In determining~~; and (ii) notice of the initial Protection Agreement Maximum, ~~the Province~~which may ~~have regard to (but not be bound by)~~not exceed the Initial Forecast.

(b) Not more than 10 Business Days following receipt of the Initial Forecast and notice of the initial Protection Agreement Maximum from OPG pursuant to Section 4.01(a), the Province may disagree with the Initial Forecast and the initial Protection Agreement Maximum on the basis that (i) there appears to be inaccuracies in the Financing Plan or the Initial Forecast, (ii) the Initial Forecast is

inconsistent with the Financing Plan, or (iii) the initial Protection Agreement Maximum is not less than the Initial Forecast. If the Province disagrees, OPG shall discuss any discrepancies with the Province, address any inaccuracies and inconsistencies to the reasonable satisfaction of the Province, and the initial Protection Agreement Maximum will be revised accordingly and confirmed by an amended notice to the Province.

(c) Between nine (9) and twelve (12) months prior to the end of the Initial Forecast Period, OPG shall, as the FSM, deliver to the Province an updated forecast setting out the sum of (1) the aggregate amount of Repayments that will arise in the future under Approved Obligations that are then outstanding and (2) OPG's expectations regarding the aggregate maximum amount of Repayments that would arise in the future under Approved Obligations to be incurred during the period ending 24 months following the Initial Forecast Period, which expectation shall be consistent with the then applicable Financing Plan. Such updated forecast shall be further updated on a similar basis with respect to each successive 24 month period or more frequently with the consent of the Province if at any time OPG has knowledge that the most recent forecast is materially inaccurate (the Initial Forecast and each such updated forecast, each a "**Forecast**"). Together with each Forecast, OPG shall also provide a revised Protection Agreement Maximum, which may not exceed such Forecast.

(d) ~~Upon receiving an updated Forecast, the Province shall determine whether or not the Protection Agreement Maximum will be revised. In determining whether the Protection Agreement Maximum will be revised, the Province may have regard to (but not be bound by) such updated Forecast. Any determination by the Province to revise the Protection Agreement Maximum will be confirmed by setting out a new Protection Agreement Maximum in a written notice from the Province to the FSM and the Indenture Trustee, the delivery of which will be conclusive evidence that such new Protection Agreement Maximum will apply until it may be further so revised.~~Not more than 10 Business Days following receipt of any further Forecast and notice of the revised Protection Agreement Maximum from OPG pursuant to Section 4.01(c), the Province may disagree with such further Forecast or revised Protection Agreement Maximum on the basis that (i) there appears to be inaccuracies in the Financing Plan or such further Forecast, (ii) the further Forecast is inconsistent with the Financing Plan, or (iii) the revised Protection Agreement Maximum is not less than the further Forecast. If the Province disagrees, OPG shall discuss any discrepancies with the Province, address any inaccuracies and inconsistencies to the reasonable satisfaction of the Province, and the revised Protection Agreement Maximum will be further revised accordingly and confirmed by an amended notice to the Province.

(e) For clarity, Repayments under Obligations Secured owing in currencies other than Canadian dollars and in respect of which a Derivative Agreement has been entered into to hedge related currency exposures shall be valued for the purposes of this Section 4.01 on the basis of the hedged value expressed in Canadian dollars for so long as such Derivative Agreement is in good standing.

ARTICLE V
REPRESENTATIONS AND WARRANTIES

5.01 Representations and Warranties of ~~OPG~~[the FSM]

~~OPG~~[The FSM] represents and warrants that on the date hereof and on each day that a Primary Obligation is incurred or amended:

(a) The Financing Entity is a trust duly constituted and validly existing under the laws of the Province of Ontario, is duly qualified to carry on its business in each jurisdiction in which it carries on business, and has the power and authority to perform the acts that OPG, as the FSM, ~~shall~~may cause it to perform pursuant to this Agreement and to own its property and carry on its business in accordance with the Program Agreements.

(b) OPG is a corporation duly constituted and validly existing under the laws of the Province of Ontario~~, is duly qualified to carry on its business in each jurisdiction in which it carries on business,~~ and has the power and authority to enter into and perform its obligations under this Agreement and all instruments and agreements delivered pursuant hereto~~ and to own its property and carry on its business as currently conducted~~.

(c) OPG has been validly appointed, and has irrecovably accepted such appointment, as the FSM in accordance with the Act. OPG has the power and authority to enter into and perform its obligations as the FSM under the Program Agreements and all instruments and agreements delivered pursuant thereto.

(d) The execution, delivery and performance of this Agreement and every instrument or agreement delivered pursuant hereto or in its capacity as the FSM has been or will be duly authorized by all requisite action by OPG and constitute a valid and binding obligation~~ of OPG enforceable against OPG~~ in accordance with its terms subject to (i) applicable bankruptcy, insolvency, moratorium and similar laws at the time in effect affecting the rights of creditors generally, and (ii) equitable principles which may limit the availability of certain remedies, including the remedy of specific performance.

(e) There are no actions, suits or proceedings pending or, to the knowledge of OPG, threatened against or affecting ~~OPG (including in its capacity as the FSM) or~~ the Financing Entity at law or in equity or before or by any Governmental Authority, or before any arbitrator of any kind, which would result in any material adverse change in the business, operations, prospects, properties, assets or condition, financial or otherwise, of ~~OPG or~~ the Financing Entity or in the ability of ~~OPG or~~ the Financing Entity to perform ~~their respective~~its obligations under the Program Agreements.

(f) There are no actions, suits or proceedings pending or, to the knowledge of OPG, threatened against or affecting OPG at law or in equity or before or by any Governmental Authority, or before any arbitrator of any kind, which would result

in any material adverse change in the business, operations, prospects, properties, assets or condition, financial or otherwise, of OPG or in the ability of the OPG to perform its obligations under this Agreement or any Program Agreements.

(g) The performance by the Financing Entity of the Program Agreements does not conflict with, will not conflict with, does not result in, and will not result in, any breach of, and does not constitute, a default under, the Declaration of Trust or any agreements or instruments to which the Financing Entity is a party or by which it or any of its property and assets are bound.

(h) Neither the execution nor delivery of this Agreement, the Program Agreements nor any agreements or instruments delivered pursuant hereto or thereto, the consummation of the transactions herein or therein, nor compliance with the terms, conditions and provisions hereof or thereof conflicts with or will conflict with, or results or will result in any breach of, or constitutes a default under, any of the provisions of the constating documents of OPG or any agreements or instruments to which OPG is a party or by which it or any of its property and assets are bound.

(i) No consent, approval or authorization of, or declaration, registration, filing or qualification with, or giving of notice to, or taking of any other action in respect of, any Governmental Authority on the part of OPG is required in connection with the execution and delivery of this Agreement, the Program Agreements or any agreements or instruments delivered pursuant hereto or thereto or the consummation of any of the transactions contemplated hereby or thereby or in connection with the enforcement of this Agreement, the Program Agreements or any agreements or instruments delivered pursuant hereto or thereto, except those which have been obtained.

5.02 Representations and Warranties of the Province

The Province hereby represents and warrants that:

(a) the execution, delivery and performance of this Agreement by the Province have been authorized by all necessary action on the part of the Province;

(b) the execution, delivery and performance of this Agreement by the Province do not result in the violation of any applicable law; and

(c) this Agreement has been duly executed and delivered by the Province.

ARTICLE VI
ELECTION[2] TO ASSUME APPROVED OBLIGATIONS

6.01 Election by the Province

At any time following the occurrence of a Protection Event, the Province may (but shall not be obligated) ~~to~~ elect to assume the Financing Entity's obligations in respect of all Obligations Secured, as obligor and debtor. To make such election, the Province shall duly complete and deliver to ~~OPG~~[the FSM] a notice in the form of Exhibit A (an "**Election Notice**"), which in turn will set forth the form of agreement (an "**Assumption Agreement**") setting forth the material terms and conditions under which the Province would assume and become obligated under each of the Obligations Secured. The Election Notice shall, among other things, specify the date on which the Province proposes to assume the Obligations Secured, which date shall be no earlier than 20 Business Days following delivery of the Election Notice to ~~OPG~~[the FSM] (the "**Proposed Assumption Date**").

6.02 Details regarding Obligations Secured

Promptly following the delivery of the Election Notice to ~~OPG, OPG~~[the FSM], [the FSM] shall provide the following information and documentation to the Province:

(a) a summary of the amounts that will be owing under all Obligations Secured as of the Proposed Assumption Date, together with a detailed schedule setting out the dates on which such amounts will become due and payable under the Obligations Secured;

(b) a summary of the rights arising under the Obligations Secured that permit the Financing Entity to assign the Obligations Secured to the Province, including details regarding any conditions precedent to such assignment and the related assumption becoming effective and any notices, filings, consents or other actions that will be required in order to implement and effect such assignment and assumption;

(c) current versions of all documentation under which the Obligations Secured arise;

(d) copies of all correspondence exchanged between OPG, as the FSM, or the Financing Entity, on the one hand, and any Specified Creditor, Rating Agency or the Indenture Trustee, on the other hand, in each case that may reasonably be considered to be material to the assumption and performance of the Obligations Secured by the Province;

(e) all income tax returns and assessments, financial statements and notices of proceedings of or pertaining to the Financing Entity or its business and any

[2] OPG's proposal to move Art VI to the Protection Agreement is not consistent with the original basis for the Process Agreement - to keep the details and plumbing out of the "external" document. If we move toward putting all of this into the Protection Agreement, it will raise additional drafting issues (e.g., we will have to have a parallel "Breach Event" concept in the Protection Agreement that will deal with these sorts of undertakings and allow for a suspension of the Limited Guarantee). OPG to advise if that approach is preferred.

documentation related thereto, including any pleadings, appeals, objections, qualifications or other similar materials in respect of the Financing Entity or any Program Agreement; and

(f) ~~a draft version of~~ the form of Assumption Agreement ~~prepared in relation to each Obligation Secured, prepared in accordance with and having regard to the requirements of the relevant agreement(s) under which the Obligation Secured arises.~~in respect of the assignment and assumption of all Obligations Secured attached as Exhibit E to the Change of Law Protection Agreement.[3]

6.03 Settlement of Terms

Within ~~20~~30 Business Days following receipt by the Province of the information and documentation to be provided under Section 6.02, the Province shall confirm in writing whether or not it will proceed with the assignment and assumption of the Obligations Secured and, if it will be proceeding with the assignment and assumption, the date on which the Province intends that assignment and assumption will be effected, which may not be earlier than the Proposed Assumption Date. If it will be proceeding with such assignment and assumption, the Province will deliver an Assumption Notice as contemplated under Section 6.01 of the Change of Law Protection Agreement, which will specify such date as the "Assumption Closing Date" for the purposes thereof.

6.04 Cooperation to Implement the Assignment and Assumption

~~OPG~~[The FSM] shall cooperate with the Province and~~, as FSM,~~ will use commercially reasonable efforts to cause the Financing Entity to cooperate, and ~~each~~ shall use its ~~best~~commercially reasonable efforts, to complete the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province, by the applicable Assumption Closing Date.~~3~~

6.05 Terms of Obligations Secured

In order to permit the Province to assume the Obligations Secured in the circumstances contemplated herein, ~~OPG will, and as~~[the FSM~~, will~~] shall cause the Financing Entity to~~,~~ ensure that all Obligations Secured permit such an assignment to and assumption by the Province substantially in accordance with the terms and on the basis contemplated in the Assumption Agreement, without any penalty or make-whole payment, or any requirement for further consent, approval or agreement, or alternatively, in the case of any Obligations Secured entered into by or on behalf of the Financing Entity for the provision of on-going services to the Financing Entity~~,~~ permitting the satisfaction and termination of such Obligations Secured on or prior to the effective time of such assumption without any acceleration of future fees, profits or other like amounts, other than to the extent of payment obligations arise under market standard

[3] Torys to provide a draft of the proposed form of global Assumption Agreement for all Obligations Secured. The Province may be guided by OPG on this, but we note that it seems simplistic to think that the same assumption agreement will work for swaps, debt and service obligations.

~~[3] Note: Further details regarding obtaining of third party consents and rating agency approvals to be considered.~~

mark-to-market payment terms and conditions included on a commercially reasonable basis under a Derivative Agreement.[4]

ARTICLE VII
BREACH EVENTS

7.01 Breach Events

"**Breach Event**" shall mean the occurrence or existence of any one or more of the following:

(a) a default in the performance, or breach, of any covenants of ~~OPG~~[the FSM] under this Agreement ~~(including in respect of its role as FSM under any Program Agreement)~~, which continues for thirty (30) days after written notice by the Province to [the FSM] of such default or breach;

(b) any representation or warranty made by ~~OPG~~[the FSM] in this Agreement, any certification made in a Process Certificate, or any certification made in a certificate contemplated by Section ~~4.03~~4.02 of the Change of Law Protection Agreement, proves to be incorrect on the date made and, if curable, is not cured within thirty (30) days after written notice by the Province to [the FSM] of such misrepresentation; or

(c) OPG is no longer the ~~FSM, the Administrative Agent or the~~ Manager or actions have been taken by or on behalf of the Indenture Trustee to remove OPG as ~~the FSM, the Administrative Agent or~~ the Manager.

7.02 Notice on Breach Event

If any Breach Event shall have occurred and not been waived in writing by the Province, the Province shall have the right at its option, upon written notice to ~~OPG~~[the FSM], and in addition to and not in substitution for any other remedies available hereunder at law or equity, to provide a Suspension Notice to the Indenture Trustee, [the FSM] and the Financing Entity in accordance with the terms of the Change of Law Protection Agreement.

[4] ~~Note:~~ The Trust Indenture will need to ~~include a clause providing that~~permit the obligations of the Financing Entity to the Indenture Trustee and the Noteholders ~~may~~to be assigned to and assumed by the Province in accordance with an assumption agreement, substantially in ~~the~~a form of agreement to be set out in an exhibit to the Trust Indenture. The Province agrees that the same form of the assumption agreement should also be an exhibit to the Change of Law Protection Agreement. The Trust Indenture will need to be revised to ensure that the Province's assignment and assumption right is fully contemplated and may be implemented without any requirement for further Specified Creditor or other third party consents. Among other changes, it is contemplated that Torys will add the following to the MTI to address this requirement: (i) Specified Creditors will be required to acknowledge the rights of the Province to assume the Obligations Secured on the basis contemplated in the form of assumption agreement, and (ii) the Indenture Trustee will be permitted to enter into and give effect to the global Assumption Agreement without the consent of Specified Creditors or any other third parties.

ARTICLE VIII
MISCELLANEOUS

8.01 Term of Agreement

This Agreement will continue for the term of the Change of Law Protection Agreement.

8.02 Notices

Any notice or other communication required or permitted to be given hereunder will be in writing and will be given by prepaid first-class mail, by facsimile or other means of electronic communication or by hand-delivery as hereinafter provided. Any such notice or other communication, if mailed by prepaid first-class mail at any time other than during a general discontinuance of postal service due to strike, lockout or otherwise, will be deemed to have been received on the fourth Business Day after the post-marked date thereof, or if sent by facsimile or other means of electronic communication, will be deemed to have been received on the Business Day following the sending, or if delivered by hand will be deemed to have been received at the time it is delivered to the applicable address noted below either to the individual designated below or to an individual at such address having apparent authority to accept deliveries on behalf of the addressee. Notice of change of address will also be governed by this Section. In the event of a general discontinuance of postal service due to strike, lock-out or otherwise, notices or other communications will be delivered by hand or sent by facsimile or other means of electronic communication and will be deemed to have been received in accordance with this Section. Notices and other communications will be addressed as follows:

(a) if to ~~OPG~~the FSM:

Ontario Power Generation Inc.
700 University Avenue
Toronto, Ontario M5G 1X6
Attention: [■]
Fax: (416) [■]
Email: [■]

(b) if to the Province:

Ministry of Finance
[Address]
Attention: [■]
Fax: (416) [■]
Email: [■]

and

Ministry of Energy
[Address]

Attention: [■]
Fax: (416) [■]
Email: [■]

or to such other addresses as a party may from time to time notify the other parties in accordance with this Section 8.02.

8.03 Assignment

(a) None of the rights or obligations hereunder shall be assignable or transferable by any party without the prior written consent of the other parties.

(b) Any purported assignment of this Agreement in violation of this Section 8.03 shall be null and void.

8.04 Enurement

This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

8.05 FIPPA

The parties acknowledge that the Province will be bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province, or any agent or representative of the Province in connection with this Agreement may be subject to disclosure in accordance with the act or as otherwise required by law.

~~**8.06 Confidentiality**~~[5]

8.06 ~~**8.07**~~ **Delivery of Executed Copies**

Each party acknowledges delivery of a fully executed copy of this Agreement.

[Signature page to follow]

[5] ~~To be considered based on what would be customary and appropriate for similar types of arrangements and would be acceptable to the Province.~~

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF FINANCE

By: _____

Name:
Title:

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY

By: _____

Name:
Title:

ONTARIO POWER GENERATION INC., [AS FINANCIAL SERVICES MANAGER TO THE FINANCING ENTITY]

By: _____

Name:
Title:

By: _____

Name:
Title:

Each of the undersigned hereby acknowledge the foregoing as of the day and year first above written.

~~[FINANCING ENTITY TRUSTEE], IN ITS CAPACITY AS FINANCING ENTITY~~COMPUTERSHARE TRUST COMPANY OF CANADA, AS **TRUSTEE** ~~FOR [FINANCING ENTITY]~~OF FAIR HYDRO TRUST

By: _____
Name:
Title:

~~[INDENTURE TRUSTEE]~~BNY TRUST COMPANY OF CANADA, **AS INDENTURE TRUSTEE AND NOT IN ITS INDIVIDUAL CAPACITY**

By: _____
Name:
Title:

SCHEDULE A
DEFINED TERMS

"**Act**" has the meaning ascribed thereto in the first paragraph of the recitals in this Agreement.

"**Adherence Conditions**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

~~["**Administrative Agent**" has the meaning ascribed thereto in the Change of Law Protection Agreement.]~~

~~["**Administrative Services Agreement**" has the meaning ascribed thereto in the Change of Law Protection Agreement.][6]~~

"**Approved Obligation**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Assumption Agreement**" has the meaning ascribed thereto in Section 6.01.

"**Assumption Closing Date**" has the meaning ascribed thereto in Section 6.03.

"**Beneficiaries**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Breach Event**" has the meaning ascribed thereto in Section 7.01.

"**Business Day**" means any day other than a Saturday, a Sunday or a day on which banking institutions in Toronto, Ontario are authorized or obligated by applicable law, regulation or executive order to be closed.

"**Change of Law Protection Agreement**" means the Change of Law Protection Agreement dated [■], 2017 among the Province, the FSM on behalf of the Financing Entity~~, the FSM~~ and the Indenture Trustee.

"**Collateral**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Co-Owner Agreement**" means any agreement between, *inter alia*, the Financing Entity and any other owner or owners of an Investment Interest as contemplated by Subsection 29(5) of the Act.

"**Declaration of Trust**" means the declaration of trust made as of [■], 2017 under which the Financing Entity was established.

"**Derivative Agreement**" means any rate swap transaction, basis swap, forward rate transaction, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction,

[6] ~~Note: To be confirmed if required.~~

collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, total return swap transaction, credit default swap transaction or any other similar transaction (including any option with respect to any of those transactions) or any combination of these transactions entered into from time to time by the Financing Entity in connection with or related to Funding Obligations.

"**Disclosure Document**" means a disclosure document (including any offering circular, prospectus or other investor disclosure statement) describing the material terms of the notes, bonds or securities to be issued pursuant to a supplemental indenture under the Trust Indenture, together with any related material information;

"**Election Notice**" has the meaning ascribed thereto in Section 6.01.

"**Financing Entity**" means [■]Fair Hydro Trust, a trust settled by the FSM under the laws of the Province of Ontario and under which the Financing Entity Trustee is the trustee.

"**Financing Entity Trustee**" means, at any time, the Person who is, in accordance with the Declaration of Trust, the trustee of the Financing Entity at such time.

"**Financing Plan**" has the meaning ascribed thereto in the Act as of the date of this Agreement.

"**Forecast**" has the meaning ascribed thereto in Section 4.01(c).

"**FSM**" has the meaning ascribed thereto in the second paragraph of the recitals of this Agreement.

"**Funding Obligation**" has the meaning ascribed to the term "funding obligation" in the Act as of the date of this Agreement.

"**General Regulation**" means O. Reg. 206/17 made under the Act.

"**Governing Document**" has the meaning ascribed to the term "governing document" in the General Regulation.

"**Governmental Authority**" means any nation or government, any federal, state, provincial, local or other political subdivision thereof and any court, administrative agency or other instrumentality or entity exercising executive, legislative, judicial, regulatory or administrative functions of government.

"**IESO**" has the meaning ascribed thereto in the Act as of the date of this Agreement.

"**Indenture Trustee**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Initial Forecast**" has the meaning ascribed thereto in Section 4.01(~~b~~a).

"**Initial Forecast Period**" has the meaning ascribed thereto in Section 4.01(~~b~~a).

"**Investment Interest**" has the meaning ascribed to the term "investment interest" in the Act as of the date of this Agreement.

"**Legislature**" means the Legislature of the Province of Ontario.

~~"**Lien**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.~~

"**Limited Guarantee**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

~~[~~"**Management Agreement**" has the meaning ascribed thereto in the Change of Law Protection Agreement.~~]~~

~~[~~

"**Manager**" has the meaning ascribed thereto in the Change of Law Protection Agreement.~~]~~[7]

"**Master Transfer and Servicing Agreement**" means the master transfer and servicing agreement dated [■], 2017 between the Financing Entity and IESO~~, and acknowledged and accepted by the Indenture Trustee~~.

"**Obligations Secured**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**OPG**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Person**" means any individual, corporation, limited liability company, estate, partnership, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization or Governmental Authority.

~~"**PILs Regime**" means the Payment in Lieu of Taxes regime contemplated under the *Electricity Act* (Ontario).~~

"**Primary Obligations**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Process Certificate**" has the meaning ascribed thereto in Section 3.01.

"**Program Agreements**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Proposed Assumption Date**" has the meaning ascribed thereto in Section 6.01.

~~[7]Note: To be confirmed if required. Also note that the draft Trust Indenture refers to OPG as the "manager" (rather than "Financial Services Manager" as under the Act). To be reconciled.~~

"**Protection Agreement Maximum**" means the dollar amount ~~determined by the Province and of which OPG is provided written notice~~[referenced as the Program Agreement Maximum in accordance with Article IV].

"**Protection Event**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Province**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Rating Agency**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Reviewed Documentation**" has the meaning ascribed thereto in Section 3.03.

"**Repayment**" has the meaning ascribed ~~thereto~~to the term "repayment" in the General Regulation as of the date of this Agreement.

"**Security Interest**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Specified Creditors**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Substantially in the Form**" has the meaning ascribed thereto in Section 3.04.

"**Suspension Notice**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**this Agreement**" means this agreement, as amended, supplemented, restated or otherwise modified from time to time.

"**Transaction Document**" means (i) all constating and organizational documents of the Financing Entity, including the Declaration of Trust; (ii) any management, administration or servicing agreement to which the Financing Entity is a party, including any replacement or standby services agreement~~, the Administrative Services Agreement~~ and the Management Agreement; (iii) the Master Transfer and Servicing Agreement ~~between the Financing Entity and the IESO~~; (iv) Trust Indenture; (v) the form of supplemental indenture (supplemental to the Trust Indenture) governing the terms and conditions of a sample series of notes, bonds or other securities to be issued by the Financing Entity, including the particular allocations, security and priority of the Obligations Secured being serviced by the related Investment Interest and any other related series property; (vi) the form of any note, bond or securities purchase agreement; (vii) the form of underwriting agreement, agency agreement, selling agreement and/or subscription agreement that may be used with respect to a sale of a related series of notes, bonds or securities to be issued under the supplemental indenture referred to in (v), above; (viii) the form of any loan or credit agreement governing the issuance of short term loan obligations by the

Financing Entity; (ix) the form of schedule to an ISDA Master Agreement governing derivative transactions that may be entered into the Financing Entity from time to time; (x) the form of any other agreement or instrument under which a Funding Obligation may arise or be effected, including any other agreement under which the Financing Entity incurs a material financial obligation or that affects the Province's subrogation rights and/or subrogee interests, including any standby liquidity arrangements or credit enhancement agreements; (xi) if applicable, a Co-Owner Agreement or any other agreement governing the respective interests of persons having rights or interests in the investment asset or other assets of the Financing Entity, including any other agreement of the sort contemplated in Subsection 29(5) of the Act; and (xii) the form of Disclosure Document.

"**Trust Indenture**" means the trust indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017.

EXHIBIT A
FORM OF ELECTION NOTICE

~~**(form of Assumption Agreement to be attached, once settled)**~~

Document comparison by Workshare Compare on Tuesday, November 14, 2017 8:21:33 PM

Input:	
Document 1 ID	PowerDocs://TOR_2528/23239361/7
Description	TOR_2528-#23239361-v7-CLPA_-_Process_Agreement
Document 2 ID	PowerDocs://TOR_2528/23239361/10
Description	TOR_2528-#23239361-v10-CLPA_-_Process_Agreement
Rendering set	Standard

Legend:	
Insertion	
~~Deletion~~	
~~Moved from~~	
Moved to	
Style change	
Format change	
~~Moved deletion~~	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	143
Deletions	146
Moved from	8
Moved to	8
Style change	0
Format changed	0
Total changes	305

23239360-v12-CLPA - Protection Agreement.pdf

Draft: November 14, 2017

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY AND THE MINISTER OF FINANCE

AND

COMPUTERSHARE TRUST COMPANY OF CANADA, AS TRUSTEE OF FAIR HYDRO TRUST

AND

ONTARIO POWER GENERATION INC., AS FINANCIAL SERVICES MANAGER

AND

BNY TRUST COMPANY OF CANADA, AS INDENTURE TRUSTEE

CHANGE OF LAW PROTECTION AGREEMENT

Dated as of [■], 2017

This **AGREEMENT**, among Her Majesty the Queen in Right of Ontario, as represented by the Minister of Energy and the Minister of Finance (the "**Province**"), Computershare Trust Company of Canada, in its capacity as trustee (the "**Financing Entity Trustee**") of Fair Hydro Trust, a trust under the laws of the Province of Ontario (the "**Financing Entity**")[1], Ontario Power Generation Inc., in its capacity as Manager of the Financing Entity and in its capacity as the Financial Services Manager in accordance with the Act (the "**FSM**") and BNY Trust Company of Canada, a trust company existing under the laws of Canada, as Indenture Trustee, is made and entered into as of [■], 2017.

RECITALS

Pursuant to Subsection 5(3) of the *Ontario Fair Hydro Plan Act, 2017* (the "**Act**"), the Lieutenant Governor in Council may by order, authorize the Minister of Energy and the Minister of Finance, acting together on behalf of the Province of Ontario, to agree to guarantee or indemnify certain debts, obligations, securities or undertakings associated with an Investment Interest.

Pursuant to an Order in Council dated as of ■ (the "**OIC**"), the Lieutenant Governor in Council has, among other things, authorized the Minister of Energy and the Minister of Finance, acting together on behalf of the Province of Ontario, to enter into one or more agreements to guarantee or indemnify the debts, obligations, securities or undertakings of one or more financing entities established or caused to be established pursuant to Subsection 22(2) of the Act by the FSM and that may incur Funding Obligations in connection with one or more Investment Interests.

Pursuant to a Declaration of Trust[2] dated as of ■, 2017, the Financing Entity was established as a "financing entity" (as defined in the Act) for the purposes contemplated in the Act.

The Financing Entity Trustee, in its capacity as trustee of the Financing Entity, and the Indenture Trustee are parties to the Trust Indenture and propose to create and issue series of notes, bonds and other securities as contemplated therein, and to provide security over the assets and undertaking of the Financing Entity in respect of such notes, bonds and securities, as well as other Obligations Secured.

The Minister of Energy and the Minister of Finance, acting together on behalf of the Province of Ontario, have determined to provide protections and assurances to the Indenture Trustee, for the benefit of the Beneficiaries, in respect of Obligations Secured that constitute Approved Obligations, in order to address concerns that would arise from a change or adverse determination of law, subject in each case to the satisfaction of the Adherence Conditions at the time the Approved Obligation is incurred or amended. This Agreement sets out the terms and conditions of such protections and assurances.

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[1] Province needs the Trust as a party to be assured of its rights of subrogation, step-in, etc.

[2] Torys to confirm that Trust is a "financing entity" under OFHPA. Under definition, FSM to establish or cause to be established. DofT indicates Computershare declares trust. Need to have this confirmed for purposes of authority under OFHPA 5(3), among other things.

The FSM and the Province will concurrently enter into the Process Agreement, under which the FSM will agree to perform certain related activities and to provide certain assurances on which the Province will rely, including for the purposes of determining whether the Adherence Conditions have been satisfied in connection with the incurrence or amendment of an Approved Obligation and ensuring that the Province's assumption right may be exercised without impediment on the terms and conditions contemplated in this Agreement.

All things necessary to make this Agreement a valid and legally binding agreement of the Province, the Financing Entity, the FSM and the Indenture Trustee, in accordance with the Act, the OIC and the Trust Indenture, have been done.

AGREEMENT OF THE PARTIES

In consideration of the respective agreements herein contained, the parties hereto covenant and agree as follows:

ARTICLE I
DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

1.01 Interpretation

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) the terms used in this Agreement that are defined in Schedule A have the meanings assigned to them in Schedule A;

(b) words importing the singular shall include the plural and vice versa, words importing general shall include all genders or the neuter, and words importing the neuter shall include all genders;

(c) all references to any Person shall include such Person's permitted successors and assigns, and any reference to a Person in a particular capacity excludes such Person in other capacities;

(d) references to any law, rule, regulation or order of a Governmental Authority (including, for greater certainty, references to the Act and the General Regulation) shall include such law, rule, regulation or order as from time to time in effect, including any amendment, modification, codification, replacement or reenactment thereof or any substitution therefor;

(e) the word "will" shall be construed to have the same meaning and effect as the word "shall". The word "or" is not exclusive;

(f) any reference to this Agreement or any other agreement, document or instrument shall be construed as a reference to this Agreement or, as the case may be, such other agreement, document or instrument as the same may have been, or may

from time to time be, amended, varied, replaced, amended and restated, supplemented or otherwise modified;

(g) all references in this Agreement to designated "Articles", "Sections", "Subsections", "Schedules", "Exhibits" and other subdivisions are to the designated Articles, Sections, Subsections, Schedules, Exhibits and other subdivisions of this Agreement as originally executed. The words "herein", "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section, Subsection, Schedule, Exhibit or other subdivision;

(h) "including" and words of similar import will be deemed to be followed by "without limitation"; and

(i) with respect to the computation of periods of time from a specified date to a later specified date, unless otherwise expressly stated, the word "from" means "from and including" and the words "to" and "until" each mean "to but excluding".

1.02 Trustee to act in accordance with the Trust Indenture

Any action taken, required to be taken or permitted to be taken by the Indenture Trustee under this Agreement shall only be taken in the manner, at the times, for the purposes, subject to the prerequisites, conditions, requirements and limitations, and with the benefits, exculpations, indemnities and protections that are provided to the Indenture Trustee, in each case in respect of such action taken, required to be taken or permitted to be taken by it under the Trust Indenture.

1.03 Proof of Approved Obligations

The efficacy of any agreement, instrument or writing evidencing a Primary Obligation may, in the absence of manifest error, be conclusively proved in any manner that the Indenture Trustee deems to be sufficient.

Any statement of account prepared by the Indenture Trustee as regards the Primary Obligations shall constitute *prima facie* evidence of the amount which, as at the date of the statement so prepared, is due and payable by the Financing Entity to the Beneficiaries and/or the Indenture Trustee and the Province hereby acknowledges and agrees that, absent manifest error, it shall be bound by each such statement. The Indenture Trustee agrees to provide the Province with the computations and calculations used by the Indenture Trustee to prepare each such statement of account promptly following a request therefor.

1.04 Limitation on Rights of and Actions by Specified Creditors

Specified Creditors, as Beneficiaries, shall not have or be permitted to exercise any rights, interests, or elections under this Agreement, other than in the manner and to the extent effected and exercised through the Indenture Trustee under, in accordance with and subject to the limitations set forth in the Trust Indenture. No Specified Creditor will have any right to institute any proceeding, judicial or otherwise, with respect to this Agreement.

1.05 Province Retains Rights of Beneficiaries

Without limiting any rights of subrogation or succession that arise pursuant to applicable law or pursuant to the Province's rights as an assignee, subrogee or pursuant to Section 5.01, all of the rights, interests, elections and privileges that would arise in favour of a Beneficiary under the Trust Indenture or other Funding Obligation Agreement under which a related Primary Obligation arises shall automatically arise, vest in and be available to the Province to the extent of the performance by the Province of the Primary Obligation.

1.06 Effect of Headings

The Article and Section headings herein are for convenience only and will not affect the construction hereof.

1.07 Successors and Assigns

All covenants and agreements in this Agreement by the parties will bind their respective successors and permitted assigns, whether so expressed or not. All covenants and agreements of the Indenture Trustee, the Financing Entity, the Financing Entity Trustee or the FSM in this Agreement shall bind their respective successors, co-trustees and agents.

1.08 Severability

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction will not affect the validity or enforceability of any other provision hereof. To the extent permitted by applicable law, the parties waive any provision of law which renders any provision of this Agreement invalid or unenforceable in any respect. The parties will engage in good faith negotiations to replace any provision which is declared invalid or unenforceable with a valid and enforceable provision, the economic effect of which comes as close as possible to that of the invalid or unenforceable provision which it replaces.

1.09 Governing Law

THIS AGREEMENT WILL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE PROVINCE OF ONTARIO AND THE FEDERAL LAWS OF CANADA APPLICABLE THEREIN, AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.

1.10 Proceedings Against the Crown Act

NOTHING IN THIS AGREEMENT OR THE PROGRAM AGREEMENTS AFFECTS THE RIGHTS, PROTECTIONS AND IMMUNITIES OF THE CROWN UNDER THE PROCEEDINGS AGAINST THE CROWN ACT.

1.11 Attornment

EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY ONTARIO COURTS SITTING IN TORONTO IN ANY ACTION, APPLICATION, REFERENCE OR OTHER PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT. THE PARTIES HERETO HEREBY WAIVE ANY RIGHT THEY MAY HAVE TO REQUIRE A TRIAL BY JURY OF ANY PROCEEDING COMMENCED IN CONNECTION WITH THIS AGREEMENT.

1.12 Counterparts; Electronic Delivery

This Agreement may be executed in any number of counterparts, each of which so executed will be deemed to be an original, but all such counterparts will together constitute one and the same instrument. Delivery of an executed signature page to this Agreement by a party by electronic transmission will be as effective as delivery of a manually executed copy of the Agreement by such party.

1.13 Change of Law Protection Agreement Referred to in the Trust Indenture

This Agreement is the "Change of Law Protection Agreement" referred to in the Trust Indenture.

1.14 Non-Business Days

Whenever any payment to be made hereunder shall be stated to be due, any period of time would begin or end, any calculation is to be made or any other action to be taken hereunder shall be stated to be required to be taken, on a day other than a Business Day, then (notwithstanding any other provision of this Agreement) such payment shall be made, such period of time shall begin or end, such calculations shall be made and such other action shall be taken on the next succeeding Business Day.

1.15 Waiver, Amendment

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement will be binding unless executed in writing by the party to be bound thereby. No waiver of any provision of this Agreement will constitute a waiver of any other provision nor will any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided. A party's failure or delay in exercising any right under this Agreement will not operate as a waiver of that right. A single or partial exercise of any right will not preclude a party from any other or further exercise of that right or the exercise of any other right.

1.16 Interest Act

For the purpose of disclosure pursuant to the *Interest Act* (Canada), the yearly rate of interest to which any rate of interest payable under this Agreement that is calculated on any basis other than a full calendar year is equivalent may be determined by multiplying such rate by a fraction, the numerator of which is the actual number of days in the calendar year in which such

yearly rate of interest is to be ascertained and the denominator of which is the number of days comprising such other basis. The parties further agree that for the purposes of the *Interest Act* (Canada), (i) the principle of deemed reinvestment of interest shall not apply to any interest calculation under this Agreement, and (ii) the rates of interest stipulated in this Agreement are intended to be nominal rates and not effective rates or yields.

1.17 Currency

Unless stated otherwise, all amounts herein are stated in Canadian Dollars.

1.18 References to Acts of the Financing Entity

For greater certainty, where any reference is made in this Agreement, or in any other instrument executed pursuant hereto or contemplated hereby to which the Financing Entity or the Financing Entity Trustee, as trustee of the Financing Entity, is party, to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against, or a covenant, representation or warranty (other than relating to the constitution or existence of the Financing Entity) by or with respect to (i) the Financing Entity or (ii) the Financing Entity Trustee, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against or a covenant, representation or warranty (other than relating to the constitution or existence of the Financing Entity) by or with respect to, the Financing Entity Trustee as trustee of the Financing Entity.

1.19 Judgment Currency

(a) If for the purpose of obtaining judgment in any court or for any other purposes (other than conversions specifically provided for in the agreement under which an Approved Obligation arises), it is necessary to convert any amount due under this Agreement from the currency in which it is due (the "**Original Currency**") into another currency (the "**Second Currency**"), the rate of exchange applied shall be that at which, in accordance with normal banking procedures, the purchaser could purchase, in the New York foreign exchange market, the Original Currency with the Second Currency on the date on which judgment is given. The obligation of the Province in respect of any Original Currency due from it to the Indenture Trustee under this Agreement shall, notwithstanding any judgment or payment in such other currency, be discharged only to the extent that, on the Business Day following receipt of any sum so paid or adjudged to be due under this Agreement in the Second Currency, the Indenture Trustee may, in accordance with normal banking procedures, purchase in the New York foreign exchange market the Original Currency with the amount of the Second Currency so paid or so adjudged to be due; and if the amount of the Original Currency so purchased is less than the amount originally due in the Original Currency, the Province shall indemnify the Indenture Trustee against such loss.

(b) The term "rate of exchange" in this Section 1.19 means the spot rate at which the Indenture Trustee, in accordance with normal practice, is able on the relevant date to purchase the Original Currency with the Second Currency and includes any premium and costs of exchange payable in connection with such purchase.

ARTICLE II
AGREEMENT TO PERFORM APPROVED OBLIGATIONS

2.01 Limited Guarantee

(a) Upon the occurrence of a Protection Event, the Indenture Trustee may provide a written demand, in the form attached as Exhibit A (a "**Payment Demand**"), to the Province requiring the Province to pay the amount of the Approved Obligations that would have been payable from Available Collections had the Protection Event not occurred[3] from time to time by the Financing Entity to the Indenture Trustee as and when they become due and payable, without Acceleration. A Payment Demand will not be valid with respect to an Approved Obligation until the amount claimed becomes due and payable in respect of the Approved Obligation, without Acceleration, in accordance with the Trust Indenture and has not otherwise been paid by the Financing Entity.

(b) Following receipt of a valid Payment Demand under Subsection 2.01(a), the Province shall pay the amounts that would have been payable from Available Collections had the Protection Event not occurred by the Financing Entity to the Indenture Trustee, on behalf of the applicable Beneficiaries, in respect of each Approved Obligation, in each case as and when the Approved Obligation becomes due and payable in accordance with its terms and on its scheduled, specified or determined payment date, as determined without regard to any Acceleration or rights of Acceleration arising under the Approved Obligation, in each case by the Province depositing or causing the deposit of the applicable payment amount into the Protection Account[4] on or before the day on which the applicable Approved Obligation becomes due and payable in accordance with its terms (the "**Limited Guarantee**"). For greater certainty, the Limited Guarantee will not apply to any amount or obligation of the Financing Entity that is not or does not arise under an Approved Obligation.

(c) Except as expressly provided in this Agreement, the Province's obligation to provide and perform the Limited Guarantee shall be irrevocable, absolute and unconditional.

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[3] The amount "owing" under an obligation (i.e., balloon) will different from the amount available to be paid in respect of such owed amount (based on Available Collections). The Province is not obligated to pay more than the obligations that would have been paid from CEAs had they been collected.

[4] Province needs to see how the Trust Indenture will be modified to address addition of Protection Account (i.e., payment mechanics; Protection Account to be part of the Collateral; mechanics of how funds move to Collection Account; absence of equitable claims; etc.). Province will need to know that all amounts will be applied for their intended purposes without undermining Province's step-in and subrogation rights.

(d) Any amount payable by the Province under the Limited Guarantee in respect of an Approved Obligation that is not paid when required herein shall bear interest from the applicable due date until paid in full at the rate or rates expressed to be payable on the Approved Obligation.

(e) The right to deliver a Payment Demand and thereupon enforce the Limited Guarantee shall constitute the only remedy available to the Indenture Trustee under this Agreement. Under no circumstances shall the Province be obligated to pay or indemnify the Indenture Trustee or any Beneficiary for consequential, special or punitive damages, or for economic loss or loss of profits.

2.02 Intentionally Deleted.

2.03 Absence of Set-off

Subject to applicable law, the Province acknowledges and agrees that each payment to be made by the Province hereunder in respect of an Approved Obligation shall be made as required in whole, without application of any right of set-off and without regard to any equities as between or among any of the Province, the Beneficiaries and/or the Indenture Trustee.

2.04 Payment into Protection Account[5] in Satisfaction

(a) On or before the date of delivery of a Payment Demand to the Province, the Indenture Trustee shall cause to be established and maintained an Eligible Deposit Account (the "**Protection Account**") in the name of the Indenture Trustee, bearing a designation clearly indicating that the funds and other property credited thereto are held for the benefit of the Indenture Trustee and the Beneficiaries. The Protection Account shall be under the control of the Indenture Trustee for the benefit of the Beneficiaries. If, at any time, the institution holding the Protection Account ceases to be an Eligible Institution, the FSM shall notify the Indenture Trustee, and the Indenture Trustee upon being notified in writing of such ineligibility (or the FSM on its behalf) shall within 30 days (or such longer period, not to exceed 45 days, so long as the Rating Agency Condition is satisfied) establish a new Protection Account that is an Eligible Deposit Account and shall transfer any funds or other property from such Protection Account to such new Protection Account. From the date each such new Protection Account is established, it shall be the "Protection Account." for purposes of this Agreement. Funds credited to the Protection Account will be invested and held in accordance with Section 7.03 of the Trust Indenture on the basis that it is an Issuer Account.

(b) Notwithstanding the priority of payment requirements set forth in the Trust Indenture and any legal rule concerning the imputation of payments, the Indenture Trustee shall apply the full amount paid by the Province into the Protection Account in respect of an Approved Obligation to pay the corresponding amount

[5] Use of Protection Account to be considered by Province after required modifications to Trust Indenture have been provided.

due and payable to the applicable Beneficiaries under the Approved Obligation. Upon a payment having been made by or on behalf of the Province into the Protection Account in respect of an Approved Obligation, the amount so paid shall for all purposes be considered to have been applied to pay the applicable Beneficiaries and thereby reduce the amount due and payable to such Beneficiaries in respect of the Approved Obligation, whereupon an affected Beneficiary shall have no continuing rights, interests or entitlements (including rights as a secured party) in respect of the Approved Obligation to the extent so paid[6]. For greater certainty, the obligations arising in respect of the Approved Obligation shall not be reduced by such payment as the Province shall become entitled to the rights contemplated under Section 5.01 in relation to such continuing obligations.

2.05 Certain Waivers

The Province hereby waives:

(a) any requirement, and any right to require, that any power be exercised or any action be taken against the Financing Entity or any Collateral for any of the Approved Obligations;

(b) all notices which may be required by applicable law to preserve any rights against the Province hereunder, including any notice of default, demand, dishonour, presentment and protest;

(c) diligence; and

(d) any defence based upon, arising out of or in any way related to any claim that any election of remedies by the Beneficiaries impaired, reduced, released or extinguished any rights that the Province might otherwise have had against the Financing Entity or any other surety.

The Province agrees that each such waiver is made with full knowledge of its significance and consequences and if any such waiver is determined to be contrary to any applicable law or public policy, such waiver shall be effective only to the maximum extent permitted by applicable law.

2.06 Additional Security

This Agreement shall be in addition to and without prejudice to any other security by whomsoever given, held at any time by the Indenture Trustee or for the benefit of any of the Beneficiaries.

[6] A corresponding provision needs to be added to the Trust Indenture and each other contract under which the Obligation Secured arises, so that the Beneficiaries are bound by these applications and the agreement of the Indenture Trustee under this Agreement.

2.07 Continuing Liability of the Province

The Approved Obligations shall be deemed not to have been paid, observed or performed, and the liability of the Province hereunder in respect thereof shall continue and not be discharged, to the extent that any payment, observance or performance thereof by the Financing Entity, or out of the proceeds of any Collateral, is recovered from or reimbursed by or for the account of any of the Beneficiaries for any reason, including a preference or fraudulent transfer or by virtue of any subordination (whether present or future or contractual or otherwise) of the Approved Obligations, whether such recovery or payment over is effected by any judgment, decree or order of any court or Governmental Authority, by any plan of reorganization or by settlement or compromise by any of the Beneficiaries (whether or not consented to by the Financing Entity or the Province) of any claim for any such recovery or payment over.

2.08 Continuance of the Limited Guarantee

Subject to Section 2.07, the Limited Guarantee shall continue in full force and effect until the indefeasible payment, observance and performance in full of the Approved Obligations, or until the Province is no longer required to provide and perform the Limited Guarantee in accordance with Section 6.03.

2.09 Modifications of Approved Obligations

The Province expressly authorizes the Indenture Trustee, at any time and from time to time, without notice and without affecting the liability of the Province hereunder, but subject to compliance with the requirements of the Program Agreements and this Agreement, to:

(a) accept new, additional or replacement instruments, documents, agreements or security in connection with all or any part of the Approved Obligations;

(b) accept partial payments on the Approved Obligations; and

(c) waive, release, reconvey, terminate, abandon, subordinate, exchange, substitute, transfer, compound, compromise, liquidate and enforce all or any part of the Approved Obligations and any security or guarantee therefor, and apply any such security and direct the order or manner of sale thereof as the Indenture Trustee (for the benefit of the Beneficiaries) in its discretion may determine,

provided, however, that the Indenture Trustee shall not permit any change, modification, alteration, amendment, supplement, extension, renewal, compromise, novation, replacement, suspension or waiver of the terms of all or any part of the Approved Obligations or any Collateral therefor expect with the prior written consent of the Province having first been obtained.

ARTICLE III
THE INDENTURE TRUSTEE

3.01 The Indenture Trustee

This Agreement is made in favour of the Indenture Trustee in its capacity as trustee under the Trust Indenture. Accordingly, in the event of a new trustee being appointed under the Trust Indenture, such new trustee shall thereupon become and be the Indenture Trustee hereunder, but nevertheless, the Indenture Trustee shall forthwith assign, transfer and make over to the new trustee hereunder this Agreement. All provisions of the Trust Indenture for the protection of the Indenture Trustee or for facilitating the administration of the trusts or otherwise relating to the Indenture Trustee solely as to its holding of the rights thereunder shall apply *mutatis mutandis* to this Agreement and the Indenture Trustee's duties hereunder.

3.02 Acceptance of Trusts

The Indenture Trustee hereby accepts the trusts hereof and agrees to carry out and discharge the same unless and until a new trustee shall be appointed as contemplated in Section 3.01.

ARTICLE IV
APPROVED OBLIGATIONS

4.01 Approval Process

A Primary Obligation shall constitute an Approved Obligation if the Adherence Conditions applicable thereto have been satisfied.

4.02 Adherence Conditions

The following shall be the Adherence Conditions applicable in relation to a Primary Obligation:

(a) the Primary Obligation is contemplated under the Trust Indenture as an Obligation Secured; and

(b) the FSM delivers a certificate signed by the Chief Financial Officer and the Treasurer of OPG (or their respective designees, provided that such designees are executive officers of OPG and, for clarity, such certificate is to be provided by such officers in their capacity as officers of OPG acting in its capacity as FSM) and addressed to the Indenture Trustee, prior to the earlier of (i) one Business Day prior to the incurrence or any amendment of the Primary Obligation, and (ii) on the Business Day on which the financial terms of the Primary Obligation are definitively determined (including the interest or discount rate applicable to any notes, bonds or other securities), confirming that the FSM has delivered to the Province a Process Certificate in accordance with Section **[3.01]** of the Process Agreement; and

(c) the Province has not provided a Suspension Notice to the Indenture Trustee, the FSM and the Financing Entity in accordance with the terms of this Agreement. [7]

4.03 Evidence of Satisfaction

A closing certificate delivered in accordance with Section 4.02 in connection with an incurrence or amendment of a Primary Obligation shall be determinative as to whether the applicable Adherence Conditions with respect thereto have been satisfied, notwithstanding that such certificate may include inaccuracies, be incomplete or otherwise be defective or deficient, and such closing certificate may be relied upon by any addressee as conclusive evidence of same.

ARTICLE V
PROVINCE MATTERS

5.01 Assignment and Subrogation

(a) Upon paying an amount in respect of an Approved Obligation to or at the direction of the Indenture Trustee in satisfaction of the Limited Guarantee, the Province (in addition to and without prejudice to any rights it otherwise has in law or equity) shall be subrogated and entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Approved Obligation to the extent of such payment, including (i) the right and entitlement to be paid and receive distributions of such amount by the Financing Entity in accordance with and in the priority applicable to the Approved Obligation applicable in respect of the payment under the Trust Indenture, (ii) the benefits of the related Collateral and (iii) all proceeds therefrom. The Province shall have and be entitled to enforce all rights and interests (including as a Specified Creditor under the Trust Indenture on the basis contemplated in Section 5.01(b)), under and in respect of such Approved Obligation as an absolute assignee of the applicable Beneficiary, with effect from and after the time of such payment, without any further requirement for notice to or acceptance by the Financing Entity of such absolute assignment and without any reduction, set-off or counterclaim on account of any amounts that may, at or after the time of payment, be or become owing by the Beneficiary to the Financing Entity and unaffected by any other rights or equities that arise thereafter as between the Beneficiary and the Financing Entity. The Indenture Trustee shall recognize the Province as being entitled to all of the rights, interests and entitlements of the Beneficiary (including as a Specified Creditor under the Trust Indenture on the basis contemplated in Section 5.01(b)) in respect and to the extent of the Approved Obligation so paid, determined as of the time of payment, for all purposes under the Trust Indenture, and the Province shall be treated as a Specified Creditor in respect thereof for all purposes under the Trust Indenture and any other agreement under which the Approved Obligation arises.

[7] Province wants this mechanic embedded in the adherence conditions so it is explicitly understood and mechanically contemplated as the way the Province be sure future Limited Guarantees are cut-off opposite the indenture trustee.

(a) The Province (i) acknowledges and agrees in favour of the Indenture Trustee that, upon being subrogated and entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Approved Obligation in accordance with Section 5.01(a), the Province, in its capacity as a Specified Creditor, will be subject to the provisions applicable to Specified Creditors under the Trust Indenture, including **[Section 7.11 (Payments Held in Trust), Section 8.12 (Limitation on Suits), Sections 7.04 and 8.13 (Payment Priorities), Section 8.14 (Limited Recourse) and Section 16.01 (No Petition) thereof]** and (ii) confirms that the Indenture Trustee shall send notices to the Province, in its capacity as a Specified Creditor, in accordance with Section 9.02.

5.02 Priorities

For greater certainty, the rights, interests and entitlements of the Province as an assignee and subrogee of and with respect to an Approved Obligation shall rank equally with the rights, interests and entitlements of a Beneficiary for whom a Limited Guarantee payment is made in respect of, and to the extent of the payment made to satisfy, the Approved Obligation and the Province shall not be subject to postponement or subordination with respect thereto except to the extent of the priorities established in relation to the Approved Obligation under the Trust Indenture.

5.03 Province May Perform Other Program Agreement Covenants.

If the Financing Entity fails to perform any covenant under any Program Agreement, the Province may (but, except as expressly provided for under this Agreement, shall not be obligated to) perform such covenant on behalf of the Financing Entity. If the Province performs such a covenant on behalf of the Financing Entity, all sums expended or advanced by the Province in so performing the covenant will bear interest at the rate of interest determined by the Province to reflect market terms and conditions for a borrowing made by the Province at the relevant time from the date of expenditure until repayment by the Financing Entity and will (together with such interest) be paid by the Financing Entity upon demand and will until paid form part of the Obligations Secured subject to Sections **[7.04 and 8.13]** of the Trust Indenture and constitute a Finance Amount.[8]

5.04 Representations and Warranties

The Province hereby represents and warrants that:

(a) the execution, delivery and performance of this Agreement by the Province have been authorized by all necessary action on the part of the Province;

(b) the execution, delivery and performance of this Agreement by the Province do not result in the violation of any applicable law; and

(c) this Agreement has been duly executed and delivered by the Province.

[8] Payments to be addressed in the Trust Indenture like servicer advances under the waterfall provisions.

ARTICLE VI
NOTICE OF ASSUMPTION OF OBLIGATIONS SECURED

6.01 Delivery of Assumption Notice

Following the occurrence of a Protection Event, the Province may provide notice (in the form of Exhibit B) to the Indenture Trustee, in accordance with the terms of the Process Agreement, that the Province has elected to assume the Financing Entity's obligations in respect of all Obligations Secured, as obligor and debtor (the "**Assumption Notice**"). The Assumption Notice shall specify the date on which the assignment and assumption of the Obligations Secured will be effective (the "**Assumption Closing Date**").

6.02 Cooperation to Implement the Assignment and Assumption

The Indenture Trustee, the FSM, the Financing Entity and the Province will cooperate and use best efforts to complete the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province, by the Assumption Closing Date.[9]

6.03 Effect of Assumption

On the date that the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province becomes effective (the "**Assumption Effective Date**"), the Province shall no longer be required to provide and perform the Limited Guarantee but will instead become a primary obligor under the Obligations Secured assumed pursuant to and in accordance with an applicable Assumption Agreement. For greater certainty, the obligations of the Province so assumed will not be secured obligations of the Province and the obligees thereof will have no right, interest or claim to or in respect of the Collateral or any proceeds therefrom. **[NTD: Need to move Article VI of the Change of Law Process Agreement into this Article VI and amend accordingly.[10] Also, we will need to attach the form of Assumption Agreement as an Exhibit to this Agreement that will be used for the assignment and assumption of all Obligations Secured. Contrary to the statement in Section 6.02(f) of the Change of Law Protection Agreement, there will not be a separate form of Assumption Agreement for each Obligation Secured. [11]]**

6.04 Interim Period

Until the effective time of the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province on the Assumption Effective Date, the Province shall continue to perform and be obligated under the Limited Guarantee.

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[9] Further details regarding obtaining of third party consents and rating agency approvals to be provided by OPG.

[10] The idea was to not burden the external agreement with the necessary steps for the Province to be in a position to step-in. If the preference is to include more in this external agreement, the Province will not object subject to further consideration of drafting issues.

[11] It has been assumed that there may be variations depending on the nature of the underlying obligations. A root form of Assumption Agreement, modified to conform substantially to that form in connection with a particular obligation, was the idea. To be further discussed.

6.05 Rights in respect of the Assets Comprising the Collateral

Upon assuming the Financing Entity's obligations in respect of all Obligations Secured under Article VI, the Province (in addition to and without prejudice to any rights it otherwise has in law or equity) shall be subrogated and entitled to all of the Financing Entity's rights and interests under and in respect of the assets, property and undertaking comprising the Collateral and all proceeds therefrom, free and clear of any liens, encumbrances or restrictions arising under or as a result of the Trust Indenture. The Province shall have and be entitled to enforce all such rights and interests as an absolute assignee of the Financing Entity, with effect from and after the time of such assumption, without any further requirement for notice to or acceptance by the Financing Entity of such absolute assignment and without any reduction, set-off or counterclaim on account of any amounts that may, at or after the time of payment, be or become owing to the Financing Entity and unaffected by any other rights, interests or equities that arise thereafter in respect of the assets, property and undertaking comprising the Collateral as between the Beneficiaries and the Financing Entity. The Indenture Trustee shall thereupon recognize the Province as the absolute owner of the assets, property and undertaking comprising the Collateral.

ARTICLE VII
INDENTURE TRUSTEE MATTERS

7.01 Limited Recourse

No recourse may be taken, directly or indirectly, with respect to the obligations of the Financing Entity under this Agreement, or any certificate or other writing delivered in connection herewith or therewith, against (a) the Financing Entity Trustee in its individual capacity, (b) any owner of a beneficial interest in the Financing Entity or (c) any partner, owner, beneficiary, agent, officer, director, employee or agent of the Financing Entity Trustee in its individual capacity, any holder of a beneficial interest in the Financing Entity or the Financing Entity Trustee or of any successor or assign of the Financing Entity Trustee in its individual capacity, except as any such Person may have expressly agreed (it being understood that the Financing Entity Trustee has no such obligations in its individual capacity).

7.02 Not Responsible for Recitals or Issuance of Notes

The recitals contained herein will be taken as the statements of the Province and the FSM, and the Indenture Trustee assumes no responsibility for their correctness. The Indenture Trustee makes no representations as to the validity or sufficiency of this Agreement.

7.03 Representations and Covenants of the Indenture Trustee

The Indenture Trustee represents, warrants and covenants that:

(a) the Indenture Trustee is a trust company organized, existing and in good standing under the laws of Canada;

(b) the Indenture Trustee has full power and authority to execute, deliver and perform this Agreement and has taken all necessary action to authorize the execution,

delivery and performance by it of this Agreement and other documents to which it is a party;

(c) each of this Agreement and the other documents to which it is a party has been duly executed and delivered by the Indenture Trustee and constitutes its legal, valid and binding obligation in accordance with its terms; and

(d) the Indenture Trustee is authorized to carry on the business of a trust company in each of the provinces and territories of Canada.

ARTICLE VIII
SUSPENSION OF ADHERENCE FOR NEW PRIMARY OBLIGATIONS

8.01 Suspension Notice

A written notice in the form of Exhibit C (a "**Suspension Notice**") may be provided by the Province to the Indenture Trustee, the FSM and the Financing Entity:

(a) upon the Province becoming aware of the occurrence of a Program Breach; and

(b) following the occurrence of a Breach Event that has not been waived in writing by the Province.

8.02 Suspension

If a Suspension Notice has been provided under Section 8.01 (the provision of such notice being a "**Suspension Event**"), the Limited Guarantee shall not apply in respect of any Obligation Secured incurred on or after the time such Suspension Notice is delivered. For greater certainty, the rights of the Province under Article VI shall apply in respect of all Obligations Secured, including if incurred on or after the time such Suspension Notice is delivered.

8.03 Termination Notice

On (a) the occurrence of a Suspension Event or (b) the Assumption Effective Date, the Province may provide to the Indenture Trustee, the FSM and the Financing Entity a notice in the form of Exhibit D (a "**Termination Notice**").[12]

8.04 No Impact on Adherence

For greater certainty, the occurrence of Suspension Event or a failure by the FSM or the Financing Entity to perform its covenants under this Agreement will not invalidate or extinguish the obligations of the Province under the Limited Guarantee in respect of Approved Obligations

[12] The suspension right in favour of the Province is intended to allow the Province to cut-off future obligations under this Agreement, but not affect rights that have arisen prior to the suspension notice. The termination notice is a further step that allows the Province to bring this agreement to an end, but that only happens (under section 9.01) after all amounts capable of becoming due under the Limited Guarantee have been paid (i.e., the last obligation incurred prior to the suspension notice has been satisfied), including as a result of an assumption under Art VI.

in existence prior to the occurrence of the Suspension Event, nor will it in any way impact the Obligations Secured which are assumed by the Province in accordance with Article VI.

ARTICLE IX
MISCELLANEOUS

9.01 Term of Agreement

This Agreement will continue until the later of:

(a) the date that no amount is or may become due and payable by the Province under the Limited Guarantee; and

(b) the date that a Termination Notice delivered in accordance with Section 8.03 is received by the Indenture Trustee, the FSM and the Financing Entity.

9.02 Notices

Any notice or other communication required or permitted to be given hereunder will be in writing and will be given by prepaid first-class mail, by facsimile or other means of electronic communication or by hand-delivery as hereinafter provided. Any such notice or other communication, if mailed by prepaid first-class mail at any time other than during a general discontinuance of postal service due to strike, lockout or otherwise, will be deemed to have been received on the fourth Business Day after the post-marked date thereof, or if sent by facsimile or other means of electronic communication, will be deemed to have been received on the Business Day following the sending, or if delivered by hand will be deemed to have been received at the time it is delivered to the applicable address noted below either to the individual designated below or to an individual at such address having apparent authority to accept deliveries on behalf of the addressee. Notice of change of address will also be governed by this Section. In the event of a general discontinuance of postal service due to strike, lock-out or otherwise, notices or other communications will be delivered by hand or sent by facsimile or other means of electronic communication and will be deemed to have been received in accordance with this Section. Notices and other communications will be addressed as follows:

(a) if to the Financing Entity:

Fair Hydro Trust
700 University Avenue
Toronto, Ontario M5G 1X6
Attention: [■]
Fax: (416) [■]
Email: [■]

with copies to:

Computershare Trust Company of Canada, in its capacity as Financing Entity Trustee for Fair Hydro Trust
100 University Avenue, 11th Floor
Toronto, Ontario M5J 2Y1
Attention: [■]
Fax: (416) [■]
Email: [■]

[■]

(b) if to the FSM:

Ontario Power Generation Inc.
700 University Avenue
Toronto, Ontario M5G 1X6
Attention: [■]
Fax: (416) [■]
Email: [■]

(c) if to the Province:

Ministry of Finance
[Address]
Attention: [■]
Fax: (416) [■]
Email: [■]

and

Ministry of Energy
[Address]
Attention: [■]
Fax: (416) [■]
Email: [■]

(d) if to the Indenture Trustee:

[Address]
Attention: [■]
Fax: (416) [■]
Email: [■]

or to such other addresses as a party may from time to time notify the other parties in accordance with this Section 9.02.

9.03 Assignment

(a) None of the rights or obligations hereunder shall be assignable or transferable by any party without the prior written consent of the other parties, except as otherwise provided for herein.

(b) Any purported assignment of this Agreement in violation of this Section 9.03 shall be null and void.

9.04 Enurement

This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

9.05 FIPPA

The parties acknowledge that the Province will be bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province, or any agent or representative of the Province in connection with this Agreement may be subject to disclosure in accordance with the act or as otherwise required by law.

9.06 No Petition

The Province agrees, to the fullest extent permitted by applicable law, that at no time until one year and one day following repayment in full of all Primary Obligations shall it commence, or join in commencing, a bankruptcy case or other insolvency or similar proceeding under the laws of any jurisdiction against the Financing Entity.

9.07 Intentionally Deleted

9.08 Third Party Rights

This Agreement is not intended to create rights for any Person not party to this Agreement. Beneficiaries are not parties to this Agreement and accordingly any benefits derived hereunder shall arise exclusively through the Indenture Trustee and shall be subject to the provisions applicable to Specified Creditors in the Trust Indenture.

9.09 Delivery of Executed Copies

Each party acknowledges delivery of a fully executed copy of this Agreement.

[Signature page to follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF FINANCE

By: _____
Name:
Title:

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY

By: _____
Name:
Title:

ONTARIO POWER GENERATION INC., AS FSM

By: _____
Name:
Title:

By: _____
Name:
Title:

COMPUTERSHARE TRUST COMPANY OF CANADA, AS TRUSTEE OF FAIR HYDRO TRUST

By: _____
Name:
Title:

BNY TRUST COMPANY OF CANADA, AS INDENTURE TRUSTEE AND NOT IN ITS INDIVIDUAL CAPACITY

By: _____
Name:
Title:

SCHEDULE A
DEFINED TERMS

"**Acceleration**" has the meaning ascribed to the term "acceleration" in the General Regulation.

"**Act**" has the meaning ascribed thereto in the first paragraph of the recitals in this Agreement.

"**Action**" has the meaning ascribed thereto under the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Adherence Conditions**", in respect of a Primary Obligation, means the conditions set out in Section 4.02.

"**Approved Obligation**" means a Primary Obligation that constitutes an Approved Obligation pursuant to Section 4.01.

"**Assumption Closing Date**" has the meaning ascribed thereto in Section 6.01.

"**Assumption Effective Date**" has the meaning ascribed thereto in Section 6.03.

"**Assumption Notice**" has the meaning ascribed thereto in Section 6.01.

"**Available Collections**" has the meaning ascribed thereto in the Trust Indenture.

"**Beneficiaries**" means the Specified Creditors to whom the Financing Entity owes a payment obligation pursuant to one or more Approved Obligations from time to time.

"**Breach Event**" [means the occurrence or existence of any one or more of the following: (a) a default in the performance, or breach, of any covenants of the FSM under the Process Agreement; or (b) any representation or warranty made by the FSM, any certification made by the FSM under the Process Agreement, or any certification made by the FSM in a certificate contemplated by Section 4.03 of this Agreement, proves to be incorrect in any material respect on the date made; or (c) OPG is no longer the FSM or the Manager or actions have been taken by or on behalf of the Indenture Trustee to remove OPG as the FSM or the Manager.][has the meaning ascribed thereto in the Process Agreement.][13]

"**Business Day**" means any day other than a Saturday, a Sunday or a day on which banking institutions in Toronto, Ontario are authorized or obligated by applicable law, regulation or executive order to be closed.

"**Capital Account**" has the meaning ascribed to the term "capital account" in the General Regulation.

"**Change of Law Protection Agreement**" means this Agreement.

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[13] Consider this longer version to avoid hard-coding Process Agreement into this Agreement.

"**Collateral**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Declaration of Trust**" means the declaration of trust made as of [■], 2017 under which the Financing Entity was established.

"**Derivative Agreement**" means any rate swap transaction, basis swap, forward rate transaction, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, total return swap transaction, credit default swap transaction or any other similar transaction (including any option with respect to any of those transactions) or any combination of these transactions entered into from time to time by the Financing Entity in connection with or related to Funding Obligations.

"**Eligible Deposit Account**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Eligible Institution**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Finance Amount**" has the meaning ascribed to the term "finance amount" in the Act as of the date of this Agreement.

"**Finance Reserve Account**" has the meaning ascribed to the term "finance reserve account" in the General Regulation.

"**Financing Entity**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Financing Entity Trustee**" means, at any time, the Person who is, in accordance with the Declaration of Trust, the trustee of the Financing Entity at such time.

"**FSM**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Funding Obligation**" has the meaning ascribed to the term "funding obligation" in the Act as of the date of this Agreement.

"**Funding Obligation Agreement**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**General Regulation**" means O. Reg. 206/17 made under the Act.

"**Governmental Authority**" means any nation or government, any federal, state, provincial, local or other political subdivision thereof and any court, administrative agency or other

instrumentality or entity exercising executive, legislative, judicial, regulatory or administrative functions of government.

"**IESO**" has the meaning ascribed thereto in the Act.

"**Indenture Trustee**" means the Person named as the Indenture Trustee in the first paragraph of this Agreement until a successor Indenture Trustee shall have become such pursuant to the applicable provisions of the Trust Indenture and this Agreement, and thereafter "Indenture Trustee" means and includes such Person.

"**Investment Interest**" has the meaning ascribed to the term "investment interest" in the Act as of the date of this Agreement.

"**Issuer Account**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Legislature**" means the Legislature of the Province of Ontario.

"**Limited Guarantee**" has the meaning ascribed thereto in Section 2.01(b).

"**Management Agreement**" means the management agreement dated [■], 2017 between the Manager and the Financing Entity.

"**Manager**" means OPG, in its capacity as manager of the Financing Entity under the Management Agreement.

"**Master Transfer and Servicing Agreement**" means the master transfer and servicing agreement dated [■], 2017 between the Financing Entity and IESO, as may be amended prior to the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Note**" or "**Notes**" has the meaning ascribed thereto under the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Noteholder**" has the meaning ascribed thereto under the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Obligations Secured**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**OIC**" has the meaning ascribed thereto in the second paragraph of the recitals in this Agreement.

"**OPG**" means Ontario Power Generation Inc., a corporation established under the laws of the Province of Ontario.

"**Original Currency**" has the meaning ascribed thereto in Section 1.19(a).

"**Payment Demand**" has the meaning ascribed thereto in Section 2.01(a).

"**Person**" means any individual, corporation, limited liability company, estate, partnership, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization or Governmental Authority.

"**Primary Obligations**" means any Obligation Secured (a) that is a Funding Obligation or (b) that otherwise is a payment obligation of the Financing Entity that gives rise to a Finance Amount, in each case other than (i) any amounts that are or become payable as a result of the exercise of an option of the Financing Entity following a Protection Event; (ii) any amounts required to be deposited by or on behalf of the Financing Entity into any Capital Account, Finance Reserve Account, or Supplemental Reserve Account; (iii) any amounts that would be remaining amounts of Available Collections required by the to be held in the Collection Account for distribution on a succeeding Payment Date pursuant to the Trust Indenture; (iv) any amount payable under a Derivative Agreement in respect of a "termination payment" where the Financing Entity's counterparty under the Derivative Agreement is a "defaulting party" or the sole "affected party" (as such terms are given meaning under the Derivative Agreement); and (v) any obligation to pay the Trust or on the Trust's direction any remaining amounts of Available Collections.

"**Process Agreement**" means the Change of Law Process Agreement dated [■], 2017 between the Province and [the FSM].

["**Process Certificate**" has the meaning ascribed thereto in Section 3.01 of the Process Agreement.]

"**Program Agreements**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Program Breach**" means an acceleration of Funding Obligations in accordance with the provisions of the Trust Indenture or an event of default, early amortization event, termination event or similar event or circumstance (including any event that with the passage of time or the giving of notice would become such an event) of or in respect of the obligations of any party under any Program Agreement, including under this Agreement, the Trust Indenture, the Master Transfer and Servicing Agreement or any Derivative Agreement.

"**Protection Account**" has the meaning ascribed to such term in Section 2.04(a).

"**Protection Event**" means the occurrence of any of the following events:

(a) (i) the Legislature repeals (and does not replace on an equivalent basis) or amends the Act or any portion thereof as in effect on the date hereof;

(ii) the Legislature enacts or amends any other statute;

(iii) the Lieutenant Governor in Council repeals (and does not replace on an equivalent basis) the regulations made under the Act or any portion thereof as in effect on the date hereof; or

(iv) the Lieutenant Governor in Council, a minister of the [Crown], an official of the government or a board or commission all the members of which are appointed by the Lieutenant Governor in Council makes or amends any "regulation" (as defined in Part III of the *Legislation Act, 2006*) as in effect on the date hereof;

(v) the implementation of a change in the organization or structure of the IESO or Ontario's electricity market undertaken at the initiative of the Province or an entity controlled by the Province,

in each case, that materially and adversely affects (a) the ability of the Financing Entity to receive amounts in respect of its Investment Interest so that it can pay Obligations Secured, or (b) this Agreement or any of the agreements under which Obligations Secured arise, other than if the Indenture Trustee has confirmed in writing that the effect under such agreements is otherwise acceptable; or

(b) a court of competent jurisdiction (i) determines that all or a portion of the Act or the regulations made under the Act, as in effect on the date hereof, is *ultra vires* or invalid in a way that materially and adversely affects the ability of the Financing Entity to receive amounts in respect of its Investment Interest so that it can pay Obligations Secured, and (ii) issues a decision or an order preventing the Financing Entity from receiving amounts on its Investment Interest, in each case that results in the Financing Entity not having sufficient funds to pay Obligations Secured that have become due and payable.

"**Province**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Rating Agency Condition**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Repayment**" has the meaning ascribed thereto in the General Regulation.

"**Second Currency**" has the meaning ascribed thereto in Section 1.19(b).

"**Security Interest**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Specified Creditors**" has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Supplemental Reserve Account**" has the meaning ascribed in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

"**Suspension Event**" has the meaning ascribed thereto in Section 8.02.

"**Suspension Notice**" has the meaning ascribed thereto in Section 8.01.

"**Termination Notice**" has the meaning ascribed thereto in Section 8.03.

"**this Agreement**" means this agreement, as amended, supplemented, restated or otherwise modified from time to time.

"**Trust Indenture**" means the trust indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017, as amended, supplemented, restated or otherwise modified from time to time.

EXHIBIT A
FORM OF PAYMENT DEMAND

EXHIBIT B
ASSUMPTION NOTICE

EXHIBIT C
SUSPENSION NOTICE

EXHIBIT D
TERMINATION NOTICE

EXHIBIT E

FORM OF ASSUMPTION AGREEMENT

FW_ Clarifications.rtf

From: Petsche, Nadine (TBS) []
To: Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]
Subject: FW: Clarifications
Date: Wednesday, April 12, 2017 14:13:12

FYI

From: Veinot, Cindy (TBS)
Sent: April-12-17 2:13 PM
To: Petsche, Nadine (TBS); Suzie Gignac; Kandeepan, Ken (OFA)
Subject: Clarifications

Fyi. FSA = OPG Trust, Absolute Assignee = OPG Trust or Investor.

Call is just being opened now.

Sent from my BlackBerry 10 smartphone on the Rogers network.

FW_ E&Y - IESO - Accounting for Conservation Costs - Revised DRAFT.rtf

From: Petsche, Nadine (TBS) []
To: LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]
CC: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
Subject: FW: E&Y - IESO - Accounting for Conservation Costs - Revised DRAFT
Date: Monday, May 29, 2017 14:12:55
Attachment 1: @

This message has been archived. View the original item
https://ctsbigdcapmvs05.cihs.ad.gov.on.ca/EnterpriseVault/ViewMessage.asp?VaultId=1FDBBEE0C5A97944D942FA2B3EB38945A1110000ctsbigdcapmvs01&SavesetId=201706308855809~201705291812550000~Z~D13F405C1E73C776BF0CD946EC9C51D1View the original item

Lee Anne/Suzie/Blake,

Just wanted to make sure that you also had a copy of this draft memo for reference. I don’t have a copy of the final memo, but can request one if you feel that would be helpf

Attachments:
IESO - Accounting for Conservation Costs (Revised DRAFT)_February 17 2017.pdf (112 KB)
https://ctsbigdcapmvs05.cihs.ad.gov.on.ca/EnterpriseVault/ViewMessage.asp?VaultId=1FDBBEE0C5A97944D942FA2B3EB38945A1110000ctsbigdcapmvs01&SavesetId=201706308855809~201705291812550000~Z~D13F405C1E73C776BF0CD946EC9C51D1&AttachmentId=1IESO - Accounting for Conservation Costs (Revised DRAFT)_February 17 2017.pdf

FW_ E&Y - IESO - Accounting for Conservation Costs - Revised DRAFT.rtf

From: Petsche, Nadine (TBS) []
To: LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]
CC: Veinot, Cindy (TBS) (Cindy.Veinot@ontario.ca) [Cindy.Veinot@ontario.ca]
Subject: FW: E&Y - IESO - Accounting for Conservation Costs - Revised DRAFT
Date: Monday, May 29, 2017 14:12:55
Attachment 1: IESO - Accounting for Conservation Costs (Revised DRAFT)_February 17 2017.pdf

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Lee Anne/Suzie/Blake,

Just wanted to make sure that you also had a copy of this draft memo for reference. I don't have a copy of the final memo, but can request one if you feel that would be helpful.

Regards,

Nadine

IESO - Accounting for Conservation Costs (Revised DRAFT)_February 17 2017.pdf

Ernst & Young LLP
Ernst & Young Tower
222 Bay Street, PO Box 251
Toronto, ON M5K 1J7

Tel: +1 416 864 1234
Fax: +1 416 864 1174
ey.com

Mr. Phil Bosco
Manager, Technical Services Conservation & Corporate Relations
Independent Electricity System Operator
120 Adelaide Street West, Suite 1600
Toronto ON, M5H 1T1

February 17, 2017

Dear Mr. Bosco:

We have completed our engagement to assist you with understanding the accounting treatment for conservation and demand initiative costs. Our engagement was performed in accordance with our Statement of Work dated January 10, 2017 under our Agreement during the period January 13 to February 17, 2017. You requested that we amend the original Report to include consideration of the application of the US Governmental Accounting Standards Board guidance. This Report replaces the previously issued report dated January 19, 2017.

Results of our work

Based on our procedures performed during the period January 13 to February 17, 2017, we prepared the attached Report for your use. Management of the Company reviewed these documents for completeness, accuracy and reasonableness. Decisions regarding the Company's application of CPA Public Sector Accounting Standards ("PSAS") were made solely by the Company's management.

Background

Under the Statement of Work, our scope of services was to assist you with understanding the accounting for conservation incentive costs. The Ministry of Energy is currently exploring a potential financing arrangement for conservation and demand management ("CDM") initiative programs that would see the IESO borrow funds from the Ontario Financing Authority ("OFA") to fund eligible CDM costs.

Scope of our work

In connection with our engagement, we held discussions with and made inquiries of the IESO's personnel. We also obtained and read the Company's financial statements, certain limited accounting records, and certain computations prepared by the IESO.

The procedures performed by us is included in our Statement of Work. There were no differences between the procedures set forth in this Report and those set forth in our Statement of Work.

Our work was performed under the direction of yourself and was based on inquiries of, and discussions with, you. We have not sought to confirm the accuracy of the data or the information and explanations provided by management.

We did not provide a professional opinion on the application of accounting principles pursuant to Chartered Professional Accountants of Canada ("CPA Canada") or the AICPA's Standards for Reports on the Application of Accounting Principles (as amended and interpreted).

DRAFT

The procedures that we performed were advisory in nature and do not constitute an audit or review in accordance with CPA Canada, PCAOB or AICPA auditing or attestation standards, nor do they constitute an examination of prospective financial statements in accordance with standards established by the American Institute of Certified Public Accountants. Additionally, the procedures do not address the effectiveness of internal controls over financial reporting under National Instrument 52-109 issued by the Canadian Securities Administrators or Section 404 of the Sarbanes-Oxley Act. Accordingly, we express no opinion or any other form of assurance on the historical or prospective financial statements, management representations or other data of the Company included in or underlying the accompanying information. While we believe the information obtained is substantially responsive to your request, we are not in a position to assess its sufficiency for your purposes. In addition, we have no responsibility to update the Report for events or circumstances occurring after the date of the Report.

Our work has been limited in scope and time, and more detailed procedures may reveal issues that this engagement has not.

Restrictions on the use of our Report

This Report is intended solely for the information and use of the management of the IESO, and is not intended to be and should not be used by anyone other than these specified parties. EY therefore assumes no responsibility to any user of the Report other than IESO. Any other persons who choose to rely on our Report do so entirely at their own risk.

We appreciate the cooperation and assistance provided to us during the course of our work. If you have any questions, please call Nadira Singh at (416) 943-3896 or me at (416) 943-2094.

Sincerely,

[Signature will be inserted when report is final]

Shannon O'Mahony, CPA, CA
Partner

DRAFT

IESO – Accounting for Conservation Costs

i. Background

The Independent Electricity System Operator ("IESO") is in the process of evaluating the accounting implications of a potential change to the recovery method of conservation costs.

The IESO is a non-profit entity, owned by the government of Ontario, and is governed by the Ministry of Energy ("Minister") and operates pursuant to a license granted by the Ontario Energy Board ("OEB"). As part of the IESO's operations, it is required to submit its proposed expenditures, revenue requirements and fees for the coming year to the OEB for review and approval. The submission may be made only with the approval of the IESO business plan by the Ministry of Energy.

As part of the IESO's operations, it facilitates conservation and demand management ("CDM") initiatives in Ontario, whereby local distribution companies ("LDC") incur expenditures in accordance with the CDM guidelines prescribed by the IESO. The IESO then reimburses the LDCs on a dollar-for-dollar basis. Currently, the IESO is reimbursed through the global adjustment mechanism in the fiscal year in which the expenditure is incurred as outlined in Ontario regulation 429/04 Adjustments under the Act and as provided by the Minister per the directive dated March 31, 2014, *2015-2020 Conservation First Framework.* The IESO receives this reimbursement from the LDCs who collect the global adjustments directly from ratepayers. The calculation of the global adjustment is the difference between the Hourly Ontario Electricity Price ("HOEP") and:

- Ontario Power Generation's regulated nuclear and hydro generation;
- IESO (including former Ontario Power Authority) contracts with generators and suppliers of conservation;
- Contracted rates administered by the Ontario Electricity Financial Corporation paid to existing generators.

The Ministry of Energy has granted authority to the IESO to collect the CDM incentive costs as part of the global adjustment.

The Ministry of Energy is currently exploring a potential financing arrangement for CDM programs that would see the IESO borrow funds from the Ontario Financing Authority ("OFA") to fund eligible CDM costs. This loan would be recognized as a financial liability by IESO. The CDM costs would then be recovered through the global adjustment over an extended period of time. The accounting alternatives for the underlying CDM costs and the loan interest in accordance with Public Sector Accounting Standards is discussed herein.

ii. Accounting guidance

Presently, the IESO accounts for CDM costs as an asset at the time an invoice is received from the entity that has incurred the CDM expenditure eligible for reimbursement (e.g. DR Asset; CR Accounts Payable to the LDC). At the end of each month, the IESO takes the sum of the amounts requested for reimbursement and includes this sum in its submission in the calculation of the total global adjustment for the month. Once the global adjustment is calculated by the IESO, the amount is charged to customers by the LDCs (on the IESO's behalf) and the IESO receives the funds in the subsequent month.

To address the accounting considerations of the inclusion of the CDM costs in the global adjustment over an extended recovery period (that will be determined by the Minister), the IESO must consider the guidance prescribed by the CPA Public Sector Accounting Standards ("PSAS"). PSAS does not provide specific

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guidance to address the accounting for assets that will be recovered through rates from various customers over future years

In the absence of PSAS that specifically applies to a transaction, professional judgement is required to apply an appropriate accounting policy that is consistent with primary sources and financial statement concepts of PSAS. Other accounting pronouncements may be useful but are not required to be consulted as noted in paragraphs 18 to 22 of PS 1150 *Generally accepted accounting principles* which addresses other sources that may be referenced:

> *.19 Pronouncements issued by other bodies authorized to issue accounting standards may be useful sources to consult. For example, accounting pronouncements published with the authority of the Canadian Accounting Standards Board (AcSB), International Accounting Standards Board (IASB), US Federal Accounting Standards Advisory Board (FASAB), US Governmental Accounting Standards Board (GASB), or International Public Sector Accounting Standards Board (IPSASB) are often important sources to consult on matters not covered by primary sources of GAAP or for assistance in applying a primary source of GAAP to specific circumstances.*
>
> *.20 When a public sector reporting entity chooses to consult a source described in paragraph PS 1150.19, it applies professional judgment and evaluates the source in the context of the relative manner in which the standard setter requires its pronouncements to be applied, as well as in the context of the related pronouncement. When an accounting standard setter does not have a conceptual framework that is similar to the concepts referred to in paragraph PS 1150.05(b), the public sector reporting entity needs to ensure that the selected source is consistent with those concepts.*

Consequently, to evaluate the accounting considerations of the accounting for CDM costs being evaluated by the IESO, other sources of GAAP may be considered. The following sources of GAAP were reviewed to determine whether specific guidance was provided addressing the recognition of assets related to regulatory activities:

1) Accounting Standards for Private Enterprises (“ASPE”) as issued by the Canadian Accounting Standards Board (“AcSB”)/ CPA provides the following guidance:

   AcG 19 *Disclosures by entities subject to rate regulation* provides guidance related to the presentation of financial information related to entities with rate regulated activities *when a separate asset or liability has been recognized solely as a result of the effects of rate regulation (AcG 19* paragraph 7(c)).

2) The guidance issued by the US Governmental Accounting Standards Board (“US GASB”) addresses accounting for regulated operations in GASB S62—*Codification of Accounting and Financial Reporting Guidance Contained in Pre-November 30, 1989 FASB and AICPA* Pronouncements. The GASB S62 standard provides clear guidance that regulatory assets may be recognized to the extent certain criteria are met.

3) US GAAP, as issued by the Financial Accounting Standards Board (“FASB”) does provide guidance to address such activities in ASC 980 *Regulated Operations,* addresses the recognition of regulatory assets.

4) IFRS as issued by the IASB no longer precludes the recognition of regulatory assets and liabilities a rate-regulated entity’s financial statements. Rather, the IASB issued a standard, IFRS 14 *Regulatory deferral accounts*, which provides the following relevant guidance:

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Paragraph 2(a) of IFRS 14 notes that the objective of the Standard was to:

> *limit changes to the accounting policies that were applied in accordance with previous generally accepted accounting principles (previous GAAP) for regulatory deferral account balances, which are primarily related to the presentation of these accounts;*

Additionally, paragraph 10 of IFRS 14 notes:

> *Paragraphs 11–12 of IAS 8 specify sources of requirements and guidance that management is required or permitted to consider in developing an accounting policy for an item, if no relevant Standard applies specifically to that item. This Standard exempts an entity from applying paragraph 11 of IAS 8 to its accounting policies for the recognition, measurement, impairment and derecognition of regulatory deferral account balances. Consequently, entities that recognise regulatory deferral account balances, either as separate items or as part of the carrying value of other assets and liabilities, in accordance with their previous GAAP, are permitted to continue to recognise those balances in accordance with this Standard through the exemption from paragraph 11 of IAS 8, subject to any presentation changes required by paragraphs 18–19 of this Standard.*

This IFRS was issued in response to North American entities potentially transitioning to IFRS, because there was a lack of guidance that permitted the continued separate accounting treatment for regulatory assets and liabilities recognized as a result of rate regulated activities. The guidance above, permits rate-regulated entities upon first-time adoption of IFRS to continue to recognize regulatory assets and liabilities in accordance with the framework that was applied previously (i.e. generally, entities recognized assets in accordance with the guidance of ASC 980 (US entities) or AcG 19 (Canadian entities)).

Given the above-noted guidance, an entity can look to the other accounting frameworks while also ensuring that when judgment is applied, the resulting accounting policy is not inconsistent with the accounting guidance of PSAS. For this reason, the evaluation of accounting considerations in the development of the proposed accounting treatment for the recovery of CDM costs, is considered in the following order:

1) Can an asset be recognized in accordance with PS 1000 *Financial statement concepts* as prescribed by PSAS?

2) Can the IESO reference the guidance of other accounting frameworks to support the recognition of the reimbursement of CDM costs as an asset?

3) Failing the above, is the most appropriate accounting treatment to recognize the reimbursement of CDM costs as an expense of the current period and simply recognize revenue in future periods when the cost is recovered?

1. Qualification of reimbursement of CDM costs as an asset in accordance with PSAS:

Although PSAS does not specifically address the recognition of costs incurred that will be recovered through regulatory operations in future periods, this does not result in the conclusion that such costs cannot be recognized as an asset. In particular, paragraph 5 of PS 1150 notes:

> *.05 When the primary sources of GAAP do not deal with the accounting and reporting in financial statements of transactions or events encountered by the public sector reporting entity, or*

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additional guidance is needed to apply a primary source to specific circumstances, the selection of an appropriate accounting policy requires the exercise of professional judgment. In these circumstances, a public sector reporting entity should adopt accounting policies and disclosures that are consistent with:

(a) the primary sources of GAAP; and

(b) the application of the concepts described in FINANCIAL STATEMENT CONCEPTS, Section PS 1000.

In this case, the IESO would consider whether an asset could be supported by the guidance noted in PS 1000 *Financial statement concepts*, as follows:

Recognition of an asset

Paragraphs 35-37:

.35 Assets are economic resources controlled by a government as a result of past transactions or events and from which future economic benefits are expected to be obtained.

.36 Assets have three essential characteristics:

a) they embody future economic benefits that involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows, or to reduce cash outflows;

b) the public sector entity can control the economic resource and access to the future economic benefits; and

c) the transaction or event giving rise to the public sector entity's control has already occurred. [Former paragraph PS 1000.36 retained in Archived Pronouncements.]

.37 An item is not an asset of a government if it lacks one or more of the essential characteristics listed in the preceding paragraph. Thus, for example, an item does not qualify as an asset of a government if the item involves:

(a) no future economic benefit;

(b) future economic benefit, but the government cannot obtain it; or

(c) future economic benefit that the government may obtain, but the events or circumstances that give the government control of the benefit have not yet occurred.

In evaluating the costs incurred by the IESO to reimburse the LDCs, an argument could be made to support the recognition of the costs as an asset as the costs meet the three essential characteristics prescribed by PS 1000. Particularly:

- ***Future economic benefits*** – the CDM costs incurred by the IESO are made to reimburse eligible expenditures from market participants or third-party delivery agents (e.g. an LDC). The IESO can expect to generate future economic benefits from the reimbursement of these expenditures because: a) it has a license with the OEB to operate as a system operator and recover reasonable costs incurred (as noted below) and b) it is mandated by the Minister to charge ratepayers the global adjustment, which results in future cash inflows to recover the reimbursed costs.

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Paragraph 13 of PS 3210 *Assets* notes:

.13 *The future economic benefits embodied in an asset may also be in the form of generating future cash inflows. Cash inflows benefit the public sector entity because cash can be used to purchase or to provide goods and services, redistribute wealth or settle liabilities. Benefits in the form of cash inflows relate to resources, such as loans receivable, inventory for resale and portfolio investments. Also, some public sector resources generate cash inflows because they have user fees associated with them.*

The global adjustment that is charged to ratepayers and calculated by the IESO is not subject to the review or approval of the Ontario Electricity Board ("OEB"). Accordingly, there is limited risk with respect to the IESO's ability to recover the reimbursement costs incurred – even if the costs are recovered over an extended period of time, as the OEB does not have the ability to reject the recovery of these costs. While risk is limited, the recovery of the CDM expenditures reimbursed by the IESO is dependent on future transactions with electricity customers.

Also, while not specifically governed by the OEB, the IESO's license with the OEB provides that reasonable costs of its activities will be recovered:

> 13 *Fees and Charges*
>
> 13.1 *The Licensee may impose fees and charges to recover the cost of its activities in accordance with an order of the Board, or as permitted by law.*
>
> 14 *Books of Accounts and Financial Reporting*
>
> 14.3 *Unless otherwise provided by law, the Licensee shall, no less than 60 days before the beginning of the Licensee's fiscal year submit the Licensee's proposed expenditure and revenue requirements for the following fiscal year and the fees it proposes to charge during that year to the Board for review and approval. The Licensee's submission shall include a copy of the Licensee's annual business plan for the fiscal year as approved by the Minister under section 24 of the Electricity Act.*

Through its mandate from the Ministry of Energy, which provides the IESO with the right to recover costs, in combination with the IESO's license with the OEB, to the extent that CDM costs are incurred (past transaction) in accordance with the IESO's mandate from the Ministry of Energy, these cash inflows (and thus, future economic benefits) are expected to be recovered.

- ***Public sector entity control's economic resource and access to economic benefits*** – The IESO controls access to the future cash inflows that are generated from the incurrence of the CDM expenditures, as it is the IESO who has the mandate from the Ministry of Energy to incur these CDM costs and it is also the IESO who has the directive from this Minister to recover the CDM costs through the global adjustment mechanism charged to rate payers. Specifically, the Electricity Act 1998 notes the following:

> ***Electricity pricing to reflect costs***
>
> ***IESO to make adjustments***
>
> *25.33 (1) The IESO shall, through its billing and settlement systems, make adjustments in accordance with the regulations that ensure that, over time, payments by classes of market participants in Ontario that are prescribed by regulation reflect,*
>
> *a. amounts paid to generators, the Financial Corporation and distributors, whether the amounts are determined under the market rules or under section 78.1, 78.2 or 78.5 of the Ontario Energy Board Act, 1998; and*

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b. *amounts paid to entities with whom the IESO has a procurement contract, as determined under the procurement contract. 2014, c. 7, Sched. 7, s. 8 (1).*

Paragraph 16 of PS 3210 provides additional guidance regarding control of an economic resource and access to future economic benefits, which notes that the public entity:

a) *Can benefit from the economic resource through its capacity to provide goods and services, to provide future cash inflows or to reduce cash outflows;*

b) *Can deny or regulate access to those benefits by others; and*

c) *Is exposed to the risks associated with the economic resource.*

As outlined previously, the IESO has control over the economic resource, as it is the sole entity that is entitled to the cash inflows from ratepayers[1]. Furthermore, while risk is limited, the IESO is exposed to the risk associated with the economic resource – as the Ministry of Energy could change their directive or calculation of the global adjustment, or there could be a change in the economic environment (as discussed above) and thus, alter the ability of the IESO to recover the costs.

- ***Transaction or event giving rise to public sector entity's control has already occurred*** – When evaluating whether a transaction or event gives rise to control, paragraphs 26 and 27 of PS 3210 provides helpful guidance:

  The past transaction or event that gives rise to control of an economic resource resulting from exchange agreements or contracts usually occurs at the point of exchange. This arises when substantially all the benefits and risks of ownership have been transferred to the public sector entity and normally coincides with the disbursement of funds, exchange of other assets or assumption of liabilities.

  Meeting the eligibility criteria under an authorized transfer often determines the past transaction or event giving rise to control of an economic resource in non-exchange contracts or agreements. Shared cost agreements (reimbursement arrangements) are an example where the control of an economic resource arises when the recipient incurs eligible expenditures.

  Consistent with the guidance in paragraph 26, control over the economic benefits of the IESO's reimbursement via the global adjustment mechanism from the LDC occurs once the IESO has distributed funds to the LDC. At this point in time, the IESO has incurred a cash outflow for which it is entitled to recover through the global adjustment as prescribed by the Ministry of Energy and the Electricity Act 1998.

Based on the characteristics, as prescribed by PS 1000 and the additional guidance of PS 3210, the cash outflows disbursed by the IESO to reimburse CDM costs to LDCs could meet the definition of an asset in PS 1000.

In accordance with the principles of PSAS, there are generally two types of assets that the IESO may consider recognizing 1) financial asset; or 2) non-financial asset. To classify the asset, it must fall into one of the two categories.

[1] Although the administrative framework provides that LDCs invoice the global adjustment to ratepayers on the IESO's behalf, the IESO has sole entitlement to the cash inflows that result from the global adjustment. All global adjustment amounts collected by LDCs are required to be submitted to the IESO.

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Financial asset

.39 ***Financial assets*** *are assets that could be used to discharge existing liabilities or finance future operations and are not for consumption in the normal course of operations.*

.40 *A financial asset is any asset that is:*

a) *cash;*

b) *a realizable asset that is convertible to cash;*

c) *a contractual right to receive cash or another financial asset from another party;*

d) *a contractual right to exchange financial instruments with another party under conditions that are potentially favourable to the government;*

e) *an equity instrument of another entity;*

f) *an investment in a government business enterprise or government business partnership;*

g) *a financial claim on an outside organization or individual; or*

h) *an inventory or item for sale that meets the criteria in FINANCIAL STATEMENT PRESENTATION, paragraph PS 1201.055.*

Based on the guidance of PS 1000, paragraphs 39 and 40, it may be difficult to substantiate the IESO's reimbursement of costs is a financial asset. The costs incurred by the IESO creates a right to recover costs as mandated by the Ministry of Energy. However, there is no contract with a specific ratepayer who ultimately reimburses the IESO for the costs incurred if the IESO calculates the global adjustment (i.e. its recovery mechanism) and this amount is then disbursed to all ratepayers in Ontario (regardless of whether an individual ratepayer benefited from the cost incurred). Furthermore, to the extent that a current ratepayer moves outside of Ontario, it could in fact result in a new ratepayer having to incur the additional charge to permit the IESO to recover its costs. It is difficult to argue that there is a contractual right to receive cash from another party, because legislation and the regulatory framework result in the right to future cash inflows from a pool of ratepayers.

An alternative view may be that the LDCs represent the counterparty to the IESO whereby the LDC is responsible for paying the IESO the global adjustment whether or not payment is ultimately received from the ratepayer. In this circumstance, the IESO can argue that a financial asset should be recognized for its contractual right to receive cash is from each specific LDC. An assessment of who is obligated for the global adjustment (e.g. an assessment of whether the LDC is the agent facilitating cash collection or is the entity obligated to pay the amount) would need to support this alternative.

Non-Financial asset

.41 *Non-financial assets include tangible capital assets, and other assets such as prepaid expenses and inventories of supplies.*

.42 *Non-financial assets are acquired, constructed or developed assets that do not normally provide resources to discharge existing liabilities, but instead:*

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(a) are normally employed to deliver government services;

(b) may be consumed in the normal course of operations; and

(c) are not for sale in the normal course of operations.

Another accounting treatment could be a 'non-financial asset' in accordance with paragraphs 41 and 42 of PS 1000. This accounting treatment may be supportable under the PSAS guidance as an 'other asset'. The reimbursement of CDM costs, results in the incurrence of an upfront cost in which the entity will benefit from economic benefits over a period of time.

Subsequent measurement of a non-financial asset

To the extent that the recognition of an asset is supported under the framework discussed above, the entity would then be required to draw the asset down over the recovery period (i.e. as cash is collected from ratepayers through the global adjustment mechanism). The presentation of the 'draw' down of the asset is dependent upon the IESO's accounting for the global adjustment. To the extent that funds received from the global adjustment are recognized in revenue rather than to directly reduce the asset then the IESO might consider recognizing the draw-down of the asset as a reduction in revenues. Nonetheless, depending on the IESO's view of its role (i.e. principal versus agent) or its view of the nature of costs incurred, an alternative accounting treatment may result. For instance, if the IESO is an agent, then it may reduce the asset balance directly for those amounts collected by way of the global adjustment rather than recording two separate entries for the recognition of revenue (i.e. global adjustment) and reduction of revenue (i.e. over the recovery period). At this time, the IESO has not completed a principal versus agency assessment.

Demonstrating that the CDM costs will meet the definition of a financial or non-financial asset is challenging and the IESO may not be able to support either view and should consider if referencing another accounting framework to inform an accounting policy for these costs may be required as discussed below.

2. Reference to other accounting frameworks:

As previously noted above, other accounting frameworks as issued by the AcSB, GASB, FASB and IASB provide accounting guidance related to the recognition of expenditures as an asset due to rate regulated operations. When referencing the other frameworks, it is important that the costs qualify as an asset under the framework set forth by PSAS to ensure that the principles of PSAS are not violated, and only then can reference to other frameworks be made to record the reimbursement of costs as an asset.

As the IASB and AcSB do not provide detailed guidance, the IESO could explore whether the costs incurred meet the specific criteria established by GASB S62 as note below; however consideration will need to be given to the consistent application of an accounting policy to all similar existing rate regulated assets and whether an established accounting policy is already in place that would require criteria to be met to change this policy:

476. Paragraphs 476–500 may be applied to activities reported in business-type activities that have regulated operations that meet all of the following criteria:

a. The regulated business-type activity's rates for regulated services provided to its customers are established by or are subject to approval by an independent, third-party regulator or by its own governing board empowered by statute or contract to establish rates that bind customers.

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b. The regulated rates are designed to recover the specific regulated business-type activity's costs of providing the regulated services.

c. In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume that rates set at levels that will recover the regulated business-type activity's costs can be charged to and collected from customers. This criterion requires consideration of anticipated changes in levels of demand or competition during the recovery period for any capitalized costs.

To the extent that the criteria of paragraph 476 of GASB S62 are met, paragraph 480 then provides the following guidance:

480. Rate actions of a regulator can provide a business-type activity with reasonable assurance of the existence of an asset. A regulated business-type activity should capitalize all or part of an incurred cost that otherwise would be charged to expense if both of the following criteria are met:

a. It is probable that future revenue in an amount at least equal to the capitalized cost will result from inclusion of that cost in allowable costs for rate-making purposes.

b. Based on available evidence, the future revenue will be provided to permit recovery of the previously incurred cost rather than to provide for expected levels of similar future costs. If the revenue will be provided through an automatic rate-adjustment clause, this criterion requires that the regulator's intent clearly be to permit recovery of the previously incurred cost.

By referencing the guidance of GASB S62, the IESO must first establish that it meets the criteria of paragraph 476. In doing so, the IESO should consider:

a. Established rates for regulated services (GASB S62.474 (a)) - The IESO's business activity rates are regulated services subject to approval. In this particular instance, the IESO's CDM expenditures are governed by legislation, Electricity Act 1998 as noted above, and by its own governing board, being, the Ministry of Energy. The Ministry of Energy has established the calculation of the global adjustment mechanism[2], which in turn, is charged to the ultimate customer who consumes the energy.

b. Regulated rates are designed to recover specific costs (GASB S62.474 (b)) - One element of the global adjustment mechanism is designed to recover the CDM expenditures that the IESO reimburses to the respective LDCs. As the IESO's regulated business activities support the LDCs delivery of energy to customers, these costs form an integral part of the IESO's regulated services to support the transmission and distribution of energy in Ontario.

c. Demand for regulated activities results in reasonable assumption that established rates will be collected and will recover cost of activities (GASB S62.474(c)) - Given that the structure of the IESO is a not-for-profit entity governed by the Electricity Act of 1998 and regulated by the Ontario Energy Board to support the transmission and distribution of energy to customers in Ontario, rates approved to be charged to customers are designed to recover the IESO's costs. Since the reimbursement of CDM expenditures is a program initiated and mandated by the Ministry of Energy, an entity that also controls the Ontario Energy Board, the IESO would need to examine and support whether the CDM expenditures will be recovered through cash inflows from customers through the global adjustment mechanism. For example, the historic demand and dependency and projected demand for electricity could be used to support a judgment or assertion by the IESO that there is no significant risk that future demand levels decline and diminish to the extent that IESO would not be able to recover the reimbursement of CDM expenditures through rates (i.e. global adjustment mechanism).

[2] Section 1.7 of the directive from the Ministry of Energy dated March 31, 2014 titled *2015-2020 Conservation First Framework* provides that the Ontario Power Authority (now merged into the IESO) may "*recover payments made under the Province-Wide Distributor CDM Programs and Local Distributor CDM Programs from the Global Adjustment Mechanism up to the budget established…"*

If the IESO can demonstrate that CDM expenditures meet the criteria as noted above, the fact pattern may support recognition of a regulatory asset in accordance with paragraph 480 of GASB S62. The IESO could consider:

a. Probability of future revenues (GASB S62.480 (a)) - The global adjustment mechanism explicitly includes recovery of the CDM expenditures. The directive from the Ministry of Energy could support the IESO's assertion that it is at least probable that future revenue will be generated in an amount at least equal to the capitalized cost related to the CDM expenditures. The IESO will need to assess if the global adjustment is considered future revenue (i.e. as part of the analysis of principal versus agent).

b. Recovery of previously incurred costs (GASB S62.480 (b)) - The IESO recovers the CDM expenditures through the global adjustment mechanism. The calculation of the portion of the global adjustment mechanism that relates to the CDM expenditures is determined by the amount that the IESO has approved to reimburse the LDC (e.g. the LDC requests reimbursement for costs it has *incurred* related to the CDM Requirement[3] and if all criteria are met, the IESO then approves the costs for reimbursement). For this reason, there is evidence that the future revenue earned from the global adjustment mechanism permits the recovery of previously incurred costs (i.e. not future costs).

Using the GASB S62 accounting guidance, and the related considerations noted above, the IESO may be able to reference GASB S62 to support the recognition of CDM expenditures as an asset by way of the GAAP hierarchy prescribed by PS 1150, paragraph 19, which explicitly references GASB as a secondary source of GAAP in the event that PSAS does not address a particular transaction. However, the IESO would also need to consider whether it is appropriate to refer to the GASB. First, consideration should be given to whether the GASB accounting guidance to capitalize rate regulated assets is consistent with the primary sources and financial statement concepts of PSAS. This may be challenging as it was noted in a paper prepared by the PSAB Conceptual Task Force *Consultation Paper 2: Measuring Financial Performance in Public Sector Financial Statements,* that the existing model in the PSA Handbook takes predominately an asset and liability view whereas standards set by the GASB is a financial statement presentation model based on a revenue and expense view. That said, the definition of an asset is similar under both the PSAS and GASB standards (GASB Concepts Statement 4[4]) and because rate regulated assets are not classified as deferred outflows of resources (GASB S65) but rather assets, it may be possible to use the GAAP hierarchy to refer to GASB to formulate an accounting policy. GASB S65 *Items Previously Recognized as Assets and Liabilities* was applicable for periods beginning after December 15, 2012. In paragraph 48 of GASB S65, rate regulated assets retained the definition of an asset and these assets were not required to be reclassified as a deferred outflow which is defined as the consumption of net assets by the government that is applicable to a future period. Secondly, any existing policy that the IESO currently applies to any other assets that could be considered rate regulated assets would require an evaluation of whether an accounting policy change from expensing to one that capitalizes rate regulated assets meets the criteria that the new accounting policy results in a more appropriate presentation of events or transactions in the IESO's financial statements (PS 2120, paragraph 2).

An alternative view is that it is inappropriate to reference GASB S62 because GASB has provided a special accommodation to permit the capitalization of rate regulated assets when they would otherwise be expensed. If an entity that applies PSAS, determines that the definition of an asset under PS 1000 is not met then for the IESO to use a special accommodation in another framework to avoid expensing the CDM costs would not be appropriate.

[3] The Ministry of Energy issued a CDM Directive as per its letter re: 2015-2020 Conservation First Framework, which instructed the Ontario Energy Board to amend the license of each licensed electricity distributor to add a condition that specifies the distributor would make CDM programs available to customers in its licensed area. The CDM programs are required to achieve reductions in electricity consumption. As part of this, the distributor is required to make province-wide CDM programs, funded by the OPA (now the IESO) available to all customers in its licensed service area.

[4] GASB Concepts Statement 4, paragraph 8, defines assets as '*resources with present service capacity that the government presently controls*.'

If the IESO does adopt an accounting policy to capitalize the CDM costs there are examples of entities that capitalize similar rate regulated assets that prepare their financial statements in accordance with GASB in the United States. For instance, the Long Island Power Authority ("LIPA") is an organization that is responsible for supplying electricity to customers within a specified service area. LIPA recognizes regulatory assets on its statement of net position in accordance with the guidance of GASB S62.

The FASB also includes accounting guidance related to the accounting for regulated activities in ASC 980-340-25-1 as follows:

> *Rate actions of a regulator can provide reasonable assurance of the existence of an asset. An entity shall capitalize all or part of an incurred cost that would otherwise be charged to expense if both of the following criteria are met:*
>
> *a) It is probable (as defined in Topic 450) that future revenue in an amount at least equal to the capitalized cost will result from inclusion of that cost in allowable costs for rate-making purposes.*
>
> *b) Based on available evidence, the future revenue will be provided to permit recovery of the previously incurred cost rather than to provide for expected levels of similar future costs. If the revenue will be provided through an automatic rate-adjustment clause, this criterion requires that the regulator's intent clearly be to permit recovery of the previously incurred cost.*
>
> *A cost that does not meet these asset recognition criteria at the date the cost is incurred shall be recognized as a regulatory asset when it does meet those criteria at a later date.*

The guidance provided by US GAAP notes that to the extent that a regulator provides reasonable assurance of the existence of an asset, then the entity should capitalize the incurred cost that would have otherwise been expensed. In this case, the Ministry of Energy has provided that the IESO will be able to recover its costs through the global adjustment mechanism[5]. As a result, the IESO can support meeting criterion a) of 980-340-25-1 that it is probable that future revenue will equal the cost capitalized as the IESO will include those reimbursed CDM costs in its calculation of the global adjustment charged to rate payers. Furthermore, the IESO can support criterion b) is met, because the future recovery relates only to those costs paid by the IESO to reimburse eligible CDM costs.

To further support this accounting position, there are system operators (i.e. similar to the IESO) in the United States who recognize regulatory assets. As an example, ISO New England Inc., a not-for-profit organization that regulates the flow of transactions in accordance with the Federal Energy Regulatory Commission ("FERC") recognizes regulatory assets for those costs incurred subject to rate recovery mechanisms. The ISO New England Inc. operates in a very similar manner to the IESO, in that both organizations are government regulated, system operators who manage the flow of electricity transactions and are not-for-profit. While ISO New England Inc. prepares its financial statements in accordance with US GAAP, rather than GASB, ISO New England Inc.'s treatment of regulatory items is indicative that the capitalization of expenditures related to regulated activities is not an unreasonable treatment for entities of this nature.

As the application of the hierarchy is a choice and not a requirement, another entity with the same fact pattern could account for the recovery of CDM expenditures differently.

Subsequent measurement of asset

To the extent that the recognition of an asset is supported under one of the frameworks discussed above, the entity would then draw the asset down over the recovery period (i.e. as cash is collected from ratepayers

[5] Section 1.7 of the directive from the Ministry of Energy dated March 31, 2014 titled *2015-2020 Conservation First Framework* provides that the Ontario Power Authority (now merged into the IESO) may "*recover payments made under the Province-Wide Distributor CDM Programs and Local Distributor CDM Programs from the Global Adjustment Mechanism up to the budget established…"*

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through the global adjustment mechanism). The presentation of the draw down of the asset is dependent upon the IESO's accounting for the global adjustment. To the extent that funds received from the global adjustment are recognized in revenue then the IESO might consider recognizing the recovery of the asset as a reduction in revenues (contra revenue account). Nonetheless, depending on the IESO's view of its role (i.e. principal vs. agent) or its view of the nature of costs incurred, an alternative accounting treatment may result. For instance, if the IESO is an agent, then it may reduce the asset balance directly for those amounts collected by way of the global adjustment – rather than recording two separate entries for the recognition of revenue (i.e. global adjustment) and reduction of revenue (i.e. recovery of asset).

3. Expensing expenditures as incurred

Failing the ability to support that an asset can be recognized from alternatives (1) and (2) above, the IESO would be required to record the reimbursement of an LDC's eligible CDM expenditures as an expense in the period incurred.

Paragraphs 49 to 51 of PS 1000 provide the following guidance related to expenses:

.49 Expenses, including losses, are decreases in economic resources, either by way of decreases in assets or increases in liabilities, resulting from the operations, transactions and events of the accounting period.

.50 Expenses include the cost of economic resources consumed in and identifiable with the operations of the accounting period. For example, the cost of tangible capital assets is amortized to expenses as the assets are used in delivering government programs (see TANGIBLE CAPITAL ASSETS, Section PS 3150). Expenses do not include debt repayments or transfers to other governmental units in the government reporting entity.

.51 Losses can arise from peripheral or incidental transactions and events affecting a government. Such transactions and events include the disposition of assets purchased for use and not for resale, and the liquidation or refinancing of debt.

By referencing paragraphs 49 to 51, it can be noted that the reimbursement of an LDC's CDM expenditures do indeed result in an immediate decrease in the IESO's economic resources – as noted in paragraph 49. If it cannot be substantiated that an asset can be recorded due to the future economic benefits expected to be received through the global adjustment – these expenditures must be recorded as an expense.

4. Accounting for interest costs

The accounting for interest costs related to the loan being considered to finance the IESO's recovery of CDM costs incurred over an extended period of time would be dependent on how the Ministry of Energy proposes that the IESO will recover these costs. To the extent that the Minister revises the calculation of the global adjustment, then the IESO may be able to recognize an asset for these costs (i.e. see the arguments listed in sections (1) and (2) above).

If the Ministry of Energy proposes that the IESO recover the interest costs through the revenue requirement, the IESO will need to evaluate its ability to recover the interest costs through future rates. To the extent that the there is significant risk associated with recovering these costs, interest costs should be recognized as an expense in the current period. Otherwise, the IESO may be able to capitalize the interest costs as an asset by applying the arguments in sections (1) and (2) noted above.

If a recovery mechanism is not established for the interest costs related to the loan, the interest costs would be recognized as an expense of the current period.

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FW_ E&Y - IESO - Accounting for Conservation Costs - Revised DRAFT.rtf

From: Petsche, Nadine (TBS) []
To: LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]
CC: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
Subject: FW: E&Y - IESO - Accounting for Conservation Costs - Revised DRAFT
Date: Monday, May 29, 2017 14:12:55
Attachment 1: IESO - Accounting for Conservation Costs (Revised DRAFT)_February 17 2017.pdf

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Lee Anne/Suzie/Blake,

Just wanted to make sure that you also had a copy of this draft memo for reference. I don't have a copy of the final memo, but can request one if you feel that would be helpful.

Regards,

Nadine

IESO - Accounting for Conservation Costs (Revised DRAFT)_February 17 2017.pdf

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Mr. Phil Bosco
Manager, Technical Services Conservation & Corporate Relations
Independent Electricity System Operator
120 Adelaide Street West, Suite 1600
Toronto ON, M5H 1T1

February 17, 2017

Dear Mr. Bosco:

We have completed our engagement to assist you with understanding the accounting treatment for conservation and demand initiative costs. Our engagement was performed in accordance with our Statement of Work dated January 10, 2017 under our Agreement during the period January 13 to February 17, 2017. You requested that we amend the original Report to include consideration of the application of the US Governmental Accounting Standards Board guidance. This Report replaces the previously issued report dated January 19, 2017.

Results of our work

Based on our procedures performed during the period January 13 to February 17, 2017, we prepared the attached Report for your use. Management of the Company reviewed these documents for completeness, accuracy and reasonableness. Decisions regarding the Company's application of CPA Public Sector Accounting Standards ("PSAS") were made solely by the Company's management.

Background

Under the Statement of Work, our scope of services was to assist you with understanding the accounting for conservation incentive costs. The Ministry of Energy is currently exploring a potential financing arrangement for conservation and demand management ("CDM") initiative programs that would see the IESO borrow funds from the Ontario Financing Authority ("OFA") to fund eligible CDM costs.

Scope of our work

In connection with our engagement, we held discussions with and made inquiries of the IESO's personnel. We also obtained and read the Company's financial statements, certain limited accounting records, and certain computations prepared by the IESO.

The procedures performed by us is included in our Statement of Work. There were no differences between the procedures set forth in this Report and those set forth in our Statement of Work.

Our work was performed under the direction of yourself and was based on inquiries of, and discussions with, you. We have not sought to confirm the accuracy of the data or the information and explanations provided by management.

We did not provide a professional opinion on the application of accounting principles pursuant to Chartered Professional Accountants of Canada ("CPA Canada") or the AICPA's Standards for Reports on the Application of Accounting Principles (as amended and interpreted).

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The procedures that we performed were advisory in nature and do not constitute an audit or review in accordance with CPA Canada, PCAOB or AICPA auditing or attestation standards, nor do they constitute an examination of prospective financial statements in accordance with standards established by the American Institute of Certified Public Accountants. Additionally, the procedures do not address the effectiveness of internal controls over financial reporting under National Instrument 52-109 issued by the Canadian Securities Administrators or Section 404 of the Sarbanes-Oxley Act. Accordingly, we express no opinion or any other form of assurance on the historical or prospective financial statements, management representations or other data of the Company included in or underlying the accompanying information. While we believe the information obtained is substantially responsive to your request, we are not in a position to assess its sufficiency for your purposes. In addition, we have no responsibility to update the Report for events or circumstances occurring after the date of the Report.

Our work has been limited in scope and time, and more detailed procedures may reveal issues that this engagement has not.

Restrictions on the use of our Report

This Report is intended solely for the information and use of the management of the IESO, and is not intended to be and should not be used by anyone other than these specified parties. EY therefore assumes no responsibility to any user of the Report other than IESO. Any other persons who choose to rely on our Report do so entirely at their own risk.

We appreciate the cooperation and assistance provided to us during the course of our work. If you have any questions, please call Nadira Singh at (416) 943-3896 or me at (416) 943-2094.

Sincerely,

[Signature will be inserted when report is final]

Shannon O'Mahony, CPA, CA
Partner

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IESO – Accounting for Conservation Costs

i. Background

The Independent Electricity System Operator ("IESO") is in the process of evaluating the accounting implications of a potential change to the recovery method of conservation costs.

The IESO is a non-profit entity, owned by the government of Ontario, and is governed by the Ministry of Energy ("Minister") and operates pursuant to a license granted by the Ontario Energy Board ("OEB"). As part of the IESO's operations, it is required to submit its proposed expenditures, revenue requirements and fees for the coming year to the OEB for review and approval. The submission may be made only with the approval of the IESO business plan by the Ministry of Energy.

As part of the IESO's operations, it facilitates conservation and demand management ("CDM") initiatives in Ontario, whereby local distribution companies ("LDC") incur expenditures in accordance with the CDM guidelines prescribed by the IESO. The IESO then reimburses the LDCs on a dollar-for-dollar basis. Currently, the IESO is reimbursed through the global adjustment mechanism in the fiscal year in which the expenditure is incurred as outlined in Ontario regulation 429/04 Adjustments under the Act and as provided by the Minister per the directive dated March 31, 2014, *2015-2020 Conservation First Framework.* The IESO receives this reimbursement from the LDCs who collect the global adjustments directly from ratepayers. The calculation of the global adjustment is the difference between the Hourly Ontario Electricity Price ("HOEP") and:

- Ontario Power Generation's regulated nuclear and hydro generation;
- IESO (including former Ontario Power Authority) contracts with generators and suppliers of conservation;
- Contracted rates administered by the Ontario Electricity Financial Corporation paid to existing generators.

The Ministry of Energy has granted authority to the IESO to collect the CDM incentive costs as part of the global adjustment.

The Ministry of Energy is currently exploring a potential financing arrangement for CDM programs that would see the IESO borrow funds from the Ontario Financing Authority ("OFA") to fund eligible CDM costs. This loan would be recognized as a financial liability by IESO. The CDM costs would then be recovered through the global adjustment over an extended period of time. The accounting alternatives for the underlying CDM costs and the loan interest in accordance with Public Sector Accounting Standards is discussed herein.

ii. Accounting guidance

Presently, the IESO accounts for CDM costs as an asset at the time an invoice is received from the entity that has incurred the CDM expenditure eligible for reimbursement (e.g. DR Asset; CR Accounts Payable to the LDC). At the end of each month, the IESO takes the sum of the amounts requested for reimbursement and includes this sum in its submission in the calculation of the total global adjustment for the month. Once the global adjustment is calculated by the IESO, the amount is charged to customers by the LDCs (on the IESO's behalf) and the IESO receives the funds in the subsequent month.

To address the accounting considerations of the inclusion of the CDM costs in the global adjustment over an extended recovery period (that will be determined by the Minister), the IESO must consider the guidance prescribed by the CPA Public Sector Accounting Standards ("PSAS"). PSAS does not provide specific

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guidance to address the accounting for assets that will be recovered through rates from various customers over future years

In the absence of PSAS that specifically applies to a transaction, professional judgement is required to apply an appropriate accounting policy that is consistent with primary sources and financial statement concepts of PSAS. Other accounting pronouncements may be useful but are not required to be consulted as noted in paragraphs 18 to 22 of PS 1150 *Generally accepted accounting principles* which addresses other sources that may be referenced:

> *.19 Pronouncements issued by other bodies authorized to issue accounting standards may be useful sources to consult. For example, accounting pronouncements published with the authority of the Canadian Accounting Standards Board (AcSB), International Accounting Standards Board (IASB), US Federal Accounting Standards Advisory Board (FASAB), US Governmental Accounting Standards Board (GASB), or International Public Sector Accounting Standards Board (IPSASB) are often important sources to consult on matters not covered by primary sources of GAAP or for assistance in applying a primary source of GAAP to specific circumstances.*
>
> *.20 When a public sector reporting entity chooses to consult a source described in paragraph PS 1150.19, it applies professional judgment and evaluates the source in the context of the relative manner in which the standard setter requires its pronouncements to be applied, as well as in the context of the related pronouncement. When an accounting standard setter does not have a conceptual framework that is similar to the concepts referred to in paragraph PS 1150.05(b), the public sector reporting entity needs to ensure that the selected source is consistent with those concepts.*

Consequently, to evaluate the accounting considerations of the accounting for CDM costs being evaluated by the IESO, other sources of GAAP may be considered. The following sources of GAAP were reviewed to determine whether specific guidance was provided addressing the recognition of assets related to regulatory activities:

1) Accounting Standards for Private Enterprises (“ASPE”) as issued by the Canadian Accounting Standards Board (“AcSB”)/ CPA provides the following guidance:

   AcG 19 *Disclosures by entities subject to rate regulation* provides guidance related to the presentation of financial information related to entities with rate regulated activities *when a separate asset or liability has been recognized solely as a result of the effects of rate regulation (AcG 19* paragraph 7(c)).

2) The guidance issued by the US Governmental Accounting Standards Board (“US GASB”) addresses accounting for regulated operations in GASB S62—*Codification of Accounting and Financial Reporting Guidance Contained in Pre-November 30, 1989 FASB and AICPA* Pronouncements. The GASB S62 standard provides clear guidance that regulatory assets may be recognized to the extent certain criteria are met.

3) US GAAP, as issued by the Financial Accounting Standards Board (“FASB”) does provide guidance to address such activities in ASC 980 *Regulated Operations,* addresses the recognition of regulatory assets.

4) IFRS as issued by the IASB no longer precludes the recognition of regulatory assets and liabilities a rate-regulated entity’s financial statements. Rather, the IASB issued a standard, IFRS 14 *Regulatory deferral accounts*, which provides the following relevant guidance:

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Paragraph 2(a) of IFRS 14 notes that the objective of the Standard was to:

> *limit changes to the accounting policies that were applied in accordance with previous generally accepted accounting principles (previous GAAP) for regulatory deferral account balances, which are primarily related to the presentation of these accounts;*

Additionally, paragraph 10 of IFRS 14 notes:

> *Paragraphs 11–12 of IAS 8 specify sources of requirements and guidance that management is required or permitted to consider in developing an accounting policy for an item, if no relevant Standard applies specifically to that item. This Standard exempts an entity from applying paragraph 11 of IAS 8 to its accounting policies for the recognition, measurement, impairment and derecognition of regulatory deferral account balances. Consequently, entities that recognise regulatory deferral account balances, either as separate items or as part of the carrying value of other assets and liabilities, in accordance with their previous GAAP, are permitted to continue to recognise those balances in accordance with this Standard through the exemption from paragraph 11 of IAS 8, subject to any presentation changes required by paragraphs 18–19 of this Standard.*

This IFRS was issued in response to North American entities potentially transitioning to IFRS, because there was a lack of guidance that permitted the continued separate accounting treatment for regulatory assets and liabilities recognized as a result of rate regulated activities. The guidance above, permits rate-regulated entities upon first-time adoption of IFRS to continue to recognize regulatory assets and liabilities in accordance with the framework that was applied previously (i.e. generally, entities recognized assets in accordance with the guidance of ASC 980 (US entities) or AcG 19 (Canadian entities)).

Given the above-noted guidance, an entity can look to the other accounting frameworks while also ensuring that when judgment is applied, the resulting accounting policy is not inconsistent with the accounting guidance of PSAS. For this reason, the evaluation of accounting considerations in the development of the proposed accounting treatment for the recovery of CDM costs, is considered in the following order:

1) Can an asset be recognized in accordance with PS 1000 *Financial statement concepts* as prescribed by PSAS?

2) Can the IESO reference the guidance of other accounting frameworks to support the recognition of the reimbursement of CDM costs as an asset?

3) Failing the above, is the most appropriate accounting treatment to recognize the reimbursement of CDM costs as an expense of the current period and simply recognize revenue in future periods when the cost is recovered?

1. Qualification of reimbursement of CDM costs as an asset in accordance with PSAS:

Although PSAS does not specifically address the recognition of costs incurred that will be recovered through regulatory operations in future periods, this does not result in the conclusion that such costs cannot be recognized as an asset. In particular, paragraph 5 of PS 1150 notes:

> *.05 When the primary sources of GAAP do not deal with the accounting and reporting in financial statements of transactions or events encountered by the public sector reporting entity, or*

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additional guidance is needed to apply a primary source to specific circumstances, the selection of an appropriate accounting policy requires the exercise of professional judgment. In these circumstances, a public sector reporting entity should adopt accounting policies and disclosures that are consistent with:

(a) the primary sources of GAAP; and

(b) the application of the concepts described in FINANCIAL STATEMENT CONCEPTS, Section PS 1000.

In this case, the IESO would consider whether an asset could be supported by the guidance noted in PS 1000 *Financial statement concepts*, as follows:

Recognition of an asset

Paragraphs 35-37:

.35 Assets are economic resources controlled by a government as a result of past transactions or events and from which future economic benefits are expected to be obtained.

.36 Assets have three essential characteristics:

a) they embody future economic benefits that involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows, or to reduce cash outflows;

b) the public sector entity can control the economic resource and access to the future economic benefits; and

c) the transaction or event giving rise to the public sector entity's control has already occurred. [Former paragraph PS 1000.36 retained in Archived Pronouncements.]

.37 An item is not an asset of a government if it lacks one or more of the essential characteristics listed in the preceding paragraph. Thus, for example, an item does not qualify as an asset of a government if the item involves:

(a) no future economic benefit;

(b) future economic benefit, but the government cannot obtain it; or

(c) future economic benefit that the government may obtain, but the events or circumstances that give the government control of the benefit have not yet occurred.

In evaluating the costs incurred by the IESO to reimburse the LDCs, an argument could be made to support the recognition of the costs as an asset as the costs meet the three essential characteristics prescribed by PS 1000. Particularly:

- ***Future economic benefits*** – the CDM costs incurred by the IESO are made to reimburse eligible expenditures from market participants or third-party delivery agents (e.g. an LDC). The IESO can expect to generate future economic benefits from the reimbursement of these expenditures because: a) it has a license with the OEB to operate as a system operator and recover reasonable costs incurred (as noted below) and b) it is mandated by the Minister to charge ratepayers the global adjustment, which results in future cash inflows to recover the reimbursed costs.

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Paragraph 13 of PS 3210 *Assets* notes:

.13 *The future economic benefits embodied in an asset may also be in the form of generating future cash inflows. Cash inflows benefit the public sector entity because cash can be used to purchase or to provide goods and services, redistribute wealth or settle liabilities. Benefits in the form of cash inflows relate to resources, such as loans receivable, inventory for resale and portfolio investments. Also, some public sector resources generate cash inflows because they have user fees associated with them.*

The global adjustment that is charged to ratepayers and calculated by the IESO is not subject to the review or approval of the Ontario Electricity Board ("OEB"). Accordingly, there is limited risk with respect to the IESO's ability to recover the reimbursement costs incurred – even if the costs are recovered over an extended period of time, as the OEB does not have the ability to reject the recovery of these costs. While risk is limited, the recovery of the CDM expenditures reimbursed by the IESO is dependent on future transactions with electricity customers.

Also, while not specifically governed by the OEB, the IESO's license with the OEB provides that reasonable costs of its activities will be recovered:

> 13 *Fees and Charges*
>
> 13.1 *The Licensee may impose fees and charges to recover the cost of its activities in accordance with an order of the Board, or as permitted by law.*
>
> 14 *Books of Accounts and Financial Reporting*
>
> 14.3 *Unless otherwise provided by law, the Licensee shall, no less than 60 days before the beginning of the Licensee's fiscal year submit the Licensee's proposed expenditure and revenue requirements for the following fiscal year and the fees it proposes to charge during that year to the Board for review and approval. The Licensee's submission shall include a copy of the Licensee's annual business plan for the fiscal year as approved by the Minister under section 24 of the Electricity Act.*

Through its mandate from the Ministry of Energy, which provides the IESO with the right to recover costs, in combination with the IESO's license with the OEB, to the extent that CDM costs are incurred (past transaction) in accordance with the IESO's mandate from the Ministry of Energy, these cash inflows (and thus, future economic benefits) are expected to be recovered.

- ***Public sector entity control's economic resource and access to economic benefits*** – The IESO controls access to the future cash inflows that are generated from the incurrence of the CDM expenditures, as it is the IESO who has the mandate from the Ministry of Energy to incur these CDM costs and it is also the IESO who has the directive from this Minister to recover the CDM costs through the global adjustment mechanism charged to rate payers. Specifically, the Electricity Act 1998 notes the following:

> ***Electricity pricing to reflect costs***
>
> ***IESO to make adjustments***
>
> *25.33 (1) The IESO shall, through its billing and settlement systems, make adjustments in accordance with the regulations that ensure that, over time, payments by classes of market participants in Ontario that are prescribed by regulation reflect,*
>
> *a. amounts paid to generators, the Financial Corporation and distributors, whether the amounts are determined under the market rules or under section 78.1, 78.2 or 78.5 of the Ontario Energy Board Act, 1998; and*

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b. *amounts paid to entities with whom the IESO has a procurement contract, as determined under the procurement contract. 2014, c. 7, Sched. 7, s. 8 (1).*

Paragraph 16 of PS 3210 provides additional guidance regarding control of an economic resource and access to future economic benefits, which notes that the public entity:

a) *Can benefit from the economic resource through its capacity to provide goods and services, to provide future cash inflows or to reduce cash outflows;*

b) *Can deny or regulate access to those benefits by others; and*

c) *Is exposed to the risks associated with the economic resource.*

As outlined previously, the IESO has control over the economic resource, as it is the sole entity that is entitled to the cash inflows from ratepayers[1]. Furthermore, while risk is limited, the IESO is exposed to the risk associated with the economic resource – as the Ministry of Energy could change their directive or calculation of the global adjustment, or there could be a change in the economic environment (as discussed above) and thus, alter the ability of the IESO to recover the costs.

- ***Transaction or event giving rise to public sector entity's control has already occurred*** – When evaluating whether a transaction or event gives rise to control, paragraphs 26 and 27 of PS 3210 provides helpful guidance:

  The past transaction or event that gives rise to control of an economic resource resulting from exchange agreements or contracts usually occurs at the point of exchange. This arises when substantially all the benefits and risks of ownership have been transferred to the public sector entity and normally coincides with the disbursement of funds, exchange of other assets or assumption of liabilities.

  Meeting the eligibility criteria under an authorized transfer often determines the past transaction or event giving rise to control of an economic resource in non-exchange contracts or agreements. Shared cost agreements (reimbursement arrangements) are an example where the control of an economic resource arises when the recipient incurs eligible expenditures.

  Consistent with the guidance in paragraph 26, control over the economic benefits of the IESO's reimbursement via the global adjustment mechanism from the LDC occurs once the IESO has distributed funds to the LDC. At this point in time, the IESO has incurred a cash outflow for which it is entitled to recover through the global adjustment as prescribed by the Ministry of Energy and the Electricity Act 1998.

Based on the characteristics, as prescribed by PS 1000 and the additional guidance of PS 3210, the cash outflows disbursed by the IESO to reimburse CDM costs to LDCs could meet the definition of an asset in PS 1000.

In accordance with the principles of PSAS, there are generally two types of assets that the IESO may consider recognizing 1) financial asset; or 2) non-financial asset. To classify the asset, it must fall into one of the two categories.

[1] Although the administrative framework provides that LDCs invoice the global adjustment to ratepayers on the IESO's behalf, the IESO has sole entitlement to the cash inflows that result from the global adjustment. All global adjustment amounts collected by LDCs are required to be submitted to the IESO.

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Financial asset

.39 ***Financial assets*** *are assets that could be used to discharge existing liabilities or finance future operations and are not for consumption in the normal course of operations.*

.40 *A financial asset is any asset that is:*

a) *cash;*

b) *a realizable asset that is convertible to cash;*

c) *a contractual right to receive cash or another financial asset from another party;*

d) *a contractual right to exchange financial instruments with another party under conditions that are potentially favourable to the government;*

e) *an equity instrument of another entity;*

f) *an investment in a government business enterprise or government business partnership;*

g) *a financial claim on an outside organization or individual; or*

h) *an inventory or item for sale that meets the criteria in FINANCIAL STATEMENT PRESENTATION, paragraph PS 1201.055.*

Based on the guidance of PS 1000, paragraphs 39 and 40, it may be difficult to substantiate the IESO's reimbursement of costs is a financial asset. The costs incurred by the IESO creates a right to recover costs as mandated by the Ministry of Energy. However, there is no contract with a specific ratepayer who ultimately reimburses the IESO for the costs incurred if the IESO calculates the global adjustment (i.e. its recovery mechanism) and this amount is then disbursed to all ratepayers in Ontario (regardless of whether an individual ratepayer benefited from the cost incurred). Furthermore, to the extent that a current ratepayer moves outside of Ontario, it could in fact result in a new ratepayer having to incur the additional charge to permit the IESO to recover its costs. It is difficult to argue that there is a contractual right to receive cash from another party, because legislation and the regulatory framework result in the right to future cash inflows from a pool of ratepayers.

An alternative view may be that the LDCs represent the counterparty to the IESO whereby the LDC is responsible for paying the IESO the global adjustment whether or not payment is ultimately received from the ratepayer. In this circumstance, the IESO can argue that a financial asset should be recognized for its contractual right to receive cash is from each specific LDC. An assessment of who is obligated for the global adjustment (e.g. an assessment of whether the LDC is the agent facilitating cash collection or is the entity obligated to pay the amount) would need to support this alternative.

Non-Financial asset

.41 *Non-financial assets include tangible capital assets, and other assets such as prepaid expenses and inventories of supplies.*

.42 *Non-financial assets are acquired, constructed or developed assets that do not normally provide resources to discharge existing liabilities, but instead:*

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(a) are normally employed to deliver government services;

(b) may be consumed in the normal course of operations; and

(c) are not for sale in the normal course of operations.

Another accounting treatment could be a 'non-financial asset' in accordance with paragraphs 41 and 42 of PS 1000. This accounting treatment may be supportable under the PSAS guidance as an 'other asset'. The reimbursement of CDM costs, results in the incurrence of an upfront cost in which the entity will benefit from economic benefits over a period of time.

Subsequent measurement of a non-financial asset

To the extent that the recognition of an asset is supported under the framework discussed above, the entity would then be required to draw the asset down over the recovery period (i.e. as cash is collected from ratepayers through the global adjustment mechanism). The presentation of the 'draw' down of the asset is dependent upon the IESO's accounting for the global adjustment. To the extent that funds received from the global adjustment are recognized in revenue rather than to directly reduce the asset then the IESO might consider recognizing the draw-down of the asset as a reduction in revenues. Nonetheless, depending on the IESO's view of its role (i.e. principal versus agent) or its view of the nature of costs incurred, an alternative accounting treatment may result. For instance, if the IESO is an agent, then it may reduce the asset balance directly for those amounts collected by way of the global adjustment rather than recording two separate entries for the recognition of revenue (i.e. global adjustment) and reduction of revenue (i.e. over the recovery period). At this time, the IESO has not completed a principal versus agency assessment.

Demonstrating that the CDM costs will meet the definition of a financial or non-financial asset is challenging and the IESO may not be able to support either view and should consider if referencing another accounting framework to inform an accounting policy for these costs may be required as discussed below.

2. Reference to other accounting frameworks:

As previously noted above, other accounting frameworks as issued by the AcSB, GASB, FASB and IASB provide accounting guidance related to the recognition of expenditures as an asset due to rate regulated operations. When referencing the other frameworks, it is important that the costs qualify as an asset under the framework set forth by PSAS to ensure that the principles of PSAS are not violated, and only then can reference to other frameworks be made to record the reimbursement of costs as an asset.

As the IASB and AcSB do not provide detailed guidance, the IESO could explore whether the costs incurred meet the specific criteria established by GASB S62 as note below; however consideration will need to be given to the consistent application of an accounting policy to all similar existing rate regulated assets and whether an established accounting policy is already in place that would require criteria to be met to change this policy:

476. Paragraphs 476–500 may be applied to activities reported in business-type activities that have regulated operations that meet all of the following criteria:

a. The regulated business-type activity's rates for regulated services provided to its customers are established by or are subject to approval by an independent, third-party regulator or by its own governing board empowered by statute or contract to establish rates that bind customers.

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b. The regulated rates are designed to recover the specific regulated business-type activity's costs of providing the regulated services.

c. In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume that rates set at levels that will recover the regulated business-type activity's costs can be charged to and collected from customers. This criterion requires consideration of anticipated changes in levels of demand or competition during the recovery period for any capitalized costs.

To the extent that the criteria of paragraph 476 of GASB S62 are met, paragraph 480 then provides the following guidance:

480. Rate actions of a regulator can provide a business-type activity with reasonable assurance of the existence of an asset. A regulated business-type activity should capitalize all or part of an incurred cost that otherwise would be charged to expense if both of the following criteria are met:

a. It is probable that future revenue in an amount at least equal to the capitalized cost will result from inclusion of that cost in allowable costs for rate-making purposes.

b. Based on available evidence, the future revenue will be provided to permit recovery of the previously incurred cost rather than to provide for expected levels of similar future costs. If the revenue will be provided through an automatic rate-adjustment clause, this criterion requires that the regulator's intent clearly be to permit recovery of the previously incurred cost.

By referencing the guidance of GASB S62, the IESO must first establish that it meets the criteria of paragraph 476. In doing so, the IESO should consider:

a. Established rates for regulated services (GASB S62.474 (a)) - The IESO's business activity rates are regulated services subject to approval. In this particular instance, the IESO's CDM expenditures are governed by legislation, Electricity Act 1998 as noted above, and by its own governing board, being, the Ministry of Energy. The Ministry of Energy has established the calculation of the global adjustment mechanism[2], which in turn, is charged to the ultimate customer who consumes the energy.

b. Regulated rates are designed to recover specific costs (GASB S62.474 (b)) - One element of the global adjustment mechanism is designed to recover the CDM expenditures that the IESO reimburses to the respective LDCs. As the IESO's regulated business activities support the LDCs delivery of energy to customers, these costs form an integral part of the IESO's regulated services to support the transmission and distribution of energy in Ontario.

c. Demand for regulated activities results in reasonable assumption that established rates will be collected and will recover cost of activities (GASB S62.474(c)) - Given that the structure of the IESO is a not-for-profit entity governed by the Electricity Act of 1998 and regulated by the Ontario Energy Board to support the transmission and distribution of energy to customers in Ontario, rates approved to be charged to customers are designed to recover the IESO's costs. Since the reimbursement of CDM expenditures is a program initiated and mandated by the Ministry of Energy, an entity that also controls the Ontario Energy Board, the IESO would need to examine and support whether the CDM expenditures will be recovered through cash inflows from customers through the global adjustment mechanism. For example, the historic demand and dependency and projected demand for electricity could be used to support a judgment or assertion by the IESO that there is no significant risk that future demand levels decline and diminish to the extent that IESO would not be able to recover the reimbursement of CDM expenditures through rates (i.e. global adjustment mechanism).

[2] Section 1.7 of the directive from the Ministry of Energy dated March 31, 2014 titled *2015-2020 Conservation First Framework* provides that the Ontario Power Authority (now merged into the IESO) may "*recover payments made under the Province-Wide Distributor CDM Programs and Local Distributor CDM Programs from the Global Adjustment Mechanism up to the budget established…"*

If the IESO can demonstrate that CDM expenditures meet the criteria as noted above, the fact pattern may support recognition of a regulatory asset in accordance with paragraph 480 of GASB S62. The IESO could consider:

a. Probability of future revenues (GASB S62.480 (a)) - The global adjustment mechanism explicitly includes recovery of the CDM expenditures. The directive from the Ministry of Energy could support the IESO's assertion that it is at least probable that future revenue will be generated in an amount at least equal to the capitalized cost related to the CDM expenditures. The IESO will need to assess if the global adjustment is considered future revenue (i.e. as part of the analysis of principal versus agent).

b. Recovery of previously incurred costs (GASB S62.480 (b)) - The IESO recovers the CDM expenditures through the global adjustment mechanism. The calculation of the portion of the global adjustment mechanism that relates to the CDM expenditures is determined by the amount that the IESO has approved to reimburse the LDC (e.g. the LDC requests reimbursement for costs it has *incurred* related to the CDM Requirement[3] and if all criteria are met, the IESO then approves the costs for reimbursement). For this reason, there is evidence that the future revenue earned from the global adjustment mechanism permits the recovery of previously incurred costs (i.e. not future costs).

Using the GASB S62 accounting guidance, and the related considerations noted above, the IESO may be able to reference GASB S62 to support the recognition of CDM expenditures as an asset by way of the GAAP hierarchy prescribed by PS 1150, paragraph 19, which explicitly references GASB as a secondary source of GAAP in the event that PSAS does not address a particular transaction. However, the IESO would also need to consider whether it is appropriate to refer to the GASB. First, consideration should be given to whether the GASB accounting guidance to capitalize rate regulated assets is consistent with the primary sources and financial statement concepts of PSAS. This may be challenging as it was noted in a paper prepared by the PSAB Conceptual Task Force *Consultation Paper 2: Measuring Financial Performance in Public Sector Financial Statements,* that the existing model in the PSA Handbook takes predominately an asset and liability view whereas standards set by the GASB is a financial statement presentation model based on a revenue and expense view. That said, the definition of an asset is similar under both the PSAS and GASB standards (GASB Concepts Statement 4[4]) and because rate regulated assets are not classified as deferred outflows of resources (GASB S65) but rather assets, it may be possible to use the GAAP hierarchy to refer to GASB to formulate an accounting policy. GASB S65 *Items Previously Recognized as Assets and Liabilities* was applicable for periods beginning after December 15, 2012. In paragraph 48 of GASB S65, rate regulated assets retained the definition of an asset and these assets were not required to be reclassified as a deferred outflow which is defined as the consumption of net assets by the government that is applicable to a future period. Secondly, any existing policy that the IESO currently applies to any other assets that could be considered rate regulated assets would require an evaluation of whether an accounting policy change from expensing to one that capitalizes rate regulated assets meets the criteria that the new accounting policy results in a more appropriate presentation of events or transactions in the IESO's financial statements (PS 2120, paragraph 2).

An alternative view is that it is inappropriate to reference GASB S62 because GASB has provided a special accommodation to permit the capitalization of rate regulated assets when they would otherwise be expensed. If an entity that applies PSAS, determines that the definition of an asset under PS 1000 is not met then for the IESO to use a special accommodation in another framework to avoid expensing the CDM costs would not be appropriate.

[3] The Ministry of Energy issued a CDM Directive as per its letter re: 2015-2020 Conservation First Framework, which instructed the Ontario Energy Board to amend the license of each licensed electricity distributor to add a condition that specifies the distributor would make CDM programs available to customers in its licensed area. The CDM programs are required to achieve reductions in electricity consumption. As part of this, the distributor is required to make province-wide CDM programs, funded by the OPA (now the IESO) available to all customers in its licensed service area.

[4] GASB Concepts Statement 4, paragraph 8, defines assets as '*resources with present service capacity that the government presently controls*.'

If the IESO does adopt an accounting policy to capitalize the CDM costs there are examples of entities that capitalize similar rate regulated assets that prepare their financial statements in accordance with GASB in the United States. For instance, the Long Island Power Authority ("LIPA") is an organization that is responsible for supplying electricity to customers within a specified service area. LIPA recognizes regulatory assets on its statement of net position in accordance with the guidance of GASB S62.

The FASB also includes accounting guidance related to the accounting for regulated activities in ASC 980-340-25-1 as follows:

> *Rate actions of a regulator can provide reasonable assurance of the existence of an asset. An entity shall capitalize all or part of an incurred cost that would otherwise be charged to expense if both of the following criteria are met:*
>
> *a) It is probable (as defined in Topic 450) that future revenue in an amount at least equal to the capitalized cost will result from inclusion of that cost in allowable costs for rate-making purposes.*
>
> *b) Based on available evidence, the future revenue will be provided to permit recovery of the previously incurred cost rather than to provide for expected levels of similar future costs. If the revenue will be provided through an automatic rate-adjustment clause, this criterion requires that the regulator's intent clearly be to permit recovery of the previously incurred cost.*
>
> *A cost that does not meet these asset recognition criteria at the date the cost is incurred shall be recognized as a regulatory asset when it does meet those criteria at a later date.*

The guidance provided by US GAAP notes that to the extent that a regulator provides reasonable assurance of the existence of an asset, then the entity should capitalize the incurred cost that would have otherwise been expensed. In this case, the Ministry of Energy has provided that the IESO will be able to recover its costs through the global adjustment mechanism[5]. As a result, the IESO can support meeting criterion a) of 980-340-25-1 that it is probable that future revenue will equal the cost capitalized as the IESO will include those reimbursed CDM costs in its calculation of the global adjustment charged to rate payers. Furthermore, the IESO can support criterion b) is met, because the future recovery relates only to those costs paid by the IESO to reimburse eligible CDM costs.

To further support this accounting position, there are system operators (i.e. similar to the IESO) in the United States who recognize regulatory assets. As an example, ISO New England Inc., a not-for-profit organization that regulates the flow of transactions in accordance with the Federal Energy Regulatory Commission ("FERC") recognizes regulatory assets for those costs incurred subject to rate recovery mechanisms. The ISO New England Inc. operates in a very similar manner to the IESO, in that both organizations are government regulated, system operators who manage the flow of electricity transactions and are not-for-profit. While ISO New England Inc. prepares its financial statements in accordance with US GAAP, rather than GASB, ISO New England Inc.'s treatment of regulatory items is indicative that the capitalization of expenditures related to regulated activities is not an unreasonable treatment for entities of this nature.

As the application of the hierarchy is a choice and not a requirement, another entity with the same fact pattern could account for the recovery of CDM expenditures differently.

Subsequent measurement of asset

To the extent that the recognition of an asset is supported under one of the frameworks discussed above, the entity would then draw the asset down over the recovery period (i.e. as cash is collected from ratepayers

[5] Section 1.7 of the directive from the Ministry of Energy dated March 31, 2014 titled *2015-2020 Conservation First Framework* provides that the Ontario Power Authority (now merged into the IESO) may "*recover payments made under the Province-Wide Distributor CDM Programs and Local Distributor CDM Programs from the Global Adjustment Mechanism up to the budget established…"*

DRAFT

through the global adjustment mechanism). The presentation of the draw down of the asset is dependent upon the IESO's accounting for the global adjustment. To the extent that funds received from the global adjustment are recognized in revenue then the IESO might consider recognizing the recovery of the asset as a reduction in revenues (contra revenue account). Nonetheless, depending on the IESO's view of its role (i.e. principal vs. agent) or its view of the nature of costs incurred, an alternative accounting treatment may result. For instance, if the IESO is an agent, then it may reduce the asset balance directly for those amounts collected by way of the global adjustment – rather than recording two separate entries for the recognition of revenue (i.e. global adjustment) and reduction of revenue (i.e. recovery of asset).

3. Expensing expenditures as incurred

Failing the ability to support that an asset can be recognized from alternatives (1) and (2) above, the IESO would be required to record the reimbursement of an LDC's eligible CDM expenditures as an expense in the period incurred.

Paragraphs 49 to 51 of PS 1000 provide the following guidance related to expenses:

.49 Expenses, including losses, are decreases in economic resources, either by way of decreases in assets or increases in liabilities, resulting from the operations, transactions and events of the accounting period.

.50 Expenses include the cost of economic resources consumed in and identifiable with the operations of the accounting period. For example, the cost of tangible capital assets is amortized to expenses as the assets are used in delivering government programs (see TANGIBLE CAPITAL ASSETS, Section PS 3150). Expenses do not include debt repayments or transfers to other governmental units in the government reporting entity.

.51 Losses can arise from peripheral or incidental transactions and events affecting a government. Such transactions and events include the disposition of assets purchased for use and not for resale, and the liquidation or refinancing of debt.

By referencing paragraphs 49 to 51, it can be noted that the reimbursement of an LDC's CDM expenditures do indeed result in an immediate decrease in the IESO's economic resources – as noted in paragraph 49. If it cannot be substantiated that an asset can be recorded due to the future economic benefits expected to be received through the global adjustment – these expenditures must be recorded as an expense.

4. Accounting for interest costs

The accounting for interest costs related to the loan being considered to finance the IESO's recovery of CDM costs incurred over an extended period of time would be dependent on how the Ministry of Energy proposes that the IESO will recover these costs. To the extent that the Minister revises the calculation of the global adjustment, then the IESO may be able to recognize an asset for these costs (i.e. see the arguments listed in sections (1) and (2) above).

If the Ministry of Energy proposes that the IESO recover the interest costs through the revenue requirement, the IESO will need to evaluate its ability to recover the interest costs through future rates. To the extent that the there is significant risk associated with recovering these costs, interest costs should be recognized as an expense in the current period. Otherwise, the IESO may be able to capitalize the interest costs as an asset by applying the arguments in sections (1) and (2) noted above.

If a recovery mechanism is not established for the interest costs related to the loan, the interest costs would be recognized as an expense of the current period.

DRAFT

FW_ EXTERNAL - Urgent -- Electricity Rate Mitigation .rtf

From: Veinot, Cindy (TBS) []
To: Suzie Gignac [suzie.r.gignac@ca.ey.com]; Lee Anne Probert [leeanne.probert@ca.ey.com]
CC: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
Subject: FW: EXTERNAL - Urgent -- Electricity Rate Mitigation
Date: Thursday, April 13, 2017 18:59:22
Attachment 1: OPG entries.xlsx

This is the journal entry model that we referred to -- in the process of being updated now.
-----Original Message-----
From: CHENG Alec -FIN & C CTRL [mailto:alec.cheng@opg.com]
Sent: February-25-17 12:15 AM
To: Petsche, Nadine (TBS); MAUTI John -FIN & C CTRL
Cc: Kandeepan, Ken (OFA); Veinot, Cindy (TBS); LEE John -TREASURY
Subject: RE: EXTERNAL - Urgent -- Electricity Rate Mitigation

As requested, we have updated the model for OPG and Trust based on the parameters specified – bills of $100, $105, $95 over the next 3 years as outlined in your illustration. We have to add in the interest portion for reflect the recovery in your example. Also, we wanted to note that the example in your illustration is based on deferral of actual bill (not the GA amount), which is different from our understanding of how the deferral would work. But I trust the illustration is sufficient to illustrate OPG's and the Trust's accounting for your purposes.

As mentioned before, I understand that this is a simplified model, but some additional features could be added at a later date when there is sufficient certainty. For example:

o the financing model would include debt at different rates based on the tranche and the rate implicitly charged to customers would be determined based on the ultimate model and the legislation (may not be the same as the debt financing rate)

o the Trust may have embedded features which may be introduce variability into the Trust.

Alec

From: Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]
Sent: Friday, February 24, 2017 5:02 PM
To: CHENG Alec -FIN & C CTRL; MAUTI John -FIN & C CTRL
Cc: Kandeepan, Ken (OFA); Veinot, Cindy (TBS); LEE John -TREASURY
Subject: RE: EXTERNAL - Urgent -- Electricity Rate Mitigation

Alec/John,
To help us better understand the interest impact on the Province overall, it would be helpful if you could complete the interest related entries in the original model (attached) for OPG and OPGTrust, for the first couple of years.
Also, we wondered if could share any details on how the billing is anticipated to work (based on discussions you may have had with the Ministry of Energy).
We will monitor our emails for your response.
Thanks in advance.
Nadine

From: CHENG Alec -FIN & C CTRL [mailto:alec.cheng@opg.com]
Sent: February-24-17 4:06 PM
To: CHENG Alec -FIN & C CTRL; Petsche, Nadine (TBS); MAUTI John -FIN & C CTRL
Cc: Kandeepan, Ken (OFA); Veinot, Cindy (TBS); LEE John -TREASURY

Subject: RE: EXTERNAL - Urgent -- Electricity Rate Mitigation (feedback requested today)

Sorry, sent this before I attached the table.

Customer Bill

Current Yr

New Yr

0

1

2

3

Other (Non-GA components)

60

60

60

60

GA

100

100

100

100

GA Deferral

-30

-31.5

-33.1

Interest

1.5

3.1

Total Bill

160

130

130

130

From: CHENG Alec -FIN & C CTRL
Sent: Friday, February 24, 2017 4:04 PM
To: 'Petsche, Nadine (TBS)'; MAUTI John -FIN & C CTRL
Cc: Kandeepan, Ken (OFA); Veinot, Cindy (TBS); LEE John -TREASURY
Subject: RE: EXTERNAL – Urgent -- Electricity Rate Mitigation (feedback requested today)

Our comments:

- We cannot verify the IESO entries, but assuming that KPMG is looking at that.

- The current proposal is to have the Trust collect revenue from customers, so the Trust should recognize revenue (which comprise of interest and other recovery amounts) before we start collecting the principal amount from the customers (i.e. before year 5) (see the table below as an illustration)

- I understand that this is a simplified model, but some additional features should be added at a later date when we have more certainty:

o the financing model would include debt at different rates based on the tranche and the rate implicitly charged to customers would be determined based on the ultimate model and the legislation (may not be the same as the debt financing rate)

o the Trust will have embedded features which will introduce other variability into the Trust

From: Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]
Sent: Friday, February 24, 2017 12:28 PM
To: MAUTI John -FIN & C CTRL; CHENG Alec -FIN & C CTRL

Cc: Kandeepan, Ken (OFA); Veinot, Cindy (TBS); LEE John -TREASURY
Subject: EXTERNAL – Urgent -- Electricity Rate Mitigation (feedback requested today)
Importance: High

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John/Alec,

In advance of next Monday's FPC meeting, we would like to confirm our understanding of the net fiscal impact under the Electricity Rate Mitigation model as currently envisioned. Attached for your review is a model outlining the transactions and impacts as we understand them. The net impact on interest expense to OFA and the Trust appears on lines AS 40 – AS 42.

We would appreciate your comments on the attached as well as any suggestions on how to address the net fiscal impact over the term of the proposal, today if possible.

Regards,
Nadine

_____
_____

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OPG entries.pdf

Customer Bill				
			New Yr	
		1	2	3
Bill		100	105	95
Bill Deferral		-30.77	-33.89	-32.55
Interest		0.77	2.39	4.05
Total Bill		70	73.5	66.5

Interest expense		5%	5%	5%
Loan #1		0.34	1.05	1.78
Loan #2		0.04	0.12	0.20
External		0.39	1.22	2.06
		0.77	2.39	4.05
Balance				
Loan #1	44%	13.54	14.91	14.32
Accumulated Loan #1		**13.54**	**28.45**	**42.77**
Loan #2	5%	1.54	1.69	1.63
Accumulated Loan #2		**1.54**	**3.23**	**4.86**
External	51%	15.69	17.28	16.60
Accumulated External		**15.69**	**32.98**	**49.58**

DR (CR)

OPG

Equity injection from OFA			
Dr. Cash	13.54	14.91	14.32
Cr. Equity	-13.54	-14.91	-14.32
Loan to Trust - #1			
Dr. Receivable from Trust	13.54	14.91	14.32
Cr. Cash	-13.54	-14.91	-14.32
Borrow from the market			
Dr. Cash	1.54	1.69	1.63
Cr. Long-term debt	-1.54	-1.69	-1.63
Loan to Trust - #2			
Dr. Receivable from Trust	1.54	1.69	1.63
Cr. Cash	-1.54	-1.69	-1.63
Recognize interest from Trust - #1			
Dr. Cash	0.34	1.05	1.78
Cr. Interest income	-0.34	-1.05	-1.78
Recognize interest from Trust -- #2			
Dr. Cash	0.04	0.12	0.20
Cr. Interest income	-0.04	-0.12	-0.20

Recognize interest expense on long-term debt			
Dr. interest expense	0.04	0.12	0.20
Cr. Cash	-0.04	-0.12	-0.20

Trust

Amount collected from customers (The current proposal is to have the Trust collect revenue from customers, so the Trust should recognize revenue (which comprise of interest and other recovery amounts) before we start collecting the principal amount from the customers (i.e. before year 5) - assume interest only for simplicity			
Dr. Cash	0.77	2.39	4.05
Cr. Revenue	-0.77	-2.39	-4.05
Loan #1 from OPG			
Dr. Cash	13.54	14.91	14.32
Cr. Due to OPG	-13.54	-14.91	-14.32
Loan #2 from OPG			
Dr. Cash	1.54	1.69	1.63
Cr. Due to OPG	-1.54	-1.69	-1.63
External financing			
Dr. Cash	15.69	17.28	16.60
Cr. Long-term debt	-15.69	-17.28	-16.60
Purchase cash flow stream from IESO			
Dr. Intangible asset	30.77	33.89	32.55
Cr. Cash	-30.77	-33.89	-32.55
Interest expense on Loan #1 to OPG			
Dr. Interest expense	0.34	1.05	1.78
Cr. Cash	-0.34	-1.05	-1.78
Interest expense on Loan #2 to OPG			
Dr. Interest expense	0.04	0.12	0.20
Cr. Cash	-0.04	-0.12	-0.20
Interest expense on external financing			
Dr. Interest expense	0.39	1.22	2.06
Cr. Cash	-0.39	-1.22	-2.06

OPG

Cash	0.34	1.05	1.78
Equity	-13.88	-15.96	-16.10

Receivable from OPG Trust	15.08	16.61	15.95
Long-term Debt	-1.54	-1.69	-1.63
Interest income	-0.38	-1.17	-1.98
Interest expense	0.04	0.12	0.20
Trust			
Cash	0.00	0.00	0.00
Intangible asset	30.77	33.89	32.55
Loans payable to OPG	-15.08	-16.61	-15.95
Long-term Debt	-15.69	-17.28	-16.60
Revenue	-0.77	-2.39	-4.05
Interest expense	0.77	2.39	4.05
Consolidated			
Cash	0.34	1.05	1.78
Intangible asset	30.77	33.89	32.55
Loans between Trust and OPG	0.00	0.00	0.00
Equity from Province	-13.88	-15.96	-16.10
Long-term Debt	-17.23	-18.98	-18.23
Consolidated net income	**-0.34**	**-1.05**	**-1.78**

FW_ EXTERNAL □RE_ OPG analysis re_ FHP and AROs.rtf

From: Donaldson, Mark (TBS) []
To: leeanne.probert@ca.ey.com [leeanne.probert@ca.ey.com]
CC: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
Subject: FW: EXTERNAL – RE: OPG analysis re: FHP and AROs
Date: Tuesday, August 29, 2017 19:59:21
Attachment 1: @

This message has been archived. View the original item
https://ctsbigdcapmvs05.cihs.ad.gov.on.ca/EnterpriseVault/ViewMessage.asp?VaultId=184971630C5FAB646A01170AFB6CF78EC1110000ctsbigdcapmvs01&SavesetId=201710036994637~20170829235921000~Z~1019E020744598CEFB51B713C73D5471View the original item

Hi Lee Anne,

Please find attached the memo received from OPG.

Attached is a very draft analysis on just the principal repayments of the intangible.

Cheers,
Mark

Sent with BlackBerry W

Attachments:
GA Consolidated Memo_US GAAP Day 2 Accounting_Intangible.docx (99 KB)
https://ctsbigdcapmvs05.cihs.ad.gov.on.ca/EnterpriseVault/ViewMessage.asp?VaultId=184971630C5FAB646A01170AFB6CF78EC1110000ctsbigdcapmvs01&SavesetId=201710036994637~20170829235921000~Z~1019E020744598CEFB51B713C73D5471&AttachmentId=1GA Consolidated Memo_US GAAP Day 2 Accounting_Intangible.docx

FW_ EXTERNAL RE_ Please confirm (use of extract from Torys LLP correspondence).rtf

From: Petsche, Nadine (TBS) []
To: LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]
Subject: FW: EXTERNAL – RE: Please confirm (use of extract from Torys LLP correspondence)
Date: Wednesday, July 26, 2017 13:57:24

Hi Lee Anne.

Please note OPG's response below w.r.t. the Tory's extract. Please consider other alts to reflect key message(s) without including reference to the docs.

Thanks.

Nadine

From: MAUTI John -FIN & C CTRL [mailto:john.mauti@opg.com]
Sent: July 26, 2017 11:17 AM
To: Petsche, Nadine (TBS)
Cc: JORDA Jenny -FIN & C CTRL; MAUTI John -FIN & C CTRL
Subject: FW: EXTERNAL – RE: Please confirm (use of extract from Torys LLP correspondence)

Nadine,

Our recommendation is NOT to use

Thanks

John G. Mauti
Chief Controller & Accounting Officer

OPG Inc.

(416) 592-4046

From: JORDA Jenny -FIN & C CTRL
Sent: Wednesday, July 26, 2017 9:14 AM
To: MAUTI John -FIN & C CTRL
Subject: Fw: EXTERNAL – RE: Please confirm (use of extract from Torys LLP correspondence)

Hi John. Definitely not OK. This paper was written for a very specific purpose (as per disclaimer in the letter) and per discussion with internal lawyers yesterday, no longer relevant given it was written in 2011 in anticipation of us converting to IFRS (some things happened with the Supreme Court since then that weaken some of the arguments in the letter)

Sent from my BlackBerry 10 smartphone on the Bell network.

From: Petsche, Nadine (TBS) <Nadine.Petsche@ontario.ca>

Sent: Wednesday, July 26, 2017 9:01 AM

To: MAUTI John -FIN & C CTRL

Cc: JORDA Jenny -FIN & C CTRL

Subject: EXTERNAL – RE: Please confirm (use of extract from Torys LLP correspondence)

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Hi John.

Just following up on this item. Please confirm that it is ok to plan to include the extract below in our accounting paper on the FHP.

Thanks in advance.

Nadine

From: Petsche, Nadine (TBS)
Sent: July 21, 2017 12:37 PM
To: MAUTI John -FIN & C CTRL

Cc: JORDA Jenny -FIN & C CTRL (jenny.jorda@opg.com)
Subject: Please confirm (use of extract from Torys LLP correspondence)

Hi John.

I am writing to seek your confirmation on the use of an extract from Torys LLP's previous correspondence on regulatory accounting for purposes of OPCD' accounting paper on the FHP. In particular, we would like to include the following extract:

In April 2011, Torys LLP issued a letter to OPG relating to the legal basis of OPG's regulatory deferral and variance accounts which, as evidenced by the following excerpts, also takes the position that the transaction or event giving rise to the asset is the incurrence of costs for which recovery is provided for under statute:

OPG's deferral and variance accounts are established either by regulation or by orders of the Ontario Energy Board (the "OEB") through the proper exercise of its jurisdiction as the administrative tribunal responsible for regulating the electricity industry in Ontario. The establishing of such an account pursuant to regulation or the granting of approval by the OEB to establish such an account confers upon OPG a right to record amounts in the account and to account for the amounts recorded on the basis that they have been prudently incurred.

The OEB has broad jurisdiction in setting payment amounts for OPG and it would not be reasonable for the legislature to have given the OEB the legislative power to authorize the establishment of accounts without also giving the OEB the power to dispose of the amounts recorded in such accounts, including in circumstances where there is no future output. Moreover, to interpret the applicable legislation in a manner that only allows for payment amounts on a volumetric basis is in our view unreasonable because it would not be consistent with the rules of statutory interpretation.

Please confirm that you are OK with us including the reference.

Regards,

Nadine

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FW_ EY_OPCD Status Updates.rtf

From: Donaldson, Mark (TBS) []
To: Lee Anne Probert [leeanne.probert@ca.ey.com]
CC: Suzie Gignac [suzie.r.gignac@ca.ey.com]; Blake Langill [blake.w.langill@ca.ey.com]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
Subject: FW: EY/OPCD Status Updates
Date: Friday, December 15, 2017 10:24:14
Attachment 1: CLPA - Protection Agreement.docx
Attachment 2: -CLPA - Process Agreement(November 22_17).docx
Attachment 3: _Fair Hydro -- Change of Law Process Agreement.docx
Attachment 4: _Fair Hydro -- Change of Law Protection Agreement.docx

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Hi Lee Anne,

Further to our call this morning, attached are the docs sent Nov 27 ("CLPA") and the most current final versions we have received. Note the topic of conversation had this week with counsel was around "material effect" defined on page 28 of the Protection Agreement and page 20 of the Process Agreement.

I have some time at 11 or 2pm today to check back in on the pension merger issues – let me know if either of those times work.

Cheers,

Mark

From: Donaldson, Mark (TBS)
Sent: November 27, 2017 11:28 AM
To: 'Lee Anne Probert'
Cc: Blake Langill; Suzie Gignac; Veinot, Cindy (TBS)
Subject: EY/OPCD Status Updates

Hi Lee Anne,

Just a quick follow-up from our call Friday, attached are the 'final draft' guarantee agreements. As mentioned, the "protection" is the guarantee arrangement with the dealers, and the "process" is how the financing will work through between the province

and OPG.

Happy to discuss,
Mark

CLPA - Protection Agreement.pdf

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY AND THE MINISTER OF FINANCE[1]

AND

COMPUTERSHARE TRUST COMPANY OF CANADA, AS TRUSTEE OF FAIR HYDRO TRUST[2]

AND

ONTARIO POWER GENERATION INC., AS FINANCIAL SERVICES MANAGER AND AS MANAGER OF FAIR HYDRO TRUST

AND

BNY TRUST COMPANY OF CANADA, AS INDENTURE TRUSTEE

CHANGE OF LAW PROTECTION AGREEMENT

Dated as of [■], 2017

[1] This Agreement and the Process Agreement will need to be effective on closing but signed and held in escrow as soon as they are settled and prior to pricing of the term deal.

[2] Please advise if there are any further issues with the Manager signing the Protection Agreement on behalf of the Trust? If so, can you please explain the issue. The Manager is currently signing all Program Agreements on behalf of the Trust and has authority to do so. We would like the Manager to sign this Agreement on behalf of the Trust.

This **AGREEMENT**, among Her Majesty the Queen in Right of Ontario, as represented by the Minister of Energy and the Minister of Finance (the "**Province**"), Computershare Trust Company of Canada, in its capacity as trustee (the "**Financing Entity Trustee**") of Fair Hydro Trust, a trust under the laws of the Province of Ontario (the "**Financing Entity**"), Ontario Power Generation Inc., in its capacity as Manager of the Financing Entity and in its capacity as the Financial Services Manager in accordance with the Act (the "**FSM**") and BNY Trust Company of Canada, a trust company existing under the laws of Canada, as Indenture Trustee, is made and entered into as of [■], 2017.

RECITALS

Pursuant to Subsection 5(3) of the *Ontario Fair Hydro Plan Act, 2017* (the "**Act**"), the Lieutenant Governor in Council may by order, authorize the Minister of Energy and the Minister of Finance, acting together on behalf of the Province of Ontario, to agree to guarantee or indemnify certain debts, obligations, securities or undertakings associated with an Investment Interest.

Pursuant to an Order in Council dated as of ■ (the "**OIC**"), the Lieutenant Governor in Council has, among other things, authorized the Minister of Energy and the Minister of Finance, acting together on behalf of the Province of Ontario, to enter into one or more agreements to guarantee or indemnify the debts, obligations, securities or undertakings of one or more financing entities established or caused to be established pursuant to Subsection 22(2) of the Act by the FSM and that may incur Funding Obligations in connection with one or more Investment Interests.

Pursuant to a Declaration of Trust[3] dated as of ■, 2017, the Financing Entity was established as a "financing entity" (as defined in the Act) for the purposes contemplated in the Act.

The Financing Entity Trustee, in its capacity as trustee of the Financing Entity, and the Indenture Trustee are parties to the Trust Indenture and propose to create and issue series of notes, bonds and other securities as contemplated therein, and to provide security over the assets and undertaking of the Financing Entity in respect of such notes, bonds and securities, as well as other Obligations Secured.

The Minister of Energy and the Minister of Finance, acting together on behalf of the Province of Ontario, have determined to provide protections and assurances to the Indenture Trustee, for the benefit of the Beneficiaries, in respect of Primary Obligations that constitute Approved Obligations, in order to address concerns that would arise from a change or adverse determination of law, subject in each case to the satisfaction of the Adherence Conditions at the time the Approved Obligation is incurred. This Agreement sets out the terms and conditions of such protections and assurances.

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[3] We are comfortable on this point because OPG has retained Computershare as issuer trustee. The recitals of the Declaration of Trust provide that Computershare has established the Trust at the request of the FSM. We can also provide you with a copy of the Computershare engagement letter upon request.

All things necessary to make this Agreement a valid and legally binding agreement of the Province, the Financing Entity, the FSM and the Indenture Trustee, in accordance with the Act, the OIC and the Trust Indenture, have been done.

AGREEMENT OF THE PARTIES

In consideration of the respective agreements herein contained, the parties hereto covenant and agree as follows:

ARTICLE I
DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

1.01 Interpretation

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) the terms used in this Agreement that are defined in Schedule A have the meanings assigned to them in Schedule A;

(b) words importing the singular shall include the plural and vice versa, words importing general shall include all genders or the neuter, and words importing the neuter shall include all genders;

(c) all references to any Person shall include such Person's permitted successors and assigns, and any reference to a Person in a particular capacity excludes such Person in other capacities;

(d) references to any law, rule, regulation or order of a Governmental Authority (including, for greater certainty, references to the Act and the General Regulation) shall include such law, rule, regulation or order as from time to time in effect, including any amendment, modification, codification, replacement or reenactment thereof or any substitution therefor;

(e) the word "will" shall be construed to have the same meaning and effect as the word "shall". The word "or" is not exclusive;

(f) any reference to this Agreement or any other agreement, document or instrument shall be construed as a reference to this Agreement or, as the case may be, such other agreement, document or instrument as the same may have been, or may from time to time be, amended, varied, replaced, amended and restated, supplemented or otherwise modified;

(g) all references in this Agreement to designated "Articles", "Sections", "Subsections", "Schedules", "Exhibits" and other subdivisions are to the designated Articles, Sections, Subsections, Schedules, Exhibits and other subdivisions of this Agreement as originally executed. The words "herein", "hereof" and "hereunder"

and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section, Subsection, Schedule, Exhibit or other subdivision;

(h) "including" and words of similar import will be deemed to be followed by "without limitation"; and

(i) with respect to the computation of periods of time from a specified date to a later specified date, unless otherwise expressly stated, the word "from" means "from and including" and the words "to" and "until" each mean "to but excluding".

1.02 Trustee to act in accordance with the Trust Indenture

Any action taken, required to be taken or permitted to be taken by the Indenture Trustee under this Agreement shall only be taken in the manner, at the times, for the purposes, subject to the prerequisites, conditions, requirements and limitations, and with the benefits, exculpations, indemnities and protections that are provided to the Indenture Trustee, in each case in respect of such action taken, required to be taken or permitted to be taken by it under the Trust Indenture.

1.03 Proof of Approved Obligations

The efficacy of any agreement, instrument or writing evidencing a Primary Obligation may, in the absence of manifest error, be conclusively proved in any manner that the Indenture Trustee deems to be sufficient.

Any statement of account prepared by the Indenture Trustee as regards the Primary Obligations shall constitute *prima facie* evidence of the amount which, as at the date of the statement so prepared, is due and payable by the Financing Entity to the Beneficiaries and/or the Indenture Trustee and the Province hereby acknowledges and agrees that, absent manifest error, it shall be bound by each such statement. The Indenture Trustee agrees to provide the Province with the computations and calculations used by the Indenture Trustee to prepare each such statement of account promptly following a request therefor.

1.04 Limitation on Rights of and Actions by Specified Creditors

Specified Creditors, as Beneficiaries, shall not have or be permitted to exercise any rights, interests, or elections under this Agreement, other than in the manner and to the extent effected and exercised under, in accordance with and subject to the limitations set forth in the Trust Indenture as of the date of this Agreement.

1.05 Province Retains Rights of Beneficiaries

Without limiting any rights of subrogation or succession that arise pursuant to applicable law or pursuant to the Province's rights as an assignee, subrogee or pursuant to Section 2.01 or Section 5.01, all of the rights, interests, elections and privileges that would arise in favour of a Beneficiary under the Trust Indenture or other Funding Obligation Agreement under which a

related Primary Obligation arises shall automatically arise, vest in and be available to the Province to the extent of the performance by the Province of the Primary Obligation.

1.06 Effect of Headings

The Article and Section headings herein are for convenience only and will not affect the construction hereof.

1.07 Successors and Assigns

All covenants and agreements in this Agreement by the parties will bind their respective successors and permitted assigns, whether so expressed or not. All covenants and agreements of the Indenture Trustee, the Financing Entity, the Financing Entity Trustee, the Manager or the FSM in this Agreement shall bind their respective successors, co-trustees and agents.

1.08 Severability

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction will not affect the validity or enforceability of any other provision hereof. To the extent permitted by applicable law, the parties waive any provision of law which renders any provision of this Agreement invalid or unenforceable in any respect.

1.09 Governing Law

THIS AGREEMENT WILL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE PROVINCE OF ONTARIO AND THE FEDERAL LAWS OF CANADA APPLICABLE THEREIN, AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.

1.10 Proceedings Against the Crown Act

NOTHING IN THIS AGREEMENT OR THE PROGRAM AGREEMENTS AFFECTS THE RIGHTS, PROTECTIONS AND IMMUNITIES OF THE CROWN UNDER THE PROCEEDINGS AGAINST THE CROWN ACT (ONTARIO).

1.11 Attornment

EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY ONTARIO COURTS SITTING IN TORONTO IN ANY ACTION, APPLICATION, REFERENCE OR OTHER PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT. THE PARTIES HERETO HEREBY WAIVE ANY RIGHT THEY MAY HAVE TO REQUIRE A TRIAL BY JURY OF ANY PROCEEDING COMMENCED IN CONNECTION WITH THIS AGREEMENT.

1.12 Counterparts; Electronic Delivery

This Agreement may be executed in any number of counterparts, each of which so executed will be deemed to be an original, but all such counterparts will together constitute one and the same instrument. Delivery of an executed signature page to this Agreement by a party by electronic transmission will be as effective as delivery of a manually executed copy of the Agreement by such party.

1.13 Change of Law Protection Agreement Referred to in the Trust Indenture

This Agreement is the "Change of Law Protection Agreement" referred to in the Trust Indenture.

1.14 Non-Business Days

Whenever any payment to be made hereunder shall be stated to be due, any period of time would begin or end, any calculation is to be made or any other action to be taken hereunder shall be stated to be required to be taken, on a day other than a Business Day, then (notwithstanding any other provision of this Agreement) such payment shall be made, such period of time shall begin or end, such calculations shall be made and such other action shall be taken on the next succeeding Business Day.

1.15 Waiver, Amendment

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement will be binding unless executed in writing by the party to be bound thereby. No waiver of any provision of this Agreement will constitute a waiver of any other provision nor will any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided. A party's failure or delay in exercising any right under this Agreement will not operate as a waiver of that right. A single or partial exercise of any right will not preclude a party from any other or further exercise of that right or the exercise of any other right.

1.16 Interest Act

For the purpose of disclosure pursuant to the *Interest Act* (Canada), the yearly rate of interest to which any rate of interest payable under this Agreement that is calculated on any basis other than a full calendar year is equivalent may be determined by multiplying such rate by a fraction, the numerator of which is the actual number of days in the calendar year in which such yearly rate of interest is to be ascertained and the denominator of which is the number of days comprising such other basis. The parties further agree that for the purposes of the *Interest Act* (Canada), (i) the principle of deemed reinvestment of interest shall not apply to any interest calculation under this Agreement, and (ii) the rates of interest stipulated in this Agreement are intended to be nominal rates and not effective rates or yields.

1.17 Currency

Unless stated otherwise, all amounts herein are stated in Canadian Dollars.

1.18 References to Acts of the Financing Entity

For greater certainty, where any reference is made in this Agreement, or in any other instrument executed pursuant hereto or contemplated hereby to which the Financing Entity or the Financing Entity Trustee, as trustee of the Financing Entity, is party, to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against, or a covenant, representation or warranty (other than relating to the constitution or existence of the Financing Entity) by or with respect to (i) the Financing Entity or (ii) the Financing Entity Trustee, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against or a covenant, representation or warranty (other than relating to the constitution or existence of the Financing Entity) by or with respect to, the Financing Entity Trustee as trustee of the Financing Entity.

1.19 Judgment Currency

(a) If for the purpose of obtaining judgment in any court or for any other purposes (other than conversions specifically provided for in the agreement under which an Approved Obligation arises), it is necessary to convert any amount due under this Agreement from the currency in which it is due (the "**Original Currency**") into another currency (the "**Second Currency**"), the rate of exchange applied shall be that at which, in accordance with normal banking procedures, the purchaser could purchase, in the New York foreign exchange market, the Original Currency with the Second Currency on the date on which judgment is given. The obligation of the Province in respect of any Original Currency due from it to the Indenture Trustee under this Agreement shall, notwithstanding any judgment or payment in such other currency, be discharged only to the extent that, on the Business Day following receipt of any sum so paid or adjudged to be due under this Agreement in the Second Currency, the Indenture Trustee may, in accordance with normal banking procedures, purchase in the New York foreign exchange market the Original Currency with the amount of the Second Currency so paid or so adjudged to be due; and if the amount of the Original Currency so purchased is less than the amount originally due in the Original Currency, the Province shall indemnify the Indenture Trustee against such loss.

(b) The term "rate of exchange" in this Section 1.19 means the spot rate at which the Indenture Trustee, in accordance with normal practice, is able on the relevant date to purchase the Original Currency with the Second Currency and includes any premium and costs of exchange payable in connection with such purchase.

ARTICLE II
AGREEMENT TO PERFORM APPROVED OBLIGATIONS

2.01 Limited Guarantee

(a) Upon the occurrence of a Protection Event, the Indenture Trustee may deliver a written demand, substantially in the form attached as Exhibit A (a "**Payment Demand**"), to the Province requiring the Province to make payments in respect of the Approved Obligations at the times, in the amounts and subject to the requirements specified in this Agreement. From and after such delivery of a Payment Demand, the Province shall make the following payments in respect of the Approved Obligations (the "**Limited Guarantee**"), and the Financing Entity shall pay, and the Province shall be entitled to be paid, the Subrogation Amounts specified below, on the specified Guarantee Payment Date:

i. Not less than 3 Business Days prior to each day when any payment or payments are to be made in respect of one or more Approved Obligations occurring after such delivery of a Payment Demand and prior to the Assumption Effective Date, if any, (a "**Guarantee Payment Date**"), the Manager shall deliver a written statement setting forth the Aggregate Approved Obligations Amount, if any, in respect of the Approved Obligations that are due and payable on such Guarantee Payment Date, together with a detailed description identifying such Approved Obligations and the nature and amount of payments due and payable thereunder on the Guarantee Payment Date, the aggregate outstanding amount payable by the Financing Entity under such Approved Obligations as of the date of the Guarantor Settlement Statement, and details regarding any default in performance by any party obligated thereunder (a "**Guarantor Settlement Statement**")[4].

ii. On each such Guarantee Payment Date, the Province shall deposit the Aggregate Approved Obligations Amount into the Protection Account.

iii. On each such Guarantee Payment Date, the Financing Entity and the Indenture Trustee shall ensure that the amounts on deposit in the Protection Account are applied to pay each Beneficiary to whom an amount is due and payable under an Approved Obligation on the Guarantee Payment Date the Approved Obligation Amount for such Beneficiary in respect of such Approved Obligation on such Guarantee Payment Date; provided that if the amount deposited pursuant to clause 2.01(a)ii is insufficient to pay all such Approved Obligation Amounts in full, the amount on deposit in the Protection Account on the Guarantee Payment Date shall be applied to pay Beneficiaries in the order of priority in which such Approved Obligations are payable under the payment

[4] Given timing, we would appreciate if the parties did not negotiate this form now.

provisions of the Trust Indenture applicable to the making of such payments on the Guarantee Payment Date (each, a "**Beneficiary Payee**").

iv. On any Guarantee Payment Date on which an amount is paid by the Province pursuant to clause 2.01(a)ii, the applicable payment provisions of the Trust Indenture shall, notwithstanding the express terms of such provisions set forth in the Trust Indenture, be applied and operate on the following basis:

(A) the amount payable to a Beneficiary Payee in respect of an Approved Obligation from amounts available under such payment provisions on such Guarantee Payment Date shall be reduced by the amount paid to the Beneficiary Payee pursuant to clause 2.01(a)iii in respect of such Approved Obligation on such Guarantee Payment Date;

(B) the Province shall be paid the lesser of (x) the amount payable to a Beneficiary Payee in respect of an Approved Obligation from amounts available to pay the Beneficiary Payee under such payment provisions on the Guarantee Payment Date, determined without regard to subclause 2.01(a)iv(A), and (y) the amount paid to the Beneficiary Payee pursuant to clause 2.01(a)iii in respect of such Approved Obligation on the Guarantee Payment Date (such payments to the Province being "**Subrogation Amounts**"); and[5]

(C) no Beneficiary having a right to be paid an amount in respect of an Approved Obligation that ranks equal with or subordinate to an Approved Obligation in respect of which an amount is payable to the Province under subclause 2.01(a)iv(B) shall be entitled to make any claim or assert any right in or to the amounts paid or payable to the Province under such subclause (including any right or reimbursement, contribution or indemnity) and no such Beneficiary shall have any right or interest in, to or under the Collateral or any proceeds therefrom in respect of such amounts.

v. On any Guarantee Payment Date, the Indenture Trustee shall release and pay to the Province free and clear of any Liens any amount remaining on deposit in the Protection Account that has not been applied to pay

[5] We thought this section required tweaking to reflect the intention of the parties.

Beneficiary Payees on the Guarantee Payment Date in accordance with clause 2.01(a)iii.

vi. In preparing any payment instructions under the Trust Indenture, the Manager shall reflect the amounts payable for the Guarantee Payment Date under Section 2.01(a).

(b) The Province shall, as a payee of Subrogation Amounts and any amounts payable under clause 2.01(a)(iv)(B), be a "Specified Creditor" under the Trust Indenture and have the benefit of the Collateral thereunder.

(c) For greater certainty, the Limited Guarantee will not apply to any amount or obligation of the Financing Entity that is not or does not arise under an Approved Obligation and will be limited to the right to receive the Approved Obligation Amounts, if any, for payment to Beneficiary Payees and will be subject to the priorities and to the Province's rights to Subrogation Amounts, set forth in Section 2.01(a).

(d) Except as expressly provided in this Agreement, the Province's obligation to provide and perform the Limited Guarantee shall be irrevocable, absolute and unconditional.

(e) Any amount payable by the Province under the Limited Guarantee in respect of an Approved Obligation that is not paid by the Province when required herein shall bear interest from the applicable due date until paid in full at the rate or rates expressed to be payable on the Approved Obligation by their terms.

(f) The right to deliver a Payment Demand and thereupon enforce the Limited Guarantee shall constitute the only remedy available to the Indenture Trustee (and to the Beneficiaries, to the extent they are permitted to exercise any rights, interests, or elections under and in accordance with the Trust Indenture) under this Agreement. Under no circumstances shall the Province be obligated to pay or indemnify the Indenture Trustee or any Beneficiary for consequential, special or punitive damages, or for economic loss or loss of profits; provided that, for greater certainty, economic loss shall not include any amount in respect of any amount due and payable to a Beneficiary Payee under the Limited Guarantee.

2.02 Intentionally Deleted.

2.03 Absence of Set-off

Subject to applicable law, the Province acknowledges and agrees that each payment to be made by the Province hereunder in respect of an Approved Obligation shall be made as required in whole, without application of any right of set-off and without regard to any equities as between or among any of the Province, the Beneficiaries and/or the Indenture Trustee.

2.04 Payment into Protection Account in Satisfaction

(a) On or before the date of delivery of a Payment Demand to the Province, the Indenture Trustee shall cause to be established and maintained an Eligible Deposit Account (the "**Protection Account**") in the name of the Indenture Trustee, bearing a designation clearly indicating that the funds and other property credited thereto are held for the benefit of the Indenture Trustee and the Beneficiaries. The Protection Account shall be under the control of the Indenture Trustee for the benefit of the Beneficiaries. If, at any time, the institution holding the Protection Account ceases to be an Eligible Institution, the FSM shall notify the Indenture Trustee, and the Indenture Trustee upon being notified in writing of such ineligibility (or the FSM on its behalf) shall within 30 days (or such longer period, not to exceed 45 days, so long as the Rating Agency Condition is satisfied) establish a new Protection Account that is an Eligible Deposit Account and shall transfer any funds or other property from such Protection Account to such new Protection Account. From the date each such new Protection Account is established, it shall be the "Protection Account" for purposes of this Agreement. Funds credited to the Protection Account will be invested and held in accordance with Section **[7.03]** of the Trust Indenture on the basis that it is an Issuer Account.

(b) Notwithstanding the priority of payment requirements set forth in the Trust Indenture and any legal rule concerning the imputation of payments, the Financing Entity and the Indenture Trustee shall ensure that all amounts paid by the Province into the Protection Account on a Guarantee Payment Date in respect of an Approved Obligation are applied to pay the amounts due and payable to the Beneficiaries as and to the extent provided for in Section 2.01(a). Upon a payment having been made by or on behalf of the Province into the Protection Account, the amounts so paid shall for all purposes be considered to have been applied to pay the applicable Beneficiaries as provided for in Section 2.01(a) and thereby reduce the amount due and payable to such Beneficiaries in respect of the applicable Approved Obligations, whereupon an affected Beneficiary shall have no continuing rights, interests or entitlements (including rights as a secured party) in respect of the Approved Obligation to the extent so paid. For greater certainty, the obligations arising in respect of an applicable Approved Obligation shall not be reduced by such payment as the Province shall become entitled to be paid related Subrogation Amounts and the rights contemplated under Section 2.01(a) and Section 5.01 in relation to such continuing obligations.

2.05 Certain Waivers

The Province hereby waives:

(a) any requirement, and any right to require, that any power be exercised or any action be taken against the Financing Entity or any Collateral for any of the Approved Obligations;

(b) all notices which may be required by applicable law to preserve any rights against the Province hereunder, including any notice of default, demand, dishonour, presentment and protest;

(c) diligence; and

(d) any defence based upon, arising out of or in any way related to any claim that any election of remedies by the Beneficiaries impaired, reduced, released or extinguished any rights that the Province might otherwise have had against the Financing Entity or any other surety.

The Province agrees that each such waiver is made with full knowledge of its significance and consequences and if any such waiver is determined to be contrary to any applicable law or public policy, such waiver shall be effective only to the maximum extent permitted by applicable law.

2.06 Additional Security

This Agreement shall be in addition to and without prejudice to any other security by whomsoever given, held at any time by the Indenture Trustee or for the benefit of any of the Beneficiaries.

2.07 Continuing Liability of the Province

The Approved Obligations shall be deemed not to have been paid, observed or performed, and the liability of the Province hereunder in respect thereof shall continue and not be discharged, to the extent that any payment, observance or performance thereof by the Financing Entity, or out of the proceeds of any Collateral, is recovered from or reimbursed by or for the account of any of the Beneficiaries for any reason, including a preference or fraudulent transfer or by virtue of any subordination (whether present or future or contractual or otherwise) of the Approved Obligations, whether such recovery or payment over is effected by any judgment, decree or order of any court or Governmental Authority, by any plan of reorganization or by settlement or compromise by any of the Beneficiaries (whether or not consented to by the Financing Entity or the Province) of any claim for any such recovery or payment over.

2.08 Continuance of the Limited Guarantee

Subject to Section 2.07, the Limited Guarantee shall continue in full force and effect until the indefeasible payment, observance and performance in full of the Approved Obligations in accordance with Section 9.01.[6]

2.09 Modifications of Approved Obligations

The Province expressly authorizes the Indenture Trustee, at any time and from time to time, without notice and without affecting the liability of the Province hereunder, but subject to compliance with the requirements of the Program Agreements and this Agreement, to:

[6] We made this change to be consistent with the termination clause in section 9.01.

(a) accept new, additional or replacement instruments, documents, agreements or security in connection with all or any part of the Approved Obligations;

(b) accept partial payments on the Approved Obligations; and

(c) waive, release, reconvey, terminate, abandon, subordinate, exchange, substitute, transfer, compound, compromise, liquidate and enforce all or any part of the Approved Obligations and any security or guarantee therefor, and apply any such security and direct the order or manner of sale thereof as the Indenture Trustee (for the benefit of the Beneficiaries) in its discretion may determine.

ARTICLE III
THE INDENTURE TRUSTEE

3.01 The Indenture Trustee

This Agreement is made in favour of the Indenture Trustee in its capacity as trustee under the Trust Indenture. Accordingly, in the event of a new trustee being appointed under the Trust Indenture, such new trustee shall thereupon become and be the Indenture Trustee hereunder, but nevertheless, the Indenture Trustee shall forthwith assign, transfer and make over to the new trustee hereunder this Agreement. All provisions of the Trust Indenture for the protection of the Indenture Trustee or for facilitating the administration of the trusts or otherwise relating to the Indenture Trustee solely as to its holding of the rights thereunder shall apply *mutatis mutandis* to this Agreement and the Indenture Trustee's duties hereunder.

3.02 Acceptance of Trusts

The Indenture Trustee hereby accepts the trusts hereof and agrees to carry out and discharge the same unless and until a new trustee shall be appointed as contemplated in Section 3.01.

ARTICLE IV
APPROVED OBLIGATIONS

4.01 Approval Process

A Primary Obligation shall constitute an Approved Obligation if (i) the Adherence Conditions applicable thereto have been satisfied at the time the Primary Obligation was incurred, or (ii) the Province, in its sole discretion, agrees it is an Approved Obligation.

4.02 Adherence Conditions[7]

The following shall be the Adherence Conditions applicable in relation to each Certified Primary Obligation:

(a) the Certified Primary Obligation when incurred is an Obligation Secured under the Trust Indenture; and

(b) OPG, as FSM, delivers a certificate signed by the Chief Financial Officer and the Treasurer of OPG, or any two Executive Officers of OPG (for clarity, such certificate is to be provided by such officers in their capacity as officers of OPG acting in its capacity as FSM) and addressed to the Indenture Trustee, on or before the incurrence of a Certified Primary Obligation[8] (provided that delivery may not be more than 5 Business Days before the incurrence of the Certified Primary Obligation), confirming that OPG has provided to the Province all certifications required by the Province in connection with the incurrence of such Certified Primary Obligation; and

(c) in respect of a Certified Primary Obligation other than a Refinancing, the Province has not provided a Suspension Notice to the Indenture Trustee, OPG and the Financing Entity.

For greater certainty, (y) satisfaction of the Adherence Conditions for a Certified Primary Obligation shall be deemed satisfaction of the Adherence Conditions in respect of all principal, interest and other amounts owing under the Certified Primary Obligation, as such Certified Primary Obligation may be amended, restated, supplemented or otherwise modified from time to time, and (z) there shall be no Adherence Conditions applicable in relation to a Primary Obligation that is not a Certified Primary Obligation.

4.03 Evidence of Satisfaction

A closing certificate delivered in accordance with Section 4.02(b) in connection with an incurrence of a Certified Primary Obligation shall be determinative as to whether the applicable Adherence Conditions with respect thereto have been satisfied, notwithstanding that such certificate may include inaccuracies, be incomplete or otherwise be defective or deficient, and such closing certificate may be relied upon by any addressee as conclusive evidence of same. A closing certificate that purports on its face to be signed by officers specified in Section 4.02(b) may be relied upon by any addressee without further enquiry or evidence as to the incumbency

[7] We would propose that the certification in section 4.02(b) of the Protection Agreement track the requirements of section 3.01 of the Process Agreement to ensure that the two sections are consistent. Accordingly, we have revised section 4.02(b) of the Protection Agreement to state the certificate delivered to the Indenture Trustee under this section should confirm that all certifications to the Province required in connection with the incurrence of such Certified Primary Obligations have been delivered to the Province.

[8] We tried to address all parties concerns expressed at our last meeting by this language. The Province can be assured that no certificate earlier than 5 Business Days prior to incurring the Certified Primary Obligation is delivered and the dealers have comfort that the clause is not too prescriptive.

or signatures of such officers. If a closing certificate is not delivered in accordance with the timing requirements of Section 4.02(b), such certificate may be delivered at a later date, and be effective as if it had been delivered in accordance with the timing requirement of Section 4.02(b), if at the time such certificate was required to be delivered OPG had delivered to the Province all certifications required by the Province in connection with the incurrence of a Certified Primary Obligation.[9]

ARTICLE V
PROVINCE MATTERS

5.01 Assignment and Subrogation

(a) Upon paying an amount in respect of an Approved Obligation to or at the direction of the Indenture Trustee in satisfaction of the Limited Guarantee, the Province (in addition to and without prejudice to any rights it otherwise has in law or equity) shall be subrogated and entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Approved Obligation to the extent of such payment, including (i) the right and entitlement to be paid and receive the related Subrogation Amounts, (ii) the benefits of the related Collateral and (iii) all proceeds therefrom. The Province shall have and be entitled to enforce all rights and interests (including as a Specified Creditor under the Trust Indenture on the basis contemplated in Section 5.01(b)), under and in respect of such Approved Obligation to the extent of the payment by the Province in respect of the Approved Obligation as an absolute assignee of the applicable Beneficiary, with effect from and after the time of such payment, without any further requirement for notice to or acceptance by the Financing Entity of such absolute assignment and without any reduction, set-off or counterclaim on account of any amounts that may, at or after the time of payment, be or become owing by the Beneficiary to the Financing Entity and unaffected by any other rights or equities that arise thereafter as between the Beneficiary and the Financing Entity. The Indenture Trustee shall recognize the Province as being entitled to all of the rights, interests and entitlements of the Beneficiary (including as a Specified Creditor under the Trust Indenture on the basis contemplated in Section 5.01(b)) in respect and to the extent of the Approved Obligation so paid, determined as of the time of payment, for all purposes under the Trust Indenture, and the Province shall be treated as a Specified Creditor in respect thereof for all purposes under the Trust Indenture and any other agreement under which the Approved Obligation arises.

(b) The Province (i) acknowledges and agrees in favour of the Indenture Trustee that, upon being subrogated and entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Approved Obligation in accordance with Section 5.01(a), the Province, in its capacity as a Specified Creditor, will be subject to the provisions applicable to Specified Creditors under the Trust Indenture, including **[Sections 7.04 through 7.11 and 8.13 (Payment Priorities),**

[9] This additional language was added to address the concerns of the dealers and Oslers discussed at our last meeting.

Section 7.12 (Payments Held in Trust), Section 8.11 (Control by Controlling Class Creditors), Section 8.12 (Limitation on Suits), Section 8.14 (Limited Recourse), Section 9.14 (Communications to Specified Creditors) and Section 16.01 (No Petition)]; (ii) consents, requests and authorizes the Issuer and the Indenture Trustee to (x) add the Province to the register of Specified Creditors described in subsection **[13.13(b)]** of the Trust Indenture and (y) disseminate the notice details of the Province to other Specified Creditors for the purposes set out in subsection **[9.14(b)]** of the Trust Indenture, and (iii) confirms that the Indenture Trustee shall send notices to the Province, in its capacity as a Specified Creditor, in accordance with Section 9.02.[10]

5.02 Priorities

For greater certainty, the rights, interests and entitlements of the Province as an assignee or subrogee, as applicable, of and with respect to an Approved Obligation shall rank equally with the rights, interests and entitlements of a Beneficiary to whom a Limited Guarantee payment is made in respect of, and to the extent of the payment made to satisfy, the Approved Obligation and the Province shall not be subject to postponement or subordination with respect thereto except to the extent of the priorities established in relation to the Approved Obligation under the Trust Indenture in the manner and to the extent contemplated in Section 2.01.

5.03 Intentionally Deleted

5.04 Representations and Warranties

The Province hereby represents and warrants that:

(a) the execution and delivery of, and the performance of its obligations under, this Agreement by the Province have been authorized by all necessary action on the part of the Province;

(b) the execution and delivery of, and the performance of its obligations under, this Agreement by the Province do not result in the violation of any applicable law; and

(c) this Agreement has been duly executed and delivered by the Province.

[10] These changes were made to conform to the latest draft of the Trust Indenture, a copy of which will be circulated soon.

ARTICLE VI
NOTICE OF ASSUMPTION OF CERTAIN OBLIGATIONS SECURED[11]

6.01 Delivery of Assumption Notice

Following the occurrence of a Protection Event, the Province may (but shall not be obligated to) provide notice (in the form of Exhibit B) to the Indenture Trustee that the Province has elected to assume the Financing Entity's obligations in respect of all Obligations Secured permitted to be assumed by their terms (the "**Assumption Notice**"). The Assumption Notice shall specify the date on which the assignment and assumption of such Obligations Secured will be effective (each such date being an "**Assumption Closing Date**").[12]

6.02 Cooperation to Implement the Assignment and Assumption

The Indenture Trustee, the FSM, the Financing Entity and the Province will cooperate and use best efforts to complete the assignment and assumption of the Obligations Secured referenced in Section 6.01 by and from the Financing Entity to and by the Province by the applicable Assumption Closing Date.

6.03 Effect of Assignment and Assumption

On the date that the assignment and assumption of the Obligations Secured referenced in Section 6.01 by and from the Financing Entity to and by the Province becomes effective (the "**Assumption Effective Date**"), the Province shall no longer be required to provide and perform the Limited Guarantee but will instead become a primary obligor under such Obligations Secured assumed pursuant to and in accordance with an applicable Assumption Agreement. For greater certainty, the obligations of the Province so assumed will not be secured obligations of the Province and the obligees thereof will have no right, interest or claim to or in respect of the Collateral or any proceeds therefrom.

6.04 Interim Period

Until the effective time of the assignment and assumption of the Obligations Secured referenced in Section 6.01 by and from the Financing Entity to and by the Province on the Assumption Effective Date, the Province shall continue to perform and be obligated under the Limited Guarantee with respect to those Obligations Secured.

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[11] Please see Torys' cover email to explain changes made in this Article and the related Article in the Process Agreement. Section 6.05 was deleted since it was not applicable in a context where only some of the Obligations Secured would be assumed.

[12] It is not realistic to think that the assumptions of Secured Obligations will all occur on one day. We think it has to happen on a contract by contract basis. As a Secured Obligation is assumed, the Limited Guarantee falls away with respect to it (it becomes a "zero" item in the waterfalls).

ARTICLE VII
INDENTURE TRUSTEE MATTERS

7.01 Limited Recourse

No recourse may be taken, directly or indirectly, with respect to the obligations of the Financing Entity under this Agreement, or any certificate or other writing delivered in connection herewith or therewith, against (a) the Financing Entity Trustee in its individual capacity, (b) any owner of a beneficial interest in the Financing Entity or (c) any partner, owner, beneficiary, agent, officer, director, employee or agent of the Financing Entity Trustee in its individual capacity, any holder of a beneficial interest in the Financing Entity or the Financing Entity Trustee or of any successor or assign of the Financing Entity Trustee in its individual capacity, except as any such Person may have expressly agreed (it being understood that the Financing Entity Trustee has no such obligations in its individual capacity).

7.02 Not Responsible for Recitals

The recitals contained herein will be taken as the statements of the Province, the Financing Entity and the FSM, and the Indenture Trustee assumes no responsibility for their correctness. The Indenture Trustee makes no representations as to the validity or sufficiency of this Agreement.

7.03 Representations and Covenants of the Indenture Trustee[13]

The Indenture Trustee represents, warrants and covenants that:

(a) the Indenture Trustee is a trust company organized, existing and in good standing under the laws of Canada; and

(b) the Indenture Trustee is authorized to carry on the business of a trust company in each of the provinces and territories of Canada.

ARTICLE VIII
SUSPENSION OF ADHERENCE FOR NEW PRIMARY OBLIGATIONS

8.01 Suspension Notice

Upon:

(a) a Program Breach; or

(b) a default in the performance, or breach, of any covenants or representations of the FSM to the Province in connection with an incurrence or amendment of Primary

[13] The Indenture Trustee asked us to delete these representations. They will not provide these types of representations without attaining a legal opinion from outside counsel. To avoid delay, we would ask that the parties agree to this deletion.

Obligations, which continues for thirty (30) days after written notice by the Province to the FSM of such default or breach; or

(c) the FSM no longer being the Manager or actions having been taken by or on behalf of the Indenture Trustee to remove the FSM as the Manager,

the Province may declare that the Limited Guarantee under this Agreement shall not apply to any Primary Obligations incurred[14] on or after such declaration, other than any Refinancing of a Primary Obligation in respect of which the Adherence Conditions had previously been satisfied, by delivering a written notice in the form of Exhibit C (a "**Suspension Notice**") to the Province to the Indenture Trustee, the FSM and the Financing Entity.[15]

8.02 Suspension

If a Suspension Notice has been provided under Section 8.01 (the provision of such notice being a "**Suspension Event**"), the Limited Guarantee shall not apply in respect of any Primary Obligation incurred[16] on or after the time such Suspension Notice is delivered, other than any Refinancing of a Primary Obligation in respect of which the Adherence Conditions had previously been satisfied. For greater certainty, the rights of the Province under Article VI shall apply in respect of the Obligations Secured referenced in Section 6.01, including if incurred on or after the time such Suspension Notice is delivered.[17]

8.03 No Impact on Adherence

For greater certainty, the occurrence of Suspension Event or a failure by the FSM or the Financing Entity to perform its covenants under this Agreement will not invalidate or extinguish the obligations of the Province under the Limited Guarantee in respect of Approved Obligations in existence prior to the occurrence of the Suspension Event or in respect of any Refinancing of a Primary Obligation in respect of which the Adherence Conditions had previously been satisfied, nor will it in any way impact the Obligations Secured which are assumed by the Province in accordance with ARTICLE VI.

[14] We will need the ability to amend the Primary Obligations after a Suspension Notice to deal with the Suspension Notice itself.

[15] OPG has confirmed that it is problematic from an accounting perspective to give the Province a broad right to suspend at any time. As discussed in the meeting, we therefore reintroduced the concept of the Program Breach and Breach Event but we made the breach event generic to ensure we do not have to reference the Process Agreement in this document.

[16] We will need the ability to amend the Primary Obligations after a Suspension Notice to deal with the Suspension Notice itself.

[17] We have deleted the concept of the termination notice since it no longer serves a purpose and is potentially confusing to the reader.

ARTICLE IX
MISCELLANEOUS

9.01 Term of Agreement

This Agreement will continue until the date that no amount is or may become due and payable by the Province under the Limited Guarantee.

9.02 Notices

Any notice or other communication required or permitted to be given hereunder will be in writing and will be given by prepaid first-class mail, by facsimile or other means of electronic communication or by hand-delivery as hereinafter provided. Any such notice or other communication, if mailed by prepaid first-class mail at any time other than during a general discontinuance of postal service due to strike, lockout or otherwise, will be deemed to have been received on the fourth Business Day after the post-marked date thereof, or if sent by facsimile or other means of electronic communication, will be deemed to have been received on the Business Day following the sending, or if delivered by hand will be deemed to have been received at the time it is delivered to the applicable address noted below either to the individual designated below or to an individual at such address having apparent authority to accept deliveries on behalf of the addressee. Notice of change of address will also be governed by this Section. In the event of a general discontinuance of postal service due to strike, lock-out or otherwise, notices or other communications will be delivered by hand or sent by facsimile or other means of electronic communication and will be deemed to have been received in accordance with this Section. Notices and other communications will be addressed as follows:

(a) if to the Financing Entity:

Fair Hydro Trust
700 University Avenue
Toronto, Ontario M5G 1X6
Attention: General Counsel
Fax: (416) 592-4189

with copies to:

Computershare Trust Company of Canada, in its capacity as Financing Entity Trustee for Fair Hydro Trust
100 University Avenue, 11th Floor
Toronto, Ontario M5J 2Y1
Attention: Manager, Corporate Trust
Fax: (416) 981-9777
Email: corporatetrust.toronto@computershare.com

(b) if to the FSM:

Ontario Power Generation Inc.
700 University Avenue
Toronto, Ontario M5G 1X6
Attention: General Counsel
Fax: (416) 592-4189

(c) if to the Province:

Ministry of Finance
[Address]
Attention: [■]
Fax: (416) [■]
Email: [■]

and

Ministry of Energy
[Address]
Attention: [■]
Fax: (416) [■]
Email: [■]

(d) if to the Indenture Trustee:

[Address]
Attention: [■]
Fax: (416) [■]
Email: [■]

or to such other addresses as a party may from time to time notify the other parties in accordance with this Section 9.02.

9.03 Assignment

(a) None of the rights or obligations hereunder shall be assignable or transferable by any party without the prior written consent of the other parties, except as otherwise provided for herein.

(b) Any purported assignment of this Agreement in violation of this Section 9.03 shall be null and void.

9.04 Enurement

This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

9.05 FIPPA

The parties acknowledge that the Province will be bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province, or any agent or representative of the Province in connection with this Agreement may be subject to disclosure in accordance with the act or as otherwise required by law.

9.06 No Petition

The Province agrees, to the fullest extent permitted by applicable law, that at no time until one year and one day following repayment in full of all Primary Obligations shall it commence, or join in commencing, a bankruptcy case or other insolvency or similar proceeding under the laws of any jurisdiction against the Financing Entity.

9.07 Intentionally Deleted

9.08 Third Party Rights

This Agreement is not intended to create rights for any Person not party to this Agreement. Beneficiaries derive their benefits hereunder through the Indenture Trustee and shall be subject to the provisions applicable to Specified Creditors in the Trust Indenture.

9.09 Delivery of Executed Copies

Each party acknowledges delivery of a fully executed copy of this Agreement.

[Signature page to follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF FINANCE

By: _____
Name:
Title:

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY

By: _____
Name:
Title:

ONTARIO POWER GENERATION INC., AS FSM AND AS MANAGER

By: _____
Name:
Title:

By: _____
Name:
Title:

COMPUTERSHARE TRUST COMPANY OF CANADA, IN ITS CAPACITY AS TRUSTEE OF FAIR HYDRO TRUST, AS ISSUER, BY ONTARIO POWER GENERATION INC., NOT IN ITS INDIVIDUAL CAPACITY BUT SOLELY AS MANAGER

By: _____
Name:
Title:

By: _____
Name:
Title:

BNY TRUST COMPANY OF CANADA, AS INDENTURE TRUSTEE AND NOT IN ITS INDIVIDUAL CAPACITY

By: _____
Name:
Title:

By: _____
Name:
Title:

SCHEDULE A
DEFINED TERMS

"**Acceleration**" has the meaning ascribed to the term "acceleration" in the General Regulation.

"**Act**" has the meaning ascribed thereto in the first paragraph of the recitals in this Agreement.

"**Action**" has the meaning ascribed thereto under the Trust Indenture.

"**Adherence Conditions**", means, in respect of the Certified Primary Obligations, the conditions set out in Section 4.02.

"**Aggregate Approved Obligations Amount**" means, in respect of a Guarantee Payment Date, the aggregate of the Approved Obligation Amounts for such Guarantee Payment Date.

"**Approved Obligation**" means a Primary Obligation that constitutes an Approved Obligation pursuant to Section 4.01.

"**Approved Obligation Amount**" means, for a Beneficiary in respect of an Approved Obligation under which an amount is due and payable on a Guarantee Payment Date:

(a) if no Acceleration has occurred in respect of any Obligation Secured on or before the Guarantee Payment Date, the amount due and payable to the Beneficiary on such Guarantee Payment Date in respect of the Approved Obligation (for greater certainty, determined on the assumption that there are adequate amounts available under the applicable payment provisions of the Trust Indenture to pay in full all amounts referred to in such payment provisions that are due and payable on the Guarantee Payment Date); and

(b) if an Acceleration has occurred in respect of any Obligations Secured on or before the Guarantee Payment Date, the amount that would be available to be paid to the Beneficiary on such Guarantee Payment Date in respect of the Approved Obligation under the applicable payment provisions of the Trust Indenture, determined on the assumption that the amount available for allocation to Specified Creditors in accordance with such applicable payment provisions of the Trust Indenture in respect of each relevant month during each Reference Period is equal to the estimated Finance Amount determined in respect of such Reference Period for purposes of section 15(1) of the Act (in effect on the date hereof) divided by the number of months in such Reference Period.

"**Assumption Agreement**" means the agreement among the Province, the Indenture Trustee, the Financing Entity and any other person that is party to the applicable Supplemental Indenture or Loan Agreement affected by the assignment and assumption contemplated under Article VI, which agreement shall be in substantially the form of assumption agreement set forth in the applicable Supplemental Indenture or Loan Agreement.

"**Assumption Effective Date**" has the meaning ascribed thereto in Section 6.03.

"**Assumption Closing Date**" has the meaning ascribed thereto in Section 6.01.

"**Assumption Notice**" has the meaning ascribed thereto in Section 6.01.

"**Beneficiaries**" means the Specified Creditors to whom the Financing Entity owes a payment obligation pursuant to one or more Approved Obligations from time to time.

"**Beneficiary Payee**" has the meaning ascribed thereto in Section 2.01(a)iii.

"**Business Day**" means any day other than a Saturday, a Sunday or a day on which banking institutions in Toronto, Ontario are authorized or obligated by applicable law, regulation or executive order to be closed.

"**Capital Account**" has the meaning ascribed to the term "capital account" in the General Regulation.

"**Certified Primary Obligations**" means Primary Obligations that are payment obligations that are: (i) incurred by or on behalf of the Financing Entity to fund its ownership of an Investment Interest or to repay payment obligations that were incurred by or on behalf of the Financing Entity to fund its ownership of an Investment Interest,[18] (ii) incurred by or on behalf of the Financing Entity upon the Financing Entity entering into a Derivative Agreement, in which case the Certified Primary Obligation therefor shall be the Master Agreement applicable to such Derivative Agreement and not each individual trade confirmation, or (iii) incurred by or on behalf of the Financing Entity upon entering into a contract that has a term of more than three (3) years which is not terminable by the Financing Entity giving three (3) years' notice or less and aggregate payments by the Financing Entity thereunder during the term of such contract is in excess of C$5,000,000 (that, for greater certainty, is not otherwise captured in clauses (i) and (ii) above).[19]

"**Change of Law Protection Agreement**" means this Agreement.

"**Collateral**" has the meaning ascribed thereto in the Trust Indenture.

"**Declaration of Trust**" means the declaration of trust made as of [■], 2017 under which the Financing Entity was established.

"**Derivative Agreement**" means any rate swap transaction, basis swap, forward rate transaction, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, total return swap transaction, credit default swap transaction or any other similar transaction (including any option with respect to any of those transactions) or any combination of

[18] Query: For a warehouse facility, does the Province want a Certificate for each monthly draw?

[19] This concept reflects what Primary Obligations the parties agreed to be subject to the adherence conditions.

these transactions entered into from time to time by the Financing Entity in connection with or related to Funding Obligations.

"**Eligible Deposit Account**" has the meaning ascribed thereto in the Trust Indenture.

"**Eligible Institution**" has the meaning ascribed thereto in the Trust Indenture.

"**Executive Officer**" has the meaning ascribed thereto in the *Securities Act* (Ontario).

"**Finance Amount**" has the meaning ascribed to the term "finance amount" in the Act as of the date of this Agreement.

"**Finance Reserve Account**" has the meaning ascribed to the term "finance reserve account" in the General Regulation.

"**Financing Entity**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Financing Entity Trustee**" has the meaning ascribed thereto in the first paragraph of this Agreement until a successor Financing Entity Trustee shall have become such pursuant to the applicable provisions of the Trust Indenture and the Declaration of Trust, and thereafter "Financing Entity Trustee" means and includes such Person.[20]

"**FSM**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Funding Obligation**" has the meaning ascribed to the term "funding obligation" in the Act as of the date of this Agreement.

"**Funding Obligation Agreement**" has the meaning ascribed thereto in the Trust Indenture.

"**General Regulation**" means O. Reg. 206/17 made under the Act.

"**Guarantee Payment Date**" has the meaning ascribed thereto in Section 2.01(a).

"**Guarantor Settlement Statement**" has the meaning ascribed thereto in Section 2.01(a).

"**Governmental Authority**" means any nation or government, any federal, state, provincial, local or other political subdivision thereof and any court, administrative agency or other instrumentality or entity exercising executive, legislative, judicial, regulatory or administrative functions of government.

"**IESO**" has the meaning ascribed thereto in the Act.

"**Indenture Trustee**" means the Person named as the Indenture Trustee in the first paragraph of this Agreement until a successor Indenture Trustee shall have become such pursuant to the applicable provisions of the Trust Indenture and this Agreement, and thereafter "Indenture Trustee" means and includes such Person.

[20] We are merely conforming this definition to the definition of Indenture Trustee.

"**Investment Interest**" has the meaning ascribed to the term "investment interest" in the Act as of the date of this Agreement.

"**Issuer Account**" has the meaning ascribed thereto in the Trust Indenture.

"**Legislature**" means the Legislature of the Province of Ontario.

"**Lien**" has the meaning ascribed thereto in the Trust Indenture.

"**Limited Guarantee**" has the meaning ascribed thereto in Section 2.01(a).

"**Loan Agreement**" has the meaning ascribed thereto in the Trust Indenture.

"**Management Agreement**" means the management agreement dated [■], 2017 between the Manager and the Financing Entity, as amended, supplemented, restated or otherwise modified from time to time.

"**Manager**" means OPG, in its capacity as manager of the Financing Entity under the Management Agreement.

"**Master Agreement**" means an agreement in the form of a 1992 ISDA Master Agreement (Multi-Currency – Cross Border) as published by ISDA or any replacement or substitute or functional equivalent of such agreement.

"**Master Transfer and Servicing Agreement**" means the master transfer and servicing agreement dated [■], 2017 between the Financing Entity and IESO, as amended, supplemented, restated or otherwise modified from time to time.

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"**Obligations Secured**" has the meaning ascribed thereto in the Trust Indenture.

"**OIC**" has the meaning ascribed thereto in the second paragraph of the recitals in this Agreement.

"**OPG**" means Ontario Power Generation Inc., a corporation established under the laws of the Province of Ontario.

"**Original Currency**" has the meaning ascribed thereto in Section 1.19(a).

"**Payment Demand**" has the meaning ascribed thereto in Section 2.01(a).

"**Person**" means any individual, corporation, limited liability company, estate, partnership, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization or Governmental Authority.

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[21] The definition of Notes is not used in the Agreement.

"**Primary Obligations**" means any Obligation Secured (a) that is a Funding Obligation or (b) that otherwise is a payment obligation of the Financing Entity that gives rise to a Finance Amount, in each case other than (i) any amounts required to be deposited by or on behalf of the Financing Entity into any Capital Account or Finance Reserve Account; and (ii) any obligation to pay the Financing Entity or on the Financing Entity's direction any remaining amounts in the Collection Account pursuant to the Trust Indenture.[22]

"**Program Agreements**" has the meaning ascribed thereto in the Trust Indenture.

"**Program Breach**" means an acceleration of Funding Obligations in accordance with the provisions of the Trust Indenture or an event of default, termination event or similar event or circumstance (including any event that with the passage of time or the giving of notice would become such an event) of or in respect of the obligations of any party under any Program Agreement, including under this Agreement, the Trust Indenture, the Master Transfer and Servicing Agreement or any Derivative Agreement.[23]

"**Protection Account**" has the meaning ascribed to such term in Section 2.04(a).

"**Protection Event**" means the occurrence of any of the following events:

(a) (i) the Legislature repeals (and does not replace on an equivalent basis) or amends the Act or any portion thereof as in effect on the date hereof;

(ii) the Legislature enacts or amends any other statute;

(iii) the Lieutenant Governor in Council repeals (and does not replace on an equivalent basis) the regulations made under the Act or any portion thereof as in effect on the date hereof; or

(iv) the Lieutenant Governor in Council, a minister of the Crown, an official of the government or a board or commission all the members of which are appointed by the Lieutenant Governor in Council makes or amends any "regulation" (as defined in Part III of the *Legislation Act, 2006*) as in effect on the date hereof;

(v) the implementation of a change in the organization or structure of the IESO or Ontario's electricity market undertaken at the initiative of the Province or an entity controlled by the Province,

in each case, that materially and adversely affects (a) the ability of the Financing Entity to receive amounts in respect of its Investment Interest so that it can pay

[22] These changes were made to conform to the most current version of the Trust Indenture, a copy of which will be circulated soon. Additionally, money in the Collection Account is required to flow through the waterfall and is not required to be held in the Collection Account otherwise.

[23] We deleted early amortization events because that is no longer a concept used in the Trust Indenture.

Obligations Secured, or (b) this Agreement or any of the agreements under which Obligations Secured arise; or

(b) a court of competent jurisdiction determines that all or a portion of the Act or the regulations made under the Act, as in effect on the date hereof, is *ultra vires* or invalid in a way that materially and adversely affects the ability of the Financing Entity to receive amounts in respect of its Investment Interest so that it can pay Obligations Secured and that has the effect of the Financing Entity not in fact having sufficient funds to pay such Obligations Secured that have become due and payable.

"**Province**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Rating Agency Condition**" has the meaning ascribed thereto in the Trust Indenture.

"**Reference Period**" has the meaning ascribed thereto in the Act.

"**Refinancing**" means the incurrence of debt where at the time of issuance the use of the proceeds thereof are identified by the Issuer as to be used to repay an existing Approved Obligation.[24]

"**Second Currency**" has the meaning ascribed thereto in Section 1.19(b).

"**Specified Creditors**" has the meaning ascribed thereto in the Trust Indenture.

"**Subrogation Amounts**" has the meaning ascribed thereto in subclause 2.01(a)iv(ii).

"**Supplemental Indenture**" has the meaning ascribed in the Trust Indenture.

"**Supplemental Reserve Account**" has the meaning ascribed in the Trust Indenture.

"**Suspension Event**" has the meaning ascribed thereto in Section 8.02.

"**Suspension Notice**" has the meaning ascribed thereto in Section 8.01.

"**this Agreement**" means this agreement, as amended, supplemented, restated or otherwise modified from time to time.

"**Trust Indenture**" means the trust indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017, as amended, supplemented, restated or otherwise modified from time to time.

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[24] Refinancings can occur up to six months prior to the application of the refinancing proceeds to the existing obligation. The regulations provide that if the refinancing proceeds are not applied to repay the intended funding obligation, then it is not a Refinancing. Accordingly, we have revised the definition to ensure that Refinancings do not have to be simultaneous with repayment of the existing Approved Obligation (we understand from the dealers that in most circumstances they will not be).

EXHIBIT A
FORM OF PAYMENT DEMAND

TO: Her Majesty the Queen in Right of Ontario, as represented by the Minister of Energy and the Minister of Finance (the "**Province**")

Reference is made to the Change of Law Protection Agreement dated [■], 2017 among the Province, Computershare Trust Company of Canada, as trustee of Fair Hydro Trust (the "**Financing Entity**"), Ontario Power Generation Inc., in its capacity as Manager of the Financing Entity and in its capacity as the Financial Services Manager under the *Fair Hydro Plan Act, 2017*, and the Indenture Trustee (the "**Change of Law Protection Agreement**"). Capitalized terms used and not defined herein shall have the meanings ascribed to such terms in the Change of Law Protection Agreement.

Pursuant to section 2.01(a) of the Change of the Law Protection Agreement, the Indenture Trustee hereby demands payment from the Province in respect of the Approved Obligations at the times, in the amounts and subject to the requirements specified in the Change of Law Protection Agreement.

DATED as of the [■] day of [■], [■].

BNY TRUST COMPANY OF CANADA

By: _____
Name:
Title:

By: _____
Name:
Title:

EXHIBIT B
ASSUMPTION NOTICE

[NTD: Blakes to provide draft]

EXHIBIT C
SUSPENSION NOTICE

[NTD: Blakes to provide draft]

-CLPA - Process Agreement(November 22_17).pdf

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY AND THE MINISTER OF FINANCE

AND

ONTARIO POWER GENERATION INC.

CHANGE OF LAW PROCESS AGREEMENT[1]

Dated as of [■], 2017

[1] This Agreement and the Protection Agreement will need to be effective on closing but signed and held in escrow as soon as they are settled and prior to pricing of the term deal.

This **CHANGE OF LAW PROCESS AGREEMENT**, between Her Majesty the Queen in Right of Ontario, as represented by the Minister of Energy and the Minister of Finance (the "**Province**"), and Ontario Power Generation Inc. ("**OPG**") is made and entered into as of [■], 2017.

RECITALS

OPG is appointed as the Financial Services Manager under Section 18 of the *Ontario Fair Hydro Plan Act, 2017* (the "**Act**").

Pursuant to Section 22(2) of the Act, OPG, in its capacity as the Financial Services Manager (the "**FSM**"), may establish or cause to be established one or more financing entities (as defined in the Act), which may incur Funding Obligations in accordance with the Act.

Pursuant to a Declaration of Trust dated as of [■], 2017, the Financing Entity was established as a "financing entity" (as defined in the Act) for the purposes contemplated in the Act.[2]

Concurrent with this Agreement, the Province, the FSM, the Financing Entity and the Indenture Trustee will enter into the Change of Law Protection Agreement under which the Province will agree to provide protections and assurances to the Indenture Trustee, for the benefit of the Beneficiaries, in respect of Primary Obligations that constitute Approved Obligations, in order to address concerns that would arise from a change or adverse determination of law, subject in each case to the satisfaction of the Adherence Conditions.

Prior to entering into this Agreement, OPG provided the Province with the proposed forms of the Transaction Documents listed on Exhibit "A", and the Province has not objected to such forms and has confirmed to OPG that such Transaction Documents constitute "Reference Documentation" for purposes of this Agreement.

Prior to entering into this Agreement, OPG, as the FSM, provided the Province with the initial Financing Plan attached hereto as Exhibit "B" (the "**Initial Financing Plan**"), and the Province has not objected to such Initial Financing Plan.

Prior to entering into this Agreement, OPG, as the FSM, provided to the Province (i) the initial forecast attached hereto as Exhibit "C" (the "**Initial Forecast**") setting out OPG's expectations regarding the aggregate maximum amount of Repayments that would arise in the future under Approved Obligations to be incurred during the 24 month period following the date hereof (the "**Initial Forecast Period**"); and (ii) notice of the initial Protection Agreement Maximum of C$■ (the "**Initial Protection Agreement Maximum**").[3]

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[2] We are comfortable on this point because OPG has retained Computershare as issuer trustee. The recitals of the Declaration of Trust provide that Computershare has established the Trust at the request of the FSM. We can also provide you with a copy of the Computershare engagement letter upon request.

[3] Given that this Agreement would now be delivered on or immediately prior to closing, we thought it would be acceptable to reference these initial items as delivered versus as future deliverables. Please note that OPG is working

The Province has not objected to the Initial Forecast and the Initial Protection Agreement Maximum on the basis that (i) there does not appear to be inaccuracies in the Initial Financing Plan or the Initial Forecast, (ii) the Initial Forecast is consistent with the Initial Financing Plan, and (iii) the Initial Protection Agreement Maximum is less than the Initial Forecast.

This Agreement sets out the obligations OPG has agreed to perform and assurances OPG has agreed to provide and on which the Province will rely in entering into and implementing the Change of Law Protection Agreement, including for the purposes of determining whether the Adherence Conditions have been satisfied, maintaining information related to the Program Agreements and the Approved Obligations, and ensuring that the Province's assumption rights pursuant to Article VI of the Change of Law Protection Agreement may be exercised without impediment on the terms and conditions contemplated in this Agreement and the Change of Law Protection Agreement.

All things necessary to make this Agreement a valid and legally binding agreement of OPG and the Province, have been done.

AGREEMENT OF THE PARTIES

In consideration of the respective agreements herein contained, the parties hereto covenant and agree as follows:

ARTICLE I
DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

1.01 Interpretation

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) the terms used in this Agreement that are defined in Schedule A have the meanings assigned to them in Schedule A;

(b) the terms used in this Agreement that are not defined in this Agreement shall have the meanings assigned to them in the Change of Law Protection Agreement;

(c) words importing the singular shall include the plural and vice versa, words importing general shall include all genders or the neuter, and words importing the neuter shall include all genders;

(d) all references to any Person shall include such Person's permitted successors and assigns, and any reference to a Person in a particular capacity excludes such Person in other capacities;

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with the Province to deliver the initial financing plan and the initial forecast and to confirm the initial protection agreement maximum.

(e) references to any law, rule, regulation or order of a Governmental Authority (including, for greater certainty, references to the Act and the General Regulation) shall include such law, rule, regulation or order as from time to time in effect, including any amendment, modification, codification, replacement or reenactment thereof or any substitution therefor;

(f) the word "will" shall be construed to have the same meaning and effect as the word "shall". The word "or" is not exclusive;

(g) any reference to this Agreement or any other agreement, document or instrument shall be construed as a reference to this Agreement or, as the case may be, such other agreement, document or instrument as the same may have been, or may from time to time be, amended, varied, replaced, amended and restated, supplemented or otherwise modified;

(h) all references in this Agreement to designated "Articles", "Sections", "Subsections" "Schedules", "Exhibits" and other subdivisions are to the designated Articles, Sections, Subsections, Schedules, Exhibits and other subdivisions of this Agreement as originally executed. The words "herein", "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section, Subsection, Schedule, Exhibit or other subdivision;

(i) "including" and words of similar import will be deemed to be followed by "without limitation"; and

(j) with respect to the computation of periods of time from a specified date to a later specified date, unless otherwise expressly stated, the word "from" means "from and including" and the words "to" and "until" each mean "to but excluding".

1.02 References to the Financing Entity

For greater certainty, each reference to the Financing Entity shall be construed as a reference to the Financing Entity Trustee, as trustee of the Financing Entity.

1.03 Effect of Headings

The Article and Section headings herein and are for convenience only and will not affect the construction hereof.

1.04 Successors and Assigns

All covenants and agreements in this Agreement by the parties will bind their respective successors and permitted assigns, whether so expressed or not.

1.05 Severability

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction will not affect the validity or enforceability of any other provision hereof. To the extent permitted by applicable law, the parties waive any provision of law which renders any provision of this Agreement invalid or unenforceable in any respect.

1.06 Governing Law

THIS AGREEMENT WILL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE PROVINCE OF ONTARIO AND THE FEDERAL LAWS OF CANADA APPLICABLE THEREIN, AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.

1.07 Proceedings Against the Crown Act

NOTHING IN THIS AGREEMENT OR THE PROGRAM AGREEMENTS AFFECTS THE RIGHTS, PROTECTIONS AND IMMUNITIES OF THE CROWN UNDER THE PROCEEDINGS AGAINST THE CROWN ACT (ONTARIO).

1.08 Attornment

EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY ONTARIO COURTS SITTING IN TORONTO IN ANY ACTION, APPLICATION, REFERENCE OR OTHER PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT. THE PARTIES HERETO HEREBY WAIVE ANY RIGHT THEY MAY HAVE TO REQUIRE A TRIAL BY JURY OF ANY PROCEEDING COMMENCED IN CONNECTION WITH THIS AGREEMENT.

1.09 Counterparts; Electronic Delivery

This Agreement may be executed in any number of counterparts, each of which so executed will be deemed to be an original, but all such counterparts will together constitute one and the same instrument. Delivery of an executed signature page to this Agreement by a party by electronic transmission will be as effective as delivery of a manually executed copy of the Agreement by such party.

1.10 Non-Business Days

Whenever any period of time would begin or end or any other action to be taken hereunder shall be stated to be required to be taken, on a day other than a Business Day, then (notwithstanding any other provision of this Agreement) such period of time shall begin or end, and such other action shall be taken on the next succeeding Business Day.

1.11 Waiver, Amendment

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement will be binding unless executed in writing by the party to be bound thereby. No waiver of any provision of this Agreement will constitute a waiver of any other provision nor will any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided. A party's failure or delay in exercising any right under this Agreement will not operate as a waiver of that right. A single or partial exercise of any right will not preclude a party from any other or further exercise of that right or the exercise of any other right.

ARTICLE II
COVENANTS OF OPG

2.01 Deliveries to the Province

(a) OPG shall promptly deliver to the Province a copy of any proposed change to or replacement of the Initial Financing Plan.

(b) Not less than 10 Business Days, or such lesser period as the Province may agree to in writing, prior to (i) any proposed change or supplement to a previously provided Transaction Document becoming effective or otherwise being used, (ii) any additional or replacement Transaction Document becoming effective or otherwise being used, OPG shall deliver to the Province a copy of such proposed change or supplement to the Transaction Document and any such additional or replacement Transaction Document.

(c) Promptly following (i) any change, modification, alteration, amendment, supplement, extension, renewal, compromise, novation, replacement, suspension or waiver of the terms of all or any part of the Approved Obligations or any Collateral therefor being made, (ii) any new, additional or replacement instruments, documents, agreements or security being used or granted in connection with all or any part of the Approved Obligations, or (iii) any waiver, release, reconveyance, termination, abandonment, subordination, exchange, substitution, transfer, compound, compromise, liquidation or enforcement of all or any part of the Approved Obligations or any security or guarantee therefor being effected, OPG shall deliver to the Province a detailed description of such event and the reasons for it together with any related documents, agreements and instruments.

(d) Promptly following any incurrence of a Funding Obligation or any amendment of a Funding Obligation, OPG shall provide the Province with electronic copies of all related Governing Documents and all other closing documents executed by or on behalf of the Financing Entity in connection with such incurrence or amendment that would affect the Financing Entity's assets or obligations

(including, for greater certainty, any related Disclosure Document) and which have not been previously provided to the Province.

(e) Promptly upon request, OPG shall provide the Province with such additional information and documentation as the Province reasonably requests in order to enable the Province to assess the nature and extent of its obligations under the Change of Law Protection Agreement.

2.02 Covenants

(a) OPG shall use commercially reasonable efforts to cause the Financing Entity to:

(i) punctually perform and observe all of the Financing Entity's obligations and agreements contained in the Program Agreements;

(ii) ensure that all Obligations Secured are incurred pursuant to and in accordance with the terms and conditions of the Trust Indenture;

(iii) ensure that no obligations other than the Obligations Secured are incurred by or on behalf of the Financing Entity;

(iv) not engage in any business other than as permitted under the Declaration of Trust or the other Program Agreements and activities ancillary thereto; and

(v) not (unless waived by the Province):

(A) amend, supplement, modify, restate or replace or waive or consent to a postponement of compliance with the terms and conditions on the part of any other party to any of the Program Agreements, if any such supplementation, amendment, modification, restatement or replacement or waiver or consent could reasonably be considered to be materially prejudicial to the rights or interests of the Province under the Change of Law Protection Agreement; provided, however, that the foregoing does not apply to any change in particular financial terms, rates and levels;

(B) extend, renew, compromise, novate, replace, suspend, reconvey, terminate, abandon, subordinate, exchange, substitute, transfer, compound, liquidate or enforce the terms of all or any part of the Approved Obligations or any Collateral, if any such action could reasonably be considered to be materially prejudicial to the rights or interests of the Province under the Change of Law Protection Agreement; provided, however, that the foregoing does not apply to the extent that only particular financial terms, rates and levels are affected;

(C) permit the validity or effectiveness of the Change of Law Protection Agreement to be impaired; or

(D) allow the Financing Entity to enter into any Supplemental Indenture or Loan Agreement where any penalty or make-whole payment, or any requirement for further consent, approval or agreement, of the Specified Creditor party thereto would be required for the Province to assume the Obligations Secured thereunder.[4]

(b) OPG shall:

(i) comply, and shall use commercially reasonable efforts to cause compliance by the Financing Entity, with the Act, the General Regulation and any other enactment related thereto;

(ii) punctually perform and observe all of its (including as the FSM and as Manager) obligations and agreements contained in the Program Agreements;

(iii) promptly notify the Province of the creation of any Funding Obligation that is not or would not be an Approved Obligation; and

(iv) after the occurrence of any Protection Event[5], not, without the Province's prior written consent, permit the Financing Entity to exercise any redemption, pre-payment, early termination or extension right in respect of any Approved Obligation or exercise any other election or privilege in respect of any Approved Obligation, in each case if as a result the obligations applicable to the Approved Obligation under the Change of Law Protection Agreement would be accelerated, delayed or otherwise affected.

(c) For greater certainty, the parties hereto acknowledge and agree that OPG's obligations under this Agreement are subject to (i) OPG's obligations as FSM under the Act, and (ii) OPG's obligations under the Management Agreement.[6]

(d) Nothing in this Agreement nor in the Change of Law Protection Agreement[7] shall limit the obligations of the Province under the Indemnity Agreement by the

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[4] Please see our cover note regarding the proposed assumption by the Province. Lawyers to discuss if appropriate mechanics for the first two deals are possible given timing.

[5] OPG is not in a position to be aware of events that may lead to a Protection Event.

[6] We would like to ensure that there is an acknowledgement that OPG has certain obligations under the Act and the Management Agreement.

[7] This language has extra-contractual implications and so its meaning as between only 2 of the parties to the Protection Agreement is uncertain. Torys to explain intention. Torys: This provision is intended to clarify that neither the Protection Agreement nor the Process Agreement supersedes or otherwise amends the Province's obligations under the Provincial Indemnity Agreement. It is effectively an acknowledgment by the Province in **Error! Unknown document property name.**

Province in favour of OPG dated June 1, 2017 (as amended, the "**Indemnity Agreement**") and to the extent of any conflict between this Agreement, the Change of Law Protection Agreement and such Indemnity Agreement, in respect of any matter relating to the Province's obligations to indemnify OPG, the Indemnity Agreement shall prevail.

ARTICLE III
PROCESS CERTIFICATE

3.01 Process Certificate[8]

OPG shall deliver a certificate (the "**Process Certificate**"), signed by the Chief Financial Officer and the Treasurer of OPG or any two Executive Officers of OPG (for clarity, such certificate is to be provided by such officers in their capacity as officers of OPG acting in its capacity as FSM) and addressed to the Province, on or before the incurrence of a Certified Primary Obligation (provided that delivery may not be more than 5 Business Days before the incurrence of the Certified Primary Obligation), setting out the following with respect to such Certified Primary Obligation:

(a) the material terms of the Certified Primary Obligation pertaining to (i) in the case of notes, bonds or other securities, the principal amount, interest or discount rate, third party fees, term to maturity, amortization, redemption or extension features, structure and coupon frequency, as applicable, and (ii) in the case of a Master Agreement[9], events of default, termination events and any amendment to the standard terms of the Master Agreement relating to the calculation of termination amounts (and, for greater certainty, it shall not be necessary to set out the terms of any trade confirmation);

(b) a statement to the effect that: (i) the Certified Primary Obligation to be incurred (1) will arise under terms and conditions that are Substantially in the Form of the Reference Documentation applicable thereto; (2) in the opinion of the signatories to the Process Certificate, are reasonably incurred or effected in compliance with the Act, the General Regulation, any other enactments related thereto and the applicable Financing Plan; (3) are of a type and are on terms that a reasonably prudent financial services manager would incur in similar circumstances; and

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favour of OPG and does not involve the other parties to the Protection Agreement and so we are comfortable including it here only. However, we do not have an issue with putting an equivalent clause in the Protection Agreement if that is preferable from your perspective.

[8] The Process Certificate conforms to the certificate delivered under the Change of Law Protection Agreement including the changes to ensure that the Process Certificate is only provided here when a concurrent certificate is required to be delivered by OPG under the Protection Agreement. Without this consistency, the obligations can become confusing and the intent of the parties of when Primary Obligations are subject to the adherence conditions may not be clear.

[9] Since we agreed at our meeting that OPG only needs to provide a certificate under section 4.02 of the Change of Law Protection Agreement when they enter into a Master Agreement (and not the broader concept of the Derivative Agreement), we had to revise the language here to conform to what would be expected to be found in a Master Agreement.

(4) reflect, in all material respects, arm's length terms and conditions; and (ii) any Disclosure Document used in connection with the offering and sale of notes, bonds or other securities is Substantially in the Form of the Reference Documentation;

(c) a statement confirming that any disclosure made in respect of the Certified Primary Obligation (including any Disclosure Document, press release or other written communication prepared for dissemination to third parties in relation to the Certified Primary Obligation) that refers to or describes the terms, effect or adherence of or to this Agreement or the Change of Law Protection Agreement has been made available to the Province prior to use or dissemination, other than where such disclosure was substantially the same as a disclosure previously made;

(d) a statement that no Breach Event has occurred on or prior to the date of the Process Certificate, unless such Breach Event has been waived by the Province in writing; and

(e) confirmation that, at the time the Certified Primary Obligation is incurred, the maximum aggregate payment amounts due or becoming due in the future in respect of Repayments under the Certified Primary Obligation, together with all other outstanding amounts due or becoming due in the future in respect of Repayments under all Approved Obligations, do not and will not exceed the then applicable Protection Agreement Maximum; for clarity, Repayments under Obligations Secured owing in currencies other than Canadian dollars will be determined on the date the Process Certificate is delivered hereunder in accordance with the following:

(i) where a Derivative Agreement has been entered into to hedge related currency exposures, Repayments under such obligations shall be valued on the basis of the hedged value expressed in Canadian dollars; and

(ii) where a Derivative Agreement has not been entered into to hedge related currency exposures, Repayments under such obligations shall be valued on the basis of the noon spot rate for conversions of any currencies into Canadian dollars.

3.02 Acknowledgement[10]

The Province acknowledges and agrees that, concurrent with the delivery of the Process Certificate pursuant to Section 3.01 of this Agreement, the Chief Financial Officer and the Treasurer of OPG or any two Executive Officers of OPG (for clarity, such certificate is to be provided by such officers in their capacity as officers of OPG acting in its capacity as FSM) are authorized to deliver the certificate referred to in Subsection **[4.02(b)]** of the Change of Law Protection Agreement to the Indenture Trustee confirming that OPG has delivered all required

[10] OPG needs certainty on the conditions in which it is permitted to deliver the certificate under the Change of Law adherence conditions.

certifications to the Province in connection with the incurrence of the Certified Primary Obligations in respect of which the certificate in Subsection **[4.02(b)]** of the Change of Law Protection Agreement is being delivered; provided that, upon receipt of a Suspension Notice under the Change of Law Protection Agreement, OPG covenants not to deliver any further certificates to the Indenture Trustee under Subsection **[4.02(b)]** of the Change of Law Protection Agreement other than in connection with a Refinancing.[11]

3.03 Meaning of "Reference Documentation"

For the purposes of Subsection 3.01(b), the term "Reference Documentation" shall mean each Transaction Document (including any change, addition or supplement thereto) that, at the relevant time:

(a) is a Transaction Document provided to, and not objected to by, the Province prior to the making of this Agreement, as contemplated in the fifth recital to this Agreement; or

(b) is a Transaction Document provided to the Province in accordance with Subsection 2.01(b) that has not been objected to by the Province, by delivery of an objection notice in writing delivered to OPG, within 10 Business Days after it is provided to the Province.

3.04 Meaning of "Substantially in the Form"

For the purposes of Subsection 3.01(b), the term "Substantially in the Form" shall mean:

(a) with respect to the Reference Documentation referred to in clauses (i) to (xi) of the definition of "Transaction Documents", that there are no differences between the proposed documents and such Reference Documentation that could result in a change in the material terms or conditions applicable to the applicable Primary Obligation, including regarding the timing of or circumstances under which related payments are or may become due or accrue (including as a result of any default, acceleration, termination, wind-up, liquidation or realization), or that would affect the Province's rights of subrogation or assignment (including pursuant to **[Section 5.01 or Article VI]** of the Change of Law Protection Agreement) or its interests as a subrogee or an assignee, that would arise as a result of performing the Limited Guarantee in respect of the applicable Primary Obligation or upon the assumption of obligations in accordance with **[Article VI]** of the Change of Law Protection Agreement; provided, however, that the foregoing does not apply to any variable terms to be set forth in the proposed documents as are reasonably contemplated in the Reference Documentation, including the particular financial terms, rates and levels set forth in the proposed documents other than to the extent that the forms of Reference Documentation

[11] Since OPG receives a Suspension Notice under the Change of Law Protection Agreement, we removed the concept of such notice here other than to provide the covenant above.

themselves specify specific requirements, limitations or parameters with respect to such financial terms, rates, levels and parameters; and

(b) with respect to the Reference Documentation referred to in clause (xii) of the definition of "Transaction Documents", that there are no material differences between the form and substance of the proposed Disclosure Document and such form of Disclosure Document and that the proposed Disclosure Document complies in all material respects with all applicable securities disclosure requirements relating to the Primary Obligation subject to distribution thereunder.

ARTICLE IV
PROTECTION AGREEMENT MAXIMUM

4.01 Protection Agreement Maximum[12]

(a) Between nine (9) and twelve (12) months prior to the end of the Initial Forecast Period, OPG shall, as the FSM, deliver to the Province an updated forecast setting out the sum of (1) the aggregate amount of Repayments that will arise in the future under Approved Obligations that are then outstanding and (2) OPG's expectations regarding the aggregate maximum amount of Repayments that would arise in the future under Approved Obligations to be incurred during the period ending 24 months following the Initial Forecast Period, which expectation shall be consistent with the then applicable Financing Plan. Such updated forecast shall be further updated on a similar basis with respect to each successive 24 month period or more frequently if at any time OPG has knowledge that the most recent forecast is materially inaccurate (the Initial Forecast and each such updated forecast, each a "**Forecast**"). Together with each Forecast, OPG shall also provide a revised Protection Agreement Maximum, which may not exceed such Forecast.

(b) Not more than 10 Business Days, or such lesser period as the Province may agree to in writing, following receipt of any further Forecast and notice of the revised Protection Agreement Maximum from OPG pursuant to Section 4.01(a), the Province may disagree with such further Forecast or revised Protection Agreement Maximum on the basis that (i) there appears to be inaccuracies in the Financing Plan or such further Forecast, (ii) the further Forecast is inconsistent with the Financing Plan, or (iii) the revised Protection Agreement Maximum is more than the further Forecast. If the Province disagrees, OPG shall discuss any discrepancies with the Province, address any inaccuracies and inconsistencies to the reasonable satisfaction of the Province and OPG, and the revised Protection Agreement Maximum will be further revised accordingly and confirmed by an amended notice to the Province.

[12] Per an earlier footnote, the items in previous draft (a) and (b) were moved to the recitals.

(c) For clarity, Repayments under Obligations Secured owing in currencies other than Canadian dollars will be valued at the time to be determined for the purposes of this Section 4.01 in accordance with the following:

(i) where a Derivative Agreement has been entered into to hedge related currency exposures, Repayments under such obligations shall be valued on the basis of the hedged value expressed in Canadian dollars; and

(ii) where a Derivative Agreement has not been entered into to hedge related currency exposures, Repayments under such obligations shall be valued on the basis of the noon spot rate for conversions of any currencies into Canadian dollars.

ARTICLE V
REPRESENTATIONS AND WARRANTIES

5.01 Representations and Warranties of OPG

OPG represents and warrants that on the date hereof and on each day that a Primary Obligation is incurred or amended:

(a) The Financing Entity is a trust duly constituted and validly existing under the laws of the Province of Ontario, is duly qualified to carry on its business in each jurisdiction in which it carries on business, and has the power and authority to perform the acts that OPG, as the FSM, may cause it to perform pursuant to this Agreement and to own its property and carry on its business in accordance with the Program Agreements.

(b) OPG is a corporation duly constituted and validly existing under the laws of the Province of Ontario and has the power and authority to enter into and perform its obligations under this Agreement and all instruments and agreements delivered pursuant hereto.

(c) OPG has the power and authority to enter into and perform its obligations as the FSM under the Program Agreements and all instruments and agreements delivered pursuant thereto.

(d) The execution, delivery and performance of this Agreement and every instrument or agreement delivered pursuant hereto or in its capacity as the FSM has been or will be duly authorized by all requisite action by OPG and constitute a valid and binding obligation in accordance with its terms subject to (i) applicable bankruptcy, insolvency, moratorium and similar laws at the time in effect affecting the rights of creditors generally, and (ii) equitable principles which may limit the availability of certain remedies, including the remedy of specific performance.

(e) There are no actions, suits or proceedings pending or, to the knowledge of OPG, threatened against or affecting the Financing Entity at law or in equity or before or by any Governmental Authority, or before any arbitrator of any kind, which would result in any material adverse change in the business, operations, prospects, properties, assets or condition, financial or otherwise, of the Financing Entity or in the ability of the Financing Entity to perform its obligations under the Program Agreements.

(f) There are no actions, suits or proceedings pending or, to the knowledge of OPG, threatened against or affecting OPG at law or in equity or before or by any Governmental Authority, or before any arbitrator of any kind, which would result in any material adverse change in the business, operations, prospects, properties, assets or condition, financial or otherwise, of OPG or in the ability of the OPG to perform its obligations under this Agreement or any Program Agreements.

(g) The performance by the Financing Entity of the Program Agreements does not conflict with, will not conflict with, does not result in, and will not result in, any breach of, and does not constitute, a default under, the Declaration of Trust or any agreements or instruments to which the Financing Entity is a party or by which it or any of its property and assets are bound.

(h) Neither the execution nor delivery of this Agreement, the Program Agreements nor any agreements or instruments delivered pursuant hereto or thereto, the consummation of the transactions herein or therein, nor compliance with the terms, conditions and provisions hereof or thereof conflicts with or will conflict with, or results or will result in any breach of, or constitutes a default under, any of the provisions of the constating documents of OPG or any agreements or instruments to which OPG is a party or by which it or any of its property and assets are bound.

(i) No consent, approval or authorization of, or declaration, registration, filing or qualification with, or giving of notice to, or taking of any other action in respect of, any Governmental Authority on the part of OPG is required in connection with the execution and delivery of this Agreement, the Program Agreements or any agreements or instruments delivered pursuant hereto or thereto or the consummation of any of the transactions contemplated hereby or thereby or in connection with the enforcement of this Agreement, the Program Agreements or any agreements or instruments delivered pursuant hereto or thereto, except those which have been obtained.

5.02 Representations and Warranties of the Province

The Province hereby represents and warrants that:

(a) the execution and delivery of, and the performance of its obligations under, this Agreement by the Province have been authorized by all necessary action on the part of the Province;

(b) the execution and delivery of, and the performance of its obligations under, this Agreement by the Province do not result in the violation of any applicable law; and

(c) this Agreement has been duly executed and delivered by the Province.

ARTICLE VI
PROCESS FOR ELECTION TO ASSUME APPROVED OBLIGATIONS[13]

6.01 Election by the Province

Pursuant to Section 6.01 of the Change of Law Protection Agreement, at any time following the occurrence of a Protection Event, the Province may (but shall not be obligated) elect to assume the Financing Entity's obligations in respect of all Obligations Secured permitted to be assumed by their terms as obligor and debtor by giving notice to the Indenture Trustee. Prior to determining whether or not to exercise its election, the Province may deliver to OPG a notice in the form of Exhibit "D" (an "**Election Information Notice**"). The Election Information Notice shall, among other things, specify the date or dates on which the Province proposes to assume the Obligations Secured referred to in this Section 6.01, which date or dates shall be no earlier than 60 days[14] following delivery of the Election Information Notice to OPG (with respect to each such Obligation Secured, the "**Proposed Assumption Date**").

6.02 Details regarding Obligations Secured

Within 10 Business Days following the delivery of the Election Information Notice to OPG, OPG shall provide the following information and documentation to the Province:

(a) a summary of the amounts that will be owing under the Obligations Secured referred to in Section 6.01 as of the Proposed Assumption Date, together with a detailed schedule setting out the dates on which such amounts will become due and payable under such Obligations Secured;

(b) a summary of the rights arising under the Obligations Secured referred to in Section 6.01 that permit the Province to assume such Obligations Secured, including details regarding any conditions precedent to such assignment and the related assumption becoming effective and any notices, filings, consents or other actions that will be required in order to implement and effect such assignment and assumption;

(c) current versions of all documentation under which the Obligations Secured referred to in Section 6.01 arise;

[13] Please see Torys' cover email to explain changes made in this Article and the related Article in the Protection Agreement. Section 6.05 was deleted and moved up as a covenant in section 2.02(a)(v)(D).

[14] This process will take time and require appropriate notice to holders of the applicable Obligations Secured.

(d) copies of all correspondence exchanged between OPG, as the FSM, or the Financing Entity, on the one hand, and any Specified Creditor, Rating Agency or the Indenture Trustee, on the other hand, in each case that may reasonably be considered to be material to the assumption and performance of the Obligations Secured referred to in Section 6.01 by the Province; and

(e) all income tax returns and assessments, financial statements and notices of proceedings of or pertaining to the Financing Entity or its business and any documentation related thereto, including any pleadings, appeals, objections, qualifications or other similar materials in respect of the Financing Entity or any Program Agreement.

6.03 Settlement of Terms

Following receipt and consideration by the Province of the information and documentation to be provided under Section 6.02, the Province shall confirm in writing whether or not it expects to proceed with the assignment and assumption of the Obligations Secured referred to in Section 6.01 and, if it will be proceeding with the assignment and assumption, the date on which the Province expects that assignment and assumption will be effected. If it will be proceeding with such assignment and assumption, the Province will deliver an Assumption Notice as contemplated under Section **[6.01]** of the Change of Law Protection Agreement. A decision not to proceed with an election at any time will not limit the Province from proceeding with an election at a later date, including by issuing a further Election Information Notice, and Article VI of this Agreement shall continue to apply unaffected.

6.04 Cooperation to Implement the Assignment and Assumption

OPG shall cooperate with the Province and, as FSM, shall use commercially reasonable efforts to cause the Financing Entity to cooperate, and shall use its commercially reasonable efforts, to complete the assignment and assumption of the Obligations Secured referred to in Section 6.01 by and from the Financing Entity to and by the Province, by the applicable Assumption Closing Date.

ARTICLE VII[15]
MISCELLANEOUS

7.01 Term of Agreement

This Agreement will continue for the term of the Change of Law Protection Agreement.

[15] Breach events not required to be listed since OPG receives a Suspension Notice under the Change of Law Protection Agreement. See also the proviso in section 3.02.

7.02 Notices

Any notice or other communication required or permitted to be given hereunder will be in writing and will be given by prepaid first-class mail, by facsimile or other means of electronic communication or by hand-delivery as hereinafter provided. Any such notice or other communication, if mailed by prepaid first-class mail at any time other than during a general discontinuance of postal service due to strike, lockout or otherwise, will be deemed to have been received on the fourth Business Day after the post-marked date thereof, or if sent by facsimile or other means of electronic communication, will be deemed to have been received on the Business Day following the sending, or if delivered by hand will be deemed to have been received at the time it is delivered to the applicable address noted below either to the individual designated below or to an individual at such address having apparent authority to accept deliveries on behalf of the addressee. Notice of change of address will also be governed by this Section. In the event of a general discontinuance of postal service due to strike, lock-out or otherwise, notices or other communications will be delivered by hand or sent by facsimile or other means of electronic communication and will be deemed to have been received in accordance with this Section. Notices and other communications will be addressed as follows:

(a) if to OPG:

Ontario Power Generation Inc.
700 University Avenue
Toronto, Ontario M5G 1X6
Attention: General Counsel
Fax: (416) 592-4189

(b) if to the Province:

Ministry of Finance
[Address]
Attention: [■]
Fax: (416) [■]
Email: [■]

and

Ministry of Energy
[Address]
Attention: [■]
Fax: (416) [■]
Email: [■]

or to such other addresses as a party may from time to time notify the other parties in accordance with this Section 7.02.

7.03 Assignment

(a) None of the rights or obligations hereunder shall be assignable or transferable by any party without the prior written consent of the other parties.

(b) Any purported assignment of this Agreement in violation of this Section 7.03 shall be null and void.

7.04 Enurement

This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

7.05 FIPPA

The parties acknowledge that the Province will be bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province, or any agent or representative of the Province in connection with this Agreement may be subject to disclosure in accordance with the act or as otherwise required by law.

7.06 Delivery of Executed Copies

Each party acknowledges delivery of a fully executed copy of this Agreement.

[Signature page to follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF FINANCE

By: _____

Name:
Title:

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY

By: _____

Name:
Title:

ONTARIO POWER GENERATION INC.

By: _____

Name:
Title:

By: _____

Name:
Title:

Each of the undersigned hereby acknowledge the foregoing as of the day and year first above written.

COMPUTERSHARE TRUST COMPANY OF CANADA, in its capacity as trustee of **FAIR HYDRO TRUST**, as Issuer, by **ONTARIO POWER GENERATION INC.**, not in its individual capacity but solely as Manager

By: _____

Name:
Title:

By: _____

Name:
Title:

SCHEDULE A
DEFINED TERMS

"**Act**" has the meaning ascribed thereto in the first paragraph of the recitals in this Agreement.

"**Adherence Conditions**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Approved Obligation**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Assumption Agreement**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Assumption Closing Date**" has the meaning ascribed thereto in Section 6.03.

"**Beneficiaries**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Breach Event**" means the occurrence of an event described in Section **[8.01(b) or (c)]** of the Change of Law Protection Agreement.

"**Business Day**" means any day other than a Saturday, a Sunday or a day on which banking institutions in Toronto, Ontario are authorized or obligated by applicable law, regulation or executive order to be closed.

"**Certified Primary Obligations**" means Primary Obligations that are payment obligations that are: (i) incurred by or on behalf of the Financing Entity to fund its ownership of an Investment Interest or to repay payment obligations that were incurred by or on behalf of the Financing Entity to fund its ownership of an Investment Interest,[16] (ii) incurred by or on behalf of the Financing Entity upon the Financing Entity entering into a Derivative Agreement, in which case the Certified Primary Obligation therefor shall be the Master Agreement applicable to such Derivative Agreement and not each individual trade confirmation, or (iii) incurred by or on behalf of the Financing Entity upon entering into a contract that has a term of more than three (3) years which is not terminable by the Financing Entity giving three (3) years' notice or less and aggregate payments by the Financing Entity thereunder during the term of such contract is in excess of C$5,000,000 (that, for greater certainty, is not otherwise captured in clauses (i) and (ii) above).[17]

"**Change of Law Protection Agreement**" means the Change of Law Protection Agreement dated [■], 2017 among the Province, the FSM on behalf of the Financing Entity and the Indenture Trustee.

"**Collateral**" has the meaning ascribed thereto in the Trust Indenture.

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[16] Query: For a warehouse facility, does the Province want a Certificate for each monthly draw?

[17] This concept reflects what Primary Obligations the parties agreed to be subject to the adherence conditions.

"**Co-Owner Agreement**" means any agreement between, *inter alia*, the Financing Entity and any other owner or owners of an Investment Interest as contemplated by Subsection 29(5) of the Act.

"**Declaration of Trust**" means the declaration of trust made as of [■], 2017 under which the Financing Entity was established.

"**Derivative Agreement**" means any rate swap transaction, basis swap, forward rate transaction, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, total return swap transaction, credit default swap transaction or any other similar transaction (including any option with respect to any of those transactions) or any combination of these transactions entered into from time to time by the Financing Entity in connection with or related to Funding Obligations.

"**Disclosure Document**" means a disclosure document (including any offering circular, prospectus or other investor disclosure statement) describing the material terms of the notes, bonds or securities to be issued pursuant to a supplemental indenture under the Trust Indenture, together with any related material information;

"**Election Information Notice**" has the meaning ascribed thereto in Section 6.01.

"**Executive Officer**" has the meaning ascribed thereto in the *Securities Act* (Ontario).

"**Financing Entity**" means Fair Hydro Trust, a trust settled by the FSM under the laws of the Province of Ontario and under which the Financing Entity Trustee is the trustee.

"**Financing Entity Trustee**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Financing Plan**" has the meaning ascribed thereto in the Act as of the date of this Agreement.

"**Forecast**" has the meaning ascribed thereto in Section 4.01(a).

"**FSM**" has the meaning ascribed thereto in the second paragraph of the recitals of this Agreement.

"**Funding Obligation**" has the meaning ascribed to the term "funding obligation" in the Act as of the date of this Agreement.

"**General Regulation**" means O. Reg. 206/17 made under the Act.

"**Governing Document**" has the meaning ascribed to the term "governing document" in the General Regulation.

"**Governmental Authority**" means any nation or government, any federal, state, provincial, local or other political subdivision thereof and any court, administrative agency or other

instrumentality or entity exercising executive, legislative, judicial, regulatory or administrative functions of government.

"**IESO**" has the meaning ascribed thereto in the Act as of the date of this Agreement.

"**Indenture Trustee**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Initial Financing Plan**" has the meaning ascribed thereto in the recitals of this Agreement.

"**Initial Forecast**" has the meaning ascribed thereto in the recitals of this Agreement.

"**Initial Forecast Period**" has the meaning ascribed thereto in the recitals of this Agreement.

"**Initial Protection Agreement Maximum**" has the meaning ascribed thereto in the recitals of this Agreement.

"**Investment Interest**" has the meaning ascribed to the term "investment interest" in the Act as of the date of this Agreement.

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"**Limited Guarantee**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Loan Agreement**" has the meaning ascribed thereto in the Trust Indenture.

"**Management Agreement**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Manager**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Master Agreement**" means an agreement in the form of a 1992 ISDA Master Agreement (Multi-Currency – Cross Border) as published by ISDA or any replacement or substitute or functional equivalent of such agreement.

"**Master Transfer and Servicing Agreement**" means the master transfer and servicing agreement dated [■], 2017 between the Financing Entity and IESO.

"**Obligations Secured**" has the meaning ascribed thereto in the Trust Indenture.

"**OPG**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Person**" means any individual, corporation, limited liability company, estate, partnership, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization or Governmental Authority.

[18] Definition of Legislature not used here.

"**Primary Obligations**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Process Certificate**" has the meaning ascribed thereto in Section 3.01.

"**Program Agreements**" has the meaning ascribed thereto in the Trust Indenture.

"**Proposed Assumption Date**" has the meaning ascribed thereto in Section 6.01.

"**Protection Agreement Maximum**" means the dollar amount referenced as the Program Agreement Maximum and determined in accordance with Article IV.

"**Protection Event**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Province**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Rating Agency**" has the meaning ascribed thereto in the Trust Indenture.

"**Reference Documentation**" has the meaning ascribed thereto in Section 3.03.

"**Repayment**" has the meaning ascribed to the term "repayment" in the General Regulation as of the date of this Agreement.

"**Specified Creditors**" has the meaning ascribed thereto in the Trust Indenture.

"**Substantially in the Form**" has the meaning ascribed thereto in Section 3.04.

"**Suspension Notice**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**this Agreement**" means this agreement, as amended, supplemented, restated or otherwise modified from time to time.

"**Transaction Document**" means (i) all constating and organizational documents of the Financing Entity, including the Declaration of Trust; (ii) any management, administration or servicing agreement to which the Financing Entity is a party, including any replacement or standby services agreement and the Management Agreement; (iii) the Master Transfer and Servicing Agreement; (iv) Trust Indenture; (v) the form of supplemental indenture (supplemental to the Trust Indenture) governing the terms and conditions of a sample series of notes, bonds or other securities to be issued by the Financing Entity, including the particular allocations, security and priority of the Obligations Secured being serviced by the related Investment Interest and any other related series property; (vi) the form of any note, bond or securities purchase agreement; (vii) the form of underwriting agreement, agency agreement, selling agreement and/or subscription agreement that may be used with respect to a sale of a related series of notes, bonds or securities to be issued under the supplemental indenture referred to in (v), above; (viii) the form of any loan or credit agreement governing the issuance of short term loan obligations by the

Financing Entity; (ix) the form of schedule to a Master Agreement governing derivative transactions that may be entered into the Financing Entity from time to time; (x) the form of any other agreement or instrument under which a Funding Obligation may arise or be effected, including any other agreement under which the Financing Entity incurs a material financial obligation or that affects the Province's subrogation rights and/or subrogee interests, including any standby liquidity arrangements or credit enhancement agreements; (xi) if applicable, a Co-Owner Agreement or any other agreement governing the respective interests of persons having rights or interests in the investment asset or other assets of the Financing Entity, including any other agreement of the sort contemplated in Subsection 29(5) of the Act; and (xii) the form of Disclosure Document.

"**Trust Indenture**" means the trust indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017.

EXHIBIT "A"
INITIAL REFERENCE DOCUMENTATION

- Declaration of Trust;
- Management Agreement;
- Master Transfer and Servicing Agreement;
- Acknowledgement and indemnity agreement dated as of [■], 2017 made by IESO in favour of the Indenture Trustee;
- Security agreement made by IESO in favour of the Financing Entity to secure certain of its obligations under the Master Transfer and Servicing Agreement;
- Trust Indenture;
- Term Senior Series 2017-1 Supplemental Indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017;
- Term Subordinated Series 2017-1 Supplemental Indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017;
- Term Junior Subordinated Series 2017-1 Supplemental Indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017;
- Warehouse Senior Series 2017-1 Supplemental Indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017;
- Warehouse Subordinated Series 2017-1 Supplemental Indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017;
- Warehouse Junior Subordinated Series 2017-1 Supplemental Indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017;
- Schedule to the ISDA Master Agreement governing derivative transactions that may be entered into the Financing Entity from time to time;
- Confidential shelf offering memorandum of the Financing Entity dated as of [■], 2017, including the term sheet incorporated by reference therein; and
- Agency agreement between the Financing Entity, CIBC World Markets Inc., RBC Dominion Securities Inc., Goldman Sachs Canada Inc. and the other agents named therein dated as of [■], 2017.

[NTD: List above to be confirmed.]

EXHIBIT "B"
INITIAL FINANCING PLAN

(see attached)

EXHIBIT "C"
INITIAL FORECAST

(see attached)

EXHIBIT "D"
FORM OF ELECTION INFORMATION NOTICE

[NTD: Blakes to provide draft.]

_Fair Hydro -- Change of Law Process Agreement.pdf

Draft: December 13, 2017

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY AND THE MINISTER OF FINANCE

AND

ONTARIO POWER GENERATION INC.

CHANGE OF LAW PROCESS AGREEMENT

Dated as of [■], 2017

This **CHANGE OF LAW PROCESS AGREEMENT**, between Her Majesty the Queen in Right of Ontario, as represented by the Minister of Energy and the Minister of Finance (the "**Province**"), and Ontario Power Generation Inc. ("**OPG**") is made and entered into as of [■], 2017.

RECITALS

OPG is appointed as the Financial Services Manager under Section 18 of the *Ontario Fair Hydro Plan Act, 2017* (the "**Act**").

Pursuant to Section 22(2) of the Act, OPG, in its capacity as the Financial Services Manager (the "**FSM**"), may establish or cause to be established one or more financing entities (as defined in the Act), which may incur Funding Obligations in accordance with the Act.

Pursuant to a Declaration of Trust dated as of [■], 2017, the Financing Entity was established as a "financing entity" (as defined in the Act) for the purposes contemplated in the Act.

Concurrent with this Agreement, the Province, the FSM, the Financing Entity and the Indenture Trustee will enter into the Change of Law Protection Agreement under which the Province will agree to provide protections and assurances to the Indenture Trustee, for the benefit of the Beneficiaries, in respect of Obligations Secured that constitute Approved Obligations, in order to address concerns that would arise from a change or adverse determination of law, subject in each case to the satisfaction of the applicable Adherence Conditions.

Prior to entering into this Agreement, OPG provided the Province with the final forms of certain of the Transaction Documents, as described on Exhibit "A", and the Province has not objected to such forms and hereby confirms to OPG that such Transaction Documents will constitute "Reference Documentation" for purposes of this Agreement.

Prior to entering into this Agreement, OPG, as the FSM, provided the Minister of Energy, in compliance with the Act, with the initial Financing Plan, which includes the initial forecast (the "**Initial Forecast**") setting out OPG's expectations regarding the aggregate maximum amount of Repayments that would arise in the future under Obligations Secured to be incurred during the 24 month period from December 1, 2017 to November 30, 2019 (the "**Initial Forecast Period**"). Prior to entering into this Agreement, OPG provided the Province with the initial Protection Agreement Maximum (the "**Initial Protection Agreement Maximum**"). The Province has received the initial Financing Plan and has not disagreed with the Initial Forecast or the Initial Protection Agreement Maximum on the basis of an apparent inaccuracy in the Initial Forecast, an inconsistency between the Initial Forecast and the initial Financing Plan, or as a result of the Initial Protection Agreement Maximum being more than the Initial Forecast.

This Agreement sets out the obligations OPG has agreed to perform and assurances OPG has agreed to provide and on which the Province will rely in entering into and implementing the Change of Law Protection Agreement, including for the purposes of determining whether the applicable Adherence Conditions have been satisfied and maintaining information related to the Program Agreements and the Approved Obligations.

All things necessary to make this Agreement a valid and legally binding agreement of OPG and the Province, have been done.

AGREEMENT OF THE PARTIES

In consideration of the respective agreements herein contained, the parties hereto covenant and agree as follows:

ARTICLE I
DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

1.01 Interpretation

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) the terms used in this Agreement that are defined in Schedule A have the meanings assigned to them in Schedule A;

(b) the terms used in this Agreement that are not defined in this Agreement shall have the meanings assigned to them in the Change of Law Protection Agreement;

(c) words importing the singular shall include the plural and vice versa, words importing general shall include all genders or the neuter, and words importing the neuter shall include all genders;

(d) all references to any Person shall include such Person's permitted successors and assigns, and any reference to a Person in a particular capacity excludes such Person in other capacities;

(e) references to any law, rule, regulation or order of a Governmental Authority (including, for greater certainty, references to the Act and the General Regulation) shall include such law, rule, regulation or order as from time to time in effect, including any amendment, modification, codification, replacement or reenactment thereof or any substitution therefor;

(f) the word "will" shall be construed to have the same meaning and effect as the word "shall"; the word "or" is not exclusive;

(g) any reference to this Agreement or any other agreement, document or instrument shall be construed as a reference to this Agreement or, as the case may be, such other agreement, document or instrument as the same may have been, or may from time to time be, amended, varied, replaced, amended and restated, supplemented or otherwise modified;

(h) all references in this Agreement to designated "Articles", "Sections", "Subsections" "Schedules", "Exhibits" and other subdivisions are to the designated Articles, Sections, Subsections, Schedules, Exhibits and other

subdivisions of this Agreement as originally executed; the words "herein", "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section, Subsection, Schedule, Exhibit or other subdivision;

(i) "including" and words of similar import will be deemed to be followed by "without limitation"; and

(j) with respect to the computation of periods of time from a specified date to a later specified date, unless otherwise expressly stated, the word "from" means "from and including" and the words "to" and "until" each mean "to but excluding".

1.02 References to the Financing Entity

For greater certainty, each reference to the Financing Entity shall be construed as a reference to the Financing Entity Trustee, as trustee of the Financing Entity.

1.03 Effect of Headings

The Article and Section headings herein are for convenience only and will not affect the construction hereof.

1.04 Successors and Assigns

All covenants and agreements in this Agreement by the parties will bind their respective successors and permitted assigns, whether so expressed or not.

1.05 Severability

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction will not affect the validity or enforceability of any other provision hereof. To the extent permitted by applicable law, the parties waive any provision of law which renders any provision of this Agreement invalid or unenforceable in any respect.

1.06 Governing Law

THIS AGREEMENT WILL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE PROVINCE OF ONTARIO AND THE FEDERAL LAWS OF CANADA APPLICABLE THEREIN, AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.

1.07 Proceedings Against the Crown Act

NOTHING IN THIS AGREEMENT OR THE PROGRAM AGREEMENTS AFFECTS THE RIGHTS, PROTECTIONS AND IMMUNITIES OF THE CROWN UNDER THE PROCEEDINGS AGAINST THE CROWN ACT (ONTARIO).

1.08 Attornment

EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY ONTARIO COURTS SITTING IN TORONTO IN ANY ACTION, APPLICATION, REFERENCE OR OTHER PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT. THE PARTIES HERETO HEREBY WAIVE ANY RIGHT THEY MAY HAVE TO REQUIRE A TRIAL BY JURY OF ANY PROCEEDING COMMENCED IN CONNECTION WITH THIS AGREEMENT.

1.09 Counterparts; Electronic Delivery

This Agreement may be executed in any number of counterparts, each of which so executed will be deemed to be an original, but all such counterparts will together constitute one and the same instrument. Delivery of an executed signature page to this Agreement by a party by electronic transmission will be as effective as delivery of a manually executed copy of the Agreement by such party.

1.10 Non-Business Days

Whenever any period of time would begin or end or any other action to be taken hereunder shall be stated to be required to be taken, on a day other than a Business Day, then (notwithstanding any other provision of this Agreement) such period of time shall begin or end, and such other action shall be taken on the next succeeding Business Day.

1.11 Waiver, Amendment

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement will be binding unless executed in writing by the party to be bound thereby. No waiver of any provision of this Agreement will constitute a waiver of any other provision nor will any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided. A party's failure or delay in exercising any right under this Agreement will not operate as a waiver of that right. A single or partial exercise of any right will not preclude a party from any other or further exercise of that right or the exercise of any other right.

ARTICLE II
COVENANTS OF OPG

2.01 Deliveries to the Province

(a) OPG shall promptly deliver to the Province a copy of any proposed change to or replacement of the Financing Plan.

(b) Not less than 10 Business Days, or such lesser period as the Province may agree to in writing, prior to:

(i) any proposed material change in the terms or conditions applicable to a Primary Obligation in a previously provided Transaction Document becoming effective or otherwise being used; provided, however, that a proposed change in particular financial terms, rates or levels shall not constitute a material change, and

(ii) any additional, supplemental or replacement Transaction Document becoming effective or otherwise being used,

OPG shall deliver to the Province a copy of such proposed change to the Transaction Document and any such additional, supplemental or replacement Transaction Document.

(c) Without limiting Subsection 2.01(b), and except as has previously been provided to the Province under Subsection 2.01(b), promptly following (i) any change, modification, alteration, amendment, supplement, extension, renewal, compromise, novation, replacement, suspension or waiver of the terms of all or any part of the Approved Obligations or any Collateral therefor being made, (ii) any new, additional, supplemental or replacement instruments, documents, agreements or security being used or granted in connection with all or any part of the Approved Obligations, or (iii) any waiver, release, reconveyance, termination, abandonment, subordination, exchange, substitution, transfer, compound, compromise, liquidation or enforcement of all or any part of the Approved Obligations or any security or guarantee therefor being effected, OPG shall deliver to the Province a detailed description of such event and the reasons for it together with any related documents, agreements and instruments.

(d) Promptly following any incurrence of a Funding Obligation or any amendment of a Funding Obligation, OPG shall provide the Province with electronic copies of all related Governing Documents and all other closing documents executed by or on behalf of the Financing Entity in connection with such incurrence or amendment that would affect the Financing Entity's assets or obligations (including, for greater certainty, any related Disclosure Document) and which have not been previously provided to the Province.

(e) Promptly upon request, OPG shall provide the Province with such additional information and documentation as the Province reasonably requests in order to enable the Province to assess the nature and extent of its obligations under the Change of Law Protection Agreement.

2.02 Covenants

(a) OPG shall use commercially reasonable efforts to cause the Financing Entity to:

(i) punctually perform and observe all of the Financing Entity's obligations and agreements contained in the Program Agreements;

(ii) ensure that all Obligations Secured are incurred pursuant to and in accordance with the terms and conditions of the Trust Indenture;

(iii) ensure that no obligations other than the Obligations Secured are incurred by or on behalf of the Financing Entity;

(iv) not engage in any business other than as permitted under the Declaration of Trust or the other Program Agreements and activities ancillary thereto; and

(v) not (unless waived in writing by the Province):

(A) amend, supplement, modify, restate or replace or waive or consent to a postponement of compliance with the terms and conditions on the part of any other party to any of the Program Agreements, if any such supplementation, amendment, modification, restatement, replacement, waiver or consent could reasonably be considered to have a Material Effect; provided, however, that the foregoing does not apply to any supplement, amendment, modification, restatement, replacement, waiver or consent in respect of particular financial terms, rates or levels;

(B) extend, renew, compromise, novate, replace, suspend, reconvey, terminate, abandon, subordinate, exchange, substitute, transfer, compound, liquidate or enforce the terms of all or any part of the Approved Obligations or any Collateral, if any such action could reasonably be considered to have a Material Effect; provided, however, that the foregoing does not apply to any such action taken in respect of particular financial terms, rates or levels; or

(C) permit the validity or effectiveness of the Change of Law Protection Agreement to be impaired.

(b) If any action restricted pursuant to Section 2.02(a)(v) is reflected in a delivery required to be made by OPG to the Province pursuant to Section 2.01(b) and is not objected to by the Province under Section 3.04(b), the Province shall be

deemed to have waived its rights in respect of such action under Section 2.02(a)(v).

(c) OPG shall:

(i) comply, and shall use commercially reasonable efforts to cause compliance by the Financing Entity, with the Act, the General Regulation and any other enactment related thereto;

(ii) punctually perform and observe all of its (including as the FSM and as Manager) obligations and agreements contained in the Program Agreements;

(iii) promptly notify the Province of the creation of any Funding Obligation that is not or would not be an Approved Obligation; and

(iv) notify the Province of (1) the occurrence of any Breach Event and any Program Breach, in each case within 2 Business Days of any such occurrence, and (2) any event or circumstance known to OPG that with the passage of time or the giving of notice would be a Breach Event or a Program Breach, in each case within 1 Business Day of OPG first becoming aware of such event or circumstance; and

(v) after the occurrence of any Protection Event (or any event or circumstance known to OPG that with the passage of time or the giving of notice would be a Protection Event), not, without the Province's prior written consent, permit the Financing Entity to exercise any redemption, pre-payment, early termination or extension right in respect of any Approved Obligation or exercise any other election or privilege in respect of any Approved Obligation, in each case if as a result the obligations applicable to the Approved Obligation under the Change of Law Protection Agreement would be accelerated, delayed or otherwise affected.

(d) The Province and OPG acknowledge that their obligations to each other under the Indemnity Agreement between the Province and OPG dated June 1, 2017 (as amended, the "**Indemnity Agreement**") are not amended by this Agreement and continue in full force and effect, notwithstanding that this Agreement is entered into subsequent to the Indemnity Agreement.

(e) The Province and OPG acknowledge that their obligations to each other under the Indemnity Agreement are not amended by the Change of Law Protection Agreement and continue in full force and effect, notwithstanding that the Change of Law Protection Agreement was entered into subsequent to the Indemnity Agreement.

ARTICLE III
PROCESS CERTIFICATE

3.01 Process Certificate

OPG shall deliver a certificate (the "**Process Certificate**"), signed by the Chief Financial Officer and the Treasurer of OPG or any two Executive Officers of OPG (for clarity, such certificate is to be provided by such officers in their capacity as officers of OPG acting in its capacity as FSM) and addressed to the Province, on or before the incurrence or any amendment of a Funding Obligation, other than any Funding Obligation under which not more than $5,000,000 in the aggregate may become payable by the Financing Entity (provided that delivery may not be more than 5 Business Days before the incurrence or amendment of the Funding Obligation), setting out the following with respect to such Funding Obligation:

(a) the material terms of the Funding Obligation pertaining to (i) in the case of notes, bonds or other securities, the principal amount, interest or discount rate, third party fees, term to maturity, amortization, redemption or extension features, structure and coupon frequency, as applicable, and (ii) in the case of a Derivative Agreement, OPG's best estimate of the expected notional amount, financial terms and pricing, benchmarks, payment structures and early termination rights;

(b) if an existing Funding Obligation is proposed to be amended, material details respecting such amendment, including regarding the applicable details set forth in Subsection 3.01(a), as the context requires;

(c) a statement to the effect that: (i) the Funding Obligation to be incurred or amended (1) will arise under terms and conditions that are Substantially in the Form of the Reference Documentation applicable thereto; (2) in the opinion of the signatories to the Process Certificate, are reasonably incurred or effected in compliance with the Act, the General Regulation, any other enactments related thereto and the applicable Financing Plan; (3) are of a type and are on terms that a reasonably prudent financial services manager would incur in similar circumstances; and (4) reflect, in all material respects, arm's length terms and conditions; and (ii) any Disclosure Document used in connection with the offering and sale of notes, bonds or other securities is Substantially in the Form of the Reference Documentation;

(d) a statement confirming that any disclosure made in respect of the Funding Obligation (including any Disclosure Document, press release or other written communication prepared for dissemination to third parties in relation to the Funding Obligation) that refers to or describes the terms, effect or adherence of or to this Agreement or the Change of Law Protection Agreement has been made available to the Province prior to use or dissemination, other than where such disclosure was substantially the same as a disclosure previously made;

(e) a statement that no Breach Event has occurred on or prior to the date of the Process Certificate, unless such Breach Event has been waived by the Province in writing; and

(f) confirmation that, at the time the Funding Obligation is incurred or amended, the maximum aggregate payment amounts due or becoming due in the future in respect of Repayments under the Funding Obligation, together with all other outstanding amounts due or becoming due in the future in respect of Repayments under all Approved Obligations, do not and will not exceed the Protection Agreement Maximum applicable on the date that the Process Certificate is delivered; for clarity, Repayments under Obligations Secured owing in currencies other than Canadian dollars will be determined on the date the Process Certificate is delivered hereunder in accordance with the following:

(i) where a Derivative Agreement has been entered into to hedge related currency exposures, Repayments under such obligations shall be valued on the basis of the hedged value expressed in Canadian dollars; and

(ii) where a Derivative Agreement has not been entered into to hedge related currency exposures, Repayments under such obligations shall be valued on the basis of the noon spot rate for conversions of any currencies into Canadian dollars.

3.02 Acknowledgement regarding delivery of certificate under Change of Law Protection Agreement

The Province acknowledges and agrees that, concurrent with the delivery of the Process Certificate pursuant to Section 3.01 of this Agreement, the Chief Financial Officer and the Treasurer of OPG or any two Executive Officers of OPG (for clarity, such certificate is to be provided by such officers in their capacity as officers of OPG acting in its capacity as FSM) are authorized to deliver the certificate referred to in Subsection 4.02(a)(ii) of the Change of Law Protection Agreement to the Indenture Trustee confirming that OPG has complied with all of its obligations to the Province and internal requirements and processes in connection with adherence of the Limited Guarantee to the incurrence of the Certified Primary Obligations in respect of which the certificate in Subsection 4.02(a)(ii) of the Change of Law Protection Agreement is being delivered; provided that, upon receipt of a Suspension Notice under the Change of Law Protection Agreement, OPG covenants not to deliver any further certificates to the Indenture Trustee under Subsection 4.02(a)(ii) of the Change of Law Protection Agreement.

3.03 Acknowledgement regarding delivery of Suspension Notice

The parties acknowledge and agree that the Province is entitled to deliver a Suspension Notice under Section 7.01 of the Change of Law Protection Agreement if a Program Breach or Breach Event has occurred. The Province agrees not to deliver a Suspension Notice pursuant to Section 7.01 of the Change of Law Protection Agreement unless a Program Breach or a Breach Event has occurred.

3.04 Meaning of "Reference Documentation"

For the purposes of Subsection 3.01(c), the term "Reference Documentation" shall mean each Transaction Document that, at the relevant time:

(a) is a Transaction Document listed on Exhibit "A"; or

(b) is a Transaction Document (including any amended or amended and restated Transaction Document) provided to the Province in accordance with Subsection 2.01(b) that has not been objected to by the Province, by delivery of an objection notice in writing delivered to OPG, within 10 Business Days after it is provided to the Province; provided that the Province (i) shall only be entitled to deliver an objection notice if the Transaction Document (including any amended or amended and restated Transaction Document) has a Material Effect and (ii) shall not be entitled to deliver an objection notice in respect of any Post-Suspension Refinancing.

3.05 Meaning of "Substantially in the Form"

For the purposes of Subsection 3.01(c), the term "Substantially in the Form" shall mean:

(a) with respect to the Reference Documentation referred to in clauses (i) to (xi) of the definition of "Transaction Documents", that there are no differences between the proposed documents and such Reference Documentation that could result in a change in the material terms or conditions applicable to the applicable Primary Obligation that could have a Material Effect; provided, however, that the foregoing does not apply to any particular financial terms, rates or levels; and

(b) with respect to the Reference Documentation referred to in clause (xii) of the definition of "Transaction Documents", that there are no material differences between the form and substance of the proposed Disclosure Document and such form of Disclosure Document and that the proposed Disclosure Document complies in all material respects with all applicable securities disclosure requirements relating to the Primary Obligation subject to distribution thereunder.

ARTICLE IV
PROTECTION AGREEMENT MAXIMUM

4.01 Protection Agreement Maximum

(a) Between nine (9) and twelve (12) months prior to the end of the Initial Forecast Period, OPG shall, as the FSM, deliver to the Province an updated forecast setting out the sum of (1) the aggregate amount of Repayments that will arise in the future under Obligations Secured that are then outstanding and (2) OPG's expectations regarding the aggregate maximum amount of Repayments that would arise in the future under Obligations Secured to be incurred during the period ending 24 months following the Initial Forecast Period, which expectation shall be consistent with the then applicable Financing Plan. Such updated forecast

shall be further updated on a similar basis with respect to each successive 24 month period or more frequently if at any time OPG has knowledge that the most recent forecast is materially inaccurate (the Initial Forecast and each such updated forecast, each a "**Forecast**"). Together with each Forecast, OPG shall also provide a revised Protection Agreement Maximum, which may not exceed such Forecast.

(b) Not more than 10 Business Days, or such lesser period as the Province may agree to in writing, following receipt of any further Forecast and notice of the revised Protection Agreement Maximum from OPG pursuant to Section 4.01(a), the Province may disagree with such further Forecast or revised Protection Agreement Maximum on the basis that (i) there appears to be inaccuracies in such further Forecast, (ii) the further Forecast is inconsistent with the Financing Plan, or (iii) the revised Protection Agreement Maximum is more than the further Forecast. If the Province disagrees, OPG shall discuss any discrepancies with the Province, address any inaccuracies and inconsistencies to the reasonable satisfaction of the Province and OPG, and the revised Protection Agreement Maximum will be further revised accordingly and confirmed by an amended notice to the Province.

(c) For clarity, Repayments under Obligations Secured owing in currencies other than Canadian dollars will be valued at the time to be determined for the purposes of this Section 4.01 in accordance with the following:

(i) where a Derivative Agreement has been entered into to hedge related currency exposures, Repayments under such obligations shall be valued on the basis of the hedged value expressed in Canadian dollars; and

(ii) where a Derivative Agreement has not been entered into to hedge related currency exposures, Repayments under such obligations shall be valued on the basis of the noon spot rate for conversions of any currencies into Canadian dollars.

ARTICLE V
REPRESENTATIONS AND WARRANTIES

5.01 Representations and Warranties of OPG

OPG represents and warrants that on the date hereof and on each day that a Primary Obligation is incurred or amended:

(a) The Financing Entity is a trust duly constituted and validly existing under the laws of the Province of Ontario, is duly qualified to carry on its business in each jurisdiction in which it carries on business, and has the power and authority to perform the acts that OPG, as the FSM, may cause it to perform pursuant to this Agreement and to own its property and carry on its business in accordance with the Program Agreements.

(b) OPG is a corporation duly constituted and validly existing under the laws of the Province of Ontario and has the power and authority to enter into and perform its obligations under this Agreement and all instruments and agreements delivered pursuant hereto.

(c) OPG has the power and authority to enter into and perform its obligations as the FSM under the Program Agreements and all instruments and agreements delivered pursuant thereto.

(d) The execution, delivery and performance of this Agreement and every instrument or agreement delivered pursuant hereto or in its capacity as the FSM has been or will be duly authorized by all requisite action by OPG and constitute a valid and binding obligation in accordance with its terms subject to (i) applicable bankruptcy, insolvency, moratorium and similar laws at the time in effect affecting the rights of creditors generally, and (ii) equitable principles which may limit the availability of certain remedies, including the remedy of specific performance.

(e) There are no actions, suits or proceedings pending or, to the knowledge of OPG, threatened against or affecting the Financing Entity at law or in equity or before or by any Governmental Authority, or before any arbitrator of any kind, which would result in any material adverse change in the business, operations, prospects, properties, assets or condition, financial or otherwise, of the Financing Entity or in the ability of the Financing Entity to perform its obligations under the Program Agreements.

(f) There are no actions, suits or proceedings pending or, to the knowledge of OPG, threatened against or affecting OPG at law or in equity or before or by any Governmental Authority, or before any arbitrator of any kind, which would result in any material adverse change in the business, operations, prospects, properties, assets or condition, financial or otherwise, of OPG or in the ability of the OPG to perform its obligations under this Agreement or any Program Agreements.

(g) The performance by the Financing Entity of the Program Agreements does not conflict with, will not conflict with, does not result in, and will not result in, any breach of, and does not constitute, a default under, the Declaration of Trust or any agreements or instruments to which the Financing Entity is a party or by which it or any of its property and assets are bound.

(h) Neither the execution nor delivery of this Agreement, the Program Agreements nor any agreements or instruments delivered pursuant hereto or thereto, the consummation of the transactions herein or therein, nor compliance with the terms, conditions and provisions hereof or thereof conflicts with or will conflict with, or results or will result in any breach of, or constitutes a default under, any of the provisions of the constating documents of OPG or any agreements or instruments to which OPG is a party or by which it or any of its property and assets are bound.

(i) No consent, approval or authorization of, or declaration, registration, filing or qualification with, or giving of notice to, or taking of any other action in respect of, any Governmental Authority on the part of OPG is required in connection with the execution and delivery of this Agreement, the Program Agreements or any agreements or instruments delivered pursuant hereto or thereto or the consummation of any of the transactions contemplated hereby or thereby or in connection with the enforcement of this Agreement, the Program Agreements or any agreements or instruments delivered pursuant hereto or thereto, except those which have been obtained.

5.02 Representations and Warranties of the Province

The Province hereby represents and warrants that:

(a) the execution and delivery of, and the performance of its obligations under, this Agreement by the Province have been authorized by all necessary action on the part of the Province;

(b) the execution and delivery of, and the performance of its obligations under, this Agreement by the Province do not result in the violation of any applicable law; and

(c) this Agreement has been duly executed and delivered by the Province.

ARTICLE VI
BREACH EVENTS

6.01 Breach Events

"**Breach Event**" shall mean the occurrence or existence of any one or more of the following:

(a) a default in the performance, or breach, by OPG of Section 2.01(b)(i), Section 2.02(b)(iv) or Section 3.01;

(b) a default in the performance, or breach, of any other covenants of OPG under this Agreement (excluding Section 2.01(b)(i), Section 2.02(b)(iv) and Section 3.01), which, if curable in a way such that the default or breach would not have or have had a Material Effect, is not so cured within thirty (30) days;

(c) any representation or warranty made by OPG in this Agreement, any certification made in a Process Certificate, or any certification made in a certificate contemplated by Subsection 4.02 of the Change of Law Protection Agreement, proves to be incorrect in a material respect on the date made and which, if curable in a way such that the incorrect representation or warranty may be remedied without any Material Effect having occurred as a result of the Province's reliance thereon, is not so cured within thirty (30) days; or

(d) OPG is no longer the Manager or actions have been taken by or on behalf of the Indenture Trustee to remove OPG as the Manager.

ARTICLE VII
MISCELLANEOUS

7.01 Term of Agreement

This Agreement will continue for the term of the Change of Law Protection Agreement.

7.02 Notices

Any notice or other communication required or permitted to be given hereunder will be in writing and will be given by prepaid first-class mail, by facsimile or other means of electronic communication or by hand-delivery as hereinafter provided. Any such notice or other communication, if mailed by prepaid first-class mail at any time other than during a general discontinuance of postal service due to strike, lockout or otherwise, will be deemed to have been received on the fourth Business Day after the post-marked date thereof, or if sent by facsimile or other means of electronic communication, will be deemed to have been received on the Business Day following the sending, or if delivered by hand will be deemed to have been received at the time it is delivered to the applicable address noted below either to the individual designated below or to an individual at such address having apparent authority to accept deliveries on behalf of the addressee. Notice of change of address will also be governed by this Section. In the event of a general discontinuance of postal service due to strike, lock-out or otherwise, notices or other communications will be delivered by hand or sent by facsimile or other means of electronic communication and will be deemed to have been received in accordance with this Section. Notices and other communications will be addressed as follows:

(a) if to OPG:

Ontario Power Generation Inc.
700 University Avenue
Toronto, Ontario M5G 1X6
Attention: General Counsel
Fax: (416) 592-4189

(b) if to the Province:

Deputy Minister of Finance
[Address]
Attention: [■]
Fax: (416) [■]
Email: [■]

and

Deputy Ministry of Energy
[Address]

Attention: [■]
Fax: (416) [■]
Email: [■]

or to such other addresses as a party may from time to time notify the other parties in accordance with this Section 7.02.

7.03 Assignment

(a) None of the rights or obligations hereunder shall be assignable or transferable by any party without the prior written consent of the other parties.

(b) Any purported assignment of this Agreement in violation of this Section 7.03 shall be null and void.

7.04 Enurement

This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

7.05 FIPPA

The parties acknowledge that the Province will be bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province, or any agent or representative of the Province in connection with this Agreement may be subject to disclosure in accordance with the act or as otherwise required by law.

7.06 Delivery of Executed Copies

Each party acknowledges delivery of a fully executed copy of this Agreement.

[Signature page to follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF FINANCE

By: _____

Name:
Title:

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY

By: _____

Name:
Title:

ONTARIO POWER GENERATION INC.

By: _____

Name:
Title:

By: _____

Name:
Title:

Each of the undersigned hereby acknowledge the foregoing as of the day and year first above written.

COMPUTERSHARE TRUST COMPANY OF CANADA, in its capacity as trustee of **FAIR HYDRO TRUST**, as Issuer, by **ONTARIO POWER GENERATION INC.**, not in its individual capacity but solely as Manager

By: _____

Name:
Title:

By: _____

Name:
Title:

SCHEDULE A
DEFINED TERMS

"**Act**" has the meaning ascribed thereto in the first paragraph of the recitals in this Agreement.

"**Breach Event**" has the meaning ascribed thereto in Section 6.01.

"**Business Day**" means any day other than a Saturday, a Sunday or a day on which banking institutions in Toronto, Ontario are authorized or obligated by applicable law, regulation or executive order to be closed.

"**Change of Law Protection Agreement**" means the Change of Law Protection Agreement dated [■], 2017 among the Province, the Financing Entity, OPG (as the FSM and the Manager) and the Indenture Trustee.

"**Collateral**" has the meaning ascribed thereto in the Trust Indenture.

"**Co-Owner Agreement**" means any agreement between, *inter alia*, the Financing Entity and any other owner or owners of an Investment Interest as contemplated by Subsection 29(5) of the Act.

"**Declaration of Trust**" means the declaration of trust made as of [■], 2017 under which the Financing Entity was established.

"**Derivative Agreement**" means any rate swap transaction, basis swap, forward rate transaction, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, total return swap transaction, credit default swap transaction or any other similar transaction (including any option with respect to any of those transactions) or any combination of these transactions entered into from time to time by the Financing Entity in connection with or related to Funding Obligations.

"**Disclosure Document**" means a disclosure document (including any offering circular, prospectus or other investor disclosure statement) describing the material terms of the notes, bonds or securities to be issued pursuant to a supplemental indenture under the Trust Indenture, together with any related material information;

"**Fair Allocation Amount**" has the meaning ascribed to the term "fair allocation amount" in the Act as of the date of this Agreement.

"**Financing Entity**" means Fair Hydro Trust, a trust settled by the FSM under the laws of the Province of Ontario and under which the Financing Entity Trustee is the trustee.

"**Financing Plan**" has the meaning ascribed thereto in the Act as of the date of this Agreement.

"**Forecast**" has the meaning ascribed thereto in Section 4.01(a).

"**FSM**" has the meaning ascribed thereto in the second paragraph of the recitals of this Agreement.

"**Funding Obligation**" has the meaning ascribed to the term "funding obligation" in the Act as of the date of this Agreement.

"**General Regulation**" means O. Reg. 206/17 made under the Act.

"**Governing Document**" has the meaning ascribed to the term "governing document" in the General Regulation.

"**Governmental Authority**" means any nation or government, any federal, state, provincial, local or other political subdivision thereof and any court, administrative agency or other instrumentality or entity exercising executive, legislative, judicial, regulatory or administrative functions of government.

"**IESO**" has the meaning ascribed thereto in the Act as of the date of this Agreement.

"**IESO Security Agreement**" has the meaning ascribed thereto in the Trust Indenture.

"**Initial Forecast**" has the meaning ascribed thereto in the recitals of this Agreement.

"**Initial Forecast Period**" has the meaning ascribed thereto in the recitals of this Agreement.

"**Initial Protection Agreement Maximum**" has the meaning ascribed thereto in the recitals of this Agreement.

"**Investment Interest**" has the meaning ascribed to the term "investment interest" in the Act as of the date of this Agreement.

"**Master Transfer and Servicing Agreement**" means the master transfer and servicing agreement dated [■], 2017 between the Financing Entity and IESO.

"**Material Effect**" means a material adverse effect on the obligations or the rights of the Province under the Limited Guarantee, the Change of Law Protection Agreement or this Agreement that relates to: (i) the timing of or circumstances under which related payments would or may become due or accrue (including as a result of any default, acceleration, termination, wind-up, liquidation or realization) that, in each case, is inconsistent with the Fair Allocation Amount or the terms of any previously provided Reference Documentation; (ii) the appointment, obligations or duties of OPG as the Manager; (iii) the existence, powers or authority of the Financing Entity or the Financing Entity Trustee; (iv) the obligations of the Indenture Trustee to or in respect of the Province as a Specified Creditor; (v) the payment provisions and associated priorities set forth in the Trust Indenture; (vi) compliance by the FSM with the then applicable Financing Plan; (vii) compliance by the FSM or the Financing Entity with the Act or the General Regulation; or (viii) the Province's rights of subrogation or assignment (including pursuant to Sections 1.05, 2.01 or 5.01 of the Change of Law Protection Agreement) or its interests as a subrogee or an assignee, that would arise as a result of performing the Limited Guarantee in respect of the applicable Primary Obligation.

"**Obligations Secured**" has the meaning ascribed thereto in the Trust Indenture.

"**OPG**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Person**" means any individual, corporation, limited liability company, estate, partnership, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization or Governmental Authority.

"**Process Certificate**" has the meaning ascribed thereto in Section 3.01.

"**Program Agreements**" has the meaning ascribed thereto in the Trust Indenture.

"**Protection Agreement Maximum**" means the dollar amount referenced as the Program Agreement Maximum and determined in accordance with Section 4.01.

"**Province**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Rating Agency**" has the meaning ascribed thereto in the Trust Indenture.

"**Reference Documentation**" has the meaning ascribed thereto in Section 3.04.

"**Repayment**" has the meaning ascribed to the term "repayment" in the General Regulation as of the date of this Agreement.

"**Substantially in the Form**" has the meaning ascribed thereto in Section 3.05.

"**this Agreement**" means this agreement, as amended, supplemented, restated or otherwise modified from time to time.

"**Transaction Document**" means (i) all constating and organizational documents of the Financing Entity, including the Declaration of Trust; (ii) any management, administration or servicing agreement to which the Financing Entity is a party, including any replacement or standby services agreement and the Management Agreement; (iii) the Master Transfer and Servicing Agreement; (iv) Trust Indenture; (v) the form of supplemental indenture (supplemental to the Trust Indenture) governing the terms and conditions of a sample series of notes, bonds or other securities to be issued by the Financing Entity, including the particular allocations, security and priority of the Obligations Secured being serviced by the related Investment Interest and any other related series property; (vi) the form of any note, bond or securities purchase agreement; (vii) the form of underwriting agreement, agency agreement, selling agreement and/or subscription agreement that may be used with respect to a sale of a related series of notes, bonds or securities to be issued under the supplemental indenture referred to in (v), above; (viii) the form of any loan or credit agreement governing the issuance of short term loan obligations by the Financing Entity; (ix) the form of schedule to an ISDA Master Agreement governing derivative transactions that may be entered into the Financing Entity from time to time; (x) the form of any other agreement or instrument under which a Funding Obligation may arise or be effected, including any other agreement under which the Financing Entity incurs a material financial obligation or that could affect the Province's rights of subrogation or assignment (including pursuant to Sections 1.05, 2.01 or 5.01 of the Change of Law Protection Agreement) or its

interests as a subrogee or an assignee, including any standby liquidity arrangements or credit enhancement agreements; (xi) if applicable, a Co-Owner Agreement or any other agreement governing the respective interests of persons having rights or interests in the investment asset or other assets of the Financing Entity, including any other agreement of the sort contemplated in Subsection 29(5) of the Act; and (xii) the form of Disclosure Document.

"**Trust Indenture**" means the trust indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017.

EXHIBIT "A"
INITIAL REFERENCE DOCUMENTATION

- Declaration of Trust;
- Management Agreement;
- Master Transfer and Servicing Agreement;
- Acknowledgement and indemnity agreement dated as of [■], 2017 made by IESO in favour of the Indenture Trustee;
- IESO Security Agreement;
- Trust Indenture;
- Warehouse Senior Series 2017-1 Supplemental Indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017;
- Warehouse Subordinated Series 2017-1 Supplemental Indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017; and
- Warehouse Junior Subordinated Series 2017-1 Supplemental Indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017.

_Fair Hydro -- Change of Law Protection Agreement.pdf

Draft: December 13, 2017

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY AND THE MINISTER OF FINANCE

AND

COMPUTERSHARE TRUST COMPANY OF CANADA, AS TRUSTEE OF FAIR HYDRO TRUST

AND

ONTARIO POWER GENERATION INC., AS FINANCIAL SERVICES MANAGER AND AS MANAGER OF FAIR HYDRO TRUST

AND

BNY TRUST COMPANY OF CANADA, AS INDENTURE TRUSTEE

CHANGE OF LAW PROTECTION AGREEMENT

Dated as of [■], 2017

This **AGREEMENT**, among Her Majesty the Queen in Right of Ontario, as represented by the Minister of Energy and the Minister of Finance (the "**Province**"), Computershare Trust Company of Canada, in its capacity as trustee (the "**Financing Entity Trustee**") of Fair Hydro Trust, a trust organized under the laws of the Province of Ontario (the "**Financing Entity**"), Ontario Power Generation Inc., in its capacity as Manager of the Financing Entity and in its capacity as the Financial Services Manager in accordance with the Act (the "**FSM**") and BNY Trust Company of Canada, a trust company existing under the laws of Canada, as Indenture Trustee, is made and entered into as of [■], 2017.

RECITALS

Pursuant to Subsection 5(3) of the *Ontario Fair Hydro Plan Act, 2017* (the "**Act**"), the Lieutenant Governor in Council may by order, authorize the Minister of Energy and the Minister of Finance, acting together on behalf of the Province of Ontario, to agree to guarantee or indemnify certain debts, obligations, securities or undertakings associated with an Investment Interest.

Pursuant to an Order in Council 1981/2017 (the "**OIC**"), the Lieutenant Governor in Council has, among other things, authorized the Minister of Energy and the Minister of Finance, acting together on behalf of the Province of Ontario, to enter into one or more agreements to guarantee or indemnify the debts, obligations, securities or undertakings of one or more financing entities established or caused to be established pursuant to Subsection 22(2) of the Act by the FSM and that may incur Funding Obligations in connection with one or more Investment Interests.

Pursuant to a Declaration of Trust dated as of ■, 2017, the Financing Entity was established as a "financing entity" (as defined in the Act) for the purposes contemplated in the Act.

The Financing Entity Trustee, in its capacity as trustee of the Financing Entity, and the Indenture Trustee are parties to the Trust Indenture and propose to create and issue series of notes, bonds and other securities as contemplated therein, and to provide security over the assets and undertaking of the Financing Entity in respect of such notes, bonds and securities, as well as other Obligations Secured.

The Minister of Energy and the Minister of Finance, acting together on behalf of the Province of Ontario, have determined to provide protections and assurances to the Indenture Trustee, for the benefit of the Beneficiaries, in respect of Primary Obligations that constitute Approved Obligations, in order to address concerns that would arise from a change or adverse determination of law, subject in each case to the satisfaction of the Adherence Conditions at the time the Approved Obligation is incurred. This Agreement sets out the terms and conditions of such protections and assurances.

All things necessary to make this Agreement a valid and legally binding agreement of the Province, the Financing Entity, the FSM and the Indenture Trustee, in accordance with the Act, the OIC and the Trust Indenture, have been done.

AGREEMENT OF THE PARTIES

In consideration of the respective agreements herein contained, the parties hereto covenant and agree as follows:

ARTICLE I
DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

1.01 Interpretation

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) the terms used in this Agreement that are defined in Schedule A have the meanings assigned to them in Schedule A, and any other capitalized terms not defined herein shall have the meanings assigned to them in the Trust Indenture;

(b) words importing the singular shall include the plural and vice versa, words importing general shall include all genders or the neuter, and words importing the neuter shall include all genders;

(c) all references to any Person shall include such Person's permitted successors and assigns, and any reference to a Person in a particular capacity excludes such Person in other capacities;

(d) references to any law, rule, regulation or order of a Governmental Authority (including, for greater certainty, references to the Act and the General Regulation) shall include such law, rule, regulation or order as from time to time in effect, including any amendment, modification, codification, replacement or reenactment thereof or any substitution therefor;

(e) the word "will" shall be construed to have the same meaning and effect as the word "shall". The word "or" is not exclusive;

(f) any reference to this Agreement or any other agreement, document or instrument shall be construed as a reference to this Agreement or, as the case may be, such other agreement, document or instrument as the same may have been, or may from time to time be, amended, varied, replaced, amended and restated, supplemented or otherwise modified;

(g) all references in this Agreement to designated "Articles", "Sections", "Subsections", "Schedules", "Exhibits" and other subdivisions are to the designated Articles, Sections, Subsections, Schedules, Exhibits and other subdivisions of this Agreement as originally executed. The words "herein", "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section, Subsection, Schedule, Exhibit or other subdivision;

(h) "including" and words of similar import will be deemed to be followed by "without limitation"; and

(i) with respect to the computation of periods of time from a specified date to a later specified date, unless otherwise expressly stated, the word "from" means "from and including" and the words "to" and "until" each mean "to but excluding".

1.02 Trustee to act in accordance with the Trust Indenture

Any action taken, required to be taken or permitted to be taken by the Indenture Trustee under this Agreement shall only be taken in the manner, at the times, for the purposes, subject to the prerequisites, conditions, requirements and limitations, and with the benefits, exculpations, indemnities and protections that are provided to the Indenture Trustee, in each case in respect of such action taken, required to be taken or permitted to be taken by it under the Trust Indenture.

1.03 Proof of Approved Obligations

The efficacy of any agreement, instrument or writing evidencing a Primary Obligation may, in the absence of manifest error, be conclusively proved in any manner that the Manager deems to be sufficient.

Each statement delivered by the Manager under Section 2.01(a)i shall constitute *prima facie* evidence of the amount which, as at the date of the statement so prepared, is due and payable by the Financing Entity to the Beneficiaries and/or the Indenture Trustee and each of the parties hereby acknowledges and agrees that, absent manifest error, it shall be bound by each such statement. The Manager shall act diligently in the preparation of each such statement and shall provide the Indenture Trustee and the Province with all supporting computations and calculations used by the Manager to prepare each such statement promptly following a request therefor made by the Indenture Trustee or the Province.

1.04 Limitation on Rights of and Actions by Specified Creditors

Specified Creditors, as Beneficiaries, shall not have or be permitted to exercise any rights, interests, or elections under this Agreement, other than in the manner and to the extent effected and exercised under, in accordance with and subject to the limitations set forth in the Trust Indenture as of the date of this Agreement.

1.05 Province Retains Rights of Beneficiaries

Without limiting any rights of subrogation or succession that arise pursuant to applicable law or pursuant to the Province's rights as an assignee, subrogee or pursuant to Section 2.01 or Section 5.01, all of the rights, interests, elections and privileges that would arise in favour of a Beneficiary under the Trust Indenture or other Funding Obligation Agreement under which a related Primary Obligation arises shall automatically arise, vest in and be available to the Province to the extent of the performance by the Province of the Primary Obligation.

1.06 Effect of Headings

The Article and Section headings herein are for convenience only and will not affect the construction hereof.

1.07 Successors and Assigns

All covenants and agreements in this Agreement by the parties will bind their respective successors and permitted assigns, whether so expressed or not. All covenants and agreements of the Indenture Trustee, the Financing Entity, the Financing Entity Trustee, the Manager or the FSM in this Agreement shall bind their respective successors, co-trustees and agents.

1.08 Severability

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction will not affect the validity or enforceability of any other provision hereof. To the extent permitted by applicable law, the parties waive any provision of law which renders any provision of this Agreement invalid or unenforceable in any respect.

1.09 Governing Law

THIS AGREEMENT WILL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE PROVINCE OF ONTARIO AND THE FEDERAL LAWS OF CANADA APPLICABLE THEREIN, AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.

1.10 Proceedings Against the Crown Act

NOTHING IN THIS AGREEMENT OR THE PROGRAM AGREEMENTS AFFECTS THE RIGHTS, PROTECTIONS AND IMMUNITIES OF THE CROWN UNDER THE PROCEEDINGS AGAINST THE CROWN ACT (ONTARIO).

1.11 Attornment

EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY ONTARIO COURTS SITTING IN TORONTO IN ANY ACTION, APPLICATION, REFERENCE OR OTHER PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT. THE PARTIES HERETO HEREBY WAIVE ANY RIGHT THEY MAY HAVE TO REQUIRE A TRIAL BY JURY OF ANY PROCEEDING COMMENCED IN CONNECTION WITH THIS AGREEMENT.

1.12 Counterparts; Electronic Delivery

This Agreement may be executed in any number of counterparts, each of which so executed will be deemed to be an original, but all such counterparts will together constitute one and the same instrument. Delivery of an executed signature page to this Agreement by a party by

electronic transmission will be as effective as delivery of a manually executed copy of the Agreement by such party.

1.13 Change of Law Protection Agreement Referred to in the Trust Indenture

This Agreement is the "Change of Law Protection Agreement" referred to in the Trust Indenture.

1.14 Non-Business Days

Whenever any payment to be made hereunder shall be stated to be due, any period of time would begin or end, any calculation is to be made or any other action to be taken hereunder shall be stated to be required to be taken, on a day other than a Business Day, then (notwithstanding any other provision of this Agreement) such payment shall be made, such period of time shall begin or end, such calculations shall be made and such other action shall be taken on the next succeeding Business Day.

1.15 Waiver, Amendment

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement will be binding unless executed in writing by the party to be bound thereby. No waiver of any provision of this Agreement will constitute a waiver of any other provision nor will any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided. A party's failure or delay in exercising any right under this Agreement will not operate as a waiver of that right. A single or partial exercise of any right will not preclude a party from any other or further exercise of that right or the exercise of any other right.

1.16 Interest Act

For the purpose of disclosure pursuant to the *Interest Act* (Canada), the yearly rate of interest to which any rate of interest payable under this Agreement that is calculated on any basis other than a full calendar year is equivalent may be determined by multiplying such rate by a fraction, the numerator of which is the actual number of days in the calendar year in which such yearly rate of interest is to be ascertained and the denominator of which is the number of days comprising such other basis. The parties further agree that for the purposes of the *Interest Act* (Canada), (i) the principle of deemed reinvestment of interest shall not apply to any interest calculation under this Agreement, and (ii) the rates of interest stipulated in this Agreement are intended to be nominal rates and not effective rates or yields.

1.17 Currency

Unless stated otherwise, all amounts herein are stated in Canadian Dollars.

1.18 References to Acts of the Financing Entity

For greater certainty, where any reference is made in this Agreement, or in any other instrument executed pursuant hereto or contemplated hereby to which the Financing Entity or the

Financing Entity Trustee, as trustee of the Financing Entity, is party, to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against, or a covenant, representation or warranty (other than relating to the constitution or existence of the Financing Entity) by or with respect to (i) the Financing Entity or (ii) the Financing Entity Trustee, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against or a covenant, representation or warranty (other than relating to the constitution or existence of the Financing Entity) by or with respect to, the Financing Entity Trustee as trustee of the Financing Entity.

1.19 Judgment Currency

(a) If for the purpose of obtaining judgment in any court or for any other purposes (other than conversions specifically provided for in the agreement under which an Approved Obligation arises), it is necessary to convert any amount due under this Agreement from the currency in which it is due (the "**Original Currency**") into another currency (the "**Second Currency**"), the rate of exchange applied shall be that at which, in accordance with normal banking procedures, the purchaser could purchase, in the New York foreign exchange market, the Original Currency with the Second Currency on the date on which judgment is given. The obligation of the Province in respect of any Original Currency due from it to the Indenture Trustee under this Agreement shall, notwithstanding any judgment or payment in such other currency, be discharged only to the extent that, on the Business Day following receipt of any sum so paid or adjudged to be due under this Agreement in the Second Currency, the Indenture Trustee may, in accordance with normal banking procedures, purchase in the New York foreign exchange market the Original Currency with the amount of the Second Currency so paid or so adjudged to be due; and if the amount of the Original Currency so purchased is less than the amount originally due in the Original Currency, the Province shall indemnify the Indenture Trustee against such loss.

(b) The term "rate of exchange" in this Section 1.19 means the spot rate at which the Indenture Trustee, in accordance with normal practice, is able on the relevant date to purchase the Original Currency with the Second Currency and includes any premium and costs of exchange payable in connection with such purchase.

ARTICLE II
AGREEMENT TO PERFORM APPROVED OBLIGATIONS

2.01 Limited Guarantee

(a) Upon the occurrence of a Protection Event, the Indenture Trustee may deliver a written demand, substantially in the form attached as **[Exhibit A]** (a "**Payment Demand**"), to the Province requiring the Province to make payments in respect of the Approved Obligations at the times, in the amounts and subject to the requirements specified in this Agreement. From and after such delivery of a

Payment Demand, the Province shall make the following payments in respect of the Approved Obligations (the "**Limited Guarantee**"), the Financing Entity shall pay, and the Province shall be entitled to be paid, the Subrogation Amounts specified below, and the following terms shall apply:

i. Not less than three (3) Business Days prior to each day when any payment or payments are to be made in respect of one or more Approved Obligations occurring after such delivery of a Payment Demand (each such day, a "**Guarantee Payment Date**"), the Manager shall deliver a written statement setting forth the Aggregate Approved Obligations Amount, if any, in respect of the Approved Obligations that are due and payable on such Guarantee Payment Date, together with a detailed description identifying such Approved Obligations and the nature and amount of payments due and payable thereunder on the Guarantee Payment Date, the aggregate outstanding amount payable by the Financing Entity under such Approved Obligations as of the date of such written statement, and details regarding any default in performance by any party obligated thereunder.

ii. On each such Guarantee Payment Date, the Province shall deposit the Aggregate Approved Obligations Amount into the Protection Account.

iii. On each such Guarantee Payment Date, the Financing Entity and the Indenture Trustee shall ensure that the amounts on deposit in the Protection Account are applied to pay each Beneficiary to whom an amount is due and payable under an Approved Obligation on the Guarantee Payment Date the Approved Obligation Amount for such Beneficiary in respect of such Approved Obligation on such Guarantee Payment Date; provided that if the amount deposited pursuant to clause 2.01(a)ii is insufficient to pay all such Approved Obligation Amounts in full, the amount on deposit in the Protection Account on the Guarantee Payment Date shall be applied to pay Beneficiaries in the order of priority in which such Approved Obligations are payable under the payment provisions of the Trust Indenture applicable to the making of such payments on the Guarantee Payment Date (each, a "**Beneficiary Payee**" and each payment made to a Beneficiary Payee on a Guarantee Payment Date, a "**Guarantee Payment**").

iv. On the first Guarantee Payment Date and on each subsequent Guarantee Payment Date, Payment Date or other day on which any amount is required to be paid in respect of any Obligations Secured under the Trust Indenture (a "**Subrogation Payment Date**"), the Issuer and the Indenture Trustee shall ensure that the applicable payment provisions of the Trust Indenture shall be applied and operate on the following basis:

(A) If such day is a Guarantee Payment Date, then for each Approved Obligation for which amounts are paid to a

Beneficiary Payee on such day pursuant to clause 2.01(a)iii in respect of principal, interest or any other amounts ("**Payable Approved Amounts**"), the amounts payable by the Financing Entity in respect of such amounts for such Approved Obligation shall be reduced by the respective amounts of such payments to the Beneficiary Payee, and equivalent amounts shall be payable by the Financing Entity to the Province as "**Subrogation Amounts**" in respect of such Approved Obligations, such Subrogation Amounts being payable in the same order of priority and with the same entitlements accruing to the Province as applied in respect of the related Payable Approved Amounts which were previously owing to the Beneficiary Payee, and to reflect this subrogation the payments set out in clause 2.01(a)iv(B) below shall be made by the Financing Entity.

(B) If the Province has made all deposits required to be made by it on each Guarantee Payment Date occurring on or before such day in accordance with clause 2.01(a)ii (or the related Approved Obligation Amounts have otherwise all been paid in full), then in respect of each Approved Obligation for which any related Subrogation Amounts have not yet been paid in full to the Province, the Financing Entity shall pay to the Province from amounts available under the Trust Indenture payment provisions and in accordance with the priority of payment provisions in the Trust Indenture the amount that would be payable on such date in satisfaction of the relevant Payable Approved Amounts, as determined without regard to any Guarantee Payment paid on any Guarantee Payment Date and also without regard to the corresponding reduction of the amounts owing to present and former Beneficiary Payees pursuant to subclause 2.01(a)iv(A) up to the amount of the unpaid related Subrogation Amounts.

(C) No Beneficiary having a right to be paid an amount in respect of an Approved Obligation, and no other Person entitled under an Obligation Secured, in each case that ranks equal with or subordinate to the Payable Approved Amount in respect of which a Subrogation Amount is payable to the Province under subclause 2.01(a)iv(B), shall be entitled to make any claim or assert any right in or to the amounts paid or payable to the Province under such subclause (including any right of set-off, offset, reimbursement, contribution or indemnity) and no such Beneficiary or other Person shall have any right or

interest in, to or under the Collateral or any proceeds therefrom in respect of any such Subrogation Amount.

(D) For greater certainty, the entitlements of the Province in respect of Subrogation Amounts arising in respect of Payable Approved Obligations that are interest and principal obligations on Notes shall be treated for all purposes of the Trust Indenture as interest and principal obligations, respectively, arising under Notes having the same priority as and any applicable voting rights under the related Approved Obligations, and accordingly the Province (and any successor, assignee or transferee of such entitlements) shall be entitled to all of the rights, entitlements, interests and privileges of a Holder of such a Notes in accordance with the Trust Indenture, as supplemented by the Supplemental Indenture or other indenture document under which the related Approved Obligations were issued.

(b) On each Guarantee Payment Date and upon demand by the Province, the Indenture Trustee shall release and pay to the Province free and clear of any Liens any amount remaining on deposit in the Protection Account that has not been applied to pay Guarantee Payments to Beneficiary Payees on the Guarantee Payment Date in accordance with clause 2.01(a)iii or that otherwise remains on deposit in the Protection Account on the relevant date.

(c) In preparing any payment instructions under the Trust Indenture, the Manager shall reflect the amounts payable under Section 2.01(a), if applicable.

(d) The Province shall, as a payee of Subrogation Amounts under clause 2.01(a)iv(B) and as a payee of any amounts payable under clause 2.01(b), be a "Specified Creditor" under the Trust Indenture and have the benefit of the Collateral thereunder.

(e) For greater certainty, the Limited Guarantee will not apply to any amount or obligation of the Financing Entity that is not or does not arise under an Approved Obligation and will be limited to the right to receive the Approved Obligation Amounts, if any, for payment to Beneficiary Payees and will be subject to the priorities and to the Province's rights to Subrogation Amounts, set forth in Section 2.01(a).

(f) Except as expressly provided in this Agreement, the Province's obligation to provide and perform the Limited Guarantee shall be irrevocable, absolute and unconditional.

(g) Any amount payable by the Province under the Limited Guarantee in respect of an Approved Obligation that is not paid by the Province when required herein

shall bear interest from the applicable due date until paid in full at the rate or rates expressed to be payable on the Approved Obligation by their terms.

(h) Any amount payable to the Province in respect of a Subrogation Amount shall bear interest from and including the date of payment by the Province of the related Guarantee Payment to but excluding the date of payment of the Subrogation Amount to the Province, such interest to accrue at the rate equivalent to the applicable interest rate borne by the related Approved Obligation, and such interest amounts shall be added to their respective Subrogated Amounts and shall consequently be payable in the same priority as the relevant Subrogated Amount under clause 2.01(a)iv(B), all such accruing interest amounts to be calculated and added to the Subrogation Amounts by the Manager in its discretion acting in a commercially reasonable fashion.

(i) The right to deliver a Payment Demand and thereupon enforce the Limited Guarantee shall constitute the only remedy available to the Indenture Trustee (and to the Beneficiaries, to the extent they are permitted to exercise any rights, interests, or elections under and in accordance with the Trust Indenture) under this Agreement. Under no circumstances shall the Province be obligated to pay or indemnify the Indenture Trustee or any Beneficiary for consequential, special or punitive damages, or for economic loss or loss of profits; provided that, for greater certainty, economic loss shall not include any amount in respect of any amount due and payable to a Beneficiary Payee under the Limited Guarantee.

2.02 Intentionally Deleted.

2.03 Absence of Set-off

Subject to applicable law, the Province acknowledges and agrees that each payment to be made by the Province hereunder in respect of an Approved Obligation shall be made as required in whole, without application of any right of set-off and without regard to any equities as between or among any of the Province, the Beneficiaries and/or the Indenture Trustee.

2.04 Payment into Protection Account in Satisfaction

(a) On or before the date of delivery of a Payment Demand to the Province, the Indenture Trustee shall cause to be established and maintained an Eligible Deposit Account (the "**Protection Account**") in the name of the Indenture Trustee, bearing a designation clearly indicating that the funds and other property credited thereto are held for the benefit of the Indenture Trustee and the Beneficiaries. The Protection Account shall be under the control of the Indenture Trustee for the benefit of the Beneficiaries. If, at any time, the institution holding the Protection Account ceases to be an Eligible Institution, the FSM shall notify the Indenture Trustee, and the Indenture Trustee upon being notified in writing of such ineligibility (or the FSM on its behalf) shall within 30 days (or such longer period, not to exceed 45 days, so long as the Rating Agency Condition is satisfied) establish a new Protection Account that is an Eligible Deposit Account and shall

transfer any funds or other property from such Protection Account to such new Protection Account. From the date each such new Protection Account is established, it shall be the "Protection Account" for purposes of this Agreement. Funds credited to the Protection Account will be invested and held in accordance with Section **[7.03]** of the Trust Indenture on the basis that it is an Issuer Account.

(b) Notwithstanding the priority of payment requirements set forth in the Trust Indenture and any legal rule concerning the imputation of payments, the Financing Entity and the Indenture Trustee shall ensure that all amounts paid by the Province into the Protection Account on a Guarantee Payment Date in respect of an Approved Obligation are applied to pay the amounts due and payable to the Beneficiary Payee as and to the extent provided for in Section 2.01(a). Upon a payment having been made by or on behalf of the Province into the Protection Account, the amounts so paid shall for all purposes be considered to have been applied to pay the applicable Beneficiary Payee as provided for in Section 2.01(a) and thereby reduce the amount due and payable to such Beneficiary Payee in respect of the applicable Approved Obligations, whereupon an affected Beneficiary Payee shall have no continuing rights, interests or entitlements (including rights as a secured party) in respect of the Approved Obligation to the extent so paid. For greater certainty, the obligations arising in respect of an applicable Approved Obligation shall not be reduced by such payment as the Province shall become entitled to be paid related Subrogation Amounts and the rights contemplated under Section 2.01(a) and Section 5.01 in relation to such continuing obligations.

2.05 <u>Certain Waivers</u>

The Province hereby waives:

(a) any requirement, and any right to require, that any power be exercised or any action be taken against the Financing Entity or any Collateral for any of the Approved Obligations;

(b) all notices which may be required by applicable law to preserve any rights against the Province hereunder, including any notice of default, demand, dishonour, presentment and protest;

(c) diligence; and

(d) any defence based upon, arising out of or in any way related to any claim that any election of remedies by the Beneficiaries impaired, reduced, released or extinguished any rights that the Province might otherwise have had against the Financing Entity or any other surety.

The Province agrees that each such waiver is made with full knowledge of its significance and consequences and if any such waiver is determined to be contrary to any applicable law or public policy, such waiver shall be effective only to the maximum extent permitted by applicable law.

2.06 Additional Security

This Agreement shall be in addition to and without prejudice to any other security by whomsoever given, held at any time by the Indenture Trustee or for the benefit of any of the Beneficiaries.

2.07 Continuing Liability of the Province

The Approved Obligations shall be deemed not to have been paid, observed or performed, and the liability of the Province hereunder in respect thereof shall continue and not be discharged, to the extent that any payment, observance or performance thereof by the Financing Entity, or out of the proceeds of any Collateral, is recovered from or reimbursed by or for the account of any of the Beneficiaries for any reason, including a preference or fraudulent transfer or by virtue of any subordination (whether present or future or contractual or otherwise) of the Approved Obligations, whether such recovery or payment over is effected by any judgment, decree or order of any court or Governmental Authority, by any plan of reorganization or by settlement or compromise by any of the Beneficiaries (whether or not consented to by the Financing Entity or the Province) of any claim for any such recovery or payment over.

2.08 Continuance of the Limited Guarantee

Subject to Section 2.07, the Limited Guarantee shall continue in full force and effect until the indefeasible payment, observance and performance in full of the Approved Obligations in accordance with Section 8.01.

2.09 Modifications of Approved Obligations

The Province expressly authorizes the Indenture Trustee, at any time and from time to time, without notice and without affecting the liability of the Province hereunder, but subject to compliance with the requirements of the Program Agreements and this Agreement, to:

(a) accept new, additional or replacement instruments, documents, agreements or security in connection with all or any part of the Approved Obligations;

(b) accept partial payments on the Approved Obligations; and

(c) waive, release, reconvey, terminate, abandon, subordinate, exchange, substitute, transfer, compound, compromise, liquidate and enforce all or any part of the Approved Obligations and any security or guarantee therefor, and apply any such security and direct the order or manner of sale thereof as the Indenture Trustee (for the benefit of the Beneficiaries) in its discretion may determine.

ARTICLE III
THE INDENTURE TRUSTEE

3.01 The Indenture Trustee

This Agreement is made in favour of the Indenture Trustee in its capacity as trustee under the Trust Indenture. Accordingly, in the event of a new trustee being appointed under the Trust Indenture, such new trustee shall thereupon become and be the Indenture Trustee hereunder, but nevertheless, the Indenture Trustee shall forthwith assign, transfer and make over to the new trustee hereunder this Agreement. All provisions of the Trust Indenture for the protection of the Indenture Trustee or for facilitating the administration of the trusts or otherwise relating to the Indenture Trustee solely as to its holding of the rights thereunder shall apply *mutatis mutandis* to this Agreement and the Indenture Trustee's duties hereunder.

3.02 Acceptance of Trusts

The Indenture Trustee hereby accepts the trusts hereof and agrees to carry out and discharge the same unless and until a new trustee shall be appointed as contemplated in Section 3.01.

ARTICLE IV
APPROVED OBLIGATIONS

4.01 Approval Process

Except in respect of any Primary Obligation to which the Limited Guarantee will not apply on or after a Suspension Notice is delivered in accordance with Section 7.02, a Primary Obligation that is not a Certified Primary Obligation shall be an Approved Obligation. A Certified Primary Obligation shall constitute an Approved Obligation if (i) the Adherence Conditions applicable thereto have been satisfied at the time the Primary Obligation was incurred or (ii) the Province, in its sole discretion, designates in writing that it is an Approved Obligation.

4.02 Adherence Conditions

(a) The following shall be the Adherence Conditions applicable in relation to each Certified Primary Obligation:

i. the Certified Primary Obligation when incurred is an Obligation Secured under the Trust Indenture; and

ii. OPG, as FSM, delivers an Adherence Compliance Certificate in the form attached hereto as Exhibit B signed by the Chief Financial Officer and the Treasurer of OPG, or any two Executive Officers of OPG (for clarity, such certificate is to be provided by such officers in their capacity as officers of OPG acting in its capacity as FSM) and addressed to the Indenture Trustee, on or before the incurrence of the Certified Primary Obligation (provided that delivery may not be more than 5 Business Days before the incurrence of the Certified Primary Obligation); and

iii. the Province has not provided a Suspension Notice to the Indenture Trustee, OPG and the Financing Entity.

(b) Without limiting any obligations of OPG to the Province arising other than pursuant to this Agreement, satisfaction of the Adherence Conditions for a Certified Primary Obligation shall be deemed satisfaction of the Adherence Conditions in respect of all principal, interest and other amounts owing under the Certified Primary Obligation, as such Certified Primary Obligation may be amended, restated, supplemented or modified from time to time.

(c) For greater certainty, there shall be no Adherence Conditions applicable in relation to a Primary Obligation that is not a Certified Primary Obligation.

4.03 Evidence of Satisfaction

An Adherence Compliance Certificate delivered in accordance with clause 4.02(a)ii shall be determinative as to whether the applicable Adherence Condition with respect thereto has been satisfied, notwithstanding that such certificate may include inaccuracies, be incomplete or otherwise be defective or deficient, and such closing certificate may be relied upon by any addressee as conclusive evidence of same. An Adherence Compliance Certificate that purports on its face to be signed by officers specified in clause 4.02(a)ii may be relied upon by any addressee without further enquiry or evidence as to the incumbency or signatures of such officers. If an Adherence Compliance Certificate is not delivered in accordance with the timing requirements of clause 4.02(a)ii such certificate may be delivered at a later date, and be effective as if it had been delivered in accordance with the timing requirement of clause 4.02(a)ii if at the time such certificate was otherwise required to be delivered OPG had delivered to the Province all certifications required by the Province in connection with the adherence of the Limited Guarantee to the Certified Primary Obligation.

ARTICLE V
PROVINCE MATTERS

5.01 Assignment and Subrogation

(a) Upon paying an amount in respect of an Approved Obligation to or at the direction of the Indenture Trustee in satisfaction of the Limited Guarantee, the Province (in addition to and without prejudice to any rights it otherwise has in law or equity) shall be subrogated and entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Approved Obligation to the extent of such payment, and shall be entitled to (i) the right and entitlement to be paid and receive the related Subrogation Amounts, (ii) the benefits of the related Collateral and (iii) all proceeds therefrom. The Province shall have and be entitled to enforce all rights and interests (including as a Specified Creditor under the Trust Indenture on the basis contemplated in Section 5.01(b)), under and in respect of such Approved Obligation to the extent of the payment by the Province in respect of the Approved Obligation as an absolute assignee of the applicable Beneficiary, with effect from and after the time of such payment, without any

further requirement for notice to or acceptance by the Financing Entity of such absolute assignment and without any reduction, set-off or counterclaim on account of any amounts that may, at or after the time of payment, be or become owing by the Beneficiary to the Financing Entity and unaffected by any other rights or equities that arise thereafter as between the Beneficiary and the Financing Entity. The Indenture Trustee shall recognize the Province as being entitled to all of the rights, interests and entitlements of the Beneficiary (including as a Specified Creditor under the Trust Indenture on the basis contemplated in Section 5.01(b)) in respect and to the extent of the Approved Obligation so paid, determined as of the time of payment, for all purposes under the Trust Indenture, and the Province shall be treated as a Specified Creditor in respect thereof for all purposes under the Trust Indenture and any other agreement under which the Approved Obligation arises.

(b) The Province (i) acknowledges and agrees in favour of the Indenture Trustee that, upon being subrogated and entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Approved Obligation in accordance with Section 5.01(a), the Province, in its capacity as a Specified Creditor, will be subject to the provisions applicable to Specified Creditors under the Trust Indenture, including Sections **[7.04]** through **[7.11]** and **[8.13]** (Payment Priorities), Section **[7.12]** (Payments Held in Trust), Section **[8.11]** (Control by Controlling Class Creditors), Section **[8.12]** (Limitation on Suits), Section **[8.14]** (Limited Recourse), Article IX (The Indenture Trustee), including all limitations of liability thereunder, Section **[9.14]** (Communications to Specified Creditors) and Section **[16.01]** (No Petition); (ii) consents, requests and authorizes the Issuer and the Indenture Trustee to (x) add the Province to the register of Specified Creditors described in subsection **[13.13(b)]** of the Trust Indenture and (y) disseminate the notice details of the Province to other Specified Creditors for the purposes set out in subsection **[9.14(b)]** of the Trust Indenture, and (iii) confirms that it will execute and deliver, or cause to be executed and delivered, all such further agreements, documents and instruments in connection with this Section 5.01 as the Indenture Trustee may request from time to time for the purpose of giving effect to the terms of this Section 5.01.

5.02 <u>Priorities</u>

For greater certainty, the rights, interests and entitlements of the Province as an assignee and subrogee of and with respect to an Approved Obligation and the Payable Approved Amounts thereunder shall rank equally with the rights, interests and entitlements of a Beneficiary to whom a Limited Guarantee payment is made in respect of, and to the extent of the payment made to satisfy, the Approved Obligation and the Province shall not be subject to postponement or subordination with respect thereto except to the extent of the priorities established in relation to the Approved Obligation under the Trust Indenture in the manner and to the extent contemplated in Section **[7.10]** of the Trust Indenture.

5.03 Intentionally Deleted

5.04 Representations and Warranties

The Province hereby represents and warrants that:

(a) the execution and delivery of, and the performance of its obligations under, this Agreement by the Province have been authorized by all necessary action on the part of the Province;

(b) the execution and delivery of, and the performance of its obligations under, this Agreement by the Province do not result in the violation of any applicable law; and

(c) this Agreement has been duly executed and delivered by the Province.

ARTICLE VI
INDENTURE TRUSTEE MATTERS

6.01 Limited Recourse

No recourse may be taken, directly or indirectly, with respect to the obligations of the Financing Entity under this Agreement, or any certificate or other writing delivered in connection herewith or therewith, against (a) the Financing Entity Trustee in its individual capacity, (b) any owner of a beneficial interest in the Financing Entity or (c) any partner, owner, beneficiary, agent, officer, director, employee or agent of the Financing Entity Trustee in its individual capacity, any holder of a beneficial interest in the Financing Entity or the Financing Entity Trustee or of any successor or assign of the Financing Entity Trustee in its individual capacity, except as any such Person may have expressly agreed (it being understood that the Financing Entity Trustee has no such obligations in its individual capacity).

6.02 Not Responsible for Recitals

The recitals contained herein will be taken as the statements of the Province, the Financing Entity and the FSM, and the Indenture Trustee assumes no responsibility for their correctness. The Indenture Trustee makes no representations as to the validity or sufficiency of this Agreement.

6.03 Representations and Covenants of the Indenture Trustee

The Indenture Trustee represents, warrants and covenants that:

(a) the Indenture Trustee is a trust company organized, existing and in good standing under the laws of Canada;

(b) the Indenture Trustee has full power and authority to execute, deliver and perform this Agreement and has taken all necessary action to authorize the execution, delivery and performance by it of this Agreement;

(c) this Agreement has been duly executed and delivered by the Indenture Trustee and constitutes its legal, valid and binding obligation in accordance with its terms; and

(d) the Indenture Trustee is authorized to carry on the business of a trust company in each of the provinces and territories of Canada. If, notwithstanding the provisions of this subsection 6.03(d), the Indenture Trustee ceases to be so authorized to carry on business, the validity and enforceability of this Agreement shall not be affected in any manner whatsoever by reason only of such event.

ARTICLE VII
SUSPENSION OF ADHERENCE FOR NEW PRIMARY OBLIGATIONS

7.01 Suspension Notice

Upon:

(a) a Program Breach;

(b) a default in the performance, or breach, of any covenants of OPG, as FSM, or OPG, in its corporate capacity, in each case to the Province in connection with its obligations to the Province pursuant to internal requirements and processes in connection with the provision or adherence of the Limited Guarantee to or in respect of any Certified Primary Obligation and the expiration of any applicable cure period;

(c) a representation or warranty made by OPG or a certification made by one or more officers of OPG, in each case whether as FSM or in its corporate capacity, to the Province in connection with its obligations to the Province and its internal requirements and processes in connection with the provision or adherence of the Limited Guarantee to or in respect of any Certified Primary Obligations, proves to be incorrect in any material respect on the date made and the expiration of any applicable cure period; or

(d) the FSM no longer being the Manager or actions having been taken by or on behalf of the Indenture Trustee to remove the FSM as the Manager;

the Province may deliver a written notice in the form of Exhibit C (a "**Suspension Notice**") to the Indenture Trustee, the FSM and the Financing Entity.

7.02 Suspension

If a Suspension Notice has been provided under Section 7.01 (the provision of such notice being a "**Suspension Event**"), the Limited Guarantee shall not apply in respect of: (i) any Primary Obligation incurred, excluding Post-Suspension Refinancings, or (ii) any amendment of any Primary Obligation that has a Material Effect, unless otherwise agreed to by the Province, in each case, on or after the time such Suspension Notice is delivered.

7.03 Additional Right of the Province Regarding Post-Suspension Refinancings

Following the occurrence of a Suspension Event, the Limited Guarantee shall continue to apply in respect of any Post-Suspension Refinancing (for greater certainty, without regard to the satisfaction of any Adherence Conditions); provided that prior to the Financing Entity incurring any Primary Obligation constituting a Post-Suspension Refinancing, the Manager shall provide the Province with at least 30 days' notice of its intention to seek a Post-Suspension Refinancing and prior to incurrence, which notice shall describe the material covenants, events of default, representations and warranties and indemnities of the Financing Entity and other material terms, excluding financial terms, rates and levels, and that shall be in respect of the full amount of the amount becoming due and payable in respect of the applicable Primary Obligation less amounts otherwise available to the Financing Entity from other available or committed sources (the "**Proposal**"), and during such 30 day period the Province may, but is not obligated to, offer to fund such Post-Suspension Refinancing or arrange for another Person to fund such Post-Suspension Refinancing on the same terms as set out in the Proposal or on such other terms as may be considered by the Province to be not more onerous on the Financing Entity and that are acceptable on that basis to the Financing Entity, acting reasonably. If, within such 30-day period, the Province elects to offer to fund such Post-Suspension Refinancing as provided in the preceding sentence, the Manager shall accept such offer; however, if the Province does not elect to offer to fund such Post-Suspension Refinancing, the Manager shall cause the Financing Entity to incur Primary Obligations constituting such a Post-Suspension Refinancing on substantially the same terms (excluding, for greater certainty, any financial terms, rates or levels) as those set out in the Proposal if the Post-Suspension Refinancing can be completed by the Financing Entity in compliance with the Act, or on such other terms as would not have a Material Effect, without taking into account any financial terms, rates or levels.

7.04 No Impact on Adherence

For greater certainty, the occurrence of a Suspension Event or a failure by the FSM or the Financing Entity to perform its covenants under this Agreement will not invalidate or extinguish the obligations of the Province under the Limited Guarantee in respect of Approved Obligations in existence prior to the occurrence of the Suspension Event or in respect of any Post-Suspension Refinancing.

ARTICLE VIII
MISCELLANEOUS

8.01 Term of Agreement

This Agreement will continue until the later of: (a) the date that no amount is or may become due and payable by the Province under the Limited Guarantee and (b) the date that no amount is or may become due and payable to the Province in respect of any Subrogation Amount.

8.02 Notices

Any notice or other communication required or permitted to be given hereunder will be in writing and will be given by prepaid first-class mail, by facsimile or other means of electronic

communication or by hand-delivery as hereinafter provided. Any such notice or other communication, if mailed by prepaid first-class mail at any time other than during a general discontinuance of postal service due to strike, lockout or otherwise, will be deemed to have been received on the fourth Business Day after the post-marked date thereof, or if sent by facsimile or other means of electronic communication, will be deemed to have been received on the Business Day following the sending, or if delivered by hand will be deemed to have been received at the time it is delivered to the applicable address noted below either to the individual designated below or to an individual at such address having apparent authority to accept deliveries on behalf of the addressee. Notice of change of address will also be governed by this Section. In the event of a general discontinuance of postal service due to strike, lock-out or otherwise, notices or other communications will be delivered by hand or sent by facsimile or other means of electronic communication and will be deemed to have been received in accordance with this Section. Notices and other communications will be addressed as follows:

(a) if to the Financing Entity:

Fair Hydro Trust
700 University Avenue
Toronto, Ontario M5G 1X6
Attention: General Counsel
Fax: (416) 592-4189

with copies to:

Computershare Trust Company of Canada, in its capacity as Financing Entity Trustee for Fair Hydro Trust
100 University Avenue, 11th Floor
Toronto, Ontario M5J 2Y1
Attention: Manager, Corporate Trust
Fax: (416) 981-9777
Email: corporatetrust.toronto@computershare.com

(b) if to the FSM:

Ontario Power Generation Inc.
700 University Avenue
Toronto, Ontario M5G 1X6
Attention: General Counsel
Fax: (416) 592-4189

(c) if to the Province:

Minister of Finance
[Address]
Attention: [■]
Fax: (416) [■]
Email: [■]

and

Minister of Energy
[Address]
Attention: [■]
Fax: (416) [■]
Email: [■]

With copies to:

Deputy Minister of Finance
[Address]
Attention: [■]
Fax: (416) [■]
Email: [■]

and

Deputy Minister of Energy
[Address]
Attention: [■]
Fax: (416) [■]
Email: [■]

(d) if to the Indenture Trustee:

[Address]
Attention: [■]
Fax: (416) [■]
Email: [■]

or to such other addresses as a party may from time to time notify the other parties in accordance with this Section 8.02.

8.03 Assignment

(a) None of the rights or obligations hereunder shall be assignable or transferable by any party without the prior written consent of the other parties, except as otherwise provided for herein.

(b) Any purported assignment of this Agreement in violation of this Section 8.03 shall be null and void.

8.04 Enurement

This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

8.05 FIPPA

The parties acknowledge that the Province will be bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province, or any agent or representative of the Province in connection with this Agreement may be subject to disclosure in accordance with the act or as otherwise required by law.

8.06 No Petition

The Province agrees, to the fullest extent permitted by applicable law, that at no time until one year and one day following repayment in full of all Primary Obligations shall it commence, or join in commencing, a bankruptcy case or other insolvency or similar proceeding under the laws of any jurisdiction against the Financing Entity.

8.07 Notice to Rating Agencies

OPG, as FSM, shall deliver prompt written notice to the Rating Agencies of the occurrence of (i) a Protection Event; (ii) receipt of a Suspension Notice delivered by the Province pursuant to Section 7.01; and (iii) an assignment of this Agreement by any party pursuant to Section 8.03.

8.08 Third Party Rights

This Agreement is not intended to create rights for any Person not party to this Agreement. Beneficiaries derive their benefits hereunder through the Indenture Trustee and shall be subject to the provisions applicable to Specified Creditors in the Trust Indenture.

8.09 Delivery of Executed Copies

Each party acknowledges delivery of a fully executed copy of this Agreement.

[Signature page to follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF FINANCE

By: _____
Name:
Title:

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY

By: _____
Name:
Title:

ONTARIO POWER GENERATION INC., AS FSM AND AS MANAGER

By: _____
Name:
Title:
By: _____
Name:
Title:

COMPUTERSHARE TRUST COMPANY OF CANADA, IN ITS CAPACITY AS TRUSTEE OF FAIR HYDRO TRUST, AS ISSUER, BY ONTARIO POWER GENERATION INC., NOT IN ITS INDIVIDUAL CAPACITY BUT SOLELY AS MANAGER

By: _____
Name:
Title:
By: _____
Name:
Title:

BNY TRUST COMPANY OF CANADA, AS INDENTURE TRUSTEE AND NOT IN ITS INDIVIDUAL CAPACITY

By: _____
Name:
Title:

By: _____
Name:
Title:

SCHEDULE A
DEFINED TERMS

"**Acceleration**" has the meaning ascribed to the term "acceleration of a funding obligation" in the General Regulation.

"**Act**" has the meaning ascribed thereto in the first paragraph of the recitals in this Agreement.

"**Adherence Compliance Certificate**" means a certificate in the form attached hereto as Exhibit B delivered by the FSM in accordance with Section 4.02(a)ii.

"**Adherence Conditions**", means, in respect of a Certified Primary Obligation, the conditions set out in Section 4.02.

"**Aggregate Approved Obligations Amount**" means, in respect of a Guarantee Payment Date, the aggregate of the Approved Obligation Amounts for such Guarantee Payment Date.

"**Approved Obligation**" means a Primary Obligation that constitutes an Approved Obligation pursuant to Section 4.01.

"**Approved Obligation Amount**" means, for a Beneficiary in respect of an Approved Obligation under which an amount is due and payable on a Guarantee Payment Date:

(a) if no Acceleration has occurred in respect of any Obligation Secured on or before the Guarantee Payment Date, the amount due and payable to the Beneficiary on such Guarantee Payment Date in respect of the Approved Obligation (for greater certainty, determined on the assumption that there are adequate amounts available under the applicable payment provisions of the Trust Indenture to pay in full all amounts referred to in such payment provisions that are due and payable on the Guarantee Payment Date); and

(b) if an Acceleration has occurred in respect of any Obligations Secured on or before the Guarantee Payment Date, the amount that would be available to be paid to the Beneficiary on such Guarantee Payment Date in respect of the Approved Obligation under the applicable payment provisions of the Trust Indenture, determined on the assumption that the amount available for allocation to Specified Creditors in accordance with such applicable payment provisions of the Trust Indenture in respect of each relevant month during each Reference Period is equal to the estimated Finance Amount determined in respect of such Reference Period for purposes of section 15(1) of the Act (in effect on the date hereof), including section 6.1 of the General Regulation (in effect on the date hereof), divided by the number of months in such Reference Period.

"**Beneficiaries**" means the Specified Creditors to whom the Financing Entity owes a payment obligation pursuant to one or more Approved Obligations from time to time.

"**Beneficiary Payee**" has the meaning ascribed thereto in Section 2.01(a)iii.

"**Business Day**" means any day other than a Saturday, a Sunday or a day on which banking institutions in Toronto, Ontario are authorized or obligated by applicable law, regulation or executive order to be closed.

"**Capital Account**" has the meaning ascribed to the term "capital account" in the General Regulation.

"**Certified Primary Obligations**" means Primary Obligations that are: (i) incurred by or on behalf of the Financing Entity to fund its ownership of an Investment Interest, including any Refinancing, other than a Post-Suspension Refinancing or a Pre-Approved Refinancing, of such a Primary Obligation (for greater certainty, including, in the case of any Certified Primary Obligation permitting funding transactions pursuant to a Funding Obligation Agreement applicable to the Certified Primary Obligation, each individual borrowing or funding utilization thereunder), (ii) incurred by or on behalf of the Financing Entity upon the Financing Entity entering into a Derivative Agreement, in which case the Certified Primary Obligation therefor shall be the Master Agreement applicable to such Derivative Agreement and not any individual trade confirmation other than a trade confirmation that modifies or purports to override the express terms or conditions of the related Master Agreement, or (iii) incurred by or on behalf of the Financing Entity upon entering into a contract that has a term of more than three (3) years which is not terminable by the Financing Entity giving three (3) years' notice or less and expected (as determined by the Manager, acting reasonably) aggregate payments by the Financing Entity thereunder during the term of such contract are or would be in excess of C$5,000,000 (that, for greater certainty, is not otherwise captured in clauses (i) and (ii) above).

"**Change of Law Protection Agreement**" means this Agreement.

"**Declaration of Trust**" means the declaration of trust made as of [■], 2017 under which the Financing Entity was established.

"**Derivative Agreement**" means any rate swap transaction, basis swap, forward rate transaction, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, total return swap transaction, credit default swap transaction or any other similar transaction (including any option with respect to any of those transactions) or any combination of these transactions entered into from time to time by the Financing Entity in connection with or related to Funding Obligations.

"**Executive Officer**" has the meaning ascribed to the term "executive officer" in National Instrument 51-102 – *Continuous Disclosure Obligations* of the Canadian Securities Administrators.

"**Fair Allocation Amount**" has the meaning ascribed to the term "fair allocation amount" in the Act as of the date of this Agreement.

"**Finance Amount**" has the meaning ascribed to the term "finance amount" in the Act as of the date of this Agreement.

"**Finance Reserve Account**" has the meaning ascribed to the term "finance reserve account" in the General Regulation.

"**Financing Entity**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Financing Entity Trustee**" has the meaning ascribed thereto in the first paragraph of this Agreement until a successor Financing Entity Trustee shall have become such pursuant to the applicable provisions of the Trust Indenture and the Declaration of Trust, and thereafter "Financing Entity Trustee" means and includes such Person.

"**Financing Plan**" has the meaning ascribed to the term "Financing Plan" in the Act as of the date of this Agreement.

"**FSM**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Funding Obligation**" has the meaning ascribed to the term "funding obligation" in the Act as of the date of this Agreement.

"**Funding Obligation Agreement**" has the meaning ascribed thereto in the Trust Indenture.

"**General Regulation**" means O. Reg. 206/17 made under the Act.

"**Guarantee Payment**" has the meaning ascribed thereto in Section 2.01(a)iii.

"**Guarantee Payment Date**" has the meaning ascribed thereto in Section 2.01(a)i.

"**Governmental Authority**" means any nation or government, any federal, state, provincial, local or other political subdivision thereof and any court, administrative agency or other instrumentality or entity exercising executive, legislative, judicial, regulatory or administrative functions of government.

"**Holder**" has the meaning ascribed thereto in the Trust Indenture as of the date hereof.

"**IESO**" has the meaning ascribed thereto in the Act as of the date of this Agreement.

"**Indenture Trustee**" means the Person named as the Indenture Trustee in the first paragraph of this Agreement until a successor Indenture Trustee shall have become such pursuant to the applicable provisions of the Trust Indenture and this Agreement, and thereafter "Indenture Trustee" means and includes such Person.

"**Investment Interest**" has the meaning ascribed to the term "investment interest" in the Act as of the date of this Agreement.

"**Legislature**" means the Legislature of the Province of Ontario.

"**Liens**" has the meaning ascribed thereto in the Trust Indenture as of the date hereof.

"**Limited Guarantee**" has the meaning ascribed thereto in Section 2.01(a).

"**Management Agreement**" means the management agreement dated [■], 2017 between the Manager and the Financing Entity, as amended, supplemented, restated or otherwise modified from time to time.

"**Manager**" means OPG, in its capacity as manager of the Financing Entity under the Management Agreement.

"**Master Agreement**" means an agreement in the form of a Master Agreement as published by ISDA or any replacement or substitute or functional equivalent of such agreement.

"**Master Transfer and Servicing Agreement**" means the master transfer and servicing agreement dated [■], 2017 between the Financing Entity and IESO, as amended, supplemented, restated or otherwise modified from time to time.

"**Material Effect**" means a material adverse effect on the obligations or the rights of the Province under the Limited Guarantee that relates to: (i) the timing of or circumstances under which Primary Obligations would or may become due or accrue (including as a result of any default, acceleration, termination, wind-up, liquidation or realization) that, in each case, is inconsistent with the Fair Allocation Amount or the terms of any previously provided Reference Documentation; (ii) the appointment, obligations or duties of OPG as the Manager; (iii) the existence, powers or authority of the Financing Entity or the Financing Entity Trustee; (iv) the obligations of the Indenture Trustee to or in respect of the Province as a Specified Creditor; (v) the payment provisions and associated priorities set forth in the Trust Indenture; (vi) compliance by the FSM with the then applicable Financing Plan; (vii) compliance by the FSM or the Financing Entity with the Act or the General Regulation; or (viii) the Province's rights of subrogation or assignment (including pursuant to Sections 1.05, 2.01 or 5.01 of this Agreement) or its interests as a subrogee or an assignee, that would arise as a result of performing the Limited Guarantee in respect of the applicable Primary Obligation.

"**Notes**" has the meaning ascribed thereto in the Trust Indenture as of the date hereof.

"**OIC**" has the meaning ascribed thereto in the second paragraph of the recitals in this Agreement.

"**OPG**" means Ontario Power Generation Inc., a corporation established under the laws of the Province of Ontario.

"**Original Currency**" has the meaning ascribed thereto in Section 1.19(a).

"**Payable Approved Amounts**" has the meaning ascribed thereto in 2.01(a).

"**Payment Date**" has the meaning ascribed thereto in the Trust Indenture as of the date hereof.

"**Payment Demand**" has the meaning ascribed thereto in Section 2.01(a).

"**Person**" means any individual, corporation, limited liability company, unlimited liability company, estate, partnership, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization or Governmental Authority.

"**Post-Suspension Refinancing**" means a Funding Obligation that is an Obligation Secured and that is incurred on or after the occurrence of a Suspension Event in compliance with the requirements of Section 7.03, as a Refinancing of one or more Series of Approved Obligations (including any Pre-Approved Refinancing incurred on or after the occurrence of a Suspension Event), in each case the proceeds of which, together with any other funds that may be available, are used solely for the purpose of paying in full such Series of Approved Obligations.

"**Pre-Approved Refinancing**" means a Refinancing of a Certified Primary Obligation in respect of which the Province has, prior to the incurrence of such Certified Primary Obligation, agreed shall be an Approved Obligation, subject to compliance with such conditions and requirements as may be specified in such agreement.

"**Primary Obligations**" means any Obligation Secured (a) that is a Funding Obligation or (b) that otherwise is a payment obligation of the Financing Entity that gives rise to a Finance Amount, in each case other than (i) any amounts required to be deposited by or on behalf of the Financing Entity into any Capital Account or Finance Reserve Account; and (ii) any obligation to pay the Financing Entity or on the Financing Entity's direction any remaining amounts in the Collection Account pursuant to the Trust Indenture.

"**Program Breach**" means an acceleration of Funding Obligations in accordance with the provisions of the Trust Indenture or an event of default, early amortization event, termination event or similar event or circumstance (including any event that with the passage of time or the giving of notice would become such an event) of or in respect of the obligations of any party under any Program Agreement, including under this Agreement, the Trust Indenture, the Master Transfer and Servicing Agreement or any Derivative Agreement.

"**Protection Account**" has the meaning ascribed to such term in Section 2.04(a).

"**Protection Event**" means the occurrence of any of the following events:

(a) (i) the Legislature repeals (and does not replace on an equivalent basis) or amends the Act or any portion thereof as in effect on the date hereof;

(ii) the Legislature enacts or amends any other statute;

(iii) the Lieutenant Governor in Council repeals (and does not replace on an equivalent basis) the regulations made under the Act or any portion thereof as in effect on the date hereof; or

(iv) the Lieutenant Governor in Council, a minister of the Crown, an official of the government or a board or commission all the members of which are appointed by the Lieutenant Governor in Council makes or amends any "regulation" (as defined in Part III of the *Legislation Act, 2006*) as in effect on the date hereof;

(v) the implementation of a change in the organization or structure of the IESO or Ontario's electricity market undertaken at the initiative of the Province or an entity controlled by the Province,

in each case, that (X) adversely affects the ability of the Financing Entity to receive amounts in respect of its Investment Interest so that it can pay Approved Obligations when due and payable, in each case determined after taking into account and having regard to (i) any funds available at such time to apply to such Approved Obligations, including in any Finance Reserve Account, Capital Account or collateral posting account applicable under a Derivative Agreement, (ii) the availability of any credit enhancement agreement to which the Financing Entity is a party and (iii) any reasonably expected potential effect of a True-up Amount in the Reference Period immediately following the occurrence of an event described in any of clauses (i) to (v) of this paragraph (a), or (Y) adversely affects the enforceability of, or adversely changes, the terms and conditions of this Agreement or of any of the agreements under which Approved Obligations arise; or

(b) a court of competent jurisdiction determines that all or a portion of the Act or the regulations made under the Act, as in effect on the date hereof, is *ultra vires* or invalid in a way that adversely affects the ability of the Financing Entity to receive amounts in respect of its Investment Interest so that it can pay Approved Obligations when due and payable and that has the effect of the Financing Entity not in fact having sufficient funds to pay such Approved Obligations that have become due and payable, in each case determined after taking into account and having regard to (i) any funds available at such time to apply to such Approved Obligations, including in any Finance Reserve Account, Capital Account or collateral posting account applicable under a Derivative Agreement, (ii) the availability of any credit enhancement agreement to which the Financing Entity is a party and (iii) any reasonably expected potential effect of a True-up Amount in the Reference Period immediately following the occurrence of an event described in paragraph (b).

"**Province**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Rating Agency**" has the meaning ascribed thereto in the Trust Indenture, except that the reference to "Issuer Funding Obligation" in the definition of "Rating Agency" in the Trust Indenture shall be replaced with a reference to an Issuer Funding Obligation that is an Approved Obligation.

"**Rating Agency Condition**" has the meaning ascribed thereto in the Trust Indenture, except that the reference to "Issuer Funding Obligation" in the definition of "Rating Agency Condition" in the Trust Indenture shall be replaced with a reference to an Issuer Funding Obligation that is an Approved Obligation.

"**Reference Period**" has the meaning ascribed to the term "reference period" in the Act as of the date of this Agreement.

"**Refinancing**" has the meaning ascribed to the term "refinancing" in the Act as of the date of this Agreement, as more particularly described and given meaning in the General Regulation as of the date of this Agreement.

"**Second Currency**" has the meaning ascribed thereto in Section 1.19(b).

"**Specified Creditor**" has the meaning ascribed thereto in the Trust Indenture on the date hereof.

"**Subrogation Amount**" has the meaning ascribed thereto in subclause 2.01(a)iv(B).

"**Subrogation Payment Date**" has the meaning ascribed thereto in clause 2.01(a)iv.

"**Suspension Event**" has the meaning ascribed thereto in Section 7.02.

"**Suspension Notice**" has the meaning ascribed thereto in Section 7.01.

"**this Agreement**" means this agreement, as amended, supplemented, restated or otherwise modified from time to time.

"**True-up Amount**" has the meaning ascribed to the term "true up amount" in the Act as of the date of this Agreement.

"**Trust Indenture**" means the trust indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017, as amended, supplemented, restated or otherwise modified from time to time.

EXHIBIT A
FORM OF PAYMENT DEMAND

TO: Her Majesty the Queen in Right of Ontario, as represented by the Minister of Energy and the Minister of Finance (the "**Province**")

Reference is made to the Change of Law Protection Agreement dated [■], 2017 among the Province, Computershare Trust Company of Canada, as trustee of Fair Hydro Trust (the "**Financing Entity**"), Ontario Power Generation Inc., in its capacity as Manager of the Financing Entity and in its capacity as the Financial Services Manager under the *Fair Hydro Plan Act, 2017*, and the Indenture Trustee (the "**Change of Law Protection Agreement**"). Capitalized terms used and not defined herein shall have the meanings ascribed to such terms in the Change of Law Protection Agreement.

Pursuant to and in accordance with section 2.01(a) of the Change of the Law Protection Agreement, the Indenture Trustee hereby demands payment from the Province in respect of the Approved Obligations at the times, in the amounts and subject to the requirements specified in the Change of Law Protection Agreement.

DATED as of the [■] day of [■], [■].

BNY TRUST COMPANY OF CANADA

By: _____
Name:
Title:

By: _____
Name:
Title:

EXHIBIT B
FORM OF ADHERENCE COMPLIANCE CERTIFICATE UNDER SECTION 4.02(a)

TO: **BNY TRUST COMPANY OF CANADA**, in its capacity as Indenture Trustee (the "**Indenture Trustee**") under the Master Trust Indenture dated as of December ●, 2017 between Fair Hydro Trust and the Indenture Trustee (the "**Master Trust Indenture**")

Reference is made to the Change of Law Protection Agreement dated [■], 2017 among the Province of Ontario, Computershare Trust Company of Canada, as trustee of Fair Hydro Trust, Ontario Power Generation Inc., in its capacity as Manager of the Financing Entity and in its capacity as the Financial Services Manager under the *Fair Hydro Plan Act, 2017*, and the Indenture Trustee (the "**Change of Law Protection Agreement**"). Capitalized terms used and not defined herein shall have the meanings ascribed to such terms in the Change of Law Protection Agreement.

Each of the undersigned, being the ● and ● of OPG acting in its capacity as FSM and holding the offices set forth under their names and signatures below, pursuant to and accordance with clause 4.02(a)ii of the Change of Law Protection Agreement, hereby certifies for and on behalf of OPG, in its capacity as Financial Services Manager, and not in such officer's personal capacity and intending that this certificate may be relied on by the addressees hereof without independent inquiry, that:

1. I have read and understand the provisions of the Change of Law Protection Agreement, the Master Trust Indenture and all other documents and materials necessary to enable me to deliver this certificate.
2. If the Certified Primary Obligation is a Refinancing, the proceeds of the Refinancing will be used solely for the purpose of repaying one or more Certified Primary Obligations in respect of which the Adherence Conditions in Subsection 4.02(a) of the Change of Law Protection Agreement had been satisfied, including one or more other Refinancings in respect of which the Adherence Conditions in Subsection 4.02(a) of the Change of Law Protection Agreement had been satisfied.
3. OPG has delivered to the Province a certificate signed by the Chief Financial Officer and the Treasurer of OPG, or any two Executive Officers of OPG (for clarity, such certificate was provided by such officers in their capacity as officers of OPG acting in its capacity as FSM) confirming that OPG has complied with all of its obligations to the Province and internal requirements and processes in connection with the adherence of the Limited Guarantee to the Certified Primary Obligation.

DATED as of the [■] day of [■], [■].

Name: [1]	Name:
Office:	Office:

[1] This certificate must be signed by two officers of OPG being either (i) the Chief Financial Officer and the Treasurer, or (ii) any two Executive Officers (as defined in the Change of Law Protection Agreement) of OPG.

EXHIBIT C
SUSPENSION NOTICE

TO: Ontario Power Generation Inc., in its capacity as Financial Services Manager

AND TO: Fair Hydro Trust

AND TO: Computershare Trust Company of Canada, in its capacity as trustee of Fair Hydro Trust

AND TO: BNY Trust Company of Canada, as Indenture Trustee

Reference is made to the Change of Law Protection Agreement dated [■], 2017 among the Province, Computershare Trust Company of Canada, as trustee of Fair Hydro Trust (the "**Financing Entity**"), Ontario Power Generation Inc., in its capacity as Manager of the Financing Entity and in its capacity as the Financial Services Manager under the *Fair Hydro Plan Act, 2017*, and the Indenture Trustee (the "**Change of Law Protection Agreement**"). Capitalized terms used and not defined herein shall have the meanings ascribed to such terms in the Change of Law Protection Agreement. All references in this Suspension Notice to "Articles" or "Sections" refer to Articles or Sections of the Change of Law Protection Agreement.

The Province has a reasonable basis for concluding that an event described in clauses (a) to (d) of Section 7.01 has occurred. Pursuant to Section 7.01, the Province hereby declares that the Limited Guarantee shall hereby not apply in respect of (i) any Primary Obligation incurred, excluding Post-Suspension Refinancings or Pre-Approved Refinancings or (ii) any amendment of any Primary Obligation that has a Material Effect, unless otherwise agreed to by the Province, in each case, on or after delivery of this Suspension Notice.

This Suspension Notice is hereby delivered to the FSM, the Financing Entity and the Indenture Trustee in accordance with Section 8.02 of the Change of Law Protection Agreement.

* * * *

DATED as of the [■] day of [■], [■].

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF FINANCE

By: _____
Name:
Title:

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY

By: _____
Name:
Title:

FW_ Fair Hydro - financing entity costs.rtf

From: Kim Marshall [Kim.Marshall@ieso.ca]
To: Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; john.s.lee@opg.com [john.s.lee@opg.com]
CC: Michael Boll [Michael.Boll@ieso.ca]
Subject: FW: Fair Hydro - financing entity costs
Date: Wednesday, August 23, 2017 08:38:05
Attachment 1: reg_framework _IESO Ministry draft_170713.doc

In conversation with OPG, KPMG and E&Y, it seems that the regulatory option to financing costs during the moratorium period is a good approach to pursue. Attached is the material Michael previously sent. Can we touch on next steps, if not tomorrow early next week? thanks

Kimberly Marshall | VP, Corporate Services & CFO

Independent Electricity System Operator (IESO) | T: (416) 969-6232 | C: (416) 545-7202

120 Adelaide Street West, Suite 1600, Toronto, ON M5H 1T1

Web: www.ieso.ca | Twitter: IESO_Tweets | LinkedIn: IESO

Corporate Services collaborates with you to deliver solutions and expertise that enable the IESO to achieve its goals.

Conservation: www.saveONenergy.ca | Twitter: saveONenergyOnt | LinkedIn: saveONenergy

From: Michael Boll
Sent: July 20, 2017 3:28 PM
To: Kim Marshall
Subject: FW: Fair Hydro - financing entity costs

This is what was sent to the Ministry.

From: Michael Boll
Sent: July 13, 2017 12:09 PM
To: Kim Marshall
Subject: FW: Fair Hydro - financing entity costs

FYI – now that we have an initial impression from Michel, I have forwarded to Carolyn so they can start considering from their perspective.

From: Michael Boll
Sent: July 13, 2017 12:07 PM
To: 'Calwell, Carolyn (ENERGY/MEDEI/MRI)'
Subject: Fair Hydro - financing entity costs

Common Interest Privilege and Confidential

Hi Carolyn,

Attached for discussion is an outline of a potential regulatory option that may enable the financing entity's cost recovery from the market. This has not been socialized outside the IESO and its advisors. We wanted to send it to you so you could assess whether it seemed viable, including from a regulation making authority perspective.

Please let me know if you would like to discuss.

Regards,

Michael

Michael Boll | Associate General Counsel

Independent Electricity System Operator (IESO) | T: (416) 969-6023

120 Adelaide Street West, Suite 1600, Toronto, ON, M5H 1T1

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reg_framework _IESO Ministry draft_170713.pdf

Privileged & Confidential Draft

Regulatory Option for Temporary Funding of Financing Entity's Cost/Interests

For discussion purposes, the following is a potential regulatory mechanism whereby IESO market settlement mechanisms might be used to fund the financing entity's costs until the clean energy adjustment may be charged to specified consumers. This is subject to the there being sufficient regulation making authority to enact the regulations contemplated below.

1. A regulation could be passed (possibly pursuant to section 26(1) of FHA) requiring IESO, as part of the regulatory asset transfer, to fund financing entity's costs/interest in relation to such transferred regulatory asset for the period during which the clean energy adjustment may not be recovered from specified consumers. The regulation may indicate these funding amounts will be added to the global adjustment (GA) but only allocated to specified consumers (i.e. not form part of GA payable by Class A or Class B consumers who are not also specified consumers under Fair Hydro).
    a. This regulatory funding mechanism would be similar to other existing mechanisms whereby a third party's costs are funded from the GA via IESO settlement processes. For example, section 26.1 of the Ontario Energy Board Act creates a mechanism for IESO to collect costs incurred by the Ministry from consumers. Likewise, section 78.5 of the Ontario Energy Board Act requires the IESO to make payments to distributors with respect to amounts approved by the OEB for CDM programs and to recover such payment amounts from prescribed consumers as part of the GA.

2. A regulation could be passed (or amend O. Reg for 430/04 and/or O. Reg 429/04) pursuant to section 25.33(1)(c) and 25.33(2)(c) of the Electricity Act:

    - prescribing funding amounts incurred/paid for by the IESO pursuant to paragraph 1 above

    - prescribing specified consumers (as defined in Fair Hydro Act) as class of market participants and class of consumers for which adjustments will be made relating to funding amounts

    - prescribing, as necessary, payment adjustments and variance account treatment

3. If the above regulations were passed, amounts the IESO invoices electricity vendors monthly would include each electricity vendor's proportionate share of the funding amount. Proportionate share would likely be determined based on volume of electricity withdrawn by the electricity vendor's specified consumers during that month compared to total electricity withdrawn by all specified consumers in province for that month.

4. Difference between gross amounts billed by IESO to electricity vendors (which include funding amounts referred to above) and net amounts received by IESO from electricity vendors taking into account fair hydro adjustment constitutes IESO deferral (s. 23, FHA and s. 15, O. Reg 206/17).

5. IESO deferral is included in a variance account (s. 24(1), FHA)

6. All amounts in variance account constitute a regulatory asset (s. 25, FHA), which the IESO:

    - may transfer to the financing entity (s. 26(1), FHA)

    - or, if any balance remains in the variance account, recover through OEB-approved rates from specified consumers on or after May 1, 2021 (s. 25, FHA)

FW_ Fair Hydro -- Change of Law Agreements.rtf

From: Anna.Strathy@ofina.on.ca [Anna.Strathy@ofina.on.ca]
To: Ramchandani, Rima [rramchandani@torys.com]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Cox, Hilary (ENERGY) [Hilary.Cox@ontario.ca]; Cayley, Daniel (ENERGY) [Daniel.Cayley@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Katona, Keley (MOF) [Keley.Katona@ontario.ca]; Kwan, Ronald (OFA) [Ronald.Kwan@ofina.on.ca]; Zahid, Usman (OFA) [Usman.Zahid@ofina.on.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Donaldson, Mark (TBS) [Mark.Donaldson@ontario.ca]
Subject: FW: Fair Hydro -- Change of Law Agreements
Date: Tuesday, November 21, 2017 10:32:40

-----Original Appointment-----
From: Ramchandani, Rima [mailto:rramchandani@torys.com]
Sent: Tuesday, November 21, 2017 9:26 AM
To: Ramchandani, Rima; Anna Strathy; LEE John -TREASURY; RYFA Ken -TREASURY; 'HAHN PARKER Janet -TREASURY'; MAUTI John -FIN & C CTRL; LAURETA LAPIRA May -TREASURY; Mansoori, Nina; Feldman, Michael; WONG Leslie -LAWDIV; 'Sebastiano, Rocco'; Milligan, Peter; Fullerton, Rick; Gadi Mayman; Mike Manning; Malle Hanslep (MOF); 'ASHBOURNE, STEPHEN'; 'ian.benaiah@rbccm.com'; 'Khan, Nur (nur.khan@rbccm.com)'; 'brent.r.taylor@rbccm.com'; 'katrina.niehaus@gs.com'; 'brian.delaney@gs.com'; Maciel, Andrew; Adalja, Sunil; Persad, Nicole; Persaud, Donnie - Debt Capital Markets
Cc: Ken Kandeepan; LADAK Lubna -TREASURY
Subject: Fwd: Fair Hydro -- Change of Law Agreements
When: Tuesday, November 21, 2017 11:00 AM-2:00 PM (UTC-05:00) Eastern Time (US & Canada).
Where: Torys (79 Wellington Street West, 33rd Floor)

Begin forwarded message:

From: "Ramchandani, Rima" <rramchandani@torys.com>
To: "LEE John -TREASURY" <john.s.lee@opg.com>, "RYFA Ken -TREASURY" <ken.ryfa@opg.com>, "'HAHN PARKER Janet -TREASURY'" <j.hahnparker@opg.com>, "MAUTI John -FIN & C CTRL" <john.mauti@opg.com>, "LAURETA LAPIRA May -TREASURY" <may.lapira@opg.com>, "Mansoori, Nina" <nmansoori@torys.com>, "Feldman, Michael" <mfeldman@torys.com>, "WONG Leslie -LAWDIV" <leslie.wong@opg.com>, "'Sebastiano, Rocco'" <RSebastiano@osler.com>, "Milligan, Peter" <PMilligan@osler.com>, "Fullerton, Rick" <RFullerton@osler.com>, "Gadi Mayman" <Gadi.Mayman@ofina.on.ca>, "Mike Manning" <Mike.Manning@ofina.on.ca>, "Malle Hanslep (MOF)" <Malle.Hanslep@ontario.ca>, "'ASHBOURNE, STEPHEN'" <STEPHEN.ASHBOURNE@blakes.com>, "'ian.benaiah@rbccm.com'" <ian.benaiah@rbccm.com>, "'Khan, Nur (nur.khan@rbccm.com)'" <nur.khan@rbccm.com>, "'brent.r.taylor@rbccm.com'" <brent.r.taylor@rbccm.com>, "'katrina.niehaus@gs.com'"

<katrina.niehaus@gs.com>, "'brian.delaney@gs.com'" <brian.delaney@gs.com>, "Maciel, Andrew" <Andrew.Maciel@cibc.com>, "Adalja, Sunil" <Sunil.Adalja@cibc.com>, "Persad, Nicole" <Nicole.Persad@cibc.com>, "Persaud, Donnie - Debt Capital Markets" <Donnie.Persaud@cibc.com>
Cc: "Ken Kandeepan" <Ken.Kandeepan@ofina.on.ca>, "LADAK Lubna -TREASURY" <lubna.ladak@opg.com>
Subject: Fair Hydro -- Change of Law Agreements

For those unable to participate in person, here's the dial-in:

Dial-in: 1-800-600-0998
Access Code: 8657666#

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FW_ Fair Hydro -- Master Trust Indenture and Warehouse Supplemental Indenture.rtf

From: Hanslep, Malle (MOF) []
To: Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Manning, Mike (OFA) [Mike.Manning@ofina.on.ca]; Kim, John (OFA) [John.Kim@ofina.on.ca]; Kwan, Ronald (OFA) [Ronald.Kwan@ofina.on.ca]; Yep, Carlos (OFA) [Carlos.Yep@ofina.on.ca]; Devine, James (OFA) [James.Devine@ofina.on.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Katona, Keley (MOF) [Keley.Katona@ontario.ca]; Donaldson, Mark (TBS) [Mark.Donaldson@ontario.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
CC: Whitfield, Tobias P. (MOF) [Tobias.Whitfield@ontario.ca]; Thouin, Alena (ENERGY) [Alena.Thouin@ontario.ca]; McKinlay, Tom (MAG) [Tom.McKinlay@ontario.ca]
Subject: FW: Fair Hydro -- Master Trust Indenture and Warehouse Supplemental Indenture
Date: Wednesday, November 08, 2017 10:51:56
Attachment 1: imageaf2542.JPG
Attachment 2: Master Trust Indenture (November 7th Rating Agency Draft).DOCX
Attachment 3: Blackline - MTI.pdf
Attachment 4: MTSA (November 7th Rating Agency Draft).DOCX
Attachment 5: Blackline - MTSA.pdf
Attachment 6: IESO Security Agreement (November 7th Rating Agency Draft).DOCX
Attachment 7: Warehouse Supplement - Nov 6, 2017 (Osler).docx

---

Hi,

Here are updated versions of these documents.

We haven't heard anything on the protection agreement and process agreement.

Thanks,

Malle

From: Saulnier, Brett [mailto:bsaulnier@torys.com]
Sent: November 8, 2017 9:42 AM
To: Thouin, Alena (ENERGY); Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); McKinlay, Tom (MAG); STEPHEN.ASHBOURNE@blakes.com
Cc: 'leslie.wong@opg.com'; dup-john.s.lee@opg.com; 'ken.ryfa@opg.com'; Feldman, Michael; Ramchandani, Rima; Mansoori, Nina; Olusoga, Yinka
Subject: RE: Fair Hydro -- Master Trust Indenture and Warehouse Supplemental Indenture

Hi all,

Please find attached the latest drafts of the master trust indenture, master transfer and servicing agreement, IESO security agreement and warehouse supplemental indenture. These drafts remain subject to continuing review by OPG and the dealers.

Please let me know if you would like any blacklines in addition to the attached.

Thanks,

Brett

Brett Saulnier

P. 416.865.8148 | F. 416.865.7380 | 1.800.505.8679

79 Wellington St. W., 30th Floor, Box 270, TD South Tower
Toronto, Ontario M5K 1N2 Canada | www.torys.com

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imageaf2542.pdf

TORYS
LLP

Master Trust Indenture (November 7th Rating Agency Draft).pdf

Draft Date: November 7, 2017

FAIR HYDRO TRUST

as Issuer

AND

BNY TRUST COMPANY OF CANADA

as Indenture Trustee

TRUST INDENTURE

DATED AS OF [■], 2017

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SCHEDULE A — DEFINED TERMS
EXHIBIT 1 — FORM OF PAYMENT INSTRUCTIONS
EXHIBIT 2 — FORM OF REFINANCING NOTICE

This **TRUST INDENTURE**, between **COMPUTERSHARE TRUST COMPANY OF CANADA** in its capacity as trustee of **FAIR HYDRO TRUST**, a trust formed under the laws of the Province of Ontario (the "**Issuer**"), and **BNY TRUST COMPANY OF CANADA**, a trust company existing under the laws of Canada, in its capacity as Indenture Trustee[1] (the "**Indenture Trustee**"), is made and entered into as of [■], 2017.

RECITALS OF THE ISSUER

The Issuer wishes to provide for the incurrence of Issuer Funding Obligations in one or more Classes, Series or Tranches.

All things necessary to make this Indenture a valid and legally binding agreement of the Issuer, in accordance with its terms, have been done.

AGREEMENT OF THE PARTIES

In consideration of the respective agreements herein contained, the parties hereto covenant and agree as follows:

ARTICLE I
DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

1.01 Definitions

For all purposes of this Indenture and of any Supplemental Indenture, except as otherwise expressly provided or unless the context otherwise requires:

(a) the terms defined in Schedule A have the meanings assigned to them in Schedule A, and include the plural as well as the singular;

(b) all accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles (including the International Financial Reporting Standards as published by the International Accounting Standards Board, or any successor accounting standards board) and, except as otherwise herein expressly provided, the term "generally accepted accounting principles" with respect to any computation required or permitted hereunder means such accounting principles as are generally accepted in Canada at the date of such computation;

(c) unless the context otherwise requires, terms defined in the PPSA and not otherwise defined in this Indenture or a Supplemental Indenture shall have the meanings set forth in the PPSA;

[1] This draft does not reflect any comments from the Indenture Trustee.

(d) references to an agreement shall mean such agreement, as amended, modified, restated and supplemented from time to time in accordance with the provisions hereof;

(e) all references to any Person shall include such Person's permitted successors and assigns, and any reference to a Person in a particular capacity excludes such Person in other capacities;

(f) references to any law, rule, regulation or order of a Governmental Authority shall include such law, rule, regulation or order as from time to time in effect, including any amendment, modification, codification, replacement or reenactment thereof or any substitution therefor;

(g) the word "will" shall be construed to have the same meaning and effect as the word "shall". The word "or" is not exclusive;

(h) all references in this Indenture to designated "Articles", "Sections", "Schedules", "Exhibits" and other subdivisions are to the designated Articles, Sections, Schedules, Exhibits and other subdivisions of this Indenture as originally executed. The words "herein", "hereof" and "hereunder" and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision;

(i) "including" and words of similar import will be deemed to be followed by "without limitation"; and

(j) with respect to the computation of periods of time from a specified date to a later specified date, unless otherwise expressly stated, the word "from" means "from and including" and the words "to" and "until" each mean "to but excluding".

1.02 Compliance Certificates and Opinions

Upon any application or request by the Issuer to the Indenture Trustee to take any action under any provision of this Indenture, the Issuer will furnish to the Indenture Trustee (i) an Issuer's Certificate stating that all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with, and (ii) an Opinion of Counsel stating that, in the opinion of such counsel, all such conditions precedent, if any, have been complied with, except that in the case of any such application or request as to which the furnishing of such documents are specifically required by any provision of this Indenture relating to such particular application or request, no additional certificate or opinion need be furnished.

The Indenture Trustee may rely, as to authorization by the Issuer of any Series or Tranche of Notes, the form and terms thereof and the legality, validity, binding effect and enforceability thereof, upon the Opinion of Counsel and the other documents delivered pursuant to Article V and this Section 1.02, as applicable, in connection with the authentication of Notes of such Series or Tranche.

Every certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture (except for the written statement required by Section 13.10) will include:

(a) a statement that each individual signing such certificate or opinion has read such covenant or condition and the definitions herein relating thereto;

(b) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;

(c) a statement that such individual has made such examination or investigation as is necessary to express an informed opinion as to whether or not such covenant or condition has been complied with; and

(d) a statement as to whether, in the opinion of each such individual, such condition or covenant has been complied with.

1.03 Form of Documents Delivered to Indenture Trustee

In any case where several matters are required to be certified by, or covered by an opinion of, one or more specified Persons, one such Person may certify or give an opinion with respect to some matters and one or more other such Persons as to the other matters, and any such Person may certify or give an opinion as to such matters in one or several documents.

Any certificate or opinion of the Issuer may be based, insofar as it relates to legal matters, upon a certificate or opinion of, or representations by, counsel, unless the Issuer knows, or in the exercise of reasonable care should know, that the certificate or opinion or representations are erroneous. Any such certificate or opinion of, or representation by, counsel may be based, insofar as it relates to factual matters, upon a certificate or opinion of, or representations by, the Issuer stating that the information with respect to such factual matters is in the possession of the Issuer, unless such counsel knows, or in the exercise of reasonable care should know, that the certificate or opinion or representations are erroneous.

Where any Person is required to make, give or execute two or more applications, requests, consents, certificates, statements, opinions or other instruments under this Indenture, they may, but need not, be consolidated and form one instrument.

1.04 Actions by Noteholders

(a) Any request, demand, authorization, direction, notice, consent, resolution, waiver or other action (collectively, an "**Action**") provided by this Indenture to be given or taken by Noteholders of any Class, Series or Tranche may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Noteholders in person or by an agent duly appointed in writing. In addition, any Action provided by this Indenture to be given or taken by such Noteholders may, alternatively, be embodied in and evidenced by the record of such Noteholders voting in favor thereof, either in person or by proxies duly appointed in writing, at any meeting of Noteholders duly called and held in accordance with the provisions

of Article X or a combination of such instruments and any such record. Except as herein otherwise expressly provided, such Action will become effective when such instrument or instruments or record are delivered to the Indenture Trustee, and, where it is hereby expressly required, to the Issuer. Proof of execution of any such instrument or of a writing appointing any such agent, or the holding by any Person of a Note, will be sufficient for any purpose of this Indenture and (subject to Section 9.01) conclusive in favor of the Indenture Trustee and the Issuer, if made in the manner provided in this Section 1.04. The record of any meeting of Noteholders shall be proved in the manner provided in Article X.

(b) The fact and date of the execution of any such instrument or writing, or the authority of the person executing the same, may be proved in any manner which the Indenture Trustee deems sufficient.

(c) (i) The ownership of Registered Notes will be proved by the Note Register.

(ii) The ownership of Bearer Notes or coupons will be proved by the production of such Bearer Notes or coupons or by a certificate, satisfactory to the Issuer and the Indenture Trustee, executed, as depositary, by any bank, trust company, recognized securities dealer, as depositary, wherever situated, satisfactory to the Issuer. Each such certificate will be dated and will state that on the date thereof a Bearer Note or coupon bearing a specified serial number was deposited with or exhibited to such bank, trust company or recognized securities dealer by the Person named in such certificate. Any such certificate may be issued in respect of one or more Bearer Notes or coupons specified therein. The holding by the Person named in any such certificate of any Bearer Note specified therein will be presumed to continue for a period of one year from the date of such certificate unless at the time of any determination of such holding (A) another certificate bearing a later date is issued in respect of the same Bearer Note or coupon produced, (B) the Bearer Note or coupon specified in such certificate is produced by some other Person or (C) the Bearer Note or coupon specified in such certificate has ceased to be Outstanding.

(d) The fact and date of execution of any such instrument or writing, the authority of the Person executing the same and the principal amount and serial numbers of Bearer Notes held by the Person so executing such instrument or writing and the date of holding the same may also be proved in any other manner which the Indenture Trustee deems sufficient; and the Indenture Trustee may in any instance require further proof with respect to any of the matters referred to in this Section 1.04.

(e) If the Issuer will solicit from the Noteholders any Action, the Issuer may, at its option, by an Issuer Certificate, fix in advance a record date for the determination of Noteholders entitled to give such Action, but the Issuer will have no obligation to do so. If the Issuer does not so fix a record date, such record date will be the later of 30 days before the first solicitation of such Action or the date of the most recent

list of Noteholders furnished to the Indenture Trustee pursuant to Section 13.13 before such solicitation. Such Action may be given before or after the record date, but only the Noteholders of record at the close of business on the record date will be deemed to be Noteholders for the purposes of determining whether Noteholders of the requisite proportion of Outstanding Notes have authorized or agreed or consented to such Action, and for that purpose the Outstanding Notes will be computed as of the record date; provided that no such authorization, agreement or consent by the Noteholders on the record date will be deemed effective unless it will become effective pursuant to the provisions of this Indenture not later than 6 months after the record date.

(f) Any Action by a Noteholder will bind the holder of every Note issued upon the transfer thereof or in exchange therefor or in lieu thereof, in respect of anything done or suffered to be done by the Indenture Trustee or the Issuer in reliance thereon whether or not notation of such Action is made upon such Note.

(g) Without limiting the foregoing, a Noteholder entitled hereunder to take any Action hereunder with regard to any particular Note may do so with regard to all or any part of the principal amount of such Note or by one or more duly appointed agents each of which may do so pursuant to such appointment with regard to all or any part of such principal amount. Any notice given or Action taken by a Noteholder or its agents with regard to different parts of such principal amount pursuant to this paragraph shall have the same effect as if given or taken by separate Noteholders of each such different part.

(h) Without limiting the generality of the foregoing, unless otherwise specified pursuant to one or more Supplemental Indentures, a Noteholder, including a Depository that is the holder of a Global Note, may make, give or take, by a proxy or proxies duly appointed in writing, any Action provided in this Indenture to be made, given or taken by Noteholders, and a Depository that is the holder of a Global Note may provide its proxy or proxies to the beneficial owners of interests in or security entitlements to any such Global Note through such Depository's standing instructions and customary practices.

(i) The Issuer may fix a record date for the purpose of determining the Persons who are beneficial owners of interests in or security entitlements to any Global Note held by a Depository entitled under the procedures of such Depository to make, give or take, by a proxy or proxies duly appointed in writing, any Action provided in this Indenture to be made, given or taken by Noteholders. If such a record date is fixed, the Noteholders on such record date or their duly appointed proxy or proxies, and only such Persons, shall be entitled to make, give or take such Action, whether or not such Noteholders remain Noteholders after such record date. No such Action shall be valid or effective if made, given or taken more than six months days after such record date.

1.05 Actions of Other Specified Creditors

Any Action provided by this Indenture to be given or taken by any Specified Creditor (other than Noteholders) may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Specified Creditor in person or an agent duly appointed in writing. Proof of execution of any such instrument or of a writing appointing any such agent will be sufficient for any purpose of this Indenture and (subject to Section 9.01) conclusive in favour of the Indenture Trustee and the Issuer, if made in the manner provided in Section 1.04(b).

1.06 Effect of Headings and Table of Contents

The Article and Section headings herein and the Table of Contents are for convenience only and will not affect the construction hereof.

1.07 Successors and Assigns

All covenants and agreements in this Indenture by the Issuer will bind its successors and assigns, whether so expressed or not. All covenants and agreements of the Indenture Trustee in this Indenture shall bind its successors, co-trustees and agents of the Indenture Trustee.

1.08 Severability

In case any provision in this Indenture or in the Notes will be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired thereby.

1.09 Governing Law

THIS INDENTURE WILL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE PROVINCE OF ONTARIO AND THE FEDERAL LAWS OF CANADA APPLICABLE THEREIN, AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS. EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY ONTARIO COURTS SITTING IN TORONTO IN ANY ACTION, APPLICATION, REFERENCE OR OTHER PROCEEDING ARISING OUT OF OR RELATED TO THIS INDENTURE. THE PARTIES HERETO HEREBY WAIVE ANY RIGHT THEY MAY HAVE TO REQUIRE A TRIAL BY JURY OF ANY PROCEEDING COMMENCED IN CONNECTION WITH THIS INDENTURE.

1.10 Counterparts

This Indenture may be executed in any number of counterparts, each of which so executed will be deemed to be an original, but all such counterparts will together constitute one and the same instrument.

1.11 Indenture Referred to in the Declaration of Trust and the Master Transfer and Servicing Agreement

This is the Indenture referred to in the Declaration of Trust and the Master Transfer and Servicing Agreement.

1.12 Non-Business Days

Whenever any payment to be made hereunder shall be stated to be due, any period of time would begin or end, any calculation is to be made or any other action to be taken hereunder shall be stated to be required to be taken, on a day other than a Business Day, then (notwithstanding any other provision of the Notes or this Indenture) such payment shall be made, such period of time shall begin or end, such calculations shall be made and such other action shall be taken on the next succeeding Business Day.

1.13 Interest Act

For the purpose of disclosure pursuant to the *Interest Act* (Canada), the yearly rate of interest to which any rate of interest payable under this Indenture that is calculated on any basis other than a full calendar year is equivalent may be determined by multiplying such rate by a fraction, the numerator of which is the actual number of days in the calendar year in which such yearly rate of interest is to be ascertained and the denominator of which is the number of days comprising such other basis. The parties further agree that for the purposes of the *Interest Act* (Canada), (i) the principle of deemed reinvestment of interest shall not apply to any interest calculation under this Indenture or the Notes, and (ii) the rates of interest stipulated in this Indenture or the Notes are intended to be nominal rates and not effective rates or yields.

1.14 Currency

Unless stated otherwise, all amounts herein are stated in Dollars.

1.15 References to Acts of the Issuer

For greater certainty, where any reference is made in this Indenture, or in any other instrument executed pursuant hereto or contemplated hereby to which the Issuer or the Issuer Trustee, as trustee of the Issuer, is party, to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against, or a covenant, representation or warranty (other than relating to the constitution or existence of the Issuer) by or with respect to (i) the Issuer or (ii) the Issuer Trustee, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against or a covenant, representation or warranty (other than relating to the constitution or existence of the Issuer) by or with respect to, the Issuer Trustee as trustee of the Issuer.

1.16 Judgment Currency

(a) If for the purpose of obtaining judgment in any court or for any other purposes (other than conversions specifically provided for in this Indenture), it is necessary to convert any amount due under this Indenture from the currency in which it is due (the "**Original Currency**") into another currency (the "**Second Currency**"), the rate of exchange applied shall be that at which, in accordance with normal banking procedures, the purchaser could purchase, in the New York foreign exchange market, the Original Currency with the Second Currency on the date on which judgment is given. The obligation of the Issuer in respect of any Original Currency due from it to the Indenture Trustee under this Indenture shall, notwithstanding any judgment or payment in such other currency, be discharged only to the extent that, on the Business Day following receipt of any sum so paid or adjudged to be due under this Indenture in the Second Currency, the Indenture Trustee may, in accordance with normal banking procedures, purchase in the New York foreign exchange market the Original Currency with the amount of the Second Currency so paid or so adjudged to be due; and if the amount of the Original Currency so purchased is less than the amount originally due in the Original Currency, the Issuer shall indemnify the Indenture Trustee against such loss.

(b) The term "**rate of exchange**" in this Section 1.16 means the spot rate at which the Indenture Trustee, in accordance with normal practice, is able on the relevant date to purchase the Original Currency with the Second Currency and includes any premium and costs of exchange payable in connection with such purchase.

ARTICLE II
COLLATERAL

2.01 Security for Obligations Secured

As security for the due payment of all Obligations Secured including, without limitation, all principal of and interest, if any, on the Notes from time to time issued and certified under this Indenture and on any Borrowings, and the performance by the Issuer of all of the obligations of the Issuer in relation thereto, the Issuer hereby:

(a) mortgages, charges, pledges, grants, transfers, assigns, hypothecates and sets over unto the Indenture Trustee, for the benefit and security of the applicable Specified Creditors and the Indenture Trustee, in its individual capacity, as and by way of a fixed and specific mortgage, assignment, pledge, hypothec and charge and grants to the Indenture Trustee for the benefit and security of the applicable Specified Creditors and the Indenture Trustee, in its individual capacity, a security interest in all of its right, title and interest, whether now owned or hereafter acquired, in and to the following:

(i) the Issuer Investment Interest;

(ii) each Issuer Account (including all Sub-Accounts of each Issuer Account);

(iii) all Eligible Investments and all investment property, money and other property held in the Issuer Accounts (including any Sub-Accounts of each Issuer Account);

(iv) all rights, benefits and powers of the Issuer under any Program Agreement;

(v) all rights, benefits and powers of the Issuer under the Act and all regulations promulgated thereunder;

(vi) all present and future claims, demands, causes of and choses in action in respect of any of the foregoing and all interest, principal, payments and distributions of any nature or type on any of the foregoing;

(vii) all accounts, general intangibles, chattel paper, instruments, documents, goods, money, investment property, deposit accounts, letters of credit and letter-of-credit rights consisting of, arising from, or relating to any of the foregoing;

(viii) all debts, accounts, claims, monies and choses in action due or to become due with respect to all of the foregoing and also all securities, bills, notes, evidences of deposits of money, and other documents now held or owned or which may be hereafter taken, held or owned by the Issuer, or anyone on behalf of the Issuer, and all renewals thereof, accretions thereto, substitutions therefor and all interest, income and revenue arising therefrom or by virtue thereof;

(ix) all amounts received with respect to all of the foregoing; and

(x) all proceeds of the foregoing; and

(b) mortgages, charges, pledges, grants, transfers, assigns, hypothecates and sets over unto the Indenture Trustee, for the benefit and security of the Specified Creditors and the Indenture Trustee, in its individual capacity, a floating charge over, and grants to the Indenture Trustee for the benefit and security of the Specified Creditors and the Indenture Trustee, in its individual capacity, a security interest in all of the property, assets and undertaking now owned or hereafter acquired by the Issuer.

The property described in the preceding sentence is collectively referred to as the "**Collateral**".

The Indenture Trustee acknowledges the grant of such Security Interest, and accepts the Collateral in trust hereunder in accordance with the provisions hereof and agrees to perform the duties herein such that the interests of the Specified Creditors may be adequately and effectively protected.

To have and to hold the Collateral and all rights hereby conferred unto the Indenture Trustee, its successors and assigns forever but in trust nevertheless for the benefit of the Specified

Creditors and the Indenture Trustee, in its individual capacity, and for the uses and purposes and subject to the terms and conditions herein set forth.

The Issuer acknowledges that value has been given and that the security granted shall attach and be effective on the date of execution of this Indenture and when the Issuer has rights in the Collateral, whether or not the monies and the Notes or any other evidence of Obligations Secured or any part thereof hereby secured or intended to be hereby secured shall be advanced or issued before or after or upon the date of the execution of this Indenture.

2.02 Recording, Etc.

(a) The Issuer intends the Security Interest granted pursuant to this Indenture in favor of the Indenture Trustee to be prior to all other Liens in respect of the Collateral. The Issuer will take all actions necessary to maintain a perfected Lien on the Collateral in favor of the Indenture Trustee.

(b) The Indenture Trustee shall hold each item of the Collateral separate and apart from all other property held by the Indenture Trustee.

(c) The Issuer will from time to time execute, authorize and deliver all such supplements and amendments hereto and all such financing statements, amendments thereto, instruments of further assurance and other instruments, all as prepared by the Issuer, and will take such other action necessary or advisable to:

(i) grant the Security Interest more effectively in all or any portion of the Collateral;

(ii) maintain or preserve the Security Interest (and the priority thereof) created by this Indenture or carry out more effectively the purposes hereof;

(iii) perfect, publish notice of or protect the validity of any grant made or to be made by this Indenture;

(iv) enforce its rights under the Investment Asset, the IESO Security Agreement, any Derivative Agreement, any Credit Enhancement Agreement, any Liquidity Agreement and each other instrument or agreement designated for inclusion in the Collateral;

(v) preserve and defend title to the Collateral and the rights of the Indenture Trustee in the Collateral against the claims of all Persons; or

(vi) pay all Taxes levied or assessed upon the Collateral when due.

(d) The Issuer will from time to time promptly pay and discharge all PPSA recording and filing fees, charges and Taxes relating to this Indenture, any amendments hereto and any other instruments of further assurance.

(e) Without limiting the generality of subsection 2.02(c) or (d):

(i) The Issuer will cause this Indenture, all amendments and supplements hereto and all financing statements and all amendments to such financing statements and any other necessary documents covering the Indenture Trustee's right, title and interest in and to the Collateral to be promptly recorded, registered and filed, and at all times to be kept recorded, registered and filed, all in such manner and in such places as may be required by applicable law fully to preserve and protect the right, title and interest of the Indenture Trustee in and to all property comprising the Collateral. The Issuer will deliver to the Indenture Trustee file-stamped copies of, or filing receipts for, any document recorded, registered or filed as provided above, as soon as available following such recording, registration or filing. The Issuer hereby authorizes the filing of financing statements (and amendments of financing statements) that name the Issuer as debtor and the Indenture Trustee as secured party and that cover all personal property of the Issuer. The Issuer also hereby ratifies the filing of any such financing statements (or amendments of financing statements) that were filed prior to the execution hereof.

(ii) The Issuer shall not change its name, its jurisdiction of formation or its type of organization unless it has first (A) made all filings and taken all actions in all relevant jurisdictions under the PPSA and other applicable law as are necessary to continue and maintain the first priority perfected Security Interest of the Indenture Trustee in the Collateral, and (B) delivered to the Indenture Trustee an Opinion of Counsel to the effect that all necessary filings have been made under the PPSA (and where applicable, the equivalent thereof) in all relevant jurisdictions as are necessary to continue and maintain the first priority perfected Security Interest of the Indenture Trustee in the Collateral.

2.03 Use of Collateral

Subject to the express terms of this Indenture, until the Issuer Funding Obligations have become due and payable pursuant to Section 8.02, the Issuer will be permitted to possess and use the Collateral in connection with the activities of the Issuer, including, without limitation, the right to (a) exercise all of its rights and perform all of its obligations under each Program Agreement without consultation with or the consent of the Indenture Trustee, and (b) use the funds in any Issuer Account for any purpose not in violation of this Indenture or the Program Agreements.

2.04 Suits To Protect the Collateral

Subject to the provisions of this Indenture, the Indenture Trustee will have the power to institute and to maintain such suits and proceedings as it may deem expedient to prevent any impairment of the Collateral by any acts which may be unlawful or in violation of this Indenture, and such suits and proceedings as the Indenture Trustee may deem expedient to preserve or protect the interests of the Specified Creditors and the interests of the Indenture Trustee in the Collateral

(including the power to institute and maintain suits or proceedings to restrain the enforcement of, or compliance with, any legislative or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid if the enforcement of, or compliance with, such enactment, rule or order would impair the Security Interest or be prejudicial to the interests of the Specified Creditors or the Indenture Trustee).

2.05 Purchaser Protected

In no event will any purchaser in good faith of any property purported to be released hereunder be bound to ascertain the authority of the Indenture Trustee to execute the release or to inquire as to the satisfaction of any conditions required by the provisions hereof for the exercise of such authority or to see to the application of any consideration given by such purchaser or other transferee; nor will any purchaser or other transferee of any property or rights permitted by this Article II to be sold be under any obligation to ascertain or inquire into the authority of the Issuer to make any such sale or other transfer.

2.06 Powers Exercisable by Receiver or Indenture Trustee

In case the Collateral shall be in the possession of a receiver or trustee lawfully appointed, the powers conferred in this Article II upon the Issuer with respect to the release, sale or other disposition of such property may be exercised by such receiver or trustee, and an instrument signed by such receiver or trustee shall be deemed the equivalent of any similar instrument of the Issuer or of any officer or officers thereof required by the provisions of this Article II.

2.07 Determinations Relating to Collateral

In the event (i) the Indenture Trustee shall receive any written request from the Issuer for consent or approval with respect to any matter or thing relating to any Collateral or the Issuer's obligations with respect thereto, (ii) there shall be due to or from the Indenture Trustee under the provisions hereof any performance or the delivery of any instrument, or (iii) the Indenture Trustee shall become aware of any nonperformance by the Issuer of any covenant or any breach of any representation or warranty of the Issuer set forth in this Indenture, then, in each such event, the Indenture Trustee shall be entitled to hire experts, consultants, agents and attorneys to advise the Indenture Trustee on the manner in which the Indenture Trustee should respond to such request or render any requested performance or response to such nonperformance or breach (the expenses of which will be reimbursed to the Indenture Trustee pursuant to Section 9.05). The Indenture Trustee will be fully protected in the taking of any action recommended or approved by any such expert, consultant, agent or attorney, or agreed to by Extraordinary Resolution of Debtholders of Controlling Class Obligations.

2.08 Satisfaction and Discharge of Indenture

(a) The Issuer may at any time, for the purpose of obtaining the satisfaction and discharge of this Indenture with respect to any Class, Series or Tranche of Notes or for any other purpose, pay, or by an Issuer Certificate direct any Paying Agent to pay, to the Indenture Trustee all sums held in trust by the Issuer or such Paying Agent in respect of each and every Class, Series or Tranche of Funding Obligations as to which it seeks to discharge this Indenture or, if for any other purpose, all sums

so held in trust by the Issuer in respect of all Notes, such sums to be held by the Indenture Trustee upon the same trusts as those upon which such sums were held by the Issuer or such Paying Agent; and, upon such payment by any Paying Agent to the Indenture Trustee, such Paying Agent will be released from all further liability with respect to such money.

(b) This Indenture will cease to be of further effect with respect to any Class, Series or Tranche of Funding Obligations (except as to any surviving rights of transfer or exchange of Notes of that Class, Series or Tranche expressly provided for herein or in any form of Note for that Class, Series or Tranche), and the Indenture Trustee, on demand of and at the expense of the Issuer, will execute proper instruments acknowledging satisfaction and discharge of this Indenture as to that Class, Series or Tranche, when:

(i) all Notes of that Class, Series or Tranche theretofore outstanding (other than (A) Notes of that Class, Series or Tranche which have been destroyed, lost or stolen and which have been replaced or paid as provided in Section 16.05(b), and (B) Funding Obligations of that Class, Series or Tranche for whose payment money has theretofore been deposited in trust or segregated and held in trust by the Issuer and thereafter repaid to the Issuer or discharged from that trust, as provided in Section 16.05(b)) have been delivered to the Indenture Trustee for cancellation or been cancelled;

(ii) the Issuer has paid or caused to be paid all other sums payable under the Indenture (including payments to the Indenture Trustee pursuant to Section 9.05) by the Issuer with respect to the Funding Obligations of that Class, Series or Tranche; and

(iii) the Issuer has delivered to the Indenture Trustee an Issuer Certificate and an Opinion of Counsel each stating that all conditions precedent herein provided for relating to the satisfaction and discharge of this Indenture with respect to the Notes of that Class, Series or Tranche have been complied with.

Notwithstanding the satisfaction and discharge of this Indenture with respect to any Class, Series or Tranche of Notes, the obligations of the Issuer to the Indenture Trustee with respect to that Class, Series or Tranche of Notes under Section 9.05 and the obligations of the Indenture Trustee under Sections 7.12 and 16.05(b) will survive such satisfaction and discharge.

2.09 Release of all Collateral

(a) Subject to the payment of its fees and expenses pursuant to Section 9.05, the Indenture Trustee shall, at the request of the Issuer or when otherwise required by the provisions of this Indenture, execute instruments to release Collateral from the Security Interest of this Indenture, or convey the Indenture Trustee's interest (which is held by the Indenture Trustee for the benefit of the Specified Creditors) in the same, in a manner and under circumstances which are not inconsistent with the

provisions of this Indenture. No party relying upon an instrument executed by the Indenture Trustee as provided in this Article II will be bound to ascertain the Indenture Trustee's authority, inquire into the satisfaction of any conditions precedent or see to the application of any funds.

(b) Upon delivery of an Officer's Certificate of the Issuer certifying that all Issuer Funding Obligations and all other Obligations Secured have been satisfied and discharged by complying with the provisions of this Article II and all applicable Program Agreements, the Indenture Trustee shall execute and deliver such releases, termination statements and other instruments (in recordable form, where appropriate) as the Issuer may reasonably request evidencing the termination of the Security Interest created by this Indenture.

(c) The Issuer and the Specified Creditors shall be entitled to receive at least 10 days' written notice when the Indenture Trustee proposes to take any action pursuant to clause (a), accompanied by copies of any instruments involved, and the Indenture Trustee shall also be entitled to require, as a condition to such action, an Opinion of Counsel, stating the legal effect of any such action, outlining the steps required to complete the same, and concluding that all conditions precedent to the taking of such action have been complied with. Counsel rendering any such opinion may rely, without independent investigation, on the accuracy and validity of any certificate or other instrument delivered to the Indenture Trustee in connection with any such action.

2.10 Certain Commercial Law Representations and Warranties

The Issuer hereby makes the following representations and warranties. Such representations and warranties shall survive until the termination of this Indenture. Such representations and warranties speak of the date that a Lien in the Collateral is granted to the Indenture Trustee and shall not be waived by any of the parties to this Indenture unless the Rating Agency Condition is satisfied.

(a) This Indenture constitutes the grant of a first priority perfected Lien by the Issuer to the Indenture Trustee in the Collateral which, in the case of the existing Collateral and the proceeds thereof, is enforceable upon execution and delivery of this Indenture or, with respect to after-acquired property, as of the date such property is acquired, and which will be enforceable with respect to the Collateral hereafter and thereafter created and the proceeds thereof upon such creation. Upon the filing of the assignments, financing statements and continuation statements (and other documents where applicable) and, in the case of after-acquired Collateral and the proceeds thereof, upon its creation, the Indenture Trustee shall have a first priority perfected Lien in such property and proceeds.

(b) At the time of its grant of any Lien in the Collateral pursuant to this Indenture, the Issuer owned and had good and marketable title to such Collateral free and clear of any Lien of any other Person (other than Permitted Liens).

(c) The Issuer has caused the filing of all appropriate financing statements in the proper filing office in the Province of Ontario under applicable law in order to perfect the Security Interest.

(d) Other than the Security Interest, the Issuer has not pledged, assigned, sold, granted a Lien in, or otherwise conveyed, the Collateral. The Issuer has not authorized the filing of and is not aware of any financing statements against the Issuer that include a description of the Collateral other than any financing statement relating to the Security Interest or that has been terminated. The Issuer is not aware of any judgment or Tax lien filings against the Issuer.

ARTICLE III
NOTE FORMS

3.01 Forms Generally

The Notes will have such appropriate insertions, omissions, substitutions and other variations as are required or permitted by this Indenture or the Related Supplemental Indenture and may have such letters, numbers or other marks of identification and such legends or endorsements placed thereon, as may be required to comply with applicable laws or regulations or with the rules of any securities exchange, or as may, consistently herewith, be determined by the Issuer, as evidenced by the Issuer's execution of such Notes. Any portion of the text of any Note may be set forth on the reverse thereof, with an appropriate reference thereto on the face of the Note.

Definitive Notes will be typewritten, printed, lithographed or engraved or produced by any combination of these methods (with or without steel engraved borders) or may be produced in any other manner, all as determined by the Issuer, as evidenced by the Issuer's execution of such Notes, subject, with respect to the Notes of any Class, Series or Tranche, to the rules of any securities exchange on which such Notes are listed.

3.02 Forms of Notes

Before the delivery of a Note to the Indenture Trustee for authentication, the Issuer will deliver to the Indenture Trustee the Issuer Certificate by or pursuant to which such form of Note has been approved, which Issuer Certificate will have attached thereto a true and correct copy of the form of Note which has been approved thereby or, if an Issuer Certificate authorizes a specific officer or officers of the Manager to approve a form of Note, a certificate of such officer or officers approving the form of Note attached thereto. Any form of Note approved by or pursuant to an Issuer Certificate must be acceptable as to form to the Indenture Trustee, such acceptance to be evidenced by the Indenture Trustee's authentication of Notes in that form or a certificate signed by a Responsible Officer of the Indenture Trustee and delivered to the Issuer.

3.03 Form of Indenture Trustee's Certificate of Authentication

The form of Indenture Trustee's Certificate of Authentication for any Note issued pursuant to this Indenture will be substantially as follows:

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

This is one of the Notes of the Class, Series or Tranche designated therein referred to in the within-mentioned Indenture.

BNY TRUST COMPANY OF CANADA, as Indenture Trustee,

By: _____

Authorized Signatory

Dated: _____

3.04 Notes Issuable in the Form of a Global Note

(a) If the Issuer establishes that the Notes of a particular Class, Series or Tranche are to be issued in whole or in part in the form of one or more Global Notes, then the Issuer will execute and the Indenture Trustee or its agent will, in accordance with Section 4.03 and the Issuer Certificate delivered to the Indenture Trustee or its agent thereunder, authenticate and deliver, such Global Note or Notes, which, unless otherwise provided in the Related Supplemental Indenture (i) will represent, and will be denominated in an amount equal to the aggregate Stated Principal Amount (or in the case of Discount Notes, the aggregate Stated Principal Amount at the Principal Payment Due Date of such Notes) of the Outstanding Notes of such Class, Series or Tranche to be represented by such Global Note or Notes, or such portion thereof as the Issuer will specify in an Issuer Certificate, (ii) in the case of Registered Notes, will be registered in the name of the Depository for such Global Note or Notes or its nominee, (iii) will be delivered by the Indenture Trustee or its agent to the Depository or pursuant to the Depository's instruction, (iv) if applicable, will bear a legend substantially to the following effect: (A) "Unless this Note is presented by an authorized representative of The Depository Trust Company ("**DTC**"), to Fair Hydro Trust (the "**Issuer**") or its agent for registration of transfer, exchange or payment, and any Note issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), any transfer, pledge or other use hereof for value or otherwise by or to any Person is wrongful inasmuch as the registered owner hereof, Cede & Co., has an interest herein", or (B) "Unless this Note is presented by an authorized representative of CDS Clearing and Depository Services Inc. ("**CDS**"), to Fair Hydro Trust (the "**Issuer**") or its agent for registration of transfer, exchange or payment, and any Note issued is registered in the name of CDS & Co. or in such other name as is requested by an authorized representative of CDS (and any payment is made to CDS & Co. or to such other entity as is requested by an authorized representative of CDS), any transfer, pledge or other use hereof for value or otherwise by or to any Person is wrongful since the

registered owner hereof, CDS & Co., has a property interest in the securities represented by this Note and it is a violation of its rights for another Person to hold, transfer or deal with this Note", and (v) may bear such other legend as the Issuer, upon advice of counsel, deems to be applicable. **[NTD: Indenture Trustee to review forms of legends.]**

(b) Notwithstanding any other provisions of this Section 3.04 or of Section 4.05, and subject to the provisions of paragraph (c) below, unless the terms of a Global Note or the Related Supplemental Indenture expressly permit such Global Note to be exchanged in whole or in part for individual Notes, a Global Note may be transferred, in whole but not in part and in the manner provided in Section 4.05, only to a nominee of the Depository for such Global Note, or to the Depository, or a successor Depository for such Global Note selected or approved by the Issuer, or to a nominee of such successor Depository.

(c) With respect to Notes issued within the United States or Canada, unless otherwise specified in the Related Supplemental Indenture, or with respect to Notes issued outside the United States and Canada, if specified in the Related Supplemental Indenture:

(i) If at any time the Depository for a Global Note notifies the Issuer that it is unwilling or unable to continue as Depository for such Global Note or if at any time the Depository for the Notes for such Class, Series or Tranche ceases to be a clearing agency registered under the Securities Exchange Act, or other applicable statute or regulation, in the case of Notes issued within the United States, or ceases to be a clearing agency registered under the *Securities Act* (Ontario), or other applicable statute or regulation, in the case of Notes issued within Canada, the Issuer will appoint a successor Depository with respect to such Global Note. If a successor Depository for such Global Note is not appointed by the Issuer within 90 days after the Issuer receives such notice or becomes aware of such ineligibility, the Issuer will execute, and the Indenture Trustee or its agent, upon receipt of an Issuer Certificate requesting the authentication and delivery of individual Notes of such Class, Series or Tranche in exchange for such Global Note, will authenticate and deliver, individual Notes of such Class, Series or Tranche of like tenor and terms in definitive form in an aggregate Stated Principal Amount equal to the Stated Principal Amount of the Global Note in exchange for such Global Note.

(ii) The Issuer may at any time and in its sole discretion determine that the Notes of any Class, Series or Tranche or portion thereof issued or issuable in the form of one or more Global Notes will no longer be represented by such Global Note or Notes. In such event the Issuer will execute, and the Indenture Trustee, upon receipt of a written request by the Issuer for the authentication and delivery of individual Notes of such Class, Series or Tranche in exchange in whole or in part for such Global Note, will authenticate and deliver individual Notes of such Class, Series or Tranche

of like tenor and terms in definitive form in an aggregate Stated Principal Amount equal to the Stated Principal Amount of such Global Note or Notes representing such Class, Series or Tranche or portion thereof in exchange for such Global Note or Notes.

(iii) If any Event of Default has occurred and is continuing and Noteholders holding more than 50% of the unpaid Outstanding Dollar Principal Amount of the Global Notes of all Series advise the Indenture Trustee and the Depository that Global Notes are no longer in the best interest of the Noteholders, the holders of Global Notes may exchange such Notes for individual Notes.

(iv) In any exchange provided for in any of the preceding three paragraphs, the Issuer will execute and the Indenture Trustee or its agent will authenticate and deliver individual Notes in definitive registered form in authorized denominations. Upon the exchange of the entire Stated Principal Amount of a Global Note for individual Notes, such Global Note will be canceled by the Indenture Trustee or its agent. Except as provided in the preceding paragraphs, Notes issued in exchange for a Global Note pursuant to this Section 3.04 will be registered in such names and in such authorized denominations as the Depository for such Global Note, pursuant to instructions from its direct or indirect participants or otherwise, will instruct the Indenture Trustee or the Note Registrar. The Indenture Trustee or the Note Registrar will deliver such Notes to the Persons in whose names such Notes are so registered.

3.05 Temporary Global Notes and Permanent Global Notes

(a) If specified in the Related Supplemental Indenture for any Series, all or any portion of a Global Note may initially be issued in the form of a single temporary global Bearer Note or Registered Note (the "**Temporary Global Note**"), without interest coupons, in the denomination of the entire aggregate principal amount of such Series and substantially in the form set forth in the exhibit with respect thereto attached to the Related Supplemental Indenture. The Temporary Global Note will be authenticated by the Indenture Trustee upon the same conditions, in substantially the same manner and with the same effect as the Notes in definitive form. The Temporary Global Note may be exchanged as described below or in the Related Supplemental Indenture for permanent global Bearer Notes or Registered Notes (the "**Permanent Global Notes**").

(b) Unless otherwise provided in the Related Supplemental Indenture, exchanges of beneficial interests in or security entitlements to Temporary Global Notes for beneficial interests in or security entitlements to Permanent Global Notes will be made as provided in this subsection 3.05(b). The Manager will, upon its determination of the date of completion of the distribution of the Notes of such Series, so advise the Indenture Trustee, the Issuer, the Foreign Depository, and each foreign clearing agency forthwith. Without unnecessary delay, but in any event not

prior to the Exchange Date, the Issuer will execute and deliver to the Indenture Trustee at the office of its designated agent outside Canada and the United States Permanent Global Notes in bearer or registered form (as specified in the Related Supplemental Indenture) in an aggregate principal amount equal to the Outstanding Currency Specific Dollar Principal Amount of such Series of Notes. Bearer Notes so issued and delivered may have coupons attached. The Temporary Global Note may be exchanged for an equal aggregate principal amount of Permanent Global Notes only on or after the Exchange Date. A United States Person may exchange its beneficial interest in or security entitlement to the Temporary Global Note only for an equal aggregate principal amount of Permanent Global Notes in registered form bearing the applicable legend set forth in the form of Registered Note attached to the Related Supplemental Indenture and having a minimum denomination of 500,000 units of the applicable currency, which may be in temporary form if the Issuer so elects. The Issuer may waive the 500,000 minimum denomination requirement if it so elects. Upon any demand for exchange for Permanent Global Notes in accordance with this subsection 3.05(b), the Issuer will cause the Indenture Trustee to authenticate and deliver the Permanent Global Notes to the Noteholder (x) outside Canada or the United States, in the case of Bearer Notes and (y) according to the instructions of the Noteholder, in the case of Registered Notes. Upon receipt of such certification, the Indenture Trustee will cause the Temporary Global Note to be endorsed in accordance with subsection 3.05(d). Any exchange as provided in this Section 3.05 will be made free of charge to the Noteholders and the beneficial owners of the Temporary Global Note and to the beneficial owners of the Permanent Global Note issued in exchange, except that a Person receiving the Permanent Global Note must bear the cost of insurance, postage, transportation and the like in the event that such Person does not receive such Permanent Global Note in person at the offices of a foreign clearing agency or Foreign Depository.

(c) The delivery to the Indenture Trustee by a foreign clearing agency or Foreign Depository of any written statement referred to above may be relied upon by the Issuer and the Indenture Trustee as conclusive evidence that a corresponding certification or certifications has or have been delivered to such foreign clearing agency or Foreign Depository pursuant to the terms of this Indenture.

(d) Upon any such exchange of all or a portion of the Temporary Global Note for a Permanent Global Note(s), such Temporary Global Note will be endorsed by or on behalf of the Indenture Trustee to reflect the reduction of its principal amount by an amount equal to the aggregate principal amount of such Permanent Global Note(s). Until so exchanged in full, such Temporary Global Note will in all respects be entitled to the same benefits under this Indenture as Permanent Global Notes authenticated and delivered hereunder except that the beneficial owners of such Temporary Global Note will not be entitled to receive payments of interest on the Notes until they have exchanged their beneficial interests in or security entitlements to such Temporary Global Note for Permanent Global Notes.

3.06 Beneficial Ownership of Global Notes

Until definitive Notes have been issued to the applicable Noteholders pursuant to Section 3.04 or as otherwise specified in any Related Supplemental Indenture:

(a) the Issuer and the Indenture Trustee may deal with the applicable Depository and the Depository's participants for all purposes (including the making of distributions) as the authorized representatives of the respective Note Owners; and

(b) the rights of the respective Note Owners will be exercised only through the Depository and the Depository's participants. Unless and until Notes in definitive form are issued pursuant to Section 3.04, the Depository will make book-entry transfers among the Depository's participants and receive and transmit distributions of principal and interest on the related Notes to such Depository's participants in accordance with the Depository's applicable procedures from time to time.

For purposes of any provision of this Indenture requiring or permitting Actions with the consent of, or at the direction of, Noteholders evidencing a specified percentage of the Outstanding Dollar Principal Amount of Outstanding Notes, such direction or consent may be given by Note Owners (acting through the Depository and the Depository's participants) owning interests in or security entitlements to Notes evidencing the requisite percentage of principal amount of Notes in accordance with the applicable procedures of the Depository.

3.07 Notices to Depository

Whenever any notice or other communication is required to be given to Noteholders with respect to which book-entry Notes have been issued, unless and until Notes in definitive form will have been issued to the related Note Owners, the Indenture Trustee will give all such notices and communications to the applicable clearing agency or Depository.

3.08 CUSIP Numbers

In issuing the Notes, the Issuer may use "CUSIP" numbers (if then generally in use), and, if so, the Indenture Trustee shall use such CUSIP numbers in notices of redemption as a convenience to Noteholders; provided that, subject to Section 9.01, any such notice may state that (a) no representation is made as to the correctness of such CUSIP numbers as printed on the related Notes or as contained in any notice of redemption, (b) reliance may be placed only on the other identification numbers, if any, printed on the Notes and (c) any such redemption shall not be affected by any defect in or omission of such CUSIP numbers. The Issuer will promptly provide the Indenture Trustee with written notice of any change in the CUSIP numbers for any Outstanding Note.

ARTICLE IV
THE NOTES

4.01 General Title, General Limitations, Issuable in Series, Terms of a Series or Tranche of Notes

(a) The aggregate Stated Principal Amount of Notes which may be authenticated and delivered and Outstanding under this Indenture is not limited.

(b) The Notes of any Class may be issued in one or more Series or Tranches up to an aggregate Stated Principal Amount of Notes as from time to time may be authorized by the Issuer.

(c) The Classes of Notes are as set forth in this Indenture. Each Note issued must be part of a Class and Series of Notes for purposes of allocations pursuant to this Indenture, the Related Supplemental Indenture and the Master Transfer and Servicing Agreement. A Series of Notes is created pursuant to a Supplemental Indenture. A Tranche of Notes is created pursuant to a Supplemental Indenture or pursuant to a Terms Document related to the Supplemental Indenture for the applicable Series.

(d) Each Series of Notes shall be designated in the Related Supplemental Indenture as either Senior Notes, Subordinated Notes or Junior Subordinated Notes. If the Notes of a Series of Notes belong to different Tranches, all Notes of such Series, without regard to the Tranche they are included in, shall be Senior Notes, Subordinated Notes or Junior Subordinated Notes, as applicable to the Series of Notes.

(e) Each Series of Notes may consist of a single Tranche or may be subdivided into multiple Tranches. Notes of a single Series of a Class will belong to different Tranches if they have different terms and conditions. With respect to any Series of Notes, Notes which have identical terms, conditions and Tranche designation will be deemed to be part of a single Tranche of Notes.

(f) Before the initial issuance of Notes of each Series or Tranche, there shall also be established in or pursuant to a Supplemental Indenture or pursuant to a Terms Document related to the applicable Supplemental Indenture, provision for:

(i) The Class in respect of such Series;

(ii) the Series designation;

(iii) the Stated Principal Amount of the Notes;

(iv) whether such Notes are of a particular Tranche of Notes;

(v) the currency or currencies in which such Notes will be denominated and in which payments of principal of, and interest on, such Notes will or may be payable;

(vi) the price or prices at which such Series or Tranche of Notes will be issued;

(vii) the times at which such Series or Tranche of Notes may, pursuant to any optional or mandatory redemption provisions, be redeemed, and the other terms and provisions of any such redemption;

(viii) the rate per annum at which such Series or Tranche of Notes will bear interest, if any, or the formula or index on which such rate will be determined, including all relevant definitions, and the date from which interest will accrue;

(ix) each Payment Date, the Principal Payment Due Date and the Principal Payment Default Date for such Series or Tranche of Notes;

(x) the Principal Accumulation Date for such Series of Notes;

(xi) the Principal Accumulation Amounts for such Series of Notes;

(xii) the Initial Dollar Principal Amount or the Initial Currency Specific Dollar Principal Amount of such Notes, and the means for calculating the Outstanding Dollar Principal Amount or the Outstanding Currency Specific Dollar Principal Amount, as applicable, of such Series or Tranche of Notes;

(xiii) whether or not application will be made to list such Series or Tranche of Notes on any securities exchange;

(xiv) any Events of Default with respect to such Series or Tranche of Notes, if not set forth herein and any additions, deletions or other changes to the Events of Default set forth herein that will be applicable to such Series or Tranche of Notes (including a provision making any Event of Default set forth herein inapplicable to the Notes of that Series or Tranche);

(xv) if such Series or Tranche of Notes will be issued in whole or in part in the form of a Global Note or Global Notes, the terms and conditions, if any, upon which such Global Note or Global Notes may be exchanged in whole or in part for other individual Notes, and the Depository for such Global Note or Global Notes;

(xvi) if such Series or Tranche of Notes will be issued in whole or in part as Registered Notes, Bearer Notes or both, whether such Series or Tranche of Notes are to be issued with or without coupons or both;

(xvii) **[if such Series or Tranche of Notes are to have the benefit of any Derivative Agreement, the terms and provisions of such agreement;]**

(xviii) if such Series or Tranche of Notes are to have the benefit of any Credit Enhancement Agreement or Liquidity Agreement, the terms and provisions of the applicable agreement;

(xix) the Record Date for any Payment Date of such Series or Tranche of Notes, if different from the last day of the month before the related Payment Date;

(xx) whether and under what conditions, additional amounts will be payable to Noteholders of such Series or Tranche; and

(xxi) any other terms of such Notes as stated in the Related Supplemental Indenture;

all upon such terms as may be determined in or pursuant to the Related Supplemental Indenture.

(g) The Notes of each Class, Series or Tranche will be distinguished from the Notes of each other Class, Series or Tranche in such manner, reasonably satisfactory to the Indenture Trustee, as the Issuer may determine.

(h) Any terms or provisions in respect of the Notes of any Class, Series or Tranche issued under this Indenture may be determined pursuant to this Section 4.01 by providing in the Related Supplemental Indenture for the method by which such terms or provisions will be determined.

4.02 Denominations

The Notes of each Series or Tranche will be issuable in such denominations and currency as will be provided in the provisions of this Indenture or in or pursuant to the Related Supplemental Indenture. In the absence of any such provisions with respect to the Registered Notes of any Series or Tranche, the Registered Notes of that Series or Tranche will be issued in denominations of 100,000 units of the applicable currency and integral multiples of 1,000. In the absence of any such provisions with respect to the Bearer Notes of any Series or Tranche, the Bearer Notes of that Series or Tranche will be issued in denominations of 1,000, 5,000, 50,000 and 100,000 units of the applicable currency.

4.03 Execution, Authentication and Delivery and Dating

(a) The Notes will be executed on behalf of the Issuer by a Responsible Officer of the Issuer. The signature of any Responsible Officer of the Issuer on the Notes may be manual or facsimile or may be given by other electronic means.

(b) Notes bearing the manual, facsimile or other electronic signatures of individuals who were at any time a Responsible Officer of the Issuer will bind the Issuer, notwithstanding that such individuals or any of them have ceased to hold such offices before the authentication and delivery of such Notes or did not hold such offices at the date of issuance of such Notes.

(c) At any time and from time to time after the execution and delivery of this Indenture, the Issuer may deliver Notes executed by the Issuer to the Indenture Trustee for authentication; and the Indenture Trustee will, upon request by an Issuer Certificate, authenticate and deliver such Notes as provided in this Indenture and not otherwise.

(d) Before any such authentication and delivery, the Indenture Trustee will be entitled to receive, in addition to any Officer's Certificate and Opinion of Counsel required to be furnished to the Indenture Trustee pursuant to Section 1.02, the Issuer Certificate and any other opinion or certificate relating to the issuance of the Series or Tranche of Notes required to be furnished pursuant to Section 3.02 or Article V.

(e) The Indenture Trustee will not be required to authenticate such Notes if the issue thereof will adversely affect the Indenture Trustee's own rights, duties or immunities under the Notes and this Indenture.

(f) Unless otherwise provided in the form of Note for any Series or Tranche, all Notes will be dated the date of their authentication.

(g) No Note will be entitled to any benefit under this Indenture or be valid or obligatory for any purpose unless there appears on such Note a Certificate of Authentication executed by the Indenture Trustee by manual signature of an authorized signatory, and such certificate upon any Note will be conclusive evidence, and the only evidence, that such Note has been duly authenticated and delivered hereunder.

4.04 Temporary Notes

(a) Pending the preparation of definitive Notes of any Series or Tranche, the Issuer may execute, and, upon receipt of the documents required by Section 4.03, the Indenture Trustee will authenticate and deliver, temporary Notes which are printed, lithographed, typewritten, mimeographed or otherwise produced, in any authorized denomination, substantially of the tenor of the definitive Notes in lieu of which they are issued and with such appropriate insertions, omissions, substitutions and other variations as the Issuer may determine, as evidenced by the Issuer's execution of such Notes.

(b) If temporary Notes of any Series or Tranche are issued, the Issuer will cause definitive Notes of such Series or Tranche to be prepared without unreasonable delay. After the preparation of definitive Notes, the temporary Notes of such Series or Tranche will be exchangeable for definitive Notes of such Series or Tranche upon surrender of the temporary Notes of such Series or Tranche at the office or agency of the Issuer in a Place of Payment, without charge to the Noteholder; and upon surrender for cancellation of any one or more temporary Notes the Issuer will execute and the Indenture Trustee will authenticate and deliver in exchange therefor a like Stated Principal Amount of definitive Notes of such Series or Tranche of authorized denominations and of like tenor and terms. Until so exchanged the temporary Notes of such Series or Tranche will in all respects be entitled to the same benefits under this Indenture as definitive Notes of such Series or Tranche.

4.05 Registration, Transfer and Exchange

(a) The Issuer will keep or cause to be kept a register (herein sometimes referred to as the "**Note Register**") in which, subject to such reasonable regulations as it may prescribe, the Issuer will provide for the registration of Registered Notes, or of

Registered Notes of a particular Class, Series or Tranche, and for transfers of Registered Notes or of Registered Notes of such Class, Series or Tranche. Any such register will be in written form or in any other form capable of being converted into written form within a reasonable time. At all reasonable times, the information contained in such register or registers will be available for inspection by the Indenture Trustee at the office or agency to be maintained by the Issuer as provided in Section 13.03.

(b) Subject to Section 3.04, upon surrender for transfer of any Registered Note of any Class, Series or Tranche at the office or agency of the Issuer in a Place of Payment, the Issuer will execute, and, upon receipt of such surrendered Note, the Indenture Trustee will authenticate and deliver, in the name of the designated transferee or transferees, one or more new Registered Notes of such Class, Series or Tranche of any authorized denominations, of a like aggregate Stated Principal Amount, Principal Payment Due Date and Principal Payment Default Date and of like terms.

(c) Subject to Section 3.04, at the option of the Noteholder, Notes of any Class, Series or Tranche may be exchanged for other Notes of such Class, Series or Tranche of any authorized denominations, of a like aggregate Stated Principal Amount, Principal Payment Due Date and Principal Payment Default Date and of like terms, upon surrender of the Notes to be exchanged at the office or agency of the Issuer in a Place of Payment. Registered Notes, including Registered Notes received in exchange for Bearer Notes, may not be exchanged for Bearer Notes. At the option of the holder of a Bearer Note, subject to applicable laws and regulations, Bearer Notes may be exchanged for other Bearer Notes or Registered Notes (of the same Class, Series and Tranche of Notes) of authorized denominations of like aggregate fractional undivided interests in the Noteholders' interest, upon surrender of the Bearer Notes to be exchanged at an office or agency of the Note Registrar located outside Canada and the United States. Each Bearer Note surrendered pursuant to this Section 4.05 will have attached thereto all unmatured coupons; provided, however, that any Bearer Note, so surrendered after the close of business on the last day of the month preceding the relevant Payment Date need not have attached the coupon relating to such Payment Date. Whenever any Notes are so surrendered for exchange, the Issuer will execute, and the Indenture Trustee will authenticate and deliver (in the case of Bearer Notes, outside Canada and the United States), the Notes which the Noteholders making the exchange are entitled to receive.

(d) All Notes issued upon any transfer or exchange of Notes will be the valid and legally binding obligations of the Issuer, evidencing the same debt, and entitled to the same benefits under this Indenture, as the Notes surrendered upon such transfer or exchange.

(e) Every Note presented or surrendered for transfer or exchange will (if so required by the Issuer or the Indenture Trustee) be duly endorsed, or be accompanied by a written instrument of transfer in form satisfactory to the Issuer and the Note Registrar duly executed, by the Noteholder or his attorney duly authorized in writing.

(f) Unless otherwise provided in the Note to be transferred or exchanged, no service charge will be made on any Noteholder for any transfer or exchange of Notes, but the Issuer may (unless otherwise provided in such Note) require payment of a sum sufficient to cover any Tax or other governmental charge that may be imposed in connection with any transfer or exchange of Notes before the transfer or exchange will be complete, other than exchanges pursuant to Section 4.04 or Section 11.05 not involving any transfer.

(g) None of the Issuer, the Note Registrar or the Indenture Trustee shall be required (i) to issue, register the transfer of or exchange any Notes of any Class, Series or Tranche during a period beginning at the opening of business 15 days before the day of selection of Notes of such Class, Series or Tranche to be redeemed and ending at the close of business on (A) if Notes of such Class, Series or Tranche are issuable only as Registered Notes, the day of the mailing of the relevant notice of redemption of Registered Notes of such Class, Series or Tranche so selected for redemption or (B) if Notes of the Class, Series or Tranche are issuable as Bearer Notes, the day of the first publication of the relevant notice of redemption or, if Notes of the Class, Series or Tranche are also issuable as Registered Notes and there is no publication, the mailing of the relevant notice of redemption or (ii) to register the transfer or exchange of any Notes or portions thereof so selected for redemption.

(h) Notwithstanding anything herein to the contrary, the exchange of Bearer Notes into Registered Notes shall be subject to applicable laws and regulations in effect at the time of exchange; none of the Issuer, the Indenture Trustee or the Note Registrar shall exchange any Bearer Notes into Registered Notes if it has received an Opinion of Counsel that as a result of such exchanges the Issuer would suffer adverse consequences under the Canadian or United States federal income tax laws and regulations then in effect, or the income tax laws of the jurisdiction of the holder of the Bearer Note, and the Issuer has delivered to the Indenture Trustee an Issuer Certificate directing the Indenture Trustee not to make such exchanges unless and until the Indenture Trustee receives a subsequent Issuer Certificate to the contrary. The Issuer shall deliver copies of such Issuer Certificates to the Note Registrar.

(i) None of the Issuer, the Indenture Trustee, any agent of the Indenture Trustee, any Paying Agent or the Note Registrar will have any responsibility or liability for any aspect of the records relating to or payments made on account of beneficial ownership of a Global Note or for maintaining, supervising or reviewing any records relating to such beneficial ownership.

(j) The Issuer initially appoints the Indenture Trustee to act as Note Registrar for the Registered Notes on its behalf. The Issuer may at any time and from time to time authorize any Person to act as Note Registrar in place of the Indenture Trustee with respect to any Class, Series or Tranche of Notes issued under this Indenture.

(k) Registration of transfer of Notes containing the following legend or to which the following legend is applicable:

THIS NOTE HAS NOT BEEN AND WILL NOT BE REGISTERED UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE "**SECURITIES ACT**"), OR ANY OTHER APPLICABLE U.S. STATE SECURITIES LAWS AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD WITHIN THE UNITED STATES OR TO, OR FOR THE ACCOUNT OR BENEFIT OF, U.S. PERSONS EXCEPT IN ACCORDANCE WITH THE TRUST INDENTURE AND THE INDENTURE SUPPLEMENT AND PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OR PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT.

will be effected only if such transfer is made pursuant to an effective registration statement under the U.S. Securities Act, or is exempt from the registration requirements under the U.S. Securities Act. In the event that registration of a transfer is to be made in reliance upon an exemption from the registration requirements under the U.S. Securities Act other than Rule 144A under the U.S. Securities Act or Rule 903 or Rule 904 of Regulation S under the U.S. Securities Act, the transferor or the transferee will deliver, at its expense, to the Issuer and the Indenture Trustee, an investment letter from the transferee, substantially in a form appended to a Supplemental Indenture authorizing the applicable Series of Notes or such other form as the Issuer may determine, and no registration of transfer will be made until such letter is so delivered.

Notes issued upon registration or transfer of, or Notes issued in exchange for, Notes bearing the legend referred to above will also bear such legend and any other legends required by the Related Supplemental Indenture unless the Issuer, the Indenture Trustee and the Note Registrar receive an Opinion of Counsel, satisfactory to each of them, to the effect that such legend may be removed.

Whenever a Note containing the legend referred to above is presented to the Note Registrar for registration of transfer, the Note Registrar will promptly seek instructions from the Issuer regarding such transfer and will be entitled to receive an Issuer Certificate prior to registering any such transfer. The Issuer hereby agrees to indemnify the Note Registrar and the Indenture Trustee and to hold each of them harmless against any loss, liability or expense incurred without negligence or bad faith on their part arising out of or in connection with actions taken or omitted by them in relation to any such instructions furnished pursuant to this clause. The Indenture Trustee shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Indenture, the Related Supplemental Indenture, or under applicable law with respect to any transfer of any interest in any Note other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by the terms of, this Indenture, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

(l) By acquiring a Note, each Noteholder that is a United States Person will be deemed to represent, warrant and covenant that either: (i) it is not acquiring the Note (or any interest therein) with the assets of a Benefit Plan or a governmental, church or non-U.S. plan that is subject to any federal, state, local or other non-U.S. law that is substantially similar to Section 406 of ERISA or Section 4975 of the Internal Revenue Code ("**Similar Law**"); or (ii) (A) the Note is rated at least "BBB-" or its equivalent by a nationally recognized statistical rating agency at the time of purchase or transfer, and (B) the acquisition, holding and disposition of the Note will not give rise to a non-exempt prohibited transaction under Section 406 of ERISA or Section 4975 of the Internal Revenue Code or a violation of any Similar Law.

4.06 Mutilated, Destroyed, Lost and Stolen Notes

(a) If (i) any mutilated Note (together, in the case of Bearer Notes, with all unmatured coupons, if any, appertaining thereto) is surrendered to the Indenture Trustee or the Note Registrar, or the Issuer, the Note Registrar or the Indenture Trustee receive evidence to their satisfaction of the destruction, loss or theft of any Note, and (ii) there is delivered to the Issuer, the Note Registrar or the Indenture Trustee such security or indemnity as may be required by them to save each of them harmless, then, in the absence of notice to the Issuer, the Note Registrar or the Indenture Trustee that such Note has been acquired by a protected purchaser, the Issuer will execute and upon its request the Indenture Trustee will authenticate and deliver (in the case of Bearer Notes, outside the United States), in exchange for or in lieu of any such mutilated, destroyed, lost or stolen Note, a new Note of like tenor, Class, Series or Tranche, Principal Payment Due Date, Principal Payment Default Date and Stated Principal Amount, bearing a number not contemporaneously Outstanding.

(b) In case any such mutilated, destroyed, lost or stolen Note has become or is about to become due and payable, the Issuer in its discretion may, instead of issuing a new Note, pay such Note.

(c) Upon the issuance of any new Note under this Section 4.06, the Issuer may require the payment of a sum sufficient to cover any Tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Indenture Trustee) connected therewith.

(d) Every new Note issued pursuant to this Section 4.06 in lieu of any destroyed, lost or stolen Note will constitute an original additional contractual obligation of the Issuer, whether or not the destroyed, lost or stolen Note will be at any time enforceable by anyone, and will be entitled to all the benefits of this Indenture equally and proportionately with any and all other Notes of the same Class, Series or Tranche duly issued hereunder.

(e) The provisions of this Section 4.06 are exclusive and will preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost or stolen Notes.

4.07 Persons Entitled to Payment

(a) Unless otherwise provided with respect to such Note pursuant to Section 4.01, interest payable on any Registered Note will be paid to the Person in whose name that Note (or one or more Predecessor Notes) is registered at the close of business on the most recent Record Date and interest payable on any Bearer Note will be paid to the bearer of that Note (or the applicable coupon).

(b) Subject to clause (a), each Note delivered under this Indenture upon transfer of or in exchange for or in lieu of any other Note will carry the rights to interest accrued or principal accreted and unpaid, and to accrue or accrete, which were carried by such other Note.

(c) Title to any Bearer Note, including any coupons appertaining thereto, shall pass by delivery. The Issuer, the Indenture Trustee, the Manager and any agent of the Issuer, the Indenture Trustee or the Manager may treat the Person who is proved to be the owner of such Note pursuant to subsection 1.04(c) as the owner of such Note for the purpose of receiving payment of principal of and (subject to this Section 4.07) interest on such Note and for all other purposes whatsoever, whether or not such Note be overdue, and none of the Issuer, the Indenture Trustee, the Manager or any agent of the Issuer, the Indenture Trustee or the Manager will be affected by notice to the contrary.

(d) Delivery of a Note to the Paying Agent by the holder of such Note shall, upon payment thereof, be a good discharge to the Issuer of all obligations evidenced by such Note. The Paying Agent shall not be bound to enquire into the title of any such Noteholder, save as ordered by a court of competent jurisdiction or as required by statute, nor shall it be bound to see to the execution of any trust affecting the ownership of any Note or be affected by notice of any equity that may be subsisting in respect thereof.

(e) In the case of the death of one or more joint registered owners, the principal money of and interest, if any, on a Note may be paid to the survivor or survivors of such registered Noteholders whose receipt thereof, accompanied by the delivery of such Note, shall constitute a valid discharge to the Issuer and the Paying Agent.

(f) Any payment of principal or interest on any Note which is due on a day other than a Business Day shall be payable on the next succeeding Business Day without adjustment for interest thereon and such payment shall be deemed to have been made with the same force and effect as if made on the due date.

(g) Upon the Paying Agent's reasonable request therefor, the Issuer will (i) provide the Paying Agent with any information in its possession or (ii) assist the Paying Agent (to the extent necessary and it is commercially reasonable for the Issuer to do so)

to obtain information, in each case, to the extent such information is required by the Paying Agent to comply with its tax reporting and withholding obligations under applicable law with respect to payments to be made to Specified Creditors pursuant to this Indenture and the other Program Agreements, unless the Issuer is prohibited from doing so by applicable law or an obligation of confidentiality by which the Issuer is bound.

4.08 Cancellation

All Notes surrendered for payment, redemption, repurchase, transfer, conversion or exchange will, if surrendered to any Person other than the Indenture Trustee, be delivered to the Indenture Trustee and, if not already canceled, will be promptly canceled by it. The Issuer may at any time deliver to the Indenture Trustee for cancellation any Notes previously authenticated and delivered hereunder which the Issuer may have acquired in any manner whatsoever, and all Notes so delivered will be promptly canceled by the Indenture Trustee. No Note will be authenticated in lieu of or in exchange for any Notes canceled as provided in this Section 4.08, except as expressly permitted by this Indenture. The Indenture Trustee will dispose of all canceled Notes in accordance with its customary procedures and will deliver a certificate of such disposition to the Issuer.

4.09 Protection of Notes

(a) The Indenture Trustee shall hold in safekeeping the Notes which have not been issued (but which have been delivered to the Indenture Trustee by or on behalf of the Issuer) pending receipt of an Issuer Certificate. The Indenture Trustee shall acknowledge receipt of the Notes so delivered by signing and returning to the Issuer an acknowledgement of receipt of the Notes, such acknowledgement to be in a form satisfactory to the Issuer.

(b) The Indenture Trustee's responsibility for any Notes held in its custody hereunder shall be limited to using the same diligence in physically safeguarding such Notes as it does for its own securities. The Indenture Trustee shall account for the unissued Notes held in its custody whenever so required by the Issuer. If at any time the Indenture Trustee shall discover that any of such Notes have been lost, damaged, destroyed, stolen or misappropriated, it shall promptly advise the Issuer thereof and identify, to the extent practicable, such Notes.

4.10 New Issuances of Notes

(a) There are no restrictions on the timing or amount of any additional issuance of Notes of an Outstanding Series or Tranche of a Class of Notes, so long as the conditions described in Article V are satisfied. As of the date of any additional issuance of Notes of an Outstanding Series or Tranche of Notes, the Stated Principal Amount and Outstanding Dollar Principal Amount of that Series or Tranche will be increased to reflect the principal amount of the additional Notes. If the additional Notes are a Series or Tranche of Notes that has the benefit of a Derivative Agreement, the Issuer will enter into a Derivative Agreement for the benefit of the additional Notes. In addition, if the additional Notes are a Series or Tranche of

Notes that has the benefit of any Credit Enhancement Agreement or Liquidity Agreement, the Issuer will enter into a Credit Enhancement Agreement or Liquidity Agreement, as applicable, for the benefit of the additional Notes.

(b) When issued, the additional Notes of a Series or Tranche will be identical in all respects to the other Outstanding Notes of that Series or Tranche and will be equally and ratably entitled to the benefits of this Indenture and the Related Supplemental Indenture as the other Outstanding Notes of that Series or Tranche without preference, priority or distinction; provided, however, that if such additional Notes are not fungible with such other Outstanding Notes for United States federal income tax purposes, then such additional Notes shall have a separate ISIN, CUSIP or other identifying number from such other Outstanding Notes.

4.11 Redemption

[NTD: redemption mechanics to be included.]

ARTICLE V
CONDITIONS PRECEDENT

5.01 Conditions Precedent for Incurrence of Indebtedness

On or prior to the date that the Issuer enters into a definitive agreement for the incurrence of Issuer Funding Obligations, the following conditions precedent shall be satisfied:

(a) the Issuer delivers to the Indenture Trustee and each Rating Agency notice of the incurrence of such new Issuer Funding Obligation;

(b) the Issuer delivers to the Indenture Trustee and each Rating Agency an Issuer Certificate to the effect that:

(i) the Issuer reasonably believes that the incurrence of the new Issuer Funding Obligation will not cause an Adverse Effect;

(ii) all instruments furnished to the Indenture Trustee conform to the requirements of this Indenture and constitute sufficient authority hereunder for the Indenture Trustee to (A) in the case of a Note issuance only, authenticate and deliver such Notes, and (B) in the case of all other Issuer Funding Obligations, execute and deliver the Related Funding Obligation Agreement(s) in accordance with Section 5.04;

(iii) in the case of a Note issuance only, the form and terms of such Notes have been established in conformity with the provisions of this Indenture;

(iv) the incurrence of such Issuer Funding Obligation is consistent in all material respects with the Financing Plan;

(v) after giving effect to the incurrence of such Issuer Funding Obligation, the estimated Finance Amount that would become due and payable during the applicable Reference Period is reasonably expected to align with the Fair Allocation Amount determined in respect of such Reference Period; and

(vi) such other matters as the Indenture Trustee may reasonably request;

(c) the representations and warranties set forth in Section 12.01 shall be true and correct in all material respects;

(d) the Rating Agency Condition shall have been satisfied with respect to the incurrence of such Issuer Funding Obligation;

(e) the Issuer delivers to the Indenture Trustee copies of the Related Funding Obligation Agreement(s), including in the case of Notes, a Supplemental Indenture, and if applicable, a Terms Document relating to the applicable Series or Tranche of Notes;

(f) each creditor for such Issuer Funding Obligation (or an authorized agent on their behalf) shall (i) have acknowledged and agreed in favour of the Indenture Trustee that it is a Specified Creditor hereunder and its entitlements as a Specified Creditor are subject to the provisions applicable to Specified Creditors under this Indenture including, without limitation, Section 7.11 (Payments Held in Trust), Section 8.12 (Limitation on Suits), Sections 7.04 and 8.13 (Payment Priorities), Section 8.14 (Limited Recourse) and Section 16.01 (No Petition), (ii) irrevocably authorize and direct the Indenture Trustee on its behalf to take such action (including the execution and delivery of documents of subordination) as may be necessary or appropriate to further assure the priority arrangements provided for in Article VI and Sections 7.04 and 8.13, (iii) appoint the Indenture Trustee as its agent for any and all such purposes, and (iv) provide the Indenture Trustee with its notice details;

(g) the Change of Law Protection Agreement shall be in full force and effect against the Province or has been replaced with a new agreement that is in form and substance satisfactory to Debtholders of Controlling Class Obligations pursuant to an Ordinary Resolution;

(h) the conditions precedent, if any, specified in the applicable Funding Obligation Agreement shall be satisfied;

(i) in the case of a Note issuance only, the Indenture Trustee shall have received an Issuer Certificate for the certification and delivery of such Notes and specifying the particulars relating to such Notes;

(j) in the case of Bearer Notes described in section 163(f)(2)(A) of the Internal Revenue Code, if such Notes are not in registered form (including by reason of a book entry system described in section 163(f)(3) of the Internal Revenue Code),

then such Notes shall be described in section 4701(b)(1)(B) of the Internal Revenue Code and such section shall apply to such Notes; and

(k) in the case of Foreign Currency Notes only, the Issuer shall have appointed one or more Paying Agents in the appropriate countries, if requested by the Indenture Trustee.

5.02 No Consent

Except as otherwise provided in any Funding Obligation Agreement, the Issuer and the Indenture Trustee will not be required to provide prior notice to or obtain the consent of any Debtholder to incur any additional Issuer Funding Obligations.

5.03 Conditions Precedent for the Incurrence of other Obligations Secured

On or prior to the date that the Issuer enters into any agreement that would give rise to Obligations Secured (other than Issuer Funding Obligations), the following conditions precedent shall be satisfied:

(a) the Issuer delivers to the Indenture Trustee a copy of the applicable agreement; and

(b) each counterparty to such agreement (or an authorized agent on their behalf) shall (i) have acknowledged and agreed in favour of the Indenture Trustee that it is a Specified Creditor hereunder and its entitlements as a Specified Creditor are subject to the provisions applicable to Specified Creditors under this Indenture including, without limitation, Section 7.11 (Payments Held in Trust), Section 8.12 (Limitation on Suits), Sections 7.04 and 8.13 (Payment Priorities), Section 8.14 (Limited Recourse) and Section 16.01 (No Petition), (ii) irrevocably authorize and direct the Indenture Trustee on its behalf to take such action (including the execution and delivery of documents of subordination) as may be necessary or appropriate to further assure the priority arrangements provided for in Article VI and Sections 7.04 and 8.13, (iii) appoint the Indenture Trustee as its agent for any and all such purposes, and (iv) provide the Indenture Trustee with its notice details.

5.04 Acknowledgements

Upon receipt of an Issuer Certificate directing it to do so (provided the conditions set forth in Sections 5.01 and 5.03 have been satisfied, as certified by the Issuer), the Indenture Trustee shall execute an acknowledgement with respect to any Program Agreement or any evidence of indebtedness issued pursuant to a Program Agreement confirming that such Program Agreement or evidence of indebtedness is an Obligation Secured under this Indenture and the creditors listed in such Program Agreements are Specified Creditors for the purposes of this Indenture.

ARTICLE VI
SUBORDINATION

6.01 Subordination

The payment of all Subordinated Funding Obligations shall be subordinate and rank junior, to the extent and in the manner set forth in this Article VI, Article VII and Article VIII, if applicable, to the prior payment in full of all amounts owing from time to time with respect to the Senior Funding Obligations and the Derivative Funding Obligations. The payment of all Junior Subordinated Funding Obligations shall be subordinate and rank junior, to the extent and in the manner set forth in this Article VI, Article VII and Article VIII, if applicable, to the prior payment in full of all amounts owing from time to time with respect to the Senior Funding Obligations, the Derivative Funding Obligations and the Subordinated Funding Obligations. Subject to the provisions of the Related Funding Obligation Agreement, (i) prior to the acceleration of the Issuer Funding Obligations pursuant to Section 8.02, payment in respect of the Subordinated Funding Obligations and the Junior Subordinated Funding Obligations shall be made as provided for in Section 7.04; and (ii) after the acceleration of the Issuer Funding Obligations pursuant to Section 8.02, payment on account of the Subordinated Funding Obligations and the Junior Subordinated Funding Obligations shall be made as provided for in Section 8.13.

6.02 Subrogation to Senior Funding Obligations and Derivative Funding Obligations

(a) Subject to the payment in full of the Senior Funding Obligations and the Derivative Funding Obligations or the making of due provision for such payment, the Debtholders of Subordinated Funding Obligations shall be subrogated to the rights of the Debtholders of Senior Funding Obligations and Derivative Counterparties to receive payments or distributions of assets of the Issuer, to the extent of the application thereto of moneys or other assets which would have been received by the Debtholders of Subordinated Funding Obligations but for the provisions of this Article VI, until the principal of and interest on the Subordinated Funding Obligations shall be paid in full.

(b) Subject to the payment in full of the Senior Funding Obligations, the Derivative Funding Obligations and the Subordinated Funding Obligations or the making of due provision for such payment, the Debtholders of Junior Subordinated Funding Obligations shall be subrogated to the rights of the Debtholders of Senior Funding Obligations and Subordinated Funding Obligations, and Derivative Counterparties, to receive payments or distributions of assets of the Issuer, to the extent of the application thereto of moneys or other assets which would have been received by the Debtholders of Junior Subordinated Funding Obligations but for the provisions of this Article VI, until the principal of and interest on the Junior Subordinated Funding Obligations shall be paid in full.

6.03 Rights of Specified Creditors Preserved

The provisions of this Article VI are and are intended solely for the purpose of defining the relative rights of the Debtholders of Senior Funding Obligations, Subordinated Funding

Obligations and Junior Subordinated Funding Obligations, and Derivative Counterparties, as applicable. Nothing in this Article VI is intended to or shall impair the obligation of the Issuer, subject to the rights of the Debtholders of Senior Funding Obligations and Derivative Counterparties, to pay the Subordinated Funding Obligations and Junior Subordinated Funding Obligations as and when the same shall become due and payable in accordance herewith, or affect the relative rights of the Debtholders of Subordinated Funding Obligations and Junior Subordinated Funding Obligations, and creditors of the Issuer other than Debtholders of such Senior Funding Obligations and Derivative Counterparties, nor shall anything in this Article VI prevent the Indenture Trustee or such Debtholders from exercising all remedies otherwise permitted by this Indenture, subject to the rights (if any) under this Article VI of Debtholders of Senior Funding Obligations, Derivative Counterparties and the Indenture Trustee on their behalves in respect of any payment or distribution of cash, property or securities of the Issuer received upon the exercise of any such remedy.

6.04 Renewal or Extension of Senior Funding Obligations

(a) Except as provided in this Indenture or the Related Funding Obligation Agreement, Debtholders of Senior Funding Obligations and Derivative Counterparties may at any time in their discretion renew or extend the time of payment of their Issuer Funding Obligations or exercise any other of their rights in respect thereof, including, without limitation, the waiver of an Event of Default thereunder, all without notice to or assent from the Debtholders of the Subordinated Funding Obligations or Junior Subordinated Funding Obligations, or the Indenture Trustee.

(b) No compromise, alteration, amendment, modification, extension, renewal or other change of, or waiver, consent or other action in respect of, any liability or obligation under or in respect of any Senior Funding Obligations, Derivative Funding Obligations or of any of the terms, covenants or conditions of any Related Funding Obligation Agreement under which any Senior Funding Obligations or Derivative Funding Obligations shall have been issued, shall in any way alter or affect any of the provisions of this Article VI.

ARTICLE VII
ISSUER ACCOUNTS AND INVESTMENTS; ORDINARY COURSE ALLOCATIONS

7.01 Available Collections

Except as otherwise expressly provided in this Indenture, the Indenture Trustee may demand payment or delivery of, and shall receive and collect, directly and without intervention or assistance from any fiscal agent or other intermediary, all money and other property payable to or receivable by the Indenture Trustee pursuant to this Indenture including, without limitation, all funds and other property payable to the Indenture Trustee in connection with the Collateral. The Indenture Trustee will hold all such money and property received by it as part of the Collateral and will apply it, or cause it to be applied, as provided in this Indenture and any applicable Program Agreement.

7.02 Issuer Accounts

(a) On or before the date hereof, the Issuer shall cause to be established and maintained an Eligible Deposit Account (the "**Collection Account**") in the name of the Indenture Trustee, bearing a designation clearly indicating that the funds and other property credited thereto are held for the benefit of the Indenture Trustee and the Specified Creditors. All Available Collections received shall be credited to the Collection Account. The Collection Account shall be under the control of the Indenture Trustee for the benefit of the Indenture Trustee and the Specified Creditors. If, at any time, the institution holding the Collection Account ceases to be an Eligible Institution, the Manager shall notify the Indenture Trustee, and the Indenture Trustee upon being notified in writing of such ineligibility (or the Manager on its behalf) shall within 30 calendar days (or such longer period, not to exceed 45 calendar days, so long as the Rating Agency Condition is satisfied) establish a new Collection Account that is an Eligible Deposit Account and shall transfer any funds or other property from such Collection Account to such new Collection Account. From the date each such new Collection Account is established, it shall be the "Collection Account."

(b) On or before the date hereof, the Issuer shall cause to be established and maintained an Eligible Deposit Account (the "**Interest Accumulation Account**") in the name of the Indenture Trustee, bearing a designation clearly indicating that the funds and other property credited thereto are held for the benefit of the Indenture Trustee and the Specified Creditors. The Interest Accumulation Account shall be under the control of the Indenture Trustee for the benefit of the Indenture Trustee and the Specified Creditors. If, at any time, the institution holding the Interest Accumulation Account ceases to be an Eligible Institution, the Manager shall notify the Indenture Trustee, and the Indenture Trustee upon being notified in writing of such ineligibility (or the Manager on its behalf) shall within 30 days (or such longer period, not to exceed 45 days, so long as the Rating Agency Condition is satisfied) establish a new Interest Accumulation Account that is an Eligible Deposit Account and shall transfer any funds or other property from such Interest Accumulation Account to such new Interest Accumulation Account. From the date each such new Interest Accumulation Account is established, it shall be the "Interest Accumulation Account." The Interest Accumulation Account is a "finance reserve account" under, and as defined under, the Fair Hydro Regulations.

(c) On or before the date hereof, the Issuer shall cause to be established and maintained an Eligible Deposit Account (the "**Principal Accumulation Account**") in the name of the Indenture Trustee, bearing a designation clearly indicating that the funds and other property credited thereto are held for the benefit of the Indenture Trustee and the Specified Creditors. The Principal Accumulation Account shall be under the control of the Indenture Trustee for the benefit of the Indenture Trustee and the Specified Creditors. If, at any time, the institution holding the Principal Accumulation Account ceases to be an Eligible Institution, the Manager shall notify the Indenture Trustee, and the Indenture Trustee upon being notified in writing of such ineligibility (or the Manager on its behalf) shall within 30 days (or such longer

period, not to exceed 45 calendar days, so long as the Rating Agency Condition is satisfied) establish a new Principal Accumulation Account that is an Eligible Deposit Account and shall transfer any funds or other property from such Principal Accumulation Account to such new Principal Accumulation Account. From the date each such new Principal Accumulation Account is established, it shall be the "Principal Accumulation Account." The Principal Accumulation Account is a "capital account" under, and as defined under, the Fair Hydro Regulations.

(d) On or before the date hereof, the Issuer shall cause to be established and maintained an Eligible Deposit Account (the "**Program Cash Reserve Account**") in the name of the Indenture Trustee, bearing a designation clearly indicating that the funds and other property credited thereto are held for the benefit of the Indenture Trustee and the Specified Creditors. The Program Cash Reserve Account shall be under the control of the Indenture Trustee for the benefit of the Indenture Trustee and the Specified Creditors. If, at any time, the institution holding the Program Cash Reserve Account ceases to be an Eligible Institution, the Manager shall notify the Indenture Trustee, and the Indenture Trustee upon being notified in writing of such ineligibility (or the Manager on its behalf) shall within 30 days (or such longer period, not to exceed 45 days, so long as the Rating Agency Condition is satisfied) establish a new Program Cash Reserve Account that is an Eligible Deposit Account and shall transfer any funds or other property from such Program Cash Reserve Account to such new Program Cash Reserve Account. From the date each such new Program Cash Reserve Account is established, it shall be the "Program Cash Reserve Account." The Program Cash Reserve Account is a "finance reserve account" under, and as defined under, the Fair Hydro Regulations.

(e) On or before the date hereof, the Issuer shall cause to be established and maintained an Eligible Deposit Account (the "**Refinancing Account**") in the name of the Indenture Trustee, bearing a designation clearly indicating that the funds and other property credited thereto are held for the benefit of the Indenture Trustee and the Specified Creditors. All proceeds arising from Notes and Borrowings related to Refinancings shall be deposited to the Refinancing Account. For greater certainty, the Refinancing Account may contain Sub-Accounts to account for proceeds in different currencies. The Refinancing Account shall be under the control of the Indenture Trustee for the benefit of the Indenture Trustee and the Specified Creditors. If, at any time, the institution holding the Refinancing Account ceases to be an Eligible Institution, the Manager shall notify the Indenture Trustee, and the Indenture Trustee upon being notified in writing of such ineligibility (or the Manager on its behalf) shall within 30 days (or such longer period, not to exceed 45 calendar days, so long as the Rating Agency Condition is satisfied) establish a new Refinancing Account that is an Eligible Deposit Account and shall transfer any funds or other property from such Refinancing Account to such new Refinancing Account. From the date each such new Refinancing Account is established, it shall be the "Refinancing Account."

(f) From time to time in connection with the creation of any Series of Issuer Funding Obligations, the Issuer may cause to be established and maintained an Eligible

Deposit Account (a "**Series Capital Reserve Account**") in the name of the Indenture Trustee, bearing a designation clearly indicating that the funds and other property credited thereto are held for the benefit of the Indenture Trustee and the applicable Specified Creditors. A Series Capital Reserve Account may be established for the sole purpose of allowing the Issuer to accumulate funds to be used to make repayments in respect of Issuer Funding Obligations. Details of any period of accumulation and the amounts to be accumulated shall be specified in the Related Funding Obligation Agreement. Payments of Available Collections out of the Collection Account shall be credited to a Series Capital Reserve Account, to the extent that there is a requirement for funds in such Series Capital Reserve Account, in accordance with the terms of the applicable Funding Obligation Agreement and Section 7.04. Each Series Capital Reserve Account shall be under the control of the Indenture Trustee for the benefit of the Indenture Trustee and the applicable Specified Creditors. If, at any time, the institution holding a Series Capital Reserve Account ceases to be an Eligible Institution, the Manager shall notify the Indenture Trustee, and the Indenture Trustee upon being notified in writing of such ineligibility (or the Manager on its behalf) shall within 30 days (or such longer period, not to exceed 45 calendar days, so long as the Rating Agency Condition is satisfied) establish a new Series Capital Reserve Account that is an Eligible Deposit Account and shall transfer any funds or other property to such new Series Capital Reserve Account. From the date each such new Series Capital Reserve Account is established, it shall be a "Series Capital Reserve Account." Each Series Capital Reserve Account shall be a "capital account" under, and as defined under, the Fair Hydro Act Regulations.

(g) From time to time in connection with the creation of any Series of Issuer Funding Obligations, the Issuer may cause to be established and maintained an Eligible Deposit Account (a "**Series Finance Reserve Account**") in the name of the Indenture Trustee, bearing a designation clearly indicating that the funds and other property credited thereto are held for the benefit of the Indenture Trustee and the applicable Specified Creditors. A Series Finance Reserve Account may be established for the purpose of allowing the Issuer to reserve funds to pay finance charges (including, without limitation, interest and payments under Derivative Agreements) for a Series of Issuer Funding Obligations. Payments of Available Collections out of the Collection Account shall be credited to a Series Finance Reserve Account, to the extent that there is a requirement for funds in such Series Finance Reserve Account, in accordance with the terms of the applicable Funding Obligation Agreement and Section 7.04. Each Series Finance Reserve Account shall be under the control of the Indenture Trustee for the benefit of the Indenture Trustee and the applicable Specified Creditors. If, at any time, the institution holding a Series Finance Reserve Account ceases to be an Eligible Institution, the Manager shall notify the Indenture Trustee, and the Indenture Trustee upon being notified in writing of such ineligibility (or the Manager on its behalf) shall within 30 days (or such longer period, not to exceed 45 calendar days, so long as the Rating Agency Condition is satisfied) establish a new Series Finance Reserve Account that is an Eligible Deposit Account and shall transfer any funds or other property to such new Series Finance Reserve Account. From the date each such

new Series Finance Reserve Account is established, it shall be a "Series Finance Reserve Account." Each Series Finance Reserve Account shall be a "finance reserve account" under, and as defined under, the Fair Hydro Act Regulations.

7.03 Investment of Funds in the Issuer Accounts

(a) Funds credited to the Issuer Accounts will (unless otherwise stated in this Indenture or any applicable Funding Obligation Agreement) be invested and reinvested by the Indenture Trustee at the written direction of the Manager in one or more Eligible Investments. The Manager may appoint as its agent under a separate agreement a registered investment advisor and authorize such agent to give instructions on behalf of the Manager to the Indenture Trustee for funds to be invested and reinvested in one or more Eligible Investments. The Manager shall provide the Indenture Trustee with a written direction certifying any such appointment. The Indenture Trustee shall be entitled to conclusively rely on, and shall be protected in acting upon, instructions received from such agent on behalf of the Manager. The Manager (or its agent appointed pursuant to the preceding sentence) may authorize the Indenture Trustee to make specific investments pursuant to written instructions, in such amounts as the Manager will specify. Notwithstanding the foregoing, funds held by the Indenture Trustee in any of the Issuer Accounts will be invested in Eligible Investments that will mature so that a sufficient amount of such funds shall be available to the extent required to pay all Obligations Secured that are payable on the following Payment Date.

(b) All funds from time to time credited to the Issuer Accounts pursuant to this Indenture and the Funding Obligation Agreements, and all investments made with such funds, if any, are property of the Issuer until such time as they are allocated or paid to satisfy Obligations Secured and will be held by the Indenture Trustee in the Issuer Accounts as part of the Collateral as herein provided, subject to withdrawal by the Paying Agent or the Indenture Trustee for the purposes specified herein.

(c) Funds and other property in any of the Issuer Accounts will not be commingled with any other funds or property of the Issuer or the Indenture Trustee.

(d) Subject to Section 8.13, on the applicable Payment Date, all interest and earnings (net of losses and investment expenses), if any, on funds credited to the Issuer Accounts will be applied as specified in Sections 7.05 to 7.10.

(e) Subject to subsection 9.01(d), neither the Indenture Trustee nor the Manager will in any way be held liable by reason of any insufficiency in such Issuer Accounts resulting from any loss on any Eligible Investment included therein.

(f) Funds credited to the Issuer Accounts will be invested and reinvested by the Indenture Trustee as provided in the written direction of the Manager; provided,

however, that such funds shall remain uninvested upon the occurrence of any of the following events:

(i) the Manager (or its agent appointed pursuant to paragraph (a) above) shall have failed to give investment directions to the Indenture Trustee; or

(ii) an Event of Default shall have occurred and be continuing but no Issuer Funding Obligations have been declared due and payable pursuant to Section 8.02.

7.04 Allocation of Amounts on Deposit in the Collection Account

(a) All Senior Funding Obligations of each Series or Tranche will in all respects be equally and ratably entitled to the benefits hereof with respect to such Series or Tranche without preference, priority or distinction on account of (i) the actual time of the incurrence, (ii) the Principal Payment Due Date, (iii) the Principal Payment Default Date of the Senior Funding Obligations of such Series or Tranche, or (iv) the Principal Accumulation Date of such Series or Tranche, except as specified in the Related Funding Obligation Agreement. All Subordinated Funding Obligations of each Series or Tranche will in all respects be equally and ratably entitled to the benefits hereof with respect to such Series or Tranche without preference, priority or distinction on account of (i) the actual time of the incurrence, (ii) the Principal Payment Due Date, (iii) the Principal Payment Default Date of the Subordinated Funding Obligations of such Series or Tranche, or (iv) the Principal Accumulation Date of such Series or Tranche, except as specified in the Related Funding Obligation Agreement. All Junior Subordinated Funding Obligations of each Series or Tranche under this Indenture will in all respects be equally and ratably entitled to the benefits hereof with respect to such Series or Tranche without preference, priority or distinction on account of (i) the actual time of the incurrence, (ii) the Principal Payment Due Date, (iii) the Principal Payment Default Date, or (iv) the Principal Accumulation Date of such Series or Tranche, except as specified in the Related Funding Obligation Agreement.

(b) On each Payment Date, Available Collections credited to the Collection Account since the previous Payment Date will be distributed in accordance with Section 7.04(e).

(c) If any amount below is payable on a date other than a Payment Date, prior to such payment being made, an amount will be reserved in the Collection Account equal to the amount estimated by the Manager in its commercially reasonable judgment, based upon amounts then known and/or reasonably expected to be or become payable on or before the next Payment Date, to be the aggregate amount of items *pari passu* or more senior in priority than such obligation, calculated on a *pro forma* basis, and if, due to such reservation of funds, there are insufficient funds available in the Collection Account to make such payment, such payment will be made only on the following Payment Date (and then only if funds are available pursuant to this Section 7.04).

(d) In the event of non-payment on any Payment Date of any amounts referred to in subsection 7.04(e), such amounts shall remain due and shall be payable on each subsequent Payment Date in the order of priority provided for in subsection 7.04(e), subject to Section 8.13.

(e) Subject to Section 8.13, on each Payment Date, any amount standing to the credit of the Collection Account will be distributed by the Paying Agent in the order of priority specified below, based upon the Payment Instructions received from the Manager in respect of such Payment Date, *pro rata* in proportion to the claims represented by each subclause except as otherwise specifically provided below:

(i) First, to the payment or remittance of all Taxes exigible for which a Governmental Authority is given priority over the Specified Creditors under the laws of the applicable jurisdiction;

(ii) Second, to the Indenture Trustee and the Issuer Trustee in respect of the amount of fees, expenses and reimbursements owing, up to a maximum aggregate amount (without duplication of any amounts previously paid in respect of such fees, expenses, reimbursements and indemnified claims) of **[■ percent (■%)]**[2] of the Outstanding Dollar Principal Amount of all Issuer Funding Obligations at such time;

(iii) Third, on a *pro rata* basis (A) to transfer to the Interest Accumulation Account, the Interest Accrual Amount (Senior) for such Payment Date, and (B) to Derivative Counterparties, on a *pro rata* basis, all Derivative Funding Obligations payable other than Termination Payments;

(iv) Fourth, on a *pro rata* basis (A) to transfer to the Principal Accumulation Account, the Principal Accumulation Amount (Senior) for such Payment Date, and (B) to Derivative Counterparties, on a *pro rata* basis, any Termination Payment where the Derivative Counterparty is not the Defaulting Party or the sole Affected Party;

(v) Fifth, to Debtholders, on a *pro rata* basis, all fees and other amounts (other than interest or principal) due and payable on the Senior Funding Obligations,

(vi) Sixth, to deposit to the Program Cash Reserve Account, the Program Cash Reserve Required Deposit Amount (Senior);

(vii) Seventh, to transfer such amounts as is sufficient to replenish, on a *pro rata* basis, any Series Capital Account or Series Finance Reserve Account as required by any Related Funding Obligation Agreement, other than any Series Capital Account or Series Finance Reserve Account related solely to

[2] To be confirmed.

Subordinated Funding Obligations or Junior Subordinated Funding Obligations;

(viii) Eighth, to the Manager in respect of all fees, expenses, reimbursement and indemnity amounts owing;

(ix) Ninth, to transfer to the Interest Accumulation Account, the Interest Accrual Amount (Subordinated) for such Payment Date;

(x) Tenth, to transfer to the Principal Accumulation Account, the Principal Accumulation Amount (Subordinated) for such Payment Date,

(xi) Eleventh, to Debtholders, on a *pro rata* basis, all fees and other amounts (other than interest or principal) due and payable on the Subordinated Funding Obligations;

(xii) Twelfth, to deposit to the Program Cash Reserve Account, the Program Cash Reserve Required Deposit Amount (Subordinated);

(xiii) Thirteenth, to transfer such amounts as is sufficient to replenish, on a *pro rata* basis, any Series Capital Account or Series Finance Reserve Account as required by any Related Funding Obligation Agreement related solely to Subordinated Funding Obligations;

(xiv) Fourteenth, to transfer to the Interest Accumulation Account, the Interest Accrual Amount (Junior Subordinated) for such Payment Date,

(xv) Fifteenth, to transfer to the Principal Accumulation Account, the Principal Accumulation Amount (Junior Subordinated) for such Payment Date,

(xvi) Sixteenth, to Debtholders, on a *pro rata* basis, all fees and other amounts (other than interest or principal) due and payable on the Junior Subordinated Funding Obligations;

(xvii) Seventeenth, to transfer such amounts as is sufficient to replenish, on a *pro rata* basis, any Series Capital Accounts or Series Finance Reserve Accounts as required by any Related Funding Obligation Agreement related solely to Junior Subordinated Funding Obligations;

(xviii) Eighteenth, to Derivative Counterparties, on a *pro rata* basis, any Termination Payment where the Derivative Counterparty is the Defaulting Party or the sole Affected Party;

(xix) Nineteenth, to the Issuer Trustee for the account of the beneficiaries of the Issuer, such amount as is required pursuant to the Declaration of Trust, provided that such amount shall at no time be less than $100 in any Monthly Period;

(xx) Twentieth, on a *pro rata* basis (A) to the Indenture Trustee and the Issuer Trustee, in each case, in respect of the amount of any fees, expenses, reimbursements and indemnity amounts owing and not previously paid pursuant to clause (i); and then (B) to other service providers (other than the Manager), in each case, in respect of the amount of any fees, expenses, reimbursement and indemnity amounts owing; including for each referenced party in subclauses (A) and (B), any amounts payable to their respective Affiliates under the terms of any relevant indemnity; and

(xxi) Twenty-First, any amounts remaining: (i) to be held in the Collection Account for distribution in the above order of priority on the succeeding Payment Date (or for distribution prior thereto as permitted or required pursuant to this Indenture); or (ii) after the final Issuer Funding Obligation has been paid in full and discharged, and all of the other foregoing amounts are paid in full, together with all amounts due to the Indenture Trustee under Section 9.05 or otherwise, to the Issuer or as the Issuer designates.

7.05 Allocation of Amounts on Deposit in Interest Accumulation Account

Subject to Sections 7.07 and 8.13, on each Interest Payment Date, any amount on deposit in the Interest Accumulation Account will be distributed by the Paying Agent in the order of priority specified below, based upon the Payment Instructions received from the Manager in respect of such Interest Payment Date:

(a) Firstly, to Debtholders, on a *pro rata* basis, in respect of all interest due and payable on the Senior Funding Obligations on such Interest Payment Date;

(b) Secondly, to Debtholders, on a *pro rata* basis, in respect of all interest due and payable on Subordinated Funding Obligations on such Interest Payment Date; provided that no payment of interest on Subordinated Funding Obligations shall be made under this Section 7.05(b) unless, after making such payment (x) the amount remaining on deposit in the Interest Accumulation Account equals or exceeds the amount of accrued and unpaid interest on the Senior Funding Obligations as of such Interest Payment Date, and (y) the amount on deposit in the Principal Accumulation Account equals or exceeds the Required Principal Accumulation Amount (Senior) as of the Interest Payment Date;

(c) Thirdly, to Debtholders, on a *pro rata* basis, in respect of all interest due and payable on Junior Subordinated Funding Obligations on such Interest Payment Date; provided that no payment of interest on Junior Subordinated Funding Obligations shall be made under this Section 7.05(c) unless, after making such payment (x) the amount remaining on deposit in the Interest Accumulation Account equals or exceeds the amount of accrued and unpaid interest on the Senior Funding Obligations and the Subordinated Funding Obligations as of such Interest Payment Date; and (y) the amount remaining on deposit in the Principal Accumulation Account equals or exceeds the sum of the Required Principal Accumulation

Amount (Senior) and the Required Principal Accumulation Amount (Subordinated) as of such Interest Payment Date; and

(d) Fourthly, any amounts remaining: (i) to be held in the Interest Accumulation Account for distribution in the above order of priority on the succeeding Interest Payment Date; or (ii) after the final Issuer Funding Obligation has been repaid in full including all interest thereon any amounts remaining shall be deposited to the Collection Account and applied in accordance with subsection 7.04(e);

provided that upon the occurrence and during the continuance of any Event of Default and the acceleration of the Issuer Funding Obligations in accordance with Section 8.02, any amounts in the Interest Accumulation Account shall be applied in accordance with Section 8.13.

7.06 Allocation of Amounts on Deposit in Principal Accumulation Account

Subject to Section 8.13, on each Principal Payment Date, any amount on deposit in the Principal Accumulation Account and any amounts transferred pursuant to Section 7.07 will be distributed by the Paying Agent in the order of priority specified below, based upon the Payment Instructions received from the Manager in respect of such Principal Payment Date:

(a) Firstly, to Debtholders, on a *pro rata* basis, in respect of the aggregate outstanding principal amount of Senior Funding Obligations payable on such Principal Payment Date;

(b) Secondly, to Debtholders, on a *pro rata* basis, in respect of the aggregate outstanding principal amount of Subordinated Funding Obligations payable on such Principal Payment Date; provided that no payment of principal on Subordinated Funding Obligations shall be made under this Section 7.06(b) unless, after making such payment, the amount remaining on deposit in the Principal Accumulation Account equals or exceeds the Required Principal Accumulation Amount (Senior) as of such Principal Payment Date;

(c) Thirdly, to Debtholders, on a *pro rata* basis, in respect of the aggregate outstanding principal amount of Junior Subordinated Funding Obligations payable on such Principal Payment Date; provided that no payment of principal on Junior Subordinated Funding Obligations shall be made under this Section 7.06(b) unless, after making such payment, the amount remaining on deposit in the Principal Accumulation Account equals or exceeds the sum of the Required Principal Accumulation Amount (Senior) and the Required Principal Accumulation Amount (Subordinated) as of such Principal Payment Date; and

(d) Fourthly, any amounts remaining: (i) to be held in the Principal Accumulation Account for distribution in the above order of priority on the succeeding Principal Payment Date; or (ii) after the final Issuer Funding Obligation has been repaid in full, any amounts remaining shall be deposited to the Collection Account and applied in accordance with subsection 7.04(e);

provided that upon the occurrence and during the continuance of any Event of Default and the acceleration of the Issuer Funding Obligations in accordance with Section 8.02, any amounts in the Principal Accumulation Account shall be applied in accordance with Section 8.13.

7.07 Transfers from Interest Accumulation Account to Principal Accumulation Account

(a) If on any Principal Payment Date, the amount on deposit in the Principal Accumulation Account is less than the aggregate outstanding principal amount of Senior Funding Obligations and Subordinated Funding Obligations payable on such Principal Payment Date (the deficiency being a "**Subordinated/Senior Principal Shortfall**"), an amount equal to the lesser of:

(i) the Subordinated/Senior Principal Shortfall, and

(ii) the amount, if any, by which the amount on deposit in the Interest Accumulation Account equals or exceeds the amount of accrued and unpaid interest on the Senior Funding Obligations and Subordinate Funding Obligations as of such Principal Payment Date,

shall be transferred from the Interest Accumulation Account to the Principal Accumulation Account on such Principal Payment Date.

(b) If on any Principal Payment Date after making any transfer contemplated by subsection 7.07(a), the amount on deposit in the Principal Accumulation Account is less than the aggregate outstanding principal amount of Senior Funding Obligations payable on such Principal Payment Date (the deficiency being a "**Senior Principal Shortfall**"), an amount equal to the lesser of:

(i) the Senior Principal Shortfall, and

(ii) the amount, if any, by which the amount on deposit in the Interest Accumulation Account equals or exceeds the amount of accrued and unpaid interest on the Senior Funding Obligations as of such Principal Payment Date,

shall be transferred from the Interest Accumulation Account to the Principal Accumulation Account on such Principal Payment Date.

7.08 Allocation of Amounts on Deposit in Program Cash Reserve Account

(a) On each Interest Payment Date, amounts on deposit in the Program Cash Reserve Account shall be applied in the following order of priority:

(i) Firstly, to the extent that the amount on deposit in the Interest Accumulation Account is less than the amount of interest due and payable on the Senior Funding Obligations on such Interest Payment Date, an amount equal to such deficiency shall be applied to the payment of interest due and payable on the Senior Funding Obligations on such Interest Payment Date,

(ii) Secondly, to the extent that the amount available from the Interest Accumulation Account under Section 7.05(b) is less than the amount of interest due and payable on the Subordinated Funding Obligations on such Interest Payment Date, an amount equal to such deficiency shall be applied to the payment of interest due and payable on the Subordinated Funding Obligations on such Interest Payment Date; provided that after making such payment, the amount remaining on deposit in the Program Cash Reserve Account is equal to or greater than the Program Cash Reserve Required Amount (Senior), and

(iii) Thirdly, to the extent that the amount available from the Interest Accumulation Account under Section 7.05(c) is less than the amount of interest due and payable on the Junior Subordinated Funding Obligations on such Interest Payment Date, an amount equal to such deficiency shall be applied to the payment of interest due and payable on the Junior Subordinated Funding Obligations on such Interest Payment Date; provided that after making such payment, the amount remaining on deposit in the Program Cash Reserve Account is equal to or greater than the sum of the Program Cash Reserve Required Amount (Senior) and the Program Cash Reserve Required Amount (Subordinated).

(b) On each Principal Payment Date (and if the Principal Payment Date is also an Interest Payment Date, after making the applications provided for in subsection 7.08(a) and Section 7.07), amounts on deposit in the Program Cash Reserve Account shall be applied in the following order of priority:

(i) Firstly, to the extent that the amount on deposit in the Principal Accumulation Account is less than the amount of principal due and payable on the Senior Funding Obligations on such Principal Payment Date, an amount equal to such deficiency shall be applied to the payment of principal due and payable on the Senior Funding Obligations on such Principal Payment Date;

(ii) Secondly, to the extent that the amount available from the Principal Accumulation Account under Section 7.06(b) is less than the amount of principal due and payable on the Subordinated Funding Obligations on such Principal Payment Date, an amount equal to such deficiency shall be applied to the payment of principal due and payable on the Subordinated Funding Obligations on such Principal Payment Date; provided that after making such payment, the amount remaining on deposit in the Program Cash Reserve Account is equal to or greater than the Program Cash Reserve Required Amount (Senior), and

(iii) Thirdly, to the extent that the amount available from the Principal Accumulation Account under Section 7.06(c) is less than the amount of principal due and payable on the Junior Subordinated Funding Obligations on such Principal Payment Date, an amount equal to such deficiency shall

be applied to the payment of principal due and payable on the Junior Subordinated Funding Obligations on such Principal Payment Date; provided that after making such payment, the amount remaining on deposit in the Program Cash Reserve Account is equal to or greater than the sum of the Program Cash Reserve Required Amount (Senior) and the Program Cash Reserve Required Amount (Subordinated).

(c) Any amounts remaining after making the applications referred to in subsection 7.08(a) and subsection 7.08(b): (i) to be held in the Program Cash Reserve Account for distribution under this Section 7.08 on the succeeding Interest Payment Date or Principal Payment Date; or (ii) after the final Issuer Funding Obligation has been repaid in full, any amounts remaining shall be deposited to the Collection Account and applied in accordance with subsection 7.04(e); provided that upon the occurrence and during the continuance of any Event of Default and the acceleration of the Issuer Funding Obligations in accordance with Section 8.02, any amounts in the Program Cash Reserve Account shall be applied in accordance with Section 8.13.

7.09 Refinancing

(a) Not less than [30] days prior the first day of the Reference Period that includes the Principal Accumulation Date in respect of a Series of Senior Funding Obligations, Subordinated Funding Obligations or Junior Subordinated Funding Obligations, the Issuer shall, if it intends to repay all or a portion of the principal obligations of such Funding Obligation Agreement pursuant to a Refinancing, issue a Refinancing Notice to the Indenture Trustee.

(b) On completion of a Refinancing all proceeds received by the Issuer shall be deposited to the Refinancing Account.

(c) On each Payment Date, an amount shall be transferred from the Refinancing Account to the Principal Accumulation Account equal to the lesser of:

(i) The amount on deposit in the Refinancing Account; and

(ii) The Deferred Principal Accumulation Amount.

(d) After the final Issuer Funding Obligation has been repaid in full, any amounts remaining in the Refinancing Account shall be deposited to the Collection Account and applied in accordance with subsection 7.04(e); provided that upon the occurrence and during the continuance of any Event of Default and the acceleration of the Issuer Funding Obligations in accordance with Section 8.02, any amounts remaining in the Refinancing Account shall be applied in accordance with Section 8.13.

7.10 Allocation of Amounts on Deposit in the Series Accounts

If, after giving effect to payments made on any Payment Date, the amount in the Collection Account is insufficient to satisfy all amounts required to be paid to Specified Creditors on such date amounts on deposit in any Series Account may be withdrawn from such Series Account and allocated to Specified Creditors in accordance with the terms of the Related Funding Obligations Agreement.

7.11 Payments to be Held in Trust

If, notwithstanding Sections 7.04 and 8.13, any payment on Obligations Secured shall be received at any time by any Specified Creditor, other than in accordance with this Indenture, then the funds received in respect of such payment shall be held by such Specified Creditor in trust for the Issuer and the other Specified Creditors and such Specified Creditor shall forthwith remit to the Indenture Trustee such funds.

7.12 Application of Trust Money

All money and obligations deposited with the Indenture Trustee pursuant to Section 7.01 or Section 7.03 and all money received by the Indenture Trustee in respect of such obligations will be held in trust and applied by it, in accordance with the provisions of the Program Agreements in respect of which it was deposited and this Indenture, to the payment, either directly or through any Paying Agent (including the Issuer acting as its own Paying Agent) as the Indenture Trustee, at the direction of the Manager, may determine, to the Persons entitled thereto, of the principal, interest, fees and other amounts for whose payment that money and obligations have been deposited with or received by the Indenture Trustee. Money held by the Indenture Trustee in trust hereunder need not be segregated from other funds except to the extent required by this Indenture or by applicable law. The Indenture Trustee will be under no liability for interest on any money received by it hereunder except as otherwise agreed with the Issuer.

ARTICLE VIII
EVENTS OF DEFAULT AND REMEDIES

8.01 Events of Default

[NTD: to be determined if certain events of default should be triggered on a series by series basis.]

"**Event of Default**," wherever used herein, means any one of the following events (whatever the reason for such Event of Default and whether it will be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any Governmental Authority):

(a) a default by the Issuer in the payment of any interest on any Controlling Class Obligations when such interest becomes due and payable, and continuance of such default for a period of [5] days following the date on which such interest became due and payable;

(b) a default by the Issuer in the payment of any principal of any Controlling Class Obligations at its Principal Payment Default Date;

(c) any representation or warranty contained in Section 12.01 proves to be incorrect in any material respect when made and such incorrect representation or warranty if capable of being remedied by the Issuer, has not been remedied for a period of 60 days after notice thereof has been given, by registered or certified mail, to the Issuer by the Indenture Trustee or to the Issuer and the Indenture Trustee by Debtholders holding at least 25% of the Outstanding Dollar Principal Amount of all Controlling Class Obligations, a written notice specifying such default or breach and requesting it to be remedied and stating that such notice is a "Notice of Default" hereunder and, as a result of such default, the interests of such Debtholders are materially and adversely affected and continue to be materially and adversely affected during the 60-day period;

(d) a default in the performance, or breach, of any covenant of the Issuer in this Indenture in respect of any Controlling Class Obligations (other than an agreement, covenant or warranty a default in the performance of which or the breach of which is elsewhere specifically dealt with in this Section 8.01), all of such covenants in this Indenture which are not expressly stated to be for the benefit of a particular Series of Issuer Funding Obligations being deemed to be in respect of all Series of Issuer Funding Obligations for this purpose, and continuance of such default or breach for a period of 60 days after notice thereof has been given, by registered or certified mail, to the Issuer by the Indenture Trustee or to the Issuer and the Indenture Trustee by Debtholders holding at least 25% of the Outstanding Dollar Principal Amount of all Controlling Class Obligations, a written notice specifying such default or breach and requesting it to be remedied and stating that such notice is a "Notice of Default" hereunder and, as a result of such default, the interests of such Debtholders are materially and adversely affected and continue to be materially and adversely affected during the 60-day period;

(e) an Insolvency Event in respect of the Issuer;

(f) the Change of Law Protection Agreement ceases to be in full force and effect against the Province and if the Province does not, within 10 days of receipt of notice of such agreement not being in full force and effect, cause such agreement to be in full force and effect or replace such agreement with a new agreement that is in form and substance satisfactory to Debtholders of Controlling Class Obligations, acting reasonably, pursuant to an Ordinary Resolution;

(g) the validity of the Change of Law Protection Agreement or the applicability thereof to the Province or to any Controlling Class Obligations or any other obligations purported to be secured thereby or any material part thereof shall be disaffirmed in writing by or on behalf of the Province; or

(h) any additional event of default specified in a Funding Obligation Agreement in respect of Controlling Class Obligations.

For greater certainty, failure to pay amounts owing pursuant to a Derivative Agreement shall not constitute an Event of Default.

8.02 Acceleration of Maturity; Rescission and Annulment

[NTD: to be determined if acceleration should be determined on a series by series basis.]

(a) If an Event of Default (other than an Event of Default described in clause (e), (f) or (g) of Section 8.01) occurs and is continuing, then and in each and every such case, unless the principal of all the Controlling Class Obligations shall have already become due and payable, either the Indenture Trustee or Debtholders holding not less than 50% of the Outstanding Dollar Principal Amount of all Controlling Class Obligations (treated as one class), by notice in writing to the Issuer (and to the Indenture Trustee if given by such Debtholders), may declare the Outstanding Dollar Principal Amount of all Issuer Funding Obligations (other than Derivative Funding Obligations) and all interest accrued or principal accreted and unpaid (if any) thereon to be due and payable immediately, and upon any such declaration the same will become and will be immediately due and payable, notwithstanding anything in this Indenture or any Funding Obligation Agreement to the contrary.

(b) If an Event of Default described in clause (e), (f) or (g) of Section 8.01 occurs and is continuing, then all Series of Issuer Funding Obligations (other than Derivative Funding Obligations) will automatically be and become immediately due and payable by the Issuer, without notice or demand to any Person, and the Issuer will automatically and immediately be obligated to pay off the Issuer Funding Obligations.

(c) At any time after such a declaration of acceleration has been made or an automatic acceleration has occurred with respect to the Issuer Funding Obligations (other than Derivative Funding Obligations) and before a judgment or decree for payment of the money due has been obtained by the Indenture Trustee as hereinafter provided in this Article VIII, Debtholders of Controlling Class Obligations may, by Extraordinary Resolution, rescind and annul such declaration and its consequences if:

(i) the Issuer has paid or deposited with the Indenture Trustee a sum sufficient to pay (A) all overdue installments of interest on the Controlling Class Obligations, (B) the principal of any Controlling Class Obligations which have become due otherwise than by such declaration of acceleration, and interest thereon at the rate or rates prescribed therefor by the terms of the Related Funding Obligation Agreements, to the extent that payment of such interest is lawful, (C) interest upon overdue installments of interest at the rate or rates prescribed therefor by the terms of the Related Funding Obligation Agreements, to the extent that payment of such interest is lawful, and (D) all sums paid by the Indenture Trustee hereunder and the reasonable compensation, expenses and disbursements of the Indenture Trustee, its

agents and counsel and all other amounts due to the Indenture Trustee under Section 9.05; and

(ii) all Events of Default other than the nonpayment of the principal of the Controlling Class Obligations which has become due solely by such acceleration, have been cured or waived as provided in Section 8.03.

(d) If, at any time, any Event of Default capable of being remedied has been remedied by the Issuer to the satisfaction of the Indenture Trustee: (i) the Security Interest will no longer be or be deemed to be enforceable by reason of such Event of Default; (ii) any rights which had become vested in the Indenture Trustee by virtue thereof will be and be deemed to be cancelled as fully and to the same extent as though no such Event of Default had occurred; and (iii) the Indenture Trustee will, or will instruct any receiver appointed pursuant to this Indenture to restore to the Issuer any Collateral in the possession of the Indenture Trustee or receiver, as the case may be.

(e) No such rescission will affect any subsequent default or impair any right consequent thereon.

8.03 Waiver of Past Defaults

Subject to Section 8.02(c), Debtholders of Controlling Class Obligations may, by Ordinary Resolution, waive any past default hereunder and its consequences. Upon any such waiver, such default will cease to exist, and any Event of Default arising therefrom will be deemed to have been cured, for every purpose of this Indenture; but no such waiver will extend to any subsequent or other default or impair any right consequent thereon.

8.04 Notice of Defaults

(a) Within 90 days after the occurrence of any Event of Default of which the Indenture Trustee has received written notice:

(i) the Indenture Trustee will transmit by mail to all Registered Noteholders, as their names and addresses appear in the Note Register, notice of such default;

(ii) the Indenture Trustee will notify all holders of Bearer Notes by publication of notice of such default in an Authorized Newspaper, or as otherwise provided in the Related Supplemental Indenture;

(iii) the Indenture Trustee will give prompt written notification thereof to the other Debtholders and all other Specified Creditors; and

(iv) the Indenture Trustee will give prompt written notification thereof to the Rating Agencies, unless such default will have been cured or waived;

provided, however, that, except in the case of a default in the payment of the principal of or interest on any Issuer Funding Obligations, the Indenture Trustee will be protected in withholding such notice if and so long as a Responsible Officer of the Indenture Trustee in good faith determines that the withholding of such notice is in the interests of the Specified Creditors.

(b) When such notice of an occurrence of an Event of Default has been given and the Event of Default is thereafter cured, notice that the Event of Default is no longer continuing shall be given by the Indenture Trustee to Persons to whom notice was sent pursuant to Section 8.04(a) within a reasonable time, but not exceeding 30 days in any event, after the Indenture Trustee receives notice from the applicable Debtholders that the Event of Default has been cured.

8.05 Remedies Generally

Subject to subsections 8.02(c) and (d), and Section 8.03, if, with respect to any Controlling Class Obligations, such Controlling Class Obligation has become due and payable pursuant to Section 8.02 and the Issuer has failed to pay such Controlling Class Obligation, the Indenture Trustee (subject, however, to compliance with the provisions of Section 9.02(d) with respect to the giving of indemnity and funds) may proceed to realize upon the Security Interest and to enforce the rights of the Indenture Trustee and of the Specified Creditors to whom Obligations Secured are owed by (i) application to any court of competent jurisdiction for an order of sequestration and payment of amounts in respect of clean energy adjustments, collections or remittances in accordance with the Act, (ii) possession of the Collateral, (iii) appointment of a receiver with respect to the Collateral, (iv) proceedings in any court of competent jurisdiction for the appointment of a receiver or for sale of the Collateral or any part thereof, or for foreclosure, (v) subject to Section 10.02, exercise any of the rights of the Issuer under any of the Program Agreements, including the right to replace the Manager or the Servicer in accordance with Section 8.10, or (vi) any other action, suit, remedy or proceeding authorized or permitted by this Indenture or by applicable law or by equity.

8.06 Default Interest and Expenses

The Issuer covenants that if:

(a) the Issuer defaults in the payment of interest on any Series of Issuer Funding Obligations when such interest becomes due and payable and such default continues for a period of 65 days following the date on which such interest became due and payable, or

(b) the Issuer defaults in the payment of the principal amount of any Series of Issuer Funding Obligations on the Principal Payment Default Date thereof;

the Issuer will, upon demand of the Indenture Trustee, pay (subject to the allocation provided in this Article VIII and any Related Funding Obligation Agreement) to the Indenture Trustee, for the benefit of the Debtholders of any such Issuer Funding Obligations, the whole amount then due and payable on any such Issuer Funding Obligations for principal and interest, with interest, to the extent that payment of such interest will be legally enforceable, upon the overdue principal and

upon overdue installments of interest, (i) in the case of interest-bearing Issuer Funding Obligations, at the rate of interest applicable to the principal amount thereof, unless otherwise specified in the Related Funding Obligation Agreement; and (ii) in the case of Discount Notes, as specified in the Related Supplemental Indenture, and in addition thereto, will pay such further amount as will be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Indenture Trustee, its agents and counsel and all other amounts due to the Indenture Trustee under Section 9.05.

If the Issuer fails to pay such amounts forthwith upon such demand, the Indenture Trustee may, if the Issuer Funding Obligations have been accelerated in accordance with Section 8.02, take immediate steps to enforce the Security Interest, including instituting, in its own name and as trustee of an express trust, a judicial proceeding seeking the appointment of a receiver or a judicial proceeding for the collection of the sums so due and unpaid, and may directly prosecute such proceeding to judgment or final decree, and the Indenture Trustee may enforce the same against the Issuer and collect the money adjudged or decreed to be payable in the manner provided by applicable law out of the Collateral, wherever situated.

8.07 Indenture Trustee May File Proofs of Claim

In case of the pendency of any receivership, insolvency, liquidation, bankruptcy or other similar proceeding relative to the Issuer or the property of the Issuer, the Indenture Trustee (irrespective of whether the principal of the Issuer Funding Obligations will then be due and payable as therein expressed or by declaration or otherwise) will be entitled and empowered by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of principal, interest, fees and other amounts owing and unpaid in respect of the Issuer Funding Obligations and to file such other papers or documents as may be necessary and advisable in order to have the claims of the Indenture Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Indenture Trustee, its agents and counsel and all other amounts due to the Indenture Trustee under Section 9.05) and of the Specified Creditors allowed in such judicial proceeding, and

(b) to collect and receive any funds or other property payable or deliverable on any such claims and to distribute the same;

and any receiver, assignee, trustee, liquidator or other similar official in any such proceeding is hereby authorized by each Specified Creditor to make such payment to the Indenture Trustee, and in the event that the Indenture Trustee will consent to the making of such payments directly to the Specified Creditors, to pay to the Indenture Trustee any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Indenture Trustee, its agents and counsel, and any other amounts due to the Indenture Trustee under Section 9.05.

Nothing herein contained will be deemed to authorize the Indenture Trustee to authorize or consent to or accept or adopt on behalf of any Specified Creditor any plan of reorganization, arrangement, adjustment or composition affecting the Issuer Funding Obligations or the rights of

any Specified Creditors, or to authorize the Indenture Trustee to vote in respect of the claim of any Specified Creditor in any such proceeding.

8.08 Indenture Trustee May Enforce Claims Without Possession of Notes

All rights of action and claims under this Indenture or the Notes of any Class, Series or Tranche may be prosecuted and enforced by the Indenture Trustee without the possession of any of the Notes of such Class, Series or Tranche or the production thereof in any proceeding relating thereto, and any such proceeding instituted by the Indenture Trustee will be brought in its own name as trustee of an express trust.

8.09 Indenture Trustee May Elect to Hold the Collateral

Following an acceleration of Issuer Funding Obligations in accordance with Section 8.02, the Indenture Trustee may elect to continue to hold the Collateral and apply distributions on the Collateral in accordance with the distribution provisions of Section 8.13.

8.10 Termination by Indenture Trustee of Manager and Servicer

Upon the occurrence and during the continuance of an Event of Default, the Indenture Trustee shall have the right to (and, upon receipt of an Extraordinary Resolution of Debtholders of Controlling Class Obligations to that effect, shall) terminate the appointment of the then existing Manager under the Management Agreement and/or the Servicer under the Master Transfer and Servicing Agreement, and appoint new Persons under such agreements in accordance with such direction, provided that the Issuer shall have the right to reinstate any appointee under such agreements at such time as the Event of Default is no longer continuing.

8.11 Control by Debtholders

Subject to Section 10.02(b), Debtholders of Controlling Class Obligations will, by Ordinary Resolution, have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Indenture Trustee, or exercising any trust or power conferred on the Indenture Trustee with respect to all Issuer Funding Obligations, provided that:

(a) the Indenture Trustee will have the right to decline to follow any such direction if the Indenture Trustee, being advised by counsel, determines that the action so directed may not lawfully be taken or would conflict with this Indenture, or if the Indenture Trustee in good faith determines that the proceedings so directed would involve it in personal liability or be unjustly prejudicial to the Debtholders of Controlling Class Obligations not taking part in such direction; and

(b) the Indenture Trustee may take any other action permitted hereunder deemed proper by the Indenture Trustee which is not inconsistent with such direction.

8.12 Limitation on Suits

To the fullest extent permitted by applicable law, no Specified Creditor will have any right to institute any proceeding, judicial or otherwise, with respect to this Indenture, or for the appointment of a receiver or trustee or similar official, or for any other remedy hereunder, unless:

(a) the Issuer or a Debtholder has previously given written notice to the Indenture Trustee of a continuing Event of Default;

(b) Debtholders of Controlling Class Obligations, by way of Ordinary Resolution, have made written request to the Indenture Trustee to institute proceedings in respect of such Event of Default in the name of the Indenture Trustee hereunder;

(c) such Debtholders of Controlling Class Obligations have offered to the Indenture Trustee (when so requested by the Indenture Trustee) indemnity reasonably satisfactory to it against the costs, expenses and liabilities to be incurred in compliance with such request; and

(d) the Indenture Trustee, for 60 days after the Indenture Trustee has received such notice, request and offer of indemnity has failed to institute any such proceeding;

it being understood and intended that no one or more Specified Creditors will have any right in any manner whatsoever by virtue of, or by availing of, any provision of this Indenture to affect, disturb or prejudice the rights of any other Specified Creditor, or to obtain or to seek to obtain priority or preference over any other Specified Creditor or to enforce any right under this Indenture, except in the manner herein provided and for the benefit of all Specified Creditors.

8.13 Application of Money Following an Event of Default

Subject to the following paragraph, upon the occurrence and during the continuance of an Event of Default which has been accelerated in accordance with Section 8.02, any money or other property standing in each Issuer Account or otherwise received by the Indenture Trustee pursuant to this Article VIII will be applied in the order of priority specified in this Section 8.13, *pro rata* in proportion to the claims represented by each subclause, except as otherwise specifically provided below:

(a) First, to the payment or remittance of all Taxes exigible for which a Governmental Authority is given priority over the Specified Creditors under the laws of the applicable jurisdiction;

(b) Second, to the Indenture Trustee and the Issuer Trustee in respect of the amount of fees, expenses and reimbursements owing, up to a maximum aggregate amount (without duplication of amounts previously paid in respect of such fees, expenses, reimbursements and indemnified claims) of **[■ percent (■%)]**[3] of the Outstanding Dollar Principal Amount of all Issuer Funding Obligations at such time;

[3] To be confirmed.

(c) Third, to Debtholders, on a *pro rata* basis, in respect of all interest accrued and unpaid, if any, and fees and other amounts (other than principal) due and payable on the Senior Funding Obligations in respect of Warehouse Facility Agreements;

(d) Fourth, to Debtholders, on a *pro rata* basis, in respect of the aggregate outstanding principal amount of the Senior Funding Obligations in respect of Warehouse Facility Agreements until such amount has been paid in full;][4]

(e) Fifth, *pari passu*, (A) to Debtholders, on a *pro rata* basis, in respect of all interest accrued and unpaid, if any, and fees and other amounts (other than principal) due and payable on the Senior Funding Obligations that are not in respect of Warehouse Facility Agreements, and (B) to Derivative Counterparties, on a *pro rata* basis, all Derivative Funding Obligations payable other than Termination Payments;

(f) Sixth, *pari passu*, (A) to Debtholders, on a *pro rata* basis, in respect of the aggregate outstanding principal amount of the Senior Funding Obligations that are not in respect of Warehouse Facility Agreements until such amount has been paid in full, and (B) to Derivative Counterparties, on a *pro rata* basis, any Termination Payment where the Derivative Counterparty is not the Defaulting Party or the sole Affected Party;

(g) Seventh, to the Manager in respect of all fees, expenses, reimbursement and indemnity amounts owing;

(h) Eighth, to Debtholders, on a *pro rata* basis, in respect of all interest accrued and unpaid, if any, and fees and other amounts (other than principal) due and payable on the Subordinated Funding Obligations;

(i) Ninth, to Debtholders, on a *pro rata* basis, in respect of the aggregate outstanding principal amount of the Subordinated Funding Obligations until such amount has been paid in full;

(j) Tenth, to Debtholders, on a *pro rata* basis, in respect of all interest accrued and unpaid, if any, and fees and other amounts (other than principal) due and payable on the Junior Subordinated Funding Obligations;

(k) Eleventh, to Debtholders, on a *pro rata* basis, in respect of the aggregate outstanding principal amount of the Junior Subordinated Funding Obligations until such amount has been paid in full;

(l) Twelfth, to each Derivative Counterparty, on a *pro rata* basis, any Termination Payment where the Derivative Counterparty is the Defaulting Party or the sole Affected Party;

(m) Thirteenth, (A) to the Indenture Trustee and the Issuer Trustee, in each case, in respect of the amount of any fees, expenses, reimbursements and indemnity

[4] Subject to ongoing discussion.

amounts owing and not previously paid pursuant to clause (a); and then (B) to other service providers (other than the Manager), in each case, in respect of the amount of any fees, expenses, reimbursement and indemnity amounts owing; including for each referenced party in subclauses (A) and (B), any amounts payable to their respective Affiliates under the terms of any relevant indemnity, with funds being distributed *pro rata* in proportion to the claims represented by each of subclauses (A) and (B), respectively;

(n) Fourteenth, to the Issuer or as the Issuer otherwise directs.

Notwithstanding the foregoing, amounts on deposit in a Series Account established solely for the benefit of one or more Series of Issuer Funding Obligations shall first be used to satisfy all obligations owing to those Specified Creditors for whom such Series Account was established. If any amounts remain following such application, such amounts shall be applied in accordance with the priorities set out above.

8.14 Limited Recourse

(a) Notwithstanding any other provision of this Indenture to the contrary, the obligation to pay principal of or interest on any Issuer Funding Obligation or any other amount payable to any Specified Creditor will be without recourse to the Indenture Trustee, the Issuer Trustee, the Manager or any Affiliate, officer, employee, member or director of any of them, and the satisfaction of the obligation of the Issuer to pay principal of or interest on any Issuer Funding Obligation or any other amount payable to any Specified Creditor will be subject to the allocation and payment provisions of this Indenture and any Related Funding Obligation Agreement, and limited to amounts available from the Collateral.

(b) No recourse may be taken, directly or indirectly, with respect to the obligations of the Issuer under the Issuer Funding Obligations or under this Indenture, or any certificate or other writing delivered in connection herewith or therewith, against (i) the Issuer Trustee in its individual capacity, (ii) any owner of a beneficial interest in the Issuer or (iii) any partner, owner, beneficiary, agent, officer, director, employee or agent of the Issuer Trustee in its individual capacity, any holder of a beneficial interest in the Issuer or the Issuer Trustee or of any successor or assign of the Issuer Trustee in its individual capacity, except as any such Person may have expressly agreed (it being understood that the Issuer Trustee has no such obligations in its individual capacity).

(c) Under no circumstances shall the Manager or any of its Affiliates be deemed an obligor or guarantor or otherwise deemed to be responsible for payment from its own funds of principal, interest, dividends or other amounts due on the Collateral, the Issuer Funding Obligations or any other Obligations Secured.

8.15 Restoration of Rights and Remedies

If the Indenture Trustee or any Specified Creditor (to the extent and in the manner provided for in Section 8.12) has instituted any proceeding to enforce any right or remedy under this

Indenture and such proceeding has been discontinued or abandoned for any reason, then and in every such case the Issuer, the Indenture Trustee and the Specified Creditors will, subject to any determination in such proceeding, be restored severally and respectively to their former positions hereunder, and thereafter all rights and remedies of the Indenture Trustee and the Specified Creditors will continue as though no such proceeding had been instituted.

8.16 Rights and Remedies Cumulative

No right or remedy herein conferred upon or reserved to the Indenture Trustee or to the Specified Creditors is intended to be exclusive of any other right or remedy, and every right and remedy will, to the extent permitted by applicable law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, will not prevent the concurrent assertion or employment of any other appropriate right or remedy.

8.17 Delay or Omission Not Waiver

No delay or omission of the Indenture Trustee or of any Specified Creditor to exercise any right or remedy accruing upon any Event of Default will impair any such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein. Every right and remedy given by this Article VIII or by applicable law to the Indenture Trustee or to the Specified Creditors may be exercised from time to time, and as often as may be deemed expedient, by the Indenture Trustee or by the Specified Creditors, as the case may be.

8.18 Waiver of Stay or Extension Laws

The Issuer covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay or extension law wherever enacted, now or at any time hereafter in force, which may affect the covenants or the performance of this Indenture; and the Issuer (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and covenants that it will not hinder, delay or impede the execution of any power herein granted to the Indenture Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

8.19 Indenture Trustee Appointed Attorney

The Issuer irrevocably constitutes and appoints the Indenture Trustee and any officer or employee thereof, with full power of substitution, as its true and lawful attorney coupled with an interest with full power and authority in the name of the Issuer or in its own name, in its discretion, upon the occurrence and during the continuance of any Event of Default, for the purpose of carrying out the terms of this Indenture to take all appropriate action and to execute any and all documents and instruments which may be necessary or desirable to accomplish the purposes hereof, and without limiting the generality of the foregoing, hereby gives the Indenture Trustee the power and right on behalf of the Issuer, without notice to or assent by the Issuer, to the extent permitted by applicable law, to do the following:

(a) to ask for, demand, sue for, collect and receive all and any monies due or becoming due with respect to the Collateral;

(b) to receive, take, endorse, assign and deliver any and all cheques, notes, drafts, acceptances, documents and other negotiable and non-negotiable instruments, documents and chattel paper taken or received by the Indenture Trustee in connection therewith and herewith; and

(c) to commence, file, prosecute, defend, settle, compromise or adjust any claim, suit, action or proceeding with respect to the Collateral.

8.20 Disclaimer of Marshalling

In the event that the Security Interest shall become enforceable and the Indenture Trustee shall have determined or become bound to enforce the same, the Issuer covenants not to invoke the doctrine of marshalling or any other equitable principle for the purpose of requiring the Indenture Trustee to realize or to have realized on any particular asset forming part of the Collateral.

ARTICLE IX
THE INDENTURE TRUSTEE

9.01 Certain Duties and Responsibilities

(a) The Indenture Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Indenture with respect to the Obligations Secured, and no implied covenants or obligations will be read into this Indenture against the Indenture Trustee.

(b) In the exercise of the rights and duties prescribed or conferred by the terms of this Indenture, the Indenture Trustee will act honestly and in good faith with a view to the best interests of the Specified Creditors as a whole and exercise that degree of care, diligence and skill that a reasonably prudent trustee would exercise in comparable circumstances.

(c) In the absence of bad faith on its part, the Indenture Trustee may, with respect to any Obligations Secured, conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Indenture Trustee and conforming to the requirements of this Indenture; but in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Indenture Trustee, the Indenture Trustee will be under a duty to examine the same to determine whether or not they substantially conform to the requirements of this Indenture (but need not confirm or investigate the accuracy of any mathematical calculations or other facts stated therein).

(d) No provision of this Indenture will be construed to relieve the Indenture Trustee from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that:

(i) this clause (d) will not be construed to limit the effect of subsection 9.01(a);

(ii) the Indenture Trustee will not be liable for any error of judgment made in good faith by a Responsible Officer of the Indenture Trustee, unless it will be proved that the Indenture Trustee was negligent in ascertaining the pertinent facts;

(iii) the Indenture Trustee will not be liable with respect to any action taken or omitted to be taken by it in good faith if so directed by Extraordinary Resolution, relating to the time, method and place of conducting any proceeding for any remedy available to the Indenture Trustee, or exercising any trust or power conferred upon the Indenture Trustee, under this Indenture with respect to the Obligations Secured; and

(iv) no provision of this Indenture will require the Indenture Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers.

(e) Whether or not therein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Indenture Trustee will be subject to the provisions of this Section 9.01.

9.02 Certain Rights of Indenture Trustee

Except as otherwise provided in Section 9.01:

(a) the Indenture Trustee may conclusively rely and will be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture or other paper or document (whether in its original, facsimile or other electronic form) believed by it to be genuine and to have been signed or presented by the proper party or parties;

(b) whenever in the administration of this Indenture the Indenture Trustee will deem it desirable that a matter be proved or established before taking, suffering or omitting any action hereunder, the Indenture Trustee (unless other evidence be herein specifically prescribed) may, in the absence of bad faith on its part, rely upon an Officer's Certificate;

(c) the Indenture Trustee may consult with counsel of its own selection and the advice of such counsel or any Opinion of Counsel will be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon;

(d) the Indenture Trustee will be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Specified Creditors pursuant to this Indenture, unless such Specified Creditors shall have offered to the Indenture Trustee security or indemnity reasonably satisfactory to it against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction;

(e) the Indenture Trustee will not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture or other paper or document, but the Indenture Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Indenture Trustee will determine to make such further inquiry or investigation, it will be entitled to examine the books, records and premises of the Issuer, personally or by agent or attorney;

(f) the Indenture Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys and the Indenture Trustee will not be responsible for any misconduct or negligence on the part of any agent or attorney appointed with due care by it hereunder;

(g) the Indenture Trustee will not be responsible for filing any financing statements or continuation statements in connection with the Obligations Secured or the Security Interest, but will cooperate with the Issuer in connection with the filing of such financing statements or amendments to such financing statements;

(h) the Indenture Trustee shall not be deemed to have notice of any default (including any Servicer Default or Event of Default) unless a Responsible Officer of the Indenture Trustee has actual knowledge thereof or unless written notice of any event which is in fact such a default is received by the Indenture Trustee at the Corporate Trust Office of the Indenture Trustee, and such notice references the Issuer Funding Obligations and this Indenture;

(i) the rights, privileges, protections, immunities and benefits given to the Indenture Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Indenture Trustee in each of its capacities hereunder, and each agent, custodian and other person employed to act hereunder;

(j) the Indenture Trustee shall not be liable for any action taken, suffered or omitted to be taken by it in good faith and reasonably believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Indenture;

(k) the Indenture Trustee shall be entitled to and may rely absolutely upon the Payment Instruction and the Indenture Trustee will have no obligation to calculate any amount due or owing or to be allocated as provided in this Indenture, including interest or principal for any Issuer Funding Obligations;

(l) the Indenture Trustee will be entitled to rely and act upon any direction, order, instruction, notice or communication provided to it under this Indenture which is sent to it by Electronic Methods. The Indenture Trustee shall have no liability for any losses, liabilities, costs or expenses incurred by it as a result of such reliance upon or compliance with such instructions or directions. The Issuer agrees: (i) to assume all risks arising out of the use of such Electronic Methods to submit instructions and directions to the Indenture Trustee, including without limitation the risk of the Indenture Trustee acting on unauthorized instructions, and the risk of interception and misuse by third parties; (ii) that it is fully informed of the protections and risks associated with the various methods of transmitting instructions to the Indenture Trustee and that there may be more secure methods of transmitting instructions than the method(s) selected by the Issuer; and (iii) that the security procedures (if any) to be followed in connection with its transmission of instructions provide to it a commercially reasonable degree of protection in light of its particular needs and circumstances; and

(m) the Indenture Trustee will not be liable for any consequential, punitive or special damages.

9.03 Not Responsible for Recitals or Issuer Funding Obligations

The recitals contained herein and in the Funding Obligation Agreements, except the Certificates of Authentication, will be taken as the statements of the Issuer, and the Indenture Trustee assumes no responsibility for their correctness. The Indenture Trustee makes no representations as to the validity or sufficiency of this Indenture or of the Funding Obligation Agreements. The Indenture Trustee will not be accountable for the use or application by the Issuer of Notes, Borrowings or the proceeds thereof.

9.04 May Hold Notes

The Indenture Trustee, the Issuer Trustee, any Paying Agent, the Note Registrar, the Manager or any other agent of the Issuer, in its individual or any other capacity, may become the owner or pledgee of Notes and, subject to subsection 9.07(e) and applicable legislation, may otherwise deal with the Issuer with the same rights it would have if it were not Indenture Trustee, Issuer Trustee, Paying Agent, Note Registrar, Manager or such other agent.

9.05 Compensation and Reimbursement; Limit on Compensation Reimbursement and Indemnity

(a) The Issuer agrees:

(i) to pay to the Indenture Trustee from time to time reasonable compensation (or, for so long as BNY Trust Company of Canada is the Indenture Trustee, such amount as has been mutually agreed upon in writing) for all services rendered by it hereunder (which compensation will not be limited by any provision of law in regard to the compensation of a trustee of an express trust);

(ii) except as otherwise expressly provided herein, to reimburse the Indenture Trustee upon its request for all reasonable expenses, disbursements and advances incurred or made by the Indenture Trustee in accordance with any provision of this Indenture (including the reasonable compensation and the reasonable expenses and disbursements of its agents and counsel), except any such expense, disbursement or advance as may be attributable to its own negligence or bad faith; and

(iii) to indemnify the Indenture Trustee for, and to hold it harmless against, any and all loss, liability, expense, claim, damage or injury incurred without negligence or bad faith on its part, arising out of or in connection with the acceptance or administration of the trusts hereunder, including the costs and expenses of defending itself against any claim or liability (whether asserted by the Issuer, any Specified Creditor or any other Person) in connection with the exercise or performance of any of its powers or duties hereunder.

The Indenture Trustee will have no recourse to any asset of the Issuer other than funds available pursuant to Section 7.04 or 8.13, or to any Person other than the Issuer.

(b) This Section 9.05 will survive the termination of this Indenture and the resignation or replacement of the Indenture Trustee under Section 9.07.

9.06 Corporate Indenture Trustee Required; Eligibility

There will at all times be an Indenture Trustee hereunder which will be either a bank, a trust company or a corporation organized and doing business under the laws of Canada or of any province or territory thereof, authorized under such laws to carry on a trust business as contemplated hereby in each of the provinces and territories of Canada. The Issuer may not, nor may any Person directly or indirectly controlling, controlled by, or under common control with the Issuer, serve as Indenture Trustee. If at any time the Indenture Trustee will cease to be eligible in accordance with the provisions of this Section 9.06, it will resign immediately in the manner and with the effect hereinafter specified in this Article IX.

9.07 Resignation and Removal; Appointment of Successor

(a) No resignation or removal of the Indenture Trustee and no appointment of a successor Indenture Trustee pursuant to this Article IX will become effective until the acceptance of appointment by the successor Indenture Trustee under Section 9.08.

(b) The Indenture Trustee may resign at any time by giving written notice thereof to the Issuer. If an instrument of acceptance by a successor Indenture Trustee shall not have been delivered to the Indenture Trustee within 30 days after the giving of such notice of resignation, the resigning Indenture Trustee may petition any court of competent jurisdiction for the appointment of a successor Indenture Trustee.

(c) The Indenture Trustee may be removed at any time by Ordinary Resolution of the Debtholders of Controlling Class Obligations delivered to the Indenture Trustee and to the Issuer. If an instrument of acceptance by a successor Indenture Trustee shall not have been delivered to the Indenture Trustee within 30 days after the giving of such notice of removal, the Indenture Trustee being removed may petition any court of competent jurisdiction for the appointment of a successor Indenture Trustee.

(d) If at any time:

(i) the Indenture Trustee ceases to be eligible under Section 9.06 and fails to resign after written request therefor by the Issuer or by any Debtholder of Controlling Class Obligations, or

(ii) the Indenture Trustee becomes incapable of acting, or

(iii) the Indenture Trustee is adjudged bankrupt or insolvent or a receiver of the Indenture Trustee or of its property is appointed, or any public officer takes charge or control of the Indenture Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation,

then, in any such case, (A) the Issuer may remove the Indenture Trustee, or (B) subject to Article XI, any Debtholder of Controlling Class Obligations who has been a *bona fide* Debtholder of Controlling Class Obligations for at least six (6) months may, on behalf of itself and all other Debtholders, petition any court of competent jurisdiction for the removal of the Indenture Trustee and the appointment of a successor Indenture Trustee.

(e) The Indenture Trustee shall resign if a material conflict of interest arises in its role as a trustee under this Indenture that is not eliminated within 90 days after the Indenture Trustee becomes aware that it has such a material conflict of interest. Forthwith after the Indenture Trustee becomes aware that it has a material conflict of interest, it shall provide the Issuer with written notice of the nature of that conflict. If, notwithstanding the foregoing provisions of this subsection 9.07(e), the Indenture Trustee has such a material conflict of interest, the validity and enforceability of this Indenture and of the Funding Obligation Agreements shall not be affected in any manner whatsoever by reason only of the existence of such material conflict of interest. If the Indenture Trustee contravenes the foregoing provisions of this subsection 9.07(e), any interested Person may apply to a court of competent jurisdiction for an order that the Indenture Trustee be replaced as trustee hereunder. The Indenture Trustee represents to the Issuer that at the time of the execution and delivery hereof no material conflict of interest exists in the Indenture Trustee's role as a fiduciary hereunder.

(f) If the Indenture Trustee resigns, is removed or becomes incapable of acting, or if a vacancy shall occur in the office of the Indenture Trustee for any cause, the Issuer will promptly appoint a successor Indenture Trustee. If, within one (1) year after

such resignation, removal or incapacity, or the occurrence of such vacancy, a successor Indenture Trustee is appointed by Ordinary Resolution of Debtholders of Controlling Class Obligations delivered to the Issuer and the retiring Indenture Trustee, the successor Indenture Trustee so appointed will, forthwith upon its acceptance of such appointment, become the successor Indenture Trustee and supersede the successor Indenture Trustee appointed by the Issuer. If no successor Indenture Trustee shall have been so appointed by the Issuer or Debtholders of Controlling Class Obligations and accepted in the manner hereinafter provided, any Debtholder of Controlling Class Obligations who has been a *bona fide* Debtholder of Controlling Class Obligations for at least six (6) months may, on behalf of itself and all other Debtholders, petition any court of competent jurisdiction for the appointment of a successor Indenture Trustee.

(g) The Issuer will give written notice of each resignation and each removal of the Indenture Trustee and each appointment of a successor Indenture Trustee to each Specified Creditor as provided in Article XV and to each Rating Agency. To facilitate delivery of such notice, upon request by the Issuer, the retiring Indenture Trustee shall provide to the Issuer a list of all Specified Creditors. Each notice will include the name of the successor Indenture Trustee and the address of its Corporate Trust Office.

(h) Upon such resignation, the Indenture Trustee shall be discharged from all further duties and liabilities under this Indenture.

9.08 <u>Acceptance of Appointment by Successor</u>

Every successor Indenture Trustee appointed hereunder will execute, acknowledge and deliver to the Issuer and to the predecessor Indenture Trustee an instrument accepting such appointment, with a copy to the Rating Agencies, and thereupon the resignation or removal of the predecessor Indenture Trustee will become effective, and such successor Indenture Trustee, without any further act, deed or conveyance, will become vested with all the rights, powers, trusts and duties of the predecessor Indenture Trustee; but, on request of the Issuer or the successor Indenture Trustee, such predecessor Indenture Trustee will, upon payment of its reasonable charges, if any, execute and deliver an instrument transferring to such successor Indenture Trustee all the rights, powers and trusts of the predecessor Indenture Trustee, and will duly assign, transfer and deliver to such successor Indenture Trustee all property and money held by such predecessor Indenture Trustee hereunder, subject nevertheless to its Lien, if any, provided for in Section 9.05. Upon request of any such successor Indenture Trustee, the Issuer will execute any and all instruments for more fully and certainly vesting in and confirming to such successor Indenture Trustee all such rights, powers and trusts.

No successor Indenture Trustee will accept its appointment unless at the time of such acceptance, such successor Indenture Trustee will be qualified and eligible under this Article IX.

9.09 Merger, Conversion, Consolidation or Succession to Business

Any corporation into which the Indenture Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Indenture Trustee shall be a party, or any corporation succeeding to all or substantially all of the corporate trust business of the Indenture Trustee, will be the successor of the Indenture Trustee hereunder, provided such corporation shall be otherwise qualified and eligible under this Article IX, without the execution or filing of any paper or any further act on the part of any of the parties hereto. The Indenture Trustee shall give prompt written notice of such merger, conversion, consolidation or succession to the Issuer and the Rating Agencies. In case any Notes shall have been authenticated, but not delivered, by the Indenture Trustee then in office, any successor by merger, conversion or consolidation to such authenticating Indenture Trustee may adopt such authentication and deliver the Notes so authenticated with the same effect as if such successor Indenture Trustee had itself authenticated such Notes.

9.10 Trust Indenture Legislation

(a) In this Article IX, the term "**applicable legislation**" means the provisions, if any, of the *Trust and Loan Companies Act* (Canada) and any other statute of Canada or a province thereof, and of regulations under any such statute, in each case, as amended, restated or re-enacted from time to time, relating to trust indentures and to the rights, duties and obligations of trustees under trust indentures and of entities issuing debt obligations under trust indentures, to the extent that in the opinion of counsel to the Issuer such provisions are at the time in force and applicable to this Indenture.

(b) If and to the extent that any provision of this Indenture limits, qualifies or conflicts with a mandatory requirement of applicable legislation, such mandatory requirement shall prevail.

(c) The Issuer and the Indenture Trustee agree that each will at all times in relation to this Indenture and any action to be taken hereunder, observe and comply with and be entitled to the benefits of applicable legislation.

9.11 Representations and Covenants of the Indenture Trustee

The Indenture Trustee represents, warrants and covenants that:

(a) the Indenture Trustee is a trust company organized, existing and in good standing under the laws of Canada;

(b) the Indenture Trustee has full power and authority to execute, deliver and perform this Indenture and has taken all necessary action to authorize the execution, delivery and performance by it of this Indenture and other documents to which it is a party;

(c) each of this Indenture and the other documents to which it is a party has been duly executed and delivered by the Indenture Trustee and constitutes its legal, valid and binding obligation in accordance with its terms; and

(d) the Indenture Trustee is authorized to carry on the business of a trust company in each of the provinces and territories of Canada. If, notwithstanding the provisions of this subsection 9.11(d), the Indenture Trustee ceases to be so authorized to carry on business, the validity and enforceability of this Indenture and the Funding Obligation Agreements shall not be affected in any manner whatsoever by reason only of such event.

9.12 Indenture Trustee's Application for Instructions from the Issuer

Any application by the Indenture Trustee for written instructions from the Issuer may, at the option of the Indenture Trustee, set forth in writing any action proposed to be taken or omitted by the Indenture Trustee under and in accordance with this Indenture and the date on and/or after which such action shall be taken or such omission shall be effective; provided that such application shall make specific reference to this Section 9.12. The Indenture Trustee shall not be liable for any action taken by, or omission of, the Indenture Trustee in accordance with a proposal included in such application on or after the date specified in such application (which date shall not be less than five (5) Business Days after the date the Issuer actually receives such application, unless the Issuer shall have consented in writing to any earlier date) unless prior to taking any such action (or the effective date in the case of an omission), the Indenture Trustee shall have received written instructions in response to such application specifying the action be taken or omitted.

9.13 Appointment of Co-Trustee or Separate Indenture Trustee

(a) Notwithstanding any other provisions of this Indenture, at any time, for the purpose of meeting any legal requirements of any relevant jurisdiction, the Indenture Trustee shall have the power and shall execute and deliver all instruments, subject to the prior written consent of the Manager, which consent shall not be unreasonably withheld, to appoint one or more Persons reasonably acceptable to the Issuer to act as a co-trustee or co-trustees, or separate trustee or separate trustees, of all or any part of the Issuer's property, and to vest in such Person or Persons, in such capacity and for the benefit of the Specified Creditors, such title to the Issuer's property, or any part thereof, and, subject to the other provisions of this Section 9.13, such powers, duties, obligations, rights and trusts as the Indenture Trustee may consider necessary or desirable. No co-trustee or separate trustee hereunder shall be required to meet the terms of eligibility as a successor trustee under Section 9.06 and no notice to Specified Creditors of the appointment of any co-trustee or separate trustee shall be required under Section 9.07.

(b) Every separate trustee and co-trustee shall, to the extent permitted by applicable law, be appointed and act subject to the following provisions and conditions:

(i) all rights, powers, duties and obligations conferred or imposed upon the Indenture Trustee shall be conferred or imposed upon and exercised or performed by the Indenture Trustee and such separate trustee or co-trustee jointly (it being understood that such separate trustee or co-trustee is not authorized to act separately without the Indenture Trustee joining in such act), except to the extent that under any law of any jurisdiction in which any

particular act or acts are to be performed, the Indenture Trustee shall be incompetent or unqualified to perform such act or acts, in which event such rights, powers, duties and obligations (including the holding of title to the Issuer's property or any portion thereof in any such jurisdiction) shall be exercised and performed singly by such separate trustee or co-trustee, but solely at the direction of the Indenture Trustee;

(ii) no trustee hereunder shall be personally liable by reason of any act or omission of any other trustee hereunder; and

(iii) the Indenture Trustee may at any time accept the resignation of or remove any separate trustee or co-trustee.

(c) Any notice, request or other writing given to the Indenture Trustee shall be deemed to have been given to each of the then separate trustees and co-trustees, as effectively as if given to each of them. Every instrument appointing any separate trustee or co-trustee shall refer to this Indenture and the conditions of this Article IX. Each separate trustee and co-trustee, upon its acceptance of the trusts conferred, shall be vested with the estates or property specified in its instrument of appointment, either jointly with the Indenture Trustee or separately, as may be provided therein, subject to all the provisions of this Indenture, specifically including every provision of this Indenture relating to the conduct of, affecting the liability of, or affording protection to, the Indenture Trustee. Every such instrument shall be filed with the Indenture Trustee.

(d) Any separate trustee or co-trustee may at any time appoint the Indenture Trustee, its agent or attorney-in-fact with full power and authority, to the extent not prohibited by applicable law, to do any lawful act under or in respect of this Indenture on its behalf and in its name. If any separate trustee or co-trustee shall die, become incapable of acting, resign or be removed, all of its estates, properties, rights, remedies and trusts shall vest in and be exercised by the Indenture Trustee, to the extent permitted by applicable law, without the appointment of a new or successor trustee.

9.14 Preservation of Information; Communications to Debtholders

(a) The Indenture Trustee will preserve, in as current a form as is reasonably practicable, the names and addresses of Registered Noteholders contained in the most recent list furnished to the Indenture Trustee as provided in Section 13.13 and the names and addresses of Registered Noteholders received by the Indenture Trustee in its capacity as Note Registrar. The Indenture Trustee may destroy any list furnished to it as provided in Section 13.13 upon receipt of a new list so furnished. The Indenture Trustee will also preserve, in as current a form as is reasonably practicable, the names and addresses of all other Specified Creditors received by the Indenture Trustee pursuant to subsections 5.01(f) and 5.03(b).

(b) If three or more Debtholders of any Class, Series or Tranche (hereinafter referred to as "**applicants**") (or, if there are less than three such Debtholders, all of the Debtholders) apply in writing to the Indenture Trustee, and furnish to the Indenture Trustee reasonable proof that each such applicant has owned an Issuer Funding Obligation of such Class, Series or Tranche for a period of at least six (6) months preceding the date of such application, and such application states that the applicants desire to communicate with all Debtholders (or such subset thereof as will be specified) with respect to their rights under this Indenture or under the applicable Issuer Funding Obligations and is accompanied by a copy of the form of proxy or other communication which such applicants propose to transmit, then the Indenture Trustee will, within five (5) Business Days after the receipt of such application, at its election, either:

(i) afford such applicants access to the information preserved at the time by the Indenture Trustee in accordance with subsection 9.14(a), or

(ii) inform such applicants as to the approximate number of Debtholders of all Issuer Funding Obligations (or such subset thereof as will be specified), as the case may be, whose names and addresses appear in the information preserved at the time by the Indenture Trustee in accordance with subsection 9.14(a) and as to the approximate cost of mailing to such Debtholders the form of proxy or other communication, if any, specified in such application.

If the Indenture Trustee shall elect not to afford such applicants access to such information, the Indenture Trustee shall, upon the written request of such applicants, mail to each applicable Lender and to each holder of a Registered Note of the applicable Classes, Series and Tranches whose names and addresses appear in the information preserved at the time by the Indenture Trustee in accordance with subsection 9.14(a), a copy of the form of proxy or other communication which is specified in such request, with reasonable promptness after a tender to the Indenture Trustee of the material to be mailed and of payment, or provision for the payment, of the reasonable expenses of mailing, unless, within five days after such tender, the Indenture Trustee shall mail to such applicants, together with a copy of the material to be mailed, a written statement to the effect that, in the opinion of the Indenture Trustee, such mailing would be contrary to the best interests of the Debtholders for which such mailing is intended or would be in violation of applicable law. Such written statement will specify the basis of such opinion.

(c) Every Debtholder agrees with the Issuer and the Indenture Trustee that neither the Issuer nor the Indenture Trustee will be held accountable by reason of the disclosure of any such information as to the names and addresses of the Debtholders in accordance with subsection 9.14(b), regardless of the source from which such information was derived, and that the Indenture Trustee will not be held accountable by reason of mailing any material pursuant to a request made under subsection 9.14(b).

9.15 Acceptance of Trusts by Indenture Trustee

The Indenture Trustee hereby accepts the trusts in this Indenture and agrees to perform the same upon the terms and conditions herein set forth.

9.16 Paying Agent

(a) The Paying Agent, on behalf of the Indenture Trustee, will make distributions to Specified Creditors from the Collection Account or other applicable Issuer Account pursuant to the provisions of this Indenture and any applicable Program Agreement and will report the amounts of such distributions to the Indenture Trustee. Any Paying Agent will have the revocable power to withdraw funds from the Collection Account or other applicable Issuer Account for the purpose of making the distributions referred to above.

(b) The Indenture Trustee may revoke such power and remove the Paying Agent if the Indenture Trustee determines in its sole discretion that the Paying Agent has failed to perform its obligations under this Indenture in any material respect. The Paying Agent upon removal will return all funds in its possession to the Indenture Trustee.

(c) The Issuer will cause each Paying Agent (other than the Indenture Trustee) to execute and deliver to the Indenture Trustee an instrument in which such Paying Agent will agree with the Indenture Trustee (and if the Indenture Trustee acts as Paying Agent, it so agrees), subject to the provisions of this Section 9.16, that such Paying Agent will:

(i) hold all sums held by it for the payment of principal of, interest, fees or other amounts in trust for the benefit of the Persons entitled thereto until such sums will be paid to such Persons or otherwise disposed of as herein provided;

(ii) if such Paying Agent is not the Indenture Trustee, give the Indenture Trustee notice of any default by the Issuer in the making of any such payment of principal or interest on any Issuer Funding Obligations;

(iii) if such Paying Agent is not the Indenture Trustee, at any time during the continuance of any such default, upon the written request of the Indenture Trustee, forthwith pay to the Indenture Trustee all sums so held in trust by such Paying Agent;

(iv) open and maintain appropriate records with respect to each Note; record by appropriate entries therein each payment made on account of interest, principal, fees and other amounts owing with respect to each such Note. For the purposes thereof, the Paying Agent shall provide to the Issuer and the Indenture Trustee satisfactory evidence of each payment as soon as practicable after making such payment. The failure to record, or any error in recording, any such payment shall not, however, limit or otherwise affect the obligations of the Issuer as to the principal amount or accrued interest

owing with respect to any Note. Such records of payment shall be conclusive evidence of the unpaid principal balance and interest owing in respect of the Notes in the absence of demonstrable error;

(v) immediately resign as a Paying Agent and, if such Paying Agent is not the Indenture Trustee, forthwith pay to the Indenture Trustee all sums held by it in trust for the payment of Issuer Funding Obligations if at any time it ceases to meet the standards described in this Section 9.16 required to be met by a Paying Agent at the time of its appointment; and

(vi) comply with all requirements of the Income Tax Act or any other applicable tax law with respect to the withholding from any payments made by it on any amounts contemplated under this Indenture of any applicable withholding taxes imposed thereon and with respect to any applicable reporting requirements in connection therewith.

(d) Each Paying Agent, if not OPG, will at all times have, or be a wholly owned subsidiary of a corporation which has, a combined capital and surplus of at least $50,000,000 and be subject to supervision or examination by a Canadian federal, provincial or territorial authority or be regulated by or subject to the supervision or examination of a Governmental Authority of a nation that is a member of the Organization for Economic Co-operation and Development. If such Paying Agent publishes reports of condition at least annually, pursuant to law or to the requirements of the aforesaid supervising or examining authority, then for the purposes of this subsection 9.16(d), the combined capital and surplus of such Paying Agent will be deemed to be its combined capital and surplus as set forth in its most recent report of condition as so published.

ARTICLE X
MEETINGS

10.01 Conduct of Meetings

Meetings of Debtholders of any Class, Series or Tranche, of all Issuer Funding Obligations or of all Controlling Class Obligations, as the case may be, may be convened, held and conducted in the following manner:

(a) At any time, and from time to time, the Indenture Trustee or the Issuer may, and the Indenture Trustee shall, on receipt of a written request of the Issuer or a requisition signed by Debtholders of a particular Class, Series or Tranche, of all Issuer Funding Obligations, **[of Controlling Class Obligations of a Series]** or of all Controlling Class Obligations (each of such groups of Debtholders being a "**Debtholder Group**"), as the case may be, holding at least 25% of the aggregate Outstanding Dollar Principal Amount of that Debtholder Group, convene a meeting of the Debtholders of that Debtholder Group. If the Indenture Trustee fails to convene a meeting after 30 days of being duly required by the Issuer or such Debtholders, the Issuer or such Debtholders may themselves convene such meeting

and, in the case of a meeting called by such Debtholders, the notice calling such meeting may be signed by such Person as those Debtholders specify. Every such meeting shall be held in the City of Toronto or such other place in Ontario, Canada as the Indenture Trustee may in any case determine or approve.

(b) At least 7 days' prior notice of any meeting shall be given to the Debtholders of the applicable Debtholder Group to which such meeting relates and to the Issuer, unless the meeting has been called by the Issuer, and such notice shall state the date, time and the place the meeting is to be held and shall specify, in general terms, the nature of the business to be transacted. It shall not be necessary to specify in the notice the text of the resolutions to be passed. Subject to Section 10.01(c), notices shall be given in the manner set forth in Article XV and a copy thereof shall be delivered to the Indenture Trustee unless the meeting has been called by it. It shall not be necessary to specify in the notice of any adjournment of a meeting the nature of the business to be transacted at the adjourned meeting. The non-receipt of any such notice by a Debtholder shall not invalidate any resolution passed at such meeting.

(c) At any meeting of a Debtholders Group, subject as herein provided, a quorum shall consist of two or more Persons present in person or by proxy holding either personally or as proxies not less than 25% of the Outstanding Dollar Principal Amount of the Issuer Funding Obligations of the applicable Debtholder Group entitled to vote at such meeting. If a quorum is not present on the date for which the meeting is called within 30 minutes after the time fixed for the holding of such meeting, the meeting shall be adjourned to be held at a place and upon a date and at an hour to be fixed by the Indenture Trustee who shall give not less than 7 days' notice of the date and time to which such meeting is to be adjourned and at such adjourned meeting a quorum shall consist of the Debtholders of that Debtholder Group then and there represented in person or by proxy and entitled to vote at such meeting.

(d) An individual, who need not be a Debtholder, nominated in writing by the Indenture Trustee shall be chairman of the meeting (a "**Chairman**"). If no individual is so nominated or if the individual nominated is not present within 25 minutes after the time fixed for the holding of the meeting, the Debtholders and proxies for Debtholders present shall choose one of their number to be Chairman.

(e) Every question submitted to a meeting, except matters requiring an Extraordinary Resolution, shall be decided by a majority of the votes given on a show of hands or, if a poll shall be requested as hereinafter provided, by a majority of the votes cast on the poll (in either case, an "**Ordinary Resolution**") and shall be binding on all Debtholders of the Debtholder Group. On a show of hands, each Debtholder who is present, whether in person or by proxy, will have one vote for every $1,000 of Outstanding Dollar Principal Amount of applicable Issuer Funding Obligations of which he or she shall be the Debtholder. A poll shall be taken on every Extraordinary Resolution and otherwise whenever requested by a Debtholder or its proxy. On a poll, each Debtholder shall have one vote for every $1,000 of Outstanding Dollar Principal Amount of applicable Issuer Funding Obligations of

which he or she shall be the Debtholder. Votes may be given in person or by proxy and a proxy need not be a Debtholder. If at any meeting a poll is so demanded as aforesaid on the election of a Chairman or on a question of adjournment, it shall be taken forthwith. If at any meeting a poll is so demanded on any other question, or an Extraordinary Resolution is to be voted upon, a poll shall be taken in such manner and either at once or after an adjournment as the Chairman directs. The result of a poll shall be deemed to be the decision of the meeting at which the poll was demanded and shall be binding on all Debtholders of the applicable Debtholder Group. In the case of joint Registered Noteholders, any one of them present in person or by proxy at the meeting may vote in the absence of the other or others but, if more than one of them is present in person or by proxy, they shall vote together in respect of the Notes of which they are joint Registered Noteholders.

10.02 Powers Exercisable by Ordinary Resolution and Extraordinary Resolution

(a) In addition to any powers hereinbefore given, Debtholders of a Class, Series or Tranche of Issuer Funding Obligations shall by Ordinary Resolution have the power to:

(i) require the Indenture Trustee (subject to receipt by the Indenture Trustee of reasonable funding and indemnity) to exercise or refrain from exercising any of the powers conferred upon it by this Indenture insofar as they apply solely to such Class, Series or Tranche or by the Related Funding Obligation Agreement;

(ii) sanction, insofar as they apply to the Class, Series or Tranche, the release of the Issuer from its covenants and obligations hereunder;

(iii) subject to the provisions of this Indenture or of the Related Funding Obligation Agreement, sanction any change whatsoever to any provision of the Issuer Funding Obligations of such Class, Series or Tranche which shall be agreed to by the Issuer and any modification, alteration, abrogation, compromise or arrangement of or in respect of the rights of the Debtholders of such Class, Series or Tranche or the Indenture Trustee against the Issuer, whether such rights shall arise under the provisions of this Indenture or otherwise;

(iv) subject to the provisions of this Indenture, assent to any modification of or change in or addition to or omission from the provisions contained in this Indenture, a Related Supplemental Indenture or any instrument ancillary or supplementary hereto or thereto, in each case, insofar as they apply to the Class, Series or Tranche, which shall be agreed to by the Issuer and to authorize the Indenture Trustee to concur in and execute any deed, instrument or agreement embodying any such modification, change, addition or omission or any other deeds, documents or writings authorized by such Ordinary Resolution; provided that no such assent shall be

necessary for any modification of or change in or addition otherwise permitted hereunder or under a Related Supplemental Indenture; and

(v) take any other Action authorized by this Indenture or a Related Supplemental Indenture to be taken by Ordinary Resolution of the Debtholders of a Class, Series or Tranche of Issuer Funding Obligations.

(b) In addition to any powers hereinbefore given, Debtholders of the Controlling Class Obligations shall by Extraordinary Resolution have the power to:

(i) after the Security Interest has become enforceable, authorize the Indenture Trustee to accept, in satisfaction or partial satisfaction, all or any part of the Collateral;

(ii) after the Security Interest has become enforceable, sanction the selling of the Collateral or any part thereof or interest therein;

(iii) after the Security Interest has become enforceable, authorize the Indenture Trustee or any other Person to bid or tender at any sale of the Collateral or any part thereof and take such actions in connection with such sale as it determines to be in the best interests of all Debtholders of Controlling Class Obligations;

(iv) assent to any compromise or arrangement by the Issuer with any creditor, creditors or class or classes of creditors or with the holders of any securities of the Issuer whose claims are payable from the Collateral;

(v) restrain any Debtholder from taking or instituting any suit, action or proceeding for the purpose of realizing on the Collateral or for the execution of any trust or power hereunder or for the appointment of a liquidator, receiver or trustee in bankruptcy or to have the Issuer liquidated or for any other remedy hereunder and to direct such Debtholder to waive any Event of Default on which any suit or proceeding is founded;

(vi) require the Indenture Trustee (subject to receipt by the Indenture Trustee of reasonable funding and indemnity) to exercise or refrain from exercising any other powers conferred upon it by this Indenture of general application to all Classes of Issuer Funding Obligations, including the exercise of any rights of the Issuer under any of the Program Agreements upon the occurrence and during the continuance of an Event of Default, or cancel any declaration of acceleration made pursuant to Article VIII upon such terms and/or conditions as may be decided;

(vii) authorize the Indenture Trustee, in the event of the Issuer making an authorized assignment or proposal or in the event of an administrator, trustee, receiver or liquidator being appointed under any applicable bankruptcy or insolvency legislation for and on behalf of all Specified Creditors and, in addition to any claim or debt provided or made for its own

account as Indenture Trustee hereunder, to file and prove a claim or debt against the Issuer or its property for an amount equivalent to the aggregate amount which may be payable in respect of all Issuer Funding Obligations, to value the Collateral, and to vote such claim or debt at meetings of creditors and generally act for and on behalf of all Debtholders in such proceedings as such Extraordinary Resolution may provide;

(viii) appoint a committee with power and authority (subject to such limitations, if any, as may be prescribed in such Extraordinary Resolution) to exercise, and to direct the Indenture Trustee to exercise, on behalf of all Debtholders of Controlling Class Obligations, such of the powers of such Debtholders as are exercisable by Extraordinary Resolution or other resolution as shall be included in the Extraordinary Resolution appointing the committee. The Extraordinary Resolution making such appointment may provide for payment of the expenses and disbursements of and compensation to such committee from the Collateral. Such committee shall consist of such number of Persons as shall be prescribed in the Extraordinary Resolution appointing it and the members need not themselves be Debtholders. Each such committee may elect a chairman and may make regulations respecting its quorum, the calling of its meetings, the filling of vacancies occurring in its number and its procedures generally. Such regulations may provide that the committee may act at a meeting at which a quorum is present or may act by minutes signed by the number of members thereof necessary to constitute a quorum. All acts of any such committee within the authority delegated to it shall be binding upon all Debtholders. Neither the committee nor any member thereof shall be liable for any loss arising from or in connection with any action taken or omitted to be taken by them in good faith;

(ix) take any other action authorized by this Indenture to be taken by Extraordinary Resolution; and

(x) permit the creation of any Lien on the Collateral that is prior to the Security Interest.

(c) The foregoing powers shall be deemed to be several and cumulative and not dependent on each other and the exercise of one or more of such powers, or any combination of such powers, from time to time, shall not be deemed to exhaust the rights of the Debtholders to exercise such power or powers, or combinations of powers, thereafter from time to time. No powers exercisable by Extraordinary Resolution shall derogate in any way from any rights of the Issuer under or pursuant to this Indenture. The Issuer shall give the Rating Agency notice of any Extraordinary Resolution adopted.

10.03 Extraordinary Resolution

An Extraordinary Resolution, adopted in accordance with the provisions hereof, shall be binding upon each and every Debtholder and each other Specified Creditor and their respective

heirs, executors, administrators, successors and assigns, whether present or absent, and the Indenture Trustee (subject to the provisions for funding and its indemnity herein contained) shall be bound to give effect thereto accordingly.

Except as expressly provided to the contrary in this Indenture, no action shall be taken at a meeting of the Debtholders of a Debtholder Group which changes any provision of this Indenture or changes or prejudices the exercise of any right of any Debtholder except by Extraordinary Resolution of the Debtholders of Controlling Class Obligations.

10.04 Declaration by Chairman of Result of Vote

At any meeting of the Debtholders of any Debtholder Group in cases where no poll is required or requested, a declaration made by the Chairman that a resolution has been carried, or carried by any particular majority, or lost, shall be conclusive evidence thereof.

10.05 Minutes

Minutes of all resolutions and proceedings at every such meeting, as aforesaid, shall be made and duly entered in books to be provided from time to time for that purpose by an agent of the Issuer at the expense of the Issuer and any such minutes, as aforesaid, if signed by the Chairman of the meeting at which such resolutions were passed or proceedings had shall be *prima facie* evidence of the matters therein stated and, until the contrary is proved, every such meeting in respect of the proceedings of which minutes shall have been made shall be deemed to have been duly held and convened and all resolutions passed or proceedings had thereat to have been duly passed and had.

10.06 Signed Instruments

Any resolution or instrument signed in one or more counterparts by (a) Debtholders holding not less than 50% of the aggregate Outstanding Dollar Principal Amount of Issuer Funding Obligations of a Debtholder Group, in the case of matters capable of being decided by Ordinary Resolution, and (b) Debtholders holding not less than 66⅔% of the aggregate Outstanding Dollar Principal Amount of Issuer Funding Obligations of all Controlling Class Obligations in the case of matters required to be decided by Extraordinary Resolution, shall, in either case, have the same force and effect as a resolution duly passed at a meeting of such Debtholders by the affirmative vote of all of the votes cast upon a poll. Notice of any Ordinary Resolution or Extraordinary Resolution passed in accordance with this Section 10.06 shall be given by the Indenture Trustee to all applicable Debtholders within 30 days of the date on which such Ordinary Resolution or Extraordinary Resolution was passed.

10.07 Persons Who May Attend

Each Debtholder, by their respective officers, directors, employees, and the legal advisers of such parties, may attend any meeting of Debtholders.

10.08 Binding Effect of Resolutions

Every Ordinary Resolution and every Extraordinary Resolution passed in accordance with the provisions of this Article X at a meeting of Debtholders of a Debtholder Group will be binding upon all of the Debtholders of such Debtholder Group whether present at or absent from such meeting, and every instrument in writing signed by Debtholders in accordance with Section 10.06 will be binding upon all of the Debtholders of such Debtholder Group, whether signatories thereto or not, and the Indenture Trustee will be bound to give effect accordingly to every such Ordinary Resolution, Extraordinary Resolution and instrument in writing. For greater certainty, any Extraordinary Resolution shall bind all Debtholders in accordance with Section 10.03.

10.09 Notes Regarded as Not Outstanding for Certain Purposes

If, in the opinion of the Indenture Trustee and upon receipt of an Issuer Certificate in respect of the following, any business to be transacted at any meeting of Debtholders or any action to be taken or power exercised by instrument in writing under Section 10.06 does not materially adversely affect the rights of the Debtholders of one or more particular Class, Series or Tranche of Issuer Funding Obligations, the provisions of this Article X shall apply as if the Issuer Funding Obligations of that Class, Series or Tranche were not outstanding, and no notice of any such meeting need be given to the Debtholders of that Class, Series or Tranche.

ARTICLE XI
SUPPLEMENTAL INDENTURES

11.01 Supplemental Indentures and Amendments Without Consent of Specified Creditors

Without the consent of Specified Creditors but with 10 Business Days' prior notice to each Rating Agency, the Issuer and the Indenture Trustee, at any time and from time to time, and upon delivery by the Issuer to the Indenture Trustee of an Issuer Certificate to the effect that the Issuer reasonably believes that such amendment will not have an Adverse Effect and is not reasonably expected to have an Adverse Effect at any time in the future, the Issuer may amend this Indenture, including any Supplemental Indenture or enter into one or more Supplemental Indentures, in form satisfactory to the Indenture Trustee, for any of the following purposes:

(a) to evidence the succession or successive successions of another Financing Entity to the Issuer, and the assumption by any such successor of the covenants of the Issuer herein and in the Notes; or

(b) to add to the covenants of the Issuer, or to surrender any right or power herein conferred upon the Issuer by the Issuer, for the benefit of Debtholders of any or all Classes, Series or Tranches of Issuer Funding Obligations; or

(c) to cure any ambiguity, to correct or supplement any provision herein which may be inconsistent with any other provision herein, to correct a clear clerical or administrative error, or to make any other provisions with respect to matters or questions arising under this Indenture; or

(d) to provide for the issuance of any Series or Tranche of Notes as provided in Article IV and Article V and to set forth the terms thereof, and/or to add to the rights of the Noteholders of any Class, Series or Tranche; or

(e) to evidence and provide for the acceptance of appointment by another corporation as a successor Indenture Trustee hereunder; or

(f) to add any additional Events of Default in respect of any or all Classes, Series or Tranches of Issuer Funding Obligations; or

(g) to provide for the consolidation of any Financing Entity and the Issuer into a single Person or the transfer of assets in any Financing Entity to the Issuer; or

(h) if IESO is replaced under the Master Transfer and Servicing Agreement as Servicer, to make any necessary changes to this Indenture or any other related document; or

(i) to provide for additional forms of Credit Enhancement for any Class, Series or Tranche of Issuer Funding Obligations; or

(j) to comply with any regulatory, accounting, securities or tax laws, rules, regulations or requirements, or changes to Rating Agency ratings criteria; or

(k) to enable the Issuer to file a registration statement (and any related exhibits thereto) for the offering of securities registered under the U.S. Securities Act and to comply with Regulation AB (including, without limitation, ongoing reporting obligations thereunder); or

(l) to qualify for sale treatment under generally accepted accounting principles.

Additionally, notwithstanding any provision of this Article XI to the contrary and in addition to clauses (a) through (l) above, the Issuer and the Indenture Trustee may amend this Indenture, including any Supplemental Indenture, without the consent of any Specified Creditor, to modify, eliminate or add to the provisions of this Indenture (i) to facilitate compliance with any amendment to any change of law or regulation which applies to the Issuer or the transactions governed by the Program Agreements, or (ii) to cause the provisions hereof to conform to or be consistent with or in furtherance of the statements made with respect to this Indenture in any applicable offering document; in each case, provided that the Issuer shall deliver to the Indenture Trustee an Issuer Certificate to the effect that (A) the Issuer reasonably believes that such amendment will not have an Adverse Effect and is not reasonably expected to have an Adverse Effect at any time in the future or (B) such amendment is required to remain in compliance with any change of law or regulation which applies to the Issuer or the transactions governed by the Program Agreements, or such amendment is required to cause the provisions hereof to conform to or be consistent with or in furtherance of the statements made with respect to this Indenture in any applicable offering document.

Additionally, notwithstanding any provision of this Article XI to the contrary and in addition to clauses (a) through (l) above and the immediately preceding paragraph, this Indenture, including any Supplemental Indenture, may also be amended by the Issuer and the Indenture

Trustee, without the consent of any Specified Creditor, for the purpose of (i) adding any provisions to, or changing in any manner or eliminating any of the provisions of, this Indenture or any Supplemental Indenture or (ii) modifying in any manner the rights of the Specified Creditors under this Indenture or any Supplemental Indenture; provided, however, that (A) the Issuer shall deliver to the Indenture Trustee an Issuer Certificate to the effect that the Issuer reasonably believes that such amendment will not have an Adverse Effect and is not reasonably expected to have an Adverse Effect at any time in the future, and (B) the Rating Agency Condition shall be satisfied.

Additionally, notwithstanding any provision of this Article XI to the contrary and in addition to clauses (a) through (l) above and the immediately preceding paragraphs, this Indenture, including any Supplemental Indenture, may also be amended by the Issuer and the Indenture Trustee, without the consent of any Specified Creditor, to provide for those changes necessary for compliance with securities law requirements or banking laws or regulations; provided, however, that (i) the Issuer shall deliver to the Indenture Trustee an Issuer Certificate to the effect that the Issuer reasonably believes that such amendment will not have an Adverse Effect and is not reasonably expected to have an Adverse Effect at any time in the future, and (ii) the Rating Agency Condition shall be satisfied.

The Issuer shall send a copy of any amendment to this Indenture or any Supplemental Indenture to each Rating Agency.

The Indenture Trustee may, but shall not be obligated to, enter into any amendment which adversely affects the Indenture Trustee's rights, duties, benefits, protections, privileges or immunities under this Indenture or otherwise.

11.02 Supplemental Indentures and Amendments with Consent of Debtholders

In addition to any amendment permitted pursuant to Section 11.01, with prior notice to each Rating Agency and the consent of Debtholders of each Class, Series or Tranche of Issuer Funding Obligations affected by such amendment of this Indenture, including any Supplemental Indenture, by Ordinary Resolution delivered to the Issuer and the Indenture Trustee, the Issuer and the Indenture Trustee may enter into an amendment of this Indenture or any Supplemental Indenture for the purpose of adding any provisions to, or changing in any manner or eliminating any of the provisions of, this Indenture or of modifying in any manner the rights of the Debtholders of each such Class, Series or Tranche of Issuer Funding Obligations under this Indenture or any Supplemental Indenture; provided, however, that no such amendment of this Indenture or any Supplemental Indenture will, without the consent of each Debtholder of Issuer Funding Obligations affected thereby:

(a) change the scheduled payment date of any payment of interest on any Issuer Funding Obligation, or change a Principal Payment Due Date or Principal Payment Default Date of any Issuer Funding Obligation;

(b) reduce the principal amount of, or the interest rate on any Note, or change the method of computing the Outstanding Dollar Principal Amount, the Outstanding Currency Specific Dollar Principal Amount or the Outstanding Dollar Principal Amount in a manner that is adverse to any Debtholders;

(c) reduce the amount of a Discount Note payable upon its acceleration;

(d) reduce the percentage in Outstanding Dollar Principal Amount of Issuer Funding Obligations of any Class, Series or Tranche, the consent of whose holders is required for any such amendment, or the consent of whose holders is required for any waiver of compliance with the provisions of this Indenture or of defaults hereunder and their consequences, provided for in this Indenture;

(e) modify any of the provisions of this Section 11.02 or Section 8.03, except to increase any percentage of Debtholders required to consent to any such amendment or to provide that other provisions of this Indenture cannot be modified or waived without the consent of the Debtholders affected thereby;

(f) change any Place of Payment where any principal of, or interest on, any Note is payable, unless otherwise provided in the Related Supplemental Indenture; or

(g) change the method of computing the amount of principal of, or interest on, any Note on any date.

An amendment of this Indenture or a Supplemental Indenture which changes or eliminates any covenant or other provision of this Indenture which has expressly been included solely for the benefit of one or more particular Classes, Series or Tranches of Issuer Funding Obligations, or which modifies the rights of the Debtholders of such Class, Series or Tranche with respect to such covenant or other provision, will be deemed not to affect the rights under this Indenture of the Debtholders of any other Class, Series or Tranche of Issuer Funding Obligations.

It will not be necessary for any Ordinary Resolution under this Section 11.02 to approve the particular form of any proposed amendment or Supplemental Indenture, but it will be sufficient if such Ordinary Resolution will approve the substance thereof.

11.03 Execution of Amendments and Supplemental Indentures

In executing or accepting the additional trusts created by any amendment of this Indenture or Supplemental Indenture permitted by this Article XI or the modifications thereby of the trusts created by this Indenture, the Indenture Trustee will be provided with, and (subject to Section 9.01) will be fully protected in relying upon, an Opinion of Counsel stating that the execution of such amendment or Supplemental Indenture is authorized or permitted by this Indenture and that all conditions precedent thereto have been satisfied. The Indenture Trustee may, but will not (except to the extent required in the case of an amendment or Supplemental Indenture entered into under subsection 11.01(e)) be obligated to, enter into any such amendment or Supplemental Indenture which affects the Indenture Trustee's own rights, duties or immunities under this Indenture or otherwise.

11.04 Effect of Amendments and Supplemental Indentures

Upon the execution of any amendment of this Indenture or any Supplemental Indenture under this Article XI, this Indenture and/or such Supplemental Indenture will be modified in accordance therewith with respect to each Class, Series or Tranche of Issuer Funding Obligations

affected thereby, or all Issuer Funding Obligations, as the case may be, and such amendment or Supplemental Indenture will form a part of this Indenture and such Supplemental Indenture for all purposes; and every holder of Issuer Funding Obligations theretofore or thereafter incurred and every other Specified Creditor will be bound thereby to the extent provided therein.

11.05 Reference in Notes to Supplemental Indentures

Notes authenticated and delivered after the execution of any amendment of this Indenture or any Supplemental Indenture pursuant to this Article XI may, and will if required by the Indenture Trustee, bear a notation in form approved by the Indenture Trustee as to any matter provided for in such amendment or Supplemental Indenture. If the Issuer will so determine, new Notes so modified as to conform, in the opinion of the Indenture Trustee and the Issuer, to any such amendment or Supplemental Indenture may be prepared and executed by the Issuer and authenticated and delivered by the Indenture Trustee in exchange for Outstanding Notes.

ARTICLE XII
REPRESENTATIONS AND WARRANTIES OF THE ISSUER

12.01 Representations and Warranties of the Issuer

The Issuer hereby represents and warrants to the Indenture Trustee and shall be deemed to represent and warrant to the Indenture Trustee on the issuance of Notes of any particular Class, Series or Tranche hereunder, and upon each Borrowing under the applicable Funding Obligation Agreement, that:

(a) The Issuer is a Financing Entity.

(b) The indebtedness incurred pursuant to each issuance of Notes and each Borrowing is a Funding Obligation.

(c) The Issuer (i) is a trust duly constituted and validly existing under the laws of the Province of Ontario, (ii) is duly qualified to carry on its business in each jurisdiction in which it carries on business, (iii) has the power and authority to enter into and perform its obligations under this Indenture and the other Program Agreements executed by it and all instruments and agreements delivered pursuant hereto, and thereto and to own its property and carry on its business as currently conducted including, without limitation, the power and authority and legal right to acquire Investment Interests, and (iv) has obtained all material licences, permits and approvals from all Governmental Authorities required in respect of its business.

(d) The execution, delivery and performance of this Indenture, and at the time it enters into such document, the other Program Agreements executed by it and every instrument or agreement delivered pursuant hereto and thereto has been or will be duly authorized by all requisite action and this Indenture and such other Program Agreements, instruments and agreements have been or will be duly executed and delivered by the Issuer and constitute valid and binding obligations of the Issuer enforceable against the Issuer in accordance with their respective terms subject to (i) applicable bankruptcy, insolvency, moratorium and similar laws at the time in

effect affecting the rights of creditors generally, and (ii) equitable principles which may limit the availability of certain remedies, including the remedy of specific performance.

(e) There are no actions, suits or proceedings pending or, to the knowledge of the Issuer, threatened against or affecting the Issuer at law or in equity or before or by any Governmental Authority, or before any arbitrator of any kind, which would result in any material adverse change in the business, operations, prospects, properties, assets or condition, financial or otherwise, of the Issuer or in the ability of the Issuer to perform its obligations under this Indenture, the other Program Agreements executed by it or any agreement or instrument delivered pursuant hereto or thereto; and the Issuer is not aware of any existing ground on which such action, suit or proceeding might be commenced with any reasonable likelihood of success or of any default with respect to any judgment, order, writ, injunction, decree, award, rule or regulation of any court, arbitrator or Governmental Authority, which, either separately or in the aggregate, would result in any such material adverse change.

(f) The Issuer is not a party to any agreement or instrument which materially adversely affects its ability to perform its obligations under this Indenture, the other Program Agreements executed by it or any agreements or instruments delivered pursuant hereto or thereto or materially adversely affects the business, operations, prospects, properties, assets or condition, financial or otherwise of the Issuer.

(g) The Issuer is not subject to any restriction or any judgment, order, writ, injunction, decree, award, rule or regulation which materially adversely affects, or in the future may materially adversely affect, the business, operations, prospects, properties, assets or condition, financial or otherwise of the Issuer or its ability to perform its obligations under this Indenture, the other Program Agreements executed by it or any agreements or instruments delivered pursuant hereto or thereto.

(h) Neither the execution nor delivery of this Indenture, the other Program Agreements executed by it or any agreements or instruments delivered pursuant hereto or thereto, the consummation of the transactions herein and therein contemplated, nor compliance with the terms, conditions and provisions hereof or thereof conflicts with or will conflict with, or results or will result in any breach of, or constitutes a default under, any of the provisions of the Declaration of Trust or any agreements or instruments to which the Issuer is a party or by which it or any of its property and assets are bound, or results or will result in the creation or imposition of any Lien of any nature whatsoever upon any of the property or assets of the Issuer.

(i) No consent, approval or authorization of, or declaration, registration, filing or qualification with, or giving of notice to, or taking of any other action in respect of, any Governmental Authority on the part of the Issuer is required in connection with the execution and delivery of this Indenture, the other Program Agreements executed by it or any agreements or instruments delivered pursuant hereto or thereto or the consummation of any of the transactions contemplated hereby or in

connection with the enforcement of this Indenture, the other Program Agreements executed by it or any agreements or instruments delivered pursuant hereto or thereto (except those which have been obtained or deemed to have been obtained).

ARTICLE XIII
COVENANTS OF THE ISSUER

13.01 Payment of Principal and Interest

With respect to each Class, Series or Tranche of Issuer Funding Obligations, the Issuer will duly and punctually pay the principal of and interest on such Issuer Funding Obligations in accordance with their terms, this Indenture and any Related Funding Obligation Agreement, and will duly comply with all the other terms, agreements and conditions contained in, or made in this Indenture and any Funding Obligation Agreement.

13.02 Use of Proceeds

The Issuer will use the proceeds of Notes and Borrowings solely for: (a) the acquisition by the Issuer of an Investment Interest; (b) the redemption, repayment or repurchase of any existing Issuer Funding Obligations; (c) the funding of Issuer Accounts; and (d) the payment of transaction fees and expenses in connection with the incurrence of Issuer Funding Obligations.

13.03 Maintenance of Office or Agency

The Issuer will maintain an office or agency in each Place of Payment where Notes may be presented or surrendered for payment, where Notes may be surrendered for transfer or exchange and where notices and demands to or upon the Issuer in respect of the Notes and this Indenture may be served. The Issuer will give prompt written notice to the Indenture Trustee of the location, and of any change in the location, of such office or agency. If at any time the Issuer will fail to maintain such office or agency or will fail to furnish the Indenture Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office of the Indenture Trustee, and the Issuer hereby appoints the Indenture Trustee its agent to receive all such presentations, surrenders, notices and demands.

The Issuer may also from time to time designate one or more other offices or agencies where the Notes of one or more Classes, Series or Tranches may be presented or surrendered for any or all of such purposes specified above and may constitute and appoint one or more Paying Agents for the payments of such Notes, in one or more other cities, and may from time to time rescind such designations and appointments; provided, however, that no such designation, appointment or rescission shall in any matter relieve the Issuer of its obligations to maintain an office or agency in each Place of Payment for Notes of any Class, Series or Tranche for such purposes. The Issuer will give prompt written notice to the Indenture Trustee of any such designation or rescission and of any change in the location of any such other office or agency. Unless and until the Issuer rescinds one or more of such appointments, the Issuer hereby appoints the Indenture Trustee, as its Paying Agent in Toronto, Ontario with respect to all Series, Classes and Tranches of Notes having a Place of Payment in the City of Toronto, Ontario.

13.04 Legal Existence

The Issuer will do or cause to be done all things necessary to preserve and keep in full force and effect its legal existence and maintain its status as a Financing Entity.

13.05 Separateness Covenants

The Issuer will take all reasonable steps to maintain the Issuer's identity as a distinct entity with assets and liabilities distinct from those of the Manager and any of its Affiliates. Without limiting the generality of the foregoing and in addition to the other covenants set forth herein, the Issuer shall:

(a) not identify the offices of the Manager or any Affiliate thereof as its offices (by signage or otherwise);

(b) not identify the telephone number of the Manager as its telephone number and it will not utilize the stationery, invoices or cheques of the Manager;

(c) conduct all transactions with the Manager strictly on an arm's length basis and in good faith, allocate all overhead expenses for items shared between the Issuer and the Manager on the basis of actual use to the extent practicable and, to the extent such allocation is not practicable, on a basis reasonably related to actual use;

(d) conduct its affairs strictly in accordance with the Declaration of Trust, and observe all necessary, appropriate and trust formalities;

(e) maintain the Issuer's books and records separate from those of the Manager or any Affiliate thereof and otherwise readily identifiable as its own assets rather than assets of the Manager or any Affiliate thereof;

(f) prepare its financial statements separately from those of the Manager and ensure that any consolidated financial statements of the Manager that include the Issuer have notes clearly stating that the Issuer is a separate entity;

(g) only maintain bank accounts or other depository accounts to which the Issuer alone is the account party (or where the Issuer Trustee or the Indenture Trustee will maintain them on behalf of the Issuer), and from which only the Issuer or its agent has the power to make withdrawals;

(h) pay all of the Issuer's operating expenses from the Issuer's own assets (including, for greater certainty, reimbursing the Manager for any such expenses);

(i) continuously maintain the resolutions, agreements and other instruments of the Issuer underlying the transactions described in the Program Agreements as official records of the Issuer separately identified and held apart from the records of the Manager;

(j) maintain its property in such a manner that it is not costly or difficult to segregate, ascertain or otherwise identify its individual assets from or against those of the Manager or any Affiliate thereof; and

(k) not become liable to any Person for any obligations of the Manager or any Affiliate thereof.

13.06 Compliance with Laws

The Issuer will comply with the requirements of all applicable laws, the noncompliance with which would, individually or in the aggregate, materially and adversely affect the ability of the Issuer to perform its obligations under the Program Agreements.

13.07 Performance of Obligations

(a) The Issuer will punctually perform and observe all of its obligations and agreements contained in this Indenture, the Declaration of Trust, the Master Transfer and Servicing Agreement, the other Program Agreements and in the instruments and agreements relating to the Collateral, including but not limited to filing or causing to be filed all PPSA financing statements and amendments thereto required to be filed by the terms of this Indenture in accordance with and within the time periods provided for herein.

(b) The Issuer (i) will diligently pursue any and all actions to enforce its rights under each instrument or agreement included in the Collateral and (ii) will not take any action and will use its best efforts not to permit any action to be taken by others that would release any Person from any of such Person's covenants or obligations under any such instrument or agreement or that would result in the amendment, hypothecation, subordination, termination or discharge of, or impair the validity or effectiveness of, any such instrument or agreement, except, in each case, as expressly provided in this Indenture, the Master Transfer and Servicing Agreement or any other Program Agreement.

(c) The Issuer will enforce the Servicer's compliance with and performance of all of the Servicer's material obligations under the Master Transfer and Servicing Agreement. The Issuer will enforce the Manager's compliance with and performance of all of the Manager's material obligations under the Management Agreement.

13.08 Funding Obligations

The Issuer will ensure that all indebtedness is incurred pursuant to and in accordance with Article V.

13.09 Financial Statements

The Issuer will deliver or cause to be delivered to the Indenture Trustee and the Rating Agencies within 140 days after the end of each fiscal year audited financial statements of the Issuer

for the fiscal year, including the balance sheet and statements of income, retained earnings and changes in financial position of the Issuer, and within 90 days after the end of each fiscal quarter, other than the fiscal quarter of the Issuer ending on the fiscal year end of the Issuer, unaudited financial statements of the Issuer for such fiscal quarter of the Issuer, including the balance sheet and statements of income, retained earnings and changes in financial position of the Issuer.

13.10 Statement as to Compliance

The Issuer will deliver to the Indenture Trustee and the Rating Agencies, on or before March 31 of each year, beginning in 2018, a written statement signed by a Responsible Officer of the Issuer stating that:

(a) a review of the activities of the Issuer during the prior year and of the Issuer's performance under this Indenture and under the terms of the Notes has been made under such Responsible Officer's supervision; and

(b) to the best of such Responsible Officer's knowledge, based on such review, the Issuer has complied in all material respects with all conditions and covenants under this Indenture throughout such year and that no Event of Default has occurred (without regard to any grace period or requirement of notice), or, if there has been a material default in the fulfillment of any such condition or covenant or an Event of Default has occurred (without regard to any grace period or requirement of notice), specifying each such default known to such Responsible Officer and the nature and status thereof.

13.11 Payment Instruction

Promptly after the receipt by the Issuer of each Monthly Report under the Master Transfer and Servicing Agreement, the Issuer will, in cooperation with the Manager, complete the Payment Instruction and deliver a copy thereof to the Indenture Trustee and the Paying Agent (if the Paying Agent is not the Indenture Trustee).

13.12 Notice of Events of Default

The Issuer agrees to give the Indenture Trustee and the Rating Agencies prompt written notice of (i) each Event of Default, (ii) each breach on the part of the Issuer or the Servicer of its respective obligations under the Master Transfer and Servicing Agreement, (iii) each breach on the part of the Manager of its obligations under the Management Agreement, and (iv) any default of the Issuer or a Derivative Counterparty under a Derivative Agreement.

13.13 Issuer To Furnish Indenture Trustee Names and Addresses of Specified Creditors

(a) The Issuer will furnish or cause to be furnished to the Indenture Trustee:

(i) not more than 15 days after each Record Date, in such form as the Indenture Trustee may reasonably require, a list of the names and addresses of the Registered Noteholders of such Classes, Series or Tranches as of such date, and

(ii) at such other times as the Indenture Trustee may request in writing, within 30 days after the receipt by the Issuer of any such request, a list of similar form and content as of a date not more than 15 days before the time such list is furnished;

provided, however, that so long as the Indenture Trustee is the Note Registrar, no such lists shall be required to be furnished.

(b) Upon written request from the Indenture Trustee, within 30 days after the receipt by the Issuer of any such request, the Issuer will furnish or cause to be furnished to the Indenture Trustee a list of the names and addresses of all other Specified Creditors.

13.14 Other Positive Covenants

The Issuer will:

(a) in the event that the Issuer shall be required to file tax returns, the Manager shall prepare or shall cause to be prepared such tax returns and shall provide such tax returns to the Issuer for signature at least five (5) Business Days before such tax returns are due to be filed. The Issuer, in accordance with the terms of each applicable Supplemental Indenture, shall also prepare or shall cause to be prepared all tax information required by applicable law to be distributed to any Noteholder and shall deliver such information to the Indenture Trustee at least 5 Business Days prior to the date it is required by applicable law to be distributed to any Noteholder. The Indenture Trustee, upon written request, will furnish the Manager with all such information known to the Indenture Trustee as may be reasonably requested and required in connection with the preparation of all tax returns of the Issuer;

(b) pay or cause to be paid all Taxes levied, assessed or imposed upon the Issuer and its property or any part thereof, as and when the same become due and payable; provided that the Issuer may protest the payment of any such Taxes if it is acting in good faith and if it either provides the Indenture Trustee with cash in an amount sufficient to satisfy the same or otherwise satisfies the Indenture Trustee that its interests are not prejudiced thereby and the Rating Agency Condition is satisfied;

(c) upon the written request of the Indenture Trustee, use reasonable commercial efforts, following any (i) termination or resignation of the Servicer, the Manager or the Paying Agent or, in each case, any successor thereof; or (ii) termination, non-renewal or expiry of a Liquidity Agreement or a Credit Enhancement Agreement (other than, in the latter case, a termination, non-renewal or expiry which occurs because neither party thereto has any further obligation thereunder), to appoint and enter into an agreement with a successor to such Servicer, Manager or Paying Agent, or replace or renew such Liquidity Agreement or Credit Enhancement Agreement, in form and substance the same as the applicable provisions in the previously existing Program Agreement and will notify the Indenture Trustee and the Rating Agencies of each such occurrence and new agreement, and will execute

and deliver all Supplemental Indentures and amendments hereto and all instruments of further assurance and other instruments and will take other and further action as the Indenture Trustee, relying on the advice of counsel, may consider necessary or advisable to assign and render subject to this Indenture any such agreement; and

(d) deliver or cause to be delivered to the Indenture Trustee and the Rating Agencies on a confidential basis (excepting only, on the part of the Rating Agencies, for purposes of rating the securities of the Issuer) (i) copies of all Program Agreements (including any amendments thereto) in effect from time to time; and (ii) such reports and other information relating to the conduct of the business and affairs of the Issuer as the Indenture Trustee and the Rating Agencies may reasonably require including, without limitation, information pertaining to any actual or anticipated Event of Default or other event which could reasonably be anticipated to have a material adverse effect on the affairs of the Issuer.

13.15 Rule 144A Information

For so long as Notes of any Class, Series or Tranche are "restricted securities" within the meaning of Rule 144(a)(3) under the Securities Exchange Act, the Issuer agrees to provide to any Noteholder of such Class, Series or Tranche and to any prospective purchaser of Notes designated by such Noteholder, upon the request of such Noteholder or prospective purchaser, any information required to be provided to such Noteholder or prospective purchaser to satisfy the conditions set forth in Rule 144A(d)(4) under the Securities Exchange Act.

13.16 Further Instruments and Acts

Upon request of the Indenture Trustee or as necessary, the Issuer will execute and deliver such further instruments and do such further acts (including, but not limited to, disclosing or causing to be disclosed information) as may be reasonably necessary or proper to carry out more effectively the purpose of this Indenture.

13.17 No Other Business

The Issuer will not engage in any business other than as permitted under the Declaration of Trust or the other Program Agreements and activities ancillary thereto.

13.18 Amendments to Program Agreements

(a) The Issuer will not:

(i) amend, supplement, modify, restate or replace, or waive or consent to a postponement of compliance with the terms and conditions on the part of any other party to, any of the Funding Obligation Agreements (other than this Indenture and Derivative Agreements) if any such supplementation, amendment, modification, restatement or replacement, or waiver or consent, could reasonably be considered to be materially prejudicial to the rights or interests of any Specified Creditor, except as expressly permitted

by such Specified Creditor, and unless the Rating Agency Condition is satisfied; or

(ii) consent, if consent is required, to the resignation of the Manager under the Management Agreement unless the Rating Agency Condition is satisfied.

(b) The Issuer will not amend the Declaration of Trust if such amendment would have an Adverse Effect or would reasonably be expected to have an Adverse Effect at any time in the future; provided that if an amendment would have, or would reasonably be expected to have, an Adverse Effect, such amendment may only be made with the consent of the Debtholders affected thereby, acting pursuant to an Ordinary Resolution.

13.19 Issuer May Consolidate, Etc., Only on Certain Terms

The Issuer shall not consolidate or merge with or into any other Person, or sell, convey, exchange, transfer or otherwise dispose of any of its properties or assets included in the Collateral to any Person (in this Section 13.19, a "**transaction**"), unless:

(a) the Person (if other than the Issuer) formed by or surviving the consolidation or merger, or the Person that acquires by conveyance or transfer the properties and assets of the Issuer the conveyance or transfer of which is restricted, as applicable, shall: (i) be a Financing Entity, (ii) be organized and existing under the laws of Canada or any province or territory thereof, (iii) not be a Non-resident, (iv) not be subject to regulation as an "investment company" under the Investment Company Act, (v) expressly assume, pursuant to an assignment and/or assumption agreement or supplement executed and delivered to the Indenture Trustee, in a form satisfactory to the Indenture Trustee, the due and punctual payment of all Obligations Secured then outstanding and the performance or observance of every agreement and covenant of the Issuer in this Indenture and the other Program Agreements to which the Issuer is a party; and (vi) in the case of a conveyance or transfer only, expressly agree, by means of such assignment and/or assumption agreement or supplement, that (A) all right, title and interest so conveyed or transferred is subject and subordinate to the Security Interest, and (B) it shall make all filings required by applicable securities laws in connection with the Notes;

(b) immediately after giving effect to such transaction, no Event of Default shall have occurred and be continuing;

(c) the Issuer shall have delivered to the Indenture Trustee an Issuer Certificate and an Opinion of Counsel each stating that (i) such transaction and the agreements delivered in connection therewith comply with this Section 13.19, (ii) all conditions precedent in this Section 13.19 relating to such transaction have been complied with, and (iii) each agreement delivered in connection with such transaction has been duly authorized, executed and delivered, and is valid, binding and enforceable against the surviving Person or transferee, as applicable;

(d) the Rating Agency Condition shall have been satisfied with respect to such transaction; and

(e) any action that is necessary to maintain the Security Interest shall have been taken.

13.20 Successor Substituted

Upon any consolidation or merger, or any conveyance or transfer of the properties and assets of the Issuer substantially as an entirety in accordance with Section 13.19, the Person formed by or surviving such consolidation or merger (if other than the Issuer) or the Person to which such conveyance or transfer is made shall succeed to, and be substituted for, and may exercise every right and power of, the Issuer under this Indenture with the same effect as if such Person had been named as the Issuer herein. In the event of any such conveyance or transfer, the Person named as the Issuer in the first paragraph of this Indenture or any successor which shall theretofore have become such in the manner prescribed in this Section 13.20 shall be released from its obligations under this Indenture as issued immediately upon the effectiveness of such conveyance or transfer.

13.21 Guarantees, Loans, Advances and Other Liabilities

Except as contemplated by this Indenture or the Declaration of Trust, the Issuer shall not make any loan or advance or credit to, or guarantee (directly or indirectly or by an instrument having the effect of assuring another's payment or performance on any obligation or capability of so doing or otherwise), endorse or otherwise become contingently liable, directly or indirectly, in connection with the obligations, stocks or dividends of, or own, purchase, repurchase or acquire (or agree contingently to do so) any stock, obligations, assets or securities of, or any other interest in, or make any capital contribution to, any other Person.

13.22 Capital Expenditures

The Issuer shall not make any expenditure (by long-term or operating lease or otherwise) for capital assets.

13.23 Restricted Payments

The Issuer is permitted to declare or make payable any amounts to the owner of units in the Issuer as permitted or in accordance with the Declaration of Trust, and redeem, purchase, retire or otherwise acquire for value any units in the Issuer, provided that the Issuer may only satisfy the distribution declared or made payable, or the redemption or purchase price of any units so redeemed, purchased, retired or otherwise acquired, in cash or property to the extent that cash or property is available for such purpose, subject to Sections 7.04 and 8.13. For greater certainty, if the Issuer is restricted from satisfying the foregoing amounts in cash or property pursuant to the provisions of this Section, then the Issuer shall satisfy such amounts through the issuance of additional units and/or a promissory note to its unitholders in accordance with the Declaration of Trust. The Issuer Trustee is permitted to make or cause to be made payments to the Indenture Trustee pursuant to Sections 9.05 and 13.26.

13.24 No Borrowing

The Issuer will not issue, incur, assume, guarantee or otherwise become liable, directly or indirectly, for any additional indebtedness, except for Funding Obligations and pursuant to the Program Agreements.

13.25 Other Negative Covenants

The Issuer will not:

(a) claim any credit on, or make any deduction from the principal or interest payable in respect of, the Notes or Borrowings (other than amounts withheld or deducted as described in Section 16.02);

(b) permit the validity or effectiveness of this Indenture to be impaired, or permit the Security Interest to be amended, hypothecated, subordinated, terminated or discharged, or permit any Person to be released from any covenants or obligations hereunder with respect to any Program Agreements except as may be expressly permitted hereby;

(c) permit any Lien (other than Permitted Liens) to be created on or extend to or otherwise arise upon or burden the Collateral or any part thereof or any interest therein or the proceeds thereof;

(d) sell, transfer, exchange or otherwise dispose of any of the Collateral except as may be expressly permitted hereby;

(e) release any security or guarantee in respect of the Collateral;

(f) voluntarily dissolve or liquidate; or

(g) take any action that would cause it to be treated as engaged in a "trade or business within the United States" within the meaning of applicable U.S. tax law interpreting section 864 of the Internal Revenue Code or its successor or predecessor provisions.

13.26 Indenture Trustee May Perform Covenants

If the Issuer fails to perform any of its covenants herein contained, the Indenture Trustee may, subject to the receipt of indemnification and funding reasonably acceptable to the Indenture Trustee as provided in Section 9.02(d), itself perform the covenant if the covenant is capable of being performed by the Indenture Trustee and, if the covenant requires the payment or expenditure of money, the Indenture Trustee may make the payment or expenditure with its own funds or with money borrowed by or advanced to it for such purpose, but will be under no obligation to do so; and all sums so expended or advanced will bear interest at the rate of interest charged to the Indenture Trustee by its bankers from the date of expenditure until repayment and will (together with such interest) be paid by the Issuer upon demand and will until paid form part of the Obligations Secured and constitute a Lien on the Collateral to which such covenant related in priority to the Security Interest and will be payable out of any funds coming into possession of the

Indenture Trustee hereunder. No performance or payment will be deemed to relieve the Issuer from the consequences of the occurrence of any Event of Default hereunder.

ARTICLE XIV
MANAGEMENT AGREEMENT AND CREDIT ENHANCEMENT AGREEMENTS

14.01 Management Agreement

The Indenture Trustee acknowledges that the Issuer has entered into the Management Agreement which provides, among other things, for the provision of certain services and the performance by the Manager of certain obligations of the Issuer under this Indenture connected with the Issuer Investment Interest, the incurrence of Issuer Funding Obligations and all registrations required pursuant to Section 4.05. Accordingly, any obligation of the Issuer hereunder performed by the Manager on behalf of the Issuer will be deemed to have been performed by the Issuer and any payments referred to hereunder received or received and applied against the Issuer Funding Obligations by the Manager on behalf of the Issuer will be deemed to have been received or received and applied by the Issuer. The Indenture Trustee may act and rely on any instrument or report referred to hereunder prepared by the Manager on behalf of the Issuer as if the instrument or report had been prepared by the Issuer.

14.02 Credit Enhancement Agreements

The Indenture Trustee acknowledges that the Issuer may enter into one or more Credit Enhancement Agreements which provide, among other things, for the right of the Issuer, the Indenture Trustee or the Manager, as attorney for the Issuer, to make drawings on Credit Enhancers for the purpose of paying maturing Issuer Funding Obligations and repaying Borrowings under Liquidity Agreements. The Indenture Trustee hereby appoints the Manager as the Indenture Trustee's attorney, with full authority in the place and stead of and in the name of the Indenture Trustee or otherwise, from time to time to make any drawings pursuant to a Credit Enhancement Agreement (provided that written notice of any drawings shall be given by the Manager to the Indenture Trustee) and, in that connection, to execute and deliver all such documents, instruments and certificates including, without limitation, any drawing certificates required to be delivered to a Credit Enhancer at the time any drawing is made, and to do all such further acts and things and to take all such proceedings as the Manager in its sole discretion deems necessary or desirable to enforce compliance by a Credit Enhancer with the terms of a Credit Enhancement Agreement.

ARTICLE XV
NOTICES

15.01 Notice to Issuer

Any notice, document or other communication required or permitted to be given or delivered to the Issuer hereunder will be in writing and will be valid and effective if given by delivery to the addresses indicated below or by facsimile or email transmission at such addresses (with, in the case of facsimile or email transmission, receipt confirmed, either by telephone, reply facsimile or reply email, or, in the case of email transmission, through the email software itself) and such notice, document or other communication shall be deemed to have been received, if given by delivery, on the day of delivery, and, if sent by facsimile or email transmission, on the day

receipt thereof has been confirmed in accordance with the provisions of this Section 15.01. Such notice shall, if given on a day other than a Business Day or after the normal business hours of the recipient on a Business Day, be deemed to have been given on the next Business Day:

Fair Hydro Trust
c/o Ontario Power Generation Inc.
700 University Avenue
Toronto, Ontario M5G 1X6

Attention: [■]
Fax: (416) [■]
Email: [■]

with copies to:

Computershare Trust Company of Canada, in its capacity as
Issuer Trustee for Fair Hydro Trust
100 University Avenue, 11th Floor
Toronto, Ontario M5J 2Y1

Attention: [■]
Fax: (416) [■]
Email: [■]

15.02 Notice to the Indenture Trustee

Any notice, document or other communication required or permitted to be given or delivered to the Indenture Trustee hereunder will be in writing and will be valid and effective if given by delivery to the address indicated below or by facsimile transmission at such address (with, in the case of facsimile transmission, receipt confirmed, either by telephone or reply facsimile) and such notice, document or other communication shall be deemed to have been received, if given by delivery, on the day of delivery, and, if sent by facsimile transmission, on the day receipt thereof has been confirmed in accordance with the provisions of this Section 15.02. Such notice shall, if given on a day other than a Business Day or after the normal business hours of the Indenture Trustee on a Business Day, be deemed to have been given on the next Business Day:

BNY Trust Company of Canada
One York Street, 6th Floor
Toronto, Ontario M5J 0B6

Attention: Corporate Trust Services
Fax: (416) 360-1711

15.03 Notice to Noteholders

(a) Any notice, document or other communication required or permitted to be given or delivered hereunder to Registered Noteholders will be deemed to be validly given if sent to a destination within Canada by first class mail and if sent to a destination

outside of Canada by airmail, postage prepaid in each case, or sent by facsimile transmission or email transmission, addressed in each case to the Registered Noteholder at its address appearing in the Note Register, not later than the latest date, and not earlier than the earliest date, prescribed for the giving of such notice. In any case where notice to Registered Noteholders is given by mail, facsimile or electronic transmission, neither the failure to mail, send by facsimile or send by electronic transmission such notice, nor any defect in any notice so mailed, to any particular Noteholders will affect the sufficiency of such notice with respect to other Noteholders and any notice that is mailed, sent by facsimile or sent by electronic transmission in the manner herein provided shall conclusively have been presumed to have been duly given.

(b) No notice will be given by mail, facsimile, email transmission or otherwise delivered to a holder of Bearer Notes or coupons in bearer form. In the case of any Class, Series or Tranche with respect to which any Bearer Notes are Outstanding, any notice required or permitted to be given to holders of such Bearer Notes will be published in an Authorized Newspaper within the time period prescribed in this Indenture or the Related Supplemental Indenture.

(c) In case, by reason of the suspension of regular mail service as a result of a strike, work stoppage or otherwise, it will be impractical to mail notice of any event to any holder of a Registered Note when such notice is required to be given pursuant to any provision of this Indenture, then any method of notification as will be satisfactory to the Indenture Trustee and the Issuer will be deemed to be a sufficient giving of such notice.

(d) With respect to any Series or Tranche of Notes, the Related Supplemental Indenture may specify different or additional means of giving notice to the Noteholders of such Series or Tranche.

(e) Where this Indenture, any Supplemental Indenture or any Registered Note provides for notice in any manner, such notice may be waived in writing by the Person entitled to receive such notice, either before or after the event, and such waiver will be the equivalent of such notice. Waivers of notice by Registered Noteholders will be filed with the Indenture Trustee, but such filing will not be a condition precedent to the validity of any action taken in reliance upon such waiver.

15.04 Notice to Other Specified Creditors

Any notice, document or other communication required or permitted to be given or delivered to (i) a Lender will be given in accordance with the relevant Liquidity Agreement, Loan Agreement or Credit Enhancement Agreement; (ii) the Manager will be given in accordance with the Management Agreement; (iii) a Derivative Counterparty will be given in accordance with the relevant Derivative Agreement; and (iv) any other Specified Creditor will be given in accordance with the relevant Program Agreement.

15.05 Notice to Rating Agencies

Any notice, document or other communication required or permitted to be given or delivered to the Rating Agencies hereunder will be in writing and will be given by delivery to the applicable addresses provided to the Issuer by the Rating Agencies or by facsimile or electronic transmission. Any such notice shall, if given on a day other than a Business Day or after the normal business hours of the recipient on a Business Day, be deemed to have been given on the next Business Day. Where this Indenture provides for notice to any Rating Agency, failure to give such notice will not affect any other rights or obligations created hereunder and will not under any circumstance constitute an Adverse Effect.

15.06 Change of Address

Any Person referenced above may from time to time notify any other interested Person, in accordance with the provisions hereof, of any change of address which thereafter, until changed by like notice, shall be the address of such Person for all purposes of this Indenture.

ARTICLE XVI
MISCELLANEOUS

16.01 No Petition

The Indenture Trustee, by entering into this Indenture, and each Specified Creditor by accepting its rights as a third party beneficiary hereunder, agrees, to the fullest extent permitted by applicable law, that at no time until one year and one day following repayment in full of all Issuer Funding Obligations shall it commence, or join in commencing, a bankruptcy case or other insolvency or similar proceeding under the laws of any jurisdiction against the Issuer.

16.02 Withholding Rights

The right of any Person to receive amounts described in this Indenture, including rights of a Noteholder to receive interest on or principal of a Note, or the rights of a Person to receive payments described in Section 7.04 and 8.13, shall be subject to any applicable withholding or deduction imposed pursuant to the Income Tax Act or other applicable tax law, including foreign withholding and deduction. Any amounts properly withheld or deducted shall be treated as actually paid to the appropriate recipient, provided that such deduction or withheld amounts are actually remitted in accordance with applicable law to the appropriate Governmental Authority.

16.03 U.S. Tax Treatment

The Issuer and each Noteholder that is a United States Person agree that the Notes are intended to be debt for United States federal, state and local income and franchise tax purposes and agree to treat the Notes accordingly for all such purposes, unless otherwise required by a taxing authority. Each Noteholder that is a United States Person further agrees that it will cause any Note Owner that is a United States Person acquiring an interest in a Note through it to comply with this Indenture as to treatment as indebtedness for United States federal, state and local income and franchise tax purposes as described in this Section 16.02.

16.04 Alternate Payment Provisions

Notwithstanding any provision of this Indenture or any of the Notes to the contrary, the Issuer, with the written consent of the Indenture Trustee, may enter into any agreement with any Noteholder providing for a method of payment or notice that is different from the methods provided for in this Indenture for such payments or notices. The Issuer will furnish to the Indenture Trustee a copy of each such agreement and the Indenture Trustee will cause payments or notices, as applicable, to be made in accordance with such agreements.

16.05 Final Distribution

(a) The Issuer shall give the Indenture Trustee at least 30 days written notice of the Payment Date on which the Noteholders of any Class, Series or Tranche may surrender their Notes for payment of the final distribution on and cancellation of such Notes. Not later than the fifth day of the month in which the final distribution in respect of such Class, Series or Tranche is payable to Noteholders, the Indenture Trustee shall provide notice to Noteholders of such Class, Series or Tranche specifying (i) the date upon which final payment of such Class, Series or Tranche will be made upon presentation and surrender of Notes of such Class, Series or Tranche at the office or offices therein designated, (ii) the amount of any such final payment, and (iii) that the Record Date otherwise applicable to such Payment Date is not applicable, payments being made only upon presentation and surrender of such Notes at the office or offices therein specified (which, in the case of Bearer Notes, shall be outside the United States **[and Canada]**). The Indenture Trustee shall give such notice to the Note Registrar and the Paying Agent at the time such notice is given to Noteholders.

(b) Notwithstanding a final distribution to the Noteholders of any Class, Series or Tranche of Notes (or the termination of the Issuer), except as otherwise provided in this paragraph, all funds then on deposit in any Series Account allocated solely to such Noteholders shall continue to be held in trust for the benefit of such Noteholders, and the Paying Agent or the Indenture Trustee shall pay such funds to such Noteholders upon surrender of their Notes, if certificated. In the event that all such Noteholders shall not surrender their Notes for cancellation within 6 months after the date specified in the notice from the Indenture Trustee described in paragraph (a), the Indenture Trustee shall give a second notice to the remaining such Noteholders to surrender their Notes for cancellation and receive the final distribution with respect thereto (which surrender and payment, in the case of Bearer Notes, shall be outside the United States **[and Canada]**). If within one year after the second notice all such Notes shall not have been surrendered for cancellation, the Indenture Trustee may take appropriate steps, or may appoint an agent to take appropriate steps, to contact the remaining such Noteholders concerning surrender of their Notes, and the cost thereof shall be paid out of the funds in the Collection Account or any Series Account held for the benefit of such Noteholders. The Indenture Trustee and the Paying Agent shall pay to the Issuer any monies held by them for the payment of principal or interest that remains unclaimed for 2 years. After payment to the Issuer, Noteholders entitled to the

money must look to the Issuer for payment as general creditors unless an applicable abandoned property law designates another Person.

16.06 Force Majeure

In no event shall the Indenture Trustee or the Issuer Trustee be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services; it being understood that the Indenture Trustee and the Issuer Trustee shall use reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

16.07 Delivery of Executed Copies

Each party acknowledges delivery of a fully executed copy of this Indenture.

[Signature page to follow]

IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be duly executed as of the day and year first above written.

COMPUTERSHARE TRUST COMPANY OF CANADA, in its capacity as trustee of **FAIR HYDRO TRUST**, as Issuer

By: **ONTARIO POWER GENERATION INC.**, not in its individual capacity but solely as Manager

By: _____

Name:
Title:

By: _____

Name:
Title:

BNY TRUST COMPANY OF CANADA, as Indenture Trustee and not in its individual capacity

By: _____

Name:
Title:

Schedule A
DEFINED TERMS

"**Act**" means *Ontario Fair Hydro Plan Act, 2017*.

"**Action**" has the meaning specified in Section 1.04.

"**Adverse Effect**" means, whenever used in this Indenture with respect to any action, that such action will at the time of its occurrence (a) result in the occurrence of an Event of Default or any event which with the giving of notice or passage of time, or both, would become an Event of Default, (b) adversely affect the amount or timing of any payment to be made to any Debtholder or Derivative Counterparty pursuant to this Indenture or any Program Agreement, (c) materially adversely affect the amount or timing of payments to be made to the Specified Creditors (other than Debtholders and Derivative Counterparties) pursuant to this Indenture or any Program Agreement, or (d) adversely affect the Security Interest and the rights and remedies of the Indenture Trustee in respect thereof.

"**Affected Party**" has the meaning specified in the applicable Derivative Agreement.

"**Affiliate**" means, with respect to any specified Person, any other Person controlling or controlled by or under common control with such specified Person. For the purposes of this definition, "**control**" when used with respect to any specified Person means the power to direct the management and policies of such specified Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise, and the terms "**controlling**" and "**controlled**" have meanings correlative to the foregoing.

"**Agency Agreement**" means an agency agreement made between the Issuer and one or more Persons acting on behalf of the Issuer, providing for the sale and distribution of Notes on an agency basis.

"**Authorized Newspaper**" means any newspaper or newspapers of general circulation, in the case of Notes issued in the United States, in the Borough of Manhattan, The City of New York, and in the case of Notes issued in Canada, in the City of Toronto, in each case printed in the English language and customarily published on each Business Day at such place, whether or not published on Saturdays, Sundays or holidays, or if and so long as Notes of any Class, Series or Tranche are listed on any securities exchange and that exchange so requires, the newspaper of record required by the applicable securities exchange, printed in any language satisfying the requirements of such exchange.

"**Available Collections**" means, for any Monthly Period: (a) the Servicer CEA Collections paid to the Issuer in accordance with Section **[3.3]** of the Master Transfer and Servicing Agreement, plus investment earnings allocable to the amounts on deposit in any Issuer Account, plus any other amounts, or allocable portion thereof, to be treated as Available Collections, subject to this Indenture and any applicable Supplemental Indenture; (b) the IESO Carrying Cost Payments; and (c) amounts received by the Issuer pursuant to Derivative Agreements.

"**Bearer Note**" means a Note in bearer form.

"**Benefit Plan**" means an "employee benefit plan" as defined in Section 3(3) of ERISA, which is subject to the provisions of Title I of ERISA, a "plan" described in and subject to Section 4975 of the Code, or an entity whose underlying assets include "plan assets" by reason of an employee benefit plan's investment in the entity.

"**Borrowing**" means a borrowing or drawing by the Issuer pursuant to a Liquidity Agreement, a Loan Agreement or a Credit Enhancement Agreement.

"**Business Day**" means any day other than a Saturday, a Sunday or a day on which banking institutions in Toronto, Ontario are, or the office of the Indenture Trustee is, authorized or obligated by applicable law, regulation or executive order to be closed.

"**Canadian Depository**" means, unless otherwise specified by the Issuer pursuant to any of Section 3.04, 3.06, or 4.01, with respect to Notes issuable or issued as a Global Note within Canada, CDS Clearing and Depository Services Inc., or any successor thereto registered as a clearing agency under the *Securities Act* (Ontario), or other applicable statute or regulation.

"**Certificate of Authentication**" means the certificate of authentication of the Indenture Trustee, the form of which is described in Section 3.03.

"**Chairman**" has the meaning specified in subsection 10.01(d).

"**Change of Law Protection Agreement**" means the change of law protection agreement dated [■], 2017 among the Province, the Issuer and the Indenture Trustee.

"**Class**" or "**Class of Issuer Funding Obligations**" means the Senior Funding Obligations, the Subordinated Funding Obligations, the Junior Subordinated Funding Obligations **[and the Derivative Funding Obligations]**, each of which shall be a class of Issuer Funding Obligations.

"**Closing Date**", with respect to any Series of Issuer Funding Obligations, has the meaning specified in the Related Funding Obligation Agreement.

"**Collateral**" has the meaning specified in Section 2.01.

"**Collection Account**" has the meaning specified in subsection 7.02(a).

"**Commission**" means the U.S. Securities and Exchange Commission.

"**Controlling Class Obligations** means: (a) Senior Funding Obligations until such time as all Senior Funding Obligations have been paid in full; then (b) if all Senior Funding Obligations have been paid in full, Subordinated Funding Obligations until such time as all Subordinated Funding Obligations have been paid in full; then (c) if all Senior Funding Obligations and Subordinated Funding Obligations have been paid in full, Junior Subordinated Funding Obligations until such time as all Junior Subordinated Funding Obligations have been paid in full; and finally (d) if all Issuer Funding Obligations have been paid in full, all other Obligations Secured.

"**Co-Owner Agreement**" means any agreement between, *inter alia*, the Issuer and any other owner or owners of an Investment Interest as contemplated by subsection 29(5) of the Act.

"**Corporate Trust Office**" means the office of the Indenture Trustee at which, at any particular time, its corporate trust business shall be administered, which office as of the date hereof is located at One York Street, 6th Floor, Toronto, Ontario M5J 0B6, or at such other address as the Indenture Trustee may designate from time to time by notice to the Specified Creditors and the Issuer, or the principal corporate trust office of any successor trustee designated by like notice.

"**Credit Enhancement**" means any form of credit enhancement (howsoever characterized) for any Obligations Secured, including any letter of credit, letter of guarantee, insurance policy, surety bond, cash reserve account, spread account, guaranteed rate agreement, note purchase agreement, loan facility or other similar agreement established for the benefit of a Lender or Noteholder, as applicable, and including any facility provided by a Person to the Issuer which is specified or acknowledged in writing by the Issuer as "Credit Enhancement" for purposes hereof.

"**Credit Enhancement Agreement**" means any credit enhancement agreement entered into hereafter between the Issuer and one or more Credit Enhancers, and acknowledged and accepted by the Indenture Trustee in accordance with Article V, providing Credit Enhancement in respect of Obligations Secured, and includes any letter of credit, guarantee, surety bond or other instrument executed and delivered by such Credit Enhancer(s).

"**Credit Enhancer**" means any Person providing Credit Enhancement to the Issuer or in respect of Obligations Secured.

"**DBRS**" means DBRS Limited, or any successor thereof.

"**Debtholder**" means a Noteholder or a Lender.

"**Debtholder Group**" has the meaning specified in subsection 10.01(a)

"**Declaration of Trust**" means the declaration of trust made as of [■], 2017 under which the Issuer was established.

"**Defaulting Party**" has the meaning specified in the applicable Derivative Agreement.

"**Deferred Principal Accumulation Amount**" means, on any Payment Date, the amount by which the aggregate of the Principal Accumulation Amount (Senior), the Principal Accumulation Amount (Subordinated) and the Principal Accumulation Amount (Junior Subordinated) for such Payment Date determined without reference to any Refinancing Notices is greater than the amount on deposit in the Principal Accumulation Account.

"**Depository**" means a Canadian Depository, a U.S. Depository or a Foreign Depository, as the case may be.

"**Derivative Agreement**" means any rate swap transaction, basis swap, forward rate transaction, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, total return swap transaction, credit default swap transaction or any other similar transaction (including any option with respect to any of those transactions) or any combination of

these transactions entered into from time to time by the Issuer in connection with or related to Borrowings or Notes.

"**Derivative Counterparty**" means any party to any Derivative Agreement other than the Issuer or the Indenture Trustee.

"**Derivative Funding Obligations**" means Funding Obligations arising under, or in connection with, Derivative Agreements.

"**Discount Note**" means a Note that provides for an amount less than the Stated Principal Amount (but not less than the Initial Currency Specific Dollar Principal Amount) thereof to be due and payable upon the occurrence of an optional or mandatory redemption, or the occurrence of an Event of Default and the acceleration of such Note, in each case before the Principal Payment Due Date of the applicable Note.

"**Dollar**," "**$**" or "**Cdn. $**" means Canadian dollars.

"**Electronic Methods**" means delivery of any notice or form of communication by facsimile, pdf or e-mail, or by other similar electronic means in a form satisfactory to the Issuer.

"**Eligible Deposit Account**" means, in relation to any Issuer Account, an account that is a segregated account with an Eligible Institution.

"**Eligible Institution**" means (a) a trust company or Schedule I chartered bank incorporated under the laws of Canada or any province thereof (i) which has either (x) a long-term unsecured debt rating of A (high) or better by DBRS, or (y) a certificate of deposit rating or short-term credit rating of R-1 (middle) or better by DBRS, (ii) which has (x) either (1) a long-term unsecured debt rating of A or better by S&P and (2) a short-term debt rating of A-1 or better by S&P, (y) a long-term unsecured debt rating of A+ or better by S&P and no short-term rating by S&P, or (z) a short-term debt rating of A-1 or better by S&P and no long-term unsecured debt rating by S&P, and (iii) whose deposits are insured by Canada Deposit Insurance Corporation, or (b) any institution that otherwise satisfies the Rating Agency Condition.

"**Eligible Investments**" means instruments or investment property that evidence:

(a) direct obligations of, or obligations fully and unconditionally guaranteed as to timely payment by, Canada or the United States of America;

(b) demand or time deposits of, unsecured certificates of deposit of, money market deposit accounts of, bank deposit products of or bankers' acceptances issued by, any depository institution (including, but not limited to, bank deposit products of the Indenture Trustee, acting in its commercial capacity) incorporated or organized under the laws of the United States of America, Canada or any state or province thereof and subject to supervision and examination by applicable banking authorities, so long as the commercial paper or other short-term debt obligations of such depository institution are, at the time of deposit, rated at least "A-1" and "P-1" (or their equivalents) by each of S&P and Moody's and, if DBRS provides a rating

thereon, by DBRS, or such lower rating as will not result in the downgrading or withdrawal of the ratings of the Issuer or any of the Issuer Funding Obligations;

(c) commercial paper (including commercial paper of the Indenture Trustee, acting in its commercial capacity, and other than commercial paper of the Servicer), which at the time of purchase is rated at least "A-1" and "P-1" (or their equivalents) by each of S&P and Moody's or such lower rating as will not result in the downgrading or withdrawal of the ratings of the Issuer or any of the Issuer Funding Obligations;

(d) investments in money market funds having a rating in the highest investment category granted thereby (including funds for which the Indenture Trustee or any of its Affiliates is investment manager or advisor) from Moody's, S&P and DBRS, if rated by DBRS;

(e) repurchase obligations with respect to any security that is a direct obligation of, or fully guaranteed by, the United States of America, Canada or their respective agencies or instrumentalities, entered into with Eligible Institutions;

(f) repurchase obligations with respect to any security or whole loan entered into with an Eligible Institution or with a registered broker/dealer acting as principal and that meets the ratings criteria set forth below:

(i) a broker/dealer (acting as principal) registered as a broker or dealer under the Securities Act (any such broker/dealer being referred to in this definition as a "broker/dealer"), the unsecured short-term debt obligations of which are rated at least "P-1" by Moody's, "A-1+" by S&P and, if DBRS provides a rating thereon, "R-1" by DBRS at the time of entering into such repurchase obligation; or

(ii) an unrated broker/dealer, acting as principal, that is a wholly-owned subsidiary of a non-bank or bank holding company the unsecured short-term debt obligations of which are rated at least "P-1" by Moody's, "A-1+" by S&P and, if DBRS provides a rating thereon, "R-1" by DBRS at the time of purchase so long as the obligations of such unrated broker/dealer are unconditionally guaranteed by such non-bank or bank holding company; and

(g) any other investment permitted by each of the Rating Agencies;

in each case maturing not later than the Business Day preceding the next Payment Date (for the avoidance of doubt, investments in money market funds or similar instruments that are redeemable on demand shall be deemed to satisfy the foregoing requirement). Notwithstanding the foregoing: (1) no securities or investments that mature in 30 days or more shall be "Eligible Investments" unless the issuer thereof has either a short-term unsecured debt rating of at least "P-1" from Moody's or a long-term unsecured debt rating of at least "A1" from Moody's and also has a long-term unsecured debt rating of at least "A" from S&P; (2) no securities or investments described in clauses (b) through (d) above that have maturities of more than 30 days but less than or equal to

3 months shall be "Eligible Investments" unless the issuer thereof has a long-term unsecured debt rating of at least "A1" from Moody's and a short-term unsecured debt rating of at least "P-1" from Moody's; and (3) no securities or investments described in clauses (b) through (d) above that have maturities of more than 3 months shall be "Eligible Investments" unless the issuer thereof has a long-term unsecured debt rating of at least "A1" from Moody's and a short-term unsecured debt rating of at least "P-1" from Moody's.

"**ERISA**" means the *Employee Retirement Income Security Act* of 1974, as amended.

"**Event of Default**" has the meaning specified in Section 8.01.

"**Exchange Date**" means, with respect to any Class, Series or Tranche of Notes, the latest of:

(a) in the case of exchanges of beneficial interests in Temporary Global Notes for beneficial interests in Permanent Global Notes in registered form, any date that is after the related issuance date;

(b) in the case of exchanges of beneficial interests in Temporary Global Notes for beneficial interests in Permanent Global Notes in bearer form, the date of presentation of certification of non-United States beneficial ownership (as described in Section 3.05); and

(c) the earliest date on which such an exchange of a beneficial interest in a Temporary Global Note for a beneficial interest in a Permanent Global Note is permitted by applicable law.

"**Extraordinary Resolution**" means a resolution passed by the affirmative votes of Debtholders of not less than 66⅔% of the Outstanding Dollar Principal Amount of all Controlling Class Obligations represented and voting at a meeting of Debtholders of all Controlling Class Obligations duly convened and held in accordance with the provisions of this Indenture.

"**Fair Allocation Amount**" has the meaning ascribed to the term "fair allocation amount" in the Act as of the date of this Indenture.

"**Fair Hydro Regulations**" means the regulations made under the Act including Ontario regulations 206/17 and 195/17

"**Finance Amount**" has the meaning ascribed to the term "finance amount" in the Act as of the date of this Indenture.

"**Financing Entity**" has the meaning ascribed to the term "financing entity" in the Act as of the date of this Indenture.

"**Financing Plan**" has the meaning ascribed to the term "financing plan" in the Act as of the date of this Indenture.

"**Foreign Currency**" means (a) a currency other than Dollars, or (b) denominated in a currency other than Dollars.

"**Foreign Currency Note**" means a Note denominated in a Foreign Currency.

"**Foreign Depository**" means the Person specified in the Related Supplemental Indenture, in its capacity as depository for the accounts of any clearing agencies located outside Canada and the United States.

"**Funding Obligation Agreement**" means any Notes, any Supplemental Indenture (including any Terms Document), any Liquidity Agreement, any Loan Agreement, any Credit Enhancement Agreement or any Derivative Agreement.

"**Funding Obligation**" has the meaning ascribed to the term "funding obligation" in the Act as of the date of this Indenture.

"**Global Note**" means any Note issued pursuant to Section 3.04.

"**Governmental Authority**" means any nation or government, any federal, state, provincial, local or other political subdivision thereof and any court, administrative agency or other instrumentality or entity exercising executive, legislative, judicial, regulatory or administrative functions of government.

"**IESO**" means the Independent Electricity System Operator, a statutory corporation without share capital established by the *Electricity Act, 1998*, SO, 1998.

"**IESO Carrying Cost Payments**" means those amounts paid to the Issuer by the IESO pursuant to the Act and the regulations promulgated thereunder.

"**IESO Security Agreement**" means the security agreement made by the IESO in favour of the Issuer pursuant to the Act and the regulations promulgated thereunder.

"**Income Tax Act**" means the *Income Tax Act* (Canada).

"**Indenture**" or "**this Indenture**" means this Trust Indenture, as amended, supplemented, restated or otherwise modified from time to time, including by Supplemental Indentures for the issuance of Series of Notes entered into pursuant to the applicable provisions hereof.

"**Indenture Trustee**" means the Person named as the Indenture Trustee in the first paragraph of this Indenture until a successor Indenture Trustee shall have become such pursuant to the applicable provisions of this Indenture, and thereafter "Indenture Trustee" means and includes such Person.

"**Initial Currency Specific Dollar Principal Amount**" means with respect to a Series or Tranche in a Series that includes Foreign Currency Notes, the amount specified in the applicable Supplemental Indenture as the Initial Currency Specific Dollar Principal Amount thereof.

"**Initial Dollar Principal Amount**" means (a) unless otherwise specified in the applicable Supplemental Indenture, with respect to a Class, Series or Tranche of Notes, the aggregate initial principal amount of the Outstanding Notes of such Class, Series or Tranche plus the aggregate initial principal amount of any additional Notes of such Class, Series or Tranche, and (b) with

respect to a Class, Series or Tranche of Discount Notes that includes Foreign Currency Notes, the amount specified in the applicable Supplemental Indenture as the Initial Dollar Principal Amount thereof.

"**Insolvency Event**" means, with respect to a specified Person, the specified Person admits the inability of such specified Person to pay its liabilities generally as they become due or makes a general assignment for the benefit of the creditors of such specified Person or otherwise acknowledges the insolvency of such specified Person or any proceeding shall be instituted by or against such specified Person seeking to adjudicate it a bankrupt or insolvent or seeking liquidation, winding up, dissolution, reorganization, arrangement, adjustment, protection, relief or composition of its debts under any law relating to bankruptcy, insolvency, reorganization, moratorium or relief of debtors or seeking the entry of an order for relief by the appointment of a receiver, trustee or other similar official for such specified Person or for any substantial part of its property and if such proceeding has been instituted against such specified Person either such proceeding has not been stayed or dismissed within 45 days or any of the actions sought in such proceeding (including the entry of an order for relief or the appointment of a receiver) are granted in whole or in part, or if a receiver is privately appointed in respect of such specified Person or of the property of such specified Person or any substantial part thereof.

"**Interest Accrual Amount (Junior Subordinated)**" means, in respect of any Payment Date and all Junior Subordinated Funding Obligations, the amount of interest that accrued on such Junior Subordinated Funding Obligations during the period from and including the issuance date of such Junior Subordinated Funding Obligations or the last date to which interest has been paid in respect of such Junior Subordinated Funding Obligations, as applicable, to such Payment Date less any amounts deposited to the Interest Accrual Account in respect of such interest accruing during such period pursuant to Section 7.04(e)(xiii) plus any amounts transferred from the Interest Accumulation Account to the Principal Accumulation Account pursuant to subsection 7.07(a).

"**Interest Accrual Amount (Senior)**" means, in respect of any Payment Date and all Senior Funding Obligations, the amount of interest that accrued on such Senior Funding Obligations during the period from and including the issuance date of such Senior Funding Obligations or the last date to which interest has been paid in respect of such Senior Funding Obligations, as applicable, to such Payment Date less any amounts deposited to the Interest Accrual Account in respect of such interest accruing during such period pursuant to Section 7.04(e)(iii)(A).

"**Interest Accrual Amount (Subordinated)**" means, in respect of any Payment Date and all Subordinated Funding Obligations, the amount of interest that accrued on such Subordinated Funding Obligations during the period from and including the issuance date of such Subordinated Funding Obligations or the last date to which interest has been paid in respect of such Subordinated Funding Obligations, as applicable, to such Payment Date less any amounts deposited to the Interest Accrual Account in respect of such interest accruing during such period pursuant to Section 7.04(e)(viii) plus any amounts transferred from the Interest Accumulation Account to the Principal Accumulation Account pursuant to subsection 7.07(b).

"**Interest Accumulation Account**" has the meaning specified in subsection 7.02(b).

"**Interest Payment Date**" means each Business Day which is an "Interest Payment Date" in respect of any Funding Obligation Agreement in respect of Senior Funding Obligations, Subordinated Funding Obligations or Junior Subordinated Funding Obligations.

"**Internal Revenue Code**" means the United States Internal Revenue Code of 1986, as amended.

"**Investment Asset**" has the meaning ascribed to the term "investment asset" in the Act as of the date of this Indenture.

"**Investment Company Act**" means the United States Investment Company Act of 1940, as amended.

"**Investment Interest**" has the meaning ascribed to the term "investment interest" in the Act as of the date of this Indenture.

"**Issuer**" has the meaning specified in the first paragraph of this Indenture.

"**Issuer Accounts**" means, collectively, the Program Accounts and the Series Accounts and including any Sub-Accounts thereof.

"**Issuer Certificate**" means a certificate (including an Officer's Certificate) signed in the name of the Issuer by a Responsible Officer of the Manager on behalf of the Issuer and, in each case delivered to the Indenture Trustee relating to, among other things, the issuance of a new Series or Tranche of Notes. Wherever this Indenture requires that an Issuer Certificate be signed also by an accountant or other expert, such accountant or other expert (except as otherwise expressly provided in this Indenture) may be an employee of the Manager.

"**Issuer Funding Obligations**" means, the Funding Obligations of the Issuer, including the Senior Funding Obligations, the Subordinated Funding Obligations, the Junior Subordinated Funding Obligations and the Derivative Funding Obligations.

"**Issuer Investment Interest**" means, initially, the Investment Interest acquired by the Issuer pursuant to the first Transfer completed under the Master Transfer and Servicing Agreement and, upon the completion of each Transfer thereafter, the cumulative Investment Interest acquired by the Issuer.

"**Issuer Trustee**" means, at any time, the Person who is, in accordance with the Declaration of Trust, the trustee of the Issuer at such time.

"**Junior Subordinated Borrowings**" means Borrowings that have been designated as "Junior Subordinated Borrowings" in the Related Loan Agreement, Related Liquidity Agreement or Related Credit Enhancement Agreement.

"**Junior Subordinated Funding Obligations**" means Funding Obligations arising under, or in connection with, Junior Subordinated Notes and Junior Subordinated Borrowings.

"**Junior Subordinated Notes**" means Notes of a Series that have been designated as "Junior Subordinated Notes" in the Related Supplemental Indenture.

"**Lender**" means any Person providing credit facilities, note purchase facilities or advances under a Liquidity Agreement, Loan Agreement or Credit Enhancement Agreement, as applicable.

"**Lien**" means a security interest, lien, mortgage, charge, pledge, claim or encumbrance of any kind.

"**Liquidity Agreement**" means an agreement between the Issuer and one or more Lenders, and acknowledged and accepted by the Indenture Trustee in accordance with Article V, providing for the creation of one or more liquidity facilities in respect of all or a portion of the Notes in favour of the Issuer, including a facility to fund the repayment of all or a portion of Notes or that permits the Issuer to require the purchase of Notes by a counterparty, and including further any facility provided by a Person to the Issuer which is specified or acknowledged in writing by the Issuer as a "Liquidity Agreement" for the purposes hereof.

"**Loan Agreement**" means an agreement between the Issuer and one or more Lenders, and acknowledged and accepted by the Indenture Trustee in accordance with Article V, providing for the creation of one or more credit facilities in favour of the Issuer for purposes of purchasing Investment Interests.

"**Management Agreement**" means the management agreement dated [■], 2017 between the Manager and the Issuer.

"**Manager**" means OPG, in its capacity as manager of the Issuer under the Management Agreement.

"**Master Transfer and Servicing Agreement**" means the master transfer and servicing agreement dated [■], 2017 between the Issuer and IESO, and acknowledged and accepted by the Indenture Trustee.

"**Monthly Period**" means, with respect to each Payment Date, unless otherwise provided in a Funding Obligation Agreement, the period from and including the first day of each calendar month and to and including the last day of such calendar month; provided, however, that the initial Monthly Period with respect to any Series of Issuer Funding Obligations will commence on the Closing Date with respect to such Series.

"**Monthly Report**" has the meaning ascribed thereto in Section 3.5(a) of the Master Transfer and Servicing Agreement.

"**Moody's**" means Moody's Investors Service, Inc., or any successor thereof.

"**Non-resident**" means a non-resident of Canada as such term is defined in the Income Tax Act or a partnership that is not a Canadian partnership within the meaning of the Income Tax Act.

"**Note**" or "**Notes**" means any note or notes of any Class, Series or Tranche created pursuant to Supplemental Indentures and authenticated and delivered from time to time under this Indenture.

"**Noteholder**" means a Person in whose name a Note is registered in the Note Register or the bearer of any Bearer Note (including a Global Note in bearer form), as the case may be.

"**Note Owner**" means the beneficial owner of an interest in a Global Note.

"**Note Purchase Agreement**" means an agreement providing for the purchase of Notes from the Issuer by one or more Persons.

"**Note Register**" has the meaning specified in subsection 4.05(a).

"**Note Registrar**" means the Person who keeps the Note Register.

"**Obligations Secured**" means all present and future debts, expenses and liabilities, direct or indirect, absolute or contingent, due, owing or accruing due or owing from time to time by the Issuer to the Specified Creditors in their capacity as such. For greater certainty, amounts owing to any Specified Creditors by the Issuer at any time shall include (a) the unpaid face amount of any Notes issued on a discount basis; (b) the principal amount owing at such time, together with the accrued and unpaid interest on interest bearing Notes or Borrowings; (c) accrued fees, whether or not then due and payable; and (d) any evidence of indebtedness issued pursuant to or in respect of an amount owing under a Program Agreement (other than amounts payable by the Issuer to its beneficiaries pursuant to the Declaration of Trust or a promissory note issued by the Issuer to a beneficiary as contemplated in the Declaration of Trust).

"**Officer's Certificate**" means a certificate on behalf of any Person that is signed by any Responsible Officer of such Person and states that the certifications set forth in such certificate are based upon the results of a due inquiry into the matters in question conducted by or under the supervision of the signing Responsible Officer and that the facts stated in such certifications are made to such signing Responsible Officer's knowledge and belief.

"**OPG**" means Ontario Power Generation Inc., a corporation established under the laws of the Province of Ontario.

"**Opinion of Counsel**" means one or more written opinions of counsel, who may, except as otherwise expressly provided in the Program Agreements, be employees of or counsel to the party providing such opinion of counsel, which counsel shall be reasonably acceptable to the party receiving such opinion of counsel, and shall be in form and substance reasonably acceptable to such party.

"**Ordinary Resolution**" has the meaning specified in subsection 10.01(e).

"**Outstanding**" means, in respect of Notes, as of the date of determination, all Notes theretofore authenticated and delivered under this Indenture, except:

(a) any Notes theretofore canceled by the Indenture Trustee or delivered to the Indenture Trustee for cancellation pursuant to Section 4.08, or canceled by the Issuer and delivered to the Indenture Trustee pursuant to Section 4.08;

(b) any Notes for whose full payment (including principal and interest) or redemption money in the necessary amount has been theretofore deposited with the Indenture Trustee or any Paying Agent in trust for the holders of such Notes; provided that, if such Notes are to be redeemed, notice of such redemption has been duly given if

required pursuant to this Indenture or the Related Supplemental Indenture, or provision therefor satisfactory to the Indenture Trustee has been made; and

(c) any Notes in exchange for or in lieu of which other Notes have been authenticated and delivered pursuant to this Indenture, or which will have been paid pursuant to the terms of Section 4.06 (except with respect to any such Note as to which proof satisfactory to the Indenture Trustee is presented that such Note is held by a Person in whose hands such Note is a legal, valid and binding obligation of the Issuer).

For purposes of determining the amounts of deposits, allocations, reallocations or payments to be made, unless the context clearly requires otherwise, references to "Notes" will be deemed to be references to "Outstanding Notes". In determining whether Noteholders of the requisite principal amount of Outstanding Notes have taken any Action hereunder, and for purposes of Article X, Senior Notes beneficially owned by the Issuer, OPG or any Affiliate of the Issuer or OPG will be disregarded and deemed not to be Outstanding. In determining whether the Indenture Trustee will be protected in relying upon any such Action, only Senior Notes which a Responsible Officer of the Indenture Trustee knows to be owned by the Issuer, OPG or any Affiliate of the Issuer or OPG will be so disregarded. Senior Notes so owned which have been pledged in good faith may be regarded as Outstanding if the pledgee creates to the satisfaction of the Indenture Trustee the pledgee's right to act as owner with respect to such Notes and that the pledgee is not the Issuer, OPG or any Affiliate of the Issuer or OPG.

"**Outstanding Currency Specific Dollar Principal Amount**" means at any time, with respect to any Notes in a Series that includes Foreign Currency Notes, the Initial Currency Specific Dollar Principal Amount of the Outstanding Notes of such Series or Tranche at such time, less the amount of any payments of principal to the holders of such Series of Notes; plus, the amount of any increase in the Outstanding Currency Specific Dollar Principal Amount of such Series of Notes due to the issuance of additional Notes of such Series.

"**Outstanding Dollar Principal Amount**" means at any time:

(a) in respect of Notes, either:

(i) with respect to any Class, Series or Tranche of Notes (other than Discount Notes), the aggregate Initial Dollar Principal Amount of the Outstanding Notes of such Class, Series or Tranche at such time, less the amount of any payments of principal to the holders of such Class, Series or Tranche of Notes or the applicable Derivative Counterparty pursuant to the Related Supplemental Indenture, or

(ii) with respect to any Series or Tranche of Discount Notes, an amount of the Outstanding Notes of such Series or Tranche calculated by reference to the applicable formula set forth in the Related Supplemental Indenture, taking into account the amount and timing of payments of principal made to the holders of such Series or Tranche or the applicable Derivative Counterparty, each pursuant to the Related Supplemental Indenture;

plus, in either case, the amount of any increase in the Outstanding Dollar Principal Amount of such Class, Series or Tranche of Notes due to the issuance of additional Notes of such Class, Series or Tranche pursuant to Article V; and

(b) in respect of other Issuer Funding Obligations, the aggregate principal amount (converted into Dollars, if applicable) of Borrowings under the Liquidity Agreements and the Loan Agreements.

"**Paying Agent**" means any Person authorized by the Issuer to pay any Obligations Secured on behalf of the Issuer as provided in Section 13.03.

"**Payment Date**" means the 15th day of each calendar month.

"**Payment Instruction**" means, with respect to any Series of Issuer Funding Obligations, the instructions of the Manager substantially in the form of Exhibit 1.

"**Permanent Global Note**" has the meaning specified in subsection 3.05(a).

"**Permitted Liens**" means:

(a) Liens for Taxes not yet due or for which installments have been paid based on reasonable estimates pending final assessments, or if due, the validity of which is being contested diligently and in good faith by appropriate proceedings by that Person for which reasonable reserves under GAAP are maintained;

(b) the Lien of any Indenture Trustee, as provided in Section 9.05;

(c) the Security Interest; and

(d) any Lien created pursuant to a Co-Owner Agreement.

"**Person**" means any individual, corporation, limited liability company, unlimited liability company, estate, partnership, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization or Governmental Authority.

"**Place of Payment**" means, with respect to any Class, Series or Tranche of Notes issued hereunder, the city or political subdivision so designated with respect to such Class, Series or Tranche of Notes in accordance with the provisions of Article V.

"**PPSA**" shall mean the *Personal Property Security Act* (Ontario).

"**Predecessor Notes**" of any particular Note means every previous Note evidencing all or a portion of the same debt as that evidenced by such particular Note; and, for the purposes of this definition, any Note authenticated and delivered under Section 4.06 in lieu of a mutilated, lost, destroyed or stolen Note will be deemed to evidence the same debt as the mutilated, lost, destroyed or stolen Note.

"**Principal Accumulation Account**" has the meaning specified in subsection 7.02(c).

"**Principal Accumulation Amount**" means, in respect of any Series of Senior Funding Obligations, Subordinated Funding Obligations or Junior Subordinated Funding Obligations and a Payment Date occurring on or after the Principal Accumulation Date for such Series, the amount specified for such Payment Date in the Funding Obligation Agreement in respect of such Series plus any amounts specified in the Funding Obligation Agreement in respect of such Series in respect of prior Payment Dates after the Principal Accumulation Date for such Series which were not deposited to the Principal Accumulation Account; *provided* that if the Issuer has delivered a Refinancing Notice in respect of such Series pursuant to Section 7.09, the Principal Accumulation Amounts in respect of such Series shall be adjusted as provided for in such Refinancing Notice.

"**Principal Accumulation Amount (Junior Subordinated)**" means, in respect of any Payment Date, the sum of the Principal Accumulation Amounts for all Series of Junior Subordinated Funding Obligations for such Payment Date.

"**Principal Accumulation Amount (Senior)**" means, in respect of any Payment Date, the sum of the Principal Accumulation Amounts for all Series of Senior Funding Obligations for such Payment Date.

"**Principal Accumulation Amount (Subordinated)**" means, in respect of any Payment Date, the sum of the Principal Accumulation Amounts for all Series of Subordinated Funding Obligations for such Payment Date.

"**Principal Accumulation Date**" means, in respect of any Series of Issuer Funding Obligations, other than Derivative Funding Obligations, the date, if any, specified in the related Funding Obligation Agreement.

"**Principal Payment Date**" means each Business Day which is a "Principal Payment Date" under a Funding Obligation Agreement in respect of Senior Funding Obligations, Subordinated Funding Obligations or Junior Subordinated Funding Obligations.

"**Principal Payment Default Date**" has, with respect to any Issuer Funding Obligation, the meaning specified in the Related Supplemental Indenture or Related Loan Agreement.

"**Principal Payment Due Date**" has, with respect to any Issuer Funding Obligation, the meaning specified in the Related Supplemental Indenture or Related Loan Agreement.

"**Program Account**" means each of the Collection Account, the Principal Accumulation Account, the Interest Accumulation Account, the Program Cash Reserve Account and the Refinancing Account.

"**Program Agreements**" means this Indenture, each Supplemental Indenture, the Declaration of Trust, the Management Agreement, the Master Transfer and Servicing Agreement, each Transfer Notice, any Co-Owner Agreements, the IESO Security Agreement, the Change of Law Protection Agreement, the Notes, any Derivative Agreements, Credit Enhancement Agreements, Liquidity Agreements, Loan Agreements, Underwriting Agreements, Agency Agreements or Note Purchase Agreements and all other documents and certificates delivered in connection therewith.

"**Program Cash Reserve Account**" has the meaning specified in subsection 7.02(g).

"**Program Cash Reserve Balance**" means, at any time, the amount on deposit in the Program Cash Reserve Account.

"**Program Cash Reserve Required Amount (Junior Subordinated)**" means, on any Payment Date, an amount equal to [■]% of the outstanding principal amount of Junior Subordinated Funding Obligations after giving effect to all settlements on such Payment Date.

"**Program Cash Reserve Required Amount (Senior)**" means, on any Payment Date, an amount equal to [■]% of the outstanding principal amount of Senior Funding Obligations after giving effect to all settlements on such Payment Date.

"**Program Cash Reserve Required Amount (Subordinated)**" means, on any Payment Date, an amount equal to [■]% of the outstanding principal amount of Subordinated Funding Obligations after giving effect to all settlements on such Payment Date.

"**Program Cash Reserve Required Amount (Total)**" means, on any Payment Date, an amount equal to the sum of the Program Cash Reserve Required Amount (Senior), the Program Cash Reserve Required Amount (Subordinated) and the Program Cash Reserve Required Amount (Junior Subordinated).

"**Program Cash Reserve Required Deposit Amount (Junior Subordinated)**" means, on any Payment Date, the amount by which the aggregate of the Program Cash Reserve Required Amount (Total) exceeds the Program Cash Reserve Balance.

"**Program Cash Reserve Required Deposit Amount (Senior)**" means, on any Payment Date, the amount by which the Program Cash Reserve Required Amount (Senior) exceeds the Program Cash Reserve Balance.

"**Program Cash Reserve Required Deposit Amount (Subordinated)**" means, on any Payment Date, the amount by which the aggregate of the Program Cash Reserve Required Amount (Senior) plus the Program Cash Reserve Required Amount (Subordinated) exceeds the Program Cash Reserve Balance.

"**Province**" means Her Majesty the Queen in Right of Ontario as represented by the Minister of Energy and the Minister of Finance.

"**Rating Agency**" means, with respect to any Outstanding Class, Series or Tranche of Notes, each nationally recognized statistical rating organization or designated rating organization, as specified in the Related Supplemental Indenture, selected by the Manager to rate such Notes.

"**Rating Agency Condition**" means, unless otherwise specified in the Related Supplemental Indenture for any Series or Tranche of Notes, with respect to any action subject to such condition, the Issuer shall deliver written notice of the proposed action to such Rating Agency or Rating Agencies at least 10 Business Days prior to the effective date of such action (or such shorter notice period if specified in the Related Supplemental Indenture with respect to any specific action, or if 10 Business Days prior notice is impractical, such advance notice as is practicable) and the Rating Agencies (i) shall not have informed the Issuer prior to the effective date of such action that such action will result in the reduction or withdrawal of the rating in effect with respect to any

Outstanding Notes immediately before the taking of such action, **[or (ii) in the case of S&P, or any successor thereto, when it is a Rating Agency, such Rating Agency shall have informed the Issuer in writing prior to the effective date of such action that such action will not result in the reduction or withdrawal of the rating of any Outstanding Notes immediately before the taking of such action]**, provided that wherever there is reference to satisfaction of a Rating Agency Condition in this Indenture or any other Program Agreement, subject to the terms of the specific Program Agreement which shall govern, such condition need not be satisfied if there is no Rating Agency then rating the applicable Notes or other Notes in respect of which the Rating Agency Condition is applicable. For purposes of this Indenture, any Supplemental Indenture and the Master Transfer and Servicing Agreement, the Indenture Trustee shall receive, and shall be entitled to rely on, an Issuer Certificate confirming the satisfaction of the Rating Agency Condition.

"**Record Date**" means, for the interest or principal payable on any Note on any applicable Payment Date, the last day of the calendar month immediately preceding such Payment Date, unless otherwise specified in the Related Supplemental Indenture.

"**Reference Period**" has the meaning ascribed to the term "reference period" in the Act as of the date of this Indenture.

"**Refinancing**" has the meaning ascribed to the term "refinancing" in the Act as of the date of this Indenture.

"**Refinancing Account**" has the meaning specified in subsection 7.02(b).

"**Refinancing Notice**" means a notice substantially in the form of Exhibit 2.

"**Registered Note**" means a Note issued in registered form.

"**Registered Noteholder**" means a Noteholder of a Registered Note.

"**Regulation AB**" means Subpart 229.1100 – Asset Backed Securities (Regulation AB), 17 C.F.R. §§229.1100-229.1125, and all related rules and regulations of the Commission, as such rules may be amended from time to time, and subject to such clarification and interpretation as have been provided by the Commission or by the staff of the Commission, or as may be provided by the Commission or its staff from time to time.

"**Related**" is used in reference to the Issuer Funding Obligations of a particular Series and means, when used in conjunction with:

(a) "Credit Enhancement Agreement": a Credit Enhancement Agreement pursuant to which Credit Enhancement has been provided in respect of such Issuer Funding Obligations;

(b) "Funding Obligation Agreements": the Funding Obligation Agreements entered into in connection with the incurrence of such Issuer Funding Obligations;

(c) "Liquidity Agreement": a Liquidity Agreement pursuant to which one or more liquidity facilities have been made available to fund the repayment of such Issuer Funding Obligations constituting Notes or, if specified in such Liquidity Agreement, a Series or Tranche of such Issuer Funding Obligations constituting Notes;

(d) "Loan Agreement": a Loan Agreement in respect of Issuer Funding Obligations constituting Borrowings; and

(e) "Supplemental Indenture": a supplement to this Indenture executed in connection with the issuance of such Issuer Funding Obligations constituting Notes.

"**Required Principal Accumulation Amount (Senior)**" means, in respect of any Principal Payment Date or Interest Payment Date, the aggregate of the Principal Accumulation Amounts (Senior) for all Payment Dates up to and including such Principal Payment Date or Interest Payment Date, as applicable, less all amounts that have been applied to principal repayments of Senior Funding Obligations on or prior to such Principal Payment Date or Interest Payment Date, as applicable.

"**Required Principal Accumulation Amount (Subordinated)**" means, in respect of any Principal Payment Date or Interest Payment Date, the aggregate of the Principal Accumulation Amounts (Subordinated) for all Payment Dates up to and including such Principal Payment Date or Interest Payment Date, as applicable, less all amounts that have been applied to principal repayments of Subordinated Funding Obligations on or prior to such Principal Payment Date or Interest Payment Date, as applicable.

"**Responsible Officer**" means, with respect to: (a) the Issuer, any director or officer of the Manager; (b) the Servicer, any director or officer of the IESO; and (c) the Indenture Trustee, any officer within the Corporate Trust Office of such trustee (including the President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Treasurer or any other officer of the Indenture Trustee customarily performing functions similar to those performed by persons who at the time shall be such officers, respectively, and that has direct responsibility for the administration of this Indenture and also, with respect to a particular matter, any other officer to whom such matter is referred to because of such officer's knowledge and familiarity with the particular subject).

"**S&P**" means Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc., or any successor thereof.

"**Securities Exchange Act**" means the United States Securities Exchange Act of 1934, as amended from time to time.

"**Security Interest**" means the Lien granted pursuant to Section 2.01.

"**Senior Borrowings**" means Borrowings that have been designated as "Senior Borrowings" in the Related Loan Agreement, Related Liquidity Agreement or Related Credit Enhancement Agreement.

"**Senior Funding Obligations**" means Funding Obligations arising under, or in connection with, Senior Notes and Senior Borrowings.

"**Senior Principal Shortfall**" has the meaning specified in subsection 7.07(b).

"**Senior Notes**" means Notes of a Series that have been designated as "Senior Notes" in the Related Supplemental Indenture.

"**Series**" means, with respect to any Class of Issuer Funding Obligation, the Series of the Class specified in the Related Funding Obligation Agreement.

"**Series Account**" means each Series Finance Reserve Account and each Series Capital Account.

"**Series Finance Reserve Account**" has the meaning specified in subsection 7.02(g).

"**Series Capital Account**" has the meaning specified in subsection 7.02(f).

"**Servicer**" has the meaning specified in the Master Transfer and Servicing Agreement.

"**Servicer Default**" has the meaning ascribed thereto in Section **[7.1]** of the Master Transfer and Servicing Agreement.

"**Specified Creditors**" means, collectively, Noteholders, Lenders, the Paying Agent, the Indenture Trustee, the Issuer Trustee, the Manager, the Servicer, Derivative Counterparties, Credit Enhancers, counterparties to Underwriting Agreements, Agency Agreements or Note Purchase Agreements, and other Persons in respect of Obligations Secured, in each case, to the extent of their claims related to Program Agreements.

"**Stated Principal Amount**," has, with respect to any Note, the meaning specified in the Related Supplemental Indenture (including a Terms Document).

"**Sub-Account**" means each sub-account of an Issuer Account maintained pursuant to this Indenture or any Funding Obligation Agreement.

"**Subordinated/Senior Principal Shortfall**" has the meaning specified in subsection 7.07(a).

"**Subordinated Borrowings**" means Borrowings that have been designated as "Subordinated Borrowings" in the Related Loan Agreement, Related Liquidity Agreement or Related Credit Enhancement Agreement.

"**Subordinated Funding Obligations**" means Funding Obligations arising under, or in connection with, Subordinated Notes and Subordinated Borrowings.

"**Subordinated Notes**" means Notes of a Series that have been designated as "Subordinated Notes" in the Related Supplemental Indenture.

"**Supplemental Indenture**" means, with respect to any Series of Notes, a supplement to this Indenture, executed and delivered in conjunction with the issuance of such Notes pursuant to Section 4.01, together with any applicable Terms Document for any Tranches of Notes belonging

to such Series and any amendment to the Supplemental Indenture executed pursuant to Section 11.01 or 11.02.

"**Tax**" has the meaning ascribed to the term "tax" in the regulations promulgated under the Act as of the date of this Indenture.

"**Temporary Global Note**" has the meaning specified in Section 3.05(a).

"**Termination Payment**" means all amounts payable upon early termination of any Derivative Agreement calculated in accordance with the terms of such Derivative Agreeement.

"**Terms Document**" means, with respect to any Tranche of Notes, a supplement to the Related Supplemental Indenture.

"**Tranche**" means, with respect to any Series of Notes, Notes of such Series which have identical terms, conditions and Tranche designation. Notes of a single Tranche may be issued on different dates.

"**Underwriting Agreement**" means an agreement providing for the purchase of Notes from the Issuer by one or more Persons as principals for the purpose of resale.

"**United States Person**" means a citizen or resident of the United States, a corporation, partnership or other entity created or organized in or under the laws of the United States of America, any one of the states thereof, the District of Columbia or any political subdivision thereof, or an estate or trust the income of which is subject to United States federal income taxation regardless of its source.

"**U.S. Depository**" means, unless otherwise specified by the Issuer pursuant to any of Section 3.04, 3.06, or 4.01, with respect to Notes issuable or issued as a Global Note within the United States, The Depository Trust Company, or any successor thereto registered as a clearing agency under the Securities Exchange Act, or other applicable statute or regulation.

"**U.S. Securities Act**" means the United States Securities Act of 1933, as amended from time to time.

"**Warehouse Facility Agreement**" means a Funding Obligation Agreement that provides the Issuer with a revolving facility under which principal amounts can be advanced, repaid and again advanced during a committed revolving period and does not provide any other type of credit facility.

EXHIBIT 1
FORM OF PAYMENT INSTRUCTIONS

See Attached.

EXHIBIT 2
FORM OF REFINANCING NOTICE

See Attached.

[NTD: Notice must specify Series and the amount of the Principal Accumulation Amounts specified in the related Supplemental Indenture that will be repaid with the proceeds of the Refinancing.]

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~~[ISSUER]~~FAIR HYDRO TRUST

as Issuer

AND

~~[INDENTURE TRUSTEE]~~

BNY TRUST COMPANY OF CANADA

as Indenture Trustee

TRUST INDENTURE

DATED AS OF [■], 2017

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This **TRUST INDENTURE**, between ~~[ISSUER]~~**COMPUTERSHARE TRUST COMPANY OF CANADA in its capacity as trustee of FAIR HYDRO TRUST**, a trust formed under the laws of the Province of Ontario (the "**Issuer**"), and ~~[INDENTURE TRUSTEE]~~**BNY TRUST COMPANY OF CANADA**, a trust company existing under the laws of Canada, in its capacity as Indenture Trustee[1] (the "**Indenture Trustee**"), is made and entered into as of [■], 2017.

RECITALS OF THE ISSUER

The Issuer wishes to provide for the incurrence of **Issuer** Funding Obligations in one or more **Classes,** Series~~, Classes~~ or Tranches.

All things necessary to make this Indenture a valid and legally binding agreement of the Issuer, in accordance with its terms, have been done.

AGREEMENT OF THE PARTIES

In consideration of the respective agreements herein contained, the parties hereto covenant and agree as follows:

ARTICLE I
DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

1.01 Definitions

For all purposes of this Indenture and of any Supplemental Indenture, except as otherwise expressly provided or unless the context otherwise requires:

(a) the terms defined in Schedule A have the meanings assigned to them in Schedule A, and include the plural as well as the singular;

~~(b) [all other terms used herein which are defined in the Master Transfer and Servicing Agreement, either directly or by reference therein, have the meanings assigned to them therein;]~~[1]

(b) ~~(c)~~ all accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles (including the International Financial Reporting Standards as published by the International Accounting Standards Board, or any successor accounting standards board) and, except as otherwise herein expressly provided, the term "generally accepted accounting principles" with respect to any computation required or permitted hereunder means such accounting principles as are generally accepted in Canada at the date of such computation;

[1] **This draft does not reflect any comments from the Indenture Trustee.**

~~[1] NTD: Defined terms from Master Transfer and Servicing Agreement to be included in Schedule A. Schedule A will be a master glossary for all Program Agreements.~~

(c) ~~(d)~~ unless the context otherwise requires, terms defined in the PPSA and not otherwise defined in this Indenture or a Supplemental Indenture shall have the meanings set forth in the PPSA;

(d) references to an agreement shall mean such agreement, as amended, modified, restated and supplemented from time to time in accordance with the provisions hereof;

(e) all references to any Person shall include such Person's permitted successors and assigns, and any reference to a Person in a particular capacity excludes such Person in other capacities;

(f) references to any law, rule, regulation or order of a Governmental Authority shall include such law, rule, regulation or order as from time to time in effect, including any amendment, modification, codification, replacement or reenactment thereof or any substitution therefor;

(g) the word "will" shall be construed to have the same meaning and effect as the word "shall". The word "or" is not exclusive;

(h) all references in this Indenture to designated "Articles", "Sections", "Schedules", "Exhibits" and other subdivisions are to the designated Articles, Sections, Schedules, Exhibits and other subdivisions of this Indenture as originally executed. The words "herein", "hereof" and "hereunder" and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision;

(i) "including" and words of similar import will be deemed to be followed by "without limitation"; and

(j) with respect to the computation of periods of time from a specified date to a later specified date, unless otherwise expressly stated, the word "from" means "from and including" and the words "to" and "until" each mean "to but excluding".

1.02 Compliance Certificates and Opinions

Upon any application or request by the Issuer to the Indenture Trustee to take any action under any provision of this Indenture, the Issuer will furnish to the Indenture Trustee (i) an Issuer's Certificate stating that all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with, and (ii) an Opinion of Counsel stating that, in the opinion of such counsel, all such conditions precedent, if any, have been complied with, except that in the case of any such application or request as to which the furnishing of such documents are specifically required by any provision of this Indenture relating to such particular application or request, no additional certificate or opinion need be furnished.

The Indenture Trustee may rely, as to authorization by the Issuer of any Series~~, Class~~ or Tranche of Notes, the form and terms thereof and the legality, validity, binding effect and enforceability thereof, upon the Opinion of Counsel and the other documents delivered pursuant

to Article V and this Section 1.02, as applicable, in connection with the ~~first~~ authentication of Notes of such Series~~, Class~~ or Tranche.

Every certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture (except for the written statement required by Section 13.10) will include:

(a) a statement that each individual signing such certificate or opinion has read such covenant or condition and the definitions herein relating thereto;

(b) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;

(c) a statement that such individual has made such examination or investigation as is necessary to express an informed opinion as to whether or not such covenant or condition has been complied with; and

(d) a statement as to whether, in the opinion of each such individual, such condition or covenant has been complied with.

1.03 Form of Documents Delivered to Indenture Trustee

In any case where several matters are required to be certified by, or covered by an opinion of, one or more specified Persons, one such Person may certify or give an opinion with respect to some matters and one or more other such Persons as to the other matters, and any such Person may certify or give an opinion as to such matters in one or several documents.

Any certificate or opinion of the Issuer may be based, insofar as it relates to legal matters, upon a certificate or opinion of, or representations by, counsel, unless the Issuer knows, or in the exercise of reasonable care should know, that the certificate or opinion or representations are erroneous. Any such certificate or opinion of, or representation by, counsel may be based, insofar as it relates to factual matters, upon a certificate or opinion of, or representations by, the Issuer stating that the information with respect to such factual matters is in the possession of the Issuer, unless such counsel knows, or in the exercise of reasonable care should know, that the certificate or opinion or representations are erroneous.

Where any Person is required to make, give or execute two or more applications, requests, consents, certificates, statements, opinions or other instruments under this Indenture, they may, but need not, be consolidated and form one instrument.

1.04 Actions by Noteholders

(a) Any request, demand, authorization, direction, notice, consent, **resolution,** waiver or other action (collectively, an "**Action**") provided by this Indenture to be given or taken by Noteholders of any **Class,** Series~~, Class~~ or Tranche may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Noteholders in person or by an agent duly appointed in writing. ~~If Notes~~

~~of a Series, Class or Tranche are issuable in whole or in part as Bearer Notes~~**In addition**, any Action provided by this Indenture to be given or taken by such Noteholders may, alternatively, be embodied in and evidenced by the record of such Noteholders voting in favor thereof, either in person or by proxies duly appointed in writing, at any meeting of Noteholders duly called and held in accordance with the provisions of Article X or a combination of such instruments and any such record. Except as herein otherwise expressly provided, such Action will become effective when such instrument or instruments or record are delivered to the Indenture Trustee, and, where it is hereby expressly required, to the Issuer. Proof of execution of any such instrument or of a writing appointing any such agent, or the holding by any Person of a Note, will be sufficient for any purpose of this Indenture and (subject to Section 9.01) conclusive in favor of the Indenture Trustee and the Issuer, if made in the manner provided in this Section 1.04. The record of any meeting of Noteholders shall be proved in the manner provided in Article X.

(b) ~~The fact and date of the execution by any Person of any such instrument or writing may be proved by the affidavit of a witness to such execution or by the certificate of any notary public or other officer authorized by applicable law to take acknowledgments of deeds, certifying that the individual signing such instrument or writing acknowledged to him the execution thereof. Where such execution is by an officer of a corporation or limited liability company, or a partner of a partnership, on behalf of such corporation, limited liability company or partnership, such certificate or affidavit will also constitute sufficient proof of his or her authority.~~ The fact and date of the execution of any such instrument or writing, or the authority of the person executing the same, may ~~also~~ be proved in any ~~other~~ manner which the Indenture Trustee deems sufficient.

(c) (i) The ownership of Registered Notes will be proved by the Note Register.

(ii) The ownership of Bearer Notes or coupons will be proved by the production of such Bearer Notes or coupons or by a certificate, satisfactory to the Issuer and the Indenture Trustee, executed, as depositary, by any bank, trust company, recognized securities dealer, as depositary, wherever situated, satisfactory to the Issuer. Each such certificate will be dated and will state that on the date thereof a Bearer Note or coupon bearing a specified serial number was deposited with or exhibited to such bank, trust company or recognized securities dealer by the Person named in such certificate. Any such certificate may be issued in respect of one or more Bearer Notes or coupons specified therein. The holding by the Person named in any such certificate of any Bearer Note specified therein will be presumed to continue for a period of one year from the date of such certificate unless at the time of any determination of such holding (A) another certificate bearing a later date is issued in respect of the same Bearer Note or coupon produced, (B) the Bearer Note or coupon specified in such certificate is produced by some other Person or (C) the Bearer Note or coupon specified in such certificate has ceased to be Outstanding.

(d) The fact and date of execution of any such instrument or writing, the authority of the Person executing the same and the principal amount and serial numbers of Bearer Notes held by the Person so executing such instrument or writing and the date of holding the same may also be proved in any other manner which the Indenture Trustee deems sufficient; and the Indenture Trustee may in any instance require further proof with respect to any of the matters referred to in this Section 1.04.

(e) If the Issuer will solicit from the Noteholders any Action, the Issuer may, at its option, by an Issuer Certificate, fix in advance a record date for the determination of Noteholders entitled to give such Action, but the Issuer will have no obligation to do so. If the Issuer does not so fix a record date, such record date will be the later of 30 days before the first solicitation of such Action or the date of the most recent list of Noteholders furnished to the Indenture Trustee pursuant to Section 13.13 before such solicitation. Such Action may be given before or after the record date, but only the Noteholders of record at the close of business on the record date will be deemed to be Noteholders for the purposes of determining whether Noteholders of the requisite proportion of Outstanding Notes have authorized or agreed or consented to such Action, and for that purpose the Outstanding Notes will be computed as of the record date; provided that no such authorization, agreement or consent by the Noteholders on the record date will be deemed effective unless it will become effective pursuant to the provisions of this Indenture not later than 6 months after the record date.

(f) Any Action by a Noteholder will bind the holder of every Note issued upon the transfer thereof or in exchange therefor or in lieu thereof, in respect of anything done or suffered to be done by the Indenture Trustee or the Issuer in reliance thereon whether or not notation of such Action is made upon such Note.

(g) Without limiting the foregoing, a Noteholder entitled hereunder to take any Action hereunder with regard to any particular Note may do so with regard to all or any part of the principal amount of such Note or by one or more duly appointed agents each of which may do so pursuant to such appointment with regard to all or any part of such principal amount. Any notice given or Action taken by a Noteholder or its agents with regard to different parts of such principal amount pursuant to this paragraph shall have the same effect as if given or taken by separate Noteholders of each such different part.

(h) Without limiting the generality of the foregoing, unless otherwise specified ~~pursuant to Section 4.01 or~~ pursuant to one or more Supplemental Indentures, a Noteholder, including a Depository that is the holder of a Global Note, may make, give or take, by a proxy or proxies duly appointed in writing, any Action provided in this Indenture to be made, given or taken by Noteholders, and a Depository that is the holder of a Global Note may provide its proxy or proxies to the beneficial owners of interests in or security entitlements to any such Global Note through such Depository's standing instructions and customary practices.

(i) The Issuer may fix a record date for the purpose of determining the Persons who are beneficial owners of interests in or security entitlements to any Global Note held by a Depository entitled under the procedures of such Depository to make, give or take, by a proxy or proxies duly appointed in writing, any Action provided in this Indenture to be made, given or taken by Noteholders. If such a record date is fixed, the Noteholders on such record date or their duly appointed proxy or proxies, and only such Persons, shall be entitled to make, give or take such Action, whether or not such Noteholders remain Noteholders after such record date. No such Action shall be valid or effective if made, given or taken more than ~~90~~**six months** days after such record date.

1.05 Actions of Other Specified Creditors

Any Action provided by this Indenture to be given or taken by any Specified Creditor (other than Noteholders) may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Specified Creditor in person or an agent duly appointed in writing. Proof of execution of any such instrument or of a writing appointing any such agent will be sufficient for any purpose of this Indenture and (subject to Section 9.01) conclusive in favour of the Indenture Trustee and the Issuer, if made in the manner provided in Section 1.04(b).

1.06 Effect of Headings and Table of Contents

The Article and Section headings herein and the Table of Contents are for convenience only and will not affect the construction hereof.

1.07 Successors and Assigns

All covenants and agreements in this Indenture by the Issuer will bind its successors and assigns, whether so expressed or not. All covenants and agreements of the Indenture Trustee in this Indenture shall bind its successors, co-trustees and agents of the Indenture Trustee.

1.08 Severability

In case any provision in this Indenture or in the Notes will be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired thereby.

1.09 Governing Law

THIS INDENTURE WILL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE PROVINCE OF ONTARIO AND THE FEDERAL LAWS OF CANADA APPLICABLE THEREIN, AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS. EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY ONTARIO COURTS SITTING IN TORONTO IN ANY ACTION, APPLICATION, REFERENCE OR OTHER PROCEEDING ARISING OUT OF OR RELATED TO THIS INDENTURE. THE PARTIES HERETO HEREBY WAIVE ANY RIGHT THEY

MAY HAVE TO REQUIRE A TRIAL BY JURY OF ANY PROCEEDING COMMENCED IN CONNECTION WITH THIS INDENTURE.

1.10 Counterparts

This Indenture may be executed in any number of counterparts, each of which so executed will be deemed to be an original, but all such counterparts will together constitute one and the same instrument.

1.11 Indenture Referred to in the Declaration of Trust and the Master Transfer and Servicing Agreement

This is the Indenture referred to in the Declaration of Trust and the Master Transfer and Servicing Agreement.

1.12 Non-Business Days

Whenever any payment to be made hereunder shall be stated to be due, any period of time would begin or end, any calculation is to be made or any other action to be taken hereunder shall be stated to be required to be taken, on a day other than a Business Day, then (notwithstanding any other provision of the Notes or this Indenture) such payment shall be made, such period of time shall begin or end, such calculations shall be made and such other action shall be taken on the next succeeding Business Day.

1.13 Interest Act

For the purpose of disclosure pursuant to the *Interest Act* (Canada), the yearly rate of interest to which any rate of interest payable under this Indenture that is calculated on any basis other than a full calendar year is equivalent may be determined by multiplying such rate by a fraction, the numerator of which is the actual number of days in the calendar year in which such yearly rate of interest is to be ascertained and the denominator of which is the number of days comprising such other basis. The parties further agree that for the purposes of the *Interest Act* (Canada), (i) the principle of deemed reinvestment of interest shall not apply to any interest calculation under this Indenture or the Notes, and (ii) the rates of interest stipulated in this Indenture or the Notes are intended to be nominal rates and not effective rates or yields.

1.14 Currency

Unless stated otherwise, all amounts herein are stated in Dollars.

1.15 References to Acts of the Issuer

For greater certainty, where any reference is made in this Indenture, or in any other instrument executed pursuant hereto or contemplated hereby to which the Issuer or the Issuer Trustee, as trustee of the Issuer, is party, to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against, or a covenant, representation or warranty (other than relating to the constitution or existence of the Issuer) by or with respect to (i) the Issuer or (ii) the

Issuer Trustee, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against or a covenant, representation or warranty (other than relating to the constitution or existence of the Issuer) by or with respect to, the Issuer Trustee as trustee of the Issuer.

1.16 Judgment Currency

(a) If for the purpose of obtaining judgment in any court or for any other purposes (other than conversions specifically provided for in this Indenture), it is necessary to convert any amount due under this Indenture from the currency in which it is due (the "**Original Currency**") into another currency (the "**Second Currency**"), the rate of exchange applied shall be that at which, in accordance with normal banking procedures, the purchaser could purchase, in the New York foreign exchange market, the Original Currency with the Second Currency on the date on which judgment is given. The obligation of the Issuer in respect of any Original Currency due from it to the Indenture Trustee under this Indenture shall, notwithstanding any judgment or payment in such other currency, be discharged only to the extent that, on the Business Day following receipt of any sum so paid or adjudged to be due under this Indenture in the Second Currency, the Indenture Trustee may, in accordance with normal banking procedures, purchase in the New York foreign exchange market the Original Currency with the amount of the Second Currency so paid or so adjudged to be due; and if the amount of the Original Currency so purchased is less than the amount originally due in the Original Currency, the Issuer shall indemnify the Indenture Trustee against such loss.

(b) The term "**rate of exchange**" in this Section 1.16 means the spot rate at which the Indenture Trustee, in accordance with normal practice, is able on the relevant date to purchase the Original Currency with the Second Currency and includes any premium and costs of exchange payable in connection with such purchase.

ARTICLE II
COLLATERAL

2.01 Security for Obligations Secured

As security for the due payment of all Obligations Secured including, without limitation, all principal of and interest, if any, on the Notes from time to time issued and certified under this Indenture and on any Borrowings, and the performance by the Issuer of all of the obligations of the Issuer in relation thereto, the Issuer hereby:

(a) mortgages, charges, pledges, grants, transfers, assigns, hypothecates and sets over unto the Indenture Trustee, for the benefit and security of the applicable Specified Creditors and the Indenture Trustee, in its individual capacity, as and by way of a fixed and specific mortgage, assignment, pledge, hypothec and charge and grants to the Indenture Trustee for the benefit and security of the applicable Specified

Creditors and the Indenture Trustee, in its individual capacity, a security interest in all of its right, title and interest, whether now owned or hereafter acquired, in and to the following:

(i) the Issuer Investment Interest;

(ii) ~~the Collection Account, the Refinancing Account, each Finance Reserve Account, each Capital Reserve Account and each Supplemental Reserve~~**each Issuer** Account (including all Sub-Accounts of each ~~of the foregoing~~**Issuer Account**);

(iii) all Eligible Investments and all investment property, money and other property held in the ~~Collection Account, the Refinancing Account, any Finance Reserve Account, any Capital Reserve Account or any Supplemental Reserve Account~~**Issuer Accounts** (including any Sub-Accounts of each ~~of the foregoing~~**Issuer Account**);

(iv) all rights, benefits and powers of the Issuer under any Program Agreement;

(v) all rights, benefits and powers of the Issuer under the Act and all regulations promulgated thereunder;

(vi) all present and future claims, demands, causes of and choses in action in respect of any of the foregoing and all interest, principal, payments and distributions of any nature or type on any of the foregoing;

(vii) all accounts, general intangibles, chattel paper, instruments, documents, goods, money, investment property, deposit accounts, letters of credit and letter-of-credit rights consisting of, arising from, or relating to any of the foregoing;

(viii) all debts, accounts, claims, monies and choses in action due or to become due with respect to all of the foregoing and also all securities, bills, notes, evidences of deposits of money, and other documents now held or owned or which may be hereafter taken, held or owned by the Issuer, or anyone on behalf of the Issuer, and all renewals thereof, accretions thereto, substitutions therefor and all interest, income and revenue arising therefrom or by virtue thereof;

(ix) all amounts received with respect to all of the foregoing; and

(x) all proceeds of the foregoing; and

(b) mortgages, charges, pledges, grants, transfers, assigns, hypothecates and sets over unto the Indenture Trustee, for the benefit and security of the Specified Creditors and the Indenture Trustee, in its individual capacity, a floating charge over, and grants to the Indenture Trustee for the benefit and security of the Specified Creditors and the Indenture Trustee, in its individual capacity, a security interest

in all of the property, assets and undertaking now owned or hereafter acquired by the Issuer.

The property described in the preceding sentence is collectively referred to as the "**Collateral**".

The Indenture Trustee acknowledges the grant of such Security Interest, and accepts the Collateral in trust hereunder in accordance with the provisions hereof and agrees to perform the duties herein such that the interests of the Specified Creditors may be adequately and effectively protected.

To have and to hold the Collateral and all rights hereby conferred unto the Indenture Trustee, its successors and assigns forever but in trust nevertheless for the benefit of the Specified Creditors and the Indenture Trustee, in its individual capacity, and for the uses and purposes and subject to the terms and conditions herein set forth.

The Issuer acknowledges that value has been given and that the security granted shall attach and be effective on the date of execution of this Indenture and when the Issuer has rights in the Collateral, whether or not the monies and the Notes or any other evidence of Obligations Secured or any part thereof hereby secured or intended to be hereby secured shall be advanced or issued before or after or upon the date of the execution of this Indenture.

2.02 Recording, Etc.

(a) The Issuer intends the Security Interest granted pursuant to this Indenture in favor of the Indenture Trustee to be prior to all other Liens in respect of the Collateral. The Issuer will take all actions necessary to maintain a perfected Lien on the Collateral in favor of the Indenture Trustee.

(b) The Indenture Trustee shall hold each item of the Collateral separate and apart from all other property held by the Indenture Trustee.

(c) The Issuer will from time to time execute, authorize and deliver all such supplements and amendments hereto and all such financing statements, amendments thereto, instruments of further assurance and other instruments, all as prepared by the Issuer, and will take such other action necessary or advisable to:

(i) grant the Security Interest more effectively in all or any portion of the Collateral;

(ii) maintain or preserve the Security Interest (and the priority thereof) created by this Indenture or carry out more effectively the purposes hereof;

(iii) perfect, publish notice of or protect the validity of any grant made or to be made by this Indenture;

(iv) enforce its rights under the Investment Asset, the IESO Security Agreement, any Derivative Agreement, any Credit Enhancement

Agreement, any Liquidity Agreement and each other instrument or agreement designated for inclusion in the Collateral;

(v) preserve and defend title to the Collateral and the rights of the Indenture Trustee in the Collateral against the claims of all Persons; or

(vi) pay all Taxes levied or assessed upon the Collateral when due.

(d) The Issuer will from time to time promptly pay and discharge all PPSA recording and filing fees, charges and Taxes relating to this Indenture, any amendments hereto and any other instruments of further assurance.

(e) Without limiting the generality of subsection 2.02(c) or (d):

(i) The Issuer will cause this Indenture, all amendments and supplements hereto and all financing statements and all amendments to such financing statements and any other necessary documents covering the Indenture Trustee's right, title and interest in and to the Collateral to be promptly recorded, registered and filed, and at all times to be kept recorded, registered and filed, all in such manner and in such places as may be required by applicable law fully to preserve and protect the right, title and interest of the Indenture Trustee in and to all property comprising the Collateral. The Issuer will deliver to the Indenture Trustee file-stamped copies of, or filing receipts for, any document recorded, registered or filed as provided above, as soon as available following such recording, registration or filing. The Issuer hereby authorizes the filing of financing statements (and amendments of financing statements) that name the Issuer as debtor and the Indenture Trustee as secured party and that cover all personal property of the Issuer. The Issuer also hereby ratifies the filing of any such financing statements (or amendments of financing statements) that were filed prior to the execution hereof.

(ii) The Issuer shall not change its name, its jurisdiction of formation or its type of organization unless it has first (A) made all filings and taken all actions in all relevant jurisdictions under the PPSA and other applicable law as are necessary to continue and maintain the first priority perfected Security Interest of the Indenture Trustee in the Collateral, and (B) delivered to the Indenture Trustee an Opinion of Counsel to the effect that all necessary filings have been made under the PPSA (and where applicable, the equivalent thereof) in all relevant jurisdictions as are necessary to continue and maintain the first priority perfected Security Interest of the Indenture Trustee in the Collateral.

2.03 Use of Collateral

Subject to the express terms of this Indenture, until the Issuer Funding Obligations have become due and payable pursuant to Section 8.02, the Issuer will be permitted to possess and use the Collateral in connection with the activities of the Issuer, including, without limitation, the

right to (a) exercise all of its rights and perform all of its obligations under each Program Agreement without consultation with or the consent of the Indenture Trustee, and (b) use the funds in any Issuer Account for any purpose not in violation of this Indenture or the Program Agreements.

2.04 Suits To Protect the Collateral

Subject to the provisions of this Indenture, the Indenture Trustee will have the power to institute and to maintain such suits and proceedings as it may deem expedient to prevent any impairment of the Collateral by any acts which may be unlawful or in violation of this Indenture, and such suits and proceedings as the Indenture Trustee may deem expedient to preserve or protect the interests of the Specified Creditors and the interests of the Indenture Trustee in the Collateral (including the power to institute and maintain suits or proceedings to restrain the enforcement of, or compliance with, any legislative or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid if the enforcement of, or compliance with, such enactment, rule or order would impair the Security Interest or be prejudicial to the interests of the Specified Creditors or the Indenture Trustee).

2.05 Purchaser Protected

In no event will any purchaser in good faith of any property purported to be released hereunder be bound to ascertain the authority of the Indenture Trustee to execute the release or to inquire as to the satisfaction of any conditions required by the provisions hereof for the exercise of such authority or to see to the application of any consideration given by such purchaser or other transferee; nor will any purchaser or other transferee of any property or rights permitted by this Article II to be sold be under any obligation to ascertain or inquire into the authority of the Issuer to make any such sale or other transfer.

2.06 Powers Exercisable by Receiver or Indenture Trustee

In case the Collateral shall be in the possession of a receiver or trustee lawfully appointed, the powers conferred in this Article II upon the Issuer with respect to the release, sale or other disposition of such property may be exercised by such receiver or trustee, and an instrument signed by such receiver or trustee shall be deemed the equivalent of any similar instrument of the Issuer or of any officer or officers thereof required by the provisions of this Article II.

2.07 Determinations Relating to Collateral

In the event (i) the Indenture Trustee shall receive any written request from the Issuer for consent or approval with respect to any matter or thing relating to any Collateral or the Issuer's obligations with respect thereto, (ii) there shall be due to or from the Indenture Trustee under the provisions hereof any performance or the delivery of any instrument, or (iii) the Indenture Trustee shall become aware of any nonperformance by the Issuer of any covenant or any breach of any representation or warranty of the Issuer set forth in this Indenture, then, in each such event, the Indenture Trustee shall be entitled to hire experts, consultants, agents and attorneys to advise the Indenture Trustee on the manner in which the Indenture Trustee should respond to such request or render any requested performance or response to such nonperformance or breach (the expenses of which will be reimbursed to the Indenture Trustee pursuant to Section 9.05).

The Indenture Trustee will be fully protected in the taking of any action recommended or approved by any such expert, consultant, agent or attorney, or agreed to by Extraordinary Resolution of Debtholders of Controlling Class Obligations.

2.08 Satisfaction and Discharge of Indenture

(a) The Issuer may at any time, for the purpose of obtaining the satisfaction and discharge of this Indenture with respect to any **Class,** Series~~, Class~~ or Tranche of Notes or for any other purpose, pay, or by an Issuer Certificate direct any Paying Agent to pay, to the Indenture Trustee all sums held in trust by the Issuer or such Paying Agent in respect of each and every **Class,** Series~~, Class~~ or Tranche of ~~Notes~~**Funding Obligations** as to which it seeks to discharge this Indenture or, if for any other purpose, all sums so held in trust by the Issuer in respect of all Notes, such sums to be held by the Indenture Trustee upon the same trusts as those upon which such sums were held by the Issuer or such Paying Agent; and, upon such payment by any Paying Agent to the Indenture Trustee, such Paying Agent will be released from all further liability with respect to such money.

(b) This Indenture will cease to be of further effect with respect to any **Class,** Series~~, Class~~ or Tranche of ~~Notes~~**Funding Obligations** (except as to any surviving rights of transfer or exchange of Notes of that **Class,** Series~~, Class~~ or Tranche expressly provided for herein or in ~~the~~**any** form of Note for that **Class,** Series~~, Class~~ or Tranche), and the Indenture Trustee, on demand of and at the expense of the Issuer, will execute proper instruments acknowledging satisfaction and discharge of this Indenture as to that **Class,** Series~~, Class~~ or Tranche, when:

(i) all Notes of that **Class,** Series~~, Class~~ or Tranche theretofore ~~authenticated and delivered~~**outstanding** (other than (A) Notes of that **Class,** Series~~, Class~~ or Tranche which have been destroyed, lost or stolen and which have been replaced or paid as provided in Section ~~16.04~~**16.05**(b), and (B) ~~Notes~~**Funding Obligations** of that **Class,** Series~~, Class~~ or Tranche for whose payment money has theretofore been deposited in trust or segregated and held in trust by the Issuer and thereafter repaid to the Issuer or discharged from that trust, as provided in Section ~~16.04~~**16.05**(b)) have been delivered to the Indenture Trustee ~~canceled or~~ for cancellation **or been cancelled**;

(ii) the Issuer has paid or caused to be paid all other sums payable under the Indenture (including payments to the Indenture Trustee pursuant to Section 9.05) by the Issuer with respect to the ~~Notes~~**Funding Obligations** of that **Class,** Series~~, Class~~ or Tranche; and

(iii) the Issuer has delivered to the Indenture Trustee an Issuer Certificate and an Opinion of Counsel each stating that all conditions precedent herein provided for relating to the satisfaction and discharge of this Indenture with respect to the Notes of that **Class,** Series~~, Class~~ or Tranche have been complied with.

Notwithstanding the satisfaction and discharge of this Indenture with respect to any Class, Series~~, Class~~ or Tranche of Notes, the obligations of the Issuer to the Indenture Trustee with respect to that Class, Series~~, Class~~ or Tranche of Notes under Section 9.05 and the obligations of the Indenture Trustee under Sections ~~7.07~~7.12 and ~~16.04~~16.05(b) will survive such satisfaction and discharge.

2.09 Release of all Collateral

(a) Subject to the payment of its fees and expenses pursuant to Section 9.05, the Indenture Trustee shall, at the request of the Issuer or when otherwise required by the provisions of this Indenture, execute instruments to release Collateral from the Security Interest of this Indenture, or convey the Indenture Trustee's interest (which is held by the Indenture Trustee for the benefit of the Specified Creditors) in the same, in a manner and under circumstances which are not inconsistent with the provisions of this Indenture. No party relying upon an instrument executed by the Indenture Trustee as provided in this Article II will be bound to ascertain the Indenture Trustee's authority, inquire into the satisfaction of any conditions precedent or see to the application of any funds.

(b) Upon delivery of an Officer's Certificate of the Issuer certifying that all Issuer Funding Obligations and all other Obligations Secured have been satisfied and discharged by complying with the provisions of this Article II and all applicable Program Agreements, the Indenture Trustee shall execute and deliver such releases, termination statements and other instruments (in recordable form, where appropriate) as the Issuer may reasonably request evidencing the termination of the Security Interest created by this Indenture.

(c) The Issuer and the Specified Creditors shall be entitled to receive at least 10 days' written notice when the Indenture Trustee proposes to take any action pursuant to clause (a), accompanied by copies of any instruments involved, and the Indenture Trustee shall also be entitled to require, as a condition to such action, an Opinion of Counsel, stating the legal effect of any such action, outlining the steps required to complete the same, and concluding that all conditions precedent to the taking of such action have been complied with. Counsel rendering any such opinion may rely, without independent investigation, on the accuracy and validity of any certificate or other instrument delivered to the Indenture Trustee in connection with any such action.

2.10 Certain Commercial Law Representations and Warranties

The Issuer hereby makes the following representations and warranties. Such representations and warranties shall survive until the termination of this Indenture. Such representations and warranties speak of the date that a Lien in the Collateral is granted to the Indenture Trustee and shall not be waived by any of the parties to this Indenture unless the Rating Agency Condition is satisfied.

(a) This Indenture constitutes the grant of a first priority perfected Lien by the Issuer to the Indenture Trustee in the Collateral which, in the case of the existing Collateral and the proceeds thereof, is enforceable upon execution and delivery of this Indenture or, with respect to after-acquired property, as of the date such property is acquired, and which will be enforceable with respect to the Collateral hereafter and thereafter created and the proceeds thereof upon such creation. Upon the filing of the assignments, financing statements and continuation statements (and other documents where applicable) and, in the case of after-acquired Collateral and the proceeds thereof, upon its creation, the Indenture Trustee shall have a first priority perfected Lien in such property and proceeds.

(b) At the time of its grant of any Lien in the Collateral pursuant to this Indenture, the Issuer owned and had good and marketable title to such Collateral free and clear of any Lien of any other Person (other than Permitted Liens).

(c) The Issuer has caused the filing of all appropriate financing statements in the proper filing office in the Province of Ontario under applicable law in order to perfect the Security Interest.

(d) Other than the Security Interest, the Issuer has not pledged, assigned, sold, granted a Lien in, or otherwise conveyed, the Collateral. The Issuer has not authorized the filing of and is not aware of any financing statements against the Issuer that include a description of the Collateral other than any financing statement relating to the Security Interest or that has been terminated. The Issuer is not aware of any judgment or Tax lien filings against the Issuer.

ARTICLE III
NOTE FORMS

3.01 Forms Generally

The Notes will have such appropriate insertions, omissions, substitutions and other variations as are required or permitted by this Indenture or the Related Supplemental Indenture and may have such letters, numbers or other marks of identification and such legends or endorsements placed thereon, as may be required to comply with applicable laws or regulations or with the rules of any securities exchange, or as may, consistently herewith, be determined by the Issuer, as evidenced by the Issuer's execution of such Notes. Any portion of the text of any Note may be set forth on the reverse thereof, with an appropriate reference thereto on the face of the Note.

Definitive Notes will be typewritten, printed, lithographed or engraved or produced by any combination of these methods (with or without steel engraved borders) or may be produced in any other manner, all as determined by the Issuer, as evidenced by the Issuer's execution of such Notes, subject, with respect to the Notes of any **Class,** Series~~, Class~~ or Tranche, to the rules of any securities exchange on which such Notes are listed.

3.02 Forms of Notes

Before the delivery of a Note to the Indenture Trustee for authentication, the Issuer will deliver to the Indenture Trustee the Issuer Certificate by or pursuant to which such form of Note has been approved, which Issuer Certificate will have attached thereto a true and correct copy of the form of Note which has been approved thereby or, if an Issuer Certificate authorizes a specific officer or officers of the Manager to approve a form of Note, a certificate of such officer or officers approving the form of Note attached thereto. Any form of Note approved by or pursuant to an Issuer Certificate must be acceptable as to form to the Indenture Trustee, such acceptance to be evidenced by the Indenture Trustee's authentication of Notes in that form or a certificate signed by a Responsible Officer of the Indenture Trustee and delivered to the Issuer.

3.03 Form of Indenture Trustee's Certificate of Authentication

The form of Indenture Trustee's Certificate of Authentication for any Note issued pursuant to this Indenture will be substantially as follows:

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

This is one of the Notes of the Class, Series, Class or Tranche designated therein referred to in the within-mentioned Indenture.

[INDENTURE TRUSTEE]BNY TRUST COMPANY OF CANADA, as Indenture Trustee,

By:

Authorized Signatory

Dated:

3.04 Notes Issuable in the Form of a Global Note

(a) If the Issuer establishes pursuant to Sections 3.02 and 4.01 that the Notes of a particular Class, Series, Class or Tranche are to be issued in whole or in part in the form of one or more Global Notes, then the Issuer will execute and the Indenture Trustee or its agent will, in accordance with Section 4.03 and the Issuer Certificate delivered to the Indenture Trustee or its agent thereunder, authenticate and deliver, such Global Note or Notes, which, unless otherwise provided in the Related Supplemental Indenture (i) will represent, and will be denominated in an amount equal to the aggregate Stated Principal Amount (or in the case of Discount Notes, the aggregate Stated Principal Amount at the Principal Payment Due Date of such Notes) of the Outstanding Notes of such Class, Series, Class or Tranche to be represented by such Global Note or Notes, or such portion thereof as the Issuer will specify in an Issuer Certificate, (ii) in the case of Registered Notes, will be registered in the name of the Depository for such Global Note or Notes or its nominee, (iii) will be delivered by the Indenture Trustee or its agent to the

Depository or pursuant to the Depository's instruction, (iv) if applicable, will bear a legend substantially to the following effect: (A) "Unless this Note is presented by an authorized representative of The Depository Trust Company ("**DTC**"), to ~~[~~Fair Hydro Trust~~]~~ (the "**Issuer**") or its agent for registration of transfer, exchange or payment, and any Note issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), any transfer, pledge or other use hereof for value or otherwise by or to any Person is wrongful inasmuch as the registered owner hereof, Cede & Co., has an interest herein", or (B) "Unless this Note is presented by an authorized representative of CDS Clearing and Depository Services Inc. ("**CDS**"), to ~~[~~Fair Hydro Trust~~]~~ (the "**Issuer**") or its agent for registration of transfer, exchange or payment, and any Note issued is registered in the name of CDS & Co. or in such other name as is requested by an authorized representative of CDS (and any payment is made to CDS & Co. or to such other entity as is requested by an authorized representative of CDS), any transfer, pledge or other use hereof for value or otherwise by or to any Person is wrongful since the registered owner hereof, CDS & Co., has a property interest in the securities represented by this Note and it is a violation of its rights for another Person to hold, transfer or deal with this Note", and (v) may bear such other legend as the Issuer, upon advice of counsel, deems to be applicable. **[NTD: Indenture Trustee to review forms of legends.]**

(b) Notwithstanding any other provisions of this Section 3.04 or of Section 4.05, and subject to the provisions of paragraph (c) below, unless the terms of a Global Note or the Related Supplemental Indenture expressly permit such Global Note to be exchanged in whole or in part for individual Notes, a Global Note may be transferred, in whole but not in part and in the manner provided in Section 4.05, only to a nominee of the Depository for such Global Note, or to the Depository, or a successor Depository for such Global Note selected or approved by the Issuer, or to a nominee of such successor Depository.

(c) With respect to Notes issued within the United States or Canada, unless otherwise specified in the Related Supplemental Indenture, or with respect to Notes issued outside the United States and Canada, if specified in the Related Supplemental Indenture:

(i) If at any time the Depository for a Global Note notifies the Issuer that it is unwilling or unable to continue as Depository for such Global Note or if at any time the Depository for the Notes for such **Class,** Series~~, Class~~ or Tranche ceases to be a clearing agency registered under the Securities Exchange Act, or other applicable statute or regulation, in the case of Notes issued within the United States, or **ceases to be** a clearing agency registered under the *Securities Act* (Ontario), or other applicable statute or regulation, in the case of Notes issued within Canada, the Issuer will appoint a successor Depository with respect to such Global Note. If a successor Depository for such Global Note is not appointed by the Issuer

within 90 days after the Issuer receives such notice or becomes aware of such ineligibility, the Issuer will execute, and the Indenture Trustee or its agent, upon receipt of an Issuer Certificate requesting the authentication and delivery of individual Notes of such **Class,** Series~~, Class~~ or Tranche in exchange for such Global Note, will authenticate and deliver, individual Notes of such **Class,** Series~~, Class~~ or Tranche of like tenor and terms in **definitive form in** an aggregate Stated Principal Amount equal to the Stated Principal Amount of the Global Note in exchange for such Global Note.

(ii) The Issuer may at any time and in its sole discretion determine that the Notes of any **Class,** Series~~, Class~~ or Tranche or portion thereof issued or issuable in the form of one or more Global Notes will no longer be represented by such Global Note or Notes. In such event the Issuer will execute, and the Indenture Trustee, upon receipt of a written request by the Issuer for the authentication and delivery of individual Notes of such **Class,** Series~~, Class~~ or Tranche in exchange in whole or in part for such Global Note, will authenticate and deliver individual Notes of such **Class,** Series~~, Class~~ or Tranche of like tenor and terms in definitive form in an aggregate Stated Principal Amount equal to the Stated Principal Amount of such Global Note or Notes representing such **Class,** Series~~, Class~~ or Tranche or portion thereof in exchange for such Global Note or Notes.

(iii) If any Event of Default has occurred and is continuing~~ with respect to such Global Notes,~~ and Noteholders holding more than 50% of the unpaid Outstanding Dollar Principal Amount of the Global Notes of ~~that~~**all** Series advise the Indenture Trustee and the Depository that ~~a~~ Global ~~Note is~~**Notes are** no longer in the best interest of the Noteholders~~ of that Series~~, the holders of Global Notes~~ of that Series~~ may exchange such Notes for individual Notes.

(iv) In any exchange provided for in any of the preceding three paragraphs, the Issuer will execute and the Indenture Trustee or its agent will authenticate and deliver individual Notes in definitive registered form in authorized denominations. Upon the exchange of the entire Stated Principal Amount of a Global Note for individual Notes, such Global Note will be canceled by the Indenture Trustee or its agent. Except as provided in the preceding paragraphs, Notes issued in exchange for a Global Note pursuant to this Section 3.04 will be registered in such names and in such authorized denominations as the Depository for such Global Note, pursuant to instructions from its direct or indirect participants or otherwise, will instruct the Indenture Trustee or the Note Registrar. The Indenture Trustee or the Note Registrar will deliver such Notes to the Persons in whose names such Notes are so registered.

3.05 Temporary Global Notes and Permanent Global Notes

(a) If specified in the Related Supplemental Indenture for any ~~Tranche~~**Series**, all or any portion of a Global Note may initially be issued in the form of a single temporary global Bearer Note or Registered Note (the "**Temporary Global Note**"), without interest coupons, in the denomination of the entire aggregate principal amount of such Series~~, Class or Tranche~~ and substantially in the form set forth in the exhibit with respect thereto attached to the Related Supplemental Indenture. The Temporary Global Note will be authenticated by the Indenture Trustee upon the same conditions, in substantially the same manner and with the same effect as the Notes in definitive form. The Temporary Global Note may be exchanged as described below or in the Related Supplemental Indenture for permanent global Bearer Notes or Registered Notes (the "**Permanent Global Notes**").

(b) Unless otherwise provided in the Related Supplemental Indenture, exchanges of beneficial interests in or security entitlements to Temporary Global Notes for beneficial interests in or security entitlements to Permanent Global Notes will be made as provided in this subsection 3.05(b). The Manager will, upon its determination of the date of completion of the distribution of the Notes of such Series~~, Class or Tranche~~, so advise the Indenture Trustee, the Issuer, the Foreign Depository, and each foreign clearing agency forthwith. Without unnecessary delay, but in any event not prior to the Exchange Date, the Issuer will execute and deliver to the Indenture Trustee at the office of its designated agent outside Canada and the United States Permanent Global Notes in bearer or registered form (as specified in the Related Supplemental Indenture) in an aggregate principal amount equal to the Outstanding Currency Specific Dollar Principal Amount of such Series~~, Class or Tranche~~ of Notes. Bearer Notes so issued and delivered may have coupons attached. The Temporary Global Note may be exchanged for an equal aggregate principal amount of Permanent Global Notes only on or after the Exchange Date. A United States Person may exchange its beneficial interest in or security entitlement to the Temporary Global Note only for an equal aggregate principal amount of Permanent Global Notes in registered form bearing the applicable legend set forth in the form of Registered Note attached to the Related Supplemental Indenture and having a minimum denomination of 500,000 units of the applicable currency, which may be in temporary form if the Issuer so elects. The Issuer may waive the 500,000 minimum denomination requirement if it so elects. Upon any demand for exchange for Permanent Global Notes in accordance with this subsection 3.05(b), the Issuer will cause the Indenture Trustee to authenticate and deliver the Permanent Global Notes to the Noteholder (x) outside Canada or the United States, in the case of Bearer Notes and (y) according to the instructions of the Noteholder, in the case of Registered Notes. Upon receipt of such certification, the Indenture Trustee will cause the Temporary Global Note to be endorsed in accordance with subsection 3.05(d). Any exchange as provided in this Section 3.05 will be made free of charge to the Noteholders and the beneficial owners of the Temporary Global Note and to the beneficial owners of the Permanent Global

Note issued in exchange, except that a Person receiving the Permanent Global Note must bear the cost of insurance, postage, transportation and the like in the event that such Person does not receive such Permanent Global Note in person at the offices of a foreign clearing agency or Foreign Depository.

(c) The delivery to the Indenture Trustee by a foreign clearing agency or Foreign Depository of any written statement referred to above may be relied upon by the Issuer and the Indenture Trustee as conclusive evidence that a corresponding certification or certifications has or have been delivered to such foreign clearing agency or Foreign Depository pursuant to the terms of this Indenture.

(d) Upon any such exchange of all or a portion of the Temporary Global Note for a Permanent Global Note(s), such Temporary Global Note will be endorsed by or on behalf of the Indenture Trustee to reflect the reduction of its principal amount by an amount equal to the aggregate principal amount of such Permanent Global Note(s). Until so exchanged in full, such Temporary Global Note will in all respects be entitled to the same benefits under this Indenture as Permanent Global Notes authenticated and delivered hereunder except that the beneficial owners of such Temporary Global Note will not be entitled to receive payments of interest on the Notes until they have exchanged their beneficial interests in or security entitlements to such Temporary Global Note for Permanent Global Notes.

3.06 Beneficial Ownership of Global Notes

Until definitive Notes have been issued to the applicable Noteholders pursuant to Section 3.04 or as otherwise specified in any Related Supplemental Indenture:

(a) the Issuer and the Indenture Trustee may deal with the applicable ~~clearing agency or~~ Depository and the~~ clearing agency's or~~ Depository's participants for all purposes (including the making of distributions) as the authorized representatives of the respective Note Owners; and

(b) the rights of the respective Note Owners will be exercised only through the ~~applicable clearing agency or Depository and the clearing agency's or Depository's participants and will be limited to those established by applicable law and agreements between such Note Owners and the clearing agency or Depository and/or the clearing agency's or~~**Depository and the** Depository's participants. ~~Pursuant to the operating rules of the applicable clearing agency, unless~~**Unless** and until Notes in definitive form are issued pursuant to Section 3.04,~~ the clearing agency or~~ the Depository will make book-entry transfers among the ~~clearing agency's or the~~ Depository's participants and receive and transmit distributions of principal and interest on the related Notes to such~~ clearing agency's or~~ Depository's participants**, in accordance with the Depository's applicable procedures from time to time**.

For purposes of any provision of this Indenture requiring or permitting Actions with the consent of, or at the direction of, Noteholders evidencing a specified percentage of the

Outstanding Dollar Principal Amount of Outstanding Notes, such direction or consent may be given by Note Owners (acting through the ~~clearing agency~~**Depository** and the ~~clearing agency~~**Depository**'s participants) owning interests in or security entitlements to Notes evidencing the requisite percentage of principal amount of Notes **in accordance with the applicable procedures of the Depository**.

3.07 Notices to Depository

Whenever any notice or other communication is required to be given to Noteholders with respect to which book-entry Notes have been issued, unless and until Notes in definitive form will have been issued to the related Note Owners, the Indenture Trustee will give all such notices and communications to the applicable clearing agency or Depository.

3.08 CUSIP Numbers

In issuing the Notes, the Issuer may use "CUSIP" numbers (if then generally in use), and, if so, the Indenture Trustee shall use such CUSIP numbers in notices of redemption as a convenience to Noteholders; provided that, subject to Section 9.01, any such notice may state that (a) no representation is made as to the correctness of such CUSIP numbers as printed on the related Notes or as contained in any notice of redemption, (b) reliance may be placed only on the other identification numbers, if any, printed on the Notes and (c) any such redemption shall not be affected by any defect in or omission of such CUSIP numbers. The Issuer will promptly provide the Indenture Trustee with written notice of any change in the CUSIP numbers for any Outstanding Note.

ARTICLE IV
THE NOTES

4.01 General Title, General Limitations, Issuable in Series, Terms of a Series~~, Class~~ or Tranche of Notes

(a) The aggregate Stated Principal Amount of Notes which may be authenticated and delivered and Outstanding under this Indenture is not limited.

(b) The Notes **of any Class** may be issued in one or more Series~~, Classes~~ or Tranches up to an aggregate Stated Principal Amount of Notes as from time to time may be authorized by the Issuer.

(c) **The Classes of Notes are as set forth in this Indenture.** Each Note issued must be part of a ~~Series, Class~~ and ~~Tranche~~**Series** of Notes for purposes of allocations pursuant to this Indenture, the Related Supplemental Indenture and the Master Transfer and Servicing Agreement. A Series of Notes is created pursuant to a Supplemental Indenture. A ~~Class or~~ Tranche of Notes is created pursuant to a Supplemental Indenture or pursuant to a Terms Document related to the Supplemental Indenture for the applicable Series.

~~(d) Each Series of Notes may, but need not be, subdivided into multiple Classes. Notes belonging to a Class in any Series may be entitled to specified payment priorities over other Classes of Notes in that Series.~~

(d) ~~(e)~~ Each Series of Notes shall be designated in the Related Supplemental Indenture as either Senior Notes, Subordinated Notes or Junior Subordinated Notes. If **the Notes of** a Series ~~of Notes is subdivided into multiple Classes, the Notes of each Class of such Series shall be designated in the Related Supplemental Indenture as either Senior Notes, Subordinated Notes or Junior Subordinated Notes. If the Notes of a Class~~ of Notes belong to different Tranches, all Notes of such ~~Class~~**Series**, without regard to the Tranche they are included in, shall be Senior Notes, Subordinated Notes or Junior Subordinated Notes, as applicable to the ~~Class~~**Series** of Notes.

~~(f) Notes of a Series that belong to different Classes in that Series belong to different Tranches on the basis of the difference in Class membership.~~

(e) ~~(g)~~ Each ~~Class~~**Series** of Notes may consist of a single Tranche or may be subdivided into multiple Tranches. Notes of a single ~~Class~~**Series** of a ~~Series~~**Class** will belong to different Tranches if they have different terms and conditions. With respect to any ~~Class~~**Series** of Notes, Notes which have identical terms, conditions and Tranche designation will be deemed to be part of a single Tranche of Notes.

(f) ~~(h)~~ Before the initial issuance of Notes of each Series~~, Class~~ or Tranche, there shall also be established in or pursuant to a Supplemental Indenture or pursuant to a Terms Document related to the applicable Supplemental Indenture, provision for:

(i) **The Class in respect of such Series;**

(ii) ~~(i)~~ the Series designation;

(iii) ~~(ii)~~ the Stated Principal Amount of the Notes;

(iv) ~~(iii)~~ whether such Notes are of a particular ~~Class of Notes or a~~ Tranche of ~~a Class of~~ Notes;

(v) ~~(iv)~~ the currency or currencies in which such Notes will be denominated and in which payments of principal of, and interest on, such Notes will or may be payable;

~~(v) if the principal of or interest, if any, on such Notes are to be payable, at the election of the Issuer or a Noteholder, in a currency or currencies other than that in which the Notes are stated to be payable, the period or periods within which, and the terms and conditions upon which, such election may be made;~~

~~(vi) if the amount of payments of principal of or interest, if any, on such Notes may be determined with reference to an index based on (A) a currency or currencies other than that in which the Notes are stated to be payable, (B) changes in the prices of one or more other securities or indexes of securities or (C) changes in the prices of one or more commodities or indexes of commodities, or any combination of the foregoing, the manner in which such amounts will be determined;~~

(vi) ~~(vii)~~ the price or prices at which such Series~~, Class~~ or Tranche of Notes will be issued;

(vii) ~~(viii)~~ the times at which such Series~~, Class~~ or Tranche of Notes may, pursuant to any optional or mandatory redemption provisions, be redeemed, and the other terms and provisions of any such redemption;~~2~~

(viii) ~~(ix)~~ the rate per annum at which such Series~~, Class~~ or Tranche of Notes will bear interest, if any, or the formula or index on which such rate will be determined, including all relevant definitions, and the date from which interest will accrue;

(ix) ~~(x)~~ each Payment Date, the Principal Payment Due Date and the Principal Payment Default Date for such Series~~, Class~~ or Tranche of Notes;

(x) the Principal Accumulation Date for such Series of Notes;

(xi) the Principal Accumulation Amounts for such Series of Notes;

(xii) ~~(xi)~~ the Initial Dollar Principal Amount or the Initial Currency Specific Dollar Principal Amount of such Notes, and the means for calculating the Outstanding Dollar Principal Amount or the Outstanding Currency Specific Dollar Principal Amount, as applicable, of such Series~~, Class~~ or Tranche of Notes;

(xiii) ~~(xii)~~ whether or not application will be made to list such Series~~, Class~~ or Tranche of Notes on any securities exchange;

(xiv) ~~(xiii)~~ any Events of Default with respect to such Series~~, Class~~ or Tranche of Notes, if not set forth herein and any additions, deletions or other changes to the Events of Default set forth herein that will be applicable to such Series~~, Class~~ or Tranche of Notes (including a provision making any Event of Default set forth herein inapplicable to the Notes of that Series~~, Class~~ or Tranche);

(xv) ~~(xiv)~~ if such Series~~, Class~~ or Tranche of Notes will be issued in whole or in part in the form of a Global Note or Global Notes, the terms and conditions, if any, upon which such Global Note or Global Notes may be

~~2 To confirm whether optional or mandatory redemption is possible. If not, a specific provision prohibiting it will be included.~~

exchanged in whole or in part for other individual Notes, and the Depository for such Global Note or Global Notes;

(xvi) ~~(xv)~~ if such Series~~, Class~~ or Tranche of Notes will be issued in whole or in part as Registered Notes, Bearer Notes or both, whether such Series~~, Class~~ or Tranche of Notes are to be issued with or without coupons or both;

~~(xvi) the subordination of such Series, Class or Tranche of Notes to any other indebtedness of the Issuer, including without limitation, the Notes of any other Series, Class or Tranche;~~

(xvii) **[if such Series~~, Class~~ or Tranche of Notes are to have the benefit of any Derivative Agreement, the terms and provisions of such agreement;]**

(xviii) if such Series~~, Class~~ or Tranche of Notes are to have the benefit of any Credit Enhancement Agreement or Liquidity Agreement, the terms and provisions of the applicable agreement;

(xix) the Record Date for any Payment Date of such Series~~, Class~~ or Tranche of Notes, if different from the last day of the month before the related Payment Date;

~~(xx) the details of any accumulation period for such Series, Class or Tranche of Notes and the amount scheduled to be deposited in a Capital Reserve Account, if any, on each Payment Date during such accumulation period;~~

(xx) ~~(xxi)~~ whether and under what conditions, additional amounts will be payable to Noteholders of such Series~~, Class~~ or Tranche; and

(xxi) ~~(xxii)~~ any other terms of such Notes as stated in the Related Supplemental Indenture;

all upon such terms as may be determined in or pursuant to the Related Supplemental Indenture.

(g) ~~(i)~~ The Notes of each **Class,** Series~~, Class~~ or Tranche will be distinguished from the Notes of each other **Class,** Series~~, Class~~ or Tranche in such manner, reasonably satisfactory to the Indenture Trustee, as the Issuer may determine.

(h) ~~(j)~~ Any terms or provisions in respect of the Notes of any **Class,** Series~~, Class~~ or Tranche issued under this Indenture may be determined pursuant to this Section 4.01 by providing in the Related Supplemental Indenture for the method by which such terms or provisions will be determined.

4.02 Denominations

The Notes of each Series~~, Class~~ or Tranche will be issuable in such denominations and currency as will be provided in the provisions of this Indenture or in or pursuant to the Related Supplemental Indenture. In the absence of any such provisions with respect to the Registered Notes of any Series~~, Class~~ or Tranche, the Registered Notes of that Series~~, Class~~ or Tranche will be issued in denominations of 100,000 units of the applicable currency and integral multiples of 1,000. In the absence of any such provisions with respect to the Bearer Notes of any Series~~, Class~~ or Tranche, the Bearer Notes of that Series~~, Class~~ or Tranche will be issued in denominations of 1,000, 5,000, 50,000 and 100,000 units of the applicable currency.

4.03 Execution, Authentication and Delivery and Dating

(a) The Notes will be executed on behalf of the Issuer by a Responsible Officer of the Issuer. The signature of any Responsible Officer of the Issuer on the Notes may be manual or facsimile or may be given by other electronic means.

(b) Notes bearing the manual, facsimile or other electronic signatures of individuals who were at any time a Responsible Officer of the Issuer will bind the Issuer, notwithstanding that such individuals or any of them have ceased to hold such offices before the authentication and delivery of such Notes or did not hold such offices at the date of issuance of such Notes.

(c) At any time and from time to time after the execution and delivery of this Indenture, the Issuer may deliver Notes executed by the Issuer to the Indenture Trustee for authentication; and the Indenture Trustee will, upon request by an Issuer Certificate, authenticate and deliver such Notes as provided in this Indenture and not otherwise.

(d) Before any such authentication and delivery, the Indenture Trustee will be entitled to receive, in addition to any Officer's Certificate and Opinion of Counsel required to be furnished to the Indenture Trustee pursuant to Section 1.02, the Issuer Certificate and any other opinion or certificate relating to the issuance of the Series~~, Class~~ or Tranche of Notes required to be furnished pursuant to Section 3.02 or Article V.

(e) The Indenture Trustee will not be required to authenticate such Notes if the issue thereof will adversely affect the Indenture Trustee's own rights, duties or immunities under the Notes and this Indenture.

(f) Unless otherwise provided in the form of Note for any Series~~, Class~~ or Tranche, all Notes will be dated the date of their authentication.

(g) No Note will be entitled to any benefit under this Indenture or be valid or obligatory for any purpose unless there appears on such Note a Certificate of Authentication executed by the Indenture Trustee by manual signature of an authorized signatory, and such certificate upon any Note will be conclusive

evidence, and the only evidence, that such Note has been duly authenticated and delivered hereunder.

4.04 Temporary Notes

(a) Pending the preparation of definitive Notes of any Series~~, Class~~ or Tranche, the Issuer may execute, and, upon receipt of the documents required by Section 4.03, the Indenture Trustee will authenticate and deliver, temporary Notes which are printed, lithographed, typewritten, mimeographed or otherwise produced, in any authorized denomination, substantially of the tenor of the definitive Notes in lieu of which they are issued and with such appropriate insertions, omissions, substitutions and other variations as the Issuer may determine, as evidenced by the Issuer's execution of such Notes.

(b) If temporary Notes of any Series~~, Class~~ or Tranche are issued, the Issuer will cause definitive Notes of such Series~~, Class~~ or Tranche to be prepared without unreasonable delay. After the preparation of definitive Notes, the temporary Notes of such Series~~, Class~~ or Tranche will be exchangeable for definitive Notes of such Series~~, Class~~ or Tranche upon surrender of the temporary Notes of such Series~~, Class~~ or Tranche at the office or agency of the Issuer in a Place of Payment, without charge to the Noteholder; and upon surrender for cancellation of any one or more temporary Notes the Issuer will execute and the Indenture Trustee will authenticate and deliver in exchange therefor a like Stated Principal Amount of definitive Notes of such Series~~, Class~~ or Tranche of authorized denominations and of like tenor and terms. Until so exchanged the temporary Notes of such Series~~, Class~~ or Tranche will in all respects be entitled to the same benefits under this Indenture as definitive Notes of such Series~~, Class~~ or Tranche.

4.05 Registration, Transfer and Exchange

(a) The Issuer will keep or cause to be kept a register (herein sometimes referred to as the "**Note Register**") in which, subject to such reasonable regulations as it may prescribe, the Issuer will provide for the registration of Registered Notes, or of Registered Notes of a particular **Class,** Series~~, Class~~ or Tranche, and for transfers of Registered Notes or of Registered Notes of such **Class,** Series~~, Class~~ or Tranche. Any such register will be in written form or in any other form capable of being converted into written form within a reasonable time. At all reasonable times, the information contained in such register or registers will be available for inspection by the Indenture Trustee at the office or agency to be maintained by the Issuer as provided in Section 13.03.

(b) Subject to Section 3.04, upon surrender for transfer of any Registered Note of any **Class,** Series~~, Class~~ or Tranche at the office or agency of the Issuer in a Place of Payment, the Issuer will execute, and, upon receipt of such surrendered Note, the Indenture Trustee will authenticate and deliver, in the name of the designated transferee or transferees, one or more new Registered Notes of such **Class,** Series~~, Class~~ or Tranche of any authorized denominations, of a like aggregate Stated

Principal Amount, Principal Payment Due Date and Principal Payment Default Date and of like terms.

(c) Subject to Section 3.04, at the option of the Noteholder, Notes of any **Class,** Series~~, Class~~ or Tranche may be exchanged for other Notes of such **Class,** Series~~, Class~~ or Tranche of any authorized denominations, of a like aggregate Stated Principal Amount, Principal Payment Due Date and Principal Payment Default Date and of like terms, upon surrender of the Notes to be exchanged at the office or agency of the Issuer in a Place of Payment. Registered Notes, including Registered Notes received in exchange for Bearer Notes, may not be exchanged for Bearer Notes. At the option of the holder of a Bearer Note, subject to applicable laws and regulations, Bearer Notes may be exchanged for other Bearer Notes or Registered Notes (of the same **Class,** Series~~, Class~~ and Tranche of Notes) of authorized denominations of like aggregate fractional undivided interests in the Noteholders' interest, upon surrender of the Bearer Notes to be exchanged at an office or agency of the Note Registrar located outside Canada and the United States. Each Bearer Note surrendered pursuant to this Section 4.05 will have attached thereto all unmatured coupons; provided, however, that any Bearer Note, so surrendered after the close of business on the last day of the month preceding the relevant Payment Date need not have attached the coupon relating to such Payment Date. Whenever any Notes are so surrendered for exchange, the Issuer will execute, and the Indenture Trustee will authenticate and deliver (in the case of Bearer Notes, outside Canada and the United States), the Notes which the Noteholders making the exchange are entitled to receive.

(d) All Notes issued upon any transfer or exchange of Notes will be the valid and legally binding obligations of the Issuer, evidencing the same debt, and entitled to the same benefits under this Indenture, as the Notes surrendered upon such transfer or exchange.

(e) Every Note presented or surrendered for transfer or exchange will (if so required by the Issuer or the Indenture Trustee) be duly endorsed, or be accompanied by a written instrument of transfer in form satisfactory to the Issuer and the Note Registrar duly executed, by the Noteholder or his attorney duly authorized in writing.

(f) Unless otherwise provided in the Note to be transferred or exchanged, no service charge will be made on any Noteholder for any transfer or exchange of Notes, but the Issuer may (unless otherwise provided in such Note) require payment of a sum sufficient to cover any Tax or other governmental charge that may be imposed in connection with any transfer or exchange of Notes before the transfer or exchange will be complete, other than exchanges pursuant to Section 4.04 or Section 11.05 not involving any transfer.

(g) None of the Issuer, the Note Registrar or the Indenture Trustee shall be required (i) to issue, register the transfer of or exchange any Notes of any **Class,** Series~~, Class~~ or Tranche during a period beginning at the opening of business 15 days

before the day of selection of Notes of such **Class,** Series~~, Class~~ or Tranche to be redeemed and ending at the close of business on (A) if Notes of such **Class,** Series~~, Class~~ or Tranche are issuable only as Registered Notes, the day of the mailing of the relevant notice of redemption of Registered Notes of such **Class,** Series~~, Class~~ or Tranche so selected for redemption or (B) if Notes of the **Class,** Series~~, Class~~ or Tranche are issuable as Bearer Notes, the day of the first publication of the relevant notice of redemption or, if Notes of the **Class,** Series~~, Class~~ or Tranche are also issuable as Registered Notes and there is no publication, the mailing of the relevant notice of redemption or (ii) to register the transfer or exchange of any Notes or portions thereof so selected for redemption.

(h) Notwithstanding anything herein to the contrary, the exchange of Bearer Notes into Registered Notes shall be subject to applicable laws and regulations in effect at the time of exchange; none of the Issuer, the Indenture Trustee or the Note Registrar shall exchange any Bearer Notes into Registered Notes if it has received an Opinion of Counsel that as a result of such exchanges the Issuer would suffer adverse consequences under the Canadian or United States federal income tax laws and regulations then in effect, or the income tax laws of the jurisdiction of the holder of the Bearer Note, and the Issuer has delivered to the Indenture Trustee an Issuer Certificate directing the Indenture Trustee not to make such exchanges unless and until the Indenture Trustee receives a subsequent Issuer Certificate to the contrary. The Issuer shall deliver copies of such Issuer Certificates to the Note Registrar.

(i) None of the Issuer, the Indenture Trustee, any agent of the Indenture Trustee, any Paying Agent or the Note Registrar will have any responsibility or liability for any aspect of the records relating to or payments made on account of beneficial ownership of a Global Note or for maintaining, supervising or reviewing any records relating to such beneficial ownership.

(j) The Issuer initially appoints the Indenture Trustee to act as Note Registrar for the Registered Notes on its behalf. The Issuer may at any time and from time to time authorize any Person to act as Note Registrar in place of the Indenture Trustee with respect to any **Class,** Series~~, Class~~ or Tranche of Notes issued under this Indenture.

(k) Registration of transfer of Notes containing the following legend or to which the following legend is applicable:

THIS NOTE HAS NOT BEEN AND WILL NOT BE REGISTERED UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE "**SECURITIES ACT**"), OR ANY OTHER APPLICABLE U.S. STATE SECURITIES LAWS AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD WITHIN THE UNITED STATES OR TO, OR FOR THE ACCOUNT OR BENEFIT OF, U.S. PERSONS EXCEPT IN ACCORDANCE WITH THE TRUST INDENTURE AND THE INDENTURE SUPPLEMENT AND PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OR

PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT.

will be effected only if such transfer is made pursuant to an effective registration statement under the U.S. Securities Act, or is exempt from the registration requirements under the U.S. Securities Act. In the event that registration of a transfer is to be made in reliance upon an exemption from the registration requirements under the U.S. Securities Act other than Rule 144A under the U.S. Securities Act or Rule 903 or Rule 904 of Regulation S under the U.S. Securities Act, the transferor or the transferee will deliver, at its expense, to the Issuer and the Indenture Trustee, an investment letter from the transferee, substantially in a form appended to a Supplemental Indenture authorizing the applicable Series of Notes or such other form as the Issuer may determine, and no registration of transfer will be made until such letter is so delivered.

Notes issued upon registration or transfer of, or Notes issued in exchange for, Notes bearing the legend referred to above will also bear such legend and any other legends required by the Related Supplemental Indenture unless the Issuer, the Indenture Trustee and the Note Registrar receive an Opinion of Counsel, satisfactory to each of them, to the effect that such legend may be removed.

Whenever a Note containing the legend referred to above is presented to the Note Registrar for registration of transfer, the Note Registrar will promptly seek instructions from the Issuer regarding such transfer and will be entitled to receive an Issuer Certificate prior to registering any such transfer. The Issuer hereby agrees to indemnify the Note Registrar and the Indenture Trustee and to hold each of them harmless against any loss, liability or expense incurred without negligence or bad faith on their part arising out of or in connection with actions taken or omitted by them in relation to any such instructions furnished pursuant to this clause. The Indenture Trustee shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Indenture, the Related Supplemental Indenture, or under applicable law with respect to any transfer of any interest in any Note other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by the terms of, this Indenture, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

(l) By acquiring a Note, each Noteholder that is a United States Person will be deemed to represent, warrant and covenant that either: (i) it is not acquiring the Note (or any interest therein) with the assets of a Benefit Plan or a governmental, church or non-U.S. plan that is subject to any federal, state, local or other non-U.S. law that is substantially similar to Section 406 of ERISA or Section 4975 of the Internal Revenue Code ("**Similar Law**"); or (ii) (A) the Note is rated at least "BBB-" or its equivalent by a nationally recognized statistical rating agency at the time of purchase or transfer, and (B) the acquisition, holding and disposition of the Note will not give rise to a non-exempt prohibited transaction

under Section 406 of ERISA or Section 4975 of the Internal Revenue Code or a violation of any Similar Law.

4.06 Mutilated, Destroyed, Lost and Stolen Notes

(a) If (i) any mutilated Note (together, in the case of Bearer Notes, with all unmatured coupons, if any, appertaining thereto) is surrendered to the Indenture Trustee or the Note Registrar, or the Issuer, the Note Registrar or the Indenture Trustee receive evidence to their satisfaction of the destruction, loss or theft of any Note, and (ii) there is delivered to the Issuer, the Note Registrar or the Indenture Trustee such security or indemnity as may be required by them to save each of them harmless, then, in the absence of notice to the Issuer, the Note Registrar or the Indenture Trustee that such Note has been acquired by a protected purchaser, the Issuer will execute and upon its request the Indenture Trustee will authenticate and deliver (in the case of Bearer Notes, outside the United States), in exchange for or in lieu of any such mutilated, destroyed, lost or stolen Note, a new Note of like tenor, **Class,** Series~~, Class~~ or Tranche, Principal Payment Due Date, Principal Payment Default Date and Stated Principal Amount, bearing a number not contemporaneously Outstanding.

(b) In case any such mutilated, destroyed, lost or stolen Note has become or is about to become due and payable, the Issuer in its discretion may, instead of issuing a new Note, pay such Note.

(c) Upon the issuance of any new Note under this Section 4.06, the Issuer may require the payment of a sum sufficient to cover any Tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Indenture Trustee) connected therewith.

(d) Every new Note issued pursuant to this Section 4.06 in lieu of any destroyed, lost or stolen Note will constitute an original additional contractual obligation of the Issuer, whether or not the destroyed, lost or stolen Note will be at any time enforceable by anyone, and will be entitled to all the benefits of this Indenture equally and proportionately with any and all other Notes of the same **Class,** Series~~, Class~~ or Tranche duly issued hereunder.

(e) The provisions of this Section 4.06 are exclusive and will preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost or stolen Notes.

4.07 Persons Entitled to Payment

(a) Unless otherwise provided with respect to such Note pursuant to Section 4.01, interest payable on any Registered Note will be paid to the Person in whose name that Note (or one or more Predecessor Notes) is registered at the close of business on the most recent Record Date and interest payable on any Bearer Note will be paid to the bearer of that Note (or the applicable coupon).

(b) Subject to clause (a), each Note delivered under this Indenture upon transfer of or in exchange for or in lieu of any other Note will carry the rights to interest accrued or principal accreted and unpaid, and to accrue or accrete, which were carried by such other Note.

(c) Title to any Bearer Note, including any coupons appertaining thereto, shall pass by delivery. The Issuer, the Indenture Trustee, the Manager and any agent of the Issuer, the Indenture Trustee or the Manager may treat the Person who is proved to be the owner of such Note pursuant to subsection 1.04(c) as the owner of such Note for the purpose of receiving payment of principal of and (subject to this Section 4.07) interest on such Note and for all other purposes whatsoever, whether or not such Note be overdue, and none of the Issuer, the Indenture Trustee, the Manager or any agent of the Issuer, the Indenture Trustee or the Manager will be affected by notice to the contrary.

(d) Delivery of a Note to the Paying Agent by the holder of such Note shall, upon payment thereof, be a good discharge to the Issuer of all obligations evidenced by such Note. The Paying Agent shall not be bound to enquire into the title of any such Noteholder, save as ordered by a court of competent jurisdiction or as required by statute, nor shall it be bound to see to the execution of any trust affecting the ownership of any Note or be affected by notice of any equity that may be subsisting in respect thereof.

(e) In the case of the death of one or more joint registered owners, the principal money of and interest, if any, on a Note may be paid to the survivor or survivors of such registered Noteholders whose receipt thereof, accompanied by the delivery of such Note, shall constitute a valid discharge to the Issuer and the Paying Agent.

(f) Any payment of principal or interest on any Note which is due on a day other than a Business Day shall be payable on the next succeeding Business Day without adjustment for interest thereon and such payment shall be deemed to have been made with the same force and effect as if made on the due date.

(g) Upon the Paying Agent's reasonable request therefor, the Issuer will (i) provide the Paying Agent with any information in its possession or (ii) assist the Paying Agent (to the extent necessary and it is commercially reasonable for the Issuer to do so) to obtain information, in each case, to the extent such information is required by the Paying Agent to comply with its tax reporting and withholding obligations under applicable law with respect to payments to be made to Specified Creditors pursuant to this Indenture and the other Program Agreements, unless the Issuer is prohibited from doing so by applicable law or an obligation of confidentiality by which the Issuer is bound.

4.08 Cancellation

All Notes surrendered for payment, redemption, **repurchase,** transfer, conversion or exchange will, if surrendered to any Person other than the Indenture Trustee, be delivered to the

Indenture Trustee and, if not already canceled, will be promptly canceled by it. The Issuer may at any time deliver to the Indenture Trustee for cancellation any Notes previously authenticated and delivered hereunder which the Issuer may have acquired in any manner whatsoever, and all Notes so delivered will be promptly canceled by the Indenture Trustee. No Note will be authenticated in lieu of or in exchange for any Notes canceled as provided in this Section 4.08, except as expressly permitted by this Indenture. The Indenture Trustee will dispose of all canceled Notes in accordance with its customary procedures and will deliver a certificate of such disposition to the Issuer.

4.09 Protection of Notes

(a) The Indenture Trustee shall hold in safekeeping the Notes which have not been issued (but which have been delivered to the Indenture Trustee by or on behalf of the Issuer) pending receipt of an Issuer Certificate. The Indenture Trustee shall acknowledge receipt of the Notes so delivered by signing and returning to the Issuer an acknowledgement of receipt of the Notes, such acknowledgement to be in a form satisfactory to the Issuer.

(b) The Indenture Trustee's responsibility for any Notes held in its custody hereunder shall be limited to using the same diligence in physically safeguarding such Notes as it does for its own securities. The Indenture Trustee shall account for the unissued Notes held in its custody whenever so required by the Issuer. If at any time the Indenture Trustee shall discover that any of such Notes have been lost, damaged, destroyed, stolen or misappropriated, it shall promptly advise the Issuer thereof and identify, to the extent practicable, such Notes.

4.10 New Issuances of Notes

(a) There are no restrictions on the timing or amount of any additional issuance of Notes of an Outstanding ~~Class~~**Series** or Tranche of a ~~Series~~**Class** of Notes, so long as the conditions described in Article V are satisfied. As of the date of any additional issuance of Notes of an Outstanding ~~Class~~**Series** or Tranche of Notes, the Stated Principal Amount and Outstanding Dollar Principal Amount of that ~~Class~~**Series** or Tranche will be increased to reflect the principal amount of the additional Notes. If the additional Notes are a ~~Class~~**Series** or Tranche of Notes that has the benefit of a Derivative Agreement, the Issuer will enter into a Derivative Agreement for the benefit of the additional Notes. In addition, if the additional Notes are a ~~Class~~**Series** or Tranche of Notes that has the benefit of any Credit Enhancement Agreement or Liquidity Agreement, the Issuer will enter into a Credit Enhancement Agreement or Liquidity Agreement, as applicable, for the benefit~~ of the additional Notes. Furthermore, the targeted deposits, if any, to any applicable Issuer Account, will be increased proportionately to reflect the principal amount~~ of the additional Notes.

(b) When issued, the additional Notes of a ~~Class~~**Series** or Tranche will be identical in all respects to the other Outstanding Notes of that ~~Class~~**Series** or Tranche and will be equally and ratably entitled to the benefits of this Indenture and the Related

Supplemental Indenture as the other Outstanding Notes of that ~~Class~~**Series** or Tranche without preference, priority or distinction; provided, however, that if such additional Notes are not fungible with such other Outstanding Notes for United States federal income tax purposes, then such additional Notes shall have a separate ISIN, CUSIP or other identifying number from such other Outstanding Notes.

4.11 Redemption

[NTD: redemption mechanics to be included.]

ARTICLE V
CONDITIONS PRECEDENT

5.01 Conditions Precedent for Incurrence of Indebtedness

On or prior to the date that the Issuer enters into a definitive agreement for the incurrence of Issuer Funding Obligations, the following conditions precedent shall be satisfied:

(a) the Issuer delivers to the Indenture Trustee and each Rating Agency notice of the incurrence of such new Issuer Funding Obligation;

(b) the Issuer delivers to the Indenture Trustee and each Rating Agency an Issuer Certificate to the effect that:

(i) the Issuer reasonably believes that the incurrence of the new Issuer Funding Obligation will not cause an Adverse Effect;

(ii) all instruments furnished to the Indenture Trustee conform to the requirements of this Indenture and constitute sufficient authority hereunder for the Indenture Trustee to (A) in the case of a Note issuance only, authenticate and deliver such Notes, and (B) in the case of all other Issuer Funding Obligations, execute and deliver the Related Funding Obligation Agreement(s) in accordance with Section 5.04;

(iii) in the case of a Note issuance only, the form and terms of such Notes have been established in conformity with the provisions of this Indenture;

(iv) the incurrence of such Issuer Funding Obligation is consistent in all material respects with the Financing Plan;

(v) after giving effect to the incurrence of such Issuer Funding Obligation, the estimated Finance Amount that would become due and payable during the applicable Reference Period is reasonably expected to align with the Fair Allocation Amount determined in respect of such Reference Period; and

(vi) such other matters as the Indenture Trustee may reasonably request;

(c) the representations and warranties set forth in Section 12.01 shall be true and correct in all material respects;

(d) the Rating Agency Condition shall have been satisfied with respect to the incurrence of such Issuer Funding Obligation;

(e) the Issuer delivers to the Indenture Trustee copies of the Related Funding Obligation Agreement(s), including in the case of Notes, a Supplemental Indenture, and if applicable, a Terms Document relating to the applicable ~~Class~~**Series** or Tranche of Notes;

(f) each creditor for such Issuer Funding Obligation (or an authorized agent on their behalf) shall (i) have acknowledged and agreed in favour of the Indenture Trustee that it is a Specified Creditor hereunder and its entitlements as a Specified Creditor are subject to the provisions applicable to Specified Creditors under this Indenture including, without limitation, Section ~~7.06~~**7.11** (Payments Held in Trust), Section 8.12 (Limitation on Suits), Sections 7.04 and 8.13 (Payment Priorities), Section 8.14 (Limited Recourse) and Section 16.01 (No Petition), (ii) irrevocably authorize and direct the Indenture Trustee on its behalf to take such action (including the execution and delivery of documents of subordination) as may be necessary or appropriate to further assure the priority arrangements provided for in Article VI and Sections 7.04 and 8.13, (iii) appoint the Indenture Trustee as its agent for any and all such purposes, and (iv) provide the Indenture Trustee with its notice details;

(g) the Change of Law Protection Agreement shall be in full force and effect against the Province or has been replaced with a new agreement that is in form and substance satisfactory to Debtholders of Controlling Class Obligations pursuant to an Ordinary Resolution;

(h) ~~(g)~~ the conditions precedent, if any, specified in the applicable Funding Obligation Agreement shall be satisfied;

(i) ~~(h)~~ in the case of a Note issuance only, the Indenture Trustee shall have received an Issuer Certificate for the certification and delivery of such Notes and specifying the particulars relating to such Notes;

(j) ~~(i)~~ in the case of Bearer Notes described in section 163(f)(2)(A) of the Internal Revenue Code, if such Notes are not in registered form (including by reason of a book entry system described in section 163(f)(3) of the Internal Revenue Code), then such Notes shall be described in section 4701(b)(1)(B) of the Internal Revenue Code and such section shall apply to such Notes; and

(k) ~~(j)~~ in the case of Foreign Currency Notes only, the Issuer shall have appointed one or more Paying Agents in the appropriate countries, if requested by the Indenture Trustee.

5.02 No Consent

Except as otherwise provided in any Funding Obligation Agreement, the Issuer and the Indenture Trustee will not be required to provide prior notice to or obtain the consent of any Debtholder to incur any additional Issuer Funding Obligations.

5.03 Conditions Precedent for the Incurrence of other Obligations Secured

On or prior to the date that the Issuer enters into any agreement that would give rise to Obligations Secured (other than Issuer Funding Obligations), the following conditions precedent shall be satisfied:

(a) the Issuer delivers to the Indenture Trustee a copy of the applicable agreement; and

(b) each counterparty to such agreement (or an authorized agent on their behalf) shall (i) have acknowledged and agreed in favour of the Indenture Trustee that it is a Specified Creditor hereunder and its entitlements as a Specified Creditor are subject to the provisions applicable to Specified Creditors under this Indenture including, without limitation, Section ~~7.06~~7.11 (Payments Held in Trust), Section 8.12 (Limitation on Suits), Sections 7.04 and 8.13 (Payment Priorities), Section 8.14 (Limited Recourse) and Section 16.01 (No Petition), (ii) irrevocably authorize and direct the Indenture Trustee on its behalf to take such action (including the execution and delivery of documents of subordination) as may be necessary or appropriate to further assure the priority arrangements provided for in Article VI and Sections 7.04 and 8.13, (iii) appoint the Indenture Trustee as its agent for any and all such purposes, and (iv) provide the Indenture Trustee with its notice details.

5.04 Acknowledgements

Upon receipt of an Issuer Certificate directing it to do so (provided the conditions set forth in Sections 5.01 and 5.03 have been satisfied, as certified by the Issuer), the Indenture Trustee shall execute an acknowledgement with respect to any Program Agreement or any evidence of indebtedness issued pursuant to a Program Agreement confirming that such Program Agreement or evidence of indebtedness is an Obligation Secured under this Indenture and the creditors listed in such Program Agreements are Specified Creditors for the purposes of this Indenture.

ARTICLE VI
SUBORDINATION

6.01 Subordination

The payment of all Subordinated Funding Obligations shall be subordinate and rank junior, to the extent and in the manner set forth in this Article VI, Article VII and Article VIII, if applicable, to the prior payment in full of all amounts owing from time to time with respect to the Senior Funding Obligations and the Derivative Funding Obligations. The payment of all Junior

Subordinated Funding Obligations shall be subordinate and rank junior, to the extent and in the manner set forth in this Article VI, Article VII and Article VIII, if applicable, to the prior payment in full of all amounts owing from time to time with respect to the Senior Funding Obligations, the Derivative Funding Obligations and the Subordinated Funding Obligations. Subject to the provisions of the Related Funding Obligation Agreement, (i) prior to the acceleration of the Issuer Funding Obligations pursuant to Section 8.02, payment in respect of the Subordinated Funding Obligations and the Junior Subordinated Funding Obligations shall be made as provided for in Section 7.04; and (ii) after the acceleration of the Issuer Funding Obligations pursuant to Section 8.02, payment on account of the Subordinated Funding Obligations and the Junior Subordinated Funding Obligations shall be made as provided for in Section 8.13.

6.02 Subrogation to Senior Funding Obligations and Derivative Funding Obligations

(a) Subject to the payment in full of the Senior Funding Obligations and the Derivative Funding Obligations or the making of due provision for such payment, the Debtholders of Subordinated Funding Obligations shall be subrogated to the rights of the Debtholders of Senior Funding Obligations and Derivative Counterparties to receive payments or distributions of assets of the Issuer, to the extent of the application thereto of moneys or other assets which would have been received by the Debtholders of Subordinated Funding Obligations but for the provisions of this Article VI, until the principal of and interest on the Subordinated Funding Obligations shall be paid in full.

(b) Subject to the payment in full of the Senior Funding Obligations, the Derivative Funding Obligations and the Subordinated Funding Obligations or the making of due provision for such payment, the Debtholders of Junior Subordinated Funding Obligations shall be subrogated to the rights of the Debtholders of Senior Funding Obligations and Subordinated Funding Obligations, and Derivative Counterparties, to receive payments or distributions of assets of the Issuer, to the extent of the application thereto of moneys or other assets which would have been received by the Debtholders of Junior Subordinated Funding Obligations but for the provisions of this Article VI, until the principal of and interest on the Junior Subordinated Funding Obligations shall be paid in full.

6.03 Rights of Specified Creditors Preserved

The provisions of this Article VI are and are intended solely for the purpose of defining the relative rights of the Debtholders of Senior Funding Obligations, Subordinated Funding Obligations and Junior Subordinated Funding Obligations, and Derivative Counterparties, as applicable. Nothing in this Article VI is intended to or shall impair the obligation of the Issuer, subject to the rights of the Debtholders of Senior Funding Obligations and Derivative Counterparties, to pay the Subordinated Funding Obligations and Junior Subordinated Funding Obligations as and when the same shall become due and payable in accordance herewith, or affect the relative rights of the Debtholders of Subordinated Funding Obligations and Junior Subordinated Funding Obligations, and creditors of the Issuer other than Debtholders of such Senior Funding Obligations and Derivative Counterparties, nor shall anything in this Article VI

prevent the Indenture Trustee or such Debtholders from exercising all remedies otherwise permitted by this Indenture, subject to the rights (if any) under this Article VI of Debtholders of Senior Funding Obligations, Derivative Counterparties and the Indenture Trustee on their behalves in respect of any payment or distribution of cash, property or securities of the Issuer received upon the exercise of any such remedy.

6.04 Renewal or Extension of Senior Funding Obligations

(a) Except as provided in this Indenture or the Related Funding Obligation Agreement, Debtholders of Senior Funding Obligations and Derivative Counterparties may at any time in their discretion renew or extend the time of payment of their Issuer Funding Obligations or exercise any other of their rights in respect thereof, including, without limitation, the waiver of an Event of Default thereunder, all without notice to or assent from the Debtholders of the Subordinated Funding Obligations or Junior Subordinated Funding Obligations, or the Indenture Trustee.

(b) No compromise, alteration, amendment, modification, extension, renewal or other change of, or waiver, consent or other action in respect of, any liability or obligation under or in respect of any Senior Funding Obligations, Derivative Funding Obligations or of any of the terms, covenants or conditions of any Related Funding Obligation Agreement under which any Senior Funding Obligations or Derivative Funding Obligations shall have been issued, shall in any way alter or affect any of the provisions of this Article VI.

ARTICLE VII
ISSUER ACCOUNTS AND INVESTMENTS; ORDINARY COURSE ALLOCATIONS

7.01 Available Collections

Except as otherwise expressly provided in this Indenture, the Indenture Trustee may demand payment or delivery of, and shall receive and collect, directly and without intervention or assistance from any fiscal agent or other intermediary, all money and other property payable to or receivable by the Indenture Trustee pursuant to this Indenture including, without limitation, all funds and other property payable to the Indenture Trustee in connection with the Collateral. The Indenture Trustee will hold all such money and property received by it as part of the Collateral and will apply it, or cause it to be applied, as provided in this Indenture and any applicable Program Agreement.

7.02 Issuer Accounts

(a) On or before the date hereof, the Issuer shall cause to be established and maintained an Eligible Deposit Account (the "**Collection Account**") in the name of the Indenture Trustee, bearing a designation clearly indicating that the funds and other property credited thereto are held for the benefit of the Indenture Trustee and the Specified Creditors. All Available Collections received shall be credited to the Collection Account. The Collection Account shall be under the control of

the Indenture Trustee for the benefit of the Indenture Trustee and the Specified Creditors. If, at any time, the institution holding the Collection Account ceases to be an Eligible Institution, the Manager shall notify the Indenture Trustee, and the Indenture Trustee upon being notified in writing of such ineligibility (or the Manager on its behalf) shall within 30 calendar days (or such longer period, not to exceed 45 calendar days, so long as the Rating Agency Condition is satisfied) establish a new Collection Account that is an Eligible Deposit Account and shall transfer any funds or other property from such Collection Account to such new Collection Account. From the date each such new Collection Account is established, it shall be the "Collection Account~~"~~**."**

(b) **On or before the date hereof, the Issuer shall cause to be established and maintained an Eligible Deposit Account (the "Interest Accumulation Account") in the name of the Indenture Trustee, bearing a designation clearly indicating that the funds and other property credited thereto are held for the benefit of the Indenture Trustee and the Specified Creditors. The Interest Accumulation Account shall be under the control of the Indenture Trustee for the benefit of the Indenture Trustee and the Specified Creditors. If, at any time, the institution holding the Interest Accumulation** Account ceases to be an Eligible Institution, the Manager shall notify the Indenture Trustee, and the Indenture Trustee upon being notified in writing of such ineligibility (or the Manager on its behalf) shall within 30 **days (or such longer period, not to exceed 45 days, so long as the Rating Agency Condition is satisfied) establish a new Interest Accumulation Account that is an Eligible Deposit Account and shall transfer any funds or other property from such Interest Accumulation Account to such new Interest Accumulation Account. From the date each such new Interest Accumulation Account is established, it shall be the "Interest Accumulation Account." The Interest Accumulation Account is a "finance reserve account" under, and as defined under, the Fair Hydro Regulations.**

(c) **On or before the date hereof, the Issuer shall cause to be established and maintained an Eligible Deposit Account (the "Principal Accumulation Account") in the name of the Indenture Trustee, bearing a designation clearly indicating that the funds and other property credited thereto are held for the benefit of the Indenture Trustee and the Specified Creditors. The Principal Accumulation Account shall be under the control of the Indenture Trustee for the benefit of the Indenture Trustee and the Specified Creditors. If, at any time, the institution holding the Principal Accumulation Account ceases to be an Eligible Institution, the Manager shall notify the Indenture Trustee, and the Indenture Trustee upon being notified in writing of such ineligibility (or the Manager on its behalf) shall within 30** days (or such longer period, not to exceed 45 calendar days, so long as the Rating Agency Condition is satisfied) establish a new **Principal Accumulation Account that is an Eligible Deposit Account and shall transfer any funds or other property from such Principal Accumulation Account to such new Principal Accumulation Account. From the date each such new Principal Accumulation Account is**

established, it shall be the "Principal Accumulation Account." The Principal Accumulation Account is a "capital account" under, and as defined under, the Fair Hydro Regulations.

(d) On or before the date hereof, the Issuer shall cause to be established and maintained an Eligible Deposit Account (the "Program Cash Reserve Account") in the name of the Indenture Trustee, bearing a designation clearly indicating that the funds and other property credited thereto are held for the benefit of the Indenture Trustee and the Specified Creditors. The Program Cash Reserve Account shall be under the control of the Indenture Trustee for the benefit of the Indenture Trustee and the Specified Creditors. If, at any time, the institution holding the Program Cash Reserve Account ceases to be an Eligible Institution, the Manager shall notify the Indenture Trustee, and the Indenture Trustee upon being notified in writing of such ineligibility (or the Manager on its behalf) shall within 30 days (or such longer period, not to exceed 45 days, so long as the Rating Agency Condition is satisfied) establish a new Program Cash Reserve Account that is an Eligible Deposit Account and shall transfer any funds or other property from such Program Cash Reserve Account to such new Program Cash Reserve Account. From the date each such new Program Cash Reserve Account is established, it shall be the "Program Cash Reserve Account." The Program Cash Reserve Account is a "finance reserve account" under, and as defined under, the Fair Hydro Regulations.

(e) ~~(b)~~ On or before the date hereof, the Issuer shall cause to be established and maintained an Eligible Deposit Account (the "**Refinancing Account**") in the name of the Indenture Trustee, bearing a designation clearly indicating that the funds and other property credited thereto are held for the benefit of the Indenture Trustee and the Specified Creditors. All proceeds arising from Notes and Borrowings related to Refinancings shall be deposited to the Refinancing Account. For greater certainty, the Refinancing Account may contain Sub-Accounts to account for proceeds in different currencies. The Refinancing Account shall be under the control of the Indenture Trustee for the benefit of the Indenture Trustee and the Specified Creditors. If, at any time, the institution holding the Refinancing Account ceases to be an Eligible Institution, the Manager shall notify the Indenture Trustee, and the Indenture Trustee upon being notified in writing of such ineligibility (or the Manager on its behalf) shall within 30 ~~calendar~~ days (or such longer period, not to exceed 45 calendar days, so long as the Rating Agency Condition is satisfied) establish a new Refinancing Account that is an Eligible Deposit Account and shall transfer any funds or other property from such Refinancing Account to such new Refinancing Account. From the date each such new Refinancing Account is established, it shall be the "Refinancing Account."

(f) ~~(c)~~ From time to time in connection with the creation of any Series ~~or Class~~ of Issuer Funding Obligations, the Issuer may cause to be established and maintained an Eligible Deposit Account (a "Series **Capital Reserve Account**") in the name

of the Indenture Trustee, bearing a designation clearly indicating that the funds and other property credited thereto are held for the benefit of the Indenture Trustee and the applicable Specified Creditors. A **Series** Capital Reserve Account may be established for the sole purpose of allowing the Issuer to accumulate funds to be used to make repayments in respect of Issuer Funding Obligations. Details of any period of accumulation and the amounts to be accumulated shall be specified in the Related Funding Obligation Agreement. Payments of Available Collections out of the Collection Account ~~not otherwise required to be paid to Specified Creditors at such time~~ shall be credited to a **Series** Capital Reserve Account, to the extent that there is a requirement for funds in such **Series** Capital Reserve Account, in accordance with the terms of ~~any~~**the** applicable Funding Obligation Agreement and Section 7.04. Each **Series** Capital Reserve Account shall be under the control of the Indenture Trustee for the benefit of the Indenture Trustee and the applicable Specified Creditors. If, at any time, the institution holding a **Series** Capital Reserve Account ceases to be an Eligible Institution, the Manager shall notify the Indenture Trustee, and the Indenture Trustee upon being notified in writing of such ineligibility (or the Manager on its behalf) shall within 30 ~~calendar~~ days (or such longer period, not to exceed 45 calendar days, so long as the Rating Agency Condition is satisfied) establish a new **Series** Capital Reserve Account that is an Eligible Deposit Account and shall transfer any funds or other property to such new **Series** Capital Reserve Account. From the date each such new **Series** Capital Reserve Account is established, it shall be a "**Series** Capital Reserve Account~~"~~**." Each Series Capital Reserve Account shall be a "capital account" under, and as defined under, the Fair Hydro Act Regulations.**

(g) ~~(d)~~ From time to time in connection with the creation of any Series ~~or Class~~ of Issuer Funding Obligations, the Issuer may cause to be established and maintained an Eligible Deposit Account (a "**Series** **Finance Reserve Account**") in the name of the Indenture Trustee, bearing a designation clearly indicating that the funds and other property credited thereto are held for the benefit of the Indenture Trustee and the applicable Specified Creditors. A **Series** Finance Reserve Account may be established for the purpose of allowing the Issuer to reserve funds to pay finance charges (including, without limitation, interest and payments under Derivative Agreements) for ~~one or more~~**a** Series ~~or Classes~~ of Issuer Funding Obligations. Payments of Available Collections out of the Collection Account ~~not otherwise required to be paid to Specified Creditors or a Capital Reserve Account at such time~~ shall be credited to a **Series** Finance Reserve Account, to the extent that there is a requirement for funds in such **Series** Finance Reserve Account, in accordance with the terms of ~~any~~**the** applicable Funding Obligation Agreement and Section 7.04. Each **Series** Finance Reserve Account shall be under the control of the Indenture Trustee for the benefit of the Indenture Trustee and the applicable Specified Creditors. If, at any time, the institution holding a **Series** Finance Reserve Account ceases to be an Eligible Institution, the Manager shall notify the Indenture Trustee, and the Indenture Trustee upon being notified in writing of such ineligibility (or the Manager on its behalf) shall within 30 ~~calendar~~ days (or such longer period, not to exceed 45 calendar days, so long as the Rating Agency

Condition is satisfied) establish a new **Series** Finance Reserve Account that is an Eligible Deposit Account and shall transfer any funds or other property to such new **Series** Finance Reserve Account. From the date each such new **Series** Finance Reserve Account is established, it shall be a "**Series** Finance Reserve Account~~".~~**." Each Series Finance Reserve Account shall be a "finance reserve account" under, and as defined under, the Fair Hydro Act Regulations.**

~~(e) From time to time in connection with the creation of any Series or Class of Issuer Funding Obligations, the Issuer may cause the Indenture Trustee to establish one or more Eligible Deposit Accounts denominated as "**Supplemental Reserve Accounts**" in the name of the Indenture Trustee, bearing a designation clearly indicating that the funds and other property credited thereto are held for the benefit of the Indenture Trustee and the applicable Specified Creditors. A Supplemental Reserve Account may be established for such other purposes not prohibited by this Indenture as the Issuer may deem necessary or desirable from time to time. Payments of Available Collections out of the Collection Account not otherwise required to be paid to Specified Creditors or a Capital Reserve Account at such time shall be credited to a Supplemental Reserve Account, to the extent that there is a requirement for funds in such Supplemental Reserve Account, in accordance with the terms of the any applicable Funding Obligation Agreement and Section 7.04. Each Supplemental Reserve Account shall be under the control of the Indenture Trustee for the benefit of the Indenture Trustee and the applicable Specified Creditors. If, at any time, the institution holding a Supplemental Reserve Account ceases to be an Eligible Institution, the Manager shall notify the Indenture Trustee, and the Indenture Trustee upon being notified in writing of such ineligibility (or the Manager on its behalf) shall within 30 calendar days (or such longer period, not to exceed 45 calendar days, so long as the Rating Agency Condition is satisfied) establish a new Supplemental Reserve Account, as applicable, that is an Eligible Deposit Account and shall transfer any funds or other property from such Supplemental Reserve Account to such new Supplemental Reserve Account. From the date each such new Supplemental Reserve Account is established, it shall be a "Supplemental Reserve Account".~~

7.03 Investment of Funds in the Issuer Accounts

(a) Funds credited to the Issuer Accounts will (unless otherwise stated in this Indenture or any applicable Funding Obligation Agreement) be invested and reinvested by the Indenture Trustee at the written direction of the Manager in one or more Eligible Investments. The Manager may appoint as its agent under a separate agreement a registered investment advisor and authorize such agent to give instructions on behalf of the Manager to the Indenture Trustee for funds to be invested and reinvested in one or more Eligible Investments. The Manager shall provide the Indenture Trustee with a written direction certifying any such appointment. The Indenture Trustee shall be entitled to conclusively rely on, and shall be protected in acting upon, instructions received from such agent on behalf of the Manager. The Manager (or its agent appointed pursuant to the preceding sentence) may authorize the Indenture Trustee to make specific investments

pursuant to written instructions, in such amounts as the Manager will specify. Notwithstanding the foregoing, funds held by the Indenture Trustee in any of the Issuer Accounts will be invested in Eligible Investments that will mature so that a sufficient amount of such funds shall be available to the extent required to pay all Obligations Secured that are payable on the following Payment Date.

(b) All funds from time to time credited to the Issuer Accounts pursuant to this Indenture and the Funding Obligation Agreements, and all investments made with such funds, if any, are property of the Issuer until such time as they are allocated or paid to satisfy Obligations Secured and will be held by the Indenture Trustee in the Issuer Accounts as part of the Collateral as herein provided, subject to withdrawal by the Paying Agent or the Indenture Trustee for the purposes specified herein.

(c) Funds and other property in any of the Issuer Accounts will not be commingled with any other funds or property of the Issuer or the Indenture Trustee.

(d) Subject to Section 8.13, on the applicable Payment Date, all interest and earnings (net of losses and investment expenses), if any, on funds credited to the Issuer Accounts will be applied as specified in Sections ~~7.04 and~~ 7.05 **to 7.10**.

(e) Subject to subsection 9.01(d), neither the Indenture Trustee nor the Manager will in any way be held liable by reason of any insufficiency in such Issuer Accounts resulting from any loss on any Eligible Investment included therein.

(f) Funds credited to the Issuer Accounts will be invested and reinvested by the Indenture Trustee as provided in the written direction of the Manager; provided, however, that such funds shall remain uninvested upon the occurrence of any of the following events:

(i) the Manager (or its agent appointed pursuant to paragraph (a) above) shall have failed to give investment directions to the Indenture Trustee; or

(ii) an Event of Default shall have occurred and be continuing but no Issuer Funding Obligations have been declared due and payable pursuant to Section 8.02.

7.04 Allocation of Amounts on Deposit in the Collection Account

(a) All Senior Funding Obligations of each Series~~, Class~~ or Tranche will in all respects be equally and ratably entitled to the benefits hereof with respect to such Series~~, Class~~ or Tranche without preference, priority or distinction on account of (i) the actual time of the incurrence, (ii) the Principal Payment Due Date, ~~or~~ (iii) the Principal Payment Default Date of the Senior Funding Obligations of such Series~~, Class~~ **or Tranche, or (iv) the Principal Accumulation Date of such Series** or Tranche, except as specified in the Related Funding Obligation Agreement. All Subordinated Funding Obligations of each Series~~, Class~~ or Tranche will in all respects be equally and ratably entitled to the benefits hereof

with respect to such Series~~, Class~~ or Tranche without preference, priority or distinction on account of (i) the actual time of the incurrence, (ii) the Principal Payment Due Date, ~~or~~ (iii) the Principal Payment Default Date of the Subordinated Funding Obligations of such Series~~, Class~~ **or Tranche, or (iv) the Principal Accumulation Date of such Series** or Tranche, except as specified in the Related Funding Obligation Agreement. All Junior Subordinated Funding Obligations of each Series~~, Class~~ or Tranche under this Indenture will in all respects be equally and ratably entitled to the benefits hereof with respect to such Series~~, Class~~ or Tranche without preference, priority or distinction on account of (i) the actual time of the incurrence, (ii) the Principal Payment Due Date, ~~or~~ (iii) the Principal Payment Default Date~~ of the Junior Subordinated Funding Obligations~~**, or (iv) the Principal Accumulation Date** of such Series~~, Class~~ or Tranche, except as specified in the Related Funding Obligation Agreement.

(b) On each Payment Date, Available Collections credited to the Collection Account since the previous Payment Date will be distributed in accordance with Section 7.04(e).

(c) If any amount below is payable on a date other than a Payment Date, prior to such payment being made, an amount will be reserved in the Collection Account equal to the amount estimated by the Manager in its commercially reasonable judgment, based upon amounts then known and/or reasonably expected to be or become payable on or before the next Payment Date, to be the aggregate amount of items *pari passu* or more senior in priority than such obligation, calculated on a *pro forma* basis, and if, due to such reservation of funds, there are insufficient funds available in the Collection Account to make such payment, such payment will be made only on the following Payment Date (and then only if funds are available pursuant to this Section 7.04).

(d) In the event of non-payment on any Payment Date of any amounts referred to in subsection 7.04(e), such amounts shall remain due and shall be payable on each subsequent Payment Date in the order of priority provided for in subsection 7.04(e), subject to Section 8.13.

(e) Subject to Section 8.13, on each Payment Date, any amount standing to the credit of the Collection Account will be distributed by the Paying Agent in the order of priority specified below, based upon the Payment Instructions received from the Manager in respect of such Payment Date, *pro rata* in proportion to the claims represented by each subclause except as otherwise specifically provided below:

(i) First, ~~(A)~~ to the payment or remittance of all Taxes exigible for which a Governmental Authority is given priority over the Specified Creditors under the laws of the applicable jurisdiction; ~~and then (B)~~

(ii) **Second,** to the Indenture Trustee and the Issuer Trustee in respect of the amount of fees, expenses and reimbursements owing, up to a maximum aggregate amount (without duplication of any amounts previously paid in

respect of such fees, expenses, reimbursements and indemnified claims) of **[■ percent (■%)]**[32] of the Outstanding Dollar Principal Amount of all Issuer Funding Obligations at such time;

(iii) ~~(ii) Second, *pari passu*, (A) to Debtholders~~**Third**, on a *pro rata* basis~~, in respect of all interest accrued and unpaid, if any, and fees and other amounts (other than principal) due and payable on the Senior Funding Obligations~~ **(A) to transfer to the Interest Accumulation Account, the Interest Accrual Amount (Senior) for such Payment Date**, and (B) to Derivative Counterparties, on a *pro rata* basis, all Derivative Funding Obligations payable other than Termination Payments;

(iv) ~~(iii) Third, *pari passu*, (A) to Debtholders, on a *pro rata* basis, in respect of the aggregate outstanding principal amount of the Senior Funding Obligations, only to the extent required to satisfy any payment of principal or requirement to accumulate amounts in a Capital Reserve Account in accordance with the terms of any Related Funding Obligation Agreement~~**Fourth, on a *pro rata* basis (A) to transfer to the Principal Accumulation Account, the Principal Accumulation Amount (Senior) for such Payment Date**, and (B) to Derivative Counterparties, on a *pro rata* basis, any Termination Payment where the Derivative Counterparty is not the Defaulting Party or the sole Affected Party;

~~(iv) Fourth, to transfer such amounts as is sufficient to replenish, on a *pro rata* basis, any other Issuer Account as required by any Related Funding Obligation Agreement, other than Issuer Accounts related solely to Subordinated Funding Obligations or Junior Subordinated Funding Obligations;~~

(v) Fifth, to ~~the Manager in respect of~~**Debtholders, on a *pro rata* basis,** all fees~~, expenses, reimbursement and indemnity amounts owing;~~ **and other amounts (other than interest or principal) due and payable on the Senior Funding Obligations,**

(vi) Sixth, to ~~the payment or remittance of all Taxes exigible and not previously paid pursuant to clause (i);~~**deposit to the Program Cash Reserve Account, the Program Cash Reserve Required Deposit Amount (Senior);**

(vii) Seventh, ~~(A) to the Indenture Trustee and the Issuer Trustee, in each case, in respect of the amount of any fees, expenses, reimbursements and indemnity amounts owing and not previously paid pursuant to clause (i); and then (B) to other service providers, in each case, in respect of the amount of any fees, expenses, reimbursement and indemnity amounts owing; including for each referenced party in subclauses (A) and (B), any amounts payable to their respective Affiliates under the terms of any~~

[32] To be confirmed.

~~relevant indemnity, with funds being distributed *pro rata* in proportion to the claims represented by each of subclauses (A) and (B), respectively;~~**to transfer such amounts as is sufficient to replenish, on a *pro rata* basis, any Series Capital Account or Series Finance Reserve Account as required by any Related Funding Obligation Agreement, other than any Series Capital Account or Series Finance Reserve Account related solely to Subordinated Funding Obligations or Junior Subordinated Funding Obligations;**

(viii) Eighth, to ~~Debtholders, on a *pro rata* basis,~~**the Manager** in respect of all ~~interest accrued and unpaid, if any, and~~ fees**, expenses, reimbursement** and ~~other amounts (other than principal) due and payable on the Subordinated Funding Obligations~~**indemnity amounts owing**;

(ix) Ninth, to ~~Debtholders, on a *pro rata* basis, in respect of the aggregate outstanding principal amount of the Subordinated Funding Obligations, only to the extent required to satisfy any payment of principal or requirement to accumulate amounts in a Capital Reserve Account for Subordinated Funding Obligations in accordance with the terms of any Related Funding Obligation Agreement;~~**transfer to the Interest Accumulation Account, the Interest Accrual Amount (Subordinated) for such Payment Date;**

(x) Tenth, to transfer ~~such amounts as is sufficient to replenish, on a *pro rata* basis, any Issuer Account (other than a Capital Reserve Account) related solely to Subordinated Funding Obligations as required by any Related Funding Obligation Agreement;~~**to the Principal Accumulation Account, the Principal Accumulation Amount (Subordinated) for such Payment Date,**

(xi) Eleventh, to Debtholders, on a *pro rata* basis, ~~in respect of all interest accrued and unpaid, if any, and~~**all** fees and other amounts (other than **interest or** principal) due and payable on the ~~Junior~~ Subordinated Funding Obligations;

(xii) Twelfth, to ~~Debtholders, on a *pro rata* basis, in respect of the aggregate outstanding principal amount of the Junior Subordinated Funding Obligations, only to the extent required to satisfy any payment of principal or requirement to accumulate amounts in a Capital Reserve Account for Junior Subordinated Funding Obligations in accordance with the terms of any Related Funding Obligation Agreement;~~**deposit to the Program Cash Reserve Account, the Program Cash Reserve Required Deposit Amount (Subordinated);**

(xiii) Thirteenth**, to transfer such amounts as is sufficient to replenish, on a *pro rata* basis, any Series Capital Account or Series Finance Reserve**

Account as required by any Related Funding Obligation Agreement related solely to Subordinated Funding Obligations;

(xiv) **Fourteenth, to transfer to the Interest Accumulation Account, the Interest Accrual Amount (Junior Subordinated) for such Payment Date,**

(xv) **Fifteenth, to transfer to the Principal Accumulation Account, the Principal Accumulation Amount (Junior Subordinated) for such Payment Date,**

(xvi) **Sixteenth, to Debtholders, on a *pro rata* basis, all fees and other amounts (other than interest or principal) due and payable on the Junior Subordinated Funding Obligations;**

(xvii) **Seventeenth**, to transfer such amounts as is sufficient to replenish, on a *pro rata* basis, any ~~Issuer Account (other than a Capital Reserve Account)~~**Series Capital Accounts or Series Finance Reserve Accounts** as required by any Related Funding Obligation Agreement related solely to Junior Subordinated Funding Obligations~~ as required by any Related Funding Obligation Agreement~~;

(xviii) ~~(xiv) Fourteenth~~**Eighteenth**, to Derivative Counterparties, on a *pro rata* basis, any Termination Payment where the Derivative Counterparty is the Defaulting Party or the sole Affected Party;

(xix) ~~(xv) Fifteenth~~**Nineteenth**, to the Issuer Trustee for the account of the beneficiaries of the Issuer, such amount as is required pursuant to the Declaration of Trust, provided that such amount shall at no time be less than $100 in any Monthly Period;~~ and~~

(xx) **Twentieth, on a *pro rata* basis (A) to the Indenture Trustee and the Issuer Trustee, in each case, in respect of the amount of any fees, expenses, reimbursements and indemnity amounts owing and not previously paid pursuant to clause (i); and then (B) to other service providers (other than the Manager), in each case, in respect of the amount of any fees, expenses, reimbursement and indemnity amounts owing; including for each referenced party in subclauses (A) and (B), any amounts payable to their respective Affiliates under the terms of any relevant indemnity; and**

(xxi) ~~(xvi) Sixteenth~~**Twenty-First**, any amounts remaining: (i) to be held in the Collection Account for distribution in the above order of priority on the succeeding Payment Date (or for distribution prior thereto as permitted or required pursuant to this Indenture); or (ii) after the final Issuer Funding Obligation has been paid in full and discharged, and all of the other foregoing amounts are paid in full, together with all amounts due to the

Indenture Trustee under Section 9.05 or otherwise, to the Issuer or as the Issuer designates.

7.05 Allocation of Amounts on Deposit in ~~the Other Issuer Accounts~~Interest Accumulation Account

~~(a)~~ Subject to ~~clause (b) below, if, after giving effect to payments made on any Payment Date, the amount in the Collection Account is insufficient to satisfy all amounts required to be paid to Specified Creditors on such date: (i) amounts on deposit in any Issuer Account, other than Issuer Accounts related solely to Subordinated Funding Obligations or Junior Subordinated Funding Obligations, may be withdrawn from such Issuer Account and allocated only to those Specified Creditors required to be paid pursuant to and in accordance with subsection 7.04(e)(i) through (iii); (ii) amounts on deposit in any Issuer Account related solely to Subordinated Funding Obligations may be withdrawn from such Issuer Account and allocated only to those Specified Creditors required to be paid pursuant to and in accordance with subsection 7.04(e)(i) through (ix); and (iii) amounts on deposit in any Issuer Account related solely to Junior Subordinated Funding Obligations may be withdrawn from such Issuer Account and allocated only to those Specified Creditors required to be paid pursuant to and in accordance with subsection 7.04(e)(i) through (xii).~~ **Sections 7.07 and 8.13, on each Interest Payment Date, any amount on deposit in the Interest Accumulation Account will be distributed by the Paying Agent in the order of priority specified below, based upon the Payment Instructions received from the Manager in respect of such Interest Payment Date:**

(a) Firstly, to Debtholders, on a *pro rata* basis, in respect of all interest due and payable on the Senior Funding Obligations on such Interest Payment Date;

(b) Secondly, to Debtholders, on a *pro rata* basis, in respect of all interest due and payable on Subordinated Funding Obligations on such Interest Payment Date; provided that no payment of interest on Subordinated Funding Obligations shall be made under this Section 7.05(b) unless, after making such payment (x) the amount remaining on deposit in the Interest Accumulation Account equals or exceeds the amount of accrued and unpaid interest on the Senior Funding Obligations as of such Interest Payment Date, and (y) the amount on deposit in the Principal Accumulation Account equals or exceeds the Required Principal Accumulation Amount (Senior) as of the Interest Payment Date;

(c) Thirdly, to Debtholders, on a *pro rata* basis, in respect of all interest due and payable on Junior Subordinated Funding Obligations on such Interest Payment Date; provided that no payment of interest on Junior Subordinated Funding Obligations shall be made under this Section 7.05(c) unless, after making such payment (x) the amount remaining on deposit in the Interest Accumulation Account equals or exceeds the amount of accrued and unpaid interest on the Senior Funding Obligations and the Subordinated Funding Obligations as of such Interest Payment Date; and (y) the amount remaining on deposit in the Principal Accumulation Account equals or exceeds the sum of the Required Principal Accumulation Amount (Senior) and the Required

Principal Accumulation Amount (Subordinated) as of such Interest Payment Date; and

(d) Fourthly, any amounts remaining: (i) to be held in the Interest Accumulation Account for distribution in the above order of priority on the succeeding Interest Payment Date; or (ii) after the final Issuer Funding Obligation has been repaid in full including all interest thereon any amounts remaining shall be deposited to the Collection Account and applied in accordance with subsection 7.04(e);

provided that upon the occurrence and during the continuance of any Event of Default and the acceleration of the Issuer Funding Obligations in accordance with Section 8.02, any amounts in the Interest Accumulation Account shall be applied in accordance with Section 8.13.

7.06 Allocation of Amounts on Deposit in Principal Accumulation Account

Subject to Section 8.13, on each Principal Payment Date, any amount on deposit in the Principal Accumulation Account and any amounts transferred pursuant to Section 7.07 will be distributed by the Paying Agent in the order of priority specified below, based upon the Payment Instructions received from the Manager in respect of such Principal Payment Date:

(a) Firstly, to Debtholders, on a *pro rata* basis, in respect of the aggregate outstanding principal amount of Senior Funding Obligations payable on such Principal Payment Date;

(b) Secondly, to Debtholders, on a *pro rata* basis, in respect of the aggregate outstanding principal amount of Subordinated Funding Obligations payable on such Principal Payment Date; provided that no payment of principal on Subordinated Funding Obligations shall be made under this Section 7.06(b) unless, after making such payment, the amount remaining on deposit in the Principal Accumulation Account equals or exceeds the Required Principal Accumulation Amount (Senior) as of such Principal Payment Date;

(c) Thirdly, to Debtholders, on a *pro rata* basis, in respect of the aggregate outstanding principal amount of Junior Subordinated Funding Obligations payable on such Principal Payment Date; provided that no payment of principal on Junior Subordinated Funding Obligations shall be made under this Section 7.06(b) unless, after making such payment, the amount remaining on deposit in the Principal Accumulation Account equals or exceeds the sum of the Required Principal Accumulation Amount (Senior) and the Required Principal Accumulation Amount (Subordinated) as of such Principal Payment Date; and

(d) Fourthly, any amounts remaining: (i) to be held in the Principal Accumulation Account for distribution in the above order of priority on the

succeeding Principal Payment Date; or (ii) after the final Issuer Funding Obligation has been repaid in full, any amounts remaining shall be deposited to the Collection Account and applied in accordance with subsection 7.04(e);

provided that upon the occurrence and during the continuance of any Event of Default and the acceleration of the Issuer Funding Obligations in accordance with Section 8.02, any amounts in the Principal Accumulation Account shall be applied in accordance with Section 8.13.

7.07 Transfers from Interest Accumulation Account to Principal Accumulation Account

(a) If on any Principal Payment Date, the amount on deposit in the Principal Accumulation Account is less than the aggregate outstanding principal amount of Senior Funding Obligations and Subordinated Funding Obligations payable on such Principal Payment Date (the deficiency being a "Subordinated/Senior Principal Shortfall"), an amount equal to the lesser of:

(i) the Subordinated/Senior Principal Shortfall, and

(ii) the amount, if any, by which the amount on deposit in the Interest Accumulation Account equals or exceeds the amount of accrued and unpaid interest on the Senior Funding Obligations and Subordinate Funding Obligations as of such Principal Payment Date,

shall be transferred from the Interest Accumulation Account to the Principal Accumulation Account on such Principal Payment Date.

(b) If on any Principal Payment Date after making any transfer contemplated by subsection 7.07(a), the amount on deposit in the Principal Accumulation Account is less than the aggregate outstanding principal amount of Senior Funding Obligations payable on such Principal Payment Date (the deficiency being a "Senior Principal Shortfall"), an amount equal to the lesser of:

(i) the Senior Principal Shortfall, and

(ii) the amount, if any, by which the amount on deposit in the Interest Accumulation Account equals or exceeds the amount of accrued and unpaid interest on the Senior Funding Obligations as of such Principal Payment Date,

shall be transferred from the Interest Accumulation Account to the Principal Accumulation Account on such Principal Payment Date.

7.08 Allocation of Amounts on Deposit in Program Cash Reserve Account

(a) On each Interest Payment Date, amounts on deposit in the Program Cash Reserve Account shall be applied in the following order of priority:

(i) Firstly, to the extent that the amount on deposit in the Interest Accumulation Account is less than the amount of interest due and payable on the Senior Funding Obligations on such Interest Payment Date, an amount equal to such deficiency shall be applied to the payment of interest due and payable on the Senior Funding Obligations on such Interest Payment Date,

(ii) Secondly, to the extent that the amount available from the Interest Accumulation Account under Section 7.05(b) is less than the amount of interest due and payable on the Subordinated Funding Obligations on such Interest Payment Date, an amount equal to such deficiency shall be applied to the payment of interest due and payable on the Subordinated Funding Obligations on such Interest Payment Date; provided that after making such payment, the amount remaining on deposit in the Program Cash Reserve Account is equal to or greater than the Program Cash Reserve Required Amount (Senior), and

(iii) Thirdly, to the extent that the amount available from the Interest Accumulation Account under Section 7.05(c) is less than the amount of interest due and payable on the Junior Subordinated Funding Obligations on such Interest Payment Date, an amount equal to such deficiency shall be applied to the payment of interest due and payable on the Junior Subordinated Funding Obligations on such Interest Payment Date; provided that after making such payment, the amount remaining on deposit in the Program Cash Reserve Account is equal to or greater than the sum of the Program Cash Reserve Required Amount (Senior) and the Program Cash Reserve Required Amount (Subordinated).

(b) On each Principal Payment Date (and if the Principal Payment Date is also an Interest Payment Date, after making the applications provided for in subsection 7.08(a) and Section 7.07), amounts on deposit in the Program Cash Reserve Account shall be applied in the following order of priority:

(i) Firstly, to the extent that the amount on deposit in the Principal Accumulation Account is less than the amount of principal due and payable on the Senior Funding Obligations on such Principal Payment Date, an amount equal to such deficiency shall be applied to the payment of principal due and payable on the Senior Funding Obligations on such Principal Payment Date;

(ii) Secondly, to the extent that the amount available from the Principal Accumulation Account under Section 7.06(b) is less than the amount of principal due and payable on the Subordinated Funding Obligations on such Principal Payment Date, an amount equal to such deficiency shall be applied to the payment of principal due and payable on the Subordinated Funding Obligations on such Principal

Payment Date; provided that after making such payment, the amount remaining on deposit in the Program Cash Reserve Account is equal to or greater than the Program Cash Reserve Required Amount (Senior), and

(iii) Thirdly, to the extent that the amount available from the Principal Accumulation Account under Section 7.06(c) is less than the amount of principal due and payable on the Junior Subordinated Funding Obligations on such Principal Payment Date, an amount equal to such deficiency shall be applied to the payment of principal due and payable on the Junior Subordinated Funding Obligations on such Principal Payment Date; provided that after making such payment, the amount remaining on deposit in the Program Cash Reserve Account is equal to or greater than the sum of the Program Cash Reserve Required Amount (Senior) and the Program Cash Reserve Required Amount (Subordinated).

(c) Any amounts remaining after making the applications referred to in subsection 7.08(a) and subsection 7.08(b): (i) to be held in the Program Cash Reserve Account for distribution under this Section 7.08 on the succeeding Interest Payment Date or Principal Payment Date; or (ii) after the final Issuer Funding Obligation has been repaid in full, any amounts remaining shall be deposited to the Collection Account and applied in accordance with subsection 7.04(e); provided that upon the occurrence and during the continuance of any Event of Default and the acceleration of the Issuer Funding Obligations in accordance with Section 8.02, any amounts in the Program Cash Reserve Account shall be applied in accordance with Section 8.13.

7.09 Refinancing

(a) Not less than [30] days prior the first day of the Reference Period that includes the Principal Accumulation Date in respect of a Series of Senior Funding Obligations, Subordinated Funding Obligations or Junior Subordinated Funding Obligations, the Issuer shall, if it intends to repay all or a portion of the principal obligations of such Funding Obligation Agreement pursuant to a Refinancing, issue a Refinancing Notice to the Indenture Trustee.

(b) ~~Notwithstanding anything to the contrary contained herein but subject to Section 8.13:~~On completion of a Refinancing all proceeds received by the Issuer shall be deposited to the Refinancing Account.

(c) On each Payment Date, an amount shall be transferred from the Refinancing Account to the Principal Accumulation Account equal to the lesser of:

(i) ~~amounts~~**The amount** on deposit in the Refinancing Account ~~may only be withdrawn from the Refinancing Account for the purpose of repaying the principal amount of Issuer Funding Obligations which are due and payable and interest thereon~~; and

(ii) The Deferred Principal Accumulation Amount.

(d) After the final Issuer Funding Obligation has been repaid in full, any amounts remaining in the Refinancing Account **shall be deposited to the Collection Account and applied in accordance with subsection 7.04(e); provided that upon the occurrence and during the continuance of any Event of Default and the acceleration of the Issuer Funding Obligations in accordance with Section 8.02, any amounts remaining in the Refinancing Account shall be applied in accordance with Section 8.13.**

7.10 Allocation of Amounts on Deposit in the Series Accounts

~~(ii)~~ **If**, after giving effect to payments made on any Payment Date, the amount in the Collection Account is insufficient to satisfy all amounts required to be paid to Specified Creditors on such date amounts on deposit in ~~an Issuer Account established solely for the benefit of one or more Series, Classes or Tranches of Issuer Funding Obligations may only~~**any Series Account may** be withdrawn from such ~~Issuer~~**Series** Account ~~for the purpose for which such Issuer Account was established~~ and allocated ~~only~~ to ~~those~~ Specified Creditors ~~for whom such Issuer Account was established~~**in accordance with the terms of the Related Funding Obligations Agreement**.

7.11 ~~7.06~~ Payments to be Held in Trust

If, notwithstanding Sections 7.04 and 8.13, any payment on Obligations Secured shall be received at any time by any Specified Creditor, other than in accordance with this Indenture, then the funds received in respect of such payment shall be held by such Specified Creditor in trust for the Issuer and the other Specified Creditors and such Specified Creditor shall forthwith remit to the Indenture Trustee such funds.

7.12 ~~7.07~~ Application of Trust Money

All money and obligations deposited with the Indenture Trustee pursuant to Section 7.01 or Section 7.03 and all money received by the Indenture Trustee in respect of such obligations will be held in trust and applied by it, in accordance with the provisions of the Program Agreements in respect of which it was deposited and this Indenture, to the payment, either directly or through any Paying Agent (including the Issuer acting as its own Paying Agent) as the Indenture Trustee, at the direction of the Manager, may determine, to the Persons entitled thereto, of the principal, interest, fees and other amounts for whose payment that money and obligations have been deposited with or received by the Indenture Trustee. Money held by the Indenture Trustee in trust hereunder need not be segregated from other funds except to the extent required by this Indenture or by applicable law. The Indenture Trustee will be under no liability for interest on any money received by it hereunder except as otherwise agreed with the Issuer.

ARTICLE VIII
EVENTS OF DEFAULT AND REMEDIES[4]

8.01 Events of Default

[NTD: to be determined if certain events of default should be triggered on a series by series basis.]

"**Event of Default**," wherever used herein, means any one of the following events (whatever the reason for such Event of Default and whether it will be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any Governmental Authority):

(a) a default by the Issuer in the payment of any interest on any Controlling Class Obligations when such interest becomes due and payable, and continuance of such default for a period of ~~65~~**[5]** days following the date on which such interest became due and payable;

(b) a default by the Issuer in the payment of any principal of any Controlling Class Obligations at its Principal Payment Default Date;

(c) any representation or warranty contained in Section 12.01 proves to be incorrect in any material respect when made and such incorrect representation or warranty if capable of being remedied by the Issuer, has not been remedied for a period of ~~90~~**60** days after notice thereof has been given, by registered or certified mail, to the Issuer by the Indenture Trustee or to the Issuer and the Indenture Trustee by Debtholders holding at least 25% of the Outstanding Dollar Principal Amount of all Controlling Class Obligations, a written notice specifying such default or breach and requesting it to be remedied and stating that such notice is a "Notice of Default" hereunder and, as a result of such default, the interests of such Debtholders are materially and adversely affected and continue to be materially and adversely affected during the ~~90~~**60**-day period;

(d) a default in the performance, or breach, of any covenant of the Issuer in this Indenture in respect of any Controlling Class Obligations (other than an agreement, covenant or warranty a default in the performance of which or the breach of which is elsewhere specifically dealt with in this Section 8.01), all of such covenants in this Indenture which are not expressly stated to be for the benefit of a particular Series of Issuer Funding Obligations being deemed to be in respect of all Series of Issuer Funding Obligations for this purpose, and continuance of such default or breach for a period of ~~90~~**60** days after notice thereof has been given, by registered or certified mail, to the Issuer by the Indenture Trustee or to the Issuer and the Indenture Trustee by Debtholders holding at least 25% of the Outstanding Dollar Principal Amount of all Controlling Class Obligations, a written notice specifying such default or breach and requesting it to be remedied and stating that such notice is a "Notice of

[4] ~~Subject to ongoing discussions.~~

Default" hereunder and, as a result of such default, the interests of such Debtholders are materially and adversely affected and continue to be materially and adversely affected during the ~~90~~60-day period;

(e) an Insolvency Event in respect of the Issuer;

(f) the Change of Law Protection Agreement ceases to be in full force and effect against the Province and if the Province does not, within ~~90~~10 days of receipt of notice of such agreement not being in full force and effect, cause such agreement to be in full force and effect or replace such agreement with a new agreement that is in form and substance satisfactory to Debtholders of Controlling Class Obligations, acting reasonably, pursuant to an Ordinary Resolution;

(g) the validity of the Change of Law Protection Agreement or the applicability thereof to the Province or to any Controlling Class Obligations or any other obligations purported to be secured thereby or any material part thereof shall be disaffirmed in writing by or on behalf of the Province; or

(h) any additional event of default specified in a Funding Obligation Agreement in respect of Controlling Class Obligations.

For greater certainty, failure to pay amounts owing pursuant to a Derivative Agreement shall not constitute an Event of Default.

8.02 Acceleration of Maturity; Rescission and Annulment

[NTD: to be determined if acceleration should be determined on a series by series basis.]

(a) If an Event of Default (other than an Event of Default described in clause (e), (f) or (g) of Section 8.01) occurs and is continuing, then and in each and every such case, unless the principal of all the Controlling Class Obligations shall have already become due and payable, either the Indenture Trustee or Debtholders holding not less than 50% of the Outstanding Dollar Principal Amount of all Controlling Class Obligations (treated as one class), by notice in writing to the Issuer (and to the Indenture Trustee if given by such Debtholders), may declare the Outstanding Dollar Principal Amount of all Issuer Funding Obligations (other than Derivative Funding Obligations) and all interest accrued or principal accreted and unpaid (if any) thereon to be due and payable immediately, and upon any such declaration the same will become and will be immediately due and payable, notwithstanding anything in this Indenture or any Funding Obligation Agreement to the contrary.

(b) If an Event of Default described in clause (e), (f) or (g) of Section 8.01 occurs and is continuing, then all Series of Issuer Funding Obligations (other than Derivative Funding Obligations) will automatically be and become immediately due and payable by the Issuer, without notice or demand to any Person, and the Issuer will

automatically and immediately be obligated to pay off the Issuer Funding Obligations.

(c) At any time after such a declaration of acceleration has been made or an automatic acceleration has occurred with respect to the Issuer Funding Obligations (other than Derivative Funding Obligations) and before a judgment or decree for payment of the money due has been obtained by the Indenture Trustee as hereinafter provided in this Article VIII, Debtholders of Controlling Class Obligations may, by Extraordinary Resolution, rescind and annul such declaration and its consequences if:

(i) the Issuer has paid or deposited with the Indenture Trustee a sum sufficient to pay (A) all overdue installments of interest on the Controlling Class Obligations, (B) the principal of any Controlling Class Obligations which have become due otherwise than by such declaration of acceleration, and interest thereon at the rate or rates prescribed therefor by the terms of the Related Funding Obligation Agreements, to the extent that payment of such interest is lawful, (C) interest upon overdue installments of interest at the rate or rates prescribed therefor by the terms of the Related Funding Obligation Agreements, to the extent that payment of such interest is lawful, and (D) all sums paid by the Indenture Trustee hereunder and the reasonable compensation, expenses and disbursements of the Indenture Trustee, its agents and counsel and all other amounts due to the Indenture Trustee under Section 9.05; and

(ii) all Events of Default other than the nonpayment of the principal of the Controlling Class Obligations which has become due solely by such acceleration, have been cured or waived as provided in Section 8.03.

(d) If, at any time, any Event of Default capable of being remedied has been remedied by the Issuer to the satisfaction of the Indenture Trustee: (i) the Security Interest will no longer be or be deemed to be enforceable by reason of such Event of Default; (ii) any rights which had become vested in the Indenture Trustee by virtue thereof will be and be deemed to be cancelled as fully and to the same extent as though no such Event of Default had occurred; and (iii) the Indenture Trustee will, or will instruct any receiver appointed pursuant to this Indenture to restore to the Issuer any Collateral in the possession of the Indenture Trustee or receiver, as the case may be.

(e) No such rescission will affect any subsequent default or impair any right consequent thereon.

8.03 Waiver of Past Defaults

Subject to Section 8.02(c), Debtholders of Controlling Class Obligations may, by Ordinary Resolution, waive any past default hereunder and its consequences. Upon any such waiver, such default will cease to exist, and any Event of Default arising therefrom will be

deemed to have been cured, for every purpose of this Indenture; but no such waiver will extend to any subsequent or other default or impair any right consequent thereon.

8.04 Notice of Defaults

(a) Within 90 days after the occurrence of any Event of Default of which the Indenture Trustee has received written notice:

(i) the Indenture Trustee will transmit by mail to all Registered Noteholders, as their names and addresses appear in the Note Register, notice of such default;

(ii) the Indenture Trustee will notify all holders of Bearer Notes by publication of notice of such default in an Authorized Newspaper, or as otherwise provided in the Related Supplemental Indenture;

(iii) the Indenture Trustee will give prompt written notification thereof to the other Debtholders and all other Specified Creditors; and

(iv) the Indenture Trustee will give prompt written notification thereof to the Rating Agencies, unless such default will have been cured or waived;

provided, however, that, except in the case of a default in the payment of the principal of or interest on any Issuer Funding Obligations, the Indenture Trustee will be protected in withholding such notice if and so long as a Responsible Officer of the Indenture Trustee in good faith determines that the withholding of such notice is in the interests of the Specified Creditors.

(b) When such notice of an occurrence of an Event of Default has been given and the Event of Default is thereafter cured, notice that the Event of Default is no longer continuing shall be given by the Indenture Trustee to Persons to whom notice was sent pursuant to Section 8.04(a) within a reasonable time, but not exceeding 30 days in any event, after the Indenture Trustee receives notice from the applicable Debtholders that the Event of Default has been cured.

8.05 Remedies Generally

Subject to subsections 8.02(c) and (d), and Section 8.03, if, with respect to any Controlling Class Obligations, such Controlling Class Obligation has become due and payable pursuant to Section 8.02 and the Issuer has failed to pay such Controlling Class Obligation, the Indenture Trustee (subject, however, to compliance with the provisions of Section 9.02(d) with respect to the giving of indemnity and funds) may proceed to realize upon the Security Interest and to enforce the rights of the Indenture Trustee and of the Specified Creditors to whom Obligations Secured are owed by (i) application to any court of competent jurisdiction for an order of sequestration and payment of amounts in respect of clean energy adjustments, collections or remittances in accordance with the Act, (ii) possession of the Collateral, (iii) appointment of a receiver with respect to the Collateral, (iv) proceedings in any court of competent jurisdiction for the appointment of a receiver or for sale of the Collateral or any part

thereof, or for foreclosure, (v) subject to Section 10.02, exercise any of the rights of the Issuer under any of the Program Agreements, including the right to replace the Manager or the Servicer in accordance with Section 8.10, or (vi) any other action, suit, remedy or proceeding authorized or permitted by this Indenture or by applicable law or by equity.

8.06 Default Interest and Expenses

The Issuer covenants that if:

(a) the Issuer defaults in the payment of interest on any Series of Issuer Funding Obligations when such interest becomes due and payable and such default continues for a period of 65 days following the date on which such interest became due and payable, or

(b) the Issuer defaults in the payment of the principal amount of any Series of Issuer Funding Obligations on the Principal Payment Default Date thereof;

the Issuer will, upon demand of the Indenture Trustee, pay (subject to the allocation provided in this Article VIII and any Related Funding Obligation Agreement) to the Indenture Trustee, for the benefit of the Debtholders of any such Issuer Funding Obligations, the whole amount then due and payable on any such Issuer Funding Obligations for principal and interest, with interest, to the extent that payment of such interest will be legally enforceable, upon the overdue principal and upon overdue installments of interest, (i) in the case of interest-bearing Issuer Funding Obligations, at the rate of interest applicable to the principal amount thereof, unless otherwise specified in the Related Funding Obligation Agreement; and (ii) in the case of Discount Notes, as specified in the Related Supplemental Indenture, and in addition thereto, will pay such further amount as will be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Indenture Trustee, its agents and counsel and all other amounts due to the Indenture Trustee under Section 9.05.

If the Issuer fails to pay such amounts forthwith upon such demand, the Indenture Trustee may, if the Issuer Funding Obligations have been accelerated in accordance with Section 8.02, take immediate steps to enforce the Security Interest, including instituting, in its own name and as trustee of an express trust, a judicial proceeding seeking the appointment of a receiver or a judicial proceeding for the collection of the sums so due and unpaid, and may directly prosecute such proceeding to judgment or final decree, and the Indenture Trustee may enforce the same against the Issuer and collect the money adjudged or decreed to be payable in the manner provided by applicable law out of the Collateral, wherever situated.

8.07 Indenture Trustee May File Proofs of Claim

In case of the pendency of any receivership, insolvency, liquidation, bankruptcy or other similar proceeding relative to the Issuer or the property of the Issuer, the Indenture Trustee (irrespective of whether the principal of the Issuer Funding Obligations will then be due and payable as therein expressed or by declaration or otherwise) will be entitled and empowered by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of principal, interest, fees and other amounts owing and unpaid in respect of the Issuer Funding Obligations and to file such other papers or documents as may be necessary and advisable in order to have the claims of the Indenture Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Indenture Trustee, its agents and counsel and all other amounts due to the Indenture Trustee under Section 9.05) and of the Specified Creditors allowed in such judicial proceeding, and

(b) to collect and receive any funds or other property payable or deliverable on any such claims and to distribute the same;

and any receiver, assignee, trustee, liquidator or other similar official in any such proceeding is hereby authorized by each Specified Creditor to make such payment to the Indenture Trustee, and in the event that the Indenture Trustee will consent to the making of such payments directly to the Specified Creditors, to pay to the Indenture Trustee any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Indenture Trustee, its agents and counsel, and any other amounts due to the Indenture Trustee under Section 9.05.

Nothing herein contained will be deemed to authorize the Indenture Trustee to authorize or consent to or accept or adopt on behalf of any Specified Creditor any plan of reorganization, arrangement, adjustment or composition affecting the Issuer Funding Obligations or the rights of any Specified Creditors, or to authorize the Indenture Trustee to vote in respect of the claim of any Specified Creditor in any such proceeding.

8.08 Indenture Trustee May Enforce Claims Without Possession of Notes

All rights of action and claims under this Indenture or the Notes of any **Class,** Series~~, Class~~ or Tranche may be prosecuted and enforced by the Indenture Trustee without the possession of any of the Notes of such **Class,** Series~~, Class~~ or Tranche or the production thereof in any proceeding relating thereto, and any such proceeding instituted by the Indenture Trustee will be brought in its own name as trustee of an express trust.

8.09 Indenture Trustee May Elect to Hold the Collateral

Following an acceleration of Issuer Funding Obligations in accordance with Section 8.02, the Indenture Trustee may elect to continue to hold the Collateral and apply distributions on the Collateral in accordance with the distribution provisions of Section 8.13.

8.10 Termination by Indenture Trustee of Manager and Servicer

Upon the occurrence and during the continuance of an Event of Default, the Indenture Trustee shall have the right to (and, upon receipt of an Extraordinary Resolution of Debtholders of Controlling Class Obligations to that effect, shall) terminate the appointment of the then existing Manager under the Management Agreement and/or the Servicer under the Master Transfer and Servicing Agreement, and appoint new Persons under such agreements in accordance with such direction, provided that the Issuer shall have the right to reinstate any appointee under such agreements at such time as the Event of Default is no longer continuing.

8.11 Control by Debtholders

Subject to Section 10.02(b), Debtholders of Controlling Class Obligations will, by Ordinary Resolution, have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Indenture Trustee, or exercising any trust or power conferred on the Indenture Trustee with respect to all Issuer Funding Obligations, provided that:

(a) the Indenture Trustee will have the right to decline to follow any such direction if the Indenture Trustee, being advised by counsel, determines that the action so directed may not lawfully be taken or would conflict with this Indenture, or if the Indenture Trustee in good faith determines that the proceedings so directed would involve it in personal liability or be unjustly prejudicial to the Debtholders of Controlling Class Obligations not taking part in such direction; and

(b) the Indenture Trustee may take any other action permitted hereunder deemed proper by the Indenture Trustee which is not inconsistent with such direction.

8.12 Limitation on Suits

To the fullest extent permitted by applicable law, no Specified Creditor will have any right to institute any proceeding, judicial or otherwise, with respect to this Indenture, or for the appointment of a receiver or trustee or similar official, or for any other remedy hereunder, unless:

(a) the Issuer or a Debtholder has previously given written notice to the Indenture Trustee of a continuing Event of Default;

(b) Debtholders of Controlling Class Obligations, by way of Ordinary Resolution, have made written request to the Indenture Trustee to institute proceedings in respect of such Event of Default in the name of the Indenture Trustee hereunder;

(c) such Debtholders of Controlling Class Obligations have offered to the Indenture Trustee (when so requested by the Indenture Trustee) indemnity reasonably satisfactory to it against the costs, expenses and liabilities to be incurred in compliance with such request; and

(d) the Indenture Trustee, for 60 days after the Indenture Trustee has received such notice, request and offer of indemnity has failed to institute any such proceeding;

it being understood and intended that no one or more Specified Creditors will have any right in any manner whatsoever by virtue of, or by availing of, any provision of this Indenture to affect, disturb or prejudice the rights of any other Specified Creditor, or to obtain or to seek to obtain priority or preference over any other Specified Creditor or to enforce any right under this Indenture, except in the manner herein provided and for the benefit of all Specified Creditors.

8.13 Application of Money Following an Event of Default

Subject to the following paragraph, upon the occurrence and during the continuance of an Event of Default which has been accelerated in accordance with Section 8.02, any money or

other property standing in each Issuer Account or otherwise received by the Indenture Trustee pursuant to this Article VIII will be applied in the order of priority specified in this Section 8.13, *pro rata* in proportion to the claims represented by each subclause, except as otherwise specifically provided below:

(a) First, to ~~(A)~~ the payment or remittance of all Taxes exigible for which a Governmental Authority is given priority over the Specified Creditors under the laws of the applicable jurisdiction; ~~and then~~

(b) **Second,** to ~~(B)~~ the Indenture Trustee and the Issuer Trustee in respect of the amount of fees, expenses and reimbursements owing, up to a maximum aggregate amount (without duplication of amounts previously paid in respect of such fees, expenses, reimbursements and indemnified claims) of **[■ percent (■%)]**[~~53~~] of the Outstanding Dollar Principal Amount of all Issuer Funding Obligations at such time;

(c) ~~(b) [Second~~**Third**, to Debtholders, on a *pro rata* basis, in respect of all interest accrued and unpaid, if any, and fees and other amounts (other than principal) due and payable on the Senior Funding Obligations in respect of Warehouse Facility Agreements;

(d) ~~(c) Third~~**Fourth**, to Debtholders, on a *pro rata* basis, in respect of the aggregate outstanding principal amount of the Senior Funding Obligations in respect of Warehouse Facility Agreements until such amount has been paid in full;]~~64~~

(e) ~~(d) Fourth~~**Fifth**, *pari passu*, (A) to Debtholders, on a *pro rata* basis, in respect of all interest accrued and unpaid, if any, and fees and other amounts (other than principal) due and payable on the Senior Funding Obligations that are not in respect of Warehouse Facility Agreements, and (B) to Derivative Counterparties, on a *pro rata* basis, all Derivative Funding Obligations payable other than Termination Payments;

(f) ~~(e) Fifth~~**Sixth**, *pari passu*, (A) to Debtholders, on a *pro rata* basis, in respect of the aggregate outstanding principal amount of the Senior Funding Obligations that are not in respect of Warehouse Facility Agreements until such amount has been paid in full, and (B) to Derivative Counterparties, on a *pro rata* basis, any Termination Payment where the Derivative Counterparty is not the Defaulting Party or the sole Affected Party;

~~(f) Sixth, to the Manager in respect of all fees, expenses, reimbursement and indemnity amounts owing;~~

(g) Seventh, to the ~~payment or remittance of all Taxes exigible and not previously paid pursuant to clause (a)~~**Manager in respect of all fees, expenses, reimbursement and indemnity amounts owing**;

[~~53~~] To be confirmed.

[~~64~~] Subject to ongoing discussion.

(h) Eighth~~, (A) to the Indenture Trustee and the Issuer Trustee, in each case, in respect of the amount of any fees, expenses, reimbursements and indemnity amounts owing and not previously paid pursuant to clause (a); and then (B) to other service providers, in each case, in respect of the amount of any fees, expenses, reimbursement and indemnity amounts owing; including for each referenced party in subclauses (A) and (B), any amounts payable to their respective Affiliates under the terms of any relevant indemnity, with funds being distributed *pro rata* in proportion to the claims represented by each of subclauses (A) and (B), respectively;(i)~~ ~~Ninth~~, to Debtholders, on a *pro rata* basis, in respect of all interest accrued and unpaid, if any, and fees and other amounts (other than principal) due and payable on the Subordinated Funding Obligations;

(i) ~~(j) Tenth~~**Ninth**, to Debtholders, on a *pro rata* basis, in respect of the aggregate outstanding principal amount of the Subordinated Funding Obligations until such amount has been paid in full;

(j) ~~(k) Eleventh~~**Tenth**, to Debtholders, on a *pro rata* basis, in respect of all interest accrued and unpaid, if any, and fees and other amounts (other than principal) due and payable on the Junior Subordinated Funding Obligations;

(k) ~~(l) Twelfth~~**Eleventh**, to Debtholders, on a *pro rata* basis, in respect of the aggregate outstanding principal amount of the Junior Subordinated Funding Obligations until such amount has been paid in full;

(l) ~~(m) Thirteenth~~**Twelfth**, to each Derivative Counterparty, on a *pro rata* basis, any Termination Payment where the Derivative Counterparty is the Defaulting Party or the sole Affected Party; ~~and~~

(m) **Thirteenth, (A) to the Indenture Trustee and the Issuer Trustee, in each case, in respect of the amount of any fees, expenses, reimbursements and indemnity amounts owing and not previously paid pursuant to clause (a); and then (B) to other service providers (other than the Manager), in each case, in respect of the amount of any fees, expenses, reimbursement and indemnity amounts owing; including for each referenced party in subclauses (A) and (B), any amounts payable to their respective Affiliates under the terms of any relevant indemnity, with funds being distributed *pro rata* in proportion to the claims represented by each of subclauses (A) and (B), respectively;**

(n) Fourteenth, to the Issuer or as the Issuer otherwise directs.

Notwithstanding the foregoing, amounts on deposit in ~~an Issuer~~**a Series** Account established solely for the benefit of one or more Series~~, Classes or Tranches~~ of Issuer Funding Obligations ~~(which, for greater certainty, shall not include the Refinancing Account)~~ shall first be used to satisfy all obligations owing to those Specified Creditors for whom such ~~Issuer~~**Series** Account was established. If any amounts remain following such application, such amounts shall be applied in accordance with the priorities set out above.

8.14 Limited Recourse

(a) Notwithstanding any other provision of this Indenture to the contrary, the obligation to pay principal of or interest on any Issuer Funding Obligation or any other amount payable to any Specified Creditor will be without recourse to the Indenture Trustee, the Issuer Trustee, the Manager or any Affiliate, officer, employee, member or director of any of them, and the satisfaction of the obligation of the Issuer to pay principal of or interest on any Issuer Funding Obligation or any other amount payable to any Specified Creditor will be subject to the allocation and payment provisions of this Indenture and any Related Funding Obligation Agreement, and limited to amounts available from the Collateral.

(b) No recourse may be taken, directly or indirectly, with respect to the obligations of the Issuer under the Issuer Funding Obligations or under this Indenture, or any certificate or other writing delivered in connection herewith or therewith, against (i) the Issuer Trustee in its individual capacity, (ii) any owner of a beneficial interest in the Issuer or (iii) any partner, owner, beneficiary, agent, officer, director, employee or agent of the Issuer Trustee in its individual capacity, any holder of a beneficial interest in the Issuer or the Issuer Trustee or of any successor or assign of the Issuer Trustee in its individual capacity, except as any such Person may have expressly agreed (it being understood that the Issuer Trustee has no such obligations in its individual capacity).

(c) Under no circumstances shall the Manager or any of its Affiliates be deemed an obligor or guarantor or otherwise deemed to be responsible for payment from its own funds of principal, interest, dividends or other amounts due on the Collateral, the Issuer Funding Obligations or any other Obligations Secured.

8.15 Restoration of Rights and Remedies

If the Indenture Trustee or any Specified Creditor (to the extent and in the manner provided for in Section 8.12) has instituted any proceeding to enforce any right or remedy under this Indenture and such proceeding has been discontinued or abandoned for any reason, then and in every such case the Issuer, the Indenture Trustee and the Specified Creditors will, subject to any determination in such proceeding, be restored severally and respectively to their former positions hereunder, and thereafter all rights and remedies of the Indenture Trustee and the Specified Creditors will continue as though no such proceeding had been instituted.

8.16 Rights and Remedies Cumulative

No right or remedy herein conferred upon or reserved to the Indenture Trustee or to the Specified Creditors is intended to be exclusive of any other right or remedy, and every right and remedy will, to the extent permitted by applicable law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, will not prevent the concurrent assertion or employment of any other appropriate right or remedy.

8.17 Delay or Omission Not Waiver

No delay or omission of the Indenture Trustee or of any Specified Creditor to exercise any right or remedy accruing upon any Event of Default will impair any such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein. Every right and remedy given by this Article VIII or by applicable law to the Indenture Trustee or to the Specified Creditors may be exercised from time to time, and as often as may be deemed expedient, by the Indenture Trustee or by the Specified Creditors, as the case may be.

8.18 Waiver of Stay or Extension Laws

The Issuer covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay or extension law wherever enacted, now or at any time hereafter in force, which may affect the covenants or the performance of this Indenture; and the Issuer (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and covenants that it will not hinder, delay or impede the execution of any power herein granted to the Indenture Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

8.19 Indenture Trustee Appointed Attorney

The Issuer irrevocably constitutes and appoints the Indenture Trustee and any officer or employee thereof, with full power of substitution, as its true and lawful attorney coupled with an interest with full power and authority in the name of the Issuer or in its own name, in its discretion, upon the occurrence and during the continuance of any Event of Default, for the purpose of carrying out the terms of this Indenture to take all appropriate action and to execute any and all documents and instruments which may be necessary or desirable to accomplish the purposes hereof, and without limiting the generality of the foregoing, hereby gives the Indenture Trustee the power and right on behalf of the Issuer, without notice to or assent by the Issuer, to the extent permitted by applicable law, to do the following:

(a) to ask for, demand, sue for, collect and receive all and any monies due or becoming due with respect to the Collateral;

(b) to receive, take, endorse, assign and deliver any and all cheques, notes, drafts, acceptances, documents and other negotiable and non-negotiable instruments, documents and chattel paper taken or received by the Indenture Trustee in connection therewith and herewith; and

(c) to commence, file, prosecute, defend, settle, compromise or adjust any claim, suit, action or proceeding with respect to the Collateral.

8.20 Disclaimer of Marshalling

In the event that the Security Interest shall become enforceable and the Indenture Trustee shall have determined or become bound to enforce the same, the Issuer covenants not to invoke the doctrine of marshalling or any other equitable principle for the purpose of requiring the

Indenture Trustee to realize or to have realized on any particular asset forming part of the Collateral.

ARTICLE IX
THE INDENTURE TRUSTEE

9.01 Certain Duties and Responsibilities

(a) The Indenture Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Indenture with respect to the Obligations Secured, and no implied covenants or obligations will be read into this Indenture against the Indenture Trustee.

(b) In the exercise of the rights and duties prescribed or conferred by the terms of this Indenture, the Indenture Trustee will act honestly and in good faith with a view to the best interests of the Specified Creditors as a whole and exercise that degree of care, diligence and skill that a reasonably prudent trustee would exercise in comparable circumstances.

(c) In the absence of bad faith on its part, the Indenture Trustee may, with respect to any Obligations Secured, conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Indenture Trustee and conforming to the requirements of this Indenture; but in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Indenture Trustee, the Indenture Trustee will be under a duty to examine the same to determine whether or not they substantially conform to the requirements of this Indenture (but need not confirm or investigate the accuracy of any mathematical calculations or other facts stated therein).

(d) No provision of this Indenture will be construed to relieve the Indenture Trustee from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that:

(i) this clause (d) will not be construed to limit the effect of subsection 9.01(a);

(ii) the Indenture Trustee will not be liable for any error of judgment made in good faith by a Responsible Officer of the Indenture Trustee, unless it will be proved that the Indenture Trustee was negligent in ascertaining the pertinent facts;

(iii) the Indenture Trustee will not be liable with respect to any action taken or omitted to be taken by it in good faith if so directed by Extraordinary Resolution, relating to the time, method and place of conducting any proceeding for any remedy available to the Indenture Trustee, or exercising any trust or power conferred upon the Indenture Trustee, under this Indenture with respect to the Obligations Secured; and

(iv) no provision of this Indenture will require the Indenture Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers.

(e) Whether or not therein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Indenture Trustee will be subject to the provisions of this Section 9.01.

9.02 Certain Rights of Indenture Trustee

Except as otherwise provided in Section 9.01:

(a) the Indenture Trustee may conclusively rely and will be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture or other paper or document (whether in its original, facsimile or other electronic form) believed by it to be genuine and to have been signed or presented by the proper party or parties;

(b) whenever in the administration of this Indenture the Indenture Trustee will deem it desirable that a matter be proved or established before taking, suffering or omitting any action hereunder, the Indenture Trustee (unless other evidence be herein specifically prescribed) may, in the absence of bad faith on its part, rely upon an Officer's Certificate;

(c) the Indenture Trustee may consult with counsel of its own selection and the advice of such counsel or any Opinion of Counsel will be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon;

(d) the Indenture Trustee will be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Specified Creditors pursuant to this Indenture, unless such Specified Creditors shall have offered to the Indenture Trustee security or indemnity reasonably satisfactory to it against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction;

(e) the Indenture Trustee will not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture or other paper or document, but the Indenture Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Indenture Trustee will determine to make such further inquiry or investigation, it will be entitled to examine the books, records and premises of the Issuer, personally or by agent or attorney;

(f) the Indenture Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys and the Indenture Trustee will not be responsible for any misconduct or negligence on the part of any agent or attorney appointed with due care by it hereunder;

(g) the Indenture Trustee will not be responsible for filing any financing statements or continuation statements in connection with the Obligations Secured or the Security Interest, but will cooperate with the Issuer in connection with the filing of such financing statements or amendments to such financing statements;

(h) the Indenture Trustee shall not be deemed to have notice of any default (including any Servicer Default or Event of Default) unless a Responsible Officer of the Indenture Trustee has actual knowledge thereof or unless written notice of any event which is in fact such a default is received by the Indenture Trustee at the Corporate Trust Office of the Indenture Trustee, and such notice references the Issuer Funding Obligations and this Indenture;

(i) the rights, privileges, protections, immunities and benefits given to the Indenture Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Indenture Trustee in each of its capacities hereunder, and each agent, custodian and other person employed to act hereunder;

(j) the Indenture Trustee shall not be liable for any action taken, suffered or omitted to be taken by it in good faith and reasonably believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Indenture;

(k) the Indenture Trustee shall be entitled to and may rely absolutely upon the Payment Instruction and the Indenture Trustee will have no obligation to calculate any amount due or owing or to be allocated as provided in this Indenture, including interest or principal for any Issuer Funding Obligations;

(l) the Indenture Trustee will be entitled to rely and act upon any direction, order, instruction, notice or communication provided to it under this Indenture which is sent to it by Electronic Methods. The Indenture Trustee shall have no liability for any losses, liabilities, costs or expenses incurred by it as a result of such reliance upon or compliance with such instructions or directions. The Issuer agrees: (i) to assume all risks arising out of the use of such Electronic Methods to submit instructions and directions to the Indenture Trustee, including without limitation the risk of the Indenture Trustee acting on unauthorized instructions, and the risk of interception and misuse by third parties; (ii) that it is fully informed of the protections and risks associated with the various methods of transmitting instructions to the Indenture Trustee and that there may be more secure methods of transmitting instructions than the method(s) selected by the Issuer; and (iii) that the security procedures (if any) to be followed in connection with its transmission of instructions provide to it a commercially reasonable degree of protection in light of its particular needs and circumstances; and

(m) the Indenture Trustee will not be liable for any consequential, punitive or special damages.

9.03 Not Responsible for Recitals or Issuer Funding Obligations

The recitals contained herein and in the Funding Obligation Agreements, except the Certificates of Authentication, will be taken as the statements of the Issuer, and the Indenture Trustee assumes no responsibility for their correctness. The Indenture Trustee makes no representations as to the validity or sufficiency of this Indenture or of the Funding Obligation Agreements. The Indenture Trustee will not be accountable for the use or application by the Issuer of Notes, Borrowings or the proceeds thereof.

9.04 May Hold Notes

The Indenture Trustee, the Issuer Trustee, any Paying Agent, the Note Registrar, the Manager or any other agent of the Issuer, in its individual or any other capacity, may become the owner or pledgee of Notes and, subject to subsection 9.07(e) and applicable legislation, may otherwise deal with the Issuer with the same rights it would have if it were not Indenture Trustee, Issuer Trustee, Paying Agent, Note Registrar, Manager or such other agent.

9.05 Compensation and Reimbursement; Limit on Compensation Reimbursement and Indemnity

(a) The Issuer agrees:

(i) to pay to the Indenture Trustee from time to time reasonable compensation (or, for so long as ~~[Indenture Trustee]~~**BNY Trust Company of Canada** is the Indenture Trustee, such amount as has been mutually agreed upon in writing) for all services rendered by it hereunder (which compensation will not be limited by any provision of law in regard to the compensation of a trustee of an express trust);

(ii) except as otherwise expressly provided herein, to reimburse the Indenture Trustee upon its request for all reasonable expenses, disbursements and advances incurred or made by the Indenture Trustee in accordance with any provision of this Indenture (including the reasonable compensation and the reasonable expenses and disbursements of its agents and counsel), except any such expense, disbursement or advance as may be attributable to its own negligence or bad faith; and

(iii) to indemnify the Indenture Trustee for, and to hold it harmless against, any and all loss, liability, expense, claim, damage or injury incurred without negligence or bad faith on its part, arising out of or in connection with the acceptance or administration of the trusts hereunder, including the costs and expenses of defending itself against any claim or liability (whether asserted by the Issuer, any Specified Creditor or any other Person) in connection with the exercise or performance of any of its powers or duties hereunder.

The Indenture Trustee will have no recourse to any asset of the Issuer other than funds available pursuant to Section 7.04 or 8.13, or to any Person other than the Issuer.

(b) This Section 9.05 will survive the termination of this Indenture and the resignation or replacement of the Indenture Trustee under Section 9.07.

9.06 Corporate Indenture Trustee Required; Eligibility

There will at all times be an Indenture Trustee hereunder which will be either a bank, a trust company or a corporation organized and doing business under the laws of Canada or of any province or territory thereof, authorized under such laws to carry on a trust business as contemplated hereby in each of the provinces and territories of Canada. The Issuer may not, nor may any Person directly or indirectly controlling, controlled by, or under common control with the Issuer, serve as Indenture Trustee. If at any time the Indenture Trustee will cease to be eligible in accordance with the provisions of this Section 9.06, it will resign immediately in the manner and with the effect hereinafter specified in this Article IX.

9.07 Resignation and Removal; Appointment of Successor

(a) No resignation or removal of the Indenture Trustee and no appointment of a successor Indenture Trustee pursuant to this Article IX will become effective until the acceptance of appointment by the successor Indenture Trustee under Section 9.08.

(b) The Indenture Trustee may resign at any time by giving written notice thereof to the Issuer. If an instrument of acceptance by a successor Indenture Trustee shall not have been delivered to the Indenture Trustee within 30 days after the giving of such notice of resignation, the resigning Indenture Trustee may petition any court of competent jurisdiction for the appointment of a successor Indenture Trustee.

(c) The Indenture Trustee may be removed at any time by Ordinary Resolution of the Debtholders of Controlling Class Obligations delivered to the Indenture Trustee and to the Issuer. If an instrument of acceptance by a successor Indenture Trustee shall not have been delivered to the Indenture Trustee within 30 days after the giving of such notice of removal, the Indenture Trustee being removed may petition any court of competent jurisdiction for the appointment of a successor Indenture Trustee.

(d) If at any time:

(i) the Indenture Trustee ceases to be eligible under Section 9.06 and fails to resign after written request therefor by the Issuer or by any Debtholder of Controlling Class Obligations, or

(ii) the Indenture Trustee becomes incapable of acting, or

(iii) the Indenture Trustee is adjudged bankrupt or insolvent or a receiver of the Indenture Trustee or of its property is appointed, or any public officer takes charge or control of the Indenture Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation,

then, in any such case, (A) the Issuer may remove the Indenture Trustee, or (B) subject to Article XI, any Debtholder of Controlling Class Obligations who has been a *bona fide* Debtholder of Controlling Class Obligations for at least six (6) months may, on behalf of itself and all other Debtholders, petition any court of competent jurisdiction for the removal of the Indenture Trustee and the appointment of a successor Indenture Trustee.

(e) The Indenture Trustee shall resign if a material conflict of interest arises in its role as a trustee under this Indenture that is not eliminated within 90 days after the Indenture Trustee becomes aware that it has such a material conflict of interest. Forthwith after the Indenture Trustee becomes aware that it has a material conflict of interest, it shall provide the Issuer with written notice of the nature of that conflict. If, notwithstanding the foregoing provisions of this subsection 9.07(e), the Indenture Trustee has such a material conflict of interest, the validity and enforceability of this Indenture and of the Funding Obligation Agreements shall not be affected in any manner whatsoever by reason only of the existence of such material conflict of interest. If the Indenture Trustee contravenes the foregoing provisions of this subsection 9.07(e), any interested Person may apply to a court of competent jurisdiction for an order that the Indenture Trustee be replaced as trustee hereunder. The Indenture Trustee represents to the Issuer that at the time of the execution and delivery hereof no material conflict of interest exists in the Indenture Trustee's role as a fiduciary hereunder.

(f) If the Indenture Trustee resigns, is removed or becomes incapable of acting, or if a vacancy shall occur in the office of the Indenture Trustee for any cause, the Issuer will promptly appoint a successor Indenture Trustee. If, within one (1) year after such resignation, removal or incapacity, or the occurrence of such vacancy, a successor Indenture Trustee is appointed by Ordinary Resolution of Debtholders of Controlling Class Obligations delivered to the Issuer and the retiring Indenture Trustee, the successor Indenture Trustee so appointed will, forthwith upon its acceptance of such appointment, become the successor Indenture Trustee and supersede the successor Indenture Trustee appointed by the Issuer. If no successor Indenture Trustee shall have been so appointed by the Issuer or Debtholders of Controlling Class Obligations and accepted in the manner hereinafter provided, any Debtholder of Controlling Class Obligations who has been a *bona fide* Debtholder of Controlling Class Obligations for at least six (6) months may, on behalf of itself and all other Debtholders, petition any court of competent jurisdiction for the appointment of a successor Indenture Trustee.

(g) The Issuer will give written notice of each resignation and each removal of the Indenture Trustee and each appointment of a successor Indenture Trustee to each Specified Creditor as provided in Article XV and to each Rating Agency. To

facilitate delivery of such notice, upon request by the Issuer, the retiring Indenture Trustee shall provide to the Issuer a list of all Specified Creditors. Each notice will include the name of the successor Indenture Trustee and the address of its Corporate Trust Office.

(h) Upon such resignation, the Indenture Trustee shall be discharged from all further duties and liabilities under this Indenture.

9.08 Acceptance of Appointment by Successor

Every successor Indenture Trustee appointed hereunder will execute, acknowledge and deliver to the Issuer and to the predecessor Indenture Trustee an instrument accepting such appointment, with a copy to the Rating Agencies, and thereupon the resignation or removal of the predecessor Indenture Trustee will become effective, and such successor Indenture Trustee, without any further act, deed or conveyance, will become vested with all the rights, powers, trusts and duties of the predecessor Indenture Trustee; but, on request of the Issuer or the successor Indenture Trustee, such predecessor Indenture Trustee will, upon payment of its reasonable charges, if any, execute and deliver an instrument transferring to such successor Indenture Trustee all the rights, powers and trusts of the predecessor Indenture Trustee, and will duly assign, transfer and deliver to such successor Indenture Trustee all property and money held by such predecessor Indenture Trustee hereunder, subject nevertheless to its Lien, if any, provided for in Section 9.05. Upon request of any such successor Indenture Trustee, the Issuer will execute any and all instruments for more fully and certainly vesting in and confirming to such successor Indenture Trustee all such rights, powers and trusts.

No successor Indenture Trustee will accept its appointment unless at the time of such acceptance, such successor Indenture Trustee will be qualified and eligible under this Article IX.

9.09 Merger, Conversion, Consolidation or Succession to Business

Any corporation into which the Indenture Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Indenture Trustee shall be a party, or any corporation succeeding to all or substantially all of the corporate trust business of the Indenture Trustee, will be the successor of the Indenture Trustee hereunder, provided such corporation shall be otherwise qualified and eligible under this Article IX, without the execution or filing of any paper or any further act on the part of any of the parties hereto. The Indenture Trustee shall give prompt written notice of such merger, conversion, consolidation or succession to the Issuer and the Rating Agencies. In case any Notes shall have been authenticated, but not delivered, by the Indenture Trustee then in office, any successor by merger, conversion or consolidation to such authenticating Indenture Trustee may adopt such authentication and deliver the Notes so authenticated with the same effect as if such successor Indenture Trustee had itself authenticated such Notes.

9.10 Trust Indenture Legislation

(a) In this Article IX, the term "**applicable legislation**" means the provisions, if any, of the *Trust and Loan Companies Act* (Canada) and any other statute of Canada or

a province thereof, and of regulations under any such statute, in each case, as amended, restated or re-enacted from time to time, relating to trust indentures and to the rights, duties and obligations of trustees under trust indentures and of entities issuing debt obligations under trust indentures, to the extent that in the opinion of counsel to the Issuer such provisions are at the time in force and applicable to this Indenture.

(b) If and to the extent that any provision of this Indenture limits, qualifies or conflicts with a mandatory requirement of applicable legislation, such mandatory requirement shall prevail.

(c) The Issuer and the Indenture Trustee agree that each will at all times in relation to this Indenture and any action to be taken hereunder, observe and comply with and be entitled to the benefits of applicable legislation.

9.11 Representations and Covenants of the Indenture Trustee

The Indenture Trustee represents, warrants and covenants that:

(a) the Indenture Trustee is a trust company organized, existing and in good standing under the laws of Canada;

(b) the Indenture Trustee has full power and authority to execute, deliver and perform this Indenture and has taken all necessary action to authorize the execution, delivery and performance by it of this Indenture and other documents to which it is a party;

(c) each of this Indenture and the other documents to which it is a party has been duly executed and delivered by the Indenture Trustee and constitutes its legal, valid and binding obligation in accordance with its terms; and

(d) the Indenture Trustee is authorized to carry on the business of a trust company in each of the provinces and territories of Canada. If, notwithstanding the provisions of this subsection 9.11(d), the Indenture Trustee ceases to be so authorized to carry on business, the validity and enforceability of this Indenture and the Funding Obligation Agreements shall not be affected in any manner whatsoever by reason only of such event.

9.12 Indenture Trustee's Application for Instructions from the Issuer

Any application by the Indenture Trustee for written instructions from the Issuer may, at the option of the Indenture Trustee, set forth in writing any action proposed to be taken or omitted by the Indenture Trustee under and in accordance with this Indenture and the date on and/or after which such action shall be taken or such omission shall be effective; provided that such application shall make specific reference to this Section 9.12. The Indenture Trustee shall not be liable for any action taken by, or omission of, the Indenture Trustee in accordance with a proposal included in such application on or after the date specified in such application (which date shall not be less than five (5) Business Days after the date the Issuer actually receives such

application, unless the Issuer shall have consented in writing to any earlier date) unless prior to taking any such action (or the effective date in the case of an omission), the Indenture Trustee shall have received written instructions in response to such application specifying the action be taken or omitted.

9.13 Appointment of Co-Trustee or Separate Indenture Trustee

(a) Notwithstanding any other provisions of this Indenture, at any time, for the purpose of meeting any legal requirements of any **relevant** jurisdiction ~~in which any part of the Issuer's property may at the time be located~~, the Indenture Trustee shall have the power and shall execute and deliver all instruments, subject to the prior written consent of the Manager, which consent shall not be unreasonably withheld, to appoint one or more Persons reasonably acceptable to the Issuer to act as a co-trustee or co-trustees, or separate trustee or separate trustees, of all or any part of the Issuer's property, and to vest in such Person or Persons, in such capacity and for the benefit of the Specified Creditors, such title to the Issuer's property, or any part thereof, and, subject to the other provisions of this Section 9.13, such powers, duties, obligations, rights and trusts as the Indenture Trustee may consider necessary or desirable. No co-trustee or separate trustee hereunder shall be required to meet the terms of eligibility as a successor trustee under Section 9.06 and no notice to Specified Creditors of the appointment of any co-trustee or separate trustee shall be required under Section 9.07.

(b) Every separate trustee and co-trustee shall, to the extent permitted by applicable law, be appointed and act subject to the following provisions and conditions:

(i) all rights, powers, duties and obligations conferred or imposed upon the Indenture Trustee shall be conferred or imposed upon and exercised or performed by the Indenture Trustee and such separate trustee or co-trustee jointly (it being understood that such separate trustee or co-trustee is not authorized to act separately without the Indenture Trustee joining in such act), except to the extent that under any law of any jurisdiction in which any particular act or acts are to be performed, the Indenture Trustee shall be incompetent or unqualified to perform such act or acts, in which event such rights, powers, duties and obligations (including the holding of title to the Issuer's property or any portion thereof in any such jurisdiction) shall be exercised and performed singly by such separate trustee or co-trustee, but solely at the direction of the Indenture Trustee;

(ii) no trustee hereunder shall be personally liable by reason of any act or omission of any other trustee hereunder; and

(iii) the Indenture Trustee may at any time accept the resignation of or remove any separate trustee or co-trustee.

(c) Any notice, request or other writing given to the Indenture Trustee shall be deemed to have been given to each of the then separate trustees and co-trustees, as

effectively as if given to each of them. Every instrument appointing any separate trustee or co-trustee shall refer to this Indenture and the conditions of this Article IX. Each separate trustee and co-trustee, upon its acceptance of the trusts conferred, shall be vested with the estates or property specified in its instrument of appointment, either jointly with the Indenture Trustee or separately, as may be provided therein, subject to all the provisions of this Indenture, specifically including every provision of this Indenture relating to the conduct of, affecting the liability of, or affording protection to, the Indenture Trustee. Every such instrument shall be filed with the Indenture Trustee.

(d) Any separate trustee or co-trustee may at any time appoint the Indenture Trustee, its agent or attorney-in-fact with full power and authority, to the extent not prohibited by applicable law, to do any lawful act under or in respect of this Indenture on its behalf and in its name. If any separate trustee or co-trustee shall die, become incapable of acting, resign or be removed, all of its estates, properties, rights, remedies and trusts shall vest in and be exercised by the Indenture Trustee, to the extent permitted by applicable law, without the appointment of a new or successor trustee.

9.14 Preservation of Information; Communications to Debtholders

(a) The Indenture Trustee will preserve, in as current a form as is reasonably practicable, the names and addresses of Registered Noteholders contained in the most recent list furnished to the Indenture Trustee as provided in Section 13.13 and the names and addresses of Registered Noteholders received by the Indenture Trustee in its capacity as Note Registrar. The Indenture Trustee may destroy any list furnished to it as provided in Section 13.13 upon receipt of a new list so furnished. The Indenture Trustee will also preserve, in as current a form as is reasonably practicable, the names and addresses of all other Specified Creditors received by the Indenture Trustee pursuant to subsections 5.01(f) and 5.03(b).

(b) If three or more Debtholders of any **Class,** Series~~, Class~~ or Tranche (hereinafter referred to as "**applicants**") (or, if there are less than three such Debtholders, all of the Debtholders) apply in writing to the Indenture Trustee, and furnish to the Indenture Trustee reasonable proof that each such applicant has owned an Issuer Funding Obligation of such **Class,** Series~~, Class~~ or Tranche for a period of at least six (6) months preceding the date of such application, and such application states that the applicants desire to communicate with all Debtholders (or such subset thereof as will be specified) with respect to their rights under this Indenture or under the applicable Issuer Funding Obligations and is accompanied by a copy of the form of proxy or other communication which such applicants propose to transmit, then the Indenture Trustee will, within five (5) Business Days after the receipt of such application, at its election, either:

(i) afford such applicants access to the information preserved at the time by the Indenture Trustee in accordance with subsection 9.14(a), or

(ii) inform such applicants as to the approximate number of Debtholders of all Issuer Funding Obligations (or such subset thereof as will be specified), as the case may be, whose names and addresses appear in the information preserved at the time by the Indenture Trustee in accordance with subsection 9.14(a) and as to the approximate cost of mailing to such Debtholders the form of proxy or other communication, if any, specified in such application.

If the Indenture Trustee shall elect not to afford such applicants access to such information, the Indenture Trustee shall, upon the written request of such applicants, mail to each applicable Lender and to each holder of a Registered Note of the applicable **Classes,** Series~~, Classes~~ and Tranches whose names and addresses appear in the information preserved at the time by the Indenture Trustee in accordance with subsection 9.14(a), a copy of the form of proxy or other communication which is specified in such request, with reasonable promptness after a tender to the Indenture Trustee of the material to be mailed and of payment, or provision for the payment, of the reasonable expenses of mailing, unless, within five days after such tender, the Indenture Trustee shall mail to such applicants, together with a copy of the material to be mailed, a written statement to the effect that, in the opinion of the Indenture Trustee, such mailing would be contrary to the best interests of the Debtholders for which such mailing is intended or would be in violation of applicable law. Such written statement will specify the basis of such opinion.

(c) Every Debtholder agrees with the Issuer and the Indenture Trustee that neither the Issuer nor the Indenture Trustee will be held accountable by reason of the disclosure of any such information as to the names and addresses of the Debtholders in accordance with subsection 9.14(b), regardless of the source from which such information was derived, and that the Indenture Trustee will not be held accountable by reason of mailing any material pursuant to a request made under subsection 9.14(b).

9.15 Acceptance of Trusts by Indenture Trustee

The Indenture Trustee hereby accepts the trusts in this Indenture and agrees to perform the same upon the terms and conditions herein set forth.

9.16 Paying Agent

(a) The Paying Agent, on behalf of the Indenture Trustee, will make distributions to Specified Creditors from the Collection Account or other applicable Issuer Account pursuant to the provisions of this Indenture and any applicable Program Agreement and will report the amounts of such distributions to the Indenture Trustee. Any Paying Agent will have the revocable power to withdraw funds from the Collection Account or other applicable Issuer Account for the purpose of making the distributions referred to above.

(b) The Indenture Trustee may revoke such power and remove the Paying Agent if the Indenture Trustee determines in its sole discretion that the Paying Agent has failed to perform its obligations under this Indenture in any material respect. The Paying Agent upon removal will return all funds in its possession to the Indenture Trustee.

(c) The Issuer will cause each Paying Agent (other than the Indenture Trustee) to execute and deliver to the Indenture Trustee an instrument in which such Paying Agent will agree with the Indenture Trustee (and if the Indenture Trustee acts as Paying Agent, it so agrees), subject to the provisions of this Section 9.16, that such Paying Agent will:

(i) hold all sums held by it for the payment of principal of, interest, fees or other amounts in trust for the benefit of the Persons entitled thereto until such sums will be paid to such Persons or otherwise disposed of as herein provided;

(ii) if such Paying Agent is not the Indenture Trustee, give the Indenture Trustee notice of any default by the Issuer in the making of any such payment of principal or interest on any Issuer Funding Obligations;

(iii) if such Paying Agent is not the Indenture Trustee, at any time during the continuance of any such default, upon the written request of the Indenture Trustee, forthwith pay to the Indenture Trustee all sums so held in trust by such Paying Agent;

(iv) open and maintain appropriate records with respect to each Note; record by appropriate entries therein each payment made on account of interest, principal, fees and other amounts owing with respect to each such Note. For the purposes thereof, the Paying Agent shall provide to the Issuer and the Indenture Trustee satisfactory evidence of each payment as soon as practicable after making such payment. The failure to record, or any error in recording, any such payment shall not, however, limit or otherwise affect the obligations of the Issuer as to the principal amount or accrued interest owing with respect to any Note. Such records of payment shall be conclusive evidence of the unpaid principal balance and interest owing in respect of the Notes in the absence of demonstrable error;

(v) immediately resign as a Paying Agent and, if such Paying Agent is not the Indenture Trustee, forthwith pay to the Indenture Trustee all sums held by it in trust for the payment of Issuer Funding Obligations if at any time it ceases to meet the standards described in this Section 9.16 required to be met by a Paying Agent at the time of its appointment; and

(vi) comply with all requirements of the Income Tax Act or any other applicable tax law with respect to the withholding from any payments made by it on any amounts contemplated under this Indenture of any

applicable withholding taxes imposed thereon and with respect to any applicable reporting requirements in connection therewith.

(d) Each Paying Agent, if not OPG, will at all times have, or be a wholly owned subsidiary of a corporation which has, a combined capital and surplus of at least $50,000,000 and be subject to supervision or examination by a Canadian federal, provincial or territorial authority or be regulated by or subject to the supervision or examination of a Governmental Authority of a nation that is a member of the Organization for Economic Co-operation and Development. If such Paying Agent publishes reports of condition at least annually, pursuant to law or to the requirements of the aforesaid supervising or examining authority, then for the purposes of this subsection 9.16(d), the combined capital and surplus of such Paying Agent will be deemed to be its combined capital and surplus as set forth in its most recent report of condition as so published.

ARTICLE X
MEETINGS

10.01 Conduct of Meetings

Meetings of Debtholders of any **Class,** Series~~, Class~~ or Tranche, of all ~~Series of~~ Issuer Funding Obligations or of all Controlling Class Obligations, as the case may be, may be convened, held and conducted in the following manner:

(a) At any time, and from time to time, the Indenture Trustee or the Issuer may, and the Indenture Trustee shall, on receipt of a written request of the Issuer or a requisition signed by Debtholders of a particular **Class,** Series~~, Class~~ or Tranche, of all ~~Series of~~ Issuer Funding Obligations**, [of Controlling Class Obligations of a Series]** or of all Controlling Class Obligations **(each of such groups of Debtholders being a "Debtholder Group")**, as the case may be, holding at least 25% of the aggregate Outstanding Dollar Principal Amount of that ~~Series, Class or Tranche, of all Series of Issuer Funding Obligations or of all Controlling Class Obligations, as the case may be~~**Debtholder Group**, convene a meeting of the Debtholders of that ~~Series, Class or Tranche, of all Series of Issuer Funding Obligations or of all Controlling Class Obligations, as the case may be~~**Debtholder Group**. If the Indenture Trustee fails to convene a meeting after 30 days of being duly required by the Issuer or such Debtholders, the Issuer or such Debtholders may themselves convene such meeting and, in the case of a meeting called by such Debtholders, the notice calling such meeting may be signed by such Person as those Debtholders specify. Every such meeting shall be held in the City of Toronto or such other place in Ontario, Canada as the Indenture Trustee may in any case determine or approve.

(b) At least 7 days' prior notice of any meeting shall be given to the Debtholders of the ~~Series, Class or Tranche~~**applicable Debtholder Group** to which such meeting relates~~, of all Series of Issuer Funding Obligations or of all Controlling Class Obligations, as the case may be,~~ and to the Issuer, unless the meeting has been

called by the Issuer, and such notice shall state the date, time and the place the meeting is to be held and shall specify, in general terms, the nature of the business to be transacted. It shall not be necessary to specify in the notice the text of the resolutions to be passed. Subject to Section 10.01(c), notices shall be given in the manner set forth in Article XV and a copy thereof shall be delivered to the Indenture Trustee unless the meeting has been called by it. It shall not be necessary to specify in the notice of any adjournment of a meeting the nature of the business to be transacted at the adjourned meeting. The non-receipt of any such notice by a Debtholder shall not invalidate any resolution passed at such meeting.

(c) At any meeting of ~~the Debtholders of a Series, Class or Tranche, of all Series of Issuer Funding Obligations or of all Controlling Class Obligations, as the case may be~~**a Debtholders Group**, subject as herein provided, a quorum shall consist of two or more Persons present in person or by proxy holding either personally or as proxies not less than 25% of the Outstanding Dollar Principal Amount of the ~~Series, Class or Tranche, of all Series of~~ Issuer Funding Obligations ~~or of all Controlling Class Obligations, as the case may be,~~**of the applicable Debtholder Group** entitled to vote at such meeting. If a quorum is not present on the date for which the meeting is called within 30 minutes after the time fixed for the holding of such meeting, the meeting shall be adjourned to be held at a place and upon a date and at an hour to be fixed by the Indenture Trustee who shall give not less than 7 days' notice of the date and time to which such meeting is to be adjourned and at such adjourned meeting a quorum shall consist of the Debtholders of that ~~Series, Class or Tranche, of all Series of Issuer Funding Obligations or of all Controlling Class Obligations, as the case may be,~~**Debtholder Group** then and there represented in person or by proxy and entitled to vote at such meeting.

(d) An individual, who need not be a Debtholder, nominated in writing by the Indenture Trustee shall be chairman of the meeting (a "**Chairman**"). If no individual is so nominated or if the individual nominated is not present within 25 minutes after the time fixed for the holding of the meeting, the Debtholders and proxies for Debtholders present shall choose one of their number to be Chairman.

(e) Every question submitted to a meeting, except matters requiring an Extraordinary Resolution, shall be decided by a majority of the votes given on a show of hands or, if a poll shall be requested as hereinafter provided, by a majority of the votes cast on the poll (in either case, an "**Ordinary Resolution**") and shall be binding on all Debtholders of the ~~Series, Class or Tranche, of all Series of Issuer Funding Obligations or of all Controlling Class Obligations, as the case may be~~**Debtholder Group**. On a show of hands, each Debtholder who is present, whether in person or by proxy, will have one vote for every $1,000 of Outstanding Dollar Principal Amount of applicable Issuer Funding Obligations of which he or she shall be the Debtholder. A poll shall be taken on every Extraordinary Resolution and otherwise whenever requested by a Debtholder or its proxy. On a poll, each Debtholder shall have one vote for every $1,000 of Outstanding Dollar Principal Amount of applicable Issuer Funding Obligations of which he or she shall be the

Debtholder. Votes may be given in person or by proxy and a proxy need not be a Debtholder. If at any meeting a poll is so demanded as aforesaid on the election of a Chairman or on a question of adjournment, it shall be taken forthwith. If at any meeting a poll is so demanded on any other question, or an Extraordinary Resolution is to be voted upon, a poll shall be taken in such manner and either at once or after an adjournment as the Chairman directs. The result of a poll shall be deemed to be the decision of the meeting at which the poll was demanded and shall be binding on all Debtholders of ~~that Series, Class or Tranche, of all Series of Issuer Funding Obligations or of all Controlling Class Obligations, as the case may be~~**the applicable Debtholder Group**. In the case of joint Registered Noteholders, any one of them present in person or by proxy at the meeting may vote in the absence of the other or others but, if more than one of them is present in person or by proxy, they shall vote together in respect of the Notes of which they are joint Registered Noteholders.

10.02 Powers Exercisable by Ordinary Resolution and Extraordinary Resolution

(a) In addition to any powers hereinbefore given, Debtholders of a **Class,** Series~~, Class~~ or Tranche of Issuer Funding Obligations shall by Ordinary Resolution have the power to:

(i) require the Indenture Trustee (subject to receipt by the Indenture Trustee of reasonable funding and indemnity) to exercise or refrain from exercising any of the powers conferred upon it by this Indenture insofar as they apply solely to such **Class,** Series~~, Class~~ or Tranche or by the Related Funding Obligation Agreement;

(ii) sanction, insofar as they apply to the **Class,** Series~~, Class~~ or Tranche, the release of the Issuer from its covenants and obligations hereunder;

(iii) subject to the provisions of this Indenture or of the Related Funding Obligation Agreement, sanction any change whatsoever to any provision of the Issuer Funding Obligations of such **Class,** Series~~, Class~~ or Tranche which shall be agreed to by the Issuer and any modification, alteration, abrogation, compromise or arrangement of or in respect of the rights of the Debtholders of such **Class,** Series~~, Class~~ or Tranche or the Indenture Trustee against the Issuer, whether such rights shall arise under the provisions of this Indenture or otherwise;

(iv) subject to the provisions of this Indenture, assent to any modification of or change in or addition to or omission from the provisions contained in this Indenture, a Related Supplemental Indenture or any instrument ancillary or supplementary hereto or thereto, in each case, insofar as they apply to the **Class,** Series~~, Class~~ or Tranche, which shall be agreed to by the Issuer and to authorize the Indenture Trustee to concur in and execute any deed, instrument or agreement embodying any such modification, change, addition or omission or any other deeds, documents or writings authorized

by such Ordinary Resolution; provided that no such assent shall be necessary for any modification of or change in or addition otherwise permitted hereunder or under a Related Supplemental Indenture; and

(v) take any other Action authorized by this Indenture or a Related Supplemental Indenture to be taken by Ordinary Resolution of the Debtholders of a **Class,** Series~~, Class~~ or Tranche of Issuer Funding Obligations.

(b) In addition to any powers hereinbefore given, Debtholders of ~~all~~**the** Controlling Class Obligations shall by Extraordinary Resolution have the power to:

(i) after the Security Interest has become enforceable, authorize the Indenture Trustee to accept, in satisfaction or partial satisfaction, all or any part of the Collateral;

(ii) after the Security Interest has become enforceable, sanction the selling of the Collateral or any part thereof or interest therein;

(iii) after the Security Interest has become enforceable, authorize the Indenture Trustee or any other Person to bid or tender at any sale of the Collateral or any part thereof and take such actions in connection with such sale as it determines to be in the best interests of all Debtholders of Controlling Class Obligations;

(iv) assent to any compromise or arrangement by the Issuer with any creditor, creditors or class or classes of creditors or with the holders of any securities of the Issuer whose claims are payable from the Collateral;

(v) restrain any Debtholder from taking or instituting any suit, action or proceeding for the purpose of realizing on the Collateral or for the execution of any trust or power hereunder or for the appointment of a liquidator, receiver or trustee in bankruptcy or to have the Issuer liquidated or for any other remedy hereunder and to direct such Debtholder to waive any Event of Default on which any suit or proceeding is founded;

(vi) require the Indenture Trustee (subject to receipt by the Indenture Trustee of reasonable funding and indemnity) to exercise or refrain from exercising any other powers conferred upon it by this Indenture of general application to all ~~Series~~**Classes** of Issuer Funding Obligations, including the exercise of any rights of the Issuer under any of the Program Agreements upon the occurrence and during the continuance of an Event of Default, or cancel any declaration of acceleration made pursuant to Article VIII upon such terms and/or conditions as may be decided;

(vii) authorize the Indenture Trustee, in the event of the Issuer making an authorized assignment or proposal or in the event of an administrator, trustee, receiver or liquidator being appointed under any applicable

bankruptcy or insolvency legislation for and on behalf of all Specified Creditors and, in addition to any claim or debt provided or made for its own account as Indenture Trustee hereunder, to file and prove a claim or debt against the Issuer or its property for an amount equivalent to the aggregate amount which may be payable in respect of all Issuer Funding Obligations, to value the Collateral, and to vote such claim or debt at meetings of creditors and generally act for and on behalf of all Debtholders in such proceedings as such Extraordinary Resolution may provide;

(viii) appoint a committee with power and authority (subject to such limitations, if any, as may be prescribed in such Extraordinary Resolution) to exercise, and to direct the Indenture Trustee to exercise, on behalf of all Debtholders of Controlling Class Obligations, such of the powers of such Debtholders as are exercisable by Extraordinary Resolution or other resolution as shall be included in the Extraordinary Resolution appointing the committee. The Extraordinary Resolution making such appointment may provide for payment of the expenses and disbursements of and compensation to such committee from the Collateral. Such committee shall consist of such number of Persons as shall be prescribed in the Extraordinary Resolution appointing it and the members need not themselves be Debtholders. Each such committee may elect a chairman and may make regulations respecting its quorum, the calling of its meetings, the filling of vacancies occurring in its number and its procedures generally. Such regulations may provide that the committee may act at a meeting at which a quorum is present or may act by minutes signed by the number of members thereof necessary to constitute a quorum. All acts of any such committee within the authority delegated to it shall be binding upon all Debtholders. Neither the committee nor any member thereof shall be liable for any loss arising from or in connection with any action taken or omitted to be taken by them in good faith;

(ix) take any other action authorized by this Indenture to be taken by Extraordinary Resolution; and

(x) permit the creation of any Lien on the Collateral that is prior to the Security Interest ~~(other than Permitted Liens)~~.

(c) The foregoing powers shall be deemed to be several and cumulative and not dependent on each other and the exercise of one or more of such powers, or any combination of such powers, from time to time, shall not be deemed to exhaust the rights of the Debtholders to exercise such power or powers, or combinations of powers, thereafter from time to time. No powers exercisable by Extraordinary Resolution shall derogate in any way from any rights of the Issuer under or pursuant to this Indenture. The Issuer shall give the Rating Agency notice of any Extraordinary Resolution adopted.

10.03 Extraordinary Resolution

An Extraordinary Resolution, adopted in accordance with the provisions hereof, shall be binding upon each and every Debtholder and each other Specified Creditor and their respective heirs, executors, administrators, successors and assigns, whether present or absent, and the Indenture Trustee (subject to the provisions for funding and its indemnity herein contained) shall be bound to give effect thereto accordingly.

Except as expressly provided to the contrary in this Indenture, no action shall be taken at a meeting of the Debtholders of a ~~Series, Class or Tranche, of all Series of Issuer Funding Obligations or of all Controlling Class Obligations~~**Debtholder Group** which changes any provision of this Indenture or changes or prejudices the exercise of any right of any Debtholder except by Extraordinary Resolution of the Debtholders of Controlling Class Obligations.

10.04 Declaration by Chairman of Result of Vote

At any meeting of the Debtholders of any ~~Series, Class or Tranche, of all Series of Issuer Funding Obligations or of all Controlling Class Obligations,~~**Debtholder Group** in cases where no poll is required or requested, a declaration made by the Chairman that a resolution has been carried, or carried by any particular majority, or lost, shall be conclusive evidence thereof.

10.05 Minutes

Minutes of all resolutions and proceedings at every such meeting, as aforesaid, shall be made and duly entered in books to be provided from time to time for that purpose by an agent of the Issuer at the expense of the Issuer and any such minutes, as aforesaid, if signed by the Chairman of the meeting at which such resolutions were passed or proceedings had shall be *prima facie* evidence of the matters therein stated and, until the contrary is proved, every such meeting in respect of the proceedings of which minutes shall have been made shall be deemed to have been duly held and convened and all resolutions passed or proceedings had thereat to have been duly passed and had.

10.06 Signed Instruments

Any resolution or instrument signed in one or more counterparts by (a) Debtholders holding not less than 50% of the aggregate Outstanding Dollar Principal Amount of Issuer Funding Obligations of a ~~Series, Class or Tranche, of all Series of Issuer Funding Obligations or of all Controlling Class Obligations, as the case may be~~**Debtholder Group**, in the case of matters capable of being decided by Ordinary Resolution, and (b) Debtholders holding not less than 66⅔% of the aggregate Outstanding Dollar Principal Amount of Issuer Funding Obligations of all Controlling Class Obligations in the case of matters required to be decided by Extraordinary Resolution, shall, in either case, have the same force and effect as a resolution duly passed at a meeting of such Debtholders by the affirmative vote of all of the votes cast upon a poll. Notice of any Ordinary Resolution or Extraordinary Resolution passed in accordance with this Section 10.06 shall be given by the Indenture Trustee to all applicable Debtholders within 30 days of the date on which such Ordinary Resolution or Extraordinary Resolution was passed.

10.07 Persons Who May Attend

Each Debtholder, by their respective officers, directors, employees, and the legal advisers of such parties, may attend any meeting of Debtholders.

10.08 Binding Effect of Resolutions

Every Ordinary Resolution and every Extraordinary Resolution passed in accordance with the provisions of this Article X at a meeting of Debtholders of a ~~Series, Class or Tranche, of all Series of Issuer Funding Obligations or of all Controlling Class Obligations, as the case may be,~~**Debtholder Group** will be binding upon all of the Debtholders of such ~~Series, Class or Tranche, of all Series of Issuer Funding Obligations or of all Controlling Class Obligations, as the case may be,~~**Debtholder Group** whether present at or absent from such meeting, and every instrument in writing signed by Debtholders in accordance with Section 10.06 will be binding upon all of the Debtholders of such ~~Series, Class or Tranche, of all Series of Issuer Funding Obligations or of all Controlling Class Obligations, as the case may be~~**Debtholder Group**, whether signatories thereto or not, and the Indenture Trustee will be bound to give effect accordingly to every such Ordinary Resolution, Extraordinary Resolution and instrument in writing. For greater certainty, any Extraordinary Resolution shall bind all Debtholders in accordance with Section 10.03.

10.09 Notes Regarded as Not Outstanding for Certain Purposes

If, in the opinion of the Indenture Trustee and upon receipt of an Issuer Certificate in respect of the following, any business to be transacted at any meeting of Debtholders or any action to be taken or power exercised by instrument in writing under Section 10.06 does not materially adversely affect the rights of the Debtholders of one or more particular **Class,** Series~~, Class~~ or Tranche of Issuer Funding Obligations, the provisions of this Article X shall apply as if the Issuer Funding Obligations of that **Class,** Series~~, Class~~ or Tranche were not outstanding, and no notice of any such meeting need be given to the Debtholders of that **Class,** Series~~, Class~~ or Tranche.

ARTICLE XI
SUPPLEMENTAL INDENTURES

11.01 Supplemental Indentures and Amendments Without Consent of Specified Creditors

Without the consent of Specified Creditors but with 10 Business Days' prior notice to each Rating Agency, the Issuer and the Indenture Trustee, at any time and from time to time, and upon delivery by the Issuer to the Indenture Trustee of an Issuer Certificate to the effect that the Issuer reasonably believes that such amendment will not have an Adverse Effect and is not reasonably expected to have an Adverse Effect at any time in the future, the Issuer may amend this Indenture, including any Supplemental Indenture or enter into one or more Supplemental Indentures, in form satisfactory to the Indenture Trustee, for any of the following purposes:

(a) to evidence the succession or successive successions of another Financing Entity to the Issuer, and the assumption by any such successor of the covenants of the Issuer herein and in the Notes; or

(b) to add to the covenants of the Issuer, or to surrender any right or power herein conferred upon the Issuer by the Issuer, for the benefit of Debtholders of any or all **Classes,** Series~~, Class~~ or ~~Tranche~~**Tranches** of Issuer Funding Obligations; or

(c) to cure any ambiguity, to correct or supplement any provision herein which may be inconsistent with any other provision herein, to correct a clear clerical or administrative error, or to make any other provisions with respect to matters or questions arising under this Indenture; or

(d) to provide for the issuance of any Series~~, Class~~ or Tranche of Notes as provided in Article IV and Article V and to set forth the terms thereof, and/or to add to the rights of the Noteholders of any **Class,** Series~~, Class~~ or Tranche; or

(e) to evidence and provide for the acceptance of appointment by another corporation as a successor Indenture Trustee hereunder; or

(f) to add any additional Events of Default in respect of any or all **Classes,** Series~~, Class~~ or ~~Tranche~~**Tranches** of Issuer Funding Obligations; or

(g) to provide for the consolidation of any Financing Entity and the Issuer into a single Person or the transfer of assets in any Financing Entity to the Issuer; or

(h) if IESO is replaced under the Master Transfer and Servicing Agreement as Servicer, to make any necessary changes to this Indenture or any other related document; or

(i) to provide for additional ~~or alternative~~ forms of Credit Enhancement for any **Class,** Series~~, Class~~ or Tranche of Issuer Funding Obligations; or

(j) to comply with any regulatory, accounting, securities or tax laws, rules, regulations or requirements, or changes to Rating Agency ratings criteria; or

(k) to enable the Issuer to file a registration statement (and any related exhibits thereto) for the offering of securities registered under the U.S. Securities Act and to comply with Regulation AB (including, without limitation, ongoing reporting obligations thereunder); or

(l) to qualify for sale treatment under generally accepted accounting principles.

Additionally, notwithstanding any provision of this Article XI to the contrary and in addition to clauses (a) through (l) above, the Issuer and the Indenture Trustee may amend this Indenture, including any Supplemental Indenture, without the consent of any Specified Creditor, to modify, eliminate or add to the provisions of this Indenture (i) to facilitate compliance with any amendment to any change of law or regulation which applies to the Issuer or the transactions governed by the Program Agreements, or (ii) to cause the provisions hereof to conform to or be consistent with or in furtherance of the statements made with respect to this Indenture in any applicable offering document; in each case, provided that the Issuer shall deliver to the Indenture Trustee an Issuer Certificate to the effect that (A) the Issuer reasonably believes that such

amendment will not have an Adverse Effect and is not reasonably expected to have an Adverse Effect at any time in the future or (B) such amendment is required to remain in compliance with any change of law or regulation which applies to the Issuer or the transactions governed by the Program Agreements, or such amendment is required to cause the provisions hereof to conform to or be consistent with or in furtherance of the statements made with respect to this Indenture in any applicable offering document.

Additionally, notwithstanding any provision of this Article XI to the contrary and in addition to clauses (a) through (l) above and the immediately preceding paragraph, this Indenture, including any Supplemental Indenture, may also be amended by the Issuer and the Indenture Trustee, without the consent of any Specified Creditor, for the purpose of (i) adding any provisions to, or changing in any manner or eliminating any of the provisions of, this Indenture or any Supplemental Indenture or (ii) modifying in any manner the rights of the Specified Creditors under this Indenture or any Supplemental Indenture; provided, however, that (A) the Issuer shall deliver to the Indenture Trustee an Issuer Certificate to the effect that the Issuer reasonably believes that such amendment will not have an Adverse Effect and is not reasonably expected to have an Adverse Effect at any time in the future, and (B) the Rating Agency Condition shall be satisfied.

Additionally, notwithstanding any provision of this Article XI to the contrary and in addition to clauses (a) through (l) above and the immediately preceding paragraphs, this Indenture, including any Supplemental Indenture, may also be amended by the Issuer and the Indenture Trustee, without the consent of any Specified Creditor, to provide for those changes necessary for compliance with securities law requirements or banking laws or regulations; provided, however, that (i) the Issuer shall deliver to the Indenture Trustee an Issuer Certificate to the effect that the Issuer reasonably believes that such amendment will not have an Adverse Effect and is not reasonably expected to have an Adverse Effect at any time in the future, and (ii) the Rating Agency Condition shall be satisfied.

The Issuer shall send a copy of any amendment to this Indenture or any Supplemental Indenture to each Rating Agency.

The Indenture Trustee may, but shall not be obligated to, enter into any amendment which adversely affects the Indenture Trustee's rights, duties, benefits, protections, privileges or immunities under this Indenture or otherwise.

11.02 Supplemental Indentures and Amendments with Consent of Debtholders

In addition to any amendment permitted pursuant to Section 11.01, with prior notice to each Rating Agency and the consent of Debtholders of each **Class,** Series~~, Class~~ or Tranche of Issuer Funding Obligations affected by such amendment of this Indenture, including any Supplemental Indenture, by Ordinary Resolution delivered to the Issuer and the Indenture Trustee, the Issuer and the Indenture Trustee may enter into an amendment of this Indenture or any Supplemental Indenture for the purpose of adding any provisions to, or changing in any manner or eliminating any of the provisions of, this Indenture or of modifying in any manner the rights of the Debtholders of each such **Class,** Series~~, Class~~ or Tranche of Issuer Funding Obligations under this Indenture or any Supplemental Indenture; provided, however, that no such

amendment of this Indenture or any Supplemental Indenture will, without the consent of each Debtholder of Issuer Funding Obligations affected thereby:

(a) change the scheduled payment date of any payment of interest on any Issuer Funding Obligation, or change a Principal Payment Due Date or Principal Payment Default Date of any Issuer Funding Obligation;

(b) reduce the principal amount of, or the interest rate on any Note, or change the method of computing the Outstanding Dollar Principal Amount, the Outstanding Currency Specific Dollar Principal Amount or the ~~Adjusted~~ Outstanding Dollar Principal Amount in a manner that is adverse to any Debtholders;

(c) reduce the amount of a Discount Note payable upon its acceleration;

(d) reduce the percentage in Outstanding Dollar Principal Amount of Issuer Funding Obligations of any **Class,** Series~~, Class~~ or Tranche, the consent of whose holders is required for any such amendment, or the consent of whose holders is required for any waiver of compliance with the provisions of this Indenture or of defaults hereunder and their consequences, provided for in this Indenture;

(e) modify any of the provisions of this Section 11.02 or Section 8.03, except to increase any percentage of Debtholders required to consent to any such amendment or to provide that other provisions of this Indenture cannot be modified or waived without the consent of the Debtholders affected thereby;

(f) change any Place of Payment where any principal of, or interest on, any Note is payable, unless otherwise provided in the Related Supplemental Indenture; or

(g) change the method of computing the amount of principal of, or interest on, any Note on any date.

An amendment of this Indenture or a Supplemental Indenture which changes or eliminates any covenant or other provision of this Indenture which has expressly been included solely for the benefit of one or more particular **Classes,** Series~~, Class~~ or ~~Tranche~~**Tranches** of Issuer Funding Obligations, or which modifies the rights of the Debtholders of such **Class,** Series **or Tranche** with respect to such covenant or other provision, will be deemed not to affect the rights under this Indenture of the Debtholders of any other **Class,** Series~~, Class~~ or Tranche of Issuer Funding Obligations.

It will not be necessary for any Ordinary Resolution under this Section 11.02 to approve the particular form of any proposed amendment or Supplemental Indenture, but it will be sufficient if such Ordinary Resolution will approve the substance thereof.

11.03 Execution of Amendments and Supplemental Indentures

In executing or accepting the additional trusts created by any amendment of this Indenture or Supplemental Indenture permitted by this Article XI or the modifications thereby of the trusts created by this Indenture, the Indenture Trustee will be provided with, and (subject to Section

9.01) will be fully protected in relying upon, an Opinion of Counsel stating that the execution of such amendment or Supplemental Indenture is authorized or permitted by this Indenture and that all conditions precedent thereto have been satisfied. The Indenture Trustee may, but will not (except to the extent required in the case of an amendment or Supplemental Indenture entered into under subsection 11.01(e)) be obligated to, enter into any such amendment or Supplemental Indenture which affects the Indenture Trustee's own rights, duties or immunities under this Indenture or otherwise.

11.04 Effect of Amendments and Supplemental Indentures

Upon the execution of any amendment of this Indenture or any Supplemental Indenture under this Article XI, this Indenture and/or such Supplemental Indenture will be modified in accordance therewith with respect to each **Class,** Series~~, Class~~ or Tranche of Issuer Funding Obligations affected thereby, or all Issuer Funding Obligations, as the case may be, and such amendment or Supplemental Indenture will form a part of this Indenture and such Supplemental Indenture for all purposes; and every holder of Issuer Funding Obligations theretofore or thereafter incurred and every other Specified Creditor will be bound thereby to the extent provided therein.

11.05 Reference in Notes to Supplemental Indentures

Notes authenticated and delivered after the execution of any amendment of this Indenture or any Supplemental Indenture pursuant to this Article XI may, and will if required by the Indenture Trustee, bear a notation in form approved by the Indenture Trustee as to any matter provided for in such amendment or Supplemental Indenture. If the Issuer will so determine, new Notes so modified as to conform, in the opinion of the Indenture Trustee and the Issuer, to any such amendment or Supplemental Indenture may be prepared and executed by the Issuer and authenticated and delivered by the Indenture Trustee in exchange for Outstanding Notes.

ARTICLE XII
REPRESENTATIONS AND WARRANTIES OF THE ISSUER

12.01 Representations and Warranties of the Issuer

The Issuer hereby represents and warrants to the Indenture Trustee and shall be deemed to represent and warrant to the Indenture Trustee on the issuance of Notes of any particular **Class,** Series~~, Class~~ or Tranche hereunder, and upon each Borrowing under the applicable Funding Obligation Agreement, that:

(a) The Issuer is a Financing Entity.

(b) The indebtedness incurred pursuant to each issuance of Notes and each Borrowing is a Funding Obligation.

(c) The Issuer (i) is a trust duly constituted and validly existing under the laws of the Province of Ontario, (ii) is duly qualified to carry on its business in each jurisdiction in which it carries on business, (iii) has the power and authority to enter into and perform its obligations under this Indenture and the other Program

Agreements executed by it and all instruments and agreements delivered pursuant hereto, and thereto and to own its property and carry on its business as currently conducted including, without limitation, the power and authority and legal right to acquire Investment Interests, and (iv) has obtained all material licences, permits and approvals from all Governmental Authorities required in respect of its business.

(d) The execution, delivery and performance of this Indenture, and at the time it enters into such document, the other Program Agreements executed by it and every instrument or agreement delivered pursuant hereto and thereto has been or will be duly authorized by all requisite action and this Indenture and such other Program Agreements, instruments and agreements have been or will be duly executed and delivered by the Issuer and constitute valid and binding obligations of the Issuer enforceable against the Issuer in accordance with their respective terms subject to (i) applicable bankruptcy, insolvency, moratorium and similar laws at the time in effect affecting the rights of creditors generally, and (ii) equitable principles which may limit the availability of certain remedies, including the remedy of specific performance.

(e) There are no actions, suits or proceedings pending or, to the knowledge of the Issuer, threatened against or affecting the Issuer at law or in equity or before or by any Governmental Authority, or before any arbitrator of any kind, which would result in any material adverse change in the business, operations, prospects, properties, assets or condition, financial or otherwise, of the Issuer or in the ability of the Issuer to perform its obligations under this Indenture, the other Program Agreements executed by it or any agreement or instrument delivered pursuant hereto or thereto; and the Issuer is not aware of any existing ground on which such action, suit or proceeding might be commenced with any reasonable likelihood of success or of any default with respect to any judgment, order, writ, injunction, decree, award, rule or regulation of any court, arbitrator or Governmental Authority, which, either separately or in the aggregate, would result in any such material adverse change.

(f) The Issuer is not a party to any agreement or instrument which materially adversely affects its ability to perform its obligations under this Indenture, the other Program Agreements executed by it or any agreements or instruments delivered pursuant hereto or thereto or materially adversely affects the business, operations, prospects, properties, assets or condition, financial or otherwise of the Issuer.

(g) The Issuer is not subject to any restriction or any judgment, order, writ, injunction, decree, award, rule or regulation which materially adversely affects, or in the future may materially adversely affect, the business, operations, prospects, properties, assets or condition, financial or otherwise of the Issuer or its ability to perform its obligations under this Indenture, the other Program Agreements executed by it or any agreements or instruments delivered pursuant hereto or thereto.

(h) Neither the execution nor delivery of this Indenture, the other Program Agreements executed by it or any agreements or instruments delivered pursuant hereto or thereto, the consummation of the transactions herein and therein contemplated, nor compliance with the terms, conditions and provisions hereof or thereof conflicts with or will conflict with, or results or will result in any breach of, or constitutes a default under, any of the provisions of the Declaration of Trust or any agreements or instruments to which the Issuer is a party or by which it or any of its property and assets are bound, or results or will result in the creation or imposition of any Lien of any nature whatsoever upon any of the property or assets of the Issuer.

(i) No consent, approval or authorization of, or declaration, registration, filing or qualification with, or giving of notice to, or taking of any other action in respect of, any Governmental Authority on the part of the Issuer is required in connection with the execution and delivery of this Indenture, the other Program Agreements executed by it or any agreements or instruments delivered pursuant hereto or thereto or the consummation of any of the transactions contemplated hereby or in connection with the enforcement of this Indenture, the other Program Agreements executed by it or any agreements or instruments delivered pursuant hereto or thereto (except those which have been obtained or deemed to have been obtained).

ARTICLE XIII
COVENANTS OF THE ISSUER

13.01 Payment of Principal and Interest

With respect to each **Class,** Series~~, Class~~ or Tranche of Issuer Funding Obligations, the Issuer will duly and punctually pay the principal of and interest on such Issuer Funding Obligations in accordance with their terms, this Indenture and any Related Funding Obligation Agreement, and will duly comply with all the other terms, agreements and conditions contained in, or made in this Indenture and any Funding Obligation Agreement.

13.02 Use of Proceeds

The Issuer will use the proceeds of Notes and Borrowings solely for: (a) the acquisition by the Issuer of an Investment Interest; (b) the ~~Refinancing~~**redemption, repayment or repurchase** of any existing Issuer Funding Obligations; (c) the funding of Issuer Accounts; and (d) the payment of transaction fees and expenses in connection with the incurrence of Issuer Funding Obligations.

13.03 Maintenance of Office or Agency

The Issuer will maintain an office or agency in each Place of Payment where Notes may be presented or surrendered for payment, where Notes may be surrendered for transfer or exchange and where notices and demands to or upon the Issuer in respect of the Notes and this Indenture may be served. The Issuer will give prompt written notice to the Indenture Trustee of the location, and of any change in the location, of such office or agency. If at any time the Issuer

will fail to maintain such office or agency or will fail to furnish the Indenture Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office of the Indenture Trustee, and the Issuer hereby appoints the Indenture Trustee its agent to receive all such presentations, surrenders, notices and demands.

The Issuer may also from time to time designate one or more other offices or agencies where the Notes of one or more **Classes,** Series~~, Classes~~ or Tranches may be presented or surrendered for any or all of such purposes specified above and may constitute and appoint one or more Paying Agents for the payments of such Notes, in one or more other cities, and may from time to time rescind such designations and appointments; provided, however, that no such designation, appointment or rescission shall in any matter relieve the Issuer of its obligations to maintain an office or agency in each Place of Payment for Notes of any **Class,** Series~~, Class~~ or Tranche for such purposes. The Issuer will give prompt written notice to the Indenture Trustee of any such designation or rescission and of any change in the location of any such other office or agency. Unless and until the Issuer rescinds one or more of such appointments, the Issuer hereby appoints the ~~[■]~~[7] **Indenture Trustee**, as its Paying Agent in Toronto, Ontario with respect to all Series, Classes and Tranches of Notes having a Place of Payment in the City of Toronto, Ontario.

13.04 Legal Existence

The Issuer will do or cause to be done all things necessary to preserve and keep in full force and effect its legal existence and maintain its status as a Financing Entity.

13.05 Separateness Covenants

The Issuer will take all reasonable steps to maintain the Issuer's identity as a distinct entity with assets and liabilities distinct from those of the Manager and any of its Affiliates. Without limiting the generality of the foregoing and in addition to the other covenants set forth herein, the Issuer shall:

(a) not identify the offices of the Manager or any Affiliate thereof as its offices (by signage or otherwise);

(b) not identify the telephone number of the Manager as its telephone number and it will not utilize the stationery, invoices or cheques of the Manager;

(c) conduct all transactions with the Manager strictly on an arm's length basis and in good faith, allocate all overhead expenses for items shared between the Issuer and the Manager on the basis of actual use to the extent practicable and, to the extent such allocation is not practicable, on a basis reasonably related to actual use;

(d) conduct its affairs strictly in accordance with the Declaration of Trust, and observe all necessary, appropriate and trust formalities;

[7] ~~OPG to confirm.~~

(e) maintain the Issuer's books and records separate from those of the Manager or any Affiliate thereof and otherwise readily identifiable as its own assets rather than assets of the Manager or any Affiliate thereof;

(f) ~~[~~prepare its financial statements separately from those of the Manager and ensure that any consolidated financial statements of the Manager that include the Issuer have notes clearly stating that the Issuer is a separate entity;~~]~~[8]

(g) only maintain bank accounts or other depository accounts to which the Issuer alone is the account party (or where the Issuer Trustee or the Indenture Trustee will maintain them on behalf of the Issuer), and from which only the Issuer or its agent has the power to make withdrawals;

(h) pay all of the Issuer's operating expenses from the Issuer's own assets (including, for greater certainty, reimbursing the Manager for any such expenses);

(i) continuously maintain the resolutions, agreements and other instruments of the Issuer underlying the transactions described in the Program Agreements as official records of the Issuer separately identified and held apart from the records of the Manager;

(j) maintain its property in such a manner that it is not costly or difficult to segregate, ascertain or otherwise identify its individual assets from or against those of the Manager or any Affiliate thereof; and

(k) not become liable to any Person for any obligations of the Manager or any Affiliate thereof.

13.06 Compliance with Laws

The Issuer will comply with the requirements of all applicable laws, the noncompliance with which would, individually or in the aggregate, materially and adversely affect the ability of the Issuer to perform its obligations under the Program Agreements.

13.07 Performance of Obligations

(a) The Issuer will punctually perform and observe all of its obligations and agreements contained in this Indenture, the Declaration of Trust, the Master Transfer and Servicing Agreement, the other Program Agreements and in the instruments and agreements relating to the Collateral, including but not limited to filing or causing to be filed all PPSA financing statements and amendments thereto required to be filed by the terms of this Indenture in accordance with and within the time periods provided for herein.

(b) The Issuer (i) will diligently pursue any and all actions to enforce its rights under each instrument or agreement included in the Collateral and (ii) will not take any action and will use its best efforts not to permit any action to be taken by others

[8] ~~To discuss financial statement requirements.~~

that would release any Person from any of such Person's covenants or obligations under any such instrument or agreement or that would result in the amendment, hypothecation, subordination, termination or discharge of, or impair the validity or effectiveness of, any such instrument or agreement, except, in each case, as expressly provided in this Indenture, the Master Transfer and Servicing Agreement or any other Program Agreement.

(c) The Issuer will enforce the Servicer's compliance with and performance of all of the Servicer's material obligations under the Master Transfer and Servicing Agreement. The Issuer will enforce the Manager's compliance with and performance of all of the Manager's material obligations under the Management Agreement.

13.08 Funding Obligations

The Issuer will ensure that all indebtedness is incurred pursuant to and in accordance with Article V.

13.09 Financial Statements

The Issuer will deliver or cause to be delivered to the Indenture Trustee and the Rating Agencies within 140 days after the end of each fiscal year audited ~~[consolidated~~ financial statements of the Issuer~~]~~ for the fiscal year, including the balance sheet and statements of income, retained earnings and changes in financial position of the Issuer, and within 90 days after the end of each fiscal quarter, other than the fiscal quarter of the Issuer ending on the fiscal year end of the Issuer, ~~[~~unaudited ~~consolidated~~ financial statements of the Issuer~~]~~ for such fiscal quarter of the Issuer, including the balance sheet and statements of income, retained earnings and changes in financial position of the Issuer.[9]

13.10 Statement as to Compliance

The Issuer will deliver to the Indenture Trustee and the Rating Agencies, on or before March 31 of each year, beginning in 2018, a written statement signed by a Responsible Officer of the Issuer stating that:

(a) a review of the activities of the Issuer during the prior year and of the Issuer's performance under this Indenture and under the terms of the Notes has been made under such Responsible Officer's supervision; and

(b) to the best of such Responsible Officer's knowledge, based on such review, the Issuer has complied in all material respects with all conditions and covenants under this Indenture throughout such year **and that no Event of Default has occurred (without regard to any grace period or requirement of notice)**, or, if there has been a material default in the fulfillment of any such condition or covenant **or an Event of Default has occurred** (without regard to any grace

[9] ~~To discuss financial statement requirements.~~

period or requirement of notice), specifying each such default known to such Responsible Officer and the nature and status thereof.

13.11 Payment Instruction

Promptly after the receipt by the Issuer of each Monthly Report under the Master Transfer and Servicing Agreement, the Issuer will, in cooperation with the Manager, complete the Payment Instruction and deliver a copy thereof to the Indenture Trustee and the Paying Agent (if the Paying Agent is not the Indenture Trustee).

13.12 Notice of Events of Default

The Issuer agrees to give the Indenture Trustee and the Rating Agencies prompt written notice of (i) each Event of Default, (ii) each breach on the part of the Issuer or the Servicer of its respective obligations under the Master Transfer and Servicing Agreement, (iii) each breach on the part of the Manager of its obligations under the Management Agreement, and (iv) any default of the Issuer or a Derivative Counterparty under a Derivative Agreement.

13.13 Issuer To Furnish Indenture Trustee Names and Addresses of Specified Creditors

(a) The Issuer will furnish or cause to be furnished to the Indenture Trustee:

(i) not more than 15 days after each Record Date, in such form as the Indenture Trustee may reasonably require, a list of the names and addresses of the Registered Noteholders of such **Classes,** Series~~, Classes~~ or Tranches as of such date, and

(ii) at such other times as the Indenture Trustee may request in writing, within 30 days after the receipt by the Issuer of any such request, a list of similar form and content as of a date not more than 15 days before the time such list is furnished;

provided, however, that so long as the Indenture Trustee is the Note Registrar, no such lists shall be required to be furnished.

(b) Upon written request from the Indenture Trustee, within 30 days after the receipt by the Issuer of any such request, the Issuer will furnish or cause to be furnished to the Indenture Trustee a list of the names and addresses of all other Specified Creditors.

13.14 Other Positive Covenants

The Issuer will:

(a) in the event that the Issuer shall be required to file tax returns, the Manager shall prepare or shall cause to be prepared such tax returns and shall provide such tax returns to the Issuer for signature at least five (5) Business Days before such tax returns are due to be filed. The Issuer, in accordance with the terms of each

applicable Supplemental Indenture, shall also prepare or shall cause to be prepared all tax information required by applicable law to be distributed to any Noteholder and shall deliver such information to the Indenture Trustee at least 5 Business Days prior to the date it is required by applicable law to be distributed to any Noteholder. The Indenture Trustee, upon written request, will furnish the Manager with all such information known to the Indenture Trustee as may be reasonably requested and required in connection with the preparation of all tax returns of the Issuer;

(b) pay or cause to be paid all Taxes levied, assessed or imposed upon the Issuer and its property or any part thereof, as and when the same become due and payable; provided that the Issuer may protest the payment of any such Taxes if it is acting in good faith and if it either provides the Indenture Trustee with cash in an amount sufficient to satisfy the same or otherwise satisfies the Indenture Trustee that its interests are not prejudiced thereby and the Rating Agency Condition is satisfied;

(c) upon the written request of the Indenture Trustee, use reasonable commercial efforts, following any (i) termination or resignation of the Servicer, the Manager or the Paying Agent or, in each case, any successor thereof; or (ii) termination, non-renewal or expiry of a Liquidity Agreement or a Credit Enhancement Agreement (other than, in the latter case, a termination, non-renewal or expiry which occurs because neither party thereto has any further obligation thereunder), to appoint and enter into an agreement with a successor to such Servicer, Manager or Paying Agent, or replace or renew such Liquidity Agreement or Credit Enhancement Agreement, in form and substance the same as the applicable provisions in the previously existing Program Agreement and will notify the Indenture Trustee and the Rating Agencies of each such occurrence and new agreement, and will execute and deliver all Supplemental Indentures and amendments hereto and all instruments of further assurance and other instruments and will take other and further action as the Indenture Trustee, relying on the advice of counsel, may consider necessary or advisable to assign and render subject to this Indenture any such agreement; and

(d) deliver or cause to be delivered to the Indenture Trustee and the Rating Agencies on a confidential basis (excepting only, on the part of the Rating Agencies, for purposes of rating the securities of the Issuer) (i) copies of all Program Agreements (including any amendments thereto) in effect from time to time; and (ii) such reports and other information relating to the conduct of the business and affairs of the Issuer as the Indenture Trustee and the Rating Agencies may reasonably require including, without limitation, information pertaining to any actual or anticipated Event of Default or other event which could reasonably be anticipated to have a material adverse effect on the affairs of the Issuer.

13.15 Rule 144A Information

For so long as Notes of any **Class,** Series~~, Class~~ or Tranche are "restricted securities" within the meaning of Rule 144(a)(3) under the Securities Exchange Act, the Issuer agrees to

provide to any Noteholder of such **Class,** Series~~, Class~~ or Tranche and to any prospective purchaser of Notes designated by such Noteholder, upon the request of such Noteholder or prospective purchaser, any information required to be provided to such Noteholder or prospective purchaser to satisfy the conditions set forth in Rule 144A(d)(4) under the Securities Exchange Act.

13.16 Further Instruments and Acts

Upon request of the Indenture Trustee or as necessary, the Issuer will execute and deliver such further instruments and do such further acts (including, but not limited to, disclosing or causing to be disclosed information) as may be reasonably necessary or proper to carry out more effectively the purpose of this Indenture.

13.17 No Other Business

The Issuer will not engage in any business other than as permitted under the Declaration of Trust or the other Program Agreements and activities ancillary thereto.

13.18 Amendments to Program Agreements

(a) The Issuer will not:

(i) amend, supplement, modify, restate or replace, or waive or consent to a postponement of compliance with the terms and conditions on the part of any other party to, any of the Funding Obligation Agreements (other than this Indenture and Derivative Agreements) if any such supplementation, amendment, modification, restatement or replacement, or waiver or consent, could reasonably be considered to be materially prejudicial to the rights or interests of any Specified Creditor, except as expressly permitted by such Specified Creditor, and unless the Rating Agency Condition is satisfied; or

(ii) consent, if consent is required, to the resignation of the Manager under the Management Agreement unless the Rating Agency Condition is satisfied.

(b) The Issuer will not amend the Declaration of Trust if such amendment would have an Adverse Effect or would reasonably be expected to have an Adverse Effect at any time in the future; provided that if an amendment would have, or would reasonably be expected to have, an Adverse Effect, such amendment may only be made with the consent of the Debtholders affected thereby, acting pursuant to an Ordinary Resolution.

13.19 Issuer May Consolidate, Etc., Only on Certain Terms

The Issuer shall not consolidate or merge with or into any other Person, or sell, convey, exchange, transfer or otherwise dispose of any of its properties or assets included in the Collateral to any Person (in this Section 13.19, a "**transaction**"), unless:

(a) the Person (if other than the Issuer) formed by or surviving the consolidation or merger, or the Person that acquires by conveyance or transfer the properties and assets of the Issuer the conveyance or transfer of which is restricted, as applicable, shall: (i) be a Financing Entity, (ii) be organized and existing under the laws of Canada or any province or territory thereof, (iii) not be a Non-resident, (iv) not be subject to regulation as an "investment company" under the Investment Company Act, (v) expressly assume, pursuant to an assignment and/or assumption agreement or supplement executed and delivered to the Indenture Trustee, in a form satisfactory to the Indenture Trustee, the due and punctual payment of all Obligations Secured then outstanding and the performance or observance of every agreement and covenant of the Issuer in this Indenture and the other Program Agreements to which the Issuer is a party; and (vi) in the case of a conveyance or transfer only, expressly agree, by means of such assignment and/or assumption agreement or supplement, that (A) all right, title and interest so conveyed or transferred is subject and subordinate to the Security Interest, and (B) it shall make all filings required by applicable securities laws in connection with the Notes;

(b) immediately after giving effect to such transaction, no Event of Default shall have occurred and be continuing;

(c) the Issuer shall have delivered to the Indenture Trustee an Issuer Certificate and an Opinion of Counsel each stating that (i) such transaction and the agreements delivered in connection therewith comply with this Section 13.19, (ii) all conditions precedent in this Section 13.19 relating to such transaction have been complied with, and (iii) each agreement delivered in connection with such transaction has been duly authorized, executed and delivered, and is valid, binding and enforceable against the surviving Person or transferee, as applicable;

(d) the Rating Agency Condition shall have been satisfied with respect to such transaction; and

(e) any action that is necessary to maintain the Security Interest shall have been taken.

13.20 Successor Substituted

Upon any consolidation or merger, or any conveyance or transfer of the properties and assets of the Issuer substantially as an entirety in accordance with Section 13.19, the Person formed by or surviving such consolidation or merger (if other than the Issuer) or the Person to which such conveyance or transfer is made shall succeed to, and be substituted for, and may exercise every right and power of, the Issuer under this Indenture with the same effect as if such Person had been named as the Issuer herein. In the event of any such conveyance or transfer, the Person named as the Issuer in the first paragraph of this Indenture or any successor which shall theretofore have become such in the manner prescribed in this Section 13.20 shall be released from its obligations under this Indenture as issued immediately upon the effectiveness of such conveyance or transfer.

13.21 Guarantees, Loans, Advances and Other Liabilities

Except as contemplated by this Indenture or the Declaration of Trust, the Issuer shall not make any loan or advance or credit to, or guarantee (directly or indirectly or by an instrument having the effect of assuring another's payment or performance on any obligation or capability of so doing or otherwise), endorse or otherwise become contingently liable, directly or indirectly, in connection with the obligations, stocks or dividends of, or own, purchase, repurchase or acquire (or agree contingently to do so) any stock, obligations, assets or securities of, or any other interest in, or make any capital contribution to, any other Person.

13.22 Capital Expenditures

The Issuer shall not make any expenditure (by long-term or operating lease or otherwise) for capital assets.

13.23 Restricted Payments

The Issuer is permitted to declare or make payable any amounts to the owner of units in the Issuer as permitted or in accordance with the Declaration of Trust, and redeem, purchase, retire or otherwise acquire for value any units in the Issuer, provided that the Issuer may only satisfy the distribution declared or made payable, or the redemption or purchase price of any units so redeemed, purchased, retired or otherwise acquired, in cash or property to the extent that cash or property is available for such purpose, subject to Sections 7.04 and 8.13. For greater certainty, if the Issuer is restricted from satisfying the foregoing amounts in cash or property pursuant to the provisions of this Section, then the Issuer shall satisfy such amounts through the issuance of additional units and/or a promissory note to its unitholders in accordance with the Declaration of Trust. The Issuer Trustee is permitted to make or cause to be made payments to the Indenture Trustee pursuant to Sections 9.05 and 13.26.

13.24 No Borrowing

The Issuer will not issue, incur, assume, guarantee or otherwise become liable, directly or indirectly, for any additional indebtedness, except for Funding Obligations and pursuant to the Program Agreements.

13.25 Other Negative Covenants

The Issuer will not:

(a) claim any credit on, or make any deduction from the principal or interest payable in respect of, the Notes or Borrowings (other than amounts withheld or deducted as described in Section 16.02);

(b) permit the validity or effectiveness of this Indenture to be impaired, or permit the Security Interest to be amended, hypothecated, subordinated, terminated or discharged, or permit any Person to be released from any covenants or obligations hereunder with respect to any Program Agreements except as may be expressly permitted hereby;

(c) permit any Lien (other than Permitted Liens) to be created on or extend to or otherwise arise upon or burden the Collateral or any part thereof or any interest therein or the proceeds thereof;

(d) sell, transfer, exchange or otherwise dispose of any of the Collateral except as may be expressly permitted hereby;

(e) release any security or guarantee in respect of the Collateral;

(f) voluntarily dissolve or liquidate; or

(g) take any action that would cause it to be treated as engaged in a "trade or business within the United States" within the meaning of applicable U.S. tax law interpreting section 864 of the Internal Revenue Code or its successor or predecessor provisions.

13.26 Indenture Trustee May Perform Covenants

If the Issuer fails to perform any of its covenants herein contained, the Indenture Trustee may, subject to the receipt of indemnification and funding reasonably acceptable to the Indenture Trustee as provided in Section 9.02(d), itself perform the covenant if the covenant is capable of being performed by the Indenture Trustee and, if the covenant requires the payment or expenditure of money, the Indenture Trustee may make the payment or expenditure with its own funds or with money borrowed by or advanced to it for such purpose, but will be under no obligation to do so; and all sums so expended or advanced will bear interest at the rate of interest charged to the Indenture Trustee by its bankers from the date of expenditure until repayment and will (together with such interest) be paid by the Issuer upon demand and will until paid form part of the Obligations Secured and constitute a Lien on the Collateral to which such covenant related in priority to the Security Interest and will be payable out of any funds coming into possession of the Indenture Trustee hereunder. No performance or payment will be deemed to relieve the Issuer from the consequences of the occurrence of any Event of Default hereunder.

ARTICLE XIV
MANAGEMENT AGREEMENT AND CREDIT ENHANCEMENT AGREEMENTS

14.01 Management Agreement

The Indenture Trustee acknowledges that the Issuer has entered into the Management Agreement which provides, among other things, for the provision of certain services and the performance by the Manager of certain obligations of the Issuer under this Indenture connected with the Issuer Investment Interest, the incurrence of Issuer Funding Obligations and all registrations required pursuant to Section 4.05. Accordingly, any obligation of the Issuer hereunder performed by the Manager on behalf of the Issuer will be deemed to have been performed by the Issuer and any payments referred to hereunder received or received and applied against the Issuer Funding Obligations by the Manager on behalf of the Issuer will be deemed to have been received or received and applied by the Issuer. The Indenture Trustee may act and rely on any instrument or report referred to hereunder prepared by the Manager on behalf of the Issuer as if the instrument or report had been prepared by the Issuer.

14.02 Credit Enhancement Agreements

The Indenture Trustee acknowledges that the Issuer may enter into one or more Credit Enhancement Agreements which provide, among other things, for the right of the Issuer, the Indenture Trustee or the Manager, as attorney for the Issuer, to make drawings on Credit Enhancers for the purpose of paying maturing Issuer Funding Obligations and repaying Borrowings under Liquidity Agreements. The Indenture Trustee hereby appoints the Manager as the Indenture Trustee's attorney, with full authority in the place and stead of and in the name of the Indenture Trustee or otherwise, from time to time to make any drawings pursuant to a Credit Enhancement Agreement (provided that written notice of any drawings shall be given by the Manager to the Indenture Trustee) and, in that connection, to execute and deliver all such documents, instruments and certificates including, without limitation, any drawing certificates required to be delivered to a Credit Enhancer at the time any drawing is made, and to do all such further acts and things and to take all such proceedings as the Manager in its sole discretion deems necessary or desirable to enforce compliance by a Credit Enhancer with the terms of a Credit Enhancement Agreement.

ARTICLE XV
NOTICES

15.01 Notice to Issuer

Any notice, document or other communication required or permitted to be given or delivered to the Issuer hereunder will be in writing and will be valid and effective if given by delivery to the addresses indicated below or by facsimile or email transmission at such addresses (with, in the case of facsimile or email transmission, receipt confirmed, either by telephone, reply facsimile or reply email, or, in the case of email transmission, through the email software itself) and such notice, document or other communication shall be deemed to have been received, if given by delivery, on the day of delivery, and, if sent by facsimile or email transmission, on the day receipt thereof has been confirmed in accordance with the provisions of this Section 15.01. Such notice shall, if given on a day other than a Business Day or after the normal business hours of the recipient on a Business Day, be deemed to have been given on the next Business Day:

~~[Issuer]~~Fair Hydro Trust
c/o Ontario Power Generation Inc.
~~100~~700 University Avenue~~, 11th Floor~~
Toronto, Ontario M5~~J 2Y~~G 1X6

Attention: [■]
Fax: (416) [■]
Email: [■]

with copies to:

~~[Issuer Trustee]~~Computershare Trust Company of Canada, in its capacity as Issuer Trustee for ~~[Issuer]~~
~~[Address]~~

Fair Hydro Trust
100 **University Avenue**, 11th Floor
Toronto, Ontario M5J 2Y**1**

Attention: [■]
Fax: (416) [■]
Email: [■]

~~[■]~~

15.02 Notice to the Indenture Trustee

Any notice, document or other communication required or permitted to be given or delivered to the Indenture Trustee hereunder will be in writing and will be valid and effective if given by delivery to the address indicated below or by facsimile transmission at such address (with, in the case of facsimile transmission, receipt confirmed, either by telephone or reply facsimile) and such notice, document or other communication shall be deemed to have been received, if given by delivery, on the day of delivery, and, if sent by facsimile transmission, on the day receipt thereof has been confirmed in accordance with the provisions of this Section 15.02. Such notice shall, if given on a day other than a Business Day or after the normal business hours of the Indenture Trustee on a Business Day, be deemed to have been given on the next Business Day:

BNY Trust Company of Canada
One York Street, 6th Floor
Toronto, Ontario M5J 0B6

~~**[Indenture Trustee]**~~
~~**[Address]**~~
Attention: ~~[■]~~**Corporate Trust Services**
Fax: ~~[■]~~**(416) 360-1711**

15.03 Notice to Noteholders

(a) Any notice, document or other communication required or permitted to be given or delivered hereunder to Registered Noteholders will be deemed to be validly given if sent to a destination within Canada by first class mail and if sent to a destination outside of Canada by airmail, postage prepaid in each case, or sent by facsimile transmission or email transmission, addressed in each case to the Registered Noteholder at its address appearing in the Note Register, not later than the latest date, and not earlier than the earliest date, prescribed for the giving of such notice. In any case where notice to Registered Noteholders is given by mail, facsimile or electronic transmission, neither the failure to mail, send by facsimile or send by electronic transmission such notice, nor any defect in any notice so mailed, to any particular Noteholders will affect the sufficiency of such notice with respect to other Noteholders and any notice that is mailed, sent by facsimile

or sent by electronic transmission in the manner herein provided shall conclusively have been presumed to have been duly given.

(b) No notice will be given by mail, facsimile, email transmission or otherwise delivered to a holder of Bearer Notes or coupons in bearer form. In the case of any **Class,** Series~~, Class~~ or Tranche with respect to which any Bearer Notes are Outstanding, any notice required or permitted to be given to holders of such Bearer Notes will be published in an Authorized Newspaper within the time period prescribed in this Indenture or the Related Supplemental Indenture.

(c) In case, by reason of the suspension of regular mail service as a result of a strike, work stoppage or otherwise, it will be impractical to mail notice of any event to any holder of a Registered Note when such notice is required to be given pursuant to any provision of this Indenture, then any method of notification as will be satisfactory to the Indenture Trustee and the Issuer will be deemed to be a sufficient giving of such notice.

(d) With respect to any Series~~, Class~~ or Tranche of Notes, the Related Supplemental Indenture may specify different or additional means of giving notice to the Noteholders of such Series~~, Class~~ or Tranche.

(e) Where this Indenture, any Supplemental Indenture or any Registered Note provides for notice in any manner, such notice may be waived in writing by the Person entitled to receive such notice, either before or after the event, and such waiver will be the equivalent of such notice. Waivers of notice by Registered Noteholders will be filed with the Indenture Trustee, but such filing will not be a condition precedent to the validity of any action taken in reliance upon such waiver.

15.04 Notice to Other Specified Creditors

Any notice, document or other communication required or permitted to be given or delivered to (i) a Lender will be given in accordance with the relevant Liquidity Agreement, Loan Agreement or Credit Enhancement Agreement; (ii) the Manager will be given in accordance with the Management Agreement; (iii) a Derivative Counterparty will be given in accordance with the relevant Derivative Agreement; and (iv) any other Specified Creditor will be given in accordance with the relevant Program Agreement.

15.05 Notice to Rating Agencies

Any notice, document or other communication required or permitted to be given or delivered to the Rating Agencies hereunder will be in writing and will be given by delivery to the applicable addresses provided to the Issuer by the Rating Agencies or by facsimile or electronic transmission. Any such notice shall, if given on a day other than a Business Day or after the normal business hours of the recipient on a Business Day, be deemed to have been given on the next Business Day. Where this Indenture provides for notice to any Rating Agency, failure to

give such notice will not affect any other rights or obligations created hereunder and will not under any circumstance constitute an Adverse Effect.

15.06 Change of Address

Any Person referenced above may from time to time notify any other interested Person, in accordance with the provisions hereof, of any change of address which thereafter, until changed by like notice, shall be the address of such Person for all purposes of this Indenture.

ARTICLE XVI
MISCELLANEOUS

16.01 No Petition

The Indenture Trustee, by entering into this Indenture, and each Specified Creditor by accepting its rights as a third party beneficiary hereunder, agrees, to the fullest extent permitted by applicable law, that at no time until one year and one day following repayment in full of all Issuer Funding Obligations shall it commence, or join in commencing, a bankruptcy case or other insolvency or similar proceeding under the laws of any jurisdiction against the Issuer.

16.02 Withholding Rights

The right of any Person to receive amounts described in this Indenture, including rights of a Noteholder to receive interest on or principal of a Note, or the rights of a Person to receive payments described in Section 7.04 and 8.13, shall be subject to any applicable withholding or deduction imposed pursuant to the Income Tax Act or other applicable tax law, including foreign withholding and deduction. Any amounts properly withheld or deducted shall be treated as actually paid to the appropriate recipient, provided that such deduction or withheld amounts are actually remitted in accordance with applicable law to the appropriate Governmental Authority.

16.03 ~~16.02~~ U.S. Tax Treatment

The Issuer and each Noteholder that is a United States Person agree that the Notes are intended to be debt for United States federal, state and local income and franchise tax purposes and agree to treat the Notes accordingly for all such purposes, unless otherwise required by a taxing authority. Each Noteholder that is a United States Person further agrees that it will cause any Note Owner that is a United States Person acquiring an interest in a Note through it to comply with this Indenture as to treatment as indebtedness for United States federal, state and local income and franchise tax purposes as described in this Section 16.02.

16.04 ~~16.03~~ Alternate Payment Provisions

Notwithstanding any provision of this Indenture or any of the Notes to the contrary, the Issuer, with the written consent of the Indenture Trustee, may enter into any agreement with any Noteholder providing for a method of payment or notice that is different from the methods provided for in this Indenture for such payments or notices. The Issuer will furnish to the Indenture Trustee a copy of each such agreement and the Indenture Trustee will cause payments or notices, as applicable, to be made in accordance with such agreements.

16.05 ~~16.04~~ Final Distribution

(a) The Issuer shall give the Indenture Trustee at least 30 days written notice of the Payment Date on which the Noteholders of any **Class,** Series~~, Class~~ or Tranche may surrender their Notes for payment of the final distribution on and cancellation of such Notes. Not later than the fifth day of the month in which the final distribution in respect of such **Class,** Series~~, Class~~ or Tranche is payable to Noteholders, the Indenture Trustee shall provide notice to Noteholders of such **Class,** Series~~, Class~~ or Tranche specifying (i) the date upon which final payment of such **Class,** Series~~, Class~~ or Tranche will be made upon presentation and surrender of Notes of such **Class,** Series~~, Class~~ or Tranche at the office or offices therein designated, (ii) the amount of any such final payment, and (iii) that the Record Date otherwise applicable to such Payment Date is not applicable, payments being made only upon presentation and surrender of such Notes at the office or offices therein specified (which, in the case of Bearer Notes, shall be outside the United States **[and Canada]**). The Indenture Trustee shall give such notice to the Note Registrar and the Paying Agent at the time such notice is given to Noteholders.

(b) Notwithstanding a final distribution to the Noteholders of any **Class,** Series~~, Class~~ or Tranche of Notes (or the termination of the Issuer), except as otherwise provided in this paragraph, all funds then on deposit in any ~~Issuer~~**Series** Account allocated solely to such Noteholders shall continue to be held in trust for the benefit of such Noteholders, and the Paying Agent or the Indenture Trustee shall pay such funds to such Noteholders upon surrender of their Notes, if certificated. In the event that all such Noteholders shall not surrender their Notes for cancellation within 6 months after the date specified in the notice from the Indenture Trustee described in paragraph (a), the Indenture Trustee shall give a second notice to the remaining such Noteholders to surrender their Notes for cancellation and receive the final distribution with respect thereto (which surrender and payment, in the case of Bearer Notes, shall be outside the United States **[and Canada]**). If within one year after the second notice all such Notes shall not have been surrendered for cancellation, the Indenture Trustee may take appropriate steps, or may appoint an agent to take appropriate steps, to contact the remaining such Noteholders concerning surrender of their Notes, and the cost thereof shall be paid out of the funds in the Collection Account or any ~~Issuer~~**Series** Account held for the benefit of such Noteholders. The Indenture Trustee and the Paying Agent shall pay to the Issuer any monies held by them for the payment of principal or interest that remains unclaimed for 2 years. After payment to the Issuer, Noteholders entitled to the money must look to the Issuer for payment as general creditors unless an applicable abandoned property law designates another Person.

16.06 ~~16.05~~ Force Majeure

In no event shall the Indenture Trustee or the Issuer Trustee be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by,

directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services; it being understood that the Indenture Trustee and the Issuer Trustee shall use reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

16.07 ~~16.06~~ Delivery of Executed Copies

Each party acknowledges delivery of a fully executed copy of this Indenture.

[Signature page to follow]

IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be duly executed as of the day and year first above written.

~~[ISSUER]~~**COMPUTERSHARE TRUST COMPANY OF CANADA, in its capacity as trustee of FAIR HYDRO TRUST**, as Issuer

By: **ONTARIO POWER GENERATION INC.**, not in its individual capacity but solely as Manager

By: _____

Name:
Title:

By: _____

Name:
Title:

~~[INDENTURE TRUSTEE]~~**BNY TRUST COMPANY OF CANADA**, as Indenture Trustee and not in its individual capacity

By:

Name:
Title:

Schedule A
DEFINED TERMS

"**Act**" means *Ontario Fair Hydro Plan Act, 2017*.

"**Action**" has the meaning specified in Section 1.04.

~~"**Adjusted Outstanding Dollar Principal Amount**" means, at any time with respect to any Series, Class or Tranche of Notes, the Outstanding Dollar Principal Amount of all Outstanding Notes of such Series, Class or Tranche at such time, less any funds on deposit in any Issuer Account or the related Sub-Account, as applicable, for the benefit of such Series, Class or Tranche at such time.~~

"**Adverse Effect**" means, whenever used in this Indenture with respect to any action, that such action will at the time of its occurrence (a) result in the occurrence of an Event of Default~~, (b~~ **or any event which with the giving of notice or passage of time, or both, would become an Event of Default, (b) adversely affect the amount or timing of any payment to be made to any Debtholder or Derivative Counterparty pursuant to this Indenture or any Program Agreement, (c**) materially adversely affect the amount or timing of payments to be made to the Specified Creditors **(other than Debtholders and Derivative Counterparties)** pursuant to this Indenture or any Program Agreement, or (~~c~~**d**) adversely affect the Security Interest ~~unless otherwise permitted by this~~**and the rights and remedies of the** Indenture~~.~~ **Trustee in respect thereof.**

"**Affected Party**" has the meaning specified in the applicable Derivative Agreement.

"**Affiliate**" means, with respect to any specified Person, any other Person controlling or controlled by or under common control with such specified Person. For the purposes of this definition, "**control**" when used with respect to any specified Person means the power to direct the management and policies of such specified Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise, and the terms "**controlling**" and "**controlled**" have meanings correlative to the foregoing.

"**Agency Agreement**" means an agency agreement made between the Issuer and one or more Persons acting on behalf of the Issuer, providing for the sale and distribution of Notes on an agency basis.

"**Authorized Newspaper**" means any newspaper or newspapers of general circulation, in the case of Notes issued in the United States, in the Borough of Manhattan, The City of New York, and in the case of Notes issued in Canada, in the City of Toronto, in each case printed in the English language and customarily published on each Business Day at such place, whether or not published on Saturdays, Sundays or holidays, or if and so long as Notes of any **Class,** Series~~, Class~~ or Tranche are listed on any securities exchange and that exchange so requires, the newspaper of record required by the applicable securities exchange, printed in any language satisfying the requirements of such exchange.

"**Available Collections**" means, for any Monthly Period: (a) the Servicer CEA Collections paid to the Issuer in accordance with Section **[3.3]** of the Master Transfer and Servicing Agreement, plus investment earnings allocable to the amounts on deposit in ~~the Collection Account, any Finance Reserve Account and any Capital Reserve~~**any Issuer** Account, plus any other amounts, or allocable portion thereof, to be treated as Available Collections, subject to this Indenture and any applicable Supplemental Indenture; ~~and~~ (b) the IESO Carrying Cost Payments**; and (c) amounts received by the Issuer pursuant to Derivative Agreements**.

"**Bearer Note**" means a Note in bearer form.

"**Benefit Plan**" means an "employee benefit plan" as defined in Section 3(3) of ERISA, which is subject to the provisions of Title I of ERISA, a "plan" described in and subject to Section 4975 of the Code, or an entity whose underlying assets include "plan assets" by reason of an employee benefit plan's investment in the entity.

"**Borrowing**" means a borrowing or drawing by the Issuer pursuant to a Liquidity Agreement, a Loan Agreement or a Credit Enhancement Agreement.

"**Business Day**" means ~~(a)~~ any day other than a Saturday, a Sunday or a day on which banking institutions in Toronto, Ontario are, or the office of the Indenture Trustee is, authorized or obligated by applicable law, regulation or executive order to be closed~~, or (b) for purposes of any particular Series, Class or Tranche of Notes, any other day specified in the applicable Supplemental Indenture~~.

"**Canadian Depository**" means, unless otherwise specified by the Issuer pursuant to any of Section 3.04, 3.06, or 4.01, with respect to Notes ~~of any Tranche~~ issuable or issued as a Global Note within Canada, CDS Clearing and Depository Services Inc., or any successor thereto registered as a clearing agency under the *Securities Act* (Ontario), or other applicable statute or regulation.

~~"**Capital Reserve Account**" has the meaning specified in subsection 7.02(c).~~

"**Certificate of Authentication**" means the certificate of authentication of the Indenture Trustee, the form of which is described in Section 3.03.

"**Chairman**" has the meaning specified in subsection 10.01(d).

"**Change of Law Protection Agreement**" means the change of law protection agreement dated [■], 2017 among the Province, the Issuer and the Indenture Trustee.

"**Class**" ~~means, with respect to any Issuer Funding Obligation, the class specified in the Related Funding Obligation Agreement.~~**or "Class of Issuer Funding Obligations" means the Senior Funding Obligations, the Subordinated Funding Obligations, the Junior Subordinated Funding Obligations [and the Derivative Funding Obligations], each of which shall be a class of Issuer Funding Obligations.**

"**Closing Date**", with respect to any Series of Issuer Funding Obligations, has the meaning specified in the Related Funding Obligation Agreement.

"**Collateral**" has the meaning specified in Section 2.01.

"**Collection Account**" has the meaning specified in subsection 7.02(a).

"**Commission**" means the U.S. Securities and Exchange Commission.

"**Controlling Class Obligations** means: (a) Senior Funding Obligations until such time as all Senior Funding Obligations have been paid in full; then (b) if all Senior Funding Obligations have been paid in full, Subordinated Funding Obligations until such time as all Subordinated Funding Obligations have been paid in full; then (c) if all Senior Funding Obligations and Subordinated Funding Obligations have been paid in full, Junior Subordinated Funding Obligations until such time as all Junior Subordinated Funding Obligations have been paid in full; and finally (d) if all Issuer Funding Obligations have been paid in full, all other Obligations Secured.

"**Co-Owner Agreement**" means any agreement between, *inter alia*, the Issuer and any other owner or owners of an Investment Interest as contemplated by subsection 29(5) of the Act.

"**Corporate Trust Office**" means the office of the Indenture Trustee at which, at any particular time, its corporate trust business shall be administered, which office as of the date hereof is located at ~~[■]; Telephone: [■]; Facsimile: [■],~~**One York Street, 6th Floor, Toronto, Ontario M5J 0B6,** or at such other address as the Indenture Trustee may designate from time to time by notice to the Specified Creditors and the Issuer, or the principal corporate trust office of any successor trustee designated by like notice.

"**Credit Enhancement**" means any form of credit enhancement (howsoever characterized) for any Obligations Secured, including any letter of credit, letter of guarantee, insurance policy, surety bond, cash reserve account, spread account, guaranteed rate agreement, note purchase agreement, loan facility or other similar agreement established for the benefit of a Lender or Noteholder, as applicable, and including any facility provided by a Person to the Issuer which is specified or acknowledged in writing by the Issuer as "Credit Enhancement" for purposes hereof.

"**Credit Enhancement Agreement**" means any credit enhancement agreement entered into hereafter between the Issuer and one or more Credit Enhancers, and acknowledged and accepted by the Indenture Trustee in accordance with Article V, providing Credit Enhancement in respect of Obligations Secured, and includes any letter of credit, guarantee, surety bond or other instrument executed and delivered by such Credit Enhancer(s).

"**Credit Enhancer**" means any Person providing Credit Enhancement to the Issuer or in respect of Obligations Secured.

"**DBRS**" means DBRS Limited, or any successor thereof.

"**Debtholder**" means a Noteholder or a Lender.

"Debtholder Group" has the meaning specified in subsection 10.01(a)

"**Declaration of Trust**" means the declaration of trust made as of [■], 2017 under which the Issuer was established.

"**Defaulting Party**" has the meaning specified in the applicable Derivative Agreement.

"Deferred Principal Accumulation Amount" means, on any Payment Date, the amount by which the aggregate of the Principal Accumulation Amount (Senior), the Principal Accumulation Amount (Subordinated) and the Principal Accumulation Amount (Junior Subordinated) for such Payment Date determined without reference to any Refinancing Notices is greater than the amount on deposit in the Principal Accumulation Account.

"**Depository**" means a Canadian Depository, a U.S. Depository or a Foreign Depository, as the case may be.

"**Derivative Agreement**" means any rate swap transaction, basis swap, forward rate transaction, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, total return swap transaction, credit default swap transaction or any other similar transaction (including any option with respect to any of those transactions) or any combination of these transactions entered into from time to time by the Issuer in connection with or related to Borrowings or Notes.

"**Derivative Counterparty**" means any party to any Derivative Agreement other than the Issuer or the Indenture Trustee.

"**Derivative Funding Obligations**" means Funding Obligations arising under, or in connection with, Derivative Agreements.

"**Discount Note**" means a Note that provides for an amount less than the Stated Principal Amount (but not less than the Initial Currency Specific Dollar Principal Amount) thereof to be due and payable upon the occurrence of an optional or mandatory redemption, or the occurrence of an Event of Default and the acceleration of such Note, in each case before the Principal Payment Due Date of the applicable Note.

"**Dollar**," "**$**" or "**Cdn. $**" means Canadian dollars.

"**Electronic Methods**" means delivery of any notice or form of communication by facsimile, pdf or e-mail, or by other similar electronic means in a form satisfactory to the Issuer.

"**Eligible Deposit Account**" means, in relation to any Issuer Account, an account that is a segregated account with an Eligible Institution.

"**Eligible Institution**" means (a) a trust company or Schedule I chartered bank incorporated under the laws of Canada or any province thereof (i) which has either (x) a long-term unsecured debt rating of A (high) or better by DBRS, or (y) a certificate of deposit rating or short-term credit rating of R-1 (middle) or better by DBRS, (ii) which has (x) either (1) a long-term unsecured debt rating of A or better by S&P and (2) a short-term debt rating of A-1 or better by S&P, (y) a long-term unsecured debt rating of A+ or better by S&P and no short-term rating by

S&P, or (z) a short-term debt rating of A-1 or better by S&P and no long-term unsecured debt rating by S&P, and (iii) whose deposits are insured by Canada Deposit Insurance Corporation, or (b) any institution that otherwise satisfies the Rating Agency Condition.

"**Eligible Investments**" means instruments or investment property that evidence:

(a) direct obligations of, or obligations fully and unconditionally guaranteed as to timely payment by, Canada or the United States of America;

(b) demand or time deposits of, unsecured certificates of deposit of, money market deposit accounts of, bank deposit products of or bankers' acceptances issued by, any depository institution (including, but not limited to, bank deposit products of the Indenture Trustee, acting in its commercial capacity) incorporated or organized under the laws of the United States of America, Canada or any state or province thereof and subject to supervision and examination by applicable banking authorities, so long as the commercial paper or other short-term debt obligations of such depository institution are, at the time of deposit, rated at least "A-1" and "P-1" (or their equivalents) by each of S&P and Moody's and, if DBRS provides a rating thereon, by DBRS, or such lower rating as will not result in the downgrading or withdrawal of the ratings of the Issuer or any of the Issuer Funding Obligations;

(c) commercial paper (including commercial paper of the Indenture Trustee, acting in its commercial capacity, and other than commercial paper of the Servicer), which at the time of purchase is rated at least "A-1" and "P-1" (or their equivalents) by each of S&P and Moody's or such lower rating as will not result in the downgrading or withdrawal of the ratings of the Issuer or any of the Issuer Funding Obligations;

(d) investments in money market funds having a rating in the highest investment category granted thereby (including funds for which the Indenture Trustee or any of its Affiliates is investment manager or advisor) from Moody's, S&P and DBRS, if rated by DBRS;

(e) repurchase obligations with respect to any security that is a direct obligation of, or fully guaranteed by, the United States of America, Canada or their respective agencies or instrumentalities, entered into with Eligible Institutions;

(f) repurchase obligations with respect to any security or whole loan entered into with an Eligible Institution or with a registered broker/dealer acting as principal and that meets the ratings criteria set forth below:

(i) a broker/dealer (acting as principal) registered as a broker or dealer under the Securities Act (any such broker/dealer being referred to in this

definition as a "broker/dealer"), the unsecured short-term debt obligations of which are rated at least "P-1" by Moody's, "A-1+" by S&P and, if DBRS provides a rating thereon, "R-1" by DBRS at the time of entering into such repurchase obligation; or

(ii) an unrated broker/dealer, acting as principal, that is a wholly-owned subsidiary of a non-bank or bank holding company the unsecured short-term debt obligations of which are rated at least "P-1" by Moody's, "A-1+" by S&P and, if DBRS provides a rating thereon, "R-1" by DBRS at the time of purchase so long as the obligations of such unrated broker/dealer are unconditionally guaranteed by such non-bank or bank holding company; and

(g) any other investment permitted by each of the Rating Agencies;

in each case maturing not later than the Business Day preceding the next Payment Date (for the avoidance of doubt, investments in money market funds or similar instruments that are redeemable on demand shall be deemed to satisfy the foregoing requirement). Notwithstanding the foregoing: (1) no securities or investments that mature in 30 days or more shall be "Eligible Investments" unless the issuer thereof has either a short-term unsecured debt rating of at least "P-1" from Moody's or a long-term unsecured debt rating of at least "A1" from Moody's and also has a long-term unsecured debt rating of at least "A" from S&P; (2) no securities or investments described in clauses (b) through (d) above that have maturities of more than 30 days but less than or equal to 3 months shall be "Eligible Investments" unless the issuer thereof has a long-term unsecured debt rating of at least "A1" from Moody's and a short-term unsecured debt rating of at least "P-1" from Moody's; and (3) no securities or investments described in clauses (b) through (d) above that have maturities of more than 3 months shall be "Eligible Investments" unless the issuer thereof has a long-term unsecured debt rating of at least "A1" from Moody's and a short-term unsecured debt rating of at least "P-1" from Moody's.

"**ERISA**" means the *Employee Retirement Income Security Act* of 1974, as amended.

"**Event of Default**" has the meaning specified in Section 8.01.

"**Exchange Date**" means, with respect to any **Class,** Series~~, Class~~ or Tranche of Notes, the latest of:

(a) in the case of exchanges of beneficial interests in Temporary Global Notes for beneficial interests in Permanent Global Notes in registered form, any date that is after the related issuance date;

(b) in the case of exchanges of beneficial interests in Temporary Global Notes for beneficial interests in Permanent Global Notes in bearer form, the date of presentation of certification of non-United States beneficial ownership (as described in Section 3.05); and

(c) the earliest date on which such an exchange of a beneficial interest in a Temporary Global Note for a beneficial interest in a Permanent Global Note is permitted by applicable law.

"**Extraordinary Resolution**" means a resolution passed by the affirmative votes of Debtholders of not less than 66⅔% of the Outstanding Dollar Principal Amount of all Controlling Class Obligations represented and voting at a meeting of Debtholders of all Controlling Class Obligations duly convened and held in accordance with the provisions of this Indenture.

"**Fair Allocation Amount**" has the meaning ascribed to the term "fair allocation amount" in the Act as of the date of this Indenture.

"Fair Hydro Regulations" means the regulations made under the Act including Ontario regulations 206/17 and 195/17

"**Finance Amount**" has the meaning ascribed to the term "finance amount" in the Act as of the date of this Indenture.

~~"**Finance Reserve Account**" has the meaning specified in subsection 7.02(d).~~

"**Financing Entity**" has the meaning ascribed to the term "financing entity" in the Act as of the date of this Indenture.

"**Financing Plan**" has the meaning ascribed to the term "financing plan" in the Act as of the date of this Indenture.

"**Foreign Currency**" means (a) a currency other than Dollars, or (b) denominated in a currency other than Dollars.

"**Foreign Currency Note**" means a Note denominated in a Foreign Currency.

"**Foreign Depository**" means the Person specified in the Related Supplemental Indenture, in its capacity as depository for the accounts of any clearing agencies located outside Canada and the United States.

"**Funding Obligation Agreement**" means any Notes, any Supplemental Indenture (including any Terms Document), any Liquidity Agreement, any Loan Agreement, any Credit Enhancement Agreement or any Derivative Agreement.

"**Funding ~~Obligations~~Obligation**" has the meaning ascribed to the term "funding ~~obligations~~**obligation**" in the Act as of the date of this Indenture.

"**Global Note**" means any Note issued pursuant to Section 3.04.

"**Governmental Authority**" means any nation or government, any federal, state, provincial, local or other political subdivision thereof and any court, administrative agency or other instrumentality or entity exercising executive, legislative, judicial, regulatory or administrative functions of government.

"**IESO**" means the Independent Electricity System Operator, a statutory corporation without share capital established by the *Electricity Act, 1998*, SO, 1998.

"**IESO Carrying Cost Payments**" means those amounts paid to the Issuer by the IESO pursuant to the Act and the regulations promulgated thereunder.

"**IESO Security Agreement**" means the security agreement made by the IESO in favour of the Issuer pursuant to the Act and the regulations promulgated thereunder.

"**Income Tax Act**" means the *Income Tax Act* (Canada).

"**Indenture**" or "**this Indenture**" means this Trust Indenture, as amended, supplemented, restated or otherwise modified from time to time, including by Supplemental Indentures for the issuance of Series of Notes entered into pursuant to the applicable provisions hereof.

"**Indenture Trustee**" means the Person named as the Indenture Trustee in the first paragraph of this Indenture until a successor Indenture Trustee shall have become such pursuant to the applicable provisions of this Indenture, and thereafter "Indenture Trustee" means and includes such Person.

"**Initial Currency Specific Dollar Principal Amount**" means with respect to a ~~Class~~**Series** or Tranche in a Series that includes Foreign Currency Notes, the amount specified in the applicable Supplemental Indenture as the Initial Currency Specific Dollar Principal Amount thereof.

"**Initial Dollar Principal Amount**" means (a) unless otherwise specified in the applicable Supplemental Indenture, with respect to a **Class,** Series~~, Class~~ or Tranche of Notes, the aggregate initial principal amount of the Outstanding Notes of such **Class,** Series~~, Class~~ or Tranche plus the aggregate initial principal amount of any additional Notes of such **Class,** Series~~, Class~~ or Tranche, and (b) with respect to a **Class,** Series~~, Class~~ or Tranche of Discount Notes~~ or~~ that includes Foreign Currency Notes, the amount specified in the applicable Supplemental Indenture as the Initial Dollar Principal Amount thereof.

"**Insolvency Event**" means, with respect to a specified Person, the specified Person admits the inability of such specified Person to pay its liabilities generally as they become due or makes a general assignment for the benefit of the creditors of such specified Person or otherwise acknowledges the insolvency of such specified Person or any proceeding shall be instituted by or against such specified Person seeking to adjudicate it a bankrupt or insolvent or seeking liquidation, winding up, dissolution, reorganization, arrangement, adjustment, protection, relief or composition of its debts under any law relating to bankruptcy, insolvency, reorganization, moratorium or relief of debtors or seeking the entry of an order for relief by the appointment of a receiver, trustee or other similar official for such specified Person or for any substantial part of its property and if such proceeding has been instituted against such specified Person either such proceeding has not been stayed or dismissed within 45 days or any of the actions sought in such proceeding (including the entry of an order for relief or the appointment of a receiver) are granted in whole or in part, or if a receiver is privately appointed in respect of such specified Person or of the property of such specified Person or any substantial part thereof.

"Interest Accrual Amount (Junior Subordinated)" means, in respect of any Payment Date and all Junior Subordinated Funding Obligations, the amount of interest that accrued on such Junior Subordinated Funding Obligations during the period from and including the issuance date of such Junior Subordinated Funding Obligations or the last date to which interest has been paid in respect of such Junior Subordinated Funding Obligations, as applicable, to such Payment Date less any amounts deposited to the Interest Accrual Account in respect of such interest accruing during such period pursuant to Section 7.04(e)(xiii) plus any amounts transferred from the Interest Accumulation Account to the Principal Accumulation Account pursuant to subsection 7.07(a).

"Interest Accrual Amount (Senior)" means, in respect of any Payment Date and all Senior Funding Obligations, the amount of interest that accrued on such Senior Funding Obligations during the period from and including the issuance date of such Senior Funding Obligations or the last date to which interest has been paid in respect of such Senior Funding Obligations, as applicable, to such Payment Date less any amounts deposited to the Interest Accrual Account in respect of such interest accruing during such period pursuant to Section 7.04(e)(iii)(A).

"Interest Accrual Amount (Subordinated)" means, in respect of any Payment Date and all Subordinated Funding Obligations, the amount of interest that accrued on such Subordinated Funding Obligations during the period from and including the issuance date of such Subordinated Funding Obligations or the last date to which interest has been paid in respect of such Subordinated Funding Obligations, as applicable, to such Payment Date less any amounts deposited to the Interest Accrual Account in respect of such interest accruing during such period pursuant to Section 7.04(e)(viii) plus any amounts transferred from the Interest Accumulation Account to the Principal Accumulation Account pursuant to subsection 7.07(b).

"Interest Accumulation Account" has the meaning specified in subsection 7.02(b).

"Interest Payment Date" means each Business Day which is an "Interest Payment Date" in respect of any Funding Obligation Agreement in respect of Senior Funding Obligations, Subordinated Funding Obligations or Junior Subordinated Funding Obligations.

"**Internal Revenue Code**" means the United States Internal Revenue Code of 1986, as amended.

"**Investment Asset**" has the meaning ascribed to the term "investment asset" in the Act as of the date of this Indenture.

"**Investment Company Act**" means the United States Investment Company Act of 1940, as amended.

"**Investment Interest**" has the meaning ascribed to the term "investment interest" in the Act as of the date of this Indenture.

"**Issuer**" has the meaning specified in the first paragraph of this Indenture.

"**Issuer Accounts**" means, collectively, the ~~Collection Account, the Refinancing Account, all Finance Reserve Accounts, all Capital Reserve~~**Program Accounts and the Series** Accounts and ~~all Supplemental Reserve Accounts,~~ including any Sub-Accounts thereof.

"**Issuer Certificate**" means a certificate (including an Officer's Certificate) signed in the name of the Issuer by a Responsible Officer of the Manager on behalf of the Issuer and, in each case delivered to the Indenture Trustee relating to, among other things, the issuance of a new Series~~, Class~~ or Tranche of Notes. Wherever this Indenture requires that an Issuer Certificate be signed also by an accountant or other expert, such accountant or other expert (except as otherwise expressly provided in this Indenture) may be an employee of the Manager.

"**Issuer Funding Obligations**" means, the Funding Obligations of the Issuer, including the Senior Funding Obligations, the Subordinated Funding Obligations, the Junior Subordinated Funding Obligations and the Derivative Funding Obligations.

"**Issuer Investment Interest**" means, initially, the Investment Interest acquired by the Issuer pursuant to the first Transfer completed under the Master Transfer and Servicing Agreement and, upon the completion of each Transfer thereafter, the cumulative Investment Interest acquired by the Issuer.

"**Issuer Trustee**" means, at any time, the Person who is, in accordance with the Declaration of Trust, the trustee of the Issuer at such time.

"**Junior Subordinated Borrowings**" means Borrowings that have been designated as "Junior Subordinated Borrowings" in the Related Loan Agreement, Related Liquidity Agreement or Related Credit Enhancement Agreement.

"**Junior Subordinated Funding Obligations**" means Funding Obligations arising under, or in connection with, Junior Subordinated Notes and Junior Subordinated Borrowings.

"**Junior Subordinated Notes**" means Notes of a Series ~~or Class~~ that have been designated as "Junior Subordinated Notes" in the Related Supplemental Indenture.

"**Lender**" means any Person providing credit facilities, note purchase facilities or advances under a Liquidity Agreement, Loan Agreement or Credit Enhancement Agreement, as applicable.

"**Lien**" means a security interest, lien, mortgage, charge, pledge, claim or encumbrance of any kind.

"**Liquidity Agreement**" means an agreement between the Issuer and one or more Lenders, and acknowledged and accepted by the Indenture Trustee in accordance with Article V, providing for the creation of one or more liquidity facilities in respect of all or a portion of the Notes in favour of the Issuer, including a facility to fund the repayment of all or a portion of Notes or that permits the Issuer to require the purchase of Notes by a counterparty, and including further any facility provided by a Person to the Issuer which is specified or acknowledged in writing by the Issuer as a "Liquidity Agreement" for the purposes hereof.

"**Loan Agreement**" means an agreement between the Issuer and one or more Lenders, and acknowledged and accepted by the Indenture Trustee in accordance with Article V, providing for the creation of one or more credit facilities in favour of the Issuer for purposes of purchasing Investment Interests.

"**Management Agreement**" means the management agreement dated [■], 2017 between the Manager and the Issuer.

"**Manager**" means OPG, in its capacity as manager of the Issuer under the Management Agreement.

"**Master Transfer and Servicing Agreement**" means the master transfer and servicing agreement dated [■], 2017 between the Issuer and IESO, and acknowledged and accepted by the Indenture Trustee.

"**Monthly Period**" means, with respect to each Payment Date, unless otherwise provided in a Funding Obligation Agreement, the period from and including the first day of each calendar month and to and including the last day of such calendar month; provided, however, that the initial Monthly Period with respect to any Series of Issuer Funding Obligations will commence on the Closing Date with respect to such Series.

"**Monthly Report**" has the meaning ascribed thereto in Section 3.5(a) of the Master Transfer and Servicing Agreement.

"**Moody's**" means Moody's Investors Service, Inc., or any successor thereof.

"**Non-resident**" means a non-resident of Canada as such term is defined in the Income Tax Act or a partnership that is not a Canadian partnership within the meaning of the Income Tax Act.

"**Note**" or "**Notes**" means any note or notes of any **Class,** Series~~, Class~~ or Tranche created pursuant to Supplemental Indentures and authenticated and delivered from time to time under this Indenture.

"**Noteholder**" means a Person in whose name a Note is registered in the Note Register or the bearer of any Bearer Note (including a Global Note in bearer form), as the case may be.

"**Note Owner**" means the beneficial owner of an interest in a Global Note.

"**Note Purchase Agreement**" means an agreement providing for the purchase of Notes from the Issuer by one or more Persons.

"**Note Register**" has the meaning specified in subsection 4.05(a).

"**Note Registrar**" means the Person who keeps the Note Register.

"**Obligations Secured**" means all present and future debts, expenses and liabilities, direct or indirect, absolute or contingent, due, owing or accruing due or owing from time to time by the Issuer to the Specified Creditors in their capacity as such. For greater certainty, amounts owing to

any Specified Creditors by the Issuer at any time shall include (a) the unpaid face amount of any Notes issued on a discount basis; (b) the principal amount owing at such time, together with the accrued and unpaid interest on interest bearing Notes or Borrowings; (c) accrued fees, whether or not then due and payable; and (d) any evidence of indebtedness issued pursuant to or in respect of an amount owing under a Program Agreement (other than amounts payable by the Issuer to its beneficiaries pursuant to the Declaration of Trust **or a promissory note issued by the Issuer to a beneficiary as contemplated in the Declaration of Trust**).

"**Officer's Certificate**" means a certificate on behalf of any Person that is signed by any Responsible Officer of such Person and states that the certifications set forth in such certificate are based upon the results of a due inquiry into the matters in question conducted by or under the supervision of the signing Responsible Officer and that the facts stated in such certifications are made to such signing Responsible Officer's knowledge and belief.

"**OPG**" means Ontario Power Generation Inc., a corporation established under the laws of the Province of Ontario.

"**Opinion of Counsel**" means one or more written opinions of counsel, who may, except as otherwise expressly provided in the Program Agreements, be employees of or counsel to the party providing such opinion of counsel, which counsel shall be reasonably acceptable to the party receiving such opinion of counsel, and shall be in form and substance reasonably acceptable to such party.

"**Ordinary Resolution**" has the meaning specified in subsection 10.01(e).

"**Outstanding**" means, in respect of Notes, as of the date of determination, all Notes theretofore authenticated and delivered under this Indenture, except:

(a) any Notes theretofore canceled by the Indenture Trustee or delivered to the Indenture Trustee for cancellation pursuant to Section 4.08, or canceled by the Issuer and delivered to the Indenture Trustee pursuant to Section 4.08;

(b) any Notes for whose full payment (including principal and interest) or redemption money in the necessary amount has been theretofore deposited with the Indenture Trustee or any Paying Agent in trust for the holders of such Notes; provided that, if such Notes are to be redeemed, notice of such redemption has been duly given if required pursuant to this Indenture or the Related Supplemental Indenture, or provision therefor satisfactory to the Indenture Trustee has been made; and

(c) any Notes in exchange for or in lieu of which other Notes have been authenticated and delivered pursuant to this Indenture, or which will have been paid pursuant to the terms of Section 4.06 (except with respect to any such Note as to which proof satisfactory to the Indenture Trustee is presented that such Note is held by a Person in whose hands such Note is a legal, valid and binding obligation of the Issuer).

For purposes of determining the amounts of deposits, allocations, reallocations or payments to be made, unless the context clearly requires otherwise, references to "Notes" will be deemed to be

references to "Outstanding Notes". In determining whether Noteholders of the requisite principal amount of Outstanding Notes have taken any Action hereunder, and for purposes of Article X, **Senior** Notes beneficially owned by the Issuer, OPG or any Affiliate of the Issuer or OPG will be disregarded and deemed not to be Outstanding. In determining whether the Indenture Trustee will be protected in relying upon any such Action, only **Senior** Notes which a Responsible Officer of the Indenture Trustee knows to be owned by the Issuer, OPG or any Affiliate of the Issuer or OPG will be so disregarded. **Senior** Notes so owned which have been pledged in good faith may be regarded as Outstanding if the pledgee creates to the satisfaction of the Indenture Trustee the pledgee's right to act as owner with respect to such Notes and that the pledgee is not the Issuer, OPG or any Affiliate of the Issuer or OPG.

"**Outstanding Currency Specific Dollar Principal Amount**" means at any time, with respect to any ~~Class or Tranche of~~ Notes in a Series that includes Foreign Currency Notes, the Initial Currency Specific Dollar Principal Amount of the Outstanding Notes of such ~~Class~~**Series** or Tranche at such time, less the amount of any ~~withdrawals from any Issuer Account or Sub-Account for such Class or Tranche of Notes for payment~~**payments** of principal to the holders of such ~~Class or Tranche~~**Series** of Notes; plus, the amount of any increase in the Outstanding Currency Specific Dollar Principal Amount of such ~~Class or Tranche~~**Series** of Notes due to the issuance of additional Notes of such ~~Class or Tranche pursuant to Article V~~**Series**.

"**Outstanding Dollar Principal Amount**" means at any time:

(a) in respect of Notes, either:

(i) with respect to any **Class,** Series~~, Class~~ or Tranche of Notes (other than Discount Notes), the aggregate Initial Dollar Principal Amount of the Outstanding Notes of such **Class,** Series~~, Class~~ or Tranche at such time, less the amount of any ~~withdrawals from any Issuer Account or Sub-Account for such Series, Class or Tranche of Notes for payment~~**payments** of principal to the holders of such **Class,** Series~~, Class~~ or Tranche of Notes or the applicable Derivative Counterparty pursuant to the Related Supplemental Indenture, or

(ii) with respect to any Series~~, Class~~ or Tranche of Discount Notes, an amount of the Outstanding Notes of such Series~~, Class~~ or Tranche calculated by reference to the applicable formula set forth in the Related Supplemental Indenture, taking into account the amount and timing of payments of principal made to the holders of such Series~~, Class~~ or Tranche or the applicable Derivative Counterparty~~ and accretions of principal~~, each pursuant to the Related Supplemental Indenture;

plus, in either case, the amount of any increase in the Outstanding Dollar Principal Amount of such **Class,** Series~~, Class~~ or Tranche of Notes due to the issuance of additional Notes of such **Class,** Series~~, Class~~ or Tranche pursuant to Article V; and

(b) in respect of other Issuer Funding Obligations, the aggregate principal amount (converted into Dollars, if applicable) of Borrowings under the Liquidity Agreements and the Loan Agreements.

"**Paying Agent**" means any Person authorized by the Issuer to pay any Obligations Secured on behalf of the Issuer as provided in Section 13.03.

"**Payment Date**" means~~, with respect to any Series of Issuer Funding Obligations,~~ the 15th day of each calendar month~~ or the date otherwise specified in the Related Funding Obligation Agreement~~.

"**Payment Instruction**" means, with respect to any Series of Issuer Funding Obligations, the instructions of the Manager substantially in the form of Exhibit 1.

"**Permanent Global Note**" has the meaning specified in subsection 3.05(a).

"**Permitted Liens**" means:

(a) Liens for Taxes not yet due or for which installments have been paid based on reasonable estimates pending final assessments, or if due, the validity of which is being contested diligently and in good faith by appropriate proceedings by that Person for which reasonable reserves under GAAP are maintained;

(b) the Lien of any Indenture Trustee, as provided in Section 9.05;~~ and~~

(c) the Security Interest**; and**

(d) any Lien created pursuant to a Co-Owner Agreement.

"**Person**" means any individual, corporation, limited liability company, **unlimited liability company,** estate, partnership, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization or Governmental Authority.

"**Place of Payment**" means, with respect to any **Class,** Series~~, Class~~ or Tranche of Notes issued hereunder, the city or political subdivision so designated with respect to such **Class,** Series~~, Class~~ or Tranche of Notes in accordance with the provisions of Article V.

"**PPSA**" shall mean the *Personal Property Security Act* (Ontario).

"**Predecessor Notes**" of any particular Note means every previous Note evidencing all or a portion of the same debt as that evidenced by such particular Note; and, for the purposes of this definition, any Note authenticated and delivered under Section 4.06 in lieu of a mutilated, lost, destroyed or stolen Note will be deemed to evidence the same debt as the mutilated, lost, destroyed or stolen Note.

"Principal Accumulation Account" has the meaning specified in subsection 7.02(c).

"Principal Accumulation Amount" means, in respect of any Series of Senior Funding Obligations, Subordinated Funding Obligations or Junior Subordinated Funding Obligations and a Payment Date occurring on or after the Principal Accumulation Date for such Series, the amount specified for such Payment Date in the Funding Obligation Agreement in respect of such Series plus any amounts specified in the Funding Obligation Agreement in respect of such Series in respect of prior Payment Dates after the Principal Accumulation Date for such Series which were not deposited to the Principal Accumulation Account; *provided* that if the Issuer has delivered a Refinancing Notice in respect of such Series pursuant to Section 7.09, the Principal Accumulation Amounts in respect of such Series shall be adjusted as provided for in such Refinancing Notice.

"Principal Accumulation Amount (Junior Subordinated)" means, in respect of any Payment Date, the sum of the Principal Accumulation Amounts for all Series of Junior Subordinated Funding Obligations for such Payment Date.

"Principal Accumulation Amount (Senior)" means, in respect of any Payment Date, the sum of the Principal Accumulation Amounts for all Series of Senior Funding Obligations for such Payment Date.

"Principal Accumulation Amount (Subordinated)" means, in respect of any Payment Date, the sum of the Principal Accumulation Amounts for all Series of Subordinated Funding Obligations for such Payment Date.

"Principal Accumulation Date" means, in respect of any Series of Issuer Funding Obligations, other than Derivative Funding Obligations, the date, if any, specified in the related Funding Obligation Agreement.

"Principal Payment Date" means each Business Day which is a "Principal Payment Date" under a Funding Obligation Agreement in respect of Senior Funding Obligations, Subordinated Funding Obligations or Junior Subordinated Funding Obligations.

"**Principal Payment Default Date**" has, with respect to any Issuer Funding Obligation, the meaning specified in the Related Supplemental Indenture or Related Loan Agreement.

"**Principal Payment Due Date**" has, with respect to any Issuer Funding Obligation, the meaning specified in the Related Supplemental Indenture or Related Loan Agreement.

"Program Account" means each of the Collection Account, the Principal Accumulation Account, the Interest Accumulation Account, the Program Cash Reserve Account and the Refinancing Account.

"**Program Agreements**" means this Indenture, each Supplemental Indenture, the Declaration of Trust, the Management Agreement, the Master Transfer and Servicing Agreement, each Transfer Notice, any Co-Owner Agreements, the IESO Security Agreement, the Change of Law Protection Agreement, the Notes, any Derivative Agreements, Credit Enhancement Agreements, Liquidity Agreements, Loan Agreements, Underwriting Agreements, Agency Agreements or Note Purchase Agreements and all other documents and certificates delivered in connection therewith.

"Program Cash Reserve Account" has the meaning specified in subsection 7.02(g).

"Program Cash Reserve Balance" means, at any time, the amount on deposit in the Program Cash Reserve Account.

"Program Cash Reserve Required Amount (Junior Subordinated)" means, on any Payment Date, an amount equal to [■]% of the outstanding principal amount of Junior Subordinated Funding Obligations after giving effect to all settlements on such Payment Date.

"Program Cash Reserve Required Amount (Senior)" means, on any Payment Date, an amount equal to [■]% of the outstanding principal amount of Senior Funding Obligations after giving effect to all settlements on such Payment Date.

"Program Cash Reserve Required Amount (Subordinated)" means, on any Payment Date, an amount equal to [■]% of the outstanding principal amount of Subordinated Funding Obligations after giving effect to all settlements on such Payment Date.

"Program Cash Reserve Required Amount (Total)" means, on any Payment Date, an amount equal to the sum of the Program Cash Reserve Required Amount (Senior), the Program Cash Reserve Required Amount (Subordinated) and the Program Cash Reserve Required Amount (Junior Subordinated).

"Program Cash Reserve Required Deposit Amount (Junior Subordinated)" means, on any Payment Date, the amount by which the aggregate of the Program Cash Reserve Required Amount (Total) exceeds the Program Cash Reserve Balance.

"Program Cash Reserve Required Deposit Amount (Senior)" means, on any Payment Date, the amount by which the Program Cash Reserve Required Amount (Senior) exceeds the Program Cash Reserve Balance.

"Program Cash Reserve Required Deposit Amount (Subordinated)" means, on any Payment Date, the amount by which the aggregate of the Program Cash Reserve Required Amount (Senior) plus the Program Cash Reserve Required Amount (Subordinated) exceeds the Program Cash Reserve Balance.

"**Province**" means Her Majesty the Queen in Right of Ontario as represented by the Minister of Energy and the Minister of Finance.

"**Rating Agency**" means, with respect to any Outstanding **Class,** Series~~, Class~~ or Tranche of Notes, each nationally recognized statistical rating organization or designated rating organization, as specified in the Related Supplemental Indenture, selected by the Manager to rate such Notes.

"**Rating Agency Condition**" means, unless otherwise specified in the Related Supplemental Indenture for any Series~~, Class~~ or Tranche of Notes, with respect to any action subject to such condition, the Issuer shall deliver written notice of the proposed action to such Rating Agency or Rating Agencies at least 10 Business Days prior to the effective date of such action (or such shorter notice period if specified in the Related Supplemental Indenture with respect to any

specific action, or if 10 Business Days prior notice is impractical, such advance notice as is practicable) and the Rating Agencies (i) shall not have informed the Issuer prior to the effective date of such action that such action will result in the reduction or withdrawal of the rating in effect with respect to any Outstanding Notes immediately before the taking of such action, **[or (ii) in the case of S&P, or any successor thereto, when it is a Rating Agency, such Rating Agency shall have informed the Issuer in writing prior to the effective date of such action that such action will not result in the reduction or withdrawal of the rating of any Outstanding Notes immediately before the taking of such action]**, provided that wherever there is reference to satisfaction of a Rating Agency Condition in this Indenture or any other Program Agreement, subject to the terms of the specific Program Agreement which shall govern, such condition need not be satisfied if there is no Rating Agency then rating the applicable Notes or other Notes in respect of which the Rating Agency Condition is applicable. For purposes of this Indenture, any Supplemental Indenture and the Master Transfer and Servicing Agreement, the Indenture Trustee shall receive, and shall be entitled to rely on, an Issuer Certificate confirming the satisfaction of the Rating Agency Condition.

"**Record Date**" means, for the interest or principal payable on any Note on any applicable Payment Date, the last day of the calendar month immediately preceding such Payment Date, unless otherwise specified in the Related Supplemental Indenture.

"**Reference Period**" has the meaning ascribed to the term "reference period" in the Act as of the date of this Indenture.

"**Refinancing**" has the meaning ascribed to the term "refinancing" in the Act as of the date of this Indenture.

"**Refinancing Account**" has the meaning specified in subsection 7.02(b).

"Refinancing Notice" means a notice substantially in the form of Exhibit 2.

"**Registered Note**" means a Note issued in registered form.

"**Registered Noteholder**" means a Noteholder of a Registered Note.

"**Regulation AB**" means Subpart 229.1100 – Asset Backed Securities (Regulation AB), 17 C.F.R. §§229.1100-229.1125, and all related rules and regulations of the Commission, as such rules may be amended from time to time, and subject to such clarification and interpretation as have been provided by the Commission or by the staff of the Commission, or as may be provided by the Commission or its staff from time to time.

"**Related**" is used in reference to the Issuer Funding Obligations of a particular Series and means, when used in conjunction with:

(a) "Credit Enhancement Agreement": a Credit Enhancement Agreement pursuant to which Credit Enhancement has been provided in respect of such Issuer Funding Obligations;

(b) "Funding Obligation Agreements": the Funding Obligation Agreements entered into in connection with the incurrence of such Issuer Funding Obligations;

(c) "Liquidity Agreement": a Liquidity Agreement pursuant to which one or more liquidity facilities have been made available to fund the repayment of such Issuer Funding Obligations constituting Notes or, if specified in such Liquidity Agreement, a ~~Class~~**Series** or Tranche of such Issuer Funding Obligations constituting Notes;

(d) "Loan Agreement": a Loan Agreement in respect of Issuer Funding Obligations constituting Borrowings; and

(e) "Supplemental Indenture": a supplement to this Indenture executed in connection with the issuance of such Issuer Funding Obligations constituting Notes.

"Required Principal Accumulation Amount (Senior)" means, in respect of any Principal Payment Date or Interest Payment Date, the aggregate of the Principal Accumulation Amounts (Senior) for all Payment Dates up to and including such Principal Payment Date or Interest Payment Date, as applicable, less all amounts that have been applied to principal repayments of Senior Funding Obligations on or prior to such Principal Payment Date or Interest Payment Date, as applicable.

"Required Principal Accumulation Amount (Subordinated)" means, in respect of any Principal Payment Date or Interest Payment Date, the aggregate of the Principal Accumulation Amounts (Subordinated) for all Payment Dates up to and including such Principal Payment Date or Interest Payment Date, as applicable, less all amounts that have been applied to principal repayments of Subordinated Funding Obligations on or prior to such Principal Payment Date or Interest Payment Date, as applicable.

"**Responsible Officer**" means, with respect to: (a) the Issuer, any ~~authorized~~ director or officer of the Manager; (b) the Servicer, any ~~authorized~~ director or officer of the IESO; and (c) the Indenture Trustee, any officer within the Corporate Trust Office of such trustee (including the President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Treasurer or any other officer of the Indenture Trustee customarily performing functions similar to those performed by persons who at the time shall be such officers, respectively, and that has direct responsibility for the administration of this Indenture and also, with respect to a particular matter, any other officer to whom such matter is referred to because of such officer's knowledge and familiarity with the particular subject).

"**S&P**" means Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc., or any successor thereof.

"**Securities Exchange Act**" means the United States Securities Exchange Act of 1934, as amended from time to time.

"**Security Interest**" means the Lien granted pursuant to Section 2.01.

"**Senior Borrowings**" means Borrowings that have been designated as "Senior Borrowings" in the Related Loan Agreement, Related Liquidity Agreement or Related Credit Enhancement Agreement.

"**Senior Funding Obligations**" means Funding Obligations arising under, or in connection with, Senior Notes and Senior Borrowings.

"Senior Principal Shortfall" has the meaning specified in subsection 7.07(b).

"**Senior Notes**" means Notes of a Series ~~or Class~~ that have been designated as "Senior Notes" in the Related Supplemental Indenture.

"**Series**" means, with respect to any **Class of** Issuer Funding Obligation, the Series **of the Class** specified in the Related Funding Obligation Agreement.

"Series Account" means each Series Finance Reserve Account and each Series Capital Account.

"Series Finance Reserve Account" has the meaning specified in subsection 7.02(g).

"Series Capital Account" has the meaning specified in subsection 7.02(f).

"**Servicer**" has the meaning specified in the Master Transfer and Servicing Agreement.

"**Servicer Default**" has the meaning ascribed thereto in Section **[7.1]** of the Master Transfer and Servicing Agreement.

"**Specified Creditors**" means, collectively, Noteholders, Lenders, the Paying Agent, the Indenture Trustee, the Issuer Trustee, the Manager, the Servicer, Derivative Counterparties, Credit Enhancers, counterparties to Underwriting Agreements, Agency Agreements or Note Purchase Agreements, and other Persons in respect of Obligations Secured, in each case, to the extent of their claims related to Program Agreements.

"**Stated Principal Amount**," has, with respect to any Note, the meaning specified in the Related Supplemental Indenture (including a Terms Document).

"**Sub-Account**" means each sub-account of an Issuer Account maintained pursuant to this Indenture or any Funding Obligation Agreement.

"Subordinated/Senior Principal Shortfall" has the meaning specified in subsection 7.07(a).

"**Subordinated Borrowings**" means Borrowings that have been designated as "Subordinated Borrowings" in the Related Loan Agreement, Related Liquidity Agreement or Related Credit Enhancement Agreement.

"**Subordinated Funding Obligations**" means Funding Obligations arising under, or in connection with, Subordinated Notes and Subordinated Borrowings.

"**Subordinated Notes**" means Notes of a Series ~~or Class~~ that have been designated as "Subordinated Notes" in the Related Supplemental Indenture.

"**Supplemental Indenture**" means, with respect to any Series of Notes, a supplement to this Indenture, executed and delivered in conjunction with the issuance of such Notes pursuant to Section 4.01, together with any applicable Terms Document for any ~~Classes and~~ Tranches of Notes belonging to such Series and any amendment to the Supplemental Indenture executed pursuant to Section 11.01 or 11.02.

~~"**Supplemental Reserve Account**" means the trust account or accounts designated as such and established pursuant to subsection 7.02(e).~~

"**Tax**" has the meaning ascribed to the term "tax" in the regulations promulgated under the Act ~~[~~as of the date of this Indenture.~~]~~.

"**Temporary Global Note**" has the meaning specified in Section 3.05(a).

"**Termination Payment**" ~~has the meaning specified in the applicable~~**means all amounts payable upon early termination of any** Derivative Agreement **calculated in accordance with the terms of such Derivative Agreeement**.

"**Terms Document**" means, with respect to any ~~Class or~~ Tranche of Notes, a supplement to the Related Supplemental Indenture.

"**Tranche**" means, with respect to any ~~Class~~**Series** of Notes, Notes of such ~~Class~~**Series** which have identical terms, conditions and Tranche designation. Notes of a single Tranche may be issued on different dates.

"**Underwriting Agreement**" means an agreement providing for the purchase of Notes from the Issuer by one or more Persons as principals for the purpose of resale.

"**United States Person**" means a citizen or resident of the United States, a corporation, partnership or other entity created or organized in or under the laws of the United States of America, any one of the states thereof, the District of Columbia or any political subdivision thereof, or an estate or trust the income of which is subject to United States federal income taxation regardless of its source.

"**U.S. Depository**" means, unless otherwise specified by the Issuer pursuant to any of Section 3.04, 3.06, or 4.01, with respect to Notes ~~of any Tranche~~ issuable or issued as a Global Note within the United States, The Depository Trust Company, or any successor thereto registered as a clearing agency under the Securities Exchange Act, or other applicable statute or regulation.

"**U.S. Securities Act**" means the United States Securities Act of 1933, as amended from time to time.

"**Warehouse Facility Agreement**" means a Funding Obligation Agreement that provides the Issuer with a revolving facility under which principal amounts can be advanced, repaid and again advanced during a committed revolving period and does not provide any other type of credit

facility.

EXHIBIT 1
FORM OF PAYMENT INSTRUCTIONS

See Attached.

EXHIBIT 2
FORM OF REFINANCING NOTICE

See Attached.

[NTD: Notice must specify Series and the amount of the Principal Accumulation Amounts specified in the related Supplemental Indenture that will be repaid with the proceeds of the Refinancing.]

Document comparison by Workshare Compare on November-08-17 8:59:29 AM

Input:	
Document 1 ID	file://C:\Users\bsaulnie\Desktop\#23425981v13_TorysAtWork_ - Fair Hydro Plan Master Trust Indenture.docx
Description	#23425981v13_TorysAtWork_ - Fair Hydro Plan Master Trust Indenture
Document 2 ID	file://C:\Users\bsaulnie\Desktop\Province\Master Trust Indenture (November 7th Rating Agency Draft).DOCX
Description	Master Trust Indenture (November 7th Rating Agency Draft)
Rendering set	Firm_Standard

Legend:	
Insertion	
~~Deletion~~	
~~Moved from~~	
Moved to	
Style change	
Format change	
~~Moved deletion~~	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	649
Deletions	635
Moved from	8
Moved to	8
Style change	0
Format changed	0
Total changes	1300

MTSA (November 7th Rating Agency Draft).pdf

Draft Date: November 7, 2017

MASTER TRANSFER AND SERVICING AGREEMENT

between

[FINANCING ENTITY]
as Issuer

- and -

INDEPENDENT ELECTRICITY SYSTEM OPERATOR
as Transferor and Servicer

Dated as of ■, 2017

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EXHIBIT

Exhibit A – Form of Transfer Notice
Exhibit B – Form of Monthly Report
Exhibit C – Form of Monthly Carrying Costs Statement

MASTER TRANSFER AND SERVICING AGREEMENT

THIS AGREEMENT made as of ■, 2017.

BETWEEN:

[FINANCING ENTITY], a trust formed under the laws of the Province of Ontario

(the "**Issuer**")

- and -

INDEPENDENT ELECTRICITY SYSTEM OPERATOR, a statutory corporation without share capital amalgamated under the laws of the Province of Ontario

(the "**Transferor**" in its capacity as transferor, the "**Servicer**", in its capacity as servicer, and the "**IESO**" in its capacity as both Transferor and Servicer)

WHEREAS the Government of Ontario has enacted the *Ontario Fair Hydro Act, 2017* (the "**Act**") for the purpose of, among other things, ensuring that clean energy costs and clean energy benefits (each as defined in the Act) are fairly allocated among present and future Specified Consumers;

AND WHEREAS, under the Act, the IESO is required to establish and maintain the Fair Hydro Variance Account, and has the right under the Act and the Regulations to record certain amounts in the Fair Hydro Variance Account and recover the balance from time to time of the Fair Hydro Variance Account from Specified Consumers (such right, the "**Regulatory Asset**");

AND WHEREAS the IESO may from time to time, in accordance with the Act, Transfer Specified Portions of the Regulatory Asset to the Issuer pursuant to Section 26(1) of the Act;

AND WHEREAS the Issuer may finance the acquisition from the IESO, from time to time, of an Investment Interest through the incurrence of Funding Obligations under the Indenture;

AND WHEREAS the Issuer will grant a security interest over all of the Issuer Investment Interest to and in favour of the Indenture Trustee on behalf of all Specified Creditors;

AND WHEREAS in connection with its ownership of the Issuer Investment Interest and in order to collect the associated Clean Energy Adjustments in accordance with the Act, the Issuer desires to engage the Servicer to carry out the services described herein and the Servicer agrees to be so engaged;

NOW THEREFORE in consideration of the foregoing and the mutual covenants and agreements contained herein (the receipt and adequacy of which are hereby acknowledged), the parties hereto agree as follows:

ARTICLE 1
INTERPRETATION

1.1 Definitions

In this Agreement, the following terms have the following meanings:

"**Act**" has the meaning ascribed thereto in the recitals;

"**Agreement**" means this master transfer and servicing agreement, as amended, supplemented, modified, restated or replaced from time to time, and the expressions "herein", "hereof", "hereto", "hereunder" and similar expressions refer to this Agreement and not to any Article, Section, paragraph, subparagraph or clause hereof;

"**Billing Period**" means a calendar month in which the Clean Energy Adjustment is billed to Specified Consumers;

"**Board**" means the Ontario Energy Board, a statutory corporation without share capital continued under the *Ontario Energy Board Act, 1998*, S.O., 1998;

"**Business Day**" means any day other than a Saturday, a Sunday or a day on which banking institutions in Toronto, Ontario are authorized or obligated by law, regulation or executive order to be closed;

"**Carrying Costs**" has the meaning ascribed to the term "carrying costs" in the Regulations;

"**CEA Consumer Invoice Amounts**" means amounts invoiced by an Electricity Vendor to Specified Consumers in respect of the Clean Energy Adjustment based on the rates established by the Board;

"**Clean Energy Adjustment**" has the meaning ascribed to the term "clean energy adjustment" in the Act;

"**Closing Date**" means the date on which a Transfer is to be completed as specified in the applicable Transfer Notice;

"**Co-Owner Agreement**" means any agreement between, *inter alia*, the parties hereto and any other owner or owners of an Investment Interest as contemplated by Section 29(5) of the Act in form and substance satisfactory to the parties hereto, acting reasonably;

"**Co-Owner Implementation Date**" means the date, if any, upon which the Issuer Investment Interest ceases to be the only Investment Interest outstanding representing the full Investment Asset;

"**Collection Account**" means an Eligible Deposit Account established by the Issuer for the purpose of receiving the Issuer Share of the Servicer CEA Receipts;

"**Daily Remittance Event**" means the occurrence of either: (i) a Servicer Default or (ii) the IESO (or any successor thereto) ceasing to have the Required Servicer Rating;

"**Declaration of Trust**" means the declaration of trust made as of ■, 2017 under which the Issuer was established, as may be supplemented, amended, replaced or amended and restated from time to time;

"**Electricity Vendor**" has the meaning ascribed to the term "electricity vendor" in the Act;

"**Electricity Vendor CEA Collections**" means payments actually received by Electricity Vendors from Specified Consumers in respect of Clean Energy Adjustments;

"**Electricity Vendor Billing Period Report**" means a report as contemplated by Section 17(2) of the Act from each Electricity Vendor in respect of each Billing Period where Clean Energy Adjustments are billed to Specified Consumers containing:

(a) its total CEA Consumer Invoice Amounts in such Billing Period;

(b) its total Electricity Vendor CEA Collections during such Billing Period; and

(c) such other information as may be prescribed in the Regulations or any other Requirement of Law, or which otherwise may be agreed to by the applicable Electricity Vendor;

"**Eligible Deposit Account**" means an account in Canada with an Eligible Institution;

"**Eligible Institution**" means:

(a) at any time before the Co-Owner Implementation Date, an "Eligible Institution" as defined in the Indenture; and

(b) at any time on or after the Co-Owner Implementation Date, an "Eligible Institution" as defined in the applicable Co-Owner Agreement;

"**Fair Hydro Variance Account**" means the variance account established by the IESO pursuant to Section 24(1) of the Act;

"**Financing Entity**" has the meaning ascribed to the term "financing entity" in the Act;

"**Funding Obligation**" has the meaning ascribed to the term "funding obligation" in the Act;

"**Governmental Authority**" means any nation or government, any federal, state, provincial, local or other political subdivision thereof and any court, administrative agency or other instrumentality or entity exercising executive, legislative, judicial, regulatory or administrative functions of government;

"**IESO**" or "**Independent Electricity System Operator**" means the Independent Electricity System Operator, a statutory corporation without share capital established by the *Electricity Act, 1998*, SO, 1998;

"**IESO Deferral**" has the meaning ascribed to the term "IESO deferral" in the Act;

"**IESO Disclosure**" has the meaning ascribed thereto in Section 5.7;

"**IESO Segregated Account**" has the meaning ascribed thereto in Section 3.3(a);

"**Indemnified Losses**" has the meaning ascribed thereto in Section 6.1(a);

"**Indemnified Party**" has the meaning ascribed thereto in Section 6.1(a);

"**Indenture**" means the master trust indenture dated ■, 2017 between the Indenture Trustee and the Issuer;

"**Indenture Trustee**" means ■, a trust company existing under the laws of Canada and duly authorized to carry on the business of a trust company in all of the provinces and territories of Canada, as indenture trustee for the benefit of Specified Creditors, or any successor thereto, under the Indenture;

"**Insolvency Event**" means, with respect to a specified Person, the specified Person admits the inability of such specified Person to pay its liabilities generally as they become due or makes a general assignment for the benefit of the creditors of such specified Person or otherwise acknowledges the insolvency of such specified Person or any proceeding shall be instituted by or against such specified Person seeking to adjudicate it a bankrupt or insolvent or seeking liquidation, winding up, dissolution, reorganization, arrangement, adjustment, protection, relief or composition of its debts under any law relating to bankruptcy, insolvency, reorganization, moratorium or relief of debtors or seeking the entry of an order for relief by the appointment of a receiver, trustee or other similar official for such specified Person or for any substantial part of its property and if such proceeding has been instituted against such specified Person either such proceeding has not been stayed or dismissed within **[45]** days or any of the actions sought in such proceeding (including the entry of an order for relief or the appointment of a receiver) are granted in whole or in part, or if a receiver is privately appointed in respect of such specified Person or of the property of such specified Person or any substantial part thereof;

"**Investment Asset**" has the meaning ascribed to the term "investment asset" in the Act;

"**Investment Interest**" has the meaning ascribed to the term "investment interest" in the Act;

"**Issuer**" means ■, a trust formed under the laws of the Province of Ontario;

"**Issuer Funding Obligations**" means the Funding Obligations of the Issuer;

"**Issuer Investment Interest**" means, initially, the Investment Interest acquired by the Issuer pursuant to the first Transfer completed under this Agreement and, upon the completion of each Transfer thereafter, the cumulative Investment Interest acquired by the Issuer;

"**Issuer Share**" means:

(a) at any time before the Co-Owner Implementation Date, 100%; and

(b) at any time on or after the Co-Owner Implementation Date, the percentage determined in accordance with the applicable Co-Owner Agreement;

"**Issuer Trustee**" means, at any time, the Person who is, in accordance with the Declaration of Trust, the trustee of the Issuer at such time;

"**Lien**" means a security interest, lien, mortgage, charge, pledge, claim or encumbrance of any kind;

"**Management Agreement**" means the management agreement dated ■, 2017 between the Manager and the Issuer;

"**Manager**" means OPG, in its capacity as manager of the Issuer, and any successor appointed in accordance with the Management Agreement;

"**Minister**" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of the Act under the *Executive Council Act*;

"**Monthly Carrying Costs**" has the meaning ascribed thereto in Section 3.13(b);

"**Monthly Carrying Costs Statement**" has the meaning ascribed thereto in Section 3.13(b);

"**Monthly Report**" has the meaning ascribed thereto in Section 3.4(a);

"**Officer's Certificate**" means a certificate signed by a Responsible Officer of the Issuer under the circumstances described in, and otherwise complying with, the applicable requirements of Section **[10.01]** of the Indenture;

"**OPG**" means Ontario Power Generation Inc., a corporation established under the laws of the Province of Ontario;

"**Opinion of Counsel**" means one or more written opinions of counsel, which counsel shall be reasonably acceptable to the party receiving such opinion of counsel, and shall be in form and substance reasonably acceptable to such party;

"**Permitted Successor**" means any successor to the IESO under the Act, whether pursuant to any bankruptcy, reorganization or other insolvency proceeding or pursuant to any merger, conversion, acquisition, sale or transfer, by operation of law, as a result of any restructuring, or otherwise, but only to the extent such successor is approved by the Minister;

"**Permitted Transfer**" means (i) a Transfer to the Issuer pursuant to this Agreement; and (ii) a Transfer to a person who has entered into a Co-Owner Agreement with, inter alia, the Issuer.

"**Person**" means any individual, corporation, limited liability company, estate, partnership, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization or Governmental Authority;

"**Prescribed Period**" has the meaning ascribed thereto in Section 3.13(a);

"**Proceeding**" means any suit in equity, action at law or other judicial or administrative proceeding;

"**Program Agreements**" has the meaning ascribed thereto in the Indenture;

"**Purchase Price**" has the meaning ascribed thereto in Section 2.1(c);

"**Rating Agency**" has the meaning ascribed thereto in the Indenture;

"**Rating Agency Condition**" has the meaning ascribed thereto in the Indenture;

"**Records**" has the meaning ascribed thereto in Section 7.1;

"**Regulations**" means Ontario Regulation 206/17: General, together with any other regulations promulgated under the Act;

"**Regulatory Asset**" has the meaning ascribed thereto in the recitals;

"**Remittance Date**" means, in respect of each Billing Period, the **[18th]** Business Day following the last day of each Billing Period;

"**Required Servicer Rating**" means rating of "Baa3" or higher by Moody's Investors Service, Inc. (or any successor thereof) and a rating of "BBB(low)" or higher by DBRS Limited (or any successor thereof);

"**Requirement of Law**" means any foreign, Canadian federal, provincial or local laws, statutes, regulations, rules, codes or ordinances enacted, adopted, issued or promulgated by any Governmental Authority or common law;

"**Responsible Officer**" means, with respect to: (a) the Issuer, any authorized director or officer of the Manager; (b) the Servicer, any authorized director or officer of the IESO; and (c) a Successor Servicer, any authorized director or officer of the Successor Servicer;

"**Servicer**" means the Independent Electricity System Operator, as Servicer under this Agreement, or any Successor Servicer to the extent permitted under this Agreement;

"**Servicer CEA Receipts**" has the meaning ascribed thereto in Section 3.3(e);

"**Servicer Default**" has the meaning ascribed thereto in Section 7.1;

"**Specified Consumer**" has the meaning ascribed to the term "specified consumer" in the Act;

"**Specified Creditors**" has the meaning ascribed thereto in the Indenture;

"**Specified Portion**" means, in respect of the Regulatory Asset and any Transfer, the portion of the Regulatory Asset subject to such Transfer, as set out in the applicable Transfer Notice.

"**Successor Servicer**" has the meaning ascribed thereto in Section **[3.07(e)]** of the Indenture;

"**Supplemental Indenture**" means an indenture supplemental to the Indenture that authorizes the incurrence of Funding Obligations;

"**Termination Event**" has the meaning ascribed thereto in Section 3.9;

"**Termination Notice**" has the meaning ascribed thereto in Section 7.1;

"**Transfer**" has the meaning ascribed to the term "transfer" in Section 1(3) of the Act, and "**Transferred**" has a corresponding meaning;

"**Transfer Notice**" means a Transfer Notice in respect of a Transfer substantially in the form of Exhibit A to this Agreement and delivered pursuant to Section 2.1(c) of this Agreement; and

"**Transferor**" means the Independent Electricity System Operator, as transferor under this Agreement;

1.2 Sections and Headings

The table of contents does not form part of this Agreement. The division of this Agreement into Articles and Sections and the insertion of headings are for convenience of reference only and will not affect the construction or interpretation of this Agreement. Unless something in the subject matter or context is inconsistent therewith, references herein to Articles and Sections are to Articles and Sections of this Agreement.

1.3 Extended Meanings

(a) Words importing the singular number only will include the plural and vice versa and words importing the masculine gender will include the feminine and neuter genders and vice versa. A reference to any agreement, instrument or declaration means such agreement, instrument or declaration as the same may be amended, supplemented, modified, restated or replaced from time to time.

(b) The term "**including**" means "including without limitation", and other forms of the verb "**include**" have correlative meanings.

(c) All references to any Person shall include such Person's permitted successors and assigns, and any reference to a Person in a particular capacity excludes such Person in other capacities.

(d) Unless otherwise stated, in the computation of a period of time from a specified date to a later specified date, the word "**from**" means "**from and including**" and each of the words "**to**" and "**until**" means "**to but excluding**".

(e) The words "**hereof**", "**herein**" and "**hereunder**" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement, unless otherwise specified. References to Articles, Sections, Appendices and Exhibits in this Agreement are references to Articles, Sections, Appendices and Exhibits in or to this Agreement unless otherwise specified.

(f) References to any law, rule, regulation or order of a Governmental Authority shall include such law, rule, regulation or order as from time to time in effect, including any amendment, modification, codification, replacement or reenactment thereof or any substitution therefor.

(g) The word "**will**" shall be construed to have the same meaning and effect as the word "**shall**". The word "**or**" is not exclusive.

ARTICLE 2
TRANSFER OF SPECIFIED PORTIONS OF THE REGULATORY ASSET

2.1 Transfer Notices and Agreement to Transfer Specified Portions of the Regulatory Asset

(a) The Transferor shall determine the IESO Deferral as required by Section 23(1) of the Act and the Regulations.

(b) The Transferor shall maintain the Fair Hydro Variance Account as required by Section 24 of the Act and the Regulations.

(c) The Transferor may, no more frequently than monthly and no later than the 8th Business Day of any calendar month, offer to Transfer to the Issuer a Specified Portion of the Regulatory Asset by providing to the Issuer a Transfer Notice executed by the Transferor and setting out (i) the Specified Portion of the Regulatory Asset that the Transferor is offering to Transfer to the Issuer, (ii) the consideration to be paid to the Transferor by the Issuer for the Transfer (the "**Purchase Price**") which shall be equal to the amount of such Specified Portion of the Regulatory Asset, (iii) the Closing Date to effect such transfer which shall be no earlier than the **[5th]** Business Day after the delivery of the Transfer Notice and no later than the last Business Day of the calendar month in which the Transfer Notice was delivered, or such other Business Day as may be agreed by the Transferor and the Issuer, and (iv) such other information as required in the form of Transfer Notice attached as Exhibit A hereto.

(d) On or before the 2nd Business Day following receipt of a Transfer Notice, the Issuer shall have the right, but not the obligation, to accept the Transferor's offer to Transfer the Specified Portion of the Regulatory Asset referred to in the Transfer Notice by executing and returning such Transfer Notice to the Transferor. Upon acceptance by the Issuer of the Transfer Notice, there shall be a

binding agreement for IESO to Transfer the Specified Portion of the Regulatory Asset referred to in the Transfer Notice and for the Issuer to pay the Purchase Price, subject to satisfaction of all conditions precedent in Section 2.2.

(e) Provided that all conditions precedent set out in Section 2.2 have been satisfied on or prior to the applicable Closing Date, on the applicable Closing Date, the Issuer shall deliver or cause to be delivered to the Transferor, by bank wire transfer or bank electronic funds transfer, in immediately available funds, an amount in Canadian dollars equal to the Purchase Price set forth in the applicable Transfer Notice. The Transferor agrees that receipt by the Transferor of the payment referred to in this Section 2.1(e) is receipt by the Transferor of a payment referred to in Section 26(3) of the Act.

(f) Upon receipt by the Transferor of the payment referred to in Section 2.1(e), the Transferor shall reduce the balance of the Fair Hydro Variance Account by an amount equal to the Purchase Price received and shall retain no further right, title or interest in the Issuer Investment Interest corresponding to the Specified Portion of the Regulatory Asset Transferred.

(g) The parties state that they intend that this Agreement, together with each Transfer Notice accepted by the Issuer, constitute an agreement, for purposes of Section 27(2) of the Act for the Transferor to dispose, upon receipt by the Transferor of the payment referred to in Section 2.1(e), of the Specified Portion of the Regulatory Asset referred to in the Transfer Notice and to assign, convey or sell a corresponding Investment Interest to the Issuer.

2.2 Conditions Precedent to each Transfer of a Specified Portion of the Regulatory Asset

(a) The obligation of the Issuer to pay the Purchase Price related to the initial Transfer of a Specified Portion of the Regulatory Asset shall be subject to the satisfaction by the Transferor, or waiver by the Issuer, of the following conditions:

(i) the Issuer shall have received from the Transferor the following documents, in form and substance satisfactory to the Issuer:

(A) a certificate of an officer of the IESO, dated the initial Closing Date certifying (1) that attached thereto is a true and complete copy of the by-laws of the IESO, each as in effect on the date of such certificate, (2) that attached thereto is a true and complete copy of a resolution adopted by the IESO's board of directors authorizing the execution, delivery and performance of this Agreement and the performance by the IESO of its obligations hereunder, and that such resolution has not been modified, rescinded or amended and is in full force and effect, and (3) as to the incumbency and true specimen signature of each of the IESO

officers or delegates executing this Agreement and authorized to give notices and instructions hereunder (which can be changed by notice hereunder); and

(B) the Transferor shall have delivered to the Rating Agencies and the Issuer any Opinions of Counsel reasonably required by them. **[NTD: Scope of opinions required to be confirmed by the Dealers and their counsel]**

(b) The obligation of the Issuer to pay the Purchase Price related to each Transfer of a Specified Portion of the Regulatory Asset (including the initial Transfer) shall be subject to the satisfaction or waiver by the Issuer of each of the following conditions:

(i) as of the applicable Closing Date, all Program Agreements shall have been entered into on terms and conditions satisfactory to the Issuer and shall be in full force and effect as of such Closing Date;

(ii) as of the applicable Closing Date, no Insolvency Event in respect of the Transferor shall have occurred and the Transferor is not aware of any pending Insolvency Event with respect to itself;

(iii) as of the applicable Closing Date, (A) the representations and warranties of the IESO in this Agreement must be true and correct with the same force and effect as if made on that date (except to the extent they relate to an earlier date), (B) no breach of any covenant or agreement of the IESO contained in this Agreement shall have occurred be continuing, and (C) no Servicer Default shall have occurred and be continuing;

(iv) the Transferor shall have delivered to the Issuer an Officer's Certificate confirming the satisfaction of each condition precedent specified in Sections 2.2(b)(ii) and (iii);

(v) as of the applicable Closing Date, (A) the Issuer shall have sufficient funds available to pay the Purchase Price as set forth in the applicable Transfer Notice, (B) all conditions to any incurrence of Funding Obligations intended to provide such funds set forth in the Indenture (and any applicable Supplemental Indenture) or other instrument shall have been satisfied or waived, (C) the Rating Agency Condition in respect of the issuance of the Funding Obligations funding the payment of the Purchase Price shall have been satisfied, and (D) the Funding Obligation required to fund the payment of the Purchase Price shall have been issued at the same time as, or prior to, the Transfer; and

(vi) immediately after giving effect to the Transfer, each of the Fair Hydro Variance Account and the Regulatory Asset will have a balance or amount, as applicable, equal to or greater than zero.

ARTICLE 3
ROLE OF THE SERVICER

3.1 Designation of Servicer

Each Transfer of a Specified Portion of the Regulatory Asset shall be made on the basis that the related Issuer Investment Interest shall be serviced by the Servicer in accordance with this Article 3, and the IESO or any Permitted Successor of the IESO that is the Servicer shall not be entitled, except as otherwise provided in this Agreement or agreed by the Parties, to receive any further compensation from the Issuer for its services in connection therewith. The Servicer agrees to perform the duties and obligations of the Servicer pursuant to the terms hereof at no additional cost to the Issuer.

3.2 Forecasts and Other Information

The IESO shall:

(a) provide to the Board the forecast information contemplated by Section 8(3) of the Regulations;

(b) provide to the Issuer the forecast information provided to the Board pursuant to Section 3.2(a); and

(c) provide to the Issuer such other information and reports as the Issuer may reasonably request in connection with the calculation of the Clean Energy Adjustments, that is in the possession or control of the Transferor or which is available on request to the Transferor, can lawfully be provided and can be provided without incurring material incremental expense.

3.3 Clean Energy Adjustments and Electricity Vendors

The Servicer shall:

(a) prior to receiving Servicer CEA Receipts, establish an Eligible Deposit Account (the "**IESO Segregated Account**") bearing a designation indicating that the funds deposited therein are held in trust for the benefit of the Issuer and, after the Co-Owner Implementation Date, for the benefit of any other owner or owners of an Investment Interest. If at any time the IESO Segregated Account ceases to be an Eligible Deposit Account, the Servicer shall within 30 days establish a new IESO Segregated Account as an Eligible Deposit Account and shall transfer any cash and/or any investments held in the former account to such new account and make all future deposits to such new account;

(b) prior to the first Billing Period when amounts are invoiced by Electricity Vendors to Specified Consumers in respect of Clean Energy Adjustments:

(i) provide guidance to the Electricity Vendors with respect to their obligations under the Act to establish a segregated account into which

Electricity Vendor CEA Collections are to be deposited as required by Section 10(2) of the Regulations;

(ii) provide a suggested form of Electricity Vendor Billing Period Report to be used by such Electricity Vendors;

(iii) provide guidance with respect to the establishment by the Electricity Vendors of procedures for the invoicing by such Electricity Vendor of amounts in respect of the Clean Energy Adjustment, the identification, deposit and segregation of Electricity Vendor CEA Collections, the remittance of Electricity Vendor CEA Collections to the Servicer and reporting to the Servicer; and

(iv) respond to inquiries from Electricity Vendors with respect to such forms and guidance.

(c) request certification from each Electricity Vendor that the segregated account required by Section 10(2) of the Regulations has been established by that Electricity Vendor;

(d) as agent of the Issuer and, after the Co-Owner Implementation Date, as agent of any other owner or owners of an Investment Interest, receive Electricity Vendor CEA Collections from Electricity Vendors;

(e) as agent of the Issuer and, after the Co-Owner Implementation Date, as agent of any other owner or owners of an Investment Interest, receive any amounts in respect of Clean Energy Adjustments payable directly by Specified Consumers to the Servicer (such amounts, together with the amounts referred to in Section 3.3(d), the "**Servicer CEA Receipts**");

(f) deposit the Servicer CEA Receipts into the IESO Segregated Account promptly following receipt by the Servicer and, in any event, within two Business Days of receipt by the Servicer and the Issuer Share of such Servicer CEA Receipts shall remain in the IESO Segregated Account until remitted in accordance with Section 3.5;

(g) respond to inquiries by Electricity Vendors with respect to the Clean Energy Adjustment and amounts payable in respect thereof;

(h) request from each Electricity Vendor an Electricity Vendor Billing Period Report in respect of each Billing Period during which Clean Energy Adjustments are billed to Specified Consumers; such report to be requested to be delivered within twelve Business Days of the end of each Billing Period;

(i) review each Electricity Vendor Billing Period Report received by the Servicer for material manifest discrepancies, including any discrepancy between the Electricity Vendor CEA Collections reported in respect of the Billing Period and

the amount received pursuant to Section 3.3(d), and such other discrepancies as may be agreed by the parties hereto, acting reasonably;

(j) contact each Electricity Vendor:

(i) that does not deliver an Electricity Vendor Billing Period Report in respect of a Billing Period where Clean Energy Adjustments were payable by Specified Consumers;

(ii) from which no Electricity Vendor CEA Collections are received in respect of the Billing Period,

(iii) for whom Electricity Vendor CEA Collections do not match the amount thereof reported in its Electricity Vendor Billing Period Report, or

(iv) that has not certified that it has established the segregated account required by Section 10(2) of the Regulations,

in each case, to remind them of their obligations under the Act and the Regulations and, in the case of Electricity Vendor CEA Collections that do not match the amount thereof reported in the Electricity Vendor Billing Period Report, to request an explanation of the discrepancy;

(k) hold the Issuer Share of Servicer CEA Receipts and the Issuer Share of any other proceeds in respect of the Clean Energy Adjustment received by it in trust for the benefit of the Issuer and remit such amounts in accordance with Section 3.5 without any surcharge, fee, offset, charge or other deduction.

3.4 Reporting

The Servicer shall:

(a) on or before the 20th Business Day following the end of each Billing Period, prepare and deliver to the Issuer a written report substantially in the form of Exhibit B (a "**Monthly Report**");

(b) Report monthly to the Issuer any failure on the part of Electricity Vendors to deliver, remit or certify referred to in (j)(i), (ii) or (iv) which has not been remedied as a result of the contact made by the IESO pursuant to Section 3.3(j) or any discrepancy referred to in (j)(ii), and the explanation provided therefor by the Electricity Vendor.

(c) promptly notify the Issuer in writing of any Requirement of Law hereafter adopted or announced or the occurrence of any other event or circumstance of which it becomes aware that has a material adverse effect on the Servicer's ability to perform its duties and obligations under this Agreement; and

(d) upon the reasonable request of the Issuer provide to the Issuer any public financial information in respect of the Servicer, or any material information regarding the Clean Energy Adjustment, to the extent it is reasonably available to the Servicer, and as may be reasonably necessary and permitted by law, to enable the Issuer to monitor the performance by the Servicer of its duties and obligations hereunder.

3.5 Remittances

(a) The Issuer shall provide the Servicer with notice of the Collection Account at least ten Business Days prior to the first Remittance Date and shall provide the Servicer with notice of any change to the Collection Account at least ten Business Days prior to any subsequent Remittance Date.

(b) Absent the occurrence of a Daily Remittance Event, the Issuer Share of Servicer CEA Receipts received by the Servicer and any interest earned thereon received on or subsequent to a Remittance Date shall be remitted by the Servicer to the Collection Account no later than the immediately following Remittance Date.

(c) Following the occurrence of a Daily Remittance Event, the Issuer Share of all Servicer CEA Receipts on deposit in the IESO Segregated Account and any interest earned thereon shall be remitted by the Servicer to the Collection Account on the second following Business Day.

3.6 Limits to Obligations

Notwithstanding anything to the contrary in this Agreement, the parties hereto agree the duties, liabilities and obligations of IESO under this Agreement are limited as provided in this Section 3.6.

(a) IESO is not responsible for, or in respect of, any amounts not collected by Electricity Vendors from their customers or not remitted by Electricity Vendors to the Servicer.

(b) IESO is not responsible to confirm, verify or audit the amount of the Clean Energy Adjustment invoiced by Electricity Vendors or the Electricity Vendor CEA Collections collected by Electricity Vendors and reported to the IESO;

(c) IESO is not responsible for enforcing the obligations of Specified Consumers to pay, or the obligations of Electricity Vendors to invoice, collect or remit Clean Energy Adjustments or any other amounts, and IESO is under no obligation to initiate or prosecute any legal action relating to the collection of the Clean Energy Adjustments or the Issuer Investment Interest.

(d) IESO shall not be responsible or liable for the performance by Electricity Vendors of their duties and responsibilities under the Act or the Regulations including (i) the invoicing of Specified Consumers in respect of the Clean Energy Adjustment and ancillary matters related thereto; (ii) the collection from Specified Consumers of amounts due in respect of such invoices and the remittance of such payments to

the Servicer; (iii) the accuracy of any information provided by the Electricity Vendors; and (iv) any reporting by the Electricity Vendors, including the reporting to the Servicer of the total CEA Consumer Invoice Amounts invoiced by such Electricity Vendor to its Specified Consumers in respect of the Clean Energy Adjustment, the total Electricity Vendor CEA Collections received by such Electricity Vendor and the Issuer Share of Electricity Vendor CEA Collections received by such Electricity Vendor.

(e) IESO is under no responsibility or obligation to the Issuer with respect to the nature or extent of the Issuer Investment Interest, the collectability of the Issuer Share of Servicer CEA Receipts or that the Issuer Share of Servicer CEA Receipts will be sufficient to satisfy the Issuer's Funding Obligations.

(f) IESO may rely in good faith on the advice of counsel or on any document of any kind, prima facie properly executed and submitted by any Person, respecting any matters arising under this Agreement.

(g) IESO shall have no liability or responsibility to any Person in respect of any forecasts or other information provided pursuant to Section 3.2, provided only that such forecasts or other information has been prepared and provided in good faith.

(h) None of the directors, officers, employees or agents of IESO shall be liable to the Issuer or any other Person for any action taken or for refraining from the taking of any action pursuant to this Agreement or for good faith errors in judgment.

3.7 Servicing and Maintenance Standards

Subject to Section 3.6, the Servicer shall discharge its duties, responsibilities and obligations hereunder with reasonable care and in material compliance with the Requirements of Law, including the Act and the Regulations and, in doing so, shall follow standards, policies and procedures in performing its duties as Servicer hereunder that are customary for an electricity market operator and administrator that regularly performs settlement functions.

3.8 Appointments

The Servicer may at any time appoint any Person to act as its agent to perform all or any portion of its obligations as Servicer hereunder; provided however, that the Rating Agency Condition shall have been satisfied in connection therewith; and provided further that the Servicer shall remain obligated and be liable for the performance of its obligations under this Agreement without diminution of such obligation and liability by virtue of the appointment of such Person and to the same extent and under the same terms and conditions as if the Servicer alone were performing such obligations. The fees and expenses of any such Person shall be as agreed between the Servicer and such Person from time to time, and the Issuer shall not have any responsibility therefor or right or claim thereto. Any such appointment shall not constitute a resignation of the Servicer under Section 3.10.

3.9 Term

The Servicer's appointment as Servicer under this Agreement shall become effective as of the execution hereof and shall continue in full force and effect until the earlier of (a) the effective date of resignation of the Servicer in accordance with the provisions of this Agreement, (b) termination of all of the rights and obligations of the Servicer under Article 7, and (c) the date on which all Issuer Funding Obligations have been paid in full and all CEA Consumer Invoice Amounts have been received or written off (in each case, a "**Termination Event**"). The appointment of the Servicer as servicer under this Agreement shall be terminated effective as of the date of the Termination Event.

3.10 Resignation of Servicer

The IESO shall not resign from the obligations and duties imposed on it as Servicer under this Agreement except upon a determination that the performance of its duties under this Agreement shall no longer be permissible under applicable Requirements of Law. Notice of any such determination permitting the resignation of the IESO as Servicer shall be communicated to the Issuer and the Rating Agencies at the earliest practicable time (and, if such communication is not in writing, shall be confirmed in writing at the earliest practicable time), and any such determination shall be evidenced by an Opinion of Counsel to such effect delivered to the Issuer and the Rating Agencies concurrently with or promptly after such notice. No such resignation shall become effective until a Successor Servicer that is a Permitted Successor has assumed the servicing obligations and duties hereunder of the Servicer in accordance with Section 7.2.

3.11 Mergers

Any Person (a) into which the Servicer may be merged, converted or amalgamated and that is a Permitted Successor, (b) that may result from any merger, conversion or amalgamation to which the Servicer shall be a party and that is a Permitted Successor, (c) that may succeed to the properties and assets of the Servicer substantially as a whole and that is a Permitted Successor, or (d) that otherwise is a Permitted Successor, which Person in any of the foregoing cases executes an agreement of assumption to perform all of the obligations of the Servicer hereunder, shall be the successor to the Servicer under this Agreement without further act on the part of any of the parties to this Agreement; provided, however, that (i) immediately after giving effect to such transaction, no representation or warranty made pursuant to Section 4.1 shall have been breached and no Servicer Default and no event that, after notice or lapse of time, or both, would become a Servicer Default shall have occurred and be continuing, (ii) the Servicer shall have delivered to the Issuer an Officer's Certificate and an Opinion of Counsel from external counsel stating that such consolidation, conversion, merger or succession and such agreement of assumption complies with this Section 3.11 and that all conditions precedent, if any, provided for in this Agreement relating to such transaction have been complied with, and (iii) the Servicer shall have given to the Issuer prior written notice of such transaction. When any Person that is a Permitted Successor acquires the properties and assets of the Servicer substantially as a whole or otherwise becomes the successor, by merger, conversion, consolidation, sale, transfer, lease or otherwise, to all or substantially all the assets of the Servicer in accordance with the terms of this Section 3.11, then, upon satisfaction of all of the

other conditions of this Section 3.11, the preceding Servicer shall automatically and without further notice be released from all of its obligations hereunder (except for responsibilities for its actions prior to such release).

3.12 The IESO Not to Resign as Servicer

Subject to the provisions of Section 3.11, the IESO shall not resign from the obligations and duties imposed on it as Servicer under this Agreement except upon a determination that the performance of its duties under this Agreement shall no longer be permissible under applicable Requirements of Law. Notice of any such determination permitting the resignation of the IESO as Servicer shall be communicated to the Issuer and each Rating Agency at the earliest practicable time (and, if such communication is not in writing, shall be confirmed in writing at the earliest practicable time), and any such determination shall be evidenced by an Opinion of Counsel to such effect delivered to the Issuer and each Rating Agency concurrently with or promptly after such notice. No such resignation shall become effective until a Successor Servicer that is a Permitted Successor has assumed the servicing obligations and duties hereunder of the Servicer in accordance with Section 7.2.

3.13 IESO Regulatory Obligation to Pay Carrying Costs

(a) The IESO acknowledges that it has an obligation to pay monthly Carrying Costs pursuant to the Regulations for the prescribed period set out in the Regulations (the "**Prescribed Period**") and agrees to comply with its obligations under the Regulations to pay and remit the Carrying Costs to the Issuer on a monthly basis.

(b) On or before the 4th Business Day of each calendar month during the Prescribed Period, the Issuer shall prepare and deliver to the IESO a written statement substantially in the form of Exhibit C (a "**Monthly Carrying Costs Statement**") certifying the amount of the Carrying Costs incurred in the preceding calendar month ("**Monthly Carrying Costs**"). If requested by the IESO, the Issuer shall, in lieu of providing the Monthly Carrying Costs Statement, enter the amount of the Monthly Carrying Costs in the IESO operated portal, or such other similar facility operated by the IESO, and such entry shall be deemed to be a certification of the accuracy of the amount entered.

(c) On or before the [14th] Business Day following receipt by the IESO of the Monthly Carrying Costs Statement, the IESO shall, as required under the Regulations, deliver or cause to be delivered to the Issuer, by wire transfer or electronic funds transfer in immediately available funds, an amount in Canadian dollars equal to the Monthly Carrying Costs certified by the Issuer in the applicable Monthly Carrying Costs Statement.

3.14 IESO Security for CEA Remittances

If required by the Issuer, the IESO shall provide to the Issuer, on or prior to the first day of the first Billing Period when amounts are invoiced to Specified Consumers in respect of Clean Energy Adjustments, a letter of credit in an amount equal to $■, or such other form of security as may be acceptable to the Issuer, as security for any failure of Electricity Vendors

which are either not rated or are rated less than investment grade to remit their Electricity Vendor CEA Collections.

ARTICLE 4
REPRESENTATIONS AND WARRANTIES OF THE IESO

4.1 Representations and Warranties

Subject to Section 3.6, the IESO makes the following representations and warranties as of the date hereof and as of each applicable Closing Date, and the IESO acknowledges that the Issuer will rely thereon in paying the Purchase Price related to Transfers of Specified Portions of the Regulatory Asset, and the Issuer has relied thereon in entering into this Agreement relating to the servicing of the corresponding Investment Interests.

(a) Organization and Good Standing. The IESO is a statutory corporation amalgamated under the laws of the Province of Ontario, with requisite corporate power and authority to own its properties, to conduct its business as such properties are currently owned and such business is presently conducted by it.

(b) Due Qualification. The IESO has obtained all necessary licences and approvals, in all jurisdictions in which the ownership or lease of property or the conduct of its business (including acting as Servicer under this Agreement) shall require such licences or approvals, except where the failure to so qualify or obtain such licences and approvals would not be reasonably likely to have a material adverse effect on the IESO's business, operations, assets, revenues or properties, the Regulatory Asset or the servicing of related Investment Interests.

(c) Power and Authority. The IESO has the requisite corporate power and authority to execute and deliver this Agreement and to carry out its terms. The IESO has full corporate power and authority to hold the Regulatory Asset and to Transfer Specified Portions of the Regulatory Asset to the Issuer and the IESO has duly authorized such Transfer to the Issuer by all necessary corporate action. The execution, delivery and performance of all obligations under this Agreement have been duly authorized by all necessary corporate action on the part of the IESO under all applicable laws.

(d) Binding Obligation. This Agreement constitutes a legal, valid and binding obligation of the IESO, enforceable against the IESO in accordance with its terms, subject to bankruptcy, receivership, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally from time to time in effect and to general principles of equity (including concepts of materiality, reasonableness, good faith and fair dealing).

(e) No Violation. The consummation of the transactions contemplated by this Agreement and the fulfillment of the terms hereof by the IESO do not conflict with, result in any breach of any of the terms and provisions of, or constitute (with or without notice or lapse of time, or both) a default under, the IESO's by-laws, or

any indenture, or other material agreement or instrument to which the IESO is a party or by which it is bound, result in the creation or imposition of any Lien upon any of the IESO's properties pursuant to the terms of any such indenture, agreement or other instrument or violate any existing law or any order, rule or regulation applicable to the IESO issued by any Governmental Authority having jurisdiction over the IESO or its properties, except, in each case, where such breach would not reasonably be expected to materially and adversely affect the performance by the IESO of its obligations under this Agreement or the Act or the validity or enforceability of this Agreement.

(f) No Proceedings. To the IESO's knowledge, except as disclosed in writing to the Issuer, there are no Proceedings pending or threatened against the IESO or its properties: (a) asserting the invalidity of this Agreement or the Act, (b) seeking to prevent the consummation of any of the transactions contemplated by this Agreement or the Act, or (c) seeking a determination or ruling that could reasonably be expected to materially and adversely affect the performance by the IESO of its obligations under this Agreement or the Act or the validity or enforceability of this Agreement.

(g) Approvals. No approvals, authorizations, consents, orders or other actions or filings with any Governmental Authority are required for the IESO to execute, deliver and perform its obligations under this Agreement except those which have previously been obtained or made.

(h) Information. Except in respect of information provided by a third party, all written information, as amended or supplemented from time to time, provided by the Transferor to the Issuer with respect to the Issuer in a Transfer Notice and a Monthly Report is true and correct in all material respects and does not omit any material fact.

(i) The Transfer. After the completion of the Transfer on the applicable Closing Date, the IESO will have no right, title or interest in the Investment Interest related to the Specified Portion of the Regulatory Asset as set forth in the applicable Transfer Notice, and the related Investment Interest shall not form part of the estate of the IESO in the event of an Insolvency Event in respect of the IESO.

(j) No Transfer. Except for Permitted Transfers, the IESO has not sold, transferred, assigned or otherwise conveyed any interest in the Regulatory Asset to any Person.

(k) Liens. IESO has not pledged or otherwise granted a Lien to any Person in the Regulatory Asset and to the IESO's knowledge (after due inquiry), there is no registered financing statement listing the IESO as debtor covering or extending to the Regulatory Asset.

(l) Tax Liens. The IESO (i) is not aware, after due inquiry, of any judgment or tax lien filing against the IESO, and (ii) is not a non-resident of Canada for purposes of the *Income Tax Act* (Canada).

(m) Solvency. On the date hereof and after giving effect to each Transfer, the IESO:

(i) reasonably believes that it will be able to pay its debts as they come due; and

(ii) is able to pay its debts as they mature and does not intend to incur, or believes that it will not incur, indebtedness that it will not be able to repay at its maturity.

(n) No Court Order. There is no order by any court that seeks to enjoin the performance of any obligations of the IESO under the Act or this Agreement.

4.2 Survival

The representations and warranties set forth in Section 4.1 shall survive the execution and delivery of this Agreement, each Transfer of a Specified Portion of a Regulatory Asset to the Issuer and the pledge of the corresponding Investment Asset to the Indenture Trustee pursuant to the Indenture and may not be waived by any party hereto except pursuant to a written agreement executed in accordance with Section 8.1 and as to which the Rating Agency Condition has been satisfied.

ARTICLE 5
COVENANTS OF THE IESO

5.1 Existence

So long as any Issuer Funding Obligations are outstanding, the IESO (a) shall not take any action to impair its corporate existence, and (b) will obtain and preserve its qualification to do business in the Province of Ontario.

5.2 No Transfer or Liens

Except for Transfers under this Agreement to the Issuer or Permitted Transfers, the IESO will not Transfer the Regulatory Asset or any portion thereof to any person. The IESO will not grant, create, incur, assume or suffer to exist any Lien on the Regulatory Asset or any portion thereof. The IESO will not at any time assert any Lien against or with respect to the Issuer Investment Interest, except for any Lien granted by the Issuer to the IESO.

5.3 Notice of Liens

The IESO shall notify the Issuer promptly after becoming aware of any Lien on any portion of the Regulatory Asset.

5.4 Compliance with Law

The IESO will comply with all Requirements of Law applicable to, and binding upon, the IESO or relating to the Regulatory Asset, except to the extent that failure to so comply would not materially adversely affect the Transfer of Specified Portions of the Regulatory Asset or the IESO's performance of its obligations under this Agreement; provided, however, that the foregoing is not intended to, and shall not, impose any liability on the IESO for non-compliance with any Requirement of Law that the IESO is contesting in good faith in accordance with its customary standards and procedures.

5.5 Covenants Related to the Investment Interest

(a) So long as any Issuer Funding Obligations are outstanding, the IESO shall treat the Issuer Investment Interest as the Issuer's property for all purposes.

(b) Except for investments held for employee benefit purposes, the IESO shall not at any time become a holder of Issuer Funding Obligations.

(c) The IESO shall disclose the effects of all transactions between the IESO and the Issuer in accordance with generally accepted accounting principles (for government entities).

(d) (i) In all Proceedings relating directly or indirectly to the Issuer Investment Interest, the IESO shall affirmatively certify and confirm that it has Transferred all of its rights and interests in and to the Specified Portions of the Regulatory Asset giving rise to the Issuer Investment Interest, (ii) the IESO shall not make any statement or reference in respect of the Issuer Investment Interest that is inconsistent with the ownership interest of the Issuer, and (iii) the IESO shall not take any action in respect of the Issuer Investment Interest except solely in its capacity as the Servicer thereof pursuant to this Agreement.

5.6 Non-petition Covenants

Notwithstanding any prior termination of this Agreement or the Indenture, the IESO shall not, prior to the date that is one year plus one day after termination of the Indenture and the payment in full of all Issuer Funding Obligations and any other amounts owed under the Indenture, petition or otherwise invoke the process of any Governmental Authority for the purpose of commencing or sustaining a Proceeding against the Issuer under any Canadian bankruptcy, insolvency or similar law, appointing a receiver, liquidator, assignee, trustee, custodian, sequestrator or other similar official or any substantial part of the property of the Issuer.

5.7 Disclosure

The IESO shall provide such non-confidential information regarding IESO, the Regulatory Asset and the services provided by the Servicer hereunder (collectively, the "**IESO Disclosure**") as may be reasonably requested by the Issuer for inclusion in any offering document of the Issuer from time to time, including but not limited to offering memoranda,

prospectuses, registration statements and continuous disclosure documents (the "**Offering Documents**"), provided that the IESO has been given a reasonable opportunity by the Issuer to review any such Offering Documents. The IESO represents that, except in respect information provided by a third party, all IESO Disclosure, as at the respective dates of delivery to the Issuer, is true and correct in all material respects and contains no misrepresentation.

5.8 Further Assurances

Upon the request of the Issuer, the IESO shall execute and deliver such further instruments and do such further acts as may reasonably be necessary to carry out the provisions and purposes of this Agreement.

5.9 Access to Certain Records and Information

The IESO shall provide to the Issuer access to all records relating to the IESO Deferral, the Fair Hydro Variance Account, the IESO Segregated Account and Servicer CEA Receipts, as is reasonably required for the Issuer to confirm compliance by the IESO with its obligations under this Agreement. Access shall be afforded without charge, but only upon reasonable request and during normal business hours at the offices of the IESO. Nothing in this Section 5.9 shall affect the obligation of the IESO to comply with any Requirement of Law prohibiting disclosure of information, and the failure of the IESO to provide access to such information as a result of such obligation shall not constitute a breach of this Section 5.9.

5.10 Maintenance of Operations

Subject to Section 3.11, the IESO agrees to continue, unless prevented by circumstances beyond its control, to operate as the electricity system operator in the Province of Ontario so long as it is acting as the Servicer under this Agreement.

ARTICLE 6
IESO INDEMNITIES

6.1 Liability of the IESO; Indemnities

(a) The IESO shall indemnify the Issuer and each of its trustees, officers, directors and employees (each, an "**Indemnified Party**"), for, and defend and hold harmless each such Person from and against, any and all liabilities, obligations, losses, damages, payments and claims, and reasonable costs or expenses, of any kind whatsoever (collectively, "**Indemnified Losses**") imposed on, incurred by or asserted against such Person, as a result of (i) the failure of the IESO to perform its covenants and other obligations under this Agreement or any other Program Agreement to which the IESO is a party; or (ii) the breach by the IESO of any of its representations or warranties under this Agreement or any other Program Agreement to which the IESO is a party and, except to the extent of Indemnified Losses resulting from the willful misconduct, bad faith or gross negligence of such Person seeking indemnification hereunder; provided that, in each case, the IESO shall not be required to indemnify an Indemnified Party for any amount

paid or payable by such Indemnified Party in the settlement of any Proceeding or investigation without the written consent of the IESO, which consent shall not be unreasonably withheld. Promptly after receipt by an Indemnified Party of notice of the commencement of any Proceeding or investigation, such Indemnified Party shall, if a claim in respect thereof is to be made against the IESO under this Section 6.1(a), notify the IESO in writing of the commencement thereof. Failure by an Indemnified Party to so notify the IESO shall relieve the IESO from the obligation to indemnify and hold harmless such Indemnified Party under this Section 6.1(a) only to the extent that the IESO suffers actual prejudice as a result of such failure. With respect to any Proceeding or investigation brought by a third party for which indemnification may be sought under this Section 6.1(a), the IESO shall be entitled to conduct and control, at its expense and with counsel of its choosing that is reasonably satisfactory to such Indemnified Party, the defence of any such Proceeding or investigation (in which case the IESO shall not thereafter be responsible for the fees and expenses of any separate counsel retained by the Indemnified Party except as set forth below); provided, that the Indemnified Party shall have the right to participate in such Proceeding or investigation through counsel chosen by it and at its own expense. Notwithstanding the IESO's election to assume the defence of any Proceeding or investigation, the Indemnified Party shall have the right to employ separate counsel, and the IESO shall bear the reasonable fees, costs and expenses of such separate counsel, if (i) the defendants in any such action include both the Indemnified Party and the IESO and the Indemnified Party shall have reasonably concluded that there may be legal defences available to it that are different from or additional to those available to the IESO, (ii) the IESO shall not have employed counsel reasonably satisfactory to the Indemnified Party to represent the Indemnified Party within a reasonable time after notice of the institution of such action, or (iii) the IESO authorizes the Indemnified Party to employ separate counsel at the expense of the IESO. Notwithstanding the foregoing, the IESO shall not be obligated to pay for the fees, costs and expenses of more than one separate counsel for the Indemnified Parties other than one local counsel, if appropriate. The IESO will not, without the prior written consent of the Indemnified Party, settle or compromise or consent to the entry of any judgment with respect to any pending or threatened claim or Proceeding in respect of which indemnification may be sought under this Section 6.1(a) (whether or not the Indemnified Party is an actual or potential party to such claim or action) unless such settlement, compromise or consent includes an unconditional release of the Indemnified Party from all liability arising out of such claim or Proceeding.

(b) For purposes of Section 6.1(a), in the event of the termination of the rights and obligations of the IESO (or any successor thereto pursuant to Section 3.11) as Servicer pursuant to Section 7.1, or a resignation by such Servicer pursuant to Section 3.10 of this Agreement, the IESO shall be deemed to be the Servicer pending appointment of a Successor Servicer pursuant to Section 7.2.

(c) Indemnification under Section 6.1(a) shall include reasonable out-of-pocket fees and expenses of investigation and litigation (including reasonable legal fees and expenses), except as otherwise expressly provided in this Agreement.

(d) Indemnification under this Section 6.1 shall survive any repeal of, modification of, or supplement to, or judicial invalidation of, the Act and shall survive the termination of this Agreement and will rank *pari passu* with other general, unsecured obligations of the IESO.

(e) The IESO shall not be required to indemnify any party under this Section 6.1 for any losses resulting from changes in law after the date hereof, whether such changes in law are effected by means of any legislative enactment or any final and non-appealable judicial decision.

ARTICLE 7
SERVICER DEFAULT

7.1 Servicer Default

If any one or more of the following events (each, a "**Servicer Default**") shall occur and be continuing:

(a) any failure by the Servicer to remit to the Collection Account any required remittance that shall continue unremedied for a period of **[two/three]** Business Days after written notice of such failure is received by the Servicer from the Issuer or after discovery of such failure by a Responsible Officer of the Servicer;

(b) any failure on the part of the Servicer or, so long as the Servicer is the IESO, any failure on the part of the IESO, as the case may be, duly to observe or to perform in any respect any covenants or agreements of the Servicer or the IESO, as the case may be, set forth in this Agreement or in any other Program Agreement to which it is a party (other than as provided in Section 7.1(a)), which failure shall (i) materially and adversely affect the rights of the Specified Creditors and (ii) continue unremedied for a period of 30 days after the date on which (A) written notice of such failure, requiring the same to be remedied, shall have been given to the Servicer or the IESO, as the case may be, by the Issuer or (B) such failure is discovered by a Responsible Officer of the Servicer;

(c) any representation or warranty made by the Servicer in this Agreement, any other Program Agreement to which it is a party, any Transfer Notice or any Monthly Report shall prove to have been incorrect when made, which has a material adverse effect on the Issuer and which remains unremedied for a period of 30 days after the date on which (i) written notice thereof, requiring the same to be remedied, shall have been delivered to the Servicer by the Issuer or (ii) such failure is discovered by a Responsible Officer of the Servicer;

(d) an Insolvency Event occurs with respect to the Servicer or the IESO; or

(e) any additional "Servicer Default" as specified in any Co-Owner Agreement occurs;

then, and in each and every case, the Issuer may, subject to the terms of any Co-Owner Agreement, by notice then given in writing to the Servicer (a "**Termination Notice**"), terminate all the rights and obligations (other than the obligations set forth in Section 6.1 and the obligation under Section 7.2 to continue performing its functions as Servicer until a Successor Servicer is appointed) of the Servicer under this Agreement and under the Co-Owner Agreement. In addition, upon a Servicer Default described in Section 7.1(a), Issuer shall be entitled to apply to a court of appropriate jurisdiction for an order for sequestration and payment of revenues arising with respect to the Issuer. On or after the receipt by the Servicer of a Termination Notice, all authority and power of the Servicer under this Agreement, whether with respect to the Investment Interest, the Clean Energy Adjustments or otherwise, shall, without further action, pass to and be vested in such Successor Servicer as may be appointed under Section 7.2; and, without limitation, the Issuer is hereby authorized and empowered to execute and deliver, on behalf of the predecessor Servicer, as attorney-in-fact or otherwise, any and all documents and other instruments, and to do or accomplish all other acts or things necessary or appropriate to effect the purposes of such Termination Notice, whether to complete the transfer of all documents and records related to the Regulatory Asset, the Fair Hydro Variance Account and related documents or records, or otherwise (the "**Records**"). The predecessor Servicer shall cooperate with the Successor Servicer and the Issuer in effecting the termination of the responsibilities and rights of the predecessor Servicer under this Agreement, including the transfer to the Successor Servicer for administration by it of all Records and all cash amounts that shall at the time be held by the predecessor Servicer for remittance, or shall thereafter be received by it with respect to the Investment Interest or the Clean Energy Adjustment. As soon as practicable after receipt by the Servicer of such Termination Notice, the Servicer shall deliver the Records to the Successor Servicer. If a Successor Servicer has been appointed as a result of a Servicer Default, all reasonable costs and expenses (including reasonable legal fees and expenses) incurred in connection with transferring the Records to the Successor Servicer and amending this Agreement and any Co-Owner Agreement to reflect such succession as Servicer pursuant to this Section 7.1 shall be paid by the predecessor Servicer upon presentation of reasonable documentation of such costs and expenses. Termination of the IESO as Servicer shall not terminate the IESO's rights or obligations under this Agreement (except rights thereunder deriving from its rights as the Servicer hereunder).

7.2 Appointment of Successor Servicer

(a) Upon the Servicer's receipt of a Termination Notice pursuant to Section 7.1 or the Servicer's resignation or removal in accordance with the terms of this Agreement, the predecessor Servicer shall continue to perform its functions as Servicer under this Agreement, until a Successor Servicer shall have assumed in writing the obligations of the Servicer hereunder as described below. In the event of the Servicer's removal or resignation hereunder, the Issuer may, but subject to the provisions of the applicable Co-Owner Agreement, appoint a Successor Servicer and the Successor Servicer shall accept its appointment by a written assumption in form reasonably acceptable to the Issuer. If, within 30 days after the delivery of the Termination Notice, a Successor Servicer shall not have been appointed, the

Issuer may petition a court of competent jurisdiction to appoint a Successor Servicer under this Agreement. A Person shall qualify as a Successor Servicer only if (i) such Person is permitted under the Act to perform the duties of the Servicer, (ii) the Rating Agency Condition shall have been satisfied with respect to such appointment, (iii) such Person enters into a master transfer and servicing agreement with the Issuer having substantially the same provisions as this Agreement and (iv) such Person agrees to perform the obligations of the Servicer under any Co-Owner Agreement. In no event shall the Issuer be liable for its appointment of a Successor Servicer..

(b) Upon appointment, the Successor Servicer shall be the successor in all respects to the predecessor Servicer and shall be subject to all the responsibilities, duties and liabilities arising thereafter placed on the predecessor Servicer and shall be entitled to all the rights granted to the predecessor Servicer by the terms and provisions of this Agreement.

7.3 Waiver of Past Defaults

The Issuer may waive in writing any default by the Servicer in the performance of its obligations hereunder and its consequences. Upon any such waiver of a past default, such default shall cease to exist, and any Servicer Default arising therefrom shall be deemed to have been remedied for every purpose of this Agreement. No such waiver shall extend to any subsequent or other default or impair any right consequent thereto.

7.4 Notice of Servicer Default

The Servicer shall deliver to the Issuer, promptly after having obtained knowledge thereof, but in no event later than five Business Days thereafter, written notice of any event that, with the giving of notice or lapse of time, or both, would become a Servicer Default under Section 7.1.

7.5 Cooperation with Successor Servicer

The Servicer covenants and agrees with the Issuer that it will, on an ongoing basis, cooperate with the Successor Servicer and provide whatever information is, and take whatever actions are, reasonably necessary to assist the Successor Servicer in performing its obligations hereunder.

ARTICLE 8
MISCELLANEOUS

8.1 Amendment

This Agreement may be amended in writing by the IESO and the Issuer, and with satisfaction of the Rating Agency Condition, such satisfaction to be confirmed by the Issuer at the time of such amendment. Promptly after the execution of any such amendment, the Issuer shall furnish copies of such amendment to each of the Rating Agencies.

8.2 Withholding Rights

The parties shall be entitled to deduct and withhold from amounts payable under this Agreement such amounts as each is required to deduct and withhold with respect to such payment under the *Income Tax Act* (Canada) or any provision of any applicable federal, provincial, territorial, state, local or foreign tax law. To the extent that amounts are so withheld, such withheld amounts shall be treated for all purposes as having been paid to the recipient of the payment in respect of which such deduction and withholding was made, provided that such withheld amounts are actually remitted in accordance with applicable law to the appropriate taxing authority.

8.3 No Partnership

Each party expressly disclaims any intention to create a partnership, and none of the Issuer or the IESO will be deemed to be carrying on business in partnership by reason of its execution and delivery of this Agreement or the exercise or performance by it of its respective rights and obligations hereunder.

8.4 Notices

Any notice, report or other communication given hereunder shall be in writing and shall be effective (a) upon receipt when sent through the mails, registered or certified mail, return receipt requested, postage prepaid, with such receipt to be effective the date of delivery indicated on the return receipt, (b) upon receipt when sent by an overnight courier, (c) on the date personally delivered to an authorized officer of the party to which sent, or (d) on the date transmitted by electronic transmission with a confirmation of receipt in all cases, addressed as follows:

(a) in the case of the IESO, in its capacity as Transferor or Servicer:

Independent Electricity System Operator
120 Adelaide Street West, Suite 1600
Toronto, Ontario M5H 1T1

Attention: Chief Financial Officer, General Counsel and Associate General Counsel
Email: ■

(b) in the case of the Issuer or the Manager (on behalf of the Issuer):

[Financing Entity]
c/o Ontario Power Generation Inc., as Manager
700 University Avenue
Toronto, Ontario
M5G 1X6

Attention: ■
Email: ■

Each party hereto may, by notice given in accordance herewith to the other party or parties hereto, designate any further or different address to which subsequent notices, reports and other communications shall be sent. Any notice, report or communication required to be given by the IESO hereunder to a Rating Agency shall be given to the address provided by the Issuer from time to time.

8.5 Assignment

Notwithstanding anything to the contrary contained herein, except as provided in the provisions of this Agreement concerning the resignation of the Servicer, this Agreement may not be assigned by the IESO.

8.6 Limitations on Rights of Third Parties

The provisions of this Agreement are solely for the benefit of the IESO and the Issuer, and such Persons shall have the right to enforce the relevant provisions of this Agreement. Nothing in this Agreement, whether express or implied, shall be construed to give to any other Person any legal or equitable right, remedy or claim in the Issuer Investment Interest or under or in respect of this Agreement or any covenants, conditions or provisions contained herein.

8.7 Severability

Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remainder of such provision (if any) or the remaining provisions hereof (unless such construction shall be unreasonable), and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

8.8 Separate Counterparts; Electronic Delivery

This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument. Delivery of an executed signature page to this Agreement by a party by electronic transmission will be as effective as delivery of a manually executed copy of this Agreement by such party.

8.9 Governing Law

This Agreement shall be construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein, and each party to this Agreement attorns to the non-exclusive jurisdiction of the courts of the Province of Ontario.

8.10 Grant of Security Interest to Indenture Trustee

The IESO hereby acknowledges and consents to the grant of a Lien by the Issuer to the Indenture Trustee pursuant to the Indenture for the benefit of the Specified Creditors

against all right, title and interest of the Issuer in, to and under this Agreement, the Investment Interest and the proceeds thereof and the assignment of any or all of the Issuer's rights hereunder to the Indenture Trustee for the benefit of the Specified Creditors.

8.11 Limitation of Liability of the Issuer Trustee

(a) It is expressly understood and agreed by the parties hereto that the Issuer Trustee is acting solely in its capacity as trustee of the Issuer, and not in any other capacity. The Issuer solely shall be responsible for the performance of the Issuer's obligations hereunder and the assets of the Issuer solely shall be subject to levy or execution in satisfaction of such obligations.

(b) The Issuer Trustee will not be subject to any liability whatsoever, in tort, in contract or otherwise, in connection with the Issuer's property or the Issuer's activities, to the Issuer's beneficiaries or to any other Person, for any action taken or permitted by the Issuer Trustee to be taken, or the Issuer Trustee's failure to compel in any way any former or acting Issuer Trustee to redress any breach of trust with respect to the execution of the duties of its office or in respect of the Issuer's property or the Issuer's activities, provided that the foregoing limitation will not apply in respect of action or failure to act arising from or in connection with dishonesty, bad faith, willful misconduct, gross negligence or reckless disregard of a duty by the Issuer Trustee. The Issuer Trustee, in doing anything or permitting anything to be done in respect of the execution of the duties of its office or in respect of the Issuer's property or the Issuer's activities, is, and will be conclusively deemed to be, acting as trustee of the Issuer and not in any other capacity. Except as to the extent provided in this Section 8.11, the Issuer Trustee will not be subject to any liability for any debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses against or with respect to the Issuer, arising out of anything done or permitted by it to be done or its failure to take any action in respect of the execution of the duties of its office or for or in respect of the Issuer's property or the Issuer's activities and resort will be had solely to the Issuer's property for the payment or performance thereof. No property or assets of the Issuer Trustee owned in its personal capacity will be subject to levy, execution or other enforcement procedure with regard to any obligation under this Agreement.

(c) The holders of the units of the Issuer will not be subject to any liability whatsoever, in tort, in contract or otherwise, in connection with the Issuer's property or the Issuer's activities, to the Issuer's beneficiaries or to any other Person, for any action taken or permitted by it to be taken. The holders of the units of the Issuer will not be subject to any liability for any debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses against or with respect to the Issuer, arising out of anything done or permitted by it to be done or its failure to take any action in respect of the execution of the duties of its office or for or in respect of the Issuer's property or the Issuer's activities and resort will be had solely to the Issuer's property for the payment or performance thereof. No property or assets of the holders of the units of the Issuer owned in

their personal capacity will be subject to levy, execution or other enforcement procedure with regard to any obligation under this Agreement.

8.12 Waivers

Any term or provision of this Agreement may be waived, or the time for its performance may be extended, by the party or parties entitled to the benefit thereof. Any such waiver shall be validly and sufficiently authorized for the purposes of this Agreement if, as to any party, it is authorized in writing by an authorized representative of such party, with prompt written notice of any such waiver to be provided to the Rating Agencies. The failure of any party hereto to enforce at any time any provision of this Agreement shall not be construed to be a waiver of such provision, nor in any way to affect the validity of this Agreement or any part hereof or the right of any party thereafter to enforce each and every such provision. No waiver of any breach of this Agreement shall be held to constitute a waiver of any other or subsequent breach.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective officers as of the day and year first above written.

[FINANCING ENTITY], by its Manager,
ONTARIO POWER GENERATION INC.

By: _____
Name:
Title:

By: _____
Name:
Title:

INDEPENDENT ELECTRICITY SYSTEM OPERATOR
as Transferor and Servicer

By: _____
Name:
Title:

By: _____
Name:
Title:

EXHIBIT A

FORM OF TRANSFER NOTICE

See attached

TRANSFER NOTICE

TO: **[FINANCING ENTITY]**
c/o Ontario Power Generation Inc., as Manager
700 University Avenue
Toronto, Ontario
M5G 1X6

Attention: ■
Email: ■

This Transfer Notice is delivered to you pursuant to Section 2.1 of a master transfer and servicing agreement made as of ■, 2017 (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "**Master Transfer and Servicing Agreement**") between **[FINANCING ENTITY]**, a trust formed under the laws of the Province of Ontario (the "**Issuer**"), the **INDEPENDENT ELECTRICITY SYSTEM OPERATOR** ("**Transferor**" in its capacity as transferor, "**Servicer**", in its capacity as servicer, and "**IESO**" in its capacity as both Transferor and Servicer), a statutory corporation without share capital amalgamated under the laws of the Province of Ontario. All capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Master Transfer and Servicing Agreement.

The Transferor hereby gives notice to the Issuer of its offer to transfer to the Issuer on the Closing Date set out below, the Specified Portion of the Regulatory Asset referred to below, all in accordance with the terms and conditions of the Master Transfer and Servicing Agreement. In consideration for (i) the Transferor's Transfer to the Issuer of the Specified Portion of the Regulatory Asset referred to below, the Issuer shall deliver or cause to be delivered to the Transferor on the Closing Date set out below, by wire transfer in immediately available funds, an amount in Canadian dollars equal to the Purchase Price set out below.

Upon receipt by the Transferor of the Purchase Price on the Closing Date the Transferor shall reduce the balance of the Fair Hydro Variance Account by an amount equal to the Purchase Price, and the Regulatory Asset shall be adjusted accordingly.

Specified portion of Regulatory Asset: $■

Purchase Price: $■

Closing Date: ■

The Transferor hereby represents, warrants and confirms that:

(i) each of the representations and warranties on the part of the Transferor contained in the Master Transfer and Servicing Agreement are true and correct in all respects on the date hereof as if made on the date hereof;

(ii) the Transferor is not in breach of any of its covenants in the Master Transfer and Servicing Agreement; and

(iii) as of the date hereof, each condition precedent that must be satisfied by the Transferor under Section 2.2 of the Master Transfer and Servicing Agreement is capable of being satisfied prior to Closing Date.

The closing shall take place at ■ (Toronto time) on the Closing Date referred to above at the offices of ■, except as may be otherwise mutually agreed. The Purchase Price shall be paid on that date by bank wire transfer to [insert IESO bank account details].

DATED this ■ day of ■, 20■.

[FINANCING ENTITY], by its Manager,
ONTARIO POWER GENERATION INC.

By: _____
Name:
Title:

By: _____
Name:
Title:

The undersigned hereby accepts the foregoing offer.

DATED this ■ day of ■, 20■.

INDEPENDENT ELECTRICITY SYSTEM OPERATOR
as Transferor

By: _____
Name:
Title:

By: _____
Name:
Title:

EXHIBIT B

FORM OF MONTHLY REPORT

[NTD: form to be settled]

EXHIBIT C

FORM OF MONTHLY CARRYING COSTS STATEMENT

See Attached

MONTHLY CARRYING COSTS STATEMENT

TO: INDEPENDENT ELECTRICITY SYSTEM OPERATOR
[Address]

Attention: ■
Email: ■

Reference is made to the master transfer and servicing agreement made as of ■, 2017 (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "**Master Transfer and Servicing Agreement**") between **[FINANCING ENTITY]**, a trust formed under the laws of the Province of Ontario (the "**Issuer**") and the **INDEPENDENT ELECTRICITY SYSTEM OPERATOR** ("**Transferor**" in its capacity as transferor, "**Servicer**", in its capacity as servicer, and "**IESO**" in its capacity as both Transferor and Servicer), a statutory corporation without share capital amalgamated under the laws of the Province of Ontario. Capitalized terms used but not defined in this Monthly Carrying Costs Statement have their respective meanings as set forth in the Master Transfer and Servicing Agreement.

Pursuant to Section 3.13 of the Master Transfer and Servicing Agreement, the undersigned hereby certifies that the Monthly Carrying Costs in respect of the calendar month of ■, ■ are as follows:

In accordance with Section 3.13(c) of the Master Transfer and Servicing Agreement, the undersigned hereby directs you to deliver to the Issuer, by wire transfer to the account set forth below, an amount in Canadian dollars equal to the Monthly Carrying Costs set forth above on or before ■, 20■, and this shall be your good and valid authority for so doing.

[NTD: Wire transfer instructions to be provided by OPG.]

DATED this ■ day of ■, 20■.

[FINANCING ENTITY], by its Manager,
ONTARIO POWER GENERATION INC.

By: _____
Name:
Title:

By: _____
Name:
Title:

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MASTER TRANSFER AND SERVICING AGREEMENT

between

[FINANCING ENTITY]
as Issuer

- and -

INDEPENDENT ELECTRICITY SYSTEM OPERATOR
as Transferor and Servicer

Dated as of ■, 2017

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MASTER TRANSFER AND SERVICING AGREEMENT

THIS AGREEMENT made as of ■, 2017.

BETWEEN:

[FINANCING ENTITY], a trust formed under the laws of the Province of Ontario

(the "**Issuer**")

- and -

INDEPENDENT ELECTRICITY SYSTEM OPERATOR, a statutory corporation without share capital amalgamated under the laws of the Province of Ontario

(the "**Transferor**" in its capacity as transferor, the "**Servicer**", in its capacity as servicer, and the "**IESO**" in its capacity as both Transferor and Servicer)

WHEREAS the Government of Ontario has enacted the *Ontario Fair Hydro Act, 2017* (the "**Act**") for the purpose of, among other things, ensuring that clean energy costs and clean energy benefits (each as defined in the Act) are fairly allocated among present and future Specified Consumers;

AND WHEREAS, under the Act, the IESO is required to establish and maintain the Fair Hydro Variance Account, and has the right under the Act and the Regulations to record certain amounts in the Fair Hydro Variance Account and recover the balance from time to time of the Fair Hydro Variance Account from Specified Consumers (such right, the "**Regulatory Asset**");

AND WHEREAS the IESO may from time to time, in accordance with the Act, Transfer Specified Portions of the Regulatory Asset to the Issuer pursuant to Section 26(1) of the Act;

AND WHEREAS the Issuer may finance the acquisition from the IESO, from time to time, of an Investment Interest through the incurrence of Funding Obligations under the Indenture;

AND WHEREAS the Issuer will grant a security interest over all of the Issuer Investment Interest to and in favour of the Indenture Trustee on behalf of all Specified Creditors;

AND WHEREAS in connection with its ownership of the Issuer Investment Interest and in order to collect the associated Clean Energy Adjustments in accordance with the Act, the Issuer desires to engage the Servicer to carry out the services described herein and the Servicer agrees to be so engaged;

NOW THEREFORE in consideration of the foregoing and the mutual covenants and agreements contained herein (the receipt and adequacy of which are hereby acknowledged), the parties hereto agree as follows:

ARTICLE 1
INTERPRETATION

1.1 Definitions

In this Agreement, the following terms have the following meanings:

"**Act**" has the meaning ascribed thereto in the recitals;

"**Agreement**" means this master transfer and servicing agreement, as amended, supplemented, modified, restated or replaced from time to time, and the expressions "herein", "hereof", "hereto", "hereunder" and similar expressions refer to this Agreement and not to any Article, Section, paragraph, subparagraph or clause hereof;

"**Billing Period**" means a calendar month in which the Clean Energy Adjustment is billed to Specified Consumers;

"**Board**" means the Ontario Energy Board, a statutory corporation without share capital continued under the *Ontario Energy Board Act, 1998*, S.O., 1998;

"**Business Day**" means any day other than a Saturday, a Sunday or a day on which banking institutions in Toronto, Ontario are authorized or obligated by law, regulation or executive order to be closed;

"**Carrying Costs**" has the meaning ascribed to the term "carrying costs" in the Regulations;

"**CEA Consumer Invoice Amounts**" means amounts invoiced by an Electricity Vendor to Specified Consumers in respect of the Clean Energy Adjustment based on the rates established by the Board;

"**Clean Energy Adjustment**" has the meaning ascribed to the term "clean energy adjustment" in the Act;

"**Closing Date**" means the date on which a Transfer is to be completed as specified in the applicable Transfer Notice;

"**Co-Owner Agreement**" means any agreement between, *inter alia*, the parties hereto and any other owner or owners of an Investment Interest as contemplated by Section 29(5) of the Act in form and substance satisfactory to the parties hereto, acting reasonably;

"**Co-Owner Implementation Date**" means the date, if any, upon which the Issuer Investment Interest ceases to be the only Investment Interest outstanding representing the full Investment Asset;

"**Collection Account**" means an Eligible Deposit Account established by the Issuer for the purpose of receiving the Issuer Share of the Servicer CEA Receipts;

"**Daily Remittance Event**" means the occurrence of either: (i) a Servicer Default or (ii) the IESO (or any successor thereto) ceasing to have the Required Servicer Rating;

"**Declaration of Trust**" means the declaration of trust made as of ■, 2017 under which the Issuer was established, as may be supplemented, amended, replaced or amended and restated from time to time;

"**Electricity Vendor**" has the meaning ascribed to the term "electricity vendor" in the Act;

"**Electricity Vendor CEA Collections**" means payments actually received by Electricity Vendors from Specified Consumers in respect of Clean Energy Adjustments;

"**Electricity Vendor Billing Period Report**" means a report as contemplated by Section 17(2) of the Act from each Electricity Vendor in respect of each Billing Period where Clean Energy Adjustments are billed to Specified Consumers containing:

(a) its total CEA Consumer Invoice Amounts in such Billing Period;

(b) its total Electricity Vendor CEA Collections during such Billing Period; and

(c) such other information as may be prescribed in the Regulations or any other Requirement of Law, or which otherwise may be agreed to **by the applicable Electricity Vendor**;

"**Eligible Deposit Account**" means an account in Canada with an Eligible Institution;

"**Eligible Institution**" means:

(a) at any time before the Co-Owner Implementation Date, an "Eligible Institution" as defined in the Indenture; and

(b) at any time on or after the Co-Owner Implementation Date, an "Eligible Institution" as defined in the applicable Co-Owner Agreement;

"**Fair Hydro Variance Account**" means the variance account established by the IESO pursuant to Section 24(1) of the Act;

"**Financing Entity**" has the meaning ascribed to the term "financing entity" in the Act;

"**Funding Obligation**" has the meaning ascribed to the term "funding obligation" in the Act;

"**Governmental Authority**" means any nation or government, any federal, state, provincial, local or other political subdivision thereof and any court, administrative agency or other instrumentality or entity exercising executive, legislative, judicial, regulatory or administrative functions of government;

"**IESO**" or "**Independent Electricity System Operator**" means the Independent Electricity System Operator, a statutory corporation without share capital established by the *Electricity Act, 1998*, SO, 1998;

"**IESO Deferral**" has the meaning ascribed to the term "IESO deferral" in the Act;

"**IESO Disclosure**" has the meaning ascribed thereto in Section 5.7;

"**IESO Segregated Account**" has the meaning ascribed thereto in Section 3.3(a);

"**Indemnified Losses**" has the meaning ascribed thereto in Section 6.1(a);

"**Indemnified Party**" has the meaning ascribed thereto in Section 6.1(a);

"**Indenture**" means the master trust indenture dated ■, 2017 between the Indenture Trustee and the Issuer;

"**Indenture Trustee**" means ■, a trust company existing under the laws of Canada and duly authorized to carry on the business of a trust company in all of the provinces and territories of Canada, as indenture trustee for the benefit of Specified Creditors, or any successor thereto, under the Indenture;

"**Insolvency Event**" means, with respect to a specified Person, the specified Person admits the inability of such specified Person to pay its liabilities generally as they become due or makes a general assignment for the benefit of the creditors of such specified Person or otherwise acknowledges the insolvency of such specified Person or any proceeding shall be instituted by or against such specified Person seeking to adjudicate it a bankrupt or insolvent or seeking liquidation, winding up, dissolution, reorganization, arrangement, adjustment, protection, relief or composition of its debts under any law relating to bankruptcy, insolvency, reorganization, moratorium or relief of debtors or seeking the entry of an order for relief by the appointment of a receiver, trustee or other similar official for such specified Person or for any substantial part of its property and if such proceeding has been instituted against such specified Person either such proceeding has not been stayed or dismissed within **[45]** days or any of the actions sought in such proceeding (including the entry of an order for relief or the appointment of a receiver) are granted in whole or in part, or if a receiver is privately appointed in respect of such specified Person or of the property of such specified Person or any substantial part thereof;

"**Investment Asset**" has the meaning ascribed to the term "investment asset" in the Act;

"**Investment Interest**" has the meaning ascribed to the term "investment interest" in the Act;

"**Issuer**" means ■, a trust formed under the laws of the Province of Ontario;

"**Issuer Funding Obligations**" means the Funding Obligations of the Issuer;

"**Issuer Investment Interest**" means, initially, the Investment Interest acquired by the Issuer pursuant to the first Transfer completed under this Agreement and, upon the completion of each Transfer thereafter, the cumulative Investment Interest acquired by the Issuer;

"**Issuer Share**" means:

(a) at any time before the Co-Owner Implementation Date, 100%; and

(b) at any time on or after the Co-Owner Implementation Date, the percentage determined in accordance with the applicable Co-Owner Agreement;

"**Issuer Trustee**" means, at any time, the Person who is, in accordance with the Declaration of Trust, the trustee of the Issuer at such time;

"**Lien**" means a security interest, lien, mortgage, charge, pledge, claim or encumbrance of any kind;

"**Management Agreement**" means the management agreement dated ■, 2017 between the Manager and the Issuer;

"**Manager**" means OPG, in its capacity as manager of the Issuer, and any successor appointed in accordance with the Management Agreement;

"**Minister**" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of the Act under the *Executive Council Act*;

"**Monthly Carrying Costs**" has the meaning ascribed thereto in Section 3.13(b);

"**Monthly Carrying Costs Statement**" has the meaning ascribed thereto in Section 3.13(b);

"**Monthly Report**" has the meaning ascribed thereto in Section 3.4(a);

"**Officer's Certificate**" means a certificate signed by a Responsible Officer of the Issuer under the circumstances described in, and otherwise complying with, the applicable requirements of Section **[10.01]** of the Indenture;

"**OPG**" means Ontario Power Generation Inc., a corporation established under the laws of the Province of Ontario;

"**Opinion of Counsel**" means one or more written opinions of counsel, which counsel shall be reasonably acceptable to the party receiving such opinion of counsel, and shall be in form and substance reasonably acceptable to such party;

"**Permitted Successor**" means any successor to the IESO under the Act, whether pursuant to any bankruptcy, reorganization or other insolvency proceeding or pursuant to any merger, conversion, acquisition, sale or transfer, by operation of law, as a result of any restructuring, or otherwise, but only to the extent such successor is approved by the Minister;

"**Permitted Transfer**" means (i) a Transfer to the Issuer pursuant to this Agreement; and (ii) a Transfer to a person who has entered into a Co-Owner Agreement with, inter alia, the Issuer.

"**Person**" means any individual, corporation, limited liability company, estate, partnership, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization or Governmental Authority;

"Prescribed Period" has the meaning ascribed thereto in Section 3.13(a);

"**Proceeding**" means any suit in equity, action at law or other judicial or administrative proceeding;

"**Program Agreements**" has the meaning ascribed thereto in the Indenture;

"**Purchase Price**" has the meaning ascribed thereto in Section 2.1(c);

"**Rating Agency**" has the meaning ascribed thereto in the Indenture;

"**Rating Agency Condition**" has the meaning ascribed thereto in the Indenture;

"**Records**" has the meaning ascribed thereto in Section 7.1;

"**Regulations**" means Ontario Regulation 206/17: General, together with any other regulations promulgated under the Act;

"**Regulatory Asset**" has the meaning ascribed thereto in the recitals;

"**Remittance Date**" means, in respect of each Billing Period, the **[18th]** Business Day following the last day of each Billing Period;

"**Required Servicer Rating**" means rating of "Baa3" or higher by Moody's Investors Service, Inc. (or any successor thereof) and a rating of "BBB(low)" or higher by DBRS Limited (or any successor thereof);

"**Requirement of Law**" means any foreign, Canadian federal, provincial or local laws, statutes, regulations, rules, codes or ordinances enacted, adopted, issued or promulgated by any Governmental Authority or common law;

"**Responsible Officer**" means, with respect to: (a) the Issuer, any authorized director or officer of the Manager; (b) the Servicer, any authorized director or officer of the IESO; and (c) a Successor Servicer, any authorized director or officer of the Successor Servicer;

"**Servicer**" means the Independent Electricity System Operator, as Servicer under this Agreement, or any Successor Servicer to the extent permitted under this Agreement;

"**Servicer CEA Receipts**" has the meaning ascribed thereto in Section 3.3(e);

"**Servicer Default**" has the meaning ascribed thereto in Section 7.1;

"**Specified Consumer**" has the meaning ascribed to the term "specified consumer" in the Act;

"**Specified Creditors**" has the meaning ascribed thereto in the Indenture;

"**Specified Portion**" means, in respect of the Regulatory Asset and any Transfer, the portion of the Regulatory Asset subject to such Transfer, as set out in the applicable Transfer Notice.

"**Successor Servicer**" has the meaning ascribed thereto in Section **[3.07(e)]** of the Indenture;

"**Supplemental Indenture**" means an indenture supplemental to the Indenture that authorizes the incurrence of Funding Obligations;

"**Termination Event**" has the meaning ascribed thereto in Section 3.9;

"**Termination Notice**" has the meaning ascribed thereto in Section 7.1;

"**Transfer**" has the meaning ascribed to the term "transfer" in Section 1(3) of the Act, and "**Transferred**" has a corresponding meaning;

"**Transfer Notice**" means a Transfer Notice in respect of a Transfer substantially in the form of Exhibit A to this Agreement and delivered pursuant to Section 2.1(c) of this Agreement; and

"**Transferor**" means the Independent Electricity System Operator, as transferor under this Agreement;

1.2 Sections and Headings[1]

The table of contents does not form part of this Agreement. The division of this Agreement into Articles and Sections and the insertion of headings are for convenience of reference only and will not affect the construction or interpretation of this Agreement. Unless something in the subject matter or context is inconsistent therewith, references herein to Articles and Sections are to Articles and Sections of this Agreement.

1.3 Extended Meanings

(a) Words importing the singular number only will include the plural and vice versa and words importing the masculine gender will include the feminine and neuter genders and vice versa. A reference to any agreement, instrument or declaration

[1] ~~Torys to conform boilerplate provisions, as applicable, across all transaction documents.~~

means such agreement, instrument or declaration as the same may be amended, supplemented, modified, restated or replaced from time to time.

(b) The term "**including**" means "including without limitation", and other forms of the verb "**include**" have correlative meanings.

(c) All references to any Person shall include such Person's permitted successors and assigns, and any reference to a Person in a particular capacity excludes such Person in other capacities.

(d) Unless otherwise stated, in the computation of a period of time from a specified date to a later specified date, the word "**from**" means "**from and including**" and each of the words "**to**" and "**until**" means "**to but excluding**".

(e) The words "**hereof**", "**herein**" and "**hereunder**" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement, unless otherwise specified. References to Articles, Sections, Appendices and Exhibits in this Agreement are references to Articles, Sections, Appendices and Exhibits in or to this Agreement unless otherwise specified.

(f) References to any law, rule, regulation or order of a Governmental Authority shall include such law, rule, regulation or order as from time to time in effect, including any amendment, modification, codification, replacement or reenactment thereof or any substitution therefor.

(g) The word "**will**" shall be construed to have the same meaning and effect as the word "**shall**". The word "**or**" is not exclusive.

ARTICLE 2
TRANSFER OF SPECIFIED PORTIONS OF THE REGULATORY ASSET

2.1 Transfer Notices and Agreement to Transfer Specified Portions of the Regulatory Asset

(a) The Transferor shall determine the IESO Deferral as required by Section 23(1) of the Act and the Regulations.

(b) The Transferor shall maintain the Fair Hydro Variance Account as required by Section 24 of the Act and the Regulations.

(c) The Transferor may, no more frequently than monthly and no later than the 8th Business Day of any calendar month, offer to Transfer to the Issuer a Specified Portion of the Regulatory Asset by providing to the Issuer a Transfer Notice executed by the Transferor and setting out (i) the Specified Portion of the Regulatory Asset that the Transferor is offering to Transfer to the Issuer, (ii) the consideration to be paid to the Transferor by the Issuer for the Transfer (the "**Purchase Price**") which shall be equal to the amount of such Specified Portion of the Regulatory Asset, (iii) the Closing Date to effect such transfer which shall be no earlier than the **[5th]** Business Day after the delivery of the Transfer Notice and no later than the last Business Day of the calendar month in which the Transfer Notice was delivered, or such other Business Day as may be agreed by the Transferor and the Issuer, and (iv) such other information as required in the form of Transfer Notice attached as Exhibit A hereto.

(d) On or before the 2nd Business Day following receipt of a Transfer Notice, the Issuer shall have the right, but not the obligation, to accept the Transferor's offer to Transfer the Specified Portion of the Regulatory Asset referred to in the Transfer Notice by executing and returning such Transfer Notice to the Transferor. Upon acceptance by the Issuer of the Transfer Notice, there shall be a binding agreement for IESO to Transfer the Specified Portion of the Regulatory Asset referred to in the Transfer Notice and for the Issuer to pay the Purchase Price, subject to satisfaction of all conditions precedent in Section 2.2.

(e) Provided that all conditions precedent set out in Section 2.2 have been satisfied on or prior to the applicable Closing Date, on the applicable Closing Date, the Issuer shall deliver or cause to be delivered to the Transferor, by bank wire transfer or bank electronic funds transfer, in immediately available funds, an amount in Canadian dollars equal to the Purchase Price set forth in the applicable Transfer Notice. The Transferor agrees that receipt by the Transferor of the payment referred to in this Section 2.1(e) is receipt by the Transferor of a payment referred to in Section 26(3) of the Act.

(f) Upon receipt by the Transferor of the payment referred to in Section 2.1(e), the Transferor shall reduce the balance of the Fair Hydro Variance Account by an amount equal to the Purchase Price received and shall retain no further right, title or interest in the Issuer Investment Interest corresponding to the Specified Portion of the Regulatory Asset Transferred.

(g) The parties state that they intend that this Agreement, together with each Transfer Notice accepted by the Issuer, constitute an agreement, for purposes of Section 27(2) of the Act for the Transferor to dispose, upon receipt by the Transferor of the payment referred to in Section 2.1(e), of the Specified Portion of the Regulatory Asset referred to in the Transfer Notice and to assign, convey or sell a corresponding Investment Interest to the Issuer.

2.2 Conditions Precedent to each Transfer of a Specified Portion of the Regulatory Asset

(a) The obligation of the Issuer to pay the Purchase Price related to the initial Transfer of a Specified Portion of the Regulatory Asset shall be subject to the satisfaction by the Transferor, or waiver by the Issuer, of the following conditions:

(i) the Issuer shall have received from the Transferor the following documents, in form and substance satisfactory to the Issuer:

(A) a certificate of an officer of the IESO, dated the initial Closing Date certifying (1) that attached thereto is a true and complete copy of the by-laws of the IESO, each as in effect on the date of such certificate, (2) that attached thereto is a true and complete copy of a resolution adopted by the IESO's board of directors authorizing the execution, delivery and performance of this Agreement and the performance by the IESO of its obligations hereunder, and that such resolution has not been modified, rescinded or amended and is in full force and effect, and (3) as to the incumbency and true specimen signature of each of the IESO officers or delegates executing this Agreement and authorized to give notices and instructions hereunder (which can be changed by notice hereunder); and

(B) the Transferor shall have delivered to the Rating Agencies and the Issuer any Opinions of Counsel reasonably required by them. **[NTD: Scope of opinions required to be confirmed by the Dealers and their counsel]**

(b) The obligation of the Issuer to pay the Purchase Price related to each Transfer of a Specified Portion of the Regulatory Asset (including the initial Transfer) shall be subject to the satisfaction or waiver by the Issuer of each of the following conditions:

(i) as of the applicable Closing Date, all Program Agreements shall have been entered into on terms and conditions satisfactory to the Issuer and shall be in full force and effect as of such Closing Date;

(ii) as of the applicable Closing Date, no Insolvency Event in respect of the Transferor shall have occurred and the Transferor is not aware of any pending Insolvency Event with respect to itself;

(iii) as of the applicable Closing Date, (A) the representations and warranties of the IESO in this Agreement must be true and correct with the same

force and effect as if made on that date (except to the extent they relate to an earlier date), (B) no breach of any covenant or agreement of the IESO contained in this Agreement shall have occurred be continuing, and (C) no Servicer Default shall have occurred and be continuing;

(iv) the Transferor shall have delivered to the Issuer an Officer's Certificate confirming the satisfaction of each condition precedent specified in Sections 2.2(b)(ii) and (iii);

(v) as of the applicable Closing Date, (A) the Issuer shall have sufficient funds available to pay the Purchase Price as set forth in the applicable Transfer Notice, (B) all conditions to any incurrence of Funding Obligations intended to provide such funds set forth in the Indenture (and any applicable Supplemental Indenture) or other instrument shall have been satisfied or waived, (C) the Rating Agency Condition in respect of the issuance of the Funding Obligations funding the payment of the Purchase Price shall have been satisfied, and (D) the Funding Obligation required to fund the payment of the Purchase Price shall have been issued at the same time as, or prior to, the Transfer; and

(vi) **immediately** after giving effect to the Transfer, each of the Fair Hydro Variance Account and the Regulatory Asset will have a balance or amount, as applicable, equal to or greater than zero.

ARTICLE 3
ROLE OF THE SERVICER

3.1 Designation of Servicer

Each Transfer of a Specified Portion of the Regulatory Asset shall be made on the basis that the related Issuer Investment Interest shall be serviced by the Servicer in accordance with this Article 3, and the IESO or any Permitted Successor of the IESO that is the Servicer shall not be entitled, except as otherwise provided in this Agreement or agreed by the Parties, to receive any further compensation from the Issuer for its services in connection therewith. The Servicer agrees to perform the duties and obligations of the Servicer pursuant to the terms hereof at no additional cost to the Issuer.

3.2 Forecasts and Other Information

The IESO shall:

(a) provide to the Board the forecast information contemplated by Section 8(3) of the Regulations;

(b) provide to the Issuer the forecast information provided to the Board pursuant to Section 3.2 (a); and

(c) provide to the Issuer such other information and reports as the Issuer may reasonably request in connection with the calculation of the Clean Energy Adjustments, **that is in the possession or control of the Transferor or** which is ~~reasonably~~ available **on request** to the Transferor, can lawfully be provided and can be provided without incurring material incremental expense.

3.3 Clean Energy Adjustments and Electricity Vendors

The Servicer shall:

(a) prior to receiving Servicer CEA Receipts, establish an Eligible Deposit Account (the "**IESO Segregated Account**") bearing a designation indicating that the funds deposited therein are held in trust for the benefit of the Issuer and, after the Co-Owner Implementation Date, for the benefit of any other owner or owners of an Investment Interest. If at any time the IESO Segregated Account ceases to be an Eligible Deposit Account, the Servicer shall within 30 days establish a new IESO Segregated Account as an Eligible Deposit Account and shall transfer any cash and/or any investments held in the former account to such new account and make all future deposits to such new account;

(b) prior to the first Billing Period when amounts are invoiced by Electricity Vendors to Specified Consumers in respect of Clean Energy Adjustments:

(i) provide guidance to the Electricity Vendors with respect to their obligations under the Act to establish a segregated account into which Electricity Vendor CEA Collections are to be deposited as required by Section 10(2) of the Regulations;

(ii) provide a suggested form of Electricity Vendor Billing Period Report to be used by such Electricity Vendors;

(iii) provide guidance with respect to the establishment by the Electricity Vendors of procedures for the invoicing by such Electricity Vendor of amounts in respect of the Clean Energy Adjustment, the identification, deposit and segregation of Electricity Vendor CEA Collections, the remittance of Electricity Vendor CEA Collections to the Servicer and reporting to the Servicer; and

(iv) respond to inquiries from Electricity Vendors with respect to such forms and guidance.

(c) request certification from each Electricity Vendor that the segregated account required by Section 10(2) of the Regulations has been established by that Electricity Vendor;

(d) as agent of the Issuer and, after the Co-Owner Implementation Date, as agent of any other owner or owners of an Investment Interest, receive Electricity Vendor CEA Collections from Electricity Vendors;

(e) as agent of the Issuer and, after the Co-Owner Implementation Date, as agent of any other owner or owners of an Investment Interest, receive any amounts in respect of Clean Energy Adjustments payable directly by Specified Consumers to the Servicer (such amounts, together with the amounts referred to in Section 3.3(d), the "**Servicer CEA Receipts**");

(f) deposit the Servicer CEA Receipts into the IESO Segregated Account promptly following receipt by the Servicer and, in any event, within two Business Days of receipt by the Servicer and the Issuer Share of such Servicer CEA Receipts shall remain in the IESO Segregated Account until remitted in accordance with Section 3.5;

(g) respond to inquiries by Electricity Vendors with respect to the Clean Energy Adjustment and amounts payable in respect thereof;

(h) request from each Electricity Vendor an Electricity Vendor Billing Period Report in respect of each Billing Period during which Clean Energy Adjustments are billed to Specified Consumers; such report to be requested to be delivered within twelve Business Days of the end of each Billing Period;

(i) review each Electricity Vendor Billing Period Report received by the Servicer for material manifest discrepancies, including any discrepancy between the Electricity Vendor CEA Collections reported in respect of the Billing Period and the amount received pursuant to Section 3.3(d)**, and such other discrepancies as may be agreed by the parties hereto, acting reasonably**;

(j) contact each Electricity Vendor:

(i) that does not deliver an Electricity Vendor Billing Period Report in respect of a Billing Period where Clean Energy Adjustments were payable by Specified Consumers;

(ii) from which no Electricity Vendor CEA Collections are received in respect of the Billing Period,

(iii) for whom Electricity Vendor CEA Collections do not match the amount thereof reported in its Electricity Vendor Billing Period Report, or

(iv) that has not certified that it has established the segregated account required by Section 10(2) of the Regulations,

in each case, to remind them of their obligations under the Act and the Regulations and, in the case of Electricity Vendor CEA Collections that do not match the amount thereof reported in the Electricity Vendor Billing Period Report, to request an explanation of the discrepancy;

(k) hold the Issuer Share of Servicer CEA Receipts and the Issuer Share of any other proceeds in respect of the Clean Energy Adjustment received by it in trust for the

benefit of the Issuer and remit such amounts in accordance with Section 3.5 without any surcharge, fee, offset, charge or other deduction.

3.4 Reporting

The Servicer shall:

(a) on or before the 20th Business Day following the end of each Billing Period, prepare and deliver to the Issuer a written report substantially in the form of Exhibit B (a "**Monthly Report**");

(b) Report monthly to the Issuer any failure on the part of Electricity Vendors to deliver, remit or certify referred to in (j)(i), (ii) or (iv) which has not been remedied as a result of the contact made by the IESO pursuant to Section 3.3(j) or any discrepancy referred to in (j)(ii), and the explanation provided therefor by the Electricity Vendor.

(c) promptly notify the Issuer in writing of any Requirement of Law hereafter adopted or announced or the occurrence of any other event or circumstance of which it becomes aware that has a material adverse effect on the Servicer's ability to perform its duties and obligations under this Agreement; and

(d) upon the reasonable request of the Issuer provide to the Issuer any public financial information in respect of the Servicer, or any material information regarding the Clean Energy Adjustment, to the extent it is reasonably available to the Servicer, and as may be reasonably necessary and permitted by law, to enable the Issuer to monitor the performance by the Servicer of its duties and obligations hereunder.

3.5 Remittances

(a) The Issuer shall provide the Servicer with notice of the Collection Account at least ~~[five]~~ten Business Days prior to the first Remittance Date and shall provide the Servicer with notice of any change to the Collection Account at least ~~[five]~~ten Business Days prior to any subsequent Remittance Date.

(b) Absent the occurrence of a Daily Remittance Event, the Issuer Share of Servicer CEA Receipts received by the Servicer and any interest earned thereon received ~~during a Billing Period~~**on or subsequent to a Remittance Date** shall be remitted by the Servicer to the Collection Account no later than the ~~Remittance Date~~ immediately following ~~such Billing Period~~**Remittance Date**.

(c) Following the occurrence of a Daily Remittance Event, the Issuer Share of all Servicer CEA Receipts on deposit in the IESO Segregated Account and any interest earned thereon shall be remitted by the Servicer to the Collection Account on the second following Business Day.

3.6 Limits to Obligations

Notwithstanding anything to the contrary in this Agreement, the parties hereto agree the duties, liabilities and obligations of IESO under this Agreement are limited as provided in this Section 3.6.

(a) IESO is not responsible for, or in respect of, any amounts not collected by Electricity Vendors from their customers or not remitted by Electricity Vendors to the Servicer.

(b) IESO is not responsible to confirm, verify or audit the amount of the Clean Energy Adjustment invoiced by Electricity Vendors or the Electricity Vendor CEA Collections collected by Electricity Vendors and reported to the IESO;

(c) IESO is not responsible for enforcing the obligations of Specified Consumers to pay, or the obligations of Electricity Vendors to invoice, collect or remit Clean Energy Adjustments or any other amounts, and IESO is under no obligation to initiate or prosecute any legal action relating to the collection of the Clean Energy Adjustments or the Issuer Investment Interest.

(d) IESO shall not be responsible or liable for the performance by Electricity Vendors of their duties and responsibilities under the Act or the Regulations including (i) the invoicing of Specified Consumers in respect of the Clean Energy Adjustment and ancillary matters related thereto; (ii) the collection from Specified Consumers of amounts due in respect of such invoices and the remittance of such payments to the Servicer; (iii) the accuracy of any information provided by the Electricity Vendors; and (iv) any reporting by the Electricity Vendors, including the reporting to the Servicer of the total CEA Consumer Invoice Amounts invoiced by such Electricity Vendor to its Specified Consumers in respect of the Clean Energy Adjustment, the total Electricity Vendor CEA Collections received by such Electricity Vendor and the Issuer Share of Electricity Vendor CEA Collections received by such Electricity Vendor.

(e) IESO is under no responsibility or obligation to the Issuer with respect to the nature or extent of the Issuer Investment Interest, the collectability of the Issuer Share of Servicer CEA Receipts or that the Issuer Share of Servicer CEA Receipts will be sufficient to satisfy the Issuer's Funding Obligations.

(f) IESO may rely in good faith on the advice of counsel or on any document of any kind, prima facie properly executed and submitted by any Person, respecting any matters arising under this Agreement.

(g) IESO shall have no liability or responsibility to any Person in respect of any forecasts or other information provided pursuant to Section 3.2, provided only that such forecasts or other information has been prepared and provided in good faith.

(h) None of the directors, officers, employees or agents of IESO shall be liable to the Issuer or any other Person for any action taken or for refraining from the

taking of any action pursuant to this Agreement or for good faith errors in judgment.

3.7 Servicing and Maintenance Standards

Subject to Section 3.6, the Servicer shall discharge its duties, responsibilities and obligations hereunder with reasonable care and in material compliance with the Requirements of Law, including the Act and the Regulations and, in doing so, shall follow standards, policies and procedures in performing its duties as Servicer hereunder that are customary for an electricity market operator and administrator that regularly performs settlement functions.

3.8 Appointments

The Servicer may at any time appoint any Person to act as its agent to perform all or any portion of its obligations as Servicer hereunder; provided however, that the Rating Agency Condition shall have been satisfied in connection therewith; and provided further that the Servicer shall remain obligated and be liable for the performance of its obligations under this Agreement without diminution of such obligation and liability by virtue of the appointment of such Person and to the same extent and under the same terms and conditions as if the Servicer alone were performing such obligations. The fees and expenses of any such Person shall be as agreed between the Servicer and such Person from time to time, and the Issuer shall not have any responsibility therefor or right or claim thereto. Any such appointment shall not constitute a resignation of the Servicer under Section 3.10.

3.9 Term

The Servicer's appointment as Servicer under this Agreement shall become effective as of the execution hereof and shall continue in full force and effect until the earlier of (a) the effective date of resignation of the Servicer in accordance with the provisions of this Agreement, (b) termination of all of the rights and obligations of the Servicer under Article 7, and (c) the date on which all Issuer Funding Obligations have been paid in full and all CEA Consumer Invoice Amounts have been received or written off (in each case, a "**Termination Event**"). The appointment of the Servicer as servicer under this Agreement shall be terminated effective as of the date of the Termination Event.

3.10 Resignation of Servicer

The IESO shall not resign from the obligations and duties imposed on it as Servicer under this Agreement except upon a determination that the performance of its duties under this Agreement shall no longer be permissible under applicable Requirements of Law. Notice of any such determination permitting the resignation of the IESO as Servicer shall be communicated to the Issuer and the Rating Agencies at the earliest practicable time (and, if such communication is not in writing, shall be confirmed in writing at the earliest practicable time), and any such determination shall be evidenced by an Opinion of Counsel to such effect delivered to the Issuer and the Rating Agencies concurrently with or promptly after such notice. No such resignation shall become effective until a Successor Servicer that is a Permitted Successor has

assumed the servicing obligations and duties hereunder of the Servicer in accordance with Section 7.2.

3.11 Mergers

Any Person (a) into which the Servicer may be merged, converted or amalgamated and that is a Permitted Successor, (b) that may result from any merger, conversion or amalgamation to which the Servicer shall be a party and that is a Permitted Successor, (c) that may succeed to the properties and assets of the Servicer substantially as a whole and that is a Permitted Successor, or (d) that otherwise is a Permitted Successor, which Person in any of the foregoing cases executes an agreement of assumption to perform all of the obligations of the Servicer hereunder, shall be the successor to the Servicer under this Agreement without further act on the part of any of the parties to this Agreement; provided, however, that (i) immediately after giving effect to such transaction, no representation or warranty made pursuant to Section 4.1 shall have been breached and no Servicer Default and no event that, after notice or lapse of time, or both, would become a Servicer Default shall have occurred and be continuing, (ii) the Servicer shall have delivered to the Issuer an Officer's Certificate and an Opinion of Counsel from external counsel stating that such consolidation, conversion, merger or succession and such agreement of assumption complies with this Section 3.11 and that all conditions precedent, if any, provided for in this Agreement relating to such transaction have been complied with, and (iii) the Servicer shall have given to the Issuer prior written notice of such transaction. When any Person that is a Permitted Successor acquires the properties and assets of the Servicer substantially as a whole or otherwise becomes the successor, by merger, conversion, consolidation, sale, transfer, lease or otherwise, to all or substantially all the assets of the Servicer in accordance with the terms of this Section 3.11, then, upon satisfaction of all of the other conditions of this Section 3.11, the preceding Servicer shall automatically and without further notice be released from all of its obligations hereunder (except for responsibilities for its actions prior to such release).

3.12 The IESO Not to Resign as Servicer

Subject to the provisions of Section 3.11, the IESO shall not resign from the obligations and duties imposed on it as Servicer under this Agreement except upon a determination that the performance of its duties under this Agreement shall no longer be permissible under applicable Requirements of Law. Notice of any such determination permitting the resignation of the IESO as Servicer shall be communicated to the Issuer and each Rating Agency at the earliest practicable time (and, if such communication is not in writing, shall be confirmed in writing at the earliest practicable time), and any such determination shall be evidenced by an Opinion of Counsel to such effect delivered to the Issuer and each Rating Agency concurrently with or promptly after such notice. No such resignation shall become effective until a Successor Servicer that is a Permitted Successor has assumed the servicing obligations and duties hereunder of the Servicer in accordance with Section 7.2.

3.13 IESO Regulatory Obligation to Pay Carrying Costs

(a) ~~During the period~~**The IESO acknowledges that it has an obligation to pay monthly Carrying Costs pursuant to the Regulations for the** prescribed

~~by~~**period set out in the** Regulations (the "**Prescribed Period**")~~, the IESO shall, as required~~ **and agrees to comply with its obligations** under the Regulations~~,~~ **to** pay and remit **the Carrying Costs** to the Issuer on a monthly basis~~ the Carrying Costs~~.

(b) On or before the 4th Business Day of each calendar month during the Prescribed Period, the Issuer shall prepare and deliver to the IESO a written statement substantially in the form of Exhibit C (a "**Monthly Carrying Costs Statement**") certifying the amount of the Carrying Costs incurred in the preceding calendar month ("**Monthly Carrying Costs**"). If requested by the IESO, the Issuer shall, in lieu of providing the Monthly ~~Carry~~**Carrying** Costs Statement, enter the amount of the Monthly Carrying Costs in the IESO operated portal, or such other similar facility operated by the IESO**, and such entry shall be deemed to be a certification of the accuracy of the amount entered**.

(c) On or before the [14th] Business Day following receipt by the IESO of the Monthly Carrying Costs Statement, the IESO shall, as required under the Regulations, deliver or cause to be delivered to the Issuer, by wire transfer or electronic funds transfer in immediately available funds, an amount in Canadian dollars equal to the Monthly Carrying Costs certified by the Issuer in the applicable Monthly Carrying Costs Statement.

3.14 IESO Security for CEA Remittances

If required by the Issuer, the IESO shall provide to the Issuer, on or prior to the first day of the first Billing Period when amounts are invoiced to Specified Consumers in respect of Clean Energy Adjustments, a letter of credit in an amount equal to $■, or such other form of security as may be acceptable to the Issuer, as security for any failure of Electricity Vendors~~,~~ **which are either not rated or are rated less than investment grade** to remit their Electricity Vendor CEA Collections.

ARTICLE 4
REPRESENTATIONS AND WARRANTIES OF THE IESO

4.1 Representations and Warranties

Subject to Section 3.6, the IESO makes the following representations and warranties as of the date hereof and as of each applicable Closing Date, and the IESO acknowledges that the Issuer will rely thereon in paying the Purchase Price related to Transfers of Specified Portions of the Regulatory Asset, and the Issuer has relied thereon in entering into this Agreement relating to the servicing of the corresponding Investment Interests.

(a) Organization and Good Standing. The IESO is a statutory corporation amalgamated under the laws of the Province of Ontario, with requisite corporate

power and authority to own its properties, to conduct its business as such properties are currently owned and such business is presently conducted by it.

(b) Due Qualification. The IESO has obtained all necessary licences and approvals, in all jurisdictions in which the ownership or lease of property or the conduct of its business (including acting as Servicer under this Agreement) shall require such licences or approvals, except where the failure to so qualify or obtain such licences and approvals would not be reasonably likely to have a material adverse effect on the IESO's business, operations, assets, revenues or properties, the Regulatory Asset or the servicing of related Investment Interests.

(c) Power and Authority. The IESO has the requisite corporate power and authority to execute and deliver this Agreement and to carry out its terms. The IESO has full corporate power and authority to hold the Regulatory Asset and to Transfer Specified Portions of the Regulatory Asset to the Issuer and the IESO has duly authorized such Transfer to the Issuer by all necessary corporate action. The execution, delivery and performance of all obligations under this Agreement have been duly authorized by all necessary corporate action on the part of the IESO under all applicable laws.

(d) Binding Obligation. This Agreement constitutes a legal, valid and binding obligation of the IESO, enforceable against the IESO in accordance with its terms, subject to bankruptcy, receivership, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally from time to time in effect and to general principles of equity (including concepts of materiality, reasonableness, good faith and fair dealing).

(e) No Violation. The consummation of the transactions contemplated by this Agreement and the fulfillment of the terms hereof by the IESO do not conflict with, result in any breach of any of the terms and provisions of, or constitute (with or without notice or lapse of time, or both) a default under, the IESO's by-laws, or any indenture, or other material agreement or instrument to which the IESO is a party or by which it is bound, result in the creation or imposition of any Lien upon any of the IESO's properties pursuant to the terms of any such indenture, agreement or other instrument or violate any existing law or any order, rule or regulation applicable to the IESO issued by any Governmental Authority having jurisdiction over the IESO or its properties, except, in each case, where such breach would not reasonably be expected to materially and adversely affect the performance by the IESO of its obligations under~~,~~ **this Agreement** or the Act or the validity or enforceability of~~,~~ this Agreement ~~or the Act~~.

(f) No Proceedings. To the IESO's knowledge, except as disclosed in writing to the Issuer, there are no Proceedings pending or threatened against the IESO or its properties: (a) asserting the invalidity of this Agreement or the Act, (b) seeking to prevent the consummation of any of the transactions contemplated by this Agreement or the Act, or (c) seeking a determination or ruling that could reasonably be expected to materially and adversely affect the performance by the IESO of its obligations under~~,~~ **this Agreement or the Act** or the validity or enforceability of~~,~~ this Agreement ~~or the Act~~.

(g) Approvals. No approvals, authorizations, consents, orders or other actions or filings with any Governmental Authority are required for the IESO to execute, deliver and perform its obligations under this Agreement except those which have previously been obtained or made.

(h) Information. Except in respect of information provided by a third party, all written information, as amended or supplemented from time to time, provided by the Transferor to the Issuer with respect to the Issuer in a Transfer Notice and a Monthly Report is true and correct in all material respects and does not omit any material fact.

(i) The Transfer. After the completion of the Transfer on the applicable Closing Date, the IESO will have no right, title or interest in the Investment Interest related to the Specified Portion of the Regulatory Asset as set forth in the applicable Transfer Notice, and the related Investment Interest shall not form part of the estate of the IESO in the event of an Insolvency Event in respect of the IESO.

(j) No Transfer. Except for Permitted Transfers, the IESO has not sold, transferred, assigned or otherwise conveyed any interest in the Regulatory Asset to any Person.

(k) Liens. IESO has not pledged or otherwise granted a Lien to any Person in the Regulatory Asset and to the IESO's knowledge (after due inquiry), there is no registered financing statement listing the IESO as debtor covering or extending to the Regulatory Asset.

(l) Tax Liens. The IESO (i) is not aware, after due inquiry, of any judgment or tax lien filing against the IESO, and (ii) is not a non-resident of Canada for purposes of the *Income Tax Act* (Canada).

(m) Solvency. On the date hereof and after giving effect to each Transfer, the IESO:

(i) reasonably believes that it will be able to pay its debts as they come due; and

(ii) is able to pay its debts as they mature and does not intend to incur, or believes that it will not incur, indebtedness that it will not be able to repay at its maturity.

(n) No Court Order. There is no order by any court that seeks to enjoin the performance of any obligations of the IESO under the Act or this Agreement.

4.2 Survival

The representations and warranties set forth in Section 4.1 shall survive the execution and delivery of this Agreement, each Transfer of a Specified Portion of a Regulatory Asset to the Issuer and the pledge of the corresponding Investment Asset to the Indenture Trustee pursuant to the Indenture and may not be waived by any party hereto except pursuant to a written agreement executed in accordance with Section 8.1 and as to which the Rating Agency Condition has been satisfied.

ARTICLE 5
COVENANTS OF THE IESO

5.1 Existence

So long as any Issuer Funding Obligations are outstanding, the IESO (a) shall not take any action to impair its corporate existence, and (b) will obtain and preserve its qualification to do business in the Province of Ontario.

5.2 No Transfer or Liens

Except for Transfers under this Agreement to the Issuer or Permitted Transfers, the IESO will not Transfer the Regulatory Asset or any portion thereof to any person. The IESO will not grant, create, incur, assume or suffer to exist any Lien on the Regulatory Asset or any portion thereof. The IESO will not at any time assert any Lien against or with respect to the Issuer Investment Interest**, except for any Lien granted by the Issuer to the IESO**.

5.3 Notice of Liens

The IESO shall notify the Issuer promptly after becoming aware of any Lien on any portion of the Regulatory Asset.

5.4 Compliance with Law

The IESO will comply with all Requirements of Law applicable to, and binding upon, the IESO or relating to the Regulatory Asset, except to the extent that failure to so comply would not materially adversely affect the Transfer of Specified Portions of the Regulatory Asset or the IESO's performance of its obligations under this Agreement; provided, however, that the foregoing is not intended to, and shall not, impose any liability on the IESO for non-compliance with any Requirement of Law that the IESO is contesting in good faith in accordance with its customary standards and procedures.

5.5 Covenants Related to the Investment Interest

(a) So long as any Issuer Funding Obligations are outstanding, the IESO shall treat the Issuer Investment Interest as the Issuer's property for all purposes.

(b) Except for ~~passive~~ investments held for employee benefit purposes, the IESO shall not at any time become a holder of Issuer Funding Obligations.

(c) The IESO shall disclose the effects of all transactions between the IESO and the Issuer in accordance with generally accepted accounting principles (for government entities).

(d) (i) In all Proceedings relating directly or indirectly to the Issuer Investment Interest, the IESO shall affirmatively certify and confirm that it has Transferred all of its rights and interests in and to the Specified Portions of the Regulatory Asset giving rise to the Issuer Investment Interest, (ii) the IESO shall not make any statement or reference in respect of the Issuer Investment Interest that is inconsistent with the ownership interest of the Issuer, and (iii) the IESO shall not take any action in respect of the Issuer Investment Interest except solely in its capacity as the Servicer thereof pursuant to this Agreement.

5.6 Non-petition Covenants

Notwithstanding any prior termination of this Agreement or the Indenture, the IESO shall not, prior to the date that is one year plus one day after termination of the Indenture and the payment in full of all Issuer Funding Obligations and any other amounts owed under the Indenture, petition or otherwise invoke the process of any Governmental Authority for the purpose of commencing or sustaining a Proceeding against the Issuer under any Canadian bankruptcy, insolvency or similar law, appointing a receiver, liquidator, assignee, trustee, custodian, sequestrator or other similar official or any substantial part of the property of the Issuer.

5.7 Disclosure

The IESO shall provide such non-confidential information regarding IESO, the Regulatory Asset and the services provided by the Servicer hereunder (collectively, the "**IESO Disclosure**") as may be reasonably requested by the Issuer for inclusion in any offering document of the Issuer from time to time, including but not limited to offering memoranda, prospectuses, registration statements and continuous disclosure documents (the "**Offering Documents**"), provided that the IESO has been given a reasonable opportunity by the Issuer to review any such Offering Documents. The IESO represents that, except in respect information provided by a third party, all IESO Disclosure, as at the respective dates of delivery to the Issuer, is true and correct in all material respects and contains no misrepresentation.

5.8 Further Assurances

Upon the request of the Issuer, the IESO shall execute and deliver such further instruments and do such further acts as may reasonably be necessary to carry out the provisions and purposes of this Agreement.

5.9 Access to Certain Records and Information

The IESO shall provide to the Issuer access to all records relating to the IESO Deferral, the Fair Hydro Variance Account, the IESO Segregated Account and Servicer CEA Receipts, as is reasonably required for the Issuer to confirm compliance by the IESO with its obligations under this Agreement. Access shall be afforded without charge, but only upon reasonable request and during normal business hours at the offices of the IESO. Nothing in this Section 5.9 shall affect the obligation of the IESO to comply with any Requirement of Law prohibiting disclosure of information, and the failure of the IESO to provide access to such information as a result of such obligation shall not constitute a breach of this Section 5.9.

5.10 Maintenance of Operations

Subject to Section 3.11, the IESO agrees to continue, unless prevented by circumstances beyond its control, to operate as the electricity system operator in the Province of Ontario so long as it is acting as the Servicer under this Agreement.

~~**5.11 Acknowledgement of Indenture**~~

~~The IESO acknowledges and agrees in favour of the Indenture Trustee that it is a Specified Creditor under the Indenture and its entitlements as a Specified Creditor are subject to the provisions applicable to Specified Creditors under the Indenture.~~

ARTICLE 6
IESO INDEMNITIES

6.1 Liability of the IESO; Indemnities

(a) The IESO shall indemnify the Issuer~~, the Manager~~ and each of ~~their respective~~its trustees, officers, directors and employees (each, an "**Indemnified Party**"), for, and defend and hold harmless each such Person from and against, any and all liabilities, obligations, losses, damages, payments and claims, and reasonable costs or expenses, of any kind whatsoever (collectively, "**Indemnified Losses**") imposed on, incurred by or asserted against such Person, as a result of (i) the failure of the IESO to perform its covenants and other obligations under this Agreement or any other Program Agreement to which the IESO is a party; or (ii) the breach by the IESO of any of its representations or warranties under this Agreement or any other Program Agreement to which the IESO is a party and, except to the extent of Indemnified Losses resulting from the willful misconduct, bad faith or gross negligence of such Person seeking indemnification hereunder; provided that, in each case, the IESO shall not be required to indemnify an Indemnified Party for any amount paid or payable by such Indemnified Party in the settlement of any Proceeding or investigation without the written consent of the IESO, which consent shall not be unreasonably withheld. Promptly after receipt by an Indemnified Party of notice of the commencement of any Proceeding or investigation, such Indemnified Party shall, if a claim in respect thereof is to be made against the IESO under this Section 6.1(a), notify the IESO in writing of the commencement thereof. Failure by an Indemnified Party to so notify the IESO shall relieve the IESO from the obligation to indemnify and hold harmless such Indemnified Party under this Section 6.1(a) only to the extent that the IESO suffers actual prejudice as a result of such failure. With respect to any Proceeding or investigation brought by a third party for which indemnification may be sought under this Section 6.1(a), the IESO shall be entitled to conduct and control, at its expense and with counsel of its choosing that is reasonably satisfactory to such Indemnified Party, the defence of any such Proceeding or investigation (in which case the IESO shall not thereafter be responsible for the fees and expenses of any separate counsel retained by the Indemnified Party except as set forth below); provided, that the Indemnified Party shall have the right to participate in such Proceeding or investigation through counsel chosen by it and at its own expense. Notwithstanding the IESO's election to assume the defence of any Proceeding or investigation, the Indemnified Party shall have the right to employ separate counsel, and the IESO shall bear the reasonable fees, costs and expenses of such separate counsel, if (i) the defendants in any such action include both the Indemnified Party and the IESO and the Indemnified Party shall have reasonably concluded that there may be legal defences available to it that are different from or additional to those available to the IESO, (ii) the IESO shall not have employed

counsel reasonably satisfactory to the Indemnified Party to represent the Indemnified Party within a reasonable time after notice of the institution of such action, or (iii) the IESO authorizes the Indemnified Party to employ separate counsel at the expense of the IESO. Notwithstanding the foregoing, the IESO shall not be obligated to pay for the fees, costs and expenses of more than one separate counsel for the Indemnified Parties other than one local counsel, if appropriate. The IESO will not, without the prior written consent of the Indemnified Party, settle or compromise or consent to the entry of any judgment with respect to any pending or threatened claim or Proceeding in respect of which indemnification may be sought under this Section 6.1(a) (whether or not the Indemnified Party is an actual or potential party to such claim or action) unless such settlement, compromise or consent includes an unconditional release of the Indemnified Party from all liability arising out of such claim or Proceeding.

(b) For purposes of Section 6.1(a), in the event of the termination of the rights and obligations of the IESO (or any successor thereto pursuant to Section 3.11) as Servicer pursuant to Section 7.1, or a resignation by such Servicer pursuant to Section 3.10 of this Agreement, the IESO shall be deemed to be the Servicer pending appointment of a Successor Servicer pursuant to Section 7.2.

(c) Indemnification under Section 6.1(a) shall include reasonable out-of-pocket fees and expenses of investigation and litigation (including reasonable legal fees and expenses), except as otherwise expressly provided in this Agreement.

(d) Indemnification under this Section 6.1 shall survive any repeal of, modification of, or supplement to, or judicial invalidation of, the Act and shall survive the termination of this Agreement and will rank *pari passu* with other general, unsecured obligations of the IESO.

(e) The IESO shall not be required to indemnify any party under this Section 6.1 for any losses resulting from changes in law after the date hereof, whether such changes in law are effected by means of any legislative enactment or any final and non-appealable judicial decision.

~~**[Note to Draft: The Indenture Trustee has been removed as a party to this Agreement on the understanding that a separate acknowledgement and indemnity will be entered into between the IESO and the Indenture Trustee in which the IESO acknowledges the Indenture Trustee's right to enforce this Agreement, and in which the IESO provides an similar indemnity to that above in favour of the Indenture Trustee on behalf of the Specified Creditors.]**~~

ARTICLE 7
SERVICER DEFAULT

7.1 Servicer Default

If any one or more of the following events (each, a "**Servicer Default**") shall occur and be continuing:

(a) any failure by the Servicer to remit to the Collection Account any required remittance that shall continue unremedied for a period of **[two/three~~] [NTD: Rating Agencies will expect 2-3 days~~]** Business Days after written notice of such failure is received by the Servicer from the Issuer or after discovery of such failure by a Responsible Officer of the Servicer;

(b) any failure on the part of the Servicer or, so long as the Servicer is the IESO, any failure on the part of the IESO, as the case may be, duly to observe or to perform in any respect any covenants or agreements of the Servicer or the IESO, as the case may be, set forth in this Agreement or in any other Program Agreement to which it is a party (other than as provided in Section 7.1(a)), which failure shall (i) materially and adversely affect the rights of the Specified Creditors and (ii) continue unremedied for a period of 30 days after the date on which (A) written notice of such failure, requiring the same to be remedied, shall have been given to the Servicer or the IESO, as the case may be, by the Issuer or (B) such failure is discovered by a Responsible Officer of the Servicer;

(c) any representation or warranty made by the Servicer in this Agreement, any other Program Agreement to which it is a party, any Transfer Notice or any Monthly Report shall prove to have been incorrect when made, which has a material adverse effect on the Issuer and which remains unremedied for a period of 30 days after the date on which (i) written notice thereof, requiring the same to be remedied, shall have been delivered to the Servicer by the Issuer or (ii) such failure is discovered by a Responsible Officer of the Servicer;

(d) an Insolvency Event occurs with respect to the Servicer or the IESO; or

(e) any additional "Servicer Default" as specified in any Co-Owner Agreement occurs;

then, and in each and every case, the Issuer may, subject to the terms of any Co-Owner Agreement, by notice then given in writing to the Servicer (a "**Termination Notice**"), terminate all the rights and obligations (other than the obligations set forth in Section 6.1 and the obligation under Section 7.2 to continue performing its functions as Servicer until a Successor Servicer is appointed) of the Servicer under this Agreement and under the Co-Owner Agreement. In addition, upon a Servicer Default described in Section 7.1(a), Issuer shall be entitled to apply to a court of appropriate jurisdiction for an order for sequestration and payment of revenues arising with respect to the Issuer. On or after the receipt by the Servicer of a Termination Notice, all authority and power of the Servicer under this Agreement, whether with respect to the Investment

Interest, the Clean Energy Adjustments or otherwise, shall, without further action, pass to and be vested in such Successor Servicer as may be appointed under Section 7.2; and, without limitation, the Issuer is hereby authorized and empowered to execute and deliver, on behalf of the predecessor Servicer, as attorney-in-fact or otherwise, any and all documents and other instruments, and to do or accomplish all other acts or things necessary or appropriate to effect the purposes of such Termination Notice, whether to complete the transfer of all documents and records related to the Regulatory Asset, the Fair Hydro Variance Account and related documents or records, or otherwise (the "**Records**"). The predecessor Servicer shall cooperate with the Successor Servicer and the Issuer in effecting the termination of the responsibilities and rights of the predecessor Servicer under this Agreement, including the transfer to the Successor Servicer for administration by it of all Records and all cash amounts that shall at the time be held by the predecessor Servicer for remittance, or shall thereafter be received by it with respect to the Investment Interest or the Clean Energy Adjustment. As soon as practicable after receipt by the Servicer of such Termination Notice, the Servicer shall deliver the Records to the Successor Servicer. If a Successor Servicer has been appointed as a result of a Servicer Default, all reasonable costs and expenses (including reasonable legal fees and expenses) incurred in connection with transferring the Records to the Successor Servicer and amending this Agreement and any Co-Owner Agreement to reflect such succession as Servicer pursuant to this Section 7.1 shall be paid by the predecessor Servicer upon presentation of reasonable documentation of such costs and expenses. Termination of the IESO as Servicer shall not terminate the IESO's rights or obligations under this Agreement (except rights thereunder deriving from its rights as the Servicer hereunder).

7.2 Appointment of Successor Servicer

(a) Upon the Servicer's receipt of a Termination Notice pursuant to Section 7.1 or the Servicer's resignation or removal in accordance with the terms of this Agreement, the predecessor Servicer shall continue to perform its functions as Servicer under this Agreement, until a Successor Servicer shall have assumed in writing the obligations of the Servicer hereunder as described below. In the event of the Servicer's removal or resignation hereunder, the Issuer may, but subject to the provisions of the applicable Co-Owner Agreement, appoint a Successor Servicer and the Successor Servicer shall accept its appointment by a written assumption in form reasonably acceptable to the Issuer. If, within 30 days after the delivery of the Termination Notice, a Successor Servicer shall not have been appointed, the Issuer may petition a court of competent jurisdiction to appoint a Successor Servicer under this Agreement. A Person shall qualify as a Successor Servicer only if (i) such Person is permitted under the Act to perform the duties of the Servicer, (ii) the Rating Agency Condition shall have been satisfied with respect to such appointment, (iii) such Person enters into a master transfer and servicing agreement with the Issuer having substantially the same provisions as this Agreement and (iv) such Person agrees to perform the obligations of the Servicer under any Co-Owner Agreement. In no event shall the Issuer be liable for its appointment of a Successor Servicer..

(b) Upon appointment, the Successor Servicer shall be the successor in all respects to the predecessor Servicer and shall be subject to all the responsibilities, duties and

liabilities arising thereafter placed on the predecessor Servicer and shall be entitled to all the rights granted to the predecessor Servicer by the terms and provisions of this Agreement.

7.3 Waiver of Past Defaults

The Issuer may waive in writing any default by the Servicer in the performance of its obligations hereunder and its consequences. Upon any such waiver of a past default, such default shall cease to exist, and any Servicer Default arising therefrom shall be deemed to have been remedied for every purpose of this Agreement. No such waiver shall extend to any subsequent or other default or impair any right consequent thereto.

7.4 Notice of Servicer Default

The Servicer shall deliver to the Issuer, promptly after having obtained knowledge thereof, but in no event later than five Business Days thereafter, written notice of any event that, with the giving of notice or lapse of time, or both, would become a Servicer Default under Section 7.1.

7.5 Cooperation with Successor Servicer

The Servicer covenants and agrees with the Issuer that it will, on an ongoing basis, cooperate with the Successor Servicer and provide whatever information is, and take whatever actions are, reasonably necessary to assist the Successor Servicer in performing its obligations hereunder.

ARTICLE 8
MISCELLANEOUS

8.1 Amendment

This Agreement may be amended in writing by the IESO and the Issuer, and with satisfaction of the Rating Agency Condition**, such satisfaction to be confirmed by the Issuer at the time of such amendment**. Promptly after the execution of any such amendment, the Issuer shall furnish copies of such amendment to each of the Rating Agencies.

8.2 Withholding Rights

The parties shall be entitled to deduct and withhold from amounts payable under this Agreement such amounts as each is required to deduct and withhold with respect to such payment under the *Income Tax Act* (Canada) or any provision of any applicable federal, provincial, territorial, state, local or foreign tax law. To the extent that amounts are so withheld, such withheld amounts shall be treated for all purposes as having been paid to the recipient of the payment in respect of which such deduction and withholding was made, provided that such withheld amounts are actually remitted in accordance with applicable law to the appropriate taxing authority.

8.3 No Partnership

Each party expressly disclaims any intention to create a partnership, and none of the Issuer or the IESO will be deemed to be carrying on business in partnership by reason of its execution and delivery of this Agreement or the exercise or performance by it of its respective rights and obligations hereunder.

8.4 Notices

Any notice, report or other communication given hereunder shall be in writing and shall be effective (a) upon receipt when sent through the mails, registered or certified mail, return receipt requested, postage prepaid, with such receipt to be effective the date of delivery indicated on the return receipt, (b) upon receipt when sent by an overnight courier, (c) on the date personally delivered to an authorized officer of the party to which sent, or (d) on the date transmitted by electronic transmission with a confirmation of receipt in all cases, addressed as follows:

(a) in the case of the IESO, in its capacity as Transferor or Servicer:

Independent Electricity System Operator
120 Adelaide Street West, Suite 1600
Toronto, Ontario M5H 1T1

Attention: Chief Financial Officer, General Counsel and Associate General Counsel
Email: ■

(b) in the case of the Issuer or the Manager (on behalf of the Issuer):

[Financing Entity]
c/o Ontario Power Generation Inc., as Manager
700 University Avenue
Toronto, Ontario
M5G 1X6

Attention: ■
Email: ■

Each party hereto may, by notice given in accordance herewith to the other party or parties hereto, designate any further or different address to which subsequent notices, reports

and other communications shall be sent. Any notice, report or communication required to be given by the IESO hereunder to a Rating Agency shall be given to the address provided by the Issuer from time to time.

8.5 Assignment

Notwithstanding anything to the contrary contained herein, except as provided in the provisions of this Agreement concerning the resignation of the Servicer, this Agreement may not be assigned by the IESO.

8.6 Limitations on Rights of Third Parties

The provisions of this Agreement are solely for the benefit of the IESO and the Issuer, and such Persons shall have the right to enforce the relevant provisions of this Agreement. Nothing in this Agreement, whether express or implied, shall be construed to give to any other Person any legal or equitable right, remedy or claim in the Issuer Investment Interest or under or in respect of this Agreement or any covenants, conditions or provisions contained herein.

8.7 Severability

Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remainder of such provision (if any) or the remaining provisions hereof (unless such construction shall be unreasonable), and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

8.8 Separate Counterparts; Electronic Delivery

This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument. Delivery of an executed signature page to this Agreement by a party by electronic transmission will be as effective as delivery of a manually executed copy of this Agreement by such party.

8.9 Governing Law

This Agreement shall be construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein, and each party to this Agreement attorns to the non-exclusive jurisdiction of the courts of the Province of Ontario.

8.10 Grant of Security Interest to Indenture Trustee

The IESO hereby acknowledges and consents to the grant of a Lien by the Issuer to the Indenture Trustee pursuant to the Indenture for the benefit of the Specified Creditors against all right, title and interest of the Issuer in, to and under this Agreement, the Investment Interest and the proceeds thereof and the assignment of any or all of the Issuer's rights hereunder to the Indenture Trustee for the benefit of the Specified Creditors.

8.11 Limitation of Liability of the Issuer Trustee

(a) It is expressly understood and agreed by the parties hereto that the Issuer Trustee is acting solely in its capacity as trustee of the Issuer, and not in any other capacity. The Issuer solely shall be responsible for the performance of the Issuer's obligations hereunder and the assets of the Issuer solely shall be subject to levy or execution in satisfaction of such obligations.

(b) The Issuer Trustee will not be subject to any liability whatsoever, in tort, in contract or otherwise, in connection with the Issuer's property or the Issuer's activities, to the Issuer's beneficiaries or to any other Person, for any action taken or permitted by the Issuer Trustee to be taken, or the Issuer Trustee's failure to compel in any way any former or acting Issuer Trustee to redress any breach of trust with respect to the execution of the duties of its office or in respect of the Issuer's property or the Issuer's activities, provided that the foregoing limitation will not apply in respect of action or failure to act arising from or in connection with dishonesty, bad faith, willful misconduct, gross negligence or reckless disregard of a duty by the Issuer Trustee. The Issuer Trustee, in doing anything or permitting anything to be done in respect of the execution of the duties of its office or in respect of the Issuer's property or the Issuer's activities, is, and will be conclusively deemed to be, acting as trustee of the Issuer and not in any other capacity. Except as to the extent provided in this Section 8.11, the Issuer Trustee will not be subject to any liability for any debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses against or with respect to the Issuer, arising out of anything done or permitted by it to be done or its failure to take any action in respect of the execution of the duties of its office or for or in respect of the Issuer's property or the Issuer's activities and resort will be had solely to the Issuer's property for the payment or performance thereof. No property or assets of the Issuer Trustee owned in its personal capacity will be subject to levy, execution or other enforcement procedure with regard to any obligation under this Agreement.

(c) The holders of the units of the Issuer will not be subject to any liability whatsoever, in tort, in contract or otherwise, in connection with the Issuer's property or the Issuer's activities, to the Issuer's beneficiaries or to any other Person, for any action taken or permitted by it to be taken. The holders of the units

of the Issuer will not be subject to any liability for any debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses against or with respect to the Issuer, arising out of anything done or permitted by it to be done or its failure to take any action in respect of the execution of the duties of its office or for or in respect of the Issuer's property or the Issuer's activities and resort will be had solely to the Issuer's property for the payment or performance thereof. No property or assets of the holders of the units of the Issuer owned in their personal capacity will be subject to levy, execution or other enforcement procedure with regard to any obligation under this Agreement.

8.12 Waivers

Any term or provision of this Agreement may be waived, or the time for its performance may be extended, by the party or parties entitled to the benefit thereof. Any such waiver shall be validly and sufficiently authorized for the purposes of this Agreement if, as to any party, it is authorized in writing by an authorized representative of such party, with prompt written notice of any such waiver to be provided to the Rating Agencies. The failure of any party hereto to enforce at any time any provision of this Agreement shall not be construed to be a waiver of such provision, nor in any way to affect the validity of this Agreement or any part hereof or the right of any party thereafter to enforce each and every such provision. No waiver of any breach of this Agreement shall be held to constitute a waiver of any other or subsequent breach.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective officers as of the day and year first above written.

[FINANCING ENTITY], by its Manager,
ONTARIO POWER GENERATION INC.

By:
Name:
Title:

By:
Name:
Title:

INDEPENDENT ELECTRICITY SYSTEM OPERATOR
as Transferor and Servicer

By:
Name:
Title:

By:
Name:
Title:

EXHIBIT A

FORM OF TRANSFER NOTICE

See attached

TRANSFER NOTICE

TO: **[FINANCING ENTITY]**
c/o Ontario Power Generation Inc., as Manager
700 University Avenue
Toronto, Ontario
M5G 1X6

Attention: ■
Email: ■

This Transfer Notice is delivered to you pursuant to Section 2.1 of a master transfer and servicing agreement made as of ■, 2017 (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "**Master Transfer and Servicing Agreement**") between **[FINANCING ENTITY]**, a trust formed under the laws of the Province of Ontario (the "**Issuer**"), the **INDEPENDENT ELECTRICITY SYSTEM OPERATOR** ("**Transferor**" in its capacity as transferor, "**Servicer**", in its capacity as servicer, and "**IESO**" in its capacity as both Transferor and Servicer), a statutory corporation without share capital amalgamated under the laws of the Province of Ontario. All capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Master Transfer and Servicing Agreement.

The Transferor hereby gives notice to the Issuer of its offer to transfer to the Issuer on the Closing Date set out below, the Specified Portion of the Regulatory Asset referred to below, all in accordance with the terms and conditions of the Master Transfer and Servicing Agreement. In consideration for (i) the Transferor's Transfer to the Issuer of the Specified Portion of the Regulatory Asset referred to below, the Issuer shall deliver or cause to be delivered to the Transferor on the Closing Date set out below, by wire transfer in immediately available funds, an amount in Canadian dollars equal to the Purchase Price set out below.

Upon receipt by the Transferor of the Purchase Price on the Closing Date the Transferor shall reduce the balance of the Fair Hydro Variance Account by an amount equal to the Purchase Price, and the Regulatory Asset shall be adjusted accordingly.

Specified portion of Regulatory Asset: $■

Purchase Price: $■

Closing Date: ■

The Transferor hereby represents, warrants and confirms that:

(i) each of the representations and warranties on the part of the Transferor contained in the Master Transfer and Servicing Agreement are true and correct in all respects on the date hereof as if made on the date hereof;

(ii) the Transferor is not in breach of any of its covenants in the Master Transfer and Servicing Agreement; and

(iii) as of the date hereof, each condition precedent that must be satisfied by the Transferor under Section 2.2 of the Master Transfer and Servicing Agreement is capable of being satisfied prior to Closing Date.

The closing shall take place at ■ (Toronto time) on the Closing Date referred to above at the offices of ■, except as may be otherwise mutually agreed. The Purchase Price shall be paid on that date by bank wire transfer to [insert IESO bank account details].

DATED this ■ day of ■, 20■.

[FINANCING ENTITY], by its Manager,
ONTARIO POWER GENERATION INC.

By: _____
Name:
Title:

By: _____
Name:
Title:

The undersigned hereby accepts the foregoing offer.

DATED this ■ day of ■, 20■.

INDEPENDENT ELECTRICITY SYSTEM OPERATOR
as Transferor

By: _____
Name:
Title:

By: _____
Name:
Title:

EXHIBIT B

FORM OF MONTHLY REPORT

~~See Attached~~

~~MONTHLY REPORT~~

~~[NTD: Subject to continuing review by the Dealers and their counsel.]~~

~~TO:~~ **~~[FINANCING ENTITY]~~**
~~c/o Ontario Power Generation Inc., as Manager~~
~~700 University Avenue~~
~~Toronto, Ontario~~
~~M5G 1X6~~

~~Attention:~~ ■
~~Email:~~ ■

~~Reference is made to the master transfer and servicing agreement made as of ■, 2017 (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "**Master Transfer and Servicing Agreement**") between **[FINANCING ENTITY]**, a trust formed under the laws of the Province of Ontario (the "**Issuer**") and the **INDEPENDENT ELECTRICITY SYSTEM OPERATOR** ("**Transferor**" in its capacity as transferor, "**Servicer**", in its capacity as servicer, and "**IESO**" in its capacity as both Transferor and Servicer), a statutory corporation without share capital amalgamated under the laws of the Province of Ontario. Capitalized terms used but not defined in this Monthly Report have their respective meanings as set forth in the Master Transfer and Servicing Agreement.~~

~~Pursuant to Section 3.4(a) of the Master Transfer and Servicing Agreement the Servicer hereby certifies in the date hereof and in respect of the period subsequent to the preceding Remittance Date, as follows:~~

	~~Item~~	~~Amount~~
~~(A)~~	~~CEA Consumer Invoice Amounts:~~	~~$■~~
~~(B)~~	~~Servicer CEA Receipts:~~	~~$■~~
	~~Comprised of:~~	
	~~Electricity Vendor CEA Collections:~~	~~$■~~
	~~IESO direct CEA collections:~~	~~$■~~
~~(C)~~	~~Actual Monthly Consumption of Specified Consumers:~~	~~■~~
~~(D)~~	~~Balance of IESO Segregated Account:~~	~~$■~~

LDC Name	Billed Amount	Remitted Amount	Difference
LDC 1	$xx	$yy	
LDC 2			
LDC 70			

Shortfall $

Delinquency Amount $

[**NTD:** **Any additional information considered necessary for OPG/IESO to be included.**form to be settled]

DATED this ■ day of ■, 20■.

INDEPENDENT ELECTRICITY SYSTEM OPERATOR
as Servicer

By: _____
Name:
Title:

By: _____
Name:
Title:

EXHIBIT C

FORM OF MONTHLY CARRYING COSTS STATEMENT

See Attached

MONTHLY CARRYING COSTS STATEMENT

TO: INDEPENDENT ELECTRICITY SYSTEM OPERATOR
[Address]

Attention: ■
Email: ■

Reference is made to the master transfer and servicing agreement made as of ■, 2017 (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "**Master Transfer and Servicing Agreement**") between **[FINANCING ENTITY]**, a trust formed under the laws of the Province of Ontario (the "**Issuer**") and the **INDEPENDENT ELECTRICITY SYSTEM OPERATOR** ("**Transferor**" in its capacity as transferor, "**Servicer**", in its capacity as servicer, and "**IESO**" in its capacity as both Transferor and Servicer), a statutory corporation without share capital amalgamated under the laws of the Province of Ontario. Capitalized terms used but not defined in this Monthly Carrying Costs Statement have their respective meanings as set forth in the Master Transfer and Servicing Agreement.

Pursuant to Section 3.13 of the Master Transfer and Servicing Agreement, the undersigned hereby certifies that the Monthly Carrying Costs in respect of the calendar month of ■, ■ are as follows:

In accordance with Section 3.13(c) of the Master Transfer and Servicing Agreement, the undersigned hereby directs you to deliver to the Issuer, by wire transfer to the account set forth below, an amount in Canadian dollars equal to the Monthly Carrying Costs set forth above on or before ■, 20■, and this shall be your good and valid authority for so doing.

[NTD: Wire transfer instructions to be provided by OPG.]

DATED this ■ day of ■, 20■.

[FINANCING ENTITY], by its Manager, **ONTARIO POWER GENERATION INC.**

By: _____
Name:
Title:

By: _____
Name:
Title:

Document comparison by Workshare Compare on November-08-17 9:02:13 AM

Input:	
Document 1 ID	file://C:\Users\bsaulnie\Desktop\Master_Transfer_and_Servicing_Agreement (Osler_Torys comments on IESO_SE....docx
Description	Master_Transfer_and_Servicing_Agreement (Osler_Torys comments on IESO_SE...
Document 2 ID	file://C:\Users\bsaulnie\Desktop\Province\MTSA (November 7th Rating Agency Draft).DOCX
Description	MTSA (November 7th Rating Agency Draft)
Rendering set	Firm_Standard

Legend:	
Insertion	
~~Deletion~~	
~~Moved from~~	
Moved to	
Style change	
Format change	
~~Moved deletion~~	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	79
Deletions	139
Moved from	2
Moved to	2
Style change	0
Format changed	0
Total changes	222

IESO Security Agreement (November 7th Rating Agency Draft).pdf

Draft Date: November 7, 2017

SECURITY AGREEMENT

THIS AGREEMENT made as of the ____ day of _____, 2017,

BETWEEN:

INDEPENDENT ELECTRICITY SYSTEM OPERATOR, a statutory corporation without share capital established by the *Electricity Act, 1998*, SO, 1998,

(hereinafter referred to as the "**Grantor**"),

IN FAVOUR OF:

[FINANCING ENTITY], a trust formed under the laws of the Province of Ontario,

(hereinafter referred to as the "**Secured Party**"),

WHEREAS under Regulation 206/17 made under the *Ontario Fair Hydro Plan Act, 2017* (the "**Regulation**"), the Grantor is required to pay to the Secured Party the Carrying Costs of the Secured Party during the period beginning on April 1, 2017 and ending on June 30, 2021 (the "**Statutory Obligation**");

AND WHEREAS the Grantor (together with the Secured Party, collectively referred to as the "**Parties**") has agreed to enter into a security agreement in favour of the Secured Party to secure payment of the Statutory Obligation;

NOW THEREFORE THIS AGREEMENT WITNESSES that, for and in consideration of the premises, mutual covenants and conditions herein contained and such other lawful and valuable consideration the receipt of sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. INTERPRETATION

1.1 Defined Terms

In this Agreement, unless there is something in the context or subject matter inconsistent therewith,

(a) "**Account**" shall have the meaning attributed to such term in the PPSA;

(b) "**Business Day**" means any day other than a Saturday or a Sunday on which banks generally are open for business in Toronto, Ontario;

(c) "**Carrying Costs**" shall have the meaning attributed to the term "carrying costs" in the Regulation;

(d) "**Collateral**" shall have the meaning attributed to such term in Section 2.1;

(e) "Electricity Vendor" shall mean a licensed distributor and a licensed retailer, each as defined in the Ontario Fair Hydro Act.

(f) "**Money**" shall have the meaning attributed to such term in the PPSA;

(g) "**Permitted Liens**" means liens approved in writing by the Secured Party;

(h) "**PPSA**" means the *Personal Property Security Act* (Ontario), as amended from time to time, and any regulations thereto;

(i) "**Proceeds**" means "proceeds", as defined in the PPSA, of the Collateral;

(j) **"Receiver"** shall have the meaning attributed to such term in Section 6.2 of this Agreement;

(k) "**Regulation**" shall have the meaning attributed to such term in the recitals hereto;

(l) "**Statutory Obligation**" shall have the meaning attributed to such term in the recitals hereto.

1.2 Other Usages

References to "this Agreement", "hereof", "herein", "hereto" and like references refer to this Security Agreement and not to any particular Article, Section or other subdivision of this Agreement.

1.3 Plural and Singular

Where the context so requires, the words importing the singular number shall include the plural and vice versa.

1.4 Headings

The division of this Agreement into Articles and Sections and the insertion of headings in this Agreement are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

1.5 Applicable Law

This Agreement and all documents delivered pursuant hereto shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and the Parties do hereby attorn to the non-exclusive jurisdiction of the courts of the Province of Ontario.

1.6 Prohibited Provisions

In the event that any provision or any part of any provision hereof is deemed to be invalid by reason of the operation of any law or by reason of the interpretation placed thereon by a court,

this Agreement shall be construed as not containing such provision or such part of such provision and the invalidity of such provision or such part shall not affect the validity of any other provision or the remainder of such provision hereof, and all other provisions hereof which are otherwise lawful and valid shall remain in full force and effect.

1.7 Time of the Essence

Time shall in all respects be of the essence of this Agreement.

1.8 Recitals and Schedules

Each and every one of the recitals and schedules which are referred to in this Agreement and attached to this Agreement shall form an integral part of this Agreement.

2. SECURITY INTEREST

2.1 Grant of Security Interest

As general and continuing security for the payment of the Statutory Obligation, the Grantor hereby grants a security interest to the Secured Party in the following (collectively, the "**Collateral**"):

(a) all Accounts, which are now due, owing or accruing or growing due to, or which may hereafter become due, owing or accruing or growing due, to the Grantor by an Electricity Vendor;

(b) all Proceeds and renewals of the foregoing, in whatever form, together with all substitutions therefore.

Whenever used elsewhere in this Agreement, the expression "**security interest**" refers to the security interest created in this Section 2.1.

2.2 Attachment of Security Interest

The Grantor acknowledges and agrees that (i) value has been given, (ii) the Grantor has rights in such of the Collateral as constitutes present property of the Grantor, and (iii) the security interest shall attach to existing Collateral upon execution of this Agreement by the Grantor and to each item of after-acquired Collateral at the time that the Grantor acquires any rights therein.

3. COVENANTS OF THE GRANTOR

3.1 Covenants

The Grantor hereby covenants and agrees with the Secured Party as follows:

(a) To promptly pay all taxes, assessments, rates, levies, payroll deductions, vacation pay, workers' compensation assessments, and any other charges which could result in the creation of a statutory lien or deemed trust in respect of the Collateral.

(b) To defend the Collateral against the claims and demands of all other persons claiming the same or an interest therein and to promptly notify the Secured Party of any such claim or demand.

(c) To do, make, execute and deliver such further and other assignments, transfers, deeds, agreements and other documents as may be required by the Secured Party to establish in favour of the Secured Party the security interest intended to be created hereby.

3.2 Performance of Covenants by the Secured Party

The Secured Party may, in its sole discretion and upon notice to and at the expense of the Grantor, perform any covenant of the Grantor under this Agreement that the Grantor fails to perform and that the Secured Party is capable of performing, provided that the Secured Party will not be obligated to perform any such covenant on behalf of the Grantor and no such performance by the Secured Party will require the Secured Party further to perform the Grantor's covenants nor operate as a derogation of the rights and remedies of the Secured Party under this Agreement.

4. DEALING WITH COLLATERAL

4.1 Grantor's Rights

Until the Secured Party is entitled to exercise its rights and remedies under Section 6.2, the Grantor shall be entitled to deal with the Collateral in the ordinary course of business, provided however, that no such action shall be taken which would impair the effectiveness of the security interests created hereby, the provisions of this Agreement or any other written agreement between the Secured Party and the Grantor.

4.2 General Restrictions

The Grantor shall not, without the prior written consent of the Secured Party:

(a) sell, lease or otherwise dispose of the Collateral or any part thereof except in the ordinary course of business; or

(b) enter into or grant, create, assume or suffer to exist any mortgage, charge, hypothec, assignment, pledge, lien or other security interest or encumbrance affecting any of the Collateral except the Permitted Liens.

4.3 Release by the Secured Party

The Secured Party may, at its discretion, at any time release from the security interest created by this Agreement any part or parts of the Collateral or any other security or any surety for the Statutory Obligation either with or without sufficient consideration therefor without thereby releasing any other part of the Collateral or any person from this Agreement.

5. REPRESENTATIONS AND WARRANTIES

5.1 Representations and Warranties

The Grantor hereby represents and warrants to the Secured Party, the matters set out below:

(a) **Incorporation and Qualifications** – The Grantor is a statutory corporation amalgamated under the laws of the Province of Ontario, with requisite power and authority to own its properties, to conduct its business as such properties are currently owned and such business is presently conducted by it, and to execute, deliver and carry out the terms of this Agreement.

(b) **Corporate Authority and Power** – The Grantor has the requisite power and authority to execute and deliver this Agreement and to carry out its terms. The execution, delivery and performance of all obligations under this Agreement have been duly authorized by all necessary action on the part of the Grantor under all applicable laws.

(c) **Non-Conflict** – Neither the execution nor the performance of this Agreement requires the approval of any regulatory agency having jurisdiction over the Grantor nor is this Agreement in contravention of or in conflict with the by-laws or resolutions of the directors or shareholders of the Grantor or of the provisions of any agreement to which the Grantor is a party or by which any of its property may be bound or of any statute, regulation, by-law, ordinance or other law, or to the best of its knowledge of any judgement, decree, award, ruling or order to which the Grantor or any of its property may be subject, other than approvals that have been obtained.

(d) **Ownership of Collateral Free of Liens** – The Grantor is the owner of or has rights in the existing Collateral free and clear of any liens other than Permitted Liens.

(e) **Grantor Information** – Schedule A sets forth (a) the Grantor's jurisdiction of incorporation, (b) the location of the Grantor's registered office and business operations and records, and (c) the Grantor's exact legal name (in English and French).

(f) **Enforceability** – This Agreement constitutes a valid and legally binding obligation of the Grantor enforceable against it in accordance with its terms, subject to general equitable principles, including the fact that the availability of equitable remedies, such as injunctive relief and specific performance, is in the discretion of the court.

5.2 Reliance and Survival

All representations and warranties of the Grantor made in this Agreement shall survive the execution and delivery of this Agreement and shall continue in full force and effect without time limit. The Secured Party shall be deemed to have relied upon each such representation and

warranty notwithstanding any investigation made by or on behalf of the Secured Party at any time.

6. ENFORCEMENT

6.1 Enforceability of Security

The security hereby constituted shall become enforceable only upon the failure of the Grantor to pay the Statutory Obligations when due, and then only to the extent of the Statutory Obligations not then paid when due. The Grantor acknowledges that it has no right in any circumstance to accelerate payment of the Statutory Obligations, to apply proceeds of Collateral on account of Statutory Obligations not yet due, or to reserve or hold proceeds of Collateral on account of Statutory Obligations not yet due.

6.2 Remedies

At any time that the security hereby constituted shall have become enforceable, the Secured Party may give notice of its intention to its exercise rights and remedies hereunder. At any time ten Business Days following the giving of such notice, and unless the amounts due and owing on account of the carrying Costs at the time of the Notice have been paid, the Secured Party shall have the following rights, powers and remedies:

(a) to appoint any person to be an agent or any person to be a receiver, manager or receiver and manager (herein called the "**Receiver**") of the Collateral and to remove any Receiver so appointed and to appoint another if the Secured Party so desires; it being agreed that any Receiver appointed pursuant to the provisions of this Agreement shall have all of the powers of the Secured Party hereunder;

(b) to make payments to parties having prior charges or encumbrances on the Collateral;

(c) to preserve, protect and maintain the Collateral;

(d) to enjoy and exercise all powers necessary or incidental to the performance of all functions provided for in this Agreement;

(e) to sell or dispose of all or any part of the Collateral whether by public or private sale or otherwise and on any terms so long as every aspect of the disposition is commercially reasonable, including without limitation, terms that provide time for payment on credit;

(f) to enjoy and exercise in respect of the Collateral all of the rights and remedies of a secured party under the PPSA;

(g) to notify the account debtors or obligors under any Accounts which constitute part of the Collateral of the assignment of such Accounts to the Secured Party and to direct such account debtors or obligors to make payment of all amounts due or to become due to the Grantor thereunder directly to the Secured Party and to give valid and binding receipts and discharges therefor and in respect thereof and,

upon such notification and at the expense of the Grantor, to enforce collection of any such Accounts, and to adjust, settle or compromise the amount or payment thereof, in the same manner and to the same extent as the Grantor might have done; and

(h) to commence, continue or defend proceedings in any court of competent jurisdiction in the name of the Secured Party, the Receiver or the Grantor for the purpose of exercising any of the rights, powers and remedies set out in this Section, including the institution of proceedings for the appointment of a receiver, manager or receiver and manager of the Collateral.

6.3 Special Rules re Accounts

At any time that the Secured Party is entitled to exercise its rights and remedies under Section 6.2,

(a) all Money or other form of payment received by the Grantor in respect of the Collateral shall be received in trust for the benefit of the Secured Party hereunder, shall be segregated from other funds of the Grantor and shall be forthwith paid over to the Secured Party in the same form as so received (with any necessary endorsement) to be held as cash collateral and applied as provided by Section 6.8; and

(b) the Grantor shall not adjust, settle or compromise the amount or payment of any Collateral.

6.4 Receiver as Agent

The Receiver shall be deemed to be the agent of the Grantor for the purpose of establishing liability for the acts or omissions of the Receiver and the Secured Party shall not be liable for such acts or omissions and, without restricting the generality of the foregoing, the Grantor hereby irrevocably authorizes the Secured Party to give instructions to the Receiver relating to the performance of its duties as set out herein.

6.5 Expenses of Enforcement

The Grantor shall pay to the Receiver the remuneration of the Receiver and all costs and expenses (including, without limitation, legal fees and disbursements on a full indemnity basis) properly incurred by the Receiver pursuant to its appointment and the exercise of its powers hereunder, and shall pay to the Secured Party and the Receiver as required all amounts of Money (including interest thereon) borrowed or advanced by either of them pursuant to the powers set out herein, and the obligations of the Grantor to the Secured Party and the Receiver pursuant to this Section 6.5 shall be payable on demand.

6.6 Indulgences and Releases

Either the Secured Party or the Receiver may grant extensions of time and other indulgences, take and give up securities, accept compositions, grant releases and discharges, release any part of the Collateral to third parties and otherwise deal with the Grantor, debtors of the Grantor,

sureties and others and with the Collateral and other security as the Secured Party or the Receiver may see fit without prejudice to the right of the Secured Party and the Receiver to repossess, hold, collect and realize the Collateral.

6.7 No Liability for Failure to Exercise Remedies

The Secured Party and the Receiver shall not be liable or accountable to the Grantor or to any other person for any failure to exercise any of the rights, powers and remedies set out in this Agreement, and shall not be bound to commence, continue or defend proceedings for the purpose of preserving or protecting any rights of the Secured Party, the Receiver, the Grantor or any other party in respect of the same.

6.8 Proceeds of Disposition

All Moneys received by the Secured Party or by the Receiver pursuant to Section 6.2 shall be promptly applied as follows:

(a) first, in payment of all costs and expenses incurred by the Secured Party in the exercise of all or any of the powers granted to it under this Agreement and in payment of all of the remuneration of the Receiver and all costs and expenses properly incurred by the Receiver in the exercise of all or any of the powers granted to it under this Agreement, including, without limitation, the remuneration, costs and expenses referred to in Section 6.5;

(b) second, in payment of all amounts of Money borrowed or advanced by either of the Secured Party or the Receiver pursuant to the powers set out in this Agreement and any interest thereon;

(c) third, in payment of the Statutory Obligation, provided that if there are not sufficient Moneys to fully pay and perform the Statutory Obligation, the Secured Party may apply the Moneys available to such part or parts thereof as the Secured Party, in its sole discretion, may determine; and

(d) fourth, in payment of any surplus in accordance with applicable law.

6.9 Grantor Liable for Deficiency

If the Moneys received by the Secured Party or the Receiver pursuant to Section 6.2 are not sufficient to pay the claims set out in Section 6.8, the Grantor shall immediately pay the Secured Party the amount of such deficiency.

6.10 Restriction on Grantor

Upon notification of the account debtors or obligors under any Accounts which constitute part of the Collateral of the assignment of such Accounts to the Secured Party or the appointment of a Receiver in respect of the Collateral, all the powers, functions, rights and privileges of the Grantor or any officer, director, servant or agent of the Grantor with respect to the Collateral shall, to the extent permitted by applicable law, be suspended unless specifically continued by the written consent of the Secured Party; however, all other powers, functions, rights and

privileges of the Grantor or any officer, director, servant or agent of the Grantor shall be unaffected by such events.

6.11 Rights Cumulative

All rights and remedies of the Secured Party set out in this Agreement shall be cumulative and no right or remedy contained herein is intended to be exclusive but each shall be in addition to every other right or remedy contained herein or in any existing or future security document or now or hereafter existing at law or in equity or by statute.

7. GENERAL

7.1 Waiver

Any default by the Grantor in the observance or performance of any covenant or condition required to be observed or performed by the Grantor hereunder, may only be waived by the Secured Party in writing, provided that no such waiver by the Secured Party shall extend to or be taken in any manner to affect any subsequent breach or default or the rights resulting therefrom.

7.2 The Secured Party as Attorney

At any time that the Secured Party is entitled to exercise its rights and remedies under Section 6.2, the Grantor hereby irrevocably appoints the Secured Party and any person further designated by the Secured Party to be the attorney of the Grantor for and in the name of the Grantor to execute and do any deeds, documents, transfers, demands, assignments, assurances, consents and things which the Grantor is obliged to sign, execute or do hereunder and, to commence, continue and defend any proceedings authorized to be taken hereunder and generally to use the name of the Grantor in the exercise of all or any of the powers hereby conferred on the Secured Party. These powers are coupled with an interest, have been given for valuable consideration (the receipt and adequacy of which is acknowledged), survive, and do not terminate upon, the bankruptcy, dissolution, winding up or insolvency of the Grantor, and are irrevocable until the Statutory Obligation has been satisfied in full and this Agreement is terminated and the security interest created herein has been released. This power of attorney extends to and is binding upon the Grantor's successors and permitted assigns. The Grantor authorizes the Secured Party to delegate in writing to another person any power and authority of the Secured Party under this power of attorney as may be necessary or desirable in the opinion of the Secured Party, and to revoke or suspend such delegation.

7.3 Further Assurances

The Grantor shall do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered, such further acts, deeds, mortgages, transfers and assurances as the Secured Party shall reasonably require for the better assuring, charging, assigning and conferring unto the Secured Party a security interest in the Collateral, or which the Grantor may hereafter become bound to charge in favour of the Secured Party, for the purpose of accomplishing and effecting the intention of this Agreement.

7.4 Amalgamation of the Grantor

The Grantor acknowledges and agrees that in the event that it amalgamates with any other persons, then (i) the Collateral and the security interest shall extend to and include all of the property and undertaking that any of the amalgamating corporations then owns, all of the property and undertaking that the amalgamated corporation thereafter acquires, all of the property and undertaking in which any of the amalgamating corporations then has any interest, and all of the property and undertaking in which the amalgamated corporation thereafter acquires any interest, and (ii) all references herein to the Grantor shall extend to and include the amalgamated corporation.

7.5 Continuing Security

The security interest constituted hereby shall be deemed to be a continuing security for the Statutory Obligation until the Statutory Obligation is paid and performed in full.

7.6 Notices

All notices and other communications provided for herein shall be in writing and shall be personally delivered to an officer or other responsible employee of the addressee or sent by facsimile, charges prepaid, at or to the applicable address or facsimile number, as the case may be, of the party set opposite its name below or at or to such other address or addresses or facsimile number or numbers as either party may from time to time designate to the other party in such manner. Any communication which is personally delivered as aforesaid shall be deemed to have been validly and effectively given on the date of such delivery if such date is a Business Day and such delivery was made during normal business hours of the recipient; otherwise, it shall be deemed to have been validly and effectively given on the Business Day next following such date of delivery. Any communication which is transmitted by facsimile as aforesaid shall be deemed to have been validly and effectively given on the date of transmission if such date is a Business Day and such transmission was made during normal business hours of the recipient; otherwise, it shall be deemed to have been validly and effectively given on the Business Day next following such date of transmission.

In the case of the Grantor:

Independent Electricity System Operator
[Address]

Attention: ■
Email: ■
Facsimile: ■

In the case of the Secured Party:

[Financing Entity]
c/o Ontario Power Generation Inc., as Manager
700 University Avenue
Toronto, Ontario
M5G 1X6

Attention: ■
Email: ■
Facsimile: ■

7.7 Assignment

The Secured Party may from time to time upon notice to, but without the consent of the Grantor, assign or transfer this Agreement to any other person. The Grantor shall not be entitled to assign or transfer this Agreement or any of the Grantor's rights, duties or obligations hereunder without the prior written consent of the Secured Party.

7.8 Successors and Assigns

This Agreement shall enure to the benefit of the Secured Party and its successors and assigns and shall be binding upon the Grantor and its successors and permitted assigns.

7.9 Amendments

This Agreement may not be amended or otherwise modified except by an instrument in writing executed by the Parties.

7.10 Entire Agreement

This Agreement and the agreements referred to herein and any document, agreement or instrument delivered pursuant to such agreements constitute the entire agreement between the Parties and supersede any prior agreements, undertakings, declarations, representations and undertakings, both written and verbal, in respect of the subject matter hereof.

7.11 Receipt of Agreement and Financing Statement.

The Grantor hereby acknowledges receipt of an executed copy of this Agreement and of the financing statement registered under the PPSA evidencing the security interest created hereby.

7.12 Counterpart

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart.

7.13 Delivery by Facsimile or Electronic Transmission

This Agreement may be executed and delivered by facsimile or electronic transmission and each of the Parties may rely on such facsimile or electronic signature as though such facsimile signature were an original signature.

[NEXT PAGE IS SIGNATURE PAGE]

IN WITNESS WHEREOF the Parties have duly executed this Agreement as of the date first written above.

[FINANCING ENTITY], by its Manager,
ONTARIO POWER GENERATION INC., as Secured Party

By: _____
Name:
Title:

By: _____
Name:
Title:

INDEPENDENT ELECTRICITY SYSTEM OPERATOR
as Grantor

By: _____
Name:
Title:

By: _____
Name:
Title:

_____

_____

SCHEDULE A

GRANTOR INFORMATION

1. **Grantor's exact legal name: Independent Electricity System Operator**

   ■ [French]

2. **Grantor's jurisdiction of incorporation: Ontario**

3. **Grantor's registered office address: ■**

4. **Location of Grantor's business operations and records: ■**

Warehouse Supplement - Nov 6, 2017 (Osler).pdf

SENIOR SERIES 2017-1

SUPPLEMENTAL INDENTURE

between

FAIR HYDRO TRUST

by

COMPUTERSHARE TRUST COMPANY OF CANADA
as Issuer Trustee

and

BNY TRUST COMPANY OF CANADA
as Indenture Trustee

and

●
as Administrative Agent

and

CERTAIN CP CONDUIT PURCHASERS,
CERTAIN NON-CONDUIT PURCHASERS
CERTAIN FUNDING AGENTS
and CERTAIN GROUP BANKS

Made as of ●, 2017

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FLOATING RATE VARIABLE FUNDING,
SERIES 2017-1 SENIOR NOTES

SUPPLEMENTAL INDENTURE made as of ●, 2017, between **Computershare Trust Company of Canada**, a trust company established under the laws of Canada (the "**Issuer Trustee**"), in its capacity as trustee of **Fair Hydro Trust**, a trust existing under the laws of the Province of Ontario (in such capacity, the "**Issuer**"), **BNY Trust Company of Canada**, a trust company established under the laws of Canada (the "**Indenture Trustee**"), ●, in its capacity as the administrative agent for the Purchaser Groups (the "**Administrative Agent**"), the **Non-Conduit Purchasers** from time to time party hereto, the **CP Conduit Purchasers** from time to time party hereto, and the **Funding Agents** for the CP Conduit Purchaser Groups from time to time party hereto.

WHEREAS pursuant to the Trust Indenture, provision was made for the issuance of Notes from time to time;

AND WHEREAS pursuant to the Trust Indenture, Notes may be issued in one or more Series by the execution and delivery of a Supplemental Indenture;

AND WHEREAS the parties hereto are entering into this Supplemental Indenture to provide for the creation and issuance of the Series 2017-1 Senior Notes;

NOW THEREFORE THIS SUPPLEMENTAL INDENTURE WITNESSES and it is hereby covenanted, agreed and declared as follows:

ARTICLE 1
INTERPRETATION

1.1 Definitions

(a) For all purposes of this Supplemental Indenture, except as otherwise expressly provided or unless the context otherwise requires, the terms defined in Schedule A hereto have the meanings assigned to them in Schedule A and include the plural as well as the singular.

(b) The provisions of Section 1.1 of the Trust Indenture are applicable to this Supplemental Indenture. Except as otherwise expressly provided or unless the context otherwise requires, all terms used herein which are defined in the Trust Indenture, either directly or by reference therein, have the meanings assigned to them in the Trust Indenture.

1.2 Interpretation

Subject to the next following sentences, this Supplemental Indenture is supplemental to the Trust Indenture and the Trust Indenture shall be read in conjunction with this Supplemental Indenture and all of the provisions of the Trust Indenture shall apply to and shall have effect in connection with this Supplemental Indenture in the same manner as if all of the provisions of the Trust Indenture and of this Supplemental Indenture were contained in one instrument. This Supplemental Indenture shall, unless the context otherwise requires, be subject to the interpretative provisions contained in Article 1 of the Trust Indenture. If any terms of the Trust Indenture are inconsistent with the express terms or provisions hereof, the terms and provisions of the Trust

Indenture shall be, solely in respect of the Series 2017-1 Senior Notes, amended and supplemented so as to be consistent herewith. The provisions of this Supplemental Indenture are applicable only in respect of the Series 2017-1 Senior Notes and not the Notes of any other Series.

1.3 Application of this Supplemental Indenture

With respect to the Series 2017-1 Senior Notes only, the terms of the Trust Indenture are amended, supplemented, modified, restated and replaced to the extent applicable by the terms of this Supplemental Indenture in respect of the Series 2017-1 Senior Notes in accordance with Section 1.2 above.

ARTICLE 2
PRINCIPAL TERMS

2.1 Creation of Series 2017-1 Senior Notes

There is hereby created a Series of Notes to be issued pursuant to the Trust Indenture and this Supplemental Indenture designated as the "**Floating Rate Variable Funding Senior Notes, Series 2017-1**."

2.2 Principal Terms

In addition to and without limiting any of the provisions of this Supplemental Indenture, the Series 2017-1 Senior Notes:

(a) will be designated as set out in Section 2.1;

(b) will be Senior Notes;

(c) will have a Stated Principal Amount equal to the Series 2017-1 Maximum Principal Amount;

(d) will not be issued in Classes or Tranches;

(e) will be denominated in Canadian dollars;

(f) will not be listed on any securities exchange;

(g) will have an Initial Dollar Principal Amount equal to the Series 2017-1 Initial Principal Amount;

(h) will be issued as definitive notes and will not be in the form of a Global Note;

(i) will be issued as Registered Notes and will be without coupons;

(j) will be Senior Notes and will not be subordinated to any other Series, Class or Tranche of Notes;

(k) will be substantially in the form of Schedule B, with such appropriate insertions, omissions, substitutions and variations as may be approved by the Issuer;

(l) will have each Payment Date as an Interest Payment Date;

(m) will have a Principal Payment Due Date that is the Series 2017-1 Principal Payment Due Date;

(n) will have a Principal Payment Default Date that is the Series 2017-1 Principal Payment Default Date; and

(o) will have no minimum issue amount.

ARTICLE 3
NOTE PURCHASE FACILITY

3.1 Purchase of Notes by the Purchasers

(a) ***Initial Purchases***. Subject to the terms and conditions of this Supplemental Indenture, including delivery of notice in accordance with Section 3.3, (i) each Non-Conduit Purchaser shall purchase, and each CP Conduit Purchaser may, in its sole discretion, purchase a Series 2017-1 Senior Note in an amount equal to all or a portion of its Commitment Percentage of the Series 2017-1 Initial Principal Amount on any Business Day during the period from the date hereof to and including **[December 15, 2017]**, and if any such CP Conduit Purchaser shall have notified the Administrative Agent and the Funding Agent with respect to such CP Conduit Purchaser that it has elected not to fund a Series 2017-1 Senior Note in an amount equal to its Commitment Percentage of the Series 2017-1 Initial Principal Amount on the Closing Date, the Group Bank with respect to such CP Conduit Purchaser shall fund on the Closing Date that portion of such Series 2017-1 Senior Note not to be funded by such CP Conduit Purchaser; and (ii) thereafter, (A) each Non-Conduit Purchaser shall maintain its Series 2017-1 Senior Note, subject to increase or decrease during the period from the Closing Date to and including the Commitment Expiry Date, in accordance with the provisions of this Supplemental Indenture, (B) if a CP Conduit Purchaser shall have purchased a Series 2017-1 Senior Note on the Closing Date, such CP Conduit Purchaser may, in its sole discretion, maintain its Series 2017-1 Senior Note, subject to increase or decrease during the period from the Closing Date to and including the Commitment Expiry Date, in accordance with the provisions of this Supplemental Indenture, and (C) the Group Bank shall maintain its Series 2017-1 Senior Note with respect to its Related Purchaser Group, subject to increase or decrease during the period from the Closing Date to and including the Commitment Expiry Date, in accordance with the provisions of this Supplemental Indenture. Payments by the Non-Conduit Purchasers, the CP Conduit Purchasers and/or the Group Bank with respect to the CP Conduit Purchasers shall be made in immediately available funds on the Closing Date in accordance with Section 3.3(d).

(b) ***Maximum Purchaser Group Principal Amounts***. Notwithstanding anything to the contrary contained in this Supplemental Indenture, at no time shall a Purchaser Group be required to make the initial purchase of a Series 2017-1 Senior Note or increase its Purchaser Group Principal Amount if the sum of (x) Purchaser Group Principal Amount with respect to such Purchaser Group, after giving effect to such purchase or increase, and (y) the sum of any unfunded Delayed Amounts with respect to such Purchaser Group, would exceed the Maximum Purchaser Group Principal Amount with respect to such Purchaser Group at such time.

3.2 Delivery

(a) On the Closing Date (or on any later date that any Purchaser Group becomes a party to this Supplemental Indenture), Series 2017-1 Senior Notes shall be executed, authenticated and delivered by the Issuer in accordance with Section 4.03 of the Trust Indenture (i) in the case of a CP Conduit Purchaser Group, in the name of the Funding Agent with respect to such CP Conduit Purchaser Group (or as otherwise requested by such CP Conduit Purchaser Group and agreed to by the Issuer) in an amount equal to the Maximum Purchaser Group Principal Amount with respect to such CP Conduit Purchaser Group and delivered to such Funding Agent; or (ii) in the case of a Non-Conduit Purchaser Group, in the name of the Related Non-Conduit Purchaser in an amount equal to the Maximum Purchaser Group Principal Amount with respect to such Related Non-Conduit Purchaser Group and delivered to such Related Non-Conduit Purchaser.

(b) The Administrative Agent shall maintain a record of the actual Purchaser Group Principal Amount outstanding with respect to each Purchaser Group and the actual Series 2017-1 Principal Amount outstanding on any date of determination, which, absent manifest error, shall constitute prima facie evidence of the outstanding Purchaser Group Principal Amounts and outstanding Series 2017-1 Principal Amount from time to time. Upon a written request from the Indenture Trustee, the Administrative Agent shall provide in writing the identity of the Purchaser Groups, the related Funding Agents for each CP Conduit Purchaser Group, the Purchaser Group Principal Amount for each Purchaser Group and the Commitment Percentage with respect to such Purchaser Group to the Indenture Trustee.

3.3 Procedure for Initial Issuance and for Increasing the Series 2017-1 Principal Amount

(a) (i) On any Business Day prior to [**December 15, 2017**], in the case of a Non-Conduit Purchaser Group, the Related Non-Conduit Purchaser hereby agrees, or in the case of a CP Conduit Purchaser Group, the CP Conduit Purchaser in such CP Conduit Purchaser Group may agree, in its sole discretion, and the Group Bank with respect to such CP Conduit Purchaser hereby agrees, that it will purchase a Series 2017-1 Senior Note for an initial purchase price equal to the Commitment Percentage with respect to such Purchaser Group of the Series 2017-1 Initial Principal Amount upon the request of the Issuer (the date on which the initial purchase occurs being referred to as the "**Closing Date**"); provided, however, that the Issuer shall have given the Administrative Agent (with a copy to the Indenture Trustee) irrevocable written notice (effective upon receipt), by email communication, substantially in the form of Schedule C no later than **[3:00 p.m.]** (Toronto time) on the third Business Day prior to the Closing Date. The written notice of the initial purchase of the Series 2017-1 Senior Notes shall state (x) the Closing Date, and (y) the initial total purchase price to be paid for the Series 2017-1 Senior Notes (the "**Series 2017-1 Initial Principal Amount**"); and (ii) subject to Section 3.3(e), on any Business Day during the period from the initial purchase of the Series 2017-1 Senior Notes hereunder to and including the Commitment Expiry Date, in the case of a Non-Conduit Purchaser Group, the Related Non-Conduit Purchaser hereby agrees, or in the case of a CP Conduit Purchaser Group, the CP Conduit Purchaser in such CP Conduit Purchaser Group may agree, in its sole discretion, and the Group Bank with respect to such CP Conduit Purchaser hereby agrees that the Purchaser Group Principal Amount with respect to such Purchaser Group may be increased by an amount equal to the Commitment Percentage with respect to such Purchaser Group of the Increase Amount (an "**Increase**"), upon the request of the Issuer (each date on which an increase in the Series 2017-1 Principal Amount occurs hereunder being herein referred to as the "**Increase Date**" applicable to such Increase); provided, however, that the Issuer shall have given the Administrative Agent (with

a copy to the Indenture Trustee) irrevocable (other than as specified in Section 3.3(e)) written notice (effective upon receipt), by email communication, substantially in the form of Schedule C (an "**Increase Notice**") no later than **[3:00 p.m.]** (Toronto time) on (A) with respect to a Deferrable Increase Notice, the third Business Day prior to such Increase Date, or (B) with respect to a Non-Deferrable Increase Notice, the second Business Day prior to such Increase Date. Each Increase Notice shall state (x) the Increase Date, (y) the proposed amount of the increase in the Series 2017-1 Principal Amount (an "**Increase Amount**"), (z) whether a Delayed Funding Notice may be delivered in connection with such Increase pursuant to Section 3.3(e) and whether the Increase is to fund a Transfer (a "**Transfer Increase**") or is in respect of a Refinancing (a "**Refinancing Increase**"). The Commitment Percentage with respect to any Purchaser Group of the Increase Amount set forth in any Non-Deferrable Increase Notice shall not exceed such Purchaser Group's Non-Deferrable Draw Amount as of the related Increase Date.

(b) If a CP Conduit Purchaser elects not to fund the full amount of its Commitment Percentage of a requested Increase, such CP Conduit Purchaser shall notify the Administrative Agent and the Funding Agent with respect to such CP Conduit Purchaser, and the Group Bank with respect to such CP Conduit Purchaser shall fund the portion of the Commitment Percentage with respect to such Related Purchaser Group of such Increase not funded by such CP Conduit Purchaser.

(c) No Purchaser Group shall be required to increase its Purchaser Group Principal Amount on any Increase Date hereunder unless:

(i) such Purchaser Group's Commitment Percentage of such Increase Amount is (A) equal to $**[1,000,000]** or more, or (B) if less than $[1,000,000], the difference between the Maximum Purchaser Group Principal Amount with respect to such Purchaser Group and the Purchaser Group Principal Amount with respect to such Purchaser Group; and

(ii) after giving effect to such Increase Amount, the sum of the (x) the Purchaser Group Principal Amount, and (y) any unfunded Delayed Amounts with respect to such Purchaser Group would not exceed the Maximum Purchaser Group Principal Amount with respect to such Purchaser Group;

(d) Upon receipt of any notice required by Section 3.3(a) or permitted by Section 3.3(e) from the Issuer, the Administrative Agent shall forward (by email communication) a copy of such notice to each Non-Conduit Purchaser and the Funding Agent with respect to each CP Conduit Purchaser Group (or, with respect to any notice pursuant to Section 3.3(e) requiring a Delayed Funding Purchaser Group to decrease its Delayed Amount, the applicable Non-Conduit Purchaser or Funding Agent), no later than **[5:00 p.m.]** (Toronto time) on the Business Day received. After receipt by any Funding Agent with respect to a CP Conduit Purchaser Group of such notice from the Administrative Agent, such Funding Agent shall, so long as the conditions set forth in Sections 3.3(a) and (c) and Article 4 are satisfied, promptly provide notice by email communication to the related CP Conduit Purchaser and the related Group Bank, of the Increase Date and of such CP Conduit Purchaser Group's Commitment Percentage of the Closing Date or Increase Amount, as applicable. Subject to Section 3.3(e), if such CP Conduit Purchaser elects to fund all or a portion of its Commitment Percentage of the Series 2017-1 Initial Principal Amount or the Increase Amount, as applicable, such CP Conduit Purchaser shall pay in immediately available funds its Commitment Percentage (or any portion thereof) of the amount of the Series 2017-1 Initial Principal Amount or Increase Amount, as applicable, on the Closing Date or the related Increase

Date, as applicable, to the Funding Agent with respect to such CP Conduit Purchaser Group for remittance to the Issuer for application in accordance with Section 3.3(h). Subject to Section 3.3(e), if such CP Conduit Purchaser does not fund the full amount of the Commitment Percentage of such CP Conduit Purchaser Group of the Series 2017-1 Initial Principal Amount or an Increase Amount, as applicable, and the related Group Bank is required to fund the portion thereof not funded by the CP Conduit Purchaser, such Group Bank shall pay in immediately available funds such portion on the Closing Date or the related Increase Date, as applicable, to the Funding Agent with respect to such CP Conduit Purchaser Group. Each Funding Agent shall remit the amounts received by it from its CP Conduit Purchaser or the related Group Bank pursuant to this Section 3.3(d) to the Issuer for application in accordance with Section 3.3(h). Subject to Section 3.3(e), so long as the conditions set forth in Sections 3.3(a) and (c) and Article 4 are satisfied, each Non-Conduit Purchaser shall pay in immediately available funds the Commitment Percentage of such Non-Conduit Purchaser of the amount of the Series 2017-1 Initial Principal Amount or Increase Amount, as applicable, on the Closing Date or the Increase Date, as applicable, to the Issuer for application in accordance with Section 3.3(h).

(e) Notwithstanding any of the foregoing, any Group Bank or Non-Conduit Purchaser who shall have previously notified the Issuer in writing that it or any related Program Support Provider may, in the absence of the Group Bank or Non-Conduit Purchaser having the ability to deliver Delayed Funding Notices hereunder, incur charges under, or in anticipation of, Basel III (which may include external charges incurred by the Group Bank, Non-Conduit Purchaser or Program Support Provider or internal charges incurred by any of their businesses) in respect of its Commitment hereunder or any agreement to support such Commitment, or in respect of its interest in the Series 2017-1 Senior Notes, based on its "liquidity coverage ratio" calculated under Basel III, may, upon receipt of any Deferrable Increase Notice pursuant to Section 3.3(a), notify the Issuer in writing (a "**Delayed Funding Notice**") on or prior to **[12:00 noon]** (Toronto time) on the second Business Day preceding the related Increase Date, of its intent to fund an amount up to its Commitment Percentage of the related Increase Amount (such amount, subject to any adjustment described below, the "**Delayed Amount**") on a Business Day that is on or before the thirty-third (33rd) day following the Increase Date specified in such Deferrable Increase Notice (the "**Delayed Funding Date**") rather than on such Increase Date. If any Group Bank or Non-Conduit Purchaser provides a Delayed Funding Notice to the Issuer following the Issuer's delivery of an Increase Notice pursuant to Section 3.3(a), the Issuer may with written notice to the Administrative Agent delivered prior to 3:00 pm on the second Business Day preceding such Increase Date, (x) decrease the Increase Amount with respect to such Deferrable Increase Notice (or revoke such Deferrable Increase Notice by decreasing the Increase Amount to zero), and/or (y) require any Group Bank or Non-Conduit Purchaser who has provided a Delayed Funding Notice to reduce the Delayed Amount with respect to such Increase by an amount no greater than the Non-Deferrable Draw Amount with respect to such Purchaser Group as of the related Increase Date. In the event that the Increase Amount with respect to such Deferrable Increase Notice is reduced, but not to zero, then any Delayed Amount with respect to any Purchaser Group shall be reduced on a pro rata basis unless otherwise specified by the Issuer pursuant to clause (y) above. No Purchaser Group that has provided a Delayed Funding Notice in respect of an Increase (each a "**Delayed Funding Purchaser Group**") shall be considered to be in default of its obligation to fund its Delayed Amount pursuant to this Section 3.3 unless and until it has failed to fund the Delayed Amount (and/or the Delayed Funding Reimbursement Amount with respect to such Delayed Amount) on or before the Delayed Funding Date. [**NTD: the definition of "Non-Deferrable Draw Amount"**

includes a percentage (currently [10]%) that represents the amount that cannot be deferred by the dealers. OPG should make a proposal as to this percentage.]

(f) If (i) one or more Delayed Funding Purchaser Groups provides a Delayed Funding Notice to the Issuer in respect of any Increase Date; and (ii) the Issuer shall not have decreased the related Increase Amount to zero or required each such Delayed Funding Purchaser Group to reduce the Delayed Amount with respect to such Increase to zero, in each case, pursuant to Section 3.3(e), the Administrative Agent shall, by no later than **[12:00 noon]** (Toronto time) on the Business Day preceding such Increase Date, direct each Purchaser Group that is not a Delayed Funding Purchaser Group with respect to such Increase Date (each a "**Non-Delayed Funding Purchaser Group**") to fund an additional portion of such Increase Amount on such Increase Date equal to such Non-Delayed Funding Purchaser Group's proportionate share (based upon the Maximum Purchaser Group Principal Amount with respect to such Non-Delayed Funding Purchaser Group relative to the sum of the Maximum Purchaser Group Principal Amounts with respect to all Non-Delayed Funding Purchaser Groups) of the aggregate Delayed Amounts with respect to such Increase Date; provided that no Non-Delayed Funding Purchaser Group shall be required to fund any portion of the aggregate Delayed Amounts that would cause its Purchaser Group Principal Amount to exceed its Maximum Purchaser Group Principal Amount. Subject to Section 3.3(a), in the case of a Non-Delayed Funding Purchaser Group that is a Non-Conduit Purchaser, such Non-Conduit Purchaser hereby agrees, or, in the case of a Non-Delayed Funding Purchaser Group that is a CP Conduit Purchaser Group, the CP Conduit in such CP Conduit Purchaser Group may agree, in its sole discretion, and the Group Bank in such CP Conduit Purchaser Group hereby agrees, to fund such portion of the Increase Amount on such Increase Date.

(g) After the Non-Delayed Funding Purchaser Groups fund a Delayed Amount on any Increase Date in accordance with Section 3.3(f), the Delayed Funding Purchaser Group in respect of such Delayed Amount will be obligated to fund the Delayed Funding Reimbursement Amount with respect to such Delayed Amount on or before its Delayed Funding Date, irrespective of whether the Scheduled Commitment Expiry Date shall have occurred on or prior to such Delayed Funding Date or the Issuer would be able to satisfy the conditions set forth in Section 3.3(c) to an Increase in an amount equal to such Delayed Funding Reimbursement Amount on such Delayed Funding Date. Such Delayed Funding Purchaser Group shall fund such Delayed Funding Reimbursement Amount on such Delayed Funding Date by paying such amount to the Administrative Agent in immediately available funds, and the Administrative Agent shall distribute such funds to each such Non-Delayed Funding Purchaser Group, *pro rata* based on the relative amount of such Delayed Amount funded by such Non-Delayed Funding Purchaser Group on such Increase Date pursuant to Section 3.3(f).

(h) The Issuer shall apply amounts paid to it pursuant to Sections 3.3(d) and 3.3(f) in the following order of priority:

(i) As to an amount equal to ●% of the amounts paid to pursuant to Sections 3.3(d) and 3.3(f), by deposit to the Program Cash Reserve Account; and

(ii) as to the balance, in respect of the proceeds of the initial purchase of the Series 2017-1 Notes or a Transfer Increase, by application to payment of the purchase price payable by the Issuer to the IESO under the Master Transfer and Servicing Agreement in respect of the related Transfer and, in respect of the proceeds of a Refinancing Increase, by deposit to the Refinancing Account.

3.4 Procedure for Decreasing the Series 2017-1 Principal Amount; Optional Termination

(a) In the case of a Non-Conduit Purchaser Group, the Related Non-Conduit Purchaser hereby agrees, and in the case of a CP Conduit Purchaser Group, each of the CP Conduit Purchasers and the Group Bank in such CP Conduit Purchaser Group hereby agrees, that the Purchaser Group Principal Amount with respect to such Purchaser Group may be decreased on any Payment Date by such Purchaser Group's Commitment Percentage of a Decrease Amount (a "**Decrease**"), upon the request of the Issuer. Each Payment Date on which a Decrease in the Series 2017-1 Principal Amount occurs hereunder being herein referred to as the "**Decrease Date**" applicable to such Decrease; provided, however, that the Issuer shall have given the Administrative Agent (with a copy to the Indenture Trustee) irrevocable written notice (effective upon receipt), by email communication, substantially in the form of Schedule D (a "**Decrease Notice**") no later than **[3:00 p.m.]** (Toronto time) on the second Business Day prior to any Payment Date that is a Decrease Date. Each Decrease Notice shall state (x) the Decrease Date, and (y) the proposed amount of the decrease in the Series 2017-1 Principal Amount (a "**Decrease Amount**").

(b) Upon each Decrease, the Administrative Agent shall indicate in its records such Decrease and the Purchaser Group Principal Amount outstanding with respect to each Purchaser Group after giving effect to such Decrease. Upon receipt of any notice required by Section 3.4(a) from the Issuer, the Administrative Agent shall forward (by email communication) a copy of such notice to each Non-Conduit Purchaser and the Funding Agent with respect to each CP Conduit Purchaser Group, no later than **[1:00 p.m.]** (Toronto time) on the Business Day received.

(c) On any Business Day, the Issuer shall have the right to deliver an irrevocable written notice (an "**Optional Termination Notice**") to the Administrative Agent in which the Issuer declares that the Commitments shall terminate on the date (the "**Optional Termination Date**") set forth in such notice (which date, in any event, shall be a Payment Date not less than twenty (20) Business Days from the date on which such notice is delivered). Upon receipt of any Optional Termination Notice from the Issuer, the Administrative Agent shall promptly notify each Non-Conduit Purchaser and the Funding Agent with respect to each CP Conduit Purchaser Group thereof.

3.5 Increases and Reductions of the Commitments

(a) The Issuer may from time to time request that any Purchaser Group agree to increase its Maximum Purchaser Group Principal Amount. An increase in such amount shall be effective hereunder if such Purchaser Group shall have agreed in its sole discretion to such increase.

(b) On any Business Day, the Issuer may, upon two (2) Business Days' prior written notice to the Administrative Agent (effective upon receipt) (with copies to the Indenture Trustee) reduce the Series 2017-1 Maximum Principal Amount in an amount equal to $**[10,000,000]** or a whole multiple of $**[1,000,000]** in excess thereof; provided that no such termination or reduction shall be permitted if, after giving effect thereto and to any reduction in the Series 2017-1 Principal Amount on such date, the Purchaser Group Principal Amount with respect to any Purchaser Group would exceed the Maximum Purchaser Group Principal Amount with respect to such Purchaser Group then in effect. Any reduction in the Series 2017-1 Maximum Principal Amount shall be made on a pro rata basis to the Maximum Purchaser Group Principal Amounts with respect to the Purchaser Groups, based on the Maximum Purchaser Group Principal Amount with respect to each Purchaser Group. Once reduced, the Maximum Purchaser Group Principal Amounts may not be

subsequently reinstated without each such Purchaser Group's prior written consent, which consent shall be granted or not in the sole discretion of such Purchaser Group.

(c) The Issuer may extend the Scheduled Commitment Expiry Date only with the prior written consent of the Administrative Agent, each Non-Conduit Purchaser and each Funding Agent.

3.6 Interest; Fees and Other Amounts

(a) Interest shall be payable on the Series 2017-1 Senior Notes on each Payment Date.

(b) The Issuer shall pay to each CP Conduit Purchaser Group and each Non-Conduit Purchaser, on each Payment Date, a commitment fee with respect to the preceding Billing Period (the "**Commitment Fee**") during the period from the Closing Date to and including the Commitment Expiry Date in an amount equal to the sum of the following amounts calculated for each day during such Billing Period: (x) the Commitment Fee Rate, multiplied by (y) the amount by which Maximum Purchaser Group Principal Amount with respect to such Purchaser Group on such day exceeds the Purchaser Group Principal Amount with respect to such Purchaser Group on such day, and divided by (z) 365. The Commitment Fees shall be payable monthly in arrears on each Payment Date.

(c) The Funding Agent with respect to each CP Conduit Purchaser Group and each Non-Conduit Purchaser shall provide written notice to the Issuer and the Paying Agent no later than two (2) Business Days prior to each Payment Date, setting forth the Group Monthly Interest and the Group Monthly Fees and Other Amounts with respect to its Related Purchaser Group with respect to the Payment Date.

(d) The Monthly Interest shall be included in each calculation of the Interest Accrual Amount (Senior) for the purposes of Section 7.04(e)(iii) of the Trust Indenture and shall be payable pursuant to Sections 7.05(a), 7.08(a)(i) or 8.13(c) of the Trust Indenture, as applicable. On each Payment Date, the Monthly Fees and Other Amounts shall be payable in respect of the Series 2017-1 Notes pursuant to Sections 7.04(e)(iii) or 8.13(c) of the Trust Indenture, as applicable. On each Payment Date the Paying Agent shall, subject to availability of funds, pay to each CP Conduit Purchaser Group and each Non-Conduit Purchaser its Group Monthly Interest and its Group Monthly Fees and Other Amounts with respect to the Payment Date; provided that if the amounts available to pay such Group Monthly Interest and Group Monthly Fees and Other Amounts are insufficient, the amounts available shall be paid *pro rata* based on the amounts owing to each Purchaser Group.

3.7 Accumulation and Repayment of Principal

(a) For the purposes of the Trust Indenture and the Series 2017-1 Notes:

(i) for each Payment Date before the Principal Accumulation Date, the Principal Accumulation Amount shall be the Principal Payment Amount for such Payment Date; and

(ii) for each Payment Date on or after the Principal Accumulation Date, the Principal Accumulation Amount shall be the greater of (x) the Principal Payment Amount

for such Payment Date, and (y) the Principal Accumulation Amount, for such Payment Date.

(b) Each Payment Date where the Principal Payment Amount is not nil shall be a Principal Payment Date in respect of the Series 2017-1 Notes. On each Principal Payment Date in respect of the Series 2017-1 Notes, the Paying Agent shall pay to each Non-Conduit Purchaser and each Funding Agent with respect to its Related Purchaser Group, such Purchaser Group's Pro Rata Share of the Principal Payment Amount for such Principal Payment Date out of funds allocated to the Series 2017-1 Senior Notes pursuant to Sections **7.04(e)(iv)(A), 7.06(a) or 8.13(d)** of the Trust Indenture, as applicable, in repayment of the principal amount of the Series 2017-1 Notes.

3.8 Indemnification by the Issuer

The Issuer agrees to indemnify and hold harmless the Indenture Trustee, the Administrative Agent, each Funding Agent, each CP Conduit Purchaser, the Group Bank, each Non-Conduit Purchaser and each of their respective officers, directors, agents and employees (each, an "**Issuer indemnified person**") from and against any loss, liability, expense, damage or injury suffered or sustained by such Issuer indemnified person by reason of (a) any acts, omissions or alleged acts or omissions arising out of, or relating to, activities of the Issuer pursuant to the Program Agreements to which it is a party; (b) a breach of any representation or warranty made or deemed made by the Issuer (or any of its officers) in any Program Agreement; or (c) a failure by the Issuer to comply with any applicable law or regulation or to perform its covenants, agreements, duties or obligations required to be performed or observed by it in accordance with the provisions of the Program Agreements, including, but not limited to, any judgment, award, settlement, reasonable attorneys' fees and other reasonable costs or expenses incurred in connection with the defense of any actual or threatened action, proceeding or claim, except to the extent such loss, liability, expense, damage or injury resulted from the gross negligence, bad faith or willful misconduct of such Issuer indemnified person or its officers, directors, agents, principals, employees or employers as determined by a court of competent jurisdiction in a final non-appealable judgement or includes any Excluded Taxes; provided that any payments made by the Issuer pursuant to this Section 3.8 shall be made solely from funds available pursuant to Section **[7.04] or [8.13]** of the Trust Indenture, as applicable, shall be non-recourse other than with respect to such funds, and shall not constitute a claim against the Issuer to the extent that such funds are insufficient to make such payment.

3.9 Funding Agents

(a) The Funding Agent with respect to each CP Conduit Purchaser Group is hereby authorized to determine the Group Monthly Interest and Group Monthly Fees and Other Amounts with respect to each Payment Date and such CP Conduit Purchaser Group. Any such determination by a Funding Agent, absent manifest error, shall constitute prima facie evidence of the accuracy of the calculation. Furthermore, the Funding Agent with respect to each CP Conduit Purchaser Group will maintain records sufficient to identify the percentage interest of the related CP Conduit Purchaser and the Group Bank with respect to such CP Conduit Purchaser Group holding an interest in the Series 2017-1 Senior Note registered in the name of such Funding Agent and any amounts owing thereunder.

(b) Upon receipt of funds on each Payment Date, each Funding Agent shall pay such funds to the related CP Conduit Purchaser and/or the related Group Bank owed such funds. If a Funding

Agent shall have paid to any CP Conduit Purchaser or Group Bank any funds that (i) must be returned for any reason (including bankruptcy); or (ii) exceeds that which such CP Conduit Purchaser or Group Bank was entitled to receive, such amount shall be promptly repaid to such Funding Agent by such CP Conduit Purchaser or Group Bank.

3.10 Taxes

(a) All payments by or on account of any obligation of the Issuer hereunder shall, to the extent allowed by law, be made free and clear of, and without deduction or withholding for or on account of Taxes, excluding (i) income taxes (including branch profit taxes, minimum taxes and taxes computed under alternative methods, at least one of which is based on or measured by net income), franchise taxes (imposed in lieu of income taxes), or any other Taxes based on or measured by the net income of any person legally entitled to receive such payments (each a "**Recipient**") as a result of a present or former connection between the Recipient and the jurisdiction of the Governmental Authority imposing such Taxes (other than any such connection arising solely from the Recipient having executed, delivered or performed its obligations or received a payment under, disposed of, or enforced, this Supplemental Indenture); (ii) any withholding or deduction imposed pursuant to (A) Sections 1471 to 1474 of the U.S. Internal Revenue Code of 1986, as amended ("**FATCA**"), or any successor version thereof, or any similar legislation imposed by any other Governmental Authority, or (B) any treaty, law or regulation or other official guidance enacted by Canada implementing FATCA or any intergovernmental agreement with respect to FATCA or any similar legislation imposed by any other Governmental Authority, including, for greater certainty, the Canada-United States Enhanced Tax Information Exchange Agreement Implementation Act (Canada) and Parts XVIII and XIX of the Income Tax Act (Canada), as amended (collectively, and including FATCA, the "**AEOI Legislation**"); and (iii) any interest, penalties and additions to Taxes in respect of (i) and (ii) (all such excluded Taxes being hereinafter called "**Excluded Taxes**"). If any Taxes, other than Excluded Taxes, are required to be withheld from any amounts payable to a Recipient hereunder, the amounts so payable to the Recipient shall be increased, and the Recipient shall be entitled to be paid by the Issuer the amount of such increase to the extent necessary to yield to the Recipient (after payment of all such Taxes other than Excluded Taxes) interest or any such other amounts payable hereunder or thereunder at the rates or in the amounts specified hereunder. Where the amount payable by the Issuer is increased in accordance with the previous sentence, the Group Monthly Interest shall be increased by the amount of such increase. Whenever any Taxes are payable on or with respect to amounts distributed to a Recipient, as promptly as possible thereafter the Issuer shall send to such Recipient a certified copy of an original official receipt showing payment thereof.

(b) If a payment by or on account of any obligation of the Issuer hereunder would be subject to withholding Taxes under any AEOI Legislation if the Recipient were to fail to comply with the applicable reporting requirements of any AEOI Legislation, such Recipient shall deliver to the Issuer at the time or times prescribed by law and at such time or times reasonably requested by the Issuer such documentation prescribed by applicable law and such additional documentation reasonably requested by the Issuer as may be necessary for the Issuer to comply with its obligations under any AEOI Legislation and to determine that such Recipient has complied with its obligations under any AEOI Legislation, or to determine the amount to deduct and withhold from such payment. If any form or certification it previously delivered by a Recipient expires or becomes obsolete or inaccurate in any respect, the Recipient shall update such form or certification or promptly notify the Issuer in writing of its legal inability to do so.

(c) If a Recipient is legally entitled to receive a refund of any Taxes (other than Excluded Taxes) as to which it has been indemnified or with respect to which additional amounts have been paid to it hereunder or it is legally entitled to receive a credit or deduction with respect to such Taxes or with respect to such additional amounts that have been paid hereunder (in each case pursuant to Section 3.10(a)), it shall use commercially reasonable efforts to obtain or claim such refund, credit or deduction and pay over such refund or the value of such credit or deduction to the Issuer, together with any interest thereon.

3.11 Increased Costs

(a) (i) If any Regulatory Change (x) subjects any Affected Party to any charge or withholding on or with respect to any Support Facility or this Supplemental Indenture or an Affected Person's obligations under a Support Facility or this Supplemental Indenture, or changes the basis of taxation of payments to any Affected Person of any amounts payable under any Support Facility or this Supplemental Indenture Agreement (except for changes in the rate of tax on the overall net income of an Affected Person or Excluded Taxes) or (y) imposes, modifies or deems applicable any reserve, assessment, fee, tax, insurance charge, special deposit or similar requirement against assets of, deposits with or for the account of, or liabilities of an Affected Person, or credit extended by an Affected Person pursuant to a Support Facility or this Supplemental Indenture or (z) imposes any other condition the result of which is to increase the cost to an Affected Person of performing its obligations under a Support Facility or this Supplemental Indenture, or to reduce the rate of return on an Affected Person's capital or assets as a consequence of its obligations under a Support Facility or this Supplemental Indenture, or to reduce the amount of any sum received or receivable by an Affected Person under a Support Facility or this Supplemental Indenture, or to require any payment calculated by reference to the amount of interests or loans held or interest received by it, then, upon written request by such Affected Party (through the Funding Agent for its Purchaser Group if the Affected Party is a Program Support Provider, CP Conduit Purchaser or Group Bank) of a written request therefore to the Issuer, such Affected Party (through the Funding Agent for its Purchaser Group if the Affected Party is a Program Support Provider, CP Conduit Purchaser or Group Bank) shall be entitled to be paid, such amounts charged to such Affected Party or such amounts to otherwise compensate such Affected for such increased cost or such reduction, no later than the Payment Date following receipt by the Issuer of such request for compensation under this Section 3.11(a)(i), if such request is received by the Issuer no later than five (5) Business Days prior to the end of the Interest Period related to such Payment Date, and otherwise on the following Payment Date.

(ii) The Issuer acknowledges that any Affected Party may implement, as an internal institutional matter, measures in anticipation of a final or proposed Regulatory Change (including, without limitation, the imposition of internal charges on such Affected Party's interest or obligations under any Support Agreement or this Supplemental Indenture) and may commence recognizing the incurrence of charges by seeking compensation under Section 3.11(a)(i) in connection with such measures, in advance of the effective date of such final or proposed Regulatory Change, and the Issuer agrees that such charges or compensation shall be payable, to the related Funding Agent, for the benefit of Affected Party, following demand therefor without regard to whether such proposed Regulatory Change has been adopted or whether such effective date has occurred; provided, that (I) the Affected Party shall provide thirty (30) days prior written notice to the Issuer of its intent to impose or incur any such charges or compensation, (II) an Affected Party shall not be compensated for any such amount pursuant to this subsection 3.11(a)(ii)

relating to any period ending, and of which such Affected Party has had knowledge, more than one year prior to the date that such Affected Party provided the Issuer with the written notice contemplated by the preceding clause (I) of this subsection 3.11(a)(ii), (III) if, after the payment by the Trust of any charges or compensation pursuant to this subsection 3.11(a)(ii), either (A) the Issuer requests in writing that the applicable Affected Party re-compute any such charge or compensation in light of differences between a proposed Regulatory Change and the final effective version thereof or (B) the applicable Affected Party determines that the amount of the charge imposed on and required to be compensated by the Issuer exceeds the amount necessary to compensate it for the applicable Regulatory Change as contemplated by subsection 3.11(a)(i), then (x) the amount of such charge or compensation shall, from and after such determination, be reduced by the amount of such excess and (y) such Affected Party shall, within thirty (30) days of such determination, either repay the amount of such excess or credit the amount of such excess against future charges under this subsection 3.11(a)(ii). The Issuer further acknowledges that any charge or compensation demanded hereunder may take the form of a monthly charge to be assessed by such Affected Party.

(b) Each Affected Party claiming increased amounts described in subsection 3.11(a) of this Supplemental Indenture will furnish to the Issuer (together with its request for compensation) a certificate prepared in good faith setting forth the basis and the calculation of the amount (in reasonable detail) of each request by such Affected Party for any such increased amounts referred to in subsection 3.11(a) hereof. Any such certificate shall be conclusive absent manifest error. Failure on the part of any Affected Party to demand compensation for any amount pursuant to subsection 3.11(a) hereof with respect to any period shall not constitute a waiver of such Affected Party's right to demand compensation with respect to such period.

ARTICLE 4
CONDITIONS PRECEDENT

4.1 Conditions Precedent to Initial Purchase of Series 2017-1 Senior Notes

On or prior to the initial purchase of Series 2017-1 Senior Notes hereunder, the following conditions precedent shall be satisfied:

(a) Each of the conditions precedent set forth in Section 5.01 of the Trust Indenture in respect of the incurrence of Funding Obligations under this Supplemental Indenture shall have been satisfied.

(b) The Administrative Agent and each of the Funding Agents shall have received:

(i) executed copies of the Fee Letter, this Supplemental Indenture, the Manager Indemnity and copies of each of the other Program Agreements certified by an Authorized Officer of the Issuer;

(ii) certificates of status or compliance or other similar documents issued by the applicable governmental authority to evidence that each of the Issuer Trustee, the IESO and the Manager is validly existing pursuant to the laws of the jurisdiction of their respective establishment or incorporation;

(iii) a copy of the incorporating documents and all amendments thereto and applicable by-laws of each of the Issuer Trustee, the IESO and the Manager certified by an Authorized Officer of the applicable entity;

(iv) a copy of the Declaration of Trust certified by an Authorized Officer of the Issuer;

(v) copies of resolutions of the board of directors of the IESO and the Manager approving and authorizing the execution, delivery and performance of each Program Agreement they are party to, in each case certified by an Authorized Officer of the applicable entity;

(vi) incumbency certificates for each of the Issuer Trustee, the Manager and the IESO executing this Supplemental Indenture and any other Program Agreements and the other documents to be delivered by either the Issuer Trustee, the Manager or the IESO thereunder, in each case showing their names, offices and specimen signatures on which certificates the Administrative Agent and the Purchaser Groups shall be entitled to conclusively rely until such time as the Administrative Agent and the Funding Agents receive a replacement certificate meeting the requirements of this Section 4.1(b)(vi);

(vii) the following Opinions of Counsel:

(A) the opinion of external counsel to the Manager as to the non-consolidation of the Issuer with the Manager in the event of the insolvency of the Manager in form and substance satisfactory to the Administrative Agent and the Funding Agents;

(B) the opinion of external counsel to the IESO as to the Investment Asset acquired by the Issuer not being subject to the claims of creditors of the IESO in form and substance satisfactory to the Administrative Agent and the Funding Agents;

(C) favourable opinions of external counsel to the Manager covering general corporate matters, the due execution and delivery of, and the enforceability of, each of the Program Agreements to which the Manager, the Issuer and the Issuer Trustee are party which opinion, as to certain matters, may rely on opinion of internal counsel to the Manager and the Issuer Trustee; and

(D) a favourable opinion of external counsel to the Province with respect to the due authorization, execution, delivery and enforceability of the Change of Law Protection Agreement in form and substance satisfactory to the Administration Agent and the Funding Agents;

(viii) a certificate of an Authorized Officer of the Manager confirming that the representations and warranties set forth in Section **[12.01]** of the Trust Indenture and Section 5.1 of this Supplemental Indenture are true and correct in all material respects, that the Issuer is in compliance in all material respects with all of its covenants and obligations under the Program Agreements to which it is a party and that no Termination Event has occurred; and

(ix) such additional documents, instruments, certificates or letters as the Administrative Agent or any Funding Agent may reasonably request.

(c) The representations and warranties set forth in Section **[12.01]** of the Trust Indenture and Section 5.1 of this Supplemental Indenture shall be true and correct in all material respects, the Issuer shall be compliance in all material respects with all of its covenants and obligations under the Program Agreements to which it is a party and no Termination Event shall have occurred.

(d) The Series 2017-1 Senior Notes shall have been duly issued in accordance with the Trust Indenture and each Funding Agent and Non-Conduit Purchaser shall have received its Series 2017-1 Senior Note registered in its name or a nominee in a face amount equal to its Maximum Purchaser Group Principal Amount.

(e) After giving effect to the purchase, the covenant of the Issuer in Section 6.1(d) will be satisfied.

(f) All fees payable on or before the Closing Date pursuant to the Fee Letter shall have been paid in full [**(or arrangements satisfactory to the Administrative Agent and the Funding Agents have been made)**]. [**NTD**: to be discussed]

(g) The Rating Agency Condition shall have been satisfied in respect of the initial purchase.

4.2 Conditions Precedent to each Increase under Series 2017-1 Senior Notes

On or prior to each Increase, the following conditions precedent shall be satisfied:

(a) the Administrative Agent shall have received an Increase Notice;

(b) no Termination Event shall have occurred or would occur after giving effect to such Increase;

(c) the Increase Date in respect of the Increase is prior to the Commitment Expiry Date;

(d) if the Increase is identified as a Transfer Increase in the Increase Notice, then the related Transfer under the Master Transfer and Servicing Agreement shall have been completed or contemporaneously completed; and

(e) after giving effect to the Increase, the Rating Agency Condition will be satisfied.

The Issuer's acceptance of funds in connection with each Increase occurring on any Increase Date shall constitute a representation and warranty by the Issuer to the Administrative Agent and the Purchaser Groups as of such Increase Date that all of the conditions contained in Section 3.3(a) and this Section 4.2 are satisfied.

ARTICLE 5
REPRESENTATIONS AND WARRANTIES

5.1 Representations and Warranties of the Issuer

The Issuer hereby represents and warrants to the Administrative Agent and the Purchaser Groups as of the Closing Date, and shall be deemed to represent and warrant to the Administrative Agent and the Purchaser Groups on each Increase Date, that:

(a) no Termination Event has occurred or would result from the initial purchase of the Issuer Investment Interest on the Closing Date or any increase in the Issuer Investment Interest on an Increase Date, as applicable;

(b) the Issuer is not a non-resident of Canada within the meaning of the *Income Tax Act* (Canada);

(c) all tax returns (federal, provincial and local) required to be filed with respect to the Issuer have been filed and there has been paid or adequate provision made for the payment of all material Taxes in respect of the Issuer;

(d) the Issuer has complied in all material respects with all laws in respect of the conduct of its business and ownership of its property including the Issuer Investment Interest;

(e) all information provided to the Administrative Agent and the Purchaser Groups by or on behalf of the Issuer in respect of the Issuer Investment Interest is and will be true and accurate in all material respects; and

(f) to its knowledge, there is no set of circumstances existing at such time that will have an Adverse Effect or will reasonably be expected to have an Adverse Effect.

5.2 Representations and Warranties of the Purchasers

Each Purchaser Group member represents and warrants to the Issuer as of the Closing Date, and shall be deemed to represent and warrant to the Issuer on each Increase Date, that:

(a) it is resident in Ontario or is otherwise subject to the securities legislation of the Province of Ontario;

(b) it is purchasing the applicable Series 2017-1 Senior Notes (i) as principal for its own account and not for the benefit of any other "person" (as defined in the *Securities Act* (Ontario)) or company; and (ii) for cash consideration in excess of $150,000; and

(c) it was not created and is not being used solely to purchase or hold securities in reliance on the exemption from the prospectus and dealer registration requirements contained in Section 2.10 of National Instrument 45-106 − Prospectus and Registration Exemptions.

5.3 Survival

The representations and warranties set out in this Article 5 shall survive the execution hereof.

ARTICLE 6
COVENANTS

6.1 Covenants of the Issuer

(a) The Issuer shall promptly provide to the Administrative Agent, each Funding Agent and each Non-Conduit Purchaser (in multiple copies if requested) copies of all material reports, notices, financial statements and other documents delivered by the IESO to the Issuer with respect to the Issuer Investment Interest or pursuant to the Master Transfer and Servicing Agreement.

(b) The Issuer shall provide to the Administrative Agent, each Funding Agent and each Non-Conduit Purchaser (in multiple copies, if requested) such other information, documents, records or reports respecting the Issuer Investment Interest, the Issuer or the IESO which is in the possession or under the control of the Issuer or the Manager, as the Administrative Agent, a Funding Agent or a Non-Conduit Purchaser may from time to time reasonably request.

(c) The Issuer shall furnish to the Administrative Agent, each Funding Agent and each Non-Conduit Purchaser promptly after known to the Issuer or the Manager, information with respect to any action, suit or proceeding involving the Manager, the Issuer or the IESO or any of their respective Affiliates by or before any court or any Governmental Authority which, if adversely determined, would have an Adverse Effect.

(d) The Issuer will, at all times, cause the aggregate outstanding principal amount of Subordinated Funding Obligations and Junior Subordinated Funding Obligations to be not less than [49]% of the aggregate outstanding principal amount of all Issuer Funding Obligations.

(e) The Issuer will not make any amendments to the Funding Obligation Agreements governing any outstanding Subordinated Funding Obligations or Junior Subordinated Funding Obligations without the prior written consent of the Requisite Series 2017-1 Noteholders.

(f) The Issuer will not hold or own, directly or indirectly, any share or equity security of, or any equity interest in, any Person.

(g) The Issuer confirms that this Supplemental Indenture is a Warehouse Facility Agreement. The Issuer will not enter into any other Warehouse Facility Agreement creating Senior Funding Obligations without the prior written consent of the Requisite Series 2017-1 Noteholders unless the Commitment Expiry Date has occurred.

ARTICLE 7
AGENTS

7.1 Administrative Agent

(a) Each of the Non-Conduit Purchasers, CP Conduit Purchasers, the Group Banks and the Funding Agents hereby irrevocably designates and appoints the Administrative Agent as the agent of such Person under this Supplemental Indenture and irrevocably authorizes the Administrative Agent, in such capacity, to take such action on its behalf under the provisions of this Supplemental Indenture and to exercise such powers and perform such duties as are expressly delegated to the Administrative Agent by the terms of this Supplemental Indenture, together with such other

powers as are reasonably incidental thereto. Notwithstanding any provision to the contrary elsewhere in this Supplemental Indenture, the Administrative Agent shall not have any duties or responsibilities except those expressly set forth herein, or any fiduciary relationship with any Non-Conduit Purchaser, any CP Conduit Purchaser, any Group Bank or any Funding Agent, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Supplemental Indenture or otherwise exist against the Administrative Agent.

(b) The Administrative Agent may execute any of its duties under this Supplemental Indenture by or through agents or attorneys in fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties. The Administrative Agent shall not be responsible for the negligence or misconduct of any agents or attorneys-in-fact selected by it with reasonable care.

(c) Neither the Administrative Agent nor any of its officers, directors, employees, agents, attorneys in fact or Affiliates shall be (i) liable for any action lawfully taken or omitted to be taken by it or such Person under or in connection with the Trust Indenture, this Supplemental Indenture or any other Program Agreement (except to the extent that any of the foregoing are found by a final and nonappealable decision of a court of competent jurisdiction to have resulted from its or such Person's own gross negligence or willful misconduct) or (ii) responsible in any manner to any of the Non-Conduit Purchasers, the CP Conduit Purchasers, the Group Banks or the Funding Agents for any recitals, statements, representations or warranties made by the Issuer, the IESO, the Manager or any officer thereof contained in this Supplemental Indenture or any other Program Agreement or in any certificate, report, statement or other document referred to or provided for in, or received by the Administrative Agent under or in connection with, this Supplemental Indenture or any other Program Agreement or for the value, validity, effectiveness, genuineness, enforceability or sufficiency of this Supplemental Indenture, any other Program Agreement, or for any failure of any of the Issuer, the Manager or the IESO to perform its obligations hereunder or thereunder. The Administrative Agent shall not be under any obligation to any Non-Conduit Purchaser, any CP Conduit Purchaser, any Group Bank or any Funding Agent to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Supplemental Indenture, any other Program Agreement or to inspect the properties, books or records of the Issuer, the Manager or the IESO.

(d) The Administrative Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing, resolution, notice, consent, certificate, affidavit, letter or electronic message, statement, order or other document or conversation believed by it to be genuine and correct and to have been signed, sent or made by the proper Person or Persons and upon advice and statements of legal counsel (including, without limitation, counsel to the Issuer, the Manager or the IESO), independent accountants and other experts selected by the Administrative Agent.

(e) The Administrative Agent shall not be deemed to have knowledge or notice of the occurrence of any Termination Event unless the Administrative Agent has received written notice from a Non-Conduit Purchaser, a CP Conduit Purchaser, a Group Bank, a Funding Agent, the Issuer or the Manager referring to the Trust Indenture or this Supplemental Indenture, describing such Termination Event and stating that such notice is a "notice of a Termination Event". In the event that the Administrative Agent receives such a notice, the Administrative Agent shall give notice thereof to the Non-Conduit Purchasers, the Funding Agents, the Issuer Trustee and the Manager.

(f) Each of the Non-Conduit Purchasers, the CP Conduit Purchasers, the Group Banks and the Funding Agents expressly acknowledges that neither the Administrative Agent nor any of its officers, directors, employees, agents, attorneys in fact or Affiliates has made any representations or warranties to it and that no act by the Administrative Agent hereinafter taken, including any review of the affairs of the Issuer, the Manager or the IESO shall be deemed to constitute any representation or warranty by the Administrative Agent to any such Person. Each of the Non-Conduit Purchasers, the CP Conduit Purchasers, the Group Banks and the Funding Agents represents to the Administrative Agent that it has, independently and without reliance upon the Administrative Agent or any other Non-Conduit Purchaser, CP Conduit Purchaser, Group Bank or Funding Agent and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, operations, property, financial and other condition and creditworthiness of the Issuer, the Manager and the IESO and made its own decision to enter into this Supplemental Indenture. Each of the Non-Conduit Purchasers, the CP Conduit Purchasers, the Group Banks and the Funding Agents also represents that it will, independently and without reliance upon the Administrative Agent or any other Non-Conduit Purchaser, CP Conduit Purchaser, Group Bank or Funding Agent, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Supplemental Indenture and the other Program Agreements, and to make such investigation as it deems necessary to inform itself as to the business, operations, property, financial and other condition and creditworthiness of the Issuer, the Manager and the IESO. Except for notices, reports and other documents expressly required to be furnished to the Non-Conduit Purchasers and the Funding Agents by the Administrative Agent hereunder, the Administrative Agent shall have no duty or responsibility to provide any Non-Conduit Purchaser, any CP Conduit Purchaser, any Group Bank or any Funding Agent with any credit or other information concerning the business, operations, property, condition (financial or otherwise), prospects or creditworthiness of the Issuer, the Manager or the IESO which may come into the possession of the Administrative Agent or any of its officers, directors, employees, agents, attorneys in fact or Affiliates.

(g) The Administrative Agent and its Affiliates may make loans to, accept deposits from and generally engage in any kind of business with the Issuer, the Manager and the IESO as though the Administrative Agent were not the Administrative Agent hereunder. With respect to any Series 2017-1 Senior Note held by the Administrative Agent, the Administrative Agent shall have the same rights and powers under this Supplemental Indenture and the other Program Agreements as any Group Bank or Funding Agent and may exercise the same as though it were not the Administrative Agent, and the terms "Group Bank," and "Funding Agent" shall include the Administrative Agent in its individual capacity.

(h) The Administrative Agent may resign as Administrative Agent at any time by giving 30 days' notice to the Non-Conduit Purchasers, the Funding Agents, the Indenture Trustee, the Issuer and the Manager. If ● shall resign as Administrative Agent under this Supplemental Indenture, then the Requisite Series 2017-1 Noteholders shall appoint a successor administrative agent from among the Non-Conduit Purchasers and Funding Agents, whereupon such successor agent shall succeed to the rights, powers and duties of the Administrative Agent, and the term "Administrative Agent" shall mean such successor agent effective upon such appointment and approval, and the former Administrative Agent's rights, powers and duties as Administrative Agent shall be terminated, without any other or further act or deed on the part of such former Administrative Agent or any of the parties to this Supplemental Indenture. If no successor administrative agent

has accepted appointment as Administrative Agent prior to the effective date of the resignation of the Administrative Agent, the retiring Administrative Agent may appoint, after consulting with the Non-Conduit Purchasers and the Funding Agents, a successor Administrative Agent from among the Non-Conduit Purchasers and the Funding Agents. If no successor administrative agent has accepted appointment by the date which is thirty (30) days following a retiring Administrative Agent's notice of resignation, the retiring Administrative Agent's resignation shall nevertheless thereupon become effective and Manager shall assume and perform all of the duties of the Administrative Agent hereunder until such time, if any, as the Requisite Series 2017-1 Noteholders appoint a successor administrative agent as provided for above. After any retiring Administrative Agent's resignation as Administrative Agent, the provisions of this Article 7 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Administrative Agent under this Supplemental Indenture.

7.2 Funding Agents

(a) Each CP Conduit Purchaser and each Group Bank with respect to such CP Conduit Purchaser hereby irrevocably designates and appoints the Funding Agent set forth next to such CP Conduit Purchaser's name on Schedule E as the agent of such Person under this Supplemental Indenture and irrevocably authorizes such Funding Agent, in such capacity, to take such action on its behalf under the provisions of this Supplemental Indenture and to exercise such powers and perform such duties as are expressly delegated to such Funding Agent by the terms of this Supplemental Indenture, together with such other powers as are reasonably incidental thereto. Notwithstanding any provision to the contrary elsewhere in this Supplemental Indenture, each Funding Agent shall not have any duties or responsibilities except those expressly set forth herein, or any fiduciary relationship with any CP Conduit Purchaser or Group Bank and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Supplemental Indenture or otherwise exist against each Funding Agent.

(b) Each Funding Agent may execute any of its duties under this Supplemental Indenture by or through agents or attorneys-in-fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties. Each Funding Agent shall not be responsible to the CP Conduit Purchaser or any Group Bank in its CP Conduit Purchaser Group for the negligence or misconduct of any agents or attorneys in fact selected by it with reasonable care.

(c) Each Funding Agent and any of its officers, directors, employees, agents, attorneys in fact or Affiliates shall not be (i) liable for any action lawfully taken or omitted to be taken by it or such Person under or in connection with the Trust Indenture, this Supplemental Indenture or any other Program Agreement (except to the extent that any of the foregoing are found by a final and nonappealable decision of a court of competent jurisdiction to have resulted from its or such Person's own gross negligence or willful misconduct) or (ii) responsible in any manner to any of the CP Conduit Purchasers and/or Group Banks for any recitals, statements, representations or warranties made by the Issuer, the Manager or the IESO, or any officer thereof contained in this Supplemental Indenture or any other Program Agreement or in any certificate, report, statement or other document referred to or provided for in, or received by such Funding Agent under or in connection with, this Supplemental Indenture or any other Program Agreement or for the value, validity, effectiveness, genuineness, enforceability or sufficiency of this Supplemental Indenture, any other Program Agreement, or for any failure of any of the Issuer, the Manager or the IESO to perform its obligations hereunder or thereunder. Each Funding Agent shall not be under any obligation to the CP Conduit Purchaser or any Group Bank in its CP Conduit Purchaser Group to

ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Supplemental Indenture, any other Program Agreement or to inspect the properties, books or records of the Issuer, the Manager or the IESO.

(d) Each Funding Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing, resolution, notice, consent, certificate, affidavit, letter or electronic message, statement, order or other document or conversation believed by it to be genuine and correct and to have been signed, sent or made by the proper Person or Persons and upon advice and statements of legal counsel (including, without limitation, counsel to the Issuer, the Manager or the IESO), independent accountants and other experts selected by such Funding Agent. Each Funding Agent shall be fully justified in failing or refusing to take any action under this Supplemental Indenture or any other Program Agreement unless it shall first receive such advice or concurrence of the Related Purchaser Group, as it deems appropriate or it shall first be indemnified to its satisfaction by the Related Purchaser Group against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action.

(e) Each Funding Agent shall not be deemed to have knowledge or notice of the occurrence of any Termination Event unless such Funding Agent has received written notice from a Non-Conduit Purchaser, a CP Conduit Purchaser, a Group Bank, the Issuer, the Manager or the Administrative Agent referring to the Trust Indenture or this Supplemental Indenture, describing such Termination Event and stating that such notice is a "notice of a Termination Event," as the case may be. In the event that any Funding Agent receives such a notice, such Funding Agent shall give notice thereof to the CP Conduit Purchaser and Group Bank in its CP Conduit Purchaser Group. Such Funding Agent shall take such action with respect to such event as shall be reasonably directed by the CP Conduit Purchaser and Group Bank in its CP Conduit Purchaser Group, provided that unless and until such Funding Agent shall have received such directions, such Funding Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such event as it shall deem advisable in the best interests of the CP Conduit Purchaser and Group Bank in its CP Conduit Purchaser Group.

(f) Each CP Conduit Purchaser and each of the related Group Banks expressly acknowledge that neither its Funding Agent nor any of its officers, directors, employees, agents, attorneys in fact or Affiliates has made any representations or warranties to it and that no act by such Funding Agent hereinafter taken, including any review of the affairs of the Issuer, the Manager or the IESO shall be deemed to constitute any representation or warranty by such Funding Agent to any such Person. Each CP Conduit Purchaser and each of the related Group Banks represents to its Funding Agent that it has, independently and without reliance upon such Funding Agent and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, operations, property, financial and other condition and creditworthiness of the Issuer, the Manager and the IESO and made its own decision to enter into this Supplemental Indenture. Each CP Conduit Purchaser and each of the related Group Banks also represents that it will, independently and without reliance upon its Funding Agent and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Supplemental Indenture and the other Program Agreements, and to make such investigation as it deems necessary to inform itself as to the business, operations, property, financial and other conditions and creditworthiness of the Issuer, the Manager and the IESO.

(g) Each Group Bank in a CP Conduit Purchaser Group agrees to indemnify its Funding Agent in its capacity as such (to the extent not reimbursed by the Issuer and without limiting the obligation of the Issuer to do so), from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind whatsoever which may at any time be imposed on, incurred by or asserted against such Funding Agent in any way relating to or arising out of this Supplemental Indenture, any of the other Program Agreements or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby or any action taken or omitted by such Funding Agent under or in connection with any of the foregoing; provided that no Group Bank shall be liable for the payment of any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements that are found by a final and nonappealable decision of a court of competent jurisdiction to have resulted from such related Funding Agent's gross negligence or willful misconduct. The agreements in this Section shall survive the payment of all amounts payable hereunder.

ARTICLE 8
GENERAL

8.1 Successor and Assigns

(a) This Supplemental Indenture shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, except that (i) the Issuer may not assign or transfer any of its rights under this Supplemental Indenture without the prior written consent of all of the Series 2017-1 Noteholders; (ii) no Non-Conduit Purchaser may assign or transfer any of its rights under this Supplemental Indenture other than pursuant to paragraph (e) or (f) below; (iii) no CP Conduit Purchaser may assign or transfer any of its rights under this Supplemental Indenture other than to the Group Bank with respect to such CP Conduit Purchaser or a Program Support Provider with respect to such CP Conduit Purchaser or pursuant to clause (b) or (e) below of this Section 8.1; and (iv) no Group Bank may assign or transfer any of its rights or obligations under this Supplemental Indenture except to a Program Support Provider or pursuant to clause (c), (d) or (e) below of this Section 8.1.

(b) Without limiting the foregoing, each CP Conduit Purchaser may assign all or a portion of the Purchaser Group Principal Amount with respect to such CP Conduit Purchaser and its rights and obligations under this Supplemental Indenture to a Conduit Assignee with respect to such CP Conduit Purchaser. Prior to or concurrently with the effectiveness of any such assignment (or if impracticable, immediately thereafter), the assigning CP Conduit Purchaser shall notify the Administrative Agent and the Issuer. Upon such assignment by a CP Conduit Purchaser to a Conduit Assignee, (i) such Conduit Assignee shall be the owner of the Purchaser Group Principal Amount or such portion thereof with respect to such CP Conduit Purchaser; (ii) the related administrative or managing agent for such Conduit Assignee will act as the administrative agent for such Conduit Assignee hereunder, with all corresponding rights and powers, express or implied, granted to the Funding Agent hereunder; (iii) such Conduit Assignee and its liquidity support provider(s) and credit support provider(s) and other related parties shall have the benefit of all the rights and protections provided to such CP Conduit Purchaser herein (including, without limitation, any limitation on recourse against such Conduit Assignee as provided in this paragraph); (iv) such Conduit Assignee shall assume all of such CP Conduit Purchaser's obligations, if any, hereunder with respect to such portion of the Purchaser Group Principal Amount and such CP Conduit Purchaser shall be released from such obligations; (v) all

distributions in respect of the Purchaser Group Principal Amount or such portion thereof with respect to such CP Conduit Purchaser shall be made to the applicable agent or administrative agent, as applicable, on behalf of such Conduit Assignee; and (vi) if requested by the Administrative Agent or the agent or administrative agent with respect to the Conduit Assignee, the parties will execute and deliver such further agreements and documents and take such other actions as the Administrative Agent or such agent or administrative agent may reasonably request to evidence and give effect to the foregoing. No assignment by any CP Conduit Purchaser to a Conduit Assignee of the Purchaser Group Principal Amount with respect to such CP Conduit Purchaser shall in any way diminish the obligations of the Group Bank with respect to such CP Conduit Purchaser under Section 3.3 to fund any Increase.

(c) Any Group Bank may, in the ordinary course of its business and in accordance with applicable law, at any time, sell all or any part of its rights and obligations under this Supplemental Indenture and the Series 2017-1 Senior Notes, with the prior written consent of the Administrative Agent and the Issuer (in each case, which consent shall not be unreasonably withheld), to one or more banks (an "**Acquiring Group Bank**") pursuant to a transfer supplement, substantially in the form of Exhibit H (the "**Transfer Supplement**"), executed by such Acquiring Group Bank, such assigning Group Bank, the Funding Agent with respect to such Group Bank, the Administrative Agent and the Issuer and delivered to the Administrative Agent. Notwithstanding the foregoing, no Group Bank shall so sell its rights hereunder if such Acquiring Group Bank is not an Eligible Assignee.

(d) Any Group Bank may, in the ordinary course of its business and in accordance with applicable law at any time sell to one or more financial institutions or other entities ("**Group Bank Participants**") participations in its Commitment Amount with respect to its related CP Conduit Purchaser Group, its Series 2017-1 Senior Note and its rights hereunder pursuant to documentation in form and substance satisfactory to such Group Bank and the Group Bank Participant; provided, however, that (i) in the event of any such sale by a Group Bank to a Group Bank Participant, (A) such Group Bank's obligations under this Supplemental Indenture shall remain unchanged, (B) such Group Bank shall remain solely responsible for the performance thereof, and (C) the Issuer and the Administrative Agent shall continue to deal solely and directly with such Group Bank in connection with its rights and obligations under this Supplemental Indenture; and (ii) no Group Bank shall sell any participating interest under which the Group Bank Participant shall have rights to approve any amendment to, or any consent or waiver with respect to, this Supplemental Indenture, the Trust Indenture or any Program Agreement, except to the extent that the approval of such amendment, consent or waiver otherwise would require the unanimous consent of all Group Banks hereunder. A Group Bank Participant shall have the right to receive compensation pursuant to Sections 3.10 and 3.11 but only to the extent that the related selling Group Bank would have had such right absent the sale of the related participation and, with respect to amounts due pursuant to Sections 3.10 and 3.11, only to the extent such Group Bank Participant shall have complied with the provisions of Sections 3.10 and 3.11 as if such Group Bank Participant were a Group Bank.

(e) Any CP Conduit Purchaser and the Group Bank with respect to such CP Conduit Purchaser may, at any time, sell all or any part of their respective rights and obligations, and any Non-Conduit Purchaser may, at any time, sell all or any part of its rights and obligations, under this Supplemental Indenture and the Series 2017-1 Senior Notes, with the prior written consent of the Administrative Agent and the Issuer (in each case, which consent shall not be unreasonably withheld), (x) to a

multi-seller commercial paper conduit and one or more banks providing support to such multi-seller commercial paper conduit, or (y) to a financial institution or other entity (an "**Acquiring Purchaser Group**") pursuant to a transfer supplement, substantially in the form of Exhibit I (the "**Purchaser Group Supplement**"), executed by such Acquiring Purchaser Group (including the CP Conduit Purchaser and the Group Banks, if any, with respect to such Acquiring Purchaser Group), the Funding Agent, if any, with respect to such Acquiring Purchaser Group, such assigning Purchaser Group (including the Group Banks, if any, with respect to such assigning Purchaser Group), the Funding Agent, if any, with respect to such assigning Purchaser Group and the Administrative Agent and the Issuer and delivered to the Administrative Agent.

(f) Any Non-Conduit Purchaser may, in the ordinary course of its business and in accordance with applicable law, at any time sell to one or more financial institutions or other entities ("**Non-Conduit Purchaser Participants**") participations in its Commitment, its Series 2017-1 Senior Note and its rights hereunder pursuant to documentation in form and substance satisfactory to such Non-Conduit Purchaser and the Non-Conduit Purchaser Participant; provided, however, that (i) in the event of any such sale by a Non-Conduit Purchaser to a Non-Conduit Purchaser Participant, (A) such Non-Conduit Purchaser's obligations under this Supplemental Indenture shall remain unchanged, (B) such Non-Conduit Purchaser shall remain solely responsible for the performance thereof, and (C) the Issuer and the Administrative Agent shall continue to deal solely and directly with such Non-Conduit Purchaser in connection with its rights and obligations under this Supplemental Indenture; and (ii) no Non-Conduit Purchaser shall sell any participating interest under which the Non-Conduit Purchaser Participant shall have rights to approve any amendment to, or any consent or waiver with respect to, this Supplemental Indenture, the Trust Indenture or any Program Agreement, except to the extent that the approval of such amendment, consent or waiver otherwise would require the unanimous consent of all Series 2017-1 Noteholders hereunder. A Non-Conduit Purchaser Participant shall have the right to receive compensation under Sections 3.10 and 3.11 but only to the extent that the related selling Non-Conduit Purchaser would have had such right absent the sale of the related participation and, with respect to amounts due pursuant to Sections 3.10 and 3.11, only to the extent such Non-Conduit Purchaser Participant shall have complied with the provisions of Sections 3.10 and 3.11 as if such Non-Conduit Purchaser Participant were a Non-Conduit Purchaser.

(g) The Issuer authorizes each Group Bank and Non-Conduit Purchaser to disclose to any Group Bank Participant, Acquiring Group Bank, Non-Conduit Purchaser Participant or Acquiring Purchaser Group (each, a "**Transferee**") and any prospective Transferee any and all financial information in such Group Bank's or Non-Conduit Purchaser's possession concerning the Issuer, the Issuer Investment Asset and the Program Agreements which has been delivered to such Group Bank by the Issuer or the Manager in connection with such Group Bank's credit evaluation of the Issuer and the Issuer Investment Asset.

(h) Notwithstanding any other provision of this Supplemental Indenture to the contrary, any Non-Conduit Purchaser, any Group Bank or any Program Support Provider may at any time pledge or grant a security interest in all or any portion of its rights under its Series 2017-1 Senior Note and this Supplemental Indenture to secure obligations of such Non-Conduit Purchaser, such Group Bank or such Program Support Provider to a Federal Reserve Bank or the Bank of Canada, without notice to or consent of the Administrative Agent, the Issuer or the Administrator; provided that no such pledge or grant of a security interest shall release a Non-Conduit Purchaser or an Group Bank

from any of its obligations hereunder or substitute any such pledgee or grantee for such Non-Conduit Purchaser or such Group Bank as a party hereto.

8.2 Waiver

Without limiting the requirements of Section **[11.02]** of the Trust Indenture which shall be applicable to this Supplemental Indenture, no waiver of any provision of this Supplemental Indenture or consent to any departure by the Issuer from any provision of this Supplemental Indenture will be effective (in whole or in part) unless in writing and signed by the Requisite Series 2017-1 Noteholders. Such waiver will be effective only in the specific instance, for the specific purpose and for the specific length of time for which it is given by the Requisite Series 2017-1 Noteholders.

8.3 Notice

All notices, requests, instructions and demands to or upon any party hereto to be effective shall be given (a) in the case of the Issuer and the Indenture Trustee, in the manner set forth in Article **[15]** of the Trust Indenture; and (b) in the case of the Administrative Agent, the Non-Conduit Purchasers, the CP Conduit Purchasers, the Group Banks and the Funding Agents, in writing, and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when delivered by hand or three days after being deposited in the mail, postage prepaid, in the case of facsimile notice, when received, or in the case of overnight air courier, one Business Day after the date such notice is delivered to such overnight courier, addressed as follows in the case of the Administrative Agent and to the addresses therefor set forth in Schedule E, in the case of the Non-Conduit Purchasers, the CP Conduit Purchasers, the Group Banks and the Funding Agents; or to such other address as may be hereafter notified by the respective parties hereto:

Administrative Agent:

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8.4 No Waiver: Remedies

No failure on the part of any party to exercise, and no delay in exercising, any power, right or remedy hereunder will operate as a waiver thereof; nor will any single or partial exercise of any such power, right or remedy hereunder preclude any other or further exercise thereof or the exercise of any other power, right or remedy. The rights and remedies herein provided are cumulative and not exclusive of any remedies provided by applicable law.

8.5 Entire Agreement

This Supplemental Indenture, the Fee Letter, the Trust Indenture and the other Program Agreements contain the entire agreement between the parties relative to the subject matter hereof and supersede all prior and contemporaneous agreements, term sheets, commitments, understandings, negotiations and discussions, whether oral or written. There are no warranties, representations or other agreements between the parties in connection with the subject matter

hereof except as specifically set forth in this Supplemental Indenture, the Fee Letter, the Trust Indenture and the other Program Agreements.

8.6 Governing Law and Attornment

This Supplemental Indenture shall be governed by, and construed in accordance with, the laws of the Province of Ontario and the parties hereby attorn to the jurisdiction of the courts of Ontario.

8.7 Acknowledgment of Trust Indenture and No Proceedings

The Administrative Agent, each Non-Conduit Purchaser, each CP Conduit Purchaser, each Group Bank and each Funding Agent hereby acknowledges and agrees in favour of the Indenture Trustee that it is a Specified Creditor under the Trust Indenture and its entitlements as a Specified Creditor are subject to the provisions applicable to Specified Creditors under the Trust Indenture including, without limitation, Section **[7.06]** (Payments Held in Trust), Section **[8.12]** (Limitation on Suits), Sections **[7.04 and 8.13]** (Payment Priorities), Section **[8.14]** (Limited Recourse) and Section **[16.01]** (No Petition).

8.8 Expenses

The Issuer agrees to pay on demand (a) to the Indenture Trustee, the Administrative Agent and the Purchaser Groups all reasonable costs and expenses in connection with the preparation, execution, and delivery of this Supplemental Indenture and the other documents to be delivered hereunder or in connection herewith, including, the reasonable fees and out-of-pocket expenses of counsel for the Administrative Agent and the Purchaser Groups, with respect thereto, and the reasonable fees and out-of-pocket expenses incurred by the CP Conduit Purchasers in connection with the review by each rating agency then rating the Commercial Paper of such CP Conduit Purchaser of the transactions contemplated by this Supplemental Indenture and the Program Agreements; (b) to the Indenture Trustee, the Administrative Agent and each Purchaser Group all reasonable costs and expenses in connection with any amendments of or waivers or consents under this Supplemental Indenture or the Program Agreements, including in each case the reasonable fees and out-of-pocket expenses of counsel with respect thereto, and the reasonable fees and out-of-pocket expenses incurred by the CP Conduit Purchasers in connection with the review by any rating agency then rating the Commercial Paper of such CP Conduit Purchasers; and (c) to the Indenture Trustee, the Administrative Agent and each Purchaser Group, on demand, all reasonable costs and expenses (including reasonable fees and expenses of counsel to the Administrative Agent and each Purchaser Group), if any, in connection with the enforcement of this Supplemental Indenture or any of the Program Agreements, and the other documents delivered thereunder or in connection therewith.

8.9 Further Assurances

Each of the parties hereto upon the request of the other party or parties hereto shall do, execute, acknowledge and deliver or cause to be done, executed acknowledged or delivered all such further acts, deeds, documents, assignments, transfers, conveyances, powers of attorney and assurances as may be reasonably necessary or desirable to effect or complete the consummation of the transactions contemplated by this Supplemental Indenture.

8.10 Confidentiality

(a) Each Purchaser Group and the Administrative Agent covenants and agrees that any non-public information obtained by it pursuant to this Supplemental Indenture and the other Program Agreements shall be held in confidence except that the Purchaser Groups or Administrative Agent may disclose such information (i) pursuant to the order of any court or administrative agency or in any pending legal or administrative proceeding (whether or not having the force or effect of law) provided that, unless prohibited by applicable law, a Purchaser Group or the Administrative Agent, as applicable, shall provide prompt notice of such order to the affected party; (ii) upon the request or demand of any regulatory authority having or claiming jurisdiction over any Purchaser Group or the Administrative Agent; (iii) as required by applicable law including, without limitation, all applicable securities laws; (iv) to the extent that such information becomes publicly available other than by reason of improper disclosure by a Purchaser Group or the Administrative Agent; (v) to its affiliates, officers, directors, employees, legal counsel, independent auditors, accountants, advisors, investors, potential investors, commercial paper dealers, providers of surety, guaranty, credit or liquidity enhancement (including the directors, officers and accountants of such surety, guaranty, credit or liquidity enhancement provider), legal counsel of any of the foregoing and other experts or agents who need to know such information and are informed of the confidential nature of such information (provided that the Persons permitted to make such disclosures under clauses (i), (ii) and (iii) of this Section 8.10 shall also include credit or liquidity enhancers of a CP Conduit Purchaser); (vi) for purposes of establishing a "due diligence" defense; (vii) which was available to a Purchaser Group or the Administrative Agent on a non-confidential basis from a source other than the affected party, provided that such source was not to the knowledge of the Purchaser Group or the Administrative Agent, as applicable, bound by a confidentiality agreement with the affected party; (viii) has been independently acquired or developed by a Purchaser Group or the Administrative Agent without violating any of the Purchaser Group's or the Administrative Agent's obligations under this Supplemental Indenture; (ix) if such disclosure has been approved in writing in advance by the Issuer or the Manager; (x) regarding the existence of this Supplemental Indenture, but not the financial terms thereof; and (xi) to DBRS and Moody's and any other Rating Agencies.

(b) The Issuer covenants and agrees to hold in confidence, and not disclose to any Person, the terms of this Supplemental Indenture (including any fees payable in connection with this Supplemental Indenture or the identity of any CP Conduit Purchaser under this Supplemental Indenture), except as the applicable Purchaser Group may have consented to in writing prior to any proposed disclosure and except (i) it may also disclose such information (A) to its officers, directors, employees, legal counsel, independent auditors, accountants and other advisors who are directly involved in the consideration of this Supplemental Indenture (and then only on a confidential basis), (B) to the Manager and its officers, directors, employees, legal counsel, independent auditors, accountants and other advisors, (C) any ministry or agency of the Province of Ontario and, in each case, their respective employees, officials, agents and advisors, (D) as required by applicable law (including, without limitation, applicable securities law) or compulsory legal process, (E) as expressly permitted by the terms of the Program Agreements, and (F) to DBRS and Moody's and any other Rating Agencies; provided, that, in the case of clause (D), the Issuer will use all commercially reasonable efforts to maintain confidentiality and will (unless otherwise prohibited by law) notify the affected Administrative Agent or Purchaser Group of its intention to make any such disclosure prior to making such disclosure; and (ii) it may also disclose the

existence (but not the financial terms) of this Supplemental Indenture, including to any actual or prospective purchaser of other Notes.

(c) The parties hereto acknowledge that a description of this Supplemental Indenture and the Series 2017-1 Senior Note will be included in the preliminary and final offering memoranda of the Issuer relating to the issue of other Notes from time to time.

8.11 Acknowledgement and Consent to Bail-In of EEA Financial Institutions

Notwithstanding anything to the contrary in this Supplemental Indenture or in any other Program Agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any EEA Financial Institution arising under this Supplemental Indenture or any other Program Agreement, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and

(b) the effects of any Bail-in Action on any such liability, including, if applicable

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments or ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Supplemental Indenture or any other Facility Agreement; or

(iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any EEA Resolution Authority.

8.12 Limitation of Liability of Issuer Trustee

Each party hereto other than the Issuer acknowledges that the Issuer is a trust, and that ● Trust Company of Canada is the Issuer Trustee. The other parties hereto agree that the Issuer Trustee will not be subject to any liability whatsoever to them, in tort, contract or otherwise, in connection with the Issuer's assets or the trust activities, for any action taken or permitted by it to be taken, or for its failure to take any action; provided that the foregoing limitation will not apply in respect of any action or failure to act arising from or in connection with wilful misconduct, negligence or reckless disregard of a duty by the Issuer Trustee. The Issuer Trustee in doing anything or permitting anything to be done in respect of assets or the trust activities is, and shall be conclusively deemed to be, acting as trustee of the Issuer and not in any other capacity. Except as to the extent provided in this Section 8.12, the Issuer Trustee will not be subject to any debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses against or with respect to the Issuer, arising out of anything done or permitted by it to be done or its failure to take any action in respect of the Issuer's assets or the trust activities and resort will be had solely to the Collateral for

the payment or performance thereof. No property or assets of the Issuer Trustee, whether owned in its personal capacity or otherwise, will be subject to levy, execution or other enforcement procedure with regard to any obligation under this Supplemental Indenture. Nothing contained in this Section 8.12 shall be construed so as to limit the liability of the Issuer under this Supplemental Indenture. This Supplemental Indenture, and every deed, transfer, assignment, agreement or other instrument made pursuant hereto including, without limitation, the Series 2017-1 Senior Notes, made or purporting to be made by or creating an obligation of the Issuer or the Issuer Trustee on behalf of, or as trustee of, the Issuer shall be deemed and construed for all purposes as if made by the Issuer Trustee, in and only in its capacity as trustee of the Issuer. Any obligations of the Issuer Trustee hereunder or thereunder are non-recourse to the Issuer Trustee in its personal capacity.

8.13 Execution in Counterparts

This Supplemental Indenture may be executed in several counterparts, each of which when so executed shall be deemed to be an original and the counterparts together shall constitute one and the same instrument. This Supplemental Indenture may be executed and delivered by email or other electronic transmission of a manually signed counterpart.

8.14 Delivery of Executed Copies

Each party acknowledges delivery of an executed copy of this Supplemental Indenture.

[signature page follows]

IN WITNESS WHEREOF the parties hereto have duly executed this Trust Indenture as of the date first above written.

[FAIR HYDRO TRUST], as Issuer

ONTARIO POWER GENERATION INC., not in its individual capacity but solely as Manager

By: _____
Name:
Title:

By: _____
Name:
Title:

● **TRUST COMPANY OF CANADA**, as Indenture Trustee

By: _____
Name:
Title:

By: _____
Name:
Title:

●,

By: _____
Name:
Title:

[NTD: Detailed signing pages to be prepared.]

SCHEDULE A

DEFINITIONS

"**Acceleration Event**" means the outstanding Dollar Principal Amount of all Funding Obligations of the Series 2017-1 Senior Notes have been declared or automatically become due and payable pursuant to Section **[8.02]** of the Trust Indenture.

"**Administrative Agent**" shall have the meaning specified in the preamble to this Supplemental Indenture.

"**AEOI Legislation**" has the meaning specified in Section 3.10(a) of this Supplemental Indenture.

"**Affected Party**" means any Non-Conduit Purchaser, CP Conduit Purchaser and any Program Support Provider with respect to any CP Conduit Purchaser.

"**Applicable Margin**" is defined in the Fee Letter.

"**Authorized Officer**" means, with respect to: (a) the Issuer, any authorized director or officer of the Manager; (b) the Manager, any authorized director of officer of OPG; (c) the IESO, any authorized director or officer of the IESO; (c) the Issuer Trustee, any officer within the corporate trust office of such trustee (including the President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Treasurer or any other officer of the Issuer Trustee customarily performing functions similar to those performed by persons who at the time shall be such officers, respectively, and that has direct responsibility for the administration of the Issuer and also, with respect to a particular matter, any other officer to whom such matter is referred to because of such officer's knowledge and familiarity with the particular subject).

"**Bail-In Action**" shall mean the exercise of any Write-Down and Conversion Powers by the applicable EEA Resolution Authority in respect of any liability of an EEA Financial Institution.

"**Bail-In Legislation**" shall mean, with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule.

"**Basel III**" means the revised Basel Accord prepared by the Basel Committee on Banking Supervision as set out in the publication entitled "A Global Regulatory Framework for More Resilient Banks and Banking Systems" developed by the Basel Committee on Banking Supervision, initially published in December 2010, as updated from time to time, and any rules, regulations, guidance, requests, interpretations or directives from any Official Body relating thereto (whether or not having the force of law).

"**Billing Period**" has the meaning specified in the Master Transfer and Servicing Agreement;

"**CDOR**" means, on any day, an annual rate of interest equal to the average rate applicable to Canadian dollar bankers' acceptances for a 1 month period appearing on the "Reuters Screen CDOR Page" (as defined in the International Swaps and Derivatives Association, Inc. 2000

definitions, as modified and amended from time to time) at approximately 10:00 a.m. on such day, or if such day is not a Business Day, then on the immediately preceding Business Day, provided that if such rate does not appear on the Reuters Screen CDOR Page on such day as contemplated, then CDOR on such day shall be calculated as the average of the rates for such period applicable to Canadian dollar bankers' acceptances quoted by the banks listed in Schedule I of the *Bank Act* (Canada) as of 10:00 a.m. on such day or, if such day is not a Business Day, then on the immediately preceding Business Day.

"**Closing Date**" is defined in Section 3.3(a).

"**Code**" is defined in Section 3.10(a).

"**Commercial Paper**" means, with respect to any CP Conduit Purchaser, the promissory notes issued by, or for the benefit of, such CP Conduit Purchaser in the commercial paper market.

"**Commitment**" means, with respect to (a) the Group Bank included in any CP Conduit Purchaser Group, the obligation of such Group Bank to purchase a Series 2017-1 Senior Note on the Closing Date and, thereafter, to maintain and, subject to certain conditions, increase the Purchaser Group Principal Amount with respect to such CP Conduit Purchaser Group, in each case, in an amount up to the Maximum Purchaser Group Principal Amount with respect to such CP Conduit Purchaser Group; or (b) any Non-Conduit Purchaser Group, the obligation of the Related Non-Conduit Purchaser to purchase a Series 2017-1 Senior Note on the Closing Date and, thereafter, to maintain and, subject to certain conditions, increase the Purchaser Group Principal Amount with respect to such Non-Conduit Purchaser Group, in each case, in an amount up to the Maximum Purchaser Group Principal Amount with respect to such Non-Conduit Purchaser Group.

"**Commitment Expiry Date**" means the earlier of (a) the Scheduled Commitment Expiry Date; and (b) the date on which an Event of Default shall have been declared or automatically occurred.

"**Commitment Fee**" is defined in Section 3.6(b).

"**Commitment Fee Rate**" is defined in the Fee Letter.

"**Commitment Percentage**" means, on any date of determination, with respect to any Purchaser Group, the ratio, expressed as a percentage, which such Purchaser Group's Maximum Purchaser Group Principal Amount bears to the Series 2017-1 Maximum Principal Amount on such date.

"**Conduit Assignee**" means, with respect to any CP Conduit Purchaser, any commercial paper conduit administered by the Funding Agent with respect to such CP Conduit Purchaser and designated by such Funding Agent to accept an assignment from such CP Conduit Purchaser of the Purchaser Group Principal Amount or a portion thereof with respect to such CP Conduit Purchaser pursuant to Section 8.1(b).

"**CP Conduit Funded Amount**" means, with respect to any CP Conduit Purchaser Group for any day, the portion of the Purchaser Group Principal Amount with respect to such CP Conduit Purchaser Group funded by the CP Conduit Purchaser in respect of such CP Conduit Purchaser Group.

"**CP Conduit Purchaser**" means each commercial paper conduit listed on Schedule E or party to a Purchaser Group Supplement pursuant to which such commercial paper conduit became a party to this Supplemental Indenture

"**CP Conduit Purchaser Group**" means, collectively, a CP Conduit Purchaser and the Group Bank with respect to such CP Conduit Purchaser.

"**CP Conduit Rating Agencies**" means, with respect to any CP Conduit Purchaser, each of DBRS and Moody's and any other nationally recognized statistical rating organization which may, from time to time, rate the Commercial Paper of the CP Conduit Purchaser at the request of the CP Conduit Purchaser.

"**CP Rate**" means with respect to any CP Conduit Purchaser for any day during an Interest Period, the weighted average annual rate of interest applicable to all Commercial Paper of the CP Conduit Purchaser; and provided further that (x) any such Commercial Paper may be issued in either United States dollars or Canadian dollars with the appropriate market rate currency swap agreements being entered into to match such issuance to the funding requirements of such CP Conduit Purchaser, and (y) such weighted average annual rate of interest shall be calculated to reflect any costs incurred by such CP Conduit Purchaser in connection with such swap transactions or in connection with any redemption or repurchase transaction between such CP Conduit Purchaser and the holders of such commercial paper; provided that no amount shall be included in the calculation of the CP Rate which reflects any termination amounts payable by such CP Conduit Purchaser in respect of the early termination of any market rate currency swap referred to in this definition.

"**Decrease**" is defined in Section 3.4(a).

"**Decrease Amount**" is defined in Section 3.4(a).

"**Deferrable Increase Notice**" means a notice of Increase that provides that a Delayed Funding Notice may be provided by any Purchaser Group with respect to such Increase in accordance with Section 3.3(e).

"**Delayed Amount**" is defined in Section 3.3(e).

"**Delayed Funding Date**" is defined in Section 3.3(e).

"**Delayed Funding Notice**" is defined in Section 3.3(e).

"**Delayed Funding Purchaser Group**" is defined in Section 3.3(e).

"**Delayed Funding Reimbursement Amount**" means, with respect to any Delayed Amount of a Delayed Funding Purchaser Group funded by Non-Delayed Funding Purchaser Groups on an Increase Date, an amount equal to the excess, if any, of (a) such Delayed Amount; over (b) the amount, if any, by which the portion of any principal payment made by the Issuer to such Non-Delayed Funding Purchaser Group pursuant to Section 3.7 on any date during the period from and including such Increase Date to but excluding the Delayed Funding Date for such Delayed

Amount, was greater than what it would have been had such Delayed Amount been funded by such Delayed Funding Purchaser Group on such Increase Date.

"**EEA Financial Institution**" shall mean (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority; (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition; or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clause (a) or (b) of this definition and is subject to consolidated supervision with its parent.

"**EEA Member Country**" shall mean any of the member states of the European Union, Iceland, Liechtenstein and Norway.

"**EEA Resolution Authority**" shall mean any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

"**Eligible Assignee**" means a financial institution having short-term debt ratings of at least "A-1" from Standard & Poor's and "P-1" from Moody's.

"**EU Bail-In Legislation Schedule**" shall mean the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

"**Excluded Taxes**" shall have the meaning specified in Section 3.10(a) of this Supplemental Indenture.

"**FATCA**" has the meaning specified in Section 3.10(a) of this Supplemental Indenture.

"**Fee Letter**" means the letter dated the date hereof, from the Issuer addressed to the Administrative Agent, each Non-Conduit Purchaser and each of the CP Conduit Purchasers, the Funding Agents and the Group Banks, setting forth certain fees payable from time to time to the Purchaser Groups, as such letter may be amended or replaced from time to time.

"**Funding Agent**" means, with respect to each CP Conduit Purchaser and its CP Conduit Purchaser Group, the agent bank set forth opposite the name of such CP Conduit Purchaser on Schedule E or in the Purchaser Group Supplement pursuant to which such CP Conduit Purchaser became a party to this Supplemental Indenture.

"**Group Bank**" means, with respect to a CP Conduit Purchaser, the bank or other Person set forth opposite the name of such CP Conduit Purchaser on Schedule E or in the Purchaser Group Supplement pursuant to which such CP Conduit Purchaser became a party to this Supplemental Indenture and any assignee thereof, to the extent such assignee has assumed all or a portion of the Commitments of the Group Bank pursuant to a Transfer Supplement entered into in accordance with Section 8.1(c).

"**Group Bank Funded Amount**" means, with respect to any CP Conduit Purchaser Group for any day, the excess, if any, of the Purchaser Group Principal Amount with respect to such CP Conduit

Purchaser Group over the CP Conduit Funded Amount with respect to such CP Conduit Purchaser Group for such day.

"**Group Bank Participants**" is defined in Section 8.1(d).

"**Group Monthly Fees and Other Amounts**" shall mean, for any Payment Date and a Purchaser Group the sum of (a) the Commitment Fee with respect to the related Billing Period for such Purchaser Group; plus (b) any amounts payable to such Purchaser Group hereunder including, without limitation, pursuant to Sections 3.8, 3.10, 3.11 and 8.8; plus (c) the Monthly Fees and Other Amounts Shortfall for such Purchaser Group for such Payment Date.

"**Group Monthly Interest**" means, with respect to each Interest Period and:

(a) any CP Conduit Purchaser Group, the sum of:

(i) for each day during such Interest Period, the product of (x) the portion of the CP Conduit Funded Amount with respect to the CP Conduit Purchaser Group on such day funded through the issuance of Commercial Paper outstanding on such day, times (y) the sum of the CP Rate for such day plus the Applicable Margin, divided by (z) 365; plus

(ii) for each day during such Interest Period, the product of (x) the portion of the CP Conduit Funded Amount with respect to the CP Conduit Purchaser in such GP Conduit Purchaser Group on such day not funded through the issuance of Commercial Paper outstanding on such day, times (y) the sum of CDOR for such day plus the Applicable Margin, divided by (z) 365; plus

(iii) for each day during such Interest Period the product of (x) the Group Bank Funded Amount with respect to such Purchaser Group on such day, times (y) the sum of CDOR for such day plus the Applicable Margin, divided by (x) 365.

(b) any Non-Conduit Purchaser Group, the sum for each day during such Interest Period of the product of (i) the Purchaser Group Principal Amount with respect to such Non-Conduit Purchaser Group on such day; times (ii) the sum of CDOR for such day plus the Applicable Margin, divided by (iii) 365.

For the purposes of determining the Group Monthly Interest in respect of an Interest Period prior to the end of the Interest Period, the Funding Agent in respect of a CP Conduit Purchaser Group or a Non-Conduit Purchaser Group may estimate the interest for the remaining days in the Interest Period. If the actual interest for such days is less than the estimated interest, the Group Monthly Interest for the following Interest Period shall be reduced to adjust for such lower actual interest and if the actual interest for such days is higher than the estimated interest, the Group Monthly Interest for the following Interest Period shall be increased to adjust for such higher interest.

"**Increase**" is defined in Section 3.3(a).

"**Increase Amount**" is defined in Section 3.3(a).

"**Increase Date**" is defined in Section 3.3(a).

"**Increase Notice**" is defined in Section 3.3(a).

"**Interest Period**" means each of the consecutive periods that begins on, and includes, each Payment Date and ends on and excludes, the following Payment Date; provided that the first Interest Period shall begin on the Closing Date and end on ●.

"**Issuer indemnified person**" is defined in Section 3.8.

"**Issuer indemnified person**" is defined in Section 3.8

"**Manager Indemnity**" means an indemnity agreement from the Manager in favour of the Purchaser Groups, the Funding Agents and the Administrative Agent with respect to losses resulting from the failure of the Issuer to perform its obligations under the Program Agreements other than losses resulting from insufficient funds being transferred to the Issuer, in form and substance satisfactory to the Purchaser Groups, the Funding Agents and the Administrative Agent.

"**Maximum Purchaser Group Principal Amount**" means, with respect to (a) any CP Conduit Purchaser Group, the amount set forth opposite the name of the CP Conduit Purchaser included in such CP Conduit Purchaser Group on Schedule E or in the Purchaser Group Supplement pursuant to which such CP Conduit Purchaser Group became a party to this Supplemental Indenture; or (b) any Non-Conduit Purchaser Group, the amount set forth opposite the name of such Non-Conduit Purchaser Group on Schedule E or in the Purchaser Group Supplement pursuant to which such Non-Conduit Purchaser Group became a party to this Supplemental Indenture, in each case, as such amount may be increased or reduced from time to time as provided in Section 3.5.

"**Monthly Interest**" shall mean, for any Payment Date, the aggregate for all Purchaser Groups of the sum of (a) Group Monthly Interest for the related Interest Period for each Purchaser Group; plus (b) the Monthly Interest Shortfall for such Payment Date for each Purchaser Group.

"**Monthly Fees and Other Amounts**" shall mean, for any Payment Date, the aggregate of the Monthly Fees and Other Amounts for all Purchaser Groups.

"**Monthly Interest Shortfall**" means, for any Payment Date and a Purchaser Group, if the amount of the Group Monthly Interest for the preceding Payment Date was greater than the amount distributed to the payment of such amounts pursuant to Section 3.6(d), an amount equal to the Group Monthly Interest owing to such Purchaser Group which were unpaid on the preceding Payment Date plus interest on such unpaid amount for the period from the preceding Payment Date to the current Payment Date at a rate equal to the Prime Rate plus ●% per annum.

"**Monthly Fees and Other Amounts Shortfall**" means, for any Payment Date and a Purchaser Group, if the amount of the Monthly Fees and Other Amounts for the preceding Payment Date was greater than the amount distributed to the payment of such amounts pursuant to Section 3.6(d), an amount equal to the Monthly Fees and Other Amounts owing to such Purchaser Group which were unpaid on the preceding Payment Date plus interest on such unpaid amount for the period from the preceding Payment Date to the current Payment Date at a rate equal to the Prime Rate plus ●% per annum.

"**Non-Conduit Purchaser**" means each financial institution or other entity (other than a commercial paper conduit, Group Bank or Funding Agent) listed on Schedule E or party to a Purchaser Group Supplement pursuant to which such financial institution or entity became a party to this Supplemental Indenture.

"**Non-Conduit Purchaser Group**" means a Non-Conduit Purchaser.

"**Non-Conduit Purchaser Participants**" is defined in Section 8.1(f).

"**Non-Deferrable Draw Amount**" means, with respect to any Purchaser Group as of any Increase Date, an amount equal to the lesser of (a) the excess, if any, of (x) **[10]**% of the Maximum Purchaser Group Principal Amount with respect to such Purchaser Group over (y) the portion of any Increase Amounts funded by such Purchaser Group during the preceding thirty-five (35) days pursuant to a Non-Deferrable Increase Notice or, to the extent of any decrease pursuant to Section 3.3(e) in the Delayed Amount set forth in a Delayed Funding Notice delivered by such Purchaser Group, a Deferrable Increase Notice; and (b) the excess, if any, of (x) the Maximum Purchaser Group Principal Amount with respect to such Purchaser Group, over (y) the sum of (i) the Purchaser Group Principal Amount with respect to such Purchaser Group; and (ii) any unfunded Delayed Amounts with respect to such Purchaser Group, in each case as of such Increase Date. [**NTD: The percentage in (a)(x) above is intended to represent the non-deferrable amount.]**

"**Non-Deferrable Increase Notice**" means a notice of Increase that provides that a Delayed Funding Notice may not be provided by any Purchaser Group with respect to such Increase in accordance with Section 3.3(a).

"**Non-Delayed Funding Purchaser Group**" is defined in Section 3.3(f).

"**Optional Termination Date**" is defined in Section 3.4.

"**Optional Termination Notice**" is defined in Section 3.4.

"**Prime Rate**" means the annual rate of interest announced by ● from time to time as being its reference rate for the determination of interest rates on Canadian dollar denominated commercial loans made by it and commonly referred to by ● as its "prime rate."

"**Principal Accumulation Amount**" means, in respect of each Payment Date occurring on or after the Principal Accumulation Date, an amount equal to the lesser of (x) $●, and (y) the Series 2017-1 Principal Amount.

"**Principal Accumulation Date**" means the Payment Date occurring in the month of ●, [2021].

"**Principal Payment Amount**" means, in respect of the Series 2017-1 Notes:

(a) on any Payment Date that is a Decrease Date before the earlier of (i) the Series 2017-1 Principal Payment Due Date; and (ii) the occurrence of an Acceleration Event, the Decrease Amount of the Decrease occurring on such Payment Date;

(b) on any Payment Date that is not a Decrease Date before the earlier of (i) the Series 2017-1 Principal Payment Due Date; and (ii) the occurrence of an Acceleration Event, nil; and

(c) on any Payment Date occurring on or after the earlier of (i) the Series 2017-1 Principal Payment Due Date; and (ii) the occurrence of an Acceleration Event, the Series 2017-1 Principal Amount.

"**Pro Rata Share**" means, with respect to any Purchaser Group, on any date, the ratio, expressed as a percentage, which the Purchaser Group Principal Amount with respect to such Purchaser Group bears to the Series 2017-1 Principal Amount on such date.

"**Program Support Provider**" means, with respect to any CP Conduit Purchaser, the Group Bank with respect to such CP Conduit Purchaser and any other or additional Person now or hereafter extending credit, or having a commitment to extend credit to or for the account of, or to make purchases from, such CP Conduit Purchaser or issuing a letter of credit, surety bond or other instrument to support any obligations arising under or in connection with such CP Conduit Purchaser's securitization program.

"**Purchaser Group**" means a CP Conduit Purchaser Group or a Non-Conduit Purchaser Group.

"**Purchaser Group Increase Amount**" means, with respect to any Purchaser Group, for any Business Day, such Purchaser Group's Commitment Percentage of the Increase Amount, if any, on such Business Day.

"**Purchaser Group Principal Amount**" means, with respect to any Purchaser Group, (a) when used with respect to the Closing Date, such Purchaser Group's Commitment Percentage of the Series 2017-1 Initial Principal Amount; and (b) when used with respect to any other date, an amount equal to (i) the Purchaser Group Principal Amount with respect to such Purchaser Group on the immediately preceding Business Day; plus (ii) the Purchaser Group Increase Amount with respect to such Purchaser Group on such date; minus (iii) the amount of principal payments made to such Purchaser Group pursuant to Section 3.7 on such date. For the avoidance of doubt, (x) so long as any Purchaser Group has failed to fund any portion of its Purchaser Group Increase Amount with respect to any Increase Date (including any Delayed Amount), such unfunded amount shall not be included in the Purchaser Group Principal Amount for such Purchaser Group unless and until such amount has been funded (including by Funding any Delayed Funding Reimbursement Amount, if applicable), and (y) any Delayed Amounts funded on an Increase Date by a Non-Delayed Funding Purchaser Group shall be included in the Purchaser Group Principal Amount for such Non-Delayed Funding Purchaser Group until the related Delayed Funding Reimbursement Amount has been funded.

"**Purchaser Group Supplement**" is defined in Section 8.1(e).

"**Rating Agency Condition**" means, with respect to any action in respect of the Series 2017-1 Senior Notes subject to such condition, each of the CP Conduit Purchasers shall deliver written notice of the proposed action to the CP Conduit Rating Agencies at least 10 Business Days prior to the effective date of such action (or if 10 Business Days prior notice is impractical, such advance notice as is practicable) and the CP Conduit Rating Agencies (i) shall not have informed any CP Conduit Purchaser prior to the effective date of such action that such action will result in the

reduction or withdrawal of the rating in effect with respect to the Commercial Paper of the CP Conduit Purchaser immediately before the taking of such action, or (ii) in the case of DBRS, or any successor thereto, when it is a CP Conduit Rating Agency, DBRS shall have informed each of the CP Conduit Purchasers in writing prior to the effective date of such action that such action will not result in the reduction or withdrawal of the rating of any Commercial Paper of such CP Conduit Purchasers immediately before the taking of such action. For purposes of the Trust Indenture, this Supplemental Indenture and the Master Transfer and Servicing Agreement, the Indenture Trustee shall receive, and shall be entitled to rely on, a certificate of a CP Conduit Purchaser confirming the satisfaction of the Rating Agency Condition.

"**Recipient**" has the meaning specified in Section 3.10(a) of this Supplemental Indenture.

"**Refinancing Increase**" is defined in Section 3.3(a).

"**Regulatory Change**" shall mean (i) the adoption after the date hereof of any applicable law, rule or regulation (including any applicable law, rule or regulation regarding capital adequacy, deposits, reserves or liquidity coverage) or any change therein after the date hereof, (ii) any change after the date hereof in the interpretation, administration, scope or timing of implementation thereof by any governmental authority, central bank, self-regulating professional body or comparable agency or authority charged with the interpretation or administration thereof, or compliance with any guidance, request or directive (whether or not having the force of law) of any such authority, central bank, self-regulating professional body or comparable agency or authority; provided that for purposes of this definition, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder, issued in connection therewith or in implementation thereof, and (y) all requests, rules, guidelines and directives (whether or not having the force of law) promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or Canadian or United States or other foreign regulatory authorities, shall in each case be deemed to be a "Regulatory Change", regardless of the date enacted, adopted, issued or implemented.

"**Related Non-Conduit Purchaser**" means, with respect to any Non-Conduit Purchaser Group, the Non-Conduit Purchaser that constitutes such Non-Conduit Purchaser Group.

"**Related Purchaser Group**" means, with respect to (a) any Funding Agent, the CP Conduit Purchaser identified next to such Funding Agent on Schedule E and the Group Bank identified on Schedule I next to such CP Conduit Purchaser or the CP Conduit Purchaser and Group Bank party to the Purchaser Group Supplement pursuant to which such Funding Agent became a party to this Supplemental Indenture; (b) any CP Conduit Purchaser, the CP Conduit Purchaser Group of which such CP Conduit Purchaser is a member; and (c) any Non-Conduit Purchaser, the Non-Conduit Purchaser Group that such Non-Conduit Purchaser constitutes.

"**Requisite Series 2017-1 Noteholders**" means Purchaser Groups having Commitment Percentages aggregating more than 50% (or if all Commitments have terminated, Purchaser Groups whose aggregate Purchaser Group Principal Amounts exceed 50% of the Series 2017-1 Principal Amount).

"**Scheduled Commitment Expiry Date**" means, ●, as such date may be extended in accordance with Section 3.5(c). [**NTD: two years out.]**

"**Series 2017-1 Initial Principal Amount**" is defined in Section 3.3(a).

"**Series 2017-1 Maximum Principal Amount**" means, on any date of determination, the sum of the Maximum Purchaser Group Principal Amounts with respect to each of the Purchaser Groups on such date.

"**Series 2017-1 Noteholder**" means a Person in whose name a Series 2017-1 Senior Note is registered in the Note Register.

"**Series 2017-1 Principal Amount**" means, on any date of determination, the sum of the Purchaser Group Principal Amounts with respect to each of the Purchaser Groups on such date.

"**Series 2017-1 Principal Payment Due Date**" means ●. [**NTD: the date upon which the Series 2017-1 Senior Notes become due and payable – a date after May 1, 2021?**]

"**Series 2017-1 Principal Payment Default Date**" means ●. [**NTD: the "cure period" number of days after the Series 2017-1 Principal Payment Due Date when an Event of Default will occur if the Series 2017-1 Senior Notes are not paid in full.]**

"**Series 2017-1 Senior Note**" means any one of the Floating Rate Variable Funding Senior Notes, Series 2017-1, executed by the Issuer and authenticated and delivered by or on behalf of the Indenture Trustee, substantially in the form of Exhibit B.

"**Standard & Poor's**" means Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc.

"**Supplemental Indenture**" means this Amended and Restated Supplemental Indenture, together with the Schedules hereto, as amended, supplemented, modified, restated or replaced from time to time, together with all schedules hereto and the expressions "hereof," "herein," "hereto," "hereunder," "hereby" and similar expressions refer to this Supplemental Indenture and not to any Article, Section, paragraph, subparagraph or clause hereof.

"**Support Facility**" shall mean any liquidity or credit support agreement with a CP Conduit Purchaser which relates to, or is otherwise available to such CP Conduit Purchaser in relation to its funding activities under, this Supplemental Indenture.

"**Termination Event**" means any Event of Default or any event which with the giving of notice or the passage of time, or both, could become an Event of Default.

"**Transfer Increase**" is defined in Section 3.3(a).

"**Transfer Supplement**" is defined in Section 8.1(c).

"**Transferee**" is defined in Section 8.1(g).

"**Trust Indenture**" means the trust indenture dated as of ●, 2017 between the Issuer and the Indenture Trustee, as amended or restated from time to time.

"**Write-Down and Conversion Powers**" shall mean, with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule.

SCHEDULE B

[FORM OF NOTE]

SERIES 2017-1 SENIOR NOTE

●

SCHEDULE C

FORM OF INCREASE NOTICE

●

SCHEDULE D

FORM OF DECREASE NOTICE

●

SCHEDULE E

PURCHASER GROUPS

●

FW_ Fair Hydro -- Revised Program Agreements.rtf

From: Hanslep, Malle (MOF) []
To: Manning, Mike (OFA) [Mike.Manning@ofina.on.ca]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Mayman, Gadi (OFA) [Gadi.Mayman@ofina.on.ca]; Kwan, Ronald (OFA) [Ronald.Kwan@ofina.on.ca]; Kim, John (OFA) [John.Kim@ofina.on.ca]; Devine, James (OFA) [James.Devine@ofina.on.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Katona, Keley (MOF) [Keley.Katona@ontario.ca]; Donaldson, Mark (TBS) [Mark.Donaldson@ontario.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]
CC: Whitfield, Tobias P. (MOF) [Tobias.Whitfield@ontario.ca]; McKinlay, Tom (ENERGY) [Tom.McKinlay2@ontario.ca]; Thouin, Alena (ENERGY) [Alena.Thouin@ontario.ca]; ASHBOURNE, STEPHEN (STEPHEN.ASHBOURNE@blakes.com) [STEPHEN.ASHBOURNE@blakes.com]
Subject: FW: Fair Hydro -- Revised Program Agreements
Date: Saturday, November 11, 2017 11:21:05
Attachment 1: image997f59.JPG
Attachment 2: Declaration of Trust.docx
Attachment 3: Management Agreement.docx
Attachment 4: Master Transfer and Servicing Agreement.docx
Attachment 5: Supplemental Indenture (Long Term Senior).doc
Attachment 6: Supplemental Indenture (Long Term Subordinated).doc
Attachment 7: Supplemental Indenture (Short Term Senior).docx
Attachment 8: Supplemental Indenture (Short Term Subordinated).docx
Attachment 9: Blackline - Declaration of Trust.pdf
Attachment 10: Blackline - Management Agreement.pdf
Attachment 11: Blackline - Master Transfer and Servicing Agreement.pdf
Attachment 12: Blackline - Supplemental Indenture (Long Term Senior).pdf
Attachment 13: Blackline - Supplemental Indenture (Subordinated Long Term).pdf
Attachment 14: Blackline - Supplemental Indenture (Short Term Senior).pdf
Attachment 15: Blackline - Supplemental Indenture (Subordinated Short Term).pdf

---

Subordinated debt documents are attached among others, not sure we have seen those before.

From: Saulnier, Brett [mailto:bsaulnier@torys.com]
Sent: November-10-17 8:40 PM
To: Thouin, Alena (ENERGY); Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); McKinlay, Tom (MAG); STEPHEN.ASHBOURNE@blakes.com
Cc: 'leslie.wong@opg.com'; dup-john.s.lee@opg.com; 'ken.ryfa@opg.com'; Feldman, Michael; Ramchandani, Rima; Mansoori, Nina; Olusoga, Yinka
Subject: Fair Hydro -- Revised Program Agreements

All,

Please find attached the latest drafts of the following documents (together with blacklines against the last draft you received, where applicable):

- Declaration of Trust
- Management Agreement
- Master Transfer and Servicing Agreement
- Supplemental Indenture (Long Term Senior)
- Supplemental Indenture (Long Term Subordinated)
- Supplemental Indenture (Short Term Senior)
- Supplemental Indenture (Short Term Subordinated)

Let us know if you have any questions or if you require any additional blacklines.

Thanks,
Brett

Brett Saulnier

P. 416.865.8148 | F. 416.865.7380 | 1.800.505.8679

79 Wellington St. W., 30th Floor, Box 270, TD South Tower
Toronto, Ontario M5K 1N2 Canada | www.torys.com

http://www.torys.com/

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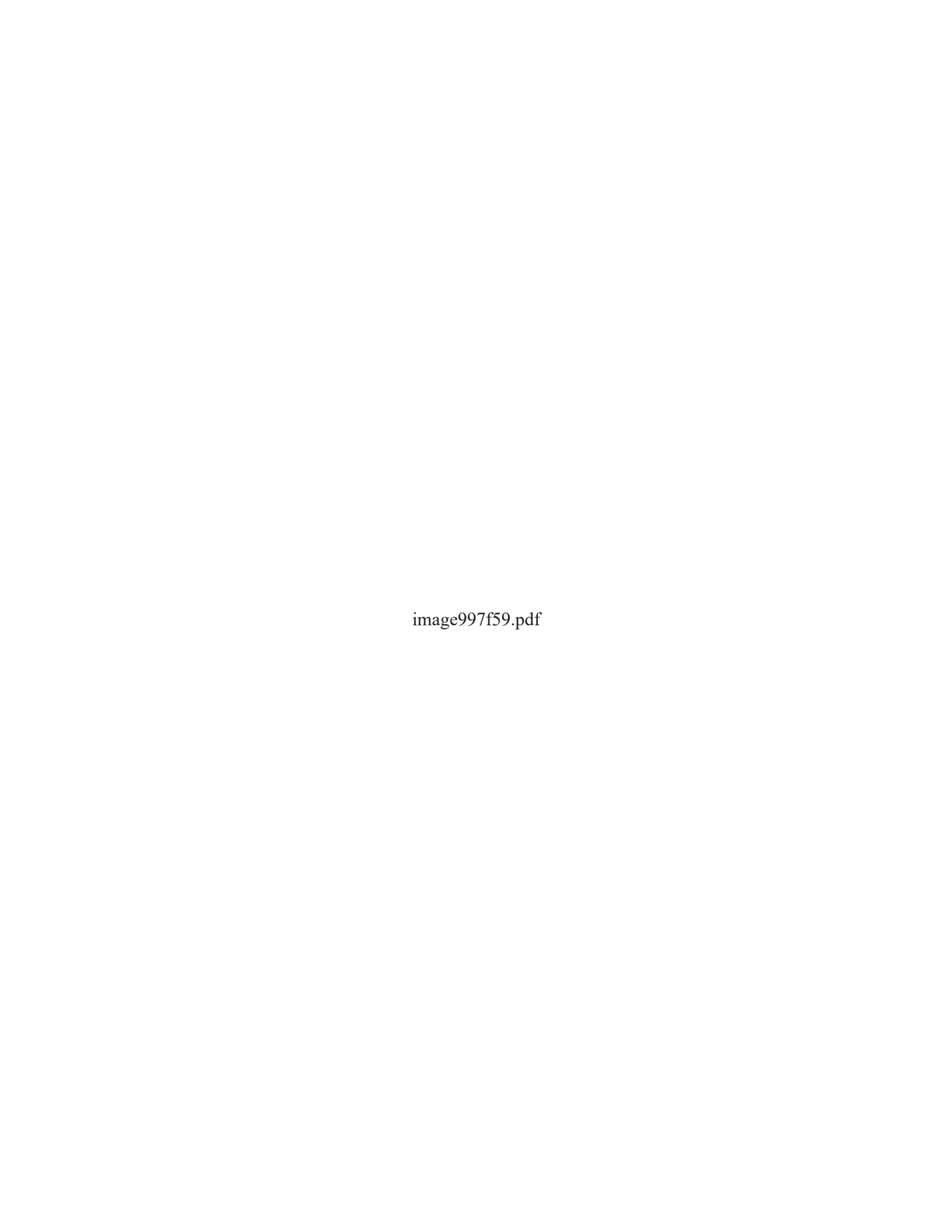
image997f59.pdf

TORYS
LLP

Declaration of Trust.pdf

COMPUTERSHARE TRUST COMPANY OF CANADA

as Issuer Trustee of

FAIR HYDRO TRUST

DECLARATION OF TRUST

Made as of ■, 2017

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THIS DECLARATION OF TRUST is made as of ■, 2017 by Computershare Trust Company of Canada, a trust company established under the laws of Canada (the "**Issuer Trustee**").

WHEREAS the Government of Ontario has enacted the *Ontario Fair Hydro Act, 2017* (the "**Act**") for the purpose of, among other things, ensuring that clean energy costs and clean energy benefits (each as defined in the Act) are fairly allocated among present and future Specified Consumers (as defined below);

AND WHEREAS the Issuer Trustee has determined, at the request of OPG, to establish a Trust (as defined below) for the purpose of carrying on the activities of a financing entity (as defined in the Act) as hereinafter described for the benefit of the Unitholders (as defined below);

NOW THEREFORE the Issuer Trustee hereby declares that it holds in trust as trustee the sum of TEN DOLLARS ($10.00) now contributed by it and all property of every nature and kind which it may acquire in its capacity as trustee of the Trust, and all income therefrom, for the benefit of the Unitholders, in accordance with and subject to the provisions of this Declaration of Trust.

ARTICLE 1
INTERPRETATION

1.1 Definitions

In this Declaration of Trust, the following terms have the following meanings:

"**Act**" has the meaning ascribed thereto in the Recitals.

"**Adjusted Redemption Price**" has the meaning ascribed thereto in subsection 4.1(3).

"**Affiliate**" means, with respect to any specified Person, any other Person controlling, controlled by or under common control with such specified Person and, for the purposes of this definition, "**control**" means, in respect of any specified Person, the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise, and the terms "**controlling**" and "**controlled**" have meanings correlative to the foregoing.

"**Business Day**" means any day other than a Saturday, a Sunday or a day on which banking institutions in Toronto, Ontario are, or the office of the Indenture Trustee is, authorized or obligated by law, regulation or executive order to be closed.

"**Change of Law Protection Agreement**" means the Change of Law Protection Agreement to be entered into between Her Majesty the Queen in Right of Ontario, as represented by the Minister of Energy and the Minister of Finance, the Indenture Trustee and the Trust.

"**Claim**" has the meaning ascribed thereto in Section 7.3.

"**Dealer**" means one or more Persons (other than the Issuer Trustee or the Manager) who have entered into an agreement with the Trust for the purpose of facilitating the sale and distribution of Funding Obligations.

"**Declaration of Trust**" means this declaration of trust.

"**Designated Beneficiary**" has the meaning ascribed thereto in section 3.6.

"**Eligible Investments**" means investments permitted to be made by the Trust under the Indenture.

"**Excess Income on Redemption**" has the meaning ascribed thereto in subsection 11.1(2).

"**Funding Obligation**" means a payment obligation incurred by or on behalf of the Trust to fund its ownership of an Investment Interest or a payment obligation that meets such other criteria as may be prescribed by the Regulations.

"**GAAP**" or "**generally accepted accounting principles**" means generally accepted accounting principles in Canada.

"**Governmental Authority**" means any nation or government, any federal, state, provincial, local or other political subdivision thereof and any court, administrative agency or other instrumentality or entity exercising executive, legislative, judicial, regulatory or administrative functions of government.

"**Hedging Agreement**" means any agreement evidencing an interest rate swap transaction, forward rate transaction, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction or any other similar transaction or any combination of these transactions, in each case, entered into by the Trust in connection with or related to, and at the time of or prior to, the issuance of Funding Obligations or acquisition of Investment Interests by the Trust in accordance with and subject to the terms of the Program Agreements.

"**IESO**" means the Independent Electricity System Operator.

"**Income of the Trust**" for any taxation year of the Trust means the net income for the year determined pursuant to the provisions of the ITA having regard to the provisions thereof which relate to the calculation of income for the purposes of determining the "taxable income" of a trust, without reference to paragraph 82(1)(b) and subsection 104(6) thereof, less any non-capital losses of the Trust carried forward from prior taxation years that are deductible in the taxation year, and taking into account such other adjustments as may be determined in the discretion of the Issuer Trustee; provided, however, that capital gains and capital losses will be excluded from the computation of net income.

"**Indenture**" means the master trust indenture to be entered into between the Trust and the Indenture Trustee.

"**Indenture Trustee**" means BNY Trust Company of Canada, a trust company existing under the laws of Canada and duly authorized to carry on the business of a trust company in all of the provinces and territories of Canada, as indenture trustee for the benefit of Specified Creditors under the Indenture.

"**Investment Interest**" has the meaning ascribed to the term "investment interest" in the Act.

"**Issuer Trustee**" means Computershare Trust Company of Canada and any successor thereto appointed pursuant to Article 6.

"**ITA**" means the *Income Tax Act* (Canada) and the regulations promulgated thereunder.

"**Management Agreement**" means the management agreement dated the date hereof between the Manager and the Trust.

"**Manager**" means OPG, in its capacity as manager appointed under the Management Agreement to administer the Investment Interests and perform such other duties assigned to it thereunder.

"**Master Transfer and Servicing Agreement**" means the master transfer and servicing agreement to be entered into by and between the Trust and the IESO.

"**Net Realized Capital Gains of the Trust**" for any taxation year means the amount, if any, by which the aggregate amount of the realized capital gains of the Trust for the year, calculated in accordance with the provisions of the ITA, exceeds the aggregate of: (i) the aggregate amount of any realized capital losses of the Trust for the year, calculated in accordance with the provisions of the ITA; and (ii) the amount determined by the Issuer Trustee in respect of any net capital losses of the Trust carried forward from prior taxation years that are deductible in the taxation year; provided that in the discretion of the Issuer Trustee, the Net Realized Capital Gains of the Trust for a taxation year may be calculated without subtracting the full amount of the net capital losses of the Trust carried forward from prior years.

"**Net Realized Capital Gains of the Trust Allocated on Redemption**" has the meaning ascribed thereto in subsection 4.1(5).

"**New Holder**" has the meaning ascribed thereto in subsection 3.6(1).

"**OPG**" means Ontario Power Generation Inc.

"**Person**" means any individual, corporation, limited liability company, estate, partnership, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization or Government Authority.

"**Program Agreements**" means the Indenture, each Supplemental Indenture, this Declaration of Trust, the Management Agreement, the Master Transfer and Servicing Agreement, each Transfer Notice, the Change of Law Protection Agreement and any

hedging agreements, credit enhancement agreements, loan agreements, subordinated loan agreements, security agreements and Underwriting Agreements in effect at such time and all other documents and certificates delivered in connection therewith.

"**Rating Agencies**" means, at any time, the credit rating agencies which at the request of the Trust are rating the Funding Obligations at such time.

"**Rating Agency Condition**" has the meaning ascribed thereto in the Indenture.

"**Records**" means all contracts, books, records and other documents and information, including, without limitation, data and information, including any stored on computer-related or other electronic media, computer programs, data processing software and related property and rights, maintained with respect to, but solely to, the assets of the Trust.

"**Redemption Price**" has the meaning ascribed thereto in subsection 4.1(3).

"**Regulations**" means the regulations promulgated under the Act.

"**Specified Consumer**" has the meaning ascribed to the term "specified consumer" in the Act.

"**Specified Creditors**" has the meaning ascribed thereto in the Indenture.

"**Supplemental Indenture**" means any supplemental indenture to the Indenture.

"**Transfer**" has the meaning ascribed to the term "transfer" in the Act.

"**Transfer Notice**" means a Transfer Notice in respect of a Transfer substantially in the form of Exhibit A to the Master Transfer and Servicing Agreement and delivered pursuant to such Program Agreement.

"**Trust**" means Fair Hydro Trust, a trust established under the laws of the Province of Ontario pursuant to this Declaration of Trust.

"**Trust Activities**" means the activities of the Trust described in Section 2.1.

"**Trust Company**" means a federally or provincially established trust company licensed to carry on business in all provinces and territories of Canada and which is resident in Canada for purposes of the ITA.

"**Trust Property**" means, as of any particular time, all assets of the Trust and all property, real, personal or otherwise, tangible or intangible, which have been transferred, conveyed or paid to, or acquired by the Trust, including all income, earnings, profits and gains therefrom, and which at such time are owned or held by the Trust.

"**Underwriting Agreement**" means any underwriting, agency or other agreement providing for the sale and distribution of Funding Obligations by one or more Dealers.

"**Unitholders**" means at any time, the holders at such time of one or more Units, and "**Unitholder**" means any such holder.

"**Units**" means the units of beneficial interest of the Trust authorized and issued hereunder as such and for the time being outstanding and entitled to the benefits hereof.

1.2 Interpretation

In this Declaration of Trust, unless otherwise expressly stated or the context otherwise requires:

(a) references to "herein", "hereby", "hereunder", "hereof" and similar expressions are references to this Declaration of Trust and not to any particular Article or Section of this Declaration of Trust;

(b) references to an "Article" or "Section" are references to an Article or Section of this Declaration of Trust;

(c) words importing the singular shall include the plural and vice versa, and words importing gender shall include the masculine, feminine and neuter genders;

(d) the use of headings is for convenience of reference only and shall not affect the construction or interpretation hereof;

(e) the words "includes" and "including", when following any general term or statement, are not to be construed as limiting the general term or statement to the specific items or matters set forth or to similar items or matters, but rather as referring to all other items or matters that could reasonably fall within the broadest possible scope of the general term or statement;

(f) references to any Person include such Person's successors and permitted assigns;

(g) any reference to a statute, regulation, policy, rule or instrument shall include, and shall be deemed to be a reference also to, all amendments made to such statute, regulation, policy, rule or instrument and to any statute, regulation, policy, rule or instrument that may be passed which has the effect of supplementing or superseding the statute, regulation, policy, rule or instrument so referred to;

(h) any reference to this Declaration of Trust or any other agreement, document or instrument shall be construed as a reference to this Declaration of Trust or, as the case may be, such other agreement, document or instrument as the same may have been, or may from time to time be, amended, varied, replaced, amended and restated or supplemented;

(i) in the event that any day on which any amount is to be determined or any action is required to be taken hereunder is not a Business Day, then such amount shall be determined or such action shall be required to be taken at or before the requisite time on the next succeeding day that is a Business Day; and

(j) unless otherwise specified, all references to "$" or "dollars" are to lawful currency of Canada.

1.3 Accounting Principles

Where the character or amount of any asset or liability or item of revenue or expense is required to be determined, or any consolidation or other accounting computation is required to be made for the purpose of this Declaration of Trust, such determination or calculation shall, to the extent applicable and except as otherwise specified herein or as the Issuer Trustee otherwise determines, be made in accordance with GAAP applied on a consistent basis.

1.4 References to Acts of the Trust

For greater certainty, where any reference is made in this Declaration of Trust to an act to be performed or not by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against, or a covenant, representation or warranty by or with respect to either (i) the Trust; or (ii) the Issuer Trustee, such reference will be construed and applied for all purposes as if it referred to an act to be performed by or not, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against, or a covenant, representation or warranty by or with respect to, the Issuer Trustee in its capacity as trustee of the Trust, and not in any other capacity.

ARTICLE 2
THE TRUST

2.1 Purpose and Activities of the Trust

The purpose of the Trust is to establish and carry on activities for the exclusive benefit of the Unitholders and to distribute the Trust Property upon termination of those activities by the Trust in accordance with Article 11. The Trust is permitted to engage in any activity, undertaking, transaction or event authorized or permitted by the Act (the "**Trust Activities**"), including:

(a) issuing Units;

(b) redeeming Units;

(c) acquiring, owning, holding, administering or entering into agreements regarding the acquisition and servicing of Investment Interests, along with certain other related assets;

(d) managing, selling, assigning, pledging and collecting amounts due on or otherwise deal with Investment Interests and the other related assets to be so acquired in accordance with the terms of the Program Agreements;

(e) negotiating, authorizing, executing, delivering, assuming the obligations under, and performing its duties under, the Program Agreements and any other agreement or instrument or document relating to the activities set forth in clauses (c) and (d)

above; provided, that the Trust shall be permitted to incur additional indebtedness or other liabilities payable to service providers and trade creditors in the ordinary course of business in connection with the foregoing activities;

(f) filing with any applicable securities commission one or more prospectuses, offering memoranda or registration statements, and filing such applications, reports, irrevocable consents, appointments of attorney for service of process and other papers and documents necessary or desirable to register one or more series of Funding Obligations under the securities laws of any applicable jurisdiction;

(g) authorizing, executing, delivering, issuing and registering one or more series of Funding Obligations;

(h) making payments on the Funding Obligations;

(i) pledging its interest in Investment Interests and related assets to the Indenture Trustee in order to secure the Funding Obligations; and

(j) engaging in any lawful act or activity and exercise any powers permitted to trusts formed under the laws of the Province of Ontario that, in each case, are incidental to, or necessary, suitable or convenient for the accomplishment of the above-mentioned purposes.

The Trust shall engage only in any activities related to the foregoing purposes or required or authorized by the terms of the Program Agreements or other agreements referenced above.

2.2 Limitation on Certain Activities

Notwithstanding any other provision of this Declaration of Trust or the Management Agreement, at any time that any Funding Obligations remain outstanding, the consent of the Indenture Trustee shall be required for the Trust to:

(a) take any action to wind-up or dissolve the Trust; or

(b) institute any voluntary proceedings to be adjudicated bankrupt or insolvent, or consent to the institution of any bankruptcy or insolvency proceedings against it, or file a petition seeking or consent to any assignment, petition, application or proceeding under any applicable bankruptcy or insolvency law, or consent to the appointment of a receiver, liquidator, assignee, trustee or other similar official of the Trust or a substantial part of its property, or make any assignment for the benefit of creditors, or admit in writing its inability to pay its debts generally as they become due, or take any similar action in respect of the Trust.

2.3 Name and Head Office

The English form of the name of the Trust is "Fair Hydro Trust" and the French form of the name of the Trust is "■". The Trust may use and may be legally designated by either the English form or the French form of its name. Should the Issuer Trustee determine that the use of

such name is not practicable, legal or convenient, it may use such other designation or adopt such other name for the Trust as it deems proper and the Trust may hold property and conduct the Trust Activities under such other designation or name. The head office, chief executive office, chief place of business and situs of administration of the Trust will initially be situated at the offices of the Issuer Trustee situated at 100 University Avenue, 11th Floor, Toronto, Ontario M5J 2Y1.

2.4 Nature of the Trust

The Trust is an unincorporated open-ended unit trust established for the purposes specified in Section 2.1. The Trust shall be governed by the general law of trusts, except as such general law of trusts has been or is from time to time modified, altered or abridged for the Trust by:

(a) applicable laws and regulations or other requirements imposed by applicable securities or other regulatory authorities, including the Act and Regulations; and

(b) the terms, conditions and trusts set forth in this Declaration of Trust.

The beneficial interest and rights generally of the Unitholders in the Trust shall be limited to the right to participate in distributions when and as declared by the Issuer Trustee and distributions upon the termination of the Trust. The Trust is not and is not intended to be, shall not be deemed to be and shall not be treated as a general partnership, limited partnership, syndicate, association, joint venture, company, corporation or joint stock company nor shall the Issuer Trustee or the Unitholders or any of them for any purpose be, or be deemed to be treated in any way whatsoever to be, liable or responsible hereunder as partners or joint venturers. The Issuer Trustee shall not be, or be deemed to be, an agent of the Unitholders. The relationship of the Unitholders to the Issuer Trustee, to the Trust and to the Trust Property shall be solely that of beneficiaries in accordance with this Declaration of Trust.

2.5 Rights of Unitholders

No Unitholder shall be entitled to call for any partition or division of the Trust Property or for a distribution of any particular asset forming part of the Trust Property or of any particular monies or funds received by the Issuer Trustee. The legal ownership of the Trust Property and the right to conduct the activities of the Trust are vested exclusively in the Issuer Trustee, and no Unitholder has or is deemed to have any right of ownership in any of the Trust Property, except as specifically provided herein. Except as specifically provided herein, no Unitholder or Unitholders shall be entitled to interfere with or give any direction to the Issuer Trustee with respect to the affairs of the Trust or in connection with the exercise of any powers or authorities conferred upon the Issuer Trustee under this Declaration of Trust. The Units shall be personal property and shall confer upon the holders thereof only the interest and rights, and impose upon the holders thereof only those liabilities and obligations, specifically set forth in this Declaration of Trust.

ARTICLE 3
UNITS

3.1 Nature of Units

The beneficial interests in the Trust shall be divided into a single class of Units. Each Unit represents an equal undivided beneficial interest in any distributions by the Trust, whether of Income of the Trust, Net Realized Capital Gains of the Trust (other than Net Realized Capital Gains of the Trust Allocated on Redemption to redeeming Unitholders), or other amounts, and, in the event of termination or winding up of the Trust, in the net assets of the Trust remaining after satisfaction of all liabilities. All Units rank equally among themselves and rateably without discrimination, preference or priority. Each Unit will entitle the Unitholder of record thereof to one vote at all meetings of the Unitholders or in respect of any written resolution of the Unitholders. Each Unit, when issued, shall vest indefeasibly in the holder thereof.

The number of Units which the Trust may issue is unlimited. The issued and outstanding Units may be subdivided or consolidated from time to time by the Issuer Trustee without notice to or approval of the Unitholders. Unless the Issuer Trustee determines otherwise, immediately after any *pro rata* issuance of additional Units to all Unitholders pursuant to subsection 11.3(3), the number of outstanding Units will automatically be consolidated such that each such holder will hold after the consolidation the same number of Units as such holder held before the issuance of additional Units.

3.2 Consideration of Units

A Unit will not be fully paid until the consideration therefor has been received in full by or on behalf of the Trust. The consideration for any Unit will be paid in money or in property (including, without limitation, a debt instrument issued to the Trust) or in past services received by the Trust that are not less in value than the fair equivalent of the money that the Trust would have received if the Unit had been issued for money. In determining whether property or past services are the fair equivalent of consideration paid in money, the Issuer Trustee may take into account reasonable charges and expenses of organization and reorganization and payments for property and past services reasonably expected to benefit the Trust. In no case will a Unit be issued to a Designated Beneficiary.

3.3 No Pre-Emptive Rights

No Person shall be entitled, as a matter of right, to subscribe for or purchase any Units of the Trust. There are no pre-emptive rights attaching to the Units.

3.4 Fractional Units

If as a result of any act of the Issuer Trustee hereunder, any Person becomes entitled to a fraction of a Unit, such Person will not be entitled to receive a certificate therefor. Fractional Units will not, except to the extent that they may represent in the aggregate one or more whole Units, entitle the holders thereof to notice of or to attend or to vote at meetings of the Unitholders. Subject to the foregoing, such fractional Units will have attached thereto the rights, restrictions, conditions and limitations attaching to whole Units in the proportion that they bear to a whole Unit.

3.5 Allotment and Issue

Subject to Section 3.6, the Issuer Trustee may allot and issue Units at such time or times and in such manner (including pursuant to any plan from time to time in effect relating to reinvestment by the Unitholders of distributions of the Trust in Units) and to such Person, Persons or class of Persons as the Issuer Trustee in its sole discretion will determine. The price or the value of the consideration for which Units may be issued and the terms and conditions of issuance of the Units will be determined by the Issuer Trustee in its sole discretion. Not restricting the generality of the foregoing, the Issuer Trustee may accept amounts received from a Unitholder as a prepayment in respect of the obligation of the Unitholder to pay all or any part of the subscription price of Units to be issued at a later date by the Issuer Trustee. In such circumstances, such prepayment will form part of the Trust Property. In the event that Units are issued in whole or in part for a consideration other than money, the resolution of the Issuer Trustee allotting and issuing such Units will express the fair equivalent in money of the other consideration received.

3.6 Prohibited Issuances and Transfers

(1) Notwithstanding any other provision in this Declaration of Trust, at no time, may Units be issued or transferred to a Person who would be a "designated beneficiary" within the meaning of Part XII.2 of the ITA ("**Designated Beneficiary**"), and the Issuer Trustee will not accept a subscription for Units from, or issue or register a transfer of Units to, a Person unless the Person provides a declaration to the Issuer Trustee that it would not be a Designated Beneficiary and covenants to maintain such representation true for as long as it continues to hold one or more Units. If, notwithstanding the foregoing, the Issuer Trustee determines that a Person has purported to become or remain a Unitholder in breach of the above mentioned declaration or covenant, or if the Unitholder fails to provide, upon request, a declaration in form and content satisfactory to the Issuer Trustee that it is not a Designated Beneficiary, (i) the Issuer Trustee will require such Person to dispose of the Units within a specified period not to exceed 60 days to a Person who does not contravene the above mentioned limitation on ownership ("**New Holder**"), and (ii) effective immediately prior to the breach, such Person will be deemed to have ceased to be a holder of such Units, the voting and distribution rights attached to such Units will be suspended and such Units will be deemed not to be outstanding until acquired by a New Holder (provided that holders of other Units will not be entitled to any portion of the distributions that may have been paid in respect of Units that have been so deemed not to be outstanding) and such Person's rights in respect of such Units will be limited to receiving the net proceeds of the sale thereof. If such Person has not, within such period, sold such Units or provided the Issuer Trustee with a declaration in form and content satisfactory to the Issuer Trustee that it is not a Designated Beneficiary, the Issuer Trustee may sell such Units on behalf of such Person (and the Issuer Trustee will have the power of attorney of such Person to do so), and such Person's rights in respect of such Units will be limited to receiving the net proceeds of sale upon surrender of the certificates representing such Units.

(2) Subject to this section 3.6, and until the Issuer Trustee will have been required to do so under the terms hereof, the Issuer Trustee will not be bound to do or take any proceeding or action with respect to this section 3.6 by virtue of the powers conferred on it hereby. The Issuer Trustee will have the sole right and authority to make any determination required

for the administration of the provisions of, or contemplated under this section 3.6, and without limiting the generality of the foregoing, if the Issuer Trustee considers that there are reasonable grounds for believing that a contravention of the above mentioned limitation on ownership has occurred or may occur, the Issuer Trustee will make a determination with respect to the matter. Any such determination will be conclusive, final and binding for the purposes of this section 3.6 except to the extent modified by any subsequent determination by the Issuer Trustee. The Issuer Trustee may require declarations as to whether a Unitholder is a Designated Beneficiary or as to factual information that will enable the Issuer Trustee to determine whether a Unitholder or a prospective transferee of a Unit may be a Designated Beneficiary. In any situation where it is unclear whether Units may be held by a Person who may be a Designated Beneficiary, the Issuer Trustee may exercise its discretion in determining whether such Person is or is not a Designated Beneficiary, and any such exercise by it of its discretion will be binding for the purposes of this section 3.6.

3.7 Liability of Unitholders

No Unitholder of the Trust, in its capacity as such, will incur or be subject to any liability, direct or indirect, absolute or contingent, in contract or in tort or of any other kind, to any Person in connection with: (i) the Trust Property or the ownership, use, operation, acquisition or disposition thereof or exercise or enjoyment of the rights, privileges, conditions or benefits attached thereto, associated therewith or derived therefrom; (ii) the obligations, liabilities, activities or affairs of the Trust; (iii) any actual or alleged act or omission of the Issuer Trustee or any other Person in respect of the activities or affairs of the Trust (whether or not authorized by or pursuant to this Declaration of Trust); (iv) any actual or alleged act or omission of the Issuer Trustee or any other Person in the performance or exercise, or purported or attempted performance or exercise, of any obligation, power, discretion or authority conferred upon the Issuer Trustee or such other Person in respect of the activities or affairs of the Trust (whether or not authorized by or pursuant to this Declaration of Trust); (v) any transaction entered into by the Issuer Trustee or by any other Person in respect of the activities or affairs of the Trust (whether or not authorized by or pursuant to this Declaration of Trust); or (vi) any taxes, levies, imposts or charges or fines, penalties or interest in respect thereof payable by the Trust or by the Issuer Trustee or by any other Person (except the Unitholders to the extent required by applicable tax laws) on behalf of or in connection with the activities or affairs of the Trust. No Unitholder will be liable to indemnify the Issuer Trustee or any other Person with respect to any such liability or liabilities incurred by the Issuer Trustee or by any such other Person or Persons or with respect to any taxes payable by the Trust or by the Issuer Trustee or any other Person on behalf of or in connection with the Trust. To the extent that any such liabilities of the Unitholders may arise, they will be enforceable only against, and will be satisfied only out of, the Trust Property to the full extent of such liability and the costs of any litigation or other proceedings in which such liability will have been determined, including without limitation, the fees and disbursements of counsel.

ARTICLE 4
REDEMPTION OF UNITS

4.1 Redemption of Units

Each Unitholder will be entitled to require the Trust to redeem at any time and from time to time at the demand of such Unitholder all or any part of the Units held by such Unitholder as follows:

(1) The Unitholder will give notice in writing to the Trust at its head office of its intention to redeem Units and the number of Units to be redeemed.

(2) Upon receipt by the Trust of such notice from the Unitholder to redeem Units, the Unitholder will be entitled to receive, subject to subsection 4.1(3), an amount equal to the aggregate fair market value of such Units immediately before the redemption (the "**Redemption Price**") established by the Issuer Trustee, acting reasonably, payable by certified cheque or via wire transfer of funds.

(3) In the event that the Trust has insufficient funds to make the payment required pursuant to subsection 4.1(2) or such payment is restricted under the terms of the Indenture, the Trust will satisfy the Redemption Price, subject to compliance with any regulatory requirements, by either issuing a promissory note to the Unitholder, which note shall have a principal amount equal to the Redemption Price and such other terms as is determined at the time of issuance by the Issuer Trustee, or by distributing to the redeeming Unitholder *in specie* a proportionate amount of the Trust Property, the fair market value of which, as determined by the Issuer Trustee, acting reasonably, is equal to the Redemption Price. In the event that property is distributed *in specie*, the amount of Net Realized Capital Gains of the Trust Allocated on Redemption as contemplated by subsection 4.1(5) payable in connection with the redemption of Units shall be payable to the Unitholder in kind, and to the extent of the amount thereof, the Redemption Price of the Units being redeemed shall be reduced accordingly (the "**Adjusted Redemption Price**").

(4) Upon satisfaction of the Redemption Price or the Adjusted Redemption Price, as the case may be, the redeeming Unitholder will not be entitled to any rights or benefits, including voting and the right to receive distributions, in connection with the Units redeemed.

(5) Where the Trust distributes Trust Property *in specie* as contemplated in subsection 4.1(3), the Issuer Trustee shall designate and pay to the redeeming Unitholder such part of the Net Realized Capital Gains of the Trust as is realized by the Trust in connection with such *in specie* distribution, provided that the amount of the Net Realize Capital Gains on the Trust so allocated shall not exceed the amount, if any, by which the Redemption Price of the particular Units being redeemed exceeds the aggregate adjusted cost base of such Units to the Unitholder for the purpose of the ITA immediately before the redemption (the "**Net Realized Capital Gains of the Trust Allocated on Redemption**"). If the total Net Realized Capital Gains of the Trust Allocated on Redemption determined by the Issuer Trustee pursuant to the preceding sentence for all redeeming Unitholders in any taxation year exceeds the Net Realized Capital Gains of the Trust for that year, the Net Realized

Capital Gains of the Trust for that taxation year shall be allocated rateably to all redeeming Unitholders for the year based on the Net Realized Capital Gains of the Trust Allocated on Redemption as otherwise determined pursuant to the preceding sentence. The Net Realized Capital Gains of the Trust Allocated on Redemption designated and paid on the redemption of Units as determined under this subsection shall be deemed to be a distribution of Net Realized Capital Gains of the Trust for the particular taxation year in which the redemption occurs. If the Issuer Trustee is required to deduct or withhold an amount from such distribution, the Unitholder shall make the cash payment described in Section 11.7 to the Issuer Trustee on or prior to the date the Units are to be redeemed.

ARTICLE 5
RIGHTS AND POWERS OF ISSUER TRUSTEE

5.1 General Rights and Powers

Subject to the specific restrictions and limitations set forth in this Declaration of Trust and notwithstanding the provisions of the *Trustee Act* (Ontario) or any other similar legislation in any jurisdiction, the Issuer Trustee will have, without the necessity of authorization by, and free from any power or control on the part of, the Unitholders, full, exclusive and absolute power, control and authority over the Trust Property and the Trust Activities to the same extent as if the Issuer Trustee were the sole and absolute owner thereof in its own right including, without limitation, such power, control and authority to do all such acts and things as in its sole judgment and discretion are necessary, incidental or desirable for carrying on the Trust Activities in accordance with the Program Agreements with such powers of delegation as may be permitted by this Declaration of Trust, including the right, power and authority to amend this Declaration of Trust subject to and in accordance with the terms hereof and to appoint, employ or contract with any Person as the Issuer Trustee may deem necessary, appropriate or desirable for the transaction of the Trust Activities, including for the administration of the Trust. The Issuer Trustee shall exercise the functions of the trustee of the Trust in Ontario, Canada. For greater certainty, the powers of the Issuer Trustee that may be exercised as aforesaid include the powers set forth in Section 5.2 to and including Section 5.18. The enumeration of any specific power or authority in this Declaration of Trust will not be construed as limiting the aforesaid power or authority or any other specific power or authority. Subject only to the express limitations contained in this Declaration of Trust, every discretion or power hereby conferred on the Issuer Trustee is an absolute and uncontrolled discretion or power.

5.2 Acquisition of Assets and Deposit of Funds

Subject to Section 2.1, the Issuer Trustee will have the power to acquire Investment Interests in accordance with the Program Agreements. Subject to compliance with the terms of the Program Agreements, the Issuer Trustee will have the power to deposit any money forming part of the Trust Property with any bank (which bank may be an Affiliate of the Issuer Trustee) licensed under the laws of Canada or any trust company (which includes the Issuer Trustee) licensed under the laws of any province of Canada and to withdraw such deposits in accordance with the Program Agreements. The Issuer Trustee will have no liability for any loss which may occur by reason of the failure of any depository with whom such money has been deposited or for the depreciation of any investment.

5.3 Legal Title and Custody

The Issuer Trustee will have the power to cause any and all Trust Property to be held by and/or registered in the name of any Person.

5.4 Disposition of Trust Property

In accordance with and subject to the terms of the Program Agreements, the Issuer Trustee will have the power to sell, convey, transfer and assign all Trust Property free and clear of any and all trusts hereby established, at public or private sale, for cash or on terms, with or without advertisement and subject to such restrictions, stipulations, agreements and reservations as it may deem proper.

5.5 Management of Trust Property

In accordance with and subject to the terms of the Program Agreements, the Issuer Trustee will have the power to own, manage, use, invest and hold the Trust Property (including, without limitation, the power to make investments in Eligible Investments) and to enter into agreements in respect of the Trust Property or its use including, without limitation, agreements to modify, amend, extend, renew or terminate any grant or agreement relating to the Trust Property and to waive compliance with any of the terms and conditions thereof, all, in each case, without the approval of or notice to the Unitholders.

5.6 Power to Borrow Money and Issue Funding Obligations

In accordance with and subject to the terms of the Program Agreements, the Issuer Trustee will have the power to:

(a) borrow or in any other manner raise money and to evidence the same by the issuance of Funding Obligations, by private placement, public offering or otherwise;

(b) reacquire or redeem Funding Obligations;

(c) execute and deliver any trust indenture or supplement thereto, security agreement, mortgage, pledge, hypothec, assignment or other instrument to secure Funding Obligations, and amendments, modifications, restatements or replacements thereof, whether by fixed or floating charge or by assignment or by the granting of a security interest, free and clear of any and all trusts hereby established and, in lieu of or in addition to granting any security, to grant to any Person a negative pledge whereby the Issuer Trustee agrees not to encumber any Trust Property and such other covenants as may be consistent with those set out in the Program Agreements or as may otherwise be specified by any applicable Rating Agency in accordance with the foregoing; and

(d) execute and/or deliver any agreement, instrument, certificate, direction or other document necessary or desirable in order to permit or give effect to the provisions of this Section 5.6, including, without limitation, prospectuses, offering

memoranda, regulatory filings, dealer agreements, Underwriting Agreements, subscription agreements, letters of representation, consent letters, and any instruments ancillary thereto.

5.7 Hedging Agreements

In accordance with and subject to the terms of the Program Agreements, the Issuer Trustee will have the power to enter into Hedging Agreements in connection with or related to the borrowing or other raising of money by the Issuer Trustee or the purchase or ownership of Investment Interests, provided that such Hedging Agreements may be entered into only at or prior to the time that such securities are sold, or such borrowing, other raising of money or purchase takes place, as applicable, or as otherwise expressly permitted in the Management Agreement; provided, however, that amendments, modifications or novations of or to a Hedging Agreement may be entered into at any time after the original Hedging Agreement was executed.

5.8 Execution of Instruments

Every deed, transfer, assignment, hypothec, agreement, certificate, direction, instrument, prospectus, or any other document which is necessary or desirable to be executed by the Trust, including, without limitation, any document evidencing Funding Obligations or relating to the issuance of Funding Obligations, will be signed on behalf of the Trust by the Issuer Trustee or its duly appointed agent, including the Manager.

5.9 Facsimile Signatures

The Issuer Trustee may authorize the use of facsimile signatures on the documents evidencing Funding Obligations, provided, however, that where facsimile signatures are so used, documents evidencing Funding Obligations will be manually countersigned or certified by a transfer agent, trustee, registrar or similar Person. If a Funding Obligation contains a printed or mechanically reproduced signature of a Person, the Issuer Trustee may issue the Funding Obligation notwithstanding that the Person has ceased to be a director, officer or signing officer of the Issuer Trustee, and the Funding Obligation will be as valid as if the Person were a director, an officer or a signing officer at the date of its issue.

5.10 Taxes

The Issuer Trustee will have the power to pay all taxes or assessments of whatever kind or nature imposed upon the Issuer Trustee and/or the Trust in connection with the Trust Property or the Trust Activities or upon or against the income from the Trust Activities or any part thereof, to settle and compromise disputed tax liabilities and, for the foregoing purposes, to make such returns and do all such other acts and things as may be deemed by the Issuer Trustee necessary or desirable. The Issuer Trustee will have the power to deduct and remit any taxes which are required by law to be deducted and remitted from any payment made by the Issuer Trustee under any Program Agreements or otherwise.

5.11 Collection

In accordance with and subject to the terms of the Program Agreements, the Issuer Trustee will have the power to:

(a) collect, receive, give receipts for and sue for all sums of money or other property due to the Trust;

(b) consent to extensions of time for payment of, or the renewal of, any securities or obligations of the Trust;

(c) engage or intervene in, prosecute, defend, compound, compromise, abandon or adjust by arbitration or otherwise deal with or settle any actions, suits, proceedings, disputes, claims, demands or things relating to the Trust Property or the Trust Activities;

(d) exercise any and all remedies available to it under any Program Agreements or otherwise, including any power of foreclosure or sale available to the Issuer Trustee at law or pursuant to any agreement and, in connection with any such foreclosure or sale, to purchase or otherwise acquire title to any property and to convey good title thereto free of any and all trusts hereby established, or to take or retake possession of any property secured or unsecured thereunder or such other security;

(e) extend the time, with or without security, for the payment or delivery of any debts or property and to execute and enter into releases, agreements and other instruments; and

(f) pay or satisfy any debts or claims upon any evidence that the Issuer Trustee determines to be sufficient.

5.12 Expenses and Compensation of Issuer Trustee

(a) The Issuer Trustee will have the power to incur and make payment of any charges or expenses which in the opinion of the Issuer Trustee are necessary or incidental to or proper for carrying out any of the purposes of this Declaration of Trust and the Trust Activities, and to pay appropriate compensation or fees from the Trust Property to Persons with whom the Trust has contracted or transacted business including, without limitation, any charges, expenses, compensation or fees payable under or in connection with the Program Agreements.

(b) The Issuer Trustee will be entitled to be paid from the funds of the Trust, without any requirement of a passing of accounts in respect thereof or approval of the Unitholders, such fees as the Issuer Trustee and the Manager may agree to from time to time for its services hereunder and all reasonable expenses, disbursements and advances incurred or made by the Issuer Trustee in the administration or execution of the trusts hereby created (including the reasonable compensation and the disbursements of its counsel and all other advisers and assistants not regularly in its employ) until all the duties of the Issuer Trustee under the trusts hereby

created shall be finally and fully performed, except any such expense, disbursement or advance as may arise from or in connection with the dishonesty, bad faith, wilful misconduct, negligence or reckless disregard of any duty or the failure to comply with the standard of care referred to in Section 7.1 by the Issuer Trustee, its officers, employees or agents. All such amounts will be payable at such times as the Issuer Trustee and the Manager may agree from time to time. All such amounts shall be exclusive of any applicable taxes and any applicable taxes shall be paid to the Issuer Trustee in addition to such amounts. Any amount not paid when due shall bear interest at a rate per annum equal to the rate designated by the Issuer Trustee as the then current rate charged by the Issuer Trustee or its successors from time to time to its corporate customers, payable on demand. After default and unless otherwise provided in the Indenture and any documents contemplated thereunder, all amounts so payable and the interest thereon shall be payable out of any funds coming into the possession of the Issuer Trustee or its successors in the trusts hereunder in priority to any payments to other Specified Creditors.

5.13 Allocation

The Issuer Trustee will have the power to determine conclusively whether money or other assets received by the Trust or expenses or disbursements made by the Trust will be charged or credited to income or capital or allocated between income and capital, provided, however, that such determination will not be inconsistent with calculation of income in accordance with the ITA at the time the determination is made.

5.14 Fiscal Year and Form of Accounts

The fiscal year of the Trust will end on December 31. The Issuer Trustee will have the power to determine and from time to time change the method or form in which the accounts of the Trust will be kept, provided such method or form reasonably complies with Canadian generally accepted accounting principles as applicable from time to time.

5.15 Power to Contract

In accordance with and subject to the terms of the Program Agreements, the Issuer Trustee will have the power to appoint, employ or contract with any Person as the Issuer Trustee may deem necessary or desirable for the transaction of the Trust Activities and may transfer assets to such Person and, save and except for such matters as are listed in Section 2.2, delegate to such Person any or all of the discretionary powers given to the Issuer Trustee with respect to the management of the Trust Property. Without in any way limiting the generality of the foregoing, the Issuer Trustee will have the power to:

(a) enter into, execute, deliver, perform the obligations of the Trust under, and grant security as provided for in, the Program Agreements;

(b) appoint, employ or contract with the Manager or any other Person who, under the supervision of the Manager, may, among other things: (i) furnish and supervise or cause to be furnished and supervised the performance of the clerical and administrative services necessary to the administration of the Trust and the Trust

Property including, without limitation, the provision of office space, office equipment and personnel for the performance of such services, property management, administration and servicing, the maintenance of documents, books and Records for the Trust (including those described in Section 8.1), the receipt and disbursement of Trust Property, the servicing and payment of debt and other obligations and generally all matters relating to the obtaining of and the administration and servicing of Trust Property, including, without limitation, as provided in the Management Agreement; (ii) serve as an advisor to the Issuer Trustee, furnish reports to the Issuer Trustee and provide research, economic and statistical data in connection with the Trust Activities; (iii) act as consultant, accountant, correspondent, lender, technical advisor, counsel, broker and dealer, underwriter, fiscal agent, corporate fiduciary, escrow agent, depository, custodian or agent for collection from obligors, loan administrator, appraiser, bank, insurer or insurance agent, transfer agent or registrar or issuing and paying agent for Funding Obligations or in any other capacity deemed by the Issuer Trustee necessary or desirable; (iv) act as attorney or agent in the purchase or sale or other disposition of the Trust Property or the property secured thereby and the handling, prosecution or settling of any claims of the Trust and assist in the performance of such functions necessary in the management of the Trust as may be agreed upon with the Issuer Trustee; and (v) execute and deliver the Program Agreements. For greater certainty, the appointment by the Issuer Trustee of the Manager under the Management Agreement will, where applicable, be deemed to constitute adequate supervision by the Issuer Trustee for purposes of the *Trustee Act* (Ontario) and this Declaration of Trust of any Person thereby engaged in connection with the foregoing activities; and

(c) investigate, select and conduct negotiations with Persons acting in the capacities referred to in Section 5.15(b) and pay appropriate fees to, and enter into appropriate contracts with, employ or retain the services of, any of them in connection with the Trust Property or property secured thereby, other assets and any security related thereto funded, acquired, sold or otherwise disposed of, or committed, negotiated or contemplated to be funded, acquired, sold, or otherwise disposed of in connection with Funding Obligations.

5.16 Indemnification

In accordance with and subject to the terms of the Program Agreements, the Issuer Trustee will have the power to indemnify or enter into agreements with respect to indemnification with any Person with whom the Issuer Trustee or the Trust deals to such extent as the Issuer Trustee determines necessary or desirable.

5.17 Further Powers

Subject to Section 2.1, the Issuer Trustee will have the power to perform and do all such other acts and things and to execute itself (or have executed by any Person appointed by it pursuant to Section 5.15) all such deeds, transfers, assignments, hypothecs, agreements, certificates, directions, instruments or other documents whatsoever as it deems necessary, proper or desirable

in order to carry on the Trust Activities in accordance with and subject to the Program Agreements notwithstanding that such acts, things, deeds, transfers, assignments, hypothecs, agreements, certificates, directions, instruments or other documents are not herein specifically mentioned. Any determination as to what is necessary, proper or desirable in order to carry on the Trust Activities in accordance with the Program Agreements or otherwise, provided it is made by the Issuer Trustee honestly and in good faith, will be conclusive. Any construction of this Declaration of Trust or the existence of any power or authority hereunder, made honestly and in good faith by the Issuer Trustee upon the advice of counsel, will be conclusive to the extent consistent with the law. In construing the provisions of this Declaration of Trust, there will be a presumption in favour of a grant of power to the Issuer Trustee.

5.18 Auditors

In accordance with and subject to the terms of the Program Agreements, the Issuer Trustee will have the power from time to time to select and appoint and discharge and reappoint an auditor of the Trust in its discretion and to negotiate and fix the fees of any such auditor.

5.19 Defect in Appointment

Notwithstanding anything to the contrary herein contained, no action taken by the Issuer Trustee will be invalid by reason only of any defect that is thereafter discovered in its appointment.

5.20 Status

The Issuer Trustee shall not have the status of bankrupt and shall be resident in Canada for purposes of the ITA.

ARTICLE 6
REPLACEMENT OF ISSUER TRUSTEE

6.1 Resignation of Issuer Trustee

(a) If the Issuer Trustee desires to resign and be discharged from the trusts and powers reposed in or conferred on it by this Declaration of Trust, it will provide 120 days written notice (or such shorter period of notice as the Unitholders , the Indenture Trustee and the Rating Agencies may agree to) thereof to the Unitholders, the Indenture Trustee and the Rating Agencies provided that no such voluntary resignation shall be effective until a replacement Issuer Trustee acceptable to the Unitholders and the Indenture Trustee has been appointed and has executed a written agreement whereby such replacement Issuer Trustee agrees to assume the obligations of the Issuer Trustee hereunder, under the Program Agreements and under any other contract pursuant to which the Issuer Trustee is obligated.

(b) The Issuer Trustee shall resign if a material conflict of interest arises in its role as a trustee under this Declaration of Trust that is not eliminated within 90 days after the Issuer Trustee becomes aware that it has such a material conflict of interest. Forthwith after the Issuer Trustee becomes aware that it has such a material conflict of interest, it shall provide the Unitholders, the Indenture Trustee and the Rating

Agencies with written notice of the nature of such material conflict of interest. Upon such resignation, the Issuer Trustee shall (subject to Section 6.6) be discharged from its office under this Declaration of Trust. If, notwithstanding the foregoing provisions of this Section 6.1(b), the Issuer Trustee has such a material conflict of interest, the validity and enforceability of this Declaration of Trust and any agreement entered into by the Issuer Trustee shall not be affected in any manner whatsoever by reason only of the existence of such material conflict of interest. If the Issuer Trustee contravenes the foregoing provisions of this Section 6.1(b), the Unitholders, may apply, on notice to the Rating Agencies, to a court of competent jurisdiction for an order that the Issuer Trustee be replaced as Issuer Trustee hereunder.

6.2 Removal of Issuer Trustee

The Issuer Trustee may be removed from its office under this Declaration of Trust by the Unitholders, at any time by notice in writing delivered to the Issuer Trustee not less than 90 days prior to the date that such removal is to take effect.

6.3 Vacancy

In the event of the bankruptcy or insolvency of the Issuer Trustee or the inability of the Issuer Trustee to exercise its duties under this Declaration of Trust, the Unitholders may forthwith terminate the term of office of the Issuer Trustee as trustee and, in such instance, a vacancy will occur. No vacancy (including upon a resignation of the Issuer Trustee pursuant to Section 6.1(b)) shall operate to annul this Declaration of Trust or affect the continuity of the Trust or terminate the appointment of the Manager under the Management Agreement.

6.4 Appointment of New Issuer Trustee

If, pursuant to this Article 6, the Issuer Trustee resigns or a vacancy occurs in the office of the Issuer Trustee for any reason, the Unitholders may by instrument in writing appoint a Trust Company, which either (i) has risk-based capital of at least $50,000,000 or, in the case of an entity that is not subject to risk-based capital adequacy requirements, has a combined capital and surplus of at least $50,000,000; or (ii) has been approved in writing by each Rating Agency prior to its appointment by the Unitholders, in order to replace the Issuer Trustee. If the Unitholders fails to make such appointment within 60 days of the occurrence of any such resignation, removal or vacancy, then the Issuer Trustee may make an application, on notice to the Rating Agencies, to a court of competent jurisdiction to appoint a successor Issuer Trustee hereunder. If the Issuer Trustee elects not to make such an application, the Unitholders may do so on notice to the Rating Agencies. The expense of any act, document, deed or other instrument or thing required under this Section 6.4 will be satisfied from the Trust Property.

6.5 Merger, Consolidation and Amalgamation

Any company into which the Issuer Trustee may be merged or with which it may be consolidated or amalgamated, or any company resulting from any merger, consolidation or amalgamation to which the Issuer Trustee is a party or any company succeeding to the corporate trust business of the Issuer Trustee will be a successor Issuer Trustee under this Declaration of

Trust without any further action on the part of the Issuer Trustee, provided that such company shall be a Trust Company.

6.6 Vesting in Successor Issuer Trustee

Any successor Issuer Trustee will become vested with all the estates, properties, rights, powers, duties, responsibilities and trusts of its predecessors in the trusts hereunder as if it had been originally named as Issuer Trustee pursuant to this Declaration of Trust. In furtherance of the foregoing, upon written request of the successor Issuer Trustee, the Issuer Trustee ceasing to act will do, make, execute, deliver or cause to be done, made, executed or delivered all such acts, documents, deeds or other instruments and things as may be necessary or desirable in order to more effectively assign, transfer and deliver to, and vest in, the successor Issuer Trustee, upon the trusts herein expressed, all the rights, powers and trusts of, and all property and money held by the Issuer Trustee so ceasing to act. The expense of any act, document, deed or other instrument or thing required under this Section 6.6 will be satisfied from the Trust Property.

6.7 Confidentiality

At all times (including, without limitation, at any time the Issuer Trustee should resign or be discharged from the trusts and powers reposed in or conferred on it by this Declaration of Trust), the Issuer Trustee (or the trustee so resigning and being discharged, as the case may be) will treat as confidential all information relating to the Trust, the Trust Activities and the transactions contemplated by the Program Agreements obtained by it in its capacity as Issuer Trustee.

6.8 Right to Disclose

The Issuer Trustee shall have the right to disclose any information disclosed or released to it if in the opinion of legal counsel to the Issuer Trustee it is required to disclose under any applicable laws, court order or directions of Governmental Authorities or if it is requested by a Rating Agency. The Issuer Trustee shall not be responsible or liable to any party for any loss or damage arising out of or in any way sustained or incurred or in any way relating to such disclosure.

ARTICLE 7
STANDARD OF CARE, LIMITATION OF LIABILITY OF ISSUER TRUSTEE AND OTHER MATTERS

7.1 Standard of Care

The Issuer Trustee will exercise its powers and carry out its obligations hereunder as Issuer Trustee honestly, in good faith and in the best interests of the Trust and the Unitholders and in connection therewith will exercise that degree of care, diligence and skill that a reasonably prudent Person would exercise in comparable circumstances. To the extent that the Issuer Trustee has delegated or subcontracted the performance of all or a portion of its duties to the Manager as contemplated by Section 5.15, it will be deemed to have satisfied the aforesaid standard of care. Unless otherwise required by law, the Issuer Trustee will not be required to give bond, surety or security in any jurisdiction for the performance of any duties or obligations hereunder. The Issuer Trustee will not be required to devote its entire time to the Trust Activities. For greater certainty,

the entering into of any Program Agreement by the Trust and the performance by the Trust of its obligations thereunder will be deemed to be in the best interests of the Unitholders and the Trust.

7.2 Limitation of Liability of Issuer Trustee

The Issuer Trustee has entered into this Declaration of Trust solely in its capacity as trustee of the Trust and not in its personal capacity, and any and all of the representations, warranties, undertakings, covenants, indemnities, agreements and other obligations made on the part of the Issuer Trustee herein are made and intended not as personal representations, warranties, undertakings, covenants, indemnities, agreements and other obligations by the Issuer Trustee or for the purpose or with the intention of binding the Issuer Trustee in its personal capacity, but are made and intended for the purpose of binding only the Trust Property or a specific portion thereof. No property or assets of the Issuer Trustee, whether owned beneficially by it in its personal capacity or otherwise (other than the Trust Property), will be subject to levy, execution or other enforcement procedures with regard to any of the representations, warranties, undertakings, covenants, indemnities, agreements and other obligations of the Trust or the Issuer Trustee hereunder, and no recourse may be had or taken, directly or indirectly, against the Issuer Trustee in its personal capacity, any Unitholder or any Affiliate, shareholder, director, officer, representative, employee or agent of the Issuer Trustee or any predecessor or successor of the Issuer Trustee with regard to the representations, warranties, undertakings, covenants, indemnities, agreements and other obligations of the Trust or the Issuer Trustee hereunder; provided that the foregoing limitation will not apply in respect of any action or failure to act arising from or in connection with the wilful misconduct, negligence or the failure to comply with the standard of care referred to in Section 7.1. Notwithstanding any other provision of this Article 7, but subject to the Indenture, each Specified Creditor is entitled to recourse to the Trust Property to satisfy in full the obligations of the Trust to it even if the Issuer Trustee has no right, or only an impaired right, to seek indemnification from the Trust Property or to apply the Trust Property in satisfaction of such obligations.

7.3 Indemnification of the Issuer Trustee

The Issuer Trustee, its directors, officers, agents, representatives and employees will at all times be indemnified and saved harmless out of the Trust Property from and against all claims (including any claim arising out of the assessment of any tax on income by a taxing authority), demands, levies, penalties, suits, losses, actions, causes of action, costs, charges, fees and expenses, damages and liabilities whatsoever, including, without limitation, those arising out of or related to actions taken or omitted to be taken by any agent of the Issuer Trustee, including, without limitation, the Manager, as contemplated hereby, legal fees and disbursements on a substantial indemnity basis and costs and expenses incurred in connection with the enforcement of this indemnity (each, a "**Claim**"), which the Issuer Trustee, its directors, officers, representatives and employees may suffer or incur, whether at law or in equity, in any way caused by or arising, directly or indirectly, in respect of any act, deed, matter or thing whatsoever made, done, acquiesced in or omitted in or about or in relation to the execution of its duties as Issuer Trustee or which it sustains or incurs in or about or in relation to the Trust Property and the Trust Activities. Further, the Issuer Trustee will not be liable to the Trust, to any Unitholder or to any other Person for any loss or damage relating to any matter regarding the Trust, including any loss or diminution in the value of the Trust Property. The foregoing provisions of this Section 7.3 do not apply to the

extent that in any circumstances there has been wilful misconduct, gross negligence or the failure to comply with standard of care referred to in Section 7.1 on the part of the Issuer Trustee, its directors, officers, agents, representatives or employees excluding the other parties to the Program Agreements. Notwithstanding any other provision hereof, this indemnity will survive the removal or resignation of the Issuer Trustee, the termination of this Declaration of Trust and the termination of any trust created hereby.

7.4 Reliance upon Advice

The Issuer Trustee may rely and act upon any statement, notice, report or opinion prepared by or any advice received from the Manager or from the auditors, counsel or other professional advisors of the Issuer Trustee and will not be responsible or held liable for any loss or damage resulting from so relying or acting if the Issuer Trustee acted reasonably and in good faith relied upon the advice received and if the professional advisor was aware that the Issuer Trustee was receiving the advice in its capacity as Issuer Trustee. The Issuer Trustee is entitled to be reimbursed from the Trust Property for all costs, charges and expenses it incurs in connection with obtaining any such statement, notice, report, opinion or advice. The Issuer Trustee is entitled to rely and act upon the genuineness and authenticity of any writing submitted to it that it in good faith believes to be genuine.

7.5 Retain Experts

The Issuer Trustee may appoint such agents and employ or retain such counsel, accountants, engineers, appraisers or other experts or advisers as it may reasonably require for the purpose of discharging its duties hereunder and shall not be responsible for any misconduct on the part of any of them. The Issuer Trustee may pay remuneration out of the Trust Property for all services performed for it in the discharge of the trusts hereof without taxation for costs or fees of any counsel, solicitor or attorney.

7.6 Reliance on Experts

The Issuer Trustee may act and rely and shall be protected in acting in good faith on the opinion or advice of or information obtained from any agent, counsel, accountant, engineer, appraiser or other expert or adviser in relation to any matter arising in the performance of its duties under the Program Agreements.

7.7 Provisions Regarding Liability

Any written instrument creating an obligation of the Issuer Trustee will be conclusively deemed to have been executed by the Issuer Trustee only in its capacity as Issuer Trustee. Any written instrument creating an obligation of the Issuer Trustee will contain a provision to the effect that the obligations thereunder are not binding upon the Issuer Trustee except in its capacity as Issuer Trustee, nor will recourse be had to the property of the Issuer Trustee except in its capacity as Issuer Trustee, but that the Trust Property or a specific portion thereof only will be bound, and may at the request of the Issuer Trustee make specific provision to the foregoing effect and contain any further provisions which the Issuer Trustee may deem appropriate, but the omission of any such provisions will not operate to invalidate any such instrument or to impose liability on the

Issuer Trustee, except as aforesaid. The Issuer Trustee shall not be required to expend or risk its own funds or otherwise incur financial liability in the performance of its duties hereunder.

ARTICLE 8
RECORDS

8.1 Records to be Kept

The Issuer Trustee will keep or cause to be kept at the head office of the Trust a copy of this Declaration of Trust, a register of Unitholders, minutes of meetings and resolutions of Unitholders, minutes of meetings and resolutions of the Issuer Trustee, and such Records as are by law or good business practice necessary. The Records may be kept at the office of any Person whom the Issuer Trustee has appointed to maintain the same, provided that the Issuer Trustee has access to the Records on one Business Day's notice to such Person.

8.2 Segregation of Assets

The Issuer Trustee shall maintain the Trust Property separate from all other property in its possession.

8.3 Method of Keeping Records

Where this Declaration of Trust requires the Issuer Trustee to cause a Record to be kept, it may be kept in bound or loose-leaf form or by means of a mechanical, electronic or other device.

8.4 Annual Financial Statements

A copy of the annual financial statements of the Trust, signed by the Issuer Trustee, shall be mailed or otherwise made available within 120 days following the end of a fiscal year to which they relate to each Unitholder. The financial statements shall include all information required to be included in annual financial statements of the Trust by applicable laws.

ARTICLE 9
MEETINGS OF UNITHOLDERS AND DECISION OF UNITHOLDERS

9.1 Annual Meeting

There will not be an annual meeting of the Unitholders.

9.2 Other Meetings

The Issuer Trustee will have power at any time to call meetings of the Unitholders at such time and place as the Issuer Trustee may determine. Unitholders holding in the aggregate not less than a majority of the outstanding Units may requisition the Issuer Trustee in writing to call a meeting of the Unitholders for the purposes stated in the requisition. The requisition shall state in reasonable detail the business proposed to be transacted at the meeting and will be sent to the Issuer Trustee at the address of the Issuer Trustee. Upon receiving the requisition, the Issuer Trustee will call a meeting of the Unitholders to transact the business referred to in the requisition. If the Issuer

Trustee does not within 10 days after receiving the requisition call a meeting, any Unitholder who signed the requisition may call the meeting.

9.3 Quorum and Voting

A quorum for any meeting of the Unitholders will be persons present being Unitholders or representing by proxy Unitholders who hold in the aggregate a majority of the total number of outstanding Units. Unitholders may attend and vote at all meetings of the Unitholders either in person or by proxy. Each Unit will be entitled to one vote at all meetings of the Unitholders. Any action to be taken by the Unitholders will, except as otherwise required by this Declaration of Trust, or by law, be authorized when approved by a majority of the votes cast at a meeting of the Unitholders. The chairman of any such meeting will not have a second or casting vote.

9.4 Written Resolution

Any business which may be conducted at a meeting of the Unitholders may be approved by a resolution in writing in lieu thereof. Notice of such resolution will be given to all Unitholders and approval of such resolution will be evidenced by the signature on any such resolution or counterpart thereof by the required percentage of Unitholders for the matter to be determined.

ARTICLE 10
AMENDMENT

10.1 Amendment

Subject to Section 2.1 and compliance with the terms of the applicable Program Agreements, the Issuer Trustee may, from time to time, amend, vary, supplement, replace or restate the provisions of this Declaration of Trust without the consent or approval of the Unitholders or any court as follows:

(a) to the extent deemed necessary by the Issuer Trustee in good faith to be necessary to ensure compliance with, or to remove any conflicts or other inconsistencies which may exist between any term of this Declaration of Trust and the provisions of, any applicable law in effect from time to time;

(b) to the extent deemed necessary by the Issuer Trustee in good faith to be necessary to make any change or correction in this Declaration of Trust which is a typographical change or correction or which the Issuer Trustee has been advised by legal counsel is required for the purpose of curing any ambiguity or defect or inconsistent provision or clerical omission or mistake or manifest error contained herein, or

(c) subject to the satisfaction of the Rating Agency Condition, to the extent deemed necessary or desirable in the sole discretion of the Issuer Trustee to permit or facilitate the carrying on of the Trust Activities, including the accommodation of requests made by the Rating Agencies or regulatory authorities in relation to the issuance of Funding Obligations.

However, any such amendment may be made only if it will not materially adversely affect the interest of any Unitholder, unless that Unitholder has also approved of the amendment in writing. The Issuer Trustee will immediately upon the entering into thereof, provide the Rating Agencies and the Indenture Trustee with a copy of any amendment, variation, supplement, replacement or restatement of this Declaration of Trust.

10.2 Automatic Amendment

Upon the Issuer Trustee ceasing to be a trustee of the Trust, this Declaration of Trust will be automatically amended to delete any reference to the name of the trustee so ceasing to be a trustee of the Trust and to substitute therefor the name of the successor trustee of the Trust. Notice of any change in the Issuer Trustee may be endorsed upon or attached to this Declaration of Trust and signed by the successor Issuer Trustee and every such notice will be sufficient evidence to any Person dealing with the Issuer Trustee under this Declaration of Trust as to the facts to which it relates.

10.3 Supplemental Declaration of Trust

The Issuer Trustee is authorized to execute any supplemental declaration of trust to give effect to amendments to this Declaration of Trust made pursuant to this Article 10. The Issuer Trustee shall not be obligated to enter into any such supplemental declaration if it adversely affects the Issuer Trustee's rights, duties or immunities under this Declaration of Trust or otherwise. No amendment to or amendment and restatement of this Declaration of Trust, whether pursuant to this Article 10 or otherwise, shall be construed as a termination of the Trust or the settlement or establishment of a new trust.

ARTICLE 11
DISTRIBUTION OF TRUST PROPERTY[1]

11.1 Distributions

(1) The Issuer Trustee may declare to be payable and make distributions, from time to time, out of Income of the Trust, Net Realized Capital Gains of the Trust, capital of the Trust or otherwise, in any year, in such amount or amounts, and on such dates as the Issuer Trustee may determine, to the Unitholders at the record date for such distribution. The Issuer Trustee may declare such amounts to be payable or authorize such distributions in advance by way of a standing resolution that is effective for a period not exceeding 12 months after the date of the resolution.

(2) Where the Trust proposes to distribute Trust Property in specie to a redeeming Unitholder as contemplated in subsection 4.1(3), and the Issuer Trustee reasonably expects that such in specie distribution will give rise to Income of the Trust and / or Net Realized Capital Gains of the Trust in excess of the amount of the Net Realized Capital Gains of the Trust Allocated on Redemption to the particular Unitholder whose Units are being redeemed (collectively, the "**Excess Income on Redemption**"), the Issuer Trustee shall declare to be

[1] Subject to PILs exemption.

payable and make a distribution, on the record date that is one Business Day before the redemption, to Unitholders at such record date in an amount equal to the estimated Excess Income on Redemption. Such distribution will be satisfied by the issuance of additional Units, or fractions of Units, having a fair market value equal to the amount of such distribution. If the Issuer Trustee is required to deduct or withhold an amount from such distribution, the applicable Unitholder shall make the cash payment described in Section 11.7 to the Issuer Trustee on or prior to the date the distribution.

(3) If the Issuer Trustee declares to be payable or makes a distribution pursuant to subsections 11.1(1) or 11.1(2) without determining the portion of such distribution that is payable out of Income of the Trust, Net Realized Capital Gains of the Trust, capital of the Trust or otherwise, such allocation shall be made pursuant to subsection 11.2(2).

(4) Having regard to the present intention of the Issuer Trustee to make payable to Unitholders all of the Income of the Trust and Net Realized Capital Gains of the Trust for each taxation year so that the Trust will not have any liability for tax under Part I of the ITA in any taxation year (other than alternative minimum tax or taxes payable under the "SIFT trust" rules in the ITA), unless the Issuer Trustee, in its sole discretion determines otherwise, the following amounts will, without any further actions on the part of the Issuer Trustee, be due and payable to the Unitholders of record on the last day in each such taxation year:

(a) an amount equal to the amount, if any, by which the Income of the Trust for such year exceeds the aggregate of (A) the aggregate of the portions of the distributions paid or payable by the Trust which have been determined by the Issuer Trustee to have been payable by the Trust out of the Income of the Trust for such year, if any, and (B) the aggregate of the portions of distributions deemed by subsection 11.2(2)(a) to be paid or payable by the Trust out of the Income of the Trust for such year; and

(b) an amount equal to the amount, if any, by which the Net Realized Capital Gains of the Trust for such year exceeds the aggregate of (A) any amount of the Net Realized Capital Gains of the Trust Allocated on Redemption for the year payable to redeeming Unitholders pursuant to subsection 4.1(5), (B) the aggregate of the portions of the distributions paid or payable by the Trust which have been determined by the Issuer Trustee to have been payable by the Trust out of Net Realized Capital Gains of the Trust for such year, if any, and (C) the aggregate of the portions of distributions deemed by subsection 11.2(2)(b) to be paid or payable by the Trust out of the Net Realized Capital Gains of the Trust for such year, if any.

Any determinations by the Issuer Trustee not to make a distribution described in this subsection 11.1(4) must be exercised by the Issuer Trustee in writing prior to December 31 of the applicable taxation year.

(5) The proportionate share of each Unit of the amount of any distribution made pursuant to this section will be determined by dividing such amount by the number of issued and outstanding Units on the applicable record date in respect of a distribution pursuant to subsections 4.1(5), 11.1(1) or 11.1(2) and on the last day of the taxation year in respect of

a distribution pursuant to subsection 11.1(4). Each Unitholder's share of the amount of any such distribution will be an amount equal to the proportionate share of each Unit of such amount multiplied by the number of Units owned of record by each such Unitholder on such applicable record date or the last day of the taxation year, as the case may be, and such Unitholder shall, on such date, be entitled to enforce payment of the Unitholder's share. Subject to subsections 4.1(5) and 11.1(2) and section 11.3, amounts which are payable to Unitholders will be paid in cash.

11.2 Allocation

(1) Subject to subsection 11.2(2), distributions payable to the Unitholders pursuant to Article 11 will be deemed to be distributions of Income of the Trust (including dividends), Net Realized Capital Gains of the Trust, returns of capital of the Trust or other items in such amount as the Issuer Trustee in its absolute discretion determines and will be allocated to the Unitholders in the same proportions as distributions received by the Unitholders.

(2) If the Issuer Trustee has declared to be payable or made one or more distributions in a taxation year pursuant to subsection 11.1(1) without determining the portion of such distributions that is payable out of Income of the Trust, Net Realized Capital Gains of the Trust, capital of the Trust or otherwise, such distributions shall be deemed to be paid or payable out of:

(a) first, the Income of the Trust for such year to the extent, if any, that the Income of the Trust for such year exceeds the aggregate of the amounts in subsection 11.1(4)(a)(A);

(b) second, the Net Realized Capital Gains of the Trust for such year to the extent, if any, that the Net Realized Capital Gains of the Trust for such year exceeds the aggregate of the amounts in subsection 11.1(4)(b)(A) and 11.1(4)(b)(B); and

(c) as to any balance, the capital of the Trust;

and such amounts will be allocated to the Unitholders in the same proportions as such distributions were received by the Unitholders.

(3) For greater certainty it is hereby declared that any distribution of Net Realized Capital Gains of the Trust will include the non-taxable portion of the capital gains of the Trust which are included in such distribution.

11.3 Payment of Distributions

(1) Distributions to a Unitholder (other than distributions described in subsections 4.1(5) and 11.1(2)) will be made by cash, wire transfer or cheque payable to or to the order of the Unitholder or by such other manner provided for in subsection 11.3(3). The payment, if made by cheque, will be conclusively deemed to have been made upon hand delivery of a cheque to the Unitholder or to its agent duly authorized in writing or upon the mailing of a cheque by prepaid first-class mail addressed to the Unitholder at its address set out in the records of the Issuer Trustee unless the cheque is not paid on presentation, or in any other

manner determined by the Issuer Trustee in its discretion. The Issuer Trustee may issue a replacement cheque if it is satisfied that the original cheque has not been received or has been lost or destroyed upon being furnished with such evidence of loss, indemnity or other document in connection therewith that the Issuer Trustee may in its discretion consider necessary.

(2) The Issuer Trustee may, in its sole discretion, transfer temporarily from capital to income within the Trust sufficient cash to facilitate payments of Income of the Trust to Unitholders. A permanent transfer from capital to income may be effected if payments made by and /or expenses of the Trust in any year exceed the aggregate of the net income and Net Realized Capital Gains of the Trust in such year.

(3) Without limiting the generality of the foregoing, a distribution to a Unitholder may be paid (i) by the issuance of additional Units, or fractions of Units having a fair market value equal to the amount of such distribution, (ii) by the issuance of a promissory note for a principal amount equal to the amount of such distribution and/or (iii) *in specie* by the transfer of Trust Property having a fair market value equal to the amount of such distribution, all as may be determined by the Issuer Trustee, acting reasonably. The Issuer Trustee acknowledges and agrees that it will elect to make payment to a Unitholder of the amount of a distribution in the manner described in this subsection 11.3(3) only if it has received prior written notice from the Unitholder that such payment method is acceptable, and the Unitholder makes the cash payment described in Section 11.7 to the Issuer Trustee, which written notice may be revoked in writing by the Unitholder at any time. If the Issuer Trustee elects to make payment of the amount of a distribution by the issuance of a promissory note, such promissory note shall bear interest at a fixed or floating rate, shall be repayable on demand or on the expiry of a stated term, and shall contain such other terms all of which may be determined by the Issuer Trustee such that the fair market value of such promissory note is equal to the amount of the distribution. Any such promissory note or additional Units issued, or Trust Property transferred, by the Trust shall constitute absolute and unconditional payment in full of the distribution and, by becoming a Unitholder, each Unitholder hereby acknowledges that any such note, additional Units or transfer of Trust Property will be accepted by the Unitholder as such absolute and unconditional payment of the distribution payable to the Unitholder.

11.4 Legal Rights

For greater certainty, it is hereby declared that the Unitholders shall have the legal right to enforce payment of any amount to be distributed or payable hereunder at the time such amount is due and payable.

11.5 Income Tax Matters

In reporting income for income tax purposes, the Trust will claim the maximum amount available to it as deductions under the relevant law, unless the Issuer Trustee determines otherwise.

11.6 Designations

In accordance with and to the extent permitted by the ITA, the Issuer Trustee will, in each taxation year, make such designations for income tax purposes in respect of amounts paid or payable or deemed to be paid to the Unitholders for such amounts that the Issuer Trustee considers to be reasonable in all circumstances, including designations relating to taxable dividends received or deemed to be received by the Trust in the year on shares of taxable Canadian corporations, net taxable capital gains of the Trust in the year and foreign source income of the Trust and foreign taxes in respect of such foreign source income for the year, if any.

11.7 Withholding Taxes

The Issuer Trustee will deduct or withhold from distributions or other amounts payable under this Declaration of Trust amounts required by law to be deducted or withheld from such distributions or payments, whether such distributions or payments are satisfied in the form of cash, cheque, promissory note, additional Units or otherwise. To the extent that any amounts are deducted or withheld from payments made by cash, cheque or wire transfer, including those described in subsection 11.3(1), such deducted or withheld amounts shall be treated for all purposes as having been paid to the recipient of the payment in respect of the distribution or other amount payable, provided that such deducted or withheld amounts are actually remitted in accordance with applicable law to the appropriate taxing authority. In the event that the Issuer Trustee makes a distribution or payment that is satisfied in a manner other than cash, cheque or wire transfer, including those described in subsections 4.1(3), 4.1(5) or 11.3(3), the recipient of the payment shall provide cash to the Issuer Trustee in amount equal to any required deduction or withholding, which the Issuer Trustee shall forthwith remit to the appropriate taxing authority on behalf of the Unitholder.

ARTICLE 12
TERMINATION OF THE TRUST

12.1 Termination

(a) The Trust will continue in full force and effect for a period of twelve months from the date hereof and thereafter for so long as any Funding Obligations remain outstanding and until the Trust has satisfied all of its obligations under the Program Agreements or otherwise for the purposes of carrying on the Trust Activities. Notwithstanding the foregoing, the Issuer Trustee may, with the unanimous approval of Unitholders, wind-up the affairs of the Trust and terminate the Trust and distribute the Trust Property then remaining to the Unitholders in proportion to the number of Units held by each Unitholder no later than the date that is one day prior to the 21st anniversary of the death of the last surviving lineal descendent of Queen Elizabeth, II of England living at the date this declaration is made.

(b) Subject to Section 12.1(a), the Issuer Trustee may, with the unanimous approval of the Unitholders, wind up the affairs of the Trust and terminate the Trust. To the fullest extent permitted by law, and notwithstanding any duty otherwise existing at law or in equity, the Issuer Trustee shall consider only the interests of the Trust,

including its creditors, in acting on the matters referred to in this Section 12.1. On the date the Trust is terminated, the Issuer Trustee will, upon receipt of such releases, indemnities and refunding agreements as the Issuer Trustee may deem necessary for its protection, distribute the remaining Trust Property, after payment of all other obligations of the Trust, in cash or in kind , or partly in each, to the Unitholders in proportion to the number of Units held by each Unitholder

ARTICLE 13
GENERAL

13.1 Irrevocability

The Trust shall be irrevocable.

13.2 Change of Office

The Issuer Trustee may at any time and from time to time during the existence of the trusts hereby created change the head office, chief executive office, chief place of business and situs of the administration of the Trust to another location within Ontario or have such other offices or places of administration within Canada as the Issuer Trustee may from time to time determine is necessary or desirable.

13.3 Execution of Instruments

The Issuer Trustee shall have power from time to time to appoint any Person or Persons on behalf of the Trust either to sign instruments in writing generally or to sign specific instruments in writing.

13.4 Manner of Giving Notice

Except as otherwise permitted herein, any notice required or permitted by the provisions of this Declaration of Trust to be given to a Unitholder or the Issuer Trustee shall be deemed conclusively to have been given if given either by delivery or by prepaid first-class mail addressed to each Unitholder at its address shown on the register of Unitholders or to the Issuer Trustee at the last address provided by the Issuer Trustee for such purpose. Any notice so given shall be deemed to have been given on the day of hand delivery or the day following that on which the notice was mailed.

13.5 Taxation Information

On or before March 30 in each year, or such earlier day as is required by applicable legislation or regulation, the Issuer Trustee will provide to Unitholders who received distributions from the Trust in the prior calendar year such information regarding the Trust required by applicable law to be submitted to Unitholders for income tax purposes to enable Unitholders to complete their tax returns in respect of the prior calendar year.

13.6 Severability

The provisions of this Declaration of Trust are severable and if any provisions are in conflict with any applicable law, the conflicting provisions shall be deemed never to have constituted a part of this Declaration of Trust and shall not affect or impair any of the remaining provisions thereof. If any provision of this Declaration of Trust shall be held invalid or unenforceable in any jurisdiction, such invalidity or unenforceability shall attach only to such provision in such jurisdiction and shall not in any manner affect or render invalid or unenforceable such provision in any other jurisdiction or any other provision of this Declaration of Trust in any jurisdiction.

13.7 Governing Law

This Declaration of Trust shall be interpreted and governed by and take effect exclusively in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein. Any and all disputes arising under this Declaration of Trust, whether as to interpretation, performance or otherwise, shall be subject to the exclusive jurisdiction of the courts of the Province of Ontario and the Issuer Trustee hereby irrevocably attorns, and each Unitholder shall be deemed to hereby irrevocably attorn, to the exclusive jurisdiction of the courts of such province.

13.8 Language

Les parties aux présentes ont exigés que la présente convention ainsi que tous les documents et avis qui s'y rattachent et/ou qui en découleront soient rédigés en la langue anglaise. The parties hereto have required that this Declaration of Trust and all documents and notices resulting herefrom be drawn up in English.

IN WITNESS WHEREOF the Issuer Trustee has caused this Declaration of Trust to be executed as of the day and year first above written by its duly authorized signatories.

COMPUTERSHARE TRUST COMPANY OF CANADA,
as Issuer Trustee

By: _____
Name:
Title:

By: _____
Name:
Title:

Management Agreement.pdf

MANAGEMENT AGREEMENT

between

FAIR HYDRO TRUST
as Issuer

- and -

ONTARIO POWER GENERATION INC.
as Manager

Acknowledged and Accepted by

BNY TRUST COMPANY OF CANADA
as Indenture Trustee

Dated as of ■, 2017

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MANAGEMENT AGREEMENT

THIS AGREEMENT made as of ■, 2017,

BETWEEN:

FAIR HYDRO TRUST, a trust formed under the laws of the Province of Ontario

(the "**Issuer**")

- and -

ONTARIO POWER GENERATION INC., a corporation established under the laws of the Province of Ontario

(the "**Manager**")

- acknowledged and accepted by -

BNY TRUST COMPANY OF CANADA, a trust company existing under the laws of Canada and duly authorized to carry on the business of a trust company in all of the provinces and territories of Canada, as indenture trustee

(the "**Indenture Trustee**")

WHEREAS the Government of Ontario has passed the *Ontario Fair Hydro Plan Act, 2017* (the "**Act**") for the purpose of, among other things, ensuring that Clean Energy Costs and Clean Energy Benefits are fairly allocated among present and future Specified Consumers;

AND WHEREAS Ontario Power Generation Inc. has been appointed as Financial Services Manager under the Act to, among other things, evaluate whether potential Funding Obligations should be incurred by Financing Entities for the purposes of acquiring and financing Investment Interests;

AND WHEREAS the Issuer is a Financing Entity established by the Financial Services Manager pursuant to the Act and may from time to time finance the acquisition from the IESO of an Investment Interest pursuant to the terms of the Master Transfer and Servicing Agreement;

AND WHEREAS the Indenture Trustee has been appointed pursuant to the Indenture to act on behalf of all Specified Creditors and wishes to acknowledge and accept the rights and obligations granted to it thereby, including, but not limited to, its rights set forth in this Agreement;

AND WHEREAS the Issuer and the Manager are entering into this Agreement in furtherance of, and in accordance with, the Act;

NOW THEREFORE in consideration of the foregoing and the mutual covenants and agreements contained herein (the receipt and adequacy of which are hereby acknowledged), the parties hereto agree as follows:

ARTICLE 1
INTERPRETATION

1.1 Definitions

(a) In this Agreement, the following terms have the following meanings:

"**Act**" has the meaning ascribed thereto in the recitals;

"**Agreement**" means this Agreement, as amended, supplemented, modified, replaced or amended and restated from time to time, and the expressions "herein", "hereof", "hereto", "hereunder" and similar expressions refer to this Agreement and not to any Article, Section, paragraph, subparagraph or clause hereof;

"**Board**" means the Ontario Energy Board, a statutory corporation without share capital continued under the *Ontario Energy Board Act, 1998*, S.O., 1998;

"**Clean Energy Adjustment**" has the meaning ascribed to the term "clean energy adjustment" in the Act;

"**Clean Energy Benefits**" has the meaning ascribed to the term "clean energy benefits" in the Act;

"**Clean Energy Costs**" has the meaning ascribed to the term "clean energy costs" in the Act;

"**Declaration of Trust**" means the declaration of trust made as of ■, 2017 under which the Issuer was established, as may be amended, supplemented, modified, replaced or amended and restated from time to time;

"**Electricity Vendor**" has the meaning ascribed to the term "electricity vendor" in the Act;

"**Fair Allocation Amount**" has the meaning ascribed to the term "fair allocation amount" in the Act;

"**Finance Amount**" has the meaning ascribed to the term "finance amount" in the Act;

"**Financial Services Manager**" has the meaning ascribed to such term under the Act;

"**Financing Entity**" has the meaning ascribed to the term "financing entity" in the Act;

"**Financing Plan**" has the meaning ascribed to such term under the Act;

"**Funding Obligation**" has the meaning ascribed to the term "funding obligation" in the Act;

"**IESO**" means the Independent Electricity System Operator, a statutory corporation without share capital amalgamated under the *Electricity Act, 1998*, S.O. 1998;

"**Indenture**" means the master trust indenture dated ■, 2017 between the Indenture Trustee and the Issuer, as may be amended, supplemented, modified, replaced or amended and restated from time to time;

"**Indenture Indemnified Losses**" has the meaning ascribed to such term in Section 5.6(b);

"**Indenture Indemnified Person**" means the Indenture Trustee and its officers, directors and employees;

"**Investment Interest**" has the meaning ascribed to the term "investment interest" in the Act;

"**Investment Interest Records**" means, collectively, any and all documents and records the Manager shall keep on file, in accordance with its customary procedures, relating to the Issuer Investment Interest, including copies of all documents filed with the Board in connection with any Clean Energy Adjustments and computational records relating thereto;

"**Issuer Compensation**" has the meaning ascribed to such term in Section 5.5;

"**Issuer Funding Obligation**" means a Funding Obligation incurred by the Issuer;

"**Issuer Investment Interest**" means, initially, the Investment Interest acquired by the Issuer pursuant to the first Transfer completed under the Master Transfer and Servicing Agreement and, upon the completion of each Transfer thereafter, the cumulative Investment Interest acquired by the Issuer;

"**Issuer Property**" means, as of any particular time, all assets of the Issuer and all property, real, personal or otherwise, tangible or intangible, which has been transferred, conveyed or paid to, or acquired by the Issuer, including all income, earnings, profits and gains therefrom, and which at such time is owned or held by the Issuer;

"**Management Fees**" means the fees established and charged by the Financial Services Manager in accordance with section 19(3) of the Act and the Regulations and approved by the Board in accordance with section 19(4) of the Act;

"**Master Transfer and Servicing Agreement**" means the master transfer and servicing agreement dated ■, 2017 between the Issuer and the IESO, as may be amended, supplemented, modified, replaced or amended and restated from time to time;

"**Minister**" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of the Act under the *Executive Council Act*, S.O. 1990;

"**Offering Materials**" means any document used by the Issuer in connection with offering securities representing Issuer Funding Obligations for sale including, without limitation, any information circular, offering memorandum, annual information form, preliminary prospectus, prospectus, prospectus supplement, term sheet, registration statement or other similar document, or any amendments to such documents;

"**Perpetuity Date**" means the date that is one day prior to the 21st anniversary of the death of the last surviving lineal descendant of Queen Elizabeth, II of England living as of the date of the Declaration of Trust;

"**Proceeding**" means any suit in equity, action at law or other judicial or administrative proceeding;

"**Reference Period**" has the meaning ascribed to the term "reference period" in the Act;

"**Regulation AB**" means Subpart 229.1100 – Asset Backed Securities (Regulation AB), 17 C.F.R. §§229.1100-229.1125, and all related rules and regulations of the U.S. Securities and Exchange Commission, as such rules may be amended from time to time, and subject to such clarification and interpretation as have been provided by the U.S. Securities and Exchange Commission or by the staff of the U.S. Securities and Exchange Commission, or as may be provided by the U.S. Securities and Exchange Commission or its staff from time to time;

"**Regulations**" means Ontario Regulation 206/17: General, together with any other regulations promulgated under the Act;

"**Servicer CEA Receipts**" has the meaning ascribed thereto in the Master Transfer and Servicing Agreement;

"**Specified Consumer**" has the meaning ascribed to the term "specified consumer" in the Act;

"**Standard of Care**" has the meaning ascribed to such term in Section 5.1;

"**Transfer**" has the meaning ascribed to the term "transfer" in the Act; and

"**True Up Amount**" has the meaning ascribed to the term "true up amount" in the Act.

(b) Unless otherwise defined in this Agreement, all capitalized terms used in this Agreement shall have the meanings ascribed thereto in the Indenture.

ARTICLE 2
INTRODUCTORY PROVISIONS

2.1 Sections and Headings

The table of contents does not form part of this Agreement. The division of this Agreement into Articles and Sections and the insertion of headings are for convenience of reference only and will not affect the construction or interpretation of this Agreement. Unless something in the subject matter or context is inconsistent therewith, references herein to Articles and Sections are to Articles and Sections of this Agreement.

2.2 Extended Meanings

Words importing the singular number only will include the plural and vice versa and words importing the masculine gender will include the feminine and neuter genders and vice

versa. Unless otherwise specified, a reference to any agreement, instrument or declaration means such agreement, instrument or declaration as the same may be amended, supplemented, modified, restated or replaced from time to time.

2.3 References to Acts of the Issuer or the Issuer Trustee

For greater certainty, where any reference is made in this Agreement to an act to be performed by the Issuer, such reference will be construed and applied for all purposes as if it referred to an act to be performed by the Issuer Trustee as trustee of the Issuer. Where any reference is made in this Agreement to an act to be performed by the Issuer Trustee, such reference will be construed and applied for all purposes as if it referred to an act to be performed by the Issuer Trustee as trustee of the Issuer.

ARTICLE 3
APPOINTMENT OF THE MANAGER

3.1 Appointment and Authority of the Manager

The Issuer hereby appoints Ontario Power Generation Inc. as the Manager to act as its agent to provide services and perform duties for and on behalf of and for the account of the Issuer, as hereinafter provided, in connection with the activities of the Issuer relating to:

(a) the acquisition, administration and possible transfer of the Issuer Investment Interest on behalf of the Issuer in accordance with the Act;

(b) acting as custodian of the Investment Interest Records;

(c) the entering into and execution and delivery on behalf of the Issuer of any Program Agreements;

(d) the incurrence of Issuer Funding Obligations, and repayment thereof, to fund the acquisition of the Issuer Investment Interest;

(e) the negotiation, execution and delivering or filing on behalf of the Issuer of any Offering Materials;

(f) the implementation and administration of the provisions of the Program Agreements to which the Issuer or the Manager on its behalf is a party;

(g) the acquisition, administration and sale of investments that may from time to time be made by the Issuer; and

(h) all activities as may be reasonably incidental to the foregoing or necessary in connection with the performance by the Issuer of its obligations under the Program Agreements, the Act and the Regulations.

The Manager accepts such appointment and agrees to act in such capacity and to provide or cause to be provided the services and to perform the duties set forth in this Agreement

on and subject to the terms and conditions in this Agreement. The Issuer hereby grants to the Manager the power and authority to act in the name of and on behalf of the Issuer, and to execute and deliver all documents, agreements and instruments in the name and on behalf of the Issuer, for the sole purpose of providing the services and performing the duties to be provided and performed by the Manager pursuant to this Agreement. The Manager shall provide all the services and perform all the duties contemplated under this Agreement, including its duties as Financial Services Manager under the Act, in Ontario, Canada.

ARTICLE 4
DUTIES AND OBLIGATIONS OF THE MANAGER

4.1 Program Agreements

(a) The Manager will administer as agent for and on behalf of and for the account of the Issuer the activities of the Issuer in connection with the Program Agreements and, in this regard, its services and duties will include:

(i) negotiating and executing, on behalf of the Issuer, Program Agreements and any documents related thereto with any Person and any amendments, supplements, replacements or restatements that may be necessary or desirable from time to time;

(ii) arranging for liquidity coverage required pursuant to the Program Agreements, negotiating and settling Liquidity Agreements and administering on behalf of the Issuer the activities of the Issuer in connection with such Liquidity Agreements;

(iii) when necessary or desirable, arranging for the Credit Enhancement of the Issuer Investment Interest, negotiating and settling Credit Enhancement Agreements and administering on behalf of the Issuer the activities of the Issuer in connection with such Credit Enhancement Agreements;

(iv) seeking satisfaction of the Rating Agency Condition from the Rating Agencies in respect of the Program Agreements and proposed amendments thereto if required;

(v) based on reports submitted to it, monitoring the recording, accounting for and enforcement of payment of amounts distributable or payable to the Issuer in connection with any Program Agreement;

(vi) maintaining accounts and banking records of the Issuer with respect to acquisitions or investments in and distributions and payments in connection with the Issuer Property, including Eligible Investments;

(vii) promptly after obtaining knowledge thereof, notifying the Issuer, the Indenture Trustee and the Rating Agencies of a breach in any material respect of any of the Manager's representations, warranties or covenants contained herein;

(viii) to the extent that the Issuer shall from time to time have funds the application of which is not then necessary to the repayment of outstanding indebtedness of the Issuer or to the payment of any costs, fees, expenses or disbursements of the Issuer, applying such funds on behalf of and for the account of the Issuer to the acquisition of Eligible Investments as the Manager may select pending the application of such funds to the repayment of outstanding indebtedness of the Issuer or to the payment of any costs, fees, expenses or disbursements of the Issuer; provided, however, that in making any such Eligible Investments, the Manager shall adhere to the requirements of the Program Agreements in all respects;

(ix) taking all other necessary and appropriate action to enable the Issuer to exercise its rights and perform its obligations in accordance with the provisions of any Program Agreement, including exercising rights of termination under Program Agreements and the enforcement of security or in respect of Eligible Investments;

(x) providing for the defense of any action, suit or proceeding brought against the Issuer or affecting the Issuer or any Issuer Property;

(xi) taking all such steps as may be necessary or appropriate to enable the Issuer to collect on any security relating to the Issuer Investment Interest;

(xii) determining, in accordance with the Financing Plan, when it is appropriate for the Issuer to enter into Derivative Agreements, selecting suitable counterparties thereto and negotiating the terms thereof in accordance with the terms of the Program Agreements;

(xiii) determining, in accordance with the Financing Plan, when it is appropriate for the Issuer to incur Funding Obligations, including the determination of applicable principal (or face amount), amortization/sinking fund schedule(s), interest rates (or rate of discount), interest payment frequency, issuance date and maturities of such Funding Obligations;

(xiv) making determinations under the Declaration of Trust regarding any distributions to beneficiaries of the Issuer;

(xv) promptly providing the Issuer Trustee notice of the Perpetuity Date once determined;

(xvi) administering all activities of the Issuer in connection with the issuance, sale, payment, repurchase and redemption of Issuer Funding Obligations and the execution and performance by the Issuer of its obligations under the Program Agreements, including all reporting obligations, applying for and monitoring the ratings of any Issuer Funding Obligations and coordinating all aspects of obtaining and maintaining ratings from the Rating Agencies;

(xvii) preparing, executing and delivering, in accordance with the requirements of all applicable securities laws, any Offering Materials to be furnished by the Issuer to any dealer or prospective purchaser of Issuer Funding Obligations, in accordance with the Issuer's obligations to prepare such Offering Materials under any Underwriting Agreement or Agency Agreement, and preparing amendments to or revising or updating information for such Offering Materials as required from time to time (it being understood that the Manager, as between it and the Issuer, shall not be responsible for the accuracy of any portion of the Offering Materials prepared from information obtained from any Person other than the Issuer and the Manager);

(xviii) ensuring that all statements of the Issuer made in any Offering Materials or in connection with entering into any Program Agreement are at all times true and correct in all material respects (it being understood that the Manager, as between it and the Issuer, shall not be responsible for the accuracy of any portion of the Offering Materials prepared from information obtained from any Person other than the Issuer and the Manager);

(xix) arranging for compliance by the Issuer with any continuous disclosure obligations it may have under any applicable securities laws;

(xx) preparing and filing all reports, certificates and other documents that are required to be prepared and filed pursuant to the Indenture in order to comply with Regulation AB and delivering all such reports, certificates and other documents to the Issuer, the Indenture Trustee and the Rating Agencies;

(xxi) arranging for the retention of legal counsel as may be necessary to perform for the Issuer the services necessary or appropriate to its organization or the conduct of its operations and all general services customarily provided by legal counsel;

(xxii) arranging for the appointment, discharge and reappointment of an auditor of the Issuer and negotiating and fixing the fees of any such auditor;

(xxiii) arranging for the retention of an accounting firm and ensuring that proper books of account and complete records of all transactions of the Issuer undertaken or performed by it under the Program Agreements are maintained and rendering statements or copies thereof from time to time as requested by the Indenture Trustee and any issuing and paying agent, Lender or Credit Enhancer and co-operating in all audits of the Issuer;

(xxiv) preparing, or arranging for the preparation of, all required financial statements of the Issuer;

(xxv) preparing, procuring, delivering and filing, or causing to be prepared, procured, delivered or filed, any reports, attestations, exhibits, certificates or other documents required to be delivered or filed with the applicable securities regulator by the Issuer under the applicable securities or other applicable laws;

(xxvi) providing clerical and bookkeeping services necessary and appropriate for the Issuer relating to all transactions of the Issuer undertaken or performed by the Manager hereunder, and the Issuer's incurrence and repayment of Funding Obligations and other borrowings of money and maintaining and preserving records regarding the foregoing;

(xxvii) paying all taxes or assessments of whatever kind or nature imposed on the Issuer, and withholding and remitting all taxes required to be withheld and remitted by the Issuer under applicable laws, in each case, on behalf of and for the account of the Issuer and in accordance with the requirements of any applicable laws and subject to the payment priorities specified in the Program Agreements;

(xxviii) preparing and filing, in accordance with the requirements of the Indenture and any applicable laws, all returns (including, for greater certainty, all returns, information returns, elections, designations, declarations, schedules, statements or supporting documents in relation thereto) required to be filed with any government authority, or prepared as support for any such filing, in connection with (A) the determination, assessment or collection of any taxes of the Issuer or taxes, or amounts on account of taxes, that the Issuer is required to withhold and remit by applicable laws, or (B) the administration of any laws, regulations or administrative requirements relating to taxes; and

(xxix) providing such other services as are incidental to the foregoing or as the Issuer and the Manager may agree.

(b) The Manager will not offer to enter into any Program Agreement:

(i) after the Manager receives a notice of termination pursuant to Section 7.1; or

(ii) if the entering into of the Program Agreement would violate any other Program Agreements.

4.2 Issuer Investment Interest

The Manager will administer as agent for and on behalf of and for the account of the Issuer the following activities of the Issuer in connection with the acquisition and administration of the Issuer Investment Interest in accordance with the Program Agreements:

(a) enforcing the rights of the Issuer under the Program Agreements;

(b) seeking to protect the Issuer and the Specified Creditors from claims, actions or other proceedings of third parties that, if successfully pursued, would result in a breach of any representation by the IESO set forth in the Master Transfer and Servicing Agreement;

(c) executing and filing such filings, including filings under the PPSA, and causing such filings to be executed and filed, all in such manner and in such places as may be required by law to fully preserve, maintain, protect and perfect the ownership interest of the Issuer and the first priority security interest of the Indenture Trustee in the Issuer Investment Interest, including all filings required under the Act and the PPSA (and equivalent statutes in any applicable jurisdiction) relating to the transfer of the ownership of the rights and interest in the Issuer Investment Interest by the IESO to the Issuer or the pledge of the Issuer Investment Interest to the Indenture Trustee;

(d) maintaining accounts and records as to the Issuer Investment Interest accurately and in accordance with its standard accounting procedures and in sufficient detail to permit reconciliation between Servicer CEA Receipts and the Clean Energy Adjustment;

(e) instituting any Proceeding necessary to compel performance by the Board, the IESO, the Province of Ontario, the Indenture Trustee, the Issuer Trustee or any of their respective agents of any of their obligations or duties under the Act, the Regulations or any Program Agreement, as the case may be, and taking such legal or administrative actions, including defending against or instituting and pursuing legal actions and appearing or testifying at hearings or similar proceedings, in each case as may be reasonably necessary;

(f) seeking to block or overturn any attempts to cause a repeal of, modification of or supplement to the Act or the Regulations or the rights of holders of any Funding Obligations, by legislative enactment that would be materially adverse to the Issuer or the Specified Creditors or that would otherwise cause an impairment of the rights of the Issuer or the Specified Creditors; and

(g) instituting any Proceeding necessary to appeal or challenge the decision of a court that would be materially adverse to the Issuer or the Specified Creditors or that would otherwise cause an impairment of the rights of the Issuer or the Specified Creditors.

4.3 Collection of Clean Energy Adjustments

The Manager will as agent for and on behalf of the Issuer perform the following in connection with the collection of Clean Energy Adjustments:

(a) review each report delivered by the IESO under Section 3.4(b) of the Master Transfer and Servicing Agreement and make commercially reasonable efforts to resolve the failures and discrepancies which have not been remedied or adequately explained by Electricity Vendors;

(b) institute any Proceeding necessary to compel performance by the Electricity Vendors of any of their obligations or duties under the Act and the Regulations including with respect to the invoicing, collection, receipt, remittance and reporting in respect of Clean Energy Adjustments; and

(c) as the Manager determines necessary, review or caused to be reviewed, pursuant to its rights under Section 10(4) of the Regulations, the records maintained by each Electricity Vendor with respect to Clean Energy Adjustments; provided that if there is evidence of material non-compliance by an Electricity Vendor with its duties and obligations in respect of Clean Energy Adjustments, the Manager shall promptly review or cause to be reviewed the records of such Electricity Vendor as the Manager deems reasonably necessary to cause compliance by such Electricity Vendor.

4.4 Investment Interest Records

(a) The Manager will act as custodian of the Investment Interest Records as agent for and on behalf of and for the account of the Issuer, which are hereby constructively delivered to the Indenture Trustee, as pledgee of the Issuer with respect to the Issuer Investment Interest, and, in this regard, the Manager shall:

(i) hold the Investment Interest Records on behalf of the Issuer and the Indenture Trustee and maintain such accurate and complete accounts, records and computer systems pertaining to the Investment Interest Records as shall enable the Issuer and the Indenture Trustee, as applicable, to comply with the Program Agreements;

(ii) promptly report to the Issuer, the Indenture Trustee and the Rating Agencies any failure on its part to hold the Investment Interest Records and maintain its accounts, records and computer systems as herein provided and promptly take appropriate action to remedy any such failure;

(iii) maintain the Investment Interest Records at its offices at 700 University Avenue, Toronto, Ontario or at such other office as shall be specified to the Issuer and the Indenture Trustee by written notice at least 30 days prior to any change in location;

(iv) make available for inspection, audit and copying to the Issuer and the Indenture Trustee or their respective duly authorized representatives, attorneys or auditors the Investment Interest Records at such times during normal business hours as the Issuer or the Indenture Trustee shall reasonably request and that do not unreasonably interfere with the Manager's normal operations; and

(v) upon instruction from the Indenture Trustee in accordance with the Indenture or any other Person in accordance with another Program Agreement, release any Investment Interest Records to the Indenture Trustee, the Indenture Trustee's agent or the Indenture Trustee's designee,

as the case may be, at such place or places as the Indenture Trustee may designate, as soon as practicable.

(b) Nothing in this Section 4.4 shall affect the obligation of the Manager to observe any applicable law prohibiting disclosure of information regarding Specified Consumers, and the failure of the Manager to provide access to such information as a result of such obligation shall not constitute a breach of this Section 4.4.

(c) Nothing in this Section 4.4 shall be deemed to require an initial review or any periodic review by the Issuer or the Indenture Trustee of the Investment Interest Records. The Manager's duties to hold the Investment Interest Records set forth in this Section 4.4, to the extent the Investment Interest Records have not been previously transferred to a successor Manager pursuant to Section 7.1, shall terminate one year and one day after the earlier of (i) the date on which the Manager is succeeded by a successor Manager in accordance with Section 7.1 and (ii) the day after the termination of the Indenture and payment in full of the Issuer Funding Obligations or any other amounts owed under the Indenture.

4.5 Payment of Other Issuer Fees and Expenses

The Manager in accordance with the Program Agreements may, at its option, pay from its own funds the fees and expenses properly incurred on behalf of the Issuer in the ordinary course of the Issuer's operations. To the extent such fees and expenses are paid by the Manager from its own funds, the Issuer will reimburse the Manager for such payments, subject to the payment priorities specified in the Program Agreements.

4.6 Delegation

In connection with the services to be provided or duties to be performed by it under this Agreement, the Manager may, subject to any limitation on delegation imposed by applicable law, by the Declaration of Trust or by the Issuer, engage or employ any Persons as employees, agents, representatives, independent contractors or otherwise, including, without limitation, banks, underwriters, accountants, investment advisers, tax advisers, insurance advisers, lawyers, appraisers, bankers, brokers, dealers, depositories, custodians, agents for collection or others in one or more capacities and any other advisers which the Manager deems advisable, and may delegate any of the powers and duties of the Manager to any such Persons upon such terms and conditions as it may determine. For greater certainty, the Manager shall remain liable and responsible for any of the powers and duties of the Manager which it delegates to a third party.

4.7 Annual Compliance Certificates

The Manager shall provide to the Issuer Trustee a certificate in the form of Exhibit A within 120 days after the end of each fiscal year of the Issuer confirming compliance with the matters referred to in such certificate. The Issuer shall be entitled to rely on such certificate for the period between the effective dates of two consecutive certificates certifying such compliance unless the Issuer has received written notice to the contrary.

4.8 Acknowledgment of Duties as Financial Services Manager

The parties hereto acknowledge that, for so long as Ontario Power Generation Inc. is the Financial Services Manager appointed under the Act, Ontario Power Generation Inc., in its capacity as the Financial Services Manager, will satisfy its obligations as Financial Services Manager in accordance with the Act and the Regulations, and, for greater certainty, its services and duties in this regard will include:

(a) preparing the Financing Plan and, in accordance therewith, evaluating whether Funding Obligations should be incurred by the Issuer for the purposes of acquiring an Investment Interest or refinancing maturing Issuer Funding Obligations;

(b) determining the Clean Energy Adjustment (inclusive of any True Up Amount) payable by Specified Consumers in respect of each month in a Reference Period;

(c) calculating the True Up Amount;

(d) notifying the Board of the Clean Energy Adjustment (inclusive of any True Up Amount) in respect of a Reference Period or such other period as prescribed by the Regulations and sending a copy of such notice, as required, to the Issuer, the Indenture Trustee and the Rating Agencies concurrently therewith; and

(e) if, for any reason any Clean Energy Adjustment is not implemented and effective in respect of the Reference Period set forth in the notice and commencing on the date required under the Act, notifying the Issuer, the Indenture Trustee and each Rating Agency by the end of the second Business Day after such applicable date.

ARTICLE 5
OTHER PROVISIONS RELATING TO THE DUTIES AND COMPENSATION

5.1 Standard of Care

The Manager will perform its duties hereunder (including, for so long as it is the Financial Services Manager, its duties as Financial Services Manager under the Act and the Regulations) diligently and in conformity with the Issuer's obligations under the Program Agreements and with the Act and the Regulations, as applicable, and honestly, in good faith and in the best interests of the Issuer and, in connection therewith, will exercise the degree of care, diligence and skill that a reasonably prudent Person would exercise in comparable circumstances (the "**Standard of Care**"). In carrying out its obligations hereunder, the Manager may rely upon the opinion or advice of or information obtained from any counsel, auditor, valuer or certificates from officers of any of the other parties to Program Agreements. Unless otherwise required by applicable law, the Manager will not be required to give bond, surety or security in any jurisdiction for the performance of any duties or obligations hereunder. The Manager will not be required to devote its entire time to its duties hereunder. Notwithstanding anything else to the contrary herein contained, nothing herein shall be interpreted or construed as an obligation of or on the part of the Manager, and the Manager shall not be liable or obligated, to pay or make any payment of, on or in respect of any debt, liability or obligation of the Issuer (including any payment of, on or in

respect of any Issuer Funding Obligations or under any other Program Agreement), as agent for or on behalf of the Issuer or otherwise, except from the monies or funds of the Issuer which are made available to the Manager pursuant to this Agreement or the other Program Agreements for the purpose of such payment.

5.2 Compliance with Program Agreements; Conformity with Law

The Manager acknowledges that it has received copies of the Program Agreements, the Act and the Regulations in effect on the date hereof and is familiar with and understands the duties of the respective parties thereto or governed thereby, including those duties of the Issuer which are being delegated to the Manager hereunder. Notwithstanding anything herein to the contrary, the Manager shall perform its duties hereunder in a manner consistent with any applicable provisions of the Program Agreements in effect from time to time, and the Manager will not, in performing its obligations hereunder, take any action which it knows or ought reasonably to know would cause it or the Issuer to be in violation of any law, rule or regulation applicable to it. The Manager will use reasonable commercial efforts to comply with the terms applicable to the Issuer when acting on its behalf under all Program Agreements and will use reasonable commercial efforts in accordance with its Standard of Care to take such actions as would reasonably be expected to result in the representations and warranties given by the Issuer in any Program Agreement being true and correct in all material respects when made.

5.3 Liabilities

Except as provided in Section 5.6,

(a) the Manager will not be liable for any liabilities of the Issuer; and

(b) subject to the payment priorities specified in the Program Agreements, the Issuer agrees to indemnify, defend and hold harmless the Manager from and against any and all liabilities which may be imposed on, incurred by or assessed against the Manager as a result of any act or omission of the Issuer or the Manager under this Agreement or under any Program Agreement; provided that this Section 5.3(b) does not apply to the extent that in any circumstances there has been wilful misconduct or gross negligence of the Manager or its respective officers, employees or agents or any failure to comply with the Standard of Care.

To the extent that a liability is attributable solely to a single Series or a number of specific Series of Issuer Funding Obligations, the Manager will first exhaust its recourse against the assets available for recovery of such liability and designated to such Series of Issuer Funding Obligations. If such assets are insufficient to satisfy the indemnity set out in this Section 5.3, or if the liability is not attributable to a single Series or a number of specific Series of Issuer Funding Obligations, the liability will be satisfied on a pro rata basis as among the assets available for recovery of such liability and designated to all Issuer Funding Obligations.

Each party expressly disclaims any intention to create a partnership, and neither the Issuer nor the Manager will be deemed to be carrying on business in partnership by reason of its execution and delivery of this Agreement or the exercise or performance by it of its respective rights and obligations hereunder.

5.4 Compensation of the Manager

In consideration of and as compensation for all services provided and duties performed by the Manager pursuant to this Agreement, and so long as the Financial Services Manager is also the Manager, all services provided and duties performed by the Financial Services Manager, the Issuer will pay to the Manager, subject to the payment priorities specified in the Program Agreements, the Management Fees. The Management Fees are exclusive of any applicable sales taxes and the Issuer shall pay to the Manager the amount of any applicable sales taxes in addition to such fees.

5.5 Compensation of the Issuer

In consideration of the Issuer engaging in the activities contemplated by the Act, the Manager will pay to the Issuer, on a monthly basis, the sum of $10 per month for any month or part thereof that the Issuer is engaged in such activities (the "**Issuer Compensation**"). The Issuer Compensation is exclusive of any applicable sales taxes and the Manager shall pay to the Issuer the amount of any applicable sales taxes in addition to the Issuer Compensation.

The Issuer and the Manager agree that in respect of any month that the Issuer has an amount payable to the Manager under Section 5.4 in an amount that is not less than $10 (plus the amount of any applicable sales taxes on the Issuer Compensation), the Manager's obligation to pay the compensation to the Issuer under this Section will be fully satisfied by way of setting-off $10 (plus the amount of any applicable sales taxes on the Issuer Compensation) of the amount payable by the Issuer to the Manager under Section 5.4 against the Manager's amount payable to the Issuer under this Section.

5.6 Indemnification by Manager

(a) The Manager shall indemnify and defend and hold harmless the Issuer from and against, any and all liabilities which may be imposed on, incurred by or assessed against the Issuer as the result of any wilful misconduct or gross negligence by the Manager, its officers, employees or agents or any failure to comply with the Standard of Care, provided that the Manager will have the exclusive right to compromise or defend, through counsel selected and retained by the Manager, any such liabilities or related claims at its own expense, which decision will be binding upon the Issuer.

(b) The Manager shall indemnify each Indenture Indemnified Person and defend and hold harmless each such Indenture Indemnified Person from and against, any and all liabilities, obligations, losses, damages, payments and claims, and reasonable costs or expenses, of any kind whatsoever (collectively, "**Indenture Indemnified Losses**") imposed on, incurred by or asserted against such Indenture Indemnified Person, as a result of (i) the failure of the Manager to perform its covenants and other obligations under this Agreement; or (ii) the breach by the Manager of any of its representations or warranties under this Agreement and, except to the extent of Indenture Indemnified Losses resulting from the willful misconduct, bad faith or gross negligence of such Indenture Indemnified Person seeking indemnification

hereunder; provided that, in each case, the Manager shall not be required to indemnify an Indenture Indemnified Person for any amount paid or payable by such Indenture Indemnified Person in the settlement of any Proceeding or investigation without the written consent of the Manager, which consent shall not be unreasonably withheld. Promptly after receipt by an Indenture Indemnified Person of notice of the commencement of any Proceeding or investigation, such Indenture Indemnified Person shall, if a claim in respect thereof is to be made against the Manager under this Section 5.6(b), notify the Manager in writing of the commencement thereof. Failure by an Indenture Indemnified Person to so notify the Manager shall relieve the Manger from the obligation to indemnify and hold harmless such Indenture Indemnified Person under this Section 5.6(b) only to the extent that the Manager suffers actual prejudice as a result of such failure. With respect to any Proceeding or investigation brought by a third party for which indemnification may be sought under this Section 5.6(b), the Manager shall be entitled to conduct and control, at its expense and with counsel of its choosing that is reasonably satisfactory to such Indenture Indemnified Person, the defence of any such Proceeding or investigation (in which case the Manager shall not thereafter be responsible for the fees and expenses of any separate counsel retained by the Indenture Indemnified Person except as set forth below); provided, that the Indenture Indemnified Person shall have the right to participate in such Proceeding or investigation through counsel chosen by it and at its own expense. Notwithstanding the Manager's election to assume the defence of any Proceeding or investigation, the Indenture Indemnified Person shall have the right to employ separate counsel, and the Manager shall bear the reasonable fees, costs and expenses of such separate counsel, if (i) the defendants in any such action include both the Indenture Indemnified Person and the Manager and the Indenture Indemnified Person shall have reasonably concluded that there may be legal defences available to it that are different from or additional to those available to the Manager, (ii) the Manager shall not have employed counsel reasonably satisfactory to the Indenture Indemnified Person to represent the Indenture Indemnified Person within a reasonable time after notice of the institution of such action, or (iii) the Manager authorizes the Indenture Indemnified Person to employ separate counsel at the expense of the Manager. Notwithstanding the foregoing, the Manager shall not be obligated to pay for the fees, costs and expenses of more than one separate counsel for the Indenture Indemnified Persons other than one local counsel, if appropriate. The Manager will not, without the prior written consent of the Indenture Indemnified Person, settle or compromise or consent to the entry of any judgment with respect to any pending or threatened claim or Proceeding in respect of which indemnification may be sought under this Section 5.6(b) (whether or not the Indenture Indemnified Person is an actual or potential party to such claim or action) unless such settlement, compromise or consent includes an unconditional release of the Indenture Indemnified Person from all liability arising out of such claim or Proceeding.

(c) Indemnification under Section 5.6(b) shall survive any repeal of, modification of, or supplement to, or judicial invalidation of, the Act and shall survive the

termination of this Agreement and will rank pari passu with other general, unsecured obligations of the Manager.

(d) Notwithstanding anything contained in this Agreement, it is expressly understood that the Manager is not agreeing to indemnify or hold the Issuer or any Indenture Indemnified Person harmless with respect to any of the following:

(i) payments due on Issuer Funding Obligations or other amounts borrowed;

(i) any breach or failure to perform on the part of any other third party under any Program Agreement;

(ii) any claim arising out of the assessment of any tax or payments in lieu of tax by a taxing authority against the Issuer;

(iii) any liability of the Issuer or any Indenture Indemnified Person accruing after the termination of this Agreement unless attributable to the actions or omissions of the Manager prior to such termination;

(iv) any losses of the Issuer or any Indenture Indemnified Person arising due to risks inherent in the Issuer Investment Interest;

(v) any statements or certificates provided by the Issuer to the effect that (X) any Funding Obligation is consistent with the Financing Plan or (Y) the estimated Finance Amount that would have become due and payable in any Reference Period is expected to align with the Fair Allocation Amount determined in respect of such Reference Period; or

(vi) any losses resulting from changes in law after the date hereof, whether such changes in law are effected by means of any legislative enactment or any final and non-appealable judicial decision.

(e) Notwithstanding anything contained in this Agreement, it is expressly understood that the Manager is not agreeing to indemnify or hold harmless: (i) the Issuer with respect to any amount for which the Issuer agrees to indemnify the Manager hereunder; or (ii) the Issuer Trustee with respect to any liabilities resulting from the failure of the Issuer Trustee to satisfy the standard of care set out in the Declaration of Trust. Where the Manager has assumed total defense of a claim, it shall agree to ensure that any settlement of such claim does not include any form of admission of liability on the part of the Issuer Trustee (in its personal capacity).

5.7 Contracting with Itself and Affiliates

In the exercise of its rights, duties and obligations, the Manager may, if it is acting in good faith, enter into, as Manager for the Issuer, agreements and other contracts to which the Manager, in its personal capacity, or an Affiliate of the Manager, is a party.

ARTICLE 6
REPRESENTATIONS AND WARRANTIES

6.1 Representations of the Issuer

The Issuer represents and warrants to the Manager that (a) the execution, delivery and performance by the Issuer of this Agreement are within the powers of the Issuer and have been duly authorized by all necessary action on the part of the Issuer and do not contravene (i) the Program Agreements in effect on the date hereof or (ii) any law or contractual restriction binding on or affecting the Issuer and (b) this Agreement is a legal, valid and binding obligation of the Issuer, enforceable against the Issuer.

6.2 Representations of the Manager

The Manager represents and warrants to the Issuer that (a) the execution, delivery and performance by the Manager of this Agreement are within the powers of the Manager and have been duly authorized by all necessary action on the part of the Manager and do not contravene any law or contractual restriction binding on or affecting the Manager, (b) this Agreement is a legal, valid and binding obligation of the Manager enforceable against the Manager and (c) it is a resident of Canada for purposes of the *Income Tax Act* (Canada).

ARTICLE 7
TERMINATION AND RESIGNATION

7.1 Termination

The Manager shall not be entitled to resign as manager of the Issuer or to terminate this Agreement for so long as any Funding Obligations remain outstanding. The Manager's rights and obligations under this Agreement (other than under Sections 5.3, 5.4, 5.6 and 8.5) will terminate, if the Manager receives a termination notice from (i) the Issuer Trustee, with the consent of the Indenture Trustee, or (ii) the Indenture Trustee, subject to the terms and conditions of the Indenture, in each case, on the 30th day after receipt of such notice. Notwithstanding the foregoing, no termination shall be effective until a replacement manager that satisfies the Rating Agency Condition has been approved and has entered into a management agreement whereby the replacement manager agrees to assume, in substance, the obligations of the Manager hereunder. Upon the termination of its rights and obligations under this Agreement, the Manager will notify the Rating Agencies and, promptly and upon the request of the Issuer, deliver to the Issuer all records (including Investment Interest Records) in the possession of the Manager relating to the performance of its services hereunder.

ARTICLE 8
MISCELLANEOUS

8.1 Acknowledgement of Indenture

The Manager (i) acknowledges and agrees in favour of the Indenture Trustee that it is a Specified Creditor under the Indenture and its entitlements as a Specified Creditor are subject to the provisions applicable to Specified Creditors under the Indenture, (ii) irrevocably authorizes

and directs the Indenture Trustee on its behalf to take such action (including the execution and delivery of documents of subordination) as may be necessary or appropriate to further assure the priority arrangements provided for in the Indenture and (iii) appoints the Indenture Trustee as its agent for any and all such purposes.

8.2 Appointment of Manager as Attorney-in-Fact

Subject to any Program Agreement, the Issuer hereby irrevocably appoints the Manager as the Issuer's attorney-in-fact during the term of this Agreement, with full authority in the place and stead of and in the name of the Issuer or otherwise, including full power of substitution, from time to time in the Manager's discretion or as required by this Agreement, to take such actions on behalf of the Issuer as the Manager may deem necessary or advisable to comply with or effect the purposes of this Agreement and any Program Agreement including, without limitation, to execute any documents, instruments or certificates in connection therewith, to ask, demand, collect, sue for, recover, compound, receive and give acquittances and receipts for monies due or becoming due to the Issuer or otherwise owed thereto, to receive, endorse and collect any drafts or other instruments, documents and chattel paper in connection therewith, and to file any claims or take any action or institute any proceedings which the Manager may deem necessary or desirable for the collection thereof, or to enforce compliance with the terms and conditions of any Program Agreement.

8.3 Amendments and Waivers

(a) Subject to Section 8.3(b), this Agreement may be amended, supplemented, modified, restated or replaced from time to time by written instrument signed by the Issuer and the Manager. The Manager will forthwith after the execution of any such instrument by the Issuer and the Manager provide the Rating Agencies with a copy of such instrument.

(b) No provision of this Agreement may be amended, supplemented, modified, restated or replaced in any material respect without first obtaining the written consent of the Indenture Trustee in accordance with the Indenture and such amendment, supplement, modification or replacement will only be effective if the Rating Agency Condition has been satisfied.

(c) No waiver of any provision of this Agreement, nor consent to any departure by any party therefrom, shall in any event be effective unless the same shall be in writing and signed by such party and such waiver or consent, if material, will only be effective if the Rating Agency Condition has been satisfied, and then said waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. No failure on the part of any party to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof.

8.4 Withholding Rights

The parties hereto shall be entitled to deduct and withhold from amounts payable under this Agreement such amounts as each is required to deduct and withhold with respect to such payment under the *Income Tax Act* (Canada) or any provision of any applicable federal, provincial,

territorial, state, local or foreign tax law. To the extent that amounts are so withheld, such withheld amounts shall be treated for all purposes as having been paid to the recipient of the payment in respect of which such deduction and withholding was made, provided that such withheld amounts are actually remitted in accordance with applicable law to the appropriate taxing authority.

8.5 No Petition

The Manager hereby agrees that it will not, prior to the date that is one year and one day after the termination of the Indenture and payment in full of the Issuer Funding Obligations and any other amounts owed under the Indenture, institute or encourage against the Issuer, or join or acquiesce in any institution against the Issuer of, any bankruptcy, reorganization, arrangement, insolvency, winding-up or liquidation proceedings, or other proceedings under any federal or provincial bankruptcy, insolvency or similar law in connection with any obligations relating to this Agreement or any of the other Program Agreements. The foregoing shall not limit the rights of the Manager to file any claim in or otherwise take any action with respect to any insolvency proceeding that was instituted against the Issuer by any Person other than the Manager.

8.6 Notice

All demands, notices and communications hereunder will be in writing (unless otherwise expressly provided herein) and will be personally delivered or transmitted electronically to:

(a) in the case of the Issuer:

Fair Hydro Trust
c/o Ontario Power Generation Inc.
700 University Avenue
Toronto, Ontario
M5G 1X6

Email: ■
Attention: ■

with a copy to:

Computershare Trust Company of Canada
100 University Avenue, 11th Floor
Toronto, Ontario
M5J 2Y1

Email: ■
Attention: ■

(b) in the case of the Manager:

Ontario Power Generation Inc.
700 University Avenue
Toronto, Ontario
M5G 1X6

Email: ■
Attention: ■

or such other address or email address as may hereafter by furnished to each of the parties hereto in writing. Notices transmitted by facsimile will be deemed to have been received when delivered (with receipt confirmed).

8.7 Recourse to Issuer Trustee and the Issuer

Nothing contained herein will be deemed to cause the Issuer Trustee to be personally liable for any obligations of the Issuer hereunder, and the Manager will not seek any personal or deficiency judgment in respect of such obligations against the Issuer Trustee in its personal capacity; provided, however, that the foregoing will not in any way affect any rights that the Manager may have hereunder to (a) proceed against any Person with respect to the enforcement of any guarantee of, or collateral security for, payment of such obligations or (b) recover any funds, damages, expenses or costs as a result of fraud or misrepresentation by the Issuer Trustee in its personal capacity. The obligations hereunder are not binding upon the Issuer Trustee except in its capacity as trustee of the Issuer nor will resort be had to the property of the Issuer Trustee except where liability is expressly imposed on the Issuer Trustee in its personal capacity hereunder, but the Issuer Property will be bound hereby.

8.8 Severability

If one or more provision of this Agreement is for any reason whatever held invalid, such provision will be deemed severable from the remaining covenants, agreements and provisions of this Agreement and will in no way affect the validity or enforceability of such remaining provisions or the rights of any parties hereto.

8.9 Execution of Counterparts; Electronic Delivery

This Agreement may be executed in several counterparts, each of which when so executed shall be deemed to be an original and the counterparts together shall constitute one and the same instrument. Delivery of an executed signature page to this Agreement by any party by electronic transmission will be as effective as delivery of a manually executed copy of this Agreement by such party.

8.10 Governing Law

This Agreement will be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

8.11 Grant of Security Interest to Indenture Trustee

The Manager hereby acknowledges and consents to any mortgage, pledge, assignment and grant of a security interest by the Issuer to the Indenture Trustee for the benefit of the Specified Creditors pursuant to the Indenture of any or all of the Issuer's rights hereunder.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective officers as of the day and year first above written.

FAIR HYDRO TRUST, by its sole trustee, COMPUTERSHARE TRUST COMPANY OF CANADA
as Issuer

By: _____
Name:
Title:

By: _____
Name:
Title:

ONTARIO POWER GENERATION INC.
as Manager

By: _____
Name:
Title:

By: _____
Name:
Title:

ACKNOWLEDGED AND ACCEPTED:

BNY TRUST COMPANY OF CANADA
as Indenture Trustee

By: _____
Name:
Title:

By: _____
Name:
Title:

EXHIBIT A

ANNUAL COMPLIANCE CERTIFICATE

TO: Computer Share Trust Company of Canada, (the "**Issuer Trustee**") in its capacity as issuer trustee of Fair Hydro Trust (the "**Issuer**")

Ontario Power Generation Inc., as manager (the "**Manager**") appointed by the Issuer Trustee under the Management Agreement dated ■, 2017 between the Issuer Trustee and the Manager, and acknowledged and accepted by the Indenture Trustee (as amended, supplement, modified, restated or replaced from time to time, the "**Management Agreement**"), confirms, on behalf of the Issuer, the following:

(a) The books and records of the Issuer maintained by the Manager are current and accurate in all material respects.

(b) All debt obligations and expenses due and payable by the Issuer have been paid to date.

(c) All required filings with tax and regulatory authorities have been completed to date.

(d) All material statements and reports to be delivered by the Issuer under the Program Agreements have been delivered and all material statements and reports to be received by the Issuer under the Program Agreements have been received.

Capitalized terms used but not defined herein have the meanings given to them in the Management Agreement.

Dated this ■ day of ■, ■.

ONTARIO POWER GENERATION INC.
as Manager

By: _____
Name:
Title:

By: _____
Name:
Title:

Master Transfer and Servicing Agreement.pdf

DRAFT: NOVEMBER 10, 2017

MASTER TRANSFER AND SERVICING AGREEMENT

between

FAIR HYDRO TRUST
as Issuer

- and -

INDEPENDENT ELECTRICITY SYSTEM OPERATOR
as Transferor and Servicer

Dated as of ■, 2017

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EXHIBIT

Exhibit A – Form of Transfer Notice
Exhibit B – Form of Monthly Report
Exhibit C – Form of Monthly Carrying Costs Statement

MASTER TRANSFER AND SERVICING AGREEMENT

THIS AGREEMENT made as of ■, 2017.

BETWEEN:

FAIR HYDRO TRUST, a trust formed under the laws of the Province of Ontario

(the "**Issuer**")

- and -

INDEPENDENT ELECTRICITY SYSTEM OPERATOR, a statutory corporation without share capital amalgamated under the laws of the Province of Ontario

(the "**Transferor**" in its capacity as transferor, the "**Servicer**", in its capacity as servicer, and the "**IESO**" in its capacity as both Transferor and Servicer)

WHEREAS the Government of Ontario has enacted the *Ontario Fair Hydro Act, 2017* (the "**Act**") for the purpose of, among other things, ensuring that clean energy costs and clean energy benefits (each as defined in the Act) are fairly allocated among present and future Specified Consumers;

AND WHEREAS, under the Act, the IESO is required to establish and maintain the Fair Hydro Variance Account, and has the right under the Act and the Regulations to record certain amounts in the Fair Hydro Variance Account and recover the balance from time to time of the Fair Hydro Variance Account from Specified Consumers (such right, the "**Regulatory Asset**");

AND WHEREAS the IESO may from time to time, in accordance with the Act, Transfer Specified Portions of the Regulatory Asset to the Issuer pursuant to Section 26(1) of the Act;

AND WHEREAS the Issuer may finance the acquisition from the IESO, from time to time, of an Investment Interest through the incurrence of Funding Obligations under the Indenture;

AND WHEREAS the Issuer will grant a security interest over all of the Issuer Investment Interest to and in favour of the Indenture Trustee on behalf of all Specified Creditors;

AND WHEREAS in connection with its ownership of the Issuer Investment Interest and in order to collect the associated Clean Energy Adjustments in accordance with the Act, the Issuer desires to engage the Servicer to carry out the services described herein and the Servicer agrees to be so engaged;

NOW THEREFORE in consideration of the foregoing and the mutual covenants and agreements contained herein (the receipt and adequacy of which are hereby acknowledged), the parties hereto agree as follows:

ARTICLE 1
INTERPRETATION

1.1 Definitions

In this Agreement, the following terms have the following meanings:

"**Act**" has the meaning ascribed thereto in the recitals;

"**Agreement**" means this master transfer and servicing agreement, as amended, supplemented, modified, restated or replaced from time to time, and the expressions "herein", "hereof", "hereto", "hereunder" and similar expressions refer to this Agreement and not to any Article, Section, paragraph, subparagraph or clause hereof;

"**Billing Period**" means a calendar month in which the Clean Energy Adjustment is billed to Specified Consumers;

"**Board**" means the Ontario Energy Board, a statutory corporation without share capital continued under the *Ontario Energy Board Act, 1998*, S.O., 1998;

"**Business Day**" means any day other than a Saturday, a Sunday or a day on which banking institutions in Toronto, Ontario are authorized or obligated by law, regulation or executive order to be closed;

"**Carrying Costs**" has the meaning ascribed to the term "carrying costs" in the Regulations;

"**CEA Consumer Invoice Amounts**" means amounts invoiced by an Electricity Vendor to Specified Consumers in respect of the Clean Energy Adjustment based on the rates established by the Board;

"**Clean Energy Adjustment**" has the meaning ascribed to the term "clean energy adjustment" in the Act;

"**Closing Date**" means the date on which a Transfer is to be completed as specified in the applicable Transfer Notice;

"**Co-Owner Agreement**" means any agreement between, *inter alia*, the parties hereto and any other owner or owners of an Investment Interest as contemplated by Section 29(5) of the Act in form and substance satisfactory to the parties hereto, acting reasonably;

"**Co-Owner Implementation Date**" means the date, if any, upon which the Issuer Investment Interest ceases to be the only Investment Interest outstanding representing the full Investment Asset;

"**Collection Account**" means an Eligible Deposit Account established by the Issuer for the purpose of receiving the Issuer Share of the Servicer CEA Receipts;

"**Daily Remittance Event**" means the occurrence of either: (i) a Servicer Default or (ii) the IESO (or any successor thereto) ceasing to have the Required Servicer Rating;

"**Declaration of Trust**" means the declaration of trust made as of ■, 2017 under which the Issuer was established, as may be supplemented, amended, replaced or amended and restated from time to time;

"**Electricity Vendor**" has the meaning ascribed to the term "electricity vendor" in the Act;

"**Electricity Vendor CEA Collections**" means payments actually received by Electricity Vendors from Specified Consumers in respect of Clean Energy Adjustments;

"**Electricity Vendor Billing Period Report**" means a report as contemplated by Section 17(2) of the Act from each Electricity Vendor in respect of each Billing Period where Clean Energy Adjustments are billed to Specified Consumers containing:

(a) its total CEA Consumer Invoice Amounts in such Billing Period;

(b) its total Electricity Vendor CEA Collections during such Billing Period; and

(c) such other information as may be prescribed in the Regulations or any other Requirement of Law, or which otherwise may be agreed to by the applicable Electricity Vendor;

"**Eligible Deposit Account**" means an account in Canada with an Eligible Institution;

"**Eligible Institution**" means:

(a) at any time before the Co-Owner Implementation Date, an "Eligible Institution" as defined in the Indenture; and

(b) at any time on or after the Co-Owner Implementation Date, an "Eligible Institution" as defined in the applicable Co-Owner Agreement;

"**Fair Hydro Variance Account**" means the variance account established by the IESO pursuant to Section 24(1) of the Act;

"**Financing Entity**" has the meaning ascribed to the term "financing entity" in the Act;

"**Funding Obligation**" has the meaning ascribed to the term "funding obligation" in the Act;

"**Governmental Authority**" means any nation or government, any federal, state, provincial, local or other political subdivision thereof and any court, administrative agency or other instrumentality or entity exercising executive, legislative, judicial, regulatory or administrative functions of government;

"**IESO**" or "**Independent Electricity System Operator**" means the Independent Electricity System Operator, a statutory corporation without share capital established by the *Electricity Act, 1998*, SO, 1998;

"**IESO Deferral**" has the meaning ascribed to the term "IESO deferral" in the Act;

"**IESO Disclosure**" has the meaning ascribed thereto in Section 5.7;

"**IESO Segregated Account**" has the meaning ascribed thereto in Section 3.3(a);

"**Indemnified Losses**" has the meaning ascribed thereto in Section 6.1(a);

"**Indemnified Party**" has the meaning ascribed thereto in Section 6.1(a);

"**Indenture**" means the master trust indenture dated ■, 2017 between the Indenture Trustee and the Issuer;

"**Indenture Trustee**" means BNY Trust Company of Canada, a trust company existing under the laws of Canada and duly authorized to carry on the business of a trust company in all of the provinces and territories of Canada, as indenture trustee for the benefit of Specified Creditors, or any successor thereto, under the Indenture;

"**Insolvency Event**" means, with respect to a specified Person, the specified Person admits the inability of such specified Person to pay its liabilities generally as they become due or makes a general assignment for the benefit of the creditors of such specified Person or otherwise acknowledges the insolvency of such specified Person or any proceeding shall be instituted by or against such specified Person seeking to adjudicate it a bankrupt or insolvent or seeking liquidation, winding up, dissolution, reorganization, arrangement, adjustment, protection, relief or composition of its debts under any law relating to bankruptcy, insolvency, reorganization, moratorium or relief of debtors or seeking the entry of an order for relief by the appointment of a receiver, trustee or other similar official for such specified Person or for any substantial part of its property and if such proceeding has been instituted against such specified Person either such proceeding has not been stayed or dismissed within **[45]** days or any of the actions sought in such proceeding (including the entry of an order for relief or the appointment of a receiver) are granted in whole or in part, or if a receiver is privately appointed in respect of such specified Person or of the property of such specified Person or any substantial part thereof;

"**Investment Asset**" has the meaning ascribed to the term "investment asset" in the Act;

"**Investment Interest**" has the meaning ascribed to the term "investment interest" in the Act;

"**Issuer**" means Fair Hydro Trust, a trust formed under the laws of the Province of Ontario;

"**Issuer Funding Obligations**" means the Funding Obligations of the Issuer;

"**Issuer Investment Interest**" means, initially, the Investment Interest acquired by the Issuer pursuant to the first Transfer completed under this Agreement and, upon the completion of each Transfer thereafter, the cumulative Investment Interest acquired by the Issuer;

"**Issuer Share**" means:

(a) at any time before the Co-Owner Implementation Date, 100%; and

(b) at any time on or after the Co-Owner Implementation Date, the percentage determined in accordance with the applicable Co-Owner Agreement;

"**Issuer Trustee**" means, at any time, the Person who is, in accordance with the Declaration of Trust, the trustee of the Issuer at such time;

"**Lien**" means a security interest, lien, mortgage, charge, pledge, claim or encumbrance of any kind;

"**Management Agreement**" means the management agreement dated ■, 2017 between the Manager and the Issuer;

"**Manager**" means OPG, in its capacity as manager of the Issuer, and any successor appointed in accordance with the Management Agreement;

"**Minister**" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of the Act under the *Executive Council Act*;

"**Monthly Carrying Costs**" has the meaning ascribed thereto in Section 3.13(b);

"**Monthly Carrying Costs Statement**" has the meaning ascribed thereto in Section 3.13(b);

"**Monthly Report**" has the meaning ascribed thereto in Section 3.4(a);

"**Officer's Certificate**" means a certificate signed by a Responsible Officer of the Issuer under the circumstances described in, and otherwise complying with, the applicable requirements of Section **[10.01]** of the Indenture;

"**OPG**" means Ontario Power Generation Inc., a corporation established under the laws of the Province of Ontario;

"**Opinion of Counsel**" means one or more written opinions of counsel, which counsel shall be reasonably acceptable to the party receiving such opinion of counsel, and shall be in form and substance reasonably acceptable to such party;

"**Permitted Successor**" means any successor to the IESO under the Act, whether pursuant to any bankruptcy, reorganization or other insolvency proceeding or pursuant to any merger, conversion, acquisition, sale or transfer, by operation of law, as a result of any restructuring, or otherwise, but only to the extent such successor is approved by the Minister;

"**Permitted Transfer**" means (i) a Transfer to the Issuer pursuant to this Agreement; and (ii) a Transfer to a person who has entered into a Co-Owner Agreement with, inter alia, the Issuer.

"**Person**" means any individual, corporation, limited liability company, estate, partnership, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization or Governmental Authority;

"**Prescribed Period**" has the meaning ascribed thereto in Section 3.13(a);

"**Proceeding**" means any suit in equity, action at law or other judicial or administrative proceeding;

"**Program Agreements**" has the meaning ascribed thereto in the Indenture;

"**Purchase Price**" has the meaning ascribed thereto in Section 2.1(c);

"**Rating Agency**" has the meaning ascribed thereto in the Indenture;

"**Rating Agency Condition**" has the meaning ascribed thereto in the Indenture;

"**Records**" has the meaning ascribed thereto in Section 7.1;

"**Regulations**" means Ontario Regulation 206/17: General, together with any other regulations promulgated under the Act;

"**Regulatory Asset**" has the meaning ascribed thereto in the recitals;

"**Remittance Date**" means, in respect of each Billing Period, the **[18th]** Business Day following the last day of each Billing Period;

"**Required Servicer Rating**" means a rating of "Baa3" or higher by Moody's Investors Service, Inc. (or any successor thereof) and a rating of "BBB(low)" or higher by DBRS Limited (or any successor thereof);

"**Requirement of Law**" means any foreign, Canadian federal, provincial or local laws, statutes, regulations, rules, codes or ordinances enacted, adopted, issued or promulgated by any Governmental Authority or common law;

"**Responsible Officer**" means, with respect to: (a) the Issuer, any authorized director or officer of the Manager; (b) the Servicer, any authorized director or officer of the IESO; and (c) a Successor Servicer, any authorized director or officer of the Successor Servicer;

"**Servicer**" means the Independent Electricity System Operator, as Servicer under this Agreement, or any Successor Servicer to the extent permitted under this Agreement;

"**Servicer CEA Receipts**" has the meaning ascribed thereto in Section 3.3(e);

"**Servicer Default**" has the meaning ascribed thereto in Section 7.1;

"**Specified Consumer**" has the meaning ascribed to the term "specified consumer" in the Act;

"**Specified Creditors**" has the meaning ascribed thereto in the Indenture;

"**Specified Portion**" means, in respect of the Regulatory Asset and any Transfer, the portion of the Regulatory Asset subject to such Transfer, as set out in the applicable Transfer Notice.

"**Successor Servicer**" has the meaning ascribed thereto in Section **[3.07(e)]** of the Indenture;

"**Supplemental Indenture**" means an indenture supplemental to the Indenture that authorizes the incurrence of Funding Obligations;

"**Termination Event**" has the meaning ascribed thereto in Section 3.10;

"**Termination Notice**" has the meaning ascribed thereto in Section 7.1;

"**Transfer**" has the meaning ascribed to the term "transfer" in Section 1(3) of the Act, and "**Transferred**" has a corresponding meaning;

"**Transfer Notice**" means a Transfer Notice in respect of a Transfer substantially in the form of Exhibit A to this Agreement and delivered pursuant to Section 2.1(c) of this Agreement; and

"**Transferor**" means the Independent Electricity System Operator, as transferor under this Agreement;

1.2 Sections and Headings

The table of contents does not form part of this Agreement. The division of this Agreement into Articles and Sections and the insertion of headings are for convenience of reference only and will not affect the construction or interpretation of this Agreement. Unless something in the subject matter or context is inconsistent therewith, references herein to Articles and Sections are to Articles and Sections of this Agreement.

1.3 Extended Meanings

(a) Words importing the singular number only will include the plural and vice versa and words importing the masculine gender will include the feminine and neuter genders and vice versa. A reference to any agreement, instrument or declaration means such agreement, instrument or declaration as the same may be amended, supplemented, modified, restated or replaced from time to time.

(b) The term "**including**" means "including without limitation", and other forms of the verb "**include**" have correlative meanings.

(c) All references to any Person shall include such Person's permitted successors and assigns, and any reference to a Person in a particular capacity excludes such Person in other capacities.

(d) Unless otherwise stated, in the computation of a period of time from a specified date to a later specified date, the word "**from**" means "**from and including**" and each of the words "**to**" and "**until**" means "**to but excluding**".

(e) The words "**hereof**", "**herein**" and "**hereunder**" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement, unless otherwise specified. References to Articles, Sections, Appendices and Exhibits in this Agreement are references to Articles, Sections, Appendices and Exhibits in or to this Agreement unless otherwise specified.

(f) References to any law, rule, regulation or order of a Governmental Authority shall include such law, rule, regulation or order as from time to time in effect, including any amendment, modification, codification, replacement or reenactment thereof or any substitution therefor.

(g) The word "**will**" shall be construed to have the same meaning and effect as the word "**shall**". The word "**or**" is not exclusive.

ARTICLE 2
TRANSFER OF SPECIFIED PORTIONS OF THE REGULATORY ASSET

2.1 Transfer Notices and Agreement to Transfer Specified Portions of the Regulatory Asset

(a) The Transferor shall determine the IESO Deferral as required by Section 23(1) of the Act and the Regulations.

(b) The Transferor shall maintain the Fair Hydro Variance Account as required by Section 24 of the Act and the Regulations.

(c) The Transferor may, no more frequently than monthly and no later than the 8th Business Day of any calendar month, offer to Transfer to the Issuer a Specified Portion of the Regulatory Asset by providing to the Issuer a Transfer Notice executed by the Transferor and setting out (i) the Specified Portion of the Regulatory Asset that the Transferor is offering to Transfer to the Issuer, (ii) the consideration to be paid to the Transferor by the Issuer for the Transfer (the "**Purchase Price**") which shall be equal to the amount of such Specified Portion of the Regulatory Asset, (iii) the Closing Date to effect such transfer which shall be no earlier than the **[5th]** Business Day after the delivery of the Transfer Notice and no later than the last Business Day of the calendar month in which the Transfer Notice was delivered, or such other Business Day as may be agreed by the Transferor and the Issuer, and (iv) such other information as required in the form of Transfer Notice attached as Exhibit A hereto.

(d) On or before the 2nd Business Day following receipt of a Transfer Notice, the Issuer shall have the right, but not the obligation, to accept the Transferor's offer to Transfer the Specified Portion of the Regulatory Asset referred to in the Transfer Notice by executing and returning such Transfer Notice to the Transferor. Upon acceptance by the Issuer of the Transfer Notice, there shall be a

binding agreement for IESO to Transfer the Specified Portion of the Regulatory Asset referred to in the Transfer Notice and for the Issuer to pay the Purchase Price, subject to satisfaction of all conditions precedent in Section 2.2.

(e) Provided that all conditions precedent set out in Section 2.2 have been satisfied on or prior to the applicable Closing Date, on the applicable Closing Date, the Issuer shall deliver or cause to be delivered to the Transferor, by wire transfer or electronic funds transfer, in immediately available funds, an amount in Canadian dollars equal to the Purchase Price set forth in the applicable Transfer Notice. The Transferor agrees that receipt by the Transferor of the payment referred to in this Section 2.1(e) is receipt by the Transferor of a payment referred to in Section 26(3) of the Act.

(f) Upon receipt by the Transferor of the payment referred to in Section 2.1(e), the Transferor shall reduce the balance of the Fair Hydro Variance Account by an amount equal to the Purchase Price received and shall retain no further right, title or interest in the Issuer Investment Interest corresponding to the Specified Portion of the Regulatory Asset Transferred.

(g) The parties state that they intend that this Agreement, together with each Transfer Notice accepted by the Issuer, constitute an agreement, for purposes of Section 27(2) of the Act for the Transferor to dispose, upon receipt by the Transferor of the payment referred to in Section 2.1(e), of the Specified Portion of the Regulatory Asset referred to in the Transfer Notice and to assign, convey or sell a corresponding Investment Interest to the Issuer.

2.2 Conditions Precedent to each Transfer of a Specified Portion of the Regulatory Asset

(a) The obligation of the Issuer to pay the Purchase Price related to the initial Transfer of a Specified Portion of the Regulatory Asset shall be subject to the satisfaction by the Transferor, or waiver by the Issuer, of the following conditions:

(i) the Issuer shall have received from the Transferor the following documents, in form and substance satisfactory to the Issuer:

(A) a certificate of an officer of the IESO, dated the initial Closing Date certifying (1) that attached thereto is a true and complete copy of the by-laws of the IESO, each as in effect on the date of such certificate, (2) that attached thereto is a true and complete copy of a resolution adopted by the IESO's board of directors authorizing the execution, delivery and performance of this Agreement and the performance by the IESO of its obligations hereunder, and that such resolution has not been modified, rescinded or amended and is in full force and effect, and (3) as to the incumbency and true specimen signature of each of the IESO

officers or delegates executing this Agreement and authorized to give notices and instructions hereunder (which can be changed by notice hereunder); and

(B) the Transferor shall have delivered to the Rating Agencies and the Issuer any Opinions of Counsel reasonably required by them. **[NTD: Scope of opinions required to be confirmed by the Dealers and their counsel]**

(b) The obligation of the Issuer to pay the Purchase Price related to each Transfer of a Specified Portion of the Regulatory Asset (including the initial Transfer) shall be subject to the satisfaction or waiver by the Issuer of each of the following conditions:

(i) as of the applicable Closing Date, all Program Agreements shall have been entered into on terms and conditions satisfactory to the Issuer and shall be in full force and effect as of such Closing Date;

(ii) as of the applicable Closing Date, no Insolvency Event in respect of the Transferor shall have occurred and the Transferor is not aware of any pending Insolvency Event with respect to itself;

(iii) as of the applicable Closing Date, (A) the representations and warranties of the IESO in this Agreement must be true and correct with the same force and effect as if made on that date (except to the extent they relate to an earlier date), (B) no breach of any covenant or agreement of the IESO contained in this Agreement shall have occurred and be continuing, and (C) no Servicer Default shall have occurred and be continuing;

(iv) the Transferor shall have delivered to the Issuer an Officer's Certificate confirming the satisfaction of each condition precedent specified in Sections 2.2(b)(ii) and (iii);

(v) as of the applicable Closing Date, (A) the Issuer shall have sufficient funds available to pay the Purchase Price as set forth in the applicable Transfer Notice, (B) all conditions to any incurrence of Funding Obligations intended to provide such funds set forth in the Indenture (and any applicable Supplemental Indenture) or other instrument shall have been satisfied or waived, (C) the Rating Agency Condition in respect of the issuance of the Funding Obligations funding the payment of the Purchase Price shall have been satisfied, and (D) the Funding Obligation required to fund the payment of the Purchase Price shall have been issued at the same time as, or prior to, the Transfer; and

(vi) immediately after giving effect to the Transfer, each of the Fair Hydro Variance Account and the Regulatory Asset will have a balance or amount, as applicable, equal to or greater than zero.

ARTICLE 3
ROLE OF THE SERVICER

3.1 Designation of Servicer

Each Transfer of a Specified Portion of the Regulatory Asset shall be made on the basis that the related Issuer Investment Interest shall be serviced by the Servicer in accordance with this Article 3, and the IESO or any Permitted Successor of the IESO that is the Servicer shall not be entitled, except as otherwise provided in Section 3.6 or agreed by the Parties, to receive any further compensation from the Issuer for its services in connection therewith.

3.2 Forecasts and Other Information

The IESO shall:

(a) provide to the Board the forecast information contemplated by Section 8(3) of the Regulations;

(b) provide to the Issuer the forecast information provided to the Board pursuant to Section 3.2(a), which information shall be provided on a non-reliance basis other than with respect to the use thereof in relation to the duties, obligations or rights of the Issuer or the Manager pursuant to the Act and the Regulations; and

(c) provide to the Issuer such other information and reports as the Issuer may reasonably request in connection with the calculation of the Clean Energy Adjustments, which is reasonably available to the Transferor directly or upon request, can lawfully be provided and can be provided without incurring material incremental expense.

3.3 Clean Energy Adjustments and Electricity Vendors

The Servicer shall:

(a) prior to receiving Servicer CEA Receipts, establish an Eligible Deposit Account (the "**IESO Segregated Account**") bearing a designation indicating that the funds deposited therein are held in trust for the benefit of the Issuer and, after the Co-Owner Implementation Date, for the benefit of any other owner or owners of an Investment Interest. If at any time the IESO Segregated Account ceases to be an Eligible Deposit Account, the Servicer shall within 30 days establish a new IESO Segregated Account as an Eligible Deposit Account and shall transfer any cash and/or any investments held in the former account to such new account and make all future deposits to such new account;

(b) prior to the first Billing Period when amounts are invoiced by Electricity Vendors to Specified Consumers in respect of Clean Energy Adjustments, make commercially reasonable efforts to cause each Electricity Vendor to:

(i) establish a segregated account into which Electricity Vendor CEA Collections are to be deposited as required by Section 10(2) of the Regulations;

(ii) settle a form of Electricity Vendor Billing Period Report to be used by such Electricity Vendor;

(iii) provide guidance with respect to the establishment by the Electricity Vendors of procedures for the invoicing by such Electricity Vendor of amounts in respect of the Clean Energy Adjustment, the identification, deposit and segregation of Electricity Vendor CEA Collections, the remittance of Electricity Vendor CEA Collections to the Servicer and reporting to the Servicer; and

(iv) respond to inquiries from Electricity Vendors with respect to any of the foregoing matters.

(c) request certification from each Electricity Vendor that the segregated account required by Section 10(2) of the Regulations has been established by that Electricity Vendor;

(d) as agent of the Issuer and, after the Co-Owner Implementation Date, as agent of any other owner or owners of an Investment Interest, receive Electricity Vendor CEA Collections from Electricity Vendors;

(e) as agent of the Issuer and, after the Co-Owner Implementation Date, as agent of any other owner or owners of an Investment Interest, receive any amounts in respect of Clean Energy Adjustments payable directly by Specified Consumers to the Servicer (such amounts, together with the amounts referred to in Section 3.3(d), the "**Servicer CEA Receipts**");

(f) deposit the Servicer CEA Receipts into the IESO Segregated Account promptly following receipt by the Servicer and, in any event, within two Business Days of receipt by the Servicer and the Issuer Share of such Servicer CEA Receipts shall remain in the IESO Segregated Account until remitted in accordance with Section 3.5;

(g) respond to inquiries by Electricity Vendors with respect to the Clean Energy Adjustment and amounts payable in respect thereof;

(h) request from each Electricity Vendor an Electricity Vendor Billing Period Report in respect of each Billing Period during which Clean Energy Adjustments are billed to Specified Consumers; such report to be requested to be delivered within twelve Business Days of the end of each Billing Period;

(i) review each Electricity Vendor Billing Period Report received by the Servicer for material manifest discrepancies, including any discrepancy between the

Electricity Vendor CEA Collections reported in respect of the Billing Period and the amount received pursuant to Section 3.3(d);

(j) contact each Electricity Vendor:

(i) that does not deliver an Electricity Vendor Billing Period Report in respect of a Billing Period where Clean Energy Adjustments were payable by Specified Consumers;

(ii) from which no Electricity Vendor CEA Collections are received in respect of the Billing Period,

(iii) for whom Electricity Vendor CEA Collections do not match the amount thereof reported in its Electricity Vendor Billing Period Report,

(iv) that delivers an Electricity Vendor Billing Period Report that has any other material manifest discrepancy detected by the Servicer, or

(v) that has not certified that it has established the segregated account required by Section 10(2) of the Regulations,

and attempt to resolve the applicable issue; and

(k) hold the Issuer Share of Servicer CEA Receipts and the Issuer Share of any other proceeds in respect of the Clean Energy Adjustment received by it in trust for the benefit of the Issuer and remit such amounts in accordance with Section 3.5 without any surcharge, fee, offset, charge or other deduction.

3.4 Reporting

The Servicer shall:

(a) on or before the 20th Business Day following the end of each Billing Period, prepare and deliver to the Issuer a written report substantially in the form of Exhibit B (a "**Monthly Report**");

(b) report monthly to the Issuer any matters referred to in Section 3.3(j) which have not been resolved and any explanation provided therefor by the Electricity Vendor;

(c) promptly notify the Issuer in writing of any Requirement of Law hereafter adopted or announced or the occurrence of any other event or circumstance of which it becomes aware that has a material adverse effect on the Servicer's ability to perform its duties and obligations under this Agreement; and

(d) upon the reasonable request of the Issuer provide to the Issuer any public financial information in respect of the Servicer, or any material information regarding the Clean Energy Adjustment, to the extent it is reasonably available to the Servicer,

and as may be reasonably necessary and permitted by law, to enable the Issuer to monitor the performance by the Servicer of its duties and obligations hereunder.

3.5 Remittances

(a) The Issuer shall provide the Servicer with notice of the Collection Account at least ten Business Days prior to the first Remittance Date and shall provide the Servicer with notice of any change to the Collection Account at least ten Business Days prior to any subsequent Remittance Date.

(b) Absent the occurrence of a Daily Remittance Event, the Issuer Share of Servicer CEA Receipts received by the Servicer and any interest earned thereon received on or subsequent to a Remittance Date shall be remitted by the Servicer to the Collection Account no later than the immediately following Remittance Date.

(c) Following the occurrence of a Daily Remittance Event, the Issuer Share of all Servicer CEA Receipts on deposit in the IESO Segregated Account and any interest earned thereon shall be remitted by the Servicer to the Collection Account on the second following Business Day.

3.6 Reimbursement of Servicer

The Issuer shall reimburse the Servicer for its direct costs relating to the performance by the Servicer of its duties and obligations hereunder and that are not otherwise recovered or recoverable by the Servicer pursuant to sections 25(1) and 25.1 of the *Electricity Act, 1998*, which direct costs the IESO shall have no obligation to seek recovery for under sections 25(1) and 25.1 of the *Electricity Act, 1998*; provided, however, that this Section 3.6 shall not apply to any costs relating to the performance by the Servicer of its duties and obligations under the Act or the Regulations, including, for greater certainty the Servicer's obligations to pay monthly Carrying Costs.

3.7 Limits to Obligations

Notwithstanding anything to the contrary in this Agreement, the parties hereto agree that the duties, liabilities and obligations of IESO under this Agreement are limited as provided in this Section 3.7.

(a) IESO is not responsible for, or in respect of, any amounts not collected by Electricity Vendors from their customers or not remitted by Electricity Vendors to the Servicer.

(b) IESO is not responsible to confirm, verify or audit the amount of the Clean Energy Adjustment invoiced by Electricity Vendors or the Electricity Vendor CEA Collections collected by Electricity Vendors and reported to the IESO.

(c) IESO is not responsible for enforcing the obligations of Specified Consumers to pay, or the obligations of Electricity Vendors to invoice, collect or remit Clean Energy Adjustments or any other amounts, or to establish a segregated account

into which Electricity Vendor CEA Collections are to be deposited, and IESO is under no obligation to initiate or prosecute any legal action relating to the collection of the Clean Energy Adjustments or the Issuer Investment Interest.

(d) IESO is not responsible or liable for the performance by Electricity Vendors of their duties and responsibilities under the Act or the Regulations including (i) the invoicing of Specified Consumers in respect of the Clean Energy Adjustment and ancillary matters related thereto; (ii) the collection from Specified Consumers of amounts due in respect of such invoices and the remittance of such payments to the Servicer; (iii) the accuracy of any information provided by the Electricity Vendors; and (iv) any reporting by the Electricity Vendors, including the reporting to the Servicer of the total CEA Consumer Invoice Amounts invoiced by such Electricity Vendor to its Specified Consumers in respect of the Clean Energy Adjustment, the total Electricity Vendor CEA Collections received by such Electricity Vendor and the Issuer Share of Electricity Vendor CEA Collections received by such Electricity Vendor and any other reporting in the Electricity Vendor Billing Period Report.

(e) IESO is under no responsibility or obligation to the Issuer with respect to the nature or extent of the Issuer Investment Interest, the collectability of the Issuer Share of Servicer CEA Receipts or that the Issuer Share of Servicer CEA Receipts will be sufficient to satisfy the Issuer's Funding Obligations.

(f) IESO may rely in good faith on the advice of counsel or on any document of any kind, prima facie properly executed and submitted by any Person, respecting any matters arising under this Agreement.

(g) IESO shall have no liability or responsibility to any Person in respect of any forecasts or other information provided pursuant to Section 3.2, provided only that such forecasts or other information has been prepared and provided in good faith.

(h) None of the directors, officers, employees or agents of IESO shall be liable to the Issuer or any other Person for any action taken or for refraining from the taking of any action pursuant to this Agreement or for good faith errors in judgment.

3.8 Servicing and Maintenance Standards

Subject to Section 3.7, the Servicer shall discharge its duties, responsibilities and obligations hereunder with reasonable care and in material compliance with the Requirements of Law, including the Act and the Regulations and, in doing so, shall follow standards, policies and procedures in performing its duties as Servicer hereunder that are customary for an electricity market operator and administrator that regularly performs settlement functions.

3.9 Appointments

The Servicer may at any time appoint OPG or any other Person to act as its agent to perform all or any portion of its obligations as Servicer hereunder; provided however, that in

respect of the appointment of a Person other than OPG, the Rating Agency Condition shall have been satisfied in connection therewith; and provided further that the Servicer shall remain obligated and be liable for the performance of its obligations under this Agreement without diminution of such obligation and liability by virtue of the appointment of OPG or such other Person and to the same extent and under the same terms and conditions as if the Servicer alone were performing such obligations. The fees and expenses of OPG or any other such Person shall be as agreed between the Servicer and OPG or such other Person from time to time, and the Issuer shall not have any responsibility therefor or right or claim thereto. Any such appointment shall not constitute a resignation of the Servicer under Section 3.12.

3.10 Term

The Servicer's appointment as Servicer under this Agreement shall become effective as of the execution hereof and shall continue in full force and effect until the earlier of (a) the effective date of resignation of the Servicer in accordance with the provisions of this Agreement, (b) termination of all of the rights and obligations of the Servicer under Article 7, and (c) the date on which all Issuer Funding Obligations have been paid in full and all CEA Consumer Invoice Amounts have been received or written off (in each case, a "**Termination Event**"). The appointment of the Servicer as servicer under this Agreement shall be terminated effective as of the date of the Termination Event.

3.11 Mergers

Any Person (a) into which the Servicer may be merged, converted or amalgamated and that is a Permitted Successor, (b) that may result from any merger, conversion or amalgamation to which the Servicer shall be a party and that is a Permitted Successor, (c) that may succeed to the properties and assets of the Servicer substantially as a whole and that is a Permitted Successor, or (d) that otherwise is a Permitted Successor, which Person in any of the foregoing cases executes an agreement of assumption to perform all of the obligations of the Servicer hereunder, shall be the successor to the Servicer under this Agreement without further act on the part of any of the parties to this Agreement; provided, however, that (i) immediately after giving effect to such transaction, no representation or warranty made pursuant to Section 4.1 shall have been breached and no Servicer Default and no event that, after notice or lapse of time, or both, would become a Servicer Default shall have occurred and be continuing, (ii) the Servicer shall have delivered to the Issuer an Officer's Certificate and an Opinion of Counsel from external counsel stating that such consolidation, conversion, merger or succession and such agreement of assumption complies with this Section 3.11 and that all conditions precedent, if any, provided for in this Agreement relating to such transaction have been complied with, and (iii) the Servicer shall have given to the Issuer prior written notice of such transaction. When any Person that is a Permitted Successor acquires the properties and assets of the Servicer substantially as a whole or otherwise becomes the successor, by merger, conversion, consolidation, sale, transfer, lease or otherwise, to all or substantially all the assets of the Servicer in accordance with the terms of this Section 3.11, then, upon satisfaction of all of the other conditions of this Section 3.11, the preceding Servicer shall automatically and without further notice be released from all of its obligations hereunder (except for responsibilities for its actions prior to such release).

3.12 The IESO Not to Resign as Servicer

Subject to the provisions of Section 3.11, the IESO shall not resign from the obligations and duties imposed on it as Servicer under this Agreement except upon a determination that the performance of its duties under this Agreement shall no longer be permissible under applicable Requirements of Law. Notice of any such determination permitting the resignation of the IESO as Servicer shall be communicated to the Issuer and each Rating Agency at the earliest practicable time (and, if such communication is not in writing, shall be confirmed in writing at the earliest practicable time), and any such determination shall be evidenced by an Opinion of Counsel to such effect delivered to the Issuer and each Rating Agency concurrently with or promptly after such notice. No such resignation shall become effective until a Successor Servicer that is a Permitted Successor has assumed the servicing obligations and duties hereunder of the Servicer in accordance with Section 7.2.

3.13 IESO Regulatory Obligation to Pay Carrying Costs

(a) The IESO acknowledges that it has an obligation to pay monthly Carrying Costs pursuant to the Regulations for the prescribed period set out in the Regulations (the "**Prescribed Period**") and agrees to comply with its obligations under the Regulations to pay and remit the Carrying Costs to the Issuer on a monthly basis.

(b) On or before the 4th Business Day of each calendar month during the Prescribed Period, the Issuer shall prepare and deliver to the IESO a written statement substantially in the form of Exhibit C (a "**Monthly Carrying Costs Statement**") certifying the amount of the Carrying Costs incurred in the preceding calendar month ("**Monthly Carrying Costs**"). If requested by the IESO, the Issuer shall, in lieu of providing the Monthly Carrying Costs Statement, enter the amount of the Monthly Carrying Costs in the IESO operated portal, or such other similar facility operated by the IESO, and such entry shall be deemed to be a certification of the accuracy of the amount entered.

(c) On or before the [14th] Business Day following receipt by the IESO of the Monthly Carrying Costs Statement, the IESO shall, as required under the Regulations, deliver or cause to be delivered to the Issuer, by wire transfer or electronic funds transfer in immediately available funds, an amount in Canadian dollars equal to the Monthly Carrying Costs certified by the Issuer in the applicable Monthly Carrying Costs Statement.

3.14 IESO Security for CEA Remittances

If required by the Issuer, the IESO shall provide to the Issuer, on or prior to the first day of the first Billing Period when amounts are invoiced to Specified Consumers in respect of Clean Energy Adjustments, a letter of credit in an amount equal to $■, or such other form of security as may be acceptable to the Issuer, as security for any failure of Electricity Vendors which are either not rated or are rated less than investment grade to remit their Electricity Vendor CEA Collections.

ARTICLE 4
REPRESENTATIONS AND WARRANTIES OF THE IESO

4.1 Representations and Warranties

Subject to Section 3.7, the IESO makes the following representations and warranties as of the date hereof and as of each applicable Closing Date, and the IESO acknowledges that the Issuer will rely thereon in paying the Purchase Price related to Transfers of Specified Portions of the Regulatory Asset, and the Issuer has relied thereon in entering into this Agreement relating to the servicing of the corresponding Investment Interests.

(a) Organization and Good Standing. The IESO is a statutory corporation amalgamated under the laws of the Province of Ontario, with requisite corporate power and authority to own its properties, to conduct its business as such properties are currently owned and such business is presently conducted by it.

(b) Due Qualification. The IESO has obtained all necessary licences and approvals, in all jurisdictions in which the ownership or lease of property or the conduct of its business (including acting as Servicer under this Agreement) shall require such licences or approvals, except where the failure to so qualify or obtain such licences and approvals would not be reasonably likely to have a material adverse effect on the IESO's business, operations, assets, revenues or properties, the Regulatory Asset or the servicing of related Investment Interests.

(c) Power and Authority. The IESO has the requisite corporate power and authority to execute and deliver this Agreement and to carry out its terms. The IESO has full corporate power and authority to hold the Regulatory Asset and to Transfer Specified Portions of the Regulatory Asset to the Issuer and the IESO has duly authorized such Transfer to the Issuer by all necessary corporate action. The execution, delivery and performance of all obligations under this Agreement have been duly authorized by all necessary corporate action on the part of the IESO under all applicable laws.

(d) Binding Obligation. This Agreement constitutes a legal, valid and binding obligation of the IESO, enforceable against the IESO in accordance with its terms, subject to bankruptcy, receivership, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally from time to time in effect and to general principles of equity (including concepts of materiality, reasonableness, good faith and fair dealing).

(e) No Violation. The consummation of the transactions contemplated by this Agreement and the fulfillment of the terms hereof by the IESO do not conflict with, result in any breach of any of the terms and provisions of, or constitute (with or without notice or lapse of time, or both) a default under, the IESO's by-laws, or any indenture, or other material agreement or instrument to which the IESO is a party or by which it is bound, result in the creation or imposition of any Lien upon any of the IESO's properties pursuant to the terms of any such indenture,

agreement or other instrument or violate any existing law or any order, rule or regulation applicable to the IESO issued by any Governmental Authority having jurisdiction over the IESO or its properties, except, in each case, where such breach would not reasonably be expected to materially and adversely affect the performance by the IESO of its obligations under this Agreement or the Act or the validity or enforceability of this Agreement.

(f) No Proceedings. To the IESO's knowledge, except as disclosed in writing to the Issuer, there are no Proceedings pending or threatened against the IESO or its properties: (a) asserting the invalidity of this Agreement or the Act, (b) seeking to prevent the consummation of any of the transactions contemplated by this Agreement or the Act, or (c) seeking a determination or ruling that could reasonably be expected to materially and adversely affect the performance by the IESO of its obligations under this Agreement or the Act or the validity or enforceability of this Agreement.

(g) Approvals. No approvals, authorizations, consents, orders or other actions or filings with any Governmental Authority are required for the IESO to execute, deliver and perform its obligations under this Agreement except those which have previously been obtained or made.

(h) Information. Except in respect of information provided by a third party, all written information, as amended or supplemented from time to time, provided by the Transferor to the Issuer with respect to the Issuer in a Transfer Notice and a Monthly Report is true and correct in all material respects and does not omit any material fact.

(i) The Transfer. After the completion of the Transfer on the applicable Closing Date, the IESO will have no right, title or interest in the Investment Interest related to the Specified Portion of the Regulatory Asset as set forth in the applicable Transfer Notice, and the related Investment Interest shall not form part of the estate of the IESO in the event of an Insolvency Event in respect of the IESO.

(j) No Transfer. Except for Permitted Transfers, the IESO has not sold, transferred, assigned or otherwise conveyed any interest in the Regulatory Asset to any Person.

(k) Liens. IESO has not pledged or otherwise granted a Lien to any Person in the Regulatory Asset and to the IESO's knowledge (after due inquiry), there is no registered financing statement listing the IESO as debtor covering or extending to the Regulatory Asset.

(l) Tax Liens. The IESO (i) is not aware, after due inquiry, of any judgment or tax lien filing against the IESO, and (ii) is not a non-resident of Canada for purposes of the *Income Tax Act* (Canada).

(m) Solvency. On the date hereof and after giving effect to each Transfer, the IESO:

(i) reasonably believes that it will be able to pay its debts as they come due; and

(ii) is able to pay its debts as they mature and does not intend to incur, or believes that it will not incur, indebtedness that it will not be able to repay at its maturity.

(n) No Court Order. There is no order by any court that seeks to enjoin the performance of any obligations of the IESO under the Act or this Agreement.

4.2 Survival

The representations and warranties set forth in Section 4.1 shall survive the execution and delivery of this Agreement, each Transfer of a Specified Portion of a Regulatory Asset to the Issuer and the pledge of the corresponding Investment Asset to the Indenture Trustee pursuant to the Indenture and may not be waived by any party hereto except pursuant to a written agreement executed in accordance with Section 8.1 and as to which the Rating Agency Condition has been satisfied.

ARTICLE 5
COVENANTS OF THE IESO

5.1 Existence

So long as any Issuer Funding Obligations are outstanding, the IESO (a) shall not take any action to impair its corporate existence, and (b) will obtain and preserve its qualification to do business in the Province of Ontario.

5.2 No Transfer or Liens

Except for Transfers under this Agreement to the Issuer or Permitted Transfers, the IESO will not Transfer the Regulatory Asset or any portion thereof to any person. The IESO will not grant, create, incur, assume or suffer to exist any Lien on the Regulatory Asset or any portion thereof. The IESO will not at any time assert any Lien against or with respect to the Issuer Investment Interest, except for any Lien granted by the Issuer to the IESO.

5.3 Notice of Liens

The IESO shall notify the Issuer promptly after becoming aware of any Lien on any portion of the Regulatory Asset.

5.4 Compliance with Law

The IESO will comply with all Requirements of Law applicable to, and binding upon, the IESO or relating to the Regulatory Asset, except to the extent that failure to so comply

would not materially adversely affect the Transfer of Specified Portions of the Regulatory Asset or the IESO's performance of its obligations under this Agreement; provided, however, that the foregoing is not intended to, and shall not, impose any liability on the IESO for non-compliance with any Requirement of Law that the IESO is contesting in good faith in accordance with its customary standards and procedures.

5.5 Covenants Related to the Investment Interest

(a) So long as any Issuer Funding Obligations are outstanding, the IESO shall treat the Issuer Investment Interest as the Issuer's property for all purposes.

(b) Except for investments held for employee benefit purposes, the IESO shall not at any time become a holder of Issuer Funding Obligations.

(c) The IESO shall disclose the effects of all transactions between the IESO and the Issuer in accordance with generally accepted accounting principles (for government entities).

(d) (i) In all Proceedings relating directly or indirectly to the Issuer Investment Interest, the IESO shall affirmatively certify and confirm that it has Transferred all of its rights and interests in and to the Specified Portions of the Regulatory Asset giving rise to the Issuer Investment Interest, (ii) the IESO shall not make any statement or reference in respect of the Issuer Investment Interest that is inconsistent with the ownership interest of the Issuer, and (iii) the IESO shall not take any action in respect of the Issuer Investment Interest except solely in its capacity as the Servicer thereof pursuant to this Agreement.

5.6 Non-petition Covenants

Notwithstanding any prior termination of this Agreement or the Indenture, the IESO shall not, prior to the date that is one year plus one day after termination of the Indenture and the payment in full of all Issuer Funding Obligations and any other amounts owed under the Indenture, petition or otherwise invoke the process of any Governmental Authority for the purpose of commencing or sustaining a Proceeding against the Issuer under any Canadian bankruptcy, insolvency or similar law, appointing a receiver, liquidator, assignee, trustee, custodian, sequestrator or other similar official or any substantial part of the property of the Issuer.

5.7 Disclosure

The IESO shall provide such non-confidential information regarding IESO, the Regulatory Asset and the services provided by the Servicer hereunder (collectively, the "**IESO Disclosure**") as may be reasonably requested by the Issuer for inclusion in any offering document of the Issuer from time to time, including but not limited to offering memoranda, prospectuses, registration statements and continuous disclosure documents (the "**Offering Documents**"), provided that the IESO has been given a reasonable opportunity by the Issuer to review any such Offering Documents. The IESO represents that, except in respect information

provided by a third party, all IESO Disclosure, as at the respective dates of delivery to the Issuer, is true and correct in all material respects and contains no misrepresentation.

5.8 Further Assurances

Upon the request of the Issuer, the IESO shall execute and deliver such further instruments and do such further acts as may reasonably be necessary to carry out the provisions and purposes of this Agreement.

5.9 Access to Certain Records and Information

The IESO shall provide to the Issuer access to all records relating to the IESO Deferral, the Fair Hydro Variance Account, the IESO Segregated Account and Servicer CEA Receipts, as is reasonably required for the Issuer to confirm compliance by the IESO with its obligations under this Agreement. Access shall be afforded without charge, but only upon reasonable request and during normal business hours at the offices of the IESO. Nothing in this Section 5.9 shall affect the obligation of the IESO to comply with any Requirement of Law prohibiting disclosure of information, and the failure of the IESO to provide access to such information as a result of such obligation shall not constitute a breach of this Section 5.9.

5.10 Maintenance of Operations

Subject to Section 3.11, the IESO agrees to continue, unless prevented by circumstances beyond its control, to operate as the electricity system operator in the Province of Ontario so long as it is acting as the Servicer under this Agreement.

ARTICLE 6
IESO INDEMNITIES

6.1 Liability of the IESO; Indemnities

(a) The IESO shall indemnify the Issuer and each of its trustees, officers, directors and employees (each, an "**Indemnified Party**"), for, and defend and hold harmless each such Person from and against, any and all liabilities, obligations, losses, damages, payments and claims, and reasonable costs or expenses, of any kind whatsoever (collectively, "**Indemnified Losses**") imposed on, incurred by or asserted against such Person, as a result of (i) the failure of the IESO to perform its covenants and other obligations under this Agreement or any other Program Agreement to which the IESO is a party; or (ii) the breach by the IESO of any of its representations or warranties under this Agreement or any other Program Agreement to which the IESO is a party and, except to the extent of Indemnified Losses resulting from the willful misconduct, bad faith or gross negligence of such Person seeking indemnification hereunder; provided that, in each case, the IESO shall not be required to indemnify an Indemnified Party for any amount paid or payable by such Indemnified Party in the settlement of any Proceeding or investigation without the written consent of the IESO, which consent shall not be unreasonably withheld. Promptly after receipt by an Indemnified Party of notice

of the commencement of any Proceeding or investigation, such Indemnified Party shall, if a claim in respect thereof is to be made against the IESO under this Section 6.1(a), notify the IESO in writing of the commencement thereof. Failure by an Indemnified Party to so notify the IESO shall relieve the IESO from the obligation to indemnify and hold harmless such Indemnified Party under this Section 6.1(a) only to the extent that the IESO suffers actual prejudice as a result of such failure. With respect to any Proceeding or investigation brought by a third party for which indemnification may be sought under this Section 6.1(a), the IESO shall be entitled to conduct and control, at its expense and with counsel of its choosing that is reasonably satisfactory to such Indemnified Party, the defence of any such Proceeding or investigation (in which case the IESO shall not thereafter be responsible for the fees and expenses of any separate counsel retained by the Indemnified Party except as set forth below); provided, that the Indemnified Party shall have the right to participate in such Proceeding or investigation through counsel chosen by it and at its own expense. Notwithstanding the IESO's election to assume the defence of any Proceeding or investigation, the Indemnified Party shall have the right to employ separate counsel, and the IESO shall bear the reasonable fees, costs and expenses of such separate counsel, if (i) the defendants in any such action include both the Indemnified Party and the IESO and the Indemnified Party shall have reasonably concluded that there may be legal defences available to it that are different from or additional to those available to the IESO, (ii) the IESO shall not have employed counsel reasonably satisfactory to the Indemnified Party to represent the Indemnified Party within a reasonable time after notice of the institution of such action, or (iii) the IESO authorizes the Indemnified Party to employ separate counsel at the expense of the IESO. Notwithstanding the foregoing, the IESO shall not be obligated to pay for the fees, costs and expenses of more than one separate counsel for the Indemnified Parties other than one local counsel, if appropriate. The IESO will not, without the prior written consent of the Indemnified Party, settle or compromise or consent to the entry of any judgment with respect to any pending or threatened claim or Proceeding in respect of which indemnification may be sought under this Section 6.1(a) (whether or not the Indemnified Party is an actual or potential party to such claim or action) unless such settlement, compromise or consent includes an unconditional release of the Indemnified Party from all liability arising out of such claim or Proceeding.

(b) For purposes of Section 6.1(a), in the event of the termination of the rights and obligations of the IESO (or any successor thereto pursuant to Section 3.11) as Servicer pursuant to Section 7.1, or a resignation by such Servicer pursuant to Section 3.12 of this Agreement, the IESO shall be deemed to be the Servicer pending appointment of a Successor Servicer pursuant to Section 7.2.

(c) Indemnification under Section 6.1(a) shall include reasonable out-of-pocket fees and expenses of investigation and litigation (including reasonable legal fees and expenses), except as otherwise expressly provided in this Agreement.

(d) Indemnification under this Section 6.1 shall survive any repeal of, modification of, or supplement to, or judicial invalidation of, the Act and shall survive the termination of this Agreement and will rank *pari passu* with other general, unsecured obligations of the IESO.

(e) The IESO shall not be required to indemnify any party under this Section 6.1 for any losses resulting from changes in law after the date hereof, whether such changes in law are effected by means of any legislative enactment or any final and non-appealable judicial decision.

ARTICLE 7
SERVICER DEFAULT

7.1 Servicer Default

If any one or more of the following events (each, a "**Servicer Default**") shall occur and be continuing:

(a) any failure by the Servicer to remit to the Collection Account any required remittance that shall continue unremedied for a period of **[two/three]** Business Days after written notice of such failure is received by the Servicer from the Issuer or after discovery of such failure by a Responsible Officer of the Servicer;

(b) any failure on the part of the Servicer or, so long as the Servicer is the IESO, any failure on the part of the IESO, as the case may be, duly to observe or to perform in any respect any covenants or agreements of the Servicer or the IESO, as the case may be, set forth in this Agreement or in any other Program Agreement to which it is a party (other than as provided in Section 7.1(a)), which failure shall (i) materially and adversely affect the rights of the Specified Creditors and (ii) continue unremedied for a period of 30 days after the date on which (A) written notice of such failure, requiring the same to be remedied, shall have been given to the Servicer or the IESO, as the case may be, by the Issuer or (B) such failure is discovered by a Responsible Officer of the Servicer;

(c) any representation or warranty made by the Servicer in this Agreement, any other Program Agreement to which it is a party, any Transfer Notice or any Monthly Report shall prove to have been incorrect when made, which has a material adverse effect on the Issuer and which remains unremedied for a period of 30 days after the date on which (i) written notice thereof, requiring the same to be remedied, shall have been delivered to the Servicer by the Issuer or (ii) such failure is discovered by a Responsible Officer of the Servicer;

(d) an Insolvency Event occurs with respect to the Servicer or the IESO; or

(e) any additional "Servicer Default" as specified in any Co-Owner Agreement occurs;

then, and in each and every case, the Issuer may, subject to the terms of any Co-Owner Agreement, by notice then given in writing to the Servicer (a "**Termination Notice**"), terminate all the rights and obligations (other than the obligations set forth in Section 6.1 and the obligation under Section 7.2 to continue performing its functions as Servicer until a Successor Servicer is appointed) of the Servicer under this Agreement and under the Co-Owner Agreement. In addition, upon a Servicer Default described in Section 7.1(a), Issuer shall be entitled to apply to a court of appropriate jurisdiction for an order for sequestration and payment of revenues arising with respect to the Issuer. On or after the receipt by the Servicer of a Termination Notice, all authority and power of the Servicer under this Agreement, whether with respect to the Investment Interest, the Clean Energy Adjustments or otherwise, shall, without further action, pass to and be vested in such Successor Servicer as may be appointed under Section 7.2; and, without limitation, the Issuer is hereby authorized and empowered to execute and deliver, on behalf of the predecessor Servicer, as attorney-in-fact or otherwise, any and all documents and other instruments, and to do or accomplish all other acts or things necessary or appropriate to effect the purposes of such Termination Notice, whether to complete the transfer of all documents and records related to the Regulatory Asset, the Fair Hydro Variance Account and related documents or records, or otherwise (the "**Records**"). The predecessor Servicer shall cooperate with the Successor Servicer and the Issuer in effecting the termination of the responsibilities and rights of the predecessor Servicer under this Agreement, including the transfer to the Successor Servicer for administration by it of all Records and all cash amounts that shall at the time be held by the predecessor Servicer for remittance, or shall thereafter be received by it with respect to the Investment Interest or the Clean Energy Adjustment. As soon as practicable after receipt by the Servicer of such Termination Notice, the Servicer shall deliver the Records to the Successor Servicer. If a Successor Servicer has been appointed as a result of a Servicer Default, all reasonable costs and expenses (including reasonable legal fees and expenses) incurred in connection with transferring the Records to the Successor Servicer and amending this Agreement and any Co-Owner Agreement to reflect such succession as Servicer pursuant to this Section 7.1 shall be paid by the predecessor Servicer upon presentation of reasonable documentation of such costs and expenses. Termination of the IESO as Servicer shall not terminate the IESO's rights or obligations under this Agreement (except rights thereunder deriving from its rights as the Servicer hereunder).

7.2 Appointment of Successor Servicer

(a) Upon the Servicer's receipt of a Termination Notice pursuant to Section 7.1 or the Servicer's resignation or removal in accordance with the terms of this Agreement, the predecessor Servicer shall continue to perform its functions as Servicer under this Agreement, until a Successor Servicer shall have assumed in writing the obligations of the Servicer hereunder as described below. In the event of the Servicer's removal or resignation hereunder, the Issuer may, but subject to the provisions of the applicable Co-Owner Agreement, appoint a Successor Servicer and the Successor Servicer shall accept its appointment by a written assumption in form reasonably acceptable to the Issuer. If, within 30 days after the delivery of the Termination Notice, a Successor Servicer shall not have been appointed, the Issuer may petition a court of competent jurisdiction to appoint a Successor Servicer under this Agreement. A Person shall qualify as a Successor Servicer only if (i) such Person is permitted under the Act to perform the duties of the

Servicer, (ii) the Rating Agency Condition shall have been satisfied with respect to such appointment, (iii) such Person enters into a master transfer and servicing agreement with the Issuer having substantially the same provisions as this Agreement and (iv) such Person agrees to perform the obligations of the Servicer under any Co-Owner Agreement. In no event shall the Issuer be liable for its appointment of a Successor Servicer..

(b) Upon appointment, the Successor Servicer shall be the successor in all respects to the predecessor Servicer and shall be subject to all the responsibilities, duties and liabilities arising thereafter placed on the predecessor Servicer and shall be entitled to all the rights granted to the predecessor Servicer by the terms and provisions of this Agreement.

7.3 Waiver of Past Defaults

The Issuer may waive in writing any default by the Servicer in the performance of its obligations hereunder and its consequences. Upon any such waiver of a past default, such default shall cease to exist, and any Servicer Default arising therefrom shall be deemed to have been remedied for every purpose of this Agreement. No such waiver shall extend to any subsequent or other default or impair any right consequent thereto.

7.4 Notice of Servicer Default

The Servicer shall deliver to the Issuer, promptly after having obtained knowledge thereof, but in no event later than five Business Days thereafter, written notice of any event that, with the giving of notice or lapse of time, or both, would become a Servicer Default under Section 7.1.

7.5 Cooperation with Successor Servicer

The Servicer covenants and agrees with the Issuer that it will, on an ongoing basis, cooperate with the Successor Servicer and provide whatever information is, and take whatever actions are, reasonably necessary to assist the Successor Servicer in performing its obligations hereunder.

ARTICLE 8
MISCELLANEOUS

8.1 Amendment

This Agreement may be amended in writing by the IESO and the Issuer, and with satisfaction of the Rating Agency Condition, such satisfaction to be confirmed by the Issuer at the time of such amendment. Promptly after the execution of any such amendment, the Issuer shall furnish copies of such amendment to each of the Rating Agencies.

8.2 Withholding Rights

The parties shall be entitled to deduct and withhold from amounts payable under this Agreement such amounts as each is required to deduct and withhold with respect to such payment under the *Income Tax Act* (Canada) or any provision of any applicable federal, provincial, territorial, state, local or foreign tax law. To the extent that amounts are so withheld, such withheld amounts shall be treated for all purposes as having been paid to the recipient of the payment in respect of which such deduction and withholding was made, provided that such withheld amounts are actually remitted in accordance with applicable law to the appropriate taxing authority.

8.3 No Partnership

Each party expressly disclaims any intention to create a partnership, and none of the Issuer or the IESO will be deemed to be carrying on business in partnership by reason of its execution and delivery of this Agreement or the exercise or performance by it of its respective rights and obligations hereunder.

8.4 Notices

Any notice, report or other communication given hereunder shall be in writing and shall be effective (a) upon receipt when sent through the mails, registered or certified mail, return receipt requested, postage prepaid, with such receipt to be effective the date of delivery indicated on the return receipt, (b) upon receipt when sent by an overnight courier, (c) on the date personally delivered to an authorized officer of the party to which sent, or (d) on the date transmitted by electronic transmission with a confirmation of receipt in all cases, addressed as follows:

(a) in the case of the IESO, in its capacity as Transferor or Servicer:

Independent Electricity System Operator
120 Adelaide Street West, Suite 1600
Toronto, Ontario M5H 1T1

Attention: Chief Financial Officer, General Counsel and Associate General Counsel
Email: ■

(b) in the case of the Issuer or the Manager (on behalf of the Issuer):

Fair Hydro Trust
c/o Ontario Power Generation Inc., as Manager
700 University Avenue
Toronto, Ontario
M5G 1X6

Attention: ■
Email: ■

Each party hereto may, by notice given in accordance herewith to the other party or parties hereto, designate any further or different address to which subsequent notices, reports and other communications shall be sent. Any notice, report or communication required to be given by the IESO hereunder to a Rating Agency shall be given to the address provided by the Issuer from time to time.

8.5 Assignment

Notwithstanding anything to the contrary contained herein, except as provided in the provisions of this Agreement concerning the resignation of the Servicer, this Agreement may not be assigned by the IESO.

8.6 Limitations on Rights of Third Parties

The provisions of this Agreement are solely for the benefit of the IESO and the Issuer, and such Persons shall have the right to enforce the relevant provisions of this Agreement. Nothing in this Agreement, whether express or implied, shall be construed to give to any other Person any legal or equitable right, remedy or claim in the Issuer Investment Interest or under or in respect of this Agreement or any covenants, conditions or provisions contained herein.

8.7 Severability

Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remainder of such provision (if any) or the remaining provisions hereof (unless such construction shall be unreasonable), and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

8.8 Separate Counterparts; Electronic Delivery

This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument. Delivery of an executed signature page to this Agreement by a party by electronic transmission will be as effective as delivery of a manually executed copy of this Agreement by such party.

8.9 Governing Law

This Agreement shall be construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein, and each party to this Agreement attorns to the non-exclusive jurisdiction of the courts of the Province of Ontario.

8.10 Grant of Security Interest to Indenture Trustee

The IESO hereby acknowledges and consents to the grant of a Lien by the Issuer to the Indenture Trustee pursuant to the Indenture for the benefit of the Specified Creditors

against all right, title and interest of the Issuer in, to and under this Agreement, the Investment Interest and the proceeds thereof and the assignment of any or all of the Issuer's rights hereunder to the Indenture Trustee for the benefit of the Specified Creditors.

8.11 Limitation of Liability of the Issuer Trustee

(a) It is expressly understood and agreed by the parties hereto that the Issuer Trustee is acting solely in its capacity as trustee of the Issuer, and not in any other capacity. The Issuer solely shall be responsible for the performance of the Issuer's obligations hereunder and the assets of the Issuer solely shall be subject to levy or execution in satisfaction of such obligations.

(b) The Issuer Trustee will not be subject to any liability whatsoever, in tort, in contract or otherwise, in connection with the Issuer's property or the Issuer's activities, to the Issuer's beneficiaries or to any other Person, for any action taken or permitted by the Issuer Trustee to be taken, or the Issuer Trustee's failure to compel in any way any former or acting Issuer Trustee to redress any breach of trust with respect to the execution of the duties of its office or in respect of the Issuer's property or the Issuer's activities, provided that the foregoing limitation will not apply in respect of action or failure to act arising from or in connection with dishonesty, bad faith, willful misconduct, gross negligence or reckless disregard of a duty by the Issuer Trustee. The Issuer Trustee, in doing anything or permitting anything to be done in respect of the execution of the duties of its office or in respect of the Issuer's property or the Issuer's activities, is, and will be conclusively deemed to be, acting as trustee of the Issuer and not in any other capacity. Except as to the extent provided in this Section 8.11, the Issuer Trustee will not be subject to any liability for any debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses against or with respect to the Issuer, arising out of anything done or permitted by it to be done or its failure to take any action in respect of the execution of the duties of its office or for or in respect of the Issuer's property or the Issuer's activities and resort will be had solely to the Issuer's property for the payment or performance thereof. No property or assets of the Issuer Trustee owned in its personal capacity will be subject to levy, execution or other enforcement procedure with regard to any obligation under this Agreement.

(c) The holders of the units of the Issuer will not be subject to any liability whatsoever, in tort, in contract or otherwise, in connection with the Issuer's property or the Issuer's activities, to the Issuer's beneficiaries or to any other Person, for any action taken or permitted by it to be taken. The holders of the units of the Issuer will not be subject to any liability for any debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses against or with respect to the Issuer, arising out of anything done or permitted by it to be done or its failure to take any action in respect of the execution of the duties of its office or for or in respect of the Issuer's property or the Issuer's activities and resort will be had solely to the Issuer's property for the payment or performance thereof. No property or assets of the holders of the units of the Issuer owned in

their personal capacity will be subject to levy, execution or other enforcement procedure with regard to any obligation under this Agreement.

8.12 Waivers

Any term or provision of this Agreement may be waived, or the time for its performance may be extended, by the party or parties entitled to the benefit thereof. Any such waiver shall be validly and sufficiently authorized for the purposes of this Agreement if, as to any party, it is authorized in writing by an authorized representative of such party, with prompt written notice of any such waiver to be provided to the Rating Agencies. The failure of any party hereto to enforce at any time any provision of this Agreement shall not be construed to be a waiver of such provision, nor in any way to affect the validity of this Agreement or any part hereof or the right of any party thereafter to enforce each and every such provision. No waiver of any breach of this Agreement shall be held to constitute a waiver of any other or subsequent breach.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective officers as of the day and year first above written.

FAIR HYDRO TRUST, by its Manager,
ONTARIO POWER GENERATION INC.

By: _____
Name:
Title:

By: _____
Name:
Title:

INDEPENDENT ELECTRICITY SYSTEM OPERATOR
as Transferor and Servicer

By: _____
Name:
Title:

By: _____
Name:
Title:

EXHIBIT A

FORM OF TRANSFER NOTICE

See attached

TRANSFER NOTICE

TO: Fair Hydro Trust
c/o Ontario Power Generation Inc., as Manager
700 University Avenue
Toronto, Ontario
M5G 1X6

Attention: ■
Email: ■

This Transfer Notice is delivered to you pursuant to Section 2.1 of a master transfer and servicing agreement made as of ■, 2017 (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "**Master Transfer and Servicing Agreement**") between **FAIR HYDRO TRUST**, a trust formed under the laws of the Province of Ontario (the "**Issuer**"), the **INDEPENDENT ELECTRICITY SYSTEM OPERATOR** ("**Transferor**" in its capacity as transferor, "**Servicer**", in its capacity as servicer, and "**IESO**" in its capacity as both Transferor and Servicer), a statutory corporation without share capital amalgamated under the laws of the Province of Ontario. All capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Master Transfer and Servicing Agreement.

The Transferor hereby gives notice to the Issuer of its offer to transfer to the Issuer on the Closing Date set out below, the Specified Portion of the Regulatory Asset referred to below, all in accordance with the terms and conditions of the Master Transfer and Servicing Agreement. In consideration for (i) the Transferor's Transfer to the Issuer of the Specified Portion of the Regulatory Asset referred to below, the Issuer shall deliver or cause to be delivered to the Transferor on the Closing Date set out below, by wire transfer or electronic funds transfer in immediately available funds, an amount in Canadian dollars equal to the Purchase Price set out below.

Upon receipt by the Transferor of the Purchase Price on the Closing Date the Transferor shall reduce the balance of the Fair Hydro Variance Account by an amount equal to the Purchase Price, and the Regulatory Asset shall be adjusted accordingly.

Specified portion of Regulatory Asset: $■

Purchase Price: $■

Closing Date: ■

The Transferor hereby represents, warrants and confirms that:

(i) each of the representations and warranties on the part of the Transferor contained in the Master Transfer and Servicing Agreement are true and correct in all respects on the date hereof as if made on the date hereof;

(ii) the Transferor is not in breach of any of its covenants in the Master Transfer and Servicing Agreement; and

(iii) as of the date hereof, each condition precedent that must be satisfied by the Transferor under Section 2.2 of the Master Transfer and Servicing Agreement is capable of being satisfied prior to Closing Date.

The closing shall take place at ■ (Toronto time) on the Closing Date referred to above at the offices of ■, except as may be otherwise mutually agreed. The Purchase Price shall be paid on that date by wire transfer or electronic funds transfer to [insert IESO bank account details].

DATED this ■ day of ■, 20■.

FAIR HYDRO TRUST, by its Manager,
ONTARIO POWER GENERATION INC.

By: _____
Name:
Title:

By: _____
Name:
Title:

The undersigned hereby accepts the foregoing offer.

DATED this ■ day of ■, 20■.

INDEPENDENT ELECTRICITY SYSTEM OPERATOR
as Transferor

By: _____
Name:
Title:

By: _____
Name:
Title:

EXHIBIT B

FORM OF MONTHLY REPORT

[NTD: form to be settled]

EXHIBIT C

FORM OF MONTHLY CARRYING COSTS STATEMENT

See Attached

MONTHLY CARRYING COSTS STATEMENT

TO: INDEPENDENT ELECTRICITY SYSTEM OPERATOR
[Address]

Attention: ■
Email: ■

Reference is made to the master transfer and servicing agreement made as of ■, 2017 (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "**Master Transfer and Servicing Agreement**") between **FAIR HYDRO TRUST**, a trust formed under the laws of the Province of Ontario (the "**Issuer**") and the **INDEPENDENT ELECTRICITY SYSTEM OPERATOR** ("**Transferor**" in its capacity as transferor, "**Servicer**", in its capacity as servicer, and "**IESO**" in its capacity as both Transferor and Servicer), a statutory corporation without share capital amalgamated under the laws of the Province of Ontario. Capitalized terms used but not defined in this Monthly Carrying Costs Statement have their respective meanings as set forth in the Master Transfer and Servicing Agreement.

Pursuant to Section 3.13 of the Master Transfer and Servicing Agreement, the undersigned hereby certifies that the Monthly Carrying Costs in respect of the calendar month of ■, ■ are as follows:

In accordance with Section 3.13(c) of the Master Transfer and Servicing Agreement, the undersigned hereby directs you to deliver to the Issuer, by wire transfer or electronic funds transfer to the account set forth below, an amount in Canadian dollars equal to the Monthly Carrying Costs set forth above on or before ■, 20■, and this shall be your good and valid authority for so doing.

[NTD: Wire transfer instructions to be provided by OPG.]

DATED this ■ day of ■, 20■.

FAIR HYDRO TRUST, by its Manager, **ONTARIO POWER GENERATION INC.**

By: _____
Name:
Title:

By: _____
Name:
Title:

Supplemental Indenture (Long Term Senior).pdf

SENIOR SERIES [2017-1] SUPPLEMENTAL INDENTURE

between

FAIR HYDRO TRUST

by

COMPUTERSHARE TRUST COMPANY OF CANADA
as Issuer Trustee

and

BNY TRUST COMPANY OF CANADA
as Indenture Trustee

SUPPLEMENTING THE TRUST INDENTURE DATED AS OF ●, 2017

AND PROVIDING FOR THE ISSUE OF
●% SENIOR NOTES DUE ●, SERIES 2017-1
OF FAIR HYDRO TRUST

Made as of ●, 2017

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●% SENIOR NOTES DUE ●, SERIES 2017-1

THIS SENIOR NOTES SUPPLEMENTAL INDENTURE (this "**Supplemental Indenture**") is made as of ●, 2017, between **Computershare Trust Company of Canada** in its capacity as trustee of **Fair Hydro Trust**, a trust existing under the laws of the Province of Ontario (the "**Issuer**") and **BNY Trust Company of Canada**, a trust company existing under the laws of Canada (the "**Indenture Trustee**").

WHEREAS pursuant to the Trust Indenture dated as of ●, 2017 between the Issuer and the Indenture Trustee (as amended or restated from time to time, the "**Trust Indenture**"), provision was made for the issuance of Senior Notes from time to time in one or more Series by the execution and delivery of a Supplemental Indenture;

AND WHEREAS the parties hereto are entering into this Supplemental Indenture to provide for the creation and issuance of a Series of Senior Notes designated as the ●% Senior Notes due ●, Series 2017-1 (the "**Series 2017-1 Senior Notes**");

AND WHEREAS the foregoing recitals are made as statements of fact by the Issuer and not by the Indenture Trustee.

NOW THEREFORE THIS SUPPLEMENTAL INDENTURE WITNESSES and it is hereby covenanted, agreed and declared as follows:

ARTICLE 1
INTERPRETATION

1.1 Definitions

(a) For all purposes of this Supplemental Indenture, except as otherwise expressly provided or unless the context otherwise requires, the terms defined in Schedule A hereto have the meanings assigned to them in Schedule A and include the plural as well as the singular.

(b) The provisions of Section 1.1 of the Trust Indenture are applicable to this Supplemental Indenture. All terms used herein which are defined in the Trust Indenture, either directly or by reference therein, have the meanings assigned to them therein.

1.2 Interpretation

Subject to the next following sentences, this Supplemental Indenture is supplemental to the Trust Indenture and the Trust Indenture shall be read in conjunction with this Supplemental Indenture and all of the provisions of the Trust Indenture shall apply to and shall have effect in connection with this Supplemental Indenture in the same manner as if all of the provisions of the Trust Indenture and of this Supplemental Indenture were contained in one instrument. This Supplemental Indenture shall, unless the context otherwise requires, be subject to the interpretative provisions contained in Article I of the Trust Indenture. If any terms of the Trust Indenture are inconsistent with the express terms or provisions hereof, the terms and provisions of the Trust Indenture shall be, solely in respect of the Series 2017-1 Senior Notes, amended and supplemented so as to be consistent herewith. The provisions of this Supplemental Indenture are

applicable only in respect of the Series 2017-1 Senior Notes and not the Senior Notes of any other Series.

1.3 Application of this Supplemental Indenture

With respect to the Series 2017-1 Senior Notes only, the terms of the Trust Indenture are amended, supplemented, modified, restated and replaced to the extent applicable by the terms of this Supplemental Indenture in respect of the Series 2017-1 Senior Notes in accordance with Section 1.2 above.

ARTICLE 2
SERIES 2017-1 SENIOR NOTES

2.1 Creation of Series 2017-1 Senior Notes

There is hereby created a Series of Senior Notes to be issued pursuant to the Trust Indenture and this Supplemental Indenture designated as the "**●% Senior Notes due ●, Series 2017-1**."

2.2 Principal Terms

In addition to and without limiting all of the provisions of this Supplemental Indenture, the Series 2017-1 Senior Notes will:

(a) be designated as set out in Section 2.1;

(b) be Senior Notes and will not be subordinated to any other Class, Series or Tranche of Notes;

(c) not be divided into Tranches;

(d) **[be unlimited in principal amount but initially][NTD: To be discussed]** will have an aggregate principal amount of $● to be issued on the date hereof, provided that the principal amount of the Series 2017-1 Senior Notes may be increased after the date hereof without the consent of any holder of Series 2017-1 Senior Notes or any holder of any Notes of any other Class, Series or Tranche;

(e) be denominated in Canadian dollars;

(f) not be listed on any securities exchange;

(g) be issued in the form of a Global Note;

(h) be substantially in the form of Schedule B, with such appropriate insertions, omissions, substitutions and variations as may be approved by the Indenture Trustee;

(i) bear interest at a rate of ●% per annum;

(j) accrue interest from the later of: (i) ●, 2017 and (ii) the last Interest Payment Date on which interest has been paid or made available for payment on the Notes;

(k) have interest paid in equal semi-annual instalments **[(except the initial interest payment)]** on the Payment Dates occurring in the months of April and October in each year (each, an "**Interest Payment Date**") commencing with the Payment Date occurring in the month of [**April/October**], 2018 in respect of the Series 2017-1 Senior Notes issued prior to such date;

(l) mature on, and have ● [**NTD: select a Payment Date]**, as their sole Principal Payment Date;

(m) have ● as their Principal Payment Default Date;

(n) have ● as their Principal Accumulation Date;

(o) have the following Principal Accumulation Amounts for each Payment Date on or after their Principal Accumulation Date:

Payment Date	Principal Accumulation Amount
Payment Date in the months of ●	$●
Payment Date in the months of ●	$●
Payment Date in the months of ●	$●
Payment Date in the months of ●	$●
Principal Payment Date	$●

(p) have a Record Date for each Interest Payment Date that is the last day of the calendar month preceding each Interest Payment Date;

(q) **[be redeemable and subject to repurchase as provided in Section 2.6 below]**; and

(r) **[not be subject to defeasance and covenant defeasance as contemplated by Section ● of the Trust Indenture] [be subject to defeasance and covenant defeasance in accordance with Section ● of the Trust Indenture].**

2.3 Delivery

On the date of issuance of the Series 2017-1 Senior Notes, Series 2017-1 Senior Notes shall be executed, authenticated and delivered by the Issuer in accordance with Section 4.03 of the Trust Indenture.

2.4 Payment of Interest

The Issuer (except in case of payment of interest at maturity or as otherwise provided in the Trust Indenture, at which time payment of interest, less any taxes required by law to be deducted or withheld, may at the option of the Issuer be made upon presentation and surrender of the

certificate representing the Series 2017-1 Senior Notes) will on each Interest Payment Date, make payment of such interest, less any taxes required by law to be deducted or withheld, by wire transfer to each holder of a Series 2017-1 Senior Note as of the Record Date. The payment by such wire transfer will satisfy and discharge the liability for interest upon such Series 2017-1 Senior Note to the extent of the sum represented thereby (plus the amount of any taxes deducted or withheld as aforesaid). Notwithstanding the foregoing, the Issuer, at its option, may cause the amount payable in respect of interest to be paid to a Noteholder in any other manner reasonably acceptable to the Indenture Trustee.

2.5 Payment of Principal

By 10:00 a.m. (Toronto time) on the Principal Payment Due Date, the Issuer will deposit with the Indenture Trustee all amounts required to be paid to the order of holders of Series 2017-1 Senior Notes on maturity on account of principal. The deposit of such funds will satisfy and discharge the liability for principal of the Series 2017-1 Senior Notes to the extent of the sum represented thereby.

2.6 [Redemption and Repurchase

[**NTD: Customary redemption/repurchase mechanics to be added to Trust Indenture as per OPG MTN indenture. Redemption below contemplates a par call]**

(a) At its option, at any time prior to ● **[par call date]**, the Issuer may redeem the Series 2017-1 Senior Notes in whole or, from time to time, in part, on payment of a redemption price equal to the greater of (i) the Series 2017-1 Canada Yield Price and (ii) par, together in each case with accrued and unpaid interest to the Series 2017-1 Redemption Date. At any time on or after ● **[par call date]**, the Issuer may redeem the Series 2017-1 Senior Notes in whole or, from time to time, in part, on payment of a redemption price equal to par, together with accrued and unpaid interest to the Series 2017-1 Redemption Date. The Issuer will give notice of redemption not more than 60 days and not less than 15 days before the date fixed for redemption. Less than all of the Series 2017-1 Senior Notes may be redeemed, if so redeemed, in accordance with Section ● of the Trust Indenture.

(b) The Issuer will be entitled at any time and from time to time to purchase for cancellation Series 2017-1 Senior Notes in the market (which may include purchases from or through an investment dealer or a firm holding membership on a recognized stock exchange) or by tender or by private contract at any price. Series 2017-1 Senior Notes that are so purchased will be cancelled and will not be re-issued. Less than all of the Series 2017-1 Senior Notes may be purchased, if so purchased, for cancellation in accordance with Section ● of the Trust Indenture.

(c) The Series 2017-1 Senior Notes will not be subject to repurchase pursuant to any sinking fund or any other required repayment provisions].

2.7 Indemnification by the Issuer

The Issuer agrees to indemnify and hold harmless the Indenture Trustee and each Series 2017-1 Noteholder and each of their respective officers, directors, agents and employees (each, an "**Issuer Indemnified Person**") from and against any loss, liability, expense, damage or injury

suffered or sustained by such Issuer Indemnified Person by reason of (a) any acts, omissions or alleged acts or omissions arising out of, or relating to, activities of the Issuer pursuant to the Program Agreements to which it is a party; (b) a breach of any representation or warranty made or deemed made by the Issuer (or any of its officers) in any Program Agreement; or (c) a failure by the Issuer to comply with any applicable law or regulation or to perform its covenants, agreements, duties or obligations required to be performed or observed by it in accordance with the provisions of the Program Agreements, including, but not limited to, any judgment, award, settlement, reasonable attorneys' fees and other reasonable costs or expenses incurred in connection with the defense of any actual or threatened action, proceeding or claim, except to the extent such loss, liability, expense, damage or injury resulted from the gross negligence, bad faith or willful misconduct of such Issuer Indemnified Person or its officers, directors, agents, principals, employees or employers or includes any Excluded Taxes; provided that any payments made by the Issuer pursuant to this Section 2.7 shall be made solely from funds available pursuant to Section **[7.04]** or Section **[8.13]** of the Trust Indenture, shall be non-recourse other than with respect to such funds, and shall not constitute a claim against the Issuer to the extent that such funds are insufficient to make such payment.

2.8 Taxes

(a) All payments by or on account of any obligation of the Issuer hereunder shall, to the extent allowed by law, be made free and clear of, and without deduction or withholding for or on account of Taxes, excluding (i) income taxes (including branch profit taxes, minimum taxes and taxes computed under alternative methods, at least one of which is based on or measured by net income), franchise taxes (imposed in lieu of income taxes), or any other Taxes based on or measured by the net income of any person legally entitled to receive such payments (each a "**Recipient**") as a result of a present or former connection between the Recipient and the jurisdiction of the Governmental Authority imposing such Taxes (other than any such connection arising solely from the Recipient having executed, delivered or performed its obligations or received a payment under, disposed of, or enforced, this Supplemental Indenture); (ii) any withholding or deduction imposed pursuant to (A) Sections 1471 to 1474 of the U.S. Internal Revenue Code of 1986, as amended ("**FATCA**"), or any successor version thereof, or any similar legislation imposed by any other Governmental Authority, or (B) any treaty, law or regulation or other official guidance enacted by Canada implementing FATCA or any intergovernmental agreement with respect to FATCA or any similar legislation imposed by any other Governmental Authority, including, for greater certainty, the Canada-United States Enhanced Tax Information Exchange Agreement Implementation Act (Canada) and Parts XVIII and XIX of the Income Tax Act (Canada), as amended (collectively, and including FATCA, the "**AEOI Legislation**"); and (iii) any interest, penalties and additions to Taxes in respect of (i) and (ii) (all such excluded Taxes being hereinafter called "**Excluded Taxes**"). If any Taxes, other than Excluded Taxes, are required to be withheld from any amounts payable to a Recipient hereunder, the amounts so payable to the Recipient shall be increased, and the Recipient shall be entitled to be paid by the Issuer the amount of such increase to the extent necessary to yield to the Recipient (after payment of all such Taxes other than Excluded Taxes) interest or any such other amounts payable hereunder or thereunder at the rates or in the amounts specified hereunder. Whenever any Taxes are payable on or with respect to amounts distributed to a Recipient, as promptly as possible thereafter the Issuer shall send to such Recipient a certified copy of an original official receipt showing payment thereof.

(b) If a payment by or on account of any obligation of the Issuer hereunder would be subject to withholding Taxes under any AEOI Legislation if the Recipient were to fail to comply with the applicable reporting requirements of any AEOI Legislation, such Recipient shall deliver to the Issuer at the time or times prescribed by law and at such time or times reasonably requested by the Issuer such documentation prescribed by applicable law and such additional documentation reasonably requested by the Issuer as may be necessary for the Issuer to comply with its obligations under any AEOI Legislation and to determine that such Recipient has complied with its obligations under any AEOI Legislation, or to determine the amount to deduct and withhold from such payment. If any form or certification it previously delivered by a Recipient expires or becomes obsolete or inaccurate in any respect, the Recipient shall update such form or certification or promptly notify the Issuer in writing of its legal inability to do so.

(c) If a Recipient is legally entitled to receive a refund of any Taxes (other than Excluded Taxes) as to which it has been indemnified or with respect to which additional amounts have been paid to it hereunder or it is legally entitled to receive a credit or deduction with respect to such Taxes or with respect to such additional amounts that have been paid hereunder (in each case pursuant to Section 2.8(a)), it shall use commercially reasonable efforts to obtain or claim such refund, credit or deduction and pay over such refund or the value of such credit or deduction to the Issuer, together with any interest thereon.

2.9 Conditions Precedent to Issuance of Series 2017-1 Senior Notes

On or prior to the initial issuance of Series 2017-1 Senior Notes hereunder, the following conditions precedent shall be satisfied:

(a) Each of the conditions precedent set forth in Section 5.01 of the Trust Indenture in respect of the incurrence of Funding Obligations under this Supplemental Indenture shall have been satisfied.

(b) The representations and warranties set forth in Section 12.01 of the Trust Indenture and Section 3.1 of this Supplemental Indenture shall be true and correct in all material respects, the Issuer shall be in compliance in all material respects with all of its covenants and obligations under the Program Agreements to which it is a party.

(c) The Series 2017-1 Senior Notes shall have been duly issued in accordance with the Trust Indenture and the Global Note representing the Series 2017-1 Senior Notes shall have been executed and delivered to the Depository (or as it may direct) for deposit into its [**Book-Based System**] for the benefit of the [**Beneficial Holders**] upon receipt by the Indenture Trustee of a [**Written Order**].

(d) The Series 2017-1 Senior Notes will have been rated **[AAA(sp)]** by DBRS and **[Aaa(sp)]** by Moody's.

2.10 Acceleration Events

[NTD: Add series level acceleration provisions as discussed between Oslers and Torys.]

ARTICLE 3
REPRESENTATIONS AND WARRANTIES

3.1 Representations and Warranties of the Issuer

The Issuer hereby represents and warrants to the Indenture Trustee and each Series 2017-1 Noteholder that:

(a) no Termination Event has occurred or would result from the purchase of the Issuer Investment Interest on the date hereof;

(b) the Issuer Trustee and the Issuer are not non-residents of Canada within the meaning of the *Income Tax Act* (Canada);

(c) all Tax returns (federal, provincial and local) required to be filed with respect to the Issuer have been filed and there has been paid or adequate provision made for the payment of all material Taxes, assessments and other governmental charges in respect of the Issuer;

(d) the Issuer has not changed its name;

(e) the Issuer has complied in all material respects with all laws in respect of the conduct of its business and ownership of its property including the Issuer Investment Interest; and

(f) to its knowledge, there is no set of circumstances existing at such time that will have an Adverse Effect or will reasonably be expected to have an Adverse Effect.

3.2 Survival

The representations and warranties set out in this Article 3 shall survive the execution hereof.

ARTICLE 4
GENERAL

4.1 Acceptance of Trust

The Indenture Trustee accepts the trusts in this Supplemental Indenture and agrees to carry out and discharge the same upon the terms and conditions set out in this Supplemental Indenture and in accordance with the Trust Indenture.

4.2 Confirmation of Trust Indenture

The Trust Indenture, as amended and supplemented by this Supplemental Indenture, is in all respects confirmed.

4.3 Indenture Trustee Not Bound to Act

The Indenture Trustee shall retain the right not to act and shall not be liable for refusing to act if, due to a lack of information or for any other reason whatsoever, the Indenture Trustee, in its sole judgment, acting reasonably, determines that such act may cause it to be in non-compliance with any applicable anti-money laundering, anti-terrorism or economic sanction legislation, regulation or guideline. Further, should the Indenture Trustee, in its sole judgment, acting reasonably, determine at any time that its acting under this Supplemental Indenture has resulted in non-compliance with any applicable anti-money laundering, anti-terrorism or economic sanction legislation, regulation or guideline, then it shall have the right to resign pursuant to the terms of Section ● of the Trust Indenture, provided that (i) the Indenture Trustee's written notice of resignation shall describe the circumstances of such non-compliance; and (ii) if such circumstances are rectified to the Indenture Trustee's satisfaction within 15 Business Days of the receipt of such notice of resignation, then such notice shall not be effective.

4.4 Successor and Assigns

This Supplemental Indenture shall be binding upon and inure to the benefit of the parties hereto and their respective permitted successors and assigns.

4.5 Specified Creditors

The Indenture Trustee (on behalf of the Series 2017-1 Noteholders) hereby acknowledges and agrees that the Series 2017-1 Noteholders are Specified Creditors under the Trust Indenture and their entitlements as a Specified Creditor are subject to the provisions applicable to Specified Creditors under the Trust Indenture including, without limitation, Section **[7.11]** (Payments Held in Trust), Section **[8.12]** (Limitation on Suits), Sections **[7.04 and 8.13]** (Payment Priorities), Section **[8.14]** (Limited Recourse) and Section **[16.01]** (No Petition).

4.6 Waiver

Without limiting the requirements of Section 11.02 of the Trust Indenture, no waiver of any provision of this Supplemental Indenture or consent to any departure by the Issuer from any provision of this Supplemental Indenture will be effective (in whole or in part) unless in writing and signed by the Requisite Series 2017-1 Noteholders. Such waiver will be effective only in the specific instance, for the specific purpose and for the specific length of time for which it is given by the Requisite Series 2017-1 Noteholders.

4.7 Notice

All notices, requests, instructions and demands to or upon any party hereto to be effective shall be given in the case of the Issuer and the Indenture Trustee, in the manner set forth in Article 16 of the Trust Indenture.

4.8 No Waiver: Remedies

No failure on the part of any party to exercise, and no delay in exercising, any power, right or remedy hereunder will operate as a waiver thereof; nor will any single or partial exercise of any

such power, right or remedy hereunder preclude any other or further exercise thereof or the exercise of any other power, right or remedy. The rights and remedies herein provided are cumulative and not exclusive of any remedies provided by applicable law.

4.9 Entire Agreement

This Supplemental Indenture, the Trust Indenture and the other Program Agreements contain the entire agreement between the parties relative to the subject matter hereof and supersede all prior and contemporaneous agreements, term sheets, commitments, understandings, negotiations and discussions, whether oral or written. There are no warranties, representations or other agreements between the parties in connection with the subject matter hereof except as specifically set forth in this Supplemental Indenture, the Trust Indenture and the other Program Agreements.

4.10 Governing Law and Attornment

This Supplemental Indenture shall be governed by, and construed in accordance with, the laws of the Province of Ontario and the parties hereby attorn to the jurisdiction of the courts of Ontario.

4.11 Expenses

The Issuer agrees to pay on demand to the Indenture Trustee: (a) all reasonable costs and expenses in connection with the preparation, execution, and delivery of this Supplemental Indenture; (b) all reasonable costs and expenses in connection with any amendments of or waivers or consents under this Supplemental Indenture or the Program Agreements, including in each case the reasonable fees and out-of-pocket expenses of counsel with respect thereto, and (iii) all reasonable costs and expenses (including reasonable fees and expenses of counsel), if any, in connection with the enforcement of this Supplemental Indenture or any of the Program Agreements, and the other documents delivered thereunder or in connection therewith.

4.12 Further Assurances

Each of the parties hereto upon the request of the other party or parties hereto shall do, execute, acknowledge and deliver or cause to be done, executed acknowledged or delivered all such further acts, deeds, documents, assignments, transfers, conveyances, powers of attorney and assurances as may be reasonably necessary or desirable to effect or complete the consummation of the transactions contemplated by this Supplemental Indenture.

4.13 Limitation of Liability of Issuer Trustee

Each party hereto other than the Issuer acknowledges that the Issuer is a trust, and that Computershare Trust Company of Canada is the Issuer Trustee. The other parties hereto agree that the Issuer Trustee will not be subject to any liability whatsoever to them, in tort, contract or otherwise, in connection with the Issuer's assets or the trust activities, for any action taken or permitted by it to be taken, or for its failure to take any action; provided that the foregoing limitation will not apply in respect of any action or failure to act arising from or in connection with wilful misconduct, negligence or reckless disregard of a duty by the Issuer Trustee. The Issuer Trustee in doing anything or permitting anything to be done in respect of assets or the trust

activities is, and shall be conclusively deemed to be, acting as trustee of the Issuer and not in any other capacity. Except as to the extent provided in this Section 4.13, the Issuer Trustee will not be subject to any debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses against or with respect to the Issuer, arising out of anything done or permitted by it to be done or its failure to take any action in respect of the Issuer's assets or the trust activities and resort will be had solely to the Collateral for the payment or performance thereof. No property or assets of the Issuer Trustee, whether owned in its personal capacity or otherwise, will be subject to levy, execution or other enforcement procedure with regard to any obligation under this Supplemental Indenture. Nothing contained in this Section 4.13 shall be construed so as to limit the liability of the Issuer under this Supplemental Indenture. This Supplemental Indenture, and every deed, transfer, assignment, agreement or other instrument made pursuant hereto including, without limitation, the Series 2017-1 Senior Notes, made or purporting to be made by or creating an obligation of the Issuer or the Issuer Trustee on behalf of, or as trustee of, the Issuer shall be deemed and construed for all purposes as if made by the Issuer Trustee, in and only in its capacity as trustee of the Issuer. Any obligations of the Issuer Trustee hereunder or thereunder are non-recourse to the Issuer Trustee in its personal capacity.

4.14 Execution in Counterparts

This Supplemental Indenture may be executed in several counterparts, each of which when so executed shall be deemed to be an original and the counterparts together shall constitute one and the same instrument. This Supplemental Indenture may be executed and delivered by facsimile or other electronic transmission of a manually signed counterpart.

4.15 Delivery of Executed Copies

Each party acknowledges delivery of an executed copy of this Supplemental Indenture.

[signature page follows]

IN WITNESS WHEREOF the parties hereto have duly executed this Supplemental Indenture as of the date first above written.

FAIR HYDRO TRUST, by

ONTARIO POWER GENERATION INC.,
not in its individual capacity but solely as
Manager

By: _____
Name:
Title:

By: _____
Name:
Title:

BNY TRUST COMPANY OF CANADA, as
Indenture Trustee

By: _____
Name:
Title:

By: _____
Name:
Title:

SCHEDULE A

DEFINITIONS

"**AEOI Legislation**" has the meaning specified in Section 2.8(a) of this Supplemental Indenture.

"**Excluded Taxes**" has the meaning specified in Section 2.8(a) of this Supplemental Indenture.

"**FATCA**" has the meaning specified in Section 2.8(a) of this Supplemental Indenture.

"**Government of Canada Yield**" on any date means, in respect of the Series 2017-1 Senior Notes to be redeemed, the yield from the Series 2017-1 Redemption Date to ● **[par call date]**, compounded semi-annually and calculated in accordance with generally accepted Canadian financial practice, which a non-callable Government of Canada bond would carry if issued in dollars in Canada, at 100% of its principal amount on such date with a term to maturity equal to, or if no Government of Canada bond having an equal term to maturity exists, as close as possible to, the remaining term to ● **[par call date]** (calculated from the Series 2017-1 Redemption Date) of the Series 2017-1 Senior Notes, such yield being the average of the yields provided by two major Canadian investment dealers specified by the Issuer.

"**Interest Payment Date**" has the meaning specified in Section 2.2(l) of this Supplemental Indenture.

"**Issuer Indemnified Person**" has the meaning specified in Section 2.7.

"**Recipient**" has the meaning specified in Section 2.8(a) of this Supplemental Indenture.

"**Requisite Series 2017-1 Noteholders**" means Series 2017-1 Noteholders holding, in aggregate, at least **[50]**% of the Series 2017-1 Senior Notes then Outstanding.

"Series 2017-1 Canada Yield Price" means a price equal to the price of the Series 2017-1 Senior Notes calculated to provide a yield to ● [**par call date**], compounded semi-annually and calculated in accordance with generally accepted Canadian financial practice, equal to the Government of Canada Yield calculated at 10:00 a.m. (Toronto time) on the third Business Day preceding the Series 2017-1 Redemption Date specified in the notice of redemption delivered pursuant to Section ● of the Trust Indenture, plus ●%.

"**Series 2017-1 Noteholder**" means a Person in whose name a Series 2017-1 Senior Note is registered in the Note Register.

"**Series 2017-1 Redemption Date**" means a date fixed for redemption of the Series 2017-1 Senior Notes pursuant to Section ● of the Trust Indenture.

"**Series 2017-1 Senior Note**" means any one of the Series 2017-1 Senior Notes, executed by the Issuer and authenticated and delivered by or on behalf of the Indenture Trustee, substantially in the form of Schedule B.

"**Supplemental Indenture**" means this Supplemental Indenture, together with the Schedules hereto, as amended, supplemented, modified, restated or replaced from time to time, together with all schedules hereto and the expressions "hereof," "herein," "hereto," "hereunder," "hereby" and similar expressions refer to this Supplemental Indenture and not to any Article, Section, paragraph, subparagraph or clause hereof.

"**Termination Event**" means any Event of Default or any event which with the giving of notice or the passage of time, or both, could become an Event of Default.

SCHEDULE B

[FORM OF NOTE]

SERIES 2017-1 SENIOR NOTE

●

Supplemental Indenture (Long Term Subordinated).pdf

SUBORDINATED SERIES [2017-1] SUPPLEMENTAL INDENTURE

between

FAIR HYDRO TRUST

by

COMPUTERSHARE TRUST COMPANY OF CANADA
as Issuer Trustee

and

BNY TRUST COMPANY OF CANADA
as Indenture Trustee

SUPPLEMENTING THE TRUST INDENTURE DATED AS OF ●, 2017

AND PROVIDING FOR THE ISSUE OF
●% SUBORDINATED NOTES DUE ●, SERIES 2017-1
OF FAIR HYDRO TRUST

Made as of ●, 2017

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●% SUBORDINATED NOTES DUE ●, SERIES 2017-1

THIS SUBORDINATED NOTES SUPPLEMENTAL INDENTURE (this "**Supplemental Indenture**") is made as of ●, 2017, between **Computershare Trust Company of Canada** in its capacity as trustee of **Fair Hydro Trust**, a trust existing under the laws of the Province of Ontario (the "**Issuer**") and **BNY Trust Company of Canada**, a trust company existing under the laws of Canada (the "**Indenture Trustee**").

WHEREAS pursuant to the Trust Indenture dated as of ●, 2017 between the Issuer and the Indenture Trustee (as amended or restated from time to time, the "**Trust Indenture**"), provision was made for the issuance of Subordinated Notes from time to time in one or more Series by the execution and delivery of a Supplemental Indenture;

AND WHEREAS the parties hereto are entering into this Supplemental Indenture to provide for the creation and issuance of a Series of Subordinated Notes designated as the ●% Subordinated Notes due ●, Series 2017-1 (the "**Series 2017-1 Subordinated Notes**");

AND WHEREAS the foregoing recitals are made as statements of fact by the Issuer and not by the Indenture Trustee.

NOW THEREFORE THIS SUPPLEMENTAL INDENTURE WITNESSES and it is hereby covenanted, agreed and declared as follows:

ARTICLE 1
INTERPRETATION

1.1 Definitions

(a) For all purposes of this Supplemental Indenture, except as otherwise expressly provided or unless the context otherwise requires, the terms defined in Schedule A hereto have the meanings assigned to them in Schedule A and include the plural as well as the singular.

(b) The provisions of Section 1.1 of the Trust Indenture are applicable to this Supplemental Indenture. All terms used herein which are defined in the Trust Indenture, either directly or by reference therein, have the meanings assigned to them therein.

1.2 Interpretation

Subject to the next following sentences, this Supplemental Indenture is supplemental to the Trust Indenture and the Trust Indenture shall be read in conjunction with this Supplemental Indenture and all of the provisions of the Trust Indenture shall apply to and shall have effect in connection with this Supplemental Indenture in the same manner as if all of the provisions of the Trust Indenture and of this Supplemental Indenture were contained in one instrument. This Supplemental Indenture shall, unless the context otherwise requires, be subject to the interpretative provisions contained in Article I of the Trust Indenture. If any terms of the Trust Indenture are inconsistent with the express terms or provisions hereof, the terms and provisions of the Trust Indenture shall be, solely in respect of the Series 2017-1 Subordinated Notes, amended and supplemented so as to be consistent herewith. The provisions of this Supplemental

Indenture are applicable only in respect of the Series 2017-1 Subordinated Notes and not the Subordinated Notes of any other Series.

1.3 Application of this Supplemental Indenture

With respect to the Series 2017-1 Subordinated Notes only, the terms of the Trust Indenture are amended, supplemented, modified, restated and replaced to the extent applicable by the terms of this Supplemental Indenture in respect of the Series 2017-1 Subordinated Notes in accordance with Section 1.2 above.

ARTICLE 2
SERIES 2017-1 SUBORDINATED NOTES

2.1 Creation of Series 2017-1 Subordinated Notes

There is hereby created a Series of Subordinated Notes to be issued pursuant to the Trust Indenture and this Supplemental Indenture designated as the "**●%Subordinated Notes due ●, Series 2017-1**."

2.2 Principal Terms

In addition to and without limiting all of the provisions of this Supplemental Indenture, the Series 2017-1 Subordinated Notes will:

(a) be designated as set out in Section 2.1;

(b) be Subordinated Notes and will not be subordinated to any other Class, Series or Tranche of Notes other than all Senior Notes;

(c) not be divided into Tranches;

(d) **[be unlimited in principal amount but initially][NTD: To be discussed]** will have an aggregate principal amount of $● to be issued on the date hereof, provided that the principal amount of the Series 2017-1 Subordinated Notes may be increased after the date hereof without the consent of any holder of Series 2017-1 Subordinated Notes or any holder of any Notes of any other Class, Series or Tranche;

(e) be denominated in Canadian dollars;

(f) not be listed on any securities exchange;

(g) be issued in the form of a Global Note; **[NTD: To be confirmed.]**

(h) be substantially in the form of Schedule B, with such appropriate insertions, omissions, substitutions and variations as may be approved by the Indenture Trustee;

(i) bear interest at a rate of ●% per annum;

(j) accrue interest from the later of: (i) ●, 2017 and (ii) the last Interest Payment Date on which interest has been paid or made available for payment on the Notes;

(k) have interest paid in equal semi-annual instalments **[(except the initial interest payment)]** on the Payment Dates occurring in the months of April and October in each year (each, an "**Interest Payment Date**") commencing with the Payment Date occurring in the month of [**April/October**], 2018 in respect of the Series 2017-1 Subordinated Notes issued prior to such date;

(l) mature on, and have ● [**NTD: select a Payment Date]**, as their sole Principal Payment Date;

(m) have ● as their Principal Payment Default Date;

(n) have ● as their Principal Accumulation Date;

(o) have the following Principal Accumulation Amounts for each Payment Date on or after their Principal Accumulation Date:

Payment Date	**Principal Accumulation Amount**
Payment Date in the months of ●	$●
Payment Date in the months of ●	$●
Payment Date in the months of ●	$●
Payment Date in the months of ●	$●
Principal Payment Date	$●

(p) have a Record Date for each Interest Payment Date that is the last day of the calendar month preceding each Interest Payment Date;

(q) **[be redeemable and subject to repurchase as provided in Section 2.6 below]**; and

(r) **[not be subject to defeasance and covenant defeasance as contemplated by Section ● of the Trust Indenture] [be subject to defeasance and covenant defeasance in accordance with Section ● of the Trust Indenture].**

2.3 Delivery

On the date of issuance of the Series 2017-1 Subordinated Notes, Series 2017-1 Subordinated Notes shall be executed, authenticated and delivered by the Issuer in accordance with Section 4.03 of the Trust Indenture.

2.4 Payment of Interest

The Issuer (except in case of payment of interest at maturity or as otherwise provided in the Trust Indenture, at which time payment of interest, less any taxes required by law to be deducted or withheld, may at the option of the Issuer be made upon presentation and surrender of the certificate representing the Series 2017-1 Subordinated Notes) will on each Interest Payment Date, make payment of such interest, less any taxes required by law to be deducted or withheld, by wire transfer to each holder of a Series 2017-1 Subordinated Note as of the Record Date. The payment by such wire transfer will satisfy and discharge the liability for interest upon such Series 2017-1 Subordinated Note to the extent of the sum represented thereby (plus the amount of any taxes deducted or withheld as aforesaid). Notwithstanding the foregoing, the Issuer, at its option, may cause the amount payable in respect of interest to be paid to a Noteholder in any other manner reasonably acceptable to the Indenture Trustee.

2.5 Payment of Principal

By 10:00 a.m. (Toronto time) on the Principal Payment Due Date, the Issuer will deposit with the Indenture Trustee all amounts required to be paid to the order of holders of Series 2017-1 Subordinated Notes on maturity on account of principal. The deposit of such funds will satisfy and discharge the liability for principal of the Series 2017-1 Subordinated Notes to the extent of the sum represented thereby.

2.6 [Redemption and Repurchase

[**NTD: Customary redemption/repurchase mechanics to be added to Trust Indenture as per OPG MTN indenture. Redemption below contemplates a par call]**

(a) At its option, at any time prior to ● **[par call date]**, the Issuer may redeem the Series 2017-1 Subordinated Notes in whole or, from time to time, in part, on payment of a redemption price equal to the greater of (i) the Series 2017-1 Canada Yield Price and (ii) par, together in each case with accrued and unpaid interest to the Series 2017-1 Redemption Date. At any time on or after ● **[par call date]**, the Issuer may redeem the Series 2017-1 Subordinated Notes in whole or, from time to time, in part, on payment of a redemption price equal to par, together with accrued and unpaid interest to the Series 2017-1 Redemption Date. The Issuer will give notice of redemption not more than 60 days and not less than 15 days before the date fixed for redemption. Less than all of the Series 2017-1 Subordinated Notes may be redeemed, if so redeemed, in accordance with Section ● of the Trust Indenture.

(b) The Issuer will be entitled at any time and from time to time to purchase for cancellation Series 2017-1 Subordinated Notes in the market (which may include purchases from or through an investment dealer or a firm holding membership on a recognized stock exchange) or by tender or by private contract at any price. Series 2017-1 Subordinated Notes that are so purchased will be cancelled and will not be re-issued. Less than all of the Series 2017-1 Subordinated Notes may be purchased, if so purchased, for cancellation in accordance with Section ● of the Trust Indenture.

(c) The Series 2017-1 Subordinated Notes will not be subject to repurchase pursuant to any sinking fund or any other required repayment provisions].

2.7 Indemnification by the Issuer

The Issuer agrees to indemnify and hold harmless the Indenture Trustee and each Series 2017-1 Noteholder and each of their respective officers, directors, agents and employees (each, an "**Issuer Indemnified Person**") from and against any loss, liability, expense, damage or injury suffered or sustained by such Issuer Indemnified Person by reason of (a) any acts, omissions or alleged acts or omissions arising out of, or relating to, activities of the Issuer pursuant to the Program Agreements to which it is a party; (b) a breach of any representation or warranty made or deemed made by the Issuer (or any of its officers) in any Program Agreement; or (c) a failure by the Issuer to comply with any applicable law or regulation or to perform its covenants, agreements, duties or obligations required to be performed or observed by it in accordance with the provisions of the Program Agreements, including, but not limited to, any judgment, award, settlement, reasonable attorneys' fees and other reasonable costs or expenses incurred in connection with the defense of any actual or threatened action, proceeding or claim, except to the extent such loss, liability, expense, damage or injury resulted from the gross negligence, bad faith or willful misconduct of such Issuer Indemnified Person or its officers, directors, agents, principals, employees or employers or includes any Excluded Taxes; provided that any payments made by the Issuer pursuant to this Section 2.7 shall be made solely from funds available pursuant to Section **[7.04]** or Section **[8.13]** of the Trust Indenture, shall be non-recourse other than with respect to such funds, and shall not constitute a claim against the Issuer to the extent that such funds are insufficient to make such payment.

2.8 Taxes

(a) All payments by or on account of any obligation of the Issuer hereunder shall, to the extent allowed by law, be made free and clear of, and without deduction or withholding for or on account of Taxes, excluding (i) income taxes (including branch profit taxes, minimum taxes and taxes computed under alternative methods, at least one of which is based on or measured by net income), franchise taxes (imposed in lieu of income taxes), or any other Taxes based on or measured by the net income of any person legally entitled to receive such payments (each a "**Recipient**") as a result of a present or former connection between the Recipient and the jurisdiction of the Governmental Authority imposing such Taxes (other than any such connection arising solely from the Recipient having executed, delivered or performed its obligations or received a payment under, disposed of, or enforced, this Supplemental Indenture); (ii) any withholding or deduction imposed pursuant to (A) Sections 1471 to 1474 of the U.S. Internal Revenue Code of 1986, as amended ("**FATCA**"), or any successor version thereof, or any similar legislation imposed by any other Governmental Authority, or (B) any treaty, law or regulation or other official guidance enacted by Canada implementing FATCA or any intergovernmental agreement with respect to FATCA or any similar legislation imposed by any other Governmental Authority, including, for greater certainty, the Canada-United States Enhanced Tax Information Exchange Agreement Implementation Act (Canada) and Parts XVIII and XIX of the Income Tax Act (Canada), as amended (collectively, and including FATCA, the "**AEOI Legislation**"); and (iii) any interest, penalties and additions to Taxes in respect of (i) and (ii) (all such excluded Taxes being hereinafter called "**Excluded Taxes**"). If any Taxes, other than Excluded Taxes, are required to be withheld from any amounts payable to a Recipient hereunder, the amounts so payable to the Recipient shall be increased, and the Recipient shall be entitled to be paid by the Issuer the amount of such increase to the extent necessary to yield to the Recipient (after payment of all such Taxes other than Excluded Taxes) interest or any such

other amounts payable hereunder or thereunder at the rates or in the amounts specified hereunder. Whenever any Taxes are payable on or with respect to amounts distributed to a Recipient, as promptly as possible thereafter the Issuer shall send to such Recipient a certified copy of an original official receipt showing payment thereof.

(b) If a payment by or on account of any obligation of the Issuer hereunder would be subject to withholding Taxes under any AEOI Legislation if the Recipient were to fail to comply with the applicable reporting requirements of any AEOI Legislation, such Recipient shall deliver to the Issuer at the time or times prescribed by law and at such time or times reasonably requested by the Issuer such documentation prescribed by applicable law and such additional documentation reasonably requested by the Issuer as may be necessary for the Issuer to comply with its obligations under any AEOI Legislation and to determine that such Recipient has complied with its obligations under any AEOI Legislation, or to determine the amount to deduct and withhold from such payment. If any form or certification it previously delivered by a Recipient expires or becomes obsolete or inaccurate in any respect, the Recipient shall update such form or certification or promptly notify the Issuer in writing of its legal inability to do so.

(c) If a Recipient is legally entitled to receive a refund of any Taxes (other than Excluded Taxes) as to which it has been indemnified or with respect to which additional amounts have been paid to it hereunder or it is legally entitled to receive a credit or deduction with respect to such Taxes or with respect to such additional amounts that have been paid hereunder (in each case pursuant to Section 2.8(a)), it shall use commercially reasonable efforts to obtain or claim such refund, credit or deduction and pay over such refund or the value of such credit or deduction to the Issuer, together with any interest thereon.

2.9 Conditions Precedent to Issuance of Series 2017-1 Subordinated Notes

On or prior to the initial issuance of Series 2017-1 Subordinated Notes hereunder, the following conditions precedent shall be satisfied:

(a) Each of the conditions precedent set forth in Section 5.01 of the Trust Indenture in respect of the incurrence of Funding Obligations under this Supplemental Indenture shall have been satisfied.

(b) The representations and warranties set forth in Section 12.01 of the Trust Indenture and Section 3.1 of this Supplemental Indenture shall be true and correct in all material respects, the Issuer shall be in compliance in all material respects with all of its covenants and obligations under the Program Agreements to which it is a party.

(c) The Series 2017-1 Subordinated Notes shall have been duly issued in accordance with the Trust Indenture and the Global Note representing the Series 2017-1 Subordinated Notes shall have been executed and delivered to the Depository (or as it may direct) for deposit into its [**Book-Based System**] for the benefit of the [**Beneficial Holders**] upon receipt by the Indenture Trustee of a [**Written Order**]. **[NTD: To be confirmed.]**

2.10 Acceleration Events

[NTD: Add series level acceleration provisions as discussed between Oslers and Torys.]

ARTICLE 3
REPRESENTATIONS AND WARRANTIES

3.1 Representations and Warranties of the Issuer

The Issuer hereby represents and warrants to the Indenture Trustee and each Series 2017-1 Noteholder that:

(a) no Termination Event has occurred or would result from the purchase of the Issuer Investment Interest on the date hereof;

(b) the Issuer Trustee and the Issuer are not non-residents of Canada within the meaning of the *Income Tax Act* (Canada);

(c) all Tax returns (federal, provincial and local) required to be filed with respect to the Issuer have been filed and there has been paid or adequate provision made for the payment of all material Taxes, assessments and other governmental charges in respect of the Issuer;

(d) the Issuer has not changed its name;

(e) the Issuer has complied in all material respects with all laws in respect of the conduct of its business and ownership of its property including the Issuer Investment Interest; and

(f) to its knowledge, there is no set of circumstances existing at such time that will have an Adverse Effect or will reasonably be expected to have an Adverse Effect.

3.2 Survival

The representations and warranties set out in this Article 3 shall survive the execution hereof.

ARTICLE 4
GENERAL

4.1 Acceptance of Trust

The Indenture Trustee accepts the trusts in this Supplemental Indenture and agrees to carry out and discharge the same upon the terms and conditions set out in this Supplemental Indenture and in accordance with the Trust Indenture.

4.2 Confirmation of Trust Indenture

The Trust Indenture, as amended and supplemented by this Supplemental Indenture, is in all respects confirmed.

4.3 Indenture Trustee Not Bound to Act

The Indenture Trustee shall retain the right not to act and shall not be liable for refusing to act if, due to a lack of information or for any other reason whatsoever, the Indenture Trustee, in its sole judgment, acting reasonably, determines that such act may cause it to be in non-compliance with any applicable anti-money laundering, anti-terrorism or economic sanction legislation, regulation or guideline. Further, should the Indenture Trustee, in its sole judgment, acting reasonably, determine at any time that its acting under this Supplemental Indenture has resulted in non-compliance with any applicable anti-money laundering, anti-terrorism or economic sanction legislation, regulation or guideline, then it shall have the right to resign pursuant to the terms of Section ● of the Trust Indenture, provided that (i) the Indenture Trustee's written notice of resignation shall describe the circumstances of such non-compliance; and (ii) if such circumstances are rectified to the Indenture Trustee's satisfaction within 15 Business Days of the receipt of such notice of resignation, then such notice shall not be effective.

4.4 Successor and Assigns

This Supplemental Indenture shall be binding upon and inure to the benefit of the parties hereto and their respective permitted successors and assigns.

4.5 Specified Creditors

The Indenture Trustee (on behalf of the Series 2017-1 Noteholders) hereby acknowledges and agrees that the Series 2017-1 Noteholders are Specified Creditors under the Trust Indenture and their entitlements as a Specified Creditor are subject to the provisions applicable to Specified Creditors under the Trust Indenture including, without limitation, Section **[7.11]** (Payments Held in Trust), Section **[8.12]** (Limitation on Suits), Sections **[7.04 and 8.13]** (Payment Priorities), Section **[8.14]** (Limited Recourse) and Section **[16.01]** (No Petition).

4.6 Waiver

Without limiting the requirements of Section 11.02 of the Trust Indenture, no waiver of any provision of this Supplemental Indenture or consent to any departure by the Issuer from any provision of this Supplemental Indenture will be effective (in whole or in part) unless in writing and signed by the Requisite Series 2017-1 Noteholders. Such waiver will be effective only in the specific instance, for the specific purpose and for the specific length of time for which it is given by the Requisite Series 2017-1 Noteholders.

4.7 Notice

All notices, requests, instructions and demands to or upon any party hereto to be effective shall be given in the case of the Issuer and the Indenture Trustee, in the manner set forth in Article 16 of the Trust Indenture.

4.8 No Waiver: Remedies

No failure on the part of any party to exercise, and no delay in exercising, any power, right or remedy hereunder will operate as a waiver thereof; nor will any single or partial exercise of any

such power, right or remedy hereunder preclude any other or further exercise thereof or the exercise of any other power, right or remedy. The rights and remedies herein provided are cumulative and not exclusive of any remedies provided by applicable law.

4.9 Entire Agreement

This Supplemental Indenture, the Trust Indenture and the other Program Agreements contain the entire agreement between the parties relative to the subject matter hereof and supersede all prior and contemporaneous agreements, term sheets, commitments, understandings, negotiations and discussions, whether oral or written. There are no warranties, representations or other agreements between the parties in connection with the subject matter hereof except as specifically set forth in this Supplemental Indenture, the Trust Indenture and the other Program Agreements.

4.10 Governing Law and Attornment

This Supplemental Indenture shall be governed by, and construed in accordance with, the laws of the Province of Ontario and the parties hereby attorn to the jurisdiction of the courts of Ontario.

4.11 Expenses

The Issuer agrees to pay on demand to the Indenture Trustee: (a) all reasonable costs and expenses in connection with the preparation, execution, and delivery of this Supplemental Indenture; (b) all reasonable costs and expenses in connection with any amendments of or waivers or consents under this Supplemental Indenture or the Program Agreements, including in each case the reasonable fees and out-of-pocket expenses of counsel with respect thereto, and (iii) all reasonable costs and expenses (including reasonable fees and expenses of counsel), if any, in connection with the enforcement of this Supplemental Indenture or any of the Program Agreements, and the other documents delivered thereunder or in connection therewith.

4.12 Further Assurances

Each of the parties hereto upon the request of the other party or parties hereto shall do, execute, acknowledge and deliver or cause to be done, executed acknowledged or delivered all such further acts, deeds, documents, assignments, transfers, conveyances, powers of attorney and assurances as may be reasonably necessary or desirable to effect or complete the consummation of the transactions contemplated by this Supplemental Indenture.

4.13 Limitation of Liability of Issuer Trustee

Each party hereto other than the Issuer acknowledges that the Issuer is a trust, and that Computershare Trust Company of Canada is the Issuer Trustee. The other parties hereto agree that the Issuer Trustee will not be subject to any liability whatsoever to them, in tort, contract or otherwise, in connection with the Issuer's assets or the trust activities, for any action taken or permitted by it to be taken, or for its failure to take any action; provided that the foregoing limitation will not apply in respect of any action or failure to act arising from or in connection with wilful misconduct, negligence or reckless disregard of a duty by the Issuer Trustee. The Issuer Trustee in doing anything or permitting anything to be done in respect of assets or the trust

activities is, and shall be conclusively deemed to be, acting as trustee of the Issuer and not in any other capacity. Except as to the extent provided in this Section 4.13, the Issuer Trustee will not be subject to any debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses against or with respect to the Issuer, arising out of anything done or permitted by it to be done or its failure to take any action in respect of the Issuer's assets or the trust activities and resort will be had solely to the Collateral for the payment or performance thereof. No property or assets of the Issuer Trustee, whether owned in its personal capacity or otherwise, will be subject to levy, execution or other enforcement procedure with regard to any obligation under this Supplemental Indenture. Nothing contained in this Section 4.13 shall be construed so as to limit the liability of the Issuer under this Supplemental Indenture. This Supplemental Indenture, and every deed, transfer, assignment, agreement or other instrument made pursuant hereto including, without limitation, the Series 2017-1 Subordinated Notes, made or purporting to be made by or creating an obligation of the Issuer or the Issuer Trustee on behalf of, or as trustee of, the Issuer shall be deemed and construed for all purposes as if made by the Issuer Trustee, in and only in its capacity as trustee of the Issuer. Any obligations of the Issuer Trustee hereunder or thereunder are non-recourse to the Issuer Trustee in its personal capacity.

4.14 Execution in Counterparts

This Supplemental Indenture may be executed in several counterparts, each of which when so executed shall be deemed to be an original and the counterparts together shall constitute one and the same instrument. This Supplemental Indenture may be executed and delivered by facsimile or other electronic transmission of a manually signed counterpart.

4.15 Delivery of Executed Copies

Each party acknowledges delivery of an executed copy of this Supplemental Indenture.

[signature page follows]

IN WITNESS WHEREOF the parties hereto have duly executed this Supplemental Indenture as of the date first above written.

FAIR HYDRO TRUST by

ONTARIO POWER GENERATION INC.,
not in its individual capacity but solely as
Manager

By: _____
Name:
Title:

By: _____
Name:
Title:

BNY TRUST COMPANY OF CANADA, as
Indenture Trustee

By: _____
Name:
Title:

By: _____
Name:
Title:

SCHEDULE A

DEFINITIONS

"**AEOI Legislation**" has the meaning specified in Section 2.8(a) of this Supplemental Indenture.

"**Excluded Taxes**" has the meaning specified in Section 2.8(a) of this Supplemental Indenture.

"**FATCA**" has the meaning specified in Section 2.8(a) of this Supplemental Indenture.

"**Government of Canada Yield**" on any date means, in respect of the Series 2017-1 Subordinated Notes to be redeemed, the yield from the Series 2017-1 Redemption Date to ● **[par call date]**, compounded semi-annually and calculated in accordance with generally accepted Canadian financial practice, which a non-callable Government of Canada bond would carry if issued in dollars in Canada, at 100% of its principal amount on such date with a term to maturity equal to, or if no Government of Canada bond having an equal term to maturity exists, as close as possible to, the remaining term to ● **[par call date]** (calculated from the Series 2017-1 Redemption Date) of the Series 2017-1 Subordinated Notes, such yield being the average of the yields provided by two major Canadian investment dealers specified by the Issuer.

"**Interest Payment Date**" has the meaning specified in Section 2.2(l) of this Supplemental Indenture.

"**Issuer Indemnified Person**" has the meaning specified in Section 2.7.

"**Recipient**" has the meaning specified in Section 2.8(a) of this Supplemental Indenture.

"**Requisite Series 2017-1 Noteholders**" means Series 2017-1 Noteholders holding, in aggregate, at least **[50]**% of the Series 2017-1 Subordinated Notes then Outstanding.

"Series 2017-1 Canada Yield Price" means a price equal to the price of the Series 2017-1 Subordinated Notes calculated to provide a yield to ● [**par call date**], compounded semi-annually and calculated in accordance with generally accepted Canadian financial practice, equal to the Government of Canada Yield calculated at 10:00 a.m. (Toronto time) on the third Business Day preceding the Series 2017-1 Redemption Date specified in the notice of redemption delivered pursuant to Section ● of the Trust Indenture, plus ●%.

"**Series 2017-1 Noteholder**" means a Person in whose name a Series 2017-1 Subordinated Note is registered in the Note Register.

"**Series 2017-1 Redemption Date**" means a date fixed for redemption of the Series 2017-1 Subordinated Notes pursuant to Section ● of the Trust Indenture.

"**Series 2017-1 Subordinated Note**" means any one of the Series 2017-1 Subordinated Notes, executed by the Issuer and authenticated and delivered by or on behalf of the Indenture Trustee, substantially in the form of Schedule B.

"**Supplemental Indenture**" means this Supplemental Indenture, together with the Schedules hereto, as amended, supplemented, modified, restated or replaced from time to time, together with all schedules hereto and the expressions "hereof," "herein," "hereto," "hereunder," "hereby" and similar expressions refer to this Supplemental Indenture and not to any Article, Section, paragraph, subparagraph or clause hereof.

"**Termination Event**" means any Event of Default or any event which with the giving of notice or the passage of time, or both, could become an Event of Default.

SCHEDULE B

[FORM OF NOTE]

SERIES 2017-1 SUBORDINATED NOTE

●

Supplemental Indenture (Short Term Senior).pdf

SENIOR SERIES 2017-1

SUPPLEMENTAL INDENTURE

between

FAIR HYDRO TRUST

by

COMPUTERSHARE TRUST COMPANY OF CANADA
as Issuer Trustee

and

BNY TRUST COMPANY OF CANADA
as Indenture Trustee

and

●
as Administrative Agent

and

CERTAIN CP CONDUIT PURCHASERS,
CERTAIN NON-CONDUIT PURCHASERS
CERTAIN FUNDING AGENTS
and CERTAIN GROUP BANKS

Made as of ●, 2017

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FLOATING RATE VARIABLE FUNDING, SERIES 2017-1 SENIOR NOTES

SUPPLEMENTAL INDENTURE made as of ●, 2017, between **Computershare Trust Company of Canada**, a trust company established under the laws of Canada (the "**Issuer Trustee**"), in its capacity as trustee of **Fair Hydro Trust**, a trust existing under the laws of the Province of Ontario (in such capacity, the "**Issuer**"), **BNY Trust Company of Canada**, a trust company established under the laws of Canada (the "**Indenture Trustee**"), ●, in its capacity as the administrative agent for the Purchaser Groups (the "**Administrative Agent**"), the **Non-Conduit Purchasers** from time to time party hereto, the **CP Conduit Purchasers** from time to time party hereto, and the **Funding Agents** for the CP Conduit Purchaser Groups from time to time party hereto.

WHEREAS pursuant to the Trust Indenture, provision was made for the issuance of Notes from time to time;

AND WHEREAS pursuant to the Trust Indenture, Notes may be issued in one or more Series by the execution and delivery of a Supplemental Indenture;

AND WHEREAS the parties hereto are entering into this Supplemental Indenture to provide for the creation and issuance of the Series 2017-1 Senior Notes;

NOW THEREFORE THIS SUPPLEMENTAL INDENTURE WITNESSES and it is hereby covenanted, agreed and declared as follows:

ARTICLE 1
INTERPRETATION

1.1 Definitions

(a) For all purposes of this Supplemental Indenture, except as otherwise expressly provided or unless the context otherwise requires, the terms defined in Schedule A hereto have the meanings assigned to them in Schedule A and include the plural as well as the singular.

(b) The provisions of Section 1.1 of the Trust Indenture are applicable to this Supplemental Indenture. Except as otherwise expressly provided or unless the context otherwise requires, all terms used herein which are defined in the Trust Indenture, either directly or by reference therein, have the meanings assigned to them in the Trust Indenture.

1.2 Interpretation

Subject to the next following sentences, this Supplemental Indenture is supplemental to the Trust Indenture and the Trust Indenture shall be read in conjunction with this Supplemental Indenture and all of the provisions of the Trust Indenture shall apply to and shall have effect in connection with this Supplemental Indenture in the same manner as if all of the provisions of the Trust Indenture and of this Supplemental Indenture were contained in one instrument. This Supplemental Indenture shall, unless the context otherwise requires, be subject to the interpretative provisions contained in Article 1 of the Trust Indenture. If any terms of the Trust Indenture are inconsistent with the express terms or provisions hereof, the terms and provisions of the Trust

Indenture shall be, solely in respect of the Series 2017-1 Senior Notes, amended and supplemented so as to be consistent herewith. The provisions of this Supplemental Indenture are applicable only in respect of the Series 2017-1 Senior Notes and not the Notes of any other Series.

1.3 Application of this Supplemental Indenture

With respect to the Series 2017-1 Senior Notes only, the terms of the Trust Indenture are amended, supplemented, modified, restated and replaced to the extent applicable by the terms of this Supplemental Indenture in respect of the Series 2017-1 Senior Notes in accordance with Section 1.2 above.

ARTICLE 2
PRINCIPAL TERMS

2.1 Creation of Series 2017-1 Senior Notes

There is hereby created a Series of Notes to be issued pursuant to the Trust Indenture and this Supplemental Indenture designated as the "**Floating Rate Variable Funding Senior Notes, Series 2017-1**."

2.2 Principal Terms

In addition to and without limiting any of the provisions of this Supplemental Indenture, the Series 2017-1 Senior Notes:

(a) will be designated as set out in Section 2.1;

(b) will be Senior Notes;

(c) will have a Stated Principal Amount equal to the Series 2017-1 Maximum Principal Amount;

(d) will not be issued in Classes or Tranches;

(e) will be denominated in Canadian dollars;

(f) will not be listed on any securities exchange;

(g) will have an Initial Dollar Principal Amount equal to the Series 2017-1 Initial Principal Amount;

(h) will be issued as definitive notes and will not be in the form of a Global Note;

(i) will be issued as Registered Notes and will be without coupons;

(j) will be Senior Notes and will not be subordinated to any other Series, Class or Tranche of Notes;

(k) will be substantially in the form of Schedule B, with such appropriate insertions, omissions, substitutions and variations as may be approved by the Issuer;

(l) will have each Payment Date as an Interest Payment Date;

(m) will have a Principal Payment Due Date that is the Series 2017-1 Principal Payment Due Date;

(n) will have a Principal Payment Default Date that is the Series 2017-1 Principal Payment Default Date; and

(o) will have no minimum issue amount.

ARTICLE 3
NOTE PURCHASE FACILITY

3.1 Purchase of Notes by the Purchasers

(a) ***Initial Purchases***. Subject to the terms and conditions of this Supplemental Indenture, including delivery of notice in accordance with Section 3.3, (i) each Non-Conduit Purchaser shall purchase, and each CP Conduit Purchaser may, in its sole discretion, purchase a Series 2017-1 Senior Note in an amount equal to all or a portion of its Commitment Percentage of the Series 2017-1 Initial Principal Amount on any Business Day during the period from the date hereof to and including **[December 15, 2017]**, and if any such CP Conduit Purchaser shall have notified the Administrative Agent and the Funding Agent with respect to such CP Conduit Purchaser that it has elected not to fund a Series 2017-1 Senior Note in an amount equal to its Commitment Percentage of the Series 2017-1 Initial Principal Amount on the Closing Date, the Group Bank with respect to such CP Conduit Purchaser shall fund on the Closing Date that portion of such Series 2017-1 Senior Note not to be funded by such CP Conduit Purchaser; and (ii) thereafter, (A) each Non-Conduit Purchaser shall maintain its Series 2017-1 Senior Note, subject to increase or decrease during the period from the Closing Date to and including the Commitment Expiry Date, in accordance with the provisions of this Supplemental Indenture, (B) if a CP Conduit Purchaser shall have purchased a Series 2017-1 Senior Note on the Closing Date, such CP Conduit Purchaser may, in its sole discretion, maintain its Series 2017-1 Senior Note, subject to increase or decrease during the period from the Closing Date to and including the Commitment Expiry Date, in accordance with the provisions of this Supplemental Indenture, and (C) the Group Bank shall maintain its Series 2017-1 Senior Note with respect to its Related Purchaser Group, subject to increase or decrease during the period from the Closing Date to and including the Commitment Expiry Date, in accordance with the provisions of this Supplemental Indenture. Payments by the Non-Conduit Purchasers, the CP Conduit Purchasers and/or the Group Bank with respect to the CP Conduit Purchasers shall be made in immediately available funds on the Closing Date in accordance with Section 3.3(d).

(b) ***Maximum Purchaser Group Principal Amounts***. Notwithstanding anything to the contrary contained in this Supplemental Indenture, at no time shall a Purchaser Group be required to make the initial purchase of a Series 2017-1 Senior Note or increase its Purchaser Group Principal Amount if the sum of (x) Purchaser Group Principal Amount with respect to such Purchaser Group, after giving effect to such purchase or increase, and (y) the sum of any unfunded Delayed Amounts with respect to such Purchaser Group, would exceed the Maximum Purchaser Group Principal Amount with respect to such Purchaser Group at such time.

3.2 Delivery

(a) On the Closing Date (or on any later date that any Purchaser Group becomes a party to this Supplemental Indenture), Series 2017-1 Senior Notes shall be executed, authenticated and delivered by the Issuer in accordance with Section 4.03 of the Trust Indenture (i) in the case of a CP Conduit Purchaser Group, in the name of the Funding Agent with respect to such CP Conduit Purchaser Group (or as otherwise requested by such CP Conduit Purchaser Group and agreed to by the Issuer) in an amount equal to the Maximum Purchaser Group Principal Amount with respect to such CP Conduit Purchaser Group and delivered to such Funding Agent; or (ii) in the case of a Non-Conduit Purchaser Group, in the name of the Related Non-Conduit Purchaser in an amount equal to the Maximum Purchaser Group Principal Amount with respect to such Related Non-Conduit Purchaser Group and delivered to such Related Non-Conduit Purchaser.

(b) The Administrative Agent shall maintain a record of the actual Purchaser Group Principal Amount outstanding with respect to each Purchaser Group and the actual Series 2017-1 Principal Amount outstanding on any date of determination, which, absent manifest error, shall constitute prima facie evidence of the outstanding Purchaser Group Principal Amounts and outstanding Series 2017-1 Principal Amount from time to time. Upon a written request from the Indenture Trustee, the Administrative Agent shall provide in writing the identity of the Purchaser Groups, the related Funding Agents for each CP Conduit Purchaser Group, the Purchaser Group Principal Amount for each Purchaser Group and the Commitment Percentage with respect to such Purchaser Group to the Indenture Trustee.

3.3 Procedure for Initial Issuance and for Increasing the Series 2017-1 Principal Amount

(a) (i) On any Business Day prior to [**December 15, 2017**], in the case of a Non-Conduit Purchaser Group, the Related Non-Conduit Purchaser hereby agrees, or in the case of a CP Conduit Purchaser Group, the CP Conduit Purchaser in such CP Conduit Purchaser Group may agree, in its sole discretion, and the Group Bank with respect to such CP Conduit Purchaser hereby agrees, that it will purchase a Series 2017-1 Senior Note for an initial purchase price equal to the Commitment Percentage with respect to such Purchaser Group of the Series 2017-1 Initial Principal Amount upon the request of the Issuer (the date on which the initial purchase occurs being referred to as the "**Closing Date**"); provided, however, that the Issuer shall have given the Administrative Agent (with a copy to the Indenture Trustee) irrevocable written notice (effective upon receipt), by email communication, substantially in the form of Schedule C no later than **[3:00 p.m.]** (Toronto time) on the third Business Day prior to the Closing Date. The written notice of the initial purchase of the Series 2017-1 Senior Notes shall state (x) the Closing Date, and (y) the initial total purchase price to be paid for the Series 2017-1 Senior Notes (the "**Series 2017-1 Initial Principal Amount**"); and (ii) subject to Section 3.3(e), on any Business Day during the period from the initial purchase of the Series 2017-1 Senior Notes hereunder to and including the Commitment Expiry Date, in the case of a Non-Conduit Purchaser Group, the Related Non-Conduit Purchaser hereby agrees, or in the case of a CP Conduit Purchaser Group, the CP Conduit Purchaser in such CP Conduit Purchaser Group may agree, in its sole discretion, and the Group Bank with respect to such CP Conduit Purchaser hereby agrees that the Purchaser Group Principal Amount with respect to such Purchaser Group may be increased by an amount equal to the Commitment Percentage with respect to such Purchaser Group of the Increase Amount (an "**Increase**"), upon the request of the Issuer (each date on which an increase in the Series 2017-1 Principal Amount occurs hereunder being herein referred to as the "**Increase Date**" applicable to such Increase); provided, however, that the Issuer shall have given the Administrative Agent (with

a copy to the Indenture Trustee) irrevocable (other than as specified in Section 3.3(e)) written notice (effective upon receipt), by email communication, substantially in the form of Schedule C (an "**Increase Notice**") no later than **[3:00 p.m.]** (Toronto time) on (A) with respect to a Deferrable Increase Notice, the third Business Day prior to such Increase Date, or (B) with respect to a Non-Deferrable Increase Notice, the second Business Day prior to such Increase Date. Each Increase Notice shall state (x) the Increase Date, (y) the proposed amount of the increase in the Series 2017-1 Principal Amount (an "**Increase Amount**"), (z) whether a Delayed Funding Notice may be delivered in connection with such Increase pursuant to Section 3.3(e) and whether the Increase is to fund a Transfer (a "**Transfer Increase**") or is in respect of a Refinancing (a "**Refinancing Increase**"). The Commitment Percentage with respect to any Purchaser Group of the Increase Amount set forth in any Non-Deferrable Increase Notice shall not exceed such Purchaser Group's Non-Deferrable Draw Amount as of the related Increase Date.

(b) If a CP Conduit Purchaser elects not to fund the full amount of its Commitment Percentage of a requested Increase, such CP Conduit Purchaser shall notify the Administrative Agent and the Funding Agent with respect to such CP Conduit Purchaser, and the Group Bank with respect to such CP Conduit Purchaser shall fund the portion of the Commitment Percentage with respect to such Related Purchaser Group of such Increase not funded by such CP Conduit Purchaser.

(c) No Purchaser Group shall be required to increase its Purchaser Group Principal Amount on any Increase Date hereunder unless:

(i) such Purchaser Group's Commitment Percentage of such Increase Amount is (A) equal to $1,000,000 or more, or (B) if less than $1,000,000, the difference between the Maximum Purchaser Group Principal Amount with respect to such Purchaser Group and the Purchaser Group Principal Amount with respect to such Purchaser Group; and

(ii) after giving effect to such Increase Amount, the sum of the (x) the Purchaser Group Principal Amount, and (y) any unfunded Delayed Amounts with respect to such Purchaser Group would not exceed the Maximum Purchaser Group Principal Amount with respect to such Purchaser Group;

(d) Upon receipt of any notice required by Section 3.3(a) or permitted by Section 3.3(e) from the Issuer, the Administrative Agent shall forward (by email communication) a copy of such notice to each Non-Conduit Purchaser and the Funding Agent with respect to each CP Conduit Purchaser Group (or, with respect to any notice pursuant to Section 3.3(e) requiring a Delayed Funding Purchaser Group to decrease its Delayed Amount, the applicable Non-Conduit Purchaser or Funding Agent), no later than **[5:00 p.m.]** (Toronto time) on the Business Day received. After receipt by any Funding Agent with respect to a CP Conduit Purchaser Group of such notice from the Administrative Agent, such Funding Agent shall, so long as the conditions set forth in Sections 3.3(a) and (c) and Article 4 are satisfied, promptly provide notice by email communication to the related CP Conduit Purchaser and the related Group Bank, of the Increase Date and of such CP Conduit Purchaser Group's Commitment Percentage of the Closing Date or Increase Amount, as applicable. Subject to Section 3.3(e), if such CP Conduit Purchaser elects to fund all or a portion of its Commitment Percentage of the Series 2017-1 Initial Principal Amount or the Increase Amount, as applicable, such CP Conduit Purchaser shall pay in immediately available funds its Commitment Percentage (or any portion thereof) of the amount of the Series 2017-1 Initial Principal Amount or Increase Amount, as applicable, on the Closing Date or the

related Increase Date, as applicable, to the Funding Agent with respect to such CP Conduit Purchaser Group for remittance to the Issuer for application in accordance with Section 3.3(h). Subject to Section 3.3(e), if such CP Conduit Purchaser does not fund the full amount of the Commitment Percentage of such CP Conduit Purchaser Group of the Series 2017-1 Initial Principal Amount or an Increase Amount, as applicable, and the related Group Bank is required to fund the portion thereof not funded by the CP Conduit Purchaser, such Group Bank shall pay in immediately available funds such portion on the Closing Date or the related Increase Date, as applicable, to the Funding Agent with respect to such CP Conduit Purchaser Group. Each Funding Agent shall remit the amounts received by it from its CP Conduit Purchaser or the related Group Bank pursuant to this Section 3.3(d) to the Issuer for application in accordance with Section 3.3(h). Subject to Section 3.3(e), so long as the conditions set forth in Sections 3.3(a) and (c) and Article 4 are satisfied, each Non-Conduit Purchaser shall pay in immediately available funds the Commitment Percentage of such Non-Conduit Purchaser of the amount of the Series 2017-1 Initial Principal Amount or Increase Amount, as applicable, on the Closing Date or the Increase Date, as applicable, to the Issuer for application in accordance with Section 3.3(h).

(e) Notwithstanding any of the foregoing, any Group Bank or Non-Conduit Purchaser who shall have previously notified the Issuer in writing that it or any related Program Support Provider may, in the absence of the Group Bank or Non-Conduit Purchaser having the ability to deliver Delayed Funding Notices hereunder, incur charges under, or in anticipation of, Basel III (which may include external charges incurred by the Group Bank, Non-Conduit Purchaser or Program Support Provider or internal charges incurred by any of their businesses) in respect of its Commitment hereunder or any agreement to support such Commitment, or in respect of its interest in the Series 2017-1 Senior Notes, based on its "liquidity coverage ratio" calculated under Basel III, may, upon receipt of any Deferrable Increase Notice pursuant to Section 3.3(a), notify the Issuer in writing (a "**Delayed Funding Notice**") on or prior to **[12:00 noon]** (Toronto time) on the second Business Day preceding the related Increase Date, of its intent to fund an amount up to its Commitment Percentage of the related Increase Amount (such amount, subject to any adjustment described below, the "**Delayed Amount**") on a Business Day that is on or before the thirty-third (33rd) day following the Increase Date specified in such Deferrable Increase Notice (the "**Delayed Funding Date**") rather than on such Increase Date. If any Group Bank or Non-Conduit Purchaser provides a Delayed Funding Notice to the Issuer following the Issuer's delivery of an Increase Notice pursuant to Section 3.3(a), the Issuer may with written notice to the Administrative Agent delivered prior to 3:00 pm on the second Business Day preceding such Increase Date, (x) decrease the Increase Amount with respect to such Deferrable Increase Notice (or revoke such Deferrable Increase Notice by decreasing the Increase Amount to zero), and/or (y) require any Group Bank or Non-Conduit Purchaser who has provided a Delayed Funding Notice to reduce the Delayed Amount with respect to such Increase by an amount no greater than the Non-Deferrable Draw Amount with respect to such Purchaser Group as of the related Increase Date. In the event that the Increase Amount with respect to such Deferrable Increase Notice is reduced, but not to zero, then any Delayed Amount with respect to any Purchaser Group shall be reduced on a pro rata basis unless otherwise specified by the Issuer pursuant to clause (y) above. No Purchaser Group that has provided a Delayed Funding Notice in respect of an Increase (each a "**Delayed Funding Purchaser Group**") shall be considered to be in default of its obligation to fund its Delayed Amount pursuant to this Section 3.3 unless and until it has failed to fund the Delayed Amount (and/or the Delayed Funding Reimbursement Amount with respect to such Delayed Amount) on or before the Delayed Funding Date.

(f) If (i) one or more Delayed Funding Purchaser Groups provides a Delayed Funding Notice to the Issuer in respect of any Increase Date; and (ii) the Issuer shall not have decreased the related Increase Amount to zero or required each such Delayed Funding Purchaser Group to reduce the Delayed Amount with respect to such Increase to zero, in each case, pursuant to Section 3.3(e), the Administrative Agent shall, by no later than **[12:00 noon]** (Toronto time) on the Business Day preceding such Increase Date, direct each Purchaser Group that is not a Delayed Funding Purchaser Group with respect to such Increase Date (each a "**Non-Delayed Funding Purchaser Group**") to fund an additional portion of such Increase Amount on such Increase Date equal to such Non-Delayed Funding Purchaser Group's proportionate share (based upon the Maximum Purchaser Group Principal Amount with respect to such Non-Delayed Funding Purchaser Group relative to the sum of the Maximum Purchaser Group Principal Amounts with respect to all Non-Delayed Funding Purchaser Groups) of the aggregate Delayed Amounts with respect to such Increase Date; provided that no Non-Delayed Funding Purchaser Group shall be required to fund any portion of the aggregate Delayed Amounts that would cause its Purchaser Group Principal Amount to exceed its Maximum Purchaser Group Principal Amount. Subject to Section 3.3(a), in the case of a Non-Delayed Funding Purchaser Group that is a Non-Conduit Purchaser, such Non-Conduit Purchaser hereby agrees, or, in the case of a Non-Delayed Funding Purchaser Group that is a CP Conduit Purchaser Group, the CP Conduit in such CP Conduit Purchaser Group may agree, in its sole discretion, and the Group Bank in such CP Conduit Purchaser Group hereby agrees, to fund such portion of the Increase Amount on such Increase Date.

(g) After the Non-Delayed Funding Purchaser Groups fund a Delayed Amount on any Increase Date in accordance with Section 3.3(f), the Delayed Funding Purchaser Group in respect of such Delayed Amount will be obligated to fund the Delayed Funding Reimbursement Amount with respect to such Delayed Amount on or before its Delayed Funding Date, irrespective of whether the Scheduled Commitment Expiry Date shall have occurred on or prior to such Delayed Funding Date or the Issuer would be able to satisfy the conditions set forth in Section 3.3(c) to an Increase in an amount equal to such Delayed Funding Reimbursement Amount on such Delayed Funding Date. Such Delayed Funding Purchaser Group shall fund such Delayed Funding Reimbursement Amount on such Delayed Funding Date by paying such amount to the Administrative Agent in immediately available funds, and the Administrative Agent shall distribute such funds to each such Non-Delayed Funding Purchaser Group, *pro rata* based on the relative amount of such Delayed Amount funded by such Non-Delayed Funding Purchaser Group on such Increase Date pursuant to Section 3.3(f).

(h) The Issuer shall apply amounts paid to it pursuant to Sections 3.3(d) and 3.3(f) in the following order of priority:

(i) As to an amount equal to ●% of the amounts paid to pursuant to Sections 3.3(d) and 3.3(f), by deposit to the Program Cash Reserve Account; **[NTD: OPG would like to understand what this account is needed for]** and

(ii) as to the balance, in respect of the proceeds of the initial purchase of the Series 2017-1 Notes or a Transfer Increase, by application to payment of the purchase price payable by the Issuer to the IESO under the Master Transfer and Servicing Agreement in respect of the related Transfer and, in respect of the proceeds of a Refinancing Increase, by deposit to the Refinancing Account.

3.4 Procedure for Decreasing the Series 2017-1 Principal Amount; Optional Termination

(a) In the case of a Non-Conduit Purchaser Group, the Related Non-Conduit Purchaser hereby agrees, and in the case of a CP Conduit Purchaser Group, each of the CP Conduit Purchasers and the Group Bank in such CP Conduit Purchaser Group hereby agrees, that the Purchaser Group Principal Amount with respect to such Purchaser Group may be decreased on any Payment Date by such Purchaser Group's Commitment Percentage of a Decrease Amount (a "**Decrease**"), upon the request of the Issuer. Each Payment Date on which a Decrease in the Series 2017-1 Principal Amount occurs hereunder being herein referred to as the "**Decrease Date**" applicable to such Decrease; provided, however, that the Issuer shall have given the Administrative Agent (with a copy to the Indenture Trustee) irrevocable written notice (effective upon receipt), by email communication, substantially in the form of Schedule D (a "**Decrease Notice**") no later than **[3:00 p.m.]** (Toronto time) on the second Business Day prior to any Payment Date that is a Decrease Date. Each Decrease Notice shall state (x) the Decrease Date, and (y) the proposed amount of the decrease in the Series 2017-1 Principal Amount (a "**Decrease Amount**").

(b) Upon each Decrease, the Administrative Agent shall indicate in its records such Decrease and the Purchaser Group Principal Amount outstanding with respect to each Purchaser Group after giving effect to such Decrease. Upon receipt of any notice required by Section 3.4(a) from the Issuer, the Administrative Agent shall forward (by email communication) a copy of such notice to each Non-Conduit Purchaser and the Funding Agent with respect to each CP Conduit Purchaser Group, no later than **[1:00 p.m.]** (Toronto time) on the Business Day received.

(c) On any Business Day, the Issuer shall have the right to deliver an irrevocable written notice (an "**Optional Termination Notice**") to the Administrative Agent in which the Issuer declares that the Commitments shall terminate on the date (the "**Optional Termination Date**") set forth in such notice (which date, in any event, shall be a Payment Date not less than twenty (20) Business Days from the date on which such notice is delivered). Upon receipt of any Optional Termination Notice from the Issuer, the Administrative Agent shall promptly notify each Non-Conduit Purchaser and the Funding Agent with respect to each CP Conduit Purchaser Group thereof.

3.5 Increases and Reductions of the Commitments

(a) The Issuer may from time to time request that any Purchaser Group agree to increase its Maximum Purchaser Group Principal Amount. An increase in such amount shall be effective hereunder if such Purchaser Group shall have agreed in its sole discretion to such increase.

(b) On any Business Day, the Issuer may, upon two (2) Business Days' prior written notice to the Administrative Agent (effective upon receipt) (with copies to the Indenture Trustee) reduce the Series 2017-1 Maximum Principal Amount in an amount equal to $10,000,000 or a whole multiple of $1,000,000 in excess thereof; provided that no such termination or reduction shall be permitted if, after giving effect thereto and to any reduction in the Series 2017-1 Principal Amount on such date, the Purchaser Group Principal Amount with respect to any Purchaser Group would exceed the Maximum Purchaser Group Principal Amount with respect to such Purchaser Group then in effect. Any reduction in the Series 2017-1 Maximum Principal Amount shall be made on a pro rata basis to the Maximum Purchaser Group Principal Amounts with respect to the Purchaser Groups, based on the Maximum Purchaser Group Principal Amount with respect to each Purchaser Group. Once reduced, the Maximum Purchaser Group Principal Amounts may not be

subsequently reinstated without each such Purchaser Group's prior written consent, which consent shall be granted or not in the sole discretion of such Purchaser Group.

(c) The Issuer may extend the Scheduled Commitment Expiry Date only with the prior written consent of the Administrative Agent, each Non-Conduit Purchaser and each Funding Agent.

3.6 Interest; Fees and Other Amounts

(a) Interest shall be payable on the Series 2017-1 Senior Notes on each Payment Date.

(b) The Issuer shall pay to each CP Conduit Purchaser Group and each Non-Conduit Purchaser, on each Payment Date, a commitment fee with respect to the preceding Billing Period (the "**Commitment Fee**") during the period from the Closing Date to and including the Commitment Expiry Date in an amount equal to the sum of the following amounts calculated for each day during such Billing Period: (x) the Commitment Fee Rate, multiplied by (y) the amount by which Maximum Purchaser Group Principal Amount with respect to such Purchaser Group on such day exceeds the Purchaser Group Principal Amount with respect to such Purchaser Group on such day, and divided by (z) 365. The Commitment Fees shall be payable monthly in arrears on each Payment Date.

(c) The Funding Agent with respect to each CP Conduit Purchaser Group and each Non-Conduit Purchaser shall provide written notice to the Issuer and the Paying Agent no later than two (2) Business Days prior to each Payment Date, setting forth the Group Monthly Interest and the Group Monthly Fees and Other Amounts with respect to its Related Purchaser Group with respect to the Payment Date.

(d) The Monthly Interest shall be included in each calculation of the Interest Accrual Amount (Senior) for the purposes of Section 7.04(e)(iii) of the Trust Indenture and shall be payable pursuant to Sections 7.05(a), 7.08(a)(i) or 8.13(c) of the Trust Indenture, as applicable. On each Payment Date, the Monthly Fees and Other Amounts shall be payable in respect of the Series 2017-1 Notes pursuant to Sections 7.04(e)(iii) or 8.13(c) of the Trust Indenture, as applicable. On each Payment Date the Paying Agent shall, subject to availability of funds, pay to each CP Conduit Purchaser Group and each Non-Conduit Purchaser its Group Monthly Interest and its Group Monthly Fees and Other Amounts with respect to the Payment Date; provided that if the amounts available to pay such Group Monthly Interest and Group Monthly Fees and Other Amounts are insufficient, the amounts available shall be paid *pro rata* based on the amounts owing to each Purchaser Group.

3.7 Accumulation and Repayment of Principal

(a) For the purposes of the Trust Indenture and the Series 2017-1 Notes:

(i) for each Payment Date before the Principal Accumulation Date, the Principal Accumulation Amount shall be the Principal Payment Amount for such Payment Date; and

(ii) for each Payment Date on or after the Principal Accumulation Date, the Principal Accumulation Amount shall be the greater of (x) the Principal Payment Amount

for such Payment Date, and (y) the Principal Accumulation Amount, for such Payment Date.

(b) Each Payment Date where the Principal Payment Amount is not nil shall be a Principal Payment Date in respect of the Series 2017-1 Notes. On each Principal Payment Date in respect of the Series 2017-1 Notes, the Paying Agent shall pay to each Non-Conduit Purchaser and each Funding Agent with respect to its Related Purchaser Group, such Purchaser Group's Pro Rata Share of the Principal Payment Amount for such Principal Payment Date out of funds allocated to the Series 2017-1 Senior Notes pursuant to Sections **7.04(e)(iv)(A), 7.06(a) or 8.13(d)** of the Trust Indenture, as applicable, in repayment of the principal amount of the Series 2017-1 Notes.

3.8 Indemnification by the Issuer

The Issuer agrees to indemnify and hold harmless the Indenture Trustee, the Administrative Agent, each Funding Agent, each CP Conduit Purchaser, the Group Bank, each Non-Conduit Purchaser and each of their respective officers, directors, agents and employees (each, an "**Issuer indemnified person**") from and against any loss, liability, expense, damage or injury suffered or sustained by such Issuer indemnified person by reason of (a) any acts, omissions or alleged acts or omissions arising out of, or relating to, activities of the Issuer pursuant to the Program Agreements to which it is a party; (b) a breach of any representation or warranty made or deemed made by the Issuer (or any of its officers) in any Program Agreement; or (c) a failure by the Issuer to comply with any applicable law or regulation or to perform its covenants, agreements, duties or obligations required to be performed or observed by it in accordance with the provisions of the Program Agreements, including, but not limited to, any judgment, award, settlement, reasonable attorneys' fees and other reasonable costs or expenses incurred in connection with the defense of any actual or threatened action, proceeding or claim, except to the extent such loss, liability, expense, damage or injury resulted from the gross negligence, bad faith or willful misconduct of such Issuer indemnified person or its officers, directors, agents, principals, employees or employers as determined by a court of competent jurisdiction in a final non-appealable judgement or includes any Excluded Taxes; provided that any payments made by the Issuer pursuant to this Section 3.8 shall be made solely from funds available pursuant to Section **[7.04] or [8.13]** of the Trust Indenture, as applicable, shall be non-recourse other than with respect to such funds, and shall not constitute a claim against the Issuer to the extent that such funds are insufficient to make such payment.

3.9 Funding Agents

(a) The Funding Agent with respect to each CP Conduit Purchaser Group is hereby authorized to determine the Group Monthly Interest and Group Monthly Fees and Other Amounts with respect to each Payment Date and such CP Conduit Purchaser Group. Any such determination by a Funding Agent, absent manifest error, shall constitute prima facie evidence of the accuracy of the calculation. Furthermore, the Funding Agent with respect to each CP Conduit Purchaser Group will maintain records sufficient to identify the percentage interest of the related CP Conduit Purchaser and the Group Bank with respect to such CP Conduit Purchaser Group holding an interest in the Series 2017-1 Senior Note registered in the name of such Funding Agent and any amounts owing thereunder.

(b) Upon receipt of funds on each Payment Date, each Funding Agent shall pay such funds to the related CP Conduit Purchaser and/or the related Group Bank owed such funds. If a Funding

Agent shall have paid to any CP Conduit Purchaser or Group Bank any funds that (i) must be returned for any reason (including bankruptcy); or (ii) exceeds that which such CP Conduit Purchaser or Group Bank was entitled to receive, such amount shall be promptly repaid to such Funding Agent by such CP Conduit Purchaser or Group Bank.

3.10 Taxes

(a) All payments by or on account of any obligation of the Issuer hereunder shall, to the extent allowed by law, be made free and clear of, and without deduction or withholding for or on account of Taxes, excluding (i) income taxes (including branch profit taxes, minimum taxes and taxes computed under alternative methods, at least one of which is based on or measured by net income), franchise taxes (imposed in lieu of income taxes), or any other Taxes based on or measured by the net income of any person legally entitled to receive such payments (each a "**Recipient**") as a result of a present or former connection between the Recipient and the jurisdiction of the Governmental Authority imposing such Taxes (other than any such connection arising solely from the Recipient having executed, delivered or performed its obligations or received a payment under, disposed of, or enforced, this Supplemental Indenture); (ii) any withholding or deduction imposed pursuant to (A) Sections 1471 to 1474 of the U.S. Internal Revenue Code of 1986, as amended ("**FATCA**"), or any successor version thereof, or any similar legislation imposed by any other Governmental Authority, or (B) any treaty, law or regulation or other official guidance enacted by Canada implementing FATCA or any intergovernmental agreement with respect to FATCA or any similar legislation imposed by any other Governmental Authority, including, for greater certainty, the Canada-United States Enhanced Tax Information Exchange Agreement Implementation Act (Canada) and Parts XVIII and XIX of the Income Tax Act (Canada), as amended (collectively, and including FATCA, the "**AEOI Legislation**"); and (iii) any interest, penalties and additions to Taxes in respect of (i) and (ii) (all such excluded Taxes being hereinafter called "**Excluded Taxes**"). If any Taxes, other than Excluded Taxes, are required to be withheld from any amounts payable to a Recipient hereunder, the amounts so payable to the Recipient shall be increased, and the Recipient shall be entitled to be paid by the Issuer the amount of such increase to the extent necessary to yield to the Recipient (after payment of all such Taxes other than Excluded Taxes) interest or any such other amounts payable hereunder or thereunder at the rates or in the amounts specified hereunder. Where the amount payable by the Issuer is increased in accordance with the previous sentence, the Group Monthly Interest shall be increased by the amount of such increase. Whenever any Taxes are payable on or with respect to amounts distributed to a Recipient, as promptly as possible thereafter the Issuer shall send to such Recipient a certified copy of an original official receipt showing payment thereof.

(b) If a payment by or on account of any obligation of the Issuer hereunder would be subject to withholding Taxes under any AEOI Legislation if the Recipient were to fail to comply with the applicable reporting requirements of any AEOI Legislation, such Recipient shall deliver to the Issuer at the time or times prescribed by law and at such time or times reasonably requested by the Issuer such documentation prescribed by applicable law and such additional documentation reasonably requested by the Issuer as may be necessary for the Issuer to comply with its obligations under any AEOI Legislation and to determine that such Recipient has complied with its obligations under any AEOI Legislation, or to determine the amount to deduct and withhold from such payment. If any form or certification it previously delivered by a Recipient expires or becomes obsolete or inaccurate in any respect, the Recipient shall update such form or certification or promptly notify the Issuer in writing of its legal inability to do so.

(c) If a Recipient is legally entitled to receive a refund of any Taxes (other than Excluded Taxes) as to which it has been indemnified or with respect to which additional amounts have been paid to it hereunder or it is legally entitled to receive a credit or deduction with respect to such Taxes or with respect to such additional amounts that have been paid hereunder (in each case pursuant to Section 3.10(a)), it shall use commercially reasonable efforts to obtain or claim such refund, credit or deduction and pay over such refund or the value of such credit or deduction to the Issuer, together with any interest thereon.

3.11 Increased Costs

(a) (i) If any Regulatory Change (x) subjects any Affected Party to any charge or withholding on or with respect to any Support Facility or this Supplemental Indenture or an Affected Person's obligations under a Support Facility or this Supplemental Indenture, or changes the basis of taxation of payments to any Affected Person of any amounts payable under any Support Facility or this Supplemental Indenture Agreement (except for changes in the rate of tax on the overall net income of an Affected Person or Excluded Taxes) or (y) imposes, modifies or deems applicable any reserve, assessment, fee, tax, insurance charge, special deposit or similar requirement against assets of, deposits with or for the account of, or liabilities of an Affected Person, or credit extended by an Affected Person pursuant to a Support Facility or this Supplemental Indenture or (z) imposes any other condition the result of which is to increase the cost to an Affected Person of performing its obligations under a Support Facility or this Supplemental Indenture, or to reduce the rate of return on an Affected Person's capital or assets as a consequence of its obligations under a Support Facility or this Supplemental Indenture, or to reduce the amount of any sum received or receivable by an Affected Person under a Support Facility or this Supplemental Indenture, or to require any payment calculated by reference to the amount of interests or loans held or interest received by it, then, upon written request by such Affected Party (through the Funding Agent for its Purchaser Group if the Affected Party is a Program Support Provider, CP Conduit Purchaser or Group Bank) of a written request therefore to the Issuer, such Affected Party (through the Funding Agent for its Purchaser Group if the Affected Party is a Program Support Provider, CP Conduit Purchaser or Group Bank) shall be entitled to be paid, such amounts charged to such Affected Party or such amounts to otherwise compensate such Affected for such increased cost or such reduction, no later than the Payment Date following receipt by the Issuer of such request for compensation under this Section 3.11(a)(i), if such request is received by the Issuer no later than five (5) Business Days prior to the end of the Interest Period related to such Payment Date, and otherwise on the following Payment Date.

(ii) The Issuer acknowledges that any Affected Party may implement, as an internal institutional matter, measures in anticipation of a final or proposed Regulatory Change (including, without limitation, the imposition of internal charges on such Affected Party's interest or obligations under any Support Agreement or this Supplemental Indenture) and may commence recognizing the incurrence of charges by seeking compensation under Section 3.11(a)(i) in connection with such measures, in advance of the effective date of such final or proposed Regulatory Change, and the Issuer agrees that such charges or compensation shall be payable, to the related Funding Agent, for the benefit of Affected Party, following demand therefor without regard to whether such proposed Regulatory Change has been adopted or whether such effective date has occurred; provided, that (I) the Affected Party shall provide thirty (30) days prior written notice to the Issuer of its intent to impose or incur any such charges or compensation, (II) an Affected Party shall not be compensated for any such amount pursuant to this subsection 3.11(a)(ii)

relating to any period ending, and of which such Affected Party has had knowledge, more than ninety (90) days prior to the date that such Affected Party provided the Issuer with the written notice contemplated by the preceding clause (I) of this subsection 3.11(a)(ii), (III) if, after the payment by the Trust of any charges or compensation pursuant to this subsection 3.11(a)(ii), either (A) the Issuer requests in writing that the applicable Affected Party re-compute any such charge or compensation in light of differences between a proposed Regulatory Change and the final effective version thereof or (B) the applicable Affected Party determines that the amount of the charge imposed on and required to be compensated by the Issuer exceeds the amount necessary to compensate it for the applicable Regulatory Change as contemplated by subsection 3.11(a)(i), then (x) the amount of such charge or compensation shall, from and after such determination, be reduced by the amount of such excess and (y) such Affected Party shall, within thirty (30) days of such determination, either repay the amount of such excess or credit the amount of such excess against future charges under this subsection 3.11(a)(ii). The Issuer further acknowledges that any charge or compensation demanded hereunder may take the form of a monthly charge to be assessed by such Affected Party.

(b) Each Affected Party claiming increased amounts described in subsection 3.11(a) of this Supplemental Indenture will furnish to the Issuer (together with its request for compensation) a certificate prepared in good faith setting forth the basis and the calculation of the amount (in reasonable detail) of each request by such Affected Party for any such increased amounts referred to in subsection 3.11(a) hereof. Any such certificate shall be conclusive absent manifest error. Failure on the part of any Affected Party to demand compensation for any amount pursuant to subsection 3.11(a) hereof with respect to any period shall not constitute a waiver of such Affected Party's right to demand compensation with respect to such period.

ARTICLE 4
CONDITIONS PRECEDENT

4.1 Conditions Precedent to Initial Purchase of Series 2017-1 Senior Notes

On or prior to the initial purchase of Series 2017-1 Senior Notes hereunder, the following conditions precedent shall be satisfied:

(a) Each of the conditions precedent set forth in Section 5.01 of the Trust Indenture in respect of the incurrence of Funding Obligations under this Supplemental Indenture shall have been satisfied.

(b) The Administrative Agent and each of the Funding Agents shall have received:

(i) executed copies of the Fee Letter, this Supplemental Indenture and copies of each of the other Program Agreements certified by an Authorized Officer of the Issuer;

(ii) certificates of status or compliance or other similar documents issued by the applicable governmental authority to evidence that each of the Issuer Trustee, the IESO and the Manager is validly existing pursuant to the laws of the jurisdiction of their respective establishment or incorporation;

(iii) a copy of the incorporating documents and all amendments thereto and applicable by-laws of each of the Issuer Trustee, the IESO and the Manager certified by an Authorized Officer of the applicable entity;

(iv) a copy of the Declaration of Trust certified by an Authorized Officer of the Issuer;

(v) copies of resolutions of the board of directors of the IESO and the Manager approving and authorizing the execution, delivery and performance of each Program Agreement they are party to, in each case certified by an Authorized Officer of the applicable entity;

(vi) incumbency certificates for each of the Issuer Trustee, the Manager and the IESO executing this Supplemental Indenture and any other Program Agreements and the other documents to be delivered by either the Issuer Trustee, the Manager or the IESO thereunder, in each case showing their names, offices and specimen signatures on which certificates the Administrative Agent and the Purchaser Groups shall be entitled to conclusively rely until such time as the Administrative Agent and the Funding Agents receive a replacement certificate meeting the requirements of this Section 4.1(b)(vi);

(vii) the following Opinions of Counsel:

(A) the opinion of external counsel to the Manager as to the non-consolidation of the Issuer with the Manager in the event of the insolvency of the Manager in form and substance satisfactory to the Administrative Agent and the Funding Agents;

(B) the opinion of external counsel to the IESO as to the Investment Asset acquired by the Issuer not being subject to the claims of creditors of the IESO in form and substance satisfactory to the Administrative Agent and the Funding Agents;

(C) favourable opinions of external counsel to the Manager covering general corporate matters, the due execution and delivery of, and the enforceability of, each of the Program Agreements to which the Manager, the Issuer and the Issuer Trustee are party which opinion, as to certain matters, may rely on opinion of internal counsel to the Manager and the Issuer Trustee; and

(D) a favourable opinion of external counsel to the Province with respect to the due authorization, execution, delivery and enforceability of the Change of Law Protection Agreement in form and substance satisfactory to the Administration Agent and the Funding Agents;

(viii) a certificate of an Authorized Officer of the Manager confirming that the representations and warranties set forth in Section **[12.01]** of the Trust Indenture and Section 5.1 of this Supplemental Indenture are true and correct in all material respects, that the Issuer is in compliance in all material respects with all of its covenants and obligations under the Program Agreements to which it is a party and that no Termination Event has occurred; and

(ix) such additional documents, instruments, certificates or letters as the Administrative Agent or any Funding Agent may reasonably request.

(c) The representations and warranties set forth in Section **[12.01]** of the Trust Indenture and Section 5.1 of this Supplemental Indenture shall be true and correct in all material respects, the Issuer shall be compliance in all material respects with all of its covenants and obligations under the Program Agreements to which it is a party and no Termination Event shall have occurred.

(d) The Series 2017-1 Senior Notes shall have been duly issued in accordance with the Trust Indenture and each Funding Agent and Non-Conduit Purchaser shall have received its Series 2017-1 Senior Note registered in its name or a nominee in a face amount equal to its Maximum Purchaser Group Principal Amount.

(e) After giving effect to the purchase, the covenant of the Issuer in Section 6.1(d) will be satisfied.

(f) All fees payable on or before the Closing Date pursuant to the Fee Letter shall have been paid in full (or arrangements satisfactory to the Administrative Agent and the Funding Agents have been made).

(g) The Rating Agency Condition shall have been satisfied in respect of the initial purchase.

4.2 Conditions Precedent to each Increase under Series 2017-1 Senior Notes

On or prior to each Increase, the following conditions precedent shall be satisfied:

(a) the Administrative Agent shall have received an Increase Notice;

(b) no Termination Event shall have occurred or would occur after giving effect to such Increase;

(c) the Increase Date in respect of the Increase is prior to the Commitment Expiry Date;

(d) if the Increase is identified as a Transfer Increase in the Increase Notice, then the related Transfer under the Master Transfer and Servicing Agreement shall have been completed or contemporaneously completed; and

(e) after giving effect to the Increase, the Rating Agency Condition will be satisfied.

The Issuer's acceptance of funds in connection with each Increase occurring on any Increase Date shall constitute a representation and warranty by the Issuer to the Administrative Agent and the Purchaser Groups as of such Increase Date that all of the conditions contained in Section 3.3(a) and this Section 4.2 are satisfied.

ARTICLE 5
REPRESENTATIONS AND WARRANTIES

5.1 Representations and Warranties of the Issuer

The Issuer hereby represents and warrants to the Administrative Agent and the Purchaser Groups as of the Closing Date, and shall be deemed to represent and warrant to the Administrative Agent and the Purchaser Groups on each Increase Date, that:

(a) no Termination Event has occurred or would result from the initial purchase of the Issuer Investment Interest on the Closing Date or any increase in the Issuer Investment Interest on an Increase Date, as applicable;

(b) the Issuer is not a non-resident of Canada within the meaning of the *Income Tax Act* (Canada);

(c) all tax returns (federal, provincial and local) required to be filed with respect to the Issuer have been filed and there has been paid or adequate provision made for the payment of all material Taxes in respect of the Issuer;

(d) the Issuer has complied in all material respects with all laws in respect of the conduct of its business and ownership of its property including the Issuer Investment Interest;

(e) all information provided to the Administrative Agent and the Purchaser Groups by or on behalf of the Issuer in respect of the Issuer Investment Interest is and will be true and accurate in all material respects; and

(f) to its knowledge, there is no set of circumstances existing at such time that will have an Adverse Effect or will reasonably be expected to have an Adverse Effect.

5.2 Representations and Warranties of the Purchasers

Each Purchaser Group member represents and warrants to the Issuer as of the Closing Date, and shall be deemed to represent and warrant to the Issuer on each Increase Date, that:

(a) it is resident in Ontario or is otherwise subject to the securities legislation of the Province of Ontario;

(b) it is purchasing the applicable Series 2017-1 Senior Notes (i) as principal for its own account and not for the benefit of any other "person" (as defined in the *Securities Act* (Ontario)) or company; and (ii) for cash consideration in excess of $150,000; and

(c) it was not created and is not being used solely to purchase or hold securities in reliance on the exemption from the prospectus and dealer registration requirements contained in Section 2.10 of National Instrument 45-106 − Prospectus and Registration Exemptions.

5.3 Survival

The representations and warranties set out in this Article 5 shall survive the execution hereof.

ARTICLE 6
COVENANTS

6.1 Covenants of the Issuer

(a) The Issuer shall promptly provide to the Administrative Agent, each Funding Agent and each Non-Conduit Purchaser (in multiple copies if requested) copies of all material reports, notices, financial statements and other documents delivered by the IESO to the Issuer with respect to the Issuer Investment Interest or pursuant to the Master Transfer and Servicing Agreement.

(b) The Issuer shall provide to the Administrative Agent, each Funding Agent and each Non-Conduit Purchaser (in multiple copies, if requested) such other information, documents, records or reports respecting the Issuer Investment Interest, the Issuer or the IESO which is in the possession or under the control of the Issuer or the Manager, as the Administrative Agent, a Funding Agent or a Non-Conduit Purchaser may from time to time reasonably request.

(c) The Issuer shall furnish to the Administrative Agent, each Funding Agent and each Non-Conduit Purchaser promptly after known to the Issuer or the Manager, information with respect to any action, suit or proceeding involving the Manager, the Issuer or the IESO or any of their respective Affiliates by or before any court or any Governmental Authority which, if adversely determined, would have an Adverse Effect.

(d) The Issuer will, at all times, cause the aggregate outstanding principal amount of Subordinated Funding Obligations and Junior Subordinated Funding Obligations to be not less than twenty-five percent (25)% of the aggregate outstanding principal amount of all Issuer Funding Obligations. **[NTD: OPG has discussed with Dealers.]**

(e) The Issuer will not make any amendments to the Funding Obligation Agreements governing any outstanding Subordinated Funding Obligations or Junior Subordinated Funding Obligations without the prior written consent of the Requisite Series 2017-1 Noteholders, such consent not to be unreasonably withheld or delayed.

(f) The Issuer will not hold or own, directly or indirectly, any share or equity security of, or any equity interest in, any Person.

(g) The Issuer confirms that this Supplemental Indenture is a Warehouse Facility Agreement. The Issuer will not enter into any other Warehouse Facility Agreement creating Senior Funding Obligations without the prior written consent of the Requisite Series 2017-1 Noteholders unless the Commitment Expiry Date has occurred.

[NTD: OPG understands that there will be another covenant that following Principal Payment Due Date proceeds of any financings must be applied to repay these notes in priority to any other use of funds.]

ARTICLE 7
AGENTS

7.1 Administrative Agent

(a) Each of the Non-Conduit Purchasers, CP Conduit Purchasers, the Group Banks and the Funding Agents hereby irrevocably designates and appoints the Administrative Agent as the agent of such Person under this Supplemental Indenture and irrevocably authorizes the Administrative Agent, in such capacity, to take such action on its behalf under the provisions of this Supplemental Indenture and to exercise such powers and perform such duties as are expressly delegated to the Administrative Agent by the terms of this Supplemental Indenture, together with such other powers as are reasonably incidental thereto. Notwithstanding any provision to the contrary elsewhere in this Supplemental Indenture, the Administrative Agent shall not have any duties or responsibilities except those expressly set forth herein, or any fiduciary relationship with any Non-Conduit Purchaser, any CP Conduit Purchaser, any Group Bank or any Funding Agent, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Supplemental Indenture or otherwise exist against the Administrative Agent.

(b) The Administrative Agent may execute any of its duties under this Supplemental Indenture by or through agents or attorneys in fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties. The Administrative Agent shall not be responsible for the negligence or misconduct of any agents or attorneys-in-fact selected by it with reasonable care.

(c) Neither the Administrative Agent nor any of its officers, directors, employees, agents, attorneys in fact or Affiliates shall be (i) liable for any action lawfully taken or omitted to be taken by it or such Person under or in connection with the Trust Indenture, this Supplemental Indenture or any other Program Agreement (except to the extent that any of the foregoing are found by a final and nonappealable decision of a court of competent jurisdiction to have resulted from its or such Person's own gross negligence or willful misconduct) or (ii) responsible in any manner to any of the Non-Conduit Purchasers, the CP Conduit Purchasers, the Group Banks or the Funding Agents for any recitals, statements, representations or warranties made by the Issuer, the IESO, the Manager or any officer thereof contained in this Supplemental Indenture or any other Program Agreement or in any certificate, report, statement or other document referred to or provided for in, or received by the Administrative Agent under or in connection with, this Supplemental Indenture or any other Program Agreement or for the value, validity, effectiveness, genuineness, enforceability or sufficiency of this Supplemental Indenture, any other Program Agreement, or for any failure of any of the Issuer, the Manager or the IESO to perform its obligations hereunder or thereunder. The Administrative Agent shall not be under any obligation to any Non-Conduit Purchaser, any CP Conduit Purchaser, any Group Bank or any Funding Agent to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Supplemental Indenture, any other Program Agreement or to inspect the properties, books or records of the Issuer, the Manager or the IESO.

(d) The Administrative Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing, resolution, notice, consent, certificate, affidavit, letter or electronic message, statement, order or other document or conversation believed by it to be genuine and correct and to have been signed, sent or made by the proper Person or Persons and upon advice and statements of legal counsel (including, without limitation, counsel to the Issuer, the Manager or the IESO), independent accountants and other experts selected by the Administrative Agent.

(e) The Administrative Agent shall not be deemed to have knowledge or notice of the occurrence of any Termination Event unless the Administrative Agent has received written notice from a Non-Conduit Purchaser, a CP Conduit Purchaser, a Group Bank, a Funding Agent, the Issuer or the Manager referring to the Trust Indenture or this Supplemental Indenture, describing such Termination Event and stating that such notice is a "notice of a Termination Event". In the event that the Administrative Agent receives such a notice, the Administrative Agent shall give notice thereof to the Non-Conduit Purchasers, the Funding Agents, the Issuer Trustee and the Manager.

(f) Each of the Non-Conduit Purchasers, the CP Conduit Purchasers, the Group Banks and the Funding Agents expressly acknowledges that neither the Administrative Agent nor any of its officers, directors, employees, agents, attorneys in fact or Affiliates has made any representations or warranties to it and that no act by the Administrative Agent hereinafter taken, including any review of the affairs of the Issuer, the Manager or the IESO shall be deemed to constitute any representation or warranty by the Administrative Agent to any such Person. Each of the Non-Conduit Purchasers, the CP Conduit Purchasers, the Group Banks and the Funding Agents represents to the Administrative Agent that it has, independently and without reliance upon the Administrative Agent or any other Non-Conduit Purchaser, CP Conduit Purchaser, Group Bank or Funding Agent and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, operations, property, financial and other condition and creditworthiness of the Issuer, the Manager and the IESO and made its own decision to enter into this Supplemental Indenture. Each of the Non-Conduit Purchasers, the CP Conduit Purchasers, the Group Banks and the Funding Agents also represents that it will, independently and without reliance upon the Administrative Agent or any other Non-Conduit Purchaser, CP Conduit Purchaser, Group Bank or Funding Agent, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Supplemental Indenture and the other Program Agreements, and to make such investigation as it deems necessary to inform itself as to the business, operations, property, financial and other condition and creditworthiness of the Issuer, the Manager and the IESO. Except for notices, reports and other documents expressly required to be furnished to the Non-Conduit Purchasers and the Funding Agents by the Administrative Agent hereunder, the Administrative Agent shall have no duty or responsibility to provide any Non-Conduit Purchaser, any CP Conduit Purchaser, any Group Bank or any Funding Agent with any credit or other information concerning the business, operations, property, condition (financial or otherwise), prospects or creditworthiness of the Issuer, the Manager or the IESO which may come into the possession of the Administrative Agent or any of its officers, directors, employees, agents, attorneys in fact or Affiliates.

(g) The Administrative Agent and its Affiliates may make loans to, accept deposits from and generally engage in any kind of business with the Issuer, the Manager and the IESO as though the Administrative Agent were not the Administrative Agent hereunder. With respect to any Series 2017-1 Senior Note held by the Administrative Agent, the Administrative Agent shall have the same rights and powers under this Supplemental Indenture and the other Program Agreements as any Group Bank or Funding Agent and may exercise the same as though it were not the Administrative Agent, and the terms "Group Bank," and "Funding Agent" shall include the Administrative Agent in its individual capacity.

(h) The Administrative Agent may resign as Administrative Agent at any time by giving 30 days' notice to the Non-Conduit Purchasers, the Funding Agents, the Indenture Trustee, the Issuer and the Manager. If ● shall resign as Administrative Agent under this Supplemental Indenture, then the Requisite Series 2017-1 Noteholders shall appoint a successor administrative agent from among the Non-Conduit Purchasers and Funding Agents, whereupon such successor agent shall succeed to the rights, powers and duties of the Administrative Agent, and the term "Administrative Agent" shall mean such successor agent effective upon such appointment and approval, and the former Administrative Agent's rights, powers and duties as Administrative Agent shall be terminated, without any other or further act or deed on the part of such former Administrative Agent or any of the parties to this Supplemental Indenture. If no successor administrative agent has accepted appointment as Administrative Agent prior to the effective date of the resignation of the Administrative Agent, the retiring Administrative Agent may appoint, after consulting with the Non-Conduit Purchasers and the Funding Agents, a successor Administrative Agent from among the Non-Conduit Purchasers and the Funding Agents. If no successor administrative agent has accepted appointment by the date which is thirty (30) days following a retiring Administrative Agent's notice of resignation, the retiring Administrative Agent's resignation shall nevertheless thereupon become effective and Manager shall assume and perform all of the duties of the Administrative Agent hereunder until such time, if any, as the Requisite Series 2017-1 Noteholders appoint a successor administrative agent as provided for above. After any retiring Administrative Agent's resignation as Administrative Agent, the provisions of this Article 7 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Administrative Agent under this Supplemental Indenture.

7.2 Funding Agents

(a) Each CP Conduit Purchaser and each Group Bank with respect to such CP Conduit Purchaser hereby irrevocably designates and appoints the Funding Agent set forth next to such CP Conduit Purchaser's name on Schedule E as the agent of such Person under this Supplemental Indenture and irrevocably authorizes such Funding Agent, in such capacity, to take such action on its behalf under the provisions of this Supplemental Indenture and to exercise such powers and perform such duties as are expressly delegated to such Funding Agent by the terms of this Supplemental Indenture, together with such other powers as are reasonably incidental thereto. Notwithstanding any provision to the contrary elsewhere in this Supplemental Indenture, each Funding Agent shall not have any duties or responsibilities except those expressly set forth herein, or any fiduciary relationship with any CP Conduit Purchaser or Group Bank and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Supplemental Indenture or otherwise exist against each Funding Agent.

(b) Each Funding Agent may execute any of its duties under this Supplemental Indenture by or through agents or attorneys-in-fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties. Each Funding Agent shall not be responsible to the CP Conduit Purchaser or any Group Bank in its CP Conduit Purchaser Group for the negligence or misconduct of any agents or attorneys in fact selected by it with reasonable care.

(c) Each Funding Agent and any of its officers, directors, employees, agents, attorneys in fact or Affiliates shall not be (i) liable for any action lawfully taken or omitted to be taken by it or such Person under or in connection with the Trust Indenture, this Supplemental Indenture or any other Program Agreement (except to the extent that any of the foregoing are found by a final and nonappealable decision of a court of competent jurisdiction to have resulted from its or such

Person's own gross negligence or willful misconduct) or (ii) responsible in any manner to any of the CP Conduit Purchasers and/or Group Banks for any recitals, statements, representations or warranties made by the Issuer, the Manager or the IESO, or any officer thereof contained in this Supplemental Indenture or any other Program Agreement or in any certificate, report, statement or other document referred to or provided for in, or received by such Funding Agent under or in connection with, this Supplemental Indenture or any other Program Agreement or for the value, validity, effectiveness, genuineness, enforceability or sufficiency of this Supplemental Indenture, any other Program Agreement, or for any failure of any of the Issuer, the Manager or the IESO to perform its obligations hereunder or thereunder. Each Funding Agent shall not be under any obligation to the CP Conduit Purchaser or any Group Bank in its CP Conduit Purchaser Group to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Supplemental Indenture, any other Program Agreement or to inspect the properties, books or records of the Issuer, the Manager or the IESO.

(d) Each Funding Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing, resolution, notice, consent, certificate, affidavit, letter or electronic message, statement, order or other document or conversation believed by it to be genuine and correct and to have been signed, sent or made by the proper Person or Persons and upon advice and statements of legal counsel (including, without limitation, counsel to the Issuer, the Manager or the IESO), independent accountants and other experts selected by such Funding Agent. Each Funding Agent shall be fully justified in failing or refusing to take any action under this Supplemental Indenture or any other Program Agreement unless it shall first receive such advice or concurrence of the Related Purchaser Group, as it deems appropriate or it shall first be indemnified to its satisfaction by the Related Purchaser Group against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action.

(e) Each Funding Agent shall not be deemed to have knowledge or notice of the occurrence of any Termination Event unless such Funding Agent has received written notice from a Non-Conduit Purchaser, a CP Conduit Purchaser, a Group Bank, the Issuer, the Manager or the Administrative Agent referring to the Trust Indenture or this Supplemental Indenture, describing such Termination Event and stating that such notice is a "notice of a Termination Event," as the case may be. In the event that any Funding Agent receives such a notice, such Funding Agent shall give notice thereof to the CP Conduit Purchaser and Group Bank in its CP Conduit Purchaser Group. Such Funding Agent shall take such action with respect to such event as shall be reasonably directed by the CP Conduit Purchaser and Group Bank in its CP Conduit Purchaser Group, provided that unless and until such Funding Agent shall have received such directions, such Funding Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such event as it shall deem advisable in the best interests of the CP Conduit Purchaser and Group Bank in its CP Conduit Purchaser Group.

(f) Each CP Conduit Purchaser and each of the related Group Banks expressly acknowledge that neither its Funding Agent nor any of its officers, directors, employees, agents, attorneys in fact or Affiliates has made any representations or warranties to it and that no act by such Funding Agent hereinafter taken, including any review of the affairs of the Issuer, the Manager or the IESO shall be deemed to constitute any representation or warranty by such Funding Agent to any such Person. Each CP Conduit Purchaser and each of the related Group Banks represents to its Funding Agent that it has, independently and without reliance upon such Funding Agent and based on such documents and information as it has deemed appropriate, made its own appraisal of and

investigation into the business, operations, property, financial and other condition and creditworthiness of the Issuer, the Manager and the IESO and made its own decision to enter into this Supplemental Indenture. Each CP Conduit Purchaser and each of the related Group Banks also represents that it will, independently and without reliance upon its Funding Agent and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Supplemental Indenture and the other Program Agreements, and to make such investigation as it deems necessary to inform itself as to the business, operations, property, financial and other conditions and creditworthiness of the Issuer, the Manager and the IESO.

(g) Each Group Bank in a CP Conduit Purchaser Group agrees to indemnify its Funding Agent in its capacity as such (to the extent not reimbursed by the Issuer and without limiting the obligation of the Issuer to do so), from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind whatsoever which may at any time be imposed on, incurred by or asserted against such Funding Agent in any way relating to or arising out of this Supplemental Indenture, any of the other Program Agreements or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby or any action taken or omitted by such Funding Agent under or in connection with any of the foregoing; provided that no Group Bank shall be liable for the payment of any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements that are found by a final and nonappealable decision of a court of competent jurisdiction to have resulted from such related Funding Agent's gross negligence or willful misconduct. The agreements in this Section shall survive the payment of all amounts payable hereunder.

ARTICLE 8
GENERAL

8.1 Successor and Assigns

(a) This Supplemental Indenture shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, except that (i) the Issuer may not assign or transfer any of its rights under this Supplemental Indenture without the prior written consent of all of the Series 2017-1 Noteholders; (ii) no Non-Conduit Purchaser may assign or transfer any of its rights under this Supplemental Indenture other than pursuant to paragraph (e) or (f) below; (iii) no CP Conduit Purchaser may assign or transfer any of its rights under this Supplemental Indenture other than to the Group Bank with respect to such CP Conduit Purchaser or a Program Support Provider with respect to such CP Conduit Purchaser or pursuant to clause (b) or (e) below of this Section 8.1; and (iv) no Group Bank may assign or transfer any of its rights or obligations under this Supplemental Indenture except to a Program Support Provider or pursuant to clause (c), (d) or (e) below of this Section 8.1.

(b) Without limiting the foregoing, each CP Conduit Purchaser may assign all or a portion of the Purchaser Group Principal Amount with respect to such CP Conduit Purchaser and its rights and obligations under this Supplemental Indenture to a Conduit Assignee with respect to such CP Conduit Purchaser. Prior to or concurrently with the effectiveness of any such assignment (or if impracticable, immediately thereafter), the assigning CP Conduit Purchaser shall notify the Administrative Agent and the Issuer. Upon such assignment by a CP Conduit Purchaser to a Conduit Assignee, (i) such Conduit Assignee shall be the owner of the Purchaser Group Principal

Amount or such portion thereof with respect to such CP Conduit Purchaser; (ii) the related administrative or managing agent for such Conduit Assignee will act as the administrative agent for such Conduit Assignee hereunder, with all corresponding rights and powers, express or implied, granted to the Funding Agent hereunder; (iii) such Conduit Assignee and its liquidity support provider(s) and credit support provider(s) and other related parties shall have the benefit of all the rights and protections provided to such CP Conduit Purchaser herein (including, without limitation, any limitation on recourse against such Conduit Assignee as provided in this paragraph); (iv) such Conduit Assignee shall assume all of such CP Conduit Purchaser's obligations, if any, hereunder with respect to such portion of the Purchaser Group Principal Amount and such CP Conduit Purchaser shall be released from such obligations; (v) all distributions in respect of the Purchaser Group Principal Amount or such portion thereof with respect to such CP Conduit Purchaser shall be made to the applicable agent or administrative agent, as applicable, on behalf of such Conduit Assignee; and (vi) if requested by the Administrative Agent or the agent or administrative agent with respect to the Conduit Assignee, the parties will execute and deliver such further agreements and documents and take such other actions as the Administrative Agent or such agent or administrative agent may reasonably request to evidence and give effect to the foregoing. No assignment by any CP Conduit Purchaser to a Conduit Assignee of the Purchaser Group Principal Amount with respect to such CP Conduit Purchaser shall in any way diminish the obligations of the Group Bank with respect to such CP Conduit Purchaser under Section 3.3 to fund any Increase.

(c) Any Group Bank may, in the ordinary course of its business and in accordance with applicable law, at any time, sell all or any part of its rights and obligations under this Supplemental Indenture and the Series 2017-1 Senior Notes, with the prior written consent of the Administrative Agent and the Issuer (in each case, which consent shall not be unreasonably withheld), to one or more banks (an "**Acquiring Group Bank**") pursuant to a transfer supplement, substantially in the form of Exhibit H (the "**Transfer Supplement**"), executed by such Acquiring Group Bank, such assigning Group Bank, the Funding Agent with respect to such Group Bank, the Administrative Agent and the Issuer and delivered to the Administrative Agent. Notwithstanding the foregoing, no Group Bank shall so sell its rights hereunder if such Acquiring Group Bank is not an Eligible Assignee.

(d) Any Group Bank may, in the ordinary course of its business and in accordance with applicable law at any time sell to one or more financial institutions or other entities ("**Group Bank Participants**") participations in its Commitment Amount with respect to its related CP Conduit Purchaser Group, its Series 2017-1 Senior Note and its rights hereunder pursuant to documentation in form and substance satisfactory to such Group Bank and the Group Bank Participant; provided, however, that (i) in the event of any such sale by a Group Bank to a Group Bank Participant, (A) such Group Bank's obligations under this Supplemental Indenture shall remain unchanged, (B) such Group Bank shall remain solely responsible for the performance thereof, and (C) the Issuer and the Administrative Agent shall continue to deal solely and directly with such Group Bank in connection with its rights and obligations under this Supplemental Indenture; and (ii) no Group Bank shall sell any participating interest under which the Group Bank Participant shall have rights to approve any amendment to, or any consent or waiver with respect to, this Supplemental Indenture, the Trust Indenture or any Program Agreement, except to the extent that the approval of such amendment, consent or waiver otherwise would require the unanimous consent of all Group Banks hereunder. A Group Bank Participant shall have the right to receive compensation pursuant to Sections 3.10 and 3.11 but only to the extent that the related selling Group Bank would

have had such right absent the sale of the related participation and, with respect to amounts due pursuant to Sections 3.10 and 3.11, only to the extent such Group Bank Participant shall have complied with the provisions of Sections 3.10 and 3.11 as if such Group Bank Participant were a Group Bank.

(e) Any CP Conduit Purchaser and the Group Bank with respect to such CP Conduit Purchaser may, at any time, sell all or any part of their respective rights and obligations, and any Non-Conduit Purchaser may, at any time, sell all or any part of its rights and obligations, under this Supplemental Indenture and the Series 2017-1 Senior Notes, with the prior written consent of the Administrative Agent and the Issuer (in each case, which consent shall not be unreasonably withheld), (x) to a multi-seller commercial paper conduit and one or more banks providing support to such multi-seller commercial paper conduit, or (y) to a financial institution or other entity (an "**Acquiring Purchaser Group**") pursuant to a transfer supplement, substantially in the form of Exhibit I (the "**Purchaser Group Supplement**"), executed by such Acquiring Purchaser Group (including the CP Conduit Purchaser and the Group Banks, if any, with respect to such Acquiring Purchaser Group), the Funding Agent, if any, with respect to such Acquiring Purchaser Group, such assigning Purchaser Group (including the Group Banks, if any, with respect to such assigning Purchaser Group), the Funding Agent, if any, with respect to such assigning Purchaser Group and the Administrative Agent and the Issuer and delivered to the Administrative Agent.

(f) Any Non-Conduit Purchaser may, in the ordinary course of its business and in accordance with applicable law, at any time sell to one or more financial institutions or other entities ("**Non-Conduit Purchaser Participants**") participations in its Commitment, its Series 2017-1 Senior Note and its rights hereunder pursuant to documentation in form and substance satisfactory to such Non-Conduit Purchaser and the Non-Conduit Purchaser Participant; provided, however, that (i) in the event of any such sale by a Non-Conduit Purchaser to a Non-Conduit Purchaser Participant, (A) such Non-Conduit Purchaser's obligations under this Supplemental Indenture shall remain unchanged, (B) such Non-Conduit Purchaser shall remain solely responsible for the performance thereof, and (C) the Issuer and the Administrative Agent shall continue to deal solely and directly with such Non-Conduit Purchaser in connection with its rights and obligations under this Supplemental Indenture; and (ii) no Non-Conduit Purchaser shall sell any participating interest under which the Non-Conduit Purchaser Participant shall have rights to approve any amendment to, or any consent or waiver with respect to, this Supplemental Indenture, the Trust Indenture or any Program Agreement, except to the extent that the approval of such amendment, consent or waiver otherwise would require the unanimous consent of all Series 2017-1 Noteholders hereunder. A Non-Conduit Purchaser Participant shall have the right to receive compensation under Sections 3.10 and 3.11 but only to the extent that the related selling Non-Conduit Purchaser would have had such right absent the sale of the related participation and, with respect to amounts due pursuant to Sections 3.10 and 3.11, only to the extent such Non-Conduit Purchaser Participant shall have complied with the provisions of Sections 3.10 and 3.11 as if such Non-Conduit Purchaser Participant were a Non-Conduit Purchaser.

(g) The Issuer authorizes each Group Bank and Non-Conduit Purchaser to disclose to any Group Bank Participant, Acquiring Group Bank, Non-Conduit Purchaser Participant or Acquiring Purchaser Group (each, a "**Transferee**") and any prospective Transferee any and all financial information in such Group Bank's or Non-Conduit Purchaser's possession concerning the Issuer, the Issuer Investment Asset and the Program Agreements which has been delivered to such Group

Bank by the Issuer or the Manager in connection with such Group Bank's credit evaluation of the Issuer and the Issuer Investment Asset.

(h) Notwithstanding any other provision of this Supplemental Indenture to the contrary, any Non-Conduit Purchaser, any Group Bank or any Program Support Provider may at any time pledge or grant a security interest in all or any portion of its rights under its Series 2017-1 Senior Note and this Supplemental Indenture to secure obligations of such Non-Conduit Purchaser, such Group Bank or such Program Support Provider to a Federal Reserve Bank or the Bank of Canada, without notice to or consent of the Administrative Agent, the Issuer or the Administrator; provided that no such pledge or grant of a security interest shall release a Non-Conduit Purchaser or an Group Bank from any of its obligations hereunder or substitute any such pledgee or grantee for such Non-Conduit Purchaser or such Group Bank as a party hereto.

8.2 Waiver

Without limiting the requirements of Section **[11.02]** of the Trust Indenture which shall be applicable to this Supplemental Indenture, no waiver of any provision of this Supplemental Indenture or consent to any departure by the Issuer from any provision of this Supplemental Indenture will be effective (in whole or in part) unless in writing and signed by the Requisite Series 2017-1 Noteholders. Such waiver will be effective only in the specific instance, for the specific purpose and for the specific length of time for which it is given by the Requisite Series 2017-1 Noteholders.

8.3 Notice

All notices, requests, instructions and demands to or upon any party hereto to be effective shall be given (a) in the case of the Issuer and the Indenture Trustee, in the manner set forth in Article **[15]** of the Trust Indenture; and (b) in the case of the Administrative Agent, the Non-Conduit Purchasers, the CP Conduit Purchasers, the Group Banks and the Funding Agents, in writing, and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when delivered by hand or three days after being deposited in the mail, postage prepaid, in the case of facsimile notice, when received, or in the case of overnight air courier, one Business Day after the date such notice is delivered to such overnight courier, addressed as follows in the case of the Administrative Agent and to the addresses therefor set forth in Schedule E, in the case of the Non-Conduit Purchasers, the CP Conduit Purchasers, the Group Banks and the Funding Agents; or to such other address as may be hereafter notified by the respective parties hereto:

Administrative Agent:

●

8.4 No Waiver: Remedies

No failure on the part of any party to exercise, and no delay in exercising, any power, right or remedy hereunder will operate as a waiver thereof; nor will any single or partial exercise of any such power, right or remedy hereunder preclude any other or further exercise thereof or the exercise of any other power, right or remedy. The rights and remedies herein provided are cumulative and not exclusive of any remedies provided by applicable law.

8.5 Entire Agreement

This Supplemental Indenture, the Fee Letter, the Trust Indenture and the other Program Agreements contain the entire agreement between the parties relative to the subject matter hereof and supersede all prior and contemporaneous agreements, term sheets, commitments, understandings, negotiations and discussions, whether oral or written. There are no warranties, representations or other agreements between the parties in connection with the subject matter hereof except as specifically set forth in this Supplemental Indenture, the Fee Letter, the Trust Indenture and the other Program Agreements.

8.6 Governing Law and Attornment

This Supplemental Indenture shall be governed by, and construed in accordance with, the laws of the Province of Ontario and the parties hereby attorn to the jurisdiction of the courts of Ontario.

8.7 Acknowledgment of Trust Indenture and No Proceedings

The Administrative Agent, each Non-Conduit Purchaser, each CP Conduit Purchaser, each Group Bank and each Funding Agent hereby acknowledges and agrees in favour of the Indenture Trustee that it is a Specified Creditor under the Trust Indenture and its entitlements as a Specified Creditor are subject to the provisions applicable to Specified Creditors under the Trust Indenture including, without limitation, Section **[7.06]** (Payments Held in Trust), Section **[8.12]** (Limitation on Suits), Sections **[7.04 and 8.13]** (Payment Priorities), Section **[8.14]** (Limited Recourse) and Section **[16.01]** (No Petition).

8.8 Expenses

The Issuer agrees to pay on demand (a) to the Indenture Trustee, the Administrative Agent and the Purchaser Groups all reasonable costs and expenses in connection with the preparation, execution, and delivery of this Supplemental Indenture and the other documents to be delivered hereunder or in connection herewith, including, the reasonable fees and out-of-pocket expenses of counsel for the Administrative Agent and the Purchaser Groups, with respect thereto, and the reasonable fees and out-of-pocket expenses incurred by the CP Conduit Purchasers in connection with the review by each rating agency then rating the Commercial Paper of such CP Conduit Purchaser of the transactions contemplated by this Supplemental Indenture and the Program Agreements; (b) to the Indenture Trustee, the Administrative Agent and each Purchaser Group all reasonable costs and expenses in connection with any amendments of or waivers or consents under this Supplemental Indenture or the Program Agreements, including in each case the reasonable fees and out-of-pocket expenses of counsel with respect thereto, and the reasonable fees and out-of-pocket expenses incurred by the CP Conduit Purchasers in connection with the review by any rating agency then rating the Commercial Paper of such CP Conduit Purchasers; and (c) to the Indenture Trustee, the Administrative Agent and each Purchaser Group, on demand, all reasonable costs and expenses (including reasonable fees and expenses of counsel to the Administrative Agent and each Purchaser Group), if any, in connection with the enforcement of this Supplemental Indenture or any of the Program Agreements, and the other documents delivered thereunder or in connection therewith.

8.9 Further Assurances

Each of the parties hereto upon the request of the other party or parties hereto shall do, execute, acknowledge and deliver or cause to be done, executed acknowledged or delivered all such further acts, deeds, documents, assignments, transfers, conveyances, powers of attorney and assurances as may be reasonably necessary or desirable to effect or complete the consummation of the transactions contemplated by this Supplemental Indenture.

8.10 Confidentiality

(a) Each Purchaser Group and the Administrative Agent covenants and agrees that any non-public information obtained by it pursuant to this Supplemental Indenture and the other Program Agreements shall be held in confidence except that the Purchaser Groups or Administrative Agent may disclose such information (i) pursuant to the order of any court or administrative agency or in any pending legal or administrative proceeding (whether or not having the force or effect of law) provided that, unless prohibited by applicable law, a Purchaser Group or the Administrative Agent, as applicable, shall provide prompt notice of such order to the affected party; (ii) upon the request or demand of any regulatory authority having or claiming jurisdiction over any Purchaser Group or the Administrative Agent; (iii) as required by applicable law including, without limitation, all applicable securities laws; (iv) to the extent that such information becomes publicly available other than by reason of improper disclosure by a Purchaser Group or the Administrative Agent; (v) to its affiliates, officers, directors, employees, legal counsel, independent auditors, accountants, advisors, investors, potential investors, commercial paper dealers, providers of surety, guaranty, credit or liquidity enhancement (including the directors, officers and accountants of such surety, guaranty, credit or liquidity enhancement provider), legal counsel of any of the foregoing and other experts or agents who need to know such information and are informed of the confidential nature of such information (provided that the Persons permitted to make such disclosures under clauses (i), (ii) and (iii) of this Section 8.10 shall also include credit or liquidity enhancers of a CP Conduit Purchaser); (vi) for purposes of establishing a "due diligence" defense; (vii) which was available to a Purchaser Group or the Administrative Agent on a non-confidential basis from a source other than the affected party, provided that such source was not to the knowledge of the Purchaser Group or the Administrative Agent, as applicable, bound by a confidentiality agreement with the affected party; (viii) has been independently acquired or developed by a Purchaser Group or the Administrative Agent without violating any of the Purchaser Group's or the Administrative Agent's obligations under this Supplemental Indenture; (ix) if such disclosure has been approved in writing in advance by the Issuer or the Manager; (x) regarding the existence of this Supplemental Indenture, but not the financial terms thereof; and (xi) to DBRS and Moody's and any other Rating Agencies.

(b) The Issuer covenants and agrees to hold in confidence, and not disclose to any Person, the terms of this Supplemental Indenture (including any fees payable in connection with this Supplemental Indenture or the identity of any CP Conduit Purchaser under this Supplemental Indenture), except as the applicable Purchaser Group may have consented to in writing prior to any proposed disclosure and except (i) it may also disclose such information (A) to its officers, directors, employees, legal counsel, independent auditors, accountants and other advisors who are directly involved in the consideration of this Supplemental Indenture (and then only on a confidential basis), (B) to the Manager and its officers, directors, employees, legal counsel, independent auditors, accountants and other advisors, (C) any ministry or agency of the Province of Ontario and, in each case, their respective employees, officials, agents and advisors, (D) as

required by applicable law (including, without limitation, applicable securities law) or compulsory legal process, (E) as expressly permitted by the terms of the Program Agreements, and (F) to DBRS and Moody's and any other Rating Agencies; provided, that, in the case of clause (D), the Issuer will use all commercially reasonable efforts to maintain confidentiality and will (unless otherwise prohibited by law) notify the affected Administrative Agent or Purchaser Group of its intention to make any such disclosure prior to making such disclosure; and (ii) it may also disclose the existence (but not the financial terms) of this Supplemental Indenture, including to any actual or prospective purchaser of other Notes.

(c) The parties hereto acknowledge that a description of this Supplemental Indenture and the Series 2017-1 Senior Note will be included in the preliminary and final offering memoranda of the Issuer relating to the issue of other Notes from time to time.

8.11 Acknowledgement and Consent to Bail-In of EEA Financial Institutions

Notwithstanding anything to the contrary in this Supplemental Indenture or in any other Program Agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any EEA Financial Institution arising under this Supplemental Indenture or any other Program Agreement, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and

(b) the effects of any Bail-in Action on any such liability, including, if applicable

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments or ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Supplemental Indenture or any other Facility Agreement; or

(iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any EEA Resolution Authority.

8.12 Limitation of Liability of Issuer Trustee

Each party hereto other than the Issuer acknowledges that the Issuer is a trust, and that Computershare Trust Company of Canada is the Issuer Trustee. The other parties hereto agree that the Issuer Trustee will not be subject to any liability whatsoever to them, in tort, contract or otherwise, in connection with the Issuer's assets or the trust activities, for any action taken or permitted by it to be taken, or for its failure to take any action; provided that the foregoing limitation will not apply in respect of any action or failure to act arising from or in connection with wilful misconduct, negligence or reckless disregard of a duty by the Issuer Trustee. The Issuer

Trustee in doing anything or permitting anything to be done in respect of assets or the trust activities is, and shall be conclusively deemed to be, acting as trustee of the Issuer and not in any other capacity. Except as to the extent provided in this Section 8.12, the Issuer Trustee will not be subject to any debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses against or with respect to the Issuer, arising out of anything done or permitted by it to be done or its failure to take any action in respect of the Issuer's assets or the trust activities and resort will be had solely to the Collateral for the payment or performance thereof. No property or assets of the Issuer Trustee, whether owned in its personal capacity or otherwise, will be subject to levy, execution or other enforcement procedure with regard to any obligation under this Supplemental Indenture. Nothing contained in this Section 8.12 shall be construed so as to limit the liability of the Issuer under this Supplemental Indenture. This Supplemental Indenture, and every deed, transfer, assignment, agreement or other instrument made pursuant hereto including, without limitation, the Series 2017-1 Senior Notes, made or purporting to be made by or creating an obligation of the Issuer or the Issuer Trustee on behalf of, or as trustee of, the Issuer shall be deemed and construed for all purposes as if made by the Issuer Trustee, in and only in its capacity as trustee of the Issuer. Any obligations of the Issuer Trustee hereunder or thereunder are non-recourse to the Issuer Trustee in its personal capacity.

8.13 Execution in Counterparts

This Supplemental Indenture may be executed in several counterparts, each of which when so executed shall be deemed to be an original and the counterparts together shall constitute one and the same instrument. This Supplemental Indenture may be executed and delivered by email or other electronic transmission of a manually signed counterpart.

8.14 Delivery of Executed Copies

Each party acknowledges delivery of an executed copy of this Supplemental Indenture.

[signature page follows]

IN WITNESS WHEREOF the parties hereto have duly executed this Trust Indenture as of the date first above written.

[FAIR HYDRO TRUST], as Issuer

ONTARIO POWER GENERATION INC., not in its individual capacity but solely as Manager

By: _____
Name:
Title:

By: _____
Name:
Title:

● **TRUST COMPANY OF CANADA**, as Indenture Trustee

By: _____
Name:
Title:

By: _____
Name:
Title:

●,

By: _____
Name:
Title:

[NTD: Detailed signing pages to be prepared.]

SCHEDULE A

DEFINITIONS

"**Acceleration Event**" means the outstanding Dollar Principal Amount of all Funding Obligations of the Series 2017-1 Senior Notes have been declared or automatically become due and payable **[pursuant to Section [8.02] of the Trust Indenture]**. **[NTD: Consider if it is worth having a separate definition of Acceleration Event for this Series aside from what happens under 8.02 of the Trust Indenture.]**

"**Administrative Agent**" shall have the meaning specified in the preamble to this Supplemental Indenture.

"**AEOI Legislation**" has the meaning specified in Section 3.10(a) of this Supplemental Indenture.

"**Affected Party**" means any Non-Conduit Purchaser, CP Conduit Purchaser and any Program Support Provider with respect to any CP Conduit Purchaser.

"**Applicable Margin**" is defined in the Fee Letter.

"**Authorized Officer**" means, with respect to: (a) the Issuer, any authorized director or officer of the Manager; (b) the Manager, any authorized director of officer of OPG; (c) the IESO, any authorized director or officer of the IESO; (d) the Issuer Trustee, any officer within the corporate trust office of such trustee (including the President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Treasurer or any other officer of the Issuer Trustee customarily performing functions similar to those performed by persons who at the time shall be such officers, respectively, and that has direct responsibility for the administration of the Issuer and also, with respect to a particular matter, any other officer to whom such matter is referred to because of such officer's knowledge and familiarity with the particular subject).

"**Bail-In Action**" shall mean the exercise of any Write-Down and Conversion Powers by the applicable EEA Resolution Authority in respect of any liability of an EEA Financial Institution.

"**Bail-In Legislation**" shall mean, with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule.

"**Basel III**" means the revised Basel Accord prepared by the Basel Committee on Banking Supervision as set out in the publication entitled "A Global Regulatory Framework for More Resilient Banks and Banking Systems" developed by the Basel Committee on Banking Supervision, initially published in December 2010, as updated from time to time, and any rules, regulations, guidance, requests, interpretations or directives from any Official Body relating thereto (whether or not having the force of law).

"**Billing Period**" has the meaning specified in the Master Transfer and Servicing Agreement; **[NTD: Consider if this can be replaced with Interest Period wherever it occurs.]**

"**CDOR**" means, on any day, an annual rate of interest equal to the average rate applicable to Canadian dollar bankers' acceptances for a 1 month period appearing on the "Reuters Screen CDOR Page" (as defined in the International Swaps and Derivatives Association, Inc. 2000 definitions, as modified and amended from time to time) at approximately 10:00 a.m. on such day, or if such day is not a Business Day, then on the immediately preceding Business Day, provided that if such rate does not appear on the Reuters Screen CDOR Page on such day as contemplated, then CDOR on such day shall be calculated as the average of the rates for such period applicable to Canadian dollar bankers' acceptances quoted by the banks listed in Schedule I of the *Bank Act* (Canada) as of 10:00 a.m. on such day or, if such day is not a Business Day, then on the immediately preceding Business Day.

"**Closing Date**" is defined in Section 3.3(a).

"**Code**" is defined in Section 3.10(a).

"**Commercial Paper**" means, with respect to any CP Conduit Purchaser, the promissory notes issued by, or for the benefit of, such CP Conduit Purchaser in the commercial paper market.

"**Commitment**" means, with respect to (a) the Group Bank included in any CP Conduit Purchaser Group, the obligation of such Group Bank to purchase a Series 2017-1 Senior Note on the Closing Date and, thereafter, to maintain and, subject to certain conditions, increase the Purchaser Group Principal Amount with respect to such CP Conduit Purchaser Group, in each case, in an amount up to the Maximum Purchaser Group Principal Amount with respect to such CP Conduit Purchaser Group; or (b) any Non-Conduit Purchaser Group, the obligation of the Related Non-Conduit Purchaser to purchase a Series 2017-1 Senior Note on the Closing Date and, thereafter, to maintain and, subject to certain conditions, increase the Purchaser Group Principal Amount with respect to such Non-Conduit Purchaser Group, in each case, in an amount up to the Maximum Purchaser Group Principal Amount with respect to such Non-Conduit Purchaser Group.

"**Commitment Expiry Date**" means the earlier of (a) the Scheduled Commitment Expiry Date; and (b) the date on which an Event of Default shall have been declared or automatically occurred.

"**Commitment Fee**" is defined in Section 3.6(b).

"**Commitment Fee Rate**" is defined in the Fee Letter.

"**Commitment Percentage**" means, on any date of determination, with respect to any Purchaser Group, the ratio, expressed as a percentage, which such Purchaser Group's Maximum Purchaser Group Principal Amount bears to the Series 2017-1 Maximum Principal Amount on such date.

"**Conduit Assignee**" means, with respect to any CP Conduit Purchaser, any commercial paper conduit administered by the Funding Agent with respect to such CP Conduit Purchaser and designated by such Funding Agent to accept an assignment from such CP Conduit Purchaser of the Purchaser Group Principal Amount or a portion thereof with respect to such CP Conduit Purchaser pursuant to Section 8.1(b).

"**CP Conduit Funded Amount**" means, with respect to any CP Conduit Purchaser Group for any day, the portion of the Purchaser Group Principal Amount with respect to such CP Conduit

Purchaser Group funded by the CP Conduit Purchaser in respect of such CP Conduit Purchaser Group.

"**CP Conduit Purchaser**" means each commercial paper conduit listed on Schedule E or party to a Purchaser Group Supplement pursuant to which such commercial paper conduit became a party to this Supplemental Indenture

"**CP Conduit Purchaser Group**" means, collectively, a CP Conduit Purchaser and the Group Bank with respect to such CP Conduit Purchaser.

"**CP Conduit Rating Agencies**" means, with respect to any CP Conduit Purchaser, each of DBRS and Moody's and any other nationally recognized statistical rating organization which may, from time to time, rate the Commercial Paper of the CP Conduit Purchaser at the request of the CP Conduit Purchaser.

"**CP Rate**" means with respect to any CP Conduit Purchaser for any day during an Interest Period, the weighted average annual rate of interest applicable to all Commercial Paper of the CP Conduit Purchaser; and provided further that (x) any such Commercial Paper may be issued in either United States dollars or Canadian dollars with the appropriate market rate currency swap agreements being entered into to match such issuance to the funding requirements of such CP Conduit Purchaser, and (y) such weighted average annual rate of interest shall be calculated to reflect any costs incurred by such CP Conduit Purchaser in connection with such swap transactions or in connection with any redemption or repurchase transaction between such CP Conduit Purchaser and the holders of such commercial paper; provided that no amount shall be included in the calculation of the CP Rate which reflects any termination amounts payable by such CP Conduit Purchaser in respect of the early termination of any market rate currency swap referred to in this definition.

"**Decrease**" is defined in Section 3.4(a).

"**Decrease Amount**" is defined in Section 3.4(a).

"**Deferrable Increase Notice**" means a notice of Increase that provides that a Delayed Funding Notice may be provided by any Purchaser Group with respect to such Increase in accordance with Section 3.3(e).

"**Delayed Amount**" is defined in Section 3.3(e).

"**Delayed Funding Date**" is defined in Section 3.3(e).

"**Delayed Funding Notice**" is defined in Section 3.3(e).

"**Delayed Funding Purchaser Group**" is defined in Section 3.3(e).

"**Delayed Funding Reimbursement Amount**" means, with respect to any Delayed Amount of a Delayed Funding Purchaser Group funded by Non-Delayed Funding Purchaser Groups on an Increase Date, an amount equal to the excess, if any, of (a) such Delayed Amount; over (b) the amount, if any, by which the portion of any principal payment made by the Issuer to such Non-

Delayed Funding Purchaser Group pursuant to Section 3.7 on any date during the period from and including such Increase Date to but excluding the Delayed Funding Date for such Delayed Amount, was greater than what it would have been had such Delayed Amount been funded by such Delayed Funding Purchaser Group on such Increase Date.

"**EEA Financial Institution**" shall mean (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority; (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition; or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clause (a) or (b) of this definition and is subject to consolidated supervision with its parent.

"**EEA Member Country**" shall mean any of the member states of the European Union, Iceland, Liechtenstein and Norway.

"**EEA Resolution Authority**" shall mean any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

"**Eligible Assignee**" means a financial institution having short-term debt ratings of at least "A-1" from Standard & Poor's and "P-1" from Moody's.

"**EU Bail-In Legislation Schedule**" shall mean the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

"**Excluded Taxes**" shall have the meaning specified in Section 3.10(a) of this Supplemental Indenture.

"**FATCA**" has the meaning specified in Section 3.10(a) of this Supplemental Indenture.

"**Fee Letter**" means the letter dated the date hereof, from the Issuer addressed to the Administrative Agent, each Non-Conduit Purchaser and each of the CP Conduit Purchasers, the Funding Agents and the Group Banks, setting forth certain fees payable from time to time to the Purchaser Groups, as such letter may be amended or replaced from time to time.

"**Funding Agent**" means, with respect to each CP Conduit Purchaser and its CP Conduit Purchaser Group, the agent bank set forth opposite the name of such CP Conduit Purchaser on Schedule E or in the Purchaser Group Supplement pursuant to which such CP Conduit Purchaser became a party to this Supplemental Indenture.

"**Group Bank**" means, with respect to a CP Conduit Purchaser, the bank or other Person set forth opposite the name of such CP Conduit Purchaser on Schedule E or in the Purchaser Group Supplement pursuant to which such CP Conduit Purchaser became a party to this Supplemental Indenture and any assignee thereof, to the extent such assignee has assumed all or a portion of the Commitments of the Group Bank pursuant to a Transfer Supplement entered into in accordance with Section 8.1(c).

"**Group Bank Funded Amount**" means, with respect to any CP Conduit Purchaser Group for any day, the excess, if any, of the Purchaser Group Principal Amount with respect to such CP Conduit Purchaser Group over the CP Conduit Funded Amount with respect to such CP Conduit Purchaser Group for such day.

"**Group Bank Participants**" is defined in Section 8.1(d).

"**Group Monthly Fees and Other Amounts**" shall mean, for any Payment Date and a Purchaser Group the sum of (a) the Commitment Fee with respect to the related Billing Period for such Purchaser Group; plus (b) any amounts payable to such Purchaser Group hereunder including, without limitation, pursuant to Sections 3.8, 3.10, 3.11 and 8.8; plus (c) the Monthly Fees and Other Amounts Shortfall for such Purchaser Group for such Payment Date.

"**Group Monthly Interest**" means, with respect to each Interest Period and:

(a) any CP Conduit Purchaser Group, the sum of:

(i) for each day during such Interest Period, the product of (x) the portion of the CP Conduit Funded Amount with respect to the CP Conduit Purchaser Group on such day funded through the issuance of Commercial Paper outstanding on such day, times (y) the sum of the CP Rate for such day plus the Applicable Margin, divided by (z) 365; plus

(ii) for each day during such Interest Period, the product of (x) the portion of the CP Conduit Funded Amount with respect to the CP Conduit Purchaser in such GP Conduit Purchaser Group on such day not funded through the issuance of Commercial Paper outstanding on such day, times (y) the sum of CDOR for such day plus the Applicable Margin, divided by (z) 365; plus

(iii) for each day during such Interest Period the product of (x) the Group Bank Funded Amount with respect to such Purchaser Group on such day, times (y) the sum of CDOR for such day plus the Applicable Margin, divided by (x) 365.

(b) any Non-Conduit Purchaser Group, the sum for each day during such Interest Period of the product of (i) the Purchaser Group Principal Amount with respect to such Non-Conduit Purchaser Group on such day; times (ii) the sum of CDOR for such day plus the Applicable Margin, divided by (iii) 365.

For the purposes of determining the Group Monthly Interest in respect of an Interest Period prior to the end of the Interest Period, the Funding Agent in respect of a CP Conduit Purchaser Group or a Non-Conduit Purchaser Group may estimate the interest for the remaining days in the Interest Period. If the actual interest for such days is less than the estimated interest, the Group Monthly Interest for the following Interest Period shall be reduced to adjust for such lower actual interest and if the actual interest for such days is higher than the estimated interest, the Group Monthly Interest for the following Interest Period shall be increased to adjust for such higher interest.

"**Increase**" is defined in Section 3.3(a).

"**Increase Amount**" is defined in Section 3.3(a).

"**Increase Date**" is defined in Section 3.3(a).

"**Increase Notice**" is defined in Section 3.3(a).

"**Interest Period**" means each of the consecutive periods that begins on, and includes, each Payment Date and ends on and excludes, the following Payment Date; provided that the first Interest Period shall begin on the Closing Date and end on ●.

"**Issuer indemnified person**" is defined in Section 3.8.

"**Issuer indemnified person**" is defined in Section 3.8

"**Maximum Purchaser Group Principal Amount**" means, with respect to (a) any CP Conduit Purchaser Group, the amount set forth opposite the name of the CP Conduit Purchaser included in such CP Conduit Purchaser Group on Schedule E or in the Purchaser Group Supplement pursuant to which such CP Conduit Purchaser Group became a party to this Supplemental Indenture; or (b) any Non-Conduit Purchaser Group, the amount set forth opposite the name of such Non-Conduit Purchaser Group on Schedule E or in the Purchaser Group Supplement pursuant to which such Non-Conduit Purchaser Group became a party to this Supplemental Indenture, in each case, as such amount may be increased or reduced from time to time as provided in Section 3.5.

"**Monthly Interest**" shall mean, for any Payment Date, the aggregate for all Purchaser Groups of the sum of (a) Group Monthly Interest for the related Interest Period for each Purchaser Group; plus (b) the Monthly Interest Shortfall for such Payment Date for each Purchaser Group.

"**Monthly Fees and Other Amounts**" shall mean, for any Payment Date, the aggregate of the Monthly Fees and Other Amounts for all Purchaser Groups.

"**Monthly Interest Shortfall**" means, for any Payment Date and a Purchaser Group, if the amount of the Group Monthly Interest for the preceding Payment Date was greater than the amount distributed to the payment of such amounts pursuant to Section 3.6(d), an amount equal to the Group Monthly Interest owing to such Purchaser Group which were unpaid on the preceding Payment Date plus interest on such unpaid amount for the period from the preceding Payment Date to the current Payment Date at a rate equal to the Prime Rate plus ●% per annum.

"**Monthly Fees and Other Amounts Shortfall**" means, for any Payment Date and a Purchaser Group, if the amount of the Monthly Fees and Other Amounts for the preceding Payment Date was greater than the amount distributed to the payment of such amounts pursuant to Section 3.6(d), an amount equal to the Monthly Fees and Other Amounts owing to such Purchaser Group which were unpaid on the preceding Payment Date plus interest on such unpaid amount for the period from the preceding Payment Date to the current Payment Date at a rate equal to the Prime Rate plus ●% per annum.

"**Non-Conduit Purchaser**" means each financial institution or other entity (other than a commercial paper conduit, Group Bank or Funding Agent) listed on Schedule E or party to a

Purchaser Group Supplement pursuant to which such financial institution or entity became a party to this Supplemental Indenture.

"**Non-Conduit Purchaser Group**" means a Non-Conduit Purchaser.

"**Non-Conduit Purchaser Participants**" is defined in Section 8.1(f).

"**Non-Deferrable Draw Amount**" means, with respect to any Purchaser Group as of any Increase Date, an amount equal to the lesser of (a) the excess, if any, of (x) the product of (i) $100,000,000 and (ii) the Commitment Percentage of such Purchaser Group over (y) the portion of any Increase Amounts funded by such Purchaser Group during the preceding thirty-five (35) days pursuant to a Non-Deferrable Increase Notice or, to the extent of any decrease pursuant to Section 3.3(e) in the Delayed Amount set forth in a Delayed Funding Notice delivered by such Purchaser Group, a Deferrable Increase Notice; and (b) the excess, if any, of (x) the Maximum Purchaser Group Principal Amount with respect to such Purchaser Group, over (y) the sum of (i) the Purchaser Group Principal Amount with respect to such Purchaser Group; and (ii) any unfunded Delayed Amounts with respect to such Purchaser Group, in each case as of such Increase Date. [**NTD: OPG would like an aggregate Non-Deferrable Draw Amount of $100 million at all times.]**

"**Non-Deferrable Increase Notice**" means a notice of Increase that provides that a Delayed Funding Notice may not be provided by any Purchaser Group with respect to such Increase in accordance with Section 3.3(a).

"**Non-Delayed Funding Purchaser Group**" is defined in Section 3.3(f).

"**Optional Termination Date**" is defined in Section 3.4.

"**Optional Termination Notice**" is defined in Section 3.4.

"**Prime Rate**" means the annual rate of interest announced by ● from time to time as being its reference rate for the determination of interest rates on Canadian dollar denominated commercial loans made by it and commonly referred to by ● as its "prime rate."

"**Principal Accumulation Amount**" means, in respect of each Payment Date occurring on or after the Principal Accumulation Date, an amount equal to the lesser of (x) $●, and (y) the Series 2017-1 Principal Amount.

"**Principal Accumulation Date**" means the Payment Date occurring in the month of ●, [2021].

"**Principal Payment Amount**" means, in respect of the Series 2017-1 Notes:

(a) on any Payment Date that is a Decrease Date before the earlier of (i) the Series 2017-1 Principal Payment Due Date; and (ii) the occurrence of an Acceleration Event, the Decrease Amount of the Decrease occurring on such Payment Date;

(b) on any Payment Date that is not a Decrease Date before the earlier of (i) the Series 2017-1 Principal Payment Due Date; and (ii) the occurrence of an Acceleration Event, nil; and

(c) on any Payment Date occurring on or after the earlier of (i) the Series 2017-1 Principal Payment Due Date; and (ii) the occurrence of an Acceleration Event, the Series 2017-1 Principal Amount.

"**Pro Rata Share**" means, with respect to any Purchaser Group, on any date, the ratio, expressed as a percentage, which the Purchaser Group Principal Amount with respect to such Purchaser Group bears to the Series 2017-1 Principal Amount on such date.

"**Program Support Provider**" means, with respect to any CP Conduit Purchaser, the Group Bank with respect to such CP Conduit Purchaser and any other or additional Person now or hereafter extending credit, or having a commitment to extend credit to or for the account of, or to make purchases from, such CP Conduit Purchaser or issuing a letter of credit, surety bond or other instrument to support any obligations arising under or in connection with such CP Conduit Purchaser's securitization program.

"**Purchaser Group**" means a CP Conduit Purchaser Group or a Non-Conduit Purchaser Group.

"**Purchaser Group Increase Amount**" means, with respect to any Purchaser Group, for any Business Day, such Purchaser Group's Commitment Percentage of the Increase Amount, if any, on such Business Day.

"**Purchaser Group Principal Amount**" means, with respect to any Purchaser Group, (a) when used with respect to the Closing Date, such Purchaser Group's Commitment Percentage of the Series 2017-1 Initial Principal Amount; and (b) when used with respect to any other date, an amount equal to (i) the Purchaser Group Principal Amount with respect to such Purchaser Group on the immediately preceding Business Day; plus (ii) the Purchaser Group Increase Amount with respect to such Purchaser Group on such date; minus (iii) the amount of principal payments made to such Purchaser Group pursuant to Section 3.7 on such date. For the avoidance of doubt, (x) so long as any Purchaser Group has failed to fund any portion of its Purchaser Group Increase Amount with respect to any Increase Date (including any Delayed Amount), such unfunded amount shall not be included in the Purchaser Group Principal Amount for such Purchaser Group unless and until such amount has been funded (including by Funding any Delayed Funding Reimbursement Amount, if applicable), and (y) any Delayed Amounts funded on an Increase Date by a Non-Delayed Funding Purchaser Group shall be included in the Purchaser Group Principal Amount for such Non-Delayed Funding Purchaser Group until the related Delayed Funding Reimbursement Amount has been funded.

"**Purchaser Group Supplement**" is defined in Section 8.1(e).

"**Rating Agency Condition**" means, with respect to any action in respect of the Series 2017-1 Senior Notes subject to such condition, each of the CP Conduit Purchasers shall deliver written notice of the proposed action to the CP Conduit Rating Agencies at least 10 Business Days prior to the effective date of such action (or if 10 Business Days prior notice is impractical, such advance notice as is practicable) and the CP Conduit Rating Agencies (i) shall not have informed any CP Conduit Purchaser prior to the effective date of such action that such action will result in the reduction or withdrawal of the rating in effect with respect to the Commercial Paper of the CP Conduit Purchaser immediately before the taking of such action, or (ii) in the case of DBRS,

or any successor thereto, when it is a CP Conduit Rating Agency, DBRS shall have informed each of the CP Conduit Purchasers in writing prior to the effective date of such action that such action will not result in the reduction or withdrawal of the rating of any Commercial Paper of such CP Conduit Purchasers immediately before the taking of such action. For purposes of the Trust Indenture, this Supplemental Indenture and the Master Transfer and Servicing Agreement, the Indenture Trustee shall receive, and shall be entitled to rely on, a certificate of a CP Conduit Purchaser confirming the satisfaction of the Rating Agency Condition.

"**Recipient**" has the meaning specified in Section 3.10(a) of this Supplemental Indenture.

"**Refinancing Increase**" is defined in Section 3.3(a).

"**Regulatory Change**" shall mean (i) the adoption after the date hereof of any applicable law, rule or regulation (including any applicable law, rule or regulation regarding capital adequacy, deposits, reserves or liquidity coverage) or any change therein after the date hereof, (ii) any change after the date hereof in the interpretation, administration, scope or timing of implementation thereof by any governmental authority, central bank, self-regulating professional body or comparable agency or authority charged with the interpretation or administration thereof, or compliance with any guidance, request or directive (whether or not having the force of law) of any such authority, central bank, self-regulating professional body or comparable agency or authority; provided that for purposes of this definition, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder, issued in connection therewith or in implementation thereof, and (y) all requests, rules, guidelines and directives (whether or not having the force of law) promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or Canadian or United States or other foreign regulatory authorities, shall in each case be deemed to be a "Regulatory Change", regardless of the date enacted, adopted, issued or implemented.

"**Related Non-Conduit Purchaser**" means, with respect to any Non-Conduit Purchaser Group, the Non-Conduit Purchaser that constitutes such Non-Conduit Purchaser Group.

"**Related Purchaser Group**" means, with respect to (a) any Funding Agent, the CP Conduit Purchaser identified next to such Funding Agent on Schedule E and the Group Bank identified on Schedule I next to such CP Conduit Purchaser or the CP Conduit Purchaser and Group Bank party to the Purchaser Group Supplement pursuant to which such Funding Agent became a party to this Supplemental Indenture; (b) any CP Conduit Purchaser, the CP Conduit Purchaser Group of which such CP Conduit Purchaser is a member; and (c) any Non-Conduit Purchaser, the Non-Conduit Purchaser Group that such Non-Conduit Purchaser constitutes.

"**Requisite Series 2017-1 Noteholders**" means Purchaser Groups having Commitment Percentages aggregating more than 50% (or if all Commitments have terminated, Purchaser Groups whose aggregate Purchaser Group Principal Amounts exceed 50% of the Series 2017-1 Principal Amount).

"**Scheduled Commitment Expiry Date**" means, ●, as such date may be extended in accordance with Section 3.5(c). [**NTD: two years out.]**

"**Series 2017-1 Initial Principal Amount**" is defined in Section 3.3(a).

"**Series 2017-1 Maximum Principal Amount**" means, on any date of determination, the sum of the Maximum Purchaser Group Principal Amounts with respect to each of the Purchaser Groups on such date.

"**Series 2017-1 Noteholder**" means a Person in whose name a Series 2017-1 Senior Note is registered in the Note Register.

"**Series 2017-1 Principal Amount**" means, on any date of determination, the sum of the Purchaser Group Principal Amounts with respect to each of the Purchaser Groups on such date.

"**Series 2017-1 Principal Payment Due Date**" means ●. [**NTD: the date upon which the Series 2017-1 Senior Notes become due and payable – a date after May 1, 2021?**]

"**Series 2017-1 Principal Payment Default Date**" means ●. [**NTD: the "cure period" number of days after the Series 2017-1 Principal Payment Due Date when an Event of Default will occur if the Series 2017-1 Senior Notes are not paid in full.]**

"**Series 2017-1 Senior Note**" means any one of the Floating Rate Variable Funding Senior Notes, Series 2017-1, executed by the Issuer and authenticated and delivered by or on behalf of the Indenture Trustee, substantially in the form of Exhibit B.

"**Standard & Poor's**" means Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc.

"**Supplemental Indenture**" means this Amended and Restated Supplemental Indenture, together with the Schedules hereto, as amended, supplemented, modified, restated or replaced from time to time, together with all schedules hereto and the expressions "hereof," "herein," "hereto," "hereunder," "hereby" and similar expressions refer to this Supplemental Indenture and not to any Article, Section, paragraph, subparagraph or clause hereof.

"**Support Facility**" shall mean any liquidity or credit support agreement with a CP Conduit Purchaser which relates to, or is otherwise available to such CP Conduit Purchaser in relation to its funding activities under, this Supplemental Indenture.

"**Termination Event**" means any Event of Default or any event which with the giving of notice or the passage of time, or both, could become an Event of Default.

"**Transfer Increase**" is defined in Section 3.3(a).

"**Transfer Supplement**" is defined in Section 8.1(c).

"**Transferee**" is defined in Section 8.1(g).

"**Trust Indenture**" means the trust indenture dated as of ●, 2017 between the Issuer and the Indenture Trustee, as amended or restated from time to time.

"**Write-Down and Conversion Powers**" shall mean, with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to

time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule.

SCHEDULE B

[FORM OF NOTE]

SERIES 2017-1 SENIOR NOTE

●

SCHEDULE C

FORM OF INCREASE NOTICE

●

SCHEDULE D

FORM OF DECREASE NOTICE

●

SCHEDULE E

PURCHASER GROUPS

Supplemental Indenture (Short Term Subordinated).pdf

SUBORDINATED SERIES 2017-1

SUPPLEMENTAL INDENTURE

between

FAIR HYDRO TRUST

by

COMPUTERSHARE TRUST COMPANY OF CANADA
as Issuer Trustee

and

BNY TRUST COMPANY OF CANADA
as Indenture Trustee

and

ONTARIO POWER GENERATION INC.
as Purchaser

Made as of ●, 2017

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FLOATING RATE VARIABLE FUNDING, SERIES 2017-1 SUBORDINATED NOTES

SUPPLEMENTAL INDENTURE made as of ●, 2017, between **Computershare Trust Company of Canada**, a trust company established under the laws of Canada (the "**Issuer Trustee**"), in its capacity as trustee of **Fair Hydro Trust**, a trust existing under the laws of the Province of Ontario (in such capacity, the "**Issuer**"), **BNY Trust Company of Canada**, a trust company established under the laws of Canada (the "**Indenture Trustee**"), and Ontario Power Generation Inc., in its capacity as the purchaser (the "**Purchaser**");

WHEREAS pursuant to the Trust Indenture, provision was made for the issuance of Notes from time to time;

AND WHEREAS pursuant to the Trust Indenture, Notes may be issued in one or more Series by the execution and delivery of a Supplemental Indenture;

AND WHEREAS pursuant to a Supplemental Indenture dated the date hereof between the Issuer Trustee, in its capacity as trustee of the Issuer, the Indenture Trustee, ■, in its capacity as the administrative agent for certain purchaser groups (the "**Administrative Agent**"), certain non-conduit purchasers from time to time party thereto, certain commercial paper conduit purchasers from time to time party thereto, and certain funding agents from time to time party thereto (the "**Senior Series 2017-1 Supplemental Indenture**"), the Issuer issued floating rate variable funding Series 2017-1 Senior Notes (the "**Series 2017-1 Senior Notes**");

AND WHEREAS the parties hereto are entering into this Supplemental Indenture to provide for the creation and issuance of the Series 2017-1 Subordinated Notes;

NOW THEREFORE THIS SUPPLEMENTAL INDENTURE WITNESSES and it is hereby covenanted, agreed and declared as follows:

ARTICLE 1
INTERPRETATION

1.1 Definitions

(a) For all purposes of this Supplemental Indenture, except as otherwise expressly provided or unless the context otherwise requires, the terms defined in Schedule A hereto have the meanings assigned to them in Schedule A and include the plural as well as the singular.

(b) The provisions of Section 1.1 of the Trust Indenture are applicable to this Supplemental Indenture. Except as otherwise expressly provided or unless the context otherwise requires, all terms used herein which are defined in the Trust Indenture, either directly or by reference therein, have the meanings assigned to them in the Trust Indenture.

1.2 Interpretation

Subject to the next following sentences, this Supplemental Indenture is supplemental to the Trust Indenture and the Trust Indenture shall be read in conjunction with this Supplemental Indenture and all of the provisions of the Trust Indenture shall apply to and shall have effect in connection

with this Supplemental Indenture in the same manner as if all of the provisions of the Trust Indenture and of this Supplemental Indenture were contained in one instrument. This Supplemental Indenture shall, unless the context otherwise requires, be subject to the interpretative provisions contained in Article 1 of the Trust Indenture. If any terms of the Trust Indenture are inconsistent with the express terms or provisions hereof, the terms and provisions of the Trust Indenture shall be, solely in respect of the Series 2017-1 Subordinated Notes, amended and supplemented so as to be consistent herewith. The provisions of this Supplemental Indenture are applicable only in respect of the Series 2017-1 Subordinated Notes and not the Notes of any other Series.

1.3 Application of this Supplemental Indenture

With respect to the Series 2017-1 Subordinated Notes only, the terms of the Trust Indenture are amended, supplemented, modified, restated and replaced to the extent applicable by the terms of this Supplemental Indenture in respect of the Series 2017-1 Subordinated Notes in accordance with Section 1.2 above.

ARTICLE 2
PRINCIPAL TERMS

2.1 Creation of Series 2017-1 Subordinated Notes

There is hereby created a Series of Notes to be issued pursuant to the Trust Indenture and this Supplemental Indenture designated as the "**Floating Rate Variable Funding Subordinated Notes, Series 2017-1**."

2.2 Principal Terms

In addition to and without limiting any of the provisions of this Supplemental Indenture, the Series 2017-1 Subordinated Notes:

(a) will be designated as set out in Section 2.1;

(b) will be Subordinated Notes;

(c) will have a Stated Principal Amount equal to the Series 2017-1 Maximum Subordinated Principal Amount;

(d) will not be issued in Classes or Tranches;

(e) will be denominated in Canadian dollars;

(f) will not be listed on any securities exchange;

(g) will have an Initial Dollar Principal Amount equal to the Series 2017-1 Initial Subordinated Principal Amount;

(h) will be issued as definitive notes and will not be in the form of a Global Note;

(i) will be issued as Registered Notes and will be without coupons;

(j) will be Subordinated Notes and will not be subordinated to any other Series, Class or Tranche of Notes other than all Senior Notes;

(k) will be substantially in the form of Schedule B, with such appropriate insertions, omissions, substitutions and variations as may be approved by the Issuer;

(l) will have each Payment Date as an Interest Payment Date;

(m) will have a Principal Payment Date that is the Series 2017-1 Senior Principal Payment Date;

(n) will have a Principal Payment Default Date that is the Series 2017-1 Subordinated Principal Payment Default Date; and

(o) will have no minimum issue amount.

ARTICLE 3
NOTE PURCHASE FACILITY

3.1 Purchase of Notes by the Purchaser

(a) ***Initial Purchase***. Subject to the terms and conditions of this Supplemental Indenture, including delivery of notice in accordance with Section 3.3, the Purchaser shall purchase a Series 2017-1 Subordinated Note in an amount equal to the Series 2017-1 Initial Subordinated Principal Amount on any Business Day during the period from the date hereof to and including **[December 15, 2017]**. Payments by the Purchaser for such purchase shall be made in immediately available funds on the Closing Date in accordance with Section 3.3(c).

(b) ***Series 2017-1 Maximum Subordinated Principal Amount***. Notwithstanding anything to the contrary contained in this Supplemental Indenture, at no time shall the Purchaser be required to purchase Series 2017-1 Subordinated Notes in an amount that exceeds the Series 2017-1 Maximum Subordinated Principal Amount.

3.2 Delivery

(a) On the Closing Date, Series 2017-1 Subordinated Notes shall be executed, authenticated and delivered by the Issuer in accordance with Section 4.03 of the Trust Indenture in the name of the Purchaser in an amount equal to the Series 2017-1 Maximum Subordinated Principal Amount.

(b) The Purchaser shall maintain a record of the actual Series 2017-1 Subordinated Principal Amount outstanding on any date of determination, which, absent manifest error, shall constitute prima facie evidence of the outstanding Series 2017-1 Subordinated Principal Amount from time to time.

3.3 Procedure for Initial Issuance and for Increasing the Series 2017-1 Subordinated Principal Amount

(a) (i) On any Business Day prior to [**December 15, 2017**], concurrent with the initial purchase of the Series 2017-1 Senior Notes under the Senior Series 2017-1 Supplemental Indenture, the Issuer shall request that the Purchaser purchase, and the Purchaser shall purchase, a Series 2017-1

Subordinated Note for an initial purchase price equal to the Series 2017-1 Initial Subordinated Principal Amount (the date on which the initial purchase occurs being referred to as the "**Closing Date**") by giving the Purchaser (with a copy to the Indenture Trustee) irrevocable written notice (effective upon receipt), by email communication, substantially in the form of Schedule C no later than **[3:00 p.m.]** (Toronto time) on the third Business Day prior to the Closing Date. The written notice of the initial purchase of the Series 2017-1 Subordinated Notes shall (x) state the Closing Date, (y) state the Series 2017-1 Initial Subordinated Principal Amount, and (z) attach a copy of the irrevocable written notice delivered to the Administrative Agent pursuant to Section **[3.3(a)]** of the Senior Series 2017-1 Supplemental Indenture in connection with the concurrent initial purchase of the Series 2017-1 Senior Notes thereunder; and (ii) on any Business Day after the initial purchase of the Series 2017-1 Subordinated Notes hereunder, the Issuer and the Purchaser hereby agree that the Series 2017-1 Subordinated Principal Amount may be increased by an amount not to exceed the product of (i) the Series 2017-1 Senior Increase on such Business Day (each date on which an increase in the Series 2017-1 Subordinated Principal Amount occurs hereunder being herein referred to as the "**Increase Date**" applicable to such Increase) and (ii) **[ninety-eight]** percent **[(98)]**% (an "**Increase**") by the Issuer providing the Purchaser (with a copy to the Indenture Trustee) irrevocable written notice (effective upon receipt), by email communication, substantially in the form of Schedule C (an "**Increase Notice**") no later than **[3:00 p.m.]** (Toronto time) on the second Business Day prior to such Increase Date. Each Increase Notice shall (w) state the Increase Date, (x) state the amount of the increase in the Series 2017-1 Subordinated Principal Amount (an "**Increase Amount**"), (y) state whether the Increase is to fund a Transfer (a "**Transfer Increase**") or is in respect of a Refinancing (a "**Refinancing Increase**"), and (z) attach a copy of the irrevocable written increase notice delivered to the Administrative Agent pursuant to Section **[3.3(a)]** of the Senior Series 2017-1 Supplemental Indenture in connection with the applicable Series 2017-1 Senior Increase proposed to be made thereunder.

(b) The Purchaser shall not be required to increase the Series 2017-1 Subordinated Principal Amount on any Increase Date hereunder unless after giving effect to such Increase Amount, the Series 2017-1 Maximum Subordinated Principal Amount is not exceeded.

(c) The Issuer shall apply amounts paid to it pursuant to Section 3.3(a) in the following order of priority:

(i) **[As to an amount equal to ●% of the amounts paid to pursuant to Section 3.3(a), by deposit to the Program Cash Reserve Account; and] [NTD: Discuss how this account is to be funded.]**

(ii) as to the balance, in respect of the proceeds of the initial purchase of the Series 2017-1 Notes or a Transfer Increase, by application to payment of the purchase price payable by the Issuer to the IESO under the Master Transfer and Servicing Agreement in respect of the related Transfer and, in respect of the proceeds of a Refinancing Increase, by deposit to the Refinancing Account.

3.4 Procedure for Decreasing the Series 2017-1 Subordinated Principal Amount

(a) On any Business Day after the initial purchase of the Series 2017-1 Subordinated Notes hereunder, the Issuer and the Purchaser hereby agree that the Series 2017-1 Subordinated Principal Amount may be decreased by an amount not to exceed the product of (i) the Series 2017-1 Senior Decrease on such Business Day, and (ii) **[ninety-eight]** percent **[(98)]**% (a "**Decrease**"). Each

Payment Date on which a Decrease in the Series 2017-1 Subordinated Principal Amount occurs hereunder being herein referred to as the "**Decrease Date**" applicable to such Decrease; and the Issuer shall provide to the Purchaser (with a copy to the Indenture Trustee) irrevocable written notice (effective upon receipt), by email communication, substantially in the form of Schedule D (a "**Decrease Notice**") no later than **[3:00 p.m.]** (Toronto time) on the second Business Day prior to any Payment Date that is a Decrease Date. Each Decrease Notice shall (x) state the Decrease Date, (y) state the amount of the decrease in the Series 2017-1 Subordinated Principal Amount (a "**Decrease Amount**"), and (z) attach a copy of the irrevocable written decrease notice delivered to the Administrative Agent pursuant to Section **[3.4]** of the Senior Series 2017-1 Supplemental Indenture in connection with the applicable Series 2017-1 Senior Decrease proposed to be made thereunder.

3.5 Increases and Reductions of the 2017-1 Maximum Subordinated Principal Amount

(a) If one or more Maximum Purchaser Group Principal Amounts are increased pursuant to Section **[3.5(a)]** of the Senior Series 2017-1 Supplemental Indenture, the Series 2017-1 Subordinated Maximum Principal Amount shall be automatically increased by an amount equal to **[ninety-eight]** percent **[(98)]**% of such aggregate increase to the Maximum Purchaser Group Principal Amounts pursuant to Section **[3.5(a)]** of the Senior Series 2017-1 Supplemental Indenture. **[NTD: Consider whether in senior warehouse supplemental if section 5.01 CPs must be met and new note issued. We are missing mechanic if so.]**

(b) If the Series 2017-1 Maximum Senior Principal Amount is reduced pursuant to Section **[3.5(b)]** of the Senior Series 2017-1 Supplemental Indenture, the Series 2017-1 Maximum Subordinated Principal Amount shall be automatically decreased by an amount equal to **[ninety-eight]** percent **[(98)]**% of such aggregate decrease to the Series 2017-1 Maximum Senior Principal Amount pursuant to Section **[3.5(b)]** of the Senior Series 2017-1 Supplemental Indenture. **[NTD: Consider if new note to be issued. We are missing mechanic if so.]**

3.6 Interest; Other Amounts

(a) Interest shall be payable on the Series 2017-1 Subordinated Notes on each Payment Date.

(b) The Purchaser shall provide written notice to the Issuer and the Paying Agent no later than two (2) Business Days prior to each Payment Date, setting forth the Monthly Interest and the Monthly Other Amounts with respect to the Payment Date.

(c) The Monthly Interest shall be included in each calculation of the Interest Accrual Amount (Subordinated) for the purposes of Section **[7.04(e)(ix)]** of the Trust Indenture and shall be payable pursuant to Sections **[7.05(b), 7.08(a)(ii) or 8.13(c)]** of the Trust Indenture, as applicable. On each Payment Date, the Monthly Other Amounts shall be payable in respect of the Series 2017-1 Subordinated Notes pursuant to Sections **[7.04(e)(ix) or 8.13(h)]** of the Trust Indenture, as applicable. On each Payment Date the Paying Agent shall, subject to availability of funds, pay to the Purchaser the Monthly Other Amounts with respect to the Payment Date.

3.7 Accumulation and Repayment of Principal

(a) For the purposes of the Trust Indenture and the Series 2017-1 Subordinated Notes:

(i) for each Payment Date before the Principal Accumulation Date or an Acceleration Event, the Principal Accumulation Amount shall be the Principal Payment Amount for such Payment Date;

(ii) for each Payment Date on or after the Principal Accumulation Date prior to the occurrence of an Acceleration Event, the Principal Accumulation Amount shall be the greater of (x) the Principal Payment Amount for such Payment Date, and (y) the Principal Accumulation Amount, for such Payment Date; and

(iii) for each Payment Date following the occurrence of an Acceleration Event, the Principal Accumulation Amount shall be the Series 2017-1 Subordinated Principal Amount.

(b) Each Payment Date where the Principal Payment Amount is not nil shall be a Principal Payment Date in respect of the Series 2017-1 Subordinated Notes. On each Principal Payment Date in respect of the Series 2017-1 Subordinated Notes, the Paying Agent shall pay to the Purchaser the Principal Payment Amount for such Principal Payment Date out of funds allocated to the Series 2017-1 Subordinated Notes pursuant to Sections [**7.04(e)(x), 7.06(b) or 8.13(i)]** of the Trust Indenture, as applicable, in repayment of the principal amount of the Series 2017-1 Subordinated Notes.

3.8 Indemnification by the Issuer

The Issuer agrees to indemnify and hold harmless the Indenture Trustee and the Purchaser and each of their respective officers, directors, agents and employees (each, an "**Issuer Indemnified Person**") from and against any loss, liability, expense, damage or injury suffered or sustained by such Issuer Indemnified Person by reason of (a) any acts, omissions or alleged acts or omissions arising out of, or relating to, activities of the Issuer pursuant to the Program Agreements to which it is a party; (b) a breach of any representation or warranty made or deemed made by the Issuer (or any of its officers) in any Program Agreement; or (c) a failure by the Issuer to comply with any applicable law or regulation or to perform its covenants, agreements, duties or obligations required to be performed or observed by it in accordance with the provisions of the Program Agreements, including, but not limited to, any judgment, award, settlement, reasonable attorneys' fees and other reasonable costs or expenses incurred in connection with the defense of any actual or threatened action, proceeding or claim, except to the extent such loss, liability, expense, damage or injury resulted from the gross negligence, bad faith or willful misconduct of such Issuer indemnified person or its officers, directors, agents, principals, employees or employers as determined by a court of competent jurisdiction in a final non-appealable judgement or includes any Excluded Taxes; provided that any payments made by the Issuer pursuant to this Section 3.8 shall be made solely from funds available pursuant to Section **[7.04] or [8.13]** of the Trust Indenture, as applicable, shall be non-recourse other than with respect to such funds, and shall not constitute a claim against the Issuer to the extent that such funds are insufficient to make such payment.

3.9 Taxes

(a) All payments by or on account of any obligation of the Issuer hereunder shall, to the extent allowed by law, be made free and clear of, and without deduction or withholding for or on account of Taxes, excluding (i) income taxes (including branch profit taxes, minimum taxes and taxes computed under alternative methods, at least one of which is based on or measured by net income),

franchise taxes (imposed in lieu of income taxes), or any other Taxes based on or measured by the net income of any person legally entitled to receive such payments (each a "**Recipient**") as a result of a present or former connection between the Recipient and the jurisdiction of the Governmental Authority imposing such Taxes (other than any such connection arising solely from the Recipient having executed, delivered or performed its obligations or received a payment under, disposed of, or enforced, this Supplemental Indenture); (ii) any withholding or deduction imposed pursuant to (A) Sections 1471 to 1474 of the U.S. Internal Revenue Code of 1986, as amended ("**FATCA**"), or any successor version thereof, or any similar legislation imposed by any other Governmental Authority, or (B) any treaty, law or regulation or other official guidance enacted by Canada implementing FATCA or any intergovernmental agreement with respect to FATCA or any similar legislation imposed by any other Governmental Authority, including, for greater certainty, the Canada-United States Enhanced Tax Information Exchange Agreement Implementation Act (Canada) and Parts XVIII and XIX of the Income Tax Act (Canada), as amended (collectively, and including FATCA, the "**AEOI Legislation**"); and (iii) any interest, penalties and additions to Taxes in respect of (i) and (ii) (all such excluded Taxes being hereinafter called "**Excluded Taxes**"). If any Taxes, other than Excluded Taxes, are required to be withheld from any amounts payable to a Recipient hereunder, the amounts so payable to the Recipient shall be increased, and the Recipient shall be entitled to be paid by the Issuer the amount of such increase to the extent necessary to yield to the Recipient (after payment of all such Taxes other than Excluded Taxes) interest or any such other amounts payable hereunder or thereunder at the rates or in the amounts specified hereunder. Where the amount payable by the Issuer is increased in accordance with the previous sentence, the Monthly Interest shall be increased by the amount of such increase. Whenever any Taxes are payable on or with respect to amounts distributed to a Recipient, as promptly as possible thereafter the Issuer shall send to such Recipient a certified copy of an original official receipt showing payment thereof.

(b) If a payment by or on account of any obligation of the Issuer hereunder would be subject to withholding Taxes under any AEOI Legislation if the Recipient were to fail to comply with the applicable reporting requirements of any AEOI Legislation, such Recipient shall deliver to the Issuer at the time or times prescribed by law and at such time or times reasonably requested by the Issuer such documentation prescribed by applicable law and such additional documentation reasonably requested by the Issuer as may be necessary for the Issuer to comply with its obligations under any AEOI Legislation and to determine that such Recipient has complied with its obligations under any AEOI Legislation, or to determine the amount to deduct and withhold from such payment. If any form or certification it previously delivered by a Recipient expires or becomes obsolete or inaccurate in any respect, the Recipient shall update such form or certification or promptly notify the Issuer in writing of its legal inability to do so.

(c) If a Recipient is legally entitled to receive a refund of any Taxes (other than Excluded Taxes) as to which it has been indemnified or with respect to which additional amounts have been paid to it hereunder or it is legally entitled to receive a credit or deduction with respect to such Taxes or with respect to such additional amounts that have been paid hereunder (in each case pursuant to Section 3.9(a)), it shall use commercially reasonable efforts to obtain or claim such refund, credit or deduction and pay over such refund or the value of such credit or deduction to the Issuer, together with any interest thereon.

3.10 Increased Costs

(a) (i) If any Regulatory Change (x) subjects the Purchaser to any charge or withholding on or with respect to any Support Facility or this Supplemental Indenture or the Purchaser's obligations under a Support Facility or this Supplemental Indenture, or changes the basis of taxation of payments to the Purchaser of any amounts payable under any Support Facility or this Supplemental Indenture Agreement (except for changes in the rate of tax on the overall net income of the Purchaser or Excluded Taxes) or (y) imposes, modifies or deems applicable any reserve, assessment, fee, tax, insurance charge, special deposit or similar requirement against assets of, deposits with or for the account of, or liabilities of the Purchaser, or credit extended by the Purchaser pursuant to a Support Facility or this Supplemental Indenture or (z) imposes any other condition the result of which is to increase the cost to the Purchaser of performing its obligations under a Support Facility or this Supplemental Indenture, or to reduce the rate of return on the Purchaser's capital or assets as a consequence of its obligations under a Support Facility or this Supplemental Indenture, or to reduce the amount of any sum received or receivable by the Purchaser under a Support Facility or this Supplemental Indenture, or to require any payment calculated by reference to the amount of interests or loans held or interest received by it, then, upon written request by the Purchaser of a written request therefore to the Issuer, the Purchaser shall be entitled to be paid, such amounts charged to the Purchaser or such amounts to otherwise compensate the Purchaser for such increased cost or such reduction, no later than the Payment Date following receipt by the Issuer of such request for compensation under this Section 3.10(a)(i), if such request is received by the Issuer no later than five (5) Business Days prior to the end of the Interest Period related to such Payment Date, and otherwise on the following Payment Date.

(ii) The Issuer acknowledges that the Purchaser may implement, as an internal institutional matter, measures in anticipation of a final or proposed Regulatory Change (including, without limitation, the imposition of internal charges on the Purchaser's interest or obligations under any Support Agreement or this Supplemental Indenture) and may commence recognizing the incurrence of charges by seeking compensation under Section 3.10(a)(i) in connection with such measures, in advance of the effective date of such final or proposed Regulatory Change, and the Issuer agrees that such charges or compensation shall be payable, to the Purchaser, following demand therefor without regard to whether such proposed Regulatory Change has been adopted or whether such effective date has occurred; provided, that (I) the Purchaser shall provide thirty (30) days prior written notice to the Issuer of its intent to impose or incur any such charges or compensation, (II) the Purchaser shall not be compensated for any such amount pursuant to this subsection 3.10(a)(ii) relating to any period ending, and of which the Purchaser has had knowledge, more than ninety (90) days prior to the date that the Purchaser provided the Issuer with the written notice contemplated by the preceding clause (I) of this subsection 3.10(a)(ii), (III) if, after the payment by the Issuer of any charges or compensation pursuant to this subsection 3.10(a)(ii), either (A) the Issuer requests in writing that the Purchaser re-compute any such charge or compensation in light of differences between a proposed Regulatory Change and the final effective version thereof or (B) the the Purchaser determines that the amount of the charge imposed on and required to be compensated by the Issuer exceeds the amount necessary to compensate it for the applicable Regulatory Change as contemplated by subsection 3.10(a)(i), then (x) the amount of such charge or compensation shall, from and after such determination, be reduced by the amount of such excess and (y) the Purchaser shall, within thirty (30) days of such determination, either repay the amount of such excess or credit the amount of such excess against future charges under this subsection 3.10(a)(ii). The Issuer further acknowledges that any charge

or compensation demanded hereunder may take the form of a monthly charge to be assessed by the Purchaser.

(b) The Purchaser claiming increased amounts described in subsection 3.10(a) of this Supplemental Indenture will furnish to the Issuer (together with its request for compensation) a certificate prepared in good faith setting forth the basis and the calculation of the amount (in reasonable detail) of each request by the Purchaser for any such increased amounts referred to in subsection 3.10(a) hereof. Any such certificate shall be conclusive absent manifest error. Failure on the part of the Purchaser to demand compensation for any amount pursuant to subsection 3.10(a) hereof with respect to any period shall not constitute a waiver of the Purchaser's right to demand compensation with respect to such period.

3.11 Acceleration Events

[NTD: To be conformed with Senior Supplemental Indenture.]

ARTICLE 4
CONDITIONS PRECEDENT

4.1 Conditions Precedent to Initial Purchase of Series 2017-1 Subordinated Notes

On or prior to the initial purchase of Series 2017-1 Subordinated Notes hereunder, the following conditions precedent shall be satisfied:

(a) Each of the conditions precedent set forth in Section 5.01 of the Trust Indenture in respect of the incurrence of Funding Obligations under this Supplemental Indenture shall have been satisfied.

(b) The Purchaser shall have received:

(i) executed copies of this Supplemental Indenture and copies of each of the other Program Agreements certified by an Authorized Officer of the Issuer;

(ii) certificates of status or compliance or other similar documents issued by the applicable governmental authority to evidence that each of the Issuer Trustee, the IESO and the Manager is validly existing pursuant to the laws of the jurisdiction of their respective establishment or incorporation;

(iii) a copy of the incorporating documents and all amendments thereto and applicable by-laws of each of the Issuer Trustee, the IESO and the Manager certified by an Authorized Officer of the applicable entity;

(iv) a copy of the Declaration of Trust certified by an Authorized Officer of the Issuer;

(v) copies of resolutions of the board of directors of the IESO and the Manager approving and authorizing the execution, delivery and performance of each Program Agreement they are party to, in each case certified by an Authorized Officer of the applicable entity;

(vi) incumbency certificates for each of the Issuer Trustee, the Manager and the IESO executing this Supplemental Indenture and any other Program Agreements and the other documents to be delivered by either the Issuer Trustee, the Manager or the IESO thereunder, in each case showing their names, offices and specimen signatures on which certificates the Purchaser shall be entitled to conclusively rely until such time as the Purchaser receives a replacement certificate meeting the requirements of this Section 4.1(b)(vi);

(vii) the following Opinions of Counsel:

(A) the opinion of external counsel to the Manager as to the non-consolidation of the Issuer with the Manager in the event of the insolvency of the Manager in form and substance satisfactory to the Purchaser;

(B) the opinion of external counsel to the IESO as to the Investment Asset acquired by the Issuer not being subject to the claims of creditors of the IESO in form and substance satisfactory to the Purchaser;

(C) favourable opinions of external counsel to the Manager covering general corporate matters, the due execution and delivery of, and the enforceability of, each of the Program Agreements to which the Manager, the Issuer and the Issuer Trustee are party which opinion, as to certain matters, may rely on opinion of internal counsel to the Manager and the Issuer Trustee; and

(D) a favourable opinion of external counsel to the Province with respect to the due authorization, execution, delivery and enforceability of the Change of Law Protection Agreement and the Change of Law Process Agreement in form and substance satisfactory to the Purchaser;

(viii) a certificate of an Authorized Officer of the Manager confirming that the representations and warranties set forth in Section **[12.01]** of the Trust Indenture and Section 5.1 of this Supplemental Indenture are true and correct in all material respects, that the Issuer is in compliance in all material respects with all of its covenants and obligations under the Program Agreements to which it is a party and that no Termination Event has occurred; and

(ix) such additional documents, instruments, certificates or letters as the Purchaser may reasonably request.

(c) The representations and warranties set forth in Section **[12.01]** of the Trust Indenture and Section 5.1 of this Supplemental Indenture shall be true and correct in all material respects, the Issuer shall be compliance in all material respects with all of its covenants and obligations under the Program Agreements to which it is a party and no Termination Event shall have occurred.

(d) The Series 2017-1 Subordinated Notes shall have been duly issued in accordance with the Trust Indenture and the Purchaser shall have received its Series 2017-1 Subordinated Note registered in its name or a nominee in a face amount equal to the Series 2017-1 Maximum Principal Subordinated Amount.

(e) After giving effect to the purchase, the covenant of the Issuer in Section 6.1(d) will be satisfied.

4.2 Conditions Precedent to each Increase under Series 2017-1 Subordinated Notes

On or prior to each Increase, the following conditions precedent shall be satisfied:

(a) the Purchaser shall have received an Increase Notice;

(b) no Termination Event shall have occurred or would occur after giving effect to such Increase; and

(c) if the Increase is identified as a Transfer Increase in the Increase Notice, then the related Transfer under the Master Transfer and Servicing Agreement shall have been completed or contemporaneously completed.

The Issuer's acceptance of funds in connection with each Increase occurring on any Increase Date shall constitute a representation and warranty by the Issuer to the Purchaser as of such Increase Date that all of the conditions contained in Section 3.3(a) and this Section 4.2 are satisfied.

ARTICLE 5
REPRESENTATIONS AND WARRANTIES

5.1 Representations and Warranties of the Issuer

The Issuer hereby represents and warrants to the Purchaser as of the Closing Date, and shall be deemed to represent and warrant to the Purchaser on each Increase Date, that:

(a) no Termination Event has occurred or would result from the initial purchase of the Issuer Investment Interest on the Closing Date or any increase in the Issuer Investment Interest on an Increase Date, as applicable;

(b) the Issuer is not a non-resident of Canada within the meaning of the *Income Tax Act* (Canada);

(c) all tax returns (federal, provincial and local) required to be filed with respect to the Issuer have been filed and there has been paid or adequate provision made for the payment of all material Taxes in respect of the Issuer;

(d) the Issuer has complied in all material respects with all laws in respect of the conduct of its business and ownership of its property including the Issuer Investment Interest;

(e) all information provided to the Purchaser by or on behalf of the Issuer in respect of the Issuer Investment Interest is and will be true and accurate in all material respects; and

(f) to its knowledge, there is no set of circumstances existing at such time that will have an Adverse Effect or will reasonably be expected to have an Adverse Effect.

5.2 Representations and Warranties of the Purchaser

The Purchaser represents and warrants to the Issuer as of the Closing Date, and shall be deemed to represent and warrant to the Issuer on each Increase Date, that:

(a) it is resident in Ontario or is otherwise subject to the securities legislation of the Province of Ontario;

(b) it is purchasing the applicable Series 2017-1 Subordinated Notes (i) as principal for its own account and not for the benefit of any other "person" (as defined in the *Securities Act* (Ontario)) or company; and (ii) for cash consideration in excess of $150,000; and

(c) it was not created and is not being used solely to purchase or hold securities in reliance on the exemption from the prospectus and dealer registration requirements contained in Section 2.10 of National Instrument 45-106 − Prospectus and Registration Exemptions.

5.3 Survival

The representations and warranties set out in this Article 5 shall survive the execution hereof.

ARTICLE 6
COVENANTS

6.1 Covenants of the Issuer

(a) The Issuer shall promptly provide to the Purchaser (in multiple copies if requested) copies of all material reports, notices, financial statements and other documents delivered by the IESO to the Issuer with respect to the Issuer Investment Interest or pursuant to the Master Transfer and Servicing Agreement; provided such documents shall be deemed to be delivered hereunder so long as the Purchaser is the Manager.

(b) The Issuer shall provide to the Purchaser (in multiple copies, if requested) such other information, documents, records or reports respecting the Issuer Investment Interest, the Issuer or the IESO which is in the possession or under the control of the Issuer or the Manager, as the Purchaser may from time to time reasonably request.

(c) The Issuer shall furnish to the Purchaser promptly after known to the Issuer or the Manager, information with respect to any action, suit or proceeding involving the Manager, the Issuer or the IESO or any of their respective Affiliates by or before any court or any Governmental Authority which, if adversely determined, would have an Adverse Effect; provided that the Purchaser shall be deemed to have knowledge of such actions, suits or proceedings so long as it is the Manager.

(d) The Issuer will, at all times, cause the aggregate outstanding principal amount of Subordinated Funding Obligations and Junior Subordinated Funding Obligations to be not more than forty-nine percent (49)% of the aggregate outstanding principal amount of all Issuer Funding Obligations (excluding Derivative Funding Obligations).

ARTICLE 7
GENERAL

7.1 Successor and Assigns

(a) This Supplemental Indenture shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns except that (i) the Issuer may not assign or transfer any of its rights or obligations under this Supplemental Indenture without the prior written consent of the Purchaser; and (ii) the Purchaser may, without the prior written consent of the Issuer, assign or transfer any of its rights or obligations under this Supplemental Indenture in the ordinary course of its business and in accordance with applicable law to another Person (each, a "**Transferee**") pursuant to a transfer supplement, substantially in the form of Exhibit ■ (the "**Transfer Supplement**").

(b) The Issuer authorizes the Purchaser to disclose to any Transferee and any prospective Transferee any and all financial information in the Purchaser's possession concerning the Issuer, the Issuer Investment Asset and the Program Agreements which has been delivered to the Purchaser by the Issuer or the Manager.

(c) Notwithstanding any other provision of this Supplemental Indenture to the contrary, the Purchaser may at any time pledge or grant a security interest in all or any portion of its rights under its Series 2017-1 Subordinated Note and this Supplemental Indenture to secure obligations of the Purchaser to any Person, without notice to or consent of the Issuer; provided that no such pledge or grant of a security interest shall release the Purchaser from any of its obligations hereunder or substitute any such pledgee or grantee for the Purchaser as a party hereto.

7.2 Waiver

Without limiting the requirements of Section **[11.02]** of the Trust Indenture which shall be applicable to this Supplemental Indenture, no waiver of any provision of this Supplemental Indenture or consent to any departure by the Issuer from any provision of this Supplemental Indenture will be effective (in whole or in part) unless in writing and signed by the Purchaser. Such waiver will be effective only in the specific instance, for the specific purpose and for the specific length of time for which it is given by the Purchaser.

7.3 Notice

All notices, requests, instructions and demands to or upon any party hereto to be effective shall be given (a) in the case of the Issuer and the Indenture Trustee, in the manner set forth in Article **[15]** of the Trust Indenture; and (b) in the case of the Purchaser, in writing, and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when delivered by hand or three days after being deposited in the mail, postage prepaid, in the case of facsimile notice, when received, or in the case of overnight air courier, one Business Day after the date such notice is delivered to such overnight courier, addressed as follows; or to such other address as may be hereafter notified by the respective parties hereto:

Purchaser:

Ontario Power Generation Inc.
700 University Avenue
Toronto, Ontario M5G 1X6

Attention: [■]
Fax: (416) [■]
Email: [■]

7.4 No Waiver: Remedies

No failure on the part of any party to exercise, and no delay in exercising, any power, right or remedy hereunder will operate as a waiver thereof; nor will any single or partial exercise of any such power, right or remedy hereunder preclude any other or further exercise thereof or the exercise of any other power, right or remedy. The rights and remedies herein provided are cumulative and not exclusive of any remedies provided by applicable law.

7.5 Entire Agreement

This Supplemental Indenture, the Trust Indenture and the other Program Agreements contain the entire agreement between the parties relative to the subject matter hereof and supersede all prior and contemporaneous agreements, term sheets, commitments, understandings, negotiations and discussions, whether oral or written. There are no warranties, representations or other agreements between the parties in connection with the subject matter hereof except as specifically set forth in this Supplemental Indenture, the Trust Indenture and the other Program Agreements.

7.6 Governing Law and Attornment

This Supplemental Indenture shall be governed by, and construed in accordance with, the laws of the Province of Ontario and the parties hereby attorn to the jurisdiction of the courts of Ontario.

7.7 Acknowledgment of Trust Indenture and No Proceedings

The Purchaser acknowledges and agrees in favour of the Indenture Trustee that it is a Specified Creditor under the Trust Indenture and its entitlements as a Specified Creditor are subject to the provisions applicable to Specified Creditors under the Trust Indenture including, without limitation, Section **[7.06]** (Payments Held in Trust), Section **[8.12]** (Limitation on Suits), Sections **[7.04 and 8.13]** (Payment Priorities), Section **[8.14]** (Limited Recourse) and Section **[16.01]** (No Petition).

7.8 Expenses

The Issuer agrees to pay on demand (a) to the Indenture Trustee and the Purchaser all reasonable costs and expenses in connection with the preparation, execution, and delivery of this Supplemental Indenture and the other documents to be delivered hereunder or in connection herewith, including, the reasonable fees and out-of-pocket expenses of counsel for the Purchaser, with respect thereto; (b) to the Indenture Trustee and the Purchaser, all reasonable costs and expenses in connection with any amendments of or waivers or consents under this Supplemental Indenture or the Program Agreements, including in each case the reasonable fees and out-of-pocket

expenses of counsel with respect thereto; and (c) to the Indenture Trustee and the Purchaser, on demand, all reasonable costs and expenses (including reasonable fees and expenses of counsel to the Purchaser), if any, in connection with the enforcement of this Supplemental Indenture or any of the Program Agreements, and the other documents delivered thereunder or in connection therewith.

7.9 Further Assurances

Each of the parties hereto upon the request of the other party or parties hereto shall do, execute, acknowledge and deliver or cause to be done, executed acknowledged or delivered all such further acts, deeds, documents, assignments, transfers, conveyances, powers of attorney and assurances as may be reasonably necessary or desirable to effect or complete the consummation of the transactions contemplated by this Supplemental Indenture.

7.10 Confidentiality

(a) The Purchaser covenants and agrees that any non-public information obtained by it pursuant to this Supplemental Indenture and the other Program Agreements shall be held in confidence except that the Purchaser may disclose such information (i) pursuant to the order of any court or administrative agency or in any pending legal or administrative proceeding (whether or not having the force or effect of law) provided that, unless prohibited by applicable law, the Purchaser shall provide prompt notice of such order to the affected party; (ii) upon the request or demand of any regulatory authority having or claiming jurisdiction over the Purchaser; (iii) as required by applicable law including, without limitation, all applicable securities laws; (iv) to the extent that such information becomes publicly available other than by reason of improper disclosure by the Purchaser; (v) to its affiliates, officers, directors, employees, legal counsel, independent auditors, accountants, advisors, investors, potential investors, commercial paper dealers, providers of surety, guaranty, credit or liquidity enhancement (including the directors, officers and accountants of such surety, guaranty, credit or liquidity enhancement provider), legal counsel of any of the foregoing and other experts or agents who need to know such information and are informed of the confidential nature of such information; (vi) for purposes of establishing a "due diligence" defense; (vii) which was available to the Purchaser on a non-confidential basis from a source other than the affected party, provided that such source was not to the knowledge of the Purchaser bound by a confidentiality agreement with the affected party; (viii) has been independently acquired or developed by the Purchaser without violating any of the Purchaser's obligations under this Supplemental Indenture; (ix) if such disclosure has been approved in writing in advance by the Issuer or the Manager; (x) regarding the existence of this Supplemental Indenture, but not the financial terms thereof; and (xi) to DBRS and Moody's and any other Rating Agencies.

(b) The Issuer covenants and agrees to hold in confidence, and not disclose to any Person, the terms of this Supplemental Indenture, except as the Purchaser may have consented to in writing prior to any proposed disclosure and except (i) it may also disclose such information (A) to its officers, directors, employees, legal counsel, independent auditors, accountants and other advisors who are directly involved in the consideration of this Supplemental Indenture (and then only on a confidential basis), (B) to the Manager and its officers, directors, employees, legal counsel, independent auditors, accountants and other advisors, (C) any ministry or agency of the Province of Ontario and, in each case, their respective employees, officials, agents and advisors, (D) as required by applicable law (including, without limitation, applicable securities law) or compulsory

legal process, (E) as expressly permitted by the terms of the Program Agreements, and (F) to DBRS and Moody's and any other Rating Agencies; provided, that, in the case of clause (D), the Issuer will use all commercially reasonable efforts to maintain confidentiality and will (unless otherwise prohibited by law) notify the Purchaser of its intention to make any such disclosure prior to making such disclosure; and (ii) it may also disclose the existence (but not the financial terms) of this Supplemental Indenture, including to any actual or prospective purchaser of other Notes.

(c) The parties hereto acknowledge that a description of this Supplemental Indenture and the Series 2017-1 Subordinated Note will be included in the preliminary and final offering memoranda of the Issuer relating to the issue of other Notes from time to time.

7.11 Limitation of Liability of Issuer Trustee

Each party hereto other than the Issuer acknowledges that the Issuer is a trust, and that Computershare Trust Company of Canada is the Issuer Trustee. The other parties hereto agree that the Issuer Trustee will not be subject to any liability whatsoever to them, in tort, contract or otherwise, in connection with the Issuer's assets or the trust activities, for any action taken or permitted by it to be taken, or for its failure to take any action; provided that the foregoing limitation will not apply in respect of any action or failure to act arising from or in connection with wilful misconduct, negligence or reckless disregard of a duty by the Issuer Trustee. The Issuer Trustee in doing anything or permitting anything to be done in respect of assets or the trust activities is, and shall be conclusively deemed to be, acting as trustee of the Issuer and not in any other capacity. Except as to the extent provided in this Section 7.11, the Issuer Trustee will not be subject to any debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses against or with respect to the Issuer, arising out of anything done or permitted by it to be done or its failure to take any action in respect of the Issuer's assets or the trust activities and resort will be had solely to the Collateral for the payment or performance thereof. No property or assets of the Issuer Trustee, whether owned in its personal capacity or otherwise, will be subject to levy, execution or other enforcement procedure with regard to any obligation under this Supplemental Indenture. Nothing contained in this Section 7.11 shall be construed so as to limit the liability of the Issuer under this Supplemental Indenture. This Supplemental Indenture, and every deed, transfer, assignment, agreement or other instrument made pursuant hereto including, without limitation, the Series 2017-1 Subordinated Notes, made or purporting to be made by or creating an obligation of the Issuer or the Issuer Trustee on behalf of, or as trustee of, the Issuer shall be deemed and construed for all purposes as if made by the Issuer Trustee, in and only in its capacity as trustee of the Issuer. Any obligations of the Issuer Trustee hereunder or thereunder are non-recourse to the Issuer Trustee in its personal capacity.

7.12 Execution in Counterparts

This Supplemental Indenture may be executed in several counterparts, each of which when so executed shall be deemed to be an original and the counterparts together shall constitute one and the same instrument. This Supplemental Indenture may be executed and delivered by email or other electronic transmission of a manually signed counterpart.

7.13 Delivery of Executed Copies

Each party acknowledges delivery of an executed copy of this Supplemental Indenture.

[signature page follows]

IN WITNESS WHEREOF the parties hereto have duly executed this Supplemental Indenture as of the date first above written.

FAIR HYDRO TRUST, as Issuer, by

ONTARIO POWER GENERATION INC.,
not in its individual capacity but solely as
Manager

By: _____
Name:
Title:

By: _____
Name:
Title:

BNY TRUST COMPANY OF CANADA, as
Indenture Trustee

By: _____
Name:
Title:

By: _____
Name:
Title:

ONTARIO POWER GENERATION INC.,
as Purchaser

By: _____
Name:
Title:

By: _____
Name:
Title:

SCHEDULE A

DEFINITIONS

"**Acceleration Event**" means the outstanding Dollar Principal Amount of the Series 2017-1 Senior Notes have been declared or automatically become due and payable pursuant to Section **[3.11]** of the Senior Series 2017-1 Supplemental Indenture and the outstanding Dollar Principal Amount of the Series 2017-1 Subordinated Notes have been declared or automatically become due and payable pursuant to Section 3.11.

"**Administrative Agent**" shall have the meaning specified in the recitals to this Supplemental Indenture.

"**AEOI Legislation**" has the meaning specified in Section 3.9(a) of this Supplemental Indenture.

"**Applicable Margin**" means ■.

"**Authorized Officer**" means, with respect to: (a) the Issuer, any authorized director or officer of the Manager; (b) the Manager, any authorized director of officer of OPG; (c) the IESO, any authorized director or officer of the IESO; (d) the Issuer Trustee, any officer within the corporate trust office of such trustee (including the President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Treasurer or any other officer of the Issuer Trustee customarily performing functions similar to those performed by persons who at the time shall be such officers, respectively, and that has direct responsibility for the administration of the Issuer and also, with respect to a particular matter, any other officer to whom such matter is referred to because of such officer's knowledge and familiarity with the particular subject).

"**CDOR**" means, on any day, an annual rate of interest equal to the average rate applicable to Canadian dollar bankers' acceptances for a 1 month period appearing on the "Reuters Screen CDOR Page" (as defined in the International Swaps and Derivatives Association, Inc. 2000 definitions, as modified and amended from time to time) at approximately 10:00 a.m. on such day, or if such day is not a Business Day, then on the immediately preceding Business Day, provided that if such rate does not appear on the Reuters Screen CDOR Page on such day as contemplated, then CDOR on such day shall be calculated as the average of the rates for such period applicable to Canadian dollar bankers' acceptances quoted by the banks listed in Schedule I of the *Bank Act* (Canada) as of 10:00 a.m. on such day or, if such day is not a Business Day, then on the immediately preceding Business Day.

"**Closing Date**" is defined in Section 3.3(a).

"**Code**" is defined in Section 3.9(a).

"**Decrease**" is defined in Section 3.4(a).

"**Decrease Amount**" is defined in Section 3.4(a).

"**Excluded Taxes**" shall have the meaning specified in Section 3.9(a) of this Supplemental Indenture.

"**FATCA**" has the meaning specified in Section 3.9(a) of this Supplemental Indenture.

"**Increase**" is defined in Section 3.3(a).

"**Increase Amount**" is defined in Section 3.3(a).

"**Increase Date**" is defined in Section 3.3(a).

"**Increase Notice**" is defined in Section 3.3(a).

"**Indenture Trustee**" shall have the meaning specified in the recitals to this Supplemental Indenture.

"**Interest Period**" means each of the consecutive periods that begins on, and includes, each Payment Date and ends on and excludes, the following Payment Date; provided that the first Interest Period shall begin on the Closing Date and end on ●.

"**Issuer**" shall have the meaning specified in the recitals to this Supplemental Indenture.

"**Issuer Indemnified Person**" is defined in Section 3.8.

"**Issuer Trustee**" shall have the meaning specified in the recitals to this Supplemental Indenture.

"**Maximum Purchaser Group Principal Amount**" shall have the meaning specified in the Senior Series 2017-1 Supplemental Indenture.

"**Monthly Interest**" shall mean, for any Payment Date, the sum of (A) the sum for each day during such Interest Period of the product of (i) the Series 2017-1 Subordinated Principal Amount on such day; times (ii) the sum of CDOR for such day plus the Applicable Margin, divided by (iii) 365, and (B) the Monthly Interest Shortfall; provided that, for the purposes of determining the Monthly Interest in respect of an Interest Period prior to the end of the Interest Period, the Purchaser may estimate the interest for the remaining days in the Interest Period and provided further, if the actual interest for such days is less than the estimated interest, the Monthly Interest for the following Interest Period shall be reduced to adjust for such lower actual interest and if the actual interest for such days is higher than the estimated interest, the Monthly Interest for the following Interest Period shall be increased to adjust for such higher interest.

"**Monthly Interest Shortfall**" means, for any Payment Date, if the amount in clause (A) of the definition of Monthly Interest for the preceding Payment Date was greater than the amount distributed to the payment of such amounts pursuant to Section 3.6(c), an amount equal to the amount in clause (A) of the definition of Monthly Interest owing to the Purchaser which was unpaid on the preceding Payment Date plus interest on such unpaid amount for the period from the preceding Payment Date to the current Payment Date at a rate equal to the Prime Rate plus ●% per annum.

"**Monthly Other Amounts**" shall mean, for any Payment Date the sum of (a) any amounts payable to the Purchaser hereunder including, without limitation, pursuant to Sections 3.8, 3.9, 3.10 and 7.8; plus (c) the Monthly Other Amounts Shortfall for such Payment Date.

"**Monthly Other Amounts Shortfall**" means, for any Payment Date, if the amount of the Monthly Other Amounts for the preceding Payment Date was greater than the amount distributed to the payment of such amounts pursuant to Section 3.6(c), an amount equal to the Monthly Other Amounts owing to the Purchaser which were unpaid on the preceding Payment Date plus interest on such unpaid amount for the period from the preceding Payment Date to the current Payment Date at a rate equal to the Prime Rate plus ●% per annum.

"**Prime Rate**" means the annual rate of interest announced by ● from time to time as being its reference rate for the determination of interest rates on Canadian dollar denominated commercial loans made by it and commonly referred to by ● as its "prime rate."

"**Principal Accumulation Amount**" means, in respect of each Payment Date occurring on or after the Principal Accumulation Date, an amount equal to the lesser of (x) $●, and (y) the Series 2017-1 Subordinated Principal Amount.

"**Principal Accumulation Date**" means the Payment Date occurring in the month of ●, **[2021]**.

"**Principal Payment Amount**" means, in respect of the Series 2017-1 Subordinated Notes:

(a) on any Payment Date that is a Decrease Date before the earlier of (i) the Series 2017-1 Subordinated Principal Payment Due Date; and (ii) the occurrence of an Acceleration Event, the Decrease Amount of the Decrease occurring on such Payment Date;

(b) on any Payment Date that is not a Decrease Date before the earlier of (i) the Series 2017-1 Subordinated Principal Payment Due Date; and (ii) the occurrence of an Acceleration Event, nil; and

(c) on any Payment Date occurring on or after the earlier of (i) the Series 2017-1 Subordinated Principal Payment Date; and (ii) the occurrence of an Acceleration Event, the Series 2017-1 Subordinated Principal Amount.

"**Purchaser**" shall have the meaning specified in the recitals to this Supplemental Indenture.

"**Recipient**" has the meaning specified in Section 3.9(a) of this Supplemental Indenture.

"**Refinancing Increase**" is defined in Section 3.3(a).

"**Regulatory Change**" shall mean (i) the adoption after the date hereof of any applicable law, rule or regulation (including any applicable law, rule or regulation regarding capital adequacy, deposits, reserves or liquidity coverage) or any change therein after the date hereof, (ii) any change after the date hereof in the interpretation, administration, scope or timing of implementation thereof by any governmental authority, central bank, self-regulating professional body or comparable agency or authority charged with the interpretation or administration thereof, or compliance with any guidance, request or directive (whether or not having the force of law) of any such authority, central bank, self-regulating professional body or comparable agency or authority; provided that for purposes of this definition, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder, issued in connection therewith or in implementation thereof, and (y) all requests, rules, guidelines and directives (whether or not

having the force of law) promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or Canadian or United States or other foreign regulatory authorities, shall in each case be deemed to be a "Regulatory Change", regardless of the date enacted, adopted, issued or implemented.

"**Senior Series 2017-1 Supplemental Indenture**" shall have the meaning specified in the recitals to this Supplemental Indenture.

"**Series 2017-1 Initial Senior Principal Amount**" means the "Series 2017-1 Initial Principal Amount" as defined in the Senior Series 2017-1 Supplemental Indenture.

"**Series 2017-1 Initial Subordinated Principal Amount**" means an amount equal to **[ninety-eight percent (98%)]** of the Series 2017-1 Initial Senior Principal Amount

"**Series 2017-1 Maximum Senior Principal Amount**" means the "Series 2017-1 Maximum Principal Amount" as defined in the Senior Series 2017-1 Supplemental Indenture.

"**Series 2017-1 Maximum Subordinated Principal Amount**" means an amount equal to **[ninety-eight percent (98%)]** of the Series 2017-1 Maximum Senior Principal Amount.

"**Series 2017-1 Senior Decrease**" means, with respect to a Business Day, the sum of all amounts of Decreases (as defined in the Senior Series 2017-1 Supplemental Indenture) on such Business Day.

"**Series 2017-1 Senior Increase**" means, with respect to a Business Day, the sum of all amounts of Increases (as defined in the Senior Series 2017-1 Supplemental Indenture) on such Business Day.

"**Series 2017-1 Senior Notes**" shall have the meaning specified in the recitals to this Supplemental Indenture.

"**Series 2017-1 Senior Principal Payment Date**" means ■. **[NTD: the date upon which the Series 2017-1 Senior Notes become due and payable.]**

"**Series 2017-1 Subordinated Note**" means any one of the Floating Rate Variable Funding Subordinated Notes, Series 2017-1, executed by the Issuer and authenticated and delivered by or on behalf of the Indenture Trustee, substantially in the form of Exhibit B.

"**Series 2017-1 Subordinated Principal Amount**" means (a) when used with respect to the Closing Date, the Series 2017-1 Initial Subordinated Principal Amount; and (b) when used with respect to any other date, an amount equal to (i) the Series 2017-1 Subordinated Principal Amount on the immediately preceding Business Day; plus (ii) the Increase Amount on such date; minus (iii) the Decrease Amount on such date; minus (iv) the amount of principal payments made to the Purchaser pursuant to Section 3.7 on such date.

"**Series 2017-1 Subordinated Principal Payment Default Date**" means ■. **[NTD: likely later than the Series 2017-1 Senior Principal Payment Default Date.]**

"**Supplemental Indenture**" means this Amended and Restated Supplemental Indenture, together with the Schedules hereto, as amended, supplemented, modified, restated or replaced from time to time, together with all schedules hereto and the expressions "hereof," "herein," "hereto," "hereunder," "hereby" and similar expressions refer to this Supplemental Indenture and not to any Article, Section, paragraph, subparagraph or clause hereof.

"**Support Facility**" shall mean any liquidity or credit support agreement with the Purchaser which relates to, or is otherwise available to the Purchaser in relation to its funding activities under, this Supplemental Indenture.

"**Termination Event**" means any Acceleration Event or any event which with the giving of notice or the passage of time, or both, could become an Acceleration Event.

"**Transfer Increase**" is defined in Section 3.3(a).

"**Transfer Supplement**" is defined in Section 7.1(a).

"**Transferee**" is defined in Section 7.1(b).

"**Trust Indenture**" means the trust indenture dated as of ●, 2017 between the Issuer and the Indenture Trustee, as amended or restated from time to time.

SCHEDULE B

[FORM OF NOTE]

SERIES 2017-1 SUBORDINATED NOTE

●

SCHEDULE C

FORM OF INCREASE NOTICE

●

SCHEDULE D

FORM OF DECREASE NOTICE

●

Blackline - Declaration of Trust.pdf

~~[~~

COMPUTERSHARE TRUST COMPANY~~[~~ OF CANADA

as Issuer Trustee of

~~■~~

FAIR HYDRO TRUST

DECLARATION OF TRUST

Made as of ■, 2017

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THIS DECLARATION OF TRUST is made as of ■, 2017 by ■Computershare Trust Company of Canada, a trust company established under the laws of [Canada] (the "**Issuer Trustee**").

WHEREAS the Government of Ontario has enacted the *Ontario Fair Hydro Act, 2017* (the "**Act**") for the purpose of, among other things, ensuring that clean energy costs and clean energy benefits (each as defined in the Act) are fairly allocated among present and future Specified Consumers (as defined below);

AND WHEREAS the Issuer Trustee has determined, at the request of OPG, to establish a Trust (as defined below) for the purpose of carrying on the activities of a financing entity (as defined in the Act) as hereinafter described for the benefit of the Unitholders (as defined below);

NOW THEREFORE the Issuer Trustee hereby declares that it holds in trust as trustee the sum of TEN DOLLARS ($10.00) now contributed by it and all property of every nature and kind which it may acquire in its capacity as trustee of the Trust, and all income therefrom, for the benefit of the Unitholders, in accordance with and subject to the provisions of this Declaration of Trust.

ARTICLE 1
INTERPRETATION

1.1 Definitions

In this Declaration of Trust, the following terms have the following meanings:

"**Act**" has the meaning ascribed thereto in the Recitals.

"**Adjusted Redemption Price**" has the meaning ascribed thereto in subsection 4.1(3).

"**Affiliate**" means, with respect to any specified Person, any other Person controlling, controlled by or under common control with such specified Person and, for the purposes of this definition, "**control**" means, in respect of any specified Person, the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise, and the terms "**controlling**" and "**controlled**" have meanings correlative to the foregoing.

"**Business Day**" means any day other than a Saturday, a Sunday or a day on which banking institutions in Toronto, Ontario are, or the office of the Indenture Trustee is, authorized or obligated by law, regulation or executive order to be closed.

"**Change of Law Protection Agreement**" means the Change of Law Protection Agreement to be entered into between Her Majesty the Queen in Right of Ontario, as represented by the Minister of Energy and the Minister of Finance, the Indenture Trustee and the Trust.

"**Claim**" has the meaning ascribed thereto in Section 7.3.

"**Dealer**" means one or more Persons (other than the Issuer Trustee or the Manager) who have entered into an agreement with the Trust for the purpose of facilitating the sale and distribution of Funding Obligations.

"**Declaration of Trust**" means this declaration of trust.

"**Designated Beneficiary**" has the meaning ascribed thereto in section 3.6.

"**Eligible Investments**" means investments permitted to be made by the Trust under the Indenture.

"**Excess Income on Redemption**" has the meaning ascribed thereto in subsection 11.1(2).

"**Funding Obligation**" means a payment obligation incurred by or on behalf of the Trust to fund its ownership of an Investment Interest or a payment obligation that meets such other criteria as may be prescribed by the Regulations.

"**GAAP**" or "**generally accepted accounting principles**" means generally accepted accounting principles in Canada.

"**Governmental Authority**" means any nation or government, any federal, state, provincial, local or other political subdivision thereof and any court, administrative agency or other instrumentality or entity exercising executive, legislative, judicial, regulatory or administrative functions of government.

"**Hedging Agreement**" means any agreement evidencing an interest rate swap transaction, forward rate transaction, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction or any other similar transaction or any combination of these transactions, in each case, entered into by the Trust in connection with or related to, and at the time of or prior to, the issuance of Funding Obligations or acquisition of Investment Interests by the Trust in accordance with and subject to the terms of the Program Agreements.

"**IESO**" means the Independent Electricity System Operator.

"**Income of the Trust**" for any taxation year of the Trust means the net income for the year determined pursuant to the provisions of the ITA having regard to the provisions thereof which relate to the calculation of income for the purposes of determining the "taxable income" of a trust, without reference to paragraph 82(1)(b) and subsection 104(6) thereof, less any non-capital losses of the Trust carried forward from prior taxation years that are deductible in the taxation year, and taking into account such other adjustments as may be determined in the discretion of the Issuer Trustee; provided, however, that capital gains and capital losses will be excluded from the computation of net income.

"**Indenture**" means the master trust indenture to be entered into between the Trust and the Indenture Trustee.

"**Indenture Trustee**" means ~~the~~ BNY Trust Company of Canada, a trust company existing under the laws of Canada and duly authorized to carry on the business of a trust company in all of the provinces and territories of Canada, as indenture trustee for the benefit of Specified Creditors under the Indenture.

"**Investment Interest**" has the meaning ascribed to the term "investment interest" in the Act.

"**Issuer Trustee**" means ~~the~~ Computershare Trust Company of Canada and any successor thereto appointed pursuant to Article 6.

"**ITA**" means the *Income Tax Act* (Canada) and the regulations promulgated thereunder.

"**Management Agreement**" means the management agreement dated the date hereof between the Manager and the Trust.

"**Manager**" means OPG, in its capacity as manager appointed under the Management Agreement to administer the Investment Interests and perform such other duties assigned to it thereunder.

"**Master Transfer and Servicing Agreement**" means the master transfer and servicing agreement to be entered into by and between the Trust and the IESO~~, and acknowledged and accepted by the Indenture Trustee~~.

"**Net Realized Capital Gains of the Trust**" for any taxation year means the amount, if any, by which the aggregate amount of the realized capital gains of the Trust for the year, calculated in accordance with the provisions of the ITA, exceeds the aggregate of: (i) the aggregate amount of any realized capital losses of the Trust for the year, calculated in accordance with the provisions of the ITA; and (ii) the amount determined by the Issuer Trustee in respect of any net capital losses of the Trust carried forward from prior taxation years that are deductible in the taxation year; provided that in the discretion of the Issuer Trustee, the Net Realized Capital Gains of the Trust for a taxation year may be calculated without subtracting the full amount of the net capital losses of the Trust carried forward from prior years.

"**Net Realized Capital Gains of the Trust Allocated on Redemption**" has the meaning ascribed thereto in subsection 4.1(5).

"**New Holder**" has the meaning ascribed thereto in subsection 3.6(1).

"**OPG**" means Ontario Power Generation Inc.

"**Person**" means any individual, corporation, limited liability company, estate, partnership, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization or Government Authority.

"**Program Agreements**" means the Indenture, each Supplemental Indenture, this Declaration of Trust, the Management Agreement, the Master Transfer and Servicing

Agreement, each Transfer Notice, the Change of Law Protection Agreement and any hedging agreements, credit enhancement agreements, loan agreements, subordinated loan agreements, security agreements and Underwriting Agreements in effect at such time and all other documents and certificates delivered in connection therewith.

"**Rating Agencies**" means, at any time, the credit rating agencies which at the request of the Trust are rating the Funding Obligations at such time.

"**Rating Agency Condition**" has the meaning ascribed thereto in the Indenture.

"**Records**" means all contracts, books, records and other documents and information, including, without limitation, data and information, including any stored on computer-related or other electronic media, computer programs, data processing software and related property and rights, maintained with respect to, but solely to, the assets of the Trust.

"**Redemption Price**" has the meaning ascribed thereto in subsection 4.1(3).

"**Regulations**" means the regulations promulgated under the Act.

"**Specified Consumer**" has the meaning ascribed to the term "specified consumer" in the Act.

"**Specified Creditors**" has the meaning ascribed thereto in the Indenture.

"**Supplemental Indenture**" means any supplemental indenture to the Indenture.

"**Transfer**" has the meaning ascribed to the term "transfer" in the Act.

"**Transfer Notice**" means a Transfer Notice in respect of a Transfer substantially in the form of Exhibit A to the Master Transfer and Servicing Agreement and delivered pursuant to such Program Agreement.

"**Trust**" means Fair Hydro Trust, a trust established under the laws of the Province of Ontario pursuant to this Declaration of Trust.

"**Trust Activities**" means the activities of the Trust described in Section 2.1.

"**Trust Company**" means a federally or provincially established trust company licensed to carry on business in all provinces and territories of Canada and which is resident in Canada for purposes of the ITA.

"**Trust Property**" means, as of any particular time, all assets of the Trust and all property, real, personal or otherwise, tangible or intangible, which have been transferred, conveyed or paid to, or acquired by the Trust, including all income, earnings, profits and gains therefrom, and which at such time are owned or held by the Trust.

"**Underwriting Agreement**" means any underwriting, agency or other agreement providing for the sale and distribution of Funding Obligations by one or more Dealers.

"**Unitholders**" means at any time, the holders at such time of one or more Units, and "**Unitholder**" means any such holder.[1]

"**Units**" means the units of beneficial interest of the Trust authorized and issued hereunder as such and for the time being outstanding and entitled to the benefits hereof.

1.2 Interpretation

In this Declaration of Trust, unless otherwise expressly stated or the context otherwise requires:

(a) references to "herein", "hereby", "hereunder", "hereof" and similar expressions are references to this Declaration of Trust and not to any particular Article or Section of this Declaration of Trust;

(b) references to an "Article" or "Section" are references to an Article or Section of this Declaration of Trust;

(c) words importing the singular shall include the plural and vice versa, and words importing gender shall include the masculine, feminine and neuter genders;

(d) the use of headings is for convenience of reference only and shall not affect the construction or interpretation hereof;

(e) the words "includes" and "including", when following any general term or statement, are not to be construed as limiting the general term or statement to the specific items or matters set forth or to similar items or matters, but rather as referring to all other items or matters that could reasonably fall within the broadest possible scope of the general term or statement;

(f) references to any Person include such Person's successors and permitted assigns;

(g) any reference to a statute, regulation, policy, rule or instrument shall include, and shall be deemed to be a reference also to, all amendments made to such statute, regulation, policy, rule or instrument and to any statute, regulation, policy, rule or instrument that may be passed which has the effect of supplementing or superseding the statute, regulation, policy, rule or instrument so referred to;

(h) any reference to this Declaration of Trust or any other agreement, document or instrument shall be construed as a reference to this Declaration of Trust or, as the case may be, such other agreement, document or instrument as the same may have

[1] ~~Note: It is proposed that a single unit of the Trust will be issued to the Indenture Trustee (in addition to units to OPG or a subsidiary of OPG) in order to ensure that OPG or a subsidiary of OPG does not have the capability to cause the Trust to be wound-up.~~

been, or may from time to time be, amended, varied, replaced, amended and restated or supplemented;

(i) in the event that any day on which any amount is to be determined or any action is required to be taken hereunder is not a Business Day, then such amount shall be determined or such action shall be required to be taken at or before the requisite time on the next succeeding day that is a Business Day; and

(j) unless otherwise specified, all references to "$" or "dollars" are to lawful currency of Canada.

1.3 Accounting Principles

Where the character or amount of any asset or liability or item of revenue or expense is required to be determined, or any consolidation or other accounting computation is required to be made for the purpose of this Declaration of Trust, such determination or calculation shall, to the extent applicable and except as otherwise specified herein or as the Issuer Trustee otherwise determines, be made in accordance with GAAP applied on a consistent basis.

1.4 References to Acts of the Trust

For greater certainty, where any reference is made in this Declaration of Trust to an act to be performed or not by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against, or a covenant, representation or warranty by or with respect to either (i) the Trust; or (ii) the Issuer Trustee, such reference will be construed and applied for all purposes as if it referred to an act to be performed by or not, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against, or a covenant, representation or warranty by or with respect to, the Issuer Trustee in its capacity as trustee of the Trust, and not in any other capacity.

ARTICLE 2
THE TRUST

2.1 Purpose and Activities of the Trust

The purpose of the Trust is to establish and carry on activities for the exclusive benefit of the Unitholders and to distribute the Trust Property upon termination of those activities by the Trust in accordance with Article 11. The Trust is permitted to engage in any activity, undertaking, transaction or event authorized or permitted by the Act (the "**Trust Activities**"), including:

(a) issuing Units;

(b) redeeming Units;

(c) acquiring, owning, holding, administering or entering into agreements regarding the acquisition and servicing of Investment Interests, along with certain other related assets;

(d) managing, selling, assigning, pledging and collecting amounts due on or otherwise deal with Investment Interests and the other related assets to be so acquired in accordance with the terms of the Program Agreements;

(e) negotiating, authorizing, executing, delivering, assuming the obligations under, and performing its duties under, the Program Agreements and any other agreement or instrument or document relating to the activities set forth in clauses (c) and (d) above; provided, that the Trust shall be permitted to incur additional indebtedness or other liabilities payable to service providers and trade creditors in the ordinary course of business in connection with the foregoing activities;

(f) filing with any applicable securities commission one or more prospectuses, offering memoranda or registration statements, and filing such applications, reports, irrevocable consents, appointments of attorney for service of process and other papers and documents necessary or desirable to register one or more series of Funding Obligations under the securities laws of any applicable jurisdiction;

(g) authorizing, executing, delivering, issuing and registering one or more series of Funding Obligations;

(h) making payments on the Funding Obligations;

(i) pledging its interest in Investment Interests and related assets to the Indenture Trustee in order to secure the Funding Obligations; and

(j) engaging in any lawful act or activity and exercise any powers permitted to trusts formed under the laws of the Province of Ontario that, in each case, are incidental to, or necessary, suitable or convenient for the accomplishment of the above-mentioned purposes.

The Trust shall engage only in any activities related to the foregoing purposes or required or authorized by the terms of the Program Agreements or other agreements referenced above.

2.2 Limitation on Certain Activities

Notwithstanding any other provision of this Declaration of Trust or the Management Agreement, at any time that any Funding Obligations remain outstanding, the consent of the Indenture Trustee shall be required for the Trust to:

(a) take any action to wind-up or dissolve the Trust; or

(b) institute any voluntary proceedings to be adjudicated bankrupt or insolvent, or consent to the institution of any bankruptcy or insolvency proceedings against it, or file a petition seeking or consent to any assignment, petition, application or

proceeding under any applicable bankruptcy or insolvency law, or consent to the appointment of a receiver, liquidator, assignee, trustee or other similar official of the Trust or a substantial part of its property, or make any assignment for the benefit of creditors, or admit in writing its inability to pay its debts generally as they become due, or take any similar action in respect of the Trust.

2.3 Name and Head Office

The English form of the name of the Trust is "■**Fair Hydro Trust**" and the French form of the name of the Trust is "■". The Trust may use and may be legally designated by either the English form or the French form of its name. Should the Issuer Trustee determine that the use of such name is not practicable, legal or convenient, it may use such other designation or adopt such other name for the Trust as it deems proper and the Trust may hold property and conduct the Trust Activities under such other designation or name. The head office, chief executive office, chief place of business and situs of administration of the Trust will initially be situated at the offices of the Issuer Trustee situated at ~~[*address of Issuer Trustee*]~~ **100 University Avenue, 11th Floor, Toronto, Ontario M5J 2Y1.**

2.4 Nature of the Trust

The Trust is an unincorporated open-ended unit trust established for the purposes specified in Section 2.1. The Trust shall be governed by the general law of trusts, except as such general law of trusts has been or is from time to time modified, altered or abridged for the Trust by:

(a) applicable laws and regulations or other requirements imposed by applicable securities or other regulatory authorities, including the Act and Regulations; and

(b) the terms, conditions and trusts set forth in this Declaration of Trust.

The beneficial interest and rights generally of the Unitholders in the Trust shall be limited to the right to participate in distributions when and as declared by the Issuer Trustee and distributions upon the termination of the Trust. The Trust is not and is not intended to be, shall not be deemed to be and shall not be treated as a general partnership, limited partnership, syndicate, association, joint venture, company, corporation or joint stock company nor shall the Issuer Trustee or the Unitholders or any of them for any purpose be, or be deemed to be treated in any way whatsoever to be, liable or responsible hereunder as partners or joint venturers. The Issuer Trustee shall not be, or be deemed to be, an agent of the Unitholders. The relationship of the Unitholders to the Issuer Trustee, to the Trust and to the Trust Property shall be solely that of beneficiaries in accordance with this Declaration of Trust.

2.5 Rights of Unitholders

No Unitholder shall be entitled to call for any partition or division of the Trust Property or for a distribution of any particular asset forming part of the Trust Property or of any particular monies or funds received by the Issuer Trustee. The legal ownership of the Trust Property and the right to conduct the activities of the Trust are vested exclusively in the Issuer Trustee, and no Unitholder has or is deemed to have any right of ownership in any of the Trust Property, except

as specifically provided herein. Except as specifically provided herein, no Unitholder or Unitholders shall be entitled to interfere with or give any direction to the Issuer Trustee with respect to the affairs of the Trust or in connection with the exercise of any powers or authorities conferred upon the Issuer Trustee under this Declaration of Trust. The Units shall be personal property and shall confer upon the holders thereof only the interest and rights, and impose upon the holders thereof only those liabilities and obligations, specifically set forth in this Declaration of Trust.

ARTICLE 3
UNITS

3.1 Nature of Units

The beneficial interests in the Trust shall be divided into a single class of Units. Each Unit represents an equal undivided beneficial interest in any distributions by the Trust, whether of Income of the Trust, Net Realized Capital Gains of the Trust (other than Net Realized Capital Gains of the Trust Allocated on Redemption to redeeming Unitholders), or other amounts, and, in the event of termination or winding up of the Trust, in the net assets of the Trust remaining after satisfaction of all liabilities. All Units rank equally among themselves and rateably without discrimination, preference or priority. Each Unit will entitle the Unitholder of record thereof to one vote at all meetings of the Unitholders or in respect of any written resolution of the Unitholders. Each Unit, when issued, shall vest indefeasibly in the holder thereof.

The number of Units which the Trust may issue is unlimited. The issued and outstanding Units may be subdivided or consolidated from time to time by the Issuer Trustee without notice to or approval of the Unitholders. Unless the Issuer Trustee determines otherwise, immediately after any *pro rata* issuance of additional Units to all Unitholders pursuant to subsection 11.3(3), the number of outstanding Units will automatically be consolidated such that each such holder will hold after the consolidation the same number of Units as such holder held before the issuance of additional Units.

3.2 Consideration of Units

A Unit will not be fully paid until the consideration therefor has been received in full by or on behalf of the Trust. The consideration for any Unit will be paid in money or in property (including, without limitation, a debt instrument issued to the Trust) or in past services received by the Trust that are not less in value than the fair equivalent of the money that the Trust would have received if the Unit had been issued for money. In determining whether property or past services are the fair equivalent of consideration paid in money, the Issuer Trustee may take into account reasonable charges and expenses of organization and reorganization and payments for property and past services reasonably expected to benefit the Trust. In no case will a Unit be issued to a Designated Beneficiary.

3.3 No Pre-Emptive Rights

No Person shall be entitled, as a matter of right, to subscribe for or purchase any Units of the Trust. There are no pre-emptive rights attaching to the Units.

3.4 Fractional Units

If as a result of any act of the Issuer Trustee hereunder, any Person becomes entitled to a fraction of a Unit, such Person will not be entitled to receive a certificate therefor. Fractional Units will not, except to the extent that they may represent in the aggregate one or more whole Units, entitle the holders thereof to notice of or to attend or to vote at meetings of the Unitholders. Subject to the foregoing, such fractional Units will have attached thereto the rights, restrictions, conditions and limitations attaching to whole Units in the proportion that they bear to a whole Unit.

3.5 Allotment and Issue

Subject to Section 3.6, the Issuer Trustee may allot and issue Units at such time or times and in such manner (including pursuant to any plan from time to time in effect relating to reinvestment by the Unitholders of distributions of the Trust in Units) and to such Person, Persons or class of Persons as the Issuer Trustee in its sole discretion will determine. The price or the value of the consideration for which Units may be issued and the terms and conditions of issuance of the Units will be determined by the Issuer Trustee in its sole discretion. Not restricting the generality of the foregoing, the Issuer Trustee may accept amounts received from a Unitholder as a prepayment in respect of the obligation of the Unitholder to pay all or any part of the subscription price of Units to be issued at a later date by the Issuer Trustee. In such circumstances, such prepayment will form part of the Trust Property. In the event that Units are issued in whole or in part for a consideration other than money, the resolution of the Issuer Trustee allotting and issuing such Units will express the fair equivalent in money of the other consideration received.

3.6 Prohibited Issuances and Transfers

(1) Notwithstanding any other provision in this Declaration of Trust, at no time, may Units be issued or transferred to a Person who would be a "designated beneficiary" within the meaning of Part XII.2 of the ITA ("**Designated Beneficiary**"), and the Issuer Trustee will not accept a subscription for Units from, or issue or register a transfer of Units to, a Person unless the Person provides a declaration to the Issuer Trustee that it would not be a Designated Beneficiary and covenants to maintain such representation true for as long as it continues to hold one or more Units. If, notwithstanding the foregoing, the Issuer Trustee determines that a Person has purported to become or remain a Unitholder in breach of the above mentioned declaration or covenant, or if the Unitholder fails to provide, upon request, a declaration in form and content satisfactory to the Issuer Trustee that it is not a Designated Beneficiary, (i) the Issuer Trustee will require such Person to dispose of the Units within a specified period not to exceed 60 days to a Person who does not contravene the above mentioned limitation on ownership ("**New Holder**"), and (ii) effective immediately prior to the breach, such Person will be deemed to have ceased to be a holder of such Units, the voting and distribution rights attached to such Units will be suspended and such Units will be deemed not to be outstanding until acquired by a New Holder (provided that holders of other Units will not be entitled to any portion of the distributions that may have been paid in respect of Units that have been so deemed not to be outstanding) and such Person's rights in respect of such Units will be limited to

receiving the net proceeds of the sale thereof. If such Person has not, within such period, sold such Units or provided the Issuer Trustee with a declaration in form and content satisfactory to the Issuer Trustee that it is not a Designated Beneficiary, the Issuer Trustee may sell such Units on behalf of such Person (and the Issuer Trustee will have the power of attorney of such Person to do so), and such Person's rights in respect of such Units will be limited to receiving the net proceeds of sale upon surrender of the certificates representing such Units.

(2) Subject to this section 3.6, and until the Issuer Trustee will have been required to do so under the terms hereof, the Issuer Trustee will not be bound to do or take any proceeding or action with respect to this section 3.6 by virtue of the powers conferred on it hereby. The Issuer Trustee will have the sole right and authority to make any determination required for the administration of the provisions of, or contemplated under this section 3.6, and without limiting the generality of the foregoing, if the Issuer Trustee considers that there are reasonable grounds for believing that a contravention of the above mentioned limitation on ownership has occurred or may occur, the Issuer Trustee will make a determination with respect to the matter. Any such determination will be conclusive, final and binding for the purposes of this section 3.6 except to the extent modified by any subsequent determination by the Issuer Trustee. The Issuer Trustee may require declarations as to whether a Unitholder is a Designated Beneficiary or as to factual information that will enable the Issuer Trustee to determine whether a Unitholder or a prospective transferee of a Unit may be a Designated Beneficiary. In any situation where it is unclear whether Units may be held by a Person who may be a Designated Beneficiary, the Issuer Trustee may exercise its discretion in determining whether such Person is or is not a Designated Beneficiary, and any such exercise by it of its discretion will be binding for the purposes of this section 3.6.

3.7 Liability of Unitholders

No Unitholder of the Trust, in its capacity as such, will incur or be subject to any liability, direct or indirect, absolute or contingent, in contract or in tort or of any other kind, to any Person in connection with: (i) the Trust Property or the ownership, use, operation, acquisition or disposition thereof or exercise or enjoyment of the rights, privileges, conditions or benefits attached thereto, associated therewith or derived therefrom; (ii) the obligations, liabilities, activities or affairs of the Trust; (iii) any actual or alleged act or omission of the Issuer Trustee or any other Person in respect of the activities or affairs of the Trust (whether or not authorized by or pursuant to this Declaration of Trust); (iv) any actual or alleged act or omission of the Issuer Trustee or any other Person in the performance or exercise, or purported or attempted performance or exercise, of any obligation, power, discretion or authority conferred upon the Issuer Trustee or such other Person in respect of the activities or affairs of the Trust (whether or not authorized by or pursuant to this Declaration of Trust); (v) any transaction entered into by the Issuer Trustee or by any other Person in respect of the activities or affairs of the Trust (whether or not authorized by or pursuant to this Declaration of Trust); or (vi) any taxes, levies, imposts or charges or fines, penalties or interest in respect thereof payable by the Trust or by the Issuer Trustee or by any other Person (except the Unitholders to the extent required by applicable tax laws) on behalf of or in connection with the activities or affairs of the Trust. No Unitholder will be liable to indemnify the Issuer Trustee or any other Person with respect to any such liability or

liabilities incurred by the Issuer Trustee or by any such other Person or Persons or with respect to any taxes payable by the Trust or by the Issuer Trustee or any other Person on behalf of or in connection with the Trust. To the extent that any such liabilities of the Unitholders may arise, they will be enforceable only against, and will be satisfied only out of, the Trust Property to the full extent of such liability and the costs of any litigation or other proceedings in which such liability will have been determined, including without limitation, the fees and disbursements of counsel.

ARTICLE 4
REDEMPTION OF UNITS

4.1 Redemption of Units

Each Unitholder will be entitled to require the Trust to redeem at any time and from time to time at the demand of such Unitholder all or any part of the Units held by such Unitholder as follows:

(1) The Unitholder will give notice in writing to the Trust at its head office of its intention to redeem Units and the number of Units to be redeemed.

(2) Upon receipt by the Trust of such notice from the Unitholder to redeem Units, the Unitholder will be entitled to receive, subject to subsection 4.1(3), an amount equal to the aggregate fair market value of such Units immediately before the redemption (the "**Redemption Price**") established by the Issuer Trustee, acting reasonably, payable by certified cheque or via wire transfer of funds.

(3) In the event that the Trust has insufficient funds to make the payment required pursuant to subsection 4.1(2) or such payment is restricted under the terms of the Indenture, the Trust will **satisfy the Redemption Price**, subject to compliance with any regulatory requirements, ~~distribute~~**by either issuing a promissory note to the Unitholder, which note shall have a principal amount equal to the Redemption Price and such other terms as is determined at the time of issuance by the Issuer Trustee, or by distributing** to the redeeming Unitholder *in specie* a proportionate amount of the Trust Property, the fair market value of which, as determined by the Issuer Trustee, acting reasonably, is equal to the Redemption Price. ~~The~~ **In the event that property is distributed *in specie*, the** amount of Net Realized Capital Gains of the Trust Allocated on Redemption as contemplated by subsection 4.1(5) payable in connection with the redemption of Units shall be payable to the Unitholder in kind, and to the extent of the amount thereof, the Redemption Price of the Units being redeemed shall be reduced accordingly (the "**Adjusted Redemption Price**").

(4) Upon satisfaction of the Redemption Price or the Adjusted Redemption Price, as the case may be, the redeeming Unitholder will not be entitled to any rights or benefits, including voting and the right to receive distributions, in connection with the Units redeemed.

(5) Where the Trust distributes Trust Property *in specie* as contemplated in subsection 4.1(3), the Issuer Trustee shall designate and pay to the redeeming Unitholder such part of the

Net Realized Capital Gains of the Trust as is realized by the Trust in connection with such *in specie* distribution, provided that the amount of the Net Realize Capital Gains on the Trust so allocated shall not exceed the amount, if any, by which the Redemption Price of the particular Units being redeemed exceeds the aggregate adjusted cost base of such Units to the Unitholder for the purpose of the ITA immediately before the redemption (the "**Net Realized Capital Gains of the Trust Allocated on Redemption**"). If the total Net Realized Capital Gains of the Trust Allocated on Redemption determined by the Issuer Trustee pursuant to the preceding sentence for all redeeming Unitholders in any taxation year exceeds the Net Realized Capital Gains of the Trust for that year, the Net Realized Capital Gains of the Trust for that taxation year shall be allocated rateably to all redeeming Unitholders for the year based on the Net Realized Capital Gains of the Trust Allocated on Redemption as otherwise determined pursuant to the preceding sentence. The Net Realized Capital Gains of the Trust Allocated on Redemption designated and paid on the redemption of Units as determined under this subsection shall be deemed to be a distribution of Net Realized Capital Gains of the Trust for the particular taxation year in which the redemption occurs. If the Issuer Trustee is required to deduct or withhold an amount from such distribution, the Unitholder shall make the cash payment described in Section 11.7 to the Issuer Trustee on or prior to the date the Units are to be redeemed.

ARTICLE 5
RIGHTS AND POWERS OF ISSUER TRUSTEE

5.1 General Rights and Powers

Subject to the specific restrictions and limitations set forth in this Declaration of Trust and notwithstanding the provisions of the *Trustee Act* (Ontario) or any other similar legislation in any jurisdiction, the Issuer Trustee will have, without the necessity of authorization by, and free from any power or control on the part of, the Unitholders, full, exclusive and absolute power, control and authority over the Trust Property and the Trust Activities to the same extent as if the Issuer Trustee were the sole and absolute owner thereof in its own right including, without limitation, such power, control and authority to do all such acts and things as in its sole judgment and discretion are necessary, incidental or desirable for carrying on the Trust Activities in accordance with the Program Agreements with such powers of delegation as may be permitted by this Declaration of Trust, including the right, power and authority to amend this Declaration of Trust subject to and in accordance with the terms hereof and to appoint, employ or contract with any Person as the Issuer Trustee may deem necessary, appropriate or desirable for the transaction of the Trust Activities, including for the administration of the Trust. **The Issuer Trustee shall exercise the functions of the trustee of the Trust in Ontario, Canada.** For greater certainty, the powers of the Issuer Trustee that may be exercised as aforesaid include the powers set forth in Section 5.2 to and including Section 5.18. The enumeration of any specific power or authority in this Declaration of Trust will not be construed as limiting the aforesaid power or authority or any other specific power or authority. Subject only to the express limitations contained in this Declaration of Trust, every discretion or power hereby conferred on the Issuer Trustee is an absolute and uncontrolled discretion or power.

5.2 Acquisition of Assets and Deposit of Funds

Subject to Section 2.1, the Issuer Trustee will have the power to acquire Investment Interests in accordance with the Program Agreements. Subject to compliance with the terms of the Program Agreements, the Issuer Trustee will have the power to deposit any money forming part of the Trust Property with any bank (which bank may be an Affiliate of the Issuer Trustee) licensed under the laws of Canada or any trust company (which includes the Issuer Trustee) licensed under the laws of any province of Canada and to withdraw such deposits in accordance with the Program Agreements. The Issuer Trustee will have no liability for any loss which may occur by reason of the failure of any depository with whom such money has been deposited or for the depreciation of any investment.

5.3 Legal Title and Custody

The Issuer Trustee will have the power to cause any and all Trust Property to be held by and/or registered in the name of any Person.

5.4 Disposition of Trust Property

In accordance with and subject to the terms of the Program Agreements, the Issuer Trustee will have the power to sell, convey, transfer and assign all Trust Property free and clear of any and all trusts hereby established, at public or private sale, for cash or on terms, with or without advertisement and subject to such restrictions, stipulations, agreements and reservations as it may deem proper.

5.5 Management of Trust Property

In accordance with and subject to the terms of the Program Agreements, the Issuer Trustee will have the power to own, manage, use, invest and hold the Trust Property (including, without limitation, the power to make investments in Eligible Investments) and to enter into agreements in respect of the Trust Property or its use including, without limitation, agreements to modify, amend, extend, renew or terminate any grant or agreement relating to the Trust Property and to waive compliance with any of the terms and conditions thereof, all, in each case, without the approval of or notice to the Unitholders.

5.6 Power to Borrow Money and Issue Funding Obligations

In accordance with and subject to the terms of the Program Agreements, the Issuer Trustee will have the power to:

(a) borrow or in any other manner raise money and to evidence the same by the issuance of Funding Obligations, by private placement, public offering or otherwise;

(b) reacquire or redeem Funding Obligations;

(c) execute and deliver any trust indenture or supplement thereto, security agreement, mortgage, pledge, hypothec, assignment or other instrument to secure Funding

Obligations, and amendments, modifications, restatements or replacements thereof, whether by fixed or floating charge or by assignment or by the granting of a security interest, free and clear of any and all trusts hereby established and, in lieu of or in addition to granting any security, to grant to any Person a negative pledge whereby the Issuer Trustee agrees not to encumber any Trust Property and such other covenants as may be consistent with those set out in the Program Agreements or as may otherwise be specified by any applicable Rating Agency in accordance with the foregoing; and

(d) execute and/or deliver any agreement, instrument, certificate, direction or other document necessary or desirable in order to permit or give effect to the provisions of this Section 5.6, including, without limitation, prospectuses, offering memoranda, regulatory filings, dealer agreements, Underwriting Agreements, subscription agreements, letters of representation, consent letters, and any instruments ancillary thereto.

5.7 Hedging Agreements

In accordance with and subject to the terms of the Program Agreements, the Issuer Trustee will have the power to enter into Hedging Agreements in connection with or related to the borrowing or other raising of money by the Issuer Trustee or the purchase or ownership of Investment Interests, provided that such Hedging Agreements may be entered into only at or prior to the time that such securities are sold, or such borrowing, other raising of money or purchase takes place, as applicable, or as otherwise expressly permitted in the Management Agreement; provided, however, that amendments, modifications or novations of or to a Hedging Agreement may be entered into at any time after the original Hedging Agreement was executed.

5.8 Execution of Instruments

Every deed, transfer, assignment, hypothec, agreement, certificate, direction, instrument, prospectus, or any other document which is necessary or desirable to be executed by the Trust, including, without limitation, any document evidencing Funding Obligations or relating to the issuance of Funding Obligations, will be signed on behalf of the Trust by the Issuer Trustee or its duly appointed agent, including the Manager.

5.9 Facsimile Signatures

The Issuer Trustee may authorize the use of facsimile signatures on the documents evidencing Funding Obligations, provided, however, that where facsimile signatures are so used, documents evidencing Funding Obligations will be manually countersigned or certified by a transfer agent, trustee, registrar or similar Person. If a Funding Obligation contains a printed or mechanically reproduced signature of a Person, the Issuer Trustee may issue the Funding Obligation notwithstanding that the Person has ceased to be a director, officer or signing officer of the Issuer Trustee, and the Funding Obligation will be as valid as if the Person were a director, an officer or a signing officer at the date of its issue.

5.10 Taxes

The Issuer Trustee will have the power to pay all taxes or assessments of whatever kind or nature imposed upon the Issuer Trustee and/or the Trust in connection with the Trust Property or the Trust Activities or upon or against the income from the Trust Activities or any part thereof, to settle and compromise disputed tax liabilities and, for the foregoing purposes, to make such returns and do all such other acts and things as may be deemed by the Issuer Trustee necessary or desirable. The Issuer Trustee will have the power to deduct and remit any taxes which are required by law to be deducted and remitted from any payment made by the Issuer Trustee under any Program Agreements or otherwise.

5.11 Collection

In accordance with and subject to the terms of the Program Agreements, the Issuer Trustee will have the power to:

(a) collect, receive, give receipts for and sue for all sums of money or other property due to the Trust;

(b) consent to extensions of time for payment of, or the renewal of, any securities or obligations of the Trust;

(c) engage or intervene in, prosecute, defend, compound, compromise, abandon or adjust by arbitration or otherwise deal with or settle any actions, suits, proceedings, disputes, claims, demands or things relating to the Trust Property or the Trust Activities;

(d) exercise any and all remedies available to it under any Program Agreements or otherwise, including any power of foreclosure or sale available to the Issuer Trustee at law or pursuant to any agreement and, in connection with any such foreclosure or sale, to purchase or otherwise acquire title to any property and to convey good title thereto free of any and all trusts hereby established, or to take or retake possession of any property secured or unsecured thereunder or such other security;

(e) extend the time, with or without security, for the payment or delivery of any debts or property and to execute and enter into releases, agreements and other instruments; and

(f) pay or satisfy any debts or claims upon any evidence that the Issuer Trustee determines to be sufficient.

5.12 Expenses and Compensation of Issuer Trustee

(a) The Issuer Trustee will have the power to incur and make payment of any charges or expenses which in the opinion of the Issuer Trustee are necessary or incidental to or proper for carrying out any of the purposes of this Declaration of Trust and the Trust Activities, and to pay appropriate compensation or fees from the Trust

Property to Persons with whom the Trust has contracted or transacted business including, without limitation, any charges, expenses, compensation or fees payable under or in connection with the Program Agreements.

(b) The Issuer Trustee will be entitled to be paid from the funds of the Trust, without any requirement of a passing of accounts in respect thereof or approval of the Unitholders, such fees as the Issuer Trustee and the Manager may agree to from time to time for its services hereunder and all reasonable expenses, disbursements and advances incurred or made by the Issuer Trustee in the administration or execution of the trusts hereby created (including the reasonable compensation and the disbursements of its counsel and all other advisers and assistants not regularly in its employ) until all the duties of the Issuer Trustee under the trusts hereby created shall be finally and fully performed, except any such expense, disbursement or advance as may arise from or in connection with the dishonesty, bad faith, wilful misconduct, negligence or reckless disregard of any duty or the failure to comply with the standard of care referred to in Section 7.1 by the Issuer Trustee, its officers, employees or agents. All such amounts will be payable at such times as the Issuer Trustee and the Manager may agree from time to time. All such amounts shall be exclusive of any applicable taxes and any applicable taxes shall be paid to the Issuer Trustee in addition to such amounts. Any amount not paid when due shall bear interest at a rate per annum equal to the rate designated by the Issuer Trustee as the then current rate charged by the Issuer Trustee or its successors from time to time to its corporate customers, payable on demand. After default and unless otherwise provided in the Indenture and any documents contemplated thereunder, all amounts so payable and the interest thereon shall be payable out of any funds coming into the possession of the Issuer Trustee or its successors in the trusts hereunder in priority to any payments to other Specified Creditors.

5.13 Allocation

The Issuer Trustee will have the power to determine conclusively whether money or other assets received by the Trust or expenses or disbursements made by the Trust will be charged or credited to income or capital or allocated between income and capital, provided, however, that such determination will not be inconsistent with calculation of income in accordance with the ITA at the time the determination is made.

5.14 Fiscal Year and Form of Accounts

The fiscal year of the Trust will end on December 31. The Issuer Trustee will have the power to determine and from time to time change the method or form in which the accounts of the Trust will be kept, provided such method or form reasonably complies with Canadian generally accepted accounting principles as applicable from time to time.

5.15 Power to Contract

In accordance with and subject to the terms of the Program Agreements, the Issuer Trustee will have the power to appoint, employ or contract with any Person as the Issuer Trustee may deem necessary or desirable for the transaction of the Trust Activities and may transfer assets to such Person and, save and except for such matters as are listed in Section 2.2, delegate to such Person any or all of the discretionary powers given to the Issuer Trustee with respect to the management of the Trust Property. Without in any way limiting the generality of the foregoing, the Issuer Trustee will have the power to:

(a) enter into, execute, deliver, perform the obligations of the Trust under, and grant security as provided for in, the Program Agreements;

(b) appoint, employ or contract with the Manager or any other Person who, under the supervision of the Manager, may, among other things: (i) furnish and supervise or cause to be furnished and supervised the performance of the clerical and administrative services necessary to the administration of the Trust and the Trust Property including, without limitation, the provision of office space, office equipment and personnel for the performance of such services, property management, administration and servicing, the maintenance of documents, books and Records for the Trust (including those described in Section 8.1), the receipt and disbursement of Trust Property, the servicing and payment of debt and other obligations and generally all matters relating to the obtaining of and the administration and servicing of Trust Property, including, without limitation, as provided in the Management Agreement; (ii) serve as an advisor to the Issuer Trustee, furnish reports to the Issuer Trustee and provide research, economic and statistical data in connection with the Trust Activities; (iii) act as consultant, accountant, correspondent, lender, technical advisor, counsel, broker and dealer, underwriter, fiscal agent, corporate fiduciary, escrow agent, depository, custodian or agent for collection from obligors, loan administrator, appraiser, bank, insurer or insurance agent, transfer agent or registrar or issuing and paying agent for Funding Obligations or in any other capacity deemed by the Issuer Trustee necessary or desirable; (iv) act as attorney or agent in the purchase or sale or other disposition of the Trust Property or the property secured thereby and the handling, prosecution or settling of any claims of the Trust and assist in the performance of such functions necessary in the management of the Trust as may be agreed upon with the Issuer Trustee; and (v) execute and deliver the Program Agreements. For greater certainty, the appointment by the Issuer Trustee of the Manager under the Management Agreement will, where applicable, be deemed to constitute adequate supervision by the Issuer Trustee for purposes of the *Trustee Act* (Ontario) and this Declaration of Trust of any Person thereby engaged in connection with the foregoing activities; and

(c) investigate, select and conduct negotiations with Persons acting in the capacities referred to in Section 5.15(b) and pay appropriate fees to, and enter into appropriate contracts with, employ or retain the services of, any of them in connection with the Trust Property or property secured thereby, other assets and

any security related thereto funded, acquired, sold or otherwise disposed of, or committed, negotiated or contemplated to be funded, acquired, sold, or otherwise disposed of in connection with Funding Obligations.

5.16 Indemnification

In accordance with and subject to the terms of the Program Agreements, the Issuer Trustee will have the power to indemnify or enter into agreements with respect to indemnification with any Person with whom the Issuer Trustee or the Trust deals to such extent as the Issuer Trustee determines necessary or desirable.

5.17 Further Powers

Subject to Section 2.1, the Issuer Trustee will have the power to perform and do all such other acts and things and to execute itself (or have executed by any Person appointed by it pursuant to Section 5.15) all such deeds, transfers, assignments, hypothecs, agreements, certificates, directions, instruments or other documents whatsoever as it deems necessary, proper or desirable in order to carry on the Trust Activities in accordance with and subject to the Program Agreements notwithstanding that such acts, things, deeds, transfers, assignments, hypothecs, agreements, certificates, directions, instruments or other documents are not herein specifically mentioned. Any determination as to what is necessary, proper or desirable in order to carry on the Trust Activities in accordance with the Program Agreements or otherwise, provided it is made by the Issuer Trustee honestly and in good faith, will be conclusive. Any construction of this Declaration of Trust or the existence of any power or authority hereunder, made honestly and in good faith by the Issuer Trustee upon the advice of counsel, will be conclusive to the extent consistent with the law. In construing the provisions of this Declaration of Trust, there will be a presumption in favour of a grant of power to the Issuer Trustee.

5.18 Auditors

In accordance with and subject to the terms of the Program Agreements, the Issuer Trustee will have the power from time to time to select and appoint and discharge and reappoint an auditor of the Trust in its discretion and to negotiate and fix the fees of any such auditor.

5.19 Defect in Appointment

Notwithstanding anything to the contrary herein contained, no action taken by the Issuer Trustee will be invalid by reason only of any defect that is thereafter discovered in its appointment.

5.20 Status

The Issuer Trustee shall not have the status of bankrupt and shall be resident in Canada for purposes of the ITA.

ARTICLE 6
REPLACEMENT OF ISSUER TRUSTEE

6.1 Resignation of Issuer Trustee

(a) If the Issuer Trustee desires to resign and be discharged from the trusts and powers reposed in or conferred on it by this Declaration of Trust, it will provide 120 days written notice (or such shorter period of notice as the Unitholders , the Indenture Trustee and the Rating Agencies may agree to) thereof to the Unitholders, the Indenture Trustee and the Rating Agencies provided that no such voluntary resignation shall be effective until a replacement Issuer Trustee acceptable to the Unitholders and the Indenture Trustee has been appointed and has executed a written agreement whereby such replacement Issuer Trustee agrees to assume the obligations of the Issuer Trustee hereunder, under the Program Agreements and under any other contract pursuant to which the Issuer Trustee is obligated.

(b) The Issuer Trustee shall resign if a material conflict of interest arises in its role as a trustee under this Declaration of Trust that is not eliminated within 90 days after the Issuer Trustee becomes aware that it has such a material conflict of interest. Forthwith after the Issuer Trustee becomes aware that it has such a material conflict of interest, it shall provide the Unitholders, the Indenture Trustee and the Rating Agencies with written notice of the nature of such material conflict of interest. Upon such resignation, the Issuer Trustee shall (subject to Section 6.6) be discharged from its office under this Declaration of Trust. If, notwithstanding the foregoing provisions of this Section 6.1(b), the Issuer Trustee has such a material conflict of interest, the validity and enforceability of this Declaration of Trust and any agreement entered into by the Issuer Trustee shall not be affected in any manner whatsoever by reason only of the existence of such material conflict of interest. If the Issuer Trustee contravenes the foregoing provisions of this Section 6.1(b), the Unitholders, may apply, on notice to the Rating Agencies, to a court of competent jurisdiction for an order that the Issuer Trustee be replaced as Issuer Trustee hereunder.

6.2 Removal of Issuer Trustee

The Issuer Trustee may be removed from its office under this Declaration of Trust by the Unitholders, at any time by notice in writing delivered to the Issuer Trustee not less than 90 days prior to the date that such removal is to take effect.

6.3 Vacancy

In the event of the bankruptcy or insolvency of the Issuer Trustee or the inability of the Issuer Trustee to exercise its duties under this Declaration of Trust, the Unitholders may forthwith terminate the term of office of the Issuer Trustee as trustee and, in such instance, a vacancy will occur. No vacancy (including upon a resignation of the Issuer Trustee pursuant to

Section 6.1(b)) shall operate to annul this Declaration of Trust or affect the continuity of the Trust or terminate the appointment of the Manager under the Management Agreement.

6.4 Appointment of New Issuer Trustee

If, pursuant to this Article 6, the Issuer Trustee resigns or a vacancy occurs in the office of the Issuer Trustee for any reason, the Unitholders may by instrument in writing appoint a Trust Company, which either (i) has risk-based capital of at least $50,000,000 or, in the case of an entity that is not subject to risk-based capital adequacy requirements, has a combined capital and surplus of at least $50,000,000; or (ii) has been approved in writing by each Rating Agency prior to its appointment by the Unitholders, in order to replace the Issuer Trustee. If the Unitholders fails to make such appointment within 60 days of the occurrence of any such resignation, removal or vacancy, then the Issuer Trustee may make an application, on notice to the Rating Agencies, to a court of competent jurisdiction to appoint a successor Issuer Trustee hereunder. If the Issuer Trustee elects not to make such an application, the Unitholders may do so on notice to the Rating Agencies. The expense of any act, document, deed or other instrument or thing required under this Section 6.4 will be satisfied from the Trust Property.

6.5 Merger, Consolidation and Amalgamation

Any company into which the Issuer Trustee may be merged or with which it may be consolidated or amalgamated, or any company resulting from any merger, consolidation or amalgamation to which the Issuer Trustee is a party or any company succeeding to the corporate trust business of the Issuer Trustee will be a successor Issuer Trustee under this Declaration of Trust without any further action on the part of the Issuer Trustee, provided that such company shall be a Trust Company.

6.6 Vesting in Successor Issuer Trustee

Any successor Issuer Trustee will become vested with all the estates, properties, rights, powers, duties, responsibilities and trusts of its predecessors in the trusts hereunder as if it had been originally named as Issuer Trustee pursuant to this Declaration of Trust. In furtherance of the foregoing, upon written request of the successor Issuer Trustee, the Issuer Trustee ceasing to act will do, make, execute, deliver or cause to be done, made, executed or delivered all such acts, documents, deeds or other instruments and things as may be necessary or desirable in order to more effectively assign, transfer and deliver to, and vest in, the successor Issuer Trustee, upon the trusts herein expressed, all the rights, powers and trusts of, and all property and money held by the Issuer Trustee so ceasing to act. The expense of any act, document, deed or other instrument or thing required under this Section 6.6 will be satisfied from the Trust Property.

6.7 Confidentiality

At all times (including, without limitation, at any time the Issuer Trustee should resign or be discharged from the trusts and powers reposed in or conferred on it by this Declaration of Trust), the Issuer Trustee (or the trustee so resigning and being discharged, as the case may be) will treat as confidential all information relating to the Trust, the Trust Activities and the transactions contemplated by the Program Agreements obtained by it in its capacity as Issuer Trustee.

6.8 Right to Disclose

The Issuer Trustee shall have the right to disclose any information disclosed or released to it if in the opinion of legal counsel to the Issuer Trustee it is required to disclose under any applicable laws, court order or directions of Governmental Authorities or if it is requested by a Rating Agency. The Issuer Trustee shall not be responsible or liable to any party for any loss or damage arising out of or in any way sustained or incurred or in any way relating to such disclosure.

ARTICLE 7
STANDARD OF CARE, LIMITATION OF LIABILITY OF ISSUER TRUSTEE AND OTHER MATTERS

7.1 Standard of Care

The Issuer Trustee will exercise its powers and carry out its obligations hereunder as Issuer Trustee honestly, in good faith and in the best interests of the Trust and the Unitholders and in connection therewith will exercise that degree of care, diligence and skill that a reasonably prudent Person would exercise in comparable circumstances. To the extent that the Issuer Trustee has delegated or subcontracted the performance of all or a portion of its duties to the Manager as contemplated by Section 5.15, it will be deemed to have satisfied the aforesaid standard of care. Unless otherwise required by law, the Issuer Trustee will not be required to give bond, surety or security in any jurisdiction for the performance of any duties or obligations hereunder. The Issuer Trustee will not be required to devote its entire time to the Trust Activities. For greater certainty, the entering into of any Program Agreement by the Trust and the performance by the Trust of its obligations thereunder will be deemed to be in the best interests of the Unitholders and the Trust.

7.2 Limitation of Liability of Issuer Trustee

The Issuer Trustee has entered into this Declaration of Trust solely in its capacity as trustee of the Trust and not in its personal capacity, and any and all of the representations, warranties, undertakings, covenants, indemnities, agreements and other obligations made on the part of the Issuer Trustee herein are made and intended not as personal representations, warranties, undertakings, covenants, indemnities, agreements and other obligations by the Issuer Trustee or for the purpose or with the intention of binding the Issuer Trustee in its personal capacity, but are made and intended for the purpose of binding only the Trust Property or a specific portion thereof. No property or assets of the Issuer Trustee, whether owned beneficially by it in its personal capacity or otherwise (other than the Trust Property), will be subject to levy, execution or other enforcement procedures with regard to any of the representations, warranties, undertakings, covenants, indemnities, agreements and other obligations of the Trust or the Issuer Trustee hereunder, and no recourse may be had or taken, directly or indirectly, against the Issuer Trustee in its personal capacity, any Unitholder or any Affiliate, shareholder, director, officer, representative, employee or agent of the Issuer Trustee or any predecessor or successor of the Issuer Trustee with regard to the representations, warranties, undertakings, covenants, indemnities, agreements and other obligations of the Trust or the Issuer Trustee hereunder; provided that the foregoing limitation will not apply in respect of any action or failure to act arising from or in connection with the wilful misconduct, negligence or the failure to comply

with the standard of care referred to in Section 7.1. Notwithstanding any other provision of this Article 7, but subject to the Indenture, each Specified Creditor is entitled to recourse to the Trust Property to satisfy in full the obligations of the Trust to it even if the Issuer Trustee has no right, or only an impaired right, to seek indemnification from the Trust Property or to apply the Trust Property in satisfaction of such obligations.

7.3 Indemnification of the Issuer Trustee

The Issuer Trustee, its directors, officers, agents, representatives and employees will at all times be indemnified and saved harmless out of the Trust Property from and against all claims (including any claim arising out of the assessment of any tax on income by a taxing authority), demands, levies, penalties, suits, losses, actions, causes of action, costs, charges, fees and expenses, damages and liabilities whatsoever, including, without limitation, those arising out of or related to actions taken or omitted to be taken by any agent of the Issuer Trustee, including, without limitation, the Manager, as contemplated hereby, legal fees and disbursements on a substantial indemnity basis and costs and expenses incurred in connection with the enforcement of this indemnity (each, a "**Claim**"), which the Issuer Trustee, its directors, officers, representatives and employees may suffer or incur, whether at law or in equity, in any way caused by or arising, directly or indirectly, in respect of any act, deed, matter or thing whatsoever made, done, acquiesced in or omitted in or about or in relation to the execution of its duties as Issuer Trustee or which it sustains or incurs in or about or in relation to the Trust Property and the Trust Activities. Further, the Issuer Trustee will not be liable to the Trust, to any Unitholder or to any other Person for any loss or damage relating to any matter regarding the Trust, including any loss or diminution in the value of the Trust Property. The foregoing provisions of this Section 7.3 do not apply to the extent that in any circumstances there has been wilful misconduct, gross negligence or the failure to comply with standard of care referred to in Section 7.1 on the part of the Issuer Trustee, its directors, officers, agents, representatives or employees excluding the other parties to the Program Agreements. Notwithstanding any other provision hereof, this indemnity will survive the removal or resignation of the Issuer Trustee, the termination of this Declaration of Trust and the termination of any trust created hereby.

7.4 Reliance upon Advice

The Issuer Trustee may rely and act upon any statement, notice, report or opinion prepared by or any advice received from the Manager or from the auditors, counsel or other professional advisors of the Issuer Trustee and will not be responsible or held liable for any loss or damage resulting from so relying or acting if the Issuer Trustee acted reasonably and in good faith relied upon the advice received and if the professional advisor was aware that the Issuer Trustee was receiving the advice in its capacity as Issuer Trustee. The Issuer Trustee is entitled to be reimbursed from the Trust Property for all costs, charges and expenses it incurs in connection with obtaining any such statement, notice, report, opinion or advice. The Issuer Trustee is entitled to rely and act upon the genuineness and authenticity of any writing submitted to it that it in good faith believes to be genuine.

7.5 Retain Experts

The Issuer Trustee may appoint such agents and employ or retain such counsel, accountants, engineers, appraisers or other experts or advisers as it may reasonably require for the purpose of discharging its duties hereunder and shall not be responsible for any misconduct on the part of any of them. The Issuer Trustee may pay remuneration out of the Trust Property for all services performed for it in the discharge of the trusts hereof without taxation for costs or fees of any counsel, solicitor or attorney.

7.6 Reliance on Experts

The Issuer Trustee may act and rely and shall be protected in acting in good faith on the opinion or advice of or information obtained from any agent, counsel, accountant, engineer, appraiser or other expert or adviser in relation to any matter arising in the performance of its duties under the Program Agreements.

7.7 Provisions Regarding Liability

Any written instrument creating an obligation of the Issuer Trustee will be conclusively deemed to have been executed by the Issuer Trustee only in its capacity as Issuer Trustee. Any written instrument creating an obligation of the Issuer Trustee will contain a provision to the effect that the obligations thereunder are not binding upon the Issuer Trustee except in its capacity as Issuer Trustee, nor will recourse be had to the property of the Issuer Trustee except in its capacity as Issuer Trustee, but that the Trust Property or a specific portion thereof only will be bound, and may at the request of the Issuer Trustee make specific provision to the foregoing effect and contain any further provisions which the Issuer Trustee may deem appropriate, but the omission of any such provisions will not operate to invalidate any such instrument or to impose liability on the Issuer Trustee, except as aforesaid. The Issuer Trustee shall not be required to expend or risk its own funds or otherwise incur financial liability in the performance of its duties hereunder.

ARTICLE 8
RECORDS

8.1 Records to be Kept

The Issuer Trustee will keep or cause to be kept at the head office of the Trust a copy of this Declaration of Trust, a register of Unitholders, minutes of meetings and resolutions of Unitholders, minutes of meetings and resolutions of the Issuer Trustee, and such Records as are by law or good business practice necessary. The Records may be kept at the office of any Person whom the Issuer Trustee has appointed to maintain the same, provided that the Issuer Trustee has access to the Records on one Business Day's notice to such Person.

8.2 Segregation of Assets

The Issuer Trustee shall maintain the Trust Property separate from all other property in its possession.

8.3 Method of Keeping Records

Where this Declaration of Trust requires the Issuer Trustee to cause a Record to be kept, it may be kept in bound or loose-leaf form or by means of a mechanical, electronic or other device.

8.4 Annual Financial Statements

A copy of the annual financial statements of the Trust, signed by the Issuer Trustee, shall be mailed or otherwise made available within 120 days following the end of a fiscal year to which they relate to each Unitholder. The financial statements shall include all information required to be included in annual financial statements of the Trust by applicable laws.

ARTICLE 9
MEETINGS OF UNITHOLDERS AND DECISION OF UNITHOLDERS

9.1 Annual Meeting

There will not be an annual meeting of the Unitholders.

9.2 Other Meetings

The Issuer Trustee will have power at any time to call meetings of the Unitholders at such time and place as the Issuer Trustee may determine. Unitholders holding in the aggregate not less than a majority of the outstanding Units may requisition the Issuer Trustee in writing to call a meeting of the Unitholders for the purposes stated in the requisition. The requisition shall state in reasonable detail the business proposed to be transacted at the meeting and will be sent to the Issuer Trustee at the address of the Issuer Trustee. Upon receiving the requisition, the Issuer Trustee will call a meeting of the Unitholders to transact the business referred to in the requisition. If the Issuer Trustee does not within 10 days after receiving the requisition call a meeting, any Unitholder who signed the requisition may call the meeting.

9.3 Quorum and Voting

A quorum for any meeting of the Unitholders will be persons present being Unitholders or representing by proxy Unitholders who hold in the aggregate a majority of the total number of outstanding Units. Unitholders may attend and vote at all meetings of the Unitholders either in person or by proxy. Each Unit will be entitled to one vote at all meetings of the Unitholders. Any action to be taken by the Unitholders will, except as otherwise required by this Declaration of Trust, or by law, be authorized when approved by a majority of the votes cast at a meeting of the Unitholders. The chairman of any such meeting will not have a second or casting vote.

9.4 Written Resolution

Any business which may be conducted at a meeting of the Unitholders may be approved by a resolution in writing in lieu thereof. Notice of such resolution will be given to all Unitholders and approval of such resolution will be evidenced by the signature on any such

resolution or counterpart thereof by the required percentage of Unitholders for the matter to be determined.

ARTICLE 10
AMENDMENT

10.1 Amendment

Subject to Section 2.1 and compliance with the terms of the applicable Program Agreements, the Issuer Trustee may, from time to time, amend, vary, supplement, replace or restate the provisions of this Declaration of Trust without the consent or approval of the Unitholders or any court as follows:

(a) to the extent deemed necessary by the Issuer Trustee in good faith to be necessary to ensure compliance with, or to remove any conflicts or other inconsistencies which may exist between any term of this Declaration of Trust and the provisions of, any applicable law in effect from time to time;

(b) to the extent deemed necessary by the Issuer Trustee in good faith to be necessary to make any change or correction in this Declaration of Trust which is a typographical change or correction or which the Issuer Trustee has been advised by legal counsel is required for the purpose of curing any ambiguity or defect or inconsistent provision or clerical omission or mistake or manifest error contained herein, or

(c) subject to the satisfaction of the Rating Agency Condition, to the extent deemed necessary or desirable in the sole discretion of the Issuer Trustee to permit or facilitate the carrying on of the Trust Activities, including the accommodation of requests made by the Rating Agencies or regulatory authorities in relation to the issuance of Funding Obligations.

However, any such amendment may be made only if it will not materially adversely affect the interest of any Unitholder, unless that Unitholder has also approved of the amendment in writing. The Issuer Trustee will immediately upon the entering into thereof, provide the Rating Agencies and the Indenture Trustee with a copy of any amendment, variation, supplement, replacement or restatement of this Declaration of Trust.

10.2 Automatic Amendment

Upon the Issuer Trustee ceasing to be a trustee of the Trust, this Declaration of Trust will be automatically amended to delete any reference to the name of the trustee so ceasing to be a trustee of the Trust and to substitute therefor the name of the successor trustee of the Trust. Notice of any change in the Issuer Trustee may be endorsed upon or attached to this Declaration of Trust and signed by the successor Issuer Trustee and every such notice will be sufficient evidence to any Person dealing with the Issuer Trustee under this Declaration of Trust as to the facts to which it relates.

10.3 Supplemental Declaration of Trust

The Issuer Trustee is authorized to execute any supplemental declaration of trust to give effect to amendments to this Declaration of Trust made pursuant to this Article 10. The Issuer Trustee shall not be obligated to enter into any such supplemental declaration if it adversely affects the Issuer Trustee's rights, duties or immunities under this Declaration of Trust or otherwise. No amendment to or amendment and restatement of this Declaration of Trust, whether pursuant to this Article 10 or otherwise, shall be construed as a termination of the Trust or the settlement or establishment of a new trust.

ARTICLE 11
DISTRIBUTION OF TRUST PROPERTY[1]

11.1 Distributions

(1) The Issuer Trustee may declare to be payable and make distributions, from time to time, out of Income of the Trust, Net Realized Capital Gains of the Trust, capital of the Trust or otherwise, in any year, in such amount or amounts, and on such dates as the Issuer Trustee may determine, to the Unitholders at the record date for such distribution. The Issuer Trustee may declare such amounts to be payable or authorize such distributions in advance by way of a standing resolution that is effective for a period not exceeding 12 months after the date of the resolution.

(2) Where the Trust proposes to distribute Trust Property in specie to a redeeming Unitholder as contemplated in subsection 4.1(3), and the Issuer Trustee reasonably expects that such in specie distribution will give rise to Income of the Trust and / or Net Realized Capital Gains of the Trust in excess of the amount of the Net Realized Capital Gains of the Trust Allocated on Redemption to the particular Unitholder whose Units are being redeemed (collectively, the "**Excess Income on Redemption**"), the Issuer Trustee shall declare to be payable and make a distribution, on the record date that is one Business Day before the redemption, to Unitholders at such record date in an amount equal to the estimated Excess Income on Redemption. Such distribution will be satisfied by the issuance of additional Units, or fractions of Units, having a fair market value equal to the amount of such distribution. If the Issuer Trustee is required to deduct or withhold an amount from such distribution, the applicable Unitholder shall make the cash payment described in Section 11.7 to the Issuer Trustee on or prior to the date the distribution.

(3) If the Issuer Trustee declares to be payable or makes a distribution pursuant to subsections 11.1(1) or 11.1(2) without determining the portion of such distribution that is payable out of Income of the Trust, Net Realized Capital Gains of the Trust, capital of the Trust or otherwise, such allocation shall be made pursuant to subsection 11.2(2).

(4) Having regard to the present intention of the Issuer Trustee to make payable to Unitholders all of the Income of the Trust and Net Realized Capital Gains of the Trust for each taxation year so that the Trust will not have any liability for tax under Part I of the ITA in any taxation year (other than alternative minimum tax or taxes payable under the

[1] Subject to PILs exemption.

"SIFT trust" rules in the ITA), unless the Issuer Trustee, in its sole discretion determines otherwise, the following amounts will, without any further actions on the part of the Issuer Trustee, be due and payable to the Unitholders of record on the last day in each such taxation year:

(a) an amount equal to the amount, if any, by which the Income of the Trust for such year exceeds the aggregate of (A) the aggregate of the portions of the distributions paid or payable by the Trust which have been determined by the Issuer Trustee to have been payable by the Trust out of the Income of the Trust for such year, if any, and (B) the aggregate of the portions of distributions deemed by subsection 11.2(2)(a) to be paid or payable by the Trust out of the Income of the Trust for such year; and

(b) an amount equal to the amount, if any, by which the Net Realized Capital Gains of the Trust for such year exceeds the aggregate of (A) any amount of the Net Realized Capital Gains of the Trust Allocated on Redemption for the year payable to redeeming Unitholders pursuant to subsection 4.1(5), (B) the aggregate of the portions of the distributions paid or payable by the Trust which have been determined by the Issuer Trustee to have been payable by the Trust out of Net Realized Capital Gains of the Trust for such year, if any, and (C) the aggregate of the portions of distributions deemed by subsection 11.2(2)(b) to be paid or payable by the Trust out of the Net Realized Capital Gains of the Trust for such year, if any.

Any determinations by the Issuer Trustee not to make a distribution described in this subsection 11.1(4) must be exercised by the Issuer Trustee in writing prior to December 31 of the applicable taxation year.

(1) The proportionate share of each Unit of the amount of any distribution made pursuant to this section will be determined by dividing such amount by the number of issued and outstanding Units on the applicable record date in respect of a distribution pursuant to subsections 4.1(5), 11.1(1) or 11.1(2) and on the last day of the taxation year in respect of a distribution pursuant to subsection 11.1(4). Each Unitholder's share of the amount of any such distribution will be an amount equal to the proportionate share of each Unit of such amount multiplied by the number of Units owned of record by each such Unitholder on such applicable record date or the last day of the taxation year, as the case may be, and such Unitholder shall, on such date, be entitled to enforce payment of the Unitholder's share. Subject to subsections 4.1(5) and 11.1(2) and section 11.3, amounts which are payable to Unitholders will be paid in cash.

11.2 Allocation

(1) Subject to subsection 11.2(2), distributions payable to the Unitholders pursuant to Article 11 will be deemed to be distributions of Income of the Trust (including dividends), Net Realized Capital Gains of the Trust, returns of capital of the Trust or other items in such amount as the Issuer Trustee in its absolute discretion determines and will be allocated to the Unitholders in the same proportions as distributions received by the Unitholders.

(2) If the Issuer Trustee has declared to be payable or made one or more distributions in a taxation year pursuant to subsection 11.1(1) without determining the portion of such distributions that is payable out of Income of the Trust, Net Realized Capital Gains of the Trust, capital of the Trust or otherwise, such distributions shall be deemed to be paid or payable out of:

(a) first, the Income of the Trust for such year to the extent, if any, that the Income of the Trust for such year exceeds the aggregate of the amounts in subsection 11.1(4)(a)(A);

(b) second, the Net Realized Capital Gains of the Trust for such year to the extent, if any, that the Net Realized Capital Gains of the Trust for such year exceeds the aggregate of the amounts in subsection 11.1(4)(b)(A) and 11.1(4)(b)(B); and

(c) as to any balance, the capital of the Trust;

and such amounts will be allocated to the Unitholders in the same proportions as such distributions were received by the Unitholders.

(1) For greater certainty it is hereby declared that any distribution of Net Realized Capital Gains of the Trust will include the non-taxable portion of the capital gains of the Trust which are included in such distribution.

11.3 Payment of Distributions

(1) Distributions to a Unitholder (other than distributions described in subsections 4.1(5) and 11.1(2)) will be made by cash, wire transfer or cheque payable to or to the order of the Unitholder or by such other manner provided for in subsection 11.3(3). The payment, if made by cheque, will be conclusively deemed to have been made upon hand delivery of a cheque to the Unitholder or to its agent duly authorized in writing or upon the mailing of a cheque by prepaid first-class mail addressed to the Unitholder at its address set out in the records of the Issuer Trustee unless the cheque is not paid on presentation, or in any other manner determined by the Issuer Trustee in its discretion. The Issuer Trustee may issue a replacement cheque if it is satisfied that the original cheque has not been received or has been lost or destroyed upon being furnished with such evidence of loss, indemnity or other document in connection therewith that the Issuer Trustee may in its discretion consider necessary.

(2) The Issuer Trustee may, in its sole discretion, transfer temporarily from capital to income within the Trust sufficient cash to facilitate payments of Income of the Trust to Unitholders. A permanent transfer from capital to income may be effected if payments made by and /or expenses of the Trust in any year exceed the aggregate of the net income and Net Realized Capital Gains of the Trust in such year.

(3) Without limiting the generality of the foregoing, a distribution to a Unitholder may be paid (i) by the issuance of additional Units, or fractions of Units having a fair market value equal to the amount of such distribution, (ii) by the issuance of a promissory note for a principal amount equal to the amount of such distribution and/or (iii) *in specie* by

the transfer of Trust Property having a fair market value equal to the amount of such distribution, all as may be determined by the Issuer Trustee, acting reasonably. The Issuer Trustee acknowledges and agrees that it will elect to make payment to a Unitholder of the amount of a distribution in the manner described in this subsection 11.3(3) only if it has received prior written notice from the Unitholder that such payment method is acceptable, and the Unitholder makes the cash payment described in Section 11.7 to the Issuer Trustee, which written notice may be revoked in writing by the Unitholder at any time. If the Issuer Trustee elects to make payment of the amount of a distribution by the issuance of a promissory note, such promissory note shall bear interest at a fixed or floating rate, shall be repayable on demand or on the expiry of a stated term, and shall contain such other terms all of which may be determined by the Issuer Trustee such that the fair market value of such promissory note is equal to the amount of the distribution. Any such promissory note or additional Units issued, or Trust Property transferred, by the Trust shall constitute absolute and unconditional payment in full of the distribution and, by becoming a Unitholder, each Unitholder hereby acknowledges that any such note, additional Units or transfer of Trust Property will be accepted by the Unitholder as such absolute and unconditional payment of the distribution payable to the Unitholder.

11.4 Legal Rights

For greater certainty, it is hereby declared that the Unitholders shall have the legal right to enforce payment of any amount to be distributed or payable hereunder at the time such amount is due and payable.

11.5 Income Tax Matters

In reporting income for income tax purposes, the Trust will claim the maximum amount available to it as deductions under the relevant law, unless the Issuer Trustee determines otherwise.

11.6 Designations

In accordance with and to the extent permitted by the ITA, the Issuer Trustee will, in each taxation year, make such designations for income tax purposes in respect of amounts paid or payable or deemed to be paid to the Unitholders for such amounts that the Issuer Trustee considers to be reasonable in all circumstances, including designations relating to taxable dividends received or deemed to be received by the Trust in the year on shares of taxable Canadian corporations, net taxable capital gains of the Trust in the year and foreign source income of the Trust and foreign taxes in respect of such foreign source income for the year, if any.

11.7 Withholding Taxes

The Issuer Trustee will deduct or withhold from distributions **or other amounts** payable ~~to a Unitholder~~**under this Declaration of Trust** amounts required by law to be deducted or withheld from such ~~Unitholder's~~ distributions **or payments**, whether such distributions **or payments** are **satisfied** in the form of cash, ~~a~~**cheque,** promissory note, additional Units or

otherwise. To the extent that any amounts are deducted or withheld from payments **made by cash, cheque or wire transfer, including those** described in subsection 11.3(1), such deducted or withheld amounts shall be treated for all purposes as having been paid to ~~a Unitholder~~**the recipient of the payment** in respect of the distribution **or other amount** payable, provided that such deducted or withheld amounts are actually remitted in accordance with applicable law to the appropriate taxing authority. In the event that the Issuer Trustee makes a distribution **or payment that is satisfied in a manner other than cash, cheque or wire transfer, including those** described in subsections **4.1(3),** 4.1(5) or ~~11.1(2), or elects to pay a distribution in the manner contemplated in subsection~~ 11.3(3), the ~~Unitholder~~**recipient of the payment** shall provide cash to the Issuer Trustee in amount equal to any required deduction or withholding, which the Issuer Trustee shall forthwith remit to the appropriate taxing authority on behalf of the Unitholder.

ARTICLE 12
TERMINATION OF THE TRUST

12.1 Termination

(a) The Trust will continue in full force and effect for a period of twelve months from the date hereof and thereafter for so long as any Funding Obligations remain outstanding and until the Trust has satisfied all of its obligations under the Program Agreements or otherwise for the purposes of carrying on the Trust Activities. Notwithstanding the foregoing, the Issuer Trustee may, with the unanimous approval of Unitholders, wind-up the affairs of the Trust and terminate the Trust and distribute the Trust Property then remaining to the Unitholders in proportion to the number of Units held by each Unitholder no later than the date that is one day prior to the 21st anniversary of the death of the last surviving lineal descendent of Queen Elizabeth, II of England living at the date this declaration is made.

(b) Subject to Section 12.1(a), the Issuer Trustee may, with the unanimous approval of the Unitholders, wind up the affairs of the Trust and terminate the Trust. To the fullest extent permitted by law, and notwithstanding any duty otherwise existing at law or in equity, the Issuer Trustee shall consider only the interests of the Trust, including its creditors, in acting on the matters referred to in this Section 12.1. On the date the Trust is terminated, the Issuer Trustee will, upon receipt of such releases, indemnities and refunding agreements as the Issuer Trustee may deem necessary for its protection, distribute the remaining Trust Property, after payment of all other obligations of the Trust, in cash or in kind , or partly in each, to the Unitholders in proportion to the number of Units held by each Unitholder

ARTICLE 13
GENERAL

13.1 Irrevocability

The Trust shall be irrevocable.

13.2 Change of Office

The Issuer Trustee may at any time and from time to time during the existence of the trusts hereby created change the head office, chief executive office, chief place of business and situs of the administration of the Trust to another location within Ontario or have such other offices or places of administration within Canada as the Issuer Trustee may from time to time determine is necessary or desirable.

13.3 Execution of Instruments

The Issuer Trustee shall have power from time to time to appoint any Person or Persons on behalf of the Trust either to sign instruments in writing generally or to sign specific instruments in writing.

13.4 Manner of Giving Notice

Except as otherwise permitted herein, any notice required or permitted by the provisions of this Declaration of Trust to be given to a Unitholder or the Issuer Trustee shall be deemed conclusively to have been given if given either by delivery or by prepaid first-class mail addressed to each Unitholder at its address shown on the register of Unitholders or to the Issuer Trustee at the last address provided by the Issuer Trustee for such purpose. Any notice so given shall be deemed to have been given on the day of hand delivery or the day following that on which the notice was mailed.

13.5 Taxation Information

On or before March 30 in each year, or such earlier day as is required by applicable legislation or regulation, the Issuer Trustee will provide to Unitholders who received distributions from the Trust in the prior calendar year such information regarding the Trust required by applicable law to be submitted to Unitholders for income tax purposes to enable Unitholders to complete their tax returns in respect of the prior calendar year.

13.6 Severability

The provisions of this Declaration of Trust are severable and if any provisions are in conflict with any applicable law, the conflicting provisions shall be deemed never to have constituted a part of this Declaration of Trust and shall not affect or impair any of the remaining provisions thereof. If any provision of this Declaration of Trust shall be held invalid or unenforceable in any jurisdiction, such invalidity or unenforceability shall attach only to such provision in such jurisdiction and shall not in any manner affect or render invalid or unenforceable such provision in any other jurisdiction or any other provision of this Declaration of Trust in any jurisdiction.

13.7 Governing Law

This Declaration of Trust shall be interpreted and governed by and take effect exclusively in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein. Any and all disputes arising under this Declaration of Trust, whether as to interpretation,

performance or otherwise, shall be subject to the exclusive jurisdiction of the courts of the Province of Ontario and the Issuer Trustee hereby irrevocably attorns, and each Unitholder shall be deemed to hereby irrevocably attorn, to the exclusive jurisdiction of the courts of such province.

13.8 Language

Les parties aux présentes ont exigés que la présente convention ainsi que tous les documents et avis qui s'y rattachent et/ou qui en découleront soient rédigés en la langue anglaise. The parties hereto have required that this Declaration of Trust and all documents and notices resulting herefrom be drawn up in English.

IN WITNESS WHEREOF the Issuer Trustee has caused this Declaration of Trust to be executed as of the day and year first above written by its duly authorized signatories.

[COMPUTERSHARE TRUST COMPANY] OF CANADA,
as Issuer Trustee

By: _____
Name:
Title:

By: _____
Name:
Title:

Document comparison by Workshare Compare on November-10-17 8:07:04 PM

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Description	#24318715v1<TorysAtWork> - Declaration of Trust - Fair Hydro - RATING AGENCIES
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Description	Declaration of Trust - Fair Hydro
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Statistics:	
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Insertions	39
Deletions	29
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	68

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MANAGEMENT AGREEMENT

between

■

FAIR HYDRO TRUST
as Issuer

- and -

ONTARIO POWER GENERATION INC.
as Manager

Acknowledged and Accepted by

■

BNY TRUST COMPANY OF CANADA
as Indenture Trustee

Dated as of ■, 2017

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EXHIBIT

Exhibit A – Annual Compliance Certificate

MANAGEMENT AGREEMENT

THIS AGREEMENT made as of ■, 2017,

BETWEEN:

■FAIR HYDRO TRUST, a trust formed under the laws of the Province of Ontario

(the "**Issuer**")

- and -

ONTARIO POWER GENERATION INC., a corporation established under the laws of the Province of Ontario

(the "**Manager**")

- acknowledged and accepted by -

~~[INDENTURE TRUSTEE]~~BNY TRUST COMPANY OF CANADA, a trust company existing under the laws of Canada and duly authorized to carry on the business of a trust company in all of the provinces and territories of Canada, as indenture trustee

(the "**Indenture Trustee**")

WHEREAS the Government of Ontario has passed the *Ontario Fair Hydro Plan Act, 2017* (the "**Act**") for the purpose of, among other things, ensuring that Clean Energy Costs and Clean Energy Benefits are fairly allocated among present and future Specified Consumers;

AND WHEREAS Ontario Power Generation Inc. has been appointed as Financial Services Manager under the Act to, among other things, evaluate whether potential Funding Obligations should be incurred by Financing Entities for the purposes of acquiring and financing Investment Interests;

AND WHEREAS the Issuer is a Financing Entity established by the Financial Services Manager pursuant to the Act and may from time to time finance the acquisition from the IESO of an Investment Interest pursuant to the terms of the Master Transfer and Servicing Agreement;

AND WHEREAS the Indenture Trustee has been appointed pursuant to the Indenture to act on behalf of all Specified Creditors and wishes to acknowledge and accept the rights and obligations granted to it thereby, including, but not limited to, ~~those~~its rights ~~and obligations set forth in Sections 4.1(a)(vii), 4.1(a)(xx), 4.1(a)(xxiii), 4.3(a), 4.7(d), 4.7(e), 5.6, 7.1, 8.2(b) and 8.10 hereof~~set forth in this Agreement;

AND WHEREAS the Issuer and the Manager are entering into this Agreement in furtherance of, and in accordance with, the Act;

NOW THEREFORE in consideration of the foregoing and the mutual covenants and agreements contained herein (the receipt and adequacy of which are hereby acknowledged), the parties hereto agree as follows:

ARTICLE 1
INTERPRETATION

1.1 Definitions

(a) In this Agreement, the following terms have the following meanings:

"**Act**" has the meaning ascribed thereto in the recitals;

"**Agreement**" means this Agreement, as amended, supplemented, modified, ~~restated or~~ replaced **or amended and restated** from time to time, and the expressions "herein", "hereof", "hereto", "hereunder" and similar expressions refer to this Agreement and not to any Article, Section, paragraph, subparagraph or clause hereof;

"**Board**" means the Ontario Energy Board, a statutory corporation without share capital continued under the *Ontario Energy Board Act, 1998*, S.O., 1998;

"**Clean Energy Adjustment**" has the meaning ascribed to the term "clean energy adjustment" in the Act;

"**Clean Energy Benefits**" has the meaning ascribed to the term "clean energy benefits" in the Act;

"**Clean Energy Costs**" has the meaning ascribed to the term "clean energy costs" in the Act;

"**Declaration of Trust**" means the declaration of trust made as of ■, 2017 under which the Issuer was established, as may be **amended,** supplemented, ~~amended~~**modified**, replaced or amended and restated from time to time;

"Electricity Vendor" has the meaning ascribed to the term "electricity vendor" in the Act;

"**Fair Allocation Amount**" has the meaning ascribed to the term "fair allocation amount" in the Act;

"**Finance Amount**" has the meaning ascribed to the term "finance amount" in the Act;

"**Financial Services Manager**" has the meaning ascribed to such term under the Act;

"**Financing Entity**" has the meaning ascribed to the term "financing entity" in the Act;

"**Financing Plan**" has the meaning ascribed to such term under the Act;

"**Funding Obligation**" has the meaning ascribed to the term "funding obligation" in the Act;

"**IESO**" means the Independent Electricity System Operator, a statutory corporation without share capital ~~continued~~**amalgamated** under the *Electricity Act, 1998*, S.O. 1998;

"**Indenture**" means the master trust indenture dated ■, 2017 between the Indenture Trustee and the Issuer, as may be **amended,** supplemented, ~~amended~~**modified**, replaced or amended and restated from time to time;

"Indenture Indemnified Losses" has the meaning ascribed to such term in Section 5.6(b);

"Indenture Indemnified Person" means the Indenture Trustee and its officers, directors and employees;

"**Investment Interest**" has the meaning ascribed to the term "investment interest" in the Act;

"**Investment Interest Records**" means, collectively, any and all documents and records the Manager shall keep on file, in accordance with its customary procedures, relating to the Issuer Investment Interest, including copies of all documents filed with the Board in connection with any Clean Energy Adjustments and computational records relating thereto;

"**Issuer Compensation**" has the meaning ascribed to such term in Section 5.5;

"**Issuer Funding Obligation**" means a Funding Obligation incurred by the Issuer;

"**Issuer Investment Interest**" means, initially, the Investment Interest acquired by the Issuer pursuant to the first Transfer completed under the Master Transfer and Servicing Agreement and, upon the completion of each Transfer thereafter, the cumulative Investment Interest acquired by the Issuer;

"**Issuer Property**" means, as of any particular time, all assets of the Issuer and all property, real, personal or otherwise, tangible or intangible, which has been transferred, conveyed or paid to, or acquired by the Issuer, including all income, earnings, profits and gains therefrom, and which at such time is owned or held by the Issuer;

"**Management Fees**" means the fees ~~payable to the Manager, as set out in the applicable fee letter to be issued on an annual basis or more frequently as the Issuer and the Manager may determine~~**established and charged by the Financial Services Manager in accordance with section 19(3) of the Act and the Regulations and approved by the Board in accordance with section 19(4) of the Act**;

"**Master Transfer and Servicing Agreement**" means the master transfer and servicing agreement dated ■, 2017 between the Issuer and the IESO ~~and acknowledged and accepted by the Indenture Trustee~~, as may be **amended,** supplemented, ~~amended~~**modified**, replaced or amended and restated from time to time;

"**Minister**" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of the Act under the *Executive Council Act*, S.O. 1990;

"**Offering Materials**" means any document used by the Issuer in connection with offering securities representing Issuer Funding Obligations for sale including, without limitation, any information circular, offering memorandum, annual information form, preliminary prospectus, prospectus, prospectus supplement, term sheet, registration statement or other similar document, or any amendments to such documents;

"**Perpetuity Date**" means the date that is one day prior to the 21st anniversary of the death of the last surviving lineal descendant of Queen Elizabeth, II of England living as of the date of the Declaration of Trust;

"~~**Program Agreements**" means the Indenture, each Supplemental Indenture, the Declaration of Trust, this Agreement, the Master Transfer and Servicing Agreement, each Transfer Notice, any Co-Owner Agreements, the Change of Law Protection Agreement, the Notes, any Derivative Agreements, Credit Enhancement Agreements, Liquidity Agreements, Loan Agreements, Underwriting Agreements, Agency Agreements and Note Purchase Agreements in effect at such time and all other documents and certificates delivered in connection therewith;~~**Proceeding" means any suit in equity, action at law or other judicial or administrative proceeding;**

"**Reference Period**" has the meaning ascribed to the term "reference period" in the Act;

"**Regulation AB**" means Subpart 229.1100 – Asset Backed Securities (Regulation AB), 17 C.F.R. §§229.1100-229.1125, and all related rules and regulations of the U.S. Securities and Exchange Commission, as such rules may be amended from time to time, and subject to such clarification and interpretation as have been provided by the U.S. Securities and Exchange Commission or by the staff of the U.S. Securities and Exchange Commission, or as may be provided by the U.S. Securities and Exchange Commission or its staff from time to time;

"**Regulations**" means ~~the~~**Ontario Regulation 206/17: General, together with any other** regulations promulgated under the Act;

"**Servicer CEA ~~Collections~~Receipts**" has the meaning ascribed thereto in the Master Transfer and Servicing Agreement;

"**Specified Consumer**" has the meaning ascribed to the term "specified consumer" in the Act;

"**Standard of Care**" has the meaning ascribed to such term in Section 5.1;

"**Transfer**" has the meaning ascribed to the term "transfer" in the Act; and

"**True Up Amount**" has the meaning ascribed to the term "true up amount" in the Act.

(b) Unless otherwise defined in this Agreement, all capitalized terms used in this Agreement shall have the meanings ascribed thereto in the Indenture.

ARTICLE 2
INTRODUCTORY PROVISIONS

2.1 Sections and Headings

The table of contents does not form part of this Agreement. The division of this Agreement into Articles and Sections and the insertion of headings are for convenience of reference only and will not affect the construction or interpretation of this Agreement. Unless something in the subject matter or context is inconsistent therewith, references herein to Articles and Sections are to Articles and Sections of this Agreement.

2.2 Extended Meanings

Words importing the singular number only will include the plural and vice versa and words importing the masculine gender will include the feminine and neuter genders and vice versa. Unless otherwise specified, a reference to any agreement, instrument or declaration means such agreement, instrument or declaration as the same may be amended, supplemented, modified, restated or replaced from time to time.

2.3 References to Acts of the Issuer or the Issuer Trustee

For greater certainty, where any reference is made in this Agreement to an act to be performed by the Issuer, such reference will be construed and applied for all purposes as if it referred to an act to be performed by the Issuer Trustee as trustee of the Issuer. Where any reference is made in this Agreement to an act to be performed by the Issuer Trustee, such reference will be construed and applied for all purposes as if it referred to an act to be performed by the Issuer Trustee as trustee of the Issuer.

ARTICLE 3
APPOINTMENT OF THE MANAGER

3.1 Appointment and Authority of the Manager

The Issuer hereby appoints Ontario Power Generation Inc. as the Manager to act as its agent to provide services and perform duties for and on behalf of and for the account of the Issuer, as hereinafter provided, in connection with the activities of the Issuer relating to:

(a) the acquisition, administration and possible transfer of the Issuer Investment Interest on behalf of the Issuer in accordance with the Act;

(b) acting as custodian of the Investment Interest Records;

(c) the entering into and execution and delivery on behalf of the Issuer of any Program Agreements;

(d) the incurrence of Issuer Funding Obligations, and repayment thereof, to fund the acquisition of the Issuer Investment Interest;

(e) the negotiation, execution and delivering or filing on behalf of the Issuer of any Offering Materials;

(f) the implementation and administration of the provisions of the Program Agreements to which the Issuer or the Manager on its behalf is a party;

(g) the acquisition, administration and sale of investments that may from time to time be made by the Issuer; and

(h) all activities as may be reasonably incidental to the foregoing or necessary in connection with the performance by the Issuer of its obligations under the Program Agreements, the Act and the Regulations.

The Manager accepts such appointment and agrees to act in such capacity and to provide or cause to be provided the services and to perform the duties set forth in this Agreement on and subject to the terms and conditions in this Agreement. The Issuer hereby grants to the Manager the power and authority to act in the name of and on behalf of the Issuer, and to execute and deliver all documents, agreements and instruments in the name and on behalf of the Issuer, for the sole purpose of providing the services and performing the duties to be provided and performed by the Manager pursuant to this Agreement. **The Manager shall provide all the services and perform all the duties contemplated under this Agreement, including its duties as Financial Services Manager under the Act, in Ontario, Canada.**

ARTICLE 4
DUTIES AND OBLIGATIONS OF THE MANAGER

4.1 Program Agreements

(a) The Manager will administer as agent for and on behalf of and for the account of the Issuer the activities of the Issuer in connection with the Program Agreements and, in this regard, its services and duties will include:

(i) negotiating and executing, on behalf of the Issuer, Program Agreements and any documents related thereto with any Person and any amendments, supplements, replacements or restatements that may be necessary or desirable from time to time;

(ii) arranging for liquidity coverage required pursuant to the Program Agreements, negotiating and settling Liquidity Agreements and administering on behalf of the Issuer the activities of the Issuer in connection with such Liquidity Agreements;

(iii) when necessary or desirable, arranging for the Credit Enhancement of the Issuer Investment Interest, negotiating and settling Credit Enhancement Agreements and administering on behalf of the Issuer the activities of the Issuer in connection with such Credit Enhancement Agreements;

(iv) seeking satisfaction of the Rating Agency Condition from the Rating Agencies in respect of the Program Agreements and proposed amendments thereto if required;

(v) based on reports submitted to it, monitoring the recording, accounting for and enforcement of payment of amounts distributable or payable to the Issuer in connection with any Program Agreement;

(vi) maintaining accounts and banking records of the Issuer with respect to acquisitions or investments in and distributions and payments in connection with the Issuer Property, including Eligible Investments;

(vii) promptly after obtaining knowledge thereof, notifying the Issuer, the Indenture Trustee and the Rating Agencies of a breach in any material respect of any of the Manager's representations, warranties or covenants contained herein;

(viii) to the extent that the Issuer shall from time to time have funds the application of which is not then necessary to the repayment of outstanding indebtedness of the Issuer or to the payment of any costs, fees, expenses or disbursements of the Issuer, applying such funds on behalf of and for the account of the Issuer to the acquisition of Eligible Investments as the Manager may select pending the application of such funds to the repayment of outstanding indebtedness of the Issuer or to the payment of any costs, fees, expenses or disbursements of the Issuer; provided, however, that in making any such Eligible Investments, the Manager shall adhere to the requirements of the Program Agreements in all respects;

(ix) taking all other necessary and appropriate action to enable the Issuer to exercise its rights and perform its obligations in accordance with the provisions of any Program Agreement, including exercising rights of termination under Program Agreements and the enforcement of security or in respect of Eligible Investments;

(x) providing for the defense of any action, suit or proceeding brought against the Issuer or affecting the Issuer or any Issuer Property;

(xi) taking all such steps as may be necessary or appropriate to enable the Issuer to collect on any security relating to the Issuer Investment Interest;

(xii) determining, in accordance with the Financing Plan, when it is appropriate for the Issuer to enter into Derivative Agreements, selecting suitable counterparties thereto and negotiating the terms thereof in accordance with the terms of the Program Agreements;

(xiii) determining, in accordance with the Financing Plan, when it is appropriate for the Issuer to incur Funding Obligations, including the determination of applicable principal (or face amount), amortization/sinking fund

schedule(s), interest rates (or rate of discount), interest payment frequency, issuance date and maturities of such Funding Obligations;

(xiv) making determinations under the Declaration of Trust regarding any distributions to beneficiaries of the Issuer;

(xv) promptly providing the Issuer Trustee notice of the Perpetuity Date once determined;

(xvi) administering all activities of the Issuer in connection with the issuance, sale, payment, repurchase and redemption of Issuer Funding Obligations and the execution and performance by the Issuer of its obligations under the Program Agreements, including all reporting obligations, applying for and monitoring the ratings of any Issuer Funding Obligations and coordinating all aspects of obtaining and maintaining ratings from the Rating Agencies;

(xvii) preparing, executing and delivering, in accordance with the requirements of all applicable securities laws, any Offering Materials to be furnished by the Issuer to any dealer or prospective purchaser of Issuer Funding Obligations, in accordance with the Issuer's obligations to prepare such Offering Materials under any Underwriting Agreement or Agency Agreement, and preparing amendments to or revising or updating information for such Offering Materials as required from time to time (it being understood that the Manager, as between it and the Issuer, shall not be responsible for the accuracy of any portion of the Offering Materials prepared from information obtained from any Person other than the Issuer and the Manager);

(xviii) ensuring that all statements of the Issuer made in any Offering Materials or in connection with entering into any Program Agreement are at all times true and correct in all material respects (it being understood that the Manager, as between it and the Issuer, shall not be responsible for the accuracy of any portion of the Offering Materials prepared from information obtained from any Person other than the Issuer and the Manager);

(xix) arranging for compliance by the Issuer with any continuous disclosure obligations it may have under any applicable securities laws;

(xx) preparing and filing all reports, certificates and other documents that are required to be prepared and filed pursuant to the Indenture in order to comply with Regulation AB and delivering all such reports, certificates and other documents to the Issuer, the Indenture Trustee and the Rating Agencies;

(xxi) arranging for the retention of legal counsel as may be necessary to perform for the Issuer the services necessary or appropriate to its organization or

the conduct of its operations and all general services customarily provided by legal counsel;

(xxii) arranging for the appointment, discharge and reappointment of an auditor of the Issuer and negotiating and fixing the fees of any such auditor;

(xxiii) arranging for the retention of an accounting firm and ensuring that proper books of account and complete records of all transactions of the Issuer undertaken or performed by it under the Program Agreements are maintained and rendering statements or copies thereof from time to time as requested by the Indenture Trustee and any issuing and paying agent, ~~Liquidity~~ Lender or Credit Enhancer and co-operating in all audits of the Issuer;

(xxiv) preparing, or arranging for the preparation of, all required financial statements of the Issuer;

(xxv) preparing, procuring, delivering and filing, or causing to be prepared, procured, delivered or filed, any reports, attestations, exhibits, certificates or other documents required to be delivered or filed with the applicable securities regulator by the Issuer under the applicable securities or other applicable laws;

(xxvi) providing clerical and bookkeeping services necessary and appropriate for the Issuer relating to all transactions of the Issuer undertaken or performed by the Manager hereunder, and the Issuer's incurrence and repayment of Funding Obligations and other borrowings of money and maintaining and preserving records regarding the foregoing;

(xxvii) paying all taxes or assessments of whatever kind or nature imposed on the Issuer, and withholding and remitting all taxes required to be withheld and remitted by the Issuer under applicable laws, in each case, on behalf of and for the account of the Issuer and in accordance with the requirements of any applicable laws and subject to the payment priorities specified in the Program Agreements;

(xxviii) preparing and filing, in accordance with the requirements of **the Indenture and** any applicable laws, all returns (including, for greater certainty, all returns, information returns, elections, designations, declarations, schedules, statements or supporting documents in relation thereto) required to be filed with any government authority, or prepared as support for any such filing, in connection with (A) the determination, assessment or collection of any taxes of the Issuer or taxes, or amounts on account of taxes, that the Issuer is required to withhold and remit by applicable laws, or (B) the administration of any laws, regulations or administrative requirements relating to taxes; and

(xxix) providing such other services as are incidental to the foregoing or as the Issuer and the Manager may agree.

(b) The Manager will not offer to enter into any Program Agreement:

(i) after the Manager receives a notice of termination pursuant to Section 7.1; or

(ii) if the entering into of the Program Agreement would violate any other Program Agreements.

4.2 Issuer Investment Interest

The Manager will administer as agent for and on behalf of and for the account of the Issuer the following activities of the Issuer in connection with the acquisition and administration of the Issuer Investment Interest in accordance with the Program Agreements:

(a) enforcing the rights of the Issuer under the Program Agreements;

(b) seeking to protect the Issuer and the Specified Creditors from claims, actions or other proceedings of third parties that, if successfully pursued, would result in a breach of any representation by the IESO set forth in the Master Transfer and Servicing Agreement;

(c) executing and filing such filings, including filings under the PPSA, and causing such filings to be executed and filed, all in such manner and in such places as may be required by law to fully preserve, maintain, protect and perfect the ownership interest of the Issuer and the first priority security interest of the Indenture Trustee in the Issuer Investment Interest, including all filings required under the Act and the PPSA (and equivalent statutes in any applicable jurisdiction) relating to the transfer of the ownership of the rights and interest in the Issuer Investment Interest by the IESO to the Issuer or the pledge of the Issuer Investment Interest to the Indenture Trustee;

(d) maintaining accounts and records as to the Issuer Investment Interest accurately and in accordance with its standard accounting procedures and in sufficient detail to permit reconciliation between ~~the~~ Servicer CEA ~~Collections~~**Receipts** and the Clean Energy Adjustment;

(e) instituting any ~~action or proceeding~~**Proceeding** necessary to compel performance by the Board, the IESO, the Province of Ontario, the Indenture Trustee, the Issuer Trustee or any of their respective agents of any of their obligations or duties under the Act**, the Regulations** or any Program Agreement, as the case may be, and taking such legal or administrative actions, including defending against or instituting and pursuing legal actions and appearing or testifying at hearings or similar proceedings, in each case as may be reasonably necessary;

(f) seeking to block or overturn any attempts to cause a repeal of, modification of or supplement to the Act or the Regulations or the rights of holders of any Funding Obligations, by legislative enactment that would be materially adverse to the Issuer or the Specified Creditors or that would otherwise cause an impairment of the rights of the Issuer or the Specified Creditors; and

(g) instituting any ~~action or proceeding~~**Proceeding** necessary to appeal or challenge the decision of a court that would be materially adverse to the Issuer or the Specified Creditors or that would otherwise cause an impairment of the rights of the Issuer or the Specified Creditors.

4.3 Collection of Clean Energy Adjustments

The Manager will as agent for and on behalf of the Issuer perform the following in connection with the collection of Clean Energy Adjustments:

(a) review each report delivered by the IESO under Section 3.4(b) of the Master Transfer and Servicing Agreement **and make commercially reasonable efforts to resolve the failures and discrepancies which have not been remedied or adequately explained by Electricity Vendors;**

(b) institute any Proceeding necessary to compel performance by the Electricity Vendors of any of their obligations or duties under the Act and the Regulations including with respect to the invoicing, collection, receipt, remittance and reporting in respect of Clean Energy Adjustments; and

(c) as the Manager determines necessary, review or caused to be reviewed, pursuant to its rights under Section 10(4) of the Regulations, the records maintained by each Electricity Vendor with respect to Clean Energy Adjustments; provided that if there is evidence of material non-compliance by an Electricity Vendor with its duties and obligations in respect of Clean Energy Adjustments, the Manager shall promptly review or cause to be reviewed the records of such Electricity Vendor as the Manager deems reasonably necessary to cause compliance by such Electricity Vendor.

4.4 ~~4.3~~ Investment Interest Records

(a) The Manager will act as custodian of the Investment Interest Records as agent for and on behalf of and for the account of the Issuer, which are hereby constructively delivered to the Indenture Trustee, as pledgee of the Issuer with respect to the Issuer Investment Interest, and, in this regard, the Manager shall:

(i) hold the Investment Interest Records on behalf of the Issuer and the Indenture Trustee and maintain such accurate and complete accounts, records and computer systems pertaining to the Investment Interest Records as shall enable the Issuer and the Indenture Trustee, as applicable, to comply with the Program Agreements;

(ii) promptly report to the Issuer, the Indenture Trustee and the Rating Agencies any failure on its part to hold the Investment Interest Records and maintain its accounts, records and computer systems as herein provided and promptly take appropriate action to remedy any such failure;

(iii) maintain the Investment Interest Records at its offices at 700 University Avenue, Toronto, Ontario or at such other office as shall be specified to the Issuer and the Indenture Trustee by written notice at least 30 days prior to any change in location;

(iv) make available for inspection, audit and copying to the Issuer and the Indenture Trustee or their respective duly authorized representatives, attorneys or auditors the Investment Interest Records at such times during normal business hours as the Issuer or the Indenture Trustee shall reasonably request and that do not unreasonably interfere with the Manager's normal operations; and

(v) upon instruction from the Indenture Trustee in accordance with the Indenture or any other Person in accordance with another Program Agreement, release any Investment Interest Records to the Indenture Trustee, the Indenture Trustee's agent or the Indenture Trustee's designee, as the case may be, at such place or places as the Indenture Trustee may designate, as soon as practicable.

(b) Nothing in this Section ~~4.3~~4.4 shall affect the obligation of the Manager to observe any applicable law prohibiting disclosure of information regarding Specified Consumers, and the failure of the Manager to provide access to such information as a result of such obligation shall not constitute a breach of this Section ~~4.3~~4.4.

(c) Nothing in this Section ~~4.3~~4.4 shall be deemed to require an initial review or any periodic review by the Issuer or the Indenture Trustee of the Investment Interest Records. The Manager's duties to hold the Investment Interest Records set forth in this Section ~~4.3~~4.4, to the extent the Investment Interest Records have not been previously transferred to a successor Manager pursuant to Section 7.1, shall terminate one year and one day after the earlier of (i) the date on which the Manager is succeeded by a successor Manager in accordance with Section 7.1 and (ii) the day after the termination of the Indenture and payment in full of the Issuer Funding Obligations or any other amounts owed under the Indenture.

4.5 ~~4.4~~ Payment of Other Issuer Fees and Expenses

The Manager in accordance with the Program Agreements may, at its option, pay from its own funds the fees and expenses properly incurred on behalf of the Issuer in the ordinary course of the Issuer's operations. To the extent such fees and expenses are paid by the Manager from its own funds, the Issuer will reimburse the Manager for such payments, subject to the payment priorities specified in the Program Agreements.

4.6 ~~4.5~~ Delegation

In connection with the services to be provided or duties to be performed by it under this Agreement, the Manager may, subject to any limitation on delegation imposed by applicable law, by the Declaration of Trust or by the Issuer, engage or employ any Persons as employees, agents, representatives, independent contractors or otherwise, including, without limitation, banks, underwriters, accountants, investment advisers, tax advisers, insurance advisers, lawyers, appraisers, bankers, brokers, dealers, depositories, custodians, agents for collection or others in one or more capacities and any other advisers which the Manager deems advisable, and may delegate any of the powers and duties of the Manager to any such Persons upon such terms and conditions as it may determine. For greater certainty, the Manager shall remain liable and responsible for any of the powers and duties of the Manager which it delegates to a third party.

4.7 ~~4.6~~ Annual Compliance Certificates

The Manager shall provide to the Issuer Trustee a certificate in the form of Exhibit A within 120 days after the end of each fiscal year of the Issuer confirming compliance with the matters referred to in such certificate. The Issuer shall be entitled to rely on such certificate for the period between the effective dates of two consecutive certificates certifying such compliance unless the Issuer has received written notice to the contrary.

4.8 ~~4.7~~ Acknowledgment of Duties as Financial Services Manager

The parties hereto acknowledge that, for so long as Ontario Power Generation Inc. is the Financial Services Manager appointed under the Act, Ontario Power Generation Inc., in its capacity as the Financial Services Manager, will satisfy its obligations as Financial Services Manager in accordance with the Act and the Regulations, and, for greater certainty, its services and duties in this regard will include:

(a) preparing the Financing Plan and, in accordance therewith, evaluating whether Funding Obligations should be incurred by the Issuer for the purposes of acquiring an Investment Interest or refinancing maturing Issuer Funding Obligations;

(b) determining the Clean Energy Adjustment (inclusive of any True Up Amount) payable by Specified Consumers in respect of each month in a Reference Period;

(c) calculating the True Up Amount;

(d) notifying the Board of the Clean Energy Adjustment (inclusive of any True Up Amount) in respect of a Reference Period or such other period as prescribed by the Regulations and sending a copy of such notice, as required, to the Issuer, the Indenture Trustee and the Rating Agencies concurrently therewith; and

(e) if, for any reason any Clean Energy Adjustment is not implemented and effective in respect of the Reference Period set forth in the notice and commencing on the date required under the Act, notifying the Issuer, the Indenture Trustee and each Rating Agency by the end of the second Business Day after such applicable date.

ARTICLE 5
OTHER PROVISIONS RELATING TO THE DUTIES AND COMPENSATION

5.1 Standard of Care

The Manager will perform its duties hereunder (including, for so long as it is the Financial Services Manager, its duties as Financial Services Manager under the Act and the Regulations) diligently and in conformity with the Issuer's obligations under the Program Agreements and with the Act and the Regulations, as applicable, and honestly, in good faith and in the best interests of the Issuer and, in connection therewith, will exercise the degree of care, diligence and skill that a reasonably prudent Person would exercise in comparable circumstances (the "**Standard of Care**"). In carrying out its obligations hereunder, the Manager may rely upon the opinion or advice of or information obtained from any counsel, auditor, valuer or certificates from officers of any of the other parties to Program Agreements. Unless otherwise required by applicable law, the Manager will not be required to give bond, surety or security in any jurisdiction for the performance of any duties or obligations hereunder. The Manager will not be required to devote its entire time to its duties hereunder. Notwithstanding anything else to the contrary herein contained, nothing herein shall be interpreted or construed as an obligation of or on the part of the Manager, and the Manager shall not be liable or obligated, to pay or make any payment of, on or in respect of any debt, liability or obligation of the Issuer (including any payment of, on or in respect of any Issuer Funding Obligations or under any other Program Agreement), as agent for or on behalf of the Issuer or otherwise, except from the monies or funds of the Issuer which are made available to the Manager pursuant to this Agreement or the other Program Agreements for the purpose of such payment.

5.2 Compliance with Program Agreements; Conformity with Law

The Manager acknowledges that it has received copies of the Program Agreements, the Act and the Regulations in effect on the date hereof and is familiar with and understands the duties of the respective parties thereto or governed thereby, including those duties of the Issuer which are being delegated to the Manager hereunder. Notwithstanding anything herein to the contrary, the Manager shall perform its duties hereunder in a manner consistent with any applicable provisions of the Program Agreements in effect from time to time, and the Manager will not, in performing its obligations hereunder, take any action which it knows or ought reasonably to know would cause it or the Issuer to be in violation of any law, rule or regulation applicable to it. The Manager will use reasonable commercial efforts to comply with the terms applicable to the Issuer when acting on its behalf under all Program Agreements and will use reasonable commercial efforts in accordance with its Standard of Care to take such actions as would reasonably be expected to result in the representations and warranties given by the Issuer in any Program Agreement being true and correct in all material respects when made.

5.3 Liabilities

Except as provided in Section 5.6,

(a) the Manager will not be liable for any liabilities of the Issuer; and

(b) subject to the payment priorities specified in the Program Agreements, the Issuer agrees to indemnify, defend and hold harmless the Manager from and against any and all liabilities which may be imposed on, incurred by or assessed against the Manager as a result of any act or omission of the Issuer or the Manager under this Agreement or under any Program Agreement; provided that this Section 5.3(b) does not apply to the extent that in any circumstances there has been wilful misconduct or gross negligence of the Manager or its respective officers, employees or agents or any failure to comply with the ~~standard of care required under Section 5.1~~**Standard of Care**.

To the extent that a liability is attributable solely to a single Series or a number of specific Series of Issuer Funding Obligations, the Manager will first exhaust its recourse against the assets available for recovery of such liability and designated to such Series of Issuer Funding Obligations. If such assets are insufficient to satisfy the indemnity set out in this Section 5.3, or if the liability is not attributable to a single Series or a number of specific Series of Issuer Funding Obligations, the liability will be satisfied on a pro rata basis as among the assets available for recovery of such liability and designated to all Issuer Funding Obligations.

Each party expressly disclaims any intention to create a partnership, and neither the Issuer nor the Manager will be deemed to be carrying on business in partnership by reason of its execution and delivery of this Agreement or the exercise or performance by it of its respective rights and obligations hereunder.

5.4 Compensation of the Manager

In consideration of and as compensation for all services provided and duties performed by the Manager pursuant to this Agreement, **and so long as the Financial Services Manager is also the Manager, all services provided and duties performed by the Financial Services Manager,** the Issuer will pay to the Manager, subject to the payment priorities specified in the Program Agreements, the Management Fees. The Management Fees are exclusive of any applicable sales taxes and the Issuer shall pay to the Manager the amount of any applicable sales taxes in addition to such fees.

5.5 Compensation of the Issuer

In consideration of the Issuer engaging in the activities contemplated by the Act, the Manager will pay to the Issuer, on a monthly basis, the sum of $10 per month for any month or part thereof that the Issuer is engaged in such activities (the "**Issuer Compensation**"). The Issuer Compensation is exclusive of any applicable sales taxes and the Manager shall pay to the Issuer the amount of any applicable sales taxes in addition to the Issuer Compensation.

The Issuer and the Manager agree that in respect of any month that the Issuer has an amount payable to the Manager under Section 5.4 in an amount that is not less than $10 (plus the amount of any applicable sales taxes on the Issuer Compensation), the Manager's obligation to pay the compensation to the Issuer under this Section will be fully satisfied by way of setting-off $10 (plus the amount of any applicable sales taxes on the Issuer Compensation) of the

amount payable by the Issuer to the Manager under Section 5.4 against the Manager's amount payable to the Issuer under this Section.

5.6 Indemnification by Manager

(a) The Manager ~~agrees to~~**shall** indemnify~~,~~ **and** defend and hold harmless the Issuer from and against**,** any and all liabilities which may be imposed on, incurred by or assessed against the Issuer as the result of any wilful misconduct or gross negligence by the Manager, its officers, employees or agents or any failure to comply with the ~~standard of care required under Section 5.1~~**Standard of Care**, provided that the Manager will have the exclusive right to compromise or defend, through counsel selected and retained by the Manager, any such liabilities or related claims at its own expense, which decision will be binding upon the Issuer.~~ It is, however, expressly understood that the Manager is not agreeing to indemnify or hold the Issuer harmless with respect to any of the following:~~

(b) **The Manager shall indemnify each Indenture Indemnified Person and defend and hold harmless each such Indenture Indemnified Person from and against, any and all liabilities, obligations, losses, damages, payments and claims, and reasonable costs or expenses, of any kind whatsoever (collectively, "Indenture Indemnified Losses")** imposed on, incurred by or asserted against **such Indenture Indemnified Person, as a result of (i) the failure of the Manager to perform its covenants and other obligations under this Agreement; or (ii) the breach by the Manager of any of its representations or warranties under this Agreement and, except to the extent of Indenture Indemnified Losses resulting from the willful** misconduct, bad faith or gross negligence of **such Indenture Indemnified Person seeking indemnification hereunder; provided that, in each case, the Manager shall not be required to indemnify an Indenture Indemnified Person for any amount paid or payable by such Indenture Indemnified Person in the settlement of any Proceeding or investigation without the written consent of the Manager, which consent shall not be unreasonably withheld. Promptly after receipt by an Indenture Indemnified Person of notice of the commencement of any Proceeding or investigation, such Indenture Indemnified Person shall, if a claim in respect thereof is to be made against the Manager under this Section 5.6(b), notify the Manager in writing of the commencement thereof. Failure by an Indenture Indemnified Person to so notify the Manager shall relieve the Manger from the obligation to indemnify and hold harmless such Indenture Indemnified Person under this Section 5.6(b) only to the extent that the Manager suffers actual prejudice as a result of such failure. With respect to any Proceeding or investigation brought by a third party for which indemnification may be sought under this Section 5.6(b), the Manager shall be entitled to conduct and control, at its expense and with counsel of its choosing that is reasonably satisfactory to such Indenture Indemnified Person, the defence of any such Proceeding or investigation (in which case the Manager shall not thereafter be responsible for the fees and expenses of any separate counsel retained by the Indenture**

Indemnified Person except as set forth below); provided, that the Indenture Indemnified Person shall have the right to participate in such Proceeding or investigation through counsel chosen by it and at its own expense. Notwithstanding the Manager's election to assume the defence of any Proceeding or investigation, the Indenture Indemnified Person shall have the right to employ separate counsel, and the Manager shall bear the reasonable fees, costs and expenses of such separate counsel, if (i) the defendants in any such action include both the Indenture Indemnified Person and the Manager and the Indenture Indemnified Person shall have reasonably concluded that there may be legal defences available to it that are different from or additional to those available to the Manager, (ii) the Manager shall not have employed counsel reasonably satisfactory to the Indenture Indemnified Person to represent the Indenture Indemnified Person within a reasonable time after notice of the institution of such action, or (iii) the Manager authorizes the Indenture Indemnified Person to employ separate counsel at the expense of the Manager. Notwithstanding the foregoing, the Manager shall not be obligated to pay for the fees, costs and expenses of more than one separate counsel for the Indenture Indemnified Persons other than one local counsel, if appropriate. The Manager will not, without the prior written consent of the Indenture Indemnified Person, settle or compromise or consent to the entry of any judgment with respect to any pending or threatened claim or Proceeding in respect of which indemnification may be sought under this Section 5.6(b) (whether or not the Indenture Indemnified Person is an actual or potential party to such claim or action) unless such settlement, compromise or consent includes an unconditional release of the Indenture Indemnified Person from all liability arising out of such claim or Proceeding.

(c) **Indemnification under Section 5.6(b) shall survive any repeal of, modification of, or supplement to, or judicial invalidation of, the Act and shall survive the termination of this Agreement and will rank pari passu with other general, unsecured obligations of the Manager.**

(d) **Notwithstanding anything contained in this Agreement, it is** expressly understood that the Manager is not agreeing to indemnify or hold the Issuer **or any Indenture Indemnified Person** harmless with respect to any of the following:

~~(a)~~ **(i)** payments due on Issuer Funding Obligations or other amounts borrowed;

(i) ~~(b)~~ any breach or failure to perform on the part of any other third party under any Program Agreement;

(ii) ~~(c)~~ any claim arising out of the assessment of any tax or payments in lieu of tax by a taxing authority against the Issuer;

~~(d) any amount for which the Issuer agrees to indemnify the Manager hereunder;~~

(iii) ~~(e)~~ any liability of the Issuer **or any Indenture Indemnified Person** accruing after the termination of this Agreement unless attributable to the actions or omissions of the Manager prior to such termination;

(iv) ~~(f)~~ any losses of the Issuer **or any Indenture Indemnified Person** arising due to risks inherent in the Issuer Investment Interest; ~~or~~

(v) ~~(g)~~ any statements or certificates provided by the Issuer to the effect that ~~(i)~~ **(X)** any Funding Obligation is consistent with the Financing Plan~~,~~ or ~~(ii)~~ **(Y)** the estimated Finance Amount that would have become due and payable in any Reference Period is expected to align with the Fair Allocation Amount determined in respect of such Reference Period**; or**

(vi) **any losses resulting from changes in law after the date hereof, whether such changes in law are effected by means of any legislative enactment or any final and non-appealable judicial decision**.

(e) ~~It is further~~**Notwithstanding anything contained in this Agreement, it is expressly** understood that the Manager is not agreeing to indemnify or hold harmless**: (i) the Issuer with respect to any amount for which the Issuer agrees to indemnify the Manager hereunder; or (ii)** the Issuer Trustee with respect to any liabilities resulting from the failure of the Issuer Trustee to satisfy the standard of care set out in the Declaration of Trust. Where the Manager has assumed total defense of a claim, it shall agree to ensure that any settlement of such claim does not include any form of admission of liability on the part of the Issuer Trustee (in its personal capacity).

~~The Manager agrees to indemnify, defend and hold harmless the Indenture Trustee from and against any and all liabilities which may be imposed on, incurred by or asserted against the Indenture Trustee as the result of any wilful misconduct or gross negligence relating to the maintenance and custody by the Manager, as custodian, of the Investment Interest Records; provided that (a) the Manager will have the exclusive right to compromise or defend, through counsel selected and retained by the Manager, any such liabilities or related claims at its own expense, which decision will be binding upon the Indenture Trustee and (b) the Manager shall not be liable for any portion of any liability resulting from the wilful misconduct, bad faith or gross negligence of the Indenture Trustee.~~

5.7 Contracting with Itself and Affiliates

In the exercise of its rights, duties and obligations, the Manager may, if it is acting in good faith, enter into, as Manager for the Issuer, agreements and other contracts to which the Manager, in its personal capacity, or an Affiliate of the Manager, is a party.

ARTICLE 6
REPRESENTATIONS AND WARRANTIES

6.1 Representations of the Issuer

The Issuer represents and warrants to the Manager that (a) the execution, delivery and performance by the Issuer of this Agreement are within the powers of the Issuer and have been duly authorized by all necessary action on the part of the Issuer and do not contravene (i) the Program Agreements in effect on the date hereof or (ii) any law or contractual restriction binding on or affecting the Issuer and (b) this Agreement is a legal, valid and binding obligation of the Issuer, enforceable against the Issuer.

6.2 Representations of the Manager

The Manager represents and warrants to the Issuer that (a) the execution, delivery and performance by the Manager of this Agreement are within the powers of the Manager and have been duly authorized by all necessary action on the part of the Manager and do not contravene any law or contractual restriction binding on or affecting the Manager, (b) this Agreement is a legal, valid and binding obligation of the Manager enforceable against the Manager and (c) it is ~~not~~ a ~~non~~ resident of Canada for purposes of the *Income Tax Act* (Canada).

ARTICLE 7
TERMINATION AND RESIGNATION

7.1 Termination

The Manager shall not be entitled to resign as manager of the Issuer or to terminate this Agreement for so long as any Funding Obligations remain outstanding. The Manager's rights and obligations under this Agreement (other than under Sections 5.3, 5.4, 5.6 and ~~8.3~~**8.5**) will terminate, if the Manager receives a termination notice from (i) the Issuer Trustee, with the consent of the Indenture Trustee, or (ii) the Indenture Trustee, subject to the terms and conditions of the Indenture, in each case, on the 30th day after receipt of such notice. Notwithstanding the foregoing, no termination shall be effective until a replacement manager that satisfies the Rating Agency Condition has been approved and has entered into a management agreement whereby the replacement manager agrees to assume, in substance, the obligations of the Manager hereunder. Upon the termination of its rights and obligations under this Agreement, the Manager will notify the Rating Agencies and, promptly and upon the request of the Issuer, deliver to the Issuer all records (including Investment Interest Records) in the possession of the Manager relating to the performance of its services hereunder.

ARTICLE 8
MISCELLANEOUS

8.1 Acknowledgement of Indenture

The Manager (i) acknowledges and agrees in favour of the Indenture Trustee that it is a Specified Creditor under the Indenture and its entitlements as a Specified Creditor are subject to the provisions applicable to Specified Creditors under the

Indenture, (ii) irrevocably authorizes and directs the Indenture Trustee on its behalf to take such action (including the execution and delivery of documents of subordination) as may be necessary or appropriate to further assure the priority arrangements provided for in the Indenture and (iii) appoints the Indenture Trustee as its agent for any and all such purposes.

8.2 ~~**8.1**~~ **Appointment of Manager as Attorney-in-Fact**

Subject to any Program Agreement, the Issuer hereby irrevocably appoints the Manager as the Issuer's attorney-in-fact during the term of this Agreement, with full authority in the place and stead of and in the name of the Issuer or otherwise, including full power of substitution, from time to time in the Manager's discretion or as required by this Agreement, to take such actions on behalf of the Issuer as the Manager may deem necessary or advisable to comply with or effect the purposes of this Agreement and any Program Agreement including, without limitation, to execute any documents, instruments or certificates in connection therewith, to ask, demand, collect, sue for, recover, compound, receive and give acquittances and receipts for monies due or becoming due to the Issuer or otherwise owed thereto, to receive, endorse and collect any drafts or other instruments, documents and chattel paper in connection therewith, and to file any claims or take any action or institute any proceedings which the Manager may deem necessary or desirable for the collection thereof, or to enforce compliance with the terms and conditions of any Program Agreement.

8.3 ~~**8.2**~~ **Amendments and Waivers**

(a) Subject to Section ~~8.2~~**8.3**(b), this Agreement may be amended, supplemented, modified, restated or replaced from time to time by written instrument signed by the Issuer and the Manager. The Manager will forthwith after the execution of any such instrument by the Issuer and the Manager provide the Rating Agencies with a copy of such instrument.

(b) No provision of this Agreement may be amended, supplemented, modified, restated or replaced in any material respect without first obtaining the written consent of the Indenture Trustee in accordance with the Indenture and such amendment, supplement, modification or replacement will only be effective if the Rating Agency Condition has been satisfied.

(c) No waiver of any provision of this Agreement, nor consent to any departure by any party therefrom, shall in any event be effective unless the same shall be in writing and signed by such party and such waiver or consent, if material, will only be effective if the Rating Agency Condition has been satisfied, and then said waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. No failure on the part of any party to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof.

8.4 ~~8.3~~ Withholding Rights

The parties hereto shall be entitled to deduct and withhold from amounts payable under this Agreement such amounts as each is required to deduct and withhold with respect to such payment under the *Income Tax Act* (Canada) or any provision of any applicable federal, provincial, territorial, state, local or foreign tax law. To the extent that amounts are so withheld, such withheld amounts shall be treated for all purposes as having been paid to the recipient of the payment in respect of which such deduction and withholding was made, provided that such withheld amounts are actually remitted in accordance with applicable law to the appropriate taxing authority.

8.5 ~~8.4~~ No Petition

The Manager hereby agrees that it will not, prior to the date that is one year and one day after the termination of the Indenture and payment in full of the Issuer Funding Obligations and any other amounts owed under the Indenture, institute or encourage against the Issuer, or join or acquiesce in any institution against the Issuer of, any bankruptcy, reorganization, arrangement, insolvency, winding-up or liquidation proceedings, or other proceedings under any federal or provincial bankruptcy, insolvency or similar law in connection with any obligations relating to this Agreement or any of the other Program Agreements. The foregoing shall not limit the rights of the Manager to file any claim in or otherwise take any action with respect to any insolvency proceeding that was instituted against the Issuer by any Person other than the Manager.

8.6 ~~8.5~~ Notice

All demands, notices and communications hereunder will be in writing (unless otherwise expressly provided herein) and will be personally delivered or transmitted electronically to:

(a) in the case of the Issuer:

~~■~~
~~■~~
~~■~~
~~■~~

Fair Hydro Trust
c/o Ontario Power Generation Inc.
700 University Avenue
Toronto, Ontario
M5G 1X6

Email: ■
Attention: ■

with a copy to:

Computershare Trust Company of Canada
100 University Avenue, 11th Floor
Toronto, Ontario
M5J 2Y1

Email: ■
Attention: ■

(b) in the case of the Manager:

Ontario Power Generation Inc.
700 University Avenue
Toronto, Ontario
M5G 1X6

Email: ■
Attention: ■

or such other address or email address as may hereafter by furnished to each of the parties hereto in writing. Notices transmitted by facsimile will be deemed to have been received when delivered (with receipt confirmed).

8.7 ~~8.6~~ Recourse to Issuer Trustee and the Issuer

Nothing contained herein will be deemed to cause the Issuer Trustee to be personally liable for any obligations of the Issuer hereunder, and the Manager will not seek any personal or deficiency judgment in respect of such obligations against the Issuer Trustee in its personal capacity; provided, however, that the foregoing will not in any way affect any rights that the Manager may have hereunder to (a) proceed against any Person with respect to the enforcement of any guarantee of, or collateral security for, payment of such obligations or (b) recover any funds, damages, expenses or costs as a result of fraud or misrepresentation by the Issuer Trustee in its personal capacity. The obligations hereunder are not binding upon the Issuer Trustee except in its capacity as trustee of the Issuer nor will resort be had to the property of the Issuer Trustee except where liability is expressly imposed on the Issuer Trustee in its personal capacity hereunder, but the Issuer Property will be bound hereby.

8.8 ~~8.7~~ Severability

If one or more provision of this Agreement is for any reason whatever held invalid, such provision will be deemed severable from the remaining covenants, agreements and provisions of this Agreement and will in no way affect the validity or enforceability of such remaining provisions or the rights of any parties hereto.

8.9 ~~8.8~~ Execution of Counterparts; Electronic Delivery

This Agreement may be executed in several counterparts, each of which when so executed shall be deemed to be an original and the counterparts together shall constitute one and the same instrument. Delivery of an executed signature page to this Agreement by any party by

electronic transmission will be as effective as delivery of a manually executed copy of this Agreement by such party.

8.10 ~~8.9~~ Governing Law

This Agreement will be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

8.11 ~~8.10~~ Grant of Security Interest to Indenture Trustee

The Manager hereby acknowledges and consents to any mortgage, pledge, assignment and grant of a security interest by the Issuer to the Indenture Trustee for the benefit of the Specified Creditors pursuant to the Indenture of any or all of the Issuer's rights hereunder.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective officers as of the day and year first above written.

FAIR HYDRO TRUST, by its sole trustee, COMPUTERSHARE TRUST COMPANY OF CANADA

as Issuer

By:
Name:
Title:

By:
Name:
Title:

ONTARIO POWER GENERATION INC.
as Manager

By:
Name:
Title:

By:
Name:
Title:

ACKNOWLEDGED AND ACCEPTED:

BNY TRUST COMPANY OF CANADA
as Indenture Trustee

By:
Name:
Title:

By:
Name:
Title:

EXHIBIT A

ANNUAL COMPLIANCE CERTIFICATE

TO: ~~■~~Computer Share Trust Company of Canada, (the "**Issuer Trustee**") in its capacity as issuer trustee of ~~■~~Fair Hydro Trust (the "**Issuer**")

Ontario Power Generation Inc., as manager (the "**Manager**") appointed by the Issuer Trustee under the Management Agreement dated ■, 2017 between the Issuer Trustee and the Manager, and acknowledged and accepted by the Indenture Trustee (as amended, supplement, modified, restated or replaced from time to time, the "**Management Agreement**"), confirms, on behalf of the Issuer, the following:

(a) The books and records of the Issuer maintained by the Manager are current and accurate in all material respects.

(b) All debt obligations and expenses due and payable by the Issuer have been paid to date.

(c) All required filings with tax and regulatory authorities have been completed to date.

(d) All material statements and reports to be delivered by the Issuer under the Program Agreements have been delivered and all material statements and reports to be received by the Issuer under the Program Agreements have been received.

Capitalized terms used but not defined herein have the meanings given to them in the Management Agreement.

Dated this ■ day of ■, ■.

ONTARIO POWER GENERATION INC.

as Manager

By:
Name:
Title:

By:
Name:
Title:

Document comparison by Workshare Compare on November-10-17 8:03:39 PM

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Document 1 ID	interwovenSite://INVENTORYS1/TorysAtWork/24325449/1
Description	#24325449v1<TorysAtWork> - Fair Hydro - Management Agreement (RA Version)
Document 2 ID	interwovenSite://INVENTORYS1/TorysAtWork/24325449/6
Description	#24325449v6<TorysAtWork> - *Fair Hydro -- Management Agreement
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Statistics:	
	Count
Insertions	133
Deletions	115
Moved from	5
Moved to	5
Style change	0
Format changed	0
Total changes	258

Blackline - Master Transfer and Servicing Agreement.pdf

~~Draft Date: November 7,~~DRAFT: NOVEMBER 10, 2017

MASTER TRANSFER AND SERVICING AGREEMENT

between

~~[FINANCING ENTITY]~~FAIR HYDRO TRUST
as Issuer

- and -

INDEPENDENT ELECTRICITY SYSTEM OPERATOR
as Transferor and Servicer

Dated as of ■, 2017

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Exhibit A – Form of Transfer Notice
Exhibit B – Form of Monthly Report
Exhibit C – Form of Monthly Carrying Costs Statement

MASTER TRANSFER AND SERVICING AGREEMENT

THIS AGREEMENT made as of ■, 2017.

BETWEEN:

~~[FINANCING ENTITY]~~FAIR HYDRO TRUST, a trust formed under the laws of the Province of Ontario

(the "**Issuer**")

- and -

INDEPENDENT ELECTRICITY SYSTEM OPERATOR, a statutory corporation without share capital amalgamated under the laws of the Province of Ontario

(the "**Transferor**" in its capacity as transferor, the "**Servicer**", in its capacity as servicer, and the "**IESO**" in its capacity as both Transferor and Servicer)

WHEREAS the Government of Ontario has enacted the *Ontario Fair Hydro Act, 2017* (the "**Act**") for the purpose of, among other things, ensuring that clean energy costs and clean energy benefits (each as defined in the Act) are fairly allocated among present and future Specified Consumers;

AND WHEREAS, under the Act, the IESO is required to establish and maintain the Fair Hydro Variance Account, and has the right under the Act and the Regulations to record certain amounts in the Fair Hydro Variance Account and recover the balance from time to time of the Fair Hydro Variance Account from Specified Consumers (such right, the "**Regulatory Asset**");

AND WHEREAS the IESO may from time to time, in accordance with the Act, Transfer Specified Portions of the Regulatory Asset to the Issuer pursuant to Section 26(1) of the Act;

AND WHEREAS the Issuer may finance the acquisition from the IESO, from time to time, of an Investment Interest through the incurrence of Funding Obligations under the Indenture;

AND WHEREAS the Issuer will grant a security interest over all of the Issuer Investment Interest to and in favour of the Indenture Trustee on behalf of all Specified Creditors;

AND WHEREAS in connection with its ownership of the Issuer Investment Interest and in order to collect the associated Clean Energy Adjustments in accordance with the Act, the Issuer desires to engage the Servicer to carry out the services described herein and the Servicer agrees to be so engaged;

NOW THEREFORE in consideration of the foregoing and the mutual covenants and agreements contained herein (the receipt and adequacy of which are hereby acknowledged), the parties hereto agree as follows:

ARTICLE 1
INTERPRETATION

1.1 Definitions

In this Agreement, the following terms have the following meanings:

"**Act**" has the meaning ascribed thereto in the recitals;

"**Agreement**" means this master transfer and servicing agreement, as amended, supplemented, modified, restated or replaced from time to time, and the expressions "herein", "hereof", "hereto", "hereunder" and similar expressions refer to this Agreement and not to any Article, Section, paragraph, subparagraph or clause hereof;

"**Billing Period**" means a calendar month in which the Clean Energy Adjustment is billed to Specified Consumers;

"**Board**" means the Ontario Energy Board, a statutory corporation without share capital continued under the *Ontario Energy Board Act, 1998*, S.O., 1998;

"**Business Day**" means any day other than a Saturday, a Sunday or a day on which banking institutions in Toronto, Ontario are authorized or obligated by law, regulation or executive order to be closed;

"**Carrying Costs**" has the meaning ascribed to the term "carrying costs" in the Regulations;

"**CEA Consumer Invoice Amounts**" means amounts invoiced by an Electricity Vendor to Specified Consumers in respect of the Clean Energy Adjustment based on the rates established by the Board;

"**Clean Energy Adjustment**" has the meaning ascribed to the term "clean energy adjustment" in the Act;

"**Closing Date**" means the date on which a Transfer is to be completed as specified in the applicable Transfer Notice;

"**Co-Owner Agreement**" means any agreement between, *inter alia*, the parties hereto and any other owner or owners of an Investment Interest as contemplated by Section 29(5) of the Act in form and substance satisfactory to the parties hereto, acting reasonably;

"**Co-Owner Implementation Date**" means the date, if any, upon which the Issuer Investment Interest ceases to be the only Investment Interest outstanding representing the full Investment Asset;

"**Collection Account**" means an Eligible Deposit Account established by the Issuer for the purpose of receiving the Issuer Share of the Servicer CEA Receipts;

"**Daily Remittance Event**" means the occurrence of either: (i) a Servicer Default or (ii) the IESO (or any successor thereto) ceasing to have the Required Servicer Rating;

"**Declaration of Trust**" means the declaration of trust made as of ■, 2017 under which the Issuer was established, as may be supplemented, amended, replaced or amended and restated from time to time;

"**Electricity Vendor**" has the meaning ascribed to the term "electricity vendor" in the Act;

"**Electricity Vendor CEA Collections**" means payments actually received by Electricity Vendors from Specified Consumers in respect of Clean Energy Adjustments;

"**Electricity Vendor Billing Period Report**" means a report as contemplated by Section 17(2) of the Act from each Electricity Vendor in respect of each Billing Period where Clean Energy Adjustments are billed to Specified Consumers containing:

(a) its total CEA Consumer Invoice Amounts in such Billing Period;

(b) its total Electricity Vendor CEA Collections during such Billing Period; and

(c) such other information as may be prescribed in the Regulations or any other Requirement of Law, or which otherwise may be agreed to by the applicable Electricity Vendor;

"**Eligible Deposit Account**" means an account in Canada with an Eligible Institution;

"**Eligible Institution**" means:

(a) at any time before the Co-Owner Implementation Date, an "Eligible Institution" as defined in the Indenture; and

(b) at any time on or after the Co-Owner Implementation Date, an "Eligible Institution" as defined in the applicable Co-Owner Agreement;

"**Fair Hydro Variance Account**" means the variance account established by the IESO pursuant to Section 24(1) of the Act;

"**Financing Entity**" has the meaning ascribed to the term "financing entity" in the Act;

"**Funding Obligation**" has the meaning ascribed to the term "funding obligation" in the Act;

"**Governmental Authority**" means any nation or government, any federal, state, provincial, local or other political subdivision thereof and any court, administrative agency or other instrumentality or entity exercising executive, legislative, judicial, regulatory or administrative functions of government;

"**IESO**" or "**Independent Electricity System Operator**" means the Independent Electricity System Operator, a statutory corporation without share capital established by the *Electricity Act, 1998*, SO, 1998;

"**IESO Deferral**" has the meaning ascribed to the term "IESO deferral" in the Act;

"**IESO Disclosure**" has the meaning ascribed thereto in Section 5.7;

"**IESO Segregated Account**" has the meaning ascribed thereto in Section 3.3(a);

"**Indemnified Losses**" has the meaning ascribed thereto in Section 6.1(a);

"**Indemnified Party**" has the meaning ascribed thereto in Section 6.1(a);

"**Indenture**" means the master trust indenture dated ■, 2017 between the Indenture Trustee and the Issuer;

"**Indenture Trustee**" means ■BNY Trust Company of Canada, a trust company existing under the laws of Canada and duly authorized to carry on the business of a trust company in all of the provinces and territories of Canada, as indenture trustee for the benefit of Specified Creditors, or any successor thereto, under the Indenture;

"**Insolvency Event**" means, with respect to a specified Person, the specified Person admits the inability of such specified Person to pay its liabilities generally as they become due or makes a general assignment for the benefit of the creditors of such specified Person or otherwise acknowledges the insolvency of such specified Person or any proceeding shall be instituted by or against such specified Person seeking to adjudicate it a bankrupt or insolvent or seeking liquidation, winding up, dissolution, reorganization, arrangement, adjustment, protection, relief or composition of its debts under any law relating to bankruptcy, insolvency, reorganization, moratorium or relief of debtors or seeking the entry of an order for relief by the appointment of a receiver, trustee or other similar official for such specified Person or for any substantial part of its property and if such proceeding has been instituted against such specified Person either such proceeding has not been stayed or dismissed within **[45]** days or any of the actions sought in such proceeding (including the entry of an order for relief or the appointment of a receiver) are granted in whole or in part, or if a receiver is privately appointed in respect of such specified Person or of the property of such specified Person or any substantial part thereof;

"**Investment Asset**" has the meaning ascribed to the term "investment asset" in the Act;

"**Investment Interest**" has the meaning ascribed to the term "investment interest" in the Act;

"**Issuer**" means ~~■~~Fair Hydro Trust, a trust formed under the laws of the Province of Ontario;

"**Issuer Funding Obligations**" means the Funding Obligations of the Issuer;

"**Issuer Investment Interest**" means, initially, the Investment Interest acquired by the Issuer pursuant to the first Transfer completed under this Agreement and, upon the completion of each Transfer thereafter, the cumulative Investment Interest acquired by the Issuer;

"**Issuer Share**" means:

(a) at any time before the Co-Owner Implementation Date, 100%; and

(b) at any time on or after the Co-Owner Implementation Date, the percentage determined in accordance with the applicable Co-Owner Agreement;

"**Issuer Trustee**" means, at any time, the Person who is, in accordance with the Declaration of Trust, the trustee of the Issuer at such time;

"**Lien**" means a security interest, lien, mortgage, charge, pledge, claim or encumbrance of any kind;

"**Management Agreement**" means the management agreement dated ■, 2017 between the Manager and the Issuer;

"**Manager**" means OPG, in its capacity as manager of the Issuer, and any successor appointed in accordance with the Management Agreement;

"**Minister**" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of the Act under the *Executive Council Act*;

"**Monthly Carrying Costs**" has the meaning ascribed thereto in Section 3.13(b);

"**Monthly Carrying Costs Statement**" has the meaning ascribed thereto in Section 3.13(b);

"**Monthly Report**" has the meaning ascribed thereto in Section 3.4(a);

"**Officer's Certificate**" means a certificate signed by a Responsible Officer of the Issuer under the circumstances described in, and otherwise complying with, the applicable requirements of Section **[10.01]** of the Indenture;

"**OPG**" means Ontario Power Generation Inc., a corporation established under the laws of the Province of Ontario;

"**Opinion of Counsel**" means one or more written opinions of counsel, which counsel shall be reasonably acceptable to the party receiving such opinion of counsel, and shall be in form and substance reasonably acceptable to such party;

"**Permitted Successor**" means any successor to the IESO under the Act, whether pursuant to any bankruptcy, reorganization or other insolvency proceeding or pursuant to any merger, conversion, acquisition, sale or transfer, by operation of law, as a result of any restructuring, or otherwise, but only to the extent such successor is approved by the Minister;

"**Permitted Transfer**" means (i) a Transfer to the Issuer pursuant to this Agreement; and (ii) a Transfer to a person who has entered into a Co-Owner Agreement with, inter alia, the Issuer.

"**Person**" means any individual, corporation, limited liability company, estate, partnership, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization or Governmental Authority;

"**Prescribed Period**" has the meaning ascribed thereto in Section 3.13(a);

"**Proceeding**" means any suit in equity, action at law or other judicial or administrative proceeding;

"**Program Agreements**" has the meaning ascribed thereto in the Indenture;

"**Purchase Price**" has the meaning ascribed thereto in Section 2.1(c);

"**Rating Agency**" has the meaning ascribed thereto in the Indenture;

"**Rating Agency Condition**" has the meaning ascribed thereto in the Indenture;

"**Records**" has the meaning ascribed thereto in Section 7.1;

"**Regulations**" means Ontario Regulation 206/17: General, together with any other regulations promulgated under the Act;

"**Regulatory Asset**" has the meaning ascribed thereto in the recitals;

"**Remittance Date**" means, in respect of each Billing Period, the **[18th]** Business Day following the last day of each Billing Period;

"**Required Servicer Rating**" means a rating of "Baa3" or higher by Moody's Investors Service, Inc. (or any successor thereof) and a rating of "BBB(low)" or higher by DBRS Limited (or any successor thereof);

"**Requirement of Law**" means any foreign, Canadian federal, provincial or local laws, statutes, regulations, rules, codes or ordinances enacted, adopted, issued or promulgated by any Governmental Authority or common law;

"**Responsible Officer**" means, with respect to: (a) the Issuer, any authorized director or officer of the Manager; (b) the Servicer, any authorized director or officer of the IESO; and (c) a Successor Servicer, any authorized director or officer of the Successor Servicer;

"**Servicer**" means the Independent Electricity System Operator, as Servicer under this Agreement, or any Successor Servicer to the extent permitted under this Agreement;

"**Servicer CEA Receipts**" has the meaning ascribed thereto in Section 3.3(e);

"**Servicer Default**" has the meaning ascribed thereto in Section 7.1;

"**Specified Consumer**" has the meaning ascribed to the term "specified consumer" in the Act;

"**Specified Creditors**" has the meaning ascribed thereto in the Indenture;

"**Specified Portion**" means, in respect of the Regulatory Asset and any Transfer, the portion of the Regulatory Asset subject to such Transfer, as set out in the applicable Transfer Notice.

"**Successor Servicer**" has the meaning ascribed thereto in Section **[3.07(e)]** of the Indenture;

"**Supplemental Indenture**" means an indenture supplemental to the Indenture that authorizes the incurrence of Funding Obligations;

"**Termination Event**" has the meaning ascribed thereto in Section ~~3.9~~**3.10**;

"**Termination Notice**" has the meaning ascribed thereto in Section 7.1;

"**Transfer**" has the meaning ascribed to the term "transfer" in Section 1(3) of the Act, and "**Transferred**" has a corresponding meaning;

"**Transfer Notice**" means a Transfer Notice in respect of a Transfer substantially in the form of Exhibit A to this Agreement and delivered pursuant to Section 2.1(c) of this Agreement; and

"**Transferor**" means the Independent Electricity System Operator, as transferor under this Agreement;

1.2 Sections and Headings

The table of contents does not form part of this Agreement. The division of this Agreement into Articles and Sections and the insertion of headings are for convenience of reference only and will not affect the construction or interpretation of this Agreement. Unless something in the subject matter or context is inconsistent therewith, references herein to Articles and Sections are to Articles and Sections of this Agreement.

1.3 Extended Meanings

(a) Words importing the singular number only will include the plural and vice versa and words importing the masculine gender will include the feminine and neuter genders and vice versa. A reference to any agreement, instrument or declaration means such agreement, instrument or declaration as the same may be amended, supplemented, modified, restated or replaced from time to time.

(b) The term "**including**" means "including without limitation", and other forms of the verb "**include**" have correlative meanings.

(c) All references to any Person shall include such Person's permitted successors and assigns, and any reference to a Person in a particular capacity excludes such Person in other capacities.

(d) Unless otherwise stated, in the computation of a period of time from a specified date to a later specified date, the word "**from**" means "**from and including**" and each of the words "**to**" and "**until**" means "**to but excluding**".

(e) The words "**hereof**", "**herein**" and "**hereunder**" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement, unless otherwise specified. References to Articles, Sections, Appendices and Exhibits in this Agreement are references to Articles, Sections, Appendices and Exhibits in or to this Agreement unless otherwise specified.

(f) References to any law, rule, regulation or order of a Governmental Authority shall include such law, rule, regulation or order as from time to time in effect, including any amendment, modification, codification, replacement or reenactment thereof or any substitution therefor.

(g) The word "**will**" shall be construed to have the same meaning and effect as the word "**shall**". The word "**or**" is not exclusive.

ARTICLE 2
TRANSFER OF SPECIFIED PORTIONS OF THE REGULATORY ASSET

2.1 Transfer Notices and Agreement to Transfer Specified Portions of the Regulatory Asset

(a) The Transferor shall determine the IESO Deferral as required by Section 23(1) of the Act and the Regulations.

(b) The Transferor shall maintain the Fair Hydro Variance Account as required by Section 24 of the Act and the Regulations.

(c) The Transferor may, no more frequently than monthly and no later than the 8th Business Day of any calendar month, offer to Transfer to the Issuer a Specified Portion of the Regulatory Asset by providing to the Issuer a Transfer Notice executed by the Transferor and setting out (i) the Specified Portion of the Regulatory Asset that the Transferor is offering to Transfer to the Issuer, (ii) the consideration to be paid to the Transferor by the Issuer for the Transfer (the "**Purchase Price**") which shall be equal to the amount of such Specified Portion of the Regulatory Asset, (iii) the Closing Date to effect such transfer which shall be no earlier than the **[5th]** Business Day after the delivery of the Transfer Notice and no later than the last Business Day of the calendar month in which the Transfer Notice was delivered, or such other Business Day as may be agreed by the Transferor and the Issuer, and (iv) such other information as required in the form of Transfer Notice attached as Exhibit A hereto.

(d) On or before the 2nd Business Day following receipt of a Transfer Notice, the Issuer shall have the right, but not the obligation, to accept the Transferor's offer to Transfer the Specified Portion of the Regulatory Asset referred to in the Transfer Notice by executing and returning such Transfer Notice to the Transferor. Upon acceptance by the Issuer of the Transfer Notice, there shall be a binding agreement for IESO to Transfer the Specified Portion of the Regulatory Asset referred to in the Transfer Notice and for the Issuer to pay the Purchase Price, subject to satisfaction of all conditions precedent in Section 2.2.

(e) Provided that all conditions precedent set out in Section 2.2 have been satisfied on or prior to the applicable Closing Date, on the applicable Closing Date, the Issuer shall deliver or cause to be delivered to the Transferor, by ~~bank~~ wire transfer or ~~bank~~ electronic funds transfer, in immediately available funds, an amount in Canadian dollars equal to the Purchase Price set forth in the applicable Transfer Notice. The Transferor agrees that receipt by the Transferor of the payment referred to in this Section 2.1(e) is receipt by the Transferor of a payment referred to in Section 26(3) of the Act.

(f) Upon receipt by the Transferor of the payment referred to in Section 2.1(e), the Transferor shall reduce the balance of the Fair Hydro Variance Account by an amount equal to the Purchase Price received and shall retain no further right, title or interest in the Issuer Investment Interest corresponding to the Specified Portion of the Regulatory Asset Transferred.

(g) The parties state that they intend that this Agreement, together with each Transfer Notice accepted by the Issuer, constitute an agreement, for purposes of Section 27(2) of the Act for the Transferor to dispose, upon receipt by the Transferor of the payment referred to in Section 2.1(e), of the Specified Portion of the Regulatory Asset referred to in the Transfer Notice and to assign, convey or sell a corresponding Investment Interest to the Issuer.

2.2 Conditions Precedent to each Transfer of a Specified Portion of the Regulatory Asset

(a) The obligation of the Issuer to pay the Purchase Price related to the initial Transfer of a Specified Portion of the Regulatory Asset shall be subject to the satisfaction by the Transferor, or waiver by the Issuer, of the following conditions:

(i) the Issuer shall have received from the Transferor the following documents, in form and substance satisfactory to the Issuer:

(A) a certificate of an officer of the IESO, dated the initial Closing Date certifying (1) that attached thereto is a true and complete copy of the by-laws of the IESO, each as in effect on the date of such certificate, (2) that attached thereto is a true and complete copy of a resolution adopted by the IESO's board of directors authorizing the execution, delivery and performance of this Agreement and the performance by the IESO of its obligations hereunder, and that such resolution has not been modified, rescinded or amended and is in full force and effect, and (3) as to the incumbency and true specimen signature of each of the IESO officers or delegates executing this Agreement and authorized to give notices and instructions hereunder (which can be changed by notice hereunder); and

(B) the Transferor shall have delivered to the Rating Agencies and the Issuer any Opinions of Counsel reasonably required by them. **[NTD: Scope of opinions required to be confirmed by the Dealers and their counsel]**

(b) The obligation of the Issuer to pay the Purchase Price related to each Transfer of a Specified Portion of the Regulatory Asset (including the initial Transfer) shall be subject to the satisfaction or waiver by the Issuer of each of the following conditions:

(i) as of the applicable Closing Date, all Program Agreements shall have been entered into on terms and conditions satisfactory to the Issuer and shall be in full force and effect as of such Closing Date;

(ii) as of the applicable Closing Date, no Insolvency Event in respect of the Transferor shall have occurred and the Transferor is not aware of any pending Insolvency Event with respect to itself;

(iii) as of the applicable Closing Date, (A) the representations and warranties of the IESO in this Agreement must be true and correct with the same force and effect as if made on that date (except to the extent they relate to an earlier date), (B) no breach of any covenant or agreement of the IESO

contained in this Agreement shall have occurred and be continuing, and (C) no Servicer Default shall have occurred and be continuing;

(iv) the Transferor shall have delivered to the Issuer an Officer's Certificate confirming the satisfaction of each condition precedent specified in Sections 2.2(b)(ii) and (iii);

(v) as of the applicable Closing Date, (A) the Issuer shall have sufficient funds available to pay the Purchase Price as set forth in the applicable Transfer Notice, (B) all conditions to any incurrence of Funding Obligations intended to provide such funds set forth in the Indenture (and any applicable Supplemental Indenture) or other instrument shall have been satisfied or waived, (C) the Rating Agency Condition in respect of the issuance of the Funding Obligations funding the payment of the Purchase Price shall have been satisfied, and (D) the Funding Obligation required to fund the payment of the Purchase Price shall have been issued at the same time as, or prior to, the Transfer; and

(vi) immediately after giving effect to the Transfer, each of the Fair Hydro Variance Account and the Regulatory Asset will have a balance or amount, as applicable, equal to or greater than zero.

ARTICLE 3
ROLE OF THE SERVICER

3.1 Designation of Servicer

Each Transfer of a Specified Portion of the Regulatory Asset shall be made on the basis that the related Issuer Investment Interest shall be serviced by the Servicer in accordance with this Article 3, and the IESO or any Permitted Successor of the IESO that is the Servicer shall not be entitled, except as otherwise provided in ~~this Agreement~~Section 3.6 or agreed by the Parties, to receive any further compensation from the Issuer for its services in connection therewith. ~~The Servicer agrees to perform the duties and obligations of the Servicer pursuant to the terms hereof at no additional cost to the Issuer.~~

3.2 Forecasts and Other Information

The IESO shall:

(a) provide to the Board the forecast information contemplated by Section 8(3) of the Regulations;

(b) provide to the Issuer the forecast information provided to the Board pursuant to Section 3.2(a), which information shall be provided on a non-reliance basis other than with respect to the use thereof in relation to the duties, obligations

or rights of the Issuer or the Manager pursuant to the Act and the Regulations; and

(c) provide to the Issuer such other information and reports as the Issuer may reasonably request in connection with the calculation of the Clean Energy Adjustments, ~~that is in the possession or control of the Transferor or~~ which is reasonably available ~~on request~~ to the Transferor directly or upon request, can lawfully be provided and can be provided without incurring material incremental expense.

3.3 Clean Energy Adjustments and Electricity Vendors

The Servicer shall:

(a) prior to receiving Servicer CEA Receipts, establish an Eligible Deposit Account (the "**IESO Segregated Account**") bearing a designation indicating that the funds deposited therein are held in trust for the benefit of the Issuer and, after the Co-Owner Implementation Date, for the benefit of any other owner or owners of an Investment Interest. If at any time the IESO Segregated Account ceases to be an Eligible Deposit Account, the Servicer shall within 30 days establish a new IESO Segregated Account as an Eligible Deposit Account and shall transfer any cash and/or any investments held in the former account to such new account and make all future deposits to such new account;

(b) prior to the first Billing Period when amounts are invoiced by Electricity Vendors to Specified Consumers in respect of Clean Energy Adjustments, make commercially reasonable efforts to cause each Electricity Vendor to:

(i) ~~provide guidance to the Electricity Vendors with respect to their obligations under the Act to~~ establish a segregated account into which Electricity Vendor CEA Collections are to be deposited as required by Section 10(2) of the Regulations;

(ii) ~~provide~~settle a ~~suggested~~ form of Electricity Vendor Billing Period Report to be used by such Electricity ~~Vendors;~~ Vendor;

(iii) provide guidance with respect to the establishment by the Electricity Vendors of procedures for the invoicing by such Electricity Vendor of amounts in respect of the Clean Energy Adjustment, the identification, deposit and segregation of Electricity Vendor CEA Collections, the remittance of Electricity Vendor CEA Collections to the Servicer and reporting to the Servicer; and

(iv) respond to inquiries from Electricity Vendors with respect to ~~such forms and guidance~~any of the foregoing matters.

(c) request certification from each Electricity Vendor that the segregated account required by Section 10(2) of the Regulations has been established by that Electricity Vendor;

(d) as agent of the Issuer and, after the Co-Owner Implementation Date, as agent of any other owner or owners of an Investment Interest, receive Electricity Vendor CEA Collections from Electricity Vendors;

(e) as agent of the Issuer and, after the Co-Owner Implementation Date, as agent of any other owner or owners of an Investment Interest, receive any amounts in respect of Clean Energy Adjustments payable directly by Specified Consumers to the Servicer (such amounts, together with the amounts referred to in Section 3.3(d), the "**Servicer CEA Receipts**");

(f) deposit the Servicer CEA Receipts into the IESO Segregated Account promptly following receipt by the Servicer and, in any event, within two Business Days of receipt by the Servicer and the Issuer Share of such Servicer CEA Receipts shall remain in the IESO Segregated Account until remitted in accordance with Section 3.5;

(g) respond to inquiries by Electricity Vendors with respect to the Clean Energy Adjustment and amounts payable in respect thereof;

(h) request from each Electricity Vendor an Electricity Vendor Billing Period Report in respect of each Billing Period during which Clean Energy Adjustments are billed to Specified Consumers; such report to be requested to be delivered within twelve Business Days of the end of each Billing Period;

(i) review each Electricity Vendor Billing Period Report received by the Servicer for material manifest discrepancies, including any discrepancy between the Electricity Vendor CEA Collections reported in respect of the Billing Period and the amount received pursuant to Section 3.3(d)~~, and such other discrepancies as may be agreed by the parties hereto, acting reasonably~~;

(j) contact each Electricity Vendor:

(i) that does not deliver an Electricity Vendor Billing Period Report in respect of a Billing Period where Clean Energy Adjustments were payable by Specified Consumers;

(ii) from which no Electricity Vendor CEA Collections are received in respect of the Billing Period,

(iii) for whom Electricity Vendor CEA Collections do not match the amount thereof reported in its Electricity Vendor Billing Period Report**,**

(iv) that delivers an Electricity Vendor Billing Period Report that has any other material manifest discrepancy detected by the Servicer, or

(v) ~~(iv)~~ that has not certified that it has established the segregated account required by Section 10(2) of the Regulations,

~~in each case, to remind them of their obligations under the Act and the Regulations and, in the case of Electricity Vendor CEA Collections that do not match the amount thereof reported in the Electricity Vendor Billing Period Report, to request an explanation of the discrepancy;~~

and attempt to resolve the applicable issue; and

(k) hold the Issuer Share of Servicer CEA Receipts and the Issuer Share of any other proceeds in respect of the Clean Energy Adjustment received by it in trust for the benefit of the Issuer and remit such amounts in accordance with Section 3.5 without any surcharge, fee, offset, charge or other deduction.

3.4 Reporting

The Servicer shall:

(a) on or before the 20th Business Day following the end of each Billing Period, prepare and deliver to the Issuer a written report substantially in the form of Exhibit B (a "**Monthly Report**");

(b) ~~Report~~**report** monthly to the Issuer any ~~failure on the part of Electricity Vendors to deliver, remit or certify~~**matters** referred to in **Section 3.3**(j~~)(i), (ii) or (iv) which has not been remedied as a result of the contact made by the IESO pursuant to Section 3.3(j) or any discrepancy referred to in (j)(ii), and the~~**) which have not been resolved and any** explanation provided therefor by the Electricity Vendor~~.~~**;**

(c) promptly notify the Issuer in writing of any Requirement of Law hereafter adopted or announced or the occurrence of any other event or circumstance of which it becomes aware that has a material adverse effect on the Servicer's ability to perform its duties and obligations under this Agreement; and

(d) upon the reasonable request of the Issuer provide to the Issuer any public financial information in respect of the Servicer, or any material information regarding the Clean Energy Adjustment, to the extent it is reasonably available to the Servicer, and as may be reasonably necessary and permitted by law, to enable the Issuer to monitor the performance by the Servicer of its duties and obligations hereunder.

3.5 Remittances

(a) The Issuer shall provide the Servicer with notice of the Collection Account at least ten Business Days prior to the first Remittance Date and shall provide the Servicer with notice of any change to the Collection Account at least ten Business Days prior to any subsequent Remittance Date.

(b) Absent the occurrence of a Daily Remittance Event, the Issuer Share of Servicer CEA Receipts received by the Servicer and any interest earned thereon received on or subsequent to a Remittance Date shall be remitted by the Servicer to the Collection Account no later than the immediately following Remittance Date.

(c) Following the occurrence of a Daily Remittance Event, the Issuer Share of all Servicer CEA Receipts on deposit in the IESO Segregated Account and any interest earned thereon shall be remitted by the Servicer to the Collection Account on the second following Business Day.

3.6 Reimbursement of Servicer

The Issuer shall reimburse the Servicer for its direct costs relating to the performance by the Servicer of its duties and obligations hereunder and that are not otherwise recovered or recoverable by the Servicer pursuant to sections 25(1) and 25.1 of the *Electricity Act, 1998*, which direct costs the IESO shall have no obligation to seek recovery for under sections 25(1) and 25.1 of the *Electricity Act, 1998*; provided, however, that this Section 3.6 shall not apply to any costs relating to the performance by the Servicer of its duties and obligations under the Act or the Regulations, including, for greater certainty the Servicer's obligations to pay monthly Carrying Costs.

3.7 ~~3.6~~ Limits to Obligations

Notwithstanding anything to the contrary in this Agreement, the parties hereto agree **that** the duties, liabilities and obligations of IESO under this Agreement are limited as provided in this Section ~~3.6~~**3.7**.

(a) IESO is not responsible for, or in respect of, any amounts not collected by Electricity Vendors from their customers or not remitted by Electricity Vendors to the Servicer.

(b) IESO is not responsible to confirm, verify or audit the amount of the Clean Energy Adjustment invoiced by Electricity Vendors or the Electricity Vendor CEA Collections collected by Electricity Vendors and reported to the IESO~~;~~**.**

(c) IESO is not responsible for enforcing the obligations of Specified Consumers to pay, or the obligations of Electricity Vendors to invoice, collect or remit Clean Energy Adjustments or any other amounts, **or to establish a segregated account into which** Electricity Vendor CEA Collections **are to be deposited,** and IESO is under no obligation to initiate or prosecute any legal action relating to the collection of the Clean Energy Adjustments or the Issuer Investment Interest.

(d) IESO ~~shall~~**is** not ~~be~~ responsible or liable for the performance by Electricity Vendors of their duties and responsibilities under the Act or the Regulations including (i) the invoicing of Specified Consumers in respect of the Clean Energy Adjustment and ancillary matters related thereto; (ii) the collection from Specified Consumers of amounts due in respect of such invoices and the remittance of such

payments to the Servicer; (iii) the accuracy of any information provided by the Electricity Vendors; and (iv) any reporting by the Electricity Vendors, including the reporting to the Servicer of the total CEA Consumer Invoice Amounts invoiced by such Electricity Vendor to its Specified Consumers in respect of the Clean Energy Adjustment, the total Electricity Vendor CEA Collections received by such Electricity Vendor and the Issuer Share of Electricity Vendor CEA Collections received by such Electricity Vendor~~.~~ **and any other reporting in the Electricity Vendor Billing Period Report.**

(e) IESO is under no responsibility or obligation to the Issuer with respect to the nature or extent of the Issuer Investment Interest, the collectability of the Issuer Share of Servicer CEA Receipts or that the Issuer Share of Servicer CEA Receipts will be sufficient to satisfy the Issuer's Funding Obligations.

(f) IESO may rely in good faith on the advice of counsel or on any document of any kind, prima facie properly executed and submitted by any Person, respecting any matters arising under this Agreement.

(g) IESO shall have no liability or responsibility to any Person in respect of any forecasts or other information provided pursuant to Section 3.2, provided only that such forecasts or other information has been prepared and provided in good faith.

(h) None of the directors, officers, employees or agents of IESO shall be liable to the Issuer or any other Person for any action taken or for refraining from the taking of any action pursuant to this Agreement or for good faith errors in judgment.

3.8 ~~3.7~~ Servicing and Maintenance Standards

Subject to Section ~~3.6~~**3.7**, the Servicer shall discharge its duties, responsibilities and obligations hereunder with reasonable care and in material compliance with the Requirements of Law, including the Act and the Regulations and, in doing so, shall follow standards, policies and procedures in performing its duties as Servicer hereunder that are customary for an electricity market operator and administrator that regularly performs settlement functions.

3.9 ~~3.8~~ Appointments

The Servicer may at any time appoint **OPG or** any **other** Person to act as its agent to perform all or any portion of its obligations as Servicer hereunder; provided however, that **in respect of the appointment of a Person other than OPG,** the Rating Agency Condition shall have been satisfied in connection therewith; and provided further that the Servicer shall remain obligated and be liable for the performance of its obligations under this Agreement without diminution of such obligation and liability by virtue of the appointment of **OPG or** such **other** Person and to the same extent and under the same terms and conditions as if the Servicer alone were performing such obligations. The fees and expenses of **OPG or** any **other** such Person shall be as agreed between the Servicer and **OPG or** such **other** Person from time to time, and the

Issuer shall not have any responsibility therefor or right or claim thereto. Any such appointment shall not constitute a resignation of the Servicer under Section ~~3.10~~**3.12**.

3.10 ~~**3.9**~~ **Term**

The Servicer's appointment as Servicer under this Agreement shall become effective as of the execution hereof and shall continue in full force and effect until the earlier of (a) the effective date of resignation of the Servicer in accordance with the provisions of this Agreement, (b) termination of all of the rights and obligations of the Servicer under Article 7, and (c) the date on which all Issuer Funding Obligations have been paid in full and all CEA Consumer Invoice Amounts have been received or written off (in each case, a "**Termination Event**"). The appointment of the Servicer as servicer under this Agreement shall be terminated effective as of the date of the Termination Event.

~~**3.10 Resignation of Servicer**~~

~~The IESO shall not resign from the obligations and duties imposed on it as Servicer under this Agreement except upon a determination that the performance of its duties under this Agreement shall no longer be permissible under applicable Requirements of Law. Notice of any such determination permitting the resignation of the IESO as Servicer shall be communicated to the Issuer and the Rating Agencies at the earliest practicable time (and, if such communication is not in writing, shall be confirmed in writing at the earliest practicable time), and any such determination shall be evidenced by an Opinion of Counsel to such effect delivered to the Issuer and the Rating Agencies concurrently with or promptly after such notice. No such resignation shall become effective until a Successor Servicer that is a Permitted Successor has assumed the servicing obligations and duties hereunder of the Servicer in accordance with Section 7.2.~~

3.11 Mergers

Any Person (a) into which the Servicer may be merged, converted or amalgamated and that is a Permitted Successor, (b) that may result from any merger, conversion or amalgamation to which the Servicer shall be a party and that is a Permitted Successor, (c) that may succeed to the properties and assets of the Servicer substantially as a whole and that is a Permitted Successor, or (d) that otherwise is a Permitted Successor, which Person in any of the foregoing cases executes an agreement of assumption to perform all of the obligations of the Servicer hereunder, shall be the successor to the Servicer under this Agreement without further act on the part of any of the parties to this Agreement; provided, however, that (i) immediately after giving effect to such transaction, no representation or warranty made pursuant to Section 4.1 shall have been breached and no Servicer Default and no event that, after notice or lapse of time, or both, would become a Servicer Default shall have occurred and be continuing, (ii) the Servicer shall have delivered to the Issuer an Officer's Certificate and an Opinion of Counsel from external counsel stating that such consolidation, conversion, merger or succession and such agreement of assumption complies with this Section 3.11 and that all conditions precedent, if any, provided for in this Agreement relating to such transaction have been complied with, and (iii) the Servicer shall have given to the Issuer prior written notice of such transaction. When any Person that is a Permitted Successor acquires the properties and assets of the Servicer

substantially as a whole or otherwise becomes the successor, by merger, conversion, consolidation, sale, transfer, lease or otherwise, to all or substantially all the assets of the Servicer in accordance with the terms of this Section 3.11, then, upon satisfaction of all of the other conditions of this Section 3.11, the preceding Servicer shall automatically and without further notice be released from all of its obligations hereunder (except for responsibilities for its actions prior to such release).

3.12 The IESO Not to Resign as Servicer

Subject to the provisions of Section 3.11, the IESO shall not resign from the obligations and duties imposed on it as Servicer under this Agreement except upon a determination that the performance of its duties under this Agreement shall no longer be permissible under applicable Requirements of Law. Notice of any such determination permitting the resignation of the IESO as Servicer shall be communicated to the Issuer and each Rating Agency at the earliest practicable time (and, if such communication is not in writing, shall be confirmed in writing at the earliest practicable time), and any such determination shall be evidenced by an Opinion of Counsel to such effect delivered to the Issuer and each Rating Agency concurrently with or promptly after such notice. No such resignation shall become effective until a Successor Servicer that is a Permitted Successor has assumed the servicing obligations and duties hereunder of the Servicer in accordance with Section 7.2.

3.13 IESO Regulatory Obligation to Pay Carrying Costs

(a) The IESO acknowledges that it has an obligation to pay monthly Carrying Costs pursuant to the Regulations for the prescribed period set out in the Regulations (the "**Prescribed Period**") and agrees to comply with its obligations under the Regulations to pay and remit the Carrying Costs to the Issuer on a monthly basis.

(b) On or before the 4th Business Day of each calendar month during the Prescribed Period, the Issuer shall prepare and deliver to the IESO a written statement substantially in the form of Exhibit C (a "**Monthly Carrying Costs Statement**") certifying the amount of the Carrying Costs incurred in the preceding calendar month ("**Monthly Carrying Costs**"). If requested by the IESO, the Issuer shall, in lieu of providing the Monthly Carrying Costs Statement, enter the amount of the Monthly Carrying Costs in the IESO operated portal, or such other similar facility operated by the IESO, and such entry shall be deemed to be a certification of the accuracy of the amount entered.

(c) On or before the [14th] Business Day following receipt by the IESO of the Monthly Carrying Costs Statement, the IESO shall, as required under the Regulations, deliver or cause to be delivered to the Issuer, by wire transfer or electronic funds transfer in immediately available funds, an amount in Canadian dollars equal to the Monthly Carrying Costs certified by the Issuer in the applicable Monthly Carrying Costs Statement.

3.14 IESO Security for CEA Remittances

If required by the Issuer, the IESO shall provide to the Issuer, on or prior to the first day of the first Billing Period when amounts are invoiced to Specified Consumers in respect of Clean Energy Adjustments, a letter of credit in an amount equal to $■, or such other form of security as may be acceptable to the Issuer, as security for any failure of Electricity Vendors which are either not rated or are rated less than investment grade to remit their Electricity Vendor CEA Collections.

ARTICLE 4
REPRESENTATIONS AND WARRANTIES OF THE IESO

4.1 Representations and Warranties

Subject to Section ~~3.6~~3.7, the IESO makes the following representations and warranties as of the date hereof and as of each applicable Closing Date, and the IESO acknowledges that the Issuer will rely thereon in paying the Purchase Price related to Transfers of Specified Portions of the Regulatory Asset, and the Issuer has relied thereon in entering into this Agreement relating to the servicing of the corresponding Investment Interests.

(a) Organization and Good Standing. The IESO is a statutory corporation amalgamated under the laws of the Province of Ontario, with requisite corporate power and authority to own its properties, to conduct its business as such properties are currently owned and such business is presently conducted by it.

(b) Due Qualification. The IESO has obtained all necessary licences and approvals, in all jurisdictions in which the ownership or lease of property or the conduct of its business (including acting as Servicer under this Agreement) shall require such licences or approvals, except where the failure to so qualify or obtain such licences and approvals would not be reasonably likely to have a material adverse effect on the IESO's business, operations, assets, revenues or properties, the Regulatory Asset or the servicing of related Investment Interests.

(c) Power and Authority. The IESO has the requisite corporate power and authority to execute and deliver this Agreement and to carry out its terms. The IESO has full corporate power and authority to hold the Regulatory Asset and to Transfer Specified Portions of the Regulatory Asset to the Issuer and the IESO has duly authorized such Transfer to the Issuer by all necessary corporate action. The execution, delivery and performance of all obligations under this Agreement have been duly authorized by all necessary corporate action on the part of the IESO under all applicable laws.

(d) Binding Obligation. This Agreement constitutes a legal, valid and binding obligation of the IESO, enforceable against the IESO in accordance with its terms, subject to bankruptcy, receivership, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally from time to time in effect and to general principles of equity (including concepts of materiality, reasonableness, good faith and fair dealing).

(e) No Violation. The consummation of the transactions contemplated by this Agreement and the fulfillment of the terms hereof by the IESO do not conflict with, result in any breach of any of the terms and provisions of, or constitute (with or without notice or lapse of time, or both) a default under, the IESO's by-laws, or any indenture, or other material agreement or instrument to which the IESO is a party or by which it is bound, result in the creation or imposition of any Lien upon any of the IESO's properties pursuant to the terms of any such indenture, agreement or other instrument or violate any existing law or any order, rule or regulation applicable to the IESO issued by any Governmental Authority having jurisdiction over the IESO or its properties, except, in each case, where such breach would not reasonably be expected to materially and adversely affect the performance by the IESO of its obligations under this Agreement or the Act or the validity or enforceability of this Agreement.

(f) No Proceedings. To the IESO's knowledge, except as disclosed in writing to the Issuer, there are no Proceedings pending or threatened against the IESO or its properties: (a) asserting the invalidity of this Agreement or the Act, (b) seeking to prevent the consummation of any of the transactions contemplated by this Agreement or the Act, or (c) seeking a determination or ruling that could reasonably be expected to materially and adversely affect the performance by the IESO of its obligations under this Agreement or the Act or the validity or enforceability of this Agreement.

(g) Approvals. No approvals, authorizations, consents, orders or other actions or filings with any Governmental Authority are required for the IESO to execute, deliver and perform its obligations under this Agreement except those which have previously been obtained or made.

(h) Information. Except in respect of information provided by a third party, all written information, as amended or supplemented from time to time, provided by the Transferor to the Issuer with respect to the Issuer in a Transfer Notice and a Monthly Report is true and correct in all material respects and does not omit any material fact.

(i) The Transfer. After the completion of the Transfer on the applicable Closing Date, the IESO will have no right, title or interest in the Investment Interest related to the Specified Portion of the Regulatory Asset as set forth in the applicable Transfer Notice, and the related Investment Interest shall not form part of the estate of the IESO in the event of an Insolvency Event in respect of the IESO.

(j) No Transfer. Except for Permitted Transfers, the IESO has not sold, transferred, assigned or otherwise conveyed any interest in the Regulatory Asset to any Person.

(k) Liens. IESO has not pledged or otherwise granted a Lien to any Person in the Regulatory Asset and to the IESO's knowledge (after due inquiry), there is no registered financing statement listing the IESO as debtor covering or extending to the Regulatory Asset.

(l) Tax Liens. The IESO (i) is not aware, after due inquiry, of any judgment or tax lien filing against the IESO, and (ii) is not a non-resident of Canada for purposes of the *Income Tax Act* (Canada).

(m) Solvency. On the date hereof and after giving effect to each Transfer, the IESO:

(i) reasonably believes that it will be able to pay its debts as they come due; and

(ii) is able to pay its debts as they mature and does not intend to incur, or believes that it will not incur, indebtedness that it will not be able to repay at its maturity.

(n) No Court Order. There is no order by any court that seeks to enjoin the performance of any obligations of the IESO under the Act or this Agreement.

4.2 Survival

The representations and warranties set forth in Section 4.1 shall survive the execution and delivery of this Agreement, each Transfer of a Specified Portion of a Regulatory Asset to the Issuer and the pledge of the corresponding Investment Asset to the Indenture Trustee pursuant to the Indenture and may not be waived by any party hereto except pursuant to a written agreement executed in accordance with Section 8.1 and as to which the Rating Agency Condition has been satisfied.

ARTICLE 5
COVENANTS OF THE IESO

5.1 Existence

So long as any Issuer Funding Obligations are outstanding, the IESO (a) shall not take any action to impair its corporate existence, and (b) will obtain and preserve its qualification to do business in the Province of Ontario.

5.2 No Transfer or Liens

Except for Transfers under this Agreement to the Issuer or Permitted Transfers, the IESO will not Transfer the Regulatory Asset or any portion thereof to any person. The IESO will not grant, create, incur, assume or suffer to exist any Lien on the Regulatory Asset or any portion thereof. The IESO will not at any time assert any Lien against or with respect to the Issuer Investment Interest, except for any Lien granted by the Issuer to the IESO.

5.3 Notice of Liens

The IESO shall notify the Issuer promptly after becoming aware of any Lien on any portion of the Regulatory Asset.

5.4 Compliance with Law

The IESO will comply with all Requirements of Law applicable to, and binding upon, the IESO or relating to the Regulatory Asset, except to the extent that failure to so comply would not materially adversely affect the Transfer of Specified Portions of the Regulatory Asset or the IESO's performance of its obligations under this Agreement; provided, however, that the foregoing is not intended to, and shall not, impose any liability on the IESO for non-compliance with any Requirement of Law that the IESO is contesting in good faith in accordance with its customary standards and procedures.

5.5 Covenants Related to the Investment Interest

(a) So long as any Issuer Funding Obligations are outstanding, the IESO shall treat the Issuer Investment Interest as the Issuer's property for all purposes.

(b) Except for investments held for employee benefit purposes, the IESO shall not at any time become a holder of Issuer Funding Obligations.

(c) The IESO shall disclose the effects of all transactions between the IESO and the Issuer in accordance with generally accepted accounting principles (for government entities).

(d) (i) In all Proceedings relating directly or indirectly to the Issuer Investment Interest, the IESO shall affirmatively certify and confirm that it has Transferred all of its rights and interests in and to the Specified Portions of the Regulatory Asset giving rise to the Issuer Investment Interest, (ii) the IESO shall not make any statement or reference in respect of the Issuer Investment Interest that is inconsistent with the ownership interest of the Issuer, and (iii) the IESO shall not take any action in respect of the Issuer Investment Interest except solely in its capacity as the Servicer thereof pursuant to this Agreement.

5.6 Non-petition Covenants

Notwithstanding any prior termination of this Agreement or the Indenture, the IESO shall not, prior to the date that is one year plus one day after termination of the Indenture and the payment in full of all Issuer Funding Obligations and any other amounts owed under the Indenture, petition or otherwise invoke the process of any Governmental Authority for the purpose of commencing or sustaining a Proceeding against the Issuer under any Canadian bankruptcy, insolvency or similar law, appointing a receiver, liquidator, assignee, trustee, custodian, sequestrator or other similar official or any substantial part of the property of the Issuer.

5.7 Disclosure

The IESO shall provide such non-confidential information regarding IESO, the Regulatory Asset and the services provided by the Servicer hereunder (collectively, the "**IESO Disclosure**") as may be reasonably requested by the Issuer for inclusion in any offering document of the Issuer from time to time, including but not limited to offering memoranda, prospectuses, registration statements and continuous disclosure documents (the "**Offering Documents**"), provided that the IESO has been given a reasonable opportunity by the Issuer to review any such Offering Documents. The IESO represents that, except in respect information provided by a third party, all IESO Disclosure, as at the respective dates of delivery to the Issuer, is true and correct in all material respects and contains no misrepresentation.

5.8 Further Assurances

Upon the request of the Issuer, the IESO shall execute and deliver such further instruments and do such further acts as may reasonably be necessary to carry out the provisions and purposes of this Agreement.

5.9 Access to Certain Records and Information

The IESO shall provide to the Issuer access to all records relating to the IESO Deferral, the Fair Hydro Variance Account, the IESO Segregated Account and Servicer CEA Receipts, as is reasonably required for the Issuer to confirm compliance by the IESO with its obligations under this Agreement. Access shall be afforded without charge, but only upon reasonable request and during normal business hours at the offices of the IESO. Nothing in this Section 5.9 shall affect the obligation of the IESO to comply with any Requirement of Law prohibiting disclosure of information, and the failure of the IESO to provide access to such information as a result of such obligation shall not constitute a breach of this Section 5.9.

5.10 Maintenance of Operations

Subject to Section 3.11, the IESO agrees to continue, unless prevented by circumstances beyond its control, to operate as the electricity system operator in the Province of Ontario so long as it is acting as the Servicer under this Agreement.

ARTICLE 6
IESO INDEMNITIES

6.1 Liability of the IESO; Indemnities

(a) The IESO shall indemnify the Issuer and each of its trustees, officers, directors and employees (each, an "**Indemnified Party**"), for, and defend and hold harmless each such Person from and against, any and all liabilities, obligations, losses, damages, payments and claims, and reasonable costs or expenses, of any kind whatsoever (collectively, "**Indemnified Losses**") imposed on, incurred by or asserted against such Person, as a result of (i) the failure of the IESO to perform its covenants and other obligations under this Agreement or any other Program Agreement to which the IESO is a party; or (ii) the breach by the IESO of any of its representations or warranties under this Agreement or any other Program Agreement to which the IESO is a party and, except to the extent of Indemnified Losses resulting from the willful misconduct, bad faith or gross negligence of such Person seeking indemnification hereunder; provided that, in each case, the IESO shall not be required to indemnify an Indemnified Party for any amount paid or payable by such Indemnified Party in the settlement of any Proceeding or investigation without the written consent of the IESO, which consent shall not be unreasonably withheld. Promptly after receipt by an Indemnified Party of notice of the commencement of any Proceeding or investigation, such Indemnified Party shall, if a claim in respect thereof is to be made against the IESO under this Section 6.1(a), notify the IESO in writing of the commencement thereof. Failure

by an Indemnified Party to so notify the IESO shall relieve the IESO from the obligation to indemnify and hold harmless such Indemnified Party under this Section 6.1(a) only to the extent that the IESO suffers actual prejudice as a result of such failure. With respect to any Proceeding or investigation brought by a third party for which indemnification may be sought under this Section 6.1(a), the IESO shall be entitled to conduct and control, at its expense and with counsel of its choosing that is reasonably satisfactory to such Indemnified Party, the defence of any such Proceeding or investigation (in which case the IESO shall not thereafter be responsible for the fees and expenses of any separate counsel retained by the Indemnified Party except as set forth below); provided, that the Indemnified Party shall have the right to participate in such Proceeding or investigation through counsel chosen by it and at its own expense. Notwithstanding the IESO's election to assume the defence of any Proceeding or investigation, the Indemnified Party shall have the right to employ separate counsel, and the IESO shall bear the reasonable fees, costs and expenses of such separate counsel, if (i) the defendants in any such action include both the Indemnified Party and the IESO and the Indemnified Party shall have reasonably concluded that there may be legal defences available to it that are different from or additional to those available to the IESO, (ii) the IESO shall not have employed counsel reasonably satisfactory to the Indemnified Party to represent the Indemnified Party within a reasonable time after notice of the institution of such action, or (iii) the IESO authorizes the Indemnified Party to employ separate counsel at the expense of the IESO. Notwithstanding the foregoing, the IESO shall not be obligated to pay for the fees, costs and expenses of more than one separate counsel for the Indemnified Parties other than one local counsel, if appropriate. The IESO will not, without the prior written consent of the Indemnified Party, settle or compromise or consent to the entry of any judgment with respect to any pending or threatened claim or Proceeding in respect of which indemnification may be sought under this Section 6.1(a) (whether or not the Indemnified Party is an actual or potential party to such claim or action) unless such settlement, compromise or consent includes an unconditional release of the Indemnified Party from all liability arising out of such claim or Proceeding.

(b) For purposes of Section 6.1(a), in the event of the termination of the rights and obligations of the IESO (or any successor thereto pursuant to Section 3.11) as Servicer pursuant to Section 7.1, or a resignation by such Servicer pursuant to Section ~~3.10~~**3.12** of this Agreement, the IESO shall be deemed to be the Servicer pending appointment of a Successor Servicer pursuant to Section 7.2.

(c) Indemnification under Section 6.1(a) shall include reasonable out-of-pocket fees and expenses of investigation and litigation (including reasonable legal fees and expenses), except as otherwise expressly provided in this Agreement.

(d) Indemnification under this Section 6.1 shall survive any repeal of, modification of, or supplement to, or judicial invalidation of, the Act and shall survive the termination of this Agreement and will rank *pari passu* with other general, unsecured obligations of the IESO.

(e) The IESO shall not be required to indemnify any party under this Section 6.1 for any losses resulting from changes in law after the date hereof, whether such changes in law are effected by means of any legislative enactment or any final and non-appealable judicial decision.

ARTICLE 7
SERVICER DEFAULT

7.1 Servicer Default

If any one or more of the following events (each, a "**Servicer Default**") shall occur and be continuing:

(a) any failure by the Servicer to remit to the Collection Account any required remittance that shall continue unremedied for a period of **[two/three]** Business Days after written notice of such failure is received by the Servicer from the Issuer or after discovery of such failure by a Responsible Officer of the Servicer;

(b) any failure on the part of the Servicer or, so long as the Servicer is the IESO, any failure on the part of the IESO, as the case may be, duly to observe or to perform in any respect any covenants or agreements of the Servicer or the IESO, as the case may be, set forth in this Agreement or in any other Program Agreement to which it is a party (other than as provided in Section 7.1(a)), which failure shall (i) materially and adversely affect the rights of the Specified Creditors and (ii) continue unremedied for a period of 30 days after the date on which (A) written notice of such failure, requiring the same to be remedied, shall have been given to the Servicer or the IESO, as the case may be, by the Issuer or (B) such failure is discovered by a Responsible Officer of the Servicer;

(c) any representation or warranty made by the Servicer in this Agreement, any other Program Agreement to which it is a party, any Transfer Notice or any Monthly Report shall prove to have been incorrect when made, which has a material adverse effect on the Issuer and which remains unremedied for a period of 30 days after the date on which (i) written notice thereof, requiring the same to be remedied, shall have been delivered to the Servicer by the Issuer or (ii) such failure is discovered by a Responsible Officer of the Servicer;

(d) an Insolvency Event occurs with respect to the Servicer or the IESO; or

(e) any additional "Servicer Default" as specified in any Co-Owner Agreement occurs;

then, and in each and every case, the Issuer may, subject to the terms of any Co-Owner Agreement, by notice then given in writing to the Servicer (a "**Termination Notice**"), terminate all the rights and obligations (other than the obligations set forth in Section 6.1 and the obligation under Section 7.2 to continue performing its functions as Servicer until a Successor Servicer is appointed) of the Servicer under this Agreement and under the Co-Owner Agreement. In addition, upon a Servicer Default described in Section 7.1(a), Issuer shall be entitled to apply to a court of appropriate jurisdiction for an order for sequestration and payment of revenues arising with respect to the Issuer. On or after the receipt by the Servicer of a Termination Notice, all authority and power of the Servicer under this Agreement, whether with respect to the Investment Interest, the Clean Energy Adjustments or otherwise, shall, without further action, pass to and be vested in such Successor Servicer as may be appointed under Section 7.2; and, without limitation, the Issuer is hereby authorized and empowered to execute and deliver, on behalf of the predecessor Servicer, as attorney-in-fact or otherwise, any and all documents and other instruments, and to do or accomplish all other acts or things necessary or appropriate to effect the purposes of such Termination Notice, whether to complete the transfer of all documents and records related to the Regulatory Asset, the Fair Hydro Variance Account and related documents or records, or otherwise (the "**Records**"). The predecessor Servicer shall cooperate with the Successor Servicer and the Issuer in effecting the termination of the responsibilities and rights of the predecessor Servicer under this Agreement, including the transfer to the Successor Servicer for administration by it of all Records and all cash amounts that shall at the time be held by the predecessor Servicer for remittance, or shall thereafter be received by it with respect to the Investment Interest or the Clean Energy Adjustment. As soon as practicable after receipt by the Servicer of such Termination Notice, the Servicer shall deliver the Records to the Successor Servicer. If a Successor Servicer has been appointed as a result of a Servicer Default, all reasonable costs and expenses (including reasonable legal fees and expenses) incurred in connection with transferring the Records to the Successor Servicer and amending this Agreement and any Co-Owner Agreement to reflect such succession as Servicer pursuant to this Section 7.1 shall be paid by the predecessor Servicer upon presentation of reasonable documentation of such costs and expenses. Termination of the IESO as Servicer shall not terminate the IESO's rights or obligations under this Agreement (except rights thereunder deriving from its rights as the Servicer hereunder).

7.2 Appointment of Successor Servicer

(a) Upon the Servicer's receipt of a Termination Notice pursuant to Section 7.1 or the Servicer's resignation or removal in accordance with the terms of this Agreement, the predecessor Servicer shall continue to perform its functions as Servicer under this Agreement, until a Successor Servicer shall have assumed in writing the obligations of the Servicer hereunder as described below. In the event of the Servicer's removal or resignation hereunder, the Issuer may, but subject to the provisions of the applicable Co-Owner Agreement, appoint a Successor Servicer and the Successor Servicer shall accept its appointment by a written assumption in form reasonably acceptable to the Issuer. If, within 30 days after the delivery of the Termination Notice, a Successor Servicer shall not have been appointed, the

Issuer may petition a court of competent jurisdiction to appoint a Successor Servicer under this Agreement. A Person shall qualify as a Successor Servicer only if (i) such Person is permitted under the Act to perform the duties of the Servicer, (ii) the Rating Agency Condition shall have been satisfied with respect to such appointment, (iii) such Person enters into a master transfer and servicing agreement with the Issuer having substantially the same provisions as this Agreement and (iv) such Person agrees to perform the obligations of the Servicer under any Co-Owner Agreement. In no event shall the Issuer be liable for its appointment of a Successor Servicer..

(b) Upon appointment, the Successor Servicer shall be the successor in all respects to the predecessor Servicer and shall be subject to all the responsibilities, duties and liabilities arising thereafter placed on the predecessor Servicer and shall be entitled to all the rights granted to the predecessor Servicer by the terms and provisions of this Agreement.

7.3 Waiver of Past Defaults

The Issuer may waive in writing any default by the Servicer in the performance of its obligations hereunder and its consequences. Upon any such waiver of a past default, such default shall cease to exist, and any Servicer Default arising therefrom shall be deemed to have been remedied for every purpose of this Agreement. No such waiver shall extend to any subsequent or other default or impair any right consequent thereto.

7.4 Notice of Servicer Default

The Servicer shall deliver to the Issuer, promptly after having obtained knowledge thereof, but in no event later than five Business Days thereafter, written notice of any event that, with the giving of notice or lapse of time, or both, would become a Servicer Default under Section 7.1.

7.5 Cooperation with Successor Servicer

The Servicer covenants and agrees with the Issuer that it will, on an ongoing basis, cooperate with the Successor Servicer and provide whatever information is, and take whatever actions are, reasonably necessary to assist the Successor Servicer in performing its obligations hereunder.

ARTICLE 8
MISCELLANEOUS

8.1 Amendment

This Agreement may be amended in writing by the IESO and the Issuer, and with satisfaction of the Rating Agency Condition, such satisfaction to be confirmed by the Issuer at

the time of such amendment. Promptly after the execution of any such amendment, the Issuer shall furnish copies of such amendment to each of the Rating Agencies.

8.2 Withholding Rights

The parties shall be entitled to deduct and withhold from amounts payable under this Agreement such amounts as each is required to deduct and withhold with respect to such payment under the *Income Tax Act* (Canada) or any provision of any applicable federal, provincial, territorial, state, local or foreign tax law. To the extent that amounts are so withheld, such withheld amounts shall be treated for all purposes as having been paid to the recipient of the payment in respect of which such deduction and withholding was made, provided that such withheld amounts are actually remitted in accordance with applicable law to the appropriate taxing authority.

8.3 No Partnership

Each party expressly disclaims any intention to create a partnership, and none of the Issuer or the IESO will be deemed to be carrying on business in partnership by reason of its execution and delivery of this Agreement or the exercise or performance by it of its respective rights and obligations hereunder.

8.4 Notices

Any notice, report or other communication given hereunder shall be in writing and shall be effective (a) upon receipt when sent through the mails, registered or certified mail, return receipt requested, postage prepaid, with such receipt to be effective the date of delivery indicated on the return receipt, (b) upon receipt when sent by an overnight courier, (c) on the date personally delivered to an authorized officer of the party to which sent, or (d) on the date transmitted by electronic transmission with a confirmation of receipt in all cases, addressed as follows:

(a) in the case of the IESO, in its capacity as Transferor or Servicer:

Independent Electricity System Operator
120 Adelaide Street West, Suite 1600
Toronto, Ontario M5H 1T1

Attention: Chief Financial Officer, General Counsel and Associate General Counsel
Email: ■

(b) in the case of the Issuer or the Manager (on behalf of the Issuer):

~~[Financing Entity]~~Fair Hydro Trust
c/o Ontario Power Generation Inc., as Manager
700 University Avenue
Toronto, Ontario
M5G 1X6

Attention: ■
Email: ■

Each party hereto may, by notice given in accordance herewith to the other party or parties hereto, designate any further or different address to which subsequent notices, reports and other communications shall be sent. Any notice, report or communication required to be given by the IESO hereunder to a Rating Agency shall be given to the address provided by the Issuer from time to time.

8.5 Assignment

Notwithstanding anything to the contrary contained herein, except as provided in the provisions of this Agreement concerning the resignation of the Servicer, this Agreement may not be assigned by the IESO.

8.6 Limitations on Rights of Third Parties

The provisions of this Agreement are solely for the benefit of the IESO and the Issuer, and such Persons shall have the right to enforce the relevant provisions of this Agreement. Nothing in this Agreement, whether express or implied, shall be construed to give to any other Person any legal or equitable right, remedy or claim in the Issuer Investment Interest or under or in respect of this Agreement or any covenants, conditions or provisions contained herein.

8.7 Severability

Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remainder of such provision (if any) or the remaining provisions hereof (unless such construction shall be unreasonable), and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

8.8 Separate Counterparts; Electronic Delivery

This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument. Delivery of an executed signature page to this Agreement by a party by electronic transmission will be as effective as delivery of a manually executed copy of this Agreement by such party.

8.9 Governing Law

This Agreement shall be construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein, and each party to this Agreement attorns to the non-exclusive jurisdiction of the courts of the Province of Ontario.

8.10 Grant of Security Interest to Indenture Trustee

The IESO hereby acknowledges and consents to the grant of a Lien by the Issuer to the Indenture Trustee pursuant to the Indenture for the benefit of the Specified Creditors against all right, title and interest of the Issuer in, to and under this Agreement, the Investment Interest and the proceeds thereof and the assignment of any or all of the Issuer's rights hereunder to the Indenture Trustee for the benefit of the Specified Creditors.

8.11 Limitation of Liability of the Issuer Trustee

(a) It is expressly understood and agreed by the parties hereto that the Issuer Trustee is acting solely in its capacity as trustee of the Issuer, and not in any other capacity. The Issuer solely shall be responsible for the performance of the Issuer's obligations hereunder and the assets of the Issuer solely shall be subject to levy or execution in satisfaction of such obligations.

(b) The Issuer Trustee will not be subject to any liability whatsoever, in tort, in contract or otherwise, in connection with the Issuer's property or the Issuer's activities, to the Issuer's beneficiaries or to any other Person, for any action taken or permitted by the Issuer Trustee to be taken, or the Issuer Trustee's failure to compel in any way any former or acting Issuer Trustee to redress any breach of trust with respect to the execution of the duties of its office or in respect of the Issuer's property or the Issuer's activities, provided that the foregoing limitation will not apply in respect of action or failure to act arising from or in connection with dishonesty, bad faith, willful misconduct, gross negligence or reckless disregard of a duty by the Issuer Trustee. The Issuer Trustee, in doing anything or permitting anything to be done in respect of the execution of the duties of its office or in respect of the Issuer's property or the Issuer's activities, is, and will be conclusively deemed to be, acting as trustee of the Issuer and not in any other capacity. Except as to the extent provided in this Section 8.11, the Issuer Trustee will not be subject to any liability for any debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses against or with respect to the

Issuer, arising out of anything done or permitted by it to be done or its failure to take any action in respect of the execution of the duties of its office or for or in respect of the Issuer's property or the Issuer's activities and resort will be had solely to the Issuer's property for the payment or performance thereof. No property or assets of the Issuer Trustee owned in its personal capacity will be subject to levy, execution or other enforcement procedure with regard to any obligation under this Agreement.

(c) The holders of the units of the Issuer will not be subject to any liability whatsoever, in tort, in contract or otherwise, in connection with the Issuer's property or the Issuer's activities, to the Issuer's beneficiaries or to any other Person, for any action taken or permitted by it to be taken. The holders of the units of the Issuer will not be subject to any liability for any debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses against or with respect to the Issuer, arising out of anything done or permitted by it to be done or its failure to take any action in respect of the execution of the duties of its office or for or in respect of the Issuer's property or the Issuer's activities and resort will be had solely to the Issuer's property for the payment or performance thereof. No property or assets of the holders of the units of the Issuer owned in their personal capacity will be subject to levy, execution or other enforcement procedure with regard to any obligation under this Agreement.

8.12 Waivers

Any term or provision of this Agreement may be waived, or the time for its performance may be extended, by the party or parties entitled to the benefit thereof. Any such waiver shall be validly and sufficiently authorized for the purposes of this Agreement if, as to any party, it is authorized in writing by an authorized representative of such party, with prompt written notice of any such waiver to be provided to the Rating Agencies. The failure of any party hereto to enforce at any time any provision of this Agreement shall not be construed to be a waiver of such provision, nor in any way to affect the validity of this Agreement or any part hereof or the right of any party thereafter to enforce each and every such provision. No waiver of any breach of this Agreement shall be held to constitute a waiver of any other or subsequent breach.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective officers as of the day and year first above written.

~~[FINANCING ENTITY]~~FAIR HYDRO TRUST, by its Manager, **ONTARIO POWER GENERATION INC.**

By:
Name:
Title:

By:
Name:
Title:

INDEPENDENT ELECTRICITY SYSTEM OPERATOR
as Transferor and Servicer

By:
Name:
Title:

By:
Name:
Title:

EXHIBIT A

FORM OF TRANSFER NOTICE

See attached

TRANSFER NOTICE

TO: ~~[FINANCING ENTITY]~~Fair Hydro Trust
c/o Ontario Power Generation Inc., as Manager
700 University Avenue
Toronto, Ontario
M5G 1X6

Attention: ■
Email: ■

This Transfer Notice is delivered to you pursuant to Section 2.1 of a master transfer and servicing agreement made as of ■, 2017 (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "**Master Transfer and Servicing Agreement**") between ~~[FINANCING ENTITY]~~FAIR HYDRO TRUST, a trust formed under the laws of the Province of Ontario (the "**Issuer**"), the **INDEPENDENT ELECTRICITY SYSTEM OPERATOR** ("**Transferor**" in its capacity as transferor, "**Servicer**", in its capacity as servicer, and "**IESO**" in its capacity as both Transferor and Servicer), a statutory corporation without share capital amalgamated under the laws of the Province of Ontario. All capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Master Transfer and Servicing Agreement.

The Transferor hereby gives notice to the Issuer of its offer to transfer to the Issuer on the Closing Date set out below, the Specified Portion of the Regulatory Asset referred to below, all in accordance with the terms and conditions of the Master Transfer and Servicing Agreement. In consideration for (i) the Transferor's Transfer to the Issuer of the Specified Portion of the Regulatory Asset referred to below, the Issuer shall deliver or cause to be delivered to the Transferor on the Closing Date set out below, by wire transfer or electronic funds transfer in immediately available funds, an amount in Canadian dollars equal to the Purchase Price set out below.

Upon receipt by the Transferor of the Purchase Price on the Closing Date the Transferor shall reduce the balance of the Fair Hydro Variance Account by an amount equal to the Purchase Price, and the Regulatory Asset shall be adjusted accordingly.

Specified portion of Regulatory Asset: $■

Purchase Price: $■

Closing Date: ■

The Transferor hereby represents, warrants and confirms that:

(i) each of the representations and warranties on the part of the Transferor contained in the Master Transfer and Servicing Agreement are true and correct in all respects on the date hereof as if made on the date hereof;

(ii) the Transferor is not in breach of any of its covenants in the Master Transfer and Servicing Agreement; and

(iii) as of the date hereof, each condition precedent that must be satisfied by the Transferor under Section 2.2 of the Master Transfer and Servicing Agreement is capable of being satisfied prior to Closing Date.

The closing shall take place at ■ (Toronto time) on the Closing Date referred to above at the offices of ■, except as may be otherwise mutually agreed. The Purchase Price shall be paid on that date by ~~bank~~ wire **transfer or electronic funds** transfer to [insert IESO bank account details].

DATED this ■ day of ■, 20■.

~~[FINANCING ENTITY]~~FAIR HYDRO TRUST, by its Manager, **ONTARIO POWER GENERATION INC.**

By:
Name:
Title:

By: _____
Name:
Title:

The undersigned hereby accepts the foregoing offer.

DATED this ■ day of ■, 20■.

INDEPENDENT ELECTRICITY SYSTEM OPERATOR
as Transferor

By:
Name:
Title:

By: _____
Name:
Title:

EXHIBIT B

FORM OF MONTHLY REPORT

[**NTD: form to be settled]**

EXHIBIT C

FORM OF MONTHLY CARRYING COSTS STATEMENT

See Attached

MONTHLY CARRYING COSTS STATEMENT

TO: INDEPENDENT ELECTRICITY SYSTEM OPERATOR
[Address]

Attention: ■
Email: ■

Reference is made to the master transfer and servicing agreement made as of ■, 2017 (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "**Master Transfer and Servicing Agreement**") between ~~**[FINANCING ENTITY]**~~**FAIR HYDRO TRUST**, a trust formed under the laws of the Province of Ontario (the "**Issuer**") and the **INDEPENDENT ELECTRICITY SYSTEM OPERATOR** ("**Transferor**" in its capacity as transferor, "**Servicer**", in its capacity as servicer, and "**IESO**" in its capacity as both Transferor and Servicer), a statutory corporation without share capital amalgamated under the laws of the Province of Ontario. Capitalized terms used but not defined in this Monthly Carrying Costs Statement have their respective meanings as set forth in the Master Transfer and Servicing Agreement.

Pursuant to Section 3.13 of the Master Transfer and Servicing Agreement, the undersigned hereby certifies that the Monthly Carrying Costs in respect of the calendar month of ■, ■ are as follows:

In accordance with Section 3.13(c) of the Master Transfer and Servicing Agreement, the undersigned hereby directs you to deliver to the Issuer, by wire transfer **or electronic funds transfer** to the account set forth below, an amount in Canadian dollars equal to the Monthly Carrying Costs set forth above on or before ■, 20■, and this shall be your good and valid authority for so doing.

[NTD: Wire transfer instructions to be provided by OPG.]

DATED this ■ day of ■, 20■.

~~[FINANCING ENTITY]~~FAIR HYDRO TRUST, by its Manager, **ONTARIO POWER GENERATION INC.**

By: _____
Name:
Title:

By: _____
Name:
Title:

Document comparison by Workshare Compare on November-10-17 8:33:00 PM

Input:	
Document 1 ID	file://C:\Users\bsaulnie\Desktop\Blackline Against\MTSA (November 7th Rating Agency Draft).DOCX
Description	MTSA (November 7th Rating Agency Draft)
Document 2 ID	file://C:\Users\bsaulnie\AppData\Local\Temp\Workshare\wmtemp54bc\Master Transfer and Servicing Agreement.docx
Description	Master Transfer and Servicing Agreement
Rendering set	Firm_Standard

Legend:	
Insertion	
~~Deletion~~	
~~Moved from~~	
Moved to	
Style change	
Format change	
~~Moved deletion~~	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	91
Deletions	86
Moved from	1
Moved to	1
Style change	0
Format changed	0
Total changes	179

Blackline - Supplemental Indenture (Long Term Senior).pdf

~~FIRST [~~SENIOR ~~NOTES~~SERIES [2017-1]
SUPPLEMENTAL INDENTURE

between

~~[ISSUER]~~FAIR HYDRO TRUST

by

~~●~~ COMPUTERSHARE TRUST COMPANY OF CANADA
as Issuer Trustee

and

~~●~~BNY TRUST COMPANY OF CANADA
as Indenture Trustee

SUPPLEMENTING THE TRUST INDENTURE DATED AS OF ●, 2017

AND PROVIDING FOR THE ISSUE OF
●% SENIOR NOTES DUE ● ~~(SENIOR NOTES~~, SERIES 2017-1~~)~~
OF ~~[ISSUER]~~FAIR HYDRO TRUST

Made as of ●, 2017

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●% SENIOR NOTES DUE ● ~~(SENIOR NOTES~~, SERIES ~~2007~~2017-1~~)~~

THIS ~~FIRST (~~SENIOR NOTES~~)~~ SUPPLEMENTAL INDENTURE (this "**Supplemental Indenture**") is made as of ●, 2017, between ●Computershare Trust Company of Canada in its capacity as trustee of Fair Hydro Trust, a trust existing under the laws of the Province of Ontario (the "**Issuer**") and ●BNY **Trust Company of Canada**, a trust company existing under the laws of ~~(~~Canada~~)~~ (the "**Indenture Trustee**").

WHEREAS pursuant to the Trust Indenture dated as of ●, 2017 between the Issuer and the Indenture Trustee (as amended or restated from time to time, the "**Trust Indenture**"), provision was made for the issuance of Senior Notes from time to time in one or more Series by the execution and delivery of a Supplemental Indenture;

AND WHEREAS the parties hereto are entering into this Supplemental Indenture to provide for the creation and issuance of a Series of Senior Notes designated as the ●% Senior Notes due ●, ~~(~~Series 2017-1~~)~~ (the "**Series 2017-1 Senior Notes**");

AND WHEREAS the foregoing recitals are made as statements of fact by the Issuer and not by the Indenture Trustee.

NOW THEREFORE THIS SUPPLEMENTAL INDENTURE WITNESSES and it is hereby covenanted, agreed and declared as follows:

ARTICLE 1
INTERPRETATION

1.1 Definitions

(a) For all purposes of this Supplemental Indenture, except as otherwise expressly provided or unless the context otherwise requires, the terms defined in Schedule A hereto have the meanings assigned to them in Schedule A and include the plural as well as the singular.

(b) The provisions of Section 1.1 of the Trust Indenture are applicable to this Supplemental Indenture. All terms used herein which are defined in the Trust Indenture, either directly or by reference therein, have the meanings assigned to them therein.

1.2 Interpretation

Subject to the next following sentences, this Supplemental Indenture is supplemental to the Trust Indenture and the Trust Indenture shall be read in conjunction with this Supplemental Indenture and all of the provisions of the Trust Indenture shall apply to and shall have effect in connection with this Supplemental Indenture in the same manner as if all of the provisions of the Trust Indenture and of this Supplemental Indenture were contained in one instrument. This Supplemental Indenture shall, unless the context otherwise requires, be subject to the interpretative provisions contained in Article I of the Trust Indenture. If any terms of the Trust Indenture are inconsistent with the express terms or provisions hereof, the terms and provisions of the Trust Indenture shall be, solely in respect of the Series 2017-1 Senior Notes, amended and supplemented so as to be consistent herewith. The provisions of this Supplemental Indenture are

applicable only in respect of the Series 2017-1 Senior Notes and not the Senior Notes of any other Series.

1.3 Application of this Supplemental Indenture

With respect to the Series 2017-1 Senior Notes only, the terms of the Trust Indenture are amended, supplemented, modified, restated and replaced to the extent applicable by the terms of this Supplemental Indenture in respect of the Series 2017-1 Senior Notes in accordance with Section 1.2 above.

ARTICLE 2
SERIES 2017-1 SENIOR NOTES

2.1 Creation of Series 2017-1 Senior Notes

There is hereby created a Series of Senior Notes to be issued pursuant to the Trust Indenture and this Supplemental Indenture designated as the "●**% Senior Notes due ●, ~~(~~Series 2017-~~1)~~ 1**."

2.2 Principal Terms

In addition to and without limiting all of the provisions of this Supplemental Indenture, the Series 2017-1 Senior Notes will:

(a) be designated as set out in Section 2.1;

(b) be ~~a Series of~~ Senior Notes ~~as contemplated by the Trust Indenture;~~ and will not be subordinated to any other **Class, Series or Tranche of Notes;**

(c) not be divided into Tranches;

(d) **[be unlimited in principal amount but initially][NTD: To be discussed]** will have an aggregate principal amount of $● to be issued on the date hereof, provided that the principal amount of the Series 2017-1 Senior Notes may be increased after the date hereof without the consent of any holder of Series 2017-1 Senior Notes or any holder of any Notes of any other Class, Series or Tranche;

(e) be denominated in Canadian dollars;

(f) not be listed on any securities exchange;

(g) be issued in the form of a Global Note;

~~(h) be Senior Notes and will not be subordinated to any other Series, Class or Tranche of Notes;~~

(h) ~~(i)~~ be substantially in the form of Schedule B, with such appropriate insertions, omissions, substitutions and variations as may be approved by the Indenture Trustee;

(i) ~~(j)~~ bear interest at a rate of ●% per annum;

(j) ~~(k)~~ accrue interest from the later of: (i) ●, 2017 and (ii) the last Interest Payment Date on which interest has been paid or made available for payment on the Notes;

(k) ~~(l)~~ have interest paid in equal semi-annual instalments **[(except the initial interest payment)]** on ~~●~~ ~~and~~ ~~●~~the Payment Dates occurring in the months of April and October in each year (each, an "**Interest Payment Date**") commencing ~~●~~with the Payment Date occurring in the month of [April/October], 2018 in respect of the Series 2017-1 Senior Notes issued prior to such date ~~**[NTD: Interest Payment Dates to be considered in context of model]**~~;

~~(m) [have an initial interest payment in the amount of $● per $1,000 principal amount payable on ●, 2018;]~~

(l) ~~(n)~~ mature on, and have ● [NTD: select a Payment Date], as their sole Principal Payment ~~Due~~ Date;

(m) ~~(o)~~ have ● as their Principal Payment Default Date;

(n) ~~(p)~~ have ● as their Principal Accumulation ~~Commencement~~ Date;

(o) have the following Principal Accumulation Amounts for each Payment Date on or after their Principal Accumulation Date:

Payment Date	Principal Accumulation Amount
Payment Date in the months of ●	$●
Payment Date in the months of ●	$●
Payment Date in the months of ●	$●
Payment Date in the months of ●	$●
Principal Payment Date	$●

(p) ~~(q)~~ have a Record Date for each Interest Payment Date that is the ~~●~~last day of the calendar month preceding each Interest Payment Date;

(q) ~~(r)~~ **[be redeemable and subject to repurchase as provided in Section 2.6 below]**; and

(r) ~~(s)~~ **[not be subject to defeasance and covenant defeasance as contemplated by Section ● of the Trust Indenture] [be subject to defeasance and covenant defeasance in accordance with Section ● of the Trust Indenture].**

2.3 Delivery

On the date of issuance of the Series 2017-1 Senior Notes, Series 2017-1 Senior Notes shall be executed, authenticated and delivered by the Issuer in accordance with Section 4.03 of the Trust Indenture.

2.4 Payment of Interest

The Issuer (except in case of payment of interest at maturity or as otherwise provided in the Trust Indenture, at which time payment of interest, less any taxes required by law to be deducted or withheld, may at the option of the Issuer be made upon presentation and surrender of the certificate representing the Series 2017-1 Senior Notes) will ~~(i)~~ on each Interest Payment Date, make payment of such interest, less any taxes required by law to be deducted or withheld, by wire transfer to each holder of a Series 2017-1 Senior Note as of the Record Date~~, or (ii) on the day that is two Business Days before each Interest Payment Date, forward or cause to be forwarded to the registered address of each holder of a Series 2017-1 Senior Note as of the Record Date a cheque for such interest, less any taxes required by law to be deducted or withheld, payable to the order of such holder~~. The payment by such wire transfer ~~or forwarding of such cheque~~ will satisfy and discharge the liability for interest upon such Series 2017-1 Senior Note to the extent of the sum represented thereby (plus the amount of any taxes deducted or withheld as aforesaid) ~~unless any such cheque is not paid on presentation~~. Notwithstanding the foregoing, the Issuer, at its option, may cause the amount payable in respect of interest to be paid to a Noteholder in any other manner reasonably acceptable to the Indenture Trustee.

2.5 Payment of Principal

~~[On the] [At least one Business Day prior to the]~~By 10:00 a.m. (Toronto time) on the Principal Payment Due Date, the Issuer will deposit with the Indenture Trustee all amounts required to be paid to the order of holders of Series 2017-1 Senior Notes on maturity on account of principal. The deposit of such funds will satisfy and discharge the liability for principal of the Series 2017-1 Senior Notes to the extent of the sum represented thereby.

2.6 [Redemption and Repurchase

[NTD: Customary redemption/repurchase mechanics to be added to Trust Indenture as per OPG MTN indenture. Redemption below contemplates a par call]

(a) At its option, at any time prior to ● **[par call date]**, the Issuer may redeem the Series 2017-1 Senior Notes in whole or, from time to time, in part, on payment of a redemption price equal to the greater of (i) the Series 2017-1 Canada Yield Price and (ii) par, together in each case with accrued and unpaid interest to the Series 2017-1 Redemption Date. At any time on or after ● **[par call date]**, the Issuer may redeem the Series 2017-1 Senior Notes in whole or, from time to time, in part, on payment of a redemption price equal to par, together with accrued and unpaid interest to the Series 2017-1 Redemption Date. The Issuer will give notice of redemption not more than 60 days and not less than 15 days before the date fixed for redemption. Less than all of the Series 2017-1 Senior Notes may be redeemed, if so redeemed, in accordance with Section ● of the Trust Indenture.

(b) The Issuer will be entitled at any time and from time to time to purchase for cancellation Series 2017-1 Senior Notes in the market (which may include purchases from or through an investment dealer or a firm holding membership on a recognized stock exchange) or by tender or by private contract at any price. Series 2017-1 Senior Notes that are so purchased will be cancelled and will not be re-issued. Less than all of the Series 2017-1 Senior Notes may be purchased, if so purchased, for cancellation in accordance with Section ● of the Trust Indenture.

(c) The Series 2017-1 Senior Notes will not be subject to repurchase pursuant to any sinking fund or any other required repayment provisions].

2.7 Indemnification by the Issuer

The Issuer agrees to indemnify and hold harmless the Indenture Trustee and each Series 2017-1 Noteholder and each of their respective officers, directors, agents and employees (each, an "**Issuer Indemnified Person**") from and against any loss, liability, expense, damage or injury suffered or sustained by such Issuer ~~indemnified person~~**Indemnified Person** by reason of (a) any acts, omissions or alleged acts or omissions arising out of, or relating to, activities of the Issuer pursuant to the Program Agreements to which it is a party; (b) a breach of any representation or warranty made or deemed made by the Issuer (or any of its officers) in any Program Agreement; or (c) a failure by the Issuer to comply with any applicable law or regulation or to perform its covenants, agreements, duties or obligations required to be performed or observed by it in accordance with the provisions of the Program Agreements, including, but not limited to, any judgment, award, settlement, reasonable attorneys' fees and other reasonable costs or expenses incurred in connection with the defense of any actual or threatened action, proceeding or claim, except to the extent such loss, liability, expense, damage or injury resulted from the gross negligence, bad faith or willful misconduct of such Issuer ~~indemnified person~~**Indemnified Person** or its officers, directors, agents, principals, employees or employers or includes any Excluded Taxes; provided that any payments made by the Issuer pursuant to this Section 2.7 shall be made solely from funds available pursuant to Section **[7.04]** or Section **[8.13]** of the Trust Indenture, shall be non-recourse other than with respect to such funds, and shall not constitute a claim against the Issuer to the extent that such funds are insufficient to make such payment.

2.8 Taxes

~~**[NTD: Subject to tax review]**~~

(a) All payments by or on account of any obligation of the Issuer hereunder shall, to the extent allowed by law, be made free and clear of, and without deduction or withholding for or on account of~~, any present or future income, stamp or other taxes, levies, imposts, duties, charges, fees, deductions or withholdings, now or hereafter imposed, levied, collected, withheld or assessed by any Governmental Authority (collectively, "**Taxes**")~~ **Taxes**, excluding (i) income taxes (including branch profit taxes, minimum taxes and taxes computed under alternative methods, at least one of which is based on or measured by net income), franchise taxes (imposed in lieu of income taxes), or any other ~~taxes~~**Taxes** based on or measured by the net income of any ~~Series 2017-1 Noteholder (but specifically excluding any taxes required to be withheld under Section 1446 of the *Internal Revenue Code* of 1986 (as amended, the "**Code**"))~~**person legally entitled to receive such payments (each a "Recipient")** as a result of a present or former connection between the ~~recipient~~**Recipient** and the jurisdiction of the ~~governmental~~

~~authority~~**Governmental Authority** imposing such ~~tax~~**Taxes** (other than any such connection arising solely from the ~~recipient~~**Recipient** having executed, delivered or performed its obligations or received a payment under, disposed of, or enforced, this Supplemental Indenture); ~~and (ii) any Taxes imposed under FATCA (as defined below) (including in the case of (i) and (ii),~~**(ii) any withholding or deduction imposed pursuant to (A) Sections 1471 to 1474 of the U.S. Internal Revenue Code of 1986, as amended ("FATCA"), or any successor version thereof, or any similar legislation imposed by any other Governmental Authority, or (B) any treaty, law or regulation or other official guidance enacted by Canada implementing FATCA or any intergovernmental agreement with respect to FATCA or any similar legislation imposed by any other Governmental Authority, including, for greater certainty, the Canada-United States Enhanced Tax Information Exchange Agreement Implementation Act (Canada) and Parts XVIII and XIX of the Income Tax Act (Canada), as amended (collectively, and including FATCA, the "AEOI Legislation"); and (iii)** any interest, penalties and additions to ~~tax~~**Taxes in respect of (i) and (ii)** (all such excluded ~~taxes~~**Taxes** being hereinafter called "**Excluded Taxes**"). If any Taxes, other than Excluded Taxes, are required to be withheld from any amounts payable to a ~~recipient~~**Recipient** hereunder, the amounts so payable to the ~~recipient~~**Recipient** shall be increased, and the ~~recipient~~**Recipient** shall be entitled to be paid by the Issuer the amount of such increase to the extent necessary to yield to the ~~recipient~~**Recipient** (after payment of all such Taxes other than Excluded Taxes) interest or any such other amounts payable hereunder or thereunder at the rates or in the amounts specified hereunder. ~~Where the amount payable by the Issuer is increased in accordance with the previous sentence, the Monthly Interest and Fees shall be increased by the amount of such increase.~~ Whenever any Taxes are payable on or with respect to amounts distributed to a ~~recipient~~**Recipient**, as promptly as possible thereafter the Issuer shall send to such ~~recipient~~**Recipient** a certified copy of an original official receipt showing payment thereof.

(b) If a payment by or on account of any obligation of the Issuer hereunder would be subject to ~~U.S. federal withholding Tax imposed by provisions of Chapter 4 of the Code ("**FATCA**") if the recipient of such payment~~**withholding Taxes under any AEOI Legislation if the Recipient** were to fail to comply with the applicable reporting requirements of ~~FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such recipient~~**any AEOI Legislation, such Recipient** shall deliver to the Issuer at the time or times prescribed by law and at such time or times reasonably requested by the Issuer such documentation prescribed by applicable law ~~(including as prescribed by Section 1471(b)(3)(C)(i) of the Code)~~ and such additional documentation reasonably requested by the Issuer as may be necessary for the Issuer to comply with ~~their~~**its** obligations under ~~FATCA~~**any AEOI Legislation** and to determine that such ~~recipient~~**Recipient** has complied with ~~it's~~**its** obligations under ~~FATCA~~**any AEOI Legislation,** or to determine the amount to deduct and withhold from such payment. If any form or certification it previously delivered by a ~~recipient~~**Recipient** expires or becomes obsolete or inaccurate in any respect, the ~~recipient~~**Recipient** shall update such form or certification or promptly notify the Issuer in writing of its legal inability to do so.

(c) If a ~~recipient~~**Recipient** is legally entitled to receive a refund of any Taxes (other than Excluded Taxes) as to which it has been indemnified or with respect to which additional amounts have been paid to it hereunder or it is legally entitled to receive a credit or deduction with respect to such Taxes or with respect to such additional amounts that have been paid hereunder (in each case pursuant to Section 2.8(a)), it shall use commercially reasonable efforts to obtain or claim

such refund, credit or deduction and pay over such refund or the value of such credit or deduction to the Issuer, together with any interest thereon.

2.9 Conditions Precedent to Issuance of Series 2017-1 Senior Notes

On or prior to the initial issuance of Series 2017-1 Senior Notes hereunder, the following conditions precedent shall be satisfied:

(a) Each of the conditions precedent set forth in Section 5.01 of the Trust Indenture in respect of the incurrence of Funding Obligations under this Supplemental Indenture shall have been satisfied.

(b) The representations and warranties set forth in Section 12.01 of the Trust Indenture and Section 3.1 of this Supplemental Indenture shall be true and correct in all material respects, the Issuer shall be **in** compliance in all material respects with all of its covenants and obligations under the Program Agreements to which it is a party.

(c) The Series 2017-1 Senior Notes shall have been duly issued in accordance with the Trust Indenture and the Global Note representing the Series 2017-1 Senior Notes shall have been executed and delivered to the Depository (or as it may direct) for deposit into its [**Book-Based System**] for the benefit of the [**Beneficial Holders**] upon receipt by the Indenture Trustee of a [**Written Order**].

(d) The Series 2017-1 Senior Notes will have been rated [AAA(sp)] by DBRS and [Aaa(sp)] by Moody's.

2.10 Acceleration Events

[NTD: Add series level acceleration provisions as discussed between Oslers and Torys.]

ARTICLE 3
REPRESENTATIONS AND WARRANTIES

3.1 Representations and Warranties of the Issuer

The Issuer hereby represents and warrants to the Indenture Trustee and each Series 2017-1 Noteholder that:

(a) no Termination Event has occurred or would result from the ~~initial~~ purchase of the Issuer Investment Interest on the date hereof;

(b) the Issuer Trustee and the Issuer are not non-residents of Canada within the meaning of the *Income Tax Act* (Canada);

(c) all ~~tax~~**Tax** returns (federal, provincial and local) required to be filed with respect to the Issuer have been filed and there has been paid or adequate provision made for the payment of all material ~~taxes~~**Taxes**, assessments and other governmental charges in respect of the Issuer;

(d) the Issuer has not changed its name ~~and the Declaration of Trust has neither been amended nor rescinded other than as consented to by the holders of the Series 2017-1 Senior Notes~~;

(e) the Issuer has complied in all material respects with all laws in respect of the conduct of its business and ownership of its property including the Issuer Investment Interest; **and**

(f) ~~all information provided to the Administrative Agent and the Purchaser Groups by or on behalf of the Issuer in respect of the Issuer Investment Interest is and will be true and accurate in all material respects;~~ **to its knowledge, there is no set of circumstances existing at such time that will have an Adverse Effect or will reasonably be expected to have an Adverse Effect.**

~~(g) there has been no material adverse change in the condition (financial or otherwise), business, operations, results of operations, or the property of the Issuer; and~~

~~(h) the Issuer does not own or hold, directly or indirectly, any shares or equity security of, or any equity interest in, any Person.~~

3.2 Survival

The representations and warranties set out in this Article 3 shall survive the execution hereof.

ARTICLE 4
GENERAL

4.1 Acceptance of Trust

The Indenture Trustee accepts the trusts in this Supplemental Indenture and agrees to carry out and discharge the same upon the terms and conditions set out in this Supplemental Indenture and in accordance with the Trust Indenture.

4.2 Confirmation of Trust Indenture

The Trust Indenture, as amended and supplemented by this Supplemental Indenture, is in all respects confirmed.

4.3 Indenture Trustee Not Bound to Act

The Indenture Trustee shall retain the right not to act and shall not be liable for refusing to act if, due to a lack of information or for any other reason whatsoever, the Indenture Trustee, in its sole judgment, acting reasonably, determines that such act may cause it to be in non-compliance with any applicable anti-money laundering, anti-terrorism or economic sanction legislation, regulation or guideline. Further, should the Indenture Trustee, in its sole judgment, acting reasonably, determine at any time that its acting under this Supplemental Indenture has resulted in non-compliance with any applicable anti-money laundering, anti-terrorism or economic sanction legislation, regulation or guideline, then it shall have the right to resign pursuant to the terms of Section ● of the Trust Indenture, provided that (i) the Indenture Trustee's written notice of resignation shall describe the circumstances of such non-compliance; and (ii) if such

circumstances are rectified to the Indenture Trustee's satisfaction within 15 Business Days of the receipt of such notice of resignation, then such notice shall not be effective.

4.4 Successor and Assigns

This Supplemental Indenture shall be binding upon and inure to the benefit of the parties hereto and their respective permitted successors and assigns.

4.5 Specified Creditors

The ~~Issuer and the~~ Indenture Trustee (on behalf of the Series 2017-1 Noteholders) ~~acknowledge~~**hereby acknowledges** and ~~agree~~**agrees** that the Series 2017-1 Noteholders are Specified Creditors under the Trust Indenture and their entitlements as a Specified Creditor are subject to the provisions applicable to Specified Creditors under the Trust Indenture including, without limitation, Section ~~7.06~~**[7.11]** (Payments Held in Trust), Section **[8.12]** (Limitation on Suits), Sections **[7.04 and 8.13]** (Payment Priorities), Section ~~8.15~~**[8.14]** (Limited Recourse) and Section ~~17.01~~**[16.01]** (No Petition).

4.6 Waiver

Without limiting the requirements of Section 11.02 of the Trust Indenture, no waiver of any provision of this Supplemental Indenture or consent to any departure by the Issuer from any provision of this Supplemental Indenture will be effective (in whole or in part) unless in writing and signed by the Requisite Series 2017-1 Noteholders. Such waiver will be effective only in the specific instance, for the specific purpose and for the specific length of time for which it is given by the Requisite Series 2017-1 Noteholders.

4.7 Notice

All notices, requests, instructions and demands to or upon any party hereto to be effective shall be given in the case of the Issuer and the Indenture Trustee, in the manner set forth in Article 16 of the Trust Indenture.

4.8 No Waiver: Remedies

No failure on the part of any party to exercise, and no delay in exercising, any power, right or remedy hereunder will operate as a waiver thereof; nor will any single or partial exercise of any such power, right or remedy hereunder preclude any other or further exercise thereof or the exercise of any other power, right or remedy. The rights and remedies herein provided are cumulative and not exclusive of any remedies provided by applicable law.

4.9 Entire Agreement

This Supplemental Indenture, the Trust Indenture and the other Program Agreements contain the entire agreement between the parties relative to the subject matter hereof and supersede all prior and contemporaneous agreements, term sheets, commitments, understandings, negotiations and discussions, whether oral or written. There are no warranties, representations or other agreements between the parties in connection with the subject matter hereof except as

specifically set forth in this Supplemental Indenture, the Trust Indenture and the other Program Agreements.

4.10 Governing Law and Attornment

This Supplemental Indenture shall be governed by, and construed in accordance with, the laws of the Province of Ontario and the parties hereby attorn to the jurisdiction of the courts of Ontario.

4.11 Expenses

The Issuer agrees to pay on demand to the Indenture Trustee: (a) all reasonable costs and expenses in connection with the preparation, execution, and delivery of this Supplemental Indenture; (b) all reasonable costs and expenses in connection with any amendments of or waivers or consents under this Supplemental Indenture or the Program Agreements, including in each case the reasonable fees and out-of-pocket expenses of counsel with respect thereto, and (iii) all reasonable costs and expenses (including reasonable fees and expenses of counsel), if any, in connection with the enforcement of this Supplemental Indenture or any of the Program Agreements, and the other documents delivered thereunder or in connection therewith.

4.12 Further Assurances

Each of the parties hereto upon the request of the other party or parties hereto shall do, execute, acknowledge and deliver or cause to be done, executed acknowledged or delivered all such further acts, deeds, documents, assignments, transfers, conveyances, powers of attorney and assurances as may be reasonably necessary or desirable to effect or complete the consummation of the transactions contemplated by this Supplemental Indenture.

4.13 Limitation of Liability of Issuer Trustee

Each party hereto other than the Issuer acknowledges that the Issuer is a trust, and that ~~●~~Computershare Trust Company of Canada is the Issuer Trustee. The other parties hereto agree that the Issuer Trustee will not be subject to any liability whatsoever to them, in tort, contract or otherwise, in connection with the Issuer's assets or the trust activities, for any action taken or permitted by it to be taken, or for its failure to take any action; provided that the foregoing limitation will not apply in respect of any action or failure to act arising from or in connection with wilful misconduct, negligence or reckless disregard of a duty by the Issuer Trustee. The Issuer Trustee in doing anything or permitting anything to be done in respect of assets or the trust activities is, and shall be conclusively deemed to be, acting as trustee of the Issuer and not in any other capacity. Except as to the extent provided in this Section 4.13, the Issuer Trustee will not be subject to any debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses against or with respect to the Issuer, arising out of anything done or permitted by it to be done or its failure to take any action in respect of the Issuer's assets or the trust activities and resort will be had solely to the Collateral for the payment or performance thereof. No property or assets of the Issuer Trustee, whether owned in its personal capacity or otherwise, will be subject to levy, execution or other enforcement procedure with regard to any obligation under this Supplemental Indenture. Nothing contained in this Section 4.13 shall be construed so as to limit the liability of the Issuer under this Supplemental Indenture. This Supplemental Indenture, and every deed, transfer, assignment, agreement or

other instrument made pursuant hereto including, without limitation, the Series 2017-1 Senior Notes, made or purporting to be made by or creating an obligation of the Issuer or the Issuer Trustee on behalf of, or as trustee of, the Issuer shall be deemed and construed for all purposes as if made by the Issuer Trustee, in and only in its capacity as trustee of the Issuer. Any obligations of the Issuer Trustee hereunder or thereunder are non-recourse to the Issuer Trustee in its personal capacity.

4.14 Execution in Counterparts

This Supplemental Indenture may be executed in several counterparts, each of which when so executed shall be deemed to be an original and the counterparts together shall constitute one and the same instrument. This Supplemental Indenture may be executed and delivered by facsimile or other electronic transmission of a manually signed counterpart.

4.15 Delivery of Executed Copies

Each party acknowledges delivery of an executed copy of this Supplemental Indenture.

[signature page follows]

IN WITNESS WHEREOF the parties hereto have duly executed this ~~Trust~~Supplemental Indenture as of the date first above written.

●FAIR HYDRO **TRUST**, by ● ~~**TRUST COMPANY OF CANADA**, as Issuer Trustee~~

ONTARIO POWER GENERATION INC., not in its individual capacity but solely as Manager

By: _____
Name:
Title:

By: _____
Name:
Title:

●BNY **TRUST COMPANY OF CANADA**, as Indenture Trustee

By: _____
Name:
Title:

By: _____
Name:
Title:

~~**[NTD: Detailed signing pages to be prepared.]**~~

SCHEDULE A

DEFINITIONS

"~~Code~~AEOI Legislation" has the meaning specified in Section 2.8(a) of this Supplemental Indenture.

"**Excluded Taxes**" has the meaning specified in Section 2.8(a) of this Supplemental Indenture.

"FATCA" has the meaning specified in Section 2.8(a) of this Supplemental Indenture.

"**Government of Canada Yield**" on any date means, in respect of the Series 2017-1 Senior Notes to be redeemed, the yield from the Series 2017-1 Redemption Date to ● **[par call date]**, compounded semi-annually and calculated in accordance with generally accepted Canadian financial practice, which a non-callable Government of Canada bond would carry if issued in dollars in Canada, at 100% of its principal amount on such date with a term to maturity equal to, or if no Government of Canada bond having an equal term to maturity exists, as close as possible to, the remaining term to ● **[par call date]** (calculated from the Series 2017-1 Redemption Date) of the Series 2017-1 Senior Notes, such yield being the average of the yields provided by two major Canadian investment dealers specified by the Issuer~~;~~.

"**Interest Payment Date**" has the meaning specified in Section 2.2(l) of this Supplemental Indenture.

"**Issuer Indemnified Person**" ~~is defined~~has the meaning specified in Section 2.7.

"Recipient" has the meaning specified in Section 2.8(a) of this Supplemental Indenture.

"**Requisite Series 2017-1 Noteholders**" means Series 2017-1 Noteholders holding, in aggregate, at least **[50]**% of the Series 2017-1 Senior Notes then Outstanding.

"Series 2017-1 Canada Yield Price" means a price equal to the price of the Series 2017-1 Senior Notes calculated to provide a yield to ● [**par call date**], compounded semi-annually and calculated in accordance with generally accepted Canadian financial practice, equal to the Government of Canada Yield calculated at 10:00 a.m. (Toronto time) on the third Business Day preceding the Series 2017-1 Redemption Date specified in the notice of redemption delivered pursuant to Section ● of the Trust Indenture, plus ●%~~;~~.

"**Series 2017-1 Noteholder**" means a Person in whose name a Series 2017-1 Senior Note is registered in the Note Register.

"**Series 2017-1 Redemption Date**" ~~"~~means a date fixed for redemption of the Series 2017-1 Senior Notes pursuant to Section ● of the Trust Indenture.

"**Series 2017-1 Senior Note**" means any one of the Series 2017-1 Senior Notes, executed by the Issuer and authenticated and delivered by or on behalf of the Indenture Trustee, substantially in the form of Schedule B.

"**Supplemental Indenture**" means this Supplemental Indenture, together with the Schedules hereto, as amended, supplemented, modified, restated or replaced from time to time, together with all schedules hereto and the expressions "hereof," "herein," "hereto," "hereunder," "hereby" and similar expressions refer to this Supplemental Indenture and not to any Article, Section, paragraph, subparagraph or clause hereof.

~~"**Taxes**" has the meaning specified in Section 2.8(a) of this Supplemental Indenture.~~

"**Termination Event**" means any Event of Default or any event which with the giving of notice or the passage of time, or both, could become an Event of Default.

SCHEDULE B

[FORM OF NOTE]

SERIES 2017-1 SENIOR NOTE

●

Document comparison by Workshare Compare on November-10-17 8:33:52 PM

Input:	
Document 1 ID	file://C:\Users\bsaulnie\Desktop\Blackline Against\46490618_1.doc
Description	46490618_1
Document 2 ID	file://C:\Users\bsaulnie\AppData\Local\Temp\Workshare\wmtemp1f34\Supplemental Indenture (Long Term Senior).doc
Description	Supplemental Indenture (Long Term Senior)
Rendering set	Firm_Standard

Legend:	
Insertion	
~~Deletion~~	
~~Moved from~~	
Moved to	
Style change	
Format change	
~~Moved deletion~~	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	139
Deletions	131
Moved from	2
Moved to	2
Style change	0
Format changed	0
Total changes	274

Blackline - Supplemental Indenture (Subordinated Long Term).pdf

~~SENIOR~~SUBORDINATED SERIES [2017-1] SUPPLEMENTAL INDENTURE

between

FAIR HYDRO TRUST

by

COMPUTERSHARE TRUST COMPANY OF CANADA
as Issuer Trustee

and

BNY TRUST COMPANY OF CANADA
as Indenture Trustee

SUPPLEMENTING THE TRUST INDENTURE DATED AS OF ●, 2017

AND PROVIDING FOR THE ISSUE OF
●% ~~SENIOR~~SUBORDINATED NOTES DUE ●, SERIES 2017-1
OF FAIR HYDRO TRUST

Made as of ●, 2017

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●% ~~SENIOR~~SUBORDINATED NOTES DUE ●, SERIES 2017-1

THIS ~~SENIOR~~SUBORDINATED NOTES SUPPLEMENTAL INDENTURE (this "**Supplemental Indenture**") is made as of ●, 2017, between **Computershare Trust Company of Canada** in its capacity as trustee of **Fair Hydro Trust**, a trust existing under the laws of the Province of Ontario (the "**Issuer**") and **BNY Trust Company of Canada**, a trust company existing under the laws of Canada (the "**Indenture Trustee**").

WHEREAS pursuant to the Trust Indenture dated as of ●, 2017 between the Issuer and the Indenture Trustee (as amended or restated from time to time, the "**Trust Indenture**"), provision was made for the issuance of ~~Senior~~Subordinated Notes from time to time in one or more Series by the execution and delivery of a Supplemental Indenture;

AND WHEREAS the parties hereto are entering into this Supplemental Indenture to provide for the creation and issuance of a Series of ~~Senior~~Subordinated Notes designated as the ●% ~~Senior~~Subordinated Notes due ●, Series 2017-1 (the "**Series 2017-1 ~~Senior~~Subordinated Notes**");

AND WHEREAS the foregoing recitals are made as statements of fact by the Issuer and not by the Indenture Trustee.

NOW THEREFORE THIS SUPPLEMENTAL INDENTURE WITNESSES and it is hereby covenanted, agreed and declared as follows:

ARTICLE 1
INTERPRETATION

1.1 Definitions

(a) For all purposes of this Supplemental Indenture, except as otherwise expressly provided or unless the context otherwise requires, the terms defined in Schedule A hereto have the meanings assigned to them in Schedule A and include the plural as well as the singular.

(b) The provisions of Section 1.1 of the Trust Indenture are applicable to this Supplemental Indenture. All terms used herein which are defined in the Trust Indenture, either directly or by reference therein, have the meanings assigned to them therein.

1.2 Interpretation

Subject to the next following sentences, this Supplemental Indenture is supplemental to the Trust Indenture and the Trust Indenture shall be read in conjunction with this Supplemental Indenture and all of the provisions of the Trust Indenture shall apply to and shall have effect in connection with this Supplemental Indenture in the same manner as if all of the provisions of the Trust Indenture and of this Supplemental Indenture were contained in one instrument. This Supplemental Indenture shall, unless the context otherwise requires, be subject to the interpretative provisions contained in Article I of the Trust Indenture. If any terms of the Trust Indenture are inconsistent with the express terms or provisions hereof, the terms and provisions of the Trust Indenture shall be, solely in respect of the Series 2017-1 ~~Senior~~Subordinated Notes,

amended and supplemented so as to be consistent herewith. The provisions of this Supplemental Indenture are applicable only in respect of the Series 2017-1 ~~Senior~~Subordinated Notes and not the ~~Senior~~Subordinated Notes of any other Series.

1.3 Application of this Supplemental Indenture

With respect to the Series 2017-1 ~~Senior~~Subordinated Notes only, the terms of the Trust Indenture are amended, supplemented, modified, restated and replaced to the extent applicable by the terms of this Supplemental Indenture in respect of the Series 2017-1 ~~Senior~~Subordinated Notes in accordance with Section 1.2 above.

ARTICLE 2
SERIES 2017-1 ~~SENIOR~~SUBORDINATED NOTES

2.1 Creation of Series 2017-1 ~~Senior~~Subordinated Notes

There is hereby created a Series of ~~Senior~~Subordinated Notes to be issued pursuant to the Trust Indenture and this Supplemental Indenture designated as the "**●% ~~Senior~~Subordinated Notes due ●, Series 2017-1**."

2.2 Principal Terms

In addition to and without limiting all of the provisions of this Supplemental Indenture, the Series 2017-1 ~~Senior~~Subordinated Notes will:

(a) be designated as set out in Section 2.1;

(b) be ~~Senior~~Subordinated Notes and will not be subordinated to any other Class, Series or Tranche of Notes other than all Senior Notes;

(c) not be divided into Tranches;

(d) **[be unlimited in principal amount but initially][NTD: To be discussed]** will have an aggregate principal amount of $● to be issued on the date hereof, provided that the principal amount of the Series 2017-1 ~~Senior~~Subordinated Notes may be increased after the date hereof without the consent of any holder of Series 2017-1 ~~Senior~~Subordinated Notes or any holder of any Notes of any other Class, Series or Tranche;

(e) be denominated in Canadian dollars;

(f) not be listed on any securities exchange;

(g) be issued in the form of a Global Note; [NTD: To be confirmed.]

(h) be substantially in the form of Schedule B, with such appropriate insertions, omissions, substitutions and variations as may be approved by the Indenture Trustee;

(i) bear interest at a rate of ●% per annum;

(j) accrue interest from the later of: (i) ●, 2017 and (ii) the last Interest Payment Date on which interest has been paid or made available for payment on the Notes;

(k) have interest paid in equal semi-annual instalments **[(except the initial interest payment)]** on the Payment Dates occurring in the months of April and October in each year (each, an "**Interest Payment Date**") commencing with the Payment Date occurring in the month of [**April/October**], 2018 in respect of the Series 2017-1 ~~Senior~~**Subordinated** Notes issued prior to such date;

(l) mature on, and have ● [**NTD: select a Payment Date]**, as their sole Principal Payment Date;

(m) have ● as their Principal Payment Default Date;

(n) have ● as their Principal Accumulation Date;

(o) have the following Principal Accumulation Amounts for each Payment Date on or after their Principal Accumulation Date:

Payment Date	**Principal Accumulation Amount**
Payment Date in the months of ●	$●
Payment Date in the months of ●	$●
Payment Date in the months of ●	$●
Payment Date in the months of ●	$●
Principal Payment Date	$●

(p) have a Record Date for each Interest Payment Date that is the last day of the calendar month preceding each Interest Payment Date;

(q) **[be redeemable and subject to repurchase as provided in Section 2.6 below]**; and

(r) **[not be subject to defeasance and covenant defeasance as contemplated by Section ● of the Trust Indenture] [be subject to defeasance and covenant defeasance in accordance with Section ● of the Trust Indenture].**

2.3 Delivery

On the date of issuance of the Series 2017-1 ~~Senior~~**Subordinated** Notes, Series 2017-1 ~~Senior~~**Subordinated** Notes shall be executed, authenticated and delivered by the Issuer in accordance with Section 4.03 of the Trust Indenture.

2.4 Payment of Interest

The Issuer (except in case of payment of interest at maturity or as otherwise provided in the Trust Indenture, at which time payment of interest, less any taxes required by law to be deducted or withheld, may at the option of the Issuer be made upon presentation and surrender of the certificate representing the Series 2017-1 ~~Senior~~**Subordinated** Notes) will on each Interest Payment Date, make payment of such interest, less any taxes required by law to be deducted or withheld, by wire transfer to each holder of a Series 2017-1 ~~Senior~~**Subordinated** Note as of the Record Date. The payment by such wire transfer will satisfy and discharge the liability for interest upon such Series 2017-1 ~~Senior~~**Subordinated** Note to the extent of the sum represented thereby (plus the amount of any taxes deducted or withheld as aforesaid). Notwithstanding the foregoing, the Issuer, at its option, may cause the amount payable in respect of interest to be paid to a Noteholder in any other manner reasonably acceptable to the Indenture Trustee.

2.5 Payment of Principal

By 10:00 a.m. (Toronto time) on the Principal Payment Due Date, the Issuer will deposit with the Indenture Trustee all amounts required to be paid to the order of holders of Series 2017-1 ~~Senior~~**Subordinated** Notes on maturity on account of principal. The deposit of such funds will satisfy and discharge the liability for principal of the Series 2017-1 ~~Senior~~**Subordinated** Notes to the extent of the sum represented thereby.

2.6 [Redemption and Repurchase

[NTD: Customary redemption/repurchase mechanics to be added to Trust Indenture as per OPG MTN indenture. Redemption below contemplates a par call]

(a) At its option, at any time prior to ● **[par call date]**, the Issuer may redeem the Series 2017-1 ~~Senior~~**Subordinated** Notes in whole or, from time to time, in part, on payment of a redemption price equal to the greater of (i) the Series 2017-1 Canada Yield Price and (ii) par, together in each case with accrued and unpaid interest to the Series 2017-1 Redemption Date. At any time on or after ● **[par call date]**, the Issuer may redeem the Series 2017-1 ~~Senior~~**Subordinated** Notes in whole or, from time to time, in part, on payment of a redemption price equal to par, together with accrued and unpaid interest to the Series 2017-1 Redemption Date. The Issuer will give notice of redemption not more than 60 days and not less than 15 days before the date fixed for redemption. Less than all of the Series 2017-1 ~~Senior~~**Subordinated** Notes may be redeemed, if so redeemed, in accordance with Section ● of the Trust Indenture.

(b) The Issuer will be entitled at any time and from time to time to purchase for cancellation Series 2017-1 ~~Senior~~**Subordinated** Notes in the market (which may include purchases from or through an investment dealer or a firm holding membership on a recognized stock exchange) or by tender or by private contract at any price. Series 2017-1 ~~Senior~~**Subordinated** Notes that are so purchased will be cancelled and will not be re-issued. Less than all of the Series 2017-1 ~~Senior~~**Subordinated** Notes may be purchased, if so purchased, for cancellation in accordance with Section ● of the Trust Indenture.

(c) The Series 2017-1 ~~Senior~~**Subordinated** Notes will not be subject to repurchase pursuant to any sinking fund or any other required repayment provisions].

2.7 Indemnification by the Issuer

The Issuer agrees to indemnify and hold harmless the Indenture Trustee and each Series 2017-1 Noteholder and each of their respective officers, directors, agents and employees (each, an "**Issuer Indemnified Person**") from and against any loss, liability, expense, damage or injury suffered or sustained by such Issuer Indemnified Person by reason of (a) any acts, omissions or alleged acts or omissions arising out of, or relating to, activities of the Issuer pursuant to the Program Agreements to which it is a party; (b) a breach of any representation or warranty made or deemed made by the Issuer (or any of its officers) in any Program Agreement; or (c) a failure by the Issuer to comply with any applicable law or regulation or to perform its covenants, agreements, duties or obligations required to be performed or observed by it in accordance with the provisions of the Program Agreements, including, but not limited to, any judgment, award, settlement, reasonable attorneys' fees and other reasonable costs or expenses incurred in connection with the defense of any actual or threatened action, proceeding or claim, except to the extent such loss, liability, expense, damage or injury resulted from the gross negligence, bad faith or willful misconduct of such Issuer Indemnified Person or its officers, directors, agents, principals, employees or employers or includes any Excluded Taxes; provided that any payments made by the Issuer pursuant to this Section 2.7 shall be made solely from funds available pursuant to Section **[7.04]** or Section **[8.13]** of the Trust Indenture, shall be non-recourse other than with respect to such funds, and shall not constitute a claim against the Issuer to the extent that such funds are insufficient to make such payment.

2.8 Taxes

(a) All payments by or on account of any obligation of the Issuer hereunder shall, to the extent allowed by law, be made free and clear of, and without deduction or withholding for or on account of Taxes, excluding (i) income taxes (including branch profit taxes, minimum taxes and taxes computed under alternative methods, at least one of which is based on or measured by net income), franchise taxes (imposed in lieu of income taxes), or any other Taxes based on or measured by the net income of any person legally entitled to receive such payments (each a "**Recipient**") as a result of a present or former connection between the Recipient and the jurisdiction of the Governmental Authority imposing such Taxes (other than any such connection arising solely from the Recipient having executed, delivered or performed its obligations or received a payment under, disposed of, or enforced, this Supplemental Indenture); (ii) any withholding or deduction imposed pursuant to (A) Sections 1471 to 1474 of the U.S. Internal Revenue Code of 1986, as amended ("**FATCA**"), or any successor version thereof, or any similar legislation imposed by any other Governmental Authority, or (B) any treaty, law or regulation or other official guidance enacted by Canada implementing FATCA or any intergovernmental agreement with respect to FATCA or any similar legislation imposed by any other Governmental Authority, including, for greater certainty, the Canada-United States Enhanced Tax Information Exchange Agreement Implementation Act (Canada) and Parts XVIII and XIX of the Income Tax Act (Canada), as amended (collectively, and including FATCA, the "**AEOI Legislation**"); and (iii) any interest, penalties and additions to Taxes in respect of (i) and (ii) (all such excluded Taxes being hereinafter called "**Excluded Taxes**"). If any Taxes, other than Excluded Taxes, are required to be withheld from any amounts payable to a Recipient hereunder, the amounts so payable to the Recipient shall be increased, and the Recipient shall be entitled to be paid by the Issuer the amount of such increase to the extent necessary to yield to the Recipient (after payment

of all such Taxes other than Excluded Taxes) interest or any such other amounts payable hereunder or thereunder at the rates or in the amounts specified hereunder. Whenever any Taxes are payable on or with respect to amounts distributed to a Recipient, as promptly as possible thereafter the Issuer shall send to such Recipient a certified copy of an original official receipt showing payment thereof.

(b) If a payment by or on account of any obligation of the Issuer hereunder would be subject to withholding Taxes under any AEOI Legislation if the Recipient were to fail to comply with the applicable reporting requirements of any AEOI Legislation, such Recipient shall deliver to the Issuer at the time or times prescribed by law and at such time or times reasonably requested by the Issuer such documentation prescribed by applicable law and such additional documentation reasonably requested by the Issuer as may be necessary for the Issuer to comply with its obligations under any AEOI Legislation and to determine that such Recipient has complied with its obligations under any AEOI Legislation, or to determine the amount to deduct and withhold from such payment. If any form or certification it previously delivered by a Recipient expires or becomes obsolete or inaccurate in any respect, the Recipient shall update such form or certification or promptly notify the Issuer in writing of its legal inability to do so.

(c) If a Recipient is legally entitled to receive a refund of any Taxes (other than Excluded Taxes) as to which it has been indemnified or with respect to which additional amounts have been paid to it hereunder or it is legally entitled to receive a credit or deduction with respect to such Taxes or with respect to such additional amounts that have been paid hereunder (in each case pursuant to Section 2.8(a)), it shall use commercially reasonable efforts to obtain or claim such refund, credit or deduction and pay over such refund or the value of such credit or deduction to the Issuer, together with any interest thereon.

2.9 Conditions Precedent to Issuance of Series 2017-1 ~~Senior~~Subordinated Notes

On or prior to the initial issuance of Series 2017-1 ~~Senior~~**Subordinated** Notes hereunder, the following conditions precedent shall be satisfied:

(a) Each of the conditions precedent set forth in Section 5.01 of the Trust Indenture in respect of the incurrence of Funding Obligations under this Supplemental Indenture shall have been satisfied.

(b) The representations and warranties set forth in Section 12.01 of the Trust Indenture and Section 3.1 of this Supplemental Indenture shall be true and correct in all material respects, the Issuer shall be in compliance in all material respects with all of its covenants and obligations under the Program Agreements to which it is a party.

(c) The Series 2017-1 ~~Senior~~**Subordinated** Notes shall have been duly issued in accordance with the Trust Indenture and the Global Note representing the Series 2017-1 ~~Senior~~**Subordinated** Notes shall have been executed and delivered to the Depository (or as it may direct) for deposit into its [**Book-Based System**] for the benefit of the [**Beneficial Holders**] upon receipt by the Indenture Trustee of a [**Written Order**]. **[NTD: To be confirmed.]**

~~(d) The Series 2017-1 Senior Notes will have been rated **[AAA(sp)]** by DBRS and **[Aaa(sp)]** by Moody's.~~

2.10 Acceleration Events

[NTD: Add series level acceleration provisions as discussed between Oslers and Torys.]

ARTICLE 3
REPRESENTATIONS AND WARRANTIES

3.1 Representations and Warranties of the Issuer

The Issuer hereby represents and warrants to the Indenture Trustee and each Series 2017-1 Noteholder that:

(a) no Termination Event has occurred or would result from the purchase of the Issuer Investment Interest on the date hereof;

(b) the Issuer Trustee and the Issuer are not non-residents of Canada within the meaning of the *Income Tax Act* (Canada);

(c) all Tax returns (federal, provincial and local) required to be filed with respect to the Issuer have been filed and there has been paid or adequate provision made for the payment of all material Taxes, assessments and other governmental charges in respect of the Issuer;

(d) the Issuer has not changed its name;

(e) the Issuer has complied in all material respects with all laws in respect of the conduct of its business and ownership of its property including the Issuer Investment Interest; and

(f) to its knowledge, there is no set of circumstances existing at such time that will have an Adverse Effect or will reasonably be expected to have an Adverse Effect.

3.2 Survival

The representations and warranties set out in this Article 3 shall survive the execution hereof.

ARTICLE 4
GENERAL

4.1 Acceptance of Trust

The Indenture Trustee accepts the trusts in this Supplemental Indenture and agrees to carry out and discharge the same upon the terms and conditions set out in this Supplemental Indenture and in accordance with the Trust Indenture.

4.2 Confirmation of Trust Indenture

The Trust Indenture, as amended and supplemented by this Supplemental Indenture, is in all respects confirmed.

4.3 Indenture Trustee Not Bound to Act

The Indenture Trustee shall retain the right not to act and shall not be liable for refusing to act if, due to a lack of information or for any other reason whatsoever, the Indenture Trustee, in its sole judgment, acting reasonably, determines that such act may cause it to be in non-compliance with any applicable anti-money laundering, anti-terrorism or economic sanction legislation, regulation or guideline. Further, should the Indenture Trustee, in its sole judgment, acting reasonably, determine at any time that its acting under this Supplemental Indenture has resulted in non-compliance with any applicable anti-money laundering, anti-terrorism or economic sanction legislation, regulation or guideline, then it shall have the right to resign pursuant to the terms of Section ● of the Trust Indenture, provided that (i) the Indenture Trustee's written notice of resignation shall describe the circumstances of such non-compliance; and (ii) if such circumstances are rectified to the Indenture Trustee's satisfaction within 15 Business Days of the receipt of such notice of resignation, then such notice shall not be effective.

4.4 Successor and Assigns

This Supplemental Indenture shall be binding upon and inure to the benefit of the parties hereto and their respective permitted successors and assigns.

4.5 Specified Creditors

The Indenture Trustee (on behalf of the Series 2017-1 Noteholders) hereby acknowledges and agrees that the Series 2017-1 Noteholders are Specified Creditors under the Trust Indenture and their entitlements as a Specified Creditor are subject to the provisions applicable to Specified Creditors under the Trust Indenture including, without limitation, Section **[7.11]** (Payments Held in Trust), Section **[8.12]** (Limitation on Suits), Sections **[7.04 and 8.13]** (Payment Priorities), Section **[8.14]** (Limited Recourse) and Section **[16.01]** (No Petition).

4.6 Waiver

Without limiting the requirements of Section 11.02 of the Trust Indenture, no waiver of any provision of this Supplemental Indenture or consent to any departure by the Issuer from any provision of this Supplemental Indenture will be effective (in whole or in part) unless in writing and signed by the Requisite Series 2017-1 Noteholders. Such waiver will be effective only in the specific instance, for the specific purpose and for the specific length of time for which it is given by the Requisite Series 2017-1 Noteholders.

4.7 Notice

All notices, requests, instructions and demands to or upon any party hereto to be effective shall be given in the case of the Issuer and the Indenture Trustee, in the manner set forth in Article 16 of the Trust Indenture.

4.8 No Waiver: Remedies

No failure on the part of any party to exercise, and no delay in exercising, any power, right or remedy hereunder will operate as a waiver thereof; nor will any single or partial exercise of any

such power, right or remedy hereunder preclude any other or further exercise thereof or the exercise of any other power, right or remedy. The rights and remedies herein provided are cumulative and not exclusive of any remedies provided by applicable law.

4.9 Entire Agreement

This Supplemental Indenture, the Trust Indenture and the other Program Agreements contain the entire agreement between the parties relative to the subject matter hereof and supersede all prior and contemporaneous agreements, term sheets, commitments, understandings, negotiations and discussions, whether oral or written. There are no warranties, representations or other agreements between the parties in connection with the subject matter hereof except as specifically set forth in this Supplemental Indenture, the Trust Indenture and the other Program Agreements.

4.10 Governing Law and Attornment

This Supplemental Indenture shall be governed by, and construed in accordance with, the laws of the Province of Ontario and the parties hereby attorn to the jurisdiction of the courts of Ontario.

4.11 Expenses

The Issuer agrees to pay on demand to the Indenture Trustee: (a) all reasonable costs and expenses in connection with the preparation, execution, and delivery of this Supplemental Indenture; (b) all reasonable costs and expenses in connection with any amendments of or waivers or consents under this Supplemental Indenture or the Program Agreements, including in each case the reasonable fees and out-of-pocket expenses of counsel with respect thereto, and (iii) all reasonable costs and expenses (including reasonable fees and expenses of counsel), if any, in connection with the enforcement of this Supplemental Indenture or any of the Program Agreements, and the other documents delivered thereunder or in connection therewith.

4.12 Further Assurances

Each of the parties hereto upon the request of the other party or parties hereto shall do, execute, acknowledge and deliver or cause to be done, executed acknowledged or delivered all such further acts, deeds, documents, assignments, transfers, conveyances, powers of attorney and assurances as may be reasonably necessary or desirable to effect or complete the consummation of the transactions contemplated by this Supplemental Indenture.

4.13 Limitation of Liability of Issuer Trustee

Each party hereto other than the Issuer acknowledges that the Issuer is a trust, and that Computershare Trust Company of Canada is the Issuer Trustee. The other parties hereto agree that the Issuer Trustee will not be subject to any liability whatsoever to them, in tort, contract or otherwise, in connection with the Issuer's assets or the trust activities, for any action taken or permitted by it to be taken, or for its failure to take any action; provided that the foregoing limitation will not apply in respect of any action or failure to act arising from or in connection with wilful misconduct, negligence or reckless disregard of a duty by the Issuer Trustee. The Issuer Trustee in doing anything or permitting anything to be done in respect of assets or the trust

activities is, and shall be conclusively deemed to be, acting as trustee of the Issuer and not in any other capacity. Except as to the extent provided in this Section 4.13, the Issuer Trustee will not be subject to any debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses against or with respect to the Issuer, arising out of anything done or permitted by it to be done or its failure to take any action in respect of the Issuer's assets or the trust activities and resort will be had solely to the Collateral for the payment or performance thereof. No property or assets of the Issuer Trustee, whether owned in its personal capacity or otherwise, will be subject to levy, execution or other enforcement procedure with regard to any obligation under this Supplemental Indenture. Nothing contained in this Section 4.13 shall be construed so as to limit the liability of the Issuer under this Supplemental Indenture. This Supplemental Indenture, and every deed, transfer, assignment, agreement or other instrument made pursuant hereto including, without limitation, the Series 2017-1 ~~Senior~~**Subordinated** Notes, made or purporting to be made by or creating an obligation of the Issuer or the Issuer Trustee on behalf of, or as trustee of, the Issuer shall be deemed and construed for all purposes as if made by the Issuer Trustee, in and only in its capacity as trustee of the Issuer. Any obligations of the Issuer Trustee hereunder or thereunder are non-recourse to the Issuer Trustee in its personal capacity.

4.14 Execution in Counterparts

This Supplemental Indenture may be executed in several counterparts, each of which when so executed shall be deemed to be an original and the counterparts together shall constitute one and the same instrument. This Supplemental Indenture may be executed and delivered by facsimile or other electronic transmission of a manually signed counterpart.

4.15 Delivery of Executed Copies

Each party acknowledges delivery of an executed copy of this Supplemental Indenture.

[signature page follows]

IN WITNESS WHEREOF the parties hereto have duly executed this Supplemental Indenture as of the date first above written.

FAIR HYDRO TRUST, by

ONTARIO POWER GENERATION INC.,
not in its individual capacity but solely as
Manager

By: _____
Name:
Title:

By: _____
Name:
Title:

BNY TRUST COMPANY OF CANADA, as
Indenture Trustee

By: _____
Name:
Title:

By: _____
Name:
Title:

SCHEDULE A

DEFINITIONS

"**AEOI Legislation**" has the meaning specified in Section 2.8(a) of this Supplemental Indenture.

"**Excluded Taxes**" has the meaning specified in Section 2.8(a) of this Supplemental Indenture.

"**FATCA**" has the meaning specified in Section 2.8(a) of this Supplemental Indenture.

"**Government of Canada Yield**" on any date means, in respect of the Series 2017-1 ~~Senior~~Subordinated Notes to be redeemed, the yield from the Series 2017-1 Redemption Date to ● **[par call date]**, compounded semi-annually and calculated in accordance with generally accepted Canadian financial practice, which a non-callable Government of Canada bond would carry if issued in dollars in Canada, at 100% of its principal amount on such date with a term to maturity equal to, or if no Government of Canada bond having an equal term to maturity exists, as close as possible to, the remaining term to ● **[par call date]** (calculated from the Series 2017-1 Redemption Date) of the Series 2017-1 ~~Senior~~Subordinated Notes, such yield being the average of the yields provided by two major Canadian investment dealers specified by the Issuer.

"**Interest Payment Date**" has the meaning specified in Section 2.2(l) of this Supplemental Indenture.

"**Issuer Indemnified Person**" has the meaning specified in Section 2.7.

"**Recipient**" has the meaning specified in Section 2.8(a) of this Supplemental Indenture.

"**Requisite Series 2017-1 Noteholders**" means Series 2017-1 Noteholders holding, in aggregate, at least **[50]**% of the Series 2017-1 ~~Senior~~Subordinated Notes then Outstanding.

"Series 2017-1 Canada Yield Price" means a price equal to the price of the Series 2017-1 ~~Senior~~Subordinated Notes calculated to provide a yield to ● [**par call date**], compounded semi-annually and calculated in accordance with generally accepted Canadian financial practice, equal to the Government of Canada Yield calculated at 10:00 a.m. (Toronto time) on the third Business Day preceding the Series 2017-1 Redemption Date specified in the notice of redemption delivered pursuant to Section ● of the Trust Indenture, plus ●%.

"**Series 2017-1 Noteholder**" means a Person in whose name a Series 2017-1 ~~Senior~~Subordinated Note is registered in the Note Register.

"**Series 2017-1 Redemption Date**" means a date fixed for redemption of the Series 2017-1 ~~Senior~~Subordinated Notes pursuant to Section ● of the Trust Indenture.

"**Series 2017-1 ~~Senior~~Subordinated Note**" means any one of the Series 2017-1 ~~Senior~~Subordinated Notes, executed by the Issuer and authenticated and delivered by or on behalf of the Indenture Trustee, substantially in the form of Schedule B.

"**Supplemental Indenture**" means this Supplemental Indenture, together with the Schedules hereto, as amended, supplemented, modified, restated or replaced from time to time, together with all schedules hereto and the expressions "hereof," "herein," "hereto," "hereunder," "hereby" and similar expressions refer to this Supplemental Indenture and not to any Article, Section, paragraph, subparagraph or clause hereof.

"**Termination Event**" means any Event of Default or any event which with the giving of notice or the passage of time, or both, could become an Event of Default.

SCHEDULE B

[FORM OF NOTE]

SERIES 2017-1 ~~SENIOR~~SUBORDINATED NOTE

●

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Document 2 ID	file://C:\Users\bsaulnie\Desktop\Blackline to\Supplemental Indenture (Long Term Subordinated).doc
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Rendering set	Firm_Standard

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Insertion	
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Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	70
Deletions	74
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	144

Blackline - Supplemental Indenture (Short Term Senior).pdf

SENIOR SERIES 2017-1

SUPPLEMENTAL INDENTURE

between

FAIR HYDRO TRUST

by

COMPUTERSHARE TRUST COMPANY OF CANADA
as Issuer Trustee

and

BNY TRUST COMPANY OF CANADA
as Indenture Trustee

and

●
as Administrative Agent

and

CERTAIN CP CONDUIT PURCHASERS,
CERTAIN NON-CONDUIT PURCHASERS
CERTAIN FUNDING AGENTS
and CERTAIN GROUP BANKS

Made as of ●, 2017

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FLOATING RATE VARIABLE FUNDING, SERIES 2017-1 SENIOR NOTES

SUPPLEMENTAL INDENTURE made as of ●, 2017, between **Computershare Trust Company of Canada**, a trust company established under the laws of Canada (the "**Issuer Trustee**"), in its capacity as trustee of **Fair Hydro Trust**, a trust existing under the laws of the Province of Ontario (in such capacity, the "**Issuer**"), **BNY Trust Company of Canada**, a trust company established under the laws of Canada (the "**Indenture Trustee**"), ●, in its capacity as the administrative agent for the Purchaser Groups (the "**Administrative Agent**"), the **Non-Conduit Purchasers** from time to time party hereto, the **CP Conduit Purchasers** from time to time party hereto, and the **Funding Agents** for the CP Conduit Purchaser Groups from time to time party hereto.

WHEREAS pursuant to the Trust Indenture, provision was made for the issuance of Notes from time to time;

AND WHEREAS pursuant to the Trust Indenture, Notes may be issued in one or more Series by the execution and delivery of a Supplemental Indenture;

AND WHEREAS the parties hereto are entering into this Supplemental Indenture to provide for the creation and issuance of the Series 2017-1 Senior Notes;

NOW THEREFORE THIS SUPPLEMENTAL INDENTURE WITNESSES and it is hereby covenanted, agreed and declared as follows:

ARTICLE 1
INTERPRETATION

1.1 Definitions

(a) For all purposes of this Supplemental Indenture, except as otherwise expressly provided or unless the context otherwise requires, the terms defined in Schedule A hereto have the meanings assigned to them in Schedule A and include the plural as well as the singular.

(b) The provisions of Section 1.1 of the Trust Indenture are applicable to this Supplemental Indenture. Except as otherwise expressly provided or unless the context otherwise requires, all terms used herein which are defined in the Trust Indenture, either directly or by reference therein, have the meanings assigned to them in the Trust Indenture.

1.2 Interpretation

Subject to the next following sentences, this Supplemental Indenture is supplemental to the Trust Indenture and the Trust Indenture shall be read in conjunction with this Supplemental Indenture and all of the provisions of the Trust Indenture shall apply to and shall have effect in connection with this Supplemental Indenture in the same manner as if all of the provisions of the Trust Indenture and of this Supplemental Indenture were contained in one instrument. This Supplemental Indenture shall, unless the context otherwise requires, be subject to the interpretative provisions contained in Article 1 of the Trust Indenture. If any terms of the Trust Indenture are inconsistent with the express terms or provisions hereof, the terms and provisions

of the Trust Indenture shall be, solely in respect of the Series 2017-1 Senior Notes, amended and supplemented so as to be consistent herewith. The provisions of this Supplemental Indenture are applicable only in respect of the Series 2017-1 Senior Notes and not the Notes of any other Series.

1.3 Application of this Supplemental Indenture

With respect to the Series 2017-1 Senior Notes only, the terms of the Trust Indenture are amended, supplemented, modified, restated and replaced to the extent applicable by the terms of this Supplemental Indenture in respect of the Series 2017-1 Senior Notes in accordance with Section 1.2 above.

ARTICLE 2
PRINCIPAL TERMS

2.1 Creation of Series 2017-1 Senior Notes

There is hereby created a Series of Notes to be issued pursuant to the Trust Indenture and this Supplemental Indenture designated as the "**Floating Rate Variable Funding Senior Notes, Series 2017-1**."

2.2 Principal Terms

In addition to and without limiting any of the provisions of this Supplemental Indenture, the Series 2017-1 Senior Notes:

(a) will be designated as set out in Section 2.1;

(b) will be Senior Notes;

(c) will have a Stated Principal Amount equal to the Series 2017-1 Maximum Principal Amount;

(d) will not be issued in Classes or Tranches;

(e) will be denominated in Canadian dollars;

(f) will not be listed on any securities exchange;

(g) will have an Initial Dollar Principal Amount equal to the Series 2017-1 Initial Principal Amount;

(h) will be issued as definitive notes and will not be in the form of a Global Note;

(i) will be issued as Registered Notes and will be without coupons;

(j) will be Senior Notes and will not be subordinated to any other Series, Class or Tranche of Notes;

(k) will be substantially in the form of Schedule B, with such appropriate insertions, omissions, substitutions and variations as may be approved by the Issuer;

(l) will have each Payment Date as an Interest Payment Date;

(m) will have a Principal Payment Due Date that is the Series 2017-1 Principal Payment Due Date;

(n) will have a Principal Payment Default Date that is the Series 2017-1 Principal Payment Default Date; and

(o) will have no minimum issue amount.

ARTICLE 3
NOTE PURCHASE FACILITY

3.1 Purchase of Notes by the Purchasers

(a) ***Initial Purchases***. Subject to the terms and conditions of this Supplemental Indenture, including delivery of notice in accordance with Section 3.3, (i) each Non-Conduit Purchaser shall purchase, and each CP Conduit Purchaser may, in its sole discretion, purchase a Series 2017-1 Senior Note in an amount equal to all or a portion of its Commitment Percentage of the Series 2017-1 Initial Principal Amount on any Business Day during the period from the date hereof to and including **[December 15, 2017]**, and if any such CP Conduit Purchaser shall have notified the Administrative Agent and the Funding Agent with respect to such CP Conduit Purchaser that it has elected not to fund a Series 2017-1 Senior Note in an amount equal to its Commitment Percentage of the Series 2017-1 Initial Principal Amount on the Closing Date, the Group Bank with respect to such CP Conduit Purchaser shall fund on the Closing Date that portion of such Series 2017-1 Senior Note not to be funded by such CP Conduit Purchaser; and (ii) thereafter, (A) each Non-Conduit Purchaser shall maintain its Series 2017-1 Senior Note, subject to increase or decrease during the period from the Closing Date to and including the Commitment Expiry Date, in accordance with the provisions of this Supplemental Indenture, (B) if a CP Conduit Purchaser shall have purchased a Series 2017-1 Senior Note on the Closing Date, such CP Conduit Purchaser may, in its sole discretion, maintain its Series 2017-1 Senior Note, subject to increase or decrease during the period from the Closing Date to and including the Commitment Expiry Date, in accordance with the provisions of this Supplemental Indenture, and (C) the Group Bank shall maintain its Series 2017-1 Senior Note with respect to its Related Purchaser Group, subject to increase or decrease during the period from the Closing Date to and including the Commitment Expiry Date, in accordance with the provisions of this Supplemental Indenture. Payments by the Non-Conduit Purchasers, the CP Conduit Purchasers and/or the Group Bank with respect to the CP Conduit Purchasers shall be made in immediately available funds on the Closing Date in accordance with Section 3.3(d).

(b) ***Maximum Purchaser Group Principal Amounts***. Notwithstanding anything to the contrary contained in this Supplemental Indenture, at no time shall a Purchaser Group be required to make the initial purchase of a Series 2017-1 Senior Note or increase its Purchaser Group Principal Amount if the sum of (x) Purchaser Group Principal Amount with respect to such Purchaser Group, after giving effect to such purchase or increase, and (y) the sum of any

unfunded Delayed Amounts with respect to such Purchaser Group, would exceed the Maximum Purchaser Group Principal Amount with respect to such Purchaser Group at such time.

3.2 Delivery

(a) On the Closing Date (or on any later date that any Purchaser Group becomes a party to this Supplemental Indenture), Series 2017-1 Senior Notes shall be executed, authenticated and delivered by the Issuer in accordance with Section 4.03 of the Trust Indenture (i) in the case of a CP Conduit Purchaser Group, in the name of the Funding Agent with respect to such CP Conduit Purchaser Group (or as otherwise requested by such CP Conduit Purchaser Group and agreed to by the Issuer) in an amount equal to the Maximum Purchaser Group Principal Amount with respect to such CP Conduit Purchaser Group and delivered to such Funding Agent; or (ii) in the case of a Non-Conduit Purchaser Group, in the name of the Related Non-Conduit Purchaser in an amount equal to the Maximum Purchaser Group Principal Amount with respect to such Related Non-Conduit Purchaser Group and delivered to such Related Non-Conduit Purchaser.

(b) The Administrative Agent shall maintain a record of the actual Purchaser Group Principal Amount outstanding with respect to each Purchaser Group and the actual Series 2017-1 Principal Amount outstanding on any date of determination, which, absent manifest error, shall constitute prima facie evidence of the outstanding Purchaser Group Principal Amounts and outstanding Series 2017-1 Principal Amount from time to time. Upon a written request from the Indenture Trustee, the Administrative Agent shall provide in writing the identity of the Purchaser Groups, the related Funding Agents for each CP Conduit Purchaser Group, the Purchaser Group Principal Amount for each Purchaser Group and the Commitment Percentage with respect to such Purchaser Group to the Indenture Trustee.

3.3 Procedure for Initial Issuance and for Increasing the Series 2017-1 Principal Amount

(a) (i) On any Business Day prior to [**December 15, 2017**], in the case of a Non-Conduit Purchaser Group, the Related Non-Conduit Purchaser hereby agrees, or in the case of a CP Conduit Purchaser Group, the CP Conduit Purchaser in such CP Conduit Purchaser Group may agree, in its sole discretion, and the Group Bank with respect to such CP Conduit Purchaser hereby agrees, that it will purchase a Series 2017-1 Senior Note for an initial purchase price equal to the Commitment Percentage with respect to such Purchaser Group of the Series 2017-1 Initial Principal Amount upon the request of the Issuer (the date on which the initial purchase occurs being referred to as the "**Closing Date**"); provided, however, that the Issuer shall have given the Administrative Agent (with a copy to the Indenture Trustee) irrevocable written notice (effective upon receipt), by email communication, substantially in the form of Schedule C no later than **[3:00 p.m.]** (Toronto time) on the third Business Day prior to the Closing Date. The written notice of the initial purchase of the Series 2017-1 Senior Notes shall state (x) the Closing Date, and (y) the initial total purchase price to be paid for the Series 2017-1 Senior Notes (the "**Series 2017-1 Initial Principal Amount**"); and (ii) subject to Section 3.3(e), on any Business Day during the period from the initial purchase of the Series 2017-1 Senior Notes hereunder to and including the Commitment Expiry Date, in the case of a Non-Conduit Purchaser Group, the Related Non-Conduit Purchaser hereby agrees, or in the case of a CP Conduit Purchaser Group, the CP Conduit Purchaser in such CP Conduit Purchaser Group may agree, in its sole discretion, and the Group Bank with respect to such CP Conduit Purchaser hereby agrees that the Purchaser Group Principal Amount with respect to such Purchaser Group may be increased by an amount

equal to the Commitment Percentage with respect to such Purchaser Group of the Increase Amount (an "**Increase**"), upon the request of the Issuer (each date on which an increase in the Series 2017-1 Principal Amount occurs hereunder being herein referred to as the "**Increase Date**" applicable to such Increase); provided, however, that the Issuer shall have given the Administrative Agent (with a copy to the Indenture Trustee) irrevocable (other than as specified in Section 3.3(e)) written notice (effective upon receipt), by email communication, substantially in the form of Schedule C (an "**Increase Notice**") no later than **[3:00 p.m.]** (Toronto time) on (A) with respect to a Deferrable Increase Notice, the third Business Day prior to such Increase Date, or (B) with respect to a Non-Deferrable Increase Notice, the second Business Day prior to such Increase Date. Each Increase Notice shall state (x) the Increase Date, (y) the proposed amount of the increase in the Series 2017-1 Principal Amount (an "**Increase Amount**"), (z) whether a Delayed Funding Notice may be delivered in connection with such Increase pursuant to Section 3.3(e) and whether the Increase is to fund a Transfer (a "**Transfer Increase**") or is in respect of a Refinancing (a "**Refinancing Increase**"). The Commitment Percentage with respect to any Purchaser Group of the Increase Amount set forth in any Non-Deferrable Increase Notice shall not exceed such Purchaser Group's Non-Deferrable Draw Amount as of the related Increase Date.

(b) If a CP Conduit Purchaser elects not to fund the full amount of its Commitment Percentage of a requested Increase, such CP Conduit Purchaser shall notify the Administrative Agent and the Funding Agent with respect to such CP Conduit Purchaser, and the Group Bank with respect to such CP Conduit Purchaser shall fund the portion of the Commitment Percentage with respect to such Related Purchaser Group of such Increase not funded by such CP Conduit Purchaser.

(c) No Purchaser Group shall be required to increase its Purchaser Group Principal Amount on any Increase Date hereunder unless:

(i) such Purchaser Group's Commitment Percentage of such Increase Amount is (A) equal to ~~$[~~1,000,000~~]~~ or more, or (B) if less than ~~$[1,000,000],~~**1,000,000,** the difference between the Maximum Purchaser Group Principal Amount with respect to such Purchaser Group and the Purchaser Group Principal Amount with respect to such Purchaser Group; and

(ii) after giving effect to such Increase Amount, the sum of the (x) the Purchaser Group Principal Amount, and (y) any unfunded Delayed Amounts with respect to such Purchaser Group would not exceed the Maximum Purchaser Group Principal Amount with respect to such Purchaser Group;

(d) Upon receipt of any notice required by Section 3.3(a) or permitted by Section 3.3(e) from the Issuer, the Administrative Agent shall forward (by email communication) a copy of such notice to each Non-Conduit Purchaser and the Funding Agent with respect to each CP Conduit Purchaser Group (or, with respect to any notice pursuant to Section 3.3(e) requiring a Delayed Funding Purchaser Group to decrease its Delayed Amount, the applicable Non-Conduit Purchaser or Funding Agent), no later than **[5:00 p.m.]** (Toronto time) on the Business Day received. After receipt by any Funding Agent with respect to a CP Conduit Purchaser Group of such notice from the Administrative Agent, such Funding Agent shall, so long as the conditions set forth in Sections 3.3(a) and (c) and Article 4 are satisfied, promptly provide notice by email communication to the related CP Conduit Purchaser and the related Group Bank, of the Increase

Date and of such CP Conduit Purchaser Group's Commitment Percentage of the Closing Date or Increase Amount, as applicable. Subject to Section 3.3(e), if such CP Conduit Purchaser elects to fund all or a portion of its Commitment Percentage of the Series 2017-1 Initial Principal Amount or the Increase Amount, as applicable, such CP Conduit Purchaser shall pay in immediately available funds its Commitment Percentage (or any portion thereof) of the amount of the Series 2017-1 Initial Principal Amount or Increase Amount, as applicable, on the Closing Date or the related Increase Date, as applicable, to the Funding Agent with respect to such CP Conduit Purchaser Group for remittance to the Issuer for application in accordance with Section 3.3(h). Subject to Section 3.3(e), if such CP Conduit Purchaser does not fund the full amount of the Commitment Percentage of such CP Conduit Purchaser Group of the Series 2017-1 Initial Principal Amount or an Increase Amount, as applicable, and the related Group Bank is required to fund the portion thereof not funded by the CP Conduit Purchaser, such Group Bank shall pay in immediately available funds such portion on the Closing Date or the related Increase Date, as applicable, to the Funding Agent with respect to such CP Conduit Purchaser Group. Each Funding Agent shall remit the amounts received by it from its CP Conduit Purchaser or the related Group Bank pursuant to this Section 3.3(d) to the Issuer for application in accordance with Section 3.3(h). Subject to Section 3.3(e), so long as the conditions set forth in Sections 3.3(a) and (c) and Article 4 are satisfied, each Non-Conduit Purchaser shall pay in immediately available funds the Commitment Percentage of such Non-Conduit Purchaser of the amount of the Series 2017-1 Initial Principal Amount or Increase Amount, as applicable, on the Closing Date or the Increase Date, as applicable, to the Issuer for application in accordance with Section 3.3(h).

(e) Notwithstanding any of the foregoing, any Group Bank or Non-Conduit Purchaser who shall have previously notified the Issuer in writing that it or any related Program Support Provider may, in the absence of the Group Bank or Non-Conduit Purchaser having the ability to deliver Delayed Funding Notices hereunder, incur charges under, or in anticipation of, Basel III (which may include external charges incurred by the Group Bank, Non-Conduit Purchaser or Program Support Provider or internal charges incurred by any of their businesses) in respect of its Commitment hereunder or any agreement to support such Commitment, or in respect of its interest in the Series 2017-1 Senior Notes, based on its "liquidity coverage ratio" calculated under Basel III, may, upon receipt of any Deferrable Increase Notice pursuant to Section 3.3(a), notify the Issuer in writing (a "**Delayed Funding Notice**") on or prior to **[12:00 noon]** (Toronto time) on the second Business Day preceding the related Increase Date, of its intent to fund an amount up to its Commitment Percentage of the related Increase Amount (such amount, subject to any adjustment described below, the "**Delayed Amount**") on a Business Day that is on or before the thirty-third (33rd) day following the Increase Date specified in such Deferrable Increase Notice (the "**Delayed Funding Date**") rather than on such Increase Date. If any Group Bank or Non-Conduit Purchaser provides a Delayed Funding Notice to the Issuer following the Issuer's delivery of an Increase Notice pursuant to Section 3.3(a), the Issuer may with written notice to the Administrative Agent delivered prior to 3:00 pm on the second Business Day preceding such Increase Date, (x) decrease the Increase Amount with respect to such Deferrable Increase Notice (or revoke such Deferrable Increase Notice by decreasing the Increase Amount to zero), and/or (y) require any Group Bank or Non-Conduit Purchaser who has provided a Delayed Funding Notice to reduce the Delayed Amount with respect to such Increase by an amount no greater than the Non-Deferrable Draw Amount with respect to such Purchaser Group as of the related Increase Date. In the event that the Increase Amount with respect to such Deferrable Increase Notice is reduced, but not to zero, then any Delayed Amount with respect to any Purchaser Group shall be reduced on a pro rata basis unless otherwise specified by the Issuer

pursuant to clause (y) above. No Purchaser Group that has provided a Delayed Funding Notice in respect of an Increase (each a "**Delayed Funding Purchaser Group**") shall be considered to be in default of its obligation to fund its Delayed Amount pursuant to this Section 3.3 unless and until it has failed to fund the Delayed Amount (and/or the Delayed Funding Reimbursement Amount with respect to such Delayed Amount) on or before the Delayed Funding Date. ~~[NTD: the definition of "Non-Deferrable Draw Amount" includes a percentage (currently [10]%) that represents the amount that cannot be deferred by the dealers. OPG should make a proposal as to this percentage.]~~

(f) If (i) one or more Delayed Funding Purchaser Groups provides a Delayed Funding Notice to the Issuer in respect of any Increase Date; and (ii) the Issuer shall not have decreased the related Increase Amount to zero or required each such Delayed Funding Purchaser Group to reduce the Delayed Amount with respect to such Increase to zero, in each case, pursuant to Section 3.3(e), the Administrative Agent shall, by no later than **[12:00 noon]** (Toronto time) on the Business Day preceding such Increase Date, direct each Purchaser Group that is not a Delayed Funding Purchaser Group with respect to such Increase Date (each a "**Non-Delayed Funding Purchaser Group**") to fund an additional portion of such Increase Amount on such Increase Date equal to such Non-Delayed Funding Purchaser Group's proportionate share (based upon the Maximum Purchaser Group Principal Amount with respect to such Non-Delayed Funding Purchaser Group relative to the sum of the Maximum Purchaser Group Principal Amounts with respect to all Non-Delayed Funding Purchaser Groups) of the aggregate Delayed Amounts with respect to such Increase Date; provided that no Non-Delayed Funding Purchaser Group shall be required to fund any portion of the aggregate Delayed Amounts that would cause its Purchaser Group Principal Amount to exceed its Maximum Purchaser Group Principal Amount. Subject to Section 3.3(a), in the case of a Non-Delayed Funding Purchaser Group that is a Non-Conduit Purchaser, such Non-Conduit Purchaser hereby agrees, or, in the case of a Non-Delayed Funding Purchaser Group that is a CP Conduit Purchaser Group, the CP Conduit in such CP Conduit Purchaser Group may agree, in its sole discretion, and the Group Bank in such CP Conduit Purchaser Group hereby agrees, to fund such portion of the Increase Amount on such Increase Date.

(g) After the Non-Delayed Funding Purchaser Groups fund a Delayed Amount on any Increase Date in accordance with Section 3.3(f), the Delayed Funding Purchaser Group in respect of such Delayed Amount will be obligated to fund the Delayed Funding Reimbursement Amount with respect to such Delayed Amount on or before its Delayed Funding Date, irrespective of whether the Scheduled Commitment Expiry Date shall have occurred on or prior to such Delayed Funding Date or the Issuer would be able to satisfy the conditions set forth in Section 3.3(c) to an Increase in an amount equal to such Delayed Funding Reimbursement Amount on such Delayed Funding Date. Such Delayed Funding Purchaser Group shall fund such Delayed Funding Reimbursement Amount on such Delayed Funding Date by paying such amount to the Administrative Agent in immediately available funds, and the Administrative Agent shall distribute such funds to each such Non-Delayed Funding Purchaser Group, *pro rata* based on the relative amount of such Delayed Amount funded by such Non-Delayed Funding Purchaser Group on such Increase Date pursuant to Section 3.3(f).

(h) The Issuer shall apply amounts paid to it pursuant to Sections 3.3(d) and 3.3(f) in the following order of priority:

(i) As to an amount equal to ●% of the amounts paid to pursuant to Sections 3.3(d) and 3.3(f), by deposit to the Program Cash Reserve Account; **[NTD: OPG would like to understand what this account is needed for]** and

(ii) as to the balance, in respect of the proceeds of the initial purchase of the Series 2017-1 Notes or a Transfer Increase, by application to payment of the purchase price payable by the Issuer to the IESO under the Master Transfer and Servicing Agreement in respect of the related Transfer and, in respect of the proceeds of a Refinancing Increase, by deposit to the Refinancing Account.

3.4 Procedure for Decreasing the Series 2017-1 Principal Amount; Optional Termination

(a) In the case of a Non-Conduit Purchaser Group, the Related Non-Conduit Purchaser hereby agrees, and in the case of a CP Conduit Purchaser Group, each of the CP Conduit Purchasers and the Group Bank in such CP Conduit Purchaser Group hereby agrees, that the Purchaser Group Principal Amount with respect to such Purchaser Group may be decreased on any Payment Date by such Purchaser Group's Commitment Percentage of a Decrease Amount (a "**Decrease**"), upon the request of the Issuer. Each Payment Date on which a Decrease in the Series 2017-1 Principal Amount occurs hereunder being herein referred to as the "**Decrease Date**" applicable to such Decrease; provided, however, that the Issuer shall have given the Administrative Agent (with a copy to the Indenture Trustee) irrevocable written notice (effective upon receipt), by email communication, substantially in the form of Schedule D (a "**Decrease Notice**") no later than **[3:00 p.m.]** (Toronto time) on the second Business Day prior to any Payment Date that is a Decrease Date. Each Decrease Notice shall state (x) the Decrease Date, and (y) the proposed amount of the decrease in the Series 2017-1 Principal Amount (a "**Decrease Amount**").

(b) Upon each Decrease, the Administrative Agent shall indicate in its records such Decrease and the Purchaser Group Principal Amount outstanding with respect to each Purchaser Group after giving effect to such Decrease. Upon receipt of any notice required by Section 3.4(a) from the Issuer, the Administrative Agent shall forward (by email communication) a copy of such notice to each Non-Conduit Purchaser and the Funding Agent with respect to each CP Conduit Purchaser Group, no later than **[1:00 p.m.]** (Toronto time) on the Business Day received.

(c) On any Business Day, the Issuer shall have the right to deliver an irrevocable written notice (an "**Optional Termination Notice**") to the Administrative Agent in which the Issuer declares that the Commitments shall terminate on the date (the "**Optional Termination Date**") set forth in such notice (which date, in any event, shall be a Payment Date not less than twenty (20) Business Days from the date on which such notice is delivered). Upon receipt of any Optional Termination Notice from the Issuer, the Administrative Agent shall promptly notify each Non-Conduit Purchaser and the Funding Agent with respect to each CP Conduit Purchaser Group thereof.

3.5 Increases and Reductions of the Commitments

(a) The Issuer may from time to time request that any Purchaser Group agree to increase its Maximum Purchaser Group Principal Amount. An increase in such amount shall be effective hereunder if such Purchaser Group shall have agreed in its sole discretion to such increase.

(b) On any Business Day, the Issuer may, upon two (2) Business Days' prior written notice to the Administrative Agent (effective upon receipt) (with copies to the Indenture Trustee) reduce the Series 2017-1 Maximum Principal Amount in an amount equal to $~~[~~10,000,000~~]~~ or a whole multiple of $~~[~~1,000,000~~]~~ in excess thereof; provided that no such termination or reduction shall be permitted if, after giving effect thereto and to any reduction in the Series 2017-1 Principal Amount on such date, the Purchaser Group Principal Amount with respect to any Purchaser Group would exceed the Maximum Purchaser Group Principal Amount with respect to such Purchaser Group then in effect. Any reduction in the Series 2017-1 Maximum Principal Amount shall be made on a pro rata basis to the Maximum Purchaser Group Principal Amounts with respect to the Purchaser Groups, based on the Maximum Purchaser Group Principal Amount with respect to each Purchaser Group. Once reduced, the Maximum Purchaser Group Principal Amounts may not be subsequently reinstated without each such Purchaser Group's prior written consent, which consent shall be granted or not in the sole discretion of such Purchaser Group.

(c) The Issuer may extend the Scheduled Commitment Expiry Date only with the prior written consent of the Administrative Agent, each Non-Conduit Purchaser and each Funding Agent.

3.6 Interest; Fees and Other Amounts

(a) Interest shall be payable on the Series 2017-1 Senior Notes on each Payment Date.

(b) The Issuer shall pay to each CP Conduit Purchaser Group and each Non-Conduit Purchaser, on each Payment Date, a commitment fee with respect to the preceding Billing Period (the "**Commitment Fee**") during the period from the Closing Date to and including the Commitment Expiry Date in an amount equal to the sum of the following amounts calculated for each day during such Billing Period: (x) the Commitment Fee Rate, multiplied by (y) the amount by which Maximum Purchaser Group Principal Amount with respect to such Purchaser Group on such day exceeds the Purchaser Group Principal Amount with respect to such Purchaser Group on such day, and divided by (z) 365. The Commitment Fees shall be payable monthly in arrears on each Payment Date.

(c) The Funding Agent with respect to each CP Conduit Purchaser Group and each Non-Conduit Purchaser shall provide written notice to the Issuer and the Paying Agent no later than two (2) Business Days prior to each Payment Date, setting forth the Group Monthly Interest and the Group Monthly Fees and Other Amounts with respect to its Related Purchaser Group with respect to the Payment Date.

(d) The Monthly Interest shall be included in each calculation of the Interest Accrual Amount (Senior) for the purposes of Section 7.04(e)(iii) of the Trust Indenture and shall be payable pursuant to Sections 7.05(a), 7.08(a)(i) or 8.13(c) of the Trust Indenture, as applicable. On each Payment Date, the Monthly Fees and Other Amounts shall be payable in respect of the Series 2017-1 Notes pursuant to Sections 7.04(e)(iii) or 8.13(c) of the Trust Indenture, as applicable. On each Payment Date the Paying Agent shall, subject to availability of funds, pay to each CP Conduit Purchaser Group and each Non-Conduit Purchaser its Group Monthly Interest and its Group Monthly Fees and Other Amounts with respect to the Payment Date; provided that if the amounts available to pay such Group Monthly Interest and Group Monthly Fees and Other Amounts are insufficient, the amounts available shall be paid *pro rata* based on the amounts owing to each Purchaser Group.

3.7 Accumulation and Repayment of Principal

(a) For the purposes of the Trust Indenture and the Series 2017-1 Notes:

(i) for each Payment Date before the Principal Accumulation Date, the Principal Accumulation Amount shall be the Principal Payment Amount for such Payment Date; and

(ii) for each Payment Date on or after the Principal Accumulation Date, the Principal Accumulation Amount shall be the greater of (x) the Principal Payment Amount for such Payment Date, and (y) the Principal Accumulation Amount, for such Payment Date.

(b) Each Payment Date where the Principal Payment Amount is not nil shall be a Principal Payment Date in respect of the Series 2017-1 Notes. On each Principal Payment Date in respect of the Series 2017-1 Notes, the Paying Agent shall pay to each Non-Conduit Purchaser and each Funding Agent with respect to its Related Purchaser Group, such Purchaser Group's Pro Rata Share of the Principal Payment Amount for such Principal Payment Date out of funds allocated to the Series 2017-1 Senior Notes pursuant to Sections **7.04(e)(iv)(A), 7.06(a) or 8.13(d)** of the Trust Indenture, as applicable, in repayment of the principal amount of the Series 2017-1 Notes.

3.8 Indemnification by the Issuer

The Issuer agrees to indemnify and hold harmless the Indenture Trustee, the Administrative Agent, each Funding Agent, each CP Conduit Purchaser, the Group Bank, each Non-Conduit Purchaser and each of their respective officers, directors, agents and employees (each, an "**Issuer indemnified person**") from and against any loss, liability, expense, damage or injury suffered or sustained by such Issuer indemnified person by reason of (a) any acts, omissions or alleged acts or omissions arising out of, or relating to, activities of the Issuer pursuant to the Program Agreements to which it is a party; (b) a breach of any representation or warranty made or deemed made by the Issuer (or any of its officers) in any Program Agreement; or (c) a failure by the Issuer to comply with any applicable law or regulation or to perform its covenants, agreements, duties or obligations required to be performed or observed by it in accordance with the provisions of the Program Agreements, including, but not limited to, any judgment, award, settlement, reasonable attorneys' fees and other reasonable costs or expenses incurred in connection with the defense of any actual or threatened action, proceeding or claim, except to the extent such loss, liability, expense, damage or injury resulted from the gross negligence, bad faith or willful misconduct of such Issuer indemnified person or its officers, directors, agents, principals, employees or employers as determined by a court of competent jurisdiction in a final non-appealable judgement or includes any Excluded Taxes; provided that any payments made by the Issuer pursuant to this Section 3.8 shall be made solely from funds available pursuant to Section **[7.04] or [8.13]** of the Trust Indenture, as applicable, shall be non-recourse other than with respect to such funds, and shall not constitute a claim against the Issuer to the extent that such funds are insufficient to make such payment.

3.9 Funding Agents

(a) The Funding Agent with respect to each CP Conduit Purchaser Group is hereby authorized to determine the Group Monthly Interest and Group Monthly Fees and Other

Amounts with respect to each Payment Date and such CP Conduit Purchaser Group. Any such determination by a Funding Agent, absent manifest error, shall constitute prima facie evidence of the accuracy of the calculation. Furthermore, the Funding Agent with respect to each CP Conduit Purchaser Group will maintain records sufficient to identify the percentage interest of the related CP Conduit Purchaser and the Group Bank with respect to such CP Conduit Purchaser Group holding an interest in the Series 2017-1 Senior Note registered in the name of such Funding Agent and any amounts owing thereunder.

(b) Upon receipt of funds on each Payment Date, each Funding Agent shall pay such funds to the related CP Conduit Purchaser and/or the related Group Bank owed such funds. If a Funding Agent shall have paid to any CP Conduit Purchaser or Group Bank any funds that (i) must be returned for any reason (including bankruptcy); or (ii) exceeds that which such CP Conduit Purchaser or Group Bank was entitled to receive, such amount shall be promptly repaid to such Funding Agent by such CP Conduit Purchaser or Group Bank.

3.10 Taxes

(a) All payments by or on account of any obligation of the Issuer hereunder shall, to the extent allowed by law, be made free and clear of, and without deduction or withholding for or on account of Taxes, excluding (i) income taxes (including branch profit taxes, minimum taxes and taxes computed under alternative methods, at least one of which is based on or measured by net income), franchise taxes (imposed in lieu of income taxes), or any other Taxes based on or measured by the net income of any person legally entitled to receive such payments (each a "**Recipient**") as a result of a present or former connection between the Recipient and the jurisdiction of the Governmental Authority imposing such Taxes (other than any such connection arising solely from the Recipient having executed, delivered or performed its obligations or received a payment under, disposed of, or enforced, this Supplemental Indenture); (ii) any withholding or deduction imposed pursuant to (A) Sections 1471 to 1474 of the U.S. Internal Revenue Code of 1986, as amended ("**FATCA**"), or any successor version thereof, or any similar legislation imposed by any other Governmental Authority, or (B) any treaty, law or regulation or other official guidance enacted by Canada implementing FATCA or any intergovernmental agreement with respect to FATCA or any similar legislation imposed by any other Governmental Authority, including, for greater certainty, the Canada-United States Enhanced Tax Information Exchange Agreement Implementation Act (Canada) and Parts XVIII and XIX of the Income Tax Act (Canada), as amended (collectively, and including FATCA, the "**AEOI Legislation**"); and (iii) any interest, penalties and additions to Taxes in respect of (i) and (ii) (all such excluded Taxes being hereinafter called "**Excluded Taxes**"). If any Taxes, other than Excluded Taxes, are required to be withheld from any amounts payable to a Recipient hereunder, the amounts so payable to the Recipient shall be increased, and the Recipient shall be entitled to be paid by the Issuer the amount of such increase to the extent necessary to yield to the Recipient (after payment of all such Taxes other than Excluded Taxes) interest or any such other amounts payable hereunder or thereunder at the rates or in the amounts specified hereunder. Where the amount payable by the Issuer is increased in accordance with the previous sentence, the Group Monthly Interest shall be increased by the amount of such increase. Whenever any Taxes are payable on or with respect to amounts distributed to a Recipient, as promptly as possible thereafter the Issuer shall send to such Recipient a certified copy of an original official receipt showing payment thereof.

(b) If a payment by or on account of any obligation of the Issuer hereunder would be subject to withholding Taxes under any AEOI Legislation if the Recipient were to fail to comply with the applicable reporting requirements of any AEOI Legislation, such Recipient shall deliver to the Issuer at the time or times prescribed by law and at such time or times reasonably requested by the Issuer such documentation prescribed by applicable law and such additional documentation reasonably requested by the Issuer as may be necessary for the Issuer to comply with its obligations under any AEOI Legislation and to determine that such Recipient has complied with its obligations under any AEOI Legislation, or to determine the amount to deduct and withhold from such payment. If any form or certification it previously delivered by a Recipient expires or becomes obsolete or inaccurate in any respect, the Recipient shall update such form or certification or promptly notify the Issuer in writing of its legal inability to do so.

(c) If a Recipient is legally entitled to receive a refund of any Taxes (other than Excluded Taxes) as to which it has been indemnified or with respect to which additional amounts have been paid to it hereunder or it is legally entitled to receive a credit or deduction with respect to such Taxes or with respect to such additional amounts that have been paid hereunder (in each case pursuant to Section 3.10(a)), it shall use commercially reasonable efforts to obtain or claim such refund, credit or deduction and pay over such refund or the value of such credit or deduction to the Issuer, together with any interest thereon.

3.11 Increased Costs

(a) (i) If any Regulatory Change (x) subjects any Affected Party to any charge or withholding on or with respect to any Support Facility or this Supplemental Indenture or an Affected Person's obligations under a Support Facility or this Supplemental Indenture, or changes the basis of taxation of payments to any Affected Person of any amounts payable under any Support Facility or this Supplemental Indenture Agreement (except for changes in the rate of tax on the overall net income of an Affected Person or Excluded Taxes) or (y) imposes, modifies or deems applicable any reserve, assessment, fee, tax, insurance charge, special deposit or similar requirement against assets of, deposits with or for the account of, or liabilities of an Affected Person, or credit extended by an Affected Person pursuant to a Support Facility or this Supplemental Indenture or (z) imposes any other condition the result of which is to increase the cost to an Affected Person of performing its obligations under a Support Facility or this Supplemental Indenture, or to reduce the rate of return on an Affected Person's capital or assets as a consequence of its obligations under a Support Facility or this Supplemental Indenture, or to reduce the amount of any sum received or receivable by an Affected Person under a Support Facility or this Supplemental Indenture, or to require any payment calculated by reference to the amount of interests or loans held or interest received by it, then, upon written request by such Affected Party (through the Funding Agent for its Purchaser Group if the Affected Party is a Program Support Provider, CP Conduit Purchaser or Group Bank) of a written request therefore to the Issuer, such Affected Party (through the Funding Agent for its Purchaser Group if the Affected Party is a Program Support Provider, CP Conduit Purchaser or Group Bank) shall be entitled to be paid, such amounts charged to such Affected Party or such amounts to otherwise compensate such Affected for such increased cost or such reduction, no later than the Payment Date following receipt by the Issuer of such request for compensation under this Section 3.11(a)(i), if such request is received by the Issuer no later than five (5) Business Days prior to the end of the Interest Period related to such Payment Date, and otherwise on the following Payment Date.

(ii) The Issuer acknowledges that any Affected Party may implement, as an internal institutional matter, measures in anticipation of a final or proposed Regulatory Change (including, without limitation, the imposition of internal charges on such Affected Party's interest or obligations under any Support Agreement or this Supplemental Indenture) and may commence recognizing the incurrence of charges by seeking compensation under Section 3.11(a)(i) in connection with such measures, in advance of the effective date of such final or proposed Regulatory Change, and the Issuer agrees that such charges or compensation shall be payable, to the related Funding Agent, for the benefit of Affected Party, following demand therefor without regard to whether such proposed Regulatory Change has been adopted or whether such effective date has occurred; provided, that (I) the Affected Party shall provide thirty (30) days prior written notice to the Issuer of its intent to impose or incur any such charges or compensation, (II) an Affected Party shall not be compensated for any such amount pursuant to this subsection 3.11(a)(ii) relating to any period ending, and of which such Affected Party has had knowledge, more than ~~one year~~**ninety (90) days** prior to the date that such Affected Party provided the Issuer with the written notice contemplated by the preceding clause (I) of this subsection 3.11(a)(ii), (III) if, after the payment by the Trust of any charges or compensation pursuant to this subsection 3.11(a)(ii), either (A) the Issuer requests in writing that the applicable Affected Party re-compute any such charge or compensation in light of differences between a proposed Regulatory Change and the final effective version thereof or (B) the applicable Affected Party determines that the amount of the charge imposed on and required to be compensated by the Issuer exceeds the amount necessary to compensate it for the applicable Regulatory Change as contemplated by subsection 3.11(a)(i), then (x) the amount of such charge or compensation shall, from and after such determination, be reduced by the amount of such excess and (y) such Affected Party shall, within thirty (30) days of such determination, either repay the amount of such excess or credit the amount of such excess against future charges under this subsection 3.11(a)(ii). The Issuer further acknowledges that any charge or compensation demanded hereunder may take the form of a monthly charge to be assessed by such Affected Party.

(b) Each Affected Party claiming increased amounts described in subsection 3.11(a) of this Supplemental Indenture will furnish to the Issuer (together with its request for compensation) a certificate prepared in good faith setting forth the basis and the calculation of the amount (in reasonable detail) of each request by such Affected Party for any such increased amounts referred to in subsection 3.11(a) hereof. Any such certificate shall be conclusive absent manifest error. Failure on the part of any Affected Party to demand compensation for any amount pursuant to subsection 3.11(a) hereof with respect to any period shall not constitute a waiver of such Affected Party's right to demand compensation with respect to such period.

ARTICLE 4
CONDITIONS PRECEDENT

4.1 Conditions Precedent to Initial Purchase of Series 2017-1 Senior Notes

On or prior to the initial purchase of Series 2017-1 Senior Notes hereunder, the following conditions precedent shall be satisfied:

(a) Each of the conditions precedent set forth in Section 5.01 of the Trust Indenture in respect of the incurrence of Funding Obligations under this Supplemental Indenture shall have been satisfied.

(b) The Administrative Agent and each of the Funding Agents shall have received:

(i) executed copies of the Fee Letter, this Supplemental Indenture~~, the Manager Indemnity~~ and copies of each of the other Program Agreements certified by an Authorized Officer of the Issuer;

(ii) certificates of status or compliance or other similar documents issued by the applicable governmental authority to evidence that each of the Issuer Trustee, the IESO and the Manager is validly existing pursuant to the laws of the jurisdiction of their respective establishment or incorporation;

(iii) a copy of the incorporating documents and all amendments thereto and applicable by-laws of each of the Issuer Trustee, the IESO and the Manager certified by an Authorized Officer of the applicable entity;

(iv) a copy of the Declaration of Trust certified by an Authorized Officer of the Issuer;

(v) copies of resolutions of the board of directors of the IESO and the Manager approving and authorizing the execution, delivery and performance of each Program Agreement they are party to, in each case certified by an Authorized Officer of the applicable entity;

(vi) incumbency certificates for each of the Issuer Trustee, the Manager and the IESO executing this Supplemental Indenture and any other Program Agreements and the other documents to be delivered by either the Issuer Trustee, the Manager or the IESO thereunder, in each case showing their names, offices and specimen signatures on which certificates the Administrative Agent and the Purchaser Groups shall be entitled to conclusively rely until such time as the Administrative Agent and the Funding Agents receive a replacement certificate meeting the requirements of this Section 4.1(b)(vi);

(vii) the following Opinions of Counsel:

(A) the opinion of external counsel to the Manager as to the non-consolidation of the Issuer with the Manager in the event of the insolvency of the Manager in form and substance satisfactory to the Administrative Agent and the Funding Agents;

(B) the opinion of external counsel to the IESO as to the Investment Asset acquired by the Issuer not being subject to the claims of creditors of the IESO in form and substance satisfactory to the Administrative Agent and the Funding Agents;

(C) favourable opinions of external counsel to the Manager covering general corporate matters, the due execution and delivery of, and the enforceability of, each of the Program Agreements to which the Manager, the Issuer and the Issuer Trustee are party which opinion, as to certain matters, may rely on opinion of internal counsel to the Manager and the Issuer Trustee; and

(D) a favourable opinion of external counsel to the Province with respect to the due authorization, execution, delivery and enforceability of the Change of Law Protection Agreement in form and substance satisfactory to the Administration Agent and the Funding Agents;

(viii) a certificate of an Authorized Officer of the Manager confirming that the representations and warranties set forth in Section **[12.01]** of the Trust Indenture and Section 5.1 of this Supplemental Indenture are true and correct in all material respects, that the Issuer is in compliance in all material respects with all of its covenants and obligations under the Program Agreements to which it is a party and that no Termination Event has occurred; and

(ix) such additional documents, instruments, certificates or letters as the Administrative Agent or any Funding Agent may reasonably request.

(c) The representations and warranties set forth in Section **[12.01]** of the Trust Indenture and Section 5.1 of this Supplemental Indenture shall be true and correct in all material respects, the Issuer shall be compliance in all material respects with all of its covenants and obligations under the Program Agreements to which it is a party and no Termination Event shall have occurred.

(d) The Series 2017-1 Senior Notes shall have been duly issued in accordance with the Trust Indenture and each Funding Agent and Non-Conduit Purchaser shall have received its Series 2017-1 Senior Note registered in its name or a nominee in a face amount equal to its Maximum Purchaser Group Principal Amount.

(e) After giving effect to the purchase, the covenant of the Issuer in Section 6.1(d) will be satisfied.

(f) All fees payable on or before the Closing Date pursuant to the Fee Letter shall have been paid in full ~~[~~(or arrangements satisfactory to the Administrative Agent and the Funding Agents have been made)~~]. [**NTD**: to be discussed]~~.

(g) The Rating Agency Condition shall have been satisfied in respect of the initial purchase.

4.2 Conditions Precedent to each Increase under Series 2017-1 Senior Notes

On or prior to each Increase, the following conditions precedent shall be satisfied:

(a) the Administrative Agent shall have received an Increase Notice;

(b) no Termination Event shall have occurred or would occur after giving effect to such Increase;

(c) the Increase Date in respect of the Increase is prior to the Commitment Expiry Date;

(d) if the Increase is identified as a Transfer Increase in the Increase Notice, then the related Transfer under the Master Transfer and Servicing Agreement shall have been completed or contemporaneously completed; and

(e) after giving effect to the Increase, the Rating Agency Condition will be satisfied.

The Issuer's acceptance of funds in connection with each Increase occurring on any Increase Date shall constitute a representation and warranty by the Issuer to the Administrative Agent and the Purchaser Groups as of such Increase Date that all of the conditions contained in Section 3.3(a) and this Section 4.2 are satisfied.

ARTICLE 5
REPRESENTATIONS AND WARRANTIES

5.1 Representations and Warranties of the Issuer

The Issuer hereby represents and warrants to the Administrative Agent and the Purchaser Groups as of the Closing Date, and shall be deemed to represent and warrant to the Administrative Agent and the Purchaser Groups on each Increase Date, that:

(a) no Termination Event has occurred or would result from the initial purchase of the Issuer Investment Interest on the Closing Date or any increase in the Issuer Investment Interest on an Increase Date, as applicable;

(b) the Issuer is not a non-resident of Canada within the meaning of the *Income Tax Act* (Canada);

(c) all tax returns (federal, provincial and local) required to be filed with respect to the Issuer have been filed and there has been paid or adequate provision made for the payment of all material Taxes in respect of the Issuer;

(d) the Issuer has complied in all material respects with all laws in respect of the conduct of its business and ownership of its property including the Issuer Investment Interest;

(e) all information provided to the Administrative Agent and the Purchaser Groups by or on behalf of the Issuer in respect of the Issuer Investment Interest is and will be true and accurate in all material respects; and

(f) to its knowledge, there is no set of circumstances existing at such time that will have an Adverse Effect or will reasonably be expected to have an Adverse Effect.

5.2 Representations and Warranties of the Purchasers

Each Purchaser Group member represents and warrants to the Issuer as of the Closing Date, and shall be deemed to represent and warrant to the Issuer on each Increase Date, that:

(a) it is resident in Ontario or is otherwise subject to the securities legislation of the Province of Ontario;

(b) it is purchasing the applicable Series 2017-1 Senior Notes (i) as principal for its own account and not for the benefit of any other "person" (as defined in the *Securities Act* (Ontario)) or company; and (ii) for cash consideration in excess of $150,000; and

(c) it was not created and is not being used solely to purchase or hold securities in reliance on the exemption from the prospectus and dealer registration requirements contained in Section 2.10 of National Instrument 45-106 − Prospectus and Registration Exemptions.

5.3 Survival

The representations and warranties set out in this Article 5 shall survive the execution hereof.

ARTICLE 6
COVENANTS

6.1 Covenants of the Issuer

(a) The Issuer shall promptly provide to the Administrative Agent, each Funding Agent and each Non-Conduit Purchaser (in multiple copies if requested) copies of all material reports, notices, financial statements and other documents delivered by the IESO to the Issuer with respect to the Issuer Investment Interest or pursuant to the Master Transfer and Servicing Agreement.

(b) The Issuer shall provide to the Administrative Agent, each Funding Agent and each Non-Conduit Purchaser (in multiple copies, if requested) such other information, documents, records or reports respecting the Issuer Investment Interest, the Issuer or the IESO which is in the possession or under the control of the Issuer or the Manager, as the Administrative Agent, a Funding Agent or a Non-Conduit Purchaser may from time to time reasonably request.

(c) The Issuer shall furnish to the Administrative Agent, each Funding Agent and each Non-Conduit Purchaser promptly after known to the Issuer or the Manager, information with respect to any action, suit or proceeding involving the Manager, the Issuer or the IESO or any of their respective Affiliates by or before any court or any Governmental Authority which, if adversely determined, would have an Adverse Effect.

(d) The Issuer will, at all times, cause the aggregate outstanding principal amount of Subordinated Funding Obligations and Junior Subordinated Funding Obligations to be not less than ~~[49]~~**twenty-five percent (25)**% of the aggregate outstanding principal amount of all Issuer Funding Obligations. **[NTD: OPG has discussed with Dealers.]**

(e) The Issuer will not make any amendments to the Funding Obligation Agreements governing any outstanding Subordinated Funding Obligations or Junior Subordinated Funding Obligations without the prior written consent of the Requisite Series 2017-1 Noteholders**, such consent not to be unreasonably withheld or delayed**.

(f) The Issuer will not hold or own, directly or indirectly, any share or equity security of, or any equity interest in, any Person.

(g) The Issuer confirms that this Supplemental Indenture is a Warehouse Facility Agreement. The Issuer will not enter into any other Warehouse Facility Agreement creating Senior Funding Obligations without the prior written consent of the Requisite Series 2017-1 Noteholders unless the Commitment Expiry Date has occurred.

[NTD: OPG understands that there will be another covenant that following Principal Payment Due Date proceeds of any financings must be applied to repay these notes in priority to any other use of funds.]

ARTICLE 7
AGENTS

7.1 Administrative Agent

(a) Each of the Non-Conduit Purchasers, CP Conduit Purchasers, the Group Banks and the Funding Agents hereby irrevocably designates and appoints the Administrative Agent as the agent of such Person under this Supplemental Indenture and irrevocably authorizes the Administrative Agent, in such capacity, to take such action on its behalf under the provisions of this Supplemental Indenture and to exercise such powers and perform such duties as are expressly delegated to the Administrative Agent by the terms of this Supplemental Indenture, together with such other powers as are reasonably incidental thereto. Notwithstanding any provision to the contrary elsewhere in this Supplemental Indenture, the Administrative Agent shall not have any duties or responsibilities except those expressly set forth herein, or any fiduciary relationship with any Non-Conduit Purchaser, any CP Conduit Purchaser, any Group Bank or any Funding Agent, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Supplemental Indenture or otherwise exist against the Administrative Agent.

(b) The Administrative Agent may execute any of its duties under this Supplemental Indenture by or through agents or attorneys in fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties. The Administrative Agent shall not be responsible for the negligence or misconduct of any agents or attorneys-in-fact selected by it with reasonable care.

(c) Neither the Administrative Agent nor any of its officers, directors, employees, agents, attorneys in fact or Affiliates shall be (i) liable for any action lawfully taken or omitted to be taken by it or such Person under or in connection with the Trust Indenture, this Supplemental Indenture or any other Program Agreement (except to the extent that any of the foregoing are found by a final and nonappealable decision of a court of competent jurisdiction to have resulted from its or such Person's own gross negligence or willful misconduct) or (ii) responsible in any manner to any of the Non-Conduit Purchasers, the CP Conduit Purchasers, the Group Banks or the Funding Agents for any recitals, statements, representations or warranties made by the Issuer, the IESO, the Manager or any officer thereof contained in this Supplemental Indenture or any other Program Agreement or in any certificate, report, statement or other document referred to or provided for in, or received by the Administrative Agent under or in connection with, this Supplemental Indenture or any other Program Agreement or for the value, validity, effectiveness, genuineness, enforceability or sufficiency of this Supplemental Indenture, any other Program Agreement, or for any failure of any of the Issuer, the Manager or the IESO to perform its obligations hereunder or thereunder. The Administrative Agent shall not be under any obligation to any Non-Conduit Purchaser, any CP Conduit Purchaser, any Group Bank or any Funding Agent to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Supplemental Indenture, any other Program Agreement or to inspect the properties, books or records of the Issuer, the Manager or the IESO.

(d) The Administrative Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing, resolution, notice, consent, certificate, affidavit, letter or electronic message, statement, order or other document or conversation believed by it to be genuine and correct and to have been signed, sent or made by the proper Person or Persons and upon advice and

statements of legal counsel (including, without limitation, counsel to the Issuer, the Manager or the IESO), independent accountants and other experts selected by the Administrative Agent.

(e) The Administrative Agent shall not be deemed to have knowledge or notice of the occurrence of any Termination Event unless the Administrative Agent has received written notice from a Non-Conduit Purchaser, a CP Conduit Purchaser, a Group Bank, a Funding Agent, the Issuer or the Manager referring to the Trust Indenture or this Supplemental Indenture, describing such Termination Event and stating that such notice is a "notice of a Termination Event". In the event that the Administrative Agent receives such a notice, the Administrative Agent shall give notice thereof to the Non-Conduit Purchasers, the Funding Agents, the Issuer Trustee and the Manager.

(f) Each of the Non-Conduit Purchasers, the CP Conduit Purchasers, the Group Banks and the Funding Agents expressly acknowledges that neither the Administrative Agent nor any of its officers, directors, employees, agents, attorneys in fact or Affiliates has made any representations or warranties to it and that no act by the Administrative Agent hereinafter taken, including any review of the affairs of the Issuer, the Manager or the IESO shall be deemed to constitute any representation or warranty by the Administrative Agent to any such Person. Each of the Non-Conduit Purchasers, the CP Conduit Purchasers, the Group Banks and the Funding Agents represents to the Administrative Agent that it has, independently and without reliance upon the Administrative Agent or any other Non-Conduit Purchaser, CP Conduit Purchaser, Group Bank or Funding Agent and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, operations, property, financial and other condition and creditworthiness of the Issuer, the Manager and the IESO and made its own decision to enter into this Supplemental Indenture. Each of the Non-Conduit Purchasers, the CP Conduit Purchasers, the Group Banks and the Funding Agents also represents that it will, independently and without reliance upon the Administrative Agent or any other Non-Conduit Purchaser, CP Conduit Purchaser, Group Bank or Funding Agent, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Supplemental Indenture and the other Program Agreements, and to make such investigation as it deems necessary to inform itself as to the business, operations, property, financial and other condition and creditworthiness of the Issuer, the Manager and the IESO. Except for notices, reports and other documents expressly required to be furnished to the Non-Conduit Purchasers and the Funding Agents by the Administrative Agent hereunder, the Administrative Agent shall have no duty or responsibility to provide any Non-Conduit Purchaser, any CP Conduit Purchaser, any Group Bank or any Funding Agent with any credit or other information concerning the business, operations, property, condition (financial or otherwise), prospects or creditworthiness of the Issuer, the Manager or the IESO which may come into the possession of the Administrative Agent or any of its officers, directors, employees, agents, attorneys in fact or Affiliates.

(g) The Administrative Agent and its Affiliates may make loans to, accept deposits from and generally engage in any kind of business with the Issuer, the Manager and the IESO as though the Administrative Agent were not the Administrative Agent hereunder. With respect to any Series 2017-1 Senior Note held by the Administrative Agent, the Administrative Agent shall have the same rights and powers under this Supplemental Indenture and the other Program Agreements as any Group Bank or Funding Agent and may exercise the same as though it were not the

Administrative Agent, and the terms "Group Bank," and "Funding Agent" shall include the Administrative Agent in its individual capacity.

(h) The Administrative Agent may resign as Administrative Agent at any time by giving 30 days' notice to the Non-Conduit Purchasers, the Funding Agents, the Indenture Trustee, the Issuer and the Manager. If ● shall resign as Administrative Agent under this Supplemental Indenture, then the Requisite Series 2017-1 Noteholders shall appoint a successor administrative agent from among the Non-Conduit Purchasers and Funding Agents, whereupon such successor agent shall succeed to the rights, powers and duties of the Administrative Agent, and the term "Administrative Agent" shall mean such successor agent effective upon such appointment and approval, and the former Administrative Agent's rights, powers and duties as Administrative Agent shall be terminated, without any other or further act or deed on the part of such former Administrative Agent or any of the parties to this Supplemental Indenture. If no successor administrative agent has accepted appointment as Administrative Agent prior to the effective date of the resignation of the Administrative Agent, the retiring Administrative Agent may appoint, after consulting with the Non-Conduit Purchasers and the Funding Agents, a successor Administrative Agent from among the Non-Conduit Purchasers and the Funding Agents. If no successor administrative agent has accepted appointment by the date which is thirty (30) days following a retiring Administrative Agent's notice of resignation, the retiring Administrative Agent's resignation shall nevertheless thereupon become effective and Manager shall assume and perform all of the duties of the Administrative Agent hereunder until such time, if any, as the Requisite Series 2017-1 Noteholders appoint a successor administrative agent as provided for above. After any retiring Administrative Agent's resignation as Administrative Agent, the provisions of this Article 7 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Administrative Agent under this Supplemental Indenture.

7.2 Funding Agents

(a) Each CP Conduit Purchaser and each Group Bank with respect to such CP Conduit Purchaser hereby irrevocably designates and appoints the Funding Agent set forth next to such CP Conduit Purchaser's name on Schedule E as the agent of such Person under this Supplemental Indenture and irrevocably authorizes such Funding Agent, in such capacity, to take such action on its behalf under the provisions of this Supplemental Indenture and to exercise such powers and perform such duties as are expressly delegated to such Funding Agent by the terms of this Supplemental Indenture, together with such other powers as are reasonably incidental thereto. Notwithstanding any provision to the contrary elsewhere in this Supplemental Indenture, each Funding Agent shall not have any duties or responsibilities except those expressly set forth herein, or any fiduciary relationship with any CP Conduit Purchaser or Group Bank and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Supplemental Indenture or otherwise exist against each Funding Agent.

(b) Each Funding Agent may execute any of its duties under this Supplemental Indenture by or through agents or attorneys-in-fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties. Each Funding Agent shall not be responsible to the CP Conduit Purchaser or any Group Bank in its CP Conduit Purchaser Group for the negligence or misconduct of any agents or attorneys in fact selected by it with reasonable care.

(c) Each Funding Agent and any of its officers, directors, employees, agents, attorneys in fact or Affiliates shall not be (i) liable for any action lawfully taken or omitted to be taken by it or

such Person under or in connection with the Trust Indenture, this Supplemental Indenture or any other Program Agreement (except to the extent that any of the foregoing are found by a final and nonappealable decision of a court of competent jurisdiction to have resulted from its or such Person's own gross negligence or willful misconduct) or (ii) responsible in any manner to any of the CP Conduit Purchasers and/or Group Banks for any recitals, statements, representations or warranties made by the Issuer, the Manager or the IESO, or any officer thereof contained in this Supplemental Indenture or any other Program Agreement or in any certificate, report, statement or other document referred to or provided for in, or received by such Funding Agent under or in connection with, this Supplemental Indenture or any other Program Agreement or for the value, validity, effectiveness, genuineness, enforceability or sufficiency of this Supplemental Indenture, any other Program Agreement, or for any failure of any of the Issuer, the Manager or the IESO to perform its obligations hereunder or thereunder. Each Funding Agent shall not be under any obligation to the CP Conduit Purchaser or any Group Bank in its CP Conduit Purchaser Group to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Supplemental Indenture, any other Program Agreement or to inspect the properties, books or records of the Issuer, the Manager or the IESO.

(d) Each Funding Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing, resolution, notice, consent, certificate, affidavit, letter or electronic message, statement, order or other document or conversation believed by it to be genuine and correct and to have been signed, sent or made by the proper Person or Persons and upon advice and statements of legal counsel (including, without limitation, counsel to the Issuer, the Manager or the IESO), independent accountants and other experts selected by such Funding Agent. Each Funding Agent shall be fully justified in failing or refusing to take any action under this Supplemental Indenture or any other Program Agreement unless it shall first receive such advice or concurrence of the Related Purchaser Group, as it deems appropriate or it shall first be indemnified to its satisfaction by the Related Purchaser Group against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action.

(e) Each Funding Agent shall not be deemed to have knowledge or notice of the occurrence of any Termination Event unless such Funding Agent has received written notice from a Non-Conduit Purchaser, a CP Conduit Purchaser, a Group Bank, the Issuer, the Manager or the Administrative Agent referring to the Trust Indenture or this Supplemental Indenture, describing such Termination Event and stating that such notice is a "notice of a Termination Event," as the case may be. In the event that any Funding Agent receives such a notice, such Funding Agent shall give notice thereof to the CP Conduit Purchaser and Group Bank in its CP Conduit Purchaser Group. Such Funding Agent shall take such action with respect to such event as shall be reasonably directed by the CP Conduit Purchaser and Group Bank in its CP Conduit Purchaser Group, provided that unless and until such Funding Agent shall have received such directions, such Funding Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such event as it shall deem advisable in the best interests of the CP Conduit Purchaser and Group Bank in its CP Conduit Purchaser Group.

(f) Each CP Conduit Purchaser and each of the related Group Banks expressly acknowledge that neither its Funding Agent nor any of its officers, directors, employees, agents, attorneys in fact or Affiliates has made any representations or warranties to it and that no act by such Funding Agent hereinafter taken, including any review of the affairs of the Issuer, the Manager or the IESO shall be deemed to constitute any representation or warranty by such Funding Agent to any

such Person. Each CP Conduit Purchaser and each of the related Group Banks represents to its Funding Agent that it has, independently and without reliance upon such Funding Agent and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, operations, property, financial and other condition and creditworthiness of the Issuer, the Manager and the IESO and made its own decision to enter into this Supplemental Indenture. Each CP Conduit Purchaser and each of the related Group Banks also represents that it will, independently and without reliance upon its Funding Agent and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Supplemental Indenture and the other Program Agreements, and to make such investigation as it deems necessary to inform itself as to the business, operations, property, financial and other conditions and creditworthiness of the Issuer, the Manager and the IESO.

(g) Each Group Bank in a CP Conduit Purchaser Group agrees to indemnify its Funding Agent in its capacity as such (to the extent not reimbursed by the Issuer and without limiting the obligation of the Issuer to do so), from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind whatsoever which may at any time be imposed on, incurred by or asserted against such Funding Agent in any way relating to or arising out of this Supplemental Indenture, any of the other Program Agreements or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby or any action taken or omitted by such Funding Agent under or in connection with any of the foregoing; provided that no Group Bank shall be liable for the payment of any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements that are found by a final and nonappealable decision of a court of competent jurisdiction to have resulted from such related Funding Agent's gross negligence or willful misconduct. The agreements in this Section shall survive the payment of all amounts payable hereunder.

ARTICLE 8
GENERAL

8.1 Successor and Assigns

(a) This Supplemental Indenture shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, except that (i) the Issuer may not assign or transfer any of its rights under this Supplemental Indenture without the prior written consent of all of the Series 2017-1 Noteholders; (ii) no Non-Conduit Purchaser may assign or transfer any of its rights under this Supplemental Indenture other than pursuant to paragraph (e) or (f) below; (iii) no CP Conduit Purchaser may assign or transfer any of its rights under this Supplemental Indenture other than to the Group Bank with respect to such CP Conduit Purchaser or a Program Support Provider with respect to such CP Conduit Purchaser or pursuant to clause (b) or (e) below of this Section 8.1; and (iv) no Group Bank may assign or transfer any of its rights or obligations under this Supplemental Indenture except to a Program Support Provider or pursuant to clause (c), (d) or (e) below of this Section 8.1.

(b) Without limiting the foregoing, each CP Conduit Purchaser may assign all or a portion of the Purchaser Group Principal Amount with respect to such CP Conduit Purchaser and its rights and obligations under this Supplemental Indenture to a Conduit Assignee with respect to such CP Conduit Purchaser. Prior to or concurrently with the effectiveness of any such assignment (or if

impracticable, immediately thereafter), the assigning CP Conduit Purchaser shall notify the Administrative Agent and the Issuer. Upon such assignment by a CP Conduit Purchaser to a Conduit Assignee, (i) such Conduit Assignee shall be the owner of the Purchaser Group Principal Amount or such portion thereof with respect to such CP Conduit Purchaser; (ii) the related administrative or managing agent for such Conduit Assignee will act as the administrative agent for such Conduit Assignee hereunder, with all corresponding rights and powers, express or implied, granted to the Funding Agent hereunder; (iii) such Conduit Assignee and its liquidity support provider(s) and credit support provider(s) and other related parties shall have the benefit of all the rights and protections provided to such CP Conduit Purchaser herein (including, without limitation, any limitation on recourse against such Conduit Assignee as provided in this paragraph); (iv) such Conduit Assignee shall assume all of such CP Conduit Purchaser's obligations, if any, hereunder with respect to such portion of the Purchaser Group Principal Amount and such CP Conduit Purchaser shall be released from such obligations; (v) all distributions in respect of the Purchaser Group Principal Amount or such portion thereof with respect to such CP Conduit Purchaser shall be made to the applicable agent or administrative agent, as applicable, on behalf of such Conduit Assignee; and (vi) if requested by the Administrative Agent or the agent or administrative agent with respect to the Conduit Assignee, the parties will execute and deliver such further agreements and documents and take such other actions as the Administrative Agent or such agent or administrative agent may reasonably request to evidence and give effect to the foregoing. No assignment by any CP Conduit Purchaser to a Conduit Assignee of the Purchaser Group Principal Amount with respect to such CP Conduit Purchaser shall in any way diminish the obligations of the Group Bank with respect to such CP Conduit Purchaser under Section 3.3 to fund any Increase.

(c) Any Group Bank may, in the ordinary course of its business and in accordance with applicable law, at any time, sell all or any part of its rights and obligations under this Supplemental Indenture and the Series 2017-1 Senior Notes, with the prior written consent of the Administrative Agent and the Issuer (in each case, which consent shall not be unreasonably withheld), to one or more banks (an "**Acquiring Group Bank**") pursuant to a transfer supplement, substantially in the form of Exhibit H (the "**Transfer Supplement**"), executed by such Acquiring Group Bank, such assigning Group Bank, the Funding Agent with respect to such Group Bank, the Administrative Agent and the Issuer and delivered to the Administrative Agent. Notwithstanding the foregoing, no Group Bank shall so sell its rights hereunder if such Acquiring Group Bank is not an Eligible Assignee.

(d) Any Group Bank may, in the ordinary course of its business and in accordance with applicable law at any time sell to one or more financial institutions or other entities ("**Group Bank Participants**") participations in its Commitment Amount with respect to its related CP Conduit Purchaser Group, its Series 2017-1 Senior Note and its rights hereunder pursuant to documentation in form and substance satisfactory to such Group Bank and the Group Bank Participant; provided, however, that (i) in the event of any such sale by a Group Bank to a Group Bank Participant, (A) such Group Bank's obligations under this Supplemental Indenture shall remain unchanged, (B) such Group Bank shall remain solely responsible for the performance thereof, and (C) the Issuer and the Administrative Agent shall continue to deal solely and directly with such Group Bank in connection with its rights and obligations under this Supplemental Indenture; and (ii) no Group Bank shall sell any participating interest under which the Group Bank Participant shall have rights to approve any amendment to, or any consent or waiver with respect to, this Supplemental Indenture, the Trust Indenture or any Program Agreement, except to

the extent that the approval of such amendment, consent or waiver otherwise would require the unanimous consent of all Group Banks hereunder. A Group Bank Participant shall have the right to receive compensation pursuant to Sections 3.10 and 3.11 but only to the extent that the related selling Group Bank would have had such right absent the sale of the related participation and, with respect to amounts due pursuant to Sections 3.10 and 3.11, only to the extent such Group Bank Participant shall have complied with the provisions of Sections 3.10 and 3.11 as if such Group Bank Participant were a Group Bank.

(e) Any CP Conduit Purchaser and the Group Bank with respect to such CP Conduit Purchaser may, at any time, sell all or any part of their respective rights and obligations, and any Non-Conduit Purchaser may, at any time, sell all or any part of its rights and obligations, under this Supplemental Indenture and the Series 2017-1 Senior Notes, with the prior written consent of the Administrative Agent and the Issuer (in each case, which consent shall not be unreasonably withheld), (x) to a multi-seller commercial paper conduit and one or more banks providing support to such multi-seller commercial paper conduit, or (y) to a financial institution or other entity (an "**Acquiring Purchaser Group**") pursuant to a transfer supplement, substantially in the form of Exhibit I (the "**Purchaser Group Supplement**"), executed by such Acquiring Purchaser Group (including the CP Conduit Purchaser and the Group Banks, if any, with respect to such Acquiring Purchaser Group), the Funding Agent, if any, with respect to such Acquiring Purchaser Group, such assigning Purchaser Group (including the Group Banks, if any, with respect to such assigning Purchaser Group), the Funding Agent, if any, with respect to such assigning Purchaser Group and the Administrative Agent and the Issuer and delivered to the Administrative Agent.

(f) Any Non-Conduit Purchaser may, in the ordinary course of its business and in accordance with applicable law, at any time sell to one or more financial institutions or other entities ("**Non-Conduit Purchaser Participants**") participations in its Commitment, its Series 2017-1 Senior Note and its rights hereunder pursuant to documentation in form and substance satisfactory to such Non-Conduit Purchaser and the Non-Conduit Purchaser Participant; provided, however, that (i) in the event of any such sale by a Non-Conduit Purchaser to a Non-Conduit Purchaser Participant, (A) such Non-Conduit Purchaser's obligations under this Supplemental Indenture shall remain unchanged, (B) such Non-Conduit Purchaser shall remain solely responsible for the performance thereof, and (C) the Issuer and the Administrative Agent shall continue to deal solely and directly with such Non-Conduit Purchaser in connection with its rights and obligations under this Supplemental Indenture; and (ii) no Non-Conduit Purchaser shall sell any participating interest under which the Non-Conduit Purchaser Participant shall have rights to approve any amendment to, or any consent or waiver with respect to, this Supplemental Indenture, the Trust Indenture or any Program Agreement, except to the extent that the approval of such amendment, consent or waiver otherwise would require the unanimous consent of all Series 2017-1 Noteholders hereunder. A Non-Conduit Purchaser Participant shall have the right to receive compensation under Sections 3.10 and 3.11 but only to the extent that the related selling Non-Conduit Purchaser would have had such right absent the sale of the related participation and, with respect to amounts due pursuant to Sections 3.10 and 3.11, only to the extent such Non-Conduit Purchaser Participant shall have complied with the provisions of Sections 3.10 and 3.11 as if such Non-Conduit Purchaser Participant were a Non-Conduit Purchaser.

(g) The Issuer authorizes each Group Bank and Non-Conduit Purchaser to disclose to any Group Bank Participant, Acquiring Group Bank, Non-Conduit Purchaser Participant or Acquiring Purchaser Group (each, a "**Transferee**") and any prospective Transferee any and all financial information in such Group Bank's or Non-Conduit Purchaser's possession concerning the Issuer, the Issuer Investment Asset and the Program Agreements which has been delivered to such Group Bank by the Issuer or the Manager in connection with such Group Bank's credit evaluation of the Issuer and the Issuer Investment Asset.

(h) Notwithstanding any other provision of this Supplemental Indenture to the contrary, any Non-Conduit Purchaser, any Group Bank or any Program Support Provider may at any time pledge or grant a security interest in all or any portion of its rights under its Series 2017-1 Senior Note and this Supplemental Indenture to secure obligations of such Non-Conduit Purchaser, such Group Bank or such Program Support Provider to a Federal Reserve Bank or the Bank of Canada, without notice to or consent of the Administrative Agent, the Issuer or the Administrator; provided that no such pledge or grant of a security interest shall release a Non-Conduit Purchaser or an Group Bank from any of its obligations hereunder or substitute any such pledgee or grantee for such Non-Conduit Purchaser or such Group Bank as a party hereto.

8.2 Waiver

Without limiting the requirements of Section **[11.02]** of the Trust Indenture which shall be applicable to this Supplemental Indenture, no waiver of any provision of this Supplemental Indenture or consent to any departure by the Issuer from any provision of this Supplemental Indenture will be effective (in whole or in part) unless in writing and signed by the Requisite Series 2017-1 Noteholders. Such waiver will be effective only in the specific instance, for the specific purpose and for the specific length of time for which it is given by the Requisite Series 2017-1 Noteholders.

8.3 Notice

All notices, requests, instructions and demands to or upon any party hereto to be effective shall be given (a) in the case of the Issuer and the Indenture Trustee, in the manner set forth in Article **[15]** of the Trust Indenture; and (b) in the case of the Administrative Agent, the Non-Conduit Purchasers, the CP Conduit Purchasers, the Group Banks and the Funding Agents, in writing, and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when delivered by hand or three days after being deposited in the mail, postage prepaid, in the case of facsimile notice, when received, or in the case of overnight air courier, one Business Day after the date such notice is delivered to such overnight courier, addressed as follows in the case of the Administrative Agent and to the addresses therefor set forth in Schedule E, in the case of the Non-Conduit Purchasers, the CP Conduit Purchasers, the Group Banks and the Funding Agents; or to such other address as may be hereafter notified by the respective parties hereto:

Administrative Agent:

●

8.4 No Waiver: Remedies

No failure on the part of any party to exercise, and no delay in exercising, any power, right or remedy hereunder will operate as a waiver thereof; nor will any single or partial exercise of any such power, right or remedy hereunder preclude any other or further exercise thereof or the exercise of any other power, right or remedy. The rights and remedies herein provided are cumulative and not exclusive of any remedies provided by applicable law.

8.5 Entire Agreement

This Supplemental Indenture, the Fee Letter, the Trust Indenture and the other Program Agreements contain the entire agreement between the parties relative to the subject matter hereof and supersede all prior and contemporaneous agreements, term sheets, commitments, understandings, negotiations and discussions, whether oral or written. There are no warranties, representations or other agreements between the parties in connection with the subject matter hereof except as specifically set forth in this Supplemental Indenture, the Fee Letter, the Trust Indenture and the other Program Agreements.

8.6 Governing Law and Attornment

This Supplemental Indenture shall be governed by, and construed in accordance with, the laws of the Province of Ontario and the parties hereby attorn to the jurisdiction of the courts of Ontario.

8.7 Acknowledgment of Trust Indenture and No Proceedings

The Administrative Agent, each Non-Conduit Purchaser, each CP Conduit Purchaser, each Group Bank and each Funding Agent hereby acknowledges and agrees in favour of the Indenture Trustee that it is a Specified Creditor under the Trust Indenture and its entitlements as a Specified Creditor are subject to the provisions applicable to Specified Creditors under the Trust Indenture including, without limitation, Section **[7.06]** (Payments Held in Trust), Section **[8.12]** (Limitation on Suits), Sections **[7.04 and 8.13]** (Payment Priorities), Section **[8.14]** (Limited Recourse) and Section **[16.01]** (No Petition).

8.8 Expenses

The Issuer agrees to pay on demand (a) to the Indenture Trustee, the Administrative Agent and the Purchaser Groups all reasonable costs and expenses in connection with the preparation, execution, and delivery of this Supplemental Indenture and the other documents to be delivered hereunder or in connection herewith, including, the reasonable fees and out-of-pocket expenses of counsel for the Administrative Agent and the Purchaser Groups, with respect thereto, and the reasonable fees and out-of-pocket expenses incurred by the CP Conduit Purchasers in connection with the review by each rating agency then rating the Commercial Paper of such CP Conduit Purchaser of the transactions contemplated by this Supplemental Indenture and the Program Agreements; (b) to the Indenture Trustee, the Administrative Agent and each Purchaser Group all reasonable costs and expenses in connection with any amendments of or waivers or consents under this Supplemental Indenture or the Program Agreements, including in each case the reasonable fees and out-of-pocket expenses of counsel with respect thereto, and the reasonable fees and out-of-pocket expenses incurred by the CP Conduit Purchasers in connection with the review by any rating agency then rating the Commercial Paper of such CP Conduit Purchasers;

and (c) to the Indenture Trustee, the Administrative Agent and each Purchaser Group, on demand, all reasonable costs and expenses (including reasonable fees and expenses of counsel to the Administrative Agent and each Purchaser Group), if any, in connection with the enforcement of this Supplemental Indenture or any of the Program Agreements, and the other documents delivered thereunder or in connection therewith.

8.9 Further Assurances

Each of the parties hereto upon the request of the other party or parties hereto shall do, execute, acknowledge and deliver or cause to be done, executed acknowledged or delivered all such further acts, deeds, documents, assignments, transfers, conveyances, powers of attorney and assurances as may be reasonably necessary or desirable to effect or complete the consummation of the transactions contemplated by this Supplemental Indenture.

8.10 Confidentiality

(a) Each Purchaser Group and the Administrative Agent covenants and agrees that any non-public information obtained by it pursuant to this Supplemental Indenture and the other Program Agreements shall be held in confidence except that the Purchaser Groups or Administrative Agent may disclose such information (i) pursuant to the order of any court or administrative agency or in any pending legal or administrative proceeding (whether or not having the force or effect of law) provided that, unless prohibited by applicable law, a Purchaser Group or the Administrative Agent, as applicable, shall provide prompt notice of such order to the affected party; (ii) upon the request or demand of any regulatory authority having or claiming jurisdiction over any Purchaser Group or the Administrative Agent; (iii) as required by applicable law including, without limitation, all applicable securities laws; (iv) to the extent that such information becomes publicly available other than by reason of improper disclosure by a Purchaser Group or the Administrative Agent; (v) to its affiliates, officers, directors, employees, legal counsel, independent auditors, accountants, advisors, investors, potential investors, commercial paper dealers, providers of surety, guaranty, credit or liquidity enhancement (including the directors, officers and accountants of such surety, guaranty, credit or liquidity enhancement provider), legal counsel of any of the foregoing and other experts or agents who need to know such information and are informed of the confidential nature of such information (provided that the Persons permitted to make such disclosures under clauses (i), (ii) and (iii) of this Section 8.10 shall also include credit or liquidity enhancers of a CP Conduit Purchaser); (vi) for purposes of establishing a "due diligence" defense; (vii) which was available to a Purchaser Group or the Administrative Agent on a non-confidential basis from a source other than the affected party, provided that such source was not to the knowledge of the Purchaser Group or the Administrative Agent, as applicable, bound by a confidentiality agreement with the affected party; (viii) has been independently acquired or developed by a Purchaser Group or the Administrative Agent without violating any of the Purchaser Group's or the Administrative Agent's obligations under this Supplemental Indenture; (ix) if such disclosure has been approved in writing in advance by the Issuer or the Manager; (x) regarding the existence of this Supplemental Indenture, but not the financial terms thereof; and (xi) to DBRS and Moody's and any other Rating Agencies.

(b) The Issuer covenants and agrees to hold in confidence, and not disclose to any Person, the terms of this Supplemental Indenture (including any fees payable in connection with this Supplemental Indenture or the identity of any CP Conduit Purchaser under this Supplemental

Indenture), except as the applicable Purchaser Group may have consented to in writing prior to any proposed disclosure and except (i) it may also disclose such information (A) to its officers, directors, employees, legal counsel, independent auditors, accountants and other advisors who are directly involved in the consideration of this Supplemental Indenture (and then only on a confidential basis), (B) to the Manager and its officers, directors, employees, legal counsel, independent auditors, accountants and other advisors, (C) any ministry or agency of the Province of Ontario and, in each case, their respective employees, officials, agents and advisors, (D) as required by applicable law (including, without limitation, applicable securities law) or compulsory legal process, (E) as expressly permitted by the terms of the Program Agreements, and (F) to DBRS and Moody's and any other Rating Agencies; provided, that, in the case of clause (D), the Issuer will use all commercially reasonable efforts to maintain confidentiality and will (unless otherwise prohibited by law) notify the affected Administrative Agent or Purchaser Group of its intention to make any such disclosure prior to making such disclosure; and (ii) it may also disclose the existence (but not the financial terms) of this Supplemental Indenture, including to any actual or prospective purchaser of other Notes.

(c) The parties hereto acknowledge that a description of this Supplemental Indenture and the Series 2017-1 Senior Note will be included in the preliminary and final offering memoranda of the Issuer relating to the issue of other Notes from time to time.

8.11 Acknowledgement and Consent to Bail-In of EEA Financial Institutions

Notwithstanding anything to the contrary in this Supplemental Indenture or in any other Program Agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any EEA Financial Institution arising under this Supplemental Indenture or any other Program Agreement, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and

(b) the effects of any Bail-in Action on any such liability, including, if applicable

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments or ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Supplemental Indenture or any other Facility Agreement; or

(iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any EEA Resolution Authority.

8.12 Limitation of Liability of Issuer Trustee

Each party hereto other than the Issuer acknowledges that the Issuer is a trust, and that ~~●~~**Computershare** Trust Company of Canada is the Issuer Trustee. The other parties hereto agree that the Issuer Trustee will not be subject to any liability whatsoever to them, in tort, contract or otherwise, in connection with the Issuer's assets or the trust activities, for any action taken or permitted by it to be taken, or for its failure to take any action; provided that the foregoing limitation will not apply in respect of any action or failure to act arising from or in connection with wilful misconduct, negligence or reckless disregard of a duty by the Issuer Trustee. The Issuer Trustee in doing anything or permitting anything to be done in respect of assets or the trust activities is, and shall be conclusively deemed to be, acting as trustee of the Issuer and not in any other capacity. Except as to the extent provided in this Section 8.12, the Issuer Trustee will not be subject to any debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses against or with respect to the Issuer, arising out of anything done or permitted by it to be done or its failure to take any action in respect of the Issuer's assets or the trust activities and resort will be had solely to the Collateral for the payment or performance thereof. No property or assets of the Issuer Trustee, whether owned in its personal capacity or otherwise, will be subject to levy, execution or other enforcement procedure with regard to any obligation under this Supplemental Indenture. Nothing contained in this Section 8.12 shall be construed so as to limit the liability of the Issuer under this Supplemental Indenture. This Supplemental Indenture, and every deed, transfer, assignment, agreement or other instrument made pursuant hereto including, without limitation, the Series 2017-1 Senior Notes, made or purporting to be made by or creating an obligation of the Issuer or the Issuer Trustee on behalf of, or as trustee of, the Issuer shall be deemed and construed for all purposes as if made by the Issuer Trustee, in and only in its capacity as trustee of the Issuer. Any obligations of the Issuer Trustee hereunder or thereunder are non-recourse to the Issuer Trustee in its personal capacity.

8.13 Execution in Counterparts

This Supplemental Indenture may be executed in several counterparts, each of which when so executed shall be deemed to be an original and the counterparts together shall constitute one and the same instrument. This Supplemental Indenture may be executed and delivered by email or other electronic transmission of a manually signed counterpart.

8.14 Delivery of Executed Copies

Each party acknowledges delivery of an executed copy of this Supplemental Indenture.

[signature page follows]

IN WITNESS WHEREOF the parties hereto have duly executed this Trust Indenture as of the date first above written.

[FAIR HYDRO TRUST], as Issuer

ONTARIO POWER GENERATION INC., not in its individual capacity but solely as Manager

By:
Name:
Title:

By: _____
Name:
Title:

● **TRUST COMPANY OF CANADA**, as Indenture Trustee

By:
Name:
Title:

By:
Name:
Title:

●,

By:
Name:
Title:

[NTD: Detailed signing pages to be prepared.]

SCHEDULE A

DEFINITIONS

"**Acceleration Event**" means the outstanding Dollar Principal Amount of all Funding Obligations of the Series 2017-1 Senior Notes have been declared or automatically become due and payable **[pursuant to Section [8.02] of the Trust Indenture]. [NTD: Consider if it is worth having a separate definition of Acceleration Event for this Series aside from what happens under 8.02 of the Trust Indenture.]**

"**Administrative Agent**" shall have the meaning specified in the preamble to this Supplemental Indenture.

"**AEOI Legislation**" has the meaning specified in Section 3.10(a) of this Supplemental Indenture.

"**Affected Party**" means any Non-Conduit Purchaser, CP Conduit Purchaser and any Program Support Provider with respect to any CP Conduit Purchaser.

"**Applicable Margin**" is defined in the Fee Letter.

"**Authorized Officer**" means, with respect to: (a) the Issuer, any authorized director or officer of the Manager; (b) the Manager, any authorized director of officer of OPG; (c) the IESO, any authorized director or officer of the IESO; (~~e~~d) the Issuer Trustee, any officer within the corporate trust office of such trustee (including the President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Treasurer or any other officer of the Issuer Trustee customarily performing functions similar to those performed by persons who at the time shall be such officers, respectively, and that has direct responsibility for the administration of the Issuer and also, with respect to a particular matter, any other officer to whom such matter is referred to because of such officer's knowledge and familiarity with the particular subject).

"**Bail-In Action**" shall mean the exercise of any Write-Down and Conversion Powers by the applicable EEA Resolution Authority in respect of any liability of an EEA Financial Institution.

"**Bail-In Legislation**" shall mean, with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule.

"**Basel III**" means the revised Basel Accord prepared by the Basel Committee on Banking Supervision as set out in the publication entitled "A Global Regulatory Framework for More Resilient Banks and Banking Systems" developed by the Basel Committee on Banking Supervision, initially published in December 2010, as updated from time to time, and any rules, regulations, guidance, requests, interpretations or directives from any Official Body relating thereto (whether or not having the force of law).

"**Billing Period**" has the meaning specified in the Master Transfer and Servicing Agreement; **[NTD: Consider if this can be replaced with Interest Period wherever it occurs.]**

"**CDOR**" means, on any day, an annual rate of interest equal to the average rate applicable to Canadian dollar bankers' acceptances for a 1 month period appearing on the "Reuters Screen CDOR Page" (as defined in the International Swaps and Derivatives Association, Inc. 2000 definitions, as modified and amended from time to time) at approximately 10:00 a.m. on such day, or if such day is not a Business Day, then on the immediately preceding Business Day, provided that if such rate does not appear on the Reuters Screen CDOR Page on such day as contemplated, then CDOR on such day shall be calculated as the average of the rates for such period applicable to Canadian dollar bankers' acceptances quoted by the banks listed in Schedule I of the *Bank Act* (Canada) as of 10:00 a.m. on such day or, if such day is not a Business Day, then on the immediately preceding Business Day.

"**Closing Date**" is defined in Section 3.3(a).

"**Code**" is defined in Section 3.10(a).

"**Commercial Paper**" means, with respect to any CP Conduit Purchaser, the promissory notes issued by, or for the benefit of, such CP Conduit Purchaser in the commercial paper market.

"**Commitment**" means, with respect to (a) the Group Bank included in any CP Conduit Purchaser Group, the obligation of such Group Bank to purchase a Series 2017-1 Senior Note on the Closing Date and, thereafter, to maintain and, subject to certain conditions, increase the Purchaser Group Principal Amount with respect to such CP Conduit Purchaser Group, in each case, in an amount up to the Maximum Purchaser Group Principal Amount with respect to such CP Conduit Purchaser Group; or (b) any Non-Conduit Purchaser Group, the obligation of the Related Non-Conduit Purchaser to purchase a Series 2017-1 Senior Note on the Closing Date and, thereafter, to maintain and, subject to certain conditions, increase the Purchaser Group Principal Amount with respect to such Non-Conduit Purchaser Group, in each case, in an amount up to the Maximum Purchaser Group Principal Amount with respect to such Non-Conduit Purchaser Group.

"**Commitment Expiry Date**" means the earlier of (a) the Scheduled Commitment Expiry Date; and (b) the date on which an Event of Default shall have been declared or automatically occurred.

"**Commitment Fee**" is defined in Section 3.6(b).

"**Commitment Fee Rate**" is defined in the Fee Letter.

"**Commitment Percentage**" means, on any date of determination, with respect to any Purchaser Group, the ratio, expressed as a percentage, which such Purchaser Group's Maximum Purchaser Group Principal Amount bears to the Series 2017-1 Maximum Principal Amount on such date.

"**Conduit Assignee**" means, with respect to any CP Conduit Purchaser, any commercial paper conduit administered by the Funding Agent with respect to such CP Conduit Purchaser and designated by such Funding Agent to accept an assignment from such CP Conduit Purchaser of the Purchaser Group Principal Amount or a portion thereof with respect to such CP Conduit Purchaser pursuant to Section 8.1(b).

"**CP Conduit Funded Amount**" means, with respect to any CP Conduit Purchaser Group for any day, the portion of the Purchaser Group Principal Amount with respect to such CP Conduit Purchaser Group funded by the CP Conduit Purchaser in respect of such CP Conduit Purchaser Group.

"**CP Conduit Purchaser**" means each commercial paper conduit listed on Schedule E or party to a Purchaser Group Supplement pursuant to which such commercial paper conduit became a party to this Supplemental Indenture

"**CP Conduit Purchaser Group**" means, collectively, a CP Conduit Purchaser and the Group Bank with respect to such CP Conduit Purchaser.

"**CP Conduit Rating Agencies**" means, with respect to any CP Conduit Purchaser, each of DBRS and Moody's and any other nationally recognized statistical rating organization which may, from time to time, rate the Commercial Paper of the CP Conduit Purchaser at the request of the CP Conduit Purchaser.

"**CP Rate**" means with respect to any CP Conduit Purchaser for any day during an Interest Period, the weighted average annual rate of interest applicable to all Commercial Paper of the CP Conduit Purchaser; and provided further that (x) any such Commercial Paper may be issued in either United States dollars or Canadian dollars with the appropriate market rate currency swap agreements being entered into to match such issuance to the funding requirements of such CP Conduit Purchaser, and (y) such weighted average annual rate of interest shall be calculated to reflect any costs incurred by such CP Conduit Purchaser in connection with such swap transactions or in connection with any redemption or repurchase transaction between such CP Conduit Purchaser and the holders of such commercial paper; provided that no amount shall be included in the calculation of the CP Rate which reflects any termination amounts payable by such CP Conduit Purchaser in respect of the early termination of any market rate currency swap referred to in this definition.

"**Decrease**" is defined in Section 3.4(a).

"**Decrease Amount**" is defined in Section 3.4(a).

"**Deferrable Increase Notice**" means a notice of Increase that provides that a Delayed Funding Notice may be provided by any Purchaser Group with respect to such Increase in accordance with Section 3.3(e).

"**Delayed Amount**" is defined in Section 3.3(e).

"**Delayed Funding Date**" is defined in Section 3.3(e).

"**Delayed Funding Notice**" is defined in Section 3.3(e).

"**Delayed Funding Purchaser Group**" is defined in Section 3.3(e).

"**Delayed Funding Reimbursement Amount**" means, with respect to any Delayed Amount of a Delayed Funding Purchaser Group funded by Non-Delayed Funding Purchaser Groups on an

Increase Date, an amount equal to the excess, if any, of (a) such Delayed Amount; over (b) the amount, if any, by which the portion of any principal payment made by the Issuer to such Non-Delayed Funding Purchaser Group pursuant to Section 3.7 on any date during the period from and including such Increase Date to but excluding the Delayed Funding Date for such Delayed Amount, was greater than what it would have been had such Delayed Amount been funded by such Delayed Funding Purchaser Group on such Increase Date.

"**EEA Financial Institution**" shall mean (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority; (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition; or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clause (a) or (b) of this definition and is subject to consolidated supervision with its parent.

"**EEA Member Country**" shall mean any of the member states of the European Union, Iceland, Liechtenstein and Norway.

"**EEA Resolution Authority**" shall mean any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

"**Eligible Assignee**" means a financial institution having short-term debt ratings of at least "A-1" from Standard & Poor's and "P-1" from Moody's.

"**EU Bail-In Legislation Schedule**" shall mean the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

"**Excluded Taxes**" shall have the meaning specified in Section 3.10(a) of this Supplemental Indenture.

"**FATCA**" has the meaning specified in Section 3.10(a) of this Supplemental Indenture.

"**Fee Letter**" means the letter dated the date hereof, from the Issuer addressed to the Administrative Agent, each Non-Conduit Purchaser and each of the CP Conduit Purchasers, the Funding Agents and the Group Banks, setting forth certain fees payable from time to time to the Purchaser Groups, as such letter may be amended or replaced from time to time.

"**Funding Agent**" means, with respect to each CP Conduit Purchaser and its CP Conduit Purchaser Group, the agent bank set forth opposite the name of such CP Conduit Purchaser on Schedule E or in the Purchaser Group Supplement pursuant to which such CP Conduit Purchaser became a party to this Supplemental Indenture.

"**Group Bank**" means, with respect to a CP Conduit Purchaser, the bank or other Person set forth opposite the name of such CP Conduit Purchaser on Schedule E or in the Purchaser Group Supplement pursuant to which such CP Conduit Purchaser became a party to this Supplemental Indenture and any assignee thereof, to the extent such assignee has assumed all or a portion of the Commitments of the Group Bank pursuant to a Transfer Supplement entered into in accordance with Section 8.1(c).

"**Group Bank Funded Amount**" means, with respect to any CP Conduit Purchaser Group for any day, the excess, if any, of the Purchaser Group Principal Amount with respect to such CP Conduit Purchaser Group over the CP Conduit Funded Amount with respect to such CP Conduit Purchaser Group for such day.

"**Group Bank Participants**" is defined in Section 8.1(d).

"**Group Monthly Fees and Other Amounts**" shall mean, for any Payment Date and a Purchaser Group the sum of (a) the Commitment Fee with respect to the related Billing Period for such Purchaser Group; plus (b) any amounts payable to such Purchaser Group hereunder including, without limitation, pursuant to Sections 3.8, 3.10, 3.11 and 8.8; plus (c) the Monthly Fees and Other Amounts Shortfall for such Purchaser Group for such Payment Date.

"**Group Monthly Interest**" means, with respect to each Interest Period and:

(a) any CP Conduit Purchaser Group, the sum of:

(i) for each day during such Interest Period, the product of (x) the portion of the CP Conduit Funded Amount with respect to the CP Conduit Purchaser Group on such day funded through the issuance of Commercial Paper outstanding on such day, times (y) the sum of the CP Rate for such day plus the Applicable Margin, divided by (z) 365; plus

(ii) for each day during such Interest Period, the product of (x) the portion of the CP Conduit Funded Amount with respect to the CP Conduit Purchaser in such GP Conduit Purchaser Group on such day not funded through the issuance of Commercial Paper outstanding on such day, times (y) the sum of CDOR for such day plus the Applicable Margin, divided by (z) 365; plus

(iii) for each day during such Interest Period the product of (x) the Group Bank Funded Amount with respect to such Purchaser Group on such day, times (y) the sum of CDOR for such day plus the Applicable Margin, divided by (x) 365.

(b) any Non-Conduit Purchaser Group, the sum for each day during such Interest Period of the product of (i) the Purchaser Group Principal Amount with respect to such Non-Conduit Purchaser Group on such day; times (ii) the sum of CDOR for such day plus the Applicable Margin, divided by (iii) 365.

For the purposes of determining the Group Monthly Interest in respect of an Interest Period prior to the end of the Interest Period, the Funding Agent in respect of a CP Conduit Purchaser Group or a Non-Conduit Purchaser Group may estimate the interest for the remaining days in the Interest Period. If the actual interest for such days is less than the estimated interest, the Group Monthly Interest for the following Interest Period shall be reduced to adjust for such lower actual interest and if the actual interest for such days is higher than the estimated interest, the Group Monthly Interest for the following Interest Period shall be increased to adjust for such higher interest.

"**Increase**" is defined in Section 3.3(a).

"**Increase Amount**" is defined in Section 3.3(a).

"**Increase Date**" is defined in Section 3.3(a).

"**Increase Notice**" is defined in Section 3.3(a).

"**Interest Period**" means each of the consecutive periods that begins on, and includes, each Payment Date and ends on and excludes, the following Payment Date; provided that the first Interest Period shall begin on the Closing Date and end on ●.

"**Issuer indemnified person**" is defined in Section 3.8.

"**Issuer indemnified person**" is defined in Section 3.8

~~"**Manager Indemnity**" means an indemnity agreement from the Manager in favour of the Purchaser Groups, the Funding Agents and the Administrative Agent with respect to losses resulting from the failure of the Issuer to perform its obligations under the Program Agreements other than losses resulting from insufficient funds being transferred to the Issuer, in form and substance satisfactory to the Purchaser Groups, the Funding Agents and the Administrative Agent.~~

"**Maximum Purchaser Group Principal Amount**" means, with respect to (a) any CP Conduit Purchaser Group, the amount set forth opposite the name of the CP Conduit Purchaser included in such CP Conduit Purchaser Group on Schedule E or in the Purchaser Group Supplement pursuant to which such CP Conduit Purchaser Group became a party to this Supplemental Indenture; or (b) any Non-Conduit Purchaser Group, the amount set forth opposite the name of such Non-Conduit Purchaser Group on Schedule E or in the Purchaser Group Supplement pursuant to which such Non-Conduit Purchaser Group became a party to this Supplemental Indenture, in each case, as such amount may be increased or reduced from time to time as provided in Section 3.5.

"**Monthly Interest**" shall mean, for any Payment Date, the aggregate for all Purchaser Groups of the sum of (a) Group Monthly Interest for the related Interest Period for each Purchaser Group; plus (b) the Monthly Interest Shortfall for such Payment Date for each Purchaser Group.

"**Monthly Fees and Other Amounts**" shall mean, for any Payment Date, the aggregate of the Monthly Fees and Other Amounts for all Purchaser Groups.

"**Monthly Interest Shortfall**" means, for any Payment Date and a Purchaser Group, if the amount of the Group Monthly Interest for the preceding Payment Date was greater than the amount distributed to the payment of such amounts pursuant to Section 3.6(d), an amount equal to the Group Monthly Interest owing to such Purchaser Group which were unpaid on the preceding Payment Date plus interest on such unpaid amount for the period from the preceding Payment Date to the current Payment Date at a rate equal to the Prime Rate plus ●% per annum.

"**Monthly Fees and Other Amounts Shortfall**" means, for any Payment Date and a Purchaser Group, if the amount of the Monthly Fees and Other Amounts for the preceding Payment Date was greater than the amount distributed to the payment of such amounts pursuant to Section

3.6(d), an amount equal to the Monthly Fees and Other Amounts owing to such Purchaser Group which were unpaid on the preceding Payment Date plus interest on such unpaid amount for the period from the preceding Payment Date to the current Payment Date at a rate equal to the Prime Rate plus ●% per annum.

"**Non-Conduit Purchaser**" means each financial institution or other entity (other than a commercial paper conduit, Group Bank or Funding Agent) listed on Schedule E or party to a Purchaser Group Supplement pursuant to which such financial institution or entity became a party to this Supplemental Indenture.

"**Non-Conduit Purchaser Group**" means a Non-Conduit Purchaser.

"**Non-Conduit Purchaser Participants**" is defined in Section 8.1(f).

"**Non-Deferrable Draw Amount**" means, with respect to any Purchaser Group as of any Increase Date, an amount equal to the lesser of (a) the excess, if any, of (x) ~~[10]% of the Maximum Purchaser Group Principal Amount with respect to~~**the product of (i) $100,000,000 and (ii) the Commitment Percentage of** such Purchaser Group over (y) the portion of any Increase Amounts funded by such Purchaser Group during the preceding thirty-five (35) days pursuant to a Non-Deferrable Increase Notice or, to the extent of any decrease pursuant to Section 3.3(e) in the Delayed Amount set forth in a Delayed Funding Notice delivered by such Purchaser Group, a Deferrable Increase Notice; and (b) the excess, if any, of (x) the Maximum Purchaser Group Principal Amount with respect to such Purchaser Group, over (y) the sum of (i) the Purchaser Group Principal Amount with respect to such Purchaser Group; and (ii) any unfunded Delayed Amounts with respect to such Purchaser Group, in each case as of such Increase Date. [**NTD:** ~~**The percentage in (a)(x) above is intended to represent the non-deferrable amount**~~**OPG would like an aggregate Non-Deferrable Draw Amount of $100 million at all times.**]

"**Non-Deferrable Increase Notice**" means a notice of Increase that provides that a Delayed Funding Notice may not be provided by any Purchaser Group with respect to such Increase in accordance with Section 3.3(a).

"**Non-Delayed Funding Purchaser Group**" is defined in Section 3.3(f).

"**Optional Termination Date**" is defined in Section 3.4.

"**Optional Termination Notice**" is defined in Section 3.4.

"**Prime Rate**" means the annual rate of interest announced by ● from time to time as being its reference rate for the determination of interest rates on Canadian dollar denominated commercial loans made by it and commonly referred to by ● as its "prime rate."

"**Principal Accumulation Amount**" means, in respect of each Payment Date occurring on or after the Principal Accumulation Date, an amount equal to the lesser of (x) $●, and (y) the Series 2017-1 Principal Amount.

"**Principal Accumulation Date**" means the Payment Date occurring in the month of ●, [2021].

"**Principal Payment Amount**" means, in respect of the Series 2017-1 Notes:

(a) on any Payment Date that is a Decrease Date before the earlier of (i) the Series 2017-1 Principal Payment Due Date; and (ii) the occurrence of an Acceleration Event, the Decrease Amount of the Decrease occurring on such Payment Date;

(b) on any Payment Date that is not a Decrease Date before the earlier of (i) the Series 2017-1 Principal Payment Due Date; and (ii) the occurrence of an Acceleration Event, nil; and

(c) on any Payment Date occurring on or after the earlier of (i) the Series 2017-1 Principal Payment Due Date; and (ii) the occurrence of an Acceleration Event, the Series 2017-1 Principal Amount.

"**Pro Rata Share**" means, with respect to any Purchaser Group, on any date, the ratio, expressed as a percentage, which the Purchaser Group Principal Amount with respect to such Purchaser Group bears to the Series 2017-1 Principal Amount on such date.

"**Program Support Provider**" means, with respect to any CP Conduit Purchaser, the Group Bank with respect to such CP Conduit Purchaser and any other or additional Person now or hereafter extending credit, or having a commitment to extend credit to or for the account of, or to make purchases from, such CP Conduit Purchaser or issuing a letter of credit, surety bond or other instrument to support any obligations arising under or in connection with such CP Conduit Purchaser's securitization program.

"**Purchaser Group**" means a CP Conduit Purchaser Group or a Non-Conduit Purchaser Group.

"**Purchaser Group Increase Amount**" means, with respect to any Purchaser Group, for any Business Day, such Purchaser Group's Commitment Percentage of the Increase Amount, if any, on such Business Day.

"**Purchaser Group Principal Amount**" means, with respect to any Purchaser Group, (a) when used with respect to the Closing Date, such Purchaser Group's Commitment Percentage of the Series 2017-1 Initial Principal Amount; and (b) when used with respect to any other date, an amount equal to (i) the Purchaser Group Principal Amount with respect to such Purchaser Group on the immediately preceding Business Day; plus (ii) the Purchaser Group Increase Amount with respect to such Purchaser Group on such date; minus (iii) the amount of principal payments made to such Purchaser Group pursuant to Section 3.7 on such date. For the avoidance of doubt, (x) so long as any Purchaser Group has failed to fund any portion of its Purchaser Group Increase Amount with respect to any Increase Date (including any Delayed Amount), such unfunded amount shall not be included in the Purchaser Group Principal Amount for such Purchaser Group unless and until such amount has been funded (including by Funding any Delayed Funding Reimbursement Amount, if applicable), and (y) any Delayed Amounts funded on an Increase Date by a Non-Delayed Funding Purchaser Group shall be included in the Purchaser Group Principal Amount for such Non-Delayed Funding Purchaser Group until the related Delayed Funding Reimbursement Amount has been funded.

"**Purchaser Group Supplement**" is defined in Section 8.1(e).

"**Rating Agency Condition**" means, with respect to any action in respect of the Series 2017-1 Senior Notes subject to such condition, each of the CP Conduit Purchasers shall deliver written notice of the proposed action to the CP Conduit Rating Agencies at least 10 Business Days prior to the effective date of such action (or if 10 Business Days prior notice is impractical, such advance notice as is practicable) and the CP Conduit Rating Agencies (i) shall not have informed any CP Conduit Purchaser prior to the effective date of such action that such action will result in the reduction or withdrawal of the rating in effect with respect to the Commercial Paper of the CP Conduit Purchaser immediately before the taking of such action, or (ii) in the case of DBRS, or any successor thereto, when it is a CP Conduit Rating Agency, DBRS shall have informed each of the CP Conduit Purchasers in writing prior to the effective date of such action that such action will not result in the reduction or withdrawal of the rating of any Commercial Paper of such CP Conduit Purchasers immediately before the taking of such action. For purposes of the Trust Indenture, this Supplemental Indenture and the Master Transfer and Servicing Agreement, the Indenture Trustee shall receive, and shall be entitled to rely on, a certificate of a CP Conduit Purchaser confirming the satisfaction of the Rating Agency Condition.

"**Recipient**" has the meaning specified in Section 3.10(a) of this Supplemental Indenture.

"**Refinancing Increase**" is defined in Section 3.3(a).

"**Regulatory Change**" shall mean (i) the adoption after the date hereof of any applicable law, rule or regulation (including any applicable law, rule or regulation regarding capital adequacy, deposits, reserves or liquidity coverage) or any change therein after the date hereof, (ii) any change after the date hereof in the interpretation, administration, scope or timing of implementation thereof by any governmental authority, central bank, self-regulating professional body or comparable agency or authority charged with the interpretation or administration thereof, or compliance with any guidance, request or directive (whether or not having the force of law) of any such authority, central bank, self-regulating professional body or comparable agency or authority; provided that for purposes of this definition, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder, issued in connection therewith or in implementation thereof, and (y) all requests, rules, guidelines and directives (whether or not having the force of law) promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or Canadian or United States or other foreign regulatory authorities, shall in each case be deemed to be a "Regulatory Change", regardless of the date enacted, adopted, issued or implemented.

"**Related Non-Conduit Purchaser**" means, with respect to any Non-Conduit Purchaser Group, the Non-Conduit Purchaser that constitutes such Non-Conduit Purchaser Group.

"**Related Purchaser Group**" means, with respect to (a) any Funding Agent, the CP Conduit Purchaser identified next to such Funding Agent on Schedule E and the Group Bank identified on Schedule I next to such CP Conduit Purchaser or the CP Conduit Purchaser and Group Bank party to the Purchaser Group Supplement pursuant to which such Funding Agent became a party to this Supplemental Indenture; (b) any CP Conduit Purchaser, the CP Conduit Purchaser Group of which such CP Conduit Purchaser is a member; and (c) any Non-Conduit Purchaser, the Non-Conduit Purchaser Group that such Non-Conduit Purchaser constitutes.

"**Requisite Series 2017-1 Noteholders**" means Purchaser Groups having Commitment Percentages aggregating more than 50% (or if all Commitments have terminated, Purchaser Groups whose aggregate Purchaser Group Principal Amounts exceed 50% of the Series 2017-1 Principal Amount).

"**Scheduled Commitment Expiry Date**" means, ●, as such date may be extended in accordance with Section 3.5(c). [**NTD: two years out.]**

"**Series 2017-1 Initial Principal Amount**" is defined in Section 3.3(a).

"**Series 2017-1 Maximum Principal Amount**" means, on any date of determination, the sum of the Maximum Purchaser Group Principal Amounts with respect to each of the Purchaser Groups on such date.

"**Series 2017-1 Noteholder**" means a Person in whose name a Series 2017-1 Senior Note is registered in the Note Register.

"**Series 2017-1 Principal Amount**" means, on any date of determination, the sum of the Purchaser Group Principal Amounts with respect to each of the Purchaser Groups on such date.

"**Series 2017-1 Principal Payment Due Date**" means ●. [**NTD: the date upon which the Series 2017-1 Senior Notes become due and payable – a date after May 1, 2021?**]

"**Series 2017-1 Principal Payment Default Date**" means ●. [**NTD: the "cure period" number of days after the Series 2017-1 Principal Payment Due Date when an Event of Default will occur if the Series 2017-1 Senior Notes are not paid in full.]**

"**Series 2017-1 Senior Note**" means any one of the Floating Rate Variable Funding Senior Notes, Series 2017-1, executed by the Issuer and authenticated and delivered by or on behalf of the Indenture Trustee, substantially in the form of Exhibit B.

"**Standard & Poor's**" means Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc.

"**Supplemental Indenture**" means this Amended and Restated Supplemental Indenture, together with the Schedules hereto, as amended, supplemented, modified, restated or replaced from time to time, together with all schedules hereto and the expressions "hereof," "herein," "hereto," "hereunder," "hereby" and similar expressions refer to this Supplemental Indenture and not to any Article, Section, paragraph, subparagraph or clause hereof.

"**Support Facility**" shall mean any liquidity or credit support agreement with a CP Conduit Purchaser which relates to, or is otherwise available to such CP Conduit Purchaser in relation to its funding activities under, this Supplemental Indenture.

"**Termination Event**" means any Event of Default or any event which with the giving of notice or the passage of time, or both, could become an Event of Default.

"**Transfer Increase**" is defined in Section 3.3(a).

"**Transfer Supplement**" is defined in Section 8.1(c).

"**Transferee**" is defined in Section 8.1(g).

"**Trust Indenture**" means the trust indenture dated as of ●, 2017 between the Issuer and the Indenture Trustee, as amended or restated from time to time.

"**Write-Down and Conversion Powers**" shall mean, with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule.

SCHEDULE B

[FORM OF NOTE]

SERIES 2017-1 SENIOR NOTE

●

SCHEDULE C

FORM OF INCREASE NOTICE

●

SCHEDULE D

FORM OF DECREASE NOTICE

●

SCHEDULE E

PURCHASER GROUPS

-

Document comparison by Workshare Compare on November-10-17 8:35:25 PM

Input:	
Document 1 ID	file://C:\Users\bsaulnie\Desktop\Blackline Against\Warehouse Supplement - Nov 6, 2017 (Osler).docx
Description	Warehouse Supplement - Nov 6, 2017 (Osler)
Document 2 ID	file://C:\Users\bsaulnie\AppData\Local\Temp\Workshare\wmtemp47c4\Supplemental Indenture (Short Term Senior).docx
Description	Supplemental Indenture (Short Term Senior)
Rendering set	Firm_Standard

Legend:	
Insertion	
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Moved cell	
Split/Merged cell	
Padding cell	

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	Count
Insertions	39
Deletions	57
Moved from	1
Moved to	1
Style change	0
Format changed	0
Total changes	98

Blackline - Supplemental Indenture (Subordinated Short Term).pdf

~~SENIOR~~SUBORDINATED SERIES 2017-1

SUPPLEMENTAL INDENTURE

between

FAIR HYDRO TRUST

by

COMPUTERSHARE TRUST COMPANY OF CANADA
as Issuer Trustee

and

BNY TRUST COMPANY OF CANADA
as Indenture Trustee

and

~~●~~
~~as Administrative Agent~~

~~and~~

~~CERTAIN CP CONDUIT PURCHASERS,~~
~~CERTAIN NON-CONDUIT PURCHASERS~~
~~CERTAIN FUNDING AGENTS~~
~~and CERTAIN GROUP BANKS~~

ONTARIO POWER GENERATION INC.
as Purchaser

Made as of ●, 2017

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FLOATING RATE VARIABLE FUNDING, SERIES 2017-1 ~~SENIOR~~SUBORDINATED NOTES

SUPPLEMENTAL INDENTURE made as of ●, 2017, between **Computershare Trust Company of Canada**, a trust company established under the laws of Canada (the "**Issuer Trustee**"), in its capacity as trustee of **Fair Hydro Trust**, a trust existing under the laws of the Province of Ontario (in such capacity, the "**Issuer**"), **BNY Trust Company of Canada**, a trust company established under the laws of Canada (the "**Indenture Trustee**"), ~~●~~and Ontario Power Generation Inc., in its capacity as the ~~administrative agent for the~~ purchaser (the "**Purchaser** ~~Groups (the "**Administrative Agent**"), the **Non-Conduit Purchasers** from time to time party hereto, the **CP Conduit Purchasers** from time to time party hereto, and the **Funding Agents** for the CP Conduit Purchaser Groups from time to time party hereto.~~");

WHEREAS pursuant to the Trust Indenture, provision was made for the issuance of Notes from time to time;

AND WHEREAS pursuant to the Trust Indenture, Notes may be issued in one or more Series by the execution and delivery of a Supplemental Indenture;

AND WHEREAS pursuant to a Supplemental Indenture dated the date hereof between the Issuer Trustee, in its capacity as trustee of the Issuer, the Indenture Trustee, ■, in its capacity as the administrative agent for certain purchaser groups (the "Administrative Agent"), certain non-conduit purchasers from time to time party thereto, certain commercial paper conduit purchasers from time to time party thereto, and certain funding agents from time to time party thereto (the "Senior Series 2017-1 Supplemental Indenture"), the Issuer issued floating rate variable funding Series 2017-1 Senior Notes (the "Series 2017-1 Senior Notes");

AND WHEREAS the parties hereto are entering into this Supplemental Indenture to provide for the creation and issuance of the Series 2017-1 ~~Senior~~**Subordinated** Notes;

NOW THEREFORE THIS SUPPLEMENTAL INDENTURE WITNESSES and it is hereby covenanted, agreed and declared as follows:

ARTICLE 1
INTERPRETATION

1.1 Definitions

(a) For all purposes of this Supplemental Indenture, except as otherwise expressly provided or unless the context otherwise requires, the terms defined in Schedule A hereto have the meanings assigned to them in Schedule A and include the plural as well as the singular.

(b) The provisions of Section 1.1 of the Trust Indenture are applicable to this Supplemental Indenture. Except as otherwise expressly provided or unless the context otherwise requires, all terms used herein which are defined in the Trust Indenture, either directly or by reference therein, have the meanings assigned to them in the Trust Indenture.

1.2 Interpretation

Subject to the next following sentences, this Supplemental Indenture is supplemental to the Trust Indenture and the Trust Indenture shall be read in conjunction with this Supplemental Indenture and all of the provisions of the Trust Indenture shall apply to and shall have effect in connection with this Supplemental Indenture in the same manner as if all of the provisions of the Trust Indenture and of this Supplemental Indenture were contained in one instrument. This Supplemental Indenture shall, unless the context otherwise requires, be subject to the interpretative provisions contained in Article 1 of the Trust Indenture. If any terms of the Trust Indenture are inconsistent with the express terms or provisions hereof, the terms and provisions of the Trust Indenture shall be, solely in respect of the Series 2017-1 ~~Senior~~**Subordinated** Notes, amended and supplemented so as to be consistent herewith. The provisions of this Supplemental Indenture are applicable only in respect of the Series 2017-1 ~~Senior~~**Subordinated** Notes and not the Notes of any other Series.

1.3 Application of this Supplemental Indenture

With respect to the Series 2017-1 ~~Senior~~**Subordinated** Notes only, the terms of the Trust Indenture are amended, supplemented, modified, restated and replaced to the extent applicable by the terms of this Supplemental Indenture in respect of the Series 2017-1 ~~Senior~~**Subordinated** Notes in accordance with Section 1.2 above.

ARTICLE 2
PRINCIPAL TERMS

2.1 Creation of Series 2017-1 ~~Senior~~Subordinated Notes

There is hereby created a Series of Notes to be issued pursuant to the Trust Indenture and this Supplemental Indenture designated as the "**Floating Rate Variable Funding ~~Senior~~Subordinated Notes, Series 2017-1**."

2.2 Principal Terms

In addition to and without limiting any of the provisions of this Supplemental Indenture, the Series 2017-1 ~~Senior~~**Subordinated** Notes:

(a) will be designated as set out in Section 2.1;

(b) will be ~~Senior~~**Subordinated** Notes;

(c) will have a Stated Principal Amount equal to the Series 2017-1 Maximum **Subordinated** Principal Amount;

(d) will not be issued in Classes or Tranches;

(e) will be denominated in Canadian dollars;

(f) will not be listed on any securities exchange;

(g) will have an Initial Dollar Principal Amount equal to the Series 2017-1 Initial **Subordinated** Principal Amount;

(h) will be issued as definitive notes and will not be in the form of a Global Note;

(i) will be issued as Registered Notes and will be without coupons;

(j) will be ~~Senior~~**Subordinated** Notes and will not be subordinated to any other Series, Class or Tranche of Notes **other than all Senior Notes**;

(k) will be substantially in the form of Schedule B, with such appropriate insertions, omissions, substitutions and variations as may be approved by the Issuer;

(l) will have each Payment Date as an Interest Payment Date;

(m) will have a Principal Payment ~~Due~~ Date that is the Series 2017-1 **Senior** Principal Payment ~~Due~~ Date;

(n) will have a Principal Payment Default Date that is the Series 2017-1 **Subordinated** Principal Payment Default Date; and

(o) will have no minimum issue amount.

ARTICLE 3
NOTE PURCHASE FACILITY

3.1 Purchase of Notes by the ~~Purchasers~~Purchaser

(a) ***Initial ~~Purchases~~Purchase***. Subject to the terms and conditions of this Supplemental Indenture, including delivery of notice in accordance with Section 3.3, ~~(i) each Non-Conduit~~**the** Purchaser shall~~ purchase, and each CP Conduit Purchaser may, in its sole discretion,~~ purchase a Series 2017-1 ~~Senior~~**Subordinated** Note in an amount equal to ~~all or a portion of its Commitment Percentage of~~ the Series 2017-1 Initial **Subordinated** Principal Amount on any Business Day during the period from the date hereof to and including **[December 15, 2017]**~~, and if any such CP Conduit Purchaser shall have notified the Administrative Agent and the Funding Agent with respect to such CP Conduit Purchaser that it has elected not to fund a Series 2017-1 Senior Note in an amount equal to its Commitment Percentage of the Series 2017-1 Initial Principal Amount on the Closing Date, the Group Bank with respect to such CP Conduit Purchaser shall fund on the Closing Date that portion of such Series 2017-1 Senior Note not to be funded by such CP Conduit Purchaser; and (ii) thereafter, (A) each Non-Conduit Purchaser shall maintain its Series 2017-1 Senior Note, subject to increase or decrease during the period from the Closing Date to and including the Commitment Expiry Date, in accordance with the provisions of this Supplemental Indenture, (B) if a CP Conduit Purchaser shall have purchased a Series 2017-1 Senior Note on the Closing Date, such CP Conduit Purchaser may, in its sole discretion, maintain its Series 2017-1 Senior Note, subject to increase or decrease during the period from the Closing Date to and including the Commitment Expiry Date, in accordance with the provisions of this Supplemental Indenture, and (C) the Group Bank shall maintain its Series 2017-1 Senior Note with respect to its Related Purchaser Group, subject to increase or decrease during the period from the Closing Date to and including the Commitment Expiry Date, in accordance with~~

~~the provisions of this Supplemental Indenture. Payments by the Non-Conduit Purchasers, the CP Conduit Purchasers and/or the Group Bank with respect to the CP Conduit Purchasers,~~ **Payments by the Purchaser for such purchase** shall be made in immediately available funds on the Closing Date in accordance with Section 3.3(~~d~~**c**).

(b) ***Series 2017-1 Maximum ~~Purchaser Group~~Subordinated Principal ~~Amounts~~Amount***. Notwithstanding anything to the contrary contained in this Supplemental Indenture, at no time shall ~~a~~**the** Purchaser ~~Group~~ be required to ~~make the initial purchase of a Series 2017-1 Senior Note or increase its Purchaser Group Principal Amount if the sum of (x) Purchaser Group Principal Amount with respect to such Purchaser Group, after giving effect to such purchase or increase, and (y) the sum of any unfunded Delayed Amounts with respect to such Purchaser Group, would exceed the Maximum Purchaser Group Principal Amount with respect to such Purchaser Group at such time~~**purchase Series 2017-1 Subordinated Notes in an amount that exceeds the Series 2017-1 Maximum Subordinated Principal Amount**.

3.2 Delivery

(a) On the Closing Date ~~(or on any later date that any Purchaser Group becomes a party to this Supplemental Indenture)~~, Series 2017-1 ~~Senior~~**Subordinated** Notes shall be executed, authenticated and delivered by the Issuer in accordance with Section 4.03 of the Trust Indenture ~~(i)~~ in the ~~case of a CP Conduit Purchaser Group, in the name of the Funding Agent with respect to such CP Conduit Purchaser Group (or as otherwise requested by such CP Conduit Purchaser Group and agreed to by the Issuer) in an amount equal to the Maximum Purchaser Group Principal Amount with respect to such CP Conduit Purchaser Group and delivered to such Funding Agent; or (ii) in the case of a Non-Conduit Purchaser Group, in the name of the Related Non-Conduit Purchaser in an amount equal to the Maximum Purchaser Group Principal Amount with respect to such Related Non-Conduit Purchaser Group and delivered to such Related Non-Conduit Purchaser~~**name of the Purchaser in an amount equal to the Series 2017-1 Maximum Subordinated Principal Amount**.

(b) The ~~Administrative Agent~~**Purchaser** shall maintain a record of the actual ~~Purchaser Group Principal Amount outstanding with respect to each Purchaser Group and the actual~~ Series 2017-1 **Subordinated** Principal Amount outstanding on any date of determination, which, absent manifest error, shall constitute prima facie evidence of the outstanding ~~Purchaser Group Principal Amounts and outstanding~~ Series 2017-1 **Subordinated** Principal Amount from time to time. ~~Upon a written request from the Indenture Trustee, the Administrative Agent shall provide in writing the identity of the Purchaser Groups, the related Funding Agents for each CP Conduit Purchaser Group, the Purchaser Group Principal Amount for each Purchaser Group and the Commitment Percentage with respect to such Purchaser Group to the Indenture Trustee.~~

3.3 Procedure for Initial Issuance and for Increasing the Series 2017-1 Subordinated Principal Amount

(a) (i) On any Business Day prior to [**December 15, 2017**], ~~in the case of a Non-Conduit Purchaser Group, the Related Non-Conduit Purchaser hereby agrees, or in the case of a CP Conduit Purchaser Group, the CP Conduit Purchaser in such CP Conduit Purchaser Group may agree, in its sole discretion, and the Group Bank with respect to such CP Conduit~~**concurrent with the initial purchase of** the Series 2017-1 Senior Notes **under the Senior Series 2017-1 Supplemental Indenture, the Issuer shall request that the Purchaser purchase, and the**

Purchaser ~~hereby agrees, that it will~~**shall** purchase**,** a Series 2017-1 ~~Senior~~**Subordinated** Note for an initial purchase price equal to the ~~Commitment Percentage with respect to such Purchaser Group of the~~ Series 2017-1 Initial **Subordinated** Principal Amount ~~upon the request of the Issuer~~ (the date on which the initial purchase occurs being referred to as the "**Closing Date**")~~; provided, however, that the Issuer shall have given the Administrative Agent~~ **by giving the Purchaser** (with a copy to the Indenture Trustee) irrevocable written notice (effective upon receipt), by email communication, substantially in the form of Schedule C no later than **[3:00 p.m.]** (Toronto time) on the third Business Day prior to the Closing Date. The written notice of the initial purchase of the Series 2017-1 ~~Senior~~**Subordinated** Notes shall **(x)** state ~~(x)~~ the Closing Date, ~~and~~ (y) **state** the ~~initial total purchase price to be paid for the Series 2017-1 Senior Notes (the "~~Series 2017-1 Initial **Subordinated** Principal Amount~~"); and (ii) subject to Section 3.3(e),~~**, and (z) attach a copy of the irrevocable written notice delivered to the Administrative Agent pursuant to Section [3.3(a)] of the Senior Series 2017-1 Supplemental Indenture in connection with the concurrent initial purchase of the Series 2017-1 Senior Notes thereunder; and (ii)** on any Business Day ~~during the period from~~**after** the initial purchase of the Series 2017-1 ~~Senior~~**Subordinated** Notes hereunder ~~to and including the Commitment Expiry Date, in the case of a Non-Conduit Purchaser Group, the Related Non-Conduit Purchaser hereby agrees, or in the case of a CP Conduit Purchaser Group, the CP Conduit Purchaser in such CP Conduit Purchaser Group may agree, in its sole discretion, and the Group Bank with respect to such CP Conduit Purchaser hereby agrees that the Purchaser Group~~**, the Issuer and the Purchaser hereby agree that the Series 2017-1 Subordinated** Principal Amount ~~with respect to such Purchaser Group~~ may be increased by an amount ~~equal to the Commitment Percentage with respect to such Purchaser Group of the Increase Amount (an "**Increase**"), upon the request of the Issuer~~**not to exceed the product of (i) the Series 2017-1 Senior Increase on such Business Day** (each date on which an increase in the Series 2017-1 **Subordinated** Principal Amount occurs hereunder being herein referred to as the "**Increase Date**" applicable to such Increase)~~; provided, however, that the Issuer shall have given the Administrative Agent~~ **and (ii) [ninety-eight] percent [(98)]% (an "Increase") by the Issuer providing the Purchaser** (with a copy to the Indenture Trustee) irrevocable ~~(other than as specified in Section 3.3(e))~~ written notice (effective upon receipt), by email communication, substantially in the form of Schedule C (an "**Increase Notice**") no later than **[3:00 p.m.]** (Toronto time) on ~~(A) with respect to a Deferrable Increase Notice, the third Business Day prior to such Increase Date, or (B) with respect to a Non-Deferrable Increase Notice,~~ the second Business Day prior to such Increase Date. Each Increase Notice shall **(w)** state **the Increase Date,** (x) **state** the ~~Increase Date, (y) the proposed~~ amount of the increase in the Series 2017-1 **Subordinated** Principal Amount (an "**Increase Amount**"), (~~z) whether a Delayed Funding Notice may be delivered in connection with such Increase pursuant to Section 3.3(e) and~~**y) state** whether the Increase is to fund a Transfer (a "**Transfer Increase**") or is in respect of a Refinancing (a "**Refinancing Increase**")~~. The Commitment Percentage with respect to any Purchaser Group of the Increase Amount set forth in any Non-Deferrable Increase Notice shall not exceed such Purchaser Group's Non-Deferrable Draw Amount as of the related Increase Date.~~**, and (z) attach a copy of the irrevocable written increase notice delivered to the Administrative Agent pursuant to Section [3.3(a)] of the Senior Series 2017-1 Supplemental Indenture in connection with the applicable Series 2017-1 Senior Increase proposed to be made thereunder.**

(b) ~~If a CP Conduit Purchaser elects not to fund the full amount of its Commitment Percentage of a requested Increase, such CP Conduit Purchaser shall notify the Administrative Agent and the Funding Agent with respect to such CP Conduit Purchaser, and the Group Bank~~

~~with respect to such CP Conduit Purchaser shall fund the portion of the Commitment Percentage with respect to such Related Purchaser Group of such Increase not funded by such CP Conduit Purchaser.~~**The Purchaser shall not** be required to increase **the Series 2017-1 Subordinated** Principal Amount on any Increase Date hereunder unless **after giving effect to such Increase Amount, the Series 2017-1 Maximum Subordinated Principal Amount is not exceeded.**

~~(c) No Purchaser Group shall be required to increase its Purchaser Group Principal Amount on any Increase Date hereunder unless:~~

~~(i) such Purchaser Group's Commitment Percentage of such Increase Amount is (A) equal to $1,000,000 or more, or (B) if less than $1,000,000, the difference between the Maximum Purchaser Group Principal Amount with respect to such Purchaser Group and the Purchaser Group Principal Amount with respect to such Purchaser Group; and~~

~~(ii) after giving effect to such Increase Amount, the sum of the (x) the Purchaser Group Principal Amount, and (y) any unfunded Delayed Amounts with respect to such Purchaser Group would not exceed the Maximum Purchaser Group Principal Amount with respect to such Purchaser Group;~~

~~(d) Upon receipt of any notice required by Section 3.3(a) or permitted by Section 3.3(e) from the Issuer, the Administrative Agent shall forward (by email communication) a copy of such notice to each Non-Conduit Purchaser and the Funding Agent with respect to each CP Conduit Purchaser Group (or, with respect to any notice pursuant to Section 3.3(e) requiring a Delayed Funding Purchaser Group to decrease its Delayed Amount, the applicable Non-Conduit Purchaser or Funding Agent), no later than **[5:00 p.m.]** (Toronto time) on the Business Day received. After receipt by any Funding Agent with respect to a CP Conduit Purchaser Group of such notice from the Administrative Agent, such Funding Agent shall, so long as the conditions set forth in Sections 3.3(a) and (c) and Article 4 are satisfied, promptly provide notice by email communication to the related CP Conduit Purchaser and the related Group Bank, of the Increase Date and of such CP Conduit Purchaser Group's Commitment Percentage of the Closing Date or Increase Amount, as applicable. Subject to Section 3.3(e), if such CP Conduit Purchaser elects to fund all or a portion of its Commitment Percentage of the Series 2017-1 Initial Principal Amount or the Increase Amount, as applicable, such CP Conduit Purchaser shall pay in immediately available funds its Commitment Percentage (or any portion thereof) of the amount of the Series 2017-1 Initial Principal Amount or Increase Amount, as applicable, on the Closing Date or the related Increase Date, as applicable, to the Funding Agent with respect to such CP Conduit Purchaser Group for remittance to the Issuer for application in accordance with Section 3.3(h). Subject to Section 3.3(e), if such CP Conduit Purchaser does not fund the full amount of the Commitment Percentage of such CP Conduit Purchaser Group of the Series 2017-1 Initial Principal Amount or an Increase Amount, as applicable, and the related Group Bank is required to fund the portion thereof not funded by the CP Conduit Purchaser, such Group Bank shall pay in immediately available funds such portion on the Closing Date or the related Increase Date, as applicable, to the Funding Agent with respect to such CP Conduit Purchaser Group. Each Funding Agent shall remit the amounts received by it from its CP Conduit Purchaser or the related Group Bank pursuant to this Section 3.3(d) to the Issuer for application in accordance with Section 3.3(h). Subject to Section 3.3(e), so long as the conditions set forth in Sections 3.3(a) and (c) and Article 4 are satisfied, each Non-Conduit Purchaser shall pay in immediately available funds the Commitment Percentage of such Non-Conduit Purchaser of the amount of the~~

Series 2017-1 Initial Principal Amount or Increase Amount, as applicable, on the Closing Date or the Increase Date, as applicable, to the Issuer for application in accordance with Section 3.3(h).

(e) Notwithstanding any of the foregoing, any Group Bank or Non-Conduit Purchaser who shall have previously notified the Issuer in writing that it or any related Program Support Provider may, in the absence of the Group Bank or Non-Conduit Purchaser having the ability to deliver Delayed Funding Notices hereunder, incur charges under, or in anticipation of, Basel III (which may include external charges incurred by the Group Bank, Non-Conduit Purchaser or Program Support Provider or internal charges incurred by any of their businesses) in respect of its Commitment hereunder or any agreement to support such Commitment, or in respect of its interest in the Series 2017-1 Senior Notes, based on its "liquidity coverage ratio" calculated under Basel III, may, upon receipt of any Deferrable Increase Notice pursuant to Section 3.3(a), notify the Issuer in writing (a "**Delayed Funding Notice**") on or prior to **[12:00 noon]** (Toronto time) on the second Business Day preceding the related Increase Date, of its intent to fund an amount up to its Commitment Percentage of the related Increase Amount (such amount, subject to any adjustment described below, the "**Delayed Amount**") on a Business Day that is on or before the thirty-third (33rd) day following the Increase Date specified in such Deferrable Increase Notice (the "**Delayed Funding Date**") rather than on such Increase Date. If any Group Bank or Non-Conduit Purchaser provides a Delayed Funding Notice to the Issuer following the Issuer's delivery of an Increase Notice pursuant to Section 3.3(a), the Issuer may with written notice to the Administrative Agent delivered prior to 3:00 pm on the second Business Day preceding such Increase Date, (x) decrease the Increase Amount with respect to such Deferrable Increase Notice (or revoke such Deferrable Increase Notice by decreasing the Increase Amount to zero), and/or (y) require any Group Bank or Non-Conduit Purchaser who has provided a Delayed Funding Notice to reduce the Delayed Amount with respect to such Increase by an amount no greater than the Non-Deferrable Draw Amount with respect to such Purchaser Group as of the related Increase Date. In the event that the Increase Amount with respect to such Deferrable Increase Notice is reduced, but not to zero, then any Delayed Amount with respect to any Purchaser Group shall be reduced on a pro rata basis unless otherwise specified by the Issuer pursuant to clause (y) above. No Purchaser Group that has provided a Delayed Funding Notice in respect of an Increase (each a "**Delayed Funding Purchaser Group**") shall be considered to be in default of its obligation to fund its Delayed Amount pursuant to this Section 3.3 unless and until it has failed to fund the Delayed Amount (and/or the Delayed Funding Reimbursement Amount with respect to such Delayed Amount) on or before the Delayed Funding Date.

(f) If (i) one or more Delayed Funding Purchaser Groups provides a Delayed Funding Notice to the Issuer in respect of any Increase Date; and (ii) the Issuer shall not have decreased the related Increase Amount to zero or required each such Delayed Funding Purchaser Group to reduce the Delayed Amount with respect to such Increase to zero, in each case, pursuant to Section 3.3(e), the Administrative Agent shall, by no later than **[12:00 noon]** (Toronto time) on the Business Day preceding such Increase Date, direct each Purchaser Group that is not a Delayed Funding Purchaser Group with respect to such Increase Date (each a "**Non-Delayed Funding Purchaser Group**") to fund an additional portion of such Increase Amount on such Increase Date equal to such Non-Delayed Funding Purchaser Group's proportionate share (based upon the Maximum Purchaser Group Principal Amount with respect to such Non-Delayed Funding Purchaser Group relative to the sum of the Maximum Purchaser Group Principal Amounts with respect to all Non-Delayed Funding Purchaser Groups) of the aggregate Delayed Amounts with respect to such Increase Date; provided that no Non-Delayed Funding Purchaser

~~Group shall be required to fund any portion of the aggregate Delayed Amounts that would cause its Purchaser Group Principal Amount to exceed its Maximum Purchaser Group Principal Amount. Subject to Section 3.3(a), in the case of a Non-Delayed Funding Purchaser Group that is a Non-Conduit Purchaser, such Non-Conduit Purchaser hereby agrees, or, in the case of a Non-Delayed Funding Purchaser Group that is a CP Conduit Purchaser Group, the CP Conduit in such CP Conduit Purchaser Group may agree, in its sole discretion, and the Group Bank in such CP Conduit Purchaser Group hereby agrees, to fund such portion of the Increase Amount on such Increase Date.~~

~~(g) After the Non-Delayed Funding Purchaser Groups fund a Delayed Amount on any Increase Date in accordance with Section 3.3(f), the Delayed Funding Purchaser Group in respect of such Delayed Amount will be obligated to fund the Delayed Funding Reimbursement Amount with respect to such Delayed Amount on or before its Delayed Funding Date, irrespective of whether the Scheduled Commitment Expiry Date shall have occurred on or prior to such Delayed Funding Date or the Issuer would be able to satisfy the conditions set forth in Section 3.3(c) to an Increase in an amount equal to such Delayed Funding Reimbursement Amount on such Delayed Funding Date. Such Delayed Funding Purchaser Group shall fund such Delayed Funding Reimbursement Amount on such Delayed Funding Date by paying such amount to the Administrative Agent in immediately available funds, and the Administrative Agent shall distribute such funds to each such Non-Delayed Funding Purchaser Group, *pro rata* based on the relative amount of such Delayed Amount funded by such Non-Delayed Funding Purchaser Group on such Increase Date pursuant to Section 3.3(f).~~

(c) ~~(h)~~ The Issuer shall apply amounts paid to it pursuant to ~~Sections~~**Section** 3.3(~~d) and 3.3(f~~**a**) in the following order of priority:

(i) **[As to an amount equal to ●% of the amounts paid to pursuant to ~~Sections~~Section 3.3(~~d) and 3.3(f~~a), by deposit to the Program Cash Reserve Account; and] [NTD: ~~OPG would like to understand what~~Discuss how this account is ~~needed for~~] ~~and~~to be funded.]**

(ii) as to the balance, in respect of the proceeds of the initial purchase of the Series 2017-1 Notes or a Transfer Increase, by application to payment of the purchase price payable by the Issuer to the IESO under the Master Transfer and Servicing Agreement in respect of the related Transfer and, in respect of the proceeds of a Refinancing Increase, by deposit to the Refinancing Account.

3.4 Procedure for Decreasing the Series 2017-1 Subordinated Principal Amount~~; Optional Termination~~

(a) ~~In the case of a Non-Conduit Purchaser Group, the Related Non-Conduit Purchaser hereby agrees, and in the case of a CP Conduit Purchaser Group, each of the CP Conduit Purchasers and the Group Bank in such CP Conduit Purchaser Group hereby agrees, that the Purchaser Group Principal Amount with respect to such Purchaser Group~~**On any Business Day after the initial purchase of the Series 2017-1 Subordinated Notes hereunder, the Issuer and the Purchaser hereby agree that the Series 2017-1 Subordinated Principal Amount** may be decreased ~~on any Payment Date by such Purchaser Group's Commitment Percentage of a Decrease Amount~~**by an amount not to exceed the product of (i) the Series 2017-1 Senior Decrease on such Business Day, and (ii) [ninety-eight] percent [(98)]%** (a "**Decrease**")~~, upon~~

~~the request of the Issuer. .~~ . Each Payment Date on which a Decrease in the Series 2017-1 **Subordinated** Principal Amount occurs hereunder being herein referred to as the "**Decrease Date**" applicable to such Decrease; ~~provided, however, that~~**and** the Issuer shall ~~have given~~**provide to** the ~~Administrative Agent~~**Purchaser** (with a copy to the Indenture Trustee) irrevocable written notice (effective upon receipt), by email communication, substantially in the form of Schedule D (a "**Decrease Notice**") no later than **[3:00 p.m.]** (Toronto time) on the second Business Day prior to any Payment Date that is a Decrease Date. Each Decrease Notice shall ~~state~~ (x) **state** the Decrease Date, ~~and~~ (y) **state** the ~~proposed~~ amount of the decrease in the Series 2017-1 **Subordinated** Principal Amount (a "**Decrease Amount**")**, and (z) attach a copy of the irrevocable written decrease notice delivered to the Administrative Agent pursuant to Section [3.4] of the Senior Series 2017-1 Supplemental Indenture in connection with the applicable Series 2017-1 Senior Decrease proposed to be made thereunder**.

~~(b) Upon each Decrease, the Administrative Agent shall indicate in its records such Decrease and the Purchaser Group Principal Amount outstanding with respect to each Purchaser Group after giving effect to such Decrease. Upon receipt of any notice required by Section 3.4(a) from the Issuer, the Administrative Agent shall forward (by email communication) a copy of such notice to each Non-Conduit Purchaser and the Funding Agent with respect to each CP Conduit Purchaser Group, no later than **[1:00 p.m.]** (Toronto time) on the Business Day received.~~

~~(c) On any Business Day, the Issuer shall have the right to deliver an irrevocable written notice (an "**Optional Termination Notice**") to the Administrative Agent in which the Issuer declares that the Commitments shall terminate on the date (the "**Optional Termination Date**") set forth in such notice (which date, in any event, shall be a Payment Date not less than twenty (20) Business Days from the date on which such notice is delivered). Upon receipt of any Optional Termination Notice from the Issuer, the Administrative Agent shall promptly notify each Non-Conduit Purchaser and the Funding Agent with respect to each CP Conduit Purchaser Group thereof.~~

3.5 Increases and Reductions of the ~~Commitments~~**2017-1 Maximum Subordinated Principal Amount**

(a) ~~The Issuer may from time to time request that any Purchaser Group agree to increase its Maximum Purchaser Group Principal Amount. An increase in such amount shall be effective hereunder if such Purchaser Group shall have agreed in its sole discretion to such increase.~~**If one or more Maximum Purchaser Group Principal Amounts are increased pursuant to Section [3.5(a)] of the Senior Series 2017-1 Supplemental Indenture, the Series 2017-1 Subordinated Maximum Principal Amount shall be automatically increased by an amount equal to [ninety-eight] percent [(98)]% of such aggregate increase to the Maximum Purchaser Group Principal Amounts pursuant to Section [3.5(a)] of the Senior Series 2017-1 Supplemental Indenture. [NTD: Consider whether in senior warehouse supplemental if section 5.01 CPs must be met and new note issued. We are missing mechanic if so.]**

(b) ~~On any Business Day, the Issuer may, upon two (2) Business Days' prior written notice to the Administrative Agent (effective upon receipt) (with copies to the Indenture Trustee) reduce the Series 2017-1 Maximum Principal Amount in an amount equal to $10,000,000 or a whole multiple of $1,000,000 in excess thereof; provided that no such termination or reduction shall be~~

~~permitted if, after giving effect thereto and to any reduction in the Series 2017-1 Principal Amount on such date, the Purchaser Group Principal Amount with respect to any Purchaser Group would exceed the Maximum Purchaser Group Principal Amount with respect to such Purchaser Group then in effect. Any reduction in the Series 2017-1 Maximum Principal Amount shall be made on a pro rata basis to the Maximum Purchaser Group Principal Amounts with respect to the Purchaser Groups, based on the Maximum Purchaser Group Principal Amount with respect to each Purchaser Group. Once reduced, the Maximum Purchaser Group Principal Amounts may not be subsequently reinstated without each such Purchaser Group's prior written consent, which consent shall be granted or not in the sole discretion of such Purchaser Group.~~**If the Series 2017-1 Maximum Senior Principal Amount is reduced pursuant to Section [3.5(b)] of the Senior Series 2017-1 Supplemental Indenture, the Series 2017-1 Maximum Subordinated Principal Amount shall be automatically decreased by an amount equal to [ninety-eight] percent [(98)]% of such aggregate decrease to the Series 2017-1 Maximum Senior Principal Amount pursuant to Section [3.5(b)] of the Senior Series 2017-1 Supplemental Indenture. [NTD: Consider if new note to be issued. We are missing mechanic if so.]**

~~(c) The Issuer may extend the Scheduled Commitment Expiry Date only with the prior written consent of the Administrative Agent, each Non-Conduit Purchaser and each Funding Agent.~~

3.6 Interest; ~~Fees and~~ Other Amounts

(a) Interest shall be payable on the Series 2017-1 ~~Senior~~**Subordinated** Notes on each Payment Date.

(b) The~~ Issuer shall pay to each CP Conduit Purchaser Group and each Non-Conduit Purchaser, on each Payment Date, a commitment fee with respect to the preceding Billing Period (the "**Commitment Fee**") during the period from the Closing Date to and including the Commitment Expiry Date in an amount equal to the sum of the following amounts calculated for each day during such Billing Period: (x) the Commitment Fee Rate, multiplied by (y) the amount by which Maximum Purchaser Group Principal Amount with respect to such Purchaser Group on such day exceeds the Purchaser Group Principal Amount with respect to such Purchaser Group on such day, and divided by (z) 365. The Commitment Fees shall be payable monthly in arrears on each Payment Date. (c) The Funding Agent with respect to each CP Conduit Purchaser Group and each Non-Conduit~~ Purchaser shall provide written notice to the Issuer and the Paying Agent no later than two (2) Business Days prior to each Payment Date, setting forth the ~~Group~~ Monthly Interest and the ~~Group~~ Monthly ~~Fees and~~ Other Amounts with respect~~ to its Related Purchaser Group with respect~~ to the Payment Date.

(c) ~~(d)~~ The Monthly Interest shall be included in each calculation of the Interest Accrual Amount (~~Senior~~**Subordinated**) for the purposes of Section **[7.04(e)(~~iii~~ix)]** of the Trust Indenture and shall be payable pursuant to Sections **[7.05(~~a~~b), 7.08(a)(~~i~~ii) or 8.13(c)]** of the Trust Indenture, as applicable. On each Payment Date, the Monthly ~~Fees and~~ Other Amounts shall be payable in respect of the Series 2017-1 **Subordinated** Notes pursuant to Sections **[7.04(e)(~~iii~~ix) or 8.13(~~e~~h)]** of the Trust Indenture, as applicable. On each Payment Date the Paying Agent shall, subject to availability of funds, pay to ~~each CP Conduit~~**the** Purchaser ~~Group and each Non-Conduit Purchaser its Group Monthly Interest and its Group Monthly Fees and~~**the Monthly** Other Amounts with respect to the Payment Date~~; provided that if the amounts available to pay~~

~~such Group Monthly Interest and Group Monthly Fees and Other Amounts are insufficient, the amounts available shall be paid *pro rata* based on the amounts owing to each Purchaser Group~~.

3.7 Accumulation and Repayment of Principal

(a) For the purposes of the Trust Indenture and the Series 2017-1 **Subordinated** Notes:

(i) for each Payment Date before the Principal Accumulation Date **or an Acceleration Event**, the Principal Accumulation Amount shall be the Principal Payment Amount for such Payment Date; ~~and~~

(ii) for each Payment Date on or after the Principal Accumulation Date **prior to the occurrence of an Acceleration Event**, the Principal Accumulation Amount shall be the greater of (x) the Principal Payment Amount for such Payment Date, and (y) the Principal Accumulation Amount, for such Payment Date**; and**

(iii) for each Payment Date following the occurrence of an Acceleration Event, the Principal Accumulation Amount shall be the Series 2017-1 Subordinated Principal Amount.

(b) Each Payment Date where the Principal Payment Amount is not nil shall be a Principal Payment Date in respect of the Series 2017-1 **Subordinated** Notes. On each Principal Payment Date in respect of the Series 2017-1 **Subordinated** Notes, the Paying Agent shall pay to ~~each Non-Conduit Purchaser and each Funding Agent with respect to its Related Purchaser Group, such Purchaser Group's Pro Rata Share of~~**the Purchaser** the Principal Payment Amount for such Principal Payment Date out of funds allocated to the Series 2017-1 ~~Senior~~**Subordinated** Notes pursuant to Sections **[7.04(e)(~~iv~~)(~~A~~x), 7.06(~~a~~b) or 8.13(~~d~~i)]** of the Trust Indenture, as applicable, in repayment of the principal amount of the Series 2017-1 **Subordinated** Notes.

3.8 Indemnification by the Issuer

The Issuer agrees to indemnify and hold harmless the Indenture Trustee~~, the Administrative Agent, each Funding Agent, each CP Conduit Purchaser, the Group Bank, each Non-Conduit~~ **and the** Purchaser and each of their respective officers, directors, agents and employees (each, an "**Issuer ~~indemnified person~~Indemnified Person**") from and against any loss, liability, expense, damage or injury suffered or sustained by such Issuer ~~indemnified person~~**Indemnified Person** by reason of (a) any acts, omissions or alleged acts or omissions arising out of, or relating to, activities of the Issuer pursuant to the Program Agreements to which it is a party; (b) a breach of any representation or warranty made or deemed made by the Issuer (or any of its officers) in any Program Agreement; or (c) a failure by the Issuer to comply with any applicable law or regulation or to perform its covenants, agreements, duties or obligations required to be performed or observed by it in accordance with the provisions of the Program Agreements, including, but not limited to, any judgment, award, settlement, reasonable attorneys' fees and other reasonable costs or expenses incurred in connection with the defense of any actual or threatened action, proceeding or claim, except to the extent such loss, liability, expense, damage or injury resulted from the gross negligence, bad faith or willful misconduct of such Issuer indemnified person or its officers, directors, agents, principals, employees or employers as determined by a court of competent jurisdiction in a final non-appealable judgement or includes any Excluded Taxes; provided that any payments made by the Issuer pursuant to this Section 3.8 shall be made solely

from funds available pursuant to Section **[7.04] or [8.13]** of the Trust Indenture, as applicable, shall be non-recourse other than with respect to such funds, and shall not constitute a claim against the Issuer to the extent that such funds are insufficient to make such payment.

~~**3.9 Funding Agents**~~

~~(a) The Funding Agent with respect to each CP Conduit Purchaser Group is hereby authorized to determine the Group Monthly Interest and Group Monthly Fees and Other Amounts with respect to each Payment Date and such CP Conduit Purchaser Group. Any such determination by a Funding Agent, absent manifest error, shall constitute prima facie evidence of the accuracy of the calculation. Furthermore, the Funding Agent with respect to each CP Conduit Purchaser Group will maintain records sufficient to identify the percentage interest of the related CP Conduit Purchaser and the Group Bank with respect to such CP Conduit Purchaser Group holding an interest in the Series 2017-1 Senior Note registered in the name of such Funding Agent and any amounts owing thereunder.~~

~~(b) Upon receipt of funds on each Payment Date, each Funding Agent shall pay such funds to the related CP Conduit Purchaser and/or the related Group Bank owed such funds. If a Funding Agent shall have paid to any CP Conduit Purchaser or Group Bank any funds that (i) must be returned for any reason (including bankruptcy); or (ii) exceeds that which such CP Conduit Purchaser or Group Bank was entitled to receive, such amount shall be promptly repaid to such Funding Agent by such CP Conduit Purchaser or Group Bank.~~

3.9 ~~3.10~~ Taxes

(a) All payments by or on account of any obligation of the Issuer hereunder shall, to the extent allowed by law, be made free and clear of, and without deduction or withholding for or on account of Taxes, excluding (i) income taxes (including branch profit taxes, minimum taxes and taxes computed under alternative methods, at least one of which is based on or measured by net income), franchise taxes (imposed in lieu of income taxes), or any other Taxes based on or measured by the net income of any person legally entitled to receive such payments (each a "**Recipient**") as a result of a present or former connection between the Recipient and the jurisdiction of the Governmental Authority imposing such Taxes (other than any such connection arising solely from the Recipient having executed, delivered or performed its obligations or received a payment under, disposed of, or enforced, this Supplemental Indenture); (ii) any withholding or deduction imposed pursuant to (A) Sections 1471 to 1474 of the U.S. Internal Revenue Code of 1986, as amended ("**FATCA**"), or any successor version thereof, or any similar legislation imposed by any other Governmental Authority, or (B) any treaty, law or regulation or other official guidance enacted by Canada implementing FATCA or any intergovernmental agreement with respect to FATCA or any similar legislation imposed by any other Governmental Authority, including, for greater certainty, the Canada-United States Enhanced Tax Information Exchange Agreement Implementation Act (Canada) and Parts XVIII and XIX of the Income Tax Act (Canada), as amended (collectively, and including FATCA, the "**AEOI Legislation**"); and (iii) any interest, penalties and additions to Taxes in respect of (i) and (ii) (all such excluded Taxes being hereinafter called "**Excluded Taxes**"). If any Taxes, other than Excluded Taxes, are required to be withheld from any amounts payable to a Recipient hereunder, the amounts so payable to the Recipient shall be increased, and the Recipient shall be entitled to be paid by the Issuer the amount of such increase to the extent necessary to yield to the Recipient (after payment of all such Taxes other than Excluded Taxes) interest or any such other amounts payable

hereunder or thereunder at the rates or in the amounts specified hereunder. Where the amount payable by the Issuer is increased in accordance with the previous sentence, the ~~Group~~ Monthly Interest shall be increased by the amount of such increase. Whenever any Taxes are payable on or with respect to amounts distributed to a Recipient, as promptly as possible thereafter the Issuer shall send to such Recipient a certified copy of an original official receipt showing payment thereof.

(b) If a payment by or on account of any obligation of the Issuer hereunder would be subject to withholding Taxes under any AEOI Legislation if the Recipient were to fail to comply with the applicable reporting requirements of any AEOI Legislation, such Recipient shall deliver to the Issuer at the time or times prescribed by law and at such time or times reasonably requested by the Issuer such documentation prescribed by applicable law and such additional documentation reasonably requested by the Issuer as may be necessary for the Issuer to comply with its obligations under any AEOI Legislation and to determine that such Recipient has complied with its obligations under any AEOI Legislation, or to determine the amount to deduct and withhold from such payment. If any form or certification it previously delivered by a Recipient expires or becomes obsolete or inaccurate in any respect, the Recipient shall update such form or certification or promptly notify the Issuer in writing of its legal inability to do so.

(c) If a Recipient is legally entitled to receive a refund of any Taxes (other than Excluded Taxes) as to which it has been indemnified or with respect to which additional amounts have been paid to it hereunder or it is legally entitled to receive a credit or deduction with respect to such Taxes or with respect to such additional amounts that have been paid hereunder (in each case pursuant to Section ~~3.10~~**3.9**(a)), it shall use commercially reasonable efforts to obtain or claim such refund, credit or deduction and pay over such refund or the value of such credit or deduction to the Issuer, together with any interest thereon.

3.10 ~~3.11~~ Increased Costs

(a) (i) If any Regulatory Change (x) subjects ~~any Affected Party~~**the Purchaser** to any charge or withholding on or with respect to any Support Facility or this Supplemental Indenture or ~~an Affected Person~~**the Purchaser**'s obligations under a Support Facility or this Supplemental Indenture, or changes the basis of taxation of payments to ~~any Affected Person~~**the Purchaser** of any amounts payable under any Support Facility or this Supplemental Indenture Agreement (except for changes in the rate of tax on the overall net income of ~~an Affected Person~~**the Purchaser** or Excluded Taxes) or (y) imposes, modifies or deems applicable any reserve, assessment, fee, tax, insurance charge, special deposit or similar requirement against assets of, deposits with or for the account of, or liabilities of ~~an Affected Person~~**the Purchaser**, or credit extended by ~~an Affected Person~~**the Purchaser** pursuant to a Support Facility or this Supplemental Indenture or (z) imposes any other condition the result of which is to increase the cost to ~~an Affected Person~~**the Purchaser** of performing its obligations under a Support Facility or this Supplemental Indenture, or to reduce the rate of return on ~~an Affected Person~~**the Purchaser**'s capital or assets as a consequence of its obligations under a Support Facility or this Supplemental Indenture, or to reduce the amount of any sum received or receivable by ~~an Affected Person~~**the Purchaser** under a Support Facility or this Supplemental Indenture, or to require any payment calculated by reference to the amount of interests or loans held or interest received by it, then, upon written request by ~~such Affected Party (through the Funding Agent for its Purchaser Group if the Affected Party is a Program Support Provider, CP Conduit Purchaser~~

~~or Group Bank)~~**the Purchaser** of a written request therefore to the Issuer, ~~such Affected Party (through the Funding Agent for its Purchaser Group if the Affected Party is a Program Support Provider, CP Conduit Purchaser or Group Bank)~~**the Purchaser** shall be entitled to be paid, such amounts charged to ~~such Affected Party~~**the Purchaser** or such amounts to otherwise compensate ~~such Affected~~**the Purchaser** for such increased cost or such reduction, no later than the Payment Date following receipt by the Issuer of such request for compensation under this Section ~~3.11~~**3.10**(a)(i), if such request is received by the Issuer no later than five (5) Business Days prior to the end of the Interest Period related to such Payment Date, and otherwise on the following Payment Date.

(ii) The Issuer acknowledges that ~~any Affected Party~~**the Purchaser** may implement, as an internal institutional matter, measures in anticipation of a final or proposed Regulatory Change (including, without limitation, the imposition of internal charges on ~~such Affected Party~~**the Purchaser**'s interest or obligations under any Support Agreement or this Supplemental Indenture) and may commence recognizing the incurrence of charges by seeking compensation under Section ~~3.11~~**3.10**(a)(i) in connection with such measures, in advance of the effective date of such final or proposed Regulatory Change, and the Issuer agrees that such charges or compensation shall be payable, to the ~~related Funding Agent, for the benefit of Affected Party~~**Purchaser**, following demand therefor without regard to whether such proposed Regulatory Change has been adopted or whether such effective date has occurred; provided, that (I) the ~~Affected Party~~**Purchaser** shall provide thirty (30) days prior written notice to the Issuer of its intent to impose or incur any such charges or compensation, (II) ~~an Affected Party~~**the Purchaser** shall not be compensated for any such amount pursuant to this subsection ~~3.11~~**3.10**(a)(ii) relating to any period ending, and of which ~~such Affected Party~~**the Purchaser** has had knowledge, more than ninety (90) days prior to the date that ~~such Affected Party~~**the Purchaser** provided the Issuer with the written notice contemplated by the preceding clause (I) of this subsection ~~3.11~~**3.10**(a)(ii), (III) if, after the payment by the ~~Trust~~**Issuer** of any charges or compensation pursuant to this subsection ~~3.11~~**3.10**(a)(ii), either (A) the Issuer requests in writing that the ~~applicable Affected Party~~**Purchaser** re-compute any such charge or compensation in light of differences between a proposed Regulatory Change and the final effective version thereof or (B) the ~~applicable Affected Party~~**the Purchaser** determines that the amount of the charge imposed on and required to be compensated by the Issuer exceeds the amount necessary to compensate it for the applicable Regulatory Change as contemplated by subsection ~~3.11~~**3.10**(a)(i), then (x) the amount of such charge or compensation shall, from and after such determination, be reduced by the amount of such excess and (y) ~~such Affected Party~~**the Purchaser** shall, within thirty (30) days of such determination, either repay the amount of such excess or credit the amount of such excess against future charges under this subsection ~~3.11~~**3.10**(a)(ii). The Issuer further acknowledges that any charge or compensation demanded hereunder may take the form of a monthly charge to be assessed by ~~such Affected Party~~**the Purchaser**.

(b) ~~Each Affected Party~~**The Purchaser** claiming increased amounts described in subsection ~~3.11~~**3.10**(a) of this Supplemental Indenture will furnish to the Issuer (together with its request for compensation) a certificate prepared in good faith setting forth the basis and the calculation of the amount (in reasonable detail) of each request by ~~such Affected Party~~**the Purchaser** for any such increased amounts referred to in subsection ~~3.11~~**3.10**(a) hereof. Any such certificate shall be conclusive absent manifest error. Failure on the part of ~~any Affected Party~~**the Purchaser** to demand compensation for any amount pursuant to subsection ~~3.11~~**3.10**(a) hereof with respect to

any period shall not constitute a waiver of ~~such Affected Party~~**the Purchaser**'s right to demand compensation with respect to such period.

3.11 Acceleration Events

[NTD: To be conformed with Senior Supplemental Indenture.]

ARTICLE 4
CONDITIONS PRECEDENT

4.1 Conditions Precedent to Initial Purchase of Series 2017-1 ~~Senior~~Subordinated Notes

On or prior to the initial purchase of Series 2017-1 ~~Senior~~**Subordinated** Notes hereunder, the following conditions precedent shall be satisfied:

(a) Each of the conditions precedent set forth in Section 5.01 of the Trust Indenture in respect of the incurrence of Funding Obligations under this Supplemental Indenture shall have been satisfied.

(b) The ~~Administrative Agent and each of the Funding Agents~~**Purchaser** shall have received:

(i) executed copies of ~~the Fee Letter,~~ this Supplemental Indenture and copies of each of the other Program Agreements certified by an Authorized Officer of the Issuer;

(ii) certificates of status or compliance or other similar documents issued by the applicable governmental authority to evidence that each of the Issuer Trustee, the IESO and the Manager is validly existing pursuant to the laws of the jurisdiction of their respective establishment or incorporation;

(iii) a copy of the incorporating documents and all amendments thereto and applicable by-laws of each of the Issuer Trustee, the IESO and the Manager certified by an Authorized Officer of the applicable entity;

(iv) a copy of the Declaration of Trust certified by an Authorized Officer of the Issuer;

(v) copies of resolutions of the board of directors of the IESO and the Manager approving and authorizing the execution, delivery and performance of each Program Agreement they are party to, in each case certified by an Authorized Officer of the applicable entity;

(vi) incumbency certificates for each of the Issuer Trustee, the Manager and the IESO executing this Supplemental Indenture and any other Program Agreements and the other documents to be delivered by either the Issuer Trustee, the Manager or the IESO thereunder, in each case showing their names, offices and specimen signatures on which certificates ~~the Administrative Agent and~~ the Purchaser ~~Groups~~ shall be entitled to conclusively rely until such time as the ~~Administrative Agent and the Funding Agents receive~~**Purchaser receives** a replacement certificate meeting the requirements of this Section 4.1(b)(vi);

(vii) the following Opinions of Counsel:

(A) the opinion of external counsel to the Manager as to the non-consolidation of the Issuer with the Manager in the event of the insolvency of the Manager in form and substance satisfactory to the ~~Administrative Agent and the Funding Agents~~**Purchaser**;

(B) the opinion of external counsel to the IESO as to the Investment Asset acquired by the Issuer not being subject to the claims of creditors of the IESO in form and substance satisfactory to the ~~Administrative Agent and the Funding Agents~~**Purchaser**;

(C) favourable opinions of external counsel to the Manager covering general corporate matters, the due execution and delivery of, and the enforceability of, each of the Program Agreements to which the Manager, the Issuer and the Issuer Trustee are party which opinion, as to certain matters, may rely on opinion of internal counsel to the Manager and the Issuer Trustee; and

(D) a favourable opinion of external counsel to the Province with respect to the due authorization, execution, delivery and enforceability of the Change of Law Protection Agreement **and the Change of Law Process Agreement** in form and substance satisfactory to the ~~Administration Agent and the Funding Agents~~**Purchaser**;

(viii) a certificate of an Authorized Officer of the Manager confirming that the representations and warranties set forth in Section **[12.01]** of the Trust Indenture and Section 5.1 of this Supplemental Indenture are true and correct in all material respects, that the Issuer is in compliance in all material respects with all of its covenants and obligations under the Program Agreements to which it is a party and that no Termination Event has occurred; and

(ix) such additional documents, instruments, certificates or letters as the ~~Administrative Agent or any Funding Agent~~**Purchaser** may reasonably request.

(c) The representations and warranties set forth in Section **[12.01]** of the Trust Indenture and Section 5.1 of this Supplemental Indenture shall be true and correct in all material respects, the Issuer shall be compliance in all material respects with all of its covenants and obligations under the Program Agreements to which it is a party and no Termination Event shall have occurred.

(d) The Series 2017-1 ~~Senior~~**Subordinated** Notes shall have been duly issued in accordance with the Trust Indenture and ~~each Funding Agent and Non-Conduit~~**the** Purchaser shall have received its Series 2017-1 ~~Senior~~**Subordinated** Note registered in its name or a nominee in a face amount equal to ~~its~~**the Series 2017-1** Maximum ~~Purchaser Group~~ Principal **Subordinated** Amount.

(e) After giving effect to the purchase, the covenant of the Issuer in Section 6.1(d) will be satisfied.

~~(f) All fees payable on or before the Closing Date pursuant to the Fee Letter shall have been paid in full (or arrangements satisfactory to the Administrative Agent and the Funding Agents have been made).~~

~~(g) The Rating Agency Condition shall have been satisfied in respect of the initial purchase.~~

4.2 Conditions Precedent to each Increase under Series 2017-1 ~~Senior~~Subordinated Notes

On or prior to each Increase, the following conditions precedent shall be satisfied:

(a) the ~~Administrative Agent~~Purchaser shall have received an Increase Notice;

(b) no Termination Event shall have occurred or would occur after giving effect to such Increase; and

~~(c) the Increase Date in respect of the Increase is prior to the Commitment Expiry Date;~~

(c) ~~(d)~~ if the Increase is identified as a Transfer Increase in the Increase Notice, then the related Transfer under the Master Transfer and Servicing Agreement shall have been completed or contemporaneously completed~~; and(e) after giving effect to the Increase, the Rating Agency Condition will be satisfied~~.

The Issuer's acceptance of funds in connection with each Increase occurring on any Increase Date shall constitute a representation and warranty by the Issuer to the ~~Administrative Agent and the~~ Purchaser ~~Groups~~ as of such Increase Date that all of the conditions contained in Section 3.3(a) and this Section 4.2 are satisfied.

ARTICLE 5
REPRESENTATIONS AND WARRANTIES

5.1 Representations and Warranties of the Issuer

The Issuer hereby represents and warrants to the ~~Administrative Agent and the~~ Purchaser ~~Groups~~ as of the Closing Date, and shall be deemed to represent and warrant to ~~the Administrative Agent and~~ the Purchaser ~~Groups~~ on each Increase Date, that:

(a) no Termination Event has occurred or would result from the initial purchase of the Issuer Investment Interest on the Closing Date or any increase in the Issuer Investment Interest on an Increase Date, as applicable;

(b) the Issuer is not a non-resident of Canada within the meaning of the *Income Tax Act* (Canada);

(c) all tax returns (federal, provincial and local) required to be filed with respect to the Issuer have been filed and there has been paid or adequate provision made for the payment of all material Taxes in respect of the Issuer;

(d) the Issuer has complied in all material respects with all laws in respect of the conduct of its business and ownership of its property including the Issuer Investment Interest;

(e) all information provided to the ~~Administrative Agent and the~~ Purchaser ~~Groups~~ by or on behalf of the Issuer in respect of the Issuer Investment Interest is and will be true and accurate in all material respects; and

(f) to its knowledge, there is no set of circumstances existing at such time that will have an Adverse Effect or will reasonably be expected to have an Adverse Effect.

5.2 Representations and Warranties of the ~~Purchasers~~Each Purchaser ~~Group member~~

The Purchaser represents and warrants to the Issuer as of the Closing Date, and shall be deemed to represent and warrant to the Issuer on each Increase Date, that:

(a) it is resident in Ontario or is otherwise subject to the securities legislation of the Province of Ontario;

(b) it is purchasing the applicable Series 2017-1 ~~Senior~~**Subordinated** Notes (i) as principal for its own account and not for the benefit of any other "person" (as defined in the *Securities Act* (Ontario)) or company; and (ii) for cash consideration in excess of $150,000; and

(c) it was not created and is not being used solely to purchase or hold securities in reliance on the exemption from the prospectus and dealer registration requirements contained in Section 2.10 of National Instrument 45-106 − Prospectus and Registration Exemptions.

5.3 Survival

The representations and warranties set out in this Article 5 shall survive the execution hereof.

ARTICLE 6
COVENANTS

6.1 Covenants of the Issuer

(a) The Issuer shall promptly provide to the ~~Administrative Agent, each Funding Agent and each Non-Conduit~~ Purchaser (in multiple copies if requested) copies of all material reports, notices, financial statements and other documents delivered by the IESO to the Issuer with respect to the Issuer Investment Interest or pursuant to the Master Transfer and Servicing Agreement**; provided such documents shall be deemed to be delivered hereunder so long as the Purchaser is the Manager**.

(b) The Issuer shall provide to the ~~Administrative Agent, each Funding Agent and each Non-Conduit~~ Purchaser (in multiple copies, if requested) such other information, documents, records or reports respecting the Issuer Investment Interest, the Issuer or the IESO which is in the possession or under the control of the Issuer or the Manager, as the ~~Administrative Agent, a Funding Agent or a Non-Conduit~~ Purchaser may from time to time reasonably request.

(c) The Issuer shall furnish to the ~~Administrative Agent, each Funding Agent and each Non-Conduit~~ Purchaser promptly after known to the Issuer or the Manager, information with respect to any action, suit or proceeding involving the Manager, the Issuer or the IESO or any of their respective Affiliates by or before any court or any Governmental Authority which, if adversely determined, would have an Adverse Effect**; provided that the Purchaser shall be deemed to have knowledge of such actions, suits or proceedings so long as it is the Manager**.

(d) The Issuer will, at all times, cause the aggregate outstanding principal amount of Subordinated Funding Obligations and Junior Subordinated Funding Obligations to be not ~~less~~**more** than ~~twenty-five~~**forty-nine** percent (~~25~~**49**)% of the aggregate outstanding principal amount of all Issuer Funding Obligations~~. [NTD: OPG has discussed with Dealers.]~~ **(excluding Derivative Funding Obligations).**

~~(e) The Issuer will not make any amendments to the Funding Obligation Agreements governing any outstanding Subordinated Funding Obligations or Junior Subordinated Funding Obligations without the prior written consent of the Requisite Series 2017-1 Noteholders, such consent not to be unreasonably withheld or delayed.~~

~~(f) The Issuer will not hold or own, directly or indirectly, any share or equity security of, or any equity interest in, any Person.~~

~~(g) The Issuer confirms that this Supplemental Indenture is a Warehouse Facility Agreement. The Issuer will not enter into any other Warehouse Facility Agreement creating Senior Funding Obligations without the prior written consent of the Requisite Series 2017-1 Noteholders unless the Commitment Expiry Date has occurred.~~

~~**[NTD: OPG understands that there will be another covenant that following Principal Payment Due Date proceeds of any financings must be applied to repay these notes in priority to any other use of funds.]**~~

ARTICLE 7
~~AGENTS~~

~~7.1 Administrative Agent~~

~~(a) Each of the Non-Conduit Purchasers, CP Conduit Purchasers, the Group Banks and the Funding Agents hereby irrevocably designates and appoints the Administrative Agent as the agent of such Person under this Supplemental Indenture and irrevocably authorizes the Administrative Agent, in such capacity, to take such action on its behalf under the provisions of this Supplemental Indenture and to exercise such powers and perform such duties as are expressly delegated to the Administrative Agent by the terms of this Supplemental Indenture, together with such other powers as are reasonably incidental thereto. Notwithstanding any provision to the contrary elsewhere in this Supplemental Indenture, the Administrative Agent shall not have any duties or responsibilities except those expressly set forth herein, or any fiduciary relationship with any Non-Conduit Purchaser, any CP Conduit Purchaser, any Group Bank or any Funding Agent, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Supplemental Indenture or otherwise exist against the Administrative Agent.~~

~~(b) The Administrative Agent may execute any of its duties under this Supplemental Indenture by or through agents or attorneys in fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties. The Administrative Agent shall not be responsible for the negligence or misconduct of any agents or attorneys-in-fact selected by it with reasonable care.~~

(c) Neither the Administrative Agent nor any of its officers, directors, employees, agents, attorneys in fact or Affiliates shall be (i) liable for any action lawfully taken or omitted to be taken by it or such Person under or in connection with the Trust Indenture, this Supplemental Indenture or any other Program Agreement (except to the extent that any of the foregoing are found by a final and nonappealable decision of a court of competent jurisdiction to have resulted from its or such Person's own gross negligence or willful misconduct) or (ii) responsible in any manner to any of the Non-Conduit Purchasers, the CP Conduit Purchasers, the Group Banks or the Funding Agents for any recitals, statements, representations or warranties made by the Issuer, the IESO, the Manager or any officer thereof contained in this Supplemental Indenture or any other Program Agreement or in any certificate, report, statement or other document referred to or provided for in, or received by the Administrative Agent under or in connection with, this Supplemental Indenture or any other Program Agreement or for the value, validity, effectiveness, genuineness, enforceability or sufficiency of this Supplemental Indenture, any other Program Agreement, or for any failure of any of the Issuer, the Manager or the IESO to perform its obligations hereunder or thereunder. The Administrative Agent shall not be under any obligation to any Non-Conduit Purchaser, any CP Conduit Purchaser, any Group Bank or any Funding Agent to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Supplemental Indenture, any other Program Agreement or to inspect the properties, books or records of the Issuer, the Manager or the IESO.

(d) The Administrative Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing, resolution, notice, consent, certificate, affidavit, letter or electronic message, statement, order or other document or conversation believed by it to be genuine and correct and to have been signed, sent or made by the proper Person or Persons and upon advice and statements of legal counsel (including, without limitation, counsel to the Issuer, the Manager or the IESO), independent accountants and other experts selected by the Administrative Agent.

(e) The Administrative Agent shall not be deemed to have knowledge or notice of the occurrence of any Termination Event unless the Administrative Agent has received written notice from a Non-Conduit Purchaser, a CP Conduit Purchaser, a Group Bank, a Funding Agent, the Issuer or the Manager referring to the Trust Indenture or this Supplemental Indenture, describing such Termination Event and stating that such notice is a "notice of a Termination Event". In the event that the Administrative Agent receives such a notice, the Administrative Agent shall give notice thereof to the Non-Conduit Purchasers, the Funding Agents, the Issuer Trustee and the Manager.

(f) Each of the Non-Conduit Purchasers, the CP Conduit Purchasers, the Group Banks and the Funding Agents expressly acknowledges that neither the Administrative Agent nor any of its officers, directors, employees, agents, attorneys in fact or Affiliates has made any representations or warranties to it and that no act by the Administrative Agent hereinafter taken, including any review of the affairs of the Issuer, the Manager or the IESO shall be deemed to constitute any representation or warranty by the Administrative Agent to any such Person. Each of the Non-Conduit Purchasers, the CP Conduit Purchasers, the Group Banks and the Funding Agents represents to the Administrative Agent that it has, independently and without reliance upon the Administrative Agent or any other Non-Conduit Purchaser, CP Conduit Purchaser, Group Bank or Funding Agent and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, operations, property, financial and other condition and creditworthiness of the Issuer, the Manager and the IESO and made its own

decision to enter into this Supplemental Indenture. Each of the Non-Conduit Purchasers, the CP Conduit Purchasers, the Group Banks and the Funding Agents also represents that it will, independently and without reliance upon the Administrative Agent or any other Non-Conduit Purchaser, CP Conduit Purchaser, Group Bank or Funding Agent, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Supplemental Indenture and the other Program Agreements, and to make such investigation as it deems necessary to inform itself as to the business, operations, property, financial and other condition and creditworthiness of the Issuer, the Manager and the IESO. Except for notices, reports and other documents expressly required to be furnished to the Non-Conduit Purchasers and the Funding Agents by the Administrative Agent hereunder, the Administrative Agent shall have no duty or responsibility to provide any Non-Conduit Purchaser, any CP Conduit Purchaser, any Group Bank or any Funding Agent with any credit or other information concerning the business, operations, property, condition (financial or otherwise), prospects or creditworthiness of the Issuer, the Manager or the IESO which may come into the possession of the Administrative Agent or any of its officers, directors, employees, agents, attorneys in fact or Affiliates.

(g) The Administrative Agent and its Affiliates may make loans to, accept deposits from and generally engage in any kind of business with the Issuer, the Manager and the IESO as though the Administrative Agent were not the Administrative Agent hereunder. With respect to any Series 2017-1 Senior Note held by the Administrative Agent, the Administrative Agent shall have the same rights and powers under this Supplemental Indenture and the other Program Agreements as any Group Bank or Funding Agent and may exercise the same as though it were not the Administrative Agent, and the terms "Group Bank," and "Funding Agent" shall include the Administrative Agent in its individual capacity.

(h) The Administrative Agent may resign as Administrative Agent at any time by giving 30 days' notice to the Non-Conduit Purchasers, the Funding Agents, the Indenture Trustee, the Issuer and the Manager. If ● shall resign as Administrative Agent under this Supplemental Indenture, then the Requisite Series 2017-1 Noteholders shall appoint a successor administrative agent from among the Non-Conduit Purchasers and Funding Agents, whereupon such successor agent shall succeed to the rights, powers and duties of the Administrative Agent, and the term "Administrative Agent" shall mean such successor agent effective upon such appointment and approval, and the former Administrative Agent's rights, powers and duties as Administrative Agent shall be terminated, without any other or further act or deed on the part of such former Administrative Agent or any of the parties to this Supplemental Indenture. If no successor administrative agent has accepted appointment as Administrative Agent prior to the effective date of the resignation of the Administrative Agent, the retiring Administrative Agent may appoint, after consulting with the Non-Conduit Purchasers and the Funding Agents, a successor Administrative Agent from among the Non-Conduit Purchasers and the Funding Agents. If no successor administrative agent has accepted appointment by the date which is thirty (30) days following a retiring Administrative Agent's notice of resignation, the retiring Administrative Agent's resignation shall nevertheless thereupon become effective and Manager shall assume and perform all of the duties of the Administrative Agent hereunder until such time, if any, as the Requisite Series 2017-1 Noteholders appoint a successor administrative agent as provided for above. After any retiring Administrative Agent's resignation as Administrative Agent, the provisions of this Article 7 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Administrative Agent under this Supplemental Indenture.

7.2 Funding Agents

(a) Each CP Conduit Purchaser and each Group Bank with respect to such CP Conduit Purchaser hereby irrevocably designates and appoints the Funding Agent set forth next to such CP Conduit Purchaser's name on Schedule E as the agent of such Person under this Supplemental Indenture and irrevocably authorizes such Funding Agent, in such capacity, to take such action on its behalf under the provisions of this Supplemental Indenture and to exercise such powers and perform such duties as are expressly delegated to such Funding Agent by the terms of this Supplemental Indenture, together with such other powers as are reasonably incidental thereto. Notwithstanding any provision to the contrary elsewhere in this Supplemental Indenture, each Funding Agent shall not have any duties or responsibilities except those expressly set forth herein, or any fiduciary relationship with any CP Conduit Purchaser or Group Bank and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Supplemental Indenture or otherwise exist against each Funding Agent.

(b) Each Funding Agent may execute any of its duties under this Supplemental Indenture by or through agents or attorneys in fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties. Each Funding Agent shall not be responsible to the CP Conduit Purchaser or any Group Bank in its CP Conduit Purchaser Group for the negligence or misconduct of any agents or attorneys in fact selected by it with reasonable care.

(c) Each Funding Agent and any of its officers, directors, employees, agents, attorneys in fact or Affiliates shall not be (i) liable for any action lawfully taken or omitted to be taken by it or such Person under or in connection with the Trust Indenture, this Supplemental Indenture or any other Program Agreement (except to the extent that any of the foregoing are found by a final and nonappealable decision of a court of competent jurisdiction to have resulted from its or such Person's own gross negligence or willful misconduct) or (ii) responsible in any manner to any of the CP Conduit Purchasers and/or Group Banks for any recitals, statements, representations or warranties made by the Issuer, the Manager or the IESO, or any officer thereof contained in this Supplemental Indenture or any other Program Agreement or in any certificate, report, statement or other document referred to or provided for in, or received by such Funding Agent under or in connection with, this Supplemental Indenture or any other Program Agreement or for the value, validity, effectiveness, genuineness, enforceability or sufficiency of this Supplemental Indenture, any other Program Agreement, or for any failure of any of the Issuer, the Manager or the IESO to perform its obligations hereunder or thereunder. Each Funding Agent shall not be under any obligation to the CP Conduit Purchaser or any Group Bank in its CP Conduit Purchaser Group to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Supplemental Indenture, any other Program Agreement or to inspect the properties, books or records of the Issuer, the Manager or the IESO.

(d) Each Funding Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing, resolution, notice, consent, certificate, affidavit, letter or electronic message, statement, order or other document or conversation believed by it to be genuine and correct and to have been signed, sent or made by the proper Person or Persons and upon advice and statements of legal counsel (including, without limitation, counsel to the Issuer, the Manager or the IESO), independent accountants and other experts selected by such Funding Agent. Each Funding Agent shall be fully justified in failing or refusing to take any action under this Supplemental Indenture or any other Program Agreement unless it shall first receive such advice or concurrence of the Related Purchaser Group, as it deems appropriate or it shall first be

~~indemnified to its satisfaction by the Related Purchaser Group against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action.~~

~~(e) Each Funding Agent shall not be deemed to have knowledge or notice of the occurrence of any Termination Event unless such Funding Agent has received written notice from a Non-Conduit Purchaser, a CP Conduit Purchaser, a Group Bank, the Issuer, the Manager or the Administrative Agent referring to the Trust Indenture or this Supplemental Indenture, describing such Termination Event and stating that such notice is a "notice of a Termination Event," as the case may be. In the event that any Funding Agent receives such a notice, such Funding Agent shall give notice thereof to the CP Conduit Purchaser and Group Bank in its CP Conduit Purchaser Group. Such Funding Agent shall take such action with respect to such event as shall be reasonably directed by the CP Conduit Purchaser and Group Bank in its CP Conduit Purchaser Group, provided that unless and until such Funding Agent shall have received such directions, such Funding Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such event as it shall deem advisable in the best interests of the CP Conduit Purchaser and Group Bank in its CP Conduit Purchaser Group.~~

~~(f) Each CP Conduit Purchaser and each of the related Group Banks expressly acknowledge that neither its Funding Agent nor any of its officers, directors, employees, agents, attorneys in fact or Affiliates has made any representations or warranties to it and that no act by such Funding Agent hereinafter taken, including any review of the affairs of the Issuer, the Manager or the IESO shall be deemed to constitute any representation or warranty by such Funding Agent to any such Person. Each CP Conduit Purchaser and each of the related Group Banks represents to its Funding Agent that it has, independently and without reliance upon such Funding Agent and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, operations, property, financial and other condition and creditworthiness of the Issuer, the Manager and the IESO and made its own decision to enter into this Supplemental Indenture. Each CP Conduit Purchaser and each of the related Group Banks also represents that it will, independently and without reliance upon its Funding Agent and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Supplemental Indenture and the other Program Agreements, and to make such investigation as it deems necessary to inform itself as to the business, operations, property, financial and other conditions and creditworthiness of the Issuer, the Manager and the IESO.~~

~~(g) Each Group Bank in a CP Conduit Purchaser Group agrees to indemnify its Funding Agent in its capacity as such (to the extent not reimbursed by the Issuer and without limiting the obligation of the Issuer to do so), from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind whatsoever which may at any time be imposed on, incurred by or asserted against such Funding Agent in any way relating to or arising out of this Supplemental Indenture, any of the other Program Agreements or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby or any action taken or omitted by such Funding Agent under or in connection with any of the foregoing; provided that no Group Bank shall be liable for the payment of any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements that are found by a final and nonappealable decision of a court of competent jurisdiction to have resulted from such related Funding Agent's gross negligence or willful misconduct. The agreements in this Section shall~~

~~survive the payment of all amounts payable hereunder.~~ **~~ARTICLE 8~~**
GENERAL

7.1 **~~8.1~~ Successor and Assigns**

(a) This Supplemental Indenture shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns~~,~~ except that (i) the Issuer may not assign or transfer any of its rights **or obligations** under this Supplemental Indenture without the prior written consent of ~~all of the Series 2017-1 Noteholders; (ii) no Non-Conduit Purchaser may assign or transfer any of its rights under this Supplemental Indenture other than pursuant to paragraph (e) or (f) below; (iii) no CP Conduit Purchaser may assign or transfer any of its rights under this Supplemental Indenture other than to the Group Bank with respect to such CP Conduit Purchaser or a Program Support Provider with respect to such CP Conduit Purchaser or pursuant to clause (b) or (e) below of this Section 8.1; and (iv) no Group Bank may~~**the Purchaser; and (ii) the Purchaser may, without the prior written consent of the Issuer,** assign or transfer any of its rights or obligations under this Supplemental Indenture ~~except to a Program Support Provider or pursuant to clause (c), (d) or (e) below of this Section 8.1.~~ **in the ordinary course of its business and in accordance with applicable law to another Person (each, a "Transferee") pursuant to a transfer supplement, substantially in the form of Exhibit ■ (the "Transfer Supplement").**

~~(b) Without limiting the foregoing, each CP Conduit Purchaser may assign all or a portion of the Purchaser Group Principal Amount with respect to such CP Conduit Purchaser and its rights and obligations under this Supplemental Indenture to a Conduit Assignee with respect to such CP Conduit Purchaser. Prior to or concurrently with the effectiveness of any such assignment (or if impracticable, immediately thereafter), the assigning CP Conduit Purchaser shall notify the Administrative Agent and the Issuer. Upon such assignment by a CP Conduit Purchaser to a Conduit Assignee, (i) such Conduit Assignee shall be the owner of the Purchaser Group Principal Amount or such portion thereof with respect to such CP Conduit Purchaser; (ii) the related administrative or managing agent for such Conduit Assignee will act as the administrative agent for such Conduit Assignee hereunder, with all corresponding rights and powers, express or implied, granted to the Funding Agent hereunder; (iii) such Conduit Assignee and its liquidity support provider(s) and credit support provider(s) and other related parties shall have the benefit of all the rights and protections provided to such CP Conduit Purchaser herein (including, without limitation, any limitation on recourse against such Conduit Assignee as provided in this paragraph); (iv) such Conduit Assignee shall assume all of such CP Conduit Purchaser's obligations, if any, hereunder with respect to such portion of the Purchaser Group Principal Amount and such CP Conduit Purchaser shall be released from such obligations; (v) all distributions in respect of the Purchaser Group Principal Amount or such portion thereof with respect to such CP Conduit Purchaser shall be made to the applicable agent or administrative agent, as applicable, on behalf of such Conduit Assignee; and (vi) if requested by the Administrative Agent or the agent or administrative agent with respect to the Conduit Assignee, the parties will execute and deliver such further agreements and documents and take such other actions as the Administrative Agent or such agent or administrative agent may reasonably request to evidence and give effect to the foregoing. No assignment by any CP Conduit Purchaser to a Conduit Assignee of the Purchaser Group Principal Amount with respect to such CP Conduit Purchaser shall in any way diminish the obligations of the Group Bank with respect to such CP Conduit Purchaser under Section 3.3 to fund any Increase.~~

~~(c) Any Group Bank may, in the ordinary course of its business and in accordance with applicable law, at any time, sell all or any part of its rights and obligations under this Supplemental Indenture and the Series 2017-1 Senior Notes, with the prior written consent of the Administrative Agent and the Issuer (in each case, which consent shall not be unreasonably withheld), to one or more banks (an "**Acquiring Group Bank**") pursuant to a transfer supplement, substantially in the form of Exhibit H (the "**Transfer Supplement**"), executed by such Acquiring Group Bank, such assigning Group Bank, the Funding Agent with respect to such Group Bank, the Administrative Agent and the Issuer and delivered to the Administrative Agent. Notwithstanding the foregoing, no Group Bank shall so sell its rights hereunder if such Acquiring Group Bank is not an Eligible Assignee.~~

~~(d) Any Group Bank may, in the ordinary course of its business and in accordance with applicable law at any time sell to one or more financial institutions or other entities ("**Group Bank Participants**") participations in its Commitment Amount with respect to its related CP Conduit Purchaser Group, its Series 2017-1 Senior Note and its rights hereunder pursuant to documentation in form and substance satisfactory to such Group Bank and the Group Bank Participant; provided, however, that (i) in the event of any such sale by a Group Bank to a Group Bank Participant, (A) such Group Bank's obligations under this Supplemental Indenture shall remain unchanged, (B) such Group Bank shall remain solely responsible for the performance thereof, and (C) the Issuer and the Administrative Agent shall continue to deal solely and directly with such Group Bank in connection with its rights and obligations under this Supplemental Indenture; and (ii) no Group Bank shall sell any participating interest under which the Group Bank Participant shall have rights to approve any amendment to, or any consent or waiver with respect to, this Supplemental Indenture, the Trust Indenture or any Program Agreement, except to the extent that the approval of such amendment, consent or waiver otherwise would require the unanimous consent of all Group Banks hereunder. A Group Bank Participant shall have the right to receive compensation pursuant to Sections 3.10 and 3.11 but only to the extent that the related selling Group Bank would have had such right absent the sale of the related participation and, with respect to amounts due pursuant to Sections 3.10 and 3.11, only to the extent such Group Bank Participant shall have complied with the provisions of Sections 3.10 and 3.11 as if such Group Bank Participant were a Group Bank.~~

~~(e) Any CP Conduit Purchaser and the Group Bank with respect to such CP Conduit Purchaser may, at any time, sell all or any part of their respective rights and obligations, and any Non-Conduit Purchaser may, at any time, sell all or any part of its rights and obligations, under this Supplemental Indenture and the Series 2017-1 Senior Notes, with the prior written consent of the Administrative Agent and the Issuer (in each case, which consent shall not be unreasonably withheld), (x) to a multi-seller commercial paper conduit and one or more banks providing support to such multi-seller commercial paper conduit, or (y) to a financial institution or other entity (an "**Acquiring Purchaser Group**") pursuant to a transfer supplement, substantially in the form of Exhibit I (the "**Purchaser Group Supplement**"), executed by such Acquiring Purchaser Group (including the CP Conduit Purchaser and the Group Banks, if any, with respect to such Acquiring Purchaser Group), the Funding Agent, if any, with respect to such Acquiring Purchaser Group, such assigning Purchaser Group (including the Group Banks, if any, with respect to such assigning Purchaser Group), the Funding Agent, if any, with respect to such assigning Purchaser Group and the Administrative Agent and the Issuer and delivered to the Administrative Agent.~~

~~(f) Any Non-Conduit Purchaser may, in the ordinary course of its business and in accordance with applicable law, at any time sell to one or more financial institutions or other entities ("**Non-Conduit Purchaser Participants**") participations in its Commitment, its Series 2017-1 Senior Note and its rights hereunder pursuant to documentation in form and substance satisfactory to such Non-Conduit Purchaser and the Non-Conduit Purchaser Participant; provided, however, that (i) in the event of any such sale by a Non-Conduit Purchaser to a Non-Conduit Purchaser Participant, (A) such Non-Conduit Purchaser's obligations under this Supplemental Indenture shall remain unchanged, (B) such Non-Conduit Purchaser shall remain solely responsible for the performance thereof, and (C) the Issuer and the Administrative Agent shall continue to deal solely and directly with such Non-Conduit Purchaser in connection with its rights and obligations under this Supplemental Indenture; and (ii) no Non-Conduit Purchaser shall sell any participating interest under which the Non-Conduit Purchaser Participant shall have rights to approve any amendment to, or any consent or waiver with respect to, this Supplemental Indenture, the Trust Indenture or any Program Agreement, except to the extent that the approval of such amendment, consent or waiver otherwise would require the unanimous consent of all Series 2017-1 Noteholders hereunder. A Non-Conduit Purchaser Participant shall have the right to receive compensation under Sections 3.10 and 3.11 but only to the extent that the related selling Non-Conduit Purchaser would have had such right absent the sale of the related participation and, with respect to amounts due pursuant to Sections 3.10 and 3.11, only to the extent such Non-Conduit Purchaser Participant shall have complied with the provisions of Sections 3.10 and 3.11 as if such Non-Conduit Purchaser Participant were a Non-Conduit Purchaser.~~

(b) ~~(g)~~ The Issuer authorizes ~~each Group Bank and Non-Conduit~~**the** Purchaser to disclose to any ~~Group Bank Participant, Acquiring Group Bank, Non-Conduit Purchaser Participant or Acquiring Purchaser Group (each, a "**Transferee**")~~**Transferee** and any prospective Transferee any and all financial information in ~~such Group Bank's or Non-Conduit~~**the** Purchaser's possession concerning the Issuer, the Issuer Investment Asset and the Program Agreements which has been delivered to ~~such Group Bank~~**the Purchaser** by the Issuer or the Manager ~~in connection with such Group Bank's credit evaluation of the Issuer and the Issuer Investment Asset~~.

(c) ~~(h)~~ Notwithstanding any other provision of this Supplemental Indenture to the contrary, ~~any Non-Conduit~~**the** Purchaser~~, any Group Bank or any Program Support Provider~~ may at any time pledge or grant a security interest in all or any portion of its rights under its Series 2017-1 ~~Senior~~**Subordinated** Note and this Supplemental Indenture to secure obligations of ~~such Non-Conduit~~**the** Purchaser~~, such Group Bank or such Program Support Provider to a Federal Reserve Bank or the Bank of Canada~~ **to any Person**, without notice to or consent of the ~~Administrative Agent, the~~ Issuer ~~or the Administrator~~; provided that no such pledge or grant of a security interest shall release ~~a Non-Conduit~~**the** Purchaser ~~or an Group Bank~~ from any of its obligations hereunder or substitute any such pledgee or grantee for ~~such Non-Conduit~~**the** Purchaser ~~or such Group Bank~~ as a party hereto.

7.2 ~~8.2~~ Waiver

Without limiting the requirements of Section **[11.02]** of the Trust Indenture which shall be applicable to this Supplemental Indenture, no waiver of any provision of this Supplemental Indenture or consent to any departure by the Issuer from any provision of this Supplemental

Indenture will be effective (in whole or in part) unless in writing and signed by the ~~Requisite Series 2017-1 Noteholders~~**Purchaser**. Such waiver will be effective only in the specific instance, for the specific purpose and for the specific length of time for which it is given by the ~~Requisite Series 2017-1 Noteholders~~**Purchaser**.

7.3 ~~8.3~~ Notice

All notices, requests, instructions and demands to or upon any party hereto to be effective shall be given (a) in the case of the Issuer and the Indenture Trustee, in the manner set forth in Article **[15]** of the Trust Indenture; and (b) in the case of the ~~Administrative Agent, the Non-Conduit Purchasers, the CP Conduit Purchasers, the Group Banks and the Funding Agents~~**Purchaser**, in writing, and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when delivered by hand or three days after being deposited in the mail, postage prepaid, in the case of facsimile notice, when received, or in the case of overnight air courier, one Business Day after the date such notice is delivered to such overnight courier, addressed as follows~~ in the case of the Administrative Agent and to the addresses therefor set forth in Schedule E, in the case of the Non-Conduit Purchasers, the CP Conduit Purchasers, the Group Banks and the Funding Agents~~; or to such other address as may be hereafter notified by the respective parties hereto:

~~Administrative Agent:~~**Purchaser:**

●

Ontario Power Generation Inc.
700 University Avenue
Toronto, Ontario M5G 1X6

Attention: [■]
Fax: (416) [■]
Email: [■]

7.4 ~~8.4~~ No Waiver: Remedies

No failure on the part of any party to exercise, and no delay in exercising, any power, right or remedy hereunder will operate as a waiver thereof; nor will any single or partial exercise of any such power, right or remedy hereunder preclude any other or further exercise thereof or the exercise of any other power, right or remedy. The rights and remedies herein provided are cumulative and not exclusive of any remedies provided by applicable law.

7.5 ~~8.5~~ Entire Agreement

This Supplemental Indenture, ~~the Fee Letter,~~ the Trust Indenture and the other Program Agreements contain the entire agreement between the parties relative to the subject matter hereof and supersede all prior and contemporaneous agreements, term sheets, commitments, understandings, negotiations and discussions, whether oral or written. There are no warranties, representations or other agreements between the parties in connection with the subject matter hereof except as specifically set forth in this Supplemental Indenture, ~~the Fee Letter,~~ the Trust Indenture and the other Program Agreements.

7.6 ~~8.6~~ Governing Law and Attornment

This Supplemental Indenture shall be governed by, and construed in accordance with, the laws of the Province of Ontario and the parties hereby attorn to the jurisdiction of the courts of Ontario.

7.7 ~~8.7~~ Acknowledgment of Trust Indenture and No Proceedings

The ~~Administrative Agent, each Non-Conduit Purchaser, each CP Conduit Purchaser, each Group Bank and each Funding Agent hereby~~Purchaser acknowledges and agrees in favour of the Indenture Trustee that it is a Specified Creditor under the Trust Indenture and its entitlements as a Specified Creditor are subject to the provisions applicable to Specified Creditors under the Trust Indenture including, without limitation, Section **[7.06]** (Payments Held in Trust), Section **[8.12]** (Limitation on Suits), Sections **[7.04 and 8.13]** (Payment Priorities), Section **[8.14]** (Limited Recourse) and Section **[16.01]** (No Petition).

7.8 ~~8.8~~ Expenses

The Issuer agrees to pay on demand (a) to the Indenture Trustee~~, the Administrative Agent~~ and the Purchaser~~ Groups~~ all reasonable costs and expenses in connection with the preparation, execution, and delivery of this Supplemental Indenture and the other documents to be delivered hereunder or in connection herewith, including, the reasonable fees and out-of-pocket expenses of counsel for ~~the Administrative Agent and~~ the Purchaser~~ Groups, with respect thereto, and the reasonable fees and out-of-pocket expenses incurred by the CP Conduit Purchasers in connection with the review by each rating agency then rating the Commercial Paper of such CP Conduit Purchaser of the transactions contemplated by this Supplemental Indenture and the Program Agreements~~, with respect thereto; (b) to the Indenture Trustee~~,~~ and the ~~Administrative Agent and each~~ Purchaser~~ Group~~, all reasonable costs and expenses in connection with any amendments of or waivers or consents under this Supplemental Indenture or the Program Agreements, including in each case the reasonable fees and out-of-pocket expenses of counsel with respect thereto~~, and the reasonable fees and out-of-pocket expenses incurred by the CP Conduit Purchasers in connection with the review by any rating agency then rating the Commercial Paper of such CP Conduit Purchasers~~; and (c) to the Indenture Trustee~~, the Administrative Agent~~ and ~~each~~the Purchaser~~ Group~~, on demand, all reasonable costs and expenses (including reasonable fees and expenses of counsel to the ~~Administrative Agent and each~~ Purchaser~~ Group~~), if any, in connection with the enforcement of this Supplemental Indenture or any of the Program Agreements, and the other documents delivered thereunder or in connection therewith.

7.9 ~~8.9~~ Further Assurances

Each of the parties hereto upon the request of the other party or parties hereto shall do, execute, acknowledge and deliver or cause to be done, executed acknowledged or delivered all such further acts, deeds, documents, assignments, transfers, conveyances, powers of attorney and assurances as may be reasonably necessary or desirable to effect or complete the consummation of the transactions contemplated by this Supplemental Indenture.

7.10 ~~8.10~~ Confidentiality

(a) ~~Each~~The Purchaser~~ Group and the Administrative Agent~~ covenants and agrees that any non-public information obtained by it pursuant to this Supplemental Indenture and the other

Program Agreements shall be held in confidence except that the Purchaser ~~Groups or Administrative Agent~~ may disclose such information (i) pursuant to the order of any court or administrative agency or in any pending legal or administrative proceeding (whether or not having the force or effect of law) provided that, unless prohibited by applicable law, ~~a~~**the** Purchaser ~~Group or the Administrative Agent, as applicable,~~ shall provide prompt notice of such order to the affected party; (ii) upon the request or demand of any regulatory authority having or claiming jurisdiction over ~~any~~**the** Purchaser ~~Group or the Administrative Agent~~; (iii) as required by applicable law including, without limitation, all applicable securities laws; (iv) to the extent that such information becomes publicly available other than by reason of improper disclosure by ~~a~~**the** Purchaser ~~Group or the Administrative Agent~~; (v) to its affiliates, officers, directors, employees, legal counsel, independent auditors, accountants, advisors, investors, potential investors, commercial paper dealers, providers of surety, guaranty, credit or liquidity enhancement (including the directors, officers and accountants of such surety, guaranty, credit or liquidity enhancement provider), legal counsel of any of the foregoing and other experts or agents who need to know such information and are informed of the confidential nature of such information ~~(provided that the Persons permitted to make such disclosures under clauses (i), (ii) and (iii) of this Section 8.10 shall also include credit or liquidity enhancers of a CP Conduit Purchaser)~~; (vi) for purposes of establishing a "due diligence" defense; (vii) which was available to ~~a~~**the** Purchaser ~~Group or the Administrative Agent~~ on a non-confidential basis from a source other than the affected party, provided that such source was not to the knowledge of the Purchaser ~~Group or the Administrative Agent, as applicable,~~ bound by a confidentiality agreement with the affected party; (viii) has been independently acquired or developed by ~~a~~**the** Purchaser ~~Group or the Administrative Agent~~ without violating any of the Purchaser ~~Group's or the Administrative Agent~~'s obligations under this Supplemental Indenture; (ix) if such disclosure has been approved in writing in advance by the Issuer or the Manager; (x) regarding the existence of this Supplemental Indenture, but not the financial terms thereof; and (xi) to DBRS and Moody's and any other Rating Agencies.

(b) The Issuer covenants and agrees to hold in confidence, and not disclose to any Person, the terms of this Supplemental Indenture ~~(including any fees payable in connection with this Supplemental Indenture or the identity of any CP Conduit Purchaser under this Supplemental Indenture), except as the applicable~~**, except as the** Purchaser ~~Group~~ may have consented to in writing prior to any proposed disclosure and except (i) it may also disclose such information (A) to its officers, directors, employees, legal counsel, independent auditors, accountants and other advisors who are directly involved in the consideration of this Supplemental Indenture (and then only on a confidential basis), (B) to the Manager and its officers, directors, employees, legal counsel, independent auditors, accountants and other advisors, (C) any ministry or agency of the Province of Ontario and, in each case, their respective employees, officials, agents and advisors, (D) as required by applicable law (including, without limitation, applicable securities law) or compulsory legal process, (E) as expressly permitted by the terms of the Program Agreements, and (F) to DBRS and Moody's and any other Rating Agencies; provided, that, in the case of clause (D), the Issuer will use all commercially reasonable efforts to maintain confidentiality and will (unless otherwise prohibited by law) notify the ~~affected Administrative Agent or~~ Purchaser ~~Group~~ of its intention to make any such disclosure prior to making such disclosure; and (ii) it may also disclose the existence (but not the financial terms) of this Supplemental Indenture, including to any actual or prospective purchaser of other Notes.

(c) The parties hereto acknowledge that a description of this Supplemental Indenture and the Series 2017-1 ~~Senior~~**Subordinated** Note will be included in the preliminary and final offering memoranda of the Issuer relating to the issue of other Notes from time to time.

~~**8.11 Acknowledgement and Consent to Bail-In of EEA Financial Institutions**~~

~~Notwithstanding anything to the contrary in this Supplemental Indenture or in any other Program Agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any EEA Financial Institution arising under this Supplemental Indenture or any other Program Agreement, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:~~

~~(a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and~~

~~(b) the effects of any Bail-in Action on any such liability, including, if applicable~~

~~(i) a reduction in full or in part or cancellation of any such liability;~~

~~(ii) a conversion of all, or a portion of, such liability into shares or other instruments or ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Supplemental Indenture or any other Facility Agreement; or~~

~~(iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any EEA Resolution Authority.~~

7.11 ~~**8.12**~~ **Limitation of Liability of Issuer Trustee**

Each party hereto other than the Issuer acknowledges that the Issuer is a trust, and that Computershare Trust Company of Canada is the Issuer Trustee. The other parties hereto agree that the Issuer Trustee will not be subject to any liability whatsoever to them, in tort, contract or otherwise, in connection with the Issuer's assets or the trust activities, for any action taken or permitted by it to be taken, or for its failure to take any action; provided that the foregoing limitation will not apply in respect of any action or failure to act arising from or in connection with wilful misconduct, negligence or reckless disregard of a duty by the Issuer Trustee. The Issuer Trustee in doing anything or permitting anything to be done in respect of assets or the trust activities is, and shall be conclusively deemed to be, acting as trustee of the Issuer and not in any other capacity. Except as to the extent provided in this Section ~~8.12~~**7.11**, the Issuer Trustee will not be subject to any debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses against or with respect to the Issuer, arising out of anything done or permitted by it to be done or its failure to take any action in respect of the Issuer's assets or the trust activities and resort will be had solely to the Collateral for the payment or performance thereof. No property or assets of the Issuer Trustee, whether owned in its personal capacity or otherwise, will be subject to levy, execution or other enforcement procedure with regard to any obligation under this

Supplemental Indenture. Nothing contained in this Section ~~8.12~~7.11 shall be construed so as to limit the liability of the Issuer under this Supplemental Indenture. This Supplemental Indenture, and every deed, transfer, assignment, agreement or other instrument made pursuant hereto including, without limitation, the Series 2017-1 ~~Senior~~Subordinated Notes, made or purporting to be made by or creating an obligation of the Issuer or the Issuer Trustee on behalf of, or as trustee of, the Issuer shall be deemed and construed for all purposes as if made by the Issuer Trustee, in and only in its capacity as trustee of the Issuer. Any obligations of the Issuer Trustee hereunder or thereunder are non-recourse to the Issuer Trustee in its personal capacity.

7.12 ~~8.13~~ Execution in Counterparts

This Supplemental Indenture may be executed in several counterparts, each of which when so executed shall be deemed to be an original and the counterparts together shall constitute one and the same instrument. This Supplemental Indenture may be executed and delivered by email or other electronic transmission of a manually signed counterpart.

7.13 ~~8.14~~ Delivery of Executed Copies

Each party acknowledges delivery of an executed copy of this Supplemental Indenture.

[signature page follows]

IN WITNESS WHEREOF the parties hereto have duly executed this ~~Trust~~**Supplemental** Indenture as of the date first above written.

~~[~~**FAIR HYDRO TRUST**~~]~~, as Issuer**, by**

ONTARIO POWER GENERATION INC., not in its individual capacity but solely as Manager

By: _____
Name:
Title:

By: _____
Name:
Title:

~~●~~**BNY TRUST COMPANY OF CANADA**, as Indenture Trustee

By: _____
Name:
Title:

By: _____
Name:
Title:

~~●,~~ **ONTARIO POWER GENERATION INC., as Purchaser**

By: _____
Name:
Title:

By: _____
Name:
Title:

~~**[NTD: Detailed signing pages to be prepared.]**~~

SCHEDULE A

DEFINITIONS

"**Acceleration Event**" means the outstanding Dollar Principal Amount of the Series 2017-1 Senior Notes have been declared or automatically become due and payable pursuant to Section [3.11] of the Senior Series 2017-1 Supplemental Indenture and the outstanding Dollar Principal Amount of all Funding Obligations of the Series 2017-1 SeniorSubordinated Notes have been declared or automatically become due and payable [pursuant to Section [8.02] of the Trust Indenture]. [NTD: Consider if it is worth having a separate definition of Acceleration Event for this Series aside from what happens under 8.02 of the Trust Indenture.]3.11.

"**Administrative Agent**" shall have the meaning specified in the preamblerecitals to this Supplemental Indenture.

"**AEOI Legislation**" has the meaning specified in Section 3.103.9(a) of this Supplemental Indenture.

"**Affected Party**" means any Non-Conduit Purchaser, CP Conduit Purchaser and any Program Support Provider with respect to any CP Conduit Purchaser.

"**Applicable Margin**" is defined in the Fee Lettermeans ■.

"**Authorized Officer**" means, with respect to: (a) the Issuer, any authorized director or officer of the Manager; (b) the Manager, any authorized director of officer of OPG; (c) the IESO, any authorized director or officer of the IESO; (d) the Issuer Trustee, any officer within the corporate trust office of such trustee (including the President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Treasurer or any other officer of the Issuer Trustee customarily performing functions similar to those performed by persons who at the time shall be such officers, respectively, and that has direct responsibility for the administration of the Issuer and also, with respect to a particular matter, any other officer to whom such matter is referred to because of such officer's knowledge and familiarity with the particular subject).

"**Bail-In Action**" shall mean the exercise of any Write-Down and Conversion Powers by the applicable EEA Resolution Authority in respect of any liability of an EEA Financial Institution.

"**Bail-In Legislation**" shall mean, with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule.

"**Basel III**" means the revised Basel Accord prepared by the Basel Committee on Banking Supervision as set out in the publication entitled "A Global Regulatory Framework for More Resilient Banks and Banking Systems" developed by the Basel Committee on Banking Supervision, initially published in December 2010, as updated from time to time, and any rules, regulations, guidance, requests, interpretations or directives from any Official Body relating thereto (whether or not having the force of law).

~~"**Billing Period**" has the meaning specified in the Master Transfer and Servicing Agreement; **[NTD: Consider if this can be replaced with Interest Period wherever it occurs.]**~~

"**CDOR**" means, on any day, an annual rate of interest equal to the average rate applicable to Canadian dollar bankers' acceptances for a 1 month period appearing on the "Reuters Screen CDOR Page" (as defined in the International Swaps and Derivatives Association, Inc. 2000 definitions, as modified and amended from time to time) at approximately 10:00 a.m. on such day, or if such day is not a Business Day, then on the immediately preceding Business Day, provided that if such rate does not appear on the Reuters Screen CDOR Page on such day as contemplated, then CDOR on such day shall be calculated as the average of the rates for such period applicable to Canadian dollar bankers' acceptances quoted by the banks listed in Schedule I of the *Bank Act* (Canada) as of 10:00 a.m. on such day or, if such day is not a Business Day, then on the immediately preceding Business Day.

"**Closing Date**" is defined in Section 3.3(a).

"**Code**" is defined in Section ~~3.10~~**3.9**(a).

~~"**Commercial Paper**" means, with respect to any CP Conduit Purchaser, the promissory notes issued by, or for the benefit of, such CP Conduit Purchaser in the commercial paper market.~~

~~"**Commitment**" means, with respect to (a) the Group Bank included in any CP Conduit Purchaser Group, the obligation of such Group Bank to purchase a Series 2017-1 Senior Note on the Closing Date and, thereafter, to maintain and, subject to certain conditions, increase the Purchaser Group Principal Amount with respect to such CP Conduit Purchaser Group, in each case, in an amount up to the Maximum Purchaser Group Principal Amount with respect to such CP Conduit Purchaser Group; or (b) any Non-Conduit Purchaser Group, the obligation of the Related Non-Conduit Purchaser to purchase a Series 2017-1 Senior Note on the Closing Date and, thereafter, to maintain and, subject to certain conditions, increase the Purchaser Group Principal Amount with respect to such Non-Conduit Purchaser Group, in each case, in an amount up to the Maximum Purchaser Group Principal Amount with respect to such Non-Conduit Purchaser Group.~~

~~"**Commitment Expiry Date**" means the earlier of (a) the Scheduled Commitment Expiry Date; and (b) the date on which an Event of Default shall have been declared or automatically occurred.~~

~~"**Commitment Fee**" is defined in Section 3.6(b).~~

~~"**Commitment Fee Rate**" is defined in the Fee Letter.~~

~~"**Commitment Percentage**" means, on any date of determination, with respect to any Purchaser Group, the ratio, expressed as a percentage, which such Purchaser Group's Maximum Purchaser Group Principal Amount bears to the Series 2017-1 Maximum Principal Amount on such date.~~

~~"**Conduit Assignee**" means, with respect to any CP Conduit Purchaser, any commercial paper conduit administered by the Funding Agent with respect to such CP Conduit Purchaser and designated by such Funding Agent to accept an assignment from such CP Conduit Purchaser of~~

~~the Purchaser Group Principal Amount or a portion thereof with respect to such CP Conduit Purchaser pursuant to Section 8.1(b).~~

~~"**CP Conduit Funded Amount**" means, with respect to any CP Conduit Purchaser Group for any day, the portion of the Purchaser Group Principal Amount with respect to such CP Conduit Purchaser Group funded by the CP Conduit Purchaser in respect of such CP Conduit Purchaser Group.~~

~~"**CP Conduit Purchaser**" means each commercial paper conduit listed on Schedule E or party to a Purchaser Group Supplement pursuant to which such commercial paper conduit became a party to this Supplemental Indenture~~

~~"**CP Conduit Purchaser Group**" means, collectively, a CP Conduit Purchaser and the Group Bank with respect to such CP Conduit Purchaser.~~

~~"**CP Conduit Rating Agencies**" means, with respect to any CP Conduit Purchaser, each of DBRS and Moody's and any other nationally recognized statistical rating organization which may, from time to time, rate the Commercial Paper of the CP Conduit Purchaser at the request of the CP Conduit Purchaser.~~

~~"**CP Rate**" means with respect to any CP Conduit Purchaser for any day during an Interest Period, the weighted average annual rate of interest applicable to all Commercial Paper of the CP Conduit Purchaser; and provided further that (x) any such Commercial Paper may be issued in either United States dollars or Canadian dollars with the appropriate market rate currency swap agreements being entered into to match such issuance to the funding requirements of such CP Conduit Purchaser, and (y) such weighted average annual rate of interest shall be calculated to reflect any costs incurred by such CP Conduit Purchaser in connection with such swap transactions or in connection with any redemption or repurchase transaction between such CP Conduit Purchaser and the holders of such commercial paper; provided that no amount shall be included in the calculation of the CP Rate which reflects any termination amounts payable by such CP Conduit Purchaser in respect of the early termination of any market rate currency swap referred to in this definition.~~

"**Decrease**" is defined in Section 3.4(a).

"**Decrease Amount**" is defined in Section 3.4(a).

~~"**Deferrable Increase Notice**" means a notice of Increase that provides that a Delayed Funding Notice may be provided by any Purchaser Group with respect to such Increase in accordance with Section 3.3(e).~~

~~"**Delayed Amount**" is defined in Section 3.3(e).~~

~~"**Delayed Funding Date**" is defined in Section 3.3(e).~~

~~"**Delayed Funding Notice**" is defined in Section 3.3(e).~~

~~"**Delayed Funding Purchaser Group**" is defined in Section 3.3(e).~~

~~"**Delayed Funding Reimbursement Amount**" means, with respect to any Delayed Amount of a Delayed Funding Purchaser Group funded by Non-Delayed Funding Purchaser Groups on an Increase Date, an amount equal to the excess, if any, of (a) such Delayed Amount; over (b) the amount, if any, by which the portion of any principal payment made by the Issuer to such Non-Delayed Funding Purchaser Group pursuant to Section 3.7 on any date during the period from and including such Increase Date to but excluding the Delayed Funding Date for such Delayed Amount, was greater than what it would have been had such Delayed Amount been funded by such Delayed Funding Purchaser Group on such Increase Date.~~

~~"**EEA Financial Institution**" shall mean (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority; (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition; or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clause (a) or (b) of this definition and is subject to consolidated supervision with its parent.~~

~~"**EEA Member Country**" shall mean any of the member states of the European Union, Iceland, Liechtenstein and Norway.~~

~~"**EEA Resolution Authority**" shall mean any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.~~

~~"**Eligible Assignee**" means a financial institution having short-term debt ratings of at least "A-1" from Standard & Poor's and "P-1" from Moody's.~~

~~"**EU Bail-In Legislation Schedule**" shall mean the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.~~

"**Excluded Taxes**" shall have the meaning specified in Section ~~3.10~~**3.9**(a) of this Supplemental Indenture.

"**FATCA**" has the meaning specified in Section ~~3.10~~**3.9**(a) of this Supplemental Indenture.

~~"**Fee Letter**" means the letter dated the date hereof, from the Issuer addressed to the Administrative Agent, each Non-Conduit Purchaser and each of the CP Conduit Purchasers, the Funding Agents and the Group Banks, setting forth certain fees payable from time to time to the Purchaser Groups, as such letter may be amended or replaced from time to time.~~

~~"**Funding Agent**" means, with respect to each CP Conduit Purchaser and its CP Conduit Purchaser Group, the agent bank set forth opposite the name of such CP Conduit Purchaser on Schedule E or in the Purchaser Group Supplement pursuant to which such CP Conduit Purchaser became a party to this Supplemental Indenture.~~

~~"**Group Bank**" means, with respect to a CP Conduit Purchaser, the bank or other Person set forth opposite the name of such CP Conduit Purchaser on Schedule E or in the Purchaser Group Supplement pursuant to which such CP Conduit Purchaser became a party to this Supplemental Indenture and any assignee thereof, to the extent such assignee has assumed all or a portion of the~~

~~Commitments of the Group Bank pursuant to a Transfer Supplement entered into in accordance with Section 8.1(c).~~

"~~**Group Bank Funded Amount**~~" ~~means, with respect to any CP Conduit Purchaser Group for any day, the excess, if any, of the Purchaser Group Principal Amount with respect to such CP Conduit Purchaser Group over the CP Conduit Funded Amount with respect to such CP Conduit Purchaser Group for such day.~~

"~~**Group Bank Participants**~~" ~~is defined in Section 8.1(d).~~

"~~**Group Monthly Fees and Other Amounts**~~" ~~shall mean, for any Payment Date and a Purchaser Group the sum of (a) the Commitment Fee with respect to the related Billing Period for such Purchaser Group; plus (b) any amounts payable to such Purchaser Group hereunder including, without limitation, pursuant to Sections 3.8, 3.10, 3.11 and 8.8; plus (c) the Monthly Fees and Other Amounts Shortfall for such Purchaser Group for such Payment Date.~~

"~~**Group Monthly Interest**~~" ~~means, with respect to each Interest Period and:~~

~~(a)~~ ~~any CP Conduit Purchaser Group, the sum of:~~

~~(i)~~ ~~for each day during such Interest Period, the product of (x) the portion of the CP Conduit Funded Amount with respect to the CP Conduit Purchaser Group on such day funded through the issuance of Commercial Paper outstanding on such day, times (y) the sum of the CP Rate for such day plus the Applicable Margin, divided by (z) 365; plus~~

~~(ii)~~ ~~for each day during such Interest Period, the product of (x) the portion of the CP Conduit Funded Amount with respect to the CP Conduit Purchaser in such GP Conduit Purchaser Group on such day not funded through the issuance of Commercial Paper outstanding on such day, times (y) the sum of CDOR for such day plus the Applicable Margin, divided by (z) 365; plus~~

~~(iii)~~ ~~for each day during such Interest Period the product of (x) the Group Bank Funded Amount with respect to such Purchaser Group on such day, times (y) the sum of CDOR for such day plus the Applicable Margin, divided by (x) 365.~~

~~(b)~~ ~~any Non-Conduit Purchaser Group, the sum for each day during such Interest Period of the product of (i) the Purchaser Group Principal Amount with respect to such Non-Conduit Purchaser Group on such day; times (ii) the sum of CDOR for such day plus the Applicable Margin, divided by (iii) 365.~~

~~For~~ ~~the purposes of determining the Group~~ ~~Monthly Interest in respect of an Interest Period prior to the end of the Interest Period, the Funding Agent in respect of a CP Conduit Purchaser Group or a Non-Conduit Purchaser Group may estimate the interest for the remaining days in the Interest Period.~~ ~~If the actual interest for such days is less than the estimated interest, the Group Monthly Interest for the following Interest Period shall be reduced to adjust for such lower actual interest and if the actual interest for such days is higher than the estimated interest, the Group~~

~~Monthly Interest for the following Interest Period shall be increased to adjust for such higher interest.~~

"**Increase**" is defined in Section 3.3(a).

"**Increase Amount**" is defined in Section 3.3(a).

"**Increase Date**" is defined in Section 3.3(a).

"**Increase Notice**" is defined in Section 3.3(a).

"Indenture Trustee" shall have the meaning specified in the recitals to this Supplemental Indenture.

"**Interest Period**" means each of the consecutive periods that begins on, and includes, each Payment Date and ends on and excludes, the following Payment Date; provided that the first Interest Period shall begin on the Closing Date and end on ●.

"**Issuer** ~~**indemnified person**~~**" shall have the meaning specified in the recitals to this Supplemental Indenture.**

"Issuer Indemnified Person" is defined in Section 3.8.

"**Issuer** ~~**indemnified person**~~" ~~is defined in Section 3.8~~**Trustee" shall have the meaning specified in the recitals to this Supplemental Indenture.**

"**Maximum Purchaser Group Principal Amount**" ~~means, with respect to (a) any CP Conduit Purchaser Group, the amount set forth opposite the name of the CP Conduit Purchaser included in such CP Conduit Purchaser Group on Schedule E or in the Purchaser Group Supplement pursuant to which such CP Conduit Purchaser Group became a party to this Supplemental Indenture; or (b) any Non-Conduit Purchaser Group, the amount set forth opposite the name of such Non-Conduit Purchaser Group on Schedule E or in the Purchaser Group Supplement pursuant to which such Non-Conduit Purchaser Group became a party to this Supplemental Indenture, in each case, as such amount may be increased or reduced from time to time as provided in Section 3.5.~~**shall have the meaning specified in the Senior Series 2017-1 Supplemental Indenture.**

"**Monthly Interest**" shall mean, for any Payment Date, ~~the aggregate for all Purchaser Groups of~~ the sum of (~~a) Group Monthly Interest for the related Interest Period for each Purchaser Group; plus (b~~**A) the sum for each day during such Interest Period of the product of (i) the Series 2017-1 Subordinated Principal Amount on such day; times (ii) the sum of CDOR for such day plus the Applicable Margin, divided by (iii) 365, and (B**) the Monthly Interest Shortfall ~~for such Payment Date for each Purchaser Group~~**; provided that, for** the purposes of determining the Monthly Interest in respect of an Interest Period prior to the end of the Interest Period, the **Purchaser** may estimate the interest for the remaining days in the Interest Period **and provided further, if** the actual interest for such days is less than the estimated interest, the Monthly Interest for the following Interest Period shall be reduced to adjust for such lower actual

interest and if the actual interest for such days is higher than the estimated interest, the Monthly Interest for the following Interest Period shall be increased to adjust for such higher interest.

~~"**Monthly Fees and Other Amounts**" shall mean, for any Payment Date, the aggregate of the Monthly Fees and Other Amounts for all Purchaser Groups.~~

"**Monthly Interest Shortfall**" means, for any Payment Date~~ and a Purchaser Group~~, if the amount **in clause (A)** of the ~~Group~~**definition of** Monthly Interest for the preceding Payment Date was greater than the amount distributed to the payment of such amounts pursuant to Section 3.6(~~d~~**c**), an amount equal to the ~~Group~~**amount in clause (A) of the definition of** Monthly Interest owing to ~~such~~**the** Purchaser~~ Group~~ which ~~were~~**was** unpaid on the preceding Payment Date plus interest on such unpaid amount for the period from the preceding Payment Date to the current Payment Date at a rate equal to the Prime Rate plus ●% per annum.

"**Monthly ~~Fees and~~Other Amounts" shall mean, for any Payment Date the sum of (a) any amounts payable to the Purchaser** hereunder including, without limitation, pursuant to Sections **3.8, 3.9, 3.10 and 7.8; plus (c) the Monthly** Other Amounts Shortfall for such **Payment Date.**

"Monthly Other Amounts Shortfall" means, for any Payment Date~~ and a Purchaser Group~~, if the amount of the Monthly~~ Fees and~~ Other Amounts for the preceding Payment Date was greater than the amount distributed to the payment of such amounts pursuant to Section 3.6(~~d~~**c**), an amount equal to the Monthly~~ Fees and~~ Other Amounts owing to ~~such~~**the** Purchaser~~ Group~~ which were unpaid on the preceding Payment Date plus interest on such unpaid amount for the period from the preceding Payment Date to the current Payment Date at a rate equal to the Prime Rate plus ●% per annum.

~~"**Non-Conduit Purchaser**" means each financial institution or other entity (other than a commercial paper conduit, Group Bank or Funding Agent) listed on Schedule E or party to a Purchaser Group Supplement pursuant to which such financial institution or entity became a party to this Supplemental Indenture.~~

~~"**Non-Conduit Purchaser Group**" means a Non-Conduit Purchaser.~~

~~"**Non-Conduit Purchaser Participants**" is defined in Section 8.1(f).~~

~~"**Non-Deferrable Draw Amount**" means, with respect to any Purchaser Group as of any Increase Date, an amount equal to the lesser of (a) the excess, if any, of (x) the product of (i) $100,000,000 and (ii) the Commitment Percentage of such Purchaser Group over (y) the portion of any Increase Amounts funded by such Purchaser Group during the preceding thirty-five (35) days pursuant to a Non-Deferrable Increase Notice or, to the extent of any decrease pursuant to Section 3.3(e) in the Delayed Amount set forth in a Delayed Funding Notice delivered by such Purchaser Group, a Deferrable Increase Notice; and (b) the excess, if any, of (x) the Maximum Purchaser Group Principal Amount with respect to such Purchaser Group, over (y) the sum of (i) the Purchaser Group Principal Amount with respect to such Purchaser Group; and (ii) any unfunded Delayed Amounts with respect to such Purchaser Group, in each case as of such~~

~~Increase Date. [**NTD: OPG would like an aggregate Non-Deferrable Draw Amount of $100 million at all times.**]~~

~~"**Non-Deferrable Increase Notice**" means a notice of Increase that provides that a Delayed Funding Notice may not be provided by any Purchaser Group with respect to such Increase in accordance with Section 3.3(a).~~

~~"**Non-Delayed Funding Purchaser Group**" is defined in Section 3.3(f).~~

~~"**Optional Termination Date**" is defined in Section 3.4.~~

~~"**Optional Termination Notice**" is defined in Section 3.4.~~

"**Prime Rate**" means the annual rate of interest announced by ● from time to time as being its reference rate for the determination of interest rates on Canadian dollar denominated commercial loans made by it and commonly referred to by ● as its "prime rate."

"**Principal Accumulation Amount**" means, in respect of each Payment Date occurring on or after the Principal Accumulation Date, an amount equal to the lesser of (x) $●, and (y) the Series 2017~~-1~~-1 **Subordinated** Principal Amount.

"**Principal Accumulation Date**" means the Payment Date occurring in the month of ●, **[2021]**.

"**Principal Payment Amount**" means, in respect of the Series 2017-1 **Subordinated** Notes:

(a) on any Payment Date that is a Decrease Date before the earlier of (i) the Series 2017-1 **Subordinated** Principal Payment Due Date; and (ii) the occurrence of an Acceleration Event, the Decrease Amount of the Decrease occurring on such Payment Date;

(b) on any Payment Date that is not a Decrease Date before the earlier of (i) the Series 2017-1 **Subordinated** Principal Payment Due Date; and (ii) the occurrence of an Acceleration Event, nil; and

(c) on any Payment Date occurring on or after the earlier of (i) the Series 2017-1 **Subordinated** Principal Payment ~~Due~~ Date; and (ii) the occurrence of an Acceleration Event, the Series 2017-1 **Subordinated** Principal Amount.

"~~**Pro Rata Share**" means, with respect to any Purchaser Group, on any date, the ratio, expressed as a percentage, which the Purchaser Group Principal Amount with respect to such Purchaser Group bears to the Series 2017-1 Principal Amount on such date.~~**Purchaser" shall have the meaning specified in the recitals to this Supplemental Indenture.**

~~"**Program Support Provider**" means, with respect to any CP Conduit Purchaser, the Group Bank with respect to such CP Conduit Purchaser and any other or additional Person now or hereafter extending credit, or having a commitment to extend credit to or for the account of, or to make purchases from, such CP Conduit Purchaser or issuing a letter of credit, surety bond or other instrument to support any obligations arising under or in connection with such CP Conduit Purchaser's securitization program.~~

~~"**Purchaser Group**" means a CP Conduit Purchaser Group or a Non-Conduit Purchaser Group.~~

~~"**Purchaser Group Increase Amount**" means, with respect to any Purchaser Group, for any Business Day, such Purchaser Group's Commitment Percentage of the Increase Amount, if any, on such Business Day.~~

~~"**Purchaser Group Principal Amount**" means, with respect to any Purchaser Group, (a) when used with respect to the Closing Date, such Purchaser Group's Commitment Percentage of the Series 2017-1 Initial Principal Amount; and (b) when used with respect to any other date, an amount equal to (i) the Purchaser Group Principal Amount with respect to such Purchaser Group on the immediately preceding Business Day; plus (ii) the Purchaser Group Increase Amount with respect to such Purchaser Group on such date; minus (iii) the amount of principal payments made to such Purchaser Group pursuant to Section 3.7 on such date. For the avoidance of doubt, (x) so long as any Purchaser Group has failed to fund any portion of its Purchaser Group Increase Amount with respect to any Increase Date (including any Delayed Amount), such unfunded amount shall not be included in the Purchaser Group Principal Amount for such Purchaser Group unless and until such amount has been funded (including by Funding any Delayed Funding Reimbursement Amount, if applicable), and (y) any Delayed Amounts funded on an Increase Date by a Non-Delayed Funding Purchaser Group shall be included in the Purchaser Group Principal Amount for such Non-Delayed Funding Purchaser Group until the related Delayed Funding Reimbursement Amount has been funded.~~

~~"**Purchaser Group Supplement**" is defined in Section 8.1(e).~~

~~"**Rating Agency Condition**" means, with respect to any action in respect of the Series 2017-1 Senior Notes subject to such condition, each of the CP Conduit Purchasers shall deliver written notice of the proposed action to the CP Conduit Rating Agencies at least 10 Business Days prior to the effective date of such action (or if 10 Business Days prior notice is impractical, such advance notice as is practicable) and the CP Conduit Rating Agencies (i) shall not have informed any CP Conduit Purchaser prior to the effective date of such action that such action will result in the reduction or withdrawal of the rating in effect with respect to the Commercial Paper of the CP Conduit Purchaser immediately before the taking of such action, or (ii) in the case of DBRS, or any successor thereto, when it is a CP Conduit Rating Agency, DBRS shall have informed each of the CP Conduit Purchasers in writing prior to the effective date of such action that such action will not result in the reduction or withdrawal of the rating of any Commercial Paper of such CP Conduit Purchasers immediately before the taking of such action. For purposes of the Trust Indenture, this Supplemental Indenture and the Master Transfer and Servicing Agreement, the Indenture Trustee shall receive, and shall be entitled to rely on, a certificate of a CP Conduit Purchaser confirming the satisfaction of the Rating Agency Condition.~~

"**Recipient**" has the meaning specified in Section ~~3.10~~**3.9**(a) of this Supplemental Indenture.

"**Refinancing Increase**" is defined in Section 3.3(a).

"**Regulatory Change**" shall mean (i) the adoption after the date hereof of any applicable law, rule or regulation (including any applicable law, rule or regulation regarding capital adequacy, deposits, reserves or liquidity coverage) or any change therein after the date hereof, (ii) any

change after the date hereof in the interpretation, administration, scope or timing of implementation thereof by any governmental authority, central bank, self-regulating professional body or comparable agency or authority charged with the interpretation or administration thereof, or compliance with any guidance, request or directive (whether or not having the force of law) of any such authority, central bank, self-regulating professional body or comparable agency or authority; provided that for purposes of this definition, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder, issued in connection therewith or in implementation thereof, and (y) all requests, rules, guidelines and directives (whether or not having the force of law) promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or Canadian or United States or other foreign regulatory authorities, shall in each case be deemed to be a "Regulatory Change", regardless of the date enacted, adopted, issued or implemented.

"~~**Related Non-Conduit Purchaser**~~" ~~means, with respect to any Non-Conduit Purchaser Group, the Non-Conduit Purchaser that constitutes such Non-Conduit Purchaser Group.~~ **Senior Series 2017-1 Supplemental Indenture" shall have the meaning specified in the recitals to this Supplemental Indenture.**

"~~**Related Purchaser Group**~~" ~~means, with respect to (a) any Funding Agent, the CP Conduit Purchaser identified next to such Funding Agent on Schedule E and the Group Bank identified on Schedule I next to such CP Conduit Purchaser or the CP Conduit Purchaser and Group Bank party to the Purchaser Group Supplement pursuant to which such Funding Agent became a party to this Supplemental Indenture; (b) any CP Conduit Purchaser, the CP Conduit Purchaser Group of which such CP Conduit Purchaser is a member; and (c) any Non-Conduit Purchaser, the Non-Conduit Purchaser Group that such Non-Conduit Purchaser constitutes.~~**Series 2017-1 Initial Senior Principal Amount" means the "Series 2017-1 Initial Principal Amount" as defined in the Senior Series 2017-1 Supplemental Indenture.**

"~~**Requisite Series 2017-1 Noteholders**~~" ~~means Purchaser Groups having Commitment Percentages aggregating more than 50% (or if all Commitments have terminated, Purchaser Groups whose aggregate Purchaser Group Principal Amounts exceed 50% of the Series 2017-1 Principal Amount).~~**Series 2017-1 Initial Subordinated Principal Amount" means an amount equal to [ninety-eight percent (98%)] of the Series 2017-1 Initial Senior Principal Amount**

"~~**Scheduled Commitment Expiry Date**~~" ~~means, ●, as such date may be extended in accordance with Section 3.5(c). [**NTD: two years out.**]~~

~~"**Series 2017-1 Initial Principal Amount**" is defined in Section 3.3(a).~~

~~"**Series 2017-1 Maximum Principal Amount**" means, on any date of determination, the sum of the Maximum Purchaser Group Principal Amounts with respect to each of the Purchaser Groups on such date.~~

~~"**Series 2017-1 Noteholder**" means a Person in whose name a Series 2017-1 Senior Note is registered in the Note Register.~~

~~"**Series 2017-1 Principal Amount**" means, on any date of determination, the sum of the Purchaser Group Principal Amounts with respect to each of the Purchaser Groups on such date~~**Series 2017-1 Maximum Senior Principal Amount" means the "Series 2017-1 Maximum Principal Amount" as defined in the Senior Series 2017-1 Supplemental Indenture.**

"Series 2017-1 Maximum Subordinated Principal Amount" means an amount equal to [ninety-eight percent (98%)] of the Series 2017-1 Maximum Senior Principal Amount.

"Series 2017-1 Senior Decrease" means, with respect to a Business Day, the sum of all amounts of Decreases (as defined in the Senior Series 2017-1 Supplemental Indenture) on such Business Day.

"Series 2017-1 Senior Increase" means, with respect to a Business Day, the sum of all amounts of Increases (as defined in the Senior Series 2017-1 Supplemental Indenture) on such Business Day.

"Series 2017-1 Senior Notes" shall have the meaning specified in the recitals to this Supplemental Indenture.

"**Series 2017-1 Senior Principal Payment ~~Due~~ Date**" means ●■. **[NTD: the date upon which the Series 2017-1 Senior Notes become due and payable~~ – a date after May 1, 2021?~~.]**

"**Series 2017-1 ~~Principal Payment Default Date~~**" means ●. **[~~NTD: the "cure period" number of days after the Series 2017-1 Principal Payment Due Date when an Event of Default will occur if the Series 2017-1 Senior Notes are not paid in full.~~]"~~Series 2017-1 Senior~~Subordinated Note**" means any one of the Floating Rate Variable Funding ~~Senior~~**Subordinated** Notes, Series 2017-1, executed by the Issuer and authenticated and delivered by or on behalf of the Indenture Trustee, substantially in the form of Exhibit B.

"~~**Standard & Poor's**" means Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc.~~**Series 2017-1 Subordinated Principal Amount" means (a) when used with respect to the Closing Date, the Series 2017-1 Initial Subordinated Principal Amount; and (b) when used with respect to any other date, an amount equal to (i) the Series 2017-1 Subordinated Principal Amount on the immediately preceding Business Day; plus (ii) the Increase Amount on such date; minus (iii) the Decrease Amount on such date; minus (iv)** the amount of principal payments made to **the Purchaser pursuant to Section 3.7 on such date.**

"Series 2017-1 Subordinated Principal Payment Default Date" means ■. [NTD: likely later than the Series 2017-1 Senior Principal Payment Default Date.]

"**Supplemental Indenture**" means this Amended and Restated Supplemental Indenture, together with the Schedules hereto, as amended, supplemented, modified, restated or replaced from time to time, together with all schedules hereto and the expressions "hereof," "herein," "hereto," "hereunder," "hereby" and similar expressions refer to this Supplemental Indenture and not to any Article, Section, paragraph, subparagraph or clause hereof.

"**Support Facility**" shall mean any liquidity or credit support agreement with ~~a CP Conduit~~**the** Purchaser which relates to, or is otherwise available to ~~such CP Conduit~~**the** Purchaser in relation to its funding activities under, this Supplemental Indenture.

"**Termination Event**" means any **Acceleration** Event ~~of Default~~ or any event which with the giving of notice or the passage of time, or both, could become an **Acceleration** Event ~~of Default~~.

"**Transfer Increase**" is defined in Section 3.3(a).

"**Transfer Supplement**" is defined in Section ~~8.1~~**7.1**(~~c~~**a**).

"**Transferee**" is defined in Section ~~8.1~~**7.1**(~~g~~**b**).

"**Trust Indenture**" means the trust indenture dated as of ●, 2017 between the Issuer and the Indenture Trustee, as amended or restated from time to time.

~~"**Write-Down and Conversion Powers**" shall mean, with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule.~~

SCHEDULE B

[FORM OF NOTE]

SERIES 2017-1 ~~SENIOR~~SUBORDINATED NOTE

SCHEDULE C

FORM OF INCREASE NOTICE

●

SCHEDULE D

FORM OF DECREASE NOTICE

~~**SCHEDULE E**~~

~~**PURCHASER GROUPS**~~

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Description	Supplemental Indenture (Short Term Subordinated)
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Legend:	
Insertion	
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Style change	
Format change	
~~Moved deletion~~	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	369
Deletions	558
Moved from	13
Moved to	13
Style change	0
Format changed	0
Total changes	953

FW_ a quick question.rtf

From: Petsche, Nadine (TBS) []
To: LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]
CC: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]
Subject: FW: a quick question
Date: Monday, July 17, 2017 14:02:23

Lee Anne,

Legal Counsel advises that there is no specific period of recovery specified in the legislation. The “fair allocation” is a constraint on recovery and will be calculated for each reference period to 2047.

N

FW_ a quick question.rtf

From: Petsche, Nadine (TBS) []
To: LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]
CC: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]
Subject: FW: a quick question
Date: Monday, July 17, 2017 14:02:23

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Lee Anne,

Legal Counsel advises that there is no specific period of recovery specified in the legislation. The “fair allocation” is a constraint on recovery and will be calculated for each referen

FW_ a quick question.rtf

From: Petsche, Nadine (TBS) []
To: LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]
CC: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]
Subject: FW: a quick question
Date: Monday, July 17, 2017 14:02:23

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Lee Anne,

Legal Counsel advises that there is no specific period of recovery specified in the legislation. The “fair allocation” is a constraint on recovery and will be calculated for each referen

FW_ feedback .rtf

From: Petsche, Nadine (TBS) []
To: LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]
CC: Hosick, Sarah (TBS) (Sarah.Hosick@ontario.ca) [Sarah.Hosick@ontario.ca]
Subject: FW: feedback
Date: Monday, July 10, 2017 16:28:54

Hi Lee Anne.

I think that Cindy was planning to provide feedback, but I'm not sure of the status. I'm copying her assistant so that she might be able to help to get you a timeframe. I am away from the office right now.

Nadine

From: Lee Anne Probert [mailto:leeanne.probert@ca.ey.com]
Sent: July-10-17 4:17 PM
To: Petsche, Nadine (TBS)
Subject: RE: feedback

Hi Nadine,

Do you know when Cindy will be providing comments? If it's going to be soon, I'll hold off on making changes/replying to your comments until I have the version with her comments to avoid having two different live versions.

Lee Anne

--

LeeAnne Probert | Senior Manager | Assurance Services

Ernst & Young LLP

Office: 416 943 3554 | leeanne.probert@ca.ey.com

From: Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]
Sent: Friday, July 07, 2017 12:51 PM
To: Lee Anne Probert <leeanne.probert@ca.ey.com>
Cc: Suzie Gignac <suzie.r.gignac@ca.ey.com>; Blake Langill <blake.w.langill@ca.ey.com>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>
Subject: feedback

Hi Lee Anne.

Attached are my comments and suggested edits for the draft paper, for your consideration. Note that I have not had a chance to discuss my comments/edits with Cindy, and that she may offer further edits/comments later.

Have a great weekend.

Nadine

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Fw_ EXTERNAL Provincial Guarantee for Fair Hydro Program.rtf

From: Petsche, Nadine (TBS) []
To: Suzie Gignac [suzie.r.gignac@ca.ey.com]; Lee Anne Probert [LeeAnne.Probert@ca.ey.com]; Blake Langill [blake.w.langill@ca.ey.com]
CC: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
Subject: Fw: EXTERNAL – Provincial Guarantee for Fair Hydro Program
Date: Wednesday, April 19, 2017 09:05:00

As discussed. N

Original Message
From: Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>
Sent: Tuesday, April 18, 2017 11:45 AM
To: Petsche, Nadine (TBS)
Cc: Hosick, Sarah (TBS)
Subject: FW: EXTERNAL – Provincial Guarantee for Fair Hydro Program

-----Original Message-----
From: Gadi Mayman [mailto:Gadi.Mayman@ofina.on.ca]
Sent: April-18-17 11:14 AM
To: Veinot, Cindy (TBS)
Cc: Hughes, Karen (TBS)
Subject: Fw: EXTERNAL – Provincial Guarantee for Fair Hydro Program

FYI on the guarantee.

Original Message
From: Gadi Mayman <Gadi.Mayman@ofina.on.ca>
Sent: Tuesday, April 18, 2017 11:13 AM
To: Scott Nelms (ENERGY)
Cc: Mike Manning; Ronald Kwan; Ken Kandeepan
Subject: Re: EXTERNAL – Provincial Guarantee for Fair Hydro Program

Thanks. Has TD seen this, or commented on it? The make whole provision, rather than just moving the outstanding bonds up to being provincial debt could be extremely expensive if the guarantee is triggered and exercised.

I assume the challenge to the rating is that we're not AAA, so the debt would be downgraded to our level, but this shows the flaw in the ratings methodology, because why would you want a guarantee from someone who is supposedly less credit worthy? This is definitely, in my mind, worth pushing back on.

Regards,
Gadi

Original Message
From: Nelms, Scott (MOF)
Sent: Tuesday, April 18, 2017 11:04 AM
To: Gadi Mayman
Subject: FW: EXTERNAL – Provincial Guarantee for Fair Hydro Program

Fyi

-----Original Message-----

From: LEE John -TREASURY [mailto:john.s.lee@opg.com]

Sent: April 16, 2017 6:28 PM

To: Hume, Steen (ENERGY); Nelms, Scott (MOF)

Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI); WONG Leslie -LAWDIV

Subject: Fw: EXTERNAL – Provincial Guarantee for Fair Hydro Program

Steen/Scott

Here is the initial view of the dealers on their ask. We can discuss further tomorrow. Maybe more efficient that we discuss prior to the group meeting in the afternoon

John

From: Persaud, Donnie - Debt Capital Markets <Donnie.Persaud@cibc.com>

Sent: Thursday, April 13, 2017 9:15 PM

To: LEE John -TREASURY; RYFA Ken -TREASURY; WONG Leslie -LAWDIV

Cc: 'Sebastiano, Rocco'; 'Mullen, Max M.'; Maciel, Andrew; 'david.dalbello@rbccm.com'; 'Smith, Elliot'; 'Ms Victoria M. Turnbull'; Persaud, Donnie - Debt Capital Markets; 'Benaiah, Ian'; 'Fullerton, Rick'; Adalja, Sunil; Alvi, Shariq; Peric, Christiane

Subject: EXTERNAL – Provincial Guarantee for Fair Hydro Program

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Hey John, Ken,

Further to our discussion earlier today, please see the note below which outlines our collective views on the Provincial guarantee that would be required for the Fair Hydro Program. Happy to discuss further.

There are two types of “guarantees” that we are looking for from the Province in relation to this program on the basis that any debt issued under the Fair Hydro Program will be AAA-rated. In addition, the following is based on the understanding that the transition charges collected from prescribed consumers will begin upon the commencement of the program and will not be subject to any cap or restrictions.

The legislation must include a specific reference to the Province being required to provide a guarantee on debt repayment and servicing in certain circumstances.

The first is “Springing Guarantee”, which would be via a legal agreement put in place when establishing the program and would require the Province to step in and assume responsibility for paying all amounts that are or become due in respect of (i) any of the outstanding funding obligations; (ii) the operation and maintenance of the financing entity; and (iii) any other amounts due in relation to the program that have not yet been paid (collectively, the “Fair Hydro Program Costs”). This Springing Guarantee would kick in should any of the following happen:

(1) There is any change in the legislation or regulations that is, or could be, adverse to finance entity noteholders or the legislation is determined to be ultra vires. In this situation, the Springing Guarantee would require the immediate repayment of all Fair Hydro Program Costs (including any makewhole prepayment obligations).

(2) There is a market disruption (i.e. there is a period of time when capital markets term funding is not available to take out the warehouse facilities (bank facility or ABCP)). In this situation, either (i) we start to charge ratepayers for principal recovery via transition charges; or (ii) the Province must be responsible for the immediate repayment of those warehouse facilities.

The period of time that must lapse before this Springing Guarantee becomes applicable with respect to the warehouse facilities can be set to accommodate a short term dislocation in the term funding market (6-18 months). We would note that depending on the size of the warehouse facility, if there is no term takeout for an extended period of time, it is likely that the warehouse facilities will also quickly reach their credit limits and the province would likely have to fund any future shortfalls if they wished to continue the program.

To the extent that the Springing Guarantee does not require the Province to make the repayment contemplated under scenario (1), but simply requires the Province to repay the debt in accordance with its original repayment terms, this may adversely impact the rating of the Fair Hydro Program.

The second type of guarantee we are looking for from the province is a performance guarantee. This is not a credit guarantee. The performance guarantee would require the Province to stand behind certain obligations of the Servicer (initially IESO) in the program. This performance guarantee would be included as part of the Securitization documents for the program. It would, amongst other things, require the province to stand behind (including taking responsibility for helping remedy any breaches in) the representations, warranties, or covenants made by the servicer. It would also require the province to ensure that the servicer performs its servicing activities as set out in the securitization documents and if it does not, put in place an alternative servicer who would perform those servicing activities. The performance guarantee would also include standing behind any indemnities that may be owing by the servicer.

Donnie Persaud | Executive Director | Debt Capital Markets | CIBC Capital Markets | CIBC World Markets Inc.

161 Bay Street, 5th Floor, Toronto ON M5J 2S8 | Tel: 416-594-7511 | Fax: 416-594-7760 | donnie.persaud@cibc.com<mailto:donnie.persaud@cibc.com>

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Fw_ EY .rtf

From: Petsche, Nadine (TBS) []
To: Lee Anne Probert [LeeAnne.Probert@ca.ey.com]; Suzie Gignac [suzie.r.gignac@ca.ey.com]; Blake Langill [blake.w.langill@ca.ey.com]
Subject: Fw: EY
Date: Thursday, June 15, 2017 07:52:10

Please see below. N

Original Message
From: Nadine.Petsche@ontario.ca
Sent: Thursday, June 15, 2017 7:50 AM
To: Picard, Michel
Subject: Re: EY

Thanks

Original Message
From: Picard, Michel
Sent: Thursday, June 15, 2017 7:51 AM
To: Petsche, Nadine (TBS)
Subject: RE: EY

yes

-----Original Message-----
From: Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]
Sent: Thursday, June 15, 2017 7:50 AM
To: Picard, Michel <mpicard@kpmg.ca>
Subject: Re: EY

Thanks Michel. Just to confirm, the letter can be signed on a firm basis vs. Individuals? N

From: Picard, Michel
Sent: Thursday, June 15, 2017 7:46 AM
To: LeeAnne.Probert@ca.ey.com; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); Kim Marshall (Kim.Marshall@ieso.ca)
Cc: Petsche, Nadine (TBS)
Subject: EY

All,

Please find enclosed the amended and signed letter. I would appreciate if you could return a signed copy before the call of today.

Thanks a million.

Michel Picard, CPA, CA

Partner, Accounting Advisory Services

KPMG LLP

333 Bay Street, Suite 4600
Toronto, Ontario, M5H 2S5

T 416 777 8414
M 416 560 2569
mpicard@kpmg.ca<mailto:mpicard@kpmg.ca>
LinkedIn<https://urldefense.proofpoint.com/v2/url?u=https-3A__www.linkedin.com_in_michel-2Dpicard-2D8b3b942b-3FauthType-3DNAME-5FSEARCH-26authToken-3DoVKr-26locale-3Den-5FUS-26trk-3Dtyah-26trkInfo-3DclickedVertical-253Amynetwork-252CclickedEntityId-253A107441415-252CauthType-253ANAME-5FSEARCH-252Cidx-253A1-2D1-2D1-252CtarId-253A1478640064654-252Ctas-253Amichel-2520pi&d=DwIFAg&c=0TzQCy9lgR5hSW-bDg5HA76y7nf4lvOzvVop5GM3Y80&r=DAOe89GuHpPZrONj_IODmw&m=plYU47R0OJ9WkBOivFBTMntwDCObNv37TO053Zw4lNo&s=Orn8JB-WqIrWcgM9JNLO1DQsUgzXSW4775YCCwzaWM0&e= >

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If you are unable to access the links above, please cut and paste the URL that follows the link into your browser.

Fw_ Fair Hydro -- Supplemental Indenture for Long Term Debt.rtf

From: Hanslep, Malle (MOF) []
To: Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Manning, Mike (OFA) [Mike.Manning@ofina.on.ca]; Mayman, Gadi (OFA) [Gadi.Mayman@ofina.on.ca]; Yep, Carlos (OFA) [Carlos.Yep@ofina.on.ca]; Kwan, Ronald (OFA) [Ronald.Kwan@ofina.on.ca]; Devine, James (OFA) [James.Devine@ofina.on.ca]; Kim, John (OFA) [John.Kim@ofina.on.ca]; Strathy, Anna (OFA) [Anna.Strathy@ofina.on.ca]; Katona, Keley (MOF) [Keley.Katona@ontario.ca]; John Psinas [John.Psinas@ofina.on.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Montgomery, Kaitlin (MOF) [Kaitlin.Montgomery@ontario.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Donaldson, Mark (TBS) [Mark.Donaldson@ontario.ca]
CC: Whitfield, Tobias P. (MOF) [Tobias.Whitfield@ontario.ca]; McKinlay, Tom (MAG) [Tom.McKinlay@ontario.ca]
Subject: Fw: Fair Hydro -- Supplemental Indenture for Long Term Debt
Date: Thursday, October 26, 2017 18:47:16
Attachment 1: image13b340.JPG
Attachment 2: 46490618_1.doc

I might not have covered everyone with this email

Sent from my BlackBerry 10 smartphone on the Rogers network.
From: Saulnier, Brett <bsaulnier@torys.com>
Sent: Thursday, October 26, 2017 18:36
To: Thouin, Alena (ENERGY); Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); McKinlay, Tom (MAG); STEPHEN.ASHBOURNE@blakes.com
Cc: 'leslie.wong@opg.com'; dup-john.s.lee@opg.com; 'ken.ryfa@opg.com'; Feldman, Michael; Ramchandani, Rima; Mansoori, Nina; Olusoga, Yinka
Subject: Fair Hydro -- Supplemental Indenture for Long Term Debt

All,

Please find attached a first draft of the supplemental indenture for the long term debt, which we just received from Osler. Osler has advised that this draft remains subject to review and comment by the dealers. Please note that Torys/OPG have not yet reviewed.

Thanks,
Brett

Brett Saulnier

P. 416.865.8148 | F. 416.865.7380 | 1.800.505.8679

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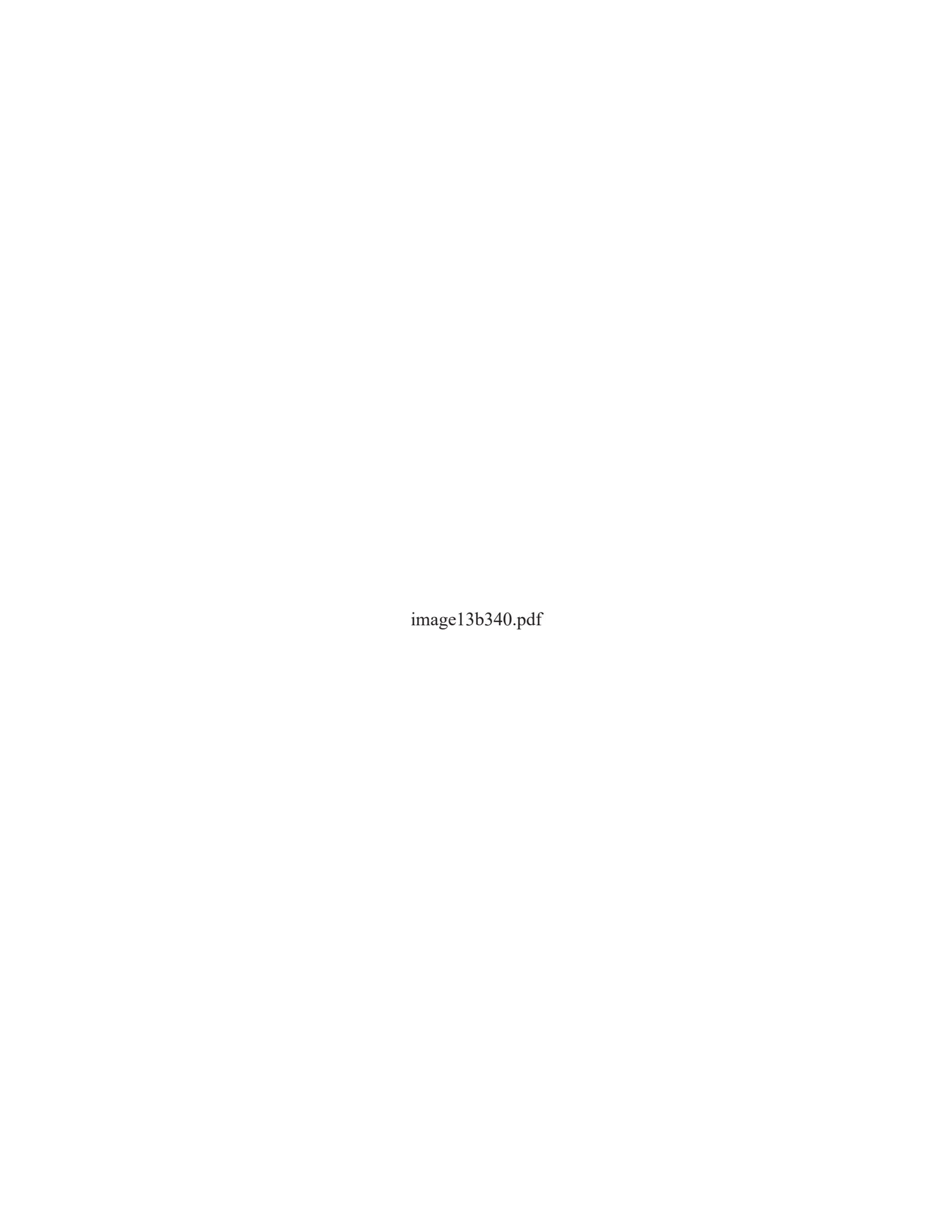
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TORYS
LLP

46490618_1.pdf

FIRST [SENIOR NOTES] SUPPLEMENTAL INDENTURE

between

[ISSUER] TRUST

by

● TRUST COMPANY OF CANADA
as Issuer Trustee

and

● TRUST COMPANY OF CANADA
as Indenture Trustee

SUPPLEMENTING THE TRUST INDENTURE DATED AS OF ●, 2017

AND PROVIDING FOR THE ISSUE OF
●% SENIOR NOTES DUE ● (SENIOR NOTES SERIES 2017-1)
OF [ISSUER] TRUST

Made as of ●, 2017

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●% SENIOR NOTES DUE ● (SENIOR NOTES SERIES 2007-1)

THIS FIRST [SENIOR NOTES] SUPPLEMENTAL INDENTURE (this "**Supplemental Indenture**") is made as of ●, 2017, between ●, a trust existing under the laws of the Province of Ontario (the "**Issuer**") and ● **Trust Company of Canada**, a trust company existing under the laws of **[Canada]** (the "**Indenture Trustee**").

WHEREAS pursuant to the Trust Indenture dated as of ●, 2017 between the Issuer and the Indenture Trustee (as amended or restated from time to time, the "**Trust Indenture**"), provision was made for the issuance of Senior Notes from time to time in one or more Series by the execution and delivery of a Supplemental Indenture;

AND WHEREAS the parties hereto are entering into this Supplemental Indenture to provide for the creation and issuance of a Series of Senior Notes designated as the ●% Senior Notes due ● (Series 2017-1) (the "**Series 2017-1 Senior Notes**");

AND WHEREAS the foregoing recitals are made as statements of fact by the Issuer and not by the Indenture Trustee.

NOW THEREFORE THIS SUPPLEMENTAL INDENTURE WITNESSES and it is hereby covenanted, agreed and declared as follows:

ARTICLE 1
INTERPRETATION

1.1 Definitions

(a) For all purposes of this Supplemental Indenture, except as otherwise expressly provided or unless the context otherwise requires, the terms defined in Schedule A hereto have the meanings assigned to them in Schedule A and include the plural as well as the singular.

(b) The provisions of Section 1.1 of the Trust Indenture are applicable to this Supplemental Indenture. All terms used herein which are defined in the Trust Indenture, either directly or by reference therein, have the meanings assigned to them therein.

1.2 Interpretation

Subject to the next following sentences, this Supplemental Indenture is supplemental to the Trust Indenture and the Trust Indenture shall be read in conjunction with this Supplemental Indenture and all of the provisions of the Trust Indenture shall apply to and shall have effect in connection with this Supplemental Indenture in the same manner as if all of the provisions of the Trust Indenture and of this Supplemental Indenture were contained in one instrument. This Supplemental Indenture shall, unless the context otherwise requires, be subject to the interpretative provisions contained in Article I of the Trust Indenture. If any terms of the Trust Indenture are inconsistent with the express terms or provisions hereof, the terms and provisions of the Trust Indenture shall be, solely in respect of the Series 2017-1 Senior Notes, amended and supplemented so as to be consistent herewith. The provisions of this Supplemental Indenture are applicable only in respect of the Series 2017-1 Senior Notes and not the Senior Notes of any other Series.

1.3 Application of this Supplemental Indenture

With respect to the Series 2017-1 Senior Notes only, the terms of the Trust Indenture are amended, supplemented, modified, restated and replaced to the extent applicable by the terms of this Supplemental Indenture in respect of the Series 2017-1 Senior Notes in accordance with Section 1.2 above.

ARTICLE 2
SERIES 2017-1 SENIOR NOTES

2.1 Creation of Series 2017-1 Senior Notes

There is hereby created a Series of Senior Notes to be issued pursuant to the Trust Indenture and this Supplemental Indenture designated as the "**●% Senior Notes due ● (Series 2017-1)**."

2.2 Principal Terms

In addition to and without limiting all of the provisions of this Supplemental Indenture, the Series 2017-1 Senior Notes will:

(a) be designated as set out in Section 2.1;

(b) be a Series of Senior Notes as contemplated by the Trust Indenture;

(c) not be divided into Tranches;

(d) be unlimited in principal amount but initially will have an aggregate principal amount of $● to be issued on the date hereof, provided that the principal amount of the Series 2017-1 Senior Notes may be increased after the date hereof without the consent of any holder of Series 2017-1 Senior Notes or any holder of any Notes of any other Class, Series or Tranche;

(e) be denominated in Canadian dollars;

(f) not be listed on any securities exchange;

(g) be issued in the form of a Global Note;

(h) be Senior Notes and will not be subordinated to any other Series, Class or Tranche of Notes;

(i) be substantially in the form of Schedule B, with such appropriate insertions, omissions, substitutions and variations as may be approved by the Indenture Trustee;

(j) bear interest at a rate of ●% per annum;

(k) accrue interest from the later of: (i) ●, 2017 and (ii) the last Interest Payment Date on which interest has been paid or made available for payment on the Notes;

(l) have interest paid in equal semi-annual instalments **[(except the initial interest payment)]** on ● and ● each year (each, an "**Interest Payment Date**") commencing ●, 2018 in

respect of the Series 2017-1 Senior Notes issued prior to such date **[NTD: Interest Payment Dates to be considered in context of model]**;

(m) **[have an initial interest payment in the amount of $● per $1,000 principal amount payable on ●, 2018;]**

(n) mature on, and have ●, as their Principal Payment Due Date;

(o) have ● as their Principal Payment Default Date;

(p) have ● as their Principal Accumulation Commencement Date;

(q) have a Record Date for each Interest Payment Date that is the ● day preceding each Interest Payment Date;

(r) **[be redeemable and subject to repurchase as provided in Section 2.6 below]**; and

(s) **[not be subject to defeasance and covenant defeasance as contemplated by Section ● of the Trust Indenture] [be subject to defeasance and covenant defeasance in accordance with Section ● of the Trust Indenture].**

2.3 Delivery

On the date of issuance of the Series 2017-1 Senior Notes, Series 2017-1 Senior Notes shall be executed, authenticated and delivered by the Issuer in accordance with Section 4.03 of the Trust Indenture.

2.4 Payment of Interest

The Issuer (except in case of payment of interest at maturity or as otherwise provided in the Trust Indenture, at which time payment of interest, less any taxes required by law to be deducted or withheld, may at the option of the Issuer be made upon presentation and surrender of the certificate representing the Series 2017-1 Senior Notes) will (i) on each Interest Payment Date, make payment of such interest, less any taxes required by law to be deducted or withheld, by wire transfer to each holder of a Series 2017-1 Senior Note as of the Record Date, or (ii) on the day that is two Business Days before each Interest Payment Date, forward or cause to be forwarded to the registered address of each holder of a Series 2017-1 Senior Note as of the Record Date a cheque for such interest, less any taxes required by law to be deducted or withheld, payable to the order of such holder. The payment by such wire transfer or forwarding of such cheque will satisfy and discharge the liability for interest upon such Series 2017-1 Senior Note to the extent of the sum represented thereby (plus the amount of any taxes deducted or withheld as aforesaid) unless any such cheque is not paid on presentation. Notwithstanding the foregoing, the Issuer, at its option, may cause the amount payable in respect of interest to be paid to a Noteholder in any other manner reasonably acceptable to the Indenture Trustee.

2.5 Payment of Principal

[On the] [At least one Business Day prior to the] Principal Payment Due Date, the Issuer will deposit with the Indenture Trustee all amounts required to be paid to the order of holders of Series 2017-1 Senior Notes on maturity on account of principal. The deposit of such funds will

satisfy and discharge the liability for principal of the Series 2017-1 Senior Notes to the extent of the sum represented thereby.

2.6 [Redemption and Repurchase

[**NTD: Customary redemption/repurchase mechanics to be added to Trust Indenture as per OPG MTN indenture. Redemption below contemplates a par call]**

(a) At its option, at any time prior to ● **[par call date]**, the Issuer may redeem the Series 2017-1 Senior Notes in whole or, from time to time, in part, on payment of a redemption price equal to the greater of (i) the Series 2017-1 Canada Yield Price and (ii) par, together in each case with accrued and unpaid interest to the Series 2017-1 Redemption Date. At any time on or after ● **[par call date]**, the Issuer may redeem the Series 2017-1 Senior Notes in whole or, from time to time, in part, on payment of a redemption price equal to par, together with accrued and unpaid interest to the Series 2017-1 Redemption Date. The Issuer will give notice of redemption not more than 60 days and not less than 15 days before the date fixed for redemption. Less than all of the Series 2017-1 Senior Notes may be redeemed, if so redeemed, in accordance with Section ● of the Trust Indenture.

(b) The Issuer will be entitled at any time and from time to time to purchase for cancellation Series 2017-1 Senior Notes in the market (which may include purchases from or through an investment dealer or a firm holding membership on a recognized stock exchange) or by tender or by private contract at any price. Series 2017-1 Senior Notes that are so purchased will be cancelled and will not be re-issued. Less than all of the Series 2017-1 Senior Notes may be purchased, if so purchased, for cancellation in accordance with Section ● of the Trust Indenture.

(c) The Series 2017-1 Senior Notes will not be subject to repurchase pursuant to any sinking fund or any other required repayment provisions].

2.7 Indemnification by the Issuer

The Issuer agrees to indemnify and hold harmless the Indenture Trustee and each Series 2017-1 Noteholder and each of their respective officers, directors, agents and employees (each, an "**Issuer Indemnified Person**") from and against any loss, liability, expense, damage or injury suffered or sustained by such Issuer indemnified person by reason of (a) any acts, omissions or alleged acts or omissions arising out of, or relating to, activities of the Issuer pursuant to the Program Agreements to which it is a party; (b) a breach of any representation or warranty made or deemed made by the Issuer (or any of its officers) in any Program Agreement; or (c) a failure by the Issuer to comply with any applicable law or regulation or to perform its covenants, agreements, duties or obligations required to be performed or observed by it in accordance with the provisions of the Program Agreements, including, but not limited to, any judgment, award, settlement, reasonable attorneys' fees and other reasonable costs or expenses incurred in connection with the defense of any actual or threatened action, proceeding or claim, except to the extent such loss, liability, expense, damage or injury resulted from the gross negligence, bad faith or willful misconduct of such Issuer indemnified person or its officers, directors, agents, principals, employees or employers or includes any Excluded Taxes; provided that any payments made by the Issuer pursuant to this Section 2.7 shall be made solely from funds available pursuant to Section **[7.04]** or Section **[8.13]** of the Trust Indenture, shall be non-recourse other

than with respect to such funds, and shall not constitute a claim against the Issuer to the extent that such funds are insufficient to make such payment.

2.8 Taxes

[NTD: Subject to tax review]

(a) All payments by or on account of any obligation of the Issuer hereunder shall, to the extent allowed by law, be made free and clear of, and without deduction or withholding for or on account of, any present or future income, stamp or other taxes, levies, imposts, duties, charges, fees, deductions or withholdings, now or hereafter imposed, levied, collected, withheld or assessed by any Governmental Authority (collectively, "**Taxes**"), excluding (i) income taxes (including branch profit taxes, minimum taxes and taxes computed under alternative methods, at least one of which is based on or measured by net income), franchise taxes (imposed in lieu of income taxes), or any other taxes based on or measured by the net income of any Series 2017-1 Noteholder (but specifically excluding any taxes required to be withheld under Section 1446 of the *Internal Revenue Code* of 1986 (as amended, the "**Code**")) as a result of a present or former connection between the recipient and the jurisdiction of the governmental authority imposing such tax (other than any such connection arising solely from the recipient having executed, delivered or performed its obligations or received a payment under, disposed of, or enforced, this Supplemental Indenture); and (ii) any Taxes imposed under FATCA (as defined below) (including in the case of (i) and (ii), any interest, penalties and additions to tax) (all such excluded taxes being hereinafter called "**Excluded Taxes**"). If any Taxes, other than Excluded Taxes, are required to be withheld from any amounts payable to a recipient hereunder, the amounts so payable to the recipient shall be increased, and the recipient shall be entitled to be paid by the Issuer the amount of such increase to the extent necessary to yield to the recipient (after payment of all such Taxes other than Excluded Taxes) interest or any such other amounts payable hereunder or thereunder at the rates or in the amounts specified hereunder. Where the amount payable by the Issuer is increased in accordance with the previous sentence, the Monthly Interest and Fees shall be increased by the amount of such increase. Whenever any Taxes are payable on or with respect to amounts distributed to a recipient, as promptly as possible thereafter the Issuer shall send to such recipient a certified copy of an original official receipt showing payment thereof.

(b) If a payment by or on account of any obligation of the Issuer hereunder would be subject to U.S. federal withholding Tax imposed by provisions of Chapter 4 of the Code ("**FATCA**") if the recipient of such payment were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such recipient shall deliver to the Issuer at the time or times prescribed by law and at such time or times reasonably requested by the Issuer such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Issuer as may be necessary for the Issuer to comply with their obligations under FATCA and to determine that such recipient has complied with it's obligations under FATCA or to determine the amount to deduct and withhold from such payment. If any form or certification it previously delivered by a recipient expires or becomes obsolete or inaccurate in any respect, the recipient shall update such form or certification or promptly notify the Issuer in writing of its legal inability to do so.

(c) If a recipient is legally entitled to receive a refund of any Taxes (other than Excluded Taxes) as to which it has been indemnified or with respect to which additional amounts have been paid to it hereunder or it is legally entitled to receive a credit or deduction with respect to such Taxes or with respect to such additional amounts that have been paid hereunder (in each case pursuant to Section 2.8(a)), it shall use commercially reasonable efforts to obtain or claim such refund, credit or deduction and pay over such refund or the value of such credit or deduction to the Issuer, together with any interest thereon.

2.9 Conditions Precedent to Issuance of Series 2017-1 Senior Notes

On or prior to the initial issuance of Series 2017-1 Senior Notes hereunder, the following conditions precedent shall be satisfied:

(a) Each of the conditions precedent set forth in Section 5.01 of the Trust Indenture in respect of the incurrence of Funding Obligations under this Supplemental Indenture shall have been satisfied.

(b) The representations and warranties set forth in Section 12.01 of the Trust Indenture and Section 3.1 of this Supplemental Indenture shall be true and correct in all material respects, the Issuer shall be compliance in all material respects with all of its covenants and obligations under the Program Agreements to which it is a party.

(c) The Series 2017-1 Senior Notes shall have been duly issued in accordance with the Trust Indenture and the Global Note representing the Series 2017-1 Senior Notes shall have been executed and delivered to the Depository (or as it may direct) for deposit into its [**Book-Based System**] for the benefit of the [**Beneficial Holders**] upon receipt by the Indenture Trustee of a [**Written Order**].

ARTICLE 3
REPRESENTATIONS AND WARRANTIES

3.1 Representations and Warranties of the Issuer

The Issuer hereby represents and warrants to the Indenture Trustee and each Series 2017-1 Noteholder that:

(a) no Termination Event has occurred or would result from the initial purchase of the Issuer Investment Interest on the date hereof;

(b) the Issuer Trustee and the Issuer are not non-residents of Canada within the meaning of the *Income Tax Act* (Canada);

(c) all tax returns (federal, provincial and local) required to be filed with respect to the Issuer have been filed and there has been paid or adequate provision made for the payment of all material taxes, assessments and other governmental charges in respect of the Issuer;

(d) the Issuer has not changed its name and the Declaration of Trust has neither been amended nor rescinded other than as consented to by the holders of the Series 2017-1 Senior Notes;

(e) the Issuer has complied in all material respects with all laws in respect of the conduct of its business and ownership of its property including the Issuer Investment Interest;

(f) all information provided to the Administrative Agent and the Purchaser Groups by or on behalf of the Issuer in respect of the Issuer Investment Interest is and will be true and accurate in all material respects;

(g) there has been no material adverse change in the condition (financial or otherwise), business, operations, results of operations, or the property of the Issuer; and

(h) the Issuer does not own or hold, directly or indirectly, any shares or equity security of, or any equity interest in, any Person.

3.2 Survival

The representations and warranties set out in this Article 3 shall survive the execution hereof.

ARTICLE 4
GENERAL

4.1 Acceptance of Trust

The Indenture Trustee accepts the trusts in this Supplemental Indenture and agrees to carry out and discharge the same upon the terms and conditions set out in this Supplemental Indenture and in accordance with the Trust Indenture.

4.2 Confirmation of Trust Indenture

The Trust Indenture, as amended and supplemented by this Supplemental Indenture, is in all respects confirmed.

4.3 Indenture Trustee Not Bound to Act

The Indenture Trustee shall retain the right not to act and shall not be liable for refusing to act if, due to a lack of information or for any other reason whatsoever, the Indenture Trustee, in its sole judgment, acting reasonably, determines that such act may cause it to be in non-compliance with any applicable anti-money laundering, anti-terrorism or economic sanction legislation, regulation or guideline. Further, should the Indenture Trustee, in its sole judgment, acting reasonably, determine at any time that its acting under this Supplemental Indenture has resulted in non-compliance with any applicable anti-money laundering, anti-terrorism or economic sanction legislation, regulation or guideline, then it shall have the right to resign pursuant to the terms of Section ● of the Trust Indenture, provided that (i) the Indenture Trustee's written notice of resignation shall describe the circumstances of such non-compliance; and (ii) if such circumstances are rectified to the Indenture Trustee's satisfaction within 15 Business Days of the receipt of such notice of resignation, then such notice shall not be effective.

4.4 Successor and Assigns

This Supplemental Indenture shall be binding upon and inure to the benefit of the parties hereto and their respective permitted successors and assigns.

4.5 Specified Creditors

The Issuer and the Indenture Trustee (on behalf of the Series 2017-1 Noteholders) acknowledge and agree that the Series 2017-1 Noteholders are Specified Creditors under the Trust Indenture and their entitlements as a Specified Creditor are subject to the provisions applicable to Specified Creditors under the Trust Indenture including, without limitation, Section 7.06 (Payments Held in Trust), Section 8.12 (Limitation on Suits), Sections 7.04 and 8.13 (Payment Priorities), Section 8.15 (Limited Recourse) and Section 17.01 (No Petition).

4.6 Waiver

Without limiting the requirements of Section 11.02 of the Trust Indenture, no waiver of any provision of this Supplemental Indenture or consent to any departure by the Issuer from any provision of this Supplemental Indenture will be effective (in whole or in part) unless in writing and signed by the Requisite Series 2017-1 Noteholders. Such waiver will be effective only in the specific instance, for the specific purpose and for the specific length of time for which it is given by the Requisite Series 2017-1 Noteholders.

4.7 Notice

All notices, requests, instructions and demands to or upon any party hereto to be effective shall be given in the case of the Issuer and the Indenture Trustee, in the manner set forth in Article 16 of the Trust Indenture.

4.8 No Waiver: Remedies

No failure on the part of any party to exercise, and no delay in exercising, any power, right or remedy hereunder will operate as a waiver thereof; nor will any single or partial exercise of any such power, right or remedy hereunder preclude any other or further exercise thereof or the exercise of any other power, right or remedy. The rights and remedies herein provided are cumulative and not exclusive of any remedies provided by applicable law.

4.9 Entire Agreement

This Supplemental Indenture, the Trust Indenture and the other Program Agreements contain the entire agreement between the parties relative to the subject matter hereof and supersede all prior and contemporaneous agreements, term sheets, commitments, understandings, negotiations and discussions, whether oral or written. There are no warranties, representations or other agreements between the parties in connection with the subject matter hereof except as specifically set forth in this Supplemental Indenture, the Trust Indenture and the other Program Agreements.

4.10 Governing Law and Attornment

This Supplemental Indenture shall be governed by, and construed in accordance with, the laws of the Province of Ontario and the parties hereby attorn to the jurisdiction of the courts of Ontario.

4.11 Expenses

The Issuer agrees to pay on demand to the Indenture Trustee: (a) all reasonable costs and expenses in connection with the preparation, execution, and delivery of this Supplemental Indenture; (b) all reasonable costs and expenses in connection with any amendments of or waivers or consents under this Supplemental Indenture or the Program Agreements, including in each case the reasonable fees and out-of-pocket expenses of counsel with respect thereto, and (iii) all reasonable costs and expenses (including reasonable fees and expenses of counsel), if any, in connection with the enforcement of this Supplemental Indenture or any of the Program Agreements, and the other documents delivered thereunder or in connection therewith.

4.12 Further Assurances

Each of the parties hereto upon the request of the other party or parties hereto shall do, execute, acknowledge and deliver or cause to be done, executed acknowledged or delivered all such further acts, deeds, documents, assignments, transfers, conveyances, powers of attorney and assurances as may be reasonably necessary or desirable to effect or complete the consummation of the transactions contemplated by this Supplemental Indenture.

4.13 Limitation of Liability of Issuer Trustee

Each party hereto other than the Issuer acknowledges that the Issuer is a trust, and that ● Trust Company of Canada is the Issuer Trustee. The other parties hereto agree that the Issuer Trustee will not be subject to any liability whatsoever to them, in tort, contract or otherwise, in connection with the Issuer's assets or the trust activities, for any action taken or permitted by it to be taken, or for its failure to take any action; provided that the foregoing limitation will not apply in respect of any action or failure to act arising from or in connection with wilful misconduct, negligence or reckless disregard of a duty by the Issuer Trustee. The Issuer Trustee in doing anything or permitting anything to be done in respect of assets or the trust activities is, and shall be conclusively deemed to be, acting as trustee of the Issuer and not in any other capacity. Except as to the extent provided in this Section 4.13, the Issuer Trustee will not be subject to any debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses against or with respect to the Issuer, arising out of anything done or permitted by it to be done or its failure to take any action in respect of the Issuer's assets or the trust activities and resort will be had solely to the Collateral for the payment or performance thereof. No property or assets of the Issuer Trustee, whether owned in its personal capacity or otherwise, will be subject to levy, execution or other enforcement procedure with regard to any obligation under this Supplemental Indenture. Nothing contained in this Section 4.13 shall be construed so as to limit the liability of the Issuer under this Supplemental Indenture. This Supplemental Indenture, and every deed, transfer, assignment, agreement or other instrument made pursuant hereto including, without limitation, the Series 2017-1 Senior Notes, made or purporting to be made by or creating an obligation of the Issuer or the Issuer Trustee on behalf of, or as trustee of, the Issuer shall be deemed and construed for all purposes as if made by the Issuer Trustee, in and only in its capacity as trustee of the Issuer. Any obligations of the Issuer Trustee hereunder or thereunder are non-recourse to the Issuer Trustee in its personal capacity.

4.14 Execution in Counterparts

This Supplemental Indenture may be executed in several counterparts, each of which when so executed shall be deemed to be an original and the counterparts together shall constitute one and the same instrument. This Supplemental Indenture may be executed and delivered by facsimile or other electronic transmission of a manually signed counterpart.

4.15 Delivery of Executed Copies

Each party acknowledges delivery of an executed copy of this Supplemental Indenture.

[signature page follows]

IN WITNESS WHEREOF the parties hereto have duly executed this Trust Indenture as of the date first above written.

● **TRUST**, by ● **TRUST COMPANY OF CANADA**, as Issuer Trustee

By: _____
Name:
Title:

By: _____
Name:
Title:

● **TRUST COMPANY OF CANADA**, as Indenture Trustee

By: _____
Name:
Title:

By: _____
Name:
Title:

[NTD: Detailed signing pages to be prepared.]

SCHEDULE A

DEFINITIONS

"**Code**" has the meaning specified in Section 2.8(a) of this Supplemental Indenture.

"**Excluded Taxes**" has the meaning specified in Section 2.8(a) of this Supplemental Indenture.

"**Government of Canada Yield**" on any date means, in respect of the Series 2017-1 Senior Notes to be redeemed, the yield from the Series 2017-1 Redemption Date to ● **[par call date]**, compounded semi-annually and calculated in accordance with generally accepted Canadian financial practice, which a non-callable Government of Canada bond would carry if issued in dollars in Canada, at 100% of its principal amount on such date with a term to maturity equal to, or if no Government of Canada bond having an equal term to maturity exists, as close as possible to, the remaining term to ● **[par call date]** (calculated from the Series 2017-1 Redemption Date) of the Series 2017-1 Senior Notes, such yield being the average of the yields provided by two major Canadian investment dealers specified by the Issuer;

"**Interest Payment Date**" has the meaning specified in Section 2.2(l) of this Supplemental Indenture.

"**Issuer Indemnified Person**" is defined in Section 2.7

"**Requisite Series 2017-1 Noteholders**" means Series 2017-1 Noteholders holding, in aggregate, at least **[50]**% of the Series 2017-1 Senior Notes then Outstanding.

"Series 2017-1 Canada Yield Price" means a price equal to the price of the Series 2017-1 Senior Notes calculated to provide a yield to ● [**par call date**], compounded semi-annually and calculated in accordance with generally accepted Canadian financial practice, equal to the Government of Canada Yield calculated at 10:00 a.m. (Toronto time) on the third Business Day preceding the Series 2017-1 Redemption Date specified in the notice of redemption delivered pursuant to Section ● of the Trust Indenture, plus ●%;

"**Series 2017-1 Noteholder**" means a Person in whose name a Series 2017-1 Senior Note is registered in the Note Register.

"**Series 2017-1 Redemption Date**" "means a date fixed for redemption of the Series 2017-1 Senior Notes pursuant to Section ● of the Trust Indenture.

"**Series 2017-1 Senior Note**" means any one of the Series 2017-1 Senior Notes, executed by the Issuer and authenticated and delivered by or on behalf of the Indenture Trustee, substantially in the form of Schedule B.

"**Supplemental Indenture**" means this Supplemental Indenture, together with the Schedules hereto, as amended, supplemented, modified, restated or replaced from time to time, together with all schedules hereto and the expressions "hereof," "herein," "hereto," "hereunder," "hereby" and similar expressions refer to this Supplemental Indenture and not to any Article, Section, paragraph, subparagraph or clause hereof.

"**Taxes**" has the meaning specified in Section 2.8(a) of this Supplemental Indenture.

"**Termination Event**" means any Event of Default or any event which with the giving of notice or the passage of time, or both, could become an Event of Default.

SCHEDULE B

[FORM OF NOTE]

SERIES 2017-1 SENIOR NOTE

●

FW_ FHP - Statement of facts.rtf

From: Petsche, Nadine (TBS) []
To: Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]
CC: Veinot, Cindy (TBS) (Cindy.Veinot@ontario.ca) [Cindy.Veinot@ontario.ca]
Subject: FW: FHP - Statement of facts
Date: Wednesday, April 19, 2017 11:18:33
Attachment 1: Statement of Facts-OPG draft April 19.doc

FYI. Nadine

-----Original Message-----
From: MAUTI John -FIN & C CTRL [mailto:john.mauti@opg.com]
Sent: April 19, 2017 9:49 AM
To: Veinot, Cindy (TBS); Petsche, Nadine (TBS); 'kim.marshall@ieso.ca'
Cc: LEE John -TREASURY; WONG Leslie -LAWDIV; JORDA Jenny -FIN & C CTRL; HARTWICK Ken -FINANCE
Subject: FHP - Statement of facts

As committed to, attached is an initial draft of a document that lays out key accounting and operating conditions for the financing of the Fair Hydro Plan. Broken out between what we have been able to see in the current drafts of the legislation as well as what is required in yet to be drafted Regulations or other principle documents such as Trust indenture docs.

Again, an initial draft for others to consider from their perspective.

Thanks

John G. Mauti
Chief Controller & Accounting Officer
OPG Inc.
(416) 592-4046

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Statement of Facts-OPG draft April 19.pdf

Statement of Facts – Fair Hydro Plan Legislation / Regulation

Included in the legislation – Draft April 17, 2017

Item	Meets "operability" criteria (financing)	Meets "accounting" criteria for Control
Legislation needs to address that OPG will be paid management fees (both fixed and variable)	**Yes**-management fees will be part of the regulatory assets and to be recovered in future. Management fees will also be built in Management Agreement between OPG and the Trust	**Yes**
Part IV – Limitation 12(1.1) - The Financing Plan shall not provide for the collection of the clean energy adjustment by specified consumers before May 1, 2022.	**NO** – not collecting interest before May 1, 2022 will cause financeability issue. Agree with "accounting" assessment, the Legislation must require interest, carrying and administrative costs to be paid to the Trust	**NO** - The Legislation must require interest, carrying and administrative costs to be paid to the Trust on a monthly basis, so that the Trust is able to recognize appropriate revenue to offset any ongoing costs.
Part IV – Section 12.(1) – Contents of Financing Plan	Need to know the restrictions in the Plan to decide on financeability	**NO** – Too many restrictions here on what the Financing Plan should have, specifically point *6) such other matters as may be prescribed.* Too open ended. Weakens accounting argument. This section should stick only to principles and parameters.
Regulations 100x The Lieutenant Governor in Council may make regulations, governing the inclusion of adjustments under this Act on invoices, which may include requiring notice to be provided by electricity vendors to specified persons regarding the adjustments.	N/A	**No –** The Province should not have the right to change how OPG will ultimately collect the intangible asset once financing is issued.

Part IV – Section 8.1 – Principles • The allocation of the costs among specified consumers should be proportionate to the benefits of the clean energy initiative to those specified consumers over time. • During a reference period, no specified consumer should bear an unreasonably disproportionate share of the costs.	**NO –** this may create risk on financeability Need to know details on these items to further assess financeability	**MAYBE –** How is the allocation of costs supposed to be measured, what is defined as 'disproportionate'? Need to ensure that this would not impact any regulatory assets that are already being financed and does not impact recoverability.
Part IV – Section 8.2 – Implementation - The IESO shall ensure that the IESO funding shortfall during a reference period does not exceed the maximum amount set out for the reference period in the Fair Allocation Plan.	**NO –** this restriction will make it not be financeable	**MAYBE** – Is this meant to ensure that it is in line with the 25% reduction and does not impact the recoverability of debt already issued?
Part IV – Section 8.(2) – Amendments to the Plan	**MAYBE**- as long as it does not affect existing debt (similar to accounting assessment)	**MAYBE** – Amendments made by the Minister relating to the Fair Allocation Plan **cannot** impact the recoverability of debt already issued
Part IV – Financial Services Manager to Prepare Financing Plan – Consistency with Fair Allocation Plan - Section 11(1) (2) The Financing Plan in effect at any given time shall be consistent with the applicable Fair Allocation Plan.	Need details re Fair Allocation Plan to assess it	**MAYBE** – to clarify what is meant by this? This clause cannot impact the recoverability of debt already issued.
Part IV – Termination of Appointment 12.1(1)	**NO** – This could be a financing issue if Province could terminate OPG as the manager, relating to existing bond.	**MAYBE** – This could raise control issues, depending on the circumstances under which OPG could be removed and replaced. It is preferable to bifurcate the roles so that the Province could not remove OPG as manager/administrator with respect to the existing debt placed by the Trust, but could remove OPG's responsibility/right to prepare the Financing Plan going forward.

Expected to be included in subsequent regulation:

Issue	Expected Operability criterion	Expected Accounting Criterion for Control
Needs to be clear that OPG has the choice in whether to **buy** the Regulatory Asset (not the Province having the option to sell)	To make it financeable, The trust need to have the "right" but not "obligation" to buy the regulatory assets	
Management fees (both fixed and variable) must be payable to OPG as Financial Services Manager of the Trust.	Management fees will be part of the regulatory assets and to be recovered in future. Management fees will also be built in Management Agreement between OPG and the Trust. Possibly subject to OEB "prudency" review	OPG must have the ability to earn variable returns by exercising its authority. • The cash flow from the restructured asset shall include interest determined based on a relevant benchmark that is appropriate relative to the restructured asset, plus an appropriate margin consistent with the relevant market and other risks • OPG shall have the authority to determine the financing strategy, which will vary the financing costs with the objective of enabling the Trust to achieve a more favourable return compared to the benchmark for interest on the restructured asset
OPG should be the sole unitholder of the Trust and make all decisions regarding the operating and financing policies of the Trust. OPG must have the ability to make decisions about the financing alternatives, duration, and the strategy to minimize financing costs. OPG must have the power to establish operating and capital budgets of the Trust with no veto right by the Province.	Agree with accounting assessment and Financeability will depend on the level of Province involvement	• OPG must have the ability to appoint and remove the Trustee (or Board of Trustees), with no veto right by the Province. No party shall have the ability to remove OPG from its role and authority in the Trust. • OPG must have the power to determine or change operating and financing policies of the Trust, which will affect the variability of risks and returns.

FW_ For your attention (time sensitive) Access letter.rtf

From: Petsche, Nadine (TBS) []
To: LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]
Subject: FW: For your attention (time sensitive) Access letter
Date: Wednesday, June 14, 2017 14:57:22

Hi Lee Anne.

Please sign as a firm (as engaged by OPCD) and return to me and I will distribute. Thanks. N

From: Lee Anne Probert [mailto:leeanne.probert@ca.ey.com]
Sent: June 14, 2017 1:57 PM
To: Petsche, Nadine (TBS)
Subject: RE: For your attention (time sensitive) Access letter

Hi Nadine,

Do we sign this once as a firm, or do we each need to sign one?

Regards,
Lee Anne

From: Petsche, Nadine (TBS)
Sent: Wednesday, June 14, 2017 6:56:01 PM
To: Lee Anne Probert; Suzie Gignac; Blake Langill
Cc: Veinot, Cindy (TBS); Virani, Shyrose (TBS)
Subject: For your attention (time sensitive) Access letter

All,

Please find a letter which needs to be completed and signed prior to tomorrow's call with KPMG.

Thanks.

Nadine

From: Kim Marshall <Kim.Marshall@ieso.ca>

Sent: Tuesday, June 13, 2017 3:35 PM

To: Petsche, Nadine (TBS)

Cc: Michel Picard

Subject: Fwd: Access letter

Nadine a letter for you to forward to e&y

Sent from my iPhone

Begin forwarded message:

> **From:** "Picard, Michel" <mpicard@kpmg.ca>
> **Date:** June 12, 2017 at 1:22:41 PM EDT
> **To:** Kim Marshall <Kim.Marshall@ieso.ca>
> **Subject: Access letter**
>
> Hi Kim,
>
> Please find enclosed the access letters to be signed by IESO and EY in relation to our meeting on Thursday. These letters need to be signed before we meet with them.
>
> Thanks in advance,
>
> **Michel Picard, CPA, CA**
>
> Partner, Accounting Advisory Services

KPMG LLP

333 Bay Street, Suite 4600

Toronto, Ontario, M5H 2S5

T 416 777 8414

M 416 560 2569

mpicard@kpmg.ca

LinkedIn

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FW_ GA Consolidated memo and EY Letter.rtf

From: Petsche, Nadine (TBS) []
To: Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]
CC: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
Subject: FW: GA Consolidated memo and EY Letter
Date: Friday, May 19, 2017 11:43:47
Attachment 1: OPG - Letter on Fair Hydro Act May 17_FINAL.PDF
Attachment 2: GA Consolidated Memo_May 17 FINAL.pdf

All,
Forwarding additional GA related docs for your reference, and discussion of any related concerns on our call next Tuesday.
Nadine

-----Original Message-----
From: Veinot, Cindy (TBS)
Sent: May-19-17 10:27 AM
To: Petsche, Nadine (TBS)
Subject: FW: GA Consolidated memo and EY Letter

Letters were updated for legislation tabled -- Cindy

OPG - Letter on Fair Hydro Act May 17_FINAL.PDF

Building a better working world

Ernst & Young
222 Bay Street
P.O. Box 251
Toronto ON
M5K 1J7

Tel: +1 416 943 2615
Fax: +1 416 943 3767
ey.com

The Special Committee of the Board of Directors
Ontario Power Generation Inc. (the "Company")
700 University Avenue
Toronto, ON M5G 1X6

May 17 2017

Dear Sirs/Madames:

This letter is being issued to the Special Committee to assist them in their evaluation of management's analysis of the application of International Financial Reporting Standards ("IFRS") as adopted by the International Accounting Standards Board ("IASB")) to the specific transaction described in the Company's memorandum entitled *OPG Accounting Considerations of Ontario Fair Hydro* dated May 17 2017, herein referred to as "the Management Memorandum". We are issuing this letter in our role as auditors of the Company for the year ending December 31, 2017. As the Province consolidates OPG on an IFRS basis, this letter pertains solely to management's IFRS analysis as contained in the Management Memorandum.

We have read the Management Memorandum and we agree with management's analysis therein, subject to all of the assumptions and limitations identified therein. Specifically, we concur that the existing legislation, along with the yet undrafted Regulation and special purpose vehicle (TRUST) documents, and various other agreements assuming they include the required criteria that Management has identified as outstanding in its Appendix A, would be sufficient to support consolidation of the TRUST with OPG Inc.

Additionally, we specifically refer you to the section entitled "Conclusion" in the Management Memorandum, which indicates that their analysis is based on the tabled legislation as well as their assumptions regarding the terms and conditions of certain contractual arrangements and other documentary evidence that is not yet drafted. Therefore, the Management Memorandum will be required to be updated to reflect the final contents of other relevant contractual arrangements and documentary evidence. We will review the updated Management Memorandum once it is available, and update you on our viewpoints once our review of such updated Management Memorandum is completed.

The scope of this letter and any views expressed herein are limited to the transactions, facts, circumstances and assumptions provided to us by management or the Company as described in the Management Memorandum. If such facts, circumstances or assumptions differ, our conclusions may change.

We have not performed an audit or a review of the Management Memorandum. Additionally, we have not performed an audit as of any date or for any period subsequent to December 31, 2016.

The ultimate responsibility for the proper accounting treatment under IFRS and US GAAP rests with the Company.

We have not been asked for, nor do we express, an opinion on the tax consequences of the transactions described herein.

The accounting for such transactions could be affected by actions of the International Accounting Standards Board, the IFRS Interpretations Committee, the Ontario Securities Commission, or other regulatory bodies. Any such actions occurring prior to the finalization of the 2017 IFRS consolidated financial information will be required to be analyzed by management, and such analysis will be reviewed by us in the context of the audit procedures we will perform on the consolidated IFRS financial information for the year ending December 31, 2017.

Our work does not include the provision of legal advice and we make no representations regarding questions of legal interpretation of any possible structure or strategy. We make no representation regarding the sufficiency of our work for any purpose.

This report is intended solely for the information and use of the Special Committee, Board of Directors and management. We understand that a copy of this letter may be provided to the Province of Ontario, the Independent Electricity System Operator, and/or the Ontario Energy Board. It is not intended to be, and should not be, used by anyone other than these specified parties.

This analysis, or portions thereof, should not be referred to or distributed to any other person or entity, other than those noted in the paragraph directly above. It is not to be referred to or quoted, in whole or in part, in any registration statement, prospectus, public filing, loan agreement, or other agreement or document.

Yours sincerely

Ernst & Young LLP

Chartered Professional Accountants
Licensed Public Accountants

Tracy E Brennan
Partner
416-943-2615

GA Consolidated Memo_May 17 FINAL.pdf

May 17, 2017

OPG ACCOUNTING CONSIDERATIONS OF ONTARIO FAIR HYDRO PLAN

Purpose:

The purpose of this document is to summarize the preliminary views of Ontario Power Generation (OPG) on the ability for OPG to consolidate the Financing Entity Trust associated with the Ontario Fair Hydro Plan.

This memo is assessed against *Bill 132 – An Act to enact the Ontario Fair Hydro Plan Act, 2017 and to make amendments to the Electricity Act, 1998 and the Ontario Energy Board Act, 1998*, (Bill 132 or Legislation) legislation as introduced on May 11, 2017.

This assessment is preliminary pending the passing of the Legislation, the Trust indentures, Regulations, financing structure and other detailed terms, and all related documentary evidence. This assessment will be updated once final documentation is available.

Background:

On March 2, 2017, the Province of Ontario (the Province) announced Ontario's Fair Hydro Plan (the Plan) aimed at reducing electricity bills by 25 percent on average for all residential consumers in the province. As part of the Plan, the Province has proposed financing a portion of the Global Adjustment costs over a longer time period for Regulated Price Plan eligible customers (e.g., residential, farm, small businesses).

On April 13th, the Province requested that OPG consider administering the financing associated with the Plan, because of OPG's participation in the market, regulatory knowledge and the potential ability to consolidate the related financing activities. To undertake this financing, OPG will establish a Financing Entity Trust (the Trust) to finance and administer the Global Adjustment costs through a mixture of external financing and an equity injection from the Ontario Financing Authority. It is expected that OPG will control the Trust for accounting purposes and that its financial position and results will be consolidated within OPG's consolidated financial statements.

Assumptions made to perform accounting analysis which are not yet addressed in Legislation – it is expected that these matters will be addressed in Regulations, Trust documents, and various other agreements:

- The Regulation must require interest, carrying and administrative costs to be paid to the Trust in cash on a monthly basis, so that the Trust is able to recognize appropriate revenue to offset any ongoing costs.
- The Regulations, Trust documents and various agreements will provide that OPG will have significant variability and exposure from the activities of the Trust relative to the rate of return that OPG would recognize from its role as the Financial Services Manager of the Trust. The performance fee will be meaningful and allow OPG to make decisions that will significantly impact its returns.
- The Minister of Energy will have the ability to replace the Financial Services Manger (OPG) if there is a failure to perform. There will be a bifurcation of roles where the Province could not remove OPG as manager/administrator with respect to the existing debt placed by the Trust, but could remove OPG's responsibility/right to prepare the Financing Plan going forward. The ability for the Minister of Energy to

remove OPG as the Financial Services Manager should not impact the recoverability of existing intangible assets.

- The calculation of the Fair Allocation Amount will be performed by the Minister of Energy.
- OPG has the ability to appoint and remove the Trustee (or Board of Trustees) and there are no veto rights by the Province. No party has the ability to remove OPG from its role and authority in the Trust.
- Neither the Ontario Energy Board (OEB) nor any other party can discretionally reduce the management fee or performance fee except due to a calculation error.
- The margin on the interest rates associated with Tranche B and Tranche C which will be recovered from the ratepayers will be reflective of the risk profile of the debt and the associated market terms.
- The indemnification provided to the Trust by the Minister of Finance on behalf of the Province as described in *Part I – General – Section 5(3) Guarantee, indemnification* of the Legislation will be subject to terms and conditions in a separate Provincial support agreement. The guarantee is expected to be in place only in the event of a Payment Guarantee Event, such as if the Legislative Assembly of Ontario repeals the Legislation or amends the Legislation in a way that adversely impacts the ability of the Trust to fully recover an intangible asset in order to pay the obligations of the Trust.
- The approval by the Ontario Energy Board of the Financial Services Manager (i.e. OPG's) fees as described in *Part IV – Implementation – Duties and Powers – Section 19(4) Same, Board approval* of the Legislation will not allow the OEB to change or limit the management fee structure, but only ensure that it is prudent by ensuring it is calculated in accordance with the Regulations.
- In the event that a different Financial Services Manager is appointed by the Minister of Energy, the IESO is required to continue to make cash payments for interest to the Trust for the existing debt. Principal repayments on existing debt will continue to be repaid by ratepayers to the Trust in accordance with the terms of the issued debt.
- All other items as indicated in Appendix A.

Accounting Analysis:

In order to meet the accounting definition of 'control', accounting guidance must be considered. There are no bright lines to determine whether OPG has exposure, or rights, to variable returns from its involvement with the Trust, or whether it has the ability to affect the returns of the Trust through its power over the Trust. Rather, all facts and circumstances are considered when assessing whether an entity has control over another entity.

In order to consolidate the Trust, OPG must be able to demonstrate that it controls the Trust.

Control

An investor controls an investee if and only if the investor has all the following:

a) *power over the investee;*
b) *exposure, or rights, to variable returns from its involvement with the investee; and*
c) *the ability to use its power over the investee to affect the amount of the investor's returns.* [IFRS 10, paragraph 7]

Purpose and design of the investee

When assessing control of an investee, an investor shall consider the purpose and design of the investee in order to identify the relevant activities, how decisions about the relevant activities are made, who has the current ability to direct those activities and who receives returns from those activities. [IFRS 10, paragraph B5]

Criteria	Analysis
Purpose and design of the Trust	The purpose of the Trust is to allow OPG to earn a return on the Intangible Asset from the IESO by effectively managing financing to earn a spread, earn management fees, and earn interest fees.
Relevant activities of the Trust and how decisions are made about those activities	<u>Relevant activities:</u> The relevant activities of the Trust are: • To evaluate and make decisions on financing alternatives, duration, and the strategy to minimize financing costs. • To effectively manage funding obtained through the capital markets and be able to make or lose any spread from financing • To provide funding to the IESO in return for an interest in a future cash flow stream • To obtain funding through the capital markets and other vehicles available to OPG to be able to provide the IESO funding. • To make capital and funding decisions required to meet the Fair Allocation Amount objectives as set out in Legislation • To finance the requirements associated with the short-fall amount • To raise debt, pay bond debt holders, and determine capacity for the Trust to raise additional financing <u>Financing Plan (Legislation: Part IV – Implementation)</u> • OPG's plan for managing the assets of the Trust will be dictated through a 'Financing Plan'. • The Financial Services Manager (i.e. the Trust) shall provide the Financing Plan to the Minister. The Financing Plan is expected to follow Principles as stipulated in the Legislation which indicate that the assumptions must be reasonable and that the Trust has the power to determine what is reasonable and cost-effective. The Trust makes all the decisions in determining the relevant activities as listed above. • OPG can amend the Financing Plan at any time without the approval of the Minister. <u>Fair Allocation Amount (Legislation: Part IV – Implementation)</u> • The 'Fair Allocation Amount' ("FAA") is the amount of the deferral for the reference period and includes finance amounts. The current Legislation dictates that the Minister of Energy is to calculate the FAA. • This does not impact OPG's relevant activities in the Trust as OPG's variable returns are based on financing decisions which are not dictated by the FAA. OPG can choose to

Purpose and design of the investee *When assessing control of an investee, an investor shall consider the purpose and design of the investee in order to identify the relevant activities, how decisions about the relevant activities are made, who has the current ability to direct those activities and who receives returns from those activities.* [IFRS 10, paragraph B5]	
	accept or reject the purchase of the intangible asset which is based on the Fair Allocation Amount. Decisions made and voting rights of the Trust ***The following is not addressed by the Legislation and must be addressed in Regulations, Trust Documentation or various other agreements.*** • OPG has the ability to appoint and remove the Trustee (and if applicable Board of Trustees) and there are no veto rights by the Province. No party has the ability to remove OPG from its role and authority in the Trust. • Except as otherwise stated, all decisions of the members (if applicable) shall be made by the Trustee who will be appointed by OPG. Termination Rights ***The following is not addressed by the Legislation and must be addressed in Regulations, Trust Documentation or various other agreements.*** • OPG cannot be removed from its role in the Trust. The Province has the right to remove OPG as the 'Financial Services Manager' for failure to perform. This will not impact debt that has already been issued for which OPG is already managing through the Trust or the recoverability of existing intangible assets. If the right is exercised, it serves to reduce or eliminate the scope of new business activities of the Trust but it does not affect OPG's ability to control the Trust. Should a new Financial Services Manager be appointed, a separate assessment would be made as to which party if any would control it.
Assessment	The purpose of the Trust is to allow OPG to earn a return on the Intangible Asset from the IESO by effectively managing financing to earn a spread, earn management fees, and earn interest fees. For the reasons noted above, OPG has control over the decisions to be made about the relevant activities.

Power over the investee	
Criteria	**Analysis**
Identify whether OPG's rights give it the current ability to direct the relevant activities of the Trust (Substantive rights)	See above for relevant activities of the Trust.
Assessment	OPG has the ability to direct the relevant activities of the Trust. OPG can amend the Financing Plan at any time, without approval from the Minister. Further, if the Minister of Energy chooses not to continue with OPG's current Financing Plan, OPG can withdraw its Financing

Power over the investee	
	Plan, without impacting the existing debt and related intangible assets that is already in the Trust. The Province would just appoint a new party to participate in future securitizations and OPG would continue to manage the debt that already exists in the Trust. If future financing transactions are with a different Financing Entity, a separate consolidation analysis would be prepared at that time as to which party if any would consolidate the Financing Entity.

Exposure or rights to variable returns	
Criteria	**Analysis**
Dividends, other distributions of economic benefits from an investee and changes in the value of the investor's investment in that investee [IFRS 10, paragraph B57(a)]	OPG is expected to realize management fees from its activities with the Trust.
Remuneration for servicing an investee's assets or liabilities, fees and exposure to loss from providing credit or liquidity support, residual interests in the investee's assets and liabilities on liquidation of that investee, tax benefits, and access to future liquidity that an investor has from its involvement with an investee [IFRS 10, paragraph B57(b)]	***The following is not addressed by Legislation and must be addressed in Regulations, Trust Documentation or various other agreements.*** OPG has exposure and rights to variable returns from the Trust in the form of the following: • The Regulations, Trust documents and various agreements will provide that OPG will have significant variability and exposure from the activities of the Trust relative to the rate of return that OPG would recognize from its role as the Financial Services Manager of the Trust. The performance fee will be meaningful and allow OPG to make decisions that will significantly impact its returns. • OPG, through ownership of the most subordinated debt, is exposed to risk of non-collection. Given that the program is expected to run until 2047, this 30 year time period results in uncertainty about the future collection of OPG's amount at risk. OPG and the Ontario Financing Authority (OFA) (5% out of 44% contribution) would be the last parties to get paid in the event that the program stops running due to a change in Government, if electricity demand is not high enough to allow for collection from ratepayers in a timely manner, etc. The end date of 2047 that is prescribed in the Legislation results in uncertainty toward whether this program will continue and whether OPG will have collected its amount at risk at that time. • In the event that there is a market disruption whereby OPG is not able to obtain debt from the financial markets (e.g. due to a recession), the Province will provide funding in the event that OPG wishes to continue purchasing intangible assets from the IESO. This is considered to be a protective right as it does not impact the relevant activities of the Trust, but is designed to protect both parties and does not give either party more or less power over the Trust. It is designed to allow OPG to keep purchasing intangible

Exposure or rights to variable returns	
	assets if it wishes to. • Protective rights are typically held to prohibit fundamental changes in the activities of an investee that the holder does not agree with and usually apply only in exceptional circumstances (i.e., upon a contingent event). This is true for this right as it is only applicable if there is a market disruption and the Trust is not able to obtain financing from external markets. Further, the fundamental activities of the Trust would change if it were not able to obtain financing from external markets.
Returns that are not available to other interest holders. For example, an investor might use its assets in combination with the assets of the investee, such as combining operating functions to achieve economies of scale, cost savings, sourcing scarce products, gaining access to proprietary knowledge or limiting some operations or assets, to enhance the value of the investor's other assets [IFRS 10, paragraph B57 (c)]	• OPG will have synergistic benefits from combining operating functions with the Trust given its extensive knowledge on the market and current regulatory knowledge.
Assessment	To determine which party is the most 'at risk' in the event that the loans default, expected loss rates were obtained from Moody's and DBRS. Using the *Moody's Investors Service – Loss Given Default for Speculative Grade Companies* dated December 4, 2015, the 4-year Idealized Expected Loss ranges from 0.00% for a triple A rated bond to 0.30% for an A3 rated bond. DBRS Expected Loss Ratings give an indication of the expected loss of a loan portfolio. As per a November 2016 publication, the 10-year expected loss rates range from 0.1% for a AAA rated bond to 1.7% for an A (low) rated bond. Given that OPG's subordinated debt is equal to 5% of the total debt, which is higher than the default rates above, 100% of the risk is with both OPG and the OFA since they are the last parties to get paid should there be any default with the debt. OPG is also exposed to variable returns from the Trust from its performance on decisions made on financing alternatives, duration, and the strategy to minimize financing costs through the variable fee component of the management fee. Therefore, OPG has the exposure to variable returns from the Trust.

Ability to use power to affect returns	
Criteria	**Analysis**
Ability of investor to use its power to affect the investor's returns from its involvement with the investee	OPG needs to have both power over the Trust (i.e. as a Principal, not an agent), exposure or rights to the variable returns from the Trust, and the ability to use its power to affect OPG's returns from its involvement with the Trust OPG has the ability to use its power over the relevant activities of the Trust to affect its returns from its involvement with the Trust through the variable fee component. Further, the Trust's ability to use its power to affect returns is in a manner that is consistent with being a principal. See Appendix B for Principal-Agent analysis.
Assessment	OPG has the ability to use its power to affect returns of the Trust.

Conclusion:

Based on *Bill 132 – An Act to enact the Ontario Fair Hydro Plan Act, 2017 and to make amendments to the Electricity Act, 1998 and the Ontario Energy Board Act, 1998*, legislation as introduced on May 11, 2017, the conditions to ensure the ability of OPG to consolidate the operations of the Trust have not fully been reflected. As noted in Appendix A, several conditions must be evident in the Regulations, Trust documents, and various other agreements which are not yet drafted and therefore not yet available for our review and assessment. In OPG's assessment, while no current clause of the Legislation would hamper the ability to effect a consolidation within OPG Inc.'s financial statements, there are several key conditions for consolidation that are currently not present within the Legislation. On the assumption that future Regulations, Trust documents and various other agreements fully capture these operating conditions, and that no new conditions that would conflict with OPG's control of the trust are introduced, OPG believes that consolidation of the Trust is supportable.

APPENDIX A:

Terms necessary for OPG to consolidate the Global Adjustment Trust

This analysis is assessed against Bill 132 – An Act to enact the Ontario Fair Hydro Plan Act, 2017 and to make amendments to the Electricity Act, 1998 and the Ontario Energy Board Act, 1998, legislation as introduced on May 11, 2017.

Legend:

✓ **- Addressed by *Bill 132 – An Act to enact the Ontario Fair Hydro Plan Act, 2017 and to make amendments to the Electricity Act, 1998 and the Ontario Energy Board Act, 1998*, legislation as introduced on May 11, 2017.**

RT – Not addressed by Legislation and must be addressed in Regulations, Trust Documentation or various other agreements

Ω - Will not be addressed in Legislation/Regulations or Trust but is the intended plan

Issue	No.	Requirements
Directive	1 ✓	The Trust must be undertaken by OPG as a business initiative on its merits. A Shareholder Directive is to be limited to direct OPG to investigate the option of establishing a Trust vehicle to administer, finance and operate the Global Adjustment plan and the operation of that Trust and the control, risk and rewards of that Trust will determine its consolidation into OPG as a business enterprise. ***The Province will not direct OPG to participate in the Fair Hydro Plan. A letter was issued from the Minister of Energy to OPG on April 13th requesting OPG's involvement in the implementation of the Fair Hydro Plan. OPG's Board Chair responded to the Minister on April 18th committing OPG to work with the IESO and OEB to develop a plan. OPG will have the option to prepare, implement and amend a financing plan (in accordance with principles set out in legislation) and propose the adoption of such plan as the 'Financing Plan'. OPG will have the right to withdraw its financing plan at any time.***
Trust	2 **RT**	The Trust should not operate in a predetermined way such that OPG does not have decision-making authority over the Trust's ongoing activities after its formation (i.e. should not operate on 'autopilot'). ***OPG will be the sole unit holder of the Trust. All decisions over the relevant activities of the Trust (as described above) will be made by OPG.***
	3 **RT**	OPG must have the ability to appoint and remove the Trustee (or Board of Trustees), with no veto right by the Province. No party shall have the ability to remove OPG from its role and authority in the Trust. ***OPG will be the sole unit holder of the Trust. The Province will be involved in the Board of Trustees, but OPG is expected to have the***

<table>
<tr><th>Issue</th><th>No.</th><th>Requirements</th></tr>
<tr><td></td><td></td><td>majority vote.</td></tr>
<tr><td></td><td>4
RT</td><td>The Province cannot have the right to veto OPG's decisions about the relevant activities of the Trust. OPG must have the power over the relevant activities of the Trust and be compensated. The relevant activities of the Trust include (but are not limited to) the evaluation and decisions on financing alternatives, duration, and the strategy to minimize financing costs. OPG must have the power to establish operating and capital budgets of the Trust.

OPG will have the ability to make decisions about the financing alternatives, duration, and the strategy to minimize financing costs. OPG will have the power to establish operating and capital budgets of the Trust with no veto right by the Province.</td></tr>
<tr><td></td><td>5
RT</td><td>OPG must have the power to determine or change operating and financing policies of the Trust, which will affect the variability of risks and returns.

The Regulations, Trust documents and various agreements will provide that OPG will have significant variability and exposure from the activities of the Trust relative to the rate of return that OPG would recognize from its role as the Financial Services Manager of the Trust. The performance fee will be meaningful and allow OPG to make decisions that will significantly impact its returns.</td></tr>
<tr><td></td><td>6
Ω</td><td>The Province or its agencies must not directly or indirectly fund (through debt or equity) more than 50% of the following:
a. The Trust
b. The most subordinated debt of the Trust

See below for financing structure.

<table>
<tr><th></th><th>Risk Profile</th><th>Source</th><th>% of Total Funding Requirement</th></tr>
<tr><td>Tranche A Senior Debt</td><td>the least risky</td><td>Capital Markets</td><td>51%</td></tr>
<tr><td>Tranche B Sub Debt</td><td>In between A&C</td><td>OPG via OEFC</td><td>39%</td></tr>
<tr><td>Tranche C Sub Debt</td><td>the most risky</td><td>OPG via OEFC</td><td>5%</td></tr>
<tr><td></td><td></td><td>OPG via Capital Markets</td><td>5%</td></tr>
</table>
</td></tr>
<tr><td></td><td>7
Ω</td><td>OPG must own at least 50% of the most subordinated debt and must be no less than 5% of the debt of the Trust. Such ownership must be financed entirely by OPG through operating cash flows or external debt, without assistance from Provincial sources.

See chart in Point 6 above.</td></tr>
</table>

Issue	No.	Requirements
	8 RT	OPG must have the ability to earn variable returns by exercising its authority, which shall be accomplished as follows: a. The cash flow from the restructured asset shall include interest determined based on a relevant benchmark that is appropriate relative to the restructured asset, plus an appropriate margin consistent with the relevant market and other risks ***The cash flow from the restructured asset will include interest income that is equal to the interest expense (i.e. interest expense is passed back to the ratepayers). The Trust will also receive a margin as discussed in the 'Exposure or rights to variable returns' section above.*** ***Part IV – Implementation – Fees – Section 3 of Legislation addresses that the Financial Services Manager may establish and charge fees, recover costs and expenditures and to earn a return. Further analysis to be performed as the Trust indentures, Regulations, financing structure and other detailed terms are finalized.***
	✓	b. OPG shall have the authority to determine the financing strategy, which will vary the financing costs with the objective of enabling the Trust to achieve a more favourable return compared to the benchmark for interest on the restructured asset ***OPG will determine the financing strategy through the proposal of its 'Financing Plan'. The 'Financing Plan' will only be required to follow general Parameters and Principles as set forth in the Legislation but funding decisions will be made entirely by OPG. The Trust will also receive a margin as discussed in the 'Exposure or rights to variable returns' section above.***
	Ω	c. The Trust shall establish classes of liabilities (senior, subordinated and the most subordinated). The classes would allow the Trust to delineate financing of lower risk investment and investment that would bear higher residual risk. The delineation would limit OPG's self-funded investment to a reasonable level in order to allow OPG to remain a self-sustaining entity. ***OPG's portion of the most subordinated debt will be limited to a reasonable level. If it is determined that OPG's portion is not at a reasonable level, OPG has the option to withdraw its Financing Plan.***
	RT	c. OPG shall, through its ownership of the most subordinated liability, be able to capture and retain the pricing difference between cost of financing and benchmark for interest on the

Issue	No.	Requirements
		restructured asset, or any residual risk of restructured asset. The targeted return of the subordinated liability should be reflective of the underlying risks and compensate holders for active management that would be required. ***OPG will be able to capture the pricing difference between cost of financing and benchmark for interest through the performance fee which is described in point 5) above and the 'Exposure or rights to variable returns' section above.***
	Ω	d. OPG should participate in the detailed design of the above and the Trust documentation to ensure that it has substantive power and variability, which will allow OPG's Board of Directors to evaluate the opportunity as a business initiative instead of through a shareholder directive. ***OPG will be involved in the Trust documentation.***
	RT	Defined Forced Majeure for emergency events (e.g. unlikely credit market event or disruption where it is not possible to borrow from the market at a reasonable rate), OFA may provide bridge financing beyond the designated percentage for a defined period. ***This will be structured through a separate indemnification agreement. This is not expected to impact consolidation of the Trust because this is seen as a protective right which is only in affect when a contingency arises and not as a result of the relevant activities of the Trust.***
Legislation	9 ✓	The Legislation must require interest, carrying and administrative costs to be paid to the Trust on a monthly basis, so that the Trust is able to recognize appropriate revenue to offset any ongoing costs. ***Under Part III – Clean Energy Adjustment – Section 13(3) – Terms of the Legislation, the expectation is that the Legislation will allow for interest payments to be paid to the Trust on a monthly basis in cash. The Trust will not accrue interest to the current intangible asset balances but this interest amount could form part of future intangible assets that are purchased from the IESO.***
	10 RT	The Legislation must dictate the manner in which the restructured asset would be determined, collected, and the period of collection, so that the determination of the restructured asset will not be subject to the Province's decisions on an ongoing basis, but determined based on a formula. Alternatively, the Legislation may allow for an adjustment to the pre-determined deferral formula based on specific parameters that would limit the adjustment to the restructured asset. Adjustments beyond the specific parameters would require approval by the Board of Trustee. ***The Regulations are expected to dictate the 'Fair Allocation Amount' which will be based on high level Principles and***

Issue	No.	Requirements
		Parameters of the Plan, including the attribution methodology. The Regulations are expected to determine the following principles: • ***25% Reduction (June 1, 2017) where the average bill will reduce by 25% including of HST and social programs noted above*** • ***Inflation Period (November 2017 – April 2022) where bill increases are capped at inflation*** • ***Straight-line Increase Period (May 2022 – April 2027) where bills increased at a straight-line rate (i.e., 8% per year) which is set so that borrowing will not exceed the Trust's capacity.*** • ***Amortization Period (May 2027 – April 2047) where debt built up over the previous periods is repaid by ratepayers.*** ***OPG will determine the manner in which the intangible asset, once purchased from the IESO, will be collected and the period of collection.*** ***The recoverability of the existing intangible assets cannot be impacted by the Province.*** ***Although the Province may determine the Principles and Parameters around the 'Fair Allocation Amount', it does not impact the activities of the Trust once OPG has purchased the intangible asset.***
	11 **RT**	The Legislation must be written in accordance with all applicable laws and be irrevocable to reduce the cost of borrowing and with a specific formula which determines the deferral amount. ***See above, point 10.***
	12 **RT**	The spirit of the above terms should be reflected in the Trust Indenture Agreement as well as Legislation, wherever possible. ***Trust Indenture and Regulations are outstanding.***

APPENDIX B:

Link between power and returns: principal-agency situations

The third criterion for having control is that the investor must have the ability to use its power over the investee to affect the amount of the investor's returns. When decision-making rights have been delegated or are being held for the benefit of others, it is necessary to assess whether the decision-maker is a principal or an agent to determine whether it has control. This is because if the decision-maker has been delegated rights that give it power, the decision-maker must assess whether those rights give it power for its own benefit, or merely power for the benefit of others. As an agent cannot have control over the investee, it does not consolidate the investee. A principal may have control over the investee, and if so, would consolidate the investee.

A decision maker shall consider the overall relationship between itself, the investee being managed and other parties involved with the investee, in particular all the factors below, in determining whether it is an agent:

a) the scope of its decision-making authority over the investee

   As discussed above, OPG has decision-making authority over the Trust and its relevant activities. The Province has no right to determine what sort of funding decisions OPG should make to fund the intangible assets that they will purchase and OPG can choose not to purchase future intangible asset purchases.

   Terms necessary for OPG to consolidate the Global Adjustment Trust (Appendix A) to support this point: 1, 2, 3, 4, 5

b) the rights held by other parties (paragraphs B64–B67).

   There are no substantive removal rights held by the Province for debt that already exists in the Trust.

   Terms necessary for OPG to consolidate the Global Adjustment Trust (Appendix A) to support this point: 3, 4, 5

c) the remuneration to which it is entitled in accordance with the remuneration agreement(s) (paragraphs B68–B70).

   See section on 'Exposure or rights to variable returns' above.

   Terms necessary for OPG to consolidate the Global Adjustment Trust (Appendix A) to support this point: 6, 7, 8, 9

d) the decision maker's exposure to variability of returns from other interests that it holds in the investee (paragraphs B71 and B72).

   See section on 'Exposure or rights to variable returns' above.

   OPG will receive a 44% equity injection from the Province of Ontario, indirectly through the Ontario Financing Authority. Given that currently, the majority (currently 51%) of the Trust debt will be from External Markets and not the Province, it can be argued that OPG did not receive the majority of its interest in the investee as a contribution or loan from the Province. This shows that OPG is a principal, not a de-facto agent.

Terms necessary for OPG to consolidate the Global Adjustment Trust (Appendix A) to support this point: 6, 7, 8, 9

Conclusion: OPG is not an agent for the Province as the arrangement does not provide for the Province to directly absorb any variability associated with the structure. If the Province decides to intervene at a later date due to evolving market conditions, an assessment would be made at that future date.

Analysis on whether OPG is an agent for ratepayers

OPG is not an agent for the ratepayers because OPG has substantive exposure to risk of loss of its own funds. The ratepayers do not have any of their own funds in any of the subordinated tranches and further, no decision making authority is delegated to the ratepayers relating to the relevant activities of the Trust.

Analysis on whether OPG is an agent for the IESO

OPG is not an agent of the IESO because the IESO faces no continuing risk of loss after sale of the intangible asset to OPG.

FW_ GA leg meeting tomorrow.rtf

From: Veinot, Cindy (TBS) []
To: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
Subject: FW: GA leg meeting tomorrow
Date: Wednesday, April 05, 2017 11:08:19
Attachment 1: RE: Materials for Review draft OFHP legislation
Attachment 2: Materials for Review draft OFHP legislation

Nadine – are our advisors from EY attending tomorrow? If so, please forward this to them.

Thanks,

From: Veinot, Cindy (TBS)
Sent: April-05-17 11:08 AM
To: 'Kim Marshall'; 'HARTWICK Ken -FINANCE'; 'MAUTI John -FIN & C CTRL'
Cc: Hosick, Sarah (TBS)
Subject: GA leg meeting tomorrow

Kim and Ken – just confirming that this is the draft of the legislation that we will use for tomorrow – it was sent to Kim and John Lee at OPG previously. Please forward to others from your orgs that are attending as well as any advisors.

Thanks,

RE_ Materials for Review draft OFHP legislation .pdf

From: Cox, Hilary (ENERGY) []
To: Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; Johnson, Paul (ENERGY) [Paul.Johnson3@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Kwan, Ronald (OFA) [Ronald.Kwan@ofina.on.ca]; He, Gavin (OFA) [Gavin.He@ofina.on.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; kim.marshall@ieso.ca [kim.marshall@ieso.ca]; 'LEE John -TREASURY' (john.s.lee@opg.com) [john.s.lee@opg.com]
CC: 'WONG Leslie -LAWDIV' [leslie.wong@opg.com]; 'Peter Hamilton' [PHamilton@stikeman.com]; Whitfield, Tobias P. (MOF) [Tobias.Whitfield@ontario.ca]; 'Ramchandani, Rima' [rramchandani@torys.com]; 'Glenn Zacher' [GZacher@stikeman.com]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; 'Anthony Martinello' [Anthony.Martinello@ieso.ca]; 'Mansoori, Nina' [nmansoori@torys.com]; 'Olusoga, Yinka' [yolusoga@torys.com]; 'Myers, Jonathan' [jmyers@torys.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; 'ASHBOURNE, STEPHEN' [STEPHEN.ASHBOURNE@blakes.com]
Subject: RE: Materials for Review draft OFHP legislation
Date: Monday, April 03, 2017 15:48:34

Pw: snowplow

From: Cox, Hilary (ENERGY)
Sent: April 3, 2017 3:26 PM
To: Christie, Tim (ENERGY); Calwell, Carolyn (ENERGY/MEDEI/MRI); Johnson, Paul (ENERGY/MEDEI/MRI); Shear, Dan (ENERGY); Rehob, James (ENERGY); Kwan, Ronald (OFA); 'Gavin He'; Veinot, Cindy (TBS); Hosick, Sarah (TBS); Nelms, Scott (MOF); kim.marshall@ieso.ca; 'LEE John -TREASURY' (john.s.lee@opg.com); Cox, Hilary (ENERGY)
Cc: 'WONG Leslie -LAWDIV'; 'Peter Hamilton'; Whitfield, Tobias P. (MOF); 'Ramchandani, Rima'; 'Glenn Zacher'; Petsche, Nadine (TBS); 'Anthony Martinello'; 'Mansoori, Nina'; 'Olusoga, Yinka'; 'Myers, Jonathan'; JUDY.WILSON@blakes.com; 'ASHBOURNE, STEPHEN'
Subject: Materials for Review draft OFHP legislation

Please see attached materials for Review of Draft OFHP legislation meeting tomorrow morning.

Hilary

Hilary Cox
Executive Assistant/Sr. Policy Advisor (A) | Assistant Deputy Minister's Office
Energy Supply Policy Division | Ministry of Energy

T: 416.327.7204 | Bb: 647.237.8140 |

E: Hilary.cox@ontario.ca

Materials for Review draft OFHP legislation .pdf

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CC: 'WONG Leslie -LAWDIV' [leslie.wong@opg.com]; 'Peter Hamilton' [PHamilton@stikeman.com]; Whitfield, Tobias P. (MOF) [Tobias.Whitfield@ontario.ca]; 'Ramchandani, Rima' [rramchandani@torys.com]; 'Glenn Zacher' [GZacher@stikeman.com]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; 'Anthony Martinello' [Anthony.Martinello@ieso.ca]; 'Mansoori, Nina' [nmansoori@torys.com]; 'Olusoga, Yinka' [yolusoga@torys.com]; 'Myers, Jonathan' [jmyers@torys.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; 'ASHBOURNE, STEPHEN' [STEPHEN.ASHBOURNE@blakes.com]
Subject: Materials for Review draft OFHP legislation
Date: Monday, April 03, 2017 15:25:53
Attachment 1: External - Draft 5 Annotated (Blks DS) GOV2016.146.e05 (April 3 2017).docx

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Please see attached materials for Review of Draft OFHP legislation meeting tomorrow morning.

Hilary

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Subject: GA leg meeting tomorrow

Kim and Ken – just confirming that this is the draft of the legislation that we will use for tomorrow – it was sent to Kim and John Lee at OPG previously. Please forward to others from your orgs that are attending as well as any advisors.

Thanks,

RE_ Materials for Review draft OFHP legislation .pdf

From: Cox, Hilary (ENERGY) []
To: Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; Johnson, Paul (ENERGY) [Paul.Johnson3@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Kwan, Ronald (OFA) [Ronald.Kwan@ofina.on.ca]; He, Gavin (OFA) [Gavin.He@ofina.on.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; kim.marshall@ieso.ca [kim.marshall@ieso.ca]; 'LEE John -TREASURY' (john.s.lee@opg.com) [john.s.lee@opg.com]
CC: 'WONG Leslie -LAWDIV' [leslie.wong@opg.com]; 'Peter Hamilton' [PHamilton@stikeman.com]; Whitfield, Tobias P. (MOF) [Tobias.Whitfield@ontario.ca]; 'Ramchandani, Rima' [rramchandani@torys.com]; 'Glenn Zacher' [GZacher@stikeman.com]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; 'Anthony Martinello' [Anthony.Martinello@ieso.ca]; 'Mansoori, Nina' [nmansoori@torys.com]; 'Olusoga, Yinka' [yolusoga@torys.com]; 'Myers, Jonathan' [jmyers@torys.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; 'ASHBOURNE, STEPHEN' [STEPHEN.ASHBOURNE@blakes.com]
Subject: RE: Materials for Review draft OFHP legislation
Date: Monday, April 03, 2017 15:48:34

Pw: snowplow

From: Cox, Hilary (ENERGY)
Sent: April 3, 2017 3:26 PM
To: Christie, Tim (ENERGY); Calwell, Carolyn (ENERGY/MEDEI/MRI); Johnson, Paul (ENERGY/MEDEI/MRI); Shear, Dan (ENERGY); Rehob, James (ENERGY); Kwan, Ronald (OFA); 'Gavin He'; Veinot, Cindy (TBS); Hosick, Sarah (TBS); Nelms, Scott (MOF); kim.marshall@ieso.ca; 'LEE John -TREASURY' (john.s.lee@opg.com); Cox, Hilary (ENERGY)
Cc: 'WONG Leslie -LAWDIV'; 'Peter Hamilton'; Whitfield, Tobias P. (MOF); 'Ramchandani, Rima'; 'Glenn Zacher'; Petsche, Nadine (TBS); 'Anthony Martinello'; 'Mansoori, Nina'; 'Olusoga, Yinka'; 'Myers, Jonathan'; JUDY.WILSON@blakes.com; 'ASHBOURNE, STEPHEN'
Subject: Materials for Review draft OFHP legislation

Please see attached materials for Review of Draft OFHP legislation meeting tomorrow morning.

Hilary

Hilary Cox
Executive Assistant/Sr. Policy Advisor (A) | Assistant Deputy Minister's Office
Energy Supply Policy Division | Ministry of Energy

T: 416.327.7204 | Bb: 647.237.8140 |

E: Hilary.cox@ontario.ca

Materials for Review draft OFHP legislation .pdf

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To: Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; Johnson, Paul (ENERGY) [Paul.Johnson3@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Kwan, Ronald (OFA) [Ronald.Kwan@ofina.on.ca]; He, Gavin (OFA) [Gavin.He@ofina.on.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; kim.marshall@ieso.ca [kim.marshall@ieso.ca]; 'LEE John -TREASURY' (john.s.lee@opg.com) [john.s.lee@opg.com]; Cox, Hilary (ENERGY) [Hilary.Cox@ontario.ca]
CC: 'WONG Leslie -LAWDIV' [leslie.wong@opg.com]; 'Peter Hamilton' [PHamilton@stikeman.com]; Whitfield, Tobias P. (MOF) [Tobias.Whitfield@ontario.ca]; 'Ramchandani, Rima' [rramchandani@torys.com]; 'Glenn Zacher' [GZacher@stikeman.com]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; 'Anthony Martinello' [Anthony.Martinello@ieso.ca]; 'Mansoori, Nina' [nmansoori@torys.com]; 'Olusoga, Yinka' [yolusoga@torys.com]; 'Myers, Jonathan' [jmyers@torys.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; 'ASHBOURNE, STEPHEN' [STEPHEN.ASHBOURNE@blakes.com]
Subject: Materials for Review draft OFHP legislation
Date: Monday, April 03, 2017 15:25:53
Attachment 1: External - Draft 5 Annotated (Blks DS) GOV2016.146.e05 (April 3 2017).docx

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Please see attached materials for Review of Draft OFHP legislation meeting tomorrow morning.

Hilary

Hilary Cox
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Energy Supply Policy Division | Ministry of Energy
T: 416.327.7204 | Bb: 647.237.8140 |

E: Hilary.cox@ontario.ca

FW_ GA leg meeting tomorrow.rtf

From: Veinot, Cindy (TBS) []
To: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
Subject: FW: GA leg meeting tomorrow
Date: Wednesday, April 05, 2017 11:08:19
Attachment 1: RE: Materials for Review draft OFHP legislation
Attachment 2: Materials for Review draft OFHP legislation

Nadine – are our advisors from EY attending tomorrow? If so, please forward this to them.

Thanks,

From: Veinot, Cindy (TBS)
Sent: April-05-17 11:08 AM
To: 'Kim Marshall'; 'HARTWICK Ken -FINANCE'; 'MAUTI John -FIN & C CTRL'
Cc: Hosick, Sarah (TBS)
Subject: GA leg meeting tomorrow

Kim and Ken – just confirming that this is the draft of the legislation that we will use for tomorrow – it was sent to Kim and John Lee at OPG previously. Please forward to others from your orgs that are attending as well as any advisors.

Thanks,

RE_ Materials for Review draft OFHP legislation .pdf

From: Cox, Hilary (ENERGY) []
To: Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; Johnson, Paul (ENERGY/MEDEI/MRI) [Paul.Johnson3@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Kwan, Ronald (OFA) [Ronald.Kwan@ofina.on.ca]; He, Gavin (OFA) [Gavin.He@ofina.on.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; kim.marshall@ieso.ca [kim.marshall@ieso.ca]; 'LEE John -TREASURY' (john.s.lee@opg.com) [john.s.lee@opg.com]
CC: 'WONG Leslie -LAWDIV' [leslie.wong@opg.com]; 'Peter Hamilton' [PHamilton@stikeman.com]; Whitfield, Tobias P. (MOF) [Tobias.Whitfield@ontario.ca]; 'Ramchandani, Rima' [rramchandani@torys.com]; 'Glenn Zacher' [GZacher@stikeman.com]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; 'Anthony Martinello' [Anthony.Martinello@ieso.ca]; 'Mansoori, Nina' [nmansoori@torys.com]; 'Olusoga, Yinka' [yolusoga@torys.com]; 'Myers, Jonathan' [jmyers@torys.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; 'ASHBOURNE, STEPHEN' [STEPHEN.ASHBOURNE@blakes.com]
Subject: RE: Materials for Review draft OFHP legislation
Date: Monday, April 03, 2017 15:48:34

Pw: snowplow

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To: Christie, Tim (ENERGY); Calwell, Carolyn (ENERGY/MEDEI/MRI); Johnson, Paul (ENERGY/MEDEI/MRI); Shear, Dan (ENERGY); Rehob, James (ENERGY); Kwan, Ronald (OFA); 'Gavin He'; Veinot, Cindy (TBS); Hosick, Sarah (TBS); Nelms, Scott (MOF); kim.marshall@ieso.ca; 'LEE John -TREASURY' (john.s.lee@opg.com); Cox, Hilary (ENERGY)
Cc: 'WONG Leslie -LAWDIV'; 'Peter Hamilton'; Whitfield, Tobias P. (MOF); 'Ramchandani, Rima'; 'Glenn Zacher'; Petsche, Nadine (TBS); 'Anthony Martinello'; 'Mansoori, Nina'; 'Olusoga, Yinka'; 'Myers, Jonathan'; JUDY.WILSON@blakes.com; 'ASHBOURNE, STEPHEN'
Subject: Materials for Review draft OFHP legislation

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Please see attached materials for Review of Draft OFHP legislation meeting tomorrow morning.

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Hilary Cox
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Energy Supply Policy Division | Ministry of Energy
T: 416.327.7204 | Bb: 647.237.8140 |

E: Hilary.cox@ontario.ca

FW_ IESO accounting considerations.rtf

From: Petsche, Nadine (TBS) []
To: Kim Marshall (Kim.Marshall@ieso.ca) [Kim.Marshall@ieso.ca]
Subject: FW: IESO accounting considerations
Date: Monday, April 17, 2017 19:28:51
Attachment 1: RE: Ontario Fair Hydro Plan

Just sharing as an FYI. n

From: Petsche, Nadine (TBS)
Sent: April-17-17 7:20 PM
To: Calwell, Carolyn (ENERGY/MEDEI/MRI)
Subject: RE: IESO accounting considerations

Hi Carolyn.

The attachment to Peter's earlier email (attached) was the relevant reference.

Take care,

Nadine

From: Calwell, Carolyn (ENERGY/MEDEI/MRI)
Sent: April-17-17 5:44 PM
To: Petsche, Nadine (TBS)
Subject: Re: IESO accounting considerations

Thanks, Nadine. Which do document are you pointing me to?

From: Petsche, Nadine (TBS)

Sent: Monday, April 17, 2017 3:52 PM

To: Calwell, Carolyn (ENERGY/MEDEI/MRI)

Subject: IESO accounting considerations

Carolyn,

We didn't spend much time reviewing the IESO doc, but wanted to flag for you the commentary on #4,5,8 in particular as important to support a sale from an accounting perspective.

Nadine

RE_ Ontario Fair Hydro Plan.pdf

From: Peter Hamilton [PHamilton@stikeman.com]
To: Feldman, Michael [mfeldman@torys.com]; Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Kacaba, Jennifer (ENERGY) [Jennifer.Kacaba@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) [tyler.mcauley@opg.com]; John.S.Lee@opg.com [John.S.Lee@opg.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; 'Alan Hibben' (alan.hibben@rogers.com) [alan.hibben@rogers.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Maharukh.Hilloowala@tdsecurities.com [Maharukh.Hilloowala@tdsecurities.com]; Michael.Wolff@tdsecurities.com [Michael.Wolff@tdsecurities.com]; Harold.Holloway@tdsecurities.com [Harold.Holloway@tdsecurities.com]; 'Niehaus, Katrina' [Katrina.Niehaus@gs.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; Nevison, Gary (Gary.Nevison@tdsecurities.com) [Gary.Nevison@tdsecurities.com]; Thom, Trevor (Trevor.Thom@tdsecurities.com) [Trevor.Thom@tdsecurities.com]; Akman, Steven (Steven.Akman@tdsecurities.com) [Steven.Akman@tdsecurities.com]; Thompson, Susan (Susan.Thompson@tdsecurities.com) [Susan.Thompson@tdsecurities.com]; Manii, David (david.manii@tdsecurities.com) [david.manii@tdsecurities.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; Hill, Krista [khill@torys.com]; 'Turnbull, Vickie' [vickie.turnbull@rbccm.com]; 'Dal Bello, David' [david.dalbello@rbccm.com]; Mansoori, Nina [nmansoori@torys.com]; 'Sebastiano, Rocco' [RSebastiano@osler.com]; 'Fitzpatrick, Michael F.' [MFitzpatrick@hunton.com]; michael.boll@ieso.ca [michael.boll@ieso.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Glenn Zacher [GZacher@stikeman.com]; 'O'Brian, Adam' [aobrian@hunton.com]; Emes, Aaron [aemes@torys.com]; 'JORDA Jenny -FIN & C CTRL' [jenny.jorda@opg.com]; maryanne.aldred@ontarioenergyboard.ca [maryanne.aldred@ontarioenergyboard.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
CC: Myers, Jonathan [jmyers@torys.com]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Michael Boll <Michael.Boll@ieso.ca> (Michael.Boll@ieso.ca) [Michael.Boll@ieso.ca]; kim.marshall@ieso.ca [kim.marshall@ieso.ca]; Anthony Martinello (Anthony.Martinello@ieso.ca) [Anthony.Martinello@ieso.ca]; Glenn Zacher [GZacher@stikeman.com]; Jim Harbell [JHarbell@stikeman.com]
Subject: RE: Ontario Fair Hydro Plan
Date: Monday, April 17, 2017 12:15:28
Attachment 1: image001.jpg
Attachment 2: SETOR1-#6709178-v8-Fair_Hydro_Plan_-_Issues_to_be_Addressed.doc

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Please see attached the IESO/Stikemans comments.

Peter Hamilton
Tel : (416) 869-5564
phamilton@stikeman.com

STIKEMAN ELLIOTT LLP Barristers & Solicitors

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TORONTO MONTREAL OTTAWA CALGARY VANCOUVER NEW YORK LONDON SYDNEY

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From: Feldman, Michael [mailto:mfeldman@torys.com]
Sent: Monday, April 17, 2017 12:10 PM
To: Calwell, Carolyn (ENERGY/MEDEI/MRI); Rehob, James (ENERGY); Shear, Dan (ENERGY); Kacaba, Jennifer (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Persaud, Donnie - Debt Capital Markets'; Hill, Krista; 'Turnbull, Vickie'; 'Dal Bello, David'; Mansoori, Nina; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); Glenn Zacher; 'O'Brian, Adam'; Emes, Aaron; Peter Hamilton; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS)
Cc: Myers, Jonathan; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA); Hosick, Sarah (TBS); Feldman, Michael
Subject: RE: Ontario Fair Hydro Plan

All,

In case it is helpful for this afternoon’s meeting I have put the points from my last email into a Word document (attached) that might be easier to work with. I will bring extra copies to the meeting.

Michael K. Feldman

P. 416.865.7513 | F. 416.865.7380 | 1.800.505.8679

79 Wellington St. W., 30th Floor, Box 270, TD South Tower

Toronto, Ontario M5K 1N2 Canada | www.torys.com

Torys LLP

From: Feldman, Michael
Sent: April-17-17 10:40 AM
To: Calwell, Carolyn (ENERGY/MEDEI/MRI) <Carolyn.Calwell@ontario.ca>; Rehob, James (ENERGY) <James.Rehob@ontario.ca>; Shear, Dan (ENERGY) <Dan.Shear@ontario.ca>; Kacaba, Jennifer (ENERGY) <Jennifer.Kacaba@ontario.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Hume, Steen (ENERGY) <Steen.Hume@ontario.ca>; Christie, Tim (ENERGY) <Tim.Christie@ontario.ca>; Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) <tyler.mcauley@opg.com>; John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com) <alan.hibben@rogers.com>; Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina' <Katrina.Niehaus@gs.com>; 'Benaiah, Ian' <ian.benaiah@rbccm.com>; Nevison, Gary (Gary.Nevison@tdsecurities.com) <Gary.Nevison@tdsecurities.com>; Thom, Trevor (Trevor.Thom@tdsecurities.com) <Trevor.Thom@tdsecurities.com>; Akman, Steven (Steven.Akman@tdsecurities.com) <Steven.Akman@tdsecurities.com>; Thompson, Susan (Susan.Thompson@tdsecurities.com) <Susan.Thompson@tdsecurities.com>; Manii, David (david.manii@tdsecurities.com) <david.manii@tdsecurities.com>; 'Persaud, Donnie - Debt Capital Markets' <Donnie.Persaud@cibc.com>; Hill, Krista <khill@torys.com>; 'Turnbull, Vickie' <vickie.turnbull@rbccm.com>; 'Dal Bello, David' <david.dalbello@rbccm.com>; Mansoori, Nina <nmansoori@torys.com>; 'Sebastiano, Rocco' <RSebastiano@osler.com>; 'Fitzpatrick, Michael F.' <MFitzpatrick@hunton.com>; michael.boll@ieso.ca; Kim Marshall <Kim.Marshall@ieso.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; 'Glenn Zacher' <GZacher@stikeman.com>; 'O'Brian, Adam' <aobrian@hunton.com>; Emes, Aaron <aemes@torys.com>; 'Peter Hamilton' <PHamilton@stikeman.com>; 'JORDA Jenny -FIN & C CTRL' <jenny.jorda@opg.com>; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS) <Nadine.Petsche@ontario.ca>
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Subject: RE: Ontario Fair Hydro Plan

Carolyn,

OPG, Torys, the Dealers, Oslers and Hunton & Williams had a call yesterday with a view to coming up with broader issues for discussion at this afternoon's meeting. Below is a list of what we believe are the broader issues. We expect that on the drafting issues you and Blakes continue to try to move legislative counsel closer to the last version of the Blakes memo that you circulated along with the draft Bill on Saturday night. We are inclined to leave you to pursue that process and will reserve any drafting comments until we see the next version of the Bill.

Our larger issues are:

1. It appears as though IESO will not be able to create a funding shortfall (regulatory asset) in a month when the Fair Adjustment would be less than "Past Over-Charges". How will Investors be able to get comfort that IESO is not selling an asset to a Financing Entity (FE) that might exceed "Past Over-Charges" ? Is there transparency around this calculation ? Is the information that would be required to due diligence this point publicly available ? Would it be reasonable to suggest that we could get a certification from MOE before each financing that the IESO shortfall together with all previous IESO shortfalls under this Act would not exceed Past Over-Charges ?

2. According to the note after s. 5 there will be a five year moratorium on clean energy adjustments (contrary to what we had been led to believe). This means that it will be necessary to capitalize all interest, financing charges and other expenses for five years. Hopefully this is just a case of the legislative drafting being behind the decision making. However, if this is the intention then it is a big problem. In additional to the financing challenges, we are advised that in order for the desired accounting treatment to be available it is necessary that there be sufficient cash flow to service the debt on a current basis. It will not be sufficient to purchase the regulatory asset at a deep discount or pay interest and expenses out of cash reserves.

3. In light of 2, the absence of a market disruption guarantee in s. 4 is most concerning. A market disruption guarantee could be contained in a contractual undertaking by the Crown, but since it is not included in s.4(3) lenders would have to be comfortable that the Province could do this outside of the provisions of the Act. We

suggest that section 4(3) be revised to provide the Minister with the broadest possible authority to enter into agreements in support of the Fair Allocation Plan rather than the limited scope currently provided.

4. We need more specificity around the "funding obligation" definition. Permit this definition to refer to the Regs (ie, “payment obligations as may be prescribed”).

5. How will Investors get comfortable that particular funding obligations have been incurred in accordance with the Financing Plan. The proposal in s. 9x(2)(b) is one solution but there appears to be some reluctance in the note to draft. I am not sure there is anyone else other than the Province who is capable of covering the consequences if a funding obligation is declared invalid because it was not issued in accordance with the FP, but this does not appear to be covered by s. 4. Our understanding was that there should be no adverse consequences if funding obligations are issued in a way that does not fit the Financing Plan. This is far from clear in the draft Bill.

6. In s. 12x(3) IESO should not have a statutory duty to "make reasonably diligent efforts". The standard of care should be set out in the applicable agreements and we expect that it will be to use the same standard of care that IESO currently uses in its role of collecting the GA amounts for electricity generators. But the standard should not be hardwired into the statute. We are all in agreement that IESO is not guaranteeing collections.

7. Section 8.1, items 2 to 6 are far too vague to be able to verify compliance. In any event, Investors cannot be expected to take a risk that their debt is not incompliance with the FAP. There needs to be some way to get assurances from the Province that once the Financial Services Manager has authorized the issuance of funding obligations by a Financing Entity there is no risk of such debt being declared invalidly issued or being declared as unauthorized debt.

8. In section 8.0.1(a) we would like an explanation of what is intended to be included. It is not clear to our regulatory lawyers that this is all “green energy”.

9. Section 11(1) must not state that the Financing Plan is cost-effective. It will clearly not be as cost-effective as direct funding by the Province.

10. There is still no restriction on who can be an owner of an investment asset (although section 26(1) appears to be heading in that direction). Is it necessary to define Financing Entity and limit investment asset owners to FEs, or is it OK to have an operating enterprise as an investment asset owner so long as it is administered by OPG on behalf of Brookfield ? Dealers have a concern that perhaps the Province (through an agency or Crown corporation) could become an investment asset owner and through something like a “collective rights agreement” affect the rights of other investors.

11. Section 22(1) needs to define the IESO funding shortfall precisely and determinatively. It cannot be subject to 22(1.1)(1). It must be determined each month before it is sold. Also, the Act should provide the basis by which IESO (in the absence of a transfer) would be entitled to recover this shortfall. (We understand that is required in order for IESO to treat the shortfall as a regulatory asset.) Also, s. 22.1(1) is a problem because we cannot have the recorded amount subject to an approval order from OEB (otherwise, any financing would be conditional on getting that order and ensuring that any possible appeal process has expired). Section 22.1(3) seems to contradict 22.1(1). Section 22.2(2) can't be based on actual use; it can only be based on estimated use. In sum, this section needs lots of work and probably much of it can be moved to the Regs.

12. Sections 23(1) and 23(2). We can't have the transfer of a regulatory asset be subject to the Financing Plan. Also, can't impose restrictions on the price at which IESO sells the regulatory asset. Sales must be conclusive and not subject to post-closing analysis.

13. Section 23.1 is a key section and it currently does not work as it should (hopefully because legislative counsel were working of an old version of the Blakes memo). I would redraft that section to read as follows:

'Upon transfer of the regulatory asset or a portion thereof to a transferee, the regulatory asset or portion thereof shall comprise a portion of the investment asset recoverable by the transferee in accordance with this Act and shall be immediately vested in such transferee."

I think it is also important to update the definition of "transfer" to catch the latest changes to the definition of "Disposition" in the Blakes memo (ie, that it includes a release by IESO of its right to recover its regulatory asset in order to enable the investment asset owner to recover such amount).

In a separate email we will also be sending to you and a smaller group than this some tax comments from OPG's perspective.

Michael K. Feldman

P. 416.865.7513

From: Calwell, Carolyn (ENERGY/MEDEI/MRI) [mailto:Carolyn.Calwell@ontario.ca]
Sent: April-15-17 10:06 PM
To: Rehob, James (ENERGY) <James.Rehob@ontario.ca>; Shear, Dan (ENERGY) <Dan.Shear@ontario.ca>; Kacaba, Jennifer (ENERGY) <Jennifer.Kacaba@ontario.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Hume, Steen (ENERGY) <Steen.Hume@ontario.ca>; Christie, Tim (ENERGY) <Tim.Christie@ontario.ca>; Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) <tyler.mcauley@opg.com>; John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com) <alan.hibben@rogers.com>; Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina' <Katrina.Niehaus@gs.com>; 'Benaiah, Ian' <ian.benaiah@rbccm.com>; Nevison, Gary (Gary.Nevison@tdsecurities.com) <Gary.Nevison@tdsecurities.com>; Thom, Trevor (Trevor.Thom@tdsecurities.com) <Trevor.Thom@tdsecurities.com>; Akman, Steven (Steven.Akman@tdsecurities.com) <Steven.Akman@tdsecurities.com>; Thompson, Susan (Susan.Thompson@tdsecurities.com) <Susan.Thompson@tdsecurities.com>; Manii, David (david.manii@tdsecurities.com) <david.manii@tdsecurities.com>; Feldman, Michael <mfeldman@torys.com>; 'Persaud, Donnie - Debt Capital Markets' <Donnie.Persaud@cibc.com>; Hill, Krista <khill@torys.com>; 'Turnbull, Vickie' <vickie.turnbull@rbccm.com>; 'Dal Bello, David' <david.dalbello@rbccm.com>;

Mansoori, Nina <nmansoori@torys.com>; 'Sebastiano, Rocco' <RSebastiano@osler.com>; 'Fitzpatrick, Michael F.' <MFitzpatrick@hunton.com>; michael.boll@ieso.ca; Kim Marshall <Kim.Marshall@ieso.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; 'Glenn Zacher' <GZacher@stikeman.com>; 'O'Brian, Adam' <aobrian@hunton.com>; Emes, Aaron <aemes@torys.com>; 'Peter Hamilton' <PHamilton@stikeman.com>; 'JORDA Jenny -FIN & C CTRL' <jenny.jorda@opg.com>; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS) <Nadine.Petsche@ontario.ca>
Cc: Myers, Jonathan <jmyers@torys.com>; Suzie Gignac (suzie.r.gignac@ca.ey.com) <suzie.r.gignac@ca.ey.com>; Blake Langill (blake.w.langill@ca.ey.com) <blake.w.langill@ca.ey.com>; LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>
Subject: Ontario Fair Hydro Plan

All - Please find attached the draft “Intergenerational Fairness in Hydro Rates Act, 2017”. A tremendous amount of work has gone into getting to this draft and much more work is required to get this ready for the House. The goal of sharing this document now is to further the process we have engaged in over the last weeks. In the attached, we have included notes to try to address where the drafting is not yet consistent with our thinking. These notes are neither comprehensive nor complete. They are intended only as flags and as colour to the draft. We have not forgotten the comments that you have already provided and we are continuing to working through the translation of the commercial terms we have been discussing into legislative language.

For ease of reference, included with the draft bill are the partially updated Blakes’ summary, a chart that attempts links the articles in that document to the sections of the bill (which is imperfectly numbered at best) and excerpts from the Electricity Act and the Ontario Energy Board Act, related to the consequential amendments.

In your review, please focus on the broad stroke concepts, rather than the minutia, and keep in mind the cascade of instruments that will be required – legislation first, then regulations and finally commercial agreements. We look forward to discussing the broader concepts on Monday

Carolyn Calwell

Legal Director

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

416-212-8392

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FW_ IESO-KPMG indemnity letter.rtf

From: Kim Marshall [Kim.Marshall@ieso.ca]
To: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
Subject: FW: IESO-KPMG indemnity letter
Date: Wednesday, August 30, 2017 07:58:59
Attachment 1: Draft Indemnity letter EY .docx
Attachment 2: Draft Indemnity letter IESO.docx

I can sign IESO – mirrors language already in our contract with KPMG – what do you think about the other for you and kpmg?

Kimberly Marshall | VP, Corporate Services & CFO

Independent Electricity System Operator (IESO) | T: (416) 969-6232 | C: (416) 545-7202

120 Adelaide Street West, Suite 1600, Toronto, ON M5H 1T1

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From: Picard, Michel [mailto:mpicard@kpmg.ca]
Sent: August 29, 2017 4:14 PM
To: Kim Marshall
Cc: Michael Boll
Subject: RE: IESO-KPMG indemnity letter

Kim,

Please find enclosed the draft letters for your review and signature.

Regards,

Michel

From: Picard, Michel
Sent: Tuesday, August 29, 2017 3:40 PM
To: 'Kim Marshall' <Kim.Marshall@ieso.ca>
Cc: Michael Boll <Michael.Boll@ieso.ca>
Subject: RE: IESO-KPMG indemnity letter

Will provide updated letters soon…

From: Kim Marshall [mailto:Kim.Marshall@ieso.ca]
Sent: Tuesday, August 29, 2017 11:16 AM
To: Picard, Michel <mpicard@kpmg.ca>
Cc: Michael Boll <Michael.Boll@ieso.ca>
Subject: Re: IESO-KPMG indemnity letter

Could we use the same letter with a revised first sentence reference to document(s)

Sent from my iPad

On Aug 29, 2017, at 8:44 AM, Picard, Michel <mpicard@kpmg.ca> wrote:

> Hi Kim,
>
> It does not. It is a different document.
>
> Michel

From: Kim Marshall [mailto:Kim.Marshall@ieso.ca]
Sent: Tuesday, August 29, 2017 7:40 AM
To: Picard, Michel <mpicard@kpmg.ca>
Cc: Michael Boll <Michael.Boll@ieso.ca>
Subject: IESO-KPMG indemnity letter

Michel, attached is the indemnity letter previously signed by IESO and KPMG. We believe this covers the release of the KPMG material to E&Y – agreed thanks

Kimberly Marshall | VP, Corporate Services & CFO

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From: Picard, Michel [mailto:mpicard@kpmg.ca]
Sent: May 18, 2017 9:03 AM
To: Bruce Campbell
Cc: Michael Boll; Kim Marshall
Subject: RE: Final letter

All,

Please find enclosed the signed indemnity letter.

Regards,

Michel

From: Bruce Campbell [mailto:bruce.campbell@ieso.ca]
Sent: Thursday, May 18, 2017 8:20 AM
To: Picard, Michel <mpicard@kpmg.ca>
Cc: Michael Boll <Michael.Boll@ieso.ca>; Kim Marshall <Kim.Marshall@ieso.ca>; Bruce Campbell <bruce.campbell@ieso.ca>
Subject: RE: Final letter

Mr. Picard – attached is the signed letter. Can you please fully execute and return a copy to us.

Thank you,

Lorraine Turnevicius

For Bruce Campbell

Lorraine Turnevicius | Executive Assistant

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From: Picard, Michel [mailto:mpicard@kpmg.ca]
Sent: May 17, 2017 5:36 PM
To: Bruce Campbell
Cc: Michael Boll; Kim Marshall
Subject: RE: Final letter

Thanks Bruce.

As agreed over the phone, you can release the report to the Ministry on the provisio that you sign tomorrow the EL as provided to you a few minutes ago, a copy of which is attached.

Good evening,

Michel

From: Bruce Campbell [mailto:bruce.campbell@ieso.ca]
Sent: Wednesday, May 17, 2017 5:30 PM
To: Picard, Michel <mpicard@kpmg.ca>
Cc: Michael Boll <Michael.Boll@ieso.ca>; Kim Marshall <Kim.Marshall@ieso.ca>
Subject: FW: Final letter

Thank you Michel – as discussed we will be sending the material to the Ministry now – we will get you a signed copy in the morning.

Bruce

Bruce Campbell | President & CEO

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From: Picard, Michel [mailto:mpicard@kpmg.ca]
Sent: May 17, 2017 5:15 PM
To: Bruce Campbell
Subject: Final letter

Bruce,

Please find enclosed the final indemnity letter. We have accepted your last suggestion.

Michel Picard, CPA, CA

Partner, Accounting Advisory Services

KPMG LLP

333 Bay Street, Suite 4600

Toronto, Ontario, M5H 2S5

T 416 777 8414

M 416 560 2569

mpicard@kpmg.ca

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Draft Indemnity letter EY .pdf

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Ms. Cindy Veinot
Treasury Board Secretariat, Office of the Provincial Controller
Frost Building South
7 Queen's Park Crescent East
Toronto, Ontario, M7A 1Y7
Canada

August 29, 2017

Dear Madam:

In connection with the preparation of a technical accounting paper by the Office of the Provincial Controller Department (the "OPCD") related to the Fair Hydro Plan, 2017, KPMG LLP ("KPMG") understands that the OPCD has requested that a copy of our Memorandum to File dated July 25, 2017 be provided to their accounting adviser, Ernst and Young LLP ("EY"). In regards to this request, the Independent Electricity System Operator ("the IESO") has asked that we allow EY access to our Memorandum to File prepared in connection with our audit of the 2016 financial statements of the IESO. We have received authorization from IESO management to allow EY such access to our Memorandum prepared in the course of the audit.

Our audit of the 2016 financial statements of the IESO was conducted in accordance with generally accepted auditing standards, the objective of which was to form an opinion on whether the financial statements, which are the responsibility and representations of management of the IESO, present fairly, in all material respects, the financial position and results of operations and cash flows of the IESO in conformity with generally accepted accounting principles. Under those standards, we have the responsibility, within the inherent limitations of the auditing process, to design our audit to provide reasonable assurance of detecting errors and irregularities that are material to the financial statements and to exercise due care in the conduct of our audit. The concept of selective testing of the data being audited, which involves judgment regarding both the number of transactions to be audited and the areas to be tested, has been generally accepted as a valid and sufficient basis for an auditor to express an opinion on financial statements. Thus, our audit, based on the concept of selective testing, is subject to the inherent risk that material errors or irregularities, if they exist, will not be detected. In addition, an audit does not address the possibility that material errors or irregularities may occur in the future. The conduct of an audit requires the application of professional judgment and the assessment of materiality in connection with financial statement assertions.

Our audit of the IESO's 2016 financial statements was not planned or conducted in contemplation of the preparation of a technical accounting paper related to the Fair Hydro Plan and may not be appropriate for your purposes. Items of possible interest to OPCD may not have been specifically addressed.

We have not reported on the IESO's financial statements for any period subsequent to December 31, 2016 and significant events may have occurred since that date. Our Memorandum prepared in connection therewith and our responses to EY's questions, should not be taken to supplant other inquiries

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and procedures that OPCD should undertake for the preparation of the technical accounting paper described above or for any other purpose.

We accept no responsibility whatsoever for any reliance that OPCD, EY or any other person or body may place on the information provided by us.

In consideration of our permitting access to the Memorandum referred to above and for providing explanations relating to it if asked, and to the information contained therein, OPCD (on behalf of itself, all parties acting for it in the preparation of the technical accounting paper, all recipients of the technical accounting paper, all connected persons and entities and the accounting adviser EY - “the OPCD Parties”) agrees that:

a) such access to our Memorandum and provision of information and explanations is not provided pursuant to any agreement or other arrangements of a contractually binding nature between our firm and any of the OPCD Parties;

b) the OPCD Parties do not acquire any rights against our firm or otherwise as a result of such access or as a result of what our Memorandum contain;

c) our firm, our partners and staff do not have any duties, responsibilities, liabilities, or obligations to the OPCD Parties as a result of permitting such access or providing such information and explanations;

d) the OPCD Parties will not commence any action, suit or proceeding or make any demand, complaint or claim against us arising out of permitting such access or providing such information and explanation, or for any omission therein unless such action, suit or proceeding arises from our willful misconduct or failure to act in good faith in responding to specific questions raised by Ernst and Young.

OPCD also agrees that except as required by law, the information acquired as a result of the review of our Memorandum will be maintained in confidence and will not be disclosed to any third party (except as otherwise permitted herein) and will be used by it and EY in connection with the preparation of the technical accounting paper described above and that it will show this letter to, and secure the commitment to the provisions of this paragraph by EY.

Please confirm your agreement with the foregoing by signing and dating a copy of this letter and returning it to us.

Yours very truly

Michel Picard
Partner
416) 777 -8414

We are in agreement with the terms of this letter and to the release of the information as described.

Office of the Provincial Controller Department of the Province of Ontario

by: _____ _____

Signature: Date:

Name: Ms Cindy Veinot

Title: Treasury Board Secretariat, Office of the Provincial Controller

We acknowledge that we have read the foregoing and agree to be bound by the foregoing agreement in connection with our access to KPMG' Memorandum.

Ernst and Young LLP

by: _____ _____

Signature: Date:

Name:

Title:

Draft Indemnity letter IESO.pdf

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DRAFT

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Ms. Kimberly Marshall
VP, Corporate Services & CFO
Independent Electricity System Operator

120 Adelaide Street West Suite 1600
Toronto, ON
M5H 1T1

August 29, 2017

Dear Madam:

We write in connection with our Memorandum to File dated July 25, 2017, which addressed the issues raised by the Office of the Auditor General in its email sent to John Gordon on June 20, 2017, regarding our audit opinion of the financial statements of the Independent Electricity System Operator ("the IESO") for the financial year ended December 31, 2016.

KPMG LLP ("KPMG") understands that the Office of the Provincial Controller Department (the "OPCD") has requested that a copy of our Memorandum be provided to their accounting adviser, Ernst and Young LLP ("EY"), to assist in their preparation of a technical accounting paper addressing similar issues to those contained in our Memorandum. We agree to the IESO providing a copy of the Memorandum to Ernst and Young LLP.

The IESO will accept the risk, and not hold KPMG responsible, if providing the Memorandum to Ernst and Young LLP directly or indirectly results in any actions, damages, claims, fines, penalties, complaints, demands, suits, proceedings, liabilities, costs, expenses, or losses (collectively "Claims") against or to the IESO.

In the event of any Claims by any third party against KPMG that directly or indirectly arise out of or relate to the IESO providing a copy of the Memorandum to EY, the IESO will indemnify and hold harmless KPMG from all such Claims, including without limitation, reasonable legal fees, except to the extent finally determined to have resulted from the intentional, deliberate or fraudulent misconduct of KPMG.

For purposes of this letter, the term "KPMG" shall include its subsidiaries, its associated and affiliated entities and their respective current and former partners, directors, officers, employees, agents and representatives. This letter shall apply regardless of the form of Claim, whether in contract, statute, tort (including, without limitation, negligence) or otherwise.

Please indicate your acceptance to the terms of this letter and to our providing the requested information to the recipient by signing and returning a copy of this letter to the undersigned.

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Yours very truly,

Michel Picard
Partner
416) 777 -8414

We are in agreement with the terms of this letter and to the release of the information requested.

Independent Electricity System Operator

by: _____ _____

Signature: Date:

Name: Ms Kim Marshall

Title: VP, Corporate Services & CFO

FW_ Indemnity letters.rtf

From: Kim Marshall [Kim.Marshall@ieso.ca]
To: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
Subject: FW: Indemnity letters
Date: Wednesday, February 14, 2018 11:00:39
Attachment 1: CPO Letter.pdf
Attachment 2: IESO Letter.pdf

For discussion later today

Kimberly Marshall | VP, Corporate Services & CFO

Independent Electricity System Operator (IESO) | T: (416) 969-6232 | C: (416) 545-7202

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From: Picard, Michel [mailto:mpicard@kpmg.ca]
Sent: February 14, 2018 9:19 AM
To: Kim Marshall
Subject: Indemnity letters

Hi Kim,

We need to obtain an indemnity letter from both IESO and OPCD before our opinion can be provided to OPCD.

In that respect, I attached the required letters.

Regards,

Michel Picard, CPA, CA

Partner, Accounting Advisory Services

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Ms. Cindy Veinot
Treasury Board Secretariat, Office of the Provincial Controller
Frost Building South
7 Queen's Park Crescent East
Toronto, Ontario, M7A 1 Y7
Canada

February 14, 2018

Dear Madam:

In connection with the preparation of a technical accounting paper by the Office of the Provincial Controller Division, Treasury Board Secretariat (the "Recipient") related to the Fair Hydro Plan, 2017, KPMG LLP ("KPMG") understands that you have requested a copy of our letter to IESO, dated February 12, 2018, regarding our accounting opinion on the application of PSAS to the consolidation of a trust, and to the recognition and derecognition of a variance account in relation to the Ontario Fair Hydro Plan Act, 2017 (the "Document").

KPMG is prepared to consent to IESO providing you with a copy of the Document subject to your agreement to the terms of this letter agreement.

The Document was prepared solely in accordance with the specific terms of reference (the "Engagement Letter") agreed between ourselves and IESO for their exclusive use and for no other purpose.

The Document should not be regarded as suitable for use by any person or persons other than the addressees of the Document or for any purpose other than set out in the Engagement Letter. We accept no responsibility or liability for any reliance that the Recipient may place on the Document.

You should note that we have not sought to update the Document for events subsequent to February 12, 2018 and significant events may well have occurred since that date.

In consideration of IESO providing the Document to the Recipient, the Recipient hereby agrees to the following:

a) No one at KPMG is authorized by KPMG to make any representations to the Recipient with respect to IESO. Nor may anyone at KPMG provide the Recipient with the Document on any basis which is inconsistent with or varies or adds to the terms of this letter;

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b) KPMG neither warrants nor represents that the Document is accurate, complete, sufficient or appropriate for any purpose contemplated by the Recipient;

c) The Document is not provided pursuant to any agreement or other arrangement of a contractually binding nature between our firm and the Recipient;

d) The Recipient does not acquire any rights against our firm or otherwise as a result of our agreement to disclose the Document to the Recipient;

e) Our firm and personnel do not have any duties, responsibilities, liabilities or obligations to the Recipient relating to the Document; and

f) The Recipient will not commence any action, suit or proceeding or make any demand, complaint or claim against us relating to the Document.

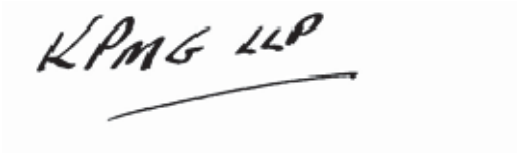
Also, in the event of a claim against KPMG or its personnel which arises out of or relates to our providing access to the Document by the Recipient, the Recipient will indemnify and hold harmless KPMG, its partners and personnel from all such claims, liabilities, damages, costs and expenses.

Further the Recipient agrees that the Document will be maintained by it in strict confidence and not disclosed to any other party, will be used by it only in connection with purpose described above, and that the Recipient will notify KPMG promptly of any request received by Recipient from any court, regulatory authority or other person or entity with respect to the Document.

This letter sets out the entire understanding of the parties in relation to the conditions upon which access to the Document is provided and replaces all prior understandings, if any, made by KPMG.

Please indicate your acceptance to the terms of this letter by signing and returning one copy of this letter to the undersigned.

Yours very truly



Michel Picard
Partner

****

The Recipient hereby acknowledges that it understands and agrees to the conditions upon which the Document is provided.

Office of the Provincial Controller, Ontario Treasury Board Secretariat

by: _____ _____

Signature Date

Name: Ms. Cindy Veinot
Title: Treasury Board Secretariat, Office of the Provincial Controller

IESO Letter.pdf

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M5H 2S5

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Ms. Kim Marshall
VP, Corporate Services & CFO
Independent Electricity System Operator ("**IESO**")

120 Adelaide Street West Suite 1600
Toronto, ON
M5H 1T1

February 14, 2018

Dear Madam:

In connection with the Government of Ontario's Fair Hydro Plan, IESO has requested that KPMG LLP ("**KPMG**") consent to the provision of a copy of our letter to IESO, dated February 12, 2018, regarding our accounting opinion on the application of PSAS to the consolidation of a trust, and to the recognition and derecognition of a variance account in relation to the Ontario Fair Hydro Plan Act, 2017 (the "**Document**") to the Office of the Provincial Controller, Ontario Treasury Board Secretariat (the "**Recipient**").

We are prepared to agree to IESO providing the Document to the Recipient subject to the Recipient agreeing to KPMG's terms and conditions for such disclosure, and to your agreement to the terms of this letter.

IESO will accept the risk, and not hold KPMG responsible, if providing the Document to the Recipient directly or indirectly results in any actions, damages, claims, fines, penalties, complaints, demands, suits, proceedings, liabilities, costs, expenses, or losses (collectively "Claims") against or to IESO.

In the event of any Claims by any third party against KPMG that directly or indirectly arise out of or relate to IESO providing a copy of the Document to the Recipient, IESO will indemnify and hold harmless KPMG from all such Claims, including without limitation, reasonable legal fees, except to the extent finally determined to have resulted from intentional, deliberate or fraudulent misconduct of KPMG.

For purposes of this letter, the term KPMG shall include it subsidiaries, its associated and affiliated entities and their respective current and former partners, directors, officers, employees, agents and representatives. This letter shall apply regardless of the form of the Claim, whether in contract, statute, tort (including, without limitation, negligence) or otherwise.

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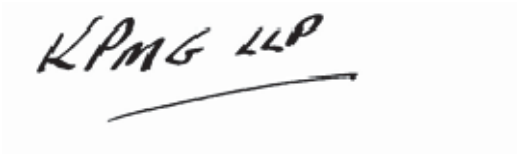
Please indicate your acceptance to the terms of this letter by signing and returning a copy of this letter to the undersigned.

Yours very truly,



Michel Picard
Partner

****

We are in agreement with the terms of this letter agreement.

INDEPENDENT ELECTRICITY SYSTEM OPERATOR

by: _____ _____
Signature: Date:

Name: Ms. Kim Marshall
Title: VP, Corporate Services & CFO

FW_ Issue tracker.rtf

From: Lee Anne Probert [leeanne.probert@ca.ey.com]
To: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
Subject: FW: Issue tracker
Date: Friday, May 12, 2017 08:31:22
Attachment 1: image001.gif
Attachment 2: Issue tracker OPCD Fair Hydro Act - updated April 27.xlsx

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LeeAnne Probert | Senior Manager | Assurance Services

Ernst & Young LLP

Office: 416 943 3554 | leeanne.probert@ca.ey.com

From: Suzie Gignac
Sent: Thursday, April 27, 2017 5:31 PM
To: Petsche, Nadine (TBS) <Nadine.Petsche@ontario.ca>
Cc: Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Blake Langill <blake.w.langill@ca.ey.com>; Lee Anne Probert <leeanne.probert@ca.ey.com>
Subject: Issue tracker

Hi Nadine:

Pls find attached an updated issue tracker which has been revised to include a list of possible white papers and related considerations. We spoke with the OPG team earlier this week so we can provide an update on those discussions tomorrow morning as well as discuss comments on the updated version of the legislation.

I will do my best to be on the call tomorrow. If I can't though, both Blake and Lee Anne have indicated that they expect to be on the call.

Thanks,

Suzie

Suzanne Gignac, Partner, CPA, CA

Ernst & Young LLP / Ernst & Young s.r.l./S.E.N.C.R.L.

99 Bank Street, Suite 1200, Ottawa, Ontario K1P 6B9, Canada

Direct: 1 613 598 4376 | Fax: 1 613 232 5324 | suzie.r.gignac@ca.ey.com

Executive Coordinator, Carolyn Roberts | Phone: 613 598 4844 | carolyn.roberts@ca.ey.com

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image001.pdf

Issue tracker OPCD Fair Hydro Act - updated April 27.pdf

OPCD - Fair Hydro Act
Risk and Issue Log

ID#		Request	Purpose
1		Support in preparing white papers	
	a	Substance of transaction - why it is being structured this way	support for document structure
	b	Document understanding of the transition of asset from RRA in IESO to Intangible in OPG and document flow of interest/admin charge component and any possible impact on Public Accts	Document support for assets
	c	Document impact of 3070 and 3420 on the transactions based on current structure and if there is no RRA	
	d	Document support for RRA accounting on Province's books if any left in IESO at a period end	
	e	What issues could take place that would result in OPG no longer controlling the structure and impact on Public Accounts	document possible impacts of changes to structure
	f	Document impact if clean energy charged deemed an unconstitutional tax	
2		Obtain logic model for legislation	Support understanding of flow of transactions and related rate setting activities
3		Obtain white paper from OPG re: acctg for structure and review from Public Accounts perspective - consider consolidation of OPG Trust, intangible asset including impact of interest component in the intangible asset	Additional support for structure/control/transition to intangible asset
4		Obtain white paper from IESO re: accounting for RRA	Additional support for structure/control/RRA
5		Read various legal documents	General comments or issues related to document

6	Reach out to global network for examples of other PS entities following RRA (following standards other than US GAAP and IFRS)	Support posifor RRA in public sector financial statements
7	Provide comments on IESO memo re: RRA accounting	Strengthen position/identify risks wrt RRA accounting

Timeline to complete	Date of update	Date closed

in progress	sent email April 17	No examples identified to-date

Comments sent Thursday April 20

Comments (Additional information)
Individual white papers to be combined to form final document
consider market, dealers, OPG role, etc. Wait to see support from OPG paper on the substance of the transaction.

- current acctg is that it does not meet criteria of financial asset for OPG because buying from a ratepayer class and not an RRA in OPG because no costs incurred by Trust which leaves intangible but then need to explain impact of financing costs on the asset. Understand that OPG Trust will bill IESO for interest and admin costs - included in the RRA - trust will borrow to buy that RRA component. Also, consider how intangible will be derecognized. Waiting on OPG/IESO papers

including map out of entries

-waiting on IESO memo

guarantee, termination clause, kick out rights, other entities involved in transaction; consider accounting if in, say 5 years, new legislation comes along that wipes out the structure - waiting on OPG paper as base

understanding of how FAP/FP/rate setting will work together and achieve appropriate deferrals and financing along with changes to those throughout the period (year 1-5, year 6, etc.)

include discussion with OPG EY team

Comments on consultation v3 sent April 22; comments on April 26 v4 of legislation provided on April 27

Waiting for next version of IESO memo

FW_ Market participants.rtf

From: Kim Marshall [Kim.Marshall@ieso.ca]
To: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
CC: Donaldson, Mark (TBS) [Mark.Donaldson@ontario.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]
Subject: FW: Market participants
Date: Thursday, August 31, 2017 15:21:03

Kimberly Marshall | VP, Corporate Services & CFO

Independent Electricity System Operator (IESO) | T: (416) 969-6232 | C: (416) 545-7202

120 Adelaide Street West, Suite 1600, Toronto, ON M5H 1T1

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Conservation: www.saveONenergy.ca | Twitter: saveONenergyOnt | LinkedIn: saveONenergy

From: Marina Mogus
Sent: August 31, 2017 3:19 PM
To: Natalie Schaus; Susan Nicholson; Kim Marshall
Cc: Beth Barrington; Marina Mogus
Subject: FW: Market participants

Hello,

Some of the largest **Generators** are:

Bruce Power, Brookfield Renewable Power, Goreway Station Partnership, Portlands

Energy Centre LP, Iroquois Falls Power Corp and Portlands Energy Centre LP. OPG is typically within the top 10.

Our top **LDCs** include:

Toronto Hydro, Hydro One Networks Inc., Alectra Utilities, Hydro Ottawa and HQ Energy Marketing Inc.

Thanks,

Marina

From: Susan Nicholson
Sent: August 31, 2017 1:02 PM
To: Marina Mogus; Natalie Schaus; Beth Barrington
Cc: Kim Marshall
Subject: Fwd: Market participants

Can you please send Kim a quick list of generators and LDCs. Thanks.

Sent from my iPhone

Begin forwarded message:

> **From:** "Veinot, Cindy (TBS)" <Cindy.Veinot@ontario.ca>
> **Date:** August 31, 2017 at 12:34:44 PM EDT
> **To:** Susan Nicholson <susan.nicholson@ieso.ca>, Kim Marshall <Kim.Marshall@ieso.ca>
> **Cc:** "Donaldson, Mark (TBS)" <Mark.Donaldson@ontario.ca>, "Hosick, Sarah (TBS)" <Sarah.Hosick@ontario.ca>
> **Subject: Market participants**
>
> Hi Susan and Kim – do you have a list of the market participants divided by

producers and users that you could share with us. I've included the following in a deck re: the market accounts and wanted to have a few other entity names to reference. I don't need a complete list, so even 5 of the largest on each side would be great. Today if possible.

Thanks,

Cindy

Slide content

§ The IESO is a party to the contracts with each market participant, and each market participant either owes an amount to the IESO or is owed an amount from the IESO.

§ For example:

- Ontario Power Generation has a receivable from IESO recorded on its financial statements related to power generated, and historically, IESO did not have a payable recorded to Ontario Power Generation – now it does

- Hydro One has a payable to IESO recorded on its financial statements related to power purchases, and historically, IESO did not have a receivable recorded from Hydro One – now it does

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FW_ Meeting between AGO and Elio Luongo - Privileged and Confidential .rtf

From: Kim Marshall [Kim.Marshall@ieso.ca]
To: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
Subject: FW: Meeting between AGO and Elio Luongo - Privileged and Confidential
Date: Tuesday, February 27, 2018 15:36:00
Attachment 1: imagee7abb9.GIF

---

fyi

Kimberly Marshall | VP, Corporate Services & CFO

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From: John Rattray
Sent: February 24, 2018 4:29 PM
To: Kim Marshall; Terry Young; Peter Gregg; Tim O'Neill; carole.workman@bell.net
Subject: Fwd: Meeting between AGO and Elio Luongo - Privileged and Confidential

FYI

Sent from my iPhone

Begin forwarded message:

From: Ed Waitzer <EWaitzer@stikeman.com>

Date: February 24, 2018 at 9:24:40 AM GMT-5
To: "John.Rattray@ieso.ca" <John.Rattray@ieso.ca>
Subject: Fwd: Meeting between AGO and Elio Luongo - Privileged and Confidential

Edward J. Waitzer

Direct: +1 416 869 5587<tel:+1%20416%20869%205587>
Mobile: +1 416 617 9748<tel:+1%20416%20617%209748>
Email: ewaitzer@stikeman.com<mailto:ewaitzer@stikeman.com>

Begin forwarded message:

[cid:cc0f760f46f5403c9cba05203282938a]<https://na01.safelinks.protection.outlook.com/?url=http%3A%2F%2Fwww.stikeman.com&data=01%7C01%7Cjohn.rattray%40ieso.ca%7C77b696460731403a83f308d57b925acb%7C7cd55abd63f243c58f4bd38ea458add8%7C0&sdata=7xxzX%2BPX4lHDraUn1zv5VnfxMVpoHCz1QKC7MPz7y6M%3D&reserved=0>

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Stikeman Elliott LLP Barristers & Solicitors

5300 Commerce Court West, 199 Bay Street, Toronto, ON M5L 1B9 Canada<https://na01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fstikeman.com%2Fen-ca%2Foffices%2Ftoronto&data=01%7C01%7Cjohn.rattray%40ieso.ca%7C77b696460731403a83f308d57b925acb%7C7cd55abd63f243c58f4bd38ea458add8%7C0&sdata=xYUPHivLyJiY8Y%2F5LH0o1VUfVbvge3aBqj3CAqfFPgQ%3D

&reserved=0>

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From: "BERG, BRAD"
<BRAD.BERG@blakes.com<mailto:BRAD.BERG@blakes.com>>
Date: February 24, 2018 at 9:20:25 AM EST
To: "Mr. Edward J. Waitzer"
<EWaitzer@stikeman.com<mailto:EWaitzer@stikeman.com>>, Peter Howard
<PHoward@stikeman.com<mailto:PHoward@stikeman.com>>
Cc: "DIMATTEO, CHRISTOPHER"
<CHRISTOPHER.DIMATTEO@blakes.com<mailto:CHRISTOPHER.DIMATTEO@blakes.com>>
Subject: Fwd: Meeting between AGO and Elio Luongo - Privileged and Confidential

I've been asked to share the account below with you.

The Globe is also pressing KPMG with more questions. We will likely respond on Monday with the same answers as before, repackaged. If the substance is different, we will canvass you first as usual.

My observation (not my client's) - this has been an arduous experience. Obviously, for your client too.

Let's stay close as this unfolds.

Brad

Bradley E. Berg, FCIArb
Partner
brad.berg@blakes.com<mailto:brad.berg@blakes.com><mailto:brad.berg@blakes.com>
Direct: 416.863.4316<tel:416.863.4316>

_____

[cid:imagee7abb9.GIF@aaa29fa5.4bb4b5a6]

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Tel: 416-863-2400 Fax: 416-863-2653
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Twitter<https://na01.safelinks.protection.outlook.com/?url=http%3A%2F%2Ftwitter.com%2FBlakesLaw%2F&data=01%7C01%7Cjohn.rattray%40ieso.ca%7C77b696460731403a83f308d57b925acb%7C7cd55abd63f243c58f4bd38ea458add8%7C0&sdata=hAuDu5Y%2Bff9xvbjgvpGN%2BX8IxEODY2OdU1Ao21B%2Fzg8%3D&reserved=0> |
Unsubscribe<https://na01.safelinks.protection.outlook.com/?url=http%3A%2F%2Fwww.blakes.com%2FEnglish%2FResources%2FBulletins%2FPages%2Funsubscribe.aspx&data=01%7C01%7Cjohn.rattray%40ieso.ca%7C77b696460731403a83f308d57b925acb%7C7cd55abd63f243c58f4bd38ea458add8%7C0&sdata=vvlzXiBfEfa03xHM93Fzg5%2FVenbmXKn5n1t11sUZKZ4%3D&reserved=0>

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From: "Gordon, John A"
<johngordon@kpmg.ca<mailto:johngordon@kpmg.ca><mailto:johngordon@kpmg.ca>>
Date: February 24, 2018 at 9:08:02 AM EST
To: "Sahagian, Peter B"

<psahagian@kpmg.ca<mailto:psahagian@kpmg.ca><mailto:psahagian@kpmg.ca>>, "Winton, Paul" <pwinton@kpmg.ca<mailto:pwinton@kpmg.ca><mailto:pwinton@kpmg.ca>>, "Betik, Matthew" <mbetik@kpmg.ca<mailto:mbetik@kpmg.ca><mailto:mbetik@kpmg.ca>>, "Luongo, Elio" <eluongo@kpmg.ca<mailto:eluongo@kpmg.ca><mailto:eluongo@kpmg.ca>>, "BERG, BRAD" <BRAD.BERG@blakes.com<mailto:BRAD.BERG@blakes.com><mailto:BRAD.BERG@blakes.com>>, "DIMATTEO, CHRISTOPHER" <CHRISTOPHER.DIMATTEO@blakes.com<mailto:CHRISTOPHER.DIMATTEO@blakes.com><mailto:CHRISTOPHER.DIMATTEO@blakes.com>>
Cc: "Maher, Mary Lou" <mmaher@kpmg.ca<mailto:mmaher@kpmg.ca><mailto:mmaher@kpmg.ca>>, "Gordon, John A" <johngordon@kpmg.ca<mailto:johngordon@kpmg.ca><mailto:johngordon@kpmg.ca>>
Subject: Meeting between AGO and Elio Luongo - Privileged and Confidential

Elio and I went to AGO office on Thursday afternoon. In attendance from AGO were bonnie Lysyk, Susan Klein and an individual that took notes. There was no indication of any reason why we wouldn't share the outcome of this discussion with our client.

Summary of the discussion:

· Bonnie talked through the background, providing Elio with her perspective on the problem and concern. Her comments here were similar to those of previous meetings

· She talked about how she knows that they are right, because they understand government accounting;

· She referred to her due diligence involving Tim Beauchamp (former director/staff at PSAB);

· She referred to letters from other AG offices in Canada

· She referred to letters from other firms. She acknowledged the comments in our letter of earlier in the day. Elio asked about whether any of those firms were big 4 firms. Again she refused to provide any info on who they were, noting that to do so would make it difficult for them to work with her in the future (which is a curious comment that transparency of their work would be concern to them)

· She criticized us for not engaging in discussion with her team on the technical aspects of the materials provided to us.

· She asked about our internal due diligence. We indicated that we had involved many senior people including Dowad, Owen, Dotzlaw, Janet Allen, Picard, and Betik. She asked about Janel Allen, and we indicated that she was a retired partner that had been involved prior to her retirement. Bonnie made a somewhat vague comment about how she understood that someone that had left the firm might now have a different view. (I Subsequently spoke to Janet Allen and she has not had any discussions with AGO reps since retirement).

· Bonnie referred to emails that indicated contrary views to the final view. She did not seem to accept that the thought process, and accordingly the emails, reflected a process of research, and evolving thinking on basis of that research.

· Bonnie referred to her right to timely communication on accounting policy changes, and how we had missed those deadlines in Feb 2017, until it was too late. She did not acknowledge that the Province reporting timeline is 3 months later;

· Bonnie referred to our participation in the press briefing with our client and reps from the Province. I indicated that our role there was no different than at any AGM. Our client asked us to attend in case there were questions about our audit. (there were no questions)

· Bonnie referred to Mat advising the Board/AC of IESO that “this” wasn’t a good idea (subsequently Mat Betik advises that he has not recollection of any such comments)

· Bonnie referred to conflict (from her perspective) of being involved in advising IESO and also as auditors;

· Bonnie asked us why we would not accept her suggestion of changing to “an appropriately disclosed basis of accounting”. I indicated that this would require a regulation to be issued, and IESO to make a different decision on accounting policies, both of which were out of our control. She suggested that a regulation could be passed quickly. I suggested that it might be unlikely that the Government would do that

· Bonnie asked again why we didn’t encourage our client to have us do a joint audit. We indicated that this was a matter for them to decide. We indicated that we ensured they were aware of her comments, but that this was out of our control;

· Bonnie encouraged us to resign for a period of 1 or 2 years, and that the AGO could “clean this up” and we could resume our role as auditors after that – noted that “I don’t want to be auditors for the long term”. It was not clear whether she was referring to resigning before the completion of our 2017 audit, or form future audits.

· Bonnie referred to the Board of IESO saying that “I have never seen anything like it”. Not clear what she meant.

· Elio spoke about how Bill Thomas had advised him of this matter after the AGO call to Bill last year, and how he had ensured we were taking this matter seriously, and had ensure we had the right people involved such as Gordon and our most senior technical people, and that we had engaged DT

· Bonnie asked about our process to select the partner at DT. We indicated again, that our request was to the leader of their professional Practice Group. She indicated that Kerry Danyluk did not have experience in the area. We indicated that our report was from DT as a firm, and that we were aware that they had involved a number of people rather than just KD.

· I indicated that while our team had previous opportunities to hear the AGOs perspective, this discussion had been useful for Elio, and that it would be constructive for him to go back and discuss with our team. We referred to the acceptance (as noted in our letter) of the AGOs request for another technical session. She had not yet had a chance to read that letter, or share it with her team. She asked about the adjustment to the iESO process/timing and we referred to our understanding that they were willing to wait until after March 6th .

JAG

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FW_ Meeting between AGO and Elio Luongo - Privileged and Confidential .rtf

From: Kim Marshall [Kim.Marshall@ieso.ca]
To: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
Subject: FW: Meeting between AGO and Elio Luongo - Privileged and Confidential
Date: Tuesday, February 27, 2018 15:36:00
Attachment 1: imagee7abb9.GIF

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fyi

Kimberly Marshall | VP, Corporate Services & CFO

Independent Electricity System Operator (IESO) | T: (416) 969-6232 | C: (416) 545-7202

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Sent: February 24, 2018 4:29 PM
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Subject: Fwd: Meeting between AGO and Elio Luongo - Privileged and Confidential

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Subject: Fwd: Meeting between AGO and Elio Luongo - Privileged and Confidential

Edward J. Waitzer

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Mobile: +1 416 617 9748<tel:+1%20416%20617%209748>
Email: ewaitzer@stikeman.com<mailto:ewaitzer@stikeman.com>

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Date: February 24, 2018 at 9:20:25 AM EST
To: "Mr. Edward J. Waitzer"
<EWaitzer@stikeman.com<mailto:EWaitzer@stikeman.com>>, Peter Howard
<PHoward@stikeman.com<mailto:PHoward@stikeman.com>>
Cc: "DIMATTEO, CHRISTOPHER"
<CHRISTOPHER.DIMATTEO@blakes.com<mailto:CHRISTOPHER.DIMATTEO@blakes.com>>
Subject: Fwd: Meeting between AGO and Elio Luongo - Privileged and Confidential

I've been asked to share the account below with you.

The Globe is also pressing KPMG with more questions. We will likely respond on Monday with the same answers as before, repackaged. If the substance is different, we will canvass you first as usual.

My observation (not my client's) - this has been an arduous experience. Obviously, for your client too.

Let's stay close as this unfolds.

Brad

Bradley E. Berg, FCIArb
Partner
brad.berg@blakes.com<mailto:brad.berg@blakes.com><mailto:brad.berg@blakes.com>
Direct: 416.863.4316<tel:416.863.4316>

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<johngordon@kpmg.ca<mailto:johngordon@kpmg.ca><mailto:johngordon@kpmg.ca>>
Date: February 24, 2018 at 9:08:02 AM EST
To: "Sahagian, Peter B"

<psahagian@kpmg.ca<mailto:psahagian@kpmg.ca><mailto:psahagian@kpmg.ca>>, "Winton, Paul" <pwinton@kpmg.ca<mailto:pwinton@kpmg.ca><mailto:pwinton@kpmg.ca>>, "Betik, Matthew" <mbetik@kpmg.ca<mailto:mbetik@kpmg.ca><mailto:mbetik@kpmg.ca>>, "Luongo, Elio" <eluongo@kpmg.ca<mailto:eluongo@kpmg.ca><mailto:eluongo@kpmg.ca>>, "BERG, BRAD" <BRAD.BERG@blakes.com<mailto:BRAD.BERG@blakes.com><mailto:BRAD.BERG@blakes.com>>, "DIMATTEO, CHRISTOPHER" <CHRISTOPHER.DIMATTEO@blakes.com<mailto:CHRISTOPHER.DIMATTEO@blakes.com><mailto:CHRISTOPHER.DIMATTEO@blakes.com>>
Cc: "Maher, Mary Lou" <mmaher@kpmg.ca<mailto:mmaher@kpmg.ca><mailto:mmaher@kpmg.ca>>, "Gordon, John A" <johngordon@kpmg.ca<mailto:johngordon@kpmg.ca><mailto:johngordon@kpmg.ca>>
Subject: Meeting between AGO and Elio Luongo - Privileged and Confidential

Elio and I went to AGO office on Thursday afternoon. In attendance from AGO were bonnie Lysyk, Susan Klein and an individual that took notes. There was no indication of any reason why we wouldn't share the outcome of this discussion with our client.

Summary of the discussion:

· Bonnie talked through the background, providing Elio with her perspective on the problem and concern. Her comments here were similar to those of previous meetings

· She talked about how she knows that they are right, because they understand government accounting;

· She referred to her due diligence involving Tim Beauchamp (former director/staff at PSAB);

· She referred to letters from other AG offices in Canada

· She referred to letters from other firms. She acknowledged the comments in our letter of earlier in the day. Elio asked about whether any of those firms were big 4 firms. Again she refused to provide any info on who they were, noting that to do so would make it difficult for them to work with her in the future (which is a curious comment that transparency of their work would be concern to them)

· She criticized us for not engaging in discussion with her team on the technical aspects of the materials provided to us.

· She asked about our internal due diligence. We indicated that we had involved many senior people including Dowad, Owen, Dotzlaw, Janet Allen, Picard, and Betik. She asked about Janel Allen, and we indicated that she was a retired partner that had been involved prior to her retirement. Bonnie made a somewhat vague comment about how she understood that someone that had left the firm might now have a different view. (I Subsequently spoke to Janet Allen and she has not had any discussions with AGO reps since retirement).

· Bonnie referred to emails that indicated contrary views to the final view. She did not seem to accept that the thought process, and accordingly the emails, reflected a process of research, and evolving thinking on basis of that research.

· Bonnie referred to her right to timely communication on accounting policy changes, and how we had missed those deadlines in Feb 2017, until it was too late. She did not acknowledge that the Province reporting timeline is 3 months later;

· Bonnie referred to our participation in the press briefing with our client and reps from the Province. I indicated that our role there was no different than at any AGM. Our client asked us to attend in case there were questions about our audit. (there were no questions)

· Bonnie referred to Mat advising the Board/AC of IESO that “this” wasn’t a good idea (subsequently Mat Betik advises that he has not recollection of any such comments)

· Bonnie referred to conflict (from her perspective) of being involved in advising IESO and also as auditors;

· Bonnie asked us why we would not accept her suggestion of changing to “an appropriately disclosed basis of accounting”. I indicated that this would require a regulation to be issued, and IESO to make a different decision on accounting policies, both of which were out of our control. She suggested that a regulation could be passed quickly. I suggested that it might be unlikely that the Government would do that

· Bonnie asked again why we didn’t encourage our client to have us do a joint audit. We indicated that this was a matter for them to decide. We indicated that we ensured they were aware of her comments, but that this was out of our control;

· Bonnie encouraged us to resign for a period of 1 or 2 years, and that the AGO could “clean this up” and we could resume our role as auditors after that – noted that “I don’t want to be auditors for the long term”. It was not clear whether she was referring to resigning before the completion of our 2017 audit, or form future audits.

· Bonnie referred to the Board of IESO saying that “I have never seen anything like it”. Not clear what she meant.

· Elio spoke about how Bill Thomas had advised him of this matter after the AGO call to Bill last year, and how he had ensured we were taking this matter seriously, and had ensure we had the right people involved such as Gordon and our most senior technical people, and that we had engaged DT

· Bonnie asked about our process to select the partner at DT. We indicated again, that our request was to the leader of their professional Practice Group. She indicated that Kerry Danyluk did not have experience in the area. We indicated that our report was from DT as a firm, and that we were aware that they had involved a number of people rather than just KD.

· I indicated that while our team had previous opportunities to hear the AGOs perspective, this discussion had been useful for Elio, and that it would be constructive for him to go back and discuss with our team. We referred to the acceptance (as noted in our letter) of the AGOs request for another technical session. She had not yet had a chance to read that letter, or share it with her team. She asked about the adjustment to the iESO process/timing and we referred to our understanding that they were willing to wait until after March 6th .

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imagee7abb9.pdf

Blakes

FW_ Meeting re Provincial Protection & Assurances Agreement.rtf

From: Montgomery, Kaitlin (MOF) []
To: Ramchandani, Rima [rramchandani@torys.com]; Mayman, Gadi (OFA) [Gadi.Mayman@ofina.on.ca]; Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; Mansoori, Nina [nmansoori@torys.com]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; 'leslie.wong@opg.com' [leslie.wong@opg.com]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; 'john.s.lee@opg.com' [john.s.lee@opg.com]; McKinlay, Tom (ENERGY) [Tom.McKinlay@ontario.ca]; 'ken.ryfa@opg.com' [ken.ryfa@opg.com]; ASHBOURNE, STEPHEN (STEPHEN.ASHBOURNE@blakes.com) [STEPHEN.ASHBOURNE@blakes.com]; 'tyler.mcauley@opg.com' [tyler.mcauley@opg.com]; Hanslep, Malle (MOF) [Malle.Hanslep@ontario.ca]; 'jenny.jorda@opg.com' [jenny.jorda@opg.com]; Whitfield, Tobias P. (MOF) [Tobias.Whitfield@ontario.ca]; Montgomery, Kaitlin (MOF) [Kaitlin.Montgomery@ontario.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; 'RSebastiano@osler.com' [RSebastiano@osler.com]; Gavaris, Hresa (OFA) [Hresa.Gavaris@ofina.on.ca]; 'PMilligan@osler.com' [PMilligan@osler.com]; Strathy, Anna (OFA) [Anna.Strathy@ofina.on.ca]; 'Katrina.Niehaus@gs.com' [Katrina.Niehaus@gs.com]; Mark.Laing@tdsecurities.com [Mark.Laing@tdsecurities.com]; 'MFitzpatrick@hunton.com' [MFitzpatrick@hunton.com]; Kwan, Ronald (OFA) [Ronald.Kwan@ofina.on.ca]; 'aobrian@hunton.com' [aobrian@hunton.com]; Maharukh.Hilloowala@tdsecurities.com [Maharukh.Hilloowala@tdsecurities.com]; Trevor.Thom@tdsecurities.com [Trevor.Thom@tdsecurities.com]
CC: Palikrousis, Rita [rpalikrousis@torys.com]
Subject: FW: Meeting re Provincial Protection & Assurances Agreement
Date: Tuesday, July 11, 2017 10:47:12

-----Original Appointment-----
From: rpalikrousis@torys.com [mailto:rpalikrousis@torys.com] **On Behalf Of** Ramchandani, Rima
Sent: July 10, 2017 3:35 PM
To: Ramchandani, Rima; Mansoori, Nina; 'leslie.wong@opg.com'; 'john.s.lee@opg.com'; 'ken.ryfa@opg.com'; 'tyler.mcauley@opg.com'; 'jenny.jorda@opg.com'; Montgomery, Kaitlin (MOF); Nelms, Scott (MOF); 'RSebastiano@osler.com'; 'PMilligan@osler.com'; 'Katrina.Niehaus@gs.com'; 'MFitzpatrick@hunton.com'; 'aobrian@hunton.com'
Cc: Palikrousis, Rita
Subject: Meeting re Provincial Protection & Assurances Agreement
When: July 12, 2017 12:00 PM-1:30 PM (UTC-05:00) Eastern Time (US & Canada).
Where: Torys Boardroom 33S3 & S4

Good Afternoon, Please feel free to forward this invitation to others from your organization that will be attending. Thank you.

Dial-in: 1.800.600.0998
Access Code: 8657666#

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FW_ Ontario Fair Hydro Plan.rtf

From: Veinot, Cindy (TBS) []
To: Fung, Felix (TBS) [Felix.Fung@ontario.ca]; Graham, Helen (TBS) [Helen.Graham@ontario.ca]
CC: Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]
Subject: FW: Ontario Fair Hydro Plan
Date: Friday, April 21, 2017 09:11:47
Attachment 1: Fair Hydro Plan Act (April 20 2017) Consultation v3.docx

---

fyi

From: Kacaba, Jennifer (ENERGY)
Sent: April-20-17 5:59 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS); rramchandani@torys.com
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI); 'Myers, Jonathan'; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA); Hosick, Sarah (TBS); Johnson, Paul (ENERGY/MEDEI/MRI)
Subject: RE: Ontario Fair Hydro Plan

All - Please find attached the next turn in the consultation draft (v.3) of the proposed legislation. We have been working to address the feedback that you provided earlier in the week. A number of points remain in progress. As with the earlier versions, by sharing this document, we hope to continue to advance our discussions.

Our timeline has been extended and we are now working to a pens down date of April 28th. We will not get another extension. Accordingly, we ask for your detailed, written comments on the draft, which we require no later than Sunday at noon.

We will continue to work on the bill in the interim, so earlier instructions are helpful to us. With your input on this timeline, we expect to be able to provide one more circulation around Tuesday or Wednesday next week.

We have not had the opportunity to add notes or to update our crosswalk to the Blakes summary document.

We look forward to receiving your written comments.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

56 Wellesley Street West, 18th Floor.

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From: Kacaba, Jennifer (ENERGY)
Sent: April 17, 2017 12:00 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS)
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI); 'Myers, Jonathan'; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA); Hosick, Sarah (TBS)
Subject: RE: Ontario Fair Hydro Plan

Please find attached a further turn of the consultation draft. This document continues to be a work in progress. We have not had the opportunity to add notes or update our tracking table. We also have not yet considered the comments that we received this morning. We look forward to seeing you at 1.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

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From: Calwell, Carolyn (ENERGY/MEDEI/MRI)
Sent: April 15, 2017 10:06 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Kacaba, Jennifer (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com);

'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS)
Cc: 'Myers, Jonathan'; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA); Hosick, Sarah (TBS)
Subject: Ontario Fair Hydro Plan

All - Please find attached the draft "Intergenerational Fairness in Hydro Rates Act, 2017". A tremendous amount of work has gone into getting to this draft and much more work is required to get this ready for the House. The goal of sharing this document now is to further the process we have engaged in over the last weeks. In the attached, we have included notes to try to address where the drafting is not yet consistent with our thinking. These notes are neither comprehensive nor complete. They are intended only as flags and as colour to the draft. We have not forgotten the comments that you have already provided and we are continuing to working through the translation of the commercial terms we have been discussing into legislative language.

For ease of reference, included with the draft bill are the partially updated Blakes' summary, a chart that attempts links the articles in that document to the sections of the bill (which is imperfectly numbered at best) and excerpts from the Electricity Act and the Ontario Energy Board Act, related to the consequential amendments.

In your review, please focus on the broad stroke concepts, rather than the minutia, and keep in mind the cascade of instruments that will be required – legislation first, then regulations and finally commercial agreements. We look forward to discussing the broader concepts on Monday

Carolyn Calwell

Legal Director

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

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Fair Hydro Plan Act (April 20 2017) Consultation v3.pdf

Version 3

This confidential draft document is provided for discussion purposes only. It should not be construed as representing the position adopted by the Government of Ontario on any of the topics included or not included in this document. The notes included in this document are intended only to help facilitate a discussion of the topics to which they relate. Any potential legislation is subject to the approval of the Ontario Legislature.

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A proposal to create Legislation.

Ontario's Fair Hydro Plan Act, 2017, if enacted

A proposal to create Legislation.

Ontario's Fair Hydro Plan Act, 2017, if enacted

EXPLANATORY NOTE TO BE ADDED BY LEGISLATIVE COUNSEL
TO ANY FINAL BILL PRIOR TO INTRODUCTION.

[Insert explanatory note.]

[Notes re this draft:
- all numbering of provisions may need to be re-done
- will need to check all definitions to ensure (1) that they are needed; and (2) that they work properly wherever the term is used in the Bill.
- additional consequential amendments likely required still
- overall organization of provisions still TBC (for now just trying to get all of the elements drafted and will reconsider architecture later)
- need to check consistency of various phrases (e.g. *during/for/in respect of* reference period; *owner of RA/IA vs. RA/IA owner; etc.)*]

Preamble

The Government of Ontario is committed to fostering the development of a clean, modern and reliable electricity system with a diverse supply mix. The Government is also committed to removing barriers to and promoting opportunities for renewable and clean energy projects.[1]

The Government of Ontario has established a regulatory framework related to the generation and sale of electricity, which has promoted and continues to promote significant investment to enable phasing out of coal fired generation, modernizing sites and facilities in the Province for the generation of electrical energy and the production therefrom,[2] and conservation and demand management.

The Government of Ontario is committed to ensuring that the costs of these investments, and the raising of money to fund the investments,[3] are allocated fairly among present and future generations of consumers.

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

[1] Note: please see the preamble of the *Green Energy Act, 2009.*
[2] Note: please see clause 92A (4) (b) of the Constitution, 1867: "des emplacements et des installations de la province destinés à la production d'énergie électrique, ainsi que de cette production meme".
[3] Note: please see opening flush of s. 92A (4) of the Constitution Act, 1867

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Schedule 1 Estimated finance amount

PART I
GENERAL

Interpretation
Definitions

1xx. (1) In this Act,

"Board" means the Ontario Energy Board; ("French")

"clean energy adjustment" means the amount determined under section 10xx; ("French")
[Note - will need to check throughout the draft that references to CEA are clear as to whether it's the total CEA in respect of a reference period vs. the portion payable by a specified consumer.]

"clean energy benefits" means, in respect of a reference period, the value of the benefits determined to be derived by the specified consumers during the reference period as a result of the clean energy initiative, including as a result of past, present and expected future incurrences of clean energy costs; ("French")

"clean energy costs" means, in respect of a reference period, the value of the costs allocated to specified consumers during the reference period as a result of the clean energy initiative, including as a result of past, present and expected costs incurred in respect of,

(a) the estimated costs to be incurred by the IESO under section 25.33 of the *Electricity Act, 1998* or any provision that is the successor to that provision, which relate to contracts for,

(i) renewable energy generation or capacity,

(ii) conservation and demand management, including storage,

(iii) energy efficiency,

(iv) natural gas generation and capacity, excluding contracts relating to amounts payable by the IESO under section 78.2 of the *Ontario Energy Board Act, 1998* and excluding such other contracts as may be prescribed, or

(v) payments made or expected to be made under section 78.5 of the *Ontario Energy Board Act, 1998*, and

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(b) such other estimated costs as may be prescribed; ("French")

"clean energy initiative" means the policies of the Government of Ontario related to,

(a) fostering the growth of and investment in clean and renewable energy sources and technologies,

(b) removing barriers to and promoting opportunities for clean and renewable energy sources and technologies, and

(c) promoting conservation and demand management; ("French")

"electricity vendor"[4] means the IESO, a licensed distributor, a licensed retailer or such other person as may be prescribed; ("French")

"fair adjustment" means the determination of the rate payable for electricity in accordance with Part II; ("French")

"Financial Services Manager" means Ontario Power Generation Inc. [or such other person or entity as may be appointed as the Financial Services Manager by the Minister under section **]; ("French")

"Financing Plan" means the plan prepared under section X, as amended from time to time in accordance with this Act; ("French")

"funding obligation" means a payment obligation incurred by or on behalf of the regulatory asset owner or an investment asset owner under section x; ("French")

"IESO" means the Independent Electricity System Operator continued under Part II of the *Electricity Act, 1998*; ("SIERE")

"IESO funding shortfall" means, in respect of a reference period, the amount determined under section 20xx for the reference period; ("French")

"investment asset" means the investment asset created as described in section 22xx; ("French")

"investment asset owner" means a financing entity that acquires an investment interest in the investment asset; ("French")

[4] Note - this is similar to the definition of "electricity vendor" in the Ontario Rebate for Electricity Consumers Act, 2016

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"investment interest" means an ownership interest in the investment asset, which entitles an investment asset owner to the rights and benefits specified in the agreement under which the ownership interest is transferred;

"invoice amount" means the amount, determined in accordance with subsections (2.1) and (2.2) and the regulations, that is payable by a specified consumer for the provision of electricity in Ontario during a period of time specified on an invoice issued by an electricity vendor; ("French")

"licensed distributor" means a person licensed under Part V of the *Ontario Energy Board Act, 1998* to own or operate a distribution system; ("French")

"licensed retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity; ("French")

"Minister" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of this Act under the *Executive Council Act*; ("ministre")

"prescribed" means prescribed by the regulations; ("prescrit")

"reference period" means,

(a) the period beginning on May 1, 2017 and ending on October 31, 2017,

(b) every six-month period following the period mentioned in clause (a) or such shorter period as may be set out in the Fair Allocation Plan; ("French")

"refinancing" means a repayment or repurchase of a funding obligation for cancellation by or on behalf of an investment asset owner by applying the net proceeds obtained by the owner incurring one or more other funding obligations; ("French")

"regulation" means a regulation made under this Act; ("règlement")

"regulatory asset" means the right established under section X to recover the IESO funding shortfall; ("French")

"representative consumer" means a consumer who meets the criteria set out in subsection (3); ("French")

"specified consumer" means,

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(a) a person who has an account with an electricity vendor for the supply of electricity, receives an invoice in respect of the account and meets the criteria set out in subsection (2); or

(b) such other person as may be prescribed; ("French")

"Toronto Hydro" means Toronto Hydro-Electric System Limited; ("French")

"transfer" means an assignment, conveyance, disposition or sale; ("French")

Specified consumers

(2) For the purposes of clause (a) of the definition of "specified consumer" in subsection (1), the person must meet any one of the following criteria:

1. The person has a demand for electricity of 50 kilowatts or less, or such other amount as may be prescribed.

2. The person annually uses not more than 250,000 kilowatt hours of electricity, or such other amount as may be prescribed.

3. The person carries on a business that is a farming business for the purposes of the *Farm Registration and Farm Organizations Funding Act, 1993* and either holds a valid registration number assigned under that Act or the has had the obligation to file a farming business registration form waived pursuant to an order made under subsection 22 (6) of that Act.

4. The person's account with the electricity vendor relates to,

   i. a dwelling,

   ii. a property within the meaning of the *Condominium Act, 1998*,

   iii. a residential complex within the meaning of subsection 2 (1) of the *Residential Tenancies Act, 2006*, without regard to section 5 of that Act, or

   iv. a property that includes one or more housing units and that is owned or leased by a co-operative within the meaning of the *Co-operative Corporations Act*.

5. The person satisfies such criteria as may be prescribed.

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Invoice amount

(2.1) Subject to subsection (2.2) and the regulations, the invoice amount for a specified consumer includes the following amounts:

1. In circumstances where the electricity is provided by a licensed distributor or a licensed retailer, the following:

    i. The commodity price of the electricity used during the invoice period.

    ii. The rates and charges set out in the applicable rate order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*.

    iii. Any adjustment on the invoice required under section 25.33 of the *Electricity Act, 1998*.

    iv. The amount of any harmonized sales tax payable [by the consumer?] under Part IX of the *Excise Tax Act* (Canada);

    v. Any other amounts as may be prescribed.

2. In circumstances where the electricity is provided by the IESO, such amounts as may be prescribed. ("French")

Same, exclusions

(2.2) Except as otherwise prescribed by the regulations, the invoice amount does not include any of the following amounts:

1. The balance of any amounts carried forward from previous invoices.

2. Penalties or interest.

3. Charges that do not relate to the use of electricity.

4. Any of the following charges that may be set out in an order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*:

    i. A fixed monthly service charge payable by a generation facility within the meaning of section 56 of the *Ontario Energy Board Act, 1998* and classified as "microFIT".

    ii. A charge labelled as a "specific service charge" or "retail service charge".

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iii. A rate rider.

5. Any other prescribed amounts.

Representative consumer

(3) For the purposes of the definition of "representative consumer" in subsection (1), the consumer,

(a) purchases electricity directly from Toronto Hydro;

(b) has an account with Toronto Hydro that falls within a residential-rate classification as specified in a rate order made by the Board under section 78 of the *Ontario Energy Board Act, 1998*;

(c) is invoiced by Toronto Hydro on a monthly basis;

(d) is not invoiced by Toronto Hydro for electricity on an equal monthly payment plan or an equal billing plan; and

(e) uses, on average, 750 kilowatt hours of electricity each month.

Transfer

(4) For greater certainty, a transfer of the regulatory asset or a portion of the regulatory asset includes any act of the IESO by which the IESO purports to dispose of its interest in the regulatory asset with the result of a named person becoming the owner of an investment interest.

Effect of invalidity, etc.[5]

2xx. (1) For greater certainty, all of the provisions of this Act remain in full force and effect, even if some provisions are held to be invalid, the intention of the Legislature being to give separate and independent effect to the extent of its powers to every provision contained in this Act.

Same, funding obligation

(2) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect a funding obligation that was incurred under this Act before the day that the provision was held to be invalid or ceased to be in effect.

Purpose

3xx. (1) The purposes of this Act are,[6]

[5] Note: this is from the *Climate Change Mitigation and Low-carbon Economy Act, 2016*

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(a) to ensure that clean energy costs are fairly allocated among specified consumers over time and that the process by which the Province raises money to fund the costs reflects the fair allocation; and

(b) to recognize that clean energy benefits that have accrued and that will accrue over time will continue to benefit present and future electricity consumers in the Province.

Crown bound

4xx. This Act binds the Crown.

Protection and assurances

Prohibition

5xx. (1) The Crown shall not do anything that would,

(a) hinder, delay, impair or prejudice the charging, collection or remittance of the clean energy adjustment;

(b) except as expressly permitted by this Act, reduce the amount of the clean energy adjustment or lower the priority of the clean energy adjustment over other debts; or

(c) adversely affect an investment asset or a funding obligation.

Clarification with respect to regulations

(2) For greater certainty, the things prohibited under subsection (1) include the making or approving of a regulation under this Act.

Agreements for compensation

(3) The Minister may, with the approval of the Lieutenant Governor in Council, enter into agreements on behalf of the Province of Ontario with any person in respect of this Act, including agreements regarding financial commitments, financial arrangements, indemnities or similar transactions.

PART II
FAIR ADJUSTMENT

[6] Note: Please see the *Electricity Act, 1998* for much of the wording proposed in this section.

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Fair adjustment, May 1, 2017 to April 30, 2018
Definition

6xx. (1) In this section,

"average baseline invoice amount" means the average monthly invoice amount that would be payable by a representative consumer under the average baseline rate; ("French")

"average baseline rate" means the average rate that would be payable effective May 1, 2017 by the class of consumers prescribed by the regulations under the *Ontario Energy Board Act, 1998* for the purposes of subsection 79.16 (1) of that Act, as determined by the Board by applying the method prescribed by the regulations under clause 79.16 (1) (b) of that Act; ("French")

"sub-meter customer" means a person who is supplied electricity by a specified consumer, if an invoice for the electricity is issued to the person by the specified consumer, by an agent of the specified consumer or by a unit sub-meter provider providing unit sub-metering for the specified consumer; ("French")

Rate determination

(2) Subject to subsection (3), [to more fairly measure and allocate the clean energy costs and clean energy benefits among present and future generations of specified consumers,] the rate for electricity payable by a specified consumer for the period beginning on May 1, 2017 and ending on April 30, 2018 is the average rate that would be payable by a representative consumer in order for the representative consumer to receive a monthly invoice amount that is 25 per cent less than the average baseline invoice amount.

Sub-meter customers

(3) A specified consumer who provides electricity to a sub-meter customer and any unit sub-meter provider who provides unit sub-metering for the specified consumer shall ensure that the rate payable by each sub-meter customer is the rate determined under subsection (2).

Determining rate

(4) The rate mentioned in subsection (2) shall be,

(a) determined by the Board within seven business days after this section receives Royal Assent; and

(b) effective as of the first day of the calendar month immediately following the determination.

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Transition

(5) If, for technical or operational reasons, an electricity vendor, specified consumer or unit sub-meter provider is unable to adapt its invoices to comply with this section by the time it issues its first invoice for electricity consumed on or after May 1, 2017,

(a) the electricity vendor, specified consumer or unit sub-meter provider shall adapt its invoices as soon as possible and, in any event, no later than [August 1, 2017]; and

(b) the electricity vendor, specified consumer or unit sub-meter provider shall ensure that any specified consumer or sub-meter customer invoiced at a rate higher than the applicable rate receives the difference between the rate shown on their invoice and the applicable rate as a lump sum credit on the first invoice issued after the invoices have been adapted or by such other means as may be prescribed by the regulations.

Fair adjustment, May 1, 2018 to April 30, 2022

7xx. The Lieutenant Governor in Council may, [to more fairly measure and allocate the clean energy costs and clean energy benefits among present and future generations of specified consumers,] make regulations prescribing the rate for electricity payable by specified consumers and sub-meter customers during the period beginning on May 1, 2018 and ending on April 30, 2022.

PART III
CLEAN ENERGY ADJUSTMENT

Specified consumers to pay clean energy adjustment

8xx. (1) Upon receipt of an invoice that includes a clean energy adjustment, a specified consumer shall pay the clean energy adjustment to the electricity vendor, as agent of the investment asset owners, in accordance with such terms of payment as may be specified in the invoice, which may include terms relating to late payment fees and interest charges.

Same

(2) For greater certainty, subsection (1) applies regardless of,

(a) whether the clean energy adjustment is inconsistent with the fair allocation calculation applicable at the time when the payment is due; and

(b) whether the clean energy adjustment relates to funding obligations that were incurred in a manner that was inconsistent with the Financing Plan.

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Indebtedness of specified consumer

(4) An unpaid clean energy adjustment that is required to be paid by a specified consumer under this section constitutes indebtedness of the consumer to each investment asset owner in respect of each owner's respective interest in the investment asset.

Same

(5) The indebtedness mentioned in subsection (4) is a single and separate debt obligation owed by the specified consumer and may be enforced independently from any other payment obligation or indebtedness owing by the specified consumer under the invoice or otherwise.

Irrevocability of clean energy adjustment

9xx. (1) The amount of the clean energy adjustment shown on an invoice issued to a specified consumer under this Act is determinative of the amount of the consumer's indebtedness created by the adjustment and is irrevocable upon invoicing the consumer and may not be set off or by passed.

Exception

(2) Subsection (1) does not apply to the extent that there is a calculation error by the electricity vendor.

Determination of clean energy adjustment

10xx. (1) The clean energy adjustment payable by all specified consumers in respect of a reference period shall be determined as follows:

1. Calculate the estimated finance amount for the reference period in accordance with Schedule 1 and such additional rules as may be prescribed.

2. Add the true up amount for the reference period, as determined in accordance with the prescribed method, to the estimated finance amount calculated under paragraph 1.

True up amount

(2) For the purposes of paragraph 2 of subsection (1), the Lieutenant Governor in Council may make regulations prescribing the method for determining the true up amount, having regard to the following principles:

1. The true up amount should serve to ensure that the collection of the clean energy adjustment is sufficient to pay the estimated finance amount when it is due.

2. The method for determining the true up amount should take into account historical and reasonably foreseeable,

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i. differences between amounts billed and amounts collected due to various factors, including applicable taxes, consumer defaults and delays, billing lags and write-offs, and

ii. variations in billings due to variations in electricity consumption.

IESO to issue remittance notice to electricity vendors

11xx. (1) The IESO shall, in accordance with the regulations, issue a remittance notice to each electricity vendor for the electricity vendor's portion, as determined in accordance with the regulations, of the clean energy adjustment in respect of a reference period.

IESO to collect

(2) The IESO shall, as an agent of the investment asset owners, collect the clean energy adjustment from electricity vendors [in accordance with the monthly settlement process set out in the market rules made under section 32 of the *Electricity Act, 1998]*.

Collection account

(3) All of the following amounts received by the IESO shall, until paid to or for the benefit of the investment asset owner in accordance with subsection (5), be deposited promptly into an account established for the purposes of collecting those accounts:

1. Amounts described in subsection 12 (4).

2. Payments made by specified consumers directly to the IESO as electricity vendor under subsection 8 (1).

Same, held in trust

(4) All amounts received by the IESO in respect of the clean energy adjustment shall, until paid to or for the benefit of the investment asset owner in accordance with subsection (6), be held in trust for the investment asset owners or a secured party to whom a security interest in an investment interest is granted under this Act.

IESO to remit

(5) The IESO shall remit amounts received by it in respect of the clean energy adjustment to or for the benefit of the investment asset owners in accordance with the regulations.

Collection of outstanding amounts, regulatory asset

(6) If the total clean energy adjustment payable by specified consumers in respect of a reference period is less than the amount contemplated to be payable under the

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applicable fair allocation calculation made by the Financial Services Manager under Part IV, the IESO may collect the difference from specified consumers.

Electricity vendor to invoice specified consumers

12xx. (1) The electricity vendor shall issue an invoice to each specified consumer for the consumer's amount of the clean energy adjustment in accordance with the regulations.

Electricity vendor to collect

(2) Each electricity vendor shall, as an agent of the IESO and the investment asset owners, collect the clean energy adjustment from specified consumers [in accordance with the monthly settlement process set out in the market rules made under section 32 of the *Electricity Act, 1998]*.

Pro rating of payments

(3) If an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices and the amount paid is less than the total amount payable, the electricity vendor shall allocate the payment on a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices in respect of electricity charges for the same invoice period.

Held in trust

(4) All of the following amounts received by an electricity vendor shall, until paid to or for the benefit of the investment asset owner in accordance with subsection (5), be held in trust for the investment asset owners or a secured party to whom a security interest in an investment interest is granted under this Act:

1. Payments received from or on behalf of specified consumers under subsection 8 (1).

2. Portions of payments received from or on behalf of specified consumers under subsection 8 (1) that are allocated to the clean energy adjustment under subsection (3).

3. Any proceeds arising from the exercise and enforcement of any rights and interests under or in respect of the investment asset.

Remittance to IESO

(5) Each electricity vendor other than the IESO shall remit amounts described in subsection (5) to the IESO for the benefit of the investment asset owners or secured parties in accordance with the regulations.

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Regulations

(6) If an electricity vendor fails, in the manner described in the regulations, to comply with the requirements of this section, the electricity vendor shall take such steps as the regulations may prescribe.

PART IV
IMPLEMENTATION

FINANCIAL SERVICES MANAGER

Appointment

13xx. (1) [Note: To be elaborated.]

Termination

(2) The Minister may by written order terminate the appointment of an appointee as the Financial Services Manager if,

(a) the Minister has advised the appointee that the Financing Plan is either inconsistent with or is being implemented in a manner that is inconsistent with the principles set out in section x;

(b) the appointee has been afforded a reasonable opportunity to consider and address the inconsistency; and

(c) the appointee is unwilling or unable to address the inconsistency to the satisfaction of the Minister.

Replacement

(3) Upon terminating an appointment, the Minister may, in accordance with the regulations, appoint a new person or entity as the Financial Services Manager.

Duties and powers

14xx. (1) The Financial Services Manager shall perform the duties assigned to it under this Act and may administer the investment asset on behalf of the investment asset owner.

Same

(2) The administration of the investment asset may include the following:

1. Providing information, in accordance with the regulations, to the Board in respect of funding obligations and the determination of the clean energy adjustment in accordance with section XX.

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2. Providing information to electricity vendors, including the IESO, in respect of obligations under Part III.

3. Such other matters as may be prescribed.

Review of costs

(3) The Board shall review the administrative costs of the Financial Services Manager in accordance with the regulations.

FAIR ALLOCATION AMOUNT

Financial Services Manager to calculate fair allocation amount

15xx. (1) The Financial Services Manager shall calculate the fair allocation amount for the purposes of,

(a) fairly measuring and allocating the estimated clean energy costs and estimated clean energy benefits among the specified consumers in respect of each reference period; and

(b) aligning funding obligations that may be incurred during each reference period with the allocation of the estimated clean energy costs and estimated clean energy benefits across present and future generations of specified consumers.

Amount

(1.1) The fair allocation amount in respect of a reference period is the sum of the following amounts:

1. The amount, if any, by which the estimated [clean energy costs] [clean energy benefits] to be allocated to specified consumers in respect of the reference period exceeds the estimated amount of [the global adjustment] that would be borne by the specified consumers in respect of clean energy costs [in the absence of this Act].

2. An allocable portion of the value of any fair adjustment, determined in accordance with subsection (3).

Principles

(2) In calculating the fair allocation amount [or in developing the fair allocation calculation?], subject to subsection (3), the Financial Services Manager shall have regard to the following principles:

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1. Clean energy costs allocated to the specified consumers in respect of a reference period should be allocated in proportion to the clean energy benefits attributed to the specified consumers in respect of the reference period.

2. The clean energy benefits attributed to the specified consumers in respect of a reference period should be determined based on *[Insert principles]*.

3. The fair allocation calculation should include reasonable assumptions regarding the following:

    i. The time value of money or the rate of inflation, for the purpose of equating nominal amounts over time.

    ii. The expected number of specified consumers for each reference period.

    iii. The expected electricity consumption rates for each reference period.

Allocation of fair adjustment

(3) If, before the Financial Services Manager has calculated the fair allocation amount in respect of a reference period, a fair adjustment has been made under Part II in respect of the reference period, the calculation shall include a portion of the value of the fair adjustment in the fair allocation calculation for each future reference period.

Amendments to the fair allocation calculation

(4) The Financial Services Manager may amend the fair allocation calculation from time to time, as the Financial Services Manager considers appropriate, having regard to the requirements of this Act.

Submission of fair allocation to Minister

(5) The Financial Services Manager shall provide to the Minister the fair allocation calculation and any amendments to the fair allocation calculation.

Effective date

(6) The fair allocation calculation or an amendment to the fair allocation calculation takes effect on the day that is 30 days after the fair allocation calculation or the amendment, as the case may be, is provided to the Minister in writing.

Publication

(7) The Minister shall ensure that the fair allocation calculation and any amendments to it are made available to the public in a manner that the Minister considers appropriate.

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Financial Services Manager to prepare Financing Plan

16xx. (1) The Financial Services Manager shall prepare and provide to the Minister a written plan entitled the Financing Plan to be used by the Financial Services Manager to evaluate whether potential funding obligations should be incurred or potential transfers should be made for the purposes of this Act.

Principles

(2) In preparing the Financing Plan, the Financial Services Manager shall have regard to the following principles:

1. Any incurrence of a funding obligation should reasonably align the expected finance amount determined under Schedule 1 that would become due and payable during a reference period with the fair allocation amount determined for the reference period under this Part as of the time of the incurrence, in each case after reducing the fair allocation calculation by the amount of any fair adjustment for the reference period.

2. Incurrences and transfers should be implemented in a manner that, as the Financial Services Manager considers to be reasonable, is cost effective and reflects prevailing market terms and conditions.

3. Reasonable assumptions should be made regarding such matters as may be prescribed.

[Note for reference: List of items for consideration in regulation: (a) anticipated IESO funding shortfalls and related transfer amounts; (b) the maturities of funding obligations; (c) the availability of refinancings, redemption opportunities and liquidity terms and conditions in order to achieve the objective contemplated in section X(1)(a); (d) the availability of currency and interest rate hedging facilities for the purpose of mitigating any differences between the expected finance amounts becoming due and payable during a reference period and the fair allocation amount for the reference period; (d) the amount and potential variability of interest rates and related financing costs; (e) available capital markets in which funding obligations may be incurred.]

Amendments to approved plan

(3) The Financial Services Manager may amend the Financing Plan at any time, without the approval of the Minister, subject to the requirements set out in this section.

Limitation, first five year period

(4) In respect of each reference period from May 1, 2017 to April 30, 2022, no funding obligation shall be incurred that would become payable during the reference period and result in a clean energy adjustment for the reference period unless,

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(a) no fair adjustment has been made under Part II in respect of the reference period; or

(b) if a fair adjustment has been made under Part II in respect of the reference period, the funding obligations incurred would not be payable during the reference period in an amount that exceeds the [difference between the fair allocation amount for the reference period and the amount of the fair adjustment for the reference period].

Confidentiality of plan

(4) The Financing Plan is deemed to be a record subject to section 17 of the *Freedom of Information and Protection of Privacy Act.*

Implementation of Financing Plan

17xx. (1) The Financial Services Manager shall incur funding obligations and make transfers in material conformity with the applicable Financing Plan.

Same

(2) For greater certainty, section [paramountcy of funding obligations] applies despite the failure of the Financial Services Manager to comply with subsection (1).

Financing entities

(3) In accordance with the Financing Plan, the Financial Services Manager may establish one or more financing entities that may incur funding obligations and make transfers.

Prohibition

(3) The Financial Services Manager shall not provide for funding obligations to be incurred with any recourse to any assets of an electricity vendor, the Board, the Province or the Lieutenant Governor in Council, except to the extent that any of these persons or entities may be liable to perform obligations or duties arising under this Act or under the express terms of a funding obligation.

Effect of amendment to Fair Allocation Plan

(4) No funding obligation incurred and no transfer made by the Financial Services Manager shall be affected by any inconsistency with the Financing Plan, including any inconsistency with the principles set out in section X.

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PART V
THE REGULATORY ASSET

Interpretation, portion of regulatory asset

18xx. If a transfer under this Part provides for the transfer of a portion of the regulatory asset, any references in this Part to the regulatory asset are deemed to be references to the portion of the regulatory asset transferred.

[Note: This is meant to assist with clarity in the subsequent provisions.]

Variance account

19xx. (1) The Board shall issue an accounting order to authorize the IESO to do the following:

1. Create a variance account for the purposes of this Act.

2. Record the IESO funding shortfall in the variance account from time to time.

3. Recover the IESO funding shortfall in accordance with section X and the regulations.

No hearing

(2) The order of the Board shall be made in writing and without holding a hearing.

No appeals, etc.

(3) No appeal lies from the order of the Board.

IESO funding shortfall

20xx. (1) The IESO shall determine the IESO funding shortfall for each month in the following manner:

1. Calculate the sum of all invoice amounts issued to specified consumers for the month if Part II of this Act did not apply.

2. Calculate the sum of all invoice amounts issued to specified consumers for the month.

3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1, and make any other adjustments as may be prescribed.

Same

(2) To the extent that the IESO funding shortfall for any month is based on an estimate of the electricity used by specified consumers, the IESO shall record an

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adjustment in the variance account in the following month to reflect the difference between the estimate and the electricity actually used by specified consumers.

Recording of IESO funding shortfall

(3) IESO shall record the IESO funding shortfall from time to time, including adjustments resulting from the exercise of the right of recovery under section 21 and any transfer under section 22, in the variance account.

Recording determinative

(4) A recording of the IESO funding shortfall in the variance account is determinative of the amount of IESO funding shortfall at the time of the recording.

Regulatory asset established

21xx. (1) The IESO has the right, exercisable in accordance with this Act and the regulations, to recover the IESO funding shortfall.

Same, restrictions

(2) The IESO's right to recover the IESO funding shortfall under subsection (1) is subject to the following:

1. The IESO shall not be entitled to collect the IESO funding shortfall from specified consumers before May 1, 2022.

2. The process by which the IESO may recover the IESO funding shortfall shall be established by the Board, having regard to the amount of the IESO funding shortfall from time to time and the [fair allocation calculation].

3. Such other restrictions as may be prescribed.

Transfer of regulatory asset

22xx. (1) The IESO may transfer all or a portion of the regulatory asset to any financing entity under the Financing Plan, which transfer creates the investment asset.

Same

(2) Upon receipt of any payment in consideration for the transfer,

(a) the IESO shall record the payment as a reduction of the IESO funding shortfall in the variance account; and

(b) unless otherwise provided for in this Act, the IESO shall have no further right, title or interest in, or any obligations in respect of, the regulatory asset or in the investment asset created by the transfer.

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Same

(3) Upon transfer, the financing entity becomes an investment asset owner and acquires an investment interest.

Validity of transfer

23xx. (1) A transfer of a regulatory asset under this Act is a valid and enforceable sale and absolute transfer to the investment asset owner of the regulatory asset, and the investment asset created by the transfer shall be immediately vested in the transferee.

Same

(2) Without limiting subsection (1), any transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of IESO's right to recover the IESO funding shortfall, and not merely as a security interest, and upon the absolute transfer the transferor shall retain no right, title or interest in the regulatory asset, including all rights to recover the IESO funding shortfall.

Deemed perfection, etc.

(3) At the time a transfer of a regulatory asset is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the transferee shall have priority over any liens in favour of those persons.

PART VI
THE INVESTMENT ASSET

Interpretation, investment asset

24xx. If a transfer under this Part provides for the transfer of an investment asset, any references in this Part to the investment interest are deemed to be references to the specific investment interest transferred.

Investment asset established

25xx. (1) The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests without duplication:

1. The right to impose, bill, invoice, collect and receive the clean energy adjustment from specified consumers, including the right to determine the amount of the clean energy adjustment in accordance with this Act.

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2. The right to receive and collect all amounts in respect of the clean energy adjustment that are imposed, billed and invoiced under this Act, including any amounts that all amounts in respect of the clean energy adjustment that are held by electricity vendors or other prescribed parties.

3. All rights and entitlements under such accounts as may be prescribed by regulation and all amounts on deposit in such accounts.

4. The right to enforce the duties and obligations under this Act of each electricity vendor to impose, attribute, charge, bill and invoice the clean energy adjustment.

5. The right to enforce the duties and obligations under this Act of each electricity vendor to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by an electricity vendor to recover payment of the clean energy adjustment.

6. All rights of any kind (whether in tort, contract or otherwise) that attach or are attendant or incidental to any of the other property rights or interests that comprise the regulatory asset owner's regulatory asset.

7. All revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 6, regardless of whether such revenue, collections, claims, payments and proceeds are imposed, invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

No set off, etc.

(2) The investment asset shall not be set off or reduced by any person in any circumstance, including,

(a) by a consumer, an electricity vendor, an agent of the investment asset owner or an owner of distribution system assets in the Province;

(b) in connection with any default, bankruptcy, reorganization or other insolvency proceeding of a person mentioned in clause (a); or

(c) by any affiliate or successor of a person mentioned in clause (a).

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Exercise of rights

(3) The rights of the investment asset owner to collect and enforce its rights and interests in, to and in respect of the investment asset against a specified consumer shall be exercised in accordance with section [xx] of the *Personal Property Security Act*.

Collective action required

(4) If the investment asset owner owns a right or interest in the investment asset that comprises less than the entire property right and interest constituted by the investment asset, the right or interest shall only be enforced by the investment asset owner collectively and in coordination with all other investment asset owners, and any agreement among that collective in furtherance of the collective action shall be valid and binding on the investment asset owner as a collective in accordance with its terms. [Note: Successors may need to be addressed here.]

Transfer of investment interest

26xx. An investment asset owner may transfer all or a portion of its rights and interests in an investment interest to any other investment asset owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan.

Validity of transfer

27xx. (1) A transfer of an investment interest under this Act is a valid and enforceable sale and absolute transfer of the investment interest and confers upon the owner of the investment interest acquired a valid property right and interest in, to and under the applicable investment interest in accordance with the terms of the transfer.

Same

(2) Without limiting subsection (1), a transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of an investment asset owner's right, title and interest in, to and under an investment interest, and not merely as a security interest, and upon such absolute transfer the transferor shall retain no right, title or interest in the investment interest, subject to the transfer, including all rights to the investment interest arising after the transfer.

Deemed perfection, etc.

(3) At the time a transfer of an investment interest is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer, assignment, etc.

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the investment asset owner shall have priority over any liens in favour of such other persons.

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Investment asset owner may grant security interest

28xx. (1) An investment asset owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under the investment interest to or in favour of any person to secure a funding obligation.

Validity

(2) A security interest granted under this Act shall be valid and enforceable in accordance with its terms.

Perfection and priority of security interests

(3) All provisions of the *Personal Property Security Act* shall apply to the investment asset and each investment interest on the basis that it is intangible personal property, except as otherwise provided for in this section, and any granting of a security interest by the owner of an investment interest to secure a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by filing a financing statement under that Act on that basis.

Proceeds

(4) All proceeds of an investment interest that are subject to the security interest and that are received by the applicable investment asset owner shall immediately be subject to the security interest and shall be perfected without any physical delivery of the proceeds, registration of any financing statement or any further act.

Perfection

(5) The security interest shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may subsequently attach to the property rights and interests in the investment interest subject to the security interest, subject to the written consent of the person to whom the security interest has been granted.

Same

(6) The person to whom the security interest has been granted shall have a perfected security interest in revenues or other proceeds that are deposited in any [investment asset account] or other account of any electricity vendor, the IESO, an agent of an electricity vendor or the IESO or other person who may have commingled such revenues or other proceeds with other funds.

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PART VI
MISCELLANEOUS

Appointment of agent, invoicing or collection

29xx. If a prescribed circumstance applies, the Lieutenant Governor in Council may by regulation appoint a person to carry out some or all of the obligations of an electricity vendor under this Act in the place of an electricity vendor with respect to invoicing or collection.

Not Crown agent

30xx. For greater certainty, no agent appointed under this Act is an agent of the Crown for any purpose, despite the *Crown Agency Act*.

Sequestration

31xx. (1) A court in the Province may, upon application by an investment asset owner or a secured party, order the sequestration and payment of the clean energy adjustment, collections and remittances, as applicable, for the benefit of the investment asset owner or secured party by any person or entity authorized to collect the clean energy adjustment, defaults on any required remittance of the clean energy adjustment, collections or remittances.

Same

(2) An order under subsection (1) does not limit any other remedies available to the applicant.

Same

(3) An order under subsection (1) shall remain in full force and effect despite any bankruptcy, reorganization or other insolvency proceedings with respect to the person or entity who is subject to the order.

Choice of law

32xx. The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the regulatory asset, the investment asset, the clean energy adjustment or the undertaking of the Crown under section x shall be the laws of the Province.

Conflict

33xx. The provisions of this Act and the regulations apply despite any provision of any other Act regarding the attachment, assignment or perfection, or the effect of perfection or priority of any transfer or security interest.

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No further approvals, etc.

34xx. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required with respect to the actions to be taken in compliance with this Act, including actions to be taken under the Financing Plan or in relation to the establishment of the Fair Allocation Plan.

Immunity

35xx. (1) No action or other proceeding for damages shall be instituted against any employee of the Province, IESO, OPG or OEB for any act done in good faith in the execution or intended execution of any duty or authority under this Act or for any alleged neglect or default in the execution in good faith of any duty or authority under this Act.

Same

(2) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

References in marketing materials and offering documents

36xx. No person shall include, in marketing materials or offering documents relating to the financing of funding obligations, references to any rights, obligations, guarantees or undertakings arising under this section unless the prescribed requirements, if any, are satisfied.

Non-application, Financial Administration Act, s. 28[7]

37xx. Section 28 of the *Financial Administration Act* does not apply with respect to any transaction or agreement or undertaking required, permitted, contemplated or authorized, directly or indirectly, under this Act.

Regulations

38xx. The Lieutenant Governor in Council may make regulations,

(a) defining any term used in this Act….

(b) prescribing types of payment obligations that constitute funding obligations;

(a) governing the calculation [true-up amount] and how the amount is to be applied to the clean energy adjustment.

(b) governing the inclusion of adjustments under this Act on invoices, which may include requiring notice to be provided by electricity vendors to specified persons regarding the adjustments.

[7] Note - see s. 51 of the Electricity Act, 1998

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[Note: reg-making powers to be dealt with in subsequent draft]

PART VII
AMENDMENTS TO OTHER ACTS

ELECTRICITY ACT, 1998

200x. (1) Subsection 6 (1) of the *Electricity Act, 1998* would be amended by adding the following clauses:

(q.0.1) to exercise the powers and rights and to perform the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and to engage in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including,

(i) entering into agreements or arrangements with any person for the purposes of the *Ontario Fair Hydro Plan Act, 2017*;

(ii) engaging in activities related to making payments to and receiving payments as contemplated under the *Ontario Fair Hydro Plan Act, 2017* and to engage in related settlement activities;

(iii) engaging in activities related to the creation, transfer and administration of the regulatory asset created under the *Ontario Fair Hydro Plan Act, 2017*, which activities may include,

(iv) incurring liabilities in relation to the regulatory asset

(v) transferring the regulatory asset for consideration;

(vi) acting as a recovery agent under the *Ontario Fair Hydro Plan Act, 2017*;

201x. Section 53.1 of the Act would be amended by adding the following subsections:

Same, *Ontario Fair Hydro Plan Act, 2017*

53.1 (1.1) In addition to the objects mentioned in subsection (1), the objects of Ontario Power Generation Inc. include exercising the powers and rights and performing the duties and obligations assigned to it under that Act and engaging in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including the following:

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1. Entering into contracts and undertakings on behalf of special purpose financing entities, including pre-formation contracts and undertakings and as principal in relation to matters permitted by the *Ontario Fair Hydro Plan Act, 2017* subject to the right of reimbursement from amounts available to the financing entity.

2. Preparing reports on behalf of the financing entity.

3. Enforcing the rights of the financing entity.

4. Signing offering documents as sponsor or otherwise on behalf of the financing entity.

5. Exercising the powers and performing the duties of the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*

6. Issuing non-equity securities in Ontario Power Generation Inc. or on if its subsidiaries, for the purpose of raising funds to acquire debt or equity interests in a financing entity whose activities are limited to the incurrence of funding obligations pursuant to the *Ontario Fair Hydro Plan Act, 2017*.

Subsidiaries, etc.

(1.2) Ontario Power Generation Inc. may create one or more subsidiaries, trusts or special purpose entities in order to more efficiently conduct its activities or achieve its objects.

202x. Section 89 of the Act would be amended by adding the following subsection:

Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply in respect of amounts payable to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a result of its functions as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

203x. Section 90 of the Act would be amended by adding the following subsection:

Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply in respect of amounts payable to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a result of its functions as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

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[Note: Drafting still to be added to the EA consequential amendments: ***All fees charged by OPG as the FSM shall be approved by the OEB before they are included in the calculation of clean energy adjustments.]***

AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

204x. Subsection 1 (1) of the *Ontario Energy Board Act, 1998* would be amended by adding the following paragraph:

6. To facilitate the implementation of the [TBD - language should link up with language from new Act.]

205x. Section 70 of the Act would be amended by adding the following subsection

[Note - still need to draft new subs. 70 (2.1)]

Short Title - this proposal for legislation would, if approved by the Legislature, have a short title to be determined by Government.

Timing – this proposal for legislation would, if approved by the Legislature, come into force on a date to be established by Government.

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SCHEDULE 1
ESTIMATED FINANCE AMOUNT

Estimated finance amount

1. The estimated finance amount for a reference period shall be determined by estimating, prior to the start of a reference period, the sum of the following:

1. The sum of all amounts that are payable during the reference period by or on behalf of the investment asset owners to satisfy an obligation to repay, redeem or repurchase, or to provide for the repayment, redemption or repurchase, of all or a portion of the amount advanced to the owners under a funding obligation, excluding any payment made by applying the proceeds of a refinancing.

2. The sum of all funding costs for the reference period, determined as follows:

    i. Calculate the aggregate of all interest, scheduled principal and other periodic finance charges accruing, due and becoming payable or paid by or on behalf of investment assets owners during the reference period in respect of all funding obligations, including such amounts as may be prescribed.

    ii. Calculate the sum of the aggregate of all amounts received by or on behalf of investment asset owners during the reference period in respect of all funding obligations and such other amounts as may be prescribed.

    iii. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1.

3. The sum of all amounts payable during the reference period by or on behalf of investment asset owners to redeem, prepay or repurchase a funding obligation, including any premium, make-whole or other amount becoming payable under a funding obligation to give effect to the redemption, prepayment or repurchase.

4. The balance of the finance reserve at the end of the reference period, as determined under section 3 to this Schedule.

5. The sum of any other amounts payable during the reference period by or on behalf of investment asset owners that were incurred or committed to directly or indirectly in connection with the incurrence of funding obligations under the Financing Plan during the reference period, which may include such amounts as may be prescribed.

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Funding costs

2. For the purposes of paragraph 2 of section 1 to this Schedule, the funding costs for a reference period are determined by taking the following steps:

Finance reserve balance

3. (1) For the purposes of paragraph 4 of section 1 to this Schedule, the balance of the finance reserve at the end of the reference period is determined by taking the following steps:

1. Calculate the sum of all amounts deposited by or on behalf of investment asset owners during the reference period in order to pre-fund, collateralize, over-collateralize or establish reserves for the ultimate payment of funding obligations or for related contingencies specified in the Financing Plan.

2. Calculate the sum of all amounts withdrawn by or on behalf of investment asset owners during the reference period from deposits previously made as described in paragraph 1.

3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1.

Confidential Draft

Fw_ Indemnity Draft Briefing Note.rtf

From: Petsche, Nadine (TBS) []
To: Lee Anne Probert [LeeAnne.Probert@ca.ey.com]
Subject: Fw: Indemnity Draft Briefing Note
Date: Wednesday, June 14, 2017 08:37:50
Attachment 1: OFHP_GA - OPG IESO Indemnities - FAA s28 - BN_v10.docx

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As discussed. Nadine

From: Bruno Amara <Bruno.Amara@ofina.on.ca>
Sent: Tuesday, June 13, 2017 1:17 PM
To: Petsche, Nadine (TBS); Yep, Carlos (OFA); Kandeepan, Ken (OFA); Patel, Bharat (TBS)
Cc: Kim, John (OFA); Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF)
Subject: FW: Indemnity Draft Briefing Note

Hi

Attached for your information is a draft briefing note on Ministry of Energy's s. 28 (FAA) request for approval of indemnities for OPG and IESO. A number of clarifications have been requested from OPG/IESO mainly related to the scope of the indemnity request.

This draft note is also intended to facilitate coordination as necessary in various ongoing discussions such as IESO/OPG indemnities, provincial guarantees, PiLs exemption. I'm not sure if the indemnity may also have implications for accounting treatment.

Comments welcome.

Bruno

Bruno Amara

Sr. Manager, Financial and Regulatory Analysis

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OFHP_GA - OPG IESO Indemnities - FAA s28 - BN_v10.pdf

MINISTER OF ENERGY REQUEST FOR SECTION 28 APPROVAL FOR INDEMNITY AGREEMENTS IN FAVOUR OF OPG AND IESO FOR THEIR PARTICIPATION UNDER THE ONTARIO FAIR HYDRO PLAN ACT

ISSUE

The Minister of Energy is requesting approval from the Minister of Finance, pursuant to Section 28 of the *Financial Administration Act (*"FAA"*)* to enter into Indemnity Agreements ("Agreements"), on behalf of the Crown, in favour of Ontario Power Generation ("OPG"),and its subsidiaries and the Independent Electricity System Operator ("IESO") with respect to their respective roles in carrying out the implementation of the Ontario Fair Hydro Plan ("OFHP") under the *Ontario Fair Hydro Plan Act, 2017* (the "OFHP Act"). The indemnities would extend to the directors, officers and employees of these entities as well as the agents of the IESO.

Section 28 of the FAA requires that all ministries and public entities request the prior written approval of the Minister of Finance or the President of the Treasury Board for any transaction or commitment that would directly or indirectly increase the indebtedness or contingent liabilities of Ontario.

- The Minister of Energy would sign an Indemnity Agreement in favour of OPG and in favour of IESO.
- The Ministry of Energy indicates both OPG and the IESO expect to carry out activities that fall outside the scope of their pre-OFHP typical business activities and corporate mandate. This creates the risk that such activities could be perceived as not being carried out in "good faith" or in the best interest of the corporation thereby exposing OPG and/or the IESO to increased liability (pre-existing statutory protections from liability only extend to "good faith acts").
- In addition, statutory protections do not indemnify for costs relating to defending a claim.

Commented [A1]: Would Energy think it fair to add this wording to its business case?

RECOMMENDATION

- IESO and OPG have stated that these indemnities are required for their participation in the implementation of the OFHP Act.
- In order for the OFHP Act to be successful, it is recommended by the Minister of Energy that the Minister of Finance approve this request.
- [The requirement for indemnities was referenced in the recent Cabinet Submission by Minister of Energy, dated _____.]

Commented [A2]: This is placeholder language. TBD/TBC

WHAT IS THE MINISTER BEING ASKED TO SIGN?

- The Minister is being asked to sign the section 28 approval forms and the transmittal letter to Minister Thibeault.

FISCAL IMPACT

- The fiscal impact of a future indemnity claim is unknown. Ministry of Energy ("MENE") states that the likelihood of this indemnity being called upon is low and that the fiscal exposure is unquantifiable at this time.
- An line item or an appropriation for the contingent liability is not required by the Ministry of Energy at this time.
- An approval would be required for a voted appropriation for the Ministry of Energy to make payments if indemnity was called upon.
- MENE has confirmed in its [draft] request letter that it bears responsibility for funding, within its approved allocation, for payments associated with the indemnities provided under the Agreements.

Commented [A3]: Is this statement in the business case? P. 5 says "The risk to the Province of giving the indemnities is undeterminable at this time." Whereas the contingent liability table says it is low.
Can we have MENE to put this right up front. Need a bit of a narrative – what we [Energy] believe and why.

Commented [BA4]: We need to make clear what this means. Is it meaningful to claim to be responsible for funding if amount is unknown? And bullets above note ministry would need an approval for an appropriation. (This could include no approval and instruction to manage).

SUMMARY OF PROPOSED INDEMNITIES

This summary of the OPG/IESO Indemnity Agreement sets out who is being indemnified, for what, and also addresses the proposed waiver of claims, whereby the Province agrees not to bring certain claims against the indemnified parties.

Who the Indemnity Applies to

- The indemnity is being given in favour of "Protected Persons" which comprises OPG, each of OPG's subsidiaries [NTD: We have not received confirmation of whether the financing entity is a subsidiary of OPG] and each of their respective directors, officers and employees.

- Protected Persons are being indemnified against all losses, costs, damages and other expenses for any amount for which they incur damages in relation to any civil, criminal, administrative, investigative and/or other claim, including a broad range of types of damages. This also includes punitive and a broad range of types of damages that are not always included in an indemnity, such as consequential damages and economic losses. The indemnity also covers costs and expenses for defending themselves. These indemnities are for any act or omission and activity that relates to the Fair Hydro Plan.

What indemnities are being provided?

- The Indemnity Agreement provides that the Protected Person shall not benefit from the indemnity to the extent that the losses are already covered by an insurance policy or another indemnity.
- The indemnity also does not apply where the loss relates to the gross negligence or willful misconduct of the Protected Person. It is also explicitly carved out of this exception that a failure to conduct reasonable due diligence investigation will not in itself constitute gross negligence or willful misconduct, which narrows the exception in the context of disclosure and activities relating to issuing securities in public markets such that failing to conduct due diligence will not necessarily invalidate the Indemnity.
- The indemnity also applies where, in the case of a criminal or administrative proceeding, the Protected Person had a reasonable belief that their conduct was lawful.

- The Indemnity Agreement sets out how the Protected Person should notify the Province of any claims, and how any proceedings should be dealt with amongst the parties, as well as how any expenses and amounts should be paid during the determination of the claim.

The Indemnity Agreement includes a waiver of claim provision, which is not a normal provision for an indemnity agreement.

- This additionally provides that the Province will not make a claim against a Protected Person who is an individual (i.e., does not apply to OPG/IESO or subsidiaries) relating to any activities associated with the Fair Hydro Plan. This does not apply to claims for willful misconduct, dishonesty or gross negligence.

The Indemnity Agreement includes a warranty section given by the Province. In this section the Province Warrants that it has the authority and capacity, and has taken all necessary steps to enter into the Indemnity Agreement.

- This is an unusual provision, but likely relates to the fact that the Province is not the employer of the indemnified party, or the officers and directors are not the officers and directors of the Province.

ANALYSIS

Commented [A5]: s.28 notes usually talk about mitigation, as does the contingent liability table. Anything we can add here?

Scope of liability from Indemnities

The IESO and OPG are asking the Province to agree to indemnify, defend and hold harmless the IESO (and its agents) and OPG (and its subsidiaries), as well as their respective directors, officers and employees, from all claims, liabilities, costs, losses, taxes, fines, penalties judgments (including indirect and consequential damages/loss of profits, economic loss/loss of opportunity) that might, directly or indirectly, be incurred by any of the indemnified entities and individuals in relation to any civil, criminal administrative investigative or other claims or proceedings arising directly or indirectly as a result of the entities or individual's activities, acts and/or omissions in the implementation of or otherwise relating to the OFHP (including where an individual is acting at the request of OPG or IESO in a different capacity than as a director, officer or employee of OPG or a subsidiary).

- The indemnity would also include coverage for the financing entity (SPV), created by OPG, (as a subsidiary of OPG) to facilitate the purchase of the deferred assets ("regulatory assets") under the Global Adjustment ("GA").

Commented [A6]: Has the scope of this indemnity been compared to the proposed Provincial guarantee related to the financing? Is there overlap or duplication?

Commented [A7R6]: Comments from MOF Legal:

Even if Board has indemnities from OPG, wouldn't be able to cover as is not in the best interest of corporation.

MOF Legal: up to Energy to tell us. OPG must have given Board members the normal indemnities.

Bruce Lease one covers the not in the best interest of corporation.

OBCA indemnity: immunity from suit. May indemnity corp. directors and officers. Limited to indemnity in good faith. Other specific provisions exist in EA and FHA.

IESO covers quite a bit. Including Board, directors, employees.

MENE states that the OFHP Act activities of both OPG and the IESO would otherwise fall outside the scope of their typical business activities and corporate mandates. According to MENE, this creates the risk that such activities could be perceived as not being carried out in "good faith" or in the best interest of the corporation, thereby exposing OPG and/or the IESO to increased liability.

Commented [A8]: Fair to insert?

Commented [A9]: Would Energy change this to "historical" in its business case?

Commented [A10R9]: MOF Legal: OPG Board appears to be concerned some would say not in good faith despite objects being changed.

Examples of specific risks to OPG include, without limitation,

- liability as a promoter under Canadian securities laws (or the equivalent, if any, under other applicable securities laws),
- secondary market liability under Canadian and/or other applicable securities laws,
- liability that the signatories to the prospectuses will have (i.e., the individuals signing the prospectus), and
- liability of OPG as the Financial Services Manager under any of the transaction agreements (e.g., the Financial Services Management Agreement, the Administration Agreement, the MSSA, the Master Trust Indenture and any Supplemental Indentures).

Examples of specific risks to the IESO include, without limitation, liability for its role in potential securities offerings of OPG's financing entity, which may come with heightened exposure to liability for the IESO, particularly for offerings into the U.S. market. It is not clear whether the statutory protections would apply federally or in the U.S. context. If they would not extend to a U.S. claim, for example, it would support the need for a separate indemnity for the IESO.

If the indemnities are not provided, ENE indicates that this could affect OPG and IESO's willingness to undertake such activities, jeopardizing the successful implementation of the OFHP Act. Both the IESO and OPG have specifically asked for these Indemnities in order to allow them to carry out their roles in implementing the OFHP Act.

Commented [A11]: Can we know this in advance, or is this only to be known if tested in the courts?

Commented [A12R11]: IESO is indirectly involved. Not clear EA 19(1) for IESO. Unclear whether it'd protect from US suit. OFA Board also raised. MOF Legal: this is a valid point.

Commented [A13]: The business case is somewhat inconsistent on specifically citing directors, or being broader. Which is it?

Key Comments:

In providing the approval under Section 28 of the FAA, it is important to flag the following key items that arise from the Indemnity Agreements that the Minister of Energy is proposing to sign [subject to finalising drafting – TBC].

1. Acting in "Good Faith"

Without duplication of the coverage for liabilities that could arise for OPG and IESO, both are requesting to be indemnified for their activities that may be found to have not been conducted in "good faith" and/or in the best interests for their respective corporations.

Since IESO and OPG are expected to carry out activities under the OFHP that fall outside the scope of their typical business activities and corporate mandate to date, management in IESO and OPG are of the view that this creates the risk that such activities could be perceived as not being carried out in "good faith" or in the best interest of the corporation thereby exposing OPG and/or the IESO and their directors, officers and employees to increased liability.

- The concern seems to be that carrying out activities to implement the OFHP Act, even if in some cases required by the Act would not be considered to be in the best interest of the respective corporation.

  - Is there a difference between acting in good faith in the best interests of the corporation versus acting in good faith in the exercise or performance of powers or duties under the Act?
- Statutory protections from liability only extend to "good faith acts as set out below for IESO directors, officers, employees and agents and for OPG employees".
  - Since OPG is falls under Ontario's *Business Corporations Act* (OBCA), directors and officers of OPG are subject to the standard set out in that Act which includes a limitation on indemnities from corporations, whereby indemnities can only be given to the extent that the directors and officers carried out their activities in good faith and in the best interest of the corporation. The proposed Provincial indemnity, however, would not be restricted to that standard.
  - The standard applicable to directors of IESO is set out in s. 12 of the *Electricity Act, 1988*, i.e., to act honestly and in good faith in the best interests of the IESO and exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.
  - So the standard is similar for both OPG and IESO directors.

Commented [A14]: There is no statutory protection for directors and officers of OPG. Most likely OPG has provided them with a typical indemnity consistent with OBCA provisions

Both the *Electricity Act, 1998* and the *Ontario Fair Hydro Plan Act, 2017*, provide coverages for such liabilities as long as those activities are done in "good faith".

- Subsection 19(1) of the Electricity Act, 1998 already provides IESO directors, officers and employees with the following protection from liability:

  "No action or other civil proceeding shall be commenced against a director, officer, employee or agent of the IESO or a member of a committee or panel established by the board of directors of the IESO for any act done in good faith in the exercise or performance or the intended exercise or performance of a power or duty under any Act, the regulations under any Act, the IESO's licence, the IESO's by-laws or the market rules, or for any neglect or default in the exercise or performance in good faith of such a power or duty."

- Subsection 39(1) of the *Ontario Fair Hydro Plan Act, 2017* also provides similar protection from liability for OPG:

  "No action or other civil proceeding shall be commenced against any employee of the Province or Ontario Power Generation Inc. for any act done in good faith in the exercise or performance or the intended exercise or performance of a power or duty under this Act, the regulations or for any alleged neglect or default in the exercise or performance in good faith of such a power or duty."

Commented [BA15]: Does this mean
- employee of the Province or employee of OPG, or
- employee of the Province or OPG (i.e., the corporation itself)?

2. Potential for Fiscal Exposure of the OFHP Act

In addition to the potential fiscal impact due to a call on the indemnity, there may be a risk associated with the anticipated accounting treatment of the GA Financing portion of the OFHP. With the Province providing guarantee agreements, financial support through credit facilities and

the proposed agreements to indemnify the IESO and OPG, the case for the anticipated accounting treatment of the GA structure could be weakened.

Commented [A16]: Whether to include or not, or how to position it, we should see what OPG and E&Y say on the impact on the accounting opinion.

Commented [A17]: Need to get an update from OPCD on whether the proposed indemnities would have a significant impact on this analysis.

BACKGROUND

- On March 2, 2017, the government announced Ontario's Fair Hydro Plan (the "OFHP"), under which the government will take steps to lower electricity bills [on an after-tax basis] by 25 per cent on average for a typical residential customer, starting July 1, 2017, relative to what the bills would otherwise have been without the OFHP.
- Changes to refinance a portion of the Global Adjustment ("GA") are a component of the 25 per cent rate relief under the OFHP. This includes roles for both IESO and OPG:
  - IESO – legislation imposes certain obligations and requirements on IESO to carry out various activities to implement the OFHP such as the creation of a regulatory asset in relation to deferred costs and the GA financing component of the OFHP, the conveyance of that asset to a financing entity (expected to be established by OPG) and providing a servicing role in recovering the financing entity's funding costs from future ratepayers. IESO may also be required to play a role in potential securities offerings of OPG's financing entity. This may come with heightened exposure to liability for the IESO.
  - OPG – OPG is expected to finance the purchase of the regulatory asset, related to deferred costs, through a financing entity that OPG creates. OPG considers risks associated with these OFHP-related activities to be beyond OPG's usual business/operations. This is particularly true with respect to any securities offerings of OPG's financing entity. Products are expected to be offered into the Canadian and U.S. Markets. As a result, pre-existing indemnities and protections do not adequately protect OPG, its directors, officers and employees.
- The 25 per cent rate relief also includes the rebate amount equivalent to the 8 per cent Provincial portion of the HST that has been in effect since January 1, 2017 under the Ontario Rebate for Electricity Consumers Act, 2016, and the expected savings from the shifting of the Ontario Electricity Support Program ("OESP") and the Rural or Remote Rate Protection program ("RRRP") costs from ratepayers to being funded by the Province.
- The government introduced legislation, passed on May 31, 2017 and received Royal Ascent on June 1, 2017, to enable the implementation of the OFHP Act.

Prepared by: Corporate and Electricity Finance Division, OFA

With inputs from: Legal Services Branch, Ministry of Finance
[Branch Name], Treasury Board Secretariat
Office of Provincial Controller Division, Treasury Board Secretariat

June XX, 2017

DRAFT

DRAFT

Fw_ Instructs 1 (May 31-17) based on OEB_May 31 revised comments (Draft 5).docx.rtf

From: Petsche, Nadine (TBS) []
To: Suzie Gignac [suzie.r.gignac@ca.ey.com]; Lee Anne Probert [LeeAnne.Probert@ca.ey.com]; Blake Langill [blake.w.langill@ca.ey.com]
Subject: Fw: Instructs 1 (May 31-17) based on OEB_May 31 revised comments (Draft 5).docx
Date: Friday, June 02, 2017 07:58:54
Attachment 1: Consultation Draft - OFHPA Part II Regulation - with Notes.docx

---

All,
Please see below and attached.
Nadine

From: Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>
Sent: Friday, June 2, 2017 7:51 AM
To: Petsche, Nadine (TBS); Graham, Helen (TBS)
Cc: Hosick, Sarah (TBS)
Subject: Fw: Instructs 1 (May 31-17) based on OEB_May 31 revised comments (Draft 5).docx

Please share with others.

Sent from my BlackBerry 10 smartphone on the Rogers network.
From: Rehob, James (ENERGY) <James.Rehob@ontario.ca>
Sent: Thursday, June 1, 2017 3:02 PM
To: Veinot, Cindy (TBS)
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI); Hume, Steen (ENERGY)
Subject: FW: Instructs 1 (May 31-17) based on OEB_May 31 revised comments (Draft 5).docx

Confidential/Solicitor & Client Privileged

June 1, 2017

Good day, Cindy. I hope you are keeping well. We have just received Royal Assent of Bill 132, the *Ontario Fair Hydro Plan Act, 2017.*

We are also pleased to provide you with the most recent draft of the Part II OFHPA Regulation in consultation format. This is the Regulation which would guide the OEB in making the first two sets of adjustments regarding the 25% invoice reduction.

This version includes Leg. Counsel's notes.

Please let us know what comments you may have.

Best,

James

James P. H. Rehob
Senior Counsel
Ministry of the Attorney General
Legal Services Branch
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Consultation Draft - OFHPA Part II Regulation - with Notes.pdf

This confidential draft document is provided for discussion purposes only. It should not be construed as representing the position adopted by the Government of Ontario on any of the topics included or not included in this document. Any notes included in this document are intended only to help facilitate a discussion of the topics to which they relate.

A PROPOSAL TO CREATE REGULATION

made under the

ONTARIO FAIR HYDRO PLAN ACT, 2017

FAIR ADJUSTMENT UNDER PART II OF THE ACT

Definitions

1. In this Regulation,

"billing period" means a period of time in respect of which an invoice for electricity is issued by an electricity vendor , a specified consumer or a unit sub-meter provider providing unit sub-metering for a specified consumer;

"Toronto Hydro" means Toronto Hydro-Electric System Limited.

Hypothetical regulated rate consumer

2. For the purposes of subsection 7 (1) of the Act, a hypothetical regulated rate consumer meets the following criteria:

[OLC Note: Section 7 of the Act refers to "a hypothetical regulated rate consumer who meets the prescribed criteria" so we need to prescribe criteria under this section.]

1. The consumer purchases electricity directly from Toronto Hydro.

2. The consumer has an account with Toronto Hydro that falls within the residential-service rate classification as specified in a rate order made by the Board under section 78 of the *Ontario Energy Board Act, 1998*.

3. The consumer is invoiced by Toronto Hydro on a monthly basis.

[OLC Note: To help me understand how the various terminology is meant to operate, does para. 3 above mean that the "billing period" is one month?]

4. The consumer is not invoiced by Toronto Hydro for electricity on an equal monthly payment plan, an equal billing plan or a net metered basis.
5. The consumer is not a rate-assisted consumer within the meaning of section 79.2 of the *Ontario Energy Board Act, 1998*.

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6. The consumer uses 750 kilowatt hours of electricity in each billing period.

7. The consumer's time-of-use consumption profile in each billing period is described as follows:

    i. 65 per cent of the consumer's usage occurs during off-peak periods associated with the regulated price referred to as $RPEM_{OFF}$ in section 3.4 of the "Standard Supply Service Code for Electricity Distributors" issued by the Board.

    ii. 17 per cent of the consumer's usage occurs during mid-peak periods associated with the regulated price referred to as $RPEM_{MID}$ in section 3.4 of the "Standard Supply Service Code for Electricity Distributors" issued by the Board.

    iii. 18 per cent of the consumer's usage occurs during on-peak periods associated with the regulated price referred to as $RPEM_{ON}$ in section 3.4 of the "Standard Supply Service Code for Electricity Distributors" issued by the Board.

Regulated rate consumers, first fair adjustment under s. 7 of the Act

3. (1) The Board shall apply the following methodology for the purposes of section 7 of the Act:

1. Subject to subsections (2) and (3), determine the total invoice amount, consisting of the following types of amounts, that would be invoiced in respect of a billing period to a hypothetical regulated rate consumer who meets the criteria set out in section 2:

    i. The commodity price of the electricity under the comparison rates described in subsection 7 (3) of the Act.

    ii. The rates and charges as of May 1, 2017 as set out in the applicable rate order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998,* except for the rates and charges related to any rural or remote rate protection compensation required under subsection 79 (4) of the *Ontario Energy Board Act, 1998* or any compensation required under subsection 79.2 (10) of that Act.

    iii. The rates and charges as of April 30, 2017 as set out in the applicable rate order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998,* related to any rural or remote rate protection compensation required under subsection 79 (4) of the *Ontario Energy Board Act, 1998* or any compensation required under subsection 79.2 (10) of that Act.

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iv. The amount of any harmonized sales tax payable by the consumer under Part IX of the *Excise Tax Act* (Canada) in respect of the amounts mentioned in subparagraphs i, ii and iii.

2. Subject to subsections (2) and (3), determine the rates that, when applied as the commodity price of the electricity in subparagraph 1 i would result in the hypothetical regulated rate consumer who meets the criteria set out in section 2 being invoiced a total invoice amount in respect of a billing period, consisting of the following types of amounts, that is 25 per cent less than the total invoice amount determined under paragraph 1:

   i. The commodity price of the electricity.

   ii. The rates and charges as of May 1, 2017 as set out in the applicable rate order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998,* except for the rates and charges related to any rural or remote rate protection compensation required under subsection 79 (4) of the *Ontario Energy Board Act, 1998***.**

   iii. The rates and charges as of July 1, 2017 as set out in the applicable rate order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*, related to any rural or remote rate protection compensation required under subsection 79 (4) of the *Ontario Energy Board Act, 1998***.**

   iv. The amount of any harmonized sales tax payable by the consumer under Part IX of the *Excise Tax Act* (Canada) in respect of the amounts mentioned in subparagraphs i, ii and iii.

(2) The following types of amounts shall be excluded from the total invoice amount determined under paragraph 1 or 2 of subsection (1).

1. The balance of any amounts carried forward from previous invoices in respect of previous invoice periods.

2. Penalties or interest.

3. Charges that do not relate to the use of electricity.

4. Any of the following charges that may be set out in an order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998:*

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i. A fixed monthly service charge payable by a generation facility within the meaning of section 56 of the *Ontario Energy Board Act, 1998* and classified as "microFIT".

ii. A charge labelled as a "specific service charge" or "retail service charge".

(3) For the purposes of determining the total invoice amount mentioned in paragraph 1 of subsection (1), the Board shall not take into account any financial assistance under the *Ontario Rebate for Electricity Consumers Act, 2016* but the Board shall do so for the purposes of determining the total invoice amount mentioned in paragraph 2 of subsection (1).

Other specified consumers, first fair adjustment under s. 8 of the Act

4. (1) For the purposes of section 8 of the Act, the Board shall determine a dollar per megawatt hour amount that represents the difference between the following:

1. The comparison rates mentioned in subparagraph 1 i of subsection 3 (1).

2. The rates determined by the Board under paragraph 2 of subsection 3 (1).

(2) The adjustment to be applied by electricity vendors in respect of each billing period with respect to specified consumers who are not regulated rate consumers shall be determined as follows:

1. The electricity vendor shall multiply the dollar per megawatt hour amount determined by the Board under subsection (1) by the total volume of electricity consumed by the specified consumer during the billing period.

2. The electricity vendor shall deduct the amount determined under paragraph 1 from the amount otherwise payable by the specified consumer in respect of the billing period relating to adjustments made under section 25.33 of the *Electricity Act, 1998*.

(3) For the purposes of paragraph 1 of subsection (2), the total amount of electricity consumed by a specified consumer in a billing period shall be,

(a) in the case of a specified consumer that is a market participant as defined in the *Electricity Act, 1998*, the net volume of electricity withdrawn from the IESO-controlled grid by the specified consumer during the billing period, as determined in accordance with the market rules made under section 32 of the *Electricity Act, 1998*; and

(b) in any other case, the volume of electricity distributed to the specified consumer during the billing period by the electricity vendor, adjusted for losses as required by

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the Retail Settlement Code issued by the Board under the *Ontario Energy Board Act, 1998*.

(4) For greater certainty, if the amount determined under paragraph 2 of subsection (2) in respect of a billing period is a negative amount, that amount shall be a credit for the specified consumer for that billing period.

Subsequent adjustments, regulated rate consumers, cl. 11 (1) (a) of the Act

5. (1) For the purpose of determining the electricity rates payable by regulated rate consumers for the period beginning on May 1, 2018 and ending on April 30, 2019, the Board shall,

(a) if the rate of inflation is a negative amount, maintain electricity rates for regulated rate consumers at the rates determined under paragraph 2 of subsection 3 (1); or

[ENE LSB Note: Is this in keeping with the policy intention? Maintaining rates as per July 1, 2017 if the rate of inflation is negative is more than likely to result in bills rising (and, of course, by more than the rate of inflation). If Toronto Hydro's distribution rates rise by 5% (and, say, 2% on the bill as a consequence) when inflation is negative or zero, the bill would rise by more than the rate of inflation. Please confirm.]

(b) in any other case, the Board shall determine electricity rates for regulated rate consumers in accordance with subsections (2) and (4).

(2) For the purposes of clause (1) (b), the rates must, when applied as the commodity price of the electricity, result in a hypothetical rate regulated consumer described in section 2 being invoiced a total invoice amount in respect of a billing period, consisting of the following types of amounts but excluding the types of amounts referred to in subsection (3), that is higher than the total invoice amount referred to in paragraph 2 of subsection 3 (1) by the rate of inflation:

1. The commodity price of the electricity.

2. The rates and charges as of May 1, 2018 as set out in the applicable rate order issued by the Board under subsection 78(3) of the *Ontario Energy Board Act, 1998*.

3. The amount of any harmonized sales tax payable by the consumer under Part IX of the *Excise Tax Act* (Canada) in respect of the amounts mentioned in paragraphs 1 and 2.

(3) The types of amounts to be excluded for the purposes of subsection (2) are the types of amounts referred to in subsection 3 (2).

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(4) For the purposes of subsection (1) , the Board shall, when determining the total invoice amount referred to in paragraph 2 of subsection 3 (1), take into account any financial assistance under the *Ontario Rebate for Energy Consumers Act, 2016.*

[OLC Note: I've suggested slightly different wording than "first total invoice amount" because I don't think that term is sufficiently clear as a drafting matter. I have also included your note immediately below, as per your request.]

[ENE LSB Note: The reference to the "first total invoice amount" is intended to refer to the May 2018 invoice that has the attributes set out in paragraphs 1 to 3 of subsection (1). If there is a better way of referring to it, we are open to suggestions. The difficulty is that there are two "total invoice amounts" referred to in subsection (1), and we are trying to identify to which one subsection (4) relates.]

(5) In this section,

"Ontario Consumer Price Index" means, for a 12-month period, the Consumer Price Index for Ontario (All-Items) as reported monthly by Statistics Canada under the authority of the *Statistics Act* (Canada), averaged over the 12-month period;

"rate of inflation" means the percentage change between,

[ENE LSB Note: Does this work with a comment Tim made regarding CPI being computed for ten, versus twelve, months? Does this align with OEB RPP rate-setting processes and timing?]

(a) the value of the Ontario Consumer Price Index for the 12-month period immediately preceding the 12-month period described in clause (b), and

(b) the vaolue of the Ontario Consumer Price Index for the 12-month period ending on the last day of the most current month for which the Ontario Consumer Price Index is reported by Statistics Canada as of the time the Board applies the methodology mentioned in subsection (1).

Subsequent adjustments, other specified consumers, cl. 11 (1) (b) of the Act

6. (1) For the purpose of determining adjustments to be applied in respect of specified consumers who are not regulated rate consumers for the period beginning on May 1, 2018 and ending on April 30, 2019, the Board shall determine a dollar per megawatt hour amount that represents the difference between the following:

1. The rates mentioned in subsection (4).

2. The rates determined by the Board under subsection 5 (1).

(2) The adjustment to be applied by electricity vendors in respect of each billing period for the period beginning on May 1, 2018 and ending on April 30, 2019 with respect to specified consumers who are not regulated rate consumers shall be determined as follows:

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1. The electricity vendor shall multiply the dollar per megawatt hour amount determined by the Board under subsection (1) by the total amount of the electricity consumed by the specified consumer during the billing period.

2. The electricity vendor shall deduct the amount determined under paragraph 1 from the amount otherwise payable by the specified consumer in respect of a billing period in respect of the adjustments made under section 25.33 of the *Electricity Act, 1998*.

(3) For the purposes of paragraph 1 of subsection (2), the total amount of the electricity consumed by a specified consumer in a billing period shall be,

(a) in the case of a specified consumer that is a market participant as defined in the *Electricity Act, 1998*, the net volume of electricity withdrawn from the IESO-controlled grid by the specified consumer during the billing period, as determined in accordance with the market rules made under section 32 of the *Electricity Act, 1998*; or

(b) in any other case, the volume of electricity distributed to the specified consumer during the billing period by the electricity vendor, adjusted for losses as required by the Retail Settlement Code issued by the Board under the *Ontario Energy Board Act, 1998.*

(4) The rates referred to in paragraph 1 of subsection (1) are the rates that would have been effective May 1, 2018 if they had been determined by the Board using the method prescribed by regulations made under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*, without taking into account any forecasted impact of any provision of the Act.

(5) If the amount determined under paragraph 2 of subsection (2) in respect of a billing period is a negative amount, that amount shall be given as a credit to the specified consumer in respect of that billing period.

(6) In determining the rates mentioned in subsection (4), the Board shall take into account any financial assistance under the *Ontario Rebate for Electricity Consumers Act, 2016.*
[ENE LSB note: If this provision is required, the OEB believes that it needs to be that the OEB will take ORECA into account.]

Sub-metering

7. For the purposes of subsection 12 (2) of the Act, the amount payable for the electricity by the person who is liable to pay the invoice shall, in respect of each billing period, reflect the person's proportionate share of any determination of the Board under section 9 or 11 of the Act that applies to the invoice for electricity payable by the specified consumer.

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Commencement

8. This Regulation would come into force on the day it is filed.

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Fw_ Instructs based on Draft 6 (June 6-17) reg2017.0246.e06.docx.rtf

From: Petsche, Nadine (TBS) []
To: Suzie Gignac [suzie.r.gignac@ca.ey.com]; Blake Langill [blake.w.langill@ca.ey.com]; Lee Anne Probert [LeeAnne.Probert@ca.ey.com]
Subject: Fw: Instructs based on Draft 6 (June 6-17) reg2017.0246.e06.docx
Date: Wednesday, June 07, 2017 14:02:43
Attachment 1: reg2017.0246.e07.docx

More to follow. The call this afternoon to be deferred to allow for time to review. Thx. Nadine

From: Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>
Sent: Wednesday, June 7, 2017 1:52 PM
To: Petsche, Nadine (TBS); Graham, Helen (TBS); Dutton, Andrea (TBS)
Cc: Hosick, Sarah (TBS); Laughton, Patrick (TBS)
Subject: FW: Instructs based on Draft 6 (June 6-17) reg2017.0246.e06.docx

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From: Rehob, James (ENERGY)
Sent: June 7, 2017 1:52 PM
To: Veinot, Cindy (TBS)
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI); Cayley, Daniel (ENERGY); Christie, Tim (ENERGY); Hume, Steen (ENERGY)
Subject: FW: Instructs based on Draft 6 (June 6-17) reg2017.0246.e06.docx

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June 7, 2017

Hi, Cindy – one last reg. of import: Updated (still not quite finalized) version of the OFHPA Part II Regulation. Kindly note, this regulation may be slightly re-organized as we work toward finalizing.

Best,
James

James P. H. Rehob
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Legal Services Branch
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reg2017.0246.e07.pdf

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REG2017.0246.e
7-TP

ONTARIO REGULATION

made under the

ONTARIO FAIR HYDRO PLAN ACT, 2017

FAIR ADJUSTMENT UNDER PART II OF THE ACT

Interpretation

1. (1) In this Regulation,

"billing period" means a period of time in respect of which an invoice for electricity is issued by an electricity vendor , a specified consumer or a unit sub-meter provider providing unit sub-metering for a specified consumer;

"Ontario Consumer Price Index" means, for a 12-month period, the Consumer Price Index for Ontario (All-Items) as reported monthly by Statistics Canada under the authority of the *Statistics Act* (Canada), averaged over the 12-month period;

"rate of inflation" means the percentage change between,

(a) the value of the Ontario Consumer Price Index for the 12-month period immediately preceding the 12-month period described in clause (b), and

(b) the value of the Ontario Consumer Price Index for the 12-month period ending on February 28, 2018;

"Toronto Hydro" means Toronto Hydro-Electric System Limited;

"Total Invoice Amount A" means the total invoice amount described in subsection (2);

"Total Invoice Amount B" means the total invoice amount described in subsection (3);

"Total Invoice Amount C" means the total invoice amount described in subsection (4).

(2) Total Invoice Amount A consists of the following types of amounts that would be invoiced in respect of a billing period to a hypothetical regulated rate consumer who meets the criteria set out in section 2:
[OLC Note: Total Invoice Amount A is the one determined at the "comparison rates" under 7 (3) of the Act, which is the benchmark for the 25 % reduction.]

1. The commodity price of the electricity, as determined under the comparison rates described in subsection 7 (3) of the Act.

2. The rates and charges as of May 1, 2017 as set out in the applicable rate order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*, except for the rates and charges related to any rural or remote rate protection compensation required under subsection 79 (4) of the *Ontario Energy Board Act, 1998* or any compensation required under subsection 79.2 (10) of that Act.

3. The rates and charges as of April 30, 2017 as set out in the applicable rate order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*, related to any rural or remote rate protection compensation required under subsection 79 (4) of the *Ontario Energy Board Act, 1998* or any compensation required under subsection 79.2 (10) of that Act.

4. The amount of any harmonized sales tax payable by the consumer under Part IX of the *Excise Tax Act* (Canada) in respect of the amounts mentioned in subparagraphs i, ii and iii.

(3) Total Invoice Amount B consists of the following types of amounts that would be invoiced in respect of a billing period to a hypothetical regulated rate consumer who meets the criteria set out in section 2:
[OLC Note: Total Invoice Amount B is the one that must ultimately equal a 25 % reduction from Total Invoice Amount A.]

1. The commodity price of the electricity, as determined under the rates determined in accordance with subsection 3 (1).

2. The rates and charges as of May 1, 2017 as set out in the applicable rate order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*, except for the rates and charges related to any rural or remote rate protection compensation required under subsection 79 (4) of the *Ontario Energy Board Act, 1998*.

3. The rates and charges as of July 1, 2017 as set out in the applicable rate order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*, related

to any rural or remote rate protection compensation required under subsection 79 (4) of the *Ontario Energy Board Act, 1998***.**

4. The amount of any harmonized sales tax payable by the consumer under Part IX of the *Excise Tax Act* (Canada) in respect of the amounts mentioned in subparagraphs i, ii and iii.

(4) Total Invoice Amount C consists of the following types of amounts that would be invoiced in respect of a billing period to a hypothetical regulated rate consumer who meets the criteria set out in section 2:
[OLC Note: Total Invoice Amount C is the one that must achieve an incremental increase to Total Invoice Amount B as a result of inflation.]

1. The commodity price of the electricity, as determined under the rates determined in accordance with subsection 5 (2).

2. The rates and charges as of May 1, 2018 as set out in the applicable rate order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*.

3. The amount of any harmonized sales tax payable by the consumer under Part IX of the *Excise Tax Act* (Canada) in respect of the amounts mentioned in paragraphs 1 and 2.

(5) The following types of amounts shall be excluded from Total Invoice Amount A, Total Invoice Amount B and Total Invoice Amount C:

1. The balance of any amounts carried forward from previous invoices in respect of previous invoice periods.

2. Penalties or interest.

3. Charges that do not relate to the consumption of electricity.

4. Any of the following charges that may be set out in the applicable rate order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998:*

    i. A fixed monthly service charge payable by a generation facility within the meaning of section 56 of the *Ontario Energy Board Act, 1998* and classified as “microFIT”.

    ii. A charge labelled as a “specific service charge” or “retail service charge”.

(6) The Board shall take into account any financial assistance under the *Ontario Rebate for Energy Consumers Act, 2016* when determining Total Invoice Amount B and Total Invoice Amount C but shall not do so when determining Total Invoice Amount A.

Hypothetical regulated rate consumer

2. For the purposes of subsection 7 (2) of the Act, a hypothetical regulated rate consumer meets the following criteria:

1. The consumer purchases electricity directly from Toronto Hydro.

2. The consumer has an account with Toronto Hydro that falls within the residential-service rate classification as specified in a rate order made by the Board under section 78 of the *Ontario Energy Board Act, 1998*.

3. The consumer's billing period is one month.

4. The consumer is not invoiced by Toronto Hydro for electricity on an equal monthly payment plan, an equal billing plan or a net metered basis.

5. The consumer is not a rate-assisted consumer within the meaning of section 79.2 of the *Ontario Energy Board Act, 1998*.

6. The consumer uses 750 kilowatt hours of electricity in each billing period.

7. The consumer's time-of-use consumption profile in each billing period is described as follows:

    i. 65 per cent of the consumer's usage occurs during off-peak periods associated with the regulated price referred to as $RPEM_{OFF}$ in section 3.4 of the "Standard Supply Service Code for Electricity Distributors" issued by the Board.

    ii. 17 per cent of the consumer's usage occurs during mid-peak periods associated with the regulated price referred to as $RPEM_{MID}$ in section 3.4 of the "Standard Supply Service Code for Electricity Distributors" issued by the Board.

    iii. 18 per cent of the consumer's usage occurs during on-peak periods associated with the regulated price referred to as $RPEM_{ON}$ in section 3.4 of the "Standard Supply Service Code for Electricity Distributors" issued by the Board.

Regulated rate consumers, first fair adjustment under s. 7 of the Act

3. (1) The Board shall determine the rates that would, when applied for the purposes of determining the commodity price of the electricity included in Total Invoice Amount B, result in Total Invoice Amount B being 25 per cent less than Total Invoice Amount A.

Other specified consumers, first fair adjustment under s. 8 of the Act

4. (1) For the purposes of section 8 of the Act, the Board shall determine a dollar per megawatt hour amount that represents the difference between the following:

1. The comparison rates described in subsection 7 (3) of the Act.

2. The rates determined by the Board under subsection 3 (1).

(2) The adjustment to be applied by electricity vendors in respect of each billing period with respect to specified consumers who are not regulated rate consumers shall be determined as follows:

1. The electricity vendor shall multiply the dollar per megawatt hour amount determined by the Board under subsection (1) by the total volume of electricity consumed by the specified consumer during the billing period.

2. The electricity vendor shall deduct the amount determined under paragraph 1 from the amount otherwise payable by the specified consumer in respect of the billing period for adjustments made under section 25.33 of the *Electricity Act, 1998*.

(3) For the purposes of paragraph 1 of subsection (2), the total volume of electricity consumed by a specified consumer in a billing period shall be,

(a) in the case of a specified consumer that is a market participant as defined in the *Electricity Act, 1998*, the net volume of electricity withdrawn from the IESO-controlled grid by the specified consumer during the billing period, as determined in accordance with the market rules made under section 32 of the *Electricity Act, 1998*; and

(b) in any other case, the volume of electricity distributed to the specified consumer during the billing period by the electricity vendor, adjusted for losses as defined in and in accordance with the Retail Settlement Code, issued by the Board under the *Ontario Energy Board Act, 1998.*

[OLC Note: Instructions said "as appropriate" but this would be an extremely vague standard without more details about what is meant. I'm wondering if you mean "in accordance with the Retail Settlement Code" (assuming that the RSC sets out some guidance on when it is appropriate to adjust for losses?)]

(4) For greater certainty, if the amount determined under paragraph 2 of subsection (2) in respect of a billing period is a negative amount, that amount shall be a credit for the specified consumer for that billing period.

Subsequent adjustments, regulated rate consumers, cl. 11 (1) (a) of the Act

5. (1) For the purpose of determining the electricity rates payable by regulated rate consumers for the period beginning on May 1, 2018 and ending on April 30, 2019, the Board shall,

(a) if the rate of inflation is a negative amount, maintain electricity rates for regulated rate consumers at the rates determined under subsection 3 (1); or

(b) in any other case, determine electricity rates for regulated rate consumers in accordance with subsection (2).

(2) For the purposes of clause (1) (b), the Board shall determine the rates that would, when applied for the purposes of determining the commodity price of the electricity included in Total Invoice Amount C, result in Total Invoice Amount C being greater than Total Invoice Amount B by the rate of inflation.

Subsequent adjustments, other specified consumers, cl. 11 (1) (b) of the Act

6. (1) For the purpose of determining adjustments to be applied in respect of specified consumers who are not regulated rate consumers for the period beginning on May 1, 2018 and ending on April 30, 2019, the Board shall determine a dollar per megawatt hour amount that represents the difference between the following:

1. The rates mentioned in subsection (4).

2. The rates determined by the Board under subsection 5 (1).

(2) The adjustment to be applied by electricity vendors in respect of each billing period for the period beginning on May 1, 2018 and ending on April 30, 2019 with respect to specified consumers who are not regulated rate consumers shall be determined as follows:

1. The electricity vendor shall multiply the dollar per megawatt hour amount determined by the Board under subsection (1) by the total volume of electricity consumed by the specified consumer during the billing period.

2. The electricity vendor shall deduct the amount determined under paragraph 1 from the amount otherwise payable by the specified consumer in respect of a billing period for adjustments made under section 25.33 of the *Electricity Act, 1998*.

(3) For the purposes of paragraph 1 of subsection (2), the total volume of the electricity consumed by a specified consumer in a billing period shall be,

(a) in the case of a specified consumer that is a market participant as defined in the *Electricity Act, 1998*, the net volume of electricity withdrawn from the IESO-controlled grid by the specified consumer during the billing period, as determined in accordance with the market rules made under section 32 of the *Electricity Act, 1998*; or

(b) in any other case, the volume of electricity distributed to the specified consumer during the billing period by the electricity vendor, adjusted for losses as defined in and in accordance with the Retail Settlement Code issued by the Board under the *Ontario Energy Board Act, 1998.*

(4) The rates referred to in paragraph 1 of subsection (1) are the rates that would have been effective May 1, 2018 if they had been determined by the Board using the method prescribed by regulations made under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*, without taking into account any forecasted impact of any provision of the Act.

(5) If the amount determined under paragraph 2 of subsection (2) in respect of a billing period is a negative amount, that amount shall be a credit for the specified consumer in that billing period.

(6) In determining the rates mentioned in subsection (4), the Board shall take into account any financial assistance under the *Ontario Rebate for Electricity Consumers Act, 2016.*

Sub-metering

7. For the purposes of subsection 12 (2) of the Act, the amount payable for the electricity by the person who is liable to pay the invoice shall, in respect of each billing period, reflect the person's proportionate share of any determination of the Board under section 9 or 11 of the Act that applies to the invoice for electricity payable by the specified consumer.

Commencement

8. This Regulation comes into force on the day it is filed.

Fw_ Ontario Fair Hydro Plan.rtf

From: Veinot, Cindy (TBS) []
To: Proulx, Didem (TBS) [Didem.Proulx@ontario.ca]
Subject: Fw: Ontario Fair Hydro Plan
Date: Tuesday, April 25, 2017 13:26:14
Attachment 1: Fair Hydro Plan Act (April 20 2017) Consultation v3.docx

---

Sent from my BlackBerry 10 smartphone on the Rogers network.
From: Kacaba, Jennifer (ENERGY) <Jennifer.Kacaba@ontario.ca>
Sent: Thursday, April 20, 2017 5:58 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS); rramchandani@torys.com
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI); 'Myers, Jonathan'; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA); Hosick, Sarah (TBS); Johnson, Paul (ENERGY/MEDEI/MRI)
Subject: RE: Ontario Fair Hydro Plan

All - Please find attached the next turn in the consultation draft (v.3) of the proposed legislation. We have been working to address the feedback that you provided earlier in the week. A number of points remain in progress. As with the earlier versions, by sharing this document, we hope to continue to advance our discussions.

Our timeline has been extended and we are now working to a pens down date of April 28th. We will not get another extension. Accordingly, we ask for your detailed, written comments on the draft, which we require no later than Sunday at noon.

We will continue to work on the bill in the interim, so earlier instructions are helpful to us. With your input on this timeline, we expect to be able to provide one more circulation around Tuesday or Wednesday next week.

We have not had the opportunity to add notes or to update our crosswalk to the Blakes summary document.

We look forward to receiving your written comments.

Jennifer

Jennifer J. Kacaba

Counsel

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message and all attachments. Thank you.

From: Kacaba, Jennifer (ENERGY)
Sent: April 17, 2017 12:00 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS)
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Subject: RE: Ontario Fair Hydro Plan

Please find attached a further turn of the consultation draft. This document continues to be a work in progress. We have not had the opportunity to add notes or update our tracking table. We also have not yet considered the comments that we received this morning. We look forward to seeing you at 1.

Jennifer

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From: Calwell, Carolyn (ENERGY/MEDEI/MRI)
Sent: April 15, 2017 10:06 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Kacaba, Jennifer (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.';

michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS)
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Subject: Ontario Fair Hydro Plan

All - Please find attached the draft "Intergenerational Fairness in Hydro Rates Act, 2017". A tremendous amount of work has gone into getting to this draft and much more work is required to get this ready for the House. The goal of sharing this document now is to further the process we have engaged in over the last weeks. In the attached, we have included notes to try to address where the drafting is not yet consistent with our thinking. These notes are neither comprehensive nor complete. They are intended only as flags and as colour to the draft. We have not forgotten the comments that you have already provided and we are continuing to working through the translation of the commercial terms we have been discussing into legislative language.

For ease of reference, included with the draft bill are the partially updated Blakes' summary, a chart that attempts links the articles in that document to the sections of the bill (which is imperfectly numbered at best) and excerpts from the Electricity Act and the Ontario Energy Board Act, related to the consequential amendments.

In your review, please focus on the broad stroke concepts, rather than the minutia, and keep in mind the cascade of instruments that will be required – legislation first, then regulations and finally commercial agreements. We look forward to discussing the broader concepts on Monday

Carolyn Calwell

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Fair Hydro Plan Act (April 20 2017) Consultation v3.pdf

Version 3

This confidential draft document is provided for discussion purposes only. It should not be construed as representing the position adopted by the Government of Ontario on any of the topics included or not included in this document. The notes included in this document are intended only to help facilitate a discussion of the topics to which they relate. Any potential legislation is subject to the approval of the Ontario Legislature.

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A proposal to create Legislation.

Ontario's Fair Hydro Plan Act, 2017, if enacted

A proposal to create Legislation.

Ontario's Fair Hydro Plan Act, 2017, if enacted

EXPLANATORY NOTE TO BE ADDED BY LEGISLATIVE COUNSEL
TO ANY FINAL BILL PRIOR TO INTRODUCTION.

[Insert explanatory note.]

[Notes re this draft:
- all numbering of provisions may need to be re-done
- will need to check all definitions to ensure (1) that they are needed; and (2) that they work properly wherever the term is used in the Bill.
- additional consequential amendments likely required still
- overall organization of provisions still TBC (for now just trying to get all of the elements drafted and will reconsider architecture later)
- need to check consistency of various phrases (e.g. *during/for/in respect of* reference period; *owner of RA/IA vs. RA/IA owner; etc.)*]

Preamble

The Government of Ontario is committed to fostering the development of a clean, modern and reliable electricity system with a diverse supply mix. The Government is also committed to removing barriers to and promoting opportunities for renewable and clean energy projects.[1]

The Government of Ontario has established a regulatory framework related to the generation and sale of electricity, which has promoted and continues to promote significant investment to enable phasing out of coal fired generation, modernizing sites and facilities in the Province for the generation of electrical energy and the production therefrom,[2] and conservation and demand management.

The Government of Ontario is committed to ensuring that the costs of these investments, and the raising of money to fund the investments,[3] are allocated fairly among present and future generations of consumers.

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

[1] Note: please see the preamble of the *Green Energy Act, 2009.*
[2] Note: please see clause 92A (4) (b) of the Constitution, 1867: "des emplacements et des installations de la province destinés à la production d'énergie électrique, ainsi que de cette production meme".
[3] Note: please see opening flush of s. 92A (4) of the Constitution Act, 1867

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PART I
GENERAL

Interpretation
Definitions

1xx. (1) In this Act,

"Board" means the Ontario Energy Board; ("French")

"clean energy adjustment" means the amount determined under section 10xx; ("French")
[Note - will need to check throughout the draft that references to CEA are clear as to whether it's the total CEA in respect of a reference period vs. the portion payable by a specified consumer.]

"clean energy benefits" means, in respect of a reference period, the value of the benefits determined to be derived by the specified consumers during the reference period as a result of the clean energy initiative, including as a result of past, present and expected future incurrences of clean energy costs; ("French")

"clean energy costs" means, in respect of a reference period, the value of the costs allocated to specified consumers during the reference period as a result of the clean energy initiative, including as a result of past, present and expected costs incurred in respect of,

(a) the estimated costs to be incurred by the IESO under section 25.33 of the *Electricity Act, 1998* or any provision that is the successor to that provision, which relate to contracts for,

(i) renewable energy generation or capacity,

(ii) conservation and demand management, including storage,

(iii) energy efficiency,

(iv) natural gas generation and capacity, excluding contracts relating to amounts payable by the IESO under section 78.2 of the *Ontario Energy Board Act, 1998* and excluding such other contracts as may be prescribed, or

(v) payments made or expected to be made under section 78.5 of the *Ontario Energy Board Act, 1998*, and

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(b) such other estimated costs as may be prescribed; ("French")

"clean energy initiative" means the policies of the Government of Ontario related to,

(a) fostering the growth of and investment in clean and renewable energy sources and technologies,

(b) removing barriers to and promoting opportunities for clean and renewable energy sources and technologies, and

(c) promoting conservation and demand management; ("French")

"electricity vendor"[4] means the IESO, a licensed distributor, a licensed retailer or such other person as may be prescribed; ("French")

"fair adjustment" means the determination of the rate payable for electricity in accordance with Part II; ("French")

"Financial Services Manager" means Ontario Power Generation Inc. [or such other person or entity as may be appointed as the Financial Services Manager by the Minister under section **]; ("French")

"Financing Plan" means the plan prepared under section X, as amended from time to time in accordance with this Act; ("French")

"funding obligation" means a payment obligation incurred by or on behalf of the regulatory asset owner or an investment asset owner under section x; ("French")

"IESO" means the Independent Electricity System Operator continued under Part II of the *Electricity Act, 1998*; ("SIERE")

"IESO funding shortfall" means, in respect of a reference period, the amount determined under section 20xx for the reference period; ("French")

"investment asset" means the investment asset created as described in section 22xx; ("French")

"investment asset owner" means a financing entity that acquires an investment interest in the investment asset; ("French")

[4] Note - this is similar to the definition of "electricity vendor" in the Ontario Rebate for Electricity Consumers Act, 2016

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"investment interest" means an ownership interest in the investment asset, which entitles an investment asset owner to the rights and benefits specified in the agreement under which the ownership interest is transferred;

"invoice amount" means the amount, determined in accordance with subsections (2.1) and (2.2) and the regulations, that is payable by a specified consumer for the provision of electricity in Ontario during a period of time specified on an invoice issued by an electricity vendor; ("French")

"licensed distributor" means a person licensed under Part V of the *Ontario Energy Board Act, 1998* to own or operate a distribution system; ("French")

"licensed retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity; ("French")

"Minister" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of this Act under the *Executive Council Act*; ("ministre")

"prescribed" means prescribed by the regulations; ("prescrit")

"reference period" means,

(a) the period beginning on May 1, 2017 and ending on October 31, 2017,

(b) every six-month period following the period mentioned in clause (a) or such shorter period as may be set out in the Fair Allocation Plan; ("French")

"refinancing" means a repayment or repurchase of a funding obligation for cancellation by or on behalf of an investment asset owner by applying the net proceeds obtained by the owner incurring one or more other funding obligations; ("French")

"regulation" means a regulation made under this Act; ("règlement")

"regulatory asset" means the right established under section X to recover the IESO funding shortfall; ("French")

"representative consumer" means a consumer who meets the criteria set out in subsection (3); ("French")

"specified consumer" means,

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(a) a person who has an account with an electricity vendor for the supply of electricity, receives an invoice in respect of the account and meets the criteria set out in subsection (2); or

(b) such other person as may be prescribed; ("French")

"Toronto Hydro" means Toronto Hydro-Electric System Limited; ("French")

"transfer" means an assignment, conveyance, disposition or sale; ("French")

Specified consumers

(2) For the purposes of clause (a) of the definition of "specified consumer" in subsection (1), the person must meet any one of the following criteria:

1. The person has a demand for electricity of 50 kilowatts or less, or such other amount as may be prescribed.

2. The person annually uses not more than 250,000 kilowatt hours of electricity, or such other amount as may be prescribed.

3. The person carries on a business that is a farming business for the purposes of the *Farm Registration and Farm Organizations Funding Act, 1993* and either holds a valid registration number assigned under that Act or the has had the obligation to file a farming business registration form waived pursuant to an order made under subsection 22 (6) of that Act.

4. The person's account with the electricity vendor relates to,

   i. a dwelling,

   ii. a property within the meaning of the *Condominium Act, 1998*,

   iii. a residential complex within the meaning of subsection 2 (1) of the *Residential Tenancies Act, 2006*, without regard to section 5 of that Act, or

   iv. a property that includes one or more housing units and that is owned or leased by a co-operative within the meaning of the *Co-operative Corporations Act*.

5. The person satisfies such criteria as may be prescribed.

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Invoice amount

(2.1) Subject to subsection (2.2) and the regulations, the invoice amount for a specified consumer includes the following amounts:

1. In circumstances where the electricity is provided by a licensed distributor or a licensed retailer, the following:

    i. The commodity price of the electricity used during the invoice period.

    ii. The rates and charges set out in the applicable rate order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*.

    iii. Any adjustment on the invoice required under section 25.33 of the *Electricity Act, 1998*.

    iv. The amount of any harmonized sales tax payable [by the consumer?] under Part IX of the *Excise Tax Act* (Canada);

    v. Any other amounts as may be prescribed.

2. In circumstances where the electricity is provided by the IESO, such amounts as may be prescribed. ("French")

Same, exclusions

(2.2) Except as otherwise prescribed by the regulations, the invoice amount does not include any of the following amounts:

1. The balance of any amounts carried forward from previous invoices.

2. Penalties or interest.

3. Charges that do not relate to the use of electricity.

4. Any of the following charges that may be set out in an order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*:

    i. A fixed monthly service charge payable by a generation facility within the meaning of section 56 of the *Ontario Energy Board Act, 1998* and classified as "microFIT".

    ii. A charge labelled as a "specific service charge" or "retail service charge".

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iii. A rate rider.

5. Any other prescribed amounts.

Representative consumer

(3) For the purposes of the definition of "representative consumer" in subsection (1), the consumer,

(a) purchases electricity directly from Toronto Hydro;

(b) has an account with Toronto Hydro that falls within a residential-rate classification as specified in a rate order made by the Board under section 78 of the *Ontario Energy Board Act, 1998*;

(c) is invoiced by Toronto Hydro on a monthly basis;

(d) is not invoiced by Toronto Hydro for electricity on an equal monthly payment plan or an equal billing plan; and

(e) uses, on average, 750 kilowatt hours of electricity each month.

Transfer

(4) For greater certainty, a transfer of the regulatory asset or a portion of the regulatory asset includes any act of the IESO by which the IESO purports to dispose of its interest in the regulatory asset with the result of a named person becoming the owner of an investment interest.

Effect of invalidity, etc.[5]

2xx. (1) For greater certainty, all of the provisions of this Act remain in full force and effect, even if some provisions are held to be invalid, the intention of the Legislature being to give separate and independent effect to the extent of its powers to every provision contained in this Act.

Same, funding obligation

(2) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect a funding obligation that was incurred under this Act before the day that the provision was held to be invalid or ceased to be in effect.

Purpose

3xx. (1) The purposes of this Act are,[6]

[5] Note: this is from the *Climate Change Mitigation and Low-carbon Economy Act, 2016*

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(a) to ensure that clean energy costs are fairly allocated among specified consumers over time and that the process by which the Province raises money to fund the costs reflects the fair allocation; and

(b) to recognize that clean energy benefits that have accrued and that will accrue over time will continue to benefit present and future electricity consumers in the Province.

Crown bound

4xx. This Act binds the Crown.

Protection and assurances

Prohibition

5xx. (1) The Crown shall not do anything that would,

(a) hinder, delay, impair or prejudice the charging, collection or remittance of the clean energy adjustment;

(b) except as expressly permitted by this Act, reduce the amount of the clean energy adjustment or lower the priority of the clean energy adjustment over other debts; or

(c) adversely affect an investment asset or a funding obligation.

Clarification with respect to regulations

(2) For greater certainty, the things prohibited under subsection (1) include the making or approving of a regulation under this Act.

Agreements for compensation

(3) The Minister may, with the approval of the Lieutenant Governor in Council, enter into agreements on behalf of the Province of Ontario with any person in respect of this Act, including agreements regarding financial commitments, financial arrangements, indemnities or similar transactions.

PART II
FAIR ADJUSTMENT

[6] Note: Please see the *Electricity Act, 1998* for much of the wording proposed in this section.

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Fair adjustment, May 1, 2017 to April 30, 2018
Definition

6xx. (1) In this section,

"average baseline invoice amount" means the average monthly invoice amount that would be payable by a representative consumer under the average baseline rate; ("French")

"average baseline rate" means the average rate that would be payable effective May 1, 2017 by the class of consumers prescribed by the regulations under the *Ontario Energy Board Act, 1998* for the purposes of subsection 79.16 (1) of that Act, as determined by the Board by applying the method prescribed by the regulations under clause 79.16 (1) (b) of that Act; ("French")

"sub-meter customer" means a person who is supplied electricity by a specified consumer, if an invoice for the electricity is issued to the person by the specified consumer, by an agent of the specified consumer or by a unit sub-meter provider providing unit sub-metering for the specified consumer; ("French")

Rate determination

(2) Subject to subsection (3), [to more fairly measure and allocate the clean energy costs and clean energy benefits among present and future generations of specified consumers,] the rate for electricity payable by a specified consumer for the period beginning on May 1, 2017 and ending on April 30, 2018 is the average rate that would be payable by a representative consumer in order for the representative consumer to receive a monthly invoice amount that is 25 per cent less than the average baseline invoice amount.

Sub-meter customers

(3) A specified consumer who provides electricity to a sub-meter customer and any unit sub-meter provider who provides unit sub-metering for the specified consumer shall ensure that the rate payable by each sub-meter customer is the rate determined under subsection (2).

Determining rate

(4) The rate mentioned in subsection (2) shall be,

(a) determined by the Board within seven business days after this section receives Royal Assent; and

(b) effective as of the first day of the calendar month immediately following the determination.

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Transition

(5) If, for technical or operational reasons, an electricity vendor, specified consumer or unit sub-meter provider is unable to adapt its invoices to comply with this section by the time it issues its first invoice for electricity consumed on or after May 1, 2017,

(a) the electricity vendor, specified consumer or unit sub-meter provider shall adapt its invoices as soon as possible and, in any event, no later than [August 1, 2017]; and

(b) the electricity vendor, specified consumer or unit sub-meter provider shall ensure that any specified consumer or sub-meter customer invoiced at a rate higher than the applicable rate receives the difference between the rate shown on their invoice and the applicable rate as a lump sum credit on the first invoice issued after the invoices have been adapted or by such other means as may be prescribed by the regulations.

Fair adjustment, May 1, 2018 to April 30, 2022

7xx. The Lieutenant Governor in Council may, [to more fairly measure and allocate the clean energy costs and clean energy benefits among present and future generations of specified consumers,] make regulations prescribing the rate for electricity payable by specified consumers and sub-meter customers during the period beginning on May 1, 2018 and ending on April 30, 2022.

PART III
CLEAN ENERGY ADJUSTMENT

Specified consumers to pay clean energy adjustment

8xx. (1) Upon receipt of an invoice that includes a clean energy adjustment, a specified consumer shall pay the clean energy adjustment to the electricity vendor, as agent of the investment asset owners, in accordance with such terms of payment as may be specified in the invoice, which may include terms relating to late payment fees and interest charges.

Same

(2) For greater certainty, subsection (1) applies regardless of,

(a) whether the clean energy adjustment is inconsistent with the fair allocation calculation applicable at the time when the payment is due; and

(b) whether the clean energy adjustment relates to funding obligations that were incurred in a manner that was inconsistent with the Financing Plan.

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Indebtedness of specified consumer

(4) An unpaid clean energy adjustment that is required to be paid by a specified consumer under this section constitutes indebtedness of the consumer to each investment asset owner in respect of each owner's respective interest in the investment asset.

Same

(5) The indebtedness mentioned in subsection (4) is a single and separate debt obligation owed by the specified consumer and may be enforced independently from any other payment obligation or indebtedness owing by the specified consumer under the invoice or otherwise.

Irrevocability of clean energy adjustment

9xx. (1) The amount of the clean energy adjustment shown on an invoice issued to a specified consumer under this Act is determinative of the amount of the consumer's indebtedness created by the adjustment and is irrevocable upon invoicing the consumer and may not be set off or by passed.

Exception

(2) Subsection (1) does not apply to the extent that there is a calculation error by the electricity vendor.

Determination of clean energy adjustment

10xx. (1) The clean energy adjustment payable by all specified consumers in respect of a reference period shall be determined as follows:

1. Calculate the estimated finance amount for the reference period in accordance with Schedule 1 and such additional rules as may be prescribed.

2. Add the true up amount for the reference period, as determined in accordance with the prescribed method, to the estimated finance amount calculated under paragraph 1.

True up amount

(2) For the purposes of paragraph 2 of subsection (1), the Lieutenant Governor in Council may make regulations prescribing the method for determining the true up amount, having regard to the following principles:

1. The true up amount should serve to ensure that the collection of the clean energy adjustment is sufficient to pay the estimated finance amount when it is due.

2. The method for determining the true up amount should take into account historical and reasonably foreseeable,

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i. differences between amounts billed and amounts collected due to various factors, including applicable taxes, consumer defaults and delays, billing lags and write-offs, and

ii. variations in billings due to variations in electricity consumption.

IESO to issue remittance notice to electricity vendors

11xx. (1) The IESO shall, in accordance with the regulations, issue a remittance notice to each electricity vendor for the electricity vendor's portion, as determined in accordance with the regulations, of the clean energy adjustment in respect of a reference period.

IESO to collect

(2) The IESO shall, as an agent of the investment asset owners, collect the clean energy adjustment from electricity vendors [in accordance with the monthly settlement process set out in the market rules made under section 32 of the *Electricity Act, 1998]*.

Collection account

(3) All of the following amounts received by the IESO shall, until paid to or for the benefit of the investment asset owner in accordance with subsection (5), be deposited promptly into an account established for the purposes of collecting those accounts:

1. Amounts described in subsection 12 (4).

2. Payments made by specified consumers directly to the IESO as electricity vendor under subsection 8 (1).

Same, held in trust

(4) All amounts received by the IESO in respect of the clean energy adjustment shall, until paid to or for the benefit of the investment asset owner in accordance with subsection (6), be held in trust for the investment asset owners or a secured party to whom a security interest in an investment interest is granted under this Act.

IESO to remit

(5) The IESO shall remit amounts received by it in respect of the clean energy adjustment to or for the benefit of the investment asset owners in accordance with the regulations.

Collection of outstanding amounts, regulatory asset

(6) If the total clean energy adjustment payable by specified consumers in respect of a reference period is less than the amount contemplated to be payable under the

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applicable fair allocation calculation made by the Financial Services Manager under Part IV, the IESO may collect the difference from specified consumers.

Electricity vendor to invoice specified consumers

12xx. (1) The electricity vendor shall issue an invoice to each specified consumer for the consumer's amount of the clean energy adjustment in accordance with the regulations.

Electricity vendor to collect

(2) Each electricity vendor shall, as an agent of the IESO and the investment asset owners, collect the clean energy adjustment from specified consumers [in accordance with the monthly settlement process set out in the market rules made under section 32 of the *Electricity Act, 1998]*.

Pro rating of payments

(3) If an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices and the amount paid is less than the total amount payable, the electricity vendor shall allocate the payment on a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices in respect of electricity charges for the same invoice period.

Held in trust

(4) All of the following amounts received by an electricity vendor shall, until paid to or for the benefit of the investment asset owner in accordance with subsection (5), be held in trust for the investment asset owners or a secured party to whom a security interest in an investment interest is granted under this Act:

1. Payments received from or on behalf of specified consumers under subsection 8 (1).

2. Portions of payments received from or on behalf of specified consumers under subsection 8 (1) that are allocated to the clean energy adjustment under subsection (3).

3. Any proceeds arising from the exercise and enforcement of any rights and interests under or in respect of the investment asset.

Remittance to IESO

(5) Each electricity vendor other than the IESO shall remit amounts described in subsection (5) to the IESO for the benefit of the investment asset owners or secured parties in accordance with the regulations.

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Regulations

(6) If an electricity vendor fails, in the manner described in the regulations, to comply with the requirements of this section, the electricity vendor shall take such steps as the regulations may prescribe.

PART IV
IMPLEMENTATION

FINANCIAL SERVICES MANAGER

Appointment

13xx. (1) [Note: To be elaborated.]

Termination

(2) The Minister may by written order terminate the appointment of an appointee as the Financial Services Manager if,

(a) the Minister has advised the appointee that the Financing Plan is either inconsistent with or is being implemented in a manner that is inconsistent with the principles set out in section x;

(b) the appointee has been afforded a reasonable opportunity to consider and address the inconsistency; and

(c) the appointee is unwilling or unable to address the inconsistency to the satisfaction of the Minister.

Replacement

(3) Upon terminating an appointment, the Minister may, in accordance with the regulations, appoint a new person or entity as the Financial Services Manager.

Duties and powers

14xx. (1) The Financial Services Manager shall perform the duties assigned to it under this Act and may administer the investment asset on behalf of the investment asset owner.

Same

(2) The administration of the investment asset may include the following:

1. Providing information, in accordance with the regulations, to the Board in respect of funding obligations and the determination of the clean energy adjustment in accordance with section XX.

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2. Providing information to electricity vendors, including the IESO, in respect of obligations under Part III.

3. Such other matters as may be prescribed.

Review of costs

(3) The Board shall review the administrative costs of the Financial Services Manager in accordance with the regulations.

FAIR ALLOCATION AMOUNT

Financial Services Manager to calculate fair allocation amount

15xx. (1) The Financial Services Manager shall calculate the fair allocation amount for the purposes of,

(a) fairly measuring and allocating the estimated clean energy costs and estimated clean energy benefits among the specified consumers in respect of each reference period; and

(b) aligning funding obligations that may be incurred during each reference period with the allocation of the estimated clean energy costs and estimated clean energy benefits across present and future generations of specified consumers.

Amount

(1.1) The fair allocation amount in respect of a reference period is the sum of the following amounts:

1. The amount, if any, by which the estimated [clean energy costs] [clean energy benefits] to be allocated to specified consumers in respect of the reference period exceeds the estimated amount of [the global adjustment] that would be borne by the specified consumers in respect of clean energy costs [in the absence of this Act].

2. An allocable portion of the value of any fair adjustment, determined in accordance with subsection (3).

Principles

(2) In calculating the fair allocation amount [or in developing the fair allocation calculation?], subject to subsection (3), the Financial Services Manager shall have regard to the following principles:

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1. Clean energy costs allocated to the specified consumers in respect of a reference period should be allocated in proportion to the clean energy benefits attributed to the specified consumers in respect of the reference period.

2. The clean energy benefits attributed to the specified consumers in respect of a reference period should be determined based on *[Insert principles]*.

3. The fair allocation calculation should include reasonable assumptions regarding the following:

    i. The time value of money or the rate of inflation, for the purpose of equating nominal amounts over time.

    ii. The expected number of specified consumers for each reference period.

    iii. The expected electricity consumption rates for each reference period.

Allocation of fair adjustment

(3) If, before the Financial Services Manager has calculated the fair allocation amount in respect of a reference period, a fair adjustment has been made under Part II in respect of the reference period, the calculation shall include a portion of the value of the fair adjustment in the fair allocation calculation for each future reference period.

Amendments to the fair allocation calculation

(4) The Financial Services Manager may amend the fair allocation calculation from time to time, as the Financial Services Manager considers appropriate, having regard to the requirements of this Act.

Submission of fair allocation to Minister

(5) The Financial Services Manager shall provide to the Minister the fair allocation calculation and any amendments to the fair allocation calculation.

Effective date

(6) The fair allocation calculation or an amendment to the fair allocation calculation takes effect on the day that is 30 days after the fair allocation calculation or the amendment, as the case may be, is provided to the Minister in writing.

Publication

(7) The Minister shall ensure that the fair allocation calculation and any amendments to it are made available to the public in a manner that the Minister considers appropriate.

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Financial Services Manager to prepare Financing Plan

16xx. (1) The Financial Services Manager shall prepare and provide to the Minister a written plan entitled the Financing Plan to be used by the Financial Services Manager to evaluate whether potential funding obligations should be incurred or potential transfers should be made for the purposes of this Act.

Principles

(2) In preparing the Financing Plan, the Financial Services Manager shall have regard to the following principles:

1. Any incurrence of a funding obligation should reasonably align the expected finance amount determined under Schedule 1 that would become due and payable during a reference period with the fair allocation amount determined for the reference period under this Part as of the time of the incurrence, in each case after reducing the fair allocation calculation by the amount of any fair adjustment for the reference period.

2. Incurrences and transfers should be implemented in a manner that, as the Financial Services Manager considers to be reasonable, is cost effective and reflects prevailing market terms and conditions.

3. Reasonable assumptions should be made regarding such matters as may be prescribed.

[Note for reference: List of items for consideration in regulation: (a) anticipated IESO funding shortfalls and related transfer amounts; (b) the maturities of funding obligations; (c) the availability of refinancings, redemption opportunities and liquidity terms and conditions in order to achieve the objective contemplated in section X(1)(a); (d) the availability of currency and interest rate hedging facilities for the purpose of mitigating any differences between the expected finance amounts becoming due and payable during a reference period and the fair allocation amount for the reference period; (d) the amount and potential variability of interest rates and related financing costs; (e) available capital markets in which funding obligations may be incurred.]

Amendments to approved plan

(3) The Financial Services Manager may amend the Financing Plan at any time, without the approval of the Minister, subject to the requirements set out in this section.

Limitation, first five year period

(4) In respect of each reference period from May 1, 2017 to April 30, 2022, no funding obligation shall be incurred that would become payable during the reference period and result in a clean energy adjustment for the reference period unless,

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(a) no fair adjustment has been made under Part II in respect of the reference period; or

(b) if a fair adjustment has been made under Part II in respect of the reference period, the funding obligations incurred would not be payable during the reference period in an amount that exceeds the [difference between the fair allocation amount for the reference period and the amount of the fair adjustment for the reference period].

Confidentiality of plan

(4) The Financing Plan is deemed to be a record subject to section 17 of the *Freedom of Information and Protection of Privacy Act.*

Implementation of Financing Plan

17xx. (1) The Financial Services Manager shall incur funding obligations and make transfers in material conformity with the applicable Financing Plan.

Same

(2) For greater certainty, section [paramountcy of funding obligations] applies despite the failure of the Financial Services Manager to comply with subsection (1).

Financing entities

(3) In accordance with the Financing Plan, the Financial Services Manager may establish one or more financing entities that may incur funding obligations and make transfers.

Prohibition

(3) The Financial Services Manager shall not provide for funding obligations to be incurred with any recourse to any assets of an electricity vendor, the Board, the Province or the Lieutenant Governor in Council, except to the extent that any of these persons or entities may be liable to perform obligations or duties arising under this Act or under the express terms of a funding obligation.

Effect of amendment to Fair Allocation Plan

(4) No funding obligation incurred and no transfer made by the Financial Services Manager shall be affected by any inconsistency with the Financing Plan, including any inconsistency with the principles set out in section X.

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PART V
THE REGULATORY ASSET

Interpretation, portion of regulatory asset

18xx. If a transfer under this Part provides for the transfer of a portion of the regulatory asset, any references in this Part to the regulatory asset are deemed to be references to the portion of the regulatory asset transferred.

[Note: This is meant to assist with clarity in the subsequent provisions.]

Variance account

19xx. (1) The Board shall issue an accounting order to authorize the IESO to do the following:

1. Create a variance account for the purposes of this Act.

2. Record the IESO funding shortfall in the variance account from time to time.

3. Recover the IESO funding shortfall in accordance with section X and the regulations.

No hearing

(2) The order of the Board shall be made in writing and without holding a hearing.

No appeals, etc.

(3) No appeal lies from the order of the Board.

IESO funding shortfall

20xx. (1) The IESO shall determine the IESO funding shortfall for each month in the following manner:

1. Calculate the sum of all invoice amounts issued to specified consumers for the month if Part II of this Act did not apply.

2. Calculate the sum of all invoice amounts issued to specified consumers for the month.

3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1, and make any other adjustments as may be prescribed.

Same

(2) To the extent that the IESO funding shortfall for any month is based on an estimate of the electricity used by specified consumers, the IESO shall record an

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adjustment in the variance account in the following month to reflect the difference between the estimate and the electricity actually used by specified consumers.

Recording of IESO funding shortfall

(3) IESO shall record the IESO funding shortfall from time to time, including adjustments resulting from the exercise of the right of recovery under section 21 and any transfer under section 22, in the variance account.

Recording determinative

(4) A recording of the IESO funding shortfall in the variance account is determinative of the amount of IESO funding shortfall at the time of the recording.

Regulatory asset established

21xx. (1) The IESO has the right, exercisable in accordance with this Act and the regulations, to recover the IESO funding shortfall.

Same, restrictions

(2) The IESO's right to recover the IESO funding shortfall under subsection (1) is subject to the following:

1. The IESO shall not be entitled to collect the IESO funding shortfall from specified consumers before May 1, 2022.

2. The process by which the IESO may recover the IESO funding shortfall shall be established by the Board, having regard to the amount of the IESO funding shortfall from time to time and the [fair allocation calculation].

3. Such other restrictions as may be prescribed.

Transfer of regulatory asset

22xx. (1) The IESO may transfer all or a portion of the regulatory asset to any financing entity under the Financing Plan, which transfer creates the investment asset.

Same

(2) Upon receipt of any payment in consideration for the transfer,

(a) the IESO shall record the payment as a reduction of the IESO funding shortfall in the variance account; and

(b) unless otherwise provided for in this Act, the IESO shall have no further right, title or interest in, or any obligations in respect of, the regulatory asset or in the investment asset created by the transfer.

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Same

(3) Upon transfer, the financing entity becomes an investment asset owner and acquires an investment interest.

Validity of transfer

23xx. (1) A transfer of a regulatory asset under this Act is a valid and enforceable sale and absolute transfer to the investment asset owner of the regulatory asset, and the investment asset created by the transfer shall be immediately vested in the transferee.

Same

(2) Without limiting subsection (1), any transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of IESO's right to recover the IESO funding shortfall, and not merely as a security interest, and upon the absolute transfer the transferor shall retain no right, title or interest in the regulatory asset, including all rights to recover the IESO funding shortfall.

Deemed perfection, etc.

(3) At the time a transfer of a regulatory asset is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the transferee shall have priority over any liens in favour of those persons.

PART VI
THE INVESTMENT ASSET

Interpretation, investment asset

24xx. If a transfer under this Part provides for the transfer of an investment asset, any references in this Part to the investment interest are deemed to be references to the specific investment interest transferred.

Investment asset established

25xx. (1) The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests without duplication:

1. The right to impose, bill, invoice, collect and receive the clean energy adjustment from specified consumers, including the right to determine the amount of the clean energy adjustment in accordance with this Act.

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2. The right to receive and collect all amounts in respect of the clean energy adjustment that are imposed, billed and invoiced under this Act, including any amounts that all amounts in respect of the clean energy adjustment that are held by electricity vendors or other prescribed parties.

3. All rights and entitlements under such accounts as may be prescribed by regulation and all amounts on deposit in such accounts.

4. The right to enforce the duties and obligations under this Act of each electricity vendor to impose, attribute, charge, bill and invoice the clean energy adjustment.

5. The right to enforce the duties and obligations under this Act of each electricity vendor to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by an electricity vendor to recover payment of the clean energy adjustment.

6. All rights of any kind (whether in tort, contract or otherwise) that attach or are attendant or incidental to any of the other property rights or interests that comprise the regulatory asset owner's regulatory asset.

7. All revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 6, regardless of whether such revenue, collections, claims, payments and proceeds are imposed, invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

No set off, etc.

(2) The investment asset shall not be set off or reduced by any person in any circumstance, including,

(a) by a consumer, an electricity vendor, an agent of the investment asset owner or an owner of distribution system assets in the Province;

(b) in connection with any default, bankruptcy, reorganization or other insolvency proceeding of a person mentioned in clause (a); or

(c) by any affiliate or successor of a person mentioned in clause (a).

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Exercise of rights

(3) The rights of the investment asset owner to collect and enforce its rights and interests in, to and in respect of the investment asset against a specified consumer shall be exercised in accordance with section [xx] of the *Personal Property Security Act*.

Collective action required

(4) If the investment asset owner owns a right or interest in the investment asset that comprises less than the entire property right and interest constituted by the investment asset, the right or interest shall only be enforced by the investment asset owner collectively and in coordination with all other investment asset owners, and any agreement among that collective in furtherance of the collective action shall be valid and binding on the investment asset owner as a collective in accordance with its terms. [Note: Successors may need to be addressed here.]

Transfer of investment interest

26xx. An investment asset owner may transfer all or a portion of its rights and interests in an investment interest to any other investment asset owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan.

Validity of transfer

27xx. (1) A transfer of an investment interest under this Act is a valid and enforceable sale and absolute transfer of the investment interest and confers upon the owner of the investment interest acquired a valid property right and interest in, to and under the applicable investment interest in accordance with the terms of the transfer.

Same

(2) Without limiting subsection (1), a transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of an investment asset owner's right, title and interest in, to and under an investment interest, and not merely as a security interest, and upon such absolute transfer the transferor shall retain no right, title or interest in the investment interest, subject to the transfer, including all rights to the investment interest arising after the transfer.

Deemed perfection, etc.

(3) At the time a transfer of an investment interest is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer, assignment, etc.

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the investment asset owner shall have priority over any liens in favour of such other persons.

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Investment asset owner may grant security interest

28xx. (1) An investment asset owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under the investment interest to or in favour of any person to secure a funding obligation.

Validity

(2) A security interest granted under this Act shall be valid and enforceable in accordance with its terms.

Perfection and priority of security interests

(3) All provisions of the *Personal Property Security Act* shall apply to the investment asset and each investment interest on the basis that it is intangible personal property, except as otherwise provided for in this section, and any granting of a security interest by the owner of an investment interest to secure a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by filing a financing statement under that Act on that basis.

Proceeds

(4) All proceeds of an investment interest that are subject to the security interest and that are received by the applicable investment asset owner shall immediately be subject to the security interest and shall be perfected without any physical delivery of the proceeds, registration of any financing statement or any further act.

Perfection

(5) The security interest shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may subsequently attach to the property rights and interests in the investment interest subject to the security interest, subject to the written consent of the person to whom the security interest has been granted.

Same

(6) The person to whom the security interest has been granted shall have a perfected security interest in revenues or other proceeds that are deposited in any [investment asset account] or other account of any electricity vendor, the IESO, an agent of an electricity vendor or the IESO or other person who may have commingled such revenues or other proceeds with other funds.

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PART VI
MISCELLANEOUS

Appointment of agent, invoicing or collection

29xx. If a prescribed circumstance applies, the Lieutenant Governor in Council may by regulation appoint a person to carry out some or all of the obligations of an electricity vendor under this Act in the place of an electricity vendor with respect to invoicing or collection.

Not Crown agent

30xx. For greater certainty, no agent appointed under this Act is an agent of the Crown for any purpose, despite the *Crown Agency Act*.

Sequestration

31xx. (1) A court in the Province may, upon application by an investment asset owner or a secured party, order the sequestration and payment of the clean energy adjustment, collections and remittances, as applicable, for the benefit of the investment asset owner or secured party by any person or entity authorized to collect the clean energy adjustment, defaults on any required remittance of the clean energy adjustment, collections or remittances.

Same

(2) An order under subsection (1) does not limit any other remedies available to the applicant.

Same

(3) An order under subsection (1) shall remain in full force and effect despite any bankruptcy, reorganization or other insolvency proceedings with respect to the person or entity who is subject to the order.

Choice of law

32xx. The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the regulatory asset, the investment asset, the clean energy adjustment or the undertaking of the Crown under section x shall be the laws of the Province.

Conflict

33xx. The provisions of this Act and the regulations apply despite any provision of any other Act regarding the attachment, assignment or perfection, or the effect of perfection or priority of any transfer or security interest.

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No further approvals, etc.

34xx. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required with respect to the actions to be taken in compliance with this Act, including actions to be taken under the Financing Plan or in relation to the establishment of the Fair Allocation Plan.

Immunity

35xx. (1) No action or other proceeding for damages shall be instituted against any employee of the Province, IESO, OPG or OEB for any act done in good faith in the execution or intended execution of any duty or authority under this Act or for any alleged neglect or default in the execution in good faith of any duty or authority under this Act.

Same

(2) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

References in marketing materials and offering documents

36xx. No person shall include, in marketing materials or offering documents relating to the financing of funding obligations, references to any rights, obligations, guarantees or undertakings arising under this section unless the prescribed requirements, if any, are satisfied.

Non-application, Financial Administration Act, s. 28[7]

37xx. Section 28 of the *Financial Administration Act* does not apply with respect to any transaction or agreement or undertaking required, permitted, contemplated or authorized, directly or indirectly, under this Act.

Regulations

38xx. The Lieutenant Governor in Council may make regulations,

(a) defining any term used in this Act….

(b) prescribing types of payment obligations that constitute funding obligations;

(a) governing the calculation [true-up amount] and how the amount is to be applied to the clean energy adjustment.

(b) governing the inclusion of adjustments under this Act on invoices, which may include requiring notice to be provided by electricity vendors to specified persons regarding the adjustments.

[7] Note - see s. 51 of the Electricity Act, 1998

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[Note: reg-making powers to be dealt with in subsequent draft]

PART VII
AMENDMENTS TO OTHER ACTS

ELECTRICITY ACT, 1998

200x. (1) Subsection 6 (1) of the *Electricity Act, 1998* would be amended by adding the following clauses:

(q.0.1) to exercise the powers and rights and to perform the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and to engage in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including,

(i) entering into agreements or arrangements with any person for the purposes of the *Ontario Fair Hydro Plan Act, 2017*;

(ii) engaging in activities related to making payments to and receiving payments as contemplated under the *Ontario Fair Hydro Plan Act, 2017* and to engage in related settlement activities;

(iii) engaging in activities related to the creation, transfer and administration of the regulatory asset created under the *Ontario Fair Hydro Plan Act, 2017*, which activities may include,

(iv) incurring liabilities in relation to the regulatory asset

(v) transferring the regulatory asset for consideration;

(vi) acting as a recovery agent under the *Ontario Fair Hydro Plan Act, 2017*;

201x. Section 53.1 of the Act would be amended by adding the following subsections:

Same, *Ontario Fair Hydro Plan Act, 2017*

53.1 (1.1) In addition to the objects mentioned in subsection (1), the objects of Ontario Power Generation Inc. include exercising the powers and rights and performing the duties and obligations assigned to it under that Act and engaging in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including the following:

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1. Entering into contracts and undertakings on behalf of special purpose financing entities, including pre-formation contracts and undertakings and as principal in relation to matters permitted by the *Ontario Fair Hydro Plan Act, 2017* subject to the right of reimbursement from amounts available to the financing entity.

2. Preparing reports on behalf of the financing entity.

3. Enforcing the rights of the financing entity.

4. Signing offering documents as sponsor or otherwise on behalf of the financing entity.

5. Exercising the powers and performing the duties of the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*

6. Issuing non-equity securities in Ontario Power Generation Inc. or on if its subsidiaries, for the purpose of raising funds to acquire debt or equity interests in a financing entity whose activities are limited to the incurrence of funding obligations pursuant to the *Ontario Fair Hydro Plan Act, 2017*.

Subsidiaries, etc.

(1.2) Ontario Power Generation Inc. may create one or more subsidiaries, trusts or special purpose entities in order to more efficiently conduct its activities or achieve its objects.

202x. Section 89 of the Act would be amended by adding the following subsection:

Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply in respect of amounts payable to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a result of its functions as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

203x. Section 90 of the Act would be amended by adding the following subsection:

Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply in respect of amounts payable to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a result of its functions as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

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[Note: Drafting still to be added to the EA consequential amendments: ***All fees charged by OPG as the FSM shall be approved by the OEB before they are included in the calculation of clean energy adjustments.]***

AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

204x. Subsection 1 (1) of the *Ontario Energy Board Act, 1998* would be amended by adding the following paragraph:

6. To facilitate the implementation of the [TBD - language should link up with language from new Act.]

205x. Section 70 of the Act would be amended by adding the following subsection

[Note - still need to draft new subs. 70 (2.1)]

Short Title - this proposal for legislation would, if approved by the Legislature, have a short title to be determined by Government.

Timing – this proposal for legislation would, if approved by the Legislature, come into force on a date to be established by Government.

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SCHEDULE 1
ESTIMATED FINANCE AMOUNT

Estimated finance amount

1. The estimated finance amount for a reference period shall be determined by estimating, prior to the start of a reference period, the sum of the following:

1. The sum of all amounts that are payable during the reference period by or on behalf of the investment asset owners to satisfy an obligation to repay, redeem or repurchase, or to provide for the repayment, redemption or repurchase, of all or a portion of the amount advanced to the owners under a funding obligation, excluding any payment made by applying the proceeds of a refinancing.

2. The sum of all funding costs for the reference period, determined as follows:

    i. Calculate the aggregate of all interest, scheduled principal and other periodic finance charges accruing, due and becoming payable or paid by or on behalf of investment assets owners during the reference period in respect of all funding obligations, including such amounts as may be prescribed.

    ii. Calculate the sum of the aggregate of all amounts received by or on behalf of investment asset owners during the reference period in respect of all funding obligations and such other amounts as may be prescribed.

    iii. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1.

3. The sum of all amounts payable during the reference period by or on behalf of investment asset owners to redeem, prepay or repurchase a funding obligation, including any premium, make-whole or other amount becoming payable under a funding obligation to give effect to the redemption, prepayment or repurchase.

4. The balance of the finance reserve at the end of the reference period, as determined under section 3 to this Schedule.

5. The sum of any other amounts payable during the reference period by or on behalf of investment asset owners that were incurred or committed to directly or indirectly in connection with the incurrence of funding obligations under the Financing Plan during the reference period, which may include such amounts as may be prescribed.

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Funding costs

2. For the purposes of paragraph 2 of section 1 to this Schedule, the funding costs for a reference period are determined by taking the following steps:

Finance reserve balance

3. (1) For the purposes of paragraph 4 of section 1 to this Schedule, the balance of the finance reserve at the end of the reference period is determined by taking the following steps:

1. Calculate the sum of all amounts deposited by or on behalf of investment asset owners during the reference period in order to pre-fund, collateralize, over-collateralize or establish reserves for the ultimate payment of funding obligations or for related contingencies specified in the Financing Plan.

2. Calculate the sum of all amounts withdrawn by or on behalf of investment asset owners during the reference period from deposits previously made as described in paragraph 1.

3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1.

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FW_ Ontario Fair Hydro Plan.rtf

From: Petsche, Nadine (TBS) []
To: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]
Subject: FW: Ontario Fair Hydro Plan
Date: Wednesday, April 12, 2017 14:09:53

Is this the right #? The music seems to be going on forever and the moderator hasn't joined yet. n

-----Original Appointment-----
From: Calwell, Carolyn (ENERGY/MEDEI/MRI)
Sent: April-10-17 3:41 PM
To: Calwell, Carolyn (ENERGY/MEDEI/MRI); Rehob, James (ENERGY); Shear, Dan (ENERGY); Kacaba, Jennifer (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS); 'Mary Anne Aldred'; Calwell, Carolyn (ENERGY/MEDEI/MRI); Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com
Cc: 'Myers, Jonathan'
Subject: Ontario Fair Hydro Plan
When: April-12-17 2:00 PM-5:00 PM (UTC-05:00) Eastern Time (US & Canada).
Where: 79 Wellington St. W. - 33rd Floor TD South Tower, Torys

Update

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Thanks,

FW_ Ontario Fair Hydro Plan.rtf

From: Calwell, Carolyn (ENERGY/MEDEI/MRI) []
To: Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Kacaba, Jennifer (ENERGY) [Jennifer.Kacaba@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) [tyler.mcauley@opg.com]; John.S.Lee@opg.com [John.S.Lee@opg.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; 'Alan Hibben' (alan.hibben@rogers.com) [alan.hibben@rogers.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Maharukh.Hilloowala@tdsecurities.com [Maharukh.Hilloowala@tdsecurities.com]; Michael.Wolff@tdsecurities.com [Michael.Wolff@tdsecurities.com]; Harold.Holloway@tdsecurities.com [Harold.Holloway@tdsecurities.com]; 'Niehaus, Katrina' [Katrina.Niehaus@gs.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; Nevison, Gary (Gary.Nevison@tdsecurities.com) [Gary.Nevison@tdsecurities.com]; Thom, Trevor (Trevor.Thom@tdsecurities.com) [Trevor.Thom@tdsecurities.com]; Akman, Steven (Steven.Akman@tdsecurities.com) [Steven.Akman@tdsecurities.com]; Thompson, Susan (Susan.Thompson@tdsecurities.com) [Susan.Thompson@tdsecurities.com]; Manii, David (david.manii@tdsecurities.com) [david.manii@tdsecurities.com]; 'Feldman, Michael' [mfeldman@torys.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; 'Hill, Krista' [khill@torys.com]; 'Turnbull, Vickie' [vickie.turnbull@rbccm.com]; 'Dal Bello, David' [david.dalbello@rbccm.com]; 'Mansoori, Nina' [nmansoori@torys.com]; 'Sebastiano, Rocco' [RSebastiano@osler.com]; 'Fitzpatrick, Michael F.' [MFitzpatrick@hunton.com]; michael.boll@ieso.ca [michael.boll@ieso.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; 'Glenn Zacher' [GZacher@stikeman.com]; 'O'Brian, Adam' [aobrian@hunton.com]; 'Emes, Aaron' [aemes@torys.com]; 'Peter Hamilton' [PHamilton@stikeman.com]; 'JORDA Jenny -FIN & C CTRL' [jenny.jorda@opg.com]; maryanne.aldred@ontarioenergyboard.ca [maryanne.aldred@ontarioenergyboard.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; 'Mary Anne Aldred' [MaryAnne.Aldred@oeb.ca]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]
CC: 'Myers, Jonathan' [jmyers@torys.com]
Subject: FW: Ontario Fair Hydro Plan
Date: Wednesday, April 12, 2017 14:09:54

Is this the right #? The music seems to be going on forever and the moderator hasn't joined yet. n

-----Original Appointment-----
From: Calwell, Carolyn (ENERGY/MEDEI/MRI)
Sent: April-10-17 3:41 PM
To: Calwell, Carolyn (ENERGY/MEDEI/MRI); Rehob, James (ENERGY); Shear, Dan (ENERGY); Kacaba, Jennifer (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS); 'Mary Anne Aldred'; Calwell, Carolyn (ENERGY/MEDEI/MRI); Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com
Cc: 'Myers, Jonathan'
Subject: Ontario Fair Hydro Plan
When: April-12-17 2:00 PM-5:00 PM (UTC-05:00) Eastern Time (US & Canada).
Where: 79 Wellington St. W. - 33rd Floor TD South Tower, Torys

Update

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Conference ID: 3164921#

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Thanks,

FW_ Ontario Fair Hydro Plan.rtf

From: Hosick, Sarah (TBS) []
To: Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]
Subject: FW: Ontario Fair Hydro Plan
Date: Wednesday, April 12, 2017 13:01:46

-----Original Appointment-----
From: Calwell, Carolyn (ENERGY/MEDEI/MRI)
Sent: April-10-17 3:41 PM
To: Calwell, Carolyn (ENERGY/MEDEI/MRI); Veinot, Cindy (TBS); Rehob, James (ENERGY); Shear, Dan (ENERGY); Kacaba, Jennifer (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS); 'Mary Anne Aldred'
Cc: 'Myers, Jonathan'
Subject: FW: Ontario Fair Hydro Plan
When: April-12-17 2:00 PM-5:00 PM (UTC-05:00) Eastern Time (US & Canada).
Where: 79 Wellington St. W. - 33rd Floor TD South Tower, Torys

Cindy/Carolyn,
I am attending a Funeral tomorrow, but I will try to call in if I can. (I may not announce myself so as not to interrupt the conversation when I drop off).
Nadine

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From: Calwell, Carolyn (ENERGY/MEDEI/MRI)
Sent: April-10-17 3:41 PM
To: Calwell, Carolyn (ENERGY/MEDEI/MRI); Rehob, James (ENERGY); Shear, Dan (ENERGY); Kacaba, Jennifer (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS); 'Mary Anne Aldred'

Cc: 'Myers, Jonathan'
Subject: Ontario Fair Hydro Plan
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Thanks,

FW_ Ontario Fair Hydro Plan.rtf

From: Petsche, Nadine (TBS) []
To: Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]
Subject: FW: Ontario Fair Hydro Plan
Date: Tuesday, April 11, 2017 16:02:36

Further to my earlier email, attached is the meeting invitation for tomorrow afternoon (with teleconference details). Your participation as observers would be appreciated.
Thanks.
Nadine

-----Original Appointment-----
From: Calwell, Carolyn (ENERGY/MEDEI/MRI)
Sent: April-10-17 3:41 PM
To: Calwell, Carolyn (ENERGY/MEDEI/MRI); Rehob, James (ENERGY); Shear, Dan (ENERGY); Kacaba, Jennifer (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS); 'Mary Anne Aldred'; Calwell, Carolyn (ENERGY/MEDEI/MRI)
Cc: 'Myers, Jonathan'
Subject: Ontario Fair Hydro Plan
When: April-12-17 2:00 PM-5:00 PM (UTC-05:00) Eastern Time (US & Canada).
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From: Petsche, Nadine (TBS) []
To: Veinot, Cindy (TBS) (Cindy.Veinot@ontario.ca) [Cindy.Veinot@ontario.ca]; Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]
Subject: FW: Ontario Fair Hydro Plan
Date: Tuesday, April 11, 2017 12:42:31

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Cc: 'Myers, Jonathan'
Subject: Ontario Fair Hydro Plan
When: April-12-17 2:00 PM-5:00 PM (UTC-05:00) Eastern Time (US & Canada).
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To: Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Kacaba, Jennifer (ENERGY) [Jennifer.Kacaba@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) [tyler.mcauley@opg.com]; John.S.Lee@opg.com [John.S.Lee@opg.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; 'Alan Hibben' (alan.hibben@rogers.com) [alan.hibben@rogers.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Maharukh.Hilloowala@tdsecurities.com [Maharukh.Hilloowala@tdsecurities.com]; Michael.Wolff@tdsecurities.com [Michael.Wolff@tdsecurities.com]; Harold.Holloway@tdsecurities.com [Harold.Holloway@tdsecurities.com]; 'Niehaus, Katrina' [Katrina.Niehaus@gs.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; Nevison, Gary (Gary.Nevison@tdsecurities.com) [Gary.Nevison@tdsecurities.com]; Thom, Trevor (Trevor.Thom@tdsecurities.com) [Trevor.Thom@tdsecurities.com]; Akman, Steven (Steven.Akman@tdsecurities.com) [Steven.Akman@tdsecurities.com]; Thompson, Susan (Susan.Thompson@tdsecurities.com) [Susan.Thompson@tdsecurities.com]; Manii, David (david.manii@tdsecurities.com) [david.manii@tdsecurities.com]; 'Feldman, Michael' [mfeldman@torys.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; 'Hill, Krista' [khill@torys.com]; 'Turnbull, Vickie' [vickie.turnbull@rbccm.com]; 'Dal Bello, David' [david.dalbello@rbccm.com]; 'Mansoori, Nina' [nmansoori@torys.com]; 'Sebastiano, Rocco' [RSebastiano@osler.com]; 'Fitzpatrick, Michael F.' [MFitzpatrick@hunton.com]; michael.boll@ieso.ca [michael.boll@ieso.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; 'Glenn Zacher' [GZacher@stikeman.com]; 'O'Brian, Adam' [aobrian@hunton.com]; 'Emes, Aaron' [aemes@torys.com]; 'Peter Hamilton' [PHamilton@stikeman.com]; 'JORDA Jenny -FIN & C CTRL' [jenny.jorda@opg.com]; maryanne.aldred@ontarioenergyboard.ca [maryanne.aldred@ontarioenergyboard.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; 'Mary Anne Aldred' [MaryAnne.Aldred@oeb.ca]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]
CC: 'Myers, Jonathan' [jmyers@torys.com]
Subject: FW: Ontario Fair Hydro Plan
Date: Monday, April 10, 2017 15:40:34

Is this the right #? The music seems to be going on forever and the moderator hasn't joined yet. n

-----Original Appointment-----
From: Calwell, Carolyn (ENERGY/MEDEI/MRI)
Sent: April-10-17 3:41 PM
To: Calwell, Carolyn (ENERGY/MEDEI/MRI); Rehob, James (ENERGY); Shear, Dan (ENERGY); Kacaba, Jennifer (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS); 'Mary Anne Aldred'; Calwell, Carolyn (ENERGY/MEDEI/MRI); Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com
Cc: 'Myers, Jonathan'
Subject: Ontario Fair Hydro Plan
When: April-12-17 2:00 PM-5:00 PM (UTC-05:00) Eastern Time (US & Canada).
Where: 79 Wellington St. W. - 33rd Floor TD South Tower, Torys

Update

This meeting has been moved from Blakes to Torys due to boardroom availability.

Please contact Reception or Nicole Drake (ndrake@torys.com) when you arrive to be shown to the boardroom.

Hi Everyone,

This will be a meeting to discuss the Ontario Fair Hydro Plan (OFHP).

~~The meeting will be held at Blakes and the main contact on site will be Lindsay Dicks (416-863-4347 or Lindsay.Dicks@blakes.com). Please inform Lindsay if there will be additional people attending from your group because she will need to pass this information along to their security desk.~~

Please forward this meeting invitation to your respective teams for their attendance if any individuals are not included.

Any materials available for this meeting will be provided in a future update.

If you are unable to attend in person, please use the following conference call information:

Toll-free dial-in number: 1-866-633-1033
Local dial-in number: 416-212-8013
Conference ID: 3164921#

If there are any additional scheduling needs or updates, please contact Joseph Pau (416-326-1018 or Joseph.Pau@ontario.ca).

Thanks,

FW_ Ontario Fair Hydro Plan.rtf

From: Veinot, Cindy (TBS) []
To: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
Subject: FW: Ontario Fair Hydro Plan
Date: Monday, April 10, 2017 08:20:54

-----Original Appointment-----
From: Calwell, Carolyn (ENERGY/MEDEI/MRI)
Sent: April-07-17 6:39 PM
To: Calwell, Carolyn (ENERGY/MEDEI/MRI); Veinot, Cindy (TBS); Rehob, James (ENERGY); Shear, Dan (ENERGY); Kacaba, Jennifer (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com)
Cc: 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall
Subject: FW: Ontario Fair Hydro Plan
When: April-10-17 10:00 AM-2:00 PM (UTC-05:00) Eastern Time (US & Canada).
Where: 199 Bay St. - 40th Floor, Blakes

-----Original Appointment-----
From: Pau, Joseph (MEDG/MRIS) **On Behalf Of** Calwell, Carolyn (ENERGY/MEDEI/MRI)
Sent: April-06-17 2:11 PM
To: Calwell, Carolyn (ENERGY/MEDEI/MRI); Rehob, James (ENERGY); Shear, Dan (ENERGY); Kacaba, Jennifer (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); michael.boll@ieso.ca; Kim Marshall
Cc: 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim

Marshall; 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'
Subject: Ontario Fair Hydro Plan
When: April-10-17 10:00 AM-2:00 PM (UTC-05:00) Eastern Time (US & Canada).
Where: 199 Bay St. - 40th Floor, Blakes

Hi Everyone,

This will be a meeting to discuss the Ontario Fair Hydro Plan (OFHP).

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To the representatives from OPG, please forward this meeting invitation to your respective outside counsel for their attendance.

Any materials available for this meeting will be provided in a future update.

If you are unable to attend in person, please use the following conference call information:

Toll-free dial-in number: 1-866-633-1033
Local dial-in number: 416-212-8013
Conference ID: 3164921#

If there are any additional scheduling needs or updates, please contact Joseph Pau (416-326-1018 or Joseph.Pau@ontario.ca).

Thanks,

FW_ Ontario Fair Hydro Plan.rtf

From: Calwell, Carolyn (ENERGY/MEDEI/MRI) []
To: Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Kwan, Ronald (OFA) [Ronald.Kwan@ofina.on.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Kim.Marshall@ieso.ca [Kim.Marshall@ieso.ca]; John.S.Lee@opg.com [John.S.Lee@opg.com]; Cox, Hilary (ENERGY) [Hilary.Cox@ontario.ca]; Whitfield, Tobias P. (MOF) [Tobias.Whitfield@ontario.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; He, Gavin (OFA) [Gavin.He@ofina.on.ca]; yolusoga@torys.com [yolusoga@torys.com]; Anthony.Martinello@ieso.ca [Anthony.Martinello@ieso.ca]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Kacaba, Jennifer (ENERGY) [Jennifer.Kacaba@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) [tyler.mcauley@opg.com]; 'Michael.Boll@IESO.com' [Michael.Boll@IESO.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; DICKS, LINDSAY (LINDSAY.DICKS@blakes.com) [LINDSAY.DICKS@blakes.com]; Michael.Boll@IESO.ca [Michael.Boll@IESO.ca]
CC: Mary Anne Aldred (MaryAnne.Aldred@oeb.ca) [MaryAnne.Aldred@oeb.ca]; Martine.Band@ontarioenergyboard.ca [Martine.Band@ontarioenergyboard.ca]; 'Martine Band' [Martine.Band@oeb.ca]; 'Ramchandani, Rima' [rramchandani@torys.com]; 'Feldman, Michael' [mfeldman@torys.com]; 'Alan Hibben' [alan.hibben@rogers.com]; 'Mansoori, Nina' [nmansoori@torys.com]; 'Myers, Jonathan' [jmyers@torys.com]; 'Hill, Krista' [khill@torys.com]; 'Glenn Zacher' [GZacher@stikeman.com]; 'Peter Hamilton' [PHamilton@stikeman.com]
Subject: FW: Ontario Fair Hydro Plan
Date: Thursday, April 06, 2017 12:57:43

Hi Everyone,

Please make sure your appropriate colleagues are included. If not, please inform Joseph Pau (Joseph.Pau@ontario.ca) and he will provide them with the invitation and forward their name to the Blakes security desk.

Thanks,

-----Original Appointment-----
From: Pau, Joseph (MEDG/MRIS) **On Behalf Of** Calwell, Carolyn (ENERGY/MEDEI/MRI)
Sent: April 4, 2017 2:42 PM
To: Calwell, Carolyn (ENERGY/MEDEI/MRI); Rehob, James (ENERGY); Shear, Dan (ENERGY); Kacaba, Jennifer (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); 'Michael.Boll@IESO.com'; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; DICKS, LINDSAY (LINDSAY.DICKS@blakes.com); Michael.Boll@IESO.ca
Cc: Mary Anne Aldred (MaryAnne.Aldred@oeb.ca); Martine.Band@ontarioenergyboard.ca; 'Martine Band'; 'Ramchandani, Rima'; 'Feldman, Michael'; 'Alan Hibben'; 'Mansoori, Nina'; 'Myers, Jonathan'; 'Hill, Krista'; 'Glenn Zacher'; 'Peter Hamilton'
Subject: Ontario Fair Hydro Plan
When: April 7, 2017 10:00 AM-2:00 PM (UTC-05:00) Eastern Time (US & Canada).
Where: 199 Bay St. - 40th Floor, Blakes

Update

This meeting has been shortened from 4:00pm to 2:00pm.

Hi Everyone,

This will be a meeting to discuss the Ontario Fair Hydro Plan (OFHP) and will include Blakes, Torys, OPG, IESO, and Ministry Counsel.

The meeting will be held at Blakes and the main contact on site will be Lindsay Dicks (416-863-4347 or Lindsay.Dicks@blakes.com). Please inform Lindsay if there will be additional people attending from your group because she will need to pass this information along to their security desk.

To the representatives from OPG and IESO, please forward this meeting invitation to your respective outside counsel for their attendance.

Any materials available for this meeting will be provided in a future update.

If you are unable to attend in person, please use the following conference call information:

Toll-free dial-in number: 1-866-633-1033
Local dial-in number: 416-212-8013
Conference ID: 3164921#

If there are any additional scheduling needs or updates, please contact Joseph Pau (416-326-1018).

Thanks,

FW_ Ontario Fair Hydro Plan.rtf

From: Calwell, Carolyn (ENERGY/MEDEI/MRI) []
To: Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Kwan, Ronald (OFA) [Ronald.Kwan@ofina.on.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Kim.Marshall@ieso.ca [Kim.Marshall@ieso.ca]; John.S.Lee@opg.com [John.S.Lee@opg.com]; Cox, Hilary (ENERGY) [Hilary.Cox@ontario.ca]; Whitfield, Tobias P. (MOF) [Tobias.Whitfield@ontario.ca]; He, Gavin (OFA) [Gavin.He@ofina.on.ca]; yolusoga@torys.com [yolusoga@torys.com]; Anthony.Martinello@ieso.ca [Anthony.Martinello@ieso.ca]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Kacaba, Jennifer (ENERGY) [Jennifer.Kacaba@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) [tyler.mcauley@opg.com]; 'Michael.Boll@IESO.com' [Michael.Boll@IESO.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; DICKS, LINDSAY (LINDSAY.DICKS@blakes.com) [LINDSAY.DICKS@blakes.com]; Michael.Boll@IESO.ca [Michael.Boll@IESO.ca]
CC: Mary Anne Aldred (MaryAnne.Aldred@oeb.ca) [MaryAnne.Aldred@oeb.ca]; Martine.Band@ontarioenergyboard.ca [Martine.Band@ontarioenergyboard.ca]; 'Martine Band' [Martine.Band@oeb.ca]; 'Ramchandani, Rima' [rramchandani@torys.com]; 'Feldman, Michael' [mfeldman@torys.com]; 'Alan Hibben' [alan.hibben@rogers.com]; 'Mansoori, Nina' [nmansoori@torys.com]; 'Myers, Jonathan' [jmyers@torys.com]; 'Hill, Krista' [khill@torys.com]; 'Glenn Zacher' [GZacher@stikeman.com]; 'Peter Hamilton' [PHamilton@stikeman.com]
Subject: FW: Ontario Fair Hydro Plan
Date: Thursday, April 06, 2017 12:57:43

Toll-free dial-in number: 1-866-633-1033
Local dial-in number: 416-212-8013
Conference ID: 3164921#

-----Original Appointment-----
From: Calwell, Carolyn (ENERGY/MEDEI/MRI)
Sent: April-06-17 12:58 PM
To: Calwell, Carolyn (ENERGY/MEDEI/MRI); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Kwan, Ronald (OFA); Veinot, Cindy (TBS); Hosick, Sarah (TBS); Kim.Marshall@ieso.ca; John.S.Lee@opg.com; Cox, Hilary (ENERGY); Whitfield, Tobias P. (MOF); Petsche, Nadine (TBS); He, Gavin (OFA); yolusoga@torys.com; Anthony.Martinello@ieso.ca; Brad.Purkis@tdsecurities.com; Rehob, James (ENERGY); Shear, Dan (ENERGY); Kacaba, Jennifer (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); 'Michael.Boll@IESO.com'; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; DICKS, LINDSAY (LINDSAY.DICKS@blakes.com); Michael.Boll@IESO.ca
Cc: Mary Anne Aldred (MaryAnne.Aldred@oeb.ca); Martine.Band@ontarioenergyboard.ca; 'Martine Band'; 'Ramchandani, Rima'; 'Feldman, Michael'; 'Alan Hibben'; 'Mansoori, Nina'; 'Myers, Jonathan'; 'Hill, Krista'; 'Glenn Zacher'; 'Peter Hamilton'
Subject: FW: Ontario Fair Hydro Plan
When: April-07-17 10:00 AM-2:00 PM (UTC-05:00) Eastern Time (US & Canada).
Where: 199 Bay St. - 40th Floor, Blakes

Hi Everyone,

Please make sure your appropriate colleagues are included. If not, please inform Joseph Pau (Joseph.Pau@ontario.ca) and he will provide them with the invitation and forward their name to the Blakes security desk.

Thanks,

-----Original Appointment-----
From: Pau, Joseph (MEDG/MRIS) **On Behalf Of** Calwell, Carolyn (ENERGY/MEDEI/MRI)
Sent: April 4, 2017 2:42 PM
To: Calwell, Carolyn (ENERGY/MEDEI/MRI); Rehob, James (ENERGY); Shear, Dan (ENERGY); Kacaba, Jennifer (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); 'Michael.Boll@IESO.com'; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; DICKS, LINDSAY (LINDSAY.DICKS@blakes.com); Michael.Boll@IESO.ca
Cc: Mary Anne Aldred (MaryAnne.Aldred@oeb.ca); Martine.Band@ontarioenergyboard.ca; 'Martine Band'; 'Ramchandani, Rima'; 'Feldman, Michael'; 'Alan Hibben'; 'Mansoori, Nina'; 'Myers, Jonathan'; 'Hill, Krista'; 'Glenn Zacher'; 'Peter Hamilton'
Subject: Ontario Fair Hydro Plan
When: April 7, 2017 10:00 AM-2:00 PM (UTC-05:00) Eastern Time (US & Canada).
Where: 199 Bay St. - 40th Floor, Blakes

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Thanks,

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To: Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Kwan, Ronald (OFA) [Ronald.Kwan@ofina.on.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Kim.Marshall@ieso.ca [Kim.Marshall@ieso.ca]; John.S.Lee@opg.com [John.S.Lee@opg.com]; Cox, Hilary (ENERGY) [Hilary.Cox@ontario.ca]; Whitfield, Tobias P. (MOF) [Tobias.Whitfield@ontario.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; He, Gavin (OFA) [Gavin.He@ofina.on.ca]; yolusoga@torys.com [yolusoga@torys.com]; Anthony.Martinello@ieso.ca [Anthony.Martinello@ieso.ca]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Kacaba, Jennifer (ENERGY) [Jennifer.Kacaba@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) [tyler.mcauley@opg.com]; 'Michael.Boll@IESO.com' [Michael.Boll@IESO.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; DICKS, LINDSAY (LINDSAY.DICKS@blakes.com) [LINDSAY.DICKS@blakes.com]; Michael.Boll@IESO.ca [Michael.Boll@IESO.ca]
CC: Mary Anne Aldred (MaryAnne.Aldred@oeb.ca) [MaryAnne.Aldred@oeb.ca]; Martine.Band@ontarioenergyboard.ca [Martine.Band@ontarioenergyboard.ca]; 'Martine Band' [Martine.Band@oeb.ca]; 'Ramchandani, Rima' [rramchandani@torys.com]; 'Feldman, Michael' [mfeldman@torys.com]; 'Alan Hibben' [alan.hibben@rogers.com]; 'Mansoori, Nina' [nmansoori@torys.com]; 'Myers, Jonathan' [jmyers@torys.com]; 'Hill, Krista' [khill@torys.com]; 'Glenn Zacher' [GZacher@stikeman.com]; 'Peter Hamilton' [PHamilton@stikeman.com]
Subject: FW: Ontario Fair Hydro Plan
Date: Thursday, April 06, 2017 12:57:43

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From: Pau, Joseph (MEDG/MRIS) **On Behalf Of** Calwell, Carolyn (ENERGY/MEDEI/MRI)
Sent: April 4, 2017 2:42 PM
To: Calwell, Carolyn (ENERGY/MEDEI/MRI); Rehob, James (ENERGY); Shear, Dan (ENERGY); Kacaba, Jennifer (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); 'Michael.Boll@IESO.com'; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; DICKS, LINDSAY (LINDSAY.DICKS@blakes.com); Michael.Boll@IESO.ca
Cc: Mary Anne Aldred (MaryAnne.Aldred@oeb.ca); Martine.Band@ontarioenergyboard.ca; 'Martine Band'; 'Ramchandani, Rima'; 'Feldman, Michael'; 'Alan Hibben'; 'Mansoori, Nina'; 'Myers, Jonathan'; 'Hill, Krista'; 'Glenn Zacher'; 'Peter Hamilton'
Subject: Ontario Fair Hydro Plan
When: April 7, 2017 10:00 AM-2:00 PM (UTC-05:00) Eastern Time (US & Canada).
Where: 199 Bay St. - 40th Floor, Blakes

Update

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Local dial-in number: 416-212-8013
Conference ID: 3164921#

If there are any additional scheduling needs or updates, please contact Joseph Pau (416-326-1018).

Thanks,

FW_ Ontario Fair Hydro Plan.rtf

From: Petsche, Nadine (TBS) []
To: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
Subject: FW: Ontario Fair Hydro Plan
Date: Friday, April 07, 2017 09:45:46

Toll-free dial-in number: 1-866-633-1033
Local dial-in number: 416-212-8013
Conference ID: 3164921#

-----Original Appointment-----
From: Calwell, Carolyn (ENERGY/MEDEI/MRI)
Sent: April-06-17 12:58 PM
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To: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]; Lloyd, Patti (TBS) [Patti.Lloyd@ontario.ca]
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Local dial-in number: 416-212-8013
Conference ID: 3164921#

If there are any additional scheduling needs or updates, please contact Joseph Pau (416-326-1018).

Thanks,

FW_ Ontario Fair Hydro Plan.rtf

From: Ken Kandeepan [Ken.Kandeepan@ofina.on.ca]
To: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
CC: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; John Psinas [John.Psinas@ofina.on.ca]
Subject: FW: Ontario Fair Hydro Plan
Date: Sunday, April 23, 2017 11:14:22
Attachment 1: Fair Hydro Plan Act (April 20 2017) Consultation v3.docx

---

Hi Cindy

Not sure whether you have had a chance to review the latest version of the proposed legislation, if you have not yet provided comments, hopefully you can include ours as well given that the OFA comments are directed primarily towards the accounting and financing aspects of the draft legislation.

It appears that the clean energy adjustment (CEA) that is detailed in Part 3 is the mechanism for the recovery of the financing costs of the Trust from implementation to the point when repayment kicks in. Page 13 provides the computation of the CEA which is further detailed in Schedule 1, though note that Schedule 1 is still missing the section outlining how the funding costs are to be computed.

Now the way the accounting model works is that the interest costs or CEA will be recovered from the ratepayer via the invoice. In essence the deferral or the Clean Energy Benefit (CEB) includes the financing costs on the accumulated debt and is offset by another line, presumably the CEA, netting the CEB down to the required percentage of the GA.

Now page 11 under Rate Determination prescribes a 25% reduction in the invoice amount, however, nowhere does the legislation indicate the components of the 25%. However, page 8 prescribes what should be invoiced but specifically excludes penalties or interest.

In essence the draft may benefit from a restructuring as follows:

· Part 2 which prescribes the 25% reduction should be in Part 1 and should define

the components of the 25% either within the legislation or in a Schedule.

· The Sections on the 25% reduction should be followed by the specifics of what should be invoiced (now on page 8) and the components of the invoice should include the financing costs or CEA.

· The IESO funding shortfall on page 22 is a little confusing since the draft legislation prescribes the setting up of the regulatory asset that is equal to the funding shortfall and the sale of said asset. If the asset is sold then IESO has no funding shortfall to recover post May 1, 2022 as prescribed in Subsection 2 of page 22. Perhaps this section should be linked to the Financing Plan and the ability of the IESO to recover and remit as prescribed in the Financing Plan.

Thanks Cindy and happy to discuss either today at 647-202 -4373 or Monday.

Ken K

From: Kacaba, Jennifer (ENERGY) [mailto:Jennifer.Kacaba@ontario.ca]
Sent: Thursday, April 20, 2017 5:59 PM
To: James Rehob (ENERGY) <James.Rehob@ontario.ca>; Dan Shear (ENERGY) <Dan.Shear@ontario.ca>; Scott Nelms (ENERGY) <Scott.Nelms@ontario.ca>; Steen Hume (CAB) <Steen.Hume@ontario.ca>; Tim Christie (ENERGY) <Tim.Christie@ontario.ca>; Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) <tyler.mcauley@opg.com>; John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com) <alan.hibben@rogers.com>; Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina' <Katrina.Niehaus@gs.com>; 'Benaiah, Ian' <ian.benaiah@rbccm.com>; Nevison, Gary (Gary.Nevison@tdsecurities.com) <Gary.Nevison@tdsecurities.com>; Thom, Trevor (Trevor.Thom@tdsecurities.com) <Trevor.Thom@tdsecurities.com>; Akman, Steven (Steven.Akman@tdsecurities.com) <Steven.Akman@tdsecurities.com>; Thompson, Susan (Susan.Thompson@tdsecurities.com) <Susan.Thompson@tdsecurities.com>; Manii, David (david.manii@tdsecurities.com) <david.manii@tdsecurities.com>; 'Feldman, Michael' <mfeldman@torys.com>; 'Persaud, Donnie - Debt Capital Markets' <Donnie.Persaud@cibc.com>; 'Hill, Krista' <khill@torys.com>; 'Turnbull, Vickie' <vickie.turnbull@rbccm.com>; 'Dal Bello, David' <david.dalbello@rbccm.com>;

'Mansoori, Nina' <nmansoori@torys.com>; 'Sebastiano, Rocco' <RSebastiano@osler.com>; 'Fitzpatrick, Michael F.' <MFitzpatrick@hunton.com>; michael.boll@ieso.ca; Kim Marshall <Kim.Marshall@ieso.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; 'Glenn Zacher' <GZacher@stikeman.com>; 'O'Brian, Adam' <aobrian@hunton.com>; 'Emes, Aaron' <aemes@torys.com>; 'Peter Hamilton' <PHamilton@stikeman.com>; 'JORDA Jenny -FIN & C CTRL' <jenny.jorda@opg.com>; maryanne.aldred@ontarioenergyboard.ca; Nadine Petsche (MOF) <Nadine.Petsche@ontario.ca>; rramchandani@torys.com
Cc: Carolyn Calwell (MCSS) <Carolyn.Calwell@ontario.ca>; 'Myers, Jonathan' <jmyers@torys.com>; Suzie Gignac (suzie.r.gignac@ca.ey.com) <suzie.r.gignac@ca.ey.com>; Blake Langill (blake.w.langill@ca.ey.com) <blake.w.langill@ca.ey.com>; LeeAnne.Probert@ca.ey.com; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>; Paul Johnson (ENERGY) <Paul.Johnson3@ontario.ca>
Subject: RE: Ontario Fair Hydro Plan

All - Please find attached the next turn in the consultation draft (v.3) of the proposed legislation. We have been working to address the feedback that you provided earlier in the week. A number of points remain in progress. As with the earlier versions, by sharing this document, we hope to continue to advance our discussions.

Our timeline has been extended and we are now working to a pens down date of April 28th. We will not get another extension. Accordingly, we ask for your detailed, written comments on the draft, which we require no later than Sunday at noon.

We will continue to work on the bill in the interim, so earlier instructions are helpful to us. With your input on this timeline, we expect to be able to provide one more circulation around Tuesday or Wednesday next week.

We have not had the opportunity to add notes or to update our crosswalk to the Blakes summary document.

We look forward to receiving your written comments.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

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From: Kacaba, Jennifer (ENERGY)
Sent: April 17, 2017 12:00 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com;

Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS)
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI); 'Myers, Jonathan'; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA); Hosick, Sarah (TBS)
Subject: RE: Ontario Fair Hydro Plan

Please find attached a further turn of the consultation draft. This document continues to be a work in progress. We have not had the opportunity to add notes or update our tracking table. We also have not yet considered the comments that we received this morning. We look forward to seeing you at 1.

Jennifer

Jennifer J. Kacaba

Counsel

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From: Calwell, Carolyn (ENERGY/MEDEI/MRI)
Sent: April 15, 2017 10:06 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Kacaba, Jennifer (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS)
Cc: 'Myers, Jonathan'; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA); Hosick, Sarah (TBS)
Subject: Ontario Fair Hydro Plan

All - Please find attached the draft “Intergenerational Fairness in Hydro Rates Act, 2017”. A tremendous amount of work has gone into getting to this draft and much more work is required to get this ready for the House. The goal of sharing this document now is to further the process we have engaged in over the last weeks. In the attached, we have included notes to try to address where the drafting is not yet consistent with our thinking. These notes are neither comprehensive nor complete. They are intended

only as flags and as colour to the draft. We have not forgotten the comments that you have already provided and we are continuing to working through the translation of the commercial terms we have been discussing into legislative language.

For ease of reference, included with the draft bill are the partially updated Blakes' summary, a chart that attempts links the articles in that document to the sections of the bill (which is imperfectly numbered at best) and excerpts from the Electricity Act and the Ontario Energy Board Act, related to the consequential amendments.

In your review, please focus on the broad stroke concepts, rather than the minutia, and keep in mind the cascade of instruments that will be required – legislation first, then regulations and finally commercial agreements. We look forward to discussing the broader concepts on Monday

Carolyn Calwell

Legal Director

MAG Civil Law Division

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Research, Innovation & Science / Infrastructure / Accessibility

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Fair Hydro Plan Act (April 20 2017) Consultation v3.pdf

Version 3

This confidential draft document is provided for discussion purposes only. It should not be construed as representing the position adopted by the Government of Ontario on any of the topics included or not included in this document. The notes included in this document are intended only to help facilitate a discussion of the topics to which they relate. Any potential legislation is subject to the approval of the Ontario Legislature.

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A proposal to create Legislation.

Ontario's Fair Hydro Plan Act, 2017, if enacted

A proposal to create Legislation.

Ontario's Fair Hydro Plan Act, 2017, if enacted

EXPLANATORY NOTE TO BE ADDED BY LEGISLATIVE COUNSEL
TO ANY FINAL BILL PRIOR TO INTRODUCTION.

[Insert explanatory note.]

[Notes re this draft:
- all numbering of provisions may need to be re-done
- will need to check all definitions to ensure (1) that they are needed; and (2) that they work properly wherever the term is used in the Bill.
- additional consequential amendments likely required still
- overall organization of provisions still TBC (for now just trying to get all of the elements drafted and will reconsider architecture later)
- need to check consistency of various phrases (e.g. *during/for/in respect of* reference period; *owner of RA/IA vs. RA/IA owner; etc.)*]

Preamble

The Government of Ontario is committed to fostering the development of a clean, modern and reliable electricity system with a diverse supply mix. The Government is also committed to removing barriers to and promoting opportunities for renewable and clean energy projects.[1]

The Government of Ontario has established a regulatory framework related to the generation and sale of electricity, which has promoted and continues to promote significant investment to enable phasing out of coal fired generation, modernizing sites and facilities in the Province for the generation of electrical energy and the production therefrom,[2] and conservation and demand management.

The Government of Ontario is committed to ensuring that the costs of these investments, and the raising of money to fund the investments,[3] are allocated fairly among present and future generations of consumers.

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

[1] Note: please see the preamble of the *Green Energy Act, 2009.*
[2] Note: please see clause 92A (4) (b) of the Constitution, 1867: "des emplacements et des installations de la province destinés à la production d'énergie électrique, ainsi que de cette production meme".
[3] Note: please see opening flush of s. 92A (4) of the Constitution Act, 1867

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PART I
GENERAL

Interpretation
Definitions

1xx. (1) In this Act,

"Board" means the Ontario Energy Board; ("French")

"clean energy adjustment" means the amount determined under section 10xx; ("French")
[Note - will need to check throughout the draft that references to CEA are clear as to whether it's the total CEA in respect of a reference period vs. the portion payable by a specified consumer.]

"clean energy benefits" means, in respect of a reference period, the value of the benefits determined to be derived by the specified consumers during the reference period as a result of the clean energy initiative, including as a result of past, present and expected future incurrences of clean energy costs; ("French")

"clean energy costs" means, in respect of a reference period, the value of the costs allocated to specified consumers during the reference period as a result of the clean energy initiative, including as a result of past, present and expected costs incurred in respect of,

(a) the estimated costs to be incurred by the IESO under section 25.33 of the *Electricity Act, 1998* or any provision that is the successor to that provision, which relate to contracts for,

(i) renewable energy generation or capacity,

(ii) conservation and demand management, including storage,

(iii) energy efficiency,

(iv) natural gas generation and capacity, excluding contracts relating to amounts payable by the IESO under section 78.2 of the *Ontario Energy Board Act, 1998* and excluding such other contracts as may be prescribed, or

(v) payments made or expected to be made under section 78.5 of the *Ontario Energy Board Act, 1998*, and

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(b) such other estimated costs as may be prescribed; ("French")

"clean energy initiative" means the policies of the Government of Ontario related to,

(a) fostering the growth of and investment in clean and renewable energy sources and technologies,

(b) removing barriers to and promoting opportunities for clean and renewable energy sources and technologies, and

(c) promoting conservation and demand management; ("French")

"electricity vendor"[4] means the IESO, a licensed distributor, a licensed retailer or such other person as may be prescribed; ("French")

"fair adjustment" means the determination of the rate payable for electricity in accordance with Part II; ("French")

"Financial Services Manager" means Ontario Power Generation Inc. [or such other person or entity as may be appointed as the Financial Services Manager by the Minister under section **]; ("French")

"Financing Plan" means the plan prepared under section X, as amended from time to time in accordance with this Act; ("French")

"funding obligation" means a payment obligation incurred by or on behalf of the regulatory asset owner or an investment asset owner under section x; ("French")

"IESO" means the Independent Electricity System Operator continued under Part II of the *Electricity Act, 1998*; ("SIERE")

"IESO funding shortfall" means, in respect of a reference period, the amount determined under section 20xx for the reference period; ("French")

"investment asset" means the investment asset created as described in section 22xx; ("French")

"investment asset owner" means a financing entity that acquires an investment interest in the investment asset; ("French")

[4] Note - this is similar to the definition of "electricity vendor" in the Ontario Rebate for Electricity Consumers Act, 2016

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"investment interest" means an ownership interest in the investment asset, which entitles an investment asset owner to the rights and benefits specified in the agreement under which the ownership interest is transferred;

"invoice amount" means the amount, determined in accordance with subsections (2.1) and (2.2) and the regulations, that is payable by a specified consumer for the provision of electricity in Ontario during a period of time specified on an invoice issued by an electricity vendor; ("French")

"licensed distributor" means a person licensed under Part V of the *Ontario Energy Board Act, 1998* to own or operate a distribution system; ("French")

"licensed retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity; ("French")

"Minister" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of this Act under the *Executive Council Act*; ("ministre")

"prescribed" means prescribed by the regulations; ("prescrit")

"reference period" means,

(a) the period beginning on May 1, 2017 and ending on October 31, 2017,

(b) every six-month period following the period mentioned in clause (a) or such shorter period as may be set out in the Fair Allocation Plan; ("French")

"refinancing" means a repayment or repurchase of a funding obligation for cancellation by or on behalf of an investment asset owner by applying the net proceeds obtained by the owner incurring one or more other funding obligations; ("French")

"regulation" means a regulation made under this Act; ("règlement")

"regulatory asset" means the right established under section X to recover the IESO funding shortfall; ("French")

"representative consumer" means a consumer who meets the criteria set out in subsection (3); ("French")

"specified consumer" means,

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(a) a person who has an account with an electricity vendor for the supply of electricity, receives an invoice in respect of the account and meets the criteria set out in subsection (2); or

(b) such other person as may be prescribed; ("French")

"Toronto Hydro" means Toronto Hydro-Electric System Limited; ("French")

"transfer" means an assignment, conveyance, disposition or sale; ("French")

Specified consumers

(2) For the purposes of clause (a) of the definition of "specified consumer" in subsection (1), the person must meet any one of the following criteria:

1. The person has a demand for electricity of 50 kilowatts or less, or such other amount as may be prescribed.

2. The person annually uses not more than 250,000 kilowatt hours of electricity, or such other amount as may be prescribed.

3. The person carries on a business that is a farming business for the purposes of the *Farm Registration and Farm Organizations Funding Act, 1993* and either holds a valid registration number assigned under that Act or the has had the obligation to file a farming business registration form waived pursuant to an order made under subsection 22 (6) of that Act.

4. The person's account with the electricity vendor relates to,

   i. a dwelling,

   ii. a property within the meaning of the *Condominium Act, 1998*,

   iii. a residential complex within the meaning of subsection 2 (1) of the *Residential Tenancies Act, 2006*, without regard to section 5 of that Act, or

   iv. a property that includes one or more housing units and that is owned or leased by a co-operative within the meaning of the *Co-operative Corporations Act*.

5. The person satisfies such criteria as may be prescribed.

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Invoice amount

(2.1) Subject to subsection (2.2) and the regulations, the invoice amount for a specified consumer includes the following amounts:

1. In circumstances where the electricity is provided by a licensed distributor or a licensed retailer, the following:

    i. The commodity price of the electricity used during the invoice period.

    ii. The rates and charges set out in the applicable rate order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*.

    iii. Any adjustment on the invoice required under section 25.33 of the *Electricity Act, 1998*.

    iv. The amount of any harmonized sales tax payable [by the consumer?] under Part IX of the *Excise Tax Act* (Canada);

    v. Any other amounts as may be prescribed.

2. In circumstances where the electricity is provided by the IESO, such amounts as may be prescribed. ("French")

Same, exclusions

(2.2) Except as otherwise prescribed by the regulations, the invoice amount does not include any of the following amounts:

1. The balance of any amounts carried forward from previous invoices.

2. Penalties or interest.

3. Charges that do not relate to the use of electricity.

4. Any of the following charges that may be set out in an order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*:

    i. A fixed monthly service charge payable by a generation facility within the meaning of section 56 of the *Ontario Energy Board Act, 1998* and classified as "microFIT".

    ii. A charge labelled as a "specific service charge" or "retail service charge".

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iii. A rate rider.

5. Any other prescribed amounts.

Representative consumer

(3) For the purposes of the definition of "representative consumer" in subsection (1), the consumer,

(a) purchases electricity directly from Toronto Hydro;

(b) has an account with Toronto Hydro that falls within a residential-rate classification as specified in a rate order made by the Board under section 78 of the *Ontario Energy Board Act, 1998*;

(c) is invoiced by Toronto Hydro on a monthly basis;

(d) is not invoiced by Toronto Hydro for electricity on an equal monthly payment plan or an equal billing plan; and

(e) uses, on average, 750 kilowatt hours of electricity each month.

Transfer

(4) For greater certainty, a transfer of the regulatory asset or a portion of the regulatory asset includes any act of the IESO by which the IESO purports to dispose of its interest in the regulatory asset with the result of a named person becoming the owner of an investment interest.

Effect of invalidity, etc.[5]

2xx. (1) For greater certainty, all of the provisions of this Act remain in full force and effect, even if some provisions are held to be invalid, the intention of the Legislature being to give separate and independent effect to the extent of its powers to every provision contained in this Act.

Same, funding obligation

(2) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect a funding obligation that was incurred under this Act before the day that the provision was held to be invalid or ceased to be in effect.

Purpose

3xx. (1) The purposes of this Act are,[6]

[5] Note: this is from the *Climate Change Mitigation and Low-carbon Economy Act, 2016*

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(a) to ensure that clean energy costs are fairly allocated among specified consumers over time and that the process by which the Province raises money to fund the costs reflects the fair allocation; and

(b) to recognize that clean energy benefits that have accrued and that will accrue over time will continue to benefit present and future electricity consumers in the Province.

Crown bound

4xx. This Act binds the Crown.

Protection and assurances

Prohibition

5xx. (1) The Crown shall not do anything that would,

(a) hinder, delay, impair or prejudice the charging, collection or remittance of the clean energy adjustment;

(b) except as expressly permitted by this Act, reduce the amount of the clean energy adjustment or lower the priority of the clean energy adjustment over other debts; or

(c) adversely affect an investment asset or a funding obligation.

Clarification with respect to regulations

(2) For greater certainty, the things prohibited under subsection (1) include the making or approving of a regulation under this Act.

Agreements for compensation

(3) The Minister may, with the approval of the Lieutenant Governor in Council, enter into agreements on behalf of the Province of Ontario with any person in respect of this Act, including agreements regarding financial commitments, financial arrangements, indemnities or similar transactions.

PART II
FAIR ADJUSTMENT

[6] Note: Please see the *Electricity Act, 1998* for much of the wording proposed in this section.

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Fair adjustment, May 1, 2017 to April 30, 2018
Definition

6xx. (1) In this section,

"average baseline invoice amount" means the average monthly invoice amount that would be payable by a representative consumer under the average baseline rate; ("French")

"average baseline rate" means the average rate that would be payable effective May 1, 2017 by the class of consumers prescribed by the regulations under the *Ontario Energy Board Act, 1998* for the purposes of subsection 79.16 (1) of that Act, as determined by the Board by applying the method prescribed by the regulations under clause 79.16 (1) (b) of that Act; ("French")

"sub-meter customer" means a person who is supplied electricity by a specified consumer, if an invoice for the electricity is issued to the person by the specified consumer, by an agent of the specified consumer or by a unit sub-meter provider providing unit sub-metering for the specified consumer; ("French")

Rate determination

(2) Subject to subsection (3), [to more fairly measure and allocate the clean energy costs and clean energy benefits among present and future generations of specified consumers,] the rate for electricity payable by a specified consumer for the period beginning on May 1, 2017 and ending on April 30, 2018 is the average rate that would be payable by a representative consumer in order for the representative consumer to receive a monthly invoice amount that is 25 per cent less than the average baseline invoice amount.

Sub-meter customers

(3) A specified consumer who provides electricity to a sub-meter customer and any unit sub-meter provider who provides unit sub-metering for the specified consumer shall ensure that the rate payable by each sub-meter customer is the rate determined under subsection (2).

Determining rate

(4) The rate mentioned in subsection (2) shall be,

(a) determined by the Board within seven business days after this section receives Royal Assent; and

(b) effective as of the first day of the calendar month immediately following the determination.

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Transition

(5) If, for technical or operational reasons, an electricity vendor, specified consumer or unit sub-meter provider is unable to adapt its invoices to comply with this section by the time it issues its first invoice for electricity consumed on or after May 1, 2017,

(a) the electricity vendor, specified consumer or unit sub-meter provider shall adapt its invoices as soon as possible and, in any event, no later than [August 1, 2017]; and

(b) the electricity vendor, specified consumer or unit sub-meter provider shall ensure that any specified consumer or sub-meter customer invoiced at a rate higher than the applicable rate receives the difference between the rate shown on their invoice and the applicable rate as a lump sum credit on the first invoice issued after the invoices have been adapted or by such other means as may be prescribed by the regulations.

Fair adjustment, May 1, 2018 to April 30, 2022

7xx. The Lieutenant Governor in Council may, [to more fairly measure and allocate the clean energy costs and clean energy benefits among present and future generations of specified consumers,] make regulations prescribing the rate for electricity payable by specified consumers and sub-meter customers during the period beginning on May 1, 2018 and ending on April 30, 2022.

PART III
CLEAN ENERGY ADJUSTMENT

Specified consumers to pay clean energy adjustment

8xx. (1) Upon receipt of an invoice that includes a clean energy adjustment, a specified consumer shall pay the clean energy adjustment to the electricity vendor, as agent of the investment asset owners, in accordance with such terms of payment as may be specified in the invoice, which may include terms relating to late payment fees and interest charges.

Same

(2) For greater certainty, subsection (1) applies regardless of,

(a) whether the clean energy adjustment is inconsistent with the fair allocation calculation applicable at the time when the payment is due; and

(b) whether the clean energy adjustment relates to funding obligations that were incurred in a manner that was inconsistent with the Financing Plan.

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Indebtedness of specified consumer

(4) An unpaid clean energy adjustment that is required to be paid by a specified consumer under this section constitutes indebtedness of the consumer to each investment asset owner in respect of each owner's respective interest in the investment asset.

Same

(5) The indebtedness mentioned in subsection (4) is a single and separate debt obligation owed by the specified consumer and may be enforced independently from any other payment obligation or indebtedness owing by the specified consumer under the invoice or otherwise.

Irrevocability of clean energy adjustment

9xx. (1) The amount of the clean energy adjustment shown on an invoice issued to a specified consumer under this Act is determinative of the amount of the consumer's indebtedness created by the adjustment and is irrevocable upon invoicing the consumer and may not be set off or by passed.

Exception

(2) Subsection (1) does not apply to the extent that there is a calculation error by the electricity vendor.

Determination of clean energy adjustment

10xx. (1) The clean energy adjustment payable by all specified consumers in respect of a reference period shall be determined as follows:

1. Calculate the estimated finance amount for the reference period in accordance with Schedule 1 and such additional rules as may be prescribed.

2. Add the true up amount for the reference period, as determined in accordance with the prescribed method, to the estimated finance amount calculated under paragraph 1.

True up amount

(2) For the purposes of paragraph 2 of subsection (1), the Lieutenant Governor in Council may make regulations prescribing the method for determining the true up amount, having regard to the following principles:

1. The true up amount should serve to ensure that the collection of the clean energy adjustment is sufficient to pay the estimated finance amount when it is due.

2. The method for determining the true up amount should take into account historical and reasonably foreseeable,

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i. differences between amounts billed and amounts collected due to various factors, including applicable taxes, consumer defaults and delays, billing lags and write-offs, and

ii. variations in billings due to variations in electricity consumption.

IESO to issue remittance notice to electricity vendors

11xx. (1) The IESO shall, in accordance with the regulations, issue a remittance notice to each electricity vendor for the electricity vendor's portion, as determined in accordance with the regulations, of the clean energy adjustment in respect of a reference period.

IESO to collect

(2) The IESO shall, as an agent of the investment asset owners, collect the clean energy adjustment from electricity vendors [in accordance with the monthly settlement process set out in the market rules made under section 32 of the *Electricity Act, 1998]*.

Collection account

(3) All of the following amounts received by the IESO shall, until paid to or for the benefit of the investment asset owner in accordance with subsection (5), be deposited promptly into an account established for the purposes of collecting those accounts:

1. Amounts described in subsection 12 (4).

2. Payments made by specified consumers directly to the IESO as electricity vendor under subsection 8 (1).

Same, held in trust

(4) All amounts received by the IESO in respect of the clean energy adjustment shall, until paid to or for the benefit of the investment asset owner in accordance with subsection (6), be held in trust for the investment asset owners or a secured party to whom a security interest in an investment interest is granted under this Act.

IESO to remit

(5) The IESO shall remit amounts received by it in respect of the clean energy adjustment to or for the benefit of the investment asset owners in accordance with the regulations.

Collection of outstanding amounts, regulatory asset

(6) If the total clean energy adjustment payable by specified consumers in respect of a reference period is less than the amount contemplated to be payable under the

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applicable fair allocation calculation made by the Financial Services Manager under Part IV, the IESO may collect the difference from specified consumers.

Electricity vendor to invoice specified consumers

12xx. (1) The electricity vendor shall issue an invoice to each specified consumer for the consumer's amount of the clean energy adjustment in accordance with the regulations.

Electricity vendor to collect

(2) Each electricity vendor shall, as an agent of the IESO and the investment asset owners, collect the clean energy adjustment from specified consumers [in accordance with the monthly settlement process set out in the market rules made under section 32 of the *Electricity Act, 1998]*.

Pro rating of payments

(3) If an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices and the amount paid is less than the total amount payable, the electricity vendor shall allocate the payment on a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices in respect of electricity charges for the same invoice period.

Held in trust

(4) All of the following amounts received by an electricity vendor shall, until paid to or for the benefit of the investment asset owner in accordance with subsection (5), be held in trust for the investment asset owners or a secured party to whom a security interest in an investment interest is granted under this Act:

1. Payments received from or on behalf of specified consumers under subsection 8 (1).

2. Portions of payments received from or on behalf of specified consumers under subsection 8 (1) that are allocated to the clean energy adjustment under subsection (3).

3. Any proceeds arising from the exercise and enforcement of any rights and interests under or in respect of the investment asset.

Remittance to IESO

(5) Each electricity vendor other than the IESO shall remit amounts described in subsection (5) to the IESO for the benefit of the investment asset owners or secured parties in accordance with the regulations.

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Regulations

(6) If an electricity vendor fails, in the manner described in the regulations, to comply with the requirements of this section, the electricity vendor shall take such steps as the regulations may prescribe.

PART IV
IMPLEMENTATION

FINANCIAL SERVICES MANAGER

Appointment

13xx. (1) [Note: To be elaborated.]

Termination

(2) The Minister may by written order terminate the appointment of an appointee as the Financial Services Manager if,

(a) the Minister has advised the appointee that the Financing Plan is either inconsistent with or is being implemented in a manner that is inconsistent with the principles set out in section x;

(b) the appointee has been afforded a reasonable opportunity to consider and address the inconsistency; and

(c) the appointee is unwilling or unable to address the inconsistency to the satisfaction of the Minister.

Replacement

(3) Upon terminating an appointment, the Minister may, in accordance with the regulations, appoint a new person or entity as the Financial Services Manager.

Duties and powers

14xx. (1) The Financial Services Manager shall perform the duties assigned to it under this Act and may administer the investment asset on behalf of the investment asset owner.

Same

(2) The administration of the investment asset may include the following:

1. Providing information, in accordance with the regulations, to the Board in respect of funding obligations and the determination of the clean energy adjustment in accordance with section XX.

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2. Providing information to electricity vendors, including the IESO, in respect of obligations under Part III.

3. Such other matters as may be prescribed.

Review of costs

(3) The Board shall review the administrative costs of the Financial Services Manager in accordance with the regulations.

FAIR ALLOCATION AMOUNT

Financial Services Manager to calculate fair allocation amount

15xx. (1) The Financial Services Manager shall calculate the fair allocation amount for the purposes of,

(a) fairly measuring and allocating the estimated clean energy costs and estimated clean energy benefits among the specified consumers in respect of each reference period; and

(b) aligning funding obligations that may be incurred during each reference period with the allocation of the estimated clean energy costs and estimated clean energy benefits across present and future generations of specified consumers.

Amount

(1.1) The fair allocation amount in respect of a reference period is the sum of the following amounts:

1. The amount, if any, by which the estimated [clean energy costs] [clean energy benefits] to be allocated to specified consumers in respect of the reference period exceeds the estimated amount of [the global adjustment] that would be borne by the specified consumers in respect of clean energy costs [in the absence of this Act].

2. An allocable portion of the value of any fair adjustment, determined in accordance with subsection (3).

Principles

(2) In calculating the fair allocation amount [or in developing the fair allocation calculation?], subject to subsection (3), the Financial Services Manager shall have regard to the following principles:

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1. Clean energy costs allocated to the specified consumers in respect of a reference period should be allocated in proportion to the clean energy benefits attributed to the specified consumers in respect of the reference period.

2. The clean energy benefits attributed to the specified consumers in respect of a reference period should be determined based on *[Insert principles]*.

3. The fair allocation calculation should include reasonable assumptions regarding the following:

    i. The time value of money or the rate of inflation, for the purpose of equating nominal amounts over time.

    ii. The expected number of specified consumers for each reference period.

    iii. The expected electricity consumption rates for each reference period.

Allocation of fair adjustment

(3) If, before the Financial Services Manager has calculated the fair allocation amount in respect of a reference period, a fair adjustment has been made under Part II in respect of the reference period, the calculation shall include a portion of the value of the fair adjustment in the fair allocation calculation for each future reference period.

Amendments to the fair allocation calculation

(4) The Financial Services Manager may amend the fair allocation calculation from time to time, as the Financial Services Manager considers appropriate, having regard to the requirements of this Act.

Submission of fair allocation to Minister

(5) The Financial Services Manager shall provide to the Minister the fair allocation calculation and any amendments to the fair allocation calculation.

Effective date

(6) The fair allocation calculation or an amendment to the fair allocation calculation takes effect on the day that is 30 days after the fair allocation calculation or the amendment, as the case may be, is provided to the Minister in writing.

Publication

(7) The Minister shall ensure that the fair allocation calculation and any amendments to it are made available to the public in a manner that the Minister considers appropriate.

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Financial Services Manager to prepare Financing Plan

16xx. (1) The Financial Services Manager shall prepare and provide to the Minister a written plan entitled the Financing Plan to be used by the Financial Services Manager to evaluate whether potential funding obligations should be incurred or potential transfers should be made for the purposes of this Act.

Principles

(2) In preparing the Financing Plan, the Financial Services Manager shall have regard to the following principles:

1. Any incurrence of a funding obligation should reasonably align the expected finance amount determined under Schedule 1 that would become due and payable during a reference period with the fair allocation amount determined for the reference period under this Part as of the time of the incurrence, in each case after reducing the fair allocation calculation by the amount of any fair adjustment for the reference period.

2. Incurrences and transfers should be implemented in a manner that, as the Financial Services Manager considers to be reasonable, is cost effective and reflects prevailing market terms and conditions.

3. Reasonable assumptions should be made regarding such matters as may be prescribed.

[Note for reference: List of items for consideration in regulation: (a) anticipated IESO funding shortfalls and related transfer amounts; (b) the maturities of funding obligations; (c) the availability of refinancings, redemption opportunities and liquidity terms and conditions in order to achieve the objective contemplated in section X(1)(a); (d) the availability of currency and interest rate hedging facilities for the purpose of mitigating any differences between the expected finance amounts becoming due and payable during a reference period and the fair allocation amount for the reference period; (d) the amount and potential variability of interest rates and related financing costs; (e) available capital markets in which funding obligations may be incurred.]

Amendments to approved plan

(3) The Financial Services Manager may amend the Financing Plan at any time, without the approval of the Minister, subject to the requirements set out in this section.

Limitation, first five year period

(4) In respect of each reference period from May 1, 2017 to April 30, 2022, no funding obligation shall be incurred that would become payable during the reference period and result in a clean energy adjustment for the reference period unless,

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(a) no fair adjustment has been made under Part II in respect of the reference period; or

(b) if a fair adjustment has been made under Part II in respect of the reference period, the funding obligations incurred would not be payable during the reference period in an amount that exceeds the [difference between the fair allocation amount for the reference period and the amount of the fair adjustment for the reference period].

Confidentiality of plan

(4) The Financing Plan is deemed to be a record subject to section 17 of the *Freedom of Information and Protection of Privacy Act.*

Implementation of Financing Plan

17xx. (1) The Financial Services Manager shall incur funding obligations and make transfers in material conformity with the applicable Financing Plan.

Same

(2) For greater certainty, section [paramountcy of funding obligations] applies despite the failure of the Financial Services Manager to comply with subsection (1).

Financing entities

(3) In accordance with the Financing Plan, the Financial Services Manager may establish one or more financing entities that may incur funding obligations and make transfers.

Prohibition

(3) The Financial Services Manager shall not provide for funding obligations to be incurred with any recourse to any assets of an electricity vendor, the Board, the Province or the Lieutenant Governor in Council, except to the extent that any of these persons or entities may be liable to perform obligations or duties arising under this Act or under the express terms of a funding obligation.

Effect of amendment to Fair Allocation Plan

(4) No funding obligation incurred and no transfer made by the Financial Services Manager shall be affected by any inconsistency with the Financing Plan, including any inconsistency with the principles set out in section X.

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PART V
THE REGULATORY ASSET

Interpretation, portion of regulatory asset

18xx. If a transfer under this Part provides for the transfer of a portion of the regulatory asset, any references in this Part to the regulatory asset are deemed to be references to the portion of the regulatory asset transferred.

[Note: This is meant to assist with clarity in the subsequent provisions.]

Variance account

19xx. (1) The Board shall issue an accounting order to authorize the IESO to do the following:

1. Create a variance account for the purposes of this Act.

2. Record the IESO funding shortfall in the variance account from time to time.

3. Recover the IESO funding shortfall in accordance with section X and the regulations.

No hearing

(2) The order of the Board shall be made in writing and without holding a hearing.

No appeals, etc.

(3) No appeal lies from the order of the Board.

IESO funding shortfall

20xx. (1) The IESO shall determine the IESO funding shortfall for each month in the following manner:

1. Calculate the sum of all invoice amounts issued to specified consumers for the month if Part II of this Act did not apply.

2. Calculate the sum of all invoice amounts issued to specified consumers for the month.

3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1, and make any other adjustments as may be prescribed.

Same

(2) To the extent that the IESO funding shortfall for any month is based on an estimate of the electricity used by specified consumers, the IESO shall record an

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adjustment in the variance account in the following month to reflect the difference between the estimate and the electricity actually used by specified consumers.

Recording of IESO funding shortfall

(3) IESO shall record the IESO funding shortfall from time to time, including adjustments resulting from the exercise of the right of recovery under section 21 and any transfer under section 22, in the variance account.

Recording determinative

(4) A recording of the IESO funding shortfall in the variance account is determinative of the amount of IESO funding shortfall at the time of the recording.

Regulatory asset established

21xx. (1) The IESO has the right, exercisable in accordance with this Act and the regulations, to recover the IESO funding shortfall.

Same, restrictions

(2) The IESO's right to recover the IESO funding shortfall under subsection (1) is subject to the following:

1. The IESO shall not be entitled to collect the IESO funding shortfall from specified consumers before May 1, 2022.

2. The process by which the IESO may recover the IESO funding shortfall shall be established by the Board, having regard to the amount of the IESO funding shortfall from time to time and the [fair allocation calculation].

3. Such other restrictions as may be prescribed.

Transfer of regulatory asset

22xx. (1) The IESO may transfer all or a portion of the regulatory asset to any financing entity under the Financing Plan, which transfer creates the investment asset.

Same

(2) Upon receipt of any payment in consideration for the transfer,

(a) the IESO shall record the payment as a reduction of the IESO funding shortfall in the variance account; and

(b) unless otherwise provided for in this Act, the IESO shall have no further right, title or interest in, or any obligations in respect of, the regulatory asset or in the investment asset created by the transfer.

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Same

(3) Upon transfer, the financing entity becomes an investment asset owner and acquires an investment interest.

Validity of transfer

23xx. (1) A transfer of a regulatory asset under this Act is a valid and enforceable sale and absolute transfer to the investment asset owner of the regulatory asset, and the investment asset created by the transfer shall be immediately vested in the transferee.

Same

(2) Without limiting subsection (1), any transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of IESO's right to recover the IESO funding shortfall, and not merely as a security interest, and upon the absolute transfer the transferor shall retain no right, title or interest in the regulatory asset, including all rights to recover the IESO funding shortfall.

Deemed perfection, etc.

(3) At the time a transfer of a regulatory asset is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the transferee shall have priority over any liens in favour of those persons.

PART VI
THE INVESTMENT ASSET

Interpretation, investment asset

24xx. If a transfer under this Part provides for the transfer of an investment asset, any references in this Part to the investment interest are deemed to be references to the specific investment interest transferred.

Investment asset established

25xx. (1) The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests without duplication:

1. The right to impose, bill, invoice, collect and receive the clean energy adjustment from specified consumers, including the right to determine the amount of the clean energy adjustment in accordance with this Act.

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2. The right to receive and collect all amounts in respect of the clean energy adjustment that are imposed, billed and invoiced under this Act, including any amounts that all amounts in respect of the clean energy adjustment that are held by electricity vendors or other prescribed parties.

3. All rights and entitlements under such accounts as may be prescribed by regulation and all amounts on deposit in such accounts.

4. The right to enforce the duties and obligations under this Act of each electricity vendor to impose, attribute, charge, bill and invoice the clean energy adjustment.

5. The right to enforce the duties and obligations under this Act of each electricity vendor to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by an electricity vendor to recover payment of the clean energy adjustment.

6. All rights of any kind (whether in tort, contract or otherwise) that attach or are attendant or incidental to any of the other property rights or interests that comprise the regulatory asset owner's regulatory asset.

7. All revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 6, regardless of whether such revenue, collections, claims, payments and proceeds are imposed, invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

No set off, etc.

(2) The investment asset shall not be set off or reduced by any person in any circumstance, including,

(a) by a consumer, an electricity vendor, an agent of the investment asset owner or an owner of distribution system assets in the Province;

(b) in connection with any default, bankruptcy, reorganization or other insolvency proceeding of a person mentioned in clause (a); or

(c) by any affiliate or successor of a person mentioned in clause (a).

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Exercise of rights

(3) The rights of the investment asset owner to collect and enforce its rights and interests in, to and in respect of the investment asset against a specified consumer shall be exercised in accordance with section [xx] of the *Personal Property Security Act*.

Collective action required

(4) If the investment asset owner owns a right or interest in the investment asset that comprises less than the entire property right and interest constituted by the investment asset, the right or interest shall only be enforced by the investment asset owner collectively and in coordination with all other investment asset owners, and any agreement among that collective in furtherance of the collective action shall be valid and binding on the investment asset owner as a collective in accordance with its terms. [Note: Successors may need to be addressed here.]

Transfer of investment interest

26xx. An investment asset owner may transfer all or a portion of its rights and interests in an investment interest to any other investment asset owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan.

Validity of transfer

27xx. (1) A transfer of an investment interest under this Act is a valid and enforceable sale and absolute transfer of the investment interest and confers upon the owner of the investment interest acquired a valid property right and interest in, to and under the applicable investment interest in accordance with the terms of the transfer.

Same

(2) Without limiting subsection (1), a transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of an investment asset owner's right, title and interest in, to and under an investment interest, and not merely as a security interest, and upon such absolute transfer the transferor shall retain no right, title or interest in the investment interest, subject to the transfer, including all rights to the investment interest arising after the transfer.

Deemed perfection, etc.

(3) At the time a transfer of an investment interest is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer, assignment, etc.

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the investment asset owner shall have priority over any liens in favour of such other persons.

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Investment asset owner may grant security interest

28xx. (1) An investment asset owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under the investment interest to or in favour of any person to secure a funding obligation.

Validity

(2) A security interest granted under this Act shall be valid and enforceable in accordance with its terms.

Perfection and priority of security interests

(3) All provisions of the *Personal Property Security Act* shall apply to the investment asset and each investment interest on the basis that it is intangible personal property, except as otherwise provided for in this section, and any granting of a security interest by the owner of an investment interest to secure a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by filing a financing statement under that Act on that basis.

Proceeds

(4) All proceeds of an investment interest that are subject to the security interest and that are received by the applicable investment asset owner shall immediately be subject to the security interest and shall be perfected without any physical delivery of the proceeds, registration of any financing statement or any further act.

Perfection

(5) The security interest shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may subsequently attach to the property rights and interests in the investment interest subject to the security interest, subject to the written consent of the person to whom the security interest has been granted.

Same

(6) The person to whom the security interest has been granted shall have a perfected security interest in revenues or other proceeds that are deposited in any [investment asset account] or other account of any electricity vendor, the IESO, an agent of an electricity vendor or the IESO or other person who may have commingled such revenues or other proceeds with other funds.

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PART VI
MISCELLANEOUS

Appointment of agent, invoicing or collection

29xx. If a prescribed circumstance applies, the Lieutenant Governor in Council may by regulation appoint a person to carry out some or all of the obligations of an electricity vendor under this Act in the place of an electricity vendor with respect to invoicing or collection.

Not Crown agent

30xx. For greater certainty, no agent appointed under this Act is an agent of the Crown for any purpose, despite the *Crown Agency Act*.

Sequestration

31xx. (1) A court in the Province may, upon application by an investment asset owner or a secured party, order the sequestration and payment of the clean energy adjustment, collections and remittances, as applicable, for the benefit of the investment asset owner or secured party by any person or entity authorized to collect the clean energy adjustment, defaults on any required remittance of the clean energy adjustment, collections or remittances.

Same

(2) An order under subsection (1) does not limit any other remedies available to the applicant.

Same

(3) An order under subsection (1) shall remain in full force and effect despite any bankruptcy, reorganization or other insolvency proceedings with respect to the person or entity who is subject to the order.

Choice of law

32xx. The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the regulatory asset, the investment asset, the clean energy adjustment or the undertaking of the Crown under section x shall be the laws of the Province.

Conflict

33xx. The provisions of this Act and the regulations apply despite any provision of any other Act regarding the attachment, assignment or perfection, or the effect of perfection or priority of any transfer or security interest.

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No further approvals, etc.

34xx. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required with respect to the actions to be taken in compliance with this Act, including actions to be taken under the Financing Plan or in relation to the establishment of the Fair Allocation Plan.

Immunity

35xx. (1) No action or other proceeding for damages shall be instituted against any employee of the Province, IESO, OPG or OEB for any act done in good faith in the execution or intended execution of any duty or authority under this Act or for any alleged neglect or default in the execution in good faith of any duty or authority under this Act.

Same

(2) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

References in marketing materials and offering documents

36xx. No person shall include, in marketing materials or offering documents relating to the financing of funding obligations, references to any rights, obligations, guarantees or undertakings arising under this section unless the prescribed requirements, if any, are satisfied.

Non-application, Financial Administration Act, s. 28[7]

37xx. Section 28 of the *Financial Administration Act* does not apply with respect to any transaction or agreement or undertaking required, permitted, contemplated or authorized, directly or indirectly, under this Act.

Regulations

38xx. The Lieutenant Governor in Council may make regulations,

(a) defining any term used in this Act….

(b) prescribing types of payment obligations that constitute funding obligations;

(a) governing the calculation [true-up amount] and how the amount is to be applied to the clean energy adjustment.

(b) governing the inclusion of adjustments under this Act on invoices, which may include requiring notice to be provided by electricity vendors to specified persons regarding the adjustments.

[7] Note - see s. 51 of the Electricity Act, 1998

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[Note: reg-making powers to be dealt with in subsequent draft]

PART VII
AMENDMENTS TO OTHER ACTS

ELECTRICITY ACT, 1998

200x. (1) Subsection 6 (1) of the *Electricity Act, 1998* would be amended by adding the following clauses:

(q.0.1) to exercise the powers and rights and to perform the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and to engage in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including,

(i) entering into agreements or arrangements with any person for the purposes of the *Ontario Fair Hydro Plan Act, 2017*;

(ii) engaging in activities related to making payments to and receiving payments as contemplated under the *Ontario Fair Hydro Plan Act, 2017* and to engage in related settlement activities;

(iii) engaging in activities related to the creation, transfer and administration of the regulatory asset created under the *Ontario Fair Hydro Plan Act, 2017*, which activities may include,

(iv) incurring liabilities in relation to the regulatory asset

(v) transferring the regulatory asset for consideration;

(vi) acting as a recovery agent under the *Ontario Fair Hydro Plan Act, 2017*;

201x. Section 53.1 of the Act would be amended by adding the following subsections:

Same, *Ontario Fair Hydro Plan Act, 2017*

53.1 (1.1) In addition to the objects mentioned in subsection (1), the objects of Ontario Power Generation Inc. include exercising the powers and rights and performing the duties and obligations assigned to it under that Act and engaging in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including the following:

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1. Entering into contracts and undertakings on behalf of special purpose financing entities, including pre-formation contracts and undertakings and as principal in relation to matters permitted by the *Ontario Fair Hydro Plan Act, 2017* subject to the right of reimbursement from amounts available to the financing entity.

2. Preparing reports on behalf of the financing entity.

3. Enforcing the rights of the financing entity.

4. Signing offering documents as sponsor or otherwise on behalf of the financing entity.

5. Exercising the powers and performing the duties of the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*

6. Issuing non-equity securities in Ontario Power Generation Inc. or on if its subsidiaries, for the purpose of raising funds to acquire debt or equity interests in a financing entity whose activities are limited to the incurrence of funding obligations pursuant to the *Ontario Fair Hydro Plan Act, 2017*.

Subsidiaries, etc.

(1.2) Ontario Power Generation Inc. may create one or more subsidiaries, trusts or special purpose entities in order to more efficiently conduct its activities or achieve its objects.

202x. Section 89 of the Act would be amended by adding the following subsection:

Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply in respect of amounts payable to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a result of its functions as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

203x. Section 90 of the Act would be amended by adding the following subsection:

Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply in respect of amounts payable to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a result of its functions as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

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[Note: Drafting still to be added to the EA consequential amendments: ***All fees charged by OPG as the FSM shall be approved by the OEB before they are included in the calculation of clean energy adjustments.]***

AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

204x. Subsection 1 (1) of the *Ontario Energy Board Act, 1998* would be amended by adding the following paragraph:

6. To facilitate the implementation of the [TBD - language should link up with language from new Act.]

205x. Section 70 of the Act would be amended by adding the following subsection

[Note - still need to draft new subs. 70 (2.1)]

Short Title - this proposal for legislation would, if approved by the Legislature, have a short title to be determined by Government.

Timing – this proposal for legislation would, if approved by the Legislature, come into force on a date to be established by Government.

Confidential Draft

SCHEDULE 1
ESTIMATED FINANCE AMOUNT

Estimated finance amount

1. The estimated finance amount for a reference period shall be determined by estimating, prior to the start of a reference period, the sum of the following:

1. The sum of all amounts that are payable during the reference period by or on behalf of the investment asset owners to satisfy an obligation to repay, redeem or repurchase, or to provide for the repayment, redemption or repurchase, of all or a portion of the amount advanced to the owners under a funding obligation, excluding any payment made by applying the proceeds of a refinancing.

2. The sum of all funding costs for the reference period, determined as follows:

    i. Calculate the aggregate of all interest, scheduled principal and other periodic finance charges accruing, due and becoming payable or paid by or on behalf of investment assets owners during the reference period in respect of all funding obligations, including such amounts as may be prescribed.

    ii. Calculate the sum of the aggregate of all amounts received by or on behalf of investment asset owners during the reference period in respect of all funding obligations and such other amounts as may be prescribed.

    iii. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1.

3. The sum of all amounts payable during the reference period by or on behalf of investment asset owners to redeem, prepay or repurchase a funding obligation, including any premium, make-whole or other amount becoming payable under a funding obligation to give effect to the redemption, prepayment or repurchase.

4. The balance of the finance reserve at the end of the reference period, as determined under section 3 to this Schedule.

5. The sum of any other amounts payable during the reference period by or on behalf of investment asset owners that were incurred or committed to directly or indirectly in connection with the incurrence of funding obligations under the Financing Plan during the reference period, which may include such amounts as may be prescribed.

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Funding costs

2. For the purposes of paragraph 2 of section 1 to this Schedule, the funding costs for a reference period are determined by taking the following steps:

Finance reserve balance

3. (1) For the purposes of paragraph 4 of section 1 to this Schedule, the balance of the finance reserve at the end of the reference period is determined by taking the following steps:

1. Calculate the sum of all amounts deposited by or on behalf of investment asset owners during the reference period in order to pre-fund, collateralize, over-collateralize or establish reserves for the ultimate payment of funding obligations or for related contingencies specified in the Financing Plan.

2. Calculate the sum of all amounts withdrawn by or on behalf of investment asset owners during the reference period from deposits previously made as described in paragraph 1.

3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1.

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FW_ Ontario Fair Hydro Plan.rtf

From: Calwell, Carolyn (ENERGY/MEDEI/MRI) []
To: Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Kwan, Ronald (OFA) [Ronald.Kwan@ofina.on.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Kim.Marshall@ieso.ca [Kim.Marshall@ieso.ca]; John.S.Lee@opg.com [John.S.Lee@opg.com]; Cox, Hilary (ENERGY) [Hilary.Cox@ontario.ca]; Whitfield, Tobias P. (MOF) [Tobias.Whitfield@ontario.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; He, Gavin (OFA) [Gavin.He@ofina.on.ca]; yolusoga@torys.com [yolusoga@torys.com]; Anthony.Martinello@ieso.ca [Anthony.Martinello@ieso.ca]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Kacaba, Jennifer (ENERGY) [Jennifer.Kacaba@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) [tyler.mcauley@opg.com]; 'Michael.Boll@IESO.com' [Michael.Boll@IESO.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; DICKS, LINDSAY (LINDSAY.DICKS@blakes.com) [LINDSAY.DICKS@blakes.com]; Michael.Boll@IESO.ca [Michael.Boll@IESO.ca]
CC: Mary Anne Aldred (MaryAnne.Aldred@oeb.ca) [MaryAnne.Aldred@oeb.ca]; Martine.Band@ontarioenergyboard.ca [Martine.Band@ontarioenergyboard.ca]; 'Martine Band' [Martine.Band@oeb.ca]; 'Ramchandani, Rima' [rramchandani@torys.com]; 'Feldman, Michael' [mfeldman@torys.com]; 'Alan Hibben' [alan.hibben@rogers.com]; 'Mansoori, Nina' [nmansoori@torys.com]; 'Myers, Jonathan' [jmyers@torys.com]; 'Hill, Krista' [khill@torys.com]; 'Glenn Zacher' [GZacher@stikeman.com]; 'Peter Hamilton' [PHamilton@stikeman.com]
Subject: FW: Ontario Fair Hydro Plan
Date: Thursday, April 06, 2017 12:57:43

Hi Everyone,

Please make sure your appropriate colleagues are included. If not, please inform Joseph Pau (Joseph.Pau@ontario.ca) and he will provide them with the invitation and forward their name to the Blakes security desk.

Thanks,

-----Original Appointment-----
From: Pau, Joseph (MEDG/MRIS) **On Behalf Of** Calwell, Carolyn (ENERGY/MEDEI/MRI)
Sent: April 4, 2017 2:42 PM
To: Calwell, Carolyn (ENERGY/MEDEI/MRI); Rehob, James (ENERGY); Shear, Dan (ENERGY); Kacaba, Jennifer (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); 'Michael.Boll@IESO.com'; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; DICKS, LINDSAY (LINDSAY.DICKS@blakes.com); Michael.Boll@IESO.ca
Cc: Mary Anne Aldred (MaryAnne.Aldred@oeb.ca); Martine.Band@ontarioenergyboard.ca; 'Martine Band'; 'Ramchandani, Rima'; 'Feldman, Michael'; 'Alan Hibben'; 'Mansoori, Nina'; 'Myers, Jonathan'; 'Hill, Krista'; 'Glenn Zacher'; 'Peter Hamilton'
Subject: Ontario Fair Hydro Plan
When: April 7, 2017 10:00 AM-2:00 PM (UTC-05:00) Eastern Time (US & Canada).
Where: 199 Bay St. - 40th Floor, Blakes

Update

This meeting has been shortened from 4:00pm to 2:00pm.

Hi Everyone,

This will be a meeting to discuss the Ontario Fair Hydro Plan (OFHP) and will include Blakes, Torys, OPG, IESO, and Ministry Counsel.

The meeting will be held at Blakes and the main contact on site will be Lindsay Dicks (416-863-4347 or Lindsay.Dicks@blakes.com). Please inform Lindsay if there will be additional people attending from your group because she will need to pass this information along to their security desk.

To the representatives from OPG and IESO, please forward this meeting invitation to your respective outside counsel for their attendance.

Any materials available for this meeting will be provided in a future update.

If you are unable to attend in person, please use the following conference call information:

Toll-free dial-in number: 1-866-633-1033
Local dial-in number: 416-212-8013
Conference ID: 3164921#

If there are any additional scheduling needs or updates, please contact Joseph Pau (416-326-1018).

Thanks,

FW_ Ontario Fair Hydro Plan.rtf

From: Ken Kandeepan [Ken.Kandeepan@ofina.on.ca]
To: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
CC: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; John Psinas [John.Psinas@ofina.on.ca]
Subject: FW: Ontario Fair Hydro Plan
Date: Sunday, April 23, 2017 11:14:22
Attachment 1: Fair Hydro Plan Act (April 20 2017) Consultation v3.docx

---

Hi Cindy

Not sure whether you have had a chance to review the latest version of the proposed legislation, if you have not yet provided comments, hopefully you can include ours as well given that the OFA comments are directed primarily towards the accounting and financing aspects of the draft legislation.

It appears that the clean energy adjustment (CEA) that is detailed in Part 3 is the mechanism for the recovery of the financing costs of the Trust from implementation to the point when repayment kicks in. Page 13 provides the computation of the CEA which is further detailed in Schedule 1, though note that Schedule 1 is still missing the section outlining how the funding costs are to be computed.

Now the way the accounting model works is that the interest costs or CEA will be recovered from the ratepayer via the invoice. In essence the deferral or the Clean Energy Benefit (CEB) includes the financing costs on the accumulated debt and is offset by another line, presumably the CEA, netting the CEB down to the required percentage of the GA.

Now page 11 under Rate Determination prescribes a 25% reduction in the invoice amount, however, nowhere does the legislation indicate the components of the 25%. However, page 8 prescribes what should be invoiced but specifically excludes penalties or interest.

In essence the draft may benefit from a restructuring as follows:

· Part 2 which prescribes the 25% reduction should be in Part 1 and should define

the components of the 25% either within the legislation or in a Schedule.

· The Sections on the 25% reduction should be followed by the specifics of what should be invoiced (now on page 8) and the components of the invoice should include the financing costs or CEA.

· The IESO funding shortfall on page 22 is a little confusing since the draft legislation prescribes the setting up of the regulatory asset that is equal to the funding shortfall and the sale of said asset. If the asset is sold then IESO has no funding shortfall to recover post May 1, 2022 as prescribed in Subsection 2 of page 22. Perhaps this section should be linked to the Financing Plan and the ability of the IESO to recover and remit as prescribed in the Financing Plan.

Thanks Cindy and happy to discuss either today at 647-202 -4373 or Monday.

Ken K

From: Kacaba, Jennifer (ENERGY) [mailto:Jennifer.Kacaba@ontario.ca]
Sent: Thursday, April 20, 2017 5:59 PM
To: James Rehob (ENERGY) <James.Rehob@ontario.ca>; Dan Shear (ENERGY) <Dan.Shear@ontario.ca>; Scott Nelms (ENERGY) <Scott.Nelms@ontario.ca>; Steen Hume (CAB) <Steen.Hume@ontario.ca>; Tim Christie (ENERGY) <Tim.Christie@ontario.ca>; Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) <tyler.mcauley@opg.com>; John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com) <alan.hibben@rogers.com>; Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina' <Katrina.Niehaus@gs.com>; 'Benaiah, Ian' <ian.benaiah@rbccm.com>; Nevison, Gary (Gary.Nevison@tdsecurities.com) <Gary.Nevison@tdsecurities.com>; Thom, Trevor (Trevor.Thom@tdsecurities.com) <Trevor.Thom@tdsecurities.com>; Akman, Steven (Steven.Akman@tdsecurities.com) <Steven.Akman@tdsecurities.com>; Thompson, Susan (Susan.Thompson@tdsecurities.com) <Susan.Thompson@tdsecurities.com>; Manii, David (david.manii@tdsecurities.com) <david.manii@tdsecurities.com>; 'Feldman, Michael' <mfeldman@torys.com>; 'Persaud, Donnie - Debt Capital Markets' <Donnie.Persaud@cibc.com>; 'Hill, Krista' <khill@torys.com>; 'Turnbull, Vickie' <vickie.turnbull@rbccm.com>; 'Dal Bello, David' <david.dalbello@rbccm.com>;

'Mansoori, Nina' <nmansoori@torys.com>; 'Sebastiano, Rocco' <RSebastiano@osler.com>; 'Fitzpatrick, Michael F.' <MFitzpatrick@hunton.com>; michael.boll@ieso.ca; Kim Marshall <Kim.Marshall@ieso.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; 'Glenn Zacher' <GZacher@stikeman.com>; 'O'Brian, Adam' <aobrian@hunton.com>; 'Emes, Aaron' <aemes@torys.com>; 'Peter Hamilton' <PHamilton@stikeman.com>; 'JORDA Jenny -FIN & C CTRL' <jenny.jorda@opg.com>; maryanne.aldred@ontarioenergyboard.ca; Nadine Petsche (MOF) <Nadine.Petsche@ontario.ca>; rramchandani@torys.com
Cc: Carolyn Calwell (MCSS) <Carolyn.Calwell@ontario.ca>; 'Myers, Jonathan' <jmyers@torys.com>; Suzie Gignac (suzie.r.gignac@ca.ey.com) <suzie.r.gignac@ca.ey.com>; Blake Langill (blake.w.langill@ca.ey.com) <blake.w.langill@ca.ey.com>; LeeAnne.Probert@ca.ey.com; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>; Paul Johnson (ENERGY) <Paul.Johnson3@ontario.ca>
Subject: RE: Ontario Fair Hydro Plan

All - Please find attached the next turn in the consultation draft (v.3) of the proposed legislation. We have been working to address the feedback that you provided earlier in the week. A number of points remain in progress. As with the earlier versions, by sharing this document, we hope to continue to advance our discussions.

Our timeline has been extended and we are now working to a pens down date of April 28th. We will not get another extension. Accordingly, we ask for your detailed, written comments on the draft, which we require no later than Sunday at noon.

We will continue to work on the bill in the interim, so earlier instructions are helpful to us. With your input on this timeline, we expect to be able to provide one more circulation around Tuesday or Wednesday next week.

We have not had the opportunity to add notes or to update our crosswalk to the Blakes summary document.

We look forward to receiving your written comments.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

56 Wellesley Street West, 18th Floor.

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From: Kacaba, Jennifer (ENERGY)
Sent: April 17, 2017 12:00 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com;

Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS)
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI); 'Myers, Jonathan'; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA); Hosick, Sarah (TBS)
Subject: RE: Ontario Fair Hydro Plan

Please find attached a further turn of the consultation draft. This document continues to be a work in progress. We have not had the opportunity to add notes or update our tracking table. We also have not yet considered the comments that we received this morning. We look forward to seeing you at 1.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

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From: Calwell, Carolyn (ENERGY/MEDEI/MRI)
Sent: April 15, 2017 10:06 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Kacaba, Jennifer (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS)
Cc: 'Myers, Jonathan'; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA); Hosick, Sarah (TBS)
Subject: Ontario Fair Hydro Plan

All - Please find attached the draft “Intergenerational Fairness in Hydro Rates Act, 2017”. A tremendous amount of work has gone into getting to this draft and much more work is required to get this ready for the House. The goal of sharing this document now is to further the process we have engaged in over the last weeks. In the attached, we have included notes to try to address where the drafting is not yet consistent with our thinking. These notes are neither comprehensive nor complete. They are intended

only as flags and as colour to the draft. We have not forgotten the comments that you have already provided and we are continuing to working through the translation of the commercial terms we have been discussing into legislative language.

For ease of reference, included with the draft bill are the partially updated Blakes' summary, a chart that attempts links the articles in that document to the sections of the bill (which is imperfectly numbered at best) and excerpts from the Electricity Act and the Ontario Energy Board Act, related to the consequential amendments.

In your review, please focus on the broad stroke concepts, rather than the minutia, and keep in mind the cascade of instruments that will be required – legislation first, then regulations and finally commercial agreements. We look forward to discussing the broader concepts on Monday

Carolyn Calwell

Legal Director

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

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Fair Hydro Plan Act (April 20 2017) Consultation v3.pdf

Version 3

This confidential draft document is provided for discussion purposes only. It should not be construed as representing the position adopted by the Government of Ontario on any of the topics included or not included in this document. The notes included in this document are intended only to help facilitate a discussion of the topics to which they relate. Any potential legislation is subject to the approval of the Ontario Legislature.

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A proposal to create Legislation.

Ontario's Fair Hydro Plan Act, 2017, if enacted

A proposal to create Legislation.

Ontario's Fair Hydro Plan Act, 2017, if enacted

EXPLANATORY NOTE TO BE ADDED BY LEGISLATIVE COUNSEL
TO ANY FINAL BILL PRIOR TO INTRODUCTION.

[Insert explanatory note.]

[Notes re this draft:
- all numbering of provisions may need to be re-done
- will need to check all definitions to ensure (1) that they are needed; and (2) that they work properly wherever the term is used in the Bill.
- additional consequential amendments likely required still
- overall organization of provisions still TBC (for now just trying to get all of the elements drafted and will reconsider architecture later)
- need to check consistency of various phrases (e.g. *during/for/in respect of* reference period; *owner of RA/IA vs. RA/IA owner; etc.)*]

Preamble

The Government of Ontario is committed to fostering the development of a clean, modern and reliable electricity system with a diverse supply mix. The Government is also committed to removing barriers to and promoting opportunities for renewable and clean energy projects.[1]

The Government of Ontario has established a regulatory framework related to the generation and sale of electricity, which has promoted and continues to promote significant investment to enable phasing out of coal fired generation, modernizing sites and facilities in the Province for the generation of electrical energy and the production therefrom,[2] and conservation and demand management.

The Government of Ontario is committed to ensuring that the costs of these investments, and the raising of money to fund the investments,[3] are allocated fairly among present and future generations of consumers.

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

[1] Note: please see the preamble of the *Green Energy Act, 2009.*
[2] Note: please see clause 92A (4) (b) of the Constitution, 1867: "des emplacements et des installations de la province destinés à la production d'énergie électrique, ainsi que de cette production meme".
[3] Note: please see opening flush of s. 92A (4) of the Constitution Act, 1867

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PART I
GENERAL

Interpretation
Definitions

1xx. (1) In this Act,

"Board" means the Ontario Energy Board; ("French")

"clean energy adjustment" means the amount determined under section 10xx; ("French")
[Note - will need to check throughout the draft that references to CEA are clear as to whether it's the total CEA in respect of a reference period vs. the portion payable by a specified consumer.]

"clean energy benefits" means, in respect of a reference period, the value of the benefits determined to be derived by the specified consumers during the reference period as a result of the clean energy initiative, including as a result of past, present and expected future incurrences of clean energy costs; ("French")

"clean energy costs" means, in respect of a reference period, the value of the costs allocated to specified consumers during the reference period as a result of the clean energy initiative, including as a result of past, present and expected costs incurred in respect of,

(a) the estimated costs to be incurred by the IESO under section 25.33 of the *Electricity Act, 1998* or any provision that is the successor to that provision, which relate to contracts for,

(i) renewable energy generation or capacity,

(ii) conservation and demand management, including storage,

(iii) energy efficiency,

(iv) natural gas generation and capacity, excluding contracts relating to amounts payable by the IESO under section 78.2 of the *Ontario Energy Board Act, 1998* and excluding such other contracts as may be prescribed, or

(v) payments made or expected to be made under section 78.5 of the *Ontario Energy Board Act, 1998*, and

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(b) such other estimated costs as may be prescribed; ("French")

"clean energy initiative" means the policies of the Government of Ontario related to,

(a) fostering the growth of and investment in clean and renewable energy sources and technologies,

(b) removing barriers to and promoting opportunities for clean and renewable energy sources and technologies, and

(c) promoting conservation and demand management; ("French")

"electricity vendor"[4] means the IESO, a licensed distributor, a licensed retailer or such other person as may be prescribed; ("French")

"fair adjustment" means the determination of the rate payable for electricity in accordance with Part II; ("French")

"Financial Services Manager" means Ontario Power Generation Inc. [or such other person or entity as may be appointed as the Financial Services Manager by the Minister under section **]; ("French")

"Financing Plan" means the plan prepared under section X, as amended from time to time in accordance with this Act; ("French")

"funding obligation" means a payment obligation incurred by or on behalf of the regulatory asset owner or an investment asset owner under section x; ("French")

"IESO" means the Independent Electricity System Operator continued under Part II of the *Electricity Act, 1998*; ("SIERE")

"IESO funding shortfall" means, in respect of a reference period, the amount determined under section 20xx for the reference period; ("French")

"investment asset" means the investment asset created as described in section 22xx; ("French")

"investment asset owner" means a financing entity that acquires an investment interest in the investment asset; ("French")

[4] Note - this is similar to the definition of "electricity vendor" in the Ontario Rebate for Electricity Consumers Act, 2016

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"investment interest" means an ownership interest in the investment asset, which entitles an investment asset owner to the rights and benefits specified in the agreement under which the ownership interest is transferred;

"invoice amount" means the amount, determined in accordance with subsections (2.1) and (2.2) and the regulations, that is payable by a specified consumer for the provision of electricity in Ontario during a period of time specified on an invoice issued by an electricity vendor; ("French")

"licensed distributor" means a person licensed under Part V of the *Ontario Energy Board Act, 1998* to own or operate a distribution system; ("French")

"licensed retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity; ("French")

"Minister" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of this Act under the *Executive Council Act*; ("ministre")

"prescribed" means prescribed by the regulations; ("prescrit")

"reference period" means,

(a) the period beginning on May 1, 2017 and ending on October 31, 2017,

(b) every six-month period following the period mentioned in clause (a) or such shorter period as may be set out in the Fair Allocation Plan; ("French")

"refinancing" means a repayment or repurchase of a funding obligation for cancellation by or on behalf of an investment asset owner by applying the net proceeds obtained by the owner incurring one or more other funding obligations; ("French")

"regulation" means a regulation made under this Act; ("règlement")

"regulatory asset" means the right established under section X to recover the IESO funding shortfall; ("French")

"representative consumer" means a consumer who meets the criteria set out in subsection (3); ("French")

"specified consumer" means,

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(a) a person who has an account with an electricity vendor for the supply of electricity, receives an invoice in respect of the account and meets the criteria set out in subsection (2); or

(b) such other person as may be prescribed; ("French")

"Toronto Hydro" means Toronto Hydro-Electric System Limited; ("French")

"transfer" means an assignment, conveyance, disposition or sale; ("French")

Specified consumers

(2) For the purposes of clause (a) of the definition of "specified consumer" in subsection (1), the person must meet any one of the following criteria:

1. The person has a demand for electricity of 50 kilowatts or less, or such other amount as may be prescribed.

2. The person annually uses not more than 250,000 kilowatt hours of electricity, or such other amount as may be prescribed.

3. The person carries on a business that is a farming business for the purposes of the *Farm Registration and Farm Organizations Funding Act, 1993* and either holds a valid registration number assigned under that Act or the has had the obligation to file a farming business registration form waived pursuant to an order made under subsection 22 (6) of that Act.

4. The person's account with the electricity vendor relates to,

   i. a dwelling,

   ii. a property within the meaning of the *Condominium Act, 1998*,

   iii. a residential complex within the meaning of subsection 2 (1) of the *Residential Tenancies Act, 2006*, without regard to section 5 of that Act, or

   iv. a property that includes one or more housing units and that is owned or leased by a co-operative within the meaning of the *Co-operative Corporations Act*.

5. The person satisfies such criteria as may be prescribed.

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Invoice amount

(2.1) Subject to subsection (2.2) and the regulations, the invoice amount for a specified consumer includes the following amounts:

1. In circumstances where the electricity is provided by a licensed distributor or a licensed retailer, the following:

    i. The commodity price of the electricity used during the invoice period.

    ii. The rates and charges set out in the applicable rate order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*.

    iii. Any adjustment on the invoice required under section 25.33 of the *Electricity Act, 1998*.

    iv. The amount of any harmonized sales tax payable [by the consumer?] under Part IX of the *Excise Tax Act* (Canada);

    v. Any other amounts as may be prescribed.

2. In circumstances where the electricity is provided by the IESO, such amounts as may be prescribed. ("French")

Same, exclusions

(2.2) Except as otherwise prescribed by the regulations, the invoice amount does not include any of the following amounts:

1. The balance of any amounts carried forward from previous invoices.

2. Penalties or interest.

3. Charges that do not relate to the use of electricity.

4. Any of the following charges that may be set out in an order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*:

    i. A fixed monthly service charge payable by a generation facility within the meaning of section 56 of the *Ontario Energy Board Act, 1998* and classified as "microFIT".

    ii. A charge labelled as a "specific service charge" or "retail service charge".

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iii. A rate rider.

5. Any other prescribed amounts.

Representative consumer

(3) For the purposes of the definition of "representative consumer" in subsection (1), the consumer,

(a) purchases electricity directly from Toronto Hydro;

(b) has an account with Toronto Hydro that falls within a residential-rate classification as specified in a rate order made by the Board under section 78 of the *Ontario Energy Board Act, 1998*;

(c) is invoiced by Toronto Hydro on a monthly basis;

(d) is not invoiced by Toronto Hydro for electricity on an equal monthly payment plan or an equal billing plan; and

(e) uses, on average, 750 kilowatt hours of electricity each month.

Transfer

(4) For greater certainty, a transfer of the regulatory asset or a portion of the regulatory asset includes any act of the IESO by which the IESO purports to dispose of its interest in the regulatory asset with the result of a named person becoming the owner of an investment interest.

Effect of invalidity, etc.[5]

2xx. (1) For greater certainty, all of the provisions of this Act remain in full force and effect, even if some provisions are held to be invalid, the intention of the Legislature being to give separate and independent effect to the extent of its powers to every provision contained in this Act.

Same, funding obligation

(2) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect a funding obligation that was incurred under this Act before the day that the provision was held to be invalid or ceased to be in effect.

Purpose

3xx. (1) The purposes of this Act are,[6]

[5] Note: this is from the *Climate Change Mitigation and Low-carbon Economy Act, 2016*

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(a) to ensure that clean energy costs are fairly allocated among specified consumers over time and that the process by which the Province raises money to fund the costs reflects the fair allocation; and

(b) to recognize that clean energy benefits that have accrued and that will accrue over time will continue to benefit present and future electricity consumers in the Province.

Crown bound

4xx. This Act binds the Crown.

Protection and assurances

Prohibition

5xx. (1) The Crown shall not do anything that would,

(a) hinder, delay, impair or prejudice the charging, collection or remittance of the clean energy adjustment;

(b) except as expressly permitted by this Act, reduce the amount of the clean energy adjustment or lower the priority of the clean energy adjustment over other debts; or

(c) adversely affect an investment asset or a funding obligation.

Clarification with respect to regulations

(2) For greater certainty, the things prohibited under subsection (1) include the making or approving of a regulation under this Act.

Agreements for compensation

(3) The Minister may, with the approval of the Lieutenant Governor in Council, enter into agreements on behalf of the Province of Ontario with any person in respect of this Act, including agreements regarding financial commitments, financial arrangements, indemnities or similar transactions.

PART II
FAIR ADJUSTMENT

[6] Note: Please see the *Electricity Act, 1998* for much of the wording proposed in this section.

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Fair adjustment, May 1, 2017 to April 30, 2018
Definition

6xx. (1) In this section,

"average baseline invoice amount" means the average monthly invoice amount that would be payable by a representative consumer under the average baseline rate; ("French")

"average baseline rate" means the average rate that would be payable effective May 1, 2017 by the class of consumers prescribed by the regulations under the *Ontario Energy Board Act, 1998* for the purposes of subsection 79.16 (1) of that Act, as determined by the Board by applying the method prescribed by the regulations under clause 79.16 (1) (b) of that Act; ("French")

"sub-meter customer" means a person who is supplied electricity by a specified consumer, if an invoice for the electricity is issued to the person by the specified consumer, by an agent of the specified consumer or by a unit sub-meter provider providing unit sub-metering for the specified consumer; ("French")

Rate determination

(2) Subject to subsection (3), [to more fairly measure and allocate the clean energy costs and clean energy benefits among present and future generations of specified consumers,] the rate for electricity payable by a specified consumer for the period beginning on May 1, 2017 and ending on April 30, 2018 is the average rate that would be payable by a representative consumer in order for the representative consumer to receive a monthly invoice amount that is 25 per cent less than the average baseline invoice amount.

Sub-meter customers

(3) A specified consumer who provides electricity to a sub-meter customer and any unit sub-meter provider who provides unit sub-metering for the specified consumer shall ensure that the rate payable by each sub-meter customer is the rate determined under subsection (2).

Determining rate

(4) The rate mentioned in subsection (2) shall be,

(a) determined by the Board within seven business days after this section receives Royal Assent; and

(b) effective as of the first day of the calendar month immediately following the determination.

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Transition

(5) If, for technical or operational reasons, an electricity vendor, specified consumer or unit sub-meter provider is unable to adapt its invoices to comply with this section by the time it issues its first invoice for electricity consumed on or after May 1, 2017,

(a) the electricity vendor, specified consumer or unit sub-meter provider shall adapt its invoices as soon as possible and, in any event, no later than [August 1, 2017]; and

(b) the electricity vendor, specified consumer or unit sub-meter provider shall ensure that any specified consumer or sub-meter customer invoiced at a rate higher than the applicable rate receives the difference between the rate shown on their invoice and the applicable rate as a lump sum credit on the first invoice issued after the invoices have been adapted or by such other means as may be prescribed by the regulations.

Fair adjustment, May 1, 2018 to April 30, 2022

7xx. The Lieutenant Governor in Council may, [to more fairly measure and allocate the clean energy costs and clean energy benefits among present and future generations of specified consumers,] make regulations prescribing the rate for electricity payable by specified consumers and sub-meter customers during the period beginning on May 1, 2018 and ending on April 30, 2022.

PART III
CLEAN ENERGY ADJUSTMENT

Specified consumers to pay clean energy adjustment

8xx. (1) Upon receipt of an invoice that includes a clean energy adjustment, a specified consumer shall pay the clean energy adjustment to the electricity vendor, as agent of the investment asset owners, in accordance with such terms of payment as may be specified in the invoice, which may include terms relating to late payment fees and interest charges.

Same

(2) For greater certainty, subsection (1) applies regardless of,

(a) whether the clean energy adjustment is inconsistent with the fair allocation calculation applicable at the time when the payment is due; and

(b) whether the clean energy adjustment relates to funding obligations that were incurred in a manner that was inconsistent with the Financing Plan.

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Indebtedness of specified consumer

(4) An unpaid clean energy adjustment that is required to be paid by a specified consumer under this section constitutes indebtedness of the consumer to each investment asset owner in respect of each owner's respective interest in the investment asset.

Same

(5) The indebtedness mentioned in subsection (4) is a single and separate debt obligation owed by the specified consumer and may be enforced independently from any other payment obligation or indebtedness owing by the specified consumer under the invoice or otherwise.

Irrevocability of clean energy adjustment

9xx. (1) The amount of the clean energy adjustment shown on an invoice issued to a specified consumer under this Act is determinative of the amount of the consumer's indebtedness created by the adjustment and is irrevocable upon invoicing the consumer and may not be set off or by passed.

Exception

(2) Subsection (1) does not apply to the extent that there is a calculation error by the electricity vendor.

Determination of clean energy adjustment

10xx. (1) The clean energy adjustment payable by all specified consumers in respect of a reference period shall be determined as follows:

1. Calculate the estimated finance amount for the reference period in accordance with Schedule 1 and such additional rules as may be prescribed.

2. Add the true up amount for the reference period, as determined in accordance with the prescribed method, to the estimated finance amount calculated under paragraph 1.

True up amount

(2) For the purposes of paragraph 2 of subsection (1), the Lieutenant Governor in Council may make regulations prescribing the method for determining the true up amount, having regard to the following principles:

1. The true up amount should serve to ensure that the collection of the clean energy adjustment is sufficient to pay the estimated finance amount when it is due.

2. The method for determining the true up amount should take into account historical and reasonably foreseeable,

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i. differences between amounts billed and amounts collected due to various factors, including applicable taxes, consumer defaults and delays, billing lags and write-offs, and

ii. variations in billings due to variations in electricity consumption.

IESO to issue remittance notice to electricity vendors

11xx. (1) The IESO shall, in accordance with the regulations, issue a remittance notice to each electricity vendor for the electricity vendor's portion, as determined in accordance with the regulations, of the clean energy adjustment in respect of a reference period.

IESO to collect

(2) The IESO shall, as an agent of the investment asset owners, collect the clean energy adjustment from electricity vendors [in accordance with the monthly settlement process set out in the market rules made under section 32 of the *Electricity Act, 1998]*.

Collection account

(3) All of the following amounts received by the IESO shall, until paid to or for the benefit of the investment asset owner in accordance with subsection (5), be deposited promptly into an account established for the purposes of collecting those accounts:

1. Amounts described in subsection 12 (4).

2. Payments made by specified consumers directly to the IESO as electricity vendor under subsection 8 (1).

Same, held in trust

(4) All amounts received by the IESO in respect of the clean energy adjustment shall, until paid to or for the benefit of the investment asset owner in accordance with subsection (6), be held in trust for the investment asset owners or a secured party to whom a security interest in an investment interest is granted under this Act.

IESO to remit

(5) The IESO shall remit amounts received by it in respect of the clean energy adjustment to or for the benefit of the investment asset owners in accordance with the regulations.

Collection of outstanding amounts, regulatory asset

(6) If the total clean energy adjustment payable by specified consumers in respect of a reference period is less than the amount contemplated to be payable under the

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applicable fair allocation calculation made by the Financial Services Manager under Part IV, the IESO may collect the difference from specified consumers.

Electricity vendor to invoice specified consumers

12xx. (1) The electricity vendor shall issue an invoice to each specified consumer for the consumer's amount of the clean energy adjustment in accordance with the regulations.

Electricity vendor to collect

(2) Each electricity vendor shall, as an agent of the IESO and the investment asset owners, collect the clean energy adjustment from specified consumers [in accordance with the monthly settlement process set out in the market rules made under section 32 of the *Electricity Act, 1998]*.

Pro rating of payments

(3) If an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices and the amount paid is less than the total amount payable, the electricity vendor shall allocate the payment on a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices in respect of electricity charges for the same invoice period.

Held in trust

(4) All of the following amounts received by an electricity vendor shall, until paid to or for the benefit of the investment asset owner in accordance with subsection (5), be held in trust for the investment asset owners or a secured party to whom a security interest in an investment interest is granted under this Act:

1. Payments received from or on behalf of specified consumers under subsection 8 (1).

2. Portions of payments received from or on behalf of specified consumers under subsection 8 (1) that are allocated to the clean energy adjustment under subsection (3).

3. Any proceeds arising from the exercise and enforcement of any rights and interests under or in respect of the investment asset.

Remittance to IESO

(5) Each electricity vendor other than the IESO shall remit amounts described in subsection (5) to the IESO for the benefit of the investment asset owners or secured parties in accordance with the regulations.

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Regulations

(6) If an electricity vendor fails, in the manner described in the regulations, to comply with the requirements of this section, the electricity vendor shall take such steps as the regulations may prescribe.

PART IV
IMPLEMENTATION

FINANCIAL SERVICES MANAGER

Appointment

13xx. (1) [Note: To be elaborated.]

Termination

(2) The Minister may by written order terminate the appointment of an appointee as the Financial Services Manager if,

(a) the Minister has advised the appointee that the Financing Plan is either inconsistent with or is being implemented in a manner that is inconsistent with the principles set out in section x;

(b) the appointee has been afforded a reasonable opportunity to consider and address the inconsistency; and

(c) the appointee is unwilling or unable to address the inconsistency to the satisfaction of the Minister.

Replacement

(3) Upon terminating an appointment, the Minister may, in accordance with the regulations, appoint a new person or entity as the Financial Services Manager.

Duties and powers

14xx. (1) The Financial Services Manager shall perform the duties assigned to it under this Act and may administer the investment asset on behalf of the investment asset owner.

Same

(2) The administration of the investment asset may include the following:

1. Providing information, in accordance with the regulations, to the Board in respect of funding obligations and the determination of the clean energy adjustment in accordance with section XX.

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2. Providing information to electricity vendors, including the IESO, in respect of obligations under Part III.

3. Such other matters as may be prescribed.

Review of costs

(3) The Board shall review the administrative costs of the Financial Services Manager in accordance with the regulations.

FAIR ALLOCATION AMOUNT

Financial Services Manager to calculate fair allocation amount

15xx. (1) The Financial Services Manager shall calculate the fair allocation amount for the purposes of,

(a) fairly measuring and allocating the estimated clean energy costs and estimated clean energy benefits among the specified consumers in respect of each reference period; and

(b) aligning funding obligations that may be incurred during each reference period with the allocation of the estimated clean energy costs and estimated clean energy benefits across present and future generations of specified consumers.

Amount

(1.1) The fair allocation amount in respect of a reference period is the sum of the following amounts:

1. The amount, if any, by which the estimated [clean energy costs] [clean energy benefits] to be allocated to specified consumers in respect of the reference period exceeds the estimated amount of [the global adjustment] that would be borne by the specified consumers in respect of clean energy costs [in the absence of this Act].

2. An allocable portion of the value of any fair adjustment, determined in accordance with subsection (3).

Principles

(2) In calculating the fair allocation amount [or in developing the fair allocation calculation?], subject to subsection (3), the Financial Services Manager shall have regard to the following principles:

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1. Clean energy costs allocated to the specified consumers in respect of a reference period should be allocated in proportion to the clean energy benefits attributed to the specified consumers in respect of the reference period.

2. The clean energy benefits attributed to the specified consumers in respect of a reference period should be determined based on *[Insert principles]*.

3. The fair allocation calculation should include reasonable assumptions regarding the following:

    i. The time value of money or the rate of inflation, for the purpose of equating nominal amounts over time.

    ii. The expected number of specified consumers for each reference period.

    iii. The expected electricity consumption rates for each reference period.

Allocation of fair adjustment

(3) If, before the Financial Services Manager has calculated the fair allocation amount in respect of a reference period, a fair adjustment has been made under Part II in respect of the reference period, the calculation shall include a portion of the value of the fair adjustment in the fair allocation calculation for each future reference period.

Amendments to the fair allocation calculation

(4) The Financial Services Manager may amend the fair allocation calculation from time to time, as the Financial Services Manager considers appropriate, having regard to the requirements of this Act.

Submission of fair allocation to Minister

(5) The Financial Services Manager shall provide to the Minister the fair allocation calculation and any amendments to the fair allocation calculation.

Effective date

(6) The fair allocation calculation or an amendment to the fair allocation calculation takes effect on the day that is 30 days after the fair allocation calculation or the amendment, as the case may be, is provided to the Minister in writing.

Publication

(7) The Minister shall ensure that the fair allocation calculation and any amendments to it are made available to the public in a manner that the Minister considers appropriate.

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Financial Services Manager to prepare Financing Plan

16xx. (1) The Financial Services Manager shall prepare and provide to the Minister a written plan entitled the Financing Plan to be used by the Financial Services Manager to evaluate whether potential funding obligations should be incurred or potential transfers should be made for the purposes of this Act.

Principles

(2) In preparing the Financing Plan, the Financial Services Manager shall have regard to the following principles:

1. Any incurrence of a funding obligation should reasonably align the expected finance amount determined under Schedule 1 that would become due and payable during a reference period with the fair allocation amount determined for the reference period under this Part as of the time of the incurrence, in each case after reducing the fair allocation calculation by the amount of any fair adjustment for the reference period.

2. Incurrences and transfers should be implemented in a manner that, as the Financial Services Manager considers to be reasonable, is cost effective and reflects prevailing market terms and conditions.

3. Reasonable assumptions should be made regarding such matters as may be prescribed.

[Note for reference: List of items for consideration in regulation: (a) anticipated IESO funding shortfalls and related transfer amounts; (b) the maturities of funding obligations; (c) the availability of refinancings, redemption opportunities and liquidity terms and conditions in order to achieve the objective contemplated in section X(1)(a); (d) the availability of currency and interest rate hedging facilities for the purpose of mitigating any differences between the expected finance amounts becoming due and payable during a reference period and the fair allocation amount for the reference period; (d) the amount and potential variability of interest rates and related financing costs; (e) available capital markets in which funding obligations may be incurred.]

Amendments to approved plan

(3) The Financial Services Manager may amend the Financing Plan at any time, without the approval of the Minister, subject to the requirements set out in this section.

Limitation, first five year period

(4) In respect of each reference period from May 1, 2017 to April 30, 2022, no funding obligation shall be incurred that would become payable during the reference period and result in a clean energy adjustment for the reference period unless,

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(a) no fair adjustment has been made under Part II in respect of the reference period; or

(b) if a fair adjustment has been made under Part II in respect of the reference period, the funding obligations incurred would not be payable during the reference period in an amount that exceeds the [difference between the fair allocation amount for the reference period and the amount of the fair adjustment for the reference period].

Confidentiality of plan

(4) The Financing Plan is deemed to be a record subject to section 17 of the *Freedom of Information and Protection of Privacy Act.*

Implementation of Financing Plan

17xx. (1) The Financial Services Manager shall incur funding obligations and make transfers in material conformity with the applicable Financing Plan.

Same

(2) For greater certainty, section [paramountcy of funding obligations] applies despite the failure of the Financial Services Manager to comply with subsection (1).

Financing entities

(3) In accordance with the Financing Plan, the Financial Services Manager may establish one or more financing entities that may incur funding obligations and make transfers.

Prohibition

(3) The Financial Services Manager shall not provide for funding obligations to be incurred with any recourse to any assets of an electricity vendor, the Board, the Province or the Lieutenant Governor in Council, except to the extent that any of these persons or entities may be liable to perform obligations or duties arising under this Act or under the express terms of a funding obligation.

Effect of amendment to Fair Allocation Plan

(4) No funding obligation incurred and no transfer made by the Financial Services Manager shall be affected by any inconsistency with the Financing Plan, including any inconsistency with the principles set out in section X.

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PART V
THE REGULATORY ASSET

Interpretation, portion of regulatory asset

18xx. If a transfer under this Part provides for the transfer of a portion of the regulatory asset, any references in this Part to the regulatory asset are deemed to be references to the portion of the regulatory asset transferred.

[Note: This is meant to assist with clarity in the subsequent provisions.]

Variance account

19xx. (1) The Board shall issue an accounting order to authorize the IESO to do the following:

1. Create a variance account for the purposes of this Act.

2. Record the IESO funding shortfall in the variance account from time to time.

3. Recover the IESO funding shortfall in accordance with section X and the regulations.

No hearing

(2) The order of the Board shall be made in writing and without holding a hearing.

No appeals, etc.

(3) No appeal lies from the order of the Board.

IESO funding shortfall

20xx. (1) The IESO shall determine the IESO funding shortfall for each month in the following manner:

1. Calculate the sum of all invoice amounts issued to specified consumers for the month if Part II of this Act did not apply.

2. Calculate the sum of all invoice amounts issued to specified consumers for the month.

3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1, and make any other adjustments as may be prescribed.

Same

(2) To the extent that the IESO funding shortfall for any month is based on an estimate of the electricity used by specified consumers, the IESO shall record an

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adjustment in the variance account in the following month to reflect the difference between the estimate and the electricity actually used by specified consumers.

Recording of IESO funding shortfall

(3) IESO shall record the IESO funding shortfall from time to time, including adjustments resulting from the exercise of the right of recovery under section 21 and any transfer under section 22, in the variance account.

Recording determinative

(4) A recording of the IESO funding shortfall in the variance account is determinative of the amount of IESO funding shortfall at the time of the recording.

Regulatory asset established

21xx. (1) The IESO has the right, exercisable in accordance with this Act and the regulations, to recover the IESO funding shortfall.

Same, restrictions

(2) The IESO's right to recover the IESO funding shortfall under subsection (1) is subject to the following:

1. The IESO shall not be entitled to collect the IESO funding shortfall from specified consumers before May 1, 2022.

2. The process by which the IESO may recover the IESO funding shortfall shall be established by the Board, having regard to the amount of the IESO funding shortfall from time to time and the [fair allocation calculation].

3. Such other restrictions as may be prescribed.

Transfer of regulatory asset

22xx. (1) The IESO may transfer all or a portion of the regulatory asset to any financing entity under the Financing Plan, which transfer creates the investment asset.

Same

(2) Upon receipt of any payment in consideration for the transfer,

(a) the IESO shall record the payment as a reduction of the IESO funding shortfall in the variance account; and

(b) unless otherwise provided for in this Act, the IESO shall have no further right, title or interest in, or any obligations in respect of, the regulatory asset or in the investment asset created by the transfer.

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Same

(3) Upon transfer, the financing entity becomes an investment asset owner and acquires an investment interest.

Validity of transfer

23xx. (1) A transfer of a regulatory asset under this Act is a valid and enforceable sale and absolute transfer to the investment asset owner of the regulatory asset, and the investment asset created by the transfer shall be immediately vested in the transferee.

Same

(2) Without limiting subsection (1), any transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of IESO's right to recover the IESO funding shortfall, and not merely as a security interest, and upon the absolute transfer the transferor shall retain no right, title or interest in the regulatory asset, including all rights to recover the IESO funding shortfall.

Deemed perfection, etc.

(3) At the time a transfer of a regulatory asset is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the transferee shall have priority over any liens in favour of those persons.

PART VI
THE INVESTMENT ASSET

Interpretation, investment asset

24xx. If a transfer under this Part provides for the transfer of an investment asset, any references in this Part to the investment interest are deemed to be references to the specific investment interest transferred.

Investment asset established

25xx. (1) The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests without duplication:

1. The right to impose, bill, invoice, collect and receive the clean energy adjustment from specified consumers, including the right to determine the amount of the clean energy adjustment in accordance with this Act.

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2. The right to receive and collect all amounts in respect of the clean energy adjustment that are imposed, billed and invoiced under this Act, including any amounts that all amounts in respect of the clean energy adjustment that are held by electricity vendors or other prescribed parties.

3. All rights and entitlements under such accounts as may be prescribed by regulation and all amounts on deposit in such accounts.

4. The right to enforce the duties and obligations under this Act of each electricity vendor to impose, attribute, charge, bill and invoice the clean energy adjustment.

5. The right to enforce the duties and obligations under this Act of each electricity vendor to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by an electricity vendor to recover payment of the clean energy adjustment.

6. All rights of any kind (whether in tort, contract or otherwise) that attach or are attendant or incidental to any of the other property rights or interests that comprise the regulatory asset owner's regulatory asset.

7. All revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 6, regardless of whether such revenue, collections, claims, payments and proceeds are imposed, invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

No set off, etc.

(2) The investment asset shall not be set off or reduced by any person in any circumstance, including,

(a) by a consumer, an electricity vendor, an agent of the investment asset owner or an owner of distribution system assets in the Province;

(b) in connection with any default, bankruptcy, reorganization or other insolvency proceeding of a person mentioned in clause (a); or

(c) by any affiliate or successor of a person mentioned in clause (a).

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Exercise of rights

(3) The rights of the investment asset owner to collect and enforce its rights and interests in, to and in respect of the investment asset against a specified consumer shall be exercised in accordance with section [xx] of the *Personal Property Security Act*.

Collective action required

(4) If the investment asset owner owns a right or interest in the investment asset that comprises less than the entire property right and interest constituted by the investment asset, the right or interest shall only be enforced by the investment asset owner collectively and in coordination with all other investment asset owners, and any agreement among that collective in furtherance of the collective action shall be valid and binding on the investment asset owner as a collective in accordance with its terms. [Note: Successors may need to be addressed here.]

Transfer of investment interest

26xx. An investment asset owner may transfer all or a portion of its rights and interests in an investment interest to any other investment asset owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan.

Validity of transfer

27xx. (1) A transfer of an investment interest under this Act is a valid and enforceable sale and absolute transfer of the investment interest and confers upon the owner of the investment interest acquired a valid property right and interest in, to and under the applicable investment interest in accordance with the terms of the transfer.

Same

(2) Without limiting subsection (1), a transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of an investment asset owner's right, title and interest in, to and under an investment interest, and not merely as a security interest, and upon such absolute transfer the transferor shall retain no right, title or interest in the investment interest, subject to the transfer, including all rights to the investment interest arising after the transfer.

Deemed perfection, etc.

(3) At the time a transfer of an investment interest is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer, assignment, etc.

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the investment asset owner shall have priority over any liens in favour of such other persons.

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Investment asset owner may grant security interest

28xx. (1) An investment asset owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under the investment interest to or in favour of any person to secure a funding obligation.

Validity

(2) A security interest granted under this Act shall be valid and enforceable in accordance with its terms.

Perfection and priority of security interests

(3) All provisions of the *Personal Property Security Act* shall apply to the investment asset and each investment interest on the basis that it is intangible personal property, except as otherwise provided for in this section, and any granting of a security interest by the owner of an investment interest to secure a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by filing a financing statement under that Act on that basis.

Proceeds

(4) All proceeds of an investment interest that are subject to the security interest and that are received by the applicable investment asset owner shall immediately be subject to the security interest and shall be perfected without any physical delivery of the proceeds, registration of any financing statement or any further act.

Perfection

(5) The security interest shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may subsequently attach to the property rights and interests in the investment interest subject to the security interest, subject to the written consent of the person to whom the security interest has been granted.

Same

(6) The person to whom the security interest has been granted shall have a perfected security interest in revenues or other proceeds that are deposited in any [investment asset account] or other account of any electricity vendor, the IESO, an agent of an electricity vendor or the IESO or other person who may have commingled such revenues or other proceeds with other funds.

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PART VI
MISCELLANEOUS

Appointment of agent, invoicing or collection

29xx. If a prescribed circumstance applies, the Lieutenant Governor in Council may by regulation appoint a person to carry out some or all of the obligations of an electricity vendor under this Act in the place of an electricity vendor with respect to invoicing or collection.

Not Crown agent

30xx. For greater certainty, no agent appointed under this Act is an agent of the Crown for any purpose, despite the *Crown Agency Act*.

Sequestration

31xx. (1) A court in the Province may, upon application by an investment asset owner or a secured party, order the sequestration and payment of the clean energy adjustment, collections and remittances, as applicable, for the benefit of the investment asset owner or secured party by any person or entity authorized to collect the clean energy adjustment, defaults on any required remittance of the clean energy adjustment, collections or remittances.

Same

(2) An order under subsection (1) does not limit any other remedies available to the applicant.

Same

(3) An order under subsection (1) shall remain in full force and effect despite any bankruptcy, reorganization or other insolvency proceedings with respect to the person or entity who is subject to the order.

Choice of law

32xx. The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the regulatory asset, the investment asset, the clean energy adjustment or the undertaking of the Crown under section x shall be the laws of the Province.

Conflict

33xx. The provisions of this Act and the regulations apply despite any provision of any other Act regarding the attachment, assignment or perfection, or the effect of perfection or priority of any transfer or security interest.

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No further approvals, etc.

34xx. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required with respect to the actions to be taken in compliance with this Act, including actions to be taken under the Financing Plan or in relation to the establishment of the Fair Allocation Plan.

Immunity

35xx. (1) No action or other proceeding for damages shall be instituted against any employee of the Province, IESO, OPG or OEB for any act done in good faith in the execution or intended execution of any duty or authority under this Act or for any alleged neglect or default in the execution in good faith of any duty or authority under this Act.

Same

(2) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

References in marketing materials and offering documents

36xx. No person shall include, in marketing materials or offering documents relating to the financing of funding obligations, references to any rights, obligations, guarantees or undertakings arising under this section unless the prescribed requirements, if any, are satisfied.

Non-application, Financial Administration Act, s. 28[7]

37xx. Section 28 of the *Financial Administration Act* does not apply with respect to any transaction or agreement or undertaking required, permitted, contemplated or authorized, directly or indirectly, under this Act.

Regulations

38xx. The Lieutenant Governor in Council may make regulations,

(a) defining any term used in this Act….

(b) prescribing types of payment obligations that constitute funding obligations;

(a) governing the calculation [true-up amount] and how the amount is to be applied to the clean energy adjustment.

(b) governing the inclusion of adjustments under this Act on invoices, which may include requiring notice to be provided by electricity vendors to specified persons regarding the adjustments.

[7] Note - see s. 51 of the Electricity Act, 1998

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[Note: reg-making powers to be dealt with in subsequent draft]

PART VII
AMENDMENTS TO OTHER ACTS

ELECTRICITY ACT, 1998

200x. (1) Subsection 6 (1) of the *Electricity Act, 1998* would be amended by adding the following clauses:

(q.0.1) to exercise the powers and rights and to perform the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and to engage in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including,

(i) entering into agreements or arrangements with any person for the purposes of the *Ontario Fair Hydro Plan Act, 2017*;

(ii) engaging in activities related to making payments to and receiving payments as contemplated under the *Ontario Fair Hydro Plan Act, 2017* and to engage in related settlement activities;

(iii) engaging in activities related to the creation, transfer and administration of the regulatory asset created under the *Ontario Fair Hydro Plan Act, 2017*, which activities may include,

(iv) incurring liabilities in relation to the regulatory asset

(v) transferring the regulatory asset for consideration;

(vi) acting as a recovery agent under the *Ontario Fair Hydro Plan Act, 2017*;

201x. Section 53.1 of the Act would be amended by adding the following subsections:

Same, *Ontario Fair Hydro Plan Act, 2017*

53.1 (1.1) In addition to the objects mentioned in subsection (1), the objects of Ontario Power Generation Inc. include exercising the powers and rights and performing the duties and obligations assigned to it under that Act and engaging in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including the following:

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1. Entering into contracts and undertakings on behalf of special purpose financing entities, including pre-formation contracts and undertakings and as principal in relation to matters permitted by the *Ontario Fair Hydro Plan Act, 2017* subject to the right of reimbursement from amounts available to the financing entity.

2. Preparing reports on behalf of the financing entity.

3. Enforcing the rights of the financing entity.

4. Signing offering documents as sponsor or otherwise on behalf of the financing entity.

5. Exercising the powers and performing the duties of the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*

6. Issuing non-equity securities in Ontario Power Generation Inc. or on if its subsidiaries, for the purpose of raising funds to acquire debt or equity interests in a financing entity whose activities are limited to the incurrence of funding obligations pursuant to the *Ontario Fair Hydro Plan Act, 2017*.

Subsidiaries, etc.

(1.2) Ontario Power Generation Inc. may create one or more subsidiaries, trusts or special purpose entities in order to more efficiently conduct its activities or achieve its objects.

202x. Section 89 of the Act would be amended by adding the following subsection:

Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply in respect of amounts payable to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a result of its functions as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

203x. Section 90 of the Act would be amended by adding the following subsection:

Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply in respect of amounts payable to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a result of its functions as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

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[Note: Drafting still to be added to the EA consequential amendments: ***All fees charged by OPG as the FSM shall be approved by the OEB before they are included in the calculation of clean energy adjustments.]***

AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

204x. Subsection 1 (1) of the *Ontario Energy Board Act, 1998* would be amended by adding the following paragraph:

6. To facilitate the implementation of the [TBD - language should link up with language from new Act.]

205x. Section 70 of the Act would be amended by adding the following subsection

[Note - still need to draft new subs. 70 (2.1)]

Short Title - this proposal for legislation would, if approved by the Legislature, have a short title to be determined by Government.

Timing – this proposal for legislation would, if approved by the Legislature, come into force on a date to be established by Government.

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SCHEDULE 1
ESTIMATED FINANCE AMOUNT

Estimated finance amount

1. The estimated finance amount for a reference period shall be determined by estimating, prior to the start of a reference period, the sum of the following:

1. The sum of all amounts that are payable during the reference period by or on behalf of the investment asset owners to satisfy an obligation to repay, redeem or repurchase, or to provide for the repayment, redemption or repurchase, of all or a portion of the amount advanced to the owners under a funding obligation, excluding any payment made by applying the proceeds of a refinancing.

2. The sum of all funding costs for the reference period, determined as follows:

    i. Calculate the aggregate of all interest, scheduled principal and other periodic finance charges accruing, due and becoming payable or paid by or on behalf of investment assets owners during the reference period in respect of all funding obligations, including such amounts as may be prescribed.

    ii. Calculate the sum of the aggregate of all amounts received by or on behalf of investment asset owners during the reference period in respect of all funding obligations and such other amounts as may be prescribed.

    iii. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1.

3. The sum of all amounts payable during the reference period by or on behalf of investment asset owners to redeem, prepay or repurchase a funding obligation, including any premium, make-whole or other amount becoming payable under a funding obligation to give effect to the redemption, prepayment or repurchase.

4. The balance of the finance reserve at the end of the reference period, as determined under section 3 to this Schedule.

5. The sum of any other amounts payable during the reference period by or on behalf of investment asset owners that were incurred or committed to directly or indirectly in connection with the incurrence of funding obligations under the Financing Plan during the reference period, which may include such amounts as may be prescribed.

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Funding costs

2. For the purposes of paragraph 2 of section 1 to this Schedule, the funding costs for a reference period are determined by taking the following steps:

Finance reserve balance

3. (1) For the purposes of paragraph 4 of section 1 to this Schedule, the balance of the finance reserve at the end of the reference period is determined by taking the following steps:

1. Calculate the sum of all amounts deposited by or on behalf of investment asset owners during the reference period in order to pre-fund, collateralize, over-collateralize or establish reserves for the ultimate payment of funding obligations or for related contingencies specified in the Financing Plan.

2. Calculate the sum of all amounts withdrawn by or on behalf of investment asset owners during the reference period from deposits previously made as described in paragraph 1.

3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1.

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Fw_ Ontario Fair Hydro Plan.rtf

From: Petsche, Nadine (TBS) []
To: Suzie Gignac [suzie.r.gignac@ca.ey.com]; Lee Anne Probert [LeeAnne.Probert@ca.ey.com]; Blake Langill [blake.w.langill@ca.ey.com]
CC: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
Subject: Fw: Ontario Fair Hydro Plan
Date: Wednesday, April 26, 2017 12:45:29
Attachment 1: Fair Hydro Plan Act (April 26 2017) Consultation v4.docx

---

Suzie/Lee Anne/Blake,
Your comments on this version would be appreciated.
I am off site today. Please highlight any significant issues/substantive comments to Cindy.
Thanks.
Nadine
From: Kacaba, Jennifer (ENERGY) <Jennifer.Kacaba@ontario.ca>
Sent: Wednesday, April 26, 2017 12:38 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS); rramchandani@torys.com
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI); 'Myers, Jonathan'; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA); Hosick, Sarah (TBS); Johnson, Paul (ENERGY/MEDEI/MRI); mouche1961@gmail.com; Martine Band (Martine.Band@oeb.ca)
Subject: RE: Ontario Fair Hydro Plan

All - Thank you for the detailed comments that you provided on Saturday and Sunday. Please find attached the next turn of the legislation. We have tried to balance the comments that we received to address the points that you have raised. This draft does not reflect the drafting points that were raised over Monday and Tuesday and we will reflect those points in our next instructions to legislative counsel. Please review and identify any significant substantive issues by 6 p.m. today. We continue to work

toward pens down on Friday, meaning the draft that we have at that point in time will be proposed for introduction in the House. Thank you again for your contributions to this process.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

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From: Kacaba, Jennifer (ENERGY)
Sent: April 20, 2017 5:59 PM

To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS); rramchandani@torys.com
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI); 'Myers, Jonathan'; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA); Hosick, Sarah (TBS); Johnson, Paul (ENERGY/MEDEI/MRI)
Subject: RE: Ontario Fair Hydro Plan

All - Please find attached the next turn in the consultation draft (v.3) of the proposed legislation. We have been working to address the feedback that you provided earlier in the week. A number of points remain in progress. As with the earlier versions, by sharing this document, we hope to continue to advance our discussions.

Our timeline has been extended and we are now working to a pens down date of April 28th. We will not get another extension. Accordingly, we ask for your detailed, written comments on the draft, which we require no later than Sunday at noon.

We will continue to work on the bill in the interim, so earlier instructions are helpful to us. With your input on this timeline, we expect to be able to provide one more circulation around Tuesday or Wednesday next week.

We have not had the opportunity to add notes or to update our crosswalk to the Blakes summary document.

We look forward to receiving your written comments.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

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From: Kacaba, Jennifer (ENERGY)
Sent: April 17, 2017 12:00 PM

To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS)
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI); 'Myers, Jonathan'; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA); Hosick, Sarah (TBS)
Subject: RE: Ontario Fair Hydro Plan

Please find attached a further turn of the consultation draft. This document continues to be a work in progress. We have not had the opportunity to add notes or update our tracking table. We also have not yet considered the comments that we received this morning. We look forward to seeing you at 1.

Jennifer

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From: Calwell, Carolyn (ENERGY/MEDEI/MRI)
Sent: April 15, 2017 10:06 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Kacaba, Jennifer (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS)
Cc: 'Myers, Jonathan'; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA); Hosick, Sarah (TBS)
Subject: Ontario Fair Hydro Plan

All - Please find attached the draft “Intergenerational Fairness in Hydro Rates Act, 2017”. A tremendous amount of work has gone into getting to this draft and much more work is required to get this ready for the House. The goal of sharing this document now is to further the process we have engaged in over the last weeks. In the attached, we have included notes to try to address where the drafting is not yet consistent with our thinking. These notes are neither comprehensive nor complete. They are intended only as flags and as colour to the draft. We have not forgotten the comments that you have already provided and we are continuing to working through the translation of the commercial terms we have been discussing into legislative language.

For ease of reference, included with the draft bill are the partially updated Blakes’ summary, a chart that attempts links the articles in that document to the sections of the bill (which is imperfectly numbered at best) and excerpts from the Electricity Act and the Ontario Energy Board Act, related to the consequential amendments.

In your review, please focus on the broad stroke concepts, rather than the minutia, and keep in mind the cascade of instruments that will be required – legislation first, then regulations and finally commercial agreements. We look forward to discussing the broader concepts on Monday

Carolyn Calwell

Legal Director

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Fair Hydro Plan Act (April 26 2017) Consultation v4.pdf

Version 4

This confidential draft document is provided for discussion purposes only. It should not be construed as representing the position adopted by the Government of Ontario on any of the topics included or not included in this document. The notes included in this document are intended only to help facilitate a discussion of the topics to which they relate. Any potential legislation is subject to the approval of the Ontario Legislature.

A proposal to create Legislation.

An Act to provide for the fair allocation of costs of electricity over time, if enacted

Confidential Draft

A proposal to create Legislation.

An Act to provide for the fair allocation of costs of electricity over time, if enacted

EXPLANATORY NOTE TO BE ADDED BY LEGISLATIVE COUNSEL TO ANY FINAL BILL PRIOR TO INTRODUCTION.

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Preamble

The Government of Ontario is committed to fostering the development of a clean, modern and reliable electricity system with a diverse supply mix. The Government is also committed to removing barriers to and promoting opportunities for renewable and clean energy projects.[1] These commitments can only be achieved if costs are shared fairly among consumers, today and in the future.

Electricity rates have risen for two key reasons. First, decades of under-investment in the electricity system resulted in the need to invest more than $50 billion in generation, transmission and distribution assets to ensure the system is clean and reliable. Second, the decision to eliminate Ontario's use of coal and produce clean, renewable power has created additional costs.

The actions taken to achieve a clean, modern and reliable electricity system have resulted in significant costs to consumers today. The burden of financing these system improvements and funding key programs has unfairly fallen almost entirely on the shoulders of today's consumers.

The Government of Ontario is committed to ensuring that the costs of financing these investments and the associated charges to consumers are allocated fairly among present and future generations of consumers.

Recognizing that the electricity infrastructure that has been built and the policy decisions that have been made will create benefits for years to come, costs should be allocated fairly over time, so that consumers in the future pay their fair share for the benefits that they receive from the investments already made.

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PART I
GENERAL

Interpretation
Definitions

1xx. (1) In this Act,

"Board" means the Ontario Energy Board; ("French")

"clean energy adjustment" means the amount determined under section 10xx; ("French")

"clean energy benefits" means the value of the benefits determined to be derived by or accruing to the specified consumers as a result of the clean energy initiative, including as a result of clean energy costs; ("French")

"clean energy costs" means the value of the costs allocated to specified consumers as a result of the clean energy initiative, including as a result of past, present and expected costs incurred in respect of,

(a) the estimated amounts to be paid or reflected by the IESO in adjustments made under section 25.33 of the *Electricity Act, 1998* or any provision that is the successor to that provision, which relate to contracts for,

(i) renewable energy generation or capacity,

(ii) conservation and demand management,

(iii) energy storage,

(iv) energy efficiency,

(v) natural gas generation and capacity, excluding contracts relating to amounts payable by the IESO under section 78.2 of the *Ontario Energy Board Act, 1998* and excluding such other contracts as may be prescribed, or

(vi) payments made or expected to be made under section 78.5 of the *Ontario Energy Board Act, 1998*, and

(b) such other estimated costs as may be prescribed; ("French")

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"clean energy initiative" means the policies of the Government of Ontario related to,

(a) fostering the growth of and investment in clean and renewable energy sources and technologies,

(b) removing barriers to and promoting opportunities for clean and renewable energy sources and technologies, and

(c) promoting conservation and demand management; ("French")

"electricity vendor"[2] means,

(a) a licensed distributor,

(b) a licensed retailer,

(c) the IESO in circumstances where the IESO directly invoices a specified consumer, or

(d) such other person as may be prescribed; ("French")

"fair allocation amount" means the amount determined in under section 15xx;

"financing entity" means an entity established or caused to be established under subsection 17xx (3); ("French")

"Financial Services Manager" means the Financial Services Manager appointed under section 13xx; ("French")

"Financing Plan" means the plan prepared under section 16xx, as amended from time to time in accordance with this Act; ("French")

"funding obligation" means,

(a) a payment obligation incurred in connection with the transfer of a regulatory asset or the refinancing of an existing funding obligation, or

(b) a payment obligation that meets such other criteria as may be prescribed; ("French")

[2] FLS - this is similar to the definition of "electricity vendor" in the Ontario Rebate for Electricity Consumers Act, 2016

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"IESO" means the Independent Electricity System Operator continued under Part II of the *Electricity Act, 1998*; ("SIERE")

"IESO funding shortfall" means the amount determined under section 20xx; ("French")

"investment asset" means the rights and interests described in section 22xx; ("French")

"investment interest owner" means a financing entity that has acquired and holds an investment interest; ("French")

"investment interest" means,

(a) an ownership interest in the investment asset, and

(b) in circumstances where the ownership interest is transferred, the rights and benefits specified in the agreement under which the interest is transferred; ("French")

"invoice amount" means, in respect of an invoice period, the sum of the amounts set out in subsection (2.1) in relation to the provision of electricity in Ontario to a specified consumer; ("French")

"invoice period" means the period in respect of which an invoice amount applies, as specified on an invoice issued by an electricity vendor; ("French")

"licensed distributor" means a person licensed under Part V of the *Ontario Energy Board Act, 1998* to own or operate a distribution system; ("French")

"licensed retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity; ("French")

"Minister" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of this Act under the *Executive Council Act*; ("ministre")

"Ontario Power Generation Inc." means the corporation incorporated as Ontario Power Generation Inc. under the *Business Corporations Act* on December 1, 1998; ("Ontario Power Generation Inc.")

"prescribed" means prescribed by the regulations; ("prescrit")

"reference period" means,

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(a) the period beginning on May 1, 2017 and ending on October 31, 2017, and

(b) during the period beginning on November 1, 2017 and ending on April 30, 2047,

(i) every six-month period following the period mentioned in clause (a); or

(ii) any period shorter than six months, as may be prescribed; ("French")

"refinancing" means, subject to the regulations, a redemption, repayment or repurchase of a funding obligation; ("French")

"regulation" means a regulation made under this Act; ("règlement")

"regulatory asset" means the right and interest established under section 21xx; ("French")

"specified consumer" means,

(a) a person who has an account with an electricity vendor for the supply of electricity in Ontario and meets the criteria set out in subsection (2); or

(b) such other person as may be prescribed; ("French")

"sub-meter customer" means a person who is supplied electricity by a specified consumer, if an invoice for the electricity is issued to the person by the specified consumer, by an agent of the specified consumer or by a unit sub-meter provider providing unit sub-metering for the specified consumer; ("French")

"transfer" means [TBD]; ("French")

"unit sub-metering" has the same meaning as in the *Energy Consumer Protection Act, 2010*; ("activités liées aux compteurs divisionnaires d'unité")

"unit sub-meter provider" has the same meaning as in the *Energy Consumer Protection Act, 2010*; ("fournisseur de compteurs divisionnaires d'unité")

Specified consumers

(2) For the purposes of clause (a) of the definition of "specified consumer" in subsection (1), the person must meet any one of the following criteria:

1. The person has a demand for electricity of 50 kilowatts or less, or such other amount as may be prescribed.

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2. The person annually uses not more than 250,000 kilowatt hours of electricity, or such other amount as may be prescribed.

3. The person carries on a business that is a farming business for the purposes of the *Farm Registration and Farm Organizations Funding Act, 1993* and either holds a valid registration number assigned under that Act or the has had the obligation to file a farming business registration form waived pursuant to an order made under subsection 22 (6) of that Act.

4. The person's account with the electricity vendor relates to,

    i. a dwelling,

    ii. a property within the meaning of the *Condominium Act, 1998*,

    iii. a residential complex within the meaning of subsection 2 (1) of the *Residential Tenancies Act, 2006*, without regard to section 5 of that Act, or

    iv. a property that includes one or more housing units and that is owned or leased by a co-operative within the meaning of the *Co-operative Corporations Act*.

5. The person satisfies such criteria as may be prescribed.

Invoice amount

(2.1) Subject to the regulations, the invoice amount for a specified consumer in respect of an invoice period includes the following amounts:

1. In circumstances where the electricity is provided by a licensed distributor or a licensed retailer, the following amounts in respect of the invoice period:

    i. The commodity price of the electricity used.

    ii. The rates and charges set out in the applicable rate order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998* and in effect on April 30, 2017.

    iii. Any adjustment on the invoice required under section 25.33 of the *Electricity Act, 1998*.

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iv. The amount of any harmonized sales tax payable by the consumer under Part IX of the *Excise Tax Act* (Canada) in respect of the amounts mentioned in subparagraphs i, ii and iii;

v. Any other amounts as may be prescribed.

2. In circumstances where the electricity is provided by the IESO or other prescribed entity, such amounts as may be prescribed in respect of the invoice period. ("French")

Same, exclusions

(2.2) Subject to the regulations, an invoice amount does not include any of the following amounts:

1. The balance of any amounts carried forward from previous invoices in respect of previous invoice periods.

2. Penalties or interest.

3. Charges that do not relate to the use of electricity.

4. Any of the following charges that may be set out in an order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*:

   i. A fixed monthly service charge payable by a generation facility within the meaning of section 56 of the *Ontario Energy Board Act, 1998* and classified as "microFIT".

   ii. A charge labelled as a "specific service charge" or "retail service charge".

   iii. A rate rider [of the prescribed type or class].

5. Any other prescribed amounts.

Effect of invalidity, etc.[3]

2xx. (1) For greater certainty, all of the provisions of this Act remain in full force and effect, even if one or more provisions are held to be invalid, the intention of the Legislature being to give separate and independent effect to the extent of its powers to every provision contained in this Act.

[3] FLS: this is from the *Climate Change Mitigation and Low-carbon Economy Act, 2016*

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Same, funding obligation

(2) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect the validity or enforceability of a funding obligation incurred under this Act before the day that the provision is held to be invalid or ceases to be in effect, or any rights or obligations associated with the funding obligation.

Purpose

3xx. (1) The purposes of this Act are,[4]

(a) to ensure that clean energy costs are fairly allocated among present and future specified consumers and reflect the fair allocation; and

(b) to recognize that clean energy benefits have accrued and will accrue over time and will continue to benefit present and future electricity consumers in the Province.

Crown bound

4xx. This Act binds the Crown.

Protection and assurances

Prohibition

5xx. (1) The Crown shall not do anything that would,

(a) hinder, delay, impair or prejudice the charging, collection or remittance of amounts in respect of the clean energy adjustment;

(b) except as expressly permitted by this Act, reduce the clean energy adjustment determined under this Act or lower the priority of the clean energy adjustment over other debts; or

(c) adversely affect an investment asset or a funding obligation.

Clarification with respect to regulations

(2) For greater certainty, the things prohibited under subsection (1) include the making or approving of a regulation under this Act.

Agreements for compensation

(3) The Minister may, with the approval of the Lieutenant Governor in Council, enter into agreements on behalf of the Province of Ontario with any person in respect of this Act, including agreements regarding the performance of IESO or electricity vendors under this Act or similar transactions.

[4] FLS: Please see the *Electricity Act, 1998* for much of the wording proposed in this section.

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Guarantee, indemnification

(4) The Lieutenant Governor in Council may by order,

(a) authorize the Minister of Finance, on behalf of the Province,

(i) to agree to guarantee or indemnify any debts, obligations, securities or undertakings associated with an investment interest, and

(ii) to determine terms and conditions and the amount on which the guarantee or indemnity will be given;

(b) impose terms and conditions, as it considers advisable, on which the Minister of Finance may, on behalf of the Province, agree to guarantee or indemnify as described in subclause (a) (ii); and

(c) specify a maximum liability for the guarantee or indemnity.

PART II
FAIR ADJUSTMENT OF ELECTRICITY RATES

Definitions

6xx. In this Part,

"effective date" means the date determined under section 6.5xx; ("French")

"RPP rate" means the rate determined by the Board under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*, which rate is commonly referred to as the Regulated Price Plan"; ("French")

"specified RPP consumer" means a specified consumer who meets the following criteria:

1. The consumer is a member of the class of consumers prescribed by the regulations made under the *Ontario Energy Board Act, 1998* for the purposes of subsection 79.16 (1) of that Act.

2. The consumer is subject to the RPP rate. ("French")

Specified RPP consumer, first fair adjustment

6.1xx (1) The rate for electricity payable by a specified RPP consumer for the period beginning on the effective date and ending on April 30, 2018 is the rate required for a specified RPP consumer who meets the prescribed criteria to receive a monthly invoice

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amount that is 25 per cent lower than the monthly invoice amount for that consumer under the comparison rate described in subsection (2).

Comparison rate

(2) The comparison rate is the rate that would be effective May 1, 2017, determined by the Board solely using the method prescribed by the regulations made under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*.

Same

(3) For the purposes of subsection (2), the applicable method is the method on the day this section comes into force.

Specified consumers (non-RPP), first fair adjustment

6.2xx The rate for electricity payable by a specified consumer who is not a specified RPP consumer for the period beginning on the effective date and ending on April 30, 2018 is the rate that would be necessary in order for [the monthly global adjustment rate] in respect of a specified consumer who is not a specified RPP consumer (RPP) and who meets the prescribed criteria to be reduced by the same amount as the difference between the comparison rate referred to in subsection 6.1xx (2) and the rate determined under subsection 6.1xx (1).

Determination by Board

6.3xx The Board shall determine the rates mentioned in sections 6.1xx and 6.2xx no later than seven business days after the day this section receives Royal Assent.

Implementation of rates

6.4xx Each electricity vendor, [specified consumer who provides electricity to a sub-meter customer and unit sub-meter provider who provides unit sub-metering for a specified consumer] shall, no later than seven business days after the day on which the Board determines the rates under section 6.3xx, adapt is billing practices and invoices to reflect the new rates.

Effective date

6.5xx The rates determined under section 6.3xx are effective on the earlier of the following days:

1. The first day of the month immediately following the last day of the seven-day period referred to in section 6.4xx.

2. July 1, 2017.

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Transition

6.6xx (1) This section applies if an electricity vendor, specified consumer or unit sub-meter provider is unable to comply with section 6.4xx for one of the following reasons:

1. There are fewer than seven days between the day of the Board's determination of rates under section 6.3xx and the effective date.

2. Technical or operational reasons.

Same

(2) In the circumstances described in subsection (1), the electricity vendor, specified consumer or unit sub-meter provider shall,

(a) adapt its invoices as soon as possible and, in any event, no later than August 1, 2017; and

(b) ensure that any specified consumer or sub-meter customer invoiced at a rate higher than the applicable rate determined by the Board receives the difference between the rate shown on their invoice and the applicable rate as a lump sum credit on the first invoice issued after the invoices have been adapted or by such other means as may be prescribed by the regulations.

Subsequent fair adjustments

7xx. The Lieutenant Governor in Council may make regulations prescribing the methodology to be applied by the Board to determine rates for electricity payable by specified consumers and sub-meter customers during the period beginning on May 1, 2018 and ending on April 30, 2022.

Sub-meter customers

7.1xx A specified consumer who provides electricity to a sub-meter customer and any unit sub-meter provider who provides unit sub-metering for the specified consumer shall ensure that the rate payable by each sub-meter customer is the applicable rate determined under this Part.

PART III
CLEAN ENERGY ADJUSTMENT

Specified consumers to pay

8xx. (1) Upon receipt of an invoice that includes an amount in respect of the clean energy adjustment, a specified consumer shall pay the amount to the electricity vendor, as agent of the investment interest owners, in accordance with such terms of payment as may be specified in the invoice, which may include terms relating to late payment fees and interest charges.

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Same

(2) For greater certainty, subsection (1) applies regardless of,

(a) whether the clean energy adjustment was determined in a manner that was inconsistent with this Act; and

(b) whether the amount payable in respect of the clean energy adjustment relates to funding obligations that were incurred in a manner that was not in material conformity with the Financing Plan.

Indebtedness of specified consumer

(4) An unpaid amount that is required to be paid by a specified consumer under this section constitutes indebtedness of the specified consumer to each investment interest owner to the extent of each owner's respective interest in the investment asset.

Same

(5) The indebtedness mentioned in subsection (4) is a single and separate debt obligation owed by the specified consumer and may be enforced independently from any other payment obligation or indebtedness owing by the specified consumer.

Recovery from sub-meter consumers

(6) A specified consumer who provides electricity to a sub-meter customer may recover amounts in respect of the clean energy adjustment payable under this section from each sub-meter customer on a pro rata basis.

Irrevocability of amount

9xx. (1) An amount in respect of the clean energy adjustment shown on an invoice issued to a specified consumer under this Act is determinative of the amount of the consumer's indebtedness resulting from the clean energy adjustment and is irrevocable upon invoicing the consumer and may not be set off or by passed.

Exception

(2) Subsection (1) does not apply to the extent that there is a clerical, typographical or calculation-related error by the electricity vendor.

Determination of clean energy adjustment
Financial Services Manager to determine

10xx. (1) The Financial Services Manager shall determine the clean energy adjustment payable by all specified consumers in respect of each month in a reference period by adding the estimated finance amount in respect of the reference period to the true up amount in respect of the reference period.

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Estimated finance amount, true up amount

(2) The estimated finance amount and the true up amount shall be determined in accordance with the regulations.

Regulations re true up amount

(3) The regulations under subsection (2) shall have regard to the following principles:

1. The true up amount should serve to ensure that the collection of the clean energy adjustment is sufficient to pay the finance amount when it is due.

2. The method for determining the true up amount should take into account historical and reasonably foreseeable,

    i. differences between the estimated and actual finance amount for the immediately preceding reference period,

    ii. differences between amounts invoiced and amounts collected due to various factors, including applicable taxes, consumer defaults and delays, billing lags and write-offs, and

    ii. variations in billings due to variations in electricity consumption.

Financial Services Manager to notify Board

(4) The Financial Services Manager shall, in accordance with the regulations, notify the Board of the clean energy adjustment and such other information related to the determination of the clean energy adjustment as may be prescribed.

Board to determine rates

(5) The Board shall, in accordance with the regulations, determine the rate at which specified consumers are invoiced to recover the clean energy adjustment in respect of the reference period.

IESO to receive amounts

11xx. (2) The IESO shall, as an agent of the investment interest owners, receive amounts in respect of the clean energy adjustment paid to it from electricity vendors in accordance with the regulations and the market rules made under section 32 of the *Electricity Act, 1998*.

Account

(3) All of the following amounts received by the IESO shall, until paid to or for the benefit of the investment interest owner in accordance with subsection (5), be deposited promptly into an account established for the purposes of receiving those amounts:

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1. Amounts described in subsection 11xx (2).

2. Payments made by specified consumers directly to the IESO as electricity vendor under subsection 8xx (1).

Same, held in trust

(4) All amounts received by the IESO in respect of the clean energy adjustment shall, until paid to or for the benefit of the investment interest owner, be received and held in trust by the IESO for the investment interest owners or a secured party to whom a security interest in an investment interest is granted under this Act.

IESO to remit

(5) The IESO shall remit amounts received by it in respect of the clean energy adjustment to or for the benefit of the investment interest owners in accordance with the regulations.

Electricity vendor to invoice specified consumers

12xx. (1) Each electricity vendor shall issue an invoice to each of its specified consumers for the amount payable by the consumer in respect of the clean energy adjustment, as determined by applying the rate set by the Board under subsection 10xx (2) and in accordance with the regulations.

Electricity vendor to report

(1.1) Each electricity vendor shall, in accordance with the regulations, promptly report to the IESO the total amount invoiced to its specified consumers in respect of the clean energy adjustment, the amount collected and such further information as may be prescribed.

Electricity vendor to collect

(2) Each electricity vendor shall, as agent of the investment interest owners, collect amounts in respect of the clean energy adjustment from specified consumers in accordance with the regulations.

Pro rating of payments

(3) If an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices and the amount paid is less than the total amount payable, the electricity vendor shall allocate the payment on a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices in respect of electricity charges in respect of the same period.

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Held in trust

(4) Payments received by an electricity vendor from or on behalf of specified consumers shall, until paid to or for the benefit of the investment interest owner in accordance with subsection (5), be received by and held by each electricity vendor in trust for the benefit of the investment interest owners.

Remittance to IESO

(5) Each electricity vendor shall remit amounts described in subsection (5) to the IESO for the benefit of the investment interest owners in accordance with the regulations.

PART IV
IMPLEMENTATION

Financial Services Manager

Appointment

13xx. (1) Subject to subsection (2), Ontario Power Generation Inc. is appointed as the Financial Services Manager for the purposes of this Act.

Replacement

(2) The Minister may terminate an appointment of a Financial Services Manager and may, in accordance with the regulations, appoint a new person or entity as the Financial Services Manager.

Duties and powers

14xx. (1) The Financial Services Manager shall perform the duties assigned to it under this Act and may administer the investment asset on behalf of the investment interest owners.

Same

(2) The administration of the investment asset may include the following:

1. Providing information, in accordance with the regulations, to the Board in respect of funding obligations and the determination of the clean energy adjustment in accordance with section 10xx.

2. Providing information to the IESO in respect of obligations under Part III.

3. Such other matters as may be prescribed.

Review of costs

(3) The Board shall review the administrative costs of the Financial Services Manager in accordance with the regulations.

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FAIR ALLOCATION AMOUNT

Financial Services Manager to calculate fair allocation amount

15xx. (1) The Financial Services Manager shall calculate a fair allocation amount in respect of each reference period, having regard to the need to align that amount with the finance amount payable during the reference period, for the purpose of fairly measuring and allocating the estimated clean energy costs and estimated clean energy benefits among the specified consumers in respect of the reference period.

Timing of calculation

(1.1) The Financial Services Manager shall calculate a fair allocation amount in respect of each reference period before any funding obligation is incurred [by a financing entity during the reference period].

Amount

(1.2) The fair allocation amount in respect of a reference period is the sum of the following amounts:

1. The amount, if any, by which, if this Act had not been enacted, the estimated clean energy costs and estimated clean energy benefits allocated to specified consumers in respect of the reference period would have exceeded the estimated amount of the adjustments provided for under section 25.33 of the *Electricity Act, 1998* and the regulations made under that provision that would have been borne by the specified consumers in respect of clean energy costs for the reference period.

2. A portion of the value of any fair adjustment that has been made under Part II in respect of any previous reference period.

Principles

(2) In calculating the estimated clean energy costs and estimated clean energy benefits to be allocated to specified consumers in respect of a reference period, the Financial Services Manager shall [comply with the regulations and] have regard to the following principles:

1. Clean energy costs allocated to specified consumers in respect of a reference period should be allocated in proportion to the clean energy benefits attributed to the specified consumers in respect of the reference period.

2. The clean energy benefits allocated to the specified consumers in respect of a reference period should be determined in accordance with the regulations.

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3. The fair allocation calculation should include reasonable assumptions regarding the following:

    i. The time value of money or the rate of inflation, for the purpose of equating nominal amounts over time.

    ii. The expected number of specified consumers in respect of each reference period.

    iii. The expected electricity consumption rates in respect of each reference period.

Method

(3) The Financial Services Manager shall calculate a fair allocation amount in accordance with such methods as the Financial Services Manager considers appropriate, having regard to the requirements of this Act.

Notification to Minister

(4) The Financial Services Manager shall notify the Minister of the methods used to calculate the fair allocation amount and any changes to those methods.

Effective date

(6) The fair allocation calculation or an amendment to the fair allocation calculation takes effect on the day that is 30 days after the fair allocation calculation or the amendment, as the case may be, is provided to the Minister in writing.

Publication

(7) The Minister shall ensure that the fair allocation calculation and any amendments to it are made available to the public in a manner that the Minister considers appropriate.

FINANCING PLAN

Financial Services Manager to prepare Financing Plan

16xx. (1) The Financial Services Manager shall prepare a written plan entitled the Financing Plan to be used by the Financial Services Manager to evaluate whether potential funding obligations should be incurred for the purposes of acquiring an investment interest in accordance with this Act.

Plan to be provided to Minister

(1.1) The Financial Services Manager shall provide the Financing Plan to the Minister.

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Principles

(2) In preparing the Financing Plan, the Financial Services Manager shall have regard to the following principles:

1. Any incurrence of a funding obligation should reasonably align with the estimated finance amount, as determined in accordance with the regulations, that would, subject to any refinancing, become due and payable during a reference period with the fair allocation amount determined in respect of the reference period under this Part as of the time of the incurrence, in each case after reducing the fair allocation calculation by the amount of any fair adjustment in respect of the reference period.

2. Incurrences should be implemented in a manner that, in the opinion of the Financial Services Manager, is reasonable, cost effective and that reflects prevailing market terms and conditions.

3. Reasonable assumptions should be made regarding such matters as may be prescribed.

Limitation, first five year period

(4) In respect of each reference period from May 1, 2017 to April 30, 2022, no funding obligation shall be incurred that would become payable during the reference period and result in amounts payable in respect of the clean energy adjustment in respect of the reference period unless,

(a) no fair adjustment has been made under Part II in respect of the reference period; or

(b) if a fair adjustment has been made under Part II in respect of the reference period, the funding obligations incurred would not be payable during the reference period in an amount that exceeds the [difference between the fair allocation amount in respect of the reference period and the amount of the fair adjustment in respect of the reference period].

Other reports

(3.1) The Financial Services Manager shall submit to the Minister such reports and information as the Minister may require from time to time and shall, if required by the Minister to do so, examine, report and advise on any question relating to the Financing Plan.

Confidentiality

(5) The following are deemed to be records subject to clauses 18 (1) (c) and (d) of the *Freedom of Information and Protection of Privacy Act*:

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1. The Financing Plan.

2. Reports referred to in subsection (3.1).

3. Any other document that would reveal information contained in the Financing Plan or the reports.

Amendments to plan

(6) The Financial Services Manager may amend the Financing Plan at any time.

Same

(7) In the event that the Financing Plan is amended, any reference in this section to the Financing Plan is deemed to be a reference to the plan as amended.

Implementation of Financing Plan

17xx. (1) The Financial Services Manager shall incur funding obligations in material conformity with the applicable Financing Plan.

Same

(2) For greater certainty, subsection 17xx (5) applies despite the failure of the Financial Services Manager to comply with subsection (1).

Financing entities

(3) In accordance with the Financing Plan, the Financial Services Manager may establish or cause to be established one or more financing entities that may incur funding obligations.

Prohibition

(3.1) The Financial Services Manager shall not provide for funding obligations to be incurred with any recourse to any assets of an electricity vendor, the Board, Ontario Power Generation Inc., the Province or the Lieutenant Governor in Council, except to the extent that any of these persons or entities may be liable to perform obligations or duties arising under this Act or under the express terms of a funding obligation or other agreement.

Effect of amendment to fair allocation amount

(4) Each funding obligation incurred and each transfer made by a financing entity is deemed to be consistent with the Financing Plan and [the fair allocation amount].

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PART V
THE REGULATORY ASSET

IESO funding shortfall

20xx. (1) The IESO funding shortfall for each month shall be determined in accordance with the regulations.

Electricity vendors to provide information

(2) Electricity vendors shall provide to IESO such information as IESO may reasonably request for the purposes of determining the IESO shortfall under subsection (1) and such further information as may be prescribed.

Same

(3) IESO may rely on information provided by electricity vendors for the purposes of the determination under subsection (1).

Variance account to be established, maintained

20.1xx (1) The IESO shall establish and maintain a variance account for the purposes of this section.

Recording in variance account

(2) The IESO shall record the following in the variance account:

1. The amount of the IESO funding shortfall for each month.

2. All payments received by the IESO resulting from the exercise of the right of recovery under section 21xx and any transfer under section 22xx.

3. Such other adjustments as may be prescribed.

Recording determinative

(3) Subject to any finding of [manifest error], a recording by the IESO in the variance account of the balance is, as of the time of the recording, determinative of the balance at the time.

Rights of investment interest owner

(4) No change made by IESO to the balance in the variance account shall, if the previous balance was relied upon by an investment interest owner in the context of a transfer under section 22x, affect the rights of the investment interest owner acquired under the transfer.

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Regulatory asset established

21xx. (1) The IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Limitation

(2) Despite subsection (1), the IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2022.

Board to set rates

(3) The Board shall, from time to time, determine and set rates payable by specified consumers to allow for IESO to recover the balance recorded in the variance account.

Same, limitations

(4) The Board's powers under subsection (3) shall be exercised in accordance with the regulations.

Transfer of regulatory asset

22xx. (1) The IESO may from time to time transfer all or a portion of the regulatory asset to any financing entity.

Same

(2) Upon receipt by IESO of payment in consideration of a transfer of all or a portion of the regulatory asset, the transfer shall be valid and enforceable against the IESO and the IESO shall retain no further right, title or interest in, or any obligations in respect of, the regulatory asset or in the investment asset created by the transfer.

Same

(3) Upon transfer, the financing entity acquires an investment interest and becomes an investment asset owner.

Validity of transfer

23xx. (1) A transfer of a regulatory asset under this Act is a valid and enforceable sale and absolute transfer to the investment interest owner of the regulatory asset.

Same

(2) Without limiting subsection (1), any transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of IESO's right to recover the IESO funding shortfall, and not merely as a security interest, and upon the absolute transfer the transferor shall retain no right, title or interest in the regulatory asset, including all rights to recover the IESO funding shortfall.

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Deemed perfection, etc.

(3) At the time a transfer of a regulatory asset is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the transferee shall have priority over any liens in favour of those persons.

PART VI
THE INVESTMENT ASSET

Effect of transfer

24xx. (1) The first transfer of the regulatory asset or a portion of it creates the investment asset.

Same

(2) Upon any transfer of all or a portion of the regulatory asset to a financing entity, the investment asset resulting from the transfer is immediately vested in the financing entity, free and clear of any adverse claim, and the financing entity becomes an investment interest owner and acquires an investment interest**.**

Investment asset established

25xx. (1) The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests of investment interest owners:

1. The right to impose, invoice, collect, receive and recover amounts in respect of the clean energy adjustment from specified consumers, including the right to determine the clean energy adjustment in accordance with this Act.

2. The right to receive, collect and recover amounts in respect of the clean energy adjustment that are imposed, invoiced and recoverable under this Act, including any amounts in respect of the clean energy adjustment that are held by electricity vendors or other prescribed parties.

3. All rights and entitlements under such accounts as may be prescribed by regulation and all amounts on deposit in such accounts.

4. The right to enforce the duties and obligations under this Act of each electricity vendor to impose, attribute, charge and invoice for amounts in respect of the clean energy adjustment.

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5. The right to enforce the duties and obligations under this Act of each electricity vendor to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by an electricity vendor to recover payment of amounts in respect of the clean energy adjustment.

6. All rights of any kind related to any of the other property rights or interests that comprise the investment interest.

7. All revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 6, regardless of whether it is invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

Not affected by failure to impose etc. clean energy adjustment

(1.1) An investment interest is not affected by any failure to impose, attribute, invoice, accrue or collect amounts in respect of the clean energy adjustment.

No set off, etc.

(2) The investment asset shall not be set off,

(a) by a consumer, an electricity vendor, an agent of the investment interest owner or an owner of distribution system assets in the Province;

(b) in connection with any default of a person mentioned in clause (a); or

(c) by any affiliate or successor of a person mentioned in clause (a).

Exercise of rights

(3) The rights of the investment asset owner to collect and enforce its rights and interests in, to and in respect of the investment asset against a specified consumer shall be exercised in accordance with Part III of this Act.

Collective action required

(4) If the investment interest owner owns a right or interest in the investment asset that comprises less than the entire property right and interest constituted by the investment asset, the right or interest shall only be enforced by the investment interest owner collectively and in coordination with all other investment interest owners, and any agreement among that collective in furtherance of the collective action shall be valid and binding on the investment interest owner as a collective in accordance with its terms.

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Transfer of investment interest

26xx. An investment interest owner may transfer all or a portion of its rights and interests in an investment interest to any other investment interest owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan.

Validity of transfer

27xx. (1) A transfer of an investment interest under this Act is a valid and enforceable sale and absolute transfer of the investment interest and confers upon the investment asset owner a valid property right and interest in, to and under the applicable investment interest in accordance with the terms of the transfer.

Same

(2) Without limiting subsection (1), a transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of an investment interest owner's right, title and interest in, to and under an investment interest, and not merely as a security interest, and upon such absolute transfer the transferor shall retain no right, title or interest in the investment interest, subject to the transfer, including all rights to the investment interest arising after the transfer.

Deemed perfection, etc.

(3) At the time a transfer of an investment interest is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer, assignment, etc.

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the investment interest owner shall have priority over any liens in favour of such other persons.

Investment interest owner may grant security interest

28xx. (1) An investment interest owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under the investment interest to or in favour of any person to secure a funding obligation.

Validity

(2) A security interest granted under this Act shall be valid and enforceable in accordance with its terms.

Perfection and priority of security interests

(3) All provisions of the *Personal Property Security Act* shall apply to the investment asset and each investment interest on the basis that it is intangible personal property,

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except as otherwise provided for in this section, and any granting of a security interest by the investment interest owner to secure a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by filing a financing statement under that Act on that basis.

Proceeds

(4) All proceeds of an investment interest that are subject to the security interest and that are received by the applicable investment interest owner shall immediately be subject to the security interest and shall be perfected without any physical delivery of the proceeds, registration of any financing statement or any further act.

Perfection

(5) The security interest shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may subsequently attach to the property rights and interests in the investment interest subject to the security interest, subject to the written consent of the person to whom the security interest has been granted.

Same

(6) The person to whom the security interest has been granted shall have a perfected security interest in revenues or other proceeds that are deposited in any ccount of any electricity vendor, an agent of an electricity vendor or other person who may have commingled such revenues or other proceeds with other funds.

Notice required

(7) The secured party shall be entitled to exercise the rights of an investment interest owner only after the secured party has given notice of the enforcement of its security interest to the IESO.

Definition

(8) For the purposes of this section, a security interest is perfected when it is perfected as described in the *Personal Property Security Act*.

PART VI
MISCELLANEOUS

Appointment of agent, invoicing or collection

29xx. If a prescribed circumstance applies, the Lieutenant Governor in Council may by regulation appoint a person to carry out some or all of the obligations of an electricity vendor under this Act in the place of an electricity vendor with respect to invoicing or collection.

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Not Crown agent

30xx. For greater certainty, no agent appointed under this Act is an agent of the Crown for any purpose, despite the *Crown Agency Act*.

Sequestration

31xx. (1) A court in the Province may, upon application by an investment interest owner or a secured party, order the sequestration and payment of amounts in respect of the clean energy adjustment, collections and remittances, as applicable, for the benefit of the investment interest owner or secured party by any person or entity authorized to collect amounts in respect of the clean energy adjustment, including defaults on any required remittance of amounts in respect of the clean energy adjustment, collections or remittances.

Same

(2) An order under subsection (1) does not limit any other remedies available to the applicant.

Choice of law

32xx. The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the regulatory asset, the investment asset, the clean energy adjustment or the undertaking of the Crown under section x shall be the laws of the Province.

Conflict

33xx. The provisions of this Act and the regulations apply despite any provision of any other Act regarding the attachment, assignment or perfection, or the effect of perfection or priority of any transfer or security interest.

No further approvals, etc.

34xx. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required to be taken under the Financing Plan or in relation to the determination of the fair allocation amount.

Immunity

35xx. (1) No action or other proceeding for damages shall be instituted against any employee of the Province, IESO, OPG or OEB for any act done in good faith in the execution or intended execution of any duty or authority under this Act or for any alleged neglect or default in the execution in good faith of any duty or authority under this Act.

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Same

(2) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

References in marketing materials and offering documents

36xx. No person shall include, in marketing materials or offering documents relating to the financing of funding obligations, references to any rights, obligations, guarantees or undertakings arising under section 5xx unless the prescribed requirements, if any, are satisfied.

Non-application, Financial Administration Act, s. 28[5]

37xx. Section 28 of the *Financial Administration Act* does not apply with respect to any transaction or agreement or undertaking required, permitted, contemplated or authorized, directly or indirectly, under this Act.

Regulations

38xx. The Lieutenant Governor in Council may make regulations in respect of the following matters:

1. [6]Governing anything that is required or permitted to be prescribed or that is required or permitted to be done by, or in accordance with, the regulations or as authorized, specified or provided in the regulations.

2. Defining, for the purposes of a regulation, words and expressions used in this Act that are not defined in the Act.

x. Prescribing types of payment obligations that constitute funding obligations;

x. governing the calculation [true-up amount] and how the amount is to be applied to the clean energy adjustment;

x. governing the inclusion of information under this Act on invoices, which may include requiring notice to be provided by electricity vendors to specified persons regarding the adjustments;

x. governing the inclusion of information about the clean energy adjustment and any other matters provided for under this Act on invoices issued to specified consumers, including the form that the information must take and the form of

[5] FLS - see s. 51 of the Electricity Act, 1998

[6] FLS - see s. 78 (1) of the Climate Change Mitigation and Low-carbon Economy Act, 2016 - paras. 1 and 2.

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the invoices and any notice to be provided to the specified consumer under this Act[7];

x. prescribing the time within which any action required by this Act may be required to be done;

x. Providing for such other matters as the Lieutenant Governor in Council considers advisable to carry out the purpose of this Act.

PART VII[8]
AMENDMENTS TO OTHER ACTS

ELECTRICITY ACT, 1998

200x. (1) Subsection 6 (1) of the *Electricity Act, 1998* is amended by adding the following clauses:

(q.0.1) to exercise the powers and rights and to perform the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and to engage in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including,

(i) entering into agreements or arrangements with any person for the purposes of the *Ontario Fair Hydro Plan Act, 2017*;

(ii) engaging in activities related to making payments to and receiving payments as contemplated under the *Ontario Fair Hydro Plan Act, 2017* and to engage in related settlement activities;

(iii) engaging in activities related to the creation, transfer and administration of the regulatory asset created under the *Ontario Fair Hydro Plan Act, 2017*, which activities may include,

(iv) incurring liabilities in relation to the regulatory asset

(v) transferring the regulatory asset for consideration;

(vi) acting as a recovery agent under the *Ontario Fair Hydro Plan Act, 2017*;

[7] FLS - see *OEBA s.79.17 and 88(1)(z.11) and (z.12)*
[8] FLS: These amendments are drawn from previous drafting contained in gov2016.146.e05 (which was drafted as amendments to the EA, 1998).

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200.1xx (1) Subsection 25.33 (1) of the Act is amended by striking out "and" at the end of clause (a) and by adding the following clauses:

(c) amounts paid to or received from a [prescribed] financial services entity or [a financing entity prescribed under] the *Ontario Fair Hydro Plan Act, 2017* and any related amounts; and

(d) amounts collected from consumers who are [specified consumers within the meaning of] the *Ontario Fair Hydro Plan Act, 2017* in respect of the clean energy adjustment and any related amounts.

(1.1) Subsection 25.33 (2) of the Act is amended by striking out "and" at the end of clause (a) and by adding the following clauses:

(c) amounts paid to or received from a [prescribed] financial services entity or [a financing entity prescribed under] the *Ontario Fair Hydro Plan Act, 2017* and any related amounts; and

(d) amounts collected from consumers who are [specified consumers within the meaning of] the *Ontario Fair Hydro Plan Act, 2017* in respect of the clean energy adjustment and any related amounts.

(2) Subsection 25.33 (3) of the Act is amended by adding the following paragraph:

4. A consumer who is,

   i. a [specified consumer within the meaning of] the *Ontario Fair Hydro Plan Act, 2017*, or

   ii. prescribed by the regulations [made under the *Ontario Energy Board Act, 1998]*.

(3) Clause 25.33 (4) (b) of the Act is amended by adding "or as may be required under a regulation made under the *Ontario Fair Hydro Plan Act, 2017* or the *Ontario Energy Board Act, 1998*" at the end.

(4) Subsection 25.33 (5) of the Act is amended by adding "or under the *Ontario Fair Hydro Plan Act, 2017*" at the end

201x. Section 53.1 of the Act is amended by adding the following subsections:

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Same, *Ontario Fair Hydro Plan Act, 2017*

53.1 (1.1) In addition to the objects mentioned in subsection (1), the objects of Ontario Power Generation Inc. include exercising the powers and rights and performing the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and engaging in activities to facilitate the implementation of that Act, including entering into contracts and undertakings on behalf of financing entities, subject to the right to be paid by the financing entities for those services.

Subsidiaries, etc.

(1.2) Ontario Power Generation Inc. may create or invest in one or more subsidiaries, trusts, partnerships or special purpose entities in order to more efficiently conduct its activities or achieve its objects.

Deemed assets, entity

(1.3) Despite any other provision of this Act, the *Business Corporations Act* or any other Act,

(a) the assets and liabilities of a special purpose financing entity shall not form part of the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries; and

(b) the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries shall not form part of the assets and liabilities of a financing entity.

Definition, financing entity

(1.4) For the purposes of this section, "financing entity" has the same meaning as in the *Fair Hydro Plan Act, 2017*.

AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

204x. Subsection 1 (1) of the *Ontario Energy Board Act, 1998* is amended by adding the following paragraph:

6. To facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*.

205x. Subsection 70 (2.1) of the Act is amended by adding the following paragraph:

4. The licensee is required to comply with the *Ontario Fair Hydro Plan Act, 2017*.

206x. Section 78.1 of the Act is amended by adding the following subsection:

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Same, limitation re Ontario Power Generation Inc.

(3) The determination of a payment to Ontario Power Generation Inc. under this section shall not include any consideration of amounts related to activities of Ontario Power Generation Inc. carried out in relation to the *Ontario Fair Hydro Plan Act, 2017*.

Same

(3.1) The amounts referred to in subsection (3) include, without limitation, the following:

1. Amounts related to the appointment of Ontario Power Generation Inc. as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

2. Amounts related to the charging of fees for performing duties as the Financial Services Manager.

3. Amounts related to exercising the powers and performing the duties of the Financial Services Manager.

4. Amounts related to the consolidation of the assets and liabilities for accounting purposes of any special purpose financing entities established under and for the purposes of that Act.

Short Title - this proposal for legislation would, if approved by the Legislature, have a short title to be determined by Government.

Timing – this proposal for legislation would, if approved by the Legislature, come into force on a date to be established by Government.

Confidential Draft

FW_ OPA Regulatory Assets and Liabilities.rtf

From: Petsche, Nadine (TBS) []
To: LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]
CC: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
Subject: FW: OPA Regulatory Assets and Liabilities
Date: Friday, July 21, 2017 09:40:49

Found this email, but I seem to recall something more detailed…I'll send it along if I find it. n

From: Terry Gabriele [mailto:Terry.Gabriele@powerauthority.on.ca]
Sent: January-18-11 1:11 PM
To: Petsche, Nadine (FIN)
Cc: Travers, Kevin M
Subject: OPA Regulatory Assets and Liabilities

Nadine,

I had a discussion today with Kevin Travers (KPMG Partner on the OPA account) and the topic of the OPA's regulatory assets and liabilities came up. In general the discussion was around whether or not the OPA position that the regulatory assets and liabilities are acceptably defined as financial assets and liabilities under the new PSAB standards. Kevin expressed KPMG's position that there is reasonable justification for our position. Should you wish to understand KPMG's position further, Kevin is willing to discuss this with you and can be reached at 416 228 7004.

Terry Gabriele

Director, Finance

Ontario Power Authority

416 969 6006

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FW_ OPA Regulatory Assets and Liabilities.rtf

From: Petsche, Nadine (TBS) []
To: LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]
CC: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
Subject: FW: OPA Regulatory Assets and Liabilities
Date: Friday, July 21, 2017 09:40:49

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FW_ Please advise (rev).rtf

From: Petsche, Nadine (TBS) []
To: LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]
Subject: FW: Please advise (rev)
Date: Wednesday, July 19, 2017 14:11:23

This message has been archived. View the original item
https://ctsbigdcapmvs11.cihs.ad.gov.on.ca/EnterpriseVault/ViewMessage.asp?VaultId=197AAA1BE57CB8849926FB522A5AEBA421110000ctsbigdcapmvs01&SavesetId=201708223373301~201707191811000000~Z~209B80F8B44BAD37FD472BFEFE8C08A1
View the original item

Hi Lee Anne.

Please note below. N

From: Kevin Reid [mailto:kevin.reid@ieso.ca]
Sent: July 19, 2017 1:46 PM
To: Petsche, Nadine (TBS)
Subject: RE: Please advise

Hi Nadine,

FW_ Please advise (rev).rtf

From: Petsche, Nadine (TBS) []
To: LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]
Subject: FW: Please advise (rev)
Date: Wednesday, July 19, 2017 14:11:23

Hi Lee Anne.

Please note below. N

From: Kevin Reid [mailto:kevin.reid@ieso.ca]
Sent: July 19, 2017 1:46 PM
To: Petsche, Nadine (TBS)
Subject: RE: Please advise

Hi Nadine,

Glad we could be of help. 1 addition to the reference below I was just informed of … in reference to the Ontario Energy Board Act, it should include the year of inception (1998). It should read:

"… Ontario Energy Board Act, 1998 … "

Thanks,

Kevin

From: Kevin Reid
Sent: July 19, 2017 11:20 AM
To: 'Nadine.Petsche@ontario.ca'
Cc: Susan Nicholson; Kim Marshall; Natalie Schaus
Subject: FW: Please advise

Hi Nadine,

Hope this helps:

The Smart Metering Entity charge is recovered over the period from May 1, 2013 to October 31, 2018 in accordance with S78 (2.1) & (3.0.1) of the *Ontario Energy Board Act* and the March 28, 2013 Decision and Order of the Board.

Details are below.

Thanks,

Kevin

Kevin Reid, CPA, CMA | Manager, Financial and Resource Planning & Analysis | Corporate Services

Independent Electricity System Operator (IESO) | T: 416.969.6274

120 Adelaide Street West, Suite 1600, Toronto, ON, M5H 1T1

Email: kevin.reid@ieso.ca | Web: www.ieso.ca

IESO on Twitter: IESO Tweets | IESO on Facebook: The Electricity Outlet

Conservation: www.saveONenergy.ca| Twitter: saveONenergyOnt | LinkedIn: saveONenergy

From: Adrian Pye
Sent: July 19, 2017 11:15 AM
To: Kevin Reid
Subject: RE: Please advise

The Smart Metering Entity charge is recovered over the period from May 1, 2013 to October 31, 2018 in accordance with S78 (2.1) & (3.0.1) of the *Ontario Energy Board Act* and the March 28, 2013 Decision and Order of the Board XX[LAP1] .

OEB Act, S78

Rates

(3.0.1) The Board may make orders approving or fixing just and reasonable rates for the Smart Metering Entity in order for it to meet its obligations under this Act or under Part IV.2 of the *Electricity Act, 1998*. 2006, c. 3, Sched. C, s. 5 (1).

The March 28 Decision is available at (http://www.rds.ontarioenergyboard.ca/webdrawer/webdrawer.dll/webdrawer/rec/388528/view/dec_order_IESO%20SME_20130328.PDF) and it

States:

Effective May 1, 2013, the Smart Metering Entity charge to be levied and

collected by the Smart Metering Entity from all Distributors identified in the

Board's annual *Yearbook of Electricity Distributors* shall be $0.788 per month for

each Residential and General Service <50kW customers for each distributor.

The Smart Metering Entity charge shall be in effect from May 1, 2013 to October

31, 2018. The number of Residential and General Service <50kW customers to

which the Smart Metering Entity charge will be applied to shall be in accordance with the methodology set forth in the Settlement Agreement Attached as Appendix A.

From: Kevin Reid
Sent: July 19, 2017 11:01 AM
To: Kevin Reid
Subject: FW: Please advise

EB-2012-0100 / EB-2012-0211

From: Susan Nicholson
Sent: July 17, 2017 1:43 PM
To: Kevin Reid
Cc: Kim Marshall; Natalie Schaus
Subject: Fwd: Please advise

Sent from my iPhone

Begin forwarded message:

> **From:** "Petsche, Nadine (TBS)" <Nadine.Petsche@ontario.ca>
> **Date:** July 17, 2017 at 1:37:08 PM EDT
> **To:** Susan Nicholson <susan.nicholson@ieso.ca>
> **Subject: Please advise**
>
> Hi Susan.

Hoping you can help fill in the blank below. Thanks. N

The Smart Metering Entity charge is recovered over the period from May 1, 2013 to October 31, 2018 in accordance with XX[LAP2] .

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To add statute reference.

To add statute reference.

FW_ Please advise.rtf

From: Petsche, Nadine (TBS) []
To: LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]
Subject: FW: Please advise
Date: Wednesday, July 19, 2017 12:19:30

Hi Lee Anne.

Please see additional details provided below from the IESO regarding the extract from the accounting paper re: smart metering costs.

Regards,

Nadine

From: Kevin Reid [mailto:kevin.reid@ieso.ca]
Sent: July 19, 2017 11:20 AM
To: Petsche, Nadine (TBS)
Cc: Susan Nicholson; Kim Marshall; Natalie Schaus
Subject: FW: Please advise

Hi Nadine,

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Details are below.

Thanks,

Kevin

Kevin Reid, CPA, CMA | Manager, Financial and Resource Planning & Analysis | Corporate Services

Independent Electricity System Operator (IESO) | T: 416.969.6274

120 Adelaide Street West, Suite 1600, Toronto, ON, M5H 1T1

Email: kevin.reid@ieso.ca | Web: www.ieso.ca

IESO on Twitter: IESO Tweets | IESO on Facebook: The Electricity Outlet

Conservation: www.saveONenergy.ca| Twitter: saveONenergyOnt | LinkedIn: saveONenergy

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OEB Act, S78

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The March 28 Decision is available at (http://www.rds.ontarioenergyboard.ca/webdrawer/webdrawer.dll/webdrawer/rec/388528/view/dec_order_IESO%20SME_20130328.PDF) and it

States:

Effective May 1, 2013, the Smart Metering Entity charge to be levied and collected by the Smart Metering Entity from all Distributors identified in the Board's annual *Yearbook of Electricity Distributors* shall be $0.788 per month for each Residential and General Service <50kW customers for each distributor. The Smart Metering Entity charge shall be in effect from May 1, 2013 to October 31, 2018. The number of Residential and General Service <50kW customers to which the Smart Metering Entity charge will be applied to shall be in accordance with the methodology set forth in the Settlement Agreement Attached as Appendix A.

From: Kevin Reid
Sent: July 19, 2017 11:01 AM
To: Kevin Reid
Subject: FW: Please advise

EB-2012-0100 / EB-2012-0211

From: Susan Nicholson
Sent: July 17, 2017 1:43 PM
To: Kevin Reid
Cc: Kim Marshall; Natalie Schaus
Subject: Fwd: Please advise

Sent from my iPhone

Begin forwarded message:

> **From:** "Petsche, Nadine (TBS)" <Nadine.Petsche@ontario.ca>
> **Date:** July 17, 2017 at 1:37:08 PM EDT
> **To:** Susan Nicholson <susan.nicholson@ieso.ca>
> **Subject: Please advise**
>
> Hi Susan.
>
> Hoping you can help fill in the blank below. Thanks. N
>
> The Smart Metering Entity charge is recovered over the period from May 1, 2013 to October 31, 2018 in accordance with XX[LAP2] .

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

To add statute reference.

To add statute reference.

FW_ Provincial Protection Agreement - Dealer Comments.rtf

From: Donaldson, Mark (TBS) []
To: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
CC: Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]
Subject: FW: Provincial Protection Agreement - Dealer Comments
Date: Friday, September 15, 2017 13:31:23
Attachment 1: image002.gif
Attachment 2: image003.gif

From: Milligan, Peter [mailto:PMilligan@osler.com]
Sent: September 15, 2017 12:11 PM
To: Ramchandani, Rima; Whitfield, Tobias P. (MOF); Hill, Krista; 'STEPHEN.ASHBOURNE@blakes.com'; 'LEE John -TREASURY'; Feldman, Michael; RYFA Ken -TREASURY
Cc: He, Gavin (OFA); Hosick, Sarah (TBS); Cengarle, John (MOF); Kim, John (OFA); Strathy, Anna (OFA); Hanslep, Malle (MOF); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Manning, Mike (OFA); Mayman, Gadi (OFA); Donaldson, Mark (TBS); Katona, Keley (MOF); McKinlay, Tom (MAG); Thouin, Alena (ENERGY); Sebastiano, Rocco; Fullerton, Rick; Smith, Elliot; Mansoori, Nina; Emes, Aaron
Subject: Provincial Protection Agreement - Dealer Comments

All,

We (Osler and the dealers) have discussed the several drafts of the Provincial Protections and Assurances Term Sheet that were circulated yesterday. Below are the issues the dealers would like to discuss. We understand that a meeting is being arranged for Monday.

1. In several places, the term sheet provides that decisions will be made by the Ministers or by the Ministers and the Financing Entity/Manager. There is no reference to the Indenture Trustee/dealers. For example, the third sentence of the document provides that the agreement will include "*such terms and conditions as the Minister of Energy and the Minister of Finance determine to be appropriate.*" Either all anticipated parties to the definitive agreement should have the benefit of statements of this nature or they should not be included.

2. The clause headed Specified Claims refers to “payment obligations” that are secured. Is there an intention to exclude any Obligations Secured (to use the Trust Indenture term)?

3. There was a request to expand the scope of the regulations covered to include “connected” regulations; the intention being to include the regulations relating to the recovery of interest during the moratorium period through the Global Adjustment. The Province did not make the requested change. Will these GA regulations be covered? They need to be.

4. While we understand the IESO LC for defaulted LDCs and the step-up pricing for warehouse take-out risk are not specifically the subject of this agreement, they are substitutes for provincial protections that were originally requested. We need to have confirmation that these issues have been resolved.

5. The requirement that the change of law have a “material” adverse effect is not acceptable.

6. We do not want the phrase “in a final and non-appealable judgement” being included in the *ultra vires* provision. Investors will be looking for timely payment.

7. We need it to be clear that the exclusion for “economic loss or loss of profits” does not cover the obvious economic loss/loss of profits that occurs when debt is not paid. The exclusion of consequential, special or punitive damages should be sufficient.

8. We need to understand exactly what is contemplated by an obligation to pay under the heading “Obligation to Pay Specified Claims” versus the option to assume under the heading of “Optional Assumption”. We do not see a distinction. We also note that in the subrogation section there is a reference to the Obligor as guarantor. Our view is that if a Protection Event occurs, the Province assumes all the obligations and is subrogated to all of the rights of the specified creditors against the Financing Entity and in respect of the clean energy adjustment. The Province can then retain as little or as much of the existing structure as it sees fit.

9. A proposal was made to address the issues arising from a post-default acceleration of the funding obligations by giving the province an option to assume the funding obligations to avoid acceleration. If that option is to be pursued, it would need to be in this term sheet. If it is not the solution, what is the solution?

10. We understand that the obligor approval mechanic has been deferred. Investors will need a provision that contemplates either (a) before each funding obligation is incurred, explicit confirmation by the Province that the provincial protection will apply to the protection, or (b) a process for non-specific approvals that the Financing Entity and the Province agree to implement that includes a provision to the effect that if a funding obligation is issued, the provincial protection is applicable. Put another way, the investors will have no obligation to insure that the province and the Financing Entity/Manager followed their agreed process for approvals.

We look forward to discussing.

Peter

Peter Milligan

416.862.6634

DIRECT

416.862.6666

FACSIMILE

pmilligan@osler.com

Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place

Toronto, Ontario, Canada M5X 1B8

http://www.osler.com/

****

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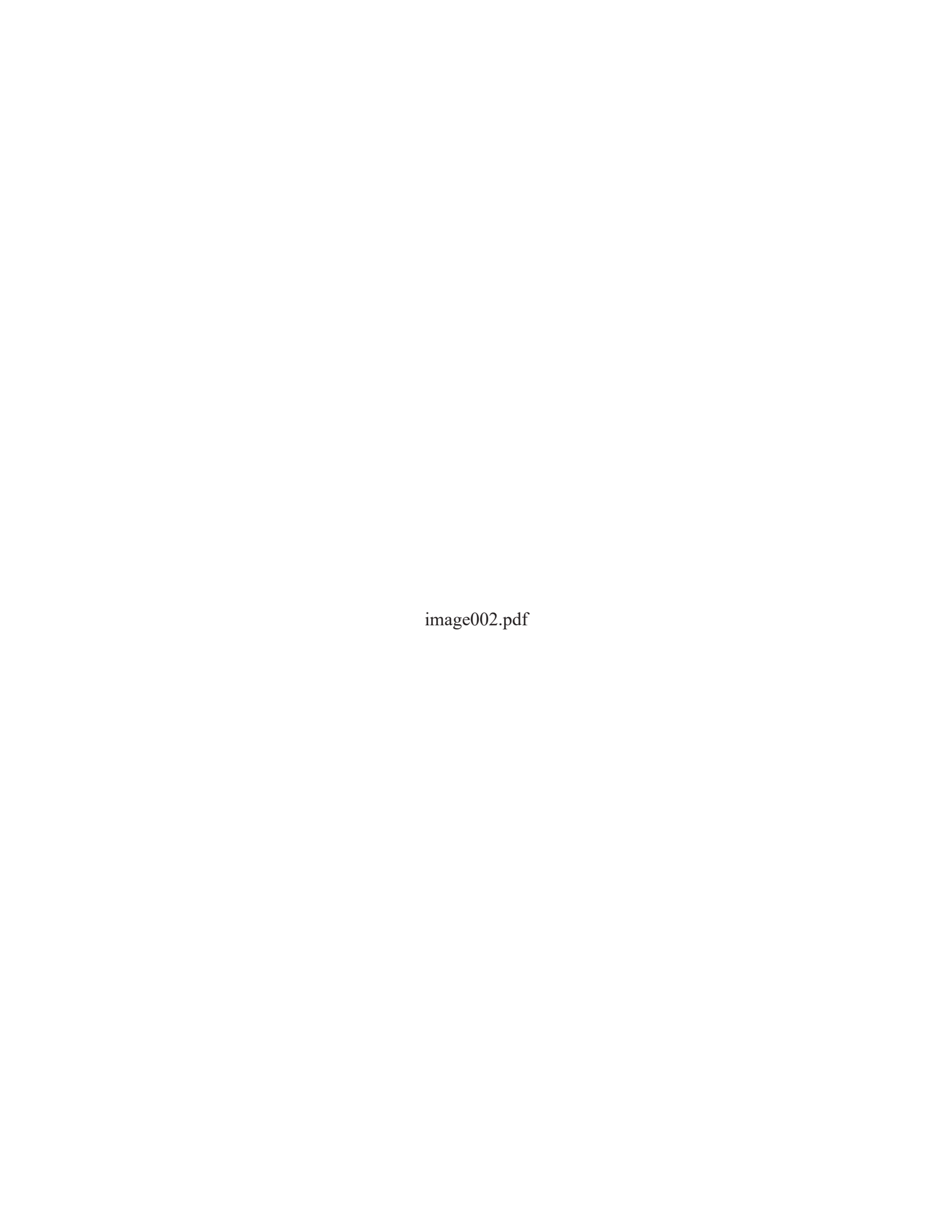
image002.pdf

OSLER

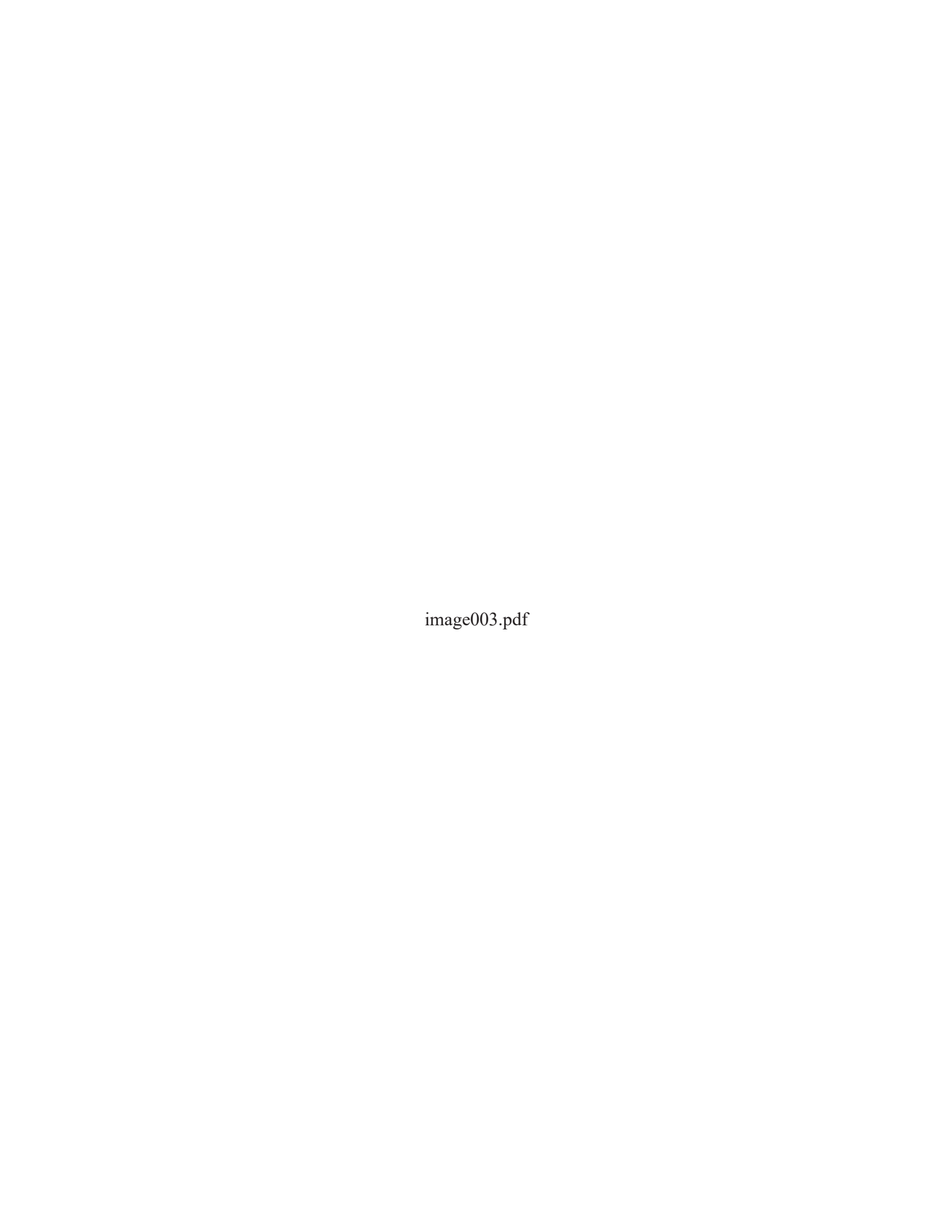
image003.pdf

osler.com

FW_ Provincial Protection Agreement.rtf

From: Donaldson, Mark (TBS) []
To: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
Subject: FW: Provincial Protection Agreement
Date: Monday, September 18, 2017 17:25:01
Attachment 1: @

This message has been archived. View the original item
https://ctsbigdcapmvs05.cihs.ad.gov.on.ca/EnterpriseVault/ViewMessage.asp?VaultId=184971630C5FAB646A01170AFB6CF78EC1110000ctsbigdcapmvs01&SavesetId=201710188366669~201709182125030000~Z~F0366D42F1E6950A5997F57BF6BAC681View the original item

This would be the most recent one.

From: Whitfield, Tobias P. (MOF)
Sent: September 14, 2017 5:00 PM
To: Hill, Krista (khill@torys.com); 'STEPHEN.ASHBOURNE@blakes.com'; 'LEE John -TREASURY'
Attachments:
Term Sheet - Provincial Support Agreement - Sept 14.DOCX (30 KB)
https://ctsbigdcapmvs05.cihs.ad.gov.on.ca/EnterpriseVault/ViewMessage.asp?VaultId=184971630C5FAB646A01170AFB6CF78EC1110000ctsbigdcapmvs01&SavesetId=201710188366669~201709182125030000~Z~F0366D42F1E6950A5997F57BF6BAC681&AttachmentId=1Term Sheet - Provincial Support Agreement - Sept 14.DOCX

FW_ UPDATED - Fair Hydro -- Change of Law Agreements (Rating Agency Comments).rtf

From: Hanslep, Malle (MOF) []
To: Mayman, Gadi (OFA) [Gadi.Mayman@ofina.on.ca]; Manning, Mike (OFA) [Mike.Manning@ofina.on.ca]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Kwan, Ronald (OFA) [Ronald.Kwan@ofina.on.ca]; Strathy, Anna (OFA) [Anna.Strathy@ofina.on.ca]; Cayley, Daniel (ENERGY) [Daniel.Cayley@ontario.ca]; Donaldson, Mark (TBS) [Mark.Donaldson@ontario.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Donaldson, Mark (TBS) [Mark.Donaldson@ontario.ca]
CC: Whitfield, Tobias P. (MOF) [Tobias.Whitfield@ontario.ca]
Subject: FW: UPDATED - Fair Hydro -- Change of Law Agreements (Rating Agency Comments)
Date: Friday, December 01, 2017 14:11:12
Attachment 1: DBRS Comments (Change of Law Protection Agreement).DOCX

Please see attached email from Torys setting out proposed responses to the DBRS comments for review.

From: Ramchandani, Rima [mailto:rramchandani@torys.com]
Sent: December 1, 2017 1:00 PM
To: Hanslep, Malle (MOF)
Cc: Mansoori, Nina; Whitfield, Tobias P. (MOF); ASHBOURNE, STEPHEN; JON.VINER@blakes.com; JA.PRESTAGE@blakes.com; Milligan, Peter; Sebastiano, Rocco; Fullerton, Rick; Feldman, Michael; Saulnier, Brett; Thouin, Alena (ENERGY); McKinlay, Tom (MAG); LEE John -TREASURY; WONG Leslie -LAWDIV
Subject: RE: UPDATED - Fair Hydro -- Change of Law Agreements (Rating Agency Comments)

All, attached are draft responses to the DBRS questions on the Change of Law Protection Agreement prepared by Torys. The attached is being circulated to all parties for review concurrently. We prepared the attached responses based on the most recent drafts of the agreements circulated by Torys (as a reminder, Nina circulated revised drafts last Friday (Nov 24) and I sent around a few minor updates on Wednesday of this week).

In order to ensure we are continuing to advance the rating agency process at an appropriate pace to meet our end of year financing deadline, OPG would like to respond these questions **by no later than Monday**. As such, we would appreciate if Osler and Blakes/the Province could let us know as soon as possible (and by Monday) if they are comfortable with the attached responses or if they have any comments. I would note that a few of the draft responses depend on whether or not the Province has accepted the language as proposed by Torys/Osler in the most recent drafts circulated.

In addition, we would appreciate if the Province could advise when we should expect to

see revised drafts of the Change of Law agreements – I understand that John Lee has discussed with the business folks and relayed that the documents will need to be circulated today in order to meet our deadlines.

Thanks,

Rima

Rima Ramchandani

P. 416.865.7666 | F. 416.865.7380 | 1.800.505.8679

From: Ramchandani, Rima
Sent: November-29-17 8:29 PM
To: Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>
Cc: Mansoori, Nina <nmansoori@torys.com>; Whitfield, Tobias P. (MOF) <Tobias.Whitfield@ontario.ca>; ASHBOURNE, STEPHEN <STEPHEN.ASHBOURNE@blakes.com>; JON.VINER@blakes.com; JA.PRESTAGE@blakes.com; Milligan, Peter <PMilligan@osler.com>; Sebastiano, Rocco <RSebastiano@osler.com>; Fullerton, Rick <RFullerton@osler.com>; Feldman, Michael <mfeldman@torys.com>; Saulnier, Brett <bsaulnier@torys.com>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; McKinlay, Tom (MAG) <Tom.McKinlay@ontario.ca>; LEE John -TREASURY <john.s.lee@opg.com>; WONG Leslie -LAWDIV <leslie.wong@opg.com>; Ramchandani, Rima <rramchandani@torys.com>
Subject: RE: UPDATED - Fair Hydro -- Change of Law Agreements (Rating Agency Comments)

Malle, Steve and Osler Team, attached are rating agency comments on the change of law protection agreement just received from DBRS. We are reviewing these concurrently but are circulating to all parties now in the interests of time (you will see that many of the comments are simply to provide notices to the rating agencies of certain events and there are also some questions about the subrogation mechanics that Blakes/Osler/Torys will need to consider).

Malle and Steve, I expect you previously received the comments communicated to the

dealers from Moodys – for ease of reference, I am attaching those comments to this email as well.

Rima

P. 416.865.7666

From: Ramchandani, Rima
Sent: November-29-17 12:12 PM
To: Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>
Cc: Mansoori, Nina <nmansoori@torys.com>; Whitfield, Tobias P. (MOF) <Tobias.Whitfield@ontario.ca>; ASHBOURNE, STEPHEN <STEPHEN.ASHBOURNE@blakes.com>; JON.VINER@blakes.com; JA.PRESTAGE@blakes.com; Milligan, Peter <PMilligan@osler.com>; Sebastiano, Rocco <RSebastiano@osler.com>; Fullerton, Rick <RFullerton@osler.com>; Feldman, Michael <mfeldman@torys.com>; Saulnier, Brett <bsaulnier@torys.com>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; McKinlay, Tom (MAG) <Tom.McKinlay@ontario.ca>; LEE John -TREASURY <john.s.lee@opg.com>; WONG Leslie -LAWDIV <leslie.wong@opg.com>
Subject: RE: UPDATED - Fair Hydro -- Change of Law Agreements

Malle and Steve, we received a few minor comments from the indenture trustee on the Protection Agreement which are reflected in the attached blackline. We also updated the attached change of law agreements to reflect the following:

n Provide the correct cross-reference in the definition of “executive officers”.

n Update the list of Initial Reference Documentation in Schedule A to the Process Agreement to remove the references to the term debt supplements, Master ISDA and OM (since the term deal is no longer closing this year, we are anticipating that those documents may not be finalized prior to execution of the change of law documents).

n A minor change to Section 3.01(e) of the Process Certificate provisions – as we were drafting the form of this certificate for OPG, we realized that the clause didn’t work as drafted because it required OPG to make a forward-looking certification tied to a rolling Protection Agreement Maximum. Whenever certified primary obligations are incurred, OPG will certify that the principal payable under those certified primary obligations (together with all other principal repayments in respect of Approved Obligations as of

that date) do not exceed the Protection Agreement Maximum at the time of incurrence.

Blacklines are to the versions Nina circulated on Friday. Happy to discuss if you have any questions.

Thanks,

Rima

Rima Ramchandani

P. 416.865.7666

From: Ramchandani, Rima
Sent: November-27-17 2:28 PM
To: Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>
Cc: Mansoori, Nina <nmansoori@torys.com>; Whitfield, Tobias P. (MOF) <Tobias.Whitfield@ontario.ca>; ASHBOURNE, STEPHEN <STEPHEN.ASHBOURNE@blakes.com>; JON.VINER@blakes.com; JA.PRESTAGE@blakes.com; Milligan, Peter <PMilligan@osler.com>; Sebastiano, Rocco <RSebastiano@osler.com>; Fullerton, Rick <RFullerton@osler.com>; Feldman, Michael <mfeldman@torys.com>; Saulnier, Brett <bsaulnier@torys.com>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; McKinlay, Tom (MAG) <Tom.McKinlay@ontario.ca>; LEE John -TREASURY <john.s.lee@opg.com>; WONG Leslie -LAWDIV <leslie.wong@opg.com>
Subject: Re: UPDATED - Fair Hydro -- Change of Law Agreements

Hi Malle, I appreciate there may have been more blacklining than you expected, but we didn't view the changes as deviating from our business discussion last week. From our perspective, the changes were mainly clean up in nature and we tried to include explanatory footnotes to the revisions so you understood our rationale for the changes. The only point we think we need to discuss is how the assumption is intended to work given that we understand the Province is no longer requiring a right to exchange the Fair Hydro bonds with Provincial bonds — this wasn't a point we discussed in any detail in our meeting so I think we we need to just talk through how we think this would work and then address in the docs as appropriate.

We are on standby and will make ourselves available to discuss at your convenience.

Thanks,

Rima

Sent from my iPhone

On Nov 27, 2017, at 1:55 PM, Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca> wrote:

> Hi Rima,
>
> Unfortunately we can't set a time yet as the review is taking longer and more client consultation will be required because there were so many revisions made that were outside the discussion of business points on Tuesday.
>
> Malle
>
> -----Original Message-----
> From: Ramchandani, Rima [mailto:rramchandani@torys.com]
> Sent: November 27, 2017 1:49 PM
> To: Hanslep, Malle (MOF); Mansoori, Nina; Whitfield, Tobias P. (MOF); 'ASHBOURNE, STEPHEN'; 'JON.VINER@blakes.com'; 'JA.PRESTAGE@blakes.com'; 'Milligan, Peter'; 'Sebastiano, Rocco'; 'Fullerton, Rick'
> Cc: Feldman, Michael; Saulnier, Brett; Thouin, Alena (ENERGY); McKinlay, Tom (MAG); LEE John -TREASURY; 'WONG Leslie -LAWDIV'
> Subject: RE: UPDATED - Fair Hydro -- Change of Law Agreements
>
> Hi Malle, just checking in to see if you think we will need to block off some time to discuss the change of law agreements tomorrow or whether you think we will be able to settle the drafts without a call? -- Rima
>
> Rima Ramchandani
>
> P. 416.865.7666 | F. 416.865.7380 | 1.800.505.8679

Torys LLP
79 Wellington St. W., 30th Floor, Box 270, TD South Tower Toronto, Ontario M5K 1N2 Canada | www.torys.com

-----Original Message-----
From: Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
Sent: November-24-17 4:33 PM
To: Mansoori, Nina <nmansoori@torys.com>; Whitfield, Tobias P. (MOF) <Tobias.Whitfield@ontario.ca>; 'ASHBOURNE, STEPHEN' <STEPHEN.ASHBOURNE@blakes.com>; 'JON.VINER@blakes.com' <JON.VINER@blakes.com>; 'JA.PRESTAGE@blakes.com' <JA.PRESTAGE@blakes.com>; 'Milligan, Peter' <PMilligan@osler.com>; 'Sebastiano, Rocco' <RSebastiano@osler.com>; 'Fullerton, Rick' <RFullerton@osler.com>
Cc: Ramchandani, Rima <rramchandani@torys.com>; Feldman, Michael <mfeldman@torys.com>; Saulnier, Brett <bsaulnier@torys.com>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; McKinlay, Tom (MAG) <Tom.McKinlay@ontario.ca>
Subject: Re: UPDATED - Fair Hydro -- Change of Law Agreements

Hi Nina

I'm not sure that this timeframe is doable as we have to review and consult with clients before having this call . I think Tuesday is probably more reasonable to give us time to review the draft that we received late this afternoon coming out of comments at a meeting last Tuesday evening

Thanks

Malle

Sent from my BlackBerry 10 smartphone on the Rogers network.
From: Mansoori, Nina
Sent: Friday, November 24, 2017 15:58
To: Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); 'ASHBOURNE, STEPHEN'; 'JON.VINER@blakes.com'; 'JA.PRESTAGE@blakes.com'; 'Milligan, Peter'; 'Sebastiano, Rocco'; 'Fullerton, Rick'
Cc: Ramchandani, Rima; Feldman, Michael; Saulnier, Brett
Subject: RE: UPDATED - Fair Hydro -- Change of Law Agreements

Provincial legal/Blakes/Oslers teams,

As a follow up to my email below and given the challenges with all our schedules, we thought it prudent to block off some time on Monday to discuss the revised

Change of Law Agreements. I can confirm that Torys is available for a call between 9:30 am and 2 pm on Monday. Please let us know what times work for you in that window and we will circulate a dial-in.

Best Regards,
Nina

Nina Mansoori

P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679
79 Wellington St. W., 30th Floor, Box 270, TD South Tower Toronto, Ontario M5K 1N2 Canada | www.torys.com<http://www.torys.com>
[Torys LLP]<http://www.torys.com>

From: Mansoori, Nina
Sent: November-24-17 2:15 PM
To: 'ASHBOURNE, STEPHEN' <STEPHEN.ASHBOURNE@blakes.com>; 'JON.VINER@blakes.com' <JON.VINER@blakes.com>; 'JA.PRESTAGE@blakes.com' <JA.PRESTAGE@blakes.com>
Cc: Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; LADAK Lubna -TREASURY <lubna.ladak@opg.com>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; McKinlay, Tom (MAG) <Tom.McKinlay@ontario.ca>; Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>; Cayley, Daniel (ENERGY) (Daniel.Cayley@ontario.ca) <Daniel.Cayley@ontario.ca>; Thouin, Alena (ENERGY) (Alena.Thouin@ontario.ca) <Alena.Thouin@ontario.ca>; Ramchandani, Rima <rramchandani@torys.com>; LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; 'HAHN PARKER Janet -TREASURY' <j.hahnparker@opg.com>; MAUTI John -FIN & C CTRL <john.mauti@opg.com>; LAURETA LAPIRA May -TREASURY <may.lapira@opg.com>; Feldman, Michael <mfeldman@torys.com>; WONG Leslie -LAWDIV <leslie.wong@opg.com>; 'Sebastiano, Rocco' <RSebastiano@osler.com>; Milligan, Peter <PMilligan@osler.com>; Fullerton, Rick <RFullerton@osler.com>; Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca>; Manning, Mike (OFA) <Mike.Manning@ofina.on.ca>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>; 'ian.benaiah@rbccm.com' <ian.benaiah@rbccm.com>; 'Khan, Nur (nur.khan@rbccm.com)' <nur.khan@rbccm.com>; 'brent.r.taylor@rbccm.com' <brent.r.taylor@rbccm.com>; 'katrina.niehaus@gs.com' <katrina.niehaus@gs.com>; 'brian.delaney@gs.com' <brian.delaney@gs.com>; Maciel, Andrew <Andrew.Maciel@cibc.com>; Adalja, Sunil <Sunil.Adalja@cibc.com>; Persad, Nicole <Nicole.Persad@cibc.com>; Persaud, Donnie - Debt Capital Markets <Donnie.Persaud@cibc.com>; Steen Hume (CAB) <Steen.Hume@ontario.ca>
Subject: RE: UPDATED - Fair Hydro -- Change of Law Agreements

All – apologies, my email below did not have a blackline for the Process Agreement.

It is attached. Thank you.

Nina Mansoori

From: Mansoori, Nina
Sent: November-24-17 2:04 PM
To: 'ASHBOURNE, STEPHEN'
<STEPHEN.ASHBOURNE@blakes.com<mailto:STEPHEN.ASHBOURNE@blakes.com>>; 'JON.VINER@blakes.com'
<JON.VINER@blakes.com<mailto:JON.VINER@blakes.com>>;
'JA.PRESTAGE@blakes.com'
<JA.PRESTAGE@blakes.com<mailto:JA.PRESTAGE@blakes.com>>
Cc: Ken Kandeepan
<Ken.Kandeepan@ofina.on.ca<mailto:Ken.Kandeepan@ofina.on.ca>>; LADAK Lubna -TREASURY <lubna.ladak@opg.com<mailto:lubna.ladak@opg.com>>; Anna Strathy <Anna.Strathy@ofina.on.ca<mailto:Anna.Strathy@ofina.on.ca>>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca<mailto:Cindy.Veinot@ontario.ca>>; McKinlay, Tom (MAG)
<Tom.McKinlay@ontario.ca<mailto:Tom.McKinlay@ontario.ca>>; Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca<mailto:Mark.Donaldson@ontario.ca>>; Cayley, Daniel (ENERGY) (Daniel.Cayley@ontario.ca<mailto:Daniel.Cayley@ontario.ca>)
<Daniel.Cayley@ontario.ca<mailto:Daniel.Cayley@ontario.ca>>; Thouin, Alena (ENERGY) (Alena.Thouin@ontario.ca<mailto:Alena.Thouin@ontario.ca>)
<Alena.Thouin@ontario.ca<mailto:Alena.Thouin@ontario.ca>>; Ramchandani, Rima <rramchandani@torys.com<mailto:rramchandani@torys.com>>; LEE John -TREASURY <john.s.lee@opg.com<mailto:john.s.lee@opg.com>>; RYFA Ken -TREASURY <ken.ryfa@opg.com<mailto:ken.ryfa@opg.com>>; 'HAHN PARKER Janet -TREASURY' <j.hahnparker@opg.com<mailto:j.hahnparker@opg.com>>; MAUTI John -FIN & C CTRL <john.mauti@opg.com<mailto:john.mauti@opg.com>>; LAURETA LAPIRA May -TREASURY
<may.lapira@opg.com<mailto:may.lapira@opg.com>>; Feldman, Michael <mfeldman@torys.com<mailto:mfeldman@torys.com>>; WONG Leslie -LAWDIV <leslie.wong@opg.com<mailto:leslie.wong@opg.com>>; 'Sebastiano, Rocco'
<RSebastiano@osler.com<mailto:RSebastiano@osler.com>>; Milligan, Peter <PMilligan@osler.com<mailto:PMilligan@osler.com>>; Fullerton, Rick <RFullerton@osler.com<mailto:RFullerton@osler.com>>; Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca<mailto:Gadi.Mayman@ofina.on.ca>>; Manning, Mike (OFA) <Mike.Manning@ofina.on.ca<mailto:Mike.Manning@ofina.on.ca>>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca<mailto:Malle.Hanslep@ontario.ca>>;
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<brent.r.taylor@rbccm.com<mailto:brent.r.taylor@rbccm.com>>;
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'brian.delaney@gs.com' <brian.delaney@gs.com<mailto:brian.delaney@gs.com>>; Maciel, Andrew <Andrew.Maciel@cibc.com<mailto:Andrew.Maciel@cibc.com>>; Adalja, Sunil <Sunil.Adalja@cibc.com<mailto:Sunil.Adalja@cibc.com>>; Persad, Nicole <Nicole.Persad@cibc.com<mailto:Nicole.Persad@cibc.com>>; Persaud, Donnie - Debt Capital Markets <Donnie.Persaud@cibc.com<mailto:Donnie.Persaud@cibc.com>>; Steen Hume (CAB) <Steen.Hume@ontario.ca<mailto:Steen.Hume@ontario.ca>>; Mansoori, Nina <nmansoori@torys.com<mailto:nmansoori@torys.com>>
Subject: RE: UPDATED - Fair Hydro -- Change of Law Agreements

Blakes team,

Please find attached consolidated comments from the dealers and OPG (and their counsels) on the draft documents circulated below. These changes are drafting changes and clean up changes that reflect our discussions from earlier this week where we addressed all the open business points. Where we changed a concept or revised the drafting, we provided an explanation in the footnote to assist in your review.

The one substantive point we think requires further discussion is on the assumption mechanics; we understand that the Province is no longer seeking an exchange right. Once you have digested these new drafts, we'd like to schedule a lawyers call early next week to finalize them.

Best Regards,
Nina

Nina Mansoori

P. 416.865.7332

From: ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
Sent: November-21-17 5:17 PM
To: Ramchandani, Rima <rramchandani@torys.com<mailto:rramchandani@torys.com>>; LEE John -TREASURY <john.s.lee@opg.com<mailto:john.s.lee@opg.com>>; RYFA Ken -TREASURY <ken.ryfa@opg.com<mailto:ken.ryfa@opg.com>>; 'HAHN PARKER Janet -TREASURY' <j.hahnparker@opg.com<mailto:j.hahnparker@opg.com>>; MAUTI John -FIN & C CTRL <john.mauti@opg.com<mailto:john.mauti@opg.com>>; LAURETA LAPIRA May -TREASURY <may.lapira@opg.com<mailto:may.lapira@opg.com>>; Mansoori, Nina <nmansoori@torys.com<mailto:nmansoori@torys.com>>; Feldman, Michael <mfeldman@torys.com<mailto:mfeldman@torys.com>>; WONG Leslie -LAWDIV <leslie.wong@opg.com<mailto:leslie.wong@opg.com>>; 'Sebastiano, Rocco' <RSebastiano@osler.com<mailto:RSebastiano@osler.com>>; Milligan, Peter <PMilligan@osler.com<mailto:PMilligan@osler.com>>; Fullerton, Rick

<RFullerton@osler.com<mailto:RFullerton@osler.com>>; Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca<mailto:Gadi.Mayman@ofina.on.ca>>; Manning, Mike (OFA) <Mike.Manning@ofina.on.ca<mailto:Mike.Manning@ofina.on.ca>>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca<mailto:Malle.Hanslep@ontario.ca>>; 'ian.benaiah@rbccm.com' <ian.benaiah@rbccm.com<mailto:ian.benaiah@rbccm.com>>; 'Khan, Nur (nur.khan@rbccm.com<mailto:nur.khan@rbccm.com>)' <nur.khan@rbccm.com<mailto:nur.khan@rbccm.com>>; 'brent.r.taylor@rbccm.com' <brent.r.taylor@rbccm.com<mailto:brent.r.taylor@rbccm.com>>; 'katrina.niehaus@gs.com' <katrina.niehaus@gs.com<mailto:katrina.niehaus@gs.com>>; 'brian.delaney@gs.com' <brian.delaney@gs.com<mailto:brian.delaney@gs.com>>; Maciel, Andrew <Andrew.Maciel@cibc.com<mailto:Andrew.Maciel@cibc.com>>; Adalja, Sunil <Sunil.Adalja@cibc.com<mailto:Sunil.Adalja@cibc.com>>; Persad, Nicole <Nicole.Persad@cibc.com<mailto:Nicole.Persad@cibc.com>>; Persaud, Donnie - Debt Capital Markets <Donnie.Persaud@cibc.com<mailto:Donnie.Persaud@cibc.com>>
Cc: Ken Kandeepan <Ken.Kandeepan@ofina.on.ca<mailto:Ken.Kandeepan@ofina.on.ca>>; LADAK Lubna -TREASURY <lubna.ladak@opg.com<mailto:lubna.ladak@opg.com>>; Anna Strathy <Anna.Strathy@ofina.on.ca<mailto:Anna.Strathy@ofina.on.ca>>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca<mailto:Cindy.Veinot@ontario.ca>>; McKinlay, Tom (MAG) <Tom.McKinlay@ontario.ca<mailto:Tom.McKinlay@ontario.ca>>; Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca<mailto:Mark.Donaldson@ontario.ca>>; Cayley, Daniel (ENERGY) (Daniel.Cayley@ontario.ca<mailto:Daniel.Cayley@ontario.ca>) <Daniel.Cayley@ontario.ca<mailto:Daniel.Cayley@ontario.ca>>; Thouin, Alena (ENERGY) (Alena.Thouin@ontario.ca<mailto:Alena.Thouin@ontario.ca>) <Alena.Thouin@ontario.ca<mailto:Alena.Thouin@ontario.ca>>; Steen Hume (CAB) <Steen.Hume@ontario.ca<mailto:Steen.Hume@ontario.ca>>
Subject: RE: UPDATED - Fair Hydro -- Change of Law Agreements

Hi Rima. Here are my mark-ups of the agreements Torys circulated yesterday afternoon. These versions have not been reviewed by the Province, but are being circulated to this group to facilitate a discussion shortly at your office. They are/remain subject to Province input, etc. We propose to gather at your office at 5:45, if that makes sense to you. Regards, Steve

Stephen R. Ashbourne
Partner
stephen.ashbourne@blakes.com<mailto:stephen.ashbourne@blakes.com>
Dir: 416-863-3086

-----Original Appointment-----
From: bwood@torys.com<mailto:bwood@torys.com> [mailto:bwood@torys.com] On Behalf Of Ramchandani, Rima
Sent: Tuesday, November 21, 2017 3:43 PM
To: Ramchandani, Rima; LEE John -TREASURY; RYFA Ken -TREASURY; 'HAHN PARKER Janet -TREASURY'; MAUTI John -FIN & C CTRL; LAURETA LAPIRA May -TREASURY; Mansoori, Nina; Feldman, Michael; WONG Leslie -LAWDIV; 'Sebastiano, Rocco'; Milligan, Peter; Fullerton, Rick; Mayman, Gadi (OFA); Manning, Mike (OFA); Hanslep, Malle (MOF); ASHBOURNE, STEPHEN; 'ian.benaiah@rbccm.com'; 'Khan, Nur (nur.khan@rbccm.com<mailto:nur.khan@rbccm.com>)'; 'brent.r.taylor@rbccm.com'; 'katrina.niehaus@gs.com'; 'brian.delaney@gs.com'; Maciel, Andrew; Adalja, Sunil; Persad, Nicole; Persaud, Donnie - Debt Capital Markets
Cc: Ken Kandeepan; LADAK Lubna -TREASURY; Anna Strathy; Veinot, Cindy (TBS); McKinlay, Tom (MAG); Donaldson, Mark (TBS)
Subject: UPDATED - Fair Hydro -- Change of Law Agreements
When: Tuesday, November 21, 2017 5:00 PM-9:00 PM (UTC-05:00) Eastern Time (US & Canada).
Where: Torys - 79 Wellington 33rd Floor

For those unable to participate in person, here's the dial-in:

Dial-in: 1-800-600-0998
Access Code: 8657666#

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_____

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DBRS Comments (Change of Law Protection Agreement).pdf

DBRS Comments on Change of Law Protection Agreement

Below are DBRS comments on the draft Change of Law Protection Agreement sent to DBRS on November 22. Our responses are noted below each comment.

(1) Will there be a legal opinion addressing the binding nature and enforceability of the Protection Agreement on its terms?

> ***Torys Response***: Yes, legal opinions regarding the enforceability of the Change of Law Protection Agreement will be delivered on closing (subject to customary limitations for enforceability opinions delivered in respect of contracts executed by the Province).

(2) Section 1.15: DBRS expects any material amendment or material waiver to the agreement to be subject to a RAC and prompt notice of any other amendments/waivers/consents.

> ***Torys Response***: We will make these changes.

(3) Section 2.01: Please provide DBRS prompt written notice of a Protection Event.

> ***Torys Response***: We will make this change.

(4) Section 2.01 (a): "Payment Date" is not defined in this Agreement. Is the reference to the Guarantee Payment Date?

> ***Torys Response***: This was a typo. The reference to "Payment Date" will be changed to "Guarantee Payment Date".

(5) Section 2.01 (a)(iv)(ii): Subrogated Amounts: this calculation is confusing and seems to missing the next prong "y". Is the subrogated amount the amount that has been actually paid to the Beneficiary by the Province in relation to the amounts payable from amounts available?

> ***Torys Response***: This will be revised to refer to the lesser of (x) and (y).

(6) To the extent the amounts paid by the Province into the Protection Account exceed the amounts payable to Beneficiary from amounts available – is that excess the subrogation amount or is that excess just returned to the Province?

> ***Torys Response***: Any excess amount would be returned to the Province.

(7) As a general comment: With respect to subrogation amounts owing to the Province - the Province seems to maintain a subrogated claim against the Financing Entity that has the same ranking as the Beneficiary obligation that has been paid by the Province and that subrogated claim is to be paid on the same date the amounts on deposit in the Protection Account are paid to the Beneficiary (i.e. the Province's subrogated claim becomes a Specified Creditor under the Trust Indenture and potentially ranks in priority or pari passu to all other securityholders claims depending on applicable Beneficiary's obligation's respective ranking within the trust indenture waterfall). How will this subrogated claim be satisfied – from what resources? Why has the right

of subrogation of the guarantor (the Province) not been postponed until after all the rated obligations have been paid in full?

> ***Torys Response***: Prior to a Protection Event, payments owing to Specified Creditors are satisfied through collection of the Clean Energy Adjustment amounts. Upon the occurrence of a Protection Event and delivery of a Payment Demand, the Province will be required to make all payments under Approved Obligations (i.e. Specified Creditors will be looking to the Province to make payments when due, instead of relying on the collection of Clean Energy Adjustment amounts). However, notwithstanding the occurrence of a Protection Event triggering the Limited Guarantee, the Fair Hydro program may remain in place and Clean Energy Adjustments may continue to be billed and collected. In such a circumstance, while the Province will be required to make payments under all Approved Obligations as they come due, the Province (in place of Specified Creditors) would be entitled to receive any Clean Energy Adjustment amounts that are billed and collected i.e. the Clean Energy Adjustment amounts constitute the Subrogated Amounts.

(8) Section 4.02: Adherence Obligations: With respect to Funding Obligations under a certain amount that do not need to meet the Adherence Conditions, what would those Funding Obligations consist of? Are these limited amounts still treated as Primary Obligations pursuant to which the guarantee obligation applies?

> ***Torys Response***: All Funding Obligations (and all other finance amounts) constitute Primary Obligations pursuant to which the Change of Law Protection Agreement applies; however, there is a subset of Funding Obligations for which the Adherence Conditions must be satisfied.
>
> The Agreement will be revised to make clear that there are no Adherence Conditions applicable to Funding Obligations that are not "Certified Primary Obligations". "Certified Primary Obligations" will mean Primary Obligations that are payment obligations that are: (i) incurred by or on behalf of the Financing Entity to fund its ownership of an Investment Interest or to repay payment obligations that were incurred by or on behalf of the Financing Entity to fund its ownership of an Investment Interest, (ii) incurred by or on behalf of the Financing Entity upon the Financing Entity entering into a Derivative Agreement, in which case the Certified Primary Obligation therefor shall be the Master Agreement applicable to such Derivative Agreement and not each individual trade confirmation, or (iii) incurred by or on behalf of the Financing Entity upon entering into a contract that has a term of more than three (3) years which is not terminable by the Financing Entity giving three (3) years' notice or less and aggregate payments by the Financing Entity thereunder during the term of such contract is in excess of C$5,000,000 (that, for greater certainty, is not otherwise captured in clauses (i) and (ii) above).

(9) Section 4.03: Is 4.02(b)(x) a typo? There is no "x" in 4.02(b)?

> ***Torys Response***: This is a typo and will be corrected.

(10) Section 5.01 (a): As per the question above on section 2.01(a)(iv)(ii), please clarify how the Subrogation Amount is calculated (if not based on the actual amount paid by the Province in respect of amounts payable).

Torys Response: Please see response to question (7) above.

(11) Section 6.01: Why is it at the Province's election to provide the Indenture Trustee notice of the Province's election to assume the Financing Entity's Obligations Secured? Under what circumstances would the Province decide not to provide the Indenture Trustee notice of its election to assume? In any event, DBRS expects to receive prompt written notice of an election to assume and copy of any such Assumption Notice.

Torys Response: As described in response to question (7), upon the occurrence of a Protection Event and delivery of a Payment Demand, the Limited Guarantee is triggered and the Province is obligated to make all payments in respect of Approved Obligations. However, notwithstanding the Limited Guarantee taking effect, the Financing Entity will continue to exist and the entire program structure may stay in place (and Clean Energy Adjustment amounts may continue to be billed and collected). The assumption right of the Province has been included to provide the Province with the flexibility to wind-up the Financing Entity and dismantle the program by assuming all of the Obligations Secured. In either case, following the occurrence of a Protection Event, the Province will be obligated to make all payments in respect of Approved Obligations.

We will add a rating agency notice requirement and a covenant to deliver to the rating agencies a copy of the Assumption Notice as requested.

(12) Section 6.04: How long can the Interim Period be in effect during the implementation and completion of the assumption terms? Are the securityholders and Indenture Trustee stayed from accelerating and enforcing if there is an Event of Default under the rated notes during the Interim Period? Are there any other restrictions on the SPV Financing Entity and/or the securityholders during the Interim Period?

Torys Response: The details of any assignment and assumption by the Province will be addressed in the supplemental indenture relating to a particular issuance of Funding Obligations. Securityholders and the Indenture Trustee will not be stayed from accelerating and enforcing if there is an Event of Default under the rated notes during the interim period.

While there are no restrictions on the Financing Entity during the interim period, under a process agreement between OPG and the Province, after the occurrence of any Protection Event, OPG has agreed that it shall not, without the Province's prior written consent, permit the Financing Entity to exercise any redemption, pre-payment, early termination or extension right in respect of any Approved Obligation or exercise any other election or privilege in respect of any Approved Obligation, in each case if as a result the obligations applicable to the Approved Obligation under the Change of Law Protection Agreement would be accelerated, delayed or otherwise affected.

(13) Section 8.01: Under this section the Province may declare at any time for any reason that the guarantee shall not apply to any Obligation Secured incurred on after the date of such declaration (other than the refinancing of a previously incurred funding obligation) by delivering a "Suspension Notice" to the Indenture Trustee/OPG/SPV.

Please provide DBRS with prompt written notice of any such Suspension Notice.

Torys Response: We will make this change.

Please confirm how the Suspension Notice would apply with respect to refinancing, increases or issuances up the program limits under the Warehouse Supplement. For example if a suspension notice is issued does the suspension apply to any issuance of notes for the purposes of refinancing outstanding ABCP? Or does this type of refinancing fall within the carve-out from a suspension notice, "Refinancing of a Primary Obligation" noted in this section 8.01?" Further, will issuances after the Suspension Notice but up to the program limit or already permitted increases be subject to a Suspension Notice?

Torys Response: Any debt issued on a refinancing of a Primary Obligation in respect of which the Adherence Conditions had been satisfied prior to delivery of the Suspension Notice (which will include the debt issuable under the Warehouse Supplement) will continue to have the benefit of the Limited Guarantee following the delivery of the Suspension Notice. In other words, any debt issued on the refinancing of "protected debt" will continue to be "protected debt" following the Suspension Notice. Except for refinancing of protected debt, no other Primary Obligations incurred after the delivery of a Suspension Notice will have the benefit of the Limited Guarantee.

(16) Section 8.03: Please provide DBRS with prompt written notice of any such Termination Notice.

Torys Response: We will make this change.

(17) Section 9.03: Please provide DBRS with prompt written notice of any assignment.

Torys Response: We will make this change.

(18) Definitions: Approved Obligation Amount (subsection (b)): Where an acceleration has occurred, how will this calculation address circumstances under which the CEA is no longer able to be charged or collected? Where amounts that would be available to be paid is compromised in some way and acceleration has occurred, could the Approved Obligation Amount be nil?

Torys Response: Subsection (b) of the definition of an Approved Obligation Amount provides that this amount is to be determined on the assumption that the amount available for allocation to Specified Creditors is equal to the estimated finance amount determined in respect of such reference period divided by the number of months in the reference period. In other words, the amount payable under the Limited Guarantee following a Protection Event would be determined in the same way that the amount payable through CEA collections would have been determined prior to the Protection Event. The

Approved Obligation Amount is by definition a positive amount payable in respect of an Approved Obligation and could therefore not be a nil amount.

FW_ .rtf

From: Petsche, Nadine (TBS) []
To: stephen.ashbourne@blakes.com [stephen.ashbourne@blakes.com]
CC: VINER, JON (JON.VINER@blakes.com) [JON.VINER@blakes.com]
Subject: FW:
Date: Wednesday, March 22, 2017 16:40:02

Stephen,

Sorry, missed this one… n

From: Picard, Michel [mailto:mpicard@kpmg.ca]
Sent: March 22, 2017 4:38 PM
To: Petsche, Nadine (TBS)
Subject:

Nadine,

The TPA, section 1.1 (g) requires us to add a reference for the definition of "non-controlled trust". This does not exist.

However, control is explained in GOVERNMENT REPORTING ENTITY, paragraphs PS 1300.07-.24.

The lawyer needs to change the reference to say that it should not meet the control as defined in paragraphs PS 1300.07-.24.

Michel Picard, CPA, CA

Partner, Accounting Advisory Services

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FW_ .rtf

From: Petsche, Nadine (TBS) []
To: stephen.ashbourne@blakes.com [stephen.ashbourne@blakes.com]
CC: VINER, JON (JON.VINER@blakes.com) [JON.VINER@blakes.com]
Subject: FW:
Date: Wednesday, March 22, 2017 16:40:02

Stephen,

Sorry, missed this one… n

From: Picard, Michel [mailto:mpicard@kpmg.ca]
Sent: March 22, 2017 4:38 PM
To: Petsche, Nadine (TBS)
Subject:

Nadine,

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However, control is explained in GOVERNMENT REPORTING ENTITY, paragraphs PS 1300.07-.24.

The lawyer needs to change the reference to say that it should not meet the control as defined in paragraphs PS 1300.07-.24.

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FW_ 1a H1_Control analysis_May 22 KPMG.rtf

From: Donaldson, Mark (TBS) []
To: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
Subject: FW: 1a H1_Control analysis_May 22 KPMG
Date: Thursday, May 24, 2018 10:31:35

From: Picard, Michel
Sent: May 24, 2018 10:31:26 AM (UTC-05:00) Eastern Time (US & Canada)
To: Church, Bailey J; Donaldson, Mark (TBS)
Subject: RE: 1a H1_Control analysis_May 22 KPMG

The real test might be soon… i.e. a Premier asking to remove the Board!

Regards,

Michel Picard, CPA, CA

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From: Church, Bailey J
Sent: Wednesday, May 23, 2018 10:09 PM
To: Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>; Picard, Michel <mpicard@kpmg.ca>
Subject: RE: 1a H1_Control analysis_May 22 KPMG

Thanks for the update Mark. This is certainly supportive of the control conclusion that was reached, as well as the logic of the arguments presented.

Cheers

Bailey

From: Donaldson, Mark (TBS) [mailto:Mark.Donaldson@ontario.ca]
Sent: Wednesday, May 23, 2018 4:41 PM
To: Picard, Michel <mpicard@kpmg.ca>; Church, Bailey J <bchurch@kpmg.ca>
Subject: RE: 1a H1_Control analysis_May 22 KPMG

Hi Michel,

Yes, I mimicked the worksheet provided in January for the 2018 AGM. I calculated 81% attendance with 59% Province --- lower due to the secondary offering but still above 50% -- with 63% of minority s/h participation in the vote. That is consistent with the argument we've put forth that we still vote the majority at the AGM even at <50%.

Cheers,

Mark

From: Picard, Michel [mailto:mpicard@kpmg.ca]
Sent: May 23, 2018 2:51 PM
To: Church, Bailey J <bchurch@kpmg.ca>; Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>
Subject: RE: 1a H1_Control analysis_May 22 KPMG

Mark,

I believe it would be important to document the voting patterns at the May 2018 AGM.

Regards,

Michel Picard, CPA, CA

Partner, Accounting Advisory Services

KPMG LLP

333 Bay Street, Suite 4600

Toronto, Ontario, M5H 2S5

T 416 777 8414

M 416 560 2569

mpicard@kpmg.ca

LinkedIn

From: Church, Bailey J
Sent: Tuesday, May 22, 2018 9:51 AM
To: Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>
Cc: Picard, Michel <mpicard@kpmg.ca>
Subject: 1a H1_Control analysis_May 22 KPMG

Hi Mark

I hope you had a great long weekend, and managed to keep it fairly work free! After our call last week, I updated Michel on our conversation and shared the previous draft of the paper with the latest comments and revisions. We have inserted some replies to the comments, and proposed a few amendments for your thoughts. We would be happy to have another call with you to discuss further updates. We can assist you in finalizing the document.

Have a great day.

Bailey

Bailey Church, CPA, CA, CIA

Partner. Accounting Advisory Services

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M 613 698 7220

F 613 212 2896

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Client Administration - Nazli Altayli Keskin naltaylikeskin@kpmg.ca

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FW_ .rtf

From: Petsche, Nadine (TBS) []
To: stephen.ashbourne@blakes.com [stephen.ashbourne@blakes.com]
CC: VINER, JON (JON.VINER@blakes.com) [JON.VINER@blakes.com]
Subject: FW:
Date: Wednesday, March 22, 2017 16:40:02

Stephen,

Sorry, missed this one… n

From: Picard, Michel [mailto:mpicard@kpmg.ca]
Sent: March 22, 2017 4:38 PM
To: Petsche, Nadine (TBS)
Subject:

Nadine,

The TPA, section 1.1 (g) requires us to add a reference for the definition of "non-controlled trust". This does not exist.

However, control is explained in GOVERNMENT REPORTING ENTITY, paragraphs PS 1300.07-.24.

The lawyer needs to change the reference to say that it should not meet the control as defined in paragraphs PS 1300.07-.24.

Michel Picard, CPA, CA

Partner, Accounting Advisory Services

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If you are unable to access the links above, please cut and paste the URL that follows the link into your browser.

FW_ Affordability Fund - Declaration of Trust and Transfer Pricing Agreement .rtf

From: Petsche, Nadine (TBS) []
To: Kamil.Baig@HydroOne.com [Kamil.Baig@HydroOne.com]
CC: samir chhelavda (Samir.Chhelavda@HydroOne.com) [Samir.Chhelavda@HydroOne.com]; Picard, Michel (mpicard@kpmg.ca) [mpicard@kpmg.ca]
Subject: FW: Affordability Fund - Declaration of Trust and Transfer Pricing Agreement
Date: Friday, March 17, 2017 08:53:30
Attachment 1: 2017-03-16 TRACK Affordability_Fund_Trust_–_Declaration_of_Trust v2.docx
Attachment 2: 2017-03-16-CLEAN TPA_Draft_Afund v2.docx
Attachment 3: 2017-03-16-TRACK TPA_Draft_Afund v2.docx
Attachment 4: 2017-03-16 CLEAN Affordability_Fund_Trust_–_Declaration_of_Trust v2.docx
Attachment 5: FW: Affordability Fund - Declaration of Trust and Transfer Pricing Agreement

---

Hi Kamil.

There is a call later today to discuss the Affordability Fund Trust (see details below). I understand that Samir is not in the office, so he may not be able to participate. You will likely receive an invitation shortly. In the meantime, I am just sharing the relevant documents for the call. I am also copying Michel on this note as I know that he has been providing advice to your team and will be planning to review the documents as well.

Regards,

Nadine

-----Original Appointment-----
From: Desouza, Charlotte (ENERGY)
Sent: March-17-17 8:10 AM
To: Desouza, Charlotte (ENERGY); Alexandra.Phillips@HydroOne.com; Spencer.Gill@HydroOne.com; Daniel.Levitan@HydroOne.com; 'Natalie.Poole-Moffatt@HydroOne.com' (Natalie.Poole-Moffatt@HydroOne.com); Johnson, Paul (ENERGY/MEDEI/MRI); Ranalli, David (ENERGY); Schachtschneider, Michelle (ENERGY); Petsche, Nadine (TBS); An, Tai (ENERGY); Gounden, Pratima (ENERGY); Sermat-Harding, Kaili (ENERGY); Syed, Usman (ENERGY); Schwab-Pflug, Emma (ENERGY); Qureshi, Musab (ENERGY)
Subject: Affordability Fund - Declaration of Trust and Transfer Pricing Agreement
When: March-17-17 3:00 PM-4:00 PM (UTC-05:00) Eastern Time (US & Canada).
Where: Teleconference Call (details in email below) / Boardroom 5B

Teleconference Detail:

Teleconference Call:

Tel: 416-212-8012

Toll Free: 1-866-633-0848

Passcode: 5588712

From: Schwab-Pflug, Emma (ENERGY)
Sent: March-16-17 3:24 PM
To: Alexandra.Phillips@HydroOne.com
Cc: Sermat-Harding, Kaili (ENERGY); Syed, Usman (ENERGY); Qureshi, Musab (ENERGY); Spencer.Gill@HydroOne.com; Daniel.Levitan@HydroOne.com; Natalie.Poole-Moffatt@HydroOne.com; Johnson, Paul (ENERGY/MEDEI/MRI); Ranalli, David (ENERGY); Schachtschneider, Michelle (ENERGY); Petsche, Nadine (TBS); An, Tai (ENERGY); Gounden, Pratima (ENERGY); Desouza, Charlotte (ENERGY); Thompson, Erin (ENERGY)
Subject: RE: Affordability Fund - Declaration of Trust and Transfer Pricing Agreement

Hi Alex:

Please find attached tracked and clean versions of the TPA and Declaration of Trust. Tracked versions are tracked from the versions you had shared on March 13. You will note that there are comments in the TPA and Declaration indicating areas that we are working with Blakes to finalize.

We would recommend, as discussed, that Hydro One share these current versions with KPMG, as well as Computershare, so that we can work to resolve identified issues.

Can Hydro One advise if it will not be possible to share comments back with us for 3 PM tomorrow?

We would like to set up a call tomorrow afternoon to discuss comments. Can you advise of a preferred time for a call?

A few other follow-ups:

· We have confirmed internally that Computershare can establish an interim Trust account using their existing banking relationship with BNF. Can you confirm once this (and the TPA/Decl if you agree to share) is communicated with Computershare?

· Can you please share the Computershare Trustee(s) contact details? We understand that the Trustees will have to be recognized in the Declaration of Trust.

· Can you share the administrative service agreement for the Ministry's review today? Our interest in seeing this is to have comfort that it will be ready for signing by Computershare on Monday or Tuesday of next week.

Thanks again to you and your team for working with us on these tight timelines.

- Emma

From: Alexandra.Phillips@HydroOne.com [mailto:Alexandra.Phillips@HydroOne.com]
Sent: March-13-17 2:56 PM
To: Syed, Usman (ENERGY); Schwab-Pflug, Emma (ENERGY); Qureshi, Musab (ENERGY)
Cc: Spencer.Gill@HydroOne.com; Daniel.Levitan@HydroOne.com; Natalie.Poole-Moffatt@HydroOne.com
Subject: Fwd: Affordability Fund - Declaration of Trust and Transfer Pricing Agreement

All:

Please see our revisions to the TPA (with a track changes PDF) and the Declaration of Trust.

Looking forward to hearing back from you by EOD tomorrow but don't hesitate to reach out if you have any questions or concerns.

Best,

Alex Phillips

Manager, External Relations

Hydro One Networks Inc.

(O) 416-345-1375

(C) 647-405-8601

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2017-03-16 TRACK Affordability_Fund_Trust_ Declaration_of_Trust v2.pdf

Formatted: English (Canada)

Style Definition: OHHMainHeading,OMH: Font: Times New Roman

Style Definition: OHHReference,Ref: Font: Times New Roman

Style Definition: OHHSubHeading,OSH: Font: Times New Roman

Style Definition: Schedule,Sch: Font: Times New Roman

Style Definition: Comment Text

Formatted: Vertical Alignment: Top

Formatted: Space Before: 102 pt

DECLARATION OF TRUST

Made as of March ~~●~~5, 2017

by

COMPUTERSHARE TRUST COMPANY OF CANADA

establishing

AFFORDABILITY FUND TRUST

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RELABEL HEADINGS AND REGENERATE TABLE OF CONTENTS]

DECLARATION OF TRUST

This Declaration of Trust is made as of March ●~~,~~●, 2017, by Computershare Trust Company of Canada, a trust company established under the laws of Canada and licensed to carry on business as a trust company in each of the provinces and territories of Canada (the "**Trustee**").

WHEREAS the Trustee wishes to establish a trust to acquire, hold, manage, apply and dispose of certain property ~~and~~ for the benefit of certain ~~purposes~~Beneficiaries as herein described.

NOW THEREFORE the Trustee hereby declares that it holds in trust as trustee the sum of ONE HUNDRED DOLLARS ($100) contributed by it on this date and all property of every type and description which it may hereafter acquire or hold in its capacity as trustee of the Trust and all income therefrom and proceeds thereof, to hold, manage,apply and dispose of the same on and subject to the provisions contained in this Declaration.

SECTION 1
INTERPRETATION

1.1 Definitions

In this Declaration:

(a) "***Administrative Services Agent***" means ~~the~~each agent, ~~if~~which may include any Electricity Distributor, appointed from time to time under an Administrative Services Agreement, and its successors and permitted assigns solely in such capacity.

(b) "***Administrative Services Agreement***" means ~~any~~each agreement ~~that may be~~ entered into from time to time by the Trust ~~with an~~and one or more Administrative Services ~~Agent~~Agents or other Persons, in furtherance of the purpose of the Trust described in section 2.1 of this Declaration, under which the Administrative Services Agent ~~agrees~~will agree to provide specified administrative and other services to and on behalf of the Trustee~~,~~ (including, following the Original Trustee Replacement Date, the Permitted Delegations Annex), as such agreement may be amended, supplemented, restated, renewed or replaced from time to time.

(c) "***Assets***" means, collectively, the following:

(i) the $100 Canadian referred to above;

(ii) all other property which is now or which at any time in the future may be issued, assigned, transferred, provided, donated, gifted and contributed to the Trustee (including pursuant to the Transfer Payment Agreement) to be held in trust pursuant to this Declaration (and which the Trustee is willing to accept and hold);

(iii) all property which may at any time be substituted therefor;

(iv) all capital depreciations to or acquisitions by the Trust;

(v) all income of the Trust; and

(vi) all proceeds of disposition of any of (i) through (v) above,

but excludes anything paid out or distributed (whether out of income or capital) in the normal course of administration or pursuant to the provisions of this Declaration.

(d) "***Beneficiary***" means each ~~individual that satisfies each of the following criteria:~~Primary Beneficiary and each Residual Beneficiary, where applicable.

~~(i) the individual owns, rents or leases a residence located in Ontario and is the primary or secondary electricity utility account holder named on an Electricity Invoice issued in respect of that residence;~~

~~(ii) the individual is not a HAP Eligible Person; and~~

~~(iii) [the individual has at any time in the prior 12 month period been more than 90 days in arrears in the payment of any amount owing by him or her under an Electricity Invoice.][**NTD: this section is an example of a bright line test to identify beneficiaries with some precision. Alternates to be discussed.]**~~

(e) "***Board of Trustees***" means the group of trustees appointed and acting in such capacity as contemplated by Section •, and as of the Original Trustee Replacement Date means the individual trustees appointed by the Original Trustee pursuant to Section 5.7 on the basis described in the Trustee Replacement Annex.

~~(e)~~(f) "***Declaration***" means this Declaration of Trust as amended, restated, supplemented or otherwise modified from time to time, including each of the Annexes hereto.

~~(f) "***Eligible Measures***" means the measures described in Schedule A. **[NTD: consider using the HAP Program list, plus heat pumps]**~~

(g) "***Electricity Distributor***" means, in respect of a designated service area or region in Ontario, the distributer of electricity to residences located in such area or region.

~~(g)~~(h) "***Electricity Invoice***" means an invoice ~~for~~issued by an Electricity Distributor in respect of electricity charges and related services and amounts ~~issued by a Local Distribution Company~~incurred in respect of a residence located in ~~Ontario.~~the Electricity Distributor's designated service area or region of Ontario.

~~(h) "***Final Distribution Date***" means ●. [**NTD: to discuss residual interest in Trust Assets]**~~

(i) "***Eligible Investments***" means [NTD: Describe deposit instruments or accounts issued or established by one or more Schedule I Canadian chartered banks].

(j) "***Eligible Measures***" means electricity efficiency and/or conservation measures determined by the Trustee from time to time, on the basis contemplated in the Principles Annex and determined in the manner specified and having regard to the Permitted Delegations Annex.

(k) "***Final Distribution Date***" means the earlier of (i) the date specified as such or determined pursuant to the Transfer Payment Agreement[1] and (ii) the later of (x) the date (if any) on which the Trustee determines that no further distributions are likely to be made to any Primary Beneficiary and (y) •, 20[23].

~~(i)~~(l) "***HAP Eligible Person***" ~~[~~means an "Eligible Person" as defined in Section 3.1 of the document entitled "Conservation First Framework LDC Took Kit" published by Independent Electricity System Operator and designated as Final v3.0 – March 11, 2016~~].[NTD: to be discussed]~~, as amended or replaced by any applicable act of the Legislature or Ontario.

~~(j) "*Local Distribution Company*" means a distributer of electricity to residences located in Ontario.~~

(m) "***Minister of Energy***" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of the *Ministry of Energy Act, 2011* under the ~~Ontario *Electricity*~~*Executive Council Act*~~, *1998*, S.O. 1998,~~.

(n) "***Original Trustee***" means Computershare Trust Company of Canada and its successors and assigns, acting in its capacity as ~~amended~~trustee hereunder.

~~(k)~~(o) "***Original Trustee Replacement Date***" has the meaning specified in Section 5.7, being the date on which the Original Trustee is replaced as trustee under this Declaration as contemplated under Section 5.7.

~~(l)~~(p) "***Person***" includes any individual, sole proprietorship, corporation, partnership, joint venture, association, society, club, board, chamber, joint-stock company, trust, trustee, unincorporated or incorporated organization or entity or government or any entity, agency or political subdivision thereof.

(q) "***Primary Beneficiary***" means each individual that, as of a time of determination, satisfies each of the following criteria:

(i) the individual owns, rents or leases a residence located in Ontario and is the primary or secondary electricity utility account holder named on an Electricity Invoice issued in respect of that residence; and

(ii) the individual is not a HAP Eligible Person.

(r) "***Principles Annex***" means the Principles Annex set forth as an annex to this Declaration.

(s) "***Permitted Delegations Annex***" means the Permitted Delegations Annex set forth as an annex to this Declaration.

[1] NTD: The TPA will provide that on an Event of Default the remaining Assets will be paid over to the Government, on the basis that the Government's transfer thereunder is subject to such a reservation in circumstances of non-compliance. The TPA should also specify that the Trust will thereafter be wound up, which will tie in to this definition by way of the date so specified in the TPA. Accounting considerations to be discussed.

(t) ***"Residual Beneficiary"*** means each charitable organization identified by the Trustee and specified as a residual beneficiary hereunder from time to time from among the charitable organizations specified on Schedule • or their respective successor charitable organizations.

~~(m)~~(u) "***Transfer Payment Agreement***" means the ~~Ontario~~ transfer payment agreement dated as of ~~●~~•, 2017 between the Trustee and Her Majesty the Queen in right of Ontario as represented by the Minister of Energy, as such agreement may be amended, restated, supplemented or otherwise modified from time to time.

~~(n)~~(v) "***Trust***" means Affordability Fund Trust, a trust established under and governed by the laws of the Province of Ontario pursuant to this Declaration.

~~(o) "***Trustee***" has the meaning given in the recitals in this Declaration.~~

(w) "***Trustee***" means (i) the Original Trustee and (ii) on and after the Original Trustee Replacement Date, the Board of Trustees acting together in accordance with and subject to Section 5.• and in accordance with the rules and procedures adopted by the Board of Trustees pursuant to Section 5.•.

(x) "***Trustee Replacement Annex***" means the Trustee Replacement Annex set forth as an annex to this Declaration.

1.2 Headings and Table of Contents

The insertion of headings and the provision of a table of contents are for convenience of reference only and shall not affect the construction or interpretation of this Declaration.

1.3 References

Unless otherwise specified, all references to Sections are to Sections of this Declaration. The words "hereto," "herein," "hereof," "hereunder" and similar expressions refer to this Declaration and not to any particular Section or other provision of this Declaration.

1.4 Number and Gender

Unless otherwise specified, words importing the singular include the plural and vice versa and words importing gender include all genders.

1.5 Governing Law

This Declaration shall be governed by, and construed and interpreted in accordance with, the laws of the Province of Ontario and of Canada applicable therein.

1.6 Severability

Any provision of this Declaration which is illegal, invalid or unenforceable in any jurisdiction shall not affect the legality, validity or enforceability of the remaining provisions and any such illegality, invalidity or unenforceability in any jurisdiction shall not affect the legality, validity or enforceability of such provision in any other jurisdiction.

~~**1.7 Time of the Essence**~~

~~Time shall be of the essence of this Declaration.~~

~~1.8~~1.7 Reference to the Trust and the Trustee

For greater certainty, where any reference is made in this Declaration to an act to be performed by or for or on behalf of the Trust, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Trustee in its capacity as trustee of the Trust, and, where any reference is made in this Declaration to an act to be performed by or for or on behalf of the Trustee, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Trustee in its capacity as trustee of the Trust. No Person dealing with the Trust or the Trustee shall be bound to make any enquiry concerning, or has the right to require production of, any evidence of the validity of any act of, or transaction purporting to be made by, the Trustee.

~~1.9~~1.8 Defect in Appointment

No action taken by the Trustee will be invalid or ineffective by reason only of any defect in the appointment of the Trustee or the compliance by the Trustee of any rules or procedures adopted by the Trustee and which is discovered after the taking of such action.

SECTION 2
CONCERNING THE TRUST

2.1 Objectives

The Trust is established for the sole purpose of ~~providing funding to or~~holding and applying the Assets for the benefit of the Beneficiaries as provided for in this Declaration. The activities of the Trust shall be to hold the Assets as contemplated in this Declaration until such time as the ~~Assets are disbursed to the Beneficiaries in accordance with~~Board of Trustees is duly appointed and determines that the Assets are to be distributed to or for the benefit of the Primary Beneficiaries in accordance with this Declaration, having regard to the principles set forth in the Principles Annex and in the manner and basis contemplated in the Permitted Delegations Annex, or otherwise to the Residual Beneficiary in accordance with Section 3.3, in each case subject to the terms, limitation and requirements set forth in this Declaration.

2.2 Name of the Trust

The name of the Trust shall be the "Affordability Fund Trust" ~~and~~or such replacement name as the Trustee shall determine and specify from time to time. The Trustee shall hold the Assets and conduct the activities of the Trust under such name or variation thereof ~~or such other name as~~. If the Trustee ~~may determine from time~~determines to ~~time in its sole and absolute discretion. Should~~change the ~~Trustee determine that~~ name of the ~~use of such name or names is not legal, possible or convenient~~Trust, the Trustee may specify and use such other designation or adopt such other name (including any name in the French language) as it considers appropriate and may hold the Assets and conduct the activities of the Trust under such ~~other~~ designation or other name.

2.3 Location

The head office and the situs of the administration of the Trust shall be ●. The Trustee may change the head office and the situs of the administration of the Trust to any• or such other locationaddress in Ontario as the Trustee, in its sole and absolute discretion, may consider advisable may determine from time to time.

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2.4 Fiscal Year

The fiscal year of the Trust shall end on December 31 in each year.

SECTION 3
DISTRIBUTIONS

3.1 Distributions to Primary Beneficiaries

Prior to the Final Distribution Date, the Trustee may, from time to time, subject to Section 3.2, shall distribute all or any portion of the Assets of the Trust (including capital or income) as to the Primary Beneficiaries identified based on the application of the principles specified in the Principles Annex and in the manner and in the amounts determined on the basis contemplated by the Permitted Delegations Annex, in each case in the amounts and to the extent specified herein and therein, subject in all respects to the exercise by the Trustee inof its absolute discretion deems advisable to or for the benefit of any one or more of the Beneficiaries hereunder and to the exclusion of the other or others, and in such proportions and on such trusts, terms and conditions, if any, as the Trustee in its absolute discretion deems advisable. Beneficiaries.

3.2 Maximum Amount of Distributions to Primary Beneficiaries

The amount distributed by the Trustee to or for the benefit of any Primary Beneficiary shall not (a) exceed the cost estimated costs (including applicable taxes) to be incurred by or on behalf of such Primary Beneficiary (whether or not such costs have been paid or remain outstanding) in respect of Eligible Measures; provided that the cost incurred by a Beneficiary shall not include any specific cost that has or will be funded or reimbursed by any Person applied in respect of the Primary Beneficiary's Ontario residence or (b) include in the calculation of such costs any amount intended to compensate an Electricity Distributor. The Trustee shall be entitled to rely on the recommendations of and information provided by Electricity Distributors acting as Administrative Services Agents appointed for the purposes and in the manner contemplated in the Permitted Delegations Annex, without any duty or obligation to verify or makes enquiries regarding the basis for or propriety of such recommendations or the accuracy or completeness of such information, except if and to the extent that the Trustee, in its discretion, determines that (i) it has actual knowledge that such recommendations are contrary to the reasonable application of the principles set forth in the Principles Annex or have been made on a basis that is manifestly contrary to such principles or the delegations and activities specified or contemplated to be undertaken under the Permitted Delegations Annex or (b) such information is known by the Trustee to be erroneous, contain a material misrepresentation or is materially incomplete.

3.3 Distributions to Residual Beneficiaries

On or as soon as practicable following the Final Distribution Date, the Trustee shall distribute all of the Assets (including capital or income) existing at that time to the Residual Beneficiaries, in each case in the amounts and to the extent determined by Trustee in its discretion hereunder[2] and to the exclusion of the other ~~than the Trust, including ministries, agencies and organizations of the Government of Ontario.~~Beneficiaries.

SECTION 4
POWERS OF THE TRUSTEE

4.1 General

Subject to and in compliance with the terms, limitations and restrictions ~~set out in~~of this Declaration and notwithstanding applicable legislation, the Trustee shall have, without other or further authorization, full, exclusive and absolute power, control and authority over the Assets and over the affairs and activities of the Trust to the same extent as if the Trustee were not a trustee, but rather the sole and absolute owner of the Assets in its own right, including such power, control and authority to do all such acts and things as in its sole judgment and discretion are necessary, incidental or desirable for carrying on the affairs and activities of the Trust, with such powers of delegation as may be permitted or otherwise contemplated by this Declaration. ~~The~~Except as expressly provided in this Declaration, the enumeration in this Declaration of any specific power or authority shall not be construed as limiting the aforesaid general power or authority or any other specific power or authority set out herein. Subject ~~only~~ to the terms, limitations ~~in~~and restrictions of this Declaration, every discretion or power hereby conferred on the Trustee is an absolute and uncontrolled discretion or power.

4.2 Specifically Enumerated Powers

The Trustee shall have the following specific powers and authorities:

(a) ***Transfer Payment Agreement.*** The Trustee shall have the power to enter into and perform its obligation under the Transfer Payment Agreement.

(b) ***Administrative Services Agreements.*** The Trustee shall have the power to enter into and perform its obligation under the Administrative Services Agreements.

~~(a)~~(c) ***Power to Dispose of Assets.*** The Trustee shall have the power to sell, convey, assign, transfer, exchange~~, lease, grant an option~~ and in any other manner dispose of the Assets or any part or parts thereof free and clear of any and all trusts established under this Declaration, by public or private sale, for cash or on credit, with or without advertisement, and subject to such restrictions, stipulations, agreements and reservations as the Trustee in its sole and absolute discretion may consider appropriate or advisable, and to execute and deliver and perform any

[2] NTD: Consider if principles should be included regarding the choice of charities or the absolute amount any particular charity may receive.

agreement, deed, conveyance, transfer~~, lease~~ or other document or instrument in connection with the foregoing.[3]

~~(b)~~(d) ***Power to Manage and Invest.*** The Trustee shall have the power to own, hold~~,~~ and manage ~~and use~~ the Assets in such manner as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable ~~and the~~.[4] The Trustee shall have the power to invest the Assets in ~~such investments~~Eligible Investments, and to change such ~~investments~~Eligible Investments at any time and from time to time, all as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable. The Trustee shall not be limited to investments authorized by law for trustees. The Trustee will have no liability for the depreciation of any investment.

~~(c)~~ ***Power to Delegate and to Appoint Agents, etc.*** The Trustee shall have the power to appoint, employ or contract with any Person as the Trustee in its sole and absolute discretion may consider appropriate or advisable in connection with the activities of the Trust. Without limiting the generality of the foregoing, the Trustee will have the power at any time and from time to time~~:~~

~~(i)~~(e) to appoint, employ or retain consultants, financial advisers, technical advisers, legal counsel, accountants, administrative services agents, insurers, insurance agents and insurance brokers, as the Trustee may require for the purpose of discharging its duties hereunder and shall not be responsible for or for the actions of any of them. The Trustee may pay remuneration and reimbursements from the ~~Trust Property~~Assets for ~~all~~ services performed for it or on its behalf in the discharge of the trusts hereof without taxation for costs or fees of any counsel, solicitor or attorney. Without limiting the generality of the forgoing, the Trustee may appoint, employ or retain any Person:

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~~(A)~~(i) to act for and on behalf of the Trust in connection with any and all matters in any way relating to the negotiation, settlement, entering into, amending, performance and enforcement of the Transfer Payment Agreement, the Administrative Services Agreement and any ~~related~~other agreements and contracts~~,~~ to which the Trust becomes a party in accordance with this Declaration;

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~~(B)~~(ii) to provide or cause to be provided any or all kinds of administrative services in any way relating to the activities of the Trust~~.~~;

~~(C)~~(iii) to act as attorney in fact, agent or trustee in the ~~purchase~~acquisition, holding ~~or~~, application, sale or other disposition of ~~Trust Property~~the Assets and in the handling, prosecuting or settling of any claims of the Trust~~.~~;

~~(D)~~(iv) to value the Assets and determine the net income of the Trust; and

(v) to ~~enter into, perform, enforce~~make any filings, elections and ~~amend agreements~~ submissions (including~~, without limitation,~~ in respect of taxation matters) in

[3] Consider limiting this broad power.

[4] Consider limiting this broad power.

connection with the Trust's compliance with applicable laws and regulatory requirements.

~~(ii)~~ Without limiting the foregoing, the Trustee shall seek to enter into Administrative Services Agreements~~, providing~~ with Electricity Distributors for ~~or relating to the appointment or employment of any of such Persons referred to above containing~~the purposes contemplated by the Permitted Delegations Annex, and on such terms and ~~provisions~~conditions (including terms and ~~provisions~~conditions as to the payment of reasonable fees and expenses) not inconsistent therewith as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable.

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~~(d)~~(f) ***Power to Operate Accounts.*** The Trustee shall have the power to open and operate accounts at any chartered bank, trust company or other financial institution in Canada or elsewhere, as the Trustee in its sole and absolute discretion may consider appropriate or advisable; to deposit therein any moneys or securities forming part of the Assets whether or not such deposits will earn interest; to withdraw such deposits at such times and in such manner as the Trustee may determine; to draw, make, endorse, deposit or otherwise deal in cheques, bills of exchange, promissory notes, drafts and other kinds of instruments and securities; to enter into contracts or agreements with any such chartered bank, trust company or other financial institution containing such terms and provisions as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable; and the Trustee shall have no liability or responsibility for any loss which may occur by reason of the failure of any such chartered bank, trust company or other financial institution.

~~(e)~~(g) ***Power to Collect, etc.*** The Trustee shall have the power to collect, sue for, receive and give receipts for all sums of money or other property due to the Trust; to consent to extensions of time for payment or to the renewal of any securities or obligations; to engage or intervene in, prosecute, defend, compound, compromise, abandon or adjust by arbitration or otherwise, any demands, claims, actions, suits or proceedings relating to the Trust or the Assets; to exercise any and all remedies available to the Trustee under any agreement or otherwise including any power of foreclosure or sale available at law and, in connection with any such foreclosure or sale, to purchase or otherwise acquire title to any property and to convey good title thereto free of any and all trusts hereby established, or to take or retake possession of any property secured under any agreement or instrument; to extend the time, with or without security, for the payment or delivery of any debts or property and to execute and deliver releases, acquittances, discharges, agreements or other instruments related thereto; and to pay or satisfy any debts or claims upon any evidence that the Trustee, in its sole and absolute discretion, may determine to be sufficient.

~~(f)~~(h) ***Power to Pay Trustee's Fees.*** The Original Trustee shall be entitled to be paid and receive reasonable fees ~~from the Assets~~ as compensation for its services under this Declaration and be reimbursed for its out-of-pocket expenses reasonably incurred, in each case from the Assets, without the approval of any Beneficiary or any court. The Original Trustee shall be entitled, in its sole and absolute discretion, to withdraw funds from time to time ~~funds~~ for such purpose from any account of the Trust. Members of the Board of Trustees shall be entitled to reimbursement for and in respect of their out-of-pocket expenses reasonably incurred in discharging their respective duties and obligations under this Declaration and any contract of the Trust entered into in accordance with this Declaration, in each case without the approval of any Beneficiary or any court, but subject to the "Travel, Meal and Hospitality Expenses Directive of

the Province" specified and amended by the Province from time to time, a copy of the current version of which is attached as Exhibit 1 to the Principles Annex.

~~(g)~~(i) ***Power to Pay Taxes.*** The Trustee shall have the power to pay, deduct, withhold or remit any taxes or assessments which are required by law to be paid, deducted, withheld or remitted together with or from any payment made by the Trustee; to pay all taxes or assessments of whatever kind or nature imposed upon or against the Trust or the Trustee in connection with the Assets or any part thereof; to collect and remit all taxes and assessments of whatever kind or nature required to be collected and remitted by the Trust or the Trustee in connection with their activities or the Assets or any part thereof; to appeal, settle or compromise tax claims or liabilities; and, for the foregoing purposes, to make such returns and do all other acts and things as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable.

~~(h)~~(j) ***Power to Appoint Auditors.*** The Trustee shall have the power to select and appoint and discharge and re-appoint, in its sole and absolute discretion, an auditor or auditors of the Trust and to settle the fees of any such auditor or auditors.

~~(i)~~(k) ***Form of Accounts.*** The Trustee shall have the power to determine and change from time to time, in its sole and absolute discretion, the method or form in which the accounts of the Trust will be kept and shall not be required to keep and provide accounts in the form usually required by law to be kept by trustees; provided that such method or form reasonably complies with generally accepted accounting principles in effect in Canada to the extent applicable.

~~(j)~~(l) ***Title to Assets.*** The Trustee shall have the power to cause all or any part of the Assets to be held by or registered, in its sole and absolute discretion, in the name of any Person.

~~(k)~~(m) ***Delegation of Discretion***. The Trustee shall have the power to delegate the right and power to exercise, or concur in the exercise of any discretion or power, conferred on the Trustee in this Declaration or conferred by law to any one or more of its directors, officers ~~or,~~ employees, agents or to such other Person, as the Trustee, in its sole and absolute discretion, may think is appropriate or advisable including, without limitation, ~~an Administrative Services Agent and its employees, officers and directors under an~~to one or more Administrative Services Agents and their respective employees, officers and directors, in each case under a related Administrative Services Agreement and on the basis contemplated in the Permitted Delegations Annex. The Trustee shall accept and follow the recommendations of an Electricity Distributor made under and in accordance with clauses [4(a)(i) to 4(a)(vi)] of the Permitted Delegation Annex with respect to a the identification and determination of distributions to be made to any Primary Beneficiary, except if and in so far as the Trustee has actual knowledge that (a) such Primary Beneficiary did not in fact satisfy the "Selection Factors" specified in the Principles Annex as of the applicable time of determination; and/or (b) the amount recommended to be distributed to the Primary Beneficiary was not calculated in compliance with or was calculated in a manner that is manifestly contrary to the requirements set forth or contemplated in the Permitted Delegation Annex or the applicable Administrative Services Agreement.

~~(l)~~(n) ***Additional Powers.*** The Trustee shall have the power to perform and do all such other acts, to take such steps and to execute all such deeds, transfers, assignments, agreements and other documents and instruments as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable for the carrying out of any of its powers hereunder or of any of the activities of the Trust as herein contemplated, or for the carrying out, promotion or advancement

of the interests of the Trust, whether or not any of such acts, things, documents or instruments are herein expressly mentioned. Any good faith determination by the Trustee as to what is necessary, desirable or appropriate to carry out its powers or activities of the Trust as contemplated under this Declaration or to carry out, promote or advance the interests of the Trust shall be conclusive. Any construction of this Declaration or any determination as to the activities of the Trust or the existence of any power or authority hereunder made in good faith by the Trustee, relying upon the advice of counsel, ~~will~~shall be conclusive. In construing the provisions of this Declaration, there shall be a presumption in favour of a grant of power to the Trustee.

SECTION 5
CONCERNING THE TRUSTEE

5.1 Duty of Trustee

In performing its duties and exercising its powers under this Declaration, the Trustee ~~will~~shall act honestly, in good faith and with a view to the best interests of the Trust and the Beneficiaries and ~~will~~shall exercise that degree of care, diligence and skill that a reasonably prudent trustee would exercise in comparable circumstances (the "**Standard of Care**"). The Trustee shall observe and act in accordance with the terms of, and shall observe and comply with the limitations and restrictions set forth in, this Declaration. To the extent that the Trustee has delegated any of its duties or powers, it shall be deemed to have satisfied the Standard of Care~~.~~ in respect of the subject matter of such delegation, subject to the Trustee's overall duty as a trustee to exercise prudent oversight in relation to such delegation. Unless required by law, the Trustee will not be required to give any security, bonds or sureties in any jurisdiction for the performance of any of its duties and obligations under this Declaration. The Trustee will not be required to devote its entire time to the trust activities.

5.2 Limitation of Liability

~~Subject to Section 5.1, the~~The Trustee ~~will~~shall not be personally liable in tort, contract or otherwise to ~~the Trust,~~ any Beneficiary or any other Person for any loss or diminution in the value of the Assets, or for any action or failure to act on the part of the Trustee or any of its employees or agents or any other Person, and ~~will~~shall not be subject to any personal liability for any debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses incurred by or against the Trust, howsoever arising, and resort will be had solely to the Assets for the payment, performance or satisfaction thereof. No property or assets of the Trustee, owned in its personal capacity or otherwise, will be subject to levy, execution or other enforcement procedure**s** with respect to any obligation under this Declaration. However, Section 5.2 shall not apply where the Trustee has demonstrated gross negligence, bad faith, fraud or wilful misconduct.

5.3 Liability of Trustee under Contracts

Any document or instrument creating a liability or obligation of the Trust or the Trustee will be conclusively deemed to have been executed by the Trustee only in its capacity as Trustee of the Trust and will be binding upon the Trustee only in its capacity as trustee hereunder and resort may not be had to, nor recourse or satisfaction be sought from, the property of the Trustee other than the Assets, whether owned by its in its personal capacity or in any other capacity other than in its capacity as Trustee of the Trust, or from its employees or agents, and resort will be had

solely to the Assets for the payment, performance or satisfaction of any such liability or obligation. Each such document or instrument shall contain a provision providing for the aforesaid limitation of liability. However, Section 5.3 shall not apply where the Trustee has demonstrated gross negligence, bad faith, fraud or wilful misconduct.

5.4 Funds of the Trustee

The Trustee shall not be required to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers.

5.5 Indemnification of Trustee

In addition to and without limiting any other protection hereunder or otherwise by law of the Trustee and its respective employees, agents, representatives and assigns (in this Section 5.5, collectively, the "**Representatives**"), the ~~Trust indemnifies, defends and saves harmless the~~ Trustee and its respective Representatives shall be indemnified, defended and saved harmless out of the Assets from ~~and,~~ against and in respect of any and all liabilities~~, including those~~ arising or related to actions taken or omitted to be taken by any agent of the Trustee, losses, claims (including any claim arising out of the assessment of any tax on income by a taxing authority), damages, penalties, fines, actions, suits, demands, levies, assessments, costs, charges, expenses and disbursements (including, without limitation, any and all legal and advisor fees and disbursements) (in this Section 5.5, collectively, the "**Liabilities**") of whatever kind or nature which may at any time be suffered by, imposed upon, incurred by or asserted against the Trustee and its Representatives, whether groundless or otherwise, howsoever arising from or out of any act, omission or error of the Trustee, in each case made in connection with its acting as Trustee hereunder, except and to the extent that the Liabilities are a result from or are caused by gross negligence, wilful misconduct, bad faith or breach of the ~~Standard of Care by or on the part of the Trustee or its Representatives.~~Confidentiality obligations described in Section 5.9. Further, except as provided in Section 5.2, the Trustee ~~will~~shall not be liable to ~~the Trust, to~~ any Beneficiary ~~or to any other Person~~ for any loss or damage relating to any matter regarding the Trust, including any loss or diminution in value of the Assets. Notwithstanding any other provision hereof, the obligations provided for in this Section shall survive any termination of the Trust created hereby, whether by reason of removal or resignation of the Trustee, termination or discharge of this Declaration or otherwise.

5.6 Reliance upon Advice

Subject to Section 5.1, in performing its duties and exercising its powers hereunder, the Trustee may rely and may act or not act, and shall be fully protected in relying and acting or not acting, upon (a) any statement, telecopy or other electronic means of communication, writing, notice, resolution, report, opinion or other document or conversation believed by its to be genuine and correct and to have been signed, sent or made by the proper Person; ~~and~~ (b) any opinion or advice received or information obtained from auditors, solicitors, or other professional advisers, whether retained by the Trustee or otherwise, and shall not be responsible or held liable for any loss or damage resulting from so relying or acting or not acting~~.~~; and (c) the advice and actions of any Administrative Services Agent, including in connection with the delegations and reliances contemplated under the Permitted Delegations Annex. For greater certainty, it shall not be necessary for the Trustee to ascertain whether or not the Persons who have executed, signed or

otherwise issued, authenticated or receipted such papers, writings or documents (including any Administrative Services Agreement or any other contract entered into by the Trustee) have authority to do so or that they are the same Persons named therein or otherwise to pass upon any requirement of such papers, writing or documents that may be essential for their validity or effectiveness or upon the truth and acceptability.

5.7 ~~Resignation~~Replacement of the Original Trustee

~~If the Trustee wishes to resign from its role as trustee under this Declaration and be discharged from the trusts and powers reposed in and conferred upon it by this Declaration, it shall give ninety (90) days' prior written notice thereof to the Minister of Energy (or such lesser period as the Minister of Energy may otherwise consent to). Notwithstanding such notice, such resignation shall become effective, and the Trustee shall be discharged from the trusts and powers reposed in and conferred upon it under this Declaration, only upon the appointment of, and the written acceptance of such appointment by, a successor trustee in accordance with Section 5.8. If no successor trustee shall have been appointed or shall have accepted appointment within ninety (90) days after the giving of such notice of resignation, the resigning Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee at the expense of the Trust.~~

~~**5.8 Appointment of Successor Trustee**~~

~~In the event of the resignation of the Trustee, the [**Minister of Energy**] shall appoint a successor trustee or trustees by instrument in writing and shall give written notice of such appointment to the Trustee resigning.~~

As soon as practicable and in any event prior to •, 2017, the Original Trustee shall appoint the Persons contemplated by the Trustee Replacement Annex to comprise the Advisory Committee contemplated therein (once constituted, the "**Advisory Committee**"). As soon as practicable thereafter, the Original Trustee shall request that the Advisory Board make recommendations with respect to the composition of the "Board of Trustees", as contemplated by the Trustee Replacement Annex. The Trustee shall have no duty or obligation to investigate the basis for any of the Advisory Committee's recommendations and may rely on such recommendations without any duty of enquiry, supervision or oversight with respect to the activities and decision-making processes adopted by the Advisory Committee in its discretion, in full satisfaction of the Original Trustee's Standard of Care with respect to such matters hereunder. Except if the Trustee determines that the individuals recommended by the Advisory Committee to become members of such Board of Trustees are disqualified from so acting on the basis of manifest non-compliance with the selection factors set forth under "Selection Factors" set forth in the Trustee Replacement Annex, the Original Trustee shall appoint, as additional Trustees, [number] of individuals from among those individuals who have been recommended for appointment to such Board of Trustees by the Advisory Committee. The Original Trustee may exercise its discretion in selecting such individuals for such appointment or, in the absence of such exercise, shall select such individuals based on the [alphabetic order of the first letter of their respective surname]. Upon the appointment of [number] additional trustees pursuant to this provision and their agreement to act as members of the Board of Trustees, the Original Trustee shall be deemed to have resigned and shall cease to be a trustee (such resignation occurring on the "**Original Trustee Replacement Date**").

5.8 Composition of the Board of Trustees

[NTD: Specify requirements or principles annex]

5.9 Rules and Procedures of the Board of Trustees

(a) ***Initial Requirements***. [NTD: Need to insert bare bones governance for the Board of Trustee's initial governance purposes.]

(b) ***Power to Adopt Rules and Procedures.*** [NTD: Add power to adopt governance provisions, including to permit remaining trustees to replace any vacancy arising after Board of Trustees and to fill any vacancy by application to the Courts of Ontario in the event of an unfilled vacancy.]

(c) ***Decisions of the Board of Trustees.*** [NTD: Add language to make clear how the majority decisions of Board will represent the decision of the "Trustee" and not any individual trustee. This will be necessary to specify at the outset in order to avoid problems enlisting members of the Board of Trustees.]

(d) ***Conflicts of Interest.*** [NTD: Specify requirements]

(e) ***Expenses and Reimbursements to Trustees.*** [NTD: Specify requirements]

~~5.9~~5.10Confidentiality

Notwithstanding the resignation or removal and discharge from the trusts and powers reposed in and conferred on the Trustee by this Declaration, or the termination of this Declaration, the Trustee so resigning or removed ~~will~~shall continue to treat as confidential all information relating to the Trust, the Assets and the Beneficiaries and shall only be entitled to make disclosures concerning such information if disclosure is required in the performance of the functions of the resigning or removed Trustee or is ordered by a court of competent jurisdiction or is otherwise required by law. The Trustee ~~will~~shall not be responsible or liable to any Person for any loss or damage arising out of or in any way sustained or incurred in any way relating to any such required disclosure. The obligations arising under this Section [5.~~9~~10] shall survive the termination of the Trust.

~~5.10~~5.11 Vesting in Successor Trustee

Any successor trustee ~~will~~(including any reconstituted Board of Trustees) shall automatically become vested with the Assets and with the same powers, rights, duties, responsibilities and trusts as if it, he or she had been originally named as Trustee under this Declaration without the requirement of any further instrument or act or conveyance and the Trustee ceasing to act ~~will~~shall execute all such transfers and other documents and do all such other acts or things as may be necessary or desirable to assign, transfer, deliver to, and vest in, the successor trustee, upon the trusts expressed in this Declaration, all the Assets and all the rights, powers and trusts of the Trustee ceasing to act. The expense of any act, document, deed or other instrument or thing required under this Section 5.~~10~~11,1, including for greater certainty, outstanding fees and unreimbursed expenses of the Trustee (including any member of the Board of Trustees) ceasing to act, ~~will~~shall be satisfied from the Assets.

~~5.11~~5.12 Execution of ~~Documents~~Instruments

The Trustee shall have the power to execute all deeds, transfers, agreements, promissory notes and other instruments on behalf of the Trust. Such power may be exercised by any one or more Administrative Services Agents acting in accordance with any delegated right to do so pursuant to an applicable Administrative Services Agreement, and any such execution of instrument by an Administrative Services Agent, acting in such capacity as agent of the Trust pursuant to the terms and conditions of such Administrative Services Agreement shall be deemed to be a proper execution of such instrument by the Trustee and shall be binding for all purposes on the Trust.

5.13 Decisions by the Trustee

If there is more than one Trustee, decisions of the Trust may be made by a majority of Trustees. Whenever the Trustees are unable to agree in relation to the commission or omission of any act or howsoever in the execution of the Trust the decision of a majority of the Trustees shall prevail.[5]

SECTION 6
AMENDMENTS AND SUPPLEMENTS

~~**6.1 Amendment**~~

6.1 ~~The~~Amendments

Subject to the requirements of the Transfer Payment Agreement, the Trustee shall have the power in its sole and absolute discretion from time to time without the approval of any Beneficiary or any court to amend, vary, supplement, replace or restate this Declaration in its entirety or any portion thereof~~.~~, provided that no amendment shall conflict with the principles set forth in the Principles Annex or as to the scope or effect of the permitted delegations and activities of any Administrative Services Agent pursuant to the Permitted Delegations Annex. Without in any way limiting the foregoing, any such amendments, variations, supplements, replacements or restatements may:

(a) add provisions for the replacement of or appointment of additional trustees to act with the Original Trustee prior to the Original Trustee Replacement Date;

~~(a)~~(b) in the case of the Original Trustee, add provisions to those contemplated in the Trustee Replacement Annex in respect of the appointment of the members and formation and empowerment of the Board of Trustees;

(c) in the case of the Original Trustee, vary the terms and requirements applicable to the duties, responsibilities, obligations, liabilities, indemnities, protections, limitations, restrictions, compensation, expense reimbursements and such other matters, in each case as the Advisory Committee may indicate are necessary be made in order to attract and receive confirmation of appointment of appropriately qualified individuals that the Advisory Committee specifies are to be appointed as members of the Board of Trustees in accordance with its recommendations;

[5] NTD: This section will be integrated into the additional provisions dealing with the Board of Trustees.

(d) add additional or replace existing Trustees[6];

(e) add to or reasonably clarify the principles set forth in the Principles Annex;

(f) add to or reasonably clarify the delegations and activities contemplated to be made in the Permitted Delegation Annex;

~~(b)~~(g) include provisions for the management of the Trust by the Trustees, including the making of rules, requirements and procedures ~~for meetings~~governing the decision-making of the Board of Trustees;

~~(c)~~(h) ~~include~~add provisions for the replacement of ~~Trustees;~~members of the Board of Trustees (in addition to those provisions contemplated in the Trustee Replacement Annex);

~~(d)~~(i) provide for the engagement of any Person or Persons as managers, administrators or other service providers to the Trust, including any additional or replacement Administrative Services Agent or representative thereof;

~~(e)~~(j) specify supplemental procedures for the identification of Primary Beneficiaries and the exchange of information with ~~Local Distribution Companies~~Electricity Distributors in connection with identifying such Primary Beneficiaries ~~who will be the recipients;~~; or

~~(f)~~ specify procedures for the transfer and transmission of funds from the Trust or any Administrative Services Agent acting on its behalf and with delegated responsibility over funds constituting Assets, to~~,~~ or for the benefit of, Beneficiaries~~;~~

~~(g) [NTD: other expected amendments]~~

~~**6.2 Automatic Amendment**~~

(k) ~~Upon the Trustee ceasing to be a trustee of the Trust, this Declaration will be automatically amended, without any action required to be taken or documentation entered into, to delete any reference to the name of the Trustee so ceasing to be a trustee of the Trust and to substitute therefor the name of the successor trustee of the Trust~~ or their designated representatives, payees or assignees.

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~~6.3~~6.2 Supplemental Declarations

The Trustee is authorized to execute any supplemental declaration of trust (including one or more amendments and restatements from time to time of this Declaration) to give effect to amendments to this Declaration made pursuant to this Section 6.

[6] NTD: Consider and, if retained, integrate with Board concepts.

SECTION 7
TERMINATION

7.1 Duration

Subject to Section 7.2, the Trust will continue in full force and effect so long as there is any Assets and until all of the debts, liabilities and obligations of the Trust have been paid and satisfied in full.[7]

7.2 Termination and Distribution of Assets

Subject as hereinafter provided, the Trustee may terminate the Trust and wind up its affairs on such date as the Trustee, in its sole and absolute discretion, may determine and after paying or adequately providing for the payment and satisfaction of all debts, liabilities and obligations of the Trust and upon receipt of such releases, indemnities and discharges as the Trustee, relying on the opinion of counsel, deems necessary for the protection of the Beneficiaries and for its own protection. Notwithstanding the foregoing, the Trustee shall in any event terminate the Trust and wind up its affairs ~~not later than December 31, 2037~~as soon as practicable after the Final Distribution Date (the "**Termination Date**"). ~~[**Upon**~~In connection with the termination of the Trust, the Trustee shall distribute or cause to be distributed the remaining Assets, in cash or in kind or partly in each, to the Residual ~~**Beneficiary.**] [**NTD: treatment of residual assets to be discussed.**]~~Beneficiaries in accordance with Section 3.3.

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7.3 Distribution of Assets on Final Distribution Date

If the Trust holds Assets on the Final Distribution Date, such assets shall promptly be paid to the Residual Beneficiaries in accordance with Section 3.3.

SECTION 8
ACCEPTANCE OF TRUSTS

8.1 Acceptance of Trusts

The Trustee hereby accepts the trusts and duties contained in this Declaration and agrees to perform the same upon the terms and conditions hereof until discharged therefrom.

[Signature Page Follows]

[7] NTD: Consider early termination scenarios.

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The Trustee has executed this Declaration as of the date first written above.

COMPUTERSHARE TRUST COMPANY OF CANADA, as Trustee

By: _____
Name:
Title:

By: _____
Name:
Title:

PRINCIPLES ANNEX

The following principles apply in relation to the administration of the Trust:

1. Identification of Primary Beneficiary Payees

1.1 A Primary Beneficiary should not receive a benefit from the Trust unless at the time of consideration it satisfies each of the following criteria (the "**Selection Factors**"):

(i) it is an [owner-occupied,], [non-commercial] [not for profit] electricity customer;

(ii) it has [committed] [made arrangements] [proposed] [indicated its willingness] to undertake measures (its "**Energy Plan**") to improve the electricity efficiency and/or promote the conservation of electricity at its Ontario residence;

(iii) its Energy Plan involves one or more Eligible Measures as may be designated by the Trustee from time to time from;

(iv) it confirms that:

1. the primary purpose of its Energy Plan is the conservation and efficient use by the Primary Beneficiary of electricity, and is not for the purposes of the Primary Beneficiary making a profit;

2. it would otherwise not have the financial resources to undertake [the Eligible Measures] included in its Energy Plan;

3. the Eligible Measures to be undertaken by it under its Energy Plan would not otherwise be eligible for reimbursement from third parties, including under any efficiency or conservation program implemented by a government, governmental agency or third party energy subsidy program;

(v) it has demonstrated a need for financial assistance on the basis that its periodic electricity bills represent a financial burden, relative to its available financial resources; and

(vi) such other criteria as the Trustee may determine, including based on the recommendations of Electricity Distributors made on the basis and in accordance with the delegations contemplated by the Permitted Delegations Annex or any applicable Administrative Services Agreement.

1.2 The availability of funds to the Primary Beneficiaries should be allocated on an equitable and consistent basis across different areas and regions within the Province, having regard to:

(i) broad economic parameters of economic activity and the financial resources of the residents of the areas and regions;

Commented [A1]: Content in the annex will be further refined

Commented [A2]: KPMG to comment on 'control' implications.

(ii) electricity use and efficiency levels of non-commercial electricity customers;

(iii) specific regional indicators of economic weakness and need; and/or

(iv) such other factors as the Trustee may determine are relevant, including based on the submissions, advice and recommendations of Electricity Distributors made on the basis and in accordance with the delegations contemplated by the Permitted Delegations Annex or any applicable Administrative Services Agreement.

1.3 An efficient basis upon which to allocate funds to the Primary Beneficiaries across different areas and regions within the Province may be based on the designated areas and regions serviced by the Electricity Distributors operating within the Province.

1.4 The designated Electricity Distributor for an area or region in which a Primary Beneficiary resides will:

(i) be a reliable source for the purpose of assessing and confirming whether the Primary Beneficiary satisfies the Selection Factors;

(ii) be an efficient intermediary for the purpose of communicating with the Primary Beneficiary, including regarding the availability, terms, conditions and intended purposes of [Project][8];

(iii) be able to efficiently integrate and reflect any distribution payments determined to be made to the Primary Beneficiary within its established practices, procedures and systems; and

(iv) have established contractual arrangements with the Primary Beneficiary that may apply to the protection and confidentiality of information provided by or respecting the Primary Beneficiary, which information may be useful in the consideration by the Electricity Distributor in its assessment of whether the Primary Beneficiary satisfies the Selection Factors, which information may not otherwise be available or readily accessible or verifiable by the Trustee.

1.5 The designated Electricity Distributor for an area or region in which a Primary Beneficiary resides will have market and utilization information that may be useful in assessing the relative needs of Primary Beneficiaries within its designated area or region. Such information will be relevant in assessing the extent to which one such Primary Beneficiary's financial needs and the merits of its Energy Plan are greater or more compelling than those of another such Primary Beneficiary, which comparison may be relevant to the extent that the funds allocable to the Primary Beneficiaries resident in the area or region are otherwise insufficient to meet the requests for funding by all such Primary Beneficiaries.

[8] Consider if the Trustees should control the messaging to ensure consistency across the Province.

1.6 Accordingly, it is consistent with the purposes of the Trust that the recommendations of Electricity Distributors be utilized and relied upon by the Trustee to guide the process of identifying particular Primary Beneficiaries for distributions under the [Project].

1.7 If an Electricity Distributor for a particular area or region is unable or unwilling to assess or confirm the application of the Selection Factors to Primary Beneficiaries residing in the area or region or to make recommendations in relation to such matters, one or more of the following may provide a suitable alternative source of information and for information gathering, assessment and confirmation purposes in relation to such area or region:

(i) other Electricity Distributors operating in adjacent or other areas or regions in the Province;

(ii) the Ontario Energy Board;

(iii) the Independent Electricity System Operator; and

(iv) anyone else having relevant expertise and access to information regarding the electricity market of the Province, in each case as may be considered relevant by the Trustee.

1.8 To the extent that privacy law or other legal requirements limit an Electricity Distributor from providing or making available specific information respecting the application of the Selection Factors to a particular Primary Beneficiary or group of Primary Beneficiaries, it may be appropriate to redact or make generic affected information regarding such Primary Beneficiary in connection with the identification and confirmation of a Primary Beneficiary's eligibility and participation in the [Project]. If such limitations or restrictions would limit an Electricity Distributor from providing or confirming the name of a particular Primary Beneficiary to the Trustee, then it should be sufficient that such information may be obtained or disseminated on a confidential basis if and when required by the Trustee for the proper administration of the Trust and on that basis such impediments should not disqualify a Primary Beneficiary from participating in the benefits of the [Project], to the extent that the confidential record-keeping of the Electricity Distributor would be available in connection with the application of any applicable legal process predicated on the identification of such Primary Beneficiary for the purposes of substantiating its rights as a Primary Beneficiary of the Trust or as to the validity or subsistence of the Trust.

2. Eligible Measures

2.1 Eligible Measures shall be identified having regard to the following (the "**Measures Factors**"):

(i) [NTD: Insert generic list of considerations relevant to the identification of the applicable spending uses].

2.2 In identifying and applying the Measures Factors, Electricity Distributors will have expertise in assessing the suitability of efficiency and conservation measures in their

respective areas and regions, which may differ across areas and regions across the Province based on factors (among other things) such as the climate, geography, density, electricity infrastructure, residential structures, and electricity use rates applicable within such areas or regions.

2.3 Unless otherwise specified by the Trustees, the measures specified in Schedule A to this Principles Annex will be considered.

3. Other

3.1 It is expected that administrative expenses of the Board of Trustees and its members, including any expenses relating to the Trust, to the establishment of the [Affordability Fund] and any expenses related to the implementation and operation of the [Project] by or through Electricity Distributors and other relevant entities, will be recognized and subject to reimbursement in accordance with the principles outlined in the [Province's Transfer Payment Accountability Directive/Travel, Meal and Hospitality Expenses Directive][9], in the form attached to Schedule B to this Principles Annex.

3.2 The Trustee is expected to conduct its activities to ensure that, as more specifically contemplated in the Transfer Payment Agreement:

(i) the Assets are applied are spent prudently and in furtherance of the purpose set forth in the Declaration;

(ii) the Trustee is accountable to the Province for activities undertaking in connection with the Project;

(iii) it complies with the Province's request for any independent verification or audit determined to be necessary or appropriate by the Province;

(iv) the Province will be entitled and has reserved its right to demand the return of the Assets if the Province determined that they are not being used for the purposes and applied in the manner as set forth or contemplated in the Declaration.

3.3 Electricity Distributors are not intended to directly profit from distributions of funds made from the Trust, although it is recognized that the objectives of electricity efficiency and conservation of Primary Beneficiaries located in the service area or region of an Electricity Distributor, and the cost savings and improved credit worthiness of such Primary Beneficiaries, may be financially beneficial to the Electricity Distributor.

3.4 Distributions from the Trust are intended to allow receiving Primary Beneficiaries to undertake Eligible Measures at no or minimal personal cost.

3.5 It is expected that the Trust Assets will be distributed to Primary Beneficiaries during the period from the Original Trustee Replacement Date to [the Final Distribution Date] [March 31, 2019].

[9] NTD: Ministry to confirm applicable Directive(s).

SCHEDULE A
TO THE PRINCIPLES ANNEX
INITIAL ELIGIBLE MEASURES

Initial Specified Measures
Block Heater Timer (just timer) – rated for outdoor use, have at least a 15 amp/1800 watt capacity, be cold weather resistant, bear a C-UL or CSA certification mark
Power bar with integrated timer, and switched power outlets, four each for a total of 8 outlets, have a total capacity of 15 amps. The switched outlets must remain "live", independent of timer settings, so long as the power bar itself remains switched on. The power bar must bear either a C-UL or CSA certification mark.
Efficient Showerheads (standard) - rated at no more than 4.8 Lpm (1.25 U.S. gpm) and be of the laminar flow type (non-aerating).
Efficient Showerhead (handheld) - rated at no more than 4.8 Lpm (1.25 U.S. gpm) and be of the laminar flow type (non-aerating).
Efficient Aerators (kitchen) - rated no more than 5.7 Lpm (1.5 U.S. gpm), dual threaded to allow installation in both thread type faucets, swivel type with pause lever.
Efficient Aerators (bathroom) - rated no more than 3.8 Lpm (1.0 U.S. gpm), be dual threaded to allow installation in both thread type faucets.
Hot Water Tank Pipe Insulation - $^{1}/_{2}$" inside diameter – foam, meets ASTM –C547-00, minimum $^{3}/_{4}$" thick
Hot Water Tank Pipe Insulation - $^{3}/_{4}$ " inside diameter - – foam, meets ASTM –C547-00, minimum $^{3}/_{4}$" thick
Hot Water Tank Insulation - fibreglass R10 (fits up to a 60 gal tank) – not bubble wrap
≤11W ENERGY STAR® Qualified LED A Shape (60W) (minimum 600 Lumen output) (Formerly: 7W – 11W ENERGY STAR® Qualified LED A Shape (60W))

Initial Specified Measures
≤14W ENERGY STAR® Qualified LED A Shape (75W) (minimum 800 Lumen output) (Formerly: 10W – 14W ENERGY STAR® Qualified LED A Shape (75W))
≤23W ENERGY STAR® Qualified LED A Shape (100W) (minimum 1600 Lumen output) (Formerly:17W – 23W ENERGY STAR® Qualified LED A Shape (100W))
≤16W ENERGY STAR® Qualified LED PAR 20 (minimum 600 Lumen output) (Formerly: 8W – 12W ENERGY STAR® Qualified LED PAR 20)
≤16W ENERGY STAR® Qualified LED PAR30 & PAR38 (minimum 600 Lumen output) (Formerly: 8W – 12W ENERGY STAR® Qualified LED PAR 30)
≤23W ENERGY STAR® Qualified LED PAR (minimum 1100 Lumen output) (Formerly: 14W – 18W ENERGY STAR® Qualified LED PAR 38)
≤6W ENERGY STAR® Qualified LED MR 16 / PAR 16 (minimum 250 Lumen output) (Formerly: 7W – 10W ENERGY STAR®
Qualified LED MR 16 / PAR 16 - GU 10 Base)
≤11W ENERGY STAR® Qualified LED MR 16 (minimum 400 Lumen output) (Formerly: 7W – 12W ENERGY STAR® Qualified LED MR 16 GU 5.3 Base)
ENERGY STAR® LED Wet Location Rated PAR lamp ≤ 23 Watt (minimum 1100 Lumen output)
Recessed Downlight Fixture including LED with Light Output >600 and <800 lumens (Retrofit Measure List)
Recessed Downlight Fixture including LED with Light Output >800 lumens (Retrofit Measure List)
Indoor Drying Rack

Extended Measures
Replace refrigerator with ENERGY STAR qualified refrigerator - 15.5 - 16.9 cubic foot top freezer, automatic defrost, refrigerator/ freezer, no through the door ice service
Replace refrigerator with ENERGY STAR qualified refrigerator - 17.0 - 18.4 cubic foot top freezer, automatic defrost, refrigerator/ freezer, no through the door ice service
Replace refrigerator with a refrigerator that has a consumption level of less than 425 kwh, 10 – 12.5 cubic foot top freezer, automatic defrost, refrigerator freezer, no through the door ice service
Replace freezer with ENERGY STAR qualified freezer -
12-14.4 cubic foot freezer
Replace freezer with ENERGY STAR qualified freezer - 14.5 - 16.0 cubic foot freezer
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 6,000 – 7,999 BTU/hr with C-UL or CSA certification mark
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 8,000 – 9,999 BTU/hr with C-UL or CSA
certification mark
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 10,000 – 12,000 BTU/hr with C-UL or CSA certification mark
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 14.2 - 21.2 l/day (30-44.9 pints/day) dehumidifier
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 21.3 - 25.4 l/day (45-53.9 pints/day) dehumidifier

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Extended Measures
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 25.5 - 35.5 l/day (54-75 pints/day) dehumidifier dehumidifier dehumidifier
Programmable Thermostat – line voltage – meets CAN/CSA-C828-06 standard, minimum performance: Droop: 1.5°C, Differential: 0.5°C, Precision 0% within 0.5°C of the original set point of 22°C
Programmable Thermostat – low voltage - meets CAN/CSA-C828-06 standard, minimum performance: Droop: 1.5°C, Differential: 0.5°C, Precision 0% within 0.5°C of the original set point of 22°C

Weatherization Measures
Comprehensive Draftproofing (caulking, foam and weather stripping, and application of same) – lifespan of 20 years plus If one or two component polyurethane foams are used, the products and installations must conform to: • CAN/ULC-S710.1 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 1: Material Specification. • CAN/ULC-S710.2 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 2: Application. • CAN/ULC-S711.1 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification • CAN/ULC-S711.2 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification, and Part 2: Application.
Attic Insulation (including installation):
cellulose: CAN/ULC-S703-01 Amendment 1 - Cellulose Fibre Insulation (CFI) for Buildings OR 2) Mineral Fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre

Weatherization Measures
for Buildings **Wall Insulation (including installation):**
cellulose: CAN/ULC-S703-01 Amendment 1 - Cellulose Fibre Insulation (CFI) for Buildings OR 2) Mineral Fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre **Basement Insulation (including installation):**
mineral fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre for Buildings Vapour Barrier: 69009-CAN/CGSB-51.34-m86 If one or two component polyurethane foams are used, the products and installations must conform to: • CAN/ULC-S710.1 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 1: Material Specification. • CAN/ULC-S710.2 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 2: Application. • CAN/ULC-S711.1 Standard for Thermal Insulation – Bead Applied Two-Component
Polyurethane Air Sealant Foam, Part 1: Material Specification • CAN/ULC-S711.2 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification, and Part 2: Application.

[NTD: Add details pertaining to heat pumps]

SCHEDULE B TO THE PRINCIPLES ANNEX
PERMITTED EXPENSE REIMBURSEMENTS

[NTD: Insert the Province's Transfer Payment Accountability Directive/Travel, Meal and Hospitality Expenses Directive]

PERMITTED DELEGATION ANNEX

1. Under Section 4.2(d) of the Declaration, the Trustee has the power to: (A) appoint, employ or retain Administrative Services Agents for the purpose of discharging its duties and obligations under the Declaration; and (B) enter into, perform, enforce and amend Administrative Services Agreements.

2. In accordance with [Section 4.2] of the Declaration, consistent with the principles set forth in the Principles Annex, the Trustee or its agent will seek to enter into one or more Administrative Services Agreements with individual Electricity Distributors under which the Electricity Distributors will act as Administrative Service Agents to the Trustee. In this manner, the Trustee will delegate certain of its powers and duties to the Electricity Distributors.

3. Under Section 5.1 of the Declaration, to the extent the Trustee has delegated any of its duties or powers, it shall be deemed to have satisfied the Standard of Care in respect of the subject matter of such delegation, subject to the Trustee's overall duty to exercise prudent oversight thereof. The Trustee is entitled to rely on an Electricity Distributor to discharge the duties delegated to it, as Administrative Services Agent, pursuant to an Administrative Services Agreement as described in this Annex.

4. Accordingly, and without limiting the Trust's right to delegate under the Declaration, the Trust will be permitted to, and should seek to, enter into Administrative Services Agreements with Electricity Distributors in order to provide for the following:

    a. **Identification of Applicable Primary Beneficiary Payees and Determination of Individual Distribution Amounts**

        i. Each Electricity Distributor will make an initial assessment of the financial needs of Primary Beneficiaries within its designated service area or region, having regard to [NTD: specify relevant economic data and reference material], in order to prepare and provide to the Trustee an estimate of the number of Primary Beneficiaries who the Electricity Distributor reasonably expects would satisfy the Selection Factors (as defined in clause 1.1 "Identification of Primary Beneficiary Payees" of the Principles Annex).

        ii. Each Electricity Distributor will make an initial assessment of the measures it would recommend be included as Eligible Measures, having regard to [NTD: specify relevant considerations], in order to prepare and provide to the Trustee an estimate of the average cost per Primary Beneficiary Payee (as defined below) of such Eligible Measures that the Electricity Distributor reasonably expects would apply in respect of Primary Beneficiaries resident in its service area or region.

        iii. Based on the product of (i) and (ii), above, and such other considerations as it considers to be directly relevant, each Electricity Distributor will make a written recommendation to the Trustee regarding the aggregate funding amount that the Electricity Distributor anticipates would be utilized under the

[Project] by Primary Beneficiaries in its service area or region (the "**Local Funding Estimate**"). Such recommendation will be accompanied, when submitted to the Trustee, by a detailed explanation regarding the assumptions, financial parameters, suitability considerations and other information underlying the Local Funding Estimate (including the type of information contemplated by "[Insert]" under the Principles Annex, which will be relied upon by the Trustee in its assessment regarding the allocation of available funding to or for the benefit of the Primary Beneficiaries across the specified areas and regions of the Province.

iv. The Trustee will inform the Electricity Distributor regarding the aggregate of the amount determined by the Trustee to be made available under the [Project] for Primary Beneficiaries in the Electricity Distributor's designated service area or region (for each LDC, its "**Maximum LDC Allocation**") and as to any maximum amount that may be paid to or for the benefit of any single Primary Beneficiary [or group of related Primary Beneficiaries] located in the servicer area or region of the Electricity Distributor (the "**Maximum Primary Beneficiary Amount**"). The Maximum LDC Amount and Maximum Primary Beneficiary Amount may vary between designated areas and regions, the Primary Beneficiaries within such areas and regions, and may be increased by the Trustee from time to time in its discretion.

v. Each Electricity Distributor will apply the principles set forth under ["Identification of Primary Beneficiary Payees" in the Principles Annex] to identify and make recommendations to the Trustee regarding the amount of funds (if any) to be distributed to or for the benefit of Primary Beneficiaries resident within its designated service area or region from time to time (the "**Primary Beneficiary Payees**").

vi. Each Electricity Distributor will ensure that the aggregate of the amounts it recommends be distributed to or for the benefit of Primary Beneficiary Payees from time to time does not exceed (1) its Maximum LDC Allocation and (2) for any single Primary Beneficiary [or group of related Primary Beneficiaries] located in the servicer area or region of the Electricity Distributor, the Maximum Primary Beneficiary Amount.

vii. The Trustee will provide written confirmation to each Electricity Distributor:

1. Either (x) that the recommendations specified of the Electricity Distributor in clause (v), above, have been accepted, or (y) as to the specific reasons for any non-acceptance;

2. The identity of each Primary Beneficiary Payee resident in the Electricity Distributor's service area or region and its residential address;

3. The amount of the distribution to be paid to or for the benefit of each such Primary Beneficiary Payee.

b. **Making of Distributions**

i. Promptly after the Trustee confirms the identity of a Primary Beneficiary Payee resident in a Electricity Distributor's service area or region and the amount of the distribution to be paid to or for the benefit of such Primary Beneficiary Payee, the Trustee will arrange for payment to the Electricity Distributor an amount equal to the amount of such distribution.

ii. Promptly upon receipt of funds in respect of a distribution to a Primary Beneficiary Payee, the Electricity Distributor will arrange for payment of the full amount of such distribution to or for the benefit of the Primary Beneficiary Payee, without reduction or set-off.

c. **Reporting, Record-Keeping, Inspection and Disclosure**

i. The Electricity Distributor will provide to the Trustee quarterly and annual reports ("**Reports**") for the duration of the Administrative Services Agreement.

ii. The Electricity Distributor will keep and maintain all financial records and non-financial documents and records relating to the provision of services under the Administrative Services Agreement. [Specify required records regarding individual Primary Beneficiary Payees]

iii. The Trustee, its authorized representatives or an independent auditor may, at its own expense, on twenty-four hours' notice to the Electricity Distributor and during normal business hours, inspect the records of and information respecting the Electricity Distributor to confirm its compliance with the Administrative Services Agreement, including its process for determining the Primary Beneficiary Payees, distribution amounts and the delivery of funds to [or for the benefit of] the Primary Beneficiary Payees. The Trustee, its authorized representatives or an independent auditor may inspect and copy all records and documents kept in accordance with the Administrative Services Agreement and conduct an audit or investigation of the Electricity Distributor in respect of the identification of the applicable Primary Beneficiary Payees, the amount of distributions made to or for the benefit of the Primary Beneficiary Payees; and the delivery of funds to or for the benefit of the Primary Beneficiary Payees.

d. **Standard of Care**

i. The Electricity Distributor will perform its duties provided under the Administrative Services Agreement exercising the degree of care, diligence and skill that a reasonably prudent Person would exercise in comparable circumstances.

ii. In recommending Primary Beneficiary Payees to the Trustee, the Electricity Distributor will seek to avoid actual, potential or perceived conflicts of interest.

e. **Expenses**

i. The Electricity Distributor will be eligible to receive reasonable compensation and reimbursement of its actual out-of-pocket costs associated with the performance of its duties under the Administrative Services Agreement, subject to compliance with the Province's Travel, Meal and Hospitality Expenses Directive. Such compensation amounts and reimbursement entitlements will be specified in the Administrative Services Agreement.

[Other matters you may consider dealing with here include compliance with privacy law/confidentiality/legal considerations and requirements; money laundering; preparation of accounting and tax statements by the Trust; compliance with regulatory laws; representation in product warranty claims (to the extent the Trust is sued in connection with a purchase of Eligible Measures); flowing money to suppliers of Eligible Measures; appropriate reps and indemnities from LDCs; specific reporting of cash and allocations; logistics of banking and cash flow mechanics and related record-keeping; production of information for Trustee to satisfy legal requirements applicable to the Trust (i.e., tax; record keeping); preparation of tax remittances for beneficiaries; preparation of reports for the Government and cooperation with other compliance by the Trust with the TPA; required communications to Primary Beneficiaries on behalf of the Trust (including to comply with applicable laws); preparation and submission of applications, etc., that may be contemplated by the [Project]; termination scenarios]

TRUSTEE REPLACEMENT ANNEX

1. The Advisory Committee shall consist of the following individuals:

   •

   •

   •

2. In the event any member of the Advisory Committee resigns or is unable to act, the remaining members may appoint a resident of Ontario as a replacement.

3. On or before •, 2017, the Advisory Committee shall identify six residents of Ontario who are willing to act as Trustees of the Affordability Fund Trust and who, collectively satisfy the following criteria:

   a) Demonstrate an understanding of the electricity sector including the electricity distribution sector;

   b) Have expertise in conservation and low income programs;

   c) It is expected that three of the identified individuals will be representatives from separate electricity distributors, two individuals will be representatives from separate social services agencies and one individual will be a government representative.

   d) It is expected that government representation will be non-controlling.

4. The Advisory Committee shall recommend that the existing Trustee appoint the individuals so identified to become replacement Trustees of the Affordability Fund Trust pursuant to section 5.7 of the Declaration.

5. If any of the persons recommended under paragraph 4 or under this paragraph are not accepted and appointed by the existing Trustee pursuant to section [5.7] of the Declaration, the Advisory Committee shall forthwith identify and recommend an alternative individual who is willing to act and who whose presence as a Trustee would result in the Trustees collectively satisfying the criteria in paragraph 2 above.

6. Upon the appointment of [number] trustees pursuant to section • of the Declaration, the Advisory Committee will be functus.

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Blakes Comments (March 15, 2017)

ONTARIO TRANSFER PAYMENT AGREEMENT

THE AGREEMENT, effective as of the • day of March, 2017 (the **"Effective Date"**)

B E T W E E N :

Her Majesty the Queen in right of Ontario
as represented by the Minister of Energy

(the "Province")

- and -

Computershare Trust Company of Canada, in its capacity as trustee of Affordability Fund Trust

(together with its successors and assigns, the "Recipient" and, together with the Province, the "Parties")

BACKGROUND

Computershare Trust Company of Canada is the original trustee of the Affordability Fund Trust.

The Province wishes to provide Funds to the Recipient to be held and distributed in accordance with the terms of the Declaration of Trust (defined below) and the Principles set forth in Annex A.

CONSIDERATION

In consideration of the mutual covenants and agreements contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is expressly acknowledged, the Parties agree as follows:

ENTIRE AGREEMENT

This agreement (as amended, restated, supplemented or otherwise modified from time to time, the **"Agreement"**), including:

Schedule "A" - General Terms and Conditions
Schedule "B" - Project Specific Information
Schedule "C" - Project - Certain Obligations of the Recipient
Schedule "D" - Budget
Schedule "E" - Payment Plan
Schedule "F" - Reporting
Annex "A" - Principles, and
any amending agreement entered into as provided for below,

constitutes the entire agreement between the Parties with respect to the subject matter contained in this Agreement and supersedes all prior oral or written representations and agreements.

COUNTERPARTS

The Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

AMENDING THE AGREEMENT

The Agreement may only be amended by a written agreement duly executed by the Parties.

ACKNOWLEDGEMENT

The Recipient:

(a) acknowledges that it has read and understands the provisions contained in the entire Agreement; and

(b) agrees to be bound by the terms and conditions contained in the entire Agreement.

IN WITNESS WHEREOF, the Parties have executed the Agreement on the dates set out below.

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO as represented by Minister of Energy

by:

_____ _____

Date Name: Serge Imbrogno

Title: Deputy Minister

Authorized Signing Officer

COMPUTERSHARE TRUST COMPANY OF CANADA, in its capacity as trustee of AFFORDABILITY FUND TRUST

by:

_____ _____

Date Name:

Title:

by:

_____ _____

Date Name:

Title:

I/We have authority to bind the Recipient.

SCHEDULE "A"
GENERAL TERMS AND CONDITIONS

1.0 INTERPRETATION AND DEFINITIONS

1.1 Interpretation. For the purposes of interpretation:

(a) words in the singular include the plural and vice-versa;

(b) words in one gender include all genders;

(c) the headings do not form part of the Agreement; they are for reference only and will not affect the interpretation of the Agreement;

(d) any reference to dollars or currency will be in Canadian dollars and currency;

(e) "include", "includes" and "including" denote that the subsequent list is not exhaustive; and

(f) where any reference is made in the Agreement to an act to be performed by or for or on behalf of the Affordability Fund Trust, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Trustee in its capacity as trustee of the Affordability Fund Trust, and, where any reference is made in the Agreement to an act to be performed by or for or on behalf of the Trustee, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Trustee in its capacity as trustee of the Affordability Fund Trust.

1.2 Definitions. In the Agreement, the following terms will have the following meanings:

"BPSAA" means the Broader Public Sector Accountability Act, 2010 (Ontario).

"**Beneficiary**" has the meaning given to such term in the Declaration of Trust.

"Budget" means the budget attached to the Agreement as Schedule "D".

"Business Day" means any working day, Monday to Friday inclusive, excluding statutory and other holidays, namely: New Year's Day; Family Day; Good Friday; Easter Monday; Victoria Day; Canada Day; Civic Holiday; Labour Day; Thanksgiving Day; Remembrance Day; Christmas Day; Boxing Day and any other day on which the Province has elected to be closed for business.

"**Declaration of Trust**" means the declaration of trust made as of March [•], 2017, under which the Affordability Fund Trust was established, as such declaration of trust may be amended, restated, supplemented or otherwise modified from time to time.

"Expiration Date" means the date on which this Agreement will expire and is the date set out in Schedule "B".

"Funds" means the money the Province provides to the Recipient pursuant to the Agreement.

"Maximum Funds" means the maximum amount of Funds that the Province will provide the Recipient under the Agreement, as set out in Schedule "B".

"Notice" means any communication given or required to be given pursuant to the Agreement.

"Party" means either the Province or the Recipient.

"**Person**" includes any individual, sole proprietorship, corporation, partnership, joint venture, association, society, club, board, chamber, joint-stock company, trust, trustee, unincorporated or incorporated organization or entity or government or any entity, agency or political subdivision thereof.

"Project" means the undertaking described in Schedule "C".

"PSSDA" means the *Public Sector Salary Disclosure Act, 1996* (Ontario).

"Reports" means the reports described in Schedule "F".

"**Trustee**" means Computershare Trust Company of Canada or any replacement trustee in its capacity as trustee of the Affordability Fund Trust.

2.0 REPRESENTATIONS, WARRANTIES AND COVENANTS

2.1 General. The Recipient represents, warrants and covenants that:

(a) The Trustee is the trustee of the Affordability Fund Trust; and

(b) The Affordability Fund Trust is, and will continue to be for the term of the Agreement, a trust existing under and governed by the laws of the Province of Ontario.

2.2 Execution of Agreement. The Recipient represents and warrants that it has:

(a) the full power and authority to enter into the Agreement; and

(b) taken all necessary actions to authorize the execution of the Agreement.

2.3 Governance. The Recipient represents, warrants and covenants that it has, and will maintain, in writing for the period during which the Agreement is in effect:

(a) decision-making mechanisms and procedures to enable the Recipient to manage Funds in accordance with the Declaration of Trust; and

(b) procedures to enable the preparation and delivery of all Reports required pursuant to Article 5.0.

2.4 Supporting Documentation. Upon request, the Recipient will provide the Province with proof of the matters referred to in this Article 2.0.

3.0 TERM OF THE AGREEMENT

3.1 Term. The term of the Agreement will commence on the Effective Date and will expire on the Expiration Date.

4.0 FUNDS AND CARRYING OUT THE PROJECT

4.1 Funds Provided. The Province will:

(a) provide the Recipient up to the Maximum Funds to be held and distributed in accordance with the terms of the Project and the Declaration of Trust;

(b) provide the Funds to the Recipient in accordance with the Payment Plan attached to the Agreement as Schedule "E"; and

(c) deposit the Funds into an account designated by the Recipient, provided that the account:

(i) resides at a Canadian financial institution; and

(ii) is in the name of the Recipient.

4.2 Limitation on Payment of Funds. Despite section 4.1, the Province is not obligated to provide any Funds to the Recipient until the Recipient provides the insurance certificate or other proof as the Province may request pursuant to [section 10.2].

4.3 Use of Funds and Project. The Recipient will use the Funds only for the purpose contemplated by the Project, the Declaration of Trust and the Principles set forth in Annex A.

4.4 Province's Role Limited to Providing Funds. For greater clarity, the Province's role under the Agreement is limited to providing Funds to the Recipient and the Province is not responsible for carrying out the terms of the Declaration of Trust.

4.5 Maximum Funds. The Recipient acknowledges that the Funds available to it pursuant to the Agreement will not exceed the Maximum Funds.

4.6 Funding, Not Procurement. For greater clarity, the Recipient acknowledges that:

(a) it is receiving funding from the Province for the Project and is not providing goods or services to the Province; and

(b) the funding the Province is providing under the Agreement is funding for the purposes of the PSSDA.

5.0 RECIPIENT'S ACQUISITION OF GOODS OR SERVICES, AND DISPOSAL OF ASSETS

5.1 Acquisition. If the Recipient acquires goods, services, or both with the Funds, it will do so through a process that promotes the best value for money.

6.0 CONFLICT OF INTEREST

6.1 No Conflict of Interest. The Recipient will carry out the Project and use the Funds without an actual, potential or perceived conflict of interest.

6.2 Conflict of Interest Includes. For the purposes of this Article, a conflict of interest includes any circumstances where:

(a) the Recipient; or
(b) any person who has the capacity to influence the Recipient's decisions,
has outside commitments, relationships or financial interests that could, or could be seen to, interfere with the Recipient's objective, unbiased and impartial judgment relating to the Project, the use of the Funds, or both.

6.3 Disclosure to Province. The Recipient will:

(a) disclose to the Province, without delay, any situation that a reasonable person would interpret as an actual, potential or perceived conflict of interest; and

7.0 REPORTING, ACCOUNTING AND REVIEW

7.1 Preparation and Submission. The Recipient will:

(a) submit to the Province at the address referred to in Schedule "B", all Reports in accordance with the timelines and content requirements set out in Schedule "F", or in a form as specified by the Province from time to time;

(b) submit to the Province at the address referred to in Schedule "B", any other reports as may be requested by the Province in accordance with the timelines and content requirements specified by the Province;

(c) ensure that all Reports and other reports are completed to the satisfaction of the Province; and

(d) ensure that all Reports and other reports are signed on behalf of the Recipient by an authorized signatory.

7.2 Record Maintenance. The Recipient will keep and maintain financial and other records necessary to permit it to satisfy its obligations under section 7.1 and to permit the Province to exercise its rights under section 7.3.

7.3 Inspection. The Province, its authorized representatives or an independent auditor identified by the Province may, at its own expense, upon twenty-four hours' Notice to the Recipient and during normal business hours, inspect the records of and information respecting the Recipient to confirm its compliance with the terms of this Agreement, including to ensure consistency with the purposes of the Project and regarding the Recipient's allocation and expenditure of the Funds and, for these purposes, the Province, its authorized representatives or an independent auditor identified by the Province may take one or more of the following actions:

(a) inspect and copy the records and documents referred to in section 7.2;

(b) keep any copies made pursuant to section 7.3(a); and

(c) conduct an audit or investigation of the Recipient in respect of the expenditure of the Funds to confirm that the funds have been used for the purposes intended, including a review of the Trust's processes to ensure that funds disbursed to LDCs were used for purposes intended..

7.4 Disclosure. To assist in respect of the rights set out in section 7.3 the Recipient will disclose any information requested by the Province, its authorized representatives or an independent auditor identified by the Province, and will do so in the form requested by the Province, its authorized representatives or an independent auditor identified by the Province, as the case may be.

7.5 No Control of Records. No provision of the Agreement will be construed so as to give the Province any control whatsoever over the Recipient's records.

7.6 Auditor General. For greater certainty, the Province's rights under this Article are in addition to and do not limit any rights provided to the Auditor General pursuant to section 9.1 of the *Auditor General Act* (Ontario).

8.0 COMMUNICATIONS REQUIREMENTS

8.1 Publication. The Recipient will indicate, in any of its Project-related publications, whether written, oral, or visual, that the views expressed in the publication are the views of the Recipient and do not necessarily reflect those of the Province.

9.0 FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY

9.1 **FIPPA.** The Recipient acknowledges that the Province is bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province in connection with the Project or otherwise in connection with the Agreement may be subject to disclosure in accordance with that Act.

10.0 EVENT OF DEFAULT, CORRECTIVE ACTION AND TERMINATION FOR DEFAULT

Commented [A1]: KPMG to comment on 'control' implications.

10.1 **Events of Default.** An Event of Default will occur if the Recipient breaches any representation, warranty, covenant or other term of this Agreement.

10.2 **Consequences of Events of Default and Corrective Action.** If an Event of Default occurs, the Province may, at any time, take one or more of the following actions:

(a) provide the Recipient with an opportunity to remedy the Event of Default;

(b) seek an order of specific performance including an order that the Recipient pursue its available remedies against third parties;

(c) recover any Funds remaining in the possession or under the control of the Recipient; and

(d) terminate the Agreement at any time, including immediately, without liability, penalty or costs to the Province upon giving Notice to the Recipient.

10.3 **Opportunity to Remedy.** If, in accordance with section 9.2(a), the Province provides the Recipient with an opportunity to remedy the Event of Default, the Province will provide Notice to the Recipient of:

(a) the particulars of the Event of Default; and

(b) the Notice Period.

10.4 **Recipient not Remedying.** If the Province has provided the Recipient with an opportunity to remedy the Event of Default pursuant to section 11.2(a), and:

(a) the Recipient does not remedy the Event of Default within the Notice Period;

(b) it becomes apparent to the Province that the Recipient cannot adequately remedy the Event of Default within the Notice Period; or

(c) the Recipient is not proceeding to remedy the Event of Default in a way that is satisfactory to the Province,

the Province may extend the Notice Period, or initiate any one or more of the actions provided for in section 11.2.

10.5 **When Termination Effective.** Termination under this Article will take effect as set out in the Notice.

11.0 REPAYMENT

11.1 **Debt Due.** If, pursuant to the Agreement: the Province demands the payment of any Funds from the Recipient pursuant to section 11.2 such Funds or other amount will be deemed to be a debt due and owing to the Province by the Recipient, and the Recipient will pay or return the amount to the Province immediately, unless the Province directs otherwise.

11.2 **Interest Rate.** The Province may charge the Recipient interest on any money owing by the Recipient at the then current interest rate charged by the Province of Ontario on accounts receivable.

11.3 **Payment of Money to Province.** The Recipient will pay any money owing to the Province by cheque payable to the "Ontario Minister of Finance" and delivered to the Province at the address referred to in **[Schedule "B"]**.

11.4 **Failure to Repay.** Without limiting the application of section 43 of the Financial Administration Act (Ontario), if the Recipient fails to repay any amount owing under the Agreement, Her Majesty the Queen in right of Ontario may deduct any unpaid amount from any money payable to the Recipient by Her Majesty the Queen in right of Ontario.

12.0 NOTICE

12.1 **Notice in Writing and Addressed.** Notice will be in writing and will be delivered by email, postage-prepaid mail, personal delivery or fax, and will be addressed to the Province and the Recipient respectively as set out in Schedule "B", or as either Party later designates to the other by Notice.

12.2 **Notice Given.** Notice will be deemed to have been given:

(a) in the case of postage-prepaid mail, five Business Days after the Notice is mailed; or

(b) in the case of email, personal delivery or fax, one Business Day after the Notice is delivered.

12.3 **Postal Disruption.** Despite section 13.2(a), in the event of a postal disruption:

(a) Notice by postage-prepaid mail will not be deemed to be received; and

(b) the Party giving Notice will provide Notice by email, personal delivery or by fax.

13.0 SEVERABILITY OF PROVISIONS

13.1 **Invalidity or Unenforceability of Any Provision.** The invalidity or unenforceability of any provision of the Agreement will not affect the validity or enforceability of any other provision of the Agreement. Any invalid or unenforceable provision will be deemed to be severed.

14.0 WAIVER

14.1 **Waivers in Writing.** If a Party fails to comply with any term of the Agreement, that Party may only rely on a waiver of the other Party if the other Party has provided a written waiver in accordance with the Notice provisions in Article 13.0. Any waiver must refer to a specific failure to comply and will not have the effect of waiving any subsequent failures to comply.

15.0 INDEPENDENT PARTIES

15.1 **Parties Independent.** The Recipient acknowledges that it is not an agent, joint venturer, partner or employee of the Province, and the Recipient will not represent itself in any way that might be taken by a reasonable person to suggest that it is, or take any actions that could establish or imply such a relationship.

16.0 ASSIGNMENT OF AGREEMENT OR FUNDS

16.1 **Agreement Binding.** All rights and obligations contained in the Agreement will extend to and be binding on the Parties' respective heirs, executors, administrators, successors and permitted assigns.

17.0 LIMITATION OF LIABILITY

17.1 This Agreement has been entered into by the Trustee solely in its capacity as trustee of the

Recipient and is not binding on the Trustee in any other capacity, whether in tort, contract or otherwise. **The Beneficiaries of the Recipient are not subject to any liability in respect of the Recipient.** Resort may not be had to, nor recourse or satisfaction be sought from, the private property of the Trustee, its directors, officers, employees, or agents, or the private property of any Beneficiary, and resort will be had solely to the property of the Recipient held in trust by the Trustee for the payment, performance or satisfaction of any liability or obligation of the Recipient or the Trustee under this Agreement.

18.0 GOVERNING LAW

18.1 Governing Law. The Agreement and the rights, obligations and relations of the Parties will be governed by and construed in accordance with the laws of the Province of Ontario and the applicable federal laws of Canada. Any actions or proceedings arising in connection with the Agreement will be conducted in the courts of Ontario, which will have exclusive jurisdiction over such proceedings.

19.0 FURTHER ASSURANCES

19.1 Agreement into Effect. The Recipient will provide such further assurances as the Province may request from time to time with respect to any matter to which the Agreement pertains, and will otherwise do or cause to be done all acts or things necessary to implement and carry into effect the terms and conditions of the Agreement to their full extent.

19.2 Declaration of Trust. The Trustee covenants that it shall not amend, restate or terminate the Declaration of Trust without obtaining the written consent of the Province in respect of same.

20.0 JOINT AND SEVERAL LIABILITY

20.1 Joint and Several Liability. Where the Recipient is comprised of more than one entity, all such entities will be jointly and severally liable to the Province for the fulfillment of the obligations of the Recipient under the Agreement.

21.0 RIGHTS AND REMEDIES CUMULATIVE

21.1 Rights and Remedies Cumulative. The rights and remedies of the Province under the Agreement are cumulative and are in addition to, and not in substitution for, any of its rights and remedies provided by law or in equity.

22.0 ACKNOWLEDGEMENT OF OTHER LEGISLATION AND DIRECTIVES

22.1 Recipient Acknowledges. The Recipient acknowledges that by receiving Funds it may become subject to legislation applicable to organizations that receive funding from the Government of Ontario, including the BPSAA, the PSSDA, and the *Auditor General Act* (Ontario).

23.0 SURVIVAL

23.1 Survival. The following Articles and sections, and all applicable cross-referenced sections and schedules, will continue in full force and effect for a period of seven years from the date of expiry or termination of the Agreement: Article 1.0 and any other applicable definitions, section, 4.5, section 7.1 (to the extent that the Recipient has not provided the Reports to the satisfaction of the Province), sections 7.2, 7.3, 7.4,7.5, 7.6, Article 8.0, Article 12.0, Article 14.0, Article 17.0, Article 20.0, Article 21.0. [NTD: References to be update/confirmed.]

- END OF GENERAL TERMS AND CONDITIONS -

SCHEDULE "B"

PROJECT SPECIFIC INFORMATION

Maximum Funds	$100 million
Expiration Date	Later of [April 30, 2019] and the Final Distribution Date (as defined in the Declaration of Trust)
Insurance	$2,000,000
Contact information for the purposes of Notice to the Province	**Attention: Usman Syed** **Position: Director** **Address: 77 Grenville St, Toronto, Ontario, M7A 2C1** **Fax: 416-325-6651** **Email: Usman.Syed@ontario.ca**
Contact information for the purposes of Notice to the Recipient	**Attention:** **Position:** **Address:** **Email:**
Contact information for the senior financial person in the Recipient organization (e.g., CFO, CAO) – to respond as required to requests from the Province related to the Agreement	**Attention:** **Position:** **Address:** **Email:**

Commented [A2]: To be refined

Commented [A3]: To be refined

SCHEDULE "C"

PROJECT

For the purposes of this Agreement, the "Project" is the distribution of the Funds in accordance with the Declaration of Trust.

The Project will be completed subject to the requirements of the Budget and in accordance with the Principles set forth in Annex A.

Notwithstanding anything else contained in the Agreement or the Declaration of Trust, until such time as each of the following conditions have been completed to the satisfaction of the Province (the "Requirements"), the Recipient shall not distribute any Funds to any Beneficiary.

1. Procedures shall be developed and implemented for (i) identifying trustees who are individuals resident in Ontario to replace Computershare Trust Company of Canada as the sole trustee of the Recipient, and (ii) the making of decisions by the trustees of the Recipient and more generally, for the governance of the Recipient.

2. Computershare Trust Company of Canada shall be replaced as the sole trustee of the Recipient with three or more individual trustees identified in accordance with the procedures developed under clause 1.

3. An administrative services agreement shall have been developed and entered into by the Recipient and the administrative services agent providing for the administrative services necessary for the operation of the Recipient and the execution of the Project.

4. Procedures will be developed and implemented under which Local Distribution Companies (as defined in the Declaration of Trust) will assist with (i) the identification of Beneficiaries, and (ii) the distribution of Funds to or for the benefit of such Beneficiaries.

5. Insurance requirement

Each of the Requirements may be accomplished by the Recipient entering into such agreements as may be necessary or expedient, including, without limitation, an amendment or amendment and restatement of the Declaration of Trust. The Province shall provide notice in writing to the Recipient when the Requirements have been completed to the satisfaction of the Province. Funds may be expended to pay the expenses of the Trustee in completing the Requirements.

Commented [A4]: We will look to refine this, but the intent is for Trustees to have insurance in place before funds are flowed.

Under the previous draft, if there was a lawsuit against a Trustee, expenses and any liabilities would be covered by the Trust (indemnification).

Instead, we are proposing that a line of insurance be established that a Trustee would access to cover lawsuit related expenses and liabilities.

The intention is to protect the Trust funds and for them to be not used for lawsuit related liabilities.

Commented [A5]: We will be refining this content further

SCHEDULE "D"

Budget

1. It is expected that the administrative expenses of the Fund, including any administrative expenses of the Recipient (or any administrative services agents or other agents retained by the Recipient), relating to the establishment of the Affordability Fund and satisfying the Requirements (as defined in Schedule "C") and any expenses related to the operation of the Trust and the execution of the Project (including any reimbursable expenses incurred by any Administrative Services Agent (as such terms are defined in the Declaration of Trust), will be no greater than 10 percent of the total Project budget.

2. Only actual (excluding HST) incurred expenditures of the Trust are eligible for reimbursement as administrative expenses.

3. It is expected any travel, meals and hospitality expenses by the Recipient will be consistent with the Province's Travel, Meal and Hospitality Expenses Directive. Entities receiving funding from the Recipient are also expected to adhere to the Province's Travel, Meal and Hospitality Expenses Directive and the Recipient is expected to request the same of such Entities. Alcohol and First-Class travel are not considered eligible claims and disbursements for hospitality, incidental or food expenses shall not be covered by the Funds, including the following:

    - Meals, snacks and beverages
    - Gratuities
    - Laundry or dry cleaning
    - Valet services
    - Dependent care
    - Home management
    - Personal telephone calls

4. It is expected that overhead expenses which are not directly related to the activities related to the Recipient in establishing and managing the Affordability Fund would not be reimbursed.

5. Any expenses that have been or may be reimbursed by other parties should not be reimbursed by the Fund.

6. In the event that the Recipient performs any procurements, it is expected that all procurements will reflect the principles of Ontario's Public Service Procurement Directive.

SCHEDULE "E"

PAYMENT PLAN

PAYMENT DATE	MAXIMUM FUNDS TO BE DISBURSED BY THE PROVINCE
Within 7 days of signing the Agreement	$ 100,000,000

SCHEDULE "F"

REPORTING

Quarterly Reports will be provided quarterly on the basis of the government's fiscal year starting at the execution of this Agreement and continuing until conclusion of the Agreement. Annual Reports will be provided annually on a fiscal basis starting at the execution of this Agreement and continuing until conclusion of the Agreement. Quarterly Reports and Annual Reports shall be submitted to the Province within one month following the end of the reporting period that they represent.

The Recipient shall prepare six (6) Quarterly Reports and two (2) Annual Report as outlined below. Reports shall explicitly demonstrate impact of Province's funding and address report detail requirements listed below.

NAME OF REPORT	DUE DATE
Quarterly Report #1	July 31, 2017
Quarterly Report #2	October 31, 2017
Quarterly Report #3	January 31, 2018
Annual Report #1	April 30, 2018
Quarterly Report #4	July 31, 2018
Quarterly Report #5	October 31, 2018
Quarterly Report #6	January 31, 2019
Annual Report #2	April 30, 2019

Requirements for Quarterly Reports

- The Recipient will provide Quarterly Reports which will include a report back on the Trustee-developed performance management criteria. Quarterly Report requirements will be determined from time to time by the Province, and initially will include:
    - Amounts disbursed by the Recipient in the previous quarter. It is expected that this information will be provided at the electricity distributor level.
    - Total Affordability Fund interest accrued to date
    - Key activities and achievements from the quarter being reported, including number of participant households per electricity distributor, average participant incentive cost per electricity distributor, and uptake of energy efficiency measures per electricity distributor
    - Any challenges or modifications required to the application, funding, or eligibility processes/rules
    - Key activities planned for the upcoming quarter

Requirements for Annual Report

- The Recipient will provide an Annual Report to the Province which will include a report back on the Trustee-developed performance management criteria. Annual Report requirements include:
    - A description of electricity distributor application process and the criteria used by the Recipient to manage funds.

- Identify and describe any challenges with achieving goals and proposed solutions, if applicable.
- Lesson learned.
- Electricity distributor and customer feedback
- Amounts disbursed by the Recipient in the previous year. It is expected that this information will be provided at the electricity distributor level.
- Key activities and achievements from the quarter being reported, including number of participant households per electricity distributor, average participant incentive cost per electricity distributor, and uptake of energy efficiency measures per electricity distributor
- Total Affordability Fund interest accrued to date

- As part of the Annual Report, the Recipient will also provide the Province with an audited financial statement for the previous year.

ANNEX A

Principles

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ONTARIO TRANSFER PAYMENT AGREEMENT

THE AGREEMENT, effective as of the ●● day of March, 2017 (the **"Effective Date"**)

B E T W E E N :

Her Majesty the Queen in right of Ontario
as represented by the Minister of Energy

(the "Province")

- and -

Computershare Trust Company of Canada, in its capacity as trustee of Affordability Fund Trust ~~and not in its personal capacity~~

(together with its successors and assigns, the "Recipient" and, together with the Province, the "Parties")

BACKGROUND

Computershare Trust Company of Canada is the original trustee of the ~~Recipient~~Affordability Fund Trust.

The Province wishes to provide Funds to the Recipient to be held and distributed in accordance with the terms of the Declaration of Trust (defined below~~).~~) and the Principles set forth in Annex A.

CONSIDERATION

In consideration of the mutual covenants and agreements contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is expressly acknowledged, the Parties agree as follows:

ENTIRE AGREEMENT

This agreement (as amended, restated, supplemented or otherwise modified from time to time, the **"Agreement"**), including:

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Schedule “A” - General Terms and Conditions
Schedule “B” - Project Specific Information
Schedule “C” - Project - Certain Obligations of the Recipient
Schedule “D” - Budget
Schedule “E” - Payment Plan
Schedule “F” - Reporting~~, and~~
Annex “A” - Principles, and
any amending agreement entered into as provided for below,

constitutes the entire agreement between the Parties with respect to the subject matter contained in this Agreement and supersedes all prior oral or written representations and agreements.

COUNTERPARTS

The Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

AMENDING THE AGREEMENT

The Agreement may only be amended by a written agreement duly executed by the Parties.

ACKNOWLEDGEMENT

The Recipient:

(a) acknowledges that it has read and understands the provisions contained in the entire Agreement; and

(b) agrees to be bound by the terms and conditions contained in the entire Agreement.

IN WITNESS WHEREOF, the Parties have executed the Agreement on the dates set out below.

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO as represented by Minister of Energy

~~_____~~by:

_____
Date

_____
Name: ~~Segre~~Serge Imbrogno

~~_____~~Title: Deputy Minister

Authorized Signing Officer

COMPUTERSHARE TRUST COMPANY OF CANADA, in its capacity as trustee of AFFORDABILITY FUND TRUST

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by:

_____ _____

Date Name:

Title:

by:

_____ _____

Date Name:

Title:

I/We have authority to bind the Recipient.

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SCHEDULE "A"
GENERAL TERMS AND CONDITIONS

1.0 INTERPRETATION AND DEFINITIONS

1.1 Interpretation. For the purposes of interpretation:

(a) words in the singular include the plural and vice-versa;

(b) words in one gender include all genders;

(c) the headings do not form part of the Agreement; they are for reference only and will not affect the interpretation of the Agreement;

(d) any reference to dollars or currency will be in Canadian dollars and currency;

(e) "include", "includes" and "including" denote that the subsequent list is not exhaustive; and

(f) where any reference is made in the Agreement to an act to be performed by or for or on behalf of the ~~Recipient~~Affordability Fund Trust, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of ~~Computershare Trust Company of Canada~~the Trustee in its capacity as trustee of the ~~Recipient~~Affordability Fund Trust, and, where any reference is made in the Agreement to an act to be performed by or for or on behalf of ~~Computershare Trust Company of Canada~~the Trustee, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of ~~Computershare Trust Company of Canada~~the Trustee in its capacity as trustee of the ~~Recipient~~Affordability Fund Trust.

1.2 Definitions. In the Agreement, the following terms will have the following meanings:

"BPSAA" means the Broader Public Sector Accountability Act, 2010 (Ontario).

"**Beneficiary**" has the meaning given to such term in the Declaration of Trust.

"Budget" means the budget attached to the Agreement as Schedule "D".

"Business Day" means any working day, Monday to Friday inclusive, excluding statutory and other holidays, namely: New Year's Day; Family Day; Good Friday; Easter Monday; Victoria Day; Canada Day; Civic Holiday; Labour Day; Thanksgiving Day; Remembrance Day; Christmas Day; Boxing Day and any other day on which the Province has elected to be closed for business.

"**Declaration of Trust**" means the declaration of trust made as of March ~~[●],~~[●], 2017, under which the ~~Recipient~~Affordability Fund Trust was established, as such declaration of trust may be amended, restated, supplemented or otherwise modified from time to time.

"Expiration Date" means the date on which this Agreement will expire and is the date set out in Schedule "B".

"Funds" means the money the Province provides to the Recipient pursuant to the Agreement.

"Maximum Funds" means the maximum amount of Funds that the Province will provide the Recipient under the Agreement, as set out in Schedule "B".

"Notice" means any communication given or required to be given pursuant to the Agreement.

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"Party" means either the Province or the Recipient.

"**Person**" includes any individual, sole proprietorship, corporation, partnership, joint venture, association, society, club, board, chamber, joint-stock company, trust, trustee, unincorporated or incorporated organization or entity or government or any entity, agency or political subdivision thereof.

"Project" means the undertaking described in Schedule "C".

"PSSDA" means the *Public Sector Salary Disclosure Act, 1996* (Ontario).

"Reports" means the reports described in Schedule "F".

"**Trustee**" means Computershare Trust Company of Canada or any replacement trustee in its capacity as trustee of the ~~Recipient~~Affordability Fund Trust.

2.0 REPRESENTATIONS, WARRANTIES AND COVENANTS

2.1 General. The Recipient represents, warrants and covenants that:

(a) The Trustee is the trustee of the ~~Recipient~~Affordability Fund Trust; and

(b) The ~~Recipient~~Affordability Fund Trust is, and will continue to be for the term of the Agreement, a trust existing under and governed by the laws of the Province of Ontario.

2.2 Execution of Agreement. The Recipient represents and warrants that it has:

(a) the full power and authority to enter into the Agreement; and

(b) taken all necessary actions to authorize the execution of the Agreement.

2.3 Governance. The Recipient represents, warrants and covenants that it has, and will maintain, in writing for the period during which the Agreement is in effect:

(a) decision-making mechanisms and procedures to enable the Recipient to manage Funds in accordance with the Declaration of Trust; and

(b) procedures to enable the preparation and delivery of all Reports required pursuant to Article 5.0~~; and~~.

2.4 Supporting Documentation. Upon request, the Recipient will provide the Province with proof of the matters referred to in this Article 2.0.

3.0 TERM OF THE AGREEMENT

3.1 Term. The term of the Agreement will commence on the Effective Date and will expire on the Expiration Date.

4.0 FUNDS AND CARRYING OUT THE PROJECT

4.1 Funds Provided. The Province will:

(a) provide the Recipient up to the Maximum Funds to be held and distributed in accordance with the terms of the Project and the Declaration of Trust;

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(b) provide the Funds to the Recipient in accordance with the Payment Plan attached to the Agreement as Schedule "E"; and

(c) deposit the Funds into an account designated by the Recipient, provided that the account:

(i) resides at a Canadian financial institution; and

(ii) is in the name of the Recipient.

4.2 Limitation on Payment of Funds. Despite section 4.1, the Province is not obligated to provide any Funds to the Recipient until the Recipient provides the insurance certificate or other proof as the Province may request pursuant to [section ~~8~~10.2~~];~~].

4.3 Use of Funds and Project. The Recipient will use the Funds only for the purpose contemplated by the Project ~~and~~, the Declaration of Trust and the Principles set forth in Annex A.

4.4 Province's Role Limited to Providing Funds. For greater clarity, the Province's role under the Agreement is limited to providing Funds to the Recipient and the Province is not responsible for carrying out the terms of the Declaration of Trust.

4.5 Maximum Funds. The Recipient acknowledges that the Funds available to it pursuant to the Agreement will not exceed the Maximum Funds.

4.6 Funding, Not Procurement. For greater clarity, the Recipient acknowledges that:

(a) it is receiving funding from the Province for the Project and is not providing goods or services to the Province; and

(b) the funding the Province is providing under the Agreement is funding for the purposes of the PSSDA.

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1.0 RECIPIENT'S ACQUISITION OF GOODS OR SERVICES, AND DISPOSAL OF ASSETS

1.1 Acquisition. If the Recipient acquires goods, services, or both with the Funds, it will do so through a process that promotes the best value for money.

2.0 CONFLICT OF INTEREST

2.1 No Conflict of Interest. The Recipient will carry out the Project and use the Funds without an actual, potential or perceived conflict of interest.

2.2 Conflict of Interest Includes. For the purposes of this Article, a conflict of interest includes any circumstances where:

(a) the Recipient; or
(b) any person who has the capacity to influence the Recipient's decisions,
has outside commitments, relationships or financial interests that could, or could be seen to, interfere with the Recipient's objective, unbiased and impartial judgment relating to the Project, the use of the Funds, or both.

2.3 Disclosure to Province. The Recipient will:

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(a) disclose to the Province, without delay, any situation that a reasonable person would interpret as an actual, potential or perceived conflict of interest; and

~~5.0~~3.0 REPORTING, ACCOUNTING AND REVIEW

~~5.1~~3.1 Preparation and Submission. The Recipient will:

(a) submit to the Province at the address referred to in Schedule "B", all Reports in accordance with the timelines and content requirements set out in Schedule "F", or in a form as specified by the Province from time to time;

(b) submit to the Province at the address referred to in Schedule "B", any other reports as may be requested by the Province in accordance with the timelines and content requirements specified by the Province;

(c) ensure that all Reports and other reports are completed to the satisfaction of the Province; and

(d) ensure that all Reports and other reports are signed on behalf of the Recipient by an authorized ~~signing officer~~signatory.

~~1.0~~ Record Maintenance. The Recipient will keep and maintain~~:~~

~~(c) all~~ financial and other records ~~(including invoices) relating~~necessary to ~~the Funds or otherwise~~permit it to ~~the Project in a manner consistent with generally accepted accounting principles; and~~

~~(d)~~**3.2** ~~all non-financial documents~~satisfy its obligations under section 7.1 and ~~records relating~~ to permit the ~~Funds or otherwise~~Province to ~~the Project~~exercise its rights under section 7.3.

~~5.3~~3.3 Inspection. The Province, its authorized representatives or an independent auditor identified by the Province may, at its own expense, upon twenty-four hours' Notice to the Recipient and during normal business hours, ~~review~~inspect the records of and information respecting the Recipient to confirm its compliance with the terms of this Agreement, including to ensure consistency with the purposes of the Project and regarding the Recipient's allocation and expenditure of the Funds and, for these purposes, the Province, its authorized representatives or an independent auditor identified by the Province may take one or more of the following actions:

(a) inspect and copy the records and documents referred to in section ~~5~~7.2;

(b) keep any copies made pursuant to section ~~5~~7.3(a); and

(c) conduct an audit or investigation of the Recipient in respect of the expenditure of the Funds~~.~~ to confirm that the funds have been used for the purposes intended, including a review of the Trust's processes to ensure that funds disbursed to LDCs were used for purposes intended..

~~5.4~~3.4 Disclosure. To assist in respect of the rights set out in section ~~5.3,~~7.3 the Recipient will disclose any information requested by the Province, its authorized representatives or an independent auditor identified by the Province, and will do so in the form requested by the Province, its

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authorized representatives or an independent auditor identified by the Province, as the case may be.

~~5.5~~3.5 **No Control of Records.** No provision of the Agreement will be construed so as to give the Province any control whatsoever over the Recipient's records.

~~5.6~~3.6 **Auditor General.** For greater certainty, the Province's rights under this Article are in addition to and do not limit any rights provided to the Auditor General pursuant to section 9.1 of the *Auditor General Act* (Ontario).

~~6.0~~4.0 **COMMUNICATIONS REQUIREMENTS**

~~6.1~~4.1 **Publication.** The Recipient will indicate, in any of its Project-related publications, whether written, oral, or visual, that the views expressed in the publication are the views of the Recipient and do not necessarily reflect those of the Province.

~~7.0~~5.0 **FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY**

~~7.1~~5.1 **FIPPA.** The Recipient acknowledges that the Province is bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province in connection with the Project or otherwise in connection with the Agreement may be subject to disclosure in accordance with that Act.

~~8.0 [INSURANCE]~~

~~8.1 [Recipient's Insurance. The Recipient represents and warrants that it has, and will maintain for the term of the Agreement, at its own cost and expense, with insurers having a secure A.M. Best rating of B+ or greater, or the equivalent, all the necessary and appropriate insurance that a prudent person that is a trust similar to the Recipient would maintain, including commercial general liability insurance on an occurrence basis for third party bodily injury, personal injury and property damage, to an inclusive limit of not less than the amount set out in Schedule "B" per occurrence. The policy will include the following:~~

~~(a) the Indemnified Parties as additional insureds with respect to liability arising in the course of performance of the Recipient's obligations under, or otherwise in connection with, the Agreement;~~

~~(b) a cross-liability clause;~~

~~(c) contractual liability coverage; and~~

~~(d) a 30 day written notice of cancellation.~~

~~8.2 Proof of Insurance. The Recipient will provide the Province with certificates of insurance, or other proof as may be requested by the Province, that confirms the insurance coverage as provided for in section 8.1. Upon the request of the Province, the Recipient will make available to the Province a copy of each insurance policy.][NTD: what risks are to be insured?]~~

6.0 EVENT OF DEFAULT, CORRECTIVE ACTION AND TERMINATION FOR DEFAULT

6.1 Events of Default. An Event of Default will occur if the Recipient breaches any representation, warranty, covenant or other term of this Agreement.

6.2 Consequences of Events of Default and Corrective Action. If an Event of Default occurs, the Province may, at any time, take one or more of the following actions:

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(a) provide the Recipient with an opportunity to remedy the Event of Default;

(b) seek an order of specific performance including an order that the Recipient pursue its available remedies against third parties;

(c) recover any Funds remaining in the possession or under the control of the Recipient; and

(d) terminate the Agreement at any time, including immediately, without liability, penalty or costs to the Province upon giving Notice to the Recipient.

6.3 Opportunity to Remedy. If, in accordance with section 9.2(a), the Province provides the Recipient with an opportunity to remedy the Event of Default, the Province will provide Notice to the Recipient of:

(a) the particulars of the Event of Default; and

(b) the Notice Period.

6.4 Recipient not Remedying. If the Province has provided the Recipient with an opportunity to remedy the Event of Default pursuant to section 11.2(a), and:

(a) the Recipient does not remedy the Event of Default within the Notice Period;

(b) it becomes apparent to the Province that the Recipient cannot adequately remedy the Event of Default within the Notice Period; or

(c) the Recipient is not proceeding to remedy the Event of Default in a way that is satisfactory to the Province,

the Province may extend the Notice Period, or initiate any one or more of the actions provided for in section 11.2.

6.5 When Termination Effective. Termination under this Article will take effect as set out in the Notice.

7.0 REPAYMENT

7.1 Debt Due. If, pursuant to the Agreement: the Province demands the payment of any Funds from the Recipient pursuant to section 11.2 such Funds or other amount will be deemed to be a debt due and owing to the Province by the Recipient, and the Recipient will pay or return the amount to the Province immediately, unless the Province directs otherwise.

7.2 Interest Rate. The Province may charge the Recipient interest on any money owing by the Recipient at the then current interest rate charged by the Province of Ontario on accounts receivable.

7.3 Payment of Money to Province. The Recipient will pay any money owing to the Province by cheque payable to the "Ontario Minister of Finance" and delivered to the Province at the address referred to in **[Schedule "B"]**.

7.4 Failure to Repay. Without limiting the application of section 43 of the Financial Administration Act (Ontario), if the Recipient fails to repay any amount owing under the Agreement, Her Majesty the Queen in right of Ontario may deduct any unpaid amount from any money payable to the Recipient by Her Majesty the Queen in right of Ontario.

~~9.0~~8.0 NOTICE

~~9.1~~8.1 Notice in Writing and Addressed. Notice will be in writing and will be delivered by email,

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postage-prepaid mail, personal delivery or fax, and will be addressed to the Province and the Recipient respectively as set out in Schedule "B", or as either Party later designates to the other by Notice.

~~9.2~~8.2 **Notice Given.** Notice will be deemed to have been given:

(a) in the case of postage-prepaid mail, five Business Days after the Notice is mailed; or

(b) in the case of email, personal delivery or fax, one Business Day after the Notice is delivered.

~~9.3~~8.3 **Postal Disruption.** Despite section ~~9~~13.2(a), in the event of a postal disruption:

(a) Notice by postage-prepaid mail will not be deemed to be received; and

(b) the Party giving Notice will provide Notice by email, personal delivery or by fax.

~~10.0~~9.0 **SEVERABILITY OF PROVISIONS**

~~10.1~~9.1 **Invalidity or Unenforceability of Any Provision.** The invalidity or unenforceability of any provision of the Agreement will not affect the validity or enforceability of any other provision of the Agreement. Any invalid or unenforceable provision will be deemed to be severed.

~~11.0~~10.0 **WAIVER**

~~11.1~~10.1 **Waivers in Writing.** If a Party fails to comply with any term of the Agreement, that Party may only rely on a waiver of the other Party if the other Party has provided a written waiver in accordance with the Notice provisions in Article ~~9~~13.0. Any waiver must refer to a specific failure to comply and will not have the effect of waiving any subsequent failures to comply.

~~12.0~~11.0 **INDEPENDENT PARTIES**

~~12.1~~11.1 **Parties Independent.** The Recipient acknowledges that it is not an agent, joint venturer, partner or employee of the Province, and the Recipient will not represent itself in any way that might be taken by a reasonable person to suggest that it is, or take any actions that could establish or imply such a relationship.

~~13.0~~12.0 **ASSIGNMENT OF AGREEMENT OR FUNDS**

~~13.1~~12.1 **Agreement Binding.** All rights and obligations contained in the Agreement will extend to and be binding on the Parties' respective heirs, executors, administrators, successors and permitted assigns.

~~14.0~~13.0 **LIMITATION OF LIABILITY**

~~14.1~~13.1 This Agreement has been entered into by the Trustee solely in its capacity as trustee of the Recipient and is not binding on the Trustee in any other capacity~~.~~, whether in tort, contract or otherwise. **The Beneficiaries of the Recipient are not subject to any liability in respect of the Recipient**~~, whether in tort, contract or otherwise.~~ Resort may not be had to, nor recourse or satisfaction be sought from, the private property of the Trustee, its directors, officers, employees, or agents, or the private property of any Beneficiary, and resort will be had solely to the property of the Recipient held in trust by the Trustee for the payment, performance or satisfaction of any liability or obligation of the Recipient or the Trustee under this Agreement.

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~~15.0~~14.0 GOVERNING LAW

~~15.1~~14.1 Governing Law. The Agreement and the rights, obligations and relations of the Parties will be governed by and construed in accordance with the laws of the Province of Ontario and the applicable federal laws of Canada. Any actions or proceedings arising in connection with the Agreement will be conducted in the courts of Ontario, which will have exclusive jurisdiction over such proceedings.

~~16.0~~15.0 FURTHER ASSURANCES

~~16.1~~15.1 Agreement into Effect. The Recipient will provide such further assurances as the Province may request from time to time with respect to any matter to which the Agreement pertains, and will otherwise do or cause to be done all acts or things necessary to implement and carry into effect the terms and conditions of the Agreement to their full extent.

15.2 Declaration of Trust. The Trustee covenants that it shall not amend, restate or terminate the Declaration of Trust without obtaining the written consent of the Province in respect of same.

16.0 JOINT AND SEVERAL LIABILITY

16.1 Joint and Several Liability. Where the Recipient is comprised of more than one entity, all such entities will be jointly and severally liable to the Province for the fulfillment of the obligations of the Recipient under the Agreement.

17.0 RIGHTS AND REMEDIES CUMULATIVE

17.1 Rights and Remedies Cumulative. The rights and remedies of the Province under the Agreement are cumulative and are in addition to, and not in substitution for, any of its rights and remedies provided by law or in equity.

18.0 ACKNOWLEDGEMENT OF OTHER LEGISLATION AND DIRECTIVES

18.1 Recipient Acknowledges. The Recipient acknowledges that by receiving Funds it may become subject to legislation applicable to organizations that receive funding from the Government of Ontario, including the BPSAA, the PSSDA, and the *Auditor General Act* (Ontario).

19.0 SURVIVAL

19.1 Survival. The following Articles and sections, and all applicable cross-referenced sections and schedules, will continue in full force and effect for a period of seven years from the date of expiry or termination of the Agreement: Article ~~1.0~~1.0 and any other applicable definitions, section, ~~4.5~~4.5, section ~~5.1~~7.1 (to the extent that the Recipient has not provided the Reports to the satisfaction of the Province), sections ~~5.2, 5.3, 5.4, 5.5, 5.6, Article 6.0, [Article 8.0], Article 10.0, Article 11.0, Article 12.0, Article 15.0, Article 18.0, Article 19.0.~~7.2, 7.3, 7.4,7.5, 7.6, Article 8.0, Article 12.0, Article 14.0, Article 17.0, Article 20.0, Article 21.0. [NTD: References to be update/confirmed.]

- END OF GENERAL TERMS AND CONDITIONS -

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SCHEDULE "B"

PROJECT SPECIFIC INFORMATION

Maximum Funds	~~$200,000,000~~ $100 million
Expiration Date	~~April 30, 2019~~Later of [April 30, 2019] and the Final Distribution Date (as defined in the Declaration of Trust)
Insurance	[~~$~~$2,000,000]
Contact information for the purposes of Notice to the Province	**Attention: Usman Syed** **Position: Director** **Address: 77 Grenville St, Toronto, Ontario, M7A 2C1** **Fax: 416-325-6651** **Email: Usman.Syed@ontario.ca**
Contact information for the purposes of Notice to the Recipient	**Attention:** **Position:** **Address:** **Email:**
Contact information for the senior financial person in the Recipient organization (e.g., CFO, CAO) – to respond as required to requests from the Province related to the Agreement	**Attention:** **Position:** **Address:** **Email:**

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SCHEDULE "C"

PROJECT

For the purposes of this Agreement, the "Project" is the ~~implementation of the Requirements (as defined below) and, after implementation of the Requirements, the~~ distribution of the Funds in accordance with the Declaration of Trust.

The Project will be completed subject to the requirements of the Budget and in accordance with the Principles set forth in Annex A.

Notwithstanding anything else contained in the Agreement or the Declaration of Trust, until such time as each of the following conditions have been completed to the satisfaction of the Province (the "Requirements"), the Recipient shall not distribute any Funds to any Beneficiary.

1. Procedures shall be developed and implemented for (i) identifying trustees who are individuals resident in Ontario to replace Computershare Trust Company of Canada as the sole trustee of the Recipient, and (ii) the making of decisions by the trustees of the Recipient and more generally, for the governance of the Recipient.

~~2.~~1. Computershare Trust Company of Canada shall be replaced as the sole trustee of the Recipient with three or more individual trustees identified in accordance with the procedures developed under clause 1.

~~3.~~1. An administrative services agreement ~~with Hydro One Limited or another Person~~ shall have been developed and entered into by the Recipient and the administrative services agent providing for the administrative services necessary for the operation of the Recipient and the execution of the Project.

~~4.~~1. Procedures will be developed and implemented under which Local Distribution Companies (as defined in the Declaration of Trust) will assist with (i) the identification of Beneficiaries, and (ii) the distribution of Funds to or for the benefit of such Beneficiaries.

1. Insurance requirement

Each of the Requirements may be accomplished by the Recipient entering into such agreements as may be necessary or expedient, including, without limitation, an amendment or amendment and restatement of the Declaration of Trust. The Province shall provide notice in writing to the Recipient when the Requirements have been completed to the satisfaction of the Province. Funds may be expended to pay the expenses of the Trustee in completing the Requirements.

~~The Project will be completed subject to the requirements of the Budget.~~

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Commented [A4]: We will look to refine this, but the intent is for Trustees to have insurance in place before funds are flowed.

Under the previous draft, if there was a lawsuit against a Trustee, expenses and any liabilities would be covered by the Trust (indemnification).

Instead, we are proposing that a line of insurance be established that a Trustee would access to cover lawsuit related expenses and liabilities.

The intention is to protect the Trust funds and for them to be not used for lawsuit related liabilities.

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SCHEDULE "D"

Budget

1. 1. It is expected that the administrative expenses of the Fund, including any administrative expenses of the Recipient (or any administrative services agents or other agents retained by the Recipient), relating to the establishment of the Affordability Fund and satisfying the Requirements (as defined in Schedule "C") and any expenses related to delivery of the program by an electricity distributor to its eligible customers,the operation of the Trust and the execution of the Project (including any reimbursable expenses incurred by any Administrative Services Agent (as such terms are defined in the Declaration of Trust), will be no greater than 10 percent of the total Project budget.

2. 2. Only actual (excluding HST) incurred expenditures of the Trust are eligible for reimbursement as administrative expenses.

3. 3. It is expected any travel, meals and hospitality expenses by the Recipient should adhere towill be consistent with the Province's Travel, Meal and Hospitality Expenses Directive. Entities receiving funding from the Recipient are also expected to adhere to the Province's Travel, Meal and Hospitality Expenses Directive. and the Recipient is expected to request the same of such Entities. Alcohol and First-Class travel are not considered eligible claims and disbursements for hospitality, incidental or food expenses shall not be covered by the Funds, including the following:

- Meals, snacks and beverages
- Gratuities
- Laundry or dry cleaning
- Valet services
- Dependent care
- Home management
- Personal telephone calls

4. Overhead4. It is expected that overhead expenses thatwhich are not directly related to the activities related to the Recipient in establishing and establishment of managing the Affordability Fund shouldwould not be reimbursed.

5. 5. Any expenses that have been or may be reimbursed by other parties should not be reimbursed by the Fund.

6. 6. In the event of that the Recipient performs any procurements, it is expected that all procurements are aligned with Ontariowill reflect the principles of Ontario's Public Service Procurement Directive.

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SCHEDULE "E"

PAYMENT PLAN

PAYMENT DATE	MAXIMUM FUNDS TO BE DISBURSED BY THE PROVINCE
Within 7 days of signing the Agreement	$ ~~X~~100,000,000

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SCHEDULE "F"

REPORTING

Quarterly Reports will be provided quarterly on the basis of the government's fiscal year starting at the execution of this Agreement and continuing until conclusion of the Agreement. Annual Reports will be provided annually on a fiscal basis starting at the execution of this Agreement and continuing until conclusion of the Agreement. Quarterly Reports and Annual Reports shall be submitted to the Province within one month following the end of the reporting period that they represent.

The Recipient shall prepare six (6) Quarterly Reports and two (2) Annual Report as outlined below. Reports shall explicitly demonstrate impact of Province's funding and address report detail requirements listed below.

NAME OF REPORT	DUE DATE
Quarterly Report #1	July 31, 2017
Quarterly Report #2	October 31, 2017
Quarterly Report #3	January 31, 2018
Annual Report #1	April 30, 2018
Quarterly Report #4	July 31, 2018
Quarterly Report #5	October 31, 2018
Quarterly Report #6	January 31, 2019
Annual Report #2	April 30, 2019

Requirements for Quarterly Reports

- The Recipient will provide Quarterly Reports which will include a report back on the Trustee-developed performance management criteria. Quarterly Report requirements ~~include:~~will be determined from time to time by the Province, and initially will include:

    - Amounts disbursed by the Recipient in the previous quarter. It is expected that this information will be provided at the electricity distributor level.
    - Total Affordability Fund interest accrued to date
    - Key activities and achievements from the quarter being reported, including number of participant households per electricity distributor, average participant incentive cost per electricity distributor, and uptake of energy efficiency measures per electricity distributor
    - Any challenges or modifications required to the application, funding, or eligibility processes/rules
    - Key activities planned for the upcoming quarter

Requirements for Annual Report

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- The Recipient will provide an Annual Report to the Province which will include a report back on the Trustee-developed performance management criteria. Annual Report requirements include:

    - A description of electricity distributor application process and the criteria used by the Recipient to manage funds.
    - Identify and describe any challenges with achieving goals and proposed solutions, if applicable.
    - Lesson learned.
    - Electricity distributor and customer feedback
    - Amounts disbursed by the Recipient in the previous year. It is expected that this information will be provided at the electricity distributor level.
    - Key activities and achievements from the quarter being reported, including number of participant households per electricity distributor, average participant incentive cost per electricity distributor, and uptake of energy efficiency measures per electricity distributor
    - Total Affordability Fund interest accrued to date

- As part of the Annual Report, the Recipient will also provide the Province with an audited financial statement for the previous year.

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ANNEX A

Principles

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MOE/Blakes Comments: March 16, 2017

DECLARATION OF TRUST

Made as of March •, 2017

by

COMPUTERSHARE TRUST COMPANY OF CANADA

establishing

AFFORDABILITY FUND TRUST

TABLE OF CONTENTS

Page

[RELABEL HEADINGS AND REGENERATE TABLE OF CONTENTS]

DECLARATION OF TRUST

This Declaration of Trust is made as of March •, 2017, by Computershare Trust Company of Canada, a trust company established under the laws of Canada and licensed to carry on business as a trust company in each of the provinces and territories of Canada (the "**Trustee**").

WHEREAS the Trustee wishes to establish a trust to acquire, hold, manage, apply and dispose of certain property for the benefit of certain Beneficiaries as herein described.

NOW THEREFORE the Trustee hereby declares that it holds in trust as trustee the sum of ONE HUNDRED DOLLARS ($100) contributed by it on this date and all property of every type and description which it may hereafter acquire or hold in its capacity as trustee of the Trust and all income therefrom and proceeds thereof, to hold, manage,apply and dispose of the same on and subject to the provisions contained in this Declaration.

SECTION 1
INTERPRETATION

1.1 Definitions

In this Declaration:

(a) "***Administrative Services Agent***" means each agent, which may include any Electricity Distributor, appointed from time to time under an Administrative Services Agreement, and its successors and permitted assigns solely in such capacity.

(b) "***Administrative Services Agreement***" means each agreement entered into from time to time by the Trust and one or more Administrative Services Agents or other Persons, in furtherance of the purpose of the Trust described in section 2.1 of this Declaration, under which the Administrative Services Agent will agree to provide specified administrative and other services to and on behalf of the Trustee (including, following the Original Trustee Replacement Date, the Permitted Delegations Annex), as such agreement may be amended, supplemented, restated, renewed or replaced from time to time.

(c) "***Assets***" means, collectively, the following:

(i) the $100 Canadian referred to above;

(ii) all other property which is now or which at any time in the future may be issued, assigned, transferred, provided, donated, gifted and contributed to the Trustee (including pursuant to the Transfer Payment Agreement) to be held in trust pursuant to this Declaration (and which the Trustee is willing to accept and hold);

(iii) all property which may at any time be substituted therefor;

(iv) all capital depreciations to or acquisitions by the Trust;

(v) all income of the Trust; and

(vi) all proceeds of disposition of any of (i) through (v) above,

but excludes anything paid out or distributed (whether out of income or capital) in the normal course of administration or pursuant to the provisions of this Declaration.

(d) "***Beneficiary***" means each Primary Beneficiary and each Residual Beneficiary, where applicable.

(e) "***Board of Trustees***" means the group of trustees appointed and acting in such capacity as contemplated by Section •, and as of the Original Trustee Replacement Date means the individual trustees appointed by the Original Trustee pursuant to Section 5.7 on the basis described in the Trustee Replacement Annex.

(f) "***Declaration***" means this Declaration of Trust as amended, restated, supplemented or otherwise modified from time to time, including each of the Annexes hereto.

(g) "***Electricity Distributor***" means, in respect of a designated service area or region in Ontario, the distributer of electricity to residences located in such area or region.

(h) "***Electricity Invoice***" means an invoice issued by an Electricity Distributor in respect of electricity charges and related services and amounts incurred in respect of a residence located in the Electricity Distributor's designated service area or region of Ontario.

(i) "***Eligible Investments***" means [NTD: Describe deposit instruments or accounts issued or established by one or more Schedule I Canadian chartered banks].

(j) "***Eligible Measures***" means electricity efficiency and/or conservation measures determined by the Trustee from time to time, on the basis contemplated in the Principles Annex and determined in the manner specified and having regard to the Permitted Delegations Annex.

(k) "***Final Distribution Date***" means the earlier of (i) the date specified as such or determined pursuant to the Transfer Payment Agreement[1] and (ii) the later of (x) the date (if any) on which the Trustee determines that no further distributions are likely to be made to any Primary Beneficiary and (y) •, 20[23].

(l) "***HAP Eligible Person***" means an "Eligible Person" as defined in Section 3.1 of the document entitled "Conservation First Framework LDC Took Kit" published by Independent Electricity System Operator and designated as Final v3.0 – March 11, 2016, as amended or replaced by any applicable act of the Legislature or Ontario.

(m) "***Minister of Energy***" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of the *Ministry of Energy Act, 2011* under the *Executive Council Act*.

[1] NTD: The TPA will provide that on an Event of Default the remaining Assets will be paid over to the Government, on the basis that the Government's transfer thereunder is subject to such a reservation in circumstances of non-compliance. The TPA should also specify that the Trust will thereafter be wound up, which will tie in to this definition by way of the date so specified in the TPA. Accounting considerations to be discussed.

(n) "***Original Trustee***" means Computershare Trust Company of Canada and its successors and assigns, acting in its capacity as trustee hereunder.

(o) "***Original Trustee Replacement Date***" has the meaning specified in Section 5.7, being the date on which the Original Trustee is replaced as trustee under this Declaration as contemplated under Section 5.7.

(p) "***Person***" includes any individual, sole proprietorship, corporation, partnership, joint venture, association, society, club, board, chamber, joint-stock company, trust, trustee, unincorporated or incorporated organization or entity or government or any entity, agency or political subdivision thereof.

(q) "***Primary Beneficiary***" means each individual that, as of a time of determination, satisfies each of the following criteria:

(i) the individual owns, rents or leases a residence located in Ontario and is the primary or secondary electricity utility account holder named on an Electricity Invoice issued in respect of that residence; and

(ii) the individual is not a HAP Eligible Person.

(r) "***Principles Annex***" means the Principles Annex set forth as an annex to this Declaration.

(s) "***Permitted Delegations Annex***" means the Permitted Delegations Annex set forth as an annex to this Declaration.

(t) ***"Residual Beneficiary"*** means each charitable organization identified by the Trustee and specified as a residual beneficiary hereunder from time to time from among the charitable organizations specified on Schedule • or their respective successor charitable organizations.

(u) "***Transfer Payment Agreement***" means the transfer payment agreement dated as of •, 2017 between the Trustee and Her Majesty the Queen in right of Ontario as represented by the Minister of Energy, as such agreement may be amended, restated, supplemented or otherwise modified from time to time.

(v) "***Trust***" means Affordability Fund Trust, a trust established under and governed by the laws of the Province of Ontario pursuant to this Declaration.

(w) "***Trustee***" means (i) the Original Trustee and (ii) on and after the Original Trustee Replacement Date, the Board of Trustees acting together in accordance with and subject to Section 5.• and in accordance with the rules and procedures adopted by the Board of Trustees pursuant to Section 5.•.

(x) "***Trustee Replacement Annex***" means the Trustee Replacement Annex set forth as an annex to this Declaration.

1.2 Headings and Table of Contents

The insertion of headings and the provision of a table of contents are for convenience of reference only and shall not affect the construction or interpretation of this Declaration.

1.3 References

Unless otherwise specified, all references to Sections are to Sections of this Declaration. The words "hereto," "herein," "hereof," "hereunder" and similar expressions refer to this Declaration and not to any particular Section or other provision of this Declaration.

1.4 Number and Gender

Unless otherwise specified, words importing the singular include the plural and vice versa and words importing gender include all genders.

1.5 Governing Law

This Declaration shall be governed by, and construed and interpreted in accordance with, the laws of the Province of Ontario and of Canada applicable therein.

1.6 Severability

Any provision of this Declaration which is illegal, invalid or unenforceable in any jurisdiction shall not affect the legality, validity or enforceability of the remaining provisions and any such illegality, invalidity or unenforceability in any jurisdiction shall not affect the legality, validity or enforceability of such provision in any other jurisdiction.

1.7 Reference to the Trust and the Trustee

For greater certainty, where any reference is made in this Declaration to an act to be performed by or for or on behalf of the Trust, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Trustee in its capacity as trustee of the Trust, and, where any reference is made in this Declaration to an act to be performed by or for or on behalf of the Trustee, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Trustee in its capacity as trustee of the Trust. No Person dealing with the Trust or the Trustee shall be bound to make any enquiry concerning, or has the right to require production of, any evidence of the validity of any act of, or transaction purporting to be made by, the Trustee.

1.8 Defect in Appointment

No action taken by the Trustee will be invalid or ineffective by reason only of any defect in the appointment of the Trustee or the compliance by the Trustee of any rules or procedures adopted by the Trustee and which is discovered after the taking of such action.

SECTION 2
CONCERNING THE TRUST

2.1 Objectives

The Trust is established for the sole purpose of holding and applying the Assets for the benefit of the Beneficiaries as provided for in this Declaration. The activities of the Trust shall be to hold the Assets as contemplated in this Declaration until such time as the Board of Trustees is duly appointed and determines that the Assets are to be distributed to or for the benefit of the Primary

Beneficiaries in accordance with this Declaration, having regard to the principles set forth in the Principles Annex and in the manner and basis contemplated in the Permitted Delegations Annex, or otherwise to the Residual Beneficiary in accordance with Section 3.3, in each case subject to the terms, limitation and requirements set forth in this Declaration.

2.2 Name of the Trust

The name of the Trust shall be the "Affordability Fund Trust" or such replacement name as the Trustee shall determine and specify from time to time. The Trustee shall hold the Assets and conduct the activities of the Trust under such name or variation thereof. If the Trustee determines to change the name of the Trust, the Trustee may specify and use such other designation or adopt such other name (including any name in the French language) as it considers appropriate and may hold the Assets and conduct the activities of the Trust under such designation or other name.

2.3 Location

The head office and the situs of the administration of the Trust shall be • or such other address in Ontario as the Trustee may determine from time to time.

2.4 Fiscal Year

The fiscal year of the Trust shall end on December 31 in each year.

SECTION 3
DISTRIBUTIONS

3.1 Distributions to Primary Beneficiaries

Prior to the Final Distribution Date, the Trustee shall distribute the Assets (including capital or income) to the Primary Beneficiaries identified based on the application of the principles specified in the Principles Annex and in the manner and in the amounts determined on the basis contemplated by the Permitted Delegations Annex, in each case in the amounts and to the extent specified herein and therein, subject in all respects to the exercise by the Trustee of its discretion hereunder and to the exclusion of the other Beneficiaries.

3.2 Maximum Amount of Distributions to Primary Beneficiaries

The amount distributed by the Trustee to or for the benefit of any Primary Beneficiary shall not (a) exceed the estimated costs (including applicable taxes) to be incurred by or on behalf of such Primary Beneficiary (whether or not such costs have been paid or remain outstanding) in respect of Eligible Measures applied in respect of the Primary Beneficiary's Ontario residence or (b) include in the calculation of such costs any amount intended to compensate an Electricity Distributor. The Trustee shall be entitled to rely on the recommendations of and information provided by Electricity Distributors acting as Administrative Services Agents appointed for the purposes and in the manner contemplated in the Permitted Delegations Annex, without any duty or obligation to verify or makes enquiries regarding the basis for or propriety of such recommendations or the accuracy or completeness of such information, except if and to the extent that the Trustee, in its discretion, determines that (i) it has actual knowledge that such

recommendations are contrary to the reasonable application of the principles set forth in the Principles Annex or have been made on a basis that is manifestly contrary to such principles or the delegations and activities specified or contemplated to be undertaken under the Permitted Delegations Annex or (b) such information is known by the Trustee to be erroneous, contain a material misrepresentation or is materially incomplete.

3.3 Distributions to Residual Beneficiaries

On or as soon as practicable following the Final Distribution Date, the Trustee shall distribute all of the Assets (including capital or income) existing at that time to the Residual Beneficiaries, in each case in the amounts and to the extent determined by Trustee in its discretion hereunder[2] and to the exclusion of the other Beneficiaries.

SECTION 4
POWERS OF THE TRUSTEE

4.1 General

Subject to and in compliance with the terms, limitations and restrictions of this Declaration and notwithstanding applicable legislation, the Trustee shall have, without other or further authorization, full, exclusive and absolute power, control and authority over the Assets and over the affairs and activities of the Trust to the same extent as if the Trustee were not a trustee, but rather the sole and absolute owner of the Assets in its own right, including such power, control and authority to do all such acts and things as in its sole judgment and discretion are necessary, incidental or desirable for carrying on the affairs and activities of the Trust, with such powers of delegation as may be permitted or otherwise contemplated by this Declaration. Except as expressly provided in this Declaration, the enumeration in this Declaration of any specific power or authority shall not be construed as limiting the aforesaid general power or authority or any other specific power or authority set out herein. Subject to the terms, limitations and restrictions of this Declaration, every discretion or power hereby conferred on the Trustee is an absolute and uncontrolled discretion or power.

4.2 Specifically Enumerated Powers

The Trustee shall have the following specific powers and authorities:

(a) ***Transfer Payment Agreement.*** The Trustee shall have the power to enter into and perform its obligation under the Transfer Payment Agreement.

(b) ***Administrative Services Agreements.*** The Trustee shall have the power to enter into and perform its obligation under the Administrative Services Agreements.

(c) ***Power to Dispose of Assets.*** The Trustee shall have the power to sell, convey, assign, transfer, exchange and in any other manner dispose of the Assets or any part or parts thereof free and clear of any and all trusts established under this Declaration, by public or private sale, for cash or on credit, with or without advertisement, and subject to such restrictions, stipulations,

[2] NTD: Consider if principles should be included regarding the choice of charities or the absolute amount any particular charity may receive.

agreements and reservations as the Trustee in its sole and absolute discretion may consider appropriate or advisable, and to execute and deliver and perform any agreement, deed, conveyance, transfer or other document or instrument in connection with the foregoing.[3]

(d) ***Power to Manage and Invest.*** The Trustee shall have the power to own, hold and manage the Assets in such manner as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable. [4] The Trustee shall have the power to invest the Assets in Eligible Investments, and to change such Eligible Investments at any time and from time to time, all as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable. The Trustee shall not be limited to investments authorized by law for trustees. The Trustee will have no liability for the depreciation of any investment.

(e) ***Power to Delegate and to Appoint Agents, etc.*** The Trustee shall have the power to appoint, employ or contract with any Person as the Trustee in its sole and absolute discretion may consider appropriate or advisable in connection with the activities of the Trust. Without limiting the generality of the foregoing, the Trustee will have the power at any time and from time to time to appoint, employ or retain consultants, financial advisers, technical advisers, legal counsel, accountants, administrative services agents, insurers, insurance agents and insurance brokers, as the Trustee may require for the purpose of discharging its duties hereunder and shall not be responsible for or for the actions of any of them. The Trustee may pay remuneration and reimbursements from the Assets for services performed for it or on its behalf in the discharge of the trusts hereof without taxation for costs or fees of any counsel, solicitor or attorney. Without limiting the generality of the forgoing, the Trustee may appoint, employ or retain any Person:

(i) to act for and on behalf of the Trust in connection with any and all matters in any way relating to the negotiation, settlement, entering into, amending, performance and enforcement of the Transfer Payment Agreement, the Administrative Services Agreement and any other agreements and contracts to which the Trust becomes a party in accordance with this Declaration;

(ii) to provide or cause to be provided any or all kinds of administrative services in any way relating to the activities of the Trust;

(iii) to act as attorney in fact, agent or trustee in the acquisition, holding, application, sale or other disposition of the Assets and in the handling, prosecuting or settling of any claims of the Trust;

(iv) to value the Assets and determine the net income of the Trust; and

(v) to make any filings, elections and submissions (including in respect of taxation matters) in connection with the Trust's compliance with applicable laws and regulatory requirements.

Without limiting the foregoing, the Trustee shall seek to enter into Administrative Services Agreements with Electricity Distributors for the purposes contemplated by the Permitted

[3] Consider limiting this broad power.

[4] Consider limiting this broad power.

Delegations Annex, and on such terms and conditions (including terms and conditions as to the payment of reasonable fees and expenses) not inconsistent therewith as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable.

(f) ***Power to Operate Accounts.*** The Trustee shall have the power to open and operate accounts at any chartered bank, trust company or other financial institution in Canada or elsewhere, as the Trustee in its sole and absolute discretion may consider appropriate or advisable; to deposit therein any moneys or securities forming part of the Assets whether or not such deposits will earn interest; to withdraw such deposits at such times and in such manner as the Trustee may determine; to draw, make, endorse, deposit or otherwise deal in cheques, bills of exchange, promissory notes, drafts and other kinds of instruments and securities; to enter into contracts or agreements with any such chartered bank, trust company or other financial institution containing such terms and provisions as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable; and the Trustee shall have no liability or responsibility for any loss which may occur by reason of the failure of any such chartered bank, trust company or other financial institution.

(g) ***Power to Collect, etc.*** The Trustee shall have the power to collect, sue for, receive and give receipts for all sums of money or other property due to the Trust; to consent to extensions of time for payment or to the renewal of any securities or obligations; to engage or intervene in, prosecute, defend, compound, compromise, abandon or adjust by arbitration or otherwise, any demands, claims, actions, suits or proceedings relating to the Trust or the Assets; to exercise any and all remedies available to the Trustee under any agreement or otherwise including any power of foreclosure or sale available at law and, in connection with any such foreclosure or sale, to purchase or otherwise acquire title to any property and to convey good title thereto free of any and all trusts hereby established, or to take or retake possession of any property secured under any agreement or instrument; to extend the time, with or without security, for the payment or delivery of any debts or property and to execute and deliver releases, acquittances, discharges, agreements or other instruments related thereto; and to pay or satisfy any debts or claims upon any evidence that the Trustee, in its sole and absolute discretion, may determine to be sufficient.

(h) ***Power to Pay Trustee's Fees.*** The Original Trustee shall be entitled to be paid and receive reasonable fees as compensation for its services under this Declaration and be reimbursed for its out-of-pocket expenses reasonably incurred, in each case from the Assets, without the approval of any Beneficiary or any court. The Original Trustee shall be entitled, in its sole and absolute discretion, to withdraw funds from time to time for such purpose from any account of the Trust. Members of the Board of Trustees shall be entitled to reimbursement for and in respect of their out-of-pocket expenses reasonably incurred in discharging their respective duties and obligations under this Declaration and any contract of the Trust entered into in accordance with this Declaration, in each case without the approval of any Beneficiary or any court, but subject to the "Travel, Meal and Hospitality Expenses Directive of the Province" specified and amended by the Province from time to time, a copy of the current version of which is attached as Exhibit 1 to the Principles Annex.

(i) ***Power to Pay Taxes.*** The Trustee shall have the power to pay, deduct, withhold or remit any taxes or assessments which are required by law to be paid, deducted, withheld or remitted together with or from any payment made by the Trustee; to pay all taxes or assessments of whatever kind or nature imposed upon or against the Trust or the Trustee in connection with the Assets or any part thereof; to collect and remit all taxes and assessments of whatever kind or

nature required to be collected and remitted by the Trust or the Trustee in connection with their activities or the Assets or any part thereof; to appeal, settle or compromise tax claims or liabilities; and, for the foregoing purposes, to make such returns and do all other acts and things as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable.

(j) ***Power to Appoint Auditors.*** The Trustee shall have the power to select and appoint and discharge and re-appoint, in its sole and absolute discretion, an auditor or auditors of the Trust and to settle the fees of any such auditor or auditors.

(k) ***Form of Accounts.*** The Trustee shall have the power to determine and change from time to time, in its sole and absolute discretion, the method or form in which the accounts of the Trust will be kept and shall not be required to keep and provide accounts in the form usually required by law to be kept by trustees; provided that such method or form reasonably complies with generally accepted accounting principles in effect in Canada to the extent applicable.

(l) ***Title to Assets.*** The Trustee shall have the power to cause all or any part of the Assets to be held by or registered, in its sole and absolute discretion, in the name of any Person.

(m) ***Delegation of Discretion***. The Trustee shall have the power to delegate the right and power to exercise, or concur in the exercise of any discretion or power, conferred on the Trustee in this Declaration or conferred by law to any one or more of its directors, officers, employees, agents or to such other Person, as the Trustee, in its sole and absolute discretion, may think is appropriate or advisable including, without limitation, to one or more Administrative Services Agents and their respective employees, officers and directors, in each case under a related Administrative Services Agreement and on the basis contemplated in the Permitted Delegations Annex. The Trustee shall accept and follow the recommendations of an Electricity Distributor made under and in accordance with clauses [4(a)(i) to 4(a)(vi)] of the Permitted Delegation Annex with respect to a the identification and determination of distributions to be made to any Primary Beneficiary, except if and in so far as the Trustee has actual knowledge that (a) such Primary Beneficiary did not in fact satisfy the "Selection Factors" specified in the Principles Annex as of the applicable time of determination; and/or (b) the amount recommended to be distributed to the Primary Beneficiary was not calculated in compliance with or was calculated in a manner that is manifestly contrary to the requirements set forth or contemplated in the Permitted Delegation Annex or the applicable Administrative Services Agreement.

(n) ***Additional Powers.*** The Trustee shall have the power to perform and do all such other acts, to take such steps and to execute all such deeds, transfers, assignments, agreements and other documents and instruments as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable for the carrying out of any of its powers hereunder or of any of the activities of the Trust as herein contemplated, or for the carrying out, promotion or advancement of the interests of the Trust, whether or not any of such acts, things, documents or instruments are herein expressly mentioned. Any good faith determination by the Trustee as to what is necessary, desirable or appropriate to carry out its powers or activities of the Trust as contemplated under this Declaration or to carry out, promote or advance the interests of the Trust shall be conclusive. Any construction of this Declaration or any determination as to the activities of the Trust or the existence of any power or authority hereunder made in good faith by the Trustee, relying upon the advice of counsel, shall be conclusive. In construing the provisions of this Declaration, there shall be a presumption in favour of a grant of power to the Trustee.

SECTION 5
CONCERNING THE TRUSTEE

5.1 Duty of Trustee

In performing its duties and exercising its powers under this Declaration, the Trustee shall act honestly, in good faith and with a view to the best interests of the Trust and the Beneficiaries and shall exercise that degree of care, diligence and skill that a reasonably prudent trustee would exercise in comparable circumstances (the "**Standard of Care**"). The Trustee shall observe and act in accordance with the terms of, and shall observe and comply with the limitations and restrictions set forth in, this Declaration. To the extent that the Trustee has delegated any of its duties or powers, it shall be deemed to have satisfied the Standard of Care in respect of the subject matter of such delegation, subject to the Trustee's overall duty as a trustee to exercise prudent oversight in relation to such delegation. Unless required by law, the Trustee will not be required to give any security, bonds or sureties in any jurisdiction for the performance of any of its duties and obligations under this Declaration. The Trustee will not be required to devote its entire time to the trust activities.

5.2 Limitation of Liability

The Trustee shall not be personally liable in tort, contract or otherwise to any Beneficiary or any other Person for any loss or diminution in the value of the Assets, or for any action or failure to act on the part of the Trustee or any of its employees or agents or any other Person, and shall not be subject to any personal liability for any debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses incurred by or against the Trust, howsoever arising, and resort will be had solely to the Assets for the payment, performance or satisfaction thereof. No property or assets of the Trustee, owned in its personal capacity or otherwise, will be subject to levy, execution or other enforcement procedure**s** with respect to any obligation under this Declaration. However, Section 5.2 shall not apply where the Trustee has demonstrated gross negligence, bad faith, fraud or wilful misconduct.

5.3 Liability of Trustee under Contracts

Any document or instrument creating a liability or obligation of the Trust or the Trustee will be conclusively deemed to have been executed by the Trustee only in its capacity as Trustee of the Trust and will be binding upon the Trustee only in its capacity as trustee hereunder and resort may not be had to, nor recourse or satisfaction be sought from, the property of the Trustee other than the Assets, whether owned by its in its personal capacity or in any other capacity other than in its capacity as Trustee of the Trust, or from its employees or agents, and resort will be had solely to the Assets for the payment, performance or satisfaction of any such liability or obligation. Each such document or instrument shall contain a provision providing for the aforesaid limitation of liability. However, Section 5.3 shall not apply where the Trustee has demonstrated gross negligence, bad faith, fraud or wilful misconduct.

5.4 Funds of the Trustee

The Trustee shall not be required to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers.

5.5 Indemnification of Trustee

In addition to and without limiting any other protection hereunder or otherwise by law of the Trustee and its respective employees, agents, representatives and assigns (in this Section 5.5, collectively, the "**Representatives**"), the Trustee and its respective Representatives shall be indemnified, defended and saved harmless out of the Assets from, against and in respect of any and all liabilities arising or related to actions taken or omitted to be taken by any agent of the Trustee, losses, claims (including any claim arising out of the assessment of any tax on income by a taxing authority), damages, penalties, fines, actions, suits, demands, levies, assessments, costs, charges, expenses and disbursements (including, without limitation, any and all legal and advisor fees and disbursements) (in this Section 5.5, collectively, the "**Liabilities**") of whatever kind or nature which may at any time be suffered by, imposed upon, incurred by or asserted against the Trustee and its Representatives, whether groundless or otherwise, howsoever arising from or out of any act, omission or error of the Trustee, in each case made in connection with its acting as Trustee hereunder, except and to the extent that the Liabilities are a result from or are caused by gross negligence, wilful misconduct, bad faith or breach of the Confidentiality obligations described in Section 5.9. Further, except as provided in Section 5.2, the Trustee shall not be liable to any Beneficiary for any loss or damage relating to any matter regarding the Trust, including any loss or diminution in value of the Assets. Notwithstanding any other provision hereof, the obligations provided for in this Section shall survive any termination of the Trust created hereby, whether by reason of removal or resignation of the Trustee, termination or discharge of this Declaration or otherwise.

5.6 Reliance upon Advice

Subject to Section 5.1, in performing its duties and exercising its powers hereunder, the Trustee may rely and may act or not act, and shall be fully protected in relying and acting or not acting, upon (a) any statement, telecopy or other electronic means of communication, writing, notice, resolution, report, opinion or other document or conversation believed by its to be genuine and correct and to have been signed, sent or made by the proper Person; (b) any opinion or advice received or information obtained from auditors, solicitors, or other professional advisers, whether retained by the Trustee or otherwise, and shall not be responsible or held liable for any loss or damage resulting from so relying or acting or not acting; and (c) the advice and actions of any Administrative Services Agent, including in connection with the delegations and reliances contemplated under the Permitted Delegations Annex. For greater certainty, it shall not be necessary for the Trustee to ascertain whether or not the Persons who have executed, signed or otherwise issued, authenticated or receipted such papers, writings or documents (including any Administrative Services Agreement or any other contract entered into by the Trustee) have authority to do so or that they are the same Persons named therein or otherwise to pass upon any requirement of such papers, writing or documents that may be essential for their validity or effectiveness or upon the truth and acceptability.

5.7 Replacement of the Original Trustee

As soon as practicable and in any event prior to •, 2017, the Original Trustee shall appoint the Persons contemplated by the Trustee Replacement Annex to comprise the Advisory Committee contemplated therein (once constituted, the "**Advisory Committee**"). As soon as practicable thereafter, the Original Trustee shall request that the Advisory Board make recommendations with respect to the composition of the "Board of Trustees", as contemplated by the Trustee

Replacement Annex. The Trustee shall have no duty or obligation to investigate the basis for any of the Advisory Committee's recommendations and may rely on such recommendations without any duty of enquiry, supervision or oversight with respect to the activities and decision-making processes adopted by the Advisory Committee in its discretion, in full satisfaction of the Original Trustee's Standard of Care with respect to such matters hereunder. Except if the Trustee determines that the individuals recommended by the Advisory Committee to become members of such Board of Trustees are disqualified from so acting on the basis of manifest non-compliance with the selection factors set forth under "Selection Factors" set forth in the Trustee Replacement Annex, the Original Trustee shall appoint, as additional Trustees, [number] of individuals from among those individuals who have been recommended for appointment to such Board of Trustees by the Advisory Committee. The Original Trustee may exercise its discretion in selecting such individuals for such appointment or, in the absence of such exercise, shall select such individuals based on the [alphabetic order of the first letter of their respective surname]. Upon the appointment of [number] additional trustees pursuant to this provision and their agreement to act as members of the Board of Trustees, the Original Trustee shall be deemed to have resigned and shall cease to be a trustee (such resignation occurring on the "**Original Trustee Replacement Date**").

5.8 Composition of the Board of Trustees

[NTD: Specify requirements or principles annex]

5.9 Rules and Procedures of the Board of Trustees

(a) ***Initial Requirements***. [NTD: Need to insert bare bones governance for the Board of Trustee's initial governance purposes.]

(b) ***Power to Adopt Rules and Procedures.*** [NTD: Add power to adopt governance provisions, including to permit remaining trustees to replace any vacancy arising after Board of Trustees and to fill any vacancy by application to the Courts of Ontario in the event of an unfilled vacancy.]

(c) ***Decisions of the Board of Trustees.*** [NTD: Add language to make clear how the majority decisions of Board will represent the decision of the "Trustee" and not any individual trustee. This will be necessary to specify at the outset in order to avoid problems enlisting members of the Board of Trustees.]

(d) ***Conflicts of Interest.*** [NTD: Specify requirements]

(e) ***Expenses and Reimbursements to Trustees.*** [NTD: Specify requirements]

5.10 Confidentiality

Notwithstanding the resignation or removal and discharge from the trusts and powers reposed in and conferred on the Trustee by this Declaration, or the termination of this Declaration, the Trustee so resigning or removed shall continue to treat as confidential all information relating to the Trust, the Assets and the Beneficiaries and shall only be entitled to make disclosures concerning such information if disclosure is required in the performance of the functions of the resigning or removed Trustee or is ordered by a court of competent jurisdiction or is otherwise

required by law. The Trustee shall not be responsible or liable to any Person for any loss or damage arising out of or in any way sustained or incurred in any way relating to any such required disclosure. The obligations arising under this Section **[**5.10**]** shall survive the termination of the Trust.

5.11 Vesting in Successor Trustee

Any successor trustee (including any reconstituted Board of Trustees) shall automatically become vested with the Assets and with the same powers, rights, duties, responsibilities and trusts as if it, he or she had been originally named as Trustee under this Declaration without the requirement of any further instrument or act or conveyance and the Trustee ceasing to act shall execute all such transfers and other documents and do all such other acts or things as may be necessary or desirable to assign, transfer, deliver to, and vest in, the successor trustee, upon the trusts expressed in this Declaration, all the Assets and all the rights, powers and trusts of the Trustee ceasing to act. The expense of any act, document, deed or other instrument or thing required under this Section 5.111, including for greater certainty, outstanding fees and unreimbursed expenses of the Trustee (including any member of the Board of Trustees) ceasing to act, shall be satisfied from the Assets.

5.12 Execution of Instruments

The Trustee shall have the power to execute all deeds, transfers, agreements, promissory notes and other instruments on behalf of the Trust. Such power may be exercised by any one or more Administrative Services Agents acting in accordance with any delegated right to do so pursuant to an applicable Administrative Services Agreement, and any such execution of instrument by an Administrative Services Agent, acting in such capacity as agent of the Trust pursuant to the terms and conditions of such Administrative Services Agreement shall be deemed to be a proper execution of such instrument by the Trustee and shall be binding for all purposes on the Trust.

5.13 Decisions by the Trustee

If there is more than one Trustee, decisions of the Trust may be made by a majority of Trustees. Whenever the Trustees are unable to agree in relation to the commission or omission of any act or howsoever in the execution of the Trust the decision of a majority of the Trustees shall prevail.[5]

SECTION 6
AMENDMENTS AND SUPPLEMENTS

6.1 Amendments

Subject to the requirements of the Transfer Payment Agreement, the Trustee shall have the power in its sole and absolute discretion from time to time without the approval of any Beneficiary or any court to amend, vary, supplement, replace or restate this Declaration in its entirety or any portion thereof, provided that no amendment shall conflict with the principles set forth in the Principles Annex or as to the scope or effect of the permitted delegations and activities of any Administrative Services Agent pursuant to the Permitted Delegations Annex.

[5] NTD: This section will be integrated into the additional provisions dealing with the Board of Trustees.

Without in any way limiting the foregoing, any such amendments, variations, supplements, replacements or restatements may:

(a) add provisions for the replacement of or appointment of additional trustees to act with the Original Trustee prior to the Original Trustee Replacement Date;

(b) in the case of the Original Trustee, add provisions to those contemplated in the Trustee Replacement Annex in respect of the appointment of the members and formation and empowerment of the Board of Trustees;

(c) in the case of the Original Trustee, vary the terms and requirements applicable to the duties, responsibilities, obligations, liabilities, indemnities, protections, limitations, restrictions, compensation, expense reimbursements and such other matters, in each case as the Advisory Committee may indicate are necessary be made in order to attract and receive confirmation of appointment of appropriately qualified individuals that the Advisory Committee specifies are to be appointed as members of the Board of Trustees in accordance with its recommendations;

(d) add additional or replace existing Trustees[6];

(e) add to or reasonably clarify the principles set forth in the Principles Annex;

(f) add to or reasonably clarify the delegations and activities contemplated to be made in the Permitted Delegation Annex;

(g) include provisions for the management of the Trust by the Trustees, including the making of rules, requirements and procedures governing the decision-making of the Board of Trustees;

(h) add provisions for the replacement of members of the Board of Trustees (in addition to those provisions contemplated in the Trustee Replacement Annex);

(i) provide for the engagement of any Person or Persons as managers, administrators or other service providers to the Trust, including any additional or replacement Administrative Services Agent or representative thereof;

(j) specify supplemental procedures for the identification of Primary Beneficiaries and the exchange of information with Electricity Distributors in connection with identifying such Primary Beneficiaries; or

(k) specify procedures for the transfer and transmission of funds from the Trust or any Administrative Services Agent acting on its behalf and with delegated responsibility over funds constituting Assets, to or for the benefit of, Beneficiaries or their designated representatives, payees or assignees.

[6] NTD: Consider and, if retained, integrate with Board concepts.

6.2 Supplemental Declarations

The Trustee is authorized to execute any supplemental declaration of trust (including one or more amendments and restatements from time to time of this Declaration) to give effect to amendments to this Declaration made pursuant to this Section 6.

SECTION 7
TERMINATION

7.1 Duration

Subject to Section 7.2, the Trust will continue in full force and effect so long as there is any Assets and until all of the debts, liabilities and obligations of the Trust have been paid and satisfied in full.[7]

7.2 Termination and Distribution of Assets

Subject as hereinafter provided, the Trustee may terminate the Trust and wind up its affairs on such date as the Trustee, in its sole and absolute discretion, may determine and after paying or adequately providing for the payment and satisfaction of all debts, liabilities and obligations of the Trust and upon receipt of such releases, indemnities and discharges as the Trustee, relying on the opinion of counsel, deems necessary for the protection of the Beneficiaries and for its own protection. Notwithstanding the foregoing, the Trustee shall in any event terminate the Trust and wind up its affairs as soon as practicable after the Final Distribution Date (the "**Termination Date**"). In connection with the termination of the Trust, the Trustee shall distribute or cause to be distributed the remaining Assets, in cash or in kind or partly in each, to the Residual Beneficiaries in accordance with Section 3.3.

7.3 Distribution of Assets on Final Distribution Date

If the Trust holds Assets on the Final Distribution Date, such assets shall promptly be paid to the Residual Beneficiaries in accordance with Section 3.3.

SECTION 8
ACCEPTANCE OF TRUSTS

8.1 Acceptance of Trusts

The Trustee hereby accepts the trusts and duties contained in this Declaration and agrees to perform the same upon the terms and conditions hereof until discharged therefrom.

[Signature Page Follows]

[7] NTD: Consider early termination scenarios.

The Trustee has executed this Declaration as of the date first written above.

COMPUTERSHARE TRUST COMPANY OF CANADA, as Trustee

By: _____
Name:
Title:

By: _____
Name:
Title:

PRINCIPLES ANNEX

Commented [A1]: Content in the annex will be further refined

Commented [A2]: KPMG to comment on 'control' implications.

The following principles apply in relation to the administration of the Trust:

1. Identification of Primary Beneficiary Payees

1.1 A Primary Beneficiary should not receive a benefit from the Trust unless at the time of consideration it satisfies each of the following criteria (the "**Selection Factors**"):

(i) it is an [owner-occupied,], [non-commercial] [not for profit] electricity customer;

(ii) it has [committed] [made arrangements] [proposed] [indicated its willingness] to undertake measures (its "**Energy Plan**") to improve the electricity efficiency and/or promote the conservation of electricity at its Ontario residence;

(iii) its Energy Plan involves one or more Eligible Measures as may be designated by the Trustee from time to time from;

(iv) it confirms that:

1. the primary purpose of its Energy Plan is the conservation and efficient use by the Primary Beneficiary of electricity, and is not for the purposes of the Primary Beneficiary making a profit;

2. it would otherwise not have the financial resources to undertake [the Eligible Measures] included in its Energy Plan;

3. the Eligible Measures to be undertaken by it under its Energy Plan would not otherwise be eligible for reimbursement from third parties, including under any efficiency or conservation program implemented by a government, governmental agency or third party energy subsidy program;

(v) it has demonstrated a need for financial assistance on the basis that its periodic electricity bills represent a financial burden, relative to its available financial resources; and

(vi) such other criteria as the Trustee may determine, including based on the recommendations of Electricity Distributors made on the basis and in accordance with the delegations contemplated by the Permitted Delegations Annex or any applicable Administrative Services Agreement.

1.2 The availability of funds to the Primary Beneficiaries should be allocated on an equitable and consistent basis across different areas and regions within the Province, having regard to:

(i) broad economic parameters of economic activity and the financial resources of the residents of the areas and regions;

(ii) electricity use and efficiency levels of non-commercial electricity customers;

(iii) specific regional indicators of economic weakness and need; and/or

(iv) such other factors as the Trustee may determine are relevant, including based on the submissions, advice and recommendations of Electricity Distributors made on the basis and in accordance with the delegations contemplated by the Permitted Delegations Annex or any applicable Administrative Services Agreement.

1.3 An efficient basis upon which to allocate funds to the Primary Beneficiaries across different areas and regions within the Province may be based on the designated areas and regions serviced by the Electricity Distributors operating within the Province.

1.4 The designated Electricity Distributor for an area or region in which a Primary Beneficiary resides will:

(i) be a reliable source for the purpose of assessing and confirming whether the Primary Beneficiary satisfies the Selection Factors;

(ii) be an efficient intermediary for the purpose of communicating with the Primary Beneficiary, including regarding the availability, terms, conditions and intended purposes of [Project][8];

(iii) be able to efficiently integrate and reflect any distribution payments determined to be made to the Primary Beneficiary within its established practices, procedures and systems; and

(iv) have established contractual arrangements with the Primary Beneficiary that may apply to the protection and confidentiality of information provided by or respecting the Primary Beneficiary, which information may be useful in the consideration by the Electricity Distributor in its assessment of whether the Primary Beneficiary satisfies the Selection Factors, which information may not otherwise be available or readily accessible or verifiable by the Trustee.

1.5 The designated Electricity Distributor for an area or region in which a Primary Beneficiary resides will have market and utilization information that may be useful in assessing the relative needs of Primary Beneficiaries within its designated area or region. Such information will be relevant in assessing the extent to which one such Primary Beneficiary's financial needs and the merits of its Energy Plan are greater or more compelling than those of another such Primary Beneficiary, which comparison may be relevant to the extent that the funds allocable to the Primary Beneficiaries resident in the area or region are otherwise insufficient to meet the requests for funding by all such Primary Beneficiaries.

1.6 Accordingly, it is consistent with the purposes of the Trust that the recommendations of Electricity Distributors be utilized and relied upon by the Trustee to guide the process of identifying particular Primary Beneficiaries for distributions under the [Project].

[8] Consider if the Trustees should control the messaging to ensure consistency across the Province.

1.7 If an Electricity Distributor for a particular area or region is unable or unwilling to assess or confirm the application of the Selection Factors to Primary Beneficiaries residing in the area or region or to make recommendations in relation to such matters, one or more of the following may provide a suitable alternative source of information and for information gathering, assessment and confirmation purposes in relation to such area or region:

(i) other Electricity Distributors operating in adjacent or other areas or regions in the Province;

(ii) the Ontario Energy Board;

(iii) the Independent Electricity System Operator; and

(iv) anyone else having relevant expertise and access to information regarding the electricity market of the Province, in each case as may be considered relevant by the Trustee.

1.8 To the extent that privacy law or other legal requirements limit an Electricity Distributor from providing or making available specific information respecting the application of the Selection Factors to a particular Primary Beneficiary or group of Primary Beneficiaries, it may be appropriate to redact or make generic affected information regarding such Primary Beneficiary in connection with the identification and confirmation of a Primary Beneficiary's eligibility and participation in the [Project]. If such limitations or restrictions would limit an Electricity Distributor from providing or confirming the name of a particular Primary Beneficiary to the Trustee, then it should be sufficient that such information may be obtained or disseminated on a confidential basis if and when required by the Trustee for the proper administration of the Trust and on that basis such impediments should not disqualify a Primary Beneficiary from participating in the benefits of the [Project], to the extent that the confidential record-keeping of the Electricity Distributor would be available in connection with the application of any applicable legal process predicated on the identification of such Primary Beneficiary for the purposes of substantiating its rights as a Primary Beneficiary of the Trust or as to the validity or subsistence of the Trust.

2. Eligible Measures

2.1 Eligible Measures shall be identified having regard to the following (the "**Measures Factors**"):

(i) [NTD: Insert generic list of considerations relevant to the identification of the applicable spending uses].

2.2 In identifying and applying the Measures Factors, Electricity Distributors will have expertise in assessing the suitability of efficiency and conservation measures in their respective areas and regions, which may differ across areas and regions across the Province based on factors (among other things) such as the climate, geography, density, electricity infrastructure, residential structures, and electricity use rates applicable within such areas or regions.

2.3 Unless otherwise specified by the Trustees, the measures specified in Schedule A to this Principles Annex will be considered.

3. Other

3.1 It is expected that administrative expenses of the Board of Trustees and its members, including any expenses relating to the Trust, to the establishment of the [Affordability Fund] and any expenses related to the implementation and operation of the [Project] by or through Electricity Distributors and other relevant entities, will be recognized and subject to reimbursement in accordance with the principles outlined in the [Province's Transfer Payment Accountability Directive/Travel, Meal and Hospitality Expenses Directive][9], in the form attached to Schedule B to this Principles Annex.

3.2 The Trustee is expected to conduct its activities to ensure that, as more specifically contemplated in the Transfer Payment Agreement:

(i) the Assets are applied are spent prudently and in furtherance of the purpose set forth in the Declaration;

(ii) the Trustee is accountable to the Province for activities undertaking in connection with the Project;

(iii) it complies with the Province's request for any independent verification or audit determined to be necessary or appropriate by the Province;

(iv) the Province will be entitled and has reserved its right to demand the return of the Assets if the Province determined that they are not being used for the purposes and applied in the manner as set forth or contemplated in the Declaration.

3.3 Electricity Distributors are not intended to directly profit from distributions of funds made from the Trust, although it is recognized that the objectives of electricity efficiency and conservation of Primary Beneficiaries located in the service area or region of an Electricity Distributor, and the cost savings and improved credit worthiness of such Primary Beneficiaries, may be financially beneficial to the Electricity Distributor.

3.4 Distributions from the Trust are intended to allow receiving Primary Beneficiaries to undertake Eligible Measures at no or minimal personal cost.

3.5 It is expected that the Trust Assets will be distributed to Primary Beneficiaries during the period from the Original Trustee Replacement Date to [the Final Distribution Date] [March 31, 2019].

[9] NTD: Ministry to confirm applicable Directive(s).

SCHEDULE A TO THE PRINCIPLES ANNEX
INITIAL ELIGIBLE MEASURES

Initial Specified Measures
Block Heater Timer (just timer) – rated for outdoor use, have at least a 15 amp/1800 watt capacity, be cold weather resistant, bear a C-UL or CSA certification mark
Power bar with integrated timer, and switched power outlets, four each for a total of 8 outlets, have a total capacity of 15 amps. The switched outlets must remain "live", independent of timer settings, so long as the power bar itself remains switched on. The power bar must bear either a C-UL or CSA certification mark.
Efficient Showerheads (standard) - rated at no more than 4.8 Lpm (1.25 U.S. gpm) and be of the laminar flow type (non-aerating).
Efficient Showerhead (handheld) - rated at no more than 4.8 Lpm (1.25 U.S. gpm) and be of the laminar flow type (non-aerating).
Efficient Aerators (kitchen) - rated no more than 5.7 Lpm (1.5 U.S. gpm), dual threaded to allow installation in both thread type faucets, swivel type with pause lever.
Efficient Aerators (bathroom) - rated no more than 3.8 Lpm (1.0 U.S. gpm), be dual threaded to allow installation in both thread type faucets.
Hot Water Tank Pipe Insulation - $^{1}/_{2}$" inside diameter – foam, meets ASTM –C547-00, minimum $^{3}/_{4}$" thick
Hot Water Tank Pipe Insulation - $^{3}/_{4}$ " inside diameter - – foam, meets ASTM –C547-00, minimum $^{3}/_{4}$" thick
Hot Water Tank Insulation - fibreglass R10 (fits up to a 60 gal tank) – not bubble wrap
≤11W ENERGY STAR® Qualified LED A Shape (60W) (minimum 600 Lumen output) (Formerly: 7W – 11W ENERGY STAR® Qualified LED A Shape (60W))
≤14W ENERGY STAR® Qualified LED A Shape (75W) (minimum 800 Lumen output) (Formerly: 10W – 14W ENERGY STAR® Qualified LED A Shape (75W))

Initial Specified Measures
≤23W ENERGY STAR® Qualified LED A Shape (100W) (minimum 1600 Lumen output) (Formerly:17W – 23W ENERGY STAR® Qualified LED A Shape (100W))
≤16W ENERGY STAR® Qualified LED PAR 20 (minimum 600 Lumen output) (Formerly: 8W – 12W ENERGY STAR® Qualified LED PAR 20)
≤16W ENERGY STAR® Qualified LED PAR30 & PAR38 (minimum 600 Lumen output) (Formerly: 8W – 12W ENERGY STAR® Qualified LED PAR 30)
≤23W ENERGY STAR® Qualified LED PAR (minimum 1100 Lumen output) (Formerly: 14W – 18W ENERGY STAR® Qualified LED PAR 38)
≤6W ENERGY STAR® Qualified LED MR 16 / PAR 16 (minimum 250 Lumen output) (Formerly: 7W – 10W ENERGY STAR®
Qualified LED MR 16 / PAR 16 - GU 10 Base)
≤11W ENERGY STAR® Qualified LED MR 16 (minimum 400 Lumen output) (Formerly: 7W – 12W ENERGY STAR® Qualified LED MR 16 GU 5.3 Base)
ENERGY STAR® LED Wet Location Rated PAR lamp ≤ 23 Watt (minimum 1100 Lumen output)
Recessed Downlight Fixture including LED with Light Output >600 and <800 lumens (Retrofit Measure List)
Recessed Downlight Fixture including LED with Light Output >800 lumens (Retrofit Measure List)
Indoor Drying Rack

Extended Measures
Replace refrigerator with ENERGY STAR qualified refrigerator - 15.5 - 16.9 cubic foot top freezer, automatic defrost, refrigerator/ freezer, no through the door ice service
Replace refrigerator with ENERGY STAR qualified refrigerator - 17.0 - 18.4 cubic foot top freezer, automatic defrost, refrigerator/ freezer, no through the door ice service
Replace refrigerator with a refrigerator that has a consumption level of less than 425 kwh, 10 – 12.5 cubic foot top freezer, automatic defrost, refrigerator freezer, no through the door ice service
Replace freezer with ENERGY STAR qualified freezer -
12-14.4 cubic foot freezer
Replace freezer with ENERGY STAR qualified freezer - 14.5 - 16.0 cubic foot freezer
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 6,000 – 7,999 BTU/hr with C-UL or CSA certification mark
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 8,000 – 9,999 BTU/hr with C-UL or CSA
certification mark
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 10,000 – 12,000 BTU/hr with C-UL or CSA certification mark
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 14.2 - 21.2 l/day (30-44.9 pints/day) dehumidifier
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 21.3 - 25.4 l/day (45-53.9 pints/day) dehumidifier

Extended Measures
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 25.5 - 35.5 l/day (54-75 pints/day) dehumidifier dehumidifier dehumidifier
Programmable Thermostat – line voltage – meets CAN/CSA-C828-06 standard, minimum performance: Droop: 1.5°C, Differential: 0.5°C, Precision 0% within 0.5°C of the original set point of 22°C
Programmable Thermostat – low voltage - meets CAN/CSA-C828-06 standard, minimum performance: Droop: 1.5°C, Differential: 0.5°C, Precision 0% within 0.5°C of the original set point of 22°C

Weatherization Measures
Comprehensive Draftproofing (caulking, foam and weather stripping, and application of same) – lifespan of 20 years plus If one or two component polyurethane foams are used, the products and installations must conform to: • CAN/ULC-S710.1 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 1: Material Specification. • CAN/ULC-S710.2 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 2: Application. • CAN/ULC-S711.1 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification • CAN/ULC-S711.2 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification, and Part 2: Application. **Attic Insulation (including installation):**
cellulose: CAN/ULC-S703-01 Amendment 1 - Cellulose Fibre Insulation (CFI) for Buildings OR 2) Mineral Fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre

Weatherization Measures
for Buildings **Wall Insulation (including installation):**
cellulose: CAN/ULC-S703-01 Amendment 1 - Cellulose Fibre Insulation (CFI) for Buildings OR 2) Mineral Fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre **Basement Insulation (including installation):**
mineral fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre for Buildings Vapour Barrier: 69009-CAN/CGSB-51.34-m86 If one or two component polyurethane foams are used, the products and installations must conform to: • CAN/ULC-S710.1 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 1: Material Specification. • CAN/ULC-S710.2 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 2: Application. • CAN/ULC-S711.1 Standard for Thermal Insulation – Bead Applied Two-Component
Polyurethane Air Sealant Foam, Part 1: Material Specification • CAN/ULC-S711.2 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification, and Part 2: Application.

[NTD: Add details pertaining to heat pumps]

SCHEDULE B TO THE PRINCIPLES ANNEX
PERMITTED EXPENSE REIMBURSEMENTS

[NTD: Insert the Province's Transfer Payment Accountability Directive/Travel, Meal and Hospitality Expenses Directive]

PERMITTED DELEGATION ANNEX

1. Under Section 4.2(d) of the Declaration, the Trustee has the power to: (A) appoint, employ or retain Administrative Services Agents for the purpose of discharging its duties and obligations under the Declaration; and (B) enter into, perform, enforce and amend Administrative Services Agreements.

2. In accordance with [Section 4.2] of the Declaration, consistent with the principles set forth in the Principles Annex, the Trustee or its agent will seek to enter into one or more Administrative Services Agreements with individual Electricity Distributors under which the Electricity Distributors will act as Administrative Service Agents to the Trustee. In this manner, the Trustee will delegate certain of its powers and duties to the Electricity Distributors.

3. Under Section 5.1 of the Declaration, to the extent the Trustee has delegated any of its duties or powers, it shall be deemed to have satisfied the Standard of Care in respect of the subject matter of such delegation, subject to the Trustee's overall duty to exercise prudent oversight thereof. The Trustee is entitled to rely on an Electricity Distributor to discharge the duties delegated to it, as Administrative Services Agent, pursuant to an Administrative Services Agreement as described in this Annex.

4. Accordingly, and without limiting the Trust's right to delegate under the Declaration, the Trust will be permitted to, and should seek to, enter into Administrative Services Agreements with Electricity Distributors in order to provide for the following:

    a. **Identification of Applicable Primary Beneficiary Payees and Determination of Individual Distribution Amounts**

        i. Each Electricity Distributor will make an initial assessment of the financial needs of Primary Beneficiaries within its designated service area or region, having regard to [NTD: specify relevant economic data and reference material], in order to prepare and provide to the Trustee an estimate of the number of Primary Beneficiaries who the Electricity Distributor reasonably expects would satisfy the Selection Factors (as defined in clause 1.1 "Identification of Primary Beneficiary Payees" of the Principles Annex).

        ii. Each Electricity Distributor will make an initial assessment of the measures it would recommend be included as Eligible Measures, having regard to [NTD: specify relevant considerations], in order to prepare and provide to the Trustee an estimate of the average cost per Primary Beneficiary Payee (as defined below) of such Eligible Measures that the Electricity Distributor reasonably expects would apply in respect of Primary Beneficiaries resident in its service area or region.

        iii. Based on the product of (i) and (ii), above, and such other considerations as it considers to be directly relevant, each Electricity Distributor will make a written recommendation to the Trustee regarding the aggregate funding amount that the Electricity Distributor anticipates would be utilized under the

[Project] by Primary Beneficiaries in its service area or region (the "**Local Funding Estimate**"). Such recommendation will be accompanied, when submitted to the Trustee, by a detailed explanation regarding the assumptions, financial parameters, suitability considerations and other information underlying the Local Funding Estimate (including the type of information contemplated by "[Insert]" under the Principles Annex, which will be relied upon by the Trustee in its assessment regarding the allocation of available funding to or for the benefit of the Primary Beneficiaries across the specified areas and regions of the Province.

iv. The Trustee will inform the Electricity Distributor regarding the aggregate of the amount determined by the Trustee to be made available under the [Project] for Primary Beneficiaries in the Electricity Distributor's designated service area or region (for each LDC, its "**Maximum LDC Allocation**") and as to any maximum amount that may be paid to or for the benefit of any single Primary Beneficiary [or group of related Primary Beneficiaries] located in the servicer area or region of the Electricity Distributor (the "**Maximum Primary Beneficiary Amount**"). The Maximum LDC Amount and Maximum Primary Beneficiary Amount may vary between designated areas and regions, the Primary Beneficiaries within such areas and regions, and may be increased by the Trustee from time to time in its discretion.

v. Each Electricity Distributor will apply the principles set forth under ["Identification of Primary Beneficiary Payees" in the Principles Annex] to identify and make recommendations to the Trustee regarding the amount of funds (if any) to be distributed to or for the benefit of Primary Beneficiaries resident within its designated service area or region from time to time (the "**Primary Beneficiary Payees**").

vi. Each Electricity Distributor will ensure that the aggregate of the amounts it recommends be distributed to or for the benefit of Primary Beneficiary Payees from time to time does not exceed (1) its Maximum LDC Allocation and (2) for any single Primary Beneficiary [or group of related Primary Beneficiaries] located in the servicer area or region of the Electricity Distributor, the Maximum Primary Beneficiary Amount.

vii. The Trustee will provide written confirmation to each Electricity Distributor:

1. Either (x) that the recommendations specified of the Electricity Distributor in clause (v), above, have been accepted, or (y) as to the specific reasons for any non-acceptance;

2. The identity of each Primary Beneficiary Payee resident in the Electricity Distributor's service area or region and its residential address;

3. The amount of the distribution to be paid to or for the benefit of each such Primary Beneficiary Payee.

b. **Making of Distributions**

i. Promptly after the Trustee confirms the identity of a Primary Beneficiary Payee resident in a Electricity Distributor's service area or region and the amount of the distribution to be paid to or for the benefit of such Primary Beneficiary Payee, the Trustee will arrange for payment to the Electricity Distributor an amount equal to the amount of such distribution.

ii. Promptly upon receipt of funds in respect of a distribution to a Primary Beneficiary Payee, the Electricity Distributor will arrange for payment of the full amount of such distribution to or for the benefit of the Primary Beneficiary Payee, without reduction or set-off.

c. **Reporting, Record-Keeping, Inspection and Disclosure**

i. The Electricity Distributor will provide to the Trustee quarterly and annual reports ("**Reports**") for the duration of the Administrative Services Agreement.

ii. The Electricity Distributor will keep and maintain all financial records and non-financial documents and records relating to the provision of services under the Administrative Services Agreement. [Specify required records regarding individual Primary Beneficiary Payees]

iii. The Trustee, its authorized representatives or an independent auditor may, at its own expense, on twenty-four hours' notice to the Electricity Distributor and during normal business hours, inspect the records of and information respecting the Electricity Distributor to confirm its compliance with the Administrative Services Agreement, including its process for determining the Primary Beneficiary Payees, distribution amounts and the delivery of funds to [or for the benefit of] the Primary Beneficiary Payees. The Trustee, its authorized representatives or an independent auditor may inspect and copy all records and documents kept in accordance with the Administrative Services Agreement and conduct an audit or investigation of the Electricity Distributor in respect of the identification of the applicable Primary Beneficiary Payees, the amount of distributions made to or for the benefit of the Primary Beneficiary Payees; and the delivery of funds to or for the benefit of the Primary Beneficiary Payees.

d. **Standard of Care**

i. The Electricity Distributor will perform its duties provided under the Administrative Services Agreement exercising the degree of care, diligence and skill that a reasonably prudent Person would exercise in comparable circumstances.

ii. In recommending Primary Beneficiary Payees to the Trustee, the Electricity Distributor will seek to avoid actual, potential or perceived conflicts of interest.

e. **Expenses**

i. The Electricity Distributor will be eligible to receive reasonable compensation and reimbursement of its actual out-of-pocket costs associated with the performance of its duties under the Administrative Services Agreement, subject to compliance with the Province's Travel, Meal and Hospitality Expenses Directive. Such compensation amounts and reimbursement entitlements will be specified in the Administrative Services Agreement.

[Other matters you may consider dealing with here include compliance with privacy law/confidentiality/legal considerations and requirements; money laundering; preparation of accounting and tax statements by the Trust; compliance with regulatory laws; representation in product warranty claims (to the extent the Trust is sued in connection with a purchase of Eligible Measures); flowing money to suppliers of Eligible Measures; appropriate reps and indemnities from LDCs; specific reporting of cash and allocations; logistics of banking and cash flow mechanics and related record-keeping; production of information for Trustee to satisfy legal requirements applicable to the Trust (i.e., tax; record keeping); preparation of tax remittances for beneficiaries; preparation of reports for the Government and cooperation with other compliance by the Trust with the TPA; required communications to Primary Beneficiaries on behalf of the Trust (including to comply with applicable laws); preparation and submission of applications, etc., that may be contemplated by the [Project]; termination scenarios]

TRUSTEE REPLACEMENT ANNEX

1. The Advisory Committee shall consist of the following individuals:

   •

   •

   •

2. In the event any member of the Advisory Committee resigns or is unable to act, the remaining members may appoint a resident of Ontario as a replacement.

3. On or before •, 2017, the Advisory Committee shall identify six residents of Ontario who are willing to act as Trustees of the Affordability Fund Trust and who, collectively satisfy the following criteria:

   a) Demonstrate an understanding of the electricity sector including the electricity distribution sector;

   b) Have expertise in conservation and low income programs;

   c) It is expected that three of the identified individuals will be representatives from separate electricity distributors, two individuals will be representatives from separate social services agencies and one individual will be a government representative.

   d) It is expected that government representation will be non-controlling.

4. The Advisory Committee shall recommend that the existing Trustee appoint the individuals so identified to become replacement Trustees of the Affordability Fund Trust pursuant to section 5.7 of the Declaration.

5. If any of the persons recommended under paragraph 4 or under this paragraph are not accepted and appointed by the existing Trustee pursuant to section [5.7] of the Declaration, the Advisory Committee shall forthwith identify and recommend an alternative individual who is willing to act and who whose presence as a Trustee would result in the Trustees collectively satisfying the criteria in paragraph 2 above.

6. Upon the appointment of [number] trustees pursuant to section • of the Declaration, the Advisory Committee will be functus.

FW_ Affordability Fund - Declaration of Trust and Transfer Pricing Agreement 1.pdf

From: Petsche, Nadine (TBS) []
To: samir chhelavda (Samir.Chhelavda@HydroOne.com) [Samir.Chhelavda@HydroOne.com]; Picard, Michel (mpicard@kpmg.ca) [mpicard@kpmg.ca]
Subject: FW: Affordability Fund - Declaration of Trust and Transfer Pricing Agreement
Date: Thursday, March 16, 2017 17:51:38

Samir/Michel

I see that you weren't included on the email below.

Regards,

Nadine

From: Schwab-Pflug, Emma (ENERGY)
Sent: March-16-17 4:21 PM
To: Alexandra.Phillips@HydroOne.com
Cc: Sermat-Harding, Kaili (ENERGY); Syed, Usman (ENERGY); Qureshi, Musab (ENERGY); Spencer.Gill@HydroOne.com; Daniel.Levitan@HydroOne.com; Natalie.Poole-Moffatt@HydroOne.com; Johnson, Paul (ENERGY/MEDEI/MRI); Ranalli, David (ENERGY); Schachtschneider, Michelle (ENERGY); Petsche, Nadine (TBS); An, Tai (ENERGY); Gounden, Pratima (ENERGY); Desouza, Charlotte (ENERGY); Thompson, Erin (ENERGY)
Subject: RE: Affordability Fund - Declaration of Trust and Transfer Pricing Agreement

Thanks Alex and understood re: sharing finals with Computershare.

Also, our counsel has drafted the following to assist in Hydro One and KPMG's review of the documents:

Our mark-up addresses the tensions that exist among (1) the requirements to recognize the Trust as non-controlled for government year-end accounting purposes, (2) the practical need for the LDCs to lead the identification and allocations to eligible participants processes (3) the desire for the ultimate customers in need to be the reference group of beneficiaries (4) the legal requirements to create a valid trust under Ontario law and (5) the practical limitations associated with addressing and contracting relevant LDC participation prior to March 31, while achieving sufficient contractual certainty for the Province and legal purposes.

To balance these tensions, we have suggested the following (subject to accounting input and practical input from Hydro One):

(1) the Declaration contemplates the following 3 time periods:

a. Initially, Computershare will be the trustee and will simply sit on the funds. Hydro One will provide very basic administrative services during this initial period. Computershare, acting on the recommendations of an "Advisory Committee" will appoint its replacement – a "Board of Trustees" (this is contemplated in a Trustee Replacement Annex to the Declaration).

b. Once the Board of Trustees is in place, administrative services agreements will be entered into with LDCs. To give the LDCs a wide scope to identify funding recipients within their service areas, a broad and specific delegation is described in the "Permitted Delegations Annex", which frames out what the basic and key terms of the ultimate Administrative Services Agreements with the LDCs will entail. That level of detail is required to enable the broad Trustee delegation, without upending the validity of the Trust for legal purposes. The Board of Trustees will maintain supervisory responsibility over the LDCs actions, but will be permitted to rely on the recommendations of the LDCs. Under these arrangements, the find will be divided by region and then LDCs will have wide discretion to recommend distributions, in each case subject to the principles set out in a "Principles Annex".

c. Once the program is to be wound up (either because of a default by the Trust, the Trustee's determine that all funding has been appropriately provided for or a final end-date occurs), any remaining funds will be paid to charitable beneficiaries identified from among a pre-determined slate. The amount available to the charities in the circumstance where a default of the Trust has occurred will be net of the amount the Province will be entitled to be paid (i.e., the remaining Assets) from the Trust under the Transfer Payment Agreement.

(2) From March 31, all of the discretion to deal with the Trust Assets will reside with Computershare or the Board, or by delegation to the LDCs where a suitable contract is signed by the Trust with the LDCs. The Province will not maintain control of the Assets, and all steps contemplated in (1) will not be affected by the Province other than (in substance):

a. To the extent the Province is represented on the Advisory Committee or the Board;

b. The Province has rights to require payment of remaining Assets under the Transfer Agreement on an "event of default"; or

c. The Province has certain reporting, audit and compliance rights, essentially to affect the intended purpose of the Trust in its implementation (and with remedies under

the Transfer Payment Agreement, including a right to be paid the undistributed Assets or to pursue contract remedies (including specific performance).

Otherwise, the terms of the Trust will be determined at the outset and determined and affected by non-governmental entities. We understand that these continuing ties to the Trust would not be contrary to the accounting principles applicable for government year-end treatment as a non-controlled trust entity.

Based on this drafting approach, Blakes believes on a preliminary basis that the validity issues associated with the Trust can be adequately addressed.

From: Alexandra.Phillips@HydroOne.com [mailto:Alexandra.Phillips@HydroOne.com]
Sent: March-16-17 3:50 PM
To: Alexandra.Phillips@HydroOne.com
Cc: Schwab-Pflug, Emma (ENERGY); Sermat-Harding, Kaili (ENERGY); Syed, Usman (ENERGY); Qureshi, Musab (ENERGY); Spencer.Gill@HydroOne.com; Daniel.Levitan@HydroOne.com; Natalie.Poole-Moffatt@HydroOne.com; Johnson, Paul (ENERGY/MEDEI/MRI); Ranalli, David (ENERGY); Schachtschneider, Michelle (ENERGY); Petsche, Nadine (TBS); An, Tai (ENERGY); Gounden, Pratima (ENERGY); Desouza, Charlotte (ENERGY); Thompson, Erin (ENERGY)
Subject: Re: Affordability Fund - Declaration of Trust and Transfer Pricing Agreement

(Press send too soon)

I am checking on exact timelines and get back to you later on today.

On sharing drafts with CS, it is our preference to send them final docs instead of drafts.

Speak soon,

Alex Phillips

Manager, External Relations

Hydro One Networks Inc.

(O) 416-345-1375

(C) 647-405-8601

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On Mar 16, 2017, at 3:48 PM, PHILLIPS Alexandra <Alexandra.Phillips@HydroOne.com> wrote:

> Thanks Emma. I am checking on exact timelines and will
>
> **Alex Phillips**
>
> Manager, External Relations
>
> Hydro One Networks Inc.
>
> (O) 416-345-1375
>
> (C) 647-405-8601
>
> This email and any attached files are privileged and may contain confidential information intended only for the person or persons named above. Any other distribution, reproduction, copying, disclosure, or other dissemination is strictly prohibited. If you have received this email in error, please notify the sender immediately by reply email and delete the transmission received by you. This statement applies to the initial email as well as any and all copies (replies and/or forwards) of the initial email.
>
> On Mar 16, 2017, at 3:23 PM, Schwab-Pflug, Emma (ENERGY) <Emma.Schwab-Pflug@ontario.ca> wrote:

Hi Alex:

Please find attached tracked and clean versions of the TPA and Declaration of Trust. Tracked versions are tracked from the versions you had shared on March 13. You will note that there are comments in the TPA and Declaration indicating areas that we are working with Blakes to finalize.

We would recommend, as discussed, that Hydro One share these current versions with KPMG, as well as Computershare, so that we can work to resolve identified issues.

Can Hydro One advise if it will not be possible to share comments back with us for 3 PM tomorrow?

We would like to set up a call tomorrow afternoon to discuss comments. Can you advise of a preferred time for a call?

A few other follow-ups:

· We have confirmed internally that Computershare can establish an interim Trust account using their existing banking relationship with BNF. Can you confirm once this (and the TPA/Decl if you agree to share) is communicated with Computershare?

· Can you please share the Computershare Trustee(s) contact details? We understand that the Trustees will have to be recognized in the Declaration of Trust.

· Can you share the administrative service agreement for the Ministry's

review today? Our interest in seeing this is to have comfort that it will be ready for signing by Computershare on Monday or Tuesday of next week.

Thanks again to you and your team for working with us on these tight timelines.

- Emma

From: Alexandra.Phillips@HydroOne.com [mailto:Alexandra.Phillips@HydroOne.com]
Sent: March-13-17 2:56 PM
To: Syed, Usman (ENERGY); Schwab-Pflug, Emma (ENERGY); Qureshi, Musab (ENERGY)
Cc: Spencer.Gill@HydroOne.com; Daniel.Levitan@HydroOne.com; Natalie.Poole-Moffatt@HydroOne.com
Subject: Fwd: Affordability Fund - Declaration of Trust and Transfer Pricing Agreement

All:

Please see our revisions to the TPA (with a track changes PDF) and the Declaration of Trust.

Looking forward to hearing back from you by EOD tomorrow but don't hesitate to reach out if you have any questions or concerns.

Best,

Alex Phillips

Manager, External Relations

Hydro One Networks Inc.

(O) 416-345-1375

(C) 647-405-8601

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<2017-03-16 TRACK Affordability_Fund_Trust_–_Declaration_of_Trust v2.docx>

<2017-03-16-CLEAN TPA_Draft_Afund v2.docx>

<2017-03-16-TRACK TPA_Draft_Afund v2.docx>

<2017-03-16 CLEAN Affordability_Fund_Trust_–_Declaration_of_Trust v2.docx>

FW_ year end.pdf

From: Jeannie Kaminski
To: Virani, Shyrose (TBS)
Cc: Suzie Gignac
Subject: FW: year end
Date: April 3, 2018 12:56:39 PM
Attachments: image001.gif
image004.jpg
TBS Invoice 2 April 2018.pdf

Hi Shyrose,

Attached please find EY's invoice. Should you have any questions or concerns, please do not hesitate to contact me.

Have a super day!

Jeannie Kaminski | Executive Assistant, Assurance Services
to Stephen McIntyre and Suzie Gignac
Ernst & Young LLP
99 Bank Street, Suite 1200, Ottawa, Ontario K1P 6B9, Canada
Office: 1-613-598-4809 | Fax: 1-613-232-5324 |
jeannie.kaminski@ca.ey.com
Website: http://www.ey.com

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From: Virani, Shyrose (TBS) <Shyrose.Virani@ontario.ca>
Date: April 3, 2018 at 9:05:11 AM EDT
To: Suzie Gignac <suzie.r.gignac@ca.ey.com>
Subject: RE: year end

Thanks Suzie for letting me know, is it possible to email the copy of the invoice today please

Thanks
shyrose

From: Suzie Gignac [mailto:suzie.r.gignac@ca.ey.com]
Sent: April 2, 2018 12:22 PM
To: Virani, Shyrose (TBS)
Cc: Jeannie Kaminski
Subject: RE: year end

Hi Shyrose:
We are preparing an invoice for March as of end of last week. It is related primarily to transfer payment work we did for Ian Provis in the last two weeks and will be for approx. $7,500.
Thanks,
Suzie

Suzanne Gignac, Partner, CPA, CA

Ernst & Young LLP / Ernst & Young s.r.l./S.E.N.C.R.L.
99 Bank Street, Suite 1200, Ottawa, Ontario K1P 6B9, Canada
Direct: 1 613 598 4376 | Fax: 1 613 232 5324 | suzie.r.gignac@ca.ey.com
Executive Coordinator, Carolyn Roberts | Phone: 613 598 4844 | carolyn.roberts@ca.ey.com

Proudly serving Canada for over 150 years

From: Virani, Shyrose (TBS) [mailto:Shyrose.Virani@ontario.ca]
Sent: March-12-18 9:02 AM
To: Suzie Gignac <suzie.r.gignac@ca.ey.com>
Subject: year end

Hi Suzie:

As March is our fiscal year end, we would appreciate receiving invoice for the month of March if any. Please let me know.

Thanks
Shyrose

p.s. I did receive invoice for February.

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image001.pdf

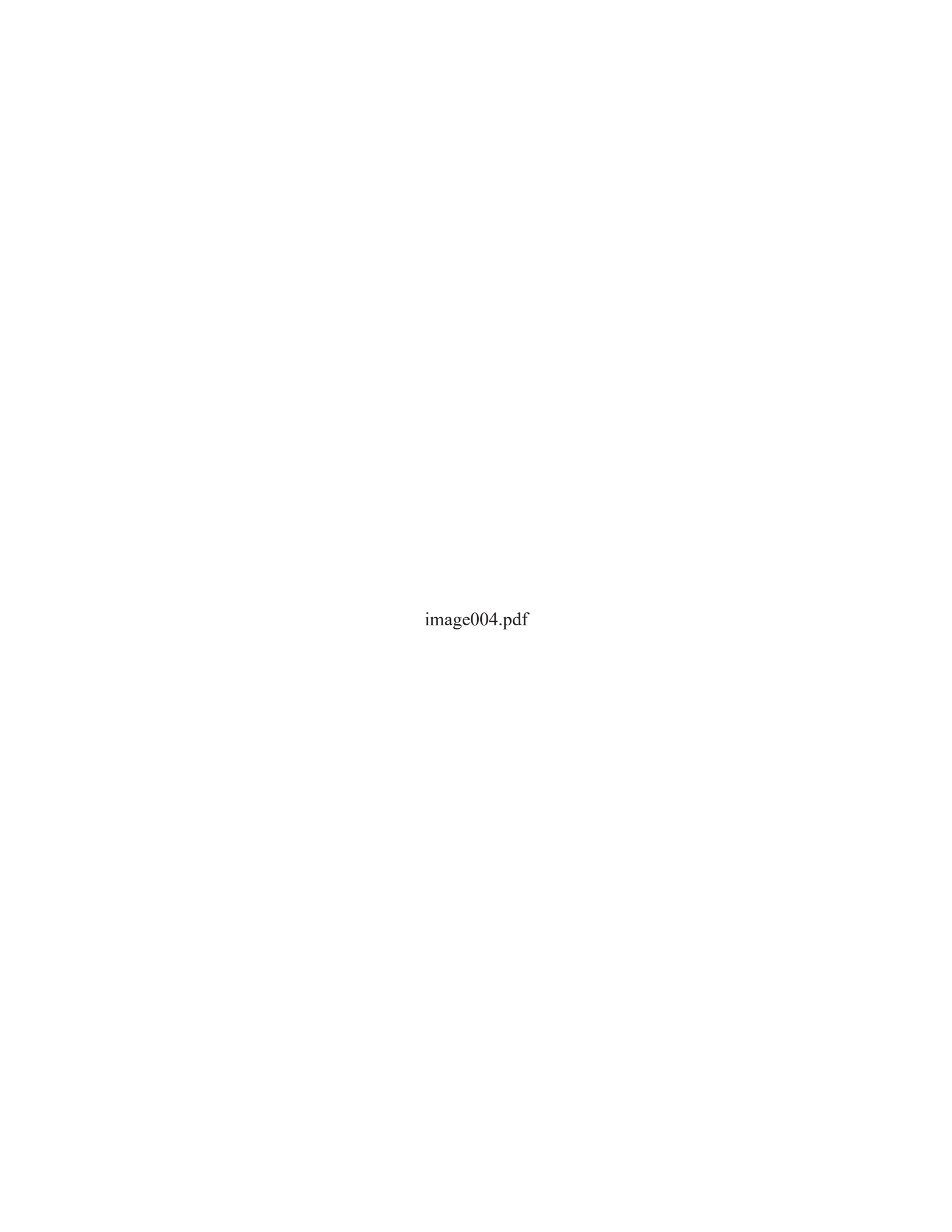
image004.pdf

TBS Invoice 2 April 2018.stub.pdf

Security settings or invalid file format do not permit using TBS Invoice 2 April 2018.pdf (246903 Bytes).

Fw_ OTS call - Nadine_LeeAnne_Suzie.rtf

From: Petsche, Nadine (TBS) []
To: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
Subject: Fw: OTS call - Nadine/LeeAnne/Suzie
Date: Thursday, February 09, 2017 23:37:57

Between us, my thought is that the SUDS impact would depend on the AG'sflexibility (as seems to have been the case in BC), and what would appear to be a logical argument for consistent treatment as with OPG and H1 (for SUDS purposes IFRS14 would be the appropriate comparator). N

From: Nadine.Petsche@ontario.ca
Sent: Thursday, February 9, 2017 10:32 PM
To: Lee Anne Probert; Suzie Gignac
Subject: Re: OTS call - Nadine/LeeAnne/Suzie

Thanks Lee Anne. This is interesting. I'll look forward to our discussion tomorrow. Nadine

From: Lee Anne Probert
Sent: Thursday, February 9, 2017 9:13 PM
To: Petsche, Nadine (TBS); Suzie Gignac
Subject: RE: OTS call - Nadine/LeeAnne/Suzie

Hi Nadine,

I went back to the Basis for Conclusion for IFRS 14 and found the following:

BC15 The IASB acknowledges the difficult practice problems related to this issue. The IASB has, therefore, decided to issue this Standard, which allows entities that currently recognise regulatory deferral account balances in accordance with their previous GAAP to continue to do so when making the transition to IFRS. In accordance with paragraph 5, an entity is only eligible to apply this Standard if it:

(a) is subject to oversight and/or approval from an authorised body (the rate regulator);

(b) recognised regulatory deferral account balances in its financial statements in accordance with its previous GAAP; and

(c) elected to apply the requirements of this Standard in its first IFRS financial statements.

BC16 Consequently, an entity that does not recognise regulatory deferral account balances in accordance with its previous GAAP in the period immediately preceding its first IFRS financial statements is not eligible to apply this Standard in order to start recognising such balances. An entity would not, therefore, be eligible if, for example:

(a) the entity did not have any relevant rate-regulated activities in the period before it made the transition to IFRS but then acquires or commences rate-regulated activities after the date that it adopts IFRS; or

(b) the entity is a newly formed business and adopts IFRS in its first IFRS financial statements.

So even if the government's newly formed entity is registered with the SEC and prepares its standalone statements in accordance with US GAAP, I don't think it will be eligible to use IFRS 14 because it will be adopting IFRS for government reporting purposes at the same time it begins reporting under US GAAP (inception).

Please let me know your thoughts.

Lee Anne

--

LeeAnne Probert | Senior Manager | Assurance Services

Ernst & Young LLP

Office: 416 943 3554 | leeanne.probert@ca.ey.com

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Fw_ OTS call - Nadine_LeeAnne_Suzie.rtf

From: Petsche, Nadine (TBS) []
To: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
Subject: Fw: OTS call - Nadine/LeeAnne/Suzie
Date: Thursday, February 09, 2017 23:37:57

Between us, my thought is that the SUDS impact would depend on the AG'sflexibility (as seems to have been the case in BC), and what would appear to be a logical argument for consistent treatment as with OPG and H1 (for SUDS purposes IFRS14 would be the appropriate comparator). N

From: Nadine.Petsche@ontario.ca
Sent: Thursday, February 9, 2017 10:32 PM
To: Lee Anne Probert; Suzie Gignac
Subject: Re: OTS call - Nadine/LeeAnne/Suzie

Thanks Lee Anne. This is interesting. I'll look forward to our discussion tomorrow. Nadine

From: Lee Anne Probert
Sent: Thursday, February 9, 2017 9:13 PM
To: Petsche, Nadine (TBS); Suzie Gignac
Subject: RE: OTS call - Nadine/LeeAnne/Suzie

Hi Nadine,

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BC15 The IASB acknowledges the difficult practice problems related to this issue. The IASB has, therefore, decided to issue this Standard, which allows entities that currently recognise regulatory deferral account balances in accordance with their previous GAAP to continue to do so when making the transition to IFRS. In accordance with paragraph 5, an entity is only eligible to apply this Standard if it:

(a) is subject to oversight and/or approval from an authorised body (the rate regulator);

(b) recognised regulatory deferral account balances in its financial statements in accordance with its previous GAAP; and

(c) elected to apply the requirements of this Standard in its first IFRS financial statements.

BC16 Consequently, an entity that does not recognise regulatory deferral account balances in accordance with its previous GAAP in the period immediately preceding its first IFRS financial statements is not eligible to apply this Standard in order to start recognising such balances. An entity would not, therefore, be eligible if, for example:

(a) the entity did not have any relevant rate-regulated activities in the period before it made the transition to IFRS but then acquires or commences rate-regulated activities after the date that it adopts IFRS; or

(b) the entity is a newly formed business and adopts IFRS in its first IFRS financial statements.

So even if the government's newly formed entity is registered with the SEC and prepares its standalone statements in accordance with US GAAP, I don't think it will be eligible to use IFRS 14 because it will be adopting IFRS for government reporting purposes at the same time it begins reporting under US GAAP (inception).

Please let me know your thoughts.

Lee Anne

--

LeeAnne Probert | Senior Manager | Assurance Services

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Office: 416 943 3554 | leeanne.probert@ca.ey.com

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Fw_ question.rtf

From: Petsche, Nadine (TBS) []
To: Lee Anne Probert [LeeAnne.Probert@ca.ey.com]
CC: Patel, Bharat (TBS) [Bharat.Patel3@ontario.ca]
Subject: Fw: question
Date: Friday, July 21, 2017 13:30:27

Lee Anne,
Thanks for your response. Bharat is away today, but we'll get back to you next week with a definitive response, and some examples. N
From: Lee Anne Probert <leeanne.probert@ca.ey.com>
Sent: Friday, July 21, 2017 1:02 PM
To: Petsche, Nadine (TBS)
Cc: Veinot, Cindy (TBS)
Subject: RE: question

Hi Nadine,

The intention of the footnote is as you indicate.

I was basing the footnote on the following excerpt. My interpretation is that OGOs can't use 4200 (4200 is for government NPOs). Perhaps I'm looking in the wrong spot or misinterpreting. Your thoughts?

Lee Anne

.16 For purposes of determining the appropriate standards, a government organization may be classified as:

(a) a government business enterprise;

(b) a government not-for-profit organization; or

(c) an other government organization.

.17 For purposes of preparing general purpose financial statements, government business enterprises apply the standards for publicly accountable enterprises in Part I of the CPA Canada Handbook – Accounting.

.18 For purposes of preparing general purpose financial statements, government

not-for-profit organizations apply the standards for not-for-profit organizations in the PSA Handbook or the standards in the PSA Handbook without Sections PS 4200 to PS 4270 (the PS 4200 series). [2]

.19 For purposes of preparing general purpose financial statements, other government organizations would normally apply the standards for governments in the PSA Handbook. When these standards do not meet their financial statement users' needs, the standards applicable to publicly accountable enterprises in Part I of the CPA Canada Handbook – Accounting should be considered. The standards determined to be most appropriate should be disclosed and consistently applied.

--

LeeAnne Probert | Senior Manager | Assurance Services

Ernst & Young LLP

Office: 416 943 3554 | leeanne.probert@ca.ey.com

From: Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]
Sent: Friday, July 21, 2017 12:50 PM
To: Lee Anne Probert <leeanne.probert@ca.ey.com>
Cc: Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>
Subject: question

Lee Anne,

I'm just reviewing the paper and had a question on the footnotes to the attached table. I think that the purposes FN1 is to reference the fact that OGOs have a choice to use IFRS as well, where it may better meet user needs. In fact, OGOs an use PSAS, PSAS +4200 or IFRS. I just wanted to clarify the intention, and suggest that we might want to consider rewording for clarity.

Thanks.

Nadine

ENTITY STATEMENTS

GRE

STATEMENTS

ENTITY

CLASSIFICATION

GAAP

ACCOUNTING METHOD

GAAP

IESO

OGO

PSAS[1]

Consolidation

PSAS

OPG

GBE

US GAAP[2]

Modified equity method

IFRS[3]

1. For purposes of preparing general purpose financial statements, an OGO applies PSAS unless those standards do not meet the needs of its financial statement users. In that situation, IFRS should be considered and the most appropriate set of standards applied.

2. Although a GBE is required to apply IFRS for purposes of preparing general purpose financial statements, the Ontario Securities Commission has approved an exemption that allows OPG to apply US GAAP up to January 1, 2019 for purposes of filing its financial statements with the OSC.

3. OPG applies IFRS 14, which permits it to continue to account for rate-regulated activities using US GAAP guidance for its general purpose financial statements.

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Fw_ Addendum to the SOW.rtf

From: Petsche, Nadine (TBS) []
To: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
Subject: Fw: Addendum to the SOW
Date: Friday, June 09, 2017 23:24:06
Attachment 1: Addedum to the SOW OTB.docx

Let's discuss on Monday
From: Picard, Michel <mpicard@kpmg.ca>
Sent: Friday, June 9, 2017 4:44 PM
To: Petsche, Nadine (TBS)
Subject: Addendum to the SOW

Hi Nadine,

As requested, please find enclosed the addendum to the SOW.

Please let me know when you are available to discuss.

Have a great weekend.

Michel Picard, CPA, CA

Partner, Accounting Advisory Services

KPMG LLP

333 Bay Street, Suite 4600

Toronto, Ontario, M5H 2S5

T 416 777 8414

M 416 560 2569

mpicard@kpmg.ca

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Our lawyers have recommended that we provide certain disclaimer language with our messages. Rather than including them here, we're drawing your attention to the following links where the full legal wording appears.

- **Disclaimer concerning confidential and privileged information/unintended recipient** (http://disclaimer.kpmg.ca).
- **Disclaimer concerning tax advice** (http://taxdisclaimer.kpmg.ca).

If you are unable to access the links above, please cut and paste the URL that follows the link into your browser.

Addedum to the SOW OTB.pdf

[Province of Ontario, Treasury Board Secretariat Letterhead]

June 9, 2017

Mr. Michel Picard
Partner
KPMG LLP
333 Bay Street, Suite 4600
Toronto ON M5H 2S5

Mr. Picard

RE: RFS-TBS-OTB-OPCD-21

This letter shall serve as an addendum to the Statement of Work for Management Consulting Services between KPMG LLP ("KPMG") and Her Majesty the Queen in Right of Ontario dated June 7, 2017 (the "SOW"), and to the extent of any conflict shall supersede the terms of the SOW and of the Master Services Agreement for Management Consulting Services between the parties dated June 16, 2014 (the "MSA").

In connection with the SOW, the Office of the Treasury Board (the "OTB"), in representation of Her Majesty the Queen in Right of Ontario, hereby agrees as follows:

1. Prior to being required to undertake any particular project or services under the SOW, KPMG shall be entitled to perform the necessary conflict of interest, independence and other legal, regulatory and professional standards compliance assessment processes. In the event that KPMG determines, in its sole discretion, that it is unable to undertake or to continue to undertake any particular project or services under the SOW due to potential non-compliance with applicable law, regulation or professional standards, KPMG shall promptly inform the OTB in writing and shall, without liability, be entitled to immediately terminate any non-compliant aspects of such project or services, or to revise the scope or other characteristics of such project or services in order that they conform with applicable law, regulation and professional standards. OTB shall provide KPMG with such information regarding a potential project or service as KPMG reasonably requires in order to undertake the legal, regulatory and professional standards compliance assessment processes referred to above.
2. In order for KPMG to undertake the legal, regulatory and professional standards compliance assessment processes described above, OTB acknowledges that it may be necessary for KPMG to disclose to certain third parties, namely existing and/or prior clients of KPMG, certain information in respect of any proposed project or services under the SOW. Prior to making any such disclosure, KPMG shall obtain the consent of OTB. Should OTB refuse to provide such consent, OTB acknowledges that KPMG may be unable to accept or to continue a project or service, and agrees that KPMG shall have no liability as a result thereof.
3. OTB acknowledges that KPMG has been requested by the Auditor General of Ontario (the "AGO") to advise her of any projects or services being provided to the Province of Ontario or a ministry, department, agency or other subdivision thereof, that may have an impact on her duties. Accordingly, OTB agrees that KPMG shall be entitled to advise the AGO of any projects or services provided to OTB under the SOW, and to answer such questions as the AGO may have in respect of such projects or services. OTB further acknowledges that it is aware that the AGO

has disagreed with KPMG's assessment of the availability of Regulatory Rate Accounting in the context of an accounting advisory engagement for the Independent Electricity Systems Operator (Ontario) ("IESO"), and has raised concerns as to whether KPMG was able to provide IESO with such advice pursuant to applicable professional standards. OTB has entered into the SOW with KPMG notwithstanding the foregoing.

4. Additional Terms and Conditions - The following terms and conditions are hereby added to the SOW:

    a. OTB will designate individual(s) who possesses suitable skill, knowledge and/or experience, preferably within senior management, to oversee all services provided by KPMG under the SOW;

    b. OTB will be responsible for making all final decisions with respect to any accounting positions taken and applied by OTB;

    c. OTB will evaluate the adequacy and results of the services performed by KPMG, and will accept responsibility for the results of the services performed by KPMG;

    d. OTB will make all management decisions and perform all management functions with respect to the services provided by KPMG under the SOW. KPMG's analysis will be limited to providing accounting support for specific accounting and reporting matters, and the OTB will be responsible for any conclusions reached; and

    e. KPMG's work will be under the direction and supervision of OTB, who will have the ultimate responsibility for the accuracy of the information provided to KPMG and for reviewing the work performed by KPMG.

5. KPMG's first project under the SOW shall be to provide advice in respect of whether Hydro One is controlled by the Province of Ontario such that Hydro One may be consolidated for provincial accounting purposes using the modified equity accounting method. In this regard, the OTB acknowledges that Hydro One is an audit client of KPMG and is a registrant with the United States Securities and Exchange Commission (the "SEC"). As such, in performing this project for the OTB, the OTB acknowledges that KPMG is required to comply with SEC independence requirements, and that such requirements will have an impact on the specific services that KPMG is able to provide to the OTB in respect of this project. By way of example, and not limitation, in providing the OTB with advice in respect of the control assessment of Hydro One, KPMG:

    a. is unable to provide any conclusions as to the control of Hydro One; rather, any such conclusions must be reached by OTB, although KPMG may verify whether the conclusions reached by OTB are supported by the relevant accounting standards;

    b. will limit its role to outlining the relevant accounting standards and options available to OTB with respect to Hydro One, including KPMG's interpretation of the application of relevant accounting guidance based only upon facts and interpretations provided by OTB;

    c. will not take the lead in any discussions or dealings with the AGO or any other third party in respect of the assessment of the control of Hydro One, but may be present during, and provide technical accounting assistance in connection with, such discussions or dealings;

d. will not provide an opinion with respect to OTB's assessment of or position regarding the control of Hydro One, but may provide technical accounting assistance in the preparation of such document;

e. will provide assistance drafting background information regarding the facts and circumstances surrounding the matter, subject to management's confirmation of the existence and accuracy of the facts presented;

f. will provide assistance explaining how applicable accounting literature applies to the matter;

g. will provide management with example memoranda or disclosures from other companies which have dealt with similar matters, for the consideration of management;

h. will provide sample (but not actual) journal entries to effect the accounting treatment for the matter, which must be limited to example illustrations of applying the accounting literature on the subject; and

i. will review management's preliminary conclusions.

6. Conflicts of Interest - Based on the information provided to KPMG in respect of the first project under the SOW as described in #5 above, KPMG confirms that it does not have a legal or professional conflict of interest in connection with such first project. However, as the definition of the term "conflict of interest" in the MSA goes beyond legal and professional conflicts of interest to also potentially capture business conflicts, KPMG hereby advises the OTB that it is the auditor of Hydro One, and that KPMG performs significant tax and advisory services for Hydro One.

   Out of an abundance of caution, KPMG will establish an ethical wall between the engagement team performing work in respect of the first project under the SOW and the engagement team performing the audit of Hydro One.

   OTB acknowledges the foregoing potential business conflict, and is comfortable proceeding with the first project under the SOW notwithstanding such potential business conflict.

Fw_ Sealed Regulation.pdf

From:	Petsche, Nadine (TBS)
To:	Petsche, Nadine (TBS)
Subject:	Fw: Sealed Regulation
Date:	June 8, 2017 11:37:33 AM
Attachments:	reg2017.0295.e03_seal.pdf

Nad

From: Petsche, Nadine (TBS) <Nadine.Petsche@ontario.ca>
Sent: Wednesday, June 7, 2017 2:03 PM
To: Suzie Gignac; Blake Langill; Lee Anne Probert
Subject: Fw: Sealed Regulation

More to follow. N

From: Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>
Sent: Wednesday, June 7, 2017 1:50 PM
To: Petsche, Nadine (TBS); Graham, Helen (TBS); Dutton, Andrea (TBS)
Cc: Hosick, Sarah (TBS); Laughton, Patrick (TBS)
Subject: FW: Sealed Regulation

From: Rehob, James (ENERGY)
Sent: June 7, 2017 1:48 PM
To: Veinot, Cindy (TBS)
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI); Hume, Steen (ENERGY); Chander, Sunita (ENERGY); Huang, Jackson (MEDG/MRIS)
Subject: FW: Sealed Regulation

Hi, Cindy – here is the IESO borrowing and investments amending regulation.

The first "snowy" password applies to this one.

Best,

James

James P. H. Rehob
Senior Counsel
Ministry of the Attorney General
Legal Services Branch
MAG Civil Law Division
Ministry of Energy, Ministry of Economic Development and Growth, Ministry of Research, Innovation and Science, Ministry of Infrastructure, Accessibility Directorate of Ontario
56 Wellesley Street West
Toronto, ON M7A 2E7
Tel: 416-325-6676

Fax: 416-325-1781
james.rehob@ontario.ca

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_reg2017.0295.e03_seal.stub.pdf

Security settings or invalid file format do not permit using _reg2017.0295.e03_seal.pdf (372990 Bytes).

TBS Invoice 2 April 2018_1.pdf

Ernst & Young LLP
Ottawa, ON

Invoice

Treasury Board Secretariat
Mark Donaldson
Director
777 Bay Street, 25th Floor
Toronto, ON M5G 2E5
Canada

Invoice No.: CA01C100133165
Please include this number with payment

Invoice Date:	03 April 2018
Due Date:	Upon receipt
Client No.:	0011426981
Engagement No.:	E-65062708

Remit To:
P.O. Box 57104, Postal Station A
Toronto, Ontario M5W 5M5
A/R Queries:
EYCanadaInvoiceInquiry@ca.ey.com

Description of Services: RFS-TBS-OTB-OPCD-16

Time incurred with regards to complex accounting support.

Blake Langill - 1.0 hr @ $450
Suzie Gignac - 5.0 hrs @ $450
Lee Ann Probert - 13.0 hrs @ $375

		Net	Tax	Rate	Tax Amount	CAD Total
Fee		7,575.00	HST	13 %	984.75	8,559.75
		7,575.00			**984.75**	**8,559.75**
Invoice summary		**7,575.00**				
Tax :	13% HST				984.75	
Total:		**7,575.00**			**984.75**	**8,559.75**

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Terms: Payment due upon receipt. Interest is charged at the rate of 12 % per annum on balances unpaid after 30 days from date of invoice. Any disbursements not charged to your account on the date of this invoice will be billed later.
GST/HST: R130866262 **QST:** 1006241791

Ernst & Young LLP
Ottawa, ON

Electronic payment instructions:
Send direct and pay to: Bank of Montreal, International Banking, H.O. Montreal, SWIFT BIC Address BOFMCAM2, Ernst & Young LLP, 6 King Street West, Toronto, Ontario, Canada, M5H 1C3.

Wire transfer instructions: Transit #2411 Account #24111000237. Reference the name and address of remitter, invoice number and engagement number.

Electronic fund transfer instructions: Bank ID: 0001 Transit# 24112 Account# 1000237. To ensure accurate allocation of funds sent electronically, please email your remittance detail to gss.canadaaccountsreceivable@xe02.ey.com including the amount paid, the invoice number and your company name.

_reg2017.0295.e03_seal_1.pdf

Office of
Legislative Counsel

Suite 3600, Whitney Block
99 Wellesley Street West
Queen's Park
Toronto Ontario M7A 1A2

Tel (416) 326-2841
Fax (416) 326-2806

Bureau des
conseillers législatifs

Bureau 3600, Édifice Whitney
99, rue Wellesley ouest
Queen's Park
Toronto (Ontario) M7A 1A2

Tél. (416) 326-2841
Télécopieur (416) 326-2806

Ontario

Date : June 5, 2017

Re : ENE
Proposed regulation under the Electricity Act, 1998
Amending - O. Reg. 280/14
IESO: ELIGIBLE INVESTMENTS AND BORROWING
reg2017.0295.e03

This proposed regulation has been sealed under the authority of the Registrar of Regulations.

REGISTRAR OF REGULATIONS

Ontario

Executive Council
Conseil exécutif

Order in Council
Décret

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and concurrence of the Executive Council, orders that:

Sur la recommandation de la personne soussignée, la lieutenante-gouverneure, sur l'avis et avec le consentement du Conseil exécutif, décrète ce qui suit :

the appended Regulation be made under the

Electricity Act, 1998.

Recommended _____
Minister of Energy

Concurred _____
Chair of Cabinet

Approved and Ordered _____
Date

_____
Lieutenant Governor

R.O.C./Décret (R)

Date : June 5, 2017

Re : ENE
Proposed regulation under the Electricity Act, 1998
Amending - O. Reg. 280/14
IESO: ELIGIBLE INVESTMENTS AND BORROWING
Reg2017.0295.e03.

This appended regulation has been sealed under the authority of the Registrar of Regulations.

Authority Verified
Compétence vérifiée _____

Recommended by the Management Board of Cabinet on
Recommandé par le Conseil de gestion du gouvernement le _____

Please print name
Nom en lettres moulées s.v.p. _____

Secretary
Secrétaire _____

Telephone
Téléphone _____

CONFIDENTIAL
Until filed with the
Registrar of Regulations

REG2017.0295.e
3-TK

ONTARIO REGULATION

made under the

ELECTRICITY ACT, 1998

Amending O. Reg. 280/14

(IESO: ELIGIBLE INVESTMENTS AND BORROWING)

1. Subsection 3 (2) of Ontario Regulation 280/14 is amended by adding the following paragraph:

5. To provide such funds as may be required for the purposes of the *Ontario Fair Hydro Plan Act, 2017*, including borrowing,

    i. to fund IESO deferrals under section 23 of that Act, and

    ii. to fund the activities in which the IESO is authorized or required to engage under that Act.

Commencement

2. This Regulation comes into force on the later of July 1, 2017 and the day it is filed.

FW_ ASC 980.rtf

From: Petsche, Nadine (TBS) []
To: Hosick, Sarah (TBS) (Sarah.Hosick@ontario.ca) [Sarah.Hosick@ontario.ca]
Subject: FW: ASC 980
Date: Thursday, March 23, 2017 12:28:47
Attachment 1: image003.png
Attachment 2: image003.png

Again, this wasn't included in the CAB

-----Original Message-----
From: Picard, Michel [mailto:mpicard@kpmg.ca]
Sent: February 24, 2017 7:31 PM
To: Veinot, Cindy (TBS); Petsche, Nadine (TBS)
Subject: Fwd: ASC 980

Cindy, Nadine,

We had a meeting with the OEB today. They do not believe they have a role to play in the review of the GAM recovery if the legislation is not leaving any room for them to regulate.

See my comments below on the analysis.

This will be discussed on Monday. Happy to chat before if needed.

Michel

Sent from my iPhone

Begin forwarded message:

From: "Picard, Michel" <mpicard@kpmg.ca<mailto:mpicard@kpmg.ca>>
Date: February 24, 2017 at 18:40:08 EST
To: Kim Marshall <Kim.Marshall@ieso.ca<mailto:Kim.Marshall@ieso.ca>>
Cc: "Ouellette, Lois A" <louellette@kpmg.ca<mailto:louellette@kpmg.ca>>, "Betik, Matthew" <mbetik@kpmg.ca<mailto:mbetik@kpmg.ca>>, "Nelms, Scott (ENERGY)" <Scott.Nelms@ontario.ca<mailto:Scott.Nelms@ontario.ca>>
Subject: ASC 980

Kim,

Further to our meeting of today, I have the following comments:

1. Based on the following requirements, I believe IESO can only recognize a regulatory asset if the activities are rate regulated i.e. meet the criteria in par. 15-2.

980-10-15-2 The guidance in the Regulated Operations Topic applies to general-purpose external financial statements of an entity that has regulated operations that meet all of the following criteria:

a. A) The entity's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party regulator or by its own governing board empowered by statute or contract to establish rates that bind customers. [Is this test met – maybe another body could regulate the GAM recovery but it needs to be a body that meet the requirements in 980-10-15-7 below)

b. b) The regulated rates are designed to recover the specific entity's costs of providing the regulated

services or products. This criterion is intended to be applied to the substance of the regulation, rather than its form. If an entity's regulated rates are based on the costs of a group of entities and the entity is so large in relation to the group of entities that its costs are, in essence, the group's costs, the regulation would meet this criterion for that entity.

c. C) In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume that rates set at levels that will recover the entity's costs can be charged to and collected from customers. This criterion requires consideration of anticipated changes in levels of demand or competition during the recovery period for any capitalized costs. This last criterion is not intended as a requirement that the entity earn a fair return on shareholders' investment under all conditions; an entity can earn less than a fair return for many reasons unrelated to the ability to bill and collect rates that will recover allowable costs<https://workspaces.ema.kworld.kpmg.com/aro/AROWeb/documentwindow.aspx?from=Doc&ref=US_FASB_COD_TOC_980_10&sec=4&q=&csw=>. For example, mild weather might reduce demand for energy utility services. In that case, rates that were expected to recover an entity's allowable costs might not do so. The resulting decreased earnings do not demonstrate an inability to charge and collect rates that would recover the entity's costs; rather, they demonstrate the uncertainty inherent in estimating weather conditions. This requirement must also be evaluated in light of the circumstances. For example, if the entity has an exclusive franchise to provide regulated services or products in an area and competition from other services or products is minimal, there is usually a reasonable expectation that it will continue to meet the other criteria. Exclusive franchises can be revoked, but they seldom are. If the entity has no exclusive franchise but has made the very large capital investment required to provide either the regulated services or products or an acceptable substitute, future competition also may be unlikely.

2. As indicated in par. 15-4, if the “market books” are not rate regulated then IESO cannot adopt regulatory accounting – ie cannot recognize regulatory assets. I was under the impression that the RPP variance accounts were approved by the OEB. Today, I learned that they are not.

980-10-15-4 If some of an entity's operations are regulated and meet the criteria of paragraph 980-10-15-2, this Topic shall be applied to only that portion of the entity's operations.

3. According to 5-08, IESO needs an accounting order from a regulator.

980-10-05-8 Unless an accounting order indicates the way a cost will be handled for rate-making purposes, it causes no economic effects that would justify deviation from the GAAP applicable to business entities in general. The mere issuance of an accounting order not tied to rate treatment does not change an entity's economic resources or obligations. In other words, the economic effect of regulatory decisions—not the mere existence of regulation—is the pervasive factor that determines the application of GAAP.

4. According to 15-7, you need a regulator that is not a party to the contract.

980-10-15-7 The guidance in the Regulated Operations Topic does not apply to any of the following transactions:

a. a) Accounting for price controls that are imposed by governmental action in times of emergency, high inflation, or other unusual conditions, or accounting for contracts in general. However, if the terms of a contract between an entity and its customer are subject to regulation and the criteria of paragraph 980-10-15-2 are met with respect to that contract, the guidance in this Topic shall apply.

b. C) The criterion in paragraph 980-10-15-2(a)<https://workspaces.ema.kworld.kpmg.com/aro/AROWeb/documentwindow.aspx?from=Doc&ref=US_FASB_COD_TOC_980_10&sec=4&q=&csw=#US_FASB_ASC_980_010_15_2> is intended to exclude contractual arrangements in which the government, or another party that could be viewed as a regulator, is a party to a contract and is the entity's principal customer.

5. I am not sure how to read this next par.

980-10-05-7 Accounting requirements that are not directly related to the economic effects of rate actions may be imposed on regulated businesses by orders of regulatory authorities and occasionally by court decisions or statutes. This does not necessarily mean that those accounting requirements conform with generally accepted accounting principles (GAAP). For example, a regulatory authority may order an entity to capitalize<https://workspaces.ema.kworld.kpmg.com/aro/AROWeb/documentwindow.aspx?from=Doc&ref=US_FASB_COD_TOC_980_10&sec=4&q=&csw=> and amortize a cost that would be charged to income currently by an unregulated entity. Unless capitalization of that cost is appropriate under this Topic, GAAP requires the regulated entity to charge the cost to current income.

I still believe that absent a rate regulator or a governing body approving the rates, then there is no recognition of regulatory asset.

Since the MOE can change the rule, I would suggest that the OEB Act be amended requiring the OEB to oversee the GAM recovery.

Can we discuss over the weekend?

Michel
416 560 2569

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At KPMG we are passionate about earning your trust and building a long-term relationship through service excellence. This extends to our communications with you.
Our lawyers have recommended that we provide certain disclaimer language with our messages. Rather than including them here, we're drawing your attention to the following links where the full legal wording appears.
Disclaimer concerning confidential and privileged information/unintended recipient (http://disclaimer.kpmg.ca). Disclaimer concerning tax advice (http://taxdisclaimer.kpmg.ca).

If you are unable to access the links above, please cut and paste the URL that follows the link into your browser.

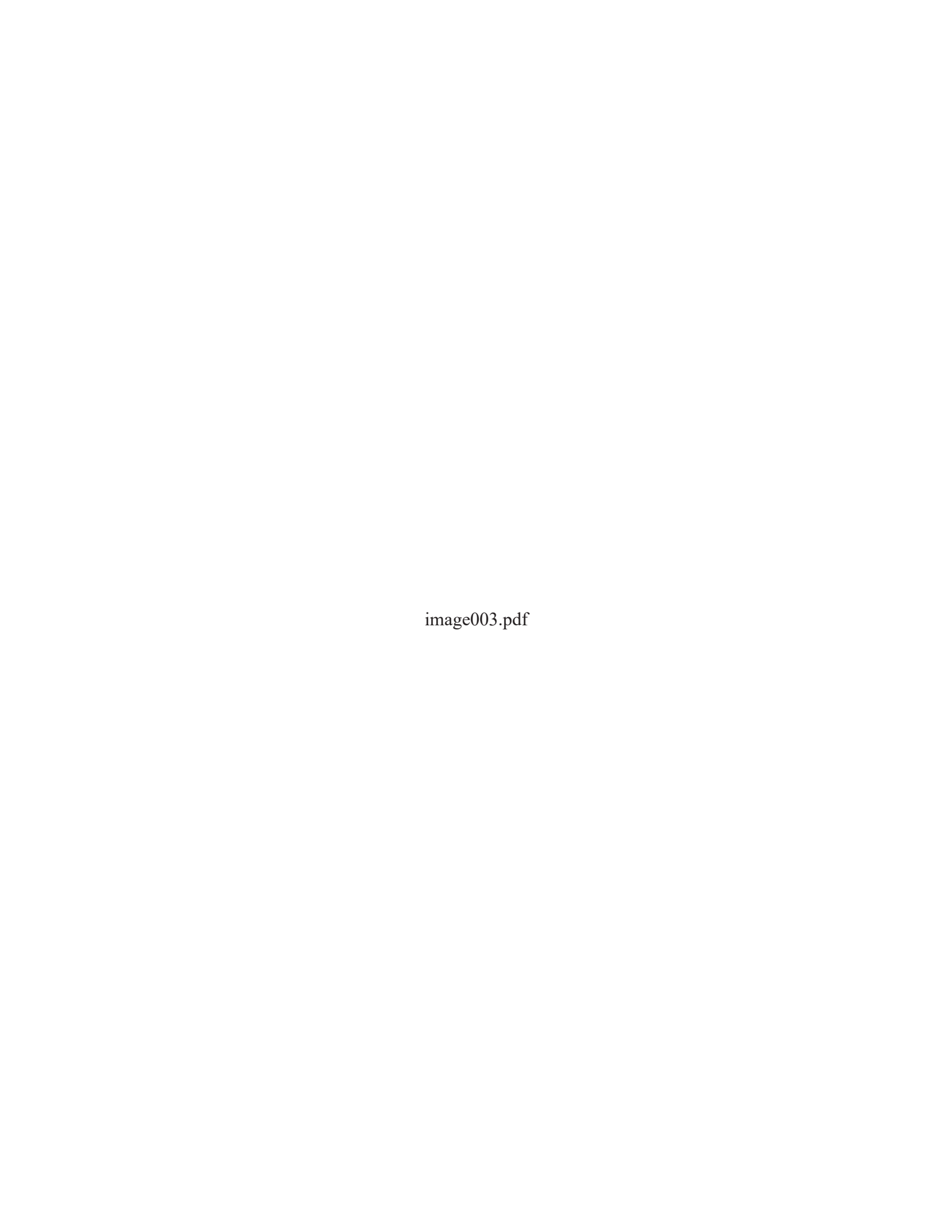
image003.pdf

image0031.pdf

FW_ ASC 980.rtf

From: Petsche, Nadine (TBS) []
To: Hosick, Sarah (TBS) (Sarah.Hosick@ontario.ca) [Sarah.Hosick@ontario.ca]
Subject: FW: ASC 980
Date: Thursday, March 23, 2017 12:27:28
Attachment 1: image003.png

FYI, but this wasn't included in the CAB item. n

-----Original Message-----
From: Picard, Michel [mailto:mpicard@kpmg.ca]
Sent: February 24, 2017 10:03 PM
To: Veinot, Cindy (TBS); Petsche, Nadine (TBS)
Subject: Fwd: ASC 980

View?

Sent from my iPhone

Begin forwarded message:

From: "Picard, Michel" <mpicard@kpmg.ca<mailto:mpicard@kpmg.ca>>
Date: February 24, 2017 at 21:44:00 EST
To: Kim Marshall <Kim.Marshall@ieso.ca<mailto:Kim.Marshall@ieso.ca>>
Cc: "Ouellette, Lois A" <louellette@kpmg.ca<mailto:louellette@kpmg.ca>>, "Betik, Matthew" <mbetik@kpmg.ca<mailto:mbetik@kpmg.ca>>, "Nelms, Scott (ENERGY)" <Scott.Nelms@ontario.ca<mailto:Scott.Nelms@ontario.ca>>, "Steen.Hume@ontario.ca<mailto:Steen.Hume@ontario.ca>" <Steen.Hume@ontario.ca<mailto:Steen.Hume@ontario.ca>>
Subject: Re: ASC 980

What would be the impact if IESO was not allowed to recognize a regulatory asset?

Assuming that the right is sold to OPG on a daily basis, then IESO would have an expense for the energy cost and a revenue for the sale of an unrecognized right for the same amount. Since IESO is acting as an agent then the revenue and expense would be shown net.

Sent from my iPhone

On Feb 24, 2017, at 18:40, Picard, Michel <mpicard@kpmg.ca<mailto:mpicard@kpmg.ca>> wrote:

Kim,

Further to our meeting of today, I have the following comments:

1. Based on the following requirements, I believe IESO can only recognize a regulatory asset if the activities are rate regulated i.e. meet the criteria in par. 15-2.

980-10-15-2 The guidance in the Regulated Operations Topic applies to general-purpose external financial statements of an entity that has regulated operations that meet all of the following criteria:

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b. b) The regulated rates are designed to recover the specific entity's costs of providing the regulated services or products. This criterion is intended to be applied to the substance of the regulation, rather than its form. If an entity's regulated rates are based on the costs of a group of entities and the entity is so large in relation to the group of entities that its costs are, in essence, the group's costs, the regulation would meet this criterion for that entity.

c. C) In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume that rates set at levels that will recover the entity's costs can be charged to and collected from customers. This criterion requires consideration of anticipated changes in levels of demand or competition during the recovery period for any capitalized costs. This last criterion is not intended as a requirement that the entity earn a fair return on shareholders' investment under all conditions; an entity can earn less than a fair return for many reasons unrelated to the ability to bill and collect rates that will recover allowable costs<https://workspaces.ema.kworld.kpmg.com/aro/AROWeb/documentwindow.aspx?from=Doc&ref=US_FASB_COD_TOC_980_10&sec=4&q=&csw=>. For example, mild weather might reduce demand for energy utility services. In that case, rates that were expected to recover an entity's allowable costs might not do so. The resulting decreased earnings do not demonstrate an inability to charge and collect rates that would recover the entity's costs; rather, they demonstrate the uncertainty inherent in estimating weather conditions. This requirement must also be evaluated in light of the circumstances. For example, if the entity has an exclusive franchise to provide regulated services or products in an area and competition from other services or products is minimal, there is usually a reasonable expectation that it will continue to meet the other criteria. Exclusive franchises can be revoked, but they seldom are. If the entity has no exclusive franchise but has made the very large capital investment required to provide either the regulated services or products or an acceptable substitute, future competition also may be unlikely.

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980-10-05-8 Unless an accounting order indicates the way a cost will be handled for rate-making purposes, it causes no economic effects that would justify deviation from the GAAP applicable to business entities in general. The mere issuance of an accounting order not tied to rate treatment does not change an entity's economic resources or obligations. In other words, the economic effect of regulatory decisions—not the mere existence of regulation—is the pervasive factor that determines the application of GAAP.

4. According to 15-7, you need a regulator that is not a party to the contract.

<image003.png>980-10-15-7 The guidance in the Regulated Operations Topic does not apply to any of the following transactions:

a. <image003.png>a) Accounting for price controls that are imposed by governmental action in times of emergency, high inflation, or other unusual conditions, or accounting for contracts in general. However, if the terms of a contract between an entity and its customer are subject to regulation and the criteria of paragraph 980-10-15-2 are met with respect to that contract, the guidance in this Topic shall apply.

b. C) The criterion in paragraph 980-10-15-2(a)<https://workspaces.ema.kworld.kpmg.com/aro/AROWeb/documentwindow.aspx?from=Doc&ref=US_FASB_COD_TOC_980_10&sec=4&q=&csw=#US_FASB_ASC_980_010_15_2> is intended

to exclude contractual arrangements in which the government, or another party that could be viewed as a regulator, is a party to a contract and is the entity's principal customer.

5. I am not sure how to read this next par.

980-10-05-7 Accounting requirements that are not directly related to the economic effects of rate actions may be imposed on regulated businesses by orders of regulatory authorities and occasionally by court decisions or statutes. This does not necessarily mean that those accounting requirements conform with generally accepted accounting principles (GAAP). For example, a regulatory authority may order an entity to capitalize<https://workspaces.ema.kworld.kpmg.com/aro/AROWeb/documentwindow.aspx?from=Doc&ref=US_FASB_COD_TOC_980_10&sec=4&q=&csw=> and amortize a cost that would be charged to income currently by an unregulated entity. Unless capitalization of that cost is appropriate under this Topic, GAAP requires the regulated entity to charge the cost to current income.

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Since the MOE can change the rule, I would suggest that the OEB Act be amended requiring the OEB to oversee the GAM recovery.

Can we discuss over the weekend?

Michel
416 560 2569

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At KPMG we are passionate about earning your trust and building a long-term relationship through service excellence. This extends to our communications with you.
Our lawyers have recommended that we provide certain disclaimer language with our messages. Rather than including them here, we're drawing your attention to the following links where the full legal wording appears.
Disclaimer concerning confidential and privileged information/unintended recipient (http://disclaimer.kpmg.ca). Disclaimer concerning tax advice (http://taxdisclaimer.kpmg.ca).

If you are unable to access the links above, please cut and paste the URL that follows the link into your browser.

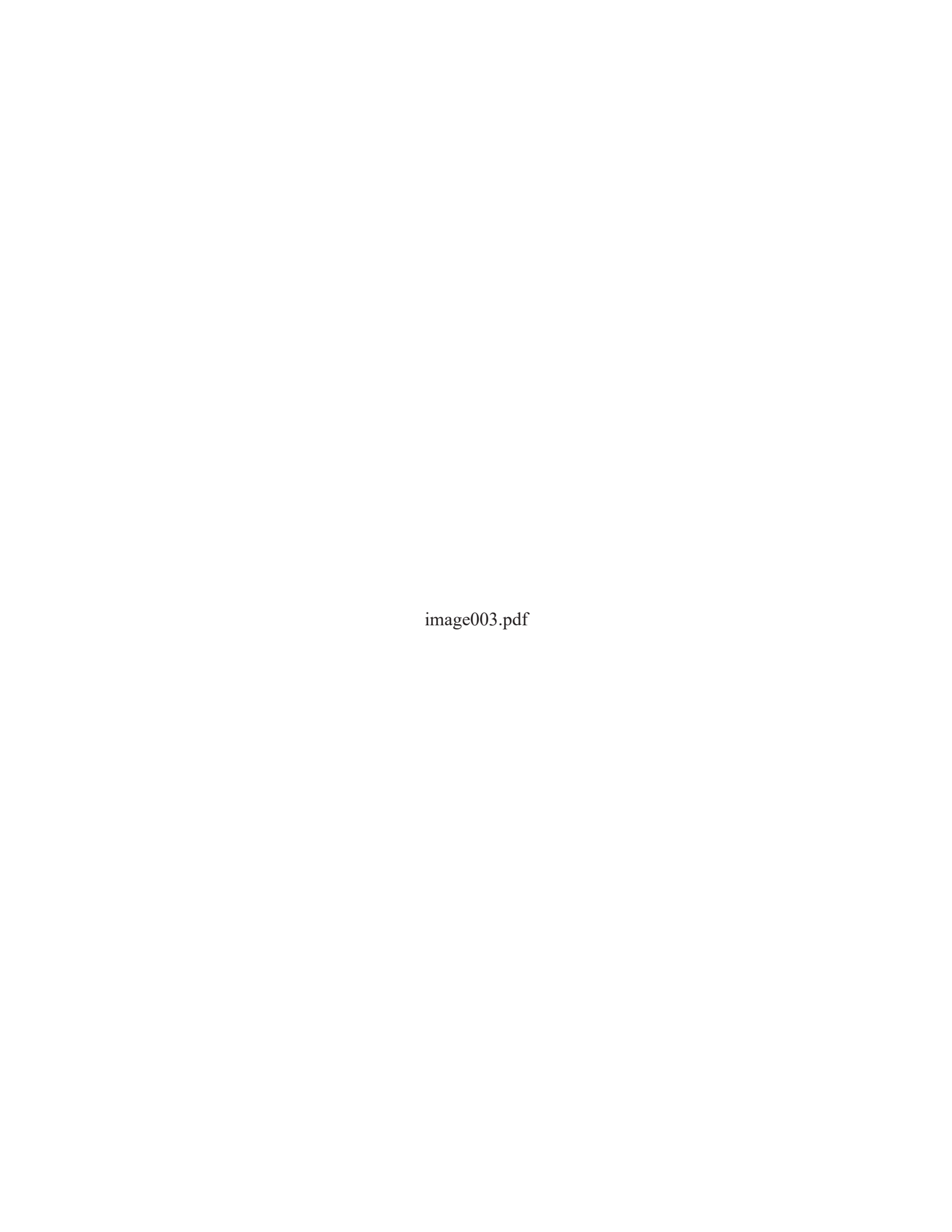
image003.pdf

FW_ Affordability Fund - Declaration of Trust and Transfer Pricing Agreement .rtf

From: Petsche, Nadine (TBS) []
To: Kamil.Baig@HydroOne.com [Kamil.Baig@HydroOne.com]
CC: samir chhelavda (Samir.Chhelavda@HydroOne.com) [Samir.Chhelavda@HydroOne.com]; Picard, Michel (mpicard@kpmg.ca) [mpicard@kpmg.ca]
Subject: FW: Affordability Fund - Declaration of Trust and Transfer Pricing Agreement
Date: Friday, March 17, 2017 08:53:30
Attachment 1: 2017-03-16 TRACK Affordability_Fund_Trust_–_Declaration_of_Trust v2.docx
Attachment 2: 2017-03-16-CLEAN TPA_Draft_Afund v2.docx
Attachment 3: 2017-03-16-TRACK TPA_Draft_Afund v2.docx
Attachment 4: 2017-03-16 CLEAN Affordability_Fund_Trust_–_Declaration_of_Trust v2.docx
Attachment 5: FW: Affordability Fund - Declaration of Trust and Transfer Pricing Agreement

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Hi Kamil.

There is a call later today to discuss the Affordability Fund Trust (see details below). I understand that Samir is not in the office, so he may not be able to participate. You will likely receive an invitation shortly. In the meantime, I am just sharing the relevant documents for the call. I am also copying Michel on this note as I know that he has been providing advice to your team and will be planning to review the documents as well.

Regards,

Nadine

-----Original Appointment-----
From: Desouza, Charlotte (ENERGY)
Sent: March-17-17 8:10 AM
To: Desouza, Charlotte (ENERGY); Alexandra.Phillips@HydroOne.com; Spencer.Gill@HydroOne.com; Daniel.Levitan@HydroOne.com; 'Natalie.Poole-Moffatt@HydroOne.com' (Natalie.Poole-Moffatt@HydroOne.com); Johnson, Paul (ENERGY/MEDEI/MRI); Ranalli, David (ENERGY); Schachtschneider, Michelle (ENERGY); Petsche, Nadine (TBS); An, Tai (ENERGY); Gounden, Pratima (ENERGY); Sermat-Harding, Kaili (ENERGY); Syed, Usman (ENERGY); Schwab-Pflug, Emma (ENERGY); Qureshi, Musab (ENERGY)
Subject: Affordability Fund - Declaration of Trust and Transfer Pricing Agreement
When: March-17-17 3:00 PM-4:00 PM (UTC-05:00) Eastern Time (US & Canada).
Where: Teleconference Call (details in email below) / Boardroom 5B

Teleconference Detail:

Teleconference Call:

Tel: 416-212-8012

Toll Free: 1-866-633-0848

Passcode: 5588712

From: Schwab-Pflug, Emma (ENERGY)
Sent: March-16-17 3:24 PM
To: Alexandra.Phillips@HydroOne.com
Cc: Sermat-Harding, Kaili (ENERGY); Syed, Usman (ENERGY); Qureshi, Musab (ENERGY); Spencer.Gill@HydroOne.com; Daniel.Levitan@HydroOne.com; Natalie.Poole-Moffatt@HydroOne.com; Johnson, Paul (ENERGY/MEDEI/MRI); Ranalli, David (ENERGY); Schachtschneider, Michelle (ENERGY); Petsche, Nadine (TBS); An, Tai (ENERGY); Gounden, Pratima (ENERGY); Desouza, Charlotte (ENERGY); Thompson, Erin (ENERGY)
Subject: RE: Affordability Fund - Declaration of Trust and Transfer Pricing Agreement

Hi Alex:

Please find attached tracked and clean versions of the TPA and Declaration of Trust. Tracked versions are tracked from the versions you had shared on March 13. You will note that there are comments in the TPA and Declaration indicating areas that we are working with Blakes to finalize.

We would recommend, as discussed, that Hydro One share these current versions with KPMG, as well as Computershare, so that we can work to resolve identified issues.

Can Hydro One advise if it will not be possible to share comments back with us for 3 PM tomorrow?

We would like to set up a call tomorrow afternoon to discuss comments. Can you advise of a preferred time for a call?

A few other follow-ups:

· We have confirmed internally that Computershare can establish an interim Trust account using their existing banking relationship with BNF. Can you confirm once this (and the TPA/Decl if you agree to share) is communicated with Computershare?

· Can you please share the Computershare Trustee(s) contact details? We understand that the Trustees will have to be recognized in the Declaration of Trust.

· Can you share the administrative service agreement for the Ministry's review today? Our interest in seeing this is to have comfort that it will be ready for signing by Computershare on Monday or Tuesday of next week.

Thanks again to you and your team for working with us on these tight timelines.

- Emma

From: Alexandra.Phillips@HydroOne.com [mailto:Alexandra.Phillips@HydroOne.com]
Sent: March-13-17 2:56 PM
To: Syed, Usman (ENERGY); Schwab-Pflug, Emma (ENERGY); Qureshi, Musab (ENERGY)
Cc: Spencer.Gill@HydroOne.com; Daniel.Levitan@HydroOne.com; Natalie.Poole-Moffatt@HydroOne.com
Subject: Fwd: Affordability Fund - Declaration of Trust and Transfer Pricing Agreement

All:

Please see our revisions to the TPA (with a track changes PDF) and the Declaration of Trust.

Looking forward to hearing back from you by EOD tomorrow but don't hesitate to reach out if you have any questions or concerns.

Best,

Alex Phillips

Manager, External Relations

Hydro One Networks Inc.

(O) 416-345-1375

(C) 647-405-8601

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2017-03-16 TRACK Affordability_Fund_Trust_ Declaration_of_Trust v2.pdf

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DECLARATION OF TRUST

Made as of March ~~●~~5, 2017

by

COMPUTERSHARE TRUST COMPANY OF CANADA

establishing

AFFORDABILITY FUND TRUST

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RELABEL HEADINGS AND REGENERATE TABLE OF CONTENTS]

DECLARATION OF TRUST

This Declaration of Trust is made as of March ●~~,~~●, 2017, by Computershare Trust Company of Canada, a trust company established under the laws of Canada and licensed to carry on business as a trust company in each of the provinces and territories of Canada (the "**Trustee**").

WHEREAS the Trustee wishes to establish a trust to acquire, hold, manage, apply and dispose of certain property ~~and~~ for the benefit of certain ~~purposes~~Beneficiaries as herein described.

NOW THEREFORE the Trustee hereby declares that it holds in trust as trustee the sum of ONE HUNDRED DOLLARS ($100) contributed by it on this date and all property of every type and description which it may hereafter acquire or hold in its capacity as trustee of the Trust and all income therefrom and proceeds thereof, to hold, manage,apply and dispose of the same on and subject to the provisions contained in this Declaration.

SECTION 1
INTERPRETATION

1.1 Definitions

In this Declaration:

(a) "***Administrative Services Agent***" means ~~the~~each agent, ~~if~~which may include any Electricity Distributor, appointed from time to time under an Administrative Services Agreement, and its successors and permitted assigns solely in such capacity.

(b) "***Administrative Services Agreement***" means ~~any~~each agreement ~~that may be~~ entered into from time to time by the Trust ~~with an~~and one or more Administrative Services ~~Agent~~Agents or other Persons, in furtherance of the purpose of the Trust described in section 2.1 of this Declaration, under which the Administrative Services Agent ~~agrees~~will agree to provide specified administrative and other services to and on behalf of the Trustee~~,~~ (including, following the Original Trustee Replacement Date, the Permitted Delegations Annex), as such agreement may be amended, supplemented, restated, renewed or replaced from time to time.

(c) "***Assets***" means, collectively, the following:

(i) the $100 Canadian referred to above;

(ii) all other property which is now or which at any time in the future may be issued, assigned, transferred, provided, donated, gifted and contributed to the Trustee (including pursuant to the Transfer Payment Agreement) to be held in trust pursuant to this Declaration (and which the Trustee is willing to accept and hold);

(iii) all property which may at any time be substituted therefor;

(iv) all capital depreciations to or acquisitions by the Trust;

(v) all income of the Trust; and

(vi) all proceeds of disposition of any of (i) through (v) above,

but excludes anything paid out or distributed (whether out of income or capital) in the normal course of administration or pursuant to the provisions of this Declaration.

(d) "***Beneficiary***" means each ~~individual that satisfies each of the following criteria:~~Primary Beneficiary and each Residual Beneficiary, where applicable.

~~(i) the individual owns, rents or leases a residence located in Ontario and is the primary or secondary electricity utility account holder named on an Electricity Invoice issued in respect of that residence;~~

~~(ii) the individual is not a HAP Eligible Person; and~~

~~(iii) [the individual has at any time in the prior 12 month period been more than 90 days in arrears in the payment of any amount owing by him or her under an Electricity Invoice.][**NTD: this section is an example of a bright line test to identify beneficiaries with some precision. Alternates to be discussed.]**~~

(e) "***Board of Trustees***" means the group of trustees appointed and acting in such capacity as contemplated by Section •, and as of the Original Trustee Replacement Date means the individual trustees appointed by the Original Trustee pursuant to Section 5.7 on the basis described in the Trustee Replacement Annex.

~~(e)~~(f) "***Declaration***" means this Declaration of Trust as amended, restated, supplemented or otherwise modified from time to time, including each of the Annexes hereto.

~~(f) "***Eligible Measures***" means the measures described in Schedule A. **[NTD: consider using the HAP Program list, plus heat pumps]**~~

(g) "***Electricity Distributor***" means, in respect of a designated service area or region in Ontario, the distributer of electricity to residences located in such area or region.

~~(g)~~(h) "***Electricity Invoice***" means an invoice ~~for~~issued by an Electricity Distributor in respect of electricity charges and related services and amounts ~~issued by a Local Distribution Company~~incurred in respect of a residence located in ~~Ontario.~~the Electricity Distributor's designated service area or region of Ontario.

~~(h) "***Final Distribution Date***" means ●. [**NTD: to discuss residual interest in Trust Assets]**~~

(i) "***Eligible Investments***" means [NTD: Describe deposit instruments or accounts issued or established by one or more Schedule I Canadian chartered banks].

(j) "***Eligible Measures***" means electricity efficiency and/or conservation measures determined by the Trustee from time to time, on the basis contemplated in the Principles Annex and determined in the manner specified and having regard to the Permitted Delegations Annex.

(k) "***Final Distribution Date***" means the earlier of (i) the date specified as such or determined pursuant to the Transfer Payment Agreement[1] and (ii) the later of (x) the date (if any) on which the Trustee determines that no further distributions are likely to be made to any Primary Beneficiary and (y) •, 20[23].

~~(i)~~(l) "***HAP Eligible Person***" ~~[~~means an "Eligible Person" as defined in Section 3.1 of the document entitled "Conservation First Framework LDC Took Kit" published by Independent Electricity System Operator and designated as Final v3.0 – March 11, 2016~~].[NTD: to be discussed]~~, as amended or replaced by any applicable act of the Legislature or Ontario.

~~(j) "*Local Distribution Company*" means a distributer of electricity to residences located in Ontario.~~

(m) "***Minister of Energy***" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of the *Ministry of Energy Act, 2011* under the ~~Ontario *Electricity*~~*Executive Council Act*~~, *1998*, S.O. 1998,~~.

(n) "***Original Trustee***" means Computershare Trust Company of Canada and its successors and assigns, acting in its capacity as ~~amended~~trustee hereunder.

~~(k)~~(o) "***Original Trustee Replacement Date***" has the meaning specified in Section 5.7, being the date on which the Original Trustee is replaced as trustee under this Declaration as contemplated under Section 5.7.

~~(l)~~(p) "***Person***" includes any individual, sole proprietorship, corporation, partnership, joint venture, association, society, club, board, chamber, joint-stock company, trust, trustee, unincorporated or incorporated organization or entity or government or any entity, agency or political subdivision thereof.

(q) "***Primary Beneficiary***" means each individual that, as of a time of determination, satisfies each of the following criteria:

(i) the individual owns, rents or leases a residence located in Ontario and is the primary or secondary electricity utility account holder named on an Electricity Invoice issued in respect of that residence; and

(ii) the individual is not a HAP Eligible Person.

(r) "***Principles Annex***" means the Principles Annex set forth as an annex to this Declaration.

(s) "***Permitted Delegations Annex***" means the Permitted Delegations Annex set forth as an annex to this Declaration.

[1] NTD: The TPA will provide that on an Event of Default the remaining Assets will be paid over to the Government, on the basis that the Government's transfer thereunder is subject to such a reservation in circumstances of non-compliance. The TPA should also specify that the Trust will thereafter be wound up, which will tie in to this definition by way of the date so specified in the TPA. Accounting considerations to be discussed.

(t) ***"Residual Beneficiary"*** means each charitable organization identified by the Trustee and specified as a residual beneficiary hereunder from time to time from among the charitable organizations specified on Schedule • or their respective successor charitable organizations.

~~(m)~~(u) "***Transfer Payment Agreement***" means the ~~Ontario~~ transfer payment agreement dated as of ~~●~~•, 2017 between the Trustee and Her Majesty the Queen in right of Ontario as represented by the Minister of Energy, as such agreement may be amended, restated, supplemented or otherwise modified from time to time.

~~(n)~~(v) "***Trust***" means Affordability Fund Trust, a trust established under and governed by the laws of the Province of Ontario pursuant to this Declaration.

~~(o) "***Trustee***" has the meaning given in the recitals in this Declaration.~~

(w) "***Trustee***" means (i) the Original Trustee and (ii) on and after the Original Trustee Replacement Date, the Board of Trustees acting together in accordance with and subject to Section 5.• and in accordance with the rules and procedures adopted by the Board of Trustees pursuant to Section 5.•.

(x) "***Trustee Replacement Annex***" means the Trustee Replacement Annex set forth as an annex to this Declaration.

1.2 Headings and Table of Contents

The insertion of headings and the provision of a table of contents are for convenience of reference only and shall not affect the construction or interpretation of this Declaration.

1.3 References

Unless otherwise specified, all references to Sections are to Sections of this Declaration. The words "hereto," "herein," "hereof," "hereunder" and similar expressions refer to this Declaration and not to any particular Section or other provision of this Declaration.

1.4 Number and Gender

Unless otherwise specified, words importing the singular include the plural and vice versa and words importing gender include all genders.

1.5 Governing Law

This Declaration shall be governed by, and construed and interpreted in accordance with, the laws of the Province of Ontario and of Canada applicable therein.

1.6 Severability

Any provision of this Declaration which is illegal, invalid or unenforceable in any jurisdiction shall not affect the legality, validity or enforceability of the remaining provisions and any such illegality, invalidity or unenforceability in any jurisdiction shall not affect the legality, validity or enforceability of such provision in any other jurisdiction.

~~**1.7 Time of the Essence**~~

~~Time shall be of the essence of this Declaration.~~

~~1.8~~1.7 Reference to the Trust and the Trustee

For greater certainty, where any reference is made in this Declaration to an act to be performed by or for or on behalf of the Trust, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Trustee in its capacity as trustee of the Trust, and, where any reference is made in this Declaration to an act to be performed by or for or on behalf of the Trustee, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Trustee in its capacity as trustee of the Trust. No Person dealing with the Trust or the Trustee shall be bound to make any enquiry concerning, or has the right to require production of, any evidence of the validity of any act of, or transaction purporting to be made by, the Trustee.

~~1.9~~1.8 Defect in Appointment

No action taken by the Trustee will be invalid or ineffective by reason only of any defect in the appointment of the Trustee or the compliance by the Trustee of any rules or procedures adopted by the Trustee and which is discovered after the taking of such action.

SECTION 2
CONCERNING THE TRUST

2.1 Objectives

The Trust is established for the sole purpose of ~~providing funding to or~~holding and applying the Assets for the benefit of the Beneficiaries as provided for in this Declaration. The activities of the Trust shall be to hold the Assets as contemplated in this Declaration until such time as the ~~Assets are disbursed to the Beneficiaries in accordance with~~Board of Trustees is duly appointed and determines that the Assets are to be distributed to or for the benefit of the Primary Beneficiaries in accordance with this Declaration, having regard to the principles set forth in the Principles Annex and in the manner and basis contemplated in the Permitted Delegations Annex, or otherwise to the Residual Beneficiary in accordance with Section 3.3, in each case subject to the terms, limitation and requirements set forth in this Declaration.

2.2 Name of the Trust

The name of the Trust shall be the "Affordability Fund Trust" ~~and~~or such replacement name as the Trustee shall determine and specify from time to time. The Trustee shall hold the Assets and conduct the activities of the Trust under such name or variation thereof ~~or such other name as~~. If the Trustee ~~may determine from time~~determines to ~~time in its sole and absolute discretion. Should~~change the ~~Trustee determine that~~ name of the ~~use of such name or names is not legal, possible or convenient~~Trust, the Trustee may specify and use such other designation or adopt such other name (including any name in the French language) as it considers appropriate and may hold the Assets and conduct the activities of the Trust under such ~~other~~ designation or other name.

2.3 Location

The head office and the situs of the administration of the Trust shall be ●. The Trustee may change the head office and the situs of the administration of the Trust to any• or such other locationaddress in Ontario as the Trustee, in its sole and absolute discretion, may consider advisable may determine from time to time.

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2.4 Fiscal Year

The fiscal year of the Trust shall end on December 31 in each year.

SECTION 3
DISTRIBUTIONS

3.1 Distributions to Primary Beneficiaries

Prior to the Final Distribution Date, the Trustee may, from time to time, subject to Section 3.2, shall distribute all or any portion of the Assets of the Trust (including capital or income) as to the Primary Beneficiaries identified based on the application of the principles specified in the Principles Annex and in the manner and in the amounts determined on the basis contemplated by the Permitted Delegations Annex, in each case in the amounts and to the extent specified herein and therein, subject in all respects to the exercise by the Trustee inof its absolute discretion deems advisable to or for the benefit of any one or more of the Beneficiaries hereunder and to the exclusion of the other or others, and in such proportions and on such trusts, terms and conditions, if any, as the Trustee in its absolute discretion deems advisable. Beneficiaries.

3.2 Maximum Amount of Distributions to Primary Beneficiaries

The amount distributed by the Trustee to or for the benefit of any Primary Beneficiary shall not (a) exceed the cost estimated costs (including applicable taxes) to be incurred by or on behalf of such Primary Beneficiary (whether or not such costs have been paid or remain outstanding) in respect of Eligible Measures; provided that the cost incurred by a Beneficiary shall not include any specific cost that has or will be funded or reimbursed by any Person applied in respect of the Primary Beneficiary's Ontario residence or (b) include in the calculation of such costs any amount intended to compensate an Electricity Distributor. The Trustee shall be entitled to rely on the recommendations of and information provided by Electricity Distributors acting as Administrative Services Agents appointed for the purposes and in the manner contemplated in the Permitted Delegations Annex, without any duty or obligation to verify or makes enquiries regarding the basis for or propriety of such recommendations or the accuracy or completeness of such information, except if and to the extent that the Trustee, in its discretion, determines that (i) it has actual knowledge that such recommendations are contrary to the reasonable application of the principles set forth in the Principles Annex or have been made on a basis that is manifestly contrary to such principles or the delegations and activities specified or contemplated to be undertaken under the Permitted Delegations Annex or (b) such information is known by the Trustee to be erroneous, contain a material misrepresentation or is materially incomplete.

3.3 Distributions to Residual Beneficiaries

On or as soon as practicable following the Final Distribution Date, the Trustee shall distribute all of the Assets (including capital or income) existing at that time to the Residual Beneficiaries, in each case in the amounts and to the extent determined by Trustee in its discretion hereunder[2] and to the exclusion of the other ~~than the Trust, including ministries, agencies and organizations of the Government of Ontario.~~Beneficiaries.

SECTION 4
POWERS OF THE TRUSTEE

4.1 General

Subject to and in compliance with the terms, limitations and restrictions ~~set out in~~of this Declaration and notwithstanding applicable legislation, the Trustee shall have, without other or further authorization, full, exclusive and absolute power, control and authority over the Assets and over the affairs and activities of the Trust to the same extent as if the Trustee were not a trustee, but rather the sole and absolute owner of the Assets in its own right, including such power, control and authority to do all such acts and things as in its sole judgment and discretion are necessary, incidental or desirable for carrying on the affairs and activities of the Trust, with such powers of delegation as may be permitted or otherwise contemplated by this Declaration. ~~The~~Except as expressly provided in this Declaration, the enumeration in this Declaration of any specific power or authority shall not be construed as limiting the aforesaid general power or authority or any other specific power or authority set out herein. Subject ~~only~~ to the terms, limitations ~~in~~and restrictions of this Declaration, every discretion or power hereby conferred on the Trustee is an absolute and uncontrolled discretion or power.

4.2 Specifically Enumerated Powers

The Trustee shall have the following specific powers and authorities:

(a) ***Transfer Payment Agreement.*** The Trustee shall have the power to enter into and perform its obligation under the Transfer Payment Agreement.

(b) ***Administrative Services Agreements.*** The Trustee shall have the power to enter into and perform its obligation under the Administrative Services Agreements.

~~(a)~~(c) ***Power to Dispose of Assets.*** The Trustee shall have the power to sell, convey, assign, transfer, exchange~~, lease, grant an option~~ and in any other manner dispose of the Assets or any part or parts thereof free and clear of any and all trusts established under this Declaration, by public or private sale, for cash or on credit, with or without advertisement, and subject to such restrictions, stipulations, agreements and reservations as the Trustee in its sole and absolute discretion may consider appropriate or advisable, and to execute and deliver and perform any

[2] NTD: Consider if principles should be included regarding the choice of charities or the absolute amount any particular charity may receive.

agreement, deed, conveyance, transfer~~, lease~~ or other document or instrument in connection with the foregoing.[3]

~~(b)~~(d) ***Power to Manage and Invest.*** The Trustee shall have the power to own, hold~~,~~ and manage ~~and use~~ the Assets in such manner as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable ~~and the~~.[4] The Trustee shall have the power to invest the Assets in ~~such investments~~Eligible Investments, and to change such ~~investments~~Eligible Investments at any time and from time to time, all as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable. The Trustee shall not be limited to investments authorized by law for trustees. The Trustee will have no liability for the depreciation of any investment.

~~(c)~~ ***Power to Delegate and to Appoint Agents, etc.*** The Trustee shall have the power to appoint, employ or contract with any Person as the Trustee in its sole and absolute discretion may consider appropriate or advisable in connection with the activities of the Trust. Without limiting the generality of the foregoing, the Trustee will have the power at any time and from time to time~~:~~

~~(i)~~(e) to appoint, employ or retain consultants, financial advisers, technical advisers, legal counsel, accountants, administrative services agents, insurers, insurance agents and insurance brokers, as the Trustee may require for the purpose of discharging its duties hereunder and shall not be responsible for or for the actions of any of them. The Trustee may pay remuneration and reimbursements from the ~~Trust Property~~Assets for ~~all~~ services performed for it or on its behalf in the discharge of the trusts hereof without taxation for costs or fees of any counsel, solicitor or attorney. Without limiting the generality of the forgoing, the Trustee may appoint, employ or retain any Person:

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~~(A)~~(i) to act for and on behalf of the Trust in connection with any and all matters in any way relating to the negotiation, settlement, entering into, amending, performance and enforcement of the Transfer Payment Agreement, the Administrative Services Agreement and any ~~related~~other agreements and contracts~~,~~ to which the Trust becomes a party in accordance with this Declaration;

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~~(B)~~(ii) to provide or cause to be provided any or all kinds of administrative services in any way relating to the activities of the Trust~~.~~;

~~(C)~~(iii) to act as attorney in fact, agent or trustee in the ~~purchase~~acquisition, holding ~~or~~, application, sale or other disposition of ~~Trust Property~~the Assets and in the handling, prosecuting or settling of any claims of the Trust~~.~~;

~~(D)~~(iv) to value the Assets and determine the net income of the Trust; and

(v) to ~~enter into, perform, enforce~~make any filings, elections and ~~amend agreements~~ submissions (including~~, without limitation,~~ in respect of taxation matters) in

[3] Consider limiting this broad power.

[4] Consider limiting this broad power.

connection with the Trust's compliance with applicable laws and regulatory requirements.

~~(ii)~~ Without limiting the foregoing, the Trustee shall seek to enter into Administrative Services Agreements~~, providing~~ with Electricity Distributors for ~~or relating to the appointment or employment of any of such Persons referred to above containing~~the purposes contemplated by the Permitted Delegations Annex, and on such terms and ~~provisions~~conditions (including terms and ~~provisions~~conditions as to the payment of reasonable fees and expenses) not inconsistent therewith as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable.

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~~(d)~~(f) ***Power to Operate Accounts.*** The Trustee shall have the power to open and operate accounts at any chartered bank, trust company or other financial institution in Canada or elsewhere, as the Trustee in its sole and absolute discretion may consider appropriate or advisable; to deposit therein any moneys or securities forming part of the Assets whether or not such deposits will earn interest; to withdraw such deposits at such times and in such manner as the Trustee may determine; to draw, make, endorse, deposit or otherwise deal in cheques, bills of exchange, promissory notes, drafts and other kinds of instruments and securities; to enter into contracts or agreements with any such chartered bank, trust company or other financial institution containing such terms and provisions as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable; and the Trustee shall have no liability or responsibility for any loss which may occur by reason of the failure of any such chartered bank, trust company or other financial institution.

~~(e)~~(g) ***Power to Collect, etc.*** The Trustee shall have the power to collect, sue for, receive and give receipts for all sums of money or other property due to the Trust; to consent to extensions of time for payment or to the renewal of any securities or obligations; to engage or intervene in, prosecute, defend, compound, compromise, abandon or adjust by arbitration or otherwise, any demands, claims, actions, suits or proceedings relating to the Trust or the Assets; to exercise any and all remedies available to the Trustee under any agreement or otherwise including any power of foreclosure or sale available at law and, in connection with any such foreclosure or sale, to purchase or otherwise acquire title to any property and to convey good title thereto free of any and all trusts hereby established, or to take or retake possession of any property secured under any agreement or instrument; to extend the time, with or without security, for the payment or delivery of any debts or property and to execute and deliver releases, acquittances, discharges, agreements or other instruments related thereto; and to pay or satisfy any debts or claims upon any evidence that the Trustee, in its sole and absolute discretion, may determine to be sufficient.

~~(f)~~(h) ***Power to Pay Trustee's Fees.*** The Original Trustee shall be entitled to be paid and receive reasonable fees ~~from the Assets~~ as compensation for its services under this Declaration and be reimbursed for its out-of-pocket expenses reasonably incurred, in each case from the Assets, without the approval of any Beneficiary or any court. The Original Trustee shall be entitled, in its sole and absolute discretion, to withdraw funds from time to time ~~funds~~ for such purpose from any account of the Trust. Members of the Board of Trustees shall be entitled to reimbursement for and in respect of their out-of-pocket expenses reasonably incurred in discharging their respective duties and obligations under this Declaration and any contract of the Trust entered into in accordance with this Declaration, in each case without the approval of any Beneficiary or any court, but subject to the "Travel, Meal and Hospitality Expenses Directive of

the Province" specified and amended by the Province from time to time, a copy of the current version of which is attached as Exhibit 1 to the Principles Annex.

~~(g)~~(i) ***Power to Pay Taxes.*** The Trustee shall have the power to pay, deduct, withhold or remit any taxes or assessments which are required by law to be paid, deducted, withheld or remitted together with or from any payment made by the Trustee; to pay all taxes or assessments of whatever kind or nature imposed upon or against the Trust or the Trustee in connection with the Assets or any part thereof; to collect and remit all taxes and assessments of whatever kind or nature required to be collected and remitted by the Trust or the Trustee in connection with their activities or the Assets or any part thereof; to appeal, settle or compromise tax claims or liabilities; and, for the foregoing purposes, to make such returns and do all other acts and things as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable.

~~(h)~~(j) ***Power to Appoint Auditors.*** The Trustee shall have the power to select and appoint and discharge and re-appoint, in its sole and absolute discretion, an auditor or auditors of the Trust and to settle the fees of any such auditor or auditors.

~~(i)~~(k) ***Form of Accounts.*** The Trustee shall have the power to determine and change from time to time, in its sole and absolute discretion, the method or form in which the accounts of the Trust will be kept and shall not be required to keep and provide accounts in the form usually required by law to be kept by trustees; provided that such method or form reasonably complies with generally accepted accounting principles in effect in Canada to the extent applicable.

~~(j)~~(l) ***Title to Assets.*** The Trustee shall have the power to cause all or any part of the Assets to be held by or registered, in its sole and absolute discretion, in the name of any Person.

~~(k)~~(m) ***Delegation of Discretion***. The Trustee shall have the power to delegate the right and power to exercise, or concur in the exercise of any discretion or power, conferred on the Trustee in this Declaration or conferred by law to any one or more of its directors, officers ~~or,~~ employees, agents or to such other Person, as the Trustee, in its sole and absolute discretion, may think is appropriate or advisable including, without limitation, ~~an Administrative Services Agent and its employees, officers and directors under an~~to one or more Administrative Services Agents and their respective employees, officers and directors, in each case under a related Administrative Services Agreement and on the basis contemplated in the Permitted Delegations Annex. The Trustee shall accept and follow the recommendations of an Electricity Distributor made under and in accordance with clauses [4(a)(i) to 4(a)(vi)] of the Permitted Delegation Annex with respect to a the identification and determination of distributions to be made to any Primary Beneficiary, except if and in so far as the Trustee has actual knowledge that (a) such Primary Beneficiary did not in fact satisfy the "Selection Factors" specified in the Principles Annex as of the applicable time of determination; and/or (b) the amount recommended to be distributed to the Primary Beneficiary was not calculated in compliance with or was calculated in a manner that is manifestly contrary to the requirements set forth or contemplated in the Permitted Delegation Annex or the applicable Administrative Services Agreement.

~~(l)~~(n) ***Additional Powers.*** The Trustee shall have the power to perform and do all such other acts, to take such steps and to execute all such deeds, transfers, assignments, agreements and other documents and instruments as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable for the carrying out of any of its powers hereunder or of any of the activities of the Trust as herein contemplated, or for the carrying out, promotion or advancement

of the interests of the Trust, whether or not any of such acts, things, documents or instruments are herein expressly mentioned. Any good faith determination by the Trustee as to what is necessary, desirable or appropriate to carry out its powers or activities of the Trust as contemplated under this Declaration or to carry out, promote or advance the interests of the Trust shall be conclusive. Any construction of this Declaration or any determination as to the activities of the Trust or the existence of any power or authority hereunder made in good faith by the Trustee, relying upon the advice of counsel, ~~will~~shall be conclusive. In construing the provisions of this Declaration, there shall be a presumption in favour of a grant of power to the Trustee.

SECTION 5
CONCERNING THE TRUSTEE

5.1 Duty of Trustee

In performing its duties and exercising its powers under this Declaration, the Trustee ~~will~~shall act honestly, in good faith and with a view to the best interests of the Trust and the Beneficiaries and ~~will~~shall exercise that degree of care, diligence and skill that a reasonably prudent trustee would exercise in comparable circumstances (the "**Standard of Care**"). The Trustee shall observe and act in accordance with the terms of, and shall observe and comply with the limitations and restrictions set forth in, this Declaration. To the extent that the Trustee has delegated any of its duties or powers, it shall be deemed to have satisfied the Standard of Care~~.~~ in respect of the subject matter of such delegation, subject to the Trustee's overall duty as a trustee to exercise prudent oversight in relation to such delegation. Unless required by law, the Trustee will not be required to give any security, bonds or sureties in any jurisdiction for the performance of any of its duties and obligations under this Declaration. The Trustee will not be required to devote its entire time to the trust activities.

5.2 Limitation of Liability

~~Subject to Section 5.1, the~~The Trustee ~~will~~shall not be personally liable in tort, contract or otherwise to ~~the Trust,~~ any Beneficiary or any other Person for any loss or diminution in the value of the Assets, or for any action or failure to act on the part of the Trustee or any of its employees or agents or any other Person, and ~~will~~shall not be subject to any personal liability for any debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses incurred by or against the Trust, howsoever arising, and resort will be had solely to the Assets for the payment, performance or satisfaction thereof. No property or assets of the Trustee, owned in its personal capacity or otherwise, will be subject to levy, execution or other enforcement procedure**s** with respect to any obligation under this Declaration. However, Section 5.2 shall not apply where the Trustee has demonstrated gross negligence, bad faith, fraud or wilful misconduct.

5.3 Liability of Trustee under Contracts

Any document or instrument creating a liability or obligation of the Trust or the Trustee will be conclusively deemed to have been executed by the Trustee only in its capacity as Trustee of the Trust and will be binding upon the Trustee only in its capacity as trustee hereunder and resort may not be had to, nor recourse or satisfaction be sought from, the property of the Trustee other than the Assets, whether owned by its in its personal capacity or in any other capacity other than in its capacity as Trustee of the Trust, or from its employees or agents, and resort will be had

solely to the Assets for the payment, performance or satisfaction of any such liability or obligation. Each such document or instrument shall contain a provision providing for the aforesaid limitation of liability. However, Section 5.3 shall not apply where the Trustee has demonstrated gross negligence, bad faith, fraud or wilful misconduct.

5.4 Funds of the Trustee

The Trustee shall not be required to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers.

5.5 Indemnification of Trustee

In addition to and without limiting any other protection hereunder or otherwise by law of the Trustee and its respective employees, agents, representatives and assigns (in this Section 5.5, collectively, the "**Representatives**"), the ~~Trust indemnifies, defends and saves harmless the~~ Trustee and its respective Representatives shall be indemnified, defended and saved harmless out of the Assets from ~~and,~~ against and in respect of any and all liabilities~~, including those~~ arising or related to actions taken or omitted to be taken by any agent of the Trustee, losses, claims (including any claim arising out of the assessment of any tax on income by a taxing authority), damages, penalties, fines, actions, suits, demands, levies, assessments, costs, charges, expenses and disbursements (including, without limitation, any and all legal and advisor fees and disbursements) (in this Section 5.5, collectively, the "**Liabilities**") of whatever kind or nature which may at any time be suffered by, imposed upon, incurred by or asserted against the Trustee and its Representatives, whether groundless or otherwise, howsoever arising from or out of any act, omission or error of the Trustee, in each case made in connection with its acting as Trustee hereunder, except and to the extent that the Liabilities are a result from or are caused by gross negligence, wilful misconduct, bad faith or breach of the ~~Standard of Care by or on the part of the Trustee or its Representatives.~~Confidentiality obligations described in Section 5.9. Further, except as provided in Section 5.2, the Trustee ~~will~~shall not be liable to ~~the Trust, to~~ any Beneficiary ~~or to any other Person~~ for any loss or damage relating to any matter regarding the Trust, including any loss or diminution in value of the Assets. Notwithstanding any other provision hereof, the obligations provided for in this Section shall survive any termination of the Trust created hereby, whether by reason of removal or resignation of the Trustee, termination or discharge of this Declaration or otherwise.

5.6 Reliance upon Advice

Subject to Section 5.1, in performing its duties and exercising its powers hereunder, the Trustee may rely and may act or not act, and shall be fully protected in relying and acting or not acting, upon (a) any statement, telecopy or other electronic means of communication, writing, notice, resolution, report, opinion or other document or conversation believed by its to be genuine and correct and to have been signed, sent or made by the proper Person; ~~and~~ (b) any opinion or advice received or information obtained from auditors, solicitors, or other professional advisers, whether retained by the Trustee or otherwise, and shall not be responsible or held liable for any loss or damage resulting from so relying or acting or not acting~~.~~; and (c) the advice and actions of any Administrative Services Agent, including in connection with the delegations and reliances contemplated under the Permitted Delegations Annex. For greater certainty, it shall not be necessary for the Trustee to ascertain whether or not the Persons who have executed, signed or

otherwise issued, authenticated or receipted such papers, writings or documents (including any Administrative Services Agreement or any other contract entered into by the Trustee) have authority to do so or that they are the same Persons named therein or otherwise to pass upon any requirement of such papers, writing or documents that may be essential for their validity or effectiveness or upon the truth and acceptability.

5.7 ~~Resignation~~Replacement of the Original Trustee

~~If the Trustee wishes to resign from its role as trustee under this Declaration and be discharged from the trusts and powers reposed in and conferred upon it by this Declaration, it shall give ninety (90) days' prior written notice thereof to the Minister of Energy (or such lesser period as the Minister of Energy may otherwise consent to). Notwithstanding such notice, such resignation shall become effective, and the Trustee shall be discharged from the trusts and powers reposed in and conferred upon it under this Declaration, only upon the appointment of, and the written acceptance of such appointment by, a successor trustee in accordance with Section 5.8. If no successor trustee shall have been appointed or shall have accepted appointment within ninety (90) days after the giving of such notice of resignation, the resigning Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee at the expense of the Trust.~~

~~**5.8 Appointment of Successor Trustee**~~

~~In the event of the resignation of the Trustee, the [**Minister of Energy**] shall appoint a successor trustee or trustees by instrument in writing and shall give written notice of such appointment to the Trustee resigning.~~

As soon as practicable and in any event prior to •, 2017, the Original Trustee shall appoint the Persons contemplated by the Trustee Replacement Annex to comprise the Advisory Committee contemplated therein (once constituted, the "**Advisory Committee**"). As soon as practicable thereafter, the Original Trustee shall request that the Advisory Board make recommendations with respect to the composition of the "Board of Trustees", as contemplated by the Trustee Replacement Annex. The Trustee shall have no duty or obligation to investigate the basis for any of the Advisory Committee's recommendations and may rely on such recommendations without any duty of enquiry, supervision or oversight with respect to the activities and decision-making processes adopted by the Advisory Committee in its discretion, in full satisfaction of the Original Trustee's Standard of Care with respect to such matters hereunder. Except if the Trustee determines that the individuals recommended by the Advisory Committee to become members of such Board of Trustees are disqualified from so acting on the basis of manifest non-compliance with the selection factors set forth under "Selection Factors" set forth in the Trustee Replacement Annex, the Original Trustee shall appoint, as additional Trustees, [number] of individuals from among those individuals who have been recommended for appointment to such Board of Trustees by the Advisory Committee. The Original Trustee may exercise its discretion in selecting such individuals for such appointment or, in the absence of such exercise, shall select such individuals based on the [alphabetic order of the first letter of their respective surname]. Upon the appointment of [number] additional trustees pursuant to this provision and their agreement to act as members of the Board of Trustees, the Original Trustee shall be deemed to have resigned and shall cease to be a trustee (such resignation occurring on the "**Original Trustee Replacement Date**").

5.8 Composition of the Board of Trustees

[NTD: Specify requirements or principles annex]

5.9 Rules and Procedures of the Board of Trustees

(a) ***Initial Requirements***. [NTD: Need to insert bare bones governance for the Board of Trustee's initial governance purposes.]

(b) ***Power to Adopt Rules and Procedures.*** [NTD: Add power to adopt governance provisions, including to permit remaining trustees to replace any vacancy arising after Board of Trustees and to fill any vacancy by application to the Courts of Ontario in the event of an unfilled vacancy.]

(c) ***Decisions of the Board of Trustees.*** [NTD: Add language to make clear how the majority decisions of Board will represent the decision of the "Trustee" and not any individual trustee. This will be necessary to specify at the outset in order to avoid problems enlisting members of the Board of Trustees.]

(d) ***Conflicts of Interest.*** [NTD: Specify requirements]

(e) ***Expenses and Reimbursements to Trustees.*** [NTD: Specify requirements]

~~5.9~~5.10Confidentiality

Notwithstanding the resignation or removal and discharge from the trusts and powers reposed in and conferred on the Trustee by this Declaration, or the termination of this Declaration, the Trustee so resigning or removed ~~will~~shall continue to treat as confidential all information relating to the Trust, the Assets and the Beneficiaries and shall only be entitled to make disclosures concerning such information if disclosure is required in the performance of the functions of the resigning or removed Trustee or is ordered by a court of competent jurisdiction or is otherwise required by law. The Trustee ~~will~~shall not be responsible or liable to any Person for any loss or damage arising out of or in any way sustained or incurred in any way relating to any such required disclosure. The obligations arising under this Section [5.~~9~~10] shall survive the termination of the Trust.

~~5.10~~5.11 Vesting in Successor Trustee

Any successor trustee ~~will~~(including any reconstituted Board of Trustees) shall automatically become vested with the Assets and with the same powers, rights, duties, responsibilities and trusts as if it, he or she had been originally named as Trustee under this Declaration without the requirement of any further instrument or act or conveyance and the Trustee ceasing to act ~~will~~shall execute all such transfers and other documents and do all such other acts or things as may be necessary or desirable to assign, transfer, deliver to, and vest in, the successor trustee, upon the trusts expressed in this Declaration, all the Assets and all the rights, powers and trusts of the Trustee ceasing to act. The expense of any act, document, deed or other instrument or thing required under this Section 5.~~10~~11,1, including for greater certainty, outstanding fees and unreimbursed expenses of the Trustee (including any member of the Board of Trustees) ceasing to act, ~~will~~shall be satisfied from the Assets.

~~5.11~~5.12 Execution of ~~Documents~~Instruments

The Trustee shall have the power to execute all deeds, transfers, agreements, promissory notes and other instruments on behalf of the Trust. Such power may be exercised by any one or more Administrative Services Agents acting in accordance with any delegated right to do so pursuant to an applicable Administrative Services Agreement, and any such execution of instrument by an Administrative Services Agent, acting in such capacity as agent of the Trust pursuant to the terms and conditions of such Administrative Services Agreement shall be deemed to be a proper execution of such instrument by the Trustee and shall be binding for all purposes on the Trust.

5.13 Decisions by the Trustee

If there is more than one Trustee, decisions of the Trust may be made by a majority of Trustees. Whenever the Trustees are unable to agree in relation to the commission or omission of any act or howsoever in the execution of the Trust the decision of a majority of the Trustees shall prevail.[5]

SECTION 6
AMENDMENTS AND SUPPLEMENTS

~~**6.1 Amendment**~~

6.1 ~~The~~Amendments

Subject to the requirements of the Transfer Payment Agreement, the Trustee shall have the power in its sole and absolute discretion from time to time without the approval of any Beneficiary or any court to amend, vary, supplement, replace or restate this Declaration in its entirety or any portion thereof~~.~~, provided that no amendment shall conflict with the principles set forth in the Principles Annex or as to the scope or effect of the permitted delegations and activities of any Administrative Services Agent pursuant to the Permitted Delegations Annex. Without in any way limiting the foregoing, any such amendments, variations, supplements, replacements or restatements may:

(a) add provisions for the replacement of or appointment of additional trustees to act with the Original Trustee prior to the Original Trustee Replacement Date;

~~(a)~~(b) in the case of the Original Trustee, add provisions to those contemplated in the Trustee Replacement Annex in respect of the appointment of the members and formation and empowerment of the Board of Trustees;

(c) in the case of the Original Trustee, vary the terms and requirements applicable to the duties, responsibilities, obligations, liabilities, indemnities, protections, limitations, restrictions, compensation, expense reimbursements and such other matters, in each case as the Advisory Committee may indicate are necessary be made in order to attract and receive confirmation of appointment of appropriately qualified individuals that the Advisory Committee specifies are to be appointed as members of the Board of Trustees in accordance with its recommendations;

[5] NTD: This section will be integrated into the additional provisions dealing with the Board of Trustees.

(d) add additional or replace existing Trustees[6];

(e) add to or reasonably clarify the principles set forth in the Principles Annex;

(f) add to or reasonably clarify the delegations and activities contemplated to be made in the Permitted Delegation Annex;

~~(b)~~(g) include provisions for the management of the Trust by the Trustees, including the making of rules, requirements and procedures ~~for meetings~~governing the decision-making of the Board of Trustees;

~~(c)~~(h) ~~include~~add provisions for the replacement of ~~Trustees;~~members of the Board of Trustees (in addition to those provisions contemplated in the Trustee Replacement Annex);

~~(d)~~(i) provide for the engagement of any Person or Persons as managers, administrators or other service providers to the Trust, including any additional or replacement Administrative Services Agent or representative thereof;

~~(e)~~(j) specify supplemental procedures for the identification of Primary Beneficiaries and the exchange of information with ~~Local Distribution Companies~~Electricity Distributors in connection with identifying such Primary Beneficiaries ~~who will be the recipients;~~; or

~~(f)~~ specify procedures for the transfer and transmission of funds from the Trust or any Administrative Services Agent acting on its behalf and with delegated responsibility over funds constituting Assets, to~~,~~ or for the benefit of, Beneficiaries~~;~~

~~(g) [NTD: other expected amendments]~~

~~**6.2 Automatic Amendment**~~

(k) ~~Upon the Trustee ceasing to be a trustee of the Trust, this Declaration will be automatically amended, without any action required to be taken or documentation entered into, to delete any reference to the name of the Trustee so ceasing to be a trustee of the Trust and to substitute therefor the name of the successor trustee of the Trust~~ or their designated representatives, payees or assignees.

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~~6.3~~6.2 Supplemental Declarations

The Trustee is authorized to execute any supplemental declaration of trust (including one or more amendments and restatements from time to time of this Declaration) to give effect to amendments to this Declaration made pursuant to this Section 6.

[6] NTD: Consider and, if retained, integrate with Board concepts.

SECTION 7
TERMINATION

7.1 Duration

Subject to Section 7.2, the Trust will continue in full force and effect so long as there is any Assets and until all of the debts, liabilities and obligations of the Trust have been paid and satisfied in full.[7]

7.2 Termination and Distribution of Assets

Subject as hereinafter provided, the Trustee may terminate the Trust and wind up its affairs on such date as the Trustee, in its sole and absolute discretion, may determine and after paying or adequately providing for the payment and satisfaction of all debts, liabilities and obligations of the Trust and upon receipt of such releases, indemnities and discharges as the Trustee, relying on the opinion of counsel, deems necessary for the protection of the Beneficiaries and for its own protection. Notwithstanding the foregoing, the Trustee shall in any event terminate the Trust and wind up its affairs ~~not later than December 31, 2037~~as soon as practicable after the Final Distribution Date (the "**Termination Date**"). ~~[**Upon**~~In connection with the termination of the Trust, the Trustee shall distribute or cause to be distributed the remaining Assets, in cash or in kind or partly in each, to the Residual ~~**Beneficiary.**] [**NTD: treatment of residual assets to be discussed.**]~~Beneficiaries in accordance with Section 3.3.

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7.3 Distribution of Assets on Final Distribution Date

If the Trust holds Assets on the Final Distribution Date, such assets shall promptly be paid to the Residual Beneficiaries in accordance with Section 3.3.

SECTION 8
ACCEPTANCE OF TRUSTS

8.1 Acceptance of Trusts

The Trustee hereby accepts the trusts and duties contained in this Declaration and agrees to perform the same upon the terms and conditions hereof until discharged therefrom.

[Signature Page Follows]

[7] NTD: Consider early termination scenarios.

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The Trustee has executed this Declaration as of the date first written above.

COMPUTERSHARE TRUST COMPANY OF CANADA, as Trustee

By: _____
Name:
Title:

By: _____
Name:
Title:

PRINCIPLES ANNEX

The following principles apply in relation to the administration of the Trust:

1. Identification of Primary Beneficiary Payees

1.1 A Primary Beneficiary should not receive a benefit from the Trust unless at the time of consideration it satisfies each of the following criteria (the "**Selection Factors**"):

(i) it is an [owner-occupied,], [non-commercial] [not for profit] electricity customer;

(ii) it has [committed] [made arrangements] [proposed] [indicated its willingness] to undertake measures (its "**Energy Plan**") to improve the electricity efficiency and/or promote the conservation of electricity at its Ontario residence;

(iii) its Energy Plan involves one or more Eligible Measures as may be designated by the Trustee from time to time from;

(iv) it confirms that:

1. the primary purpose of its Energy Plan is the conservation and efficient use by the Primary Beneficiary of electricity, and is not for the purposes of the Primary Beneficiary making a profit;

2. it would otherwise not have the financial resources to undertake [the Eligible Measures] included in its Energy Plan;

3. the Eligible Measures to be undertaken by it under its Energy Plan would not otherwise be eligible for reimbursement from third parties, including under any efficiency or conservation program implemented by a government, governmental agency or third party energy subsidy program;

(v) it has demonstrated a need for financial assistance on the basis that its periodic electricity bills represent a financial burden, relative to its available financial resources; and

(vi) such other criteria as the Trustee may determine, including based on the recommendations of Electricity Distributors made on the basis and in accordance with the delegations contemplated by the Permitted Delegations Annex or any applicable Administrative Services Agreement.

1.2 The availability of funds to the Primary Beneficiaries should be allocated on an equitable and consistent basis across different areas and regions within the Province, having regard to:

(i) broad economic parameters of economic activity and the financial resources of the residents of the areas and regions;

Commented [A1]: Content in the annex will be further refined

Commented [A2]: KPMG to comment on 'control' implications.

(ii) electricity use and efficiency levels of non-commercial electricity customers;

(iii) specific regional indicators of economic weakness and need; and/or

(iv) such other factors as the Trustee may determine are relevant, including based on the submissions, advice and recommendations of Electricity Distributors made on the basis and in accordance with the delegations contemplated by the Permitted Delegations Annex or any applicable Administrative Services Agreement.

1.3 An efficient basis upon which to allocate funds to the Primary Beneficiaries across different areas and regions within the Province may be based on the designated areas and regions serviced by the Electricity Distributors operating within the Province.

1.4 The designated Electricity Distributor for an area or region in which a Primary Beneficiary resides will:

(i) be a reliable source for the purpose of assessing and confirming whether the Primary Beneficiary satisfies the Selection Factors;

(ii) be an efficient intermediary for the purpose of communicating with the Primary Beneficiary, including regarding the availability, terms, conditions and intended purposes of [Project][8];

(iii) be able to efficiently integrate and reflect any distribution payments determined to be made to the Primary Beneficiary within its established practices, procedures and systems; and

(iv) have established contractual arrangements with the Primary Beneficiary that may apply to the protection and confidentiality of information provided by or respecting the Primary Beneficiary, which information may be useful in the consideration by the Electricity Distributor in its assessment of whether the Primary Beneficiary satisfies the Selection Factors, which information may not otherwise be available or readily accessible or verifiable by the Trustee.

1.5 The designated Electricity Distributor for an area or region in which a Primary Beneficiary resides will have market and utilization information that may be useful in assessing the relative needs of Primary Beneficiaries within its designated area or region. Such information will be relevant in assessing the extent to which one such Primary Beneficiary's financial needs and the merits of its Energy Plan are greater or more compelling than those of another such Primary Beneficiary, which comparison may be relevant to the extent that the funds allocable to the Primary Beneficiaries resident in the area or region are otherwise insufficient to meet the requests for funding by all such Primary Beneficiaries.

[8] Consider if the Trustees should control the messaging to ensure consistency across the Province.

1.6 Accordingly, it is consistent with the purposes of the Trust that the recommendations of Electricity Distributors be utilized and relied upon by the Trustee to guide the process of identifying particular Primary Beneficiaries for distributions under the [Project].

1.7 If an Electricity Distributor for a particular area or region is unable or unwilling to assess or confirm the application of the Selection Factors to Primary Beneficiaries residing in the area or region or to make recommendations in relation to such matters, one or more of the following may provide a suitable alternative source of information and for information gathering, assessment and confirmation purposes in relation to such area or region:

(i) other Electricity Distributors operating in adjacent or other areas or regions in the Province;

(ii) the Ontario Energy Board;

(iii) the Independent Electricity System Operator; and

(iv) anyone else having relevant expertise and access to information regarding the electricity market of the Province, in each case as may be considered relevant by the Trustee.

1.8 To the extent that privacy law or other legal requirements limit an Electricity Distributor from providing or making available specific information respecting the application of the Selection Factors to a particular Primary Beneficiary or group of Primary Beneficiaries, it may be appropriate to redact or make generic affected information regarding such Primary Beneficiary in connection with the identification and confirmation of a Primary Beneficiary's eligibility and participation in the [Project]. If such limitations or restrictions would limit an Electricity Distributor from providing or confirming the name of a particular Primary Beneficiary to the Trustee, then it should be sufficient that such information may be obtained or disseminated on a confidential basis if and when required by the Trustee for the proper administration of the Trust and on that basis such impediments should not disqualify a Primary Beneficiary from participating in the benefits of the [Project], to the extent that the confidential record-keeping of the Electricity Distributor would be available in connection with the application of any applicable legal process predicated on the identification of such Primary Beneficiary for the purposes of substantiating its rights as a Primary Beneficiary of the Trust or as to the validity or subsistence of the Trust.

2. Eligible Measures

2.1 Eligible Measures shall be identified having regard to the following (the "**Measures Factors**"):

(i) [NTD: Insert generic list of considerations relevant to the identification of the applicable spending uses].

2.2 In identifying and applying the Measures Factors, Electricity Distributors will have expertise in assessing the suitability of efficiency and conservation measures in their

respective areas and regions, which may differ across areas and regions across the Province based on factors (among other things) such as the climate, geography, density, electricity infrastructure, residential structures, and electricity use rates applicable within such areas or regions.

2.3 Unless otherwise specified by the Trustees, the measures specified in Schedule A to this Principles Annex will be considered.

3. Other

3.1 It is expected that administrative expenses of the Board of Trustees and its members, including any expenses relating to the Trust, to the establishment of the [Affordability Fund] and any expenses related to the implementation and operation of the [Project] by or through Electricity Distributors and other relevant entities, will be recognized and subject to reimbursement in accordance with the principles outlined in the [Province's Transfer Payment Accountability Directive/Travel, Meal and Hospitality Expenses Directive][9], in the form attached to Schedule B to this Principles Annex.

3.2 The Trustee is expected to conduct its activities to ensure that, as more specifically contemplated in the Transfer Payment Agreement:

(i) the Assets are applied are spent prudently and in furtherance of the purpose set forth in the Declaration;

(ii) the Trustee is accountable to the Province for activities undertaking in connection with the Project;

(iii) it complies with the Province's request for any independent verification or audit determined to be necessary or appropriate by the Province;

(iv) the Province will be entitled and has reserved its right to demand the return of the Assets if the Province determined that they are not being used for the purposes and applied in the manner as set forth or contemplated in the Declaration.

3.3 Electricity Distributors are not intended to directly profit from distributions of funds made from the Trust, although it is recognized that the objectives of electricity efficiency and conservation of Primary Beneficiaries located in the service area or region of an Electricity Distributor, and the cost savings and improved credit worthiness of such Primary Beneficiaries, may be financially beneficial to the Electricity Distributor.

3.4 Distributions from the Trust are intended to allow receiving Primary Beneficiaries to undertake Eligible Measures at no or minimal personal cost.

3.5 It is expected that the Trust Assets will be distributed to Primary Beneficiaries during the period from the Original Trustee Replacement Date to [the Final Distribution Date] [March 31, 2019].

[9] NTD: Ministry to confirm applicable Directive(s).

SCHEDULE A
TO THE PRINCIPLES ANNEX
INITIAL ELIGIBLE MEASURES

Initial Specified Measures
Block Heater Timer (just timer) – rated for outdoor use, have at least a 15 amp/1800 watt capacity, be cold weather resistant, bear a C-UL or CSA certification mark
Power bar with integrated timer, and switched power outlets, four each for a total of 8 outlets, have a total capacity of 15 amps. The switched outlets must remain "live", independent of timer settings, so long as the power bar itself remains switched on. The power bar must bear either a C-UL or CSA certification mark.
Efficient Showerheads (standard) - rated at no more than 4.8 Lpm (1.25 U.S. gpm) and be of the laminar flow type (non-aerating).
Efficient Showerhead (handheld) - rated at no more than 4.8 Lpm (1.25 U.S. gpm) and be of the laminar flow type (non-aerating).
Efficient Aerators (kitchen) - rated no more than 5.7 Lpm (1.5 U.S. gpm), dual threaded to allow installation in both thread type faucets, swivel type with pause lever.
Efficient Aerators (bathroom) - rated no more than 3.8 Lpm (1.0 U.S. gpm), be dual threaded to allow installation in both thread type faucets.
Hot Water Tank Pipe Insulation - $^{1}/_{2}$" inside diameter – foam, meets ASTM –C547-00, minimum $^{3}/_{4}$" thick
Hot Water Tank Pipe Insulation - $^{3}/_{4}$ " inside diameter - – foam, meets ASTM –C547-00, minimum $^{3}/_{4}$" thick
Hot Water Tank Insulation - fibreglass R10 (fits up to a 60 gal tank) – not bubble wrap
≤11W ENERGY STAR® Qualified LED A Shape (60W) (minimum 600 Lumen output) (Formerly: 7W – 11W ENERGY STAR® Qualified LED A Shape (60W))

Initial Specified Measures
≤14W ENERGY STAR® Qualified LED A Shape (75W) (minimum 800 Lumen output) (Formerly: 10W – 14W ENERGY STAR® Qualified LED A Shape (75W))
≤23W ENERGY STAR® Qualified LED A Shape (100W) (minimum 1600 Lumen output) (Formerly:17W – 23W ENERGY STAR® Qualified LED A Shape (100W))
≤16W ENERGY STAR® Qualified LED PAR 20 (minimum 600 Lumen output) (Formerly: 8W – 12W ENERGY STAR® Qualified LED PAR 20)
≤16W ENERGY STAR® Qualified LED PAR30 & PAR38 (minimum 600 Lumen output) (Formerly: 8W – 12W ENERGY STAR® Qualified LED PAR 30)
≤23W ENERGY STAR® Qualified LED PAR (minimum 1100 Lumen output) (Formerly: 14W – 18W ENERGY STAR® Qualified LED PAR 38)
≤6W ENERGY STAR® Qualified LED MR 16 / PAR 16 (minimum 250 Lumen output) (Formerly: 7W – 10W ENERGY STAR®
Qualified LED MR 16 / PAR 16 - GU 10 Base)
≤11W ENERGY STAR® Qualified LED MR 16 (minimum 400 Lumen output) (Formerly: 7W – 12W ENERGY STAR® Qualified LED MR 16 GU 5.3 Base)
ENERGY STAR® LED Wet Location Rated PAR lamp ≤ 23 Watt (minimum 1100 Lumen output)
Recessed Downlight Fixture including LED with Light Output >600 and <800 lumens (Retrofit Measure List)
Recessed Downlight Fixture including LED with Light Output >800 lumens (Retrofit Measure List)
Indoor Drying Rack

Extended Measures
Replace refrigerator with ENERGY STAR qualified refrigerator - 15.5 - 16.9 cubic foot top freezer, automatic defrost, refrigerator/ freezer, no through the door ice service
Replace refrigerator with ENERGY STAR qualified refrigerator - 17.0 - 18.4 cubic foot top freezer, automatic defrost, refrigerator/ freezer, no through the door ice service
Replace refrigerator with a refrigerator that has a consumption level of less than 425 kwh, 10 – 12.5 cubic foot top freezer, automatic defrost, refrigerator freezer, no through the door ice service
Replace freezer with ENERGY STAR qualified freezer -
12-14.4 cubic foot freezer
Replace freezer with ENERGY STAR qualified freezer - 14.5 - 16.0 cubic foot freezer
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 6,000 – 7,999 BTU/hr with C-UL or CSA certification mark
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 8,000 – 9,999 BTU/hr with C-UL or CSA
certification mark
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 10,000 – 12,000 BTU/hr with C-UL or CSA certification mark
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 14.2 - 21.2 l/day (30-44.9 pints/day) dehumidifier
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 21.3 - 25.4 l/day (45-53.9 pints/day) dehumidifier

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Extended Measures
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 25.5 - 35.5 l/day (54-75 pints/day) dehumidifier dehumidifier dehumidifier
Programmable Thermostat – line voltage – meets CAN/CSA-C828-06 standard, minimum performance: Droop: 1.5°C, Differential: 0.5°C, Precision 0% within 0.5°C of the original set point of 22°C
Programmable Thermostat – low voltage - meets CAN/CSA-C828-06 standard, minimum performance: Droop: 1.5°C, Differential: 0.5°C, Precision 0% within 0.5°C of the original set point of 22°C

Weatherization Measures
Comprehensive Draftproofing (caulking, foam and weather stripping, and application of same) – lifespan of 20 years plus If one or two component polyurethane foams are used, the products and installations must conform to: • CAN/ULC-S710.1 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 1: Material Specification. • CAN/ULC-S710.2 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 2: Application. • CAN/ULC-S711.1 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification • CAN/ULC-S711.2 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification, and Part 2: Application.
Attic Insulation (including installation):
cellulose: CAN/ULC-S703-01 Amendment 1 - Cellulose Fibre Insulation (CFI) for Buildings OR 2) Mineral Fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre

Weatherization Measures
for Buildings **Wall Insulation (including installation):**
cellulose: CAN/ULC-S703-01 Amendment 1 - Cellulose Fibre Insulation (CFI) for Buildings OR 2) Mineral Fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre **Basement Insulation (including installation):**
mineral fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre for Buildings Vapour Barrier: 69009-CAN/CGSB-51.34-m86 If one or two component polyurethane foams are used, the products and installations must conform to: • CAN/ULC-S710.1 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 1: Material Specification. • CAN/ULC-S710.2 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 2: Application. • CAN/ULC-S711.1 Standard for Thermal Insulation – Bead Applied Two-Component
Polyurethane Air Sealant Foam, Part 1: Material Specification • CAN/ULC-S711.2 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification, and Part 2: Application.

[NTD: Add details pertaining to heat pumps]

SCHEDULE B TO THE PRINCIPLES ANNEX
PERMITTED EXPENSE REIMBURSEMENTS

[NTD: Insert the Province's Transfer Payment Accountability Directive/Travel, Meal and Hospitality Expenses Directive]

PERMITTED DELEGATION ANNEX

1. Under Section 4.2(d) of the Declaration, the Trustee has the power to: (A) appoint, employ or retain Administrative Services Agents for the purpose of discharging its duties and obligations under the Declaration; and (B) enter into, perform, enforce and amend Administrative Services Agreements.

2. In accordance with [Section 4.2] of the Declaration, consistent with the principles set forth in the Principles Annex, the Trustee or its agent will seek to enter into one or more Administrative Services Agreements with individual Electricity Distributors under which the Electricity Distributors will act as Administrative Service Agents to the Trustee. In this manner, the Trustee will delegate certain of its powers and duties to the Electricity Distributors.

3. Under Section 5.1 of the Declaration, to the extent the Trustee has delegated any of its duties or powers, it shall be deemed to have satisfied the Standard of Care in respect of the subject matter of such delegation, subject to the Trustee's overall duty to exercise prudent oversight thereof. The Trustee is entitled to rely on an Electricity Distributor to discharge the duties delegated to it, as Administrative Services Agent, pursuant to an Administrative Services Agreement as described in this Annex.

4. Accordingly, and without limiting the Trust's right to delegate under the Declaration, the Trust will be permitted to, and should seek to, enter into Administrative Services Agreements with Electricity Distributors in order to provide for the following:

    a. **Identification of Applicable Primary Beneficiary Payees and Determination of Individual Distribution Amounts**

        i. Each Electricity Distributor will make an initial assessment of the financial needs of Primary Beneficiaries within its designated service area or region, having regard to [NTD: specify relevant economic data and reference material], in order to prepare and provide to the Trustee an estimate of the number of Primary Beneficiaries who the Electricity Distributor reasonably expects would satisfy the Selection Factors (as defined in clause 1.1 "Identification of Primary Beneficiary Payees" of the Principles Annex).

        ii. Each Electricity Distributor will make an initial assessment of the measures it would recommend be included as Eligible Measures, having regard to [NTD: specify relevant considerations], in order to prepare and provide to the Trustee an estimate of the average cost per Primary Beneficiary Payee (as defined below) of such Eligible Measures that the Electricity Distributor reasonably expects would apply in respect of Primary Beneficiaries resident in its service area or region.

        iii. Based on the product of (i) and (ii), above, and such other considerations as it considers to be directly relevant, each Electricity Distributor will make a written recommendation to the Trustee regarding the aggregate funding amount that the Electricity Distributor anticipates would be utilized under the

[Project] by Primary Beneficiaries in its service area or region (the "**Local Funding Estimate**"). Such recommendation will be accompanied, when submitted to the Trustee, by a detailed explanation regarding the assumptions, financial parameters, suitability considerations and other information underlying the Local Funding Estimate (including the type of information contemplated by "[Insert]" under the Principles Annex, which will be relied upon by the Trustee in its assessment regarding the allocation of available funding to or for the benefit of the Primary Beneficiaries across the specified areas and regions of the Province.

iv. The Trustee will inform the Electricity Distributor regarding the aggregate of the amount determined by the Trustee to be made available under the [Project] for Primary Beneficiaries in the Electricity Distributor's designated service area or region (for each LDC, its "**Maximum LDC Allocation**") and as to any maximum amount that may be paid to or for the benefit of any single Primary Beneficiary [or group of related Primary Beneficiaries] located in the servicer area or region of the Electricity Distributor (the "**Maximum Primary Beneficiary Amount**"). The Maximum LDC Amount and Maximum Primary Beneficiary Amount may vary between designated areas and regions, the Primary Beneficiaries within such areas and regions, and may be increased by the Trustee from time to time in its discretion.

v. Each Electricity Distributor will apply the principles set forth under ["Identification of Primary Beneficiary Payees" in the Principles Annex] to identify and make recommendations to the Trustee regarding the amount of funds (if any) to be distributed to or for the benefit of Primary Beneficiaries resident within its designated service area or region from time to time (the "**Primary Beneficiary Payees**").

vi. Each Electricity Distributor will ensure that the aggregate of the amounts it recommends be distributed to or for the benefit of Primary Beneficiary Payees from time to time does not exceed (1) its Maximum LDC Allocation and (2) for any single Primary Beneficiary [or group of related Primary Beneficiaries] located in the servicer area or region of the Electricity Distributor, the Maximum Primary Beneficiary Amount.

vii. The Trustee will provide written confirmation to each Electricity Distributor:

1. Either (x) that the recommendations specified of the Electricity Distributor in clause (v), above, have been accepted, or (y) as to the specific reasons for any non-acceptance;

2. The identity of each Primary Beneficiary Payee resident in the Electricity Distributor's service area or region and its residential address;

3. The amount of the distribution to be paid to or for the benefit of each such Primary Beneficiary Payee.

b. **Making of Distributions**

i. Promptly after the Trustee confirms the identity of a Primary Beneficiary Payee resident in a Electricity Distributor's service area or region and the amount of the distribution to be paid to or for the benefit of such Primary Beneficiary Payee, the Trustee will arrange for payment to the Electricity Distributor an amount equal to the amount of such distribution.

ii. Promptly upon receipt of funds in respect of a distribution to a Primary Beneficiary Payee, the Electricity Distributor will arrange for payment of the full amount of such distribution to or for the benefit of the Primary Beneficiary Payee, without reduction or set-off.

c. **Reporting, Record-Keeping, Inspection and Disclosure**

i. The Electricity Distributor will provide to the Trustee quarterly and annual reports ("**Reports**") for the duration of the Administrative Services Agreement.

ii. The Electricity Distributor will keep and maintain all financial records and non-financial documents and records relating to the provision of services under the Administrative Services Agreement. [Specify required records regarding individual Primary Beneficiary Payees]

iii. The Trustee, its authorized representatives or an independent auditor may, at its own expense, on twenty-four hours' notice to the Electricity Distributor and during normal business hours, inspect the records of and information respecting the Electricity Distributor to confirm its compliance with the Administrative Services Agreement, including its process for determining the Primary Beneficiary Payees, distribution amounts and the delivery of funds to [or for the benefit of] the Primary Beneficiary Payees. The Trustee, its authorized representatives or an independent auditor may inspect and copy all records and documents kept in accordance with the Administrative Services Agreement and conduct an audit or investigation of the Electricity Distributor in respect of the identification of the applicable Primary Beneficiary Payees, the amount of distributions made to or for the benefit of the Primary Beneficiary Payees; and the delivery of funds to or for the benefit of the Primary Beneficiary Payees.

d. **Standard of Care**

i. The Electricity Distributor will perform its duties provided under the Administrative Services Agreement exercising the degree of care, diligence and skill that a reasonably prudent Person would exercise in comparable circumstances.

ii. In recommending Primary Beneficiary Payees to the Trustee, the Electricity Distributor will seek to avoid actual, potential or perceived conflicts of interest.

e. **Expenses**

i. The Electricity Distributor will be eligible to receive reasonable compensation and reimbursement of its actual out-of-pocket costs associated with the performance of its duties under the Administrative Services Agreement, subject to compliance with the Province's Travel, Meal and Hospitality Expenses Directive. Such compensation amounts and reimbursement entitlements will be specified in the Administrative Services Agreement.

[Other matters you may consider dealing with here include compliance with privacy law/confidentiality/legal considerations and requirements; money laundering; preparation of accounting and tax statements by the Trust; compliance with regulatory laws; representation in product warranty claims (to the extent the Trust is sued in connection with a purchase of Eligible Measures); flowing money to suppliers of Eligible Measures; appropriate reps and indemnities from LDCs; specific reporting of cash and allocations; logistics of banking and cash flow mechanics and related record-keeping; production of information for Trustee to satisfy legal requirements applicable to the Trust (i.e., tax; record keeping); preparation of tax remittances for beneficiaries; preparation of reports for the Government and cooperation with other compliance by the Trust with the TPA; required communications to Primary Beneficiaries on behalf of the Trust (including to comply with applicable laws); preparation and submission of applications, etc., that may be contemplated by the [Project]; termination scenarios]

TRUSTEE REPLACEMENT ANNEX

1. The Advisory Committee shall consist of the following individuals:

   •

   •

   •

2. In the event any member of the Advisory Committee resigns or is unable to act, the remaining members may appoint a resident of Ontario as a replacement.

3. On or before •, 2017, the Advisory Committee shall identify six residents of Ontario who are willing to act as Trustees of the Affordability Fund Trust and who, collectively satisfy the following criteria:

   a) Demonstrate an understanding of the electricity sector including the electricity distribution sector;

   b) Have expertise in conservation and low income programs;

   c) It is expected that three of the identified individuals will be representatives from separate electricity distributors, two individuals will be representatives from separate social services agencies and one individual will be a government representative.

   d) It is expected that government representation will be non-controlling.

4. The Advisory Committee shall recommend that the existing Trustee appoint the individuals so identified to become replacement Trustees of the Affordability Fund Trust pursuant to section 5.7 of the Declaration.

5. If any of the persons recommended under paragraph 4 or under this paragraph are not accepted and appointed by the existing Trustee pursuant to section [5.7] of the Declaration, the Advisory Committee shall forthwith identify and recommend an alternative individual who is willing to act and who whose presence as a Trustee would result in the Trustees collectively satisfying the criteria in paragraph 2 above.

6. Upon the appointment of [number] trustees pursuant to section • of the Declaration, the Advisory Committee will be functus.

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Blakes Comments (March 15, 2017)

ONTARIO TRANSFER PAYMENT AGREEMENT

THE AGREEMENT, effective as of the • day of March, 2017 (the **"Effective Date"**)

B E T W E E N :

Her Majesty the Queen in right of Ontario
as represented by the Minister of Energy

(the "Province")

- and -

Computershare Trust Company of Canada, in its capacity as trustee of Affordability Fund Trust

(together with its successors and assigns, the "Recipient" and, together with the Province, the "Parties")

BACKGROUND

Computershare Trust Company of Canada is the original trustee of the Affordability Fund Trust.

The Province wishes to provide Funds to the Recipient to be held and distributed in accordance with the terms of the Declaration of Trust (defined below) and the Principles set forth in Annex A.

CONSIDERATION

In consideration of the mutual covenants and agreements contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is expressly acknowledged, the Parties agree as follows:

ENTIRE AGREEMENT

This agreement (as amended, restated, supplemented or otherwise modified from time to time, the **"Agreement"**), including:

Schedule "A" - General Terms and Conditions
Schedule "B" - Project Specific Information
Schedule "C" - Project - Certain Obligations of the Recipient
Schedule "D" - Budget
Schedule "E" - Payment Plan
Schedule "F" - Reporting
Annex "A" - Principles, and
any amending agreement entered into as provided for below,

constitutes the entire agreement between the Parties with respect to the subject matter contained in this Agreement and supersedes all prior oral or written representations and agreements.

COUNTERPARTS

The Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

AMENDING THE AGREEMENT

The Agreement may only be amended by a written agreement duly executed by the Parties.

ACKNOWLEDGEMENT

The Recipient:

(a) acknowledges that it has read and understands the provisions contained in the entire Agreement; and

(b) agrees to be bound by the terms and conditions contained in the entire Agreement.

IN WITNESS WHEREOF, the Parties have executed the Agreement on the dates set out below.

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO as represented by Minister of Energy

by:

_____ _____

Date Name: Serge Imbrogno

Title: Deputy Minister

Authorized Signing Officer

COMPUTERSHARE TRUST COMPANY OF CANADA, in its capacity as trustee of AFFORDABILITY FUND TRUST

by:

_____ _____

Date Name:

Title:

by:

_____ _____

Date Name:

Title:

I/We have authority to bind the Recipient.

SCHEDULE "A"
GENERAL TERMS AND CONDITIONS

1.0 INTERPRETATION AND DEFINITIONS

1.1 Interpretation. For the purposes of interpretation:

(a) words in the singular include the plural and vice-versa;

(b) words in one gender include all genders;

(c) the headings do not form part of the Agreement; they are for reference only and will not affect the interpretation of the Agreement;

(d) any reference to dollars or currency will be in Canadian dollars and currency;

(e) "include", "includes" and "including" denote that the subsequent list is not exhaustive; and

(f) where any reference is made in the Agreement to an act to be performed by or for or on behalf of the Affordability Fund Trust, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Trustee in its capacity as trustee of the Affordability Fund Trust, and, where any reference is made in the Agreement to an act to be performed by or for or on behalf of the Trustee, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Trustee in its capacity as trustee of the Affordability Fund Trust.

1.2 Definitions. In the Agreement, the following terms will have the following meanings:

"BPSAA" means the Broader Public Sector Accountability Act, 2010 (Ontario).

"**Beneficiary**" has the meaning given to such term in the Declaration of Trust.

"Budget" means the budget attached to the Agreement as Schedule "D".

"Business Day" means any working day, Monday to Friday inclusive, excluding statutory and other holidays, namely: New Year's Day; Family Day; Good Friday; Easter Monday; Victoria Day; Canada Day; Civic Holiday; Labour Day; Thanksgiving Day; Remembrance Day; Christmas Day; Boxing Day and any other day on which the Province has elected to be closed for business.

"**Declaration of Trust**" means the declaration of trust made as of March [•], 2017, under which the Affordability Fund Trust was established, as such declaration of trust may be amended, restated, supplemented or otherwise modified from time to time.

"Expiration Date" means the date on which this Agreement will expire and is the date set out in Schedule "B".

"Funds" means the money the Province provides to the Recipient pursuant to the Agreement.

"Maximum Funds" means the maximum amount of Funds that the Province will provide the Recipient under the Agreement, as set out in Schedule "B".

"Notice" means any communication given or required to be given pursuant to the Agreement.

"Party" means either the Province or the Recipient.

"**Person**" includes any individual, sole proprietorship, corporation, partnership, joint venture, association, society, club, board, chamber, joint-stock company, trust, trustee, unincorporated or incorporated organization or entity or government or any entity, agency or political subdivision thereof.

"Project" means the undertaking described in Schedule "C".

"PSSDA" means the *Public Sector Salary Disclosure Act, 1996* (Ontario).

"Reports" means the reports described in Schedule "F".

"**Trustee**" means Computershare Trust Company of Canada or any replacement trustee in its capacity as trustee of the Affordability Fund Trust.

2.0 REPRESENTATIONS, WARRANTIES AND COVENANTS

2.1 General. The Recipient represents, warrants and covenants that:

(a) The Trustee is the trustee of the Affordability Fund Trust; and

(b) The Affordability Fund Trust is, and will continue to be for the term of the Agreement, a trust existing under and governed by the laws of the Province of Ontario.

2.2 Execution of Agreement. The Recipient represents and warrants that it has:

(a) the full power and authority to enter into the Agreement; and

(b) taken all necessary actions to authorize the execution of the Agreement.

2.3 Governance. The Recipient represents, warrants and covenants that it has, and will maintain, in writing for the period during which the Agreement is in effect:

(a) decision-making mechanisms and procedures to enable the Recipient to manage Funds in accordance with the Declaration of Trust; and

(b) procedures to enable the preparation and delivery of all Reports required pursuant to Article 5.0.

2.4 Supporting Documentation. Upon request, the Recipient will provide the Province with proof of the matters referred to in this Article 2.0.

3.0 TERM OF THE AGREEMENT

3.1 Term. The term of the Agreement will commence on the Effective Date and will expire on the Expiration Date.

4.0 FUNDS AND CARRYING OUT THE PROJECT

4.1 Funds Provided. The Province will:

(a) provide the Recipient up to the Maximum Funds to be held and distributed in accordance with the terms of the Project and the Declaration of Trust;

(b) provide the Funds to the Recipient in accordance with the Payment Plan attached to the Agreement as Schedule "E"; and

(c) deposit the Funds into an account designated by the Recipient, provided that the account:

(i) resides at a Canadian financial institution; and

(ii) is in the name of the Recipient.

4.2 Limitation on Payment of Funds. Despite section 4.1, the Province is not obligated to provide any Funds to the Recipient until the Recipient provides the insurance certificate or other proof as the Province may request pursuant to [section 10.2].

4.3 Use of Funds and Project. The Recipient will use the Funds only for the purpose contemplated by the Project, the Declaration of Trust and the Principles set forth in Annex A.

4.4 Province's Role Limited to Providing Funds. For greater clarity, the Province's role under the Agreement is limited to providing Funds to the Recipient and the Province is not responsible for carrying out the terms of the Declaration of Trust.

4.5 Maximum Funds. The Recipient acknowledges that the Funds available to it pursuant to the Agreement will not exceed the Maximum Funds.

4.6 Funding, Not Procurement. For greater clarity, the Recipient acknowledges that:

(a) it is receiving funding from the Province for the Project and is not providing goods or services to the Province; and

(b) the funding the Province is providing under the Agreement is funding for the purposes of the PSSDA.

5.0 RECIPIENT'S ACQUISITION OF GOODS OR SERVICES, AND DISPOSAL OF ASSETS

5.1 Acquisition. If the Recipient acquires goods, services, or both with the Funds, it will do so through a process that promotes the best value for money.

6.0 CONFLICT OF INTEREST

6.1 No Conflict of Interest. The Recipient will carry out the Project and use the Funds without an actual, potential or perceived conflict of interest.

6.2 Conflict of Interest Includes. For the purposes of this Article, a conflict of interest includes any circumstances where:

(a) the Recipient; or
(b) any person who has the capacity to influence the Recipient's decisions,
has outside commitments, relationships or financial interests that could, or could be seen to, interfere with the Recipient's objective, unbiased and impartial judgment relating to the Project, the use of the Funds, or both.

6.3 Disclosure to Province. The Recipient will:

(a) disclose to the Province, without delay, any situation that a reasonable person would interpret as an actual, potential or perceived conflict of interest; and

7.0 REPORTING, ACCOUNTING AND REVIEW

7.1 Preparation and Submission. The Recipient will:

(a) submit to the Province at the address referred to in Schedule "B", all Reports in accordance with the timelines and content requirements set out in Schedule "F", or in a form as specified by the Province from time to time;

(b) submit to the Province at the address referred to in Schedule "B", any other reports as may be requested by the Province in accordance with the timelines and content requirements specified by the Province;

(c) ensure that all Reports and other reports are completed to the satisfaction of the Province; and

(d) ensure that all Reports and other reports are signed on behalf of the Recipient by an authorized signatory.

7.2 Record Maintenance. The Recipient will keep and maintain financial and other records necessary to permit it to satisfy its obligations under section 7.1 and to permit the Province to exercise its rights under section 7.3.

7.3 Inspection. The Province, its authorized representatives or an independent auditor identified by the Province may, at its own expense, upon twenty-four hours' Notice to the Recipient and during normal business hours, inspect the records of and information respecting the Recipient to confirm its compliance with the terms of this Agreement, including to ensure consistency with the purposes of the Project and regarding the Recipient's allocation and expenditure of the Funds and, for these purposes, the Province, its authorized representatives or an independent auditor identified by the Province may take one or more of the following actions:

(a) inspect and copy the records and documents referred to in section 7.2;

(b) keep any copies made pursuant to section 7.3(a); and

(c) conduct an audit or investigation of the Recipient in respect of the expenditure of the Funds to confirm that the funds have been used for the purposes intended, including a review of the Trust's processes to ensure that funds disbursed to LDCs were used for purposes intended..

7.4 Disclosure. To assist in respect of the rights set out in section 7.3 the Recipient will disclose any information requested by the Province, its authorized representatives or an independent auditor identified by the Province, and will do so in the form requested by the Province, its authorized representatives or an independent auditor identified by the Province, as the case may be.

7.5 No Control of Records. No provision of the Agreement will be construed so as to give the Province any control whatsoever over the Recipient's records.

7.6 Auditor General. For greater certainty, the Province's rights under this Article are in addition to and do not limit any rights provided to the Auditor General pursuant to section 9.1 of the *Auditor General Act* (Ontario).

8.0 COMMUNICATIONS REQUIREMENTS

8.1 Publication. The Recipient will indicate, in any of its Project-related publications, whether written, oral, or visual, that the views expressed in the publication are the views of the Recipient and do not necessarily reflect those of the Province.

9.0 FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY

9.1 **FIPPA.** The Recipient acknowledges that the Province is bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province in connection with the Project or otherwise in connection with the Agreement may be subject to disclosure in accordance with that Act.

10.0 EVENT OF DEFAULT, CORRECTIVE ACTION AND TERMINATION FOR DEFAULT

Commented [A1]: KPMG to comment on 'control' implications.

10.1 **Events of Default.** An Event of Default will occur if the Recipient breaches any representation, warranty, covenant or other term of this Agreement.

10.2 **Consequences of Events of Default and Corrective Action.** If an Event of Default occurs, the Province may, at any time, take one or more of the following actions:

(a) provide the Recipient with an opportunity to remedy the Event of Default;

(b) seek an order of specific performance including an order that the Recipient pursue its available remedies against third parties;

(c) recover any Funds remaining in the possession or under the control of the Recipient; and

(d) terminate the Agreement at any time, including immediately, without liability, penalty or costs to the Province upon giving Notice to the Recipient.

10.3 **Opportunity to Remedy.** If, in accordance with section 9.2(a), the Province provides the Recipient with an opportunity to remedy the Event of Default, the Province will provide Notice to the Recipient of:

(a) the particulars of the Event of Default; and

(b) the Notice Period.

10.4 **Recipient not Remedying.** If the Province has provided the Recipient with an opportunity to remedy the Event of Default pursuant to section 11.2(a), and:

(a) the Recipient does not remedy the Event of Default within the Notice Period;

(b) it becomes apparent to the Province that the Recipient cannot adequately remedy the Event of Default within the Notice Period; or

(c) the Recipient is not proceeding to remedy the Event of Default in a way that is satisfactory to the Province,

the Province may extend the Notice Period, or initiate any one or more of the actions provided for in section 11.2.

10.5 **When Termination Effective.** Termination under this Article will take effect as set out in the Notice.

11.0 REPAYMENT

11.1 **Debt Due.** If, pursuant to the Agreement: the Province demands the payment of any Funds from the Recipient pursuant to section 11.2 such Funds or other amount will be deemed to be a debt due and owing to the Province by the Recipient, and the Recipient will pay or return the amount to the Province immediately, unless the Province directs otherwise.

11.2 **Interest Rate.** The Province may charge the Recipient interest on any money owing by the Recipient at the then current interest rate charged by the Province of Ontario on accounts receivable.

11.3 **Payment of Money to Province.** The Recipient will pay any money owing to the Province by cheque payable to the "Ontario Minister of Finance" and delivered to the Province at the address referred to in **[Schedule "B"]**.

11.4 **Failure to Repay.** Without limiting the application of section 43 of the Financial Administration Act (Ontario), if the Recipient fails to repay any amount owing under the Agreement, Her Majesty the Queen in right of Ontario may deduct any unpaid amount from any money payable to the Recipient by Her Majesty the Queen in right of Ontario.

12.0 NOTICE

12.1 **Notice in Writing and Addressed.** Notice will be in writing and will be delivered by email, postage-prepaid mail, personal delivery or fax, and will be addressed to the Province and the Recipient respectively as set out in Schedule "B", or as either Party later designates to the other by Notice.

12.2 **Notice Given.** Notice will be deemed to have been given:

(a) in the case of postage-prepaid mail, five Business Days after the Notice is mailed; or

(b) in the case of email, personal delivery or fax, one Business Day after the Notice is delivered.

12.3 **Postal Disruption.** Despite section 13.2(a), in the event of a postal disruption:

(a) Notice by postage-prepaid mail will not be deemed to be received; and

(b) the Party giving Notice will provide Notice by email, personal delivery or by fax.

13.0 SEVERABILITY OF PROVISIONS

13.1 **Invalidity or Unenforceability of Any Provision.** The invalidity or unenforceability of any provision of the Agreement will not affect the validity or enforceability of any other provision of the Agreement. Any invalid or unenforceable provision will be deemed to be severed.

14.0 WAIVER

14.1 **Waivers in Writing.** If a Party fails to comply with any term of the Agreement, that Party may only rely on a waiver of the other Party if the other Party has provided a written waiver in accordance with the Notice provisions in Article 13.0. Any waiver must refer to a specific failure to comply and will not have the effect of waiving any subsequent failures to comply.

15.0 INDEPENDENT PARTIES

15.1 **Parties Independent.** The Recipient acknowledges that it is not an agent, joint venturer, partner or employee of the Province, and the Recipient will not represent itself in any way that might be taken by a reasonable person to suggest that it is, or take any actions that could establish or imply such a relationship.

16.0 ASSIGNMENT OF AGREEMENT OR FUNDS

16.1 **Agreement Binding.** All rights and obligations contained in the Agreement will extend to and be binding on the Parties' respective heirs, executors, administrators, successors and permitted assigns.

17.0 LIMITATION OF LIABILITY

17.1 This Agreement has been entered into by the Trustee solely in its capacity as trustee of the

Recipient and is not binding on the Trustee in any other capacity, whether in tort, contract or otherwise. **The Beneficiaries of the Recipient are not subject to any liability in respect of the Recipient.** Resort may not be had to, nor recourse or satisfaction be sought from, the private property of the Trustee, its directors, officers, employees, or agents, or the private property of any Beneficiary, and resort will be had solely to the property of the Recipient held in trust by the Trustee for the payment, performance or satisfaction of any liability or obligation of the Recipient or the Trustee under this Agreement.

18.0 GOVERNING LAW

18.1 Governing Law. The Agreement and the rights, obligations and relations of the Parties will be governed by and construed in accordance with the laws of the Province of Ontario and the applicable federal laws of Canada. Any actions or proceedings arising in connection with the Agreement will be conducted in the courts of Ontario, which will have exclusive jurisdiction over such proceedings.

19.0 FURTHER ASSURANCES

19.1 Agreement into Effect. The Recipient will provide such further assurances as the Province may request from time to time with respect to any matter to which the Agreement pertains, and will otherwise do or cause to be done all acts or things necessary to implement and carry into effect the terms and conditions of the Agreement to their full extent.

19.2 Declaration of Trust. The Trustee covenants that it shall not amend, restate or terminate the Declaration of Trust without obtaining the written consent of the Province in respect of same.

20.0 JOINT AND SEVERAL LIABILITY

20.1 Joint and Several Liability. Where the Recipient is comprised of more than one entity, all such entities will be jointly and severally liable to the Province for the fulfillment of the obligations of the Recipient under the Agreement.

21.0 RIGHTS AND REMEDIES CUMULATIVE

21.1 Rights and Remedies Cumulative. The rights and remedies of the Province under the Agreement are cumulative and are in addition to, and not in substitution for, any of its rights and remedies provided by law or in equity.

22.0 ACKNOWLEDGEMENT OF OTHER LEGISLATION AND DIRECTIVES

22.1 Recipient Acknowledges. The Recipient acknowledges that by receiving Funds it may become subject to legislation applicable to organizations that receive funding from the Government of Ontario, including the BPSAA, the PSSDA, and the *Auditor General Act* (Ontario).

23.0 SURVIVAL

23.1 Survival. The following Articles and sections, and all applicable cross-referenced sections and schedules, will continue in full force and effect for a period of seven years from the date of expiry or termination of the Agreement: Article 1.0 and any other applicable definitions, section, 4.5, section 7.1 (to the extent that the Recipient has not provided the Reports to the satisfaction of the Province), sections 7.2, 7.3, 7.4,7.5, 7.6, Article 8.0, Article 12.0, Article 14.0, Article 17.0, Article 20.0, Article 21.0. [NTD: References to be update/confirmed.]

- END OF GENERAL TERMS AND CONDITIONS -

SCHEDULE "B"

PROJECT SPECIFIC INFORMATION

Maximum Funds	$100 million
Expiration Date	Later of [April 30, 2019] and the Final Distribution Date (as defined in the Declaration of Trust)
Insurance	$2,000,000
Contact information for the purposes of Notice to the Province	**Attention: Usman Syed** **Position: Director** **Address: 77 Grenville St, Toronto, Ontario, M7A 2C1** **Fax: 416-325-6651** **Email: Usman.Syed@ontario.ca**
Contact information for the purposes of Notice to the Recipient	**Attention:** **Position:** **Address:** **Email:**
Contact information for the senior financial person in the Recipient organization (e.g., CFO, CAO) – to respond as required to requests from the Province related to the Agreement	**Attention:** **Position:** **Address:** **Email:**

Commented [A2]: To be refined

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SCHEDULE "C"

PROJECT

For the purposes of this Agreement, the "Project" is the distribution of the Funds in accordance with the Declaration of Trust.

The Project will be completed subject to the requirements of the Budget and in accordance with the Principles set forth in Annex A.

Notwithstanding anything else contained in the Agreement or the Declaration of Trust, until such time as each of the following conditions have been completed to the satisfaction of the Province (the "Requirements"), the Recipient shall not distribute any Funds to any Beneficiary.

1. Procedures shall be developed and implemented for (i) identifying trustees who are individuals resident in Ontario to replace Computershare Trust Company of Canada as the sole trustee of the Recipient, and (ii) the making of decisions by the trustees of the Recipient and more generally, for the governance of the Recipient.

2. Computershare Trust Company of Canada shall be replaced as the sole trustee of the Recipient with three or more individual trustees identified in accordance with the procedures developed under clause 1.

3. An administrative services agreement shall have been developed and entered into by the Recipient and the administrative services agent providing for the administrative services necessary for the operation of the Recipient and the execution of the Project.

4. Procedures will be developed and implemented under which Local Distribution Companies (as defined in the Declaration of Trust) will assist with (i) the identification of Beneficiaries, and (ii) the distribution of Funds to or for the benefit of such Beneficiaries.

5. Insurance requirement

Each of the Requirements may be accomplished by the Recipient entering into such agreements as may be necessary or expedient, including, without limitation, an amendment or amendment and restatement of the Declaration of Trust. The Province shall provide notice in writing to the Recipient when the Requirements have been completed to the satisfaction of the Province. Funds may be expended to pay the expenses of the Trustee in completing the Requirements.

Commented [A4]: We will look to refine this, but the intent is for Trustees to have insurance in place before funds are flowed.

Under the previous draft, if there was a lawsuit against a Trustee, expenses and any liabilities would be covered by the Trust (indemnification).

Instead, we are proposing that a line of insurance be established that a Trustee would access to cover lawsuit related expenses and liabilities.

The intention is to protect the Trust funds and for them to be not used for lawsuit related liabilities.

Commented [A5]: We will be refining this content further

SCHEDULE "D"

Budget

1. It is expected that the administrative expenses of the Fund, including any administrative expenses of the Recipient (or any administrative services agents or other agents retained by the Recipient), relating to the establishment of the Affordability Fund and satisfying the Requirements (as defined in Schedule "C") and any expenses related to the operation of the Trust and the execution of the Project (including any reimbursable expenses incurred by any Administrative Services Agent (as such terms are defined in the Declaration of Trust), will be no greater than 10 percent of the total Project budget.

2. Only actual (excluding HST) incurred expenditures of the Trust are eligible for reimbursement as administrative expenses.

3. It is expected any travel, meals and hospitality expenses by the Recipient will be consistent with the Province's Travel, Meal and Hospitality Expenses Directive. Entities receiving funding from the Recipient are also expected to adhere to the Province's Travel, Meal and Hospitality Expenses Directive and the Recipient is expected to request the same of such Entities. Alcohol and First-Class travel are not considered eligible claims and disbursements for hospitality, incidental or food expenses shall not be covered by the Funds, including the following:

    - Meals, snacks and beverages
    - Gratuities
    - Laundry or dry cleaning
    - Valet services
    - Dependent care
    - Home management
    - Personal telephone calls

4. It is expected that overhead expenses which are not directly related to the activities related to the Recipient in establishing and managing the Affordability Fund would not be reimbursed.

5. Any expenses that have been or may be reimbursed by other parties should not be reimbursed by the Fund.

6. In the event that the Recipient performs any procurements, it is expected that all procurements will reflect the principles of Ontario's Public Service Procurement Directive.

SCHEDULE "E"

PAYMENT PLAN

PAYMENT DATE	MAXIMUM FUNDS TO BE DISBURSED BY THE PROVINCE
Within 7 days of signing the Agreement	$ 100,000,000

SCHEDULE "F"

REPORTING

Quarterly Reports will be provided quarterly on the basis of the government's fiscal year starting at the execution of this Agreement and continuing until conclusion of the Agreement. Annual Reports will be provided annually on a fiscal basis starting at the execution of this Agreement and continuing until conclusion of the Agreement. Quarterly Reports and Annual Reports shall be submitted to the Province within one month following the end of the reporting period that they represent.

The Recipient shall prepare six (6) Quarterly Reports and two (2) Annual Report as outlined below. Reports shall explicitly demonstrate impact of Province's funding and address report detail requirements listed below.

NAME OF REPORT	DUE DATE
Quarterly Report #1	July 31, 2017
Quarterly Report #2	October 31, 2017
Quarterly Report #3	January 31, 2018
Annual Report #1	April 30, 2018
Quarterly Report #4	July 31, 2018
Quarterly Report #5	October 31, 2018
Quarterly Report #6	January 31, 2019
Annual Report #2	April 30, 2019

Requirements for Quarterly Reports

- The Recipient will provide Quarterly Reports which will include a report back on the Trustee-developed performance management criteria. Quarterly Report requirements will be determined from time to time by the Province, and initially will include:
    - Amounts disbursed by the Recipient in the previous quarter. It is expected that this information will be provided at the electricity distributor level.
    - Total Affordability Fund interest accrued to date
    - Key activities and achievements from the quarter being reported, including number of participant households per electricity distributor, average participant incentive cost per electricity distributor, and uptake of energy efficiency measures per electricity distributor
    - Any challenges or modifications required to the application, funding, or eligibility processes/rules
    - Key activities planned for the upcoming quarter

Requirements for Annual Report

- The Recipient will provide an Annual Report to the Province which will include a report back on the Trustee-developed performance management criteria. Annual Report requirements include:
    - A description of electricity distributor application process and the criteria used by the Recipient to manage funds.

- Identify and describe any challenges with achieving goals and proposed solutions, if applicable.
- Lesson learned.
- Electricity distributor and customer feedback
- Amounts disbursed by the Recipient in the previous year. It is expected that this information will be provided at the electricity distributor level.
- Key activities and achievements from the quarter being reported, including number of participant households per electricity distributor, average participant incentive cost per electricity distributor, and uptake of energy efficiency measures per electricity distributor
- Total Affordability Fund interest accrued to date

- As part of the Annual Report, the Recipient will also provide the Province with an audited financial statement for the previous year.

ANNEX A

Principles

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ONTARIO TRANSFER PAYMENT AGREEMENT

THE AGREEMENT, effective as of the ●● day of March, 2017 (the **"Effective Date"**)

B E T W E E N :

Her Majesty the Queen in right of Ontario
as represented by the Minister of Energy

(the "Province")

- and -

Computershare Trust Company of Canada, in its capacity as trustee of Affordability Fund Trust ~~and not in its personal capacity~~

(together with its successors and assigns, the "Recipient" and, together with the Province, the "Parties")

BACKGROUND

Computershare Trust Company of Canada is the original trustee of the ~~Recipient~~Affordability Fund Trust.

The Province wishes to provide Funds to the Recipient to be held and distributed in accordance with the terms of the Declaration of Trust (defined below~~).~~) and the Principles set forth in Annex A.

CONSIDERATION

In consideration of the mutual covenants and agreements contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is expressly acknowledged, the Parties agree as follows:

ENTIRE AGREEMENT

This agreement (as amended, restated, supplemented or otherwise modified from time to time, the **"Agreement"**), including:

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Schedule “A” - General Terms and Conditions
Schedule “B” - Project Specific Information
Schedule “C” - Project - Certain Obligations of the Recipient
Schedule “D” - Budget
Schedule “E” - Payment Plan
Schedule “F” - Reporting~~, and~~
Annex “A” - Principles, and
any amending agreement entered into as provided for below,

constitutes the entire agreement between the Parties with respect to the subject matter contained in this Agreement and supersedes all prior oral or written representations and agreements.

COUNTERPARTS

The Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

AMENDING THE AGREEMENT

The Agreement may only be amended by a written agreement duly executed by the Parties.

ACKNOWLEDGEMENT

The Recipient:

(a) acknowledges that it has read and understands the provisions contained in the entire Agreement; and

(b) agrees to be bound by the terms and conditions contained in the entire Agreement.

IN WITNESS WHEREOF, the Parties have executed the Agreement on the dates set out below.

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO as represented by Minister of Energy

~~_____~~by:

_____
Date

_____
Name: ~~Segre~~Serge Imbrogno

~~_____~~Title: Deputy Minister

Authorized Signing Officer

COMPUTERSHARE TRUST COMPANY OF CANADA, in its capacity as trustee of AFFORDABILITY FUND TRUST

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by:

_____ _____

Date Name:

Title:

by:

_____ _____

Date Name:

Title:

I/We have authority to bind the Recipient.

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SCHEDULE "A"
GENERAL TERMS AND CONDITIONS

1.0 INTERPRETATION AND DEFINITIONS

1.1 Interpretation. For the purposes of interpretation:

(a) words in the singular include the plural and vice-versa;

(b) words in one gender include all genders;

(c) the headings do not form part of the Agreement; they are for reference only and will not affect the interpretation of the Agreement;

(d) any reference to dollars or currency will be in Canadian dollars and currency;

(e) "include", "includes" and "including" denote that the subsequent list is not exhaustive; and

(f) where any reference is made in the Agreement to an act to be performed by or for or on behalf of the ~~Recipient~~Affordability Fund Trust, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of ~~Computershare Trust Company of Canada~~the Trustee in its capacity as trustee of the ~~Recipient~~Affordability Fund Trust, and, where any reference is made in the Agreement to an act to be performed by or for or on behalf of ~~Computershare Trust Company of Canada~~the Trustee, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of ~~Computershare Trust Company of Canada~~the Trustee in its capacity as trustee of the ~~Recipient~~Affordability Fund Trust.

1.2 Definitions. In the Agreement, the following terms will have the following meanings:

"BPSAA" means the Broader Public Sector Accountability Act, 2010 (Ontario).

"**Beneficiary**" has the meaning given to such term in the Declaration of Trust.

"Budget" means the budget attached to the Agreement as Schedule "D".

"Business Day" means any working day, Monday to Friday inclusive, excluding statutory and other holidays, namely: New Year's Day; Family Day; Good Friday; Easter Monday; Victoria Day; Canada Day; Civic Holiday; Labour Day; Thanksgiving Day; Remembrance Day; Christmas Day; Boxing Day and any other day on which the Province has elected to be closed for business.

"**Declaration of Trust**" means the declaration of trust made as of March ~~[●],~~[●], 2017, under which the ~~Recipient~~Affordability Fund Trust was established, as such declaration of trust may be amended, restated, supplemented or otherwise modified from time to time.

"Expiration Date" means the date on which this Agreement will expire and is the date set out in Schedule "B".

"Funds" means the money the Province provides to the Recipient pursuant to the Agreement.

"Maximum Funds" means the maximum amount of Funds that the Province will provide the Recipient under the Agreement, as set out in Schedule "B".

"Notice" means any communication given or required to be given pursuant to the Agreement.

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"Party" means either the Province or the Recipient.

"**Person**" includes any individual, sole proprietorship, corporation, partnership, joint venture, association, society, club, board, chamber, joint-stock company, trust, trustee, unincorporated or incorporated organization or entity or government or any entity, agency or political subdivision thereof.

"Project" means the undertaking described in Schedule "C".

"PSSDA" means the *Public Sector Salary Disclosure Act, 1996* (Ontario).

"Reports" means the reports described in Schedule "F".

"**Trustee**" means Computershare Trust Company of Canada or any replacement trustee in its capacity as trustee of the ~~Recipient~~Affordability Fund Trust.

2.0 REPRESENTATIONS, WARRANTIES AND COVENANTS

2.1 General. The Recipient represents, warrants and covenants that:

(a) The Trustee is the trustee of the ~~Recipient~~Affordability Fund Trust; and

(b) The ~~Recipient~~Affordability Fund Trust is, and will continue to be for the term of the Agreement, a trust existing under and governed by the laws of the Province of Ontario.

2.2 Execution of Agreement. The Recipient represents and warrants that it has:

(a) the full power and authority to enter into the Agreement; and

(b) taken all necessary actions to authorize the execution of the Agreement.

2.3 Governance. The Recipient represents, warrants and covenants that it has, and will maintain, in writing for the period during which the Agreement is in effect:

(a) decision-making mechanisms and procedures to enable the Recipient to manage Funds in accordance with the Declaration of Trust; and

(b) procedures to enable the preparation and delivery of all Reports required pursuant to Article 5.0~~; and~~.

2.4 Supporting Documentation. Upon request, the Recipient will provide the Province with proof of the matters referred to in this Article 2.0.

3.0 TERM OF THE AGREEMENT

3.1 Term. The term of the Agreement will commence on the Effective Date and will expire on the Expiration Date.

4.0 FUNDS AND CARRYING OUT THE PROJECT

4.1 Funds Provided. The Province will:

(a) provide the Recipient up to the Maximum Funds to be held and distributed in accordance with the terms of the Project and the Declaration of Trust;

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(b) provide the Funds to the Recipient in accordance with the Payment Plan attached to the Agreement as Schedule "E"; and

(c) deposit the Funds into an account designated by the Recipient, provided that the account:

(i) resides at a Canadian financial institution; and

(ii) is in the name of the Recipient.

4.2 Limitation on Payment of Funds. Despite section 4.1, the Province is not obligated to provide any Funds to the Recipient until the Recipient provides the insurance certificate or other proof as the Province may request pursuant to [section ~~8~~10.2~~];~~].

4.3 Use of Funds and Project. The Recipient will use the Funds only for the purpose contemplated by the Project ~~and~~, the Declaration of Trust and the Principles set forth in Annex A.

4.4 Province's Role Limited to Providing Funds. For greater clarity, the Province's role under the Agreement is limited to providing Funds to the Recipient and the Province is not responsible for carrying out the terms of the Declaration of Trust.

4.5 Maximum Funds. The Recipient acknowledges that the Funds available to it pursuant to the Agreement will not exceed the Maximum Funds.

4.6 Funding, Not Procurement. For greater clarity, the Recipient acknowledges that:

(a) it is receiving funding from the Province for the Project and is not providing goods or services to the Province; and

(b) the funding the Province is providing under the Agreement is funding for the purposes of the PSSDA.

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1.0 RECIPIENT'S ACQUISITION OF GOODS OR SERVICES, AND DISPOSAL OF ASSETS

1.1 Acquisition. If the Recipient acquires goods, services, or both with the Funds, it will do so through a process that promotes the best value for money.

2.0 CONFLICT OF INTEREST

2.1 No Conflict of Interest. The Recipient will carry out the Project and use the Funds without an actual, potential or perceived conflict of interest.

2.2 Conflict of Interest Includes. For the purposes of this Article, a conflict of interest includes any circumstances where:

(a) the Recipient; or
(b) any person who has the capacity to influence the Recipient's decisions,
has outside commitments, relationships or financial interests that could, or could be seen to, interfere with the Recipient's objective, unbiased and impartial judgment relating to the Project, the use of the Funds, or both.

2.3 Disclosure to Province. The Recipient will:

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(a) disclose to the Province, without delay, any situation that a reasonable person would interpret as an actual, potential or perceived conflict of interest; and

~~5.0~~3.0 REPORTING, ACCOUNTING AND REVIEW

~~5.1~~3.1 Preparation and Submission. The Recipient will:

(a) submit to the Province at the address referred to in Schedule "B", all Reports in accordance with the timelines and content requirements set out in Schedule "F", or in a form as specified by the Province from time to time;

(b) submit to the Province at the address referred to in Schedule "B", any other reports as may be requested by the Province in accordance with the timelines and content requirements specified by the Province;

(c) ensure that all Reports and other reports are completed to the satisfaction of the Province; and

(d) ensure that all Reports and other reports are signed on behalf of the Recipient by an authorized ~~signing officer~~signatory.

~~1.0~~ Record Maintenance. The Recipient will keep and maintain~~:~~

~~(c) all~~ financial and other records ~~(including invoices) relating~~necessary to ~~the Funds or otherwise~~permit it to ~~the Project in a manner consistent with generally accepted accounting principles; and~~

~~(d)~~**3.2** ~~all non-financial documents~~satisfy its obligations under section 7.1 and ~~records relating~~ to permit the ~~Funds or otherwise~~Province to ~~the Project~~exercise its rights under section 7.3.

~~5.3~~3.3 Inspection. The Province, its authorized representatives or an independent auditor identified by the Province may, at its own expense, upon twenty-four hours' Notice to the Recipient and during normal business hours, ~~review~~inspect the records of and information respecting the Recipient to confirm its compliance with the terms of this Agreement, including to ensure consistency with the purposes of the Project and regarding the Recipient's allocation and expenditure of the Funds and, for these purposes, the Province, its authorized representatives or an independent auditor identified by the Province may take one or more of the following actions:

(a) inspect and copy the records and documents referred to in section ~~5~~7.2;

(b) keep any copies made pursuant to section ~~5~~7.3(a); and

(c) conduct an audit or investigation of the Recipient in respect of the expenditure of the Funds~~.~~ to confirm that the funds have been used for the purposes intended, including a review of the Trust's processes to ensure that funds disbursed to LDCs were used for purposes intended..

~~5.4~~3.4 Disclosure. To assist in respect of the rights set out in section ~~5.3,~~7.3 the Recipient will disclose any information requested by the Province, its authorized representatives or an independent auditor identified by the Province, and will do so in the form requested by the Province, its

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authorized representatives or an independent auditor identified by the Province, as the case may be.

~~5.5~~3.5 **No Control of Records.** No provision of the Agreement will be construed so as to give the Province any control whatsoever over the Recipient's records.

~~5.6~~3.6 **Auditor General.** For greater certainty, the Province's rights under this Article are in addition to and do not limit any rights provided to the Auditor General pursuant to section 9.1 of the *Auditor General Act* (Ontario).

~~6.0~~4.0 **COMMUNICATIONS REQUIREMENTS**

~~6.1~~4.1 **Publication.** The Recipient will indicate, in any of its Project-related publications, whether written, oral, or visual, that the views expressed in the publication are the views of the Recipient and do not necessarily reflect those of the Province.

~~7.0~~5.0 **FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY**

~~7.1~~5.1 **FIPPA.** The Recipient acknowledges that the Province is bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province in connection with the Project or otherwise in connection with the Agreement may be subject to disclosure in accordance with that Act.

~~8.0 [INSURANCE]~~

~~8.1 [Recipient's Insurance. The Recipient represents and warrants that it has, and will maintain for the term of the Agreement, at its own cost and expense, with insurers having a secure A.M. Best rating of B+ or greater, or the equivalent, all the necessary and appropriate insurance that a prudent person that is a trust similar to the Recipient would maintain, including commercial general liability insurance on an occurrence basis for third party bodily injury, personal injury and property damage, to an inclusive limit of not less than the amount set out in Schedule "B" per occurrence. The policy will include the following:~~

~~(a) the Indemnified Parties as additional insureds with respect to liability arising in the course of performance of the Recipient's obligations under, or otherwise in connection with, the Agreement;~~

~~(b) a cross-liability clause;~~

~~(c) contractual liability coverage; and~~

~~(d) a 30 day written notice of cancellation.~~

~~8.2 Proof of Insurance. The Recipient will provide the Province with certificates of insurance, or other proof as may be requested by the Province, that confirms the insurance coverage as provided for in section 8.1. Upon the request of the Province, the Recipient will make available to the Province a copy of each insurance policy.][NTD: what risks are to be insured?]~~

6.0 EVENT OF DEFAULT, CORRECTIVE ACTION AND TERMINATION FOR DEFAULT

6.1 Events of Default. An Event of Default will occur if the Recipient breaches any representation, warranty, covenant or other term of this Agreement.

6.2 Consequences of Events of Default and Corrective Action. If an Event of Default occurs, the Province may, at any time, take one or more of the following actions:

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(a) provide the Recipient with an opportunity to remedy the Event of Default;

(b) seek an order of specific performance including an order that the Recipient pursue its available remedies against third parties;

(c) recover any Funds remaining in the possession or under the control of the Recipient; and

(d) terminate the Agreement at any time, including immediately, without liability, penalty or costs to the Province upon giving Notice to the Recipient.

6.3 Opportunity to Remedy. If, in accordance with section 9.2(a), the Province provides the Recipient with an opportunity to remedy the Event of Default, the Province will provide Notice to the Recipient of:

(a) the particulars of the Event of Default; and

(b) the Notice Period.

6.4 Recipient not Remedying. If the Province has provided the Recipient with an opportunity to remedy the Event of Default pursuant to section 11.2(a), and:

(a) the Recipient does not remedy the Event of Default within the Notice Period;

(b) it becomes apparent to the Province that the Recipient cannot adequately remedy the Event of Default within the Notice Period; or

(c) the Recipient is not proceeding to remedy the Event of Default in a way that is satisfactory to the Province,

the Province may extend the Notice Period, or initiate any one or more of the actions provided for in section 11.2.

6.5 When Termination Effective. Termination under this Article will take effect as set out in the Notice.

7.0 REPAYMENT

7.1 Debt Due. If, pursuant to the Agreement: the Province demands the payment of any Funds from the Recipient pursuant to section 11.2 such Funds or other amount will be deemed to be a debt due and owing to the Province by the Recipient, and the Recipient will pay or return the amount to the Province immediately, unless the Province directs otherwise.

7.2 Interest Rate. The Province may charge the Recipient interest on any money owing by the Recipient at the then current interest rate charged by the Province of Ontario on accounts receivable.

7.3 Payment of Money to Province. The Recipient will pay any money owing to the Province by cheque payable to the "Ontario Minister of Finance" and delivered to the Province at the address referred to in **[Schedule "B"]**.

7.4 Failure to Repay. Without limiting the application of section 43 of the Financial Administration Act (Ontario), if the Recipient fails to repay any amount owing under the Agreement, Her Majesty the Queen in right of Ontario may deduct any unpaid amount from any money payable to the Recipient by Her Majesty the Queen in right of Ontario.

~~9.0~~8.0 NOTICE

~~9.1~~8.1 Notice in Writing and Addressed. Notice will be in writing and will be delivered by email,

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postage-prepaid mail, personal delivery or fax, and will be addressed to the Province and the Recipient respectively as set out in Schedule "B", or as either Party later designates to the other by Notice.

~~9.2~~8.2 **Notice Given.** Notice will be deemed to have been given:

(a) in the case of postage-prepaid mail, five Business Days after the Notice is mailed; or

(b) in the case of email, personal delivery or fax, one Business Day after the Notice is delivered.

~~9.3~~8.3 **Postal Disruption.** Despite section ~~9~~13.2(a), in the event of a postal disruption:

(a) Notice by postage-prepaid mail will not be deemed to be received; and

(b) the Party giving Notice will provide Notice by email, personal delivery or by fax.

~~10.0~~9.0 **SEVERABILITY OF PROVISIONS**

~~10.1~~9.1 **Invalidity or Unenforceability of Any Provision.** The invalidity or unenforceability of any provision of the Agreement will not affect the validity or enforceability of any other provision of the Agreement. Any invalid or unenforceable provision will be deemed to be severed.

~~11.0~~10.0 **WAIVER**

~~11.1~~10.1 **Waivers in Writing.** If a Party fails to comply with any term of the Agreement, that Party may only rely on a waiver of the other Party if the other Party has provided a written waiver in accordance with the Notice provisions in Article ~~9~~13.0. Any waiver must refer to a specific failure to comply and will not have the effect of waiving any subsequent failures to comply.

~~12.0~~11.0 **INDEPENDENT PARTIES**

~~12.1~~11.1 **Parties Independent.** The Recipient acknowledges that it is not an agent, joint venturer, partner or employee of the Province, and the Recipient will not represent itself in any way that might be taken by a reasonable person to suggest that it is, or take any actions that could establish or imply such a relationship.

~~13.0~~12.0 **ASSIGNMENT OF AGREEMENT OR FUNDS**

~~13.1~~12.1 **Agreement Binding.** All rights and obligations contained in the Agreement will extend to and be binding on the Parties' respective heirs, executors, administrators, successors and permitted assigns.

~~14.0~~13.0 **LIMITATION OF LIABILITY**

~~14.1~~13.1 This Agreement has been entered into by the Trustee solely in its capacity as trustee of the Recipient and is not binding on the Trustee in any other capacity~~.~~, whether in tort, contract or otherwise. **The Beneficiaries of the Recipient are not subject to any liability in respect of the Recipient**~~, whether in tort, contract or otherwise.~~ Resort may not be had to, nor recourse or satisfaction be sought from, the private property of the Trustee, its directors, officers, employees, or agents, or the private property of any Beneficiary, and resort will be had solely to the property of the Recipient held in trust by the Trustee for the payment, performance or satisfaction of any liability or obligation of the Recipient or the Trustee under this Agreement.

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~~15.0~~14.0 GOVERNING LAW

~~15.1~~14.1 Governing Law. The Agreement and the rights, obligations and relations of the Parties will be governed by and construed in accordance with the laws of the Province of Ontario and the applicable federal laws of Canada. Any actions or proceedings arising in connection with the Agreement will be conducted in the courts of Ontario, which will have exclusive jurisdiction over such proceedings.

~~16.0~~15.0 FURTHER ASSURANCES

~~16.1~~15.1 Agreement into Effect. The Recipient will provide such further assurances as the Province may request from time to time with respect to any matter to which the Agreement pertains, and will otherwise do or cause to be done all acts or things necessary to implement and carry into effect the terms and conditions of the Agreement to their full extent.

15.2 Declaration of Trust. The Trustee covenants that it shall not amend, restate or terminate the Declaration of Trust without obtaining the written consent of the Province in respect of same.

16.0 JOINT AND SEVERAL LIABILITY

16.1 Joint and Several Liability. Where the Recipient is comprised of more than one entity, all such entities will be jointly and severally liable to the Province for the fulfillment of the obligations of the Recipient under the Agreement.

17.0 RIGHTS AND REMEDIES CUMULATIVE

17.1 Rights and Remedies Cumulative. The rights and remedies of the Province under the Agreement are cumulative and are in addition to, and not in substitution for, any of its rights and remedies provided by law or in equity.

18.0 ACKNOWLEDGEMENT OF OTHER LEGISLATION AND DIRECTIVES

18.1 Recipient Acknowledges. The Recipient acknowledges that by receiving Funds it may become subject to legislation applicable to organizations that receive funding from the Government of Ontario, including the BPSAA, the PSSDA, and the *Auditor General Act* (Ontario).

19.0 SURVIVAL

19.1 Survival. The following Articles and sections, and all applicable cross-referenced sections and schedules, will continue in full force and effect for a period of seven years from the date of expiry or termination of the Agreement: Article ~~1.0~~1.0 and any other applicable definitions, section, ~~4.5~~4.5, section ~~5.1~~7.1 (to the extent that the Recipient has not provided the Reports to the satisfaction of the Province), sections ~~5.2, 5.3, 5.4, 5.5, 5.6, Article 6.0, [Article 8.0], Article 10.0, Article 11.0, Article 12.0, Article 15.0, Article 18.0, Article 19.0.~~7.2, 7.3, 7.4,7.5, 7.6, Article 8.0, Article 12.0, Article 14.0, Article 17.0, Article 20.0, Article 21.0. [NTD: References to be update/confirmed.]

- END OF GENERAL TERMS AND CONDITIONS -

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SCHEDULE "B"

PROJECT SPECIFIC INFORMATION

Maximum Funds	~~$200,000,000~~ $100 million
Expiration Date	~~April 30, 2019~~Later of [April 30, 2019] and the Final Distribution Date (as defined in the Declaration of Trust)
Insurance	[~~$~~$2,000,000]
Contact information for the purposes of Notice to the Province	**Attention: Usman Syed** **Position: Director** **Address: 77 Grenville St, Toronto, Ontario, M7A 2C1** **Fax: 416-325-6651** **Email: Usman.Syed@ontario.ca**
Contact information for the purposes of Notice to the Recipient	**Attention:** **Position:** **Address:** **Email:**
Contact information for the senior financial person in the Recipient organization (e.g., CFO, CAO) – to respond as required to requests from the Province related to the Agreement	**Attention:** **Position:** **Address:** **Email:**

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SCHEDULE "C"

PROJECT

For the purposes of this Agreement, the "Project" is the ~~implementation of the Requirements (as defined below) and, after implementation of the Requirements, the~~ distribution of the Funds in accordance with the Declaration of Trust.

The Project will be completed subject to the requirements of the Budget and in accordance with the Principles set forth in Annex A.

Notwithstanding anything else contained in the Agreement or the Declaration of Trust, until such time as each of the following conditions have been completed to the satisfaction of the Province (the "Requirements"), the Recipient shall not distribute any Funds to any Beneficiary.

1. Procedures shall be developed and implemented for (i) identifying trustees who are individuals resident in Ontario to replace Computershare Trust Company of Canada as the sole trustee of the Recipient, and (ii) the making of decisions by the trustees of the Recipient and more generally, for the governance of the Recipient.

~~2.~~1. Computershare Trust Company of Canada shall be replaced as the sole trustee of the Recipient with three or more individual trustees identified in accordance with the procedures developed under clause 1.

~~3.~~1. An administrative services agreement ~~with Hydro One Limited or another Person~~ shall have been developed and entered into by the Recipient and the administrative services agent providing for the administrative services necessary for the operation of the Recipient and the execution of the Project.

~~4.~~1. Procedures will be developed and implemented under which Local Distribution Companies (as defined in the Declaration of Trust) will assist with (i) the identification of Beneficiaries, and (ii) the distribution of Funds to or for the benefit of such Beneficiaries.

1. Insurance requirement

Each of the Requirements may be accomplished by the Recipient entering into such agreements as may be necessary or expedient, including, without limitation, an amendment or amendment and restatement of the Declaration of Trust. The Province shall provide notice in writing to the Recipient when the Requirements have been completed to the satisfaction of the Province. Funds may be expended to pay the expenses of the Trustee in completing the Requirements.

~~The Project will be completed subject to the requirements of the Budget.~~

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Commented [A4]: We will look to refine this, but the intent is for Trustees to have insurance in place before funds are flowed.

Under the previous draft, if there was a lawsuit against a Trustee, expenses and any liabilities would be covered by the Trust (indemnification).

Instead, we are proposing that a line of insurance be established that a Trustee would access to cover lawsuit related expenses and liabilities.

The intention is to protect the Trust funds and for them to be not used for lawsuit related liabilities.

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SCHEDULE "D"

Budget

1. 1. It is expected that the administrative expenses of the Fund, including any administrative expenses of the Recipient (or any administrative services agents or other agents retained by the Recipient), relating to the establishment of the Affordability Fund and satisfying the Requirements (as defined in Schedule "C") and any expenses related to delivery of the program by an electricity distributor to its eligible customers,the operation of the Trust and the execution of the Project (including any reimbursable expenses incurred by any Administrative Services Agent (as such terms are defined in the Declaration of Trust), will be no greater than 10 percent of the total Project budget.

2. 2. Only actual (excluding HST) incurred expenditures of the Trust are eligible for reimbursement as administrative expenses.

3. 3. It is expected any travel, meals and hospitality expenses by the Recipient should adhere towill be consistent with the Province's Travel, Meal and Hospitality Expenses Directive. Entities receiving funding from the Recipient are also expected to adhere to the Province's Travel, Meal and Hospitality Expenses Directive. and the Recipient is expected to request the same of such Entities. Alcohol and First-Class travel are not considered eligible claims and disbursements for hospitality, incidental or food expenses shall not be covered by the Funds, including the following:

- Meals, snacks and beverages
- Gratuities
- Laundry or dry cleaning
- Valet services
- Dependent care
- Home management
- Personal telephone calls

4. Overhead4. It is expected that overhead expenses thatwhich are not directly related to the activities related to the Recipient in establishing and establishment of managing the Affordability Fund shouldwould not be reimbursed.

5. 5. Any expenses that have been or may be reimbursed by other parties should not be reimbursed by the Fund.

6. 6. In the event of that the Recipient performs any procurements, it is expected that all procurements are aligned with Ontariowill reflect the principles of Ontario's Public Service Procurement Directive.

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SCHEDULE "E"

PAYMENT PLAN

PAYMENT DATE	MAXIMUM FUNDS TO BE DISBURSED BY THE PROVINCE
Within 7 days of signing the Agreement	$ ~~X~~100,000,000

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SCHEDULE "F"

REPORTING

Quarterly Reports will be provided quarterly on the basis of the government's fiscal year starting at the execution of this Agreement and continuing until conclusion of the Agreement. Annual Reports will be provided annually on a fiscal basis starting at the execution of this Agreement and continuing until conclusion of the Agreement. Quarterly Reports and Annual Reports shall be submitted to the Province within one month following the end of the reporting period that they represent.

The Recipient shall prepare six (6) Quarterly Reports and two (2) Annual Report as outlined below. Reports shall explicitly demonstrate impact of Province's funding and address report detail requirements listed below.

NAME OF REPORT	DUE DATE
Quarterly Report #1	July 31, 2017
Quarterly Report #2	October 31, 2017
Quarterly Report #3	January 31, 2018
Annual Report #1	April 30, 2018
Quarterly Report #4	July 31, 2018
Quarterly Report #5	October 31, 2018
Quarterly Report #6	January 31, 2019
Annual Report #2	April 30, 2019

Requirements for Quarterly Reports

- The Recipient will provide Quarterly Reports which will include a report back on the Trustee-developed performance management criteria. Quarterly Report requirements ~~include:~~will be determined from time to time by the Province, and initially will include:

    - Amounts disbursed by the Recipient in the previous quarter. It is expected that this information will be provided at the electricity distributor level.
    - Total Affordability Fund interest accrued to date
    - Key activities and achievements from the quarter being reported, including number of participant households per electricity distributor, average participant incentive cost per electricity distributor, and uptake of energy efficiency measures per electricity distributor
    - Any challenges or modifications required to the application, funding, or eligibility processes/rules
    - Key activities planned for the upcoming quarter

Requirements for Annual Report

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- The Recipient will provide an Annual Report to the Province which will include a report back on the Trustee-developed performance management criteria. Annual Report requirements include:

    - A description of electricity distributor application process and the criteria used by the Recipient to manage funds.
    - Identify and describe any challenges with achieving goals and proposed solutions, if applicable.
    - Lesson learned.
    - Electricity distributor and customer feedback
    - Amounts disbursed by the Recipient in the previous year. It is expected that this information will be provided at the electricity distributor level.
    - Key activities and achievements from the quarter being reported, including number of participant households per electricity distributor, average participant incentive cost per electricity distributor, and uptake of energy efficiency measures per electricity distributor
    - Total Affordability Fund interest accrued to date

- As part of the Annual Report, the Recipient will also provide the Province with an audited financial statement for the previous year.

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ANNEX A

Principles

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MOE/Blakes Comments: March 16, 2017

DECLARATION OF TRUST

Made as of March •, 2017

by

COMPUTERSHARE TRUST COMPANY OF CANADA

establishing

AFFORDABILITY FUND TRUST

TABLE OF CONTENTS

Page

[RELABEL HEADINGS AND REGENERATE TABLE OF CONTENTS]

DECLARATION OF TRUST

This Declaration of Trust is made as of March •, 2017, by Computershare Trust Company of Canada, a trust company established under the laws of Canada and licensed to carry on business as a trust company in each of the provinces and territories of Canada (the "**Trustee**").

WHEREAS the Trustee wishes to establish a trust to acquire, hold, manage, apply and dispose of certain property for the benefit of certain Beneficiaries as herein described.

NOW THEREFORE the Trustee hereby declares that it holds in trust as trustee the sum of ONE HUNDRED DOLLARS ($100) contributed by it on this date and all property of every type and description which it may hereafter acquire or hold in its capacity as trustee of the Trust and all income therefrom and proceeds thereof, to hold, manage,apply and dispose of the same on and subject to the provisions contained in this Declaration.

SECTION 1
INTERPRETATION

1.1 Definitions

In this Declaration:

(a) "***Administrative Services Agent***" means each agent, which may include any Electricity Distributor, appointed from time to time under an Administrative Services Agreement, and its successors and permitted assigns solely in such capacity.

(b) "***Administrative Services Agreement***" means each agreement entered into from time to time by the Trust and one or more Administrative Services Agents or other Persons, in furtherance of the purpose of the Trust described in section 2.1 of this Declaration, under which the Administrative Services Agent will agree to provide specified administrative and other services to and on behalf of the Trustee (including, following the Original Trustee Replacement Date, the Permitted Delegations Annex), as such agreement may be amended, supplemented, restated, renewed or replaced from time to time.

(c) "***Assets***" means, collectively, the following:

(i) the $100 Canadian referred to above;

(ii) all other property which is now or which at any time in the future may be issued, assigned, transferred, provided, donated, gifted and contributed to the Trustee (including pursuant to the Transfer Payment Agreement) to be held in trust pursuant to this Declaration (and which the Trustee is willing to accept and hold);

(iii) all property which may at any time be substituted therefor;

(iv) all capital depreciations to or acquisitions by the Trust;

(v) all income of the Trust; and

(vi) all proceeds of disposition of any of (i) through (v) above,

but excludes anything paid out or distributed (whether out of income or capital) in the normal course of administration or pursuant to the provisions of this Declaration.

(d) "***Beneficiary***" means each Primary Beneficiary and each Residual Beneficiary, where applicable.

(e) "***Board of Trustees***" means the group of trustees appointed and acting in such capacity as contemplated by Section •, and as of the Original Trustee Replacement Date means the individual trustees appointed by the Original Trustee pursuant to Section 5.7 on the basis described in the Trustee Replacement Annex.

(f) "***Declaration***" means this Declaration of Trust as amended, restated, supplemented or otherwise modified from time to time, including each of the Annexes hereto.

(g) "***Electricity Distributor***" means, in respect of a designated service area or region in Ontario, the distributer of electricity to residences located in such area or region.

(h) "***Electricity Invoice***" means an invoice issued by an Electricity Distributor in respect of electricity charges and related services and amounts incurred in respect of a residence located in the Electricity Distributor's designated service area or region of Ontario.

(i) "***Eligible Investments***" means [NTD: Describe deposit instruments or accounts issued or established by one or more Schedule I Canadian chartered banks].

(j) "***Eligible Measures***" means electricity efficiency and/or conservation measures determined by the Trustee from time to time, on the basis contemplated in the Principles Annex and determined in the manner specified and having regard to the Permitted Delegations Annex.

(k) "***Final Distribution Date***" means the earlier of (i) the date specified as such or determined pursuant to the Transfer Payment Agreement[1] and (ii) the later of (x) the date (if any) on which the Trustee determines that no further distributions are likely to be made to any Primary Beneficiary and (y) •, 20[23].

(l) "***HAP Eligible Person***" means an "Eligible Person" as defined in Section 3.1 of the document entitled "Conservation First Framework LDC Took Kit" published by Independent Electricity System Operator and designated as Final v3.0 – March 11, 2016, as amended or replaced by any applicable act of the Legislature or Ontario.

(m) "***Minister of Energy***" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of the *Ministry of Energy Act, 2011* under the *Executive Council Act*.

[1] NTD: The TPA will provide that on an Event of Default the remaining Assets will be paid over to the Government, on the basis that the Government's transfer thereunder is subject to such a reservation in circumstances of non-compliance. The TPA should also specify that the Trust will thereafter be wound up, which will tie in to this definition by way of the date so specified in the TPA. Accounting considerations to be discussed.

(n) "***Original Trustee***" means Computershare Trust Company of Canada and its successors and assigns, acting in its capacity as trustee hereunder.

(o) "***Original Trustee Replacement Date***" has the meaning specified in Section 5.7, being the date on which the Original Trustee is replaced as trustee under this Declaration as contemplated under Section 5.7.

(p) "***Person***" includes any individual, sole proprietorship, corporation, partnership, joint venture, association, society, club, board, chamber, joint-stock company, trust, trustee, unincorporated or incorporated organization or entity or government or any entity, agency or political subdivision thereof.

(q) "***Primary Beneficiary***" means each individual that, as of a time of determination, satisfies each of the following criteria:

(i) the individual owns, rents or leases a residence located in Ontario and is the primary or secondary electricity utility account holder named on an Electricity Invoice issued in respect of that residence; and

(ii) the individual is not a HAP Eligible Person.

(r) "***Principles Annex***" means the Principles Annex set forth as an annex to this Declaration.

(s) "***Permitted Delegations Annex***" means the Permitted Delegations Annex set forth as an annex to this Declaration.

(t) ***"Residual Beneficiary"*** means each charitable organization identified by the Trustee and specified as a residual beneficiary hereunder from time to time from among the charitable organizations specified on Schedule • or their respective successor charitable organizations.

(u) "***Transfer Payment Agreement***" means the transfer payment agreement dated as of •, 2017 between the Trustee and Her Majesty the Queen in right of Ontario as represented by the Minister of Energy, as such agreement may be amended, restated, supplemented or otherwise modified from time to time.

(v) "***Trust***" means Affordability Fund Trust, a trust established under and governed by the laws of the Province of Ontario pursuant to this Declaration.

(w) "***Trustee***" means (i) the Original Trustee and (ii) on and after the Original Trustee Replacement Date, the Board of Trustees acting together in accordance with and subject to Section 5.• and in accordance with the rules and procedures adopted by the Board of Trustees pursuant to Section 5.•.

(x) "***Trustee Replacement Annex***" means the Trustee Replacement Annex set forth as an annex to this Declaration.

1.2 Headings and Table of Contents

The insertion of headings and the provision of a table of contents are for convenience of reference only and shall not affect the construction or interpretation of this Declaration.

1.3 References

Unless otherwise specified, all references to Sections are to Sections of this Declaration. The words "hereto," "herein," "hereof," "hereunder" and similar expressions refer to this Declaration and not to any particular Section or other provision of this Declaration.

1.4 Number and Gender

Unless otherwise specified, words importing the singular include the plural and vice versa and words importing gender include all genders.

1.5 Governing Law

This Declaration shall be governed by, and construed and interpreted in accordance with, the laws of the Province of Ontario and of Canada applicable therein.

1.6 Severability

Any provision of this Declaration which is illegal, invalid or unenforceable in any jurisdiction shall not affect the legality, validity or enforceability of the remaining provisions and any such illegality, invalidity or unenforceability in any jurisdiction shall not affect the legality, validity or enforceability of such provision in any other jurisdiction.

1.7 Reference to the Trust and the Trustee

For greater certainty, where any reference is made in this Declaration to an act to be performed by or for or on behalf of the Trust, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Trustee in its capacity as trustee of the Trust, and, where any reference is made in this Declaration to an act to be performed by or for or on behalf of the Trustee, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Trustee in its capacity as trustee of the Trust. No Person dealing with the Trust or the Trustee shall be bound to make any enquiry concerning, or has the right to require production of, any evidence of the validity of any act of, or transaction purporting to be made by, the Trustee.

1.8 Defect in Appointment

No action taken by the Trustee will be invalid or ineffective by reason only of any defect in the appointment of the Trustee or the compliance by the Trustee of any rules or procedures adopted by the Trustee and which is discovered after the taking of such action.

SECTION 2
CONCERNING THE TRUST

2.1 Objectives

The Trust is established for the sole purpose of holding and applying the Assets for the benefit of the Beneficiaries as provided for in this Declaration. The activities of the Trust shall be to hold the Assets as contemplated in this Declaration until such time as the Board of Trustees is duly appointed and determines that the Assets are to be distributed to or for the benefit of the Primary

Beneficiaries in accordance with this Declaration, having regard to the principles set forth in the Principles Annex and in the manner and basis contemplated in the Permitted Delegations Annex, or otherwise to the Residual Beneficiary in accordance with Section 3.3, in each case subject to the terms, limitation and requirements set forth in this Declaration.

2.2 Name of the Trust

The name of the Trust shall be the "Affordability Fund Trust" or such replacement name as the Trustee shall determine and specify from time to time. The Trustee shall hold the Assets and conduct the activities of the Trust under such name or variation thereof. If the Trustee determines to change the name of the Trust, the Trustee may specify and use such other designation or adopt such other name (including any name in the French language) as it considers appropriate and may hold the Assets and conduct the activities of the Trust under such designation or other name.

2.3 Location

The head office and the situs of the administration of the Trust shall be • or such other address in Ontario as the Trustee may determine from time to time.

2.4 Fiscal Year

The fiscal year of the Trust shall end on December 31 in each year.

SECTION 3
DISTRIBUTIONS

3.1 Distributions to Primary Beneficiaries

Prior to the Final Distribution Date, the Trustee shall distribute the Assets (including capital or income) to the Primary Beneficiaries identified based on the application of the principles specified in the Principles Annex and in the manner and in the amounts determined on the basis contemplated by the Permitted Delegations Annex, in each case in the amounts and to the extent specified herein and therein, subject in all respects to the exercise by the Trustee of its discretion hereunder and to the exclusion of the other Beneficiaries.

3.2 Maximum Amount of Distributions to Primary Beneficiaries

The amount distributed by the Trustee to or for the benefit of any Primary Beneficiary shall not (a) exceed the estimated costs (including applicable taxes) to be incurred by or on behalf of such Primary Beneficiary (whether or not such costs have been paid or remain outstanding) in respect of Eligible Measures applied in respect of the Primary Beneficiary's Ontario residence or (b) include in the calculation of such costs any amount intended to compensate an Electricity Distributor. The Trustee shall be entitled to rely on the recommendations of and information provided by Electricity Distributors acting as Administrative Services Agents appointed for the purposes and in the manner contemplated in the Permitted Delegations Annex, without any duty or obligation to verify or makes enquiries regarding the basis for or propriety of such recommendations or the accuracy or completeness of such information, except if and to the extent that the Trustee, in its discretion, determines that (i) it has actual knowledge that such

recommendations are contrary to the reasonable application of the principles set forth in the Principles Annex or have been made on a basis that is manifestly contrary to such principles or the delegations and activities specified or contemplated to be undertaken under the Permitted Delegations Annex or (b) such information is known by the Trustee to be erroneous, contain a material misrepresentation or is materially incomplete.

3.3 Distributions to Residual Beneficiaries

On or as soon as practicable following the Final Distribution Date, the Trustee shall distribute all of the Assets (including capital or income) existing at that time to the Residual Beneficiaries, in each case in the amounts and to the extent determined by Trustee in its discretion hereunder[2] and to the exclusion of the other Beneficiaries.

SECTION 4
POWERS OF THE TRUSTEE

4.1 General

Subject to and in compliance with the terms, limitations and restrictions of this Declaration and notwithstanding applicable legislation, the Trustee shall have, without other or further authorization, full, exclusive and absolute power, control and authority over the Assets and over the affairs and activities of the Trust to the same extent as if the Trustee were not a trustee, but rather the sole and absolute owner of the Assets in its own right, including such power, control and authority to do all such acts and things as in its sole judgment and discretion are necessary, incidental or desirable for carrying on the affairs and activities of the Trust, with such powers of delegation as may be permitted or otherwise contemplated by this Declaration. Except as expressly provided in this Declaration, the enumeration in this Declaration of any specific power or authority shall not be construed as limiting the aforesaid general power or authority or any other specific power or authority set out herein. Subject to the terms, limitations and restrictions of this Declaration, every discretion or power hereby conferred on the Trustee is an absolute and uncontrolled discretion or power.

4.2 Specifically Enumerated Powers

The Trustee shall have the following specific powers and authorities:

(a) ***Transfer Payment Agreement.*** The Trustee shall have the power to enter into and perform its obligation under the Transfer Payment Agreement.

(b) ***Administrative Services Agreements.*** The Trustee shall have the power to enter into and perform its obligation under the Administrative Services Agreements.

(c) ***Power to Dispose of Assets.*** The Trustee shall have the power to sell, convey, assign, transfer, exchange and in any other manner dispose of the Assets or any part or parts thereof free and clear of any and all trusts established under this Declaration, by public or private sale, for cash or on credit, with or without advertisement, and subject to such restrictions, stipulations,

[2] NTD: Consider if principles should be included regarding the choice of charities or the absolute amount any particular charity may receive.

agreements and reservations as the Trustee in its sole and absolute discretion may consider appropriate or advisable, and to execute and deliver and perform any agreement, deed, conveyance, transfer or other document or instrument in connection with the foregoing.[3]

(d) ***Power to Manage and Invest.*** The Trustee shall have the power to own, hold and manage the Assets in such manner as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable. [4] The Trustee shall have the power to invest the Assets in Eligible Investments, and to change such Eligible Investments at any time and from time to time, all as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable. The Trustee shall not be limited to investments authorized by law for trustees. The Trustee will have no liability for the depreciation of any investment.

(e) ***Power to Delegate and to Appoint Agents, etc.*** The Trustee shall have the power to appoint, employ or contract with any Person as the Trustee in its sole and absolute discretion may consider appropriate or advisable in connection with the activities of the Trust. Without limiting the generality of the foregoing, the Trustee will have the power at any time and from time to time to appoint, employ or retain consultants, financial advisers, technical advisers, legal counsel, accountants, administrative services agents, insurers, insurance agents and insurance brokers, as the Trustee may require for the purpose of discharging its duties hereunder and shall not be responsible for or for the actions of any of them. The Trustee may pay remuneration and reimbursements from the Assets for services performed for it or on its behalf in the discharge of the trusts hereof without taxation for costs or fees of any counsel, solicitor or attorney. Without limiting the generality of the forgoing, the Trustee may appoint, employ or retain any Person:

(i) to act for and on behalf of the Trust in connection with any and all matters in any way relating to the negotiation, settlement, entering into, amending, performance and enforcement of the Transfer Payment Agreement, the Administrative Services Agreement and any other agreements and contracts to which the Trust becomes a party in accordance with this Declaration;

(ii) to provide or cause to be provided any or all kinds of administrative services in any way relating to the activities of the Trust;

(iii) to act as attorney in fact, agent or trustee in the acquisition, holding, application, sale or other disposition of the Assets and in the handling, prosecuting or settling of any claims of the Trust;

(iv) to value the Assets and determine the net income of the Trust; and

(v) to make any filings, elections and submissions (including in respect of taxation matters) in connection with the Trust's compliance with applicable laws and regulatory requirements.

Without limiting the foregoing, the Trustee shall seek to enter into Administrative Services Agreements with Electricity Distributors for the purposes contemplated by the Permitted

[3] Consider limiting this broad power.

[4] Consider limiting this broad power.

Delegations Annex, and on such terms and conditions (including terms and conditions as to the payment of reasonable fees and expenses) not inconsistent therewith as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable.

(f) ***Power to Operate Accounts.*** The Trustee shall have the power to open and operate accounts at any chartered bank, trust company or other financial institution in Canada or elsewhere, as the Trustee in its sole and absolute discretion may consider appropriate or advisable; to deposit therein any moneys or securities forming part of the Assets whether or not such deposits will earn interest; to withdraw such deposits at such times and in such manner as the Trustee may determine; to draw, make, endorse, deposit or otherwise deal in cheques, bills of exchange, promissory notes, drafts and other kinds of instruments and securities; to enter into contracts or agreements with any such chartered bank, trust company or other financial institution containing such terms and provisions as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable; and the Trustee shall have no liability or responsibility for any loss which may occur by reason of the failure of any such chartered bank, trust company or other financial institution.

(g) ***Power to Collect, etc.*** The Trustee shall have the power to collect, sue for, receive and give receipts for all sums of money or other property due to the Trust; to consent to extensions of time for payment or to the renewal of any securities or obligations; to engage or intervene in, prosecute, defend, compound, compromise, abandon or adjust by arbitration or otherwise, any demands, claims, actions, suits or proceedings relating to the Trust or the Assets; to exercise any and all remedies available to the Trustee under any agreement or otherwise including any power of foreclosure or sale available at law and, in connection with any such foreclosure or sale, to purchase or otherwise acquire title to any property and to convey good title thereto free of any and all trusts hereby established, or to take or retake possession of any property secured under any agreement or instrument; to extend the time, with or without security, for the payment or delivery of any debts or property and to execute and deliver releases, acquittances, discharges, agreements or other instruments related thereto; and to pay or satisfy any debts or claims upon any evidence that the Trustee, in its sole and absolute discretion, may determine to be sufficient.

(h) ***Power to Pay Trustee's Fees.*** The Original Trustee shall be entitled to be paid and receive reasonable fees as compensation for its services under this Declaration and be reimbursed for its out-of-pocket expenses reasonably incurred, in each case from the Assets, without the approval of any Beneficiary or any court. The Original Trustee shall be entitled, in its sole and absolute discretion, to withdraw funds from time to time for such purpose from any account of the Trust. Members of the Board of Trustees shall be entitled to reimbursement for and in respect of their out-of-pocket expenses reasonably incurred in discharging their respective duties and obligations under this Declaration and any contract of the Trust entered into in accordance with this Declaration, in each case without the approval of any Beneficiary or any court, but subject to the "Travel, Meal and Hospitality Expenses Directive of the Province" specified and amended by the Province from time to time, a copy of the current version of which is attached as Exhibit 1 to the Principles Annex.

(i) ***Power to Pay Taxes.*** The Trustee shall have the power to pay, deduct, withhold or remit any taxes or assessments which are required by law to be paid, deducted, withheld or remitted together with or from any payment made by the Trustee; to pay all taxes or assessments of whatever kind or nature imposed upon or against the Trust or the Trustee in connection with the Assets or any part thereof; to collect and remit all taxes and assessments of whatever kind or

nature required to be collected and remitted by the Trust or the Trustee in connection with their activities or the Assets or any part thereof; to appeal, settle or compromise tax claims or liabilities; and, for the foregoing purposes, to make such returns and do all other acts and things as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable.

(j) ***Power to Appoint Auditors.*** The Trustee shall have the power to select and appoint and discharge and re-appoint, in its sole and absolute discretion, an auditor or auditors of the Trust and to settle the fees of any such auditor or auditors.

(k) ***Form of Accounts.*** The Trustee shall have the power to determine and change from time to time, in its sole and absolute discretion, the method or form in which the accounts of the Trust will be kept and shall not be required to keep and provide accounts in the form usually required by law to be kept by trustees; provided that such method or form reasonably complies with generally accepted accounting principles in effect in Canada to the extent applicable.

(l) ***Title to Assets.*** The Trustee shall have the power to cause all or any part of the Assets to be held by or registered, in its sole and absolute discretion, in the name of any Person.

(m) ***Delegation of Discretion***. The Trustee shall have the power to delegate the right and power to exercise, or concur in the exercise of any discretion or power, conferred on the Trustee in this Declaration or conferred by law to any one or more of its directors, officers, employees, agents or to such other Person, as the Trustee, in its sole and absolute discretion, may think is appropriate or advisable including, without limitation, to one or more Administrative Services Agents and their respective employees, officers and directors, in each case under a related Administrative Services Agreement and on the basis contemplated in the Permitted Delegations Annex. The Trustee shall accept and follow the recommendations of an Electricity Distributor made under and in accordance with clauses [4(a)(i) to 4(a)(vi)] of the Permitted Delegation Annex with respect to a the identification and determination of distributions to be made to any Primary Beneficiary, except if and in so far as the Trustee has actual knowledge that (a) such Primary Beneficiary did not in fact satisfy the "Selection Factors" specified in the Principles Annex as of the applicable time of determination; and/or (b) the amount recommended to be distributed to the Primary Beneficiary was not calculated in compliance with or was calculated in a manner that is manifestly contrary to the requirements set forth or contemplated in the Permitted Delegation Annex or the applicable Administrative Services Agreement.

(n) ***Additional Powers.*** The Trustee shall have the power to perform and do all such other acts, to take such steps and to execute all such deeds, transfers, assignments, agreements and other documents and instruments as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable for the carrying out of any of its powers hereunder or of any of the activities of the Trust as herein contemplated, or for the carrying out, promotion or advancement of the interests of the Trust, whether or not any of such acts, things, documents or instruments are herein expressly mentioned. Any good faith determination by the Trustee as to what is necessary, desirable or appropriate to carry out its powers or activities of the Trust as contemplated under this Declaration or to carry out, promote or advance the interests of the Trust shall be conclusive. Any construction of this Declaration or any determination as to the activities of the Trust or the existence of any power or authority hereunder made in good faith by the Trustee, relying upon the advice of counsel, shall be conclusive. In construing the provisions of this Declaration, there shall be a presumption in favour of a grant of power to the Trustee.

SECTION 5
CONCERNING THE TRUSTEE

5.1 Duty of Trustee

In performing its duties and exercising its powers under this Declaration, the Trustee shall act honestly, in good faith and with a view to the best interests of the Trust and the Beneficiaries and shall exercise that degree of care, diligence and skill that a reasonably prudent trustee would exercise in comparable circumstances (the "**Standard of Care**"). The Trustee shall observe and act in accordance with the terms of, and shall observe and comply with the limitations and restrictions set forth in, this Declaration. To the extent that the Trustee has delegated any of its duties or powers, it shall be deemed to have satisfied the Standard of Care in respect of the subject matter of such delegation, subject to the Trustee's overall duty as a trustee to exercise prudent oversight in relation to such delegation. Unless required by law, the Trustee will not be required to give any security, bonds or sureties in any jurisdiction for the performance of any of its duties and obligations under this Declaration. The Trustee will not be required to devote its entire time to the trust activities.

5.2 Limitation of Liability

The Trustee shall not be personally liable in tort, contract or otherwise to any Beneficiary or any other Person for any loss or diminution in the value of the Assets, or for any action or failure to act on the part of the Trustee or any of its employees or agents or any other Person, and shall not be subject to any personal liability for any debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses incurred by or against the Trust, howsoever arising, and resort will be had solely to the Assets for the payment, performance or satisfaction thereof. No property or assets of the Trustee, owned in its personal capacity or otherwise, will be subject to levy, execution or other enforcement procedure**s** with respect to any obligation under this Declaration. However, Section 5.2 shall not apply where the Trustee has demonstrated gross negligence, bad faith, fraud or wilful misconduct.

5.3 Liability of Trustee under Contracts

Any document or instrument creating a liability or obligation of the Trust or the Trustee will be conclusively deemed to have been executed by the Trustee only in its capacity as Trustee of the Trust and will be binding upon the Trustee only in its capacity as trustee hereunder and resort may not be had to, nor recourse or satisfaction be sought from, the property of the Trustee other than the Assets, whether owned by its in its personal capacity or in any other capacity other than in its capacity as Trustee of the Trust, or from its employees or agents, and resort will be had solely to the Assets for the payment, performance or satisfaction of any such liability or obligation. Each such document or instrument shall contain a provision providing for the aforesaid limitation of liability. However, Section 5.3 shall not apply where the Trustee has demonstrated gross negligence, bad faith, fraud or wilful misconduct.

5.4 Funds of the Trustee

The Trustee shall not be required to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers.

5.5 Indemnification of Trustee

In addition to and without limiting any other protection hereunder or otherwise by law of the Trustee and its respective employees, agents, representatives and assigns (in this Section 5.5, collectively, the "**Representatives**"), the Trustee and its respective Representatives shall be indemnified, defended and saved harmless out of the Assets from, against and in respect of any and all liabilities arising or related to actions taken or omitted to be taken by any agent of the Trustee, losses, claims (including any claim arising out of the assessment of any tax on income by a taxing authority), damages, penalties, fines, actions, suits, demands, levies, assessments, costs, charges, expenses and disbursements (including, without limitation, any and all legal and advisor fees and disbursements) (in this Section 5.5, collectively, the "**Liabilities**") of whatever kind or nature which may at any time be suffered by, imposed upon, incurred by or asserted against the Trustee and its Representatives, whether groundless or otherwise, howsoever arising from or out of any act, omission or error of the Trustee, in each case made in connection with its acting as Trustee hereunder, except and to the extent that the Liabilities are a result from or are caused by gross negligence, wilful misconduct, bad faith or breach of the Confidentiality obligations described in Section 5.9. Further, except as provided in Section 5.2, the Trustee shall not be liable to any Beneficiary for any loss or damage relating to any matter regarding the Trust, including any loss or diminution in value of the Assets. Notwithstanding any other provision hereof, the obligations provided for in this Section shall survive any termination of the Trust created hereby, whether by reason of removal or resignation of the Trustee, termination or discharge of this Declaration or otherwise.

5.6 Reliance upon Advice

Subject to Section 5.1, in performing its duties and exercising its powers hereunder, the Trustee may rely and may act or not act, and shall be fully protected in relying and acting or not acting, upon (a) any statement, telecopy or other electronic means of communication, writing, notice, resolution, report, opinion or other document or conversation believed by its to be genuine and correct and to have been signed, sent or made by the proper Person; (b) any opinion or advice received or information obtained from auditors, solicitors, or other professional advisers, whether retained by the Trustee or otherwise, and shall not be responsible or held liable for any loss or damage resulting from so relying or acting or not acting; and (c) the advice and actions of any Administrative Services Agent, including in connection with the delegations and reliances contemplated under the Permitted Delegations Annex. For greater certainty, it shall not be necessary for the Trustee to ascertain whether or not the Persons who have executed, signed or otherwise issued, authenticated or receipted such papers, writings or documents (including any Administrative Services Agreement or any other contract entered into by the Trustee) have authority to do so or that they are the same Persons named therein or otherwise to pass upon any requirement of such papers, writing or documents that may be essential for their validity or effectiveness or upon the truth and acceptability.

5.7 Replacement of the Original Trustee

As soon as practicable and in any event prior to •, 2017, the Original Trustee shall appoint the Persons contemplated by the Trustee Replacement Annex to comprise the Advisory Committee contemplated therein (once constituted, the "**Advisory Committee**"). As soon as practicable thereafter, the Original Trustee shall request that the Advisory Board make recommendations with respect to the composition of the "Board of Trustees", as contemplated by the Trustee

Replacement Annex. The Trustee shall have no duty or obligation to investigate the basis for any of the Advisory Committee's recommendations and may rely on such recommendations without any duty of enquiry, supervision or oversight with respect to the activities and decision-making processes adopted by the Advisory Committee in its discretion, in full satisfaction of the Original Trustee's Standard of Care with respect to such matters hereunder. Except if the Trustee determines that the individuals recommended by the Advisory Committee to become members of such Board of Trustees are disqualified from so acting on the basis of manifest non-compliance with the selection factors set forth under "Selection Factors" set forth in the Trustee Replacement Annex, the Original Trustee shall appoint, as additional Trustees, [number] of individuals from among those individuals who have been recommended for appointment to such Board of Trustees by the Advisory Committee. The Original Trustee may exercise its discretion in selecting such individuals for such appointment or, in the absence of such exercise, shall select such individuals based on the [alphabetic order of the first letter of their respective surname]. Upon the appointment of [number] additional trustees pursuant to this provision and their agreement to act as members of the Board of Trustees, the Original Trustee shall be deemed to have resigned and shall cease to be a trustee (such resignation occurring on the "**Original Trustee Replacement Date**").

5.8 Composition of the Board of Trustees

[NTD: Specify requirements or principles annex]

5.9 Rules and Procedures of the Board of Trustees

(a) ***Initial Requirements***. [NTD: Need to insert bare bones governance for the Board of Trustee's initial governance purposes.]

(b) ***Power to Adopt Rules and Procedures.*** [NTD: Add power to adopt governance provisions, including to permit remaining trustees to replace any vacancy arising after Board of Trustees and to fill any vacancy by application to the Courts of Ontario in the event of an unfilled vacancy.]

(c) ***Decisions of the Board of Trustees.*** [NTD: Add language to make clear how the majority decisions of Board will represent the decision of the "Trustee" and not any individual trustee. This will be necessary to specify at the outset in order to avoid problems enlisting members of the Board of Trustees.]

(d) ***Conflicts of Interest.*** [NTD: Specify requirements]

(e) ***Expenses and Reimbursements to Trustees.*** [NTD: Specify requirements]

5.10 Confidentiality

Notwithstanding the resignation or removal and discharge from the trusts and powers reposed in and conferred on the Trustee by this Declaration, or the termination of this Declaration, the Trustee so resigning or removed shall continue to treat as confidential all information relating to the Trust, the Assets and the Beneficiaries and shall only be entitled to make disclosures concerning such information if disclosure is required in the performance of the functions of the resigning or removed Trustee or is ordered by a court of competent jurisdiction or is otherwise

required by law. The Trustee shall not be responsible or liable to any Person for any loss or damage arising out of or in any way sustained or incurred in any way relating to any such required disclosure. The obligations arising under this Section **[**5.10**]** shall survive the termination of the Trust.

5.11 Vesting in Successor Trustee

Any successor trustee (including any reconstituted Board of Trustees) shall automatically become vested with the Assets and with the same powers, rights, duties, responsibilities and trusts as if it, he or she had been originally named as Trustee under this Declaration without the requirement of any further instrument or act or conveyance and the Trustee ceasing to act shall execute all such transfers and other documents and do all such other acts or things as may be necessary or desirable to assign, transfer, deliver to, and vest in, the successor trustee, upon the trusts expressed in this Declaration, all the Assets and all the rights, powers and trusts of the Trustee ceasing to act. The expense of any act, document, deed or other instrument or thing required under this Section 5.111, including for greater certainty, outstanding fees and unreimbursed expenses of the Trustee (including any member of the Board of Trustees) ceasing to act, shall be satisfied from the Assets.

5.12 Execution of Instruments

The Trustee shall have the power to execute all deeds, transfers, agreements, promissory notes and other instruments on behalf of the Trust. Such power may be exercised by any one or more Administrative Services Agents acting in accordance with any delegated right to do so pursuant to an applicable Administrative Services Agreement, and any such execution of instrument by an Administrative Services Agent, acting in such capacity as agent of the Trust pursuant to the terms and conditions of such Administrative Services Agreement shall be deemed to be a proper execution of such instrument by the Trustee and shall be binding for all purposes on the Trust.

5.13 Decisions by the Trustee

If there is more than one Trustee, decisions of the Trust may be made by a majority of Trustees. Whenever the Trustees are unable to agree in relation to the commission or omission of any act or howsoever in the execution of the Trust the decision of a majority of the Trustees shall prevail.[5]

SECTION 6
AMENDMENTS AND SUPPLEMENTS

6.1 Amendments

Subject to the requirements of the Transfer Payment Agreement, the Trustee shall have the power in its sole and absolute discretion from time to time without the approval of any Beneficiary or any court to amend, vary, supplement, replace or restate this Declaration in its entirety or any portion thereof, provided that no amendment shall conflict with the principles set forth in the Principles Annex or as to the scope or effect of the permitted delegations and activities of any Administrative Services Agent pursuant to the Permitted Delegations Annex.

[5] NTD: This section will be integrated into the additional provisions dealing with the Board of Trustees.

Without in any way limiting the foregoing, any such amendments, variations, supplements, replacements or restatements may:

(a) add provisions for the replacement of or appointment of additional trustees to act with the Original Trustee prior to the Original Trustee Replacement Date;

(b) in the case of the Original Trustee, add provisions to those contemplated in the Trustee Replacement Annex in respect of the appointment of the members and formation and empowerment of the Board of Trustees;

(c) in the case of the Original Trustee, vary the terms and requirements applicable to the duties, responsibilities, obligations, liabilities, indemnities, protections, limitations, restrictions, compensation, expense reimbursements and such other matters, in each case as the Advisory Committee may indicate are necessary be made in order to attract and receive confirmation of appointment of appropriately qualified individuals that the Advisory Committee specifies are to be appointed as members of the Board of Trustees in accordance with its recommendations;

(d) add additional or replace existing Trustees[6];

(e) add to or reasonably clarify the principles set forth in the Principles Annex;

(f) add to or reasonably clarify the delegations and activities contemplated to be made in the Permitted Delegation Annex;

(g) include provisions for the management of the Trust by the Trustees, including the making of rules, requirements and procedures governing the decision-making of the Board of Trustees;

(h) add provisions for the replacement of members of the Board of Trustees (in addition to those provisions contemplated in the Trustee Replacement Annex);

(i) provide for the engagement of any Person or Persons as managers, administrators or other service providers to the Trust, including any additional or replacement Administrative Services Agent or representative thereof;

(j) specify supplemental procedures for the identification of Primary Beneficiaries and the exchange of information with Electricity Distributors in connection with identifying such Primary Beneficiaries; or

(k) specify procedures for the transfer and transmission of funds from the Trust or any Administrative Services Agent acting on its behalf and with delegated responsibility over funds constituting Assets, to or for the benefit of, Beneficiaries or their designated representatives, payees or assignees.

[6] NTD: Consider and, if retained, integrate with Board concepts.

6.2 Supplemental Declarations

The Trustee is authorized to execute any supplemental declaration of trust (including one or more amendments and restatements from time to time of this Declaration) to give effect to amendments to this Declaration made pursuant to this Section 6.

SECTION 7
TERMINATION

7.1 Duration

Subject to Section 7.2, the Trust will continue in full force and effect so long as there is any Assets and until all of the debts, liabilities and obligations of the Trust have been paid and satisfied in full.[7]

7.2 Termination and Distribution of Assets

Subject as hereinafter provided, the Trustee may terminate the Trust and wind up its affairs on such date as the Trustee, in its sole and absolute discretion, may determine and after paying or adequately providing for the payment and satisfaction of all debts, liabilities and obligations of the Trust and upon receipt of such releases, indemnities and discharges as the Trustee, relying on the opinion of counsel, deems necessary for the protection of the Beneficiaries and for its own protection. Notwithstanding the foregoing, the Trustee shall in any event terminate the Trust and wind up its affairs as soon as practicable after the Final Distribution Date (the "**Termination Date**"). In connection with the termination of the Trust, the Trustee shall distribute or cause to be distributed the remaining Assets, in cash or in kind or partly in each, to the Residual Beneficiaries in accordance with Section 3.3.

7.3 Distribution of Assets on Final Distribution Date

If the Trust holds Assets on the Final Distribution Date, such assets shall promptly be paid to the Residual Beneficiaries in accordance with Section 3.3.

SECTION 8
ACCEPTANCE OF TRUSTS

8.1 Acceptance of Trusts

The Trustee hereby accepts the trusts and duties contained in this Declaration and agrees to perform the same upon the terms and conditions hereof until discharged therefrom.

[Signature Page Follows]

[7] NTD: Consider early termination scenarios.

The Trustee has executed this Declaration as of the date first written above.

COMPUTERSHARE TRUST COMPANY OF CANADA, as Trustee

By: _____
Name:
Title:

By: _____
Name:
Title:

PRINCIPLES ANNEX

Commented [A1]: Content in the annex will be further refined

Commented [A2]: KPMG to comment on 'control' implications.

The following principles apply in relation to the administration of the Trust:

1. Identification of Primary Beneficiary Payees

1.1 A Primary Beneficiary should not receive a benefit from the Trust unless at the time of consideration it satisfies each of the following criteria (the "**Selection Factors**"):

(i) it is an [owner-occupied,], [non-commercial] [not for profit] electricity customer;

(ii) it has [committed] [made arrangements] [proposed] [indicated its willingness] to undertake measures (its "**Energy Plan**") to improve the electricity efficiency and/or promote the conservation of electricity at its Ontario residence;

(iii) its Energy Plan involves one or more Eligible Measures as may be designated by the Trustee from time to time from;

(iv) it confirms that:

1. the primary purpose of its Energy Plan is the conservation and efficient use by the Primary Beneficiary of electricity, and is not for the purposes of the Primary Beneficiary making a profit;

2. it would otherwise not have the financial resources to undertake [the Eligible Measures] included in its Energy Plan;

3. the Eligible Measures to be undertaken by it under its Energy Plan would not otherwise be eligible for reimbursement from third parties, including under any efficiency or conservation program implemented by a government, governmental agency or third party energy subsidy program;

(v) it has demonstrated a need for financial assistance on the basis that its periodic electricity bills represent a financial burden, relative to its available financial resources; and

(vi) such other criteria as the Trustee may determine, including based on the recommendations of Electricity Distributors made on the basis and in accordance with the delegations contemplated by the Permitted Delegations Annex or any applicable Administrative Services Agreement.

1.2 The availability of funds to the Primary Beneficiaries should be allocated on an equitable and consistent basis across different areas and regions within the Province, having regard to:

(i) broad economic parameters of economic activity and the financial resources of the residents of the areas and regions;

(ii) electricity use and efficiency levels of non-commercial electricity customers;

(iii) specific regional indicators of economic weakness and need; and/or

(iv) such other factors as the Trustee may determine are relevant, including based on the submissions, advice and recommendations of Electricity Distributors made on the basis and in accordance with the delegations contemplated by the Permitted Delegations Annex or any applicable Administrative Services Agreement.

1.3 An efficient basis upon which to allocate funds to the Primary Beneficiaries across different areas and regions within the Province may be based on the designated areas and regions serviced by the Electricity Distributors operating within the Province.

1.4 The designated Electricity Distributor for an area or region in which a Primary Beneficiary resides will:

(i) be a reliable source for the purpose of assessing and confirming whether the Primary Beneficiary satisfies the Selection Factors;

(ii) be an efficient intermediary for the purpose of communicating with the Primary Beneficiary, including regarding the availability, terms, conditions and intended purposes of [Project][8];

(iii) be able to efficiently integrate and reflect any distribution payments determined to be made to the Primary Beneficiary within its established practices, procedures and systems; and

(iv) have established contractual arrangements with the Primary Beneficiary that may apply to the protection and confidentiality of information provided by or respecting the Primary Beneficiary, which information may be useful in the consideration by the Electricity Distributor in its assessment of whether the Primary Beneficiary satisfies the Selection Factors, which information may not otherwise be available or readily accessible or verifiable by the Trustee.

1.5 The designated Electricity Distributor for an area or region in which a Primary Beneficiary resides will have market and utilization information that may be useful in assessing the relative needs of Primary Beneficiaries within its designated area or region. Such information will be relevant in assessing the extent to which one such Primary Beneficiary's financial needs and the merits of its Energy Plan are greater or more compelling than those of another such Primary Beneficiary, which comparison may be relevant to the extent that the funds allocable to the Primary Beneficiaries resident in the area or region are otherwise insufficient to meet the requests for funding by all such Primary Beneficiaries.

1.6 Accordingly, it is consistent with the purposes of the Trust that the recommendations of Electricity Distributors be utilized and relied upon by the Trustee to guide the process of identifying particular Primary Beneficiaries for distributions under the [Project].

[8] Consider if the Trustees should control the messaging to ensure consistency across the Province.

1.7 If an Electricity Distributor for a particular area or region is unable or unwilling to assess or confirm the application of the Selection Factors to Primary Beneficiaries residing in the area or region or to make recommendations in relation to such matters, one or more of the following may provide a suitable alternative source of information and for information gathering, assessment and confirmation purposes in relation to such area or region:

(i) other Electricity Distributors operating in adjacent or other areas or regions in the Province;

(ii) the Ontario Energy Board;

(iii) the Independent Electricity System Operator; and

(iv) anyone else having relevant expertise and access to information regarding the electricity market of the Province, in each case as may be considered relevant by the Trustee.

1.8 To the extent that privacy law or other legal requirements limit an Electricity Distributor from providing or making available specific information respecting the application of the Selection Factors to a particular Primary Beneficiary or group of Primary Beneficiaries, it may be appropriate to redact or make generic affected information regarding such Primary Beneficiary in connection with the identification and confirmation of a Primary Beneficiary's eligibility and participation in the [Project]. If such limitations or restrictions would limit an Electricity Distributor from providing or confirming the name of a particular Primary Beneficiary to the Trustee, then it should be sufficient that such information may be obtained or disseminated on a confidential basis if and when required by the Trustee for the proper administration of the Trust and on that basis such impediments should not disqualify a Primary Beneficiary from participating in the benefits of the [Project], to the extent that the confidential record-keeping of the Electricity Distributor would be available in connection with the application of any applicable legal process predicated on the identification of such Primary Beneficiary for the purposes of substantiating its rights as a Primary Beneficiary of the Trust or as to the validity or subsistence of the Trust.

2. Eligible Measures

2.1 Eligible Measures shall be identified having regard to the following (the "**Measures Factors**"):

(i) [NTD: Insert generic list of considerations relevant to the identification of the applicable spending uses].

2.2 In identifying and applying the Measures Factors, Electricity Distributors will have expertise in assessing the suitability of efficiency and conservation measures in their respective areas and regions, which may differ across areas and regions across the Province based on factors (among other things) such as the climate, geography, density, electricity infrastructure, residential structures, and electricity use rates applicable within such areas or regions.

2.3 Unless otherwise specified by the Trustees, the measures specified in Schedule A to this Principles Annex will be considered.

3. Other

3.1 It is expected that administrative expenses of the Board of Trustees and its members, including any expenses relating to the Trust, to the establishment of the [Affordability Fund] and any expenses related to the implementation and operation of the [Project] by or through Electricity Distributors and other relevant entities, will be recognized and subject to reimbursement in accordance with the principles outlined in the [Province's Transfer Payment Accountability Directive/Travel, Meal and Hospitality Expenses Directive][9], in the form attached to Schedule B to this Principles Annex.

3.2 The Trustee is expected to conduct its activities to ensure that, as more specifically contemplated in the Transfer Payment Agreement:

(i) the Assets are applied are spent prudently and in furtherance of the purpose set forth in the Declaration;

(ii) the Trustee is accountable to the Province for activities undertaking in connection with the Project;

(iii) it complies with the Province's request for any independent verification or audit determined to be necessary or appropriate by the Province;

(iv) the Province will be entitled and has reserved its right to demand the return of the Assets if the Province determined that they are not being used for the purposes and applied in the manner as set forth or contemplated in the Declaration.

3.3 Electricity Distributors are not intended to directly profit from distributions of funds made from the Trust, although it is recognized that the objectives of electricity efficiency and conservation of Primary Beneficiaries located in the service area or region of an Electricity Distributor, and the cost savings and improved credit worthiness of such Primary Beneficiaries, may be financially beneficial to the Electricity Distributor.

3.4 Distributions from the Trust are intended to allow receiving Primary Beneficiaries to undertake Eligible Measures at no or minimal personal cost.

3.5 It is expected that the Trust Assets will be distributed to Primary Beneficiaries during the period from the Original Trustee Replacement Date to [the Final Distribution Date] [March 31, 2019].

[9] NTD: Ministry to confirm applicable Directive(s).

SCHEDULE A TO THE PRINCIPLES ANNEX
INITIAL ELIGIBLE MEASURES

Initial Specified Measures
Block Heater Timer (just timer) – rated for outdoor use, have at least a 15 amp/1800 watt capacity, be cold weather resistant, bear a C-UL or CSA certification mark
Power bar with integrated timer, and switched power outlets, four each for a total of 8 outlets, have a total capacity of 15 amps. The switched outlets must remain "live", independent of timer settings, so long as the power bar itself remains switched on. The power bar must bear either a C-UL or CSA certification mark.
Efficient Showerheads (standard) - rated at no more than 4.8 Lpm (1.25 U.S. gpm) and be of the laminar flow type (non-aerating).
Efficient Showerhead (handheld) - rated at no more than 4.8 Lpm (1.25 U.S. gpm) and be of the laminar flow type (non-aerating).
Efficient Aerators (kitchen) - rated no more than 5.7 Lpm (1.5 U.S. gpm), dual threaded to allow installation in both thread type faucets, swivel type with pause lever.
Efficient Aerators (bathroom) - rated no more than 3.8 Lpm (1.0 U.S. gpm), be dual threaded to allow installation in both thread type faucets.
Hot Water Tank Pipe Insulation - $^{1}/_{2}$" inside diameter – foam, meets ASTM –C547-00, minimum $^{3}/_{4}$" thick
Hot Water Tank Pipe Insulation - $^{3}/_{4}$ " inside diameter - – foam, meets ASTM –C547-00, minimum $^{3}/_{4}$" thick
Hot Water Tank Insulation - fibreglass R10 (fits up to a 60 gal tank) – not bubble wrap
≤11W ENERGY STAR® Qualified LED A Shape (60W) (minimum 600 Lumen output) (Formerly: 7W – 11W ENERGY STAR® Qualified LED A Shape (60W))
≤14W ENERGY STAR® Qualified LED A Shape (75W) (minimum 800 Lumen output) (Formerly: 10W – 14W ENERGY STAR® Qualified LED A Shape (75W))

Initial Specified Measures
≤23W ENERGY STAR® Qualified LED A Shape (100W) (minimum 1600 Lumen output) (Formerly:17W – 23W ENERGY STAR® Qualified LED A Shape (100W))
≤16W ENERGY STAR® Qualified LED PAR 20 (minimum 600 Lumen output) (Formerly: 8W – 12W ENERGY STAR® Qualified LED PAR 20)
≤16W ENERGY STAR® Qualified LED PAR30 & PAR38 (minimum 600 Lumen output) (Formerly: 8W – 12W ENERGY STAR® Qualified LED PAR 30)
≤23W ENERGY STAR® Qualified LED PAR (minimum 1100 Lumen output) (Formerly: 14W – 18W ENERGY STAR® Qualified LED PAR 38)
≤6W ENERGY STAR® Qualified LED MR 16 / PAR 16 (minimum 250 Lumen output) (Formerly: 7W – 10W ENERGY STAR®
Qualified LED MR 16 / PAR 16 - GU 10 Base)
≤11W ENERGY STAR® Qualified LED MR 16 (minimum 400 Lumen output) (Formerly: 7W – 12W ENERGY STAR® Qualified LED MR 16 GU 5.3 Base)
ENERGY STAR® LED Wet Location Rated PAR lamp ≤ 23 Watt (minimum 1100 Lumen output)
Recessed Downlight Fixture including LED with Light Output >600 and <800 lumens (Retrofit Measure List)
Recessed Downlight Fixture including LED with Light Output >800 lumens (Retrofit Measure List)
Indoor Drying Rack

Extended Measures
Replace refrigerator with ENERGY STAR qualified refrigerator - 15.5 - 16.9 cubic foot top freezer, automatic defrost, refrigerator/ freezer, no through the door ice service
Replace refrigerator with ENERGY STAR qualified refrigerator - 17.0 - 18.4 cubic foot top freezer, automatic defrost, refrigerator/ freezer, no through the door ice service
Replace refrigerator with a refrigerator that has a consumption level of less than 425 kwh, 10 – 12.5 cubic foot top freezer, automatic defrost, refrigerator freezer, no through the door ice service
Replace freezer with ENERGY STAR qualified freezer -
12-14.4 cubic foot freezer
Replace freezer with ENERGY STAR qualified freezer - 14.5 - 16.0 cubic foot freezer
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 6,000 – 7,999 BTU/hr with C-UL or CSA certification mark
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 8,000 – 9,999 BTU/hr with C-UL or CSA
certification mark
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 10,000 – 12,000 BTU/hr with C-UL or CSA certification mark
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 14.2 - 21.2 l/day (30-44.9 pints/day) dehumidifier
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 21.3 - 25.4 l/day (45-53.9 pints/day) dehumidifier

Extended Measures
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 25.5 - 35.5 l/day (54-75 pints/day) dehumidifier dehumidifier dehumidifier
Programmable Thermostat – line voltage – meets CAN/CSA-C828-06 standard, minimum performance: Droop: 1.5°C, Differential: 0.5°C, Precision 0% within 0.5°C of the original set point of 22°C
Programmable Thermostat – low voltage - meets CAN/CSA-C828-06 standard, minimum performance: Droop: 1.5°C, Differential: 0.5°C, Precision 0% within 0.5°C of the original set point of 22°C

Weatherization Measures
Comprehensive Draftproofing (caulking, foam and weather stripping, and application of same) – lifespan of 20 years plus If one or two component polyurethane foams are used, the products and installations must conform to: • CAN/ULC-S710.1 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 1: Material Specification. • CAN/ULC-S710.2 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 2: Application. • CAN/ULC-S711.1 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification • CAN/ULC-S711.2 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification, and Part 2: Application. **Attic Insulation (including installation):**
cellulose: CAN/ULC-S703-01 Amendment 1 - Cellulose Fibre Insulation (CFI) for Buildings OR 2) Mineral Fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre

Weatherization Measures
for Buildings **Wall Insulation (including installation):**
cellulose: CAN/ULC-S703-01 Amendment 1 - Cellulose Fibre Insulation (CFI) for Buildings OR 2) Mineral Fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre **Basement Insulation (including installation):**
mineral fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre for Buildings Vapour Barrier: 69009-CAN/CGSB-51.34-m86 If one or two component polyurethane foams are used, the products and installations must conform to: • CAN/ULC-S710.1 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 1: Material Specification. • CAN/ULC-S710.2 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 2: Application. • CAN/ULC-S711.1 Standard for Thermal Insulation – Bead Applied Two-Component
Polyurethane Air Sealant Foam, Part 1: Material Specification • CAN/ULC-S711.2 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification, and Part 2: Application.

[NTD: Add details pertaining to heat pumps]

SCHEDULE B TO THE PRINCIPLES ANNEX
PERMITTED EXPENSE REIMBURSEMENTS

[NTD: Insert the Province's Transfer Payment Accountability Directive/Travel, Meal and Hospitality Expenses Directive]

PERMITTED DELEGATION ANNEX

1. Under Section 4.2(d) of the Declaration, the Trustee has the power to: (A) appoint, employ or retain Administrative Services Agents for the purpose of discharging its duties and obligations under the Declaration; and (B) enter into, perform, enforce and amend Administrative Services Agreements.

2. In accordance with [Section 4.2] of the Declaration, consistent with the principles set forth in the Principles Annex, the Trustee or its agent will seek to enter into one or more Administrative Services Agreements with individual Electricity Distributors under which the Electricity Distributors will act as Administrative Service Agents to the Trustee. In this manner, the Trustee will delegate certain of its powers and duties to the Electricity Distributors.

3. Under Section 5.1 of the Declaration, to the extent the Trustee has delegated any of its duties or powers, it shall be deemed to have satisfied the Standard of Care in respect of the subject matter of such delegation, subject to the Trustee's overall duty to exercise prudent oversight thereof. The Trustee is entitled to rely on an Electricity Distributor to discharge the duties delegated to it, as Administrative Services Agent, pursuant to an Administrative Services Agreement as described in this Annex.

4. Accordingly, and without limiting the Trust's right to delegate under the Declaration, the Trust will be permitted to, and should seek to, enter into Administrative Services Agreements with Electricity Distributors in order to provide for the following:

    a. **Identification of Applicable Primary Beneficiary Payees and Determination of Individual Distribution Amounts**

        i. Each Electricity Distributor will make an initial assessment of the financial needs of Primary Beneficiaries within its designated service area or region, having regard to [NTD: specify relevant economic data and reference material], in order to prepare and provide to the Trustee an estimate of the number of Primary Beneficiaries who the Electricity Distributor reasonably expects would satisfy the Selection Factors (as defined in clause 1.1 "Identification of Primary Beneficiary Payees" of the Principles Annex).

        ii. Each Electricity Distributor will make an initial assessment of the measures it would recommend be included as Eligible Measures, having regard to [NTD: specify relevant considerations], in order to prepare and provide to the Trustee an estimate of the average cost per Primary Beneficiary Payee (as defined below) of such Eligible Measures that the Electricity Distributor reasonably expects would apply in respect of Primary Beneficiaries resident in its service area or region.

        iii. Based on the product of (i) and (ii), above, and such other considerations as it considers to be directly relevant, each Electricity Distributor will make a written recommendation to the Trustee regarding the aggregate funding amount that the Electricity Distributor anticipates would be utilized under the

[Project] by Primary Beneficiaries in its service area or region (the "**Local Funding Estimate**"). Such recommendation will be accompanied, when submitted to the Trustee, by a detailed explanation regarding the assumptions, financial parameters, suitability considerations and other information underlying the Local Funding Estimate (including the type of information contemplated by "[Insert]" under the Principles Annex, which will be relied upon by the Trustee in its assessment regarding the allocation of available funding to or for the benefit of the Primary Beneficiaries across the specified areas and regions of the Province.

iv. The Trustee will inform the Electricity Distributor regarding the aggregate of the amount determined by the Trustee to be made available under the [Project] for Primary Beneficiaries in the Electricity Distributor's designated service area or region (for each LDC, its "**Maximum LDC Allocation**") and as to any maximum amount that may be paid to or for the benefit of any single Primary Beneficiary [or group of related Primary Beneficiaries] located in the servicer area or region of the Electricity Distributor (the "**Maximum Primary Beneficiary Amount**"). The Maximum LDC Amount and Maximum Primary Beneficiary Amount may vary between designated areas and regions, the Primary Beneficiaries within such areas and regions, and may be increased by the Trustee from time to time in its discretion.

v. Each Electricity Distributor will apply the principles set forth under ["Identification of Primary Beneficiary Payees" in the Principles Annex] to identify and make recommendations to the Trustee regarding the amount of funds (if any) to be distributed to or for the benefit of Primary Beneficiaries resident within its designated service area or region from time to time (the "**Primary Beneficiary Payees**").

vi. Each Electricity Distributor will ensure that the aggregate of the amounts it recommends be distributed to or for the benefit of Primary Beneficiary Payees from time to time does not exceed (1) its Maximum LDC Allocation and (2) for any single Primary Beneficiary [or group of related Primary Beneficiaries] located in the servicer area or region of the Electricity Distributor, the Maximum Primary Beneficiary Amount.

vii. The Trustee will provide written confirmation to each Electricity Distributor:

1. Either (x) that the recommendations specified of the Electricity Distributor in clause (v), above, have been accepted, or (y) as to the specific reasons for any non-acceptance;

2. The identity of each Primary Beneficiary Payee resident in the Electricity Distributor's service area or region and its residential address;

3. The amount of the distribution to be paid to or for the benefit of each such Primary Beneficiary Payee.

b. **Making of Distributions**

i. Promptly after the Trustee confirms the identity of a Primary Beneficiary Payee resident in a Electricity Distributor's service area or region and the amount of the distribution to be paid to or for the benefit of such Primary Beneficiary Payee, the Trustee will arrange for payment to the Electricity Distributor an amount equal to the amount of such distribution.

ii. Promptly upon receipt of funds in respect of a distribution to a Primary Beneficiary Payee, the Electricity Distributor will arrange for payment of the full amount of such distribution to or for the benefit of the Primary Beneficiary Payee, without reduction or set-off.

c. **Reporting, Record-Keeping, Inspection and Disclosure**

i. The Electricity Distributor will provide to the Trustee quarterly and annual reports ("**Reports**") for the duration of the Administrative Services Agreement.

ii. The Electricity Distributor will keep and maintain all financial records and non-financial documents and records relating to the provision of services under the Administrative Services Agreement. [Specify required records regarding individual Primary Beneficiary Payees]

iii. The Trustee, its authorized representatives or an independent auditor may, at its own expense, on twenty-four hours' notice to the Electricity Distributor and during normal business hours, inspect the records of and information respecting the Electricity Distributor to confirm its compliance with the Administrative Services Agreement, including its process for determining the Primary Beneficiary Payees, distribution amounts and the delivery of funds to [or for the benefit of] the Primary Beneficiary Payees. The Trustee, its authorized representatives or an independent auditor may inspect and copy all records and documents kept in accordance with the Administrative Services Agreement and conduct an audit or investigation of the Electricity Distributor in respect of the identification of the applicable Primary Beneficiary Payees, the amount of distributions made to or for the benefit of the Primary Beneficiary Payees; and the delivery of funds to or for the benefit of the Primary Beneficiary Payees.

d. **Standard of Care**

i. The Electricity Distributor will perform its duties provided under the Administrative Services Agreement exercising the degree of care, diligence and skill that a reasonably prudent Person would exercise in comparable circumstances.

ii. In recommending Primary Beneficiary Payees to the Trustee, the Electricity Distributor will seek to avoid actual, potential or perceived conflicts of interest.

e. **Expenses**

i. The Electricity Distributor will be eligible to receive reasonable compensation and reimbursement of its actual out-of-pocket costs associated with the performance of its duties under the Administrative Services Agreement, subject to compliance with the Province's Travel, Meal and Hospitality Expenses Directive. Such compensation amounts and reimbursement entitlements will be specified in the Administrative Services Agreement.

[Other matters you may consider dealing with here include compliance with privacy law/confidentiality/legal considerations and requirements; money laundering; preparation of accounting and tax statements by the Trust; compliance with regulatory laws; representation in product warranty claims (to the extent the Trust is sued in connection with a purchase of Eligible Measures); flowing money to suppliers of Eligible Measures; appropriate reps and indemnities from LDCs; specific reporting of cash and allocations; logistics of banking and cash flow mechanics and related record-keeping; production of information for Trustee to satisfy legal requirements applicable to the Trust (i.e., tax; record keeping); preparation of tax remittances for beneficiaries; preparation of reports for the Government and cooperation with other compliance by the Trust with the TPA; required communications to Primary Beneficiaries on behalf of the Trust (including to comply with applicable laws); preparation and submission of applications, etc., that may be contemplated by the [Project]; termination scenarios]

TRUSTEE REPLACEMENT ANNEX

1. The Advisory Committee shall consist of the following individuals:

   •

   •

   •

2. In the event any member of the Advisory Committee resigns or is unable to act, the remaining members may appoint a resident of Ontario as a replacement.

3. On or before •, 2017, the Advisory Committee shall identify six residents of Ontario who are willing to act as Trustees of the Affordability Fund Trust and who, collectively satisfy the following criteria:

   a) Demonstrate an understanding of the electricity sector including the electricity distribution sector;

   b) Have expertise in conservation and low income programs;

   c) It is expected that three of the identified individuals will be representatives from separate electricity distributors, two individuals will be representatives from separate social services agencies and one individual will be a government representative.

   d) It is expected that government representation will be non-controlling.

4. The Advisory Committee shall recommend that the existing Trustee appoint the individuals so identified to become replacement Trustees of the Affordability Fund Trust pursuant to section 5.7 of the Declaration.

5. If any of the persons recommended under paragraph 4 or under this paragraph are not accepted and appointed by the existing Trustee pursuant to section [5.7] of the Declaration, the Advisory Committee shall forthwith identify and recommend an alternative individual who is willing to act and who whose presence as a Trustee would result in the Trustees collectively satisfying the criteria in paragraph 2 above.

6. Upon the appointment of [number] trustees pursuant to section • of the Declaration, the Advisory Committee will be functus.

FW_ Affordability Fund - Declaration of Trust and Transfer Pricing Agreement 1.pdf

From: Petsche, Nadine (TBS) []
To: samir chhelavda (Samir.Chhelavda@HydroOne.com) [Samir.Chhelavda@HydroOne.com]; Picard, Michel (mpicard@kpmg.ca) [mpicard@kpmg.ca]
Subject: FW: Affordability Fund - Declaration of Trust and Transfer Pricing Agreement
Date: Thursday, March 16, 2017 17:51:38

Samir/Michel

I see that you weren't included on the email below.

Regards,

Nadine

From: Schwab-Pflug, Emma (ENERGY)
Sent: March-16-17 4:21 PM
To: Alexandra.Phillips@HydroOne.com
Cc: Sermat-Harding, Kaili (ENERGY); Syed, Usman (ENERGY); Qureshi, Musab (ENERGY); Spencer.Gill@HydroOne.com; Daniel.Levitan@HydroOne.com; Natalie.Poole-Moffatt@HydroOne.com; Johnson, Paul (ENERGY/MEDEI/MRI); Ranalli, David (ENERGY); Schachtschneider, Michelle (ENERGY); Petsche, Nadine (TBS); An, Tai (ENERGY); Gounden, Pratima (ENERGY); Desouza, Charlotte (ENERGY); Thompson, Erin (ENERGY)
Subject: RE: Affordability Fund - Declaration of Trust and Transfer Pricing Agreement

Thanks Alex and understood re: sharing finals with Computershare.

Also, our counsel has drafted the following to assist in Hydro One and KPMG's review of the documents:

Our mark-up addresses the tensions that exist among (1) the requirements to recognize the Trust as non-controlled for government year-end accounting purposes, (2) the practical need for the LDCs to lead the identification and allocations to eligible participants processes (3) the desire for the ultimate customers in need to be the reference group of beneficiaries (4) the legal requirements to create a valid trust under Ontario law and (5) the practical limitations associated with addressing and contracting relevant LDC participation prior to March 31, while achieving sufficient contractual certainty for the Province and legal purposes.

To balance these tensions, we have suggested the following (subject to accounting input and practical input from Hydro One):

(1) the Declaration contemplates the following 3 time periods:

a. Initially, Computershare will be the trustee and will simply sit on the funds. Hydro One will provide very basic administrative services during this initial period. Computershare, acting on the recommendations of an "Advisory Committee" will appoint its replacement – a "Board of Trustees" (this is contemplated in a Trustee Replacement Annex to the Declaration).

b. Once the Board of Trustees is in place, administrative services agreements will be entered into with LDCs. To give the LDCs a wide scope to identify funding recipients within their service areas, a broad and specific delegation is described in the "Permitted Delegations Annex", which frames out what the basic and key terms of the ultimate Administrative Services Agreements with the LDCs will entail. That level of detail is required to enable the broad Trustee delegation, without upending the validity of the Trust for legal purposes. The Board of Trustees will maintain supervisory responsibility over the LDCs actions, but will be permitted to rely on the recommendations of the LDCs. Under these arrangements, the find will be divided by region and then LDCs will have wide discretion to recommend distributions, in each case subject to the principles set out in a "Principles Annex".

c. Once the program is to be wound up (either because of a default by the Trust, the Trustee's determine that all funding has been appropriately provided for or a final end-date occurs), any remaining funds will be paid to charitable beneficiaries identified from among a pre-determined slate. The amount available to the charities in the circumstance where a default of the Trust has occurred will be net of the amount the Province will be entitled to be paid (i.e., the remaining Assets) from the Trust under the Transfer Payment Agreement.

(2) From March 31, all of the discretion to deal with the Trust Assets will reside with Computershare or the Board, or by delegation to the LDCs where a suitable contract is signed by the Trust with the LDCs. The Province will not maintain control of the Assets, and all steps contemplated in (1) will not be affected by the Province other than (in substance):

a. To the extent the Province is represented on the Advisory Committee or the Board;

b. The Province has rights to require payment of remaining Assets under the Transfer Agreement on an "event of default"; or

c. The Province has certain reporting, audit and compliance rights, essentially to affect the intended purpose of the Trust in its implementation (and with remedies under

the Transfer Payment Agreement, including a right to be paid the undistributed Assets or to pursue contract remedies (including specific performance).

Otherwise, the terms of the Trust will be determined at the outset and determined and affected by non-governmental entities. We understand that these continuing ties to the Trust would not be contrary to the accounting principles applicable for government year-end treatment as a non-controlled trust entity.

Based on this drafting approach, Blakes believes on a preliminary basis that the validity issues associated with the Trust can be adequately addressed.

From: Alexandra.Phillips@HydroOne.com [mailto:Alexandra.Phillips@HydroOne.com]
Sent: March-16-17 3:50 PM
To: Alexandra.Phillips@HydroOne.com
Cc: Schwab-Pflug, Emma (ENERGY); Sermat-Harding, Kaili (ENERGY); Syed, Usman (ENERGY); Qureshi, Musab (ENERGY); Spencer.Gill@HydroOne.com; Daniel.Levitan@HydroOne.com; Natalie.Poole-Moffatt@HydroOne.com; Johnson, Paul (ENERGY/MEDEI/MRI); Ranalli, David (ENERGY); Schachtschneider, Michelle (ENERGY); Petsche, Nadine (TBS); An, Tai (ENERGY); Gounden, Pratima (ENERGY); Desouza, Charlotte (ENERGY); Thompson, Erin (ENERGY)
Subject: Re: Affordability Fund - Declaration of Trust and Transfer Pricing Agreement

(Press send too soon)

I am checking on exact timelines and get back to you later on today.

On sharing drafts with CS, it is our preference to send them final docs instead of drafts.

Speak soon,

Alex Phillips

Manager, External Relations

Hydro One Networks Inc.

(O) 416-345-1375

(C) 647-405-8601

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On Mar 16, 2017, at 3:48 PM, PHILLIPS Alexandra <Alexandra.Phillips@HydroOne.com> wrote:

> Thanks Emma. I am checking on exact timelines and will
>
> **Alex Phillips**
>
> Manager, External Relations
>
> Hydro One Networks Inc.
>
> (O) 416-345-1375
>
> (C) 647-405-8601
>
> This email and any attached files are privileged and may contain confidential information intended only for the person or persons named above. Any other distribution, reproduction, copying, disclosure, or other dissemination is strictly prohibited. If you have received this email in error, please notify the sender immediately by reply email and delete the transmission received by you. This statement applies to the initial email as well as any and all copies (replies and/or forwards) of the initial email.
>
> On Mar 16, 2017, at 3:23 PM, Schwab-Pflug, Emma (ENERGY) <Emma.Schwab-Pflug@ontario.ca> wrote:

Hi Alex:

Please find attached tracked and clean versions of the TPA and Declaration of Trust. Tracked versions are tracked from the versions you had shared on March 13. You will note that there are comments in the TPA and Declaration indicating areas that we are working with Blakes to finalize.

We would recommend, as discussed, that Hydro One share these current versions with KPMG, as well as Computershare, so that we can work to resolve identified issues.

Can Hydro One advise if it will not be possible to share comments back with us for 3 PM tomorrow?

We would like to set up a call tomorrow afternoon to discuss comments. Can you advise of a preferred time for a call?

A few other follow-ups:

· We have confirmed internally that Computershare can establish an interim Trust account using their existing banking relationship with BNF. Can you confirm once this (and the TPA/Decl if you agree to share) is communicated with Computershare?

· Can you please share the Computershare Trustee(s) contact details? We understand that the Trustees will have to be recognized in the Declaration of Trust.

· Can you share the administrative service agreement for the Ministry's

review today? Our interest in seeing this is to have comfort that it will be ready for signing by Computershare on Monday or Tuesday of next week.

Thanks again to you and your team for working with us on these tight timelines.

- Emma

From: Alexandra.Phillips@HydroOne.com [mailto:Alexandra.Phillips@HydroOne.com]
Sent: March-13-17 2:56 PM
To: Syed, Usman (ENERGY); Schwab-Pflug, Emma (ENERGY); Qureshi, Musab (ENERGY)
Cc: Spencer.Gill@HydroOne.com; Daniel.Levitan@HydroOne.com; Natalie.Poole-Moffatt@HydroOne.com
Subject: Fwd: Affordability Fund - Declaration of Trust and Transfer Pricing Agreement

All:

Please see our revisions to the TPA (with a track changes PDF) and the Declaration of Trust.

Looking forward to hearing back from you by EOD tomorrow but don't hesitate to reach out if you have any questions or concerns.

Best,

Alex Phillips

Manager, External Relations

Hydro One Networks Inc.

(O) 416-345-1375

(C) 647-405-8601

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<2017-03-16 TRACK Affordability_Fund_Trust_–_Declaration_of_Trust v2.docx>

<2017-03-16-CLEAN TPA_Draft_Afund v2.docx>

<2017-03-16-TRACK TPA_Draft_Afund v2.docx>

<2017-03-16 CLEAN Affordability_Fund_Trust_–_Declaration_of_Trust v2.docx>

FW_ Affordability Fund - Declaration of Trust and Transfer Pricing Agreement .rtf

From: Petsche, Nadine (TBS) []
To: Picard, Michel (mpicard@kpmg.ca) [mpicard@kpmg.ca]
Subject: FW: Affordability Fund - Declaration of Trust and Transfer Pricing Agreement
Date: Thursday, March 16, 2017 17:52:52
Attachment 1: 2017-03-16 TRACK Affordability_Fund_Trust_–_Declaration_of_Trust v2.docx
Attachment 2: 2017-03-16-CLEAN TPA_Draft_Afund v2.docx
Attachment 3: 2017-03-16-TRACK TPA_Draft_Afund v2.docx
Attachment 4: 2017-03-16 CLEAN Affordability_Fund_Trust_–_Declaration_of_Trust v2.docx

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Hi Michel.

I didn't hear back from Samir, so I'm not sure if he's in the office. Sending you a copy of the docs provided earlier this afternoon for your review and consideration.

N

From: Petsche, Nadine (TBS)
Sent: March-16-17 3:27 PM
To: samir chhelavda (Samir.Chhelavda@HydroOne.com)
Subject: FW: Affordability Fund - Declaration of Trust and Transfer Pricing Agreement

FYI.

Nadine

From: Schwab-Pflug, Emma (ENERGY)
Sent: March-16-17 3:24 PM
To: Alexandra.Phillips@HydroOne.com
Cc: Sermat-Harding, Kaili (ENERGY); Syed, Usman (ENERGY); Qureshi, Musab (ENERGY); Spencer.Gill@HydroOne.com; Daniel.Levitan@HydroOne.com; Natalie.Poole-Moffatt@HydroOne.com; Johnson, Paul (ENERGY/MEDEI/MRI); Ranalli, David (ENERGY); Schachtschneider, Michelle (ENERGY); Petsche, Nadine (TBS); An, Tai (ENERGY); Gounden, Pratima (ENERGY); Desouza, Charlotte (ENERGY); Thompson, Erin (ENERGY)
Subject: RE: Affordability Fund - Declaration of Trust and Transfer Pricing Agreement

Hi Alex:

Please find attached tracked and clean versions of the TPA and Declaration of Trust. Tracked versions are tracked from the versions you had shared on March 13. You will note that there are comments in the TPA and Declaration indicating areas that we are working with Blakes to finalize.

We would recommend, as discussed, that Hydro One share these current versions with KPMG, as well as Computershare, so that we can work to resolve identified issues.

Can Hydro One advise if it will not be possible to share comments back with us for 3 PM tomorrow?

We would like to set up a call tomorrow afternoon to discuss comments. Can you advise of a preferred time for a call?

A few other follow-ups:

· We have confirmed internally that Computershare can establish an interim Trust account using their existing banking relationship with BNF. Can you confirm once this (and the TPA/Decl if you agree to share) is communicated with Computershare?

· Can you please share the Computershare Trustee(s) contact details? We understand that the Trustees will have to be recognized in the Declaration of Trust.

· Can you share the administrative service agreement for the Ministry's review today? Our interest in seeing this is to have comfort that it will be ready for signing by Computershare on Monday or Tuesday of next week.

Thanks again to you and your team for working with us on these tight timelines.

- Emma

From: Alexandra.Phillips@HydroOne.com [mailto:Alexandra.Phillips@HydroOne.com]
Sent: March-13-17 2:56 PM
To: Syed, Usman (ENERGY); Schwab-Pflug, Emma (ENERGY); Qureshi, Musab (ENERGY)
Cc: Spencer.Gill@HydroOne.com; Daniel.Levitan@HydroOne.com; Natalie.Poole-Moffatt@HydroOne.com
Subject: Fwd: Affordability Fund - Declaration of Trust and Transfer Pricing Agreement

All:

Please see our revisions to the TPA (with a track changes PDF) and the Declaration of Trust.

Looking forward to hearing back from you by EOD tomorrow but don't hesitate to reach out if you have any questions or concerns.

Best,

Alex Phillips

Manager, External Relations

Hydro One Networks Inc.

(O) 416-345-1375

(C) 647-405-8601

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2017-03-16 TRACK Affordability_Fund_Trust_ Declaration_of_Trust v2.pdf

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Style Definition: OHHReference,Ref: Font: Times New Roman

Style Definition: OHHSubHeading,OSH: Font: Times New Roman

Style Definition: Schedule,Sch: Font: Times New Roman

Style Definition: Comment Text

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DECLARATION OF TRUST

Made as of March ~~●~~5, 2017

by

COMPUTERSHARE TRUST COMPANY OF CANADA

establishing

AFFORDABILITY FUND TRUST

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RELABEL HEADINGS AND REGENERATE TABLE OF CONTENTS]

DECLARATION OF TRUST

This Declaration of Trust is made as of March ●~~,~~●, 2017, by Computershare Trust Company of Canada, a trust company established under the laws of Canada and licensed to carry on business as a trust company in each of the provinces and territories of Canada (the "**Trustee**").

WHEREAS the Trustee wishes to establish a trust to acquire, hold, manage, apply and dispose of certain property ~~and~~ for the benefit of certain ~~purposes~~Beneficiaries as herein described.

NOW THEREFORE the Trustee hereby declares that it holds in trust as trustee the sum of ONE HUNDRED DOLLARS ($100) contributed by it on this date and all property of every type and description which it may hereafter acquire or hold in its capacity as trustee of the Trust and all income therefrom and proceeds thereof, to hold, manage,apply and dispose of the same on and subject to the provisions contained in this Declaration.

SECTION 1
INTERPRETATION

1.1 Definitions

In this Declaration:

(a) "***Administrative Services Agent***" means ~~the~~each agent, ~~if~~which may include any Electricity Distributor, appointed from time to time under an Administrative Services Agreement, and its successors and permitted assigns solely in such capacity.

(b) "***Administrative Services Agreement***" means ~~any~~each agreement ~~that may be~~ entered into from time to time by the Trust ~~with an~~and one or more Administrative Services ~~Agent~~Agents or other Persons, in furtherance of the purpose of the Trust described in section 2.1 of this Declaration, under which the Administrative Services Agent ~~agrees~~will agree to provide specified administrative and other services to and on behalf of the Trustee~~,~~ (including, following the Original Trustee Replacement Date, the Permitted Delegations Annex), as such agreement may be amended, supplemented, restated, renewed or replaced from time to time.

(c) "***Assets***" means, collectively, the following:

(i) the $100 Canadian referred to above;

(ii) all other property which is now or which at any time in the future may be issued, assigned, transferred, provided, donated, gifted and contributed to the Trustee (including pursuant to the Transfer Payment Agreement) to be held in trust pursuant to this Declaration (and which the Trustee is willing to accept and hold);

(iii) all property which may at any time be substituted therefor;

(iv) all capital depreciations to or acquisitions by the Trust;

(v) all income of the Trust; and

(vi) all proceeds of disposition of any of (i) through (v) above,

but excludes anything paid out or distributed (whether out of income or capital) in the normal course of administration or pursuant to the provisions of this Declaration.

(d) "***Beneficiary***" means each ~~individual that satisfies each of the following criteria:~~Primary Beneficiary and each Residual Beneficiary, where applicable.

~~(i) the individual owns, rents or leases a residence located in Ontario and is the primary or secondary electricity utility account holder named on an Electricity Invoice issued in respect of that residence;~~

~~(ii) the individual is not a HAP Eligible Person; and~~

~~(iii) [the individual has at any time in the prior 12 month period been more than 90 days in arrears in the payment of any amount owing by him or her under an Electricity Invoice.][**NTD: this section is an example of a bright line test to identify beneficiaries with some precision. Alternates to be discussed.]**~~

(e) "***Board of Trustees***" means the group of trustees appointed and acting in such capacity as contemplated by Section •, and as of the Original Trustee Replacement Date means the individual trustees appointed by the Original Trustee pursuant to Section 5.7 on the basis described in the Trustee Replacement Annex.

~~(e)~~(f) "***Declaration***" means this Declaration of Trust as amended, restated, supplemented or otherwise modified from time to time, including each of the Annexes hereto.

~~(f) "***Eligible Measures***" means the measures described in Schedule A. **[NTD: consider using the HAP Program list, plus heat pumps]**~~

(g) "***Electricity Distributor***" means, in respect of a designated service area or region in Ontario, the distributer of electricity to residences located in such area or region.

~~(g)~~(h) "***Electricity Invoice***" means an invoice ~~for~~issued by an Electricity Distributor in respect of electricity charges and related services and amounts ~~issued by a Local Distribution Company~~incurred in respect of a residence located in ~~Ontario.~~the Electricity Distributor's designated service area or region of Ontario.

~~(h) "***Final Distribution Date***" means ●. [**NTD: to discuss residual interest in Trust Assets]**~~

(i) "***Eligible Investments***" means [NTD: Describe deposit instruments or accounts issued or established by one or more Schedule I Canadian chartered banks].

(j) "***Eligible Measures***" means electricity efficiency and/or conservation measures determined by the Trustee from time to time, on the basis contemplated in the Principles Annex and determined in the manner specified and having regard to the Permitted Delegations Annex.

(k) "***Final Distribution Date***" means the earlier of (i) the date specified as such or determined pursuant to the Transfer Payment Agreement[1] and (ii) the later of (x) the date (if any) on which the Trustee determines that no further distributions are likely to be made to any Primary Beneficiary and (y) •, 20[23].

~~(i)~~(l) "***HAP Eligible Person***" ~~[~~means an "Eligible Person" as defined in Section 3.1 of the document entitled "Conservation First Framework LDC Took Kit" published by Independent Electricity System Operator and designated as Final v3.0 – March 11, 2016~~].[NTD: to be discussed]~~, as amended or replaced by any applicable act of the Legislature or Ontario.

~~(j) "*Local Distribution Company*" means a distributer of electricity to residences located in Ontario.~~

(m) "***Minister of Energy***" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of the *Ministry of Energy Act, 2011* under the ~~Ontario *Electricity*~~*Executive Council Act*~~, *1998*, S.O. 1998,~~.

(n) "***Original Trustee***" means Computershare Trust Company of Canada and its successors and assigns, acting in its capacity as ~~amended~~trustee hereunder.

~~(k)~~(o) "***Original Trustee Replacement Date***" has the meaning specified in Section 5.7, being the date on which the Original Trustee is replaced as trustee under this Declaration as contemplated under Section 5.7.

~~(l)~~(p) "***Person***" includes any individual, sole proprietorship, corporation, partnership, joint venture, association, society, club, board, chamber, joint-stock company, trust, trustee, unincorporated or incorporated organization or entity or government or any entity, agency or political subdivision thereof.

(q) "***Primary Beneficiary***" means each individual that, as of a time of determination, satisfies each of the following criteria:

(i) the individual owns, rents or leases a residence located in Ontario and is the primary or secondary electricity utility account holder named on an Electricity Invoice issued in respect of that residence; and

(ii) the individual is not a HAP Eligible Person.

(r) "***Principles Annex***" means the Principles Annex set forth as an annex to this Declaration.

(s) "***Permitted Delegations Annex***" means the Permitted Delegations Annex set forth as an annex to this Declaration.

[1] NTD: The TPA will provide that on an Event of Default the remaining Assets will be paid over to the Government, on the basis that the Government's transfer thereunder is subject to such a reservation in circumstances of non-compliance. The TPA should also specify that the Trust will thereafter be wound up, which will tie in to this definition by way of the date so specified in the TPA. Accounting considerations to be discussed.

(t) ***"Residual Beneficiary"*** means each charitable organization identified by the Trustee and specified as a residual beneficiary hereunder from time to time from among the charitable organizations specified on Schedule • or their respective successor charitable organizations.

~~(m)~~(u) "***Transfer Payment Agreement***" means the ~~Ontario~~ transfer payment agreement dated as of ~~●~~•, 2017 between the Trustee and Her Majesty the Queen in right of Ontario as represented by the Minister of Energy, as such agreement may be amended, restated, supplemented or otherwise modified from time to time.

~~(n)~~(v) "***Trust***" means Affordability Fund Trust, a trust established under and governed by the laws of the Province of Ontario pursuant to this Declaration.

~~(o) "***Trustee***" has the meaning given in the recitals in this Declaration.~~

(w) "***Trustee***" means (i) the Original Trustee and (ii) on and after the Original Trustee Replacement Date, the Board of Trustees acting together in accordance with and subject to Section 5.• and in accordance with the rules and procedures adopted by the Board of Trustees pursuant to Section 5.•.

(x) "***Trustee Replacement Annex***" means the Trustee Replacement Annex set forth as an annex to this Declaration.

1.2 Headings and Table of Contents

The insertion of headings and the provision of a table of contents are for convenience of reference only and shall not affect the construction or interpretation of this Declaration.

1.3 References

Unless otherwise specified, all references to Sections are to Sections of this Declaration. The words "hereto," "herein," "hereof," "hereunder" and similar expressions refer to this Declaration and not to any particular Section or other provision of this Declaration.

1.4 Number and Gender

Unless otherwise specified, words importing the singular include the plural and vice versa and words importing gender include all genders.

1.5 Governing Law

This Declaration shall be governed by, and construed and interpreted in accordance with, the laws of the Province of Ontario and of Canada applicable therein.

1.6 Severability

Any provision of this Declaration which is illegal, invalid or unenforceable in any jurisdiction shall not affect the legality, validity or enforceability of the remaining provisions and any such illegality, invalidity or unenforceability in any jurisdiction shall not affect the legality, validity or enforceability of such provision in any other jurisdiction.

~~**1.7 Time of the Essence**~~

~~Time shall be of the essence of this Declaration.~~

~~1.8~~1.7 Reference to the Trust and the Trustee

For greater certainty, where any reference is made in this Declaration to an act to be performed by or for or on behalf of the Trust, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Trustee in its capacity as trustee of the Trust, and, where any reference is made in this Declaration to an act to be performed by or for or on behalf of the Trustee, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Trustee in its capacity as trustee of the Trust. No Person dealing with the Trust or the Trustee shall be bound to make any enquiry concerning, or has the right to require production of, any evidence of the validity of any act of, or transaction purporting to be made by, the Trustee.

~~1.9~~1.8 Defect in Appointment

No action taken by the Trustee will be invalid or ineffective by reason only of any defect in the appointment of the Trustee or the compliance by the Trustee of any rules or procedures adopted by the Trustee and which is discovered after the taking of such action.

SECTION 2
CONCERNING THE TRUST

2.1 Objectives

The Trust is established for the sole purpose of ~~providing funding to or~~holding and applying the Assets for the benefit of the Beneficiaries as provided for in this Declaration. The activities of the Trust shall be to hold the Assets as contemplated in this Declaration until such time as the ~~Assets are disbursed to the Beneficiaries in accordance with~~Board of Trustees is duly appointed and determines that the Assets are to be distributed to or for the benefit of the Primary Beneficiaries in accordance with this Declaration, having regard to the principles set forth in the Principles Annex and in the manner and basis contemplated in the Permitted Delegations Annex, or otherwise to the Residual Beneficiary in accordance with Section 3.3, in each case subject to the terms, limitation and requirements set forth in this Declaration.

2.2 Name of the Trust

The name of the Trust shall be the "Affordability Fund Trust" ~~and~~or such replacement name as the Trustee shall determine and specify from time to time. The Trustee shall hold the Assets and conduct the activities of the Trust under such name or variation thereof ~~or such other name as~~. If the Trustee ~~may determine from time~~determines to ~~time in its sole and absolute discretion. Should~~change the ~~Trustee determine that~~ name of the ~~use of such name or names is not legal, possible or convenient~~Trust, the Trustee may specify and use such other designation or adopt such other name (including any name in the French language) as it considers appropriate and may hold the Assets and conduct the activities of the Trust under such ~~other~~ designation or other name.

2.3 Location

The head office and the situs of the administration of the Trust shall be ●. The Trustee may change the head office and the situs of the administration of the Trust to any• or such other locationaddress in Ontario as the Trustee, in its sole and absolute discretion, may consider advisable may determine from time to time.

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2.4 Fiscal Year

The fiscal year of the Trust shall end on December 31 in each year.

SECTION 3
DISTRIBUTIONS

3.1 Distributions to Primary Beneficiaries

Prior to the Final Distribution Date, the Trustee may, from time to time, subject to Section 3.2, shall distribute all or any portion of the Assets of the Trust (including capital or income) as to the Primary Beneficiaries identified based on the application of the principles specified in the Principles Annex and in the manner and in the amounts determined on the basis contemplated by the Permitted Delegations Annex, in each case in the amounts and to the extent specified herein and therein, subject in all respects to the exercise by the Trustee inof its absolute discretion deems advisable to or for the benefit of any one or more of the Beneficiaries hereunder and to the exclusion of the other or others, and in such proportions and on such trusts, terms and conditions, if any, as the Trustee in its absolute discretion deems advisable. Beneficiaries.

3.2 Maximum Amount of Distributions to Primary Beneficiaries

The amount distributed by the Trustee to or for the benefit of any Primary Beneficiary shall not (a) exceed the cost estimated costs (including applicable taxes) to be incurred by or on behalf of such Primary Beneficiary (whether or not such costs have been paid or remain outstanding) in respect of Eligible Measures; provided that the cost incurred by a Beneficiary shall not include any specific cost that has or will be funded or reimbursed by any Person applied in respect of the Primary Beneficiary's Ontario residence or (b) include in the calculation of such costs any amount intended to compensate an Electricity Distributor. The Trustee shall be entitled to rely on the recommendations of and information provided by Electricity Distributors acting as Administrative Services Agents appointed for the purposes and in the manner contemplated in the Permitted Delegations Annex, without any duty or obligation to verify or makes enquiries regarding the basis for or propriety of such recommendations or the accuracy or completeness of such information, except if and to the extent that the Trustee, in its discretion, determines that (i) it has actual knowledge that such recommendations are contrary to the reasonable application of the principles set forth in the Principles Annex or have been made on a basis that is manifestly contrary to such principles or the delegations and activities specified or contemplated to be undertaken under the Permitted Delegations Annex or (b) such information is known by the Trustee to be erroneous, contain a material misrepresentation or is materially incomplete.

3.3 Distributions to Residual Beneficiaries

On or as soon as practicable following the Final Distribution Date, the Trustee shall distribute all of the Assets (including capital or income) existing at that time to the Residual Beneficiaries, in each case in the amounts and to the extent determined by Trustee in its discretion hereunder[2] and to the exclusion of the other ~~than the Trust, including ministries, agencies and organizations of the Government of Ontario.~~Beneficiaries.

SECTION 4
POWERS OF THE TRUSTEE

4.1 General

Subject to and in compliance with the terms, limitations and restrictions ~~set out in~~of this Declaration and notwithstanding applicable legislation, the Trustee shall have, without other or further authorization, full, exclusive and absolute power, control and authority over the Assets and over the affairs and activities of the Trust to the same extent as if the Trustee were not a trustee, but rather the sole and absolute owner of the Assets in its own right, including such power, control and authority to do all such acts and things as in its sole judgment and discretion are necessary, incidental or desirable for carrying on the affairs and activities of the Trust, with such powers of delegation as may be permitted or otherwise contemplated by this Declaration. ~~The~~Except as expressly provided in this Declaration, the enumeration in this Declaration of any specific power or authority shall not be construed as limiting the aforesaid general power or authority or any other specific power or authority set out herein. Subject ~~only~~ to the terms, limitations ~~in~~and restrictions of this Declaration, every discretion or power hereby conferred on the Trustee is an absolute and uncontrolled discretion or power.

4.2 Specifically Enumerated Powers

The Trustee shall have the following specific powers and authorities:

(a) ***Transfer Payment Agreement.*** The Trustee shall have the power to enter into and perform its obligation under the Transfer Payment Agreement.

(b) ***Administrative Services Agreements.*** The Trustee shall have the power to enter into and perform its obligation under the Administrative Services Agreements.

~~(a)~~(c) ***Power to Dispose of Assets.*** The Trustee shall have the power to sell, convey, assign, transfer, exchange~~, lease, grant an option~~ and in any other manner dispose of the Assets or any part or parts thereof free and clear of any and all trusts established under this Declaration, by public or private sale, for cash or on credit, with or without advertisement, and subject to such restrictions, stipulations, agreements and reservations as the Trustee in its sole and absolute discretion may consider appropriate or advisable, and to execute and deliver and perform any

[2] NTD: Consider if principles should be included regarding the choice of charities or the absolute amount any particular charity may receive.

agreement, deed, conveyance, transfer~~, lease~~ or other document or instrument in connection with the foregoing.[3]

~~(b)~~(d) ***Power to Manage and Invest.*** The Trustee shall have the power to own, hold~~,~~ and manage ~~and use~~ the Assets in such manner as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable ~~and the~~.[4] The Trustee shall have the power to invest the Assets in ~~such investments~~Eligible Investments, and to change such ~~investments~~Eligible Investments at any time and from time to time, all as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable. The Trustee shall not be limited to investments authorized by law for trustees. The Trustee will have no liability for the depreciation of any investment.

~~(c)~~ ***Power to Delegate and to Appoint Agents, etc.*** The Trustee shall have the power to appoint, employ or contract with any Person as the Trustee in its sole and absolute discretion may consider appropriate or advisable in connection with the activities of the Trust. Without limiting the generality of the foregoing, the Trustee will have the power at any time and from time to time~~:~~

~~(i)~~(e) to appoint, employ or retain consultants, financial advisers, technical advisers, legal counsel, accountants, administrative services agents, insurers, insurance agents and insurance brokers, as the Trustee may require for the purpose of discharging its duties hereunder and shall not be responsible for or for the actions of any of them. The Trustee may pay remuneration and reimbursements from the ~~Trust Property~~Assets for ~~all~~ services performed for it or on its behalf in the discharge of the trusts hereof without taxation for costs or fees of any counsel, solicitor or attorney. Without limiting the generality of the forgoing, the Trustee may appoint, employ or retain any Person:

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~~(A)~~(i) to act for and on behalf of the Trust in connection with any and all matters in any way relating to the negotiation, settlement, entering into, amending, performance and enforcement of the Transfer Payment Agreement, the Administrative Services Agreement and any ~~related~~other agreements and contracts~~,~~ to which the Trust becomes a party in accordance with this Declaration;

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~~(B)~~(ii) to provide or cause to be provided any or all kinds of administrative services in any way relating to the activities of the Trust~~.~~;

~~(C)~~(iii) to act as attorney in fact, agent or trustee in the ~~purchase~~acquisition, holding ~~or~~, application, sale or other disposition of ~~Trust Property~~the Assets and in the handling, prosecuting or settling of any claims of the Trust~~.~~;

~~(D)~~(iv) to value the Assets and determine the net income of the Trust; and

(v) to ~~enter into, perform, enforce~~make any filings, elections and ~~amend agreements~~ submissions (including~~, without limitation,~~ in respect of taxation matters) in

[3] Consider limiting this broad power.

[4] Consider limiting this broad power.

connection with the Trust's compliance with applicable laws and regulatory requirements.

~~(ii)~~ Without limiting the foregoing, the Trustee shall seek to enter into Administrative Services Agreements~~, providing~~ with Electricity Distributors for ~~or relating to the appointment or employment of any of such Persons referred to above containing~~the purposes contemplated by the Permitted Delegations Annex, and on such terms and ~~provisions~~conditions (including terms and ~~provisions~~conditions as to the payment of reasonable fees and expenses) not inconsistent therewith as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable.

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~~(d)~~(f) ***Power to Operate Accounts.*** The Trustee shall have the power to open and operate accounts at any chartered bank, trust company or other financial institution in Canada or elsewhere, as the Trustee in its sole and absolute discretion may consider appropriate or advisable; to deposit therein any moneys or securities forming part of the Assets whether or not such deposits will earn interest; to withdraw such deposits at such times and in such manner as the Trustee may determine; to draw, make, endorse, deposit or otherwise deal in cheques, bills of exchange, promissory notes, drafts and other kinds of instruments and securities; to enter into contracts or agreements with any such chartered bank, trust company or other financial institution containing such terms and provisions as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable; and the Trustee shall have no liability or responsibility for any loss which may occur by reason of the failure of any such chartered bank, trust company or other financial institution.

~~(e)~~(g) ***Power to Collect, etc.*** The Trustee shall have the power to collect, sue for, receive and give receipts for all sums of money or other property due to the Trust; to consent to extensions of time for payment or to the renewal of any securities or obligations; to engage or intervene in, prosecute, defend, compound, compromise, abandon or adjust by arbitration or otherwise, any demands, claims, actions, suits or proceedings relating to the Trust or the Assets; to exercise any and all remedies available to the Trustee under any agreement or otherwise including any power of foreclosure or sale available at law and, in connection with any such foreclosure or sale, to purchase or otherwise acquire title to any property and to convey good title thereto free of any and all trusts hereby established, or to take or retake possession of any property secured under any agreement or instrument; to extend the time, with or without security, for the payment or delivery of any debts or property and to execute and deliver releases, acquittances, discharges, agreements or other instruments related thereto; and to pay or satisfy any debts or claims upon any evidence that the Trustee, in its sole and absolute discretion, may determine to be sufficient.

~~(f)~~(h) ***Power to Pay Trustee's Fees.*** The Original Trustee shall be entitled to be paid and receive reasonable fees ~~from the Assets~~ as compensation for its services under this Declaration and be reimbursed for its out-of-pocket expenses reasonably incurred, in each case from the Assets, without the approval of any Beneficiary or any court. The Original Trustee shall be entitled, in its sole and absolute discretion, to withdraw funds from time to time ~~funds~~ for such purpose from any account of the Trust. Members of the Board of Trustees shall be entitled to reimbursement for and in respect of their out-of-pocket expenses reasonably incurred in discharging their respective duties and obligations under this Declaration and any contract of the Trust entered into in accordance with this Declaration, in each case without the approval of any Beneficiary or any court, but subject to the "Travel, Meal and Hospitality Expenses Directive of

the Province" specified and amended by the Province from time to time, a copy of the current version of which is attached as Exhibit 1 to the Principles Annex.

~~(g)~~(i) ***Power to Pay Taxes.*** The Trustee shall have the power to pay, deduct, withhold or remit any taxes or assessments which are required by law to be paid, deducted, withheld or remitted together with or from any payment made by the Trustee; to pay all taxes or assessments of whatever kind or nature imposed upon or against the Trust or the Trustee in connection with the Assets or any part thereof; to collect and remit all taxes and assessments of whatever kind or nature required to be collected and remitted by the Trust or the Trustee in connection with their activities or the Assets or any part thereof; to appeal, settle or compromise tax claims or liabilities; and, for the foregoing purposes, to make such returns and do all other acts and things as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable.

~~(h)~~(j) ***Power to Appoint Auditors.*** The Trustee shall have the power to select and appoint and discharge and re-appoint, in its sole and absolute discretion, an auditor or auditors of the Trust and to settle the fees of any such auditor or auditors.

~~(i)~~(k) ***Form of Accounts.*** The Trustee shall have the power to determine and change from time to time, in its sole and absolute discretion, the method or form in which the accounts of the Trust will be kept and shall not be required to keep and provide accounts in the form usually required by law to be kept by trustees; provided that such method or form reasonably complies with generally accepted accounting principles in effect in Canada to the extent applicable.

~~(j)~~(l) ***Title to Assets.*** The Trustee shall have the power to cause all or any part of the Assets to be held by or registered, in its sole and absolute discretion, in the name of any Person.

~~(k)~~(m) ***Delegation of Discretion***. The Trustee shall have the power to delegate the right and power to exercise, or concur in the exercise of any discretion or power, conferred on the Trustee in this Declaration or conferred by law to any one or more of its directors, officers ~~or,~~ employees, agents or to such other Person, as the Trustee, in its sole and absolute discretion, may think is appropriate or advisable including, without limitation, ~~an Administrative Services Agent and its employees, officers and directors under an~~to one or more Administrative Services Agents and their respective employees, officers and directors, in each case under a related Administrative Services Agreement and on the basis contemplated in the Permitted Delegations Annex. The Trustee shall accept and follow the recommendations of an Electricity Distributor made under and in accordance with clauses [4(a)(i) to 4(a)(vi)] of the Permitted Delegation Annex with respect to a the identification and determination of distributions to be made to any Primary Beneficiary, except if and in so far as the Trustee has actual knowledge that (a) such Primary Beneficiary did not in fact satisfy the "Selection Factors" specified in the Principles Annex as of the applicable time of determination; and/or (b) the amount recommended to be distributed to the Primary Beneficiary was not calculated in compliance with or was calculated in a manner that is manifestly contrary to the requirements set forth or contemplated in the Permitted Delegation Annex or the applicable Administrative Services Agreement.

~~(l)~~(n) ***Additional Powers.*** The Trustee shall have the power to perform and do all such other acts, to take such steps and to execute all such deeds, transfers, assignments, agreements and other documents and instruments as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable for the carrying out of any of its powers hereunder or of any of the activities of the Trust as herein contemplated, or for the carrying out, promotion or advancement

of the interests of the Trust, whether or not any of such acts, things, documents or instruments are herein expressly mentioned. Any good faith determination by the Trustee as to what is necessary, desirable or appropriate to carry out its powers or activities of the Trust as contemplated under this Declaration or to carry out, promote or advance the interests of the Trust shall be conclusive. Any construction of this Declaration or any determination as to the activities of the Trust or the existence of any power or authority hereunder made in good faith by the Trustee, relying upon the advice of counsel, ~~will~~shall be conclusive. In construing the provisions of this Declaration, there shall be a presumption in favour of a grant of power to the Trustee.

SECTION 5
CONCERNING THE TRUSTEE

5.1 Duty of Trustee

In performing its duties and exercising its powers under this Declaration, the Trustee ~~will~~shall act honestly, in good faith and with a view to the best interests of the Trust and the Beneficiaries and ~~will~~shall exercise that degree of care, diligence and skill that a reasonably prudent trustee would exercise in comparable circumstances (the "**Standard of Care**"). The Trustee shall observe and act in accordance with the terms of, and shall observe and comply with the limitations and restrictions set forth in, this Declaration. To the extent that the Trustee has delegated any of its duties or powers, it shall be deemed to have satisfied the Standard of Care~~.~~ in respect of the subject matter of such delegation, subject to the Trustee's overall duty as a trustee to exercise prudent oversight in relation to such delegation. Unless required by law, the Trustee will not be required to give any security, bonds or sureties in any jurisdiction for the performance of any of its duties and obligations under this Declaration. The Trustee will not be required to devote its entire time to the trust activities.

5.2 Limitation of Liability

~~Subject to Section 5.1, the~~The Trustee ~~will~~shall not be personally liable in tort, contract or otherwise to ~~the Trust,~~ any Beneficiary or any other Person for any loss or diminution in the value of the Assets, or for any action or failure to act on the part of the Trustee or any of its employees or agents or any other Person, and ~~will~~shall not be subject to any personal liability for any debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses incurred by or against the Trust, howsoever arising, and resort will be had solely to the Assets for the payment, performance or satisfaction thereof. No property or assets of the Trustee, owned in its personal capacity or otherwise, will be subject to levy, execution or other enforcement procedure**s** with respect to any obligation under this Declaration. However, Section 5.2 shall not apply where the Trustee has demonstrated gross negligence, bad faith, fraud or wilful misconduct.

5.3 Liability of Trustee under Contracts

Any document or instrument creating a liability or obligation of the Trust or the Trustee will be conclusively deemed to have been executed by the Trustee only in its capacity as Trustee of the Trust and will be binding upon the Trustee only in its capacity as trustee hereunder and resort may not be had to, nor recourse or satisfaction be sought from, the property of the Trustee other than the Assets, whether owned by its in its personal capacity or in any other capacity other than in its capacity as Trustee of the Trust, or from its employees or agents, and resort will be had

solely to the Assets for the payment, performance or satisfaction of any such liability or obligation. Each such document or instrument shall contain a provision providing for the aforesaid limitation of liability. However, Section 5.3 shall not apply where the Trustee has demonstrated gross negligence, bad faith, fraud or wilful misconduct.

5.4 Funds of the Trustee

The Trustee shall not be required to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers.

5.5 Indemnification of Trustee

In addition to and without limiting any other protection hereunder or otherwise by law of the Trustee and its respective employees, agents, representatives and assigns (in this Section 5.5, collectively, the "**Representatives**"), the ~~Trust indemnifies, defends and saves harmless the~~ Trustee and its respective Representatives shall be indemnified, defended and saved harmless out of the Assets from ~~and,~~ against and in respect of any and all liabilities~~, including those~~ arising or related to actions taken or omitted to be taken by any agent of the Trustee, losses, claims (including any claim arising out of the assessment of any tax on income by a taxing authority), damages, penalties, fines, actions, suits, demands, levies, assessments, costs, charges, expenses and disbursements (including, without limitation, any and all legal and advisor fees and disbursements) (in this Section 5.5, collectively, the "**Liabilities**") of whatever kind or nature which may at any time be suffered by, imposed upon, incurred by or asserted against the Trustee and its Representatives, whether groundless or otherwise, howsoever arising from or out of any act, omission or error of the Trustee, in each case made in connection with its acting as Trustee hereunder, except and to the extent that the Liabilities are a result from or are caused by gross negligence, wilful misconduct, bad faith or breach of the ~~Standard of Care by or on the part of the Trustee or its Representatives.~~Confidentiality obligations described in Section 5.9. Further, except as provided in Section 5.2, the Trustee ~~will~~shall not be liable to ~~the Trust, to~~ any Beneficiary ~~or to any other Person~~ for any loss or damage relating to any matter regarding the Trust, including any loss or diminution in value of the Assets. Notwithstanding any other provision hereof, the obligations provided for in this Section shall survive any termination of the Trust created hereby, whether by reason of removal or resignation of the Trustee, termination or discharge of this Declaration or otherwise.

5.6 Reliance upon Advice

Subject to Section 5.1, in performing its duties and exercising its powers hereunder, the Trustee may rely and may act or not act, and shall be fully protected in relying and acting or not acting, upon (a) any statement, telecopy or other electronic means of communication, writing, notice, resolution, report, opinion or other document or conversation believed by its to be genuine and correct and to have been signed, sent or made by the proper Person; ~~and~~ (b) any opinion or advice received or information obtained from auditors, solicitors, or other professional advisers, whether retained by the Trustee or otherwise, and shall not be responsible or held liable for any loss or damage resulting from so relying or acting or not acting~~.~~; and (c) the advice and actions of any Administrative Services Agent, including in connection with the delegations and reliances contemplated under the Permitted Delegations Annex. For greater certainty, it shall not be necessary for the Trustee to ascertain whether or not the Persons who have executed, signed or

otherwise issued, authenticated or receipted such papers, writings or documents (including any Administrative Services Agreement or any other contract entered into by the Trustee) have authority to do so or that they are the same Persons named therein or otherwise to pass upon any requirement of such papers, writing or documents that may be essential for their validity or effectiveness or upon the truth and acceptability.

5.7 ~~Resignation~~Replacement of the Original Trustee

~~If the Trustee wishes to resign from its role as trustee under this Declaration and be discharged from the trusts and powers reposed in and conferred upon it by this Declaration, it shall give ninety (90) days' prior written notice thereof to the Minister of Energy (or such lesser period as the Minister of Energy may otherwise consent to). Notwithstanding such notice, such resignation shall become effective, and the Trustee shall be discharged from the trusts and powers reposed in and conferred upon it under this Declaration, only upon the appointment of, and the written acceptance of such appointment by, a successor trustee in accordance with Section 5.8. If no successor trustee shall have been appointed or shall have accepted appointment within ninety (90) days after the giving of such notice of resignation, the resigning Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee at the expense of the Trust.~~

~~**5.8 Appointment of Successor Trustee**~~

~~In the event of the resignation of the Trustee, the [**Minister of Energy**] shall appoint a successor trustee or trustees by instrument in writing and shall give written notice of such appointment to the Trustee resigning.~~

As soon as practicable and in any event prior to •, 2017, the Original Trustee shall appoint the Persons contemplated by the Trustee Replacement Annex to comprise the Advisory Committee contemplated therein (once constituted, the "**Advisory Committee**"). As soon as practicable thereafter, the Original Trustee shall request that the Advisory Board make recommendations with respect to the composition of the "Board of Trustees", as contemplated by the Trustee Replacement Annex. The Trustee shall have no duty or obligation to investigate the basis for any of the Advisory Committee's recommendations and may rely on such recommendations without any duty of enquiry, supervision or oversight with respect to the activities and decision-making processes adopted by the Advisory Committee in its discretion, in full satisfaction of the Original Trustee's Standard of Care with respect to such matters hereunder. Except if the Trustee determines that the individuals recommended by the Advisory Committee to become members of such Board of Trustees are disqualified from so acting on the basis of manifest non-compliance with the selection factors set forth under "Selection Factors" set forth in the Trustee Replacement Annex, the Original Trustee shall appoint, as additional Trustees, [number] of individuals from among those individuals who have been recommended for appointment to such Board of Trustees by the Advisory Committee. The Original Trustee may exercise its discretion in selecting such individuals for such appointment or, in the absence of such exercise, shall select such individuals based on the [alphabetic order of the first letter of their respective surname]. Upon the appointment of [number] additional trustees pursuant to this provision and their agreement to act as members of the Board of Trustees, the Original Trustee shall be deemed to have resigned and shall cease to be a trustee (such resignation occurring on the "**Original Trustee Replacement Date**").

5.8 Composition of the Board of Trustees

[NTD: Specify requirements or principles annex]

5.9 Rules and Procedures of the Board of Trustees

(a) ***Initial Requirements***. [NTD: Need to insert bare bones governance for the Board of Trustee's initial governance purposes.]

(b) ***Power to Adopt Rules and Procedures.*** [NTD: Add power to adopt governance provisions, including to permit remaining trustees to replace any vacancy arising after Board of Trustees and to fill any vacancy by application to the Courts of Ontario in the event of an unfilled vacancy.]

(c) ***Decisions of the Board of Trustees.*** [NTD: Add language to make clear how the majority decisions of Board will represent the decision of the "Trustee" and not any individual trustee. This will be necessary to specify at the outset in order to avoid problems enlisting members of the Board of Trustees.]

(d) ***Conflicts of Interest.*** [NTD: Specify requirements]

(e) ***Expenses and Reimbursements to Trustees.*** [NTD: Specify requirements]

~~5.9~~5.10Confidentiality

Notwithstanding the resignation or removal and discharge from the trusts and powers reposed in and conferred on the Trustee by this Declaration, or the termination of this Declaration, the Trustee so resigning or removed ~~will~~shall continue to treat as confidential all information relating to the Trust, the Assets and the Beneficiaries and shall only be entitled to make disclosures concerning such information if disclosure is required in the performance of the functions of the resigning or removed Trustee or is ordered by a court of competent jurisdiction or is otherwise required by law. The Trustee ~~will~~shall not be responsible or liable to any Person for any loss or damage arising out of or in any way sustained or incurred in any way relating to any such required disclosure. The obligations arising under this Section [5.~~9~~10] shall survive the termination of the Trust.

~~5.10~~5.11 Vesting in Successor Trustee

Any successor trustee ~~will~~(including any reconstituted Board of Trustees) shall automatically become vested with the Assets and with the same powers, rights, duties, responsibilities and trusts as if it, he or she had been originally named as Trustee under this Declaration without the requirement of any further instrument or act or conveyance and the Trustee ceasing to act ~~will~~shall execute all such transfers and other documents and do all such other acts or things as may be necessary or desirable to assign, transfer, deliver to, and vest in, the successor trustee, upon the trusts expressed in this Declaration, all the Assets and all the rights, powers and trusts of the Trustee ceasing to act. The expense of any act, document, deed or other instrument or thing required under this Section 5.~~10~~11,1, including for greater certainty, outstanding fees and unreimbursed expenses of the Trustee (including any member of the Board of Trustees) ceasing to act, ~~will~~shall be satisfied from the Assets.

~~5.11~~5.12 Execution of ~~Documents~~Instruments

The Trustee shall have the power to execute all deeds, transfers, agreements, promissory notes and other instruments on behalf of the Trust. Such power may be exercised by any one or more Administrative Services Agents acting in accordance with any delegated right to do so pursuant to an applicable Administrative Services Agreement, and any such execution of instrument by an Administrative Services Agent, acting in such capacity as agent of the Trust pursuant to the terms and conditions of such Administrative Services Agreement shall be deemed to be a proper execution of such instrument by the Trustee and shall be binding for all purposes on the Trust.

5.13 Decisions by the Trustee

If there is more than one Trustee, decisions of the Trust may be made by a majority of Trustees. Whenever the Trustees are unable to agree in relation to the commission or omission of any act or howsoever in the execution of the Trust the decision of a majority of the Trustees shall prevail.[5]

SECTION 6
AMENDMENTS AND SUPPLEMENTS

~~**6.1 Amendment**~~

6.1 ~~The~~Amendments

Subject to the requirements of the Transfer Payment Agreement, the Trustee shall have the power in its sole and absolute discretion from time to time without the approval of any Beneficiary or any court to amend, vary, supplement, replace or restate this Declaration in its entirety or any portion thereof~~.~~, provided that no amendment shall conflict with the principles set forth in the Principles Annex or as to the scope or effect of the permitted delegations and activities of any Administrative Services Agent pursuant to the Permitted Delegations Annex. Without in any way limiting the foregoing, any such amendments, variations, supplements, replacements or restatements may:

(a) add provisions for the replacement of or appointment of additional trustees to act with the Original Trustee prior to the Original Trustee Replacement Date;

~~(a)~~(b) in the case of the Original Trustee, add provisions to those contemplated in the Trustee Replacement Annex in respect of the appointment of the members and formation and empowerment of the Board of Trustees;

(c) in the case of the Original Trustee, vary the terms and requirements applicable to the duties, responsibilities, obligations, liabilities, indemnities, protections, limitations, restrictions, compensation, expense reimbursements and such other matters, in each case as the Advisory Committee may indicate are necessary be made in order to attract and receive confirmation of appointment of appropriately qualified individuals that the Advisory Committee specifies are to be appointed as members of the Board of Trustees in accordance with its recommendations;

[5] NTD: This section will be integrated into the additional provisions dealing with the Board of Trustees.

(d) add additional or replace existing Trustees[6];

(e) add to or reasonably clarify the principles set forth in the Principles Annex;

(f) add to or reasonably clarify the delegations and activities contemplated to be made in the Permitted Delegation Annex;

~~(b)~~(g) include provisions for the management of the Trust by the Trustees, including the making of rules, requirements and procedures ~~for meetings~~governing the decision-making of the Board of Trustees;

~~(c)~~(h) ~~include~~add provisions for the replacement of ~~Trustees;~~members of the Board of Trustees (in addition to those provisions contemplated in the Trustee Replacement Annex);

~~(d)~~(i) provide for the engagement of any Person or Persons as managers, administrators or other service providers to the Trust, including any additional or replacement Administrative Services Agent or representative thereof;

~~(e)~~(j) specify supplemental procedures for the identification of Primary Beneficiaries and the exchange of information with ~~Local Distribution Companies~~Electricity Distributors in connection with identifying such Primary Beneficiaries ~~who will be the recipients;~~; or

~~(f)~~ specify procedures for the transfer and transmission of funds from the Trust or any Administrative Services Agent acting on its behalf and with delegated responsibility over funds constituting Assets, to~~,~~ or for the benefit of, Beneficiaries~~;~~

~~(g) [NTD: other expected amendments]~~

~~**6.2 Automatic Amendment**~~

(k) ~~Upon the Trustee ceasing to be a trustee of the Trust, this Declaration will be automatically amended, without any action required to be taken or documentation entered into, to delete any reference to the name of the Trustee so ceasing to be a trustee of the Trust and to substitute therefor the name of the successor trustee of the Trust~~ or their designated representatives, payees or assignees.

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~~6.3~~6.2 Supplemental Declarations

The Trustee is authorized to execute any supplemental declaration of trust (including one or more amendments and restatements from time to time of this Declaration) to give effect to amendments to this Declaration made pursuant to this Section 6.

[6] NTD: Consider and, if retained, integrate with Board concepts.

SECTION 7
TERMINATION

7.1 Duration

Subject to Section 7.2, the Trust will continue in full force and effect so long as there is any Assets and until all of the debts, liabilities and obligations of the Trust have been paid and satisfied in full.[7]

7.2 Termination and Distribution of Assets

Subject as hereinafter provided, the Trustee may terminate the Trust and wind up its affairs on such date as the Trustee, in its sole and absolute discretion, may determine and after paying or adequately providing for the payment and satisfaction of all debts, liabilities and obligations of the Trust and upon receipt of such releases, indemnities and discharges as the Trustee, relying on the opinion of counsel, deems necessary for the protection of the Beneficiaries and for its own protection. Notwithstanding the foregoing, the Trustee shall in any event terminate the Trust and wind up its affairs ~~not later than December 31, 2037~~as soon as practicable after the Final Distribution Date (the "**Termination Date**"). ~~[**Upon**~~In connection with the termination of the Trust, the Trustee shall distribute or cause to be distributed the remaining Assets, in cash or in kind or partly in each, to the Residual ~~**Beneficiary.**] [**NTD: treatment of residual assets to be discussed.**]~~Beneficiaries in accordance with Section 3.3.

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7.3 Distribution of Assets on Final Distribution Date

If the Trust holds Assets on the Final Distribution Date, such assets shall promptly be paid to the Residual Beneficiaries in accordance with Section 3.3.

SECTION 8
ACCEPTANCE OF TRUSTS

8.1 Acceptance of Trusts

The Trustee hereby accepts the trusts and duties contained in this Declaration and agrees to perform the same upon the terms and conditions hereof until discharged therefrom.

[Signature Page Follows]

[7] NTD: Consider early termination scenarios.

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The Trustee has executed this Declaration as of the date first written above.

COMPUTERSHARE TRUST COMPANY OF CANADA, as Trustee

By: _____
Name:
Title:

By: _____
Name:
Title:

PRINCIPLES ANNEX

The following principles apply in relation to the administration of the Trust:

1. Identification of Primary Beneficiary Payees

1.1 A Primary Beneficiary should not receive a benefit from the Trust unless at the time of consideration it satisfies each of the following criteria (the "**Selection Factors**"):

(i) it is an [owner-occupied,], [non-commercial] [not for profit] electricity customer;

(ii) it has [committed] [made arrangements] [proposed] [indicated its willingness] to undertake measures (its "**Energy Plan**") to improve the electricity efficiency and/or promote the conservation of electricity at its Ontario residence;

(iii) its Energy Plan involves one or more Eligible Measures as may be designated by the Trustee from time to time from;

(iv) it confirms that:

1. the primary purpose of its Energy Plan is the conservation and efficient use by the Primary Beneficiary of electricity, and is not for the purposes of the Primary Beneficiary making a profit;

2. it would otherwise not have the financial resources to undertake [the Eligible Measures] included in its Energy Plan;

3. the Eligible Measures to be undertaken by it under its Energy Plan would not otherwise be eligible for reimbursement from third parties, including under any efficiency or conservation program implemented by a government, governmental agency or third party energy subsidy program;

(v) it has demonstrated a need for financial assistance on the basis that its periodic electricity bills represent a financial burden, relative to its available financial resources; and

(vi) such other criteria as the Trustee may determine, including based on the recommendations of Electricity Distributors made on the basis and in accordance with the delegations contemplated by the Permitted Delegations Annex or any applicable Administrative Services Agreement.

1.2 The availability of funds to the Primary Beneficiaries should be allocated on an equitable and consistent basis across different areas and regions within the Province, having regard to:

(i) broad economic parameters of economic activity and the financial resources of the residents of the areas and regions;

Commented [A1]: Content in the annex will be further refined

Commented [A2]: KPMG to comment on 'control' implications.

(ii) electricity use and efficiency levels of non-commercial electricity customers;

(iii) specific regional indicators of economic weakness and need; and/or

(iv) such other factors as the Trustee may determine are relevant, including based on the submissions, advice and recommendations of Electricity Distributors made on the basis and in accordance with the delegations contemplated by the Permitted Delegations Annex or any applicable Administrative Services Agreement.

1.3 An efficient basis upon which to allocate funds to the Primary Beneficiaries across different areas and regions within the Province may be based on the designated areas and regions serviced by the Electricity Distributors operating within the Province.

1.4 The designated Electricity Distributor for an area or region in which a Primary Beneficiary resides will:

(i) be a reliable source for the purpose of assessing and confirming whether the Primary Beneficiary satisfies the Selection Factors;

(ii) be an efficient intermediary for the purpose of communicating with the Primary Beneficiary, including regarding the availability, terms, conditions and intended purposes of [Project][8];

(iii) be able to efficiently integrate and reflect any distribution payments determined to be made to the Primary Beneficiary within its established practices, procedures and systems; and

(iv) have established contractual arrangements with the Primary Beneficiary that may apply to the protection and confidentiality of information provided by or respecting the Primary Beneficiary, which information may be useful in the consideration by the Electricity Distributor in its assessment of whether the Primary Beneficiary satisfies the Selection Factors, which information may not otherwise be available or readily accessible or verifiable by the Trustee.

1.5 The designated Electricity Distributor for an area or region in which a Primary Beneficiary resides will have market and utilization information that may be useful in assessing the relative needs of Primary Beneficiaries within its designated area or region. Such information will be relevant in assessing the extent to which one such Primary Beneficiary's financial needs and the merits of its Energy Plan are greater or more compelling than those of another such Primary Beneficiary, which comparison may be relevant to the extent that the funds allocable to the Primary Beneficiaries resident in the area or region are otherwise insufficient to meet the requests for funding by all such Primary Beneficiaries.

[8] Consider if the Trustees should control the messaging to ensure consistency across the Province.

1.6 Accordingly, it is consistent with the purposes of the Trust that the recommendations of Electricity Distributors be utilized and relied upon by the Trustee to guide the process of identifying particular Primary Beneficiaries for distributions under the [Project].

1.7 If an Electricity Distributor for a particular area or region is unable or unwilling to assess or confirm the application of the Selection Factors to Primary Beneficiaries residing in the area or region or to make recommendations in relation to such matters, one or more of the following may provide a suitable alternative source of information and for information gathering, assessment and confirmation purposes in relation to such area or region:

(i) other Electricity Distributors operating in adjacent or other areas or regions in the Province;

(ii) the Ontario Energy Board;

(iii) the Independent Electricity System Operator; and

(iv) anyone else having relevant expertise and access to information regarding the electricity market of the Province, in each case as may be considered relevant by the Trustee.

1.8 To the extent that privacy law or other legal requirements limit an Electricity Distributor from providing or making available specific information respecting the application of the Selection Factors to a particular Primary Beneficiary or group of Primary Beneficiaries, it may be appropriate to redact or make generic affected information regarding such Primary Beneficiary in connection with the identification and confirmation of a Primary Beneficiary's eligibility and participation in the [Project]. If such limitations or restrictions would limit an Electricity Distributor from providing or confirming the name of a particular Primary Beneficiary to the Trustee, then it should be sufficient that such information may be obtained or disseminated on a confidential basis if and when required by the Trustee for the proper administration of the Trust and on that basis such impediments should not disqualify a Primary Beneficiary from participating in the benefits of the [Project], to the extent that the confidential record-keeping of the Electricity Distributor would be available in connection with the application of any applicable legal process predicated on the identification of such Primary Beneficiary for the purposes of substantiating its rights as a Primary Beneficiary of the Trust or as to the validity or subsistence of the Trust.

2. Eligible Measures

2.1 Eligible Measures shall be identified having regard to the following (the "**Measures Factors**"):

(i) [NTD: Insert generic list of considerations relevant to the identification of the applicable spending uses].

2.2 In identifying and applying the Measures Factors, Electricity Distributors will have expertise in assessing the suitability of efficiency and conservation measures in their

respective areas and regions, which may differ across areas and regions across the Province based on factors (among other things) such as the climate, geography, density, electricity infrastructure, residential structures, and electricity use rates applicable within such areas or regions.

2.3 Unless otherwise specified by the Trustees, the measures specified in Schedule A to this Principles Annex will be considered.

3. Other

3.1 It is expected that administrative expenses of the Board of Trustees and its members, including any expenses relating to the Trust, to the establishment of the [Affordability Fund] and any expenses related to the implementation and operation of the [Project] by or through Electricity Distributors and other relevant entities, will be recognized and subject to reimbursement in accordance with the principles outlined in the [Province's Transfer Payment Accountability Directive/Travel, Meal and Hospitality Expenses Directive][9], in the form attached to Schedule B to this Principles Annex.

3.2 The Trustee is expected to conduct its activities to ensure that, as more specifically contemplated in the Transfer Payment Agreement:

(i) the Assets are applied are spent prudently and in furtherance of the purpose set forth in the Declaration;

(ii) the Trustee is accountable to the Province for activities undertaking in connection with the Project;

(iii) it complies with the Province's request for any independent verification or audit determined to be necessary or appropriate by the Province;

(iv) the Province will be entitled and has reserved its right to demand the return of the Assets if the Province determined that they are not being used for the purposes and applied in the manner as set forth or contemplated in the Declaration.

3.3 Electricity Distributors are not intended to directly profit from distributions of funds made from the Trust, although it is recognized that the objectives of electricity efficiency and conservation of Primary Beneficiaries located in the service area or region of an Electricity Distributor, and the cost savings and improved credit worthiness of such Primary Beneficiaries, may be financially beneficial to the Electricity Distributor.

3.4 Distributions from the Trust are intended to allow receiving Primary Beneficiaries to undertake Eligible Measures at no or minimal personal cost.

3.5 It is expected that the Trust Assets will be distributed to Primary Beneficiaries during the period from the Original Trustee Replacement Date to [the Final Distribution Date] [March 31, 2019].

[9] NTD: Ministry to confirm applicable Directive(s).

SCHEDULE A
TO THE PRINCIPLES ANNEX
INITIAL ELIGIBLE MEASURES

Initial Specified Measures
Block Heater Timer (just timer) – rated for outdoor use, have at least a 15 amp/1800 watt capacity, be cold weather resistant, bear a C-UL or CSA certification mark
Power bar with integrated timer, and switched power outlets, four each for a total of 8 outlets, have a total capacity of 15 amps. The switched outlets must remain "live", independent of timer settings, so long as the power bar itself remains switched on. The power bar must bear either a C-UL or CSA certification mark.
Efficient Showerheads (standard) - rated at no more than 4.8 Lpm (1.25 U.S. gpm) and be of the laminar flow type (non-aerating).
Efficient Showerhead (handheld) - rated at no more than 4.8 Lpm (1.25 U.S. gpm) and be of the laminar flow type (non-aerating).
Efficient Aerators (kitchen) - rated no more than 5.7 Lpm (1.5 U.S. gpm), dual threaded to allow installation in both thread type faucets, swivel type with pause lever.
Efficient Aerators (bathroom) - rated no more than 3.8 Lpm (1.0 U.S. gpm), be dual threaded to allow installation in both thread type faucets.
Hot Water Tank Pipe Insulation - $^{1}/_{2}$" inside diameter – foam, meets ASTM –C547-00, minimum $^{3}/_{4}$" thick
Hot Water Tank Pipe Insulation - $^{3}/_{4}$ " inside diameter - – foam, meets ASTM –C547-00, minimum $^{3}/_{4}$" thick
Hot Water Tank Insulation - fibreglass R10 (fits up to a 60 gal tank) – not bubble wrap
≤11W ENERGY STAR® Qualified LED A Shape (60W) (minimum 600 Lumen output) (Formerly: 7W – 11W ENERGY STAR® Qualified LED A Shape (60W))

Initial Specified Measures
≤14W ENERGY STAR® Qualified LED A Shape (75W) (minimum 800 Lumen output) (Formerly: 10W – 14W ENERGY STAR® Qualified LED A Shape (75W))
≤23W ENERGY STAR® Qualified LED A Shape (100W) (minimum 1600 Lumen output) (Formerly:17W – 23W ENERGY STAR® Qualified LED A Shape (100W))
≤16W ENERGY STAR® Qualified LED PAR 20 (minimum 600 Lumen output) (Formerly: 8W – 12W ENERGY STAR® Qualified LED PAR 20)
≤16W ENERGY STAR® Qualified LED PAR30 & PAR38 (minimum 600 Lumen output) (Formerly: 8W – 12W ENERGY STAR® Qualified LED PAR 30)
≤23W ENERGY STAR® Qualified LED PAR (minimum 1100 Lumen output) (Formerly: 14W – 18W ENERGY STAR® Qualified LED PAR 38)
≤6W ENERGY STAR® Qualified LED MR 16 / PAR 16 (minimum 250 Lumen output) (Formerly: 7W – 10W ENERGY STAR®
Qualified LED MR 16 / PAR 16 - GU 10 Base)
≤11W ENERGY STAR® Qualified LED MR 16 (minimum 400 Lumen output) (Formerly: 7W – 12W ENERGY STAR® Qualified LED MR 16 GU 5.3 Base)
ENERGY STAR® LED Wet Location Rated PAR lamp ≤ 23 Watt (minimum 1100 Lumen output)
Recessed Downlight Fixture including LED with Light Output >600 and <800 lumens (Retrofit Measure List)
Recessed Downlight Fixture including LED with Light Output >800 lumens (Retrofit Measure List)
Indoor Drying Rack

Extended Measures
Replace refrigerator with ENERGY STAR qualified refrigerator - 15.5 - 16.9 cubic foot top freezer, automatic defrost, refrigerator/ freezer, no through the door ice service
Replace refrigerator with ENERGY STAR qualified refrigerator - 17.0 - 18.4 cubic foot top freezer, automatic defrost, refrigerator/ freezer, no through the door ice service
Replace refrigerator with a refrigerator that has a consumption level of less than 425 kwh, 10 – 12.5 cubic foot top freezer, automatic defrost, refrigerator freezer, no through the door ice service
Replace freezer with ENERGY STAR qualified freezer -
12-14.4 cubic foot freezer
Replace freezer with ENERGY STAR qualified freezer - 14.5 - 16.0 cubic foot freezer
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 6,000 – 7,999 BTU/hr with C-UL or CSA certification mark
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 8,000 – 9,999 BTU/hr with C-UL or CSA
certification mark
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 10,000 – 12,000 BTU/hr with C-UL or CSA certification mark
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 14.2 - 21.2 l/day (30-44.9 pints/day) dehumidifier
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 21.3 - 25.4 l/day (45-53.9 pints/day) dehumidifier

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Extended Measures
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 25.5 - 35.5 l/day (54-75 pints/day) dehumidifier dehumidifier dehumidifier
Programmable Thermostat – line voltage – meets CAN/CSA-C828-06 standard, minimum performance: Droop: 1.5°C, Differential: 0.5°C, Precision 0% within 0.5°C of the original set point of 22°C
Programmable Thermostat – low voltage - meets CAN/CSA-C828-06 standard, minimum performance: Droop: 1.5°C, Differential: 0.5°C, Precision 0% within 0.5°C of the original set point of 22°C

Weatherization Measures
Comprehensive Draftproofing (caulking, foam and weather stripping, and application of same) – lifespan of 20 years plus If one or two component polyurethane foams are used, the products and installations must conform to: • CAN/ULC-S710.1 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 1: Material Specification. • CAN/ULC-S710.2 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 2: Application. • CAN/ULC-S711.1 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification • CAN/ULC-S711.2 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification, and Part 2: Application.
Attic Insulation (including installation):
cellulose: CAN/ULC-S703-01 Amendment 1 - Cellulose Fibre Insulation (CFI) for Buildings OR 2) Mineral Fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre

Weatherization Measures
for Buildings **Wall Insulation (including installation):**
cellulose: CAN/ULC-S703-01 Amendment 1 - Cellulose Fibre Insulation (CFI) for Buildings OR 2) Mineral Fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre **Basement Insulation (including installation):**
mineral fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre for Buildings Vapour Barrier: 69009-CAN/CGSB-51.34-m86 If one or two component polyurethane foams are used, the products and installations must conform to: • CAN/ULC-S710.1 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 1: Material Specification. • CAN/ULC-S710.2 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 2: Application. • CAN/ULC-S711.1 Standard for Thermal Insulation – Bead Applied Two-Component
Polyurethane Air Sealant Foam, Part 1: Material Specification • CAN/ULC-S711.2 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification, and Part 2: Application.

[NTD: Add details pertaining to heat pumps]

SCHEDULE B TO THE PRINCIPLES ANNEX
PERMITTED EXPENSE REIMBURSEMENTS

[NTD: Insert the Province's Transfer Payment Accountability Directive/Travel, Meal and Hospitality Expenses Directive]

PERMITTED DELEGATION ANNEX

1. Under Section 4.2(d) of the Declaration, the Trustee has the power to: (A) appoint, employ or retain Administrative Services Agents for the purpose of discharging its duties and obligations under the Declaration; and (B) enter into, perform, enforce and amend Administrative Services Agreements.

2. In accordance with [Section 4.2] of the Declaration, consistent with the principles set forth in the Principles Annex, the Trustee or its agent will seek to enter into one or more Administrative Services Agreements with individual Electricity Distributors under which the Electricity Distributors will act as Administrative Service Agents to the Trustee. In this manner, the Trustee will delegate certain of its powers and duties to the Electricity Distributors.

3. Under Section 5.1 of the Declaration, to the extent the Trustee has delegated any of its duties or powers, it shall be deemed to have satisfied the Standard of Care in respect of the subject matter of such delegation, subject to the Trustee's overall duty to exercise prudent oversight thereof. The Trustee is entitled to rely on an Electricity Distributor to discharge the duties delegated to it, as Administrative Services Agent, pursuant to an Administrative Services Agreement as described in this Annex.

4. Accordingly, and without limiting the Trust's right to delegate under the Declaration, the Trust will be permitted to, and should seek to, enter into Administrative Services Agreements with Electricity Distributors in order to provide for the following:

    a. **Identification of Applicable Primary Beneficiary Payees and Determination of Individual Distribution Amounts**

        i. Each Electricity Distributor will make an initial assessment of the financial needs of Primary Beneficiaries within its designated service area or region, having regard to [NTD: specify relevant economic data and reference material], in order to prepare and provide to the Trustee an estimate of the number of Primary Beneficiaries who the Electricity Distributor reasonably expects would satisfy the Selection Factors (as defined in clause 1.1 "Identification of Primary Beneficiary Payees" of the Principles Annex).

        ii. Each Electricity Distributor will make an initial assessment of the measures it would recommend be included as Eligible Measures, having regard to [NTD: specify relevant considerations], in order to prepare and provide to the Trustee an estimate of the average cost per Primary Beneficiary Payee (as defined below) of such Eligible Measures that the Electricity Distributor reasonably expects would apply in respect of Primary Beneficiaries resident in its service area or region.

        iii. Based on the product of (i) and (ii), above, and such other considerations as it considers to be directly relevant, each Electricity Distributor will make a written recommendation to the Trustee regarding the aggregate funding amount that the Electricity Distributor anticipates would be utilized under the

[Project] by Primary Beneficiaries in its service area or region (the "**Local Funding Estimate**"). Such recommendation will be accompanied, when submitted to the Trustee, by a detailed explanation regarding the assumptions, financial parameters, suitability considerations and other information underlying the Local Funding Estimate (including the type of information contemplated by "[Insert]" under the Principles Annex, which will be relied upon by the Trustee in its assessment regarding the allocation of available funding to or for the benefit of the Primary Beneficiaries across the specified areas and regions of the Province.

iv. The Trustee will inform the Electricity Distributor regarding the aggregate of the amount determined by the Trustee to be made available under the [Project] for Primary Beneficiaries in the Electricity Distributor's designated service area or region (for each LDC, its "**Maximum LDC Allocation**") and as to any maximum amount that may be paid to or for the benefit of any single Primary Beneficiary [or group of related Primary Beneficiaries] located in the servicer area or region of the Electricity Distributor (the "**Maximum Primary Beneficiary Amount**"). The Maximum LDC Amount and Maximum Primary Beneficiary Amount may vary between designated areas and regions, the Primary Beneficiaries within such areas and regions, and may be increased by the Trustee from time to time in its discretion.

v. Each Electricity Distributor will apply the principles set forth under ["Identification of Primary Beneficiary Payees" in the Principles Annex] to identify and make recommendations to the Trustee regarding the amount of funds (if any) to be distributed to or for the benefit of Primary Beneficiaries resident within its designated service area or region from time to time (the "**Primary Beneficiary Payees**").

vi. Each Electricity Distributor will ensure that the aggregate of the amounts it recommends be distributed to or for the benefit of Primary Beneficiary Payees from time to time does not exceed (1) its Maximum LDC Allocation and (2) for any single Primary Beneficiary [or group of related Primary Beneficiaries] located in the servicer area or region of the Electricity Distributor, the Maximum Primary Beneficiary Amount.

vii. The Trustee will provide written confirmation to each Electricity Distributor:

1. Either (x) that the recommendations specified of the Electricity Distributor in clause (v), above, have been accepted, or (y) as to the specific reasons for any non-acceptance;

2. The identity of each Primary Beneficiary Payee resident in the Electricity Distributor's service area or region and its residential address;

3. The amount of the distribution to be paid to or for the benefit of each such Primary Beneficiary Payee.

b. **Making of Distributions**

i. Promptly after the Trustee confirms the identity of a Primary Beneficiary Payee resident in a Electricity Distributor's service area or region and the amount of the distribution to be paid to or for the benefit of such Primary Beneficiary Payee, the Trustee will arrange for payment to the Electricity Distributor an amount equal to the amount of such distribution.

ii. Promptly upon receipt of funds in respect of a distribution to a Primary Beneficiary Payee, the Electricity Distributor will arrange for payment of the full amount of such distribution to or for the benefit of the Primary Beneficiary Payee, without reduction or set-off.

c. **Reporting, Record-Keeping, Inspection and Disclosure**

i. The Electricity Distributor will provide to the Trustee quarterly and annual reports ("**Reports**") for the duration of the Administrative Services Agreement.

ii. The Electricity Distributor will keep and maintain all financial records and non-financial documents and records relating to the provision of services under the Administrative Services Agreement. [Specify required records regarding individual Primary Beneficiary Payees]

iii. The Trustee, its authorized representatives or an independent auditor may, at its own expense, on twenty-four hours' notice to the Electricity Distributor and during normal business hours, inspect the records of and information respecting the Electricity Distributor to confirm its compliance with the Administrative Services Agreement, including its process for determining the Primary Beneficiary Payees, distribution amounts and the delivery of funds to [or for the benefit of] the Primary Beneficiary Payees. The Trustee, its authorized representatives or an independent auditor may inspect and copy all records and documents kept in accordance with the Administrative Services Agreement and conduct an audit or investigation of the Electricity Distributor in respect of the identification of the applicable Primary Beneficiary Payees, the amount of distributions made to or for the benefit of the Primary Beneficiary Payees; and the delivery of funds to or for the benefit of the Primary Beneficiary Payees.

d. **Standard of Care**

i. The Electricity Distributor will perform its duties provided under the Administrative Services Agreement exercising the degree of care, diligence and skill that a reasonably prudent Person would exercise in comparable circumstances.

ii. In recommending Primary Beneficiary Payees to the Trustee, the Electricity Distributor will seek to avoid actual, potential or perceived conflicts of interest.

e. **Expenses**

i. The Electricity Distributor will be eligible to receive reasonable compensation and reimbursement of its actual out-of-pocket costs associated with the performance of its duties under the Administrative Services Agreement, subject to compliance with the Province's Travel, Meal and Hospitality Expenses Directive. Such compensation amounts and reimbursement entitlements will be specified in the Administrative Services Agreement.

[Other matters you may consider dealing with here include compliance with privacy law/confidentiality/legal considerations and requirements; money laundering; preparation of accounting and tax statements by the Trust; compliance with regulatory laws; representation in product warranty claims (to the extent the Trust is sued in connection with a purchase of Eligible Measures); flowing money to suppliers of Eligible Measures; appropriate reps and indemnities from LDCs; specific reporting of cash and allocations; logistics of banking and cash flow mechanics and related record-keeping; production of information for Trustee to satisfy legal requirements applicable to the Trust (i.e., tax; record keeping); preparation of tax remittances for beneficiaries; preparation of reports for the Government and cooperation with other compliance by the Trust with the TPA; required communications to Primary Beneficiaries on behalf of the Trust (including to comply with applicable laws); preparation and submission of applications, etc., that may be contemplated by the [Project]; termination scenarios]

TRUSTEE REPLACEMENT ANNEX

1. The Advisory Committee shall consist of the following individuals:

   •

   •

   •

2. In the event any member of the Advisory Committee resigns or is unable to act, the remaining members may appoint a resident of Ontario as a replacement.

3. On or before •, 2017, the Advisory Committee shall identify six residents of Ontario who are willing to act as Trustees of the Affordability Fund Trust and who, collectively satisfy the following criteria:

   a) Demonstrate an understanding of the electricity sector including the electricity distribution sector;

   b) Have expertise in conservation and low income programs;

   c) It is expected that three of the identified individuals will be representatives from separate electricity distributors, two individuals will be representatives from separate social services agencies and one individual will be a government representative.

   d) It is expected that government representation will be non-controlling.

4. The Advisory Committee shall recommend that the existing Trustee appoint the individuals so identified to become replacement Trustees of the Affordability Fund Trust pursuant to section 5.7 of the Declaration.

5. If any of the persons recommended under paragraph 4 or under this paragraph are not accepted and appointed by the existing Trustee pursuant to section [5.7] of the Declaration, the Advisory Committee shall forthwith identify and recommend an alternative individual who is willing to act and who whose presence as a Trustee would result in the Trustees collectively satisfying the criteria in paragraph 2 above.

6. Upon the appointment of [number] trustees pursuant to section • of the Declaration, the Advisory Committee will be functus.

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Blakes Comments (March 15, 2017)

ONTARIO TRANSFER PAYMENT AGREEMENT

THE AGREEMENT, effective as of the • day of March, 2017 (the **"Effective Date"**)

B E T W E E N :

Her Majesty the Queen in right of Ontario
as represented by the Minister of Energy

(the "Province")

- and -

Computershare Trust Company of Canada, in its capacity as trustee of Affordability Fund Trust

(together with its successors and assigns, the "Recipient" and, together with the Province, the "Parties")

BACKGROUND

Computershare Trust Company of Canada is the original trustee of the Affordability Fund Trust.

The Province wishes to provide Funds to the Recipient to be held and distributed in accordance with the terms of the Declaration of Trust (defined below) and the Principles set forth in Annex A.

CONSIDERATION

In consideration of the mutual covenants and agreements contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is expressly acknowledged, the Parties agree as follows:

ENTIRE AGREEMENT

This agreement (as amended, restated, supplemented or otherwise modified from time to time, the **"Agreement"**), including:

Schedule "A" - General Terms and Conditions
Schedule "B" - Project Specific Information
Schedule "C" - Project - Certain Obligations of the Recipient
Schedule "D" - Budget
Schedule "E" - Payment Plan
Schedule "F" - Reporting
Annex "A" - Principles, and
any amending agreement entered into as provided for below,

constitutes the entire agreement between the Parties with respect to the subject matter contained in this Agreement and supersedes all prior oral or written representations and agreements.

COUNTERPARTS

The Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

AMENDING THE AGREEMENT

The Agreement may only be amended by a written agreement duly executed by the Parties.

ACKNOWLEDGEMENT

The Recipient:

(a) acknowledges that it has read and understands the provisions contained in the entire Agreement; and

(b) agrees to be bound by the terms and conditions contained in the entire Agreement.

IN WITNESS WHEREOF, the Parties have executed the Agreement on the dates set out below.

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO as represented by Minister of Energy

by:

_____ _____

Date Name: Serge Imbrogno

Title: Deputy Minister

Authorized Signing Officer

COMPUTERSHARE TRUST COMPANY OF CANADA, in its capacity as trustee of AFFORDABILITY FUND TRUST

by:

_____ _____

Date Name:

Title:

by:

_____ _____

Date Name:

Title:

I/We have authority to bind the Recipient.

SCHEDULE "A"
GENERAL TERMS AND CONDITIONS

1.0 INTERPRETATION AND DEFINITIONS

1.1 Interpretation. For the purposes of interpretation:

(a) words in the singular include the plural and vice-versa;

(b) words in one gender include all genders;

(c) the headings do not form part of the Agreement; they are for reference only and will not affect the interpretation of the Agreement;

(d) any reference to dollars or currency will be in Canadian dollars and currency;

(e) "include", "includes" and "including" denote that the subsequent list is not exhaustive; and

(f) where any reference is made in the Agreement to an act to be performed by or for or on behalf of the Affordability Fund Trust, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Trustee in its capacity as trustee of the Affordability Fund Trust, and, where any reference is made in the Agreement to an act to be performed by or for or on behalf of the Trustee, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Trustee in its capacity as trustee of the Affordability Fund Trust.

1.2 Definitions. In the Agreement, the following terms will have the following meanings:

"BPSAA" means the Broader Public Sector Accountability Act, 2010 (Ontario).

"**Beneficiary**" has the meaning given to such term in the Declaration of Trust.

"Budget" means the budget attached to the Agreement as Schedule "D".

"Business Day" means any working day, Monday to Friday inclusive, excluding statutory and other holidays, namely: New Year's Day; Family Day; Good Friday; Easter Monday; Victoria Day; Canada Day; Civic Holiday; Labour Day; Thanksgiving Day; Remembrance Day; Christmas Day; Boxing Day and any other day on which the Province has elected to be closed for business.

"**Declaration of Trust**" means the declaration of trust made as of March [•], 2017, under which the Affordability Fund Trust was established, as such declaration of trust may be amended, restated, supplemented or otherwise modified from time to time.

"Expiration Date" means the date on which this Agreement will expire and is the date set out in Schedule "B".

"Funds" means the money the Province provides to the Recipient pursuant to the Agreement.

"Maximum Funds" means the maximum amount of Funds that the Province will provide the Recipient under the Agreement, as set out in Schedule "B".

"Notice" means any communication given or required to be given pursuant to the Agreement.

"Party" means either the Province or the Recipient.

"**Person**" includes any individual, sole proprietorship, corporation, partnership, joint venture, association, society, club, board, chamber, joint-stock company, trust, trustee, unincorporated or incorporated organization or entity or government or any entity, agency or political subdivision thereof.

"Project" means the undertaking described in Schedule "C".

"PSSDA" means the *Public Sector Salary Disclosure Act, 1996* (Ontario).

"Reports" means the reports described in Schedule "F".

"**Trustee**" means Computershare Trust Company of Canada or any replacement trustee in its capacity as trustee of the Affordability Fund Trust.

2.0 REPRESENTATIONS, WARRANTIES AND COVENANTS

2.1 General. The Recipient represents, warrants and covenants that:

(a) The Trustee is the trustee of the Affordability Fund Trust; and

(b) The Affordability Fund Trust is, and will continue to be for the term of the Agreement, a trust existing under and governed by the laws of the Province of Ontario.

2.2 Execution of Agreement. The Recipient represents and warrants that it has:

(a) the full power and authority to enter into the Agreement; and

(b) taken all necessary actions to authorize the execution of the Agreement.

2.3 Governance. The Recipient represents, warrants and covenants that it has, and will maintain, in writing for the period during which the Agreement is in effect:

(a) decision-making mechanisms and procedures to enable the Recipient to manage Funds in accordance with the Declaration of Trust; and

(b) procedures to enable the preparation and delivery of all Reports required pursuant to Article 5.0.

2.4 Supporting Documentation. Upon request, the Recipient will provide the Province with proof of the matters referred to in this Article 2.0.

3.0 TERM OF THE AGREEMENT

3.1 Term. The term of the Agreement will commence on the Effective Date and will expire on the Expiration Date.

4.0 FUNDS AND CARRYING OUT THE PROJECT

4.1 Funds Provided. The Province will:

(a) provide the Recipient up to the Maximum Funds to be held and distributed in accordance with the terms of the Project and the Declaration of Trust;

(b) provide the Funds to the Recipient in accordance with the Payment Plan attached to the Agreement as Schedule "E"; and

(c) deposit the Funds into an account designated by the Recipient, provided that the account:

(i) resides at a Canadian financial institution; and

(ii) is in the name of the Recipient.

4.2 Limitation on Payment of Funds. Despite section 4.1, the Province is not obligated to provide any Funds to the Recipient until the Recipient provides the insurance certificate or other proof as the Province may request pursuant to [section 10.2].

4.3 Use of Funds and Project. The Recipient will use the Funds only for the purpose contemplated by the Project, the Declaration of Trust and the Principles set forth in Annex A.

4.4 Province's Role Limited to Providing Funds. For greater clarity, the Province's role under the Agreement is limited to providing Funds to the Recipient and the Province is not responsible for carrying out the terms of the Declaration of Trust.

4.5 Maximum Funds. The Recipient acknowledges that the Funds available to it pursuant to the Agreement will not exceed the Maximum Funds.

4.6 Funding, Not Procurement. For greater clarity, the Recipient acknowledges that:

(a) it is receiving funding from the Province for the Project and is not providing goods or services to the Province; and

(b) the funding the Province is providing under the Agreement is funding for the purposes of the PSSDA.

5.0 RECIPIENT'S ACQUISITION OF GOODS OR SERVICES, AND DISPOSAL OF ASSETS

5.1 Acquisition. If the Recipient acquires goods, services, or both with the Funds, it will do so through a process that promotes the best value for money.

6.0 CONFLICT OF INTEREST

6.1 No Conflict of Interest. The Recipient will carry out the Project and use the Funds without an actual, potential or perceived conflict of interest.

6.2 Conflict of Interest Includes. For the purposes of this Article, a conflict of interest includes any circumstances where:

(a) the Recipient; or
(b) any person who has the capacity to influence the Recipient's decisions,
has outside commitments, relationships or financial interests that could, or could be seen to, interfere with the Recipient's objective, unbiased and impartial judgment relating to the Project, the use of the Funds, or both.

6.3 Disclosure to Province. The Recipient will:

(a) disclose to the Province, without delay, any situation that a reasonable person would interpret as an actual, potential or perceived conflict of interest; and

7.0 REPORTING, ACCOUNTING AND REVIEW

7.1 Preparation and Submission. The Recipient will:

(a) submit to the Province at the address referred to in Schedule "B", all Reports in accordance with the timelines and content requirements set out in Schedule "F", or in a form as specified by the Province from time to time;

(b) submit to the Province at the address referred to in Schedule "B", any other reports as may be requested by the Province in accordance with the timelines and content requirements specified by the Province;

(c) ensure that all Reports and other reports are completed to the satisfaction of the Province; and

(d) ensure that all Reports and other reports are signed on behalf of the Recipient by an authorized signatory.

7.2 Record Maintenance. The Recipient will keep and maintain financial and other records necessary to permit it to satisfy its obligations under section 7.1 and to permit the Province to exercise its rights under section 7.3.

7.3 Inspection. The Province, its authorized representatives or an independent auditor identified by the Province may, at its own expense, upon twenty-four hours' Notice to the Recipient and during normal business hours, inspect the records of and information respecting the Recipient to confirm its compliance with the terms of this Agreement, including to ensure consistency with the purposes of the Project and regarding the Recipient's allocation and expenditure of the Funds and, for these purposes, the Province, its authorized representatives or an independent auditor identified by the Province may take one or more of the following actions:

(a) inspect and copy the records and documents referred to in section 7.2;

(b) keep any copies made pursuant to section 7.3(a); and

(c) conduct an audit or investigation of the Recipient in respect of the expenditure of the Funds to confirm that the funds have been used for the purposes intended, including a review of the Trust's processes to ensure that funds disbursed to LDCs were used for purposes intended..

7.4 Disclosure. To assist in respect of the rights set out in section 7.3 the Recipient will disclose any information requested by the Province, its authorized representatives or an independent auditor identified by the Province, and will do so in the form requested by the Province, its authorized representatives or an independent auditor identified by the Province, as the case may be.

7.5 No Control of Records. No provision of the Agreement will be construed so as to give the Province any control whatsoever over the Recipient's records.

7.6 Auditor General. For greater certainty, the Province's rights under this Article are in addition to and do not limit any rights provided to the Auditor General pursuant to section 9.1 of the *Auditor General Act* (Ontario).

8.0 COMMUNICATIONS REQUIREMENTS

8.1 Publication. The Recipient will indicate, in any of its Project-related publications, whether written, oral, or visual, that the views expressed in the publication are the views of the Recipient and do not necessarily reflect those of the Province.

9.0 FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY

9.1 **FIPPA.** The Recipient acknowledges that the Province is bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province in connection with the Project or otherwise in connection with the Agreement may be subject to disclosure in accordance with that Act.

10.0 EVENT OF DEFAULT, CORRECTIVE ACTION AND TERMINATION FOR DEFAULT

Commented [A1]: KPMG to comment on 'control' implications.

10.1 **Events of Default.** An Event of Default will occur if the Recipient breaches any representation, warranty, covenant or other term of this Agreement.

10.2 **Consequences of Events of Default and Corrective Action.** If an Event of Default occurs, the Province may, at any time, take one or more of the following actions:

(a) provide the Recipient with an opportunity to remedy the Event of Default;

(b) seek an order of specific performance including an order that the Recipient pursue its available remedies against third parties;

(c) recover any Funds remaining in the possession or under the control of the Recipient; and

(d) terminate the Agreement at any time, including immediately, without liability, penalty or costs to the Province upon giving Notice to the Recipient.

10.3 **Opportunity to Remedy.** If, in accordance with section 9.2(a), the Province provides the Recipient with an opportunity to remedy the Event of Default, the Province will provide Notice to the Recipient of:

(a) the particulars of the Event of Default; and

(b) the Notice Period.

10.4 **Recipient not Remedying.** If the Province has provided the Recipient with an opportunity to remedy the Event of Default pursuant to section 11.2(a), and:

(a) the Recipient does not remedy the Event of Default within the Notice Period;

(b) it becomes apparent to the Province that the Recipient cannot adequately remedy the Event of Default within the Notice Period; or

(c) the Recipient is not proceeding to remedy the Event of Default in a way that is satisfactory to the Province,

the Province may extend the Notice Period, or initiate any one or more of the actions provided for in section 11.2.

10.5 **When Termination Effective.** Termination under this Article will take effect as set out in the Notice.

11.0 REPAYMENT

11.1 **Debt Due.** If, pursuant to the Agreement: the Province demands the payment of any Funds from the Recipient pursuant to section 11.2 such Funds or other amount will be deemed to be a debt due and owing to the Province by the Recipient, and the Recipient will pay or return the amount to the Province immediately, unless the Province directs otherwise.

11.2 **Interest Rate.** The Province may charge the Recipient interest on any money owing by the Recipient at the then current interest rate charged by the Province of Ontario on accounts receivable.

11.3 **Payment of Money to Province.** The Recipient will pay any money owing to the Province by cheque payable to the "Ontario Minister of Finance" and delivered to the Province at the address referred to in **[Schedule "B"]**.

11.4 **Failure to Repay.** Without limiting the application of section 43 of the Financial Administration Act (Ontario), if the Recipient fails to repay any amount owing under the Agreement, Her Majesty the Queen in right of Ontario may deduct any unpaid amount from any money payable to the Recipient by Her Majesty the Queen in right of Ontario.

12.0 NOTICE

12.1 **Notice in Writing and Addressed.** Notice will be in writing and will be delivered by email, postage-prepaid mail, personal delivery or fax, and will be addressed to the Province and the Recipient respectively as set out in Schedule "B", or as either Party later designates to the other by Notice.

12.2 **Notice Given.** Notice will be deemed to have been given:

(a) in the case of postage-prepaid mail, five Business Days after the Notice is mailed; or

(b) in the case of email, personal delivery or fax, one Business Day after the Notice is delivered.

12.3 **Postal Disruption.** Despite section 13.2(a), in the event of a postal disruption:

(a) Notice by postage-prepaid mail will not be deemed to be received; and

(b) the Party giving Notice will provide Notice by email, personal delivery or by fax.

13.0 SEVERABILITY OF PROVISIONS

13.1 **Invalidity or Unenforceability of Any Provision.** The invalidity or unenforceability of any provision of the Agreement will not affect the validity or enforceability of any other provision of the Agreement. Any invalid or unenforceable provision will be deemed to be severed.

14.0 WAIVER

14.1 **Waivers in Writing.** If a Party fails to comply with any term of the Agreement, that Party may only rely on a waiver of the other Party if the other Party has provided a written waiver in accordance with the Notice provisions in Article 13.0. Any waiver must refer to a specific failure to comply and will not have the effect of waiving any subsequent failures to comply.

15.0 INDEPENDENT PARTIES

15.1 **Parties Independent.** The Recipient acknowledges that it is not an agent, joint venturer, partner or employee of the Province, and the Recipient will not represent itself in any way that might be taken by a reasonable person to suggest that it is, or take any actions that could establish or imply such a relationship.

16.0 ASSIGNMENT OF AGREEMENT OR FUNDS

16.1 **Agreement Binding.** All rights and obligations contained in the Agreement will extend to and be binding on the Parties' respective heirs, executors, administrators, successors and permitted assigns.

17.0 LIMITATION OF LIABILITY

17.1 This Agreement has been entered into by the Trustee solely in its capacity as trustee of the

Recipient and is not binding on the Trustee in any other capacity, whether in tort, contract or otherwise. **The Beneficiaries of the Recipient are not subject to any liability in respect of the Recipient.** Resort may not be had to, nor recourse or satisfaction be sought from, the private property of the Trustee, its directors, officers, employees, or agents, or the private property of any Beneficiary, and resort will be had solely to the property of the Recipient held in trust by the Trustee for the payment, performance or satisfaction of any liability or obligation of the Recipient or the Trustee under this Agreement.

18.0 GOVERNING LAW

18.1 Governing Law. The Agreement and the rights, obligations and relations of the Parties will be governed by and construed in accordance with the laws of the Province of Ontario and the applicable federal laws of Canada. Any actions or proceedings arising in connection with the Agreement will be conducted in the courts of Ontario, which will have exclusive jurisdiction over such proceedings.

19.0 FURTHER ASSURANCES

19.1 Agreement into Effect. The Recipient will provide such further assurances as the Province may request from time to time with respect to any matter to which the Agreement pertains, and will otherwise do or cause to be done all acts or things necessary to implement and carry into effect the terms and conditions of the Agreement to their full extent.

19.2 Declaration of Trust. The Trustee covenants that it shall not amend, restate or terminate the Declaration of Trust without obtaining the written consent of the Province in respect of same.

20.0 JOINT AND SEVERAL LIABILITY

20.1 Joint and Several Liability. Where the Recipient is comprised of more than one entity, all such entities will be jointly and severally liable to the Province for the fulfillment of the obligations of the Recipient under the Agreement.

21.0 RIGHTS AND REMEDIES CUMULATIVE

21.1 Rights and Remedies Cumulative. The rights and remedies of the Province under the Agreement are cumulative and are in addition to, and not in substitution for, any of its rights and remedies provided by law or in equity.

22.0 ACKNOWLEDGEMENT OF OTHER LEGISLATION AND DIRECTIVES

22.1 Recipient Acknowledges. The Recipient acknowledges that by receiving Funds it may become subject to legislation applicable to organizations that receive funding from the Government of Ontario, including the BPSAA, the PSSDA, and the *Auditor General Act* (Ontario).

23.0 SURVIVAL

23.1 Survival. The following Articles and sections, and all applicable cross-referenced sections and schedules, will continue in full force and effect for a period of seven years from the date of expiry or termination of the Agreement: Article 1.0 and any other applicable definitions, section, 4.5, section 7.1 (to the extent that the Recipient has not provided the Reports to the satisfaction of the Province), sections 7.2, 7.3, 7.4,7.5, 7.6, Article 8.0, Article 12.0, Article 14.0, Article 17.0, Article 20.0, Article 21.0. [NTD: References to be update/confirmed.]

- END OF GENERAL TERMS AND CONDITIONS -

SCHEDULE "B"

PROJECT SPECIFIC INFORMATION

Maximum Funds	$100 million
Expiration Date	Later of [April 30, 2019] and the Final Distribution Date (as defined in the Declaration of Trust)
Insurance	$2,000,000
Contact information for the purposes of Notice to the Province	**Attention: Usman Syed** **Position: Director** **Address: 77 Grenville St, Toronto, Ontario, M7A 2C1** **Fax: 416-325-6651** **Email: Usman.Syed@ontario.ca**
Contact information for the purposes of Notice to the Recipient	**Attention:** **Position:** **Address:** **Email:**
Contact information for the senior financial person in the Recipient organization (e.g., CFO, CAO) – to respond as required to requests from the Province related to the Agreement	**Attention:** **Position:** **Address:** **Email:**

Commented [A2]: To be refined

Commented [A3]: To be refined

SCHEDULE "C"

PROJECT

For the purposes of this Agreement, the "Project" is the distribution of the Funds in accordance with the Declaration of Trust.

The Project will be completed subject to the requirements of the Budget and in accordance with the Principles set forth in Annex A.

Notwithstanding anything else contained in the Agreement or the Declaration of Trust, until such time as each of the following conditions have been completed to the satisfaction of the Province (the "Requirements"), the Recipient shall not distribute any Funds to any Beneficiary.

1. Procedures shall be developed and implemented for (i) identifying trustees who are individuals resident in Ontario to replace Computershare Trust Company of Canada as the sole trustee of the Recipient, and (ii) the making of decisions by the trustees of the Recipient and more generally, for the governance of the Recipient.

2. Computershare Trust Company of Canada shall be replaced as the sole trustee of the Recipient with three or more individual trustees identified in accordance with the procedures developed under clause 1.

3. An administrative services agreement shall have been developed and entered into by the Recipient and the administrative services agent providing for the administrative services necessary for the operation of the Recipient and the execution of the Project.

4. Procedures will be developed and implemented under which Local Distribution Companies (as defined in the Declaration of Trust) will assist with (i) the identification of Beneficiaries, and (ii) the distribution of Funds to or for the benefit of such Beneficiaries.

5. Insurance requirement

Each of the Requirements may be accomplished by the Recipient entering into such agreements as may be necessary or expedient, including, without limitation, an amendment or amendment and restatement of the Declaration of Trust. The Province shall provide notice in writing to the Recipient when the Requirements have been completed to the satisfaction of the Province. Funds may be expended to pay the expenses of the Trustee in completing the Requirements.

Commented [A4]: We will look to refine this, but the intent is for Trustees to have insurance in place before funds are flowed.

Under the previous draft, if there was a lawsuit against a Trustee, expenses and any liabilities would be covered by the Trust (indemnification).

Instead, we are proposing that a line of insurance be established that a Trustee would access to cover lawsuit related expenses and liabilities.

The intention is to protect the Trust funds and for them to be not used for lawsuit related liabilities.

Commented [A5]: We will be refining this content further

SCHEDULE "D"

Budget

1. It is expected that the administrative expenses of the Fund, including any administrative expenses of the Recipient (or any administrative services agents or other agents retained by the Recipient), relating to the establishment of the Affordability Fund and satisfying the Requirements (as defined in Schedule "C") and any expenses related to the operation of the Trust and the execution of the Project (including any reimbursable expenses incurred by any Administrative Services Agent (as such terms are defined in the Declaration of Trust), will be no greater than 10 percent of the total Project budget.

2. Only actual (excluding HST) incurred expenditures of the Trust are eligible for reimbursement as administrative expenses.

3. It is expected any travel, meals and hospitality expenses by the Recipient will be consistent with the Province's Travel, Meal and Hospitality Expenses Directive. Entities receiving funding from the Recipient are also expected to adhere to the Province's Travel, Meal and Hospitality Expenses Directive and the Recipient is expected to request the same of such Entities. Alcohol and First-Class travel are not considered eligible claims and disbursements for hospitality, incidental or food expenses shall not be covered by the Funds, including the following:

    - Meals, snacks and beverages
    - Gratuities
    - Laundry or dry cleaning
    - Valet services
    - Dependent care
    - Home management
    - Personal telephone calls

4. It is expected that overhead expenses which are not directly related to the activities related to the Recipient in establishing and managing the Affordability Fund would not be reimbursed.

5. Any expenses that have been or may be reimbursed by other parties should not be reimbursed by the Fund.

6. In the event that the Recipient performs any procurements, it is expected that all procurements will reflect the principles of Ontario's Public Service Procurement Directive.

SCHEDULE "E"

PAYMENT PLAN

PAYMENT DATE	MAXIMUM FUNDS TO BE DISBURSED BY THE PROVINCE
Within 7 days of signing the Agreement	$ 100,000,000

SCHEDULE "F"

REPORTING

Quarterly Reports will be provided quarterly on the basis of the government's fiscal year starting at the execution of this Agreement and continuing until conclusion of the Agreement. Annual Reports will be provided annually on a fiscal basis starting at the execution of this Agreement and continuing until conclusion of the Agreement. Quarterly Reports and Annual Reports shall be submitted to the Province within one month following the end of the reporting period that they represent.

The Recipient shall prepare six (6) Quarterly Reports and two (2) Annual Report as outlined below. Reports shall explicitly demonstrate impact of Province's funding and address report detail requirements listed below.

NAME OF REPORT	DUE DATE
Quarterly Report #1	July 31, 2017
Quarterly Report #2	October 31, 2017
Quarterly Report #3	January 31, 2018
Annual Report #1	April 30, 2018
Quarterly Report #4	July 31, 2018
Quarterly Report #5	October 31, 2018
Quarterly Report #6	January 31, 2019
Annual Report #2	April 30, 2019

Requirements for Quarterly Reports

- The Recipient will provide Quarterly Reports which will include a report back on the Trustee-developed performance management criteria. Quarterly Report requirements will be determined from time to time by the Province, and initially will include:
    - Amounts disbursed by the Recipient in the previous quarter. It is expected that this information will be provided at the electricity distributor level.
    - Total Affordability Fund interest accrued to date
    - Key activities and achievements from the quarter being reported, including number of participant households per electricity distributor, average participant incentive cost per electricity distributor, and uptake of energy efficiency measures per electricity distributor
    - Any challenges or modifications required to the application, funding, or eligibility processes/rules
    - Key activities planned for the upcoming quarter

Requirements for Annual Report

- The Recipient will provide an Annual Report to the Province which will include a report back on the Trustee-developed performance management criteria. Annual Report requirements include:
    - A description of electricity distributor application process and the criteria used by the Recipient to manage funds.

- Identify and describe any challenges with achieving goals and proposed solutions, if applicable.
- Lesson learned.
- Electricity distributor and customer feedback
- Amounts disbursed by the Recipient in the previous year. It is expected that this information will be provided at the electricity distributor level.
- Key activities and achievements from the quarter being reported, including number of participant households per electricity distributor, average participant incentive cost per electricity distributor, and uptake of energy efficiency measures per electricity distributor
- Total Affordability Fund interest accrued to date

- As part of the Annual Report, the Recipient will also provide the Province with an audited financial statement for the previous year.

ANNEX A

Principles

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ONTARIO TRANSFER PAYMENT AGREEMENT

THE AGREEMENT, effective as of the ●● day of March, 2017 (the **"Effective Date"**)

B E T W E E N :

Her Majesty the Queen in right of Ontario
as represented by the Minister of Energy

(the "Province")

- and -

Computershare Trust Company of Canada, in its capacity as trustee of Affordability Fund Trust ~~and not in its personal capacity~~

(together with its successors and assigns, the "Recipient" and, together with the Province, the "Parties")

BACKGROUND

Computershare Trust Company of Canada is the original trustee of the ~~Recipient~~Affordability Fund Trust.

The Province wishes to provide Funds to the Recipient to be held and distributed in accordance with the terms of the Declaration of Trust (defined below~~).~~) and the Principles set forth in Annex A.

CONSIDERATION

In consideration of the mutual covenants and agreements contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is expressly acknowledged, the Parties agree as follows:

ENTIRE AGREEMENT

This agreement (as amended, restated, supplemented or otherwise modified from time to time, the **"Agreement"**), including:

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Schedule “A” - General Terms and Conditions
Schedule “B” - Project Specific Information
Schedule “C” - Project - Certain Obligations of the Recipient
Schedule “D” - Budget
Schedule “E” - Payment Plan
Schedule “F” - Reporting~~, and~~
Annex “A” - Principles, and
any amending agreement entered into as provided for below,

constitutes the entire agreement between the Parties with respect to the subject matter contained in this Agreement and supersedes all prior oral or written representations and agreements.

COUNTERPARTS

The Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

AMENDING THE AGREEMENT

The Agreement may only be amended by a written agreement duly executed by the Parties.

ACKNOWLEDGEMENT

The Recipient:

(a) acknowledges that it has read and understands the provisions contained in the entire Agreement; and

(b) agrees to be bound by the terms and conditions contained in the entire Agreement.

IN WITNESS WHEREOF, the Parties have executed the Agreement on the dates set out below.

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO as represented by Minister of Energy

~~_____~~by:

_____
Date

_____
Name: ~~Segre~~Serge Imbrogno

~~_____~~Title: Deputy Minister

Authorized Signing Officer

COMPUTERSHARE TRUST COMPANY OF CANADA, in its capacity as trustee of AFFORDABILITY FUND TRUST

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by:

_____ _____

Date Name:

Title:

by:

_____ _____

Date Name:

Title:

I/We have authority to bind the Recipient.

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SCHEDULE "A"
GENERAL TERMS AND CONDITIONS

1.0 INTERPRETATION AND DEFINITIONS

1.1 Interpretation. For the purposes of interpretation:

(a) words in the singular include the plural and vice-versa;

(b) words in one gender include all genders;

(c) the headings do not form part of the Agreement; they are for reference only and will not affect the interpretation of the Agreement;

(d) any reference to dollars or currency will be in Canadian dollars and currency;

(e) "include", "includes" and "including" denote that the subsequent list is not exhaustive; and

(f) where any reference is made in the Agreement to an act to be performed by or for or on behalf of the ~~Recipient~~Affordability Fund Trust, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of ~~Computershare Trust Company of Canada~~the Trustee in its capacity as trustee of the ~~Recipient~~Affordability Fund Trust, and, where any reference is made in the Agreement to an act to be performed by or for or on behalf of ~~Computershare Trust Company of Canada~~the Trustee, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of ~~Computershare Trust Company of Canada~~the Trustee in its capacity as trustee of the ~~Recipient~~Affordability Fund Trust.

1.2 Definitions. In the Agreement, the following terms will have the following meanings:

"BPSAA" means the Broader Public Sector Accountability Act, 2010 (Ontario).

"**Beneficiary**" has the meaning given to such term in the Declaration of Trust.

"Budget" means the budget attached to the Agreement as Schedule "D".

"Business Day" means any working day, Monday to Friday inclusive, excluding statutory and other holidays, namely: New Year's Day; Family Day; Good Friday; Easter Monday; Victoria Day; Canada Day; Civic Holiday; Labour Day; Thanksgiving Day; Remembrance Day; Christmas Day; Boxing Day and any other day on which the Province has elected to be closed for business.

"**Declaration of Trust**" means the declaration of trust made as of March ~~[●],~~[●], 2017, under which the ~~Recipient~~Affordability Fund Trust was established, as such declaration of trust may be amended, restated, supplemented or otherwise modified from time to time.

"Expiration Date" means the date on which this Agreement will expire and is the date set out in Schedule "B".

"Funds" means the money the Province provides to the Recipient pursuant to the Agreement.

"Maximum Funds" means the maximum amount of Funds that the Province will provide the Recipient under the Agreement, as set out in Schedule "B".

"Notice" means any communication given or required to be given pursuant to the Agreement.

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"Party" means either the Province or the Recipient.

"**Person**" includes any individual, sole proprietorship, corporation, partnership, joint venture, association, society, club, board, chamber, joint-stock company, trust, trustee, unincorporated or incorporated organization or entity or government or any entity, agency or political subdivision thereof.

"Project" means the undertaking described in Schedule "C".

"PSSDA" means the *Public Sector Salary Disclosure Act, 1996* (Ontario).

"Reports" means the reports described in Schedule "F".

"**Trustee**" means Computershare Trust Company of Canada or any replacement trustee in its capacity as trustee of the ~~Recipient~~Affordability Fund Trust.

2.0 REPRESENTATIONS, WARRANTIES AND COVENANTS

2.1 General. The Recipient represents, warrants and covenants that:

(a) The Trustee is the trustee of the ~~Recipient~~Affordability Fund Trust; and

(b) The ~~Recipient~~Affordability Fund Trust is, and will continue to be for the term of the Agreement, a trust existing under and governed by the laws of the Province of Ontario.

2.2 Execution of Agreement. The Recipient represents and warrants that it has:

(a) the full power and authority to enter into the Agreement; and

(b) taken all necessary actions to authorize the execution of the Agreement.

2.3 Governance. The Recipient represents, warrants and covenants that it has, and will maintain, in writing for the period during which the Agreement is in effect:

(a) decision-making mechanisms and procedures to enable the Recipient to manage Funds in accordance with the Declaration of Trust; and

(b) procedures to enable the preparation and delivery of all Reports required pursuant to Article 5.0~~; and~~.

2.4 Supporting Documentation. Upon request, the Recipient will provide the Province with proof of the matters referred to in this Article 2.0.

3.0 TERM OF THE AGREEMENT

3.1 Term. The term of the Agreement will commence on the Effective Date and will expire on the Expiration Date.

4.0 FUNDS AND CARRYING OUT THE PROJECT

4.1 Funds Provided. The Province will:

(a) provide the Recipient up to the Maximum Funds to be held and distributed in accordance with the terms of the Project and the Declaration of Trust;

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(b) provide the Funds to the Recipient in accordance with the Payment Plan attached to the Agreement as Schedule "E"; and

(c) deposit the Funds into an account designated by the Recipient, provided that the account:

(i) resides at a Canadian financial institution; and

(ii) is in the name of the Recipient.

4.2 Limitation on Payment of Funds. Despite section 4.1, the Province is not obligated to provide any Funds to the Recipient until the Recipient provides the insurance certificate or other proof as the Province may request pursuant to [section ~~8~~10.2~~];~~].

4.3 Use of Funds and Project. The Recipient will use the Funds only for the purpose contemplated by the Project ~~and~~, the Declaration of Trust and the Principles set forth in Annex A.

4.4 Province's Role Limited to Providing Funds. For greater clarity, the Province's role under the Agreement is limited to providing Funds to the Recipient and the Province is not responsible for carrying out the terms of the Declaration of Trust.

4.5 Maximum Funds. The Recipient acknowledges that the Funds available to it pursuant to the Agreement will not exceed the Maximum Funds.

4.6 Funding, Not Procurement. For greater clarity, the Recipient acknowledges that:

(a) it is receiving funding from the Province for the Project and is not providing goods or services to the Province; and

(b) the funding the Province is providing under the Agreement is funding for the purposes of the PSSDA.

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1.0 RECIPIENT'S ACQUISITION OF GOODS OR SERVICES, AND DISPOSAL OF ASSETS

1.1 Acquisition. If the Recipient acquires goods, services, or both with the Funds, it will do so through a process that promotes the best value for money.

2.0 CONFLICT OF INTEREST

2.1 No Conflict of Interest. The Recipient will carry out the Project and use the Funds without an actual, potential or perceived conflict of interest.

2.2 Conflict of Interest Includes. For the purposes of this Article, a conflict of interest includes any circumstances where:

(a) the Recipient; or
(b) any person who has the capacity to influence the Recipient's decisions,
has outside commitments, relationships or financial interests that could, or could be seen to, interfere with the Recipient's objective, unbiased and impartial judgment relating to the Project, the use of the Funds, or both.

2.3 Disclosure to Province. The Recipient will:

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(a) disclose to the Province, without delay, any situation that a reasonable person would interpret as an actual, potential or perceived conflict of interest; and

~~5.0~~3.0 REPORTING, ACCOUNTING AND REVIEW

~~5.1~~3.1 Preparation and Submission. The Recipient will:

(a) submit to the Province at the address referred to in Schedule "B", all Reports in accordance with the timelines and content requirements set out in Schedule "F", or in a form as specified by the Province from time to time;

(b) submit to the Province at the address referred to in Schedule "B", any other reports as may be requested by the Province in accordance with the timelines and content requirements specified by the Province;

(c) ensure that all Reports and other reports are completed to the satisfaction of the Province; and

(d) ensure that all Reports and other reports are signed on behalf of the Recipient by an authorized ~~signing officer~~signatory.

~~1.0~~ Record Maintenance. The Recipient will keep and maintain~~:~~

~~(c) all~~ financial and other records ~~(including invoices) relating~~necessary to ~~the Funds or otherwise~~permit it to ~~the Project in a manner consistent with generally accepted accounting principles; and~~

~~(d)~~**3.2** ~~all non-financial documents~~satisfy its obligations under section 7.1 and ~~records relating~~ to permit the ~~Funds or otherwise~~Province to ~~the Project~~exercise its rights under section 7.3.

~~5.3~~3.3 Inspection. The Province, its authorized representatives or an independent auditor identified by the Province may, at its own expense, upon twenty-four hours' Notice to the Recipient and during normal business hours, ~~review~~inspect the records of and information respecting the Recipient to confirm its compliance with the terms of this Agreement, including to ensure consistency with the purposes of the Project and regarding the Recipient's allocation and expenditure of the Funds and, for these purposes, the Province, its authorized representatives or an independent auditor identified by the Province may take one or more of the following actions:

(a) inspect and copy the records and documents referred to in section ~~5~~7.2;

(b) keep any copies made pursuant to section ~~5~~7.3(a); and

(c) conduct an audit or investigation of the Recipient in respect of the expenditure of the Funds~~.~~ to confirm that the funds have been used for the purposes intended, including a review of the Trust's processes to ensure that funds disbursed to LDCs were used for purposes intended..

~~5.4~~3.4 Disclosure. To assist in respect of the rights set out in section ~~5.3,~~7.3 the Recipient will disclose any information requested by the Province, its authorized representatives or an independent auditor identified by the Province, and will do so in the form requested by the Province, its

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authorized representatives or an independent auditor identified by the Province, as the case may be.

~~5.5~~3.5 **No Control of Records.** No provision of the Agreement will be construed so as to give the Province any control whatsoever over the Recipient's records.

~~5.6~~3.6 **Auditor General.** For greater certainty, the Province's rights under this Article are in addition to and do not limit any rights provided to the Auditor General pursuant to section 9.1 of the *Auditor General Act* (Ontario).

~~6.0~~4.0 **COMMUNICATIONS REQUIREMENTS**

~~6.1~~4.1 **Publication.** The Recipient will indicate, in any of its Project-related publications, whether written, oral, or visual, that the views expressed in the publication are the views of the Recipient and do not necessarily reflect those of the Province.

~~7.0~~5.0 **FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY**

~~7.1~~5.1 **FIPPA.** The Recipient acknowledges that the Province is bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province in connection with the Project or otherwise in connection with the Agreement may be subject to disclosure in accordance with that Act.

~~8.0 [INSURANCE]~~

~~8.1 [Recipient's Insurance. The Recipient represents and warrants that it has, and will maintain for the term of the Agreement, at its own cost and expense, with insurers having a secure A.M. Best rating of B+ or greater, or the equivalent, all the necessary and appropriate insurance that a prudent person that is a trust similar to the Recipient would maintain, including commercial general liability insurance on an occurrence basis for third party bodily injury, personal injury and property damage, to an inclusive limit of not less than the amount set out in Schedule "B" per occurrence. The policy will include the following:~~

~~(a) the Indemnified Parties as additional insureds with respect to liability arising in the course of performance of the Recipient's obligations under, or otherwise in connection with, the Agreement;~~

~~(b) a cross-liability clause;~~

~~(c) contractual liability coverage; and~~

~~(d) a 30 day written notice of cancellation.~~

~~8.2 Proof of Insurance. The Recipient will provide the Province with certificates of insurance, or other proof as may be requested by the Province, that confirms the insurance coverage as provided for in section 8.1. Upon the request of the Province, the Recipient will make available to the Province a copy of each insurance policy.][NTD: what risks are to be insured?]~~

6.0 EVENT OF DEFAULT, CORRECTIVE ACTION AND TERMINATION FOR DEFAULT

6.1 Events of Default. An Event of Default will occur if the Recipient breaches any representation, warranty, covenant or other term of this Agreement.

6.2 Consequences of Events of Default and Corrective Action. If an Event of Default occurs, the Province may, at any time, take one or more of the following actions:

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(a) provide the Recipient with an opportunity to remedy the Event of Default;

(b) seek an order of specific performance including an order that the Recipient pursue its available remedies against third parties;

(c) recover any Funds remaining in the possession or under the control of the Recipient; and

(d) terminate the Agreement at any time, including immediately, without liability, penalty or costs to the Province upon giving Notice to the Recipient.

6.3 Opportunity to Remedy. If, in accordance with section 9.2(a), the Province provides the Recipient with an opportunity to remedy the Event of Default, the Province will provide Notice to the Recipient of:

(a) the particulars of the Event of Default; and

(b) the Notice Period.

6.4 Recipient not Remedying. If the Province has provided the Recipient with an opportunity to remedy the Event of Default pursuant to section 11.2(a), and:

(a) the Recipient does not remedy the Event of Default within the Notice Period;

(b) it becomes apparent to the Province that the Recipient cannot adequately remedy the Event of Default within the Notice Period; or

(c) the Recipient is not proceeding to remedy the Event of Default in a way that is satisfactory to the Province,

the Province may extend the Notice Period, or initiate any one or more of the actions provided for in section 11.2.

6.5 When Termination Effective. Termination under this Article will take effect as set out in the Notice.

7.0 REPAYMENT

7.1 Debt Due. If, pursuant to the Agreement: the Province demands the payment of any Funds from the Recipient pursuant to section 11.2 such Funds or other amount will be deemed to be a debt due and owing to the Province by the Recipient, and the Recipient will pay or return the amount to the Province immediately, unless the Province directs otherwise.

7.2 Interest Rate. The Province may charge the Recipient interest on any money owing by the Recipient at the then current interest rate charged by the Province of Ontario on accounts receivable.

7.3 Payment of Money to Province. The Recipient will pay any money owing to the Province by cheque payable to the "Ontario Minister of Finance" and delivered to the Province at the address referred to in **[Schedule "B"]**.

7.4 Failure to Repay. Without limiting the application of section 43 of the Financial Administration Act (Ontario), if the Recipient fails to repay any amount owing under the Agreement, Her Majesty the Queen in right of Ontario may deduct any unpaid amount from any money payable to the Recipient by Her Majesty the Queen in right of Ontario.

~~9.0~~8.0 NOTICE

~~9.1~~8.1 Notice in Writing and Addressed. Notice will be in writing and will be delivered by email,

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postage-prepaid mail, personal delivery or fax, and will be addressed to the Province and the Recipient respectively as set out in Schedule "B", or as either Party later designates to the other by Notice.

~~9.2~~8.2 **Notice Given.** Notice will be deemed to have been given:

(a) in the case of postage-prepaid mail, five Business Days after the Notice is mailed; or

(b) in the case of email, personal delivery or fax, one Business Day after the Notice is delivered.

~~9.3~~8.3 **Postal Disruption.** Despite section ~~9~~13.2(a), in the event of a postal disruption:

(a) Notice by postage-prepaid mail will not be deemed to be received; and

(b) the Party giving Notice will provide Notice by email, personal delivery or by fax.

~~10.0~~9.0 **SEVERABILITY OF PROVISIONS**

~~10.1~~9.1 **Invalidity or Unenforceability of Any Provision.** The invalidity or unenforceability of any provision of the Agreement will not affect the validity or enforceability of any other provision of the Agreement. Any invalid or unenforceable provision will be deemed to be severed.

~~11.0~~10.0 **WAIVER**

~~11.1~~10.1 **Waivers in Writing.** If a Party fails to comply with any term of the Agreement, that Party may only rely on a waiver of the other Party if the other Party has provided a written waiver in accordance with the Notice provisions in Article ~~9~~13.0. Any waiver must refer to a specific failure to comply and will not have the effect of waiving any subsequent failures to comply.

~~12.0~~11.0 **INDEPENDENT PARTIES**

~~12.1~~11.1 **Parties Independent.** The Recipient acknowledges that it is not an agent, joint venturer, partner or employee of the Province, and the Recipient will not represent itself in any way that might be taken by a reasonable person to suggest that it is, or take any actions that could establish or imply such a relationship.

~~13.0~~12.0 **ASSIGNMENT OF AGREEMENT OR FUNDS**

~~13.1~~12.1 **Agreement Binding.** All rights and obligations contained in the Agreement will extend to and be binding on the Parties' respective heirs, executors, administrators, successors and permitted assigns.

~~14.0~~13.0 **LIMITATION OF LIABILITY**

~~14.1~~13.1 This Agreement has been entered into by the Trustee solely in its capacity as trustee of the Recipient and is not binding on the Trustee in any other capacity~~.~~, whether in tort, contract or otherwise. **The Beneficiaries of the Recipient are not subject to any liability in respect of the Recipient**~~, whether in tort, contract or otherwise.~~ Resort may not be had to, nor recourse or satisfaction be sought from, the private property of the Trustee, its directors, officers, employees, or agents, or the private property of any Beneficiary, and resort will be had solely to the property of the Recipient held in trust by the Trustee for the payment, performance or satisfaction of any liability or obligation of the Recipient or the Trustee under this Agreement.

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~~15.0~~14.0 GOVERNING LAW

~~15.1~~14.1 Governing Law. The Agreement and the rights, obligations and relations of the Parties will be governed by and construed in accordance with the laws of the Province of Ontario and the applicable federal laws of Canada. Any actions or proceedings arising in connection with the Agreement will be conducted in the courts of Ontario, which will have exclusive jurisdiction over such proceedings.

~~16.0~~15.0 FURTHER ASSURANCES

~~16.1~~15.1 Agreement into Effect. The Recipient will provide such further assurances as the Province may request from time to time with respect to any matter to which the Agreement pertains, and will otherwise do or cause to be done all acts or things necessary to implement and carry into effect the terms and conditions of the Agreement to their full extent.

15.2 Declaration of Trust. The Trustee covenants that it shall not amend, restate or terminate the Declaration of Trust without obtaining the written consent of the Province in respect of same.

16.0 JOINT AND SEVERAL LIABILITY

16.1 Joint and Several Liability. Where the Recipient is comprised of more than one entity, all such entities will be jointly and severally liable to the Province for the fulfillment of the obligations of the Recipient under the Agreement.

17.0 RIGHTS AND REMEDIES CUMULATIVE

17.1 Rights and Remedies Cumulative. The rights and remedies of the Province under the Agreement are cumulative and are in addition to, and not in substitution for, any of its rights and remedies provided by law or in equity.

18.0 ACKNOWLEDGEMENT OF OTHER LEGISLATION AND DIRECTIVES

18.1 Recipient Acknowledges. The Recipient acknowledges that by receiving Funds it may become subject to legislation applicable to organizations that receive funding from the Government of Ontario, including the BPSAA, the PSSDA, and the *Auditor General Act* (Ontario).

19.0 SURVIVAL

19.1 Survival. The following Articles and sections, and all applicable cross-referenced sections and schedules, will continue in full force and effect for a period of seven years from the date of expiry or termination of the Agreement: Article ~~1.0~~1.0 and any other applicable definitions, section, ~~4.5~~4.5, section ~~5.1~~7.1 (to the extent that the Recipient has not provided the Reports to the satisfaction of the Province), sections ~~5.2, 5.3, 5.4, 5.5, 5.6, Article 6.0, [Article 8.0], Article 10.0, Article 11.0, Article 12.0, Article 15.0, Article 18.0, Article 19.0.~~7.2, 7.3, 7.4,7.5, 7.6, Article 8.0, Article 12.0, Article 14.0, Article 17.0, Article 20.0, Article 21.0. [NTD: References to be update/confirmed.]

- END OF GENERAL TERMS AND CONDITIONS -

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SCHEDULE "B"

PROJECT SPECIFIC INFORMATION

Maximum Funds	~~$200,000,000~~ $100 million
Expiration Date	~~April 30, 2019~~Later of [April 30, 2019] and the Final Distribution Date (as defined in the Declaration of Trust)
Insurance	[~~$~~$2,000,000]
Contact information for the purposes of Notice to the Province	**Attention: Usman Syed** **Position: Director** **Address: 77 Grenville St, Toronto, Ontario, M7A 2C1** **Fax: 416-325-6651** **Email: Usman.Syed@ontario.ca**
Contact information for the purposes of Notice to the Recipient	**Attention:** **Position:** **Address:** **Email:**
Contact information for the senior financial person in the Recipient organization (e.g., CFO, CAO) – to respond as required to requests from the Province related to the Agreement	**Attention:** **Position:** **Address:** **Email:**

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SCHEDULE "C"

PROJECT

For the purposes of this Agreement, the "Project" is the ~~implementation of the Requirements (as defined below) and, after implementation of the Requirements, the~~ distribution of the Funds in accordance with the Declaration of Trust.

The Project will be completed subject to the requirements of the Budget and in accordance with the Principles set forth in Annex A.

Notwithstanding anything else contained in the Agreement or the Declaration of Trust, until such time as each of the following conditions have been completed to the satisfaction of the Province (the "Requirements"), the Recipient shall not distribute any Funds to any Beneficiary.

1. Procedures shall be developed and implemented for (i) identifying trustees who are individuals resident in Ontario to replace Computershare Trust Company of Canada as the sole trustee of the Recipient, and (ii) the making of decisions by the trustees of the Recipient and more generally, for the governance of the Recipient.

~~2.~~1. Computershare Trust Company of Canada shall be replaced as the sole trustee of the Recipient with three or more individual trustees identified in accordance with the procedures developed under clause 1.

~~3.~~1. An administrative services agreement ~~with Hydro One Limited or another Person~~ shall have been developed and entered into by the Recipient and the administrative services agent providing for the administrative services necessary for the operation of the Recipient and the execution of the Project.

~~4.~~1. Procedures will be developed and implemented under which Local Distribution Companies (as defined in the Declaration of Trust) will assist with (i) the identification of Beneficiaries, and (ii) the distribution of Funds to or for the benefit of such Beneficiaries.

1. Insurance requirement

Each of the Requirements may be accomplished by the Recipient entering into such agreements as may be necessary or expedient, including, without limitation, an amendment or amendment and restatement of the Declaration of Trust. The Province shall provide notice in writing to the Recipient when the Requirements have been completed to the satisfaction of the Province. Funds may be expended to pay the expenses of the Trustee in completing the Requirements.

~~The Project will be completed subject to the requirements of the Budget.~~

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Commented [A4]: We will look to refine this, but the intent is for Trustees to have insurance in place before funds are flowed.

Under the previous draft, if there was a lawsuit against a Trustee, expenses and any liabilities would be covered by the Trust (indemnification).

Instead, we are proposing that a line of insurance be established that a Trustee would access to cover lawsuit related expenses and liabilities.

The intention is to protect the Trust funds and for them to be not used for lawsuit related liabilities.

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SCHEDULE "D"

Budget

1. 1. It is expected that the administrative expenses of the Fund, including any administrative expenses of the Recipient (or any administrative services agents or other agents retained by the Recipient), relating to the establishment of the Affordability Fund and satisfying the Requirements (as defined in Schedule "C") and any expenses related to delivery of the program by an electricity distributor to its eligible customers,the operation of the Trust and the execution of the Project (including any reimbursable expenses incurred by any Administrative Services Agent (as such terms are defined in the Declaration of Trust), will be no greater than 10 percent of the total Project budget.

2. 2. Only actual (excluding HST) incurred expenditures of the Trust are eligible for reimbursement as administrative expenses.

3. 3. It is expected any travel, meals and hospitality expenses by the Recipient should adhere towill be consistent with the Province's Travel, Meal and Hospitality Expenses Directive. Entities receiving funding from the Recipient are also expected to adhere to the Province's Travel, Meal and Hospitality Expenses Directive. and the Recipient is expected to request the same of such Entities. Alcohol and First-Class travel are not considered eligible claims and disbursements for hospitality, incidental or food expenses shall not be covered by the Funds, including the following:

- Meals, snacks and beverages
- Gratuities
- Laundry or dry cleaning
- Valet services
- Dependent care
- Home management
- Personal telephone calls

4. Overhead4. It is expected that overhead expenses thatwhich are not directly related to the activities related to the Recipient in establishing and establishment of managing the Affordability Fund shouldwould not be reimbursed.

5. 5. Any expenses that have been or may be reimbursed by other parties should not be reimbursed by the Fund.

6. 6. In the event of that the Recipient performs any procurements, it is expected that all procurements are aligned with Ontariowill reflect the principles of Ontario's Public Service Procurement Directive.

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SCHEDULE "E"

PAYMENT PLAN

PAYMENT DATE	MAXIMUM FUNDS TO BE DISBURSED BY THE PROVINCE
Within 7 days of signing the Agreement	$ ~~X~~100,000,000

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SCHEDULE "F"

REPORTING

Quarterly Reports will be provided quarterly on the basis of the government's fiscal year starting at the execution of this Agreement and continuing until conclusion of the Agreement. Annual Reports will be provided annually on a fiscal basis starting at the execution of this Agreement and continuing until conclusion of the Agreement. Quarterly Reports and Annual Reports shall be submitted to the Province within one month following the end of the reporting period that they represent.

The Recipient shall prepare six (6) Quarterly Reports and two (2) Annual Report as outlined below. Reports shall explicitly demonstrate impact of Province's funding and address report detail requirements listed below.

NAME OF REPORT	DUE DATE
Quarterly Report #1	July 31, 2017
Quarterly Report #2	October 31, 2017
Quarterly Report #3	January 31, 2018
Annual Report #1	April 30, 2018
Quarterly Report #4	July 31, 2018
Quarterly Report #5	October 31, 2018
Quarterly Report #6	January 31, 2019
Annual Report #2	April 30, 2019

Requirements for Quarterly Reports

- The Recipient will provide Quarterly Reports which will include a report back on the Trustee-developed performance management criteria. Quarterly Report requirements ~~include:~~will be determined from time to time by the Province, and initially will include:

    - Amounts disbursed by the Recipient in the previous quarter. It is expected that this information will be provided at the electricity distributor level.
    - Total Affordability Fund interest accrued to date
    - Key activities and achievements from the quarter being reported, including number of participant households per electricity distributor, average participant incentive cost per electricity distributor, and uptake of energy efficiency measures per electricity distributor
    - Any challenges or modifications required to the application, funding, or eligibility processes/rules
    - Key activities planned for the upcoming quarter

Requirements for Annual Report

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- The Recipient will provide an Annual Report to the Province which will include a report back on the Trustee-developed performance management criteria. Annual Report requirements include:

    - A description of electricity distributor application process and the criteria used by the Recipient to manage funds.
    - Identify and describe any challenges with achieving goals and proposed solutions, if applicable.
    - Lesson learned.
    - Electricity distributor and customer feedback
    - Amounts disbursed by the Recipient in the previous year. It is expected that this information will be provided at the electricity distributor level.
    - Key activities and achievements from the quarter being reported, including number of participant households per electricity distributor, average participant incentive cost per electricity distributor, and uptake of energy efficiency measures per electricity distributor
    - Total Affordability Fund interest accrued to date

- As part of the Annual Report, the Recipient will also provide the Province with an audited financial statement for the previous year.

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ANNEX A

Principles

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MOE/Blakes Comments: March 16, 2017

DECLARATION OF TRUST

Made as of March •, 2017

by

COMPUTERSHARE TRUST COMPANY OF CANADA

establishing

AFFORDABILITY FUND TRUST

TABLE OF CONTENTS

Page

[RELABEL HEADINGS AND REGENERATE TABLE OF CONTENTS]

DECLARATION OF TRUST

This Declaration of Trust is made as of March •, 2017, by Computershare Trust Company of Canada, a trust company established under the laws of Canada and licensed to carry on business as a trust company in each of the provinces and territories of Canada (the "**Trustee**").

WHEREAS the Trustee wishes to establish a trust to acquire, hold, manage, apply and dispose of certain property for the benefit of certain Beneficiaries as herein described.

NOW THEREFORE the Trustee hereby declares that it holds in trust as trustee the sum of ONE HUNDRED DOLLARS ($100) contributed by it on this date and all property of every type and description which it may hereafter acquire or hold in its capacity as trustee of the Trust and all income therefrom and proceeds thereof, to hold, manage,apply and dispose of the same on and subject to the provisions contained in this Declaration.

SECTION 1
INTERPRETATION

1.1 Definitions

In this Declaration:

(a) "***Administrative Services Agent***" means each agent, which may include any Electricity Distributor, appointed from time to time under an Administrative Services Agreement, and its successors and permitted assigns solely in such capacity.

(b) "***Administrative Services Agreement***" means each agreement entered into from time to time by the Trust and one or more Administrative Services Agents or other Persons, in furtherance of the purpose of the Trust described in section 2.1 of this Declaration, under which the Administrative Services Agent will agree to provide specified administrative and other services to and on behalf of the Trustee (including, following the Original Trustee Replacement Date, the Permitted Delegations Annex), as such agreement may be amended, supplemented, restated, renewed or replaced from time to time.

(c) "***Assets***" means, collectively, the following:

(i) the $100 Canadian referred to above;

(ii) all other property which is now or which at any time in the future may be issued, assigned, transferred, provided, donated, gifted and contributed to the Trustee (including pursuant to the Transfer Payment Agreement) to be held in trust pursuant to this Declaration (and which the Trustee is willing to accept and hold);

(iii) all property which may at any time be substituted therefor;

(iv) all capital depreciations to or acquisitions by the Trust;

(v) all income of the Trust; and

(vi) all proceeds of disposition of any of (i) through (v) above,

but excludes anything paid out or distributed (whether out of income or capital) in the normal course of administration or pursuant to the provisions of this Declaration.

(d) "***Beneficiary***" means each Primary Beneficiary and each Residual Beneficiary, where applicable.

(e) "***Board of Trustees***" means the group of trustees appointed and acting in such capacity as contemplated by Section •, and as of the Original Trustee Replacement Date means the individual trustees appointed by the Original Trustee pursuant to Section 5.7 on the basis described in the Trustee Replacement Annex.

(f) "***Declaration***" means this Declaration of Trust as amended, restated, supplemented or otherwise modified from time to time, including each of the Annexes hereto.

(g) "***Electricity Distributor***" means, in respect of a designated service area or region in Ontario, the distributer of electricity to residences located in such area or region.

(h) "***Electricity Invoice***" means an invoice issued by an Electricity Distributor in respect of electricity charges and related services and amounts incurred in respect of a residence located in the Electricity Distributor's designated service area or region of Ontario.

(i) "***Eligible Investments***" means [NTD: Describe deposit instruments or accounts issued or established by one or more Schedule I Canadian chartered banks].

(j) "***Eligible Measures***" means electricity efficiency and/or conservation measures determined by the Trustee from time to time, on the basis contemplated in the Principles Annex and determined in the manner specified and having regard to the Permitted Delegations Annex.

(k) "***Final Distribution Date***" means the earlier of (i) the date specified as such or determined pursuant to the Transfer Payment Agreement[1] and (ii) the later of (x) the date (if any) on which the Trustee determines that no further distributions are likely to be made to any Primary Beneficiary and (y) •, 20[23].

(l) "***HAP Eligible Person***" means an "Eligible Person" as defined in Section 3.1 of the document entitled "Conservation First Framework LDC Took Kit" published by Independent Electricity System Operator and designated as Final v3.0 – March 11, 2016, as amended or replaced by any applicable act of the Legislature or Ontario.

(m) "***Minister of Energy***" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of the *Ministry of Energy Act, 2011* under the *Executive Council Act*.

[1] NTD: The TPA will provide that on an Event of Default the remaining Assets will be paid over to the Government, on the basis that the Government's transfer thereunder is subject to such a reservation in circumstances of non-compliance. The TPA should also specify that the Trust will thereafter be wound up, which will tie in to this definition by way of the date so specified in the TPA. Accounting considerations to be discussed.

(n) "***Original Trustee***" means Computershare Trust Company of Canada and its successors and assigns, acting in its capacity as trustee hereunder.

(o) "***Original Trustee Replacement Date***" has the meaning specified in Section 5.7, being the date on which the Original Trustee is replaced as trustee under this Declaration as contemplated under Section 5.7.

(p) "***Person***" includes any individual, sole proprietorship, corporation, partnership, joint venture, association, society, club, board, chamber, joint-stock company, trust, trustee, unincorporated or incorporated organization or entity or government or any entity, agency or political subdivision thereof.

(q) "***Primary Beneficiary***" means each individual that, as of a time of determination, satisfies each of the following criteria:

(i) the individual owns, rents or leases a residence located in Ontario and is the primary or secondary electricity utility account holder named on an Electricity Invoice issued in respect of that residence; and

(ii) the individual is not a HAP Eligible Person.

(r) "***Principles Annex***" means the Principles Annex set forth as an annex to this Declaration.

(s) "***Permitted Delegations Annex***" means the Permitted Delegations Annex set forth as an annex to this Declaration.

(t) ***"Residual Beneficiary"*** means each charitable organization identified by the Trustee and specified as a residual beneficiary hereunder from time to time from among the charitable organizations specified on Schedule • or their respective successor charitable organizations.

(u) "***Transfer Payment Agreement***" means the transfer payment agreement dated as of •, 2017 between the Trustee and Her Majesty the Queen in right of Ontario as represented by the Minister of Energy, as such agreement may be amended, restated, supplemented or otherwise modified from time to time.

(v) "***Trust***" means Affordability Fund Trust, a trust established under and governed by the laws of the Province of Ontario pursuant to this Declaration.

(w) "***Trustee***" means (i) the Original Trustee and (ii) on and after the Original Trustee Replacement Date, the Board of Trustees acting together in accordance with and subject to Section 5.• and in accordance with the rules and procedures adopted by the Board of Trustees pursuant to Section 5.•.

(x) "***Trustee Replacement Annex***" means the Trustee Replacement Annex set forth as an annex to this Declaration.

1.2 Headings and Table of Contents

The insertion of headings and the provision of a table of contents are for convenience of reference only and shall not affect the construction or interpretation of this Declaration.

1.3 References

Unless otherwise specified, all references to Sections are to Sections of this Declaration. The words "hereto," "herein," "hereof," "hereunder" and similar expressions refer to this Declaration and not to any particular Section or other provision of this Declaration.

1.4 Number and Gender

Unless otherwise specified, words importing the singular include the plural and vice versa and words importing gender include all genders.

1.5 Governing Law

This Declaration shall be governed by, and construed and interpreted in accordance with, the laws of the Province of Ontario and of Canada applicable therein.

1.6 Severability

Any provision of this Declaration which is illegal, invalid or unenforceable in any jurisdiction shall not affect the legality, validity or enforceability of the remaining provisions and any such illegality, invalidity or unenforceability in any jurisdiction shall not affect the legality, validity or enforceability of such provision in any other jurisdiction.

1.7 Reference to the Trust and the Trustee

For greater certainty, where any reference is made in this Declaration to an act to be performed by or for or on behalf of the Trust, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Trustee in its capacity as trustee of the Trust, and, where any reference is made in this Declaration to an act to be performed by or for or on behalf of the Trustee, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Trustee in its capacity as trustee of the Trust. No Person dealing with the Trust or the Trustee shall be bound to make any enquiry concerning, or has the right to require production of, any evidence of the validity of any act of, or transaction purporting to be made by, the Trustee.

1.8 Defect in Appointment

No action taken by the Trustee will be invalid or ineffective by reason only of any defect in the appointment of the Trustee or the compliance by the Trustee of any rules or procedures adopted by the Trustee and which is discovered after the taking of such action.

SECTION 2
CONCERNING THE TRUST

2.1 Objectives

The Trust is established for the sole purpose of holding and applying the Assets for the benefit of the Beneficiaries as provided for in this Declaration. The activities of the Trust shall be to hold the Assets as contemplated in this Declaration until such time as the Board of Trustees is duly appointed and determines that the Assets are to be distributed to or for the benefit of the Primary

Beneficiaries in accordance with this Declaration, having regard to the principles set forth in the Principles Annex and in the manner and basis contemplated in the Permitted Delegations Annex, or otherwise to the Residual Beneficiary in accordance with Section 3.3, in each case subject to the terms, limitation and requirements set forth in this Declaration.

2.2 Name of the Trust

The name of the Trust shall be the "Affordability Fund Trust" or such replacement name as the Trustee shall determine and specify from time to time. The Trustee shall hold the Assets and conduct the activities of the Trust under such name or variation thereof. If the Trustee determines to change the name of the Trust, the Trustee may specify and use such other designation or adopt such other name (including any name in the French language) as it considers appropriate and may hold the Assets and conduct the activities of the Trust under such designation or other name.

2.3 Location

The head office and the situs of the administration of the Trust shall be • or such other address in Ontario as the Trustee may determine from time to time.

2.4 Fiscal Year

The fiscal year of the Trust shall end on December 31 in each year.

SECTION 3
DISTRIBUTIONS

3.1 Distributions to Primary Beneficiaries

Prior to the Final Distribution Date, the Trustee shall distribute the Assets (including capital or income) to the Primary Beneficiaries identified based on the application of the principles specified in the Principles Annex and in the manner and in the amounts determined on the basis contemplated by the Permitted Delegations Annex, in each case in the amounts and to the extent specified herein and therein, subject in all respects to the exercise by the Trustee of its discretion hereunder and to the exclusion of the other Beneficiaries.

3.2 Maximum Amount of Distributions to Primary Beneficiaries

The amount distributed by the Trustee to or for the benefit of any Primary Beneficiary shall not (a) exceed the estimated costs (including applicable taxes) to be incurred by or on behalf of such Primary Beneficiary (whether or not such costs have been paid or remain outstanding) in respect of Eligible Measures applied in respect of the Primary Beneficiary's Ontario residence or (b) include in the calculation of such costs any amount intended to compensate an Electricity Distributor. The Trustee shall be entitled to rely on the recommendations of and information provided by Electricity Distributors acting as Administrative Services Agents appointed for the purposes and in the manner contemplated in the Permitted Delegations Annex, without any duty or obligation to verify or makes enquiries regarding the basis for or propriety of such recommendations or the accuracy or completeness of such information, except if and to the extent that the Trustee, in its discretion, determines that (i) it has actual knowledge that such

recommendations are contrary to the reasonable application of the principles set forth in the Principles Annex or have been made on a basis that is manifestly contrary to such principles or the delegations and activities specified or contemplated to be undertaken under the Permitted Delegations Annex or (b) such information is known by the Trustee to be erroneous, contain a material misrepresentation or is materially incomplete.

3.3 Distributions to Residual Beneficiaries

On or as soon as practicable following the Final Distribution Date, the Trustee shall distribute all of the Assets (including capital or income) existing at that time to the Residual Beneficiaries, in each case in the amounts and to the extent determined by Trustee in its discretion hereunder[2] and to the exclusion of the other Beneficiaries.

SECTION 4
POWERS OF THE TRUSTEE

4.1 General

Subject to and in compliance with the terms, limitations and restrictions of this Declaration and notwithstanding applicable legislation, the Trustee shall have, without other or further authorization, full, exclusive and absolute power, control and authority over the Assets and over the affairs and activities of the Trust to the same extent as if the Trustee were not a trustee, but rather the sole and absolute owner of the Assets in its own right, including such power, control and authority to do all such acts and things as in its sole judgment and discretion are necessary, incidental or desirable for carrying on the affairs and activities of the Trust, with such powers of delegation as may be permitted or otherwise contemplated by this Declaration. Except as expressly provided in this Declaration, the enumeration in this Declaration of any specific power or authority shall not be construed as limiting the aforesaid general power or authority or any other specific power or authority set out herein. Subject to the terms, limitations and restrictions of this Declaration, every discretion or power hereby conferred on the Trustee is an absolute and uncontrolled discretion or power.

4.2 Specifically Enumerated Powers

The Trustee shall have the following specific powers and authorities:

(a) ***Transfer Payment Agreement.*** The Trustee shall have the power to enter into and perform its obligation under the Transfer Payment Agreement.

(b) ***Administrative Services Agreements.*** The Trustee shall have the power to enter into and perform its obligation under the Administrative Services Agreements.

(c) ***Power to Dispose of Assets.*** The Trustee shall have the power to sell, convey, assign, transfer, exchange and in any other manner dispose of the Assets or any part or parts thereof free and clear of any and all trusts established under this Declaration, by public or private sale, for cash or on credit, with or without advertisement, and subject to such restrictions, stipulations,

[2] NTD: Consider if principles should be included regarding the choice of charities or the absolute amount any particular charity may receive.

agreements and reservations as the Trustee in its sole and absolute discretion may consider appropriate or advisable, and to execute and deliver and perform any agreement, deed, conveyance, transfer or other document or instrument in connection with the foregoing.[3]

(d) ***Power to Manage and Invest.*** The Trustee shall have the power to own, hold and manage the Assets in such manner as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable. [4] The Trustee shall have the power to invest the Assets in Eligible Investments, and to change such Eligible Investments at any time and from time to time, all as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable. The Trustee shall not be limited to investments authorized by law for trustees. The Trustee will have no liability for the depreciation of any investment.

(e) ***Power to Delegate and to Appoint Agents, etc.*** The Trustee shall have the power to appoint, employ or contract with any Person as the Trustee in its sole and absolute discretion may consider appropriate or advisable in connection with the activities of the Trust. Without limiting the generality of the foregoing, the Trustee will have the power at any time and from time to time to appoint, employ or retain consultants, financial advisers, technical advisers, legal counsel, accountants, administrative services agents, insurers, insurance agents and insurance brokers, as the Trustee may require for the purpose of discharging its duties hereunder and shall not be responsible for or for the actions of any of them. The Trustee may pay remuneration and reimbursements from the Assets for services performed for it or on its behalf in the discharge of the trusts hereof without taxation for costs or fees of any counsel, solicitor or attorney. Without limiting the generality of the forgoing, the Trustee may appoint, employ or retain any Person:

(i) to act for and on behalf of the Trust in connection with any and all matters in any way relating to the negotiation, settlement, entering into, amending, performance and enforcement of the Transfer Payment Agreement, the Administrative Services Agreement and any other agreements and contracts to which the Trust becomes a party in accordance with this Declaration;

(ii) to provide or cause to be provided any or all kinds of administrative services in any way relating to the activities of the Trust;

(iii) to act as attorney in fact, agent or trustee in the acquisition, holding, application, sale or other disposition of the Assets and in the handling, prosecuting or settling of any claims of the Trust;

(iv) to value the Assets and determine the net income of the Trust; and

(v) to make any filings, elections and submissions (including in respect of taxation matters) in connection with the Trust's compliance with applicable laws and regulatory requirements.

Without limiting the foregoing, the Trustee shall seek to enter into Administrative Services Agreements with Electricity Distributors for the purposes contemplated by the Permitted

[3] Consider limiting this broad power.

[4] Consider limiting this broad power.

Delegations Annex, and on such terms and conditions (including terms and conditions as to the payment of reasonable fees and expenses) not inconsistent therewith as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable.

(f) ***Power to Operate Accounts.*** The Trustee shall have the power to open and operate accounts at any chartered bank, trust company or other financial institution in Canada or elsewhere, as the Trustee in its sole and absolute discretion may consider appropriate or advisable; to deposit therein any moneys or securities forming part of the Assets whether or not such deposits will earn interest; to withdraw such deposits at such times and in such manner as the Trustee may determine; to draw, make, endorse, deposit or otherwise deal in cheques, bills of exchange, promissory notes, drafts and other kinds of instruments and securities; to enter into contracts or agreements with any such chartered bank, trust company or other financial institution containing such terms and provisions as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable; and the Trustee shall have no liability or responsibility for any loss which may occur by reason of the failure of any such chartered bank, trust company or other financial institution.

(g) ***Power to Collect, etc.*** The Trustee shall have the power to collect, sue for, receive and give receipts for all sums of money or other property due to the Trust; to consent to extensions of time for payment or to the renewal of any securities or obligations; to engage or intervene in, prosecute, defend, compound, compromise, abandon or adjust by arbitration or otherwise, any demands, claims, actions, suits or proceedings relating to the Trust or the Assets; to exercise any and all remedies available to the Trustee under any agreement or otherwise including any power of foreclosure or sale available at law and, in connection with any such foreclosure or sale, to purchase or otherwise acquire title to any property and to convey good title thereto free of any and all trusts hereby established, or to take or retake possession of any property secured under any agreement or instrument; to extend the time, with or without security, for the payment or delivery of any debts or property and to execute and deliver releases, acquittances, discharges, agreements or other instruments related thereto; and to pay or satisfy any debts or claims upon any evidence that the Trustee, in its sole and absolute discretion, may determine to be sufficient.

(h) ***Power to Pay Trustee's Fees.*** The Original Trustee shall be entitled to be paid and receive reasonable fees as compensation for its services under this Declaration and be reimbursed for its out-of-pocket expenses reasonably incurred, in each case from the Assets, without the approval of any Beneficiary or any court. The Original Trustee shall be entitled, in its sole and absolute discretion, to withdraw funds from time to time for such purpose from any account of the Trust. Members of the Board of Trustees shall be entitled to reimbursement for and in respect of their out-of-pocket expenses reasonably incurred in discharging their respective duties and obligations under this Declaration and any contract of the Trust entered into in accordance with this Declaration, in each case without the approval of any Beneficiary or any court, but subject to the "Travel, Meal and Hospitality Expenses Directive of the Province" specified and amended by the Province from time to time, a copy of the current version of which is attached as Exhibit 1 to the Principles Annex.

(i) ***Power to Pay Taxes.*** The Trustee shall have the power to pay, deduct, withhold or remit any taxes or assessments which are required by law to be paid, deducted, withheld or remitted together with or from any payment made by the Trustee; to pay all taxes or assessments of whatever kind or nature imposed upon or against the Trust or the Trustee in connection with the Assets or any part thereof; to collect and remit all taxes and assessments of whatever kind or

nature required to be collected and remitted by the Trust or the Trustee in connection with their activities or the Assets or any part thereof; to appeal, settle or compromise tax claims or liabilities; and, for the foregoing purposes, to make such returns and do all other acts and things as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable.

(j) ***Power to Appoint Auditors.*** The Trustee shall have the power to select and appoint and discharge and re-appoint, in its sole and absolute discretion, an auditor or auditors of the Trust and to settle the fees of any such auditor or auditors.

(k) ***Form of Accounts.*** The Trustee shall have the power to determine and change from time to time, in its sole and absolute discretion, the method or form in which the accounts of the Trust will be kept and shall not be required to keep and provide accounts in the form usually required by law to be kept by trustees; provided that such method or form reasonably complies with generally accepted accounting principles in effect in Canada to the extent applicable.

(l) ***Title to Assets.*** The Trustee shall have the power to cause all or any part of the Assets to be held by or registered, in its sole and absolute discretion, in the name of any Person.

(m) ***Delegation of Discretion***. The Trustee shall have the power to delegate the right and power to exercise, or concur in the exercise of any discretion or power, conferred on the Trustee in this Declaration or conferred by law to any one or more of its directors, officers, employees, agents or to such other Person, as the Trustee, in its sole and absolute discretion, may think is appropriate or advisable including, without limitation, to one or more Administrative Services Agents and their respective employees, officers and directors, in each case under a related Administrative Services Agreement and on the basis contemplated in the Permitted Delegations Annex. The Trustee shall accept and follow the recommendations of an Electricity Distributor made under and in accordance with clauses [4(a)(i) to 4(a)(vi)] of the Permitted Delegation Annex with respect to a the identification and determination of distributions to be made to any Primary Beneficiary, except if and in so far as the Trustee has actual knowledge that (a) such Primary Beneficiary did not in fact satisfy the "Selection Factors" specified in the Principles Annex as of the applicable time of determination; and/or (b) the amount recommended to be distributed to the Primary Beneficiary was not calculated in compliance with or was calculated in a manner that is manifestly contrary to the requirements set forth or contemplated in the Permitted Delegation Annex or the applicable Administrative Services Agreement.

(n) ***Additional Powers.*** The Trustee shall have the power to perform and do all such other acts, to take such steps and to execute all such deeds, transfers, assignments, agreements and other documents and instruments as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable for the carrying out of any of its powers hereunder or of any of the activities of the Trust as herein contemplated, or for the carrying out, promotion or advancement of the interests of the Trust, whether or not any of such acts, things, documents or instruments are herein expressly mentioned. Any good faith determination by the Trustee as to what is necessary, desirable or appropriate to carry out its powers or activities of the Trust as contemplated under this Declaration or to carry out, promote or advance the interests of the Trust shall be conclusive. Any construction of this Declaration or any determination as to the activities of the Trust or the existence of any power or authority hereunder made in good faith by the Trustee, relying upon the advice of counsel, shall be conclusive. In construing the provisions of this Declaration, there shall be a presumption in favour of a grant of power to the Trustee.

SECTION 5
CONCERNING THE TRUSTEE

5.1 Duty of Trustee

In performing its duties and exercising its powers under this Declaration, the Trustee shall act honestly, in good faith and with a view to the best interests of the Trust and the Beneficiaries and shall exercise that degree of care, diligence and skill that a reasonably prudent trustee would exercise in comparable circumstances (the "**Standard of Care**"). The Trustee shall observe and act in accordance with the terms of, and shall observe and comply with the limitations and restrictions set forth in, this Declaration. To the extent that the Trustee has delegated any of its duties or powers, it shall be deemed to have satisfied the Standard of Care in respect of the subject matter of such delegation, subject to the Trustee's overall duty as a trustee to exercise prudent oversight in relation to such delegation. Unless required by law, the Trustee will not be required to give any security, bonds or sureties in any jurisdiction for the performance of any of its duties and obligations under this Declaration. The Trustee will not be required to devote its entire time to the trust activities.

5.2 Limitation of Liability

The Trustee shall not be personally liable in tort, contract or otherwise to any Beneficiary or any other Person for any loss or diminution in the value of the Assets, or for any action or failure to act on the part of the Trustee or any of its employees or agents or any other Person, and shall not be subject to any personal liability for any debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses incurred by or against the Trust, howsoever arising, and resort will be had solely to the Assets for the payment, performance or satisfaction thereof. No property or assets of the Trustee, owned in its personal capacity or otherwise, will be subject to levy, execution or other enforcement procedure**s** with respect to any obligation under this Declaration. However, Section 5.2 shall not apply where the Trustee has demonstrated gross negligence, bad faith, fraud or wilful misconduct.

5.3 Liability of Trustee under Contracts

Any document or instrument creating a liability or obligation of the Trust or the Trustee will be conclusively deemed to have been executed by the Trustee only in its capacity as Trustee of the Trust and will be binding upon the Trustee only in its capacity as trustee hereunder and resort may not be had to, nor recourse or satisfaction be sought from, the property of the Trustee other than the Assets, whether owned by its in its personal capacity or in any other capacity other than in its capacity as Trustee of the Trust, or from its employees or agents, and resort will be had solely to the Assets for the payment, performance or satisfaction of any such liability or obligation. Each such document or instrument shall contain a provision providing for the aforesaid limitation of liability. However, Section 5.3 shall not apply where the Trustee has demonstrated gross negligence, bad faith, fraud or wilful misconduct.

5.4 Funds of the Trustee

The Trustee shall not be required to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers.

5.5 Indemnification of Trustee

In addition to and without limiting any other protection hereunder or otherwise by law of the Trustee and its respective employees, agents, representatives and assigns (in this Section 5.5, collectively, the "**Representatives**"), the Trustee and its respective Representatives shall be indemnified, defended and saved harmless out of the Assets from, against and in respect of any and all liabilities arising or related to actions taken or omitted to be taken by any agent of the Trustee, losses, claims (including any claim arising out of the assessment of any tax on income by a taxing authority), damages, penalties, fines, actions, suits, demands, levies, assessments, costs, charges, expenses and disbursements (including, without limitation, any and all legal and advisor fees and disbursements) (in this Section 5.5, collectively, the "**Liabilities**") of whatever kind or nature which may at any time be suffered by, imposed upon, incurred by or asserted against the Trustee and its Representatives, whether groundless or otherwise, howsoever arising from or out of any act, omission or error of the Trustee, in each case made in connection with its acting as Trustee hereunder, except and to the extent that the Liabilities are a result from or are caused by gross negligence, wilful misconduct, bad faith or breach of the Confidentiality obligations described in Section 5.9. Further, except as provided in Section 5.2, the Trustee shall not be liable to any Beneficiary for any loss or damage relating to any matter regarding the Trust, including any loss or diminution in value of the Assets. Notwithstanding any other provision hereof, the obligations provided for in this Section shall survive any termination of the Trust created hereby, whether by reason of removal or resignation of the Trustee, termination or discharge of this Declaration or otherwise.

5.6 Reliance upon Advice

Subject to Section 5.1, in performing its duties and exercising its powers hereunder, the Trustee may rely and may act or not act, and shall be fully protected in relying and acting or not acting, upon (a) any statement, telecopy or other electronic means of communication, writing, notice, resolution, report, opinion or other document or conversation believed by its to be genuine and correct and to have been signed, sent or made by the proper Person; (b) any opinion or advice received or information obtained from auditors, solicitors, or other professional advisers, whether retained by the Trustee or otherwise, and shall not be responsible or held liable for any loss or damage resulting from so relying or acting or not acting; and (c) the advice and actions of any Administrative Services Agent, including in connection with the delegations and reliances contemplated under the Permitted Delegations Annex. For greater certainty, it shall not be necessary for the Trustee to ascertain whether or not the Persons who have executed, signed or otherwise issued, authenticated or receipted such papers, writings or documents (including any Administrative Services Agreement or any other contract entered into by the Trustee) have authority to do so or that they are the same Persons named therein or otherwise to pass upon any requirement of such papers, writing or documents that may be essential for their validity or effectiveness or upon the truth and acceptability.

5.7 Replacement of the Original Trustee

As soon as practicable and in any event prior to •, 2017, the Original Trustee shall appoint the Persons contemplated by the Trustee Replacement Annex to comprise the Advisory Committee contemplated therein (once constituted, the "**Advisory Committee**"). As soon as practicable thereafter, the Original Trustee shall request that the Advisory Board make recommendations with respect to the composition of the "Board of Trustees", as contemplated by the Trustee

Replacement Annex. The Trustee shall have no duty or obligation to investigate the basis for any of the Advisory Committee's recommendations and may rely on such recommendations without any duty of enquiry, supervision or oversight with respect to the activities and decision-making processes adopted by the Advisory Committee in its discretion, in full satisfaction of the Original Trustee's Standard of Care with respect to such matters hereunder. Except if the Trustee determines that the individuals recommended by the Advisory Committee to become members of such Board of Trustees are disqualified from so acting on the basis of manifest non-compliance with the selection factors set forth under "Selection Factors" set forth in the Trustee Replacement Annex, the Original Trustee shall appoint, as additional Trustees, [number] of individuals from among those individuals who have been recommended for appointment to such Board of Trustees by the Advisory Committee. The Original Trustee may exercise its discretion in selecting such individuals for such appointment or, in the absence of such exercise, shall select such individuals based on the [alphabetic order of the first letter of their respective surname]. Upon the appointment of [number] additional trustees pursuant to this provision and their agreement to act as members of the Board of Trustees, the Original Trustee shall be deemed to have resigned and shall cease to be a trustee (such resignation occurring on the "**Original Trustee Replacement Date**").

5.8 Composition of the Board of Trustees

[NTD: Specify requirements or principles annex]

5.9 Rules and Procedures of the Board of Trustees

(a) ***Initial Requirements***. [NTD: Need to insert bare bones governance for the Board of Trustee's initial governance purposes.]

(b) ***Power to Adopt Rules and Procedures.*** [NTD: Add power to adopt governance provisions, including to permit remaining trustees to replace any vacancy arising after Board of Trustees and to fill any vacancy by application to the Courts of Ontario in the event of an unfilled vacancy.]

(c) ***Decisions of the Board of Trustees.*** [NTD: Add language to make clear how the majority decisions of Board will represent the decision of the "Trustee" and not any individual trustee. This will be necessary to specify at the outset in order to avoid problems enlisting members of the Board of Trustees.]

(d) ***Conflicts of Interest.*** [NTD: Specify requirements]

(e) ***Expenses and Reimbursements to Trustees.*** [NTD: Specify requirements]

5.10 Confidentiality

Notwithstanding the resignation or removal and discharge from the trusts and powers reposed in and conferred on the Trustee by this Declaration, or the termination of this Declaration, the Trustee so resigning or removed shall continue to treat as confidential all information relating to the Trust, the Assets and the Beneficiaries and shall only be entitled to make disclosures concerning such information if disclosure is required in the performance of the functions of the resigning or removed Trustee or is ordered by a court of competent jurisdiction or is otherwise

required by law. The Trustee shall not be responsible or liable to any Person for any loss or damage arising out of or in any way sustained or incurred in any way relating to any such required disclosure. The obligations arising under this Section **[**5.10**]** shall survive the termination of the Trust.

5.11 Vesting in Successor Trustee

Any successor trustee (including any reconstituted Board of Trustees) shall automatically become vested with the Assets and with the same powers, rights, duties, responsibilities and trusts as if it, he or she had been originally named as Trustee under this Declaration without the requirement of any further instrument or act or conveyance and the Trustee ceasing to act shall execute all such transfers and other documents and do all such other acts or things as may be necessary or desirable to assign, transfer, deliver to, and vest in, the successor trustee, upon the trusts expressed in this Declaration, all the Assets and all the rights, powers and trusts of the Trustee ceasing to act. The expense of any act, document, deed or other instrument or thing required under this Section 5.111, including for greater certainty, outstanding fees and unreimbursed expenses of the Trustee (including any member of the Board of Trustees) ceasing to act, shall be satisfied from the Assets.

5.12 Execution of Instruments

The Trustee shall have the power to execute all deeds, transfers, agreements, promissory notes and other instruments on behalf of the Trust. Such power may be exercised by any one or more Administrative Services Agents acting in accordance with any delegated right to do so pursuant to an applicable Administrative Services Agreement, and any such execution of instrument by an Administrative Services Agent, acting in such capacity as agent of the Trust pursuant to the terms and conditions of such Administrative Services Agreement shall be deemed to be a proper execution of such instrument by the Trustee and shall be binding for all purposes on the Trust.

5.13 Decisions by the Trustee

If there is more than one Trustee, decisions of the Trust may be made by a majority of Trustees. Whenever the Trustees are unable to agree in relation to the commission or omission of any act or howsoever in the execution of the Trust the decision of a majority of the Trustees shall prevail.[5]

SECTION 6
AMENDMENTS AND SUPPLEMENTS

6.1 Amendments

Subject to the requirements of the Transfer Payment Agreement, the Trustee shall have the power in its sole and absolute discretion from time to time without the approval of any Beneficiary or any court to amend, vary, supplement, replace or restate this Declaration in its entirety or any portion thereof, provided that no amendment shall conflict with the principles set forth in the Principles Annex or as to the scope or effect of the permitted delegations and activities of any Administrative Services Agent pursuant to the Permitted Delegations Annex.

[5] NTD: This section will be integrated into the additional provisions dealing with the Board of Trustees.

Without in any way limiting the foregoing, any such amendments, variations, supplements, replacements or restatements may:

(a) add provisions for the replacement of or appointment of additional trustees to act with the Original Trustee prior to the Original Trustee Replacement Date;

(b) in the case of the Original Trustee, add provisions to those contemplated in the Trustee Replacement Annex in respect of the appointment of the members and formation and empowerment of the Board of Trustees;

(c) in the case of the Original Trustee, vary the terms and requirements applicable to the duties, responsibilities, obligations, liabilities, indemnities, protections, limitations, restrictions, compensation, expense reimbursements and such other matters, in each case as the Advisory Committee may indicate are necessary be made in order to attract and receive confirmation of appointment of appropriately qualified individuals that the Advisory Committee specifies are to be appointed as members of the Board of Trustees in accordance with its recommendations;

(d) add additional or replace existing Trustees[6];

(e) add to or reasonably clarify the principles set forth in the Principles Annex;

(f) add to or reasonably clarify the delegations and activities contemplated to be made in the Permitted Delegation Annex;

(g) include provisions for the management of the Trust by the Trustees, including the making of rules, requirements and procedures governing the decision-making of the Board of Trustees;

(h) add provisions for the replacement of members of the Board of Trustees (in addition to those provisions contemplated in the Trustee Replacement Annex);

(i) provide for the engagement of any Person or Persons as managers, administrators or other service providers to the Trust, including any additional or replacement Administrative Services Agent or representative thereof;

(j) specify supplemental procedures for the identification of Primary Beneficiaries and the exchange of information with Electricity Distributors in connection with identifying such Primary Beneficiaries; or

(k) specify procedures for the transfer and transmission of funds from the Trust or any Administrative Services Agent acting on its behalf and with delegated responsibility over funds constituting Assets, to or for the benefit of, Beneficiaries or their designated representatives, payees or assignees.

[6] NTD: Consider and, if retained, integrate with Board concepts.

6.2 Supplemental Declarations

The Trustee is authorized to execute any supplemental declaration of trust (including one or more amendments and restatements from time to time of this Declaration) to give effect to amendments to this Declaration made pursuant to this Section 6.

SECTION 7
TERMINATION

7.1 Duration

Subject to Section 7.2, the Trust will continue in full force and effect so long as there is any Assets and until all of the debts, liabilities and obligations of the Trust have been paid and satisfied in full.[7]

7.2 Termination and Distribution of Assets

Subject as hereinafter provided, the Trustee may terminate the Trust and wind up its affairs on such date as the Trustee, in its sole and absolute discretion, may determine and after paying or adequately providing for the payment and satisfaction of all debts, liabilities and obligations of the Trust and upon receipt of such releases, indemnities and discharges as the Trustee, relying on the opinion of counsel, deems necessary for the protection of the Beneficiaries and for its own protection. Notwithstanding the foregoing, the Trustee shall in any event terminate the Trust and wind up its affairs as soon as practicable after the Final Distribution Date (the "**Termination Date**"). In connection with the termination of the Trust, the Trustee shall distribute or cause to be distributed the remaining Assets, in cash or in kind or partly in each, to the Residual Beneficiaries in accordance with Section 3.3.

7.3 Distribution of Assets on Final Distribution Date

If the Trust holds Assets on the Final Distribution Date, such assets shall promptly be paid to the Residual Beneficiaries in accordance with Section 3.3.

SECTION 8
ACCEPTANCE OF TRUSTS

8.1 Acceptance of Trusts

The Trustee hereby accepts the trusts and duties contained in this Declaration and agrees to perform the same upon the terms and conditions hereof until discharged therefrom.

[Signature Page Follows]

[7] NTD: Consider early termination scenarios.

The Trustee has executed this Declaration as of the date first written above.

COMPUTERSHARE TRUST COMPANY OF CANADA, as Trustee

By: _____
Name:
Title:

By: _____
Name:
Title:

PRINCIPLES ANNEX

Commented [A1]: Content in the annex will be further refined

Commented [A2]: KPMG to comment on 'control' implications.

The following principles apply in relation to the administration of the Trust:

1. Identification of Primary Beneficiary Payees

1.1 A Primary Beneficiary should not receive a benefit from the Trust unless at the time of consideration it satisfies each of the following criteria (the "**Selection Factors**"):

(i) it is an [owner-occupied,], [non-commercial] [not for profit] electricity customer;

(ii) it has [committed] [made arrangements] [proposed] [indicated its willingness] to undertake measures (its "**Energy Plan**") to improve the electricity efficiency and/or promote the conservation of electricity at its Ontario residence;

(iii) its Energy Plan involves one or more Eligible Measures as may be designated by the Trustee from time to time from;

(iv) it confirms that:

1. the primary purpose of its Energy Plan is the conservation and efficient use by the Primary Beneficiary of electricity, and is not for the purposes of the Primary Beneficiary making a profit;

2. it would otherwise not have the financial resources to undertake [the Eligible Measures] included in its Energy Plan;

3. the Eligible Measures to be undertaken by it under its Energy Plan would not otherwise be eligible for reimbursement from third parties, including under any efficiency or conservation program implemented by a government, governmental agency or third party energy subsidy program;

(v) it has demonstrated a need for financial assistance on the basis that its periodic electricity bills represent a financial burden, relative to its available financial resources; and

(vi) such other criteria as the Trustee may determine, including based on the recommendations of Electricity Distributors made on the basis and in accordance with the delegations contemplated by the Permitted Delegations Annex or any applicable Administrative Services Agreement.

1.2 The availability of funds to the Primary Beneficiaries should be allocated on an equitable and consistent basis across different areas and regions within the Province, having regard to:

(i) broad economic parameters of economic activity and the financial resources of the residents of the areas and regions;

(ii) electricity use and efficiency levels of non-commercial electricity customers;

(iii) specific regional indicators of economic weakness and need; and/or

(iv) such other factors as the Trustee may determine are relevant, including based on the submissions, advice and recommendations of Electricity Distributors made on the basis and in accordance with the delegations contemplated by the Permitted Delegations Annex or any applicable Administrative Services Agreement.

1.3 An efficient basis upon which to allocate funds to the Primary Beneficiaries across different areas and regions within the Province may be based on the designated areas and regions serviced by the Electricity Distributors operating within the Province.

1.4 The designated Electricity Distributor for an area or region in which a Primary Beneficiary resides will:

(i) be a reliable source for the purpose of assessing and confirming whether the Primary Beneficiary satisfies the Selection Factors;

(ii) be an efficient intermediary for the purpose of communicating with the Primary Beneficiary, including regarding the availability, terms, conditions and intended purposes of [Project][8];

(iii) be able to efficiently integrate and reflect any distribution payments determined to be made to the Primary Beneficiary within its established practices, procedures and systems; and

(iv) have established contractual arrangements with the Primary Beneficiary that may apply to the protection and confidentiality of information provided by or respecting the Primary Beneficiary, which information may be useful in the consideration by the Electricity Distributor in its assessment of whether the Primary Beneficiary satisfies the Selection Factors, which information may not otherwise be available or readily accessible or verifiable by the Trustee.

1.5 The designated Electricity Distributor for an area or region in which a Primary Beneficiary resides will have market and utilization information that may be useful in assessing the relative needs of Primary Beneficiaries within its designated area or region. Such information will be relevant in assessing the extent to which one such Primary Beneficiary's financial needs and the merits of its Energy Plan are greater or more compelling than those of another such Primary Beneficiary, which comparison may be relevant to the extent that the funds allocable to the Primary Beneficiaries resident in the area or region are otherwise insufficient to meet the requests for funding by all such Primary Beneficiaries.

1.6 Accordingly, it is consistent with the purposes of the Trust that the recommendations of Electricity Distributors be utilized and relied upon by the Trustee to guide the process of identifying particular Primary Beneficiaries for distributions under the [Project].

[8] Consider if the Trustees should control the messaging to ensure consistency across the Province.

1.7 If an Electricity Distributor for a particular area or region is unable or unwilling to assess or confirm the application of the Selection Factors to Primary Beneficiaries residing in the area or region or to make recommendations in relation to such matters, one or more of the following may provide a suitable alternative source of information and for information gathering, assessment and confirmation purposes in relation to such area or region:

(i) other Electricity Distributors operating in adjacent or other areas or regions in the Province;

(ii) the Ontario Energy Board;

(iii) the Independent Electricity System Operator; and

(iv) anyone else having relevant expertise and access to information regarding the electricity market of the Province, in each case as may be considered relevant by the Trustee.

1.8 To the extent that privacy law or other legal requirements limit an Electricity Distributor from providing or making available specific information respecting the application of the Selection Factors to a particular Primary Beneficiary or group of Primary Beneficiaries, it may be appropriate to redact or make generic affected information regarding such Primary Beneficiary in connection with the identification and confirmation of a Primary Beneficiary's eligibility and participation in the [Project]. If such limitations or restrictions would limit an Electricity Distributor from providing or confirming the name of a particular Primary Beneficiary to the Trustee, then it should be sufficient that such information may be obtained or disseminated on a confidential basis if and when required by the Trustee for the proper administration of the Trust and on that basis such impediments should not disqualify a Primary Beneficiary from participating in the benefits of the [Project], to the extent that the confidential record-keeping of the Electricity Distributor would be available in connection with the application of any applicable legal process predicated on the identification of such Primary Beneficiary for the purposes of substantiating its rights as a Primary Beneficiary of the Trust or as to the validity or subsistence of the Trust.

2. Eligible Measures

2.1 Eligible Measures shall be identified having regard to the following (the "**Measures Factors**"):

(i) [NTD: Insert generic list of considerations relevant to the identification of the applicable spending uses].

2.2 In identifying and applying the Measures Factors, Electricity Distributors will have expertise in assessing the suitability of efficiency and conservation measures in their respective areas and regions, which may differ across areas and regions across the Province based on factors (among other things) such as the climate, geography, density, electricity infrastructure, residential structures, and electricity use rates applicable within such areas or regions.

2.3 Unless otherwise specified by the Trustees, the measures specified in Schedule A to this Principles Annex will be considered.

3. Other

3.1 It is expected that administrative expenses of the Board of Trustees and its members, including any expenses relating to the Trust, to the establishment of the [Affordability Fund] and any expenses related to the implementation and operation of the [Project] by or through Electricity Distributors and other relevant entities, will be recognized and subject to reimbursement in accordance with the principles outlined in the [Province's Transfer Payment Accountability Directive/Travel, Meal and Hospitality Expenses Directive][9], in the form attached to Schedule B to this Principles Annex.

3.2 The Trustee is expected to conduct its activities to ensure that, as more specifically contemplated in the Transfer Payment Agreement:

(i) the Assets are applied are spent prudently and in furtherance of the purpose set forth in the Declaration;

(ii) the Trustee is accountable to the Province for activities undertaking in connection with the Project;

(iii) it complies with the Province's request for any independent verification or audit determined to be necessary or appropriate by the Province;

(iv) the Province will be entitled and has reserved its right to demand the return of the Assets if the Province determined that they are not being used for the purposes and applied in the manner as set forth or contemplated in the Declaration.

3.3 Electricity Distributors are not intended to directly profit from distributions of funds made from the Trust, although it is recognized that the objectives of electricity efficiency and conservation of Primary Beneficiaries located in the service area or region of an Electricity Distributor, and the cost savings and improved credit worthiness of such Primary Beneficiaries, may be financially beneficial to the Electricity Distributor.

3.4 Distributions from the Trust are intended to allow receiving Primary Beneficiaries to undertake Eligible Measures at no or minimal personal cost.

3.5 It is expected that the Trust Assets will be distributed to Primary Beneficiaries during the period from the Original Trustee Replacement Date to [the Final Distribution Date] [March 31, 2019].

[9] NTD: Ministry to confirm applicable Directive(s).

SCHEDULE A TO THE PRINCIPLES ANNEX
INITIAL ELIGIBLE MEASURES

Initial Specified Measures
Block Heater Timer (just timer) – rated for outdoor use, have at least a 15 amp/1800 watt capacity, be cold weather resistant, bear a C-UL or CSA certification mark
Power bar with integrated timer, and switched power outlets, four each for a total of 8 outlets, have a total capacity of 15 amps. The switched outlets must remain "live", independent of timer settings, so long as the power bar itself remains switched on. The power bar must bear either a C-UL or CSA certification mark.
Efficient Showerheads (standard) - rated at no more than 4.8 Lpm (1.25 U.S. gpm) and be of the laminar flow type (non-aerating).
Efficient Showerhead (handheld) - rated at no more than 4.8 Lpm (1.25 U.S. gpm) and be of the laminar flow type (non-aerating).
Efficient Aerators (kitchen) - rated no more than 5.7 Lpm (1.5 U.S. gpm), dual threaded to allow installation in both thread type faucets, swivel type with pause lever.
Efficient Aerators (bathroom) - rated no more than 3.8 Lpm (1.0 U.S. gpm), be dual threaded to allow installation in both thread type faucets.
Hot Water Tank Pipe Insulation - $^{1}/_{2}$" inside diameter – foam, meets ASTM –C547-00, minimum $^{3}/_{4}$" thick
Hot Water Tank Pipe Insulation - $^{3}/_{4}$ " inside diameter - – foam, meets ASTM –C547-00, minimum $^{3}/_{4}$" thick
Hot Water Tank Insulation - fibreglass R10 (fits up to a 60 gal tank) – not bubble wrap
≤11W ENERGY STAR® Qualified LED A Shape (60W) (minimum 600 Lumen output) (Formerly: 7W – 11W ENERGY STAR® Qualified LED A Shape (60W))
≤14W ENERGY STAR® Qualified LED A Shape (75W) (minimum 800 Lumen output) (Formerly: 10W – 14W ENERGY STAR® Qualified LED A Shape (75W))

Initial Specified Measures
≤23W ENERGY STAR® Qualified LED A Shape (100W) (minimum 1600 Lumen output) (Formerly:17W – 23W ENERGY STAR® Qualified LED A Shape (100W))
≤16W ENERGY STAR® Qualified LED PAR 20 (minimum 600 Lumen output) (Formerly: 8W – 12W ENERGY STAR® Qualified LED PAR 20)
≤16W ENERGY STAR® Qualified LED PAR30 & PAR38 (minimum 600 Lumen output) (Formerly: 8W – 12W ENERGY STAR® Qualified LED PAR 30)
≤23W ENERGY STAR® Qualified LED PAR (minimum 1100 Lumen output) (Formerly: 14W – 18W ENERGY STAR® Qualified LED PAR 38)
≤6W ENERGY STAR® Qualified LED MR 16 / PAR 16 (minimum 250 Lumen output) (Formerly: 7W – 10W ENERGY STAR®
Qualified LED MR 16 / PAR 16 - GU 10 Base)
≤11W ENERGY STAR® Qualified LED MR 16 (minimum 400 Lumen output) (Formerly: 7W – 12W ENERGY STAR® Qualified LED MR 16 GU 5.3 Base)
ENERGY STAR® LED Wet Location Rated PAR lamp ≤ 23 Watt (minimum 1100 Lumen output)
Recessed Downlight Fixture including LED with Light Output >600 and <800 lumens (Retrofit Measure List)
Recessed Downlight Fixture including LED with Light Output >800 lumens (Retrofit Measure List)
Indoor Drying Rack

Extended Measures
Replace refrigerator with ENERGY STAR qualified refrigerator - 15.5 - 16.9 cubic foot top freezer, automatic defrost, refrigerator/ freezer, no through the door ice service
Replace refrigerator with ENERGY STAR qualified refrigerator - 17.0 - 18.4 cubic foot top freezer, automatic defrost, refrigerator/ freezer, no through the door ice service
Replace refrigerator with a refrigerator that has a consumption level of less than 425 kwh, 10 – 12.5 cubic foot top freezer, automatic defrost, refrigerator freezer, no through the door ice service
Replace freezer with ENERGY STAR qualified freezer -
12-14.4 cubic foot freezer
Replace freezer with ENERGY STAR qualified freezer - 14.5 - 16.0 cubic foot freezer
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 6,000 – 7,999 BTU/hr with C-UL or CSA certification mark
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 8,000 – 9,999 BTU/hr with C-UL or CSA
certification mark
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 10,000 – 12,000 BTU/hr with C-UL or CSA certification mark
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 14.2 - 21.2 l/day (30-44.9 pints/day) dehumidifier
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 21.3 - 25.4 l/day (45-53.9 pints/day) dehumidifier

Extended Measures
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 25.5 - 35.5 l/day (54-75 pints/day) dehumidifier dehumidifier dehumidifier
Programmable Thermostat – line voltage – meets CAN/CSA-C828-06 standard, minimum performance: Droop: 1.5°C, Differential: 0.5°C, Precision 0% within 0.5°C of the original set point of 22°C
Programmable Thermostat – low voltage - meets CAN/CSA-C828-06 standard, minimum performance: Droop: 1.5°C, Differential: 0.5°C, Precision 0% within 0.5°C of the original set point of 22°C

Weatherization Measures
Comprehensive Draftproofing (caulking, foam and weather stripping, and application of same) – lifespan of 20 years plus If one or two component polyurethane foams are used, the products and installations must conform to: • CAN/ULC-S710.1 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 1: Material Specification. • CAN/ULC-S710.2 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 2: Application. • CAN/ULC-S711.1 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification • CAN/ULC-S711.2 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification, and Part 2: Application. **Attic Insulation (including installation):**
cellulose: CAN/ULC-S703-01 Amendment 1 - Cellulose Fibre Insulation (CFI) for Buildings OR 2) Mineral Fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre

Weatherization Measures
for Buildings **Wall Insulation (including installation):**
cellulose: CAN/ULC-S703-01 Amendment 1 - Cellulose Fibre Insulation (CFI) for Buildings OR 2) Mineral Fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre **Basement Insulation (including installation):**
mineral fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre for Buildings Vapour Barrier: 69009-CAN/CGSB-51.34-m86 If one or two component polyurethane foams are used, the products and installations must conform to: • CAN/ULC-S710.1 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 1: Material Specification. • CAN/ULC-S710.2 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 2: Application. • CAN/ULC-S711.1 Standard for Thermal Insulation – Bead Applied Two-Component
Polyurethane Air Sealant Foam, Part 1: Material Specification • CAN/ULC-S711.2 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification, and Part 2: Application.

[NTD: Add details pertaining to heat pumps]

SCHEDULE B TO THE PRINCIPLES ANNEX
PERMITTED EXPENSE REIMBURSEMENTS

[NTD: Insert the Province's Transfer Payment Accountability Directive/Travel, Meal and Hospitality Expenses Directive]

PERMITTED DELEGATION ANNEX

1. Under Section 4.2(d) of the Declaration, the Trustee has the power to: (A) appoint, employ or retain Administrative Services Agents for the purpose of discharging its duties and obligations under the Declaration; and (B) enter into, perform, enforce and amend Administrative Services Agreements.

2. In accordance with [Section 4.2] of the Declaration, consistent with the principles set forth in the Principles Annex, the Trustee or its agent will seek to enter into one or more Administrative Services Agreements with individual Electricity Distributors under which the Electricity Distributors will act as Administrative Service Agents to the Trustee. In this manner, the Trustee will delegate certain of its powers and duties to the Electricity Distributors.

3. Under Section 5.1 of the Declaration, to the extent the Trustee has delegated any of its duties or powers, it shall be deemed to have satisfied the Standard of Care in respect of the subject matter of such delegation, subject to the Trustee's overall duty to exercise prudent oversight thereof. The Trustee is entitled to rely on an Electricity Distributor to discharge the duties delegated to it, as Administrative Services Agent, pursuant to an Administrative Services Agreement as described in this Annex.

4. Accordingly, and without limiting the Trust's right to delegate under the Declaration, the Trust will be permitted to, and should seek to, enter into Administrative Services Agreements with Electricity Distributors in order to provide for the following:

    a. **Identification of Applicable Primary Beneficiary Payees and Determination of Individual Distribution Amounts**

        i. Each Electricity Distributor will make an initial assessment of the financial needs of Primary Beneficiaries within its designated service area or region, having regard to [NTD: specify relevant economic data and reference material], in order to prepare and provide to the Trustee an estimate of the number of Primary Beneficiaries who the Electricity Distributor reasonably expects would satisfy the Selection Factors (as defined in clause 1.1 "Identification of Primary Beneficiary Payees" of the Principles Annex).

        ii. Each Electricity Distributor will make an initial assessment of the measures it would recommend be included as Eligible Measures, having regard to [NTD: specify relevant considerations], in order to prepare and provide to the Trustee an estimate of the average cost per Primary Beneficiary Payee (as defined below) of such Eligible Measures that the Electricity Distributor reasonably expects would apply in respect of Primary Beneficiaries resident in its service area or region.

        iii. Based on the product of (i) and (ii), above, and such other considerations as it considers to be directly relevant, each Electricity Distributor will make a written recommendation to the Trustee regarding the aggregate funding amount that the Electricity Distributor anticipates would be utilized under the

[Project] by Primary Beneficiaries in its service area or region (the "**Local Funding Estimate**"). Such recommendation will be accompanied, when submitted to the Trustee, by a detailed explanation regarding the assumptions, financial parameters, suitability considerations and other information underlying the Local Funding Estimate (including the type of information contemplated by "[Insert]" under the Principles Annex, which will be relied upon by the Trustee in its assessment regarding the allocation of available funding to or for the benefit of the Primary Beneficiaries across the specified areas and regions of the Province.

iv. The Trustee will inform the Electricity Distributor regarding the aggregate of the amount determined by the Trustee to be made available under the [Project] for Primary Beneficiaries in the Electricity Distributor's designated service area or region (for each LDC, its "**Maximum LDC Allocation**") and as to any maximum amount that may be paid to or for the benefit of any single Primary Beneficiary [or group of related Primary Beneficiaries] located in the servicer area or region of the Electricity Distributor (the "**Maximum Primary Beneficiary Amount**"). The Maximum LDC Amount and Maximum Primary Beneficiary Amount may vary between designated areas and regions, the Primary Beneficiaries within such areas and regions, and may be increased by the Trustee from time to time in its discretion.

v. Each Electricity Distributor will apply the principles set forth under ["Identification of Primary Beneficiary Payees" in the Principles Annex] to identify and make recommendations to the Trustee regarding the amount of funds (if any) to be distributed to or for the benefit of Primary Beneficiaries resident within its designated service area or region from time to time (the "**Primary Beneficiary Payees**").

vi. Each Electricity Distributor will ensure that the aggregate of the amounts it recommends be distributed to or for the benefit of Primary Beneficiary Payees from time to time does not exceed (1) its Maximum LDC Allocation and (2) for any single Primary Beneficiary [or group of related Primary Beneficiaries] located in the servicer area or region of the Electricity Distributor, the Maximum Primary Beneficiary Amount.

vii. The Trustee will provide written confirmation to each Electricity Distributor:

1. Either (x) that the recommendations specified of the Electricity Distributor in clause (v), above, have been accepted, or (y) as to the specific reasons for any non-acceptance;

2. The identity of each Primary Beneficiary Payee resident in the Electricity Distributor's service area or region and its residential address;

3. The amount of the distribution to be paid to or for the benefit of each such Primary Beneficiary Payee.

b. **Making of Distributions**

i. Promptly after the Trustee confirms the identity of a Primary Beneficiary Payee resident in a Electricity Distributor's service area or region and the amount of the distribution to be paid to or for the benefit of such Primary Beneficiary Payee, the Trustee will arrange for payment to the Electricity Distributor an amount equal to the amount of such distribution.

ii. Promptly upon receipt of funds in respect of a distribution to a Primary Beneficiary Payee, the Electricity Distributor will arrange for payment of the full amount of such distribution to or for the benefit of the Primary Beneficiary Payee, without reduction or set-off.

c. **Reporting, Record-Keeping, Inspection and Disclosure**

i. The Electricity Distributor will provide to the Trustee quarterly and annual reports ("**Reports**") for the duration of the Administrative Services Agreement.

ii. The Electricity Distributor will keep and maintain all financial records and non-financial documents and records relating to the provision of services under the Administrative Services Agreement. [Specify required records regarding individual Primary Beneficiary Payees]

iii. The Trustee, its authorized representatives or an independent auditor may, at its own expense, on twenty-four hours' notice to the Electricity Distributor and during normal business hours, inspect the records of and information respecting the Electricity Distributor to confirm its compliance with the Administrative Services Agreement, including its process for determining the Primary Beneficiary Payees, distribution amounts and the delivery of funds to [or for the benefit of] the Primary Beneficiary Payees. The Trustee, its authorized representatives or an independent auditor may inspect and copy all records and documents kept in accordance with the Administrative Services Agreement and conduct an audit or investigation of the Electricity Distributor in respect of the identification of the applicable Primary Beneficiary Payees, the amount of distributions made to or for the benefit of the Primary Beneficiary Payees; and the delivery of funds to or for the benefit of the Primary Beneficiary Payees.

d. **Standard of Care**

i. The Electricity Distributor will perform its duties provided under the Administrative Services Agreement exercising the degree of care, diligence and skill that a reasonably prudent Person would exercise in comparable circumstances.

ii. In recommending Primary Beneficiary Payees to the Trustee, the Electricity Distributor will seek to avoid actual, potential or perceived conflicts of interest.

e. **Expenses**

i. The Electricity Distributor will be eligible to receive reasonable compensation and reimbursement of its actual out-of-pocket costs associated with the performance of its duties under the Administrative Services Agreement, subject to compliance with the Province's Travel, Meal and Hospitality Expenses Directive. Such compensation amounts and reimbursement entitlements will be specified in the Administrative Services Agreement.

[Other matters you may consider dealing with here include compliance with privacy law/confidentiality/legal considerations and requirements; money laundering; preparation of accounting and tax statements by the Trust; compliance with regulatory laws; representation in product warranty claims (to the extent the Trust is sued in connection with a purchase of Eligible Measures); flowing money to suppliers of Eligible Measures; appropriate reps and indemnities from LDCs; specific reporting of cash and allocations; logistics of banking and cash flow mechanics and related record-keeping; production of information for Trustee to satisfy legal requirements applicable to the Trust (i.e., tax; record keeping); preparation of tax remittances for beneficiaries; preparation of reports for the Government and cooperation with other compliance by the Trust with the TPA; required communications to Primary Beneficiaries on behalf of the Trust (including to comply with applicable laws); preparation and submission of applications, etc., that may be contemplated by the [Project]; termination scenarios]

TRUSTEE REPLACEMENT ANNEX

1. The Advisory Committee shall consist of the following individuals:

   •

   •

   •

2. In the event any member of the Advisory Committee resigns or is unable to act, the remaining members may appoint a resident of Ontario as a replacement.

3. On or before •, 2017, the Advisory Committee shall identify six residents of Ontario who are willing to act as Trustees of the Affordability Fund Trust and who, collectively satisfy the following criteria:

   a) Demonstrate an understanding of the electricity sector including the electricity distribution sector;

   b) Have expertise in conservation and low income programs;

   c) It is expected that three of the identified individuals will be representatives from separate electricity distributors, two individuals will be representatives from separate social services agencies and one individual will be a government representative.

   d) It is expected that government representation will be non-controlling.

4. The Advisory Committee shall recommend that the existing Trustee appoint the individuals so identified to become replacement Trustees of the Affordability Fund Trust pursuant to section 5.7 of the Declaration.

5. If any of the persons recommended under paragraph 4 or under this paragraph are not accepted and appointed by the existing Trustee pursuant to section [5.7] of the Declaration, the Advisory Committee shall forthwith identify and recommend an alternative individual who is willing to act and who whose presence as a Trustee would result in the Trustees collectively satisfying the criteria in paragraph 2 above.

6. Upon the appointment of [number] trustees pursuant to section • of the Declaration, the Advisory Committee will be functus.

FW_ Affordability Fund - Declaration of Trust and Transfer Pricing Agreement .rtf

From: Petsche, Nadine (TBS) []
To: samir chhelavda (Samir.Chhelavda@HydroOne.com) [Samir.Chhelavda@HydroOne.com]; Picard, Michel (mpicard@kpmg.ca) [mpicard@kpmg.ca]
Subject: FW: Affordability Fund - Declaration of Trust and Transfer Pricing Agreement
Date: Thursday, March 16, 2017 17:51:28

Samir/Michel

I see that you weren't included on the email below.

Regards,

Nadine

From: Schwab-Pflug, Emma (ENERGY)
Sent: March-16-17 4:21 PM
To: Alexandra.Phillips@HydroOne.com
Cc: Sermat-Harding, Kaili (ENERGY); Syed, Usman (ENERGY); Qureshi, Musab (ENERGY); Spencer.Gill@HydroOne.com; Daniel.Levitan@HydroOne.com; Natalie.Poole-Moffatt@HydroOne.com; Johnson, Paul (ENERGY/MEDEI/MRI); Ranalli, David (ENERGY); Schachtschneider, Michelle (ENERGY); Petsche, Nadine (TBS); An, Tai (ENERGY); Gounden, Pratima (ENERGY); Desouza, Charlotte (ENERGY); Thompson, Erin (ENERGY)
Subject: RE: Affordability Fund - Declaration of Trust and Transfer Pricing Agreement

Thanks Alex and understood re: sharing finals with Computershare.

Also, our counsel has drafted the following to assist in Hydro One and KPMG's review of the documents:

Our mark-up addresses the tensions that exist among (1) the requirements to recognize the Trust as non-controlled for government year-end accounting purposes, (2) the practical need for the LDCs to lead the identification and allocations to eligible participants processes (3) the desire for the ultimate customers in need to be the reference group of beneficiaries (4) the legal requirements to create a valid trust under Ontario law and (5) the practical limitations associated with addressing and contracting relevant LDC participation prior to March 31, while achieving sufficient contractual certainty for the Province and legal purposes.

To balance these tensions, we have suggested the following (subject to accounting input and practical input from Hydro One):

(1) the Declaration contemplates the following 3 time periods:

a. Initially, Computershare will be the trustee and will simply sit on the funds. Hydro One will provide very basic administrative services during this initial period. Computershare, acting on the recommendations of an "Advisory Committee" will appoint its replacement – a "Board of Trustees" (this is contemplated in a Trustee Replacement Annex to the Declaration).

b. Once the Board of Trustees is in place, administrative services agreements will be entered into with LDCs. To give the LDCs a wide scope to identify funding recipients within their service areas, a broad and specific delegation is described in the "Permitted Delegations Annex", which frames out what the basic and key terms of the ultimate Administrative Services Agreements with the LDCs will entail. That level of detail is required to enable the broad Trustee delegation, without upending the validity of the Trust for legal purposes. The Board of Trustees will maintain supervisory responsibility over the LDCs actions, but will be permitted to rely on the recommendations of the LDCs. Under these arrangements, the find will be divided by region and then LDCs will have wide discretion to recommend distributions, in each case subject to the principles set out in a "Principles Annex".

c. Once the program is to be wound up (either because of a default by the Trust, the Trustee's determine that all funding has been appropriately provided for or a final end-date occurs), any remaining funds will be paid to charitable beneficiaries identified from among a pre-determined slate. The amount available to the charities in the circumstance where a default of the Trust has occurred will be net of the amount the Province will be entitled to be paid (i.e., the remaining Assets) from the Trust under the Transfer Payment Agreement.

(2) From March 31, all of the discretion to deal with the Trust Assets will reside with Computershare or the Board, or by delegation to the LDCs where a suitable contract is signed by the Trust with the LDCs. The Province will not maintain control of the Assets, and all steps contemplated in (1) will not be affected by the Province other than (in substance):

a. To the extent the Province is represented on the Advisory Committee or the Board;

b. The Province has rights to require payment of remaining Assets under the Transfer Agreement on an "event of default"; or

c. The Province has certain reporting, audit and compliance rights, essentially to affect the intended purpose of the Trust in its implementation (and with remedies under

the Transfer Payment Agreement, including a right to be paid the undistributed Assets or to pursue contract remedies (including specific performance).

Otherwise, the terms of the Trust will be determined at the outset and determined and affected by non-governmental entities. We understand that these continuing ties to the Trust would not be contrary to the accounting principles applicable for government year-end treatment as a non-controlled trust entity.

Based on this drafting approach, Blakes believes on a preliminary basis that the validity issues associated with the Trust can be adequately addressed.

From: Alexandra.Phillips@HydroOne.com [mailto:Alexandra.Phillips@HydroOne.com]
Sent: March-16-17 3:50 PM
To: Alexandra.Phillips@HydroOne.com
Cc: Schwab-Pflug, Emma (ENERGY); Sermat-Harding, Kaili (ENERGY); Syed, Usman (ENERGY); Qureshi, Musab (ENERGY); Spencer.Gill@HydroOne.com; Daniel.Levitan@HydroOne.com; Natalie.Poole-Moffatt@HydroOne.com; Johnson, Paul (ENERGY/MEDEI/MRI); Ranalli, David (ENERGY); Schachtschneider, Michelle (ENERGY); Petsche, Nadine (TBS); An, Tai (ENERGY); Gounden, Pratima (ENERGY); Desouza, Charlotte (ENERGY); Thompson, Erin (ENERGY)
Subject: Re: Affordability Fund - Declaration of Trust and Transfer Pricing Agreement

(Press send too soon)

I am checking on exact timelines and get back to you later on today.

On sharing drafts with CS, it is our preference to send them final docs instead of drafts.

Speak soon,

Alex Phillips

Manager, External Relations

Hydro One Networks Inc.

(O) 416-345-1375

(C) 647-405-8601

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On Mar 16, 2017, at 3:48 PM, PHILLIPS Alexandra <Alexandra.Phillips@HydroOne.com> wrote:

> Thanks Emma. I am checking on exact timelines and will
>
> **Alex Phillips**
>
> Manager, External Relations
>
> Hydro One Networks Inc.
>
> (O) 416-345-1375
>
> (C) 647-405-8601
>
> This email and any attached files are privileged and may contain confidential information intended only for the person or persons named above. Any other distribution, reproduction, copying, disclosure, or other dissemination is strictly prohibited. If you have received this email in error, please notify the sender immediately by reply email and delete the transmission received by you. This statement applies to the initial email as well as any and all copies (replies and/or forwards) of the initial email.
>
> On Mar 16, 2017, at 3:23 PM, Schwab-Pflug, Emma (ENERGY) <Emma.Schwab-Pflug@ontario.ca> wrote:

Hi Alex:

Please find attached tracked and clean versions of the TPA and Declaration of Trust. Tracked versions are tracked from the versions you had shared on March 13. You will note that there are comments in the TPA and Declaration indicating areas that we are working with Blakes to finalize.

We would recommend, as discussed, that Hydro One share these current versions with KPMG, as well as Computershare, so that we can work to resolve identified issues.

Can Hydro One advise if it will not be possible to share comments back with us for 3 PM tomorrow?

We would like to set up a call tomorrow afternoon to discuss comments. Can you advise of a preferred time for a call?

A few other follow-ups:

· We have confirmed internally that Computershare can establish an interim Trust account using their existing banking relationship with BNF. Can you confirm once this (and the TPA/Decl if you agree to share) is communicated with Computershare?

· Can you please share the Computershare Trustee(s) contact details? We understand that the Trustees will have to be recognized in the Declaration of Trust.

· Can you share the administrative service agreement for the Ministry's

review today? Our interest in seeing this is to have comfort that it will be ready for signing by Computershare on Monday or Tuesday of next week.

Thanks again to you and your team for working with us on these tight timelines.

- Emma

From: Alexandra.Phillips@HydroOne.com [mailto:Alexandra.Phillips@HydroOne.com]
Sent: March-13-17 2:56 PM
To: Syed, Usman (ENERGY); Schwab-Pflug, Emma (ENERGY); Qureshi, Musab (ENERGY)
Cc: Spencer.Gill@HydroOne.com; Daniel.Levitan@HydroOne.com; Natalie.Poole-Moffatt@HydroOne.com
Subject: Fwd: Affordability Fund - Declaration of Trust and Transfer Pricing Agreement

All:

Please see our revisions to the TPA (with a track changes PDF) and the Declaration of Trust.

Looking forward to hearing back from you by EOD tomorrow but don't hesitate to reach out if you have any questions or concerns.

Best,

Alex Phillips

Manager, External Relations

Hydro One Networks Inc.

(O) 416-345-1375

(C) 647-405-8601

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<2017-03-16 TRACK Affordability_Fund_Trust_–_Declaration_of_Trust v2.docx>

<2017-03-16-CLEAN TPA_Draft_Afund v2.docx>

<2017-03-16-TRACK TPA_Draft_Afund v2.docx>

<2017-03-16 CLEAN Affordability_Fund_Trust_–_Declaration_of_Trust v2.docx>

FW_ Affordability Fund - Declaration of Trust and Transfer Pricing Agreement .rtf

From: Virani, Shyrose (TBS) []
To: 'PETSCHE Nadine -CORPORATE' [nadine.petsche@opg.com]
Subject: FW: Affordability Fund - Declaration of Trust and Transfer Pricing Agreement
Date: Tuesday, October 16, 2018 08:57:10
Attachment 1: Trusts Guidance.pdf

-----Original Message-----
From: Petsche, Nadine (TBS)
Sent: March 18, 2017 5:06 PM
To: Schwab-Pflug, Emma (ENERGY) <Emma.Schwab-Pflug@ontario.ca>
Cc: Sermat-Harding, Kaili (ENERGY) <Kaili.Sermat-Harding@ontario.ca>; Johnson, Paul (ENERGY/MEDEI/MRI) <Paul.Johnson3@ontario.ca>; Syed, Usman (ENERGY) <Usman.Syed@ontario.ca>; Qureshi, Musab (ENERGY) <Musab.Qureshi@ontario.ca>; RAND, PAUL <PAUL.RAND@blakes.com>; PRESTAGE, JA <JA.PRESTAGE@blakes.com>; ASHBOURNE, STEPHEN <STEPHEN.ASHBOURNE@blakes.com>
Subject: RE: Affordability Fund - Declaration of Trust and Transfer Pricing Agreement

Hi Emma.
With regards to the second item, please see the last Q&A on the Trust guidance which indicates that the item should not be contentious from a control perspective. That said, if you want to minimize risks, you could refer to the direction as an 'expectation' which would be similar to what we did when funds per provided to municipalities under the Investing in Ontario Act.
Nadine

-----Original Message-----
From: Schwab-Pflug, Emma (ENERGY)
Sent: March-18-17 4:58 PM
To: ASHBOURNE, STEPHEN
Cc: Sermat-Harding, Kaili (ENERGY); Johnson, Paul (ENERGY/MEDEI/MRI); Syed, Usman (ENERGY); Qureshi, Musab (ENERGY); RAND, PAUL; PRESTAGE, JA; Petsche, Nadine (TBS)
Subject: RE: Affordability Fund - Declaration of Trust and Transfer Pricing Agreement

Hi Stephen,

We've had two questions come up following the call this afternoon, and would appreciate if you could consider tomorrow as you finalize the next version of the documents:

First, we would like to change tack with the charities annex/list and instead simply establish that the Trust would consult with the Ontario Energy Board to identify charities. This will allow an up to date consideration of which charities to flow money to, based on their need/function at that point in time, and could also assist with Trustee decision-making (vs. a long list).

Second, this is a hypothetical question for now, but the government may wish to promote the program, through its own marketing or further through direct branding, e.g. putting the Trillium logo on materials sent to beneficiaries. Would this need to be established in either/both documents (TPA and Deed)? Can it be established without having control implications? Nadine, it would be helpful if you could weigh in on this.

Thank you again,
Emma

-----Original Message-----

From: Syed, Usman (ENERGY)
Sent: March-18-17 12:37 PM
To: ASHBOURNE, STEPHEN
Cc: Sermat-Harding, Kaili (ENERGY); Johnson, Paul (ENERGY/MEDEI/MRI); Schwab-Pflug, Emma (ENERGY); Qureshi, Musab (ENERGY); RAND, PAUL; PRESTAGE, JA
Subject: RE: Affordability Fund - Declaration of Trust and Transfer Pricing Agreement

Hi Steve - thanks for your timely response.

I've discussed with the team and we have no desire to change the language in the Deed with regard to rules for the Advisory Committee (AC). However, we will be increasing the number of AC members to 7 in total. Thanks...

- Usman

-----Original Message-----
From: ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
Sent: March 17, 2017 9:31 PM
To: Syed, Usman (ENERGY)
Subject: Re: Affordability Fund - Declaration of Trust and Transfer Pricing Agreement

It's a bit of a conflict to be part of a process that appoints one or more of its members, so the optics are poor. We have not set rules for the AC, so I suppose we could specifically provide for it if it's important to you. Steve

Stephen R. Ashbourne
Partner
stephen.ashbourne@blakes.com<mailto:stephen.ashbourne@blakes.com>
Dir: 416-863-3086<tel:416-863-3086>

On Mar 17, 2017, at 9:27 PM, Syed, Usman (ENERGY)
<Usman.Syed@ontario.ca<mailto:Usman.Syed@ontario.ca>> wrote:

Hi Stephen, a question has come up with regards to the Advisory Committee members that I am hoping you can help address:

Would an advisory committee member would be precluded from being a trustee? Is there any provision in the draft declaration that would prevent this (I am not aware of any such provision), I think the answer is no.

I think the answer is that an advisory committee member could be considered by the committee as a potential trustee, but it would be up to the committee to decide/recommend.

Hoping you can clarify, thanks...

- Usman
From: Schwab-Pflug, Emma (ENERGY)
Sent: Friday, March 17, 2017 6:40 PM
To: ASHBOURNE, STEPHEN; RAND, PAUL; PRESTAGE, JA
Cc: Sermat-Harding, Kaili (ENERGY); Syed, Usman (ENERGY); Qureshi, Musab (ENERGY); Di Tullio, Yvonne (ENERGY); Cook, Cory (ENERGY); Johnson, Paul (ENERGY/MEDEI/MRI); Ranalli, David (ENERGY); Schachtschneider, Michelle (ENERGY); An, Tai (ENERGY); Gounden, Pratima (ENERGY)
Subject: FW: Affordability Fund - Declaration of Trust and Transfer Pricing Agreement

Hi Stephen,

Please find comments from Osler and KPMG attached (PDFs). We have incorporated these with comments from our Provincial Controller's Office ("OPC", Nadine cc'd) in the Word versions, also attached.

Many outstanding comments relate to control issues that will need to be resolved by OPC and KPMG. There will be a call scheduled tomorrow to resolve. We have requested that Blakes be invited.

One of the remaining policy/legal aspects is Osler's recommendation that the principles be allowed to be amended by the Trust, including to account for refinements in the purpose over time. We think this is reasonable and are comfortable with allowing the Trust to amend over time, with input from the Province and with the Province kept informed of amendments.

Finally, there was a placeholder for a list of charities to serve as Residual Beneficiaries. Find attached a list of agencies who help deliver energy support programs in the province. A list is maintained by the Ontario Energy Board (the province's energy regulatory) and we have included only those attached who are CRA-listed charities. We will be reviewing this further on Monday and may come back with slight refinements, but would suggest incorporating as is for now.

As noted on the call today, to meet timelines, our aim would be to send the TPA and Declaration to Computershare by end of day Monday. Could you advise us by early Monday if you see this as feasible? Again, we appreciate your continued efforts on these challenging timelines.

If you have any questions over the weekend, please email.

Thank you again,
Emma

Emma Schwab-Pflug
Acting Manager
Energy Conservation Policy Unit
Conservation and Renewable Energy Division Ontario Ministry of Energy

Emma.Schwab-Pflug@Ontario.ca<mailto:Emma.Schwab-Pflug@Ontario.ca><mailto:Emma.Schwab-Pflug@Ontario.ca>
office: 416-212-7006 | cell: 416-931-3905

From:
Alexandra.Phillips@HydroOne.com<mailto:Alexandra.Phillips@HydroOne.com><mailto:Alexandra.Phillips@HydroOne.com> [mailto:Alexandra.Phillips@HydroOne.com]
Sent: March-17-17 1:41 PM
To: Schwab-Pflug, Emma (ENERGY)
Cc: Sermat-Harding, Kaili (ENERGY); Syed, Usman (ENERGY); Qureshi, Musab (ENERGY); Daniel.Levitan@HydroOne.com<mailto:Daniel.Levitan@HydroOne.com><mailto:Daniel.Levitan@HydroOne.com>; Natalie.Poole-Moffatt@HydroOne.com<mailto:Natalie.Poole-Moffatt@HydroOne.com><mailto:Natalie.Poole-Moffatt@HydroOne.com>; Johnson, Paul (ENERGY/MEDEI/MRI); Ranalli, David (ENERGY); Schachtschneider, Michelle (ENERGY); Petsche, Nadine (TBS); An, Tai (ENERGY); Gounden, Pratima (ENERGY); Desouza, Charlotte (ENERGY); Thompson, Erin (ENERGY)
Subject: RE: Affordability Fund - Declaration of Trust and Transfer Pricing Agreement

Hi Emma et al:

See comments from Osler and KPMG attached for your review in advance of our 3PM call.

Best,
Alex Phillips
Manager, External Relations
Hydro One Networks Inc.
483 Bay St, Toronto, ON
(O) 416-345-1375

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From: PHILLIPS Alexandra
Sent: Friday, March 17, 2017 11:29 AM
To: 'Schwab-Pflug, Emma (ENERGY)'
Cc: Sermat-Harding, Kaili (ENERGY); Syed, Usman (ENERGY); Qureshi, Musab (ENERGY); GILL Spencer; LEVITAN Daniel; POOLE-MOFFATT Natalie; Johnson, Paul (ENERGY/MEDEI/MRI); Ranalli, David (ENERGY); Schachtschneider, Michelle (ENERGY); Petsche, Nadine (TBS); An, Tai (ENERGY); Gounden, Pratima (ENERGY); Desouza, Charlotte (ENERGY); Thompson, Erin (ENERGY)
Subject: RE: Affordability Fund - Declaration of Trust and Transfer Pricing Agreement

Hi Emma:
Possible to move up the call to earlier today?

Secondly, we drafted a timeline for phase 2 when the funds have flowed to CS and we need to consult with the LDC community and revise the Declaration of Trust. See attached and let me know if you have any concerns.

Thirdly, you've identified a Board of Trustees to select the trustees following CS. Who are you suggesting is on the Board?

Best,
Alex Phillips
Manager, External Relations
Hydro One Networks Inc.
483 Bay St, Toronto, ON
(O) 416-345-1375

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From: Schwab-Pflug, Emma (ENERGY)
[mailto:Emma.Schwab-Pflug@ontario.ca]<mailto:[mailto:Emma.Schwab-Pflug@ontario.ca]>
Sent: Thursday, March 16, 2017 6:58 PM
To: PHILLIPS Alexandra
Cc: Sermat-Harding, Kaili (ENERGY); Syed, Usman (ENERGY); Qureshi, Musab (ENERGY); GILL Spencer; LEVITAN Daniel; POOLE-MOFFATT Natalie; Johnson, Paul (ENERGY/MEDEI/MRI); Ranalli, David (ENERGY); Schachtschneider, Michelle (ENERGY); Petsche, Nadine (TBS); An, Tai (ENERGY); Gounden, Pratima (ENERGY); Desouza, Charlotte (ENERGY); Thompson, Erin (ENERGY)
Subject: RE: Affordability Fund - Declaration of Trust and Transfer Pricing Agreement

Alex, thank you, that's great news that all is in order for tomorrow. We look forward to speaking at 3 PM.

Charlotte (cc'd) will set up a conference line tomorrow morning.

Have a good night also!
- Emma

From:
Alexandra.Phillips@HydroOne.com<mailto:Alexandra.Phillips@HydroOne.com><mailto:Alexandra.Phillips@HydroOne.com>
[mailto:Alexandra.Phillips@HydroOne.com]<mailto:[mailto:Alexandra.Phillips@HydroOne.com]>
Sent: March-16-17 6:55 PM
To: Schwab-Pflug, Emma (ENERGY)
Cc: Sermat-Harding, Kaili (ENERGY); Syed, Usman (ENERGY); Qureshi, Musab (ENERGY);
Spencer.Gill@HydroOne.com<mailto:Spencer.Gill@HydroOne.com><mailto:Spencer.Gill@HydroOne.com>;
Daniel.Levitan@HydroOne.com<mailto:Daniel.Levitan@HydroOne.com><mailto:Daniel.Levitan@HydroOne.com>;
Natalie.Poole-Moffatt@HydroOne.com<mailto:Natalie.Poole-Moffatt@HydroOne.com><mailto:Natalie.Poole-Moffatt@HydroOne.com>; Johnson, Paul (ENERGY/MEDEI/MRI); Ranalli, David (ENERGY); Schachtschneider, Michelle (ENERGY); Petsche, Nadine (TBS); An, Tai (ENERGY); Gounden, Pratima (ENERGY); Desouza, Charlotte (ENERGY); Thompson, Erin (ENERGY)
Subject: Re: Affordability Fund - Declaration of Trust and Transfer Pricing Agreement

Hi Emma:

We are set to meet via telecon tomorrow at 3pm and our draft administrative agreement will be sent to you tomorrow morning.

I will send all outstanding info tomorrow in advance of our call.

Have a great night!

Best,
Alex Phillips
Manager, External Relations
Hydro One Networks Inc.
(O) 416-345-1375
(C) 647-405-8601

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On Mar 16, 2017, at 4:20 PM, Schwab-Pflug, Emma (ENERGY)
<Emma.Schwab-Pflug@ontario.ca<mailto:Emma.Schwab-Pflug@ontario.ca><mailto:Emma.Schwab-Pflug@ontario.ca>> wrote:
Thanks Alex and understood re: sharing finals with Computershare.

Also, our counsel has drafted the following to assist in Hydro One and KPMG's review of the documents:

Our mark-up addresses the tensions that exist among (1) the requirements to recognize the Trust as non-controlled for government year-end accounting purposes, (2) the practical need for the LDCs to lead

the identification and allocations to eligible participants processes (3) the desire for the ultimate customers in need to be the reference group of beneficiaries (4) the legal requirements to create a valid trust under Ontario law and (5) the practical limitations associated with addressing and contracting relevant LDC participation prior to March 31, while achieving sufficient contractual certainty for the Province and legal purposes.

To balance these tensions, we have suggested the following (subject to accounting input and practical input from Hydro One):

(1) the Declaration contemplates the following 3 time periods:

a. Initially, Computershare will be the trustee and will simply sit on the funds. Hydro One will provide very basic administrative services during this initial period. Computershare, acting on the recommendations of an "Advisory Committee" will appoint its replacement – a "Board of Trustees" (this is contemplated in a Trustee Replacement Annex to the Declaration).

b. Once the Board of Trustees is in place, administrative services agreements will be entered into with LDCs. To give the LDCs a wide scope to identify funding recipients within their service areas, a broad and specific delegation is described in the "Permitted Delegations Annex", which frames out what the basic and key terms of the ultimate Administrative Services Agreements with the LDCs will entail. That level of detail is required to enable the broad Trustee delegation, without upending the validity of the Trust for legal purposes. The Board of Trustees will maintain supervisory responsibility over the LDCs actions, but will be permitted to rely on the recommendations of the LDCs. Under these arrangements, the find will be divided by region and then LDCs will have wide discretion to recommend distributions, in each case subject to the principles set out in a "Principles Annex".

c. Once the program is to be wound up (either because of a default by the Trust, the Trustee's determine that all funding has been appropriately provided for or a final end-date occurs), any remaining funds will be paid to charitable beneficiaries identified from among a pre-determined slate. The amount available to the charities in the circumstance where a default of the Trust has occurred will be net of the amount the Province will be entitled to be paid (i.e., the remaining Assets) from the Trust under the Transfer Payment Agreement.

(2) From March 31, all of the discretion to deal with the Trust Assets will reside with Computershare or the Board, or by delegation to the LDCs where a suitable contract is signed by the Trust with the LDCs. The Province will not maintain control of the Assets, and all steps contemplated in (1) will not be affected by the Province other than (in substance):

a. To the extent the Province is represented on the Advisory Committee or the Board;

b. The Province has rights to require payment of remaining Assets under the Transfer Agreement on an "event of default"; or

c. The Province has certain reporting, audit and compliance rights, essentially to affect the intended purpose of the Trust in its implementation (and with remedies under the Transfer Payment Agreement, including a right to be paid the undistributed Assets or to pursue contract remedies (including specific performance).

Otherwise, the terms of the Trust will be determined at the outset and determined and affected by non-governmental entities. We understand that these continuing ties to the Trust would not be contrary to the accounting principles applicable for government year-end treatment as a non-controlled trust entity.

Based on this drafting approach, Blakes believes on a preliminary basis that the validity issues associated with the Trust can be adequately addressed.

From:
Alexandra.Phillips@HydroOne.com<mailto:Alexandra.Phillips@HydroOne.com><mailto:Alexandra.Phillips@HydroOne.com> [mailto:Alexandra.Phillips@HydroOne.com]
Sent: March-16-17 3:50 PM
To:
Alexandra.Phillips@HydroOne.com<mailto:Alexandra.Phillips@HydroOne.com><mailto:Alexandra.Phillips@HydroOne.com>
Cc: Schwab-Pflug, Emma (ENERGY); Sermat-Harding, Kaili (ENERGY); Syed, Usman (ENERGY); Qureshi, Musab (ENERGY);
Spencer.Gill@HydroOne.com<mailto:Spencer.Gill@HydroOne.com><mailto:Spencer.Gill@HydroOne.com>;
Daniel.Levitan@HydroOne.com<mailto:Daniel.Levitan@HydroOne.com><mailto:Daniel.Levitan@HydroOne.com>;
Natalie.Poole-Moffatt@HydroOne.com<mailto:Natalie.Poole-Moffatt@HydroOne.com><mailto:Natalie.Poole-Moffatt@HydroOne.com>; Johnson, Paul (ENERGY/MEDEI/MRI); Ranalli, David (ENERGY); Schachtschneider, Michelle (ENERGY); Petsche, Nadine (TBS); An, Tai (ENERGY); Gounden, Pratima (ENERGY); Desouza, Charlotte (ENERGY); Thompson, Erin (ENERGY)
Subject: Re: Affordability Fund - Declaration of Trust and Transfer Pricing Agreement

(Press send too soon)

I am checking on exact timelines and get back to you later on today.

On sharing drafts with CS, it is our preference to send them final docs instead of drafts.

Speak soon,
Alex Phillips
Manager, External Relations
Hydro One Networks Inc.
(O) 416-345-1375
(C) 647-405-8601

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On Mar 16, 2017, at 3:48 PM, PHILLIPS Alexandra
<Alexandra.Phillips@HydroOne.com<mailto:Alexandra.Phillips@HydroOne.com><mailto:Alexandra.Phillips@HydroOne.com>> wrote:
Thanks Emma. I am checking on exact timelines and will Alex Phillips Manager, External Relations Hydro One Networks Inc.
(O) 416-345-1375
(C) 647-405-8601

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On Mar 16, 2017, at 3:23 PM, Schwab-Pflug, Emma (ENERGY)
<Emma.Schwab-Pflug@ontario.ca<mailto:Emma.Schwab-Pflug@ontario.ca><mailto:Emma.Schwab-Pflu

g@ontario.ca>> wrote:
Hi Alex:

Please find attached tracked and clean versions of the TPA and Declaration of Trust. Tracked versions are tracked from the versions you had shared on March 13. You will note that there are comments in the TPA and Declaration indicating areas that we are working with Blakes to finalize.

We would recommend, as discussed, that Hydro One share these current versions with KPMG, as well as Computershare, so that we can work to resolve identified issues.

Can Hydro One advise if it will not be possible to share comments back with us for 3 PM tomorrow?

We would like to set up a call tomorrow afternoon to discuss comments. Can you advise of a preferred time for a call?

A few other follow-ups:

· We have confirmed internally that Computershare can establish an interim Trust account using their existing banking relationship with BNF. Can you confirm once this (and the TPA/Decl if you agree to share) is communicated with Computershare?

· Can you please share the Computershare Trustee(s) contact details? We understand that the Trustees will have to be recognized in the Declaration of Trust.

· Can you share the administrative service agreement for the Ministry's review today? Our interest in seeing this is to have comfort that it will be ready for signing by Computershare on Monday or Tuesday of next week.

Thanks again to you and your team for working with us on these tight timelines.

- Emma

From:
Alexandra.Phillips@HydroOne.com<mailto:Alexandra.Phillips@HydroOne.com><mailto:Alexandra.Phillips@HydroOne.com> [mailto:Alexandra.Phillips@HydroOne.com]
Sent: March-13-17 2:56 PM
To: Syed, Usman (ENERGY); Schwab-Pflug, Emma (ENERGY); Qureshi, Musab (ENERGY)
Cc:
Spencer.Gill@HydroOne.com<mailto:Spencer.Gill@HydroOne.com><mailto:Spencer.Gill@HydroOne.com>;
Daniel.Levitan@HydroOne.com<mailto:Daniel.Levitan@HydroOne.com><mailto:Daniel.Levitan@HydroOne.com>;
Natalie.Poole-Moffatt@HydroOne.com<mailto:Natalie.Poole-Moffatt@HydroOne.com><mailto:Natalie.Poole-Moffatt@HydroOne.com>
Subject: Fwd: Affordability Fund - Declaration of Trust and Transfer Pricing Agreement

All:

Please see our revisions to the TPA (with a track changes PDF) and the Declaration of Trust.

Looking forward to hearing back from you by EOD tomorrow but don't hesitate to reach out if you have any questions or concerns.

Best,
Alex Phillips
Manager, External Relations
Hydro One Networks Inc.
(O) 416-345-1375
(C) 647-405-8601

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[cid:image7c2c12.GIF@5af7c711.449be4a3]

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Trusts Guidance.pdf

ACCOUNTING CONSIDERATIONS FOR GOVERNMENT-FUNDED TRUSTS

Purpose:

The purpose of this guidance is to explore accounting-related considerations related to government-funded trusts which are established by the government to fund a specific purpose or activity. This guidance deals specifically with the difference between controlled and non-controlled trusts, the introduction of accountability provisions which can now be reflected in trust agreements, and key timing considerations for trusts contemplated towards year-end. It is important that these factors be taken into account when establishing a trust, in order to achieve the intended fiscal impact and appropriate accountability over the use of public funds.

Introduction:

Trusts are usually established by way of trust declaration or trust agreement, and are one of several means by which the government can direct funding to support key policy initiatives. Simply stated, trustees hold title to property for the benefit of, and stand in a fiduciary relationship to the beneficiaries. Trustees are accountable to third parties (beneficiaries) for the use and disposition of trust assets and for the funds derived from those trust activities. The trust itself is not a separate legal entity. The trustees carry out the activities of the trust in the name of the trustees.

Generally, direct year-end transfers are the preferred alternative over trusts where the province wants to retain ultimate decision-making authority regarding amounts to be transferred to recipients. Direct transfers are more appropriate where the identity of eligible transfer payment recipients is known and the amounts to be transferred to each recipient can be or has been determined.

Year-end transfers to a trust might be considered where the province desires to delegate to third parties ultimate decision-making authority regarding allocation of amounts amongst eligible beneficiaries.

A trust must be valid for legal purposes in order to be recognized for accounting purposes. Key requirements for a trust to be valid include: an intention to create a trust (‘certainty of intention’), certainty of subject-matter of the trust (“certainty of subject matter”) and the objects of the trust must be certain (‘certainty of objects”). There are generally two different types of trust, a trust in which the objects are the “beneficiaries” and trust in which the objects are a “purpose” (e.g. for charitable purposes). Where a trust is under serious consideration, it is imperative that ministries seek legal advice to ensure that the contemplated trust will be valid.

Trustees are obligated to follow the terms of the trust declaration or trust agreement which will usually detail the powers and duties of the trustees including the number of trustees and how decisions will be made by the trustees.

Controlled versus Non-Controlled Government-Funded Trusts

From an accounting perspective, it is important to distinguish whether the design and governance of a particular trust results in the trust being controlled by the Province for accounting purposes. Control stems from the nature of the relationship between the government and the trust. Financial and operating policies are principles that determine how an organization conducts its activities. The ability to govern these policies is an important element of government control.

The means by which a trust is established, the government's representation among the trustees, the government's involvement in the trust's governance processes and ability to impact trustee discretion in decision-making are but some of the factors to be considered in assessing whether a trust is 'controlled' or 'not controlled' by the government.

In establishing a trust, it is important to achieve the intended relationship between the province and the trust in order to achieve the intended fiscal impact.

Non-Controlled Trusts:

Where trusts are not controlled by the Province, they are excluded from the government reporting entity. For non-controlled trusts, the following accounting would apply to trust funding:

- Where funds provided to the "trust" are unconditional, the Province would record a transfer payment expense for any transfers approved in the current period (and flowed by finalization of public accounts).

- Where funds provided to the "trust" are conditional (i.e. upon the trust completing some specific task or result), the Province would initially record funding to the trust as a prepaid expense until the conditions are met at which time the Province would record a transfer payment expense, with the corresponding credit to prepaid expense. This may occur over a number of fiscal years.

In determining whether a trust is controlled, there are a variety of ways that a government might be perceived to be governing the financial and operating policies of a trust. These include:

- Eliminating or significantly limiting the ability of the trustees to make future decisions
- Directing the financial and operating policies of the trust
- Overruling, modifying or vetoing the financial and operating policies established by the trust.

Specific factors that should be considered in establishing a non-controlled trust include:

- Government representation in the trustees (should be in a minority position), and non-government trustees should be nominated by non-government sources
- Government influence over day-to-day trust governance and trustee discretion to make decisions (e.g. selection of eligibility criteria, selection of recipients).
- degree of influence over how funds are disbursed (i.e. the Declaration of Trust can provide general guidelines but not be overly prescriptive)
- the government's power to unilaterally appoint or remove the majority of trustees

- the government's on-going access to the trust's assets, or right to direct decisions regarding the flow of those assets to specific beneficiaries
- the government's unilateral power to dissolve the trust, except under specified circumstances as stipulated by the trust agreement (i.e. corrective action)
- the government's ability to establish or amend the policies used by the trust to manage accounting, personnel, deployment of resources, etc.

In some cases, it may be advantageous for ministries to provide administrative support to trusts. In these cases it is important that the extent of such support is not so pervasive as to influence or direct the day-to-day financial or operating policies of the trust, otherwise the trust will be deemed controlled and will be subject to consolidation in the government reporting entity.

Controlled Trusts:

If the Province controls the trust (for example, through its power to appoint a majority of the trustees on the board of trustees), the Province would be deemed to have control of the trust, resulting in the trust being accounted for in the same manner as other organizations controlled by the province (i.e. on a consolidated basis). As a result, the Province's contribution to the trust would not be expensed when it is transferred, but rather over time as the funds are disbursed to trust beneficiaries.

Accountability Related Considerations:

The Auditor General has confirmed that the new accountability provisions developed for one-time transfers can also be applied to trusts without impacting the expense treatment of any transfers to non-controlled trusts.

These new accountability provisions will enable the government and the Legislature to:

- obtain assurance that a trust is spending public funds prudently and for the purposes intended and to take corrective action if it is not;
- ensure ministerial accountability to the Legislative Assembly for the trust's activities; and
- ensure that the province is able to take corrective action where warranted and as stipulated under terms of the trust agreement.

It should also be noted that the Auditor General's Act now allows the Province's Legislative Auditor to conduct special audits of any person or organization receiving transfers from the government, including trusts.

To enhance accountability controls over government transfers to non-controlled trusts, Ministries can consider incorporating some or all of the following accountability provisions as part of their trust agreement/declaration without impacting the accounting treatment of the trust.

The inclusion of any of these provisions should not result in a trust being assessed as 'controlled'. Note that the key determinant in identifying appropriate provisions for any

individual trust is a ministry's assessment of the **risk** associated with a particular trust, as per the Transfer Payment Directive.

1. **Description of intended use of trust funds**;
    - specific purpose(s) for which the funds are to be used;
    - description of intended recipients and related eligibility criteria*; and,
    - the nature of eligible expenditures relevant to the transfers.

    *Note: avoid *overly prescriptive* eligibility criteria which would effectively eliminate or significantly limit the trustees' discretion to make funding decisions.

2. **Requirement for information**
    - Information to be provided by the trust at a future date (e.g. requirement for trustees to advise the government of trustee-developed performance criteria, and provide annual assessments against those criteria)

3. **Report-back requirement for Public Accountability**
    - information to be provided by the trust at a future date with respect to the stewardship and payment of transfer funds (e.g. audited financial statements, audited list of recipients and amounts funded).

4. **Right to independent verification/audit**
    - The Province reserves the right to audit any transfer payment recipients. The trust agreement should make reference to this fact.

5. **Right to take corrective action**
    - Where stipulated under the trust agreement, the Province reserves the right to re-direct unused funds where results of a trust assessment (where required by the trust agreement) indicate original purpose of the trust is not being achieved, or if there remain unused funds at the end of the trust term.
    - Province may also reserve the right to extend the term of the trust agreement, where funds remain at the end of the trust period.

To qualify for in-year expense treatment, the non-controlled trusts must satisfy the following:

- the decision to establish the trust must have been approved by Treasury Board/Management Board of Cabinet and ratified by Cabinet by March 31st;
- the ministry providing the transfer must have approved appropriations and spending authority by March 31st;
- Trustees must have been identified and signed the trust declaration or agreement to establish a valid trust by March 31st ;
- the trust must be set up and ready to receive funds, and a nominal amount transferred to the trust by March 31s;t ; and,
- the government should have communicated publicly (e.g. in the Budget document) the pending or final establishment of the trust.

In addition, all remaining funds beyond those initially transferred at March 31st should be transferred to the trust by June 30th.

Appendix

Trusts
Questions and Answers

Question: *Where a trust is announced in the Budget document, must the trust be established by March 31st, or could such a trust be established shortly thereafter without impacting the expensing of transfers to the trust in 2007-08?*

Answer: *A trust would have to be established prior to the end of a fiscal period in order to satisfy the recognition criteria for government transfers. If the intended recipient for a government transfer does not exist at March 31st, the province cannot record a payable owing to it under existing accounting standards.*

Question*: Does the transfer of funds to a non-controlled trust need to occur by March 31st or before the date of Public Accounts finalization?*

Answer: *Consistent with the new requirements for one-time transfers, as long as the trust is established by March 31st, the transfer is authorized and a reasonable estimate of the amount can be made, cash payments can be made after year-end.*

Question: *Can beneficiaries of a non-controlled trust include consolidated entities provided that the ultimate selection of recipients is at the discretion of the Trustees?*

Answer: *Any amounts provided to a trust which are in turn be provided to an organization inside the government reporting entity should not be expensed at the time of the transfer to the trust. Any amount that is flowed to a trust with the intention of subsequently flowing the funds to a consolidated entity should not be recorded as an expense to the government.*

Question: *Can a Ministry provide administrative support to a trust without compromising the non-controlled status of the trust?*

Answer: *The government can provide administrative support as long as the extent of government administrative support is <u>not so pervasive</u> so that the government is in substance establishing and managing the trust's policies in the areas of accounting, personnel, compensation, collective bargaining or deployment of resources. Where such administrative support is assessed*

as pervasive, it could impair the trust's non-controlled trust and the trust will be consolidated onto the province's financial statements.

Can the following clauses appear in a trust agreement for a non-controlled trust to ensure adequate accountability over public funds without impacting the expense treatment of such trusts?

***Question**: Specific description of purpose of the trust (possibly including nominal allocation among various objectives)*
Answer: Yes.

***Question:** Can the trust agreement include a specific description of the intended groups of beneficiaries and detailed eligibility criteria.*

***Answer:** Specificity should be applied cautiously, so as not to limit the discretion of the trustees in their subsequent grant making processes. For the trust to be considered 'not controlled' it should not be seen as 'establishing the trust's fundamental purpose and eliminating or significantly limiting the ability of the trust to make future decisions by predetermining the financial and operating policies of the trust.*

***Question:** Can trustees stipulate that funding is to be provided to beneficiaries on a cost-sharing basis?*
***Answer:** Yes.*

***Question:** Can the trust agreement include a requirement for a trust to report back to the province on trustee-established performance criteria and results, audit of financial statements, audited recipients and amounts, confirmation that trustees communicated to beneficiaries the intended purpose of the funding, etc.*
***Answer:** Yes.*

***Question**: Requirement for Trust to publicly post communications on existence, availability of funds, eligibility criteria, recipients and amounts granted to each recipient.*
***Answer:** Yes*

***Question:** Inclusion of a 'suggested' drawdown schedule over a period of years, with discretion left to Trustees as to actual results.*
***Answer:** The inclusion of a drawdown schedule is not suggested for one-time, up-front transfers.*

***Question:** Trust agreement can suggest accountability provisions which might be attached by Trustees to beneficiary payments (e.g. specific purpose of funding, requirement for report-back, right to audit, corrective actions).*
***Answer:** Yes*

***Question:** Trust agreement to reserve the province's right to re-direct any unspent funds to specified parties (e.g. non-consolidated entities or another non-controlled trust) at the end of the trust term, or alternatively to extend the term of the trust where unspent funds remain.*

Answer: *Yes*

Question*: Can the trust agreement include the requirement for evaluations of the trust at certain times (e.g. years 3, 7, 10 of the trust agreement), with the right for the government to decide either to terminate the trust (corrective action) based on the results of the assessment, or extend the trust beyond the initial term as per the agreement.*
Answer: *Yes.*

Question: *Trust agreement can require Trustees to request as part of the funding process that beneficiaries acknowledge receipt of government funding in their public communications on specific projects.*
Answer: *Yes.*

FW_ Affordability Fund - Declaration of Trust and Transfer Pricing Agreement .rtf

From: Petsche, Nadine (TBS) []
To: Picard, Michel (mpicard@kpmg.ca) [mpicard@kpmg.ca]
Subject: FW: Affordability Fund - Declaration of Trust and Transfer Pricing Agreement
Date: Friday, March 17, 2017 14:22:25
Attachment 1: Affordability Docs.LA.PDF
Attachment 2: Osler Comments on Dec of Trust - Mar 17, 2017.pdf
Attachment 3: Compare - TPA - March 17.pdf

Hi Michel.

I will start to review these now. n

From: Alexandra.Phillips@HydroOne.com [mailto:Alexandra.Phillips@HydroOne.com]
Sent: March-17-17 1:41 PM
To: Schwab-Pflug, Emma (ENERGY)
Cc: Sermat-Harding, Kaili (ENERGY); Syed, Usman (ENERGY); Qureshi, Musab (ENERGY); Daniel.Levitan@HydroOne.com; Natalie.Poole-Moffatt@HydroOne.com; Johnson, Paul (ENERGY/MEDEI/MRI); Ranalli, David (ENERGY); Schachtschneider, Michelle (ENERGY); Petsche, Nadine (TBS); An, Tai (ENERGY); Gounden, Pratima (ENERGY); Desouza, Charlotte (ENERGY); Thompson, Erin (ENERGY)
Subject: RE: Affordability Fund - Declaration of Trust and Transfer Pricing Agreement

Hi Emma et al:

See comments from Osler and KPMG attached for your review in advance of our 3PM call.

Best,

Alex Phillips

Manager, External Relations

Hydro One Networks Inc.

483 Bay St, Toronto, ON

(O) 416-345-1375

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From: PHILLIPS Alexandra
Sent: Friday, March 17, 2017 11:29 AM
To: 'Schwab-Pflug, Emma (ENERGY)'
Cc: Sermat-Harding, Kaili (ENERGY); Syed, Usman (ENERGY); Qureshi, Musab (ENERGY); GILL Spencer; LEVITAN Daniel; POOLE-MOFFATT Natalie; Johnson, Paul (ENERGY/MEDEI/MRI); Ranalli, David (ENERGY); Schachtschneider, Michelle (ENERGY); Petsche, Nadine (TBS); An, Tai (ENERGY); Gounden, Pratima (ENERGY); Desouza, Charlotte (ENERGY); Thompson, Erin (ENERGY)
Subject: RE: Affordability Fund - Declaration of Trust and Transfer Pricing Agreement

Hi Emma:

Possible to move up the call to earlier today?

Secondly, we drafted a timeline for phase 2 when the funds have flowed to CS and we need to consult with the LDC community and revise the Declaration of Trust. See attached and let me know if you have any concerns.

Thirdly, you've identified a Board of Trustees to select the trustees following CS. Who are you suggesting is on the Board?

Best,

Alex Phillips

Manager, External Relations

Hydro One Networks Inc.

483 Bay St, Toronto, ON

(O) 416-345-1375

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From: Schwab-Pflug, Emma (ENERGY) [mailto:Emma.Schwab-Pflug@ontario.ca]
Sent: Thursday, March 16, 2017 6:58 PM
To: PHILLIPS Alexandra
Cc: Sermat-Harding, Kaili (ENERGY); Syed, Usman (ENERGY); Qureshi, Musab (ENERGY); GILL Spencer; LEVITAN Daniel; POOLE-MOFFATT Natalie; Johnson, Paul (ENERGY/MEDEI/MRI); Ranalli, David (ENERGY); Schachtschneider, Michelle (ENERGY); Petsche, Nadine (TBS); An, Tai (ENERGY); Gounden, Pratima (ENERGY); Desouza, Charlotte (ENERGY); Thompson, Erin (ENERGY)
Subject: RE: Affordability Fund - Declaration of Trust and Transfer Pricing Agreement

Alex, thank you, that's great news that all is in order for tomorrow. We look forward to speaking at 3 PM. Charlotte (cc'd) will set up a conference line tomorrow morning.

Have a good night also!

- Emma

From: Alexandra.Phillips@HydroOne.com [mailto:Alexandra.Phillips@HydroOne.com]
Sent: March-16-17 6:55 PM
To: Schwab-Pflug, Emma (ENERGY)
Cc: Sermat-Harding, Kaili (ENERGY); Syed, Usman (ENERGY); Qureshi, Musab (ENERGY); Spencer.Gill@HydroOne.com; Daniel.Levitan@HydroOne.com; Natalie.Poole-Moffatt@HydroOne.com; Johnson, Paul (ENERGY/MEDEI/MRI); Ranalli, David (ENERGY); Schachtschneider, Michelle (ENERGY); Petsche, Nadine (TBS); An, Tai (ENERGY); Gounden, Pratima (ENERGY); Desouza, Charlotte (ENERGY); Thompson, Erin (ENERGY)

Subject: Re: Affordability Fund - Declaration of Trust and Transfer Pricing Agreement

Hi Emma:

We are set to meet via telecon tomorrow at 3pm and our draft administrative agreement will be sent to you tomorrow morning.

I will send all outstanding info tomorrow in advance of our call.

Have a great night!

Best,

Alex Phillips

Manager, External Relations

Hydro One Networks Inc.

(O) 416-345-1375

(C) 647-405-8601

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On Mar 16, 2017, at 4:20 PM, Schwab-Pflug, Emma (ENERGY) <Emma.Schwab-Pflug@ontario.ca> wrote:

Thanks Alex and understood re: sharing finals with Computershare.

Also, our counsel has drafted the following to assist in Hydro One and KPMG's review of the documents:

Our mark-up addresses the tensions that exist among (1) the requirements to recognize the Trust as non-controlled for government year-end accounting purposes, (2) the practical need for the LDCs to lead the identification and allocations to eligible participants processes (3) the desire for the ultimate customers in need to be the reference group of beneficiaries (4) the legal requirements to create a valid trust under Ontario law and (5) the practical limitations associated with addressing and contracting relevant LDC participation prior to March 31, while achieving sufficient contractual certainty for the Province and legal purposes.

To balance these tensions, we have suggested the following (subject to accounting input and practical input from Hydro One):

(1) the Declaration contemplates the following 3 time periods:

a. Initially, Computershare will be the trustee and will simply sit on the funds. Hydro One will provide very basic administrative services during this initial period. Computershare, acting on the recommendations of an "Advisory Committee" will appoint its replacement – a "Board of Trustees" (this is contemplated in a Trustee Replacement Annex to the Declaration).

b. Once the Board of Trustees is in place, administrative services agreements will be entered into with LDCs. To give the LDCs a wide scope to identify funding recipients within their service areas, a broad and specific delegation is described in the "Permitted Delegations Annex", which frames out what the basic and key terms of the ultimate Administrative Services Agreements with the LDCs will entail. That level of detail is required to enable the broad Trustee delegation, without upending the validity of the Trust for legal purposes. The Board of Trustees will maintain supervisory responsibility over the LDCs actions, but will be permitted to rely on the recommendations of the LDCs. Under these arrangements, the find will be divided by region and then LDCs will have wide discretion to recommend distributions, in each case subject to the principles set out in a "Principles Annex".

c. Once the program is to be wound up (either because of a default by the Trust, the Trustee's determine that all funding has been appropriately provided for or a final end-date occurs), any remaining funds will be paid to charitable beneficiaries identified from among a pre-determined slate. The amount available to the charities

in the circumstance where a default of the Trust has occurred will be net of the amount the Province will be entitled to be paid (i.e., the remaining Assets) from the Trust under the Transfer Payment Agreement.

(2) From March 31, all of the discretion to deal with the Trust Assets will reside with Computershare or the Board, or by delegation to the LDCs where a suitable contract is signed by the Trust with the LDCs. The Province will not maintain control of the Assets, and all steps contemplated in (1) will not be affected by the Province other than (in substance):

a. To the extent the Province is represented on the Advisory Committee or the Board;

b. The Province has rights to require payment of remaining Assets under the Transfer Agreement on an "event of default"; or

c. The Province has certain reporting, audit and compliance rights, essentially to affect the intended purpose of the Trust in its implementation (and with remedies under the Transfer Payment Agreement, including a right to be paid the undistributed Assets or to pursue contract remedies (including specific performance).

Otherwise, the terms of the Trust will be determined at the outset and determined and affected by non-governmental entities. We understand that these continuing ties to the Trust would not be contrary to the accounting principles applicable for government year-end treatment as a non-controlled trust entity.

Based on this drafting approach, Blakes believes on a preliminary basis that the validity issues associated with the Trust can be adequately addressed.

From: Alexandra.Phillips@HydroOne.com
[mailto:Alexandra.Phillips@HydroOne.com]
Sent: March-16-17 3:50 PM
To: Alexandra.Phillips@HydroOne.com
Cc: Schwab-Pflug, Emma (ENERGY); Sermat-Harding, Kaili (ENERGY); Syed, Usman (ENERGY); Qureshi, Musab (ENERGY); Spencer.Gill@HydroOne.com; Daniel.Levitan@HydroOne.com; Natalie.Poole-Moffatt@HydroOne.com; Johnson, Paul (ENERGY/MEDEI/MRI); Ranalli, David (ENERGY); Schachtschneider, Michelle (ENERGY); Petsche, Nadine (TBS); An, Tai (ENERGY); Gounden, Pratima (ENERGY); Desouza, Charlotte (ENERGY); Thompson, Erin (ENERGY)
Subject: Re: Affordability Fund - Declaration of Trust and Transfer Pricing Agreement

(Press send too soon)

I am checking on exact timelines and get back to you later on today.

On sharing drafts with CS, it is our preference to send them final docs instead of drafts.

Speak soon,

Alex Phillips

Manager, External Relations

Hydro One Networks Inc.

(O) 416-345-1375

(C) 647-405-8601

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On Mar 16, 2017, at 3:48 PM, PHILLIPS Alexandra <Alexandra.Phillips@HydroOne.com> wrote:

> Thanks Emma. I am checking on exact timelines and will
>
> **Alex Phillips**

Manager, External Relations

Hydro One Networks Inc.

(O) 416-345-1375

(C) 647-405-8601

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On Mar 16, 2017, at 3:23 PM, Schwab-Pflug, Emma (ENERGY) <Emma.Schwab-Pflug@ontario.ca> wrote:

> Hi Alex:
>
> Please find attached tracked and clean versions of the TPA and Declaration of Trust. Tracked versions are tracked from the versions you had shared on March 13. You will note that there are comments in the TPA and Declaration indicating areas that we are working with Blakes to finalize.
>
> We would recommend, as discussed, that Hydro One share these current versions with KPMG, as well as Computershare, so that we can work to resolve identified issues.
>
> Can Hydro One advise if it will not be possible to share comments back with us for 3 PM tomorrow?

We would like to set up a call tomorrow afternoon to discuss comments. Can you advise of a preferred time for a call?

A few other follow-ups:

· We have confirmed internally that Computershare can establish an interim Trust account using their existing banking relationship with BNF. Can you confirm once this (and the TPA/Decl if you agree to share) is communicated with Computershare?

· Can you please share the Computershare Trustee(s) contact details? We understand that the Trustees will have to be recognized in the Declaration of Trust.

· Can you share the administrative service agreement for the Ministry's review today? Our interest in seeing this is to have comfort that it will be ready for signing by Computershare on Monday or Tuesday of next week.

Thanks again to you and your team for working with us on these tight timelines.

- Emma

From: Alexandra.Phillips@HydroOne.com [mailto:Alexandra.Phillips@HydroOne.com]
Sent: March-13-17 2:56 PM
To: Syed, Usman (ENERGY); Schwab-Pflug, Emma (ENERGY); Qureshi, Musab (ENERGY)
Cc: Spencer.Gill@HydroOne.com; Daniel.Levitan@HydroOne.com; Natalie.Poole-Moffatt@HydroOne.com
Subject: Fwd: Affordability Fund - Declaration of Trust and Transfer Pricing Agreement

All:

Please see our revisions to the TPA (with a track changes PDF) and the Declaration of Trust.

Looking forward to hearing back from you by EOD tomorrow but don't hesitate to reach out if you have any questions or concerns.

Best,

Alex Phillips

Manager, External Relations

Hydro One Networks Inc.

(O) 416-345-1375

(C) 647-405-8601

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<2017-03-16 TRACK Affordability_Fund_Trust_–_Declaration_of_Trust v2.docx>

<2017-03-16-CLEAN TPA_Draft_Afund v2.docx>

<2017-03-16-TRACK TPA_Draft_Afund v2.docx>

<2017-03-16 CLEAN Affordability_Fund_Trust_–_Declaration_of_Trust v2.docx>

Affordability Docs.LA.PDF

– Declaration of Trust –

17/3/17 (call)

~~DISCUSSION DRAFT~~MOE/Blakes Comments: March ~~13~~16, 2017

Formatted: English (Canada)

Style Definition: OHHMainHeading,OMH: Font: Times New Roman

Style Definition: OHHReference,Ref: Font: Times New Roman

Style Definition: OHHSubHeading,OSH: Font: Times New Roman

Style Definition: Schedule,Sch: Font: Times New Roman

Style Definition: Comment Text

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DECLARATION OF TRUST

Made as of March ●, 2017

by

COMPUTERSHARE TRUST COMPANY OF CANADA

establishing

AFFORDABILITY FUND TRUST

(A) Critical !

Province's auditors must agree to doc's. (It is their consolidated F/S they are signing off on)

DECLARATION OF TRUST

This Declaration of Trust is made as of March ●~~,~~●, 2017, by Computershare Trust Company of Canada, a trust company established under the laws of Canada and licensed ~~to carry~~ on business as a trust company in each of the provinces and territories of Canada (the "**Trustee**").

WHEREAS the Trustee wishes to establish a trust to acquire, hold, manage, apply and dispose of certain property ~~and~~ for the benefit of certain ~~purposes~~Beneficiaries as herein described.

NOW THEREFORE the Trustee hereby declares that it holds in trust as trustee the sum of ONE HUNDRED DOLLARS ($100) contributed by it on this date and all property of every type and description which it may hereafter acquire or hold in its capacity as trustee of the Trust and all income therefrom and proceeds thereof, to hold, manage, apply and dispose of the same on and subject to the provisions contained in this Declaration.

SECTION 1
INTERPRETATION

1.1 Definitions

In this Declaration:

(a) "***Administrative Services Agent***" means ~~the~~each agent, ~~if~~which may include any Electricity Distributor, appointed from time to time under an Administrative Services Agreement, and its successors and permitted assigns solely in such capacity.

(b) "***Administrative Services Agreement***" means ~~any~~each agreement ~~that may be~~ entered into from time to time by the Trust ~~with an~~and one or more Administrative Services ~~Agent~~Agents or other Persons, in furtherance of the purpose of the Trust described in section 2.1 of this Declaration, under which the Administrative Services Agent ~~agrees~~will agree to provide specified administrative and other services to and on behalf of the Trustee, (including, following the Original Trustee Replacement Date, the Permitted Delegations Annex), as such agreement may be amended, supplemented, restated, renewed or replaced from time to time.

(c) "***Assets***" means, collectively, the following:

(i) the $100 Canadian referred to above;

(ii) all other property which is now or which at any time in the future may be issued, assigned, transferred, provided, donated, gifted and contributed to the Trustee (including pursuant to the Transfer Payment Agreement) to be held in trust pursuant to this Declaration (and which the Trustee is willing to accept and hold);

(iii) all property which may at any time be substituted therefor;

(iv) all capital depreciations to or acquisitions by the Trust;

(v) all income of the Trust; and

(vi) all proceeds of disposition of any of (i) through (v) above,

but excludes anything paid out or distributed (whether out of income or capital) in the normal course of administration or pursuant to the provisions of this Declaration.

(d) "***Beneficiary***" means each ~~individual that satisfies each of the following criteria:~~Primary Beneficiary and each Residual Beneficiary, where applicable.

~~(i) the individual owns, rents or leases a residence located in Ontario and is the primary or secondary electricity utility account holder named on an Electricity Invoice issued in respect of that residence;~~

~~(ii) the individual is not a HAP Eligible Person; and~~

~~(iii) [the individual has at any time in the prior 12 month period been more than 90 days in arrears in the payment of any amount owing by him or her under an Electricity Invoice.][NTD: this section is an example of a bright line test to identify beneficiaries with some precision. Alternates to be discussed.]~~

(e) "***Board of Trustees***" means the group of trustees appointed and acting in such capacity as contemplated by Section •, and as of the Original Trustee Replacement Date means the individual trustees appointed by the Original Trustee pursuant to Section 5.7 on the basis described in the Trustee Replacement Annex.

~~(h)~~(f) "***Declaration***" means this Declaration of Trust as amended, restated, supplemented or otherwise modified from time to time, including each of the Annexes hereto.

~~(i) "*Eligible Measures*" means the measures described in Schedule A. [NTD: consider using the HAP Program list, plus heat pumps]~~

(g) "***Electricity Distributor***" means, in respect of a designated service area or region in Ontario, the distributer of electricity to residences located in such area or region.

~~(j)~~(h) "***Electricity Invoice***" means an invoice ~~for~~issued by an Electricity Distributor in respect of electricity charges and related services and amounts ~~issued by a Local Distribution Company~~incurred in respect of a residence located in ~~Ontario.~~the Electricity Distributor's designated service area or region of Ontario.

~~(k) "*Final Distribution Date*" means •. [NTD: to discuss residual interest in Trust Assets]~~

(i) "***Eligible Investments***" means [NTD: Describe deposit instruments or accounts issued or established by one or more Schedule I Canadian chartered banks].

(j) "***Eligible Measures***" means electricity efficiency and/or conservation measures determined by the Trustee from time to time, on the basis contemplated in the Principles Annex and determined in the manner specified and having regard to the Permitted Delegations Annex.

~~Board of Trustees~~

~~A Designated Trustee~~

OK, Trustee defined Later as The Board.

So, critical who appoints Trustees and if they are deemed to be able to act independently of Province

~~be consulted~~

(k) "***Final Distribution Date***" means the earlier of (i) the date specified as such or determined pursuant to the Transfer Payment Agreement[1] and (ii) the later of (x) the date (if any) on which the Trustee determines that no further distributions are likely to be made to any Primary Beneficiary and (y) •, 20[23].

(l) "***HAP Eligible Person***" ~~[~~means an "Eligible Person" as defined in Section 3.1 of the document entitled "Conservation First Framework LDC Took Kit" published by Independent Electricity System Operator and designated as Final v3.0 – March 11, 2016~~],[NTD: to be discussed]~~, as amended or replaced by any applicable act of the Legislature or Ontario.

~~(m) "*Local Distribution Company*" means a distributer of electricity to residences located in Ontario.~~

(m) "***Minister of Energy***" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of the *Ministry of Energy Act, 2011* under the ~~Ontario *Electricity*~~*Executive Council Act, ~~1998, S.O. 1998,~~*

(n) "***Original Trustee***" means Computershare Trust Company of Canada and its successors and assigns, acting in its capacity as ~~amended~~trustee hereunder.

~~(n)~~(o) "***Original Trustee Replacement Date***" has the meaning specified in Section 5.7, being the date on which the Original Trustee is replaced as trustee under this Declaration as contemplated under Section 5.7.

~~(o)~~(p) "***Person***" includes any individual, sole proprietorship, corporation, partnership, joint venture, association, society, club, board, chamber, joint-stock company, trust, trustee, unincorporated or incorporated organization or entity or government or any entity, agency or political subdivision thereof.

(q) "***Primary Beneficiary***" means each individual that, as of a time of determination, satisfies each of the following criteria:

(i) the individual owns, rents or leases a residence located in Ontario and is the primary or secondary electricity utility account holder named on an Electricity Invoice issued in respect of that residence; and

(ii) the individual is not a HAP Eligible Person.

(r) "***Principles Annex***" means the Principles Annex set forth as an annex to this Declaration.

(s) "***Permitted Delegations Annex***" means the Permitted Delegations Annex set forth as an annex to this Declaration.

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[1] NTD: The TPA will provide that on an Event of Default the remaining Assets will be paid over to the Government, on the basis that the Government's transfer thereunder is subject to such a reservation in circumstances of non-compliance. The TPA should also specify that the Trust will thereafter be wound up, which will tie in to this definition by way of the date so specified in the TPA. Accounting considerations to be discussed.

✱ OK, defined later

OK.

No! This is a problem.

~~Board of Trustees~~?

(l) "***Residual Beneficiary***" means each charitable organization identified by the Trustee and specified as a residual beneficiary hereunder from time to time from among the charitable organizations specified on Schedule • or their respective successor charitable organizations.

~~(p)~~(m) "***Transfer Payment Agreement***" means the ~~Ontario~~-transfer payment agreement dated as of •, 2017 between the Trustee and Her Majesty the Queen in right of Ontario as represented by the Minister of Energy, as such agreement may be amended, restated, supplemented or otherwise modified from time to time.

← be careful – terms of TPA could have clauses "ruling from the grave"

~~(q)~~(v) "***Trust***" means Affordability Fund Trust, a trust established under and governed by the laws of the Province of Ontario pursuant to this Declaration.

~~(r) "Trustee" has the meaning given in the recitals in this Declaration.~~

(w) "***Trustee***" means (i) the Original Trustee and (ii) on and after the Original Trustee Replacement Date, the Board of Trustees acting together in accordance with and subject to Section 5.• and in accordance with the rules and procedures adopted by the Board of Trustees pursuant to Section 5.•.

OK ✓✓

(x) "***Trustee Replacement Annex***" means the Trustee Replacement Annex set forth as an annex to this Declaration.

1.2 Headings and Table of Contents

The insertion of headings and the provision of a table of contents are for convenience of reference only and shall not affect the construction or interpretation of this Declaration.

1.3 References

Unless otherwise specified, all references to Sections are to Sections of this Declaration. The words "hereto," "herein," "hereof," "hereunder" and similar expressions refer to this Declaration and not to any particular Section or other provision of this Declaration.

1.4 Number and Gender

Unless otherwise specified, words importing the singular include the plural and vice versa and words importing gender include all genders.

1.5 Governing Law

This Declaration shall be governed by, and construed and interpreted in accordance with, the laws of the Province of Ontario and of Canada applicable therein.

1.6 Severability

Any provision of this Declaration which is illegal, invalid or unenforceable in any jurisdiction shall not affect the legality, validity or enforceability of the remaining provisions and any such illegality, invalidity or unenforceability in any jurisdiction shall not affect the legality, validity or enforceability of such provision in any other jurisdiction.

~~1.7 Time of the Essence~~

~~Time shall be of the essence of this Declaration.~~

~~1.9~~1.7 **Reference to the Trust and the Trustee**

For greater certainty, where any reference is made in this Declaration to an act to be performed by or for or on behalf of the Trust, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Trustee in its capacity as trustee of the Trust, and, where any reference is made in this Declaration to an act to be performed by or for or on behalf of the Trustee, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Trustee in its capacity as trustee of the Trust. No Person dealing with the Trust or the Trustee shall be bound to make any enquiry concerning, or has the right to require production of, any evidence of the validity of any act of, or transaction purporting to be made by, the Trustee.

~~1.10~~1.8**Defect in Appointment**

No action taken by the Trustee will be invalid or ineffective by reason only of any defect in the appointment of the Trustee or the compliance by the Trustee of any rules or procedures adopted by the Trustee and which is discovered after the taking of such action.

SECTION 2
CONCERNING THE TRUST

2.1 Objectives

The Trust is established for the sole purpose of ~~providing funding to or~~holding and applying the Assets for the benefit of the Beneficiaries as provided for in this Declaration. The activities of the Trust shall be to hold the Assets as contemplated in this Declaration until such time as the ~~Assets are disbursed to the Beneficiaries in accordance with~~Board of Trustees is duly appointed and determines that the Assets are to be distributed to or for the benefit of the Primary Beneficiaries in accordance with this Declaration, having regard to the principles set forth in the Principles Annex and in the manner and basis contemplated in the Permitted Delegations Annex, or otherwise to the Residual Beneficiary in accordance with Section 3.3, in each case subject to the terms, limitation and requirements set forth in this Declaration.

watch closely

2.2 Name of the Trust

The name of the Trust shall be the "Affordability Fund Trust" ~~and~~or such replacement name as the Trustee shall determine and specify from time to time. The Trustee shall hold the Assets and conduct the activities of the Trust under such name or variation thereof ~~or such other name as. If~~ the Trustee ~~may determine from time~~determines to ~~time in its sole and absolute discretion. Should~~change the ~~Trustee determine that~~ name of the ~~use of such name or names is not legal, possible or convenient~~Trust, the Trustee may specify and use such other designation or adopt such other name (including any name in the French language) as it considers appropriate and may hold the Assets and conduct the activities of the Trust under such ~~other~~ designation or other name.

2.3 Location

The head office and the situs of the administration of the Trust shall be ●. ~~The Trustee may change the head office and the situs of the administration of the Trust to any~~ or such other ~~location~~address in Ontario as the Trustee~~, in its sole and absolute discretion, may consider advisable~~ may determine from time to time.

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2.4 Fiscal Year

The fiscal year of the Trust shall end on December 31 in each year.

SECTION 3
DISTRIBUTIONS

3.1 Distributions to Primary Beneficiaries

Prior to the Final Distribution Date, the Trustee ~~may, from time to time, subject to Section 3.2,~~ shall distribute ~~all or any portion of~~ the Assets ~~of the Trust~~ (including capital or income) ~~as~~ to the Primary Beneficiaries identified based on the application of the principles specified in the Principles Annex and in the manner and in the amounts determined on the basis contemplated by the Permitted Delegations Annex, in each case in the amounts and to the extent specified herein and therein, subject in all respects to the exercise by the Trustee in~~of~~ its absolute discretion ~~deems advisable to or for the benefit of any one or more of the Beneficiaries~~ hereunder and to the exclusion of the other ~~or others, and in such proportions and on such trusts, terms and conditions, if any, as the Trustee in its absolute discretion deems advisable.~~ Beneficiaries.

watch these closely.

3.2 Maximum Amount of Distributions to Primary Beneficiaries

~~The~~ amount distributed by the Trustee to or for the benefit of any Primary Beneficiary shall not (a) exceed the ~~cost~~ estimated costs (including applicable taxes) to be incurred by or on behalf of such Primary Beneficiary (whether or not such costs have been paid or remain outstanding) in respect of Eligible Measures~~: provided that the cost incurred by a Beneficiary shall not include any specific cost that has or will be funded or reimbursed by any Person~~ applied in respect of the Primary Beneficiary's Ontario residence or (b) include in the calculation of such costs any amount intended to compensate an Electricity Distributor. The Trustee shall be entitled to rely on the recommendations of and information provided by Electricity Distributors acting as Administrative Services Agents appointed for the purposes and in the manner contemplated in the Permitted Delegations Annex, without any duty or obligation to verify or makes enquiries regarding the basis for or propriety of such recommendations or the accuracy or completeness of such information, except if and to the extent that the Trustee, in its discretion, determines that (i) it has actual knowledge that such recommendations are contrary to the reasonable application of the principles set forth in the Principles Annex or have been made on a basis that is manifestly contrary to such principles or the delegations and activities specified or contemplated to be undertaken under the Permitted Delegations Annex or (b) such information is known by the Trustee to be erroneous, contain a material misrepresentation or is materially incomplete.

good.

watch closely.

OK? (i) and (b)?

3.3 Distributions to Residual Beneficiaries

On or as soon as practicable following the Final Distribution Date, the Trustee shall distribute all of the Assets (including capital or income) existing at that time to the Residual Beneficiaries, in each case in the amounts and to the extent determined by Trustee in its discretion hereunder[2] and to the exclusion of the other ~~than the Trust, including ministries, agencies and organizations of the Government of Ontario.~~Beneficiaries.

SECTION 4
POWERS OF THE TRUSTEE

4.1 General

Subject to and in compliance with the terms, limitations and restrictions ~~set out in~~of this Declaration and notwithstanding applicable legislation, the Trustee shall have, without other or further authorization, full, exclusive and absolute power, control and authority over the Assets and over the affairs and activities of the Trust to the same extent as if the Trustee were not a trustee, but rather the sole and absolute owner of the Assets in its own right, including such power, control and authority to do all such acts and things as in its sole judgment and discretion are necessary, incidental or desirable for carrying on the affairs and activities of the Trust, with such powers of delegation as may be permitted or otherwise contemplated by this Declaration. ~~The~~Except as expressly provided in this Declaration, the enumeration in this Declaration of any specific power or authority shall not be construed as limiting the aforesaid general power or authority or any other specific power or authority set out herein. Subject ~~only~~ to the terms, limitations ~~in~~and restrictions of this Declaration, every discretion or power hereby conferred on the Trustee is an absolute and uncontrolled discretion or power.

4.2 Specifically Enumerated Powers

The Trustee shall have the following specific powers and authorities:

(a) ***Transfer Payment Agreement.*** The Trustee shall have the power to enter into and perform its obligation under the Transfer Payment Agreement.

(b) ***Administrative Services Agreements.*** The Trustee shall have the power to enter into and perform its obligation under the Administrative Services Agreements.

~~(a)~~(c) ***Power to Dispose of Assets.*** The Trustee shall have the power to sell, convey, assign, transfer, exchange~~, lease, grant an option~~ and in any other manner dispose of the Assets or any part or parts thereof free and clear of any and all trusts established under this Declaration, by public or private sale, for cash or on credit, with or without advertisement, and subject to such restrictions, stipulations, agreements and reservations as the Trustee in its sole and absolute discretion may consider appropriate or advisable, and to execute and deliver and perform any

[2] NTD: Consider if principles should be included regarding the choice of charities or the absolute amount any particular charity may receive.

agreement, deed, conveyance, transfer~~, lease~~ or other document or instrument in connection with the foregoing.[3]

~~(b)~~(d) ***Power to Manage and Invest.*** The Trustee shall have the power to own, hold, and manage ~~and use~~ the Assets in such manner as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable ~~and the~~.[4] The Trustee shall have the power to invest the Assets in ~~such investments~~Eligible Investments, and to change such ~~investments~~Eligible Investments at any time and from time to time, all as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable. The Trustee shall not be limited to investments authorized by law for trustees. The Trustee will have no liability for the depreciation of any investment.

~~(b)~~ ***Power to Delegate and to Appoint Agents, etc.*** The Trustee shall have the power to appoint, employ or contract with any Person as the Trustee in its sole and absolute discretion may consider appropriate or advisable in connection with the activities of the Trust. Without limiting the generality of the foregoing, the Trustee will have the power at any time and from time to time:

~~(ii)~~(e) to appoint, employ or retain consultants, financial advisers, technical advisers, legal counsel, accountants, administrative services agents, insurers, insurance agents and insurance brokers, as the Trustee may require for the purpose of discharging its duties hereunder and shall not be responsible for or for the actions of any of them. The Trustee may pay remuneration and reimbursements from the ~~Trust Property~~Assets for all services performed for it or on its behalf in the discharge of the trusts hereof without taxation for costs or fees of any counsel, solicitor or attorney. Without limiting the generality of the forgoing, the Trustee may appoint, employ or retain any Person:

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~~(A)~~(i) to act for and on behalf of the Trust in connection with any and all matters in any way relating to the negotiation, settlement, entering into, amending, performance and enforcement of the Transfer Payment Agreement, the Administrative Services Agreement and any ~~related~~other agreements and contracts, to which the Trust becomes a party in accordance with this Declaration;

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~~(B)~~(ii) to provide or cause to be provided any or all kinds of administrative services in any way relating to the activities of the Trust;

~~(C)~~(iii) to act as attorney in fact, agent or trustee in the ~~purchase~~acquisition, holding ~~or~~, application, sale or other disposition of ~~Trust Property~~the Assets and in the handling, prosecuting or settling of any claims of the Trust;

~~(D)~~(iv) to value the Assets and determine the net income of the Trust; and

(v) to ~~enter into, perform, enforce~~make any filings, elections and ~~amend agreements~~ submissions (including, ~~without limitation,~~ in respect of taxation matters) in

[3] Consider limiting this broad power.

[4] Consider limiting this broad power.

why ?? !!

be careful

connection with the Trust's compliance with applicable laws and regulatory requirements.

~~(iii)~~ Without limiting the foregoing, the Trustee shall seek to enter into Administrative Services Agreements~~, providing~~ with Electricity Distributors for ~~or relating to the appointment or employment of any of such Persons referred to above containing~~the purposes contemplated by the Permitted Delegations Annex, and on such terms and ~~provisions~~conditions (including terms and ~~provisions~~conditions as to the payment of reasonable fees and expenses) not inconsistent therewith as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable.

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~~(e)~~(f) ***Power to Operate Accounts.*** The Trustee shall have the power to open and operate accounts at any chartered bank, trust company or other financial institution in Canada or elsewhere, as the Trustee in its sole and absolute discretion may consider appropriate or advisable; to deposit therein any moneys or securities forming part of the Assets whether or not such deposits will earn interest; to withdraw such deposits at such times and in such manner as the Trustee may determine; to draw, make, endorse, deposit or otherwise deal in cheques, bills of exchange, promissory notes, drafts and other kinds of instruments and securities; to enter into contracts or agreements with any such chartered bank, trust company or other financial institution containing such terms and provisions as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable; and the Trustee shall have no liability or responsibility for any loss which may occur by reason of the failure of any such chartered bank, trust company or other financial institution.

~~(d)~~(g) ***Power to Collect, etc.*** The Trustee shall have the power to collect, sue for, receive and give receipts for all sums of money or other property due to the Trust; to consent to extensions of time for payment or to the renewal of any securities or obligations; to engage or intervene in, prosecute, defend, compound, compromise, abandon or adjust by arbitration or otherwise, any demands, claims, actions, suits or proceedings relating to the Trust or the Assets; to exercise any and all remedies available to the Trustee under any agreement or otherwise including any power of foreclosure or sale available at law and, in connection with any such foreclosure or sale, to purchase or otherwise acquire title to any property and to convey good title thereto free of any and all trusts hereby established, or to take or retake possession of any property secured under any agreement or instrument; to extend the time, with or without security, for the payment or delivery of any debts or property and to execute and deliver releases, acquittances, discharges, agreements or other instruments related thereto; and to pay or satisfy any debts or claims upon any evidence that the Trustee, in its sole and absolute discretion, may determine to be sufficient.

~~(e)~~(h) ***Power to Pay Trustee's Fees.*** The Original Trustee shall be entitled to be paid and receive reasonable fees ~~from the Assets~~ as compensation for its services under this Declaration and be reimbursed for its out-of-pocket expenses reasonably incurred, in each case from the Assets, without the approval of any Beneficiary or any court. The Original Trustee shall be entitled, in its sole and absolute discretion, to withdraw funds from time to time ~~funds for such~~ purpose from any account of the Trust. Members of the Board of Trustees shall be entitled to reimbursement for and in respect of their out-of-pocket expenses reasonably incurred in discharging their respective duties and obligations under this Declaration and any contract of the Trust entered into in accordance with this Declaration, in each case without the approval of any Beneficiary or any court, but subject to the "Travel, Meal and Hospitality Expenses Directive of

Seems reasonable, I am not concerned - could apply to others in govt agencies

the Province" specified and amended by the Province from time to time, a copy of the current version of which is attached as Exhibit 1 to the Principles Annex.

~~(f)~~(i) ***Power to Pay Taxes.*** The Trustee shall have the power to pay, deduct, withhold or remit any taxes or assessments which are required by law to be paid, deducted, withheld or remitted together with or from any payment made by the Trustee; to pay all taxes or assessments of whatever kind or nature imposed upon or against the Trust or the Trustee in connection with the Assets or any part thereof; to collect and remit all taxes and assessments of whatever kind or nature required to be collected and remitted by the Trust or the Trustee in connection with their activities or the Assets or any part thereof; to appeal, settle or compromise tax claims or liabilities; and, for the foregoing purposes, to make such returns and do all other acts and things as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable.

~~(g)~~(j) ***Power to Appoint Auditors.*** The Trustee shall have the power to select and appoint and discharge and re-appoint, in its sole and absolute discretion, an auditor or auditors of the Trust and to settle the fees of any such auditor or auditors.

~~(h)~~(k) ***Form of Accounts.*** The Trustee shall have the power to determine and change from time to time, in its sole and absolute discretion, the method or form in which the accounts of the Trust will be kept and shall not be required to keep and provide accounts in the form usually required by law to be kept by trustees; provided that such method or form reasonably complies with generally accepted accounting principles in effect in Canada to the extent applicable.

~~(i)~~(l) ***Title to Assets.*** The Trustee shall have the power to cause all or any part of the Assets to be held by or registered, in its sole and absolute discretion, in the name of any Person.

~~(j)~~(m) ***Delegation of Discretion.*** The Trustee shall have the power to delegate the right and power to exercise, or concur in the exercise of any discretion or power, conferred on the Trustee in this Declaration or conferred by law to any one or more of its directors, officers ~~or~~, employees, agents or to such other Person, as the Trustee, in its sole and absolute discretion, may think is appropriate or advisable including, without limitation, ~~an Administrative Services Agent and its employees, officers and directors under an~~to one or more Administrative Services Agents and their respective employees, officers and directors, in each case under a related Administrative Services Agreement and on the basis contemplated in the Permitted Delegations Annex. The Trustee shall accept and follow the recommendations of an Electricity Distributor made under and in accordance with clauses [4(a)(i) to 4(a)(vi)] of the Permitted Delegation Annex with respect to a the identification and determination of distributions to be made to any Primary Beneficiary, except if and in so far as the Trustee has actual knowledge that (a) such Primary Beneficiary did not in fact satisfy the "Selection Factors" specified in the Principles Annex as of the applicable time of determination; and/or (b) the amount recommended to be distributed to the Primary Beneficiary was not calculated in compliance with or was calculated in a manner that is manifestly contrary to the requirements set forth or contemplated in the Permitted Delegation Annex or the applicable Administrative Services Agreement.

good.

So be careful here.

~~(k)~~(n) ***Additional Powers.*** The Trustee shall have the power to perform and do all such other acts, to take such steps and to execute all such deeds, transfers, assignments, agreements and other documents and instruments as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable for the carrying out of any of its powers hereunder or of any of the activities of the Trust as herein contemplated, or for the carrying out, promotion or advancement

of the interests of the Trust, whether or not any of such acts, things, documents or instruments are herein expressly mentioned. Any good faith determination by the Trustee as to what is necessary, desirable or appropriate to carry out its powers or activities of the Trust as contemplated under this Declaration or to carry out, promote or advance the interests of the Trust shall be conclusive. Any construction of this Declaration or any determination as to the activities of the Trust or the existence of any power or authority hereunder made in good faith by the Trustee, relying upon the advice of counsel, ~~will~~shall be conclusive. In construing the provisions of this Declaration, there shall be a presumption in favour of a grant of power to the Trustee.

SECTION 5
CONCERNING THE TRUSTEE

5.1 Duty of Trustee

In performing its duties and exercising its powers under this Declaration, the Trustee ~~will~~shall act honestly, in good faith and with a view to the best interests of the Trust and the Beneficiaries and ~~will~~shall exercise that degree of care, diligence and skill that a reasonably prudent trustee would exercise in comparable circumstances (the "**Standard of Care**"). The Trustee shall observe and act in accordance with the terms of, and shall observe and comply with the limitations and restrictions set forth in, this Declaration. To the extent that the Trustee has delegated any of its duties or powers, it shall be deemed to have satisfied the Standard of Care: in respect of the subject matter of such delegation, subject to the Trustee's overall duty as a trustee to exercise prudent oversight in relation to such delegation. Unless required by law, the Trustee will not be required to give any security, bonds or sureties in any jurisdiction for the performance of any of its duties and obligations under this Declaration. The Trustee will not be required to devote its entire time to the trust activities.

5.2 Limitation of Liability

~~Subject to Section 5.1, the~~The Trustee ~~will~~shall not be personally liable in tort, contract or otherwise ~~to the Trust,~~ any Beneficiary or any other Person for any loss or diminution in the value of the Assets, or for any action or failure to act on the part of the Trustee or any of its employees or agents or any other Person, and ~~will~~shall not be subject to any personal liability for any debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses incurred by or against the Trust, howsoever arising, and resort will be had solely to the Assets for the payment, performance or satisfaction thereof. No property or assets of the Trustee, owned in its personal capacity or otherwise, will be subject to levy, execution or other enforcement procedures with respect to any obligation under this Declaration. However, Section 5.2 shall not apply where the Trustee has demonstrated gross negligence, bad faith, fraud or wilful misconduct.

5.3 Liability of Trustee under Contracts

Any document or instrument creating a liability or obligation of the Trust or the Trustee will be conclusively deemed to have been executed by the Trustee only in its capacity as Trustee of the Trust and will be binding upon the Trustee only in its capacity as trustee hereunder and resort may not be had to, nor recourse or satisfaction be sought from, the property of the Trustee other than the Assets, whether owned by its in its personal capacity or in any other capacity other than in its capacity as Trustee of the Trust, or from its employees or agents, and resort will be had

solely to the Assets for the payment, performance or satisfaction of any such liability or obligation. Each such document or instrument shall contain a provision providing for the aforesaid limitation of liability. However, Section 5.3 shall not apply where the Trustee has demonstrated gross negligence, bad faith, fraud or wilful misconduct.

5.4 Funds of the Trustee

The Trustee shall not be required to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers.

5.5 Indemnification of Trustee

In addition to and without limiting any other protection hereunder or otherwise by law of the Trustee and its respective employees, agents, representatives and assigns (in this Section 5.5, collectively, the **"Representatives"**), the ~~Trust indemnifies, defends and saves harmless the~~ Trustee and its respective Representatives shall be indemnified, defended and saved harmless out of the Assets from ~~and~~, against and in respect of any and all liabilities~~, including those~~ arising or related to actions taken or omitted to be taken by any agent of the Trustee, losses, claims (including any claim arising out of the assessment of any tax on income by a taxing authority), damages, penalties, fines, actions, suits, demands, levies, assessments, costs, charges, expenses and disbursements (including, without limitation, any and all legal and advisor fees and disbursements) (in this Section 5.5, collectively, the **"Liabilities"**) of whatever kind or nature which may at any time be suffered by, imposed upon, incurred by or asserted against the Trustee and its Representatives, whether groundless or otherwise, howsoever arising from or out of any act, omission or error of the Trustee, in each case made in connection with its acting as Trustee hereunder, except and to the extent that the Liabilities are a result from or are caused by gross negligence, wilful misconduct, bad faith or breach of the ~~Standard of Care by or on the part of the Trustee or its Representatives.~~Confidentiality obligations described in Section 5.9. Further, except as provided in Section 5.2, the Trustee ~~will~~shall not be liable to ~~the Trust, to~~ any Beneficiary ~~or to any other Person~~ for any loss or damage relating to any matter regarding the Trust, including any loss or diminution in value of the Assets. Notwithstanding any other provision hereof, the obligations provided for in this Section shall survive any termination of the Trust created hereby, whether by reason of removal or resignation of the Trustee, termination or discharge of this Declaration or otherwise.

5.6 Reliance upon Advice

Subject to Section 5.1, in performing its duties and exercising its powers hereunder, the Trustee may rely and may act or not act, and shall be fully protected in relying and acting or not acting, upon (a) any statement, telecopy or other electronic means of communication, writing, notice, resolution, report, opinion or other document or conversation believed by its to be genuine and correct and to have been signed, sent or made by the proper Person; ~~and~~ (b) any opinion or advice received or information obtained from auditors, solicitors, or other professional advisers, whether retained by the Trustee or otherwise, and shall not be responsible or held liable for any loss or damage resulting from so relying or acting or not acting~~.~~; and (c) the advice and actions of any Administrative Services Agent, including in connection with the delegations and reliances contemplated under the Permitted Delegations Annex. For greater certainty, it shall not be necessary for the Trustee to ascertain whether or not the Persons who have executed, signed or

be certified.

otherwise issued, authenticated or receipted such papers, writings or documents (including any Administrative Services Agreement or any other contract entered into by the Trustee) have authority to do so or that they are the same Persons named therein or otherwise to pass upon any requirement of such papers, writing or documents that may be essential for their validity or effectiveness or upon the truth and acceptability.

5.7 ~~Resignation~~Replacement of the Original Trustee

~~If the Trustee wishes to resign from its role as trustee under this Declaration and be discharged from the trusts and powers reposed in and conferred upon it by this Declaration, it shall give ninety (90) days' prior written notice thereof to the Minister of Energy (or such lesser period as the Minister of Energy may otherwise consent to). Notwithstanding such notice, such resignation shall become effective, and the Trustee shall be discharged from the trusts and powers reposed in and conferred upon it under this Declaration, only upon the appointment of, and the written acceptance of such appointment by, a successor trustee in accordance with Section 5.8. If no successor trustee shall have been appointed or shall have accepted appointment within ninety (90) days after the giving of such notice of resignation, the resigning Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee at the expense of the Trust.~~

~~5.8 Appointment of Successor Trustee~~

~~In the event of the resignation of the Trustee, the [Minister of Energy] shall appoint a successor trustee or trustees by instrument in writing and shall give written notice of such appointment to the Trustee resigning.~~

As soon as practicable and in any event prior to •, 2017, the Original Trustee shall appoint the Persons contemplated by the Trustee Replacement Annex to comprise the Advisory Committee contemplated therein (once constituted, the "**Advisory Committee**"). As soon as practicable thereafter, the Original Trustee shall request that the Advisory Board make recommendations with respect to the composition of the "Board of Trustees", as contemplated by the Trustee Replacement Annex. The Trustee shall have no duty or obligation to investigate the basis for any of the Advisory Committee's recommendations and may rely on such recommendations without any duty of enquiry, supervision or oversight with respect to the activities and decision-making processes adopted by the Advisory Committee in its discretion, in full satisfaction of the Original Trustee's Standard of Care with respect to such matters hereunder. Except if the Trustee determines that the individuals recommended by the Advisory Committee to become members of such Board of Trustees are disqualified from so acting on the basis of manifest non-compliance with the selection factors set forth under "Selection Factors" set forth in the Trustee Replacement Annex, the Original Trustee shall appoint, as additional Trustees, [number] of individuals from among those individuals who have been recommended for appointment to such Board of Trustees by the Advisory Committee. The Original Trustee may exercise its discretion in selecting such individuals for such appointment or, in the absence of such exercise, shall select such individuals based on the [alphabetic order of the first letter of their respective surname]. Upon the appointment of [number] additional trustees pursuant to this provision and their agreement to act as members of the Board of Trustees, the Original Trustee shall be deemed to have resigned and shall cease to be a trustee (such resignation occurring on the "**Original Trustee Replacement Date**").

Committee?

So, who is on the AC? Does this be a concern that the province appoints non-indep trustees

Watch if any "trip" provincial influence

This is super-critical - see my previous comments on this!

5.8 Composition of the Board of Trustees

[NTD: Specify requirements or principles annex]

very important! with carefully

5.9 Rules and Procedures of the Board of Trustees

(a) ***Initial Requirements.*** [NTD: Need to insert bare bones governance for the Board of Trustee's initial governance purposes.]

(b) ***Power to Adopt Rules and Procedures.*** [NTD: Add power to adopt governance provisions, including to permit remaining trustees to replace any vacancy arising after Board of Trustees and to fill any vacancy by application to the Courts of Ontario in the event of an unfilled vacancy.]

(c) ***Decisions of the Board of Trustees.*** [NTD: Add language to make clear how the majority decisions of Board will represent the decision of the "Trustee" and not any individual trustee. This will be necessary to specify at the outset in order to avoid problems enlisting members of the Board of Trustees.]

(d) ***Conflicts of Interest.*** [NTD: Specify requirements]

(e) ***Expenses and Reimbursements to Trustees.*** [NTD: Specify requirements]

~~5.9~~5.10Confidentiality

Notwithstanding the resignation or removal and discharge from the trusts and powers reposed in and conferred on the Trustee by this Declaration, or the termination of this Declaration, the Trustee so resigning or removed ~~will~~shall continue to treat as confidential all information relating to the Trust, the Assets and the Beneficiaries and shall only be entitled to make disclosures concerning such information if disclosure is required in the performance of the functions of the resigning or removed Trustee or is ordered by a court of competent jurisdiction or is otherwise required by law. The Trustee ~~will~~shall not be responsible or liable to any Person for any loss or damage arising out of or in any way sustained or incurred in any way relating to any such required disclosure. The obligations arising under this Section [5.10] shall survive the termination of the Trust.

~~5.10~~5.11 Vesting in Successor Trustee

Any successor trustee ~~will~~(including any reconstituted Board of Trustees) shall automatically become vested with the Assets and with the same powers, rights, duties, responsibilities and trusts as if it, he or she had been originally named as Trustee under this Declaration without the requirement of any further instrument or act or conveyance and the Trustee ceasing to act ~~will~~shall execute all such transfers and other documents and do all such other acts or things as may be necessary or desirable to assign, transfer, deliver to, and vest in, the successor trustee, upon the trusts expressed in this Declaration, all the Assets and all the rights, powers and trusts of the Trustee ceasing to act. The expense of any act, document, deed or other instrument or thing required under this Section 5.11~~.~~1, including for greater certainty, outstanding fees and unreimbursed expenses of the Trustee (including any member of the Board of Trustees) ceasing to act, ~~will~~shall be satisfied from the Assets.

~~5.11~~5.12 Execution of ~~Documents~~Instruments

The Trustee shall have the power to execute all deeds, transfers, agreements, promissory notes and other instruments on behalf of the Trust. Such power may be exercised by any one or more Administrative Services Agents acting in accordance with any delegated right to do so pursuant to an applicable Administrative Services Agreement, and any such execution of instrument by an Administrative Services Agent, acting in such capacity as agent of the Trust pursuant to the terms and conditions of such Administrative Services Agreement shall be deemed to be a proper execution of such instrument by the Trustee and shall be binding for all purposes on the Trust.

5.13 Decisions by the Trustee

If there is more than one Trustee, decisions of the Trust may be made by a majority of Trustees. Whenever the Trustees are unable to agree in relation to the commission or omission of any act or howsoever in the execution of the Trust the decision of a majority of the Trustees shall prevail.[5]

SECTION 6
AMENDMENTS AND SUPPLEMENTS

~~**6.1 Amendment**~~

6.1 ~~The~~Amendments

Subject to the requirements of the Transfer Payment Agreement, the Trustee shall have the power in its sole and absolute discretion from time to time without the approval of any Beneficiary or any court to amend, vary, supplement, replace or restate this Declaration in its entirety or any portion thereof, provided that no amendment shall conflict with the principles set forth in the Principles Annex or as to the scope or effect of the permitted delegations and activities of any Administrative Services Agent pursuant to the Permitted Delegations Annex. ~~Without in any way limiting the foregoing, any such amendments, variations, supplements,~~ replacements or restatements may:

(a) add provisions for the replacement of or appointment of additional trustees to act with the Original Trustee prior to the Original Trustee Replacement Date;

~~(a)~~(b) in the case of the Original Trustee, add provisions to those contemplated in the Trustee Replacement Annex in respect of the appointment of the members and formation and empowerment of the Board of Trustees;

(c) in the case of the Original Trustee, vary the terms and requirements applicable to the duties, responsibilities, obligations, liabilities, indemnities, protections, limitations, restrictions, compensation, expense reimbursements and such other matters, in each case as the Advisory Committee may indicate are necessary be made in order to attract and receive confirmation of appointment of appropriately qualified individuals that the Advisory Committee specifies are to be appointed as members of the Board of Trustees in accordance with its recommendations;

[5] NTD: This section will be integrated into the additional provisions dealing with the Board of Trustees.

So, what are these? any "ruling from the grave"?

Be careful!

These are all "well + good" but Low "restrictive" is the above

(d) add additional or replace existing Trustees[6];

~~(c)~~ add to or reasonably clarify the principles set forth in the Principles Annex;

~~(d)~~ add to or reasonably clarify the delegations and activities contemplated to be made in the Permitted Delegation Annex;

~~(b)~~(g) include provisions for the management of the Trust by the Trustees, including the making of rules, requirements and procedures ~~for meetings~~governing the decision-making of the Board of Trustees;

~~(e)~~(h) ~~include~~add provisions for the replacement of ~~Trustees;~~members of the Board of Trustees (in addition to those provisions contemplated in the Trustee Replacement Annex);

~~(d)~~(i) provide for the engagement of any Person or Persons as managers, administrators or other service providers to the Trust, including any additional or replacement Administrative Services Agent or representative thereof;

~~(e)~~(j) specify supplemental procedures for the identification of Primary Beneficiaries and the exchange of information with ~~Local Distribution Companies~~Electricity Distributors in connection with identifying such Primary Beneficiaries ~~who will be the recipients;~~ or

~~(f)~~ specify procedures for the transfer and transmission of funds from the Trust or any Administrative Services Agent acting on its behalf and with delegated responsibility over funds constituting Assets, ~~to,~~ or for the benefit of, Beneficiaries;

~~{NTD: other expected amendments}~~

~~6.1 Automatic Amendment~~

(k) ~~Upon the Trustee ceasing to be a trustee of the Trust, this Declaration will be automatically amended, without any action required to be taken or documentation entered into, to delete any reference to the name of the Trustee so ceasing to be a trustee of the Trust and to substitute therefor the name of the successor trustee of the Trust~~ or their designated representatives, payees or assignees.

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6.2 Supplemental Declarations

The Trustee is authorized to execute any supplemental declaration of trust (including one or more amendments and restatements from time to time of this Declaration) to give effect to amendments to this Declaration made pursuant to this Section 6.

[6] NTD: Consider and, if retained, integrate with Board concepts.

SECTION 7
TERMINATION

7.1 Duration

Subject to Section 7.2, the Trust will continue in full force and effect so long as there is any Assets and until all of the debts, liabilities and obligations of the Trust have been paid and satisfied in full.[7]

7.2 Termination and Distribution of Assets

Subject as hereinafter provided, the Trustee may terminate the Trust and wind up its affairs on such date as the Trustee, in its sole and absolute discretion, may determine and after paying or adequately providing for the payment and satisfaction of all debts, liabilities and obligations of the Trust and upon receipt of such releases, indemnities and discharges as the Trustee, relying on the opinion of counsel, deems necessary for the protection of the Beneficiaries and for its own protection. Notwithstanding the foregoing, the Trustee shall in any event terminate the Trust and wind up its affairs ~~not later than December 31, 2037~~as soon as practicable after the Final Distribution Date (the "**Termination Date**"). ~~[Upon~~In connection with the termination of the Trust, the Trustee shall distribute or cause to be distributed the remaining Assets, in cash or in kind or partly in each, to the Residual ~~Beneficiary.] [NTD: treatment of residual assets to be discussed.]~~Beneficiaries in accordance with Section 3.3.

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7.3 Distribution of Assets on Final Distribution Date

If the Trust holds Assets on the Final Distribution Date, such assets shall promptly be paid to the Residual Beneficiaries in accordance with Section 3.3.

SECTION 8
ACCEPTANCE OF TRUSTS

8.1 Acceptance of Trusts

The Trustee hereby accepts the trusts and duties contained in this Declaration and agrees to perform the same upon the terms and conditions hereof until discharged therefrom.

[Signature Page Follows]

[7] NTD: Consider early termination scenarios.

Critical!

PRINCIPLES ANNEX

Commented [A1]: Content in the annex will be further refined

Commented [A2]: KPMG to comment on 'control' implications.

and Province's auditors – it is "their" consolidation issue also

The following principles apply in relation to the administration of the Trust:

1. Identification of Primary Beneficiary Payees This is fine

1.1 A Primary Beneficiary should not receive a benefit from the Trust unless at the time of consideration it satisfies each of the following criteria (the "**Selection Factors**"):

(i) it is an [owner-occupied,], [non-commercial] [not for profit] electricity customer;

(ii) it has [committed] [made arrangements] [proposed] [indicated its willingness] to undertake measures (its "**Energy Plan**") to improve the electricity efficiency and/or promote the conservation of electricity at its Ontario residence;

(iii) its Energy Plan involves one or more Eligible Measures as may be designated by the Trustee from time to time from;

(iv) it confirms that:

1. the primary purpose of its Energy Plan is the conservation and efficient use by the Primary Beneficiary of electricity, and is not for the purposes of the Primary Beneficiary making a profit;

2. it would otherwise not have the financial resources to undertake [the Eligible Measures] included in its Energy Plan;

3. the Eligible Measures to be undertaken by it under its Energy Plan would not otherwise be eligible for reimbursement from third parties, including under any efficiency or conservation program implemented by a government, governmental agency or third party energy subsidy program;

(v) it has demonstrated a need for financial assistance on the basis that its periodic electricity bills represent a financial burden, relative to its available financial resources; and

(vi) such other criteria as the Trustee may determine, including based on the recommendations of Electricity Distributors made on the basis and in accordance with the delegations contemplated by the Permitted Delegations Annex or any applicable Administrative Services Agreement.

1.2 The availability of funds to the Primary Beneficiaries should be allocated on an equitable and consistent basis across different areas and regions within the Province, having regard to:

(i) broad economic parameters of economic activity and the financial resources of the residents of the areas and regions;

(ii) electricity use and efficiency levels of non-commercial electricity customers;

(iii) specific regional indicators of economic weakness and need; and/or

(iv) such other factors as the Trustee may determine are relevant, including based on the submissions, advice and recommendations of Electricity Distributors made on the basis and in accordance with the delegations contemplated by the Permitted Delegations Annex or any applicable Administrative Services Agreement.

1.3 An efficient basis upon which to allocate funds to the Primary Beneficiaries across different areas and regions within the Province may be based on the designated areas and regions serviced by the Electricity Distributors operating within the Province.

1.4 The designated Electricity Distributor for an area or region in which a Primary Beneficiary resides will:

(i) be a reliable source for the purpose of assessing and confirming whether the Primary Beneficiary satisfies the Selection Factors;

(ii) be an efficient intermediary for the purpose of communicating with the Primary Beneficiary, including regarding the availability, terms, conditions and intended purposes of [Project][5];

(iii) be able to efficiently integrate and reflect any distribution payments determined to be made to the Primary Beneficiary within its established practices, procedures and systems; and

(iv) have established contractual arrangements with the Primary Beneficiary that may apply to the protection and confidentiality of information provided by or respecting the Primary Beneficiary, which information may be useful in the consideration by the Electricity Distributor in its assessment of whether the Primary Beneficiary satisfies the Selection Factors, which information may not otherwise be available or readily accessible or verifiable by the Trustee.

1.5 The designated Electricity Distributor for an area or region in which a Primary Beneficiary resides will have market and utilization information that may be useful in assessing the relative needs of Primary Beneficiaries within its designated area or region. Such information will be relevant in assessing the extent to which one such Primary Beneficiary's financial needs and the merits of its Energy Plan are greater or more compelling than those of another such Primary Beneficiary, which comparison may be relevant to the extent that the funds allocable to the Primary Beneficiaries resident in the area or region are otherwise insufficient to meet the requests for funding by all such Primary Beneficiaries.

[5] Consider if the Trustees should control the messaging to ensure consistency across the Province.

1.6 Accordingly, it is consistent with the purposes of the Trust that the recommendations of Electricity Distributors be utilized and relied upon by the Trustee to guide the process of identifying particular Primary Beneficiaries for distributions under the [Project].

1.7 If an Electricity Distributor for a particular area or region is unable or unwilling to assess or confirm the application of the Selection Factors to Primary Beneficiaries residing in the area or region or to make recommendations in relation to such matters, one or more of the following may provide a suitable alternative source of information and for information gathering, assessment and confirmation purposes in relation to such area or region:

(i) other Electricity Distributors operating in adjacent or other areas or regions in the Province;

(ii) the Ontario Energy Board;

(iii) the Independent Electricity System Operator; and

(iv) anyone else having relevant expertise and access to information regarding the electricity market of the Province, in each case as may be considered relevant by the Trustee.

1.8 To the extent that privacy law or other legal requirements limit an Electricity Distributor from providing or making available specific information respecting the application of the Selection Factors to a particular Primary Beneficiary or group of Primary Beneficiaries, it may be appropriate to redact or make generic affected information regarding such Primary Beneficiary in connection with the identification and confirmation of a Primary Beneficiary's eligibility and participation in the [Project]. If such limitations or restrictions would limit an Electricity Distributor from providing or confirming the name of a particular Primary Beneficiary to the Trustee, then it should be sufficient that such information may be obtained or disseminated on a confidential basis if and when required by the Trustee for the proper administration of the Trust and on that basis such impediments should not disqualify a Primary Beneficiary from participating in the benefits of the [Project], to the extent that the confidential record-keeping of the Electricity Distributor would be available in connection with the application of any applicable legal process predicated on the identification of such Primary Beneficiary for the purposes of substantiating its rights as a Primary Beneficiary of the Trust or as to the validity or subsistence of the Trust.

2. Eligible Measures

2.1 Eligible Measures shall be identified having regard to the following (the "**Measures Factors**"):

(i) [NTD: Insert generic list of considerations relevant to the identification of the applicable spending uses].

2.2 In identifying and applying the Measures Factors, Electricity Distributors will have expertise in assessing the suitability of efficiency and conservation measures in their

respective areas and regions, which may differ across areas and regions across the Province based on factors (among other things) such as the climate, geography, density, electricity infrastructure, residential structures, and electricity use rates applicable within such areas or regions.

2.3 Unless otherwise specified by the Trustees, the measures specified in Schedule A to this Principles Annex will be considered.

important - I read but seems pretty benign

3. Other

3.1 It is expected that administrative expenses of the Board of Trustees and its members, including any expenses relating to the Trust, to the establishment of the [Affordability Fund] and any expenses related to the implementation and operation of the [Project] by or through Electricity Distributors and other relevant entities, will be recognized and subject to reimbursement in accordance with the principles outlined in the [Province's Transfer Payment Accountability Directive/Travel, Meal and Hospitality Expenses Directive][9], in the form attached to Schedule B to this Principles Annex.

3.2 The Trustee is expected to conduct its activities to ensure that, as more specifically contemplated in the Transfer Payment Agreement:

(i) the Assets are applied are spent prudently and in furtherance of the purpose set forth in the ~~Declaration~~;

(ii) the Trustee is accountable to the Province for activities undertaking in connection with the Project;

Watch word "accountable" - I prefer "reports annually The results of its activities, for info purposes

(iii) it complies with the Province's request for any independent verification or audit determined to be necessary or appropriate by the Province; ← OK.

(iv) the Province will be entitled and has reserved its right to demand the return of the Assets if the Province determined that they are not being used for the purposes and applied in the manner as set forth or contemplated in the Declaration.

nope! "ruling from the grave"

3.3 Electricity Distributors are not intended to directly profit from distributions of funds made from the Trust, although it is recognized that the objectives of electricity efficiency and conservation of Primary Beneficiaries located in the service area or region of an Electricity Distributor, and the cost savings and improved credit worthiness of such Primary Beneficiaries, may be financially beneficial to the Electricity Distributor.

3.4 Distributions from the Trust are intended to allow receiving Primary Beneficiaries to undertake Eligible Measures at no or minimal personal cost.

3.5 It is expected that the Trust Assets will be distributed to Primary Beneficiaries during the period from the Original Trustee Replacement Date to [the Final Distribution Date] [March 31, 2019].

[9] NTD: Ministry to confirm applicable Directive(s).

SCHEDULE B TO THE PRINCIPLES ANNEX
PERMITTED EXPENSE REIMBURSEMENTS

[NTD: Insert the Province's Transfer Payment Accountability Directive/Travel, Meal and Hospitality Expenses Directive]

Carroll ē This

Schedule A benign, imo.

PERMITTED DELEGATION ANNEX

1. Under Section 4.2(d) of the Declaration, the Trustee has the power to: (A) appoint, employ or retain Administrative Services Agents for the purpose of discharging its duties and obligations under the Declaration; and (B) enter into, perform, enforce and amend Administrative Services Agreements.

2. In accordance with [Section 4.2] of the Declaration, consistent with the principles set forth in the Principles Annex, the Trustee or its agent will seek to enter into one or more Administrative Services Agreements with individual Electricity Distributors under which the Electricity Distributors will act as Administrative Service Agents to the Trustee. In this manner, the Trustee will delegate certain of its powers and duties to the Electricity Distributors.

3. Under Section 5.1 of the Declaration, to the extent the Trustee has delegated any of its duties or powers, it shall be deemed to have satisfied the Standard of Care in respect of the subject matter of such delegation, subject to the Trustee's overall duty to exercise prudent oversight thereof. The Trustee is entitled to rely on an Electricity Distributor to discharge the duties delegated to it, as Administrative Services Agent, pursuant to an Administrative Services Agreement as described in this Annex.

4. Accordingly, and without limiting the Trust's right to delegate under the Declaration, the Trust will be permitted to, and should seek to, enter into Administrative Services Agreements with Electricity Distributors in order to provide for the following:

    a. **Identification of Applicable Primary Beneficiary Payees and Determination of Individual Distribution Amounts**

        i. Each Electricity Distributor will make an initial assessment of the financial needs of Primary Beneficiaries within its designated service area or region, having regard to [NTD: specify relevant economic data and reference material], in order to prepare and provide to the Trustee an estimate of the number of Primary Beneficiaries who the Electricity Distributor reasonably expects would satisfy the Selection Factors (as defined in clause 1.1 "Identification of Primary Beneficiary Payees" of the Principles Annex).

        ii. Each Electricity Distributor will make an initial assessment of the measures it would recommend be included as Eligible Measures, having regard to [NTD: specify relevant considerations], in order to prepare and provide to the Trustee an estimate of the average cost per Primary Beneficiary Payee (as defined below) of such Eligible Measures that the Electricity Distributor reasonably expects would apply in respect of Primary Beneficiaries resident in its service area or region.

        iii. Based on the product of (i) and (ii), above, and such other considerations as it considers to be directly relevant, each Electricity Distributor will make a written recommendation to the Trustee regarding the aggregate funding amount that the Electricity Distributor anticipates would be utilized under the

[Project] by Primary Beneficiaries in its service area or region (the "**Local Funding Estimate**"). Such recommendation will be accompanied, when submitted to the Trustee, by a detailed explanation regarding the assumptions, financial parameters, suitability considerations and other information underlying the Local Funding Estimate (including the type of information contemplated by "[Insert]" under the Principles Annex, which will be relied upon by the Trustee in its assessment regarding the allocation of available funding to or for the benefit of the Primary Beneficiaries across the specified areas and regions of the Province.

iv. The Trustee will inform the Electricity Distributor regarding the aggregate of the amount determined by the Trustee to be made available under the [Project] for Primary Beneficiaries in the Electricity Distributor's designated service area or region (for each LDC, its "**Maximum LDC Allocation**") and as to any maximum amount that may be paid to or for the benefit of any single Primary Beneficiary [or group of related Primary Beneficiaries] located in the servicer area or region of the Electricity Distributor (the "**Maximum Primary Beneficiary Amount**"). The Maximum LDC Amount and Maximum Primary Beneficiary Amount may vary between designated areas and regions, the Primary Beneficiaries within such areas and regions, and may be increased by the Trustee from time to time in its discretion.

v. Each Electricity Distributor will apply the principles set forth under ["Identification of Primary Beneficiary Payees" in the Principles Annex] to identify and make recommendations to the Trustee regarding the amount of funds (if any) to be distributed to or for the benefit of Primary Beneficiaries resident within its designated service area or region from time to time (the "**Primary Beneficiary Payees**").

vi. Each Electricity Distributor will ensure that the aggregate of the amounts it recommends be distributed to or for the benefit of Primary Beneficiary Payees from time to time does not exceed (1) its Maximum LDC Allocation and (2) for any single Primary Beneficiary [or group of related Primary Beneficiaries] located in the servicer area or region of the Electricity Distributor, the Maximum Primary Beneficiary Amount.

vii. The Trustee will provide written confirmation to each Electricity Distributor:

1. Either (x) that the recommendations specified of the Electricity Distributor in clause (v), above, have been accepted, or (y) as to the specific reasons for any non-acceptance;

2. The identity of each Primary Beneficiary Payee resident in the Electricity Distributor's service area or region and its residential address;

3. The amount of the distribution to be paid to or for the benefit of each such Primary Beneficiary Payee.

b. Making of Distributions

i. Promptly after the Trustee confirms the identity of a Primary Beneficiary Payee resident in a Electricity Distributor's service area or region and the amount of the distribution to be paid to or for the benefit of such Primary Beneficiary Payee, the Trustee will arrange for payment to the Electricity Distributor an amount equal to the amount of such distribution.

ii. Promptly upon receipt of funds in respect of a distribution to a Primary Beneficiary Payee, the Electricity Distributor will arrange for payment of the full amount of such distribution to or for the benefit of the Primary Beneficiary Payee, without reduction or set-off.

c. Reporting, Record-Keeping, Inspection and Disclosure

i. The Electricity Distributor will provide to the Trustee quarterly and annual reports ("**Reports**") for the duration of the Administrative Services Agreement.

ii. The Electricity Distributor will keep and maintain all financial records and non-financial documents and records relating to the provision of services under the Administrative Services Agreement. [Specify required records regarding individual Primary Beneficiary Payees]

iii. The Trustee, its authorized representatives or an independent auditor may, at its own expense, on twenty-four hours' notice to the Electricity Distributor and during normal business hours, inspect the records of and information respecting the Electricity Distributor to confirm its compliance with the Administrative Services Agreement, including its process for determining the Primary Beneficiary Payees, distribution amounts and the delivery of funds to [or for the benefit of] the Primary Beneficiary Payees. The Trustee, its authorized representatives or an independent auditor may inspect and copy all records and documents kept in accordance with the Administrative Services Agreement and conduct an audit or investigation of the Electricity Distributor in respect of the identification of the applicable Primary Beneficiary Payees, the amount of distributions made to or for the benefit of the Primary Beneficiary Payees; and the delivery of funds to or for the benefit of the Primary Beneficiary Payees.

d. Standard of Care

i. The Electricity Distributor will perform its duties provided under the Administrative Services Agreement exercising the degree of care, diligence and skill that a reasonably prudent Person would exercise in comparable circumstances.

ii. In recommending Primary Beneficiary Payees to the Trustee, the Electricity Distributor will seek to avoid actual, potential or perceived conflicts of interest.

e. **Expenses**

i. The Electricity Distributor will be eligible to receive reasonable compensation and reimbursement of its actual out-of-pocket costs associated with the performance of its duties under the Administrative Services Agreement, subject to compliance with the Province's Travel, Meal and Hospitality Expenses Directive. Such compensation amounts and reimbursement entitlements will be specified in the Administrative Services Agreement.

[Other matters you may consider dealing with here include compliance with privacy law/confidentiality/legal considerations and requirements; money laundering; preparation of accounting and tax statements by the Trust; compliance with regulatory laws; representation in product warranty claims (to the extent the Trust is sued in connection with a purchase of Eligible Measures); flowing money to suppliers of Eligible Measures; appropriate reps and indemnities from LDCs; specific reporting of cash and allocations; logistics of banking and cash flow mechanics and related record-keeping; production of information for Trustee to satisfy legal requirements applicable to the Trust (i.e., tax; record keeping); preparation of tax remittances for beneficiaries; preparation of reports for the Government and cooperation with other compliance by the Trust with the TPA; required communications to Primary Beneficiaries on behalf of the Trust (including to comply with applicable laws); preparation and submission of applications, etc., that may be contemplated by the [Project]; termination scenarios]

watch! = to whom?

TRUSTEE REPLACEMENT ANNEX

1. The Advisory Committee shall consist of the following individuals:

   :
   :
   :

2. In the event any member of the Advisory Committee resigns or is unable to act, the remaining members may appoint a resident of Ontario as a replacement.

3. On or before •, 2017, the Advisory Committee shall identify six residents of Ontario who are willing to act as Trustees of the Affordability Fund Trust and who, collectively satisfy the following criteria:

   a) Demonstrate an understanding of the electricity sector including the electricity distribution sector;

   b) Have expertise in conservation and low income programs;

   c) It is expected that three of the identified individuals will be representatives from separate electricity distributors, two individuals will be representatives from separate social services agencies and one individual will be a government representative.

   d) It is expected that government representation will be non-controlling.

4. The Advisory Committee shall recommend that the existing Trustee appoint the individuals so identified to become replacement Trustees of the Affordability Fund Trust pursuant to section 5.7 of the Declaration.

5. If any of the persons recommended under paragraph 4 or under this paragraph are not accepted and appointed by the existing Trustee pursuant to section [5.7] of the Declaration, the Advisory Committee shall forthwith identify and recommend an alternative individual who is willing to act and who whose presence as a Trustee would result in the Trustees collectively satisfying the criteria in paragraph 2 above.

6. Upon the appointment of [number] trustees pursuant to section • of the Declaration, the Advisory Committee will be functus.

good.

So, anyone who is in the AC.!

define! what does this mean? not sure a Provincial representative is a good idea !!

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R 17/3/17

- TBA -

~~Osler~~ Blakes Comments (March ~~13~~15, 2017)

ONTARIO TRANSFER PAYMENT AGREEMENT

THE AGREEMENT, effective as of the ◆ day of March, 2017 (the "Effective Date")

BETWEEN:

Her Majesty the Queen in right of Ontario as represented by the Minister of Energy

(the "Province")

- and -

Computershare Trust Company of Canada, in its capacity as trustee of Affordability Fund Trust ~~and not in its personal capacity~~

(together with its successors and assigns, the "Recipient" and, together with the Province, the "Parties")

BACKGROUND

Computershare Trust Company of Canada is the original trustee of the ~~Recipient~~Affordability Fund Trust.

The Province wishes to provide Funds to the Recipient to ~~be held and distributed in accordance~~ with the terms of the Declaration of Trust (defined below~~)~~) and the Principles set forth in Annex A.

be careful not too prescriptive

CONSIDERATION

In consideration of the mutual covenants and agreements contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is expressly acknowledged, the Parties agree as follows:

ENTIRE AGREEMENT

This agreement (as amended, restated, supplemented or otherwise modified from time to time, the **"Agreement"**), including:

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Schedule "A" - General Terms and Conditions
Schedule "B" - Project Specific Information
Schedule "C" - Project - Certain Obligations of the Recipient
Schedule "D" - Budget
Schedule "E" - Payment Plan
Schedule "F" - Reporting~~, and~~
Annex "A" - Principles, and
any amending agreement entered into as provided for below,

constitutes the entire agreement between the Parties with respect to the subject matter contained in this Agreement and supersedes all prior oral or written representations and agreements.

COUNTERPARTS

The Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

AMENDING THE AGREEMENT

The Agreement may only be amended by a written agreement duly executed by the Parties.

ACKNOWLEDGEMENT

The Recipient:

(a) acknowledges that it has read and understands the provisions contained in the entire Agreement; and

(b) agrees to be bound by the terms and conditions contained in the entire Agreement.

IN WITNESS WHEREOF, the Parties have executed the Agreement on the dates set out below.

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO as represented by Minister of Energy

———by:

Date

Name: ~~Segre~~Serge Imbrogno

———Title: Deputy Minister

Authorized Signing Officer

COMPUTERSHARE TRUST COMPANY OF CANADA, In its capacity as trustee of AFFORDABILITY FUND TRUST

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SCHEDULE "A"
GENERAL TERMS AND CONDITIONS

1.0 INTERPRETATION AND DEFINITIONS

1.1 Interpretation. For the purposes of interpretation:

(a) words in the singular include the plural and vice-versa;

(b) words in one gender include all genders;

(c) the headings do not form part of the Agreement; they are for reference only and will not affect the interpretation of the Agreement;

(d) any reference to dollars or currency will be in Canadian dollars and currency;

(e) "include", "includes" and "including" denote that the subsequent list is not exhaustive; and

(f) where any reference is made in the Agreement to an act to be performed by or for or on behalf of the ~~Recipient~~Affordability Fund Trust, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of ~~Computershare Trust Company of Canada~~the Trustee in its capacity as trustee of the ~~Recipient~~Affordability Fund Trust, and, where any reference is made in the Agreement to an act to be performed by or for or on behalf of ~~Computershare Trust Company of Canada~~the Trustee, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of ~~Computershare Trust Company of Canada~~the Trustee in its capacity as trustee of the ~~Recipient~~Affordability Fund Trust.

1.2 Definitions. In the Agreement, the following terms will have the following meanings:

"BPSAA" means the Broader Public Sector Accountability Act, 2010 (Ontario).

"Beneficiary" has the meaning given to such term in the Declaration of Trust.

"Budget" means the budget attached to the Agreement as Schedule "D".

"Business Day" means any working day, Monday to Friday inclusive, excluding statutory and other holidays, namely: New Year's Day; Family Day; Good Friday; Easter Monday; Victoria Day; Canada Day; Civic Holiday; Labour Day; Thanksgiving Day; Remembrance Day; Christmas Day; Boxing Day and any other day on which the Province has elected to be closed for business.

"Declaration of Trust" means the declaration of trust made as of March ~~[●]~~[•], 2017, under which the ~~Recipient~~Affordability Fund Trust was established, as such declaration of trust may be amended, restated, supplemented or otherwise modified from time to time.

"Expiration Date" means the date on which this Agreement will expire and is the date set out in Schedule "B".

"Funds" means the money the Province provides to the Recipient pursuant to the Agreement.

"Maximum Funds" means the maximum amount of Funds that the Province will provide the Recipient under the Agreement, as set out in Schedule "B".

"Notice" means any communication given or required to be given pursuant to the Agreement.

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"**Party**" means either the Province or the Recipient.

"**Person**" includes any individual, sole proprietorship, corporation, partnership, joint venture, association, society, club, board, chamber, joint-stock company, trust, trustee, unincorporated or incorporated organization or entity or government or any entity, agency or political subdivision thereof.

"**Project**" means the undertaking described in Schedule "C".

"**PSSDA**" means the *Public Sector Salary Disclosure Act, 1996* (Ontario).

"**Reports**" means the reports described in Schedule "F".

"**Trustee**" means Computershare Trust Company of Canada or any replacement trustee in its capacity as trustee of the ~~Recipient~~Affordability Fund Trust.

2.0 REPRESENTATIONS, WARRANTIES AND COVENANTS

2.1 General. The Recipient represents, warrants and covenants that:

(a) The Trustee is the trustee of the ~~Recipient~~Affordability Fund Trust; and

(b) The ~~Recipient~~Affordability Fund Trust is, and will continue to be for the term of the Agreement, a trust existing under and governed by the laws of the Province of Ontario.

2.2 Execution of Agreement. The Recipient represents and warrants that it has:

(a) the full power and authority to enter into the Agreement; and

(b) taken all necessary actions to authorize the execution of the Agreement.

2.3 Governance. The Recipient represents, warrants and covenants that it has, and will maintain, in writing for the period during which the Agreement is in effect:

(a) decision-making mechanisms and procedures to enable the Recipient to manage Funds in accordance with the Declaration of Trust; and

(b) procedures to enable the preparation and delivery of all Reports required pursuant to Article 5.0~~,~~ and.

2.4 Supporting Documentation. Upon request, the Recipient will provide the Province with proof of the matters referred to in this Article 2.0.

3.0 TERM OF THE AGREEMENT

3.1 Term. The term of the Agreement will commence on the Effective Date and will expire on the Expiration Date.

4.0 FUNDS AND CARRYING OUT THE PROJECT

4.1 Funds Provided. The Province will:

(a) provide the ~~Recipient up to the Maximum Funds~~ to be held and distributed in accordance with the terms of the Project and the Declaration of Trust;

Consistent wording ?

be careful

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(b) provide the Funds to the Recipient in accordance with the Payment Plan attached to the Agreement as Schedule "E"; and

(c) deposit the Funds into an account designated by the Recipient, provided that the account:

(i) resides at a Canadian financial institution; and

(ii) is in the name of the Recipient.

4.2 **Limitation on Payment of Funds.** Despite section 4.1, the Province is not obligated to provide any Funds to the Recipient until the Recipient provides the insurance certificate or other proof as the Province may request pursuant to [section 1.1];

4.3 **Use of Funds and Project.** The Recipient will use the Funds only for the purpose contemplated by the Project ~~and~~, the Declaration of Trust and the Principles set forth in Annex A.

too prescriptive = be careful. Good - but this is really administrative so does not negate other "prescriptive" terms

4.4 **Province's Role Limited to Providing Funds.** For greater clarity, the Province's role under the Agreement is limited to providing Funds to the Recipient and the Province is not responsible for carrying out the terms of the Declaration of Trust.

4.5 **Maximum Funds.** The Recipient acknowledges that the Funds available to it pursuant to the Agreement will not exceed the Maximum Funds.

4.6 **Funding, Not Procurement.** For greater clarity, the Recipient acknowledges that:

(a) it is receiving funding from the Province for the Project and is not providing goods or services to the Province; and

(b) the funding the Province is providing under the Agreement is funding for the purposes of the PSSDA.

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1.0 RECIPIENT'S ACQUISITION OF GOODS OR SERVICES, AND DISPOSAL OF ASSETS

1.1 **Acquisition.** If the Recipient acquires goods, services, or both with the Funds, it will do so through a process that promotes the best value for money.

2.0 CONFLICT OF INTEREST

2.1 **No Conflict of Interest.** The Recipient will carry out the Project and use the Funds without an actual, potential or perceived conflict of interest.

2.2 **Conflict of Interest Includes.** For the purposes of this Article, a conflict of interest includes any circumstances where:

(a) the Recipient; or
(b) any person who has the capacity to influence the Recipient's decisions,

has outside commitments, relationships or financial interests that could, or could be seen to, interfere with the Recipient's objective, unbiased and impartial judgment relating to the Project, the use of the Funds, or both.

2.3 **Disclosure to Province.** The Recipient will:

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Why? is this not a Trustee issue to discuss

(a) disclose to the Province, without delay, any situation that a reasonable person would interpret as an actual, potential or perceived conflict of interest; and

don't like this

~~5.0~~7.0 **REPORTING, ACCOUNTING AND REVIEW**

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~~5.1~~7.1 **Preparation and Submission.** The Recipient will:

reporting is fine but watch repetitive detail, → implication Province shd controls Trust activities

(a) submit to the Province at the address referred to in Schedule "B", all Reports in accordance with the timelines and content requirements set out in Schedule "F", or in a form as specified ~~by the Province~~ from time to time;

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(b) submit to the Province at the address referred to in Schedule "B", any other reports as may be requested by the Province in accordance with the timelines and content requirements specified by the Province;

Why?

(c) ensure that all Reports and other reports are completed to the satisfaction of the Province; and

Why?

OK (d) ensure that all Reports and other reports are signed on behalf of the Recipient by an authorized ~~signing officer~~signatory.

~~5.2~~ **Record Maintenance.** The Recipient will keep and maintain:

~~(a) all financial and other records (including invoices) relating necessary to the Funds or otherwise permit it to the Project in a manner consistent with generally accepted accounting principles; and~~

~~(b)~~7.2 ~~all non-financial documents~~satisfy its obligations under section 7.1 and ~~records relating~~ to permit the ~~Funds or otherwise~~Province to ~~the Project~~exercise its rights under section 7.3.

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~~5.3~~7.3 **Inspection.** The Province, its authorized representatives or an independent auditor identified by the Province may, at its own expense, upon twenty-four hours' Notice to the Recipient and during normal business hours, ~~review~~inspect the records of and information respecting the Recipient to confirm its compliance with the terms of this Agreement, including to ensure consistency with the purposes of the Project and regarding the Recipient's allocation and expenditure of the Funds and, for these purposes, the Province, its authorized representatives or an independent auditor identified by the Province may take one or more of the following actions:

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(a) inspect and copy the records and documents referred to in section 1.1;

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(b) keep any ~~copies made pursuant to section 7.3(a)~~; and

(c) conduct an audit or investigation of the Recipient in respect of the expenditure of the Funds ~~to confirm that the funds have been used for the purposes intended, including a review of the Trust's processes to ensure that funds disbursed to LDCs were used for purposes intended~~.

why does not post reporting cover this

This looks like Province "Controls"

~~5.4~~7.4 **Disclosure.** To assist in respect of the rights set out in section ~~5.3~~7.3 the Recipient will disclose any information requested by the Province, its authorized representatives or an independent auditor identified by the Province, and will do so in the form requested by the Province, its

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I find this disconcerting. (unless "standard" government grant language)

authorized representatives or an independent auditor identified by the Province, as the case may be.

~~5.5~~7.5 **No Control of Records.** No provision of the Agreement will be construed so as to give the Province any control whatsoever over the ~~Recipient's records.~~ Trust.

~~5.6~~7.6 **Auditor General.** For greater certainty, the Province's rights under this Article are in addition to and do not limit any rights provided to the Auditor General pursuant to section 9.1 of the *Auditor General Act* (Ontario).

~~6.0~~8.0 **COMMUNICATIONS REQUIREMENTS**

~~6.1~~8.1 **Publication.** The Recipient will indicate, in any of its Project-related publications, whether written, oral, or visual, that the views expressed in the publication are the views of the Recipient and do not necessarily reflect those of the Province.

~~7.0~~9.0 **FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY**

~~7.1~~9.1 **FIPPA.** The Recipient acknowledges that the Province is bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province in connection with the Project or otherwise in connection with the Agreement may be subject to disclosure in accordance with that Act.

~~8.0 [INSURANCE]~~

~~8.1 [Recipient's Insurance. The Recipient represents and warrants that it has, and will maintain for the term of the Agreement, at its own cost and expense, with insurers having a secure A.M. Best rating of B+ or greater, or the equivalent, all the necessary and appropriate insurance that a prudent person that is a trust similar to the Recipient would maintain, including commercial general liability insurance on an occurrence basis for third party bodily injury, personal injury and property damage, to an inclusive limit of not less than the amount set out in Schedule "B" per occurrence. The policy will include the following:~~

~~(a) the Indemnified Parties as additional insureds with respect to liability arising in the course of performance of the Recipient's obligations under, or otherwise in connection with, the Agreement;~~

~~(b) a cross liability clause;~~

~~(c) contractual liability coverage; and~~

~~(d) a 30 day written notice of cancellation.~~

~~8.2 Proof of Insurance. The Recipient will provide the Province with certificates of insurance, or other proof as may be requested by the Province, that confirms the insurance coverage as provided for in section 8.1. Upon the request of the Province, the Recipient will make available to the Province a copy of each insurance policy.][NTD: what risks are to be insured?]~~

10.0 EVENT OF DEFAULT, CORRECTIVE ACTION AND TERMINATION FOR DEFAULT

10.1 Events of Default. An Event of Default will occur if the Recipient breaches any representation, warranty, covenant or other term of this Agreement.

10.2 Consequences of Events of Default and Corrective Action. If an Event of Default occurs, the Province may, at any time, take one or more of the following actions:

OK but this speaks to "records" (why not just say Trust

I find this a problem

default means somehow "ruling from the grave" – it is the Trustee resp'g to ensure funds spent

Commented [A1]: KPMG to comment on 'control' implications.

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(a) provide the Recipient with an opportunity to remedy the Event of Default;

(b) seek an order of specific performance including an order that the Recipient pursue its available remedies against third parties;

(c) recover any Funds remaining in the possession or under the control of the Recipient; and

(d) terminate the Agreement at any time, including immediately, without liability, penalty or costs to the Province upon giving Notice to the Recipient.

nope!

10.3 **Opportunity to Remedy.** If, in accordance with section 9.2(a), the Province provides the Recipient with an opportunity to remedy the Event of Default, the Province will provide Notice to the Recipient of:

(a) the particulars of the Event of Default; and

(b) the Notice Period.

10.4 **Recipient not Remedying.** If the Province has provided the Recipient with an opportunity to remedy the Event of Default pursuant to section 11.2(a), and:

(a) the Recipient does not remedy the Event of Default within the Notice Period;

(b) it becomes apparent to the Province that the Recipient cannot adequately remedy the Event of Default within the Notice Period; or

(c) the Recipient is not proceeding to remedy the Event of Default in a way that is satisfactory to the Province,

the Province may extend the Notice Period, or initiate any one or more of the actions provided for in section 11.2.

10.5 **When Termination Effective.** Termination under this Article will take effect as set out in the Notice.

11.0 REPAYMENT

11.1 **Debt Due.** If, pursuant to the Agreement, the Province demands the payment of any Funds from the Recipient pursuant to section 11.2 such Funds or other amount will be deemed to be a debt due and owing to the Province by the Recipient, and the Recipient will pay or return the amount to the Province immediately, unless the Province directs otherwise.

11.2 **Interest Rate.** The Province may charge the Recipient interest on any money owing by the Recipient at the then current interest rate charged by the Province of Ontario on accounts receivable.

11.3 **Payment of Money to Province.** The Recipient will pay any money owing to the Province by cheque payable to the "Ontario Minister of Finance" and delivered to the Province at the address referred to in [Schedule "B"].

11.4 **Failure to Repay.** Without limiting the application of section 43 of the Financial Administration Act (Ontario), if the Recipient fails to repay any amount owing under the Agreement, Her Majesty the Queen in right of Ontario may deduct any unpaid amount from any money payable to the Recipient by Her Majesty the Queen in right of Ontario.

nope!

9.012.0 NOTICE

9.112.1 Notice in Writing and Addressed. Notice will be in writing and will be delivered by email,

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postage-prepaid mail, personal delivery or fax, and will be addressed to the Province and the Recipient respectively as set out in Schedule "B", or as either Party later designates to the other by Notice.

~~9.2~~12.2 **Notice Given.** Notice will be deemed to have been given:

(a) in the case of postage-prepaid mail, five Business Days after the Notice is mailed; or

(b) in the case of email, personal delivery or fax, one Business Day after the Notice is delivered.

~~9.3~~12.3 **Postal Disruption.** Despite section 12.2(a), in the event of a postal disruption:

(a) Notice by postage-prepaid mail will not be deemed to be received; and

(b) the Party giving Notice will provide Notice by email, personal delivery or by fax.

~~10.0~~13.0 SEVERABILITY OF PROVISIONS

~~10.1~~13.1 **Invalidity or Unenforceability of Any Provision.** The invalidity or unenforceability of any provision of the Agreement will not affect the validity or enforceability of any other provision of the Agreement. Any invalid or unenforceable provision will be deemed to be severed.

~~11.0~~14.0 WAIVER

~~11.1~~14.1 **Waivers in Writing.** If a Party fails to comply with any term of the Agreement, that Party may only rely on a waiver of the other Party if the other Party has provided a written waiver in accordance with the Notice provisions in Article 12.0. Any waiver must refer to a specific failure to comply and will not have the effect of waiving any subsequent failures to comply.

~~12.0~~15.0 INDEPENDENT PARTIES

~~12.1~~15.1 **Parties Independent.** The Recipient acknowledges that it is not an agent, joint venturer, partner or employee of the Province, and the Recipient will not represent itself in any way that might be taken by a reasonable person to suggest that it is, or take any actions that could establish or imply such a relationship.

~~13.0~~16.0 ASSIGNMENT OF AGREEMENT OR FUNDS

~~13.1~~16.1 **Agreement Binding.** All rights and obligations contained in the Agreement will extend to and be binding on the Parties' respective heirs, executors, administrators, successors and permitted assigns.

~~14.0~~17.0 LIMITATION OF LIABILITY

I am not a lawyer so not sure this has "control" implications - don't think so but ask.

~~14.1~~17.1 This Agreement has been entered into by the Trustee solely in its capacity as trustee of the Recipient and is not binding on the Trustee in any other capacity~~,~~ whether in tort, contract or otherwise. **The Beneficiaries of the Recipient are not subject to any liability in respect of the Recipient, whether in tort, contract or otherwise.** Resort may not be had to, nor recourse or satisfaction be sought from, the private property of the Trustee, its directors, officers, employees, or agents, or the private property of any Beneficiary, and resort will be had solely to the property of the Recipient held in trust by the Trustee for the payment, performance or satisfaction of any liability or obligation of the Recipient or the Trustee under this Agreement.

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~~15.0~~18.0 **GOVERNING LAW**

~~15.1~~18.1 **Governing Law.** The Agreement and the rights, obligations and relations of the Parties will be governed by and construed in accordance with the laws of the Province of Ontario and the applicable federal laws of Canada. Any actions or proceedings arising in connection with the Agreement will be conducted in the courts of Ontario, which will have exclusive jurisdiction over such proceedings.

~~16.0~~19.0 **FURTHER ASSURANCES**

~~16.1~~19.1 **Agreement into Effect.** The Recipient will provide such further assurances as the Province may request from time to time with respect to any matter to which the Agreement pertains, and will otherwise do or cause to be done all acts or things necessary to implement and carry into effect the terms and conditions of the Agreement to their full extent.

~~19.2~~ Declaration of Trust. The Trustee covenants that it shall not amend, restate or terminate the Declaration of Trust without obtaining the written consent of the Province in respect of same.

20.0 JOINT AND SEVERAL LIABILITY

20.1 Joint and Several Liability. Where the Recipient is comprised of more than one entity, all such entities will be jointly and severally liable to the Province for the fulfillment of the obligations of the Recipient under the Agreement.

~~17.0~~21.0 **RIGHTS AND REMEDIES CUMULATIVE**

~~17.1~~21.1 **Rights and Remedies Cumulative.** The rights and remedies of the Province under the Agreement are cumulative and are in addition to, and not in substitution for, any of its rights and remedies provided by law or in equity.

~~18.0~~22.0 **ACKNOWLEDGEMENT OF OTHER LEGISLATION AND DIRECTIVES**

~~18.1~~22.1 **Recipient Acknowledges.** The Recipient acknowledges that by receiving Funds it may become subject to legislation applicable to organizations that receive funding from the Government of Ontario, including the BPSAA, the PSSDA, and the *Auditor General Act* (Ontario).

~~19.0~~23.0 **SURVIVAL**

~~19.1~~23.1 **Survival.** The following Articles and sections, and all applicable cross-referenced sections and schedules, will continue in full force and effect for a period of seven years from the date of expiry or termination of the Agreement: Article ~~1.0~~1.0 and any other applicable definitions, section, ~~4.5~~4.5, section ~~5.1~~7.1 (to the extent that the Recipient has not provided the Reports to the satisfaction of the Province), sections ~~5.2, 5.3, 5.4, 5.5, 5.6, Article 6.0, [Article 8.0], Article 10.0, Article 11.0, Article 12.0, Article 15.0, Article 18.0, Article 19.0~~1.1, 7.3, 7.4, 7.5, 7.6, Article 8.0, Article 13.0, Article 15.0, Article 18.0, Article 22.0, Article 23.0, [NTD: References to be update/confirmed.]

- END OF GENERAL TERMS AND CONDITIONS -

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SCHEDULE "B"

-PROJECT SPECIFIC INFORMATION

Maximum Funds	~~$200,000,000~~ $100 million
Expiration Date	~~April 30, 2019~~ Later of [April 30, 2019] and the Final Distribution Date (as defined in the Declaration of Trust)
Insurance	[$$2,000,000]
Contact information for the purposes of Notice to the Province	**Attention: Usman Syed** **Position: Director** **Address: 77 Grenville St, Toronto, Ontario, M7A 2C1** **Fax: 416-325-6651** **Email: Usman.Syed@ontario.ca**
Contact information for the purposes of Notice to the Recipient	**Attention:** **Position:** **Address:** **Email:**
Contact information for the senior financial person in the Recipient organization (e.g., CFO, CAO) – to respond as required to requests from the Province related to the Agreement	**Attention:** **Position:** **Address:** **Email:**

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~~SCHEDULE "C"~~

PROJECT

For the purposes of this Agreement, the "Project" is the ~~implementation of the Requirements (as defined below) and, after implementation of the Requirements, the~~ distribution of the Funds in accordance with the Declaration of Trust.

The Project will be completed subject to the requirements of the Budget and in accordance with the Principles set forth in Annex A. be careful

Notwithstanding anything else contained in the Agreement or the Declaration of Trust, until such time as each of the following conditions have been completed to the satisfaction of the Province (the "Requirements"), the Recipient shall not distribute any Funds to any Beneficiary.

1. Procedures shall be developed and implemented for (i) identifying trustees who are individuals resident in Ontario to replace Computershare Trust Company of Canada as the sole trustee of the Recipient, and (ii) the making of decisions by the trustees of the Recipient and more generally, for the governance of the Recipient.

~~2.~~1. Computershare Trust Company of Canada shall be replaced as the sole trustee of the Recipient with three or more individual trustees identified in accordance with the procedures developed under clause 1.

~~3.~~1. An administrative services agreement ~~with Hydro One Limited or another Person~~ shall have been developed and entered into by the Recipient and the administrative services agent providing for the administrative services necessary for the operation of the Recipient and the execution of the Project.

~~4.~~1. Procedures will be developed and implemented under which Local Distribution Companies (as defined in the Declaration of Trust) will assist with (i) the identification of Beneficiaries, and (ii) the distribution of Funds to or for the benefit of such Beneficiaries.

1. Insurance requirement

Each of the Requirements may be accomplished by the Recipient entering into such agreements as may be necessary or expedient, including, without limitation, an amendment or amendment and restatement of the Declaration of Trust. The Province shall provide notice in writing to the Recipient when the Requirements have been completed to the satisfaction of the Province. Funds may be expended to pay the expenses of the Trustee in completing the Requirements.

~~The Project will be completed subject to the requirements of the Budget.~~

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Commented [A4]: We will look to refine this, but the intent is for Trustees to have insurance in place before funds are flowed.

Under the previous draft, if there was a lawsuit against a Trustee, expenses and any liabilities would be covered by the Trust (indemnification).

Instead, we are proposing that a line of insurance be established that a Trustee would access to cover lawsuit related expenses and liabilities.

The intention is to protect the Trust funds and for them to be not used for lawsuit related liabilities.

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SCHEDULE "D"

Budget

~~1.~~ 1. It is expected that the administrative expenses of the Fund, including any administrative expenses of the Recipient (or any administrative services agents or other agents retained by the Recipient), relating to the establishment of the Affordability Fund and satisfying the Requirements (as defined in Schedule "C") and any expenses related to ~~delivery of the program by an electricity distributor to its eligible customers.~~the operation of the Trust and the execution of the Project (including any reimbursable expenses incurred by any Administrative Services Agent (as such terms are defined in the Declaration of Trust), will be no greater than 10 percent of the total o time under an

~~2.~~ 2. Only actual (excluding HST) incurred expenditures of the Trust are eligible for reimbursement as administrative expenses.

~~3.~~ 3. It is expected any travel, meals and hospitality expenses by the Recipient ~~should adhere to~~will be consistent with the Province's Travel, Meal and Hospitality Expenses Directive. Entities receiving funding from the Recipient are also expected to adhere to the Province's Travel, Meal and Hospitality Expenses Directive. and the Recipient is expected to request the same of such Entities. Alcohol and First-Class travel are not considered eligible claims and disbursements for hospitality, incidental or food expenses shall not be covered by the Funds, including the following:

- Meals, snacks and beverages
- Gratuities
- Laundry or dry cleaning
- Valet services
- Dependent care
- Home management
- Personal telephone calls

~~4.~~ ~~Overhead~~4. It is expected that overhead expenses ~~that~~which are not directly related to the activities related to the Recipient in establishing and ~~establishment of~~ managing the Affordability Fund ~~should~~would not be reimbursed.

~~5.~~ 5. Any expenses that have been or may be reimbursed by other parties should not be reimbursed by the Fund.

~~6.~~ 6. In the event ~~of~~ that the Recipient performs any procurements, it is expected that all procurements ~~are aligned with Ontario~~will reflect the principles of Ontario's Public Service Procurement Directive.

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SCHEDULE "E"

PAYMENT PLAN

PAYMENT DATE	MAXIMUM FUNDS TO BE DISBURSED BY THE PROVINCE
Within 7 days of signing the Agreement	$ X100,000,000

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really?

SCHEDULE "F"

REPORTING

be careful here - if The Province "No Longer Controls The Trust", this should read "light"

Quarterly Reports will be provided quarterly on the basis of the government's fiscal year starting at the execution of this Agreement and continuing until conclusion of the Agreement. Annual Reports will be provided annually on a fiscal basis starting at the execution of this Agreement and continuing until conclusion of the Agreement. Quarterly Reports and Annual Reports shall be submitted to the Province within one month following the end of the reporting period that they represent.

The Recipient shall prepare six (6) Quarterly Reports and two (2) Annual Report as outlined below. Reports shall explicitly demonstrate impact of Province's funding and address report detail requirements listed below.

NAME OF REPORT	DUE DATE
Quarterly Report #1	July 31, 2017
Quarterly Report #2	October 31, 2017
Quarterly Report #3	January 31, 2018
Annual Report #1	April 30, 2018
Quarterly Report #4	July 31, 2018
Quarterly Report #5	October 31, 2018
Quarterly Report #6	January 31, 2019
Annual Report #2	April 30, 2019

Requirements for Quarterly Reports

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- The Recipient will provide Quarterly Reports which will include a report back on the Trustee-developed performance management criteria. Quarterly Report requirements include:will be determined from time to time by the Province, and initially will include:

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would a normal charity/agency be asked to do this much?

- Amounts disbursed by the Recipient in the previous quarter. It is expected that this information will be provided at the electricity distributor level.
- Total Affordability Fund interest accrued to date
- Key activities and achievements from the quarter being reported, including number of participant households per electricity distributor, average participant incentive cost per electricity distributor, and uptake of energy efficiency measures per electricity distributor
- Any challenges or modifications required to the application, funding, or eligibility processes/rules
- Key activities planned for the upcoming quarter

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Requirements for Annual Report

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- The Recipient will provide an Annual Report to the Province which will include a report back on the Trustee-developed performance management criteria. Annual Report requirements include:

  - A description of electricity distributor application process and the criteria used by the Recipient to manage funds.
  - Identify and describe any challenges with achieving goals and proposed solutions, if applicable.
  - Lesson learned.
  - Electricity distributor and customer feedback
  - Amounts disbursed by the Recipient in the previous year. It is expected that this information will be provided at the electricity distributor level.
  - Key activities and achievements from the quarter being reported, including number of participant households per electricity distributor, average participant incentive cost per electricity distributor, and uptake of energy efficiency measures per electricity distributor
  - Total Affordability Fund interest accrued to date

- As part of the Annual Report, the Recipient will also provide the Province with an audited financial statement for the previous year.

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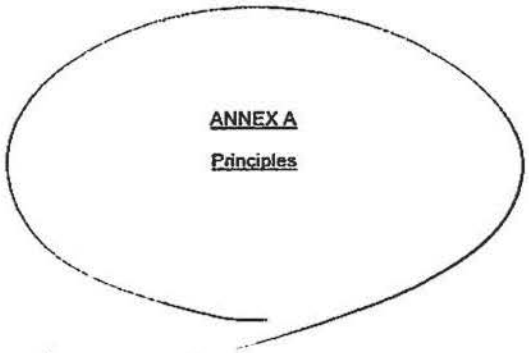

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isn't this
Supra critical ?
missing ?

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Also, our counsel has drafted the following to assist in Hydro One and KPMG's review of the documents:

Our mark-up addresses the tensions that exist among (1) the requirements to recognize the Trust as non-controlled for government year-end accounting purposes, (2) the practical need for the LDCs to lead the identification and allocations to eligible participants processes (3) the desire for the ultimate customers in need to be the reference group of beneficiaries (4) the legal requirements to create a valid trust under Ontario law and (5) the practical limitations associated with addressing and contracting relevant LDC participation prior to March 31, while achieving sufficient contractual certainty for the Province and legal purposes.

To balance these tensions, we have suggested the following (subject to accounting input and practical input from Hydro One):

(1) the Declaration contemplates the following 3 time periods:

a. Initially, Computershare will be the trustee and will simply sit on the funds. Hydro One will provide very basic administrative services during this initial period. Computershare, acting on the recommendations of an "Advisory Committee" will appoint its replacement – a "Board of Trustees" (this is contemplated in a Trustee Replacement Annex to the Declaration).

b. Once the Board of Trustees is in place, administrative services agreements will be entered into with LDCs. To give the LDCs a wide scope to identify funding recipients within their service areas, a broad and specific delegation is described in the "Permitted Delegations Annex", which frames out what the basic and key terms of the ultimate Administrative Services Agreements with the LDCs will entail. That level of detail is required to enable the broad Trustee delegation, without upending the validity of the Trust for legal purposes. The Board of Trustees will maintain supervisory responsibility over the LDCs actions, but will be permitted to rely on the recommendations of the LDCs. Under these arrangements, the find will be divided by region and then LDCs will have wide discretion to recommend distributions, in each case subject to the principles set out in a "Principles Annex".

c. Once the program is to be wound up (either because of a default by the Trust, the Trustee's determine that all funding has been appropriately provided for or a final end-date occurs), any remaining funds will be paid to charitable beneficiaries identified from among a pre-determined slate. The amount available to the charities in the circumstance where a default of the Trust has occurred will be net of the amount the Province will be entitled to be paid (i.e., the remaining Assets) from the Trust under the Transfer Payment Agreement.

(2) From March 31, all of the discretion to deal with the Trust Assets will reside with Computershare or the Board, or by delegation to the LDCs where a suitable contract is signed by the Trust with the LDCs. The Province will not maintain control of the Assets, and all steps contemplated in (1) will not be affected by the Province other than (in substance):

a. To the extent the Province is represented on the Advisory Committee or the Board;

b. The Province has rights to require payment of remaining Assets under the Transfer Agreement on an "event of default"; or

c. The Province has certain reporting, audit and compliance rights, essentially to affect the intended purpose of the Trust in its implementation (and with remedies under the Transfer Payment Agreement, including a right to be paid the undistributed Assets or to pursue contract remedies (including specific performance).

Otherwise, the terms of the Trust will be determined at the outset and determined and affected by non-governmental entities. We understand that these continuing ties to the Trust would not be contrary to the accounting principles applicable for government year-end treatment as a non-controlled trust entity.

Based on this drafting approach, Blakes believes on a preliminary basis that the validity issues associated with the Trust can be adequately addressed.

From: Alexandra.Phillips@HydroOne.com [mailto:Alexandra.Phillips@HydroOne.com]
Sent: March-16-17 3:50 PM
To: Alexandra.Phillips@HydroOne.com
Cc: Schwab-Pflug, Emma (ENERGY); Sermat-Harding, Kaili (ENERGY); Syed, Usman (ENERGY); Qureshi, Musab (ENERGY); Spencer.Gill@HydroOne.com; Daniel.Levitan@HydroOne.com; Natalie.Poole-Moffatt@HydroOne.com; Johnson, Paul (ENERGY/MEDEI/MRI); Ranalli, David (ENERGY); Schachtschneider, Michelle (ENERGY); Petsche, Nadine (TBS); An, Tai (ENERGY); Gounden, Pratima (ENERGY); Desouza, Charlotte (ENERGY); Thompson, Erin (ENERGY)
Subject: Re: Affordability Fund - Declaration of Trust and Transfer Pricing Agreement

(Press send too soon)

I am checking on exact timelines and get back to you later on today.

On sharing drafts with CS, it is our preference to send them final docs instead of drafts.

Speak soon,
Alex Phillips
Manager, External Relations
Hydro One Networks Inc.
(O) 416-345-1375
(C) 647-405-8601

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On Mar 16, 2017, at 3:48 PM, PHILLIPS Alexandra <Alexandra.Phillips@HydroOne.com> wrote:

> Thanks Emma. I am checking on exact timelines and will
>
> **Alex Phillips**
> Manager, External Relations

Osler Comments on Dec of Trust - Mar 17, 2017.pdf

Oshawa Comments
March 13, 2017

DECLARATION OF TRUST

This Declaration of Trust is made as of March ●9, 2017, by Computershare Trust Company of Canada, a trust company established under the laws of Canada and licensed to carry on business as a trust company in each of the provinces and territories of Canada (the "**Trustee**").

WHEREAS the Trustee wishes to establish a trust to acquire, hold, manage, apply and dispose of certain property ~~and~~ for the benefit of certain ~~purposes~~Beneficiaries as herein described.

NOW THEREFORE the Trustee hereby declares that it holds in trust as trustee the sum of ONE HUNDRED DOLLARS ($100) contributed by it on this date and all property of every type and description which it may hereafter acquire or hold in its capacity as trustee of the Trust and all income therefrom and proceeds thereof, to hold, manage,apply and dispose of the same on and subject to the provisions contained in this Declaration.

SECTION 1
INTERPRETATION

1.1 Definitions

In this Declaration:

(a) "***Administrative Services Agent***" means ~~the~~each agent, ~~if~~which may include any Electricity Distributor, appointed from time to time under an Administrative Services Agreement, and its successors and permitted assigns solely in such capacity.

(b) "***Administrative Services Agreement***" means ~~any~~each agreement ~~that may be~~ entered into from time to time by the Trust ~~with a~~and one or more Administrative Services ~~Agent~~Agents or other Persons, in furtherance of the purpose of the Trust described in section 2.1 of this Declaration, under which the Administrative Services Agent ~~agrees~~will agree to provide specified administrative and other services to and on behalf of the Trustee. (including, following the Original Trustee Replacement Date, the Permitted Delegations Annex), as such agreement may be amended, supplemented, restated, renewed or replaced from time to time.

We do not see a need for an initial Administrative Servies Agreement with Hydro One

(c) "***Assets***" means, collectively, the following:

(i) the $100 Canadian referred to above;

(ii) all other property which is now or which at any time in the future may be issued, assigned, transferred, provided, donated, gifted and contributed to the Trustee (including pursuant to the Transfer Payment Agreement) to be held in trust pursuant to this Declaration (and which the Trustee is willing to accept and hold);

(iii) all property which may at any time be substituted therefor;

(iv) all capital depreciations to or acquisitions by the Trust;

(v) all income of the Trust; and

2.3 Location

The head office and the situs of the administration of the Trust shall be ●. ~~The Trustee may change the head office and the situs of the administration of the Trust to any~~• or such other ~~location~~address in Ontario as the Trustee~~, in its sole and absolute discretion, may consider advisable~~ may determine from time to time.

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2.4 Fiscal Year

The fiscal year of the Trust shall end on December 31 in each year.

SECTION 3
DISTRIBUTIONS

3.1 Distributions to Primary Beneficiaries

Prior to the Final Distribution Date, the Trustee ~~may, from time to time, subject to Section 3.2,~~ shall distribute ~~all or any portion of~~ the Assets ~~of the Trust~~ (including capital or income) ~~as~~ to the Primary Beneficiaries identified based on the application of the principles specified in the Principles Annex and in the manner and in the amounts determined on the basis contemplated by the Permitted Delegations Annex, in each case in the amounts and to the extent specified herein and therein, subject in all respects to the exercise by the Trustee ~~in~~of its ~~absolute~~ discretion ~~deems advisable to or for the benefit of any one or more of the Beneficiaries~~ hereunder and to the exclusion of the other ~~or others, and in such proportions and on such trusts, terms and conditions, if any, as the Trustee in its absolute discretion deems advisable.~~ Beneficiaries.

maybe a trustee issue.

3.2 Maximum Amount of Distributions to Primary Beneficiaries

The amount distributed by the Trustee to or for the benefit of any Primary Beneficiary shall not (a) exceed the ~~cost~~ estimated costs (including applicable taxes) to be incurred by or on behalf of such Primary Beneficiary (whether or not such costs have been paid or remain outstanding) in respect of Eligible Measures~~: provided that the cost incurred by a Beneficiary shall not include any specific cost that has or will be funded or reimbursed by any Person~~ applied in respect of the Primary Beneficiary's Ontario residence or (b) include in the calculation of such costs any amount intended to compensate an Electricity Distributor. The Trustee shall be entitled to rely on the recommendations of and information provided by Electricity Distributors acting as Administrative Services Agents appointed for the purposes and in the manner contemplated in the Permitted Delegations Annex, without any duty or obligation to verify or makes enquiries regarding the basis for or propriety of such recommendations or the accuracy or completeness of such information, except if and to the extent that the Trustee, in its discretion, determines that (i) it has actual knowledge that such recommendations are contrary to the reasonable application of the principles set forth in the Principles Annex or have been made on a basis that is manifestly contrary to such principles or the delegations and activities specified or contemplated to be undertaken under the Permitted Delegations Annex or (ii) such information is known by the Trustee to be erroneous, contain a material misrepresentation or is materially incomplete.

very uncertain

(ii?)

agreement, deed, conveyance, transfer, ~~lease~~ or other document or instrument in connection with the foregoing.[3]

~~(b)~~(d) ***Power to Manage and Invest.*** The Trustee shall have the power to own, hold, and manage ~~and use~~ the Assets in such manner as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable ~~and the~~.[4] The Trustee shall have the power to invest the Assets in ~~such investments~~Eligible Investments, and to change such ~~investments~~Eligible Investments at any time and from time to time, all as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable. The Trustee shall not be limited to investments authorized by law for trustees. The Trustee will have no liability for the depreciation of any investment.

~~(c)~~ ***Power to Delegate and to Appoint Agents, etc.*** The Trustee shall have the power to appoint, employ or contract with any Person as the Trustee in its sole and absolute discretion may consider appropriate or advisable in connection with the activities of the Trust. Without limiting the generality of the foregoing, the Trustee will have the power at any time and from time to time:

~~(i)~~(e) to appoint, employ or retain consultants, financial advisers, technical advisers, legal counsel, accountants, administrative services agents, insurers, insurance agents and insurance brokers, as the Trustee may require for the purpose of discharging its duties hereunder and shall not be responsible for or for the actions of any of them. The Trustee may pay remuneration and reimbursements from the ~~Trust Property~~Assets for ~~all~~ services performed for it or on its behalf in the discharge of the trusts hereof without taxation for costs or fees of any counsel, solicitor or attorney. Without limiting the generality of the forgoing, the Trustee may appoint, employ or retain any Person:

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~~(A)~~(i) to act for and on behalf of the Trust in connection with any and all matters in any way relating to the negotiation, settlement, entering into, amending, performance and enforcement of the Transfer Payment Agreement, the Administrative Services Agreement and any ~~related~~other agreements and contracts, to which the Trust becomes a party in accordance with this Declaration;

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~~(B)~~(ii) to provide or cause to be provided any or all kinds of administrative services in any way relating to the activities of the Trust;

~~(C)~~(iii) to act as attorney in fact, agent or trustee in the ~~purchase~~acquisition, holding ~~or~~, application, sale or other disposition of ~~Trust Property~~the Assets and in the handling, prosecuting or settling of any claims of the Trust;

~~(D)~~(iv) to value the Assets and determine the net income of the Trust; and

(v) to ~~enter into, perform, enforce~~make any filings, elections and ~~amend agreements~~ submissions (including ~~without limitation~~ in respect of taxation matters) in

[3] Consider limiting this broad power.

[4] Consider limiting this broad power.

otherwise issued, authenticated or receipted such papers, writings or documents (including any Administrative Services Agreement or any other contract entered into by the Trustee) have authority to do so or that they are the same Persons named therein or otherwise to pass upon any requirement of such papers, writing or documents that may be essential for their validity or effectiveness or upon the truth and acceptability.

5.7 ResignationReplacement of the Original Trustee

~~If the Trustee wishes to resign from its role as trustee under this Declaration and be discharged from the trusts and powers reposed in and conferred upon it by this Declaration, it shall give ninety (90) days' prior written notice thereof to the Minister of Energy (or such lesser period as the Minister of Energy may otherwise consent to). Notwithstanding such notice, such resignation shall become effective, and the Trustee shall be discharged from the trusts and powers reposed in and conferred upon it under this Declaration, only upon the appointment of, and the written acceptance of such appointment by, a successor trustee in accordance with Section 5.8. If no successor trustee shall have been appointed or shall have accepted appointment within ninety (90) days after the giving of such notice of resignation, the resigning Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee at the expense of the Trust.~~

~~**5.8 Appointment of Successor Trustee**~~

~~In the event of the resignation of the Trustee, the **[Minister of Energy]** shall appoint a successor trustee or trustees by instrument in writing and shall give written notice of such appointment to the Trustee resigning.~~

As soon as practicable and in any event prior to •, 2017, the Original Trustee shall appoint the Persons contemplated by the Trustee Replacement Annex to comprise the Advisory Committee contemplated therein (once constituted, the "**Advisory Committee**"). As soon as practicable thereafter, the Original Trustee shall request that the Advisory Board make recommendations with respect to the composition of the "Board of Trustees", as contemplated by the Trustee Replacement Annex. The Trustee shall have no duty or obligation to investigate the basis for any of the Advisory Committee's recommendations and may rely on such recommendations without any duty of enquiry, supervision or oversight with respect to the activities and decision-making processes adopted by the Advisory Committee in its discretion, in full satisfaction of the Original Trustee's Standard of Care with respect to such matters hereunder. Except if the Trustee determines that the individuals recommended by the Advisory Committee to become members of such Board of Trustees are disqualified from so acting on the basis of manifest non-compliance with the selection factors set forth under "Selection Factors" set forth in the Trustee Replacement Annex, the Original Trustee shall appoint, as additional Trustees, [number] of individuals from among those individuals who have been recommended for appointment to such Board of Trustees by the Advisory Committee. The Original Trustee may exercise its discretion in selecting such individuals for such appointment or, in the absence of such exercise, shall select such individuals based on the [alphabetic order of the first letter of their respective surname]. Upon the appointment of [number] additional trustees pursuant to this provision and their agreement to act as members of the Board of Trustees, the Original Trustee shall be deemed to have resigned and shall cease to be a trustee (such resignation occurring on the "**Original Trustee Replacement Date**").

they should be appointed by this document

~~5.11~~5.12 **Execution of ~~Documents~~Instruments**

The Trustee shall have the power to execute all deeds, transfers, agreements, promissory notes and other instruments on behalf of the Trust. Such power may be exercised by any one or more Administrative Services Agents acting in accordance with any delegated right to do so pursuant to an applicable Administrative Services Agreement, and any such execution of instrument by an Administrative Services Agent, acting in such capacity as agent of the Trust pursuant to the terms and conditions of such Administrative Services Agreement shall be deemed to be a proper execution of such instrument by the Trustee and shall be binding for all purposes on the Trust.

5.13 **Decisions by the Trustee**

If there is more than one Trustee, decisions of the Trust may be made by a majority of Trustees. Whenever the Trustees are unable to agree in relation to the commission or omission of any act or howsoever in the execution of the Trust the decision of a majority of the Trustees shall prevail.[5]

SECTION 6
AMENDMENTS AND SUPPLEMENTS

~~6.1 Amendment~~

6.1 ~~The~~Amendments

Subject to the requirements of the Transfer Payment Agreement, the Trustee shall have the power in its sole and absolute discretion from time to time without the approval of any Beneficiary or any court to amend, vary, supplement, replace or restate this Declaration in its entirety or any portion thereof~~, provided that no amendment shall conflict with the principles set forth in the Principles Annex or as to the scope or effect of the permitted delegations and activities of any Administrative Services Agent pursuant to the Permitted Delegations Annex~~. Without in any way limiting the foregoing, any such amendments, variations, supplements, replacements or restatements may:

(a) add provisions for the replacement of or appointment of additional trustees to act with the Original Trustee prior to the Original Trustee Replacement Date;

~~(a)~~(b) in the case of the Original Trustee, add provisions to those contemplated in the Trustee Replacement Annex in respect of the appointment of the members and formation and empowerment of the Board of Trustees;

(c) in the case of the Original Trustee, vary the terms and requirements applicable to the duties, responsibilities, obligations, liabilities, indemnities, protections, limitations, restrictions, compensation, expense reimbursements and such other matters, in each case as the Advisory Committee may indicate are necessary be made in order to attract and receive confirmation of appointment of appropriately qualified individuals that the Advisory Committee specifies are to be appointed as members of the Board of Trustees in accordance with its recommendations;

that it will may need amendment - rely on TPA to resolve

[5] NTD: This section will be integrated into the additional provisions dealing with the Board of Trustees.

(ii) electricity use and efficiency levels of non-commercial electricity customers;

(iii) specific regional indicators of economic weakness and need; and/or

(iv) such other factors as the Trustee may determine are relevant, including based on the submissions, advice and recommendations of Electricity Distributors made on the basis and in accordance with the delegations contemplated by the Permitted Delegations Annex or any applicable Administrative Services Agreement.

1.3 An efficient basis upon which to allocate funds to the Primary Beneficiaries across different areas and regions within the Province may be based on the designated areas and regions serviced by the Electricity Distributors operating within the Province.

1.4 The designated Electricity Distributor for an area or region in which a Primary Beneficiary resides will:

(i) be a reliable source for the purpose of assessing and confirming whether the Primary Beneficiary satisfies the Selection Factors;

(ii) be an efficient intermediary for the purpose of communicating with the Primary Beneficiary, including regarding the availability, terms, conditions and intended purposes of [Project][5];

(iii) be able to efficiently integrate and reflect any distribution payments determined to be made to the Primary Beneficiary within its established practices, procedures and systems; and

(iv) have established contractual arrangements with the Primary Beneficiary that may apply to the protection and confidentiality of information provided by or respecting the Primary Beneficiary, which information may be useful in the consideration by the Electricity Distributor in its assessment of whether the Primary Beneficiary satisfies the Selection Factors, which information may not otherwise be available or readily accessible or verifiable by the Trustee.

1.5 The designated Electricity Distributor for an area or region in which a Primary Beneficiary resides will have market and utilization information that may be useful in assessing the relative needs of Primary Beneficiaries within its designated area or region. Such information will be relevant in assessing the extent to which one such Primary Beneficiary's financial needs and the merits of its Energy Plan are greater or more compelling than those of another such Primary Beneficiary, which comparison may be relevant to the extent that the funds allocable to the Primary Beneficiaries resident in the area or region are otherwise insufficient to meet the requests for funding by all such Primary Beneficiaries.

are these obligations, conditions or "wishes"?

[5] Consider if the Trustees should control the messaging to ensure consistency across the Province.

1.6 Accordingly, it is consistent with the purposes of the Trust that the recommendations of Electricity Distributors be utilized and relied upon by the Trustee to guide the process of identifying particular Primary Beneficiaries for distributions under the [Project].

1.7 If an Electricity Distributor for a particular area or region is unable or unwilling to assess or confirm the application of the Selection Factors to Primary Beneficiaries residing in the area or region or to make recommendations in relation to such matters, one or more of the following may provide a suitable alternative source of information and for information gathering, assessment and confirmation purposes in relation to such area or region:

(i) other Electricity Distributors operating in adjacent or other areas or regions in the Province;

(ii) the Ontario Energy Board;

(iii) the Independent Electricity System Operator; and

(iv) anyone else having relevant expertise and access to information regarding the electricity market of the Province, in each case as may be considered relevant by the Trustee.

1.8 To the extent that privacy law or other legal requirements limit an Electricity Distributor from providing or making available specific information respecting the application of the Selection Factors to a particular Primary Beneficiary or group of Primary Beneficiaries, it may be appropriate to redact or make generic affected information regarding such Primary Beneficiary in connection with the identification and confirmation of a Primary Beneficiary's eligibility and participation in the [Project]. If such limitations or restrictions would limit an Electricity Distributor from providing or confirming the name of a particular Primary Beneficiary to the Trustee, then it should be sufficient that such information may be obtained or disseminated on a confidential basis if and when required by the Trustee for the proper administration of the Trust and on that basis such impediments should not disqualify a Primary Beneficiary from participating in the benefits of the [Project], to the extent that the confidential record-keeping of the Electricity Distributor would be available in connection with the application of any applicable legal process predicated on the identification of such Primary Beneficiary for the purposes of substantiating its rights as a Primary Beneficiary of the Trust or as to the validity or subsistence of the Trust.

2. Eligible Measures

2.1 Eligible Measures shall be identified having regard to the following (the "**Measures Factors**"):

(i) [NTD: Insert generic list of considerations relevant to the identification of the applicable spending uses].

it would be much more certain to use HAP + heat pumps -

2.2 In identifying and applying the Measures Factors, Electricity Distributors will have expertise in assessing the suitability of efficiency and conservation measures in their

respective areas and regions, which may differ across areas and regions across the Province based on factors (among other things) such as the climate, geography, density, electricity infrastructure, residential structures, and electricity use rates applicable within such areas or regions.

2.3 Unless otherwise specified by the Trustees, the measures specified in Schedule A to this Principles Annex will be considered.

3. Other

3.1 It is expected that administrative expenses of the Board of Trustees and its members, including any expenses relating to the Trust, to the establishment of the [Affordability Fund] and any expenses related to the implementation and operation of the [Project] by or through Electricity Distributors and other relevant entities, will be recognized and subject to reimbursement in accordance with the principles outlined in the [Province's Transfer Payment Accountability Directive/Travel, Meal and Hospitality Expenses Directive][3], in the form attached as Schedule B to this Principles Annex.

3.2 The Trustee is expected to conduct its activities to ensure that, as more specifically contemplated in the Transfer Payment Agreement:

(i) the Assets are applied are spent prudently and in furtherance of the purpose set forth in the ~~Declaration~~;

(ii) the Trustee is accountable to the Province for activities ~~undertaking~~ undertaken in connection with the Project;

(iii) it complies with the Province's request for any independent verification or audit determined to be necessary or appropriate by the Province;

(iv) the Province will be entitled and has reserved its right to demand the return of the Assets if the Province ~~determined~~ determines that they are not being used for the purposes and applied in the manner as set forth or contemplated in the Declaration.

3.3 Electricity Distributors are not intended to directly profit from distributions of funds made from the Trust, although it is recognized that the objectives of electricity efficiency and conservation of Primary Beneficiaries located in the service area or region of an Electricity Distributor, and the cost savings and improved credit worthiness of such Primary Beneficiaries, may be financially beneficial to the Electricity Distributor.

3.4 Distributions from the Trust are intended to allow receiving Primary Beneficiaries to undertake Eligible Measures at no or minimal personal cost.

3.5 It is expected that the Trust Assets will be distributed to Primary Beneficiaries during the period from the Original Trustee Replacement Date to [the Final Distribution Date] [March 31, 2019].

[3] NTD: Ministry to confirm applicable Directive(s).

c. Expenses

i. The Electricity Distributor will be eligible to receive reasonable compensation and reimbursement of its actual out-of-pocket costs associated with the performance of its duties under the Administrative Services Agreement, subject to compliance with the Province's Travel, Meal and Hospitality Expenses Directive. Such compensation amounts and reimbursement entitlements will be specified in the Administrative Services Agreement.

[Other matters you may consider dealing with here include compliance with privacy law/confidentiality/legal considerations and requirements; money laundering; preparation of accounting and tax statements by the Trust; compliance with regulatory laws; representation in product warranty claims (to the extent the Trust is sued in connection with a purchase of Eligible Measures); flowing money to suppliers of Eligible Measures; appropriate reps and indemnities from LDCs; specific reporting of cash and allocations; logistics of banking and cash flow mechanics and related record-keeping; production of information for Trustee to satisfy legal requirements applicable to the Trust (i.e., tax; record keeping); preparation of tax remittances for beneficiaries; preparation of reports for the Government and cooperation with other compliance by the Trust with the TPA; required communications to Primary Beneficiaries on behalf of the Trust (including to comply with applicable laws); preparation and submission of applications, etc., that may be contemplated by the [Project]; termination scenarios]

Compare - TPA - March 17.pdf

ONTARIO TRANSFER PAYMENT AGREEMENT

THE AGREEMENT, effective as of the • day of March, 2017 (the **"Effective Date"**)

B E T W E E N :

Her Majesty the Queen in right of Ontario
as represented by the Minister of Energy

(the "Province")

- and -

Computershare Trust Company of Canada, in its capacity as trustee of Affordability Fund Trust

(together with its successors and assigns, the "Recipient" and, together with the Province, the "Parties")

BACKGROUND

Computershare Trust Company of Canada is the original trustee of the ~~Affordability Fund Trust~~Recipient.

The Province wishes to provide Funds to the Recipient to be held and distributed in accordance with the terms of the Declaration of Trust (defined below) ~~and the~~. [**NTD: duplication of** **Principles** ~~set forth in Annex A.~~**in the Declaration and the TPA is not necessary**]

CONSIDERATION

In consideration of the mutual covenants and agreements contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is expressly acknowledged, the Parties agree as follows:

ENTIRE AGREEMENT

This agreement (as amended, restated, supplemented or otherwise modified from time to time, the **"Agreement"**), including:

Schedule "A" - General Terms and Conditions
Schedule "B" - Project Specific Information
Schedule "C" - Project - Certain Obligations of the Recipient
Schedule "D" - Budget
Schedule "E" - Payment Plan
Schedule "F" - Reporting

~~Annex "A" - Principles,~~ and any amending agreement entered into as provided for below,

constitutes the entire agreement between the Parties with respect to the subject matter contained in this Agreement and supersedes all prior oral or written representations and agreements.

COUNTERPARTS

The Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

AMENDING THE AGREEMENT

The Agreement may only be amended by a written agreement duly executed by the Parties.

ACKNOWLEDGEMENT

The Recipient:

(a) acknowledges that it has read and understands the provisions contained in the entire Agreement; and

(b) agrees to be bound by the terms and conditions contained in the entire Agreement.

IN WITNESS WHEREOF, the Parties have executed the Agreement on the dates set out below.

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO as represented by Minister of Energy

by:

_____ _____

Date Name: Serge Imbrogno

Title: Deputy Minister

Authorized Signing Officer

COMPUTERSHARE TRUST COMPANY OF CANADA, in its capacity as trustee of AFFORDABILITY FUND TRUST

by:

_____ _____

Date Name:

Title:

by:

_____ _____

Date Name:

Title:

I/We have authority to bind the Recipient.

SCHEDULE "A"
GENERAL TERMS AND CONDITIONS

1.0 INTERPRETATION AND DEFINITIONS

1.1 Interpretation. For the purposes of interpretation:

(a) words in the singular include the plural and vice-versa;

(b) words in one gender include all genders;

(c) the headings do not form part of the Agreement; they are for reference only and will not affect the interpretation of the Agreement;

(d) any reference to dollars or currency will be in Canadian dollars and currency;

(e) "include", "includes" and "including" denote that the subsequent list is not exhaustive; and

(f) where any reference is made in the Agreement to an act to be performed by or for or on behalf of the ~~Affordability Fund Trust~~Recipient, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Trustee in its capacity as trustee of the ~~Affordability Fund Trust~~Recipient, and, where any reference is made in the Agreement to an act to be performed by or for or on behalf of the Trustee, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Trustee in its capacity as trustee of the ~~Affordability Fund Trust~~Recipient.

1.2 Definitions. In the Agreement, the following terms will have the following meanings:

"BPSAA" means the Broader Public Sector Accountability Act, 2010 (Ontario).

"**Beneficiary**" has the meaning given to such term in the Declaration of Trust.

"Budget" means the budget attached to the Agreement as Schedule "D".

"Business Day" means any working day, Monday to Friday inclusive, excluding statutory and other holidays, namely: New Year's Day; Family Day; Good Friday; Easter Monday; Victoria Day; Canada Day; Civic Holiday; Labour Day; Thanksgiving Day; Remembrance Day; Christmas Day; Boxing Day and any other day on which the Province has elected to be closed for business.

"**Declaration of Trust**" means the declaration of trust made as of March [•], 2017, under which the Affordability Fund Trust was established, as such declaration of trust may be amended, restated, supplemented or otherwise modified from time to time.

"Expiration Date" means the date on which this Agreement will expire and is the date set out in Schedule "B".

"Funds" means the money the Province provides to the Recipient pursuant to the Agreement.

"Maximum Funds" means the maximum amount of Funds that the Province will provide the Recipient under the Agreement, as set out in Schedule "B".

"Notice" means any communication given or required to be given pursuant to the Agreement.

"Party" means either the Province or the Recipient.

"**Person**" includes any individual, sole proprietorship, corporation, partnership, joint venture, association, society, club, board, chamber, joint-stock company, trust, trustee, unincorporated or incorporated organization or entity or government or any entity, agency or political subdivision thereof.

"Project" means the undertaking described in Schedule "C".

"PSSDA" means the *Public Sector Salary Disclosure Act, 1996* (Ontario).

"Reports" means the reports described in Schedule "F".

"**Trustee**" means Computershare Trust Company of Canada or any replacement trustee in its capacity as trustee of the Affordability Fund Trust.

2.0 REPRESENTATIONS, WARRANTIES AND COVENANTS

2.1 General. The Recipient represents, warrants and covenants that:

(a) The Trustee is the trustee of the Affordability Fund Trust; and

(b) The Affordability Fund Trust is, and will continue to be for the term of the Agreement, a trust existing under and governed by the laws of the Province of Ontario.

2.2 Execution of Agreement. The Recipient represents and warrants that it has:

(a) the full power and authority to enter into the Agreement; and

(b) taken all necessary actions to authorize the execution of the Agreement.

2.3 Governance. The Recipient represents, warrants and covenants that it has, and will maintain, in writing for the period during which the Agreement is in effect:

(a) decision-making mechanisms and procedures to enable the Recipient to manage Funds in accordance with the Declaration of Trust; and

(b) procedures to enable the preparation and delivery of all Reports required pursuant to Article 5.0.

2.4 Supporting Documentation. Upon request, the Recipient will provide the Province with proof of the matters referred to in this Article 2.0.

3.0 TERM OF THE AGREEMENT

3.1 Term. The term of the Agreement will commence on the Effective Date and will expire on the Expiration Date.

4.0 FUNDS AND CARRYING OUT THE PROJECT

4.1 Funds Provided. The Province will:

(a) provide the Recipient up to the Maximum Funds to be held and distributed in accordance with the terms of the Project and the Declaration of Trust;

(b) provide the Funds to the Recipient in accordance with the Payment Plan attached to the Agreement as Schedule "E"; and

(c) deposit the Funds into an account designated by the Recipient, provided that the account:

(i) resides at a Canadian financial institution; and

(ii) is in the name of the Recipient.

4.2 Limitation on Payment of Funds. Despite section 4.1, the Province is not obligated to provide any Funds to the Recipient until the Recipient provides the insurance certificate or other proof as the Province may request pursuant to [section 10.2].

4.3 Use of Funds and Project. The Recipient will use the Funds only for the purpose contemplated by the Project~~,~~ and the Declaration of Trust ~~and the Principles set forth in Annex A~~.

4.4 Province's Role Limited to Providing Funds. For greater clarity, the Province's role under the Agreement is limited to providing Funds to the Recipient and the Province is not responsible for carrying out the terms of the Declaration of Trust.

4.5 Maximum Funds. The Recipient acknowledges that the Funds available to it pursuant to the Agreement will not exceed the Maximum Funds.

4.6 Funding, Not Procurement. For greater clarity, the Recipient acknowledges that:

(a) it is receiving funding from the Province for the Project and is not providing goods or services to the Province; and

(b) the funding the Province is providing under the Agreement is funding for the purposes of the PSSDA.

5.0 RECIPIENT'S ACQUISITION OF GOODS OR SERVICES, AND DISPOSAL OF ASSETS

5.1 Acquisition. If the Recipient acquires goods, services, or both with the Funds, it will do so through a process that promotes the best value for money. **[NTD: Very uncertain]**

6.0 CONFLICT OF INTEREST

6.1 No Conflict of Interest. The Recipient will carry out the Project and use the Funds without an actual, potential or perceived conflict of interest.

6.2 Conflict of Interest Includes. For the purposes of this Article, a conflict of interest includes any circumstances where:

(a) the Recipient; or

(b) any person who has the capacity to influence the Recipient's decisions,

has outside commitments, relationships or financial interests that could, or could be seen to, interfere with the Recipient's objective, unbiased and impartial judgment relating to the Project, the use of the Funds, or both.

6.3 Disclosure to Province. The Recipient will:

(a) disclose to the Province, without delay, any situation that a reasonable person would interpret as an actual, potential or perceived conflict of interest; and

7.0 REPORTING, ACCOUNTING AND REVIEW

7.1 Preparation and Submission. The Recipient will:

(a) submit to the Province at the address referred to in Schedule "B", all Reports in accordance with the timelines and content requirements set out in Schedule "F", or in a form as specified by the Province from time to time;

(b) submit to the Province at the address referred to in Schedule "B", any other reports as may be requested by the Province in accordance with the timelines and content requirements specified by the Province;

(c) ensure that all Reports and other reports are completed to the satisfaction of the Province; and

(d) ensure that all Reports and other reports are signed on behalf of the Recipient by an authorized signatory.

7.2 Record Maintenance. The Recipient will keep and maintain financial and other records necessary to permit it to satisfy its obligations under section ~~7.1 and to permit the Province to exercise its rights under section 7.3.~~7.1.

7.3 Inspection. The Province, its authorized representatives or an independent auditor identified by the Province may, at its own expense, upon twenty-four hours' Notice to the Recipient and during normal business hours, inspect the records of and information respecting the Recipient to confirm its compliance with the terms of this Agreement, including to ensure consistency with the purposes of the Project and regarding the Recipient's allocation and expenditure of the Funds and, for these purposes, the Province, its authorized representatives or an independent auditor identified by the Province may take one or more of the following actions:

(a) inspect and copy the records and documents referred to in section 7.2;

(b) keep any copies made pursuant to section 7.3(a); and

(c) conduct an audit or investigation of the Recipient in respect of the expenditure of the Funds to confirm that the funds have been used for the purposes intended, including a review of the Trust's processes to ensure that funds disbursed to LDCs were used for purposes intended..

7.4 Disclosure. To assist in respect of the rights set out in section 7.3 the Recipient will disclose any information requested by the Province, its authorized representatives or an independent auditor identified by the Province, and will do so in the form requested by the Province, its authorized representatives or an independent auditor identified by the Province, as the case may be.

7.5 No Control of Records. No provision of the Agreement will be construed so as to give the Province any control whatsoever over the Recipient's records.

7.6 Auditor General. For greater certainty, the Province's rights under this Article are in addition to and do not limit any rights provided to the Auditor General pursuant to section 9.1 of the *Auditor General Act* (Ontario).

8.0 COMMUNICATIONS REQUIREMENTS

8.1 Publication. The Recipient will indicate, in any of its Project-related publications, whether written, oral, or visual, that the views expressed in the publication are the views of the Recipient and do not necessarily reflect those of the Province.

9.0 FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY

9.1 FIPPA. The Recipient acknowledges that the Province is bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province in connection with the Project or otherwise in connection with the Agreement may be subject to disclosure in accordance with that Act.

10.0 EVENT OF DEFAULT, CORRECTIVE ACTION AND TERMINATION FOR DEFAULT

[Blakes comment: KPMG to comment on 'control' implications.]

10.1 Events of Default. An Event of Default will occur if the Recipient breaches any representation, warranty, covenant or other term of this Agreement.

10.2 Consequences of Events of Default and Corrective Action. If an Event of Default occurs, the Province may, at any time, take one or more of the following actions:

(a) provide the Recipient with an opportunity to remedy the Event of Default;

(b) seek an order of specific performance including an order that the Recipient pursue its available remedies against third parties;

(c) recover any Funds remaining in the possession or under the control of the Recipient; and

(d) terminate the Agreement at any time, including immediately, without liability, penalty or costs to the Province upon giving Notice to the Recipient.

10.3 Opportunity to Remedy. If, in accordance with section 9.2(a), the Province provides the Recipient with an opportunity to remedy the Event of Default, the Province will provide Notice to the Recipient of:

(a) the particulars of the Event of Default; and

(b) the Notice Period.

10.4 Recipient not Remedying. If the Province has provided the Recipient with an opportunity to remedy the Event of Default pursuant to section 11.2(a), and:

(a) the Recipient does not remedy the Event of Default within the Notice Period;

(b) it becomes apparent to the Province that the Recipient cannot adequately remedy the Event of Default within the Notice Period; or

(c) the Recipient is not proceeding to remedy the Event of Default in a way that is satisfactory to the Province,

the Province may extend the Notice Period, or initiate any one or more of the actions provided for in section 11.2.

10.5 When Termination Effective. Termination under this Article will take effect as set out in the Notice.

11.0 REPAYMENT

11.1 Debt Due. If, pursuant to the Agreement: the Province demands the payment of any Funds from the Recipient pursuant to section 11.2 such Funds or other amount will be deemed to be a debt due and owing to the Province by the Recipient, and the Recipient will pay or return the amount to the Province immediately, unless the Province directs otherwise.

~~11.2~~ ~~**Interest Rate.** The Province may charge the Recipient interest on any money owing by the Recipient at the then current interest rate charged by the Province of Ontario on accounts receivable.~~

11.2 ~~11.3~~ **Payment of Money to Province.** The Recipient will pay any money owing to the Province by cheque payable to the "Ontario Minister of Finance" and delivered to the Province at the address referred to in **[Schedule "B"]**.

11.3 ~~11.4~~ **Failure to Repay.** Without limiting the application of section 43 of the Financial Administration Act (Ontario), if the Recipient fails to repay any amount owing under the Agreement, Her Majesty the Queen in right of Ontario may deduct any unpaid amount from any money payable to the Recipient by Her Majesty the Queen in right of Ontario.

12.0 NOTICE

12.1 Notice in Writing and Addressed. Notice will be in writing and will be delivered by email, postage-prepaid mail, personal delivery or fax, and will be addressed to the Province and the Recipient respectively as set out in Schedule "B", or as either Party later designates to the other by Notice.

12.2 Notice Given. Notice will be deemed to have been given:

(a) in the case of postage-prepaid mail, five Business Days after the Notice is mailed; or

(b) in the case of email, personal delivery or fax, one Business Day after the Notice is delivered.

12.3 Postal Disruption. Despite section 13.2(a), in the event of a postal disruption:

(a) Notice by postage-prepaid mail will not be deemed to be received; and

(b) the Party giving Notice will provide Notice by email, personal delivery or by fax.

13.0 SEVERABILITY OF PROVISIONS

13.1 Invalidity or Unenforceability of Any Provision. The invalidity or unenforceability of any provision of the Agreement will not affect the validity or enforceability of any other provision of the Agreement. Any invalid or unenforceable provision will be deemed to be severed.

14.0 WAIVER

14.1 Waivers in Writing. If a Party fails to comply with any term of the Agreement, that Party may only rely on a waiver of the other Party if the other Party has provided a written waiver in accordance with the Notice provisions in Article 13.0. Any waiver must refer to a specific failure to comply and will not have the effect of waiving any subsequent failures to comply.

15.0 INDEPENDENT PARTIES

15.1 Parties Independent. The Recipient acknowledges that it is not an agent, joint venturer, partner or employee of the Province, and the Recipient will not represent itself in any way that might be taken by a reasonable person to suggest that it is, or take any actions that could establish or imply such a relationship.

16.0 ASSIGNMENT OF AGREEMENT OR FUNDS

16.1 Agreement Binding. All rights and obligations contained in the Agreement will extend to and be binding on the Parties' respective heirs, executors, administrators, successors and permitted assigns.

17.0 LIMITATION OF LIABILITY

17.1 This Agreement has been entered into by the Trustee solely in its capacity as trustee of the Recipient and is not binding on the Trustee in any other capacity, whether in tort, contract or otherwise. **The Beneficiaries of the Recipient are not subject to any liability in respect of the Recipient.** Resort may not be had to, nor recourse or satisfaction be sought from, the private property of the Trustee, its directors, officers, employees, or agents, or the private property of any Beneficiary, and resort will be had solely to the property of the Recipient held in trust by the Trustee for the payment, performance or satisfaction of any liability or obligation of the Recipient or the Trustee under this Agreement.

18.0 GOVERNING LAW

18.1 **Governing Law.** The Agreement and the rights, obligations and relations of the Parties will be governed by and construed in accordance with the laws of the Province of Ontario and the applicable federal laws of Canada. Any actions or proceedings arising in connection with the Agreement will be conducted in the courts of Ontario, which will have exclusive jurisdiction over such proceedings.

19.0 FURTHER ASSURANCES

19.1 **Agreement into Effect.** The Recipient will provide such further assurances as the Province may request from time to time with respect to any matter to which the Agreement pertains, and will otherwise do or cause to be done all acts or things necessary to implement and carry into effect the terms and conditions of the Agreement to their full extent.

19.2 **Declaration of Trust.** The Trustee covenants that it shall not amend, restate or terminate the Declaration of Trust without obtaining the written consent of the Province in respect of same.

20.0 JOINT AND SEVERAL LIABILITY

20.1 **Joint and Several Liability.** Where the Recipient is comprised of more than one entity, all such entities will be jointly and severally liable to the Province for the fulfillment of the obligations of the Recipient under the Agreement.

21.0 RIGHTS AND REMEDIES CUMULATIVE

21.1 **Rights and Remedies Cumulative.** The rights and remedies of the Province under the Agreement are cumulative and are in addition to, and not in substitution for, any of its rights and remedies provided by law or in equity.

22.0 ACKNOWLEDGEMENT OF OTHER LEGISLATION AND DIRECTIVES

22.1 **Recipient Acknowledges.** The Recipient acknowledges that by receiving Funds it may become subject to legislation applicable to organizations that receive funding from the Government of Ontario, including the BPSAA, the PSSDA, and the *Auditor General Act* (Ontario).

23.0 SURVIVAL

23.1 **Survival.** The following Articles and sections, and all applicable cross-referenced sections and schedules, will continue in full force and effect for a period of seven years from the date of expiry or termination of the Agreement: Article 1.0 and any other applicable definitions, section, 4.5, section 7.1 (to the extent that the Recipient has not provided the Reports to the satisfaction of the Province), sections 7.2, 7.3, 7.4,7.5, 7.6, Article 8.0, Article 12.0, Article 14.0, Article 17.0, Article 20.0, Article 21.0. [NTD: References to be update/confirmed.]

- END OF GENERAL TERMS AND CONDITIONS -

SCHEDULE "B"

PROJECT SPECIFIC INFORMATION

Maximum Funds	$100 million
Expiration Date	Later of [April 30, 2019] and the Final Distribution Date (as defined in the Declaration of Trust)
Insurance	$2,000,000
Contact information for the purposes of Notice to the Province	**Attention: Usman Syed** **Position: Director** **Address: 77 Grenville St, Toronto, Ontario, M7A 2C1** **Fax: 416-325-6651** **Email: Usman.Syed@ontario.ca**
Contact information for the purposes of Notice to the Recipient	**Attention:** **Position:** **Address:** **Email:**
Contact information for the senior financial person in the Recipient organization (e.g., CFO, CAO) – to respond as required to requests from the Province related to the Agreement	**Attention:** **Position:** **Address:** **Email:**

SCHEDULE "C"

PROJECT

For the purposes of this Agreement, the "Project" is the distribution of the Funds in accordance with the Declaration of Trust.

The Project will be completed subject to the requirements of the Budget ~~and in accordance with the Principles set forth in Annex A~~.

Notwithstanding anything else contained in the Agreement or the Declaration of Trust, until such time as each of the following conditions have been completed to the satisfaction of the Province (the "Requirements"), the Recipient shall not distribute any Funds to any Beneficiary. **[Blakes comment: We will be refining this content further]**

1. Procedures shall be developed and implemented for (i) identifying trustees who are individuals resident in Ontario to replace Computershare Trust Company of Canada as the sole trustee of the Recipient, and (ii) the making of decisions by the trustees of the Recipient and more generally, for the governance of the Recipient.

2. Computershare Trust Company of Canada shall be replaced as the sole trustee of the Recipient with three or more individual trustees identified in accordance with the procedures developed under clause 1.

3. An administrative services agreement shall have been developed and entered into by the Recipient and the administrative services agent providing for the administrative services necessary for the operation of the Recipient and the execution of the Project.

4. Procedures will be developed and implemented under which Local Distribution Companies (as defined in the Declaration of Trust) will assist with (i) the identification of Beneficiaries, and (ii) the distribution of Funds to or for the benefit of such Beneficiaries.

5. Insurance requirement **[Blakes Comment: We will look to refine this, but the intent is for Trustees to have insurance in place before funds are flowed. Under the previous draft, if there was a lawsuit against a Trustee, expenses and any liabilities would be covered by the Trust (indemnification). Instead, we are proposing that a line of insurance be established that a Trustee would access to cover lawsuit related expenses and liabilities. The intention is to protect the Trust funds and for them to be not used for lawsuit related liabilities.]**

Each of the Requirements may be accomplished by the Recipient entering into such agreements as may be necessary or expedient, including, without limitation, an amendment or amendment and restatement of the Declaration of Trust. The Province shall provide notice in writing to the Recipient when the Requirements have been completed to the satisfaction of the Province. Funds may be expended to pay the expenses of the Trustee in completing the Requirements.

SCHEDULE "D"

Budget

1. It is expected that the administrative expenses of the Fund, including any fees of the Trustee and any administrative expenses of the Recipient (or any administrative services agents or other agents retained by the Recipient), relating to the establishment of the Affordability Fund and satisfying the Requirements (as defined in Schedule "C") and any expenses related to the operation of the Trust and the execution of the Project (including any reimbursable expenses incurred by any Administrative Services Agent (as such terms are defined in the Declaration of Trust), will be no greater than 10 percent of the total Project budget.

2. Only actual (excluding HST) incurred expenditures of the Trust are eligible for reimbursement as administrative expenses.

3. It is expected any travel, meals and hospitality expenses by the Recipient will be consistent with the Province's Travel, Meal and Hospitality Expenses Directive. Entities receiving funding from the Recipient are also expected to adhere to the Province's Travel, Meal and Hospitality Expenses Directive and the Recipient is expected to request the same of such Entities. Alcohol and First-Class travel are not considered eligible claims and disbursements for hospitality, incidental or food expenses shall not be covered by the Funds, including the following:

    - Meals, snacks and beverages
    - Gratuities
    - Laundry or dry cleaning
    - Valet services
    - Dependent care
    - Home management
    - Personal telephone calls

4. It is expected that overhead expenses which are not directly related to the activities related to the Recipient in establishing and managing the Affordability Fund would not be reimbursed.

5. Any expenses that have been or may be reimbursed by other parties should not be reimbursed by the Fund.

6. In the event that the Recipient performs any procurements, it is expected that all procurements will reflect the principles of Ontario's Public Service Procurement Directive.

SCHEDULE “E”

PAYMENT PLAN

PAYMENT DATE	MAXIMUM FUNDS TO BE DISBURSED BY THE PROVINCE
Within 7 days of signing the Agreement	$ 100,000,000

SCHEDULE "F"

REPORTING

Quarterly Reports will be provided quarterly on the basis of the government's fiscal year starting at the execution of this Agreement and continuing until conclusion of the Agreement. Annual Reports will be provided annually on a fiscal basis starting at the execution of this Agreement and continuing until conclusion of the Agreement. Quarterly Reports and Annual Reports shall be submitted to the Province within one month following the end of the reporting period that they represent.

The Recipient shall prepare six (6) Quarterly Reports and two (2) Annual Report as outlined below. Reports shall explicitly demonstrate impact of Province's funding and address report detail requirements listed below.

NAME OF REPORT	DUE DATE
Quarterly Report #1	July 31, 2017
Quarterly Report #2	October 31, 2017
Quarterly Report #3	January 31, 2018
Annual Report #1	April 30, 2018
Quarterly Report #4	July 31, 2018
Quarterly Report #5	October 31, 2018
Quarterly Report #6	January 31, 2019
Annual Report #2	April 30, 2019

Requirements for Quarterly Reports

- The Recipient will provide Quarterly Reports which will include a report back on the Trustee-developed performance management criteria. Quarterly Report requirements will be determined from time to time by the Province, and initially will include:
    - Amounts disbursed by the Recipient in the previous quarter. It is expected that this information will be provided at the electricity distributor level.
    - Total Affordability Fund interest accrued to date
    - Key activities and achievements from the quarter being reported, including number of participant households per electricity distributor, average participant incentive cost per electricity distributor, and uptake of energy efficiency measures per electricity distributor
    - Any challenges or modifications required to the application, funding, or eligibility processes/rules
    - Key activities planned for the upcoming quarter

Requirements for Annual Report

- The Recipient will provide an Annual Report to the Province which will include a report back on the Trustee-developed performance management criteria. Annual Report requirements include:

- A description of electricity distributor application process and the criteria used by the Recipient to manage funds.
- Identify and describe any challenges with achieving goals and proposed solutions, if applicable.
- Lesson learned.
- Electricity distributor and customer feedback
- Amounts disbursed by the Recipient in the previous year. It is expected that this information will be provided at the electricity distributor level.
- Key activities and achievements from the quarter being reported, including number of participant households per electricity distributor, average participant incentive cost per electricity distributor, and uptake of energy efficiency measures per electricity distributor
- Total Affordability Fund interest accrued to date

- As part of the Annual Report, the Recipient will also provide the Province with an audited financial statement for the previous year.

~~ANNEX A~~

~~Principles~~

FW_ Affordability Fund Trust (Further Revisions to the DoT and TPA).rtf

From: Petsche, Nadine (TBS) []
To: Picard, Michel (mpicard@kpmg.ca) [mpicard@kpmg.ca]
Subject: FW: Affordability Fund Trust (Further Revisions to the DoT and TPA)
Date: Wednesday, March 22, 2017 16:28:40
Attachment 1: imaged059c7.GIF
Attachment 2: TOR_2024-#12887993-v19-Affordability_Fund_Trust_–_Declaration_of_Trust_-_Blakes_Comments_(March_14__2017).DOCX
Attachment 3: TOR_2024-#12887993-vpdf-Affordability_Fund_Trust_–_Declaration_of_Trust_-_Blakes_Comments_(March_14__2017).PDF
Attachment 4: TOR_2024-#12888010-v13-Transfer_Payment_Agreement_(Affordability_Fund_Trust).DOCX
Attachment 5: TOR_2024-#12888010-vpdf-Transfer_Payment_Agreement_(Affordability_Fund_Trust).PDF

From: ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
Sent: March 22, 2017 4:23 PM
To: PRESTAGE, JA; Johnson, Paul (ENERGY/MEDEI/MRI); Ranalli, David (ENERGY); Schachtschneider, Michelle (ENERGY); Qureshi, Musab (ENERGY); Schwab-Pflug, Emma (ENERGY); Syed, Usman (ENERGY); Petsche, Nadine (TBS)
Subject: RE: Affordability Fund Trust (Further Revisions to the DoT and TPA)

Hi. Here is a further revised set of the DoT and TPA, reflecting some final edits, catch-ups and clean-ups. Regards, Steve

Stephen R. Ashbourne

Partner

stephen.ashbourne@blakes.com

Dir: 416-863-3086

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From: PRESTAGE, JA
Sent: Wednesday, March 22, 2017 2:48 PM
To: Paul.Johnson3@ontario.ca; David.Ranalli@ontario.ca; Michelle.Schachtschneider@ontario.ca; Musab.Qureshi@ontario.ca; Emma.Schwab-Pflug@ontario.ca; Usman.Syed@ontario.ca; Petsche, Nadine (TBS)
Cc: ASHBOURNE, STEPHEN
Subject: Affordability Fund Trust

All:

Attached are revised versions of the Declaration of Trust and the TPA which seek to reflect all of the comments received.

There are a few highlighted sections which require specific decisions or attention.

J.A.

J.A. Prestage
Partner
ja.prestage@blakes.com
Dir: 416-863-2955

imaged059c7.pdf

Blakes

TOR_2024-#12887993-v19-Affordability_Fund_Trust_□Declaration_of_Trust_-_Blakes_Comments_(March_14_2017).pdf

DECLARATION OF TRUST

Made as of March •, 2017

by

COMPUTERSHARE TRUST COMPANY OF CANADA

establishing

AFFORDABILITY FUND TRUST

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DECLARATION OF TRUST

This Declaration of Trust is made as of March •, 2017, by Computershare Trust Company of Canada, a trust company established under the laws of Canada and licensed to carry on business as a trust company in each of the provinces and territories of Canada (together with its successors and assigns and the other trustees (including the Board of Trustees) contemplated herein, the "**Trustee**").

WHEREAS Computershare Trust Company of Canada, as settlor, wishes to establish a trust to acquire, hold, manage, invest, apply and dispose of certain property for the benefit of certain Beneficiaries as herein described.

NOW THEREFORE Computershare Trust Company of Canada hereby declares that it holds in trust as trustee (a) the sum of ONE HUNDRED DOLLARS ($100) contributed by it on this date and (b) all other property of every type and description which it may hereafter acquire or hold in its capacity as trustee of the Trust and all income therefrom and proceeds thereof, to hold, manage, invest, apply and dispose of same on and subject to the provisions set forth in this Declaration of Trust, including the annexes and schedule attached hereto.

SECTION 1
INTERPRETATION

1.1 Definitions

In this Declaration:

(a) "***Administrative Services Agent***" means each agent, which may include any Electricity Distributor or other Person, appointed from time to time under an Administrative Services Agreement, and its successors and permitted assigns solely in such capacity.

(b) "***Administrative Services Agreement***" means each agreement entered into from time to time by the Trust and one or more Administrative Services Agents or other Persons, in furtherance of the Purpose, under which the Administrative Services Agent agrees to provide specified administrative and other services to and on behalf of the Trustee, as such agreement may be amended, supplemented, restated, renewed or replaced from time to time and includes the agreement entered into on or about the date hereof between the Trustee and Hydro One Limited.

(c) "***Assets***" means, collectively, the following:

(i) the $100 Canadian referred to above, contributed by Computershare Trust Company of Canada on the date hereof;

(ii) all other property which is now or which at any time in the future may be issued, assigned, transferred, provided, donated, gifted and contributed to the Trustee (including pursuant to the Transfer Payment Agreement) to be held in trust pursuant to this Declaration (and which the Trustee is willing to accept and hold);

(iii) all acquisitions of property made by the Trust;

(iv) all property which may at any time be substituted for or in respect of the property referred to in clauses (i), (ii) and (iii), above;

(v) all income of the Trust, including investment income generated by the investment of the property referred to in clauses (i), (ii), (iii) and (iv), above; and

(vi) all proceeds of disposition of any of the property referred to in clauses (i) through (v) above,

but excludes any property paid out or distributed (whether out of income or capital) pursuant to the provisions of this Declaration.

(d) "***Beneficiary***" means each Primary Beneficiary and each Residual Beneficiary, as applicable.

(e) "***Board of Trustees***" means (i) as of the Original Trustee Replacement Date, the individual trustees appointed by the Original Trustee pursuant to Section 5.7 on the basis described in the Trustee Replacement Annex, and (ii) thereafter, the group of trustees appointed hereunder and acting in such capacity.

(f) "***Business Day***" means any working day, Monday to Friday inclusive, excluding statutory and other holidays, namely: New Year's Day; Family Day; Good Friday; Easter Monday; Victoria Day; Canada Day; Civic Holiday; Labour Day; Thanksgiving Day; Remembrance Day; Christmas Day; Boxing Day and any other day on which the Province has elected to be closed for business.

(g) "***Declaration***" means this Declaration of Trust, as it may be amended, restated, supplemented or otherwise modified from time to time, and includes each of the annexes and the Schedule attached hereto which constitute and form an integral part of this Declaration.

(h) "***Electricity Distributor***" means, in respect of a designated service area or region in Ontario, the distributor of electricity to residences located in such area or region.

(i) "***Electricity Invoice***" means an invoice issued by an Electricity Distributor in respect of electricity charges and related services and amounts incurred or assessed in respect of a residence located in the Electricity Distributor's designated service area or region in Ontario.

(j) "***Eligible Investments***" means (i) a deposit receipt, note, certificate or instrument issued, guaranteed or endorsed by a bank listed in Schedule I to the *Bank Act* (Canada), which provides that the principal and any interest shall be fully paid no later than one year after the day the investment was made, or (ii) a deposit account at a bank listed in Schedule I to the *Bank Act* (Canada).

(k) "***Eligible Measures***" means electricity efficiency and/or conservation measures determined by the Trustee from time to time on the basis contemplated in the Principles Annex and in the manner specified in and having regard to the Permitted Delegations Annex.

(l) "***Final Distribution Date***" means the earlier of (a) the date (if any) on which the Trustee determines (by a resolution of the Board of Trustees) that no further distributions are likely to be made to any Primary Beneficiary and (b) December 31, 2019.

(m) "***HAP Eligible Person***" means an "Eligible Person" as defined in Section 3.1 of the document entitled "Conservation First Framework LDC Took Kit" published by the Independent Electricity System Operator and designated as Final v3.0 – March 11, 2016, as amended in accordance with the Energy Conservation Agreement between the Independent Electricity System Operator and Electricity Distributors.

(n) **"Implementation Agent"** means each agent which may include any Electricity Distributor or other Person, appointed from time to time under an Implementation Agreement, and its successors and assigns solely in such capacity.

(o) **"Implementation Agreement"** means each agreement entered into from time to time by the Trustee and one or more Implementation Agents or other Persons in furtherance of the Purpose under which the Implementation Agent would agree to provide specified services to and on behalf or the Trustee (including, following the Original Trustee Replacement Date, as contemplated by the Permitted Delegations Annex) in connection with the implementation of the Program as such agreement may be amended , supplemented, restated, renewed or replaced from time to time.

(p) "***Minister of Energy***" means the Minister of Energy or such other member of the Executive Council as may be assigned primary ministerial responsibility for the administration of the *Ministry of Energy Act, 2011* under the *Executive Council Act*.

(q) "***Original Trustee***" means Computershare Trust Company of Canada, acting in its capacity as trustee hereunder, together with any additional or replacement Trustee appointed hereunder prior to the Original Trustee Replacement Date and any of their respective successors and assigns.

(r) "***Original Trustee Replacement Date***" has the meaning specified in Section 5.7, being the date on which the Original Trustee is replaced as trustee under this Declaration by the Board of Trustees as contemplated under Section 5.7.

(s) "***Permitted Delegations Annex***" means the Permitted Delegations Annex set forth as an annex to this Declaration.

(t) "***Person***" includes any individual, sole proprietorship, corporation, partnership, joint venture, association, society, club, board, chamber, joint-stock company, trust, trustee, unincorporated or incorporated organization or entity or government or any entity, agency or political subdivision thereof.

(u) "***Primary Beneficiary***" means each individual that, as of a time of determination, satisfies each of the following criteria:

(i) the individual owns, rents or leases a residence located in Ontario and is the primary or secondary electricity utility account holder named on an Electricity Invoice issued in respect of that residence; and

(ii) the individual is not a HAP Eligible Person.

(v) "***Principles Annex***" means the Principles Annex set forth as an annex to this Declaration.

(w) "***Province***" means the Province of Ontario.

(x) "***Program***" means the establishment, promotion, implementation and administration of a program to achieve the Purpose on the basis contemplated in this Declaration.

(y) "***Purpose***" means (i) the making of distributions to Primary Beneficiaries who are identified and whose needs are assessed in accordance with section 3.1 and 3.2 of this Declaration, having regard to (x) the principles set forth in the Principles Annex, (y) the manner and basis of implementation and administration of the Program contemplated in the Permitted Delegations Annex, and (z) the other terms, limitations and requirements set forth in this Declaration, and (ii) to the extent that Assets are available following the distributions made to Primary Beneficiaries as contemplated in (i), above, the making of distributions to Residual Beneficiaries who are identified and whose needs are assessed in accordance with section 3.3 and otherwise having regard to the other terms, limitations and requirements set forth in this Declaration.

(z) ***"Residual Beneficiary"*** means each charitable organization identified by the Trustee and specified as a residual beneficiary hereunder from time to time, selected by the Trustee in consultation with and having regard to the recommendations of the Ontario Energy Board in accordance with section 3.3.

(aa) "***Transfer Payment Agreement***" means the transfer payment agreement dated as of March •, 2017 between the Trustee and Her Majesty the Queen in right of Ontario as represented by the Minister of Energy, as such agreement may be amended, restated, supplemented or otherwise modified by the further agreement of the parties thereto from time to time.

(bb) "***Trust***" means Affordability Fund Trust, a trust established under and governed by the laws of the Province of Ontario pursuant to this Declaration.

(cc) "***Trustee***" means (i) the Original Trustee and (ii) on and after the Original Trustee Replacement Date, the Board of Trustees acting together in accordance with and subject to Section 5.7 and in accordance with the rules and procedures adopted by the Board of Trustees pursuant to Section 5.8.

(dd) "***Trustee Replacement Annex***" means the Trustee Replacement Annex set forth as an annex to this Declaration.

1.2 Headings and Table of Contents

The insertion of headings and the provision of a table of contents are for convenience of reference only and shall not affect the construction or interpretation of this Declaration.

1.3 References

Unless otherwise specified, all references to Sections are to Sections of this Declaration. The words "hereto", "herein", "hereof", "hereunder" and similar expressions refer to this Declaration and not to any particular Section or other provision of this Declaration.

1.4 Number and Gender

Unless otherwise specified, words importing the singular include the plural and vice versa and words importing gender include all genders.

1.5 Governing Law

This Declaration shall be governed by, and construed and interpreted in accordance with, the laws of the Province of Ontario and of Canada applicable therein.

1.6 Severability

Any provision of this Declaration which is illegal, invalid or unenforceable in any jurisdiction shall not affect the legality, validity or enforceability of the remaining provisions and any such illegality, invalidity or unenforceability in any jurisdiction shall not affect the legality, validity or enforceability of such provision in any other jurisdiction.

1.7 Reference to the Trust and the Trustee

For greater certainty, where any reference is made in this Declaration to an act to be performed by or for or on behalf of the Trust, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Trustee in its capacity as trustee of the Trust, and, where any reference is made in this Declaration to an act to be performed by or for or on behalf of the Trustee, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Trustee solely in its capacity as trustee of the Trust. Except as provided under the Transfer Payment Agreement, no Person dealing with the Trust or the Trustee shall be bound to make any enquiry concerning, or has the right to require production of, any evidence of the validity of any act of, or transaction purporting to be made by, the Trustee.

1.8 Defect in Appointment

No action taken by the Trustee will be invalid or ineffective by reason only of any defect in the appointment of the Trustee or the non-compliance by the Trustee with any rules or procedures adopted by the Trustee and which is discovered after the taking of such action.

SECTION 2
CONCERNING THE TRUST

2.1 Objectives

The Trust is established to hold, invest, apply and dispose of the Assets for the benefit of the Beneficiaries in furtherance of the Purpose, as provided for in this Declaration. In furtherance of the Purpose:

(a) the Original Trustee shall hold and invest the Assets as contemplated in this Declaration until the Original Trustee Replacement Date, after which the Board of Trustees shall be duly appointed hereunder; and

(b) the Board of Trustees shall hold, invest, apply and dispose of the Assets in accordance with this Declaration, including by determining the identities of and distributions (if any) to be made to or for the benefit of the Primary Beneficiaries in accordance with Sections 3.1 and 3.2 of this Declaration, having regard to the principles set forth in the Principles Annex and in the manner and on the basis contemplated in the Permitted Delegations Annex, or otherwise by determining the identities of and distributions to be made to or for the benefit of any Residual Beneficiary in accordance with Section 3.3,

in each case and in all respects subject to the terms, limitation and requirements set forth in this Declaration.

2.2 Name of the Trust

The name of the Trust shall be the "Affordability Fund Trust" or such replacement name as the Trustee shall determine and specify from time to time. The Trustee shall hold the Assets and conduct the activities of the Trust under such name or variation thereof (including any variation of such name in the French language). If the Trustee determines to change the name of the Trust, the Trustee may specify and use such other designation or adopt such other name (including any name in the French language) as it considers appropriate and may hold the Assets and conduct the activities of the Trust under such designation or other name.

2.3 Location

The head office and the situs of the administration of the Trust shall be • or such other address in Ontario as the Trustee may determine from time to time.

2.4 Fiscal Year

The fiscal year of the Trust shall end on December 31 of each year.

SECTION 3
DISTRIBUTIONS

3.1 Distributions to Primary Beneficiaries

After the Original Trustee Replacement Date and prior to the Final Distribution Date, the Trustee shall undertake diligent efforts in good faith to distribute the Assets (including capital or income) to the Primary Beneficiaries identified based on the application of the principles specified in the Principles Annex and in the manner and in the amounts determined on the basis contemplated by the Permitted Delegations Annex, in each case in the amounts and to the extent specified herein and therein, subject in all respects to the exercise by the Trustee of its discretion hereunder and to the exclusion of the other Beneficiaries.

3.2 Amount of Distributions to Primary Beneficiaries

For the purposes of determining the amount of distributions to be made to the Primary Beneficiaries, the Trustee shall have regard to and be entitled to rely on the recommendations of and information provided by Electricity Distributors acting as Implementation Agents appointed for the purposes, in the manner and substantially on the terms contemplated in the Permitted Delegations Annex, without any duty or obligation to verify or makes enquiries regarding the basis for or propriety of such recommendations or the accuracy or completeness of such information, except if and to the extent that the Trustee, in its discretion, determines that (i) it has actual knowledge that such recommendations are contrary to the reasonable application of the principles set forth in the Principles Annex or have been made on a basis that is manifestly contrary to such principles or the delegations and activities specified or contemplated to be undertaken under the Permitted Delegations Annex or (b) such information is known by the Trustee to be erroneous, contain a material misrepresentation or is materially incomplete.

3.3 Distributions to Residual Beneficiaries

Prior to the Final Distribution Date, the Trustee shall identify the Residual Beneficiary, or if more than one the Residual Beneficiaries and their respective allocations, by consulting with and having regard to the recommendations of the Ontario Energy Board, based on those charitable organizations which provide support services for Low Income Energy Assistance Program Emergency Financial Assistance (LEAP EFA) and the Ontario Electricity Support Program (OESP) or other charities that OEB may identify as relating to the Purpose. Following the Final Distribution Date, the Trustee shall, subject to compliance with section 7.3 and completion of a final audit, distribute all remaining Assets (including capital or income) to the Residual Beneficiaries, in each case in the amounts and to the extent determined by the Trustee in its discretion hereunder (having consulted with and having had regard to the recommendations of the Ontario Energy Board as aforesaid) and to the exclusion of the other Beneficiaries.

SECTION 4
POWERS OF THE TRUSTEE

4.1 General

Subject to and in compliance with the terms, limitations and restrictions of this Declaration and notwithstanding applicable trust legislation, the Trustee shall have, without other or further

authorization, full, exclusive and absolute power, control and authority over the Assets and over the affairs and activities of the Trust to the same extent as if the Trustee were not a trustee, but rather the sole and absolute owner of the Assets in its own right, including such power, control and authority to do all such acts and things as in its sole judgment and discretion are necessary, incidental or desirable for carrying on the affairs and activities of the Trust, with such powers of delegation as may be permitted or otherwise contemplated by this Declaration. Except as expressly provided in this Declaration, the enumeration in this Declaration of any specific power or authority shall not be construed as limiting the aforesaid general power or authority or any other specific power or authority set out herein. Subject to the terms, limitations and restrictions of this Declaration, every discretion or power hereby conferred on the Trustee is an absolute and uncontrolled discretion or power.

4.2 Specifically Enumerated Powers

The Trustee shall have the following specific powers and authorities:

(a) ***Transfer Payment Agreement.*** The Trustee shall have the power to enter into, amend, supplement, modify and perform its obligation under the Transfer Payment Agreement.

(b) ***Contracts and Undertakings.*** The Trustee shall have the power to enter into, amend, supplement, modify and perform its obligation under any contract entered into or undertaking given by the Trustee in furtherance of the Purpose, including any Administrative Services Agreement and any Implementation Agreement.

(c) ***Power to Own, Hold and Manage.*** Subject to section 4.2(d), the Trustee shall have the power to own, hold and manage the Assets in such manner as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable.

(d) ***Power to Invest in Eligible Investments.*** The Trustee shall have the power to invest the Assets only in Eligible Investments, and to change such Eligible Investments at any time and from time to time, all as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable, but always having regard to the Trustee's expectations regarding the timing of payments to be made to the Beneficiaries hereunder. If an investment of Assets in Eligible Investments would not be authorized under the applicable trust laws of Ontario, the Trustee shall nevertheless be permitted to make an investment of the Assets in such Eligible Investments. The Trustee will have no liability for the diminution in the value of any investment in Eligible Investments made hereunder.

(e) ***Power to Dispose of Assets.*** The Trustee shall have the power to sell, convey, assign, transfer, exchange and in any other manner dispose of the Assets or any part or parts thereof free and clear of any and all trusts established under this Declaration, by public or private sale, for cash or on credit, with or without advertisement, and subject to such restrictions, stipulations, agreements and reservations as the Trustee in its sole and absolute discretion may consider appropriate or advisable, and to execute and deliver and perform any agreement, deed, conveyance, transfer or other document or instrument in connection with the foregoing.

(f) ***Power to Apply Assets and Proceeds to Make Distributions to Beneficiaries.*** The Trustee shall have the power to apply the Assets and the proceeds and income derived therefrom to make distributions to the Beneficiaries contemplated by Section 3, and to execute and deliver

and perform any agreement, deed, conveyance, transfer or other document or instrument in connection therewith.

(g) ***Power to Delegate and to Appoint Agents, etc.*** The Trustee shall have the power to appoint, employ or contract with any Person as the Trustee in its sole and absolute discretion may consider appropriate or advisable in connection with the activities of the Trust. Without limiting the generality of the foregoing:

(i) the Trustee will have the power at any time and from time to time to appoint, employ or retain consultants, financial advisers, technical advisers, legal counsel, accountants, administrative services agents, implementation agents, insurers, insurance agents and insurance brokers, as the Trustee may require for the purpose of discharging its duties hereunder and shall not be responsible for or for the actions of any of them, including to:

(A) act for and on behalf of the Trust in connection with any and all matters in any way relating to the negotiation, settlement, entering into, amending, performance and enforcement of the Transfer Payment Agreement, the Administrative Services Agreements, the Implementation Agreements, and any other agreements and contracts to which the Trust becomes a party in accordance with this Declaration;

(B) to provide or cause to be provided any or all kinds of administrative and other services in any way relating to the activities of the Trust;

(C) to act as attorney in fact, agent or trustee in the acquisition, holding, investment, application, sale or other disposition of the Assets and in the handling, prosecuting, defending or settling of any claims of or made against the Trust;

(D) to value the Assets and determine the net income of the Trust; and

(E) to make any filings, elections and submissions (including in respect of taxation matters) in connection with the Trust's compliance with applicable laws and regulatory requirements; and

(ii) the Trustee may pay remuneration and reimbursements from the Assets for services performed for it or on its behalf in the discharge of the trusts hereof without taxation for costs or fees of any counsel, solicitor or attorney.

Without limiting the foregoing, it is expected that the Board of Trustees will seek to enter into Implementation Agreements with Electricity Distributors for the purposes contemplated by the Permitted Delegations Annex, and on such terms and conditions (including terms and conditions as to the payment of reasonable fees and expenses) not inconsistent therewith as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable.

(h) ***Power to Operate Accounts.*** The Trustee shall have the power to (i) open and operate accounts at any chartered bank, trust company or other financial institution in Canada or

elsewhere, as the Trustee in its sole and absolute discretion may consider appropriate or advisable; (ii) deposit therein any moneys or securities forming part of the Assets whether or not such deposits will earn interest; (iii) withdraw such deposits at such times and in such manner as the Trustee may determine; (iv) draw, make, endorse, deposit or otherwise deal in cheques, bills of exchange, promissory notes, drafts and other kinds of instruments and securities; and (v) enter into contracts or agreements with any such chartered bank, trust company or other financial institution containing such terms and provisions as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable. In connection therewith, the Trustee shall have no liability or responsibility for any loss which may occur by reason of the failure of any such chartered bank, trust company or other financial institution.

(i) ***Power to Collect, etc.*** The Trustee shall have the power to (i) collect, sue for, receive and give receipts for all sums of money or other property due to the Trust; (ii) consent to extensions of time for payment or to the renewal of any securities or obligations; (iii) engage or intervene in, prosecute, defend, compound, compromise, abandon or adjust by arbitration or otherwise, any demands, claims, actions, suits or proceedings relating to the Trust or the Assets; (iv) exercise any and all remedies available to the Trustee under any agreement or as may otherwise be available, including any power of foreclosure or sale available at law; (v) in connection with any such foreclosure or sale, purchase or otherwise acquire title to any property and to convey good title thereto free of any and all trusts hereby established, or to take or retake possession of any property secured under any agreement or instrument; (vi) extend the time, with or without security, for the payment or delivery of any debts or property; (vii) execute and deliver releases, acquittances, discharges, agreements or other instruments related thereto; and (viii) pay or satisfy any debts or claims upon any evidence that the Trustee, in its sole and absolute discretion, may determine to be sufficient.

(j) ***Power to Obtain Insurance***. The Trustee shall have the power to enter into contracts for or in relation to or otherwise obtain policies of insurance for the purpose of insuring the risks associated with the Trust, including to insure the Trustee (including the members of the Board of Trustees) against any risk of loss associated with assuming and performing the duties as Trustee. Without limiting the foregoing, it is expected that the Board of Trustees will obtain commercial general liability insurance from insurers having a secure A.M. Best rating of B+ or greater, or the equivalent, that in the opinion of the Recipient a prudent person similar to the Recipient would maintain, and having an inclusive limit of not less than $2,000,000 per occurrence and providing for contractual liability coverage.

(k) ***Power to Pay Trustee's Fees.*** The Original Trustee shall be entitled to be paid and receive the fees set forth in the Original Trustee's schedule of fees delivered as of or prior to the date hereof as compensation for its services under this Declaration, and to be reimbursed for its out-of-pocket expenses reasonably incurred, in each case from the Assets and without the approval of any Beneficiary or any court. The Original Trustee shall be entitled, in its sole and absolute discretion, to withdraw funds from time to time for such purpose from any account of the Trust. Members of the Board of Trustees shall be entitled to reimbursement for and in respect of their out-of-pocket expenses reasonably incurred in discharging their respective duties and obligations under this Declaration, in each case without the approval of any Beneficiary or any court, provided that the members of the Board of Trustees have general regard to sorts of limitations as are set forth in the "Travel, Meal and Hospitality Expenses Directive of the

Province" specified and amended by the Province from time to time, a copy of the current version of which is attached as Exhibit 1 to the Principles Annex.

(l) ***Power to Pay Taxes.*** The Trustee shall have the power to (i) pay, deduct, withhold or remit any taxes or assessments which are required by law to be paid, deducted, withheld or remitted together with or from any payment made by the Trustee; (ii) pay all taxes or assessments of whatever kind or nature imposed upon or against the Trust or the Trustee in connection with the Assets or any part thereof; (iii) collect and remit all taxes and assessments of whatever kind or nature required to be collected and remitted by the Trust or the Trustee in connection with their activities or the Assets or any part thereof; (iv) appeal, settle or compromise tax claims or liabilities; and (v) for the foregoing purposes, to make such returns, elections and submissions and do all such other acts and things as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable.

(m) ***Power to Appoint Auditors.*** The Trustee shall have the power to select and appoint and discharge and re-appoint, in its sole and absolute discretion, an auditor or auditors of the Trust and to settle and pay the fees of any such auditor or auditors from any account of the Trust.

(n) ***Form of Accounts.*** The Trustee shall have the power to determine and change from time to time, in its sole and absolute discretion, the method or form in which the accounts of the Trust will be kept and shall not be required to keep or provide accounts in the form usually required by law to be kept or provided by trustees; provided that such method or form reasonably complies with generally accepted accounting principles in effect in Canada to the extent applicable.

(o) ***Title to Assets.*** The Trustee shall have the power to cause all or any part of the Assets to be held by or registered, in its sole and absolute discretion, in the name of any Person.

(p) ***Delegation of Discretion***. The Trustee shall have the power to delegate the right and power to exercise, or concur in the exercise of any discretion or power, conferred on the Trustee in this Declaration or conferred by law to any one or more of its directors, officers, employees, agents, representatives or to such other Person, as the Trustee, in its sole and absolute discretion, may think is appropriate or advisable, including to one or more Administrative Services Agents under an Administrative Services Agreement and to one or more Implementation Agents and their respective employees, officers and directors under a related Implementation Agreement entered into by the Trust substantially on the basis contemplated in the Permitted Delegations Annex. In particular, the Trustee shall have the power to accept, rely on and follow the recommendations of an Electricity Distributor made under and having regard to the Permitted Delegation Annex with respect to the identification of, and the determination of distributions (if any) to be made to, any Primary Beneficiary, except if and in so far as the Trustee has actual knowledge that (1) such Primary Beneficiary did not in fact satisfy the "Selection Factors" specified in the Principles Annex as of the applicable time of determination; and/or (ii) the amount recommended to be distributed to the Primary Beneficiary was not calculated in substantial compliance with, or was calculated in a manner that is manifestly contrary to the requirements set forth or contemplated in, the Permitted Delegation Annex or the applicable Implementation Agreement.

(q) ***Additional Powers.*** The Trustee shall have the power to perform and do all such other acts, to take such steps and to execute all such deeds, transfers, assignments, agreements and

other documents and instruments as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable for the carrying out of any of its powers hereunder or of any of the activities of the Trust as herein contemplated, or for the carrying out, promotion or advancement of the interests of the Trust, whether or not any of such acts, things, documents or instruments are herein expressly mentioned. Any good faith determination by the Trustee as to what is necessary, desirable or appropriate to carry out its powers or activities of the Trust as contemplated under this Declaration or to carry out, promote or advance the interests of the Trust shall be conclusive. Any construction of this Declaration or any determination as to the activities of the Trust or the existence of any power or authority hereunder made in good faith by the Trustee, relying upon the advice of counsel, shall be conclusive. In construing the provisions of this Declaration, there shall be a presumption in favour of a grant of power to the Trustee.

SECTION 5
CONCERNING THE TRUSTEE

5.1 Duty of Trustee

In performing its duties and exercising its powers under this Declaration, the Trustee shall act honestly, in good faith and with a view to the best interests of the Trust and the Beneficiaries and shall exercise that degree of care, diligence and skill that a reasonably prudent trustee would exercise in comparable circumstances (the "**Standard of Care**"). The Trustee shall observe and act in accordance with the terms of, and shall observe and comply with the limitations and restrictions set forth in, this Declaration, including having due regard to the principles set forth in the Principles Annex. To the extent that the Trustee has so delegated any of its duties or powers, it shall be deemed to have satisfied the Standard of Care in respect of the subject matter of such delegation, subject to the Trustee's overall duty as a trustee to exercise prudent oversight in relation to such delegation. Unless required by law, the Trustee will not be required to give any security, bonds or sureties in any jurisdiction for the performance of any of its duties and obligations under this Declaration. The Trustee (including the individual members of the Board of Trustees) will not be required to devote its entire time to the trust activities.

5.2 Limitation of Liability

The Trustee shall not be personally liable in tort, contract or otherwise to any Beneficiary or any other Person for any loss or diminution in the value of the Assets, or for any action or failure to act on the part of the Trustee or any of its employees or agents or any other Person, and shall not be subject to any personal liability for any debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses incurred by or against the Trust, howsoever arising, and resort will be had solely to the Assets for the payment, performance or satisfaction thereof. No property or assets of the Trustee, owned in its personal capacity or otherwise, will be subject to levy, execution or other enforcement procedure**s** with respect to any obligation under this Declaration. However, the foregoing limitations in this Section shall not apply where the Trustee has demonstrated gross negligence, bad faith, fraud or wilful misconduct.

5.3 Liability of Trustee under Contracts

Any document or instrument creating a liability or obligation of the Trust or of the Trustee will be conclusively deemed to have been executed by the Trustee only in its capacity as Trustee of

the Trust and will be binding upon the Trustee only in its capacity as trustee hereunder and resort may not be had to, nor recourse or satisfaction be sought from, the property of the Trustee other than the Assets, whether owned by its in its personal capacity or in any other capacity other than in its capacity as Trustee of the Trust, or from its employees or agents, and in all cases resort will be had solely to the Assets for the payment, performance or satisfaction of any such liability or obligation. However, the foregoing limitations in this Section shall not apply where the Trustee has demonstrated gross negligence, bad faith, fraud or wilful misconduct. Each document or instrument creating a liability or obligation of the Trust or of the Trustee shall contain a provision providing for the aforesaid limitation of liability.

5.4 Funds of the Trustee

The Trustee shall not be required to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers.

5.5 Indemnification of Trustee

In addition to and without limiting any other protection hereunder or otherwise by law of the Trustee and its respective employees, agents, representatives and assigns (in this Section 5.5, collectively, the "**Representatives**"), the Trustee and its respective Representatives shall be indemnified, defended and saved harmless out of the Assets from, against and in respect of any and all liabilities arising or related to actions taken or omitted to be taken by any agent of the Trustee, losses, claims (including any claim arising out of the assessment of any tax on income by a taxing authority), damages, penalties, fines, actions, suits, demands, levies, assessments, costs, charges, expenses and disbursements (including, without limitation, any and all legal and advisor fees and disbursements) (in this Section 5.5, collectively, the "**Liabilities**") of whatever kind or nature which may at any time be suffered by, imposed upon, incurred by or asserted against the Trustee and its Representatives, whether groundless or otherwise, howsoever arising from or out of any act, omission or error of the Trustee, in each case made in connection with its acting as Trustee hereunder, in each case except and to the extent that the Liabilities are a result from or are caused by gross negligence, wilful misconduct, bad faith or fraud. Further, except as provided in section 5.2, the Trustee shall not be liable to any Beneficiary for any loss or damage relating to any matter regarding the Trust, including any loss or diminution in value of the Assets. Notwithstanding any other provision hereof, the obligations provided for in this section 5.5 shall survive any termination of the Trust, whether by reason of removal or resignation of the Trustee, termination or discharge of this Declaration or otherwise.

5.6 Reliance upon Advice

Subject to section 5.1, in performing its duties and exercising its powers hereunder, the Trustee may rely and may act or not act, and shall be fully protected in relying and acting or not acting, upon (a) any statement, telecopy or other electronic means of communication, writing, notice, resolution, report, opinion or other document or conversation believed by it to be genuine and correct and to have been signed, sent or made by the proper Person; (b) any opinion or advice received or information obtained from auditors, solicitors, or other professional advisers, whether retained by the Trustee or otherwise, and shall not be responsible or held liable for any loss or damage resulting from so relying or acting or not acting; and (c) the advice and actions of any

Administrative Services Agent or Implementation Agent, including in connection with the delegations and reliances contemplated under the Permitted Delegations Annex. For greater certainty, it shall not be necessary for the Trustee to ascertain whether or not the Persons who have executed, signed or otherwise issued, authenticated or receipted such papers, writings or documents (including any Administrative Services Agreement or any Implementation Agreement or any other contract entered into by the Trustee) have authority to do so or that they are the same Persons named therein or otherwise to pass upon any requirement of such papers, writing or documents that may be essential for their validity or effectiveness or upon the truth and acceptability.

5.7 Replacement of the Original Trustee

The Persons identified in the Trustee Replacement Annex are hereby appointed to comprise the Advisory Committee contemplated therein (the "**Advisory Committee**"). The Original Trustee shall promptly request that the Advisory Committee make recommendations with respect to the composition of the "Board of Trustees", as contemplated by the Trustee Replacement Annex. The Original Trustee shall have no duty or obligation to investigate the basis for any of the Advisory Committee's recommendations and may rely on such recommendations without any duty of enquiry, supervision or oversight with respect to the activities and decision-making processes adopted by the Advisory Committee in its discretion, in full satisfaction of the Original Trustee's Standard of Care with respect to such matters hereunder. Except where it is manifestly apparent to the Original Trustee that the individuals recommended by the Advisory Committee to become members of such Board of Trustees are disqualified from so acting on the basis of manifest non-compliance with the "Selection Factors" set forth in the Trustee Replacement Annex, the Original Trustee shall appoint, as members of the Board of Trustees, the six (five voting and one non-voting) individuals recommended for appointment to the Board of Trustees by the Advisory Committee. If the Original Trustee declines to appoint any individual recommended by the Advisory Committee, the Original Trustee will promptly request that the Advisory Committee provide a further recommendation whom the Original Trustee shall appoint as a member of the Board of Trustees unless it is manifestly apparent to the Original Trustee that the individual so recommended is also disqualified from so acting on the basis of manifest non-compliance with the "Selection Factors" set forth in the Trustee Replacement Annex,. Upon the appointment of such six individuals pursuant to this provision and their agreement to act as members of the Board of Trustees, the Original Trustee shall be deemed to have resigned and shall cease to be a trustee (such resignation occurring on the "**Original Trustee Replacement Date**").

5.8 Rules and Procedures of the Board of Trustees

(a) ***Initial Requirements***. As soon as practicable and in any event no later than one month following the Original Trustee Replacement Date, the Board of Trustees id expected to meet to take such decisions and actions as they deem necessary to ensure the proper management and administration of the Trust. The date (and location if in person) of the initial meeting shall be determined by a majority of the Board of Trustees.

(b) ***Meetings.*** Subject to the Board of Trustees' discretion to make such rules and procedures that they may deem desirable, meetings of the Board of Trustees may be held at such time and place as the trustee members of the Board of Trustees may agree upon or as they may

fix by resolution for the purpose or if the meeting is called as hereinafter mentioned then at such time as may be designated in the notice calling the meeting. A meeting of the Board of Trustees may be called at any time by any two members of the Board of Trustees by two Business Days' notice given to the members of the Board of Trustees. No notice of any Board of Trustees' meeting shall be necessary when a quorum is present if those comprising the quorum consent to the transaction of the affairs of the Trust and the absent trustee or trustees, if any, either before or after the meeting shall waive in writing notice of the meeting. Meetings of the Board of Trustees may be conducted in person, by telephone, or in such other manner as determined by the Board of Trustees. The Board of Trustees may elect a Chairperson.

(c) ***Quorum.*** At any meeting of the Board of Trustees, a majority of the voting members of the Board of Trustees shall be a quorum irrespective of the number of members in office. The decision of the majority of the voting members where quorum exists shall govern and shall be binding for all purposes and shall be acted upon and carried out in the same manner and with the same effect as if all the voted members concurred therein; provided always that in the case of equality of votes the Chairperson, if any, shall not be entitled to cast a second or deciding vote.

(d) ***Power to Adopt Rules and Procedures.*** The Board of Trustees may make such rules and procedures not inconsistent herewith as it may deem desirable for the proper management and administration of the Trust and the discharge of the responsibilities of the Board of Trustees.

(e) ***Replacement of Members of the Board of Trustees***. The Board of Trustees shall have the power to replace any vacancy arising following the Original Trustee Replacement Date according to such rules and procedures as they deem appropriate subject to compliance with the Selection Factors specified in Trustee Replacement Annex and having regard for such considerations necessary to ensure that the composition of the Board of Trustees will be able to discharge its responsibilities in respect of the Declaration. If necessary, the Board of Trustees may fill any vacancy by application to the Courts of Ontario in the event of an unfilled vacancy.

(f) ***Decisions of the Board of Trustees.*** Decisions and actions of the Board of Trustees shall be made by voting, with each individual voting member having one vote. Subject to quorum requirements, a majority vote shall be determinative in respect of such decisions and actions. Subject to quorum requirements, any decision or action taken by the majority of voting members will represent the decision or action of the Trustee, and not any member of the Board of Trustees.

(g) ***Conflicts of Interest.*** With respect to any matter before the Board of Trustees, to the extent of a conflict of interest, whether actual, perceived or potential, involving a member of the Board of Trustees' personal interests and a matter concerning the Trust, such member shall abstain from voting on the matter or taking any other discretionary action on the matter. For the purposes of the foregoing, no member of the Board of Trustees shall be deemed to have a conflict by reason only that the member holds any office or position with an Electricity Distributor, social services agency or governmental or quasi-governmental agency or entity (such as the Independent Electricity System Operator); provided, however, that in relation to any decision of the Board of Trustees pertaining specifically to a particular Electricity Distributor, any member of the Board of Trustees who is a director, officer or employee of the Electricity Distributor would be expected to recuse himself or herself from participating in deliberations, discussions or voting in respect of such decision.

(h) ***Expense Reimbursements to Members of the Board of Trustees.*** Members of the Board of Trustees shall be entitled to reimbursement for and in respect of their out-of-pocket expenses reasonably incurred in discharging their duties and obligations as members of the Board of Trustees. Members of the Board of Trustees shall serve without compensation.

5.9 Confidentiality

Notwithstanding the resignation or removal and discharge from the trusts and powers reposed in and conferred on the Trustee by this Declaration, or the termination of this Declaration, the Trustee so resigning or removed shall continue to treat as confidential all information relating to the Trust, the Assets and the Beneficiaries and shall only be entitled to make disclosures concerning such information if disclosure is required in the performance of the functions of the resigning or removed Trustee or is ordered by a court of competent jurisdiction or is otherwise required by law. The Trustee shall not be responsible or liable to any Person for any loss or damage arising out of or in any way sustained or incurred in any way relating to any such required disclosure. The obligations arising under this section 5.9 shall survive the termination of the Trust.

5.10 Vesting in Successor Trustee

Any successor trustee (including any reconstituted Board of Trustees) shall automatically become vested with the Assets and with the same powers, rights, duties, responsibilities and trusts as if it, he or she had originally been named as Trustee under this Declaration, without the requirement of any further instrument or act or conveyance, and the Trustee ceasing to act shall execute all such transfers and other documents and do all such other acts or things as may be necessary or desirable to assign, transfer, deliver to, and vest in, the successor trustee, upon the trusts expressed in this Declaration, all the Assets and all the rights, powers and trusts of the Trustee ceasing to act. The expense of any act, document, deed or other instrument or thing required under this Section 5.10, including for greater certainty, outstanding fees and unreimbursed expenses of the Trustee (including any member of the Board of Trustees) ceasing to act, shall be satisfied from the Assets.

5.11 Execution of Instruments

The Trustee shall have the power to execute all deeds, transfers, agreements, promissory notes and other instruments on behalf of the Trust. Such power may be exercised by any one or more Administrative Services Agents acting in accordance with any delegated right to do so pursuant to an applicable Administrative Services Agreement or by any one or more Implementation Agents acting in accordance with any delegated right to do so pursuant to an applicable Implementation Agreement, and any such execution of instrument by an Administrative Services Agent, acting in such capacity as agent of the Trust pursuant to the terms and conditions of an Administrative Services Agreement or by an Implementation Agent acting in such capacity as agent of the Trust pursuant to the terms and conditions of an Implementation Agreement shall in each case be deemed to be a proper execution of such instrument by the Trustee and shall be binding for all purposes on the Trust.

5.12 Decisions by the Trustee

If there is more than one Trustee, decisions of the Trust may be made by a majority of Trustees eligible to vote on the applicable matter. Whenever the Trustees are unable to agree in relation to the commission or omission of any act or howsoever in the execution of the Trust, the decision of a majority of such Trustees shall prevail.

SECTION 6
AMENDMENTS AND SUPPLEMENTS

6.1 Amendments

Subject to the requirements of the Transfer Payment Agreement, the Trustee shall have the power in its sole and absolute discretion from time to time without the approval of any Beneficiary or any court to amend, vary, supplement, replace or restate this Declaration in its entirety or any portion thereof; provided, however that it is expected that any amendment shall be consistent with the intent of the principles set forth in the Principles Annex and with the intended scope and effect of the permitted delegations and activities of any Implementation Agent pursuant to the Permitted Delegations Annex. Without in any way limiting the foregoing, any such amendments, variations, supplements, replacements or restatements may:

(a) add provisions for the replacement of or appointment of additional trustees to act with the Original Trustee prior to the Original Trustee Replacement Date;

(b) in the case of the Original Trustee, add provisions to those contemplated in the Trustee Replacement Annex in respect of the appointment of the members and the formation and empowerment of the Board of Trustees;

(c) in the case of the Original Trustee, vary the terms and requirements applicable to the duties, responsibilities, obligations, liabilities, indemnities, protections, limitations, restrictions, compensation, expense reimbursements and such other matters, in each case as the Advisory Committee may indicate are necessary to be made in order to attract and receive confirmation of appointment of appropriately qualified individuals that the Advisory Committee specifies are to be appointed as members of the Board of Trustees in accordance with its recommendations;

(d) add additional or replace existing Trustees;

(e) add to or reasonably clarify the principles set forth in the Principles Annex;

(f) add to or reasonably clarify the delegations and activities contemplated to be made in the Permitted Delegation Annex;

(g) include provisions for the management of the Trust by the Trustees, including the making of rules, requirements and procedures governing the decision-making of the Board of Trustees;

(h) add provisions for the replacement of members of the Board of Trustees (in addition to those provisions contemplated in section 5.7 and the Trustee Replacement Annex);

(i) provide for the engagement of any Person or Persons as managers, administrators or other service providers to the Trust, including any additional or replacement Administrative Services Agent or Implementation Agent or representative thereof;

(j) specify supplemental procedures for the identification of Primary Beneficiaries and the exchange of information with Electricity Distributors in connection with identifying such Primary Beneficiaries; or

(k) specify procedures for the transfer and transmission of funds from the Trust or any Implementation Agent acting on its behalf and with delegated responsibility over funds constituting Assets, to or for the benefit of, Beneficiaries or their designated representatives, payees or assignees.

6.2 Supplemental Declarations

The Trustee is authorized to execute any supplemental declaration of trust (including one or more amendments and restatements from time to time of this Declaration) to give effect to amendments to this Declaration made pursuant to section 6.1.

SECTION 7
TERMINATION

7.1 Duration

Subject to sections 7.2 and 7.3, the Trust will continue in full force and effect so long as there are any Assets and until all of the debts, liabilities and obligations of the Trust have been paid and satisfied in full.

7.2 Termination and Distribution of Assets

The Trustee shall terminate the Trust and wind up its affairs as soon as practicable after the Final Distribution Date. In connection with the termination of the Trust, the Trustee shall identify the Residual Beneficiaries and distribute or cause to be distributed the remaining Assets, in cash or in kind or partly in each, to the Residual Beneficiaries, in each case in accordance with section 3.3. Despite the foregoing, the Trust will only be terminated and wound up after the Trustee, in its sole and absolute discretion, determines that all debts, liabilities and obligations of the Trust have been paid or otherwise adequately provided for and satisfied and upon receipt of such releases, indemnities and discharges as the Trustee, relying on the opinion of counsel, deems necessary for the protection of the Beneficiaries and for its own protection.

7.3 Distribution of Assets on Final Distribution Date

If the Trust holds Assets on the Final Distribution Date, the Trustee shall pay or provide reserves for the payment, and otherwise shall satisfy, all debts, liabilities and obligations of the Trust and shall provide or arrange to provide such investigations, audits, releases, indemnities and discharges as the Trustee, relying on the opinion of counsel, deems necessary for the protection of the Beneficiaries and for its own protection. Thereafter, any remaining Assets shall be paid to the Residual Beneficiaries in accordance with section 3.3.

SECTION 8
ACCEPTANCE OF TRUSTS

8.1 Acceptance of Trusts

The Trustee hereby accepts the trusts and duties contained in this Declaration and agrees to perform the same upon the terms and conditions hereof until discharged therefrom.

[Signature Page Follows]

The Trustee has executed this Declaration as of the date first written above.

COMPUTERSHARE TRUST COMPANY OF CANADA,

By: _____
Name:
Title:

By: _____
Name:
Title:

PRINCIPLES ANNEX

The Trustee shall have regard to, but shall not be specifically bound by, the following principles in applying its discretion in relation to the administration of the Trust:

1. Identification of Primary Beneficiary Payees

1.1 Except in exceptional circumstances, a Primary Beneficiary would not be expected to receive a benefit from the Trust unless at the time of consideration it satisfies, in addition to the requirements contemplated in the definition of "Primary Beneficiary", each of the following criteria (the "**Selection Factors**"):

(i) it has a participant agreement with an applicable Electricity Distributor to undertake measures (its "**Energy Plan**") to improve the electricity efficiency and/or promote the conservation of electricity at its Ontario residence;

(ii) its Energy Plan involves one or more Eligible Measures, as may be designated by the Trustee from time to time from;

(iii) it confirms that:

1. the primary purpose of its Energy Plan is the conservation and efficient use by the Primary Beneficiary of electricity, and is not for the purposes of the Primary Beneficiary making a profit;

2. it would otherwise not have the financial resources to undertake the Eligible Measures included in its Energy Plan; and

3. it would otherwise not be eligible to receive amounts in respect of the Eligible Measures as a HAP Eligible Person;

(iv) it has demonstrated a need for financial assistance on the basis that its periodic electricity bills represent a financial burden, relative to its available financial resources; and

(v) such other criteria as the Trustee may determine, including based on the recommendations of Electricity Distributors or other knowledgeable Persons made on the basis and having regard to the delegations contemplated by the Permitted Delegations Annex or any applicable Implementation Agreement.

1.2 It is recognized that, in furthering the Purpose, an efficient basis upon which to allocate funds to the Primary Beneficiaries across different areas and regions within Ontario may be based on the areas and regions serviced by the Electricity Distributors operating within Ontario.

1.3 It would not be contrary to the Purposes if funds are made available by the Trustee to the Primary Beneficiaries unequally across different areas and regions within Ontario, and it is expected that in making such an unequal division it would be appropriate to have regard to:

(i) broad economic parameters of economic activity and the specific financial resources of the residents of the areas and regions, in each case as an indication of the relative need of such residents across the areas and regions;

(ii) electricity use and efficiency levels of residential electricity customers across the areas and regions;

(iii) specific regional indicators of economic weakness and need; and

(iv) such other factors as the Trustee may determine are relevant, including based on the submissions, advice and recommendations of Electricity Distributors or other knowledgeable Persons made on the basis and having regard to the delegations contemplated by the Permitted Delegations Annex or any applicable implementation Agreement.

1.4 It is recognized that, in furthering the Purpose, the designated Electricity Distributor for an area or region in which a Primary Beneficiary resides would be expected to:

(i) be a reliable source for the purpose of assessing and confirming whether the Primary Beneficiary satisfies the Selection Factors;

(ii) be an efficient intermediary for the purpose of communicating with the Primary Beneficiary, including with respect to matters such as regarding the availability, terms, conditions and intended purposes of Program;

(iii) be able to facilitate an efficient payment of distribution determined to be made to or on behalf of the Primary Beneficiary, having regard to the Electricity Distributor's established practices, procedures and systems for dealing with its customers; and

(iv) have established contractual arrangements with the Primary Beneficiary that may apply to the protection and confidentiality of information provided by or respecting the Primary Beneficiary, which information may be useful in the consideration by the Electricity Distributor in its assessment of whether the Primary Beneficiary satisfies the Selection Factors, which information may not otherwise be available or readily accessible or verifiable by the Trustee.

1.5 It is recognized that, in furthering the Purpose, the Electricity Distributor for an area or region in which a Primary Beneficiary resides will have market and utilization information that may be useful in assessing the relative needs of Primary Beneficiaries within its area or region. Such information is expected to be relevant in assessing the extent to which one such Primary Beneficiary's financial needs and the merits of its Energy Plan are greater or more compelling than those of another such Primary Beneficiary, which comparison may be relevant to the extent that the funds allocable to the Primary Beneficiaries resident in the area or region are otherwise insufficient to meet the requests for funding by all such Primary Beneficiaries.

1.6 Accordingly, it is recognized that, in furthering the Purpose, it is consistent with the Purpose that the recommendations of Electricity Distributors be utilized and relied upon

by the Trustee to guide the process of identifying particular Primary Beneficiaries in making distributions to the Primary Beneficiaries.

1.7 If an Electricity Distributor for a particular area or region is unable or unwilling to assess or confirm the application of the Selection Factors to Primary Beneficiaries residing in the area or region or to make recommendations in relation to such matters, one or more of the following may provide a suitable alternative source of information and for information gathering, assessment and confirmation purposes in relation to such area or region:

(i) other Electricity Distributors operating in adjacent or other areas or regions in Ontario;

(ii) the Ontario Energy Board;

(iii) the Independent Electricity System Operator; and

(iv) anyone else having relevant expertise and access to information regarding the electricity market of the Province, in each case as may be considered relevant by the Trustee.

1.8 To the extent that privacy law or other legal requirements limit an Electricity Distributor from providing or making available specific information respecting the application of the Selection Factors to a particular Primary Beneficiary or group of Primary Beneficiaries, it is recognized that, in furthering the Purpose, it may be appropriate to redact or make generic affected information regarding such Primary Beneficiary in connection with the identification and confirmation of a Primary Beneficiary's eligibility and participation in the Program. If such limitations or restrictions would limit an Electricity Distributor from providing or confirming the name of a particular Primary Beneficiary to the Trustee, then it should be sufficient that such information may be obtained or disseminated on a confidential basis if and when required by the Trustee for the proper administration of the Trust and on that basis such impediments should not disqualify a Primary Beneficiary from participating in the benefits of the Program, provided that the confidential record-keeping of the Electricity Distributor would be available in connection with the application of any applicable legal process predicated on the identification of such Primary Beneficiary for the purposes of substantiating its rights as a Primary Beneficiary of the Trust or as to the validity or subsistence of the Trust.

2. Eligible Measures

2.1 It is expected that the Trust will identify eligible measures that, taking into consideration the principles set forth in the Principles Annex, have regard to the following (the "**Measures Factors**"):

(i) is the measure generally expected to result in reduced electricity consumption by a Primary Beneficiary if properly installed and used;

(ii) is the measure recognized under another Provincial program as being appropriate for achieving electricity conservation among a population analogous to the Primary Beneficiaries;

(iii) does the measure present any unacceptable health or safety considerations, either with respect to the Primary Beneficiary, a party providing or installing the measure, or the physical environment;

(iv) is the measure broadly available to residents across different areas and regions of the Province; or

(v) is the measure a requirement or precursor to another measure, the other measure being one which meets any of the other Measures Factors.

2.2 In identifying and applying the Measures Factors, Electricity Distributors would be expected to have expertise in assessing the suitability of efficiency and conservation measures in their respective areas and regions, which may differ across areas and regions across the Province based on factors (among other things) such as the climate, geography, density, electricity infrastructure, residential structures, and electricity use rates applicable within such areas or regions.

2.3 The measures specified in Schedule A to this Principles Annex may initially be considered to be consistent with the Measures Factors (subject to change as contemplated under the Permitted Delegations Annex).

3. Promotion of the Program

3.1 It is expected that the Trustee will undertake or engage others to undertake diligent efforts to promote the availability, terms and benefits of the Program to Primary Beneficiaries, including by establishing consistent communications through the Electricity Distributors.

3.2 It is expected that the Trustee will acknowledge the financial support of the Province in connection with the establishment and the funding for the Program, including in any external communications to or marketing directed at the Electricity Distributors and the Primary and Residual Beneficiaries. In its delegation of any duties or powers to the Electricity Distributors through Implementation Agreements it is expected that Electricity Distributors will acknowledge the financial support of the Province in connection with the program including in any communications or marketing to Primary Beneficiaries.

4. Conduct of the Trust and the Program

4.1 It is expected that administrative expenses of the Board of Trustees and its members, including any expenses relating to the Trust, to the establishment of the Trust and any expenses related to the implementation and operation of the Program, including by or through Electricity Distributors and other relevant entities, will be recognized and subject to reimbursement on a basis that is substantially consistent with the accountability provisions contemplated in the Transfer Payment Agreement and the principles in the

Province's Travel, Meal and Hospitality Expenses Directive, as set out in Schedule B to this Principles Annex.

4.2 The Trustee is expected to conduct its activities in a manner that complies in all material respects with the Transfer Payment Agreement, including to:

(i) act prudently and in furtherance of the Purpose;

(ii) report not less frequently than annually the results of its activities for information purposes to the Province in connection with the Program;

(iii) comply with the Province's request for any independent verification or audit if determined to be necessary or appropriate by the Province;

(iv) return Assets that have not been distributed if it is determined that the Trustee has breached its Standard of Care in discharging its material duties under the Declaration, and has not cured such material breach despite having been given a reasonable opportunity by the Province to do so in light of the circumstances of such material breach, with the result that all or a significant part of the Assets have not been or are not being applied and distributed in furtherance of the Purpose or are being applied and distributed in a manner that is directly contrary or without regard to the Purpose.

4.3 Electricity Distributors are not intended to directly profit from distributions of funds made from the Trust, although it is recognized that the objectives of electricity efficiency and conservation of Primary Beneficiaries located in the service area or region of an Electricity Distributor, and the cost savings and improved credit worthiness of such Primary Beneficiaries, may be financially beneficial to the Electricity Distributor.

4.4 Distributions from the Trust are intended to allow receiving Primary Beneficiaries to undertake Eligible Measures at no or minimal personal cost.

4.5 Without in any way limiting the discretion of the Board of Trustees to extend the period during which the benefits of the Program may be available to the Primary Beneficiaries, up to and including the Final Distribution Date, it is expected that the Trust Assets would be distributed to Primary Beneficiaries during the period from the Original Trustee Replacement Date to April 30, 2019.

SCHEDULE A TO THE PRINCIPLES ANNEX
INDICATIVE ELIGIBLE MEASURES[1]

Initial Specified Measures
Block Heater Timer (just timer) – rated for outdoor use, have at least a 15 amp/1800 watt capacity, be cold weather resistant, bear a C-UL or CSA certification mark
Power bar with integrated timer, and switched power outlets, four each for a total of 8 outlets, have a total capacity of 15 amps. The switched outlets must remain "live", independent of timer settings, so long as the power bar itself remains switched on. The power bar must bear either a C-UL or CSA certification mark.
Efficient Showerheads (standard) - rated at no more than 4.8 Lpm (1.25 U.S. gpm) and be of the laminar flow type (non-aerating).
Efficient Showerhead (handheld) - rated at no more than 4.8 Lpm (1.25 U.S. gpm) and be of the laminar flow type (non-aerating).
Efficient Aerators (kitchen) - rated no more than 5.7 Lpm (1.5 U.S. gpm), dual threaded to allow installation in both thread type faucets, swivel type with pause lever.
Efficient Aerators (bathroom) - rated no more than 3.8 Lpm (1.0 U.S. gpm), be dual threaded to allow installation in both thread type faucets.
Hot Water Tank Pipe Insulation - 1/2" inside diameter – foam, meets ASTM –C547-00, minimum 3/4" thick
Hot Water Tank Pipe Insulation - 3/4 " inside diameter - – foam, meets ASTM –C547-00, minimum 3/4" thick
Hot Water Tank Insulation - fibreglass R10 (fits up to a 60 gal tank) – not bubble wrap
≤11W ENERGY STAR® Qualified LED A Shape (60W) (minimum 600 Lumen output) (Formerly: 7W – 11W ENERGY STAR® Qualified LED A Shape (60W))

[1] These measures are indicative. Eligible measures added to HAP during the administration of the Trust may also be appropriately considered relevant by the Trustee.

Initial Specified Measures
≤14W ENERGY STAR® Qualified LED A Shape (75W) (minimum 800 Lumen output) (Formerly: 10W – 14W ENERGY STAR® Qualified LED A Shape (75W))
≤23W ENERGY STAR® Qualified LED A Shape (100W) (minimum 1600 Lumen output) (Formerly:17W – 23W ENERGY STAR® Qualified LED A Shape (100W))
≤16W ENERGY STAR® Qualified LED PAR 20 (minimum 600 Lumen output) (Formerly: 8W – 12W ENERGY STAR® Qualified LED PAR 20)
≤16W ENERGY STAR® Qualified LED PAR30 & PAR38 (minimum 600 Lumen output) (Formerly: 8W – 12W ENERGY STAR® Qualified LED PAR 30)
≤23W ENERGY STAR® Qualified LED PAR (minimum 1100 Lumen output) (Formerly: 14W – 18W ENERGY STAR® Qualified LED PAR 38)
≤6W ENERGY STAR® Qualified LED MR 16 / PAR 16 (minimum 250 Lumen output) (Formerly: 7W – 10W ENERGY STAR®
Qualified LED MR 16 / PAR 16 - GU 10 Base)
≤11W ENERGY STAR® Qualified LED MR 16 (minimum 400 Lumen output) (Formerly: 7W – 12W ENERGY STAR® Qualified LED MR 16 GU 5.3 Base)
ENERGY STAR® LED Wet Location Rated PAR lamp ≤ 23 Watt (minimum 1100 Lumen output)
Recessed Downlight Fixture including LED with Light Output >600 and <800 lumens (Retrofit Measure List)
Recessed Downlight Fixture including LED with Light Output >800 lumens (Retrofit Measure List)
Indoor Drying Rack

Extended Measures
Replace refrigerator with ENERGY STAR qualified refrigerator - 15.5 - 16.9 cubic foot top freezer, automatic defrost, refrigerator/ freezer, no through the door ice service
Replace refrigerator with ENERGY STAR qualified refrigerator - 17.0 - 18.4 cubic foot top freezer, automatic defrost, refrigerator/ freezer, no through the door ice service
Replace refrigerator with a refrigerator that has a consumption level of less than 425 kwh, 10 – 12.5 cubic foot top freezer, automatic defrost, refrigerator freezer, no through the door ice service
Replace freezer with ENERGY STAR qualified freezer - 12-14.4 cubic foot freezer
Replace freezer with ENERGY STAR qualified freezer - 14.5 - 16.0 cubic foot freezer
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 6,000 – 7,999 BTU/hr with C-UL or CSA certification mark
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 8,000 – 9,999 BTU/hr with C-UL or CSA certification mark
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 10,000 – 12,000 BTU/hr with C-UL or CSA certification mark
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 14.2 - 21.2 l/day (30-44.9 pints/day) dehumidifier
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 21.3 - 25.4 l/day (45-53.9 pints/day) dehumidifier
Extended Measures
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 25.5 - 35.5 l/day (54-75 pints/day) dehumidifier
Programmable Thermostat – line voltage – meets CAN/CSA-C828-06 standard, minimum performance: Droop: 1.5°C, Differential: 0.5°C, Precision 0% within 0.5°C of the original set point of 22°C
Programmable Thermostat – low voltage - meets CAN/CSA-C828-06 standard, minimum performance: Droop: 1.5°C, Differential: 0.5°C, Precision 0% within 0.5°C of the original set point of 22°C

Weatherization Measures
Comprehensive Draft proofing (caulking, foam and weather stripping, and application of same) – lifespan of 20 years plus If one or two component polyurethane foams are used, the products and installations must conform to: • CAN/ULC-S710.1 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 1: Material Specification. • CAN/ULC-S710.2 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 2: Application. • CAN/ULC-S711.1 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification • CAN/ULC-S711.2 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification, and Part 2: Application. **Attic Insulation (including installation):**
cellulose: CAN/ULC-S703-01 Amendment 1 - Cellulose Fibre Insulation (CFI) for Buildings OR 2) Mineral Fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre

Weatherization Measures
for Buildings **Wall Insulation (including installation):**
cellulose: CAN/ULC-S703-01 Amendment 1 - Cellulose Fibre Insulation (CFI) for Buildings OR 2) Mineral Fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre **Basement Insulation (including installation):**
mineral fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre for Buildings Vapour Barrier: 69009-CAN/CGSB-51.34-m86 If one or two component polyurethane foams are used, the products and installations must conform to: • CAN/ULC-S710.1 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 1: Material Specification. • CAN/ULC-S710.2 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 2: Application. • CAN/ULC-S711.1 Standard for Thermal Insulation – Bead Applied Two-Component
• Polyurethane Air Sealant Foam, Part 1: Material Specification CAN/ULC-S711.2 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification, and Part 2: Application.

Heat Pumps (Selection of manufacturers and technologies to meet the US federal minimum efficiency standard for ASHPs, as of 2015, is 13.0 SEER and 7.7 HSPF. Energy Star–certified models offer roughly 9 percent more efficiency than most new uncertified ASHPs and 20 percent more efficiency than existing models that may be in place)
Ductless Multiport Heat Pump
Cold Climate Ductless Heat Pump
Cold Climate Multiport Ductless Heat Pump
Cold Climate Ducted Heat Pump

SCHEDULE B TO THE PRINCIPLES ANNEX
PERMITTED EXPENSE REIMBURSEMENTS

Travel, Meal and Hospitality Expenses Directive

Funds should be used prudently and responsibly with a focus on accountability and transparency.

Expenses for travel, meals and hospitality support the Purpose.

Plans for travel, meals, accommodation and hospitality are necessary and economical with due regard for health and safety.

Legitimate authorized expenses incurred during the course of furthering the Purpose may be reimbursed.

Best practices should be followed, including:

Prior approval to incur expenses is appropriately obtained.

Other options for meetings are always considered before travel is approved, including audio or video conferencing.

Corporate travel cards are to be used for authorized business travel and business related expenses.

PERMITTED DELEGATION ANNEX

1. Under section 4.2(g) of the Declaration, the Trustee has the power to: (a) appoint, employ or retain Implementation Agents for the purpose of discharging its duties and obligations under the Declaration; and (b) enter into, perform, enforce and amend Implementation Agreements.

2. In accordance with section 4.2(g) of the Declaration, consistent with the principles set forth in the Principles Annex, the Trustee or its agent will seek to enter into one or more Implementation Agreements with individual Electricity Distributors under which the Electricity Distributors will act as Implementation Agents to the Trustee. In this manner, the Trustee will delegate certain of its powers and duties to the Electricity Distributors.

3. Under section 5.1 of the Declaration, to the extent the Trustee has delegated any of its duties or powers, it shall be deemed to have satisfied the Standard of Care in respect of the subject matter of such delegation, subject to the Trustee's overall duty to exercise prudent oversight thereof. The Trustee is entitled to rely on an Electricity Distributor to discharge the duties delegated to it, as Implementation Agent, pursuant to an Implementation Agreement as described in this Annex.

4. Accordingly, and without limiting the Trustee's right to delegate under the Declaration and its other rights, powers and discretion as Trustee, the Trustee will be permitted to, and is expected to seek to, enter into Implementation Agreements with Electricity Distributors in order to further the Purpose. Without limiting the Trustee's discretion to negotiate and settle the terms and conditions of such Implementation Agreements, it is expected that such Implementation Agreements will include customary terms and conditions for an administrative services arrangement of this type and, in addition, would (subject to the acceptance and agreement of the applicable Electricity Distributor counterparty) address the following points in particular:

    a. **Identification of Applicable Primary Beneficiary Payees and Determination of Individual Distribution Amounts**

        i. Each Electricity Distributor would make an initial assessment of the financial needs of Primary Beneficiaries within its designated service area or region, having regard to the Selection Factors set forth in section 1.3 of the Principles Annex, together with applicable economic data, in order to prepare and provide to the Trustee an estimate of the number of Primary Beneficiaries who the Electricity Distributor reasonably expects would satisfy the Selection Factors.

        ii. Each Electricity Distributor would make an initial assessment of the measures it would recommend be included as Eligible Measures, having regard to the Measures Factors set forth in section 2.1 of the Principles Annex, in order to prepare and provide to the Trustee an estimate of the average cost per Primary Beneficiary Payee (as defined below) of such Eligible Measures that the Electricity Distributor reasonably expects would apply in respect of Primary Beneficiaries resident in its service area or region.

iii. Based on the product of (i) and (ii), above, and such other considerations as it considers to be directly relevant, each Electricity Distributor would make a written recommendation to the Trustee regarding the aggregate funding amount that the Electricity Distributor anticipates would be utilized under the Program by the Primary Beneficiaries resident in its service area or region (the "**Local Funding Estimate**"). Such recommendation would be accompanied, when submitted to the Trustee, by a detailed explanation regarding the assumptions, financial parameters, suitability considerations and other information underlying the Local Funding Estimate (including the type of information contemplated by the Selections Factors and the Measures Factors, which would be relied upon by the Trustee in its assessment regarding the allocation of available funding to or for the benefit of the Primary Beneficiaries across the specified areas and regions of Ontario.

iv. The Trustee would inform the Electricity Distributor regarding the aggregate of the amount determined by the Trustee to be made available under the Program for Primary Beneficiaries in the Electricity Distributor's designated service area or region (for each Electricity Distributor, its "**Maximum Electricity Distributor Allocation**") and as to any maximum amount that may be paid to or for the benefit of any single Primary Beneficiary located in the servicer area or region of the Electricity Distributor (the "**Maximum Primary Beneficiary Amount**"). The Maximum Electricity Distributor Allocation and Maximum Primary Beneficiary Amount may vary between areas and regions, among the Primary Beneficiaries within such areas and regions, and may be increased by the Trustee from time to time in its discretion.

v. Each Electricity Distributor would apply the principles set forth under "Identification of Primary Beneficiary Payees" in the Principles Annex to identify and make recommendations to the Trustee regarding the amount of funds (if any) to be distributed to or for the benefit of Primary Beneficiaries resident within its service area or region from time to time (the "**Primary Beneficiary Payees**").

vi. Each Electricity Distributor would ensure that the aggregate of the amounts it recommends be distributed to or for the benefit of Primary Beneficiary Payees from time to time does not exceed (1) its Maximum Electricity Distributor Allocation and (2) for any single Primary Beneficiary located in the service area or region of the Electricity Distributor, the lesser of (x) the applicable Maximum Primary Beneficiary Amount and (y) the estimated costs (including any applicable taxes, but excluding any amount payable to the Electricity Distributor by or on behalf of the Primary Beneficiary) to be incurred by or on behalf of such Primary Beneficiary (whether or not such costs have been paid or remain outstanding) in respect of Eligible Measures applied or to be applied in respect of the Primary Beneficiary's Ontario residence.

vii. The Trustee would provide written confirmation to each Electricity Distributor:

1. Either (x) that the recommendations specified of the Electricity Distributor in clause (v), above, have been accepted, or (y) as to the specific reasons for any non-acceptance; and

2. The amount of the distributions to be paid to or for the benefit of each Primary Beneficiary Payee that is resident in the Electricity Distributor's service area or region.

viii. With respect to each Primary Beneficiary resident in a Electricity Distributor's service area or region that is confirmed as a Primary Beneficiary Payee, the Electricity Distributor would provide the Trustee written confirmation as to:

1. The identity of such Primary Beneficiary Payee; and

2. The amount of the distribution paid to or for the benefit of such Primary Beneficiary Payee.

ix. If the amount of a distribution to be made to a Primary Beneficiary Payee is based on the estimated costs to be incurred by or on behalf of such Primary Beneficiary and, prior to making the distribution to the Primary Beneficiary Payee, the Electricity Distributor determines that the actual costs (including any applicable taxes but excluding any amount payable to the Electricity Distributor by or on behalf of the Primary Beneficiary) incurred or to be incurred by or on behalf of such Primary Beneficiary in respect of Eligible Measures applied or to be applied in respect of the Primary Beneficiary's Ontario residence has or would be less than such estimated costs, then the amount to be distributed to the Primary Beneficiary shall be based on such actual costs.

b. **Making of Distributions to Primary Beneficiaries**

i. It is expected that promptly after the Trustee confirms the identity of a Primary Beneficiary Payee resident in an Electricity Distributor's service area or region and the amount of the distribution to be paid to or for the benefit of such Primary Beneficiary Payee, the Trustee would arrange for payment to or on the direction of the Electricity Distributor of an amount equal to the amount of such distribution.

ii. It is expected that promptly upon receipt of funds in respect of a distribution to be made to a Primary Beneficiary Payee, the Electricity Distributor would arrange for payment of the full amount of such distribution to or for the benefit of the Primary Beneficiary Payee (including by direct payment to a third party of, or as a reimbursement or rebate of, the costs of applicable Eligible Measures installed at the residence of and for the benefit of the Primary Beneficiary Payee), without reduction or set-off by the Electricity Distributor.

iii. If the amount paid to an Electricity Distributor in respect of a distribution to be made to a Primary Beneficiary exceeds the actual amount of the

distribution made to or on behalf of the Primary Beneficiary, it is expected that the Trustee would require Electricity Distributor to return such excess to the Trustee, whereupon the proceeds of such returned amount shall continue to form part of the Assets.

c. **Establishment of Operational, Administrative, Record-Keeping and Other Systems and Policies by Electricity Distributors to facilitate the Program**

i. It is expected that the Electricity Distributor would establish such operational, administrative, record-keeping and other systems and policies as are necessary to facilitate the Program and perform its duties under the Implementation Agreement, including systems or policies to: identify Primary Beneficiary Payees; comply with applicable privacy and regulatory laws; communicate with Primary Beneficiaries on behalf of the Trust; assess Eligible Measures; determine the Local Funding Estimate; monitor its recommendations to the Trustee against its Maximum Electricity Distributor Allocation and the Maximum Primary Beneficiary Amount; receive funds from the Trust in respect of distributions to the Primary Beneficiary Payees and transfer such funds to the appropriate recipients for the benefit of the Primary Beneficiary Payees; preparation and timely delivery to Primary Beneficiary Payees of such documents as are required by the *Income Tax Act* (Canada); and create and maintain records in respect of the foregoing.

ii. The Electricity Distributor would set up a separate bank account for the purpose of receiving funds from the Trust in respect of distributions to the Primary Beneficiary Payees and the transfer of such funds to the appropriate recipients for the benefit of the Primary Beneficiary Payees.

d. **Reporting, Record-Keeping, Inspection and Disclosure and Compliance Matters**

i. The Electricity Distributor would provide record-keeping, clerical and bookkeeping services relating to all matters relating to its recommendations and the performance of its other duties and obligations under its Implementation Agreement.

ii. The Electricity Distributor would keep and maintain all financial records and non-financial documents and records relating to the provision of services under its Implementation Agreement.

iii. The Electricity Distributor would provide to the Trustee quarterly and annual reports ("**Reports**") for the duration of its Implementation Agreement. Such Reports would set out, among other things, the amounts of the distributions paid to or for the benefit of applicable Primary Beneficiary Payees, the average distribution amount per such Primary Beneficiary Payee, the Eligible Measures for which distributions have been made, and the uptake of energy efficiency measures.

iv. The Electricity Distributor would agree to provide to the Trustee such information as is necessary for the Trustee to (v) comply with applicable law;

(w) prepare financial statements for the Trust; (x) prepare and submit such documents as are required under the *Income Tax Act* (Canada); (y) comply with the Trust's applicable obligations under the Transfer Payment Agreement; and (z) such other matters as the Trustee reasonably requests.

v. The Trustee, its authorized representatives or an independent auditor would be permitted to, at its own expense, on twenty-four hours' notice to the Electricity Distributor and during normal business hours, inspect the records of and information respecting the Electricity Distributor to confirm its compliance with the Implementation Agreement, including regarding its processes for recommending the Primary Beneficiary Payees and their respective distribution amounts and regarding the delivery of Trust funds on behalf of the Trustee to or for the benefit of the Primary Beneficiary Payees.

e. **Standard of Care**

i. The Electricity Distributor would be required to agree to perform its duties provided under the Implementation Agreement exercising the degree of care, diligence and skill that a reasonably prudent Person would exercise in comparable circumstances.

ii. In performing its duties under the Implementation Agreement (including the recommending of Primary Beneficiary Payees to the Trustee), the Electricity Distributor would be required to agree to seek to avoid actual, potential or perceived conflicts of interest.

iii. The Electricity Distributor would be required to agree that it would not, in performing its obligations under the Implementation Agreement, take any action which it knows or ought reasonably to know would cause the Trustee or the Trust to be in violation of any law, rule or regulation applicable to it.

f. **Expenses**

The Electricity Distributor would be eligible to receive reasonable compensation and reimbursement of its actual out-of-pocket costs associated with the performance of its duties and obligations under the Implementation Agreement, subject to compliance with requirements substantially equivalent to the Province's Travel, Meal and Hospitality Expenses Directive. Such compensation amounts and reimbursement entitlements would be specified in the Implementation Agreement.

g. **Representations**

The Electricity Distributor would make customary representations to the Trust regarding, among other things, its legal capacity; authorization; non-contravention of law or material contract to which it is a party; and the enforceability of the Implementation Agreement.

h. **Indemnification**

The Electricity Distributor would be required to agree to provide customary indemnities to the Trust and the Trustee from and against claims, damages and liabilities which the Trust or Trustee may suffer or incur as the result of any breach of the Agreement by the Electricity Distributor or its representatives.

TRUSTEE REPLACEMENT ANNEX

1. The Advisory Committee shall consist of the following individuals:

   Robert Mace, President and Chief Executive Officer at Thunder Bay Hydro

   Bryce Conrad, President and Chief Executive Officer at Hydro Ottawa

   Brian Bentz, President and Chief Executive Officer at Alectra

   Ferio Pugliese, Executive Vice President Customer Care and Corporate Affairs at Hydro One

   Terry Young, Vice President Conservation and Corporate Relations at the Independent Electricity System Operator

2. In the event any member of the Advisory Committee resigns or is unable to act, it is expected that the remaining members of the Advisory Committee would appoint another resident of Ontario as a replacement.

3. On or before May 31, 2017, the Advisory Committee shall identify six residents of Ontario who have expressed that they are willing to act as members of the Board of Trustees and who, individually and collectively, satisfy the following criteria (collectively, the "**Selection Factors**"):

   a) each member demonstrates an understanding of the electricity sector including the electricity distribution sector;

   b) each member demonstrates an expertise in conservation and low income programs;

   c) three of the identified individuals will be representatives from separate electricity distributors, two individuals will be representatives from separate social services agencies and one individual member, who will be a non-voting member, will be an employee or representative of the Government of Ontario; and

   d) it is expected that representation by the Government of Ontario will be non-controlling.

4. If the Advisory Committee determines that changes to the Declaration (including to this Trustee Replacement Annex) are necessary in order to (a) replace, or appoint additional trustees to act with, the Original Trustee prior to the Original Trustee Replacement Date or (b) attract and receive confirmation of appointment of appropriately qualified individuals that the Advisory Committee believes would be suitable candidates to serve as members of the Board of Trustees, the Advisory Committee shall make recommendations regarding such necessary changes, including without limitation in respect of (i) any necessary limitations on the nature or scope of the appointment of the members of the Board of Trustees, (ii) the formation and empowerment of the Board of Trustees, and (iii) the duties, responsibilities, obligations, liabilities, indemnities, protections, limitations, restrictions,

compensation, expense reimbursement entitlements of members of the Board of Trustees.

5. The Advisory Committee shall recommend that the Original Trustee appoint the individuals so identified to become the initial members of the Board of Trustees pursuant to section 5.7 of the Declaration.

6. If any of the individuals recommended under paragraph 4 or under this paragraph are not accepted and appointed by the Original Trustee pursuant to section 5.7 of the Declaration, the Advisory Committee shall forthwith identify and recommend an alternative individual or individuals willing to act and whose presence as a member of the Board of Trustees would result in the Trustee collectively satisfying the criteria in paragraph 3 above.

7. Upon the appointment of six trustees (five voting and one non-voting) pursuant to section 5.7 of the Declaration, the Advisory Committee will be functus.

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DECLARATION OF TRUST

Made as of March •, 2017

by

COMPUTERSHARE TRUST COMPANY OF CANADA

establishing

AFFORDABILITY FUND TRUST

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DECLARATION OF TRUST

This Declaration of Trust is made as of March •, 2017, by Computershare Trust Company of Canada, a trust company established under the laws of Canada and licensed to carry on business as a trust company in each of the provinces and territories of Canada (together with its successors and assigns and the other trustees (including the Board of Trustees) contemplated herein, the "**Trustee**").

WHEREAS Computershare Trust Company of Canada, as settlor, wishes to establish a trust to acquire, hold, manage, invest, apply and dispose of certain property for the benefit of certain Beneficiaries as herein described.

NOW THEREFORE Computershare Trust Company of Canada hereby declares that it holds in trust as trustee (a) the sum of ONE HUNDRED DOLLARS ($100) contributed by it on this date and (b) all other property of every type and description which it may hereafter acquire or hold in its capacity as trustee of the Trust and all income therefrom and proceeds thereof, to hold, manage, invest, apply and dispose of same on and subject to the provisions set forth in this Declaration of Trust, including the annexes and schedule attached hereto.

SECTION 1
INTERPRETATION

1.1 Definitions

In this Declaration:

(a) "***Administrative Services Agent***" means each agent, which may include any Electricity Distributor or other Person, appointed from time to time under an Administrative Services Agreement, and its successors and permitted assigns solely in such capacity.

(b) "***Administrative Services Agreement***" means each agreement entered into from time to time by the Trust and one or more Administrative Services Agents or other Persons, in furtherance of the Purpose, under which the Administrative Services Agent agrees to provide specified administrative and other services to and on behalf of the Trustee, as such agreement may be amended, supplemented, restated, renewed or replaced from time to time and includes the agreement entered into on or about the date hereof between the Trustee and Hydro One Limited.

(c) "***Assets***" means, collectively, the following:

(i) the $100 Canadian referred to above, contributed by Computershare Trust Company of Canada on the date hereof;

(ii) all other property which is now or which at any time in the future may be issued, assigned, transferred, provided, donated, gifted and contributed to the Trustee (including pursuant to the Transfer Payment Agreement) to be held in trust pursuant to this Declaration (and which the Trustee is willing to accept and hold);

(iii) all acquisitions of property made by the Trust;

(iv) all property which may at any time be substituted for or in respect of the property referred to in clauses (i), (ii) and (iii), above;

(v) all income of the Trust, including investment income generated by the investment of the property referred to in clauses (i), (ii), (iii) and (iv), above; and

(vi) all proceeds of disposition of any of the property referred to in clauses (i) through (v) above,

but excludes any property paid out or distributed (whether out of income or capital) pursuant to the provisions of this Declaration.

(d) "***Beneficiary***" means each Primary Beneficiary and each Residual Beneficiary, as applicable.

(e) "***Board of Trustees***" means (i) as of the Original Trustee Replacement Date, the individual trustees appointed by the Original Trustee pursuant to Section 5.7 on the basis described in the Trustee Replacement Annex, and (ii) thereafter, the group of trustees appointed hereunder and acting in such capacity.

(f) "***Business Day***" means any working day, Monday to Friday inclusive, excluding statutory and other holidays, namely: New Year's Day; Family Day; Good Friday; Easter Monday; Victoria Day; Canada Day; Civic Holiday; Labour Day; Thanksgiving Day; Remembrance Day; Christmas Day; Boxing Day and any other day on which the Province has elected to be closed for business.

(g) "***Declaration***" means this Declaration of Trust, as it may be amended, restated, supplemented or otherwise modified from time to time, and includes each of the annexes and the Schedule attached hereto which constitute and form an integral part of this Declaration.

(h) "***Electricity Distributor***" means, in respect of a designated service area or region in Ontario, the distributor of electricity to residences located in such area or region.

(i) "***Electricity Invoice***" means an invoice issued by an Electricity Distributor in respect of electricity charges and related services and amounts incurred or assessed in respect of a residence located in the Electricity Distributor's designated service area or region in Ontario.

(j) "***Eligible Investments***" means (i) a deposit receipt, note, certificate or instrument issued, guaranteed or endorsed by a bank listed in Schedule I to the *Bank Act* (Canada), which provides that the principal and any interest shall be fully paid no later than one year after the day the investment was made, or (ii) a deposit account at a bank listed in Schedule I to the *Bank Act* (Canada).

(k) "***Eligible Measures***" means electricity efficiency and/or conservation measures determined by the Trustee from time to time on the basis contemplated in the Principles Annex and in the manner specified in and having regard to the Permitted Delegations Annex.

(l) "***Final Distribution Date***" means the earlier of (a) the date (if any) on which the Trustee determines (by a resolution of the Board of Trustees) that no further distributions are likely to be made to any Primary Beneficiary and (b) ~~20••~~ December 31, 2019.

(m) "***HAP Eligible Person***" means an "Eligible Person" as defined in Section 3.1 of the document entitled "Conservation First Framework LDC Took Kit" published by the Independent Electricity System Operator and designated as Final v3.0 – March 11, 2016, as amended in accordance with the Energy Conservation Agreement between the Independent Electricity System Operator and Electricity Distributors.

(n) **"Implementation Agent"** means each agent which may include any Electricity Distributor or other Person, appointed from time to time under an Implementation Agreement, and its successors and assigns solely in such capacity.

(o) **"Implementation Agreement"** means each agreement entered into from time to time by the Trustee and one or more Implementation Agents or other Persons in furtherance of the Purpose under which the Implementation Agent would agree to provide specified services to and on behalf or the Trustee (including, following the Original Trustee Replacement Date, as contemplated by the Permitted Delegations Annex) in connection with the implementation of the Program as such agreement may be amended , supplemented, restated, renewed or replaced from time to time.

(p) "***Minister of Energy***" means the Minister of Energy or such other member of the Executive Council as may be assigned primary ministerial responsibility for the administration of the *Ministry of Energy Act, 2011* under the *Executive Council Act*.

(q) "***Original Trustee***" means Computershare Trust Company of Canada, acting in its capacity as trustee hereunder, together with any additional or replacement Trustee appointed hereunder prior to the Original Trustee Replacement Date and any of their respective successors and assigns.

(r) "***Original Trustee Replacement Date***" has the meaning specified in Section 5.7, being the date on which the Original Trustee is replaced as trustee under this Declaration by the Board of Trustees as contemplated under Section 5.7.

(s) "***Permitted Delegations Annex***" means the Permitted Delegations Annex set forth as an annex to this Declaration.

(t) "***Person***" includes any individual, sole proprietorship, corporation, partnership, joint venture, association, society, club, board, chamber, joint-stock company, trust, trustee, unincorporated or incorporated organization or entity or government or any entity, agency or political subdivision thereof.

(u) "***Primary Beneficiary***" means each individual that, as of a time of determination, satisfies each of the following criteria:

(i) the individual owns, rents or leases a residence located in Ontario and is the primary or secondary electricity utility account holder named on an Electricity Invoice issued in respect of that residence; and

(ii) the individual is not a HAP Eligible Person.

(v) "***Principles Annex***" means the Principles Annex set forth as an annex to this Declaration.

(w) "***Province***" means the Province of Ontario.

(x) "***Program***" means the establishment, promotion, implementation and administration of a program to achieve the Purpose on the basis contemplated in this Declaration.

(y) "***Purpose***" means (i) the making of distributions to Primary Beneficiaries who are identified and whose needs are assessed in accordance with section 3.1 and 3.2 of this Declaration, having regard to (x) the principles set forth in the Principles Annex, (y) the manner and basis of implementation and administration of the Program contemplated in the Permitted Delegations Annex, and (z) the other terms, limitations and requirements set forth in this Declaration, and (ii) to the extent that Assets are available following the distributions made to Primary Beneficiaries as contemplated in (i), above, the making of distributions to Residual Beneficiaries who are identified and whose needs are assessed in accordance with section 3.3 and otherwise having regard to the other terms, limitations and requirements set forth in this Declaration.

(z) ***"Residual Beneficiary"*** means each charitable organization identified by the Trustee and specified as a residual beneficiary hereunder from time to time, selected by the Trustee in consultation with and having regard to the recommendations of the Ontario Energy Board in accordance with section 3.3.

(aa) "***Transfer Payment Agreement***" means the transfer payment agreement dated as of March •, 2017 between the Trustee and Her Majesty the Queen in right of Ontario as represented by the Minister of Energy, as such agreement may be amended, restated, supplemented or otherwise modified by the further agreement of the parties thereto from time to time.

(bb) "***Trust***" means Affordability Fund Trust, a trust established under and governed by the laws of the Province of Ontario pursuant to this Declaration.

(cc) "***Trustee***" means (i) the Original Trustee and (ii) on and after the Original Trustee Replacement Date, the Board of Trustees acting together in accordance with and subject to Section 5.7 and in accordance with the rules and procedures adopted by the Board of Trustees pursuant to Section 5.8.

(dd) "***Trustee Replacement Annex***" means the Trustee Replacement Annex set forth as an annex to this Declaration.

1.2 Headings and Table of Contents

The insertion of headings and the provision of a table of contents are for convenience of reference only and shall not affect the construction or interpretation of this Declaration.

1.3 References

Unless otherwise specified, all references to Sections are to Sections of this Declaration. The words "hereto", "herein", "hereof", "hereunder" and similar expressions refer to this Declaration and not to any particular Section or other provision of this Declaration.

1.4 Number and Gender

Unless otherwise specified, words importing the singular include the plural and vice versa and words importing gender include all genders.

1.5 Governing Law

This Declaration shall be governed by, and construed and interpreted in accordance with, the laws of the Province of Ontario and of Canada applicable therein.

1.6 Severability

Any provision of this Declaration which is illegal, invalid or unenforceable in any jurisdiction shall not affect the legality, validity or enforceability of the remaining provisions and any such illegality, invalidity or unenforceability in any jurisdiction shall not affect the legality, validity or enforceability of such provision in any other jurisdiction.

1.7 Reference to the Trust and the Trustee

For greater certainty, where any reference is made in this Declaration to an act to be performed by or for or on behalf of the Trust, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Trustee in its capacity as trustee of the Trust, and, where any reference is made in this Declaration to an act to be performed by or for or on behalf of the Trustee, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Trustee solely in its capacity as trustee of the Trust. Except as provided under the Transfer Payment Agreement, no Person dealing with the Trust or the Trustee shall be bound to make any enquiry concerning, or has the right to require production of, any evidence of the validity of any act of, or transaction purporting to be made by, the Trustee.

1.8 Defect in Appointment

No action taken by the Trustee will be invalid or ineffective by reason only of any defect in the appointment of the Trustee or the non-compliance by the Trustee with any rules or procedures adopted by the Trustee and which is discovered after the taking of such action.

SECTION 2
CONCERNING THE TRUST

2.1 Objectives

The Trust is established to hold, invest, apply and dispose of the Assets for the benefit of the Beneficiaries in furtherance of the Purpose, as provided for in this Declaration. In furtherance of the Purpose:

(a) the Original Trustee shall hold and invest the Assets as contemplated in this Declaration until the Original Trustee Replacement Date, after which the Board of Trustees shall be duly appointed hereunder; and

(b) the Board of Trustees shall hold, invest, apply and dispose of the Assets in accordance with this Declaration, including by determining the identities of and distributions (if any) to be made to or for the benefit of the Primary Beneficiaries in accordance with Sections 3.1 and 3.2 of this Declaration, having regard to the principles set forth in the Principles Annex and in the manner and on the basis contemplated in the Permitted Delegations Annex, or otherwise by determining the identities of and distributions to be made to or for the benefit of any Residual Beneficiary in accordance with Section 3.3,

in each case and in all respects subject to the terms, limitation and requirements set forth in this Declaration.

2.2 Name of the Trust

The name of the Trust shall be the "Affordability Fund Trust" or such replacement name as the Trustee shall determine and specify from time to time. The Trustee shall hold the Assets and conduct the activities of the Trust under such name or variation thereof (including any variation of such name in the French language). If the Trustee determines to change the name of the Trust, the Trustee may specify and use such other designation or adopt such other name (including any name in the French language) as it considers appropriate and may hold the Assets and conduct the activities of the Trust under such designation or other name.

2.3 Location

The head office and the situs of the administration of the Trust shall be • or such other address in Ontario as the Trustee may determine from time to time.

2.4 Fiscal Year

The fiscal year of the Trust shall end on December 31 of each year.

SECTION 3
DISTRIBUTIONS

3.1 Distributions to Primary Beneficiaries

After the Original Trustee Replacement Date and prior to the Final Distribution Date, the Trustee shall undertake diligent efforts in good faith to distribute the Assets (including capital or income) to the Primary Beneficiaries identified based on the application of the principles specified in the Principles Annex and in the manner and in the amounts determined on the basis contemplated by the Permitted Delegations Annex, in each case in the amounts and to the extent specified herein and therein, subject in all respects to the exercise by the Trustee of its discretion hereunder and to the exclusion of the other Beneficiaries.

3.2 Amount of Distributions to Primary Beneficiaries

For the purposes of determining the amount of distributions to be made to the Primary Beneficiaries, the Trustee shall have regard to and be entitled to rely on the recommendations of and information provided by Electricity Distributors acting as Implementation Agents appointed for the purposes, in the manner and substantially on the terms contemplated in the Permitted Delegations Annex, without any duty or obligation to verify or makes enquiries regarding the basis for or propriety of such recommendations or the accuracy or completeness of such information, except if and to the extent that the Trustee, in its discretion, determines that (i) it has actual knowledge that such recommendations are contrary to the reasonable application of the principles set forth in the Principles Annex or have been made on a basis that is manifestly contrary to such principles or the delegations and activities specified or contemplated to be undertaken under the Permitted Delegations Annex or (b) such information is known by the Trustee to be erroneous, contain a material misrepresentation or is materially incomplete.

3.3 Distributions to Residual Beneficiaries

Prior to the Final Distribution Date, the Trustee shall identify the Residual Beneficiary, or if more than one the Residual Beneficiaries and their respective allocations, by consulting with and having regard to the recommendations of the Ontario Energy Board, based on those charitable organizations which provide support services for Low Income Energy Assistance Program Emergency Financial Assistance (LEAP EFA) and the Ontario Electricity Support Program (OESP) or other charities that OEB may identify as relating to the Purpose. Following the Final Distribution Date, the Trustee shall, subject to compliance with section 7.3 and completion of a final audit, distribute all remaining Assets (including capital or income) to the Residual Beneficiaries, in each case in the amounts and to the extent determined by the Trustee in its discretion hereunder (having consulted with and having had regard to the recommendations of the Ontario Energy Board as aforesaid) and to the exclusion of the other Beneficiaries.

SECTION 4
POWERS OF THE TRUSTEE

4.1 General

Subject to and in compliance with the terms, limitations and restrictions of this Declaration and notwithstanding applicable trust legislation, the Trustee shall have, without other or further

authorization, full, exclusive and absolute power, control and authority over the Assets and over the affairs and activities of the Trust to the same extent as if the Trustee were not a trustee, but rather the sole and absolute owner of the Assets in its own right, including such power, control and authority to do all such acts and things as in its sole judgment and discretion are necessary, incidental or desirable for carrying on the affairs and activities of the Trust, with such powers of delegation as may be permitted or otherwise contemplated by this Declaration. Except as expressly provided in this Declaration, the enumeration in this Declaration of any specific power or authority shall not be construed as limiting the aforesaid general power or authority or any other specific power or authority set out herein. Subject to the terms, limitations and restrictions of this Declaration, every discretion or power hereby conferred on the Trustee is an absolute and uncontrolled discretion or power.

4.2 Specifically Enumerated Powers

The Trustee shall have the following specific powers and authorities:

(a) ***Transfer Payment Agreement.*** The Trustee shall have the power to enter into, amend, supplement, modify and perform its obligation under the Transfer Payment Agreement.

(b) ***Contracts and Undertakings.*** The Trustee shall have the power to enter into, amend, supplement, modify and perform its obligation under any contract entered into or undertaking given by the Trustee in furtherance of the Purpose, including any Administrative Services Agreement and any Implementation Agreement.

(c) ***Power to Own, Hold and Manage.*** Subject to section 4.2(d), the Trustee shall have the power to own, hold and manage the Assets in such manner as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable.

(d) ***Power to Invest in Eligible Investments.*** The Trustee shall have the power to invest the Assets only in Eligible Investments, and to change such Eligible Investments at any time and from time to time, all as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable, but always having regard to the Trustee's expectations regarding the timing of payments to be made to the Beneficiaries hereunder. If an investment of Assets in Eligible Investments would not be authorized under the applicable trust laws of Ontario, the Trustee shall nevertheless be permitted to make an investment of the Assets in such Eligible Investments. The Trustee will have no liability for the diminution in the value of any investment in Eligible Investments made hereunder.

(e) ***Power to Dispose of Assets.*** The Trustee shall have the power to sell, convey, assign, transfer, exchange and in any other manner dispose of the Assets or any part or parts thereof free and clear of any and all trusts established under this Declaration, by public or private sale, for cash or on credit, with or without advertisement, and subject to such restrictions, stipulations, agreements and reservations as the Trustee in its sole and absolute discretion may consider appropriate or advisable, and to execute and deliver and perform any agreement, deed, conveyance, transfer or other document or instrument in connection with the foregoing.

(f) ***Power to Apply Assets and Proceeds to Make Distributions to Beneficiaries.*** The Trustee shall have the power to apply the Assets and the proceeds and income derived therefrom to make distributions to the Beneficiaries contemplated by Section 3, and to execute and deliver

and perform any agreement, deed, conveyance, transfer or other document or instrument in connection therewith.

(g) ***Power to Delegate and to Appoint Agents, etc.*** The Trustee shall have the power to appoint, employ or contract with any Person as the Trustee in its sole and absolute discretion may consider appropriate or advisable in connection with the activities of the Trust. Without limiting the generality of the foregoing:

(i) the Trustee will have the power at any time and from time to time to appoint, employ or retain consultants, financial advisers, technical advisers, legal counsel, accountants, administrative services agents, implementation agents, insurers, insurance agents and insurance brokers, as the Trustee may require for the purpose of discharging its duties hereunder and shall not be responsible for or for the actions of any of them, including to:

(A) act for and on behalf of the Trust in connection with any and all matters in any way relating to the negotiation, settlement, entering into, amending, performance and enforcement of the Transfer Payment Agreement, the Administrative Services Agreements, the Implementation Agreements, and any other agreements and contracts to which the Trust becomes a party in accordance with this Declaration;

(B) to provide or cause to be provided any or all kinds of administrative and other services in any way relating to the activities of the Trust;

(C) to act as attorney in fact, agent or trustee in the acquisition, holding, investment, application, sale or other disposition of the Assets and in the handling, prosecuting, defending or settling of any claims of or made against the Trust;

(D) to value the Assets and determine the net income of the Trust; and

(E) to make any filings, elections and submissions (including in respect of taxation matters) in connection with the Trust's compliance with applicable laws and regulatory requirements; and

(ii) the Trustee may pay remuneration and reimbursements from the Assets for services performed for it or on its behalf in the discharge of the trusts hereof without taxation for costs or fees of any counsel, solicitor or attorney.

Without limiting the foregoing, it is expected that the Board of Trustees will seek to enter into Implementation Agreements with Electricity Distributors for the purposes contemplated by the Permitted Delegations Annex, and on such terms and conditions (including terms and conditions as to the payment of reasonable fees and expenses) not inconsistent therewith as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable.

(h) ***Power to Operate Accounts.*** The Trustee shall have the power to (i) open and operate accounts at any chartered bank, trust company or other financial institution in Canada or

elsewhere, as the Trustee in its sole and absolute discretion may consider appropriate or advisable; (ii) deposit therein any moneys or securities forming part of the Assets whether or not such deposits will earn interest; (iii) withdraw such deposits at such times and in such manner as the Trustee may determine; (iv) draw, make, endorse, deposit or otherwise deal in cheques, bills of exchange, promissory notes, drafts and other kinds of instruments and securities; and (v) enter into contracts or agreements with any such chartered bank, trust company or other financial institution containing such terms and provisions as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable. In connection therewith, the Trustee shall have no liability or responsibility for any loss which may occur by reason of the failure of any such chartered bank, trust company or other financial institution.

(i) ***Power to Collect, etc.*** The Trustee shall have the power to (i) collect, sue for, receive and give receipts for all sums of money or other property due to the Trust; (ii) consent to extensions of time for payment or to the renewal of any securities or obligations; (iii) engage or intervene in, prosecute, defend, compound, compromise, abandon or adjust by arbitration or otherwise, any demands, claims, actions, suits or proceedings relating to the Trust or the Assets; (iv) exercise any and all remedies available to the Trustee under any agreement or as may otherwise be available, including any power of foreclosure or sale available at law; (v) in connection with any such foreclosure or sale, purchase or otherwise acquire title to any property and to convey good title thereto free of any and all trusts hereby established, or to take or retake possession of any property secured under any agreement or instrument; (vi) extend the time, with or without security, for the payment or delivery of any debts or property; (vii) execute and deliver releases, acquittances, discharges, agreements or other instruments related thereto; and (viii) pay or satisfy any debts or claims upon any evidence that the Trustee, in its sole and absolute discretion, may determine to be sufficient.

(j) ***Power to Obtain Insurance***. The Trustee shall have the power to enter into contracts for or in relation to or otherwise obtain policies of insurance for the purpose of insuring the risks associated with the Trust, including to insure the Trustee (including the members of the Board of Trustees) against any risk of loss associated with assuming and performing the duties as Trustee. Without limiting the foregoing, it is expected that the Board of Trustees will obtain commercial general liability insurance from insurers having a secure A.M. Best rating of B+ or greater, or the equivalent, that in the opinion of the Recipient a prudent person similar to the Recipient would maintain, and having an inclusive limit of not less than $2,000,000 per occurrence and providing for contractual liability coverage.

(k) ***Power to Pay Trustee's Fees.*** The Original Trustee shall be entitled to be paid and receive the fees set forth in the Original Trustee's schedule of fees delivered as of or prior to the date hereof as compensation for its services under this Declaration, and to be reimbursed for its out-of-pocket expenses reasonably incurred, in each case from the Assets and without the approval of any Beneficiary or any court. The Original Trustee shall be entitled, in its sole and absolute discretion, to withdraw funds from time to time for such purpose from any account of the Trust. Members of the Board of Trustees shall be entitled to reimbursement for and in respect of their out-of-pocket expenses reasonably incurred in discharging their respective duties and obligations under this Declaration, in each case without the approval of any Beneficiary or any court, provided that the members of the Board of Trustees have general regard to sorts of limitations as are set forth in the "Travel, Meal and Hospitality Expenses Directive of the

Province" specified and amended by the Province from time to time, a copy of the current version of which is attached as Exhibit 1 to the Principles Annex.

(l) ***Power to Pay Taxes.*** The Trustee shall have the power to (i) pay, deduct, withhold or remit any taxes or assessments which are required by law to be paid, deducted, withheld or remitted together with or from any payment made by the Trustee; (ii) pay all taxes or assessments of whatever kind or nature imposed upon or against the Trust or the Trustee in connection with the Assets or any part thereof; (iii) collect and remit all taxes and assessments of whatever kind or nature required to be collected and remitted by the Trust or the Trustee in connection with their activities or the Assets or any part thereof; (iv) appeal, settle or compromise tax claims or liabilities; and (v) for the foregoing purposes, to make such returns, elections and submissions and do all such other acts and things as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable.

(m) ***Power to Appoint Auditors.*** The Trustee shall have the power to select and appoint and discharge and re-appoint, in its sole and absolute discretion, an auditor or auditors of the Trust and to settle and pay the fees of any such auditor or auditors from any account of the Trust.

(n) ***Form of Accounts.*** The Trustee shall have the power to determine and change from time to time, in its sole and absolute discretion, the method or form in which the accounts of the Trust will be kept and shall not be required to keep or provide accounts in the form usually required by law to be kept or provided by trustees; provided that such method or form reasonably complies with generally accepted accounting principles in effect in Canada to the extent applicable.

(o) ***Title to Assets.*** The Trustee shall have the power to cause all or any part of the Assets to be held by or registered, in its sole and absolute discretion, in the name of any Person.

(p) ***Delegation of Discretion***. The Trustee shall have the power to delegate the right and power to exercise, or concur in the exercise of any discretion or power, conferred on the Trustee in this Declaration or conferred by law to any one or more of its directors, officers, employees, agents, representatives or to such other Person, as the Trustee, in its sole and absolute discretion, may think is appropriate or advisable, including to one or more Administrative Services Agents under an Administrative Services Agreement and to one or more Implementation Agents and their respective employees, officers and directors under a related Implementation Agreement entered into by the Trust substantially on the basis contemplated in the Permitted Delegations Annex. In particular, the Trustee shall have the power to accept, rely on and follow the recommendations of an Electricity Distributor made under and having regard to the Permitted Delegation Annex with respect to the identification of, and the determination of distributions (if any) to be made to, any Primary Beneficiary, except if and in so far as the Trustee has actual knowledge that (1) such Primary Beneficiary did not in fact satisfy the "Selection Factors" specified in the Principles Annex as of the applicable time of determination; and/or (ii) the amount recommended to be distributed to the Primary Beneficiary was not calculated in substantial compliance with, or was calculated in a manner that is manifestly contrary to the requirements set forth or contemplated in, the Permitted Delegation Annex or the applicable Implementation Agreement.

(q) ***Additional Powers.*** The Trustee shall have the power to perform and do all such other acts, to take such steps and to execute all such deeds, transfers, assignments, agreements and

other documents and instruments as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable for the carrying out of any of its powers hereunder or of any of the activities of the Trust as herein contemplated, or for the carrying out, promotion or advancement of the interests of the Trust, whether or not any of such acts, things, documents or instruments are herein expressly mentioned. Any good faith determination by the Trustee as to what is necessary, desirable or appropriate to carry out its powers or activities of the Trust as contemplated under this Declaration or to carry out, promote or advance the interests of the Trust shall be conclusive. Any construction of this Declaration or any determination as to the activities of the Trust or the existence of any power or authority hereunder made in good faith by the Trustee, relying upon the advice of counsel, shall be conclusive. In construing the provisions of this Declaration, there shall be a presumption in favour of a grant of power to the Trustee.

SECTION 5
CONCERNING THE TRUSTEE

5.1 Duty of Trustee

In performing its duties and exercising its powers under this Declaration, the Trustee shall act honestly, in good faith and with a view to the best interests of the Trust and the Beneficiaries and shall exercise that degree of care, diligence and skill that a reasonably prudent trustee would exercise in comparable circumstances (the "**Standard of Care**"). The Trustee shall observe and act in accordance with the terms of, and shall observe and comply with the limitations and restrictions set forth in, this Declaration, including having due regard to the principles set forth in the Principles Annex. To the extent that the Trustee has so delegated any of its duties or powers, it shall be deemed to have satisfied the Standard of Care in respect of the subject matter of such delegation, subject to the Trustee's overall duty as a trustee to exercise prudent oversight in relation to such delegation. Unless required by law, the Trustee will not be required to give any security, bonds or sureties in any jurisdiction for the performance of any of its duties and obligations under this Declaration. The Trustee (including the individual members of the Board of Trustees) will not be required to devote its entire time to the trust activities.

5.2 Limitation of Liability

The Trustee shall not be personally liable in tort, contract or otherwise to any Beneficiary or any other Person for any loss or diminution in the value of the Assets, or for any action or failure to act on the part of the Trustee or any of its employees or agents or any other Person, and shall not be subject to any personal liability for any debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses incurred by or against the Trust, howsoever arising, and resort will be had solely to the Assets for the payment, performance or satisfaction thereof. No property or assets of the Trustee, owned in its personal capacity or otherwise, will be subject to levy, execution or other enforcement procedure**s** with respect to any obligation under this Declaration. However, the foregoing limitations in this Section shall not apply where the Trustee has demonstrated gross negligence, bad faith, fraud or wilful misconduct.

5.3 Liability of Trustee under Contracts

Any document or instrument creating a liability or obligation of the Trust or of the Trustee will be conclusively deemed to have been executed by the Trustee only in its capacity as Trustee of

the Trust and will be binding upon the Trustee only in its capacity as trustee hereunder and resort may not be had to, nor recourse or satisfaction be sought from, the property of the Trustee other than the Assets, whether owned by its in its personal capacity or in any other capacity other than in its capacity as Trustee of the Trust, or from its employees or agents, and in all cases resort will be had solely to the Assets for the payment, performance or satisfaction of any such liability or obligation. However, the foregoing limitations in this Section shall not apply where the Trustee has demonstrated gross negligence, bad faith, fraud or wilful misconduct. Each document or instrument creating a liability or obligation of the Trust or of the Trustee shall contain a provision providing for the aforesaid limitation of liability.

5.4 Funds of the Trustee

The Trustee shall not be required to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers.

5.5 Indemnification of Trustee

In addition to and without limiting any other protection hereunder or otherwise by law of the Trustee and its respective employees, agents, representatives and assigns (in this Section 5.5, collectively, the "**Representatives**"), the Trustee and its respective Representatives shall be indemnified, defended and saved harmless out of the Assets from, against and in respect of any and all liabilities arising or related to actions taken or omitted to be taken by any agent of the Trustee, losses, claims (including any claim arising out of the assessment of any tax on income by a taxing authority), damages, penalties, fines, actions, suits, demands, levies, assessments, costs, charges, expenses and disbursements (including, without limitation, any and all legal and advisor fees and disbursements) (in this Section 5.5, collectively, the "**Liabilities**") of whatever kind or nature which may at any time be suffered by, imposed upon, incurred by or asserted against the Trustee and its Representatives, whether groundless or otherwise, howsoever arising from or out of any act, omission or error of the Trustee, in each case made in connection with its acting as Trustee hereunder, in each case except and to the extent that the Liabilities are a result from or are caused by gross negligence, wilful misconduct, bad faith or fraud. Further, except as provided in section 5.2, the Trustee shall not be liable to any Beneficiary for any loss or damage relating to any matter regarding the Trust, including any loss or diminution in value of the Assets. Notwithstanding any other provision hereof, the obligations provided for in this section 5.5 shall survive any termination of the Trust, whether by reason of removal or resignation of the Trustee, termination or discharge of this Declaration or otherwise.

5.6 Reliance upon Advice

Subject to section 5.1, in performing its duties and exercising its powers hereunder, the Trustee may rely and may act or not act, and shall be fully protected in relying and acting or not acting, upon (a) any statement, telecopy or other electronic means of communication, writing, notice, resolution, report, opinion or other document or conversation believed by it to be genuine and correct and to have been signed, sent or made by the proper Person; (b) any opinion or advice received or information obtained from auditors, solicitors, or other professional advisers, whether retained by the Trustee or otherwise, and shall not be responsible or held liable for any loss or damage resulting from so relying or acting or not acting; and (c) the advice and actions of any

Administrative Services Agent or Implementation Agent, including in connection with the delegations and reliances contemplated under the Permitted Delegations Annex. For greater certainty, it shall not be necessary for the Trustee to ascertain whether or not the Persons who have executed, signed or otherwise issued, authenticated or receipted such papers, writings or documents (including any Administrative Services Agreement or any Implementation Agreement or any other contract entered into by the Trustee) have authority to do so or that they are the same Persons named therein or otherwise to pass upon any requirement of such papers, writing or documents that may be essential for their validity or effectiveness or upon the truth and acceptability.

5.7 Replacement of the Original Trustee

The Persons identified in the Trustee Replacement Annex are hereby appointed to comprise the Advisory Committee contemplated therein (the "**Advisory Committee**"). The Original Trustee shall promptly request that the Advisory Committee make recommendations with respect to the composition of the "Board of Trustees", as contemplated by the Trustee Replacement Annex. The Original Trustee shall have no duty or obligation to investigate the basis for any of the Advisory Committee's recommendations and may rely on such recommendations without any duty of enquiry, supervision or oversight with respect to the activities and decision-making processes adopted by the Advisory Committee in its discretion, in full satisfaction of the Original Trustee's Standard of Care with respect to such matters hereunder. Except where it is manifestly apparent to the Original Trustee that the individuals recommended by the Advisory Committee to become members of such Board of Trustees are disqualified from so acting on the basis of manifest non-compliance with the "Selection Factors" set forth in the Trustee Replacement Annex, the Original Trustee shall appoint, as members of the Board of Trustees, the six (five voting and one non-voting) individuals recommended for appointment to the Board of Trustees by the Advisory Committee. If the Original Trustee declines to appoint any individual recommended by the Advisory Committee, the Original Trustee will promptly request that the Advisory Committee provide a further recommendation whom the Original Trustee shall appoint as a member of the Board of Trustees unless it is manifestly apparent to the Original Trustee that the individual so recommended is also disqualified from so acting on the basis of manifest non-compliance with the "Selection Factors" set forth in the Trustee Replacement Annex,. Upon the appointment of such six individuals pursuant to this provision and their agreement to act as members of the Board of Trustees, the Original Trustee shall be deemed to have resigned and shall cease to be a trustee (such resignation occurring on the "**Original Trustee Replacement Date**").

5.8 Rules and Procedures of the Board of Trustees

(a) ***Initial Requirements***. As soon as practicable and in any event no later than one month following the Original Trustee Replacement Date, the Board of Trustees id expected to meet to take such decisions and actions as they deem necessary to ensure the proper management and administration of the Trust. The date (and location if in person) of the initial meeting shall be determined by a majority of the Board of Trustees.

(b) ***Meetings.*** Subject to the Board of Trustees' discretion to make such rules and procedures that they may deem desirable, meetings of the Board of Trustees may be held at such time and place as the trustee members of the Board of Trustees may agree upon or as they may fix by

resolution for the purpose or if the meeting is called as hereinafter mentioned then at such time as may be designated in the notice calling the meeting. A meeting of the Board of Trustees may be called at any time by any two members of the Board of Trustees by two Business Days' notice given to the members of the Board of Trustees. No notice of any Board of Trustees' meeting shall be necessary when a quorum is present if those comprising the quorum consent to the transaction of the affairs of the Trust and the absent trustee or trustees, if any, either before or after the meeting shall waive in writing notice of the meeting. Meetings of the Board of Trustees may be conducted in person, by telephone, or in such other manner as determined by the Board of Trustees. The Board of Trustees may elect a Chairperson.

(c) ***Quorum.*** At any meeting of the Board of Trustees, a majority of the voting members of the Board of Trustees shall be a quorum irrespective of the number of members in office. The decision of the majority of the voting members where quorum exists shall govern and shall be binding for all purposes and shall be acted upon and carried out in the same manner and with the same effect as if all the voted members concurred therein; provided always that in the case of equality of votes the Chairperson, if any, shall not be entitled to cast a second or deciding vote.

(d) ***Power to Adopt Rules and Procedures.*** The Board of Trustees may make such rules and procedures not inconsistent herewith as it may deem desirable for the proper management and administration of the Trust and the discharge of the responsibilities of the Board of Trustees.

(e) ***Replacement of Members of the Board of Trustees***. The Board of Trustees shall have the power to replace any vacancy arising following the Original Trustee Replacement Date according to such rules and procedures as they deem appropriate subject to compliance with the Selection Factors specified in Trustee Replacement Annex and having regard for such considerations necessary to ensure that the composition of the Board of Trustees will be able to discharge its responsibilities in respect of the Declaration. If necessary, the Board of Trustees may fill any vacancy by application to the Courts of Ontario in the event of an unfilled vacancy.

(f) ***Decisions of the Board of Trustees.*** Decisions and actions of the Board of Trustees shall be made by voting, with each individual voting member having one vote. Subject to quorum requirements, a majority vote shall be determinative in respect of such decisions and actions. Subject to quorum requirements, any decision or action taken by the majority of voting members will represent the decision or action of the Trustee, and not any member of the Board of Trustees.

(g) ***Conflicts of Interest.*** With respect to any matter before the Board of Trustees, to the extent of a conflict of interest, whether actual, perceived or potential, involving a member of the Board of Trustees' personal interests and a matter concerning the Trust, such member shall abstain from voting on the matter or taking any other discretionary action on the matter. For the purposes of the foregoing, no member of the Board of Trustees shall be deemed to have a conflict by reason only that the member holds any office or position with an Electricity Distributor, social services agency or governmental or quasi-governmental agency or entity (such as the Independent Electricity System Operator); provided, however, that in relation to any decision of the Board of Trustees pertaining specifically to a particular Electricity Distributor, any member of the Board of Trustees who is a director, officer or employee of the Electricity Distributor would be expected to recuse himself or herself from participating in deliberations, discussions or voting in respect of such decision.

(h) ***Expense Reimbursements to Members of the Board of Trustees.*** Members of the Board of Trustees shall be entitled to reimbursement for and in respect of their out-of-pocket expenses reasonably incurred in discharging their duties and obligations as members of the Board of Trustees. Members of the Board of Trustees shall serve without compensation.

5.9 Confidentiality

Notwithstanding the resignation or removal and discharge from the trusts and powers reposed in and conferred on the Trustee by this Declaration, or the termination of this Declaration, the Trustee so resigning or removed shall continue to treat as confidential all information relating to the Trust, the Assets and the Beneficiaries and shall only be entitled to make disclosures concerning such information if disclosure is required in the performance of the functions of the resigning or removed Trustee or is ordered by a court of competent jurisdiction or is otherwise required by law. The Trustee shall not be responsible or liable to any Person for any loss or damage arising out of or in any way sustained or incurred in any way relating to any such required disclosure. The obligations arising under this section 5.9 shall survive the termination of the Trust.

5.10 Vesting in Successor Trustee

Any successor trustee (including any reconstituted Board of Trustees) shall automatically become vested with the Assets and with the same powers, rights, duties, responsibilities and trusts as if it, he or she had originally been named as Trustee under this Declaration, without the requirement of any further instrument or act or conveyance, and the Trustee ceasing to act shall execute all such transfers and other documents and do all such other acts or things as may be necessary or desirable to assign, transfer, deliver to, and vest in, the successor trustee, upon the trusts expressed in this Declaration, all the Assets and all the rights, powers and trusts of the Trustee ceasing to act. The expense of any act, document, deed or other instrument or thing required under this Section 5.10, including for greater certainty, outstanding fees and unreimbursed expenses of the Trustee (including any member of the Board of Trustees) ceasing to act, shall be satisfied from the Assets.

5.11 Execution of Instruments

The Trustee shall have the power to execute all deeds, transfers, agreements, promissory notes and other instruments on behalf of the Trust. Such power may be exercised by any one or more Administrative Services Agents acting in accordance with any delegated right to do so pursuant to an applicable Administrative Services Agreement or by any one or more Implementation Agents acting in accordance with any delegated right to do so pursuant to an applicable Implementation Agreement, and any such execution of instrument by an Administrative Services Agent, acting in such capacity as agent of the Trust pursuant to the terms and conditions of an Administrative Services Agreement or by an Implementation Agent acting in such capacity as agent of the Trust pursuant to the terms and conditions of an Implementation Agreement shall in each case be deemed to be a proper execution of such instrument by the Trustee and shall be binding for all purposes on the Trust.

5.12 Decisions by the Trustee

If there is more than one Trustee, decisions of the Trust may be made by a majority of Trustees eligible to vote on the applicable matter. Whenever the Trustees are unable to agree in relation to the commission or omission of any act or howsoever in the execution of the Trust, the decision of a majority of such Trustees shall prevail.

SECTION 6
AMENDMENTS AND SUPPLEMENTS

6.1 Amendments

Subject to the requirements of the Transfer Payment Agreement, the Trustee shall have the power in its sole and absolute discretion from time to time without the approval of any Beneficiary or any court to amend, vary, supplement, replace or restate this Declaration in its entirety or any portion thereof; provided, however that it is expected that any amendment shall be consistent with the intent of the principles set forth in the Principles Annex and with the intended scope and effect of the permitted delegations and activities of any Implementation Agent pursuant to the Permitted Delegations Annex. Without in any way limiting the foregoing, any such amendments, variations, supplements, replacements or restatements may:

(a) add provisions for the replacement of or appointment of additional trustees to act with the Original Trustee prior to the Original Trustee Replacement Date;

(b) in the case of the Original Trustee, add provisions to those contemplated in the Trustee Replacement Annex in respect of the appointment of the members and the formation and empowerment of the Board of Trustees;

(c) in the case of the Original Trustee, vary the terms and requirements applicable to the duties, responsibilities, obligations, liabilities, indemnities, protections, limitations, restrictions, compensation, expense reimbursements and such other matters, in each case as the Advisory Committee may indicate are necessary to be made in order to attract and receive confirmation of appointment of appropriately qualified individuals that the Advisory Committee specifies are to be appointed as members of the Board of Trustees in accordance with its recommendations;

(d) add additional or replace existing Trustees;

(e) add to or reasonably clarify the principles set forth in the Principles Annex;

(f) add to or reasonably clarify the delegations and activities contemplated to be made in the Permitted Delegation Annex;

(g) include provisions for the management of the Trust by the Trustees, including the making of rules, requirements and procedures governing the decision-making of the Board of Trustees;

(h) add provisions for the replacement of members of the Board of Trustees (in addition to those provisions contemplated in section 5.7 and the Trustee Replacement Annex);

(i) provide for the engagement of any Person or Persons as managers, administrators or other service providers to the Trust, including any additional or replacement Administrative Services Agent or Implementation Agent or representative thereof;

(j) specify supplemental procedures for the identification of Primary Beneficiaries and the exchange of information with Electricity Distributors in connection with identifying such Primary Beneficiaries; or

(k) specify procedures for the transfer and transmission of funds from the Trust or any Implementation Agent acting on its behalf and with delegated responsibility over funds constituting Assets, to or for the benefit of, Beneficiaries or their designated representatives, payees or assignees.

6.2 Supplemental Declarations

The Trustee is authorized to execute any supplemental declaration of trust (including one or more amendments and restatements from time to time of this Declaration) to give effect to amendments to this Declaration made pursuant to section 6.1.

SECTION 7
TERMINATION

7.1 Duration

Subject to sections 7.2 and 7.3, the Trust will continue in full force and effect so long as there are any Assets and until all of the debts, liabilities and obligations of the Trust have been paid and satisfied in full.

7.2 Termination and Distribution of Assets

The Trustee shall terminate the Trust and wind up its affairs as soon as practicable after the Final Distribution Date. In connection with the termination of the Trust, the Trustee shall identify the Residual Beneficiaries and distribute or cause to be distributed the remaining Assets, in cash or in kind or partly in each, to the Residual Beneficiaries, in each case in accordance with section 3.3. Despite the foregoing, the Trust will only be terminated and wound up after the Trustee, in its sole and absolute discretion, determines that all debts, liabilities and obligations of the Trust have been paid or otherwise adequately provided for and satisfied and upon receipt of such releases, indemnities and discharges as the Trustee, relying on the opinion of counsel, deems necessary for the protection of the Beneficiaries and for its own protection.

7.3 Distribution of Assets on Final Distribution Date

If the Trust holds Assets on the Final Distribution Date, the Trustee shall pay or provide reserves for the payment, and otherwise shall satisfy, all debts, liabilities and obligations of the Trust and shall provide or arrange to provide such investigations, audits, releases, indemnities and discharges as the Trustee, relying on the opinion of counsel, deems necessary for the protection of the Beneficiaries and for its own protection. Thereafter, any remaining Assets shall be paid to the Residual Beneficiaries in accordance with section 3.3.

SECTION 8
ACCEPTANCE OF TRUSTS

8.1 Acceptance of Trusts

The Trustee hereby accepts the trusts and duties contained in this Declaration and agrees to perform the same upon the terms and conditions hereof until discharged therefrom.

[Signature Page Follows]

The Trustee has executed this Declaration as of the date first written above.

COMPUTERSHARE TRUST COMPANY OF CANADA,

By:
Name:
Title:

By:
Name:
Title:

PRINCIPLES ANNEX

The Trustee shall have regard to, but shall not be specifically bound by, the following principles in applying its discretion in relation to the administration of the Trust:

1. Identification of Primary Beneficiary Payees

1.1 Except in exceptional circumstances, a Primary Beneficiary would not be expected to receive a benefit from the Trust unless at the time of consideration it satisfies, in addition to the requirements contemplated in the definition of "Primary Beneficiary", each of the following criteria (the "**Selection Factors**"):

(i) it has a participant agreement with an applicable Electricity Distributor to undertake measures (its "**Energy Plan**") to improve the electricity efficiency and/or promote the conservation of electricity at its Ontario residence;

(ii) its Energy Plan involves one or more Eligible Measures, as may be designated by the Trustee from time to time from;

(iii) it confirms that:

1. the primary purpose of its Energy Plan is the conservation and efficient use by the Primary Beneficiary of electricity, and is not for the purposes of the Primary Beneficiary making a profit;

2. it would otherwise not have the financial resources to undertake the Eligible Measures included in its Energy Plan; and

3. it would otherwise not be eligible to receive amounts in respect of the Eligible Measures as a HAP Eligible Person;

(iv) it has demonstrated a need for financial assistance on the basis that its periodic electricity bills represent a financial burden, relative to its available financial resources; and

(v) such other criteria as the Trustee may determine, including based on the recommendations of Electricity Distributors or other knowledgeable Persons made on the basis and having regard to the delegations contemplated by the Permitted Delegations Annex or any applicable Implementation Agreement.

1.2 It is recognized that, in furthering the Purpose, an efficient basis upon which to allocate funds to the Primary Beneficiaries across different areas and regions within Ontario may be based on the areas and regions serviced by the Electricity Distributors operating within Ontario.

1.3 It would not be contrary to the Purposes if funds are made available by the Trustee to the Primary Beneficiaries unequally across different areas and regions within Ontario, and it is expected that in making such an unequal division it would be appropriate to have regard to:

(i) broad economic parameters of economic activity and the specific financial resources of the residents of the areas and regions, in each case as an indication of the relative need of such residents across the areas and regions;

(ii) electricity use and efficiency levels of residential electricity customers across the areas and regions;

(iii) specific regional indicators of economic weakness and need; and

(iv) such other factors as the Trustee may determine are relevant, including based on the submissions, advice and recommendations of Electricity Distributors or other knowledgeable Persons made on the basis and having regard to the delegations contemplated by the Permitted Delegations Annex or any applicable implementation Agreement.

1.4 It is recognized that, in furthering the Purpose, the designated Electricity Distributor for an area or region in which a Primary Beneficiary resides would be expected to:

(i) be a reliable source for the purpose of assessing and confirming whether the Primary Beneficiary satisfies the Selection Factors;

(ii) be an efficient intermediary for the purpose of communicating with the Primary Beneficiary, including with respect to matters such as regarding the availability, terms, conditions and intended purposes of Program;

(iii) be able to facilitate an efficient payment of distribution determined to be made to or on behalf of the Primary Beneficiary, having regard to the Electricity Distributor's established practices, procedures and systems for dealing with its customers; and

(iv) have established contractual arrangements with the Primary Beneficiary that may apply to the protection and confidentiality of information provided by or respecting the Primary Beneficiary, which information may be useful in the consideration by the Electricity Distributor in its assessment of whether the Primary Beneficiary satisfies the Selection Factors, which information may not otherwise be available or readily accessible or verifiable by the Trustee.

1.5 It is recognized that, in furthering the Purpose, the Electricity Distributor for an area or region in which a Primary Beneficiary resides will have market and utilization information that may be useful in assessing the relative needs of Primary Beneficiaries within its area or region. Such information is expected to be relevant in assessing the extent to which one such Primary Beneficiary's financial needs and the merits of its Energy Plan are greater or more compelling than those of another such Primary Beneficiary, which comparison may be relevant to the extent that the funds allocable to the Primary Beneficiaries resident in the area or region are otherwise insufficient to meet the requests for funding by all such Primary Beneficiaries.

1.6 Accordingly, it is recognized that, in furthering the Purpose, it is consistent with the Purpose that the recommendations of Electricity Distributors be utilized and relied upon

by the Trustee to guide the process of identifying particular Primary Beneficiaries in making distributions to the Primary Beneficiaries.

1.7 If an Electricity Distributor for a particular area or region is unable or unwilling to assess or confirm the application of the Selection Factors to Primary Beneficiaries residing in the area or region or to make recommendations in relation to such matters, one or more of the following may provide a suitable alternative source of information and for information gathering, assessment and confirmation purposes in relation to such area or region:

(i) other Electricity Distributors operating in adjacent or other areas or regions in Ontario;

(ii) the Ontario Energy Board;

(iii) the Independent Electricity System Operator; and

(iv) anyone else having relevant expertise and access to information regarding the electricity market of the Province, in each case as may be considered relevant by the Trustee.

1.8 To the extent that privacy law or other legal requirements limit an Electricity Distributor from providing or making available specific information respecting the application of the Selection Factors to a particular Primary Beneficiary or group of Primary Beneficiaries, it is recognized that, in furthering the Purpose, it may be appropriate to redact or make generic affected information regarding such Primary Beneficiary in connection with the identification and confirmation of a Primary Beneficiary's eligibility and participation in the Program. If such limitations or restrictions would limit an Electricity Distributor from providing or confirming the name of a particular Primary Beneficiary to the Trustee, then it should be sufficient that such information may be obtained or disseminated on a confidential basis if and when required by the Trustee for the proper administration of the Trust and on that basis such impediments should not disqualify a Primary Beneficiary from participating in the benefits of the Program, provided that the confidential record-keeping of the Electricity Distributor would be available in connection with the application of any applicable legal process predicated on the identification of such Primary Beneficiary for the purposes of substantiating its rights as a Primary Beneficiary of the Trust or as to the validity or subsistence of the Trust.

2. Eligible Measures

2.1 It is expected that the Trust will identify eligible measures that, taking into consideration the principles set forth in the Principles Annex, have regard to the following (the "**Measures Factors**"):

(i) is the measure generally expected to result in reduced electricity consumption by a Primary Beneficiary if properly installed and used;

(ii) is the measure recognized under another Provincial program as being appropriate for achieving electricity conservation among a population analogous to the Primary Beneficiaries;

(iii) does the measure present any unacceptable health or safety considerations, either with respect to the Primary Beneficiary, a party providing or installing the measure, or the physical environment;

(iv) is the measure broadly available to residents across different areas and regions of the Province; or

(v) is the measure a requirement or precursor to another measure, the other measure being one which meets any of the other Measures Factors.

2.2 In identifying and applying the Measures Factors, Electricity Distributors would be expected to have expertise in assessing the suitability of efficiency and conservation measures in their respective areas and regions, which may differ across areas and regions across the Province based on factors (among other things) such as the climate, geography, density, electricity infrastructure, residential structures, and electricity use rates applicable within such areas or regions.

2.3 The measures specified in Schedule A to this Principles Annex may initially be considered to be consistent with the Measures Factors (subject to change as contemplated under the Permitted Delegations Annex).

3. Promotion of the Program

3.1 It is expected that the Trustee will undertake or engage others to undertake diligent efforts to promote the availability, terms and benefits of the Program to Primary ~~and Residual~~ Beneficiaries, including by establishing consistent communications through the Electricity Distributors.

3.2 It is expected that the Trustee will acknowledge the financial support of the Province in connection with the establishment and the funding for the Program, including in any external communications to or marketing directed at the Electricity Distributors and the Primary and Residual Beneficiaries. In its delegation of any duties or powers to the Electricity Distributors through Implementation Agreements it is expected that Electricity Distributors will acknowledge the financial support of the Province in connection with the program including in any communications or marketing to Primary Beneficiaries.

4. Conduct of the Trust and the Program

4.1 It is expected that administrative expenses of the Board of Trustees and its members, including any expenses relating to the Trust, to the establishment of the Trust and any expenses related to the implementation and operation of the Program, including by or through Electricity Distributors and other relevant entities, will be recognized and subject to reimbursement on a basis that is substantially consistent with the accountability provisions contemplated in the Transfer Payment Agreement and the principles in the

Province's Travel, Meal and Hospitality Expenses Directive, ~~the current form of which attached~~ as set out in Schedule B to this Principles Annex.

4.2 The Trustee is expected to conduct its activities in a manner that complies in all material respects with the Transfer Payment Agreement, including to:

(i) act prudently and in furtherance of the Purpose;

(ii) report not less frequently than annually the results of its activities for information purposes to the Province in connection with the Program;

(iii) comply with the Province's request for any independent verification or audit if determined to be necessary or appropriate by the Province;

(iv) return Assets that have not been distributed if it is determined that the Trustee has breached its Standard of Care in discharging its material duties under the Declaration, and has not cured such material breach despite having been given a reasonable opportunity by the Province to do so in light of the circumstances of such material breach, with the result that all or a significant part of the Assets have not been or are not being applied and distributed in furtherance of the Purpose or are being applied and distributed in a manner that is directly contrary or without regard to the Purpose.

4.3 Electricity Distributors are not intended to directly profit from distributions of funds made from the Trust, although it is recognized that the objectives of electricity efficiency and conservation of Primary Beneficiaries located in the service area or region of an Electricity Distributor, and the cost savings and improved credit worthiness of such Primary Beneficiaries, may be financially beneficial to the Electricity Distributor.

4.4 Distributions from the Trust are intended to allow receiving Primary Beneficiaries to undertake Eligible Measures at no or minimal personal cost.

4.5 Without in any way limiting the discretion of the Board of Trustees to extend the period during which the benefits of the Program may be available to the Primary Beneficiaries, up to and including the Final Distribution Date, it is expected that the Trust Assets would be distributed to Primary Beneficiaries during the period from the Original Trustee Replacement Date to April 30, 2019.

SCHEDULE A TO THE PRINCIPLES ANNEX
INDICATIVE ELIGIBLE MEASURES[1]

Initial Specified Measures
Block Heater Timer (just timer) – rated for outdoor use, have at least a 15 amp/1800 watt capacity, be cold weather resistant, bear a C-UL or CSA certification mark
Power bar with integrated timer, and switched power outlets, four each for a total of 8 outlets, have a total capacity of 15 amps. The switched outlets must remain "live", independent of timer settings, so long as the power bar itself remains switched on. The power bar must bear either a C-UL or CSA certification mark.
Efficient Showerheads (standard) - rated at no more than 4.8 Lpm (1.25 U.S. gpm) and be of the laminar flow type (non-aerating).
Efficient Showerhead (handheld) - rated at no more than 4.8 Lpm (1.25 U.S. gpm) and be of the laminar flow type (non-aerating).
Efficient Aerators (kitchen) - rated no more than 5.7 Lpm (1.5 U.S. gpm), dual threaded to allow installation in both thread type faucets, swivel type with pause lever.
Efficient Aerators (bathroom) - rated no more than 3.8 Lpm (1.0 U.S. gpm), be dual threaded to allow installation in both thread type faucets.
Hot Water Tank Pipe Insulation - 1/2" inside diameter – foam, meets ASTM –C547-00, minimum 3/4" thick
Hot Water Tank Pipe Insulation - 3/4 " inside diameter - – foam, meets ASTM –C547-00, minimum 3/4" thick
Hot Water Tank Insulation - fibreglass R10 (fits up to a 60 gal tank) – not bubble wrap
≤11W ENERGY STAR® Qualified LED A Shape (60W) (minimum 600 Lumen output) (Formerly: 7W – 11W ENERGY STAR® Qualified LED A Shape (60W))

[1] These measures are indicative. Eligible measures added to HAP during the administration of the Trust may also be appropriately considered relevant by the Trustee.

Initial Specified Measures
≤14W ENERGY STAR® Qualified LED A Shape (75W) (minimum 800 Lumen output) (Formerly: 10W – 14W ENERGY STAR® Qualified LED A Shape (75W))
≤23W ENERGY STAR® Qualified LED A Shape (100W) (minimum 1600 Lumen output) (Formerly:17W – 23W ENERGY STAR® Qualified LED A Shape (100W))
≤16W ENERGY STAR® Qualified LED PAR 20 (minimum 600 Lumen output) (Formerly: 8W – 12W ENERGY STAR® Qualified LED PAR 20)
≤16W ENERGY STAR® Qualified LED PAR30 & PAR38 (minimum 600 Lumen output) (Formerly: 8W – 12W ENERGY STAR® Qualified LED PAR 30)
≤23W ENERGY STAR® Qualified LED PAR (minimum 1100 Lumen output) (Formerly: 14W – 18W ENERGY STAR® Qualified LED PAR 38)
≤6W ENERGY STAR® Qualified LED MR 16 / PAR 16 (minimum 250 Lumen output) (Formerly: 7W – 10W ENERGY STAR®
Qualified LED MR 16 / PAR 16 - GU 10 Base)
≤11W ENERGY STAR® Qualified LED MR 16 (minimum 400 Lumen output) (Formerly: 7W – 12W ENERGY STAR® Qualified LED MR 16 GU 5.3 Base)
ENERGY STAR® LED Wet Location Rated PAR lamp ≤ 23 Watt (minimum 1100 Lumen output)
Recessed Downlight Fixture including LED with Light Output >600 and <800 lumens (Retrofit Measure List)
Recessed Downlight Fixture including LED with Light Output >800 lumens (Retrofit Measure List)
Indoor Drying Rack

~~**Extended Measures**~~
~~Replace refrigerator with ENERGY STAR qualified refrigerator - 15.5 - 16.9 cubic foot top-freezer, automatic defrost, refrigerator/ freezer, no through the door ice service~~

~~Replace refrigerator with ENERGY STAR qualified refrigerator - 17.0 - 18.4 cubic foot top freezer, automatic defrost, refrigerator/ freezer, no through the door ice service~~
~~Replace refrigerator with a refrigerator that has a consumption level of less than 425 kwh, 10 – 12.5 cubic foot top freezer, automatic defrost, refrigerator freezer, no through the door ice service~~
~~Replace freezer with ENERGY STAR qualified freezer - 12-14.4 cubic foot freezer~~
~~Replace freezer with ENERGY STAR qualified freezer - 14.5 - 16.0 cubic foot freezer~~
~~Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 6,000 – 7,999 BTU/hr with C-UL or CSA certification mark~~
~~Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 8,000 – 9,999 BTU/hr with C-UL or CSA certification mark~~
~~Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 10,000 – 12,000 BTU/hr with C-UL or CSA certification mark~~
~~Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 14.2 – 21.2 l/day (30-44.9 pints/day) dehumidifier~~
~~Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 21.3 – 25.4 l/day (45-53.9 pints/day) dehumidifier~~

Extended Measures
Replace refrigerator with ENERGY STAR qualified refrigerator - 15.5 - 16.9 cubic foot top freezer, automatic defrost, refrigerator/ freezer, no through the door ice service
Replace refrigerator with ENERGY STAR qualified refrigerator - 17.0 - 18.4 cubic foot top freezer, automatic defrost, refrigerator/ freezer, no through the door ice service
Replace refrigerator with a refrigerator that has a consumption level of less than 425 kwh, 10 – 12.5 cubic foot top freezer, automatic defrost, refrigerator freezer, no through the door ice service
Replace freezer with ENERGY STAR qualified freezer - 12-14.4 cubic foot freezer
Replace freezer with ENERGY STAR qualified freezer - 14.5 - 16.0 cubic foot freezer
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 6,000 – 7,999 BTU/hr with C-UL or CSA certification mark
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 8,000 – 9,999 BTU/hr with C-UL or CSA certification mark
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 10,000 – 12,000 BTU/hr with C-UL or CSA certification mark
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 14.2 - 21.2 l/day (30-44.9 pints/day) dehumidifier
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 21.3 - 25.4 l/day (45-53.9 pints/day) dehumidifier
Extended Measures
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 25.5 - 35.5 l/day (54-75 pints/day) dehumidifier
Programmable Thermostat – line voltage – meets CAN/CSA-C828-06 standard, minimum performance: Droop: 1.5°C, Differential: 0.5°C, Precision 0% within 0.5°C of the original set point of 22°C
Programmable Thermostat – low voltage - meets CAN/CSA-C828-06 standard, minimum performance: Droop: 1.5°C, Differential: 0.5°C, Precision 0% within 0.5°C of the original set point of 22°C

Weatherization Measures
Comprehensive ~~Draftproofing~~Draft proofing (caulking, foam and weather stripping, and application of same) – lifespan of 20 years plus If one or two component polyurethane foams are used, the products and installations must conform to: • CAN/ULC-S710.1 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 1: Material Specification. • CAN/ULC-S710.2 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 2: Application. • CAN/ULC-S711.1 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification • CAN/ULC-S711.2 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification, and Part 2: Application. **Attic Insulation (including installation):**
cellulose: CAN/ULC-S703-01 Amendment 1 - Cellulose Fibre Insulation (CFI) for Buildings OR 2) Mineral Fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre

Weatherization Measures
for Buildings **Wall Insulation (including installation):**
cellulose: CAN/ULC-S703-01 Amendment 1 - Cellulose Fibre Insulation (CFI) for Buildings OR 2) Mineral Fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre **Basement Insulation (including installation):**
mineral fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre for Buildings Vapour Barrier: 69009-CAN/CGSB-51.34-m86 If one or two component polyurethane foams are used, the products and installations must conform to: • CAN/ULC-S710.1 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 1: Material Specification. • CAN/ULC-S710.2 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 2: Application. • CAN/ULC-S711.1 Standard for Thermal Insulation – Bead Applied Two-Component
Polyurethane Air Sealant Foam, Part 1: Material Specification • CAN/ULC-S711.2 Standard for Thermal Insulation – Bead Applied Two-Component

Heat Pumps (Selection of manufacturers and technologies to meet the US federal minimum efficiency standard for ASHPs, as of 2015, is 13.0 SEER and 7.7 HSPF. Energy Star–certified models offer roughly 9 percent more efficiency than most new uncertified ASHPs and 20 percent more
Ductless Multiport Heat Pump
Cold Climate Ductless Heat Pump
Cold Climate Multiport Ductless Heat Pump
Cold Climate Ducted Heat Pump

SCHEDULE B TO THE PRINCIPLES ANNEX
PERMITTED EXPENSE REIMBURSEMENTS

~~[NTD: Insert the Province's Travel, Meal and Hospitality Expenses Directive.]~~**Travel, Meal and Hospitality Expenses Directive**

Funds should be used prudently and responsibly with a focus on accountability and transparency.

Expenses for travel, meals and hospitality support the Purpose.

Plans for travel, meals, accommodation and hospitality are necessary and economical with due regard for health and safety.

Legitimate authorized expenses incurred during the course of furthering the Purpose may be reimbursed.

Best practices should be followed, including:

Prior approval to incur expenses is appropriately obtained.

Other options for meetings are always considered before travel is approved, including audio or video conferencing.

Corporate travel cards are to be used for authorized business travel and business related expenses.

PERMITTED DELEGATION ANNEX

1. Under section 4.2(g) of the Declaration, the Trustee has the power to: (a) appoint, employ or retain Implementation Agents for the purpose of discharging its duties and obligations under the Declaration; and (b) enter into, perform, enforce and amend Implementation Agreements.

2. In accordance with section 4.2(g) of the Declaration, consistent with the principles set forth in the Principles Annex, the Trustee or its agent will seek to enter into one or more Implementation Agreements with individual Electricity Distributors under which the Electricity Distributors will act as Implementation Agents to the Trustee. In this manner, the Trustee will delegate certain of its powers and duties to the Electricity Distributors.

3. Under section 5.1 of the Declaration, to the extent the Trustee has delegated any of its duties or powers, it shall be deemed to have satisfied the Standard of Care in respect of the subject matter of such delegation, subject to the Trustee's overall duty to exercise prudent oversight thereof. The Trustee is entitled to rely on an Electricity Distributor to discharge the duties delegated to it, as Implementation Agent, pursuant to an Implementation Agreement as described in this Annex.

4. Accordingly, and without limiting the Trustee's right to delegate under the Declaration and its other rights, powers and discretion as Trustee, the Trustee will be permitted to, and is expected to seek to, enter into Implementation Agreements with Electricity Distributors in order to further the Purpose. Without limiting the Trustee's discretion to negotiate and settle the terms and conditions of such Implementation Agreements, it is expected that such Implementation Agreements will include customary terms and conditions for an administrative services arrangement of this type and, in addition, would (subject to the acceptance and agreement of the applicable Electricity Distributor counterparty) address the following points in particular:

    a. **Identification of Applicable Primary Beneficiary Payees and Determination of Individual Distribution Amounts**

        i. Each Electricity Distributor would make an initial assessment of the financial needs of Primary Beneficiaries within its designated service area or region, having regard to the Selection Factors set forth in section 1.3 of the Principles Annex, together with applicable economic data, in order to prepare and provide to the Trustee an estimate of the number of Primary Beneficiaries who the Electricity Distributor reasonably expects would satisfy the Selection Factors.

        ii. Each Electricity Distributor would make an initial assessment of the measures it would recommend be included as Eligible Measures, having regard to the Measures Factors set forth in section 2.1 of the Principles Annex, in order to prepare and provide to the Trustee an estimate of the average cost per Primary Beneficiary Payee (as defined below) of such Eligible Measures that the Electricity Distributor reasonably expects would apply in respect of Primary Beneficiaries resident in its service area or region.

iii. Based on the product of (i) and (ii), above, and such other considerations as it considers to be directly relevant, each Electricity Distributor would make a written recommendation to the Trustee regarding the aggregate funding amount that the Electricity Distributor anticipates would be utilized under the Program by the Primary Beneficiaries resident in its service area or region (the "**Local Funding Estimate**"). Such recommendation would be accompanied, when submitted to the Trustee, by a detailed explanation regarding the assumptions, financial parameters, suitability considerations and other information underlying the Local Funding Estimate (including the type of information contemplated by the Selections Factors and the Measures Factors, which would be relied upon by the Trustee in its assessment regarding the allocation of available funding to or for the benefit of the Primary Beneficiaries across the specified areas and regions of Ontario.

iv. The Trustee would inform the Electricity Distributor regarding the aggregate of the amount determined by the Trustee to be made available under the Program for Primary Beneficiaries in the Electricity Distributor's designated service area or region (for each Electricity Distributor, its "**Maximum Electricity Distributor Allocation**") and as to any maximum amount that may be paid to or for the benefit of any single Primary Beneficiary located in the servicer area or region of the Electricity Distributor (the "**Maximum Primary Beneficiary Amount**"). The Maximum Electricity Distributor Allocation and Maximum Primary Beneficiary Amount may vary between areas and regions, among the Primary Beneficiaries within such areas and regions, and may be increased by the Trustee from time to time in its discretion.

v. Each Electricity Distributor would apply the principles set forth under "Identification of Primary Beneficiary Payees" in the Principles Annex to identify and make recommendations to the Trustee regarding the amount of funds (if any) to be distributed to or for the benefit of Primary Beneficiaries resident within its service area or region from time to time (the "**Primary Beneficiary Payees**").

vi. Each Electricity Distributor would ensure that the aggregate of the amounts it recommends be distributed to or for the benefit of Primary Beneficiary Payees from time to time does not exceed (1) its Maximum Electricity Distributor Allocation and (2) for any single Primary Beneficiary located in the service area or region of the Electricity Distributor, the lesser of (x) the applicable Maximum Primary Beneficiary Amount and (y) the estimated costs (including any applicable taxes, but excluding any amount payable to the Electricity Distributor by or on behalf of the Primary Beneficiary) to be incurred by or on behalf of such Primary Beneficiary (whether or not such costs have been paid or remain outstanding) in respect of Eligible Measures applied or to be applied in respect of the Primary Beneficiary's Ontario residence.

vii. The Trustee would provide written confirmation to each Electricity Distributor:

1. Either (x) that the recommendations specified of the Electricity Distributor in clause (v), above, have been accepted, or (y) as to the specific reasons for any non-acceptance; and

2. The amount of the distributions to be paid to or for the benefit of each Primary Beneficiary Payee that is resident in the Electricity Distributor's service area or region.

viii. With respect to each Primary Beneficiary resident in a Electricity Distributor's service area or region that is confirmed as a Primary Beneficiary Payee, the Electricity Distributor would provide the Trustee written confirmation as to:

1. The identity of such Primary Beneficiary Payee; and

2. The amount of the distribution paid to or for the benefit of such Primary Beneficiary Payee.

ix. If the amount of a distribution to be made to a Primary Beneficiary Payee is based on the estimated costs to be incurred by or on behalf of such Primary Beneficiary and, prior to making the distribution to the Primary Beneficiary Payee, the Electricity Distributor determines that the actual costs (including any applicable taxes but excluding any amount payable to the Electricity Distributor by or on behalf of the Primary Beneficiary) incurred or to be incurred by or on behalf of such Primary Beneficiary in respect of Eligible Measures applied or to be applied in respect of the Primary Beneficiary's Ontario residence has or would be less than such estimated costs, then the amount to be distributed to the Primary Beneficiary shall be based on such actual costs.

b. **Making of Distributions to Primary Beneficiaries**

i. It is expected that promptly after the Trustee confirms the identity of a Primary Beneficiary Payee resident in an Electricity Distributor's service area or region and the amount of the distribution to be paid to or for the benefit of such Primary Beneficiary Payee, the Trustee would arrange for payment to or on the direction of the Electricity Distributor of an amount equal to the amount of such distribution.

ii. It is expected that promptly upon receipt of funds in respect of a distribution to be made to a Primary Beneficiary Payee, the Electricity Distributor would arrange for payment of the full amount of such distribution to or for the benefit of the Primary Beneficiary Payee (including by direct payment to a third party of, or as a reimbursement or rebate of, the costs of applicable Eligible Measures installed at the residence of and for the benefit of the Primary Beneficiary Payee), without reduction or set-off by the Electricity Distributor.

iii. If the amount paid to an Electricity Distributor in respect of a distribution to be made to a Primary Beneficiary exceeds the actual amount of the distribution made to or on behalf of the Primary Beneficiary, it is expected that the Trustee would require Electricity Distributor to return such excess to the Trustee, whereupon the proceeds of such returned amount shall continue to form part of the Assets.

c. **Establishment of Operational, Administrative, Record-Keeping and Other Systems and Policies by Electricity Distributors to facilitate the Program**

i. It is expected that the Electricity Distributor would establish such operational, administrative, record-keeping and other systems and policies as are necessary to facilitate the Program and perform its duties under the Implementation Agreement, including systems or policies to: identify Primary Beneficiary Payees; comply with applicable privacy and regulatory laws; communicate with Primary Beneficiaries on behalf of the Trust; assess Eligible Measures; determine the Local Funding Estimate; monitor its recommendations to the Trustee against its Maximum Electricity Distributor Allocation and the Maximum Primary Beneficiary Amount; receive funds from the Trust in respect of distributions to the Primary Beneficiary Payees and transfer such funds to the appropriate recipients for the benefit of the Primary Beneficiary Payees; preparation and timely delivery to Primary Beneficiary Payees of such documents as are required by the *Income Tax Act* (Canada); and create and maintain records in respect of the foregoing.

ii. The Electricity Distributor would set up a separate bank account for the purpose of receiving funds from the Trust in respect of distributions to the Primary Beneficiary Payees and the transfer of such funds to the appropriate recipients for the benefit of the Primary Beneficiary Payees.

d. **Reporting, Record-Keeping, Inspection and Disclosure and Compliance Matters**

i. The Electricity Distributor would provide record-keeping, clerical and bookkeeping services relating to all matters relating to its recommendations and the performance of its other duties and obligations under its Implementation Agreement.

ii. The Electricity Distributor would keep and maintain all financial records and non-financial documents and records relating to the provision of services under its Implementation Agreement.

iii. The Electricity Distributor would provide to the Trustee quarterly and annual reports ("**Reports**") for the duration of its Implementation Agreement. Such Reports would set out, among other things, the amounts of the distributions paid to or for the benefit of applicable Primary Beneficiary Payees, the average distribution amount per such Primary Beneficiary Payee, the Eligible Measures for which distributions have been made, and the uptake of energy efficiency measures.

iv. The Electricity Distributor would agree to provide to the Trustee such information as is necessary for the Trustee to (v) comply with applicable law; (w) prepare financial statements for the Trust; (x) prepare and submit such documents as are required under the *Income Tax Act* (Canada); (y) comply with the Trust's applicable obligations under the Transfer Payment Agreement; and (z) such other matters as the Trustee reasonably requests.

v. The Trustee, its authorized representatives or an independent auditor would be permitted to, at its own expense, on twenty-four hours' notice to the Electricity Distributor and during normal business hours, inspect the records of and information respecting the Electricity Distributor to confirm its compliance with the Implementation Agreement, including regarding its processes for recommending the Primary Beneficiary Payees and their respective distribution amounts and regarding the delivery of Trust funds on behalf of the Trustee to or for the benefit of the Primary Beneficiary Payees.

e. **Standard of Care**

i. The Electricity Distributor would be required to agree to perform its duties provided under the Implementation Agreement exercising the degree of care, diligence and skill that a reasonably prudent Person would exercise in comparable circumstances.

ii. In performing its duties under the Implementation Agreement (including the recommending of Primary Beneficiary Payees to the Trustee), the Electricity Distributor would be required to agree to seek to avoid actual, potential or perceived conflicts of interest.

iii. The Electricity Distributor would be required to agree that it would not, in performing its obligations under the Implementation Agreement, take any action which it knows or ought reasonably to know would cause the Trustee or the Trust to be in violation of any law, rule or regulation applicable to it.

f. **Expenses**

The Electricity Distributor would be eligible to receive reasonable compensation and reimbursement of its actual out-of-pocket costs associated with the performance of its duties and obligations under the Implementation Agreement, subject to compliance with requirements substantially equivalent to the Province's Travel, Meal and Hospitality Expenses Directive. Such compensation amounts and reimbursement entitlements would be specified in the Implementation Agreement.

g. **Representations**

The Electricity Distributor would make customary representations to the Trust regarding, among other things, its legal capacity; authorization; non-contravention of law or material contract to which it is a party; and the enforceability of the Implementation Agreement.

h. **Indemnification**

The Electricity Distributor would be required to agree to provide customary indemnities to the Trust and the Trustee from and against claims, damages and liabilities which the Trust or Trustee may suffer or incur as the result of any breach of the Agreement by the Electricity Distributor or its representatives.

TRUSTEE REPLACEMENT ANNEX

1. The Advisory Committee shall consist of the following individuals:

   Robert Mace, President and Chief Executive Officer at Thunder Bay Hydro

   Bryce Conrad, President and Chief Executive Officer at Hydro Ottawa

   Brian Bentz, President and Chief Executive Officer at Alectra

   Ferio Pugliese, Executive Vice President Customer Care and Corporate Affairs at Hydro One

   Terry Young, Vice President Conservation and Corporate Relations at the Independent Electricity System Operator

2. In the event any member of the Advisory Committee resigns or is unable to act, it is expected that the remaining members of the Advisory Committee would appoint another resident of Ontario as a replacement.

3. On or before ~~,~~May 31, 2017, the Advisory Committee shall identify six residents of Ontario who have expressed that they are willing to act as members of the Board of Trustees and who, individually and collectively, satisfy the following criteria (collectively, the "**Selection Factors**"):

   a) each member demonstrates an understanding of the electricity sector including the electricity distribution sector;

   b) each member demonstrates an expertise in conservation and low income programs;

   c) three of the identified individuals will be representatives from separate electricity distributors, two individuals will be representatives from separate social services agencies and one individual member, who will be a non-voting member, will be an employee or representative of the Government of Ontario; and

   d) it is expected that representation by the Government of Ontario will be non-controlling.

4. If the Advisory Committee determines that changes to the Declaration (including to this Trustee Replacement Annex) are necessary in order to (a) replace, or appoint additional trustees to act with, the Original Trustee prior to the Original Trustee Replacement Date or (b) attract and receive confirmation of appointment of appropriately qualified individuals that the Advisory Committee believes would be suitable candidates to serve as members of the Board of Trustees, the Advisory Committee shall make recommendations regarding such necessary changes, including without limitation in respect of (i) any necessary limitations on the nature or scope of the appointment of the members of the Board of Trustees, (ii) the formation and empowerment of the Board of Trustees, and (iii) the duties, responsibilities,

obligations, liabilities, indemnities, protections, limitations, restrictions, compensation, expense reimbursement entitlements of members of the Board of Trustees.

5. The Advisory Committee shall recommend that the Original Trustee appoint the individuals so identified to become the initial members of the Board of Trustees pursuant to section 5.7 of the Declaration.

6. If any of the individuals recommended under paragraph 4 or under this paragraph are not accepted and appointed by the Original Trustee pursuant to section 5.7 of the Declaration, the Advisory Committee shall forthwith identify and recommend an alternative individual or individuals willing to act and whose presence as a member of the Board of Trustees would result in the Trustee collectively satisfying the criteria in paragraph 3 above.

7. Upon the appointment of six trustees (five voting and one non-voting) pursuant to section 5.7 of the Declaration, the Advisory Committee will be functus.

Document comparison by Workshare Compare on Wednesday, March 22, 2017 4:16:26 PM

Input:	
Document 1 ID	PowerDocs://TOR_2024/12887993/18
Description	TOR_2024-#12887993-v18-Affordability_Fund_Trust_–_Declaration_of_Trust_-_Blakes_Comments_(March_14,_2017)
Document 2 ID	PowerDocs://TOR_2024/12887993/19
Description	TOR_2024-#12887993-v19-Affordability_Fund_Trust_–_Declaration_of_Trust_-_Blakes_Comments_(March_14,_2017)
Rendering set	Standard

Legend:	
Insertion	
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Moved to	
Style change	
Format change	
~~Moved deletion~~	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	52
Deletions	31
Moved from	0
Moved to	0
Style change	0
Format changed	0

Total changes	83

TOR_2024-#12888010-v13-Transfer_Payment_Agreement_(Affordability_Fund_Trust).pdf

ONTARIO TRANSFER PAYMENT AGREEMENT

THE AGREEMENT, effective as of the • day of March, 2017 (the **"Effective Date"**)

B E T W E E N :

Her Majesty the Queen in right of Ontario
as represented by the Minister of Energy

(the "Province")

- and -

Computershare Trust Company of Canada, in its capacity as trustee of Affordability Fund Trust

(together with its successors and assigns, the "Recipient" and, together with the Province, the "Parties")

BACKGROUND

Computershare Trust Company of Canada is the original trustee of the Affordability Fund Trust.

The Province wishes to provide Funds to the Recipient to be held, invested, applied and distributed in accordance with the terms of the Declaration of Trust (defined below), in furtherance of the Purpose (as defined in the Declaration of Trust), including having regard to the Principles set forth in Annex A.

CONSIDERATION

In consideration of the mutual covenants and agreements contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is expressly acknowledged, the Parties agree as follows:

ENTIRE AGREEMENT

This agreement (as amended, restated, supplemented or otherwise modified from time to time, the **"Agreement"**), including:

Schedule "A" - General Terms and Conditions
Schedule "B" - Project Specific Information
Schedule "C" - Project - Certain Obligations of the Recipient
Schedule "D" - Budget
Schedule "E" - Payment Plan
Schedule "F" - Reporting
Annex "A" - Principles, and
any amending agreement entered into as provided for below,

constitutes the entire agreement between the Parties with respect to the subject matter contained in this Agreement and supersedes all prior oral or written representations and agreements.

COUNTERPARTS

The Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

AMENDING THE AGREEMENT

The Agreement may only be amended by a written agreement duly executed by the Parties.

ACKNOWLEDGEMENT

The Recipient:

(a) acknowledges that it has read and understands the provisions contained in the entire Agreement; and

(b) agrees to be bound by the terms and conditions contained in the entire Agreement.

IN WITNESS WHEREOF, the Parties have executed the Agreement on the dates set out below.

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO as represented by Minister of Energy

by:

_____ _____

Date Name: Serge Imbrogno

Title: Deputy Minister

Authorized Signing Officer

COMPUTERSHARE TRUST COMPANY OF CANADA, in its capacity as trustee of AFFORDABILITY FUND TRUST

by:

_____ _____

Date Name:

Title:

by:

_____ _____

Date Name:

Title:

I/We have authority to bind the Recipient.

SCHEDULE "A"
GENERAL TERMS AND CONDITIONS

1.0 INTERPRETATION AND DEFINITIONS

1.1 Interpretation. For the purposes of interpretation:

(a) words in the singular include the plural and vice-versa;

(b) words in one gender include all genders;

(c) the headings do not form part of the Agreement; they are for reference only and will not affect the interpretation of the Agreement;

(d) any reference to dollars or currency will be in Canadian dollars and currency;

(e) "include", "includes" and "including" denote that the subsequent list is not exhaustive;

(f) where any reference is made in the Agreement to an act to be performed by or for or on behalf of the Affordability Fund Trust, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Recipient in its capacity as trustee of the Affordability Fund Trust, and, where any reference is made in the Agreement to an act to be performed by or for or on behalf of the Recipient, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Recipient in its capacity as trustee of the Affordability Fund Trust; and

(g) it is intended that the transfer of the Funds to the Recipient will be a transfer made to a "non-controlled trust" (as that term is given meaning in • applicable to the accounting rules and principles applicable to the Province as of the date of the Agreement), and so if a term or condition of the Agreement is determined to conflict with the requirements applicable to the Province recording the transfers to the Recipient of Funds contemplated hereunder as an expense incurred by the Province on the date of the transfer of Funds under the Agreement otherwise in connection with activities undertaken by the Province with such a "non-controlled trust", then such term or condition shall be given a meaning and shall have an effect insofar as it is possible to interpret such term or condition in a manner that eliminates such conflict while preserving the other provisions of the Agreement and furthering the Purpose.

1.2 Definitions. In the Agreement, the following terms will have the following meanings:

"Administrative Services Agent" has the meaning given such term in the Declaration of Trust.

"Affordability Fund Trust" means the trust established and governed by the Declaration of Trust, and for greater certainty includes such trust operating under any other name that may be designated from time to time by the Recipient in accordance with the Declaration of Trust.

"BPSAA" means the Broader Public Sector Accountability Act, 2010 (Ontario).

"**Beneficiary**" has the meaning given to such term in the Declaration of Trust.

"Budget" means the Recipient's budget attached to the Agreement as Schedule "D".

"Business Day" means any working day, Monday to Friday inclusive, excluding statutory and other holidays, namely: New Year's Day; Family Day; Good Friday; Easter Monday; Victoria Day; Canada Day; Civic Holiday; Labour Day; Thanksgiving Day; Remembrance Day; Christmas Day; Boxing Day and any other day on which the Province has elected to be closed for business.

"**Declaration of Trust**" means the declaration of trust made as of March [•], 2017, under which the Affordability Fund Trust was established, as such declaration of trust may be amended, restated, supplemented or otherwise modified from time to time with the consent of the Province in accordance with Section 20.2.

"Expiration Date" means the date on which this Agreement will expire and is the date set out in Schedule "B".

"Funds" means the money the Province provides to the Recipient pursuant to the Agreement.

"Implementation Agents" has the meaning given such term in the Declaration of Trust.

"Maximum Funds" means the maximum amount of Funds that the Province will provide the Recipient under the Agreement, as set out in Schedule "B".

"Notice" means any communication given or required to be given pursuant to the Agreement.

"Party" means either the Province or the Recipient.

"**Person**" includes any individual, sole proprietorship, corporation, partnership, joint venture, association, society, club, board, chamber, joint-stock company, trust, trustee, unincorporated or incorporated organization or entity or government or any entity, agency or political subdivision thereof.

"**Program**" has the meaning given to such term in the Declaration of Trust.

"Project" means the undertaking described in Schedule "C".

"**Purpose**" has the meaning given to such term in the Declaration of Trust.

"PSSDA" means the *Public Sector Salary Disclosure Act, 1996* (Ontario).

"**Recipient**" means, initially, Computershare Trust Company of Canada, and any additional or replacement trustee in its capacity as trustee of the Affordability Fund Trust pursuant to the Declaration of Trust, including the Board of Trustees (as defined in the Declaration of Trust) and each of their respective successors and permitted assigns.

"Reports" means the reports described in Schedule "F".

2.0 REPRESENTATIONS, WARRANTIES AND COVENANTS

2.1 General. The Recipient represents, warrants and covenants that:

(a) it is the trustee of the Affordability Fund Trust; and

(b) the Affordability Fund Trust is, and will continue to be for the term of the Agreement, a trust existing under and governed by the laws of the Province of Ontario.

2.2 Execution of Agreement. The Recipient represents and warrants that it has:

(a) the full power and authority to enter into the Agreement; and

(b) taken all necessary actions to authorize the execution of the Agreement.

2.3 Governance. The Recipient covenants that it will develop and maintain in writing until the Agreement is no longer in effect:

(a) decision-making mechanisms and procedures to enable the Recipient to hold, invest, manage, apply and distribute the Funds in accordance with the Declaration of Trust in furtherance of the Purpose; and

(b) procedures to enable the preparation and delivery of all Reports required pursuant to Article 7.0.

2.4 Supporting Documentation. Upon request, the Recipient will provide the Province with proof of the matters referred to in this Article 2.0.

3.0 TERM OF THE AGREEMENT

3.1 Term. The term of the Agreement will commence on the Effective Date and will expire on the Expiration Date.

3.2 Extension. The term of the Agreement may be extended by further agreement between the Parties.

3.3 Extension of the Declaration of Trust. If the Province determines that an extension of the Final Distribution Date (as defined in the Declaration of Trust) and time for termination of the Declaration of Trust is consistent with and in furtherance of the Purpose and the Province's original intentions and expectations in establishing the Project, the Province may request that the Recipient extend such date to a date specified by the Province in a Notice (such date not to be later than December 31, 2021, whereupon the Recipient, so long as the Recipient does not have a reasonable basis to believe that such an extension would be inconsistent with the Purpose or weaken the protections intended for the benefit of the trustee pursuant to the Declaration of Trust, will undertake such actions as it may consider to be necessary or appropriate to so extend the Declaration of Trust, including by amending the Declaration of Trust to provide for such an extension and to modify any other term or requirement as would be necessary or prudent to conform such term or requirement in light of such extension.

4.0 FUNDS AND CARRYING OUT THE PROJECT

4.1 Funds Provided. The Province will:

(a) provide the Recipient up to the Maximum Funds to be held, invested, applied and distributed in accordance with the terms of the Project and the Declaration of Trust;

(b) provide the Funds to the Recipient in accordance with the Payment Plan attached to the Agreement as Schedule "E"; and

(c) deposit the Funds into an account designated by the Recipient, provided that the account:

(i) resides at a Canadian financial institution; and

(ii) is in the name of the Recipient.

4.2 Timing of Distributions to Beneficiaries. The expectations of the Province regarding when Funds will begin to be distributed by the Recipient to Beneficiaries are set out in Schedule C. The Recipient will have regard to those expectations in the exercise of its discretion under the Declaration of Trust, in determining when Funds will be distributed to Beneficiaries in furtherance of the Purpose.

4.3 Use of Funds and Project. The Recipient will exercise its rights, duties and discretions under the Declaration of Trust so that the Funds are used, applied and distributed only for and in furtherance of the Purpose, including having regard to the Principles set forth in Annex A.

4.4 Province's Role Limited to Providing Funds. For greater clarity, the Province's role under the Agreement is limited to providing Funds to the Recipient and the Province is not responsible for carrying out or overseeing the terms of the Declaration of Trust.

4.5 Maximum Funds. The Recipient acknowledges that the Funds available to it pursuant to the Agreement will not exceed the Maximum Funds.

4.6 Funding, Not Procurement. For greater clarity, the Recipient acknowledges that:

(a) it is receiving funding from the Province for the Project and is not providing goods or services to the Province; and

(b) the funding the Province is providing under the Agreement is funding for the purposes of the PSSDA.

5.0 RECIPIENT'S ACQUISITION OF GOODS OR SERVICES, AND DISPOSAL OF ASSETS

5.1 Acquisition. If the Recipient acquires goods, services, or both with or by applying the proceeds of the Funds, it is expected to do so through a process that promotes the best value for money and to take reasonable steps to ensure that its Administrative Services Agents and Implementation Agents also follow a process that promotes the best value for money when acquiring goods and services with or by applying the proceeds of the Funds. In this regard, it is expected that the Recipient will have regard the following procurement principles:

(a) ***Accountability*** - Procurement is conducted in a manner that is well-informed and reflects rules of good governance and decision-making.

(b) ***Geographic Neutrality and Reciprocal Non-Discrimination*** - Procurement should not differentiate between competing goods, services, or suppliers based on their geographic origin or location.

(c) ***Responsible Management*** - Procurement of goods and services should be responsibly, efficiently and effectively managed and should observe the highest standard of ethics, avoiding conflict of interest.

(d) ***Value for Money*** - Procurement processes should apply a value for money evaluation that takes into account price as well as other costs and benefits, including life cycle costs and relevant non-price attributes such as quality.

(e) ***Vendor Access, Transparency, and Fairness*** - Procurement is conducted in a fair and transparent manner, offering all qualified suppliers equal treatment and open access to compete for the opportunity to supply goods and services.

6.0 CONFLICT OF INTEREST

6.1 No Conflict of Interest. Except as expressly permitted by the Declaration of Trust, the Recipient is expected to implement appropriate processes and control to ensure that the Program and the use, application and distribution of the Funds are without an actual, potential or perceived conflict of interest.

6.2 Conflict of Interest Includes. For the purposes of this Article, a conflict of interest includes any circumstances where, except as expressly permitted by the Declaration of Trust:

(a) the Recipient; or

(b) any person who has the capacity to influence the Recipient's decisions,

has outside commitments, relationships or financial interests that could, or could be seen to, interfere with the Recipient's objective, unbiased and impartial judgment relating to the Project, or the Recipient's use, application or distribution of the Funds, or both.

7.0 REPORTING, ACCOUNTING AND REVIEW

7.1 Preparation and Submission. The Recipient will cooperate with the Province to accommodate the Province's on-going information and reporting objectives in order to enable the Province to be aware of the Recipient's activities in furtherance of the Purpose, and to that end the Recipient will be expected, from and following the Original Trustee Replacement Date, to:

(a) submit to the Province at the address referred to in Schedule "B", all Reports in accordance with the timelines and content requirements set out in Schedule "F", or in a form as specified by the Province from time to time, acting reasonably;

(b) submit to the Province at the address referred to in Schedule "B", any other reports as may be reasonably requested by the Province from time to time in accordance with the timelines and content expectations identified by the Province, acting reasonably;

(c) undertake diligent efforts so that such Reports and any such other reports are complete and accurate in all material respects; and

(d) have an authorized signatory of the Recipient sign-off on such Reports and other reports.

7.2 Record Maintenance. The Recipient will keep and maintain financial and other records necessary to permit it to satisfy its obligations under section 7.1 and to permit the Province to exercise its rights under section 7.3.

7.3 Inspection. The Province, its authorized representatives or an independent auditor identified by the Province may, at its own expense, upon twenty-four hours' Notice to the Recipient and during normal business hours, inspect the records of and information respecting the Recipient to confirm its compliance with the terms of this Agreement, including to ensure consistency with the Purpose and, for these purposes, the Province, its authorized representatives or an independent auditor identified by the Province may take one or more of the following actions:

(a) inspect and copy the records and documents referred to in section 7.2;

(b) keep any copies made pursuant to section 7.3(a); and

(c) conduct an audit or investigation of the Recipient in respect of the expenditure of the Funds to confirm that the Funds have been used, applied and distributed for and in furtherance of the Purpose, including a review of the Recipient's processes, records, documents, as well as the processes and controls applied to obtain assurance that Funds disbursed to Electricity Distributors were used, applied and distributed for and in furtherance of the Purpose.

7.4 Disclosure. To assist in respect of the rights set out in section 7.3, the Recipient will disclose any information requested by the Province, its authorized representatives or an independent auditor identified by the Province, and will do so in the form requested by the Province, its authorized representatives or an independent auditor identified by the Province, as the case may be.

7.5 No Control of Records. No provision of the Agreement will be construed so as to give the Province any control whatsoever over the Recipient's records.

7.6 Auditor General. For greater certainty, the Province's rights under this Article are in addition to and do not limit any rights provided to the Auditor General pursuant to section 9.1 of the *Auditor General Act* (Ontario).

8.0 COMMUNICATIONS REQUIREMENTS

8.1 Publication. The Recipient will acknowledge, in any of its Program-related external communications and marketing whether written, oral, or visual, the financial support of the Province in connection with the establishment and funding of the program, while noting that the

views expressed in the publication are the views of the Recipient and do not necessarily reflect those of the Province.

9.0 FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY

9.1 FIPPA. The Recipient acknowledges that the Province is bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province in connection with the Project or otherwise in connection with the Agreement may be subject to disclosure in accordance with that Act.

10.0 Intentionally Deleted

11.0 EVENT OF DEFAULT, CORRECTIVE ACTION AND TERMINATION FOR DEFAULT

11.1 Events of Default. An Event of Default will occur if:

(a) the Recipient fails to perform or observe any covenant in this Agreement and such failure has and continues to have a material adverse effect on the Province and remains unremedied during any Notice period applicable under section 11.2 after the earlier of (i) actual knowledge thereof by the Recipient, or (ii) receipt by the Recipient of Notice thereof from the Province;

(b) any representation or warranty made by the Recipient in the Agreement shall prove to have been incorrect in any material respect when made or deemed made, and, if capable of remedy, continues to be incorrect in any material respect during any Notice period applicable under section 11.2 after the earlier to occur of (i) the actual knowledge thereof by the Recipient or (ii) receipt by the Recipient of Notice thereof from the Province;

(c) it is determined that the Recipient has breached its Standard of Care (within the meaning given in and context of the Declaration of Trust) in discharging its material duties under the Declaration of Trust, with the result that all or a significant part of the Funds have not been or are not being applied in furtherance of the Purpose or are being applied in a manner that is directly contrary or without regard to the Purpose, and, if such breach is capable of remedy, it continues and remains unremedied during any Notice Period applicable under section 11.2 after the earlier of (i) actual knowledge thereof by the Recipient, or (ii) receipt by the Recipient of Notice thereof from the Province;

(d) an insolvency event shall have occurred and be continuing with respect to the Recipient.

11.2 Consequences of Events of Default and Corrective Action. If an Event of Default occurs, the Province may, at any time, take one or more of the following actions:

(a) provide the Recipient with Notice allowing the Recipient an opportunity to remedy the Event of Default during a specified Notice Period;

(b) seek an order of specific performance, including an order that the Recipient pursue its available remedies against third parties;

(c) require, by Notice of demand, that the Recipient transfer to the Province (without any need for compensation, indemnity or consideration to the Recipient or any Beneficiary or other third party) any and all Assets remaining in the possession or under the control of the Recipient that can reasonably be traced or attributed to the Funds after first providing for the completion and performance by the Recipient of any unperformed contractual obligations of the Recipient undertaken in compliance with the Declaration of Trust on or prior to transfer; and

(d) terminate the Agreement, including immediately, without liability, penalty or costs to the Province upon giving Notice to the Recipient.

The transfer of Funds in accordance with the Agreement is made by the Province with the expressed intention and reservation that the transferred Funds shall be returned to the Province and the entitlements of the Recipient in remaining Funds shall thereby be revoked with reversion thereof to the Province in the circumstances contemplated in Section 11.2(c).

11.3 Opportunity to Remedy. If, in accordance with section 11.2, the Province provides the Recipient with an opportunity to remedy the Event of Default, the Province will provide Notice to the Recipient of:

(a) the particulars of the Event of Default; and

(b) the length of time within which the Recipient may cure such Event of Default without the Province pursuing any other remedy (the "Notice Period").

11.4 Recipient not Remedying. If the Province has provided the Recipient with an opportunity to remedy the Event of Default pursuant to section 11.2(a), and:

(a) the Recipient does not remedy the Event of Default within the Notice Period;

(b) it becomes apparent to the Province that the Recipient cannot adequately remedy the Event of Default within the Notice Period; or

(c) the Recipient is not proceeding to remedy the Event of Default in a way that is satisfactory to the Province,

the Province may extend any Notice Period, or initiate any one or more of the actions provided for in section 11.2.

12.0 REPAYMENT

12.1 Debt Due. If, pursuant to the Agreement: the Province demands the payment of any Funds from the Recipient pursuant to section 11.2(c) such Funds or other amount will be deemed to be a debt due and owing to the Province by the Recipient, and the Recipient will pay or return the amount to the Province immediately, unless the Province directs otherwise.

12.2 Payment of Money to Province. The Recipient will pay any money owing to the Province by cheque payable to the "Ontario Minister of Finance" and delivered to the Province at the address referred to in Schedule "B".

12.3 Failure to Repay. Without limiting the application of section 43 of the Financial Administration Act (Ontario), if the Recipient fails to repay any amount owing under the Agreement, Her Majesty the Queen in right of Ontario may deduct any unpaid amount from any money payable to the Recipient by Her Majesty the Queen in right of Ontario.

13.0 NOTICE

13.1 Notice in Writing and Addressed. Notice will be in writing and will be delivered by email, postage-prepaid mail, personal delivery or fax, and will be addressed to the Province and the Recipient respectively as set out in Schedule "B", or as either Party later designates to the other by Notice.

13.2 Notice Given. Notice will be deemed to have been given:

(a) in the case of postage-prepaid mail, five Business Days after the Notice is mailed; or

(b) in the case of email, personal delivery or fax, one Business Day after the Notice is delivered.

13.3 Postal Disruption. Despite section 13.2(a), in the event of a postal disruption:

(a) Notice by postage-prepaid mail will not be deemed to be received; and

(b) the Party giving Notice will provide Notice by email, personal delivery or by fax.

14.0 SEVERABILITY OF PROVISIONS

14.1 Invalidity or Unenforceability of Any Provision. The invalidity or unenforceability of any provision of the Agreement will not affect the validity or enforceability of any other provision of the Agreement. Any invalid or unenforceable provision will be deemed to be severed.

15.0 WAIVER

15.1 Waivers in Writing. If a Party fails to comply with any term of the Agreement, that Party may only rely on a waiver of the other Party if the other Party has provided a written waiver in accordance with the Notice provisions in Article 13.0. Any waiver must refer to a specific failure to comply and will not have the effect of waiving any subsequent failures to comply.

16.0 INDEPENDENT PARTIES

16.1 Parties Independent. The Recipient acknowledges that it is not an agent, joint venturer, partner or employee of the Province, and the Recipient will not represent itself in any way that might be taken by a reasonable person to suggest that it is, or take any actions that could establish or imply such a relationship.

17.0 ASSIGNMENT OF AGREEMENT OR FUNDS

17.1 Agreement Binding. All rights and obligations contained in the Agreement will extend to and be binding on the Parties' respective heirs, executors, administrators, successors and permitted assigns.

18.0 LIMITATION OF LIABILITY

18.1 This Agreement has been entered into by the Recipient solely in its capacity as trustee of the Affordability Fund Trust and is not binding on the Recipient in any other capacity, whether in tort, contract or otherwise. The Beneficiaries of the Affordability Fund Trust are not subject to any liability in respect of the Affordability Fund Trust. Resort may not be had to, nor recourse or satisfaction be sought from, the private property of the Recipient (whether owned by it in its personal capacity or in any other capacity other than in its capacity as trustee of the Affordability Fund Trust), its directors, officers, employees, or agents, or the private property of any Beneficiary, and resort will be had solely to the property of the Recipient held in trust for the payment, performance or satisfaction of any liability or obligation of the Recipient under this Agreement. However, the foregoing limitations in this section shall not apply where the Recipient has demonstrated gross negligence, bad faith, fraud or wilful misconduct.

19.0 GOVERNING LAW

19.1 Governing Law. The Agreement and the rights, obligations and relations of the Parties will be governed by and construed in accordance with the laws of the Province of Ontario and the applicable federal laws of Canada. Any actions or proceedings arising in connection with the Agreement will be conducted in the courts of Ontario, which will have exclusive jurisdiction over such proceedings.

20.0 FURTHER ASSURANCES

20.1 Agreement into Effect. The Recipient will provide such further assurances as the Province may request from time to time with respect to any matter to which the Agreement pertains, and will otherwise do or cause to be done all acts or things necessary to implement and carry into effect the terms and conditions of the Agreement to their full extent.

20.2 Declaration of Trust. The Recipient covenants that it shall not amend, restate or terminate the

Declaration of Trust without obtaining the written consent of the Province in respect of same, such consent not to be unreasonably withheld or delayed.

21.0 JOINT AND SEVERAL LIABILITY

21.1 Joint and Several Liability. Without limiting and subject to section 18.1 and the Declaration of Trust, if the Recipient is comprised of more than one entity, all such entities will be jointly and severally liable to the Province for the fulfillment of the obligations of the Recipient under the Agreement.

22.0 RIGHTS AND REMEDIES CUMULATIVE

22.1 Rights and Remedies Cumulative. The rights and remedies of the Province under the Agreement are cumulative and are in addition to, and not in substitution for, any of its rights and remedies provided by law or in equity.

23.0 ACKNOWLEDGEMENT OF OTHER LEGISLATION AND DIRECTIVES

23.1 Recipient Acknowledges. The Recipient acknowledges that by receiving Funds it may become subject to legislation applicable to organizations that receive funding from the Government of Ontario, including the BPSAA, the PSSDA, and the *Auditor General Act* (Ontario).

24.0 SURVIVAL

24.1 Survival. The following Articles and sections, and all applicable cross-referenced sections and schedules, will continue in full force and effect for a period of seven years from the date of expiry or termination of the Agreement: Article 1.0 and any other applicable definitions, section, 4.5, section 7.1 (to the extent that the Recipient has not provided the Reports to the satisfaction of the Province), sections 7.2, 7.3, 7.4, 7.5, 7.6, Article 8.0, Article 12.0, Article 14.0, Article 16.0, Article 17.0, Article 19.0, Article 21.0, Article 23.0 and Article 24.0.

- END OF GENERAL TERMS AND CONDITIONS -

SCHEDULE "B"

PROJECT SPECIFIC INFORMATION

Maximum Funds	$100 million
Expiration Date	The date upon which the Affordability Fund Trust is terminated in accordance with the Declaration of Trust
Contact information for the purposes of Notice to the Province	**Attention: Usman Syed** **Position: Director** **Address: 77 Grenville St, Toronto, Ontario, M7A 2C1** **Fax: 416-325-6651** **Email: Usman.Syed@ontario.ca**
Contact information for the purposes of Notice to the Recipient	**Attention:** **Position:** **Address:** **Email:**
Contact information for the senior financial person in the Recipient organization (e.g., CFO, CAO) – to respond as required to requests from the Province related to the Agreement	**Attention:** **Position:** **Address:** **Email:**

SCHEDULE "C"

PROJECT

For the purposes of this Agreement, the "Project" is the distribution of the Funds in accordance with the Declaration of Trust.

It is intended the Project will be undertaken by the Recipient in furtherance of the Purpose and in accordance with the Declaration of Trust. In this regard, it is expected that the Recipient will undertake the Program having regard to the Budget and the Principles set forth in Annex A.

The following are the Province's expectations regarding the circumstances in which the Recipient will begin to distribute any Funds to any Beneficiary.

1. The Original Trustee Replacement Date (as defined in the Declaration of Trust) will have occurred.

2. An Administrative Services Agreement (as defined in the Declaration of Trust) will have been entered into between the Recipient and Hydro One Limited under which Hydro One Limited shall provide specified administrative and other services on behalf of the Recipient.

3. Administrative procedures will have been developed and implemented under which Electricity Distributors (as defined in the Declaration of Trust) will be invited to assist with (a) the identification and selection of Primary Beneficiaries under the Declaration of Trust, (b) the determination of the amount of Funds to be distributed to particular Primary Beneficiaries, and (c) the distribution of Funds to or for the benefit of such Primary Beneficiaries (in each case substantially on the basis contemplated in the Permitted Delegations Annex).

4. The Recipient will have obtained commercial general liability insurance from insurers having a secure A.M. Best rating of B+ or greater, or the equivalent, that in the opinion of the Recipient a prudent person similar to the Recipient would maintain, and having an inclusive limit of not less than $2,000,000 per occurrence and providing for contractual liability coverage. If requested, the Recipient will provide the Province (for its information purposes) with copies of the certificates of insurance and policies for such insurance coverage.

The Province recognizes that the foregoing may involve the Recipient entering into agreements as the Recipient considers to be necessary or expedient, including any required amendment or amendment and restatement of the Declaration of Trust. Funds may be expended to pay the expenses of the Recipient in completing these matters. The Recipient is requested to advise the Province through its quarterly reports on the status of the foregoing.

SCHEDULE "D"

Recipient's Budget

1. It is expected that the administrative expenses of the Recipient, including any administrative expenses of any Administrative Services Agents or any Implementation Agents or any other agents retained by the Recipient, relating to the establishment of the Affordability Fund Trust and satisfying the Requirements (as defined in Schedule "C") and any expenses related to the operation of the Affordability Fund Trust and the execution of the Project (including any reimbursable expenses incurred by any Administrative Services Agent or any Implementation Agent (as such terms are defined in the Declaration of Trust)), will be no greater than 10 percent of the total Project budget.

2. The only expenditures incurred by the Recipient that are eligible for reimbursement are actual (excluding HST) administrative overhead expenses incurred by or on behalf of the Recipient that directly related to the Recipient or the establishment of the Affordability Fund Trust.

4. Any expenses that have been or may be reimbursed by other parties should not be reimbursed from the assets of the Affordability Fund Trust.

5. It is expected any travel, meals and hospitality expenses by the Recipient will be consistent with the Province's Travel, Meal and Hospitality Expenses Directive. For purposes of funding entities receiving funding from the Recipient, the following would not be considered eligible claims:

    - Alcohol
    - First-Class travel
    - Meals, snacks and beverages
    - Gratuities
    - Laundry or dry cleaning
    - Valet services
    - Dependent care
    - Home management
    - Personal telephone calls

6. In the event that the Recipient performs any procurements, it is expected that all procurements will reflect the principles of Ontario's Public Service Procurement Directive.

SCHEDULE “E”

PAYMENT PLAN

PAYMENT DATE	MAXIMUM FUNDS TO BE DISBURSED BY THE PROVINCE
Within 7 days of signing the Agreement	$ 100,000,000

SCHEDULE "F"

REPORTING

From and following the Original Trustee Replacement Date, Reports will be quarterly on the basis of the government's fiscal year starting at the execution of this Agreement and continuing until conclusion of the Agreement. Annual Reports will be on a fiscal basis starting at the execution of this Agreement and continuing until conclusion of the Agreement. Quarterly Reports and Annual Reports would be expected to be submitted to the Province within one month following the end of the reporting period that they represent. The Province expects that these Reports would be prepared to demonstrate the impact of the Province's funding and address the following:

- Quarterly Reports would include a report back on the trustee-developed performance management criteria. Initially, such Quarterly Reports would include details respecting:
    - Amounts disbursed by the Recipient in the previous quarter. It is expected that this information would be provided at the Electricity Distributor level and in the aggregate.
    - Total Affordability Fund investment income earned and accrued to date.
    - Key activities and achievements from the quarter, including the number of participant households per Electricity Distributor, average participant incentive cost per Electricity Distributor, and uptake of energy efficiency measures per Electricity Distributor.
    - Any challenges or modifications to the application, funding, or eligibility processes/rules of the Recipient.
    - Key activities planned for the upcoming quarter.
    - Details of any situation that a reasonable person might interpret as an actual, potential or perceived conflict of interest.
- Annual Reports would include a report back on the trustee-developed performance management criteria. Initially, such Annual Report would include details respecting:
    - A description of an Electricity Distributor's application process and the criteria used by the Recipient to distribute funds.
    - Any challenges identified by the Recipient or any Administrative Services Agent in achieving the Purpose and proposed solutions, if applicable.
    - Lesson learned.
    - Electricity Distributor and customer feedback.
    - Amounts distributed to Beneficiaries or otherwise disbursed by the Recipient in the previous year. It is expected that this information will be provided by each Electricity Distributor.
    - Key activities and achievements from each quarter being reported, including number of participant households per Electricity Distributor, average participant incentive cost per Electricity Distributor, and uptake of energy efficiency measures per Electricity Distributor.
    - Total Affordability Fund interest earned and accrued to date.

    As part of an Annual Report, the Recipient would also provide the Province with an audited financial statement for the previous year.

ANNEX A

Principles

The Trustee shall have regard to, but shall not be specifically bound by, the following principles in applying its discretion in relation to the administration of the Trust:

4. Identification of Primary Beneficiary Payees

4.1 Except in exceptional circumstances, a Primary Beneficiary would not be expected to receive a benefit from the Trust unless at the time of consideration it satisfies, in addition to the requirements contemplated in the definition of "Primary Beneficiary", each of the following criteria (the "**Selection Factors**"):

(i) it has a participant agreement with an applicable Electricity Distributor to undertake measures (its "**Energy Plan**") to improve the electricity efficiency and/or promote the conservation of electricity at its Ontario residence;

(ii) its Energy Plan involves one or more Eligible Measures, as may be designated by the Trustee from time to time from;

(iii) it confirms that:

1. the primary purpose of its Energy Plan is the conservation and efficient use by the Primary Beneficiary of electricity, and is not for the purposes of the Primary Beneficiary making a profit;

2. it would otherwise not have the financial resources to undertake the Eligible Measures included in its Energy Plan; and

3. it would otherwise not be eligible to receive amounts in respect of the Eligible Measures as a HAP Eligible Person;

(iv) it has demonstrated a need for financial assistance on the basis that its periodic electricity bills represent a financial burden, relative to its available financial resources; and

(v) such other criteria as the Trustee may determine, including based on the recommendations of Electricity Distributors or other knowledgeable Persons made on the basis and having regard to the delegations contemplated by the Permitted Delegations Annex or any applicable Implementation Agreement.

4.2 It is recognized that, in furthering the Purpose, an efficient basis upon which to allocate funds to the Primary Beneficiaries across different areas and regions within Ontario may be based on the areas and regions serviced by the Electricity Distributors operating within Ontario.

4.3 It would not be contrary to the Purposes if funds are made available by the Trustee to the Primary Beneficiaries unequally across different areas and regions within Ontario, and it is expected that in making such an unequal division it would be appropriate to have regard to:

(i) broad economic parameters of economic activity and the specific financial resources of the residents of the areas and regions, in each case as an indication of the relative need of such residents across the areas and regions;

(ii) electricity use and efficiency levels of residential electricity customers across the areas and regions;

(iii) specific regional indicators of economic weakness and need; and

(iv) such other factors as the Trustee may determine are relevant, including based on the submissions, advice and recommendations of Electricity Distributors or other knowledgeable Persons made on the basis and having regard to the delegations contemplated by the Permitted Delegations Annex or any applicable implementation Agreement.

4.4 It is recognized that, in furthering the Purpose, the designated Electricity Distributor for an area or region in which a Primary Beneficiary resides would be expected to:

(i) be a reliable source for the purpose of assessing and confirming whether the Primary Beneficiary satisfies the Selection Factors;

(ii) be an efficient intermediary for the purpose of communicating with the Primary Beneficiary, including with respect to matters such as regarding the availability, terms, conditions and intended purposes of Program;

(iii) be able to facilitate an efficient payment of distribution determined to be made to or on behalf of the Primary Beneficiary, having regard to the Electricity Distributor's established practices, procedures and systems for dealing with its customers; and

(iv) have established contractual arrangements with the Primary Beneficiary that may apply to the protection and confidentiality of information provided by or respecting the Primary Beneficiary, which information may be useful in the consideration by the Electricity Distributor in its assessment of whether the Primary Beneficiary satisfies the Selection Factors, which information may not otherwise be available or readily accessible or verifiable by the Trustee.

4.5 It is recognized that, in furthering the Purpose, the Electricity Distributor for an area or region in which a Primary Beneficiary resides will have market and utilization information that may be useful in assessing the relative needs of Primary Beneficiaries within its area or region. Such information is expected to be relevant in assessing the extent to which one such Primary Beneficiary's financial needs and the merits of its Energy Plan are greater or more compelling than those of another such Primary Beneficiary, which comparison may be relevant to the extent that the funds allocable to the Primary Beneficiaries resident in the area or region are otherwise insufficient to meet the requests for funding by all such Primary Beneficiaries.

4.6 Accordingly, it is recognized that, in furthering the Purpose, it is consistent with the Purpose that the recommendations of Electricity Distributors be utilized and relied upon by the Trustee to guide the process of identifying particular Primary Beneficiaries in making distributions to the Primary Beneficiaries.

4.7 If an Electricity Distributor for a particular area or region is unable or unwilling to assess or confirm the application of the Selection Factors to Primary Beneficiaries residing in the area or region or to make recommendations in relation to such matters, one or more of the following may provide a suitable alternative source of information and for information gathering, assessment and confirmation purposes in relation to such area or region:

(i) other Electricity Distributors operating in adjacent or other areas or regions in Ontario;

(ii) the Ontario Energy Board;

(iii) the Independent Electricity System Operator; and

(iv) anyone else having relevant expertise and access to information regarding the electricity market of the Province, in each case as may be considered relevant by the Trustee.

4.8 To the extent that privacy law or other legal requirements limit an Electricity Distributor from providing or making available specific information respecting the application of the Selection Factors to a particular Primary Beneficiary or group of Primary Beneficiaries, it is recognized that, in furthering the Purpose, it may be appropriate to redact or make generic affected information regarding such Primary Beneficiary in connection with the identification and confirmation of a Primary Beneficiary's eligibility and participation in the Program. If such limitations or restrictions would limit an Electricity Distributor from providing or confirming the name of a particular Primary Beneficiary to the Trustee, then it should be sufficient that such information may be obtained or disseminated on a confidential basis if and when required by the Trustee for the proper administration of the Trust and on that basis such impediments should not disqualify a Primary Beneficiary from participating in the benefits of the Program, provided that the confidential record-keeping of the Electricity Distributor would be available in connection with the application of any applicable legal process predicated on the identification of such Primary Beneficiary for the purposes of substantiating its rights as a Primary Beneficiary of the Trust or as to the validity or subsistence of the Trust.

5. Eligible Measures

5.1 It is expected that the Trust will identify eligible measures that, taking into consideration the principles set forth in the Principles Annex, have regard to the following (the "**Measures Factors**"):

(i) is the measure generally expected to result in reduced electricity consumption by a Primary Beneficiary if properly installed and used;

(ii) is the measure recognized under another Provincial program as being appropriate for achieving electricity conservation among a population analogous to the Primary Beneficiaries;

(iii) does the measure present any unacceptable health or safety considerations, either with respect to the Primary Beneficiary, a party providing or installing the measure, or the physical environment;

(iv) is the measure broadly available to residents across different areas and regions of the Province; or

(v) is the measure a requirement or precursor to another measure, the other measure being one which meets any of the other Measures Factors.

5.2 In identifying and applying the Measures Factors, Electricity Distributors would be expected to have expertise in assessing the suitability of efficiency and conservation measures in their respective areas and regions, which may differ across areas and regions across the Province based on factors (among other things) such as the climate, geography, density, electricity infrastructure, residential structures, and electricity use rates applicable within such areas or regions.

5.3 The measures specified in Schedule A to this Principles Annex may initially be considered to be consistent with the Measures Factors (subject to change as contemplated under the Permitted Delegations Annex).

6. Promotion of the Program

6.1 It is expected that the Trustee will undertake or engage others to undertake diligent efforts to promote the availability, terms and benefits of the Program to Primary Beneficiaries, including by establishing consistent communications through the Electricity Distributors.

6.2 It is expected that the Trustee will acknowledge the financial support of the Province in connection with the establishment and the funding for the Program, including in any external communications to or marketing directed at the Electricity Distributors and the Primary and Residual Beneficiaries. In its delegation of any duties or powers to the Electricity Distributors through Implementation Agreements it is expected that Electricity Distributors will acknowledge the financial support of the Province in connection with the program including in any communications or marketing to Primary Beneficiaries.

7. Conduct of the Trust and the Program

7.1 It is expected that administrative expenses of the Board of Trustees and its members, including any expenses relating to the Trust, to the establishment of the Trust and any expenses related to the implementation and operation of the Program, including by or through Electricity Distributors and other relevant entities, will be recognized and subject to reimbursement on a basis that is substantially consistent with the accountability provisions contemplated in the Transfer Payment Agreement and the principles in the Province's Travel, Meal and Hospitality Expenses Directive, as set out in Schedule B to this Principles Annex.

7.2 The Trustee is expected to conduct its activities in a manner that complies in all material respects with the Transfer Payment Agreement, including to:

(i) act prudently and in furtherance of the Purpose;

(ii) report not less frequently than annually the results of its activities for information purposes to the Province in connection with the Program;

(iii) comply with the Province's request for any independent verification or audit if determined to be necessary or appropriate by the Province;

(iv) return Assets that have not been distributed if it is determined that the Trustee has breached its Standard of Care in discharging its material duties under the Declaration, and has not cured such material breach despite having been given a reasonable opportunity by the Province to do so in light of the circumstances of such material breach, with the result that all or a significant part of the Assets have not been or are not being applied and distributed in furtherance of the Purpose or are being applied and distributed in a manner that is directly contrary or without regard to the Purpose.

7.3 Electricity Distributors are not intended to directly profit from distributions of funds made from the Trust, although it is recognized that the objectives of electricity efficiency and conservation of Primary Beneficiaries located in the service area or region of an Electricity Distributor, and the cost savings and improved credit worthiness of such Primary Beneficiaries, may be financially beneficial to the Electricity Distributor.

7.4 Distributions from the Trust are intended to allow receiving Primary Beneficiaries to undertake Eligible Measures at no or minimal personal cost.

7.5 Without in any way limiting the discretion of the Board of Trustees to extend the period during which the benefits of the Program may be available to the Primary Beneficiaries, up to and including the Final Distribution Date, it is expected that the Trust Assets would be distributed to

Primary Beneficiaries during the period from the Original Trustee Replacement Date to April 30, 2019.

SCHEDULE A TO THE PRINCIPLES ANNEX
INDICATIVE ELIGIBLE MEASURES[1]

Initial Specified Measures
Block Heater Timer (just timer) – rated for outdoor use, have at least a 15 amp/1800 watt capacity, be cold weather resistant, bear a C-UL or CSA certification mark
Power bar with integrated timer, and switched power outlets, four each for a total of 8 outlets, have a total capacity of 15 amps. The switched outlets must remain "live", independent of timer settings, so long as the power bar itself remains switched on. The power bar must bear either a C-UL or CSA certification mark.
Efficient Showerheads (standard) - rated at no more than 4.8 Lpm (1.25 U.S. gpm) and be of the laminar flow type (non-aerating).
Efficient Showerhead (handheld) - rated at no more than 4.8 Lpm (1.25 U.S. gpm) and be of the laminar flow type (non-aerating).
Efficient Aerators (kitchen) - rated no more than 5.7 Lpm (1.5 U.S. gpm), dual threaded to allow installation in both thread type faucets, swivel type with pause lever.
Efficient Aerators (bathroom) - rated no more than 3.8 Lpm (1.0 U.S. gpm), be dual threaded to allow installation in both thread type faucets.
Hot Water Tank Pipe Insulation - $^{1}/_{2}$" inside diameter – foam, meets ASTM –C547-00, minimum $^{3}/_{4}$" thick
Hot Water Tank Pipe Insulation - $^{3}/_{4}$ " inside diameter - – foam, meets ASTM –C547-00, minimum $^{3}/_{4}$" thick
Hot Water Tank Insulation - fibreglass R10 (fits up to a 60 gal tank) – not bubble wrap
≤11W ENERGY STAR® Qualified LED A Shape (60W) (minimum 600 Lumen output) (Formerly: 7W – 11W ENERGY STAR® Qualified LED A Shape (60W))

[1] These measures are indicative. Eligible measures added to HAP during the administration of the Trust may also be appropriately considered relevant by the Trustee.

Initial Specified Measures
≤14W ENERGY STAR® Qualified LED A Shape (75W) (minimum 800 Lumen output) (Formerly: 10W – 14W ENERGY STAR® Qualified LED A Shape (75W))
≤23W ENERGY STAR® Qualified LED A Shape (100W) (minimum 1600 Lumen output) (Formerly:17W – 23W ENERGY STAR® Qualified LED A Shape (100W))
≤16W ENERGY STAR® Qualified LED PAR 20 (minimum 600 Lumen output) (Formerly: 8W – 12W ENERGY STAR® Qualified LED PAR 20)
≤16W ENERGY STAR® Qualified LED PAR30 & PAR38 (minimum 600 Lumen output) (Formerly: 8W – 12W ENERGY STAR® Qualified LED PAR 30)
≤23W ENERGY STAR® Qualified LED PAR (minimum 1100 Lumen output) (Formerly: 14W – 18W ENERGY STAR® Qualified LED PAR 38)
≤6W ENERGY STAR® Qualified LED MR 16 / PAR 16 (minimum 250 Lumen output) (Formerly: 7W – 10W ENERGY STAR®
Qualified LED MR 16 / PAR 16 - GU 10 Base)
≤11W ENERGY STAR® Qualified LED MR 16 (minimum 400 Lumen output) (Formerly: 7W – 12W ENERGY STAR® Qualified LED MR 16 GU 5.3 Base)
ENERGY STAR® LED Wet Location Rated PAR lamp ≤ 23 Watt (minimum 1100 Lumen output)
Recessed Downlight Fixture including LED with Light Output >600 and <800 lumens (Retrofit Measure List)
Recessed Downlight Fixture including LED with Light Output >800 lumens (Retrofit Measure List)
Indoor Drying Rack

Extended Measures
Replace refrigerator with ENERGY STAR qualified refrigerator - 15.5 - 16.9 cubic foot top freezer, automatic defrost, refrigerator/ freezer, no through the door ice service
Replace refrigerator with ENERGY STAR qualified refrigerator - 17.0 - 18.4 cubic foot top freezer, automatic defrost, refrigerator/ freezer, no through the door ice service
Replace refrigerator with a refrigerator that has a consumption level of less than 425 kwh, 10 – 12.5 cubic foot top freezer, automatic defrost, refrigerator freezer, no through the door ice service
Replace freezer with ENERGY STAR qualified freezer - 12-14.4 cubic foot freezer
Replace freezer with ENERGY STAR qualified freezer - 14.5 - 16.0 cubic foot freezer
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 6,000 – 7,999 BTU/hr with C-UL or CSA certification mark
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 8,000 – 9,999 BTU/hr with C-UL or CSA certification mark
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 10,000 – 12,000 BTU/hr with C-UL or CSA certification mark
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 14.2 - 21.2 l/day (30-44.9 pints/day) dehumidifier
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 21.3 - 25.4 l/day (45-53.9 pints/day) dehumidifier
Extended Measures
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 25.5 - 35.5 l/day (54-75 pints/day) dehumidifier
Programmable Thermostat – line voltage – meets CAN/CSA-C828-06 standard, minimum performance: Droop: 1.5°C, Differential: 0.5°C, Precision 0% within 0.5°C of the original set point of 22°C
Programmable Thermostat – low voltage - meets CAN/CSA-C828-06 standard, minimum performance: Droop: 1.5°C, Differential: 0.5°C, Precision 0% within 0.5°C of the original set point of 22°C

Weatherization Measures
Comprehensive Draftproofing (caulking, foam and weather stripping, and application of same) – lifespan of 20 years plus If one or two component polyurethane foams are used, the products and installations must conform to: • CAN/ULC-S710.1 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 1: Material Specification. • CAN/ULC-S710.2 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 2: Application. • CAN/ULC-S711.1 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification • CAN/ULC-S711.2 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification, and Part 2: Application. **Attic Insulation (including installation):**
cellulose: CAN/ULC-S703-01 Amendment 1 - Cellulose Fibre Insulation (CFI) for Buildings OR 2) Mineral Fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre

Weatherization Measures
for Buildings **Wall Insulation (including installation):**
cellulose: CAN/ULC-S703-01 Amendment 1 - Cellulose Fibre Insulation (CFI) for Buildings OR 2) Mineral Fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre **Basement Insulation (including installation):**
mineral fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre for Buildings Vapour Barrier: 69009-CAN/CGSB-51.34-m86 If one or two component polyurethane foams are used, the products and installations must conform to: • CAN/ULC-S710.1 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 1: Material Specification. • CAN/ULC-S710.2 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 2: Application. • CAN/ULC-S711.1 Standard for Thermal Insulation – Bead Applied Two-Component
Polyurethane Air Sealant Foam, Part 1: Material Specification • CAN/ULC-S711.2 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification, and Part 2: Application.

Heat Pumps
(Selection of manufacturers and technologies to meet the US federal minimum efficiency standard for ASHPs, as of 2015, is 13.0 SEER and 7.7 HSPF. Energy Star–certified models offer roughly 9 percent more efficiency than most new uncertified ASHPs and 20 percent more efficiency than existing models
Ductless Multiport Heat Pump
Cold Climate Ductless Heat Pump
Cold Climate Multiport Ductless Heat Pump
Cold Climate Ducted Heat Pump

SCHEDULE B TO THE PRINCIPLES ANNEX
PERMITTED EXPENSE REIMBURSEMENTS

Travel, Meal and Hospitality Expenses Directive

Funds should be used prudently and responsibly with a focus on accountability and transparency.

Expenses for travel, meals and hospitality support the Purpose.

Plans for travel, meals, accommodation and hospitality are necessary and economical with due regard for health and safety.

Legitimate authorized expenses incurred during the course of furthering the Purpose may be reimbursed.

Best practices should be followed, including:

Prior approval to incur expenses is appropriately obtained.

Other options for meetings are always considered before travel is approved, including audio or video conferencing.

Corporate travel cards are to be used for authorized business travel and business related expenses.

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ONTARIO TRANSFER PAYMENT AGREEMENT

THE AGREEMENT, effective as of the • day of March, 2017 (the **"Effective Date"**)

B E T W E E N :

Her Majesty the Queen in right of Ontario
as represented by the Minister of Energy

(the "Province")

- and -

Computershare Trust Company of Canada, in its capacity as trustee of Affordability Fund Trust

(together with its successors and assigns, the "Recipient" and, together with the Province, the "Parties")

BACKGROUND

Computershare Trust Company of Canada is the original trustee of the Affordability Fund Trust.

The Province wishes to provide Funds to the Recipient to be held, invested, applied and distributed in accordance with the terms of the Declaration of Trust (defined below), in furtherance of the Purpose (as defined in the Declaration of Trust), including having regard to the Principles set forth in Annex A.

CONSIDERATION

In consideration of the mutual covenants and agreements contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is expressly acknowledged, the Parties agree as follows:

ENTIRE AGREEMENT

This agreement (as amended, restated, supplemented or otherwise modified from time to time, the **"Agreement"**), including:

Schedule "A" - General Terms and Conditions
Schedule "B" - Project Specific Information
Schedule "C" - Project - Certain Obligations of the Recipient
Schedule "D" - Budget
Schedule "E" - Payment Plan
Schedule "F" - Reporting
Annex "A" - Principles, and
any amending agreement entered into as provided for below,

constitutes the entire agreement between the Parties with respect to the subject matter contained in this Agreement and supersedes all prior oral or written representations and agreements.

COUNTERPARTS

The Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

AMENDING THE AGREEMENT

The Agreement may only be amended by a written agreement duly executed by the Parties.

ACKNOWLEDGEMENT

The Recipient:

(a) acknowledges that it has read and understands the provisions contained in the entire Agreement; and

(b) agrees to be bound by the terms and conditions contained in the entire Agreement.

IN WITNESS WHEREOF, the Parties have executed the Agreement on the dates set out below.

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO as represented by Minister of Energy

by:

_____ _____

Date Name: Serge Imbrogno

Title: Deputy Minister

Authorized Signing Officer

COMPUTERSHARE TRUST COMPANY OF CANADA, in its capacity as trustee of AFFORDABILITY FUND TRUST

by:

_____ _____

Date Name:

Title:

by:

_____ _____

Date Name:

Title:

I/We have authority to bind the Recipient.

SCHEDULE "A"
GENERAL TERMS AND CONDITIONS

1.0 INTERPRETATION AND DEFINITIONS

1.1 Interpretation. For the purposes of interpretation:

(a) words in the singular include the plural and vice-versa;

(b) words in one gender include all genders;

(c) the headings do not form part of the Agreement; they are for reference only and will not affect the interpretation of the Agreement;

(d) any reference to dollars or currency will be in Canadian dollars and currency;

(e) "include", "includes" and "including" denote that the subsequent list is not exhaustive;

(f) where any reference is made in the Agreement to an act to be performed by or for or on behalf of the Affordability Fund Trust, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Recipient in its capacity as trustee of the Affordability Fund Trust, and, where any reference is made in the Agreement to an act to be performed by or for or on behalf of the Recipient, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Recipient in its capacity as trustee of the Affordability Fund Trust; and

(g) it is intended that the transfer of the Funds to the Recipient will be a transfer made to a "non-controlled trust" (as that term is given meaning in • applicable to the accounting rules and principles applicable to the Province as of the date of the Agreement), and so if a term or condition of the Agreement is determined to conflict with the requirements applicable to the Province recording the transfers to the Recipient of Funds contemplated hereunder as an expense incurred by the Province on the date of the transfer of Funds under the Agreement otherwise in connection with activities undertaken by the Province with such a "non-controlled trust", then such term or condition shall be given a meaning and shall have an effect insofar as it is possible to interpret such term or condition in a manner that eliminates such conflict while preserving the other provisions of the Agreement and furthering the Purpose.

1.2 Definitions. In the Agreement, the following terms will have the following meanings:

"Administrative Services Agent" has the meaning given such term in the Declaration of Trust.

"Affordability Fund Trust" means the trust established and governed by the Declaration of Trust, and for greater certainty includes such trust operating under any other name that may be designated from time to time by the Recipient in accordance with the Declaration of Trust.

"BPSAA" means the Broader Public Sector Accountability Act, 2010 (Ontario).

"**Beneficiary**" has the meaning given to such term in the Declaration of Trust.

"Budget" means the Recipient's budget attached to the Agreement as Schedule "D".

"Business Day" means any working day, Monday to Friday inclusive, excluding statutory and other holidays, namely: New Year's Day; Family Day; Good Friday; Easter Monday; Victoria Day; Canada Day; Civic Holiday; Labour Day; Thanksgiving Day; Remembrance Day; Christmas Day; Boxing Day and any other day on which the Province has elected to be closed for business.

"**Declaration of Trust**" means the declaration of trust made as of March [•], 2017, under which the Affordability Fund Trust was established, as such declaration of trust may be amended, restated, supplemented or otherwise modified from time to time with the consent of the Province in accordance with Section 20.2.

"Expiration Date" means the date on which this Agreement will expire and is the date set out in Schedule "B".

"Funds" means the money the Province provides to the Recipient pursuant to the Agreement.

"Implementation Agents" has the meaning given such term in the Declaration of Trust.

"Maximum Funds" means the maximum amount of Funds that the Province will provide the Recipient under the Agreement, as set out in Schedule "B".

"Notice" means any communication given or required to be given pursuant to the Agreement.

"Party" means either the Province or the Recipient.

"**Person**" includes any individual, sole proprietorship, corporation, partnership, joint venture, association, society, club, board, chamber, joint-stock company, trust, trustee, unincorporated or incorporated organization or entity or government or any entity, agency or political subdivision thereof.

"**Program**" has the meaning given to such term in the Declaration of Trust.

"Project" means the undertaking described in Schedule "C".

"**Purpose**" has the meaning given to such term in the Declaration of Trust.

"PSSDA" means the *Public Sector Salary Disclosure Act, 1996* (Ontario).

"**Recipient**" means, initially, Computershare Trust Company of Canada, and any additional or replacement trustee in its capacity as trustee of the Affordability Fund Trust pursuant to the Declaration of Trust, including the Board of Trustees (as defined in the Declaration of Trust) and each of their respective successors and permitted assigns.

"Reports" means the reports described in Schedule "F".

2.0 REPRESENTATIONS, WARRANTIES AND COVENANTS

2.1 General. The Recipient represents, warrants and covenants that:

(a) it is the trustee of the Affordability Fund Trust; and

(b) the Affordability Fund Trust is, and will continue to be for the term of the Agreement, a trust existing under and governed by the laws of the Province of Ontario.

2.2 Execution of Agreement. The Recipient represents and warrants that it has:

(a) the full power and authority to enter into the Agreement; and

(b) taken all necessary actions to authorize the execution of the Agreement.

2.3 Governance. The Recipient covenants that it will develop and maintain in writing until the Agreement is no longer in effect:

(a) decision-making mechanisms and procedures to enable the Recipient to hold, invest, manage, apply and distribute the Funds in accordance with the Declaration of Trust in furtherance of the Purpose; and

(b) procedures to enable the preparation and delivery of all Reports required pursuant to Article 7.0.

2.4 Supporting Documentation. Upon request, the Recipient will provide the Province with proof of the matters referred to in this Article 2.0.

3.0 TERM OF THE AGREEMENT

3.1 Term. The term of the Agreement will commence on the Effective Date and will expire on ~~the~~ the Expiration Date.

3.2 Extension. The term of the Agreement may be extended by further agreement between the Parties.

3.3 Extension of the Declaration of Trust. If the Province determines that an extension of the Final Distribution Date (as defined in the Declaration of Trust) and time for termination of the Declaration of Trust is consistent with and in furtherance of the Purpose and the Province's original intentions and expectations in establishing the Project, the Province may request that the Recipient extend such date to a date specified by the Province in a Notice (such date not to be later than December 31, ~~2024),~~2021, whereupon the Recipient, so long as the Recipient does not have a reasonable basis to believe that such an extension would be inconsistent with the Purpose or weaken the protections intended for the benefit of the trustee pursuant to the Declaration of Trust, will undertake such actions as it may consider to be necessary or appropriate to so extend the Declaration of Trust, including by amending the Declaration of Trust to provide for such an extension and to modify any other term or requirement as would be necessary or prudent to conform such term or requirement in light of such extension.

4.0 FUNDS AND CARRYING OUT THE PROJECT

4.1 Funds Provided. The Province will:

(a) provide the Recipient up to the Maximum Funds to be held, invested, applied and distributed in accordance with the terms of the Project and the Declaration of Trust;

(b) provide the Funds to the Recipient in accordance with the Payment Plan attached to the Agreement as Schedule "E"; and

(c) deposit the Funds into an account designated by the Recipient, provided that the account:

(i) resides at a Canadian financial institution; and

(ii) is in the name of the Recipient.

4.2 Timing of Distributions to Beneficiaries. The expectations of the Province regarding when Funds will begin to be distributed by the Recipient to Beneficiaries are set out in Schedule C. The Recipient will have regard to those expectations in the exercise of its discretion under the Declaration of Trust, in determining when Funds will be distributed to Beneficiaries in furtherance of the Purpose.

4.3 Use of Funds and Project. The Recipient will exercise its rights, duties and discretions under the Declaration of Trust so that the Funds are used, applied and distributed only for and in furtherance of the Purpose, including having regard to the Principles set forth in Annex A.

4.4 Province's Role Limited to Providing Funds. For greater clarity, the Province's role under the Agreement is limited to providing Funds to the Recipient and the Province is not responsible for carrying out or overseeing the terms of the Declaration of Trust.

4.5 Maximum Funds. The Recipient acknowledges that the Funds available to it pursuant to the Agreement will not exceed the Maximum Funds.

4.6 Funding, Not Procurement. For greater clarity, the Recipient acknowledges that:

(a) it is receiving funding from the Province for the Project and is not providing goods or services to the Province; and

(b) the funding the Province is providing under the Agreement is funding for the purposes of the PSSDA.

5.0 RECIPIENT'S ACQUISITION OF GOODS OR SERVICES, AND DISPOSAL OF ASSETS

5.1 Acquisition. If the Recipient acquires goods, services, or both with or by applying the proceeds of the Funds, it is expected to do so through a process that promotes the best value for money and to take reasonable steps to ensure that its Administrative Services Agents and Implementation Agents also follow a process that promotes the best value for money when acquiring goods and services with or by applying the proceeds of the Funds. In this regard, it is expected that the Recipient will have regard the following procurement principles:

(a) ***Accountability*** - Procurement is conducted in a manner that is well-informed and ~~aligned with the public interest and~~reflects rules of good governance~~ through clear and transparent accountability~~ and decision-making.

(b) ***Geographic Neutrality and Reciprocal Non-Discrimination***~~Ontario does~~ - Procurement should not differentiate between competing goods, services, or suppliers based on their geographic origin or location~~. This is a core principle of Ontario's trade commitments~~.

(c) ***Responsible Management***~~The procurement~~ - Procurement of goods and services ~~is~~should be responsibly, efficiently and effectively managed ~~through appropriate organizational structures, systems, policies, processes and procedures. All parties involved in a procurement process~~and should observe the highest standard of ethics, avoiding conflict of interest.

(d) ***Value for Money*** - Procurement processes should apply a value for money evaluation that takes into account price as well as other costs and benefits, including life cycle costs and relevant non-price attributes such as quality. ~~Where applicable, these non-price attributes can include:~~

~~**Social Benefit:** to secure wider social benefit in support of the government's social policy objectives.~~

~~**Environmental Benefit:** to secure wider environmental benefit in support of the government's environmental policy objectives, including climate change.~~

~~**Economic Benefit:** to promote the economic well-being of the people of Ontario, in alignment with commitments in the province's trade agreements.~~

(e) ***Vendor Access, Transparency, and Fairness*** - Procurement is conducted in a fair and transparent manner, offering all qualified suppliers equal treatment and open access to compete for ~~government business~~the opportunity to supply goods and services.

6.0 CONFLICT OF ~~INTERESTn~~INTEREST

6.1 No Conflict of Interest. Except as expressly permitted by the Declaration of Trust, the Recipient is expected to implement appropriate processes and control to ensure that the Program and the use, application and distribution of the Funds are without an actual, potential or

perceived conflict of interest.

6.2 **Conflict of Interest Includes.** For the purposes of this Article, a conflict of interest includes any circumstances where, except as expressly permitted by the Declaration of Trust:

(a) the Recipient; or

(b) any person who has the capacity to influence the Recipient's decisions,

has outside commitments, relationships or financial interests that could, or could be seen to, interfere with the Recipient's objective, unbiased and impartial judgment relating to the Project, or the Recipient's use, application or distribution of the Funds, or both.

7.0 REPORTING, ACCOUNTING AND REVIEW

7.1 **Preparation and Submission.** The Recipient will cooperate with the Province to accommodate the Province's on-going information and reporting objectives in order to enable the Province to be aware of the Recipient's activities in furtherance of the Purpose, and to that end the Recipient will be expected, from and following the Original Trustee Replacement Date, to:

(a) submit to the Province at the address referred to in Schedule "B", all Reports in accordance with the timelines and content requirements set out in Schedule "F", or in a form as specified by the Province from time to time, acting reasonably;

(b) submit to the Province at the address referred to in Schedule "B", any other reports as may be reasonably requested by the Province from time to time in accordance with the timelines and content expectations identified by the Province, acting reasonably;

(c) undertake diligent efforts so that such Reports and any such other reports are complete and accurate in all material respects; and

(d) have an authorized signatory of the Recipient sign-off on such Reports and other reports.

7.2 **Record Maintenance.** The Recipient will keep and maintain financial and other records necessary to permit it to satisfy its obligations under section 7.1 and to permit the Province to exercise its rights under section 7.3.

7.3 **Inspection.** The Province, its authorized representatives or an independent auditor identified by the Province may, at its own expense, upon twenty-four hours' Notice to the Recipient and during normal business hours, inspect the records of and information respecting the Recipient to confirm its compliance with the terms of this Agreement, including to ensure consistency with the Purpose and, for these purposes, the Province, its authorized representatives or an independent auditor identified by the Province may take one or more of the following actions:

(a) inspect and copy the records and documents referred to in section 7.2;

(b) keep any copies made pursuant to section 7.3(a); and

(c) conduct an audit or investigation of the Recipient in respect of the expenditure of the Funds to confirm that the Funds have been used, applied and distributed for and in furtherance of the Purpose, including a review of the Recipient's processes, records, documents, as well as the processes and controls applied to obtain assurance that Funds disbursed to Electricity Distributors were used, applied and distributed for and in furtherance of the Purpose.

7.4 **Disclosure.** To assist in respect of the rights set out in section 7.3, the Recipient will disclose any information requested by the Province, its authorized representatives or an independent auditor identified by the Province, and will do so in the form requested by the Province, its authorized representatives or an independent auditor identified by the Province, as the case may be.

7.5 **No Control of Records.** No provision of the Agreement will be construed so as to give the Province any control whatsoever over the Recipient's records.

7.6 **Auditor General.** For greater certainty, the Province's rights under this Article are in addition to and do not limit any rights provided to the Auditor General pursuant to section 9.1 of the *Auditor General Act* (Ontario).

8.0 COMMUNICATIONS REQUIREMENTS

8.1 **Publication.** The Recipient will acknowledge, in any of its Program-related external communications and marketing whether written, oral, or visual, the financial support of the Province in connection with the establishment and funding of the program, while noting that the views expressed in the publication are the views of the Recipient and do not necessarily reflect those of the Province.

9.0 FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY

9.1 **FIPPA.** The Recipient acknowledges that the Province is bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province in connection with the Project or otherwise in connection with the Agreement may be subject to disclosure in accordance with that Act.

10.0 Intentionally Deleted

11.0 EVENT OF DEFAULT, CORRECTIVE ACTION AND TERMINATION FOR DEFAULT

11.1 **Events of Default.** An Event of Default will occur if:

(a) the Recipient fails to perform or observe any covenant in this Agreement and such failure has and continues to have a material adverse effect on the Province and remains unremedied during any Notice period applicable under section 11.2 after the earlier of (i) actual knowledge thereof by the Recipient, or (ii) receipt by the Recipient of Notice thereof from the Province;

(b) any representation or warranty made by the Recipient in the Agreement shall prove to have been incorrect in any material respect when made or deemed made, and, if capable of remedy, continues to be incorrect in any material respect during any Notice period applicable under section 11.2 after the earlier to occur of (i) the actual knowledge thereof by the Recipient or (ii) receipt by the Recipient of Notice thereof from the Province;

(c) it is determined that the Recipient has breached its Standard of Care (within the meaning given in and context of the Declaration of Trust) in discharging its material duties under the Declaration of Trust, with the result that all or a significant part of the Funds have not been or are not being applied in furtherance of the Purpose or are being applied in a manner that is directly contrary or without regard to the Purpose, and, if such breach is capable of remedy, it continues and remains unremedied during any Notice Period applicable under section 11.2 after the earlier of (i) actual knowledge thereof by the Recipient, or (ii) receipt by the Recipient of Notice thereof from the Province;

(d) an insolvency event shall have occurred and be continuing with respect to the Recipient.

11.2 **Consequences of Events of Default and Corrective Action.** If an Event of Default occurs, the Province may, at any time, take one or more of the following actions:

(a) provide the Recipient with Notice allowing the Recipient an opportunity to remedy the Event of Default during a specified Notice Period;

(b) seek an order of specific performance, including an order that the Recipient pursue its available remedies against third parties;

(c) require, by Notice of demand, that the Recipient transfer to the Province (without any need for compensation, indemnity or consideration to the Recipient or any Beneficiary or other third party) any and all Assets remaining in the possession or under the control of the Recipient that can reasonably be traced or attributed to the Funds after first providing for the completion and performance by the Recipient of any unperformed contractual obligations of the Recipient undertaken in compliance with the Declaration of Trust on or prior to transfer; and

(d) terminate the Agreement, including immediately, without liability, penalty or costs to the Province upon giving Notice to the Recipient.

The transfer of Funds in accordance with the Agreement is made by the Province with the expressed intention and reservation that the transferred Funds shall be returned to the Province and the entitlements of the Recipient in remaining Funds shall thereby be revoked with reversion thereof to the Province in the circumstances contemplated in Section 11.2(c).

11.3 Opportunity to Remedy. If, in accordance with section 11.2, the Province provides the Recipient with an opportunity to remedy the Event of Default, the Province will provide Notice to the Recipient of:

(a) the particulars of the Event of Default; and

(b) the length of time within which the Recipient may cure such Event of Default without the Province pursuing any other remedy (the "Notice Period").

11.4 Recipient not Remedying. If the Province has provided the Recipient with an opportunity to remedy the Event of Default pursuant to section 11.2(a), and:

(a) the Recipient does not remedy the Event of Default within the Notice Period;

(b) it becomes apparent to the Province that the Recipient cannot adequately remedy the Event of Default within the Notice Period; or

(c) the Recipient is not proceeding to remedy the Event of Default in a way that is satisfactory to the Province,

the Province may extend any Notice Period, or initiate any one or more of the actions provided for in section 11.2.

12.0 REPAYMENT

12.1 Debt Due. If, pursuant to the Agreement: the Province demands the payment of any Funds from the Recipient pursuant to section 11.2(c) such Funds or other amount will be deemed to be a debt due and owing to the Province by the Recipient, and the Recipient will pay or return the amount to the Province immediately, unless the Province directs otherwise.

12.2 Payment of Money to Province. The Recipient will pay any money owing to the Province by cheque payable to the "Ontario Minister of Finance" and delivered to the Province at the address referred to in Schedule "B".

12.3 Failure to Repay. Without limiting the application of section 43 of the Financial Administration Act (Ontario), if the Recipient fails to repay any amount owing under the Agreement, Her Majesty the Queen in right of Ontario may deduct any unpaid amount from any money payable to the

Recipient by Her Majesty the Queen in right of Ontario.

13.0 NOTICE

13.1 Notice in Writing and Addressed. Notice will be in writing and will be delivered by email, postage-prepaid mail, personal delivery or fax, and will be addressed to the Province and the Recipient respectively as set out in Schedule "B", or as either Party later designates to the other by Notice.

13.2 Notice Given. Notice will be deemed to have been given:

(a) in the case of postage-prepaid mail, five Business Days after the Notice is mailed; or

(b) in the case of email, personal delivery or fax, one Business Day after the Notice is delivered.

13.3 Postal Disruption. Despite section 13.2(a), in the event of a postal disruption:

(a) Notice by postage-prepaid mail will not be deemed to be received; and

(b) the Party giving Notice will provide Notice by email, personal delivery or by fax.

14.0 SEVERABILITY OF PROVISIONS

14.1 Invalidity or Unenforceability of Any Provision. The invalidity or unenforceability of any provision of the Agreement will not affect the validity or enforceability of any other provision of the Agreement. Any invalid or unenforceable provision will be deemed to be severed.

15.0 WAIVER

15.1 Waivers in Writing. If a Party fails to comply with any term of the Agreement, that Party may only rely on a waiver of the other Party if the other Party has provided a written waiver in accordance with the Notice provisions in Article 13.0. Any waiver must refer to a specific failure to comply and will not have the effect of waiving any subsequent failures to comply.

16.0 INDEPENDENT PARTIES

16.1 Parties Independent. The Recipient acknowledges that it is not an agent, joint venturer, partner or employee of the Province, and the Recipient will not represent itself in any way that might be taken by a reasonable person to suggest that it is, or take any actions that could establish or imply such a relationship.

17.0 ASSIGNMENT OF AGREEMENT OR FUNDS

17.1 Agreement Binding. All rights and obligations contained in the Agreement will extend to and be binding on the Parties' respective heirs, executors, administrators, successors and permitted assigns.

18.0 LIMITATION OF LIABILITY

18.1 This Agreement has been entered into by the Recipient solely in its capacity as trustee of the Affordability Fund Trust and is not binding on the Recipient in any other capacity, whether in tort, contract or otherwise. The Beneficiaries of the Affordability Fund Trust are not subject to any liability in respect of the Affordability Fund Trust. Resort may not be had to, nor recourse or satisfaction be sought from, the private property of the Recipient (whether owned by it in its personal capacity or in any other capacity other than in its capacity as trustee of the Affordability Fund Trust), its directors, officers, employees, or agents, or the private property of any Beneficiary, and resort will be had solely to the property of the Recipient held in trust for the payment, performance or satisfaction of any liability or obligation of the Recipient under this Agreement. However, the foregoing limitations in this section shall not apply where the Recipient has demonstrated gross negligence, bad faith, fraud or wilful misconduct.

19.0 GOVERNING LAW

19.1 Governing Law. The Agreement and the rights, obligations and relations of the Parties will be governed by and construed in accordance with the laws of the Province of Ontario and the applicable federal laws of Canada. Any actions or proceedings arising in connection with the Agreement will be conducted in the courts of Ontario, which will have exclusive jurisdiction over such proceedings.

20.0 FURTHER ASSURANCES

20.1 Agreement into Effect. The Recipient will provide such further assurances as the Province may request from time to time with respect to any matter to which the Agreement pertains, and will otherwise do or cause to be done all acts or things necessary to implement and carry into effect the terms and conditions of the Agreement to their full extent.

20.2 Declaration of Trust. The Recipient covenants that it shall not amend, restate or terminate the Declaration of Trust without obtaining the written consent of the Province in respect of same, such consent not to be unreasonably withheld or delayed.

21.0 JOINT AND SEVERAL LIABILITY

21.1 Joint and Several Liability. Without limiting and subject to section 18.1 and the Declaration of Trust, if the Recipient is comprised of more than one entity, all such entities will be jointly and severally liable to the Province for the fulfillment of the obligations of the Recipient under the Agreement.

22.0 RIGHTS AND REMEDIES CUMULATIVE

22.1 Rights and Remedies Cumulative. The rights and remedies of the Province under the Agreement are cumulative and are in addition to, and not in substitution for, any of its rights and remedies provided by law or in equity.

23.0 ACKNOWLEDGEMENT OF OTHER LEGISLATION AND DIRECTIVES

23.1 Recipient Acknowledges. The Recipient acknowledges that by receiving Funds it may become subject to legislation applicable to organizations that receive funding from the Government of Ontario, including the BPSAA, the PSSDA, and the *Auditor General Act* (Ontario).

24.0 SURVIVAL

24.1 Survival. The following Articles and sections, and all applicable cross-referenced sections and schedules, will continue in full force and effect for a period of seven years from the date of expiry or termination of the Agreement: Article 1.0 and any other applicable definitions, section, 4.5, section 7.1 (to the extent that the Recipient has not provided the Reports to the satisfaction of the Province), sections 7.2, 7.3, 7.4, 7.5, 7.6, Article 8.0, Article 12.0, Article 14.0, Article 16.0, Article 17.0, Article 19.0, Article 21.0, Article 23.0 and Article 24.0.

- END OF GENERAL TERMS AND CONDITIONS -

SCHEDULE "B"

PROJECT SPECIFIC INFORMATION

Maximum Funds	$100 million
Expiration Date	The date upon which the Affordability Fund Trust is terminated in accordance with the Declaration of Trust
Contact information for the purposes of Notice to the Province	**Attention: Usman Syed** **Position: Director** **Address: 77 Grenville St, Toronto, Ontario, M7A 2C1** **Fax: 416-325-6651** **Email: Usman.Syed@ontario.ca**
Contact information for the purposes of Notice to the Recipient	**Attention:** **Position:** **Address:** **Email:**
Contact information for the senior financial person in the Recipient organization (e.g., CFO, CAO) – to respond as required to requests from the Province related to the Agreement	**Attention:** **Position:** **Address:** **Email:**

SCHEDULE "C"

PROJECT

For the purposes of this Agreement, the "Project" is the distribution of the Funds in accordance with the Declaration of Trust.

It is intended the Project will be undertaken by the Recipient in furtherance of the Purpose and in accordance with the Declaration of Trust. In this regard, it is expected that the Recipient will undertake the Program having regard to the Budget and the Principles set forth in Annex A.

The following are the Province's expectations regarding the circumstances in which the Recipient will begin to distribute any Funds to any Beneficiary.

1. The Original Trustee Replacement Date (as defined in the Declaration of Trust) will have occurred.

2. An Administrative Services Agreement (as defined in the Declaration of Trust) will have been entered into between the Recipient and Hydro One Limited under which Hydro One Limited shall provide specified administrative and other services on behalf of the Recipient.

3. Administrative procedures will have been developed and implemented under which Electricity Distributors (as defined in the Declaration of Trust) will be invited to assist with (a) the identification and selection of Primary Beneficiaries under the Declaration of Trust, (b) the determination of the amount of Funds to be distributed to particular Primary Beneficiaries, and (c) the distribution of Funds to or for the benefit of such Primary Beneficiaries (in each case substantially on the basis contemplated in the Permitted Delegations Annex).

4. The Recipient will have obtained commercial general liability insurance from insurers having a secure A.M. Best rating of B+ or greater, or the equivalent, that in the opinion of the Recipient a prudent person similar to the Recipient would maintain, and having an inclusive limit of not less than $2,000,000 per occurrence and providing for contractual liability coverage. If requested, the Recipient will provide the Province (for its information purposes) with copies of the certificates of insurance and policies for such insurance coverage.

The Province recognizes that the foregoing may involve the Recipient entering into agreements as the Recipient considers to be necessary or expedient, including any required amendment or amendment and restatement of the Declaration of Trust. Funds may be expended to pay the expenses of the Recipient in completing these matters. The Recipient is requested to advise the Province through its quarterly reports on the status of the foregoing.

SCHEDULE "D"

Recipient's Budget

1. It is expected that the administrative expenses of the Recipient, including any administrative expenses of any Administrative Services Agents or any Implementation Agents or any other agents retained by the Recipient, relating to the establishment of the Affordability Fund Trust and satisfying the Requirements (as defined in Schedule "C") and any expenses related to the operation of the Affordability Fund Trust and the execution of the Project (including any reimbursable expenses incurred by any Administrative Services Agent or any Implementation Agent (as such terms are defined in the Declaration of Trust)), will be no greater than 10 percent of the total Project budget.

2. The only expenditures incurred by the Recipient that are eligible for reimbursement are actual (excluding HST) administrative overhead expenses incurred by or on behalf of the Recipient that directly related to the Recipient or the establishment of the Affordability Fund Trust.

4. Any expenses that have been or may be reimbursed by other parties should not be reimbursed from the assets of the Affordability Fund Trust.

5. It is expected any travel, meals and hospitality expenses by the Recipient will be consistent with the Province's Travel, Meal and Hospitality Expenses Directive. For purposes of funding entities receiving funding from the Recipient, the following would not be considered eligible claims:

    - Alcohol
    - First-Class travel
    - Meals, snacks and beverages
    - Gratuities
    - Laundry or dry cleaning
    - Valet services
    - Dependent care
    - Home management
    - Personal telephone calls

6. In the event that the Recipient performs any procurements, it is expected that all procurements will reflect the principles of Ontario's Public Service Procurement Directive.

SCHEDULE "E"

PAYMENT PLAN

PAYMENT DATE	MAXIMUM FUNDS TO BE DISBURSED BY THE PROVINCE
Within 7 days of signing the Agreement	$ 100,000,000

SCHEDULE "F"

REPORTING

From and following the Original Trustee Replacement Date, Reports will be quarterly on the basis of the government's fiscal year starting at the execution of this Agreement and continuing until conclusion of the Agreement. Annual Reports will be on a fiscal basis starting at the execution of this Agreement and continuing until conclusion of the Agreement. Quarterly Reports and Annual Reports would be expected to be submitted to the Province within one month following the end of the reporting period that they represent. The Province expects that these Reports would be prepared to demonstrate the impact of the Province's funding and address the following:

- Quarterly Reports would include a report back on the trustee-developed performance management criteria. Initially, such Quarterly Reports would include details respecting:
    - Amounts disbursed by the Recipient in the previous quarter. It is expected that this information would be provided at the Electricity Distributor level and in the aggregate.
    - Total Affordability Fund investment income earned and accrued to date.
    - Key activities and achievements from the quarter, including the number of participant households per Electricity Distributor, average participant incentive cost per Electricity Distributor, and uptake of energy efficiency measures per Electricity Distributor.
    - Any challenges or modifications to the application, funding, or eligibility processes/rules of the Recipient.
    - Key activities planned for the upcoming quarter.
    - Details of any situation that a reasonable person might interpret as an actual, potential or perceived conflict of interest.
- Annual Reports would include a report back on the trustee-developed performance management criteria. Initially, such Annual Report would include details respecting:

- A description of an Electricity Distributor's application process and the criteria used by the Recipient to distribute funds.
- Any challenges identified by the Recipient or any Administrative Services Agent in achieving the Purpose and proposed solutions, if applicable.
- Lesson learned.
- Electricity Distributor and customer feedback.
- Amounts distributed to Beneficiaries or otherwise disbursed by the Recipient in the previous year. It is expected that this information will be provided by each Electricity Distributor.
- Key activities and achievements from each quarter being reported, including number of participant households per Electricity Distributor, average participant incentive cost per Electricity Distributor, and uptake of energy efficiency measures per Electricity Distributor.
- Total Affordability Fund interest earned and accrued to date.

As part of an Annual Report, the Recipient would also provide the Province with an audited financial statement for the previous year.

ANNEX A

Principles

~~[Insert from Principles Annex once settled in the Declaration of Trust]~~

The Trustee shall have regard to, but shall not be specifically bound by, the following principles in applying its discretion in relation to the administration of the Trust:

4. Identification of Primary Beneficiary Payees

4.1 Except in exceptional circumstances, a Primary Beneficiary would not be expected to receive a benefit from the Trust unless at the time of consideration it satisfies, in addition to the requirements contemplated in the definition of "Primary Beneficiary", each of the following criteria (the "**Selection Factors**"):

(i) it has a participant agreement with an applicable Electricity Distributor to undertake measures (its "**Energy Plan**") to improve the electricity efficiency and/or promote the conservation of electricity at its Ontario residence;

(ii) its Energy Plan involves one or more Eligible Measures, as may be designated by the Trustee from time to time from;

(iii) it confirms that:

1. the primary purpose of its Energy Plan is the conservation and efficient use by the Primary Beneficiary of electricity, and is not for the purposes of the Primary Beneficiary making a profit;

2. it would otherwise not have the financial resources to undertake the Eligible Measures included in its Energy Plan; and

3. it would otherwise not be eligible to receive amounts in respect of the Eligible Measures as a HAP Eligible Person;

(iv) it has demonstrated a need for financial assistance on the basis that its periodic electricity bills represent a financial burden, relative to its available financial resources; and

(v) such other criteria as the Trustee may determine, including based on the recommendations of Electricity Distributors or other knowledgeable Persons made on the basis and having regard to the delegations contemplated by the Permitted Delegations Annex or any applicable Implementation Agreement.

4.2 It is recognized that, in furthering the Purpose, an efficient basis upon which to allocate funds to the Primary Beneficiaries across different areas and regions within Ontario may be based on the areas and regions serviced by the Electricity Distributors operating within Ontario.

4.3 It would not be contrary to the Purposes if funds are made available by the Trustee to the Primary Beneficiaries unequally across different areas and regions within Ontario, and it is expected that in making such an unequal division it would be appropriate to have regard to:

(i) broad economic parameters of economic activity and the specific financial resources of the residents of the areas and regions, in each case as an indication of the relative need of such residents across the areas and regions;

(ii) electricity use and efficiency levels of residential electricity customers across the areas and regions;

(iii) specific regional indicators of economic weakness and need; and

(iv) such other factors as the Trustee may determine are relevant, including based on the submissions, advice and recommendations of Electricity Distributors or other knowledgeable Persons made on the basis and having regard to the delegations contemplated by the Permitted Delegations Annex or any applicable implementation Agreement.

4.4 It is recognized that, in furthering the Purpose, the designated Electricity Distributor for an area or region in which a Primary Beneficiary resides would be expected to:

(i) be a reliable source for the purpose of assessing and confirming whether the Primary Beneficiary satisfies the Selection Factors;

(ii) be an efficient intermediary for the purpose of communicating with the Primary Beneficiary, including with respect to matters such as regarding the availability, terms, conditions and intended purposes of Program;

(iii) be able to facilitate an efficient payment of distribution determined to be made to or on behalf of the Primary Beneficiary, having regard to the Electricity Distributor's established practices, procedures and systems for dealing with its customers; and

(iv) have established contractual arrangements with the Primary Beneficiary that may apply to the protection and confidentiality of information provided by or respecting the Primary Beneficiary, which information may be useful in the consideration by the Electricity Distributor in its assessment of whether the Primary Beneficiary satisfies the Selection Factors, which information may not otherwise be available or readily accessible or verifiable by the Trustee.

4.5 It is recognized that, in furthering the Purpose, the Electricity Distributor for an area or region in which a Primary Beneficiary resides will have market and utilization information that may be useful in assessing the relative needs of Primary Beneficiaries within its area or region. Such information is expected to be relevant in assessing the extent to which one such Primary Beneficiary's financial needs and the merits of its Energy Plan are greater or more compelling than those of another such Primary Beneficiary, which comparison may be relevant to the extent that the funds allocable to the Primary Beneficiaries resident in the area or region are otherwise insufficient to meet the requests for funding by all such Primary Beneficiaries.

4.6 Accordingly, it is recognized that, in furthering the Purpose, it is consistent with the Purpose that the recommendations of Electricity Distributors be utilized and relied upon by the Trustee to guide the process of identifying particular Primary Beneficiaries in making distributions to the Primary Beneficiaries.

4.7 If an Electricity Distributor for a particular area or region is unable or unwilling to assess or confirm the application of the Selection Factors to Primary Beneficiaries residing in the area or region or to make recommendations in relation to such matters, one or more of the following may provide a suitable alternative source of information and for information gathering, assessment and confirmation purposes in relation to such area or region:

(i) other Electricity Distributors operating in adjacent or other areas or regions in Ontario;

(ii) the Ontario Energy Board;

(iii) the Independent Electricity System Operator; and

(iv) anyone else having relevant expertise and access to information regarding the electricity market of the Province, in each case as may be considered relevant by the Trustee.

4.8 To the extent that privacy law or other legal requirements limit an Electricity Distributor from providing or making available specific information respecting the application of the Selection Factors to a particular Primary Beneficiary or group of Primary Beneficiaries, it is recognized that, in furthering the Purpose, it may be appropriate to redact or make generic affected information regarding such Primary Beneficiary in connection with the identification and confirmation of a Primary Beneficiary's eligibility and participation in the Program. If such limitations or restrictions would limit an Electricity Distributor from providing or confirming the name of a particular Primary Beneficiary to the Trustee, then it should be sufficient that such information may be obtained or disseminated on a confidential basis if and when required by the Trustee for the proper administration of the Trust and on that basis such impediments should not disqualify a Primary Beneficiary from participating in the benefits of the Program, provided that the confidential record-keeping of the Electricity Distributor would be available in connection with the application of any applicable legal process predicated on the identification of such Primary Beneficiary for the purposes of substantiating its rights as a Primary Beneficiary of the Trust or as to the validity or subsistence of the Trust.

5. Eligible Measures

5.1 It is expected that the Trust will identify eligible measures that, taking into consideration the principles set forth in the Principles Annex, have regard to the following (the "**Measures Factors**"):

(i) is the measure generally expected to result in reduced electricity consumption by a Primary Beneficiary if properly installed and used;

(ii) is the measure recognized under another Provincial program as being appropriate for achieving electricity conservation among a population analogous to the Primary Beneficiaries;

(iii) does the measure present any unacceptable health or safety considerations, either with respect to the Primary Beneficiary, a party providing or installing the measure, or the physical environment;

(iv) is the measure broadly available to residents across different areas and regions of the Province; or

(v) is the measure a requirement or precursor to another measure, the other measure being one which meets any of the other Measures Factors.

5.2 In identifying and applying the Measures Factors, Electricity Distributors would be expected to have expertise in assessing the suitability of efficiency and conservation measures in their respective areas and regions, which may differ across areas and regions across the Province based on factors (among other things) such as the climate, geography, density, electricity infrastructure, residential structures, and electricity use rates applicable within such areas or regions.

5.3 The measures specified in Schedule A to this Principles Annex may initially be considered to be consistent with the Measures Factors (subject to change as contemplated under the Permitted Delegations Annex).

6. Promotion of the Program

6.1 It is expected that the Trustee will undertake or engage others to undertake diligent efforts to promote the availability, terms and benefits of the Program to Primary Beneficiaries, including by establishing consistent communications through the Electricity Distributors.

6.2 It is expected that the Trustee will acknowledge the financial support of the Province in connection with the establishment and the funding for the Program, including in any external communications to or marketing directed at the Electricity Distributors and the Primary and Residual Beneficiaries. In its delegation of any duties or powers to the Electricity Distributors through Implementation Agreements it is expected that Electricity Distributors will acknowledge the financial support of the Province in connection with the program including in any communications or marketing to Primary Beneficiaries.

7. Conduct of the Trust and the Program

7.1 It is expected that administrative expenses of the Board of Trustees and its members, including any expenses relating to the Trust, to the establishment of the Trust and any expenses related to the implementation and operation of the Program, including by or through Electricity Distributors and other relevant entities, will be recognized and subject to reimbursement on a basis that is substantially consistent with the accountability provisions contemplated in the Transfer Payment Agreement and the principles in the Province's Travel, Meal and Hospitality Expenses Directive, as set out in Schedule B to this Principles Annex.

7.2 The Trustee is expected to conduct its activities in a manner that complies in all material respects with the Transfer Payment Agreement, including to:

(i) act prudently and in furtherance of the Purpose;

(ii) report not less frequently than annually the results of its activities for information purposes to the Province in connection with the Program;

(iii) comply with the Province's request for any independent verification or audit if determined to be necessary or appropriate by the Province;

(iv) return Assets that have not been distributed if it is determined that the Trustee has breached its Standard of Care in discharging its material duties under the Declaration, and has not cured such material breach despite having been given a reasonable opportunity by the Province to do so in light of the circumstances of such material breach, with the result that all or a significant part of the Assets have not been or are not being applied and distributed in furtherance of the Purpose or are being applied and distributed in a manner that is directly contrary or without regard to the Purpose.

7.3 Electricity Distributors are not intended to directly profit from distributions of funds made from the Trust, although it is recognized that the objectives of electricity efficiency and conservation of Primary Beneficiaries located in the service area or region of an Electricity Distributor, and the cost savings and improved credit worthiness of such Primary Beneficiaries, may be financially beneficial to the Electricity Distributor.

7.4 Distributions from the Trust are intended to allow receiving Primary Beneficiaries to undertake Eligible Measures at no or minimal personal cost.

7.5 Without in any way limiting the discretion of the Board of Trustees to extend the period during which the benefits of the Program may be available to the Primary Beneficiaries, up to and including the Final Distribution Date, it is expected that the Trust Assets would be distributed to Primary Beneficiaries during the period from the Original Trustee Replacement Date to April 30, 2019.

SCHEDULE A TO THE PRINCIPLES ANNEX
INDICATIVE ELIGIBLE MEASURES[1]

Initial Specified Measures
Block Heater Timer (just timer) – rated for outdoor use, have at least a 15 amp/1800 watt capacity, be cold weather resistant, bear a C-UL or CSA certification mark
Power bar with integrated timer, and switched power outlets, four each for a total of 8 outlets, have a total capacity of 15 amps. The switched outlets must remain "live", independent of timer settings, so long as the power bar itself remains switched on. The power bar must bear either a C-UL or CSA certification mark.
Efficient Showerheads (standard) - rated at no more than 4.8 Lpm (1.25 U.S. gpm) and be of the laminar flow type (non-aerating).
Efficient Showerhead (handheld) - rated at no more than 4.8 Lpm (1.25 U.S. gpm) and be of the laminar flow type (non-aerating).
Efficient Aerators (kitchen) - rated no more than 5.7 Lpm (1.5 U.S. gpm), dual threaded to allow installation in both thread type faucets, swivel type with pause lever.
Efficient Aerators (bathroom) - rated no more than 3.8 Lpm (1.0 U.S. gpm), be dual threaded to allow installation in both thread type faucets.
Hot Water Tank Pipe Insulation - ½" inside diameter – foam, meets ASTM –C547-00, minimum ¾" thick
Hot Water Tank Pipe Insulation - ¾ " inside diameter - – foam, meets ASTM –C547-00, minimum ¾" thick
Hot Water Tank Insulation - fibreglass R10 (fits up to a 60 gal tank) – not bubble wrap
≤11W ENERGY STAR® Qualified LED A Shape (60W) (minimum 600 Lumen output) (Formerly: 7W – 11W ENERGY STAR® Qualified LED A Shape (60W))

[1] These measures are indicative. Eligible measures added to HAP during the administration of the Trust may also be appropriately considered relevant by the Trustee.

Initial Specified Measures
≤14W ENERGY STAR® Qualified LED A Shape (75W) (minimum 800 Lumen output) (Formerly: 10W – 14W ENERGY STAR® Qualified LED A Shape (75W))
≤23W ENERGY STAR® Qualified LED A Shape (100W) (minimum 1600 Lumen output) (Formerly:17W – 23W ENERGY STAR® Qualified LED A Shape (100W))
≤16W ENERGY STAR® Qualified LED PAR 20 (minimum 600 Lumen output) (Formerly: 8W – 12W ENERGY STAR® Qualified LED PAR 20)
≤16W ENERGY STAR® Qualified LED PAR30 & PAR38 (minimum 600 Lumen output) (Formerly: 8W – 12W ENERGY STAR® Qualified LED PAR 30)
≤23W ENERGY STAR® Qualified LED PAR (minimum 1100 Lumen output) (Formerly: 14W – 18W ENERGY STAR® Qualified LED PAR 38)
≤6W ENERGY STAR® Qualified LED MR 16 / PAR 16 (minimum 250 Lumen output) (Formerly: 7W – 10W ENERGY STAR®
Qualified LED MR 16 / PAR 16 - GU 10 Base)
≤11W ENERGY STAR® Qualified LED MR 16 (minimum 400 Lumen output) (Formerly: 7W – 12W ENERGY STAR® Qualified LED MR 16 GU 5.3 Base)
ENERGY STAR® LED Wet Location Rated PAR lamp ≤ 23 Watt (minimum 1100 Lumen output)
Recessed Downlight Fixture including LED with Light Output >600 and <800 lumens (Retrofit Measure List)
Recessed Downlight Fixture including LED with Light Output >800 lumens (Retrofit Measure List)
Indoor Drying Rack

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Extended Measures
Replace refrigerator with ENERGY STAR qualified refrigerator - 15.5 - 16.9 cubic foot top freezer, automatic defrost, refrigerator/ freezer, no through the door ice service
Replace refrigerator with ENERGY STAR qualified refrigerator - 17.0 - 18.4 cubic foot top freezer, automatic defrost, refrigerator/ freezer, no through the door ice service
Replace refrigerator with a refrigerator that has a consumption level of less than 425 kwh, 10 – 12.5 cubic foot top freezer, automatic defrost, refrigerator freezer, no through the door ice service
Replace freezer with ENERGY STAR qualified freezer - 12-14.4 cubic foot freezer
Replace freezer with ENERGY STAR qualified freezer - 14.5 - 16.0 cubic foot freezer
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 6,000 – 7,999 BTU/hr with C-UL or CSA certification mark
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 8,000 – 9,999 BTU/hr with C-UL or CSA certification mark
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 10,000 – 12,000 BTU/hr with C-UL or CSA certification mark
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 14.2 - 21.2 l/day (30-44.9 pints/day) dehumidifier
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 21.3 - 25.4 l/day (45-53.9 pints/day) dehumidifier
Extended Measures
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 25.5 - 35.5 l/day (54-75 pints/day) dehumidifier
Programmable Thermostat – line voltage – meets CAN/CSA-C828-06 standard, minimum performance: Droop: 1.5°C, Differential: 0.5°C, Precision 0% within 0.5°C of the original set point of 22°C

Programmable Thermostat – low voltage - meets CAN/CSA-C828-06 standard, minimum performance: Droop: 1.5°C, Differential: 0.5°C, Precision 0% within 0.5°C of the original set point of 22°C

Weatherization Measures
Comprehensive Draftproofing (caulking, foam and weather stripping, and application of same) – lifespan of 20 years plus If one or two component polyurethane foams are used, the products and installations must conform to: • CAN/ULC-S710.1 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 1: Material Specification. • CAN/ULC-S710.2 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 2: Application. • CAN/ULC-S711.1 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification • CAN/ULC-S711.2 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification, and Part 2: Application.
Attic Insulation (including installation):
cellulose: CAN/ULC-S703-01 Amendment 1 - Cellulose Fibre Insulation (CFI) for Buildings OR 2) Mineral Fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre

Weatherization Measures
for Buildings **Wall Insulation (including installation):**
cellulose: CAN/ULC-S703-01 Amendment 1 - Cellulose Fibre Insulation (CFI) for Buildings OR 2) Mineral Fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre **Basement Insulation (including installation):**
mineral fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre for Buildings Vapour Barrier: 69009-CAN/CGSB-51.34-m86 If one or two component polyurethane foams are used, the products and installations must conform to: • CAN/ULC-S710.1 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 1: Material Specification. • CAN/ULC-S710.2 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 2: Application. • CAN/ULC-S711.1 Standard for Thermal Insulation – Bead Applied Two-Component
Polyurethane Air Sealant Foam, Part 1: Material Specification • CAN/ULC-S711.2 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification, and Part 2: Application.

Heat Pumps
(Selection of manufacturers and technologies to meet the US federal minimum efficiency standard for ASHPs, as of 2015, is 13.0 SEER and 7.7 HSPF. Energy Star–certified models offer roughly 9 percent
Ductless Multiport Heat Pump
Cold Climate Ductless Heat Pump
Cold Climate Multiport Ductless Heat Pump
Cold Climate Ducted Heat Pump

SCHEDULE B TO THE PRINCIPLES ANNEX
PERMITTED EXPENSE REIMBURSEMENTS

Travel, Meal and Hospitality Expenses Directive

Funds should be used prudently and responsibly with a focus on accountability and transparency.

Expenses for travel, meals and hospitality support the Purpose.

Plans for travel, meals, accommodation and hospitality are necessary and economical with due regard for health and safety.

Legitimate authorized expenses incurred during the course of furthering the Purpose may be reimbursed.

Best practices should be followed, including:

Prior approval to incur expenses is appropriately obtained.

Other options for meetings are always considered before travel is approved, including audio or video conferencing.

Corporate travel cards are to be used for authorized business travel and business related expenses.

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Statistics:	
	Count
Insertions	236
Deletions	28
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	264

FW_ Affordability Fund Trust (Further Revisions to the DoT and TPA).rtf

From: Petsche, Nadine (TBS) []
To: Picard, Michel (mpicard@kpmg.ca) [mpicard@kpmg.ca]
Subject: FW: Affordability Fund Trust (Further Revisions to the DoT and TPA)
Date: Wednesday, March 22, 2017 16:28:40
Attachment 1: imaged059c7.GIF
Attachment 2: TOR_2024-#12887993-v19-Affordability_Fund_Trust_–_Declaration_of_Trust_-_Blakes_Comments_(March_14__2017).DOCX
Attachment 3: TOR_2024-#12887993-vpdf-Affordability_Fund_Trust_–_Declaration_of_Trust_-_Blakes_Comments_(March_14__2017).PDF
Attachment 4: TOR_2024-#12888010-v13-Transfer_Payment_Agreement_(Affordability_Fund_Trust).DOCX
Attachment 5: TOR_2024-#12888010-vpdf-Transfer_Payment_Agreement_(Affordability_Fund_Trust).PDF

From: ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
Sent: March 22, 2017 4:23 PM
To: PRESTAGE, JA; Johnson, Paul (ENERGY/MEDEI/MRI); Ranalli, David (ENERGY); Schachtschneider, Michelle (ENERGY); Qureshi, Musab (ENERGY); Schwab-Pflug, Emma (ENERGY); Syed, Usman (ENERGY); Petsche, Nadine (TBS)
Subject: RE: Affordability Fund Trust (Further Revisions to the DoT and TPA)

Hi. Here is a further revised set of the DoT and TPA, reflecting some final edits, catch-ups and clean-ups. Regards, Steve

Stephen R. Ashbourne

Partner

stephen.ashbourne@blakes.com

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From: PRESTAGE, JA
Sent: Wednesday, March 22, 2017 2:48 PM
To: Paul.Johnson3@ontario.ca; David.Ranalli@ontario.ca; Michelle.Schachtschneider@ontario.ca; Musab.Qureshi@ontario.ca; Emma.Schwab-Pflug@ontario.ca; Usman.Syed@ontario.ca; Petsche, Nadine (TBS)
Cc: ASHBOURNE, STEPHEN
Subject: Affordability Fund Trust

All:

Attached are revised versions of the Declaration of Trust and the TPA which seek to reflect all of the comments received.

There are a few highlighted sections which require specific decisions or attention.

J.A.

J.A. Prestage
Partner
ja.prestage@blakes.com
Dir: 416-863-2955

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Blakes

TOR_2024-#12887993-v19-Affordability_Fund_Trust_□Declaration_of_Trust_-_Blakes_Comments_(March_14_2017).pdf

DECLARATION OF TRUST

Made as of March •, 2017

by

COMPUTERSHARE TRUST COMPANY OF CANADA

establishing

AFFORDABILITY FUND TRUST

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DECLARATION OF TRUST

This Declaration of Trust is made as of March •, 2017, by Computershare Trust Company of Canada, a trust company established under the laws of Canada and licensed to carry on business as a trust company in each of the provinces and territories of Canada (together with its successors and assigns and the other trustees (including the Board of Trustees) contemplated herein, the "**Trustee**").

WHEREAS Computershare Trust Company of Canada, as settlor, wishes to establish a trust to acquire, hold, manage, invest, apply and dispose of certain property for the benefit of certain Beneficiaries as herein described.

NOW THEREFORE Computershare Trust Company of Canada hereby declares that it holds in trust as trustee (a) the sum of ONE HUNDRED DOLLARS ($100) contributed by it on this date and (b) all other property of every type and description which it may hereafter acquire or hold in its capacity as trustee of the Trust and all income therefrom and proceeds thereof, to hold, manage, invest, apply and dispose of same on and subject to the provisions set forth in this Declaration of Trust, including the annexes and schedule attached hereto.

SECTION 1
INTERPRETATION

1.1 Definitions

In this Declaration:

(a) "***Administrative Services Agent***" means each agent, which may include any Electricity Distributor or other Person, appointed from time to time under an Administrative Services Agreement, and its successors and permitted assigns solely in such capacity.

(b) "***Administrative Services Agreement***" means each agreement entered into from time to time by the Trust and one or more Administrative Services Agents or other Persons, in furtherance of the Purpose, under which the Administrative Services Agent agrees to provide specified administrative and other services to and on behalf of the Trustee, as such agreement may be amended, supplemented, restated, renewed or replaced from time to time and includes the agreement entered into on or about the date hereof between the Trustee and Hydro One Limited.

(c) "***Assets***" means, collectively, the following:

(i) the $100 Canadian referred to above, contributed by Computershare Trust Company of Canada on the date hereof;

(ii) all other property which is now or which at any time in the future may be issued, assigned, transferred, provided, donated, gifted and contributed to the Trustee (including pursuant to the Transfer Payment Agreement) to be held in trust pursuant to this Declaration (and which the Trustee is willing to accept and hold);

(iii) all acquisitions of property made by the Trust;

(iv) all property which may at any time be substituted for or in respect of the property referred to in clauses (i), (ii) and (iii), above;

(v) all income of the Trust, including investment income generated by the investment of the property referred to in clauses (i), (ii), (iii) and (iv), above; and

(vi) all proceeds of disposition of any of the property referred to in clauses (i) through (v) above,

but excludes any property paid out or distributed (whether out of income or capital) pursuant to the provisions of this Declaration.

(d) "***Beneficiary***" means each Primary Beneficiary and each Residual Beneficiary, as applicable.

(e) "***Board of Trustees***" means (i) as of the Original Trustee Replacement Date, the individual trustees appointed by the Original Trustee pursuant to Section 5.7 on the basis described in the Trustee Replacement Annex, and (ii) thereafter, the group of trustees appointed hereunder and acting in such capacity.

(f) "***Business Day***" means any working day, Monday to Friday inclusive, excluding statutory and other holidays, namely: New Year's Day; Family Day; Good Friday; Easter Monday; Victoria Day; Canada Day; Civic Holiday; Labour Day; Thanksgiving Day; Remembrance Day; Christmas Day; Boxing Day and any other day on which the Province has elected to be closed for business.

(g) "***Declaration***" means this Declaration of Trust, as it may be amended, restated, supplemented or otherwise modified from time to time, and includes each of the annexes and the Schedule attached hereto which constitute and form an integral part of this Declaration.

(h) "***Electricity Distributor***" means, in respect of a designated service area or region in Ontario, the distributor of electricity to residences located in such area or region.

(i) "***Electricity Invoice***" means an invoice issued by an Electricity Distributor in respect of electricity charges and related services and amounts incurred or assessed in respect of a residence located in the Electricity Distributor's designated service area or region in Ontario.

(j) "***Eligible Investments***" means (i) a deposit receipt, note, certificate or instrument issued, guaranteed or endorsed by a bank listed in Schedule I to the *Bank Act* (Canada), which provides that the principal and any interest shall be fully paid no later than one year after the day the investment was made, or (ii) a deposit account at a bank listed in Schedule I to the *Bank Act* (Canada).

(k) "***Eligible Measures***" means electricity efficiency and/or conservation measures determined by the Trustee from time to time on the basis contemplated in the Principles Annex and in the manner specified in and having regard to the Permitted Delegations Annex.

(l) "***Final Distribution Date***" means the earlier of (a) the date (if any) on which the Trustee determines (by a resolution of the Board of Trustees) that no further distributions are likely to be made to any Primary Beneficiary and (b) December 31, 2019.

(m) "***HAP Eligible Person***" means an "Eligible Person" as defined in Section 3.1 of the document entitled "Conservation First Framework LDC Took Kit" published by the Independent Electricity System Operator and designated as Final v3.0 – March 11, 2016, as amended in accordance with the Energy Conservation Agreement between the Independent Electricity System Operator and Electricity Distributors.

(n) **"Implementation Agent"** means each agent which may include any Electricity Distributor or other Person, appointed from time to time under an Implementation Agreement, and its successors and assigns solely in such capacity.

(o) **"Implementation Agreement"** means each agreement entered into from time to time by the Trustee and one or more Implementation Agents or other Persons in furtherance of the Purpose under which the Implementation Agent would agree to provide specified services to and on behalf or the Trustee (including, following the Original Trustee Replacement Date, as contemplated by the Permitted Delegations Annex) in connection with the implementation of the Program as such agreement may be amended , supplemented, restated, renewed or replaced from time to time.

(p) "***Minister of Energy***" means the Minister of Energy or such other member of the Executive Council as may be assigned primary ministerial responsibility for the administration of the *Ministry of Energy Act, 2011* under the *Executive Council Act*.

(q) "***Original Trustee***" means Computershare Trust Company of Canada, acting in its capacity as trustee hereunder, together with any additional or replacement Trustee appointed hereunder prior to the Original Trustee Replacement Date and any of their respective successors and assigns.

(r) "***Original Trustee Replacement Date***" has the meaning specified in Section 5.7, being the date on which the Original Trustee is replaced as trustee under this Declaration by the Board of Trustees as contemplated under Section 5.7.

(s) "***Permitted Delegations Annex***" means the Permitted Delegations Annex set forth as an annex to this Declaration.

(t) "***Person***" includes any individual, sole proprietorship, corporation, partnership, joint venture, association, society, club, board, chamber, joint-stock company, trust, trustee, unincorporated or incorporated organization or entity or government or any entity, agency or political subdivision thereof.

(u) "***Primary Beneficiary***" means each individual that, as of a time of determination, satisfies each of the following criteria:

(i) the individual owns, rents or leases a residence located in Ontario and is the primary or secondary electricity utility account holder named on an Electricity Invoice issued in respect of that residence; and

(ii) the individual is not a HAP Eligible Person.

(v) "***Principles Annex***" means the Principles Annex set forth as an annex to this Declaration.

(w) "***Province***" means the Province of Ontario.

(x) "***Program***" means the establishment, promotion, implementation and administration of a program to achieve the Purpose on the basis contemplated in this Declaration.

(y) "***Purpose***" means (i) the making of distributions to Primary Beneficiaries who are identified and whose needs are assessed in accordance with section 3.1 and 3.2 of this Declaration, having regard to (x) the principles set forth in the Principles Annex, (y) the manner and basis of implementation and administration of the Program contemplated in the Permitted Delegations Annex, and (z) the other terms, limitations and requirements set forth in this Declaration, and (ii) to the extent that Assets are available following the distributions made to Primary Beneficiaries as contemplated in (i), above, the making of distributions to Residual Beneficiaries who are identified and whose needs are assessed in accordance with section 3.3 and otherwise having regard to the other terms, limitations and requirements set forth in this Declaration.

(z) ***"Residual Beneficiary"*** means each charitable organization identified by the Trustee and specified as a residual beneficiary hereunder from time to time, selected by the Trustee in consultation with and having regard to the recommendations of the Ontario Energy Board in accordance with section 3.3.

(aa) "***Transfer Payment Agreement***" means the transfer payment agreement dated as of March •, 2017 between the Trustee and Her Majesty the Queen in right of Ontario as represented by the Minister of Energy, as such agreement may be amended, restated, supplemented or otherwise modified by the further agreement of the parties thereto from time to time.

(bb) "***Trust***" means Affordability Fund Trust, a trust established under and governed by the laws of the Province of Ontario pursuant to this Declaration.

(cc) "***Trustee***" means (i) the Original Trustee and (ii) on and after the Original Trustee Replacement Date, the Board of Trustees acting together in accordance with and subject to Section 5.7 and in accordance with the rules and procedures adopted by the Board of Trustees pursuant to Section 5.8.

(dd) "***Trustee Replacement Annex***" means the Trustee Replacement Annex set forth as an annex to this Declaration.

1.2 Headings and Table of Contents

The insertion of headings and the provision of a table of contents are for convenience of reference only and shall not affect the construction or interpretation of this Declaration.

1.3 References

Unless otherwise specified, all references to Sections are to Sections of this Declaration. The words "hereto", "herein", "hereof", "hereunder" and similar expressions refer to this Declaration and not to any particular Section or other provision of this Declaration.

1.4 Number and Gender

Unless otherwise specified, words importing the singular include the plural and vice versa and words importing gender include all genders.

1.5 Governing Law

This Declaration shall be governed by, and construed and interpreted in accordance with, the laws of the Province of Ontario and of Canada applicable therein.

1.6 Severability

Any provision of this Declaration which is illegal, invalid or unenforceable in any jurisdiction shall not affect the legality, validity or enforceability of the remaining provisions and any such illegality, invalidity or unenforceability in any jurisdiction shall not affect the legality, validity or enforceability of such provision in any other jurisdiction.

1.7 Reference to the Trust and the Trustee

For greater certainty, where any reference is made in this Declaration to an act to be performed by or for or on behalf of the Trust, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Trustee in its capacity as trustee of the Trust, and, where any reference is made in this Declaration to an act to be performed by or for or on behalf of the Trustee, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Trustee solely in its capacity as trustee of the Trust. Except as provided under the Transfer Payment Agreement, no Person dealing with the Trust or the Trustee shall be bound to make any enquiry concerning, or has the right to require production of, any evidence of the validity of any act of, or transaction purporting to be made by, the Trustee.

1.8 Defect in Appointment

No action taken by the Trustee will be invalid or ineffective by reason only of any defect in the appointment of the Trustee or the non-compliance by the Trustee with any rules or procedures adopted by the Trustee and which is discovered after the taking of such action.

SECTION 2
CONCERNING THE TRUST

2.1 Objectives

The Trust is established to hold, invest, apply and dispose of the Assets for the benefit of the Beneficiaries in furtherance of the Purpose, as provided for in this Declaration. In furtherance of the Purpose:

(a) the Original Trustee shall hold and invest the Assets as contemplated in this Declaration until the Original Trustee Replacement Date, after which the Board of Trustees shall be duly appointed hereunder; and

(b) the Board of Trustees shall hold, invest, apply and dispose of the Assets in accordance with this Declaration, including by determining the identities of and distributions (if any) to be made to or for the benefit of the Primary Beneficiaries in accordance with Sections 3.1 and 3.2 of this Declaration, having regard to the principles set forth in the Principles Annex and in the manner and on the basis contemplated in the Permitted Delegations Annex, or otherwise by determining the identities of and distributions to be made to or for the benefit of any Residual Beneficiary in accordance with Section 3.3,

in each case and in all respects subject to the terms, limitation and requirements set forth in this Declaration.

2.2 Name of the Trust

The name of the Trust shall be the "Affordability Fund Trust" or such replacement name as the Trustee shall determine and specify from time to time. The Trustee shall hold the Assets and conduct the activities of the Trust under such name or variation thereof (including any variation of such name in the French language). If the Trustee determines to change the name of the Trust, the Trustee may specify and use such other designation or adopt such other name (including any name in the French language) as it considers appropriate and may hold the Assets and conduct the activities of the Trust under such designation or other name.

2.3 Location

The head office and the situs of the administration of the Trust shall be • or such other address in Ontario as the Trustee may determine from time to time.

2.4 Fiscal Year

The fiscal year of the Trust shall end on December 31 of each year.

SECTION 3
DISTRIBUTIONS

3.1 Distributions to Primary Beneficiaries

After the Original Trustee Replacement Date and prior to the Final Distribution Date, the Trustee shall undertake diligent efforts in good faith to distribute the Assets (including capital or income) to the Primary Beneficiaries identified based on the application of the principles specified in the Principles Annex and in the manner and in the amounts determined on the basis contemplated by the Permitted Delegations Annex, in each case in the amounts and to the extent specified herein and therein, subject in all respects to the exercise by the Trustee of its discretion hereunder and to the exclusion of the other Beneficiaries.

3.2 Amount of Distributions to Primary Beneficiaries

For the purposes of determining the amount of distributions to be made to the Primary Beneficiaries, the Trustee shall have regard to and be entitled to rely on the recommendations of and information provided by Electricity Distributors acting as Implementation Agents appointed for the purposes, in the manner and substantially on the terms contemplated in the Permitted Delegations Annex, without any duty or obligation to verify or makes enquiries regarding the basis for or propriety of such recommendations or the accuracy or completeness of such information, except if and to the extent that the Trustee, in its discretion, determines that (i) it has actual knowledge that such recommendations are contrary to the reasonable application of the principles set forth in the Principles Annex or have been made on a basis that is manifestly contrary to such principles or the delegations and activities specified or contemplated to be undertaken under the Permitted Delegations Annex or (b) such information is known by the Trustee to be erroneous, contain a material misrepresentation or is materially incomplete.

3.3 Distributions to Residual Beneficiaries

Prior to the Final Distribution Date, the Trustee shall identify the Residual Beneficiary, or if more than one the Residual Beneficiaries and their respective allocations, by consulting with and having regard to the recommendations of the Ontario Energy Board, based on those charitable organizations which provide support services for Low Income Energy Assistance Program Emergency Financial Assistance (LEAP EFA) and the Ontario Electricity Support Program (OESP) or other charities that OEB may identify as relating to the Purpose. Following the Final Distribution Date, the Trustee shall, subject to compliance with section 7.3 and completion of a final audit, distribute all remaining Assets (including capital or income) to the Residual Beneficiaries, in each case in the amounts and to the extent determined by the Trustee in its discretion hereunder (having consulted with and having had regard to the recommendations of the Ontario Energy Board as aforesaid) and to the exclusion of the other Beneficiaries.

SECTION 4
POWERS OF THE TRUSTEE

4.1 General

Subject to and in compliance with the terms, limitations and restrictions of this Declaration and notwithstanding applicable trust legislation, the Trustee shall have, without other or further

authorization, full, exclusive and absolute power, control and authority over the Assets and over the affairs and activities of the Trust to the same extent as if the Trustee were not a trustee, but rather the sole and absolute owner of the Assets in its own right, including such power, control and authority to do all such acts and things as in its sole judgment and discretion are necessary, incidental or desirable for carrying on the affairs and activities of the Trust, with such powers of delegation as may be permitted or otherwise contemplated by this Declaration. Except as expressly provided in this Declaration, the enumeration in this Declaration of any specific power or authority shall not be construed as limiting the aforesaid general power or authority or any other specific power or authority set out herein. Subject to the terms, limitations and restrictions of this Declaration, every discretion or power hereby conferred on the Trustee is an absolute and uncontrolled discretion or power.

4.2 Specifically Enumerated Powers

The Trustee shall have the following specific powers and authorities:

(a) ***Transfer Payment Agreement.*** The Trustee shall have the power to enter into, amend, supplement, modify and perform its obligation under the Transfer Payment Agreement.

(b) ***Contracts and Undertakings.*** The Trustee shall have the power to enter into, amend, supplement, modify and perform its obligation under any contract entered into or undertaking given by the Trustee in furtherance of the Purpose, including any Administrative Services Agreement and any Implementation Agreement.

(c) ***Power to Own, Hold and Manage.*** Subject to section 4.2(d), the Trustee shall have the power to own, hold and manage the Assets in such manner as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable.

(d) ***Power to Invest in Eligible Investments.*** The Trustee shall have the power to invest the Assets only in Eligible Investments, and to change such Eligible Investments at any time and from time to time, all as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable, but always having regard to the Trustee's expectations regarding the timing of payments to be made to the Beneficiaries hereunder. If an investment of Assets in Eligible Investments would not be authorized under the applicable trust laws of Ontario, the Trustee shall nevertheless be permitted to make an investment of the Assets in such Eligible Investments. The Trustee will have no liability for the diminution in the value of any investment in Eligible Investments made hereunder.

(e) ***Power to Dispose of Assets.*** The Trustee shall have the power to sell, convey, assign, transfer, exchange and in any other manner dispose of the Assets or any part or parts thereof free and clear of any and all trusts established under this Declaration, by public or private sale, for cash or on credit, with or without advertisement, and subject to such restrictions, stipulations, agreements and reservations as the Trustee in its sole and absolute discretion may consider appropriate or advisable, and to execute and deliver and perform any agreement, deed, conveyance, transfer or other document or instrument in connection with the foregoing.

(f) ***Power to Apply Assets and Proceeds to Make Distributions to Beneficiaries.*** The Trustee shall have the power to apply the Assets and the proceeds and income derived therefrom to make distributions to the Beneficiaries contemplated by Section 3, and to execute and deliver

and perform any agreement, deed, conveyance, transfer or other document or instrument in connection therewith.

(g) ***Power to Delegate and to Appoint Agents, etc.*** The Trustee shall have the power to appoint, employ or contract with any Person as the Trustee in its sole and absolute discretion may consider appropriate or advisable in connection with the activities of the Trust. Without limiting the generality of the foregoing:

(i) the Trustee will have the power at any time and from time to time to appoint, employ or retain consultants, financial advisers, technical advisers, legal counsel, accountants, administrative services agents, implementation agents, insurers, insurance agents and insurance brokers, as the Trustee may require for the purpose of discharging its duties hereunder and shall not be responsible for or for the actions of any of them, including to:

(A) act for and on behalf of the Trust in connection with any and all matters in any way relating to the negotiation, settlement, entering into, amending, performance and enforcement of the Transfer Payment Agreement, the Administrative Services Agreements, the Implementation Agreements, and any other agreements and contracts to which the Trust becomes a party in accordance with this Declaration;

(B) to provide or cause to be provided any or all kinds of administrative and other services in any way relating to the activities of the Trust;

(C) to act as attorney in fact, agent or trustee in the acquisition, holding, investment, application, sale or other disposition of the Assets and in the handling, prosecuting, defending or settling of any claims of or made against the Trust;

(D) to value the Assets and determine the net income of the Trust; and

(E) to make any filings, elections and submissions (including in respect of taxation matters) in connection with the Trust's compliance with applicable laws and regulatory requirements; and

(ii) the Trustee may pay remuneration and reimbursements from the Assets for services performed for it or on its behalf in the discharge of the trusts hereof without taxation for costs or fees of any counsel, solicitor or attorney.

Without limiting the foregoing, it is expected that the Board of Trustees will seek to enter into Implementation Agreements with Electricity Distributors for the purposes contemplated by the Permitted Delegations Annex, and on such terms and conditions (including terms and conditions as to the payment of reasonable fees and expenses) not inconsistent therewith as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable.

(h) ***Power to Operate Accounts.*** The Trustee shall have the power to (i) open and operate accounts at any chartered bank, trust company or other financial institution in Canada or

elsewhere, as the Trustee in its sole and absolute discretion may consider appropriate or advisable; (ii) deposit therein any moneys or securities forming part of the Assets whether or not such deposits will earn interest; (iii) withdraw such deposits at such times and in such manner as the Trustee may determine; (iv) draw, make, endorse, deposit or otherwise deal in cheques, bills of exchange, promissory notes, drafts and other kinds of instruments and securities; and (v) enter into contracts or agreements with any such chartered bank, trust company or other financial institution containing such terms and provisions as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable. In connection therewith, the Trustee shall have no liability or responsibility for any loss which may occur by reason of the failure of any such chartered bank, trust company or other financial institution.

(i) ***Power to Collect, etc.*** The Trustee shall have the power to (i) collect, sue for, receive and give receipts for all sums of money or other property due to the Trust; (ii) consent to extensions of time for payment or to the renewal of any securities or obligations; (iii) engage or intervene in, prosecute, defend, compound, compromise, abandon or adjust by arbitration or otherwise, any demands, claims, actions, suits or proceedings relating to the Trust or the Assets; (iv) exercise any and all remedies available to the Trustee under any agreement or as may otherwise be available, including any power of foreclosure or sale available at law; (v) in connection with any such foreclosure or sale, purchase or otherwise acquire title to any property and to convey good title thereto free of any and all trusts hereby established, or to take or retake possession of any property secured under any agreement or instrument; (vi) extend the time, with or without security, for the payment or delivery of any debts or property; (vii) execute and deliver releases, acquittances, discharges, agreements or other instruments related thereto; and (viii) pay or satisfy any debts or claims upon any evidence that the Trustee, in its sole and absolute discretion, may determine to be sufficient.

(j) ***Power to Obtain Insurance***. The Trustee shall have the power to enter into contracts for or in relation to or otherwise obtain policies of insurance for the purpose of insuring the risks associated with the Trust, including to insure the Trustee (including the members of the Board of Trustees) against any risk of loss associated with assuming and performing the duties as Trustee. Without limiting the foregoing, it is expected that the Board of Trustees will obtain commercial general liability insurance from insurers having a secure A.M. Best rating of B+ or greater, or the equivalent, that in the opinion of the Recipient a prudent person similar to the Recipient would maintain, and having an inclusive limit of not less than $2,000,000 per occurrence and providing for contractual liability coverage.

(k) ***Power to Pay Trustee's Fees.*** The Original Trustee shall be entitled to be paid and receive the fees set forth in the Original Trustee's schedule of fees delivered as of or prior to the date hereof as compensation for its services under this Declaration, and to be reimbursed for its out-of-pocket expenses reasonably incurred, in each case from the Assets and without the approval of any Beneficiary or any court. The Original Trustee shall be entitled, in its sole and absolute discretion, to withdraw funds from time to time for such purpose from any account of the Trust. Members of the Board of Trustees shall be entitled to reimbursement for and in respect of their out-of-pocket expenses reasonably incurred in discharging their respective duties and obligations under this Declaration, in each case without the approval of any Beneficiary or any court, provided that the members of the Board of Trustees have general regard to sorts of limitations as are set forth in the "Travel, Meal and Hospitality Expenses Directive of the

Province" specified and amended by the Province from time to time, a copy of the current version of which is attached as Exhibit 1 to the Principles Annex.

(l) ***Power to Pay Taxes.*** The Trustee shall have the power to (i) pay, deduct, withhold or remit any taxes or assessments which are required by law to be paid, deducted, withheld or remitted together with or from any payment made by the Trustee; (ii) pay all taxes or assessments of whatever kind or nature imposed upon or against the Trust or the Trustee in connection with the Assets or any part thereof; (iii) collect and remit all taxes and assessments of whatever kind or nature required to be collected and remitted by the Trust or the Trustee in connection with their activities or the Assets or any part thereof; (iv) appeal, settle or compromise tax claims or liabilities; and (v) for the foregoing purposes, to make such returns, elections and submissions and do all such other acts and things as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable.

(m) ***Power to Appoint Auditors.*** The Trustee shall have the power to select and appoint and discharge and re-appoint, in its sole and absolute discretion, an auditor or auditors of the Trust and to settle and pay the fees of any such auditor or auditors from any account of the Trust.

(n) ***Form of Accounts.*** The Trustee shall have the power to determine and change from time to time, in its sole and absolute discretion, the method or form in which the accounts of the Trust will be kept and shall not be required to keep or provide accounts in the form usually required by law to be kept or provided by trustees; provided that such method or form reasonably complies with generally accepted accounting principles in effect in Canada to the extent applicable.

(o) ***Title to Assets.*** The Trustee shall have the power to cause all or any part of the Assets to be held by or registered, in its sole and absolute discretion, in the name of any Person.

(p) ***Delegation of Discretion***. The Trustee shall have the power to delegate the right and power to exercise, or concur in the exercise of any discretion or power, conferred on the Trustee in this Declaration or conferred by law to any one or more of its directors, officers, employees, agents, representatives or to such other Person, as the Trustee, in its sole and absolute discretion, may think is appropriate or advisable, including to one or more Administrative Services Agents under an Administrative Services Agreement and to one or more Implementation Agents and their respective employees, officers and directors under a related Implementation Agreement entered into by the Trust substantially on the basis contemplated in the Permitted Delegations Annex. In particular, the Trustee shall have the power to accept, rely on and follow the recommendations of an Electricity Distributor made under and having regard to the Permitted Delegation Annex with respect to the identification of, and the determination of distributions (if any) to be made to, any Primary Beneficiary, except if and in so far as the Trustee has actual knowledge that (1) such Primary Beneficiary did not in fact satisfy the "Selection Factors" specified in the Principles Annex as of the applicable time of determination; and/or (ii) the amount recommended to be distributed to the Primary Beneficiary was not calculated in substantial compliance with, or was calculated in a manner that is manifestly contrary to the requirements set forth or contemplated in, the Permitted Delegation Annex or the applicable Implementation Agreement.

(q) ***Additional Powers.*** The Trustee shall have the power to perform and do all such other acts, to take such steps and to execute all such deeds, transfers, assignments, agreements and

other documents and instruments as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable for the carrying out of any of its powers hereunder or of any of the activities of the Trust as herein contemplated, or for the carrying out, promotion or advancement of the interests of the Trust, whether or not any of such acts, things, documents or instruments are herein expressly mentioned. Any good faith determination by the Trustee as to what is necessary, desirable or appropriate to carry out its powers or activities of the Trust as contemplated under this Declaration or to carry out, promote or advance the interests of the Trust shall be conclusive. Any construction of this Declaration or any determination as to the activities of the Trust or the existence of any power or authority hereunder made in good faith by the Trustee, relying upon the advice of counsel, shall be conclusive. In construing the provisions of this Declaration, there shall be a presumption in favour of a grant of power to the Trustee.

SECTION 5
CONCERNING THE TRUSTEE

5.1 Duty of Trustee

In performing its duties and exercising its powers under this Declaration, the Trustee shall act honestly, in good faith and with a view to the best interests of the Trust and the Beneficiaries and shall exercise that degree of care, diligence and skill that a reasonably prudent trustee would exercise in comparable circumstances (the "**Standard of Care**"). The Trustee shall observe and act in accordance with the terms of, and shall observe and comply with the limitations and restrictions set forth in, this Declaration, including having due regard to the principles set forth in the Principles Annex. To the extent that the Trustee has so delegated any of its duties or powers, it shall be deemed to have satisfied the Standard of Care in respect of the subject matter of such delegation, subject to the Trustee's overall duty as a trustee to exercise prudent oversight in relation to such delegation. Unless required by law, the Trustee will not be required to give any security, bonds or sureties in any jurisdiction for the performance of any of its duties and obligations under this Declaration. The Trustee (including the individual members of the Board of Trustees) will not be required to devote its entire time to the trust activities.

5.2 Limitation of Liability

The Trustee shall not be personally liable in tort, contract or otherwise to any Beneficiary or any other Person for any loss or diminution in the value of the Assets, or for any action or failure to act on the part of the Trustee or any of its employees or agents or any other Person, and shall not be subject to any personal liability for any debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses incurred by or against the Trust, howsoever arising, and resort will be had solely to the Assets for the payment, performance or satisfaction thereof. No property or assets of the Trustee, owned in its personal capacity or otherwise, will be subject to levy, execution or other enforcement procedure**s** with respect to any obligation under this Declaration. However, the foregoing limitations in this Section shall not apply where the Trustee has demonstrated gross negligence, bad faith, fraud or wilful misconduct.

5.3 Liability of Trustee under Contracts

Any document or instrument creating a liability or obligation of the Trust or of the Trustee will be conclusively deemed to have been executed by the Trustee only in its capacity as Trustee of

the Trust and will be binding upon the Trustee only in its capacity as trustee hereunder and resort may not be had to, nor recourse or satisfaction be sought from, the property of the Trustee other than the Assets, whether owned by its in its personal capacity or in any other capacity other than in its capacity as Trustee of the Trust, or from its employees or agents, and in all cases resort will be had solely to the Assets for the payment, performance or satisfaction of any such liability or obligation. However, the foregoing limitations in this Section shall not apply where the Trustee has demonstrated gross negligence, bad faith, fraud or wilful misconduct. Each document or instrument creating a liability or obligation of the Trust or of the Trustee shall contain a provision providing for the aforesaid limitation of liability.

5.4 Funds of the Trustee

The Trustee shall not be required to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers.

5.5 Indemnification of Trustee

In addition to and without limiting any other protection hereunder or otherwise by law of the Trustee and its respective employees, agents, representatives and assigns (in this Section 5.5, collectively, the "**Representatives**"), the Trustee and its respective Representatives shall be indemnified, defended and saved harmless out of the Assets from, against and in respect of any and all liabilities arising or related to actions taken or omitted to be taken by any agent of the Trustee, losses, claims (including any claim arising out of the assessment of any tax on income by a taxing authority), damages, penalties, fines, actions, suits, demands, levies, assessments, costs, charges, expenses and disbursements (including, without limitation, any and all legal and advisor fees and disbursements) (in this Section 5.5, collectively, the "**Liabilities**") of whatever kind or nature which may at any time be suffered by, imposed upon, incurred by or asserted against the Trustee and its Representatives, whether groundless or otherwise, howsoever arising from or out of any act, omission or error of the Trustee, in each case made in connection with its acting as Trustee hereunder, in each case except and to the extent that the Liabilities are a result from or are caused by gross negligence, wilful misconduct, bad faith or fraud. Further, except as provided in section 5.2, the Trustee shall not be liable to any Beneficiary for any loss or damage relating to any matter regarding the Trust, including any loss or diminution in value of the Assets. Notwithstanding any other provision hereof, the obligations provided for in this section 5.5 shall survive any termination of the Trust, whether by reason of removal or resignation of the Trustee, termination or discharge of this Declaration or otherwise.

5.6 Reliance upon Advice

Subject to section 5.1, in performing its duties and exercising its powers hereunder, the Trustee may rely and may act or not act, and shall be fully protected in relying and acting or not acting, upon (a) any statement, telecopy or other electronic means of communication, writing, notice, resolution, report, opinion or other document or conversation believed by it to be genuine and correct and to have been signed, sent or made by the proper Person; (b) any opinion or advice received or information obtained from auditors, solicitors, or other professional advisers, whether retained by the Trustee or otherwise, and shall not be responsible or held liable for any loss or damage resulting from so relying or acting or not acting; and (c) the advice and actions of any

Administrative Services Agent or Implementation Agent, including in connection with the delegations and reliances contemplated under the Permitted Delegations Annex. For greater certainty, it shall not be necessary for the Trustee to ascertain whether or not the Persons who have executed, signed or otherwise issued, authenticated or receipted such papers, writings or documents (including any Administrative Services Agreement or any Implementation Agreement or any other contract entered into by the Trustee) have authority to do so or that they are the same Persons named therein or otherwise to pass upon any requirement of such papers, writing or documents that may be essential for their validity or effectiveness or upon the truth and acceptability.

5.7 Replacement of the Original Trustee

The Persons identified in the Trustee Replacement Annex are hereby appointed to comprise the Advisory Committee contemplated therein (the "**Advisory Committee**"). The Original Trustee shall promptly request that the Advisory Committee make recommendations with respect to the composition of the "Board of Trustees", as contemplated by the Trustee Replacement Annex. The Original Trustee shall have no duty or obligation to investigate the basis for any of the Advisory Committee's recommendations and may rely on such recommendations without any duty of enquiry, supervision or oversight with respect to the activities and decision-making processes adopted by the Advisory Committee in its discretion, in full satisfaction of the Original Trustee's Standard of Care with respect to such matters hereunder. Except where it is manifestly apparent to the Original Trustee that the individuals recommended by the Advisory Committee to become members of such Board of Trustees are disqualified from so acting on the basis of manifest non-compliance with the "Selection Factors" set forth in the Trustee Replacement Annex, the Original Trustee shall appoint, as members of the Board of Trustees, the six (five voting and one non-voting) individuals recommended for appointment to the Board of Trustees by the Advisory Committee. If the Original Trustee declines to appoint any individual recommended by the Advisory Committee, the Original Trustee will promptly request that the Advisory Committee provide a further recommendation whom the Original Trustee shall appoint as a member of the Board of Trustees unless it is manifestly apparent to the Original Trustee that the individual so recommended is also disqualified from so acting on the basis of manifest non-compliance with the "Selection Factors" set forth in the Trustee Replacement Annex,. Upon the appointment of such six individuals pursuant to this provision and their agreement to act as members of the Board of Trustees, the Original Trustee shall be deemed to have resigned and shall cease to be a trustee (such resignation occurring on the "**Original Trustee Replacement Date**").

5.8 Rules and Procedures of the Board of Trustees

(a) ***Initial Requirements***. As soon as practicable and in any event no later than one month following the Original Trustee Replacement Date, the Board of Trustees id expected to meet to take such decisions and actions as they deem necessary to ensure the proper management and administration of the Trust. The date (and location if in person) of the initial meeting shall be determined by a majority of the Board of Trustees.

(b) ***Meetings.*** Subject to the Board of Trustees' discretion to make such rules and procedures that they may deem desirable, meetings of the Board of Trustees may be held at such time and place as the trustee members of the Board of Trustees may agree upon or as they may

fix by resolution for the purpose or if the meeting is called as hereinafter mentioned then at such time as may be designated in the notice calling the meeting. A meeting of the Board of Trustees may be called at any time by any two members of the Board of Trustees by two Business Days' notice given to the members of the Board of Trustees. No notice of any Board of Trustees' meeting shall be necessary when a quorum is present if those comprising the quorum consent to the transaction of the affairs of the Trust and the absent trustee or trustees, if any, either before or after the meeting shall waive in writing notice of the meeting. Meetings of the Board of Trustees may be conducted in person, by telephone, or in such other manner as determined by the Board of Trustees. The Board of Trustees may elect a Chairperson.

(c) ***Quorum.*** At any meeting of the Board of Trustees, a majority of the voting members of the Board of Trustees shall be a quorum irrespective of the number of members in office. The decision of the majority of the voting members where quorum exists shall govern and shall be binding for all purposes and shall be acted upon and carried out in the same manner and with the same effect as if all the voted members concurred therein; provided always that in the case of equality of votes the Chairperson, if any, shall not be entitled to cast a second or deciding vote.

(d) ***Power to Adopt Rules and Procedures.*** The Board of Trustees may make such rules and procedures not inconsistent herewith as it may deem desirable for the proper management and administration of the Trust and the discharge of the responsibilities of the Board of Trustees.

(e) ***Replacement of Members of the Board of Trustees***. The Board of Trustees shall have the power to replace any vacancy arising following the Original Trustee Replacement Date according to such rules and procedures as they deem appropriate subject to compliance with the Selection Factors specified in Trustee Replacement Annex and having regard for such considerations necessary to ensure that the composition of the Board of Trustees will be able to discharge its responsibilities in respect of the Declaration. If necessary, the Board of Trustees may fill any vacancy by application to the Courts of Ontario in the event of an unfilled vacancy.

(f) ***Decisions of the Board of Trustees.*** Decisions and actions of the Board of Trustees shall be made by voting, with each individual voting member having one vote. Subject to quorum requirements, a majority vote shall be determinative in respect of such decisions and actions. Subject to quorum requirements, any decision or action taken by the majority of voting members will represent the decision or action of the Trustee, and not any member of the Board of Trustees.

(g) ***Conflicts of Interest.*** With respect to any matter before the Board of Trustees, to the extent of a conflict of interest, whether actual, perceived or potential, involving a member of the Board of Trustees' personal interests and a matter concerning the Trust, such member shall abstain from voting on the matter or taking any other discretionary action on the matter. For the purposes of the foregoing, no member of the Board of Trustees shall be deemed to have a conflict by reason only that the member holds any office or position with an Electricity Distributor, social services agency or governmental or quasi-governmental agency or entity (such as the Independent Electricity System Operator); provided, however, that in relation to any decision of the Board of Trustees pertaining specifically to a particular Electricity Distributor, any member of the Board of Trustees who is a director, officer or employee of the Electricity Distributor would be expected to recuse himself or herself from participating in deliberations, discussions or voting in respect of such decision.

(h) ***Expense Reimbursements to Members of the Board of Trustees.*** Members of the Board of Trustees shall be entitled to reimbursement for and in respect of their out-of-pocket expenses reasonably incurred in discharging their duties and obligations as members of the Board of Trustees. Members of the Board of Trustees shall serve without compensation.

5.9 Confidentiality

Notwithstanding the resignation or removal and discharge from the trusts and powers reposed in and conferred on the Trustee by this Declaration, or the termination of this Declaration, the Trustee so resigning or removed shall continue to treat as confidential all information relating to the Trust, the Assets and the Beneficiaries and shall only be entitled to make disclosures concerning such information if disclosure is required in the performance of the functions of the resigning or removed Trustee or is ordered by a court of competent jurisdiction or is otherwise required by law. The Trustee shall not be responsible or liable to any Person for any loss or damage arising out of or in any way sustained or incurred in any way relating to any such required disclosure. The obligations arising under this section 5.9 shall survive the termination of the Trust.

5.10 Vesting in Successor Trustee

Any successor trustee (including any reconstituted Board of Trustees) shall automatically become vested with the Assets and with the same powers, rights, duties, responsibilities and trusts as if it, he or she had originally been named as Trustee under this Declaration, without the requirement of any further instrument or act or conveyance, and the Trustee ceasing to act shall execute all such transfers and other documents and do all such other acts or things as may be necessary or desirable to assign, transfer, deliver to, and vest in, the successor trustee, upon the trusts expressed in this Declaration, all the Assets and all the rights, powers and trusts of the Trustee ceasing to act. The expense of any act, document, deed or other instrument or thing required under this Section 5.10, including for greater certainty, outstanding fees and unreimbursed expenses of the Trustee (including any member of the Board of Trustees) ceasing to act, shall be satisfied from the Assets.

5.11 Execution of Instruments

The Trustee shall have the power to execute all deeds, transfers, agreements, promissory notes and other instruments on behalf of the Trust. Such power may be exercised by any one or more Administrative Services Agents acting in accordance with any delegated right to do so pursuant to an applicable Administrative Services Agreement or by any one or more Implementation Agents acting in accordance with any delegated right to do so pursuant to an applicable Implementation Agreement, and any such execution of instrument by an Administrative Services Agent, acting in such capacity as agent of the Trust pursuant to the terms and conditions of an Administrative Services Agreement or by an Implementation Agent acting in such capacity as agent of the Trust pursuant to the terms and conditions of an Implementation Agreement shall in each case be deemed to be a proper execution of such instrument by the Trustee and shall be binding for all purposes on the Trust.

5.12 Decisions by the Trustee

If there is more than one Trustee, decisions of the Trust may be made by a majority of Trustees eligible to vote on the applicable matter. Whenever the Trustees are unable to agree in relation to the commission or omission of any act or howsoever in the execution of the Trust, the decision of a majority of such Trustees shall prevail.

SECTION 6
AMENDMENTS AND SUPPLEMENTS

6.1 Amendments

Subject to the requirements of the Transfer Payment Agreement, the Trustee shall have the power in its sole and absolute discretion from time to time without the approval of any Beneficiary or any court to amend, vary, supplement, replace or restate this Declaration in its entirety or any portion thereof; provided, however that it is expected that any amendment shall be consistent with the intent of the principles set forth in the Principles Annex and with the intended scope and effect of the permitted delegations and activities of any Implementation Agent pursuant to the Permitted Delegations Annex. Without in any way limiting the foregoing, any such amendments, variations, supplements, replacements or restatements may:

(a) add provisions for the replacement of or appointment of additional trustees to act with the Original Trustee prior to the Original Trustee Replacement Date;

(b) in the case of the Original Trustee, add provisions to those contemplated in the Trustee Replacement Annex in respect of the appointment of the members and the formation and empowerment of the Board of Trustees;

(c) in the case of the Original Trustee, vary the terms and requirements applicable to the duties, responsibilities, obligations, liabilities, indemnities, protections, limitations, restrictions, compensation, expense reimbursements and such other matters, in each case as the Advisory Committee may indicate are necessary to be made in order to attract and receive confirmation of appointment of appropriately qualified individuals that the Advisory Committee specifies are to be appointed as members of the Board of Trustees in accordance with its recommendations;

(d) add additional or replace existing Trustees;

(e) add to or reasonably clarify the principles set forth in the Principles Annex;

(f) add to or reasonably clarify the delegations and activities contemplated to be made in the Permitted Delegation Annex;

(g) include provisions for the management of the Trust by the Trustees, including the making of rules, requirements and procedures governing the decision-making of the Board of Trustees;

(h) add provisions for the replacement of members of the Board of Trustees (in addition to those provisions contemplated in section 5.7 and the Trustee Replacement Annex);

(i) provide for the engagement of any Person or Persons as managers, administrators or other service providers to the Trust, including any additional or replacement Administrative Services Agent or Implementation Agent or representative thereof;

(j) specify supplemental procedures for the identification of Primary Beneficiaries and the exchange of information with Electricity Distributors in connection with identifying such Primary Beneficiaries; or

(k) specify procedures for the transfer and transmission of funds from the Trust or any Implementation Agent acting on its behalf and with delegated responsibility over funds constituting Assets, to or for the benefit of, Beneficiaries or their designated representatives, payees or assignees.

6.2 Supplemental Declarations

The Trustee is authorized to execute any supplemental declaration of trust (including one or more amendments and restatements from time to time of this Declaration) to give effect to amendments to this Declaration made pursuant to section 6.1.

SECTION 7
TERMINATION

7.1 Duration

Subject to sections 7.2 and 7.3, the Trust will continue in full force and effect so long as there are any Assets and until all of the debts, liabilities and obligations of the Trust have been paid and satisfied in full.

7.2 Termination and Distribution of Assets

The Trustee shall terminate the Trust and wind up its affairs as soon as practicable after the Final Distribution Date. In connection with the termination of the Trust, the Trustee shall identify the Residual Beneficiaries and distribute or cause to be distributed the remaining Assets, in cash or in kind or partly in each, to the Residual Beneficiaries, in each case in accordance with section 3.3. Despite the foregoing, the Trust will only be terminated and wound up after the Trustee, in its sole and absolute discretion, determines that all debts, liabilities and obligations of the Trust have been paid or otherwise adequately provided for and satisfied and upon receipt of such releases, indemnities and discharges as the Trustee, relying on the opinion of counsel, deems necessary for the protection of the Beneficiaries and for its own protection.

7.3 Distribution of Assets on Final Distribution Date

If the Trust holds Assets on the Final Distribution Date, the Trustee shall pay or provide reserves for the payment, and otherwise shall satisfy, all debts, liabilities and obligations of the Trust and shall provide or arrange to provide such investigations, audits, releases, indemnities and discharges as the Trustee, relying on the opinion of counsel, deems necessary for the protection of the Beneficiaries and for its own protection. Thereafter, any remaining Assets shall be paid to the Residual Beneficiaries in accordance with section 3.3.

SECTION 8
ACCEPTANCE OF TRUSTS

8.1 Acceptance of Trusts

The Trustee hereby accepts the trusts and duties contained in this Declaration and agrees to perform the same upon the terms and conditions hereof until discharged therefrom.

[Signature Page Follows]

The Trustee has executed this Declaration as of the date first written above.

COMPUTERSHARE TRUST COMPANY OF CANADA,

By: _____
Name:
Title:

By: _____
Name:
Title:

PRINCIPLES ANNEX

The Trustee shall have regard to, but shall not be specifically bound by, the following principles in applying its discretion in relation to the administration of the Trust:

1. Identification of Primary Beneficiary Payees

1.1 Except in exceptional circumstances, a Primary Beneficiary would not be expected to receive a benefit from the Trust unless at the time of consideration it satisfies, in addition to the requirements contemplated in the definition of "Primary Beneficiary", each of the following criteria (the "**Selection Factors**"):

(i) it has a participant agreement with an applicable Electricity Distributor to undertake measures (its "**Energy Plan**") to improve the electricity efficiency and/or promote the conservation of electricity at its Ontario residence;

(ii) its Energy Plan involves one or more Eligible Measures, as may be designated by the Trustee from time to time from;

(iii) it confirms that:

1. the primary purpose of its Energy Plan is the conservation and efficient use by the Primary Beneficiary of electricity, and is not for the purposes of the Primary Beneficiary making a profit;

2. it would otherwise not have the financial resources to undertake the Eligible Measures included in its Energy Plan; and

3. it would otherwise not be eligible to receive amounts in respect of the Eligible Measures as a HAP Eligible Person;

(iv) it has demonstrated a need for financial assistance on the basis that its periodic electricity bills represent a financial burden, relative to its available financial resources; and

(v) such other criteria as the Trustee may determine, including based on the recommendations of Electricity Distributors or other knowledgeable Persons made on the basis and having regard to the delegations contemplated by the Permitted Delegations Annex or any applicable Implementation Agreement.

1.2 It is recognized that, in furthering the Purpose, an efficient basis upon which to allocate funds to the Primary Beneficiaries across different areas and regions within Ontario may be based on the areas and regions serviced by the Electricity Distributors operating within Ontario.

1.3 It would not be contrary to the Purposes if funds are made available by the Trustee to the Primary Beneficiaries unequally across different areas and regions within Ontario, and it is expected that in making such an unequal division it would be appropriate to have regard to:

(i) broad economic parameters of economic activity and the specific financial resources of the residents of the areas and regions, in each case as an indication of the relative need of such residents across the areas and regions;

(ii) electricity use and efficiency levels of residential electricity customers across the areas and regions;

(iii) specific regional indicators of economic weakness and need; and

(iv) such other factors as the Trustee may determine are relevant, including based on the submissions, advice and recommendations of Electricity Distributors or other knowledgeable Persons made on the basis and having regard to the delegations contemplated by the Permitted Delegations Annex or any applicable implementation Agreement.

1.4 It is recognized that, in furthering the Purpose, the designated Electricity Distributor for an area or region in which a Primary Beneficiary resides would be expected to:

(i) be a reliable source for the purpose of assessing and confirming whether the Primary Beneficiary satisfies the Selection Factors;

(ii) be an efficient intermediary for the purpose of communicating with the Primary Beneficiary, including with respect to matters such as regarding the availability, terms, conditions and intended purposes of Program;

(iii) be able to facilitate an efficient payment of distribution determined to be made to or on behalf of the Primary Beneficiary, having regard to the Electricity Distributor's established practices, procedures and systems for dealing with its customers; and

(iv) have established contractual arrangements with the Primary Beneficiary that may apply to the protection and confidentiality of information provided by or respecting the Primary Beneficiary, which information may be useful in the consideration by the Electricity Distributor in its assessment of whether the Primary Beneficiary satisfies the Selection Factors, which information may not otherwise be available or readily accessible or verifiable by the Trustee.

1.5 It is recognized that, in furthering the Purpose, the Electricity Distributor for an area or region in which a Primary Beneficiary resides will have market and utilization information that may be useful in assessing the relative needs of Primary Beneficiaries within its area or region. Such information is expected to be relevant in assessing the extent to which one such Primary Beneficiary's financial needs and the merits of its Energy Plan are greater or more compelling than those of another such Primary Beneficiary, which comparison may be relevant to the extent that the funds allocable to the Primary Beneficiaries resident in the area or region are otherwise insufficient to meet the requests for funding by all such Primary Beneficiaries.

1.6 Accordingly, it is recognized that, in furthering the Purpose, it is consistent with the Purpose that the recommendations of Electricity Distributors be utilized and relied upon

by the Trustee to guide the process of identifying particular Primary Beneficiaries in making distributions to the Primary Beneficiaries.

1.7 If an Electricity Distributor for a particular area or region is unable or unwilling to assess or confirm the application of the Selection Factors to Primary Beneficiaries residing in the area or region or to make recommendations in relation to such matters, one or more of the following may provide a suitable alternative source of information and for information gathering, assessment and confirmation purposes in relation to such area or region:

(i) other Electricity Distributors operating in adjacent or other areas or regions in Ontario;

(ii) the Ontario Energy Board;

(iii) the Independent Electricity System Operator; and

(iv) anyone else having relevant expertise and access to information regarding the electricity market of the Province, in each case as may be considered relevant by the Trustee.

1.8 To the extent that privacy law or other legal requirements limit an Electricity Distributor from providing or making available specific information respecting the application of the Selection Factors to a particular Primary Beneficiary or group of Primary Beneficiaries, it is recognized that, in furthering the Purpose, it may be appropriate to redact or make generic affected information regarding such Primary Beneficiary in connection with the identification and confirmation of a Primary Beneficiary's eligibility and participation in the Program. If such limitations or restrictions would limit an Electricity Distributor from providing or confirming the name of a particular Primary Beneficiary to the Trustee, then it should be sufficient that such information may be obtained or disseminated on a confidential basis if and when required by the Trustee for the proper administration of the Trust and on that basis such impediments should not disqualify a Primary Beneficiary from participating in the benefits of the Program, provided that the confidential record-keeping of the Electricity Distributor would be available in connection with the application of any applicable legal process predicated on the identification of such Primary Beneficiary for the purposes of substantiating its rights as a Primary Beneficiary of the Trust or as to the validity or subsistence of the Trust.

2. Eligible Measures

2.1 It is expected that the Trust will identify eligible measures that, taking into consideration the principles set forth in the Principles Annex, have regard to the following (the "**Measures Factors**"):

(i) is the measure generally expected to result in reduced electricity consumption by a Primary Beneficiary if properly installed and used;

(ii) is the measure recognized under another Provincial program as being appropriate for achieving electricity conservation among a population analogous to the Primary Beneficiaries;

(iii) does the measure present any unacceptable health or safety considerations, either with respect to the Primary Beneficiary, a party providing or installing the measure, or the physical environment;

(iv) is the measure broadly available to residents across different areas and regions of the Province; or

(v) is the measure a requirement or precursor to another measure, the other measure being one which meets any of the other Measures Factors.

2.2 In identifying and applying the Measures Factors, Electricity Distributors would be expected to have expertise in assessing the suitability of efficiency and conservation measures in their respective areas and regions, which may differ across areas and regions across the Province based on factors (among other things) such as the climate, geography, density, electricity infrastructure, residential structures, and electricity use rates applicable within such areas or regions.

2.3 The measures specified in Schedule A to this Principles Annex may initially be considered to be consistent with the Measures Factors (subject to change as contemplated under the Permitted Delegations Annex).

3. Promotion of the Program

3.1 It is expected that the Trustee will undertake or engage others to undertake diligent efforts to promote the availability, terms and benefits of the Program to Primary Beneficiaries, including by establishing consistent communications through the Electricity Distributors.

3.2 It is expected that the Trustee will acknowledge the financial support of the Province in connection with the establishment and the funding for the Program, including in any external communications to or marketing directed at the Electricity Distributors and the Primary and Residual Beneficiaries. In its delegation of any duties or powers to the Electricity Distributors through Implementation Agreements it is expected that Electricity Distributors will acknowledge the financial support of the Province in connection with the program including in any communications or marketing to Primary Beneficiaries.

4. Conduct of the Trust and the Program

4.1 It is expected that administrative expenses of the Board of Trustees and its members, including any expenses relating to the Trust, to the establishment of the Trust and any expenses related to the implementation and operation of the Program, including by or through Electricity Distributors and other relevant entities, will be recognized and subject to reimbursement on a basis that is substantially consistent with the accountability provisions contemplated in the Transfer Payment Agreement and the principles in the

Province's Travel, Meal and Hospitality Expenses Directive, as set out in Schedule B to this Principles Annex.

4.2 The Trustee is expected to conduct its activities in a manner that complies in all material respects with the Transfer Payment Agreement, including to:

(i) act prudently and in furtherance of the Purpose;

(ii) report not less frequently than annually the results of its activities for information purposes to the Province in connection with the Program;

(iii) comply with the Province's request for any independent verification or audit if determined to be necessary or appropriate by the Province;

(iv) return Assets that have not been distributed if it is determined that the Trustee has breached its Standard of Care in discharging its material duties under the Declaration, and has not cured such material breach despite having been given a reasonable opportunity by the Province to do so in light of the circumstances of such material breach, with the result that all or a significant part of the Assets have not been or are not being applied and distributed in furtherance of the Purpose or are being applied and distributed in a manner that is directly contrary or without regard to the Purpose.

4.3 Electricity Distributors are not intended to directly profit from distributions of funds made from the Trust, although it is recognized that the objectives of electricity efficiency and conservation of Primary Beneficiaries located in the service area or region of an Electricity Distributor, and the cost savings and improved credit worthiness of such Primary Beneficiaries, may be financially beneficial to the Electricity Distributor.

4.4 Distributions from the Trust are intended to allow receiving Primary Beneficiaries to undertake Eligible Measures at no or minimal personal cost.

4.5 Without in any way limiting the discretion of the Board of Trustees to extend the period during which the benefits of the Program may be available to the Primary Beneficiaries, up to and including the Final Distribution Date, it is expected that the Trust Assets would be distributed to Primary Beneficiaries during the period from the Original Trustee Replacement Date to April 30, 2019.

SCHEDULE A TO THE PRINCIPLES ANNEX
INDICATIVE ELIGIBLE MEASURES[1]

Initial Specified Measures
Block Heater Timer (just timer) – rated for outdoor use, have at least a 15 amp/1800 watt capacity, be cold weather resistant, bear a C-UL or CSA certification mark
Power bar with integrated timer, and switched power outlets, four each for a total of 8 outlets, have a total capacity of 15 amps. The switched outlets must remain "live", independent of timer settings, so long as the power bar itself remains switched on. The power bar must bear either a C-UL or CSA certification mark.
Efficient Showerheads (standard) - rated at no more than 4.8 Lpm (1.25 U.S. gpm) and be of the laminar flow type (non-aerating).
Efficient Showerhead (handheld) - rated at no more than 4.8 Lpm (1.25 U.S. gpm) and be of the laminar flow type (non-aerating).
Efficient Aerators (kitchen) - rated no more than 5.7 Lpm (1.5 U.S. gpm), dual threaded to allow installation in both thread type faucets, swivel type with pause lever.
Efficient Aerators (bathroom) - rated no more than 3.8 Lpm (1.0 U.S. gpm), be dual threaded to allow installation in both thread type faucets.
Hot Water Tank Pipe Insulation - 1/2" inside diameter – foam, meets ASTM –C547-00, minimum 3/4" thick
Hot Water Tank Pipe Insulation - 3/4 " inside diameter - – foam, meets ASTM –C547-00, minimum 3/4" thick
Hot Water Tank Insulation - fibreglass R10 (fits up to a 60 gal tank) – not bubble wrap
≤11W ENERGY STAR® Qualified LED A Shape (60W) (minimum 600 Lumen output) (Formerly: 7W – 11W ENERGY STAR® Qualified LED A Shape (60W))

[1] These measures are indicative. Eligible measures added to HAP during the administration of the Trust may also be appropriately considered relevant by the Trustee.

Initial Specified Measures
≤14W ENERGY STAR® Qualified LED A Shape (75W) (minimum 800 Lumen output) (Formerly: 10W – 14W ENERGY STAR® Qualified LED A Shape (75W))
≤23W ENERGY STAR® Qualified LED A Shape (100W) (minimum 1600 Lumen output) (Formerly:17W – 23W ENERGY STAR® Qualified LED A Shape (100W))
≤16W ENERGY STAR® Qualified LED PAR 20 (minimum 600 Lumen output) (Formerly: 8W – 12W ENERGY STAR® Qualified LED PAR 20)
≤16W ENERGY STAR® Qualified LED PAR30 & PAR38 (minimum 600 Lumen output) (Formerly: 8W – 12W ENERGY STAR® Qualified LED PAR 30)
≤23W ENERGY STAR® Qualified LED PAR (minimum 1100 Lumen output) (Formerly: 14W – 18W ENERGY STAR® Qualified LED PAR 38)
≤6W ENERGY STAR® Qualified LED MR 16 / PAR 16 (minimum 250 Lumen output) (Formerly: 7W – 10W ENERGY STAR®
Qualified LED MR 16 / PAR 16 - GU 10 Base)
≤11W ENERGY STAR® Qualified LED MR 16 (minimum 400 Lumen output) (Formerly: 7W – 12W ENERGY STAR® Qualified LED MR 16 GU 5.3 Base)
ENERGY STAR® LED Wet Location Rated PAR lamp ≤ 23 Watt (minimum 1100 Lumen output)
Recessed Downlight Fixture including LED with Light Output >600 and <800 lumens (Retrofit Measure List)
Recessed Downlight Fixture including LED with Light Output >800 lumens (Retrofit Measure List)
Indoor Drying Rack

Extended Measures
Replace refrigerator with ENERGY STAR qualified refrigerator - 15.5 - 16.9 cubic foot top freezer, automatic defrost, refrigerator/ freezer, no through the door ice service
Replace refrigerator with ENERGY STAR qualified refrigerator - 17.0 - 18.4 cubic foot top freezer, automatic defrost, refrigerator/ freezer, no through the door ice service
Replace refrigerator with a refrigerator that has a consumption level of less than 425 kwh, 10 – 12.5 cubic foot top freezer, automatic defrost, refrigerator freezer, no through the door ice service
Replace freezer with ENERGY STAR qualified freezer - 12-14.4 cubic foot freezer
Replace freezer with ENERGY STAR qualified freezer - 14.5 - 16.0 cubic foot freezer
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 6,000 – 7,999 BTU/hr with C-UL or CSA certification mark
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 8,000 – 9,999 BTU/hr with C-UL or CSA certification mark
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 10,000 – 12,000 BTU/hr with C-UL or CSA certification mark
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 14.2 - 21.2 l/day (30-44.9 pints/day) dehumidifier
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 21.3 - 25.4 l/day (45-53.9 pints/day) dehumidifier
Extended Measures
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 25.5 - 35.5 l/day (54-75 pints/day) dehumidifier
Programmable Thermostat – line voltage – meets CAN/CSA-C828-06 standard, minimum performance: Droop: 1.5°C, Differential: 0.5°C, Precision 0% within 0.5°C of the original set point of 22°C
Programmable Thermostat – low voltage - meets CAN/CSA-C828-06 standard, minimum performance: Droop: 1.5°C, Differential: 0.5°C, Precision 0% within 0.5°C of the original set point of 22°C

Weatherization Measures
Comprehensive Draft proofing (caulking, foam and weather stripping, and application of same) – lifespan of 20 years plus If one or two component polyurethane foams are used, the products and installations must conform to: • CAN/ULC-S710.1 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 1: Material Specification. • CAN/ULC-S710.2 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 2: Application. • CAN/ULC-S711.1 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification • CAN/ULC-S711.2 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification, and Part 2: Application. **Attic Insulation (including installation):**
cellulose: CAN/ULC-S703-01 Amendment 1 - Cellulose Fibre Insulation (CFI) for Buildings OR 2) Mineral Fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre

Weatherization Measures
for Buildings **Wall Insulation (including installation):**
cellulose: CAN/ULC-S703-01 Amendment 1 - Cellulose Fibre Insulation (CFI) for Buildings OR 2) Mineral Fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre **Basement Insulation (including installation):**
mineral fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre for Buildings Vapour Barrier: 69009-CAN/CGSB-51.34-m86 If one or two component polyurethane foams are used, the products and installations must conform to: • CAN/ULC-S710.1 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 1: Material Specification. • CAN/ULC-S710.2 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 2: Application. • CAN/ULC-S711.1 Standard for Thermal Insulation – Bead Applied Two-Component
• Polyurethane Air Sealant Foam, Part 1: Material Specification CAN/ULC-S711.2 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification, and Part 2: Application.

Heat Pumps (Selection of manufacturers and technologies to meet the US federal minimum efficiency standard for ASHPs, as of 2015, is 13.0 SEER and 7.7 HSPF. Energy Star–certified models offer roughly 9 percent more efficiency than most new uncertified ASHPs and 20 percent more efficiency than existing models that may be in place)
Ductless Multiport Heat Pump
Cold Climate Ductless Heat Pump
Cold Climate Multiport Ductless Heat Pump
Cold Climate Ducted Heat Pump

SCHEDULE B TO THE PRINCIPLES ANNEX
PERMITTED EXPENSE REIMBURSEMENTS

Travel, Meal and Hospitality Expenses Directive

Funds should be used prudently and responsibly with a focus on accountability and transparency.

Expenses for travel, meals and hospitality support the Purpose.

Plans for travel, meals, accommodation and hospitality are necessary and economical with due regard for health and safety.

Legitimate authorized expenses incurred during the course of furthering the Purpose may be reimbursed.

Best practices should be followed, including:

Prior approval to incur expenses is appropriately obtained.

Other options for meetings are always considered before travel is approved, including audio or video conferencing.

Corporate travel cards are to be used for authorized business travel and business related expenses.

PERMITTED DELEGATION ANNEX

1. Under section 4.2(g) of the Declaration, the Trustee has the power to: (a) appoint, employ or retain Implementation Agents for the purpose of discharging its duties and obligations under the Declaration; and (b) enter into, perform, enforce and amend Implementation Agreements.

2. In accordance with section 4.2(g) of the Declaration, consistent with the principles set forth in the Principles Annex, the Trustee or its agent will seek to enter into one or more Implementation Agreements with individual Electricity Distributors under which the Electricity Distributors will act as Implementation Agents to the Trustee. In this manner, the Trustee will delegate certain of its powers and duties to the Electricity Distributors.

3. Under section 5.1 of the Declaration, to the extent the Trustee has delegated any of its duties or powers, it shall be deemed to have satisfied the Standard of Care in respect of the subject matter of such delegation, subject to the Trustee's overall duty to exercise prudent oversight thereof. The Trustee is entitled to rely on an Electricity Distributor to discharge the duties delegated to it, as Implementation Agent, pursuant to an Implementation Agreement as described in this Annex.

4. Accordingly, and without limiting the Trustee's right to delegate under the Declaration and its other rights, powers and discretion as Trustee, the Trustee will be permitted to, and is expected to seek to, enter into Implementation Agreements with Electricity Distributors in order to further the Purpose. Without limiting the Trustee's discretion to negotiate and settle the terms and conditions of such Implementation Agreements, it is expected that such Implementation Agreements will include customary terms and conditions for an administrative services arrangement of this type and, in addition, would (subject to the acceptance and agreement of the applicable Electricity Distributor counterparty) address the following points in particular:

    a. **Identification of Applicable Primary Beneficiary Payees and Determination of Individual Distribution Amounts**

        i. Each Electricity Distributor would make an initial assessment of the financial needs of Primary Beneficiaries within its designated service area or region, having regard to the Selection Factors set forth in section 1.3 of the Principles Annex, together with applicable economic data, in order to prepare and provide to the Trustee an estimate of the number of Primary Beneficiaries who the Electricity Distributor reasonably expects would satisfy the Selection Factors.

        ii. Each Electricity Distributor would make an initial assessment of the measures it would recommend be included as Eligible Measures, having regard to the Measures Factors set forth in section 2.1 of the Principles Annex, in order to prepare and provide to the Trustee an estimate of the average cost per Primary Beneficiary Payee (as defined below) of such Eligible Measures that the Electricity Distributor reasonably expects would apply in respect of Primary Beneficiaries resident in its service area or region.

iii. Based on the product of (i) and (ii), above, and such other considerations as it considers to be directly relevant, each Electricity Distributor would make a written recommendation to the Trustee regarding the aggregate funding amount that the Electricity Distributor anticipates would be utilized under the Program by the Primary Beneficiaries resident in its service area or region (the "**Local Funding Estimate**"). Such recommendation would be accompanied, when submitted to the Trustee, by a detailed explanation regarding the assumptions, financial parameters, suitability considerations and other information underlying the Local Funding Estimate (including the type of information contemplated by the Selections Factors and the Measures Factors, which would be relied upon by the Trustee in its assessment regarding the allocation of available funding to or for the benefit of the Primary Beneficiaries across the specified areas and regions of Ontario.

iv. The Trustee would inform the Electricity Distributor regarding the aggregate of the amount determined by the Trustee to be made available under the Program for Primary Beneficiaries in the Electricity Distributor's designated service area or region (for each Electricity Distributor, its "**Maximum Electricity Distributor Allocation**") and as to any maximum amount that may be paid to or for the benefit of any single Primary Beneficiary located in the servicer area or region of the Electricity Distributor (the "**Maximum Primary Beneficiary Amount**"). The Maximum Electricity Distributor Allocation and Maximum Primary Beneficiary Amount may vary between areas and regions, among the Primary Beneficiaries within such areas and regions, and may be increased by the Trustee from time to time in its discretion.

v. Each Electricity Distributor would apply the principles set forth under "Identification of Primary Beneficiary Payees" in the Principles Annex to identify and make recommendations to the Trustee regarding the amount of funds (if any) to be distributed to or for the benefit of Primary Beneficiaries resident within its service area or region from time to time (the "**Primary Beneficiary Payees**").

vi. Each Electricity Distributor would ensure that the aggregate of the amounts it recommends be distributed to or for the benefit of Primary Beneficiary Payees from time to time does not exceed (1) its Maximum Electricity Distributor Allocation and (2) for any single Primary Beneficiary located in the service area or region of the Electricity Distributor, the lesser of (x) the applicable Maximum Primary Beneficiary Amount and (y) the estimated costs (including any applicable taxes, but excluding any amount payable to the Electricity Distributor by or on behalf of the Primary Beneficiary) to be incurred by or on behalf of such Primary Beneficiary (whether or not such costs have been paid or remain outstanding) in respect of Eligible Measures applied or to be applied in respect of the Primary Beneficiary's Ontario residence.

vii. The Trustee would provide written confirmation to each Electricity Distributor:

1. Either (x) that the recommendations specified of the Electricity Distributor in clause (v), above, have been accepted, or (y) as to the specific reasons for any non-acceptance; and

2. The amount of the distributions to be paid to or for the benefit of each Primary Beneficiary Payee that is resident in the Electricity Distributor's service area or region.

viii. With respect to each Primary Beneficiary resident in a Electricity Distributor's service area or region that is confirmed as a Primary Beneficiary Payee, the Electricity Distributor would provide the Trustee written confirmation as to:

1. The identity of such Primary Beneficiary Payee; and

2. The amount of the distribution paid to or for the benefit of such Primary Beneficiary Payee.

ix. If the amount of a distribution to be made to a Primary Beneficiary Payee is based on the estimated costs to be incurred by or on behalf of such Primary Beneficiary and, prior to making the distribution to the Primary Beneficiary Payee, the Electricity Distributor determines that the actual costs (including any applicable taxes but excluding any amount payable to the Electricity Distributor by or on behalf of the Primary Beneficiary) incurred or to be incurred by or on behalf of such Primary Beneficiary in respect of Eligible Measures applied or to be applied in respect of the Primary Beneficiary's Ontario residence has or would be less than such estimated costs, then the amount to be distributed to the Primary Beneficiary shall be based on such actual costs.

b. **Making of Distributions to Primary Beneficiaries**

i. It is expected that promptly after the Trustee confirms the identity of a Primary Beneficiary Payee resident in an Electricity Distributor's service area or region and the amount of the distribution to be paid to or for the benefit of such Primary Beneficiary Payee, the Trustee would arrange for payment to or on the direction of the Electricity Distributor of an amount equal to the amount of such distribution.

ii. It is expected that promptly upon receipt of funds in respect of a distribution to be made to a Primary Beneficiary Payee, the Electricity Distributor would arrange for payment of the full amount of such distribution to or for the benefit of the Primary Beneficiary Payee (including by direct payment to a third party of, or as a reimbursement or rebate of, the costs of applicable Eligible Measures installed at the residence of and for the benefit of the Primary Beneficiary Payee), without reduction or set-off by the Electricity Distributor.

iii. If the amount paid to an Electricity Distributor in respect of a distribution to be made to a Primary Beneficiary exceeds the actual amount of the

distribution made to or on behalf of the Primary Beneficiary, it is expected that the Trustee would require Electricity Distributor to return such excess to the Trustee, whereupon the proceeds of such returned amount shall continue to form part of the Assets.

c. **Establishment of Operational, Administrative, Record-Keeping and Other Systems and Policies by Electricity Distributors to facilitate the Program**

i. It is expected that the Electricity Distributor would establish such operational, administrative, record-keeping and other systems and policies as are necessary to facilitate the Program and perform its duties under the Implementation Agreement, including systems or policies to: identify Primary Beneficiary Payees; comply with applicable privacy and regulatory laws; communicate with Primary Beneficiaries on behalf of the Trust; assess Eligible Measures; determine the Local Funding Estimate; monitor its recommendations to the Trustee against its Maximum Electricity Distributor Allocation and the Maximum Primary Beneficiary Amount; receive funds from the Trust in respect of distributions to the Primary Beneficiary Payees and transfer such funds to the appropriate recipients for the benefit of the Primary Beneficiary Payees; preparation and timely delivery to Primary Beneficiary Payees of such documents as are required by the *Income Tax Act* (Canada); and create and maintain records in respect of the foregoing.

ii. The Electricity Distributor would set up a separate bank account for the purpose of receiving funds from the Trust in respect of distributions to the Primary Beneficiary Payees and the transfer of such funds to the appropriate recipients for the benefit of the Primary Beneficiary Payees.

d. **Reporting, Record-Keeping, Inspection and Disclosure and Compliance Matters**

i. The Electricity Distributor would provide record-keeping, clerical and bookkeeping services relating to all matters relating to its recommendations and the performance of its other duties and obligations under its Implementation Agreement.

ii. The Electricity Distributor would keep and maintain all financial records and non-financial documents and records relating to the provision of services under its Implementation Agreement.

iii. The Electricity Distributor would provide to the Trustee quarterly and annual reports ("**Reports**") for the duration of its Implementation Agreement. Such Reports would set out, among other things, the amounts of the distributions paid to or for the benefit of applicable Primary Beneficiary Payees, the average distribution amount per such Primary Beneficiary Payee, the Eligible Measures for which distributions have been made, and the uptake of energy efficiency measures.

iv. The Electricity Distributor would agree to provide to the Trustee such information as is necessary for the Trustee to (v) comply with applicable law;

(w) prepare financial statements for the Trust; (x) prepare and submit such documents as are required under the *Income Tax Act* (Canada); (y) comply with the Trust's applicable obligations under the Transfer Payment Agreement; and (z) such other matters as the Trustee reasonably requests.

v. The Trustee, its authorized representatives or an independent auditor would be permitted to, at its own expense, on twenty-four hours' notice to the Electricity Distributor and during normal business hours, inspect the records of and information respecting the Electricity Distributor to confirm its compliance with the Implementation Agreement, including regarding its processes for recommending the Primary Beneficiary Payees and their respective distribution amounts and regarding the delivery of Trust funds on behalf of the Trustee to or for the benefit of the Primary Beneficiary Payees.

e. **Standard of Care**

i. The Electricity Distributor would be required to agree to perform its duties provided under the Implementation Agreement exercising the degree of care, diligence and skill that a reasonably prudent Person would exercise in comparable circumstances.

ii. In performing its duties under the Implementation Agreement (including the recommending of Primary Beneficiary Payees to the Trustee), the Electricity Distributor would be required to agree to seek to avoid actual, potential or perceived conflicts of interest.

iii. The Electricity Distributor would be required to agree that it would not, in performing its obligations under the Implementation Agreement, take any action which it knows or ought reasonably to know would cause the Trustee or the Trust to be in violation of any law, rule or regulation applicable to it.

f. **Expenses**

The Electricity Distributor would be eligible to receive reasonable compensation and reimbursement of its actual out-of-pocket costs associated with the performance of its duties and obligations under the Implementation Agreement, subject to compliance with requirements substantially equivalent to the Province's Travel, Meal and Hospitality Expenses Directive. Such compensation amounts and reimbursement entitlements would be specified in the Implementation Agreement.

g. **Representations**

The Electricity Distributor would make customary representations to the Trust regarding, among other things, its legal capacity; authorization; non-contravention of law or material contract to which it is a party; and the enforceability of the Implementation Agreement.

h. **Indemnification**

The Electricity Distributor would be required to agree to provide customary indemnities to the Trust and the Trustee from and against claims, damages and liabilities which the Trust or Trustee may suffer or incur as the result of any breach of the Agreement by the Electricity Distributor or its representatives.

TRUSTEE REPLACEMENT ANNEX

1. The Advisory Committee shall consist of the following individuals:

   Robert Mace, President and Chief Executive Officer at Thunder Bay Hydro

   Bryce Conrad, President and Chief Executive Officer at Hydro Ottawa

   Brian Bentz, President and Chief Executive Officer at Alectra

   Ferio Pugliese, Executive Vice President Customer Care and Corporate Affairs at Hydro One

   Terry Young, Vice President Conservation and Corporate Relations at the Independent Electricity System Operator

2. In the event any member of the Advisory Committee resigns or is unable to act, it is expected that the remaining members of the Advisory Committee would appoint another resident of Ontario as a replacement.

3. On or before May 31, 2017, the Advisory Committee shall identify six residents of Ontario who have expressed that they are willing to act as members of the Board of Trustees and who, individually and collectively, satisfy the following criteria (collectively, the "**Selection Factors**"):

   a) each member demonstrates an understanding of the electricity sector including the electricity distribution sector;

   b) each member demonstrates an expertise in conservation and low income programs;

   c) three of the identified individuals will be representatives from separate electricity distributors, two individuals will be representatives from separate social services agencies and one individual member, who will be a non-voting member, will be an employee or representative of the Government of Ontario; and

   d) it is expected that representation by the Government of Ontario will be non-controlling.

4. If the Advisory Committee determines that changes to the Declaration (including to this Trustee Replacement Annex) are necessary in order to (a) replace, or appoint additional trustees to act with, the Original Trustee prior to the Original Trustee Replacement Date or (b) attract and receive confirmation of appointment of appropriately qualified individuals that the Advisory Committee believes would be suitable candidates to serve as members of the Board of Trustees, the Advisory Committee shall make recommendations regarding such necessary changes, including without limitation in respect of (i) any necessary limitations on the nature or scope of the appointment of the members of the Board of Trustees, (ii) the formation and empowerment of the Board of Trustees, and (iii) the duties, responsibilities, obligations, liabilities, indemnities, protections, limitations, restrictions,

compensation, expense reimbursement entitlements of members of the Board of Trustees.

5. The Advisory Committee shall recommend that the Original Trustee appoint the individuals so identified to become the initial members of the Board of Trustees pursuant to section 5.7 of the Declaration.

6. If any of the individuals recommended under paragraph 4 or under this paragraph are not accepted and appointed by the Original Trustee pursuant to section 5.7 of the Declaration, the Advisory Committee shall forthwith identify and recommend an alternative individual or individuals willing to act and whose presence as a member of the Board of Trustees would result in the Trustee collectively satisfying the criteria in paragraph 3 above.

7. Upon the appointment of six trustees (five voting and one non-voting) pursuant to section 5.7 of the Declaration, the Advisory Committee will be functus.

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DECLARATION OF TRUST

Made as of March •, 2017

by

COMPUTERSHARE TRUST COMPANY OF CANADA

establishing

AFFORDABILITY FUND TRUST

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DECLARATION OF TRUST

This Declaration of Trust is made as of March •, 2017, by Computershare Trust Company of Canada, a trust company established under the laws of Canada and licensed to carry on business as a trust company in each of the provinces and territories of Canada (together with its successors and assigns and the other trustees (including the Board of Trustees) contemplated herein, the "**Trustee**").

WHEREAS Computershare Trust Company of Canada, as settlor, wishes to establish a trust to acquire, hold, manage, invest, apply and dispose of certain property for the benefit of certain Beneficiaries as herein described.

NOW THEREFORE Computershare Trust Company of Canada hereby declares that it holds in trust as trustee (a) the sum of ONE HUNDRED DOLLARS ($100) contributed by it on this date and (b) all other property of every type and description which it may hereafter acquire or hold in its capacity as trustee of the Trust and all income therefrom and proceeds thereof, to hold, manage, invest, apply and dispose of same on and subject to the provisions set forth in this Declaration of Trust, including the annexes and schedule attached hereto.

SECTION 1
INTERPRETATION

1.1 Definitions

In this Declaration:

(a) "***Administrative Services Agent***" means each agent, which may include any Electricity Distributor or other Person, appointed from time to time under an Administrative Services Agreement, and its successors and permitted assigns solely in such capacity.

(b) "***Administrative Services Agreement***" means each agreement entered into from time to time by the Trust and one or more Administrative Services Agents or other Persons, in furtherance of the Purpose, under which the Administrative Services Agent agrees to provide specified administrative and other services to and on behalf of the Trustee, as such agreement may be amended, supplemented, restated, renewed or replaced from time to time and includes the agreement entered into on or about the date hereof between the Trustee and Hydro One Limited.

(c) "***Assets***" means, collectively, the following:

(i) the $100 Canadian referred to above, contributed by Computershare Trust Company of Canada on the date hereof;

(ii) all other property which is now or which at any time in the future may be issued, assigned, transferred, provided, donated, gifted and contributed to the Trustee (including pursuant to the Transfer Payment Agreement) to be held in trust pursuant to this Declaration (and which the Trustee is willing to accept and hold);

(iii) all acquisitions of property made by the Trust;

(iv) all property which may at any time be substituted for or in respect of the property referred to in clauses (i), (ii) and (iii), above;

(v) all income of the Trust, including investment income generated by the investment of the property referred to in clauses (i), (ii), (iii) and (iv), above; and

(vi) all proceeds of disposition of any of the property referred to in clauses (i) through (v) above,

but excludes any property paid out or distributed (whether out of income or capital) pursuant to the provisions of this Declaration.

(d) "***Beneficiary***" means each Primary Beneficiary and each Residual Beneficiary, as applicable.

(e) "***Board of Trustees***" means (i) as of the Original Trustee Replacement Date, the individual trustees appointed by the Original Trustee pursuant to Section 5.7 on the basis described in the Trustee Replacement Annex, and (ii) thereafter, the group of trustees appointed hereunder and acting in such capacity.

(f) "***Business Day***" means any working day, Monday to Friday inclusive, excluding statutory and other holidays, namely: New Year's Day; Family Day; Good Friday; Easter Monday; Victoria Day; Canada Day; Civic Holiday; Labour Day; Thanksgiving Day; Remembrance Day; Christmas Day; Boxing Day and any other day on which the Province has elected to be closed for business.

(g) "***Declaration***" means this Declaration of Trust, as it may be amended, restated, supplemented or otherwise modified from time to time, and includes each of the annexes and the Schedule attached hereto which constitute and form an integral part of this Declaration.

(h) "***Electricity Distributor***" means, in respect of a designated service area or region in Ontario, the distributor of electricity to residences located in such area or region.

(i) "***Electricity Invoice***" means an invoice issued by an Electricity Distributor in respect of electricity charges and related services and amounts incurred or assessed in respect of a residence located in the Electricity Distributor's designated service area or region in Ontario.

(j) "***Eligible Investments***" means (i) a deposit receipt, note, certificate or instrument issued, guaranteed or endorsed by a bank listed in Schedule I to the *Bank Act* (Canada), which provides that the principal and any interest shall be fully paid no later than one year after the day the investment was made, or (ii) a deposit account at a bank listed in Schedule I to the *Bank Act* (Canada).

(k) "***Eligible Measures***" means electricity efficiency and/or conservation measures determined by the Trustee from time to time on the basis contemplated in the Principles Annex and in the manner specified in and having regard to the Permitted Delegations Annex.

(l) "***Final Distribution Date***" means the earlier of (a) the date (if any) on which the Trustee determines (by a resolution of the Board of Trustees) that no further distributions are likely to be made to any Primary Beneficiary and (b) ~~20••~~ December 31, 2019.

(m) "***HAP Eligible Person***" means an "Eligible Person" as defined in Section 3.1 of the document entitled "Conservation First Framework LDC Took Kit" published by the Independent Electricity System Operator and designated as Final v3.0 – March 11, 2016, as amended in accordance with the Energy Conservation Agreement between the Independent Electricity System Operator and Electricity Distributors.

(n) **"Implementation Agent"** means each agent which may include any Electricity Distributor or other Person, appointed from time to time under an Implementation Agreement, and its successors and assigns solely in such capacity.

(o) **"Implementation Agreement"** means each agreement entered into from time to time by the Trustee and one or more Implementation Agents or other Persons in furtherance of the Purpose under which the Implementation Agent would agree to provide specified services to and on behalf or the Trustee (including, following the Original Trustee Replacement Date, as contemplated by the Permitted Delegations Annex) in connection with the implementation of the Program as such agreement may be amended , supplemented, restated, renewed or replaced from time to time.

(p) "***Minister of Energy***" means the Minister of Energy or such other member of the Executive Council as may be assigned primary ministerial responsibility for the administration of the *Ministry of Energy Act, 2011* under the *Executive Council Act*.

(q) "***Original Trustee***" means Computershare Trust Company of Canada, acting in its capacity as trustee hereunder, together with any additional or replacement Trustee appointed hereunder prior to the Original Trustee Replacement Date and any of their respective successors and assigns.

(r) "***Original Trustee Replacement Date***" has the meaning specified in Section 5.7, being the date on which the Original Trustee is replaced as trustee under this Declaration by the Board of Trustees as contemplated under Section 5.7.

(s) "***Permitted Delegations Annex***" means the Permitted Delegations Annex set forth as an annex to this Declaration.

(t) "***Person***" includes any individual, sole proprietorship, corporation, partnership, joint venture, association, society, club, board, chamber, joint-stock company, trust, trustee, unincorporated or incorporated organization or entity or government or any entity, agency or political subdivision thereof.

(u) "***Primary Beneficiary***" means each individual that, as of a time of determination, satisfies each of the following criteria:

(i) the individual owns, rents or leases a residence located in Ontario and is the primary or secondary electricity utility account holder named on an Electricity Invoice issued in respect of that residence; and

(ii) the individual is not a HAP Eligible Person.

(v) "***Principles Annex***" means the Principles Annex set forth as an annex to this Declaration.

(w) "***Province***" means the Province of Ontario.

(x) "***Program***" means the establishment, promotion, implementation and administration of a program to achieve the Purpose on the basis contemplated in this Declaration.

(y) "***Purpose***" means (i) the making of distributions to Primary Beneficiaries who are identified and whose needs are assessed in accordance with section 3.1 and 3.2 of this Declaration, having regard to (x) the principles set forth in the Principles Annex, (y) the manner and basis of implementation and administration of the Program contemplated in the Permitted Delegations Annex, and (z) the other terms, limitations and requirements set forth in this Declaration, and (ii) to the extent that Assets are available following the distributions made to Primary Beneficiaries as contemplated in (i), above, the making of distributions to Residual Beneficiaries who are identified and whose needs are assessed in accordance with section 3.3 and otherwise having regard to the other terms, limitations and requirements set forth in this Declaration.

(z) ***"Residual Beneficiary"*** means each charitable organization identified by the Trustee and specified as a residual beneficiary hereunder from time to time, selected by the Trustee in consultation with and having regard to the recommendations of the Ontario Energy Board in accordance with section 3.3.

(aa) "***Transfer Payment Agreement***" means the transfer payment agreement dated as of March •, 2017 between the Trustee and Her Majesty the Queen in right of Ontario as represented by the Minister of Energy, as such agreement may be amended, restated, supplemented or otherwise modified by the further agreement of the parties thereto from time to time.

(bb) "***Trust***" means Affordability Fund Trust, a trust established under and governed by the laws of the Province of Ontario pursuant to this Declaration.

(cc) "***Trustee***" means (i) the Original Trustee and (ii) on and after the Original Trustee Replacement Date, the Board of Trustees acting together in accordance with and subject to Section 5.7 and in accordance with the rules and procedures adopted by the Board of Trustees pursuant to Section 5.8.

(dd) "***Trustee Replacement Annex***" means the Trustee Replacement Annex set forth as an annex to this Declaration.

1.2 Headings and Table of Contents

The insertion of headings and the provision of a table of contents are for convenience of reference only and shall not affect the construction or interpretation of this Declaration.

1.3 References

Unless otherwise specified, all references to Sections are to Sections of this Declaration. The words "hereto", "herein", "hereof", "hereunder" and similar expressions refer to this Declaration and not to any particular Section or other provision of this Declaration.

1.4 Number and Gender

Unless otherwise specified, words importing the singular include the plural and vice versa and words importing gender include all genders.

1.5 Governing Law

This Declaration shall be governed by, and construed and interpreted in accordance with, the laws of the Province of Ontario and of Canada applicable therein.

1.6 Severability

Any provision of this Declaration which is illegal, invalid or unenforceable in any jurisdiction shall not affect the legality, validity or enforceability of the remaining provisions and any such illegality, invalidity or unenforceability in any jurisdiction shall not affect the legality, validity or enforceability of such provision in any other jurisdiction.

1.7 Reference to the Trust and the Trustee

For greater certainty, where any reference is made in this Declaration to an act to be performed by or for or on behalf of the Trust, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Trustee in its capacity as trustee of the Trust, and, where any reference is made in this Declaration to an act to be performed by or for or on behalf of the Trustee, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Trustee solely in its capacity as trustee of the Trust. Except as provided under the Transfer Payment Agreement, no Person dealing with the Trust or the Trustee shall be bound to make any enquiry concerning, or has the right to require production of, any evidence of the validity of any act of, or transaction purporting to be made by, the Trustee.

1.8 Defect in Appointment

No action taken by the Trustee will be invalid or ineffective by reason only of any defect in the appointment of the Trustee or the non-compliance by the Trustee with any rules or procedures adopted by the Trustee and which is discovered after the taking of such action.

SECTION 2
CONCERNING THE TRUST

2.1 Objectives

The Trust is established to hold, invest, apply and dispose of the Assets for the benefit of the Beneficiaries in furtherance of the Purpose, as provided for in this Declaration. In furtherance of the Purpose:

(a) the Original Trustee shall hold and invest the Assets as contemplated in this Declaration until the Original Trustee Replacement Date, after which the Board of Trustees shall be duly appointed hereunder; and

(b) the Board of Trustees shall hold, invest, apply and dispose of the Assets in accordance with this Declaration, including by determining the identities of and distributions (if any) to be made to or for the benefit of the Primary Beneficiaries in accordance with Sections 3.1 and 3.2 of this Declaration, having regard to the principles set forth in the Principles Annex and in the manner and on the basis contemplated in the Permitted Delegations Annex, or otherwise by determining the identities of and distributions to be made to or for the benefit of any Residual Beneficiary in accordance with Section 3.3,

in each case and in all respects subject to the terms, limitation and requirements set forth in this Declaration.

2.2 Name of the Trust

The name of the Trust shall be the "Affordability Fund Trust" or such replacement name as the Trustee shall determine and specify from time to time. The Trustee shall hold the Assets and conduct the activities of the Trust under such name or variation thereof (including any variation of such name in the French language). If the Trustee determines to change the name of the Trust, the Trustee may specify and use such other designation or adopt such other name (including any name in the French language) as it considers appropriate and may hold the Assets and conduct the activities of the Trust under such designation or other name.

2.3 Location

The head office and the situs of the administration of the Trust shall be • or such other address in Ontario as the Trustee may determine from time to time.

2.4 Fiscal Year

The fiscal year of the Trust shall end on December 31 of each year.

SECTION 3
DISTRIBUTIONS

3.1 Distributions to Primary Beneficiaries

After the Original Trustee Replacement Date and prior to the Final Distribution Date, the Trustee shall undertake diligent efforts in good faith to distribute the Assets (including capital or income) to the Primary Beneficiaries identified based on the application of the principles specified in the Principles Annex and in the manner and in the amounts determined on the basis contemplated by the Permitted Delegations Annex, in each case in the amounts and to the extent specified herein and therein, subject in all respects to the exercise by the Trustee of its discretion hereunder and to the exclusion of the other Beneficiaries.

3.2 Amount of Distributions to Primary Beneficiaries

For the purposes of determining the amount of distributions to be made to the Primary Beneficiaries, the Trustee shall have regard to and be entitled to rely on the recommendations of and information provided by Electricity Distributors acting as Implementation Agents appointed for the purposes, in the manner and substantially on the terms contemplated in the Permitted Delegations Annex, without any duty or obligation to verify or makes enquiries regarding the basis for or propriety of such recommendations or the accuracy or completeness of such information, except if and to the extent that the Trustee, in its discretion, determines that (i) it has actual knowledge that such recommendations are contrary to the reasonable application of the principles set forth in the Principles Annex or have been made on a basis that is manifestly contrary to such principles or the delegations and activities specified or contemplated to be undertaken under the Permitted Delegations Annex or (b) such information is known by the Trustee to be erroneous, contain a material misrepresentation or is materially incomplete.

3.3 Distributions to Residual Beneficiaries

Prior to the Final Distribution Date, the Trustee shall identify the Residual Beneficiary, or if more than one the Residual Beneficiaries and their respective allocations, by consulting with and having regard to the recommendations of the Ontario Energy Board, based on those charitable organizations which provide support services for Low Income Energy Assistance Program Emergency Financial Assistance (LEAP EFA) and the Ontario Electricity Support Program (OESP) or other charities that OEB may identify as relating to the Purpose. Following the Final Distribution Date, the Trustee shall, subject to compliance with section 7.3 and completion of a final audit, distribute all remaining Assets (including capital or income) to the Residual Beneficiaries, in each case in the amounts and to the extent determined by the Trustee in its discretion hereunder (having consulted with and having had regard to the recommendations of the Ontario Energy Board as aforesaid) and to the exclusion of the other Beneficiaries.

SECTION 4
POWERS OF THE TRUSTEE

4.1 General

Subject to and in compliance with the terms, limitations and restrictions of this Declaration and notwithstanding applicable trust legislation, the Trustee shall have, without other or further

authorization, full, exclusive and absolute power, control and authority over the Assets and over the affairs and activities of the Trust to the same extent as if the Trustee were not a trustee, but rather the sole and absolute owner of the Assets in its own right, including such power, control and authority to do all such acts and things as in its sole judgment and discretion are necessary, incidental or desirable for carrying on the affairs and activities of the Trust, with such powers of delegation as may be permitted or otherwise contemplated by this Declaration. Except as expressly provided in this Declaration, the enumeration in this Declaration of any specific power or authority shall not be construed as limiting the aforesaid general power or authority or any other specific power or authority set out herein. Subject to the terms, limitations and restrictions of this Declaration, every discretion or power hereby conferred on the Trustee is an absolute and uncontrolled discretion or power.

4.2 Specifically Enumerated Powers

The Trustee shall have the following specific powers and authorities:

(a) ***Transfer Payment Agreement.*** The Trustee shall have the power to enter into, amend, supplement, modify and perform its obligation under the Transfer Payment Agreement.

(b) ***Contracts and Undertakings.*** The Trustee shall have the power to enter into, amend, supplement, modify and perform its obligation under any contract entered into or undertaking given by the Trustee in furtherance of the Purpose, including any Administrative Services Agreement and any Implementation Agreement.

(c) ***Power to Own, Hold and Manage.*** Subject to section 4.2(d), the Trustee shall have the power to own, hold and manage the Assets in such manner as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable.

(d) ***Power to Invest in Eligible Investments.*** The Trustee shall have the power to invest the Assets only in Eligible Investments, and to change such Eligible Investments at any time and from time to time, all as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable, but always having regard to the Trustee's expectations regarding the timing of payments to be made to the Beneficiaries hereunder. If an investment of Assets in Eligible Investments would not be authorized under the applicable trust laws of Ontario, the Trustee shall nevertheless be permitted to make an investment of the Assets in such Eligible Investments. The Trustee will have no liability for the diminution in the value of any investment in Eligible Investments made hereunder.

(e) ***Power to Dispose of Assets.*** The Trustee shall have the power to sell, convey, assign, transfer, exchange and in any other manner dispose of the Assets or any part or parts thereof free and clear of any and all trusts established under this Declaration, by public or private sale, for cash or on credit, with or without advertisement, and subject to such restrictions, stipulations, agreements and reservations as the Trustee in its sole and absolute discretion may consider appropriate or advisable, and to execute and deliver and perform any agreement, deed, conveyance, transfer or other document or instrument in connection with the foregoing.

(f) ***Power to Apply Assets and Proceeds to Make Distributions to Beneficiaries.*** The Trustee shall have the power to apply the Assets and the proceeds and income derived therefrom to make distributions to the Beneficiaries contemplated by Section 3, and to execute and deliver

and perform any agreement, deed, conveyance, transfer or other document or instrument in connection therewith.

(g) ***Power to Delegate and to Appoint Agents, etc.*** The Trustee shall have the power to appoint, employ or contract with any Person as the Trustee in its sole and absolute discretion may consider appropriate or advisable in connection with the activities of the Trust. Without limiting the generality of the foregoing:

(i) the Trustee will have the power at any time and from time to time to appoint, employ or retain consultants, financial advisers, technical advisers, legal counsel, accountants, administrative services agents, implementation agents, insurers, insurance agents and insurance brokers, as the Trustee may require for the purpose of discharging its duties hereunder and shall not be responsible for or for the actions of any of them, including to:

(A) act for and on behalf of the Trust in connection with any and all matters in any way relating to the negotiation, settlement, entering into, amending, performance and enforcement of the Transfer Payment Agreement, the Administrative Services Agreements, the Implementation Agreements, and any other agreements and contracts to which the Trust becomes a party in accordance with this Declaration;

(B) to provide or cause to be provided any or all kinds of administrative and other services in any way relating to the activities of the Trust;

(C) to act as attorney in fact, agent or trustee in the acquisition, holding, investment, application, sale or other disposition of the Assets and in the handling, prosecuting, defending or settling of any claims of or made against the Trust;

(D) to value the Assets and determine the net income of the Trust; and

(E) to make any filings, elections and submissions (including in respect of taxation matters) in connection with the Trust's compliance with applicable laws and regulatory requirements; and

(ii) the Trustee may pay remuneration and reimbursements from the Assets for services performed for it or on its behalf in the discharge of the trusts hereof without taxation for costs or fees of any counsel, solicitor or attorney.

Without limiting the foregoing, it is expected that the Board of Trustees will seek to enter into Implementation Agreements with Electricity Distributors for the purposes contemplated by the Permitted Delegations Annex, and on such terms and conditions (including terms and conditions as to the payment of reasonable fees and expenses) not inconsistent therewith as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable.

(h) ***Power to Operate Accounts.*** The Trustee shall have the power to (i) open and operate accounts at any chartered bank, trust company or other financial institution in Canada or

elsewhere, as the Trustee in its sole and absolute discretion may consider appropriate or advisable; (ii) deposit therein any moneys or securities forming part of the Assets whether or not such deposits will earn interest; (iii) withdraw such deposits at such times and in such manner as the Trustee may determine; (iv) draw, make, endorse, deposit or otherwise deal in cheques, bills of exchange, promissory notes, drafts and other kinds of instruments and securities; and (v) enter into contracts or agreements with any such chartered bank, trust company or other financial institution containing such terms and provisions as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable. In connection therewith, the Trustee shall have no liability or responsibility for any loss which may occur by reason of the failure of any such chartered bank, trust company or other financial institution.

(i) ***Power to Collect, etc.*** The Trustee shall have the power to (i) collect, sue for, receive and give receipts for all sums of money or other property due to the Trust; (ii) consent to extensions of time for payment or to the renewal of any securities or obligations; (iii) engage or intervene in, prosecute, defend, compound, compromise, abandon or adjust by arbitration or otherwise, any demands, claims, actions, suits or proceedings relating to the Trust or the Assets; (iv) exercise any and all remedies available to the Trustee under any agreement or as may otherwise be available, including any power of foreclosure or sale available at law; (v) in connection with any such foreclosure or sale, purchase or otherwise acquire title to any property and to convey good title thereto free of any and all trusts hereby established, or to take or retake possession of any property secured under any agreement or instrument; (vi) extend the time, with or without security, for the payment or delivery of any debts or property; (vii) execute and deliver releases, acquittances, discharges, agreements or other instruments related thereto; and (viii) pay or satisfy any debts or claims upon any evidence that the Trustee, in its sole and absolute discretion, may determine to be sufficient.

(j) ***Power to Obtain Insurance***. The Trustee shall have the power to enter into contracts for or in relation to or otherwise obtain policies of insurance for the purpose of insuring the risks associated with the Trust, including to insure the Trustee (including the members of the Board of Trustees) against any risk of loss associated with assuming and performing the duties as Trustee. Without limiting the foregoing, it is expected that the Board of Trustees will obtain commercial general liability insurance from insurers having a secure A.M. Best rating of B+ or greater, or the equivalent, that in the opinion of the Recipient a prudent person similar to the Recipient would maintain, and having an inclusive limit of not less than $2,000,000 per occurrence and providing for contractual liability coverage.

(k) ***Power to Pay Trustee's Fees.*** The Original Trustee shall be entitled to be paid and receive the fees set forth in the Original Trustee's schedule of fees delivered as of or prior to the date hereof as compensation for its services under this Declaration, and to be reimbursed for its out-of-pocket expenses reasonably incurred, in each case from the Assets and without the approval of any Beneficiary or any court. The Original Trustee shall be entitled, in its sole and absolute discretion, to withdraw funds from time to time for such purpose from any account of the Trust. Members of the Board of Trustees shall be entitled to reimbursement for and in respect of their out-of-pocket expenses reasonably incurred in discharging their respective duties and obligations under this Declaration, in each case without the approval of any Beneficiary or any court, provided that the members of the Board of Trustees have general regard to sorts of limitations as are set forth in the "Travel, Meal and Hospitality Expenses Directive of the

Province" specified and amended by the Province from time to time, a copy of the current version of which is attached as Exhibit 1 to the Principles Annex.

(l) ***Power to Pay Taxes.*** The Trustee shall have the power to (i) pay, deduct, withhold or remit any taxes or assessments which are required by law to be paid, deducted, withheld or remitted together with or from any payment made by the Trustee; (ii) pay all taxes or assessments of whatever kind or nature imposed upon or against the Trust or the Trustee in connection with the Assets or any part thereof; (iii) collect and remit all taxes and assessments of whatever kind or nature required to be collected and remitted by the Trust or the Trustee in connection with their activities or the Assets or any part thereof; (iv) appeal, settle or compromise tax claims or liabilities; and (v) for the foregoing purposes, to make such returns, elections and submissions and do all such other acts and things as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable.

(m) ***Power to Appoint Auditors.*** The Trustee shall have the power to select and appoint and discharge and re-appoint, in its sole and absolute discretion, an auditor or auditors of the Trust and to settle and pay the fees of any such auditor or auditors from any account of the Trust.

(n) ***Form of Accounts.*** The Trustee shall have the power to determine and change from time to time, in its sole and absolute discretion, the method or form in which the accounts of the Trust will be kept and shall not be required to keep or provide accounts in the form usually required by law to be kept or provided by trustees; provided that such method or form reasonably complies with generally accepted accounting principles in effect in Canada to the extent applicable.

(o) ***Title to Assets.*** The Trustee shall have the power to cause all or any part of the Assets to be held by or registered, in its sole and absolute discretion, in the name of any Person.

(p) ***Delegation of Discretion***. The Trustee shall have the power to delegate the right and power to exercise, or concur in the exercise of any discretion or power, conferred on the Trustee in this Declaration or conferred by law to any one or more of its directors, officers, employees, agents, representatives or to such other Person, as the Trustee, in its sole and absolute discretion, may think is appropriate or advisable, including to one or more Administrative Services Agents under an Administrative Services Agreement and to one or more Implementation Agents and their respective employees, officers and directors under a related Implementation Agreement entered into by the Trust substantially on the basis contemplated in the Permitted Delegations Annex. In particular, the Trustee shall have the power to accept, rely on and follow the recommendations of an Electricity Distributor made under and having regard to the Permitted Delegation Annex with respect to the identification of, and the determination of distributions (if any) to be made to, any Primary Beneficiary, except if and in so far as the Trustee has actual knowledge that (1) such Primary Beneficiary did not in fact satisfy the "Selection Factors" specified in the Principles Annex as of the applicable time of determination; and/or (ii) the amount recommended to be distributed to the Primary Beneficiary was not calculated in substantial compliance with, or was calculated in a manner that is manifestly contrary to the requirements set forth or contemplated in, the Permitted Delegation Annex or the applicable Implementation Agreement.

(q) ***Additional Powers.*** The Trustee shall have the power to perform and do all such other acts, to take such steps and to execute all such deeds, transfers, assignments, agreements and

other documents and instruments as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable for the carrying out of any of its powers hereunder or of any of the activities of the Trust as herein contemplated, or for the carrying out, promotion or advancement of the interests of the Trust, whether or not any of such acts, things, documents or instruments are herein expressly mentioned. Any good faith determination by the Trustee as to what is necessary, desirable or appropriate to carry out its powers or activities of the Trust as contemplated under this Declaration or to carry out, promote or advance the interests of the Trust shall be conclusive. Any construction of this Declaration or any determination as to the activities of the Trust or the existence of any power or authority hereunder made in good faith by the Trustee, relying upon the advice of counsel, shall be conclusive. In construing the provisions of this Declaration, there shall be a presumption in favour of a grant of power to the Trustee.

SECTION 5
CONCERNING THE TRUSTEE

5.1 Duty of Trustee

In performing its duties and exercising its powers under this Declaration, the Trustee shall act honestly, in good faith and with a view to the best interests of the Trust and the Beneficiaries and shall exercise that degree of care, diligence and skill that a reasonably prudent trustee would exercise in comparable circumstances (the "**Standard of Care**"). The Trustee shall observe and act in accordance with the terms of, and shall observe and comply with the limitations and restrictions set forth in, this Declaration, including having due regard to the principles set forth in the Principles Annex. To the extent that the Trustee has so delegated any of its duties or powers, it shall be deemed to have satisfied the Standard of Care in respect of the subject matter of such delegation, subject to the Trustee's overall duty as a trustee to exercise prudent oversight in relation to such delegation. Unless required by law, the Trustee will not be required to give any security, bonds or sureties in any jurisdiction for the performance of any of its duties and obligations under this Declaration. The Trustee (including the individual members of the Board of Trustees) will not be required to devote its entire time to the trust activities.

5.2 Limitation of Liability

The Trustee shall not be personally liable in tort, contract or otherwise to any Beneficiary or any other Person for any loss or diminution in the value of the Assets, or for any action or failure to act on the part of the Trustee or any of its employees or agents or any other Person, and shall not be subject to any personal liability for any debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses incurred by or against the Trust, howsoever arising, and resort will be had solely to the Assets for the payment, performance or satisfaction thereof. No property or assets of the Trustee, owned in its personal capacity or otherwise, will be subject to levy, execution or other enforcement procedure**s** with respect to any obligation under this Declaration. However, the foregoing limitations in this Section shall not apply where the Trustee has demonstrated gross negligence, bad faith, fraud or wilful misconduct.

5.3 Liability of Trustee under Contracts

Any document or instrument creating a liability or obligation of the Trust or of the Trustee will be conclusively deemed to have been executed by the Trustee only in its capacity as Trustee of

the Trust and will be binding upon the Trustee only in its capacity as trustee hereunder and resort may not be had to, nor recourse or satisfaction be sought from, the property of the Trustee other than the Assets, whether owned by its in its personal capacity or in any other capacity other than in its capacity as Trustee of the Trust, or from its employees or agents, and in all cases resort will be had solely to the Assets for the payment, performance or satisfaction of any such liability or obligation. However, the foregoing limitations in this Section shall not apply where the Trustee has demonstrated gross negligence, bad faith, fraud or wilful misconduct. Each document or instrument creating a liability or obligation of the Trust or of the Trustee shall contain a provision providing for the aforesaid limitation of liability.

5.4 Funds of the Trustee

The Trustee shall not be required to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers.

5.5 Indemnification of Trustee

In addition to and without limiting any other protection hereunder or otherwise by law of the Trustee and its respective employees, agents, representatives and assigns (in this Section 5.5, collectively, the "**Representatives**"), the Trustee and its respective Representatives shall be indemnified, defended and saved harmless out of the Assets from, against and in respect of any and all liabilities arising or related to actions taken or omitted to be taken by any agent of the Trustee, losses, claims (including any claim arising out of the assessment of any tax on income by a taxing authority), damages, penalties, fines, actions, suits, demands, levies, assessments, costs, charges, expenses and disbursements (including, without limitation, any and all legal and advisor fees and disbursements) (in this Section 5.5, collectively, the "**Liabilities**") of whatever kind or nature which may at any time be suffered by, imposed upon, incurred by or asserted against the Trustee and its Representatives, whether groundless or otherwise, howsoever arising from or out of any act, omission or error of the Trustee, in each case made in connection with its acting as Trustee hereunder, in each case except and to the extent that the Liabilities are a result from or are caused by gross negligence, wilful misconduct, bad faith or fraud. Further, except as provided in section 5.2, the Trustee shall not be liable to any Beneficiary for any loss or damage relating to any matter regarding the Trust, including any loss or diminution in value of the Assets. Notwithstanding any other provision hereof, the obligations provided for in this section 5.5 shall survive any termination of the Trust, whether by reason of removal or resignation of the Trustee, termination or discharge of this Declaration or otherwise.

5.6 Reliance upon Advice

Subject to section 5.1, in performing its duties and exercising its powers hereunder, the Trustee may rely and may act or not act, and shall be fully protected in relying and acting or not acting, upon (a) any statement, telecopy or other electronic means of communication, writing, notice, resolution, report, opinion or other document or conversation believed by it to be genuine and correct and to have been signed, sent or made by the proper Person; (b) any opinion or advice received or information obtained from auditors, solicitors, or other professional advisers, whether retained by the Trustee or otherwise, and shall not be responsible or held liable for any loss or damage resulting from so relying or acting or not acting; and (c) the advice and actions of any

Administrative Services Agent or Implementation Agent, including in connection with the delegations and reliances contemplated under the Permitted Delegations Annex. For greater certainty, it shall not be necessary for the Trustee to ascertain whether or not the Persons who have executed, signed or otherwise issued, authenticated or receipted such papers, writings or documents (including any Administrative Services Agreement or any Implementation Agreement or any other contract entered into by the Trustee) have authority to do so or that they are the same Persons named therein or otherwise to pass upon any requirement of such papers, writing or documents that may be essential for their validity or effectiveness or upon the truth and acceptability.

5.7 Replacement of the Original Trustee

The Persons identified in the Trustee Replacement Annex are hereby appointed to comprise the Advisory Committee contemplated therein (the "**Advisory Committee**"). The Original Trustee shall promptly request that the Advisory Committee make recommendations with respect to the composition of the "Board of Trustees", as contemplated by the Trustee Replacement Annex. The Original Trustee shall have no duty or obligation to investigate the basis for any of the Advisory Committee's recommendations and may rely on such recommendations without any duty of enquiry, supervision or oversight with respect to the activities and decision-making processes adopted by the Advisory Committee in its discretion, in full satisfaction of the Original Trustee's Standard of Care with respect to such matters hereunder. Except where it is manifestly apparent to the Original Trustee that the individuals recommended by the Advisory Committee to become members of such Board of Trustees are disqualified from so acting on the basis of manifest non-compliance with the "Selection Factors" set forth in the Trustee Replacement Annex, the Original Trustee shall appoint, as members of the Board of Trustees, the six (five voting and one non-voting) individuals recommended for appointment to the Board of Trustees by the Advisory Committee. If the Original Trustee declines to appoint any individual recommended by the Advisory Committee, the Original Trustee will promptly request that the Advisory Committee provide a further recommendation whom the Original Trustee shall appoint as a member of the Board of Trustees unless it is manifestly apparent to the Original Trustee that the individual so recommended is also disqualified from so acting on the basis of manifest non-compliance with the "Selection Factors" set forth in the Trustee Replacement Annex,. Upon the appointment of such six individuals pursuant to this provision and their agreement to act as members of the Board of Trustees, the Original Trustee shall be deemed to have resigned and shall cease to be a trustee (such resignation occurring on the "**Original Trustee Replacement Date**").

5.8 Rules and Procedures of the Board of Trustees

(a) ***Initial Requirements***. As soon as practicable and in any event no later than one month following the Original Trustee Replacement Date, the Board of Trustees id expected to meet to take such decisions and actions as they deem necessary to ensure the proper management and administration of the Trust. The date (and location if in person) of the initial meeting shall be determined by a majority of the Board of Trustees.

(b) ***Meetings.*** Subject to the Board of Trustees' discretion to make such rules and procedures that they may deem desirable, meetings of the Board of Trustees may be held at such time and place as the trustee members of the Board of Trustees may agree upon or as they may fix by

resolution for the purpose or if the meeting is called as hereinafter mentioned then at such time as may be designated in the notice calling the meeting. A meeting of the Board of Trustees may be called at any time by any two members of the Board of Trustees by two Business Days' notice given to the members of the Board of Trustees. No notice of any Board of Trustees' meeting shall be necessary when a quorum is present if those comprising the quorum consent to the transaction of the affairs of the Trust and the absent trustee or trustees, if any, either before or after the meeting shall waive in writing notice of the meeting. Meetings of the Board of Trustees may be conducted in person, by telephone, or in such other manner as determined by the Board of Trustees. The Board of Trustees may elect a Chairperson.

(c) ***Quorum.*** At any meeting of the Board of Trustees, a majority of the voting members of the Board of Trustees shall be a quorum irrespective of the number of members in office. The decision of the majority of the voting members where quorum exists shall govern and shall be binding for all purposes and shall be acted upon and carried out in the same manner and with the same effect as if all the voted members concurred therein; provided always that in the case of equality of votes the Chairperson, if any, shall not be entitled to cast a second or deciding vote.

(d) ***Power to Adopt Rules and Procedures.*** The Board of Trustees may make such rules and procedures not inconsistent herewith as it may deem desirable for the proper management and administration of the Trust and the discharge of the responsibilities of the Board of Trustees.

(e) ***Replacement of Members of the Board of Trustees***. The Board of Trustees shall have the power to replace any vacancy arising following the Original Trustee Replacement Date according to such rules and procedures as they deem appropriate subject to compliance with the Selection Factors specified in Trustee Replacement Annex and having regard for such considerations necessary to ensure that the composition of the Board of Trustees will be able to discharge its responsibilities in respect of the Declaration. If necessary, the Board of Trustees may fill any vacancy by application to the Courts of Ontario in the event of an unfilled vacancy.

(f) ***Decisions of the Board of Trustees.*** Decisions and actions of the Board of Trustees shall be made by voting, with each individual voting member having one vote. Subject to quorum requirements, a majority vote shall be determinative in respect of such decisions and actions. Subject to quorum requirements, any decision or action taken by the majority of voting members will represent the decision or action of the Trustee, and not any member of the Board of Trustees.

(g) ***Conflicts of Interest.*** With respect to any matter before the Board of Trustees, to the extent of a conflict of interest, whether actual, perceived or potential, involving a member of the Board of Trustees' personal interests and a matter concerning the Trust, such member shall abstain from voting on the matter or taking any other discretionary action on the matter. For the purposes of the foregoing, no member of the Board of Trustees shall be deemed to have a conflict by reason only that the member holds any office or position with an Electricity Distributor, social services agency or governmental or quasi-governmental agency or entity (such as the Independent Electricity System Operator); provided, however, that in relation to any decision of the Board of Trustees pertaining specifically to a particular Electricity Distributor, any member of the Board of Trustees who is a director, officer or employee of the Electricity Distributor would be expected to recuse himself or herself from participating in deliberations, discussions or voting in respect of such decision.

(h) ***Expense Reimbursements to Members of the Board of Trustees.*** Members of the Board of Trustees shall be entitled to reimbursement for and in respect of their out-of-pocket expenses reasonably incurred in discharging their duties and obligations as members of the Board of Trustees. Members of the Board of Trustees shall serve without compensation.

5.9 Confidentiality

Notwithstanding the resignation or removal and discharge from the trusts and powers reposed in and conferred on the Trustee by this Declaration, or the termination of this Declaration, the Trustee so resigning or removed shall continue to treat as confidential all information relating to the Trust, the Assets and the Beneficiaries and shall only be entitled to make disclosures concerning such information if disclosure is required in the performance of the functions of the resigning or removed Trustee or is ordered by a court of competent jurisdiction or is otherwise required by law. The Trustee shall not be responsible or liable to any Person for any loss or damage arising out of or in any way sustained or incurred in any way relating to any such required disclosure. The obligations arising under this section 5.9 shall survive the termination of the Trust.

5.10 Vesting in Successor Trustee

Any successor trustee (including any reconstituted Board of Trustees) shall automatically become vested with the Assets and with the same powers, rights, duties, responsibilities and trusts as if it, he or she had originally been named as Trustee under this Declaration, without the requirement of any further instrument or act or conveyance, and the Trustee ceasing to act shall execute all such transfers and other documents and do all such other acts or things as may be necessary or desirable to assign, transfer, deliver to, and vest in, the successor trustee, upon the trusts expressed in this Declaration, all the Assets and all the rights, powers and trusts of the Trustee ceasing to act. The expense of any act, document, deed or other instrument or thing required under this Section 5.10, including for greater certainty, outstanding fees and unreimbursed expenses of the Trustee (including any member of the Board of Trustees) ceasing to act, shall be satisfied from the Assets.

5.11 Execution of Instruments

The Trustee shall have the power to execute all deeds, transfers, agreements, promissory notes and other instruments on behalf of the Trust. Such power may be exercised by any one or more Administrative Services Agents acting in accordance with any delegated right to do so pursuant to an applicable Administrative Services Agreement or by any one or more Implementation Agents acting in accordance with any delegated right to do so pursuant to an applicable Implementation Agreement, and any such execution of instrument by an Administrative Services Agent, acting in such capacity as agent of the Trust pursuant to the terms and conditions of an Administrative Services Agreement or by an Implementation Agent acting in such capacity as agent of the Trust pursuant to the terms and conditions of an Implementation Agreement shall in each case be deemed to be a proper execution of such instrument by the Trustee and shall be binding for all purposes on the Trust.

5.12 Decisions by the Trustee

If there is more than one Trustee, decisions of the Trust may be made by a majority of Trustees eligible to vote on the applicable matter. Whenever the Trustees are unable to agree in relation to the commission or omission of any act or howsoever in the execution of the Trust, the decision of a majority of such Trustees shall prevail.

SECTION 6
AMENDMENTS AND SUPPLEMENTS

6.1 Amendments

Subject to the requirements of the Transfer Payment Agreement, the Trustee shall have the power in its sole and absolute discretion from time to time without the approval of any Beneficiary or any court to amend, vary, supplement, replace or restate this Declaration in its entirety or any portion thereof; provided, however that it is expected that any amendment shall be consistent with the intent of the principles set forth in the Principles Annex and with the intended scope and effect of the permitted delegations and activities of any Implementation Agent pursuant to the Permitted Delegations Annex. Without in any way limiting the foregoing, any such amendments, variations, supplements, replacements or restatements may:

(a) add provisions for the replacement of or appointment of additional trustees to act with the Original Trustee prior to the Original Trustee Replacement Date;

(b) in the case of the Original Trustee, add provisions to those contemplated in the Trustee Replacement Annex in respect of the appointment of the members and the formation and empowerment of the Board of Trustees;

(c) in the case of the Original Trustee, vary the terms and requirements applicable to the duties, responsibilities, obligations, liabilities, indemnities, protections, limitations, restrictions, compensation, expense reimbursements and such other matters, in each case as the Advisory Committee may indicate are necessary to be made in order to attract and receive confirmation of appointment of appropriately qualified individuals that the Advisory Committee specifies are to be appointed as members of the Board of Trustees in accordance with its recommendations;

(d) add additional or replace existing Trustees;

(e) add to or reasonably clarify the principles set forth in the Principles Annex;

(f) add to or reasonably clarify the delegations and activities contemplated to be made in the Permitted Delegation Annex;

(g) include provisions for the management of the Trust by the Trustees, including the making of rules, requirements and procedures governing the decision-making of the Board of Trustees;

(h) add provisions for the replacement of members of the Board of Trustees (in addition to those provisions contemplated in section 5.7 and the Trustee Replacement Annex);

(i) provide for the engagement of any Person or Persons as managers, administrators or other service providers to the Trust, including any additional or replacement Administrative Services Agent or Implementation Agent or representative thereof;

(j) specify supplemental procedures for the identification of Primary Beneficiaries and the exchange of information with Electricity Distributors in connection with identifying such Primary Beneficiaries; or

(k) specify procedures for the transfer and transmission of funds from the Trust or any Implementation Agent acting on its behalf and with delegated responsibility over funds constituting Assets, to or for the benefit of, Beneficiaries or their designated representatives, payees or assignees.

6.2 Supplemental Declarations

The Trustee is authorized to execute any supplemental declaration of trust (including one or more amendments and restatements from time to time of this Declaration) to give effect to amendments to this Declaration made pursuant to section 6.1.

SECTION 7
TERMINATION

7.1 Duration

Subject to sections 7.2 and 7.3, the Trust will continue in full force and effect so long as there are any Assets and until all of the debts, liabilities and obligations of the Trust have been paid and satisfied in full.

7.2 Termination and Distribution of Assets

The Trustee shall terminate the Trust and wind up its affairs as soon as practicable after the Final Distribution Date. In connection with the termination of the Trust, the Trustee shall identify the Residual Beneficiaries and distribute or cause to be distributed the remaining Assets, in cash or in kind or partly in each, to the Residual Beneficiaries, in each case in accordance with section 3.3. Despite the foregoing, the Trust will only be terminated and wound up after the Trustee, in its sole and absolute discretion, determines that all debts, liabilities and obligations of the Trust have been paid or otherwise adequately provided for and satisfied and upon receipt of such releases, indemnities and discharges as the Trustee, relying on the opinion of counsel, deems necessary for the protection of the Beneficiaries and for its own protection.

7.3 Distribution of Assets on Final Distribution Date

If the Trust holds Assets on the Final Distribution Date, the Trustee shall pay or provide reserves for the payment, and otherwise shall satisfy, all debts, liabilities and obligations of the Trust and shall provide or arrange to provide such investigations, audits, releases, indemnities and discharges as the Trustee, relying on the opinion of counsel, deems necessary for the protection of the Beneficiaries and for its own protection. Thereafter, any remaining Assets shall be paid to the Residual Beneficiaries in accordance with section 3.3.

SECTION 8
ACCEPTANCE OF TRUSTS

8.1 Acceptance of Trusts

The Trustee hereby accepts the trusts and duties contained in this Declaration and agrees to perform the same upon the terms and conditions hereof until discharged therefrom.

[Signature Page Follows]

The Trustee has executed this Declaration as of the date first written above.

COMPUTERSHARE TRUST COMPANY OF CANADA,

By:
Name:
Title:

By:
Name:
Title:

PRINCIPLES ANNEX

The Trustee shall have regard to, but shall not be specifically bound by, the following principles in applying its discretion in relation to the administration of the Trust:

1. Identification of Primary Beneficiary Payees

1.1 Except in exceptional circumstances, a Primary Beneficiary would not be expected to receive a benefit from the Trust unless at the time of consideration it satisfies, in addition to the requirements contemplated in the definition of "Primary Beneficiary", each of the following criteria (the "**Selection Factors**"):

(i) it has a participant agreement with an applicable Electricity Distributor to undertake measures (its "**Energy Plan**") to improve the electricity efficiency and/or promote the conservation of electricity at its Ontario residence;

(ii) its Energy Plan involves one or more Eligible Measures, as may be designated by the Trustee from time to time from;

(iii) it confirms that:

1. the primary purpose of its Energy Plan is the conservation and efficient use by the Primary Beneficiary of electricity, and is not for the purposes of the Primary Beneficiary making a profit;

2. it would otherwise not have the financial resources to undertake the Eligible Measures included in its Energy Plan; and

3. it would otherwise not be eligible to receive amounts in respect of the Eligible Measures as a HAP Eligible Person;

(iv) it has demonstrated a need for financial assistance on the basis that its periodic electricity bills represent a financial burden, relative to its available financial resources; and

(v) such other criteria as the Trustee may determine, including based on the recommendations of Electricity Distributors or other knowledgeable Persons made on the basis and having regard to the delegations contemplated by the Permitted Delegations Annex or any applicable Implementation Agreement.

1.2 It is recognized that, in furthering the Purpose, an efficient basis upon which to allocate funds to the Primary Beneficiaries across different areas and regions within Ontario may be based on the areas and regions serviced by the Electricity Distributors operating within Ontario.

1.3 It would not be contrary to the Purposes if funds are made available by the Trustee to the Primary Beneficiaries unequally across different areas and regions within Ontario, and it is expected that in making such an unequal division it would be appropriate to have regard to:

(i) broad economic parameters of economic activity and the specific financial resources of the residents of the areas and regions, in each case as an indication of the relative need of such residents across the areas and regions;

(ii) electricity use and efficiency levels of residential electricity customers across the areas and regions;

(iii) specific regional indicators of economic weakness and need; and

(iv) such other factors as the Trustee may determine are relevant, including based on the submissions, advice and recommendations of Electricity Distributors or other knowledgeable Persons made on the basis and having regard to the delegations contemplated by the Permitted Delegations Annex or any applicable implementation Agreement.

1.4 It is recognized that, in furthering the Purpose, the designated Electricity Distributor for an area or region in which a Primary Beneficiary resides would be expected to:

(i) be a reliable source for the purpose of assessing and confirming whether the Primary Beneficiary satisfies the Selection Factors;

(ii) be an efficient intermediary for the purpose of communicating with the Primary Beneficiary, including with respect to matters such as regarding the availability, terms, conditions and intended purposes of Program;

(iii) be able to facilitate an efficient payment of distribution determined to be made to or on behalf of the Primary Beneficiary, having regard to the Electricity Distributor's established practices, procedures and systems for dealing with its customers; and

(iv) have established contractual arrangements with the Primary Beneficiary that may apply to the protection and confidentiality of information provided by or respecting the Primary Beneficiary, which information may be useful in the consideration by the Electricity Distributor in its assessment of whether the Primary Beneficiary satisfies the Selection Factors, which information may not otherwise be available or readily accessible or verifiable by the Trustee.

1.5 It is recognized that, in furthering the Purpose, the Electricity Distributor for an area or region in which a Primary Beneficiary resides will have market and utilization information that may be useful in assessing the relative needs of Primary Beneficiaries within its area or region. Such information is expected to be relevant in assessing the extent to which one such Primary Beneficiary's financial needs and the merits of its Energy Plan are greater or more compelling than those of another such Primary Beneficiary, which comparison may be relevant to the extent that the funds allocable to the Primary Beneficiaries resident in the area or region are otherwise insufficient to meet the requests for funding by all such Primary Beneficiaries.

1.6 Accordingly, it is recognized that, in furthering the Purpose, it is consistent with the Purpose that the recommendations of Electricity Distributors be utilized and relied upon

by the Trustee to guide the process of identifying particular Primary Beneficiaries in making distributions to the Primary Beneficiaries.

1.7 If an Electricity Distributor for a particular area or region is unable or unwilling to assess or confirm the application of the Selection Factors to Primary Beneficiaries residing in the area or region or to make recommendations in relation to such matters, one or more of the following may provide a suitable alternative source of information and for information gathering, assessment and confirmation purposes in relation to such area or region:

(i) other Electricity Distributors operating in adjacent or other areas or regions in Ontario;

(ii) the Ontario Energy Board;

(iii) the Independent Electricity System Operator; and

(iv) anyone else having relevant expertise and access to information regarding the electricity market of the Province, in each case as may be considered relevant by the Trustee.

1.8 To the extent that privacy law or other legal requirements limit an Electricity Distributor from providing or making available specific information respecting the application of the Selection Factors to a particular Primary Beneficiary or group of Primary Beneficiaries, it is recognized that, in furthering the Purpose, it may be appropriate to redact or make generic affected information regarding such Primary Beneficiary in connection with the identification and confirmation of a Primary Beneficiary's eligibility and participation in the Program. If such limitations or restrictions would limit an Electricity Distributor from providing or confirming the name of a particular Primary Beneficiary to the Trustee, then it should be sufficient that such information may be obtained or disseminated on a confidential basis if and when required by the Trustee for the proper administration of the Trust and on that basis such impediments should not disqualify a Primary Beneficiary from participating in the benefits of the Program, provided that the confidential record-keeping of the Electricity Distributor would be available in connection with the application of any applicable legal process predicated on the identification of such Primary Beneficiary for the purposes of substantiating its rights as a Primary Beneficiary of the Trust or as to the validity or subsistence of the Trust.

2. Eligible Measures

2.1 It is expected that the Trust will identify eligible measures that, taking into consideration the principles set forth in the Principles Annex, have regard to the following (the "**Measures Factors**"):

(i) is the measure generally expected to result in reduced electricity consumption by a Primary Beneficiary if properly installed and used;

(ii) is the measure recognized under another Provincial program as being appropriate for achieving electricity conservation among a population analogous to the Primary Beneficiaries;

(iii) does the measure present any unacceptable health or safety considerations, either with respect to the Primary Beneficiary, a party providing or installing the measure, or the physical environment;

(iv) is the measure broadly available to residents across different areas and regions of the Province; or

(v) is the measure a requirement or precursor to another measure, the other measure being one which meets any of the other Measures Factors.

2.2 In identifying and applying the Measures Factors, Electricity Distributors would be expected to have expertise in assessing the suitability of efficiency and conservation measures in their respective areas and regions, which may differ across areas and regions across the Province based on factors (among other things) such as the climate, geography, density, electricity infrastructure, residential structures, and electricity use rates applicable within such areas or regions.

2.3 The measures specified in Schedule A to this Principles Annex may initially be considered to be consistent with the Measures Factors (subject to change as contemplated under the Permitted Delegations Annex).

3. Promotion of the Program

3.1 It is expected that the Trustee will undertake or engage others to undertake diligent efforts to promote the availability, terms and benefits of the Program to Primary ~~and Residual~~ Beneficiaries, including by establishing consistent communications through the Electricity Distributors.

3.2 It is expected that the Trustee will acknowledge the financial support of the Province in connection with the establishment and the funding for the Program, including in any external communications to or marketing directed at the Electricity Distributors and the Primary and Residual Beneficiaries. In its delegation of any duties or powers to the Electricity Distributors through Implementation Agreements it is expected that Electricity Distributors will acknowledge the financial support of the Province in connection with the program including in any communications or marketing to Primary Beneficiaries.

4. Conduct of the Trust and the Program

4.1 It is expected that administrative expenses of the Board of Trustees and its members, including any expenses relating to the Trust, to the establishment of the Trust and any expenses related to the implementation and operation of the Program, including by or through Electricity Distributors and other relevant entities, will be recognized and subject to reimbursement on a basis that is substantially consistent with the accountability provisions contemplated in the Transfer Payment Agreement and the principles in the

Province's Travel, Meal and Hospitality Expenses Directive, ~~the current form of which attached~~ as set out in Schedule B to this Principles Annex.

4.2 The Trustee is expected to conduct its activities in a manner that complies in all material respects with the Transfer Payment Agreement, including to:

(i) act prudently and in furtherance of the Purpose;

(ii) report not less frequently than annually the results of its activities for information purposes to the Province in connection with the Program;

(iii) comply with the Province's request for any independent verification or audit if determined to be necessary or appropriate by the Province;

(iv) return Assets that have not been distributed if it is determined that the Trustee has breached its Standard of Care in discharging its material duties under the Declaration, and has not cured such material breach despite having been given a reasonable opportunity by the Province to do so in light of the circumstances of such material breach, with the result that all or a significant part of the Assets have not been or are not being applied and distributed in furtherance of the Purpose or are being applied and distributed in a manner that is directly contrary or without regard to the Purpose.

4.3 Electricity Distributors are not intended to directly profit from distributions of funds made from the Trust, although it is recognized that the objectives of electricity efficiency and conservation of Primary Beneficiaries located in the service area or region of an Electricity Distributor, and the cost savings and improved credit worthiness of such Primary Beneficiaries, may be financially beneficial to the Electricity Distributor.

4.4 Distributions from the Trust are intended to allow receiving Primary Beneficiaries to undertake Eligible Measures at no or minimal personal cost.

4.5 Without in any way limiting the discretion of the Board of Trustees to extend the period during which the benefits of the Program may be available to the Primary Beneficiaries, up to and including the Final Distribution Date, it is expected that the Trust Assets would be distributed to Primary Beneficiaries during the period from the Original Trustee Replacement Date to April 30, 2019.

SCHEDULE A TO THE PRINCIPLES ANNEX
INDICATIVE ELIGIBLE MEASURES[1]

Initial Specified Measures
Block Heater Timer (just timer) – rated for outdoor use, have at least a 15 amp/1800 watt capacity, be cold weather resistant, bear a C-UL or CSA certification mark
Power bar with integrated timer, and switched power outlets, four each for a total of 8 outlets, have a total capacity of 15 amps. The switched outlets must remain "live", independent of timer settings, so long as the power bar itself remains switched on. The power bar must bear either a C-UL or CSA certification mark.
Efficient Showerheads (standard) - rated at no more than 4.8 Lpm (1.25 U.S. gpm) and be of the laminar flow type (non-aerating).
Efficient Showerhead (handheld) - rated at no more than 4.8 Lpm (1.25 U.S. gpm) and be of the laminar flow type (non-aerating).
Efficient Aerators (kitchen) - rated no more than 5.7 Lpm (1.5 U.S. gpm), dual threaded to allow installation in both thread type faucets, swivel type with pause lever.
Efficient Aerators (bathroom) - rated no more than 3.8 Lpm (1.0 U.S. gpm), be dual threaded to allow installation in both thread type faucets.
Hot Water Tank Pipe Insulation - 1/2" inside diameter – foam, meets ASTM –C547-00, minimum 3/4" thick
Hot Water Tank Pipe Insulation - 3/4 " inside diameter - – foam, meets ASTM –C547-00, minimum 3/4" thick
Hot Water Tank Insulation - fibreglass R10 (fits up to a 60 gal tank) – not bubble wrap
≤11W ENERGY STAR® Qualified LED A Shape (60W) (minimum 600 Lumen output) (Formerly: 7W – 11W ENERGY STAR® Qualified LED A Shape (60W))

[1] These measures are indicative. Eligible measures added to HAP during the administration of the Trust may also be appropriately considered relevant by the Trustee.

Initial Specified Measures
≤14W ENERGY STAR® Qualified LED A Shape (75W) (minimum 800 Lumen output) (Formerly: 10W – 14W ENERGY STAR® Qualified LED A Shape (75W))
≤23W ENERGY STAR® Qualified LED A Shape (100W) (minimum 1600 Lumen output) (Formerly:17W – 23W ENERGY STAR® Qualified LED A Shape (100W))
≤16W ENERGY STAR® Qualified LED PAR 20 (minimum 600 Lumen output) (Formerly: 8W – 12W ENERGY STAR® Qualified LED PAR 20)
≤16W ENERGY STAR® Qualified LED PAR30 & PAR38 (minimum 600 Lumen output) (Formerly: 8W – 12W ENERGY STAR® Qualified LED PAR 30)
≤23W ENERGY STAR® Qualified LED PAR (minimum 1100 Lumen output) (Formerly: 14W – 18W ENERGY STAR® Qualified LED PAR 38)
≤6W ENERGY STAR® Qualified LED MR 16 / PAR 16 (minimum 250 Lumen output) (Formerly: 7W – 10W ENERGY STAR®
Qualified LED MR 16 / PAR 16 - GU 10 Base)
≤11W ENERGY STAR® Qualified LED MR 16 (minimum 400 Lumen output) (Formerly: 7W – 12W ENERGY STAR® Qualified LED MR 16 GU 5.3 Base)
ENERGY STAR® LED Wet Location Rated PAR lamp ≤ 23 Watt (minimum 1100 Lumen output)
Recessed Downlight Fixture including LED with Light Output >600 and <800 lumens (Retrofit Measure List)
Recessed Downlight Fixture including LED with Light Output >800 lumens (Retrofit Measure List)
Indoor Drying Rack

~~**Extended Measures**~~
~~Replace refrigerator with ENERGY STAR qualified refrigerator - 15.5 - 16.9 cubic foot top-freezer, automatic defrost, refrigerator/ freezer, no through the door ice service~~

~~Replace refrigerator with ENERGY STAR qualified refrigerator - 17.0 - 18.4 cubic foot top freezer, automatic defrost, refrigerator/ freezer, no through the door ice service~~
~~Replace refrigerator with a refrigerator that has a consumption level of less than 425 kwh, 10 – 12.5 cubic foot top freezer, automatic defrost, refrigerator freezer, no through the door ice service~~
~~Replace freezer with ENERGY STAR qualified freezer - 12-14.4 cubic foot freezer~~
~~Replace freezer with ENERGY STAR qualified freezer - 14.5 - 16.0 cubic foot freezer~~
~~Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 6,000 – 7,999 BTU/hr with C-UL or CSA certification mark~~
~~Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 8,000 – 9,999 BTU/hr with C-UL or CSA certification mark~~
~~Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 10,000 – 12,000 BTU/hr with C-UL or CSA certification mark~~
~~Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 14.2 – 21.2 l/day (30-44.9 pints/day) dehumidifier~~
~~Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 21.3 – 25.4 l/day (45-53.9 pints/day) dehumidifier~~

Extended Measures
Replace refrigerator with ENERGY STAR qualified refrigerator - 15.5 - 16.9 cubic foot top freezer, automatic defrost, refrigerator/ freezer, no through the door ice service
Replace refrigerator with ENERGY STAR qualified refrigerator - 17.0 - 18.4 cubic foot top freezer, automatic defrost, refrigerator/ freezer, no through the door ice service
Replace refrigerator with a refrigerator that has a consumption level of less than 425 kwh, 10 – 12.5 cubic foot top freezer, automatic defrost, refrigerator freezer, no through the door ice service
Replace freezer with ENERGY STAR qualified freezer - 12-14.4 cubic foot freezer
Replace freezer with ENERGY STAR qualified freezer - 14.5 - 16.0 cubic foot freezer
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 6,000 – 7,999 BTU/hr with C-UL or CSA certification mark
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 8,000 – 9,999 BTU/hr with C-UL or CSA certification mark
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 10,000 – 12,000 BTU/hr with C-UL or CSA certification mark
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 14.2 - 21.2 l/day (30-44.9 pints/day) dehumidifier
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 21.3 - 25.4 l/day (45-53.9 pints/day) dehumidifier
Extended Measures
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 25.5 - 35.5 l/day (54-75 pints/day) dehumidifier
Programmable Thermostat – line voltage – meets CAN/CSA-C828-06 standard, minimum performance: Droop: 1.5°C, Differential: 0.5°C, Precision 0% within 0.5°C of the original set point of 22°C
Programmable Thermostat – low voltage - meets CAN/CSA-C828-06 standard, minimum performance: Droop: 1.5°C, Differential: 0.5°C, Precision 0% within 0.5°C of the original set point of 22°C

Weatherization Measures
Comprehensive ~~Draftproofing~~Draft proofing (caulking, foam and weather stripping, and application of same) – lifespan of 20 years plus If one or two component polyurethane foams are used, the products and installations must conform to: • CAN/ULC-S710.1 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 1: Material Specification. • CAN/ULC-S710.2 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 2: Application. • CAN/ULC-S711.1 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification • CAN/ULC-S711.2 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification, and Part 2: Application. **Attic Insulation (including installation):**
cellulose: CAN/ULC-S703-01 Amendment 1 - Cellulose Fibre Insulation (CFI) for Buildings OR 2) Mineral Fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre

Weatherization Measures
for Buildings **Wall Insulation (including installation):**
cellulose: CAN/ULC-S703-01 Amendment 1 - Cellulose Fibre Insulation (CFI) for Buildings OR 2) Mineral Fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre **Basement Insulation (including installation):**
mineral fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre for Buildings Vapour Barrier: 69009-CAN/CGSB-51.34-m86 If one or two component polyurethane foams are used, the products and installations must conform to: • CAN/ULC-S710.1 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 1: Material Specification. • CAN/ULC-S710.2 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 2: Application. • CAN/ULC-S711.1 Standard for Thermal Insulation – Bead Applied Two-Component
Polyurethane Air Sealant Foam, Part 1: Material Specification • CAN/ULC-S711.2 Standard for Thermal Insulation – Bead Applied Two-Component

Heat Pumps (Selection of manufacturers and technologies to meet the US federal minimum efficiency standard for ASHPs, as of 2015, is 13.0 SEER and 7.7 HSPF. Energy Star–certified models offer roughly 9 percent more efficiency than most new uncertified ASHPs and 20 percent more
Ductless Multiport Heat Pump
Cold Climate Ductless Heat Pump
Cold Climate Multiport Ductless Heat Pump
Cold Climate Ducted Heat Pump

SCHEDULE B TO THE PRINCIPLES ANNEX
PERMITTED EXPENSE REIMBURSEMENTS

~~[NTD: Insert the Province's Travel, Meal and Hospitality Expenses Directive.]~~**Travel, Meal and Hospitality Expenses Directive**

Funds should be used prudently and responsibly with a focus on accountability and transparency.

Expenses for travel, meals and hospitality support the Purpose.

Plans for travel, meals, accommodation and hospitality are necessary and economical with due regard for health and safety.

Legitimate authorized expenses incurred during the course of furthering the Purpose may be reimbursed.

Best practices should be followed, including:

Prior approval to incur expenses is appropriately obtained.

Other options for meetings are always considered before travel is approved, including audio or video conferencing.

Corporate travel cards are to be used for authorized business travel and business related expenses.

PERMITTED DELEGATION ANNEX

1. Under section 4.2(g) of the Declaration, the Trustee has the power to: (a) appoint, employ or retain Implementation Agents for the purpose of discharging its duties and obligations under the Declaration; and (b) enter into, perform, enforce and amend Implementation Agreements.

2. In accordance with section 4.2(g) of the Declaration, consistent with the principles set forth in the Principles Annex, the Trustee or its agent will seek to enter into one or more Implementation Agreements with individual Electricity Distributors under which the Electricity Distributors will act as Implementation Agents to the Trustee. In this manner, the Trustee will delegate certain of its powers and duties to the Electricity Distributors.

3. Under section 5.1 of the Declaration, to the extent the Trustee has delegated any of its duties or powers, it shall be deemed to have satisfied the Standard of Care in respect of the subject matter of such delegation, subject to the Trustee's overall duty to exercise prudent oversight thereof. The Trustee is entitled to rely on an Electricity Distributor to discharge the duties delegated to it, as Implementation Agent, pursuant to an Implementation Agreement as described in this Annex.

4. Accordingly, and without limiting the Trustee's right to delegate under the Declaration and its other rights, powers and discretion as Trustee, the Trustee will be permitted to, and is expected to seek to, enter into Implementation Agreements with Electricity Distributors in order to further the Purpose. Without limiting the Trustee's discretion to negotiate and settle the terms and conditions of such Implementation Agreements, it is expected that such Implementation Agreements will include customary terms and conditions for an administrative services arrangement of this type and, in addition, would (subject to the acceptance and agreement of the applicable Electricity Distributor counterparty) address the following points in particular:

    a. **Identification of Applicable Primary Beneficiary Payees and Determination of Individual Distribution Amounts**

        i. Each Electricity Distributor would make an initial assessment of the financial needs of Primary Beneficiaries within its designated service area or region, having regard to the Selection Factors set forth in section 1.3 of the Principles Annex, together with applicable economic data, in order to prepare and provide to the Trustee an estimate of the number of Primary Beneficiaries who the Electricity Distributor reasonably expects would satisfy the Selection Factors.

        ii. Each Electricity Distributor would make an initial assessment of the measures it would recommend be included as Eligible Measures, having regard to the Measures Factors set forth in section 2.1 of the Principles Annex, in order to prepare and provide to the Trustee an estimate of the average cost per Primary Beneficiary Payee (as defined below) of such Eligible Measures that the Electricity Distributor reasonably expects would apply in respect of Primary Beneficiaries resident in its service area or region.

iii. Based on the product of (i) and (ii), above, and such other considerations as it considers to be directly relevant, each Electricity Distributor would make a written recommendation to the Trustee regarding the aggregate funding amount that the Electricity Distributor anticipates would be utilized under the Program by the Primary Beneficiaries resident in its service area or region (the "**Local Funding Estimate**"). Such recommendation would be accompanied, when submitted to the Trustee, by a detailed explanation regarding the assumptions, financial parameters, suitability considerations and other information underlying the Local Funding Estimate (including the type of information contemplated by the Selections Factors and the Measures Factors, which would be relied upon by the Trustee in its assessment regarding the allocation of available funding to or for the benefit of the Primary Beneficiaries across the specified areas and regions of Ontario.

iv. The Trustee would inform the Electricity Distributor regarding the aggregate of the amount determined by the Trustee to be made available under the Program for Primary Beneficiaries in the Electricity Distributor's designated service area or region (for each Electricity Distributor, its "**Maximum Electricity Distributor Allocation**") and as to any maximum amount that may be paid to or for the benefit of any single Primary Beneficiary located in the servicer area or region of the Electricity Distributor (the "**Maximum Primary Beneficiary Amount**"). The Maximum Electricity Distributor Allocation and Maximum Primary Beneficiary Amount may vary between areas and regions, among the Primary Beneficiaries within such areas and regions, and may be increased by the Trustee from time to time in its discretion.

v. Each Electricity Distributor would apply the principles set forth under "Identification of Primary Beneficiary Payees" in the Principles Annex to identify and make recommendations to the Trustee regarding the amount of funds (if any) to be distributed to or for the benefit of Primary Beneficiaries resident within its service area or region from time to time (the "**Primary Beneficiary Payees**").

vi. Each Electricity Distributor would ensure that the aggregate of the amounts it recommends be distributed to or for the benefit of Primary Beneficiary Payees from time to time does not exceed (1) its Maximum Electricity Distributor Allocation and (2) for any single Primary Beneficiary located in the service area or region of the Electricity Distributor, the lesser of (x) the applicable Maximum Primary Beneficiary Amount and (y) the estimated costs (including any applicable taxes, but excluding any amount payable to the Electricity Distributor by or on behalf of the Primary Beneficiary) to be incurred by or on behalf of such Primary Beneficiary (whether or not such costs have been paid or remain outstanding) in respect of Eligible Measures applied or to be applied in respect of the Primary Beneficiary's Ontario residence.

vii. The Trustee would provide written confirmation to each Electricity Distributor:

1. Either (x) that the recommendations specified of the Electricity Distributor in clause (v), above, have been accepted, or (y) as to the specific reasons for any non-acceptance; and

2. The amount of the distributions to be paid to or for the benefit of each Primary Beneficiary Payee that is resident in the Electricity Distributor's service area or region.

viii. With respect to each Primary Beneficiary resident in a Electricity Distributor's service area or region that is confirmed as a Primary Beneficiary Payee, the Electricity Distributor would provide the Trustee written confirmation as to:

1. The identity of such Primary Beneficiary Payee; and

2. The amount of the distribution paid to or for the benefit of such Primary Beneficiary Payee.

ix. If the amount of a distribution to be made to a Primary Beneficiary Payee is based on the estimated costs to be incurred by or on behalf of such Primary Beneficiary and, prior to making the distribution to the Primary Beneficiary Payee, the Electricity Distributor determines that the actual costs (including any applicable taxes but excluding any amount payable to the Electricity Distributor by or on behalf of the Primary Beneficiary) incurred or to be incurred by or on behalf of such Primary Beneficiary in respect of Eligible Measures applied or to be applied in respect of the Primary Beneficiary's Ontario residence has or would be less than such estimated costs, then the amount to be distributed to the Primary Beneficiary shall be based on such actual costs.

b. **Making of Distributions to Primary Beneficiaries**

i. It is expected that promptly after the Trustee confirms the identity of a Primary Beneficiary Payee resident in an Electricity Distributor's service area or region and the amount of the distribution to be paid to or for the benefit of such Primary Beneficiary Payee, the Trustee would arrange for payment to or on the direction of the Electricity Distributor of an amount equal to the amount of such distribution.

ii. It is expected that promptly upon receipt of funds in respect of a distribution to be made to a Primary Beneficiary Payee, the Electricity Distributor would arrange for payment of the full amount of such distribution to or for the benefit of the Primary Beneficiary Payee (including by direct payment to a third party of, or as a reimbursement or rebate of, the costs of applicable Eligible Measures installed at the residence of and for the benefit of the Primary Beneficiary Payee), without reduction or set-off by the Electricity Distributor.

iii. If the amount paid to an Electricity Distributor in respect of a distribution to be made to a Primary Beneficiary exceeds the actual amount of the distribution made to or on behalf of the Primary Beneficiary, it is expected that the Trustee would require Electricity Distributor to return such excess to the Trustee, whereupon the proceeds of such returned amount shall continue to form part of the Assets.

c. **Establishment of Operational, Administrative, Record-Keeping and Other Systems and Policies by Electricity Distributors to facilitate the Program**

i. It is expected that the Electricity Distributor would establish such operational, administrative, record-keeping and other systems and policies as are necessary to facilitate the Program and perform its duties under the Implementation Agreement, including systems or policies to: identify Primary Beneficiary Payees; comply with applicable privacy and regulatory laws; communicate with Primary Beneficiaries on behalf of the Trust; assess Eligible Measures; determine the Local Funding Estimate; monitor its recommendations to the Trustee against its Maximum Electricity Distributor Allocation and the Maximum Primary Beneficiary Amount; receive funds from the Trust in respect of distributions to the Primary Beneficiary Payees and transfer such funds to the appropriate recipients for the benefit of the Primary Beneficiary Payees; preparation and timely delivery to Primary Beneficiary Payees of such documents as are required by the *Income Tax Act* (Canada); and create and maintain records in respect of the foregoing.

ii. The Electricity Distributor would set up a separate bank account for the purpose of receiving funds from the Trust in respect of distributions to the Primary Beneficiary Payees and the transfer of such funds to the appropriate recipients for the benefit of the Primary Beneficiary Payees.

d. **Reporting, Record-Keeping, Inspection and Disclosure and Compliance Matters**

i. The Electricity Distributor would provide record-keeping, clerical and bookkeeping services relating to all matters relating to its recommendations and the performance of its other duties and obligations under its Implementation Agreement.

ii. The Electricity Distributor would keep and maintain all financial records and non-financial documents and records relating to the provision of services under its Implementation Agreement.

iii. The Electricity Distributor would provide to the Trustee quarterly and annual reports ("**Reports**") for the duration of its Implementation Agreement. Such Reports would set out, among other things, the amounts of the distributions paid to or for the benefit of applicable Primary Beneficiary Payees, the average distribution amount per such Primary Beneficiary Payee, the Eligible Measures for which distributions have been made, and the uptake of energy efficiency measures.

iv. The Electricity Distributor would agree to provide to the Trustee such information as is necessary for the Trustee to (v) comply with applicable law; (w) prepare financial statements for the Trust; (x) prepare and submit such documents as are required under the *Income Tax Act* (Canada); (y) comply with the Trust's applicable obligations under the Transfer Payment Agreement; and (z) such other matters as the Trustee reasonably requests.

v. The Trustee, its authorized representatives or an independent auditor would be permitted to, at its own expense, on twenty-four hours' notice to the Electricity Distributor and during normal business hours, inspect the records of and information respecting the Electricity Distributor to confirm its compliance with the Implementation Agreement, including regarding its processes for recommending the Primary Beneficiary Payees and their respective distribution amounts and regarding the delivery of Trust funds on behalf of the Trustee to or for the benefit of the Primary Beneficiary Payees.

e. **Standard of Care**

i. The Electricity Distributor would be required to agree to perform its duties provided under the Implementation Agreement exercising the degree of care, diligence and skill that a reasonably prudent Person would exercise in comparable circumstances.

ii. In performing its duties under the Implementation Agreement (including the recommending of Primary Beneficiary Payees to the Trustee), the Electricity Distributor would be required to agree to seek to avoid actual, potential or perceived conflicts of interest.

iii. The Electricity Distributor would be required to agree that it would not, in performing its obligations under the Implementation Agreement, take any action which it knows or ought reasonably to know would cause the Trustee or the Trust to be in violation of any law, rule or regulation applicable to it.

f. **Expenses**

The Electricity Distributor would be eligible to receive reasonable compensation and reimbursement of its actual out-of-pocket costs associated with the performance of its duties and obligations under the Implementation Agreement, subject to compliance with requirements substantially equivalent to the Province's Travel, Meal and Hospitality Expenses Directive. Such compensation amounts and reimbursement entitlements would be specified in the Implementation Agreement.

g. **Representations**

The Electricity Distributor would make customary representations to the Trust regarding, among other things, its legal capacity; authorization; non-contravention of law or material contract to which it is a party; and the enforceability of the Implementation Agreement.

h. **Indemnification**

The Electricity Distributor would be required to agree to provide customary indemnities to the Trust and the Trustee from and against claims, damages and liabilities which the Trust or Trustee may suffer or incur as the result of any breach of the Agreement by the Electricity Distributor or its representatives.

TRUSTEE REPLACEMENT ANNEX

1. The Advisory Committee shall consist of the following individuals:

   Robert Mace, President and Chief Executive Officer at Thunder Bay Hydro

   Bryce Conrad, President and Chief Executive Officer at Hydro Ottawa

   Brian Bentz, President and Chief Executive Officer at Alectra

   Ferio Pugliese, Executive Vice President Customer Care and Corporate Affairs at Hydro One

   Terry Young, Vice President Conservation and Corporate Relations at the Independent Electricity System Operator

2. In the event any member of the Advisory Committee resigns or is unable to act, it is expected that the remaining members of the Advisory Committee would appoint another resident of Ontario as a replacement.

3. On or before ~~,~~May 31, 2017, the Advisory Committee shall identify six residents of Ontario who have expressed that they are willing to act as members of the Board of Trustees and who, individually and collectively, satisfy the following criteria (collectively, the "**Selection Factors**"):

   a) each member demonstrates an understanding of the electricity sector including the electricity distribution sector;

   b) each member demonstrates an expertise in conservation and low income programs;

   c) three of the identified individuals will be representatives from separate electricity distributors, two individuals will be representatives from separate social services agencies and one individual member, who will be a non-voting member, will be an employee or representative of the Government of Ontario; and

   d) it is expected that representation by the Government of Ontario will be non-controlling.

4. If the Advisory Committee determines that changes to the Declaration (including to this Trustee Replacement Annex) are necessary in order to (a) replace, or appoint additional trustees to act with, the Original Trustee prior to the Original Trustee Replacement Date or (b) attract and receive confirmation of appointment of appropriately qualified individuals that the Advisory Committee believes would be suitable candidates to serve as members of the Board of Trustees, the Advisory Committee shall make recommendations regarding such necessary changes, including without limitation in respect of (i) any necessary limitations on the nature or scope of the appointment of the members of the Board of Trustees, (ii) the formation and empowerment of the Board of Trustees, and (iii) the duties, responsibilities,

obligations, liabilities, indemnities, protections, limitations, restrictions, compensation, expense reimbursement entitlements of members of the Board of Trustees.

5. The Advisory Committee shall recommend that the Original Trustee appoint the individuals so identified to become the initial members of the Board of Trustees pursuant to section 5.7 of the Declaration.

6. If any of the individuals recommended under paragraph 4 or under this paragraph are not accepted and appointed by the Original Trustee pursuant to section 5.7 of the Declaration, the Advisory Committee shall forthwith identify and recommend an alternative individual or individuals willing to act and whose presence as a member of the Board of Trustees would result in the Trustee collectively satisfying the criteria in paragraph 3 above.

7. Upon the appointment of six trustees (five voting and one non-voting) pursuant to section 5.7 of the Declaration, the Advisory Committee will be functus.

Document comparison by Workshare Compare on Wednesday, March 22, 2017 4:16:26 PM

Input:	
Document 1 ID	PowerDocs://TOR_2024/12887993/18
Description	TOR_2024-#12887993-v18-Affordability_Fund_Trust_–_Declaration_of_Trust_-_Blakes_Comments_(March_14,_2017)
Document 2 ID	PowerDocs://TOR_2024/12887993/19
Description	TOR_2024-#12887993-v19-Affordability_Fund_Trust_–_Declaration_of_Trust_-_Blakes_Comments_(March_14,_2017)
Rendering set	Standard

Legend:	
Insertion	
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Statistics:	
	Count
Insertions	52
Deletions	31
Moved from	0
Moved to	0
Style change	0
Format changed	0

Total changes	83

TOR_2024-#12888010-v13-Transfer_Payment_Agreement_(Affordability_Fund_Trust).pdf

ONTARIO TRANSFER PAYMENT AGREEMENT

THE AGREEMENT, effective as of the • day of March, 2017 (the **"Effective Date"**)

B E T W E E N :

Her Majesty the Queen in right of Ontario
as represented by the Minister of Energy

(the "Province")

- and -

Computershare Trust Company of Canada, in its capacity as trustee of Affordability Fund Trust

(together with its successors and assigns, the "Recipient" and, together with the Province, the "Parties")

BACKGROUND

Computershare Trust Company of Canada is the original trustee of the Affordability Fund Trust.

The Province wishes to provide Funds to the Recipient to be held, invested, applied and distributed in accordance with the terms of the Declaration of Trust (defined below), in furtherance of the Purpose (as defined in the Declaration of Trust), including having regard to the Principles set forth in Annex A.

CONSIDERATION

In consideration of the mutual covenants and agreements contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is expressly acknowledged, the Parties agree as follows:

ENTIRE AGREEMENT

This agreement (as amended, restated, supplemented or otherwise modified from time to time, the **"Agreement"**), including:

Schedule "A" - General Terms and Conditions
Schedule "B" - Project Specific Information
Schedule "C" - Project - Certain Obligations of the Recipient
Schedule "D" - Budget
Schedule "E" - Payment Plan
Schedule "F" - Reporting
Annex "A" - Principles, and
any amending agreement entered into as provided for below,

constitutes the entire agreement between the Parties with respect to the subject matter contained in this Agreement and supersedes all prior oral or written representations and agreements.

COUNTERPARTS

The Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

AMENDING THE AGREEMENT

The Agreement may only be amended by a written agreement duly executed by the Parties.

ACKNOWLEDGEMENT

The Recipient:

(a) acknowledges that it has read and understands the provisions contained in the entire Agreement; and

(b) agrees to be bound by the terms and conditions contained in the entire Agreement.

IN WITNESS WHEREOF, the Parties have executed the Agreement on the dates set out below.

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO as represented by Minister of Energy

by:

_____ _____

Date Name: Serge Imbrogno

Title: Deputy Minister

Authorized Signing Officer

COMPUTERSHARE TRUST COMPANY OF CANADA, in its capacity as trustee of AFFORDABILITY FUND TRUST

by:

_____ _____

Date Name:

Title:

by:

_____ _____

Date Name:

Title:

I/We have authority to bind the Recipient.

SCHEDULE "A"
GENERAL TERMS AND CONDITIONS

1.0 INTERPRETATION AND DEFINITIONS

1.1 Interpretation. For the purposes of interpretation:

(a) words in the singular include the plural and vice-versa;

(b) words in one gender include all genders;

(c) the headings do not form part of the Agreement; they are for reference only and will not affect the interpretation of the Agreement;

(d) any reference to dollars or currency will be in Canadian dollars and currency;

(e) "include", "includes" and "including" denote that the subsequent list is not exhaustive;

(f) where any reference is made in the Agreement to an act to be performed by or for or on behalf of the Affordability Fund Trust, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Recipient in its capacity as trustee of the Affordability Fund Trust, and, where any reference is made in the Agreement to an act to be performed by or for or on behalf of the Recipient, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Recipient in its capacity as trustee of the Affordability Fund Trust; and

(g) it is intended that the transfer of the Funds to the Recipient will be a transfer made to a "non-controlled trust" (as that term is given meaning in • applicable to the accounting rules and principles applicable to the Province as of the date of the Agreement), and so if a term or condition of the Agreement is determined to conflict with the requirements applicable to the Province recording the transfers to the Recipient of Funds contemplated hereunder as an expense incurred by the Province on the date of the transfer of Funds under the Agreement otherwise in connection with activities undertaken by the Province with such a "non-controlled trust", then such term or condition shall be given a meaning and shall have an effect insofar as it is possible to interpret such term or condition in a manner that eliminates such conflict while preserving the other provisions of the Agreement and furthering the Purpose.

1.2 Definitions. In the Agreement, the following terms will have the following meanings:

"Administrative Services Agent" has the meaning given such term in the Declaration of Trust.

"Affordability Fund Trust" means the trust established and governed by the Declaration of Trust, and for greater certainty includes such trust operating under any other name that may be designated from time to time by the Recipient in accordance with the Declaration of Trust.

"BPSAA" means the Broader Public Sector Accountability Act, 2010 (Ontario).

"**Beneficiary**" has the meaning given to such term in the Declaration of Trust.

"Budget" means the Recipient's budget attached to the Agreement as Schedule "D".

"Business Day" means any working day, Monday to Friday inclusive, excluding statutory and other holidays, namely: New Year's Day; Family Day; Good Friday; Easter Monday; Victoria Day; Canada Day; Civic Holiday; Labour Day; Thanksgiving Day; Remembrance Day; Christmas Day; Boxing Day and any other day on which the Province has elected to be closed for business.

"**Declaration of Trust**" means the declaration of trust made as of March [•], 2017, under which the Affordability Fund Trust was established, as such declaration of trust may be amended, restated, supplemented or otherwise modified from time to time with the consent of the Province in accordance with Section 20.2.

"Expiration Date" means the date on which this Agreement will expire and is the date set out in Schedule "B".

"Funds" means the money the Province provides to the Recipient pursuant to the Agreement.

"Implementation Agents" has the meaning given such term in the Declaration of Trust.

"Maximum Funds" means the maximum amount of Funds that the Province will provide the Recipient under the Agreement, as set out in Schedule "B".

"Notice" means any communication given or required to be given pursuant to the Agreement.

"Party" means either the Province or the Recipient.

"**Person**" includes any individual, sole proprietorship, corporation, partnership, joint venture, association, society, club, board, chamber, joint-stock company, trust, trustee, unincorporated or incorporated organization or entity or government or any entity, agency or political subdivision thereof.

"**Program**" has the meaning given to such term in the Declaration of Trust.

"Project" means the undertaking described in Schedule "C".

"**Purpose**" has the meaning given to such term in the Declaration of Trust.

"PSSDA" means the *Public Sector Salary Disclosure Act, 1996* (Ontario).

"**Recipient**" means, initially, Computershare Trust Company of Canada, and any additional or replacement trustee in its capacity as trustee of the Affordability Fund Trust pursuant to the Declaration of Trust, including the Board of Trustees (as defined in the Declaration of Trust) and each of their respective successors and permitted assigns.

"Reports" means the reports described in Schedule "F".

2.0 REPRESENTATIONS, WARRANTIES AND COVENANTS

2.1 General. The Recipient represents, warrants and covenants that:

(a) it is the trustee of the Affordability Fund Trust; and

(b) the Affordability Fund Trust is, and will continue to be for the term of the Agreement, a trust existing under and governed by the laws of the Province of Ontario.

2.2 Execution of Agreement. The Recipient represents and warrants that it has:

(a) the full power and authority to enter into the Agreement; and

(b) taken all necessary actions to authorize the execution of the Agreement.

2.3 Governance. The Recipient covenants that it will develop and maintain in writing until the Agreement is no longer in effect:

(a) decision-making mechanisms and procedures to enable the Recipient to hold, invest, manage, apply and distribute the Funds in accordance with the Declaration of Trust in furtherance of the Purpose; and

(b) procedures to enable the preparation and delivery of all Reports required pursuant to Article 7.0.

2.4 Supporting Documentation. Upon request, the Recipient will provide the Province with proof of the matters referred to in this Article 2.0.

3.0 TERM OF THE AGREEMENT

3.1 Term. The term of the Agreement will commence on the Effective Date and will expire on the Expiration Date.

3.2 Extension. The term of the Agreement may be extended by further agreement between the Parties.

3.3 Extension of the Declaration of Trust. If the Province determines that an extension of the Final Distribution Date (as defined in the Declaration of Trust) and time for termination of the Declaration of Trust is consistent with and in furtherance of the Purpose and the Province's original intentions and expectations in establishing the Project, the Province may request that the Recipient extend such date to a date specified by the Province in a Notice (such date not to be later than December 31, 2021, whereupon the Recipient, so long as the Recipient does not have a reasonable basis to believe that such an extension would be inconsistent with the Purpose or weaken the protections intended for the benefit of the trustee pursuant to the Declaration of Trust, will undertake such actions as it may consider to be necessary or appropriate to so extend the Declaration of Trust, including by amending the Declaration of Trust to provide for such an extension and to modify any other term or requirement as would be necessary or prudent to conform such term or requirement in light of such extension.

4.0 FUNDS AND CARRYING OUT THE PROJECT

4.1 Funds Provided. The Province will:

(a) provide the Recipient up to the Maximum Funds to be held, invested, applied and distributed in accordance with the terms of the Project and the Declaration of Trust;

(b) provide the Funds to the Recipient in accordance with the Payment Plan attached to the Agreement as Schedule "E"; and

(c) deposit the Funds into an account designated by the Recipient, provided that the account:

(i) resides at a Canadian financial institution; and

(ii) is in the name of the Recipient.

4.2 Timing of Distributions to Beneficiaries. The expectations of the Province regarding when Funds will begin to be distributed by the Recipient to Beneficiaries are set out in Schedule C. The Recipient will have regard to those expectations in the exercise of its discretion under the Declaration of Trust, in determining when Funds will be distributed to Beneficiaries in furtherance of the Purpose.

4.3 Use of Funds and Project. The Recipient will exercise its rights, duties and discretions under the Declaration of Trust so that the Funds are used, applied and distributed only for and in furtherance of the Purpose, including having regard to the Principles set forth in Annex A.

4.4 Province's Role Limited to Providing Funds. For greater clarity, the Province's role under the Agreement is limited to providing Funds to the Recipient and the Province is not responsible for carrying out or overseeing the terms of the Declaration of Trust.

4.5 Maximum Funds. The Recipient acknowledges that the Funds available to it pursuant to the Agreement will not exceed the Maximum Funds.

4.6 Funding, Not Procurement. For greater clarity, the Recipient acknowledges that:

(a) it is receiving funding from the Province for the Project and is not providing goods or services to the Province; and

(b) the funding the Province is providing under the Agreement is funding for the purposes of the PSSDA.

5.0 RECIPIENT'S ACQUISITION OF GOODS OR SERVICES, AND DISPOSAL OF ASSETS

5.1 Acquisition. If the Recipient acquires goods, services, or both with or by applying the proceeds of the Funds, it is expected to do so through a process that promotes the best value for money and to take reasonable steps to ensure that its Administrative Services Agents and Implementation Agents also follow a process that promotes the best value for money when acquiring goods and services with or by applying the proceeds of the Funds. In this regard, it is expected that the Recipient will have regard the following procurement principles:

(a) ***Accountability*** - Procurement is conducted in a manner that is well-informed and reflects rules of good governance and decision-making.

(b) ***Geographic Neutrality and Reciprocal Non-Discrimination*** - Procurement should not differentiate between competing goods, services, or suppliers based on their geographic origin or location.

(c) ***Responsible Management*** - Procurement of goods and services should be responsibly, efficiently and effectively managed and should observe the highest standard of ethics, avoiding conflict of interest.

(d) ***Value for Money*** - Procurement processes should apply a value for money evaluation that takes into account price as well as other costs and benefits, including life cycle costs and relevant non-price attributes such as quality.

(e) ***Vendor Access, Transparency, and Fairness*** - Procurement is conducted in a fair and transparent manner, offering all qualified suppliers equal treatment and open access to compete for the opportunity to supply goods and services.

6.0 CONFLICT OF INTEREST

6.1 No Conflict of Interest. Except as expressly permitted by the Declaration of Trust, the Recipient is expected to implement appropriate processes and control to ensure that the Program and the use, application and distribution of the Funds are without an actual, potential or perceived conflict of interest.

6.2 Conflict of Interest Includes. For the purposes of this Article, a conflict of interest includes any circumstances where, except as expressly permitted by the Declaration of Trust:

(a) the Recipient; or

(b) any person who has the capacity to influence the Recipient's decisions,

has outside commitments, relationships or financial interests that could, or could be seen to, interfere with the Recipient's objective, unbiased and impartial judgment relating to the Project, or the Recipient's use, application or distribution of the Funds, or both.

7.0 REPORTING, ACCOUNTING AND REVIEW

7.1 Preparation and Submission. The Recipient will cooperate with the Province to accommodate the Province's on-going information and reporting objectives in order to enable the Province to be aware of the Recipient's activities in furtherance of the Purpose, and to that end the Recipient will be expected, from and following the Original Trustee Replacement Date, to:

(a) submit to the Province at the address referred to in Schedule "B", all Reports in accordance with the timelines and content requirements set out in Schedule "F", or in a form as specified by the Province from time to time, acting reasonably;

(b) submit to the Province at the address referred to in Schedule "B", any other reports as may be reasonably requested by the Province from time to time in accordance with the timelines and content expectations identified by the Province, acting reasonably;

(c) undertake diligent efforts so that such Reports and any such other reports are complete and accurate in all material respects; and

(d) have an authorized signatory of the Recipient sign-off on such Reports and other reports.

7.2 Record Maintenance. The Recipient will keep and maintain financial and other records necessary to permit it to satisfy its obligations under section 7.1 and to permit the Province to exercise its rights under section 7.3.

7.3 Inspection. The Province, its authorized representatives or an independent auditor identified by the Province may, at its own expense, upon twenty-four hours' Notice to the Recipient and during normal business hours, inspect the records of and information respecting the Recipient to confirm its compliance with the terms of this Agreement, including to ensure consistency with the Purpose and, for these purposes, the Province, its authorized representatives or an independent auditor identified by the Province may take one or more of the following actions:

(a) inspect and copy the records and documents referred to in section 7.2;

(b) keep any copies made pursuant to section 7.3(a); and

(c) conduct an audit or investigation of the Recipient in respect of the expenditure of the Funds to confirm that the Funds have been used, applied and distributed for and in furtherance of the Purpose, including a review of the Recipient's processes, records, documents, as well as the processes and controls applied to obtain assurance that Funds disbursed to Electricity Distributors were used, applied and distributed for and in furtherance of the Purpose.

7.4 Disclosure. To assist in respect of the rights set out in section 7.3, the Recipient will disclose any information requested by the Province, its authorized representatives or an independent auditor identified by the Province, and will do so in the form requested by the Province, its authorized representatives or an independent auditor identified by the Province, as the case may be.

7.5 No Control of Records. No provision of the Agreement will be construed so as to give the Province any control whatsoever over the Recipient's records.

7.6 Auditor General. For greater certainty, the Province's rights under this Article are in addition to and do not limit any rights provided to the Auditor General pursuant to section 9.1 of the *Auditor General Act* (Ontario).

8.0 COMMUNICATIONS REQUIREMENTS

8.1 Publication. The Recipient will acknowledge, in any of its Program-related external communications and marketing whether written, oral, or visual, the financial support of the Province in connection with the establishment and funding of the program, while noting that the

views expressed in the publication are the views of the Recipient and do not necessarily reflect those of the Province.

9.0 FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY

9.1 FIPPA. The Recipient acknowledges that the Province is bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province in connection with the Project or otherwise in connection with the Agreement may be subject to disclosure in accordance with that Act.

10.0 Intentionally Deleted

11.0 EVENT OF DEFAULT, CORRECTIVE ACTION AND TERMINATION FOR DEFAULT

11.1 Events of Default. An Event of Default will occur if:

(a) the Recipient fails to perform or observe any covenant in this Agreement and such failure has and continues to have a material adverse effect on the Province and remains unremedied during any Notice period applicable under section 11.2 after the earlier of (i) actual knowledge thereof by the Recipient, or (ii) receipt by the Recipient of Notice thereof from the Province;

(b) any representation or warranty made by the Recipient in the Agreement shall prove to have been incorrect in any material respect when made or deemed made, and, if capable of remedy, continues to be incorrect in any material respect during any Notice period applicable under section 11.2 after the earlier to occur of (i) the actual knowledge thereof by the Recipient or (ii) receipt by the Recipient of Notice thereof from the Province;

(c) it is determined that the Recipient has breached its Standard of Care (within the meaning given in and context of the Declaration of Trust) in discharging its material duties under the Declaration of Trust, with the result that all or a significant part of the Funds have not been or are not being applied in furtherance of the Purpose or are being applied in a manner that is directly contrary or without regard to the Purpose, and, if such breach is capable of remedy, it continues and remains unremedied during any Notice Period applicable under section 11.2 after the earlier of (i) actual knowledge thereof by the Recipient, or (ii) receipt by the Recipient of Notice thereof from the Province;

(d) an insolvency event shall have occurred and be continuing with respect to the Recipient.

11.2 Consequences of Events of Default and Corrective Action. If an Event of Default occurs, the Province may, at any time, take one or more of the following actions:

(a) provide the Recipient with Notice allowing the Recipient an opportunity to remedy the Event of Default during a specified Notice Period;

(b) seek an order of specific performance, including an order that the Recipient pursue its available remedies against third parties;

(c) require, by Notice of demand, that the Recipient transfer to the Province (without any need for compensation, indemnity or consideration to the Recipient or any Beneficiary or other third party) any and all Assets remaining in the possession or under the control of the Recipient that can reasonably be traced or attributed to the Funds after first providing for the completion and performance by the Recipient of any unperformed contractual obligations of the Recipient undertaken in compliance with the Declaration of Trust on or prior to transfer; and

(d) terminate the Agreement, including immediately, without liability, penalty or costs to the Province upon giving Notice to the Recipient.

The transfer of Funds in accordance with the Agreement is made by the Province with the expressed intention and reservation that the transferred Funds shall be returned to the Province and the entitlements of the Recipient in remaining Funds shall thereby be revoked with reversion thereof to the Province in the circumstances contemplated in Section 11.2(c).

11.3 Opportunity to Remedy. If, in accordance with section 11.2, the Province provides the Recipient with an opportunity to remedy the Event of Default, the Province will provide Notice to the Recipient of:

(a) the particulars of the Event of Default; and

(b) the length of time within which the Recipient may cure such Event of Default without the Province pursuing any other remedy (the "Notice Period").

11.4 Recipient not Remedying. If the Province has provided the Recipient with an opportunity to remedy the Event of Default pursuant to section 11.2(a), and:

(a) the Recipient does not remedy the Event of Default within the Notice Period;

(b) it becomes apparent to the Province that the Recipient cannot adequately remedy the Event of Default within the Notice Period; or

(c) the Recipient is not proceeding to remedy the Event of Default in a way that is satisfactory to the Province,

the Province may extend any Notice Period, or initiate any one or more of the actions provided for in section 11.2.

12.0 REPAYMENT

12.1 Debt Due. If, pursuant to the Agreement: the Province demands the payment of any Funds from the Recipient pursuant to section 11.2(c) such Funds or other amount will be deemed to be a debt due and owing to the Province by the Recipient, and the Recipient will pay or return the amount to the Province immediately, unless the Province directs otherwise.

12.2 Payment of Money to Province. The Recipient will pay any money owing to the Province by cheque payable to the "Ontario Minister of Finance" and delivered to the Province at the address referred to in Schedule "B".

12.3 Failure to Repay. Without limiting the application of section 43 of the Financial Administration Act (Ontario), if the Recipient fails to repay any amount owing under the Agreement, Her Majesty the Queen in right of Ontario may deduct any unpaid amount from any money payable to the Recipient by Her Majesty the Queen in right of Ontario.

13.0 NOTICE

13.1 Notice in Writing and Addressed. Notice will be in writing and will be delivered by email, postage-prepaid mail, personal delivery or fax, and will be addressed to the Province and the Recipient respectively as set out in Schedule "B", or as either Party later designates to the other by Notice.

13.2 Notice Given. Notice will be deemed to have been given:

(a) in the case of postage-prepaid mail, five Business Days after the Notice is mailed; or

(b) in the case of email, personal delivery or fax, one Business Day after the Notice is delivered.

13.3 Postal Disruption. Despite section 13.2(a), in the event of a postal disruption:

(a) Notice by postage-prepaid mail will not be deemed to be received; and

(b) the Party giving Notice will provide Notice by email, personal delivery or by fax.

14.0 SEVERABILITY OF PROVISIONS

14.1 Invalidity or Unenforceability of Any Provision. The invalidity or unenforceability of any provision of the Agreement will not affect the validity or enforceability of any other provision of the Agreement. Any invalid or unenforceable provision will be deemed to be severed.

15.0 WAIVER

15.1 Waivers in Writing. If a Party fails to comply with any term of the Agreement, that Party may only rely on a waiver of the other Party if the other Party has provided a written waiver in accordance with the Notice provisions in Article 13.0. Any waiver must refer to a specific failure to comply and will not have the effect of waiving any subsequent failures to comply.

16.0 INDEPENDENT PARTIES

16.1 Parties Independent. The Recipient acknowledges that it is not an agent, joint venturer, partner or employee of the Province, and the Recipient will not represent itself in any way that might be taken by a reasonable person to suggest that it is, or take any actions that could establish or imply such a relationship.

17.0 ASSIGNMENT OF AGREEMENT OR FUNDS

17.1 Agreement Binding. All rights and obligations contained in the Agreement will extend to and be binding on the Parties' respective heirs, executors, administrators, successors and permitted assigns.

18.0 LIMITATION OF LIABILITY

18.1 This Agreement has been entered into by the Recipient solely in its capacity as trustee of the Affordability Fund Trust and is not binding on the Recipient in any other capacity, whether in tort, contract or otherwise. The Beneficiaries of the Affordability Fund Trust are not subject to any liability in respect of the Affordability Fund Trust. Resort may not be had to, nor recourse or satisfaction be sought from, the private property of the Recipient (whether owned by it in its personal capacity or in any other capacity other than in its capacity as trustee of the Affordability Fund Trust), its directors, officers, employees, or agents, or the private property of any Beneficiary, and resort will be had solely to the property of the Recipient held in trust for the payment, performance or satisfaction of any liability or obligation of the Recipient under this Agreement. However, the foregoing limitations in this section shall not apply where the Recipient has demonstrated gross negligence, bad faith, fraud or wilful misconduct.

19.0 GOVERNING LAW

19.1 Governing Law. The Agreement and the rights, obligations and relations of the Parties will be governed by and construed in accordance with the laws of the Province of Ontario and the applicable federal laws of Canada. Any actions or proceedings arising in connection with the Agreement will be conducted in the courts of Ontario, which will have exclusive jurisdiction over such proceedings.

20.0 FURTHER ASSURANCES

20.1 Agreement into Effect. The Recipient will provide such further assurances as the Province may request from time to time with respect to any matter to which the Agreement pertains, and will otherwise do or cause to be done all acts or things necessary to implement and carry into effect the terms and conditions of the Agreement to their full extent.

20.2 Declaration of Trust. The Recipient covenants that it shall not amend, restate or terminate the

Declaration of Trust without obtaining the written consent of the Province in respect of same, such consent not to be unreasonably withheld or delayed.

21.0 JOINT AND SEVERAL LIABILITY

21.1 Joint and Several Liability. Without limiting and subject to section 18.1 and the Declaration of Trust, if the Recipient is comprised of more than one entity, all such entities will be jointly and severally liable to the Province for the fulfillment of the obligations of the Recipient under the Agreement.

22.0 RIGHTS AND REMEDIES CUMULATIVE

22.1 Rights and Remedies Cumulative. The rights and remedies of the Province under the Agreement are cumulative and are in addition to, and not in substitution for, any of its rights and remedies provided by law or in equity.

23.0 ACKNOWLEDGEMENT OF OTHER LEGISLATION AND DIRECTIVES

23.1 Recipient Acknowledges. The Recipient acknowledges that by receiving Funds it may become subject to legislation applicable to organizations that receive funding from the Government of Ontario, including the BPSAA, the PSSDA, and the *Auditor General Act* (Ontario).

24.0 SURVIVAL

24.1 Survival. The following Articles and sections, and all applicable cross-referenced sections and schedules, will continue in full force and effect for a period of seven years from the date of expiry or termination of the Agreement: Article 1.0 and any other applicable definitions, section, 4.5, section 7.1 (to the extent that the Recipient has not provided the Reports to the satisfaction of the Province), sections 7.2, 7.3, 7.4, 7.5, 7.6, Article 8.0, Article 12.0, Article 14.0, Article 16.0, Article 17.0, Article 19.0, Article 21.0, Article 23.0 and Article 24.0.

- END OF GENERAL TERMS AND CONDITIONS -

SCHEDULE "B"

PROJECT SPECIFIC INFORMATION

Maximum Funds	$100 million
Expiration Date	The date upon which the Affordability Fund Trust is terminated in accordance with the Declaration of Trust
Contact information for the purposes of Notice to the Province	**Attention: Usman Syed** **Position: Director** **Address: 77 Grenville St, Toronto, Ontario, M7A 2C1** **Fax: 416-325-6651** **Email: Usman.Syed@ontario.ca**
Contact information for the purposes of Notice to the Recipient	**Attention:** **Position:** **Address:** **Email:**
Contact information for the senior financial person in the Recipient organization (e.g., CFO, CAO) – to respond as required to requests from the Province related to the Agreement	**Attention:** **Position:** **Address:** **Email:**

SCHEDULE "C"

PROJECT

For the purposes of this Agreement, the "Project" is the distribution of the Funds in accordance with the Declaration of Trust.

It is intended the Project will be undertaken by the Recipient in furtherance of the Purpose and in accordance with the Declaration of Trust. In this regard, it is expected that the Recipient will undertake the Program having regard to the Budget and the Principles set forth in Annex A.

The following are the Province's expectations regarding the circumstances in which the Recipient will begin to distribute any Funds to any Beneficiary.

1. The Original Trustee Replacement Date (as defined in the Declaration of Trust) will have occurred.

2. An Administrative Services Agreement (as defined in the Declaration of Trust) will have been entered into between the Recipient and Hydro One Limited under which Hydro One Limited shall provide specified administrative and other services on behalf of the Recipient.

3. Administrative procedures will have been developed and implemented under which Electricity Distributors (as defined in the Declaration of Trust) will be invited to assist with (a) the identification and selection of Primary Beneficiaries under the Declaration of Trust, (b) the determination of the amount of Funds to be distributed to particular Primary Beneficiaries, and (c) the distribution of Funds to or for the benefit of such Primary Beneficiaries (in each case substantially on the basis contemplated in the Permitted Delegations Annex).

4. The Recipient will have obtained commercial general liability insurance from insurers having a secure A.M. Best rating of B+ or greater, or the equivalent, that in the opinion of the Recipient a prudent person similar to the Recipient would maintain, and having an inclusive limit of not less than $2,000,000 per occurrence and providing for contractual liability coverage. If requested, the Recipient will provide the Province (for its information purposes) with copies of the certificates of insurance and policies for such insurance coverage.

The Province recognizes that the foregoing may involve the Recipient entering into agreements as the Recipient considers to be necessary or expedient, including any required amendment or amendment and restatement of the Declaration of Trust. Funds may be expended to pay the expenses of the Recipient in completing these matters. The Recipient is requested to advise the Province through its quarterly reports on the status of the foregoing.

SCHEDULE "D"

Recipient's Budget

1. It is expected that the administrative expenses of the Recipient, including any administrative expenses of any Administrative Services Agents or any Implementation Agents or any other agents retained by the Recipient, relating to the establishment of the Affordability Fund Trust and satisfying the Requirements (as defined in Schedule "C") and any expenses related to the operation of the Affordability Fund Trust and the execution of the Project (including any reimbursable expenses incurred by any Administrative Services Agent or any Implementation Agent (as such terms are defined in the Declaration of Trust)), will be no greater than 10 percent of the total Project budget.

2. The only expenditures incurred by the Recipient that are eligible for reimbursement are actual (excluding HST) administrative overhead expenses incurred by or on behalf of the Recipient that directly related to the Recipient or the establishment of the Affordability Fund Trust.

4. Any expenses that have been or may be reimbursed by other parties should not be reimbursed from the assets of the Affordability Fund Trust.

5. It is expected any travel, meals and hospitality expenses by the Recipient will be consistent with the Province's Travel, Meal and Hospitality Expenses Directive. For purposes of funding entities receiving funding from the Recipient, the following would not be considered eligible claims:

    - Alcohol
    - First-Class travel
    - Meals, snacks and beverages
    - Gratuities
    - Laundry or dry cleaning
    - Valet services
    - Dependent care
    - Home management
    - Personal telephone calls

6. In the event that the Recipient performs any procurements, it is expected that all procurements will reflect the principles of Ontario's Public Service Procurement Directive.

SCHEDULE “E”

PAYMENT PLAN

PAYMENT DATE	MAXIMUM FUNDS TO BE DISBURSED BY THE PROVINCE
Within 7 days of signing the Agreement	$ 100,000,000

SCHEDULE "F"

REPORTING

From and following the Original Trustee Replacement Date, Reports will be quarterly on the basis of the government's fiscal year starting at the execution of this Agreement and continuing until conclusion of the Agreement. Annual Reports will be on a fiscal basis starting at the execution of this Agreement and continuing until conclusion of the Agreement. Quarterly Reports and Annual Reports would be expected to be submitted to the Province within one month following the end of the reporting period that they represent. The Province expects that these Reports would be prepared to demonstrate the impact of the Province's funding and address the following:

- Quarterly Reports would include a report back on the trustee-developed performance management criteria. Initially, such Quarterly Reports would include details respecting:
    - Amounts disbursed by the Recipient in the previous quarter. It is expected that this information would be provided at the Electricity Distributor level and in the aggregate.
    - Total Affordability Fund investment income earned and accrued to date.
    - Key activities and achievements from the quarter, including the number of participant households per Electricity Distributor, average participant incentive cost per Electricity Distributor, and uptake of energy efficiency measures per Electricity Distributor.
    - Any challenges or modifications to the application, funding, or eligibility processes/rules of the Recipient.
    - Key activities planned for the upcoming quarter.
    - Details of any situation that a reasonable person might interpret as an actual, potential or perceived conflict of interest.
- Annual Reports would include a report back on the trustee-developed performance management criteria. Initially, such Annual Report would include details respecting:
    - A description of an Electricity Distributor's application process and the criteria used by the Recipient to distribute funds.
    - Any challenges identified by the Recipient or any Administrative Services Agent in achieving the Purpose and proposed solutions, if applicable.
    - Lesson learned.
    - Electricity Distributor and customer feedback.
    - Amounts distributed to Beneficiaries or otherwise disbursed by the Recipient in the previous year. It is expected that this information will be provided by each Electricity Distributor.
    - Key activities and achievements from each quarter being reported, including number of participant households per Electricity Distributor, average participant incentive cost per Electricity Distributor, and uptake of energy efficiency measures per Electricity Distributor.
    - Total Affordability Fund interest earned and accrued to date.

    As part of an Annual Report, the Recipient would also provide the Province with an audited financial statement for the previous year.

ANNEX A

Principles

The Trustee shall have regard to, but shall not be specifically bound by, the following principles in applying its discretion in relation to the administration of the Trust:

4. Identification of Primary Beneficiary Payees

4.1 Except in exceptional circumstances, a Primary Beneficiary would not be expected to receive a benefit from the Trust unless at the time of consideration it satisfies, in addition to the requirements contemplated in the definition of "Primary Beneficiary", each of the following criteria (the "**Selection Factors**"):

(i) it has a participant agreement with an applicable Electricity Distributor to undertake measures (its "**Energy Plan**") to improve the electricity efficiency and/or promote the conservation of electricity at its Ontario residence;

(ii) its Energy Plan involves one or more Eligible Measures, as may be designated by the Trustee from time to time from;

(iii) it confirms that:

1. the primary purpose of its Energy Plan is the conservation and efficient use by the Primary Beneficiary of electricity, and is not for the purposes of the Primary Beneficiary making a profit;

2. it would otherwise not have the financial resources to undertake the Eligible Measures included in its Energy Plan; and

3. it would otherwise not be eligible to receive amounts in respect of the Eligible Measures as a HAP Eligible Person;

(iv) it has demonstrated a need for financial assistance on the basis that its periodic electricity bills represent a financial burden, relative to its available financial resources; and

(v) such other criteria as the Trustee may determine, including based on the recommendations of Electricity Distributors or other knowledgeable Persons made on the basis and having regard to the delegations contemplated by the Permitted Delegations Annex or any applicable Implementation Agreement.

4.2 It is recognized that, in furthering the Purpose, an efficient basis upon which to allocate funds to the Primary Beneficiaries across different areas and regions within Ontario may be based on the areas and regions serviced by the Electricity Distributors operating within Ontario.

4.3 It would not be contrary to the Purposes if funds are made available by the Trustee to the Primary Beneficiaries unequally across different areas and regions within Ontario, and it is expected that in making such an unequal division it would be appropriate to have regard to:

(i) broad economic parameters of economic activity and the specific financial resources of the residents of the areas and regions, in each case as an indication of the relative need of such residents across the areas and regions;

(ii) electricity use and efficiency levels of residential electricity customers across the areas and regions;

(iii) specific regional indicators of economic weakness and need; and

(iv) such other factors as the Trustee may determine are relevant, including based on the submissions, advice and recommendations of Electricity Distributors or other knowledgeable Persons made on the basis and having regard to the delegations contemplated by the Permitted Delegations Annex or any applicable implementation Agreement.

4.4 It is recognized that, in furthering the Purpose, the designated Electricity Distributor for an area or region in which a Primary Beneficiary resides would be expected to:

(i) be a reliable source for the purpose of assessing and confirming whether the Primary Beneficiary satisfies the Selection Factors;

(ii) be an efficient intermediary for the purpose of communicating with the Primary Beneficiary, including with respect to matters such as regarding the availability, terms, conditions and intended purposes of Program;

(iii) be able to facilitate an efficient payment of distribution determined to be made to or on behalf of the Primary Beneficiary, having regard to the Electricity Distributor's established practices, procedures and systems for dealing with its customers; and

(iv) have established contractual arrangements with the Primary Beneficiary that may apply to the protection and confidentiality of information provided by or respecting the Primary Beneficiary, which information may be useful in the consideration by the Electricity Distributor in its assessment of whether the Primary Beneficiary satisfies the Selection Factors, which information may not otherwise be available or readily accessible or verifiable by the Trustee.

4.5 It is recognized that, in furthering the Purpose, the Electricity Distributor for an area or region in which a Primary Beneficiary resides will have market and utilization information that may be useful in assessing the relative needs of Primary Beneficiaries within its area or region. Such information is expected to be relevant in assessing the extent to which one such Primary Beneficiary's financial needs and the merits of its Energy Plan are greater or more compelling than those of another such Primary Beneficiary, which comparison may be relevant to the extent that the funds allocable to the Primary Beneficiaries resident in the area or region are otherwise insufficient to meet the requests for funding by all such Primary Beneficiaries.

4.6 Accordingly, it is recognized that, in furthering the Purpose, it is consistent with the Purpose that the recommendations of Electricity Distributors be utilized and relied upon by the Trustee to guide the process of identifying particular Primary Beneficiaries in making distributions to the Primary Beneficiaries.

4.7 If an Electricity Distributor for a particular area or region is unable or unwilling to assess or confirm the application of the Selection Factors to Primary Beneficiaries residing in the area or region or to make recommendations in relation to such matters, one or more of the following may provide a suitable alternative source of information and for information gathering, assessment and confirmation purposes in relation to such area or region:

(i) other Electricity Distributors operating in adjacent or other areas or regions in Ontario;

(ii) the Ontario Energy Board;

(iii) the Independent Electricity System Operator; and

(iv) anyone else having relevant expertise and access to information regarding the electricity market of the Province, in each case as may be considered relevant by the Trustee.

4.8 To the extent that privacy law or other legal requirements limit an Electricity Distributor from providing or making available specific information respecting the application of the Selection Factors to a particular Primary Beneficiary or group of Primary Beneficiaries, it is recognized that, in furthering the Purpose, it may be appropriate to redact or make generic affected information regarding such Primary Beneficiary in connection with the identification and confirmation of a Primary Beneficiary's eligibility and participation in the Program. If such limitations or restrictions would limit an Electricity Distributor from providing or confirming the name of a particular Primary Beneficiary to the Trustee, then it should be sufficient that such information may be obtained or disseminated on a confidential basis if and when required by the Trustee for the proper administration of the Trust and on that basis such impediments should not disqualify a Primary Beneficiary from participating in the benefits of the Program, provided that the confidential record-keeping of the Electricity Distributor would be available in connection with the application of any applicable legal process predicated on the identification of such Primary Beneficiary for the purposes of substantiating its rights as a Primary Beneficiary of the Trust or as to the validity or subsistence of the Trust.

5. Eligible Measures

5.1 It is expected that the Trust will identify eligible measures that, taking into consideration the principles set forth in the Principles Annex, have regard to the following (the "**Measures Factors**"):

(i) is the measure generally expected to result in reduced electricity consumption by a Primary Beneficiary if properly installed and used;

(ii) is the measure recognized under another Provincial program as being appropriate for achieving electricity conservation among a population analogous to the Primary Beneficiaries;

(iii) does the measure present any unacceptable health or safety considerations, either with respect to the Primary Beneficiary, a party providing or installing the measure, or the physical environment;

(iv) is the measure broadly available to residents across different areas and regions of the Province; or

(v) is the measure a requirement or precursor to another measure, the other measure being one which meets any of the other Measures Factors.

5.2 In identifying and applying the Measures Factors, Electricity Distributors would be expected to have expertise in assessing the suitability of efficiency and conservation measures in their respective areas and regions, which may differ across areas and regions across the Province based on factors (among other things) such as the climate, geography, density, electricity infrastructure, residential structures, and electricity use rates applicable within such areas or regions.

5.3 The measures specified in Schedule A to this Principles Annex may initially be considered to be consistent with the Measures Factors (subject to change as contemplated under the Permitted Delegations Annex).

6. Promotion of the Program

6.1 It is expected that the Trustee will undertake or engage others to undertake diligent efforts to promote the availability, terms and benefits of the Program to Primary Beneficiaries, including by establishing consistent communications through the Electricity Distributors.

6.2 It is expected that the Trustee will acknowledge the financial support of the Province in connection with the establishment and the funding for the Program, including in any external communications to or marketing directed at the Electricity Distributors and the Primary and Residual Beneficiaries. In its delegation of any duties or powers to the Electricity Distributors through Implementation Agreements it is expected that Electricity Distributors will acknowledge the financial support of the Province in connection with the program including in any communications or marketing to Primary Beneficiaries.

7. Conduct of the Trust and the Program

7.1 It is expected that administrative expenses of the Board of Trustees and its members, including any expenses relating to the Trust, to the establishment of the Trust and any expenses related to the implementation and operation of the Program, including by or through Electricity Distributors and other relevant entities, will be recognized and subject to reimbursement on a basis that is substantially consistent with the accountability provisions contemplated in the Transfer Payment Agreement and the principles in the Province's Travel, Meal and Hospitality Expenses Directive, as set out in Schedule B to this Principles Annex.

7.2 The Trustee is expected to conduct its activities in a manner that complies in all material respects with the Transfer Payment Agreement, including to:

(i) act prudently and in furtherance of the Purpose;

(ii) report not less frequently than annually the results of its activities for information purposes to the Province in connection with the Program;

(iii) comply with the Province's request for any independent verification or audit if determined to be necessary or appropriate by the Province;

(iv) return Assets that have not been distributed if it is determined that the Trustee has breached its Standard of Care in discharging its material duties under the Declaration, and has not cured such material breach despite having been given a reasonable opportunity by the Province to do so in light of the circumstances of such material breach, with the result that all or a significant part of the Assets have not been or are not being applied and distributed in furtherance of the Purpose or are being applied and distributed in a manner that is directly contrary or without regard to the Purpose.

7.3 Electricity Distributors are not intended to directly profit from distributions of funds made from the Trust, although it is recognized that the objectives of electricity efficiency and conservation of Primary Beneficiaries located in the service area or region of an Electricity Distributor, and the cost savings and improved credit worthiness of such Primary Beneficiaries, may be financially beneficial to the Electricity Distributor.

7.4 Distributions from the Trust are intended to allow receiving Primary Beneficiaries to undertake Eligible Measures at no or minimal personal cost.

7.5 Without in any way limiting the discretion of the Board of Trustees to extend the period during which the benefits of the Program may be available to the Primary Beneficiaries, up to and including the Final Distribution Date, it is expected that the Trust Assets would be distributed to

Primary Beneficiaries during the period from the Original Trustee Replacement Date to April 30, 2019.

SCHEDULE A TO THE PRINCIPLES ANNEX
INDICATIVE ELIGIBLE MEASURES[1]

Initial Specified Measures
Block Heater Timer (just timer) – rated for outdoor use, have at least a 15 amp/1800 watt capacity, be cold weather resistant, bear a C-UL or CSA certification mark
Power bar with integrated timer, and switched power outlets, four each for a total of 8 outlets, have a total capacity of 15 amps. The switched outlets must remain "live", independent of timer settings, so long as the power bar itself remains switched on. The power bar must bear either a C-UL or CSA certification mark.
Efficient Showerheads (standard) - rated at no more than 4.8 Lpm (1.25 U.S. gpm) and be of the laminar flow type (non-aerating).
Efficient Showerhead (handheld) - rated at no more than 4.8 Lpm (1.25 U.S. gpm) and be of the laminar flow type (non-aerating).
Efficient Aerators (kitchen) - rated no more than 5.7 Lpm (1.5 U.S. gpm), dual threaded to allow installation in both thread type faucets, swivel type with pause lever.
Efficient Aerators (bathroom) - rated no more than 3.8 Lpm (1.0 U.S. gpm), be dual threaded to allow installation in both thread type faucets.
Hot Water Tank Pipe Insulation - $^{1}/_{2}$" inside diameter – foam, meets ASTM –C547-00, minimum $^{3}/_{4}$" thick
Hot Water Tank Pipe Insulation - $^{3}/_{4}$ " inside diameter - – foam, meets ASTM –C547-00, minimum $^{3}/_{4}$" thick
Hot Water Tank Insulation - fibreglass R10 (fits up to a 60 gal tank) – not bubble wrap
≤11W ENERGY STAR® Qualified LED A Shape (60W) (minimum 600 Lumen output) (Formerly: 7W – 11W ENERGY STAR® Qualified LED A Shape (60W))

[1] These measures are indicative. Eligible measures added to HAP during the administration of the Trust may also be appropriately considered relevant by the Trustee.

Initial Specified Measures
≤14W ENERGY STAR® Qualified LED A Shape (75W) (minimum 800 Lumen output) (Formerly: 10W – 14W ENERGY STAR® Qualified LED A Shape (75W))
≤23W ENERGY STAR® Qualified LED A Shape (100W) (minimum 1600 Lumen output) (Formerly:17W – 23W ENERGY STAR® Qualified LED A Shape (100W))
≤16W ENERGY STAR® Qualified LED PAR 20 (minimum 600 Lumen output) (Formerly: 8W – 12W ENERGY STAR® Qualified LED PAR 20)
≤16W ENERGY STAR® Qualified LED PAR30 & PAR38 (minimum 600 Lumen output) (Formerly: 8W – 12W ENERGY STAR® Qualified LED PAR 30)
≤23W ENERGY STAR® Qualified LED PAR (minimum 1100 Lumen output) (Formerly: 14W – 18W ENERGY STAR® Qualified LED PAR 38)
≤6W ENERGY STAR® Qualified LED MR 16 / PAR 16 (minimum 250 Lumen output) (Formerly: 7W – 10W ENERGY STAR®
Qualified LED MR 16 / PAR 16 - GU 10 Base)
≤11W ENERGY STAR® Qualified LED MR 16 (minimum 400 Lumen output) (Formerly: 7W – 12W ENERGY STAR® Qualified LED MR 16 GU 5.3 Base)
ENERGY STAR® LED Wet Location Rated PAR lamp ≤ 23 Watt (minimum 1100 Lumen output)
Recessed Downlight Fixture including LED with Light Output >600 and <800 lumens (Retrofit Measure List)
Recessed Downlight Fixture including LED with Light Output >800 lumens (Retrofit Measure List)
Indoor Drying Rack

Extended Measures
Replace refrigerator with ENERGY STAR qualified refrigerator - 15.5 - 16.9 cubic foot top freezer, automatic defrost, refrigerator/ freezer, no through the door ice service
Replace refrigerator with ENERGY STAR qualified refrigerator - 17.0 - 18.4 cubic foot top freezer, automatic defrost, refrigerator/ freezer, no through the door ice service
Replace refrigerator with a refrigerator that has a consumption level of less than 425 kwh, 10 – 12.5 cubic foot top freezer, automatic defrost, refrigerator freezer, no through the door ice service
Replace freezer with ENERGY STAR qualified freezer - 12-14.4 cubic foot freezer
Replace freezer with ENERGY STAR qualified freezer - 14.5 - 16.0 cubic foot freezer
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 6,000 – 7,999 BTU/hr with C-UL or CSA certification mark
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 8,000 – 9,999 BTU/hr with C-UL or CSA certification mark
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 10,000 – 12,000 BTU/hr with C-UL or CSA certification mark
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 14.2 - 21.2 l/day (30-44.9 pints/day) dehumidifier
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 21.3 - 25.4 l/day (45-53.9 pints/day) dehumidifier
Extended Measures
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 25.5 - 35.5 l/day (54-75 pints/day) dehumidifier
Programmable Thermostat – line voltage – meets CAN/CSA-C828-06 standard, minimum performance: Droop: 1.5°C, Differential: 0.5°C, Precision 0% within 0.5°C of the original set point of 22°C
Programmable Thermostat – low voltage - meets CAN/CSA-C828-06 standard, minimum performance: Droop: 1.5°C, Differential: 0.5°C, Precision 0% within 0.5°C of the original set point of 22°C

Weatherization Measures
Comprehensive Draftproofing (caulking, foam and weather stripping, and application of same) – lifespan of 20 years plus If one or two component polyurethane foams are used, the products and installations must conform to: • CAN/ULC-S710.1 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 1: Material Specification. • CAN/ULC-S710.2 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 2: Application. • CAN/ULC-S711.1 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification • CAN/ULC-S711.2 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification, and Part 2: Application. **Attic Insulation (including installation):**
cellulose: CAN/ULC-S703-01 Amendment 1 - Cellulose Fibre Insulation (CFI) for Buildings OR 2) Mineral Fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre

Weatherization Measures
for Buildings **Wall Insulation (including installation):**
cellulose: CAN/ULC-S703-01 Amendment 1 - Cellulose Fibre Insulation (CFI) for Buildings OR 2) Mineral Fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre **Basement Insulation (including installation):**
mineral fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre for Buildings Vapour Barrier: 69009-CAN/CGSB-51.34-m86 If one or two component polyurethane foams are used, the products and installations must conform to: • CAN/ULC-S710.1 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 1: Material Specification. • CAN/ULC-S710.2 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 2: Application. • CAN/ULC-S711.1 Standard for Thermal Insulation – Bead Applied Two-Component
Polyurethane Air Sealant Foam, Part 1: Material Specification • CAN/ULC-S711.2 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification, and Part 2: Application.

Heat Pumps
(Selection of manufacturers and technologies to meet the US federal minimum efficiency standard for ASHPs, as of 2015, is 13.0 SEER and 7.7 HSPF. Energy Star–certified models offer roughly 9 percent more efficiency than most new uncertified ASHPs and 20 percent more efficiency than existing models
Ductless Multiport Heat Pump
Cold Climate Ductless Heat Pump
Cold Climate Multiport Ductless Heat Pump
Cold Climate Ducted Heat Pump

SCHEDULE B TO THE PRINCIPLES ANNEX
PERMITTED EXPENSE REIMBURSEMENTS

Travel, Meal and Hospitality Expenses Directive

Funds should be used prudently and responsibly with a focus on accountability and transparency.

Expenses for travel, meals and hospitality support the Purpose.

Plans for travel, meals, accommodation and hospitality are necessary and economical with due regard for health and safety.

Legitimate authorized expenses incurred during the course of furthering the Purpose may be reimbursed.

Best practices should be followed, including:

Prior approval to incur expenses is appropriately obtained.

Other options for meetings are always considered before travel is approved, including audio or video conferencing.

Corporate travel cards are to be used for authorized business travel and business related expenses.

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ONTARIO TRANSFER PAYMENT AGREEMENT

THE AGREEMENT, effective as of the • day of March, 2017 (the **"Effective Date"**)

B E T W E E N :

Her Majesty the Queen in right of Ontario
as represented by the Minister of Energy

(the "Province")

- and -

Computershare Trust Company of Canada, in its capacity as trustee of Affordability Fund Trust

(together with its successors and assigns, the "Recipient" and, together with the Province, the "Parties")

BACKGROUND

Computershare Trust Company of Canada is the original trustee of the Affordability Fund Trust.

The Province wishes to provide Funds to the Recipient to be held, invested, applied and distributed in accordance with the terms of the Declaration of Trust (defined below), in furtherance of the Purpose (as defined in the Declaration of Trust), including having regard to the Principles set forth in Annex A.

CONSIDERATION

In consideration of the mutual covenants and agreements contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is expressly acknowledged, the Parties agree as follows:

ENTIRE AGREEMENT

This agreement (as amended, restated, supplemented or otherwise modified from time to time, the **"Agreement"**), including:

Schedule "A" - General Terms and Conditions
Schedule "B" - Project Specific Information
Schedule "C" - Project - Certain Obligations of the Recipient
Schedule "D" - Budget
Schedule "E" - Payment Plan
Schedule "F" - Reporting
Annex "A" - Principles, and
any amending agreement entered into as provided for below,

constitutes the entire agreement between the Parties with respect to the subject matter contained in this Agreement and supersedes all prior oral or written representations and agreements.

COUNTERPARTS

The Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

AMENDING THE AGREEMENT

The Agreement may only be amended by a written agreement duly executed by the Parties.

ACKNOWLEDGEMENT

The Recipient:

(a) acknowledges that it has read and understands the provisions contained in the entire Agreement; and

(b) agrees to be bound by the terms and conditions contained in the entire Agreement.

IN WITNESS WHEREOF, the Parties have executed the Agreement on the dates set out below.

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO as represented by Minister of Energy

by:

_____ _____

Date Name: Serge Imbrogno

Title: Deputy Minister

Authorized Signing Officer

COMPUTERSHARE TRUST COMPANY OF CANADA, in its capacity as trustee of AFFORDABILITY FUND TRUST

by:

_____ _____

Date Name:

Title:

by:

_____ _____

Date Name:

Title:

I/We have authority to bind the Recipient.

SCHEDULE "A"
GENERAL TERMS AND CONDITIONS

1.0 INTERPRETATION AND DEFINITIONS

1.1 Interpretation. For the purposes of interpretation:

(a) words in the singular include the plural and vice-versa;

(b) words in one gender include all genders;

(c) the headings do not form part of the Agreement; they are for reference only and will not affect the interpretation of the Agreement;

(d) any reference to dollars or currency will be in Canadian dollars and currency;

(e) "include", "includes" and "including" denote that the subsequent list is not exhaustive;

(f) where any reference is made in the Agreement to an act to be performed by or for or on behalf of the Affordability Fund Trust, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Recipient in its capacity as trustee of the Affordability Fund Trust, and, where any reference is made in the Agreement to an act to be performed by or for or on behalf of the Recipient, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Recipient in its capacity as trustee of the Affordability Fund Trust; and

(g) it is intended that the transfer of the Funds to the Recipient will be a transfer made to a "non-controlled trust" (as that term is given meaning in • applicable to the accounting rules and principles applicable to the Province as of the date of the Agreement), and so if a term or condition of the Agreement is determined to conflict with the requirements applicable to the Province recording the transfers to the Recipient of Funds contemplated hereunder as an expense incurred by the Province on the date of the transfer of Funds under the Agreement otherwise in connection with activities undertaken by the Province with such a "non-controlled trust", then such term or condition shall be given a meaning and shall have an effect insofar as it is possible to interpret such term or condition in a manner that eliminates such conflict while preserving the other provisions of the Agreement and furthering the Purpose.

1.2 Definitions. In the Agreement, the following terms will have the following meanings:

"Administrative Services Agent" has the meaning given such term in the Declaration of Trust.

"Affordability Fund Trust" means the trust established and governed by the Declaration of Trust, and for greater certainty includes such trust operating under any other name that may be designated from time to time by the Recipient in accordance with the Declaration of Trust.

"BPSAA" means the Broader Public Sector Accountability Act, 2010 (Ontario).

"**Beneficiary**" has the meaning given to such term in the Declaration of Trust.

"Budget" means the Recipient's budget attached to the Agreement as Schedule "D".

"Business Day" means any working day, Monday to Friday inclusive, excluding statutory and other holidays, namely: New Year's Day; Family Day; Good Friday; Easter Monday; Victoria Day; Canada Day; Civic Holiday; Labour Day; Thanksgiving Day; Remembrance Day; Christmas Day; Boxing Day and any other day on which the Province has elected to be closed for business.

"**Declaration of Trust**" means the declaration of trust made as of March [•], 2017, under which the Affordability Fund Trust was established, as such declaration of trust may be amended, restated, supplemented or otherwise modified from time to time with the consent of the Province in accordance with Section 20.2.

"Expiration Date" means the date on which this Agreement will expire and is the date set out in Schedule "B".

"Funds" means the money the Province provides to the Recipient pursuant to the Agreement.

"Implementation Agents" has the meaning given such term in the Declaration of Trust.

"Maximum Funds" means the maximum amount of Funds that the Province will provide the Recipient under the Agreement, as set out in Schedule "B".

"Notice" means any communication given or required to be given pursuant to the Agreement.

"Party" means either the Province or the Recipient.

"**Person**" includes any individual, sole proprietorship, corporation, partnership, joint venture, association, society, club, board, chamber, joint-stock company, trust, trustee, unincorporated or incorporated organization or entity or government or any entity, agency or political subdivision thereof.

"**Program**" has the meaning given to such term in the Declaration of Trust.

"Project" means the undertaking described in Schedule "C".

"**Purpose**" has the meaning given to such term in the Declaration of Trust.

"PSSDA" means the *Public Sector Salary Disclosure Act, 1996* (Ontario).

"**Recipient**" means, initially, Computershare Trust Company of Canada, and any additional or replacement trustee in its capacity as trustee of the Affordability Fund Trust pursuant to the Declaration of Trust, including the Board of Trustees (as defined in the Declaration of Trust) and each of their respective successors and permitted assigns.

"Reports" means the reports described in Schedule "F".

2.0 REPRESENTATIONS, WARRANTIES AND COVENANTS

2.1 General. The Recipient represents, warrants and covenants that:

(a) it is the trustee of the Affordability Fund Trust; and

(b) the Affordability Fund Trust is, and will continue to be for the term of the Agreement, a trust existing under and governed by the laws of the Province of Ontario.

2.2 Execution of Agreement. The Recipient represents and warrants that it has:

(a) the full power and authority to enter into the Agreement; and

(b) taken all necessary actions to authorize the execution of the Agreement.

2.3 Governance. The Recipient covenants that it will develop and maintain in writing until the Agreement is no longer in effect:

(a) decision-making mechanisms and procedures to enable the Recipient to hold, invest, manage, apply and distribute the Funds in accordance with the Declaration of Trust in furtherance of the Purpose; and

(b) procedures to enable the preparation and delivery of all Reports required pursuant to Article 7.0.

2.4 Supporting Documentation. Upon request, the Recipient will provide the Province with proof of the matters referred to in this Article 2.0.

3.0 TERM OF THE AGREEMENT

3.1 Term. The term of the Agreement will commence on the Effective Date and will expire on ~~the~~ the Expiration Date.

3.2 Extension. The term of the Agreement may be extended by further agreement between the Parties.

3.3 Extension of the Declaration of Trust. If the Province determines that an extension of the Final Distribution Date (as defined in the Declaration of Trust) and time for termination of the Declaration of Trust is consistent with and in furtherance of the Purpose and the Province's original intentions and expectations in establishing the Project, the Province may request that the Recipient extend such date to a date specified by the Province in a Notice (such date not to be later than December 31, ~~2024),~~2021, whereupon the Recipient, so long as the Recipient does not have a reasonable basis to believe that such an extension would be inconsistent with the Purpose or weaken the protections intended for the benefit of the trustee pursuant to the Declaration of Trust, will undertake such actions as it may consider to be necessary or appropriate to so extend the Declaration of Trust, including by amending the Declaration of Trust to provide for such an extension and to modify any other term or requirement as would be necessary or prudent to conform such term or requirement in light of such extension.

4.0 FUNDS AND CARRYING OUT THE PROJECT

4.1 Funds Provided. The Province will:

(a) provide the Recipient up to the Maximum Funds to be held, invested, applied and distributed in accordance with the terms of the Project and the Declaration of Trust;

(b) provide the Funds to the Recipient in accordance with the Payment Plan attached to the Agreement as Schedule "E"; and

(c) deposit the Funds into an account designated by the Recipient, provided that the account:

(i) resides at a Canadian financial institution; and

(ii) is in the name of the Recipient.

4.2 Timing of Distributions to Beneficiaries. The expectations of the Province regarding when Funds will begin to be distributed by the Recipient to Beneficiaries are set out in Schedule C. The Recipient will have regard to those expectations in the exercise of its discretion under the Declaration of Trust, in determining when Funds will be distributed to Beneficiaries in furtherance of the Purpose.

4.3 Use of Funds and Project. The Recipient will exercise its rights, duties and discretions under the Declaration of Trust so that the Funds are used, applied and distributed only for and in furtherance of the Purpose, including having regard to the Principles set forth in Annex A.

4.4 Province's Role Limited to Providing Funds. For greater clarity, the Province's role under the Agreement is limited to providing Funds to the Recipient and the Province is not responsible for carrying out or overseeing the terms of the Declaration of Trust.

4.5 Maximum Funds. The Recipient acknowledges that the Funds available to it pursuant to the Agreement will not exceed the Maximum Funds.

4.6 Funding, Not Procurement. For greater clarity, the Recipient acknowledges that:

(a) it is receiving funding from the Province for the Project and is not providing goods or services to the Province; and

(b) the funding the Province is providing under the Agreement is funding for the purposes of the PSSDA.

5.0 RECIPIENT'S ACQUISITION OF GOODS OR SERVICES, AND DISPOSAL OF ASSETS

5.1 Acquisition. If the Recipient acquires goods, services, or both with or by applying the proceeds of the Funds, it is expected to do so through a process that promotes the best value for money and to take reasonable steps to ensure that its Administrative Services Agents and Implementation Agents also follow a process that promotes the best value for money when acquiring goods and services with or by applying the proceeds of the Funds. In this regard, it is expected that the Recipient will have regard the following procurement principles:

(a) ***Accountability*** - Procurement is conducted in a manner that is well-informed and ~~aligned with the public interest and~~reflects rules of good governance~~ through clear and transparent accountability~~ and decision-making.

(b) ***Geographic Neutrality and Reciprocal Non-Discrimination***~~Ontario does~~ - Procurement should not differentiate between competing goods, services, or suppliers based on their geographic origin or location~~. This is a core principle of Ontario's trade commitments~~.

(c) ***Responsible Management***~~The procurement~~ - Procurement of goods and services ~~is~~should be responsibly, efficiently and effectively managed ~~through appropriate organizational structures, systems, policies, processes and procedures. All parties involved in a procurement process~~and should observe the highest standard of ethics, avoiding conflict of interest.

(d) ***Value for Money*** - Procurement processes should apply a value for money evaluation that takes into account price as well as other costs and benefits, including life cycle costs and relevant non-price attributes such as quality. ~~Where applicable, these non-price attributes can include:~~

~~**Social Benefit:** to secure wider social benefit in support of the government's social policy objectives.~~

~~**Environmental Benefit:** to secure wider environmental benefit in support of the government's environmental policy objectives, including climate change.~~

~~**Economic Benefit:** to promote the economic well-being of the people of Ontario, in alignment with commitments in the province's trade agreements.~~

(e) ***Vendor Access, Transparency, and Fairness*** - Procurement is conducted in a fair and transparent manner, offering all qualified suppliers equal treatment and open access to compete for ~~government business~~the opportunity to supply goods and services.

6.0 CONFLICT OF ~~INTERESTn~~INTEREST

6.1 No Conflict of Interest. Except as expressly permitted by the Declaration of Trust, the Recipient is expected to implement appropriate processes and control to ensure that the Program and the use, application and distribution of the Funds are without an actual, potential or

perceived conflict of interest.

6.2 **Conflict of Interest Includes.** For the purposes of this Article, a conflict of interest includes any circumstances where, except as expressly permitted by the Declaration of Trust:

(a) the Recipient; or

(b) any person who has the capacity to influence the Recipient's decisions,

has outside commitments, relationships or financial interests that could, or could be seen to, interfere with the Recipient's objective, unbiased and impartial judgment relating to the Project, or the Recipient's use, application or distribution of the Funds, or both.

7.0 REPORTING, ACCOUNTING AND REVIEW

7.1 **Preparation and Submission.** The Recipient will cooperate with the Province to accommodate the Province's on-going information and reporting objectives in order to enable the Province to be aware of the Recipient's activities in furtherance of the Purpose, and to that end the Recipient will be expected, from and following the Original Trustee Replacement Date, to:

(a) submit to the Province at the address referred to in Schedule "B", all Reports in accordance with the timelines and content requirements set out in Schedule "F", or in a form as specified by the Province from time to time, acting reasonably;

(b) submit to the Province at the address referred to in Schedule "B", any other reports as may be reasonably requested by the Province from time to time in accordance with the timelines and content expectations identified by the Province, acting reasonably;

(c) undertake diligent efforts so that such Reports and any such other reports are complete and accurate in all material respects; and

(d) have an authorized signatory of the Recipient sign-off on such Reports and other reports.

7.2 **Record Maintenance.** The Recipient will keep and maintain financial and other records necessary to permit it to satisfy its obligations under section 7.1 and to permit the Province to exercise its rights under section 7.3.

7.3 **Inspection.** The Province, its authorized representatives or an independent auditor identified by the Province may, at its own expense, upon twenty-four hours' Notice to the Recipient and during normal business hours, inspect the records of and information respecting the Recipient to confirm its compliance with the terms of this Agreement, including to ensure consistency with the Purpose and, for these purposes, the Province, its authorized representatives or an independent auditor identified by the Province may take one or more of the following actions:

(a) inspect and copy the records and documents referred to in section 7.2;

(b) keep any copies made pursuant to section 7.3(a); and

(c) conduct an audit or investigation of the Recipient in respect of the expenditure of the Funds to confirm that the Funds have been used, applied and distributed for and in furtherance of the Purpose, including a review of the Recipient's processes, records, documents, as well as the processes and controls applied to obtain assurance that Funds disbursed to Electricity Distributors were used, applied and distributed for and in furtherance of the Purpose.

7.4 **Disclosure.** To assist in respect of the rights set out in section 7.3, the Recipient will disclose any information requested by the Province, its authorized representatives or an independent auditor identified by the Province, and will do so in the form requested by the Province, its authorized representatives or an independent auditor identified by the Province, as the case may be.

7.5 **No Control of Records.** No provision of the Agreement will be construed so as to give the Province any control whatsoever over the Recipient's records.

7.6 **Auditor General.** For greater certainty, the Province's rights under this Article are in addition to and do not limit any rights provided to the Auditor General pursuant to section 9.1 of the *Auditor General Act* (Ontario).

8.0 COMMUNICATIONS REQUIREMENTS

8.1 **Publication.** The Recipient will acknowledge, in any of its Program-related external communications and marketing whether written, oral, or visual, the financial support of the Province in connection with the establishment and funding of the program, while noting that the views expressed in the publication are the views of the Recipient and do not necessarily reflect those of the Province.

9.0 FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY

9.1 **FIPPA.** The Recipient acknowledges that the Province is bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province in connection with the Project or otherwise in connection with the Agreement may be subject to disclosure in accordance with that Act.

10.0 Intentionally Deleted

11.0 EVENT OF DEFAULT, CORRECTIVE ACTION AND TERMINATION FOR DEFAULT

11.1 **Events of Default.** An Event of Default will occur if:

(a) the Recipient fails to perform or observe any covenant in this Agreement and such failure has and continues to have a material adverse effect on the Province and remains unremedied during any Notice period applicable under section 11.2 after the earlier of (i) actual knowledge thereof by the Recipient, or (ii) receipt by the Recipient of Notice thereof from the Province;

(b) any representation or warranty made by the Recipient in the Agreement shall prove to have been incorrect in any material respect when made or deemed made, and, if capable of remedy, continues to be incorrect in any material respect during any Notice period applicable under section 11.2 after the earlier to occur of (i) the actual knowledge thereof by the Recipient or (ii) receipt by the Recipient of Notice thereof from the Province;

(c) it is determined that the Recipient has breached its Standard of Care (within the meaning given in and context of the Declaration of Trust) in discharging its material duties under the Declaration of Trust, with the result that all or a significant part of the Funds have not been or are not being applied in furtherance of the Purpose or are being applied in a manner that is directly contrary or without regard to the Purpose, and, if such breach is capable of remedy, it continues and remains unremedied during any Notice Period applicable under section 11.2 after the earlier of (i) actual knowledge thereof by the Recipient, or (ii) receipt by the Recipient of Notice thereof from the Province;

(d) an insolvency event shall have occurred and be continuing with respect to the Recipient.

11.2 **Consequences of Events of Default and Corrective Action.** If an Event of Default occurs, the Province may, at any time, take one or more of the following actions:

(a) provide the Recipient with Notice allowing the Recipient an opportunity to remedy the Event of Default during a specified Notice Period;

(b) seek an order of specific performance, including an order that the Recipient pursue its available remedies against third parties;

(c) require, by Notice of demand, that the Recipient transfer to the Province (without any need for compensation, indemnity or consideration to the Recipient or any Beneficiary or other third party) any and all Assets remaining in the possession or under the control of the Recipient that can reasonably be traced or attributed to the Funds after first providing for the completion and performance by the Recipient of any unperformed contractual obligations of the Recipient undertaken in compliance with the Declaration of Trust on or prior to transfer; and

(d) terminate the Agreement, including immediately, without liability, penalty or costs to the Province upon giving Notice to the Recipient.

The transfer of Funds in accordance with the Agreement is made by the Province with the expressed intention and reservation that the transferred Funds shall be returned to the Province and the entitlements of the Recipient in remaining Funds shall thereby be revoked with reversion thereof to the Province in the circumstances contemplated in Section 11.2(c).

11.3 Opportunity to Remedy. If, in accordance with section 11.2, the Province provides the Recipient with an opportunity to remedy the Event of Default, the Province will provide Notice to the Recipient of:

(a) the particulars of the Event of Default; and

(b) the length of time within which the Recipient may cure such Event of Default without the Province pursuing any other remedy (the "Notice Period").

11.4 Recipient not Remedying. If the Province has provided the Recipient with an opportunity to remedy the Event of Default pursuant to section 11.2(a), and:

(a) the Recipient does not remedy the Event of Default within the Notice Period;

(b) it becomes apparent to the Province that the Recipient cannot adequately remedy the Event of Default within the Notice Period; or

(c) the Recipient is not proceeding to remedy the Event of Default in a way that is satisfactory to the Province,

the Province may extend any Notice Period, or initiate any one or more of the actions provided for in section 11.2.

12.0 REPAYMENT

12.1 Debt Due. If, pursuant to the Agreement: the Province demands the payment of any Funds from the Recipient pursuant to section 11.2(c) such Funds or other amount will be deemed to be a debt due and owing to the Province by the Recipient, and the Recipient will pay or return the amount to the Province immediately, unless the Province directs otherwise.

12.2 Payment of Money to Province. The Recipient will pay any money owing to the Province by cheque payable to the "Ontario Minister of Finance" and delivered to the Province at the address referred to in Schedule "B".

12.3 Failure to Repay. Without limiting the application of section 43 of the Financial Administration Act (Ontario), if the Recipient fails to repay any amount owing under the Agreement, Her Majesty the Queen in right of Ontario may deduct any unpaid amount from any money payable to the

Recipient by Her Majesty the Queen in right of Ontario.

13.0 NOTICE

13.1 Notice in Writing and Addressed. Notice will be in writing and will be delivered by email, postage-prepaid mail, personal delivery or fax, and will be addressed to the Province and the Recipient respectively as set out in Schedule "B", or as either Party later designates to the other by Notice.

13.2 Notice Given. Notice will be deemed to have been given:

(a) in the case of postage-prepaid mail, five Business Days after the Notice is mailed; or

(b) in the case of email, personal delivery or fax, one Business Day after the Notice is delivered.

13.3 Postal Disruption. Despite section 13.2(a), in the event of a postal disruption:

(a) Notice by postage-prepaid mail will not be deemed to be received; and

(b) the Party giving Notice will provide Notice by email, personal delivery or by fax.

14.0 SEVERABILITY OF PROVISIONS

14.1 Invalidity or Unenforceability of Any Provision. The invalidity or unenforceability of any provision of the Agreement will not affect the validity or enforceability of any other provision of the Agreement. Any invalid or unenforceable provision will be deemed to be severed.

15.0 WAIVER

15.1 Waivers in Writing. If a Party fails to comply with any term of the Agreement, that Party may only rely on a waiver of the other Party if the other Party has provided a written waiver in accordance with the Notice provisions in Article 13.0. Any waiver must refer to a specific failure to comply and will not have the effect of waiving any subsequent failures to comply.

16.0 INDEPENDENT PARTIES

16.1 Parties Independent. The Recipient acknowledges that it is not an agent, joint venturer, partner or employee of the Province, and the Recipient will not represent itself in any way that might be taken by a reasonable person to suggest that it is, or take any actions that could establish or imply such a relationship.

17.0 ASSIGNMENT OF AGREEMENT OR FUNDS

17.1 Agreement Binding. All rights and obligations contained in the Agreement will extend to and be binding on the Parties' respective heirs, executors, administrators, successors and permitted assigns.

18.0 LIMITATION OF LIABILITY

18.1 This Agreement has been entered into by the Recipient solely in its capacity as trustee of the Affordability Fund Trust and is not binding on the Recipient in any other capacity, whether in tort, contract or otherwise. The Beneficiaries of the Affordability Fund Trust are not subject to any liability in respect of the Affordability Fund Trust. Resort may not be had to, nor recourse or satisfaction be sought from, the private property of the Recipient (whether owned by it in its personal capacity or in any other capacity other than in its capacity as trustee of the Affordability Fund Trust), its directors, officers, employees, or agents, or the private property of any Beneficiary, and resort will be had solely to the property of the Recipient held in trust for the payment, performance or satisfaction of any liability or obligation of the Recipient under this Agreement. However, the foregoing limitations in this section shall not apply where the Recipient has demonstrated gross negligence, bad faith, fraud or wilful misconduct.

19.0 GOVERNING LAW

19.1 Governing Law. The Agreement and the rights, obligations and relations of the Parties will be governed by and construed in accordance with the laws of the Province of Ontario and the applicable federal laws of Canada. Any actions or proceedings arising in connection with the Agreement will be conducted in the courts of Ontario, which will have exclusive jurisdiction over such proceedings.

20.0 FURTHER ASSURANCES

20.1 Agreement into Effect. The Recipient will provide such further assurances as the Province may request from time to time with respect to any matter to which the Agreement pertains, and will otherwise do or cause to be done all acts or things necessary to implement and carry into effect the terms and conditions of the Agreement to their full extent.

20.2 Declaration of Trust. The Recipient covenants that it shall not amend, restate or terminate the Declaration of Trust without obtaining the written consent of the Province in respect of same, such consent not to be unreasonably withheld or delayed.

21.0 JOINT AND SEVERAL LIABILITY

21.1 Joint and Several Liability. Without limiting and subject to section 18.1 and the Declaration of Trust, if the Recipient is comprised of more than one entity, all such entities will be jointly and severally liable to the Province for the fulfillment of the obligations of the Recipient under the Agreement.

22.0 RIGHTS AND REMEDIES CUMULATIVE

22.1 Rights and Remedies Cumulative. The rights and remedies of the Province under the Agreement are cumulative and are in addition to, and not in substitution for, any of its rights and remedies provided by law or in equity.

23.0 ACKNOWLEDGEMENT OF OTHER LEGISLATION AND DIRECTIVES

23.1 Recipient Acknowledges. The Recipient acknowledges that by receiving Funds it may become subject to legislation applicable to organizations that receive funding from the Government of Ontario, including the BPSAA, the PSSDA, and the *Auditor General Act* (Ontario).

24.0 SURVIVAL

24.1 Survival. The following Articles and sections, and all applicable cross-referenced sections and schedules, will continue in full force and effect for a period of seven years from the date of expiry or termination of the Agreement: Article 1.0 and any other applicable definitions, section, 4.5, section 7.1 (to the extent that the Recipient has not provided the Reports to the satisfaction of the Province), sections 7.2, 7.3, 7.4, 7.5, 7.6, Article 8.0, Article 12.0, Article 14.0, Article 16.0, Article 17.0, Article 19.0, Article 21.0, Article 23.0 and Article 24.0.

- END OF GENERAL TERMS AND CONDITIONS -

SCHEDULE "B"

PROJECT SPECIFIC INFORMATION

Maximum Funds	$100 million
Expiration Date	The date upon which the Affordability Fund Trust is terminated in accordance with the Declaration of Trust
Contact information for the purposes of Notice to the Province	**Attention: Usman Syed** **Position: Director** **Address: 77 Grenville St, Toronto, Ontario, M7A 2C1** **Fax: 416-325-6651** **Email: Usman.Syed@ontario.ca**
Contact information for the purposes of Notice to the Recipient	**Attention:** **Position:** **Address:** **Email:**
Contact information for the senior financial person in the Recipient organization (e.g., CFO, CAO) – to respond as required to requests from the Province related to the Agreement	**Attention:** **Position:** **Address:** **Email:**

SCHEDULE "C"

PROJECT

For the purposes of this Agreement, the "Project" is the distribution of the Funds in accordance with the Declaration of Trust.

It is intended the Project will be undertaken by the Recipient in furtherance of the Purpose and in accordance with the Declaration of Trust. In this regard, it is expected that the Recipient will undertake the Program having regard to the Budget and the Principles set forth in Annex A.

The following are the Province's expectations regarding the circumstances in which the Recipient will begin to distribute any Funds to any Beneficiary.

1. The Original Trustee Replacement Date (as defined in the Declaration of Trust) will have occurred.

2. An Administrative Services Agreement (as defined in the Declaration of Trust) will have been entered into between the Recipient and Hydro One Limited under which Hydro One Limited shall provide specified administrative and other services on behalf of the Recipient.

3. Administrative procedures will have been developed and implemented under which Electricity Distributors (as defined in the Declaration of Trust) will be invited to assist with (a) the identification and selection of Primary Beneficiaries under the Declaration of Trust, (b) the determination of the amount of Funds to be distributed to particular Primary Beneficiaries, and (c) the distribution of Funds to or for the benefit of such Primary Beneficiaries (in each case substantially on the basis contemplated in the Permitted Delegations Annex).

4. The Recipient will have obtained commercial general liability insurance from insurers having a secure A.M. Best rating of B+ or greater, or the equivalent, that in the opinion of the Recipient a prudent person similar to the Recipient would maintain, and having an inclusive limit of not less than $2,000,000 per occurrence and providing for contractual liability coverage. If requested, the Recipient will provide the Province (for its information purposes) with copies of the certificates of insurance and policies for such insurance coverage.

The Province recognizes that the foregoing may involve the Recipient entering into agreements as the Recipient considers to be necessary or expedient, including any required amendment or amendment and restatement of the Declaration of Trust. Funds may be expended to pay the expenses of the Recipient in completing these matters. The Recipient is requested to advise the Province through its quarterly reports on the status of the foregoing.

SCHEDULE "D"

Recipient's Budget

1. It is expected that the administrative expenses of the Recipient, including any administrative expenses of any Administrative Services Agents or any Implementation Agents or any other agents retained by the Recipient, relating to the establishment of the Affordability Fund Trust and satisfying the Requirements (as defined in Schedule "C") and any expenses related to the operation of the Affordability Fund Trust and the execution of the Project (including any reimbursable expenses incurred by any Administrative Services Agent or any Implementation Agent (as such terms are defined in the Declaration of Trust)), will be no greater than 10 percent of the total Project budget.

2. The only expenditures incurred by the Recipient that are eligible for reimbursement are actual (excluding HST) administrative overhead expenses incurred by or on behalf of the Recipient that directly related to the Recipient or the establishment of the Affordability Fund Trust.

4. Any expenses that have been or may be reimbursed by other parties should not be reimbursed from the assets of the Affordability Fund Trust.

5. It is expected any travel, meals and hospitality expenses by the Recipient will be consistent with the Province's Travel, Meal and Hospitality Expenses Directive. For purposes of funding entities receiving funding from the Recipient, the following would not be considered eligible claims:

    - Alcohol
    - First-Class travel
    - Meals, snacks and beverages
    - Gratuities
    - Laundry or dry cleaning
    - Valet services
    - Dependent care
    - Home management
    - Personal telephone calls

6. In the event that the Recipient performs any procurements, it is expected that all procurements will reflect the principles of Ontario's Public Service Procurement Directive.

SCHEDULE "E"

PAYMENT PLAN

PAYMENT DATE	MAXIMUM FUNDS TO BE DISBURSED BY THE PROVINCE
Within 7 days of signing the Agreement	$ 100,000,000

SCHEDULE "F"

REPORTING

From and following the Original Trustee Replacement Date, Reports will be quarterly on the basis of the government's fiscal year starting at the execution of this Agreement and continuing until conclusion of the Agreement. Annual Reports will be on a fiscal basis starting at the execution of this Agreement and continuing until conclusion of the Agreement. Quarterly Reports and Annual Reports would be expected to be submitted to the Province within one month following the end of the reporting period that they represent. The Province expects that these Reports would be prepared to demonstrate the impact of the Province's funding and address the following:

- Quarterly Reports would include a report back on the trustee-developed performance management criteria. Initially, such Quarterly Reports would include details respecting:
    - Amounts disbursed by the Recipient in the previous quarter. It is expected that this information would be provided at the Electricity Distributor level and in the aggregate.
    - Total Affordability Fund investment income earned and accrued to date.
    - Key activities and achievements from the quarter, including the number of participant households per Electricity Distributor, average participant incentive cost per Electricity Distributor, and uptake of energy efficiency measures per Electricity Distributor.
    - Any challenges or modifications to the application, funding, or eligibility processes/rules of the Recipient.
    - Key activities planned for the upcoming quarter.
    - Details of any situation that a reasonable person might interpret as an actual, potential or perceived conflict of interest.
- Annual Reports would include a report back on the trustee-developed performance management criteria. Initially, such Annual Report would include details respecting:

- A description of an Electricity Distributor's application process and the criteria used by the Recipient to distribute funds.
- Any challenges identified by the Recipient or any Administrative Services Agent in achieving the Purpose and proposed solutions, if applicable.
- Lesson learned.
- Electricity Distributor and customer feedback.
- Amounts distributed to Beneficiaries or otherwise disbursed by the Recipient in the previous year. It is expected that this information will be provided by each Electricity Distributor.
- Key activities and achievements from each quarter being reported, including number of participant households per Electricity Distributor, average participant incentive cost per Electricity Distributor, and uptake of energy efficiency measures per Electricity Distributor.
- Total Affordability Fund interest earned and accrued to date.

As part of an Annual Report, the Recipient would also provide the Province with an audited financial statement for the previous year.

ANNEX A

Principles

~~[Insert from Principles Annex once settled in the Declaration of Trust]~~

The Trustee shall have regard to, but shall not be specifically bound by, the following principles in applying its discretion in relation to the administration of the Trust:

4. Identification of Primary Beneficiary Payees

4.1 Except in exceptional circumstances, a Primary Beneficiary would not be expected to receive a benefit from the Trust unless at the time of consideration it satisfies, in addition to the requirements contemplated in the definition of "Primary Beneficiary", each of the following criteria (the "**Selection Factors**"):

(i) it has a participant agreement with an applicable Electricity Distributor to undertake measures (its "**Energy Plan**") to improve the electricity efficiency and/or promote the conservation of electricity at its Ontario residence;

(ii) its Energy Plan involves one or more Eligible Measures, as may be designated by the Trustee from time to time from;

(iii) it confirms that:

1. the primary purpose of its Energy Plan is the conservation and efficient use by the Primary Beneficiary of electricity, and is not for the purposes of the Primary Beneficiary making a profit;

2. it would otherwise not have the financial resources to undertake the Eligible Measures included in its Energy Plan; and

3. it would otherwise not be eligible to receive amounts in respect of the Eligible Measures as a HAP Eligible Person;

(iv) it has demonstrated a need for financial assistance on the basis that its periodic electricity bills represent a financial burden, relative to its available financial resources; and

(v) such other criteria as the Trustee may determine, including based on the recommendations of Electricity Distributors or other knowledgeable Persons made on the basis and having regard to the delegations contemplated by the Permitted Delegations Annex or any applicable Implementation Agreement.

4.2 It is recognized that, in furthering the Purpose, an efficient basis upon which to allocate funds to the Primary Beneficiaries across different areas and regions within Ontario may be based on the areas and regions serviced by the Electricity Distributors operating within Ontario.

4.3 It would not be contrary to the Purposes if funds are made available by the Trustee to the Primary Beneficiaries unequally across different areas and regions within Ontario, and it is expected that in making such an unequal division it would be appropriate to have regard to:

(i) broad economic parameters of economic activity and the specific financial resources of the residents of the areas and regions, in each case as an indication of the relative need of such residents across the areas and regions;

(ii) electricity use and efficiency levels of residential electricity customers across the areas and regions;

(iii) specific regional indicators of economic weakness and need; and

(iv) such other factors as the Trustee may determine are relevant, including based on the submissions, advice and recommendations of Electricity Distributors or other knowledgeable Persons made on the basis and having regard to the delegations contemplated by the Permitted Delegations Annex or any applicable implementation Agreement.

4.4 It is recognized that, in furthering the Purpose, the designated Electricity Distributor for an area or region in which a Primary Beneficiary resides would be expected to:

(i) be a reliable source for the purpose of assessing and confirming whether the Primary Beneficiary satisfies the Selection Factors;

(ii) be an efficient intermediary for the purpose of communicating with the Primary Beneficiary, including with respect to matters such as regarding the availability, terms, conditions and intended purposes of Program;

(iii) be able to facilitate an efficient payment of distribution determined to be made to or on behalf of the Primary Beneficiary, having regard to the Electricity Distributor's established practices, procedures and systems for dealing with its customers; and

(iv) have established contractual arrangements with the Primary Beneficiary that may apply to the protection and confidentiality of information provided by or respecting the Primary Beneficiary, which information may be useful in the consideration by the Electricity Distributor in its assessment of whether the Primary Beneficiary satisfies the Selection Factors, which information may not otherwise be available or readily accessible or verifiable by the Trustee.

4.5 It is recognized that, in furthering the Purpose, the Electricity Distributor for an area or region in which a Primary Beneficiary resides will have market and utilization information that may be useful in assessing the relative needs of Primary Beneficiaries within its area or region. Such information is expected to be relevant in assessing the extent to which one such Primary Beneficiary's financial needs and the merits of its Energy Plan are greater or more compelling than those of another such Primary Beneficiary, which comparison may be relevant to the extent that the funds allocable to the Primary Beneficiaries resident in the area or region are otherwise insufficient to meet the requests for funding by all such Primary Beneficiaries.

4.6 Accordingly, it is recognized that, in furthering the Purpose, it is consistent with the Purpose that the recommendations of Electricity Distributors be utilized and relied upon by the Trustee to guide the process of identifying particular Primary Beneficiaries in making distributions to the Primary Beneficiaries.

4.7 If an Electricity Distributor for a particular area or region is unable or unwilling to assess or confirm the application of the Selection Factors to Primary Beneficiaries residing in the area or region or to make recommendations in relation to such matters, one or more of the following may provide a suitable alternative source of information and for information gathering, assessment and confirmation purposes in relation to such area or region:

(i) other Electricity Distributors operating in adjacent or other areas or regions in Ontario;

(ii) the Ontario Energy Board;

(iii) the Independent Electricity System Operator; and

(iv) anyone else having relevant expertise and access to information regarding the electricity market of the Province, in each case as may be considered relevant by the Trustee.

4.8 To the extent that privacy law or other legal requirements limit an Electricity Distributor from providing or making available specific information respecting the application of the Selection Factors to a particular Primary Beneficiary or group of Primary Beneficiaries, it is recognized that, in furthering the Purpose, it may be appropriate to redact or make generic affected information regarding such Primary Beneficiary in connection with the identification and confirmation of a Primary Beneficiary's eligibility and participation in the Program. If such limitations or restrictions would limit an Electricity Distributor from providing or confirming the name of a particular Primary Beneficiary to the Trustee, then it should be sufficient that such information may be obtained or disseminated on a confidential basis if and when required by the Trustee for the proper administration of the Trust and on that basis such impediments should not disqualify a Primary Beneficiary from participating in the benefits of the Program, provided that the confidential record-keeping of the Electricity Distributor would be available in connection with the application of any applicable legal process predicated on the identification of such Primary Beneficiary for the purposes of substantiating its rights as a Primary Beneficiary of the Trust or as to the validity or subsistence of the Trust.

5. Eligible Measures

5.1 It is expected that the Trust will identify eligible measures that, taking into consideration the principles set forth in the Principles Annex, have regard to the following (the "**Measures Factors**"):

(i) is the measure generally expected to result in reduced electricity consumption by a Primary Beneficiary if properly installed and used;

(ii) is the measure recognized under another Provincial program as being appropriate for achieving electricity conservation among a population analogous to the Primary Beneficiaries;

(iii) does the measure present any unacceptable health or safety considerations, either with respect to the Primary Beneficiary, a party providing or installing the measure, or the physical environment;

(iv) is the measure broadly available to residents across different areas and regions of the Province; or

(v) is the measure a requirement or precursor to another measure, the other measure being one which meets any of the other Measures Factors.

5.2 In identifying and applying the Measures Factors, Electricity Distributors would be expected to have expertise in assessing the suitability of efficiency and conservation measures in their respective areas and regions, which may differ across areas and regions across the Province based on factors (among other things) such as the climate, geography, density, electricity infrastructure, residential structures, and electricity use rates applicable within such areas or regions.

5.3 The measures specified in Schedule A to this Principles Annex may initially be considered to be consistent with the Measures Factors (subject to change as contemplated under the Permitted Delegations Annex).

6. Promotion of the Program

6.1 It is expected that the Trustee will undertake or engage others to undertake diligent efforts to promote the availability, terms and benefits of the Program to Primary Beneficiaries, including by establishing consistent communications through the Electricity Distributors.

6.2 It is expected that the Trustee will acknowledge the financial support of the Province in connection with the establishment and the funding for the Program, including in any external communications to or marketing directed at the Electricity Distributors and the Primary and Residual Beneficiaries. In its delegation of any duties or powers to the Electricity Distributors through Implementation Agreements it is expected that Electricity Distributors will acknowledge the financial support of the Province in connection with the program including in any communications or marketing to Primary Beneficiaries.

7. Conduct of the Trust and the Program

7.1 It is expected that administrative expenses of the Board of Trustees and its members, including any expenses relating to the Trust, to the establishment of the Trust and any expenses related to the implementation and operation of the Program, including by or through Electricity Distributors and other relevant entities, will be recognized and subject to reimbursement on a basis that is substantially consistent with the accountability provisions contemplated in the Transfer Payment Agreement and the principles in the Province's Travel, Meal and Hospitality Expenses Directive, as set out in Schedule B to this Principles Annex.

7.2 The Trustee is expected to conduct its activities in a manner that complies in all material respects with the Transfer Payment Agreement, including to:

(i) act prudently and in furtherance of the Purpose;

(ii) report not less frequently than annually the results of its activities for information purposes to the Province in connection with the Program;

(iii) comply with the Province's request for any independent verification or audit if determined to be necessary or appropriate by the Province;

(iv) return Assets that have not been distributed if it is determined that the Trustee has breached its Standard of Care in discharging its material duties under the Declaration, and has not cured such material breach despite having been given a reasonable opportunity by the Province to do so in light of the circumstances of such material breach, with the result that all or a significant part of the Assets have not been or are not being applied and distributed in furtherance of the Purpose or are being applied and distributed in a manner that is directly contrary or without regard to the Purpose.

7.3 Electricity Distributors are not intended to directly profit from distributions of funds made from the Trust, although it is recognized that the objectives of electricity efficiency and conservation of Primary Beneficiaries located in the service area or region of an Electricity Distributor, and the cost savings and improved credit worthiness of such Primary Beneficiaries, may be financially beneficial to the Electricity Distributor.

7.4 Distributions from the Trust are intended to allow receiving Primary Beneficiaries to undertake Eligible Measures at no or minimal personal cost.

7.5 Without in any way limiting the discretion of the Board of Trustees to extend the period during which the benefits of the Program may be available to the Primary Beneficiaries, up to and including the Final Distribution Date, it is expected that the Trust Assets would be distributed to Primary Beneficiaries during the period from the Original Trustee Replacement Date to April 30, 2019.

SCHEDULE A TO THE PRINCIPLES ANNEX
INDICATIVE ELIGIBLE MEASURES[1]

Initial Specified Measures
Block Heater Timer (just timer) – rated for outdoor use, have at least a 15 amp/1800 watt capacity, be cold weather resistant, bear a C-UL or CSA certification mark
Power bar with integrated timer, and switched power outlets, four each for a total of 8 outlets, have a total capacity of 15 amps. The switched outlets must remain "live", independent of timer settings, so long as the power bar itself remains switched on. The power bar must bear either a C-UL or CSA certification mark.
Efficient Showerheads (standard) - rated at no more than 4.8 Lpm (1.25 U.S. gpm) and be of the laminar flow type (non-aerating).
Efficient Showerhead (handheld) - rated at no more than 4.8 Lpm (1.25 U.S. gpm) and be of the laminar flow type (non-aerating).
Efficient Aerators (kitchen) - rated no more than 5.7 Lpm (1.5 U.S. gpm), dual threaded to allow installation in both thread type faucets, swivel type with pause lever.
Efficient Aerators (bathroom) - rated no more than 3.8 Lpm (1.0 U.S. gpm), be dual threaded to allow installation in both thread type faucets.
Hot Water Tank Pipe Insulation - ½" inside diameter – foam, meets ASTM –C547-00, minimum ¾" thick
Hot Water Tank Pipe Insulation - ¾ " inside diameter - – foam, meets ASTM –C547-00, minimum ¾" thick
Hot Water Tank Insulation - fibreglass R10 (fits up to a 60 gal tank) – not bubble wrap
≤11W ENERGY STAR® Qualified LED A Shape (60W) (minimum 600 Lumen output) (Formerly: 7W – 11W ENERGY STAR® Qualified LED A Shape (60W))

[1] These measures are indicative. Eligible measures added to HAP during the administration of the Trust may also be appropriately considered relevant by the Trustee.

Initial Specified Measures
≤14W ENERGY STAR® Qualified LED A Shape (75W) (minimum 800 Lumen output) (Formerly: 10W – 14W ENERGY STAR® Qualified LED A Shape (75W))
≤23W ENERGY STAR® Qualified LED A Shape (100W) (minimum 1600 Lumen output) (Formerly:17W – 23W ENERGY STAR® Qualified LED A Shape (100W))
≤16W ENERGY STAR® Qualified LED PAR 20 (minimum 600 Lumen output) (Formerly: 8W – 12W ENERGY STAR® Qualified LED PAR 20)
≤16W ENERGY STAR® Qualified LED PAR30 & PAR38 (minimum 600 Lumen output) (Formerly: 8W – 12W ENERGY STAR® Qualified LED PAR 30)
≤23W ENERGY STAR® Qualified LED PAR (minimum 1100 Lumen output) (Formerly: 14W – 18W ENERGY STAR® Qualified LED PAR 38)
≤6W ENERGY STAR® Qualified LED MR 16 / PAR 16 (minimum 250 Lumen output) (Formerly: 7W – 10W ENERGY STAR®
Qualified LED MR 16 / PAR 16 - GU 10 Base)
≤11W ENERGY STAR® Qualified LED MR 16 (minimum 400 Lumen output) (Formerly: 7W – 12W ENERGY STAR® Qualified LED MR 16 GU 5.3 Base)
ENERGY STAR® LED Wet Location Rated PAR lamp ≤ 23 Watt (minimum 1100 Lumen output)
Recessed Downlight Fixture including LED with Light Output >600 and <800 lumens (Retrofit Measure List)
Recessed Downlight Fixture including LED with Light Output >800 lumens (Retrofit Measure List)
Indoor Drying Rack

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Extended Measures
Replace refrigerator with ENERGY STAR qualified refrigerator - 15.5 - 16.9 cubic foot top freezer, automatic defrost, refrigerator/ freezer, no through the door ice service
Replace refrigerator with ENERGY STAR qualified refrigerator - 17.0 - 18.4 cubic foot top freezer, automatic defrost, refrigerator/ freezer, no through the door ice service
Replace refrigerator with a refrigerator that has a consumption level of less than 425 kwh, 10 – 12.5 cubic foot top freezer, automatic defrost, refrigerator freezer, no through the door ice service
Replace freezer with ENERGY STAR qualified freezer - 12-14.4 cubic foot freezer
Replace freezer with ENERGY STAR qualified freezer - 14.5 - 16.0 cubic foot freezer
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 6,000 – 7,999 BTU/hr with C-UL or CSA certification mark
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 8,000 – 9,999 BTU/hr with C-UL or CSA certification mark
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 10,000 – 12,000 BTU/hr with C-UL or CSA certification mark
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 14.2 - 21.2 l/day (30-44.9 pints/day) dehumidifier
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 21.3 - 25.4 l/day (45-53.9 pints/day) dehumidifier
Extended Measures
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 25.5 - 35.5 l/day (54-75 pints/day) dehumidifier
Programmable Thermostat – line voltage – meets CAN/CSA-C828-06 standard, minimum performance: Droop: 1.5°C, Differential: 0.5°C, Precision 0% within 0.5°C of the original set point of 22°C

Programmable Thermostat – low voltage - meets CAN/CSA-C828-06 standard, minimum performance: Droop: 1.5°C, Differential: 0.5°C, Precision 0% within 0.5°C of the original set point of 22°C

Weatherization Measures
Comprehensive Draftproofing (caulking, foam and weather stripping, and application of same) – lifespan of 20 years plus If one or two component polyurethane foams are used, the products and installations must conform to: • CAN/ULC-S710.1 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 1: Material Specification. • CAN/ULC-S710.2 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 2: Application. • CAN/ULC-S711.1 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification • CAN/ULC-S711.2 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification, and Part 2: Application.
Attic Insulation (including installation):
cellulose: CAN/ULC-S703-01 Amendment 1 - Cellulose Fibre Insulation (CFI) for Buildings OR 2) Mineral Fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre

Weatherization Measures
for Buildings **Wall Insulation (including installation):**
cellulose: CAN/ULC-S703-01 Amendment 1 - Cellulose Fibre Insulation (CFI) for Buildings OR 2) Mineral Fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre **Basement Insulation (including installation):**
mineral fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre for Buildings Vapour Barrier: 69009-CAN/CGSB-51.34-m86 If one or two component polyurethane foams are used, the products and installations must conform to: • CAN/ULC-S710.1 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 1: Material Specification. • CAN/ULC-S710.2 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 2: Application. • CAN/ULC-S711.1 Standard for Thermal Insulation – Bead Applied Two-Component
Polyurethane Air Sealant Foam, Part 1: Material Specification • CAN/ULC-S711.2 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification, and Part 2: Application.

Heat Pumps
(Selection of manufacturers and technologies to meet the US federal minimum efficiency standard for ASHPs, as of 2015, is 13.0 SEER and 7.7 HSPF. Energy Star–certified models offer roughly 9 percent
Ductless Multiport Heat Pump
Cold Climate Ductless Heat Pump
Cold Climate Multiport Ductless Heat Pump
Cold Climate Ducted Heat Pump

SCHEDULE B TO THE PRINCIPLES ANNEX
PERMITTED EXPENSE REIMBURSEMENTS

Travel, Meal and Hospitality Expenses Directive

Funds should be used prudently and responsibly with a focus on accountability and transparency.

Expenses for travel, meals and hospitality support the Purpose.

Plans for travel, meals, accommodation and hospitality are necessary and economical with due regard for health and safety.

Legitimate authorized expenses incurred during the course of furthering the Purpose may be reimbursed.

Best practices should be followed, including:

Prior approval to incur expenses is appropriately obtained.

Other options for meetings are always considered before travel is approved, including audio or video conferencing.

Corporate travel cards are to be used for authorized business travel and business related expenses.

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Document comparison by Workshare Compare on Wednesday, March 22, 2017 4:13:25 PM

Input:	
Document 1 ID	PowerDocs://TOR_2024/12888010/12
Description	TOR_2024-#12888010-v12-Transfer_Payment_Agreement_(Affordability_Fund_Trust)
Document 2 ID	PowerDocs://TOR_2024/12888010/13
Description	TOR_2024-#12888010-v13-Transfer_Payment_Agreement_(Affordability_Fund_Trust)
Rendering set	Standard

Legend:	
Insertion	
~~Deletion~~	
~~Moved from~~	
Moved to	
Style change	
Format change	
~~Moved deletion~~	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	236
Deletions	28
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	264

FW_ Affordability Fund Trust (Further Revisions to the DoT and TPA).rtf

From:	Virani, Shyrose (TBS) []
To:	'PETSCHE Nadine -CORPORATE' [nadine.petsche@opg.com]
Subject:	FW: Affordability Fund Trust (Further Revisions to the DoT and TPA)
Date:	Tuesday, October 16, 2018 08:55:02
Attachment 1:	image001.gif
Attachment 2:	Affordability Fund Trust - Transaction Stmt - Mar 23 2017.pdf
Attachment 3:	Declaration of Trust dtd Mar 23 17.executed.pdf
Attachment 4:	Ontario Transfer Payment Agrt dtd Mar 23 17.executed by CTCC.pdf

---

From: Morag Abraham [mailto:Morag.Abraham@computershare.com]
Sent: March 23, 2017 6:51 PM
To: Syed, Usman (ENERGY) <Usman.Syed@ontario.ca>
Cc: Sermat-Harding, Kaili (ENERGY) <Kaili.Sermat-Harding@ontario.ca>; Schwab-Pflug, Emma (ENERGY) <Emma.Schwab-Pflug@ontario.ca>; Qureshi, Musab (ENERGY) <Musab.Qureshi@ontario.ca>; Johnson, Paul (ENERGY/MEDEI/MRI) <Paul.Johnson3@ontario.ca>; Schachtschneider, Michelle (ENERGY) <Michelle.Schachtschneider@ontario.ca>; ASHBOURNE, STEPHEN <STEPHEN.ASHBOURNE@blakes.com>; PRESTAGE, JA <JA.PRESTAGE@blakes.com>; Petsche, Nadine (TBS) <Nadine.Petsche@ontario.ca>; Alexandra.Phillips@HydroOne.com; Daniel.Levitan@HydroOne.com; GILL Spencer <Spencer.Gill@HydroOne.com>; An, Tai (ENERGY) <Tai.An@ontario.ca>; Gounden, Pratima (ENERGY) <Pratima.Gounden@ontario.ca>
Subject: RE: Affordability Fund Trust (Further Revisions to the DoT and TPA)

Hi Usman,

Attached are the following documents:

1) Declaration of Trust executed by Computershare.

2) Ontario Transfer Payment Agreement, executed by Computershare

3) Transaction Statement showing the deposit of $100 into a trust account on Mar 23, 2017 in order to establish the Trust.

Regards, Morag.

From: Syed, Usman (ENERGY) [mailto:Usman.Syed@ontario.ca]
Sent: Thursday, March 23, 2017 5:54 PM
To: Morag Abraham
Cc: Sermat-Harding, Kaili (ENERGY); Schwab-Pflug, Emma (ENERGY); Qureshi, Musab (ENERGY); Johnson, Paul (ENERGY/MEDEI/MRI); Schachtschneider, Michelle (ENERGY); ASHBOURNE, STEPHEN; PRESTAGE, JA; Petsche, Nadine (TBS); Alexandra.Phillips@HydroOne.com; Daniel.Levitan@HydroOne.com; GILL Spencer; An, Tai (ENERGY); Gounden, Pratima (ENERGY)
Subject: Affordability Fund Trust (Further Revisions to the DoT and TPA)
Importance: High

Hi Morag,

Please see attached for tracked and clean versions of the TPA and Declaration. The tracked versions are compared to the versions you saw yesterday.

Would it be possible to send us signed copies of the two documents by email by 6:30pm today?

Declaration- Next Steps

- Could you sign two copies of the clean version of the Declaration (one for us and one for you) and email us a scanned copy.

- We will pick up our copy of the original Declaration tomorrow morning.

TPA- Next Steps

- Could you sign three copies of the clean version of the TPA (two for us and one for you) and email us a scanned copy (entire version- including signature and non-signature pages)

- Our Deputy Minister will then sign on three printed copies.

- Tomorrow we will pick up two copies of the TPA that you signed and give you one copy of the TPA our Deputy signed.

Thanks!

- Usman

Usman Syed

Director, Conservation and Energy Efficiency

Ontario Ministry of Energy

5th Floor, 77 Grenville Street
Toronto ON M7A 2C1

Direct Line: (416) 325-6651

Email: usman.syed@ontario.ca

From: Morag Abraham [mailto:Morag.Abraham@computershare.com]
Sent: March-23-17 10:52 AM
To: Schwab-Pflug, Emma (ENERGY); Lisa Kudo
Cc: Syed, Usman (ENERGY); Qureshi, Musab (ENERGY); Di Tullio, Yvonne (ENERGY); Alexandra.Phillips@HydroOne.com; Johnson, Paul (ENERGY/MEDEI/MRI); Schachtschneider, Michelle (ENERGY); Petsche, Nadine (TBS); Gounden, Pratima (ENERGY); An, Tai (ENERGY)
Subject: RE: Affordability Fund Trust (Further Revisions to the DoT and TPA)

Good morning Emma,

I've reviewed the revised agreements and I have some further comments. Please see attached pages.

Regards, Morag.

From: Morag Abraham
Sent: Wednesday, March 22, 2017 5:52 PM
To: 'Schwab-Pflug, Emma (ENERGY)'; Lisa Kudo
Cc: Syed, Usman (ENERGY); Qureshi, Musab (ENERGY); Di Tullio, Yvonne (ENERGY); Alexandra.Phillips@HydroOne.com; Johnson, Paul (ENERGY/MEDEI/MRI); Schachtschneider, Michelle (ENERGY); Petsche, Nadine (TBS); Gounden, Pratima (ENERGY); An, Tai (ENERGY)
Subject: RE: Affordability Fund Trust (Further Revisions to the DoT and TPA)

Hi Emma,

Thank you for the revised documents. I'll review the changes and get back to you tomorrow morning.

Regards, Morag.

From: Schwab-Pflug, Emma (ENERGY) [mailto:Emma.Schwab-Pflug@ontario.ca]
Sent: Wednesday, March 22, 2017 5:45 PM
To: Lisa Kudo

Cc: Syed, Usman (ENERGY); Qureshi, Musab (ENERGY); Di Tullio, Yvonne (ENERGY); Alexandra.Phillips@HydroOne.com; Morag Abraham; Johnson, Paul (ENERGY/MEDEI/MRI); Schachtschneider, Michelle (ENERGY); Petsche, Nadine (TBS); Gounden, Pratima (ENERGY); An, Tai (ENERGY)
Subject: FW: Affordability Fund Trust (Further Revisions to the DoT and TPA)

Hello Lisa,

Please find attached updated versions of the TPA and Declaration. Changes are tracked against the previous versions we had sent you.

There are three main outstanding elements that we are working to address:

1. On page 2 and 10 of the TPA, we need to add Computershare's relevant contact info. Could you kindly add this to the TPA?

2. For now we have left a placeholder for the effective date. We will replace that with tomorrow's date once you review.

3. Both documents have some formatting issues (Blakes is working to address):

- inconsistent page numbering and footers for both the TPA and Declaration

- incorrect sub section numbering in Annex A of the TPA

- Schedule B reference to the hospitality directive needs to be updated

Could you kindly review the TPA and Declaration and give us your final OK. Appreciate if you can let us know by tomorrow morning (Mar 23).

We can then circulate clean versions for your signature.

Thank you,

Emma

From: ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
Sent: March-22-17 4:23 PM
To: PRESTAGE, JA; Johnson, Paul (ENERGY/MEDEI/MRI); Ranalli, David (ENERGY); Schachtschneider, Michelle (ENERGY); Qureshi, Musab (ENERGY); Schwab-Pflug, Emma (ENERGY); Syed, Usman (ENERGY); Petsche, Nadine (TBS)
Subject: RE: Affordability Fund Trust (Further Revisions to the DoT and TPA)

Hi. Here is a further revised set of the DoT and TPA, reflecting some final edits, catch-ups and clean-ups. Regards, Steve

Stephen R. Ashbourne

Partner

stephen.ashbourne@blakes.com

Dir: 416-863-3086

Blake, Cassels & Graydon LLP
199 Bay Street, Suite 4000, Toronto ON M5L 1A9
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From: PRESTAGE, JA
Sent: Wednesday, March 22, 2017 2:48 PM
To: Paul.Johnson3@ontario.ca; David.Ranalli@ontario.ca; Michelle.Schachtschneider@ontario.ca; Musab.Qureshi@ontario.ca; Emma.Schwab-Pflug@ontario.ca; Usman.Syed@ontario.ca; Petsche, Nadine (TBS)
Cc: ASHBOURNE, STEPHEN
Subject: Affordability Fund Trust

All:

Attached are revised versions of the Declaration of Trust and the TPA which seek to reflect all of the comments received.

There are a few highlighted sections which require specific decisions or attention.

J.A.

J.A. Prestage
Partner
ja.prestage@blakes.com
Dir: 416-863-2955

****

Please visit the following website to read the Computershare legal notice:
http://www.computershare.com/disclaimer/americas/en

Veuillez visiter le site Web suivant afin de prendre connaissance de l'avis juridique de Computershare: http://www.computershare.com/disclaimer/americas/fr

****

image001.pdf

Blakes

Affordability Fund Trust - Transaction Stmt - Mar 23 2017.pdf

Computershare

23/03/2017
6:18:29PM

Transaction Statement

From: 23 March, 2017 **To :** 23 March, 2017

Account Name : Affordability Fund Trust **Account Nbr :** 1000039573

Trust Officer : Josephine Chu **Currency Code:** CDN

Transaction Date	Entry Code	Description	Debit	Credit	Balance
		Period Opening Balance :			0.00
23/03/2017	TTI	INTERNAL FUNDS MOVEMENT--TO ESTABLISH THE FUND--chuj1		$100.00	$100.00
		Total Period Debits :	$0.00		
		Total Period Credits :		$100.00	
		Period Closing Balance :			$100.00

Declaration of Trust dtd Mar 23 17.executed.pdf

DECLARATION OF TRUST

Made as of March 23, 2017

by

COMPUTERSHARE TRUST COMPANY OF CANADA

establishing

AFFORDABILITY FUND TRUST

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DECLARATION OF TRUST

This Declaration of Trust is made as of March 23, 2017, by Computershare Trust Company of Canada, a trust company established under the laws of Canada and licensed to carry on business as a trust company in each of the provinces and territories of Canada (together with its successors and assigns and the other trustees (including the Board of Trustees) contemplated herein, the "**Trustee**").

WHEREAS Computershare Trust Company of Canada, as settlor, wishes to establish a trust to acquire, hold, manage, invest, apply and dispose of certain property for the benefit of certain Beneficiaries as herein described.

NOW THEREFORE Computershare Trust Company of Canada hereby declares that it holds in trust as trustee (a) the sum of ONE HUNDRED DOLLARS ($100) contributed by it on this date and (b) all other property of every type and description which it may hereafter acquire or hold in its capacity as trustee of the Trust and all income therefrom and proceeds thereof, to hold, manage, invest, apply and dispose of same on and subject to the provisions set forth in this Declaration of Trust, including the annexes and schedule attached hereto.

SECTION 1
INTERPRETATION

1.1 Definitions

In this Declaration:

(a) "***Administrative Services Agent***" means each agent, which may include any Electricity Distributor or other Person, appointed from time to time under an Administrative Services Agreement, and its successors and permitted assigns solely in such capacity.

(b) "***Administrative Services Agreement***" means each agreement entered into from time to time by the Trust and one or more Administrative Services Agents or other Persons, in furtherance of the Purpose, under which the Administrative Services Agent agrees to provide specified administrative and other services to and on behalf of the Trustee, as such agreement may be amended, supplemented, restated, renewed or replaced from time to time and includes the agreement entered into on or about the date hereof between the Trustee and Hydro One Limited.

(c) "***Assets***" means, collectively, the following:

(i) the $100 Canadian referred to above, contributed by Computershare Trust Company of Canada on the date hereof;

(ii) all other property which is now or which at any time in the future may be issued, assigned, transferred, provided, donated, gifted and contributed to the Trustee (including pursuant to the Transfer Payment Agreement) to be held in trust pursuant to this Declaration (and which the Trustee is willing to accept and hold);

(iii) all acquisitions of property made by the Trust;

(iv) all property which may at any time be substituted for or in respect of the property referred to in clauses (i), (ii) and (iii), above;

(v) all income of the Trust, including investment income generated by the investment of the property referred to in clauses (i), (ii), (iii) and (iv), above; and

(vi) all proceeds of disposition of any of the property referred to in clauses (i) through (v) above,

but excludes any property paid out or distributed (whether out of income or capital) pursuant to the provisions of this Declaration.

(d) "***Beneficiary***" means each Primary Beneficiary and each Residual Beneficiary, as applicable.

(e) "***Board of Trustees***" means (i) as of the Original Trustee Replacement Date, the individual trustees appointed by the Original Trustee pursuant to Section 5.7 on the basis described in the Trustee Replacement Annex, and (ii) thereafter, the group of trustees appointed hereunder and acting in such capacity.

(f) "***Business Day***" means any working day, Monday to Friday inclusive, excluding statutory and other holidays, namely: New Year's Day; Family Day; Good Friday; Easter Monday; Victoria Day; Canada Day; Civic Holiday; Labour Day; Thanksgiving Day; Remembrance Day; Christmas Day; Boxing Day and any other day on which the Province has elected to be closed for business.

(g) "***Declaration***" means this Declaration of Trust, as it may be amended, restated, supplemented or otherwise modified from time to time, and includes each of the annexes and the Schedule attached hereto which constitute and form an integral part of this Declaration.

(h) "***Electricity Distributor***" means, in respect of a designated service area or region in Ontario, the distributor of electricity to residences located in such area or region.

(i) "***Electricity Invoice***" means an invoice issued by an Electricity Distributor in respect of electricity charges and related services and amounts incurred or assessed in respect of a residence located in the Electricity Distributor's designated service area or region in Ontario.

(j) "***Eligible Investments***" means (i) a deposit receipt, note, certificate or instrument issued, guaranteed or endorsed by a bank listed in Schedule I to the *Bank Act* (Canada), which provides that the principal and any interest shall be fully paid no later than one year after the day the investment was made, or (ii) a deposit account at a bank listed in Schedule I to the *Bank Act* (Canada).

(k) "***Eligible Measures***" means electricity efficiency and/or conservation measures determined by the Trustee from time to time on the basis contemplated in the Principles Annex and in the manner specified in and having regard to the Permitted Delegations Annex.

(l) "***Final Distribution Date***" means the earlier of (a) the date (if any) on which the Trustee determines (by a resolution of the Board of Trustees) that no further distributions are likely to be made to any Primary Beneficiary and (b) December 31, 2019.

(m) "***HAP Eligible Person***" means an "Eligible Person" as defined in Section 3.1 of the document entitled "Conservation First Framework LDC Took Kit" published by the Independent Electricity System Operator and designated as Final v3.0 – March 11, 2016, as amended in accordance with the Energy Conservation Agreement between the Independent Electricity System Operator and Electricity Distributors.

(n) **"Implementation Agent"** means each agent which may include any Electricity Distributor or other Person, appointed from time to time under an Implementation Agreement, and its successors and assigns solely in such capacity.

(o) **"Implementation Agreement"** means each agreement entered into from time to time by the Trustee and one or more Implementation Agents or other Persons in furtherance of the Purpose under which the Implementation Agent would agree to provide specified services to and on behalf of the Trustee (including, following the Original Trustee Replacement Date, as contemplated by the Permitted Delegations Annex) in connection with the implementation of the Program as such agreement may be amended , supplemented, restated, renewed or replaced from time to time.

(p) "***Minister of Energy***" means the Minister of Energy or such other member of the Executive Council as may be assigned primary ministerial responsibility for the administration of the *Ministry of Energy Act, 2011* under the *Executive Council Act*.

(q) "***Original Trustee***" means Computershare Trust Company of Canada, acting in its capacity as trustee hereunder, together with any additional or replacement Trustee appointed hereunder prior to the Original Trustee Replacement Date and any of their respective successors and assigns.

(r) "***Original Trustee Replacement Date***" has the meaning specified in Section 5.7, being the date on which the Original Trustee is replaced as trustee under this Declaration by the Board of Trustees as contemplated under Section 5.7.

(s) "***Permitted Delegations Annex***" means the Permitted Delegations Annex set forth as an annex to this Declaration.

(t) "***Person***" includes any individual, sole proprietorship, corporation, partnership, joint venture, association, society, club, board, chamber, joint-stock company, trust, trustee, unincorporated or incorporated organization or entity or government or any entity, agency or political subdivision thereof.

(u) "***Primary Beneficiary***" means each individual that, as of a time of determination, satisfies each of the following criteria:

(i) the individual owns, rents or leases a residence located in Ontario and is the primary or secondary electricity utility account holder named on an Electricity Invoice issued in respect of that residence; and

(ii) the individual is not a HAP Eligible Person.

(v) "***Principles Annex***" means the Principles Annex set forth as an annex to this Declaration.

(w) "***Province***" means the Province of Ontario.

(x) "***Program***" means the establishment, promotion, implementation and administration of a program to achieve the Purpose on the basis contemplated in this Declaration.

(y) "***Purpose***" means (i) the making of distributions to Primary Beneficiaries who are identified and whose needs are assessed in accordance with section 3.1 and 3.2 of this Declaration, having regard to (x) the principles set forth in the Principles Annex, (y) the manner and basis of implementation and administration of the Program contemplated in the Permitted Delegations Annex, and (z) the other terms, limitations and requirements set forth in this Declaration, and (ii) to the extent that Assets are available following the distributions made to Primary Beneficiaries as contemplated in (i), above, the making of distributions to Residual Beneficiaries who are identified and whose needs are assessed in accordance with section 3.3 and otherwise having regard to the other terms, limitations and requirements set forth in this Declaration.

(z) ***"Residual Beneficiary"*** means each charitable organization identified by the Trustee and specified as a residual beneficiary hereunder from time to time, selected by the Trustee in consultation with and having regard to the recommendations of the Ontario Energy Board in accordance with section 3.3.

(aa) "***Transfer Payment Agreement***" means the transfer payment agreement dated as of March 23, 2017 between the Trustee and Her Majesty the Queen in right of Ontario as represented by the Minister of Energy, as such agreement may be amended, restated, supplemented or otherwise modified by the further agreement of the parties thereto from time to time.

(bb) "***Trust***" means Affordability Fund Trust, a trust established under and governed by the laws of the Province of Ontario pursuant to this Declaration.

(cc) "***Trustee***" means (i) the Original Trustee and (ii) on and after the Original Trustee Replacement Date, the Board of Trustees acting together in accordance with and subject to Section 5.7 and in accordance with the rules and procedures adopted by the Board of Trustees pursuant to Section 5.8.

(dd) "***Trustee Replacement Annex***" means the Trustee Replacement Annex set forth as an annex to this Declaration.

1.2 Headings and Table of Contents

The insertion of headings and the provision of a table of contents are for convenience of reference only and shall not affect the construction or interpretation of this Declaration.

1.3 References

Unless otherwise specified, all references to Sections are to Sections of this Declaration. The words "hereto", "herein", "hereof", "hereunder" and similar expressions refer to this Declaration and not to any particular Section or other provision of this Declaration.

1.4 Number and Gender

Unless otherwise specified, words importing the singular include the plural and vice versa and words importing gender include all genders.

1.5 Governing Law

This Declaration shall be governed by, and construed and interpreted in accordance with, the laws of the Province of Ontario and of Canada applicable therein.

1.6 Severability

Any provision of this Declaration which is illegal, invalid or unenforceable in any jurisdiction shall not affect the legality, validity or enforceability of the remaining provisions and any such illegality, invalidity or unenforceability in any jurisdiction shall not affect the legality, validity or enforceability of such provision in any other jurisdiction.

1.7 Reference to the Trust and the Trustee

For greater certainty, where any reference is made in this Declaration to an act to be performed by or for or on behalf of the Trust, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Trustee in its capacity as trustee of the Trust, and, where any reference is made in this Declaration to an act to be performed by or for or on behalf of the Trustee, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Trustee solely in its capacity as trustee of the Trust. Except as provided under the Transfer Payment Agreement, no Person dealing with the Trust or the Trustee shall be bound to make any enquiry concerning, or has the right to require production of, any evidence of the validity of any act of, or transaction purporting to be made by, the Trustee.

1.8 Defect in Appointment

No action taken by the Trustee will be invalid or ineffective by reason only of any defect in the appointment of the Trustee or the non-compliance by the Trustee with any rules or procedures adopted by the Trustee and which is discovered after the taking of such action.

SECTION 2
CONCERNING THE TRUST

2.1 Objectives

The Trust is established to hold, invest, apply and dispose of the Assets for the benefit of the Beneficiaries in furtherance of the Purpose, as provided for in this Declaration. In furtherance of the Purpose:

(a) the Original Trustee shall hold and invest the Assets as contemplated in this Declaration until the Original Trustee Replacement Date, after which the Board of Trustees shall be duly appointed hereunder; and

(b) the Board of Trustees shall hold, invest, apply and dispose of the Assets in accordance with this Declaration, including by determining the identities of and distributions (if any) to be made to or for the benefit of the Primary Beneficiaries in accordance with Sections 3.1 and 3.2 of this Declaration, having regard to the principles set forth in the Principles Annex and in the manner and on the basis contemplated in the Permitted Delegations Annex, or otherwise by determining the identities of and distributions to be made to or for the benefit of any Residual Beneficiary in accordance with Section 3.3,

in each case and in all respects subject to the terms, limitation and requirements set forth in this Declaration.

2.2 Name of the Trust

The name of the Trust shall be the "Affordability Fund Trust" or such replacement name as the Trustee shall determine and specify from time to time. The Trustee shall hold the Assets and conduct the activities of the Trust under such name or variation thereof (including any variation of such name in the French language). If the Trustee determines to change the name of the Trust, the Trustee may specify and use such other designation or adopt such other name (including any name in the French language) as it considers appropriate and may hold the Assets and conduct the activities of the Trust under such designation or other name.

2.3 Location

The head office and the situs of the administration of the Trust shall be • or such other address in Ontario as the Trustee may determine from time to time.

2.4 Fiscal Year

The fiscal year of the Trust shall end on December 31 of each year.

SECTION 3
DISTRIBUTIONS

3.1 Distributions to Primary Beneficiaries

After the Original Trustee Replacement Date and prior to the Final Distribution Date, the Trustee shall undertake diligent efforts in good faith to distribute the Assets (including capital or income) to the Primary Beneficiaries identified based on the application of the principles specified in the Principles Annex and in the manner and in the amounts determined on the basis contemplated by the Permitted Delegations Annex, in each case in the amounts and to the extent specified herein and therein, subject in all respects to the exercise by the Trustee of its discretion hereunder and to the exclusion of the other Beneficiaries.

3.2 Amount of Distributions to Primary Beneficiaries

For the purposes of determining the amount of distributions to be made to the Primary Beneficiaries, the Trustee shall have regard to and be entitled to rely on the recommendations of and information provided by Electricity Distributors acting as Implementation Agents appointed for the purposes, in the manner and substantially on the terms contemplated in the Permitted Delegations Annex, without any duty or obligation to verify or makes enquiries regarding the basis for or propriety of such recommendations or the accuracy or completeness of such information, except if and to the extent that the Trustee, in its discretion, determines that (i) it has actual knowledge that such recommendations are contrary to the reasonable application of the principles set forth in the Principles Annex or have been made on a basis that is manifestly contrary to such principles or the delegations and activities specified or contemplated to be undertaken under the Permitted Delegations Annex or (b) such information is known by the Trustee to be erroneous, contain a material misrepresentation or is materially incomplete.

3.3 Distributions to Residual Beneficiaries

Prior to the Final Distribution Date, the Trustee shall identify the Residual Beneficiary, or if more than one the Residual Beneficiaries and their respective allocations, by consulting with and having regard to the recommendations of the Ontario Energy Board, based on those charitable organizations which provide support services for Low Income Energy Assistance Program Emergency Financial Assistance (LEAP EFA) and the Ontario Electricity Support Program (OESP) or other charities that OEB may identify as relating to the Purpose. Following the Final Distribution Date, the Trustee shall, subject to compliance with section 7.3 and completion of a final audit, distribute all remaining Assets (including capital or income) to the Residual Beneficiaries, in each case in the amounts and to the extent determined by the Trustee in its discretion hereunder (having consulted with and having had regard to the recommendations of the Ontario Energy Board as aforesaid) and to the exclusion of the other Beneficiaries.

SECTION 4
POWERS OF THE TRUSTEE

4.1 General

Subject to and in compliance with the terms, limitations and restrictions of this Declaration and notwithstanding applicable trust legislation, the Trustee shall have, without other or further authorization, full, exclusive and absolute power, control and authority over the Assets and over the affairs and activities of the Trust to the same extent as if the Trustee were not a trustee, but rather the sole and absolute owner of the Assets in its own right, including such power, control and authority to do all such acts and things as in its sole judgment and discretion are necessary, incidental or desirable for carrying on the affairs and activities of the Trust, with such powers of delegation as may be permitted or otherwise contemplated by this Declaration. Except as expressly provided in this Declaration, the enumeration in this Declaration of any specific power or authority shall not be construed as limiting the aforesaid general power or authority or any other specific power or authority set out herein. Subject to the terms, limitations and restrictions of this Declaration, every discretion or power hereby conferred on the Trustee is an absolute and uncontrolled discretion or power.

4.2 Specifically Enumerated Powers

The Trustee shall have the following specific powers and authorities:

(a) ***Transfer Payment Agreement.*** The Trustee shall have the power to enter into, amend, supplement, modify and perform its obligation under the Transfer Payment Agreement.

(b) ***Contracts and Undertakings.*** The Trustee shall have the power to enter into, amend, supplement, modify and perform its obligation under any contract entered into or undertaking given by the Trustee in furtherance of the Purpose, including any Administrative Services Agreement and any Implementation Agreement.

(c) ***Power to Own, Hold and Manage.*** Subject to section 4.2(d), the Trustee shall have the power to own, hold and manage the Assets in such manner as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable.

(d) ***Power to Invest in Eligible Investments.*** The Trustee shall have the power to invest the Assets only in Eligible Investments, and to change such Eligible Investments at any time and from time to time, all as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable, but always having regard to the Trustee's expectations regarding the timing of payments to be made to the Beneficiaries hereunder. If an investment of Assets in Eligible Investments would not be authorized under the applicable trust laws of Ontario, the Trustee shall nevertheless be permitted to make an investment of the Assets in such Eligible Investments. The Trustee will have no liability for the diminution in the value of any investment in Eligible Investments made hereunder.

(e) ***Power to Dispose of Assets.*** The Trustee shall have the power to sell, convey, assign, transfer, exchange and in any other manner dispose of the Assets or any part or parts thereof free and clear of any and all trusts established under this Declaration, by public or private sale, for cash or on credit, with or without advertisement, and subject to such restrictions, stipulations, agreements and reservations as the Trustee in its sole and absolute discretion may consider appropriate or advisable, and to execute and deliver and perform any agreement, deed, conveyance, transfer or other document or instrument in connection with the foregoing.

(f) ***Power to Apply Assets and Proceeds to Make Distributions to Beneficiaries.*** The Trustee shall have the power to apply the Assets and the proceeds and income derived therefrom to make distributions to the Beneficiaries contemplated by Section 3, and to execute and deliver and perform any agreement, deed, conveyance, transfer or other document or instrument in connection therewith.

(g) ***Power to Delegate and to Appoint Agents, etc.*** The Trustee shall have the power to appoint, employ or contract with any Person as the Trustee in its sole and absolute discretion may consider appropriate or advisable in connection with the activities of the Trust. Without limiting the generality of the foregoing:

(i) the Trustee will have the power at any time and from time to time to appoint, employ or retain consultants, financial advisers, technical advisers, legal counsel, accountants, administrative services agents, implementation agents, insurers, insurance agents and insurance brokers, as the Trustee may require for the

purpose of discharging its duties hereunder and shall not be responsible for or for the actions of any of them, including to:

(A) act for and on behalf of the Trust in connection with any and all matters in any way relating to the negotiation, settlement, entering into, amending, performance and enforcement of the Transfer Payment Agreement, the Administrative Services Agreements, the Implementation Agreements, and any other agreements and contracts to which the Trust becomes a party in accordance with this Declaration;

(B) to provide or cause to be provided any or all kinds of administrative and other services in any way relating to the activities of the Trust;

(C) to act as attorney in fact, agent or trustee in the acquisition, holding, investment, application, sale or other disposition of the Assets and in the handling, prosecuting, defending or settling of any claims of or made against the Trust;

(D) to value the Assets and determine the net income of the Trust; and

(E) to make any filings, elections and submissions (including in respect of taxation matters) in connection with the Trust's compliance with applicable laws and regulatory requirements; and

(ii) the Trustee may pay remuneration and reimbursements from the Assets for services performed for it or on its behalf in the discharge of the trusts hereof without taxation for costs or fees of any counsel, solicitor or attorney.

Without limiting the foregoing, it is expected that the Board of Trustees will seek to enter into Implementation Agreements with Electricity Distributors for the purposes contemplated by the Permitted Delegations Annex, and on such terms and conditions (including terms and conditions as to the payment of reasonable fees and expenses) not inconsistent therewith as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable.

(h) ***Power to Operate Accounts.*** The Trustee shall have the power to (i) open and operate accounts at any chartered bank, trust company or other financial institution in Canada or elsewhere, as the Trustee in its sole and absolute discretion may consider appropriate or advisable; (ii) deposit therein any moneys or securities forming part of the Assets whether or not such deposits will earn interest; (iii) withdraw such deposits at such times and in such manner as the Trustee may determine; (iv) draw, make, endorse, deposit or otherwise deal in cheques, bills of exchange, promissory notes, drafts and other kinds of instruments and securities; and (v) enter into contracts or agreements with any such chartered bank, trust company or other financial institution containing such terms and provisions as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable. In connection therewith, the Trustee shall have no liability or responsibility for any loss which may occur by reason of the failure of any such chartered bank, trust company or other financial institution.

(i) ***Power to Collect, etc.*** The Trustee shall have the power to (i) collect, sue for, receive and give receipts for all sums of money or other property due to the Trust; (ii) consent to extensions

of time for payment or to the renewal of any securities or obligations; (iii) engage or intervene in, prosecute, defend, compound, compromise, abandon or adjust by arbitration or otherwise, any demands, claims, actions, suits or proceedings relating to the Trust or the Assets; (iv) exercise any and all remedies available to the Trustee under any agreement or as may otherwise be available, including any power of foreclosure or sale available at law; (v) in connection with any such foreclosure or sale, purchase or otherwise acquire title to any property and to convey good title thereto free of any and all trusts hereby established, or to take or retake possession of any property secured under any agreement or instrument; (vi) extend the time, with or without security, for the payment or delivery of any debts or property; (vii) execute and deliver releases, acquittances, discharges, agreements or other instruments related thereto; and (viii) pay or satisfy any debts or claims upon any evidence that the Trustee, in its sole and absolute discretion, may determine to be sufficient.

(j) ***Power to Obtain Insurance.*** The Trustee shall have the power to enter into contracts for or in relation to or otherwise obtain policies of insurance for the purpose of insuring the risks associated with the Trust, including to insure the Trustee (including the members of the Board of Trustees) against any risk of loss associated with assuming and performing the duties as Trustee. Without limiting the foregoing, it is expected that the Board of Trustees will obtain commercial general liability insurance from insurers having a secure A.M. Best rating of B+ or greater, or the equivalent, that in the opinion of the Recipient a prudent person similar to the Recipient would maintain, and having an inclusive limit of not less than $2,000,000 per occurrence and providing for contractual liability coverage.

(k) ***Power to Pay Trustee's Fees.*** The Original Trustee shall be entitled to be paid and receive the fees set forth in the Original Trustee's schedule of fees delivered as of or prior to the date hereof as compensation for its services under this Declaration, and to be reimbursed for its out-of-pocket expenses reasonably incurred, in each case from the Assets and without the approval of any Beneficiary or any court. The Original Trustee shall be entitled, in its sole and absolute discretion, to withdraw funds from time to time for such purpose from any account of the Trust. Members of the Board of Trustees shall be entitled to reimbursement for and in respect of their out-of-pocket expenses reasonably incurred in discharging their respective duties and obligations under this Declaration, in each case without the approval of any Beneficiary or any court, provided that the members of the Board of Trustees have general regard to the accountability principles set out in Schedule B to the Principles Annex.

(l) ***Power to Pay Taxes.*** The Trustee shall have the power to (i) pay, deduct, withhold or remit any taxes or assessments which are required by law to be paid, deducted, withheld or remitted together with or from any payment made by the Trustee; (ii) pay all taxes or assessments of whatever kind or nature imposed upon or against the Trust or the Trustee in connection with the Assets or any part thereof; (iii) collect and remit all taxes and assessments of whatever kind or nature required to be collected and remitted by the Trust or the Trustee in connection with their activities or the Assets or any part thereof; (iv) appeal, settle or compromise tax claims or liabilities; and (v) for the foregoing purposes, to make such returns, elections and submissions and do all such other acts and things as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable.

(m) ***Power to Appoint Auditors.*** The Trustee shall have the power to select and appoint and discharge and re-appoint, in its sole and absolute discretion, an auditor or auditors of the Trust and to settle and pay the fees of any such auditor or auditors from any account of the Trust.

(n) ***Form of Accounts.*** The Trustee shall have the power to determine and change from time to time, in its sole and absolute discretion, the method or form in which the accounts of the Trust will be kept and shall not be required to keep or provide accounts in the form usually required by law to be kept or provided by trustees; provided that such method or form reasonably complies with generally accepted accounting principles in effect in Canada to the extent applicable.

(o) ***Title to Assets.*** The Trustee shall have the power to cause all or any part of the Assets to be held by or registered, in its sole and absolute discretion, in the name of any Person.

(p) ***Delegation of Discretion***. The Trustee shall have the power to delegate the right and power to exercise, or concur in the exercise of any discretion or power, conferred on the Trustee in this Declaration or conferred by law to any one or more of its directors, officers, employees, agents, representatives or to such other Person, as the Trustee, in its sole and absolute discretion, may think is appropriate or advisable, including to one or more Administrative Services Agents under an Administrative Services Agreement and to one or more Implementation Agents and their respective employees, officers and directors under a related Implementation Agreement entered into by the Trust substantially on the basis contemplated in the Permitted Delegations Annex. In particular, the Trustee shall have the power to accept, rely on and follow the recommendations of an Electricity Distributor made under and having regard to the Permitted Delegation Annex with respect to the identification of, and the determination of distributions (if any) to be made to, any Primary Beneficiary, except if and in so far as the Trustee has actual knowledge that (1) such Primary Beneficiary did not in fact satisfy the "Selection Factors" specified in the Principles Annex as of the applicable time of determination; and/or (ii) the amount recommended to be distributed to the Primary Beneficiary was not calculated in substantial compliance with, or was calculated in a manner that is manifestly contrary to the requirements set forth or contemplated in, the Permitted Delegation Annex or the applicable Implementation Agreement.

(q) ***Additional Powers.*** The Trustee shall have the power to perform and do all such other acts, to take such steps and to execute all such deeds, transfers, assignments, agreements and other documents and instruments as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable for the carrying out of any of its powers hereunder or of any of the activities of the Trust as herein contemplated, or for the carrying out, promotion or advancement of the interests of the Trust, whether or not any of such acts, things, documents or instruments are herein expressly mentioned. Any good faith determination by the Trustee as to what is necessary, desirable or appropriate to carry out its powers or activities of the Trust as contemplated under this Declaration or to carry out, promote or advance the interests of the Trust shall be conclusive. Any construction of this Declaration or any determination as to the activities of the Trust or the existence of any power or authority hereunder made in good faith by the Trustee, relying upon the advice of counsel, shall be conclusive. In construing the provisions of this Declaration, there shall be a presumption in favour of a grant of power to the Trustee.

SECTION 5
CONCERNING THE TRUSTEE

5.1 Duty of Trustee

In performing its duties and exercising its powers under this Declaration, the Trustee shall act honestly, in good faith and with a view to the best interests of the Trust and the Beneficiaries and

shall exercise that degree of care, diligence and skill that a reasonably prudent trustee would exercise in comparable circumstances (the "**Standard of Care**"). The Trustee shall observe and act in accordance with the terms of, and shall observe and comply with the limitations and restrictions set forth in, this Declaration, including having due regard to the principles set forth in the Principles Annex. To the extent that the Trustee has so delegated any of its duties or powers, it shall be deemed to have satisfied the Standard of Care in respect of the subject matter of such delegation, subject to the Trustee's overall duty as a trustee to exercise prudent oversight in relation to such delegation. Unless required by law, the Trustee will not be required to give any security, bonds or sureties in any jurisdiction for the performance of any of its duties and obligations under this Declaration. The Trustee (including the individual members of the Board of Trustees) will not be required to devote its entire time to the trust activities.

5.2 Limitation of Liability

The Trustee shall not be personally liable in tort, contract or otherwise to any Beneficiary or any other Person for any loss or diminution in the value of the Assets, or for any action or failure to act on the part of the Trustee or any of its employees or agents or any other Person, and shall not be subject to any personal liability for any debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses incurred by or against the Trust, howsoever arising, and resort will be had solely to the Assets for the payment, performance or satisfaction thereof. No property or assets of the Trustee, owned in its personal capacity or otherwise, will be subject to levy, execution or other enforcement procedures with respect to any obligation under this Declaration. However, the foregoing limitations in this Section shall not apply where the Trustee has demonstrated gross negligence, bad faith, fraud or wilful misconduct.

5.3 Liability of Trustee under Contracts

Any document or instrument creating a liability or obligation of the Trust or of the Trustee will be conclusively deemed to have been executed by the Trustee only in its capacity as Trustee of the Trust and will be binding upon the Trustee only in its capacity as trustee hereunder and resort may not be had to, nor recourse or satisfaction be sought from, the property of the Trustee other than the Assets, whether owned by its in its personal capacity or in any other capacity other than in its capacity as Trustee of the Trust, or from its employees or agents, and in all cases resort will be had solely to the Assets for the payment, performance or satisfaction of any such liability or obligation. However, the foregoing limitations in this Section shall not apply where the Trustee has demonstrated gross negligence, bad faith, fraud or wilful misconduct. Each document or instrument creating a liability or obligation of the Trust or of the Trustee shall contain a provision providing for the aforesaid limitation of liability.

5.4 Funds of the Trustee

The Trustee shall not be required to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers.

5.5 Indemnification of Trustee

In addition to and without limiting any other protection hereunder or otherwise by law of the Trustee and its respective employees, agents, representatives and assigns (in this Section 5.5,

collectively, the "**Representatives**"), the Trustee and its respective Representatives shall be indemnified, defended and saved harmless out of the Assets from, against and in respect of any and all liabilities arising or related to actions taken or omitted to be taken by any agent of the Trustee, losses, claims (including any claim arising out of the assessment of any tax on income by a taxing authority), damages, penalties, fines, actions, suits, demands, levies, assessments, costs, charges, expenses and disbursements (including, without limitation, any and all legal and advisor fees and disbursements) (in this Section 5.5, collectively, the "**Liabilities**") of whatever kind or nature which may at any time be suffered by, imposed upon, incurred by or asserted against the Trustee and its Representatives, whether groundless or otherwise, howsoever arising from or out of any act, omission or error of the Trustee, in each case made in connection with its acting as Trustee hereunder, in each case except and to the extent that the Liabilities are a result from or are caused by gross negligence, wilful misconduct, bad faith or fraud. Further, except as provided in section 5.2, the Trustee shall not be liable to any Beneficiary for any loss or damage relating to any matter regarding the Trust, including any loss or diminution in value of the Assets. Notwithstanding any other provision hereof, the obligations provided for in this section 5.5 shall survive any termination of the Trust, whether by reason of removal or resignation of the Trustee, termination or discharge of this Declaration or otherwise.

5.6 Reliance upon Advice

Subject to section 5.1, in performing its duties and exercising its powers hereunder, the Trustee may rely and may act or not act, and shall be fully protected in relying and acting or not acting, upon (a) any statement, telecopy or other electronic means of communication, writing, notice, resolution, report, opinion or other document or conversation believed by it to be genuine and correct and to have been signed, sent or made by the proper Person; (b) any opinion or advice received or information obtained from auditors, solicitors, or other professional advisers, whether retained by the Trustee or otherwise, and shall not be responsible or held liable for any loss or damage resulting from so relying or acting or not acting; and (c) the advice and actions of any Administrative Services Agent or Implementation Agent, including in connection with the delegations and reliances contemplated under the Permitted Delegations Annex. For greater certainty, it shall not be necessary for the Trustee to ascertain whether or not the Persons who have executed, signed or otherwise issued, authenticated or receipted such papers, writings or documents (including any Administrative Services Agreement or any Implementation Agreement or any other contract entered into by the Trustee) have authority to do so or that they are the same Persons named therein or otherwise to pass upon any requirement of such papers, writing or documents that may be essential for their validity or effectiveness or upon the truth and acceptability.

5.7 Replacement of the Original Trustee

The Persons identified in the Trustee Replacement Annex are hereby appointed to comprise the Advisory Committee contemplated therein (the "**Advisory Committee**"). The Original Trustee shall promptly request that the Advisory Committee make recommendations with respect to the composition of the "Board of Trustees", as contemplated by the Trustee Replacement Annex. The Original Trustee shall have no duty or obligation to investigate the basis for any of the Advisory Committee's recommendations and may rely on such recommendations without any duty of enquiry, supervision or oversight with respect to the activities and decision-making processes adopted by the Advisory Committee in its discretion, in full satisfaction of the Original Trustee's Standard of Care with respect to such matters hereunder. Except where it is manifestly

apparent to the Original Trustee that the individuals recommended by the Advisory Committee to become members of such Board of Trustees are disqualified from so acting on the basis of manifest non-compliance with the "Selection Factors" set forth in the Trustee Replacement Annex, the Original Trustee shall appoint, as members of the Board of Trustees, the six (five voting and one non-voting) individuals recommended for appointment to the Board of Trustees by the Advisory Committee. If the Original Trustee declines to appoint any individual recommended by the Advisory Committee, the Original Trustee will promptly request that the Advisory Committee provide a further recommendation whom the Original Trustee shall appoint as a member of the Board of Trustees unless it is manifestly apparent to the Original Trustee that the individual so recommended is also disqualified from so acting on the basis of manifest non-compliance with the "Selection Factors" set forth in the Trustee Replacement Annex,. Upon the appointment of such six individuals pursuant to this provision and their agreement to act as members of the Board of Trustees, the Original Trustee shall be deemed to have resigned and shall cease to be a trustee (such resignation occurring on the "**Original Trustee Replacement Date**").

5.8 Rules and Procedures of the Board of Trustees

(a) ***Initial Requirements***. As soon as practicable and in any event no later than one month following the Original Trustee Replacement Date, the Board of Trustees is expected to meet to take such decisions and actions as they deem necessary to ensure the proper management and administration of the Trust. The date (and location if in person) of the initial meeting shall be determined by a majority of the Board of Trustees.

(b) ***Meetings.*** Subject to the Board of Trustees' discretion to make such rules and procedures that they may deem desirable, meetings of the Board of Trustees may be held at such time and place as the trustee members of the Board of Trustees may agree upon or as they may fix by resolution for the purpose or if the meeting is called as hereinafter mentioned then at such time as may be designated in the notice calling the meeting. A meeting of the Board of Trustees may be called at any time by any two members of the Board of Trustees by two Business Days' notice given to the members of the Board of Trustees. No notice of any Board of Trustees' meeting shall be necessary when a quorum is present if those comprising the quorum consent to the transaction of the affairs of the Trust and the absent trustee or trustees, if any, either before or after the meeting shall waive in writing notice of the meeting. Meetings of the Board of Trustees may be conducted in person, by telephone, or in such other manner as determined by the Board of Trustees. The Board of Trustees may elect a Chairperson.

(c) ***Quorum.*** At any meeting of the Board of Trustees, a majority of the voting members of the Board of Trustees shall be a quorum irrespective of the number of members in office. The decision of the majority of the voting members where quorum exists shall govern and shall be binding for all purposes and shall be acted upon and carried out in the same manner and with the same effect as if all the voted members concurred therein; provided always that in the case of equality of votes the Chairperson, if any, shall not be entitled to cast a second or deciding vote.

(d) ***Power to Adopt Rules and Procedures.*** The Board of Trustees may make such rules and procedures not inconsistent herewith as it may deem desirable for the proper management and administration of the Trust and the discharge of the responsibilities of the Board of Trustees.

(e) ***Replacement of Members of the Board of Trustees***. The Board of Trustees shall have the power to replace any vacancy arising following the Original Trustee Replacement Date according to such rules and procedures as they deem appropriate subject to compliance with the Selection Factors specified in Trustee Replacement Annex and having regard for such considerations necessary to ensure that the composition of the Board of Trustees will be able to discharge its responsibilities in respect of the Declaration. If necessary, the Board of Trustees may fill any vacancy by application to the Courts of Ontario in the event of an unfilled vacancy.

(f) ***Decisions of the Board of Trustees.*** Decisions and actions of the Board of Trustees shall be made by voting, with each individual voting member having one vote. Subject to quorum requirements, a majority vote shall be determinative in respect of such decisions and actions. Subject to quorum requirements, any decision or action taken by the majority of voting members will represent the decision or action of the Trustee, and not any member of the Board of Trustees.

(g) ***Conflicts of Interest.*** With respect to any matter before the Board of Trustees, to the extent of a conflict of interest, whether actual, perceived or potential, involving a member of the Board of Trustees' personal interests and a matter concerning the Trust, such member shall abstain from voting on the matter or taking any other discretionary action on the matter. For the purposes of the foregoing, no member of the Board of Trustees shall be deemed to have a conflict by reason only that the member holds any office or position with an Electricity Distributor, social services agency or governmental or quasi-governmental agency or entity (such as the Independent Electricity System Operator); provided, however, that in relation to any decision of the Board of Trustees pertaining specifically to a particular Electricity Distributor, any member of the Board of Trustees who is a director, officer or employee of the Electricity Distributor would be expected to recuse himself or herself from participating in deliberations, discussions or voting in respect of such decision.

(h) ***Expense Reimbursements to Members of the Board of Trustees.*** Members of the Board of Trustees shall be entitled to reimbursement for and in respect of their out-of-pocket expenses reasonably incurred in discharging their duties and obligations as members of the Board of Trustees. Members of the Board of Trustees shall serve without compensation.

5.9 Confidentiality

Notwithstanding the resignation or removal and discharge from the trusts and powers reposed in and conferred on the Trustee by this Declaration, or the termination of this Declaration, the Trustee so resigning or removed shall continue to treat as confidential all information relating to the Trust, the Assets and the Beneficiaries and shall only be entitled to make disclosures concerning such information if disclosure is required in the performance of the functions of the resigning or removed Trustee or is ordered by a court of competent jurisdiction or is otherwise required by law. The Trustee shall not be responsible or liable to any Person for any loss or damage arising out of or in any way sustained or incurred in any way relating to any such required disclosure. The obligations arising under this section 5.9 shall survive the termination of the Trust.

5.10 Vesting in Successor Trustee

Any successor trustee (including any reconstituted Board of Trustees) shall automatically become vested with the Assets and with the same powers, rights, duties, responsibilities and trusts as if it, he or she had originally been named as Trustee under this Declaration, without the requirement of any further instrument or act or conveyance, and the Trustee ceasing to act shall execute all such transfers and other documents and do all such other acts or things as may be necessary or desirable to assign, transfer, deliver to, and vest in, the successor trustee, upon the trusts expressed in this Declaration, all the Assets and all the rights, powers and trusts of the Trustee ceasing to act. The expense of any act, document, deed or other instrument or thing required under this Section 5.10, including for greater certainty, outstanding fees and unreimbursed expenses of the Trustee (including any member of the Board of Trustees) ceasing to act, shall be satisfied from the Assets.

5.11 Execution of Instruments

The Trustee shall have the power to execute all deeds, transfers, agreements, promissory notes and other instruments on behalf of the Trust. Such power may be exercised by any one or more Administrative Services Agents acting in accordance with any delegated right to do so pursuant to an applicable Administrative Services Agreement or by any one or more Implementation Agents acting in accordance with any delegated right to do so pursuant to an applicable Implementation Agreement, and any such execution of instrument by an Administrative Services Agent, acting in such capacity as agent of the Trust pursuant to the terms and conditions of an Administrative Services Agreement or by an Implementation Agent acting in such capacity as agent of the Trust pursuant to the terms and conditions of an Implementation Agreement shall in each case be deemed to be a proper execution of such instrument by the Trustee and shall be binding for all purposes on the Trust.

5.12 Decisions by the Trustee

If there is more than one Trustee, decisions of the Trust may be made by a majority of Trustees eligible to vote on the applicable matter. Whenever the Trustees are unable to agree in relation to the commission or omission of any act or howsoever in the execution of the Trust, the decision of a majority of such Trustees shall prevail.

SECTION 6
AMENDMENTS AND SUPPLEMENTS

6.1 Amendments

Subject to the requirements of the Transfer Payment Agreement, the Trustee shall have the power in its sole and absolute discretion from time to time without the approval of any Beneficiary or any court to amend, vary, supplement, replace or restate this Declaration in its entirety or any portion thereof; provided, however that it is expected that any amendment shall be consistent with the intent of the principles set forth in the Principles Annex and with the intended scope and effect of the permitted delegations and activities of any Implementation Agent pursuant to the Permitted Delegations Annex. Without in any way limiting the foregoing, any such amendments, variations, supplements, replacements or restatements may:

(a) add provisions for the replacement of or appointment of additional trustees to act with the Original Trustee prior to the Original Trustee Replacement Date;

(b) in the case of the Original Trustee, add provisions to those contemplated in the Trustee Replacement Annex in respect of the appointment of the members and the formation and empowerment of the Board of Trustees;

(c) in the case of the Original Trustee, vary the terms and requirements applicable to the duties, responsibilities, obligations, liabilities, indemnities, protections, limitations, restrictions, compensation, expense reimbursements and such other matters, in each case as the Advisory Committee may indicate are necessary to be made in order to attract and receive confirmation of appointment of appropriately qualified individuals that the Advisory Committee specifies are to be appointed as members of the Board of Trustees in accordance with its recommendations;

(d) add additional or replace existing Trustees;

(e) add to or reasonably clarify the principles set forth in the Principles Annex;

(f) add to or reasonably clarify the delegations and activities contemplated to be made in the Permitted Delegation Annex;

(g) include provisions for the management of the Trust by the Trustees, including the making of rules, requirements and procedures governing the decision-making of the Board of Trustees;

(h) add provisions for the replacement of members of the Board of Trustees (in addition to those provisions contemplated in section 5.7 and the Trustee Replacement Annex);

(i) provide for the engagement of any Person or Persons as managers, administrators or other service providers to the Trust, including any additional or replacement Administrative Services Agent or Implementation Agent or representative thereof;

(j) specify supplemental procedures for the identification of Primary Beneficiaries and the exchange of information with Electricity Distributors in connection with identifying such Primary Beneficiaries; or

(k) specify procedures for the transfer and transmission of funds from the Trust or any Implementation Agent acting on its behalf and with delegated responsibility over funds constituting Assets, to or for the benefit of, Beneficiaries or their designated representatives, payees or assignees.

6.2 Supplemental Declarations

The Trustee is authorized to execute any supplemental declaration of trust (including one or more amendments and restatements from time to time of this Declaration) to give effect to amendments to this Declaration made pursuant to section 6.1.

SECTION 7
TERMINATION

7.1 Duration

Subject to sections 7.2 and 7.3, the Trust will continue in full force and effect so long as there are any Assets and until all of the debts, liabilities and obligations of the Trust have been paid and satisfied in full.

7.2 Termination and Distribution of Assets

The Trustee shall terminate the Trust and wind up its affairs as soon as practicable after the Final Distribution Date. In connection with the termination of the Trust, the Trustee shall identify the Residual Beneficiaries and distribute or cause to be distributed the remaining Assets, in cash or in kind or partly in each, to the Residual Beneficiaries, in each case in accordance with section 3.3. Despite the foregoing, the Trust will only be terminated and wound up after the Trustee, in its sole and absolute discretion, determines that all debts, liabilities and obligations of the Trust have been paid or otherwise adequately provided for and satisfied and upon receipt of such releases, indemnities and discharges as the Trustee, relying on the opinion of counsel, deems necessary for the protection of the Beneficiaries and for its own protection.

7.3 Distribution of Assets on Final Distribution Date

If the Trust holds Assets on the Final Distribution Date, the Trustee shall pay or provide reserves for the payment, and otherwise shall satisfy, all debts, liabilities and obligations of the Trust and shall provide or arrange to provide such investigations, audits, releases, indemnities and discharges as the Trustee, relying on the opinion of counsel, deems necessary for the protection of the Beneficiaries and for its own protection. Thereafter, any remaining Assets shall be paid to the Residual Beneficiaries in accordance with section 3.3.

SECTION 8
ACCEPTANCE OF TRUSTS

8.1 Acceptance of Trusts

The Trustee hereby accepts the trusts and duties contained in this Declaration and agrees to perform the same upon the terms and conditions hereof until discharged therefrom.

[Signature Page Follows]

The Trustee has executed this Declaration as of the date first written above.

COMPUTERSHARE TRUST COMPANY OF CANADA,

By: _____
Name: Morag Abraham
Title: Corporate Trust Officer

By: _____
Name: Ann Samuel
Title: Associate Trust Officer

PRINCIPLES ANNEX

The Trustee shall have regard to, but shall not be specifically bound by, the following principles in applying its discretion in relation to the administration of the Trust:

1. Identification of Primary Beneficiary Payees

1.1 Except in exceptional circumstances, a Primary Beneficiary would not be expected to receive a benefit from the Trust unless at the time of consideration it satisfies, in addition to the requirements contemplated in the definition of "Primary Beneficiary", each of the following criteria (the "**Selection Factors**"):

(i) it has a participant agreement with an applicable Electricity Distributor to undertake measures (its "**Energy Plan**") to improve the electricity efficiency and/or promote the conservation of electricity at its Ontario residence;

(ii) its Energy Plan involves one or more Eligible Measures, as may be designated by the Trustee from time to time from;

(iii) it confirms that:

1. the primary purpose of its Energy Plan is the conservation and efficient use by the Primary Beneficiary of electricity, and is not for the purposes of the Primary Beneficiary making a profit;

2. it would otherwise not have the financial resources to undertake the Eligible Measures included in its Energy Plan; and

3. it would otherwise not be eligible to receive amounts in respect of the Eligible Measures as a HAP Eligible Person;

(iv) it has demonstrated a need for financial assistance on the basis that its periodic electricity bills represent a financial burden, relative to its available financial resources; and

(v) such other criteria as the Trustee may determine, including based on the recommendations of Electricity Distributors or other knowledgeable Persons made on the basis and having regard to the delegations contemplated by the Permitted Delegations Annex or any applicable Implementation Agreement.

1.2 It is recognized that, in furthering the Purpose, an efficient basis upon which to allocate funds to the Primary Beneficiaries across different areas and regions within Ontario may be based on the areas and regions serviced by the Electricity Distributors operating within Ontario.

1.3 It would not be contrary to the Purposes if funds are made available by the Trustee to the Primary Beneficiaries unequally across different areas and regions within Ontario, and it is expected that in making such an unequal division it would be appropriate to have regard to:

(i) broad economic parameters of economic activity and the specific financial resources of the residents of the areas and regions, in each case as an indication of the relative need of such residents across the areas and regions;

(ii) electricity use and efficiency levels of residential electricity customers across the areas and regions;

(iii) specific regional indicators of economic weakness and need; and

(iv) such other factors as the Trustee may determine are relevant, including based on the submissions, advice and recommendations of Electricity Distributors or other knowledgeable Persons made on the basis and having regard to the delegations contemplated by the Permitted Delegations Annex or any applicable Implementation Agreement.

1.4 It is recognized that, in furthering the Purpose, the designated Electricity Distributor for an area or region in which a Primary Beneficiary resides would be expected to:

(i) be a reliable source for the purpose of assessing and confirming whether the Primary Beneficiary satisfies the Selection Factors;

(ii) be an efficient intermediary for the purpose of communicating with the Primary Beneficiary, including with respect to matters such as regarding the availability, terms, conditions and intended purposes of Program;

(iii) be able to facilitate an efficient payment of distribution determined to be made to or on behalf of the Primary Beneficiary, having regard to the Electricity Distributor's established practices, procedures and systems for dealing with its customers; and

(iv) have established contractual arrangements with the Primary Beneficiary that may apply to the protection and confidentiality of information provided by or respecting the Primary Beneficiary, which information may be useful in the consideration by the Electricity Distributor in its assessment of whether the Primary Beneficiary satisfies the Selection Factors, which information may not otherwise be available or readily accessible or verifiable by the Trustee.

1.5 It is recognized that, in furthering the Purpose, the Electricity Distributor for an area or region in which a Primary Beneficiary resides will have market and utilization information that may be useful in assessing the relative needs of Primary Beneficiaries within its area or region. Such information is expected to be relevant in assessing the extent to which one such Primary Beneficiary's financial needs and the merits of its Energy Plan are greater or more compelling than those of another such Primary Beneficiary, which comparison may be relevant to the extent that the funds allocable to the Primary Beneficiaries resident in the area or region are otherwise insufficient to meet the requests for funding by all such Primary Beneficiaries.

1.6 Accordingly, it is recognized that, in furthering the Purpose, it is consistent with the Purpose that the recommendations of Electricity Distributors be utilized and relied upon

by the Trustee to guide the process of identifying particular Primary Beneficiaries in making distributions to the Primary Beneficiaries.

1.7 If an Electricity Distributor for a particular area or region is unable or unwilling to assess or confirm the application of the Selection Factors to Primary Beneficiaries residing in the area or region or to make recommendations in relation to such matters, one or more of the following may provide a suitable alternative source of information and for information gathering, assessment and confirmation purposes in relation to such area or region:

(i) other Electricity Distributors operating in adjacent or other areas or regions in Ontario;

(ii) the Ontario Energy Board;

(iii) the Independent Electricity System Operator; and

(iv) anyone else having relevant expertise and access to information regarding the electricity market of the Province, in each case as may be considered relevant by the Trustee.

1.8 To the extent that privacy law or other legal requirements limit an Electricity Distributor from providing or making available specific information respecting the application of the Selection Factors to a particular Primary Beneficiary or group of Primary Beneficiaries, it is recognized that, in furthering the Purpose, it may be appropriate to redact or make generic affected information regarding such Primary Beneficiary in connection with the identification and confirmation of a Primary Beneficiary's eligibility and participation in the Program. If such limitations or restrictions would limit an Electricity Distributor from providing or confirming the name of a particular Primary Beneficiary to the Trustee, then it should be sufficient that such information may be obtained or disseminated on a confidential basis if and when required by the Trustee for the proper administration of the Trust and on that basis such impediments should not disqualify a Primary Beneficiary from participating in the benefits of the Program, provided that the confidential record-keeping of the Electricity Distributor would be available in connection with the application of any applicable legal process predicated on the identification of such Primary Beneficiary for the purposes of substantiating its rights as a Primary Beneficiary of the Trust or as to the validity or subsistence of the Trust.

2. Eligible Measures

2.1 It is expected that the Trust will identify eligible measures that, taking into consideration the principles set forth in the Principles Annex, have regard to the following (the "**Measures Factors**"):

(i) is the measure generally expected to result in reduced electricity consumption by a Primary Beneficiary if properly installed and used;

(ii) is the measure recognized under another Provincial program as being appropriate for achieving electricity conservation among a population analogous to the Primary Beneficiaries;

(iii) does the measure present any unacceptable health or safety considerations, either with respect to the Primary Beneficiary, a party providing or installing the measure, or the physical environment;

(iv) is the measure broadly available to residents across different areas and regions of the Province; or

(v) is the measure a requirement or precursor to another measure, the other measure being one which meets any of the other Measures Factors.

2.2 In identifying and applying the Measures Factors, Electricity Distributors would be expected to have expertise in assessing the suitability of efficiency and conservation measures in their respective areas and regions, which may differ across areas and regions across the Province based on factors (among other things) such as the climate, geography, density, electricity infrastructure, residential structures, and electricity use rates applicable within such areas or regions.

2.3 The measures specified in Schedule A to this Principles Annex may initially be considered to be consistent with the Measures Factors (subject to change as contemplated under the Permitted Delegations Annex).

3. Promotion of the Program

3.1 It is expected that the Trustee will undertake or engage others to undertake diligent efforts to promote the availability, terms and benefits of the Program to Primary Beneficiaries, including by establishing consistent communications through the Electricity Distributors.

3.2 It is expected that the Trustee will acknowledge the financial support of the Province in connection with the establishment and the funding for the Program, including in any external communications to or marketing directed at the Electricity Distributors and the Primary and Residual Beneficiaries. In the Trustee's delegation of any duties or powers to the Electricity Distributors through Implementation Agreements it is expected that Electricity Distributors will acknowledge the financial support of the Province in connection with the program including in any communications or marketing to Primary Beneficiaries.

4. Conduct of the Trust and the Program

4.1 It is expected that administrative expenses of the Board of Trustees and its members, including any expenses relating to the Trust, to the establishment of the Trust and any expenses related to the implementation and operation of the Program, including by or through Electricity Distributors and other relevant entities, will be recognized and subject to reimbursement on a basis that is substantially consistent with the accountability principles set out in Schedule B to this Principles Annex.

4.2 The Trustee is expected to conduct its activities in a manner that complies in all material respects with the Transfer Payment Agreement, including to:

(i) act prudently and in furtherance of the Purpose;

(ii) report not less frequently than annually the results of its activities for information purposes to the Province in connection with the Program;

(iii) comply with the Province's request for any independent verification or audit if determined to be necessary or appropriate by the Province;

(iv) return Assets that have not been distributed if it is determined that the Trustee has breached its Standard of Care in discharging its material duties under the Declaration, and has not cured such material breach despite having been given a reasonable opportunity by the Province to do so in light of the circumstances of such material breach, with the result that all or a significant part of the Assets have not been or are not being applied and distributed in furtherance of the Purpose or are being applied and distributed in a manner that is directly contrary or without regard to the Purpose.

4.3 Electricity Distributors are not intended to directly profit from distributions of funds made from the Trust, although it is recognized that the objectives of electricity efficiency and conservation of Primary Beneficiaries located in the service area or region of an Electricity Distributor, and the cost savings and improved credit worthiness of such Primary Beneficiaries, may be financially beneficial to the Electricity Distributor.

4.4 Distributions from the Trust are intended to allow receiving Primary Beneficiaries to undertake Eligible Measures at no or minimal personal cost.

4.5 Without in any way limiting the discretion of the Board of Trustees to extend the period during which the benefits of the Program may be available to the Primary Beneficiaries, up to and including the Final Distribution Date, it is expected that the Trust Assets would be distributed to Primary Beneficiaries during the period from the Original Trustee Replacement Date to April 30, 2019.

SCHEDULE A TO THE PRINCIPLES ANNEX
INDICATIVE ELIGIBLE MEASURES[1]

Initial Specified Measures
Block Heater Timer (just timer) – rated for outdoor use, have at least a 15 amp/1800 watt capacity, be cold weather resistant, bear a C-UL or CSA certification mark
Power bar with integrated timer, and switched power outlets, four each for a total of 8 outlets, have a total capacity of 15 amps. The switched outlets must remain "live", independent of timer settings, so long as the power bar itself remains switched on. The power bar must bear either a C-UL or CSA certification mark.
Efficient Showerheads (standard) - rated at no more than 4.8 Lpm (1.25 U.S. gpm) and be of the laminar flow type (non-aerating).
Efficient Showerhead (handheld) - rated at no more than 4.8 Lpm (1.25 U.S. gpm) and be of the laminar flow type (non-aerating).
Efficient Aerators (kitchen) - rated no more than 5.7 Lpm (1.5 U.S. gpm), dual threaded to allow installation in both thread type faucets, swivel type with pause lever.
Efficient Aerators (bathroom) - rated no more than 3.8 Lpm (1.0 U.S. gpm), be dual threaded to allow installation in both thread type faucets.
Hot Water Tank Pipe Insulation - $^1/_2$" inside diameter – foam, meets ASTM –C547-00, minimum $^3/_4$" thick
Hot Water Tank Pipe Insulation - $^3/_4$ " inside diameter - – foam, meets ASTM –C547-00, minimum $^3/_4$" thick
Hot Water Tank Insulation - fibreglass R10 (fits up to a 60 gal tank) – not bubble wrap
≤11W ENERGY STAR® Qualified LED A Shape (60W) (minimum 600 Lumen output) (Formerly: 7W – 11W ENERGY STAR® Qualified LED A Shape (60W))

[1] These measures are indicative. Eligible measures added to HAP during the administration of the Trust may also be appropriately considered relevant by the Trustee.

Initial Specified Measures
≤14W ENERGY STAR® Qualified LED A Shape (75W) (minimum 800 Lumen output) (Formerly: 10W – 14W ENERGY STAR® Qualified LED A Shape (75W))
≤23W ENERGY STAR® Qualified LED A Shape (100W) (minimum 1600 Lumen output) (Formerly:17W – 23W ENERGY STAR® Qualified LED A Shape (100W))
≤16W ENERGY STAR® Qualified LED PAR 20 (minimum 600 Lumen output) (Formerly: 8W – 12W ENERGY STAR® Qualified LED PAR 20)
≤16W ENERGY STAR® Qualified LED PAR30 & PAR38 (minimum 600 Lumen output) (Formerly: 8W – 12W ENERGY STAR® Qualified LED PAR 30)
≤23W ENERGY STAR® Qualified LED PAR (minimum 1100 Lumen output) (Formerly: 14W – 18W ENERGY STAR® Qualified LED PAR 38)
≤6W ENERGY STAR® Qualified LED MR 16 / PAR 16 (minimum 250 Lumen output) (Formerly: 7W – 10W ENERGY STAR®
Qualified LED MR 16 / PAR 16 - GU 10 Base)
≤11W ENERGY STAR® Qualified LED MR 16 (minimum 400 Lumen output) (Formerly: 7W – 12W ENERGY STAR® Qualified LED MR 16 GU 5.3 Base)
ENERGY STAR® LED Wet Location Rated PAR lamp ≤ 23 Watt (minimum 1100 Lumen output)
Recessed Downlight Fixture including LED with Light Output >600 and <800 lumens (Retrofit Measure List)
Recessed Downlight Fixture including LED with Light Output >800 lumens (Retrofit Measure List)
Indoor Drying Rack

Extended Measures
Replace refrigerator with ENERGY STAR qualified refrigerator - 15.5 - 16.9 cubic foot top freezer, automatic defrost, refrigerator/ freezer, no through the door ice service
Replace refrigerator with ENERGY STAR qualified refrigerator - 17.0 - 18.4 cubic foot top freezer, automatic defrost, refrigerator/ freezer, no through the door ice service
Replace refrigerator with a refrigerator that has a consumption level of less than 425 kwh, 10 – 12.5 cubic foot top freezer, automatic defrost, refrigerator freezer, no through the door ice service
Replace freezer with ENERGY STAR qualified freezer - 12-14.4 cubic foot freezer
Replace freezer with ENERGY STAR qualified freezer - 14.5 - 16.0 cubic foot freezer
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 6,000 – 7,999 BTU/hr with C-UL or CSA certification mark
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 8,000 – 9,999 BTU/hr with C-UL or CSA certification mark
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 10,000 – 12,000 BTU/hr with C-UL or CSA certification mark
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 14.2 - 21.2 l/day (30-44.9 pints/day) dehumidifier
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 21.3 - 25.4 l/day (45-53.9 pints/day) dehumidifier
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 25.5 - 35.5 l/day (54-75 pints/day) dehumidifier
Programmable Thermostat – line voltage – meets CAN/CSA-C828-06 standard, minimum performance: Droop: 1.5°C, Differential: 0.5°C, Precision 0% within 0.5°C of the original set point of 22°C
Programmable Thermostat – low voltage - meets CAN/CSA-C828-06 standard, minimum performance: Droop: 1.5°C, Differential: 0.5°C, Precision 0% within 0.5°C of the original set point of 22°C

Weatherization Measures
Comprehensive Draft proofing (caulking, foam and weather stripping, and application of same) – lifespan of 20 years plus If one or two component polyurethane foams are used, the products and installations must conform to: • CAN/ULC-S710.1 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 1: Material Specification. • CAN/ULC-S710.2 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 2: Application. • CAN/ULC-S711.1 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification • CAN/ULC-S711.2 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification, and Part 2: Application. **Attic Insulation (including installation):**
cellulose: CAN/ULC-S703-01 Amendment 1 - Cellulose Fibre Insulation (CFI) for Buildings OR 2) Mineral Fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre

Weatherization Measures
for Buildings **Wall Insulation (including installation):**
cellulose: CAN/ULC-S703-01 Amendment 1 - Cellulose Fibre Insulation (CFI) for Buildings OR 2) Mineral Fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre **Basement Insulation (including installation):**
mineral fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre for Buildings Vapour Barrier: 69009-CAN/CGSB-51.34-m86 If one or two component polyurethane foams are used, the products and installations must conform to: • CAN/ULC-S710.1 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 1: Material Specification. • CAN/ULC-S710.2 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 2: Application. • CAN/ULC-S711.1 Standard for Thermal Insulation – Bead Applied Two-Component
Polyurethane Air Sealant Foam, Part 1: Material Specification • CAN/ULC-S711.2 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification, and Part 2: Application.

Heat Pumps (Selection of manufacturers and technologies to meet the US federal minimum efficiency standard for ASHPs, as of 2015, is 13.0 SEER and 7.7 HSPF. Energy Star–certified models offer roughly 9 percent more efficiency than most new uncertified ASHPs and 20 percent more efficiency than existing models that may be in place)
Ductless Multiport Heat Pump
Cold Climate Ductless Heat Pump
Cold Climate Multiport Ductless Heat Pump
Cold Climate Ducted Heat Pump

SCHEDULE B TO THE PRINCIPLES ANNEX
PRINCIPLES APPLICABLE TO EXPENSE REIMBURSEMENTS

1. Funds should be used prudently and responsibly with a focus on accountability and transparency.

2. Expenses for travel, meals and hospitality support the Purpose.

3. Plans for travel, meals, accommodation and hospitality are necessary and economical with due regard for health and safety.

4. Legitimate authorized expenses incurred during the course of furthering the Purpose may be reimbursed.

5. Best practices should be followed, including:

    a. Prior approval to incur expenses is appropriately obtained.

    b. Other options for meetings are always considered before travel is approved, including audio or video conferencing.

    c. Corporate travel cards are to be used for authorized business travel and business related expenses.

PERMITTED DELEGATION ANNEX

1. Under section 4.2(g) of the Declaration, the Trustee has the power to: (a) appoint, employ or retain Implementation Agents for the purpose of discharging its duties and obligations under the Declaration; and (b) enter into, perform, enforce and amend Implementation Agreements.

2. In accordance with section 4.2(g) of the Declaration, consistent with the principles set forth in the Principles Annex, the Trustee or its agent will seek to enter into one or more Implementation Agreements with individual Electricity Distributors under which the Electricity Distributors will act as Implementation Agents to the Trustee. In this manner, the Trustee will delegate certain of its powers and duties to the Electricity Distributors.

3. Under section 5.1 of the Declaration, to the extent the Trustee has delegated any of its duties or powers, it shall be deemed to have satisfied the Standard of Care in respect of the subject matter of such delegation, subject to the Trustee's overall duty to exercise prudent oversight thereof. The Trustee is entitled to rely on an Electricity Distributor to discharge the duties delegated to it, as Implementation Agent, pursuant to an Implementation Agreement as described in this Annex.

4. Accordingly, and without limiting the Trustee's right to delegate under the Declaration and its other rights, powers and discretion as Trustee, the Trustee will be permitted to, and is expected to seek to, enter into Implementation Agreements with Electricity Distributors in order to further the Purpose. Without limiting the Trustee's discretion to negotiate and settle the terms and conditions of such Implementation Agreements, it is expected that such Implementation Agreements will include customary terms and conditions for arrangements of this type and, in addition, would (subject to the acceptance and agreement of the applicable Electricity Distributor counterparty) address the following points in particular:

    a. **Identification of Applicable Primary Beneficiary Payees and Determination of Individual Distribution Amounts**

        i. Each Electricity Distributor would make an initial assessment of the financial needs of Primary Beneficiaries within its designated service area or region, having regard to the Selection Factors set forth in section 1.3 of the Principles Annex, together with applicable economic data, in order to prepare and provide to the Trustee an estimate of the number of Primary Beneficiaries who the Electricity Distributor reasonably expects would satisfy the Selection Factors.

        ii. Each Electricity Distributor would make an initial assessment of the measures it would recommend be included as Eligible Measures, having regard to the Measures Factors set forth in section 2.1 of the Principles Annex, in order to prepare and provide to the Trustee an estimate of the average cost per Primary Beneficiary Payee (as defined below) of such Eligible Measures that the Electricity Distributor reasonably expects would apply in respect of Primary Beneficiaries resident in its service area or region.

        iii. Based on the product of (i) and (ii), above, and such other considerations as it considers to be directly relevant, each Electricity Distributor would make a

written recommendation to the Trustee regarding the aggregate funding amount that the Electricity Distributor anticipates would be utilized under the Program by the Primary Beneficiaries resident in its service area or region (the "**Local Funding Estimate**"). Such recommendation would be accompanied, when submitted to the Trustee, by a detailed explanation regarding the assumptions, financial parameters, suitability considerations and other information underlying the Local Funding Estimate (including the type of information contemplated by the Selections Factors and the Measures Factors) which would be relied upon by the Trustee in its assessment regarding the allocation of available funding to or for the benefit of the Primary Beneficiaries across the specified areas and regions of Ontario.

iv. The Trustee would inform the Electricity Distributor regarding the aggregate of the amount determined by the Trustee to be made available under the Program for Primary Beneficiaries in the Electricity Distributor's designated service area or region (for each Electricity Distributor, its "**Maximum Electricity Distributor Allocation**") and as to any maximum amount that may be paid to or for the benefit of any single Primary Beneficiary located in the service area or region of the Electricity Distributor (the "**Maximum Primary Beneficiary Amount**"). The Maximum Electricity Distributor Allocation and Maximum Primary Beneficiary Amount may vary between areas and regions, among the Primary Beneficiaries within such areas and regions, and may be increased by the Trustee from time to time in its discretion.

v. Each Electricity Distributor would apply the principles set forth under "Identification of Primary Beneficiary Payees" in the Principles Annex to identify and make recommendations to the Trustee regarding the amount of funds (if any) to be distributed to or for the benefit of Primary Beneficiaries resident within its service area or region from time to time (the "**Primary Beneficiary Payees**").

vi. Each Electricity Distributor would ensure that the aggregate of the amounts it recommends be distributed to or for the benefit of Primary Beneficiary Payees from time to time does not exceed (1) its Maximum Electricity Distributor Allocation and (2) for any single Primary Beneficiary located in the service area or region of the Electricity Distributor, the lesser of (x) the applicable Maximum Primary Beneficiary Amount and (y) the estimated costs (including any applicable taxes, but excluding any amount payable to the Electricity Distributor by or on behalf of the Primary Beneficiary) to be incurred by or on behalf of such Primary Beneficiary (whether or not such costs have been paid or remain outstanding) in respect of Eligible Measures applied or to be applied in respect of the Primary Beneficiary's Ontario residence.

vii. The Trustee would provide written confirmation to each Electricity Distributor:

1. Either (x) that the recommendations specified of the Electricity Distributor in clause (v), above, have been accepted, or (y) as to the specific reasons for any non-acceptance; and

2. The amount of the distributions to be paid to or for the benefit of each Primary Beneficiary Payee that is resident in the Electricity Distributor's service area or region.

viii. With respect to each Primary Beneficiary resident in a Electricity Distributor's service area or region that is confirmed as a Primary Beneficiary Payee, the Electricity Distributor would provide the Trustee written confirmation as to:

1. The identity of such Primary Beneficiary Payee; and

2. The amount of the distribution paid to or for the benefit of such Primary Beneficiary Payee.

ix. If the amount of a distribution to be made to a Primary Beneficiary Payee is based on the estimated costs to be incurred by or on behalf of such Primary Beneficiary and, prior to making the distribution to the Primary Beneficiary Payee, the Electricity Distributor determines that the actual costs (including any applicable taxes but excluding any amount payable to the Electricity Distributor by or on behalf of the Primary Beneficiary) incurred or to be incurred by or on behalf of such Primary Beneficiary in respect of Eligible Measures applied or to be applied in respect of the Primary Beneficiary's Ontario residence has or would be less than such estimated costs, then the amount to be distributed to the Primary Beneficiary shall be based on such actual costs.

b. **Making of Distributions to Primary Beneficiaries**

i. It is expected that promptly after the Trustee confirms the identity of a Primary Beneficiary Payee resident in an Electricity Distributor's service area or region and the amount of the distribution to be paid to or for the benefit of such Primary Beneficiary Payee, the Trustee would arrange for payment to or on the direction of the Electricity Distributor of an amount equal to the amount of such distribution.

ii. It is expected that promptly upon receipt of funds in respect of a distribution to be made to a Primary Beneficiary Payee, the Electricity Distributor would arrange for payment of the full amount of such distribution to or for the benefit of the Primary Beneficiary Payee (including by direct payment to a third party of, or as a reimbursement or rebate of, the costs of applicable Eligible Measures installed at the residence of and for the benefit of the Primary Beneficiary Payee), without reduction or set-off by the Electricity Distributor.

iii. If the amount paid to an Electricity Distributor in respect of a distribution to be made to a Primary Beneficiary exceeds the actual amount of the

distribution made to or on behalf of the Primary Beneficiary, it is expected that the Trustee would require Electricity Distributor to return such excess to the Trustee, whereupon the proceeds of such returned amount shall continue to form part of the Assets.

c. **Establishment of Operational, Administrative, Record-Keeping and Other Systems and Policies by Electricity Distributors to facilitate the Program**

i. It is expected that the Electricity Distributor would establish such operational, administrative, record-keeping and other systems and policies as are necessary to facilitate the Program and perform its duties under the Implementation Agreement, including systems or policies to: identify Primary Beneficiary Payees; comply with applicable privacy and regulatory laws; communicate with Primary Beneficiaries on behalf of the Trust; assess Eligible Measures; determine the Local Funding Estimate; monitor its recommendations to the Trustee against its Maximum Electricity Distributor Allocation and the Maximum Primary Beneficiary Amount; receive funds from the Trust in respect of distributions to the Primary Beneficiary Payees and transfer such funds to the appropriate recipients for the benefit of the Primary Beneficiary Payees; preparation and timely delivery to Primary Beneficiary Payees of such documents as are required by the *Income Tax Act* (Canada); and create and maintain records in respect of the foregoing.

ii. The Electricity Distributor would set up a separate bank account for the purpose of receiving funds from the Trust in respect of distributions to the Primary Beneficiary Payees and the transfer of such funds to the appropriate recipients for the benefit of the Primary Beneficiary Payees.

d. **Reporting, Record-Keeping, Inspection and Disclosure and Compliance Matters**

i. The Electricity Distributor would provide record-keeping, clerical and bookkeeping services relating to all matters relating to its recommendations and the performance of its other duties and obligations under its Implementation Agreement.

ii. The Electricity Distributor would keep and maintain all financial records and non-financial documents and records relating to the provision of services under its Implementation Agreement.

iii. The Electricity Distributor would provide to the Trustee quarterly and annual reports ("**Reports**") for the duration of its Implementation Agreement. Such Reports would set out, among other things, the amounts of the distributions paid to or for the benefit of applicable Primary Beneficiary Payees, the average distribution amount per such Primary Beneficiary Payee, the Eligible Measures for which distributions have been made, and the uptake of energy efficiency measures.

iv. The Electricity Distributor would agree to provide to the Trustee such information as is necessary for the Trustee to (v) comply with applicable law;

(w) prepare financial statements for the Trust; (x) prepare and submit such documents as are required under the *Income Tax Act* (Canada); (y) comply with the Trust's applicable obligations under the Transfer Payment Agreement; and (z) such other matters as the Trustee reasonably requests.

v. The Trustee, its authorized representatives or an independent auditor would be permitted to, at its own expense, on twenty-four hours' notice to the Electricity Distributor and during normal business hours, inspect the records of and information respecting the Electricity Distributor to confirm its compliance with the Implementation Agreement, including regarding its processes for recommending the Primary Beneficiary Payees and their respective distribution amounts and regarding the delivery of Trust funds on behalf of the Trustee to or for the benefit of the Primary Beneficiary Payees.

e. **Standard of Care**

i. The Electricity Distributor would be required to agree to perform its duties provided under the Implementation Agreement exercising the degree of care, diligence and skill that a reasonably prudent Person would exercise in comparable circumstances.

ii. In performing its duties under the Implementation Agreement (including the recommending of Primary Beneficiary Payees to the Trustee), the Electricity Distributor would be required to agree to seek to avoid actual, potential or perceived conflicts of interest.

iii. The Electricity Distributor would be required to agree that it would not, in performing its obligations under the Implementation Agreement, take any action which it knows or ought reasonably to know would cause the Trustee or the Trust to be in violation of any law, rule or regulation applicable to it.

f. **Expenses**

The Electricity Distributor would be eligible to receive reasonable compensation and reimbursement of its actual out-of-pocket costs associated with the performance of its duties and obligations under the Implementation Agreement, subject to adherence with the accountability principles set out in Schedule B to the Principles Annex. Such compensation amounts and reimbursement entitlements would be specified in the Implementation Agreement.

g. **Representations**

The Electricity Distributor would make customary representations to the Trust regarding, among other things, its legal capacity; authorization; non-contravention of law or material contract to which it is a party; and the enforceability of the Implementation Agreement.

h. **Indemnification**

The Electricity Distributor would be required to agree to provide customary indemnities to the Trust and the Trustee from and against claims, damages and liabilities which the Trust or Trustee may suffer or incur as the result of any breach of the Implementation Agreement by the Electricity Distributor or its representatives.

TRUSTEE REPLACEMENT ANNEX

1. The Advisory Committee shall consist of the following individuals:

   Brian Bentz, President and Chief Executive Officer at Alectra

   Bryce Conrad, President and Chief Executive Officer at Hydro Ottawa

   Robert Mace, President and Chief Executive Officer at Thunder Bay Hydro

   Ferio Pugliese, Executive Vice President Customer Care and Corporate Affairs at Hydro One

   Terry Young, Vice President Conservation and Corporate Relations at the Independent Electricity System Operator

2. In the event any member of the Advisory Committee resigns or is unable to act, it is expected that the remaining members of the Advisory Committee would appoint another resident of Ontario as a replacement.

3. On or before May 31, 2017, the Advisory Committee shall identify six residents of Ontario who have expressed that they are willing to act as members of the Board of Trustees and who, individually and collectively, satisfy the following criteria (collectively, the "**Selection Factors**"):

   a) each member demonstrates an understanding of the electricity sector including the electricity distribution sector;

   b) each member demonstrates an expertise in conservation and low income programs;

   c) three of the identified individuals will be representatives from separate electricity distributors, two individuals will be representatives from separate social services agencies and one individual member, who will be a non-voting member, will be an employee or representative of the Government of Ontario; and

   d) it is expected that representation by the Government of Ontario will be non-controlling.

4. If the Advisory Committee determines that changes to the Declaration (including to this Trustee Replacement Annex) are necessary in order to (a) replace, or appoint additional trustees to act with, the Original Trustee prior to the Original Trustee Replacement Date or (b) attract and receive confirmation of appointment of appropriately qualified individuals that the Advisory Committee believes would be suitable candidates to serve as members of the Board of Trustees, the Advisory Committee shall make recommendations regarding such necessary changes, including without limitation in respect of (i) any necessary limitations on the nature or scope of the appointment of the members of the Board of Trustees, (ii) the formation and empowerment of the Board of Trustees, and (iii) the duties, responsibilities, obligations, liabilities, indemnities, protections, limitations, restrictions,

compensation, expense reimbursement entitlements of members of the Board of Trustees.

5. The Advisory Committee shall recommend that the Original Trustee appoint the individuals so identified to become the initial members of the Board of Trustees pursuant to section 5.7 of the Declaration.

6. If any of the individuals recommended under paragraph 4 or under this paragraph are not accepted and appointed by the Original Trustee pursuant to section 5.7 of the Declaration, the Advisory Committee shall forthwith identify and recommend an alternative individual or individuals willing to act and whose presence as a member of the Board of Trustees would result in the Trustee collectively satisfying the criteria in paragraph 3 above.

7. Upon the appointment of six trustees (five voting and one non-voting) pursuant to section 5.7 of the Declaration, the Advisory Committee will be functus.

Ontario Transfer Payment Agrt dtd Mar 23 17.executed by CTCC.pdf

ONTARIO TRANSFER PAYMENT AGREEMENT

THE AGREEMENT, effective as of the 23rd day of March, 2017 (the **"Effective Date"**)

B E T W E E N :

Her Majesty the Queen in right of Ontario
as represented by the Minister of Energy

(the "Province")

- and -

Computershare Trust Company of Canada, in its capacity as trustee of Affordability Fund Trust

(together with its successors and assigns, the "Recipient" and, together with the Province, the "Parties")

BACKGROUND

Computershare Trust Company of Canada is the original trustee of the Affordability Fund Trust.

The Province wishes to provide Funds to the Recipient to be held, invested, applied and distributed in accordance with the terms of the Declaration of Trust (defined below), in furtherance of the Purpose (as defined in the Declaration of Trust), including having regard to the Principles set forth in Annex A.

CONSIDERATION

In consideration of the mutual covenants and agreements contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is expressly acknowledged, the Parties agree as follows:

ENTIRE AGREEMENT

This agreement (as amended, restated, supplemented or otherwise modified from time to time, the **"Agreement"**), including:

Schedule "A" - General Terms and Conditions
Schedule "B" - Project Specific Information
Schedule "C" - Project - Certain Obligations of the Recipient
Schedule "D" - Budget
Schedule "E" - Payment Plan
Schedule "F" - Reporting
Annex "A" - Principles, and
any amending agreement entered into as provided for below,

constitutes the entire agreement between the Parties with respect to the subject matter contained in this Agreement and supersedes all prior oral or written representations and agreements.

COUNTERPARTS

The Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

AMENDING THE AGREEMENT

The Agreement may only be amended by a written agreement duly executed by the Parties.

ACKNOWLEDGEMENT

The Recipient:

(a) acknowledges that it has read and understands the provisions contained in the entire Agreement; and

(b) agrees to be bound by the terms and conditions contained in the entire Agreement.

IN WITNESS WHEREOF, the Parties have executed the Agreement on the dates set out below.

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO as represented by Minister of Energy

_____
Date

by: _____
Name: Serge Imbrogno
Title: Deputy Minister

Authorized Signing Officer

COMPUTERSHARE TRUST COMPANY OF CANADA, in its capacity as trustee of AFFORDABILITY FUND TRUST

March 23, 2017
Date

by: Morag Abraham
Name: Morag Abraham
Title: Corporate Trust Officer

MARCH 23, 2017
Date

by: _____
Name: Ann Samuel
Title: Associate Trust Officer

I/We have authority to bind the Recipient.

SCHEDULE "A"
GENERAL TERMS AND CONDITIONS

1.0 INTERPRETATION AND DEFINITIONS

1.1 Interpretation. For the purposes of interpretation:

(a) words in the singular include the plural and vice-versa;

(b) words in one gender include all genders;

(c) the headings do not form part of the Agreement; they are for reference only and will not affect the interpretation of the Agreement;

(d) any reference to dollars or currency will be in Canadian dollars and currency;

(e) "include", "includes" and "including" denote that the subsequent list is not exhaustive;

(f) where any reference is made in the Agreement to an act to be performed by or for or on behalf of the Affordability Fund Trust, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Recipient in its capacity as trustee of the Affordability Fund Trust, and, where any reference is made in the Agreement to an act to be performed by or for or on behalf of the Recipient, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Recipient in its capacity as trustee of the Affordability Fund Trust; and

(g) it is intended that the transfer of the Funds to the Recipient will be a transfer made to a trust that is not controlled by the Province (as the term "control" is used in *Government Reporting Entity* at paragraphs PS 1300.07-.24), and so if a term or condition of the Agreement is determined to conflict with the requirements applicable to the Province recording the transfers to the Recipient of Funds contemplated hereunder as an expense incurred by the Province on the date of the transfer of Funds under the Agreement otherwise in connection with activities undertaken by the Province with such a non-controlled trust, then such term or condition shall be given a meaning and shall have an effect insofar as it is possible to interpret such term or condition in a manner that eliminates such conflict while preserving the other provisions of the Agreement and furthering the Purpose.

1.2 Definitions. In the Agreement, the following terms will have the following meanings:

"Administrative Services Agent" has the meaning given such term in the Declaration of Trust.

"Affordability Fund Trust" means the trust established and governed by the Declaration of Trust, and for greater certainty includes such trust operating under any other name that may be designated from time to time by the Recipient in accordance with the Declaration of Trust.

"BPSAA" means the Broader Public Sector Accountability Act, 2010 (Ontario).

"**Beneficiary**" has the meaning given to such term in the Declaration of Trust.

"Budget" means the Recipient's budget attached to the Agreement as Schedule "D".

"Business Day" means any working day, Monday to Friday inclusive, excluding statutory and other holidays, namely: New Year's Day; Family Day; Good Friday; Easter Monday; Victoria Day; Canada Day; Civic Holiday; Labour Day; Thanksgiving Day; Remembrance Day; Christmas Day; Boxing Day and any other day on which the Province has elected to be closed for business.

"**Declaration of Trust**" means the declaration of trust made as of March 23, 2017, under which the Affordability Fund Trust was established, as such declaration of trust may be amended, restated, supplemented or otherwise modified from time to time with the consent of the Province in accordance with Section 20.2.

"Expiration Date" means the date on which this Agreement will expire and is the date set out in Schedule "B".

"Funds" means the money the Province provides to the Recipient pursuant to the Agreement.

"Implementation Agents" has the meaning given such term in the Declaration of Trust.

"Maximum Funds" means the maximum amount of Funds that the Province will provide the Recipient under the Agreement, as set out in Schedule "B".

"Notice" means any communication given or required to be given pursuant to the Agreement.

"Party" means either the Province or the Recipient.

"**Person**" includes any individual, sole proprietorship, corporation, partnership, joint venture, association, society, club, board, chamber, joint-stock company, trust, trustee, unincorporated or incorporated organization or entity or government or any entity, agency or political subdivision thereof.

"**Program**" has the meaning given to such term in the Declaration of Trust.

"Project" means the undertaking described in Schedule "C".

"**Purpose**" has the meaning given to such term in the Declaration of Trust.

"PSSDA" means the *Public Sector Salary Disclosure Act, 1996* (Ontario).

"**Recipient**" means, initially, Computershare Trust Company of Canada, and any additional or replacement trustee in its capacity as trustee of the Affordability Fund Trust pursuant to the Declaration of Trust, including the Board of Trustees (as defined in the Declaration of Trust) and each of their respective successors and permitted assigns.

"Reports" means the reports described in Schedule "F".

2.0 REPRESENTATIONS, WARRANTIES AND COVENANTS

2.1 General. The Recipient represents, warrants and covenants that:

(a) it is the trustee of the Affordability Fund Trust; and

(b) the Affordability Fund Trust is, and will continue to be for the term of the Agreement, a trust existing under and governed by the laws of the Province of Ontario.

2.2 Execution of Agreement. The Recipient represents and warrants that it has:

(a) the full power and authority to enter into the Agreement; and

(b) taken all necessary actions to authorize the execution of the Agreement.

2.3 Governance. The Recipient covenants that it will develop and maintain in writing until the Agreement is no longer in effect:

(a) decision-making mechanisms and procedures to enable the Recipient to hold, invest, manage, apply and distribute the Funds in accordance with the Declaration of Trust in furtherance of the Purpose; and

(b) procedures to enable the preparation and delivery of all Reports required pursuant to Article 7.0.

2.4 **Supporting Documentation.** Upon request, the Recipient will provide the Province with proof of the matters referred to in this Article 2.0.

3.0 TERM OF THE AGREEMENT

3.1 **Term.** The term of the Agreement will commence on the Effective Date and will expire on the Expiration Date.

3.2 **Extension.** The term of the Agreement may be extended by further agreement between the Parties.

3.3 **Extension of the Declaration of Trust.** If the Province determines that an extension of the Final Distribution Date (as defined in the Declaration of Trust) and time for termination of the Declaration of Trust is consistent with and in furtherance of the Purpose and the Province's original intentions and expectations in establishing the Project, the Province may request that the Recipient extend such date to a date specified by the Province in a Notice (such date not to be later than December 31, 2021), whereupon the Recipient, so long as the Recipient does not have a reasonable basis to believe that such an extension would be inconsistent with the Purpose or weaken the protections intended for the benefit of the Recipient pursuant to the Declaration of Trust, will undertake such actions as it may consider to be necessary or appropriate to so extend the Declaration of Trust, including by amending the Declaration of Trust to provide for such an extension and to modify any other term or requirement as would be necessary or prudent to conform such term or requirement in light of such extension.

4.0 FUNDS AND CARRYING OUT THE PROJECT

4.1 **Funds Provided.** The Province will:

(a) provide the Recipient up to the Maximum Funds to be held, invested, applied and distributed in accordance with the terms of the Project and the Declaration of Trust;

(b) provide the Funds to the Recipient in accordance with the Payment Plan attached to the Agreement as Schedule "E"; and

(c) deposit the Funds into an account designated by the Recipient, provided that the account:

(i) resides at a Canadian financial institution; and

(ii) is in the name of the Recipient.

4.2 **Timing of Distributions to Beneficiaries.** The expectations of the Province regarding when Funds will begin to be distributed by the Recipient to Beneficiaries are set out in Schedule C. The Recipient will have regard to those expectations in the exercise of its discretion under the Declaration of Trust, in determining when Funds will be distributed to Beneficiaries in furtherance of the Purpose.

4.3 **Use of Funds and Project.** The Recipient will exercise its rights, duties and discretions under the Declaration of Trust so that the Funds are used, applied and distributed only for and in furtherance of the Purpose, including having regard to the Principles set forth in Annex A.

4.4 **Province's Role Limited to Providing Funds.** For greater clarity, the Province's role under the Agreement is limited to providing Funds to the Recipient and the Province is not responsible for carrying out or overseeing the terms of the Declaration of Trust.

4.5 **Maximum Funds.** The Recipient acknowledges that the Funds available to it pursuant to the Agreement will not exceed the Maximum Funds.

4.6 **Funding, Not Procurement.** For greater clarity, the Recipient acknowledges that:

(a) it is receiving funding from the Province for the Project and is not providing goods or services to the Province; and

(b) the funding the Province is providing under the Agreement is funding for the purposes of the PSSDA.

5.0 RECIPIENT'S ACQUISITION OF GOODS OR SERVICES, AND DISPOSAL OF ASSETS

5.1 **Acquisition.** If the Recipient acquires goods, services, or both with or by applying the proceeds of the Funds, it is expected to do so through a process that promotes the best value for money and to take reasonable steps to ensure that its Administrative Services Agents and Implementation Agents also follow a process that promotes the best value for money when acquiring goods and services with or by applying the proceeds of the Funds.

6.0 CONFLICT OF INTEREST

6.1 **No Conflict of Interest.** Except as expressly permitted by the Declaration of Trust, the Recipient is expected to implement appropriate processes and control to ensure that the Program and the use, application and distribution of the Funds are without an actual, potential or perceived conflict of interest.

6.2 **Conflict of Interest Includes.** For the purposes of this Article, a conflict of interest includes any circumstances where, except as expressly permitted by the Declaration of Trust:

(a) the Recipient; or

(b) any person who has the capacity to influence the Recipient's decisions,

has outside commitments, relationships or financial interests that could, or could be seen to, interfere with the Recipient's objective, unbiased and impartial judgment relating to the Project, or the Recipient's use, application or distribution of the Funds, or both.

7.0 REPORTING, ACCOUNTING AND REVIEW

7.1 **Preparation and Submission.** The Recipient will cooperate with the Province to accommodate the Province's on-going information and reporting objectives in order to enable the Province to be aware of the Recipient's activities in furtherance of the Purpose, and to that end the Recipient will be expected, from and following the Original Trustee Replacement Date, to:

(a) submit to the Province at the address referred to in Schedule "B", all Reports in accordance with the timelines and content requirements set out in Schedule "F", or in a form as specified by the Province from time to time, acting reasonably;

(b) submit to the Province at the address referred to in Schedule "B", any other reports as may be reasonably requested by the Province from time to time in accordance with the timelines and content expectations identified by the Province, acting reasonably;

(c) undertake diligent efforts so that such Reports and any such other reports are complete and accurate in all material respects; and

(d) have an authorized signatory of the Recipient sign-off on such Reports and other reports.

7.2 **Record Maintenance.** The Recipient will keep and maintain financial and other records necessary to permit it to satisfy its obligations under section 7.1 and to permit the Province to exercise its rights under section 7.3.

7.3 **Inspection.** The Province, its authorized representatives or an independent auditor identified by the Province may, at its own expense, upon twenty-four hours' Notice to the Recipient and during normal business hours, inspect the records of and information respecting the Recipient to confirm its compliance with the terms of this Agreement, including to ensure consistency with the Purpose and, for these purposes, the Province, its authorized representatives or an independent auditor identified by the Province may take one or more of the following actions:

(a) inspect and copy the records and documents referred to in section 7.2;

(b) keep any copies made pursuant to section 7.3(a); and

(c) conduct an audit or investigation of the Recipient in respect of the expenditure of the Funds to confirm that the Funds have been used, applied and distributed for and in furtherance of the Purpose, including a review of the Recipient's processes, records, documents, as well as the processes and controls applied to obtain assurance that Funds disbursed to Electricity Distributors were used, applied and distributed for and in furtherance of the Purpose.

7.4 **Disclosure.** To assist in respect of the rights set out in section 7.3, the Recipient will disclose any information requested by the Province, its authorized representatives or an independent auditor identified by the Province, and will do so in the form requested by the Province, its authorized representatives or an independent auditor identified by the Province, as the case may be.

7.5 **No Control of Records.** No provision of the Agreement will be construed so as to give the Province any control whatsoever over the Recipient's records.

7.6 **Auditor General.** For greater certainty, the Province's rights under this Article are in addition to and do not limit any rights provided to the Auditor General pursuant to section 9.1 of the *Auditor General Act* (Ontario).

8.0 COMMUNICATIONS REQUIREMENTS

8.1 **Publication.** The Recipient will acknowledge, in any of its Program-related external communications and marketing whether written, oral, or visual, the financial support of the Province in connection with the establishment and funding of the program, while noting that the views expressed in the publication are the views of the Recipient and do not necessarily reflect those of the Province.

9.0 FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY

9.1 **FIPPA.** The Recipient acknowledges that the Province is bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province in connection with the Project or otherwise in connection with the Agreement may be subject to disclosure in accordance with that Act.

10.0 Intentionally Deleted

11.0 EVENT OF DEFAULT, CORRECTIVE ACTION AND TERMINATION FOR DEFAULT

11.1 Events of Default. An Event of Default will occur if:

(a) the Recipient fails to perform or observe any covenant in this Agreement and such failure has and continues to have a material adverse effect on the Province and remains unremedied during any Notice Period applicable under section 11.2 after the earlier of (i) actual knowledge thereof by the Recipient, or (ii) receipt by the Recipient of Notice thereof from the Province;

(b) any representation or warranty made by the Recipient in the Agreement shall prove to have been incorrect in any material respect when made or deemed made, and, if capable of remedy, continues to be incorrect in any material respect during any Notice period applicable under section 11.2 after the earlier to occur of (i) the actual knowledge thereof by the Recipient or (ii) receipt by the Recipient of Notice thereof from the Province;

(c) it is determined that the Recipient has breached its Standard of Care (within the meaning given in and context of the Declaration of Trust) in discharging its material duties under the Declaration of Trust, with the result that all or a significant part of the Funds have not been or are not being applied in furtherance of the Purpose or are being applied in a manner that is directly contrary or without regard to the Purpose, and, if such breach is capable of remedy, it continues and remains unremedied during any Notice Period (as defined in section 11.3) applicable under section 11.2 after the earlier of (i) actual knowledge thereof by the Recipient, or (ii) receipt by the Recipient of Notice thereof from the Province;

(d) an insolvency event shall have occurred and be continuing with respect to the Recipient.

11.2 Consequences of Events of Default and Corrective Action. If an Event of Default occurs, the Province may, at any time, take one or more of the following actions:

(a) provide the Recipient with Notice allowing the Recipient an opportunity to remedy the Event of Default during a specified Notice Period;

(b) seek an order of specific performance, including an order that the Recipient pursue its available remedies against third parties;

(c) require, by Notice of demand, that the Recipient transfer to the Province (without any need for compensation, indemnity or consideration to the Recipient or any Beneficiary or other third party) any and all Assets remaining in the possession or under the control of the Recipient that can reasonably be traced or attributed to the Funds after first providing for the completion and performance by the Recipient of any unperformed contractual obligations of the Recipient undertaken in compliance with the Declaration of Trust on or prior to transfer; and

(d) terminate the Agreement, including immediately, without liability, penalty or costs to the Province upon giving Notice to the Recipient.

The transfer of Funds in accordance with the Agreement is made by the Province with the expressed intention and reservation that the transferred Funds shall be returned to the Province and the entitlements of the Recipient in remaining Funds shall thereby be revoked with reversion thereof to the Province in the circumstances contemplated in Section 11.2(c).

11.3 Opportunity to Remedy. If, in accordance with section 11.2, the Province provides the Recipient with an opportunity to remedy the Event of Default, the Province will provide Notice to the Recipient of:

(a) the particulars of the Event of Default; and

(b) the length of time within which the Recipient may cure such Event of Default without the Province pursuing any other remedy (the "Notice Period").

11.4 Recipient not Remedying. If the Province has provided the Recipient with an opportunity to remedy the Event of Default pursuant to section 11.2(a), and:

(a) the Recipient does not remedy the Event of Default within the Notice Period;

(b) it becomes apparent to the Province that the Recipient cannot adequately remedy the Event of Default within the Notice Period; or

(c) the Recipient is not proceeding to remedy the Event of Default in a way that is satisfactory to the Province,

the Province may extend any Notice Period, or initiate any one or more of the actions provided for in section 11.2.

12.0 REPAYMENT

12.1 Debt Due. If, pursuant to the Agreement: the Province demands the payment of any Funds from the Recipient pursuant to section 11.2(c) such Funds or other amount will be deemed to be a debt due and owing to the Province by the Recipient, and the Recipient will pay or return the amount to the Province immediately, unless the Province directs otherwise.

12.2 Payment of Money to Province. The Recipient will pay any money owing to the Province by cheque payable to the "Ontario Minister of Finance" and delivered to the Province at the address referred to in Schedule "B".

12.3 Failure to Repay. Without limiting the application of section 43 of the Financial Administration Act (Ontario), if the Recipient fails to repay any amount owing under the Agreement, Her Majesty the Queen in right of Ontario may deduct any unpaid amount from any money payable to the Recipient by Her Majesty the Queen in right of Ontario.

13.0 NOTICE

13.1 Notice in Writing and Addressed. Notice will be in writing and will be delivered by email, postage-prepaid mail, personal delivery or fax, and will be addressed to the Province and the Recipient respectively as set out in Schedule "B", or as either Party later designates to the other by Notice.

13.2 Notice Given. Notice will be deemed to have been given:

(a) in the case of postage-prepaid mail, five Business Days after the Notice is mailed; or

(b) in the case of email, personal delivery or fax, one Business Day after the Notice is delivered.

13.3 Postal Disruption. Despite section 13.2(a), in the event of a postal disruption:

(a) Notice by postage-prepaid mail will not be deemed to be received; and

(b) the Party giving Notice will provide Notice by email, personal delivery or by fax.

14.0 SEVERABILITY OF PROVISIONS

14.1 Invalidity or Unenforceability of Any Provision. The invalidity or unenforceability of any

provision of the Agreement will not affect the validity or enforceability of any other provision of the Agreement. Any invalid or unenforceable provision will be deemed to be severed.

15.0 WAIVER

15.1 Waivers in Writing. If a Party fails to comply with any term of the Agreement, that Party may only rely on a waiver of the other Party if the other Party has provided a written waiver in accordance with the Notice provisions in Article 13.0. Any waiver must refer to a specific failure to comply and will not have the effect of waiving any subsequent failures to comply.

16.0 INDEPENDENT PARTIES

16.1 Parties Independent. The Recipient acknowledges that it is not an agent, joint venturer, partner or employee of the Province, and the Recipient will not represent itself in any way that might be taken by a reasonable person to suggest that it is, or take any actions that could establish or imply such a relationship.

17.0 ASSIGNMENT OF AGREEMENT OR FUNDS

17.1 Agreement Binding. All rights and obligations contained in the Agreement will extend to and be binding on the Parties' respective heirs, executors, administrators, successors and permitted assigns.

18.0 LIMITATION OF LIABILITY

18.1 This Agreement has been entered into by the Recipient solely in its capacity as trustee of the Affordability Fund Trust and is not binding on the Recipient in any other capacity, whether in tort, contract or otherwise. The Beneficiaries of the Affordability Fund Trust are not subject to any liability in respect of the Affordability Fund Trust. Resort may not be had to, nor recourse or satisfaction be sought from, the private property of the Recipient (whether owned by it in its personal capacity or in any other capacity other than in its capacity as trustee of the Affordability Fund Trust), its directors, officers, employees, or agents, or the private property of any Beneficiary, and resort will be had solely to the Assets (as defined in the Declaration of Trust) for the payment, performance or satisfaction of any liability or obligation of the Recipient under this Agreement. However, the foregoing limitations in this section shall not apply where the Recipient has demonstrated gross negligence, bad faith, fraud or wilful misconduct.

19.0 GOVERNING LAW

19.1 Governing Law. The Agreement and the rights, obligations and relations of the Parties will be governed by and construed in accordance with the laws of the Province of Ontario and the applicable federal laws of Canada. Any actions or proceedings arising in connection with the Agreement will be conducted in the courts of Ontario, which will have exclusive jurisdiction over such proceedings.

20.0 FURTHER ASSURANCES

20.1 Agreement into Effect. The Recipient will provide such further assurances as the Province may request from time to time with respect to any matter to which the Agreement pertains, and will otherwise do or cause to be done all acts or things necessary to implement and carry into effect the terms and conditions of the Agreement to their full extent.

20.2 Declaration of Trust. The Recipient covenants that it shall not amend, restate or terminate the Declaration of Trust without obtaining the written consent of the Province in respect of same, such consent not to be unreasonably withheld or delayed.

21.0 JOINT AND SEVERAL LIABILITY

21.1 Joint and Several Liability. Without limiting and subject to section 18.1 and the Declaration of Trust, if the Recipient is comprised of more than one entity, all such entities will be jointly and severally liable to the Province for the fulfillment of the obligations of the Recipient under the Agreement.

22.0 RIGHTS AND REMEDIES CUMULATIVE

22.1 Rights and Remedies Cumulative. The rights and remedies of the Province under the Agreement are cumulative and are in addition to, and not in substitution for, any of its rights and remedies provided by law or in equity.

23.0 ACKNOWLEDGEMENT OF OTHER LEGISLATION AND DIRECTIVES

23.1 Recipient Acknowledges. The Recipient acknowledges that by receiving Funds it may become subject to legislation applicable to organizations that receive funding from the Government of Ontario, including the BPSAA, the PSSDA, and the *Auditor General Act* (Ontario).

24.0 SURVIVAL

24.1 Survival. The following Articles and sections, and all applicable cross-referenced sections and schedules, will continue in full force and effect for a period of seven years from the date of expiry or termination of the Agreement: Article 1.0 and any other applicable definitions, section, 4.5, section 7.1 (to the extent that the Recipient has not provided the Reports to the satisfaction of the Province), sections 7.2, 7.3, 7.4, 7.5, 7.6, Article 8.0, Article 12.0, Article 14.0, Article 16.0, Article 17.0, Article 19.0, Article 21.0, Article 23.0 and Article 24.0.

- END OF GENERAL TERMS AND CONDITIONS -

SCHEDULE "B"

PROJECT SPECIFIC INFORMATION

Maximum Funds	$100 million
Expiration Date	The date upon which the Affordability Fund Trust is terminated in accordance with the Declaration of Trust
Contact information for the purposes of Notice to the Province	**Attention: Usman Syed** **Position: Director** **Address: 77 Grenville St, Toronto, Ontario, M7A 2C1** **Fax: 416-325-6651** **Email: Usman.Syed@ontario.ca**
Contact information for the purposes of Notice to the Recipient	**Attention: Manager, Corporate Trust Services** **Address: 100 University Ave., 11th Floor, Toronto, Ontario, M5J 2Y1** **Email: CorporateTrust.Toronto@computershare.com**

SCHEDULE "C"

PROJECT

For the purposes of this Agreement, the "Project" is the distribution of the Funds in accordance with the Declaration of Trust.

It is intended the Project will be undertaken by the Recipient in furtherance of the Purpose and in accordance with the Declaration of Trust. In this regard, it is expected that the Recipient will undertake the Program having regard to the Budget and the Principles set forth in Annex A.

The following are the Province's expectations regarding the circumstances in which the Recipient will begin to distribute any Funds to any Beneficiary.

1. The Original Trustee Replacement Date (as defined in the Declaration of Trust) will have occurred.

2. An Administrative Services Agreement (as defined in the Declaration of Trust) will have been entered into between the Recipient and Hydro One Limited under which Hydro One Limited shall provide specified administrative and other services on behalf of the Recipient.

3. Administrative procedures will have been developed and implemented under which Electricity Distributors (as defined in the Declaration of Trust) will be invited to assist with (a) the identification and selection of Primary Beneficiaries under the Declaration of Trust, (b) the determination of the amount of Funds to be distributed to particular Primary Beneficiaries, and (c) the distribution of Funds to or for the benefit of such Primary Beneficiaries (in each case substantially on the basis contemplated in the Permitted Delegations Annex).

4. The Recipient will have obtained commercial general liability insurance from insurers having a secure A.M. Best rating of B+ or greater, or the equivalent, that in the opinion of the Recipient a prudent person similar to the Recipient would maintain, and having an inclusive limit of not less than $2,000,000 per occurrence and providing for contractual liability coverage. If requested, the Recipient will provide the Province (for its information purposes) with copies of the certificates of insurance and policies for such insurance coverage.

The Province recognizes that the foregoing may involve the Recipient entering into agreements as the Recipient considers to be necessary or expedient, including any required amendment or amendment and restatement of the Declaration of Trust. Funds may be expended to pay the expenses of the Recipient in completing these matters. The Recipient is requested to advise the Province through its quarterly reports on the status of the foregoing.

SCHEDULE "D"

Recipient's Budget

1. It is expected that the administrative expenses of the Recipient, including any administrative expenses of any Administrative Services Agents or any Implementation Agents or any other agents retained by the Recipient, relating to the establishment of the Affordability Fund Trust and addressing the Province's expectations as enumerated in Schedule "C" and any expenses related to the operation of the Affordability Fund Trust and the execution of the Project (including any reimbursable expenses incurred by any Administrative Services Agent or any Implementation Agent (as such terms are defined in the Declaration of Trust)), will be no greater than 10 percent of the total Project budget.

2. The only expenditures incurred by the Recipient that are eligible for reimbursement are actual (excluding HST) administrative overhead expenses incurred by or on behalf of the Recipient that directly related to the Recipient or the establishment of the Affordability Fund Trust.

4. Any expenses that have been or may be reimbursed by other parties should not be reimbursed from the assets of the Affordability Fund Trust.

5. It is expected any travel, meals and hospitality expenses by the Recipient will be consistent with the the accountability principles set out in Schedule B to the Principles Annex. For purposes of funding entities receiving funding from the Recipient, the following would not be considered eligible claims:

    - Alcohol
    - First-Class travel
    - Meals, snacks and beverages
    - Gratuities
    - Laundry or dry cleaning
    - Valet services
    - Dependent care
    - Home management
    - Personal telephone calls

6. In the event that the Recipient performs any procurements, it is expected that all procurements will reflect the principles of Ontario's Public Service Procurement Directive.

SCHEDULE "E"

PAYMENT PLAN

PAYMENT DATE	MAXIMUM FUNDS TO BE DISBURSED BY THE PROVINCE
Within 7 days of signing the Agreement	$ 100,000,000

SCHEDULE "F"

REPORTING

From and following the Original Trustee Replacement Date, Reports will be quarterly on the basis of the government's fiscal year starting at the execution of this Agreement and continuing until conclusion of the Agreement. Annual Reports will be on a fiscal basis starting at the execution of this Agreement and continuing until conclusion of the Agreement. Quarterly Reports and Annual Reports would be expected to be submitted to the Province within one month following the end of the reporting period that they represent. The Province expects that these Reports would be prepared to demonstrate the impact of the Province's funding and address the following:

- Quarterly Reports would include a report back on the trustee-developed performance management criteria. Initially, such Quarterly Reports would include details respecting:
    - Amounts disbursed by the Recipient in the previous quarter. It is expected that this information would be provided at the Electricity Distributor level and in the aggregate.
    - Total Affordability Fund investment income earned and accrued to date.
    - Key activities and achievements from the quarter, including the number of participant households per Electricity Distributor, average participant incentive cost per Electricity Distributor, and uptake of energy efficiency measures per Electricity Distributor.
    - Any challenges or modifications to the application, funding, or eligibility processes/rules of the Recipient.
    - Key activities planned for the upcoming quarter.
    - Details of any situation that a reasonable person might interpret as an actual, potential or perceived conflict of interest.
- Annual Reports would include a report back on the trustee-developed performance management criteria. Initially, such Annual Report would include details respecting:

- A description of an Electricity Distributor's application process and the criteria used by the Recipient to distribute funds.
- Any challenges identified by the Recipient or any Administrative Services Agent in achieving the Purpose and proposed solutions, if applicable.
- Lesson learned.
- Electricity Distributor and customer feedback.
- Amounts distributed to Beneficiaries or otherwise disbursed by the Recipient in the previous year. It is expected that this information will be provided by each Electricity Distributor.
- Key activities and achievements from each quarter being reported, including number of participant households per Electricity Distributor, average participant incentive cost per Electricity Distributor, and uptake of energy efficiency measures per Electricity Distributor.
- Total Affordability Fund interest earned and accrued to date.

As part of an Annual Report, the Recipient would also provide the Province with an audited financial statement for the previous year.

ANNEX A

Principles

Except as otherwise defined herein, capitalized terms used in this Annex A shall have the respective meanings given to such terms in the Declaration of Trust.

The Trustee shall have regard to, but shall not be specifically bound by, the following principles in applying its discretion in relation to the administration of the Trust:

1. Identification of Primary Beneficiary Payees

1.1 Except in exceptional circumstances, a Primary Beneficiary would not be expected to receive a benefit from the Trust unless at the time of consideration it satisfies, in addition to the requirements contemplated in the definition of "Primary Beneficiary", each of the following criteria (the "**Selection Factors**"):

(i) it has a participant agreement with an applicable Electricity Distributor to undertake measures (its "**Energy Plan**") to improve the electricity efficiency and/or promote the conservation of electricity at its Ontario residence;

(ii) its Energy Plan involves one or more Eligible Measures, as may be designated by the Trustee from time to time from;

(iii) it confirms that:

1. the primary purpose of its Energy Plan is the conservation and efficient use by the Primary Beneficiary of electricity, and is not for the purposes of the Primary Beneficiary making a profit;

2. it would otherwise not have the financial resources to undertake the Eligible Measures included in its Energy Plan; and

3. it would otherwise not be eligible to receive amounts in respect of the Eligible Measures as a HAP Eligible Person;

(iv) it has demonstrated a need for financial assistance on the basis that its periodic electricity bills represent a financial burden, relative to its available financial resources; and

(v) such other criteria as the Trustee may determine, including based on the recommendations of Electricity Distributors or other knowledgeable Persons made on the basis and having regard to the delegations contemplated by the Permitted Delegations Annex or any applicable Implementation Agreement.

1.2 It is recognized that, in furthering the Purpose, an efficient basis upon which to allocate funds to the Primary Beneficiaries across different areas and regions within Ontario may be based on the areas and regions serviced by the Electricity Distributors operating within Ontario.

1.3 It would not be contrary to the Purposes if funds are made available by the Trustee to the Primary Beneficiaries unequally across different areas and regions within Ontario, and it is expected that in making such an unequal division it would be appropriate to have regard to:

(i) broad economic parameters of economic activity and the specific financial resources of the residents of the areas and regions, in each case as an indication of the relative need of such residents across the areas and regions;

(ii) electricity use and efficiency levels of residential electricity customers across the areas and regions;

(iii) specific regional indicators of economic weakness and need; and

(iv) such other factors as the Trustee may determine are relevant, including based on the submissions, advice and recommendations of Electricity Distributors or other knowledgeable Persons made on the basis and having regard to the delegations contemplated by the Permitted Delegations Annex or any applicable Implementation Agreement.

1.4 It is recognized that, in furthering the Purpose, the designated Electricity Distributor for an area or region in which a Primary Beneficiary resides would be expected to:

(i) be a reliable source for the purpose of assessing and confirming whether the Primary Beneficiary satisfies the Selection Factors;

(ii) be an efficient intermediary for the purpose of communicating with the Primary Beneficiary, including with respect to matters such as regarding the availability, terms, conditions and intended purposes of Program;

(iii) be able to facilitate an efficient payment of distribution determined to be made to or on behalf of the Primary Beneficiary, having regard to the Electricity Distributor's established practices, procedures and systems for dealing with its customers; and

(iv) have established contractual arrangements with the Primary Beneficiary that may apply to the protection and confidentiality of information provided by or respecting the Primary Beneficiary, which information may be useful in the consideration by the Electricity Distributor in its assessment of whether the Primary Beneficiary satisfies the Selection Factors, which information may not otherwise be available or readily accessible or verifiable by the Trustee.

1.5 It is recognized that, in furthering the Purpose, the Electricity Distributor for an area or region in which a Primary Beneficiary resides will have market and utilization information that may be useful in assessing the relative needs of Primary Beneficiaries within its area or region. Such information is expected to be relevant in assessing the extent to which one such Primary Beneficiary's financial needs and the merits of its Energy Plan are greater or more compelling than those of another such Primary Beneficiary, which comparison may be relevant to the extent that the funds allocable to the Primary Beneficiaries resident in the area or region are otherwise insufficient to meet the requests for funding by all such Primary Beneficiaries.

1.6 Accordingly, it is recognized that, in furthering the Purpose, it is consistent with the Purpose that the recommendations of Electricity Distributors be utilized and relied upon by the Trustee to guide the process of identifying particular Primary Beneficiaries in making distributions to the Primary Beneficiaries.

1.7 If an Electricity Distributor for a particular area or region is unable or unwilling to assess or confirm the application of the Selection Factors to Primary Beneficiaries residing in the area or region or to make recommendations in relation to such matters, one or more of the following may

provide a suitable alternative source of information and for information gathering, assessment and confirmation purposes in relation to such area or region:

(i) other Electricity Distributors operating in adjacent or other areas or regions in Ontario;

(ii) the Ontario Energy Board;

(iii) the Independent Electricity System Operator; and

(iv) anyone else having relevant expertise and access to information regarding the electricity market of the Province, in each case as may be considered relevant by the Trustee.

1.8 To the extent that privacy law or other legal requirements limit an Electricity Distributor from providing or making available specific information respecting the application of the Selection Factors to a particular Primary Beneficiary or group of Primary Beneficiaries, it is recognized that, in furthering the Purpose, it may be appropriate to redact or make generic affected information regarding such Primary Beneficiary in connection with the identification and confirmation of a Primary Beneficiary's eligibility and participation in the Program. If such limitations or restrictions would limit an Electricity Distributor from providing or confirming the name of a particular Primary Beneficiary to the Trustee, then it should be sufficient that such information may be obtained or disseminated on a confidential basis if and when required by the Trustee for the proper administration of the Trust and on that basis such impediments should not disqualify a Primary Beneficiary from participating in the benefits of the Program, provided that the confidential record-keeping of the Electricity Distributor would be available in connection with the application of any applicable legal process predicated on the identification of such Primary Beneficiary for the purposes of substantiating its rights as a Primary Beneficiary of the Trust or as to the validity or subsistence of the Trust.

2. Eligible Measures

2.1 It is expected that the Trust will identify eligible measures that, taking into consideration the principles set forth in the Principles Annex, have regard to the following (the "**Measures Factors**"):

(i) is the measure generally expected to result in reduced electricity consumption by a Primary Beneficiary if properly installed and used;

(ii) is the measure recognized under another Provincial program as being appropriate for achieving electricity conservation among a population analogous to the Primary Beneficiaries;

(iii) does the measure present any unacceptable health or safety considerations, either with respect to the Primary Beneficiary, a party providing or installing the measure, or the physical environment;

(iv) is the measure broadly available to residents across different areas and regions of the Province; or

(v) is the measure a requirement or precursor to another measure, the other measure being one which meets any of the other Measures Factors.

2.2 In identifying and applying the Measures Factors, Electricity Distributors would be expected to have expertise in assessing the suitability of efficiency and conservation measures in their

respective areas and regions, which may differ across areas and regions across the Province based on factors (among other things) such as the climate, geography, density, electricity infrastructure, residential structures, and electricity use rates applicable within such areas or regions.

2.3 The measures specified in Schedule A to this Principles Annex may initially be considered to be consistent with the Measures Factors (subject to change as contemplated under the Permitted Delegations Annex).

3. Promotion of the Program

3.1 It is expected that the Trustee will undertake or engage others to undertake diligent efforts to promote the availability, terms and benefits of the Program to Primary Beneficiaries, including by establishing consistent communications through the Electricity Distributors.

3.2 It is expected that the Trustee will acknowledge the financial support of the Province in connection with the establishment and the funding for the Program, including in any external communications to or marketing directed at the Electricity Distributors and the Primary and Residual Beneficiaries. In the Trustee's delegation of any duties or powers to the Electricity Distributors through Implementation Agreements it is expected that Electricity Distributors will acknowledge the financial support of the Province in connection with the program including in any communications or marketing to Primary Beneficiaries.

4. Conduct of the Trust and the Program

4.1 It is expected that administrative expenses of the Board of Trustees and its members, including any expenses relating to the Trust, to the establishment of the Trust and any expenses related to the implementation and operation of the Program, including by or through Electricity Distributors and other relevant entities, will be recognized and subject to reimbursement on a basis that is substantially consistent with the accountability principles set out in Schedule B to this Principles Annex.

4.2 The Trustee is expected to conduct its activities in a manner that complies in all material respects with the Transfer Payment Agreement, including to:

(i) act prudently and in furtherance of the Purpose;

(ii) report not less frequently than annually the results of its activities for information purposes to the Province in connection with the Program;

(iii) comply with the Province's request for any independent verification or audit if determined to be necessary or appropriate by the Province;

(iv) return Assets that have not been distributed if it is determined that the Trustee has breached its Standard of Care in discharging its material duties under the Declaration, and has not cured such material breach despite having been given a reasonable opportunity by the Province to do so in light of the circumstances of such material breach, with the result that all or a significant part of the Assets have not been or are not being applied and distributed in furtherance of the Purpose or are being applied and distributed in a manner that is directly contrary or without regard to the Purpose.

4.3 Electricity Distributors are not intended to directly profit from distributions of funds made from the Trust, although it is recognized that the objectives of electricity efficiency and conservation of

Primary Beneficiaries located in the service area or region of an Electricity Distributor, and the cost savings and improved credit worthiness of such Primary Beneficiaries, may be financially beneficial to the Electricity Distributor.

4.4 Distributions from the Trust are intended to allow receiving Primary Beneficiaries to undertake Eligible Measures at no or minimal personal cost.

4.5 Without in any way limiting the discretion of the Board of Trustees to extend the period during which the benefits of the Program may be available to the Primary Beneficiaries, up to and including the Final Distribution Date, it is expected that the Trust Assets would be distributed to Primary Beneficiaries during the period from the Original Trustee Replacement Date to April 30, 2019.

SCHEDULE A TO THE PRINCIPLES ANNEX
INDICATIVE ELIGIBLE MEASURES[1]

Initial Specified Measures
Block Heater Timer (just timer) – rated for outdoor use, have at least a 15 amp/1800 watt capacity, be cold weather resistant, bear a C-UL or CSA certification mark
Power bar with integrated timer, and switched power outlets, four each for a total of 8 outlets, have a total capacity of 15 amps. The switched outlets must remain "live", independent of timer settings, so long as the power bar itself remains switched on. The power bar must bear either a C-UL or CSA certification mark.
Efficient Showerheads (standard) - rated at no more than 4.8 Lpm (1.25 U.S. gpm) and be of the laminar flow type (non-aerating).
Efficient Showerhead (handheld) - rated at no more than 4.8 Lpm (1.25 U.S. gpm) and be of the laminar flow type (non-aerating).
Efficient Aerators (kitchen) - rated no more than 5.7 Lpm (1.5 U.S. gpm), dual threaded to allow installation in both thread type faucets, swivel type with pause lever.
Efficient Aerators (bathroom) - rated no more than 3.8 Lpm (1.0 U.S. gpm), be dual threaded to allow installation in both thread type faucets.
Hot Water Tank Pipe Insulation - $^1/_2$" inside diameter – foam, meets ASTM –C547-00, minimum $^3/_4$" thick
Hot Water Tank Pipe Insulation - $^3/_4$ " inside diameter - – foam, meets ASTM –C547-00, minimum $^3/_4$" thick
Hot Water Tank Insulation - fibreglass R10 (fits up to a 60 gal tank) – not bubble wrap
≤11W ENERGY STAR® Qualified LED A Shape (60W) (minimum 600 Lumen output) (Formerly: 7W – 11W ENERGY STAR® Qualified LED A Shape (60W))

[1] These measures are indicative. Eligible measures added to HAP during the administration of the Trust may also be appropriately considered relevant by the Trustee.

Initial Specified Measures
≤14W ENERGY STAR® Qualified LED A Shape (75W) (minimum 800 Lumen output) (Formerly: 10W – 14W ENERGY STAR® Qualified LED A Shape (75W))
≤23W ENERGY STAR® Qualified LED A Shape (100W) (minimum 1600 Lumen output) (Formerly:17W – 23W ENERGY STAR® Qualified LED A Shape (100W))
≤16W ENERGY STAR® Qualified LED PAR 20 (minimum 600 Lumen output) (Formerly: 8W – 12W ENERGY STAR® Qualified LED PAR 20)
≤16W ENERGY STAR® Qualified LED PAR30 & PAR38 (minimum 600 Lumen output) (Formerly: 8W – 12W ENERGY STAR® Qualified LED PAR 30)
≤23W ENERGY STAR® Qualified LED PAR (minimum 1100 Lumen output) (Formerly: 14W – 18W ENERGY STAR® Qualified LED PAR 38)
≤6W ENERGY STAR® Qualified LED MR 16 / PAR 16 (minimum 250 Lumen output) (Formerly: 7W – 10W ENERGY STAR®
Qualified LED MR 16 / PAR 16 - GU 10 Base)
≤11W ENERGY STAR® Qualified LED MR 16 (minimum 400 Lumen output) (Formerly: 7W – 12W ENERGY STAR® Qualified LED MR 16 GU 5.3 Base)
ENERGY STAR® LED Wet Location Rated PAR lamp ≤ 23 Watt (minimum 1100 Lumen output)
Recessed Downlight Fixture including LED with Light Output >600 and <800 lumens (Retrofit Measure List)
Recessed Downlight Fixture including LED with Light Output >800 lumens (Retrofit Measure List)
Indoor Drying Rack

Extended Measures
Replace refrigerator with ENERGY STAR qualified refrigerator - 15.5 - 16.9 cubic foot top freezer, automatic defrost, refrigerator/ freezer, no through the door ice service
Replace refrigerator with ENERGY STAR qualified refrigerator - 17.0 - 18.4 cubic foot top freezer, automatic defrost, refrigerator/ freezer, no through the door ice service
Replace refrigerator with a refrigerator that has a consumption level of less than 425 kwh, 10 – 12.5 cubic foot top freezer, automatic defrost, refrigerator freezer, no through the door ice service
Replace freezer with ENERGY STAR qualified freezer - 12-14.4 cubic foot freezer
Replace freezer with ENERGY STAR qualified freezer - 14.5 - 16.0 cubic foot freezer
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 6,000 – 7,999 BTU/hr with C-UL or CSA certification mark
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 8,000 – 9,999 BTU/hr with C-UL or CSA certification mark
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 10,000 – 12,000 BTU/hr with C-UL or CSA certification mark
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 14.2 - 21.2 l/day (30-44.9 pints/day) dehumidifier
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 21.3 - 25.4 l/day (45-53.9 pints/day) dehumidifier
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 25.5 - 35.5 l/day (54-75 pints/day) dehumidifier
Programmable Thermostat – line voltage – meets CAN/CSA-C828-06 standard, minimum performance: Droop: 1.5°C, Differential: 0.5°C, Precision 0% within 0.5°C of the original set point of 22°C
Programmable Thermostat – low voltage - meets CAN/CSA-C828-06 standard, minimum performance: Droop: 1.5°C, Differential: 0.5°C, Precision 0% within 0.5°C of the original set point of 22°C

Weatherization Measures
Comprehensive Draftproofing (caulking, foam and weather stripping, and application of same) – lifespan of 20 years plus If one or two component polyurethane foams are used, the products and installations must conform to: • CAN/ULC-S710.1 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 1: Material Specification. • CAN/ULC-S710.2 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 2: Application. • CAN/ULC-S711.1 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification • CAN/ULC-S711.2 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification, and Part 2: Application. **Attic Insulation (including installation):**
cellulose: CAN/ULC-S703-01 Amendment 1 - Cellulose Fibre Insulation (CFI) for Buildings OR 2) Mineral Fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre

Weatherization Measures
for Buildings **Wall Insulation (including installation):**
cellulose: CAN/ULC-S703-01 Amendment 1 - Cellulose Fibre Insulation (CFI) for Buildings OR 2) Mineral Fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre **Basement Insulation (including installation):**
mineral fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre for Buildings Vapour Barrier: 69009-CAN/CGSB-51.34-m86 If one or two component polyurethane foams are used, the products and installations must conform to: • CAN/ULC-S710.1 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 1: Material Specification. • CAN/ULC-S710.2 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 2: Application. • CAN/ULC-S711.1 Standard for Thermal Insulation – Bead Applied Two-Component
Polyurethane Air Sealant Foam, Part 1: Material Specification • CAN/ULC-S711.2 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification, and Part 2: Application.

Heat Pumps
(Selection of manufacturers and technologies to meet the US federal minimum efficiency standard for ASHPs, as of 2015, is 13.0 SEER and 7.7 HSPF. Energy Star–certified models offer roughly 9 percent more efficiency than most new uncertified ASHPs and 20 percent more efficiency than existing models Ductless Multiport Heat Pump
Cold Climate Ductless Heat Pump
Cold Climate Multiport Ductless Heat Pump
Cold Climate Ducted Heat Pump

SCHEDULE B TO THE PRINCIPLES ANNEX
PRINCIPLES APPLICABLE TO EXPENSE REIMBURSEMENTS

1. Funds should be used prudently and responsibly with a focus on accountability and transparency.

2. Expenses for travel, meals and hospitality support the Purpose.

3. Plans for travel, meals, accommodation and hospitality are necessary and economical with due regard for health and safety.

4. Legitimate authorized expenses incurred during the course of furthering the Purpose may be reimbursed.

5. Best practices should be followed, including:

    a. Prior approval to incur expenses is appropriately obtained.

    b. Other options for meetings are always considered before travel is approved, including audio or video conferencing.

    c. Corporate travel cards are to be used for authorized business travel and business related expenses.

FW_ Affordability Fund Trust (Further Revisions to the DoT and TPA).rtf

From: Petsche, Nadine (TBS) []
To: Picard, Michel (mpicard@kpmg.ca) [mpicard@kpmg.ca]
Subject: FW: Affordability Fund Trust (Further Revisions to the DoT and TPA)
Date: Wednesday, March 22, 2017 16:28:40
Attachment 1: imaged059c7.GIF
Attachment 2: TOR_2024-#12887993-v19-Affordability_Fund_Trust_–_Declaration_of_Trust_-_Blakes_Comments_(March_14__2017).DOCX
Attachment 3: TOR_2024-#12887993-vpdf-Affordability_Fund_Trust_–_Declaration_of_Trust_-_Blakes_Comments_(March_14__2017).PDF
Attachment 4: TOR_2024-#12888010-v13-Transfer_Payment_Agreement_(Affordability_Fund_Trust).DOCX
Attachment 5: TOR_2024-#12888010-vpdf-Transfer_Payment_Agreement_(Affordability_Fund_Trust).PDF

From: ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
Sent: March 22, 2017 4:23 PM
To: PRESTAGE, JA; Johnson, Paul (ENERGY/MEDEI/MRI); Ranalli, David (ENERGY); Schachtschneider, Michelle (ENERGY); Qureshi, Musab (ENERGY); Schwab-Pflug, Emma (ENERGY); Syed, Usman (ENERGY); Petsche, Nadine (TBS)
Subject: RE: Affordability Fund Trust (Further Revisions to the DoT and TPA)

Hi. Here is a further revised set of the DoT and TPA, reflecting some final edits, catch-ups and clean-ups. Regards, Steve

Stephen R. Ashbourne

Partner

stephen.ashbourne@blakes.com

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From: PRESTAGE, JA
Sent: Wednesday, March 22, 2017 2:48 PM
To: Paul.Johnson3@ontario.ca; David.Ranalli@ontario.ca; Michelle.Schachtschneider@ontario.ca; Musab.Qureshi@ontario.ca; Emma.Schwab-Pflug@ontario.ca; Usman.Syed@ontario.ca; Petsche, Nadine (TBS)
Cc: ASHBOURNE, STEPHEN
Subject: Affordability Fund Trust

All:

Attached are revised versions of the Declaration of Trust and the TPA which seek to reflect all of the comments received.

There are a few highlighted sections which require specific decisions or attention.

J.A.

J.A. Prestage
Partner
ja.prestage@blakes.com
Dir: 416-863-2955

imaged059c7.pdf

Blakes

TOR_2024-#12887993-v19-Affordability_Fund_Trust_□Declaration_of_Trust_-_Blakes_Comments_(March_14_2017).pdf

DECLARATION OF TRUST

Made as of March •, 2017

by

COMPUTERSHARE TRUST COMPANY OF CANADA

establishing

AFFORDABILITY FUND TRUST

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DECLARATION OF TRUST

This Declaration of Trust is made as of March •, 2017, by Computershare Trust Company of Canada, a trust company established under the laws of Canada and licensed to carry on business as a trust company in each of the provinces and territories of Canada (together with its successors and assigns and the other trustees (including the Board of Trustees) contemplated herein, the "**Trustee**").

WHEREAS Computershare Trust Company of Canada, as settlor, wishes to establish a trust to acquire, hold, manage, invest, apply and dispose of certain property for the benefit of certain Beneficiaries as herein described.

NOW THEREFORE Computershare Trust Company of Canada hereby declares that it holds in trust as trustee (a) the sum of ONE HUNDRED DOLLARS ($100) contributed by it on this date and (b) all other property of every type and description which it may hereafter acquire or hold in its capacity as trustee of the Trust and all income therefrom and proceeds thereof, to hold, manage, invest, apply and dispose of same on and subject to the provisions set forth in this Declaration of Trust, including the annexes and schedule attached hereto.

SECTION 1
INTERPRETATION

1.1 Definitions

In this Declaration:

(a) "***Administrative Services Agent***" means each agent, which may include any Electricity Distributor or other Person, appointed from time to time under an Administrative Services Agreement, and its successors and permitted assigns solely in such capacity.

(b) "***Administrative Services Agreement***" means each agreement entered into from time to time by the Trust and one or more Administrative Services Agents or other Persons, in furtherance of the Purpose, under which the Administrative Services Agent agrees to provide specified administrative and other services to and on behalf of the Trustee, as such agreement may be amended, supplemented, restated, renewed or replaced from time to time and includes the agreement entered into on or about the date hereof between the Trustee and Hydro One Limited.

(c) "***Assets***" means, collectively, the following:

(i) the $100 Canadian referred to above, contributed by Computershare Trust Company of Canada on the date hereof;

(ii) all other property which is now or which at any time in the future may be issued, assigned, transferred, provided, donated, gifted and contributed to the Trustee (including pursuant to the Transfer Payment Agreement) to be held in trust pursuant to this Declaration (and which the Trustee is willing to accept and hold);

(iii) all acquisitions of property made by the Trust;

(iv) all property which may at any time be substituted for or in respect of the property referred to in clauses (i), (ii) and (iii), above;

(v) all income of the Trust, including investment income generated by the investment of the property referred to in clauses (i), (ii), (iii) and (iv), above; and

(vi) all proceeds of disposition of any of the property referred to in clauses (i) through (v) above,

but excludes any property paid out or distributed (whether out of income or capital) pursuant to the provisions of this Declaration.

(d) "***Beneficiary***" means each Primary Beneficiary and each Residual Beneficiary, as applicable.

(e) "***Board of Trustees***" means (i) as of the Original Trustee Replacement Date, the individual trustees appointed by the Original Trustee pursuant to Section 5.7 on the basis described in the Trustee Replacement Annex, and (ii) thereafter, the group of trustees appointed hereunder and acting in such capacity.

(f) "***Business Day***" means any working day, Monday to Friday inclusive, excluding statutory and other holidays, namely: New Year's Day; Family Day; Good Friday; Easter Monday; Victoria Day; Canada Day; Civic Holiday; Labour Day; Thanksgiving Day; Remembrance Day; Christmas Day; Boxing Day and any other day on which the Province has elected to be closed for business.

(g) "***Declaration***" means this Declaration of Trust, as it may be amended, restated, supplemented or otherwise modified from time to time, and includes each of the annexes and the Schedule attached hereto which constitute and form an integral part of this Declaration.

(h) "***Electricity Distributor***" means, in respect of a designated service area or region in Ontario, the distributor of electricity to residences located in such area or region.

(i) "***Electricity Invoice***" means an invoice issued by an Electricity Distributor in respect of electricity charges and related services and amounts incurred or assessed in respect of a residence located in the Electricity Distributor's designated service area or region in Ontario.

(j) "***Eligible Investments***" means (i) a deposit receipt, note, certificate or instrument issued, guaranteed or endorsed by a bank listed in Schedule I to the *Bank Act* (Canada), which provides that the principal and any interest shall be fully paid no later than one year after the day the investment was made, or (ii) a deposit account at a bank listed in Schedule I to the *Bank Act* (Canada).

(k) "***Eligible Measures***" means electricity efficiency and/or conservation measures determined by the Trustee from time to time on the basis contemplated in the Principles Annex and in the manner specified in and having regard to the Permitted Delegations Annex.

(l) "***Final Distribution Date***" means the earlier of (a) the date (if any) on which the Trustee determines (by a resolution of the Board of Trustees) that no further distributions are likely to be made to any Primary Beneficiary and (b) December 31, 2019.

(m) "***HAP Eligible Person***" means an "Eligible Person" as defined in Section 3.1 of the document entitled "Conservation First Framework LDC Took Kit" published by the Independent Electricity System Operator and designated as Final v3.0 – March 11, 2016, as amended in accordance with the Energy Conservation Agreement between the Independent Electricity System Operator and Electricity Distributors.

(n) **"Implementation Agent"** means each agent which may include any Electricity Distributor or other Person, appointed from time to time under an Implementation Agreement, and its successors and assigns solely in such capacity.

(o) **"Implementation Agreement"** means each agreement entered into from time to time by the Trustee and one or more Implementation Agents or other Persons in furtherance of the Purpose under which the Implementation Agent would agree to provide specified services to and on behalf or the Trustee (including, following the Original Trustee Replacement Date, as contemplated by the Permitted Delegations Annex) in connection with the implementation of the Program as such agreement may be amended , supplemented, restated, renewed or replaced from time to time.

(p) "***Minister of Energy***" means the Minister of Energy or such other member of the Executive Council as may be assigned primary ministerial responsibility for the administration of the *Ministry of Energy Act, 2011* under the *Executive Council Act*.

(q) "***Original Trustee***" means Computershare Trust Company of Canada, acting in its capacity as trustee hereunder, together with any additional or replacement Trustee appointed hereunder prior to the Original Trustee Replacement Date and any of their respective successors and assigns.

(r) "***Original Trustee Replacement Date***" has the meaning specified in Section 5.7, being the date on which the Original Trustee is replaced as trustee under this Declaration by the Board of Trustees as contemplated under Section 5.7.

(s) "***Permitted Delegations Annex***" means the Permitted Delegations Annex set forth as an annex to this Declaration.

(t) "***Person***" includes any individual, sole proprietorship, corporation, partnership, joint venture, association, society, club, board, chamber, joint-stock company, trust, trustee, unincorporated or incorporated organization or entity or government or any entity, agency or political subdivision thereof.

(u) "***Primary Beneficiary***" means each individual that, as of a time of determination, satisfies each of the following criteria:

(i) the individual owns, rents or leases a residence located in Ontario and is the primary or secondary electricity utility account holder named on an Electricity Invoice issued in respect of that residence; and

(ii) the individual is not a HAP Eligible Person.

(v) "***Principles Annex***" means the Principles Annex set forth as an annex to this Declaration.

(w) "***Province***" means the Province of Ontario.

(x) "***Program***" means the establishment, promotion, implementation and administration of a program to achieve the Purpose on the basis contemplated in this Declaration.

(y) "***Purpose***" means (i) the making of distributions to Primary Beneficiaries who are identified and whose needs are assessed in accordance with section 3.1 and 3.2 of this Declaration, having regard to (x) the principles set forth in the Principles Annex, (y) the manner and basis of implementation and administration of the Program contemplated in the Permitted Delegations Annex, and (z) the other terms, limitations and requirements set forth in this Declaration, and (ii) to the extent that Assets are available following the distributions made to Primary Beneficiaries as contemplated in (i), above, the making of distributions to Residual Beneficiaries who are identified and whose needs are assessed in accordance with section 3.3 and otherwise having regard to the other terms, limitations and requirements set forth in this Declaration.

(z) ***"Residual Beneficiary"*** means each charitable organization identified by the Trustee and specified as a residual beneficiary hereunder from time to time, selected by the Trustee in consultation with and having regard to the recommendations of the Ontario Energy Board in accordance with section 3.3.

(aa) "***Transfer Payment Agreement***" means the transfer payment agreement dated as of March •, 2017 between the Trustee and Her Majesty the Queen in right of Ontario as represented by the Minister of Energy, as such agreement may be amended, restated, supplemented or otherwise modified by the further agreement of the parties thereto from time to time.

(bb) "***Trust***" means Affordability Fund Trust, a trust established under and governed by the laws of the Province of Ontario pursuant to this Declaration.

(cc) "***Trustee***" means (i) the Original Trustee and (ii) on and after the Original Trustee Replacement Date, the Board of Trustees acting together in accordance with and subject to Section 5.7 and in accordance with the rules and procedures adopted by the Board of Trustees pursuant to Section 5.8.

(dd) "***Trustee Replacement Annex***" means the Trustee Replacement Annex set forth as an annex to this Declaration.

1.2 Headings and Table of Contents

The insertion of headings and the provision of a table of contents are for convenience of reference only and shall not affect the construction or interpretation of this Declaration.

1.3 References

Unless otherwise specified, all references to Sections are to Sections of this Declaration. The words "hereto", "herein", "hereof", "hereunder" and similar expressions refer to this Declaration and not to any particular Section or other provision of this Declaration.

1.4 Number and Gender

Unless otherwise specified, words importing the singular include the plural and vice versa and words importing gender include all genders.

1.5 Governing Law

This Declaration shall be governed by, and construed and interpreted in accordance with, the laws of the Province of Ontario and of Canada applicable therein.

1.6 Severability

Any provision of this Declaration which is illegal, invalid or unenforceable in any jurisdiction shall not affect the legality, validity or enforceability of the remaining provisions and any such illegality, invalidity or unenforceability in any jurisdiction shall not affect the legality, validity or enforceability of such provision in any other jurisdiction.

1.7 Reference to the Trust and the Trustee

For greater certainty, where any reference is made in this Declaration to an act to be performed by or for or on behalf of the Trust, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Trustee in its capacity as trustee of the Trust, and, where any reference is made in this Declaration to an act to be performed by or for or on behalf of the Trustee, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Trustee solely in its capacity as trustee of the Trust. Except as provided under the Transfer Payment Agreement, no Person dealing with the Trust or the Trustee shall be bound to make any enquiry concerning, or has the right to require production of, any evidence of the validity of any act of, or transaction purporting to be made by, the Trustee.

1.8 Defect in Appointment

No action taken by the Trustee will be invalid or ineffective by reason only of any defect in the appointment of the Trustee or the non-compliance by the Trustee with any rules or procedures adopted by the Trustee and which is discovered after the taking of such action.

SECTION 2
CONCERNING THE TRUST

2.1 Objectives

The Trust is established to hold, invest, apply and dispose of the Assets for the benefit of the Beneficiaries in furtherance of the Purpose, as provided for in this Declaration. In furtherance of the Purpose:

(a) the Original Trustee shall hold and invest the Assets as contemplated in this Declaration until the Original Trustee Replacement Date, after which the Board of Trustees shall be duly appointed hereunder; and

(b) the Board of Trustees shall hold, invest, apply and dispose of the Assets in accordance with this Declaration, including by determining the identities of and distributions (if any) to be made to or for the benefit of the Primary Beneficiaries in accordance with Sections 3.1 and 3.2 of this Declaration, having regard to the principles set forth in the Principles Annex and in the manner and on the basis contemplated in the Permitted Delegations Annex, or otherwise by determining the identities of and distributions to be made to or for the benefit of any Residual Beneficiary in accordance with Section 3.3,

in each case and in all respects subject to the terms, limitation and requirements set forth in this Declaration.

2.2 Name of the Trust

The name of the Trust shall be the "Affordability Fund Trust" or such replacement name as the Trustee shall determine and specify from time to time. The Trustee shall hold the Assets and conduct the activities of the Trust under such name or variation thereof (including any variation of such name in the French language). If the Trustee determines to change the name of the Trust, the Trustee may specify and use such other designation or adopt such other name (including any name in the French language) as it considers appropriate and may hold the Assets and conduct the activities of the Trust under such designation or other name.

2.3 Location

The head office and the situs of the administration of the Trust shall be • or such other address in Ontario as the Trustee may determine from time to time.

2.4 Fiscal Year

The fiscal year of the Trust shall end on December 31 of each year.

SECTION 3
DISTRIBUTIONS

3.1 Distributions to Primary Beneficiaries

After the Original Trustee Replacement Date and prior to the Final Distribution Date, the Trustee shall undertake diligent efforts in good faith to distribute the Assets (including capital or income) to the Primary Beneficiaries identified based on the application of the principles specified in the Principles Annex and in the manner and in the amounts determined on the basis contemplated by the Permitted Delegations Annex, in each case in the amounts and to the extent specified herein and therein, subject in all respects to the exercise by the Trustee of its discretion hereunder and to the exclusion of the other Beneficiaries.

3.2 Amount of Distributions to Primary Beneficiaries

For the purposes of determining the amount of distributions to be made to the Primary Beneficiaries, the Trustee shall have regard to and be entitled to rely on the recommendations of and information provided by Electricity Distributors acting as Implementation Agents appointed for the purposes, in the manner and substantially on the terms contemplated in the Permitted Delegations Annex, without any duty or obligation to verify or makes enquiries regarding the basis for or propriety of such recommendations or the accuracy or completeness of such information, except if and to the extent that the Trustee, in its discretion, determines that (i) it has actual knowledge that such recommendations are contrary to the reasonable application of the principles set forth in the Principles Annex or have been made on a basis that is manifestly contrary to such principles or the delegations and activities specified or contemplated to be undertaken under the Permitted Delegations Annex or (b) such information is known by the Trustee to be erroneous, contain a material misrepresentation or is materially incomplete.

3.3 Distributions to Residual Beneficiaries

Prior to the Final Distribution Date, the Trustee shall identify the Residual Beneficiary, or if more than one the Residual Beneficiaries and their respective allocations, by consulting with and having regard to the recommendations of the Ontario Energy Board, based on those charitable organizations which provide support services for Low Income Energy Assistance Program Emergency Financial Assistance (LEAP EFA) and the Ontario Electricity Support Program (OESP) or other charities that OEB may identify as relating to the Purpose. Following the Final Distribution Date, the Trustee shall, subject to compliance with section 7.3 and completion of a final audit, distribute all remaining Assets (including capital or income) to the Residual Beneficiaries, in each case in the amounts and to the extent determined by the Trustee in its discretion hereunder (having consulted with and having had regard to the recommendations of the Ontario Energy Board as aforesaid) and to the exclusion of the other Beneficiaries.

SECTION 4
POWERS OF THE TRUSTEE

4.1 General

Subject to and in compliance with the terms, limitations and restrictions of this Declaration and notwithstanding applicable trust legislation, the Trustee shall have, without other or further

authorization, full, exclusive and absolute power, control and authority over the Assets and over the affairs and activities of the Trust to the same extent as if the Trustee were not a trustee, but rather the sole and absolute owner of the Assets in its own right, including such power, control and authority to do all such acts and things as in its sole judgment and discretion are necessary, incidental or desirable for carrying on the affairs and activities of the Trust, with such powers of delegation as may be permitted or otherwise contemplated by this Declaration. Except as expressly provided in this Declaration, the enumeration in this Declaration of any specific power or authority shall not be construed as limiting the aforesaid general power or authority or any other specific power or authority set out herein. Subject to the terms, limitations and restrictions of this Declaration, every discretion or power hereby conferred on the Trustee is an absolute and uncontrolled discretion or power.

4.2 Specifically Enumerated Powers

The Trustee shall have the following specific powers and authorities:

(a) ***Transfer Payment Agreement.*** The Trustee shall have the power to enter into, amend, supplement, modify and perform its obligation under the Transfer Payment Agreement.

(b) ***Contracts and Undertakings.*** The Trustee shall have the power to enter into, amend, supplement, modify and perform its obligation under any contract entered into or undertaking given by the Trustee in furtherance of the Purpose, including any Administrative Services Agreement and any Implementation Agreement.

(c) ***Power to Own, Hold and Manage.*** Subject to section 4.2(d), the Trustee shall have the power to own, hold and manage the Assets in such manner as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable.

(d) ***Power to Invest in Eligible Investments.*** The Trustee shall have the power to invest the Assets only in Eligible Investments, and to change such Eligible Investments at any time and from time to time, all as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable, but always having regard to the Trustee's expectations regarding the timing of payments to be made to the Beneficiaries hereunder. If an investment of Assets in Eligible Investments would not be authorized under the applicable trust laws of Ontario, the Trustee shall nevertheless be permitted to make an investment of the Assets in such Eligible Investments. The Trustee will have no liability for the diminution in the value of any investment in Eligible Investments made hereunder.

(e) ***Power to Dispose of Assets.*** The Trustee shall have the power to sell, convey, assign, transfer, exchange and in any other manner dispose of the Assets or any part or parts thereof free and clear of any and all trusts established under this Declaration, by public or private sale, for cash or on credit, with or without advertisement, and subject to such restrictions, stipulations, agreements and reservations as the Trustee in its sole and absolute discretion may consider appropriate or advisable, and to execute and deliver and perform any agreement, deed, conveyance, transfer or other document or instrument in connection with the foregoing.

(f) ***Power to Apply Assets and Proceeds to Make Distributions to Beneficiaries.*** The Trustee shall have the power to apply the Assets and the proceeds and income derived therefrom to make distributions to the Beneficiaries contemplated by Section 3, and to execute and deliver

and perform any agreement, deed, conveyance, transfer or other document or instrument in connection therewith.

(g) ***Power to Delegate and to Appoint Agents, etc.*** The Trustee shall have the power to appoint, employ or contract with any Person as the Trustee in its sole and absolute discretion may consider appropriate or advisable in connection with the activities of the Trust. Without limiting the generality of the foregoing:

(i) the Trustee will have the power at any time and from time to time to appoint, employ or retain consultants, financial advisers, technical advisers, legal counsel, accountants, administrative services agents, implementation agents, insurers, insurance agents and insurance brokers, as the Trustee may require for the purpose of discharging its duties hereunder and shall not be responsible for or for the actions of any of them, including to:

(A) act for and on behalf of the Trust in connection with any and all matters in any way relating to the negotiation, settlement, entering into, amending, performance and enforcement of the Transfer Payment Agreement, the Administrative Services Agreements, the Implementation Agreements, and any other agreements and contracts to which the Trust becomes a party in accordance with this Declaration;

(B) to provide or cause to be provided any or all kinds of administrative and other services in any way relating to the activities of the Trust;

(C) to act as attorney in fact, agent or trustee in the acquisition, holding, investment, application, sale or other disposition of the Assets and in the handling, prosecuting, defending or settling of any claims of or made against the Trust;

(D) to value the Assets and determine the net income of the Trust; and

(E) to make any filings, elections and submissions (including in respect of taxation matters) in connection with the Trust's compliance with applicable laws and regulatory requirements; and

(ii) the Trustee may pay remuneration and reimbursements from the Assets for services performed for it or on its behalf in the discharge of the trusts hereof without taxation for costs or fees of any counsel, solicitor or attorney.

Without limiting the foregoing, it is expected that the Board of Trustees will seek to enter into Implementation Agreements with Electricity Distributors for the purposes contemplated by the Permitted Delegations Annex, and on such terms and conditions (including terms and conditions as to the payment of reasonable fees and expenses) not inconsistent therewith as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable.

(h) ***Power to Operate Accounts.*** The Trustee shall have the power to (i) open and operate accounts at any chartered bank, trust company or other financial institution in Canada or

elsewhere, as the Trustee in its sole and absolute discretion may consider appropriate or advisable; (ii) deposit therein any moneys or securities forming part of the Assets whether or not such deposits will earn interest; (iii) withdraw such deposits at such times and in such manner as the Trustee may determine; (iv) draw, make, endorse, deposit or otherwise deal in cheques, bills of exchange, promissory notes, drafts and other kinds of instruments and securities; and (v) enter into contracts or agreements with any such chartered bank, trust company or other financial institution containing such terms and provisions as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable. In connection therewith, the Trustee shall have no liability or responsibility for any loss which may occur by reason of the failure of any such chartered bank, trust company or other financial institution.

(i) ***Power to Collect, etc.*** The Trustee shall have the power to (i) collect, sue for, receive and give receipts for all sums of money or other property due to the Trust; (ii) consent to extensions of time for payment or to the renewal of any securities or obligations; (iii) engage or intervene in, prosecute, defend, compound, compromise, abandon or adjust by arbitration or otherwise, any demands, claims, actions, suits or proceedings relating to the Trust or the Assets; (iv) exercise any and all remedies available to the Trustee under any agreement or as may otherwise be available, including any power of foreclosure or sale available at law; (v) in connection with any such foreclosure or sale, purchase or otherwise acquire title to any property and to convey good title thereto free of any and all trusts hereby established, or to take or retake possession of any property secured under any agreement or instrument; (vi) extend the time, with or without security, for the payment or delivery of any debts or property; (vii) execute and deliver releases, acquittances, discharges, agreements or other instruments related thereto; and (viii) pay or satisfy any debts or claims upon any evidence that the Trustee, in its sole and absolute discretion, may determine to be sufficient.

(j) ***Power to Obtain Insurance***. The Trustee shall have the power to enter into contracts for or in relation to or otherwise obtain policies of insurance for the purpose of insuring the risks associated with the Trust, including to insure the Trustee (including the members of the Board of Trustees) against any risk of loss associated with assuming and performing the duties as Trustee. Without limiting the foregoing, it is expected that the Board of Trustees will obtain commercial general liability insurance from insurers having a secure A.M. Best rating of B+ or greater, or the equivalent, that in the opinion of the Recipient a prudent person similar to the Recipient would maintain, and having an inclusive limit of not less than $2,000,000 per occurrence and providing for contractual liability coverage.

(k) ***Power to Pay Trustee's Fees.*** The Original Trustee shall be entitled to be paid and receive the fees set forth in the Original Trustee's schedule of fees delivered as of or prior to the date hereof as compensation for its services under this Declaration, and to be reimbursed for its out-of-pocket expenses reasonably incurred, in each case from the Assets and without the approval of any Beneficiary or any court. The Original Trustee shall be entitled, in its sole and absolute discretion, to withdraw funds from time to time for such purpose from any account of the Trust. Members of the Board of Trustees shall be entitled to reimbursement for and in respect of their out-of-pocket expenses reasonably incurred in discharging their respective duties and obligations under this Declaration, in each case without the approval of any Beneficiary or any court, provided that the members of the Board of Trustees have general regard to sorts of limitations as are set forth in the "Travel, Meal and Hospitality Expenses Directive of the

Province" specified and amended by the Province from time to time, a copy of the current version of which is attached as Exhibit 1 to the Principles Annex.

(l) ***Power to Pay Taxes.*** The Trustee shall have the power to (i) pay, deduct, withhold or remit any taxes or assessments which are required by law to be paid, deducted, withheld or remitted together with or from any payment made by the Trustee; (ii) pay all taxes or assessments of whatever kind or nature imposed upon or against the Trust or the Trustee in connection with the Assets or any part thereof; (iii) collect and remit all taxes and assessments of whatever kind or nature required to be collected and remitted by the Trust or the Trustee in connection with their activities or the Assets or any part thereof; (iv) appeal, settle or compromise tax claims or liabilities; and (v) for the foregoing purposes, to make such returns, elections and submissions and do all such other acts and things as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable.

(m) ***Power to Appoint Auditors.*** The Trustee shall have the power to select and appoint and discharge and re-appoint, in its sole and absolute discretion, an auditor or auditors of the Trust and to settle and pay the fees of any such auditor or auditors from any account of the Trust.

(n) ***Form of Accounts.*** The Trustee shall have the power to determine and change from time to time, in its sole and absolute discretion, the method or form in which the accounts of the Trust will be kept and shall not be required to keep or provide accounts in the form usually required by law to be kept or provided by trustees; provided that such method or form reasonably complies with generally accepted accounting principles in effect in Canada to the extent applicable.

(o) ***Title to Assets.*** The Trustee shall have the power to cause all or any part of the Assets to be held by or registered, in its sole and absolute discretion, in the name of any Person.

(p) ***Delegation of Discretion***. The Trustee shall have the power to delegate the right and power to exercise, or concur in the exercise of any discretion or power, conferred on the Trustee in this Declaration or conferred by law to any one or more of its directors, officers, employees, agents, representatives or to such other Person, as the Trustee, in its sole and absolute discretion, may think is appropriate or advisable, including to one or more Administrative Services Agents under an Administrative Services Agreement and to one or more Implementation Agents and their respective employees, officers and directors under a related Implementation Agreement entered into by the Trust substantially on the basis contemplated in the Permitted Delegations Annex. In particular, the Trustee shall have the power to accept, rely on and follow the recommendations of an Electricity Distributor made under and having regard to the Permitted Delegation Annex with respect to the identification of, and the determination of distributions (if any) to be made to, any Primary Beneficiary, except if and in so far as the Trustee has actual knowledge that (1) such Primary Beneficiary did not in fact satisfy the "Selection Factors" specified in the Principles Annex as of the applicable time of determination; and/or (ii) the amount recommended to be distributed to the Primary Beneficiary was not calculated in substantial compliance with, or was calculated in a manner that is manifestly contrary to the requirements set forth or contemplated in, the Permitted Delegation Annex or the applicable Implementation Agreement.

(q) ***Additional Powers.*** The Trustee shall have the power to perform and do all such other acts, to take such steps and to execute all such deeds, transfers, assignments, agreements and

other documents and instruments as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable for the carrying out of any of its powers hereunder or of any of the activities of the Trust as herein contemplated, or for the carrying out, promotion or advancement of the interests of the Trust, whether or not any of such acts, things, documents or instruments are herein expressly mentioned. Any good faith determination by the Trustee as to what is necessary, desirable or appropriate to carry out its powers or activities of the Trust as contemplated under this Declaration or to carry out, promote or advance the interests of the Trust shall be conclusive. Any construction of this Declaration or any determination as to the activities of the Trust or the existence of any power or authority hereunder made in good faith by the Trustee, relying upon the advice of counsel, shall be conclusive. In construing the provisions of this Declaration, there shall be a presumption in favour of a grant of power to the Trustee.

SECTION 5
CONCERNING THE TRUSTEE

5.1 Duty of Trustee

In performing its duties and exercising its powers under this Declaration, the Trustee shall act honestly, in good faith and with a view to the best interests of the Trust and the Beneficiaries and shall exercise that degree of care, diligence and skill that a reasonably prudent trustee would exercise in comparable circumstances (the "**Standard of Care**"). The Trustee shall observe and act in accordance with the terms of, and shall observe and comply with the limitations and restrictions set forth in, this Declaration, including having due regard to the principles set forth in the Principles Annex. To the extent that the Trustee has so delegated any of its duties or powers, it shall be deemed to have satisfied the Standard of Care in respect of the subject matter of such delegation, subject to the Trustee's overall duty as a trustee to exercise prudent oversight in relation to such delegation. Unless required by law, the Trustee will not be required to give any security, bonds or sureties in any jurisdiction for the performance of any of its duties and obligations under this Declaration. The Trustee (including the individual members of the Board of Trustees) will not be required to devote its entire time to the trust activities.

5.2 Limitation of Liability

The Trustee shall not be personally liable in tort, contract or otherwise to any Beneficiary or any other Person for any loss or diminution in the value of the Assets, or for any action or failure to act on the part of the Trustee or any of its employees or agents or any other Person, and shall not be subject to any personal liability for any debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses incurred by or against the Trust, howsoever arising, and resort will be had solely to the Assets for the payment, performance or satisfaction thereof. No property or assets of the Trustee, owned in its personal capacity or otherwise, will be subject to levy, execution or other enforcement procedure**s** with respect to any obligation under this Declaration. However, the foregoing limitations in this Section shall not apply where the Trustee has demonstrated gross negligence, bad faith, fraud or wilful misconduct.

5.3 Liability of Trustee under Contracts

Any document or instrument creating a liability or obligation of the Trust or of the Trustee will be conclusively deemed to have been executed by the Trustee only in its capacity as Trustee of

the Trust and will be binding upon the Trustee only in its capacity as trustee hereunder and resort may not be had to, nor recourse or satisfaction be sought from, the property of the Trustee other than the Assets, whether owned by its in its personal capacity or in any other capacity other than in its capacity as Trustee of the Trust, or from its employees or agents, and in all cases resort will be had solely to the Assets for the payment, performance or satisfaction of any such liability or obligation. However, the foregoing limitations in this Section shall not apply where the Trustee has demonstrated gross negligence, bad faith, fraud or wilful misconduct. Each document or instrument creating a liability or obligation of the Trust or of the Trustee shall contain a provision providing for the aforesaid limitation of liability.

5.4 Funds of the Trustee

The Trustee shall not be required to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers.

5.5 Indemnification of Trustee

In addition to and without limiting any other protection hereunder or otherwise by law of the Trustee and its respective employees, agents, representatives and assigns (in this Section 5.5, collectively, the "**Representatives**"), the Trustee and its respective Representatives shall be indemnified, defended and saved harmless out of the Assets from, against and in respect of any and all liabilities arising or related to actions taken or omitted to be taken by any agent of the Trustee, losses, claims (including any claim arising out of the assessment of any tax on income by a taxing authority), damages, penalties, fines, actions, suits, demands, levies, assessments, costs, charges, expenses and disbursements (including, without limitation, any and all legal and advisor fees and disbursements) (in this Section 5.5, collectively, the "**Liabilities**") of whatever kind or nature which may at any time be suffered by, imposed upon, incurred by or asserted against the Trustee and its Representatives, whether groundless or otherwise, howsoever arising from or out of any act, omission or error of the Trustee, in each case made in connection with its acting as Trustee hereunder, in each case except and to the extent that the Liabilities are a result from or are caused by gross negligence, wilful misconduct, bad faith or fraud. Further, except as provided in section 5.2, the Trustee shall not be liable to any Beneficiary for any loss or damage relating to any matter regarding the Trust, including any loss or diminution in value of the Assets. Notwithstanding any other provision hereof, the obligations provided for in this section 5.5 shall survive any termination of the Trust, whether by reason of removal or resignation of the Trustee, termination or discharge of this Declaration or otherwise.

5.6 Reliance upon Advice

Subject to section 5.1, in performing its duties and exercising its powers hereunder, the Trustee may rely and may act or not act, and shall be fully protected in relying and acting or not acting, upon (a) any statement, telecopy or other electronic means of communication, writing, notice, resolution, report, opinion or other document or conversation believed by it to be genuine and correct and to have been signed, sent or made by the proper Person; (b) any opinion or advice received or information obtained from auditors, solicitors, or other professional advisers, whether retained by the Trustee or otherwise, and shall not be responsible or held liable for any loss or damage resulting from so relying or acting or not acting; and (c) the advice and actions of any

Administrative Services Agent or Implementation Agent, including in connection with the delegations and reliances contemplated under the Permitted Delegations Annex. For greater certainty, it shall not be necessary for the Trustee to ascertain whether or not the Persons who have executed, signed or otherwise issued, authenticated or receipted such papers, writings or documents (including any Administrative Services Agreement or any Implementation Agreement or any other contract entered into by the Trustee) have authority to do so or that they are the same Persons named therein or otherwise to pass upon any requirement of such papers, writing or documents that may be essential for their validity or effectiveness or upon the truth and acceptability.

5.7 Replacement of the Original Trustee

The Persons identified in the Trustee Replacement Annex are hereby appointed to comprise the Advisory Committee contemplated therein (the "**Advisory Committee**"). The Original Trustee shall promptly request that the Advisory Committee make recommendations with respect to the composition of the "Board of Trustees", as contemplated by the Trustee Replacement Annex. The Original Trustee shall have no duty or obligation to investigate the basis for any of the Advisory Committee's recommendations and may rely on such recommendations without any duty of enquiry, supervision or oversight with respect to the activities and decision-making processes adopted by the Advisory Committee in its discretion, in full satisfaction of the Original Trustee's Standard of Care with respect to such matters hereunder. Except where it is manifestly apparent to the Original Trustee that the individuals recommended by the Advisory Committee to become members of such Board of Trustees are disqualified from so acting on the basis of manifest non-compliance with the "Selection Factors" set forth in the Trustee Replacement Annex, the Original Trustee shall appoint, as members of the Board of Trustees, the six (five voting and one non-voting) individuals recommended for appointment to the Board of Trustees by the Advisory Committee. If the Original Trustee declines to appoint any individual recommended by the Advisory Committee, the Original Trustee will promptly request that the Advisory Committee provide a further recommendation whom the Original Trustee shall appoint as a member of the Board of Trustees unless it is manifestly apparent to the Original Trustee that the individual so recommended is also disqualified from so acting on the basis of manifest non-compliance with the "Selection Factors" set forth in the Trustee Replacement Annex,. Upon the appointment of such six individuals pursuant to this provision and their agreement to act as members of the Board of Trustees, the Original Trustee shall be deemed to have resigned and shall cease to be a trustee (such resignation occurring on the "**Original Trustee Replacement Date**").

5.8 Rules and Procedures of the Board of Trustees

(a) ***Initial Requirements***. As soon as practicable and in any event no later than one month following the Original Trustee Replacement Date, the Board of Trustees id expected to meet to take such decisions and actions as they deem necessary to ensure the proper management and administration of the Trust. The date (and location if in person) of the initial meeting shall be determined by a majority of the Board of Trustees.

(b) ***Meetings.*** Subject to the Board of Trustees' discretion to make such rules and procedures that they may deem desirable, meetings of the Board of Trustees may be held at such time and place as the trustee members of the Board of Trustees may agree upon or as they may

fix by resolution for the purpose or if the meeting is called as hereinafter mentioned then at such time as may be designated in the notice calling the meeting. A meeting of the Board of Trustees may be called at any time by any two members of the Board of Trustees by two Business Days' notice given to the members of the Board of Trustees. No notice of any Board of Trustees' meeting shall be necessary when a quorum is present if those comprising the quorum consent to the transaction of the affairs of the Trust and the absent trustee or trustees, if any, either before or after the meeting shall waive in writing notice of the meeting. Meetings of the Board of Trustees may be conducted in person, by telephone, or in such other manner as determined by the Board of Trustees. The Board of Trustees may elect a Chairperson.

(c) ***Quorum.*** At any meeting of the Board of Trustees, a majority of the voting members of the Board of Trustees shall be a quorum irrespective of the number of members in office. The decision of the majority of the voting members where quorum exists shall govern and shall be binding for all purposes and shall be acted upon and carried out in the same manner and with the same effect as if all the voted members concurred therein; provided always that in the case of equality of votes the Chairperson, if any, shall not be entitled to cast a second or deciding vote.

(d) ***Power to Adopt Rules and Procedures.*** The Board of Trustees may make such rules and procedures not inconsistent herewith as it may deem desirable for the proper management and administration of the Trust and the discharge of the responsibilities of the Board of Trustees.

(e) ***Replacement of Members of the Board of Trustees***. The Board of Trustees shall have the power to replace any vacancy arising following the Original Trustee Replacement Date according to such rules and procedures as they deem appropriate subject to compliance with the Selection Factors specified in Trustee Replacement Annex and having regard for such considerations necessary to ensure that the composition of the Board of Trustees will be able to discharge its responsibilities in respect of the Declaration. If necessary, the Board of Trustees may fill any vacancy by application to the Courts of Ontario in the event of an unfilled vacancy.

(f) ***Decisions of the Board of Trustees.*** Decisions and actions of the Board of Trustees shall be made by voting, with each individual voting member having one vote. Subject to quorum requirements, a majority vote shall be determinative in respect of such decisions and actions. Subject to quorum requirements, any decision or action taken by the majority of voting members will represent the decision or action of the Trustee, and not any member of the Board of Trustees.

(g) ***Conflicts of Interest.*** With respect to any matter before the Board of Trustees, to the extent of a conflict of interest, whether actual, perceived or potential, involving a member of the Board of Trustees' personal interests and a matter concerning the Trust, such member shall abstain from voting on the matter or taking any other discretionary action on the matter. For the purposes of the foregoing, no member of the Board of Trustees shall be deemed to have a conflict by reason only that the member holds any office or position with an Electricity Distributor, social services agency or governmental or quasi-governmental agency or entity (such as the Independent Electricity System Operator); provided, however, that in relation to any decision of the Board of Trustees pertaining specifically to a particular Electricity Distributor, any member of the Board of Trustees who is a director, officer or employee of the Electricity Distributor would be expected to recuse himself or herself from participating in deliberations, discussions or voting in respect of such decision.

(h) ***Expense Reimbursements to Members of the Board of Trustees.*** Members of the Board of Trustees shall be entitled to reimbursement for and in respect of their out-of-pocket expenses reasonably incurred in discharging their duties and obligations as members of the Board of Trustees. Members of the Board of Trustees shall serve without compensation.

5.9 Confidentiality

Notwithstanding the resignation or removal and discharge from the trusts and powers reposed in and conferred on the Trustee by this Declaration, or the termination of this Declaration, the Trustee so resigning or removed shall continue to treat as confidential all information relating to the Trust, the Assets and the Beneficiaries and shall only be entitled to make disclosures concerning such information if disclosure is required in the performance of the functions of the resigning or removed Trustee or is ordered by a court of competent jurisdiction or is otherwise required by law. The Trustee shall not be responsible or liable to any Person for any loss or damage arising out of or in any way sustained or incurred in any way relating to any such required disclosure. The obligations arising under this section 5.9 shall survive the termination of the Trust.

5.10 Vesting in Successor Trustee

Any successor trustee (including any reconstituted Board of Trustees) shall automatically become vested with the Assets and with the same powers, rights, duties, responsibilities and trusts as if it, he or she had originally been named as Trustee under this Declaration, without the requirement of any further instrument or act or conveyance, and the Trustee ceasing to act shall execute all such transfers and other documents and do all such other acts or things as may be necessary or desirable to assign, transfer, deliver to, and vest in, the successor trustee, upon the trusts expressed in this Declaration, all the Assets and all the rights, powers and trusts of the Trustee ceasing to act. The expense of any act, document, deed or other instrument or thing required under this Section 5.10, including for greater certainty, outstanding fees and unreimbursed expenses of the Trustee (including any member of the Board of Trustees) ceasing to act, shall be satisfied from the Assets.

5.11 Execution of Instruments

The Trustee shall have the power to execute all deeds, transfers, agreements, promissory notes and other instruments on behalf of the Trust. Such power may be exercised by any one or more Administrative Services Agents acting in accordance with any delegated right to do so pursuant to an applicable Administrative Services Agreement or by any one or more Implementation Agents acting in accordance with any delegated right to do so pursuant to an applicable Implementation Agreement, and any such execution of instrument by an Administrative Services Agent, acting in such capacity as agent of the Trust pursuant to the terms and conditions of an Administrative Services Agreement or by an Implementation Agent acting in such capacity as agent of the Trust pursuant to the terms and conditions of an Implementation Agreement shall in each case be deemed to be a proper execution of such instrument by the Trustee and shall be binding for all purposes on the Trust.

5.12 Decisions by the Trustee

If there is more than one Trustee, decisions of the Trust may be made by a majority of Trustees eligible to vote on the applicable matter. Whenever the Trustees are unable to agree in relation to the commission or omission of any act or howsoever in the execution of the Trust, the decision of a majority of such Trustees shall prevail.

SECTION 6
AMENDMENTS AND SUPPLEMENTS

6.1 Amendments

Subject to the requirements of the Transfer Payment Agreement, the Trustee shall have the power in its sole and absolute discretion from time to time without the approval of any Beneficiary or any court to amend, vary, supplement, replace or restate this Declaration in its entirety or any portion thereof; provided, however that it is expected that any amendment shall be consistent with the intent of the principles set forth in the Principles Annex and with the intended scope and effect of the permitted delegations and activities of any Implementation Agent pursuant to the Permitted Delegations Annex. Without in any way limiting the foregoing, any such amendments, variations, supplements, replacements or restatements may:

(a) add provisions for the replacement of or appointment of additional trustees to act with the Original Trustee prior to the Original Trustee Replacement Date;

(b) in the case of the Original Trustee, add provisions to those contemplated in the Trustee Replacement Annex in respect of the appointment of the members and the formation and empowerment of the Board of Trustees;

(c) in the case of the Original Trustee, vary the terms and requirements applicable to the duties, responsibilities, obligations, liabilities, indemnities, protections, limitations, restrictions, compensation, expense reimbursements and such other matters, in each case as the Advisory Committee may indicate are necessary to be made in order to attract and receive confirmation of appointment of appropriately qualified individuals that the Advisory Committee specifies are to be appointed as members of the Board of Trustees in accordance with its recommendations;

(d) add additional or replace existing Trustees;

(e) add to or reasonably clarify the principles set forth in the Principles Annex;

(f) add to or reasonably clarify the delegations and activities contemplated to be made in the Permitted Delegation Annex;

(g) include provisions for the management of the Trust by the Trustees, including the making of rules, requirements and procedures governing the decision-making of the Board of Trustees;

(h) add provisions for the replacement of members of the Board of Trustees (in addition to those provisions contemplated in section 5.7 and the Trustee Replacement Annex);

(i) provide for the engagement of any Person or Persons as managers, administrators or other service providers to the Trust, including any additional or replacement Administrative Services Agent or Implementation Agent or representative thereof;

(j) specify supplemental procedures for the identification of Primary Beneficiaries and the exchange of information with Electricity Distributors in connection with identifying such Primary Beneficiaries; or

(k) specify procedures for the transfer and transmission of funds from the Trust or any Implementation Agent acting on its behalf and with delegated responsibility over funds constituting Assets, to or for the benefit of, Beneficiaries or their designated representatives, payees or assignees.

6.2 Supplemental Declarations

The Trustee is authorized to execute any supplemental declaration of trust (including one or more amendments and restatements from time to time of this Declaration) to give effect to amendments to this Declaration made pursuant to section 6.1.

SECTION 7
TERMINATION

7.1 Duration

Subject to sections 7.2 and 7.3, the Trust will continue in full force and effect so long as there are any Assets and until all of the debts, liabilities and obligations of the Trust have been paid and satisfied in full.

7.2 Termination and Distribution of Assets

The Trustee shall terminate the Trust and wind up its affairs as soon as practicable after the Final Distribution Date. In connection with the termination of the Trust, the Trustee shall identify the Residual Beneficiaries and distribute or cause to be distributed the remaining Assets, in cash or in kind or partly in each, to the Residual Beneficiaries, in each case in accordance with section 3.3. Despite the foregoing, the Trust will only be terminated and wound up after the Trustee, in its sole and absolute discretion, determines that all debts, liabilities and obligations of the Trust have been paid or otherwise adequately provided for and satisfied and upon receipt of such releases, indemnities and discharges as the Trustee, relying on the opinion of counsel, deems necessary for the protection of the Beneficiaries and for its own protection.

7.3 Distribution of Assets on Final Distribution Date

If the Trust holds Assets on the Final Distribution Date, the Trustee shall pay or provide reserves for the payment, and otherwise shall satisfy, all debts, liabilities and obligations of the Trust and shall provide or arrange to provide such investigations, audits, releases, indemnities and discharges as the Trustee, relying on the opinion of counsel, deems necessary for the protection of the Beneficiaries and for its own protection. Thereafter, any remaining Assets shall be paid to the Residual Beneficiaries in accordance with section 3.3.

SECTION 8
ACCEPTANCE OF TRUSTS

8.1 Acceptance of Trusts

The Trustee hereby accepts the trusts and duties contained in this Declaration and agrees to perform the same upon the terms and conditions hereof until discharged therefrom.

[Signature Page Follows]

The Trustee has executed this Declaration as of the date first written above.

COMPUTERSHARE TRUST COMPANY OF CANADA,

By: _____
Name:
Title:

By: _____
Name:
Title:

PRINCIPLES ANNEX

The Trustee shall have regard to, but shall not be specifically bound by, the following principles in applying its discretion in relation to the administration of the Trust:

1. Identification of Primary Beneficiary Payees

1.1 Except in exceptional circumstances, a Primary Beneficiary would not be expected to receive a benefit from the Trust unless at the time of consideration it satisfies, in addition to the requirements contemplated in the definition of "Primary Beneficiary", each of the following criteria (the "**Selection Factors**"):

(i) it has a participant agreement with an applicable Electricity Distributor to undertake measures (its "**Energy Plan**") to improve the electricity efficiency and/or promote the conservation of electricity at its Ontario residence;

(ii) its Energy Plan involves one or more Eligible Measures, as may be designated by the Trustee from time to time from;

(iii) it confirms that:

1. the primary purpose of its Energy Plan is the conservation and efficient use by the Primary Beneficiary of electricity, and is not for the purposes of the Primary Beneficiary making a profit;

2. it would otherwise not have the financial resources to undertake the Eligible Measures included in its Energy Plan; and

3. it would otherwise not be eligible to receive amounts in respect of the Eligible Measures as a HAP Eligible Person;

(iv) it has demonstrated a need for financial assistance on the basis that its periodic electricity bills represent a financial burden, relative to its available financial resources; and

(v) such other criteria as the Trustee may determine, including based on the recommendations of Electricity Distributors or other knowledgeable Persons made on the basis and having regard to the delegations contemplated by the Permitted Delegations Annex or any applicable Implementation Agreement.

1.2 It is recognized that, in furthering the Purpose, an efficient basis upon which to allocate funds to the Primary Beneficiaries across different areas and regions within Ontario may be based on the areas and regions serviced by the Electricity Distributors operating within Ontario.

1.3 It would not be contrary to the Purposes if funds are made available by the Trustee to the Primary Beneficiaries unequally across different areas and regions within Ontario, and it is expected that in making such an unequal division it would be appropriate to have regard to:

(i) broad economic parameters of economic activity and the specific financial resources of the residents of the areas and regions, in each case as an indication of the relative need of such residents across the areas and regions;

(ii) electricity use and efficiency levels of residential electricity customers across the areas and regions;

(iii) specific regional indicators of economic weakness and need; and

(iv) such other factors as the Trustee may determine are relevant, including based on the submissions, advice and recommendations of Electricity Distributors or other knowledgeable Persons made on the basis and having regard to the delegations contemplated by the Permitted Delegations Annex or any applicable implementation Agreement.

1.4 It is recognized that, in furthering the Purpose, the designated Electricity Distributor for an area or region in which a Primary Beneficiary resides would be expected to:

(i) be a reliable source for the purpose of assessing and confirming whether the Primary Beneficiary satisfies the Selection Factors;

(ii) be an efficient intermediary for the purpose of communicating with the Primary Beneficiary, including with respect to matters such as regarding the availability, terms, conditions and intended purposes of Program;

(iii) be able to facilitate an efficient payment of distribution determined to be made to or on behalf of the Primary Beneficiary, having regard to the Electricity Distributor's established practices, procedures and systems for dealing with its customers; and

(iv) have established contractual arrangements with the Primary Beneficiary that may apply to the protection and confidentiality of information provided by or respecting the Primary Beneficiary, which information may be useful in the consideration by the Electricity Distributor in its assessment of whether the Primary Beneficiary satisfies the Selection Factors, which information may not otherwise be available or readily accessible or verifiable by the Trustee.

1.5 It is recognized that, in furthering the Purpose, the Electricity Distributor for an area or region in which a Primary Beneficiary resides will have market and utilization information that may be useful in assessing the relative needs of Primary Beneficiaries within its area or region. Such information is expected to be relevant in assessing the extent to which one such Primary Beneficiary's financial needs and the merits of its Energy Plan are greater or more compelling than those of another such Primary Beneficiary, which comparison may be relevant to the extent that the funds allocable to the Primary Beneficiaries resident in the area or region are otherwise insufficient to meet the requests for funding by all such Primary Beneficiaries.

1.6 Accordingly, it is recognized that, in furthering the Purpose, it is consistent with the Purpose that the recommendations of Electricity Distributors be utilized and relied upon

by the Trustee to guide the process of identifying particular Primary Beneficiaries in making distributions to the Primary Beneficiaries.

1.7 If an Electricity Distributor for a particular area or region is unable or unwilling to assess or confirm the application of the Selection Factors to Primary Beneficiaries residing in the area or region or to make recommendations in relation to such matters, one or more of the following may provide a suitable alternative source of information and for information gathering, assessment and confirmation purposes in relation to such area or region:

(i) other Electricity Distributors operating in adjacent or other areas or regions in Ontario;

(ii) the Ontario Energy Board;

(iii) the Independent Electricity System Operator; and

(iv) anyone else having relevant expertise and access to information regarding the electricity market of the Province, in each case as may be considered relevant by the Trustee.

1.8 To the extent that privacy law or other legal requirements limit an Electricity Distributor from providing or making available specific information respecting the application of the Selection Factors to a particular Primary Beneficiary or group of Primary Beneficiaries, it is recognized that, in furthering the Purpose, it may be appropriate to redact or make generic affected information regarding such Primary Beneficiary in connection with the identification and confirmation of a Primary Beneficiary's eligibility and participation in the Program. If such limitations or restrictions would limit an Electricity Distributor from providing or confirming the name of a particular Primary Beneficiary to the Trustee, then it should be sufficient that such information may be obtained or disseminated on a confidential basis if and when required by the Trustee for the proper administration of the Trust and on that basis such impediments should not disqualify a Primary Beneficiary from participating in the benefits of the Program, provided that the confidential record-keeping of the Electricity Distributor would be available in connection with the application of any applicable legal process predicated on the identification of such Primary Beneficiary for the purposes of substantiating its rights as a Primary Beneficiary of the Trust or as to the validity or subsistence of the Trust.

2. Eligible Measures

2.1 It is expected that the Trust will identify eligible measures that, taking into consideration the principles set forth in the Principles Annex, have regard to the following (the "**Measures Factors**"):

(i) is the measure generally expected to result in reduced electricity consumption by a Primary Beneficiary if properly installed and used;

(ii) is the measure recognized under another Provincial program as being appropriate for achieving electricity conservation among a population analogous to the Primary Beneficiaries;

(iii) does the measure present any unacceptable health or safety considerations, either with respect to the Primary Beneficiary, a party providing or installing the measure, or the physical environment;

(iv) is the measure broadly available to residents across different areas and regions of the Province; or

(v) is the measure a requirement or precursor to another measure, the other measure being one which meets any of the other Measures Factors.

2.2 In identifying and applying the Measures Factors, Electricity Distributors would be expected to have expertise in assessing the suitability of efficiency and conservation measures in their respective areas and regions, which may differ across areas and regions across the Province based on factors (among other things) such as the climate, geography, density, electricity infrastructure, residential structures, and electricity use rates applicable within such areas or regions.

2.3 The measures specified in Schedule A to this Principles Annex may initially be considered to be consistent with the Measures Factors (subject to change as contemplated under the Permitted Delegations Annex).

3. Promotion of the Program

3.1 It is expected that the Trustee will undertake or engage others to undertake diligent efforts to promote the availability, terms and benefits of the Program to Primary Beneficiaries, including by establishing consistent communications through the Electricity Distributors.

3.2 It is expected that the Trustee will acknowledge the financial support of the Province in connection with the establishment and the funding for the Program, including in any external communications to or marketing directed at the Electricity Distributors and the Primary and Residual Beneficiaries. In its delegation of any duties or powers to the Electricity Distributors through Implementation Agreements it is expected that Electricity Distributors will acknowledge the financial support of the Province in connection with the program including in any communications or marketing to Primary Beneficiaries.

4. Conduct of the Trust and the Program

4.1 It is expected that administrative expenses of the Board of Trustees and its members, including any expenses relating to the Trust, to the establishment of the Trust and any expenses related to the implementation and operation of the Program, including by or through Electricity Distributors and other relevant entities, will be recognized and subject to reimbursement on a basis that is substantially consistent with the accountability provisions contemplated in the Transfer Payment Agreement and the principles in the

Province's Travel, Meal and Hospitality Expenses Directive, as set out in Schedule B to this Principles Annex.

4.2 The Trustee is expected to conduct its activities in a manner that complies in all material respects with the Transfer Payment Agreement, including to:

(i) act prudently and in furtherance of the Purpose;

(ii) report not less frequently than annually the results of its activities for information purposes to the Province in connection with the Program;

(iii) comply with the Province's request for any independent verification or audit if determined to be necessary or appropriate by the Province;

(iv) return Assets that have not been distributed if it is determined that the Trustee has breached its Standard of Care in discharging its material duties under the Declaration, and has not cured such material breach despite having been given a reasonable opportunity by the Province to do so in light of the circumstances of such material breach, with the result that all or a significant part of the Assets have not been or are not being applied and distributed in furtherance of the Purpose or are being applied and distributed in a manner that is directly contrary or without regard to the Purpose.

4.3 Electricity Distributors are not intended to directly profit from distributions of funds made from the Trust, although it is recognized that the objectives of electricity efficiency and conservation of Primary Beneficiaries located in the service area or region of an Electricity Distributor, and the cost savings and improved credit worthiness of such Primary Beneficiaries, may be financially beneficial to the Electricity Distributor.

4.4 Distributions from the Trust are intended to allow receiving Primary Beneficiaries to undertake Eligible Measures at no or minimal personal cost.

4.5 Without in any way limiting the discretion of the Board of Trustees to extend the period during which the benefits of the Program may be available to the Primary Beneficiaries, up to and including the Final Distribution Date, it is expected that the Trust Assets would be distributed to Primary Beneficiaries during the period from the Original Trustee Replacement Date to April 30, 2019.

SCHEDULE A TO THE PRINCIPLES ANNEX
INDICATIVE ELIGIBLE MEASURES[1]

Initial Specified Measures
Block Heater Timer (just timer) – rated for outdoor use, have at least a 15 amp/1800 watt capacity, be cold weather resistant, bear a C-UL or CSA certification mark
Power bar with integrated timer, and switched power outlets, four each for a total of 8 outlets, have a total capacity of 15 amps. The switched outlets must remain "live", independent of timer settings, so long as the power bar itself remains switched on. The power bar must bear either a C-UL or CSA certification mark.
Efficient Showerheads (standard) - rated at no more than 4.8 Lpm (1.25 U.S. gpm) and be of the laminar flow type (non-aerating).
Efficient Showerhead (handheld) - rated at no more than 4.8 Lpm (1.25 U.S. gpm) and be of the laminar flow type (non-aerating).
Efficient Aerators (kitchen) - rated no more than 5.7 Lpm (1.5 U.S. gpm), dual threaded to allow installation in both thread type faucets, swivel type with pause lever.
Efficient Aerators (bathroom) - rated no more than 3.8 Lpm (1.0 U.S. gpm), be dual threaded to allow installation in both thread type faucets.
Hot Water Tank Pipe Insulation - 1/2" inside diameter – foam, meets ASTM –C547-00, minimum 3/4" thick
Hot Water Tank Pipe Insulation - 3/4 " inside diameter - – foam, meets ASTM –C547-00, minimum 3/4" thick
Hot Water Tank Insulation - fibreglass R10 (fits up to a 60 gal tank) – not bubble wrap
≤11W ENERGY STAR® Qualified LED A Shape (60W) (minimum 600 Lumen output) (Formerly: 7W – 11W ENERGY STAR® Qualified LED A Shape (60W))

[1] These measures are indicative. Eligible measures added to HAP during the administration of the Trust may also be appropriately considered relevant by the Trustee.

Initial Specified Measures
≤14W ENERGY STAR® Qualified LED A Shape (75W) (minimum 800 Lumen output) (Formerly: 10W – 14W ENERGY STAR® Qualified LED A Shape (75W))
≤23W ENERGY STAR® Qualified LED A Shape (100W) (minimum 1600 Lumen output) (Formerly:17W – 23W ENERGY STAR® Qualified LED A Shape (100W))
≤16W ENERGY STAR® Qualified LED PAR 20 (minimum 600 Lumen output) (Formerly: 8W – 12W ENERGY STAR® Qualified LED PAR 20)
≤16W ENERGY STAR® Qualified LED PAR30 & PAR38 (minimum 600 Lumen output) (Formerly: 8W – 12W ENERGY STAR® Qualified LED PAR 30)
≤23W ENERGY STAR® Qualified LED PAR (minimum 1100 Lumen output) (Formerly: 14W – 18W ENERGY STAR® Qualified LED PAR 38)
≤6W ENERGY STAR® Qualified LED MR 16 / PAR 16 (minimum 250 Lumen output) (Formerly: 7W – 10W ENERGY STAR®
Qualified LED MR 16 / PAR 16 - GU 10 Base)
≤11W ENERGY STAR® Qualified LED MR 16 (minimum 400 Lumen output) (Formerly: 7W – 12W ENERGY STAR® Qualified LED MR 16 GU 5.3 Base)
ENERGY STAR® LED Wet Location Rated PAR lamp ≤ 23 Watt (minimum 1100 Lumen output)
Recessed Downlight Fixture including LED with Light Output >600 and <800 lumens (Retrofit Measure List)
Recessed Downlight Fixture including LED with Light Output >800 lumens (Retrofit Measure List)
Indoor Drying Rack

Extended Measures
Replace refrigerator with ENERGY STAR qualified refrigerator - 15.5 - 16.9 cubic foot top freezer, automatic defrost, refrigerator/ freezer, no through the door ice service
Replace refrigerator with ENERGY STAR qualified refrigerator - 17.0 - 18.4 cubic foot top freezer, automatic defrost, refrigerator/ freezer, no through the door ice service
Replace refrigerator with a refrigerator that has a consumption level of less than 425 kwh, 10 – 12.5 cubic foot top freezer, automatic defrost, refrigerator freezer, no through the door ice service
Replace freezer with ENERGY STAR qualified freezer - 12-14.4 cubic foot freezer
Replace freezer with ENERGY STAR qualified freezer - 14.5 - 16.0 cubic foot freezer
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 6,000 – 7,999 BTU/hr with C-UL or CSA certification mark
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 8,000 – 9,999 BTU/hr with C-UL or CSA certification mark
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 10,000 – 12,000 BTU/hr with C-UL or CSA certification mark
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 14.2 - 21.2 l/day (30-44.9 pints/day) dehumidifier
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 21.3 - 25.4 l/day (45-53.9 pints/day) dehumidifier
Extended Measures
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 25.5 - 35.5 l/day (54-75 pints/day) dehumidifier
Programmable Thermostat – line voltage – meets CAN/CSA-C828-06 standard, minimum performance: Droop: 1.5°C, Differential: 0.5°C, Precision 0% within 0.5°C of the original set point of 22°C
Programmable Thermostat – low voltage - meets CAN/CSA-C828-06 standard, minimum performance: Droop: 1.5°C, Differential: 0.5°C, Precision 0% within 0.5°C of the original set point of 22°C

Weatherization Measures
Comprehensive Draft proofing (caulking, foam and weather stripping, and application of same) – lifespan of 20 years plus If one or two component polyurethane foams are used, the products and installations must conform to: • CAN/ULC-S710.1 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 1: Material Specification. • CAN/ULC-S710.2 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 2: Application. • CAN/ULC-S711.1 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification • CAN/ULC-S711.2 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification, and Part 2: Application. **Attic Insulation (including installation):**
cellulose: CAN/ULC-S703-01 Amendment 1 - Cellulose Fibre Insulation (CFI) for Buildings OR 2) Mineral Fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre

Weatherization Measures
for Buildings **Wall Insulation (including installation):**
cellulose: CAN/ULC-S703-01 Amendment 1 - Cellulose Fibre Insulation (CFI) for Buildings OR 2) Mineral Fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre **Basement Insulation (including installation):**
mineral fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre for Buildings Vapour Barrier: 69009-CAN/CGSB-51.34-m86 If one or two component polyurethane foams are used, the products and installations must conform to: • CAN/ULC-S710.1 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 1: Material Specification. • CAN/ULC-S710.2 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 2: Application. • CAN/ULC-S711.1 Standard for Thermal Insulation – Bead Applied Two-Component
• Polyurethane Air Sealant Foam, Part 1: Material Specification CAN/ULC-S711.2 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification, and Part 2: Application.

Heat Pumps (Selection of manufacturers and technologies to meet the US federal minimum efficiency standard for ASHPs, as of 2015, is 13.0 SEER and 7.7 HSPF. Energy Star–certified models offer roughly 9 percent more efficiency than most new uncertified ASHPs and 20 percent more efficiency than existing models that may be in place)
Ductless Multiport Heat Pump
Cold Climate Ductless Heat Pump
Cold Climate Multiport Ductless Heat Pump
Cold Climate Ducted Heat Pump

SCHEDULE B TO THE PRINCIPLES ANNEX
PERMITTED EXPENSE REIMBURSEMENTS

Travel, Meal and Hospitality Expenses Directive

Funds should be used prudently and responsibly with a focus on accountability and transparency.

Expenses for travel, meals and hospitality support the Purpose.

Plans for travel, meals, accommodation and hospitality are necessary and economical with due regard for health and safety.

Legitimate authorized expenses incurred during the course of furthering the Purpose may be reimbursed.

Best practices should be followed, including:

Prior approval to incur expenses is appropriately obtained.

Other options for meetings are always considered before travel is approved, including audio or video conferencing.

Corporate travel cards are to be used for authorized business travel and business related expenses.

PERMITTED DELEGATION ANNEX

1. Under section 4.2(g) of the Declaration, the Trustee has the power to: (a) appoint, employ or retain Implementation Agents for the purpose of discharging its duties and obligations under the Declaration; and (b) enter into, perform, enforce and amend Implementation Agreements.

2. In accordance with section 4.2(g) of the Declaration, consistent with the principles set forth in the Principles Annex, the Trustee or its agent will seek to enter into one or more Implementation Agreements with individual Electricity Distributors under which the Electricity Distributors will act as Implementation Agents to the Trustee. In this manner, the Trustee will delegate certain of its powers and duties to the Electricity Distributors.

3. Under section 5.1 of the Declaration, to the extent the Trustee has delegated any of its duties or powers, it shall be deemed to have satisfied the Standard of Care in respect of the subject matter of such delegation, subject to the Trustee's overall duty to exercise prudent oversight thereof. The Trustee is entitled to rely on an Electricity Distributor to discharge the duties delegated to it, as Implementation Agent, pursuant to an Implementation Agreement as described in this Annex.

4. Accordingly, and without limiting the Trustee's right to delegate under the Declaration and its other rights, powers and discretion as Trustee, the Trustee will be permitted to, and is expected to seek to, enter into Implementation Agreements with Electricity Distributors in order to further the Purpose. Without limiting the Trustee's discretion to negotiate and settle the terms and conditions of such Implementation Agreements, it is expected that such Implementation Agreements will include customary terms and conditions for an administrative services arrangement of this type and, in addition, would (subject to the acceptance and agreement of the applicable Electricity Distributor counterparty) address the following points in particular:

    a. **Identification of Applicable Primary Beneficiary Payees and Determination of Individual Distribution Amounts**

        i. Each Electricity Distributor would make an initial assessment of the financial needs of Primary Beneficiaries within its designated service area or region, having regard to the Selection Factors set forth in section 1.3 of the Principles Annex, together with applicable economic data, in order to prepare and provide to the Trustee an estimate of the number of Primary Beneficiaries who the Electricity Distributor reasonably expects would satisfy the Selection Factors.

        ii. Each Electricity Distributor would make an initial assessment of the measures it would recommend be included as Eligible Measures, having regard to the Measures Factors set forth in section 2.1 of the Principles Annex, in order to prepare and provide to the Trustee an estimate of the average cost per Primary Beneficiary Payee (as defined below) of such Eligible Measures that the Electricity Distributor reasonably expects would apply in respect of Primary Beneficiaries resident in its service area or region.

iii. Based on the product of (i) and (ii), above, and such other considerations as it considers to be directly relevant, each Electricity Distributor would make a written recommendation to the Trustee regarding the aggregate funding amount that the Electricity Distributor anticipates would be utilized under the Program by the Primary Beneficiaries resident in its service area or region (the "**Local Funding Estimate**"). Such recommendation would be accompanied, when submitted to the Trustee, by a detailed explanation regarding the assumptions, financial parameters, suitability considerations and other information underlying the Local Funding Estimate (including the type of information contemplated by the Selections Factors and the Measures Factors, which would be relied upon by the Trustee in its assessment regarding the allocation of available funding to or for the benefit of the Primary Beneficiaries across the specified areas and regions of Ontario.

iv. The Trustee would inform the Electricity Distributor regarding the aggregate of the amount determined by the Trustee to be made available under the Program for Primary Beneficiaries in the Electricity Distributor's designated service area or region (for each Electricity Distributor, its "**Maximum Electricity Distributor Allocation**") and as to any maximum amount that may be paid to or for the benefit of any single Primary Beneficiary located in the servicer area or region of the Electricity Distributor (the "**Maximum Primary Beneficiary Amount**"). The Maximum Electricity Distributor Allocation and Maximum Primary Beneficiary Amount may vary between areas and regions, among the Primary Beneficiaries within such areas and regions, and may be increased by the Trustee from time to time in its discretion.

v. Each Electricity Distributor would apply the principles set forth under "Identification of Primary Beneficiary Payees" in the Principles Annex to identify and make recommendations to the Trustee regarding the amount of funds (if any) to be distributed to or for the benefit of Primary Beneficiaries resident within its service area or region from time to time (the "**Primary Beneficiary Payees**").

vi. Each Electricity Distributor would ensure that the aggregate of the amounts it recommends be distributed to or for the benefit of Primary Beneficiary Payees from time to time does not exceed (1) its Maximum Electricity Distributor Allocation and (2) for any single Primary Beneficiary located in the service area or region of the Electricity Distributor, the lesser of (x) the applicable Maximum Primary Beneficiary Amount and (y) the estimated costs (including any applicable taxes, but excluding any amount payable to the Electricity Distributor by or on behalf of the Primary Beneficiary) to be incurred by or on behalf of such Primary Beneficiary (whether or not such costs have been paid or remain outstanding) in respect of Eligible Measures applied or to be applied in respect of the Primary Beneficiary's Ontario residence.

vii. The Trustee would provide written confirmation to each Electricity Distributor:

1. Either (x) that the recommendations specified of the Electricity Distributor in clause (v), above, have been accepted, or (y) as to the specific reasons for any non-acceptance; and

2. The amount of the distributions to be paid to or for the benefit of each Primary Beneficiary Payee that is resident in the Electricity Distributor's service area or region.

viii. With respect to each Primary Beneficiary resident in a Electricity Distributor's service area or region that is confirmed as a Primary Beneficiary Payee, the Electricity Distributor would provide the Trustee written confirmation as to:

1. The identity of such Primary Beneficiary Payee; and

2. The amount of the distribution paid to or for the benefit of such Primary Beneficiary Payee.

ix. If the amount of a distribution to be made to a Primary Beneficiary Payee is based on the estimated costs to be incurred by or on behalf of such Primary Beneficiary and, prior to making the distribution to the Primary Beneficiary Payee, the Electricity Distributor determines that the actual costs (including any applicable taxes but excluding any amount payable to the Electricity Distributor by or on behalf of the Primary Beneficiary) incurred or to be incurred by or on behalf of such Primary Beneficiary in respect of Eligible Measures applied or to be applied in respect of the Primary Beneficiary's Ontario residence has or would be less than such estimated costs, then the amount to be distributed to the Primary Beneficiary shall be based on such actual costs.

b. **Making of Distributions to Primary Beneficiaries**

i. It is expected that promptly after the Trustee confirms the identity of a Primary Beneficiary Payee resident in an Electricity Distributor's service area or region and the amount of the distribution to be paid to or for the benefit of such Primary Beneficiary Payee, the Trustee would arrange for payment to or on the direction of the Electricity Distributor of an amount equal to the amount of such distribution.

ii. It is expected that promptly upon receipt of funds in respect of a distribution to be made to a Primary Beneficiary Payee, the Electricity Distributor would arrange for payment of the full amount of such distribution to or for the benefit of the Primary Beneficiary Payee (including by direct payment to a third party of, or as a reimbursement or rebate of, the costs of applicable Eligible Measures installed at the residence of and for the benefit of the Primary Beneficiary Payee), without reduction or set-off by the Electricity Distributor.

iii. If the amount paid to an Electricity Distributor in respect of a distribution to be made to a Primary Beneficiary exceeds the actual amount of the

distribution made to or on behalf of the Primary Beneficiary, it is expected that the Trustee would require Electricity Distributor to return such excess to the Trustee, whereupon the proceeds of such returned amount shall continue to form part of the Assets.

c. **Establishment of Operational, Administrative, Record-Keeping and Other Systems and Policies by Electricity Distributors to facilitate the Program**

i. It is expected that the Electricity Distributor would establish such operational, administrative, record-keeping and other systems and policies as are necessary to facilitate the Program and perform its duties under the Implementation Agreement, including systems or policies to: identify Primary Beneficiary Payees; comply with applicable privacy and regulatory laws; communicate with Primary Beneficiaries on behalf of the Trust; assess Eligible Measures; determine the Local Funding Estimate; monitor its recommendations to the Trustee against its Maximum Electricity Distributor Allocation and the Maximum Primary Beneficiary Amount; receive funds from the Trust in respect of distributions to the Primary Beneficiary Payees and transfer such funds to the appropriate recipients for the benefit of the Primary Beneficiary Payees; preparation and timely delivery to Primary Beneficiary Payees of such documents as are required by the *Income Tax Act* (Canada); and create and maintain records in respect of the foregoing.

ii. The Electricity Distributor would set up a separate bank account for the purpose of receiving funds from the Trust in respect of distributions to the Primary Beneficiary Payees and the transfer of such funds to the appropriate recipients for the benefit of the Primary Beneficiary Payees.

d. **Reporting, Record-Keeping, Inspection and Disclosure and Compliance Matters**

i. The Electricity Distributor would provide record-keeping, clerical and bookkeeping services relating to all matters relating to its recommendations and the performance of its other duties and obligations under its Implementation Agreement.

ii. The Electricity Distributor would keep and maintain all financial records and non-financial documents and records relating to the provision of services under its Implementation Agreement.

iii. The Electricity Distributor would provide to the Trustee quarterly and annual reports ("**Reports**") for the duration of its Implementation Agreement. Such Reports would set out, among other things, the amounts of the distributions paid to or for the benefit of applicable Primary Beneficiary Payees, the average distribution amount per such Primary Beneficiary Payee, the Eligible Measures for which distributions have been made, and the uptake of energy efficiency measures.

iv. The Electricity Distributor would agree to provide to the Trustee such information as is necessary for the Trustee to (v) comply with applicable law;

(w) prepare financial statements for the Trust; (x) prepare and submit such documents as are required under the *Income Tax Act* (Canada); (y) comply with the Trust's applicable obligations under the Transfer Payment Agreement; and (z) such other matters as the Trustee reasonably requests.

v. The Trustee, its authorized representatives or an independent auditor would be permitted to, at its own expense, on twenty-four hours' notice to the Electricity Distributor and during normal business hours, inspect the records of and information respecting the Electricity Distributor to confirm its compliance with the Implementation Agreement, including regarding its processes for recommending the Primary Beneficiary Payees and their respective distribution amounts and regarding the delivery of Trust funds on behalf of the Trustee to or for the benefit of the Primary Beneficiary Payees.

e. **Standard of Care**

i. The Electricity Distributor would be required to agree to perform its duties provided under the Implementation Agreement exercising the degree of care, diligence and skill that a reasonably prudent Person would exercise in comparable circumstances.

ii. In performing its duties under the Implementation Agreement (including the recommending of Primary Beneficiary Payees to the Trustee), the Electricity Distributor would be required to agree to seek to avoid actual, potential or perceived conflicts of interest.

iii. The Electricity Distributor would be required to agree that it would not, in performing its obligations under the Implementation Agreement, take any action which it knows or ought reasonably to know would cause the Trustee or the Trust to be in violation of any law, rule or regulation applicable to it.

f. **Expenses**

The Electricity Distributor would be eligible to receive reasonable compensation and reimbursement of its actual out-of-pocket costs associated with the performance of its duties and obligations under the Implementation Agreement, subject to compliance with requirements substantially equivalent to the Province's Travel, Meal and Hospitality Expenses Directive. Such compensation amounts and reimbursement entitlements would be specified in the Implementation Agreement.

g. **Representations**

The Electricity Distributor would make customary representations to the Trust regarding, among other things, its legal capacity; authorization; non-contravention of law or material contract to which it is a party; and the enforceability of the Implementation Agreement.

h. **Indemnification**

The Electricity Distributor would be required to agree to provide customary indemnities to the Trust and the Trustee from and against claims, damages and liabilities which the Trust or Trustee may suffer or incur as the result of any breach of the Agreement by the Electricity Distributor or its representatives.

TRUSTEE REPLACEMENT ANNEX

1. The Advisory Committee shall consist of the following individuals:

   Robert Mace, President and Chief Executive Officer at Thunder Bay Hydro

   Bryce Conrad, President and Chief Executive Officer at Hydro Ottawa

   Brian Bentz, President and Chief Executive Officer at Alectra

   Ferio Pugliese, Executive Vice President Customer Care and Corporate Affairs at Hydro One

   Terry Young, Vice President Conservation and Corporate Relations at the Independent Electricity System Operator

2. In the event any member of the Advisory Committee resigns or is unable to act, it is expected that the remaining members of the Advisory Committee would appoint another resident of Ontario as a replacement.

3. On or before May 31, 2017, the Advisory Committee shall identify six residents of Ontario who have expressed that they are willing to act as members of the Board of Trustees and who, individually and collectively, satisfy the following criteria (collectively, the "**Selection Factors**"):

   a) each member demonstrates an understanding of the electricity sector including the electricity distribution sector;

   b) each member demonstrates an expertise in conservation and low income programs;

   c) three of the identified individuals will be representatives from separate electricity distributors, two individuals will be representatives from separate social services agencies and one individual member, who will be a non-voting member, will be an employee or representative of the Government of Ontario; and

   d) it is expected that representation by the Government of Ontario will be non-controlling.

4. If the Advisory Committee determines that changes to the Declaration (including to this Trustee Replacement Annex) are necessary in order to (a) replace, or appoint additional trustees to act with, the Original Trustee prior to the Original Trustee Replacement Date or (b) attract and receive confirmation of appointment of appropriately qualified individuals that the Advisory Committee believes would be suitable candidates to serve as members of the Board of Trustees, the Advisory Committee shall make recommendations regarding such necessary changes, including without limitation in respect of (i) any necessary limitations on the nature or scope of the appointment of the members of the Board of Trustees, (ii) the formation and empowerment of the Board of Trustees, and (iii) the duties, responsibilities, obligations, liabilities, indemnities, protections, limitations, restrictions,

compensation, expense reimbursement entitlements of members of the Board of Trustees.

5. The Advisory Committee shall recommend that the Original Trustee appoint the individuals so identified to become the initial members of the Board of Trustees pursuant to section 5.7 of the Declaration.

6. If any of the individuals recommended under paragraph 4 or under this paragraph are not accepted and appointed by the Original Trustee pursuant to section 5.7 of the Declaration, the Advisory Committee shall forthwith identify and recommend an alternative individual or individuals willing to act and whose presence as a member of the Board of Trustees would result in the Trustee collectively satisfying the criteria in paragraph 3 above.

7. Upon the appointment of six trustees (five voting and one non-voting) pursuant to section 5.7 of the Declaration, the Advisory Committee will be functus.

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DECLARATION OF TRUST

Made as of March •, 2017

by

COMPUTERSHARE TRUST COMPANY OF CANADA

establishing

AFFORDABILITY FUND TRUST

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DECLARATION OF TRUST

This Declaration of Trust is made as of March •, 2017, by Computershare Trust Company of Canada, a trust company established under the laws of Canada and licensed to carry on business as a trust company in each of the provinces and territories of Canada (together with its successors and assigns and the other trustees (including the Board of Trustees) contemplated herein, the "**Trustee**").

WHEREAS Computershare Trust Company of Canada, as settlor, wishes to establish a trust to acquire, hold, manage, invest, apply and dispose of certain property for the benefit of certain Beneficiaries as herein described.

NOW THEREFORE Computershare Trust Company of Canada hereby declares that it holds in trust as trustee (a) the sum of ONE HUNDRED DOLLARS ($100) contributed by it on this date and (b) all other property of every type and description which it may hereafter acquire or hold in its capacity as trustee of the Trust and all income therefrom and proceeds thereof, to hold, manage, invest, apply and dispose of same on and subject to the provisions set forth in this Declaration of Trust, including the annexes and schedule attached hereto.

SECTION 1
INTERPRETATION

1.1 Definitions

In this Declaration:

(a) "***Administrative Services Agent***" means each agent, which may include any Electricity Distributor or other Person, appointed from time to time under an Administrative Services Agreement, and its successors and permitted assigns solely in such capacity.

(b) "***Administrative Services Agreement***" means each agreement entered into from time to time by the Trust and one or more Administrative Services Agents or other Persons, in furtherance of the Purpose, under which the Administrative Services Agent agrees to provide specified administrative and other services to and on behalf of the Trustee, as such agreement may be amended, supplemented, restated, renewed or replaced from time to time and includes the agreement entered into on or about the date hereof between the Trustee and Hydro One Limited.

(c) "***Assets***" means, collectively, the following:

(i) the $100 Canadian referred to above, contributed by Computershare Trust Company of Canada on the date hereof;

(ii) all other property which is now or which at any time in the future may be issued, assigned, transferred, provided, donated, gifted and contributed to the Trustee (including pursuant to the Transfer Payment Agreement) to be held in trust pursuant to this Declaration (and which the Trustee is willing to accept and hold);

(iii) all acquisitions of property made by the Trust;

(iv) all property which may at any time be substituted for or in respect of the property referred to in clauses (i), (ii) and (iii), above;

(v) all income of the Trust, including investment income generated by the investment of the property referred to in clauses (i), (ii), (iii) and (iv), above; and

(vi) all proceeds of disposition of any of the property referred to in clauses (i) through (v) above,

but excludes any property paid out or distributed (whether out of income or capital) pursuant to the provisions of this Declaration.

(d) "***Beneficiary***" means each Primary Beneficiary and each Residual Beneficiary, as applicable.

(e) "***Board of Trustees***" means (i) as of the Original Trustee Replacement Date, the individual trustees appointed by the Original Trustee pursuant to Section 5.7 on the basis described in the Trustee Replacement Annex, and (ii) thereafter, the group of trustees appointed hereunder and acting in such capacity.

(f) "***Business Day***" means any working day, Monday to Friday inclusive, excluding statutory and other holidays, namely: New Year's Day; Family Day; Good Friday; Easter Monday; Victoria Day; Canada Day; Civic Holiday; Labour Day; Thanksgiving Day; Remembrance Day; Christmas Day; Boxing Day and any other day on which the Province has elected to be closed for business.

(g) "***Declaration***" means this Declaration of Trust, as it may be amended, restated, supplemented or otherwise modified from time to time, and includes each of the annexes and the Schedule attached hereto which constitute and form an integral part of this Declaration.

(h) "***Electricity Distributor***" means, in respect of a designated service area or region in Ontario, the distributor of electricity to residences located in such area or region.

(i) "***Electricity Invoice***" means an invoice issued by an Electricity Distributor in respect of electricity charges and related services and amounts incurred or assessed in respect of a residence located in the Electricity Distributor's designated service area or region in Ontario.

(j) "***Eligible Investments***" means (i) a deposit receipt, note, certificate or instrument issued, guaranteed or endorsed by a bank listed in Schedule I to the *Bank Act* (Canada), which provides that the principal and any interest shall be fully paid no later than one year after the day the investment was made, or (ii) a deposit account at a bank listed in Schedule I to the *Bank Act* (Canada).

(k) "***Eligible Measures***" means electricity efficiency and/or conservation measures determined by the Trustee from time to time on the basis contemplated in the Principles Annex and in the manner specified in and having regard to the Permitted Delegations Annex.

(l) "***Final Distribution Date***" means the earlier of (a) the date (if any) on which the Trustee determines (by a resolution of the Board of Trustees) that no further distributions are likely to be made to any Primary Beneficiary and (b) ~~20••~~ December 31, 2019.

(m) "***HAP Eligible Person***" means an "Eligible Person" as defined in Section 3.1 of the document entitled "Conservation First Framework LDC Took Kit" published by the Independent Electricity System Operator and designated as Final v3.0 – March 11, 2016, as amended in accordance with the Energy Conservation Agreement between the Independent Electricity System Operator and Electricity Distributors.

(n) **"Implementation Agent"** means each agent which may include any Electricity Distributor or other Person, appointed from time to time under an Implementation Agreement, and its successors and assigns solely in such capacity.

(o) **"Implementation Agreement"** means each agreement entered into from time to time by the Trustee and one or more Implementation Agents or other Persons in furtherance of the Purpose under which the Implementation Agent would agree to provide specified services to and on behalf or the Trustee (including, following the Original Trustee Replacement Date, as contemplated by the Permitted Delegations Annex) in connection with the implementation of the Program as such agreement may be amended , supplemented, restated, renewed or replaced from time to time.

(p) "***Minister of Energy***" means the Minister of Energy or such other member of the Executive Council as may be assigned primary ministerial responsibility for the administration of the *Ministry of Energy Act, 2011* under the *Executive Council Act*.

(q) "***Original Trustee***" means Computershare Trust Company of Canada, acting in its capacity as trustee hereunder, together with any additional or replacement Trustee appointed hereunder prior to the Original Trustee Replacement Date and any of their respective successors and assigns.

(r) "***Original Trustee Replacement Date***" has the meaning specified in Section 5.7, being the date on which the Original Trustee is replaced as trustee under this Declaration by the Board of Trustees as contemplated under Section 5.7.

(s) "***Permitted Delegations Annex***" means the Permitted Delegations Annex set forth as an annex to this Declaration.

(t) "***Person***" includes any individual, sole proprietorship, corporation, partnership, joint venture, association, society, club, board, chamber, joint-stock company, trust, trustee, unincorporated or incorporated organization or entity or government or any entity, agency or political subdivision thereof.

(u) "***Primary Beneficiary***" means each individual that, as of a time of determination, satisfies each of the following criteria:

(i) the individual owns, rents or leases a residence located in Ontario and is the primary or secondary electricity utility account holder named on an Electricity Invoice issued in respect of that residence; and

(ii) the individual is not a HAP Eligible Person.

(v) "***Principles Annex***" means the Principles Annex set forth as an annex to this Declaration.

(w) "***Province***" means the Province of Ontario.

(x) "***Program***" means the establishment, promotion, implementation and administration of a program to achieve the Purpose on the basis contemplated in this Declaration.

(y) "***Purpose***" means (i) the making of distributions to Primary Beneficiaries who are identified and whose needs are assessed in accordance with section 3.1 and 3.2 of this Declaration, having regard to (x) the principles set forth in the Principles Annex, (y) the manner and basis of implementation and administration of the Program contemplated in the Permitted Delegations Annex, and (z) the other terms, limitations and requirements set forth in this Declaration, and (ii) to the extent that Assets are available following the distributions made to Primary Beneficiaries as contemplated in (i), above, the making of distributions to Residual Beneficiaries who are identified and whose needs are assessed in accordance with section 3.3 and otherwise having regard to the other terms, limitations and requirements set forth in this Declaration.

(z) ***"Residual Beneficiary"*** means each charitable organization identified by the Trustee and specified as a residual beneficiary hereunder from time to time, selected by the Trustee in consultation with and having regard to the recommendations of the Ontario Energy Board in accordance with section 3.3.

(aa) "***Transfer Payment Agreement***" means the transfer payment agreement dated as of March •, 2017 between the Trustee and Her Majesty the Queen in right of Ontario as represented by the Minister of Energy, as such agreement may be amended, restated, supplemented or otherwise modified by the further agreement of the parties thereto from time to time.

(bb) "***Trust***" means Affordability Fund Trust, a trust established under and governed by the laws of the Province of Ontario pursuant to this Declaration.

(cc) "***Trustee***" means (i) the Original Trustee and (ii) on and after the Original Trustee Replacement Date, the Board of Trustees acting together in accordance with and subject to Section 5.7 and in accordance with the rules and procedures adopted by the Board of Trustees pursuant to Section 5.8.

(dd) "***Trustee Replacement Annex***" means the Trustee Replacement Annex set forth as an annex to this Declaration.

1.2 Headings and Table of Contents

The insertion of headings and the provision of a table of contents are for convenience of reference only and shall not affect the construction or interpretation of this Declaration.

1.3 References

Unless otherwise specified, all references to Sections are to Sections of this Declaration. The words "hereto", "herein", "hereof", "hereunder" and similar expressions refer to this Declaration and not to any particular Section or other provision of this Declaration.

1.4 Number and Gender

Unless otherwise specified, words importing the singular include the plural and vice versa and words importing gender include all genders.

1.5 Governing Law

This Declaration shall be governed by, and construed and interpreted in accordance with, the laws of the Province of Ontario and of Canada applicable therein.

1.6 Severability

Any provision of this Declaration which is illegal, invalid or unenforceable in any jurisdiction shall not affect the legality, validity or enforceability of the remaining provisions and any such illegality, invalidity or unenforceability in any jurisdiction shall not affect the legality, validity or enforceability of such provision in any other jurisdiction.

1.7 Reference to the Trust and the Trustee

For greater certainty, where any reference is made in this Declaration to an act to be performed by or for or on behalf of the Trust, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Trustee in its capacity as trustee of the Trust, and, where any reference is made in this Declaration to an act to be performed by or for or on behalf of the Trustee, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Trustee solely in its capacity as trustee of the Trust. Except as provided under the Transfer Payment Agreement, no Person dealing with the Trust or the Trustee shall be bound to make any enquiry concerning, or has the right to require production of, any evidence of the validity of any act of, or transaction purporting to be made by, the Trustee.

1.8 Defect in Appointment

No action taken by the Trustee will be invalid or ineffective by reason only of any defect in the appointment of the Trustee or the non-compliance by the Trustee with any rules or procedures adopted by the Trustee and which is discovered after the taking of such action.

SECTION 2
CONCERNING THE TRUST

2.1 Objectives

The Trust is established to hold, invest, apply and dispose of the Assets for the benefit of the Beneficiaries in furtherance of the Purpose, as provided for in this Declaration. In furtherance of the Purpose:

(a) the Original Trustee shall hold and invest the Assets as contemplated in this Declaration until the Original Trustee Replacement Date, after which the Board of Trustees shall be duly appointed hereunder; and

(b) the Board of Trustees shall hold, invest, apply and dispose of the Assets in accordance with this Declaration, including by determining the identities of and distributions (if any) to be made to or for the benefit of the Primary Beneficiaries in accordance with Sections 3.1 and 3.2 of this Declaration, having regard to the principles set forth in the Principles Annex and in the manner and on the basis contemplated in the Permitted Delegations Annex, or otherwise by determining the identities of and distributions to be made to or for the benefit of any Residual Beneficiary in accordance with Section 3.3,

in each case and in all respects subject to the terms, limitation and requirements set forth in this Declaration.

2.2 Name of the Trust

The name of the Trust shall be the "Affordability Fund Trust" or such replacement name as the Trustee shall determine and specify from time to time. The Trustee shall hold the Assets and conduct the activities of the Trust under such name or variation thereof (including any variation of such name in the French language). If the Trustee determines to change the name of the Trust, the Trustee may specify and use such other designation or adopt such other name (including any name in the French language) as it considers appropriate and may hold the Assets and conduct the activities of the Trust under such designation or other name.

2.3 Location

The head office and the situs of the administration of the Trust shall be • or such other address in Ontario as the Trustee may determine from time to time.

2.4 Fiscal Year

The fiscal year of the Trust shall end on December 31 of each year.

SECTION 3
DISTRIBUTIONS

3.1 Distributions to Primary Beneficiaries

After the Original Trustee Replacement Date and prior to the Final Distribution Date, the Trustee shall undertake diligent efforts in good faith to distribute the Assets (including capital or income) to the Primary Beneficiaries identified based on the application of the principles specified in the Principles Annex and in the manner and in the amounts determined on the basis contemplated by the Permitted Delegations Annex, in each case in the amounts and to the extent specified herein and therein, subject in all respects to the exercise by the Trustee of its discretion hereunder and to the exclusion of the other Beneficiaries.

3.2 Amount of Distributions to Primary Beneficiaries

For the purposes of determining the amount of distributions to be made to the Primary Beneficiaries, the Trustee shall have regard to and be entitled to rely on the recommendations of and information provided by Electricity Distributors acting as Implementation Agents appointed for the purposes, in the manner and substantially on the terms contemplated in the Permitted Delegations Annex, without any duty or obligation to verify or makes enquiries regarding the basis for or propriety of such recommendations or the accuracy or completeness of such information, except if and to the extent that the Trustee, in its discretion, determines that (i) it has actual knowledge that such recommendations are contrary to the reasonable application of the principles set forth in the Principles Annex or have been made on a basis that is manifestly contrary to such principles or the delegations and activities specified or contemplated to be undertaken under the Permitted Delegations Annex or (b) such information is known by the Trustee to be erroneous, contain a material misrepresentation or is materially incomplete.

3.3 Distributions to Residual Beneficiaries

Prior to the Final Distribution Date, the Trustee shall identify the Residual Beneficiary, or if more than one the Residual Beneficiaries and their respective allocations, by consulting with and having regard to the recommendations of the Ontario Energy Board, based on those charitable organizations which provide support services for Low Income Energy Assistance Program Emergency Financial Assistance (LEAP EFA) and the Ontario Electricity Support Program (OESP) or other charities that OEB may identify as relating to the Purpose. Following the Final Distribution Date, the Trustee shall, subject to compliance with section 7.3 and completion of a final audit, distribute all remaining Assets (including capital or income) to the Residual Beneficiaries, in each case in the amounts and to the extent determined by the Trustee in its discretion hereunder (having consulted with and having had regard to the recommendations of the Ontario Energy Board as aforesaid) and to the exclusion of the other Beneficiaries.

SECTION 4
POWERS OF THE TRUSTEE

4.1 General

Subject to and in compliance with the terms, limitations and restrictions of this Declaration and notwithstanding applicable trust legislation, the Trustee shall have, without other or further

authorization, full, exclusive and absolute power, control and authority over the Assets and over the affairs and activities of the Trust to the same extent as if the Trustee were not a trustee, but rather the sole and absolute owner of the Assets in its own right, including such power, control and authority to do all such acts and things as in its sole judgment and discretion are necessary, incidental or desirable for carrying on the affairs and activities of the Trust, with such powers of delegation as may be permitted or otherwise contemplated by this Declaration. Except as expressly provided in this Declaration, the enumeration in this Declaration of any specific power or authority shall not be construed as limiting the aforesaid general power or authority or any other specific power or authority set out herein. Subject to the terms, limitations and restrictions of this Declaration, every discretion or power hereby conferred on the Trustee is an absolute and uncontrolled discretion or power.

4.2 Specifically Enumerated Powers

The Trustee shall have the following specific powers and authorities:

(a) ***Transfer Payment Agreement.*** The Trustee shall have the power to enter into, amend, supplement, modify and perform its obligation under the Transfer Payment Agreement.

(b) ***Contracts and Undertakings.*** The Trustee shall have the power to enter into, amend, supplement, modify and perform its obligation under any contract entered into or undertaking given by the Trustee in furtherance of the Purpose, including any Administrative Services Agreement and any Implementation Agreement.

(c) ***Power to Own, Hold and Manage.*** Subject to section 4.2(d), the Trustee shall have the power to own, hold and manage the Assets in such manner as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable.

(d) ***Power to Invest in Eligible Investments.*** The Trustee shall have the power to invest the Assets only in Eligible Investments, and to change such Eligible Investments at any time and from time to time, all as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable, but always having regard to the Trustee's expectations regarding the timing of payments to be made to the Beneficiaries hereunder. If an investment of Assets in Eligible Investments would not be authorized under the applicable trust laws of Ontario, the Trustee shall nevertheless be permitted to make an investment of the Assets in such Eligible Investments. The Trustee will have no liability for the diminution in the value of any investment in Eligible Investments made hereunder.

(e) ***Power to Dispose of Assets.*** The Trustee shall have the power to sell, convey, assign, transfer, exchange and in any other manner dispose of the Assets or any part or parts thereof free and clear of any and all trusts established under this Declaration, by public or private sale, for cash or on credit, with or without advertisement, and subject to such restrictions, stipulations, agreements and reservations as the Trustee in its sole and absolute discretion may consider appropriate or advisable, and to execute and deliver and perform any agreement, deed, conveyance, transfer or other document or instrument in connection with the foregoing.

(f) ***Power to Apply Assets and Proceeds to Make Distributions to Beneficiaries.*** The Trustee shall have the power to apply the Assets and the proceeds and income derived therefrom to make distributions to the Beneficiaries contemplated by Section 3, and to execute and deliver

and perform any agreement, deed, conveyance, transfer or other document or instrument in connection therewith.

(g) ***Power to Delegate and to Appoint Agents, etc.*** The Trustee shall have the power to appoint, employ or contract with any Person as the Trustee in its sole and absolute discretion may consider appropriate or advisable in connection with the activities of the Trust. Without limiting the generality of the foregoing:

(i) the Trustee will have the power at any time and from time to time to appoint, employ or retain consultants, financial advisers, technical advisers, legal counsel, accountants, administrative services agents, implementation agents, insurers, insurance agents and insurance brokers, as the Trustee may require for the purpose of discharging its duties hereunder and shall not be responsible for or for the actions of any of them, including to:

(A) act for and on behalf of the Trust in connection with any and all matters in any way relating to the negotiation, settlement, entering into, amending, performance and enforcement of the Transfer Payment Agreement, the Administrative Services Agreements, the Implementation Agreements, and any other agreements and contracts to which the Trust becomes a party in accordance with this Declaration;

(B) to provide or cause to be provided any or all kinds of administrative and other services in any way relating to the activities of the Trust;

(C) to act as attorney in fact, agent or trustee in the acquisition, holding, investment, application, sale or other disposition of the Assets and in the handling, prosecuting, defending or settling of any claims of or made against the Trust;

(D) to value the Assets and determine the net income of the Trust; and

(E) to make any filings, elections and submissions (including in respect of taxation matters) in connection with the Trust's compliance with applicable laws and regulatory requirements; and

(ii) the Trustee may pay remuneration and reimbursements from the Assets for services performed for it or on its behalf in the discharge of the trusts hereof without taxation for costs or fees of any counsel, solicitor or attorney.

Without limiting the foregoing, it is expected that the Board of Trustees will seek to enter into Implementation Agreements with Electricity Distributors for the purposes contemplated by the Permitted Delegations Annex, and on such terms and conditions (including terms and conditions as to the payment of reasonable fees and expenses) not inconsistent therewith as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable.

(h) ***Power to Operate Accounts.*** The Trustee shall have the power to (i) open and operate accounts at any chartered bank, trust company or other financial institution in Canada or

elsewhere, as the Trustee in its sole and absolute discretion may consider appropriate or advisable; (ii) deposit therein any moneys or securities forming part of the Assets whether or not such deposits will earn interest; (iii) withdraw such deposits at such times and in such manner as the Trustee may determine; (iv) draw, make, endorse, deposit or otherwise deal in cheques, bills of exchange, promissory notes, drafts and other kinds of instruments and securities; and (v) enter into contracts or agreements with any such chartered bank, trust company or other financial institution containing such terms and provisions as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable. In connection therewith, the Trustee shall have no liability or responsibility for any loss which may occur by reason of the failure of any such chartered bank, trust company or other financial institution.

(i) ***Power to Collect, etc.*** The Trustee shall have the power to (i) collect, sue for, receive and give receipts for all sums of money or other property due to the Trust; (ii) consent to extensions of time for payment or to the renewal of any securities or obligations; (iii) engage or intervene in, prosecute, defend, compound, compromise, abandon or adjust by arbitration or otherwise, any demands, claims, actions, suits or proceedings relating to the Trust or the Assets; (iv) exercise any and all remedies available to the Trustee under any agreement or as may otherwise be available, including any power of foreclosure or sale available at law; (v) in connection with any such foreclosure or sale, purchase or otherwise acquire title to any property and to convey good title thereto free of any and all trusts hereby established, or to take or retake possession of any property secured under any agreement or instrument; (vi) extend the time, with or without security, for the payment or delivery of any debts or property; (vii) execute and deliver releases, acquittances, discharges, agreements or other instruments related thereto; and (viii) pay or satisfy any debts or claims upon any evidence that the Trustee, in its sole and absolute discretion, may determine to be sufficient.

(j) ***Power to Obtain Insurance***. The Trustee shall have the power to enter into contracts for or in relation to or otherwise obtain policies of insurance for the purpose of insuring the risks associated with the Trust, including to insure the Trustee (including the members of the Board of Trustees) against any risk of loss associated with assuming and performing the duties as Trustee. Without limiting the foregoing, it is expected that the Board of Trustees will obtain commercial general liability insurance from insurers having a secure A.M. Best rating of B+ or greater, or the equivalent, that in the opinion of the Recipient a prudent person similar to the Recipient would maintain, and having an inclusive limit of not less than $2,000,000 per occurrence and providing for contractual liability coverage.

(k) ***Power to Pay Trustee's Fees.*** The Original Trustee shall be entitled to be paid and receive the fees set forth in the Original Trustee's schedule of fees delivered as of or prior to the date hereof as compensation for its services under this Declaration, and to be reimbursed for its out-of-pocket expenses reasonably incurred, in each case from the Assets and without the approval of any Beneficiary or any court. The Original Trustee shall be entitled, in its sole and absolute discretion, to withdraw funds from time to time for such purpose from any account of the Trust. Members of the Board of Trustees shall be entitled to reimbursement for and in respect of their out-of-pocket expenses reasonably incurred in discharging their respective duties and obligations under this Declaration, in each case without the approval of any Beneficiary or any court, provided that the members of the Board of Trustees have general regard to sorts of limitations as are set forth in the "Travel, Meal and Hospitality Expenses Directive of the

Province" specified and amended by the Province from time to time, a copy of the current version of which is attached as Exhibit 1 to the Principles Annex.

(l) ***Power to Pay Taxes.*** The Trustee shall have the power to (i) pay, deduct, withhold or remit any taxes or assessments which are required by law to be paid, deducted, withheld or remitted together with or from any payment made by the Trustee; (ii) pay all taxes or assessments of whatever kind or nature imposed upon or against the Trust or the Trustee in connection with the Assets or any part thereof; (iii) collect and remit all taxes and assessments of whatever kind or nature required to be collected and remitted by the Trust or the Trustee in connection with their activities or the Assets or any part thereof; (iv) appeal, settle or compromise tax claims or liabilities; and (v) for the foregoing purposes, to make such returns, elections and submissions and do all such other acts and things as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable.

(m) ***Power to Appoint Auditors.*** The Trustee shall have the power to select and appoint and discharge and re-appoint, in its sole and absolute discretion, an auditor or auditors of the Trust and to settle and pay the fees of any such auditor or auditors from any account of the Trust.

(n) ***Form of Accounts.*** The Trustee shall have the power to determine and change from time to time, in its sole and absolute discretion, the method or form in which the accounts of the Trust will be kept and shall not be required to keep or provide accounts in the form usually required by law to be kept or provided by trustees; provided that such method or form reasonably complies with generally accepted accounting principles in effect in Canada to the extent applicable.

(o) ***Title to Assets.*** The Trustee shall have the power to cause all or any part of the Assets to be held by or registered, in its sole and absolute discretion, in the name of any Person.

(p) ***Delegation of Discretion***. The Trustee shall have the power to delegate the right and power to exercise, or concur in the exercise of any discretion or power, conferred on the Trustee in this Declaration or conferred by law to any one or more of its directors, officers, employees, agents, representatives or to such other Person, as the Trustee, in its sole and absolute discretion, may think is appropriate or advisable, including to one or more Administrative Services Agents under an Administrative Services Agreement and to one or more Implementation Agents and their respective employees, officers and directors under a related Implementation Agreement entered into by the Trust substantially on the basis contemplated in the Permitted Delegations Annex. In particular, the Trustee shall have the power to accept, rely on and follow the recommendations of an Electricity Distributor made under and having regard to the Permitted Delegation Annex with respect to the identification of, and the determination of distributions (if any) to be made to, any Primary Beneficiary, except if and in so far as the Trustee has actual knowledge that (1) such Primary Beneficiary did not in fact satisfy the "Selection Factors" specified in the Principles Annex as of the applicable time of determination; and/or (ii) the amount recommended to be distributed to the Primary Beneficiary was not calculated in substantial compliance with, or was calculated in a manner that is manifestly contrary to the requirements set forth or contemplated in, the Permitted Delegation Annex or the applicable Implementation Agreement.

(q) ***Additional Powers.*** The Trustee shall have the power to perform and do all such other acts, to take such steps and to execute all such deeds, transfers, assignments, agreements and

other documents and instruments as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable for the carrying out of any of its powers hereunder or of any of the activities of the Trust as herein contemplated, or for the carrying out, promotion or advancement of the interests of the Trust, whether or not any of such acts, things, documents or instruments are herein expressly mentioned. Any good faith determination by the Trustee as to what is necessary, desirable or appropriate to carry out its powers or activities of the Trust as contemplated under this Declaration or to carry out, promote or advance the interests of the Trust shall be conclusive. Any construction of this Declaration or any determination as to the activities of the Trust or the existence of any power or authority hereunder made in good faith by the Trustee, relying upon the advice of counsel, shall be conclusive. In construing the provisions of this Declaration, there shall be a presumption in favour of a grant of power to the Trustee.

SECTION 5
CONCERNING THE TRUSTEE

5.1 Duty of Trustee

In performing its duties and exercising its powers under this Declaration, the Trustee shall act honestly, in good faith and with a view to the best interests of the Trust and the Beneficiaries and shall exercise that degree of care, diligence and skill that a reasonably prudent trustee would exercise in comparable circumstances (the "**Standard of Care**"). The Trustee shall observe and act in accordance with the terms of, and shall observe and comply with the limitations and restrictions set forth in, this Declaration, including having due regard to the principles set forth in the Principles Annex. To the extent that the Trustee has so delegated any of its duties or powers, it shall be deemed to have satisfied the Standard of Care in respect of the subject matter of such delegation, subject to the Trustee's overall duty as a trustee to exercise prudent oversight in relation to such delegation. Unless required by law, the Trustee will not be required to give any security, bonds or sureties in any jurisdiction for the performance of any of its duties and obligations under this Declaration. The Trustee (including the individual members of the Board of Trustees) will not be required to devote its entire time to the trust activities.

5.2 Limitation of Liability

The Trustee shall not be personally liable in tort, contract or otherwise to any Beneficiary or any other Person for any loss or diminution in the value of the Assets, or for any action or failure to act on the part of the Trustee or any of its employees or agents or any other Person, and shall not be subject to any personal liability for any debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses incurred by or against the Trust, howsoever arising, and resort will be had solely to the Assets for the payment, performance or satisfaction thereof. No property or assets of the Trustee, owned in its personal capacity or otherwise, will be subject to levy, execution or other enforcement procedure**s** with respect to any obligation under this Declaration. However, the foregoing limitations in this Section shall not apply where the Trustee has demonstrated gross negligence, bad faith, fraud or wilful misconduct.

5.3 Liability of Trustee under Contracts

Any document or instrument creating a liability or obligation of the Trust or of the Trustee will be conclusively deemed to have been executed by the Trustee only in its capacity as Trustee of

the Trust and will be binding upon the Trustee only in its capacity as trustee hereunder and resort may not be had to, nor recourse or satisfaction be sought from, the property of the Trustee other than the Assets, whether owned by its in its personal capacity or in any other capacity other than in its capacity as Trustee of the Trust, or from its employees or agents, and in all cases resort will be had solely to the Assets for the payment, performance or satisfaction of any such liability or obligation. However, the foregoing limitations in this Section shall not apply where the Trustee has demonstrated gross negligence, bad faith, fraud or wilful misconduct. Each document or instrument creating a liability or obligation of the Trust or of the Trustee shall contain a provision providing for the aforesaid limitation of liability.

5.4 Funds of the Trustee

The Trustee shall not be required to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers.

5.5 Indemnification of Trustee

In addition to and without limiting any other protection hereunder or otherwise by law of the Trustee and its respective employees, agents, representatives and assigns (in this Section 5.5, collectively, the "**Representatives**"), the Trustee and its respective Representatives shall be indemnified, defended and saved harmless out of the Assets from, against and in respect of any and all liabilities arising or related to actions taken or omitted to be taken by any agent of the Trustee, losses, claims (including any claim arising out of the assessment of any tax on income by a taxing authority), damages, penalties, fines, actions, suits, demands, levies, assessments, costs, charges, expenses and disbursements (including, without limitation, any and all legal and advisor fees and disbursements) (in this Section 5.5, collectively, the "**Liabilities**") of whatever kind or nature which may at any time be suffered by, imposed upon, incurred by or asserted against the Trustee and its Representatives, whether groundless or otherwise, howsoever arising from or out of any act, omission or error of the Trustee, in each case made in connection with its acting as Trustee hereunder, in each case except and to the extent that the Liabilities are a result from or are caused by gross negligence, wilful misconduct, bad faith or fraud. Further, except as provided in section 5.2, the Trustee shall not be liable to any Beneficiary for any loss or damage relating to any matter regarding the Trust, including any loss or diminution in value of the Assets. Notwithstanding any other provision hereof, the obligations provided for in this section 5.5 shall survive any termination of the Trust, whether by reason of removal or resignation of the Trustee, termination or discharge of this Declaration or otherwise.

5.6 Reliance upon Advice

Subject to section 5.1, in performing its duties and exercising its powers hereunder, the Trustee may rely and may act or not act, and shall be fully protected in relying and acting or not acting, upon (a) any statement, telecopy or other electronic means of communication, writing, notice, resolution, report, opinion or other document or conversation believed by it to be genuine and correct and to have been signed, sent or made by the proper Person; (b) any opinion or advice received or information obtained from auditors, solicitors, or other professional advisers, whether retained by the Trustee or otherwise, and shall not be responsible or held liable for any loss or damage resulting from so relying or acting or not acting; and (c) the advice and actions of any

Administrative Services Agent or Implementation Agent, including in connection with the delegations and reliances contemplated under the Permitted Delegations Annex. For greater certainty, it shall not be necessary for the Trustee to ascertain whether or not the Persons who have executed, signed or otherwise issued, authenticated or receipted such papers, writings or documents (including any Administrative Services Agreement or any Implementation Agreement or any other contract entered into by the Trustee) have authority to do so or that they are the same Persons named therein or otherwise to pass upon any requirement of such papers, writing or documents that may be essential for their validity or effectiveness or upon the truth and acceptability.

5.7 Replacement of the Original Trustee

The Persons identified in the Trustee Replacement Annex are hereby appointed to comprise the Advisory Committee contemplated therein (the "**Advisory Committee**"). The Original Trustee shall promptly request that the Advisory Committee make recommendations with respect to the composition of the "Board of Trustees", as contemplated by the Trustee Replacement Annex. The Original Trustee shall have no duty or obligation to investigate the basis for any of the Advisory Committee's recommendations and may rely on such recommendations without any duty of enquiry, supervision or oversight with respect to the activities and decision-making processes adopted by the Advisory Committee in its discretion, in full satisfaction of the Original Trustee's Standard of Care with respect to such matters hereunder. Except where it is manifestly apparent to the Original Trustee that the individuals recommended by the Advisory Committee to become members of such Board of Trustees are disqualified from so acting on the basis of manifest non-compliance with the "Selection Factors" set forth in the Trustee Replacement Annex, the Original Trustee shall appoint, as members of the Board of Trustees, the six (five voting and one non-voting) individuals recommended for appointment to the Board of Trustees by the Advisory Committee. If the Original Trustee declines to appoint any individual recommended by the Advisory Committee, the Original Trustee will promptly request that the Advisory Committee provide a further recommendation whom the Original Trustee shall appoint as a member of the Board of Trustees unless it is manifestly apparent to the Original Trustee that the individual so recommended is also disqualified from so acting on the basis of manifest non-compliance with the "Selection Factors" set forth in the Trustee Replacement Annex,. Upon the appointment of such six individuals pursuant to this provision and their agreement to act as members of the Board of Trustees, the Original Trustee shall be deemed to have resigned and shall cease to be a trustee (such resignation occurring on the "**Original Trustee Replacement Date**").

5.8 Rules and Procedures of the Board of Trustees

(a) ***Initial Requirements***. As soon as practicable and in any event no later than one month following the Original Trustee Replacement Date, the Board of Trustees id expected to meet to take such decisions and actions as they deem necessary to ensure the proper management and administration of the Trust. The date (and location if in person) of the initial meeting shall be determined by a majority of the Board of Trustees.

(b) ***Meetings.*** Subject to the Board of Trustees' discretion to make such rules and procedures that they may deem desirable, meetings of the Board of Trustees may be held at such time and place as the trustee members of the Board of Trustees may agree upon or as they may fix by

resolution for the purpose or if the meeting is called as hereinafter mentioned then at such time as may be designated in the notice calling the meeting. A meeting of the Board of Trustees may be called at any time by any two members of the Board of Trustees by two Business Days' notice given to the members of the Board of Trustees. No notice of any Board of Trustees' meeting shall be necessary when a quorum is present if those comprising the quorum consent to the transaction of the affairs of the Trust and the absent trustee or trustees, if any, either before or after the meeting shall waive in writing notice of the meeting. Meetings of the Board of Trustees may be conducted in person, by telephone, or in such other manner as determined by the Board of Trustees. The Board of Trustees may elect a Chairperson.

(c) ***Quorum.*** At any meeting of the Board of Trustees, a majority of the voting members of the Board of Trustees shall be a quorum irrespective of the number of members in office. The decision of the majority of the voting members where quorum exists shall govern and shall be binding for all purposes and shall be acted upon and carried out in the same manner and with the same effect as if all the voted members concurred therein; provided always that in the case of equality of votes the Chairperson, if any, shall not be entitled to cast a second or deciding vote.

(d) ***Power to Adopt Rules and Procedures.*** The Board of Trustees may make such rules and procedures not inconsistent herewith as it may deem desirable for the proper management and administration of the Trust and the discharge of the responsibilities of the Board of Trustees.

(e) ***Replacement of Members of the Board of Trustees***. The Board of Trustees shall have the power to replace any vacancy arising following the Original Trustee Replacement Date according to such rules and procedures as they deem appropriate subject to compliance with the Selection Factors specified in Trustee Replacement Annex and having regard for such considerations necessary to ensure that the composition of the Board of Trustees will be able to discharge its responsibilities in respect of the Declaration. If necessary, the Board of Trustees may fill any vacancy by application to the Courts of Ontario in the event of an unfilled vacancy.

(f) ***Decisions of the Board of Trustees.*** Decisions and actions of the Board of Trustees shall be made by voting, with each individual voting member having one vote. Subject to quorum requirements, a majority vote shall be determinative in respect of such decisions and actions. Subject to quorum requirements, any decision or action taken by the majority of voting members will represent the decision or action of the Trustee, and not any member of the Board of Trustees.

(g) ***Conflicts of Interest.*** With respect to any matter before the Board of Trustees, to the extent of a conflict of interest, whether actual, perceived or potential, involving a member of the Board of Trustees' personal interests and a matter concerning the Trust, such member shall abstain from voting on the matter or taking any other discretionary action on the matter. For the purposes of the foregoing, no member of the Board of Trustees shall be deemed to have a conflict by reason only that the member holds any office or position with an Electricity Distributor, social services agency or governmental or quasi-governmental agency or entity (such as the Independent Electricity System Operator); provided, however, that in relation to any decision of the Board of Trustees pertaining specifically to a particular Electricity Distributor, any member of the Board of Trustees who is a director, officer or employee of the Electricity Distributor would be expected to recuse himself or herself from participating in deliberations, discussions or voting in respect of such decision.

(h) ***Expense Reimbursements to Members of the Board of Trustees.*** Members of the Board of Trustees shall be entitled to reimbursement for and in respect of their out-of-pocket expenses reasonably incurred in discharging their duties and obligations as members of the Board of Trustees. Members of the Board of Trustees shall serve without compensation.

5.9 Confidentiality

Notwithstanding the resignation or removal and discharge from the trusts and powers reposed in and conferred on the Trustee by this Declaration, or the termination of this Declaration, the Trustee so resigning or removed shall continue to treat as confidential all information relating to the Trust, the Assets and the Beneficiaries and shall only be entitled to make disclosures concerning such information if disclosure is required in the performance of the functions of the resigning or removed Trustee or is ordered by a court of competent jurisdiction or is otherwise required by law. The Trustee shall not be responsible or liable to any Person for any loss or damage arising out of or in any way sustained or incurred in any way relating to any such required disclosure. The obligations arising under this section 5.9 shall survive the termination of the Trust.

5.10 Vesting in Successor Trustee

Any successor trustee (including any reconstituted Board of Trustees) shall automatically become vested with the Assets and with the same powers, rights, duties, responsibilities and trusts as if it, he or she had originally been named as Trustee under this Declaration, without the requirement of any further instrument or act or conveyance, and the Trustee ceasing to act shall execute all such transfers and other documents and do all such other acts or things as may be necessary or desirable to assign, transfer, deliver to, and vest in, the successor trustee, upon the trusts expressed in this Declaration, all the Assets and all the rights, powers and trusts of the Trustee ceasing to act. The expense of any act, document, deed or other instrument or thing required under this Section 5.10, including for greater certainty, outstanding fees and unreimbursed expenses of the Trustee (including any member of the Board of Trustees) ceasing to act, shall be satisfied from the Assets.

5.11 Execution of Instruments

The Trustee shall have the power to execute all deeds, transfers, agreements, promissory notes and other instruments on behalf of the Trust. Such power may be exercised by any one or more Administrative Services Agents acting in accordance with any delegated right to do so pursuant to an applicable Administrative Services Agreement or by any one or more Implementation Agents acting in accordance with any delegated right to do so pursuant to an applicable Implementation Agreement, and any such execution of instrument by an Administrative Services Agent, acting in such capacity as agent of the Trust pursuant to the terms and conditions of an Administrative Services Agreement or by an Implementation Agent acting in such capacity as agent of the Trust pursuant to the terms and conditions of an Implementation Agreement shall in each case be deemed to be a proper execution of such instrument by the Trustee and shall be binding for all purposes on the Trust.

5.12 Decisions by the Trustee

If there is more than one Trustee, decisions of the Trust may be made by a majority of Trustees eligible to vote on the applicable matter. Whenever the Trustees are unable to agree in relation to the commission or omission of any act or howsoever in the execution of the Trust, the decision of a majority of such Trustees shall prevail.

SECTION 6
AMENDMENTS AND SUPPLEMENTS

6.1 Amendments

Subject to the requirements of the Transfer Payment Agreement, the Trustee shall have the power in its sole and absolute discretion from time to time without the approval of any Beneficiary or any court to amend, vary, supplement, replace or restate this Declaration in its entirety or any portion thereof; provided, however that it is expected that any amendment shall be consistent with the intent of the principles set forth in the Principles Annex and with the intended scope and effect of the permitted delegations and activities of any Implementation Agent pursuant to the Permitted Delegations Annex. Without in any way limiting the foregoing, any such amendments, variations, supplements, replacements or restatements may:

(a) add provisions for the replacement of or appointment of additional trustees to act with the Original Trustee prior to the Original Trustee Replacement Date;

(b) in the case of the Original Trustee, add provisions to those contemplated in the Trustee Replacement Annex in respect of the appointment of the members and the formation and empowerment of the Board of Trustees;

(c) in the case of the Original Trustee, vary the terms and requirements applicable to the duties, responsibilities, obligations, liabilities, indemnities, protections, limitations, restrictions, compensation, expense reimbursements and such other matters, in each case as the Advisory Committee may indicate are necessary to be made in order to attract and receive confirmation of appointment of appropriately qualified individuals that the Advisory Committee specifies are to be appointed as members of the Board of Trustees in accordance with its recommendations;

(d) add additional or replace existing Trustees;

(e) add to or reasonably clarify the principles set forth in the Principles Annex;

(f) add to or reasonably clarify the delegations and activities contemplated to be made in the Permitted Delegation Annex;

(g) include provisions for the management of the Trust by the Trustees, including the making of rules, requirements and procedures governing the decision-making of the Board of Trustees;

(h) add provisions for the replacement of members of the Board of Trustees (in addition to those provisions contemplated in section 5.7 and the Trustee Replacement Annex);

(i) provide for the engagement of any Person or Persons as managers, administrators or other service providers to the Trust, including any additional or replacement Administrative Services Agent or Implementation Agent or representative thereof;

(j) specify supplemental procedures for the identification of Primary Beneficiaries and the exchange of information with Electricity Distributors in connection with identifying such Primary Beneficiaries; or

(k) specify procedures for the transfer and transmission of funds from the Trust or any Implementation Agent acting on its behalf and with delegated responsibility over funds constituting Assets, to or for the benefit of, Beneficiaries or their designated representatives, payees or assignees.

6.2 Supplemental Declarations

The Trustee is authorized to execute any supplemental declaration of trust (including one or more amendments and restatements from time to time of this Declaration) to give effect to amendments to this Declaration made pursuant to section 6.1.

SECTION 7
TERMINATION

7.1 Duration

Subject to sections 7.2 and 7.3, the Trust will continue in full force and effect so long as there are any Assets and until all of the debts, liabilities and obligations of the Trust have been paid and satisfied in full.

7.2 Termination and Distribution of Assets

The Trustee shall terminate the Trust and wind up its affairs as soon as practicable after the Final Distribution Date. In connection with the termination of the Trust, the Trustee shall identify the Residual Beneficiaries and distribute or cause to be distributed the remaining Assets, in cash or in kind or partly in each, to the Residual Beneficiaries, in each case in accordance with section 3.3. Despite the foregoing, the Trust will only be terminated and wound up after the Trustee, in its sole and absolute discretion, determines that all debts, liabilities and obligations of the Trust have been paid or otherwise adequately provided for and satisfied and upon receipt of such releases, indemnities and discharges as the Trustee, relying on the opinion of counsel, deems necessary for the protection of the Beneficiaries and for its own protection.

7.3 Distribution of Assets on Final Distribution Date

If the Trust holds Assets on the Final Distribution Date, the Trustee shall pay or provide reserves for the payment, and otherwise shall satisfy, all debts, liabilities and obligations of the Trust and shall provide or arrange to provide such investigations, audits, releases, indemnities and discharges as the Trustee, relying on the opinion of counsel, deems necessary for the protection of the Beneficiaries and for its own protection. Thereafter, any remaining Assets shall be paid to the Residual Beneficiaries in accordance with section 3.3.

SECTION 8
ACCEPTANCE OF TRUSTS

8.1 Acceptance of Trusts

The Trustee hereby accepts the trusts and duties contained in this Declaration and agrees to perform the same upon the terms and conditions hereof until discharged therefrom.

[Signature Page Follows]

The Trustee has executed this Declaration as of the date first written above.

COMPUTERSHARE TRUST COMPANY OF CANADA,

By:
Name:
Title:

By:
Name:
Title:

PRINCIPLES ANNEX

The Trustee shall have regard to, but shall not be specifically bound by, the following principles in applying its discretion in relation to the administration of the Trust:

1. Identification of Primary Beneficiary Payees

1.1 Except in exceptional circumstances, a Primary Beneficiary would not be expected to receive a benefit from the Trust unless at the time of consideration it satisfies, in addition to the requirements contemplated in the definition of "Primary Beneficiary", each of the following criteria (the "**Selection Factors**"):

(i) it has a participant agreement with an applicable Electricity Distributor to undertake measures (its "**Energy Plan**") to improve the electricity efficiency and/or promote the conservation of electricity at its Ontario residence;

(ii) its Energy Plan involves one or more Eligible Measures, as may be designated by the Trustee from time to time from;

(iii) it confirms that:

1. the primary purpose of its Energy Plan is the conservation and efficient use by the Primary Beneficiary of electricity, and is not for the purposes of the Primary Beneficiary making a profit;

2. it would otherwise not have the financial resources to undertake the Eligible Measures included in its Energy Plan; and

3. it would otherwise not be eligible to receive amounts in respect of the Eligible Measures as a HAP Eligible Person;

(iv) it has demonstrated a need for financial assistance on the basis that its periodic electricity bills represent a financial burden, relative to its available financial resources; and

(v) such other criteria as the Trustee may determine, including based on the recommendations of Electricity Distributors or other knowledgeable Persons made on the basis and having regard to the delegations contemplated by the Permitted Delegations Annex or any applicable Implementation Agreement.

1.2 It is recognized that, in furthering the Purpose, an efficient basis upon which to allocate funds to the Primary Beneficiaries across different areas and regions within Ontario may be based on the areas and regions serviced by the Electricity Distributors operating within Ontario.

1.3 It would not be contrary to the Purposes if funds are made available by the Trustee to the Primary Beneficiaries unequally across different areas and regions within Ontario, and it is expected that in making such an unequal division it would be appropriate to have regard to:

(i) broad economic parameters of economic activity and the specific financial resources of the residents of the areas and regions, in each case as an indication of the relative need of such residents across the areas and regions;

(ii) electricity use and efficiency levels of residential electricity customers across the areas and regions;

(iii) specific regional indicators of economic weakness and need; and

(iv) such other factors as the Trustee may determine are relevant, including based on the submissions, advice and recommendations of Electricity Distributors or other knowledgeable Persons made on the basis and having regard to the delegations contemplated by the Permitted Delegations Annex or any applicable implementation Agreement.

1.4 It is recognized that, in furthering the Purpose, the designated Electricity Distributor for an area or region in which a Primary Beneficiary resides would be expected to:

(i) be a reliable source for the purpose of assessing and confirming whether the Primary Beneficiary satisfies the Selection Factors;

(ii) be an efficient intermediary for the purpose of communicating with the Primary Beneficiary, including with respect to matters such as regarding the availability, terms, conditions and intended purposes of Program;

(iii) be able to facilitate an efficient payment of distribution determined to be made to or on behalf of the Primary Beneficiary, having regard to the Electricity Distributor's established practices, procedures and systems for dealing with its customers; and

(iv) have established contractual arrangements with the Primary Beneficiary that may apply to the protection and confidentiality of information provided by or respecting the Primary Beneficiary, which information may be useful in the consideration by the Electricity Distributor in its assessment of whether the Primary Beneficiary satisfies the Selection Factors, which information may not otherwise be available or readily accessible or verifiable by the Trustee.

1.5 It is recognized that, in furthering the Purpose, the Electricity Distributor for an area or region in which a Primary Beneficiary resides will have market and utilization information that may be useful in assessing the relative needs of Primary Beneficiaries within its area or region. Such information is expected to be relevant in assessing the extent to which one such Primary Beneficiary's financial needs and the merits of its Energy Plan are greater or more compelling than those of another such Primary Beneficiary, which comparison may be relevant to the extent that the funds allocable to the Primary Beneficiaries resident in the area or region are otherwise insufficient to meet the requests for funding by all such Primary Beneficiaries.

1.6 Accordingly, it is recognized that, in furthering the Purpose, it is consistent with the Purpose that the recommendations of Electricity Distributors be utilized and relied upon

by the Trustee to guide the process of identifying particular Primary Beneficiaries in making distributions to the Primary Beneficiaries.

1.7 If an Electricity Distributor for a particular area or region is unable or unwilling to assess or confirm the application of the Selection Factors to Primary Beneficiaries residing in the area or region or to make recommendations in relation to such matters, one or more of the following may provide a suitable alternative source of information and for information gathering, assessment and confirmation purposes in relation to such area or region:

(i) other Electricity Distributors operating in adjacent or other areas or regions in Ontario;

(ii) the Ontario Energy Board;

(iii) the Independent Electricity System Operator; and

(iv) anyone else having relevant expertise and access to information regarding the electricity market of the Province, in each case as may be considered relevant by the Trustee.

1.8 To the extent that privacy law or other legal requirements limit an Electricity Distributor from providing or making available specific information respecting the application of the Selection Factors to a particular Primary Beneficiary or group of Primary Beneficiaries, it is recognized that, in furthering the Purpose, it may be appropriate to redact or make generic affected information regarding such Primary Beneficiary in connection with the identification and confirmation of a Primary Beneficiary's eligibility and participation in the Program. If such limitations or restrictions would limit an Electricity Distributor from providing or confirming the name of a particular Primary Beneficiary to the Trustee, then it should be sufficient that such information may be obtained or disseminated on a confidential basis if and when required by the Trustee for the proper administration of the Trust and on that basis such impediments should not disqualify a Primary Beneficiary from participating in the benefits of the Program, provided that the confidential record-keeping of the Electricity Distributor would be available in connection with the application of any applicable legal process predicated on the identification of such Primary Beneficiary for the purposes of substantiating its rights as a Primary Beneficiary of the Trust or as to the validity or subsistence of the Trust.

2. Eligible Measures

2.1 It is expected that the Trust will identify eligible measures that, taking into consideration the principles set forth in the Principles Annex, have regard to the following (the "**Measures Factors**"):

(i) is the measure generally expected to result in reduced electricity consumption by a Primary Beneficiary if properly installed and used;

(ii) is the measure recognized under another Provincial program as being appropriate for achieving electricity conservation among a population analogous to the Primary Beneficiaries;

(iii) does the measure present any unacceptable health or safety considerations, either with respect to the Primary Beneficiary, a party providing or installing the measure, or the physical environment;

(iv) is the measure broadly available to residents across different areas and regions of the Province; or

(v) is the measure a requirement or precursor to another measure, the other measure being one which meets any of the other Measures Factors.

2.2 In identifying and applying the Measures Factors, Electricity Distributors would be expected to have expertise in assessing the suitability of efficiency and conservation measures in their respective areas and regions, which may differ across areas and regions across the Province based on factors (among other things) such as the climate, geography, density, electricity infrastructure, residential structures, and electricity use rates applicable within such areas or regions.

2.3 The measures specified in Schedule A to this Principles Annex may initially be considered to be consistent with the Measures Factors (subject to change as contemplated under the Permitted Delegations Annex).

3. Promotion of the Program

3.1 It is expected that the Trustee will undertake or engage others to undertake diligent efforts to promote the availability, terms and benefits of the Program to Primary ~~and Residual~~ Beneficiaries, including by establishing consistent communications through the Electricity Distributors.

3.2 It is expected that the Trustee will acknowledge the financial support of the Province in connection with the establishment and the funding for the Program, including in any external communications to or marketing directed at the Electricity Distributors and the Primary and Residual Beneficiaries. In its delegation of any duties or powers to the Electricity Distributors through Implementation Agreements it is expected that Electricity Distributors will acknowledge the financial support of the Province in connection with the program including in any communications or marketing to Primary Beneficiaries.

4. Conduct of the Trust and the Program

4.1 It is expected that administrative expenses of the Board of Trustees and its members, including any expenses relating to the Trust, to the establishment of the Trust and any expenses related to the implementation and operation of the Program, including by or through Electricity Distributors and other relevant entities, will be recognized and subject to reimbursement on a basis that is substantially consistent with the accountability provisions contemplated in the Transfer Payment Agreement and the principles in the

Province's Travel, Meal and Hospitality Expenses Directive, ~~the current form of which attached~~ as set out in Schedule B to this Principles Annex.

4.2 The Trustee is expected to conduct its activities in a manner that complies in all material respects with the Transfer Payment Agreement, including to:

(i) act prudently and in furtherance of the Purpose;

(ii) report not less frequently than annually the results of its activities for information purposes to the Province in connection with the Program;

(iii) comply with the Province's request for any independent verification or audit if determined to be necessary or appropriate by the Province;

(iv) return Assets that have not been distributed if it is determined that the Trustee has breached its Standard of Care in discharging its material duties under the Declaration, and has not cured such material breach despite having been given a reasonable opportunity by the Province to do so in light of the circumstances of such material breach, with the result that all or a significant part of the Assets have not been or are not being applied and distributed in furtherance of the Purpose or are being applied and distributed in a manner that is directly contrary or without regard to the Purpose.

4.3 Electricity Distributors are not intended to directly profit from distributions of funds made from the Trust, although it is recognized that the objectives of electricity efficiency and conservation of Primary Beneficiaries located in the service area or region of an Electricity Distributor, and the cost savings and improved credit worthiness of such Primary Beneficiaries, may be financially beneficial to the Electricity Distributor.

4.4 Distributions from the Trust are intended to allow receiving Primary Beneficiaries to undertake Eligible Measures at no or minimal personal cost.

4.5 Without in any way limiting the discretion of the Board of Trustees to extend the period during which the benefits of the Program may be available to the Primary Beneficiaries, up to and including the Final Distribution Date, it is expected that the Trust Assets would be distributed to Primary Beneficiaries during the period from the Original Trustee Replacement Date to April 30, 2019.

SCHEDULE A TO THE PRINCIPLES ANNEX
INDICATIVE ELIGIBLE MEASURES[1]

Initial Specified Measures
Block Heater Timer (just timer) – rated for outdoor use, have at least a 15 amp/1800 watt capacity, be cold weather resistant, bear a C-UL or CSA certification mark
Power bar with integrated timer, and switched power outlets, four each for a total of 8 outlets, have a total capacity of 15 amps. The switched outlets must remain "live", independent of timer settings, so long as the power bar itself remains switched on. The power bar must bear either a C-UL or CSA certification mark.
Efficient Showerheads (standard) - rated at no more than 4.8 Lpm (1.25 U.S. gpm) and be of the laminar flow type (non-aerating).
Efficient Showerhead (handheld) - rated at no more than 4.8 Lpm (1.25 U.S. gpm) and be of the laminar flow type (non-aerating).
Efficient Aerators (kitchen) - rated no more than 5.7 Lpm (1.5 U.S. gpm), dual threaded to allow installation in both thread type faucets, swivel type with pause lever.
Efficient Aerators (bathroom) - rated no more than 3.8 Lpm (1.0 U.S. gpm), be dual threaded to allow installation in both thread type faucets.
Hot Water Tank Pipe Insulation - 1/2" inside diameter – foam, meets ASTM –C547-00, minimum 3/4" thick
Hot Water Tank Pipe Insulation - 3/4 " inside diameter - – foam, meets ASTM –C547-00, minimum 3/4" thick
Hot Water Tank Insulation - fibreglass R10 (fits up to a 60 gal tank) – not bubble wrap
≤11W ENERGY STAR® Qualified LED A Shape (60W) (minimum 600 Lumen output) (Formerly: 7W – 11W ENERGY STAR® Qualified LED A Shape (60W))

[1] These measures are indicative. Eligible measures added to HAP during the administration of the Trust may also be appropriately considered relevant by the Trustee.

Initial Specified Measures
≤14W ENERGY STAR® Qualified LED A Shape (75W) (minimum 800 Lumen output) (Formerly: 10W – 14W ENERGY STAR® Qualified LED A Shape (75W))
≤23W ENERGY STAR® Qualified LED A Shape (100W) (minimum 1600 Lumen output) (Formerly:17W – 23W ENERGY STAR® Qualified LED A Shape (100W))
≤16W ENERGY STAR® Qualified LED PAR 20 (minimum 600 Lumen output) (Formerly: 8W – 12W ENERGY STAR® Qualified LED PAR 20)
≤16W ENERGY STAR® Qualified LED PAR30 & PAR38 (minimum 600 Lumen output) (Formerly: 8W – 12W ENERGY STAR® Qualified LED PAR 30)
≤23W ENERGY STAR® Qualified LED PAR (minimum 1100 Lumen output) (Formerly: 14W – 18W ENERGY STAR® Qualified LED PAR 38)
≤6W ENERGY STAR® Qualified LED MR 16 / PAR 16 (minimum 250 Lumen output) (Formerly: 7W – 10W ENERGY STAR®
Qualified LED MR 16 / PAR 16 - GU 10 Base)
≤11W ENERGY STAR® Qualified LED MR 16 (minimum 400 Lumen output) (Formerly: 7W – 12W ENERGY STAR® Qualified LED MR 16 GU 5.3 Base)
ENERGY STAR® LED Wet Location Rated PAR lamp ≤ 23 Watt (minimum 1100 Lumen output)
Recessed Downlight Fixture including LED with Light Output >600 and <800 lumens (Retrofit Measure List)
Recessed Downlight Fixture including LED with Light Output >800 lumens (Retrofit Measure List)
Indoor Drying Rack

~~**Extended Measures**~~
~~Replace refrigerator with ENERGY STAR qualified refrigerator - 15.5 - 16.9 cubic foot top-freezer, automatic defrost, refrigerator/ freezer, no through the door ice service~~

~~Replace refrigerator with ENERGY STAR qualified refrigerator - 17.0 - 18.4 cubic foot top freezer, automatic defrost, refrigerator/ freezer, no through the door ice service~~
~~Replace refrigerator with a refrigerator that has a consumption level of less than 425 kwh, 10 – 12.5 cubic foot top freezer, automatic defrost, refrigerator freezer, no through the door ice service~~
~~Replace freezer with ENERGY STAR qualified freezer - 12-14.4 cubic foot freezer~~
~~Replace freezer with ENERGY STAR qualified freezer - 14.5 - 16.0 cubic foot freezer~~
~~Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 6,000 – 7,999 BTU/hr with C-UL or CSA certification mark~~
~~Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 8,000 – 9,999 BTU/hr with C-UL or CSA certification mark~~
~~Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 10,000 – 12,000 BTU/hr with C-UL or CSA certification mark~~
~~Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 14.2 – 21.2 l/day (30-44.9 pints/day) dehumidifier~~
~~Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 21.3 – 25.4 l/day (45-53.9 pints/day) dehumidifier~~

Extended Measures
Replace refrigerator with ENERGY STAR qualified refrigerator - 15.5 - 16.9 cubic foot top freezer, automatic defrost, refrigerator/ freezer, no through the door ice service
Replace refrigerator with ENERGY STAR qualified refrigerator - 17.0 - 18.4 cubic foot top freezer, automatic defrost, refrigerator/ freezer, no through the door ice service
Replace refrigerator with a refrigerator that has a consumption level of less than 425 kwh, 10 – 12.5 cubic foot top freezer, automatic defrost, refrigerator freezer, no through the door ice service
Replace freezer with ENERGY STAR qualified freezer - 12-14.4 cubic foot freezer
Replace freezer with ENERGY STAR qualified freezer - 14.5 - 16.0 cubic foot freezer
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 6,000 – 7,999 BTU/hr with C-UL or CSA certification mark
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 8,000 – 9,999 BTU/hr with C-UL or CSA certification mark
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 10,000 – 12,000 BTU/hr with C-UL or CSA certification mark
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 14.2 - 21.2 l/day (30-44.9 pints/day) dehumidifier
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 21.3 - 25.4 l/day (45-53.9 pints/day) dehumidifier
Extended Measures
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 25.5 - 35.5 l/day (54-75 pints/day) dehumidifier
Programmable Thermostat – line voltage – meets CAN/CSA-C828-06 standard, minimum performance: Droop: 1.5°C, Differential: 0.5°C, Precision 0% within 0.5°C of the original set point of 22°C
Programmable Thermostat – low voltage - meets CAN/CSA-C828-06 standard, minimum performance: Droop: 1.5°C, Differential: 0.5°C, Precision 0% within 0.5°C of the original set point of 22°C

Weatherization Measures
Comprehensive ~~Draftproofing~~Draft proofing (caulking, foam and weather stripping, and application of same) – lifespan of 20 years plus If one or two component polyurethane foams are used, the products and installations must conform to: • CAN/ULC-S710.1 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 1: Material Specification. • CAN/ULC-S710.2 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 2: Application. • CAN/ULC-S711.1 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification • CAN/ULC-S711.2 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification, and Part 2: Application. **Attic Insulation (including installation):**
cellulose: CAN/ULC-S703-01 Amendment 1 - Cellulose Fibre Insulation (CFI) for Buildings OR 2) Mineral Fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre

Weatherization Measures
for Buildings **Wall Insulation (including installation):**
cellulose: CAN/ULC-S703-01 Amendment 1 - Cellulose Fibre Insulation (CFI) for Buildings OR 2) Mineral Fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre **Basement Insulation (including installation):**
mineral fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre for Buildings Vapour Barrier: 69009-CAN/CGSB-51.34-m86 If one or two component polyurethane foams are used, the products and installations must conform to: • CAN/ULC-S710.1 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 1: Material Specification. • CAN/ULC-S710.2 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 2: Application. • CAN/ULC-S711.1 Standard for Thermal Insulation – Bead Applied Two-Component
Polyurethane Air Sealant Foam, Part 1: Material Specification • CAN/ULC-S711.2 Standard for Thermal Insulation – Bead Applied Two-Component

Heat Pumps (Selection of manufacturers and technologies to meet the US federal minimum efficiency standard for ASHPs, as of 2015, is 13.0 SEER and 7.7 HSPF. Energy Star–certified models offer roughly 9 percent more efficiency than most new uncertified ASHPs and 20 percent more
Ductless Multiport Heat Pump
Cold Climate Ductless Heat Pump
Cold Climate Multiport Ductless Heat Pump
Cold Climate Ducted Heat Pump

SCHEDULE B TO THE PRINCIPLES ANNEX
PERMITTED EXPENSE REIMBURSEMENTS

~~[NTD: Insert the Province's Travel, Meal and Hospitality Expenses Directive.]~~**Travel, Meal and Hospitality Expenses Directive**

Funds should be used prudently and responsibly with a focus on accountability and transparency.

Expenses for travel, meals and hospitality support the Purpose.

Plans for travel, meals, accommodation and hospitality are necessary and economical with due regard for health and safety.

Legitimate authorized expenses incurred during the course of furthering the Purpose may be reimbursed.

Best practices should be followed, including:

Prior approval to incur expenses is appropriately obtained.

Other options for meetings are always considered before travel is approved, including audio or video conferencing.

Corporate travel cards are to be used for authorized business travel and business related expenses.

PERMITTED DELEGATION ANNEX

1. Under section 4.2(g) of the Declaration, the Trustee has the power to: (a) appoint, employ or retain Implementation Agents for the purpose of discharging its duties and obligations under the Declaration; and (b) enter into, perform, enforce and amend Implementation Agreements.

2. In accordance with section 4.2(g) of the Declaration, consistent with the principles set forth in the Principles Annex, the Trustee or its agent will seek to enter into one or more Implementation Agreements with individual Electricity Distributors under which the Electricity Distributors will act as Implementation Agents to the Trustee. In this manner, the Trustee will delegate certain of its powers and duties to the Electricity Distributors.

3. Under section 5.1 of the Declaration, to the extent the Trustee has delegated any of its duties or powers, it shall be deemed to have satisfied the Standard of Care in respect of the subject matter of such delegation, subject to the Trustee's overall duty to exercise prudent oversight thereof. The Trustee is entitled to rely on an Electricity Distributor to discharge the duties delegated to it, as Implementation Agent, pursuant to an Implementation Agreement as described in this Annex.

4. Accordingly, and without limiting the Trustee's right to delegate under the Declaration and its other rights, powers and discretion as Trustee, the Trustee will be permitted to, and is expected to seek to, enter into Implementation Agreements with Electricity Distributors in order to further the Purpose. Without limiting the Trustee's discretion to negotiate and settle the terms and conditions of such Implementation Agreements, it is expected that such Implementation Agreements will include customary terms and conditions for an administrative services arrangement of this type and, in addition, would (subject to the acceptance and agreement of the applicable Electricity Distributor counterparty) address the following points in particular:

    a. **Identification of Applicable Primary Beneficiary Payees and Determination of Individual Distribution Amounts**

        i. Each Electricity Distributor would make an initial assessment of the financial needs of Primary Beneficiaries within its designated service area or region, having regard to the Selection Factors set forth in section 1.3 of the Principles Annex, together with applicable economic data, in order to prepare and provide to the Trustee an estimate of the number of Primary Beneficiaries who the Electricity Distributor reasonably expects would satisfy the Selection Factors.

        ii. Each Electricity Distributor would make an initial assessment of the measures it would recommend be included as Eligible Measures, having regard to the Measures Factors set forth in section 2.1 of the Principles Annex, in order to prepare and provide to the Trustee an estimate of the average cost per Primary Beneficiary Payee (as defined below) of such Eligible Measures that the Electricity Distributor reasonably expects would apply in respect of Primary Beneficiaries resident in its service area or region.

iii. Based on the product of (i) and (ii), above, and such other considerations as it considers to be directly relevant, each Electricity Distributor would make a written recommendation to the Trustee regarding the aggregate funding amount that the Electricity Distributor anticipates would be utilized under the Program by the Primary Beneficiaries resident in its service area or region (the "**Local Funding Estimate**"). Such recommendation would be accompanied, when submitted to the Trustee, by a detailed explanation regarding the assumptions, financial parameters, suitability considerations and other information underlying the Local Funding Estimate (including the type of information contemplated by the Selections Factors and the Measures Factors, which would be relied upon by the Trustee in its assessment regarding the allocation of available funding to or for the benefit of the Primary Beneficiaries across the specified areas and regions of Ontario.

iv. The Trustee would inform the Electricity Distributor regarding the aggregate of the amount determined by the Trustee to be made available under the Program for Primary Beneficiaries in the Electricity Distributor's designated service area or region (for each Electricity Distributor, its "**Maximum Electricity Distributor Allocation**") and as to any maximum amount that may be paid to or for the benefit of any single Primary Beneficiary located in the servicer area or region of the Electricity Distributor (the "**Maximum Primary Beneficiary Amount**"). The Maximum Electricity Distributor Allocation and Maximum Primary Beneficiary Amount may vary between areas and regions, among the Primary Beneficiaries within such areas and regions, and may be increased by the Trustee from time to time in its discretion.

v. Each Electricity Distributor would apply the principles set forth under "Identification of Primary Beneficiary Payees" in the Principles Annex to identify and make recommendations to the Trustee regarding the amount of funds (if any) to be distributed to or for the benefit of Primary Beneficiaries resident within its service area or region from time to time (the "**Primary Beneficiary Payees**").

vi. Each Electricity Distributor would ensure that the aggregate of the amounts it recommends be distributed to or for the benefit of Primary Beneficiary Payees from time to time does not exceed (1) its Maximum Electricity Distributor Allocation and (2) for any single Primary Beneficiary located in the service area or region of the Electricity Distributor, the lesser of (x) the applicable Maximum Primary Beneficiary Amount and (y) the estimated costs (including any applicable taxes, but excluding any amount payable to the Electricity Distributor by or on behalf of the Primary Beneficiary) to be incurred by or on behalf of such Primary Beneficiary (whether or not such costs have been paid or remain outstanding) in respect of Eligible Measures applied or to be applied in respect of the Primary Beneficiary's Ontario residence.

vii. The Trustee would provide written confirmation to each Electricity Distributor:

1. Either (x) that the recommendations specified of the Electricity Distributor in clause (v), above, have been accepted, or (y) as to the specific reasons for any non-acceptance; and

2. The amount of the distributions to be paid to or for the benefit of each Primary Beneficiary Payee that is resident in the Electricity Distributor's service area or region.

viii. With respect to each Primary Beneficiary resident in a Electricity Distributor's service area or region that is confirmed as a Primary Beneficiary Payee, the Electricity Distributor would provide the Trustee written confirmation as to:

1. The identity of such Primary Beneficiary Payee; and

2. The amount of the distribution paid to or for the benefit of such Primary Beneficiary Payee.

ix. If the amount of a distribution to be made to a Primary Beneficiary Payee is based on the estimated costs to be incurred by or on behalf of such Primary Beneficiary and, prior to making the distribution to the Primary Beneficiary Payee, the Electricity Distributor determines that the actual costs (including any applicable taxes but excluding any amount payable to the Electricity Distributor by or on behalf of the Primary Beneficiary) incurred or to be incurred by or on behalf of such Primary Beneficiary in respect of Eligible Measures applied or to be applied in respect of the Primary Beneficiary's Ontario residence has or would be less than such estimated costs, then the amount to be distributed to the Primary Beneficiary shall be based on such actual costs.

b. **Making of Distributions to Primary Beneficiaries**

i. It is expected that promptly after the Trustee confirms the identity of a Primary Beneficiary Payee resident in an Electricity Distributor's service area or region and the amount of the distribution to be paid to or for the benefit of such Primary Beneficiary Payee, the Trustee would arrange for payment to or on the direction of the Electricity Distributor of an amount equal to the amount of such distribution.

ii. It is expected that promptly upon receipt of funds in respect of a distribution to be made to a Primary Beneficiary Payee, the Electricity Distributor would arrange for payment of the full amount of such distribution to or for the benefit of the Primary Beneficiary Payee (including by direct payment to a third party of, or as a reimbursement or rebate of, the costs of applicable Eligible Measures installed at the residence of and for the benefit of the Primary Beneficiary Payee), without reduction or set-off by the Electricity Distributor.

iii. If the amount paid to an Electricity Distributor in respect of a distribution to be made to a Primary Beneficiary exceeds the actual amount of the distribution made to or on behalf of the Primary Beneficiary, it is expected that the Trustee would require Electricity Distributor to return such excess to the Trustee, whereupon the proceeds of such returned amount shall continue to form part of the Assets.

c. **Establishment of Operational, Administrative, Record-Keeping and Other Systems and Policies by Electricity Distributors to facilitate the Program**

i. It is expected that the Electricity Distributor would establish such operational, administrative, record-keeping and other systems and policies as are necessary to facilitate the Program and perform its duties under the Implementation Agreement, including systems or policies to: identify Primary Beneficiary Payees; comply with applicable privacy and regulatory laws; communicate with Primary Beneficiaries on behalf of the Trust; assess Eligible Measures; determine the Local Funding Estimate; monitor its recommendations to the Trustee against its Maximum Electricity Distributor Allocation and the Maximum Primary Beneficiary Amount; receive funds from the Trust in respect of distributions to the Primary Beneficiary Payees and transfer such funds to the appropriate recipients for the benefit of the Primary Beneficiary Payees; preparation and timely delivery to Primary Beneficiary Payees of such documents as are required by the *Income Tax Act* (Canada); and create and maintain records in respect of the foregoing.

ii. The Electricity Distributor would set up a separate bank account for the purpose of receiving funds from the Trust in respect of distributions to the Primary Beneficiary Payees and the transfer of such funds to the appropriate recipients for the benefit of the Primary Beneficiary Payees.

d. **Reporting, Record-Keeping, Inspection and Disclosure and Compliance Matters**

i. The Electricity Distributor would provide record-keeping, clerical and bookkeeping services relating to all matters relating to its recommendations and the performance of its other duties and obligations under its Implementation Agreement.

ii. The Electricity Distributor would keep and maintain all financial records and non-financial documents and records relating to the provision of services under its Implementation Agreement.

iii. The Electricity Distributor would provide to the Trustee quarterly and annual reports ("**Reports**") for the duration of its Implementation Agreement. Such Reports would set out, among other things, the amounts of the distributions paid to or for the benefit of applicable Primary Beneficiary Payees, the average distribution amount per such Primary Beneficiary Payee, the Eligible Measures for which distributions have been made, and the uptake of energy efficiency measures.

iv. The Electricity Distributor would agree to provide to the Trustee such information as is necessary for the Trustee to (v) comply with applicable law; (w) prepare financial statements for the Trust; (x) prepare and submit such documents as are required under the *Income Tax Act* (Canada); (y) comply with the Trust's applicable obligations under the Transfer Payment Agreement; and (z) such other matters as the Trustee reasonably requests.

v. The Trustee, its authorized representatives or an independent auditor would be permitted to, at its own expense, on twenty-four hours' notice to the Electricity Distributor and during normal business hours, inspect the records of and information respecting the Electricity Distributor to confirm its compliance with the Implementation Agreement, including regarding its processes for recommending the Primary Beneficiary Payees and their respective distribution amounts and regarding the delivery of Trust funds on behalf of the Trustee to or for the benefit of the Primary Beneficiary Payees.

e. **Standard of Care**

i. The Electricity Distributor would be required to agree to perform its duties provided under the Implementation Agreement exercising the degree of care, diligence and skill that a reasonably prudent Person would exercise in comparable circumstances.

ii. In performing its duties under the Implementation Agreement (including the recommending of Primary Beneficiary Payees to the Trustee), the Electricity Distributor would be required to agree to seek to avoid actual, potential or perceived conflicts of interest.

iii. The Electricity Distributor would be required to agree that it would not, in performing its obligations under the Implementation Agreement, take any action which it knows or ought reasonably to know would cause the Trustee or the Trust to be in violation of any law, rule or regulation applicable to it.

f. **Expenses**

The Electricity Distributor would be eligible to receive reasonable compensation and reimbursement of its actual out-of-pocket costs associated with the performance of its duties and obligations under the Implementation Agreement, subject to compliance with requirements substantially equivalent to the Province's Travel, Meal and Hospitality Expenses Directive. Such compensation amounts and reimbursement entitlements would be specified in the Implementation Agreement.

g. **Representations**

The Electricity Distributor would make customary representations to the Trust regarding, among other things, its legal capacity; authorization; non-contravention of law or material contract to which it is a party; and the enforceability of the Implementation Agreement.

h. **Indemnification**

The Electricity Distributor would be required to agree to provide customary indemnities to the Trust and the Trustee from and against claims, damages and liabilities which the Trust or Trustee may suffer or incur as the result of any breach of the Agreement by the Electricity Distributor or its representatives.

TRUSTEE REPLACEMENT ANNEX

1. The Advisory Committee shall consist of the following individuals:

   Robert Mace, President and Chief Executive Officer at Thunder Bay Hydro

   Bryce Conrad, President and Chief Executive Officer at Hydro Ottawa

   Brian Bentz, President and Chief Executive Officer at Alectra

   Ferio Pugliese, Executive Vice President Customer Care and Corporate Affairs at Hydro One

   Terry Young, Vice President Conservation and Corporate Relations at the Independent Electricity System Operator

2. In the event any member of the Advisory Committee resigns or is unable to act, it is expected that the remaining members of the Advisory Committee would appoint another resident of Ontario as a replacement.

3. On or before ~~,~~May 31, 2017, the Advisory Committee shall identify six residents of Ontario who have expressed that they are willing to act as members of the Board of Trustees and who, individually and collectively, satisfy the following criteria (collectively, the "**Selection Factors**"):

   a) each member demonstrates an understanding of the electricity sector including the electricity distribution sector;

   b) each member demonstrates an expertise in conservation and low income programs;

   c) three of the identified individuals will be representatives from separate electricity distributors, two individuals will be representatives from separate social services agencies and one individual member, who will be a non-voting member, will be an employee or representative of the Government of Ontario; and

   d) it is expected that representation by the Government of Ontario will be non-controlling.

4. If the Advisory Committee determines that changes to the Declaration (including to this Trustee Replacement Annex) are necessary in order to (a) replace, or appoint additional trustees to act with, the Original Trustee prior to the Original Trustee Replacement Date or (b) attract and receive confirmation of appointment of appropriately qualified individuals that the Advisory Committee believes would be suitable candidates to serve as members of the Board of Trustees, the Advisory Committee shall make recommendations regarding such necessary changes, including without limitation in respect of (i) any necessary limitations on the nature or scope of the appointment of the members of the Board of Trustees, (ii) the formation and empowerment of the Board of Trustees, and (iii) the duties, responsibilities,

obligations, liabilities, indemnities, protections, limitations, restrictions, compensation, expense reimbursement entitlements of members of the Board of Trustees.

5. The Advisory Committee shall recommend that the Original Trustee appoint the individuals so identified to become the initial members of the Board of Trustees pursuant to section 5.7 of the Declaration.

6. If any of the individuals recommended under paragraph 4 or under this paragraph are not accepted and appointed by the Original Trustee pursuant to section 5.7 of the Declaration, the Advisory Committee shall forthwith identify and recommend an alternative individual or individuals willing to act and whose presence as a member of the Board of Trustees would result in the Trustee collectively satisfying the criteria in paragraph 3 above.

7. Upon the appointment of six trustees (five voting and one non-voting) pursuant to section 5.7 of the Declaration, the Advisory Committee will be functus.

Document comparison by Workshare Compare on Wednesday, March 22, 2017 4:16:26 PM

Input:	
Document 1 ID	PowerDocs://TOR_2024/12887993/18
Description	TOR_2024-#12887993-v18-Affordability_Fund_Trust_–_Declaration_of_Trust_-_Blakes_Comments_(March_14,_2017)
Document 2 ID	PowerDocs://TOR_2024/12887993/19
Description	TOR_2024-#12887993-v19-Affordability_Fund_Trust_–_Declaration_of_Trust_-_Blakes_Comments_(March_14,_2017)
Rendering set	Standard

Legend:	
Insertion	
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Moved to	
Style change	
Format change	
~~Moved deletion~~	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
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Insertions	52
Deletions	31
Moved from	0
Moved to	0
Style change	0
Format changed	0

Total changes	83

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ONTARIO TRANSFER PAYMENT AGREEMENT

THE AGREEMENT, effective as of the • day of March, 2017 (the **"Effective Date"**)

B E T W E E N :

Her Majesty the Queen in right of Ontario
as represented by the Minister of Energy

(the "Province")

- and -

Computershare Trust Company of Canada, in its capacity as trustee of Affordability Fund Trust

(together with its successors and assigns, the "Recipient" and, together with the Province, the "Parties")

BACKGROUND

Computershare Trust Company of Canada is the original trustee of the Affordability Fund Trust.

The Province wishes to provide Funds to the Recipient to be held, invested, applied and distributed in accordance with the terms of the Declaration of Trust (defined below), in furtherance of the Purpose (as defined in the Declaration of Trust), including having regard to the Principles set forth in Annex A.

CONSIDERATION

In consideration of the mutual covenants and agreements contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is expressly acknowledged, the Parties agree as follows:

ENTIRE AGREEMENT

This agreement (as amended, restated, supplemented or otherwise modified from time to time, the **"Agreement"**), including:

Schedule "A" - General Terms and Conditions
Schedule "B" - Project Specific Information
Schedule "C" - Project - Certain Obligations of the Recipient
Schedule "D" - Budget
Schedule "E" - Payment Plan
Schedule "F" - Reporting
Annex "A" - Principles, and
any amending agreement entered into as provided for below,

constitutes the entire agreement between the Parties with respect to the subject matter contained in this Agreement and supersedes all prior oral or written representations and agreements.

COUNTERPARTS

The Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

AMENDING THE AGREEMENT

The Agreement may only be amended by a written agreement duly executed by the Parties.

ACKNOWLEDGEMENT

The Recipient:

(a) acknowledges that it has read and understands the provisions contained in the entire Agreement; and

(b) agrees to be bound by the terms and conditions contained in the entire Agreement.

IN WITNESS WHEREOF, the Parties have executed the Agreement on the dates set out below.

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO as represented by Minister of Energy

by:

_____ _____

Date Name: Serge Imbrogno

Title: Deputy Minister

Authorized Signing Officer

COMPUTERSHARE TRUST COMPANY OF CANADA, in its capacity as trustee of AFFORDABILITY FUND TRUST

by:

_____ _____

Date Name:

Title:

by:

_____ _____

Date Name:

Title:

I/We have authority to bind the Recipient.

SCHEDULE "A"
GENERAL TERMS AND CONDITIONS

1.0 INTERPRETATION AND DEFINITIONS

1.1 Interpretation. For the purposes of interpretation:

(a) words in the singular include the plural and vice-versa;

(b) words in one gender include all genders;

(c) the headings do not form part of the Agreement; they are for reference only and will not affect the interpretation of the Agreement;

(d) any reference to dollars or currency will be in Canadian dollars and currency;

(e) "include", "includes" and "including" denote that the subsequent list is not exhaustive;

(f) where any reference is made in the Agreement to an act to be performed by or for or on behalf of the Affordability Fund Trust, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Recipient in its capacity as trustee of the Affordability Fund Trust, and, where any reference is made in the Agreement to an act to be performed by or for or on behalf of the Recipient, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Recipient in its capacity as trustee of the Affordability Fund Trust; and

(g) it is intended that the transfer of the Funds to the Recipient will be a transfer made to a "non-controlled trust" (as that term is given meaning in • applicable to the accounting rules and principles applicable to the Province as of the date of the Agreement), and so if a term or condition of the Agreement is determined to conflict with the requirements applicable to the Province recording the transfers to the Recipient of Funds contemplated hereunder as an expense incurred by the Province on the date of the transfer of Funds under the Agreement otherwise in connection with activities undertaken by the Province with such a "non-controlled trust", then such term or condition shall be given a meaning and shall have an effect insofar as it is possible to interpret such term or condition in a manner that eliminates such conflict while preserving the other provisions of the Agreement and furthering the Purpose.

1.2 Definitions. In the Agreement, the following terms will have the following meanings:

"Administrative Services Agent" has the meaning given such term in the Declaration of Trust.

"Affordability Fund Trust" means the trust established and governed by the Declaration of Trust, and for greater certainty includes such trust operating under any other name that may be designated from time to time by the Recipient in accordance with the Declaration of Trust.

"BPSAA" means the Broader Public Sector Accountability Act, 2010 (Ontario).

"**Beneficiary**" has the meaning given to such term in the Declaration of Trust.

"Budget" means the Recipient's budget attached to the Agreement as Schedule "D".

"Business Day" means any working day, Monday to Friday inclusive, excluding statutory and other holidays, namely: New Year's Day; Family Day; Good Friday; Easter Monday; Victoria Day; Canada Day; Civic Holiday; Labour Day; Thanksgiving Day; Remembrance Day; Christmas Day; Boxing Day and any other day on which the Province has elected to be closed for business.

"**Declaration of Trust**" means the declaration of trust made as of March [•], 2017, under which the Affordability Fund Trust was established, as such declaration of trust may be amended, restated, supplemented or otherwise modified from time to time with the consent of the Province in accordance with Section 20.2.

"Expiration Date" means the date on which this Agreement will expire and is the date set out in Schedule "B".

"Funds" means the money the Province provides to the Recipient pursuant to the Agreement.

"Implementation Agents" has the meaning given such term in the Declaration of Trust.

"Maximum Funds" means the maximum amount of Funds that the Province will provide the Recipient under the Agreement, as set out in Schedule "B".

"Notice" means any communication given or required to be given pursuant to the Agreement.

"Party" means either the Province or the Recipient.

"**Person**" includes any individual, sole proprietorship, corporation, partnership, joint venture, association, society, club, board, chamber, joint-stock company, trust, trustee, unincorporated or incorporated organization or entity or government or any entity, agency or political subdivision thereof.

"**Program**" has the meaning given to such term in the Declaration of Trust.

"Project" means the undertaking described in Schedule "C".

"**Purpose**" has the meaning given to such term in the Declaration of Trust.

"PSSDA" means the *Public Sector Salary Disclosure Act, 1996* (Ontario).

"**Recipient**" means, initially, Computershare Trust Company of Canada, and any additional or replacement trustee in its capacity as trustee of the Affordability Fund Trust pursuant to the Declaration of Trust, including the Board of Trustees (as defined in the Declaration of Trust) and each of their respective successors and permitted assigns.

"Reports" means the reports described in Schedule "F".

2.0 REPRESENTATIONS, WARRANTIES AND COVENANTS

2.1 General. The Recipient represents, warrants and covenants that:

(a) it is the trustee of the Affordability Fund Trust; and

(b) the Affordability Fund Trust is, and will continue to be for the term of the Agreement, a trust existing under and governed by the laws of the Province of Ontario.

2.2 Execution of Agreement. The Recipient represents and warrants that it has:

(a) the full power and authority to enter into the Agreement; and

(b) taken all necessary actions to authorize the execution of the Agreement.

2.3 Governance. The Recipient covenants that it will develop and maintain in writing until the Agreement is no longer in effect:

(a) decision-making mechanisms and procedures to enable the Recipient to hold, invest, manage, apply and distribute the Funds in accordance with the Declaration of Trust in furtherance of the Purpose; and

(b) procedures to enable the preparation and delivery of all Reports required pursuant to Article 7.0.

2.4 Supporting Documentation. Upon request, the Recipient will provide the Province with proof of the matters referred to in this Article 2.0.

3.0 TERM OF THE AGREEMENT

3.1 Term. The term of the Agreement will commence on the Effective Date and will expire on the Expiration Date.

3.2 Extension. The term of the Agreement may be extended by further agreement between the Parties.

3.3 Extension of the Declaration of Trust. If the Province determines that an extension of the Final Distribution Date (as defined in the Declaration of Trust) and time for termination of the Declaration of Trust is consistent with and in furtherance of the Purpose and the Province's original intentions and expectations in establishing the Project, the Province may request that the Recipient extend such date to a date specified by the Province in a Notice (such date not to be later than December 31, 2021, whereupon the Recipient, so long as the Recipient does not have a reasonable basis to believe that such an extension would be inconsistent with the Purpose or weaken the protections intended for the benefit of the trustee pursuant to the Declaration of Trust, will undertake such actions as it may consider to be necessary or appropriate to so extend the Declaration of Trust, including by amending the Declaration of Trust to provide for such an extension and to modify any other term or requirement as would be necessary or prudent to conform such term or requirement in light of such extension.

4.0 FUNDS AND CARRYING OUT THE PROJECT

4.1 Funds Provided. The Province will:

(a) provide the Recipient up to the Maximum Funds to be held, invested, applied and distributed in accordance with the terms of the Project and the Declaration of Trust;

(b) provide the Funds to the Recipient in accordance with the Payment Plan attached to the Agreement as Schedule "E"; and

(c) deposit the Funds into an account designated by the Recipient, provided that the account:

(i) resides at a Canadian financial institution; and

(ii) is in the name of the Recipient.

4.2 Timing of Distributions to Beneficiaries. The expectations of the Province regarding when Funds will begin to be distributed by the Recipient to Beneficiaries are set out in Schedule C. The Recipient will have regard to those expectations in the exercise of its discretion under the Declaration of Trust, in determining when Funds will be distributed to Beneficiaries in furtherance of the Purpose.

4.3 Use of Funds and Project. The Recipient will exercise its rights, duties and discretions under the Declaration of Trust so that the Funds are used, applied and distributed only for and in furtherance of the Purpose, including having regard to the Principles set forth in Annex A.

4.4 Province's Role Limited to Providing Funds. For greater clarity, the Province's role under the Agreement is limited to providing Funds to the Recipient and the Province is not responsible for carrying out or overseeing the terms of the Declaration of Trust.

4.5 Maximum Funds. The Recipient acknowledges that the Funds available to it pursuant to the Agreement will not exceed the Maximum Funds.

4.6 Funding, Not Procurement. For greater clarity, the Recipient acknowledges that:

(a) it is receiving funding from the Province for the Project and is not providing goods or services to the Province; and

(b) the funding the Province is providing under the Agreement is funding for the purposes of the PSSDA.

5.0 RECIPIENT'S ACQUISITION OF GOODS OR SERVICES, AND DISPOSAL OF ASSETS

5.1 Acquisition. If the Recipient acquires goods, services, or both with or by applying the proceeds of the Funds, it is expected to do so through a process that promotes the best value for money and to take reasonable steps to ensure that its Administrative Services Agents and Implementation Agents also follow a process that promotes the best value for money when acquiring goods and services with or by applying the proceeds of the Funds. In this regard, it is expected that the Recipient will have regard the following procurement principles:

(a) ***Accountability*** - Procurement is conducted in a manner that is well-informed and reflects rules of good governance and decision-making.

(b) ***Geographic Neutrality and Reciprocal Non-Discrimination*** - Procurement should not differentiate between competing goods, services, or suppliers based on their geographic origin or location.

(c) ***Responsible Management*** - Procurement of goods and services should be responsibly, efficiently and effectively managed and should observe the highest standard of ethics, avoiding conflict of interest.

(d) ***Value for Money*** - Procurement processes should apply a value for money evaluation that takes into account price as well as other costs and benefits, including life cycle costs and relevant non-price attributes such as quality.

(e) ***Vendor Access, Transparency, and Fairness*** - Procurement is conducted in a fair and transparent manner, offering all qualified suppliers equal treatment and open access to compete for the opportunity to supply goods and services.

6.0 CONFLICT OF INTEREST

6.1 No Conflict of Interest. Except as expressly permitted by the Declaration of Trust, the Recipient is expected to implement appropriate processes and control to ensure that the Program and the use, application and distribution of the Funds are without an actual, potential or perceived conflict of interest.

6.2 Conflict of Interest Includes. For the purposes of this Article, a conflict of interest includes any circumstances where, except as expressly permitted by the Declaration of Trust:

(a) the Recipient; or

(b) any person who has the capacity to influence the Recipient's decisions,

has outside commitments, relationships or financial interests that could, or could be seen to, interfere with the Recipient's objective, unbiased and impartial judgment relating to the Project, or the Recipient's use, application or distribution of the Funds, or both.

7.0 REPORTING, ACCOUNTING AND REVIEW

7.1 Preparation and Submission. The Recipient will cooperate with the Province to accommodate the Province's on-going information and reporting objectives in order to enable the Province to be aware of the Recipient's activities in furtherance of the Purpose, and to that end the Recipient will be expected, from and following the Original Trustee Replacement Date, to:

(a) submit to the Province at the address referred to in Schedule "B", all Reports in accordance with the timelines and content requirements set out in Schedule "F", or in a form as specified by the Province from time to time, acting reasonably;

(b) submit to the Province at the address referred to in Schedule "B", any other reports as may be reasonably requested by the Province from time to time in accordance with the timelines and content expectations identified by the Province, acting reasonably;

(c) undertake diligent efforts so that such Reports and any such other reports are complete and accurate in all material respects; and

(d) have an authorized signatory of the Recipient sign-off on such Reports and other reports.

7.2 Record Maintenance. The Recipient will keep and maintain financial and other records necessary to permit it to satisfy its obligations under section 7.1 and to permit the Province to exercise its rights under section 7.3.

7.3 Inspection. The Province, its authorized representatives or an independent auditor identified by the Province may, at its own expense, upon twenty-four hours' Notice to the Recipient and during normal business hours, inspect the records of and information respecting the Recipient to confirm its compliance with the terms of this Agreement, including to ensure consistency with the Purpose and, for these purposes, the Province, its authorized representatives or an independent auditor identified by the Province may take one or more of the following actions:

(a) inspect and copy the records and documents referred to in section 7.2;

(b) keep any copies made pursuant to section 7.3(a); and

(c) conduct an audit or investigation of the Recipient in respect of the expenditure of the Funds to confirm that the Funds have been used, applied and distributed for and in furtherance of the Purpose, including a review of the Recipient's processes, records, documents, as well as the processes and controls applied to obtain assurance that Funds disbursed to Electricity Distributors were used, applied and distributed for and in furtherance of the Purpose.

7.4 Disclosure. To assist in respect of the rights set out in section 7.3, the Recipient will disclose any information requested by the Province, its authorized representatives or an independent auditor identified by the Province, and will do so in the form requested by the Province, its authorized representatives or an independent auditor identified by the Province, as the case may be.

7.5 No Control of Records. No provision of the Agreement will be construed so as to give the Province any control whatsoever over the Recipient's records.

7.6 Auditor General. For greater certainty, the Province's rights under this Article are in addition to and do not limit any rights provided to the Auditor General pursuant to section 9.1 of the *Auditor General Act* (Ontario).

8.0 COMMUNICATIONS REQUIREMENTS

8.1 Publication. The Recipient will acknowledge, in any of its Program-related external communications and marketing whether written, oral, or visual, the financial support of the Province in connection with the establishment and funding of the program, while noting that the

views expressed in the publication are the views of the Recipient and do not necessarily reflect those of the Province.

9.0 FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY

9.1 FIPPA. The Recipient acknowledges that the Province is bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province in connection with the Project or otherwise in connection with the Agreement may be subject to disclosure in accordance with that Act.

10.0 Intentionally Deleted

11.0 EVENT OF DEFAULT, CORRECTIVE ACTION AND TERMINATION FOR DEFAULT

11.1 Events of Default. An Event of Default will occur if:

(a) the Recipient fails to perform or observe any covenant in this Agreement and such failure has and continues to have a material adverse effect on the Province and remains unremedied during any Notice period applicable under section 11.2 after the earlier of (i) actual knowledge thereof by the Recipient, or (ii) receipt by the Recipient of Notice thereof from the Province;

(b) any representation or warranty made by the Recipient in the Agreement shall prove to have been incorrect in any material respect when made or deemed made, and, if capable of remedy, continues to be incorrect in any material respect during any Notice period applicable under section 11.2 after the earlier to occur of (i) the actual knowledge thereof by the Recipient or (ii) receipt by the Recipient of Notice thereof from the Province;

(c) it is determined that the Recipient has breached its Standard of Care (within the meaning given in and context of the Declaration of Trust) in discharging its material duties under the Declaration of Trust, with the result that all or a significant part of the Funds have not been or are not being applied in furtherance of the Purpose or are being applied in a manner that is directly contrary or without regard to the Purpose, and, if such breach is capable of remedy, it continues and remains unremedied during any Notice Period applicable under section 11.2 after the earlier of (i) actual knowledge thereof by the Recipient, or (ii) receipt by the Recipient of Notice thereof from the Province;

(d) an insolvency event shall have occurred and be continuing with respect to the Recipient.

11.2 Consequences of Events of Default and Corrective Action. If an Event of Default occurs, the Province may, at any time, take one or more of the following actions:

(a) provide the Recipient with Notice allowing the Recipient an opportunity to remedy the Event of Default during a specified Notice Period;

(b) seek an order of specific performance, including an order that the Recipient pursue its available remedies against third parties;

(c) require, by Notice of demand, that the Recipient transfer to the Province (without any need for compensation, indemnity or consideration to the Recipient or any Beneficiary or other third party) any and all Assets remaining in the possession or under the control of the Recipient that can reasonably be traced or attributed to the Funds after first providing for the completion and performance by the Recipient of any unperformed contractual obligations of the Recipient undertaken in compliance with the Declaration of Trust on or prior to transfer; and

(d) terminate the Agreement, including immediately, without liability, penalty or costs to the Province upon giving Notice to the Recipient.

The transfer of Funds in accordance with the Agreement is made by the Province with the expressed intention and reservation that the transferred Funds shall be returned to the Province and the entitlements of the Recipient in remaining Funds shall thereby be revoked with reversion thereof to the Province in the circumstances contemplated in Section 11.2(c).

11.3 Opportunity to Remedy. If, in accordance with section 11.2, the Province provides the Recipient with an opportunity to remedy the Event of Default, the Province will provide Notice to the Recipient of:

(a) the particulars of the Event of Default; and

(b) the length of time within which the Recipient may cure such Event of Default without the Province pursuing any other remedy (the "Notice Period").

11.4 Recipient not Remedying. If the Province has provided the Recipient with an opportunity to remedy the Event of Default pursuant to section 11.2(a), and:

(a) the Recipient does not remedy the Event of Default within the Notice Period;

(b) it becomes apparent to the Province that the Recipient cannot adequately remedy the Event of Default within the Notice Period; or

(c) the Recipient is not proceeding to remedy the Event of Default in a way that is satisfactory to the Province,

the Province may extend any Notice Period, or initiate any one or more of the actions provided for in section 11.2.

12.0 REPAYMENT

12.1 Debt Due. If, pursuant to the Agreement: the Province demands the payment of any Funds from the Recipient pursuant to section 11.2(c) such Funds or other amount will be deemed to be a debt due and owing to the Province by the Recipient, and the Recipient will pay or return the amount to the Province immediately, unless the Province directs otherwise.

12.2 Payment of Money to Province. The Recipient will pay any money owing to the Province by cheque payable to the "Ontario Minister of Finance" and delivered to the Province at the address referred to in Schedule "B".

12.3 Failure to Repay. Without limiting the application of section 43 of the Financial Administration Act (Ontario), if the Recipient fails to repay any amount owing under the Agreement, Her Majesty the Queen in right of Ontario may deduct any unpaid amount from any money payable to the Recipient by Her Majesty the Queen in right of Ontario.

13.0 NOTICE

13.1 Notice in Writing and Addressed. Notice will be in writing and will be delivered by email, postage-prepaid mail, personal delivery or fax, and will be addressed to the Province and the Recipient respectively as set out in Schedule "B", or as either Party later designates to the other by Notice.

13.2 Notice Given. Notice will be deemed to have been given:

(a) in the case of postage-prepaid mail, five Business Days after the Notice is mailed; or

(b) in the case of email, personal delivery or fax, one Business Day after the Notice is delivered.

13.3 Postal Disruption. Despite section 13.2(a), in the event of a postal disruption:

(a) Notice by postage-prepaid mail will not be deemed to be received; and

(b) the Party giving Notice will provide Notice by email, personal delivery or by fax.

14.0 SEVERABILITY OF PROVISIONS

14.1 Invalidity or Unenforceability of Any Provision. The invalidity or unenforceability of any provision of the Agreement will not affect the validity or enforceability of any other provision of the Agreement. Any invalid or unenforceable provision will be deemed to be severed.

15.0 WAIVER

15.1 Waivers in Writing. If a Party fails to comply with any term of the Agreement, that Party may only rely on a waiver of the other Party if the other Party has provided a written waiver in accordance with the Notice provisions in Article 13.0. Any waiver must refer to a specific failure to comply and will not have the effect of waiving any subsequent failures to comply.

16.0 INDEPENDENT PARTIES

16.1 Parties Independent. The Recipient acknowledges that it is not an agent, joint venturer, partner or employee of the Province, and the Recipient will not represent itself in any way that might be taken by a reasonable person to suggest that it is, or take any actions that could establish or imply such a relationship.

17.0 ASSIGNMENT OF AGREEMENT OR FUNDS

17.1 Agreement Binding. All rights and obligations contained in the Agreement will extend to and be binding on the Parties' respective heirs, executors, administrators, successors and permitted assigns.

18.0 LIMITATION OF LIABILITY

18.1 This Agreement has been entered into by the Recipient solely in its capacity as trustee of the Affordability Fund Trust and is not binding on the Recipient in any other capacity, whether in tort, contract or otherwise. The Beneficiaries of the Affordability Fund Trust are not subject to any liability in respect of the Affordability Fund Trust. Resort may not be had to, nor recourse or satisfaction be sought from, the private property of the Recipient (whether owned by it in its personal capacity or in any other capacity other than in its capacity as trustee of the Affordability Fund Trust), its directors, officers, employees, or agents, or the private property of any Beneficiary, and resort will be had solely to the property of the Recipient held in trust for the payment, performance or satisfaction of any liability or obligation of the Recipient under this Agreement. However, the foregoing limitations in this section shall not apply where the Recipient has demonstrated gross negligence, bad faith, fraud or wilful misconduct.

19.0 GOVERNING LAW

19.1 Governing Law. The Agreement and the rights, obligations and relations of the Parties will be governed by and construed in accordance with the laws of the Province of Ontario and the applicable federal laws of Canada. Any actions or proceedings arising in connection with the Agreement will be conducted in the courts of Ontario, which will have exclusive jurisdiction over such proceedings.

20.0 FURTHER ASSURANCES

20.1 Agreement into Effect. The Recipient will provide such further assurances as the Province may request from time to time with respect to any matter to which the Agreement pertains, and will otherwise do or cause to be done all acts or things necessary to implement and carry into effect the terms and conditions of the Agreement to their full extent.

20.2 Declaration of Trust. The Recipient covenants that it shall not amend, restate or terminate the

Declaration of Trust without obtaining the written consent of the Province in respect of same, such consent not to be unreasonably withheld or delayed.

21.0 JOINT AND SEVERAL LIABILITY

21.1 Joint and Several Liability. Without limiting and subject to section 18.1 and the Declaration of Trust, if the Recipient is comprised of more than one entity, all such entities will be jointly and severally liable to the Province for the fulfillment of the obligations of the Recipient under the Agreement.

22.0 RIGHTS AND REMEDIES CUMULATIVE

22.1 Rights and Remedies Cumulative. The rights and remedies of the Province under the Agreement are cumulative and are in addition to, and not in substitution for, any of its rights and remedies provided by law or in equity.

23.0 ACKNOWLEDGEMENT OF OTHER LEGISLATION AND DIRECTIVES

23.1 Recipient Acknowledges. The Recipient acknowledges that by receiving Funds it may become subject to legislation applicable to organizations that receive funding from the Government of Ontario, including the BPSAA, the PSSDA, and the *Auditor General Act* (Ontario).

24.0 SURVIVAL

24.1 Survival. The following Articles and sections, and all applicable cross-referenced sections and schedules, will continue in full force and effect for a period of seven years from the date of expiry or termination of the Agreement: Article 1.0 and any other applicable definitions, section, 4.5, section 7.1 (to the extent that the Recipient has not provided the Reports to the satisfaction of the Province), sections 7.2, 7.3, 7.4, 7.5, 7.6, Article 8.0, Article 12.0, Article 14.0, Article 16.0, Article 17.0, Article 19.0, Article 21.0, Article 23.0 and Article 24.0.

- END OF GENERAL TERMS AND CONDITIONS -

SCHEDULE "B"

PROJECT SPECIFIC INFORMATION

Maximum Funds	$100 million
Expiration Date	The date upon which the Affordability Fund Trust is terminated in accordance with the Declaration of Trust
Contact information for the purposes of Notice to the Province	**Attention: Usman Syed** **Position: Director** **Address: 77 Grenville St, Toronto, Ontario, M7A 2C1** **Fax: 416-325-6651** **Email: Usman.Syed@ontario.ca**
Contact information for the purposes of Notice to the Recipient	**Attention:** **Position:** **Address:** **Email:**
Contact information for the senior financial person in the Recipient organization (e.g., CFO, CAO) – to respond as required to requests from the Province related to the Agreement	**Attention:** **Position:** **Address:** **Email:**

SCHEDULE "C"

PROJECT

For the purposes of this Agreement, the "Project" is the distribution of the Funds in accordance with the Declaration of Trust.

It is intended the Project will be undertaken by the Recipient in furtherance of the Purpose and in accordance with the Declaration of Trust. In this regard, it is expected that the Recipient will undertake the Program having regard to the Budget and the Principles set forth in Annex A.

The following are the Province's expectations regarding the circumstances in which the Recipient will begin to distribute any Funds to any Beneficiary.

1. The Original Trustee Replacement Date (as defined in the Declaration of Trust) will have occurred.

2. An Administrative Services Agreement (as defined in the Declaration of Trust) will have been entered into between the Recipient and Hydro One Limited under which Hydro One Limited shall provide specified administrative and other services on behalf of the Recipient.

3. Administrative procedures will have been developed and implemented under which Electricity Distributors (as defined in the Declaration of Trust) will be invited to assist with (a) the identification and selection of Primary Beneficiaries under the Declaration of Trust, (b) the determination of the amount of Funds to be distributed to particular Primary Beneficiaries, and (c) the distribution of Funds to or for the benefit of such Primary Beneficiaries (in each case substantially on the basis contemplated in the Permitted Delegations Annex).

4. The Recipient will have obtained commercial general liability insurance from insurers having a secure A.M. Best rating of B+ or greater, or the equivalent, that in the opinion of the Recipient a prudent person similar to the Recipient would maintain, and having an inclusive limit of not less than $2,000,000 per occurrence and providing for contractual liability coverage. If requested, the Recipient will provide the Province (for its information purposes) with copies of the certificates of insurance and policies for such insurance coverage.

The Province recognizes that the foregoing may involve the Recipient entering into agreements as the Recipient considers to be necessary or expedient, including any required amendment or amendment and restatement of the Declaration of Trust. Funds may be expended to pay the expenses of the Recipient in completing these matters. The Recipient is requested to advise the Province through its quarterly reports on the status of the foregoing.

SCHEDULE "D"

Recipient's Budget

1. It is expected that the administrative expenses of the Recipient, including any administrative expenses of any Administrative Services Agents or any Implementation Agents or any other agents retained by the Recipient, relating to the establishment of the Affordability Fund Trust and satisfying the Requirements (as defined in Schedule "C") and any expenses related to the operation of the Affordability Fund Trust and the execution of the Project (including any reimbursable expenses incurred by any Administrative Services Agent or any Implementation Agent (as such terms are defined in the Declaration of Trust)), will be no greater than 10 percent of the total Project budget.

2. The only expenditures incurred by the Recipient that are eligible for reimbursement are actual (excluding HST) administrative overhead expenses incurred by or on behalf of the Recipient that directly related to the Recipient or the establishment of the Affordability Fund Trust.

4. Any expenses that have been or may be reimbursed by other parties should not be reimbursed from the assets of the Affordability Fund Trust.

5. It is expected any travel, meals and hospitality expenses by the Recipient will be consistent with the Province's Travel, Meal and Hospitality Expenses Directive. For purposes of funding entities receiving funding from the Recipient, the following would not be considered eligible claims:

    - Alcohol
    - First-Class travel
    - Meals, snacks and beverages
    - Gratuities
    - Laundry or dry cleaning
    - Valet services
    - Dependent care
    - Home management
    - Personal telephone calls

6. In the event that the Recipient performs any procurements, it is expected that all procurements will reflect the principles of Ontario's Public Service Procurement Directive.

SCHEDULE “E”

PAYMENT PLAN

PAYMENT DATE	MAXIMUM FUNDS TO BE DISBURSED BY THE PROVINCE
Within 7 days of signing the Agreement	$ 100,000,000

SCHEDULE "F"

REPORTING

From and following the Original Trustee Replacement Date, Reports will be quarterly on the basis of the government's fiscal year starting at the execution of this Agreement and continuing until conclusion of the Agreement. Annual Reports will be on a fiscal basis starting at the execution of this Agreement and continuing until conclusion of the Agreement. Quarterly Reports and Annual Reports would be expected to be submitted to the Province within one month following the end of the reporting period that they represent. The Province expects that these Reports would be prepared to demonstrate the impact of the Province's funding and address the following:

- Quarterly Reports would include a report back on the trustee-developed performance management criteria. Initially, such Quarterly Reports would include details respecting:
    - Amounts disbursed by the Recipient in the previous quarter. It is expected that this information would be provided at the Electricity Distributor level and in the aggregate.
    - Total Affordability Fund investment income earned and accrued to date.
    - Key activities and achievements from the quarter, including the number of participant households per Electricity Distributor, average participant incentive cost per Electricity Distributor, and uptake of energy efficiency measures per Electricity Distributor.
    - Any challenges or modifications to the application, funding, or eligibility processes/rules of the Recipient.
    - Key activities planned for the upcoming quarter.
    - Details of any situation that a reasonable person might interpret as an actual, potential or perceived conflict of interest.
- Annual Reports would include a report back on the trustee-developed performance management criteria. Initially, such Annual Report would include details respecting:
    - A description of an Electricity Distributor's application process and the criteria used by the Recipient to distribute funds.
    - Any challenges identified by the Recipient or any Administrative Services Agent in achieving the Purpose and proposed solutions, if applicable.
    - Lesson learned.
    - Electricity Distributor and customer feedback.
    - Amounts distributed to Beneficiaries or otherwise disbursed by the Recipient in the previous year. It is expected that this information will be provided by each Electricity Distributor.
    - Key activities and achievements from each quarter being reported, including number of participant households per Electricity Distributor, average participant incentive cost per Electricity Distributor, and uptake of energy efficiency measures per Electricity Distributor.
    - Total Affordability Fund interest earned and accrued to date.

    As part of an Annual Report, the Recipient would also provide the Province with an audited financial statement for the previous year.

ANNEX A

Principles

The Trustee shall have regard to, but shall not be specifically bound by, the following principles in applying its discretion in relation to the administration of the Trust:

4. Identification of Primary Beneficiary Payees

4.1 Except in exceptional circumstances, a Primary Beneficiary would not be expected to receive a benefit from the Trust unless at the time of consideration it satisfies, in addition to the requirements contemplated in the definition of "Primary Beneficiary", each of the following criteria (the "**Selection Factors**"):

(i) it has a participant agreement with an applicable Electricity Distributor to undertake measures (its "**Energy Plan**") to improve the electricity efficiency and/or promote the conservation of electricity at its Ontario residence;

(ii) its Energy Plan involves one or more Eligible Measures, as may be designated by the Trustee from time to time from;

(iii) it confirms that:

1. the primary purpose of its Energy Plan is the conservation and efficient use by the Primary Beneficiary of electricity, and is not for the purposes of the Primary Beneficiary making a profit;

2. it would otherwise not have the financial resources to undertake the Eligible Measures included in its Energy Plan; and

3. it would otherwise not be eligible to receive amounts in respect of the Eligible Measures as a HAP Eligible Person;

(iv) it has demonstrated a need for financial assistance on the basis that its periodic electricity bills represent a financial burden, relative to its available financial resources; and

(v) such other criteria as the Trustee may determine, including based on the recommendations of Electricity Distributors or other knowledgeable Persons made on the basis and having regard to the delegations contemplated by the Permitted Delegations Annex or any applicable Implementation Agreement.

4.2 It is recognized that, in furthering the Purpose, an efficient basis upon which to allocate funds to the Primary Beneficiaries across different areas and regions within Ontario may be based on the areas and regions serviced by the Electricity Distributors operating within Ontario.

4.3 It would not be contrary to the Purposes if funds are made available by the Trustee to the Primary Beneficiaries unequally across different areas and regions within Ontario, and it is expected that in making such an unequal division it would be appropriate to have regard to:

(i) broad economic parameters of economic activity and the specific financial resources of the residents of the areas and regions, in each case as an indication of the relative need of such residents across the areas and regions;

(ii) electricity use and efficiency levels of residential electricity customers across the areas and regions;

(iii) specific regional indicators of economic weakness and need; and

(iv) such other factors as the Trustee may determine are relevant, including based on the submissions, advice and recommendations of Electricity Distributors or other knowledgeable Persons made on the basis and having regard to the delegations contemplated by the Permitted Delegations Annex or any applicable implementation Agreement.

4.4 It is recognized that, in furthering the Purpose, the designated Electricity Distributor for an area or region in which a Primary Beneficiary resides would be expected to:

(i) be a reliable source for the purpose of assessing and confirming whether the Primary Beneficiary satisfies the Selection Factors;

(ii) be an efficient intermediary for the purpose of communicating with the Primary Beneficiary, including with respect to matters such as regarding the availability, terms, conditions and intended purposes of Program;

(iii) be able to facilitate an efficient payment of distribution determined to be made to or on behalf of the Primary Beneficiary, having regard to the Electricity Distributor's established practices, procedures and systems for dealing with its customers; and

(iv) have established contractual arrangements with the Primary Beneficiary that may apply to the protection and confidentiality of information provided by or respecting the Primary Beneficiary, which information may be useful in the consideration by the Electricity Distributor in its assessment of whether the Primary Beneficiary satisfies the Selection Factors, which information may not otherwise be available or readily accessible or verifiable by the Trustee.

4.5 It is recognized that, in furthering the Purpose, the Electricity Distributor for an area or region in which a Primary Beneficiary resides will have market and utilization information that may be useful in assessing the relative needs of Primary Beneficiaries within its area or region. Such information is expected to be relevant in assessing the extent to which one such Primary Beneficiary's financial needs and the merits of its Energy Plan are greater or more compelling than those of another such Primary Beneficiary, which comparison may be relevant to the extent that the funds allocable to the Primary Beneficiaries resident in the area or region are otherwise insufficient to meet the requests for funding by all such Primary Beneficiaries.

4.6 Accordingly, it is recognized that, in furthering the Purpose, it is consistent with the Purpose that the recommendations of Electricity Distributors be utilized and relied upon by the Trustee to guide the process of identifying particular Primary Beneficiaries in making distributions to the Primary Beneficiaries.

4.7 If an Electricity Distributor for a particular area or region is unable or unwilling to assess or confirm the application of the Selection Factors to Primary Beneficiaries residing in the area or region or to make recommendations in relation to such matters, one or more of the following may provide a suitable alternative source of information and for information gathering, assessment and confirmation purposes in relation to such area or region:

(i) other Electricity Distributors operating in adjacent or other areas or regions in Ontario;

(ii) the Ontario Energy Board;

(iii) the Independent Electricity System Operator; and

(iv) anyone else having relevant expertise and access to information regarding the electricity market of the Province, in each case as may be considered relevant by the Trustee.

4.8 To the extent that privacy law or other legal requirements limit an Electricity Distributor from providing or making available specific information respecting the application of the Selection Factors to a particular Primary Beneficiary or group of Primary Beneficiaries, it is recognized that, in furthering the Purpose, it may be appropriate to redact or make generic affected information regarding such Primary Beneficiary in connection with the identification and confirmation of a Primary Beneficiary's eligibility and participation in the Program. If such limitations or restrictions would limit an Electricity Distributor from providing or confirming the name of a particular Primary Beneficiary to the Trustee, then it should be sufficient that such information may be obtained or disseminated on a confidential basis if and when required by the Trustee for the proper administration of the Trust and on that basis such impediments should not disqualify a Primary Beneficiary from participating in the benefits of the Program, provided that the confidential record-keeping of the Electricity Distributor would be available in connection with the application of any applicable legal process predicated on the identification of such Primary Beneficiary for the purposes of substantiating its rights as a Primary Beneficiary of the Trust or as to the validity or subsistence of the Trust.

5. Eligible Measures

5.1 It is expected that the Trust will identify eligible measures that, taking into consideration the principles set forth in the Principles Annex, have regard to the following (the "**Measures Factors**"):

(i) is the measure generally expected to result in reduced electricity consumption by a Primary Beneficiary if properly installed and used;

(ii) is the measure recognized under another Provincial program as being appropriate for achieving electricity conservation among a population analogous to the Primary Beneficiaries;

(iii) does the measure present any unacceptable health or safety considerations, either with respect to the Primary Beneficiary, a party providing or installing the measure, or the physical environment;

(iv) is the measure broadly available to residents across different areas and regions of the Province; or

(v) is the measure a requirement or precursor to another measure, the other measure being one which meets any of the other Measures Factors.

5.2 In identifying and applying the Measures Factors, Electricity Distributors would be expected to have expertise in assessing the suitability of efficiency and conservation measures in their respective areas and regions, which may differ across areas and regions across the Province based on factors (among other things) such as the climate, geography, density, electricity infrastructure, residential structures, and electricity use rates applicable within such areas or regions.

5.3 The measures specified in Schedule A to this Principles Annex may initially be considered to be consistent with the Measures Factors (subject to change as contemplated under the Permitted Delegations Annex).

6. Promotion of the Program

6.1 It is expected that the Trustee will undertake or engage others to undertake diligent efforts to promote the availability, terms and benefits of the Program to Primary Beneficiaries, including by establishing consistent communications through the Electricity Distributors.

6.2 It is expected that the Trustee will acknowledge the financial support of the Province in connection with the establishment and the funding for the Program, including in any external communications to or marketing directed at the Electricity Distributors and the Primary and Residual Beneficiaries. In its delegation of any duties or powers to the Electricity Distributors through Implementation Agreements it is expected that Electricity Distributors will acknowledge the financial support of the Province in connection with the program including in any communications or marketing to Primary Beneficiaries.

7. Conduct of the Trust and the Program

7.1 It is expected that administrative expenses of the Board of Trustees and its members, including any expenses relating to the Trust, to the establishment of the Trust and any expenses related to the implementation and operation of the Program, including by or through Electricity Distributors and other relevant entities, will be recognized and subject to reimbursement on a basis that is substantially consistent with the accountability provisions contemplated in the Transfer Payment Agreement and the principles in the Province's Travel, Meal and Hospitality Expenses Directive, as set out in Schedule B to this Principles Annex.

7.2 The Trustee is expected to conduct its activities in a manner that complies in all material respects with the Transfer Payment Agreement, including to:

(i) act prudently and in furtherance of the Purpose;

(ii) report not less frequently than annually the results of its activities for information purposes to the Province in connection with the Program;

(iii) comply with the Province's request for any independent verification or audit if determined to be necessary or appropriate by the Province;

(iv) return Assets that have not been distributed if it is determined that the Trustee has breached its Standard of Care in discharging its material duties under the Declaration, and has not cured such material breach despite having been given a reasonable opportunity by the Province to do so in light of the circumstances of such material breach, with the result that all or a significant part of the Assets have not been or are not being applied and distributed in furtherance of the Purpose or are being applied and distributed in a manner that is directly contrary or without regard to the Purpose.

7.3 Electricity Distributors are not intended to directly profit from distributions of funds made from the Trust, although it is recognized that the objectives of electricity efficiency and conservation of Primary Beneficiaries located in the service area or region of an Electricity Distributor, and the cost savings and improved credit worthiness of such Primary Beneficiaries, may be financially beneficial to the Electricity Distributor.

7.4 Distributions from the Trust are intended to allow receiving Primary Beneficiaries to undertake Eligible Measures at no or minimal personal cost.

7.5 Without in any way limiting the discretion of the Board of Trustees to extend the period during which the benefits of the Program may be available to the Primary Beneficiaries, up to and including the Final Distribution Date, it is expected that the Trust Assets would be distributed to

Primary Beneficiaries during the period from the Original Trustee Replacement Date to April 30, 2019.

SCHEDULE A TO THE PRINCIPLES ANNEX
INDICATIVE ELIGIBLE MEASURES[1]

Initial Specified Measures
Block Heater Timer (just timer) – rated for outdoor use, have at least a 15 amp/1800 watt capacity, be cold weather resistant, bear a C-UL or CSA certification mark
Power bar with integrated timer, and switched power outlets, four each for a total of 8 outlets, have a total capacity of 15 amps. The switched outlets must remain "live", independent of timer settings, so long as the power bar itself remains switched on. The power bar must bear either a C-UL or CSA certification mark.
Efficient Showerheads (standard) - rated at no more than 4.8 Lpm (1.25 U.S. gpm) and be of the laminar flow type (non-aerating).
Efficient Showerhead (handheld) - rated at no more than 4.8 Lpm (1.25 U.S. gpm) and be of the laminar flow type (non-aerating).
Efficient Aerators (kitchen) - rated no more than 5.7 Lpm (1.5 U.S. gpm), dual threaded to allow installation in both thread type faucets, swivel type with pause lever.
Efficient Aerators (bathroom) - rated no more than 3.8 Lpm (1.0 U.S. gpm), be dual threaded to allow installation in both thread type faucets.
Hot Water Tank Pipe Insulation - $^{1}/_{2}$" inside diameter – foam, meets ASTM –C547-00, minimum $^{3}/_{4}$" thick
Hot Water Tank Pipe Insulation - $^{3}/_{4}$ " inside diameter - – foam, meets ASTM –C547-00, minimum $^{3}/_{4}$" thick
Hot Water Tank Insulation - fibreglass R10 (fits up to a 60 gal tank) – not bubble wrap
≤11W ENERGY STAR® Qualified LED A Shape (60W) (minimum 600 Lumen output) (Formerly: 7W – 11W ENERGY STAR® Qualified LED A Shape (60W))

[1] These measures are indicative. Eligible measures added to HAP during the administration of the Trust may also be appropriately considered relevant by the Trustee.

Initial Specified Measures
≤14W ENERGY STAR® Qualified LED A Shape (75W) (minimum 800 Lumen output) (Formerly: 10W – 14W ENERGY STAR® Qualified LED A Shape (75W))
≤23W ENERGY STAR® Qualified LED A Shape (100W) (minimum 1600 Lumen output) (Formerly:17W – 23W ENERGY STAR® Qualified LED A Shape (100W))
≤16W ENERGY STAR® Qualified LED PAR 20 (minimum 600 Lumen output) (Formerly: 8W – 12W ENERGY STAR® Qualified LED PAR 20)
≤16W ENERGY STAR® Qualified LED PAR30 & PAR38 (minimum 600 Lumen output) (Formerly: 8W – 12W ENERGY STAR® Qualified LED PAR 30)
≤23W ENERGY STAR® Qualified LED PAR (minimum 1100 Lumen output) (Formerly: 14W – 18W ENERGY STAR® Qualified LED PAR 38)
≤6W ENERGY STAR® Qualified LED MR 16 / PAR 16 (minimum 250 Lumen output) (Formerly: 7W – 10W ENERGY STAR®
Qualified LED MR 16 / PAR 16 - GU 10 Base)
≤11W ENERGY STAR® Qualified LED MR 16 (minimum 400 Lumen output) (Formerly: 7W – 12W ENERGY STAR® Qualified LED MR 16 GU 5.3 Base)
ENERGY STAR® LED Wet Location Rated PAR lamp ≤ 23 Watt (minimum 1100 Lumen output)
Recessed Downlight Fixture including LED with Light Output >600 and <800 lumens (Retrofit Measure List)
Recessed Downlight Fixture including LED with Light Output >800 lumens (Retrofit Measure List)
Indoor Drying Rack

Extended Measures
Replace refrigerator with ENERGY STAR qualified refrigerator - 15.5 - 16.9 cubic foot top freezer, automatic defrost, refrigerator/ freezer, no through the door ice service
Replace refrigerator with ENERGY STAR qualified refrigerator - 17.0 - 18.4 cubic foot top freezer, automatic defrost, refrigerator/ freezer, no through the door ice service
Replace refrigerator with a refrigerator that has a consumption level of less than 425 kwh, 10 – 12.5 cubic foot top freezer, automatic defrost, refrigerator freezer, no through the door ice service
Replace freezer with ENERGY STAR qualified freezer - 12-14.4 cubic foot freezer
Replace freezer with ENERGY STAR qualified freezer - 14.5 - 16.0 cubic foot freezer
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 6,000 – 7,999 BTU/hr with C-UL or CSA certification mark
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 8,000 – 9,999 BTU/hr with C-UL or CSA certification mark
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 10,000 – 12,000 BTU/hr with C-UL or CSA certification mark
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 14.2 - 21.2 l/day (30-44.9 pints/day) dehumidifier
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 21.3 - 25.4 l/day (45-53.9 pints/day) dehumidifier
Extended Measures
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 25.5 - 35.5 l/day (54-75 pints/day) dehumidifier
Programmable Thermostat – line voltage – meets CAN/CSA-C828-06 standard, minimum performance: Droop: 1.5°C, Differential: 0.5°C, Precision 0% within 0.5°C of the original set point of 22°C
Programmable Thermostat – low voltage - meets CAN/CSA-C828-06 standard, minimum performance: Droop: 1.5°C, Differential: 0.5°C, Precision 0% within 0.5°C of the original set point of 22°C

Weatherization Measures
Comprehensive Draftproofing (caulking, foam and weather stripping, and application of same) – lifespan of 20 years plus If one or two component polyurethane foams are used, the products and installations must conform to: • CAN/ULC-S710.1 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 1: Material Specification. • CAN/ULC-S710.2 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 2: Application. • CAN/ULC-S711.1 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification • CAN/ULC-S711.2 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification, and Part 2: Application. **Attic Insulation (including installation):**
cellulose: CAN/ULC-S703-01 Amendment 1 - Cellulose Fibre Insulation (CFI) for Buildings OR 2) Mineral Fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre

Weatherization Measures
for Buildings **Wall Insulation (including installation):**
cellulose: CAN/ULC-S703-01 Amendment 1 - Cellulose Fibre Insulation (CFI) for Buildings OR 2) Mineral Fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre **Basement Insulation (including installation):**
mineral fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre for Buildings Vapour Barrier: 69009-CAN/CGSB-51.34-m86 If one or two component polyurethane foams are used, the products and installations must conform to: • CAN/ULC-S710.1 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 1: Material Specification. • CAN/ULC-S710.2 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 2: Application. • CAN/ULC-S711.1 Standard for Thermal Insulation – Bead Applied Two-Component
Polyurethane Air Sealant Foam, Part 1: Material Specification • CAN/ULC-S711.2 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification, and Part 2: Application.

Heat Pumps
(Selection of manufacturers and technologies to meet the US federal minimum efficiency standard for ASHPs, as of 2015, is 13.0 SEER and 7.7 HSPF. Energy Star–certified models offer roughly 9 percent more efficiency than most new uncertified ASHPs and 20 percent more efficiency than existing models
Ductless Multiport Heat Pump
Cold Climate Ductless Heat Pump
Cold Climate Multiport Ductless Heat Pump
Cold Climate Ducted Heat Pump

SCHEDULE B TO THE PRINCIPLES ANNEX
PERMITTED EXPENSE REIMBURSEMENTS

Travel, Meal and Hospitality Expenses Directive

Funds should be used prudently and responsibly with a focus on accountability and transparency.

Expenses for travel, meals and hospitality support the Purpose.

Plans for travel, meals, accommodation and hospitality are necessary and economical with due regard for health and safety.

Legitimate authorized expenses incurred during the course of furthering the Purpose may be reimbursed.

Best practices should be followed, including:

Prior approval to incur expenses is appropriately obtained.

Other options for meetings are always considered before travel is approved, including audio or video conferencing.

Corporate travel cards are to be used for authorized business travel and business related expenses.

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ONTARIO TRANSFER PAYMENT AGREEMENT

THE AGREEMENT, effective as of the • day of March, 2017 (the **"Effective Date"**)

B E T W E E N :

Her Majesty the Queen in right of Ontario
as represented by the Minister of Energy

(the "Province")

- and -

Computershare Trust Company of Canada, in its capacity as trustee of Affordability Fund Trust

(together with its successors and assigns, the "Recipient" and, together with the Province, the "Parties")

BACKGROUND

Computershare Trust Company of Canada is the original trustee of the Affordability Fund Trust.

The Province wishes to provide Funds to the Recipient to be held, invested, applied and distributed in accordance with the terms of the Declaration of Trust (defined below), in furtherance of the Purpose (as defined in the Declaration of Trust), including having regard to the Principles set forth in Annex A.

CONSIDERATION

In consideration of the mutual covenants and agreements contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is expressly acknowledged, the Parties agree as follows:

ENTIRE AGREEMENT

This agreement (as amended, restated, supplemented or otherwise modified from time to time, the **"Agreement"**), including:

Schedule "A" - General Terms and Conditions
Schedule "B" - Project Specific Information
Schedule "C" - Project - Certain Obligations of the Recipient
Schedule "D" - Budget
Schedule "E" - Payment Plan
Schedule "F" - Reporting
Annex "A" - Principles, and
any amending agreement entered into as provided for below,

constitutes the entire agreement between the Parties with respect to the subject matter contained in this Agreement and supersedes all prior oral or written representations and agreements.

COUNTERPARTS

The Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

AMENDING THE AGREEMENT

The Agreement may only be amended by a written agreement duly executed by the Parties.

ACKNOWLEDGEMENT

The Recipient:

(a) acknowledges that it has read and understands the provisions contained in the entire Agreement; and

(b) agrees to be bound by the terms and conditions contained in the entire Agreement.

IN WITNESS WHEREOF, the Parties have executed the Agreement on the dates set out below.

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO as represented by Minister of Energy

by:

_____ _____

Date Name: Serge Imbrogno

Title: Deputy Minister

Authorized Signing Officer

COMPUTERSHARE TRUST COMPANY OF CANADA, in its capacity as trustee of AFFORDABILITY FUND TRUST

by:

_____ _____

Date Name:

Title:

by:

_____ _____

Date Name:

Title:

I/We have authority to bind the Recipient.

SCHEDULE "A"
GENERAL TERMS AND CONDITIONS

1.0 INTERPRETATION AND DEFINITIONS

1.1 Interpretation. For the purposes of interpretation:

(a) words in the singular include the plural and vice-versa;

(b) words in one gender include all genders;

(c) the headings do not form part of the Agreement; they are for reference only and will not affect the interpretation of the Agreement;

(d) any reference to dollars or currency will be in Canadian dollars and currency;

(e) "include", "includes" and "including" denote that the subsequent list is not exhaustive;

(f) where any reference is made in the Agreement to an act to be performed by or for or on behalf of the Affordability Fund Trust, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Recipient in its capacity as trustee of the Affordability Fund Trust, and, where any reference is made in the Agreement to an act to be performed by or for or on behalf of the Recipient, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Recipient in its capacity as trustee of the Affordability Fund Trust; and

(g) it is intended that the transfer of the Funds to the Recipient will be a transfer made to a "non-controlled trust" (as that term is given meaning in • applicable to the accounting rules and principles applicable to the Province as of the date of the Agreement), and so if a term or condition of the Agreement is determined to conflict with the requirements applicable to the Province recording the transfers to the Recipient of Funds contemplated hereunder as an expense incurred by the Province on the date of the transfer of Funds under the Agreement otherwise in connection with activities undertaken by the Province with such a "non-controlled trust", then such term or condition shall be given a meaning and shall have an effect insofar as it is possible to interpret such term or condition in a manner that eliminates such conflict while preserving the other provisions of the Agreement and furthering the Purpose.

1.2 Definitions. In the Agreement, the following terms will have the following meanings:

"Administrative Services Agent" has the meaning given such term in the Declaration of Trust.

"Affordability Fund Trust" means the trust established and governed by the Declaration of Trust, and for greater certainty includes such trust operating under any other name that may be designated from time to time by the Recipient in accordance with the Declaration of Trust.

"BPSAA" means the Broader Public Sector Accountability Act, 2010 (Ontario).

"**Beneficiary**" has the meaning given to such term in the Declaration of Trust.

"Budget" means the Recipient's budget attached to the Agreement as Schedule "D".

"Business Day" means any working day, Monday to Friday inclusive, excluding statutory and other holidays, namely: New Year's Day; Family Day; Good Friday; Easter Monday; Victoria Day; Canada Day; Civic Holiday; Labour Day; Thanksgiving Day; Remembrance Day; Christmas Day; Boxing Day and any other day on which the Province has elected to be closed for business.

"**Declaration of Trust**" means the declaration of trust made as of March [•], 2017, under which the Affordability Fund Trust was established, as such declaration of trust may be amended, restated, supplemented or otherwise modified from time to time with the consent of the Province in accordance with Section 20.2.

"Expiration Date" means the date on which this Agreement will expire and is the date set out in Schedule "B".

"Funds" means the money the Province provides to the Recipient pursuant to the Agreement.

"Implementation Agents" has the meaning given such term in the Declaration of Trust.

"Maximum Funds" means the maximum amount of Funds that the Province will provide the Recipient under the Agreement, as set out in Schedule "B".

"Notice" means any communication given or required to be given pursuant to the Agreement.

"Party" means either the Province or the Recipient.

"**Person**" includes any individual, sole proprietorship, corporation, partnership, joint venture, association, society, club, board, chamber, joint-stock company, trust, trustee, unincorporated or incorporated organization or entity or government or any entity, agency or political subdivision thereof.

"**Program**" has the meaning given to such term in the Declaration of Trust.

"Project" means the undertaking described in Schedule "C".

"**Purpose**" has the meaning given to such term in the Declaration of Trust.

"PSSDA" means the *Public Sector Salary Disclosure Act, 1996* (Ontario).

"**Recipient**" means, initially, Computershare Trust Company of Canada, and any additional or replacement trustee in its capacity as trustee of the Affordability Fund Trust pursuant to the Declaration of Trust, including the Board of Trustees (as defined in the Declaration of Trust) and each of their respective successors and permitted assigns.

"Reports" means the reports described in Schedule "F".

2.0 REPRESENTATIONS, WARRANTIES AND COVENANTS

2.1 General. The Recipient represents, warrants and covenants that:

(a) it is the trustee of the Affordability Fund Trust; and

(b) the Affordability Fund Trust is, and will continue to be for the term of the Agreement, a trust existing under and governed by the laws of the Province of Ontario.

2.2 Execution of Agreement. The Recipient represents and warrants that it has:

(a) the full power and authority to enter into the Agreement; and

(b) taken all necessary actions to authorize the execution of the Agreement.

2.3 Governance. The Recipient covenants that it will develop and maintain in writing until the Agreement is no longer in effect:

(a) decision-making mechanisms and procedures to enable the Recipient to hold, invest, manage, apply and distribute the Funds in accordance with the Declaration of Trust in furtherance of the Purpose; and

(b) procedures to enable the preparation and delivery of all Reports required pursuant to Article 7.0.

2.4 Supporting Documentation. Upon request, the Recipient will provide the Province with proof of the matters referred to in this Article 2.0.

3.0 TERM OF THE AGREEMENT

3.1 Term. The term of the Agreement will commence on the Effective Date and will expire on ~~the~~ the Expiration Date.

3.2 Extension. The term of the Agreement may be extended by further agreement between the Parties.

3.3 Extension of the Declaration of Trust. If the Province determines that an extension of the Final Distribution Date (as defined in the Declaration of Trust) and time for termination of the Declaration of Trust is consistent with and in furtherance of the Purpose and the Province's original intentions and expectations in establishing the Project, the Province may request that the Recipient extend such date to a date specified by the Province in a Notice (such date not to be later than December 31, ~~2024),~~2021, whereupon the Recipient, so long as the Recipient does not have a reasonable basis to believe that such an extension would be inconsistent with the Purpose or weaken the protections intended for the benefit of the trustee pursuant to the Declaration of Trust, will undertake such actions as it may consider to be necessary or appropriate to so extend the Declaration of Trust, including by amending the Declaration of Trust to provide for such an extension and to modify any other term or requirement as would be necessary or prudent to conform such term or requirement in light of such extension.

4.0 FUNDS AND CARRYING OUT THE PROJECT

4.1 Funds Provided. The Province will:

(a) provide the Recipient up to the Maximum Funds to be held, invested, applied and distributed in accordance with the terms of the Project and the Declaration of Trust;

(b) provide the Funds to the Recipient in accordance with the Payment Plan attached to the Agreement as Schedule "E"; and

(c) deposit the Funds into an account designated by the Recipient, provided that the account:

(i) resides at a Canadian financial institution; and

(ii) is in the name of the Recipient.

4.2 Timing of Distributions to Beneficiaries. The expectations of the Province regarding when Funds will begin to be distributed by the Recipient to Beneficiaries are set out in Schedule C. The Recipient will have regard to those expectations in the exercise of its discretion under the Declaration of Trust, in determining when Funds will be distributed to Beneficiaries in furtherance of the Purpose.

4.3 Use of Funds and Project. The Recipient will exercise its rights, duties and discretions under the Declaration of Trust so that the Funds are used, applied and distributed only for and in furtherance of the Purpose, including having regard to the Principles set forth in Annex A.

4.4 Province's Role Limited to Providing Funds. For greater clarity, the Province's role under the Agreement is limited to providing Funds to the Recipient and the Province is not responsible for carrying out or overseeing the terms of the Declaration of Trust.

4.5 Maximum Funds. The Recipient acknowledges that the Funds available to it pursuant to the Agreement will not exceed the Maximum Funds.

4.6 Funding, Not Procurement. For greater clarity, the Recipient acknowledges that:

(a) it is receiving funding from the Province for the Project and is not providing goods or services to the Province; and

(b) the funding the Province is providing under the Agreement is funding for the purposes of the PSSDA.

5.0 RECIPIENT'S ACQUISITION OF GOODS OR SERVICES, AND DISPOSAL OF ASSETS

5.1 Acquisition. If the Recipient acquires goods, services, or both with or by applying the proceeds of the Funds, it is expected to do so through a process that promotes the best value for money and to take reasonable steps to ensure that its Administrative Services Agents and Implementation Agents also follow a process that promotes the best value for money when acquiring goods and services with or by applying the proceeds of the Funds. In this regard, it is expected that the Recipient will have regard the following procurement principles:

(a) ***Accountability*** - Procurement is conducted in a manner that is well-informed and ~~aligned with the public interest and~~reflects rules of good governance~~ through clear and transparent accountability~~ and decision-making.

(b) ***Geographic Neutrality and Reciprocal Non-Discrimination***~~Ontario does~~ - Procurement should not differentiate between competing goods, services, or suppliers based on their geographic origin or location~~. This is a core principle of Ontario's trade commitments~~.

(c) ***Responsible Management***~~The procurement~~ - Procurement of goods and services ~~is~~should be responsibly, efficiently and effectively managed ~~through appropriate organizational structures, systems, policies, processes and procedures. All parties involved in a procurement process~~and should observe the highest standard of ethics, avoiding conflict of interest.

(d) ***Value for Money*** - Procurement processes should apply a value for money evaluation that takes into account price as well as other costs and benefits, including life cycle costs and relevant non-price attributes such as quality. ~~Where applicable, these non-price attributes can include:~~

~~**Social Benefit:** to secure wider social benefit in support of the government's social policy objectives.~~

~~**Environmental Benefit:** to secure wider environmental benefit in support of the government's environmental policy objectives, including climate change.~~

~~**Economic Benefit:** to promote the economic well-being of the people of Ontario, in alignment with commitments in the province's trade agreements.~~

(e) ***Vendor Access, Transparency, and Fairness*** - Procurement is conducted in a fair and transparent manner, offering all qualified suppliers equal treatment and open access to compete for ~~government business~~the opportunity to supply goods and services.

6.0 CONFLICT OF ~~INTERESTn~~INTEREST

6.1 No Conflict of Interest. Except as expressly permitted by the Declaration of Trust, the Recipient is expected to implement appropriate processes and control to ensure that the Program and the use, application and distribution of the Funds are without an actual, potential or

perceived conflict of interest.

6.2 **Conflict of Interest Includes.** For the purposes of this Article, a conflict of interest includes any circumstances where, except as expressly permitted by the Declaration of Trust:

(a) the Recipient; or

(b) any person who has the capacity to influence the Recipient's decisions,

has outside commitments, relationships or financial interests that could, or could be seen to, interfere with the Recipient's objective, unbiased and impartial judgment relating to the Project, or the Recipient's use, application or distribution of the Funds, or both.

7.0 REPORTING, ACCOUNTING AND REVIEW

7.1 **Preparation and Submission.** The Recipient will cooperate with the Province to accommodate the Province's on-going information and reporting objectives in order to enable the Province to be aware of the Recipient's activities in furtherance of the Purpose, and to that end the Recipient will be expected, from and following the Original Trustee Replacement Date, to:

(a) submit to the Province at the address referred to in Schedule "B", all Reports in accordance with the timelines and content requirements set out in Schedule "F", or in a form as specified by the Province from time to time, acting reasonably;

(b) submit to the Province at the address referred to in Schedule "B", any other reports as may be reasonably requested by the Province from time to time in accordance with the timelines and content expectations identified by the Province, acting reasonably;

(c) undertake diligent efforts so that such Reports and any such other reports are complete and accurate in all material respects; and

(d) have an authorized signatory of the Recipient sign-off on such Reports and other reports.

7.2 **Record Maintenance.** The Recipient will keep and maintain financial and other records necessary to permit it to satisfy its obligations under section 7.1 and to permit the Province to exercise its rights under section 7.3.

7.3 **Inspection.** The Province, its authorized representatives or an independent auditor identified by the Province may, at its own expense, upon twenty-four hours' Notice to the Recipient and during normal business hours, inspect the records of and information respecting the Recipient to confirm its compliance with the terms of this Agreement, including to ensure consistency with the Purpose and, for these purposes, the Province, its authorized representatives or an independent auditor identified by the Province may take one or more of the following actions:

(a) inspect and copy the records and documents referred to in section 7.2;

(b) keep any copies made pursuant to section 7.3(a); and

(c) conduct an audit or investigation of the Recipient in respect of the expenditure of the Funds to confirm that the Funds have been used, applied and distributed for and in furtherance of the Purpose, including a review of the Recipient's processes, records, documents, as well as the processes and controls applied to obtain assurance that Funds disbursed to Electricity Distributors were used, applied and distributed for and in furtherance of the Purpose.

7.4 **Disclosure.** To assist in respect of the rights set out in section 7.3, the Recipient will disclose any information requested by the Province, its authorized representatives or an independent auditor identified by the Province, and will do so in the form requested by the Province, its authorized representatives or an independent auditor identified by the Province, as the case may be.

7.5 **No Control of Records.** No provision of the Agreement will be construed so as to give the Province any control whatsoever over the Recipient's records.

7.6 **Auditor General.** For greater certainty, the Province's rights under this Article are in addition to and do not limit any rights provided to the Auditor General pursuant to section 9.1 of the *Auditor General Act* (Ontario).

8.0 COMMUNICATIONS REQUIREMENTS

8.1 **Publication.** The Recipient will acknowledge, in any of its Program-related external communications and marketing whether written, oral, or visual, the financial support of the Province in connection with the establishment and funding of the program, while noting that the views expressed in the publication are the views of the Recipient and do not necessarily reflect those of the Province.

9.0 FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY

9.1 **FIPPA.** The Recipient acknowledges that the Province is bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province in connection with the Project or otherwise in connection with the Agreement may be subject to disclosure in accordance with that Act.

10.0 Intentionally Deleted

11.0 EVENT OF DEFAULT, CORRECTIVE ACTION AND TERMINATION FOR DEFAULT

11.1 **Events of Default.** An Event of Default will occur if:

(a) the Recipient fails to perform or observe any covenant in this Agreement and such failure has and continues to have a material adverse effect on the Province and remains unremedied during any Notice period applicable under section 11.2 after the earlier of (i) actual knowledge thereof by the Recipient, or (ii) receipt by the Recipient of Notice thereof from the Province;

(b) any representation or warranty made by the Recipient in the Agreement shall prove to have been incorrect in any material respect when made or deemed made, and, if capable of remedy, continues to be incorrect in any material respect during any Notice period applicable under section 11.2 after the earlier to occur of (i) the actual knowledge thereof by the Recipient or (ii) receipt by the Recipient of Notice thereof from the Province;

(c) it is determined that the Recipient has breached its Standard of Care (within the meaning given in and context of the Declaration of Trust) in discharging its material duties under the Declaration of Trust, with the result that all or a significant part of the Funds have not been or are not being applied in furtherance of the Purpose or are being applied in a manner that is directly contrary or without regard to the Purpose, and, if such breach is capable of remedy, it continues and remains unremedied during any Notice Period applicable under section 11.2 after the earlier of (i) actual knowledge thereof by the Recipient, or (ii) receipt by the Recipient of Notice thereof from the Province;

(d) an insolvency event shall have occurred and be continuing with respect to the Recipient.

11.2 **Consequences of Events of Default and Corrective Action.** If an Event of Default occurs, the Province may, at any time, take one or more of the following actions:

(a) provide the Recipient with Notice allowing the Recipient an opportunity to remedy the Event of Default during a specified Notice Period;

(b) seek an order of specific performance, including an order that the Recipient pursue its available remedies against third parties;

(c) require, by Notice of demand, that the Recipient transfer to the Province (without any need for compensation, indemnity or consideration to the Recipient or any Beneficiary or other third party) any and all Assets remaining in the possession or under the control of the Recipient that can reasonably be traced or attributed to the Funds after first providing for the completion and performance by the Recipient of any unperformed contractual obligations of the Recipient undertaken in compliance with the Declaration of Trust on or prior to transfer; and

(d) terminate the Agreement, including immediately, without liability, penalty or costs to the Province upon giving Notice to the Recipient.

The transfer of Funds in accordance with the Agreement is made by the Province with the expressed intention and reservation that the transferred Funds shall be returned to the Province and the entitlements of the Recipient in remaining Funds shall thereby be revoked with reversion thereof to the Province in the circumstances contemplated in Section 11.2(c).

11.3 Opportunity to Remedy. If, in accordance with section 11.2, the Province provides the Recipient with an opportunity to remedy the Event of Default, the Province will provide Notice to the Recipient of:

(a) the particulars of the Event of Default; and

(b) the length of time within which the Recipient may cure such Event of Default without the Province pursuing any other remedy (the "Notice Period").

11.4 Recipient not Remedying. If the Province has provided the Recipient with an opportunity to remedy the Event of Default pursuant to section 11.2(a), and:

(a) the Recipient does not remedy the Event of Default within the Notice Period;

(b) it becomes apparent to the Province that the Recipient cannot adequately remedy the Event of Default within the Notice Period; or

(c) the Recipient is not proceeding to remedy the Event of Default in a way that is satisfactory to the Province,

the Province may extend any Notice Period, or initiate any one or more of the actions provided for in section 11.2.

12.0 REPAYMENT

12.1 Debt Due. If, pursuant to the Agreement: the Province demands the payment of any Funds from the Recipient pursuant to section 11.2(c) such Funds or other amount will be deemed to be a debt due and owing to the Province by the Recipient, and the Recipient will pay or return the amount to the Province immediately, unless the Province directs otherwise.

12.2 Payment of Money to Province. The Recipient will pay any money owing to the Province by cheque payable to the "Ontario Minister of Finance" and delivered to the Province at the address referred to in Schedule "B".

12.3 Failure to Repay. Without limiting the application of section 43 of the Financial Administration Act (Ontario), if the Recipient fails to repay any amount owing under the Agreement, Her Majesty the Queen in right of Ontario may deduct any unpaid amount from any money payable to the

Recipient by Her Majesty the Queen in right of Ontario.

13.0 NOTICE

13.1 Notice in Writing and Addressed. Notice will be in writing and will be delivered by email, postage-prepaid mail, personal delivery or fax, and will be addressed to the Province and the Recipient respectively as set out in Schedule "B", or as either Party later designates to the other by Notice.

13.2 Notice Given. Notice will be deemed to have been given:

(a) in the case of postage-prepaid mail, five Business Days after the Notice is mailed; or

(b) in the case of email, personal delivery or fax, one Business Day after the Notice is delivered.

13.3 Postal Disruption. Despite section 13.2(a), in the event of a postal disruption:

(a) Notice by postage-prepaid mail will not be deemed to be received; and

(b) the Party giving Notice will provide Notice by email, personal delivery or by fax.

14.0 SEVERABILITY OF PROVISIONS

14.1 Invalidity or Unenforceability of Any Provision. The invalidity or unenforceability of any provision of the Agreement will not affect the validity or enforceability of any other provision of the Agreement. Any invalid or unenforceable provision will be deemed to be severed.

15.0 WAIVER

15.1 Waivers in Writing. If a Party fails to comply with any term of the Agreement, that Party may only rely on a waiver of the other Party if the other Party has provided a written waiver in accordance with the Notice provisions in Article 13.0. Any waiver must refer to a specific failure to comply and will not have the effect of waiving any subsequent failures to comply.

16.0 INDEPENDENT PARTIES

16.1 Parties Independent. The Recipient acknowledges that it is not an agent, joint venturer, partner or employee of the Province, and the Recipient will not represent itself in any way that might be taken by a reasonable person to suggest that it is, or take any actions that could establish or imply such a relationship.

17.0 ASSIGNMENT OF AGREEMENT OR FUNDS

17.1 Agreement Binding. All rights and obligations contained in the Agreement will extend to and be binding on the Parties' respective heirs, executors, administrators, successors and permitted assigns.

18.0 LIMITATION OF LIABILITY

18.1 This Agreement has been entered into by the Recipient solely in its capacity as trustee of the Affordability Fund Trust and is not binding on the Recipient in any other capacity, whether in tort, contract or otherwise. The Beneficiaries of the Affordability Fund Trust are not subject to any liability in respect of the Affordability Fund Trust. Resort may not be had to, nor recourse or satisfaction be sought from, the private property of the Recipient (whether owned by it in its personal capacity or in any other capacity other than in its capacity as trustee of the Affordability Fund Trust), its directors, officers, employees, or agents, or the private property of any Beneficiary, and resort will be had solely to the property of the Recipient held in trust for the payment, performance or satisfaction of any liability or obligation of the Recipient under this Agreement. However, the foregoing limitations in this section shall not apply where the Recipient has demonstrated gross negligence, bad faith, fraud or wilful misconduct.

19.0 GOVERNING LAW

19.1 Governing Law. The Agreement and the rights, obligations and relations of the Parties will be governed by and construed in accordance with the laws of the Province of Ontario and the applicable federal laws of Canada. Any actions or proceedings arising in connection with the Agreement will be conducted in the courts of Ontario, which will have exclusive jurisdiction over such proceedings.

20.0 FURTHER ASSURANCES

20.1 Agreement into Effect. The Recipient will provide such further assurances as the Province may request from time to time with respect to any matter to which the Agreement pertains, and will otherwise do or cause to be done all acts or things necessary to implement and carry into effect the terms and conditions of the Agreement to their full extent.

20.2 Declaration of Trust. The Recipient covenants that it shall not amend, restate or terminate the Declaration of Trust without obtaining the written consent of the Province in respect of same, such consent not to be unreasonably withheld or delayed.

21.0 JOINT AND SEVERAL LIABILITY

21.1 Joint and Several Liability. Without limiting and subject to section 18.1 and the Declaration of Trust, if the Recipient is comprised of more than one entity, all such entities will be jointly and severally liable to the Province for the fulfillment of the obligations of the Recipient under the Agreement.

22.0 RIGHTS AND REMEDIES CUMULATIVE

22.1 Rights and Remedies Cumulative. The rights and remedies of the Province under the Agreement are cumulative and are in addition to, and not in substitution for, any of its rights and remedies provided by law or in equity.

23.0 ACKNOWLEDGEMENT OF OTHER LEGISLATION AND DIRECTIVES

23.1 Recipient Acknowledges. The Recipient acknowledges that by receiving Funds it may become subject to legislation applicable to organizations that receive funding from the Government of Ontario, including the BPSAA, the PSSDA, and the *Auditor General Act* (Ontario).

24.0 SURVIVAL

24.1 Survival. The following Articles and sections, and all applicable cross-referenced sections and schedules, will continue in full force and effect for a period of seven years from the date of expiry or termination of the Agreement: Article 1.0 and any other applicable definitions, section, 4.5, section 7.1 (to the extent that the Recipient has not provided the Reports to the satisfaction of the Province), sections 7.2, 7.3, 7.4, 7.5, 7.6, Article 8.0, Article 12.0, Article 14.0, Article 16.0, Article 17.0, Article 19.0, Article 21.0, Article 23.0 and Article 24.0.

- END OF GENERAL TERMS AND CONDITIONS -

SCHEDULE "B"

PROJECT SPECIFIC INFORMATION

Maximum Funds	$100 million
Expiration Date	The date upon which the Affordability Fund Trust is terminated in accordance with the Declaration of Trust
Contact information for the purposes of Notice to the Province	**Attention: Usman Syed** **Position: Director** **Address: 77 Grenville St, Toronto, Ontario, M7A 2C1** **Fax: 416-325-6651** **Email: Usman.Syed@ontario.ca**
Contact information for the purposes of Notice to the Recipient	**Attention:** **Position:** **Address:** **Email:**
Contact information for the senior financial person in the Recipient organization (e.g., CFO, CAO) – to respond as required to requests from the Province related to the Agreement	**Attention:** **Position:** **Address:** **Email:**

SCHEDULE "C"

PROJECT

For the purposes of this Agreement, the "Project" is the distribution of the Funds in accordance with the Declaration of Trust.

It is intended the Project will be undertaken by the Recipient in furtherance of the Purpose and in accordance with the Declaration of Trust. In this regard, it is expected that the Recipient will undertake the Program having regard to the Budget and the Principles set forth in Annex A.

The following are the Province's expectations regarding the circumstances in which the Recipient will begin to distribute any Funds to any Beneficiary.

1. The Original Trustee Replacement Date (as defined in the Declaration of Trust) will have occurred.

2. An Administrative Services Agreement (as defined in the Declaration of Trust) will have been entered into between the Recipient and Hydro One Limited under which Hydro One Limited shall provide specified administrative and other services on behalf of the Recipient.

3. Administrative procedures will have been developed and implemented under which Electricity Distributors (as defined in the Declaration of Trust) will be invited to assist with (a) the identification and selection of Primary Beneficiaries under the Declaration of Trust, (b) the determination of the amount of Funds to be distributed to particular Primary Beneficiaries, and (c) the distribution of Funds to or for the benefit of such Primary Beneficiaries (in each case substantially on the basis contemplated in the Permitted Delegations Annex).

4. The Recipient will have obtained commercial general liability insurance from insurers having a secure A.M. Best rating of B+ or greater, or the equivalent, that in the opinion of the Recipient a prudent person similar to the Recipient would maintain, and having an inclusive limit of not less than $2,000,000 per occurrence and providing for contractual liability coverage. If requested, the Recipient will provide the Province (for its information purposes) with copies of the certificates of insurance and policies for such insurance coverage.

The Province recognizes that the foregoing may involve the Recipient entering into agreements as the Recipient considers to be necessary or expedient, including any required amendment or amendment and restatement of the Declaration of Trust. Funds may be expended to pay the expenses of the Recipient in completing these matters. The Recipient is requested to advise the Province through its quarterly reports on the status of the foregoing.

SCHEDULE "D"

Recipient's Budget

1. It is expected that the administrative expenses of the Recipient, including any administrative expenses of any Administrative Services Agents or any Implementation Agents or any other agents retained by the Recipient, relating to the establishment of the Affordability Fund Trust and satisfying the Requirements (as defined in Schedule "C") and any expenses related to the operation of the Affordability Fund Trust and the execution of the Project (including any reimbursable expenses incurred by any Administrative Services Agent or any Implementation Agent (as such terms are defined in the Declaration of Trust)), will be no greater than 10 percent of the total Project budget.

2. The only expenditures incurred by the Recipient that are eligible for reimbursement are actual (excluding HST) administrative overhead expenses incurred by or on behalf of the Recipient that directly related to the Recipient or the establishment of the Affordability Fund Trust.

4. Any expenses that have been or may be reimbursed by other parties should not be reimbursed from the assets of the Affordability Fund Trust.

5. It is expected any travel, meals and hospitality expenses by the Recipient will be consistent with the Province's Travel, Meal and Hospitality Expenses Directive. For purposes of funding entities receiving funding from the Recipient, the following would not be considered eligible claims:

    - Alcohol
    - First-Class travel
    - Meals, snacks and beverages
    - Gratuities
    - Laundry or dry cleaning
    - Valet services
    - Dependent care
    - Home management
    - Personal telephone calls

6. In the event that the Recipient performs any procurements, it is expected that all procurements will reflect the principles of Ontario's Public Service Procurement Directive.

SCHEDULE "E"

PAYMENT PLAN

PAYMENT DATE	MAXIMUM FUNDS TO BE DISBURSED BY THE PROVINCE
Within 7 days of signing the Agreement	$ 100,000,000

SCHEDULE "F"

REPORTING

From and following the Original Trustee Replacement Date, Reports will be quarterly on the basis of the government's fiscal year starting at the execution of this Agreement and continuing until conclusion of the Agreement. Annual Reports will be on a fiscal basis starting at the execution of this Agreement and continuing until conclusion of the Agreement. Quarterly Reports and Annual Reports would be expected to be submitted to the Province within one month following the end of the reporting period that they represent. The Province expects that these Reports would be prepared to demonstrate the impact of the Province's funding and address the following:

- Quarterly Reports would include a report back on the trustee-developed performance management criteria. Initially, such Quarterly Reports would include details respecting:
    - Amounts disbursed by the Recipient in the previous quarter. It is expected that this information would be provided at the Electricity Distributor level and in the aggregate.
    - Total Affordability Fund investment income earned and accrued to date.
    - Key activities and achievements from the quarter, including the number of participant households per Electricity Distributor, average participant incentive cost per Electricity Distributor, and uptake of energy efficiency measures per Electricity Distributor.
    - Any challenges or modifications to the application, funding, or eligibility processes/rules of the Recipient.
    - Key activities planned for the upcoming quarter.
    - Details of any situation that a reasonable person might interpret as an actual, potential or perceived conflict of interest.
- Annual Reports would include a report back on the trustee-developed performance management criteria. Initially, such Annual Report would include details respecting:

- A description of an Electricity Distributor's application process and the criteria used by the Recipient to distribute funds.
- Any challenges identified by the Recipient or any Administrative Services Agent in achieving the Purpose and proposed solutions, if applicable.
- Lesson learned.
- Electricity Distributor and customer feedback.
- Amounts distributed to Beneficiaries or otherwise disbursed by the Recipient in the previous year. It is expected that this information will be provided by each Electricity Distributor.
- Key activities and achievements from each quarter being reported, including number of participant households per Electricity Distributor, average participant incentive cost per Electricity Distributor, and uptake of energy efficiency measures per Electricity Distributor.
- Total Affordability Fund interest earned and accrued to date.

As part of an Annual Report, the Recipient would also provide the Province with an audited financial statement for the previous year.

ANNEX A

Principles

~~[Insert from Principles Annex once settled in the Declaration of Trust]~~

The Trustee shall have regard to, but shall not be specifically bound by, the following principles in applying its discretion in relation to the administration of the Trust:

4. Identification of Primary Beneficiary Payees

4.1 Except in exceptional circumstances, a Primary Beneficiary would not be expected to receive a benefit from the Trust unless at the time of consideration it satisfies, in addition to the requirements contemplated in the definition of "Primary Beneficiary", each of the following criteria (the "**Selection Factors**"):

(i) it has a participant agreement with an applicable Electricity Distributor to undertake measures (its "**Energy Plan**") to improve the electricity efficiency and/or promote the conservation of electricity at its Ontario residence;

(ii) its Energy Plan involves one or more Eligible Measures, as may be designated by the Trustee from time to time from;

(iii) it confirms that:

1. the primary purpose of its Energy Plan is the conservation and efficient use by the Primary Beneficiary of electricity, and is not for the purposes of the Primary Beneficiary making a profit;

2. it would otherwise not have the financial resources to undertake the Eligible Measures included in its Energy Plan; and

3. it would otherwise not be eligible to receive amounts in respect of the Eligible Measures as a HAP Eligible Person;

(iv) it has demonstrated a need for financial assistance on the basis that its periodic electricity bills represent a financial burden, relative to its available financial resources; and

(v) such other criteria as the Trustee may determine, including based on the recommendations of Electricity Distributors or other knowledgeable Persons made on the basis and having regard to the delegations contemplated by the Permitted Delegations Annex or any applicable Implementation Agreement.

4.2 It is recognized that, in furthering the Purpose, an efficient basis upon which to allocate funds to the Primary Beneficiaries across different areas and regions within Ontario may be based on the areas and regions serviced by the Electricity Distributors operating within Ontario.

4.3 It would not be contrary to the Purposes if funds are made available by the Trustee to the Primary Beneficiaries unequally across different areas and regions within Ontario, and it is expected that in making such an unequal division it would be appropriate to have regard to:

(i) broad economic parameters of economic activity and the specific financial resources of the residents of the areas and regions, in each case as an indication of the relative need of such residents across the areas and regions;

(ii) electricity use and efficiency levels of residential electricity customers across the areas and regions;

(iii) specific regional indicators of economic weakness and need; and

(iv) such other factors as the Trustee may determine are relevant, including based on the submissions, advice and recommendations of Electricity Distributors or other knowledgeable Persons made on the basis and having regard to the delegations contemplated by the Permitted Delegations Annex or any applicable implementation Agreement.

4.4 It is recognized that, in furthering the Purpose, the designated Electricity Distributor for an area or region in which a Primary Beneficiary resides would be expected to:

(i) be a reliable source for the purpose of assessing and confirming whether the Primary Beneficiary satisfies the Selection Factors;

(ii) be an efficient intermediary for the purpose of communicating with the Primary Beneficiary, including with respect to matters such as regarding the availability, terms, conditions and intended purposes of Program;

(iii) be able to facilitate an efficient payment of distribution determined to be made to or on behalf of the Primary Beneficiary, having regard to the Electricity Distributor's established practices, procedures and systems for dealing with its customers; and

(iv) have established contractual arrangements with the Primary Beneficiary that may apply to the protection and confidentiality of information provided by or respecting the Primary Beneficiary, which information may be useful in the consideration by the Electricity Distributor in its assessment of whether the Primary Beneficiary satisfies the Selection Factors, which information may not otherwise be available or readily accessible or verifiable by the Trustee.

4.5 It is recognized that, in furthering the Purpose, the Electricity Distributor for an area or region in which a Primary Beneficiary resides will have market and utilization information that may be useful in assessing the relative needs of Primary Beneficiaries within its area or region. Such information is expected to be relevant in assessing the extent to which one such Primary Beneficiary's financial needs and the merits of its Energy Plan are greater or more compelling than those of another such Primary Beneficiary, which comparison may be relevant to the extent that the funds allocable to the Primary Beneficiaries resident in the area or region are otherwise insufficient to meet the requests for funding by all such Primary Beneficiaries.

4.6 Accordingly, it is recognized that, in furthering the Purpose, it is consistent with the Purpose that the recommendations of Electricity Distributors be utilized and relied upon by the Trustee to guide the process of identifying particular Primary Beneficiaries in making distributions to the Primary Beneficiaries.

4.7 If an Electricity Distributor for a particular area or region is unable or unwilling to assess or confirm the application of the Selection Factors to Primary Beneficiaries residing in the area or region or to make recommendations in relation to such matters, one or more of the following may provide a suitable alternative source of information and for information gathering, assessment and confirmation purposes in relation to such area or region:

(i) other Electricity Distributors operating in adjacent or other areas or regions in Ontario;

(ii) the Ontario Energy Board;

(iii) the Independent Electricity System Operator; and

(iv) anyone else having relevant expertise and access to information regarding the electricity market of the Province, in each case as may be considered relevant by the Trustee.

4.8 To the extent that privacy law or other legal requirements limit an Electricity Distributor from providing or making available specific information respecting the application of the Selection Factors to a particular Primary Beneficiary or group of Primary Beneficiaries, it is recognized that, in furthering the Purpose, it may be appropriate to redact or make generic affected information regarding such Primary Beneficiary in connection with the identification and confirmation of a Primary Beneficiary's eligibility and participation in the Program. If such limitations or restrictions would limit an Electricity Distributor from providing or confirming the name of a particular Primary Beneficiary to the Trustee, then it should be sufficient that such information may be obtained or disseminated on a confidential basis if and when required by the Trustee for the proper administration of the Trust and on that basis such impediments should not disqualify a Primary Beneficiary from participating in the benefits of the Program, provided that the confidential record-keeping of the Electricity Distributor would be available in connection with the application of any applicable legal process predicated on the identification of such Primary Beneficiary for the purposes of substantiating its rights as a Primary Beneficiary of the Trust or as to the validity or subsistence of the Trust.

5. Eligible Measures

5.1 It is expected that the Trust will identify eligible measures that, taking into consideration the principles set forth in the Principles Annex, have regard to the following (the "**Measures Factors**"):

(i) is the measure generally expected to result in reduced electricity consumption by a Primary Beneficiary if properly installed and used;

(ii) is the measure recognized under another Provincial program as being appropriate for achieving electricity conservation among a population analogous to the Primary Beneficiaries;

(iii) does the measure present any unacceptable health or safety considerations, either with respect to the Primary Beneficiary, a party providing or installing the measure, or the physical environment;

(iv) is the measure broadly available to residents across different areas and regions of the Province; or

(v) is the measure a requirement or precursor to another measure, the other measure being one which meets any of the other Measures Factors.

5.2 In identifying and applying the Measures Factors, Electricity Distributors would be expected to have expertise in assessing the suitability of efficiency and conservation measures in their respective areas and regions, which may differ across areas and regions across the Province based on factors (among other things) such as the climate, geography, density, electricity infrastructure, residential structures, and electricity use rates applicable within such areas or regions.

5.3 The measures specified in Schedule A to this Principles Annex may initially be considered to be consistent with the Measures Factors (subject to change as contemplated under the Permitted Delegations Annex).

6. Promotion of the Program

6.1 It is expected that the Trustee will undertake or engage others to undertake diligent efforts to promote the availability, terms and benefits of the Program to Primary Beneficiaries, including by establishing consistent communications through the Electricity Distributors.

6.2 It is expected that the Trustee will acknowledge the financial support of the Province in connection with the establishment and the funding for the Program, including in any external communications to or marketing directed at the Electricity Distributors and the Primary and Residual Beneficiaries. In its delegation of any duties or powers to the Electricity Distributors through Implementation Agreements it is expected that Electricity Distributors will acknowledge the financial support of the Province in connection with the program including in any communications or marketing to Primary Beneficiaries.

7. Conduct of the Trust and the Program

7.1 It is expected that administrative expenses of the Board of Trustees and its members, including any expenses relating to the Trust, to the establishment of the Trust and any expenses related to the implementation and operation of the Program, including by or through Electricity Distributors and other relevant entities, will be recognized and subject to reimbursement on a basis that is substantially consistent with the accountability provisions contemplated in the Transfer Payment Agreement and the principles in the Province's Travel, Meal and Hospitality Expenses Directive, as set out in Schedule B to this Principles Annex.

7.2 The Trustee is expected to conduct its activities in a manner that complies in all material respects with the Transfer Payment Agreement, including to:

(i) act prudently and in furtherance of the Purpose;

(ii) report not less frequently than annually the results of its activities for information purposes to the Province in connection with the Program;

(iii) comply with the Province's request for any independent verification or audit if determined to be necessary or appropriate by the Province;

(iv) return Assets that have not been distributed if it is determined that the Trustee has breached its Standard of Care in discharging its material duties under the Declaration, and has not cured such material breach despite having been given a reasonable opportunity by the Province to do so in light of the circumstances of such material breach, with the result that all or a significant part of the Assets have not been or are not being applied and distributed in furtherance of the Purpose or are being applied and distributed in a manner that is directly contrary or without regard to the Purpose.

7.3 Electricity Distributors are not intended to directly profit from distributions of funds made from the Trust, although it is recognized that the objectives of electricity efficiency and conservation of Primary Beneficiaries located in the service area or region of an Electricity Distributor, and the cost savings and improved credit worthiness of such Primary Beneficiaries, may be financially beneficial to the Electricity Distributor.

7.4 Distributions from the Trust are intended to allow receiving Primary Beneficiaries to undertake Eligible Measures at no or minimal personal cost.

7.5 Without in any way limiting the discretion of the Board of Trustees to extend the period during which the benefits of the Program may be available to the Primary Beneficiaries, up to and including the Final Distribution Date, it is expected that the Trust Assets would be distributed to Primary Beneficiaries during the period from the Original Trustee Replacement Date to April 30, 2019.

SCHEDULE A TO THE PRINCIPLES ANNEX
INDICATIVE ELIGIBLE MEASURES[1]

Initial Specified Measures
Block Heater Timer (just timer) – rated for outdoor use, have at least a 15 amp/1800 watt capacity, be cold weather resistant, bear a C-UL or CSA certification mark
Power bar with integrated timer, and switched power outlets, four each for a total of 8 outlets, have a total capacity of 15 amps. The switched outlets must remain "live", independent of timer settings, so long as the power bar itself remains switched on. The power bar must bear either a C-UL or CSA certification mark.
Efficient Showerheads (standard) - rated at no more than 4.8 Lpm (1.25 U.S. gpm) and be of the laminar flow type (non-aerating).
Efficient Showerhead (handheld) - rated at no more than 4.8 Lpm (1.25 U.S. gpm) and be of the laminar flow type (non-aerating).
Efficient Aerators (kitchen) - rated no more than 5.7 Lpm (1.5 U.S. gpm), dual threaded to allow installation in both thread type faucets, swivel type with pause lever.
Efficient Aerators (bathroom) - rated no more than 3.8 Lpm (1.0 U.S. gpm), be dual threaded to allow installation in both thread type faucets.
Hot Water Tank Pipe Insulation - ½" inside diameter – foam, meets ASTM –C547-00, minimum ¾" thick
Hot Water Tank Pipe Insulation - ¾ " inside diameter - – foam, meets ASTM –C547-00, minimum ¾" thick
Hot Water Tank Insulation - fibreglass R10 (fits up to a 60 gal tank) – not bubble wrap
≤11W ENERGY STAR® Qualified LED A Shape (60W) (minimum 600 Lumen output) (Formerly: 7W – 11W ENERGY STAR® Qualified LED A Shape (60W))

[1] These measures are indicative. Eligible measures added to HAP during the administration of the Trust may also be appropriately considered relevant by the Trustee.

Initial Specified Measures
≤14W ENERGY STAR® Qualified LED A Shape (75W) (minimum 800 Lumen output) (Formerly: 10W – 14W ENERGY STAR® Qualified LED A Shape (75W))
≤23W ENERGY STAR® Qualified LED A Shape (100W) (minimum 1600 Lumen output) (Formerly:17W – 23W ENERGY STAR® Qualified LED A Shape (100W))
≤16W ENERGY STAR® Qualified LED PAR 20 (minimum 600 Lumen output) (Formerly: 8W – 12W ENERGY STAR® Qualified LED PAR 20)
≤16W ENERGY STAR® Qualified LED PAR30 & PAR38 (minimum 600 Lumen output) (Formerly: 8W – 12W ENERGY STAR® Qualified LED PAR 30)
≤23W ENERGY STAR® Qualified LED PAR (minimum 1100 Lumen output) (Formerly: 14W – 18W ENERGY STAR® Qualified LED PAR 38)
≤6W ENERGY STAR® Qualified LED MR 16 / PAR 16 (minimum 250 Lumen output) (Formerly: 7W – 10W ENERGY STAR®
Qualified LED MR 16 / PAR 16 - GU 10 Base)
≤11W ENERGY STAR® Qualified LED MR 16 (minimum 400 Lumen output) (Formerly: 7W – 12W ENERGY STAR® Qualified LED MR 16 GU 5.3 Base)
ENERGY STAR® LED Wet Location Rated PAR lamp ≤ 23 Watt (minimum 1100 Lumen output)
Recessed Downlight Fixture including LED with Light Output >600 and <800 lumens (Retrofit Measure List)
Recessed Downlight Fixture including LED with Light Output >800 lumens (Retrofit Measure List)
Indoor Drying Rack

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Extended Measures
Replace refrigerator with ENERGY STAR qualified refrigerator - 15.5 - 16.9 cubic foot top freezer, automatic defrost, refrigerator/ freezer, no through the door ice service
Replace refrigerator with ENERGY STAR qualified refrigerator - 17.0 - 18.4 cubic foot top freezer, automatic defrost, refrigerator/ freezer, no through the door ice service
Replace refrigerator with a refrigerator that has a consumption level of less than 425 kwh, 10 – 12.5 cubic foot top freezer, automatic defrost, refrigerator freezer, no through the door ice service
Replace freezer with ENERGY STAR qualified freezer - 12-14.4 cubic foot freezer
Replace freezer with ENERGY STAR qualified freezer - 14.5 - 16.0 cubic foot freezer
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 6,000 – 7,999 BTU/hr with C-UL or CSA certification mark
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 8,000 – 9,999 BTU/hr with C-UL or CSA certification mark
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 10,000 – 12,000 BTU/hr with C-UL or CSA certification mark
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 14.2 - 21.2 l/day (30-44.9 pints/day) dehumidifier
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 21.3 - 25.4 l/day (45-53.9 pints/day) dehumidifier
Extended Measures
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 25.5 - 35.5 l/day (54-75 pints/day) dehumidifier
Programmable Thermostat – line voltage – meets CAN/CSA-C828-06 standard, minimum performance: Droop: 1.5°C, Differential: 0.5°C, Precision 0% within 0.5°C of the original set point of 22°C

Programmable Thermostat – low voltage - meets CAN/CSA-C828-06 standard, minimum performance: Droop: 1.5°C, Differential: 0.5°C, Precision 0% within 0.5°C of the original set point of 22°C

Weatherization Measures
Comprehensive Draftproofing (caulking, foam and weather stripping, and application of same) – lifespan of 20 years plus If one or two component polyurethane foams are used, the products and installations must conform to: • CAN/ULC-S710.1 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 1: Material Specification. • CAN/ULC-S710.2 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 2: Application. • CAN/ULC-S711.1 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification • CAN/ULC-S711.2 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification, and Part 2: Application.
Attic Insulation (including installation):
cellulose: CAN/ULC-S703-01 Amendment 1 - Cellulose Fibre Insulation (CFI) for Buildings OR 2) Mineral Fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre

Weatherization Measures
for Buildings **Wall Insulation (including installation):**
cellulose: CAN/ULC-S703-01 Amendment 1 - Cellulose Fibre Insulation (CFI) for Buildings OR 2) Mineral Fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre **Basement Insulation (including installation):**
mineral fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre for Buildings Vapour Barrier: 69009-CAN/CGSB-51.34-m86 If one or two component polyurethane foams are used, the products and installations must conform to: • CAN/ULC-S710.1 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 1: Material Specification. • CAN/ULC-S710.2 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 2: Application. • CAN/ULC-S711.1 Standard for Thermal Insulation – Bead Applied Two-Component
Polyurethane Air Sealant Foam, Part 1: Material Specification • CAN/ULC-S711.2 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification, and Part 2: Application.

Heat Pumps
(Selection of manufacturers and technologies to meet the US federal minimum efficiency standard for ASHPs, as of 2015, is 13.0 SEER and 7.7 HSPF. Energy Star–certified models offer roughly 9 percent
Ductless Multiport Heat Pump
Cold Climate Ductless Heat Pump
Cold Climate Multiport Ductless Heat Pump
Cold Climate Ducted Heat Pump

SCHEDULE B TO THE PRINCIPLES ANNEX
PERMITTED EXPENSE REIMBURSEMENTS

Travel, Meal and Hospitality Expenses Directive

Funds should be used prudently and responsibly with a focus on accountability and transparency.

Expenses for travel, meals and hospitality support the Purpose.

Plans for travel, meals, accommodation and hospitality are necessary and economical with due regard for health and safety.

Legitimate authorized expenses incurred during the course of furthering the Purpose may be reimbursed.

Best practices should be followed, including:

Prior approval to incur expenses is appropriately obtained.

Other options for meetings are always considered before travel is approved, including audio or video conferencing.

Corporate travel cards are to be used for authorized business travel and business related expenses.

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Document comparison by Workshare Compare on Wednesday, March 22, 2017 4:13:25 PM

Input:	
Document 1 ID	PowerDocs://TOR_2024/12888010/12
Description	TOR_2024-#12888010-v12-Transfer_Payment_Agreement_(Affordability_Fund_Trust)
Document 2 ID	PowerDocs://TOR_2024/12888010/13
Description	TOR_2024-#12888010-v13-Transfer_Payment_Agreement_(Affordability_Fund_Trust)
Rendering set	Standard

Legend:	
Insertion	
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Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	236
Deletions	28
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	264

FW_ Affordability Fund Trust (Further Revisions to the DoT and TPA).rtf

From: Petsche, Nadine (TBS) []
To: Picard, Michel (mpicard@kpmg.ca) [mpicard@kpmg.ca]
Subject: FW: Affordability Fund Trust (Further Revisions to the DoT and TPA)
Date: Thursday, March 23, 2017 21:14:05
Attachment 1: image001.gif
Attachment 2: Affordability Fund Trust - Transaction Stmt - Mar 23 2017.pdf
Attachment 3: Declaration of Trust dtd Mar 23 17.executed.pdf
Attachment 4: Ontario Transfer Payment Agrt dtd Mar 23 17.executed by CTCC.pdf

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Hi Michel.

I just wanted to share the final signed docs. Thanks again for all of your help!! I'll be updating my control analysis again this evening. If you have any comments on the revised draft I sent you yesterday, it would be much appreciated.

I attended the PSAB ADG last week, and I've been pondering some of the discussion. It may influence the final documentation on the accounting, once the control analysis is complete. Would welcome a chat with you on that front when you have some time.

Talk soon,

Nadine

From: Morag Abraham [mailto:Morag.Abraham@computershare.com]
Sent: March-23-17 6:51 PM
To: Syed, Usman (ENERGY)
Cc: Sermat-Harding, Kaili (ENERGY); Schwab-Pflug, Emma (ENERGY); Qureshi, Musab (ENERGY); Johnson, Paul (ENERGY/MEDEI/MRI); Schachtschneider, Michelle (ENERGY); ASHBOURNE, STEPHEN; PRESTAGE, JA; Petsche, Nadine (TBS); Alexandra.Phillips@HydroOne.com; Daniel.Levitan@HydroOne.com; GILL Spencer; An, Tai (ENERGY); Gounden, Pratima (ENERGY)
Subject: RE: Affordability Fund Trust (Further Revisions to the DoT and TPA)

Hi Usman,

Attached are the following documents:

1) Declaration of Trust executed by Computershare.

2) Ontario Transfer Payment Agreement, executed by Computershare

3) Transaction Statement showing the deposit of $100 into a trust account on Mar 23, 2017 in order to establish the Trust.

Regards, Morag.

From: Syed, Usman (ENERGY) [mailto:Usman.Syed@ontario.ca]
Sent: Thursday, March 23, 2017 5:54 PM
To: Morag Abraham
Cc: Sermat-Harding, Kaili (ENERGY); Schwab-Pflug, Emma (ENERGY); Qureshi, Musab (ENERGY); Johnson, Paul (ENERGY/MEDEI/MRI); Schachtschneider, Michelle (ENERGY); ASHBOURNE, STEPHEN; PRESTAGE, JA; Petsche, Nadine (TBS); Alexandra.Phillips@HydroOne.com; Daniel.Levitan@HydroOne.com; GILL Spencer; An, Tai (ENERGY); Gounden, Pratima (ENERGY)
Subject: Affordability Fund Trust (Further Revisions to the DoT and TPA)
Importance: High

Hi Morag,

Please see attached for tracked and clean versions of the TPA and Declaration. The tracked versions are compared to the versions you saw yesterday.

Would it be possible to send us signed copies of the two documents by email by 6:30pm today?

Declaration- Next Steps

· Could you sign two copies of the clean version of the Declaration (one for us and one for you) and email us a scanned copy.

· We will pick up our copy of the original Declaration tomorrow morning.

TPA- Next Steps

· Could you sign three copies of the clean version of the TPA (two for us and one for you) and email us a scanned copy (entire version- including signature and non-signature pages)

· Our Deputy Minister will then sign on three printed copies.

· Tomorrow we will pick up two copies of the TPA that you signed and give you one copy of the TPA our Deputy signed.

Thanks!

- Usman

Usman Syed

Director, Conservation and Energy Efficiency

Ontario Ministry of Energy

5th Floor, 77 Grenville Street
Toronto ON M7A 2C1

Direct Line: (416) 325-6651

Email: usman.syed@ontario.ca

From: Morag Abraham [mailto:Morag.Abraham@computershare.com]
Sent: March-23-17 10:52 AM
To: Schwab-Pflug, Emma (ENERGY); Lisa Kudo
Cc: Syed, Usman (ENERGY); Qureshi, Musab (ENERGY); Di Tullio, Yvonne (ENERGY); Alexandra.Phillips@HydroOne.com; Johnson, Paul (ENERGY/MEDEI/MRI); Schachtschneider, Michelle (ENERGY); Petsche, Nadine (TBS); Gounden, Pratima (ENERGY); An, Tai (ENERGY)
Subject: RE: Affordability Fund Trust (Further Revisions to the DoT and TPA)

Good morning Emma,

I've reviewed the revised agreements and I have some further comments. Please see attached pages.

Regards, Morag.

From: Morag Abraham
Sent: Wednesday, March 22, 2017 5:52 PM
To: 'Schwab-Pflug, Emma (ENERGY)'; Lisa Kudo
Cc: Syed, Usman (ENERGY); Qureshi, Musab (ENERGY); Di Tullio, Yvonne (ENERGY); Alexandra.Phillips@HydroOne.com; Johnson, Paul (ENERGY/MEDEI/MRI); Schachtschneider, Michelle (ENERGY); Petsche, Nadine (TBS); Gounden, Pratima (ENERGY); An, Tai (ENERGY)
Subject: RE: Affordability Fund Trust (Further Revisions to the DoT and TPA)

Hi Emma,

Thank you for the revised documents. I'll review the changes and get back to you tomorrow morning.

Regards, Morag.

From: Schwab-Pflug, Emma (ENERGY) [mailto:Emma.Schwab-Pflug@ontario.ca]
Sent: Wednesday, March 22, 2017 5:45 PM
To: Lisa Kudo
Cc: Syed, Usman (ENERGY); Qureshi, Musab (ENERGY); Di Tullio, Yvonne (ENERGY); Alexandra.Phillips@HydroOne.com; Morag Abraham; Johnson, Paul (ENERGY/MEDEI/MRI); Schachtschneider, Michelle (ENERGY); Petsche, Nadine (TBS); Gounden, Pratima (ENERGY); An, Tai (ENERGY)
Subject: FW: Affordability Fund Trust (Further Revisions to the DoT and TPA)

Hello Lisa,

Please find attached updated versions of the TPA and Declaration. Changes are tracked against the previous versions we had sent you.

There are three main outstanding elements that we are working to address:

1. On page 2 and 10 of the TPA, we need to add Computershare's relevant contact info. Could you kindly add this to the TPA?

2. For now we have left a placeholder for the effective date. We will replace that with tomorrow's date once you review.

3. Both documents have some formatting issues (Blakes is working to address):

- inconsistent page numbering and footers for both the TPA and Declaration

- incorrect sub section numbering in Annex A of the TPA

- Schedule B reference to the hospitality directive needs to be updated

Could you kindly review the TPA and Declaration and give us your final OK. Appreciate if you can let us know by tomorrow morning (Mar 23).

We can then circulate clean versions for your signature.

Thank you,

Emma

From: ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
Sent: March-22-17 4:23 PM
To: PRESTAGE, JA; Johnson, Paul (ENERGY/MEDEI/MRI); Ranalli, David (ENERGY); Schachtschneider, Michelle (ENERGY); Qureshi, Musab (ENERGY); Schwab-Pflug, Emma (ENERGY); Syed, Usman (ENERGY); Petsche, Nadine (TBS)
Subject: RE: Affordability Fund Trust (Further Revisions to the DoT and TPA)

Hi. Here is a further revised set of the DoT and TPA, reflecting some final edits, catch-ups and clean-ups. Regards, Steve

Stephen R. Ashbourne

Partner

stephen.ashbourne@blakes.com

Dir: 416-863-3086

Blake, Cassels & Graydon LLP

199 Bay Street, Suite 4000, Toronto ON M5L 1A9
Tel: 416-863-2400 Fax: 416-863-2653
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From: PRESTAGE, JA
Sent: Wednesday, March 22, 2017 2:48 PM
To: Paul.Johnson3@ontario.ca; David.Ranalli@ontario.ca; Michelle.Schachtschneider@ontario.ca; Musab.Qureshi@ontario.ca; Emma.Schwab-Pflug@ontario.ca; Usman.Syed@ontario.ca; Petsche, Nadine (TBS)
Cc: ASHBOURNE, STEPHEN
Subject: Affordability Fund Trust

All:

Attached are revised versions of the Declaration of Trust and the TPA which seek to reflect all of the comments received.

There are a few highlighted sections which require specific decisions or attention.

J.A.

J.A. Prestage
Partner
ja.prestage@blakes.com
Dir: 416-863-2955

****
Please visit the following website to read the Computershare legal notice:
http://www.computershare.com/disclaimer/americas/en

Veuillez visiter le site Web suivant afin de prendre connaissance de l'avis juridique de Computershare: http://www.computershare.com/disclaimer/americas/fr

****

image001.pdf

Blakes

Affordability Fund Trust - Transaction Stmt - Mar 23 2017.pdf

Computershare

23/03/2017
6:18:29PM

Transaction Statement

From: 23 March, 2017 **To :** 23 March, 2017

Account Name : Affordability Fund Trust **Account Nbr :** 1000039573

Trust Officer : Josephine Chu **Currency Code:** CDN

Transaction Date	Entry Code	Description	Debit	Credit	Balance
		Period Opening Balance :			0.00
23/03/2017	TTI	INTERNAL FUNDS MOVEMENT--TO ESTABLISH THE FUND--chuj1		$100.00	$100.00
		Total Period Debits :	$0.00		
		Total Period Credits :		$100.00	
		Period Closing Balance :			$100.00

Declaration of Trust dtd Mar 23 17.executed.pdf

DECLARATION OF TRUST

Made as of March 23, 2017

by

COMPUTERSHARE TRUST COMPANY OF CANADA

establishing

AFFORDABILITY FUND TRUST

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DECLARATION OF TRUST

This Declaration of Trust is made as of March 23, 2017, by Computershare Trust Company of Canada, a trust company established under the laws of Canada and licensed to carry on business as a trust company in each of the provinces and territories of Canada (together with its successors and assigns and the other trustees (including the Board of Trustees) contemplated herein, the "**Trustee**").

WHEREAS Computershare Trust Company of Canada, as settlor, wishes to establish a trust to acquire, hold, manage, invest, apply and dispose of certain property for the benefit of certain Beneficiaries as herein described.

NOW THEREFORE Computershare Trust Company of Canada hereby declares that it holds in trust as trustee (a) the sum of ONE HUNDRED DOLLARS ($100) contributed by it on this date and (b) all other property of every type and description which it may hereafter acquire or hold in its capacity as trustee of the Trust and all income therefrom and proceeds thereof, to hold, manage, invest, apply and dispose of same on and subject to the provisions set forth in this Declaration of Trust, including the annexes and schedule attached hereto.

SECTION 1
INTERPRETATION

1.1 Definitions

In this Declaration:

(a) "***Administrative Services Agent***" means each agent, which may include any Electricity Distributor or other Person, appointed from time to time under an Administrative Services Agreement, and its successors and permitted assigns solely in such capacity.

(b) "***Administrative Services Agreement***" means each agreement entered into from time to time by the Trust and one or more Administrative Services Agents or other Persons, in furtherance of the Purpose, under which the Administrative Services Agent agrees to provide specified administrative and other services to and on behalf of the Trustee, as such agreement may be amended, supplemented, restated, renewed or replaced from time to time and includes the agreement entered into on or about the date hereof between the Trustee and Hydro One Limited.

(c) "***Assets***" means, collectively, the following:

(i) the $100 Canadian referred to above, contributed by Computershare Trust Company of Canada on the date hereof;

(ii) all other property which is now or which at any time in the future may be issued, assigned, transferred, provided, donated, gifted and contributed to the Trustee (including pursuant to the Transfer Payment Agreement) to be held in trust pursuant to this Declaration (and which the Trustee is willing to accept and hold);

(iii) all acquisitions of property made by the Trust;

(iv) all property which may at any time be substituted for or in respect of the property referred to in clauses (i), (ii) and (iii), above;

(v) all income of the Trust, including investment income generated by the investment of the property referred to in clauses (i), (ii), (iii) and (iv), above; and

(vi) all proceeds of disposition of any of the property referred to in clauses (i) through (v) above,

but excludes any property paid out or distributed (whether out of income or capital) pursuant to the provisions of this Declaration.

(d) "***Beneficiary***" means each Primary Beneficiary and each Residual Beneficiary, as applicable.

(e) "***Board of Trustees***" means (i) as of the Original Trustee Replacement Date, the individual trustees appointed by the Original Trustee pursuant to Section 5.7 on the basis described in the Trustee Replacement Annex, and (ii) thereafter, the group of trustees appointed hereunder and acting in such capacity.

(f) "***Business Day***" means any working day, Monday to Friday inclusive, excluding statutory and other holidays, namely: New Year's Day; Family Day; Good Friday; Easter Monday; Victoria Day; Canada Day; Civic Holiday; Labour Day; Thanksgiving Day; Remembrance Day; Christmas Day; Boxing Day and any other day on which the Province has elected to be closed for business.

(g) "***Declaration***" means this Declaration of Trust, as it may be amended, restated, supplemented or otherwise modified from time to time, and includes each of the annexes and the Schedule attached hereto which constitute and form an integral part of this Declaration.

(h) "***Electricity Distributor***" means, in respect of a designated service area or region in Ontario, the distributor of electricity to residences located in such area or region.

(i) "***Electricity Invoice***" means an invoice issued by an Electricity Distributor in respect of electricity charges and related services and amounts incurred or assessed in respect of a residence located in the Electricity Distributor's designated service area or region in Ontario.

(j) "***Eligible Investments***" means (i) a deposit receipt, note, certificate or instrument issued, guaranteed or endorsed by a bank listed in Schedule I to the *Bank Act* (Canada), which provides that the principal and any interest shall be fully paid no later than one year after the day the investment was made, or (ii) a deposit account at a bank listed in Schedule I to the *Bank Act* (Canada).

(k) "***Eligible Measures***" means electricity efficiency and/or conservation measures determined by the Trustee from time to time on the basis contemplated in the Principles Annex and in the manner specified in and having regard to the Permitted Delegations Annex.

(l) "***Final Distribution Date***" means the earlier of (a) the date (if any) on which the Trustee determines (by a resolution of the Board of Trustees) that no further distributions are likely to be made to any Primary Beneficiary and (b) December 31, 2019.

(m) "***HAP Eligible Person***" means an "Eligible Person" as defined in Section 3.1 of the document entitled "Conservation First Framework LDC Took Kit" published by the Independent Electricity System Operator and designated as Final v3.0 – March 11, 2016, as amended in accordance with the Energy Conservation Agreement between the Independent Electricity System Operator and Electricity Distributors.

(n) **"Implementation Agent"** means each agent which may include any Electricity Distributor or other Person, appointed from time to time under an Implementation Agreement, and its successors and assigns solely in such capacity.

(o) **"Implementation Agreement"** means each agreement entered into from time to time by the Trustee and one or more Implementation Agents or other Persons in furtherance of the Purpose under which the Implementation Agent would agree to provide specified services to and on behalf of the Trustee (including, following the Original Trustee Replacement Date, as contemplated by the Permitted Delegations Annex) in connection with the implementation of the Program as such agreement may be amended , supplemented, restated, renewed or replaced from time to time.

(p) "***Minister of Energy***" means the Minister of Energy or such other member of the Executive Council as may be assigned primary ministerial responsibility for the administration of the *Ministry of Energy Act, 2011* under the *Executive Council Act*.

(q) "***Original Trustee***" means Computershare Trust Company of Canada, acting in its capacity as trustee hereunder, together with any additional or replacement Trustee appointed hereunder prior to the Original Trustee Replacement Date and any of their respective successors and assigns.

(r) "***Original Trustee Replacement Date***" has the meaning specified in Section 5.7, being the date on which the Original Trustee is replaced as trustee under this Declaration by the Board of Trustees as contemplated under Section 5.7.

(s) "***Permitted Delegations Annex***" means the Permitted Delegations Annex set forth as an annex to this Declaration.

(t) "***Person***" includes any individual, sole proprietorship, corporation, partnership, joint venture, association, society, club, board, chamber, joint-stock company, trust, trustee, unincorporated or incorporated organization or entity or government or any entity, agency or political subdivision thereof.

(u) "***Primary Beneficiary***" means each individual that, as of a time of determination, satisfies each of the following criteria:

(i) the individual owns, rents or leases a residence located in Ontario and is the primary or secondary electricity utility account holder named on an Electricity Invoice issued in respect of that residence; and

(ii) the individual is not a HAP Eligible Person.

(v) "***Principles Annex***" means the Principles Annex set forth as an annex to this Declaration.

(w) "***Province***" means the Province of Ontario.

(x) "***Program***" means the establishment, promotion, implementation and administration of a program to achieve the Purpose on the basis contemplated in this Declaration.

(y) "***Purpose***" means (i) the making of distributions to Primary Beneficiaries who are identified and whose needs are assessed in accordance with section 3.1 and 3.2 of this Declaration, having regard to (x) the principles set forth in the Principles Annex, (y) the manner and basis of implementation and administration of the Program contemplated in the Permitted Delegations Annex, and (z) the other terms, limitations and requirements set forth in this Declaration, and (ii) to the extent that Assets are available following the distributions made to Primary Beneficiaries as contemplated in (i), above, the making of distributions to Residual Beneficiaries who are identified and whose needs are assessed in accordance with section 3.3 and otherwise having regard to the other terms, limitations and requirements set forth in this Declaration.

(z) ***"Residual Beneficiary"*** means each charitable organization identified by the Trustee and specified as a residual beneficiary hereunder from time to time, selected by the Trustee in consultation with and having regard to the recommendations of the Ontario Energy Board in accordance with section 3.3.

(aa) "***Transfer Payment Agreement***" means the transfer payment agreement dated as of March 23, 2017 between the Trustee and Her Majesty the Queen in right of Ontario as represented by the Minister of Energy, as such agreement may be amended, restated, supplemented or otherwise modified by the further agreement of the parties thereto from time to time.

(bb) "***Trust***" means Affordability Fund Trust, a trust established under and governed by the laws of the Province of Ontario pursuant to this Declaration.

(cc) "***Trustee***" means (i) the Original Trustee and (ii) on and after the Original Trustee Replacement Date, the Board of Trustees acting together in accordance with and subject to Section 5.7 and in accordance with the rules and procedures adopted by the Board of Trustees pursuant to Section 5.8.

(dd) "***Trustee Replacement Annex***" means the Trustee Replacement Annex set forth as an annex to this Declaration.

1.2 Headings and Table of Contents

The insertion of headings and the provision of a table of contents are for convenience of reference only and shall not affect the construction or interpretation of this Declaration.

1.3 References

Unless otherwise specified, all references to Sections are to Sections of this Declaration. The words "hereto", "herein", "hereof", "hereunder" and similar expressions refer to this Declaration and not to any particular Section or other provision of this Declaration.

1.4 Number and Gender

Unless otherwise specified, words importing the singular include the plural and vice versa and words importing gender include all genders.

1.5 Governing Law

This Declaration shall be governed by, and construed and interpreted in accordance with, the laws of the Province of Ontario and of Canada applicable therein.

1.6 Severability

Any provision of this Declaration which is illegal, invalid or unenforceable in any jurisdiction shall not affect the legality, validity or enforceability of the remaining provisions and any such illegality, invalidity or unenforceability in any jurisdiction shall not affect the legality, validity or enforceability of such provision in any other jurisdiction.

1.7 Reference to the Trust and the Trustee

For greater certainty, where any reference is made in this Declaration to an act to be performed by or for or on behalf of the Trust, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Trustee in its capacity as trustee of the Trust, and, where any reference is made in this Declaration to an act to be performed by or for or on behalf of the Trustee, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Trustee solely in its capacity as trustee of the Trust. Except as provided under the Transfer Payment Agreement, no Person dealing with the Trust or the Trustee shall be bound to make any enquiry concerning, or has the right to require production of, any evidence of the validity of any act of, or transaction purporting to be made by, the Trustee.

1.8 Defect in Appointment

No action taken by the Trustee will be invalid or ineffective by reason only of any defect in the appointment of the Trustee or the non-compliance by the Trustee with any rules or procedures adopted by the Trustee and which is discovered after the taking of such action.

SECTION 2
CONCERNING THE TRUST

2.1 Objectives

The Trust is established to hold, invest, apply and dispose of the Assets for the benefit of the Beneficiaries in furtherance of the Purpose, as provided for in this Declaration. In furtherance of the Purpose:

(a) the Original Trustee shall hold and invest the Assets as contemplated in this Declaration until the Original Trustee Replacement Date, after which the Board of Trustees shall be duly appointed hereunder; and

(b) the Board of Trustees shall hold, invest, apply and dispose of the Assets in accordance with this Declaration, including by determining the identities of and distributions (if any) to be made to or for the benefit of the Primary Beneficiaries in accordance with Sections 3.1 and 3.2 of this Declaration, having regard to the principles set forth in the Principles Annex and in the manner and on the basis contemplated in the Permitted Delegations Annex, or otherwise by determining the identities of and distributions to be made to or for the benefit of any Residual Beneficiary in accordance with Section 3.3,

in each case and in all respects subject to the terms, limitation and requirements set forth in this Declaration.

2.2 Name of the Trust

The name of the Trust shall be the "Affordability Fund Trust" or such replacement name as the Trustee shall determine and specify from time to time. The Trustee shall hold the Assets and conduct the activities of the Trust under such name or variation thereof (including any variation of such name in the French language). If the Trustee determines to change the name of the Trust, the Trustee may specify and use such other designation or adopt such other name (including any name in the French language) as it considers appropriate and may hold the Assets and conduct the activities of the Trust under such designation or other name.

2.3 Location

The head office and the situs of the administration of the Trust shall be • or such other address in Ontario as the Trustee may determine from time to time.

2.4 Fiscal Year

The fiscal year of the Trust shall end on December 31 of each year.

SECTION 3
DISTRIBUTIONS

3.1 Distributions to Primary Beneficiaries

After the Original Trustee Replacement Date and prior to the Final Distribution Date, the Trustee shall undertake diligent efforts in good faith to distribute the Assets (including capital or income) to the Primary Beneficiaries identified based on the application of the principles specified in the Principles Annex and in the manner and in the amounts determined on the basis contemplated by the Permitted Delegations Annex, in each case in the amounts and to the extent specified herein and therein, subject in all respects to the exercise by the Trustee of its discretion hereunder and to the exclusion of the other Beneficiaries.

3.2 Amount of Distributions to Primary Beneficiaries

For the purposes of determining the amount of distributions to be made to the Primary Beneficiaries, the Trustee shall have regard to and be entitled to rely on the recommendations of and information provided by Electricity Distributors acting as Implementation Agents appointed for the purposes, in the manner and substantially on the terms contemplated in the Permitted Delegations Annex, without any duty or obligation to verify or makes enquiries regarding the basis for or propriety of such recommendations or the accuracy or completeness of such information, except if and to the extent that the Trustee, in its discretion, determines that (i) it has actual knowledge that such recommendations are contrary to the reasonable application of the principles set forth in the Principles Annex or have been made on a basis that is manifestly contrary to such principles or the delegations and activities specified or contemplated to be undertaken under the Permitted Delegations Annex or (b) such information is known by the Trustee to be erroneous, contain a material misrepresentation or is materially incomplete.

3.3 Distributions to Residual Beneficiaries

Prior to the Final Distribution Date, the Trustee shall identify the Residual Beneficiary, or if more than one the Residual Beneficiaries and their respective allocations, by consulting with and having regard to the recommendations of the Ontario Energy Board, based on those charitable organizations which provide support services for Low Income Energy Assistance Program Emergency Financial Assistance (LEAP EFA) and the Ontario Electricity Support Program (OESP) or other charities that OEB may identify as relating to the Purpose. Following the Final Distribution Date, the Trustee shall, subject to compliance with section 7.3 and completion of a final audit, distribute all remaining Assets (including capital or income) to the Residual Beneficiaries, in each case in the amounts and to the extent determined by the Trustee in its discretion hereunder (having consulted with and having had regard to the recommendations of the Ontario Energy Board as aforesaid) and to the exclusion of the other Beneficiaries.

SECTION 4
POWERS OF THE TRUSTEE

4.1 General

Subject to and in compliance with the terms, limitations and restrictions of this Declaration and notwithstanding applicable trust legislation, the Trustee shall have, without other or further authorization, full, exclusive and absolute power, control and authority over the Assets and over the affairs and activities of the Trust to the same extent as if the Trustee were not a trustee, but rather the sole and absolute owner of the Assets in its own right, including such power, control and authority to do all such acts and things as in its sole judgment and discretion are necessary, incidental or desirable for carrying on the affairs and activities of the Trust, with such powers of delegation as may be permitted or otherwise contemplated by this Declaration. Except as expressly provided in this Declaration, the enumeration in this Declaration of any specific power or authority shall not be construed as limiting the aforesaid general power or authority or any other specific power or authority set out herein. Subject to the terms, limitations and restrictions of this Declaration, every discretion or power hereby conferred on the Trustee is an absolute and uncontrolled discretion or power.

4.2 Specifically Enumerated Powers

The Trustee shall have the following specific powers and authorities:

(a) ***Transfer Payment Agreement.*** The Trustee shall have the power to enter into, amend, supplement, modify and perform its obligation under the Transfer Payment Agreement.

(b) ***Contracts and Undertakings.*** The Trustee shall have the power to enter into, amend, supplement, modify and perform its obligation under any contract entered into or undertaking given by the Trustee in furtherance of the Purpose, including any Administrative Services Agreement and any Implementation Agreement.

(c) ***Power to Own, Hold and Manage.*** Subject to section 4.2(d), the Trustee shall have the power to own, hold and manage the Assets in such manner as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable.

(d) ***Power to Invest in Eligible Investments.*** The Trustee shall have the power to invest the Assets only in Eligible Investments, and to change such Eligible Investments at any time and from time to time, all as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable, but always having regard to the Trustee's expectations regarding the timing of payments to be made to the Beneficiaries hereunder. If an investment of Assets in Eligible Investments would not be authorized under the applicable trust laws of Ontario, the Trustee shall nevertheless be permitted to make an investment of the Assets in such Eligible Investments. The Trustee will have no liability for the diminution in the value of any investment in Eligible Investments made hereunder.

(e) ***Power to Dispose of Assets.*** The Trustee shall have the power to sell, convey, assign, transfer, exchange and in any other manner dispose of the Assets or any part or parts thereof free and clear of any and all trusts established under this Declaration, by public or private sale, for cash or on credit, with or without advertisement, and subject to such restrictions, stipulations, agreements and reservations as the Trustee in its sole and absolute discretion may consider appropriate or advisable, and to execute and deliver and perform any agreement, deed, conveyance, transfer or other document or instrument in connection with the foregoing.

(f) ***Power to Apply Assets and Proceeds to Make Distributions to Beneficiaries.*** The Trustee shall have the power to apply the Assets and the proceeds and income derived therefrom to make distributions to the Beneficiaries contemplated by Section 3, and to execute and deliver and perform any agreement, deed, conveyance, transfer or other document or instrument in connection therewith.

(g) ***Power to Delegate and to Appoint Agents, etc.*** The Trustee shall have the power to appoint, employ or contract with any Person as the Trustee in its sole and absolute discretion may consider appropriate or advisable in connection with the activities of the Trust. Without limiting the generality of the foregoing:

(i) the Trustee will have the power at any time and from time to time to appoint, employ or retain consultants, financial advisers, technical advisers, legal counsel, accountants, administrative services agents, implementation agents, insurers, insurance agents and insurance brokers, as the Trustee may require for the

purpose of discharging its duties hereunder and shall not be responsible for or for the actions of any of them, including to:

(A) act for and on behalf of the Trust in connection with any and all matters in any way relating to the negotiation, settlement, entering into, amending, performance and enforcement of the Transfer Payment Agreement, the Administrative Services Agreements, the Implementation Agreements, and any other agreements and contracts to which the Trust becomes a party in accordance with this Declaration;

(B) to provide or cause to be provided any or all kinds of administrative and other services in any way relating to the activities of the Trust;

(C) to act as attorney in fact, agent or trustee in the acquisition, holding, investment, application, sale or other disposition of the Assets and in the handling, prosecuting, defending or settling of any claims of or made against the Trust;

(D) to value the Assets and determine the net income of the Trust; and

(E) to make any filings, elections and submissions (including in respect of taxation matters) in connection with the Trust's compliance with applicable laws and regulatory requirements; and

(ii) the Trustee may pay remuneration and reimbursements from the Assets for services performed for it or on its behalf in the discharge of the trusts hereof without taxation for costs or fees of any counsel, solicitor or attorney.

Without limiting the foregoing, it is expected that the Board of Trustees will seek to enter into Implementation Agreements with Electricity Distributors for the purposes contemplated by the Permitted Delegations Annex, and on such terms and conditions (including terms and conditions as to the payment of reasonable fees and expenses) not inconsistent therewith as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable.

(h) ***Power to Operate Accounts.*** The Trustee shall have the power to (i) open and operate accounts at any chartered bank, trust company or other financial institution in Canada or elsewhere, as the Trustee in its sole and absolute discretion may consider appropriate or advisable; (ii) deposit therein any moneys or securities forming part of the Assets whether or not such deposits will earn interest; (iii) withdraw such deposits at such times and in such manner as the Trustee may determine; (iv) draw, make, endorse, deposit or otherwise deal in cheques, bills of exchange, promissory notes, drafts and other kinds of instruments and securities; and (v) enter into contracts or agreements with any such chartered bank, trust company or other financial institution containing such terms and provisions as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable. In connection therewith, the Trustee shall have no liability or responsibility for any loss which may occur by reason of the failure of any such chartered bank, trust company or other financial institution.

(i) ***Power to Collect, etc.*** The Trustee shall have the power to (i) collect, sue for, receive and give receipts for all sums of money or other property due to the Trust; (ii) consent to extensions

of time for payment or to the renewal of any securities or obligations; (iii) engage or intervene in, prosecute, defend, compound, compromise, abandon or adjust by arbitration or otherwise, any demands, claims, actions, suits or proceedings relating to the Trust or the Assets; (iv) exercise any and all remedies available to the Trustee under any agreement or as may otherwise be available, including any power of foreclosure or sale available at law; (v) in connection with any such foreclosure or sale, purchase or otherwise acquire title to any property and to convey good title thereto free of any and all trusts hereby established, or to take or retake possession of any property secured under any agreement or instrument; (vi) extend the time, with or without security, for the payment or delivery of any debts or property; (vii) execute and deliver releases, acquittances, discharges, agreements or other instruments related thereto; and (viii) pay or satisfy any debts or claims upon any evidence that the Trustee, in its sole and absolute discretion, may determine to be sufficient.

(j) ***Power to Obtain Insurance.*** The Trustee shall have the power to enter into contracts for or in relation to or otherwise obtain policies of insurance for the purpose of insuring the risks associated with the Trust, including to insure the Trustee (including the members of the Board of Trustees) against any risk of loss associated with assuming and performing the duties as Trustee. Without limiting the foregoing, it is expected that the Board of Trustees will obtain commercial general liability insurance from insurers having a secure A.M. Best rating of B+ or greater, or the equivalent, that in the opinion of the Recipient a prudent person similar to the Recipient would maintain, and having an inclusive limit of not less than $2,000,000 per occurrence and providing for contractual liability coverage.

(k) ***Power to Pay Trustee's Fees.*** The Original Trustee shall be entitled to be paid and receive the fees set forth in the Original Trustee's schedule of fees delivered as of or prior to the date hereof as compensation for its services under this Declaration, and to be reimbursed for its out-of-pocket expenses reasonably incurred, in each case from the Assets and without the approval of any Beneficiary or any court. The Original Trustee shall be entitled, in its sole and absolute discretion, to withdraw funds from time to time for such purpose from any account of the Trust. Members of the Board of Trustees shall be entitled to reimbursement for and in respect of their out-of-pocket expenses reasonably incurred in discharging their respective duties and obligations under this Declaration, in each case without the approval of any Beneficiary or any court, provided that the members of the Board of Trustees have general regard to the accountability principles set out in Schedule B to the Principles Annex.

(l) ***Power to Pay Taxes.*** The Trustee shall have the power to (i) pay, deduct, withhold or remit any taxes or assessments which are required by law to be paid, deducted, withheld or remitted together with or from any payment made by the Trustee; (ii) pay all taxes or assessments of whatever kind or nature imposed upon or against the Trust or the Trustee in connection with the Assets or any part thereof; (iii) collect and remit all taxes and assessments of whatever kind or nature required to be collected and remitted by the Trust or the Trustee in connection with their activities or the Assets or any part thereof; (iv) appeal, settle or compromise tax claims or liabilities; and (v) for the foregoing purposes, to make such returns, elections and submissions and do all such other acts and things as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable.

(m) ***Power to Appoint Auditors.*** The Trustee shall have the power to select and appoint and discharge and re-appoint, in its sole and absolute discretion, an auditor or auditors of the Trust and to settle and pay the fees of any such auditor or auditors from any account of the Trust.

(n) ***Form of Accounts.*** The Trustee shall have the power to determine and change from time to time, in its sole and absolute discretion, the method or form in which the accounts of the Trust will be kept and shall not be required to keep or provide accounts in the form usually required by law to be kept or provided by trustees; provided that such method or form reasonably complies with generally accepted accounting principles in effect in Canada to the extent applicable.

(o) ***Title to Assets.*** The Trustee shall have the power to cause all or any part of the Assets to be held by or registered, in its sole and absolute discretion, in the name of any Person.

(p) ***Delegation of Discretion***. The Trustee shall have the power to delegate the right and power to exercise, or concur in the exercise of any discretion or power, conferred on the Trustee in this Declaration or conferred by law to any one or more of its directors, officers, employees, agents, representatives or to such other Person, as the Trustee, in its sole and absolute discretion, may think is appropriate or advisable, including to one or more Administrative Services Agents under an Administrative Services Agreement and to one or more Implementation Agents and their respective employees, officers and directors under a related Implementation Agreement entered into by the Trust substantially on the basis contemplated in the Permitted Delegations Annex. In particular, the Trustee shall have the power to accept, rely on and follow the recommendations of an Electricity Distributor made under and having regard to the Permitted Delegation Annex with respect to the identification of, and the determination of distributions (if any) to be made to, any Primary Beneficiary, except if and in so far as the Trustee has actual knowledge that (1) such Primary Beneficiary did not in fact satisfy the "Selection Factors" specified in the Principles Annex as of the applicable time of determination; and/or (ii) the amount recommended to be distributed to the Primary Beneficiary was not calculated in substantial compliance with, or was calculated in a manner that is manifestly contrary to the requirements set forth or contemplated in, the Permitted Delegation Annex or the applicable Implementation Agreement.

(q) ***Additional Powers.*** The Trustee shall have the power to perform and do all such other acts, to take such steps and to execute all such deeds, transfers, assignments, agreements and other documents and instruments as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable for the carrying out of any of its powers hereunder or of any of the activities of the Trust as herein contemplated, or for the carrying out, promotion or advancement of the interests of the Trust, whether or not any of such acts, things, documents or instruments are herein expressly mentioned. Any good faith determination by the Trustee as to what is necessary, desirable or appropriate to carry out its powers or activities of the Trust as contemplated under this Declaration or to carry out, promote or advance the interests of the Trust shall be conclusive. Any construction of this Declaration or any determination as to the activities of the Trust or the existence of any power or authority hereunder made in good faith by the Trustee, relying upon the advice of counsel, shall be conclusive. In construing the provisions of this Declaration, there shall be a presumption in favour of a grant of power to the Trustee.

SECTION 5
CONCERNING THE TRUSTEE

5.1 Duty of Trustee

In performing its duties and exercising its powers under this Declaration, the Trustee shall act honestly, in good faith and with a view to the best interests of the Trust and the Beneficiaries and

shall exercise that degree of care, diligence and skill that a reasonably prudent trustee would exercise in comparable circumstances (the "**Standard of Care**"). The Trustee shall observe and act in accordance with the terms of, and shall observe and comply with the limitations and restrictions set forth in, this Declaration, including having due regard to the principles set forth in the Principles Annex. To the extent that the Trustee has so delegated any of its duties or powers, it shall be deemed to have satisfied the Standard of Care in respect of the subject matter of such delegation, subject to the Trustee's overall duty as a trustee to exercise prudent oversight in relation to such delegation. Unless required by law, the Trustee will not be required to give any security, bonds or sureties in any jurisdiction for the performance of any of its duties and obligations under this Declaration. The Trustee (including the individual members of the Board of Trustees) will not be required to devote its entire time to the trust activities.

5.2 Limitation of Liability

The Trustee shall not be personally liable in tort, contract or otherwise to any Beneficiary or any other Person for any loss or diminution in the value of the Assets, or for any action or failure to act on the part of the Trustee or any of its employees or agents or any other Person, and shall not be subject to any personal liability for any debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses incurred by or against the Trust, howsoever arising, and resort will be had solely to the Assets for the payment, performance or satisfaction thereof. No property or assets of the Trustee, owned in its personal capacity or otherwise, will be subject to levy, execution or other enforcement procedures with respect to any obligation under this Declaration. However, the foregoing limitations in this Section shall not apply where the Trustee has demonstrated gross negligence, bad faith, fraud or wilful misconduct.

5.3 Liability of Trustee under Contracts

Any document or instrument creating a liability or obligation of the Trust or of the Trustee will be conclusively deemed to have been executed by the Trustee only in its capacity as Trustee of the Trust and will be binding upon the Trustee only in its capacity as trustee hereunder and resort may not be had to, nor recourse or satisfaction be sought from, the property of the Trustee other than the Assets, whether owned by its in its personal capacity or in any other capacity other than in its capacity as Trustee of the Trust, or from its employees or agents, and in all cases resort will be had solely to the Assets for the payment, performance or satisfaction of any such liability or obligation. However, the foregoing limitations in this Section shall not apply where the Trustee has demonstrated gross negligence, bad faith, fraud or wilful misconduct. Each document or instrument creating a liability or obligation of the Trust or of the Trustee shall contain a provision providing for the aforesaid limitation of liability.

5.4 Funds of the Trustee

The Trustee shall not be required to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers.

5.5 Indemnification of Trustee

In addition to and without limiting any other protection hereunder or otherwise by law of the Trustee and its respective employees, agents, representatives and assigns (in this Section 5.5,

collectively, the "**Representatives**"), the Trustee and its respective Representatives shall be indemnified, defended and saved harmless out of the Assets from, against and in respect of any and all liabilities arising or related to actions taken or omitted to be taken by any agent of the Trustee, losses, claims (including any claim arising out of the assessment of any tax on income by a taxing authority), damages, penalties, fines, actions, suits, demands, levies, assessments, costs, charges, expenses and disbursements (including, without limitation, any and all legal and advisor fees and disbursements) (in this Section 5.5, collectively, the "**Liabilities**") of whatever kind or nature which may at any time be suffered by, imposed upon, incurred by or asserted against the Trustee and its Representatives, whether groundless or otherwise, howsoever arising from or out of any act, omission or error of the Trustee, in each case made in connection with its acting as Trustee hereunder, in each case except and to the extent that the Liabilities are a result from or are caused by gross negligence, wilful misconduct, bad faith or fraud. Further, except as provided in section 5.2, the Trustee shall not be liable to any Beneficiary for any loss or damage relating to any matter regarding the Trust, including any loss or diminution in value of the Assets. Notwithstanding any other provision hereof, the obligations provided for in this section 5.5 shall survive any termination of the Trust, whether by reason of removal or resignation of the Trustee, termination or discharge of this Declaration or otherwise.

5.6 Reliance upon Advice

Subject to section 5.1, in performing its duties and exercising its powers hereunder, the Trustee may rely and may act or not act, and shall be fully protected in relying and acting or not acting, upon (a) any statement, telecopy or other electronic means of communication, writing, notice, resolution, report, opinion or other document or conversation believed by it to be genuine and correct and to have been signed, sent or made by the proper Person; (b) any opinion or advice received or information obtained from auditors, solicitors, or other professional advisers, whether retained by the Trustee or otherwise, and shall not be responsible or held liable for any loss or damage resulting from so relying or acting or not acting; and (c) the advice and actions of any Administrative Services Agent or Implementation Agent, including in connection with the delegations and reliances contemplated under the Permitted Delegations Annex. For greater certainty, it shall not be necessary for the Trustee to ascertain whether or not the Persons who have executed, signed or otherwise issued, authenticated or receipted such papers, writings or documents (including any Administrative Services Agreement or any Implementation Agreement or any other contract entered into by the Trustee) have authority to do so or that they are the same Persons named therein or otherwise to pass upon any requirement of such papers, writing or documents that may be essential for their validity or effectiveness or upon the truth and acceptability.

5.7 Replacement of the Original Trustee

The Persons identified in the Trustee Replacement Annex are hereby appointed to comprise the Advisory Committee contemplated therein (the "**Advisory Committee**"). The Original Trustee shall promptly request that the Advisory Committee make recommendations with respect to the composition of the "Board of Trustees", as contemplated by the Trustee Replacement Annex. The Original Trustee shall have no duty or obligation to investigate the basis for any of the Advisory Committee's recommendations and may rely on such recommendations without any duty of enquiry, supervision or oversight with respect to the activities and decision-making processes adopted by the Advisory Committee in its discretion, in full satisfaction of the Original Trustee's Standard of Care with respect to such matters hereunder. Except where it is manifestly

apparent to the Original Trustee that the individuals recommended by the Advisory Committee to become members of such Board of Trustees are disqualified from so acting on the basis of manifest non-compliance with the "Selection Factors" set forth in the Trustee Replacement Annex, the Original Trustee shall appoint, as members of the Board of Trustees, the six (five voting and one non-voting) individuals recommended for appointment to the Board of Trustees by the Advisory Committee. If the Original Trustee declines to appoint any individual recommended by the Advisory Committee, the Original Trustee will promptly request that the Advisory Committee provide a further recommendation whom the Original Trustee shall appoint as a member of the Board of Trustees unless it is manifestly apparent to the Original Trustee that the individual so recommended is also disqualified from so acting on the basis of manifest non-compliance with the "Selection Factors" set forth in the Trustee Replacement Annex,. Upon the appointment of such six individuals pursuant to this provision and their agreement to act as members of the Board of Trustees, the Original Trustee shall be deemed to have resigned and shall cease to be a trustee (such resignation occurring on the "**Original Trustee Replacement Date**").

5.8 Rules and Procedures of the Board of Trustees

(a) ***Initial Requirements***. As soon as practicable and in any event no later than one month following the Original Trustee Replacement Date, the Board of Trustees is expected to meet to take such decisions and actions as they deem necessary to ensure the proper management and administration of the Trust. The date (and location if in person) of the initial meeting shall be determined by a majority of the Board of Trustees.

(b) ***Meetings.*** Subject to the Board of Trustees' discretion to make such rules and procedures that they may deem desirable, meetings of the Board of Trustees may be held at such time and place as the trustee members of the Board of Trustees may agree upon or as they may fix by resolution for the purpose or if the meeting is called as hereinafter mentioned then at such time as may be designated in the notice calling the meeting. A meeting of the Board of Trustees may be called at any time by any two members of the Board of Trustees by two Business Days' notice given to the members of the Board of Trustees. No notice of any Board of Trustees' meeting shall be necessary when a quorum is present if those comprising the quorum consent to the transaction of the affairs of the Trust and the absent trustee or trustees, if any, either before or after the meeting shall waive in writing notice of the meeting. Meetings of the Board of Trustees may be conducted in person, by telephone, or in such other manner as determined by the Board of Trustees. The Board of Trustees may elect a Chairperson.

(c) ***Quorum.*** At any meeting of the Board of Trustees, a majority of the voting members of the Board of Trustees shall be a quorum irrespective of the number of members in office. The decision of the majority of the voting members where quorum exists shall govern and shall be binding for all purposes and shall be acted upon and carried out in the same manner and with the same effect as if all the voted members concurred therein; provided always that in the case of equality of votes the Chairperson, if any, shall not be entitled to cast a second or deciding vote.

(d) ***Power to Adopt Rules and Procedures.*** The Board of Trustees may make such rules and procedures not inconsistent herewith as it may deem desirable for the proper management and administration of the Trust and the discharge of the responsibilities of the Board of Trustees.

(e) ***Replacement of Members of the Board of Trustees***. The Board of Trustees shall have the power to replace any vacancy arising following the Original Trustee Replacement Date according to such rules and procedures as they deem appropriate subject to compliance with the Selection Factors specified in Trustee Replacement Annex and having regard for such considerations necessary to ensure that the composition of the Board of Trustees will be able to discharge its responsibilities in respect of the Declaration. If necessary, the Board of Trustees may fill any vacancy by application to the Courts of Ontario in the event of an unfilled vacancy.

(f) ***Decisions of the Board of Trustees.*** Decisions and actions of the Board of Trustees shall be made by voting, with each individual voting member having one vote. Subject to quorum requirements, a majority vote shall be determinative in respect of such decisions and actions. Subject to quorum requirements, any decision or action taken by the majority of voting members will represent the decision or action of the Trustee, and not any member of the Board of Trustees.

(g) ***Conflicts of Interest.*** With respect to any matter before the Board of Trustees, to the extent of a conflict of interest, whether actual, perceived or potential, involving a member of the Board of Trustees' personal interests and a matter concerning the Trust, such member shall abstain from voting on the matter or taking any other discretionary action on the matter. For the purposes of the foregoing, no member of the Board of Trustees shall be deemed to have a conflict by reason only that the member holds any office or position with an Electricity Distributor, social services agency or governmental or quasi-governmental agency or entity (such as the Independent Electricity System Operator); provided, however, that in relation to any decision of the Board of Trustees pertaining specifically to a particular Electricity Distributor, any member of the Board of Trustees who is a director, officer or employee of the Electricity Distributor would be expected to recuse himself or herself from participating in deliberations, discussions or voting in respect of such decision.

(h) ***Expense Reimbursements to Members of the Board of Trustees.*** Members of the Board of Trustees shall be entitled to reimbursement for and in respect of their out-of-pocket expenses reasonably incurred in discharging their duties and obligations as members of the Board of Trustees. Members of the Board of Trustees shall serve without compensation.

5.9 Confidentiality

Notwithstanding the resignation or removal and discharge from the trusts and powers reposed in and conferred on the Trustee by this Declaration, or the termination of this Declaration, the Trustee so resigning or removed shall continue to treat as confidential all information relating to the Trust, the Assets and the Beneficiaries and shall only be entitled to make disclosures concerning such information if disclosure is required in the performance of the functions of the resigning or removed Trustee or is ordered by a court of competent jurisdiction or is otherwise required by law. The Trustee shall not be responsible or liable to any Person for any loss or damage arising out of or in any way sustained or incurred in any way relating to any such required disclosure. The obligations arising under this section 5.9 shall survive the termination of the Trust.

5.10 Vesting in Successor Trustee

Any successor trustee (including any reconstituted Board of Trustees) shall automatically become vested with the Assets and with the same powers, rights, duties, responsibilities and trusts as if it, he or she had originally been named as Trustee under this Declaration, without the requirement of any further instrument or act or conveyance, and the Trustee ceasing to act shall execute all such transfers and other documents and do all such other acts or things as may be necessary or desirable to assign, transfer, deliver to, and vest in, the successor trustee, upon the trusts expressed in this Declaration, all the Assets and all the rights, powers and trusts of the Trustee ceasing to act. The expense of any act, document, deed or other instrument or thing required under this Section 5.10, including for greater certainty, outstanding fees and unreimbursed expenses of the Trustee (including any member of the Board of Trustees) ceasing to act, shall be satisfied from the Assets.

5.11 Execution of Instruments

The Trustee shall have the power to execute all deeds, transfers, agreements, promissory notes and other instruments on behalf of the Trust. Such power may be exercised by any one or more Administrative Services Agents acting in accordance with any delegated right to do so pursuant to an applicable Administrative Services Agreement or by any one or more Implementation Agents acting in accordance with any delegated right to do so pursuant to an applicable Implementation Agreement, and any such execution of instrument by an Administrative Services Agent, acting in such capacity as agent of the Trust pursuant to the terms and conditions of an Administrative Services Agreement or by an Implementation Agent acting in such capacity as agent of the Trust pursuant to the terms and conditions of an Implementation Agreement shall in each case be deemed to be a proper execution of such instrument by the Trustee and shall be binding for all purposes on the Trust.

5.12 Decisions by the Trustee

If there is more than one Trustee, decisions of the Trust may be made by a majority of Trustees eligible to vote on the applicable matter. Whenever the Trustees are unable to agree in relation to the commission or omission of any act or howsoever in the execution of the Trust, the decision of a majority of such Trustees shall prevail.

SECTION 6
AMENDMENTS AND SUPPLEMENTS

6.1 Amendments

Subject to the requirements of the Transfer Payment Agreement, the Trustee shall have the power in its sole and absolute discretion from time to time without the approval of any Beneficiary or any court to amend, vary, supplement, replace or restate this Declaration in its entirety or any portion thereof; provided, however that it is expected that any amendment shall be consistent with the intent of the principles set forth in the Principles Annex and with the intended scope and effect of the permitted delegations and activities of any Implementation Agent pursuant to the Permitted Delegations Annex. Without in any way limiting the foregoing, any such amendments, variations, supplements, replacements or restatements may:

(a) add provisions for the replacement of or appointment of additional trustees to act with the Original Trustee prior to the Original Trustee Replacement Date;

(b) in the case of the Original Trustee, add provisions to those contemplated in the Trustee Replacement Annex in respect of the appointment of the members and the formation and empowerment of the Board of Trustees;

(c) in the case of the Original Trustee, vary the terms and requirements applicable to the duties, responsibilities, obligations, liabilities, indemnities, protections, limitations, restrictions, compensation, expense reimbursements and such other matters, in each case as the Advisory Committee may indicate are necessary to be made in order to attract and receive confirmation of appointment of appropriately qualified individuals that the Advisory Committee specifies are to be appointed as members of the Board of Trustees in accordance with its recommendations;

(d) add additional or replace existing Trustees;

(e) add to or reasonably clarify the principles set forth in the Principles Annex;

(f) add to or reasonably clarify the delegations and activities contemplated to be made in the Permitted Delegation Annex;

(g) include provisions for the management of the Trust by the Trustees, including the making of rules, requirements and procedures governing the decision-making of the Board of Trustees;

(h) add provisions for the replacement of members of the Board of Trustees (in addition to those provisions contemplated in section 5.7 and the Trustee Replacement Annex);

(i) provide for the engagement of any Person or Persons as managers, administrators or other service providers to the Trust, including any additional or replacement Administrative Services Agent or Implementation Agent or representative thereof;

(j) specify supplemental procedures for the identification of Primary Beneficiaries and the exchange of information with Electricity Distributors in connection with identifying such Primary Beneficiaries; or

(k) specify procedures for the transfer and transmission of funds from the Trust or any Implementation Agent acting on its behalf and with delegated responsibility over funds constituting Assets, to or for the benefit of, Beneficiaries or their designated representatives, payees or assignees.

6.2 Supplemental Declarations

The Trustee is authorized to execute any supplemental declaration of trust (including one or more amendments and restatements from time to time of this Declaration) to give effect to amendments to this Declaration made pursuant to section 6.1.

SECTION 7
TERMINATION

7.1 Duration

Subject to sections 7.2 and 7.3, the Trust will continue in full force and effect so long as there are any Assets and until all of the debts, liabilities and obligations of the Trust have been paid and satisfied in full.

7.2 Termination and Distribution of Assets

The Trustee shall terminate the Trust and wind up its affairs as soon as practicable after the Final Distribution Date. In connection with the termination of the Trust, the Trustee shall identify the Residual Beneficiaries and distribute or cause to be distributed the remaining Assets, in cash or in kind or partly in each, to the Residual Beneficiaries, in each case in accordance with section 3.3. Despite the foregoing, the Trust will only be terminated and wound up after the Trustee, in its sole and absolute discretion, determines that all debts, liabilities and obligations of the Trust have been paid or otherwise adequately provided for and satisfied and upon receipt of such releases, indemnities and discharges as the Trustee, relying on the opinion of counsel, deems necessary for the protection of the Beneficiaries and for its own protection.

7.3 Distribution of Assets on Final Distribution Date

If the Trust holds Assets on the Final Distribution Date, the Trustee shall pay or provide reserves for the payment, and otherwise shall satisfy, all debts, liabilities and obligations of the Trust and shall provide or arrange to provide such investigations, audits, releases, indemnities and discharges as the Trustee, relying on the opinion of counsel, deems necessary for the protection of the Beneficiaries and for its own protection. Thereafter, any remaining Assets shall be paid to the Residual Beneficiaries in accordance with section 3.3.

SECTION 8
ACCEPTANCE OF TRUSTS

8.1 Acceptance of Trusts

The Trustee hereby accepts the trusts and duties contained in this Declaration and agrees to perform the same upon the terms and conditions hereof until discharged therefrom.

[Signature Page Follows]

The Trustee has executed this Declaration as of the date first written above.

COMPUTERSHARE TRUST COMPANY OF CANADA,

By: _____
Name: Morag Abraham
Title: Corporate Trust Officer

By: _____
Name: Ann Samuel
Title: Associate Trust Officer

PRINCIPLES ANNEX

The Trustee shall have regard to, but shall not be specifically bound by, the following principles in applying its discretion in relation to the administration of the Trust:

1. Identification of Primary Beneficiary Payees

1.1 Except in exceptional circumstances, a Primary Beneficiary would not be expected to receive a benefit from the Trust unless at the time of consideration it satisfies, in addition to the requirements contemplated in the definition of "Primary Beneficiary", each of the following criteria (the "**Selection Factors**"):

(i) it has a participant agreement with an applicable Electricity Distributor to undertake measures (its "**Energy Plan**") to improve the electricity efficiency and/or promote the conservation of electricity at its Ontario residence;

(ii) its Energy Plan involves one or more Eligible Measures, as may be designated by the Trustee from time to time from;

(iii) it confirms that:

1. the primary purpose of its Energy Plan is the conservation and efficient use by the Primary Beneficiary of electricity, and is not for the purposes of the Primary Beneficiary making a profit;

2. it would otherwise not have the financial resources to undertake the Eligible Measures included in its Energy Plan; and

3. it would otherwise not be eligible to receive amounts in respect of the Eligible Measures as a HAP Eligible Person;

(iv) it has demonstrated a need for financial assistance on the basis that its periodic electricity bills represent a financial burden, relative to its available financial resources; and

(v) such other criteria as the Trustee may determine, including based on the recommendations of Electricity Distributors or other knowledgeable Persons made on the basis and having regard to the delegations contemplated by the Permitted Delegations Annex or any applicable Implementation Agreement.

1.2 It is recognized that, in furthering the Purpose, an efficient basis upon which to allocate funds to the Primary Beneficiaries across different areas and regions within Ontario may be based on the areas and regions serviced by the Electricity Distributors operating within Ontario.

1.3 It would not be contrary to the Purposes if funds are made available by the Trustee to the Primary Beneficiaries unequally across different areas and regions within Ontario, and it is expected that in making such an unequal division it would be appropriate to have regard to:

(i) broad economic parameters of economic activity and the specific financial resources of the residents of the areas and regions, in each case as an indication of the relative need of such residents across the areas and regions;

(ii) electricity use and efficiency levels of residential electricity customers across the areas and regions;

(iii) specific regional indicators of economic weakness and need; and

(iv) such other factors as the Trustee may determine are relevant, including based on the submissions, advice and recommendations of Electricity Distributors or other knowledgeable Persons made on the basis and having regard to the delegations contemplated by the Permitted Delegations Annex or any applicable Implementation Agreement.

1.4 It is recognized that, in furthering the Purpose, the designated Electricity Distributor for an area or region in which a Primary Beneficiary resides would be expected to:

(i) be a reliable source for the purpose of assessing and confirming whether the Primary Beneficiary satisfies the Selection Factors;

(ii) be an efficient intermediary for the purpose of communicating with the Primary Beneficiary, including with respect to matters such as regarding the availability, terms, conditions and intended purposes of Program;

(iii) be able to facilitate an efficient payment of distribution determined to be made to or on behalf of the Primary Beneficiary, having regard to the Electricity Distributor's established practices, procedures and systems for dealing with its customers; and

(iv) have established contractual arrangements with the Primary Beneficiary that may apply to the protection and confidentiality of information provided by or respecting the Primary Beneficiary, which information may be useful in the consideration by the Electricity Distributor in its assessment of whether the Primary Beneficiary satisfies the Selection Factors, which information may not otherwise be available or readily accessible or verifiable by the Trustee.

1.5 It is recognized that, in furthering the Purpose, the Electricity Distributor for an area or region in which a Primary Beneficiary resides will have market and utilization information that may be useful in assessing the relative needs of Primary Beneficiaries within its area or region. Such information is expected to be relevant in assessing the extent to which one such Primary Beneficiary's financial needs and the merits of its Energy Plan are greater or more compelling than those of another such Primary Beneficiary, which comparison may be relevant to the extent that the funds allocable to the Primary Beneficiaries resident in the area or region are otherwise insufficient to meet the requests for funding by all such Primary Beneficiaries.

1.6 Accordingly, it is recognized that, in furthering the Purpose, it is consistent with the Purpose that the recommendations of Electricity Distributors be utilized and relied upon

by the Trustee to guide the process of identifying particular Primary Beneficiaries in making distributions to the Primary Beneficiaries.

1.7 If an Electricity Distributor for a particular area or region is unable or unwilling to assess or confirm the application of the Selection Factors to Primary Beneficiaries residing in the area or region or to make recommendations in relation to such matters, one or more of the following may provide a suitable alternative source of information and for information gathering, assessment and confirmation purposes in relation to such area or region:

(i) other Electricity Distributors operating in adjacent or other areas or regions in Ontario;

(ii) the Ontario Energy Board;

(iii) the Independent Electricity System Operator; and

(iv) anyone else having relevant expertise and access to information regarding the electricity market of the Province, in each case as may be considered relevant by the Trustee.

1.8 To the extent that privacy law or other legal requirements limit an Electricity Distributor from providing or making available specific information respecting the application of the Selection Factors to a particular Primary Beneficiary or group of Primary Beneficiaries, it is recognized that, in furthering the Purpose, it may be appropriate to redact or make generic affected information regarding such Primary Beneficiary in connection with the identification and confirmation of a Primary Beneficiary's eligibility and participation in the Program. If such limitations or restrictions would limit an Electricity Distributor from providing or confirming the name of a particular Primary Beneficiary to the Trustee, then it should be sufficient that such information may be obtained or disseminated on a confidential basis if and when required by the Trustee for the proper administration of the Trust and on that basis such impediments should not disqualify a Primary Beneficiary from participating in the benefits of the Program, provided that the confidential record-keeping of the Electricity Distributor would be available in connection with the application of any applicable legal process predicated on the identification of such Primary Beneficiary for the purposes of substantiating its rights as a Primary Beneficiary of the Trust or as to the validity or subsistence of the Trust.

2. Eligible Measures

2.1 It is expected that the Trust will identify eligible measures that, taking into consideration the principles set forth in the Principles Annex, have regard to the following (the "**Measures Factors**"):

(i) is the measure generally expected to result in reduced electricity consumption by a Primary Beneficiary if properly installed and used;

(ii) is the measure recognized under another Provincial program as being appropriate for achieving electricity conservation among a population analogous to the Primary Beneficiaries;

(iii) does the measure present any unacceptable health or safety considerations, either with respect to the Primary Beneficiary, a party providing or installing the measure, or the physical environment;

(iv) is the measure broadly available to residents across different areas and regions of the Province; or

(v) is the measure a requirement or precursor to another measure, the other measure being one which meets any of the other Measures Factors.

2.2 In identifying and applying the Measures Factors, Electricity Distributors would be expected to have expertise in assessing the suitability of efficiency and conservation measures in their respective areas and regions, which may differ across areas and regions across the Province based on factors (among other things) such as the climate, geography, density, electricity infrastructure, residential structures, and electricity use rates applicable within such areas or regions.

2.3 The measures specified in Schedule A to this Principles Annex may initially be considered to be consistent with the Measures Factors (subject to change as contemplated under the Permitted Delegations Annex).

3. Promotion of the Program

3.1 It is expected that the Trustee will undertake or engage others to undertake diligent efforts to promote the availability, terms and benefits of the Program to Primary Beneficiaries, including by establishing consistent communications through the Electricity Distributors.

3.2 It is expected that the Trustee will acknowledge the financial support of the Province in connection with the establishment and the funding for the Program, including in any external communications to or marketing directed at the Electricity Distributors and the Primary and Residual Beneficiaries. In the Trustee's delegation of any duties or powers to the Electricity Distributors through Implementation Agreements it is expected that Electricity Distributors will acknowledge the financial support of the Province in connection with the program including in any communications or marketing to Primary Beneficiaries.

4. Conduct of the Trust and the Program

4.1 It is expected that administrative expenses of the Board of Trustees and its members, including any expenses relating to the Trust, to the establishment of the Trust and any expenses related to the implementation and operation of the Program, including by or through Electricity Distributors and other relevant entities, will be recognized and subject to reimbursement on a basis that is substantially consistent with the accountability principles set out in Schedule B to this Principles Annex.

4.2 The Trustee is expected to conduct its activities in a manner that complies in all material respects with the Transfer Payment Agreement, including to:

(i) act prudently and in furtherance of the Purpose;

(ii) report not less frequently than annually the results of its activities for information purposes to the Province in connection with the Program;

(iii) comply with the Province's request for any independent verification or audit if determined to be necessary or appropriate by the Province;

(iv) return Assets that have not been distributed if it is determined that the Trustee has breached its Standard of Care in discharging its material duties under the Declaration, and has not cured such material breach despite having been given a reasonable opportunity by the Province to do so in light of the circumstances of such material breach, with the result that all or a significant part of the Assets have not been or are not being applied and distributed in furtherance of the Purpose or are being applied and distributed in a manner that is directly contrary or without regard to the Purpose.

4.3 Electricity Distributors are not intended to directly profit from distributions of funds made from the Trust, although it is recognized that the objectives of electricity efficiency and conservation of Primary Beneficiaries located in the service area or region of an Electricity Distributor, and the cost savings and improved credit worthiness of such Primary Beneficiaries, may be financially beneficial to the Electricity Distributor.

4.4 Distributions from the Trust are intended to allow receiving Primary Beneficiaries to undertake Eligible Measures at no or minimal personal cost.

4.5 Without in any way limiting the discretion of the Board of Trustees to extend the period during which the benefits of the Program may be available to the Primary Beneficiaries, up to and including the Final Distribution Date, it is expected that the Trust Assets would be distributed to Primary Beneficiaries during the period from the Original Trustee Replacement Date to April 30, 2019.

SCHEDULE A TO THE PRINCIPLES ANNEX
INDICATIVE ELIGIBLE MEASURES[1]

Initial Specified Measures
Block Heater Timer (just timer) – rated for outdoor use, have at least a 15 amp/1800 watt capacity, be cold weather resistant, bear a C-UL or CSA certification mark
Power bar with integrated timer, and switched power outlets, four each for a total of 8 outlets, have a total capacity of 15 amps. The switched outlets must remain "live", independent of timer settings, so long as the power bar itself remains switched on. The power bar must bear either a C-UL or CSA certification mark.
Efficient Showerheads (standard) - rated at no more than 4.8 Lpm (1.25 U.S. gpm) and be of the laminar flow type (non-aerating).
Efficient Showerhead (handheld) - rated at no more than 4.8 Lpm (1.25 U.S. gpm) and be of the laminar flow type (non-aerating).
Efficient Aerators (kitchen) - rated no more than 5.7 Lpm (1.5 U.S. gpm), dual threaded to allow installation in both thread type faucets, swivel type with pause lever.
Efficient Aerators (bathroom) - rated no more than 3.8 Lpm (1.0 U.S. gpm), be dual threaded to allow installation in both thread type faucets.
Hot Water Tank Pipe Insulation - $^1/_2$" inside diameter – foam, meets ASTM –C547-00, minimum $^3/_4$" thick
Hot Water Tank Pipe Insulation - $^3/_4$ " inside diameter - – foam, meets ASTM –C547-00, minimum $^3/_4$" thick
Hot Water Tank Insulation - fibreglass R10 (fits up to a 60 gal tank) – not bubble wrap
≤11W ENERGY STAR® Qualified LED A Shape (60W) (minimum 600 Lumen output) (Formerly: 7W – 11W ENERGY STAR® Qualified LED A Shape (60W))

[1] These measures are indicative. Eligible measures added to HAP during the administration of the Trust may also be appropriately considered relevant by the Trustee.

Initial Specified Measures
≤14W ENERGY STAR® Qualified LED A Shape (75W) (minimum 800 Lumen output) (Formerly: 10W – 14W ENERGY STAR® Qualified LED A Shape (75W))
≤23W ENERGY STAR® Qualified LED A Shape (100W) (minimum 1600 Lumen output) (Formerly:17W – 23W ENERGY STAR® Qualified LED A Shape (100W))
≤16W ENERGY STAR® Qualified LED PAR 20 (minimum 600 Lumen output) (Formerly: 8W – 12W ENERGY STAR® Qualified LED PAR 20)
≤16W ENERGY STAR® Qualified LED PAR30 & PAR38 (minimum 600 Lumen output) (Formerly: 8W – 12W ENERGY STAR® Qualified LED PAR 30)
≤23W ENERGY STAR® Qualified LED PAR (minimum 1100 Lumen output) (Formerly: 14W – 18W ENERGY STAR® Qualified LED PAR 38)
≤6W ENERGY STAR® Qualified LED MR 16 / PAR 16 (minimum 250 Lumen output) (Formerly: 7W – 10W ENERGY STAR®
Qualified LED MR 16 / PAR 16 - GU 10 Base)
≤11W ENERGY STAR® Qualified LED MR 16 (minimum 400 Lumen output) (Formerly: 7W – 12W ENERGY STAR® Qualified LED MR 16 GU 5.3 Base)
ENERGY STAR® LED Wet Location Rated PAR lamp ≤ 23 Watt (minimum 1100 Lumen output)
Recessed Downlight Fixture including LED with Light Output >600 and <800 lumens (Retrofit Measure List)
Recessed Downlight Fixture including LED with Light Output >800 lumens (Retrofit Measure List)
Indoor Drying Rack

Extended Measures
Replace refrigerator with ENERGY STAR qualified refrigerator - 15.5 - 16.9 cubic foot top freezer, automatic defrost, refrigerator/ freezer, no through the door ice service
Replace refrigerator with ENERGY STAR qualified refrigerator - 17.0 - 18.4 cubic foot top freezer, automatic defrost, refrigerator/ freezer, no through the door ice service
Replace refrigerator with a refrigerator that has a consumption level of less than 425 kwh, 10 – 12.5 cubic foot top freezer, automatic defrost, refrigerator freezer, no through the door ice service
Replace freezer with ENERGY STAR qualified freezer - 12-14.4 cubic foot freezer
Replace freezer with ENERGY STAR qualified freezer - 14.5 - 16.0 cubic foot freezer
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 6,000 – 7,999 BTU/hr with C-UL or CSA certification mark
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 8,000 – 9,999 BTU/hr with C-UL or CSA certification mark
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 10,000 – 12,000 BTU/hr with C-UL or CSA certification mark
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 14.2 - 21.2 l/day (30-44.9 pints/day) dehumidifier
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 21.3 - 25.4 l/day (45-53.9 pints/day) dehumidifier
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 25.5 - 35.5 l/day (54-75 pints/day) dehumidifier
Programmable Thermostat – line voltage – meets CAN/CSA-C828-06 standard, minimum performance: Droop: 1.5°C, Differential: 0.5°C, Precision 0% within 0.5°C of the original set point of 22°C
Programmable Thermostat – low voltage - meets CAN/CSA-C828-06 standard, minimum performance: Droop: 1.5°C, Differential: 0.5°C, Precision 0% within 0.5°C of the original set point of 22°C

Weatherization Measures
Comprehensive Draft proofing (caulking, foam and weather stripping, and application of same) – lifespan of 20 years plus If one or two component polyurethane foams are used, the products and installations must conform to: • CAN/ULC-S710.1 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 1: Material Specification. • CAN/ULC-S710.2 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 2: Application. • CAN/ULC-S711.1 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification • CAN/ULC-S711.2 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification, and Part 2: Application. **Attic Insulation (including installation):**
cellulose: CAN/ULC-S703-01 Amendment 1 - Cellulose Fibre Insulation (CFI) for Buildings OR 2) Mineral Fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre

Weatherization Measures
for Buildings **Wall Insulation (including installation):**
cellulose: CAN/ULC-S703-01 Amendment 1 - Cellulose Fibre Insulation (CFI) for Buildings OR 2) Mineral Fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre **Basement Insulation (including installation):**
mineral fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre for Buildings Vapour Barrier: 69009-CAN/CGSB-51.34-m86 If one or two component polyurethane foams are used, the products and installations must conform to: • CAN/ULC-S710.1 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 1: Material Specification. • CAN/ULC-S710.2 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 2: Application. • CAN/ULC-S711.1 Standard for Thermal Insulation – Bead Applied Two-Component
Polyurethane Air Sealant Foam, Part 1: Material Specification • CAN/ULC-S711.2 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification, and Part 2: Application.

Heat Pumps (Selection of manufacturers and technologies to meet the US federal minimum efficiency standard for ASHPs, as of 2015, is 13.0 SEER and 7.7 HSPF. Energy Star–certified models offer roughly 9 percent more efficiency than most new uncertified ASHPs and 20 percent more efficiency than existing models that may be in place)
Ductless Multiport Heat Pump
Cold Climate Ductless Heat Pump
Cold Climate Multiport Ductless Heat Pump
Cold Climate Ducted Heat Pump

SCHEDULE B TO THE PRINCIPLES ANNEX
PRINCIPLES APPLICABLE TO EXPENSE REIMBURSEMENTS

1. Funds should be used prudently and responsibly with a focus on accountability and transparency.

2. Expenses for travel, meals and hospitality support the Purpose.

3. Plans for travel, meals, accommodation and hospitality are necessary and economical with due regard for health and safety.

4. Legitimate authorized expenses incurred during the course of furthering the Purpose may be reimbursed.

5. Best practices should be followed, including:

    a. Prior approval to incur expenses is appropriately obtained.

    b. Other options for meetings are always considered before travel is approved, including audio or video conferencing.

    c. Corporate travel cards are to be used for authorized business travel and business related expenses.

PERMITTED DELEGATION ANNEX

1. Under section 4.2(g) of the Declaration, the Trustee has the power to: (a) appoint, employ or retain Implementation Agents for the purpose of discharging its duties and obligations under the Declaration; and (b) enter into, perform, enforce and amend Implementation Agreements.

2. In accordance with section 4.2(g) of the Declaration, consistent with the principles set forth in the Principles Annex, the Trustee or its agent will seek to enter into one or more Implementation Agreements with individual Electricity Distributors under which the Electricity Distributors will act as Implementation Agents to the Trustee. In this manner, the Trustee will delegate certain of its powers and duties to the Electricity Distributors.

3. Under section 5.1 of the Declaration, to the extent the Trustee has delegated any of its duties or powers, it shall be deemed to have satisfied the Standard of Care in respect of the subject matter of such delegation, subject to the Trustee's overall duty to exercise prudent oversight thereof. The Trustee is entitled to rely on an Electricity Distributor to discharge the duties delegated to it, as Implementation Agent, pursuant to an Implementation Agreement as described in this Annex.

4. Accordingly, and without limiting the Trustee's right to delegate under the Declaration and its other rights, powers and discretion as Trustee, the Trustee will be permitted to, and is expected to seek to, enter into Implementation Agreements with Electricity Distributors in order to further the Purpose. Without limiting the Trustee's discretion to negotiate and settle the terms and conditions of such Implementation Agreements, it is expected that such Implementation Agreements will include customary terms and conditions for arrangements of this type and, in addition, would (subject to the acceptance and agreement of the applicable Electricity Distributor counterparty) address the following points in particular:

    a. **Identification of Applicable Primary Beneficiary Payees and Determination of Individual Distribution Amounts**

        i. Each Electricity Distributor would make an initial assessment of the financial needs of Primary Beneficiaries within its designated service area or region, having regard to the Selection Factors set forth in section 1.3 of the Principles Annex, together with applicable economic data, in order to prepare and provide to the Trustee an estimate of the number of Primary Beneficiaries who the Electricity Distributor reasonably expects would satisfy the Selection Factors.

        ii. Each Electricity Distributor would make an initial assessment of the measures it would recommend be included as Eligible Measures, having regard to the Measures Factors set forth in section 2.1 of the Principles Annex, in order to prepare and provide to the Trustee an estimate of the average cost per Primary Beneficiary Payee (as defined below) of such Eligible Measures that the Electricity Distributor reasonably expects would apply in respect of Primary Beneficiaries resident in its service area or region.

        iii. Based on the product of (i) and (ii), above, and such other considerations as it considers to be directly relevant, each Electricity Distributor would make a

written recommendation to the Trustee regarding the aggregate funding amount that the Electricity Distributor anticipates would be utilized under the Program by the Primary Beneficiaries resident in its service area or region (the "**Local Funding Estimate**"). Such recommendation would be accompanied, when submitted to the Trustee, by a detailed explanation regarding the assumptions, financial parameters, suitability considerations and other information underlying the Local Funding Estimate (including the type of information contemplated by the Selections Factors and the Measures Factors) which would be relied upon by the Trustee in its assessment regarding the allocation of available funding to or for the benefit of the Primary Beneficiaries across the specified areas and regions of Ontario.

iv. The Trustee would inform the Electricity Distributor regarding the aggregate of the amount determined by the Trustee to be made available under the Program for Primary Beneficiaries in the Electricity Distributor's designated service area or region (for each Electricity Distributor, its "**Maximum Electricity Distributor Allocation**") and as to any maximum amount that may be paid to or for the benefit of any single Primary Beneficiary located in the service area or region of the Electricity Distributor (the "**Maximum Primary Beneficiary Amount**"). The Maximum Electricity Distributor Allocation and Maximum Primary Beneficiary Amount may vary between areas and regions, among the Primary Beneficiaries within such areas and regions, and may be increased by the Trustee from time to time in its discretion.

v. Each Electricity Distributor would apply the principles set forth under "Identification of Primary Beneficiary Payees" in the Principles Annex to identify and make recommendations to the Trustee regarding the amount of funds (if any) to be distributed to or for the benefit of Primary Beneficiaries resident within its service area or region from time to time (the "**Primary Beneficiary Payees**").

vi. Each Electricity Distributor would ensure that the aggregate of the amounts it recommends be distributed to or for the benefit of Primary Beneficiary Payees from time to time does not exceed (1) its Maximum Electricity Distributor Allocation and (2) for any single Primary Beneficiary located in the service area or region of the Electricity Distributor, the lesser of (x) the applicable Maximum Primary Beneficiary Amount and (y) the estimated costs (including any applicable taxes, but excluding any amount payable to the Electricity Distributor by or on behalf of the Primary Beneficiary) to be incurred by or on behalf of such Primary Beneficiary (whether or not such costs have been paid or remain outstanding) in respect of Eligible Measures applied or to be applied in respect of the Primary Beneficiary's Ontario residence.

vii. The Trustee would provide written confirmation to each Electricity Distributor:

1. Either (x) that the recommendations specified of the Electricity Distributor in clause (v), above, have been accepted, or (y) as to the specific reasons for any non-acceptance; and

2. The amount of the distributions to be paid to or for the benefit of each Primary Beneficiary Payee that is resident in the Electricity Distributor's service area or region.

viii. With respect to each Primary Beneficiary resident in a Electricity Distributor's service area or region that is confirmed as a Primary Beneficiary Payee, the Electricity Distributor would provide the Trustee written confirmation as to:

1. The identity of such Primary Beneficiary Payee; and

2. The amount of the distribution paid to or for the benefit of such Primary Beneficiary Payee.

ix. If the amount of a distribution to be made to a Primary Beneficiary Payee is based on the estimated costs to be incurred by or on behalf of such Primary Beneficiary and, prior to making the distribution to the Primary Beneficiary Payee, the Electricity Distributor determines that the actual costs (including any applicable taxes but excluding any amount payable to the Electricity Distributor by or on behalf of the Primary Beneficiary) incurred or to be incurred by or on behalf of such Primary Beneficiary in respect of Eligible Measures applied or to be applied in respect of the Primary Beneficiary's Ontario residence has or would be less than such estimated costs, then the amount to be distributed to the Primary Beneficiary shall be based on such actual costs.

b. **Making of Distributions to Primary Beneficiaries**

i. It is expected that promptly after the Trustee confirms the identity of a Primary Beneficiary Payee resident in an Electricity Distributor's service area or region and the amount of the distribution to be paid to or for the benefit of such Primary Beneficiary Payee, the Trustee would arrange for payment to or on the direction of the Electricity Distributor of an amount equal to the amount of such distribution.

ii. It is expected that promptly upon receipt of funds in respect of a distribution to be made to a Primary Beneficiary Payee, the Electricity Distributor would arrange for payment of the full amount of such distribution to or for the benefit of the Primary Beneficiary Payee (including by direct payment to a third party of, or as a reimbursement or rebate of, the costs of applicable Eligible Measures installed at the residence of and for the benefit of the Primary Beneficiary Payee), without reduction or set-off by the Electricity Distributor.

iii. If the amount paid to an Electricity Distributor in respect of a distribution to be made to a Primary Beneficiary exceeds the actual amount of the

distribution made to or on behalf of the Primary Beneficiary, it is expected that the Trustee would require Electricity Distributor to return such excess to the Trustee, whereupon the proceeds of such returned amount shall continue to form part of the Assets.

c. **Establishment of Operational, Administrative, Record-Keeping and Other Systems and Policies by Electricity Distributors to facilitate the Program**

i. It is expected that the Electricity Distributor would establish such operational, administrative, record-keeping and other systems and policies as are necessary to facilitate the Program and perform its duties under the Implementation Agreement, including systems or policies to: identify Primary Beneficiary Payees; comply with applicable privacy and regulatory laws; communicate with Primary Beneficiaries on behalf of the Trust; assess Eligible Measures; determine the Local Funding Estimate; monitor its recommendations to the Trustee against its Maximum Electricity Distributor Allocation and the Maximum Primary Beneficiary Amount; receive funds from the Trust in respect of distributions to the Primary Beneficiary Payees and transfer such funds to the appropriate recipients for the benefit of the Primary Beneficiary Payees; preparation and timely delivery to Primary Beneficiary Payees of such documents as are required by the *Income Tax Act* (Canada); and create and maintain records in respect of the foregoing.

ii. The Electricity Distributor would set up a separate bank account for the purpose of receiving funds from the Trust in respect of distributions to the Primary Beneficiary Payees and the transfer of such funds to the appropriate recipients for the benefit of the Primary Beneficiary Payees.

d. **Reporting, Record-Keeping, Inspection and Disclosure and Compliance Matters**

i. The Electricity Distributor would provide record-keeping, clerical and bookkeeping services relating to all matters relating to its recommendations and the performance of its other duties and obligations under its Implementation Agreement.

ii. The Electricity Distributor would keep and maintain all financial records and non-financial documents and records relating to the provision of services under its Implementation Agreement.

iii. The Electricity Distributor would provide to the Trustee quarterly and annual reports ("**Reports**") for the duration of its Implementation Agreement. Such Reports would set out, among other things, the amounts of the distributions paid to or for the benefit of applicable Primary Beneficiary Payees, the average distribution amount per such Primary Beneficiary Payee, the Eligible Measures for which distributions have been made, and the uptake of energy efficiency measures.

iv. The Electricity Distributor would agree to provide to the Trustee such information as is necessary for the Trustee to (v) comply with applicable law;

(w) prepare financial statements for the Trust; (x) prepare and submit such documents as are required under the *Income Tax Act* (Canada); (y) comply with the Trust's applicable obligations under the Transfer Payment Agreement; and (z) such other matters as the Trustee reasonably requests.

v. The Trustee, its authorized representatives or an independent auditor would be permitted to, at its own expense, on twenty-four hours' notice to the Electricity Distributor and during normal business hours, inspect the records of and information respecting the Electricity Distributor to confirm its compliance with the Implementation Agreement, including regarding its processes for recommending the Primary Beneficiary Payees and their respective distribution amounts and regarding the delivery of Trust funds on behalf of the Trustee to or for the benefit of the Primary Beneficiary Payees.

e. **Standard of Care**

i. The Electricity Distributor would be required to agree to perform its duties provided under the Implementation Agreement exercising the degree of care, diligence and skill that a reasonably prudent Person would exercise in comparable circumstances.

ii. In performing its duties under the Implementation Agreement (including the recommending of Primary Beneficiary Payees to the Trustee), the Electricity Distributor would be required to agree to seek to avoid actual, potential or perceived conflicts of interest.

iii. The Electricity Distributor would be required to agree that it would not, in performing its obligations under the Implementation Agreement, take any action which it knows or ought reasonably to know would cause the Trustee or the Trust to be in violation of any law, rule or regulation applicable to it.

f. **Expenses**

The Electricity Distributor would be eligible to receive reasonable compensation and reimbursement of its actual out-of-pocket costs associated with the performance of its duties and obligations under the Implementation Agreement, subject to adherence with the accountability principles set out in Schedule B to the Principles Annex. Such compensation amounts and reimbursement entitlements would be specified in the Implementation Agreement.

g. **Representations**

The Electricity Distributor would make customary representations to the Trust regarding, among other things, its legal capacity; authorization; non-contravention of law or material contract to which it is a party; and the enforceability of the Implementation Agreement.

h. **Indemnification**

The Electricity Distributor would be required to agree to provide customary indemnities to the Trust and the Trustee from and against claims, damages and liabilities which the Trust or Trustee may suffer or incur as the result of any breach of the Implementation Agreement by the Electricity Distributor or its representatives.

TRUSTEE REPLACEMENT ANNEX

1. The Advisory Committee shall consist of the following individuals:

   Brian Bentz, President and Chief Executive Officer at Alectra

   Bryce Conrad, President and Chief Executive Officer at Hydro Ottawa

   Robert Mace, President and Chief Executive Officer at Thunder Bay Hydro

   Ferio Pugliese, Executive Vice President Customer Care and Corporate Affairs at Hydro One

   Terry Young, Vice President Conservation and Corporate Relations at the Independent Electricity System Operator

2. In the event any member of the Advisory Committee resigns or is unable to act, it is expected that the remaining members of the Advisory Committee would appoint another resident of Ontario as a replacement.

3. On or before May 31, 2017, the Advisory Committee shall identify six residents of Ontario who have expressed that they are willing to act as members of the Board of Trustees and who, individually and collectively, satisfy the following criteria (collectively, the "**Selection Factors**"):

   a) each member demonstrates an understanding of the electricity sector including the electricity distribution sector;

   b) each member demonstrates an expertise in conservation and low income programs;

   c) three of the identified individuals will be representatives from separate electricity distributors, two individuals will be representatives from separate social services agencies and one individual member, who will be a non-voting member, will be an employee or representative of the Government of Ontario; and

   d) it is expected that representation by the Government of Ontario will be non-controlling.

4. If the Advisory Committee determines that changes to the Declaration (including to this Trustee Replacement Annex) are necessary in order to (a) replace, or appoint additional trustees to act with, the Original Trustee prior to the Original Trustee Replacement Date or (b) attract and receive confirmation of appointment of appropriately qualified individuals that the Advisory Committee believes would be suitable candidates to serve as members of the Board of Trustees, the Advisory Committee shall make recommendations regarding such necessary changes, including without limitation in respect of (i) any necessary limitations on the nature or scope of the appointment of the members of the Board of Trustees, (ii) the formation and empowerment of the Board of Trustees, and (iii) the duties, responsibilities, obligations, liabilities, indemnities, protections, limitations, restrictions,

compensation, expense reimbursement entitlements of members of the Board of Trustees.

5. The Advisory Committee shall recommend that the Original Trustee appoint the individuals so identified to become the initial members of the Board of Trustees pursuant to section 5.7 of the Declaration.

6. If any of the individuals recommended under paragraph 4 or under this paragraph are not accepted and appointed by the Original Trustee pursuant to section 5.7 of the Declaration, the Advisory Committee shall forthwith identify and recommend an alternative individual or individuals willing to act and whose presence as a member of the Board of Trustees would result in the Trustee collectively satisfying the criteria in paragraph 3 above.

7. Upon the appointment of six trustees (five voting and one non-voting) pursuant to section 5.7 of the Declaration, the Advisory Committee will be functus.

Ontario Transfer Payment Agrt dtd Mar 23 17.executed by CTCC.pdf

ONTARIO TRANSFER PAYMENT AGREEMENT

THE AGREEMENT, effective as of the 23rd day of March, 2017 (the **"Effective Date"**)

B E T W E E N :

Her Majesty the Queen in right of Ontario
as represented by the Minister of Energy

(the "Province")

- and -

Computershare Trust Company of Canada, in its capacity as trustee of Affordability Fund Trust

(together with its successors and assigns, the "Recipient" and, together with the Province, the "Parties")

BACKGROUND

Computershare Trust Company of Canada is the original trustee of the Affordability Fund Trust.

The Province wishes to provide Funds to the Recipient to be held, invested, applied and distributed in accordance with the terms of the Declaration of Trust (defined below), in furtherance of the Purpose (as defined in the Declaration of Trust), including having regard to the Principles set forth in Annex A.

CONSIDERATION

In consideration of the mutual covenants and agreements contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is expressly acknowledged, the Parties agree as follows:

ENTIRE AGREEMENT

This agreement (as amended, restated, supplemented or otherwise modified from time to time, the **"Agreement"**), including:

Schedule "A" - General Terms and Conditions
Schedule "B" - Project Specific Information
Schedule "C" - Project - Certain Obligations of the Recipient
Schedule "D" - Budget
Schedule "E" - Payment Plan
Schedule "F" - Reporting
Annex "A" - Principles, and
any amending agreement entered into as provided for below,

constitutes the entire agreement between the Parties with respect to the subject matter contained in this Agreement and supersedes all prior oral or written representations and agreements.

COUNTERPARTS

The Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

AMENDING THE AGREEMENT

The Agreement may only be amended by a written agreement duly executed by the Parties.

ACKNOWLEDGEMENT

The Recipient:

(a) acknowledges that it has read and understands the provisions contained in the entire Agreement; and

(b) agrees to be bound by the terms and conditions contained in the entire Agreement.

IN WITNESS WHEREOF, the Parties have executed the Agreement on the dates set out below.

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO as represented by Minister of Energy

_____
Date

by: _____
Name: Serge Imbrogno
Title: Deputy Minister

Authorized Signing Officer

COMPUTERSHARE TRUST COMPANY OF CANADA, in its capacity as trustee of AFFORDABILITY FUND TRUST

March 23, 2017
Date

by: Morag Abraham
Name: Morag Abraham
Title: Corporate Trust Officer

MARCH 23, 2017
Date

by: _____
Name: Ann Samuel
Title: Associate Trust Officer

I/We have authority to bind the Recipient.

SCHEDULE "A"
GENERAL TERMS AND CONDITIONS

1.0 INTERPRETATION AND DEFINITIONS

1.1 Interpretation. For the purposes of interpretation:

(a) words in the singular include the plural and vice-versa;

(b) words in one gender include all genders;

(c) the headings do not form part of the Agreement; they are for reference only and will not affect the interpretation of the Agreement;

(d) any reference to dollars or currency will be in Canadian dollars and currency;

(e) "include", "includes" and "including" denote that the subsequent list is not exhaustive;

(f) where any reference is made in the Agreement to an act to be performed by or for or on behalf of the Affordability Fund Trust, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Recipient in its capacity as trustee of the Affordability Fund Trust, and, where any reference is made in the Agreement to an act to be performed by or for or on behalf of the Recipient, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Recipient in its capacity as trustee of the Affordability Fund Trust; and

(g) it is intended that the transfer of the Funds to the Recipient will be a transfer made to a trust that is not controlled by the Province (as the term "control" is used in *Government Reporting Entity* at paragraphs PS 1300.07-.24), and so if a term or condition of the Agreement is determined to conflict with the requirements applicable to the Province recording the transfers to the Recipient of Funds contemplated hereunder as an expense incurred by the Province on the date of the transfer of Funds under the Agreement otherwise in connection with activities undertaken by the Province with such a non-controlled trust, then such term or condition shall be given a meaning and shall have an effect insofar as it is possible to interpret such term or condition in a manner that eliminates such conflict while preserving the other provisions of the Agreement and furthering the Purpose.

1.2 Definitions. In the Agreement, the following terms will have the following meanings:

"Administrative Services Agent" has the meaning given such term in the Declaration of Trust.

"Affordability Fund Trust" means the trust established and governed by the Declaration of Trust, and for greater certainty includes such trust operating under any other name that may be designated from time to time by the Recipient in accordance with the Declaration of Trust.

"BPSAA" means the Broader Public Sector Accountability Act, 2010 (Ontario).

"**Beneficiary**" has the meaning given to such term in the Declaration of Trust.

"Budget" means the Recipient's budget attached to the Agreement as Schedule "D".

"Business Day" means any working day, Monday to Friday inclusive, excluding statutory and other holidays, namely: New Year's Day; Family Day; Good Friday; Easter Monday; Victoria Day; Canada Day; Civic Holiday; Labour Day; Thanksgiving Day; Remembrance Day; Christmas Day; Boxing Day and any other day on which the Province has elected to be closed for business.

"**Declaration of Trust**" means the declaration of trust made as of March 23, 2017, under which the Affordability Fund Trust was established, as such declaration of trust may be amended, restated, supplemented or otherwise modified from time to time with the consent of the Province in accordance with Section 20.2.

"Expiration Date" means the date on which this Agreement will expire and is the date set out in Schedule "B".

"Funds" means the money the Province provides to the Recipient pursuant to the Agreement.

"Implementation Agents" has the meaning given such term in the Declaration of Trust.

"Maximum Funds" means the maximum amount of Funds that the Province will provide the Recipient under the Agreement, as set out in Schedule "B".

"Notice" means any communication given or required to be given pursuant to the Agreement.

"Party" means either the Province or the Recipient.

"**Person**" includes any individual, sole proprietorship, corporation, partnership, joint venture, association, society, club, board, chamber, joint-stock company, trust, trustee, unincorporated or incorporated organization or entity or government or any entity, agency or political subdivision thereof.

"**Program**" has the meaning given to such term in the Declaration of Trust.

"Project" means the undertaking described in Schedule "C".

"**Purpose**" has the meaning given to such term in the Declaration of Trust.

"PSSDA" means the *Public Sector Salary Disclosure Act, 1996* (Ontario).

"**Recipient**" means, initially, Computershare Trust Company of Canada, and any additional or replacement trustee in its capacity as trustee of the Affordability Fund Trust pursuant to the Declaration of Trust, including the Board of Trustees (as defined in the Declaration of Trust) and each of their respective successors and permitted assigns.

"Reports" means the reports described in Schedule "F".

2.0 REPRESENTATIONS, WARRANTIES AND COVENANTS

2.1 General. The Recipient represents, warrants and covenants that:

(a) it is the trustee of the Affordability Fund Trust; and

(b) the Affordability Fund Trust is, and will continue to be for the term of the Agreement, a trust existing under and governed by the laws of the Province of Ontario.

2.2 Execution of Agreement. The Recipient represents and warrants that it has:

(a) the full power and authority to enter into the Agreement; and

(b) taken all necessary actions to authorize the execution of the Agreement.

2.3 Governance. The Recipient covenants that it will develop and maintain in writing until the Agreement is no longer in effect:

(a) decision-making mechanisms and procedures to enable the Recipient to hold, invest, manage, apply and distribute the Funds in accordance with the Declaration of Trust in furtherance of the Purpose; and

(b) procedures to enable the preparation and delivery of all Reports required pursuant to Article 7.0.

2.4 **Supporting Documentation.** Upon request, the Recipient will provide the Province with proof of the matters referred to in this Article 2.0.

3.0 TERM OF THE AGREEMENT

3.1 **Term.** The term of the Agreement will commence on the Effective Date and will expire on the Expiration Date.

3.2 **Extension.** The term of the Agreement may be extended by further agreement between the Parties.

3.3 **Extension of the Declaration of Trust.** If the Province determines that an extension of the Final Distribution Date (as defined in the Declaration of Trust) and time for termination of the Declaration of Trust is consistent with and in furtherance of the Purpose and the Province's original intentions and expectations in establishing the Project, the Province may request that the Recipient extend such date to a date specified by the Province in a Notice (such date not to be later than December 31, 2021), whereupon the Recipient, so long as the Recipient does not have a reasonable basis to believe that such an extension would be inconsistent with the Purpose or weaken the protections intended for the benefit of the Recipient pursuant to the Declaration of Trust, will undertake such actions as it may consider to be necessary or appropriate to so extend the Declaration of Trust, including by amending the Declaration of Trust to provide for such an extension and to modify any other term or requirement as would be necessary or prudent to conform such term or requirement in light of such extension.

4.0 FUNDS AND CARRYING OUT THE PROJECT

4.1 **Funds Provided.** The Province will:

(a) provide the Recipient up to the Maximum Funds to be held, invested, applied and distributed in accordance with the terms of the Project and the Declaration of Trust;

(b) provide the Funds to the Recipient in accordance with the Payment Plan attached to the Agreement as Schedule "E"; and

(c) deposit the Funds into an account designated by the Recipient, provided that the account:

(i) resides at a Canadian financial institution; and

(ii) is in the name of the Recipient.

4.2 **Timing of Distributions to Beneficiaries.** The expectations of the Province regarding when Funds will begin to be distributed by the Recipient to Beneficiaries are set out in Schedule C. The Recipient will have regard to those expectations in the exercise of its discretion under the Declaration of Trust, in determining when Funds will be distributed to Beneficiaries in furtherance of the Purpose.

4.3 **Use of Funds and Project.** The Recipient will exercise its rights, duties and discretions under the Declaration of Trust so that the Funds are used, applied and distributed only for and in furtherance of the Purpose, including having regard to the Principles set forth in Annex A.

4.4 **Province's Role Limited to Providing Funds.** For greater clarity, the Province's role under the Agreement is limited to providing Funds to the Recipient and the Province is not responsible for carrying out or overseeing the terms of the Declaration of Trust.

4.5 **Maximum Funds.** The Recipient acknowledges that the Funds available to it pursuant to the Agreement will not exceed the Maximum Funds.

4.6 **Funding, Not Procurement.** For greater clarity, the Recipient acknowledges that:

(a) it is receiving funding from the Province for the Project and is not providing goods or services to the Province; and

(b) the funding the Province is providing under the Agreement is funding for the purposes of the PSSDA.

5.0 RECIPIENT'S ACQUISITION OF GOODS OR SERVICES, AND DISPOSAL OF ASSETS

5.1 **Acquisition.** If the Recipient acquires goods, services, or both with or by applying the proceeds of the Funds, it is expected to do so through a process that promotes the best value for money and to take reasonable steps to ensure that its Administrative Services Agents and Implementation Agents also follow a process that promotes the best value for money when acquiring goods and services with or by applying the proceeds of the Funds.

6.0 CONFLICT OF INTEREST

6.1 **No Conflict of Interest.** Except as expressly permitted by the Declaration of Trust, the Recipient is expected to implement appropriate processes and control to ensure that the Program and the use, application and distribution of the Funds are without an actual, potential or perceived conflict of interest.

6.2 **Conflict of Interest Includes.** For the purposes of this Article, a conflict of interest includes any circumstances where, except as expressly permitted by the Declaration of Trust:

(a) the Recipient; or

(b) any person who has the capacity to influence the Recipient's decisions,

has outside commitments, relationships or financial interests that could, or could be seen to, interfere with the Recipient's objective, unbiased and impartial judgment relating to the Project, or the Recipient's use, application or distribution of the Funds, or both.

7.0 REPORTING, ACCOUNTING AND REVIEW

7.1 **Preparation and Submission.** The Recipient will cooperate with the Province to accommodate the Province's on-going information and reporting objectives in order to enable the Province to be aware of the Recipient's activities in furtherance of the Purpose, and to that end the Recipient will be expected, from and following the Original Trustee Replacement Date, to:

(a) submit to the Province at the address referred to in Schedule "B", all Reports in accordance with the timelines and content requirements set out in Schedule "F", or in a form as specified by the Province from time to time, acting reasonably;

(b) submit to the Province at the address referred to in Schedule "B", any other reports as may be reasonably requested by the Province from time to time in accordance with the timelines and content expectations identified by the Province, acting reasonably;

(c) undertake diligent efforts so that such Reports and any such other reports are complete and accurate in all material respects; and

(d) have an authorized signatory of the Recipient sign-off on such Reports and other reports.

7.2 **Record Maintenance.** The Recipient will keep and maintain financial and other records necessary to permit it to satisfy its obligations under section 7.1 and to permit the Province to exercise its rights under section 7.3.

7.3 **Inspection.** The Province, its authorized representatives or an independent auditor identified by the Province may, at its own expense, upon twenty-four hours' Notice to the Recipient and during normal business hours, inspect the records of and information respecting the Recipient to confirm its compliance with the terms of this Agreement, including to ensure consistency with the Purpose and, for these purposes, the Province, its authorized representatives or an independent auditor identified by the Province may take one or more of the following actions:

(a) inspect and copy the records and documents referred to in section 7.2;

(b) keep any copies made pursuant to section 7.3(a); and

(c) conduct an audit or investigation of the Recipient in respect of the expenditure of the Funds to confirm that the Funds have been used, applied and distributed for and in furtherance of the Purpose, including a review of the Recipient's processes, records, documents, as well as the processes and controls applied to obtain assurance that Funds disbursed to Electricity Distributors were used, applied and distributed for and in furtherance of the Purpose.

7.4 **Disclosure.** To assist in respect of the rights set out in section 7.3, the Recipient will disclose any information requested by the Province, its authorized representatives or an independent auditor identified by the Province, and will do so in the form requested by the Province, its authorized representatives or an independent auditor identified by the Province, as the case may be.

7.5 **No Control of Records.** No provision of the Agreement will be construed so as to give the Province any control whatsoever over the Recipient's records.

7.6 **Auditor General.** For greater certainty, the Province's rights under this Article are in addition to and do not limit any rights provided to the Auditor General pursuant to section 9.1 of the *Auditor General Act* (Ontario).

8.0 COMMUNICATIONS REQUIREMENTS

8.1 **Publication.** The Recipient will acknowledge, in any of its Program-related external communications and marketing whether written, oral, or visual, the financial support of the Province in connection with the establishment and funding of the program, while noting that the views expressed in the publication are the views of the Recipient and do not necessarily reflect those of the Province.

9.0 FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY

9.1 **FIPPA.** The Recipient acknowledges that the Province is bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province in connection with the Project or otherwise in connection with the Agreement may be subject to disclosure in accordance with that Act.

10.0 Intentionally Deleted

11.0 EVENT OF DEFAULT, CORRECTIVE ACTION AND TERMINATION FOR DEFAULT

11.1 Events of Default. An Event of Default will occur if:

(a) the Recipient fails to perform or observe any covenant in this Agreement and such failure has and continues to have a material adverse effect on the Province and remains unremedied during any Notice Period applicable under section 11.2 after the earlier of (i) actual knowledge thereof by the Recipient, or (ii) receipt by the Recipient of Notice thereof from the Province;

(b) any representation or warranty made by the Recipient in the Agreement shall prove to have been incorrect in any material respect when made or deemed made, and, if capable of remedy, continues to be incorrect in any material respect during any Notice period applicable under section 11.2 after the earlier to occur of (i) the actual knowledge thereof by the Recipient or (ii) receipt by the Recipient of Notice thereof from the Province;

(c) it is determined that the Recipient has breached its Standard of Care (within the meaning given in and context of the Declaration of Trust) in discharging its material duties under the Declaration of Trust, with the result that all or a significant part of the Funds have not been or are not being applied in furtherance of the Purpose or are being applied in a manner that is directly contrary or without regard to the Purpose, and, if such breach is capable of remedy, it continues and remains unremedied during any Notice Period (as defined in section 11.3) applicable under section 11.2 after the earlier of (i) actual knowledge thereof by the Recipient, or (ii) receipt by the Recipient of Notice thereof from the Province;

(d) an insolvency event shall have occurred and be continuing with respect to the Recipient.

11.2 Consequences of Events of Default and Corrective Action. If an Event of Default occurs, the Province may, at any time, take one or more of the following actions:

(a) provide the Recipient with Notice allowing the Recipient an opportunity to remedy the Event of Default during a specified Notice Period;

(b) seek an order of specific performance, including an order that the Recipient pursue its available remedies against third parties;

(c) require, by Notice of demand, that the Recipient transfer to the Province (without any need for compensation, indemnity or consideration to the Recipient or any Beneficiary or other third party) any and all Assets remaining in the possession or under the control of the Recipient that can reasonably be traced or attributed to the Funds after first providing for the completion and performance by the Recipient of any unperformed contractual obligations of the Recipient undertaken in compliance with the Declaration of Trust on or prior to transfer; and

(d) terminate the Agreement, including immediately, without liability, penalty or costs to the Province upon giving Notice to the Recipient.

The transfer of Funds in accordance with the Agreement is made by the Province with the expressed intention and reservation that the transferred Funds shall be returned to the Province and the entitlements of the Recipient in remaining Funds shall thereby be revoked with reversion thereof to the Province in the circumstances contemplated in Section 11.2(c).

11.3 Opportunity to Remedy. If, in accordance with section 11.2, the Province provides the Recipient with an opportunity to remedy the Event of Default, the Province will provide Notice to the Recipient of:

(a) the particulars of the Event of Default; and

(b) the length of time within which the Recipient may cure such Event of Default without the Province pursuing any other remedy (the "Notice Period").

11.4 Recipient not Remedying. If the Province has provided the Recipient with an opportunity to remedy the Event of Default pursuant to section 11.2(a), and:

(a) the Recipient does not remedy the Event of Default within the Notice Period;

(b) it becomes apparent to the Province that the Recipient cannot adequately remedy the Event of Default within the Notice Period; or

(c) the Recipient is not proceeding to remedy the Event of Default in a way that is satisfactory to the Province,

the Province may extend any Notice Period, or initiate any one or more of the actions provided for in section 11.2.

12.0 REPAYMENT

12.1 Debt Due. If, pursuant to the Agreement: the Province demands the payment of any Funds from the Recipient pursuant to section 11.2(c) such Funds or other amount will be deemed to be a debt due and owing to the Province by the Recipient, and the Recipient will pay or return the amount to the Province immediately, unless the Province directs otherwise.

12.2 Payment of Money to Province. The Recipient will pay any money owing to the Province by cheque payable to the "Ontario Minister of Finance" and delivered to the Province at the address referred to in Schedule "B".

12.3 Failure to Repay. Without limiting the application of section 43 of the Financial Administration Act (Ontario), if the Recipient fails to repay any amount owing under the Agreement, Her Majesty the Queen in right of Ontario may deduct any unpaid amount from any money payable to the Recipient by Her Majesty the Queen in right of Ontario.

13.0 NOTICE

13.1 Notice in Writing and Addressed. Notice will be in writing and will be delivered by email, postage-prepaid mail, personal delivery or fax, and will be addressed to the Province and the Recipient respectively as set out in Schedule "B", or as either Party later designates to the other by Notice.

13.2 Notice Given. Notice will be deemed to have been given:

(a) in the case of postage-prepaid mail, five Business Days after the Notice is mailed; or

(b) in the case of email, personal delivery or fax, one Business Day after the Notice is delivered.

13.3 Postal Disruption. Despite section 13.2(a), in the event of a postal disruption:

(a) Notice by postage-prepaid mail will not be deemed to be received; and

(b) the Party giving Notice will provide Notice by email, personal delivery or by fax.

14.0 SEVERABILITY OF PROVISIONS

14.1 Invalidity or Unenforceability of Any Provision. The invalidity or unenforceability of any

provision of the Agreement will not affect the validity or enforceability of any other provision of the Agreement. Any invalid or unenforceable provision will be deemed to be severed.

15.0 WAIVER

15.1 Waivers in Writing. If a Party fails to comply with any term of the Agreement, that Party may only rely on a waiver of the other Party if the other Party has provided a written waiver in accordance with the Notice provisions in Article 13.0. Any waiver must refer to a specific failure to comply and will not have the effect of waiving any subsequent failures to comply.

16.0 INDEPENDENT PARTIES

16.1 Parties Independent. The Recipient acknowledges that it is not an agent, joint venturer, partner or employee of the Province, and the Recipient will not represent itself in any way that might be taken by a reasonable person to suggest that it is, or take any actions that could establish or imply such a relationship.

17.0 ASSIGNMENT OF AGREEMENT OR FUNDS

17.1 Agreement Binding. All rights and obligations contained in the Agreement will extend to and be binding on the Parties' respective heirs, executors, administrators, successors and permitted assigns.

18.0 LIMITATION OF LIABILITY

18.1 This Agreement has been entered into by the Recipient solely in its capacity as trustee of the Affordability Fund Trust and is not binding on the Recipient in any other capacity, whether in tort, contract or otherwise. The Beneficiaries of the Affordability Fund Trust are not subject to any liability in respect of the Affordability Fund Trust. Resort may not be had to, nor recourse or satisfaction be sought from, the private property of the Recipient (whether owned by it in its personal capacity or in any other capacity other than in its capacity as trustee of the Affordability Fund Trust), its directors, officers, employees, or agents, or the private property of any Beneficiary, and resort will be had solely to the Assets (as defined in the Declaration of Trust) for the payment, performance or satisfaction of any liability or obligation of the Recipient under this Agreement. However, the foregoing limitations in this section shall not apply where the Recipient has demonstrated gross negligence, bad faith, fraud or wilful misconduct.

19.0 GOVERNING LAW

19.1 Governing Law. The Agreement and the rights, obligations and relations of the Parties will be governed by and construed in accordance with the laws of the Province of Ontario and the applicable federal laws of Canada. Any actions or proceedings arising in connection with the Agreement will be conducted in the courts of Ontario, which will have exclusive jurisdiction over such proceedings.

20.0 FURTHER ASSURANCES

20.1 Agreement into Effect. The Recipient will provide such further assurances as the Province may request from time to time with respect to any matter to which the Agreement pertains, and will otherwise do or cause to be done all acts or things necessary to implement and carry into effect the terms and conditions of the Agreement to their full extent.

20.2 Declaration of Trust. The Recipient covenants that it shall not amend, restate or terminate the Declaration of Trust without obtaining the written consent of the Province in respect of same, such consent not to be unreasonably withheld or delayed.

21.0 JOINT AND SEVERAL LIABILITY

21.1 Joint and Several Liability. Without limiting and subject to section 18.1 and the Declaration of Trust, if the Recipient is comprised of more than one entity, all such entities will be jointly and severally liable to the Province for the fulfillment of the obligations of the Recipient under the Agreement.

22.0 RIGHTS AND REMEDIES CUMULATIVE

22.1 Rights and Remedies Cumulative. The rights and remedies of the Province under the Agreement are cumulative and are in addition to, and not in substitution for, any of its rights and remedies provided by law or in equity.

23.0 ACKNOWLEDGEMENT OF OTHER LEGISLATION AND DIRECTIVES

23.1 Recipient Acknowledges. The Recipient acknowledges that by receiving Funds it may become subject to legislation applicable to organizations that receive funding from the Government of Ontario, including the BPSAA, the PSSDA, and the *Auditor General Act* (Ontario).

24.0 SURVIVAL

24.1 Survival. The following Articles and sections, and all applicable cross-referenced sections and schedules, will continue in full force and effect for a period of seven years from the date of expiry or termination of the Agreement: Article 1.0 and any other applicable definitions, section, 4.5, section 7.1 (to the extent that the Recipient has not provided the Reports to the satisfaction of the Province), sections 7.2, 7.3, 7.4, 7.5, 7.6, Article 8.0, Article 12.0, Article 14.0, Article 16.0, Article 17.0, Article 19.0, Article 21.0, Article 23.0 and Article 24.0.

- END OF GENERAL TERMS AND CONDITIONS -

SCHEDULE "B"

PROJECT SPECIFIC INFORMATION

Maximum Funds	$100 million
Expiration Date	The date upon which the Affordability Fund Trust is terminated in accordance with the Declaration of Trust
Contact information for the purposes of Notice to the Province	**Attention: Usman Syed** **Position: Director** **Address: 77 Grenville St, Toronto, Ontario, M7A 2C1** **Fax: 416-325-6651** **Email: Usman.Syed@ontario.ca**
Contact information for the purposes of Notice to the Recipient	**Attention: Manager, Corporate Trust Services** **Address: 100 University Ave., 11th Floor, Toronto, Ontario, M5J 2Y1** **Email: CorporateTrust.Toronto@computershare.com**

SCHEDULE "C"

PROJECT

For the purposes of this Agreement, the "Project" is the distribution of the Funds in accordance with the Declaration of Trust.

It is intended the Project will be undertaken by the Recipient in furtherance of the Purpose and in accordance with the Declaration of Trust. In this regard, it is expected that the Recipient will undertake the Program having regard to the Budget and the Principles set forth in Annex A.

The following are the Province's expectations regarding the circumstances in which the Recipient will begin to distribute any Funds to any Beneficiary.

1. The Original Trustee Replacement Date (as defined in the Declaration of Trust) will have occurred.

2. An Administrative Services Agreement (as defined in the Declaration of Trust) will have been entered into between the Recipient and Hydro One Limited under which Hydro One Limited shall provide specified administrative and other services on behalf of the Recipient.

3. Administrative procedures will have been developed and implemented under which Electricity Distributors (as defined in the Declaration of Trust) will be invited to assist with (a) the identification and selection of Primary Beneficiaries under the Declaration of Trust, (b) the determination of the amount of Funds to be distributed to particular Primary Beneficiaries, and (c) the distribution of Funds to or for the benefit of such Primary Beneficiaries (in each case substantially on the basis contemplated in the Permitted Delegations Annex).

4. The Recipient will have obtained commercial general liability insurance from insurers having a secure A.M. Best rating of B+ or greater, or the equivalent, that in the opinion of the Recipient a prudent person similar to the Recipient would maintain, and having an inclusive limit of not less than $2,000,000 per occurrence and providing for contractual liability coverage. If requested, the Recipient will provide the Province (for its information purposes) with copies of the certificates of insurance and policies for such insurance coverage.

The Province recognizes that the foregoing may involve the Recipient entering into agreements as the Recipient considers to be necessary or expedient, including any required amendment or amendment and restatement of the Declaration of Trust. Funds may be expended to pay the expenses of the Recipient in completing these matters. The Recipient is requested to advise the Province through its quarterly reports on the status of the foregoing.

SCHEDULE "D"

Recipient's Budget

1. It is expected that the administrative expenses of the Recipient, including any administrative expenses of any Administrative Services Agents or any Implementation Agents or any other agents retained by the Recipient, relating to the establishment of the Affordability Fund Trust and addressing the Province's expectations as enumerated in Schedule "C" and any expenses related to the operation of the Affordability Fund Trust and the execution of the Project (including any reimbursable expenses incurred by any Administrative Services Agent or any Implementation Agent (as such terms are defined in the Declaration of Trust)), will be no greater than 10 percent of the total Project budget.

2. The only expenditures incurred by the Recipient that are eligible for reimbursement are actual (excluding HST) administrative overhead expenses incurred by or on behalf of the Recipient that directly related to the Recipient or the establishment of the Affordability Fund Trust.

4. Any expenses that have been or may be reimbursed by other parties should not be reimbursed from the assets of the Affordability Fund Trust.

5. It is expected any travel, meals and hospitality expenses by the Recipient will be consistent with the the accountability principles set out in Schedule B to the Principles Annex. For purposes of funding entities receiving funding from the Recipient, the following would not be considered eligible claims:

    - Alcohol
    - First-Class travel
    - Meals, snacks and beverages
    - Gratuities
    - Laundry or dry cleaning
    - Valet services
    - Dependent care
    - Home management
    - Personal telephone calls

6. In the event that the Recipient performs any procurements, it is expected that all procurements will reflect the principles of Ontario's Public Service Procurement Directive.

SCHEDULE "E"

PAYMENT PLAN

PAYMENT DATE	MAXIMUM FUNDS TO BE DISBURSED BY THE PROVINCE
Within 7 days of signing the Agreement	$ 100,000,000

SCHEDULE "F"

REPORTING

From and following the Original Trustee Replacement Date, Reports will be quarterly on the basis of the government's fiscal year starting at the execution of this Agreement and continuing until conclusion of the Agreement. Annual Reports will be on a fiscal basis starting at the execution of this Agreement and continuing until conclusion of the Agreement. Quarterly Reports and Annual Reports would be expected to be submitted to the Province within one month following the end of the reporting period that they represent. The Province expects that these Reports would be prepared to demonstrate the impact of the Province's funding and address the following:

- Quarterly Reports would include a report back on the trustee-developed performance management criteria. Initially, such Quarterly Reports would include details respecting:
    - Amounts disbursed by the Recipient in the previous quarter. It is expected that this information would be provided at the Electricity Distributor level and in the aggregate.
    - Total Affordability Fund investment income earned and accrued to date.
    - Key activities and achievements from the quarter, including the number of participant households per Electricity Distributor, average participant incentive cost per Electricity Distributor, and uptake of energy efficiency measures per Electricity Distributor.
    - Any challenges or modifications to the application, funding, or eligibility processes/rules of the Recipient.
    - Key activities planned for the upcoming quarter.
    - Details of any situation that a reasonable person might interpret as an actual, potential or perceived conflict of interest.
- Annual Reports would include a report back on the trustee-developed performance management criteria. Initially, such Annual Report would include details respecting:

- A description of an Electricity Distributor's application process and the criteria used by the Recipient to distribute funds.
- Any challenges identified by the Recipient or any Administrative Services Agent in achieving the Purpose and proposed solutions, if applicable.
- Lesson learned.
- Electricity Distributor and customer feedback.
- Amounts distributed to Beneficiaries or otherwise disbursed by the Recipient in the previous year. It is expected that this information will be provided by each Electricity Distributor.
- Key activities and achievements from each quarter being reported, including number of participant households per Electricity Distributor, average participant incentive cost per Electricity Distributor, and uptake of energy efficiency measures per Electricity Distributor.
- Total Affordability Fund interest earned and accrued to date.

As part of an Annual Report, the Recipient would also provide the Province with an audited financial statement for the previous year.

ANNEX A

Principles

Except as otherwise defined herein, capitalized terms used in this Annex A shall have the respective meanings given to such terms in the Declaration of Trust.

The Trustee shall have regard to, but shall not be specifically bound by, the following principles in applying its discretion in relation to the administration of the Trust:

1. Identification of Primary Beneficiary Payees

1.1 Except in exceptional circumstances, a Primary Beneficiary would not be expected to receive a benefit from the Trust unless at the time of consideration it satisfies, in addition to the requirements contemplated in the definition of "Primary Beneficiary", each of the following criteria (the "**Selection Factors**"):

(i) it has a participant agreement with an applicable Electricity Distributor to undertake measures (its "**Energy Plan**") to improve the electricity efficiency and/or promote the conservation of electricity at its Ontario residence;

(ii) its Energy Plan involves one or more Eligible Measures, as may be designated by the Trustee from time to time from;

(iii) it confirms that:

1. the primary purpose of its Energy Plan is the conservation and efficient use by the Primary Beneficiary of electricity, and is not for the purposes of the Primary Beneficiary making a profit;

2. it would otherwise not have the financial resources to undertake the Eligible Measures included in its Energy Plan; and

3. it would otherwise not be eligible to receive amounts in respect of the Eligible Measures as a HAP Eligible Person;

(iv) it has demonstrated a need for financial assistance on the basis that its periodic electricity bills represent a financial burden, relative to its available financial resources; and

(v) such other criteria as the Trustee may determine, including based on the recommendations of Electricity Distributors or other knowledgeable Persons made on the basis and having regard to the delegations contemplated by the Permitted Delegations Annex or any applicable Implementation Agreement.

1.2 It is recognized that, in furthering the Purpose, an efficient basis upon which to allocate funds to the Primary Beneficiaries across different areas and regions within Ontario may be based on the areas and regions serviced by the Electricity Distributors operating within Ontario.

1.3 It would not be contrary to the Purposes if funds are made available by the Trustee to the Primary Beneficiaries unequally across different areas and regions within Ontario, and it is expected that in making such an unequal division it would be appropriate to have regard to:

(i) broad economic parameters of economic activity and the specific financial resources of the residents of the areas and regions, in each case as an indication of the relative need of such residents across the areas and regions;

(ii) electricity use and efficiency levels of residential electricity customers across the areas and regions;

(iii) specific regional indicators of economic weakness and need; and

(iv) such other factors as the Trustee may determine are relevant, including based on the submissions, advice and recommendations of Electricity Distributors or other knowledgeable Persons made on the basis and having regard to the delegations contemplated by the Permitted Delegations Annex or any applicable Implementation Agreement.

1.4 It is recognized that, in furthering the Purpose, the designated Electricity Distributor for an area or region in which a Primary Beneficiary resides would be expected to:

(i) be a reliable source for the purpose of assessing and confirming whether the Primary Beneficiary satisfies the Selection Factors;

(ii) be an efficient intermediary for the purpose of communicating with the Primary Beneficiary, including with respect to matters such as regarding the availability, terms, conditions and intended purposes of Program;

(iii) be able to facilitate an efficient payment of distribution determined to be made to or on behalf of the Primary Beneficiary, having regard to the Electricity Distributor's established practices, procedures and systems for dealing with its customers; and

(iv) have established contractual arrangements with the Primary Beneficiary that may apply to the protection and confidentiality of information provided by or respecting the Primary Beneficiary, which information may be useful in the consideration by the Electricity Distributor in its assessment of whether the Primary Beneficiary satisfies the Selection Factors, which information may not otherwise be available or readily accessible or verifiable by the Trustee.

1.5 It is recognized that, in furthering the Purpose, the Electricity Distributor for an area or region in which a Primary Beneficiary resides will have market and utilization information that may be useful in assessing the relative needs of Primary Beneficiaries within its area or region. Such information is expected to be relevant in assessing the extent to which one such Primary Beneficiary's financial needs and the merits of its Energy Plan are greater or more compelling than those of another such Primary Beneficiary, which comparison may be relevant to the extent that the funds allocable to the Primary Beneficiaries resident in the area or region are otherwise insufficient to meet the requests for funding by all such Primary Beneficiaries.

1.6 Accordingly, it is recognized that, in furthering the Purpose, it is consistent with the Purpose that the recommendations of Electricity Distributors be utilized and relied upon by the Trustee to guide the process of identifying particular Primary Beneficiaries in making distributions to the Primary Beneficiaries.

1.7 If an Electricity Distributor for a particular area or region is unable or unwilling to assess or confirm the application of the Selection Factors to Primary Beneficiaries residing in the area or region or to make recommendations in relation to such matters, one or more of the following may

provide a suitable alternative source of information and for information gathering, assessment and confirmation purposes in relation to such area or region:

(i) other Electricity Distributors operating in adjacent or other areas or regions in Ontario;

(ii) the Ontario Energy Board;

(iii) the Independent Electricity System Operator; and

(iv) anyone else having relevant expertise and access to information regarding the electricity market of the Province, in each case as may be considered relevant by the Trustee.

1.8 To the extent that privacy law or other legal requirements limit an Electricity Distributor from providing or making available specific information respecting the application of the Selection Factors to a particular Primary Beneficiary or group of Primary Beneficiaries, it is recognized that, in furthering the Purpose, it may be appropriate to redact or make generic affected information regarding such Primary Beneficiary in connection with the identification and confirmation of a Primary Beneficiary's eligibility and participation in the Program. If such limitations or restrictions would limit an Electricity Distributor from providing or confirming the name of a particular Primary Beneficiary to the Trustee, then it should be sufficient that such information may be obtained or disseminated on a confidential basis if and when required by the Trustee for the proper administration of the Trust and on that basis such impediments should not disqualify a Primary Beneficiary from participating in the benefits of the Program, provided that the confidential record-keeping of the Electricity Distributor would be available in connection with the application of any applicable legal process predicated on the identification of such Primary Beneficiary for the purposes of substantiating its rights as a Primary Beneficiary of the Trust or as to the validity or subsistence of the Trust.

2. Eligible Measures

2.1 It is expected that the Trust will identify eligible measures that, taking into consideration the principles set forth in the Principles Annex, have regard to the following (the "**Measures Factors**"):

(i) is the measure generally expected to result in reduced electricity consumption by a Primary Beneficiary if properly installed and used;

(ii) is the measure recognized under another Provincial program as being appropriate for achieving electricity conservation among a population analogous to the Primary Beneficiaries;

(iii) does the measure present any unacceptable health or safety considerations, either with respect to the Primary Beneficiary, a party providing or installing the measure, or the physical environment;

(iv) is the measure broadly available to residents across different areas and regions of the Province; or

(v) is the measure a requirement or precursor to another measure, the other measure being one which meets any of the other Measures Factors.

2.2 In identifying and applying the Measures Factors, Electricity Distributors would be expected to have expertise in assessing the suitability of efficiency and conservation measures in their

respective areas and regions, which may differ across areas and regions across the Province based on factors (among other things) such as the climate, geography, density, electricity infrastructure, residential structures, and electricity use rates applicable within such areas or regions.

2.3 The measures specified in Schedule A to this Principles Annex may initially be considered to be consistent with the Measures Factors (subject to change as contemplated under the Permitted Delegations Annex).

3. Promotion of the Program

3.1 It is expected that the Trustee will undertake or engage others to undertake diligent efforts to promote the availability, terms and benefits of the Program to Primary Beneficiaries, including by establishing consistent communications through the Electricity Distributors.

3.2 It is expected that the Trustee will acknowledge the financial support of the Province in connection with the establishment and the funding for the Program, including in any external communications to or marketing directed at the Electricity Distributors and the Primary and Residual Beneficiaries. In the Trustee's delegation of any duties or powers to the Electricity Distributors through Implementation Agreements it is expected that Electricity Distributors will acknowledge the financial support of the Province in connection with the program including in any communications or marketing to Primary Beneficiaries.

4. Conduct of the Trust and the Program

4.1 It is expected that administrative expenses of the Board of Trustees and its members, including any expenses relating to the Trust, to the establishment of the Trust and any expenses related to the implementation and operation of the Program, including by or through Electricity Distributors and other relevant entities, will be recognized and subject to reimbursement on a basis that is substantially consistent with the accountability principles set out in Schedule B to this Principles Annex.

4.2 The Trustee is expected to conduct its activities in a manner that complies in all material respects with the Transfer Payment Agreement, including to:

(i) act prudently and in furtherance of the Purpose;

(ii) report not less frequently than annually the results of its activities for information purposes to the Province in connection with the Program;

(iii) comply with the Province's request for any independent verification or audit if determined to be necessary or appropriate by the Province;

(iv) return Assets that have not been distributed if it is determined that the Trustee has breached its Standard of Care in discharging its material duties under the Declaration, and has not cured such material breach despite having been given a reasonable opportunity by the Province to do so in light of the circumstances of such material breach, with the result that all or a significant part of the Assets have not been or are not being applied and distributed in furtherance of the Purpose or are being applied and distributed in a manner that is directly contrary or without regard to the Purpose.

4.3 Electricity Distributors are not intended to directly profit from distributions of funds made from the Trust, although it is recognized that the objectives of electricity efficiency and conservation of

Primary Beneficiaries located in the service area or region of an Electricity Distributor, and the cost savings and improved credit worthiness of such Primary Beneficiaries, may be financially beneficial to the Electricity Distributor.

4.4 Distributions from the Trust are intended to allow receiving Primary Beneficiaries to undertake Eligible Measures at no or minimal personal cost.

4.5 Without in any way limiting the discretion of the Board of Trustees to extend the period during which the benefits of the Program may be available to the Primary Beneficiaries, up to and including the Final Distribution Date, it is expected that the Trust Assets would be distributed to Primary Beneficiaries during the period from the Original Trustee Replacement Date to April 30, 2019.

SCHEDULE A TO THE PRINCIPLES ANNEX
INDICATIVE ELIGIBLE MEASURES[1]

Initial Specified Measures
Block Heater Timer (just timer) – rated for outdoor use, have at least a 15 amp/1800 watt capacity, be cold weather resistant, bear a C-UL or CSA certification mark
Power bar with integrated timer, and switched power outlets, four each for a total of 8 outlets, have a total capacity of 15 amps. The switched outlets must remain "live", independent of timer settings, so long as the power bar itself remains switched on. The power bar must bear either a C-UL or CSA certification mark.
Efficient Showerheads (standard) - rated at no more than 4.8 Lpm (1.25 U.S. gpm) and be of the laminar flow type (non-aerating).
Efficient Showerhead (handheld) - rated at no more than 4.8 Lpm (1.25 U.S. gpm) and be of the laminar flow type (non-aerating).
Efficient Aerators (kitchen) - rated no more than 5.7 Lpm (1.5 U.S. gpm), dual threaded to allow installation in both thread type faucets, swivel type with pause lever.
Efficient Aerators (bathroom) - rated no more than 3.8 Lpm (1.0 U.S. gpm), be dual threaded to allow installation in both thread type faucets.
Hot Water Tank Pipe Insulation - $^1/_2$" inside diameter – foam, meets ASTM –C547-00, minimum $^3/_4$" thick
Hot Water Tank Pipe Insulation - $^3/_4$ " inside diameter - – foam, meets ASTM –C547-00, minimum $^3/_4$" thick
Hot Water Tank Insulation - fibreglass R10 (fits up to a 60 gal tank) – not bubble wrap
≤11W ENERGY STAR® Qualified LED A Shape (60W) (minimum 600 Lumen output) (Formerly: 7W – 11W ENERGY STAR® Qualified LED A Shape (60W))

[1] These measures are indicative. Eligible measures added to HAP during the administration of the Trust may also be appropriately considered relevant by the Trustee.

Initial Specified Measures
≤14W ENERGY STAR® Qualified LED A Shape (75W) (minimum 800 Lumen output) (Formerly: 10W – 14W ENERGY STAR® Qualified LED A Shape (75W))
≤23W ENERGY STAR® Qualified LED A Shape (100W) (minimum 1600 Lumen output) (Formerly:17W – 23W ENERGY STAR® Qualified LED A Shape (100W))
≤16W ENERGY STAR® Qualified LED PAR 20 (minimum 600 Lumen output) (Formerly: 8W – 12W ENERGY STAR® Qualified LED PAR 20)
≤16W ENERGY STAR® Qualified LED PAR30 & PAR38 (minimum 600 Lumen output) (Formerly: 8W – 12W ENERGY STAR® Qualified LED PAR 30)
≤23W ENERGY STAR® Qualified LED PAR (minimum 1100 Lumen output) (Formerly: 14W – 18W ENERGY STAR® Qualified LED PAR 38)
≤6W ENERGY STAR® Qualified LED MR 16 / PAR 16 (minimum 250 Lumen output) (Formerly: 7W – 10W ENERGY STAR®
Qualified LED MR 16 / PAR 16 - GU 10 Base)
≤11W ENERGY STAR® Qualified LED MR 16 (minimum 400 Lumen output) (Formerly: 7W – 12W ENERGY STAR® Qualified LED MR 16 GU 5.3 Base)
ENERGY STAR® LED Wet Location Rated PAR lamp ≤ 23 Watt (minimum 1100 Lumen output)
Recessed Downlight Fixture including LED with Light Output >600 and <800 lumens (Retrofit Measure List)
Recessed Downlight Fixture including LED with Light Output >800 lumens (Retrofit Measure List)
Indoor Drying Rack

Extended Measures
Replace refrigerator with ENERGY STAR qualified refrigerator - 15.5 - 16.9 cubic foot top freezer, automatic defrost, refrigerator/ freezer, no through the door ice service
Replace refrigerator with ENERGY STAR qualified refrigerator - 17.0 - 18.4 cubic foot top freezer, automatic defrost, refrigerator/ freezer, no through the door ice service
Replace refrigerator with a refrigerator that has a consumption level of less than 425 kwh, 10 – 12.5 cubic foot top freezer, automatic defrost, refrigerator freezer, no through the door ice service
Replace freezer with ENERGY STAR qualified freezer - 12-14.4 cubic foot freezer
Replace freezer with ENERGY STAR qualified freezer - 14.5 - 16.0 cubic foot freezer
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 6,000 – 7,999 BTU/hr with C-UL or CSA certification mark
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 8,000 – 9,999 BTU/hr with C-UL or CSA certification mark
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 10,000 – 12,000 BTU/hr with C-UL or CSA certification mark
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 14.2 - 21.2 l/day (30-44.9 pints/day) dehumidifier
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 21.3 - 25.4 l/day (45-53.9 pints/day) dehumidifier
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 25.5 - 35.5 l/day (54-75 pints/day) dehumidifier
Programmable Thermostat – line voltage – meets CAN/CSA-C828-06 standard, minimum performance: Droop: 1.5°C, Differential: 0.5°C, Precision 0% within 0.5°C of the original set point of 22°C
Programmable Thermostat – low voltage - meets CAN/CSA-C828-06 standard, minimum performance: Droop: 1.5°C, Differential: 0.5°C, Precision 0% within 0.5°C of the original set point of 22°C

Weatherization Measures
Comprehensive Draftproofing (caulking, foam and weather stripping, and application of same) – lifespan of 20 years plus If one or two component polyurethane foams are used, the products and installations must conform to: • CAN/ULC-S710.1 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 1: Material Specification. • CAN/ULC-S710.2 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 2: Application. • CAN/ULC-S711.1 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification • CAN/ULC-S711.2 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification, and Part 2: Application. **Attic Insulation (including installation):**
cellulose: CAN/ULC-S703-01 Amendment 1 - Cellulose Fibre Insulation (CFI) for Buildings OR 2) Mineral Fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre

Weatherization Measures
for Buildings **Wall Insulation (including installation):**
cellulose: CAN/ULC-S703-01 Amendment 1 - Cellulose Fibre Insulation (CFI) for Buildings OR 2) Mineral Fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre **Basement Insulation (including installation):**
mineral fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre for Buildings Vapour Barrier: 69009-CAN/CGSB-51.34-m86 If one or two component polyurethane foams are used, the products and installations must conform to: • CAN/ULC-S710.1 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 1: Material Specification. • CAN/ULC-S710.2 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 2: Application. • CAN/ULC-S711.1 Standard for Thermal Insulation – Bead Applied Two-Component
Polyurethane Air Sealant Foam, Part 1: Material Specification • CAN/ULC-S711.2 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification, and Part 2: Application.

Heat Pumps
(Selection of manufacturers and technologies to meet the US federal minimum efficiency standard for ASHPs, as of 2015, is 13.0 SEER and 7.7 HSPF. Energy Star–certified models offer roughly 9 percent more efficiency than most new uncertified ASHPs and 20 percent more efficiency than existing models Ductless Multiport Heat Pump
Cold Climate Ductless Heat Pump
Cold Climate Multiport Ductless Heat Pump
Cold Climate Ducted Heat Pump

SCHEDULE B TO THE PRINCIPLES ANNEX
PRINCIPLES APPLICABLE TO EXPENSE REIMBURSEMENTS

1. Funds should be used prudently and responsibly with a focus on accountability and transparency.

2. Expenses for travel, meals and hospitality support the Purpose.

3. Plans for travel, meals, accommodation and hospitality are necessary and economical with due regard for health and safety.

4. Legitimate authorized expenses incurred during the course of furthering the Purpose may be reimbursed.

5. Best practices should be followed, including:

    a. Prior approval to incur expenses is appropriately obtained.

    b. Other options for meetings are always considered before travel is approved, including audio or video conferencing.

    c. Corporate travel cards are to be used for authorized business travel and business related expenses.

FW_ Affordability Fund Trust (Further Revisions to the DoT and TPA).rtf

From: Petsche, Nadine (TBS) []
To: stephen.ashbourne@blakes.com [stephen.ashbourne@blakes.com]
Subject: FW: Affordability Fund Trust (Further Revisions to the DoT and TPA)
Date: Wednesday, March 22, 2017 16:56:15
Attachment 1: image001.gif

Sorry,

This relates to one of the recent comments I sent (need to correct language in the intro para of Schedule D that refers to Sch C as 'requirements'. n

From: Picard, Michel [mailto:mpicard@kpmg.ca]
Sent: March 22, 2017 4:54 PM
To: Petsche, Nadine (TBS)
Subject: RE: Affordability Fund Trust (Further Revisions to the DoT and TPA)

Still need to amend schedule D in the TPA.

From: Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]
Sent: Wednesday, March 22, 2017 4:29 PM
To: Picard, Michel <mpicard@kpmg.ca>
Subject: FW: Affordability Fund Trust (Further Revisions to the DoT and TPA)

From: ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
Sent: March 22, 2017 4:23 PM
To: PRESTAGE, JA; Johnson, Paul (ENERGY/MEDEI/MRI); Ranalli, David (ENERGY); Schachtschneider, Michelle (ENERGY); Qureshi, Musab (ENERGY); Schwab-Pflug, Emma (ENERGY); Syed, Usman (ENERGY); Petsche, Nadine (TBS)
Subject: RE: Affordability Fund Trust (Further Revisions to the DoT and TPA)

Hi. Here is a further revised set of the DoT and TPA, reflecting some final edits, catch-ups and clean-ups. Regards, Steve

Stephen R. Ashbourne

Partner

stephen.ashbourne@blakes.com

Dir: 416-863-3086

Blake, Cassels & Graydon LLP
199 Bay Street, Suite 4000, Toronto ON M5L 1A9
Tel: 416-863-2400 Fax: 416-863-2653
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From: PRESTAGE, JA
Sent: Wednesday, March 22, 2017 2:48 PM
To: Paul.Johnson3@ontario.ca; David.Ranalli@ontario.ca; Michelle.Schachtschneider@ontario.ca; Musab.Qureshi@ontario.ca; Emma.Schwab-Pflug@ontario.ca; Usman.Syed@ontario.ca; Petsche, Nadine (TBS)
Cc: ASHBOURNE, STEPHEN

Subject: Affordability Fund Trust

All:

Attached are revised versions of the Declaration of Trust and the TPA which seek to reflect all of the comments received.

There are a few highlighted sections which require specific decisions or attention.

J.A.

J.A. Prestage
Partner
ja.prestage@blakes.com
Dir: 416-863-2955

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Our lawyers have recommended that we provide certain disclaimer language with our messages. Rather than including them here, we're drawing your attention to the

following links where the full legal wording appears.

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- **Disclaimer concerning tax advice** (http://taxdisclaimer.kpmg.ca).

If you are unable to access the links above, please cut and paste the URL that follows the link into your browser.

---

image001.pdf

Blakes

FW_ Affordability Fund Trust - Administrative Services Agreement.rtf

From: Petsche, Nadine (TBS) []
To: Picard, Michel (mpicard@kpmg.ca) [mpicard@kpmg.ca]
Subject: FW: Affordability Fund Trust - Administrative Services Agreement
Date: Friday, March 24, 2017 16:22:07
Attachment 1: Administrative Services Agreement - Executed.pdf

---

FYI. N

From: Qureshi, Musab (ENERGY)
Sent: March 24, 2017 3:57 PM
To: Schachtschneider, Michelle (ENERGY); Petsche, Nadine (TBS); Gounden, Pratima (ENERGY)
Subject: FW: Affordability Fund Trust - Administrative Services Agreement

Fyi!

From: Alexandra.Phillips@HydroOne.com [mailto:Alexandra.Phillips@HydroOne.com]
Sent: March-24-17 3:38 PM
To: Sermat-Harding, Kaili (ENERGY); Syed, Usman (ENERGY); Schwab-Pflug, Emma (ENERGY); Qureshi, Musab (ENERGY)
Subject: FW: Affordability Fund Trust - Administrative Services Agreement

All:

See executed Admin Services Agreement attached.

Have a nice weekend!

Best,

Alex Phillips

Manager, External Relations

Hydro One Networks Inc.

483 Bay St, Toronto, ON

(O) 416-345-1375

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From: Burgess, Jeremy [mailto:JBurgess@osler.com]
Sent: Friday, March 24, 2017 3:36 PM
To: PHILLIPS Alexandra; Morag.Abraham@computershare.com
Cc: Milligan, Peter; SCARLETT James; VELS Michael; CHHELAVDA Samir; PUGLIESE Ferio; POOLE-MOFFATT Natalie; LEVITAN Daniel; GILL Spencer
Subject: RE: Affordability Fund Trust - Administrative Services Agreement

All –

Please find attached the fully executed version of the Administrative Services Agreement.

Thanks very much,

Jeremy

Jeremy Burgess
Associate

Osler, Hoskin & Harcourt LLP
416.862.6607

Administrative Services Agreement - Executed.pdf

ADMINISTRATIVE SERVICES AGREEMENT

Made as of March 23, 2017

Between

AFFORDABILITY FUND TRUST, by its trustee,
COMPUTERSHARE TRUST COMPANY OF CANADA

and

HYDRO ONE LIMITED,
as Administrative Services Agent

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ADMINISTRATIVE SERVICES AGREEMENT

This Agreement is made as of March 23, 2017, between

COMPUTERSHARE TRUST COMPANY OF CANADA, a trust company established under the laws of Canada, as trustee of **AFFORDABILITY FUND TRUST**,
a trust established under and governed by the laws of Ontario,
as the **Trust**

- and -

Hydro One Limited,
as **Administrative Services Agent**

RECITALS

A. The Trust has requested the Administrative Services Agent to provide the services specified in this Agreement.

B. The Administrative Services Agent is willing to provide such services to and on behalf of the Trust, subject to and upon the terms and conditions set forth in this Agreement.

FOR VALUE RECEIVED, the parties agree as follows:

SECTION 1
INTERPRETATION

1.1 Defined Terms

In this Agreement:

(1) "***Agreement***" means this agreement as the same may be amended, supplemented, restated, renewed or replaced from time to time.

(2) "***Declaration of Trust***" means the declaration of trust made as of March 23, 2017, under which the Trust was established, as such declaration of trust may be amended, restated, supplemented or otherwise modified from time to time.

(3) "***Transfer Payment Agreement***" has the meaning given to it in the Declaration of Trust.

(4) "***Trust Contracts***" means the Transfer Payment Agreement and each Implementation Agreement and any related or similar documents.

1.2 Certain Defined Terms

All other capitalized terms used in this Agreement and not otherwise defined in this Agreement have the respective meanings given to them in the Declaration of Trust or the Transfer Payment Agreement, as applicable.

1.3 Headings and Table of Contents

The insertion of headings and the provision of a table of contents are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

1.4 References

Unless otherwise specified, all references to Sections are to Sections of this Agreement. The words "hereto," "herein," "hereof," "hereunder" and similar expressions refer to this Agreement and not to any particular Section or other provision of this Agreement.

1.5 Number and Gender

Unless otherwise specified, words importing the singular include the plural and vice versa and words importing gender include all genders.

1.6 Time of Day

Unless otherwise specified, any reference to a time of day means local time in the City of Toronto, Province of Ontario.

1.7 Governing Law

This Agreement shall be governed by, and construed and interpreted in accordance with, the laws of the Province of Ontario and of Canada applicable therein.

1.8 Severability

Any provision of this Agreement which is illegal, invalid or unenforceable in any jurisdiction shall not affect the legality, validity or enforceability of the remaining provisions and any such illegality, invalidity or unenforceability in any jurisdiction shall not affect the legality, validity or enforceability of such provision in any other jurisdiction.

1.9 Entire Agreement

This Agreement and all other documents contemplated hereby constitute the entire agreement between the parties with respect to the subject matter and supersede all prior negotiations, undertakings, representations, and understandings.

1.10 References to the Trust

For greater certainty, the term "Trust" includes the Trustee and, where any reference is made in this Agreement to an act to be performed by or for or on behalf of the Trust, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Trustee in its capacity as trustee of the Trust, and, where any reference is made in this Agreement to an act to be performed by or for or on behalf of the Trustee, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Trustee in its capacity as trustee of the Trust.

SECTION 2
APPOINTMENT OF ADMINISTRATIVE SERVICES AGENT

2.1 Appointment and Acceptance

(1) The Trust hereby appoints the Administrative Services Agent as its agent to provide the services and to perform the duties set out in this Agreement in connection with the activities of the Trust under the Declaration of Trust subject to the direction and control of the Trustee.

(2) The Administrative Services Agent accepts such appointment and agrees to act in such capacity and to provide or cause to be provided the services and to perform the duties set forth in this Agreement on and subject to the terms and conditions in this Agreement. The Trust hereby grants to the Administrative Services Agent the power and authority to act in the name of and on behalf of the Trust for the sole purpose of providing the services and performing the duties to be provided and performed by the Administrative Services Agent pursuant to this Agreement.

2.2 Access

The Trust authorizes the Administrative Services Agent to have full access to the books and records of the Trust and whatever other information and material of or in respect of the Trust that the Administrative Services Agent, in its opinion, requires to discharge its duties under this Agreement.

2.3 Confidentiality

The Administrative Services Agent will keep confidential all information concerning the business and affairs of the Trust which is obtained by the Administrative Services Agent in providing the services and performing the duties set out in this Agreement; provided that such information may be disclosed:

(1) as required by law;

(2) as required by any governmental or regulatory authorities having jurisdiction over the Administrative Services Agent;

(3) on a confidential basis, to the legal counsel and auditors of the Administrative Services Agent; and

(4) if it has become publicly available other than as a result of a breach of this Section.

SECTION 3
SERVICES PROVIDED BY THE ADMINISTRATIVE SERVICES AGENT

3.1 Relating to the Performance by the Trust of its Obligations

The Administrative Services Agent shall have the authority and the responsibility to provide the following services to, for and on behalf of the Trust in connection with the activities of the Trust:

(1) ***Negotiating Implementation Agreements***. On and after the Original Trustee Replacement Date, negotiating and settling the terms of Implementation Agreements (other than any Implementation Agreement entered into by Hydro One Limited as an Implementation Agent) and related documents and any amendments, restatements, supplements or other modifications of such Implementation Agreements and any waivers thereunder.

(2) ***Bank Accounts***. Arranging for the opening of bank accounts at any Schedule I chartered bank in Canada, the deposit of moneys to such accounts and negotiating agreements with such banks in connection with such accounts.

(3) ***Arranging for the Performance and Enforcement of the Trust Contracts***. Taking all necessary and appropriate action to enable the Trust to exercise or enforce its rights and to perform its obligations under the Trust Contracts (other than any Implementation Agreement entered into by Hydro One Limited as an Implementation Agent) and related documents and acting for and on behalf of the Trust in connection with any and all matters relating to such exercise, enforcement and performance.

(4) ***Eligible Investments***. To the extent Assets are not required to pay the obligations of the Trust or to distribute to Beneficiaries, to invest such Assets in Eligible Investments as contemplated by the Declaration of Trust.

(5) ***Recommendations regarding Amendments.*** If requested by the Trustee, to make recommendations regarding the scope and substance of amendments that may be made to the Declaration of Trust or the Trust Contracts in accordance with their respective terms in order to better accomplish the Purpose, having regard to the Administrative Services Agent's understanding of the Purpose and its views regarding how best to efficiently implement the Program to accomplish the Purpose.

(6) ***Other***. Taking all other action on behalf of the Trust incidental or reasonably necessary to carry out the foregoing services and duties.

3.2 Relating to Services

The Administrative Services Agent shall have the authority and the responsibility to provide the following services related to the services provided under Section 3.1 to, for and on behalf of the Trust in connection with the activities of the Trust:

(1) ***Providing Usual Office Services***. Providing or causing to be provided to the Trust internal accounting and other usual and ordinary office services.

(2) ***Retaining Legal Counsel***. Retaining legal counsel for the Trust as necessary and providing appropriate instructions.

(3) ***Auditors***. Selecting, appointing, retaining and discharging qualified auditors for the Trust as necessary, settling the auditor's fees and providing appropriate instructions.

(4) ***Ensuring Proper Records Maintained***. Maintaining, or retaining accountants and other appropriate advisers to ensure that proper books of account, financial statements and complete records of all transactions of the Trust undertaken or performed by it under this Agreement, the

Declaration of Trust and the Trust Contracts and any other agreements entered into by the Trust are maintained and to render statements or copies thereof from time to time as requested by the Trust, the Trustee or other Persons entitled to such information and to cooperate in all audits of the Trust. The Administrative Services Agent shall permit the Trustee, its authorized representatives or an independent auditor to, at its own expense, on twenty-four hours' notice and during normal business hours, inspect the records of and information respecting the Administrative Services Agreement to confirm its compliance with the Administrative Services Agreement.

(5) ***Ensuring Government Filings Made***. Preparing or causing to be prepared all returns, reports and filings which may be required from time to time by any governmental authority and including, without limitation, such returns, reports and filings which may be required under the *Income Tax Act* (Canada), the *Excise Tax Act* (Canada) and other applicable laws.

(6) ***Ensuring Taxes are Paid***. Ensuring that the Trust pays when due out of the Assets all taxes and related expenses payable by it.

(7) ***Causing Expenses to be Paid***. Depositing funds of the Trust received by the Administrative Services Agent to the bank accounts established by the Administrative Services Agent for the Trust and causing the general operating expenses of the Trust to be paid from such deposited funds on a timely basis.

(8) ***Notice of Non-Performance***. Promptly notifying the Trust in the event that the Administrative Services Agent is unable to perform its duties hereunder.

(9) ***Providing Other Day-to-Day Services***. Providing or causing to be provided to the Trust all services necessary, in addition to those specified in Sections 3.1 and 3.2, to conduct and operate the day-to-day business of the Trust in an efficient manner and take such action, and execute and deliver such further documents as shall be reasonably required in order to fully perform the terms of, and carry out the intention of, this Agreement.

SECTION 4
SERVICE PROVIDERS TO THE ADMINISTRATIVE SERVICES AGENT

4.1 Service Providers

In connection with the services to be performed by it under this Agreement, the Administrative Services Agent may engage or employ any Persons as employees, agents, representatives, independent contractors or otherwise, including, without limitation, accountants, investment advisers, tax advisers, insurance advisers, lawyers, appraisers, bankers, custodians, agents for collection or others in one or more capacities and any other advisers which the Administrative Services Agent deems advisable, and may engage such Persons to assist in the performance of the powers and duties of the Administrative Services Agent upon such terms and conditions as it may determine provided that the Administrative Services Agent shall require such Persons to perform their services to a standard of care which is at least as high as that imposed on the Administrative Services Agent under this Agreement. Any such engagement shall not affect the Administrative Services Agent's liability for performance of its duties and obligations pursuant to the terms hereof.

SECTION 5
RELATIONSHIP BETWEEN THE ADMINISTRATIVE SERVICES AGENT AND THE TRUST

5.1 Directions from the Trust

The Administrative Services Agent agrees to comply with any directions given by the Trust in connection with the performance by the Administrative Services Agent of its duties under this Agreement; provided that before taking any such action, the Trust shall consult with the Administrative Services Agent with respect to any such proposed direction.

5.2 Compliance with Documents

The Administrative Services Agent agrees to act in accordance with, and not take any action which conflicts with, the Declaration of Trust, the Trust Contracts or, to the knowledge of the Administrative Services Agent, any other agreements entered into by the Trust and the covenants of the Trust contained in the Trust Contracts and such agreements.

5.3 Relationship of Parties

This Agreement is not intended to be and shall not be treated as anything other than a services agreement relating to the provision of certain services, with the rights of the parties being none other than the rights given to them under this Agreement. Without limitation, this Agreement shall not be deemed in any way or for any purpose to constitute the Administrative Services Agent a trustee of the Assets or any part thereof or either party a partner of the other party to this Agreement in the conduct of any business or otherwise or a member of a joint venture or joint enterprise with the other party to this Agreement.

5.4 Appointment of Administrative Services Agent as Attorney-in-Fact

The Trustee on behalf of the Trust hereby appoints the Administrative Services Agent as the Trust's attorney-in-fact, with full authority in the place and stead of and in the name of the Trust or otherwise, from time to time in the Administrative Services Agent's discretion or as required by this Agreement to ask, demand, collect, sue for, recover, compound, receive and give acquittance and receipts for moneys due and to become due in connection with Assets owned by the Trust or otherwise owed to the Trust, to receive, endorse, and collect any drafts or other instruments, documents and chattel paper in connection therewith, and to file any claims or take any action or institute any proceedings which the Administrative Services Agent may deem to be necessary or desirable for the collection thereof.

5.5 Reliance on Information Obtained from Third Parties

The Trust acknowledges that the accuracy and completeness of the records maintained and the information supplied by the Administrative Services Agent to the Trust and others is dependent upon the accuracy and completeness of the information obtained by the Administrative Services Agent from the other parties to the Trust Contracts and related documents and other sources. The Administrative Services Agent, to the extent it was reasonable in the circumstances to have relied on any such information provided to it, shall not be responsible for any inaccuracy or incompleteness in the information so obtained or for any inaccuracy in the records maintained by

the Administrative Services Agent under this Agreement which may result from the accuracy and completeness of the information obtained by the Administrative Services Agent from parties to the Trust Contracts other than the Administrative Services Agent.

5.6 Representations

(1) The Trust represents and warrants to the Administrative Services Agent that the execution, delivery and performance by the Trust of this Agreement are within the powers of the Trust and have been duly authorized by all necessary action on the part of the Trust and do not contravene any law or contractual restriction binding on or affecting the Trust and that this Agreement constitutes a legal, valid and binding obligation of the Trust enforceable against the Trust in accordance with its terms, subject to the limitation of liability of the Trustee under the Declaration of Trust, to applicable bankruptcy, insolvency, winding-up, moratorium or reorganization, or other similar laws affecting creditors' rights generally and to the availability of equitable remedies.

(2) The Administrative Services Agent represents and warrants to the Trust that the execution, delivery and performance by the Administrative Services Agent of this Agreement are within the powers of the Administrative Services Agent and have been duly authorized by all necessary corporate action on the part of the Administrative Services Agent and do not contravene any law or contractual restriction binding on or affecting the Administrative Services Agent and that this Agreement constitutes a legal, valid and binding obligation of the Administrative Services Agent enforceable against the Administrative Services Agent in accordance with its terms, subject to applicable bankruptcy, insolvency, winding-up, moratorium or reorganization, or other similar laws affecting creditors' rights generally and to the availability of equitable remedies.

SECTION 6
REPORTING OBLIGATIONS OF THE ADMINISTRATIVE SERVICES AGENT

6.1 Records

The Administrative Services Agent agrees that it shall maintain or cause to be maintained all necessary records of all transactions in respect of the Trust required by law, the Declaration of Trust or any Trust Contract, and to provide or cause to be provided to the Trust on a timely basis such reports as the Trust may reasonably require. The Trust will make available to the Administrative Services Agent all information required for purposes of maintaining such records and preparing such reports to the extent the Trust has such information and the Administrative Services Agent does not.

SECTION 7
FEES AND EXPENSES

7.1 Administrative Services Fees

In consideration of the services provided by the Administrative Services Agent hereunder, for and after the period commencing on the Original Trustee Replacement Date, the Trust shall pay to the Administrative Services Agent regular and periodic fees, the amounts and terms of payment of which shall be agreed upon by the parties from time to time and in any event, not less

frequently than annually. Such fees shall be paid within 90 days after the last day of each quarter of each fiscal year of the Trust, unless otherwise agreed by the Administrative Services Agent.

7.2 Expenses

The Trust is responsible for and there shall be paid out of the Assets, in addition to the fees payable under Section 7.1, all expenses reasonably incurred by the Administrative Services Agent as agent for the Trust, for or on behalf of the Trust, including, but not limited to, taxes (other than taxes on the Administrative Services Agent's capital or net income and taxes payable by the Administrative Services Agent either in respect of any supply of property or services by any person to the Administrative Services Agent or any taxes in respect of persons who are employees of the Administrative Services Agent), registry and transfer agency services, audit, accounting, tax advice and legal fees, custodial and safekeeping fees, expenses and fees relating to the opening and operation of accounts and other bank services and the expenses incurred in the preparation, printing and distribution of financial reports, and other reports required to comply with the laws relating to the Trust and the Trust Contracts and all other expenses properly payable by the Trust. It is agreed that the Administrative Services Agent shall at no time be responsible for any such fees or expenses.

7.3 Disbursements

Where any disbursements on account of the expenses which are properly payable by the Trust are made by the Administrative Services Agent and do not conflict with the requirements set forth in Schedule B to the Principles Annex to the Declaration, the Trust shall promptly reimburse the Administrative Services Agent for such expenses upon receiving a proper account.

SECTION 8
STANDARD OF CARE

8.1 Standard

The Administrative Services Agent shall exercise its powers and authorities hereunder and carry out its duties and functions as Administrative Services Agent under this Agreement honestly and in good faith and in connection therewith, it shall exercise that degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. In performing its duties under the Administrative Services Agreement, the Administrative Services Agent shall seek to avoid actual, potential or perceived conflicts of interest. The Administrative Services Agent shall not, in performing its obligations under the Administrative Services Agreement, take any action which it knows or ought reasonably to know would cause the Trustee or the Trust to be in violation of any law, rule or regulation applicable to it.

SECTION 9
INDEMNIFICATION AND LIABILITY OF THE ADMINISTRATIVE SERVICES AGENT

9.1 Indemnity

The Trust hereby indemnifies and saves harmless the Administrative Services Agent out of the Assets from and against all claims, costs, charges, expenses and liabilities whatsoever (including legal costs on a solicitor and his own client basis), brought, commenced, prosecuted against, sustained by, imposed on, incurred by or assessed against the Administrative Services Agent or any Person employed or engaged by it as permitted under this Agreement for or in respect of any act, deed, matter or thing whatsoever made, done, acquiesced in or omitted to be done in connection with the activities of the Trust and the performance of the services and duties of the Administrative Services Agent under this Agreement.

9.2 Exclusion of Liability

Notwithstanding any other provision in this Agreement other than Section 9.3, the Administrative Services Agent assumes no liability for anything other than to render the services it agrees to provide under this Agreement and neither the Administrative Services Agent nor any of its directors, officers, employees or affiliates shall be responsible for any action of the Trust. The Administrative Services Agent shall not be liable to the Trust or to any Beneficiary or creditor of the Trust for any loss, damage, cost, expense or other liability whatsoever relating to any matter regarding the Trust, or for any loss, damage, cost, expense or other liability whatsoever caused to the Trust through the insufficiency or deficiency of any security in or upon which any of the Assets shall be expended or invested, or for any loss, damage, cost, expense or other liability whatsoever arising from the bankruptcy, insolvency or tortious act of any Person with whom any Assets shall be lodged or deposited, or for any loss resulting from the diminution in value of Eligible Investments, or for any loss, damage, cost, expense or other liability whatsoever occasioned by any act or omission under this Agreement or error in judgment or oversight on the part of the Administrative Services Agent, its directors, officers, employees and agents or for any other loss, damage, cost, expense or other liability whatsoever which may happen in the performance by the Administrative Services Agent of its services and duties under this Agreement.

9.3 Liability for Gross Negligence

(1) Notwithstanding the provisions of Sections 9.1 and 9.2, the Administrative Services Agent shall indemnify and hold harmless the Trust against any claim, loss or expense which the Trust may incur that results from a failure by the Administrative Services Agent to perform its duties and obligations hereunder in compliance with Section 8.1 or the gross negligence or wilful misconduct of the Administrative Services Agent in performing or failing to perform its obligations hereunder. It is, however, expressly understood that the Administrative Services Agent is not agreeing to indemnify or hold the Trust harmless with respect to:

(a) any liabilities resulting from the failure of the Trustee to satisfy the standard of care set out in the Declaration of Trust unless such failure arises directly as a result of a failure by the Administrative Services Agent to perform its obligations hereunder in compliance with Section 8.1 hereunder;

(b) any claim arising out of the assessment of any tax on income or franchise tax by a taxing authority against the Trust;

(c) any liability of the Trust accruing after the termination of this Agreement unless attributable to the actions or omissions of the Administrative Services Agent prior to such termination; or

(d) any claim, loss, expense or other liability representing any amount which the Trust has returned to the Province pursuant to the provisions of the Transfer Payment Agreement for any reason whatsoever.

(2) The Administrative Services Agent shall have the exclusive right to compromise or defend, through counsel selected and retained by the Administrative Services Agent, any such liabilities or related claims at its own expense, which decision shall be binding upon the Trust provided that in compromising or defending any such liabilities or related claims, the Administrative Services Agent will ensure that any settlement agreed to by it will not, without the prior written consent of the Trustee, include any admission of liability on the part of the Trustee in its personal capacity.

9.4 Reliance on Advisers

The Administrative Services Agent shall be entitled to rely and act, and shall be fully protected in relying and acting, upon (1) any statement, electronic communication, writing, notice, resolution, report, opinion or other document or conversation believed by it to be genuine and correct and to have been signed, sent or made by the proper Person; and (2) any advice received from auditors, lawyers, or other professional advisers of the Administrative Services Agent and shall not be responsible or held liable for any loss or damage resulting from so relying thereon.

SECTION 10
TERM AND TERMINATION

10.1 Term

This Agreement shall continue in full force and effect until December 31, 2022 unless terminated in accordance with the provisions of this Agreement.

10.2 Termination

This Agreement may be terminated by the Trustee (1) immediately, upon written notice to the Administrative Services Agent if the Administrative Services Agent is in breach of its duties and obligations hereunder or (2) with effect as of the last day of any calendar month, upon six months prior written notice to the Administrative Services Agent. This Agreement may be terminated by the Administrative Services Agent (1) immediately, upon written notice to the Trust if the Trust is in breach of its duties and obligations hereunder or (2) with effect as of the last day of any calendar month, upon six months prior written notice to the Trust. The provisions of Section 2.3 and Section 9 shall survive the termination of this Agreement.

10.3 Delivery of Records

Upon termination of this Agreement, the Administrative Services Agent shall forthwith deliver to the Trust all records, documents and books of account, and all materials and supplies for which the Administrative Services Agent has been paid by the Trust, which are in the possession or control of the Administrative Services Agent and relate directly or indirectly to the performance by the Administrative Services Agent of its obligations under this Agreement provided, however, that the Administrative Services Agent may retain notarial or other copies of such records, documents and books of account and the Trust shall produce the originals of such records, documents and books of account whenever reasonably required to do so by the Administrative Services Agent for the purpose of legal proceedings or dealings with any governmental authorities.

10.4 Payment of Fees

Upon termination of this Agreement, the Trust shall pay to the Administrative Services Agent such fees and expenses under Sections 7.1 and 7.2 as may be due as of the date of termination and shall reimburse the Administrative Services Agent for its expenses and disbursements to which it is entitled under this Agreement as of the date of such termination.

SECTION 11
MISCELLANEOUS

11.1 Amendments and Waivers

(1) This Agreement may be amended, supplemented, modified, restated or replaced from time to time by written instrument signed by the Trustee on behalf of the Trust and the Administrative Services Agent. The Administrative Services Agent agrees to consider and give timely effect to any reasonable modifications proposed by the Board of Trustees so long as the Administrative Services Agent, in its discretion and acting reasonably, believes that such modifications would not be prejudicial to its interests.

(2) No waiver of any provision of this Agreement, nor consent to any departure by any party therefrom, shall in any event be effective unless the same shall be in writing and signed by such party, and then said waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. No failure on the part of any party to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof.

11.2 Notices

Any notice or other written communication required or permitted to be given hereunder may be delivered by hand, prepaid registered mail or by electronic transmission, addressed in the case of the Trust to:

Computershare Trust Company of Canada,
in its capacity as trustee of Affordability Fund Trust
c/o Computershare Trust Company of Canada
100 University Ave, 11th Floor, Toronto, ON, M5J 2Y1

Attention: Manager, Corporate Trust Services
Email: Corporatetrust.toronto@computershare.com

and in the case of the Administrative Services Agent to:

Hydro One Limited,
as Administrative Services Agent of Affordability Fund Trust
482 Bay St, South Tower, 8th Floor
Toronto, ON, M5G 2P5

Attention: J. Scarlett, Executive Vice President & Chief Legal Officer
Email: JScarlett@hydroone.com

and in any other case, addressed to such other address as a party may have specified by notice in writing given under this Section. Any such notice or other written communication shall be deemed to have been given (1) if delivered by hand, when received; (2) if mailed, on the fifth Business Day following the date of mailing; (3) if sent by electronic transmission on a Business Day before 3:00 p.m. (Toronto time), on that Business Day and if sent after 3:00 p.m. (Toronto time), on the next succeeding Business Day; and (4) if sent by electronic transmission on a day which is not a Business Day, on the next succeeding Business Day.

11.3 Waivers

No failure to exercise and no delay in exercising on the part of either party of any right, remedy, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege preclude the exercise of any other right, remedy, power or privilege.

11.4 Limitation of Liability of the Trustee

This Agreement has been entered into by the Trustee solely in its capacity as trustee of the Trust and is not binding on the Trustee in any other capacity, whether in tort, contract or otherwise. The Beneficiaries of the Trust are not subject to any liability in respect of the Trust. Resort may not be had to, nor recourse or satisfaction be sought from, the private property of the Trustee, its directors, officers, employees, or agents, or the private property of any Beneficiary, and resort will be had solely to the property of the Trust held in trust by the Trustee for the payment, performance or satisfaction of any liability or obligation of the Trust or the Trustee under this Agreement.

11.5 Further Assurances

Each party shall from time to time take such action, and execute and deliver such further documents, as shall be reasonably required in order to fully perform the terms of, and carry out the intention of, this Agreement.

11.6 Assignment

This Agreement shall not be assignable by either party, except to an affiliate as that term is defined in the *Canada Business Corporations Act*, without the express prior written consent of

the other party; provided that the appointment of a successor trustee or trustees of the Trustee in accordance with the Declaration of Trust shall not be considered an assignment of this Agreement.

11.7 Enurement

This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns including, without limitation, any company into which the Trustee may be merged, wound up or with which it may be consolidated or amalgamated, or any company resulting from any merger, consolidation, wind-up or amalgamation to which the Trustee is a party or any company to which all or substantially all (the determination of "substantially all" shall be made by the Trustee in its sole and absolute discretion) of the corporate trust business of the Trustee may be transferred.

11.8 Attornment

Each of the parties irrevocably attorns to the non-exclusive jurisdiction of the courts of the Province of Ontario.

11.9 Counterparts

This Agreement may be executed in any number of counterparts, each of which when executed and delivered is an original and all of which taken together constitute one and the same instrument. This Agreement may be executed and delivered by facsimile transmission or as an image distributed by email of a manually signed counterpart.

[INTENTIONALLY LEFT BLANK]

The parties have executed this Agreement as of the date first written above.

AFFORDABILITY FUND TRUST, by its trustee,
COMPUTERSHARE TRUST COMPANY OF CANADA

By: _____
Name: Morag Abraham
Title: Authorized Signatory Corporate Trust Officer

By: _____
Name: Ann Samuel
Title: Authorized Signatory Associate Trust Officer

HYDRO ONE LIMITED, as Administrative Services Agent

By: _____
Name: Michael Vels
Title: CFO

By: _____
Name: Ali Suleman
Title: VP & Treasurer

FW_ Affordability Fund Trust - Administrative Services Agreement.rtf

From: Virani, Shyrose (TBS) []
To: 'PETSCHE Nadine -CORPORATE' [nadine.petsche@opg.com]
Subject: FW: Affordability Fund Trust - Administrative Services Agreement
Date: Tuesday, October 16, 2018 08:54:16
Attachment 1: Administrative Services Agreement - Executed.pdf

---

-----Original Message-----
From: Qureshi, Musab (ENERGY)
Sent: March 24, 2017 3:57 PM
To: Schachtschneider, Michelle (ENERGY) <Michelle.Schachtschneider@ontario.ca>; Petsche, Nadine (TBS) <Nadine.Petsche@ontario.ca>; Gounden, Pratima (ENERGY) <Pratima.Gounden@ontario.ca>
Subject: FW: Affordability Fund Trust - Administrative Services Agreement

Fyi!

From: Alexandra.Phillips@HydroOne.com [mailto:Alexandra.Phillips@HydroOne.com]
Sent: March-24-17 3:38 PM
To: Sermat-Harding, Kaili (ENERGY); Syed, Usman (ENERGY); Schwab-Pflug, Emma (ENERGY); Qureshi, Musab (ENERGY)
Subject: FW: Affordability Fund Trust - Administrative Services Agreement

All:

See executed Admin Services Agreement attached.

Have a nice weekend!

Best,

Alex Phillips

Manager, External Relations

Hydro One Networks Inc.

483 Bay St, Toronto, ON

(O) 416-345-1375

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immediately by reply email and delete the transmission received by you. This statement applies to the initial email as well as any and all copies (replies and/or forwards) of the initial email.

From: Burgess, Jeremy [mailto:JBurgess@osler.com]
Sent: Friday, March 24, 2017 3:36 PM
To: PHILLIPS Alexandra; Morag.Abraham@computershare.com
Cc: Milligan, Peter; SCARLETT James; VELS Michael; CHHELAVDA Samir; PUGLIESE Ferio; POOLE-MOFFATT Natalie; LEVITAN Daniel; GILL Spencer
Subject: RE: Affordability Fund Trust - Administrative Services Agreement

All –

Please find attached the fully executed version of the Administrative Services Agreement.

Thanks very much,

Jeremy

Jeremy Burgess
Associate

Osler, Hoskin & Harcourt LLP
416.862.6607

Administrative Services Agreement - Executed.pdf

ADMINISTRATIVE SERVICES AGREEMENT

Made as of March 23, 2017

Between

AFFORDABILITY FUND TRUST, by its trustee,
COMPUTERSHARE TRUST COMPANY OF CANADA

and

HYDRO ONE LIMITED,
as Administrative Services Agent

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ADMINISTRATIVE SERVICES AGREEMENT

This Agreement is made as of March 23, 2017, between

COMPUTERSHARE TRUST COMPANY OF CANADA, a trust company established under the laws of Canada, as trustee of **AFFORDABILITY FUND TRUST**,
a trust established under and governed by the laws of Ontario,
as the **Trust**

- and -

Hydro One Limited,
as **Administrative Services Agent**

RECITALS

A. The Trust has requested the Administrative Services Agent to provide the services specified in this Agreement.

B. The Administrative Services Agent is willing to provide such services to and on behalf of the Trust, subject to and upon the terms and conditions set forth in this Agreement.

FOR VALUE RECEIVED, the parties agree as follows:

SECTION 1
INTERPRETATION

1.1 Defined Terms

In this Agreement:

(1) "***Agreement***" means this agreement as the same may be amended, supplemented, restated, renewed or replaced from time to time.

(2) "***Declaration of Trust***" means the declaration of trust made as of March 23, 2017, under which the Trust was established, as such declaration of trust may be amended, restated, supplemented or otherwise modified from time to time.

(3) "***Transfer Payment Agreement***" has the meaning given to it in the Declaration of Trust.

(4) "***Trust Contracts***" means the Transfer Payment Agreement and each Implementation Agreement and any related or similar documents.

1.2 Certain Defined Terms

All other capitalized terms used in this Agreement and not otherwise defined in this Agreement have the respective meanings given to them in the Declaration of Trust or the Transfer Payment Agreement, as applicable.

1.3 Headings and Table of Contents

The insertion of headings and the provision of a table of contents are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

1.4 References

Unless otherwise specified, all references to Sections are to Sections of this Agreement. The words "hereto," "herein," "hereof," "hereunder" and similar expressions refer to this Agreement and not to any particular Section or other provision of this Agreement.

1.5 Number and Gender

Unless otherwise specified, words importing the singular include the plural and vice versa and words importing gender include all genders.

1.6 Time of Day

Unless otherwise specified, any reference to a time of day means local time in the City of Toronto, Province of Ontario.

1.7 Governing Law

This Agreement shall be governed by, and construed and interpreted in accordance with, the laws of the Province of Ontario and of Canada applicable therein.

1.8 Severability

Any provision of this Agreement which is illegal, invalid or unenforceable in any jurisdiction shall not affect the legality, validity or enforceability of the remaining provisions and any such illegality, invalidity or unenforceability in any jurisdiction shall not affect the legality, validity or enforceability of such provision in any other jurisdiction.

1.9 Entire Agreement

This Agreement and all other documents contemplated hereby constitute the entire agreement between the parties with respect to the subject matter and supersede all prior negotiations, undertakings, representations, and understandings.

1.10 References to the Trust

For greater certainty, the term "Trust" includes the Trustee and, where any reference is made in this Agreement to an act to be performed by or for or on behalf of the Trust, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Trustee in its capacity as trustee of the Trust, and, where any reference is made in this Agreement to an act to be performed by or for or on behalf of the Trustee, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Trustee in its capacity as trustee of the Trust.

SECTION 2
APPOINTMENT OF ADMINISTRATIVE SERVICES AGENT

2.1 Appointment and Acceptance

(1) The Trust hereby appoints the Administrative Services Agent as its agent to provide the services and to perform the duties set out in this Agreement in connection with the activities of the Trust under the Declaration of Trust subject to the direction and control of the Trustee.

(2) The Administrative Services Agent accepts such appointment and agrees to act in such capacity and to provide or cause to be provided the services and to perform the duties set forth in this Agreement on and subject to the terms and conditions in this Agreement. The Trust hereby grants to the Administrative Services Agent the power and authority to act in the name of and on behalf of the Trust for the sole purpose of providing the services and performing the duties to be provided and performed by the Administrative Services Agent pursuant to this Agreement.

2.2 Access

The Trust authorizes the Administrative Services Agent to have full access to the books and records of the Trust and whatever other information and material of or in respect of the Trust that the Administrative Services Agent, in its opinion, requires to discharge its duties under this Agreement.

2.3 Confidentiality

The Administrative Services Agent will keep confidential all information concerning the business and affairs of the Trust which is obtained by the Administrative Services Agent in providing the services and performing the duties set out in this Agreement; provided that such information may be disclosed:

(1) as required by law;

(2) as required by any governmental or regulatory authorities having jurisdiction over the Administrative Services Agent;

(3) on a confidential basis, to the legal counsel and auditors of the Administrative Services Agent; and

(4) if it has become publicly available other than as a result of a breach of this Section.

SECTION 3
SERVICES PROVIDED BY THE ADMINISTRATIVE SERVICES AGENT

3.1 Relating to the Performance by the Trust of its Obligations

The Administrative Services Agent shall have the authority and the responsibility to provide the following services to, for and on behalf of the Trust in connection with the activities of the Trust:

(1) ***Negotiating Implementation Agreements***. On and after the Original Trustee Replacement Date, negotiating and settling the terms of Implementation Agreements (other than any Implementation Agreement entered into by Hydro One Limited as an Implementation Agent) and related documents and any amendments, restatements, supplements or other modifications of such Implementation Agreements and any waivers thereunder.

(2) ***Bank Accounts***. Arranging for the opening of bank accounts at any Schedule I chartered bank in Canada, the deposit of moneys to such accounts and negotiating agreements with such banks in connection with such accounts.

(3) ***Arranging for the Performance and Enforcement of the Trust Contracts***. Taking all necessary and appropriate action to enable the Trust to exercise or enforce its rights and to perform its obligations under the Trust Contracts (other than any Implementation Agreement entered into by Hydro One Limited as an Implementation Agent) and related documents and acting for and on behalf of the Trust in connection with any and all matters relating to such exercise, enforcement and performance.

(4) ***Eligible Investments***. To the extent Assets are not required to pay the obligations of the Trust or to distribute to Beneficiaries, to invest such Assets in Eligible Investments as contemplated by the Declaration of Trust.

(5) ***Recommendations regarding Amendments.*** If requested by the Trustee, to make recommendations regarding the scope and substance of amendments that may be made to the Declaration of Trust or the Trust Contracts in accordance with their respective terms in order to better accomplish the Purpose, having regard to the Administrative Services Agent's understanding of the Purpose and its views regarding how best to efficiently implement the Program to accomplish the Purpose.

(6) ***Other***. Taking all other action on behalf of the Trust incidental or reasonably necessary to carry out the foregoing services and duties.

3.2 Relating to Services

The Administrative Services Agent shall have the authority and the responsibility to provide the following services related to the services provided under Section 3.1 to, for and on behalf of the Trust in connection with the activities of the Trust:

(1) ***Providing Usual Office Services***. Providing or causing to be provided to the Trust internal accounting and other usual and ordinary office services.

(2) ***Retaining Legal Counsel***. Retaining legal counsel for the Trust as necessary and providing appropriate instructions.

(3) ***Auditors***. Selecting, appointing, retaining and discharging qualified auditors for the Trust as necessary, settling the auditor's fees and providing appropriate instructions.

(4) ***Ensuring Proper Records Maintained***. Maintaining, or retaining accountants and other appropriate advisers to ensure that proper books of account, financial statements and complete records of all transactions of the Trust undertaken or performed by it under this Agreement, the

Declaration of Trust and the Trust Contracts and any other agreements entered into by the Trust are maintained and to render statements or copies thereof from time to time as requested by the Trust, the Trustee or other Persons entitled to such information and to cooperate in all audits of the Trust. The Administrative Services Agent shall permit the Trustee, its authorized representatives or an independent auditor to, at its own expense, on twenty-four hours' notice and during normal business hours, inspect the records of and information respecting the Administrative Services Agreement to confirm its compliance with the Administrative Services Agreement.

(5) ***Ensuring Government Filings Made***. Preparing or causing to be prepared all returns, reports and filings which may be required from time to time by any governmental authority and including, without limitation, such returns, reports and filings which may be required under the *Income Tax Act* (Canada), the *Excise Tax Act* (Canada) and other applicable laws.

(6) ***Ensuring Taxes are Paid***. Ensuring that the Trust pays when due out of the Assets all taxes and related expenses payable by it.

(7) ***Causing Expenses to be Paid***. Depositing funds of the Trust received by the Administrative Services Agent to the bank accounts established by the Administrative Services Agent for the Trust and causing the general operating expenses of the Trust to be paid from such deposited funds on a timely basis.

(8) ***Notice of Non-Performance***. Promptly notifying the Trust in the event that the Administrative Services Agent is unable to perform its duties hereunder.

(9) ***Providing Other Day-to-Day Services***. Providing or causing to be provided to the Trust all services necessary, in addition to those specified in Sections 3.1 and 3.2, to conduct and operate the day-to-day business of the Trust in an efficient manner and take such action, and execute and deliver such further documents as shall be reasonably required in order to fully perform the terms of, and carry out the intention of, this Agreement.

SECTION 4
SERVICE PROVIDERS TO THE ADMINISTRATIVE SERVICES AGENT

4.1 Service Providers

In connection with the services to be performed by it under this Agreement, the Administrative Services Agent may engage or employ any Persons as employees, agents, representatives, independent contractors or otherwise, including, without limitation, accountants, investment advisers, tax advisers, insurance advisers, lawyers, appraisers, bankers, custodians, agents for collection or others in one or more capacities and any other advisers which the Administrative Services Agent deems advisable, and may engage such Persons to assist in the performance of the powers and duties of the Administrative Services Agent upon such terms and conditions as it may determine provided that the Administrative Services Agent shall require such Persons to perform their services to a standard of care which is at least as high as that imposed on the Administrative Services Agent under this Agreement. Any such engagement shall not affect the Administrative Services Agent's liability for performance of its duties and obligations pursuant to the terms hereof.

SECTION 5
RELATIONSHIP BETWEEN THE ADMINISTRATIVE SERVICES AGENT AND THE TRUST

5.1 Directions from the Trust

The Administrative Services Agent agrees to comply with any directions given by the Trust in connection with the performance by the Administrative Services Agent of its duties under this Agreement; provided that before taking any such action, the Trust shall consult with the Administrative Services Agent with respect to any such proposed direction.

5.2 Compliance with Documents

The Administrative Services Agent agrees to act in accordance with, and not take any action which conflicts with, the Declaration of Trust, the Trust Contracts or, to the knowledge of the Administrative Services Agent, any other agreements entered into by the Trust and the covenants of the Trust contained in the Trust Contracts and such agreements.

5.3 Relationship of Parties

This Agreement is not intended to be and shall not be treated as anything other than a services agreement relating to the provision of certain services, with the rights of the parties being none other than the rights given to them under this Agreement. Without limitation, this Agreement shall not be deemed in any way or for any purpose to constitute the Administrative Services Agent a trustee of the Assets or any part thereof or either party a partner of the other party to this Agreement in the conduct of any business or otherwise or a member of a joint venture or joint enterprise with the other party to this Agreement.

5.4 Appointment of Administrative Services Agent as Attorney-in-Fact

The Trustee on behalf of the Trust hereby appoints the Administrative Services Agent as the Trust's attorney-in-fact, with full authority in the place and stead of and in the name of the Trust or otherwise, from time to time in the Administrative Services Agent's discretion or as required by this Agreement to ask, demand, collect, sue for, recover, compound, receive and give acquittance and receipts for moneys due and to become due in connection with Assets owned by the Trust or otherwise owed to the Trust, to receive, endorse, and collect any drafts or other instruments, documents and chattel paper in connection therewith, and to file any claims or take any action or institute any proceedings which the Administrative Services Agent may deem to be necessary or desirable for the collection thereof.

5.5 Reliance on Information Obtained from Third Parties

The Trust acknowledges that the accuracy and completeness of the records maintained and the information supplied by the Administrative Services Agent to the Trust and others is dependent upon the accuracy and completeness of the information obtained by the Administrative Services Agent from the other parties to the Trust Contracts and related documents and other sources. The Administrative Services Agent, to the extent it was reasonable in the circumstances to have relied on any such information provided to it, shall not be responsible for any inaccuracy or incompleteness in the information so obtained or for any inaccuracy in the records maintained by

the Administrative Services Agent under this Agreement which may result from the accuracy and completeness of the information obtained by the Administrative Services Agent from parties to the Trust Contracts other than the Administrative Services Agent.

5.6 Representations

(1) The Trust represents and warrants to the Administrative Services Agent that the execution, delivery and performance by the Trust of this Agreement are within the powers of the Trust and have been duly authorized by all necessary action on the part of the Trust and do not contravene any law or contractual restriction binding on or affecting the Trust and that this Agreement constitutes a legal, valid and binding obligation of the Trust enforceable against the Trust in accordance with its terms, subject to the limitation of liability of the Trustee under the Declaration of Trust, to applicable bankruptcy, insolvency, winding-up, moratorium or reorganization, or other similar laws affecting creditors' rights generally and to the availability of equitable remedies.

(2) The Administrative Services Agent represents and warrants to the Trust that the execution, delivery and performance by the Administrative Services Agent of this Agreement are within the powers of the Administrative Services Agent and have been duly authorized by all necessary corporate action on the part of the Administrative Services Agent and do not contravene any law or contractual restriction binding on or affecting the Administrative Services Agent and that this Agreement constitutes a legal, valid and binding obligation of the Administrative Services Agent enforceable against the Administrative Services Agent in accordance with its terms, subject to applicable bankruptcy, insolvency, winding-up, moratorium or reorganization, or other similar laws affecting creditors' rights generally and to the availability of equitable remedies.

SECTION 6
REPORTING OBLIGATIONS OF THE ADMINISTRATIVE SERVICES AGENT

6.1 Records

The Administrative Services Agent agrees that it shall maintain or cause to be maintained all necessary records of all transactions in respect of the Trust required by law, the Declaration of Trust or any Trust Contract, and to provide or cause to be provided to the Trust on a timely basis such reports as the Trust may reasonably require. The Trust will make available to the Administrative Services Agent all information required for purposes of maintaining such records and preparing such reports to the extent the Trust has such information and the Administrative Services Agent does not.

SECTION 7
FEES AND EXPENSES

7.1 Administrative Services Fees

In consideration of the services provided by the Administrative Services Agent hereunder, for and after the period commencing on the Original Trustee Replacement Date, the Trust shall pay to the Administrative Services Agent regular and periodic fees, the amounts and terms of payment of which shall be agreed upon by the parties from time to time and in any event, not less

frequently than annually. Such fees shall be paid within 90 days after the last day of each quarter of each fiscal year of the Trust, unless otherwise agreed by the Administrative Services Agent.

7.2 Expenses

The Trust is responsible for and there shall be paid out of the Assets, in addition to the fees payable under Section 7.1, all expenses reasonably incurred by the Administrative Services Agent as agent for the Trust, for or on behalf of the Trust, including, but not limited to, taxes (other than taxes on the Administrative Services Agent's capital or net income and taxes payable by the Administrative Services Agent either in respect of any supply of property or services by any person to the Administrative Services Agent or any taxes in respect of persons who are employees of the Administrative Services Agent), registry and transfer agency services, audit, accounting, tax advice and legal fees, custodial and safekeeping fees, expenses and fees relating to the opening and operation of accounts and other bank services and the expenses incurred in the preparation, printing and distribution of financial reports, and other reports required to comply with the laws relating to the Trust and the Trust Contracts and all other expenses properly payable by the Trust. It is agreed that the Administrative Services Agent shall at no time be responsible for any such fees or expenses.

7.3 Disbursements

Where any disbursements on account of the expenses which are properly payable by the Trust are made by the Administrative Services Agent and do not conflict with the requirements set forth in Schedule B to the Principles Annex to the Declaration, the Trust shall promptly reimburse the Administrative Services Agent for such expenses upon receiving a proper account.

SECTION 8
STANDARD OF CARE

8.1 Standard

The Administrative Services Agent shall exercise its powers and authorities hereunder and carry out its duties and functions as Administrative Services Agent under this Agreement honestly and in good faith and in connection therewith, it shall exercise that degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. In performing its duties under the Administrative Services Agreement, the Administrative Services Agent shall seek to avoid actual, potential or perceived conflicts of interest. The Administrative Services Agent shall not, in performing its obligations under the Administrative Services Agreement, take any action which it knows or ought reasonably to know would cause the Trustee or the Trust to be in violation of any law, rule or regulation applicable to it.

SECTION 9
INDEMNIFICATION AND LIABILITY OF THE ADMINISTRATIVE SERVICES AGENT

9.1 Indemnity

The Trust hereby indemnifies and saves harmless the Administrative Services Agent out of the Assets from and against all claims, costs, charges, expenses and liabilities whatsoever (including legal costs on a solicitor and his own client basis), brought, commenced, prosecuted against, sustained by, imposed on, incurred by or assessed against the Administrative Services Agent or any Person employed or engaged by it as permitted under this Agreement for or in respect of any act, deed, matter or thing whatsoever made, done, acquiesced in or omitted to be done in connection with the activities of the Trust and the performance of the services and duties of the Administrative Services Agent under this Agreement.

9.2 Exclusion of Liability

Notwithstanding any other provision in this Agreement other than Section 9.3, the Administrative Services Agent assumes no liability for anything other than to render the services it agrees to provide under this Agreement and neither the Administrative Services Agent nor any of its directors, officers, employees or affiliates shall be responsible for any action of the Trust. The Administrative Services Agent shall not be liable to the Trust or to any Beneficiary or creditor of the Trust for any loss, damage, cost, expense or other liability whatsoever relating to any matter regarding the Trust, or for any loss, damage, cost, expense or other liability whatsoever caused to the Trust through the insufficiency or deficiency of any security in or upon which any of the Assets shall be expended or invested, or for any loss, damage, cost, expense or other liability whatsoever arising from the bankruptcy, insolvency or tortious act of any Person with whom any Assets shall be lodged or deposited, or for any loss resulting from the diminution in value of Eligible Investments, or for any loss, damage, cost, expense or other liability whatsoever occasioned by any act or omission under this Agreement or error in judgment or oversight on the part of the Administrative Services Agent, its directors, officers, employees and agents or for any other loss, damage, cost, expense or other liability whatsoever which may happen in the performance by the Administrative Services Agent of its services and duties under this Agreement.

9.3 Liability for Gross Negligence

(1) Notwithstanding the provisions of Sections 9.1 and 9.2, the Administrative Services Agent shall indemnify and hold harmless the Trust against any claim, loss or expense which the Trust may incur that results from a failure by the Administrative Services Agent to perform its duties and obligations hereunder in compliance with Section 8.1 or the gross negligence or wilful misconduct of the Administrative Services Agent in performing or failing to perform its obligations hereunder. It is, however, expressly understood that the Administrative Services Agent is not agreeing to indemnify or hold the Trust harmless with respect to:

(a) any liabilities resulting from the failure of the Trustee to satisfy the standard of care set out in the Declaration of Trust unless such failure arises directly as a result of a failure by the Administrative Services Agent to perform its obligations hereunder in compliance with Section 8.1 hereunder;

(b) any claim arising out of the assessment of any tax on income or franchise tax by a taxing authority against the Trust;

(c) any liability of the Trust accruing after the termination of this Agreement unless attributable to the actions or omissions of the Administrative Services Agent prior to such termination; or

(d) any claim, loss, expense or other liability representing any amount which the Trust has returned to the Province pursuant to the provisions of the Transfer Payment Agreement for any reason whatsoever.

(2) The Administrative Services Agent shall have the exclusive right to compromise or defend, through counsel selected and retained by the Administrative Services Agent, any such liabilities or related claims at its own expense, which decision shall be binding upon the Trust provided that in compromising or defending any such liabilities or related claims, the Administrative Services Agent will ensure that any settlement agreed to by it will not, without the prior written consent of the Trustee, include any admission of liability on the part of the Trustee in its personal capacity.

9.4 Reliance on Advisers

The Administrative Services Agent shall be entitled to rely and act, and shall be fully protected in relying and acting, upon (1) any statement, electronic communication, writing, notice, resolution, report, opinion or other document or conversation believed by it to be genuine and correct and to have been signed, sent or made by the proper Person; and (2) any advice received from auditors, lawyers, or other professional advisers of the Administrative Services Agent and shall not be responsible or held liable for any loss or damage resulting from so relying thereon.

SECTION 10
TERM AND TERMINATION

10.1 Term

This Agreement shall continue in full force and effect until December 31, 2022 unless terminated in accordance with the provisions of this Agreement.

10.2 Termination

This Agreement may be terminated by the Trustee (1) immediately, upon written notice to the Administrative Services Agent if the Administrative Services Agent is in breach of its duties and obligations hereunder or (2) with effect as of the last day of any calendar month, upon six months prior written notice to the Administrative Services Agent. This Agreement may be terminated by the Administrative Services Agent (1) immediately, upon written notice to the Trust if the Trust is in breach of its duties and obligations hereunder or (2) with effect as of the last day of any calendar month, upon six months prior written notice to the Trust. The provisions of Section 2.3 and Section 9 shall survive the termination of this Agreement.

10.3 Delivery of Records

Upon termination of this Agreement, the Administrative Services Agent shall forthwith deliver to the Trust all records, documents and books of account, and all materials and supplies for which the Administrative Services Agent has been paid by the Trust, which are in the possession or control of the Administrative Services Agent and relate directly or indirectly to the performance by the Administrative Services Agent of its obligations under this Agreement provided, however, that the Administrative Services Agent may retain notarial or other copies of such records, documents and books of account and the Trust shall produce the originals of such records, documents and books of account whenever reasonably required to do so by the Administrative Services Agent for the purpose of legal proceedings or dealings with any governmental authorities.

10.4 Payment of Fees

Upon termination of this Agreement, the Trust shall pay to the Administrative Services Agent such fees and expenses under Sections 7.1 and 7.2 as may be due as of the date of termination and shall reimburse the Administrative Services Agent for its expenses and disbursements to which it is entitled under this Agreement as of the date of such termination.

SECTION 11
MISCELLANEOUS

11.1 Amendments and Waivers

(1) This Agreement may be amended, supplemented, modified, restated or replaced from time to time by written instrument signed by the Trustee on behalf of the Trust and the Administrative Services Agent. The Administrative Services Agent agrees to consider and give timely effect to any reasonable modifications proposed by the Board of Trustees so long as the Administrative Services Agent, in its discretion and acting reasonably, believes that such modifications would not be prejudicial to its interests.

(2) No waiver of any provision of this Agreement, nor consent to any departure by any party therefrom, shall in any event be effective unless the same shall be in writing and signed by such party, and then said waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. No failure on the part of any party to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof.

11.2 Notices

Any notice or other written communication required or permitted to be given hereunder may be delivered by hand, prepaid registered mail or by electronic transmission, addressed in the case of the Trust to:

Computershare Trust Company of Canada,
in its capacity as trustee of Affordability Fund Trust
c/o Computershare Trust Company of Canada
100 University Ave, 11th Floor, Toronto, ON, M5J 2Y1

Attention: Manager, Corporate Trust Services
Email: Corporatetrust.toronto@computershare.com

and in the case of the Administrative Services Agent to:

Hydro One Limited,
as Administrative Services Agent of Affordability Fund Trust
482 Bay St, South Tower, 8th Floor
Toronto, ON, M5G 2P5

Attention: J. Scarlett, Executive Vice President & Chief Legal Officer
Email: JScarlett@hydroone.com

and in any other case, addressed to such other address as a party may have specified by notice in writing given under this Section. Any such notice or other written communication shall be deemed to have been given (1) if delivered by hand, when received; (2) if mailed, on the fifth Business Day following the date of mailing; (3) if sent by electronic transmission on a Business Day before 3:00 p.m. (Toronto time), on that Business Day and if sent after 3:00 p.m. (Toronto time), on the next succeeding Business Day; and (4) if sent by electronic transmission on a day which is not a Business Day, on the next succeeding Business Day.

11.3 Waivers

No failure to exercise and no delay in exercising on the part of either party of any right, remedy, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege preclude the exercise of any other right, remedy, power or privilege.

11.4 Limitation of Liability of the Trustee

This Agreement has been entered into by the Trustee solely in its capacity as trustee of the Trust and is not binding on the Trustee in any other capacity, whether in tort, contract or otherwise. The Beneficiaries of the Trust are not subject to any liability in respect of the Trust. Resort may not be had to, nor recourse or satisfaction be sought from, the private property of the Trustee, its directors, officers, employees, or agents, or the private property of any Beneficiary, and resort will be had solely to the property of the Trust held in trust by the Trustee for the payment, performance or satisfaction of any liability or obligation of the Trust or the Trustee under this Agreement.

11.5 Further Assurances

Each party shall from time to time take such action, and execute and deliver such further documents, as shall be reasonably required in order to fully perform the terms of, and carry out the intention of, this Agreement.

11.6 Assignment

This Agreement shall not be assignable by either party, except to an affiliate as that term is defined in the *Canada Business Corporations Act*, without the express prior written consent of

the other party; provided that the appointment of a successor trustee or trustees of the Trustee in accordance with the Declaration of Trust shall not be considered an assignment of this Agreement.

11.7 Enurement

This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns including, without limitation, any company into which the Trustee may be merged, wound up or with which it may be consolidated or amalgamated, or any company resulting from any merger, consolidation, wind-up or amalgamation to which the Trustee is a party or any company to which all or substantially all (the determination of "substantially all" shall be made by the Trustee in its sole and absolute discretion) of the corporate trust business of the Trustee may be transferred.

11.8 Attornment

Each of the parties irrevocably attorns to the non-exclusive jurisdiction of the courts of the Province of Ontario.

11.9 Counterparts

This Agreement may be executed in any number of counterparts, each of which when executed and delivered is an original and all of which taken together constitute one and the same instrument. This Agreement may be executed and delivered by facsimile transmission or as an image distributed by email of a manually signed counterpart.

[INTENTIONALLY LEFT BLANK]

The parties have executed this Agreement as of the date first written above.

AFFORDABILITY FUND TRUST, by its trustee,
COMPUTERSHARE TRUST COMPANY OF CANADA

By: _____
Name: Morag Abraham
Title: Authorized Signatory Corporate Trust Officer

By: _____
Name: Ann Samuel
Title: Authorized Signatory Associate Trust Officer

HYDRO ONE LIMITED, as Administrative Services Agent

By: _____
Name: Michael Vels
Title: CFO

By: _____
Name: Ali Suleman
Title: VP & Treasurer

FW_ Affordability Fund Trust.rtf

From: Petsche, Nadine (TBS) []
To: Picard, Michel (mpicard@kpmg.ca) [mpicard@kpmg.ca]; samir chhelavda (Samir.Chhelavda@HydroOne.com) [Samir.Chhelavda@HydroOne.com]
Subject: FW: Affordability Fund Trust
Date: Wednesday, March 22, 2017 15:01:53
Attachment 1: imagece5b5f.GIF
Attachment 2: TOR_2024-#12888010-v12-Transfer_Payment_Agreement_(Affordability_Fund_Tr....docx
Attachment 3: 12888010v11_Transfer Payment Agreement (Affordability Fund Trust) - 1288....pdf
Attachment 4: TOR_2024-#12887993-v18-Affordability_Fund_Trust_–_Declaration_of_Trust_-....docx
Attachment 5: 12887993v17_Affordability Fund Trust – Declaration of Trust - Blakes Com....pdf

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fyi

From: PRESTAGE, JA [mailto:JA.PRESTAGE@blakes.com]
Sent: March 22, 2017 2:48 PM
To: Johnson, Paul (ENERGY/MEDEI/MRI); Ranalli, David (ENERGY); Schachtschneider, Michelle (ENERGY); Qureshi, Musab (ENERGY); Schwab-Pflug, Emma (ENERGY); Syed, Usman (ENERGY); Petsche, Nadine (TBS)
Cc: ASHBOURNE, STEPHEN
Subject: Affordability Fund Trust

All:

Attached are revised versions of the Declaration of Trust and the TPA which seek to reflect all of the comments received.

There are a few highlighted sections which require specific decisions or attention.

J.A.

J.A. Prestage
Partner
ja.prestage@blakes.com
Dir: 416-863-2955

Blake, Cassels & Graydon LLP
199 Bay Street, Suite 4000, Toronto ON M5L 1A9
Tel: 416-863-2400 Fax: 416-863-2653
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TOR_2024-#12888010-v12-Transfer_Payment_Agreement_(Affordability_Fund_Tr....pdf

ONTARIO TRANSFER PAYMENT AGREEMENT

THE AGREEMENT, effective as of the • day of March, 2017 (the **"Effective Date"**)

B E T W E E N :

Her Majesty the Queen in right of Ontario
as represented by the Minister of Energy

(the "Province")

- and -

Computershare Trust Company of Canada, in its capacity as trustee of Affordability Fund Trust

(together with its successors and assigns, the "Recipient" and, together with the Province, the "Parties")

BACKGROUND

Computershare Trust Company of Canada is the original trustee of the Affordability Fund Trust.

The Province wishes to provide Funds to the Recipient to be held, invested, applied and distributed in accordance with the terms of the Declaration of Trust (defined below), in furtherance of the Purpose (as defined in the Declaration of Trust), including having regard to the Principles set forth in Annex A.

CONSIDERATION

In consideration of the mutual covenants and agreements contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is expressly acknowledged, the Parties agree as follows:

ENTIRE AGREEMENT

This agreement (as amended, restated, supplemented or otherwise modified from time to time, the **"Agreement"**), including:

Schedule "A" - General Terms and Conditions
Schedule "B" - Project Specific Information
Schedule "C" - Project - Certain Obligations of the Recipient
Schedule "D" - Budget
Schedule "E" - Payment Plan
Schedule "F" - Reporting
Annex "A" - Principles, and
any amending agreement entered into as provided for below,

constitutes the entire agreement between the Parties with respect to the subject matter contained in this Agreement and supersedes all prior oral or written representations and agreements.

COUNTERPARTS

The Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

AMENDING THE AGREEMENT

The Agreement may only be amended by a written agreement duly executed by the Parties.

ACKNOWLEDGEMENT

The Recipient:

(a) acknowledges that it has read and understands the provisions contained in the entire Agreement; and

(b) agrees to be bound by the terms and conditions contained in the entire Agreement.

IN WITNESS WHEREOF, the Parties have executed the Agreement on the dates set out below.

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO as represented by Minister of Energy

by:

_____ _____

Date Name: Serge Imbrogno

Title: Deputy Minister

Authorized Signing Officer

COMPUTERSHARE TRUST COMPANY OF CANADA, in its capacity as trustee of AFFORDABILITY FUND TRUST

by:

_____ _____

Date Name:

Title:

by:

_____ _____

Date Name:

Title:

I/We have authority to bind the Recipient.

SCHEDULE "A"
GENERAL TERMS AND CONDITIONS

1.0 INTERPRETATION AND DEFINITIONS

1.1 Interpretation. For the purposes of interpretation:

(a) words in the singular include the plural and vice-versa;

(b) words in one gender include all genders;

(c) the headings do not form part of the Agreement; they are for reference only and will not affect the interpretation of the Agreement;

(d) any reference to dollars or currency will be in Canadian dollars and currency;

(e) "include", "includes" and "including" denote that the subsequent list is not exhaustive;

(f) where any reference is made in the Agreement to an act to be performed by or for or on behalf of the Affordability Fund Trust, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Recipient in its capacity as trustee of the Affordability Fund Trust, and, where any reference is made in the Agreement to an act to be performed by or for or on behalf of the Recipient, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Recipient in its capacity as trustee of the Affordability Fund Trust; and

(g) it is intended that the transfer of the Funds to the Recipient will be a transfer made to a "non-controlled trust" (as that term is given meaning in • applicable to the accounting rules and principles applicable to the Province as of the date of the Agreement), and so if a term or condition of the Agreement is determined to conflict with the requirements applicable to the Province recording the transfers to the Recipient of Funds contemplated hereunder as an expense incurred by the Province on the date of the transfer of Funds under the Agreement otherwise in connection with activities undertaken by the Province with such a "non-controlled trust", then such term or condition shall be given a meaning and shall have an effect insofar as it is possible to interpret such term or condition in a manner that eliminates such conflict while preserving the other provisions of the Agreement and furthering the Purpose.

1.2 Definitions. In the Agreement, the following terms will have the following meanings:

"Administrative Services Agent" has the meaning given such term in the Declaration of Trust.

"Affordability Fund Trust" means the trust established and governed by the Declaration of Trust, and for greater certainty includes such trust operating under any other name that may be designated from time to time by the Recipient in accordance with the Declaration of Trust.

"BPSAA" means the Broader Public Sector Accountability Act, 2010 (Ontario).

"**Beneficiary**" has the meaning given to such term in the Declaration of Trust.

"Budget" means the Recipient's budget attached to the Agreement as Schedule "D".

"Business Day" means any working day, Monday to Friday inclusive, excluding statutory and other holidays, namely: New Year's Day; Family Day; Good Friday; Easter Monday; Victoria Day; Canada Day; Civic Holiday; Labour Day; Thanksgiving Day; Remembrance Day; Christmas Day; Boxing Day and any other day on which the Province has elected to be closed for business.

"**Declaration of Trust**" means the declaration of trust made as of March [•], 2017, under which the Affordability Fund Trust was established, as such declaration of trust may be amended, restated, supplemented or otherwise modified from time to time with the consent of the Province.

"Expiration Date" means the date on which this Agreement will expire and is the date set out in Schedule "B".

"Funds" means the money the Province provides to the Recipient pursuant to the Agreement.

"Implementation Agents" has the meaning given such term in the Declaration of Trust.

"Maximum Funds" means the maximum amount of Funds that the Province will provide the Recipient under the Agreement, as set out in Schedule "B".

"Notice" means any communication given or required to be given pursuant to the Agreement.

"Party" means either the Province or the Recipient.

"**Person**" includes any individual, sole proprietorship, corporation, partnership, joint venture, association, society, club, board, chamber, joint-stock company, trust, trustee, unincorporated or incorporated organization or entity or government or any entity, agency or political subdivision thereof.

"**Program**" has the meaning given to such term in the Declaration of Trust.

"Project" means the undertaking described in Schedule "C".

"**Purpose**" has the meaning given to such term in the Declaration of Trust.

"PSSDA" means the *Public Sector Salary Disclosure Act, 1996* (Ontario).

"**Recipient**" means, initially, Computershare Trust Company of Canada, and any additional or replacement trustee in its capacity as trustee of the Affordability Fund Trust pursuant to the Declaration of Trust, including the Board of Trustees (as defined in the Declaration of Trust) and each of their respective successors and permitted assigns.

"Reports" means the reports described in Schedule "F".

2.0 REPRESENTATIONS, WARRANTIES AND COVENANTS

2.1 General. The Recipient represents, warrants and covenants that:

(a) it is the trustee of the Affordability Fund Trust; and

(b) the Affordability Fund Trust is, and will continue to be for the term of the Agreement, a trust existing under and governed by the laws of the Province of Ontario.

2.2 Execution of Agreement. The Recipient represents and warrants that it has:

(a) the full power and authority to enter into the Agreement; and

(b) taken all necessary actions to authorize the execution of the Agreement.

2.3 Governance. The Recipient covenants that it will develop and maintain in writing until the Agreement is no longer in effect:

(a) decision-making mechanisms and procedures to enable the Recipient to hold, invest, manage, apply and distribute the Funds in accordance with the Declaration of Trust in furtherance of the Purpose; and

(b) procedures to enable the preparation and delivery of all Reports required pursuant to Article 7.0.

2.4 Supporting Documentation. Upon request, the Recipient will provide the Province with proof of the matters referred to in this Article 2.0.

3.0 TERM OF THE AGREEMENT

3.1 Term. The term of the Agreement will commence on the Effective Date and will expire on the the Expiration Date.

3.2 Extension. The term of the Agreement may be extended by further agreement between the Parties.

3.3 Extension of the Declaration of Trust. If the Province determines that an extension of the Final Distribution Date (as defined in the Declaration of Trust) and time for termination of the Declaration of Trust is consistent with and in furtherance of the Purpose and the Province's original intentions and expectations in establishing the Project, the Province may request that the Recipient extend such date to a date specified by the Province in a Notice (such date not to be later than December 31, 2024), whereupon the Recipient, so long as the Recipient does not have a reasonable basis to believe that such an extension would be inconsistent with the Purpose or weaken the protections intended for the benefit of the trustee pursuant to the Declaration of Trust, will undertake such actions as it may consider to be necessary or appropriate to so extend the Declaration of Trust, including by amending the Declaration of Trust to provide for such an extension and to modify any other term or requirement as would be necessary or prudent to conform such term or requirement in light of such extension.

4.0 FUNDS AND CARRYING OUT THE PROJECT

4.1 Funds Provided. The Province will:

(a) provide the Recipient up to the Maximum Funds to be held, invested, applied and distributed in accordance with the terms of the Project and the Declaration of Trust;

(b) provide the Funds to the Recipient in accordance with the Payment Plan attached to the Agreement as Schedule "E"; and

(c) deposit the Funds into an account designated by the Recipient, provided that the account:

(i) resides at a Canadian financial institution; and

(ii) is in the name of the Recipient.

4.2 Timing of Distributions to Beneficiaries. The expectations of the Province regarding when Funds will begin to be distributed by the Recipient to Beneficiaries are set out in Schedule C. The Recipient will have regard to those expectations in the exercise of its discretion under the Declaration of Trust, in determining when Funds will be distributed to Beneficiaries in furtherance of the Purpose.

4.3 Use of Funds and Project. The Recipient will exercise its rights, duties and discretions under the Declaration of Trust so that the Funds are used, applied and distributed only for and in furtherance of the Purpose, including having regard to the Principles set forth in Annex A.

4.4 Province's Role Limited to Providing Funds. For greater clarity, the Province's role under the Agreement is limited to providing Funds to the Recipient and the Province is not responsible for carrying out or overseeing the terms of the Declaration of Trust.

4.5 Maximum Funds. The Recipient acknowledges that the Funds available to it pursuant to the Agreement will not exceed the Maximum Funds.

4.6 Funding, Not Procurement. For greater clarity, the Recipient acknowledges that:

(a) it is receiving funding from the Province for the Project and is not providing goods or services to the Province; and

(b) the funding the Province is providing under the Agreement is funding for the purposes of the PSSDA.

5.0 RECIPIENT'S ACQUISITION OF GOODS OR SERVICES, AND DISPOSAL OF ASSETS

5.1 Acquisition. If the Recipient acquires goods, services, or both with or by applying the proceeds of the Funds, it is expected to do so through a process that promotes the best value for money and to take reasonable steps to ensure that its Administrative Services Agents and Implementation Agents also follow a process that promotes the best value for money when acquiring goods and services with or by applying the proceeds of the Funds. In this regard, it is expected that the Recipient will have regard the following procurement principles:

Accountability

Procurement is conducted in a manner that is well-informed and aligned with the public interest and rules of good governance through clear and transparent accountability and decision-making.

Geographic Neutrality and Reciprocal Non-Discrimination

Ontario does not differentiate between competing goods, services, or suppliers based on their geographic origin or location. This is a core principle of Ontario's trade commitments.

Responsible Management

The procurement of goods and services is responsibly, efficiently and effectively managed through appropriate organizational structures, systems, policies, processes and procedures. All parties involved in a procurement process observe the highest standard of ethics, avoiding conflict of interest.

Value for Money

Procurement processes apply a value for money evaluation that takes into account price as well as other costs and benefits, including life cycle costs and relevant non-price attributes such as quality. Where applicable, these non-price attributes can include:

Social Benefit: to secure wider social benefit in support of the government's social policy objectives.

Environmental Benefit: to secure wider environmental benefit in support of the government's environmental policy objectives, including climate change.

Economic Benefit: to promote the economic well-being of the people of Ontario, in alignment with commitments in the province's trade agreements.

Vendor Access, Transparency, and Fairness

Procurement is conducted in a fair and transparent manner, offering all qualified suppliers equal treatment and open access to compete for government business.

6.0 CONFLICT OF INTERESTn

6.1 No Conflict of Interest. Except as expressly permitted by the Declaration of Trust, the Recipient is expected to implement appropriate processes and control to ensure that the Program and the use, application and distribution of the Funds are without an actual, potential or perceived conflict of interest.

6.2 Conflict of Interest Includes. For the purposes of this Article, a conflict of interest includes any circumstances where, except as expressly permitted by the Declaration of Trust:

(a) the Recipient; or
(b) any person who has the capacity to influence the Recipient's decisions,
has outside commitments, relationships or financial interests that could, or could be seen to, interfere with the Recipient's objective, unbiased and impartial judgment relating to the Project, or the Recipient's use, application or distribution of the Funds, or both.

7.0 REPORTING, ACCOUNTING AND REVIEW

7.1 Preparation and Submission. The Recipient will cooperate with the Province to accommodate the Province's on-going information and reporting objectives in order to enable the Province to be aware of the Recipient's activities in furtherance of the Purpose, and to that end the Recipient will be expected, from and following the Original Trustee Replacement Date, to:

(a) submit to the Province at the address referred to in Schedule "B", all Reports in accordance with the timelines and content requirements set out in Schedule "F", or in a form as specified by the Province from time to time, acting reasonably;

(b) submit to the Province at the address referred to in Schedule "B", any other reports as may be reasonably requested by the Province from time to time in accordance with the timelines and content expectations identified by the Province, acting reasonably;

(c) undertake diligent efforts so that such Reports and any such other reports are complete and accurate in all material respects; and

(d) have an authorized signatory of the Recipient sign-off on such Reports and other reports.

7.2 Record Maintenance. The Recipient will keep and maintain financial and other records necessary to permit it to satisfy its obligations under section 7.1 and to permit the Province to exercise its rights under section 7.3.

7.3 Inspection. The Province, its authorized representatives or an independent auditor identified by the Province may, at its own expense, upon twenty-four hours' Notice to the Recipient and during normal business hours, inspect the records of and information respecting the Recipient to confirm its compliance with the terms of this Agreement, including to ensure consistency with the Purpose and, for these purposes, the Province, its authorized representatives or an independent auditor identified by the Province may take one or more of the following actions:

(a) inspect and copy the records and documents referred to in section 7.2;

(b) keep any copies made pursuant to section 7.3(a); and

(c) conduct an audit or investigation of the Recipient in respect of the expenditure of the Funds to confirm that the Funds have been used, applied and distributed for and in furtherance of the Purpose, including a review of the Recipient's processes, records, documents, as well as the processes and controls applied to obtain assurance that Funds disbursed to Electricity Distributors were used, applied and distributed for and in furtherance of the Purpose.

7.4 Disclosure. To assist in respect of the rights set out in section 7.3, the Recipient will disclose any information requested by the Province, its authorized representatives or an independent auditor identified by the Province, and will do so in the form requested by the Province, its authorized representatives or an independent auditor identified by the Province, as the case may be.

7.5 No Control of Records. No provision of the Agreement will be construed so as to give the Province any control whatsoever over the Recipient's records.

7.6 Auditor General. For greater certainty, the Province's rights under this Article are in addition to and do not limit any rights provided to the Auditor General pursuant to section 9.1 of the *Auditor General Act* (Ontario).

8.0 COMMUNICATIONS REQUIREMENTS

8.1 Publication. The Recipient will acknowledge, in any of its Program-related external communications and marketing whether written, oral, or visual, the financial support of the Province in connection with the establishment and funding of the program, while noting that the views expressed in the publication are the views of the Recipient and do not necessarily reflect those of the Province.

9.0 FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY

9.1 FIPPA. The Recipient acknowledges that the Province is bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province in connection with the Project or otherwise in connection with the Agreement may be subject to disclosure in accordance with that Act.

10.0 Intentionally Deleted

11.0 EVENT OF DEFAULT, CORRECTIVE ACTION AND TERMINATION FOR DEFAULT

11.1 Events of Default. An Event of Default will occur if:

(a) the Recipient fails to perform or observe any covenant in this Agreement and such failure has and continues to have a material adverse effect on the Province and remains unremedied during any Notice period applicable under section 11.2 after the earlier of (i) actual knowledge thereof by the Recipient, or (ii) receipt by the Recipient of Notice thereof from the Province;

(b) any representation or warranty made by the Recipient in the Agreement shall prove to have been incorrect in any material respect when made or deemed made, and, if capable of remedy, continues to be incorrect in any material respect during any Notice period applicable under section 11.2 after the earlier to occur of (i) the actual knowledge thereof by the Recipient or (ii) receipt by the Recipient of Notice thereof from the Province;

(c) it is determined that the Recipient has breached its Standard of Care (within the meaning given in and context of the Declaration of Trust) in discharging its material duties under the Declaration of Trust, with the result that all or a significant part of the Funds have not been or are not being applied in furtherance of the Purpose or are being applied in a manner that is directly contrary or without regard to the Purpose, and, if such breach is capable of remedy, it continues and remains unremedied during any Notice Period applicable under section 11.2 after the earlier of (i) actual knowledge thereof by the Recipient, or (ii) receipt by the Recipient of Notice thereof from the Province;

(d) an insolvency event shall have occurred and be continuing with respect to the Recipient.

11.2 Consequences of Events of Default and Corrective Action. If an Event of Default occurs, the Province may, at any time, take one or more of the following actions:

(a) provide the Recipient with Notice allowing the Recipient an opportunity to remedy the Event of Default during a specified Notice Period;

(b) seek an order of specific performance, including an order that the Recipient pursue its available remedies against third parties;

(c) require, by Notice of demand, that the Recipient transfer to the Province (without any need for compensation, indemnity or consideration to the Recipient or any Beneficiary or other third party) any and all Assets remaining in the possession or under the control of the Recipient that can reasonably be traced or attributed to the Funds after first providing for the completion and performance by the Recipient of any unperformed contractual obligations of the Recipient undertaken in compliance with the Declaration of Trust on or prior to transfer; and

(d) terminate the Agreement, including immediately, without liability, penalty or costs to the Province upon giving Notice to the Recipient.

The transfer of Funds in accordance with the Agreement is made by the Province with the expressed intention and reservation that the transferred Funds shall be returned to the Province and the entitlements of the Recipient in remaining Funds shall thereby be revoked with reversion thereof to the Province in the circumstances contemplated in Section 11.2(c).

11.3 Opportunity to Remedy. If, in accordance with section 11.2, the Province provides the Recipient with an opportunity to remedy the Event of Default, the Province will provide Notice to the Recipient of:

(a) the particulars of the Event of Default; and

(b) the length of time within which the Recipient may cure such Event of Default without the Province pursuing any other remedy (the “Notice Period”).

11.4 Recipient not Remedying. If the Province has provided the Recipient with an opportunity to remedy the Event of Default pursuant to section 11.2(a), and:

(a) the Recipient does not remedy the Event of Default within the Notice Period;

(b) it becomes apparent to the Province that the Recipient cannot adequately remedy the Event of Default within the Notice Period; or

(c) the Recipient is not proceeding to remedy the Event of Default in a way that is satisfactory to the Province,

the Province may extend any Notice Period, or initiate any one or more of the actions provided for in section 11.2.

12.0 REPAYMENT

12.1 Debt Due. If, pursuant to the Agreement: the Province demands the payment of any Funds from the Recipient pursuant to section 11.2(c) such Funds or other amount will be deemed to be a debt due and owing to the Province by the Recipient, and the Recipient will pay or return the amount to the Province immediately, unless the Province directs otherwise.

12.2 Payment of Money to Province. The Recipient will pay any money owing to the Province by cheque payable to the "Ontario Minister of Finance" and delivered to the Province at the address referred to in Schedule "B".

12.3 Failure to Repay. Without limiting the application of section 43 of the Financial Administration Act (Ontario), if the Recipient fails to repay any amount owing under the Agreement, Her Majesty the Queen in right of Ontario may deduct any unpaid amount from any money payable to the Recipient by Her Majesty the Queen in right of Ontario.

13.0 NOTICE

13.1 Notice in Writing and Addressed. Notice will be in writing and will be delivered by email, postage-prepaid mail, personal delivery or fax, and will be addressed to the Province and the Recipient respectively as set out in Schedule "B", or as either Party later designates to the other by Notice.

13.2 Notice Given. Notice will be deemed to have been given:

(a) in the case of postage-prepaid mail, five Business Days after the Notice is mailed; or

(b) in the case of email, personal delivery or fax, one Business Day after the Notice is delivered.

13.3 Postal Disruption. Despite section 13.2(a), in the event of a postal disruption:

(a) Notice by postage-prepaid mail will not be deemed to be received; and

(b) the Party giving Notice will provide Notice by email, personal delivery or by fax.

14.0 SEVERABILITY OF PROVISIONS

14.1 Invalidity or Unenforceability of Any Provision. The invalidity or unenforceability of any provision of the Agreement will not affect the validity or enforceability of any other provision of the Agreement. Any invalid or unenforceable provision will be deemed to be severed.

15.0 WAIVER

15.1 Waivers in Writing. If a Party fails to comply with any term of the Agreement, that Party may only rely on a waiver of the other Party if the other Party has provided a written waiver in accordance with the Notice provisions in Article 13.0. Any waiver must refer to a specific failure to comply and will not have the effect of waiving any subsequent failures to comply.

16.0 INDEPENDENT PARTIES

16.1 Parties Independent. The Recipient acknowledges that it is not an agent, joint venturer, partner or employee of the Province, and the Recipient will not represent itself in any way that might be taken by a reasonable person to suggest that it is, or take any actions that could establish or imply such a relationship.

17.0 ASSIGNMENT OF AGREEMENT OR FUNDS

17.1 **Agreement Binding.** All rights and obligations contained in the Agreement will extend to and be binding on the Parties' respective heirs, executors, administrators, successors and permitted assigns.

18.0 LIMITATION OF LIABILITY

18.1 This Agreement has been entered into by the Recipient solely in its capacity as trustee of the Affordability Fund Trust and is not binding on the Recipient in any other capacity, whether in tort, contract or otherwise. The Beneficiaries of the Affordability Fund Trust are not subject to any liability in respect of the Affordability Fund Trust. Resort may not be had to, nor recourse or satisfaction be sought from, the private property of the Recipient (whether owned by it in its personal capacity or in any other capacity other than in its capacity as trustee of the Affordability Fund Trust), its directors, officers, employees, or agents, or the private property of any Beneficiary, and resort will be had solely to the property of the Recipient held in trust for the payment, performance or satisfaction of any liability or obligation of the Recipient under this Agreement. However, the foregoing limitations in this section shall not apply where the Recipient has demonstrated gross negligence, bad faith, fraud or wilful misconduct.

19.0 GOVERNING LAW

19.1 **Governing Law.** The Agreement and the rights, obligations and relations of the Parties will be governed by and construed in accordance with the laws of the Province of Ontario and the applicable federal laws of Canada. Any actions or proceedings arising in connection with the Agreement will be conducted in the courts of Ontario, which will have exclusive jurisdiction over such proceedings.

20.0 FURTHER ASSURANCES

20.1 **Agreement into Effect.** The Recipient will provide such further assurances as the Province may request from time to time with respect to any matter to which the Agreement pertains, and will otherwise do or cause to be done all acts or things necessary to implement and carry into effect the terms and conditions of the Agreement to their full extent.

20.2 **Declaration of Trust.** The Recipient covenants that it shall not amend, restate or terminate the Declaration of Trust without obtaining the written consent of the Province in respect of same, such consent not to be unreasonably withheld or delayed.

21.0 JOINT AND SEVERAL LIABILITY

21.1 **Joint and Several Liability.** Without limiting and subject to section 18.1 and the Declaration of Trust, if the Recipient is comprised of more than one entity, all such entities will be jointly and severally liable to the Province for the fulfillment of the obligations of the Recipient under the Agreement.

22.0 RIGHTS AND REMEDIES CUMULATIVE

22.1 **Rights and Remedies Cumulative.** The rights and remedies of the Province under the Agreement are cumulative and are in addition to, and not in substitution for, any of its rights and remedies provided by law or in equity.

23.0 ACKNOWLEDGEMENT OF OTHER LEGISLATION AND DIRECTIVES

23.1 **Recipient Acknowledges.** The Recipient acknowledges that by receiving Funds it may become subject to legislation applicable to organizations that receive funding from the Government of Ontario, including the BPSAA, the PSSDA, and the *Auditor General Act* (Ontario).

24.0 SURVIVAL

24.1 **Survival.** The following Articles and sections, and all applicable cross-referenced sections and schedules, will continue in full force and effect for a period of seven years from the date of expiry or termination of the Agreement: Article 1.0 and any other applicable definitions, section, 4.5, section 7.1 (to the extent that the Recipient has not provided the Reports to the satisfaction of the Province), sections 7.2, 7.3, 7.4, 7.5, 7.6, Article 8.0, Article 12.0, Article 14.0, Article 16.0, Article 17.0, Article 19.0, Article 21.0, Article 23.0 and Article 24.0.

- END OF GENERAL TERMS AND CONDITIONS -

SCHEDULE "B"

PROJECT SPECIFIC INFORMATION

Maximum Funds	$100 million
Expiration Date	The date upon which the Affordability Fund Trust is terminated in accordance with the Declaration of Trust
Contact information for the purposes of Notice to the Province	**Attention: Usman Syed** **Position: Director** **Address: 77 Grenville St, Toronto, Ontario, M7A 2C1** **Fax: 416-325-6651** **Email: Usman.Syed@ontario.ca**
Contact information for the purposes of Notice to the Recipient	**Attention:** **Position:** **Address:** **Email:**
Contact information for the senior financial person in the Recipient organization (e.g., CFO, CAO) – to respond as required to requests from the Province related to the Agreement	**Attention:** **Position:** **Address:** **Email:**

SCHEDULE "C"

PROJECT

For the purposes of this Agreement, the "Project" is the distribution of the Funds in accordance with the Declaration of Trust.

It is intended the Project will be undertaken by the Recipient in furtherance of the Purpose and in accordance with the Declaration of Trust. In this regard, it is expected that the Recipient will undertake the Program having regard to the Budget and the Principles set forth in Annex A.

The following are the Province's expectations regarding the circumstances in which the Recipient will begin to distribute any Funds to any Beneficiary.

1. The Original Trustee Replacement Date (as defined in the Declaration of Trust) will have occurred.

2. An Administrative Services Agreement (as defined in the Declaration of Trust) will have been entered into between the Recipient and Hydro One Limited under which Hydro One Limited shall provide specified administrative and other services on behalf of the Recipient.

3. Administrative procedures will have been developed and implemented under which Electricity Distributors (as defined in the Declaration of Trust) will be invited to assist with (a) the identification and selection of Primary Beneficiaries under the Declaration of Trust, (b) the determination of the amount of Funds to be distributed to particular Primary Beneficiaries, and (c) the distribution of Funds to or for the benefit of such Primary Beneficiaries (in each case substantially on the basis contemplated in the Permitted Delegations Annex).

4. The Recipient will have obtained commercial general liability insurance from insurers having a secure A.M. Best rating of B+ or greater, or the equivalent, that in the opinion of the Recipient a prudent person similar to the Recipient would maintain, and having an inclusive limit of not less than $2,000,000 per occurrence and providing for contractual liability coverage. If requested, the Recipient will provide the Province (for its information purposes) with copies of the certificates of insurance and policies for such insurance coverage.

The Province recognizes that the foregoing may involve the Recipient entering into agreements as the Recipient considers to be necessary or expedient, including any required amendment or amendment and restatement of the Declaration of Trust. Funds may be expended to pay the expenses of the Recipient in completing these matters. The Recipient is requested to advise the Province through its quarterly reports on the status of the foregoing.

SCHEDULE "D"

Recipient's Budget

1. It is expected that the administrative expenses of the Recipient, including any administrative expenses of any Administrative Services Agents or any Implementation Agents or any other agents retained by the Recipient, relating to the establishment of the Affordability Fund Trust and satisfying the Requirements (as defined in Schedule "C") and any expenses related to the operation of the Affordability Fund Trust and the execution of the Project (including any reimbursable expenses incurred by any Administrative Services Agent or any Implementation Agent (as such terms are defined in the Declaration of Trust)), will be no greater than 10 percent of the total Project budget.

2. The only expenditures incurred by the Recipient that are eligible for reimbursement are actual (excluding HST) administrative overhead expenses incurred by or on behalf of the Recipient that directly related to the Recipient or the establishment of the Affordability Fund Trust.

4. Any expenses that have been or may be reimbursed by other parties should not be reimbursed from the assets of the Affordability Fund Trust.

5. It is expected any travel, meals and hospitality expenses by the Recipient will be consistent with the Province's Travel, Meal and Hospitality Expenses Directive. For purposes of funding entities receiving funding from the Recipient, the following would not be considered eligible claims:

    - Alcohol
    - First-Class travel
    - Meals, snacks and beverages
    - Gratuities
    - Laundry or dry cleaning
    - Valet services
    - Dependent care
    - Home management
    - Personal telephone calls

6. In the event that the Recipient performs any procurements, it is expected that all procurements will reflect the principles of Ontario's Public Service Procurement Directive.

SCHEDULE “E”

PAYMENT PLAN

PAYMENT DATE	MAXIMUM FUNDS TO BE DISBURSED BY THE PROVINCE
Within 7 days of signing the Agreement	$ 100,000,000

SCHEDULE “F”

REPORTING

From and following the Original Trustee Replacement Date, Reports will be quarterly on the basis of the government’s fiscal year starting at the execution of this Agreement and continuing until conclusion of the Agreement. Annual Reports will be on a fiscal basis starting at the execution of this Agreement and continuing until conclusion of the Agreement. Quarterly Reports and Annual Reports would be expected to be submitted to the Province within one month following the end of the reporting period that they represent. The Province expects that these Reports would be prepared to demonstrate the impact of the Province’s funding and address the following:

- Quarterly Reports would include a report back on the trustee-developed performance management criteria. Initially, such Quarterly Reports would include details respecting:
    - Amounts disbursed by the Recipient in the previous quarter. It is expected that this information would be provided at the Electricity Distributor level and in the aggregate.
    - Total Affordability Fund investment income earned and accrued to date.
    - Key activities and achievements from the quarter, including the number of participant households per Electricity Distributor, average participant incentive cost per Electricity Distributor, and uptake of energy efficiency measures per Electricity Distributor.
    - Any challenges or modifications to the application, funding, or eligibility processes/rules of the Recipient.
    - Key activities planned for the upcoming quarter.
    - Details of any situation that a reasonable person might interpret as an actual, potential or perceived conflict of interest.
- Annual Reports would include a report back on the trustee-developed performance management criteria. Initially, such Annual Report would include details respecting:

- A description of an Electricity Distributor's application process and the criteria used by the Recipient to distribute funds.
- Any challenges identified by the Recipient or any Administrative Services Agent in achieving the Purpose and proposed solutions, if applicable.
- Lesson learned.
- Electricity Distributor and customer feedback.
- Amounts distributed to Beneficiaries or otherwise disbursed by the Recipient in the previous year. It is expected that this information will be provided by each Electricity Distributor.
- Key activities and achievements from each quarter being reported, including number of participant households per Electricity Distributor, average participant incentive cost per Electricity Distributor, and uptake of energy efficiency measures per Electricity Distributor.
- Total Affordability Fund interest earned and accrued to date.

As part of an Annual Report, the Recipient would also provide the Province with an audited financial statement for the previous year.

ANNEX A

Principles

[Insert from Principles Annex once settled in the Declaration of Trust]

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ONTARIO TRANSFER PAYMENT AGREEMENT

THE AGREEMENT, effective as of the • day of March, 2017 (the **"Effective Date"**)

B E T W E E N :

Her Majesty the Queen in right of Ontario
as represented by the Minister of Energy

(the "Province")

- and -

Computershare Trust Company of Canada, in its capacity as trustee of Affordability Fund Trust

(together with its successors and assigns, the "Recipient" and, together with the Province, the "Parties")

BACKGROUND

Computershare Trust Company of Canada is the original trustee of the Affordability Fund Trust.

The Province wishes to provide Funds to the Recipient to be held, invested, applied and distributed in accordance with the terms of the Declaration of Trust (defined below), in furtherance of the Purpose (as defined in the Declaration of Trust), including having regard to the Principles set forth in Annex A.

CONSIDERATION

In consideration of the mutual covenants and agreements contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is expressly acknowledged, the Parties agree as follows:

ENTIRE AGREEMENT

This agreement (as amended, restated, supplemented or otherwise modified from time to time, the **"Agreement"**), including:

Schedule "A" - General Terms and Conditions
Schedule "B" - Project Specific Information
Schedule "C" - Project - Certain Obligations of the Recipient
Schedule "D" - Budget
Schedule "E" - Payment Plan
Schedule "F" - Reporting
Annex "A" - Principles, and
any amending agreement entered into as provided for below,

constitutes the entire agreement between the Parties with respect to the subject matter contained in this Agreement and supersedes all prior oral or written representations and agreements.

COUNTERPARTS

The Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

AMENDING THE AGREEMENT

The Agreement may only be amended by a written agreement duly executed by the Parties.

ACKNOWLEDGEMENT

The Recipient:

(a) acknowledges that it has read and understands the provisions contained in the entire Agreement; and

(b) agrees to be bound by the terms and conditions contained in the entire Agreement.

IN WITNESS WHEREOF, the Parties have executed the Agreement on the dates set out below.

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO as represented by Minister of Energy

by:

_____ _____

Date Name: Serge Imbrogno

Title: Deputy Minister

Authorized Signing Officer

COMPUTERSHARE TRUST COMPANY OF CANADA, in its capacity as trustee of AFFORDABILITY FUND TRUST

by:

_____ _____

Date Name:

Title:

by:

_____ _____

Date Name:

Title:

I/We have authority to bind the Recipient.

SCHEDULE "A"
GENERAL TERMS AND CONDITIONS

1.0 INTERPRETATION AND DEFINITIONS

1.1 Interpretation. For the purposes of interpretation:

(a) words in the singular include the plural and vice-versa;

(b) words in one gender include all genders;

(c) the headings do not form part of the Agreement; they are for reference only and will not affect the interpretation of the Agreement;

(d) any reference to dollars or currency will be in Canadian dollars and currency;

(e) "include", "includes" and "including" denote that the subsequent list is not exhaustive;

(f) where any reference is made in the Agreement to an act to be performed by or for or on behalf of the Affordability Fund Trust, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the ~~Trustee~~Recipient in its capacity as trustee of the Affordability Fund Trust, and, where any reference is made in the Agreement to an act to be performed by or for or on behalf of the ~~Trustee~~Recipient, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the ~~Trustee~~Recipient in its capacity as trustee of the Affordability Fund Trust; and

(g) it is intended that the transfer of the Funds to the Recipient will be a transfer made to a "non-controlled trust" (as that term is given meaning in • applicable to the accounting rules and principles applicable to the Province as of the date of the Agreement), and so if a term or condition of the Agreement is determined to conflict with the requirements applicable to the Province recording the transfers to the Recipient of Funds contemplated hereunder as an expense incurred by the Province on the date of the transfer of Funds under the Agreement otherwise in connection with activities undertaken by the Province with such a "non-controlled trust", then such term or condition shall be given a meaning and shall have an effect insofar as it is possible to interpret such term or condition in a manner that eliminates such conflict while preserving the other provisions of the Agreement and furthering the Purpose.

1.2 Definitions. In the Agreement, the following terms will have the following meanings:

"Administrative Services Agent" has the meaning given such term in the Declaration of Trust.

"Affordability Fund Trust" means the trust established and governed by the Declaration of Trust, and for greater certainty includes such trust operating under any other name that may be designated from time to time by the ~~Trustee~~Recipient in accordance with the Declaration of Trust.

"BPSAA" means the Broader Public Sector Accountability Act, 2010 (Ontario).

"**Beneficiary**" has the meaning given to such term in the Declaration of Trust.

"Budget" means the Recipient's budget attached to the Agreement as Schedule "D".

"Business Day" means any working day, Monday to Friday inclusive, excluding statutory and other holidays, namely: New Year's Day; Family Day; Good Friday; Easter Monday; Victoria Day; Canada Day; Civic Holiday; Labour Day; Thanksgiving Day; Remembrance Day; Christmas Day; Boxing Day and any other day on which the Province has elected to be closed for business.

"**Declaration of Trust**" means the declaration of trust made as of March [•], 2017, under which the Affordability Fund Trust was established, as such declaration of trust may be amended, restated, supplemented or otherwise modified from time to time with the consent of the Province.

"Expiration Date" means the date on which this Agreement will expire and is the date set out in Schedule "B".

"Funds" means the money the Province provides to the Recipient pursuant to the Agreement.

"Implementation Agents" has the meaning given such term in the Declaration of Trust.

"Maximum Funds" means the maximum amount of Funds that the Province will provide the Recipient under the Agreement, as set out in Schedule "B".

"Notice" means any communication given or required to be given pursuant to the Agreement.

"Party" means either the Province or the Recipient.

"**Person**" includes any individual, sole proprietorship, corporation, partnership, joint venture, association, society, club, board, chamber, joint-stock company, trust, trustee, unincorporated or incorporated organization or entity or government or any entity, agency or political subdivision thereof.

"**Program**" has the meaning given to such term in the Declaration of Trust.

"Project" means the undertaking described in Schedule "C".

"**Purpose**" has the meaning given to such term in the Declaration of Trust.

"PSSDA" means the *Public Sector Salary Disclosure Act, 1996* (Ontario).

~~**"Reports"** means the reports described in Schedule "F".~~ "~~**Trustee**~~**Recipient**" means, initially, Computershare Trust Company of Canada, and any additional or replacement trustee in its capacity as trustee of the Affordability Fund Trust pursuant to the Declaration of Trust, including the Board of Trustees (as defined in the Declaration of Trust) and each of their respective successors and permitted assigns.

"Reports" means the reports described in Schedule "F".

2.0 REPRESENTATIONS, WARRANTIES AND COVENANTS

2.1 General. The Recipient represents, warrants and covenants that:

(a) ~~the Trustee~~it is the trustee of the Affordability Fund Trust; and

(b) the Affordability Fund Trust is, and will continue to be for the term of the Agreement, a trust existing under and governed by the laws of the Province of Ontario.

2.2 Execution of Agreement. The Recipient represents and warrants that it has:

(a) the full power and authority to enter into the Agreement; and

(b) taken all necessary actions to authorize the execution of the Agreement.

2.3 Governance. The Recipient ~~represents, warrants and~~ covenants that it ~~has, and~~ will develop and maintain~~,~~ in writing ~~for the period during which~~until the Agreement is no longer in effect:

(a) decision-making mechanisms and procedures to enable the Recipient to hold, invest, manage, apply and distribute the Funds in accordance with the Declaration of Trust in furtherance of the Purpose; and

(b) procedures to enable the preparation and delivery of all Reports required pursuant to Article 7.0.

2.4 Supporting Documentation. Upon request, the Recipient will provide the Province with proof of the matters referred to in this Article 2.0.

3.0 TERM OF THE AGREEMENT

3.1 Term. The term of the Agreement will commence on the Effective Date and will expire on the ~~later of~~ the Expiration Date ~~and the date on which the Affordability Fund Trust is terminated in accordance with the Declaration of Trust~~.

3.2 Extension. The term of the Agreement may be extended by further agreement between the Parties.

3.3 Extension of the Declaration of Trust. If the Province determines that an extension of the ~~Declaration of Trust (beyond the "~~Final Distribution Date~~"~~ (as defined in the Declaration of Trust) and time for termination~~, each as specified or determined thereunder)~~ of the Declaration of Trust is consistent with and in furtherance of the Purpose and the Province's original intentions and expectations in establishing the Project, the Province may request that the Recipient extend ~~the Declaration of Trust~~such date to a date specified by the Province in a Notice (such date not to be later than ~~▲~~December 31, 2024), whereupon the Recipient, so long as the ~~Trustee~~Recipient does not have a reasonable basis to believe that such an extension would be inconsistent with the Purpose or weaken the protections intended for the benefit of the ~~Trustee~~trustee pursuant to the Declaration of Trust, will undertake such actions as it may consider to be necessary or appropriate to so extend the Declaration of Trust, including by amending the Declaration of Trust to provide for such an extension and to modify any other term or requirement as would be necessary or prudent to conform such term or requirement in light of such extension.

4.0 FUNDS AND CARRYING OUT THE PROJECT

4.1 Funds Provided. The Province will:

(a) provide the Recipient up to the Maximum Funds to be held, invested, applied and distributed in accordance with the terms of the Project and the Declaration of Trust;

(b) provide the Funds to the Recipient in accordance with the Payment Plan attached to the Agreement as Schedule "E"; and

(c) deposit the Funds into an account designated by the Recipient, provided that the account:

(i) resides at a Canadian financial institution; and

(ii) is in the name of the Recipient.

4.2 Timing of Distributions to Beneficiaries. The expectations of the Province regarding when Funds will begin to be distributed by the Recipient to Beneficiaries are set out in Schedule C. The Recipient will have regard to those expectations in the exercise of its discretion ~~as Trustee~~under the Declaration of Trust, in determining when Funds will be distributed to Beneficiaries in furtherance of the Purpose.

4.3 Use of Funds and Project. The Recipient will exercise its rights, duties and discretions under the Declaration of Trust so that the Funds are used, applied and distributed only for and in

furtherance of the Purpose, including having regard to the Principles set forth in Annex A.

4.4 Province's Role Limited to Providing Funds. For greater clarity, the Province's role under the Agreement is limited to providing Funds to the Recipient and the Province is not responsible for carrying out or overseeing the terms of the Declaration of Trust.

4.5 Maximum Funds. The Recipient acknowledges that the Funds available to it pursuant to the Agreement will not exceed the Maximum Funds.

4.6 Funding, Not Procurement. For greater clarity, the Recipient acknowledges that:

(a) it is receiving funding from the Province for the Project and is not providing goods or services to the Province; and

(b) the funding the Province is providing under the Agreement is funding for the purposes of the PSSDA.

5.0 RECIPIENT'S ACQUISITION OF GOODS OR SERVICES, AND DISPOSAL OF ASSETS

5.1 Acquisition. If the Recipient acquires goods, services, or both with or by applying the proceeds of the Funds, it is expected to do so through a process that promotes the best value for money and to take reasonable steps to ensure that its Administrative Services Agents and Implementation Agents also follow a process that promotes the best value for money when acquiring goods and services with or by applying the proceeds of the Funds. In this regard, it is expected that the Recipient will have regard the following procurement principles:

Accountability

Procurement is conducted in a manner that is well-informed and aligned with the public interest and rules of good governance through clear and transparent accountability and decision-making.

Geographic Neutrality and Reciprocal Non-Discrimination

Ontario does not differentiate between competing goods, services, or suppliers based on their geographic origin or location. This is a core principle of Ontario's trade commitments.

Responsible Management

The procurement of goods and services is responsibly, efficiently and effectively managed through appropriate organizational structures, systems, policies, processes and procedures. All parties involved in a procurement process observe the highest standard of ethics, avoiding conflict of interest.

Value for Money

Procurement processes apply a value for money evaluation that takes into account price as well as other costs and benefits, including life cycle costs and relevant non-price attributes such as quality. Where applicable, these non-price attributes can include:

Social Benefit: to secure wider social benefit in support of the government's social policy objectives.

Environmental Benefit: to secure wider environmental benefit in support of the government's environmental policy objectives, including climate change.

Economic Benefit: to promote the economic well-being of the people of Ontario, in alignment with commitments in the province's trade agreements.

Vendor Access, Transparency, and Fairness

Procurement is conducted in a fair and transparent manner, offering all qualified suppliers equal treatment and open access to compete for government business.

6.0 CONFLICT OF ~~INTEREST~~INTERESTn

6.1 No Conflict of Interest. Except as expressly permitted by the Declaration of Trust, the Recipient is expected to implement appropriate processes and control to ensure that the Program and the use, ~~apply~~application and ~~distribute~~distribution of the Funds are without an actual, potential or perceived conflict of interest.

6.2 Conflict of Interest Includes. For the purposes of this Article, a conflict of interest includes any circumstances where, except as expressly permitted by the Declaration of Trust:

(a) the Recipient; or

(b) any person who has the capacity to influence the Recipient's decisions,

has outside commitments, relationships or financial interests that could, or could be seen to, interfere with the Recipient's objective, unbiased and impartial judgment relating to the Project, or the Recipient's use, application or distribution of the Funds, or both.

7.0 REPORTING, ACCOUNTING AND REVIEW

7.1 Preparation and Submission. The Recipient will cooperate with the Province to accommodate the Province's on-going information and reporting objectives in order to enable the Province to be aware of the Recipient's activities in furtherance of the Purpose, and to that end the Recipient will be expected, from and following the Original Trustee Replacement Date, to:

(a) submit to the Province at the address referred to in Schedule "B", all Reports in accordance with the timelines and content requirements set out in Schedule "F", or in a form as specified by the Province from time to time, acting reasonably;

(b) submit to the Province at the address referred to in Schedule "B", any other reports as may be reasonably requested by the Province from time to time in accordance with the timelines and content expectations identified by the Province, acting reasonably;

(c) undertake diligent efforts so that such Reports and any such other reports are complete and accurate in all material respects; and

(d) have an authorized signatory of the Recipient sign-off on such Reports and other reports.

7.2 Record Maintenance. The Recipient will keep and maintain financial and other records necessary to permit it to satisfy its obligations under section 7.1 and to permit the Province to exercise its rights under section 7.3.

7.3 **Inspection.** The Province, its authorized representatives or an independent auditor identified by the Province may, at its own expense, upon twenty-four hours' Notice to the Recipient and during normal business hours, inspect the records of and information respecting the Recipient to confirm its compliance with the terms of this Agreement, including to ensure consistency with the Purpose and, for these purposes, the Province, its authorized representatives or an independent auditor identified by the Province may take one or more of the following actions:

(a) inspect and copy the records and documents referred to in section 7.2;

(b) keep any copies made pursuant to section 7.3(a); and

(c) conduct an audit or investigation of the Recipient in respect of the expenditure of the Funds to confirm that the Funds have been used, applied and distributed for and in furtherance of the Purpose, including a review of the ~~Trust~~Recipient's processes, records, documents, as well as the processes and controls applied to obtain assurance that Funds disbursed to Electricity Distributors were used, applied and distributed for and in furtherance of the Purpose.

7.4 **Disclosure.** To assist in respect of the rights set out in section 7.3, the Recipient will disclose any information requested by the Province, its authorized representatives or an independent auditor identified by the Province, and will do so in the form requested by the Province, its authorized representatives or an independent auditor identified by the Province, as the case may be.

7.5 **No Control of Records.** No provision of the Agreement will be construed so as to give the Province any control whatsoever over the Recipient's records.

7.6 **Auditor General.** For greater certainty, the Province's rights under this Article are in addition to and do not limit any rights provided to the Auditor General pursuant to section 9.1 of the *Auditor General Act* (Ontario).

8.0 COMMUNICATIONS REQUIREMENTS

8.1 **Publication.** The Recipient will ~~indicate~~acknowledge, in any of its Program-related ~~publications,~~external communications and marketing whether written, oral, or visual, the financial support of the Province in connection with the establishment and funding of the program, while noting that the views expressed in the publication are the views of the Recipient and do not necessarily reflect those of the Province.

9.0 FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY

9.1 **FIPPA.** The Recipient acknowledges that the Province is bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province in connection with the Project or otherwise in connection with the Agreement may be subject to disclosure in accordance with that Act.

10.0 ~~INSURANCE~~Intentionally Deleted

~~**10.1** **Insurance.** The Recipient has made enquiries to confirm that insurance policies of the type contemplated in Schedule C are generally available in Canada.~~

11.0 EVENT OF DEFAULT, CORRECTIVE ACTION AND TERMINATION FOR DEFAULT

11.1 **Events of Default.** An Event of Default will occur if:

(a) the Recipient fails to perform or observe any covenant in this Agreement and such failure has and continues to have a material adverse effect on the Province and remains unremedied during any Notice period applicable under section 11.2 after the earlier of (i) actual

knowledge thereof by the Recipient, or (ii) receipt by the Recipient of Notice thereof from the Province;

(b) any representation or warranty made by the Recipient in the Agreement shall prove to have been incorrect in any material respect when made or deemed made, and, if capable of remedy, continues to be incorrect in any material respect during any Notice period applicable under section 11.2 after the earlier to occur of (i) the actual knowledge thereof by the Recipient or (ii) receipt by the Recipient of Notice thereof from the Province;

(c) it is ~~[~~determined~~]~~~~[manifestly demonstrated by the Province]~~ that the Recipient has breached its Standard of Care (within the meaning given in and context of the Declaration of Trust) in discharging its material duties under the Declaration of Trust, with the result that all or a significant part of the Funds have not been or are not being applied in furtherance of the Purpose or are being applied in a manner that is directly contrary or without regard to the Purpose, and, if such breach is capable of remedy, it continues and remains unremedied during any Notice ~~period~~Period applicable under section 11.2 after the earlier of (i) actual knowledge thereof by the Recipient, or (ii) receipt by the Recipient of Notice thereof from the Province;

(d) an insolvency event shall have occurred and be continuing with respect to the Recipient.

11.2 Consequences of Events of Default and Corrective Action. If an Event of Default occurs, the Province may, at any time, take one or more of the following actions:

(a) provide the Recipient with Notice allowing the Recipient an opportunity to remedy the Event of Default during a specified Notice Period;

(b) seek an order of specific performance, including an order that the Recipient pursue its available remedies against third parties;

(c) require, by Notice of demand, that the Recipient transfer to the Province (without any need for compensation, indemnity or consideration to the Recipient or any Beneficiary or other third party) any and all Assets remaining in the possession or under the control of the Recipient that can reasonably be traced or attributed to the Funds after first providing for the completion and performance by the Recipient of any unperformed contractual obligations of the Recipient undertaken in compliance with the Declaration of Trust on or prior to transfer; and

(d) terminate the Agreement, including immediately, without liability, penalty or costs to the Province upon giving Notice to the Recipient.

The transfer of Funds in accordance with the Agreement is made by the Province with the expressed intention and reservation that the transferred Funds shall be returned to the Province and the entitlements of the Recipient in remaining Funds shall thereby be revoked with reversion thereof to the Province in the circumstances contemplated in Section 11.2(c).

11.3 Opportunity to Remedy. If, in accordance with section 11.2, the Province provides the Recipient with an opportunity to remedy the Event of Default, the Province will provide Notice to the Recipient of:

(a) the particulars of the Event of Default; and

(b) the length of time within which the Recipient may cure such Event of Default without the Province pursuing any other remedy (the "Notice Period").

11.4 Recipient not Remedying. If the Province has provided the Recipient with an opportunity to remedy the Event of Default pursuant to section 11.2(a), and:

(a) the Recipient does not remedy the Event of Default within the Notice Period;

(b) it becomes apparent to the Province that the Recipient cannot adequately remedy the Event of Default within the Notice Period; or

(c) the Recipient is not proceeding to remedy the Event of Default in a way that is satisfactory to the Province,

the Province may extend any Notice ~~period~~Period, or initiate any one or more of the actions provided for in section 11.2.

12.0 REPAYMENT

12.1 Debt Due. If, pursuant to the Agreement: the Province demands the payment of any Funds from the Recipient pursuant to section 11.2(c) such Funds or other amount will be deemed to be a debt due and owing to the Province by the Recipient, and the Recipient will pay or return the amount to the Province immediately, unless the Province directs otherwise.

~~**12.2 Interest Rate.** The Province may charge the Recipient interest on any money owing by the Recipient at the then current interest rate charged by the Province of Ontario on accounts receivable.~~

12.2 ~~**12.3**~~ **Payment of Money to Province.** The Recipient will pay any money owing to the Province by cheque payable to the "Ontario Minister of Finance" and delivered to the Province at the address referred to in ~~[~~Schedule "B"~~]~~.

12.3 ~~**12.4**~~ **Failure to Repay.** Without limiting the application of section 43 of the Financial Administration Act (Ontario), if the Recipient fails to repay any amount owing under the Agreement, Her Majesty the Queen in right of Ontario may deduct any unpaid amount from any money payable to the Recipient by Her Majesty the Queen in right of Ontario.

13.0 NOTICE

13.1 Notice in Writing and Addressed. Notice will be in writing and will be delivered by email, postage-prepaid mail, personal delivery or fax, and will be addressed to the Province and the Recipient respectively as set out in Schedule "B", or as either Party later designates to the other by Notice.

13.2 Notice Given. Notice will be deemed to have been given:

(a) in the case of postage-prepaid mail, five Business Days after the Notice is mailed; or

(b) in the case of email, personal delivery or fax, one Business Day after the Notice is delivered.

13.3 Postal Disruption. Despite section 13.2(a), in the event of a postal disruption:

(a) Notice by postage-prepaid mail will not be deemed to be received; and

(b) the Party giving Notice will provide Notice by email, personal delivery or by fax.

14.0 SEVERABILITY OF PROVISIONS

14.1 Invalidity or Unenforceability of Any Provision. The invalidity or unenforceability of any provision of the Agreement will not affect the validity or enforceability of any other provision of the Agreement. Any invalid or unenforceable provision will be deemed to be severed.

15.0 WAIVER

15.1 **Waivers in Writing.** If a Party fails to comply with any term of the Agreement, that Party may only rely on a waiver of the other Party if the other Party has provided a written waiver in accordance with the Notice provisions in Article 13.0. Any waiver must refer to a specific failure to comply and will not have the effect of waiving any subsequent failures to comply.

16.0 INDEPENDENT PARTIES

16.1 **Parties Independent.** The Recipient acknowledges that it is not an agent, joint venturer, partner or employee of the Province, and the Recipient will not represent itself in any way that might be taken by a reasonable person to suggest that it is, or take any actions that could establish or imply such a relationship.

17.0 ASSIGNMENT OF AGREEMENT OR FUNDS

17.1 **Agreement Binding.** All rights and obligations contained in the Agreement will extend to and be binding on the Parties' respective heirs, executors, administrators, successors and permitted assigns.

18.0 LIMITATION OF LIABILITY

18.1 This Agreement has been entered into by the ~~Trustee~~Recipient solely in its capacity as trustee of the ~~Recipient~~Affordability Fund Trust and is not binding on the ~~Trustee~~Recipient in any other capacity, whether in tort, contract or otherwise. The Beneficiaries of the ~~**Recipient**~~Affordability Fund Trust are not subject to any liability in respect of the ~~**Recipient**~~Affordability Fund Trust. Resort may not be had to, nor recourse or satisfaction be sought from, the private property of the ~~Trustee~~Recipient (whether owned by ~~its~~it in its personal capacity or in any other capacity other than in its capacity as ~~Trustee~~trustee of the ~~Recipient~~Affordability Fund Trust), its directors, officers, employees, or agents, or the private property of any Beneficiary, and resort will be had solely to the property of the Recipient held in trust ~~by the Trustee~~ for the payment, performance or satisfaction of any liability or obligation of the Recipient ~~or the Trustee~~ under this Agreement. However, the foregoing limitations in this section shall not apply where the ~~Trustee~~Recipient has demonstrated gross negligence, bad faith, fraud or wilful misconduct.

19.0 GOVERNING LAW

19.1 **Governing Law.** The Agreement and the rights, obligations and relations of the Parties will be governed by and construed in accordance with the laws of the Province of Ontario and the applicable federal laws of Canada. Any actions or proceedings arising in connection with the Agreement will be conducted in the courts of Ontario, which will have exclusive jurisdiction over such proceedings.

20.0 FURTHER ASSURANCES

20.1 **Agreement into Effect.** The Recipient will provide such further assurances as the Province may request from time to time with respect to any matter to which the Agreement pertains, and will otherwise do or cause to be done all acts or things necessary to implement and carry into effect the terms and conditions of the Agreement to their full extent.

20.2 **Declaration of Trust.** The ~~Trustee~~Recipient covenants that it shall not amend, restate or terminate the Declaration of Trust without obtaining the written consent of the Province in respect of same, such consent not to be unreasonably withheld or delayed.

21.0 JOINT AND SEVERAL LIABILITY

21.1 **Joint and Several Liability.** Without limiting and subject to section 18.1 and the Declaration of Trust, if the Recipient is comprised of more than one entity, all such entities will be jointly and

severally liable to the Province for the fulfillment of the obligations of the Recipient under the Agreement.

22.0 RIGHTS AND REMEDIES CUMULATIVE

22.1 Rights and Remedies Cumulative. The rights and remedies of the Province under the Agreement are cumulative and are in addition to, and not in substitution for, any of its rights and remedies provided by law or in equity.

23.0 ACKNOWLEDGEMENT OF OTHER LEGISLATION AND DIRECTIVES

23.1 Recipient Acknowledges. The Recipient acknowledges that by receiving Funds it may become subject to legislation applicable to organizations that receive funding from the Government of Ontario, including the BPSAA, the PSSDA, and the *Auditor General Act* (Ontario).

24.0 SURVIVAL

24.1 Survival. The following Articles and sections, and all applicable cross-referenced sections and schedules, will continue in full force and effect for a period of seven years from the date of expiry or termination of the Agreement: Article 1.0 and any other applicable definitions, section, 4.5, section 7.1 (to the extent that the Recipient has not provided the Reports to the satisfaction of the Province), sections 7.2, 7.3, 7.4, 7.5, 7.6, Article 8.0, Article 12.0, Article 14.0, Article 16.0, Article 17.0, Article 19.0, Article ~~20.0,~~21.0, Article ~~21.0~~23.0 and Article 24.0.

- END OF GENERAL TERMS AND CONDITIONS -

SCHEDULE "B"

PROJECT SPECIFIC INFORMATION

Maximum Funds	$100 million
Expiration Date	~~Later of [April 30, 2019] and the Final Distribution Date (as defined in~~The date upon which the Affordability Fund Trust is terminated in accordance with the Declaration of Trust~~)~~
Contact information for the purposes of Notice to the Province	**Attention: Usman Syed** **Position: Director** **Address: 77 Grenville St, Toronto, Ontario, M7A 2C1** **Fax: 416-325-6651** **Email: Usman.Syed@ontario.ca**
Contact information for the purposes of Notice to the Recipient	**Attention:** **Position:** **Address:** **Email:**
Contact information for the senior financial person in the Recipient organization (e.g., CFO, CAO) – to respond as required to requests from the Province related to the Agreement	**Attention:** **Position:** **Address:** **Email:**

SCHEDULE "C"

PROJECT

For the purposes of this Agreement, the "Project" is the distribution of the Funds in accordance with the Declaration of Trust.

It is intended the Project will be undertaken by the Recipient in furtherance of the Purpose and in accordance with the Declaration of Trust. In this regard, it is expected that the Recipient will undertake the Program having regard to the Budget and the Principles set forth in Annex A.

The following are the ~~Provinces~~Province's expectations regarding the circumstances in which the Recipient will begin to distribute any Funds to any Beneficiary.

1. The Original Trustee Replacement Date (as defined in the Declaration of Trust) will have occurred.

2. An ~~administrative services agreement~~Administrative Services Agreement (as defined in the Declaration of Trust) will have been entered into between the Recipient and ~~an Administrative Services Agent providing for the~~Hydro One Limited under which Hydro One Limited shall provide specified administrative and other services ~~necessary for~~on behalf of the Recipient ~~to perform its obligations herein and execute the Project.~~ .

3. Administrative procedures will have been developed and implemented under which Electricity Distributors (as defined in the Declaration of Trust) will be invited to assist with (a) the identification and selection of Primary Beneficiaries under the Declaration of Trust, (b) the determination of the amount of Funds to be distributed to particular Primary Beneficiaries, and (c) the distribution of Funds to or for the benefit of such Primary Beneficiaries (in each case substantially on the basis contemplated in the Permitted Delegations Annex).

4. The Recipient will have obtained commercial general liability insurance from insurers having a secure A.M. Best rating of B+ or greater, or the equivalent, that in the opinion of the Recipient a prudent person similar to the Recipient would maintain, and having an inclusive limit of not less than $2,000,000 per occurrence and providing for contractual liability coverage. If requested, the Recipient will provide the Province (for its information purposes) with copies of the certificates of insurance and policies for such insurance coverage.

The Province recognizes that the foregoing may involve the Recipient entering into agreements as ~~may be~~ the Recipient considers to be necessary or expedient, including any required amendment or amendment and restatement of the Declaration of Trust. Funds may be expended to pay the expenses of the ~~Trustee~~Recipient in completing these matters. The Recipient ~~will confirm~~is requested to advise the Province ~~once such matters have been completed~~through its quarterly reports on the status of the foregoing.

SCHEDULE "D"

Recipient's Budget

1. It is expected that the administrative expenses of the ~~Fund~~Recipient, including any administrative expenses of ~~the Recipient (or any administrative services agents or~~any Administrative Services Agents or any Implementation Agents ~~or any~~ other agents retained by the Recipient~~)~~, relating to the establishment of the Affordability Fund Trust and satisfying the Requirements (as defined in Schedule "C") and any expenses related to the operation of the Affordability Fund Trust and the execution of the Project (including any reimbursable expenses incurred by any Administrative Services Agent or any Implementation Agent (as such terms are defined in the Declaration of Trust)), will be no greater than 10 percent of the total Project budget.

2. The only expenditures incurred by the Recipient that are eligible for reimbursement are actual (excluding HST) administrative overhead expenses incurred by or on behalf of the Recipient that directly related to the Recipient or the establishment of the Affordability Fund Trust.

4. Any expenses that have been or may be reimbursed by other parties should not be reimbursed ~~by~~from the assets of the Affordability Fund Trust.

5. It is expected any travel, meals and hospitality expenses by the Recipient will be consistent with the Province's Travel, Meal and Hospitality Expenses Directive. For purposes of funding entities receiving funding from the Recipient, the following would not be considered eligible claims:

    - Alcohol
    - First-Class travel
    - Meals, snacks and beverages
    - Gratuities
    - Laundry or dry cleaning
    - Valet services
    - Dependent care
    - Home management
    - Personal telephone calls

6. In the event that the Recipient performs any procurements, it is expected that all procurements will reflect the principles of Ontario's Public Service Procurement Directive.

SCHEDULE "E"

PAYMENT PLAN

PAYMENT DATE	MAXIMUM FUNDS TO BE DISBURSED BY THE PROVINCE
Within 7 days of signing the Agreement	$ ~~100,000,000~~[1]100,000,000

[1] ~~Investment income and proceeds of the Funds are to be applied for the Purpose in accordance with the Declaration of Trust.~~

SCHEDULE "F"

REPORTING

From and following the Original Trustee Replacement Date, Reports[2] will be [quarterly] on the basis of the government's fiscal year starting at the execution of this Agreement and continuing until conclusion of the Agreement. Annual Reports will be on a fiscal basis starting at the execution of this Agreement and continuing until conclusion of the Agreement. Quarterly Reports and Annual Reports would be expected to be submitted to the Province within one month following the end of the reporting period that they represent. The Province expects that these Reports would be prepared to demonstrate the impact of the Province's funding and address the following:

- Quarterly Reports would include a report back on the ~~Trustee~~trustee-developed performance management criteria. Initially, such Quarterly Reports would include details respecting:
    - Amounts disbursed by the Recipient in the previous quarter. It is expected that this information would be provided at the Electricity Distributor level and in the aggregate.
    - Total Affordability Fund investment income earned and accrued to date.
    - Key activities and achievements from the quarter, including the number of participant households per Electricity Distributor, average participant incentive cost per Electricity Distributor, and uptake of energy efficiency measures per Electricity Distributor.
    - Any challenges or modifications to the application, funding, or eligibility processes/rules of the Recipient.
    - Key activities planned for the upcoming quarter.
    - Details of any situation that a reasonable person might interpret as an actual, potential or perceived conflict of interest.
- Annual Reports would include a report back on the ~~Trustee~~trustee-developed performance management criteria. Initially, such Annual Report would include details respecting:

[2] ~~NTD: Confirm and conform frequency references.~~

- A description of an Electricity Distributor's application process and the criteria used by the Recipient to distribute funds.
- Any challenges identified by the Recipient or any Administrative Services Agent in achieving the Purpose and proposed solutions, if applicable.
- Lesson learned.
- Electricity Distributor and customer feedback.
- Amounts distributed to Beneficiaries or otherwise disbursed by the Recipient in the previous year. It is expected that this information will be provided by each Electricity Distributor.
- Key activities and achievements from each quarter being reported, including number of participant households per Electricity Distributor, average participant incentive cost per Electricity Distributor, and uptake of energy efficiency measures per Electricity Distributor.
- Total Affordability Fund interest earned and accrued to date.

As part of an Annual Report, the Recipient would also provide the Province with an audited financial statement for the previous year.

ANNEX A

Principles

[Insert from Principles Annex once settled in the Declaration of Trust]

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DECLARATION OF TRUST

Made as of March •, 2017

by

COMPUTERSHARE TRUST COMPANY OF CANADA

establishing

AFFORDABILITY FUND TRUST

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DECLARATION OF TRUST

This Declaration of Trust is made as of March •, 2017, by Computershare Trust Company of Canada, a trust company established under the laws of Canada and licensed to carry on business as a trust company in each of the provinces and territories of Canada (together with its successors and assigns and the other trustees (including the Board of Trustees) contemplated herein, the "**Trustee**").

WHEREAS Computershare Trust Company of Canada, as settlor, wishes to establish a trust to acquire, hold, manage, invest, apply and dispose of certain property for the benefit of certain Beneficiaries as herein described.

NOW THEREFORE Computershare Trust Company of Canada hereby declares that it holds in trust as trustee (a) the sum of ONE HUNDRED DOLLARS ($100) contributed by it on this date and (b) all other property of every type and description which it may hereafter acquire or hold in its capacity as trustee of the Trust and all income therefrom and proceeds thereof, to hold, manage, invest, apply and dispose of same on and subject to the provisions set forth in this Declaration of Trust, including the annexes and schedule attached hereto.

SECTION 1
INTERPRETATION

1.1 Definitions

In this Declaration:

(a) "***Administrative Services Agent***" means each agent, which may include any Electricity Distributor or other Person, appointed from time to time under an Administrative Services Agreement, and its successors and permitted assigns solely in such capacity.

(b) "***Administrative Services Agreement***" means each agreement entered into from time to time by the Trust and one or more Administrative Services Agents or other Persons, in furtherance of the Purpose, under which the Administrative Services Agent agrees to provide specified administrative and other services to and on behalf of the Trustee, as such agreement may be amended, supplemented, restated, renewed or replaced from time to time and includes the agreement entered into on or about the date hereof between the Trustee and Hydro One Limited.

(c) "***Assets***" means, collectively, the following:

(i) the $100 Canadian referred to above, contributed by Computershare Trust Company of Canada on the date hereof;

(ii) all other property which is now or which at any time in the future may be issued, assigned, transferred, provided, donated, gifted and contributed to the Trustee (including pursuant to the Transfer Payment Agreement) to be held in trust pursuant to this Declaration (and which the Trustee is willing to accept and hold);

(iii) all acquisitions of property made by the Trust;

(iv) all property which may at any time be substituted for or in respect of the property referred to in clauses (i), (ii) and (iii), above;

(v) all income of the Trust, including investment income generated by the investment of the property referred to in clauses (i), (ii), (iii) and (iv), above; and

(vi) all proceeds of disposition of any of the property referred to in clauses (i) through (v) above,

but excludes any property paid out or distributed (whether out of income or capital) pursuant to the provisions of this Declaration.

(d) "***Beneficiary***" means each Primary Beneficiary and each Residual Beneficiary, as applicable.

(e) "***Board of Trustees***" means (i) as of the Original Trustee Replacement Date, the individual trustees appointed by the Original Trustee pursuant to Section 5.7 on the basis described in the Trustee Replacement Annex, and (ii) thereafter, the group of trustees appointed hereunder and acting in such capacity.

(f) "***Business Day***" means any working day, Monday to Friday inclusive, excluding statutory and other holidays, namely: New Year's Day; Family Day; Good Friday; Easter Monday; Victoria Day; Canada Day; Civic Holiday; Labour Day; Thanksgiving Day; Remembrance Day; Christmas Day; Boxing Day and any other day on which the Province has elected to be closed for business.

(g) "***Declaration***" means this Declaration of Trust, as it may be amended, restated, supplemented or otherwise modified from time to time, and includes each of the annexes and the Schedule attached hereto which constitute and form an integral part of this Declaration.

(h) "***Electricity Distributor***" means, in respect of a designated service area or region in Ontario, the distributor of electricity to residences located in such area or region.

(i) "***Electricity Invoice***" means an invoice issued by an Electricity Distributor in respect of electricity charges and related services and amounts incurred or assessed in respect of a residence located in the Electricity Distributor's designated service area or region in Ontario.

(j) "***Eligible Investments***" means (i) a deposit receipt, note, certificate or instrument issued, guaranteed or endorsed by a bank listed in Schedule I to the *Bank Act* (Canada), which provides that the principal and any interest shall be fully paid no later than one year after the day the investment was made, or (ii) a deposit account at a bank listed in Schedule I to the *Bank Act* (Canada).

(k) "***Eligible Measures***" means electricity efficiency and/or conservation measures determined by the Trustee from time to time on the basis contemplated in the Principles Annex and in the manner specified in and having regard to the Permitted Delegations Annex.

(l) "***Final Distribution Date***" means the earlier of (a) the date (if any) on which the Trustee determines (by a resolution of the Board of Trustees) that no further distributions are likely to be made to any Primary Beneficiary and (b) 20••.

(m) "***HAP Eligible Person***" means an "Eligible Person" as defined in Section 3.1 of the document entitled "Conservation First Framework LDC Took Kit" published by the Independent Electricity System Operator and designated as Final v3.0 – March 11, 2016, as amended in accordance with the Energy Conservation Agreement between the Independent Electricity System Operator and Electricity Distributors.

(n) **"Implementation Agent"** means each agent which may include any Electricity Distributor or other Person, appointed from time to time under an Implementation Agreement, and its successors and assigns solely in such capacity.

(o) **"Implementation Agreement"** means each agreement entered into from time to time by the Trustee and one or more Implementation Agents or other Persons in furtherance of the Purpose under which the Implementation Agent would agree to provide specified services to and on behalf or the Trustee (including, following the Original Trustee Replacement Date, as contemplated by the Permitted Delegations Annex) in connection with the implementation of the Program as such agreement may be amended , supplemented, restated, renewed or replaced from time to time.

(p) "***Minister of Energy***" means the Minister of Energy or such other member of the Executive Council as may be assigned primary ministerial responsibility for the administration of the *Ministry of Energy Act, 2011* under the *Executive Council Act*.

(q) "***Original Trustee***" means Computershare Trust Company of Canada, acting in its capacity as trustee hereunder, together with any additional or replacement Trustee appointed hereunder prior to the Original Trustee Replacement Date and any of their respective successors and assigns.

(r) "***Original Trustee Replacement Date***" has the meaning specified in Section 5.7, being the date on which the Original Trustee is replaced as trustee under this Declaration by the Board of Trustees as contemplated under Section 5.7.

(s) "***Permitted Delegations Annex***" means the Permitted Delegations Annex set forth as an annex to this Declaration.

(t) "***Person***" includes any individual, sole proprietorship, corporation, partnership, joint venture, association, society, club, board, chamber, joint-stock company, trust, trustee, unincorporated or incorporated organization or entity or government or any entity, agency or political subdivision thereof.

(u) "***Primary Beneficiary***" means each individual that, as of a time of determination, satisfies each of the following criteria:

(i) the individual owns, rents or leases a residence located in Ontario and is the primary or secondary electricity utility account holder named on an Electricity Invoice issued in respect of that residence; and

(ii) the individual is not a HAP Eligible Person.

(v) "***Principles Annex***" means the Principles Annex set forth as an annex to this Declaration.

(w) "***Province***" means the Province of Ontario.

(x) "***Program***" means the establishment, promotion, implementation and administration of a program to achieve the Purpose on the basis contemplated in this Declaration.

(y) "***Purpose***" means (i) the making of distributions to Primary Beneficiaries who are identified and whose needs are assessed in accordance with section 3.1 and 3.2 of this Declaration, having regard to (x) the principles set forth in the Principles Annex, (y) the manner and basis of implementation and administration of the Program contemplated in the Permitted Delegations Annex, and (z) the other terms, limitations and requirements set forth in this Declaration, and (ii) to the extent that Assets are available following the distributions made to Primary Beneficiaries as contemplated in (i), above, the making of distributions to Residual Beneficiaries who are identified and whose needs are assessed in accordance with section 3.3 and otherwise having regard to the other terms, limitations and requirements set forth in this Declaration.

(z) ***"Residual Beneficiary"*** means each charitable organization identified by the Trustee and specified as a residual beneficiary hereunder from time to time, selected by the Trustee in consultation with and having regard to the recommendations of the Ontario Energy Board in accordance with section 3.3.

(aa) "***Transfer Payment Agreement***" means the transfer payment agreement dated as of March •, 2017 between the Trustee and Her Majesty the Queen in right of Ontario as represented by the Minister of Energy, as such agreement may be amended, restated, supplemented or otherwise modified by the further agreement of the parties thereto from time to time.

(bb) "***Trust***" means Affordability Fund Trust, a trust established under and governed by the laws of the Province of Ontario pursuant to this Declaration.

(cc) "***Trustee***" means (i) the Original Trustee and (ii) on and after the Original Trustee Replacement Date, the Board of Trustees acting together in accordance with and subject to Section 5.7 and in accordance with the rules and procedures adopted by the Board of Trustees pursuant to Section 5.8.

(dd) "***Trustee Replacement Annex***" means the Trustee Replacement Annex set forth as an annex to this Declaration.

1.2 Headings and Table of Contents

The insertion of headings and the provision of a table of contents are for convenience of reference only and shall not affect the construction or interpretation of this Declaration.

1.3 References

Unless otherwise specified, all references to Sections are to Sections of this Declaration. The words "hereto", "herein", "hereof", "hereunder" and similar expressions refer to this Declaration and not to any particular Section or other provision of this Declaration.

1.4 Number and Gender

Unless otherwise specified, words importing the singular include the plural and vice versa and words importing gender include all genders.

1.5 Governing Law

This Declaration shall be governed by, and construed and interpreted in accordance with, the laws of the Province of Ontario and of Canada applicable therein.

1.6 Severability

Any provision of this Declaration which is illegal, invalid or unenforceable in any jurisdiction shall not affect the legality, validity or enforceability of the remaining provisions and any such illegality, invalidity or unenforceability in any jurisdiction shall not affect the legality, validity or enforceability of such provision in any other jurisdiction.

1.7 Reference to the Trust and the Trustee

For greater certainty, where any reference is made in this Declaration to an act to be performed by or for or on behalf of the Trust, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Trustee in its capacity as trustee of the Trust, and, where any reference is made in this Declaration to an act to be performed by or for or on behalf of the Trustee, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Trustee solely in its capacity as trustee of the Trust. Except as provided under the Transfer Payment Agreement, no Person dealing with the Trust or the Trustee shall be bound to make any enquiry concerning, or has the right to require production of, any evidence of the validity of any act of, or transaction purporting to be made by, the Trustee.

1.8 Defect in Appointment

No action taken by the Trustee will be invalid or ineffective by reason only of any defect in the appointment of the Trustee or the non-compliance by the Trustee with any rules or procedures adopted by the Trustee and which is discovered after the taking of such action.

SECTION 2
CONCERNING THE TRUST

2.1 Objectives

The Trust is established to hold, invest, apply and dispose of the Assets for the benefit of the Beneficiaries in furtherance of the Purpose, as provided for in this Declaration. In furtherance of the Purpose:

(a) the Original Trustee shall hold and invest the Assets as contemplated in this Declaration until the Original Trustee Replacement Date, after which the Board of Trustees shall be duly appointed hereunder; and

(b) the Board of Trustees shall hold, invest, apply and dispose of the Assets in accordance with this Declaration, including by determining the identities of and distributions (if any) to be made to or for the benefit of the Primary Beneficiaries in accordance with Sections 3.1 and 3.2 of this Declaration, having regard to the principles set forth in the Principles Annex and in the manner and on the basis contemplated in the Permitted Delegations Annex, or otherwise by determining the identities of and distributions to be made to or for the benefit of any Residual Beneficiary in accordance with Section 3.3,

in each case and in all respects subject to the terms, limitation and requirements set forth in this Declaration.

2.2 Name of the Trust

The name of the Trust shall be the "Affordability Fund Trust" or such replacement name as the Trustee shall determine and specify from time to time. The Trustee shall hold the Assets and conduct the activities of the Trust under such name or variation thereof (including any variation of such name in the French language). If the Trustee determines to change the name of the Trust, the Trustee may specify and use such other designation or adopt such other name (including any name in the French language) as it considers appropriate and may hold the Assets and conduct the activities of the Trust under such designation or other name.

2.3 Location

The head office and the situs of the administration of the Trust shall be • or such other address in Ontario as the Trustee may determine from time to time.

2.4 Fiscal Year

The fiscal year of the Trust shall end on December 31 of each year.

SECTION 3
DISTRIBUTIONS

3.1 Distributions to Primary Beneficiaries

After the Original Trustee Replacement Date and prior to the Final Distribution Date, the Trustee shall undertake diligent efforts in good faith to distribute the Assets (including capital or income) to the Primary Beneficiaries identified based on the application of the principles specified in the Principles Annex and in the manner and in the amounts determined on the basis contemplated by the Permitted Delegations Annex, in each case in the amounts and to the extent specified herein and therein, subject in all respects to the exercise by the Trustee of its discretion hereunder and to the exclusion of the other Beneficiaries.

3.2 Amount of Distributions to Primary Beneficiaries

For the purposes of determining the amount of distributions to be made to the Primary Beneficiaries, the Trustee shall have regard to and be entitled to rely on the recommendations of and information provided by Electricity Distributors acting as Implementation Agents appointed for the purposes, in the manner and substantially on the terms contemplated in the Permitted Delegations Annex, without any duty or obligation to verify or makes enquiries regarding the basis for or propriety of such recommendations or the accuracy or completeness of such information, except if and to the extent that the Trustee, in its discretion, determines that (i) it has actual knowledge that such recommendations are contrary to the reasonable application of the principles set forth in the Principles Annex or have been made on a basis that is manifestly contrary to such principles or the delegations and activities specified or contemplated to be undertaken under the Permitted Delegations Annex or (b) such information is known by the Trustee to be erroneous, contain a material misrepresentation or is materially incomplete.

3.3 Distributions to Residual Beneficiaries

Prior to the Final Distribution Date, the Trustee shall identify the Residual Beneficiary, or if more than one the Residual Beneficiaries and their respective allocations, by consulting with and having regard to the recommendations of the Ontario Energy Board, based on those charitable organizations which provide support services for Low Income Energy Assistance Program Emergency Financial Assistance (LEAP EFA) and the Ontario Electricity Support Program (OESP) or other charities that OEB may identify as relating to the Purpose. Following the Final Distribution Date, the Trustee shall, subject to compliance with section 7.3 and completion of a final audit, distribute all remaining Assets (including capital or income) to the Residual Beneficiaries, in each case in the amounts and to the extent determined by the Trustee in its discretion hereunder (having consulted with and having had regard to the recommendations of the Ontario Energy Board as aforesaid) and to the exclusion of the other Beneficiaries.

SECTION 4
POWERS OF THE TRUSTEE

4.1 General

Subject to and in compliance with the terms, limitations and restrictions of this Declaration and notwithstanding applicable trust legislation, the Trustee shall have, without other or further

authorization, full, exclusive and absolute power, control and authority over the Assets and over the affairs and activities of the Trust to the same extent as if the Trustee were not a trustee, but rather the sole and absolute owner of the Assets in its own right, including such power, control and authority to do all such acts and things as in its sole judgment and discretion are necessary, incidental or desirable for carrying on the affairs and activities of the Trust, with such powers of delegation as may be permitted or otherwise contemplated by this Declaration. Except as expressly provided in this Declaration, the enumeration in this Declaration of any specific power or authority shall not be construed as limiting the aforesaid general power or authority or any other specific power or authority set out herein. Subject to the terms, limitations and restrictions of this Declaration, every discretion or power hereby conferred on the Trustee is an absolute and uncontrolled discretion or power.

4.2 Specifically Enumerated Powers

The Trustee shall have the following specific powers and authorities:

(a) ***Transfer Payment Agreement.*** The Trustee shall have the power to enter into, amend, supplement, modify and perform its obligation under the Transfer Payment Agreement.

(b) ***Contracts and Undertakings.*** The Trustee shall have the power to enter into, amend, supplement, modify and perform its obligation under any contract entered into or undertaking given by the Trustee in furtherance of the Purpose, including any Administrative Services Agreement and any Implementation Agreement.

(c) ***Power to Own, Hold and Manage.*** Subject to section 4.2(d), the Trustee shall have the power to own, hold and manage the Assets in such manner as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable.

(d) ***Power to Invest in Eligible Investments.*** The Trustee shall have the power to invest the Assets only in Eligible Investments, and to change such Eligible Investments at any time and from time to time, all as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable, but always having regard to the Trustee's expectations regarding the timing of payments to be made to the Beneficiaries hereunder. If an investment of Assets in Eligible Investments would not be authorized under the applicable trust laws of Ontario, the Trustee shall nevertheless be permitted to make an investment of the Assets in such Eligible Investments. The Trustee will have no liability for the diminution in the value of any investment in Eligible Investments made hereunder.

(e) ***Power to Dispose of Assets.*** The Trustee shall have the power to sell, convey, assign, transfer, exchange and in any other manner dispose of the Assets or any part or parts thereof free and clear of any and all trusts established under this Declaration, by public or private sale, for cash or on credit, with or without advertisement, and subject to such restrictions, stipulations, agreements and reservations as the Trustee in its sole and absolute discretion may consider appropriate or advisable, and to execute and deliver and perform any agreement, deed, conveyance, transfer or other document or instrument in connection with the foregoing.

(f) ***Power to Apply Assets and Proceeds to Make Distributions to Beneficiaries.*** The Trustee shall have the power to apply the Assets and the proceeds and income derived therefrom to make distributions to the Beneficiaries contemplated by Section 3, and to execute and deliver

and perform any agreement, deed, conveyance, transfer or other document or instrument in connection therewith.

(g) ***Power to Delegate and to Appoint Agents, etc.*** The Trustee shall have the power to appoint, employ or contract with any Person as the Trustee in its sole and absolute discretion may consider appropriate or advisable in connection with the activities of the Trust. Without limiting the generality of the foregoing:

(i) the Trustee will have the power at any time and from time to time to appoint, employ or retain consultants, financial advisers, technical advisers, legal counsel, accountants, administrative services agents, implementation agents, insurers, insurance agents and insurance brokers, as the Trustee may require for the purpose of discharging its duties hereunder and shall not be responsible for or for the actions of any of them, including to:

(A) act for and on behalf of the Trust in connection with any and all matters in any way relating to the negotiation, settlement, entering into, amending, performance and enforcement of the Transfer Payment Agreement, the Administrative Services Agreements, the Implementation Agreements, and any other agreements and contracts to which the Trust becomes a party in accordance with this Declaration;

(B) to provide or cause to be provided any or all kinds of administrative and other services in any way relating to the activities of the Trust;

(C) to act as attorney in fact, agent or trustee in the acquisition, holding, investment, application, sale or other disposition of the Assets and in the handling, prosecuting, defending or settling of any claims of or made against the Trust;

(D) to value the Assets and determine the net income of the Trust; and

(E) to make any filings, elections and submissions (including in respect of taxation matters) in connection with the Trust's compliance with applicable laws and regulatory requirements; and

(ii) the Trustee may pay remuneration and reimbursements from the Assets for services performed for it or on its behalf in the discharge of the trusts hereof without taxation for costs or fees of any counsel, solicitor or attorney.

Without limiting the foregoing, it is expected that the Board of Trustees will seek to enter into Implementation Agreements with Electricity Distributors for the purposes contemplated by the Permitted Delegations Annex, and on such terms and conditions (including terms and conditions as to the payment of reasonable fees and expenses) not inconsistent therewith as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable.

(h) ***Power to Operate Accounts.*** The Trustee shall have the power to (i) open and operate accounts at any chartered bank, trust company or other financial institution in Canada or

elsewhere, as the Trustee in its sole and absolute discretion may consider appropriate or advisable; (ii) deposit therein any moneys or securities forming part of the Assets whether or not such deposits will earn interest; (iii) withdraw such deposits at such times and in such manner as the Trustee may determine; (iv) draw, make, endorse, deposit or otherwise deal in cheques, bills of exchange, promissory notes, drafts and other kinds of instruments and securities; and (v) enter into contracts or agreements with any such chartered bank, trust company or other financial institution containing such terms and provisions as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable. In connection therewith, the Trustee shall have no liability or responsibility for any loss which may occur by reason of the failure of any such chartered bank, trust company or other financial institution.

(i) ***Power to Collect, etc.*** The Trustee shall have the power to (i) collect, sue for, receive and give receipts for all sums of money or other property due to the Trust; (ii) consent to extensions of time for payment or to the renewal of any securities or obligations; (iii) engage or intervene in, prosecute, defend, compound, compromise, abandon or adjust by arbitration or otherwise, any demands, claims, actions, suits or proceedings relating to the Trust or the Assets; (iv) exercise any and all remedies available to the Trustee under any agreement or as may otherwise be available, including any power of foreclosure or sale available at law; (v) in connection with any such foreclosure or sale, purchase or otherwise acquire title to any property and to convey good title thereto free of any and all trusts hereby established, or to take or retake possession of any property secured under any agreement or instrument; (vi) extend the time, with or without security, for the payment or delivery of any debts or property; (vii) execute and deliver releases, acquittances, discharges, agreements or other instruments related thereto; and (viii) pay or satisfy any debts or claims upon any evidence that the Trustee, in its sole and absolute discretion, may determine to be sufficient.

(j) ***Power to Obtain Insurance***. The Trustee shall have the power to enter into contracts for or in relation to or otherwise obtain policies of insurance for the purpose of insuring the risks associated with the Trust, including to insure the Trustee (including the members of the Board of Trustees) against any risk of loss associated with assuming and performing the duties as Trustee. Without limiting the foregoing, it is expected that the Board of Trustees will obtain commercial general liability insurance from insurers having a secure A.M. Best rating of B+ or greater, or the equivalent, that in the opinion of the Recipient a prudent person similar to the Recipient would maintain, and having an inclusive limit of not less than $2,000,000 per occurrence and providing for contractual liability coverage.

(k) ***Power to Pay Trustee's Fees.*** The Original Trustee shall be entitled to be paid and receive the fees set forth in the Original Trustee's schedule of fees delivered as of the date hereof as compensation for its services under this Declaration, and to be reimbursed for its out-of-pocket expenses reasonably incurred, in each case from the Assets and without the approval of any Beneficiary or any court. The Original Trustee shall be entitled, in its sole and absolute discretion, to withdraw funds from time to time for such purpose from any account of the Trust. Members of the Board of Trustees shall be entitled to reimbursement for and in respect of their out-of-pocket expenses reasonably incurred in discharging their respective duties and obligations under this Declaration, in each case without the approval of any Beneficiary or any court, provided that the members of the Board of Trustees have general regard to sorts of limitations as are set forth in the "Travel, Meal and Hospitality Expenses Directive of the Province" specified

and amended by the Province from time to time, a copy of the current version of which is attached as Exhibit 1 to the Principles Annex.

(l) ***Power to Pay Taxes.*** The Trustee shall have the power to (i) pay, deduct, withhold or remit any taxes or assessments which are required by law to be paid, deducted, withheld or remitted together with or from any payment made by the Trustee; (ii) pay all taxes or assessments of whatever kind or nature imposed upon or against the Trust or the Trustee in connection with the Assets or any part thereof; (iii) collect and remit all taxes and assessments of whatever kind or nature required to be collected and remitted by the Trust or the Trustee in connection with their activities or the Assets or any part thereof; (iv) appeal, settle or compromise tax claims or liabilities; and (v) for the foregoing purposes, to make such returns, elections and submissions and do all such other acts and things as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable.

(m) ***Power to Appoint Auditors.*** The Trustee shall have the power to select and appoint and discharge and re-appoint, in its sole and absolute discretion, an auditor or auditors of the Trust and to settle and pay the fees of any such auditor or auditors from any account of the Trust.

(n) ***Form of Accounts.*** The Trustee shall have the power to determine and change from time to time, in its sole and absolute discretion, the method or form in which the accounts of the Trust will be kept and shall not be required to keep or provide accounts in the form usually required by law to be kept or provided by trustees; provided that such method or form reasonably complies with generally accepted accounting principles in effect in Canada to the extent applicable.

(o) ***Title to Assets.*** The Trustee shall have the power to cause all or any part of the Assets to be held by or registered, in its sole and absolute discretion, in the name of any Person.

(p) ***Delegation of Discretion***. The Trustee shall have the power to delegate the right and power to exercise, or concur in the exercise of any discretion or power, conferred on the Trustee in this Declaration or conferred by law to any one or more of its directors, officers, employees, agents, representatives or to such other Person, as the Trustee, in its sole and absolute discretion, may think is appropriate or advisable, including to one or more Administrative Services Agents under an Administrative Services Agreement and to one or more Implementation Agents and their respective employees, officers and directors under a related Implementation Agreement entered into by the Trust substantially on the basis contemplated in the Permitted Delegations Annex. In particular, the Trustee shall have the power to accept, rely on and follow the recommendations of an Electricity Distributor made under and having regard to the Permitted Delegation Annex with respect to the identification of, and the determination of distributions (if any) to be made to, any Primary Beneficiary, except if and in so far as the Trustee has actual knowledge that (1) such Primary Beneficiary did not in fact satisfy the "Selection Factors" specified in the Principles Annex as of the applicable time of determination; and/or (ii) the amount recommended to be distributed to the Primary Beneficiary was not calculated in substantial compliance with, or was calculated in a manner that is manifestly contrary to the requirements set forth or contemplated in, the Permitted Delegation Annex or the applicable Implementation Agreement.

(q) ***Additional Powers.*** The Trustee shall have the power to perform and do all such other acts, to take such steps and to execute all such deeds, transfers, assignments, agreements and

other documents and instruments as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable for the carrying out of any of its powers hereunder or of any of the activities of the Trust as herein contemplated, or for the carrying out, promotion or advancement of the interests of the Trust, whether or not any of such acts, things, documents or instruments are herein expressly mentioned. Any good faith determination by the Trustee as to what is necessary, desirable or appropriate to carry out its powers or activities of the Trust as contemplated under this Declaration or to carry out, promote or advance the interests of the Trust shall be conclusive. Any construction of this Declaration or any determination as to the activities of the Trust or the existence of any power or authority hereunder made in good faith by the Trustee, relying upon the advice of counsel, shall be conclusive. In construing the provisions of this Declaration, there shall be a presumption in favour of a grant of power to the Trustee.

SECTION 5
CONCERNING THE TRUSTEE

5.1 Duty of Trustee

In performing its duties and exercising its powers under this Declaration, the Trustee shall act honestly, in good faith and with a view to the best interests of the Trust and the Beneficiaries and shall exercise that degree of care, diligence and skill that a reasonably prudent trustee would exercise in comparable circumstances (the "**Standard of Care**"). The Trustee shall observe and act in accordance with the terms of, and shall observe and comply with the limitations and restrictions set forth in, this Declaration, including having due regard to the principles set forth in the Principles Annex. To the extent that the Trustee has so delegated any of its duties or powers, it shall be deemed to have satisfied the Standard of Care in respect of the subject matter of such delegation, subject to the Trustee's overall duty as a trustee to exercise prudent oversight in relation to such delegation. Unless required by law, the Trustee will not be required to give any security, bonds or sureties in any jurisdiction for the performance of any of its duties and obligations under this Declaration. The Trustee (including the individual members of the Board of Trustees) will not be required to devote its entire time to the trust activities.

5.2 Limitation of Liability

The Trustee shall not be personally liable in tort, contract or otherwise to any Beneficiary or any other Person for any loss or diminution in the value of the Assets, or for any action or failure to act on the part of the Trustee or any of its employees or agents or any other Person, and shall not be subject to any personal liability for any debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses incurred by or against the Trust, howsoever arising, and resort will be had solely to the Assets for the payment, performance or satisfaction thereof. No property or assets of the Trustee, owned in its personal capacity or otherwise, will be subject to levy, execution or other enforcement procedure**s** with respect to any obligation under this Declaration. However, the foregoing limitations in this Section shall not apply where the Trustee has demonstrated gross negligence, bad faith, fraud or wilful misconduct.

5.3 Liability of Trustee under Contracts

Any document or instrument creating a liability or obligation of the Trust or of the Trustee will be conclusively deemed to have been executed by the Trustee only in its capacity as Trustee of

the Trust and will be binding upon the Trustee only in its capacity as trustee hereunder and resort may not be had to, nor recourse or satisfaction be sought from, the property of the Trustee other than the Assets, whether owned by its in its personal capacity or in any other capacity other than in its capacity as Trustee of the Trust, or from its employees or agents, and in all cases resort will be had solely to the Assets for the payment, performance or satisfaction of any such liability or obligation. However, the foregoing limitations in this Section shall not apply where the Trustee has demonstrated gross negligence, bad faith, fraud or wilful misconduct. Each document or instrument creating a liability or obligation of the Trust or of the Trustee shall contain a provision providing for the aforesaid limitation of liability.

5.4 Funds of the Trustee

The Trustee shall not be required to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers.

5.5 Indemnification of Trustee

In addition to and without limiting any other protection hereunder or otherwise by law of the Trustee and its respective employees, agents, representatives and assigns (in this Section 5.5, collectively, the "**Representatives**"), the Trustee and its respective Representatives shall be indemnified, defended and saved harmless out of the Assets from, against and in respect of any and all liabilities arising or related to actions taken or omitted to be taken by any agent of the Trustee, losses, claims (including any claim arising out of the assessment of any tax on income by a taxing authority), damages, penalties, fines, actions, suits, demands, levies, assessments, costs, charges, expenses and disbursements (including, without limitation, any and all legal and advisor fees and disbursements) (in this Section 5.5, collectively, the "**Liabilities**") of whatever kind or nature which may at any time be suffered by, imposed upon, incurred by or asserted against the Trustee and its Representatives, whether groundless or otherwise, howsoever arising from or out of any act, omission or error of the Trustee, in each case made in connection with its acting as Trustee hereunder, in each case except and to the extent that the Liabilities are a result from or are caused by gross negligence, wilful misconduct, bad faith or fraud. Further, except as provided in section 5.2, the Trustee shall not be liable to any Beneficiary for any loss or damage relating to any matter regarding the Trust, including any loss or diminution in value of the Assets. Notwithstanding any other provision hereof, the obligations provided for in this section 5.5 shall survive any termination of the Trust, whether by reason of removal or resignation of the Trustee, termination or discharge of this Declaration or otherwise.

5.6 Reliance upon Advice

Subject to section 5.1, in performing its duties and exercising its powers hereunder, the Trustee may rely and may act or not act, and shall be fully protected in relying and acting or not acting, upon (a) any statement, telecopy or other electronic means of communication, writing, notice, resolution, report, opinion or other document or conversation believed by it to be genuine and correct and to have been signed, sent or made by the proper Person; (b) any opinion or advice received or information obtained from auditors, solicitors, or other professional advisers, whether retained by the Trustee or otherwise, and shall not be responsible or held liable for any loss or damage resulting from so relying or acting or not acting; and (c) the advice and actions of any

Administrative Services Agent or Implementation Agent, including in connection with the delegations and reliances contemplated under the Permitted Delegations Annex. For greater certainty, it shall not be necessary for the Trustee to ascertain whether or not the Persons who have executed, signed or otherwise issued, authenticated or receipted such papers, writings or documents (including any Administrative Services Agreement or any Implementation Agreement or any other contract entered into by the Trustee) have authority to do so or that they are the same Persons named therein or otherwise to pass upon any requirement of such papers, writing or documents that may be essential for their validity or effectiveness or upon the truth and acceptability.

5.7 Replacement of the Original Trustee

The Persons identified in the Trustee Replacement Annex are hereby appointed to comprise the Advisory Committee contemplated therein (the "**Advisory Committee**"). The Original Trustee shall promptly request that the Advisory Committee make recommendations with respect to the composition of the "Board of Trustees", as contemplated by the Trustee Replacement Annex. The Original Trustee shall have no duty or obligation to investigate the basis for any of the Advisory Committee's recommendations and may rely on such recommendations without any duty of enquiry, supervision or oversight with respect to the activities and decision-making processes adopted by the Advisory Committee in its discretion, in full satisfaction of the Original Trustee's Standard of Care with respect to such matters hereunder. Except where it is manifestly apparent to the Original Trustee that the individuals recommended by the Advisory Committee to become members of such Board of Trustees are disqualified from so acting on the basis of manifest non-compliance with the "Selection Factors" set forth in the Trustee Replacement Annex, the Original Trustee shall appoint, as members of the Board of Trustees, the six (five voting and one non-voting) individuals recommended for appointment to the Board of Trustees by the Advisory Committee. If the Original Trustee declines to appoint any individual recommended by the Advisory Committee, the Original Trustee will promptly request that the Advisory Committee provide a further recommendation whom the Original Trustee shall appoint as a member of the Board of Trustees unless it is manifestly apparent to the Original Trustee that the individual so recommended is also disqualified from so acting on the basis of manifest non-compliance with the "Selection Factors" set forth in the Trustee Replacement Annex,. Upon the appointment of such six individuals pursuant to this provision and their agreement to act as members of the Board of Trustees, the Original Trustee shall be deemed to have resigned and shall cease to be a trustee (such resignation occurring on the "**Original Trustee Replacement Date**").

5.8 Rules and Procedures of the Board of Trustees

(a) ***Initial Requirements***. As soon as practicable and in any event no later than one month following the Original Trustee Replacement Date, the Board of Trustees id expected to meet to take such decisions and actions as they deem necessary to ensure the proper management and administration of the Trust. The date (and location if in person) of the initial meeting shall be determined by a majority of the Board of Trustees.

(b) ***Meetings.*** Subject to the Board of Trustees' discretion to make such rules and procedures that they may deem desirable, meetings of the Board of Trustees may be held at such time and place as the trustee members of the Board of Trustees may agree upon or as they may

fix by resolution for the purpose or if the meeting is called as hereinafter mentioned then at such time as may be designated in the notice calling the meeting. A meeting of the Board of Trustees may be called at any time by any two members of the Board of Trustees by two Business Days' notice given to the members of the Board of Trustees. No notice of any Board of Trustees' meeting shall be necessary when a quorum is present if those comprising the quorum consent to the transaction of the affairs of the Trust and the absent trustee or trustees, if any, either before or after the meeting shall waive in writing notice of the meeting. Meetings of the Board of Trustees may be conducted in person, by telephone, or in such other manner as determined by the Board of Trustees. The Board of Trustees may elect a Chairperson.

(c) ***Quorum.*** At any meeting of the Board of Trustees, a majority of the voting members of the Board of Trustees shall be a quorum irrespective of the number of members in office. The decision of the majority of the voting members where quorum exists shall govern and shall be binding for all purposes and shall be acted upon and carried out in the same manner and with the same effect as if all the voted members concurred therein; provided always that in the case of equality of votes the Chairperson, if any, shall not be entitled to cast a second or deciding vote.

(d) ***Power to Adopt Rules and Procedures.*** The Board of Trustees may make such rules and procedures not inconsistent herewith as it may deem desirable for the proper management and administration of the Trust and the discharge of the responsibilities of the Board of Trustees.

(e) ***Replacement of Members of the Board of Trustees***. The Board of Trustees shall have the power to replace any vacancy arising following the Original Trustee Replacement Date according to such rules and procedures as they deem appropriate subject to compliance with the Selection Factors specified in Trustee Replacement Annex and having regard for such considerations necessary to ensure that the composition of the Board of Trustees will be able to discharge its responsibilities in respect of the Declaration. If necessary, the Board of Trustees may fill any vacancy by application to the Courts of Ontario in the event of an unfilled vacancy.

(f) ***Decisions of the Board of Trustees.*** Decisions and actions of the Board of Trustees shall be made by voting, with each individual voting member having one vote. Subject to quorum requirements, a majority vote shall be determinative in respect of such decisions and actions. Subject to quorum requirements, any decision or action taken by the majority of voting members will represent the decision or action of the Trustee, and not any member of the Board of Trustees.

(g) ***Conflicts of Interest.*** With respect to any matter before the Board of Trustees, to the extent of a conflict of interest, whether actual, perceived or potential, involving a member of the Board of Trustees' personal interests and a matter concerning the Trust, such member shall abstain from voting on the matter or taking any other discretionary action on the matter. For the purposes of the foregoing, no member of the Board of Trustees shall be deemed to have a conflict by reason only that the member holds any office or position with an Electricity Distributor, social services agency or governmental or quasi-governmental agency or entity (such as the Independent Electricity System Operator); provided, however, that in relation to any decision of the Board of Trustees pertaining specifically to a particular Electricity Distributor, any member of the Board of Trustees who is a director, officer or employee of the Electricity Distributor would be expected to recuse himself or herself from participating in deliberations, discussions or voting in respect of such decision.

(h) ***Expense Reimbursements to Members of the Board of Trustees.*** Members of the Board of Trustees shall be entitled to reimbursement for and in respect of their out-of-pocket expenses reasonably incurred in discharging their duties and obligations as members of the Board of Trustees. Members of the Board of Trustees shall serve without compensation.

5.9 Confidentiality

Notwithstanding the resignation or removal and discharge from the trusts and powers reposed in and conferred on the Trustee by this Declaration, or the termination of this Declaration, the Trustee so resigning or removed shall continue to treat as confidential all information relating to the Trust, the Assets and the Beneficiaries and shall only be entitled to make disclosures concerning such information if disclosure is required in the performance of the functions of the resigning or removed Trustee or is ordered by a court of competent jurisdiction or is otherwise required by law. The Trustee shall not be responsible or liable to any Person for any loss or damage arising out of or in any way sustained or incurred in any way relating to any such required disclosure. The obligations arising under this section 5.9 shall survive the termination of the Trust.

5.10 Vesting in Successor Trustee

Any successor trustee (including any reconstituted Board of Trustees) shall automatically become vested with the Assets and with the same powers, rights, duties, responsibilities and trusts as if it, he or she had originally been named as Trustee under this Declaration, without the requirement of any further instrument or act or conveyance, and the Trustee ceasing to act shall execute all such transfers and other documents and do all such other acts or things as may be necessary or desirable to assign, transfer, deliver to, and vest in, the successor trustee, upon the trusts expressed in this Declaration, all the Assets and all the rights, powers and trusts of the Trustee ceasing to act. The expense of any act, document, deed or other instrument or thing required under this Section 5.10, including for greater certainty, outstanding fees and unreimbursed expenses of the Trustee (including any member of the Board of Trustees) ceasing to act, shall be satisfied from the Assets.

5.11 Execution of Instruments

The Trustee shall have the power to execute all deeds, transfers, agreements, promissory notes and other instruments on behalf of the Trust. Such power may be exercised by any one or more Administrative Services Agents acting in accordance with any delegated right to do so pursuant to an applicable Administrative Services Agreement or by any one or more Implementation Agents acting in accordance with any delegated right to do so pursuant to an applicable Implementation Agreement, and any such execution of instrument by an Administrative Services Agent, acting in such capacity as agent of the Trust pursuant to the terms and conditions of an Administrative Services Agreement or by an Implementation Agent acting in such capacity as agent of the Trust pursuant to the terms and conditions of an Implementation Agreement shall in each case be deemed to be a proper execution of such instrument by the Trustee and shall be binding for all purposes on the Trust.

5.12 Decisions by the Trustee

If there is more than one Trustee, decisions of the Trust may be made by a majority of Trustees eligible to vote on the applicable matter. Whenever the Trustees are unable to agree in relation to the commission or omission of any act or howsoever in the execution of the Trust, the decision of a majority of such Trustees shall prevail.

SECTION 6
AMENDMENTS AND SUPPLEMENTS

6.1 Amendments

Subject to the requirements of the Transfer Payment Agreement, the Trustee shall have the power in its sole and absolute discretion from time to time without the approval of any Beneficiary or any court to amend, vary, supplement, replace or restate this Declaration in its entirety or any portion thereof; provided, however that it is expected that any amendment shall be consistent with the principles set forth in the Principles Annex and with the scope and effect of the permitted delegations and activities of any Implementation Agent pursuant to the Permitted Delegations Annex. Without in any way limiting the foregoing, any such amendments, variations, supplements, replacements or restatements may:

(a) add provisions for the replacement of or appointment of additional trustees to act with the Original Trustee prior to the Original Trustee Replacement Date;

(b) in the case of the Original Trustee, add provisions to those contemplated in the Trustee Replacement Annex in respect of the appointment of the members and the formation and empowerment of the Board of Trustees;

(c) in the case of the Original Trustee, vary the terms and requirements applicable to the duties, responsibilities, obligations, liabilities, indemnities, protections, limitations, restrictions, compensation, expense reimbursements and such other matters, in each case as the Advisory Committee may indicate are necessary to be made in order to attract and receive confirmation of appointment of appropriately qualified individuals that the Advisory Committee specifies are to be appointed as members of the Board of Trustees in accordance with its recommendations;

(d) add additional or replace existing Trustees;

(e) add to or reasonably clarify the principles set forth in the Principles Annex;

(f) add to or reasonably clarify the delegations and activities contemplated to be made in the Permitted Delegation Annex;

(g) include provisions for the management of the Trust by the Trustees, including the making of rules, requirements and procedures governing the decision-making of the Board of Trustees;

(h) add provisions for the replacement of members of the Board of Trustees (in addition to those provisions contemplated in section 5.7 and the Trustee Replacement Annex);

(i) provide for the engagement of any Person or Persons as managers, administrators or other service providers to the Trust, including any additional or replacement Administrative Services Agent or Implementation Agent or representative thereof;

(j) specify supplemental procedures for the identification of Primary Beneficiaries and the exchange of information with Electricity Distributors in connection with identifying such Primary Beneficiaries; or

(k) specify procedures for the transfer and transmission of funds from the Trust or any Implementation Agent acting on its behalf and with delegated responsibility over funds constituting Assets, to or for the benefit of, Beneficiaries or their designated representatives, payees or assignees.

6.2 Supplemental Declarations

The Trustee is authorized to execute any supplemental declaration of trust (including one or more amendments and restatements from time to time of this Declaration) to give effect to amendments to this Declaration made pursuant to section 6.1.

SECTION 7
TERMINATION

7.1 Duration

Subject to sections 7.2 and 7.3, the Trust will continue in full force and effect so long as there are any Assets and until all of the debts, liabilities and obligations of the Trust have been paid and satisfied in full.

7.2 Termination and Distribution of Assets

The Trustee shall terminate the Trust and wind up its affairs as soon as practicable after the Final Distribution Date. In connection with the termination of the Trust, the Trustee shall identify the Residual Beneficiaries and distribute or cause to be distributed the remaining Assets, in cash or in kind or partly in each, to the Residual Beneficiaries, in each case in accordance with section 3.3. Despite the foregoing, the Trust will only be terminated and wound up after the Trustee, in its sole and absolute discretion, determines that all debts, liabilities and obligations of the Trust have been paid or otherwise adequately provided for and satisfied and upon receipt of such releases, indemnities and discharges as the Trustee, relying on the opinion of counsel, deems necessary for the protection of the Beneficiaries and for its own protection.

7.3 Distribution of Assets on Final Distribution Date

If the Trust holds Assets on the Final Distribution Date, the Trustee shall pay or provide reserves for the payment, and otherwise shall satisfy, all debts, liabilities and obligations of the Trust and shall provide or arrange to provide such investigations, audits, releases, indemnities and discharges as the Trustee, relying on the opinion of counsel, deems necessary for the protection of the Beneficiaries and for its own protection. Thereafter, any remaining Assets shall be paid to the Residual Beneficiaries in accordance with section 3.3.

SECTION 8
ACCEPTANCE OF TRUSTS

8.1 Acceptance of Trusts

The Trustee hereby accepts the trusts and duties contained in this Declaration and agrees to perform the same upon the terms and conditions hereof until discharged therefrom.

[Signature Page Follows]

The Trustee has executed this Declaration as of the date first written above.

COMPUTERSHARE TRUST COMPANY OF CANADA,

By: _____
Name:
Title:

By: _____
Name:
Title:

PRINCIPLES ANNEX

The Trustee shall have regard to, but shall not be specifically bound by, the following principles in applying its discretion in relation to the administration of the Trust:

1. Identification of Primary Beneficiary Payees

1.1 Except in exceptional circumstances, a Primary Beneficiary would not be expected to receive a benefit from the Trust unless at the time of consideration it satisfies, in addition to the requirements contemplated in the definition of "Primary Beneficiary", each of the following criteria (the "**Selection Factors**"):

(i) it has a participant agreement with an applicable Electricity Distributor to undertake measures (its "**Energy Plan**") to improve the electricity efficiency and/or promote the conservation of electricity at its Ontario residence;

(ii) its Energy Plan involves one or more Eligible Measures, as may be designated by the Trustee from time to time from;

(iii) it confirms that:

1. the primary purpose of its Energy Plan is the conservation and efficient use by the Primary Beneficiary of electricity, and is not for the purposes of the Primary Beneficiary making a profit;

2. it would otherwise not have the financial resources to undertake the Eligible Measures included in its Energy Plan; and

3. it would otherwise not be eligible to receive amounts in respect of the Eligible Measures as a HAP Eligible Person;

(iv) it has demonstrated a need for financial assistance on the basis that its periodic electricity bills represent a financial burden, relative to its available financial resources; and

(v) such other criteria as the Trustee may determine, including based on the recommendations of Electricity Distributors or other knowledgeable Persons made on the basis and having regard to the delegations contemplated by the Permitted Delegations Annex or any applicable Implementation Agreement.

1.2 It is recognized that, in furthering the Purpose, an efficient basis upon which to allocate funds to the Primary Beneficiaries across different areas and regions within Ontario may be based on the areas and regions serviced by the Electricity Distributors operating within Ontario.

1.3 It would not be contrary to the Purposes if funds are made available by the Trustee to the Primary Beneficiaries unequally across different areas and regions within Ontario, and it is expected that in making such an unequal division it would be appropriate to have regard to:

(i) broad economic parameters of economic activity and the specific financial resources of the residents of the areas and regions, in each case as an indication of the relative need of such residents across the areas and regions;

(ii) electricity use and efficiency levels of residential electricity customers across the areas and regions;

(iii) specific regional indicators of economic weakness and need; and

(iv) such other factors as the Trustee may determine are relevant, including based on the submissions, advice and recommendations of Electricity Distributors or other knowledgeable Persons made on the basis and having regard to the delegations contemplated by the Permitted Delegations Annex or any applicable implementation Agreement.

1.4 It is recognized that, in furthering the Purpose, the designated Electricity Distributor for an area or region in which a Primary Beneficiary resides would be expected to:

(i) be a reliable source for the purpose of assessing and confirming whether the Primary Beneficiary satisfies the Selection Factors;

(ii) be an efficient intermediary for the purpose of communicating with the Primary Beneficiary, including with respect to matters such as regarding the availability, terms, conditions and intended purposes of Program;

(iii) be able to facilitate an efficient payment of distribution determined to be made to or on behalf of the Primary Beneficiary, having regard to the Electricity Distributor's established practices, procedures and systems for dealing with its customers; and

(iv) have established contractual arrangements with the Primary Beneficiary that may apply to the protection and confidentiality of information provided by or respecting the Primary Beneficiary, which information may be useful in the consideration by the Electricity Distributor in its assessment of whether the Primary Beneficiary satisfies the Selection Factors, which information may not otherwise be available or readily accessible or verifiable by the Trustee.

1.5 It is recognized that, in furthering the Purpose, the Electricity Distributor for an area or region in which a Primary Beneficiary resides will have market and utilization information that may be useful in assessing the relative needs of Primary Beneficiaries within its area or region. Such information is expected to be relevant in assessing the extent to which one such Primary Beneficiary's financial needs and the merits of its Energy Plan are greater or more compelling than those of another such Primary Beneficiary, which comparison may be relevant to the extent that the funds allocable to the Primary Beneficiaries resident in the area or region are otherwise insufficient to meet the requests for funding by all such Primary Beneficiaries.

1.6 Accordingly, it is recognized that, in furthering the Purpose, it is consistent with the Purpose that the recommendations of Electricity Distributors be utilized and relied upon

by the Trustee to guide the process of identifying particular Primary Beneficiaries in making distributions to the Primary Beneficiaries.

1.7 If an Electricity Distributor for a particular area or region is unable or unwilling to assess or confirm the application of the Selection Factors to Primary Beneficiaries residing in the area or region or to make recommendations in relation to such matters, one or more of the following may provide a suitable alternative source of information and for information gathering, assessment and confirmation purposes in relation to such area or region:

(i) other Electricity Distributors operating in adjacent or other areas or regions in Ontario;

(ii) the Ontario Energy Board;

(iii) the Independent Electricity System Operator; and

(iv) anyone else having relevant expertise and access to information regarding the electricity market of the Province, in each case as may be considered relevant by the Trustee.

1.8 To the extent that privacy law or other legal requirements limit an Electricity Distributor from providing or making available specific information respecting the application of the Selection Factors to a particular Primary Beneficiary or group of Primary Beneficiaries, it is recognized that, in furthering the Purpose, it may be appropriate to redact or make generic affected information regarding such Primary Beneficiary in connection with the identification and confirmation of a Primary Beneficiary's eligibility and participation in the Program. If such limitations or restrictions would limit an Electricity Distributor from providing or confirming the name of a particular Primary Beneficiary to the Trustee, then it should be sufficient that such information may be obtained or disseminated on a confidential basis if and when required by the Trustee for the proper administration of the Trust and on that basis such impediments should not disqualify a Primary Beneficiary from participating in the benefits of the Program, provided that the confidential record-keeping of the Electricity Distributor would be available in connection with the application of any applicable legal process predicated on the identification of such Primary Beneficiary for the purposes of substantiating its rights as a Primary Beneficiary of the Trust or as to the validity or subsistence of the Trust.

2. Eligible Measures

2.1 It is expected that the Trust will identify eligible measures that, taking into consideration the principles set forth in the Principles Annex, have regard to the following (the "**Measures Factors**"):

(i) is the measure generally expected to result in reduced electricity consumption by a Primary Beneficiary if properly installed and used;

(ii) is the measure recognized under another Provincial program as being appropriate for achieving electricity conservation among a population analogous to the Primary Beneficiaries;

(iii) does the measure present any unacceptable health or safety considerations, either with respect to the Primary Beneficiary, a party providing or installing the measure, or the physical environment;

(iv) is the measure broadly available to residents across different areas and regions of the Province; or

(v) is the measure a requirement or precursor to another measure, the other measure being one which meets any of the other Measures Factors.

2.2 In identifying and applying the Measures Factors, Electricity Distributors would be expected to have expertise in assessing the suitability of efficiency and conservation measures in their respective areas and regions, which may differ across areas and regions across the Province based on factors (among other things) such as the climate, geography, density, electricity infrastructure, residential structures, and electricity use rates applicable within such areas or regions.

2.3 The measures specified in Schedule A to this Principles Annex may initially be considered to be consistent with the Measures Factors (subject to change as contemplated under the Permitted Delegations Annex).

3. Promotion of the Program

3.1 It is expected that the Trustee will undertake or engage others to undertake diligent efforts to promote the availability, terms and benefits of the Program to Primary and Residual Beneficiaries, including by establishing consistent communications through the Electricity Distributors.

3.2 It is expected that the Trustee will acknowledge the financial support of the Province in connection with the establishment and the funding for the Program, including in any external communications to or marketing directed at the Electricity Distributors and the Primary and Residual Beneficiaries. In its delegation of any duties or powers to the Electricity Distributors through Implementation Agreements it is expected that Electricity Distributors will acknowledge the financial support of the Province in connection with the program including in any communications or marketing to Primary Beneficiaries.

4. Conduct of the Trust and the Program

4.1 It is expected that administrative expenses of the Board of Trustees and its members, including any expenses relating to the Trust, to the establishment of the Trust and any expenses related to the implementation and operation of the Program, including by or through Electricity Distributors and other relevant entities, will be recognized and subject to reimbursement on a basis that is substantially consistent with the accountability provisions contemplated in the Transfer Payment Agreement and the principles in the

Province's Travel, Meal and Hospitality Expenses Directive, the current form of which attached as Schedule B to this Principles Annex.

4.2 The Trustee is expected to conduct its activities in a manner that complies in all material respects with the Transfer Payment Agreement, including to:

(i) act prudently and in furtherance of the Purpose;

(ii) report not less frequently than annually the results of its activities for information purposes to the Province in connection with the Program;

(iii) comply with the Province's request for any independent verification or audit if determined to be necessary or appropriate by the Province;

(iv) return Assets that have not been distributed if it is determined that the Trustee has breached its Standard of Care in discharging its material duties under the Declaration, and has not cured such material breach despite having been given a reasonable opportunity by the Province to do so in light of the circumstances of such material breach, with the result that all or a significant part of the Assets have not been or are not being applied and distributed in furtherance of the Purpose or are being applied and distributed in a manner that is directly contrary or without regard to the Purpose.

4.3 Electricity Distributors are not intended to directly profit from distributions of funds made from the Trust, although it is recognized that the objectives of electricity efficiency and conservation of Primary Beneficiaries located in the service area or region of an Electricity Distributor, and the cost savings and improved credit worthiness of such Primary Beneficiaries, may be financially beneficial to the Electricity Distributor.

4.4 Distributions from the Trust are intended to allow receiving Primary Beneficiaries to undertake Eligible Measures at no or minimal personal cost.

4.5 Without in any way limiting the discretion of the Board of Trustees to extend the period during which the benefits of the Program may be available to the Primary Beneficiaries, up to and including the Final Distribution Date, it is expected that the Trust Assets would be distributed to Primary Beneficiaries during the period from the Original Trustee Replacement Date to April 30, 2019.

SCHEDULE A TO THE PRINCIPLES ANNEX
INDICATIVE ELIGIBLE MEASURES[1]

Initial Specified Measures
Block Heater Timer (just timer) – rated for outdoor use, have at least a 15 amp/1800 watt capacity, be cold weather resistant, bear a C-UL or CSA certification mark
Power bar with integrated timer, and switched power outlets, four each for a total of 8 outlets, have a total capacity of 15 amps. The switched outlets must remain "live", independent of timer settings, so long as the power bar itself remains switched on. The power bar must bear either a C-UL or CSA certification mark.
Efficient Showerheads (standard) - rated at no more than 4.8 Lpm (1.25 U.S. gpm) and be of the laminar flow type (non-aerating).
Efficient Showerhead (handheld) - rated at no more than 4.8 Lpm (1.25 U.S. gpm) and be of the laminar flow type (non-aerating).
Efficient Aerators (kitchen) - rated no more than 5.7 Lpm (1.5 U.S. gpm), dual threaded to allow installation in both thread type faucets, swivel type with pause lever.
Efficient Aerators (bathroom) - rated no more than 3.8 Lpm (1.0 U.S. gpm), be dual threaded to allow installation in both thread type faucets.
Hot Water Tank Pipe Insulation - 1/2" inside diameter – foam, meets ASTM –C547-00, minimum 3/4" thick
Hot Water Tank Pipe Insulation - 3/4 " inside diameter - – foam, meets ASTM –C547-00, minimum 3/4" thick
Hot Water Tank Insulation - fibreglass R10 (fits up to a 60 gal tank) – not bubble wrap
≤11W ENERGY STAR® Qualified LED A Shape (60W) (minimum 600 Lumen output) (Formerly: 7W – 11W ENERGY STAR® Qualified LED A Shape (60W))

[1] These measures are indicative. Eligible measures added to HAP during the administration of the Trust may also be appropriately considered relevant by the Trustee.

Initial Specified Measures
≤14W ENERGY STAR® Qualified LED A Shape (75W) (minimum 800 Lumen output) (Formerly: 10W – 14W ENERGY STAR® Qualified LED A Shape (75W))
≤23W ENERGY STAR® Qualified LED A Shape (100W) (minimum 1600 Lumen output) (Formerly:17W – 23W ENERGY STAR® Qualified LED A Shape (100W))
≤16W ENERGY STAR® Qualified LED PAR 20 (minimum 600 Lumen output) (Formerly: 8W – 12W ENERGY STAR® Qualified LED PAR 20)
≤16W ENERGY STAR® Qualified LED PAR30 & PAR38 (minimum 600 Lumen output) (Formerly: 8W – 12W ENERGY STAR® Qualified LED PAR 30)
≤23W ENERGY STAR® Qualified LED PAR (minimum 1100 Lumen output) (Formerly: 14W – 18W ENERGY STAR® Qualified LED PAR 38)
≤6W ENERGY STAR® Qualified LED MR 16 / PAR 16 (minimum 250 Lumen output) (Formerly: 7W – 10W ENERGY STAR®
Qualified LED MR 16 / PAR 16 - GU 10 Base)
≤11W ENERGY STAR® Qualified LED MR 16 (minimum 400 Lumen output) (Formerly: 7W – 12W ENERGY STAR® Qualified LED MR 16 GU 5.3 Base)
ENERGY STAR® LED Wet Location Rated PAR lamp ≤ 23 Watt (minimum 1100 Lumen output)
Recessed Downlight Fixture including LED with Light Output >600 and <800 lumens (Retrofit Measure List)
Recessed Downlight Fixture including LED with Light Output >800 lumens (Retrofit Measure List)
Indoor Drying Rack

Extended Measures
Replace refrigerator with ENERGY STAR qualified refrigerator - 15.5 - 16.9 cubic foot top freezer, automatic defrost, refrigerator/ freezer, no through the door ice service
Replace refrigerator with ENERGY STAR qualified refrigerator - 17.0 - 18.4 cubic foot top freezer, automatic defrost, refrigerator/ freezer, no through the door ice service
Replace refrigerator with a refrigerator that has a consumption level of less than 425 kwh, 10 – 12.5 cubic foot top freezer, automatic defrost, refrigerator freezer, no through the door ice service
Replace freezer with ENERGY STAR qualified freezer - 12-14.4 cubic foot freezer
Replace freezer with ENERGY STAR qualified freezer - 14.5 - 16.0 cubic foot freezer
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 6,000 – 7,999 BTU/hr with C-UL or CSA certification mark
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 8,000 – 9,999 BTU/hr with C-UL or CSA certification mark
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 10,000 – 12,000 BTU/hr with C-UL or CSA certification mark
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 14.2 - 21.2 l/day (30-44.9 pints/day) dehumidifier
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 21.3 - 25.4 l/day (45-53.9 pints/day) dehumidifier

Extended Measures
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 25.5 - 35.5 l/day (54-75 pints/day) dehumidifier
Programmable Thermostat – line voltage – meets CAN/CSA-C828-06 standard, minimum performance: Droop: 1.5°C, Differential: 0.5°C, Precision 0% within 0.5°C of the original set point of 22°C
Programmable Thermostat – low voltage - meets CAN/CSA-C828-06 standard, minimum performance: Droop: 1.5°C, Differential: 0.5°C, Precision 0% within 0.5°C of the original set point of 22°C

Weatherization Measures
Comprehensive Draftproofing (caulking, foam and weather stripping, and application of same) – lifespan of 20 years plus If one or two component polyurethane foams are used, the products and installations must conform to: • CAN/ULC-S710.1 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 1: Material Specification. • CAN/ULC-S710.2 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 2: Application. • CAN/ULC-S711.1 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification • CAN/ULC-S711.2 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification, and Part 2: Application. **Attic Insulation (including installation):**
cellulose: CAN/ULC-S703-01 Amendment 1 - Cellulose Fibre Insulation (CFI) for Buildings OR 2) Mineral Fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre

Weatherization Measures
for Buildings **Wall Insulation (including installation):**
cellulose: CAN/ULC-S703-01 Amendment 1 - Cellulose Fibre Insulation (CFI) for Buildings OR 2) Mineral Fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre **Basement Insulation (including installation):**
mineral fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre for Buildings Vapour Barrier: 69009-CAN/CGSB-51.34-m86 If one or two component polyurethane foams are used, the products and installations must conform to: • CAN/ULC-S710.1 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 1: Material Specification. • CAN/ULC-S710.2 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 2: Application. • CAN/ULC-S711.1 Standard for Thermal Insulation – Bead Applied Two-Component
• Polyurethane Air Sealant Foam, Part 1: Material Specification • CAN/ULC-S711.2 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification, and Part 2: Application.

Heat Pumps (Selection of manufacturers and technologies to meet the US federal minimum efficiency standard for ASHPs, as of 2015, is 13.0 SEER and 7.7 HSPF. Energy Star–certified models offer roughly 9 percent more efficiency than most new uncertified ASHPs and 20 percent more efficiency than existing models that may be in place)
Ductless Multiport Heat Pump
Cold Climate Ductless Heat Pump
Cold Climate Multiport Ductless Heat Pump

Cold Climate Ducted Heat Pump

SCHEDULE B TO THE PRINCIPLES ANNEX
PERMITTED EXPENSE REIMBURSEMENTS

[NTD: Insert the Province's Travel, Meal and Hospitality Expenses Directive.]

PERMITTED DELEGATION ANNEX

1. Under section 4.2(g) of the Declaration, the Trustee has the power to: (a) appoint, employ or retain Implementation Agents for the purpose of discharging its duties and obligations under the Declaration; and (b) enter into, perform, enforce and amend Implementation Agreements.

2. In accordance with section 4.2(g) of the Declaration, consistent with the principles set forth in the Principles Annex, the Trustee or its agent will seek to enter into one or more Implementation Agreements with individual Electricity Distributors under which the Electricity Distributors will act as Implementation Agents to the Trustee. In this manner, the Trustee will delegate certain of its powers and duties to the Electricity Distributors.

3. Under section 5.1 of the Declaration, to the extent the Trustee has delegated any of its duties or powers, it shall be deemed to have satisfied the Standard of Care in respect of the subject matter of such delegation, subject to the Trustee's overall duty to exercise prudent oversight thereof. The Trustee is entitled to rely on an Electricity Distributor to discharge the duties delegated to it, as Implementation Agent, pursuant to an Implementation Agreement as described in this Annex.

4. Accordingly, and without limiting the Trustee's right to delegate under the Declaration and its other rights, powers and discretion as Trustee, the Trustee will be permitted to, and is expected to seek to, enter into Implementation Agreements with Electricity Distributors in order to further the Purpose. Without limiting the Trustee's discretion to negotiate and settle the terms and conditions of such Implementation Agreements, it is expected that such Implementation Agreements will include customary terms and conditions for an administrative services arrangement of this type and, in addition, would (subject to the acceptance and agreement of the applicable Electricity Distributor counterparty) address the following points in particular:

    a. **Identification of Applicable Primary Beneficiary Payees and Determination of Individual Distribution Amounts**

        i. Each Electricity Distributor would make an initial assessment of the financial needs of Primary Beneficiaries within its designated service area or region, having regard to the Selection Factors set forth in section 1.3 of the Principles Annex, together with applicable economic data, in order to prepare and provide to the Trustee an estimate of the number of Primary Beneficiaries who the Electricity Distributor reasonably expects would satisfy the Selection Factors.

        ii. Each Electricity Distributor would make an initial assessment of the measures it would recommend be included as Eligible Measures, having regard to the Measures Factors set forth in section 2.1 of the Principles Annex, in order to prepare and provide to the Trustee an estimate of the average cost per Primary Beneficiary Payee (as defined below) of such Eligible Measures that the Electricity Distributor reasonably expects would apply in respect of Primary Beneficiaries resident in its service area or region.

iii. Based on the product of (i) and (ii), above, and such other considerations as it considers to be directly relevant, each Electricity Distributor would make a written recommendation to the Trustee regarding the aggregate funding amount that the Electricity Distributor anticipates would be utilized under the Program by the Primary Beneficiaries resident in its service area or region (the "**Local Funding Estimate**"). Such recommendation would be accompanied, when submitted to the Trustee, by a detailed explanation regarding the assumptions, financial parameters, suitability considerations and other information underlying the Local Funding Estimate (including the type of information contemplated by the Selections Factors and the Measures Factors, which would be relied upon by the Trustee in its assessment regarding the allocation of available funding to or for the benefit of the Primary Beneficiaries across the specified areas and regions of Ontario.

iv. The Trustee would inform the Electricity Distributor regarding the aggregate of the amount determined by the Trustee to be made available under the Program for Primary Beneficiaries in the Electricity Distributor's designated service area or region (for each Electricity Distributor, its "**Maximum Electricity Distributor Allocation**") and as to any maximum amount that may be paid to or for the benefit of any single Primary Beneficiary located in the servicer area or region of the Electricity Distributor (the "**Maximum Primary Beneficiary Amount**"). The Maximum Electricity Distributor Allocation and Maximum Primary Beneficiary Amount may vary between areas and regions, among the Primary Beneficiaries within such areas and regions, and may be increased by the Trustee from time to time in its discretion.

v. Each Electricity Distributor would apply the principles set forth under "Identification of Primary Beneficiary Payees" in the Principles Annex to identify and make recommendations to the Trustee regarding the amount of funds (if any) to be distributed to or for the benefit of Primary Beneficiaries resident within its service area or region from time to time (the "**Primary Beneficiary Payees**").

vi. Each Electricity Distributor would ensure that the aggregate of the amounts it recommends be distributed to or for the benefit of Primary Beneficiary Payees from time to time does not exceed (1) its Maximum Electricity Distributor Allocation and (2) for any single Primary Beneficiary located in the service area or region of the Electricity Distributor, the lesser of (x) the applicable Maximum Primary Beneficiary Amount and (y) the estimated costs (including any applicable taxes, but excluding any amount payable to the Electricity Distributor by or on behalf of the Primary Beneficiary) to be incurred by or on behalf of such Primary Beneficiary (whether or not such costs have been paid or remain outstanding) in respect of Eligible Measures applied or to be applied in respect of the Primary Beneficiary's Ontario residence.

vii. The Trustee would provide written confirmation to each Electricity Distributor:

1. Either (x) that the recommendations specified of the Electricity Distributor in clause (v), above, have been accepted, or (y) as to the specific reasons for any non-acceptance; and

2. The amount of the distributions to be paid to or for the benefit of each Primary Beneficiary Payee that is resident in the Electricity Distributor's service area or region.

viii. With respect to each Primary Beneficiary resident in a Electricity Distributor's service area or region that is confirmed as a Primary Beneficiary Payee, the Electricity Distributor would provide the Trustee written confirmation as to:

1. The identity of such Primary Beneficiary Payee; and

2. The amount of the distribution paid to or for the benefit of such Primary Beneficiary Payee.

ix. If the amount of a distribution to be made to a Primary Beneficiary Payee is based on the estimated costs to be incurred by or on behalf of such Primary Beneficiary and, prior to making the distribution to the Primary Beneficiary Payee, the Electricity Distributor determines that the actual costs (including any applicable taxes but excluding any amount payable to the Electricity Distributor by or on behalf of the Primary Beneficiary) incurred or to be incurred by or on behalf of such Primary Beneficiary in respect of Eligible Measures applied or to be applied in respect of the Primary Beneficiary's Ontario residence has or would be less than such estimated costs, then the amount to be distributed to the Primary Beneficiary shall be based on such actual costs.

b. **Making of Distributions to Primary Beneficiaries**

i. It is expected that promptly after the Trustee confirms the identity of a Primary Beneficiary Payee resident in an Electricity Distributor's service area or region and the amount of the distribution to be paid to or for the benefit of such Primary Beneficiary Payee, the Trustee would arrange for payment to or on the direction of the Electricity Distributor of an amount equal to the amount of such distribution.

ii. It is expected that promptly upon receipt of funds in respect of a distribution to be made to a Primary Beneficiary Payee, the Electricity Distributor would arrange for payment of the full amount of such distribution to or for the benefit of the Primary Beneficiary Payee (including by direct payment to a third party of, or as a reimbursement or rebate of, the costs of applicable Eligible Measures installed at the residence of and for the benefit of the Primary Beneficiary Payee), without reduction or set-off by the Electricity Distributor.

iii. If the amount paid to an Electricity Distributor in respect of a distribution to be made to a Primary Beneficiary exceeds the actual amount of the

distribution made to or on behalf of the Primary Beneficiary, it is expected that the Trustee would require Electricity Distributor to return such excess to the Trustee, whereupon the proceeds of such returned amount shall continue to form part of the Assets.

c. **Establishment of Operational, Administrative, Record-Keeping and Other Systems and Policies by Electricity Distributors to facilitate the Program**

i. It is expected that the Electricity Distributor would establish such operational, administrative, record-keeping and other systems and policies as are necessary to facilitate the Program and perform its duties under the Implementation Agreement, including systems or policies to: identify Primary Beneficiary Payees; comply with applicable privacy and regulatory laws; communicate with Primary Beneficiaries on behalf of the Trust; assess Eligible Measures; determine the Local Funding Estimate; monitor its recommendations to the Trustee against its Maximum Electricity Distributor Allocation and the Maximum Primary Beneficiary Amount; receive funds from the Trust in respect of distributions to the Primary Beneficiary Payees and transfer such funds to the appropriate recipients for the benefit of the Primary Beneficiary Payees; preparation and timely delivery to Primary Beneficiary Payees of such documents as are required by the *Income Tax Act* (Canada); and create and maintain records in respect of the foregoing.

ii. The Electricity Distributor would set up a separate bank account for the purpose of receiving funds from the Trust in respect of distributions to the Primary Beneficiary Payees and the transfer of such funds to the appropriate recipients for the benefit of the Primary Beneficiary Payees.

d. **Reporting, Record-Keeping, Inspection and Disclosure and Compliance Matters**

i. The Electricity Distributor would provide record-keeping, clerical and bookkeeping services relating to all matters relating to its recommendations and the performance of its other duties and obligations under its Implementation Agreement.

ii. The Electricity Distributor would keep and maintain all financial records and non-financial documents and records relating to the provision of services under its Implementation Agreement.

iii. The Electricity Distributor would provide to the Trustee quarterly and annual reports ("**Reports**") for the duration of its Implementation Agreement. Such Reports would set out, among other things, the amounts of the distributions paid to or for the benefit of applicable Primary Beneficiary Payees, the average distribution amount per such Primary Beneficiary Payee, the Eligible Measures for which distributions have been made, and the uptake of energy efficiency measures.

iv. The Electricity Distributor would agree to provide to the Trustee such information as is necessary for the Trustee to (v) comply with applicable law;

(w) prepare financial statements for the Trust; (x) prepare and submit such documents as are required under the *Income Tax Act* (Canada); (y) comply with the Trust's applicable obligations under the Transfer Payment Agreement; and (z) such other matters as the Trustee reasonably requests.

v. The Trustee, its authorized representatives or an independent auditor would be permitted to, at its own expense, on twenty-four hours' notice to the Electricity Distributor and during normal business hours, inspect the records of and information respecting the Electricity Distributor to confirm its compliance with the Implementation Agreement, including regarding its processes for recommending the Primary Beneficiary Payees and their respective distribution amounts and regarding the delivery of Trust funds on behalf of the Trustee to or for the benefit of the Primary Beneficiary Payees.

e. **Standard of Care**

i. The Electricity Distributor would be required to agree to perform its duties provided under the Implementation Agreement exercising the degree of care, diligence and skill that a reasonably prudent Person would exercise in comparable circumstances.

ii. In performing its duties under the Implementation Agreement (including the recommending of Primary Beneficiary Payees to the Trustee), the Electricity Distributor would be required to agree to seek to avoid actual, potential or perceived conflicts of interest.

iii. The Electricity Distributor would be required to agree that it would not, in performing its obligations under the Implementation Agreement, take any action which it knows or ought reasonably to know would cause the Trustee or the Trust to be in violation of any law, rule or regulation applicable to it.

f. **Expenses**

The Electricity Distributor would be eligible to receive reasonable compensation and reimbursement of its actual out-of-pocket costs associated with the performance of its duties and obligations under the Implementation Agreement, subject to compliance with requirements substantially equivalent to the Province's Travel, Meal and Hospitality Expenses Directive. Such compensation amounts and reimbursement entitlements would be specified in the Implementation Agreement.

g. **Representations**

The Electricity Distributor would make customary representations to the Trust regarding, among other things, its legal capacity; authorization; non-contravention of law or material contract to which it is a party; and the enforceability of the Implementation Agreement.

h. **Indemnification**

The Electricity Distributor would be required to agree to provide customary indemnities to the Trust and the Trustee from and against claims, damages and liabilities which the Trust or Trustee may suffer or incur as the result of any breach of the Agreement by the Electricity Distributor or its representatives.

TRUSTEE REPLACEMENT ANNEX

1. The Advisory Committee shall consist of the following individuals:

   Robert Mace, President and Chief Executive Officer at Thunder Bay Hydro

   Bryce Conrad, President and Chief Executive Officer at Hydro Ottawa

   Brian Bentz, President and Chief Executive Officer at Alectra

   Ferio Pugliese, Executive Vice President Customer Care and Corporate Affairs at Hydro One

   Terry Young, Vice President Conservation and Corporate Relations at the Independent Electricity System Operator

2. In the event any member of the Advisory Committee resigns or is unable to act, it is expected that the remaining members of the Advisory Committee would appoint another resident of Ontario as a replacement.

3. On or before •, 2017, the Advisory Committee shall identify six residents of Ontario who have expressed that they are willing to act as members of the Board of Trustees and who, individually and collectively, satisfy the following criteria (collectively, the "**Selection Factors**"):

   a) each member demonstrates an understanding of the electricity sector including the electricity distribution sector;

   b) each member demonstrates an expertise in conservation and low income programs;

   c) three of the identified individuals will be representatives from separate electricity distributors, two individuals will be representatives from separate social services agencies and one individual member, who will be a non-voting member, will be an employee or representative of the Government of Ontario; and

   d) it is expected that representation by the Government of Ontario will be non-controlling.

4. If the Advisory Committee determines that changes to the Declaration (including to this Trustee Replacement Annex) are necessary in order to (a) replace, or appoint additional trustees to act with, the Original Trustee prior to the Original Trustee Replacement Date or (b) attract and receive confirmation of appointment of appropriately qualified individuals that the Advisory Committee believes would be suitable candidates to serve as members of the Board of Trustees, the Advisory Committee shall make recommendations regarding such necessary changes, including without limitation in respect of (i) any necessary limitations on the nature or scope of the appointment of the members of the Board of Trustees, (ii) the formation and empowerment of the Board of Trustees, and (iii) the duties, responsibilities, obligations, liabilities, indemnities, protections, limitations, restrictions,

compensation, expense reimbursement entitlements of members of the Board of Trustees.

5. The Advisory Committee shall recommend that the Original Trustee appoint the individuals so identified to become the initial members of the Board of Trustees pursuant to section 5.7 of the Declaration.

6. If any of the individuals recommended under paragraph 4 or under this paragraph are not accepted and appointed by the Original Trustee pursuant to section 5.7 of the Declaration, the Advisory Committee shall forthwith identify and recommend an alternative individual or individuals willing to act and whose presence as a member of the Board of Trustees would result in the Trustee collectively satisfying the criteria in paragraph 3 above.

7. Upon the appointment of six trustees (five voting and one non-voting) pursuant to section 5.7 of the Declaration, the Advisory Committee will be functus.

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DECLARATION OF TRUST

Made as of March •, 2017

by

COMPUTERSHARE TRUST COMPANY OF CANADA

establishing

AFFORDABILITY FUND TRUST

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DECLARATION OF TRUST

This Declaration of Trust is made as of March •, 2017, by Computershare Trust Company of Canada, a trust company established under the laws of Canada and licensed to carry on business as a trust company in each of the provinces and territories of Canada (together with its successors and assigns and the other trustees (including the Board of Trustees) contemplated herein, the "**Trustee**").

WHEREAS Computershare Trust Company of Canada, as settlor, wishes to establish a trust to acquire, hold, manage, invest, apply and dispose of certain property for the benefit of certain Beneficiaries as herein described.

NOW THEREFORE Computershare Trust Company of Canada hereby declares that it holds in trust as trustee (a) the sum of ONE HUNDRED DOLLARS ($100) contributed by it on this date and (b) all other property of every type and description which it may hereafter acquire or hold in its capacity as trustee of the Trust and all income therefrom and proceeds thereof, to hold, manage, invest, apply and dispose of same on and subject to the provisions set forth in this Declaration of Trust, including the annexes and schedule attached hereto.

SECTION 1
INTERPRETATION

1.1 Definitions

In this Declaration:

(a) "***Administrative Services Agent***" means each agent, which may include any Electricity Distributor or other Person, appointed from time to time under an Administrative Services Agreement, and its successors and permitted assigns solely in such capacity.

(b) "***Administrative Services Agreement***" means each agreement entered into from time to time by the Trust and one or more Administrative Services Agents or other Persons, in furtherance of the Purpose, under which the Administrative Services Agent ~~would agree~~agrees to provide specified administrative and other services to and on behalf of the Trustee ~~(including, following the Original Trustee Replacement Date, the Permitted Delegations Annex)~~, as such agreement may be amended, supplemented, restated, renewed or replaced from time to time and includes the agreement entered into on or about the date hereof between the Trustee and Hydro One Limited.

(c) "***Assets***" means, collectively, the following:

(i) the $100 Canadian referred to above, contributed by Computershare Trust Company of Canada on the date hereof;

(ii) all other property which is now or which at any time in the future may be issued, assigned, transferred, provided, donated, gifted and contributed to the Trustee (including pursuant to the Transfer Payment Agreement) to be held in trust pursuant to this Declaration (and which the Trustee is willing to accept and hold);

(iii) all acquisitions of property made by the Trust;

(iv) all property which may at any time be substituted for or in respect of the property referred to in clauses (i), (ii) and (iii), above;

(v) all income of the Trust, including investment income generated by the investment of the property referred to in clauses (i), (ii), (iii) and (iv), above; and

(vi) all proceeds of disposition of any of the property referred to in clauses (i) through (v) above,

but excludes any property paid out or distributed (whether out of income or capital) pursuant to the provisions of this Declaration.

(d) "***Beneficiary***" means each Primary Beneficiary and each Residual Beneficiary, as applicable.

(e) "***Board of Trustees***" means (i) as of the Original Trustee Replacement Date, the individual trustees appointed by the Original Trustee pursuant to Section 5.7 on the basis described in the Trustee Replacement Annex, and (ii) thereafter, the group of trustees appointed hereunder and acting in such capacity.

(f) "***Business Day***" means any working day, Monday to Friday inclusive, excluding statutory and other holidays, namely: New Year's Day; Family Day; Good Friday; Easter Monday; Victoria Day; Canada Day; Civic Holiday; Labour Day; Thanksgiving Day; Remembrance Day; Christmas Day; Boxing Day ~~[~~and any other day on which the Province has elected to be closed for business~~]~~.

(g) "***Declaration***" means this Declaration of Trust, as it may be amended, restated, supplemented or otherwise modified from time to time, and includes each of the annexes and the Schedule attached hereto which constitute and form an integral part of this Declaration.

(h) "***Electricity Distributor***" means, in respect of a designated service area or region in Ontario, the distributor of electricity to residences located in such area or region.

(i) "***Electricity Invoice***" means an invoice issued by an Electricity Distributor in respect of electricity charges and related services and amounts incurred or assessed in respect of a residence located in the Electricity Distributor's designated service area or region in Ontario.

(j) "***Eligible Investments***" means (i) a deposit receipt, note, certificate or instrument issued, guaranteed or endorsed by a bank listed in Schedule I to the *Bank Act* (Canada), which provides that the principal and any interest shall be fully paid no later than ~~[~~one year~~]~~ after the day the investment was made, or (ii) a deposit account at a bank listed in Schedule I to the *Bank Act* (Canada).

(k) "***Eligible Measures***" means electricity efficiency and/or conservation measures determined by the Trustee from time to time on the basis contemplated in the Principles Annex and in the manner specified in and having regard to the Permitted Delegations Annex.

(l) "***Final Distribution Date***" means the earlier of (~~i~~a) the date (if any) on which the Trustee determines (by a resolution of the Board of Trustees) that no further distributions are likely to be made to any Primary Beneficiary and (~~ii~~b) ~~•, 20[23]••~~.

(m) "***HAP Eligible Person***" means an "Eligible Person" as defined in Section 3.1 of the document entitled "Conservation First Framework LDC Took Kit" published by the Independent Electricity System Operator and designated as Final v3.0 – March 11, 2016, as amended in accordance with the Energy Conservation Agreement between the Independent Electricity System Operator and Electricity Distributors.

(n) **"Implementation Agent"** means each agent which may include any Electricity Distributor or other Person, appointed from time to time under an Implementation Agreement, and its successors and assigns solely in such capacity.

(o) **"Implementation Agreement"** means each agreement entered into from time to time by the Trustee and one or more Implementation Agents or other Persons in furtherance of the Purpose under which the Implementation Agent would agree to provide specified services to and on behalf or the Trustee (including, following the Original Trustee Replacement Date, as contemplated by the Permitted Delegations Annex) in connection with the implementation of the Program as such agreement may be amended , supplemented, restated, renewed or replaced from time to time.

(p) ~~(n)~~ "***Minister of Energy***" means the Minister of Energy or such other member of the Executive Council as may be assigned primary ministerial responsibility for the administration of the *Ministry of Energy Act, 2011* under the *Executive Council Act*.

(q) ~~(o)~~ "***Original Trustee***" means Computershare Trust Company of Canada, acting in its capacity as trustee hereunder, together with any additional or replacement Trustee appointed hereunder prior to the Original Trustee Replacement Date and any of their respective successors and assigns.

(r) ~~(p)~~ "***Original Trustee Replacement Date***" has the meaning specified in Section 5.7, being the date on which the Original Trustee is replaced as trustee under this Declaration by the Board of Trustees as contemplated under Section 5.7.

(s) ~~(q)~~ "***Permitted Delegations Annex***" means the Permitted Delegations Annex set forth as an annex to this Declaration.

(t) ~~(r)~~ "***Person***" includes any individual, sole proprietorship, corporation, partnership, joint venture, association, society, club, board, chamber, joint-stock company, trust, trustee, unincorporated or incorporated organization or entity or government or any entity, agency or political subdivision thereof.

(u) ~~(s)~~ "***Primary Beneficiary***" means each individual that, as of a time of determination, satisfies each of the following criteria:

(i) the individual owns, rents or leases a residence located in Ontario and is the primary or secondary electricity utility account holder named on an Electricity Invoice issued in respect of that residence; and

(ii) the individual is not a HAP Eligible Person.

(v) ~~(t)~~ "***Principles Annex***" means the Principles Annex set forth as an annex to this Declaration.

(w) ~~(u)~~ "***Province***" means the Province of Ontario.

(x) ~~(v)~~ "***Program***" means the establishment, promotion, implementation and administration of a program to achieve the Purpose on the basis contemplated in this Declaration.

(y) ~~(w)~~ "***Purpose***" means (i) the making of distributions to Primary Beneficiaries who are identified and whose needs are assessed in accordance with section 3.1 and 3.2 of this Declaration, having regard to (x) the principles set forth in the Principles Annex, (y) the manner and basis of implementation and administration of the Program contemplated in the Permitted Delegations Annex, and (z) the other terms, limitations and requirements set forth in this Declaration, and (ii) to the extent that Assets are available following the distributions made to Primary Beneficiaries as contemplated in (i), above, the making of distributions to Residual Beneficiaries who are identified and whose needs are assessed in accordance with section 3.3 and otherwise having regard to the other terms, limitations and requirements set forth in this Declaration.

(z) ~~(x)~~ ***"Residual Beneficiary"*** means each charitable organization identified by the Trustee and specified as a residual beneficiary hereunder from time to time, selected by the Trustee in consultation with and having regard to the recommendations of the Ontario Energy Board in accordance with section 3.3.

(aa) ~~(y)~~ "***Transfer Payment Agreement***" means the transfer payment agreement dated as of March •, 2017 between the Trustee and Her Majesty the Queen in right of Ontario as represented by the Minister of Energy, as such agreement may be amended, restated, supplemented or otherwise modified by the further agreement of the parties thereto from time to time.

(bb) ~~(z)~~ "***Trust***" means Affordability Fund Trust, a trust established under and governed by the laws of the Province of Ontario pursuant to this Declaration.

(cc) ~~(aa)~~ "***Trustee***" means (i) the Original Trustee and (ii) on and after the Original Trustee Replacement Date, the Board of Trustees acting together in accordance with and subject to Section 5.7 and in accordance with the rules and procedures adopted by the Board of Trustees pursuant to Section 5.8.

(dd) ~~(bb)~~ "***Trustee Replacement Annex***" means the Trustee Replacement Annex set forth as an annex to this Declaration.

1.2 Headings and Table of Contents

The insertion of headings and the provision of a table of contents are for convenience of reference only and shall not affect the construction or interpretation of this Declaration.

1.3 References

Unless otherwise specified, all references to Sections are to Sections of this Declaration. The words "hereto", "herein", "hereof", "hereunder" and similar expressions refer to this Declaration and not to any particular Section or other provision of this Declaration.

1.4 Number and Gender

Unless otherwise specified, words importing the singular include the plural and vice versa and words importing gender include all genders.

1.5 Governing Law

This Declaration shall be governed by, and construed and interpreted in accordance with, the laws of the Province of Ontario and of Canada applicable therein.

1.6 Severability

Any provision of this Declaration which is illegal, invalid or unenforceable in any jurisdiction shall not affect the legality, validity or enforceability of the remaining provisions and any such illegality, invalidity or unenforceability in any jurisdiction shall not affect the legality, validity or enforceability of such provision in any other jurisdiction.

1.7 Reference to the Trust and the Trustee

For greater certainty, where any reference is made in this Declaration to an act to be performed by or for or on behalf of the Trust, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Trustee in its capacity as trustee of the Trust, and, where any reference is made in this Declaration to an act to be performed by or for or on behalf of the Trustee, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Trustee solely in its capacity as trustee of the Trust. Except as provided under the Transfer Payment Agreement, no Person dealing with the Trust or the Trustee shall be bound to make any enquiry concerning, or has the right to require production of, any evidence of the validity of any act of, or transaction purporting to be made by, the Trustee.

1.8 Defect in Appointment

No action taken by the Trustee will be invalid or ineffective by reason only of any defect in the appointment of the Trustee or the non-compliance by the Trustee with any rules or procedures adopted by the Trustee and which is discovered after the taking of such action.

SECTION 2
CONCERNING THE TRUST

2.1 Objectives

The Trust is established to hold, invest, apply and dispose of the Assets for the benefit of the Beneficiaries in furtherance of the Purpose, as provided for in this Declaration. In furtherance of the Purpose:

(a) the Original Trustee shall hold and invest the Assets as contemplated in this Declaration until the Original Trustee Replacement Date, after which the Board of Trustees shall be duly appointed hereunder; and

(b) the Board of Trustees shall hold, invest, apply and dispose of the Assets in accordance with this Declaration, including by determining the identities of and distributions (if any) to be made to or for the benefit of the Primary Beneficiaries in accordance with Sections 3.1 and 3.2 of this Declaration, having regard to the principles set forth in the Principles Annex and in the manner and on the basis contemplated in the Permitted Delegations Annex, or otherwise by determining the identities of and distributions to be made to or for the benefit of any Residual Beneficiary in accordance with Section 3.3,

in each case and in all respects subject to the terms, limitation and requirements set forth in this Declaration.

2.2 Name of the Trust

The name of the Trust shall be the "Affordability Fund Trust" or such replacement name as the Trustee shall determine and specify from time to time. The Trustee shall hold the Assets and conduct the activities of the Trust under such name or variation thereof (including any variation of such name in the French language). If the Trustee determines to change the name of the Trust, the Trustee may specify and use such other designation or adopt such other name (including any name in the French language) as it considers appropriate and may hold the Assets and conduct the activities of the Trust under such designation or other name.

2.3 Location

The head office and the situs of the administration of the Trust shall be • or such other address in Ontario as the Trustee may determine from time to time.

2.4 Fiscal Year

The fiscal year of the Trust shall end on December 31 of each year.

SECTION 3
DISTRIBUTIONS

3.1 Distributions to Primary Beneficiaries

~~Prior~~After the Original Trustee Replacement Date and prior to the Final Distribution Date, the Trustee shall undertake diligent efforts in good faith to distribute the Assets (including capital or income) to the Primary Beneficiaries identified based on the application of the principles specified in the Principles Annex and in the manner and in the amounts determined on the basis contemplated by the Permitted Delegations Annex, in each case in the amounts and to the extent specified herein and therein, subject in all respects to the exercise by the Trustee of its discretion hereunder and to the exclusion of the other Beneficiaries.

3.2 Amount of Distributions to Primary Beneficiaries

For the purposes of determining the amount of distributions to be made to the Primary Beneficiaries, the Trustee shall have regard to and be entitled to rely on the recommendations of and information provided by Electricity Distributors acting as ~~Administrative Services~~Implementation Agents appointed for the purposes, in the manner and substantially on the terms contemplated in the Permitted Delegations Annex, without any duty or obligation to verify or makes enquiries regarding the basis for or propriety of such recommendations or the accuracy or completeness of such information, except if and to the extent that the Trustee, in its discretion, determines that (i) it has actual knowledge that such recommendations are contrary to the reasonable application of the principles set forth in the Principles Annex or have been made on a basis that is manifestly contrary to such principles or the delegations and activities specified or contemplated to be undertaken under the Permitted Delegations Annex or (b) such information is known by the Trustee to be erroneous, contain a material misrepresentation or is materially incomplete.

3.3 Distributions to Residual Beneficiaries

Prior to the Final Distribution Date, the Trustee shall identify the Residual Beneficiary, or if more than one the Residual Beneficiaries and their respective allocations, by consulting with and having regard to the recommendations of the Ontario Energy Board, based on those charitable organizations which provide support services for Low Income Energy Assistance Program Emergency Financial Assistance (LEAP EFA) and the Ontario Electricity Support Program (OESP) or other charities that OEB may identify as relating to the Purpose. Following the Final Distribution Date, the Trustee shall, subject to compliance with section 7.3 and completion of a final audit, distribute all remaining Assets (including capital or income) to the Residual Beneficiaries, in each case in the amounts and to the extent determined by the Trustee in its discretion hereunder (having consulted with and having had regard to the recommendations of the Ontario Energy Board as aforesaid) and to the exclusion of the other Beneficiaries.

SECTION 4
POWERS OF THE TRUSTEE

4.1 General

Subject to and in compliance with the terms, limitations and restrictions of this Declaration and notwithstanding applicable trust legislation, the Trustee shall have, without other or further authorization, full, exclusive and absolute power, control and authority over the Assets and over the affairs and activities of the Trust to the same extent as if the Trustee were not a trustee, but rather the sole and absolute owner of the Assets in its own right, including such power, control and authority to do all such acts and things as in its sole judgment and discretion are necessary, incidental or desirable for carrying on the affairs and activities of the Trust, with such powers of delegation as may be permitted or otherwise contemplated by this Declaration. Except as expressly provided in this Declaration, the enumeration in this Declaration of any specific power or authority shall not be construed as limiting the aforesaid general power or authority or any other specific power or authority set out herein. Subject to the terms, limitations and restrictions of this Declaration, every discretion or power hereby conferred on the Trustee is an absolute and uncontrolled discretion or power.

4.2 Specifically Enumerated Powers

The Trustee shall have the following specific powers and authorities:

(a) ***Transfer Payment Agreement.*** The Trustee shall have the power to enter into, amend, supplement, modify and perform its obligation under the Transfer Payment Agreement.

(b) ***Contracts and Undertakings.*** The Trustee shall have the power to enter into, amend, supplement, modify and perform its obligation under any contract entered into or undertaking given by the Trustee in furtherance of the Purpose, including any Administrative Services Agreement and any ~~License~~Implementation Agreement.

(c) ***Power to Own, Hold and Manage.*** Subject to section 4.2(d), the Trustee shall have the power to own, hold and manage the Assets in such manner as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable.

(d) ***Power to Invest in Eligible Investments.*** The Trustee shall have the power to invest the Assets only in Eligible Investments, and to change such Eligible Investments at any time and from time to time, all as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable, but always having regard to the Trustee's expectations regarding the timing of payments to be made to the Beneficiaries hereunder. If an investment of Assets in Eligible Investments would not be authorized under the applicable trust laws of Ontario, the Trustee shall nevertheless be permitted to make an investment of the Assets in such Eligible Investments. The Trustee will have no liability for the diminution in the value of any investment in Eligible Investments made hereunder.

(e) ***Power to Dispose of Assets.*** The Trustee shall have the power to sell, convey, assign, transfer, exchange and in any other manner dispose of the Assets or any part or parts thereof free and clear of any and all trusts established under this Declaration, by public or private sale, for cash or on credit, with or without advertisement, and subject to such restrictions, stipulations,

agreements and reservations as the Trustee in its sole and absolute discretion may consider appropriate or advisable, and to execute and deliver and perform any agreement, deed, conveyance, transfer or other document or instrument in connection with the foregoing.

(f) ***Power to Apply Assets and Proceeds to Make Distributions to Beneficiaries.*** The Trustee shall have the power to apply the Assets and the proceeds and income derived therefrom to make distributions to the Beneficiaries contemplated by Section 3, and to execute and deliver and perform any agreement, deed, conveyance, transfer or other document or instrument in connection ~~with~~ therewith.

(g) ***Power to Delegate and to Appoint Agents, etc.*** The Trustee shall have the power to appoint, employ or contract with any Person as the Trustee in its sole and absolute discretion may consider appropriate or advisable in connection with the activities of the Trust. Without limiting the generality of the foregoing:

(i) the Trustee will have the power at any time and from time to time to appoint, employ or retain consultants, financial advisers, technical advisers, legal counsel, accountants, administrative services agents, implementation agents, insurers, insurance agents and insurance brokers, as the Trustee may require for the purpose of discharging its duties hereunder and shall not be responsible for or for the actions of any of them, including to:

(A) act for and on behalf of the Trust in connection with any and all matters in any way relating to the negotiation, settlement, entering into, amending, performance and enforcement of the Transfer Payment Agreement, the Administrative Services Agreements, ~~any License Agreement~~the Implementation Agreements, and any other agreements and contracts to which the Trust becomes a party in accordance with this Declaration;

(B) to provide or cause to be provided any or all kinds of administrative and other services in any way relating to the activities of the Trust;

(C) to act as attorney in fact, agent or trustee in the acquisition, holding, investment, application, sale or other disposition of the Assets and in the handling, prosecuting, defending or settling of any claims of or made against the Trust;

(D) to value the Assets and determine the net income of the Trust; and

(E) to make any filings, elections and submissions (including in respect of taxation matters) in connection with the Trust's compliance with applicable laws and regulatory requirements; and

(ii) the Trustee may pay remuneration and reimbursements from the Assets for services performed for it or on its behalf in the discharge of the trusts hereof without taxation for costs or fees of any counsel, solicitor or attorney.

Without limiting the foregoing, it is expected that the Board of Trustees will seek to enter into ~~Administrative Services~~Implementation Agreements with Electricity Distributors for the

purposes contemplated by the Permitted Delegations Annex, and on such terms and conditions (including terms and conditions as to the payment of reasonable fees and expenses) not inconsistent therewith as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable.

(h) ***Power to Operate Accounts.*** The Trustee shall have the power to (i) open and operate accounts at any chartered bank, trust company or other financial institution in Canada or elsewhere, as the Trustee in its sole and absolute discretion may consider appropriate or advisable; (ii) deposit therein any moneys or securities forming part of the Assets whether or not such deposits will earn interest; (iii) withdraw such deposits at such times and in such manner as the Trustee may determine; (iv) draw, make, endorse, deposit or otherwise deal in cheques, bills of exchange, promissory notes, drafts and other kinds of instruments and securities; and (v) enter into contracts or agreements with any such chartered bank, trust company or other financial institution containing such terms and provisions as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable. In connection therewith, the Trustee shall have no liability or responsibility for any loss which may occur by reason of the failure of any such chartered bank, trust company or other financial institution.

(i) ***Power to Collect, etc.*** The Trustee shall have the power to (i) collect, sue for, receive and give receipts for all sums of money or other property due to the Trust; (ii) consent to extensions of time for payment or to the renewal of any securities or obligations; (iii) engage or intervene in, prosecute, defend, compound, compromise, abandon or adjust by arbitration or otherwise, any demands, claims, actions, suits or proceedings relating to the Trust or the Assets; (iv) exercise any and all remedies available to the Trustee under any agreement or as may otherwise be available, including any power of foreclosure or sale available at law; (v) in connection with any such foreclosure or sale, purchase or otherwise acquire title to any property and to convey good title thereto free of any and all trusts hereby established, or to take or retake possession of any property secured under any agreement or instrument; (vi) extend the time, with or without security, for the payment or delivery of any debts or property; (vii) execute and deliver releases, acquittances, discharges, agreements or other instruments related thereto; and (viii) pay or satisfy any debts or claims upon any evidence that the Trustee, in its sole and absolute discretion, may determine to be sufficient.

(j) ***Power to Obtain Insurance***. The Trustee shall have the power to enter into contracts for or in relation to or otherwise obtain policies of insurance for the purpose of insuring the risks associated with the Trust, including to insure the Trustee (including the members of the Board of Trustees) against any risk of loss associated with assuming and performing the duties as Trustee. Without limiting the foregoing, it is expected that the Board of Trustees will obtain commercial general liability insurance from insurers having a secure A.M. Best rating of B+ or greater, or the equivalent, that in the opinion of the Recipient a prudent person similar to the Recipient would maintain, and having an inclusive limit of not less than $2,000,000 per occurrence and providing for contractual liability coverage.

(k) ***Power to Pay Trustee's Fees.*** The Original Trustee shall be entitled to be paid and receive the fees set forth in the Original Trustee's ~~[~~schedule of fees delivered as of the date hereof~~]~~ as compensation for its services under this Declaration, and to be reimbursed for its out-of-pocket expenses reasonably incurred, in each case from the Assets and without the

approval of any Beneficiary or any court. The Original Trustee shall be entitled, in its sole and absolute discretion, to withdraw funds from time to time for such purpose from any account of the Trust. Members of the Board of Trustees shall be entitled to reimbursement for and in respect of their out-of-pocket expenses reasonably incurred in discharging their respective duties and obligations under this Declaration, in each case without the approval of any Beneficiary or any court, provided that the members of the Board of Trustees have general regard to sorts of limitations as are set forth in the "Travel, Meal and Hospitality Expenses Directive of the Province" specified and amended by the Province from time to time, a copy of the current version of which is attached as Exhibit 1 to the Principles Annex.

(l) ***Power to Pay Taxes.*** The Trustee shall have the power to (i) pay, deduct, withhold or remit any taxes or assessments which are required by law to be paid, deducted, withheld or remitted together with or from any payment made by the Trustee; (ii) pay all taxes or assessments of whatever kind or nature imposed upon or against the Trust or the Trustee in connection with the Assets or any part thereof; (iii) collect and remit all taxes and assessments of whatever kind or nature required to be collected and remitted by the Trust or the Trustee in connection with their activities or the Assets or any part thereof; (iv) appeal, settle or compromise tax claims or liabilities; and (v) for the foregoing purposes, to make such returns, elections and submissions and do all such other acts and things as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable.

(m) ***Power to Appoint Auditors.*** The Trustee shall have the power to select and appoint and discharge and re-appoint, in its sole and absolute discretion, an auditor or auditors of the Trust and to settle and pay the fees of any such auditor or auditors from any account of the Trust.

(n) ***Form of Accounts.*** The Trustee shall have the power to determine and change from time to time, in its sole and absolute discretion, the method or form in which the accounts of the Trust will be kept and shall not be required to keep or provide accounts in the form usually required by law to be kept or provided by trustees; provided that such method or form reasonably complies with generally accepted accounting principles in effect in Canada to the extent applicable.

(o) ***Title to Assets.*** The Trustee shall have the power to cause all or any part of the Assets to be held by or registered, in its sole and absolute discretion, in the name of any Person.

(p) ***Delegation of Discretion***. The Trustee shall have the power to delegate the right and power to exercise, or concur in the exercise of any discretion or power, conferred on the Trustee in this Declaration or conferred by law to any one or more of its directors, officers, employees, agents, representatives or to such other Person, as the Trustee, in its sole and absolute discretion, may think is appropriate or advisable, including to one or more Administrative Services Agents under an Administrative Services Agreement and to one or more Implementation Agents and their respective employees, officers and directors under a related ~~Administrative Services~~Implementation Agreement entered into by the Trust substantially on the basis contemplated in the Permitted Delegations Annex. In particular, the Trustee shall have the power to accept, rely on and follow the recommendations of an Electricity Distributor made under and having regard to the Permitted Delegation Annex with respect to ~~a~~ the identification of, and the determination of distributions (if any) to be made to, any Primary Beneficiary, except if and in so far as the Trustee has actual knowledge that (1) such Primary Beneficiary did not in fact satisfy the "Selection Factors" specified in the Principles Annex as of the applicable time of

determination; and/or (ii) the amount recommended to be distributed to the Primary Beneficiary was not calculated in substantial compliance with, or was calculated in a manner that is manifestly contrary to the requirements set forth or contemplated in, the Permitted Delegation Annex or the applicable ~~Administrative Services~~Implementation Agreement.

(q) ***Additional Powers.*** The Trustee shall have the power to perform and do all such other acts, to take such steps and to execute all such deeds, transfers, assignments, agreements and other documents and instruments as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable for the carrying out of any of its powers hereunder or of any of the activities of the Trust as herein contemplated, or for the carrying out, promotion or advancement of the interests of the Trust, whether or not any of such acts, things, documents or instruments are herein expressly mentioned. Any good faith determination by the Trustee as to what is necessary, desirable or appropriate to carry out its powers or activities of the Trust as contemplated under this Declaration or to carry out, promote or advance the interests of the Trust shall be conclusive. Any construction of this Declaration or any determination as to the activities of the Trust or the existence of any power or authority hereunder made in good faith by the Trustee, relying upon the advice of counsel, shall be conclusive. In construing the provisions of this Declaration, there shall be a presumption in favour of a grant of power to the Trustee.

SECTION 5
CONCERNING THE TRUSTEE

5.1 Duty of Trustee

In performing its duties and exercising its powers under this Declaration, the Trustee shall act honestly, in good faith and with a view to the best interests of the Trust and the Beneficiaries and shall exercise that degree of care, diligence and skill that a reasonably prudent trustee would exercise in comparable circumstances (the "**Standard of Care**"). The Trustee shall observe and act in accordance with the terms of, and shall observe and comply with the limitations and restrictions set forth in, this Declaration, including having due regard to the principles set forth in the Principles Annex. To the extent that the Trustee has so delegated any of its duties or powers, it shall be deemed to have satisfied the Standard of Care in respect of the subject matter of such delegation, subject to the Trustee's overall duty as a trustee to exercise prudent oversight in relation to such delegation. Unless required by law, the Trustee will not be required to give any security, bonds or sureties in any jurisdiction for the performance of any of its duties and obligations under this Declaration. The Trustee (including the individual members of the Board of Trustees) will not be required to devote its entire time to the trust activities.

5.2 Limitation of Liability

The Trustee shall not be personally liable in tort, contract or otherwise to any Beneficiary or any other Person for any loss or diminution in the value of the Assets, or for any action or failure to act on the part of the Trustee or any of its employees or agents or any other Person, and shall not be subject to any personal liability for any debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses incurred by or against the Trust, howsoever arising, and resort will be had solely to the Assets for the payment, performance or satisfaction thereof. No property or assets of the Trustee, owned in its personal capacity or otherwise, will be subject to levy, execution or other enforcement procedure**s** with respect to any obligation under this

Declaration. However, the foregoing limitations in this Section shall not apply where the Trustee has demonstrated gross negligence, bad faith, fraud or wilful misconduct.

5.3 Liability of Trustee under Contracts

Any document or instrument creating a liability or obligation of the Trust or of the Trustee will be conclusively deemed to have been executed by the Trustee only in its capacity as Trustee of the Trust and will be binding upon the Trustee only in its capacity as trustee hereunder and resort may not be had to, nor recourse or satisfaction be sought from, the property of the Trustee other than the Assets, whether owned by its in its personal capacity or in any other capacity other than in its capacity as Trustee of the Trust, or from its employees or agents, and in all cases resort will be had solely to the Assets for the payment, performance or satisfaction of any such liability or obligation. However, the foregoing limitations in this Section shall not apply where the Trustee has demonstrated gross negligence, bad faith, fraud or wilful misconduct. Each document or instrument creating a liability or obligation of the Trust or of the Trustee shall contain a provision providing for the aforesaid limitation of liability.

5.4 Funds of the Trustee

The Trustee shall not be required to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers.

5.5 Indemnification of Trustee

In addition to and without limiting any other protection hereunder or otherwise by law of the Trustee and its respective employees, agents, representatives and assigns (in this Section 5.5, collectively, the "**Representatives**"), the Trustee and its respective Representatives shall be indemnified, defended and saved harmless out of the Assets from, against and in respect of any and all liabilities arising or related to actions taken or omitted to be taken by any agent of the Trustee, losses, claims (including any claim arising out of the assessment of any tax on income by a taxing authority), damages, penalties, fines, actions, suits, demands, levies, assessments, costs, charges, expenses and disbursements (including, without limitation, any and all legal and advisor fees and disbursements) (in this Section 5.5, collectively, the "**Liabilities**") of whatever kind or nature which may at any time be suffered by, imposed upon, incurred by or asserted against the Trustee and its Representatives, whether groundless or otherwise, howsoever arising from or out of any act, omission or error of the Trustee, in each case made in connection with its acting as Trustee hereunder, in each case except and to the extent that the Liabilities are a result from or are caused by gross negligence, wilful misconduct, bad faith or ~~breach of the Confidentiality obligations described in section 5.9.~~fraud. Further, except as provided in section 5.2, the Trustee shall not be liable to any Beneficiary for any loss or damage relating to any matter regarding the Trust, including any loss or diminution in value of the Assets. Notwithstanding any other provision hereof, the obligations provided for in this section 5.5 shall survive any termination of the Trust, whether by reason of removal or resignation of the Trustee, termination or discharge of this Declaration or otherwise.

5.6 Reliance upon Advice

Subject to section 5.1, in performing its duties and exercising its powers hereunder, the Trustee may rely and may act or not act, and shall be fully protected in relying and acting or not acting, upon (a) any statement, telecopy or other electronic means of communication, writing, notice, resolution, report, opinion or other document or conversation believed by ~~its~~it to be genuine and correct and to have been signed, sent or made by the proper Person; (b) any opinion or advice received or information obtained from auditors, solicitors, or other professional advisers, whether retained by the Trustee or otherwise, and shall not be responsible or held liable for any loss or damage resulting from so relying or acting or not acting; and (c) the advice and actions of any Administrative Services Agent~~,~~ or Implementation Agent, including in connection with the delegations and reliances contemplated under the Permitted Delegations Annex. For greater certainty, it shall not be necessary for the Trustee to ascertain whether or not the Persons who have executed, signed or otherwise issued, authenticated or receipted such papers, writings or documents (including any Administrative Services Agreement~~, License~~ or any Implementation Agreement or any other contract entered into by the Trustee) have authority to do so or that they are the same Persons named therein or otherwise to pass upon any requirement of such papers, writing or documents that may be essential for their validity or effectiveness or upon the truth and acceptability.

5.7 Replacement of the Original Trustee

~~As soon as practicable and in any event on or prior to March 31, 2017, the Original Trustee shall appoint the~~The Persons identified ~~by~~in the Trustee Replacement Annex are hereby appointed to comprise the Advisory Committee contemplated therein (~~once constituted,~~ the "**Advisory Committee**"). ~~As soon as practicable thereafter, the~~The Original Trustee shall promptly request that the Advisory Committee make recommendations with respect to the composition of the "Board of Trustees", as contemplated by the Trustee Replacement Annex. The Original Trustee shall have no duty or obligation to investigate the basis for any of the Advisory Committee's recommendations and may rely on such recommendations without any duty of enquiry, supervision or oversight with respect to the activities and decision-making processes adopted by the Advisory Committee in its discretion, in full satisfaction of the Original Trustee's Standard of Care with respect to such matters hereunder. Except ~~if~~where it is manifestly apparent to the Original Trustee ~~determines~~ that the individuals recommended by the Advisory Committee to become members of such Board of Trustees are disqualified from so acting on the basis of manifest non-compliance with the "Selection Factors" set forth in the Trustee Replacement Annex, the Original Trustee shall appoint, as members of the Board of Trustees, the ~~[~~six~~]~~ (five voting and one non-voting) individuals recommended for appointment to the Board of Trustees by the Advisory Committee. If the Original Trustee declines to appoint any individual recommended by the Advisory Committee, the Original Trustee will promptly request that the Advisory Committee provide a further recommendation whom the Original Trustee shall appoint as a member of the Board of Trustees unless it is manifestly apparent to the Original Trustee that the individual so recommended is also disqualified from so acting on the basis of manifest non-compliance with the "Selection Factors" set forth in the Trustee Replacement Annex,. Upon the appointment of such ~~[~~six~~]~~ individuals pursuant to this provision and their agreement to act as members of the Board of Trustees, the Original Trustee shall be deemed to have resigned and shall cease to be a trustee (such resignation occurring on the "**Original Trustee Replacement Date**").

5.8 Rules and Procedures of the Board of Trustees

(a) ***Initial Requirements***. As soon as practicable and in any event no later than one month following the Original Trustee Replacement Date, the Board of Trustees ~~shall~~id expected to meet to take such decisions and actions as they deem necessary to ensure the proper management and administration of the Trust. The date (and location if in person) of the initial meeting shall be determined by a majority of the Board of Trustees.

(b) ***Meetings.*** Subject to the Board of Trustees' discretion to make such rules and procedures that they may deem desirable, meetings of the Board of Trustees may be held at such time and place as the trustee members of the Board of Trustees may agree upon or as they may fix by resolution for the purpose or if the meeting is called as hereinafter mentioned then at such time as may be designated in the notice calling the meeting. A meeting of the Board of Trustees may be called at any time by any two members of the Board of Trustees by two Business Days' notice given to the members of the Board of Trustees. No notice of any Board of Trustees' meeting shall be necessary when a quorum is present if those comprising the quorum consent to the transaction of the affairs of the Trust and the absent trustee or trustees, if any, either before or after the meeting shall waive in writing notice of the meeting. Meetings of the Board of Trustees may be conducted in person, by telephone, or in such other manner as determined by the Board of Trustees. The Board of Trustees may elect a Chairperson.

(c) ***Quorum.*** At any meeting of the Board of Trustees, a majority of the voting members of the Board of Trustees shall be a quorum irrespective of the number of members in office. The decision of the majority of the voting members where quorum exists shall govern and shall be binding for all purposes and shall be acted upon and carried out in the same manner and with the same effect as if all the voted members concurred therein; provided always that in the case of equality of votes the Chairperson, if any, shall not be entitled to cast a second or deciding vote.

(d) ***Power to Adopt Rules and Procedures.*** The Board of Trustees may make such rules and procedures not inconsistent herewith as it may deem desirable for the proper management and administration of the Trust and the discharge of the responsibilities of the Board of Trustees.

(e) ***Replacement of Members of the Board of Trustees***. The Board of Trustees shall have the power to replace any vacancy arising following the Original Trustee Replacement Date according to such rules and procedures as they deem appropriate subject to compliance with the Selection Factors specified in Trustee Replacement Annex and having regard for such considerations necessary to ensure that the composition of the Board of Trustees will be able to discharge its responsibilities in respect of the Declaration. If necessary, the Board of Trustees may fill any vacancy by application to the Courts of Ontario in the event of an unfilled vacancy.

(f) ***Decisions of the Board of Trustees.*** Decisions and actions of the Board of Trustees shall be made by voting, with each individual voting member having one vote. Subject to quorum requirements, a majority vote shall be determinative in respect of such decisions and actions. Subject to quorum requirements, any decision or action taken by the majority of voting members ~~s~~ will represent the decision or action of the Trustee, and not any member of the Board of Trustees.

(g) ***Conflicts of Interest.*** With respect to any matter before the Board of Trustees, to the extent of a conflict of interest, whether actual, perceived or potential, involving a member of the Board of Trustees' personal interests and a matter concerning the Trust, such member shall abstain from voting on the matter or taking any other discretionary action on the matter. For the purposes of the foregoing, no member of the Board of Trustees shall be deemed to have a conflict by reason only that the member holds any office or position with an Electricity Distributor, social services agency or governmental or quasi-governmental agency or entity (such as the Independent Electricity System Operator); provided, however, that in relation to any decision of the Board of Trustees pertaining specifically to a particular Electricity Distributor, any member of the Board of Trustees who is a director, officer or employee of the Electricity Distributor would be expected to recuse himself or herself from participating in deliberations, discussions or voting in respect of such decision.

(h) ***Expense Reimbursements to Members of the Board of Trustees.*** Members of the Board of Trustees shall be entitled to reimbursement for and in respect of their out-of-pocket expenses reasonably incurred in discharging their duties and obligations as members of the Board of Trustees. Members of the Board of Trustees shall serve without compensation.

5.9 Confidentiality

Notwithstanding the resignation or removal and discharge from the trusts and powers reposed in and conferred on the Trustee by this Declaration, or the termination of this Declaration, the Trustee so resigning or removed shall continue to treat as confidential all information relating to the Trust, the Assets and the Beneficiaries and shall only be entitled to make disclosures concerning such information if disclosure is required in the performance of the functions of the resigning or removed Trustee or is ordered by a court of competent jurisdiction or is otherwise required by law. The Trustee shall not be responsible or liable to any Person for any loss or damage arising out of or in any way sustained or incurred in any way relating to any such required disclosure. The obligations arising under this section 5.9 shall survive the termination of the Trust.

5.10 Vesting in Successor Trustee

Any successor trustee (including any reconstituted Board of Trustees) shall automatically become vested with the Assets and with the same powers, rights, duties, responsibilities and trusts as if it, he or she had originally been named as Trustee under this Declaration, without the requirement of any further instrument or act or conveyance, and the Trustee ceasing to act shall execute all such transfers and other documents and do all such other acts or things as may be necessary or desirable to assign, transfer, deliver to, and vest in, the successor trustee, upon the trusts expressed in this Declaration, all the Assets and all the rights, powers and trusts of the Trustee ceasing to act. The expense of any act, document, deed or other instrument or thing required under this Section 5.10, including for greater certainty, outstanding fees and unreimbursed expenses of the Trustee (including any member of the Board of Trustees) ceasing to act, shall be satisfied from the Assets.

5.11 Execution of Instruments

The Trustee shall have the power to execute all deeds, transfers, agreements, promissory notes and other instruments on behalf of the Trust. Such power may be exercised by any one or more Administrative Services Agents acting in accordance with any delegated right to do so pursuant to an applicable Administrative Services Agreement or by any one or more Implementation Agents acting in accordance with any delegated right to do so pursuant to an applicable Implementation Agreement, and any such execution of instrument by an Administrative Services Agent, acting in such capacity as agent of the Trust pursuant to the terms and conditions of ~~such~~an Administrative Services Agreement ~~shall~~or by an Implementation Agent acting in such capacity as agent of the Trust pursuant to the terms and conditions of an Implementation Agreement shall in each case be deemed to be a proper execution of such instrument by the Trustee and shall be binding for all purposes on the Trust.

5.12 Decisions by the Trustee

If there is more than one Trustee, decisions of the Trust may be made by a majority of Trustees eligible to vote on the applicable matter. Whenever the Trustees are unable to agree in relation to the commission or omission of any act or howsoever in the execution of the Trust, the decision of a majority of such Trustees shall prevail.

SECTION 6
AMENDMENTS AND SUPPLEMENTS

6.1 Amendments

Subject to the requirements of the Transfer Payment Agreement, the Trustee shall have the power in its sole and absolute discretion from time to time without the approval of any Beneficiary or any court to amend, vary, supplement, replace or restate this Declaration in its entirety or any portion thereof; ~~[~~provided, however~~,~~ that ~~no~~it is expected that any amendment shall ~~conflict~~be consistent with the principles set forth in the Principles Annex ~~or as to~~ and with the scope ~~or~~and effect of the permitted delegations and activities of any ~~Administrative Services~~Implementation Agent pursuant to the Permitted Delegations Annex.~~]~~ Without in any way limiting the foregoing, any such amendments, variations, supplements, replacements or restatements may:

(a) add provisions for the replacement of or appointment of additional trustees to act with the Original Trustee prior to the Original Trustee Replacement Date;

(b) in the case of the Original Trustee, add provisions to those contemplated in the Trustee Replacement Annex in respect of the appointment of the members and the formation and empowerment of the Board of Trustees;

(c) in the case of the Original Trustee, vary the terms and requirements applicable to the duties, responsibilities, obligations, liabilities, indemnities, protections, limitations, restrictions, compensation, expense reimbursements and such other matters, in each case as the Advisory Committee may indicate are necessary to be made in order to attract and receive confirmation of appointment of appropriately qualified individuals that the Advisory Committee specifies are to be appointed as members of the Board of Trustees in accordance with its recommendations;

(d) add additional or replace existing Trustees;

(e) add to or reasonably clarify the principles set forth in the Principles Annex;

(f) add to or reasonably clarify the delegations and activities contemplated to be made in the Permitted Delegation Annex;

(g) include provisions for the management of the Trust by the Trustees, including the making of rules, requirements and procedures governing the decision-making of the Board of Trustees;

(h) add provisions for the replacement of members of the Board of Trustees (in addition to those provisions contemplated in section 5.7 and the Trustee Replacement Annex);

(i) provide for the engagement of any Person or Persons as managers, administrators or other service providers to the Trust, including any additional or replacement Administrative Services Agent or Implementation Agent or representative thereof;

(j) specify supplemental procedures for the identification of Primary Beneficiaries and the exchange of information with Electricity Distributors in connection with identifying such Primary Beneficiaries; or

(k) specify procedures for the transfer and transmission of funds from the Trust or any ~~Administrative Services~~Implementation Agent acting on its behalf and with delegated responsibility over funds constituting Assets, to or for the benefit of, Beneficiaries or their designated representatives, payees or assignees.

6.2 Supplemental Declarations

The Trustee is authorized to execute any supplemental declaration of trust (including one or more amendments and restatements from time to time of this Declaration) to give effect to amendments to this Declaration made pursuant to section ~~5.1.~~6.1.

SECTION 7
TERMINATION

7.1 Duration

Subject to sections 7.2 and 7.3, the Trust will continue in full force and effect so long as there are any Assets and until all of the debts, liabilities and obligations of the Trust have been paid and satisfied in full.

7.2 Termination and Distribution of Assets

The Trustee shall terminate the Trust and wind up its affairs as soon as practicable after the Final Distribution Date. In connection with the termination of the Trust, the Trustee shall identify the Residual Beneficiaries and distribute or cause to be distributed the remaining Assets, in cash or in kind or partly in each, to the Residual Beneficiaries, in each case in accordance with section 3.3. Despite the foregoing, the Trust will only be terminated and wound up after the Trustee, in its sole and absolute discretion, determines that all debts, liabilities and obligations of the Trust

have been paid or otherwise adequately provided for and satisfied and upon receipt of such releases, indemnities and discharges as the Trustee, relying on the opinion of counsel, deems necessary for the protection of the Beneficiaries and for its own protection.

7.3 Distribution of Assets on Final Distribution Date

If the Trust holds Assets on the Final Distribution Date, the Trustee shall pay or provide reserves for the payment, and otherwise shall satisfy, all debts, liabilities and obligations of the Trust and shall provide or arrange to provide such investigations, audits, releases, indemnities and discharges as the Trustee, relying on the opinion of counsel, deems necessary for the protection of the Beneficiaries and for its own protection. Thereafter, any remaining Assets shall be paid to the Residual Beneficiaries in accordance with section 3.3.

SECTION 8
ACCEPTANCE OF TRUSTS

8.1 Acceptance of Trusts

The Trustee hereby accepts the trusts and duties contained in this Declaration and agrees to perform the same upon the terms and conditions hereof until discharged therefrom.

[Signature Page Follows]

The Trustee has executed this Declaration as of the date first written above.

COMPUTERSHARE TRUST COMPANY OF CANADA, ~~as Trustee~~

By:
Name:
Title:

By:
Name:
Title:

PRINCIPLES ANNEX

The Trustee shall have regard to~~[~~, but shall not be specifically bound by,~~]~~ the following principles in applying its discretion in relation to the administration of the Trust:

1. Identification of Primary Beneficiary Payees

1.1 ~~[~~Except in exceptional circumstances,~~]~~ a Primary Beneficiary would not be expected to receive a benefit from the Trust unless at the time of consideration it satisfies, in addition to the requirements contemplated in the definition of "Primary Beneficiary", each of the following criteria (the "**Selection Factors**"):

(i) it has a participant agreement ~~[~~with an applicable Electricity Distributor~~]~~ to undertake measures (its "**Energy Plan**") to improve the electricity efficiency and/or promote the conservation of electricity at its Ontario residence;

(ii) its Energy Plan involves one or more Eligible Measures, as may be designated by the Trustee from time to time from;

(iii) it confirms that:

1. the primary purpose of its Energy Plan is the conservation and efficient use by the Primary Beneficiary of electricity, and is not for the purposes of the Primary Beneficiary making a profit;

2. it would otherwise not have the financial resources to undertake the Eligible Measures included in its Energy Plan; and

3. it would otherwise not be ~~[a HAP Eligible Person]~~[eligible to receive amounts in respect of the Eligible Measures ~~under~~as a HAP~~]~~ Eligible Person;

(iv) it has demonstrated a need for financial assistance on the basis that its periodic electricity bills represent a financial burden, relative to its available financial resources; and

(v) such other criteria as the Trustee may determine, including based on the recommendations of Electricity Distributors or other knowledgeable Persons made on the basis and having regard to the delegations contemplated by the Permitted Delegations Annex or any applicable ~~Administrative Services~~Implementation Agreement.

1.2 It is recognized that, in furthering the Purpose, an efficient basis upon which to allocate funds to the Primary Beneficiaries across different areas and regions within Ontario may be based on the areas and regions serviced by the Electricity Distributors operating within Ontario.

1.3 It would not be contrary to the Purposes if funds are made available by the Trustee to the Primary Beneficiaries unequally across different areas and regions within Ontario, and it

is ~~expect~~expected that in making such an unequal division it would be appropriate to have regard to:

(i) broad economic parameters of economic activity and the specific financial resources of the residents of the areas and regions, in each case as an indication of the relative need of such residents across the areas and regions;

(ii) electricity use and efficiency levels of residential electricity customers across the areas and regions;

(iii) specific regional indicators of economic weakness and need; and

(iv) such other factors as the Trustee may determine are relevant, including based on the submissions, advice and recommendations of Electricity Distributors or other knowledgeable Persons made on the basis and having regard to the delegations contemplated by the Permitted Delegations Annex or any applicable ~~Administrative Services~~implementation Agreement.

1.4 It is recognized that, in furthering the Purpose, the designated Electricity Distributor for an area or region in which a Primary Beneficiary resides would be expected to:

(i) be a reliable source for the purpose of assessing and confirming whether the Primary Beneficiary satisfies the Selection Factors;

(ii) be an efficient intermediary for the purpose of communicating with the Primary Beneficiary, including with respect to matters such as regarding the availability, terms, conditions and intended purposes of Program;

(iii) be able to facilitate an efficient payment of distribution determined to be made to or on behalf of the Primary Beneficiary, having regard to the Electricity Distributor's established practices, procedures and systems for dealing with its customers; and

(iv) have established contractual arrangements with the Primary Beneficiary that may apply to the protection and confidentiality of information provided by or respecting the Primary Beneficiary, which information may be useful in the consideration by the Electricity Distributor in its assessment of whether the Primary Beneficiary satisfies the Selection Factors, which information may not otherwise be available or readily accessible or verifiable by the Trustee.

1.5 It is recognized that, in furthering the Purpose, the Electricity Distributor for an area or region in which a Primary Beneficiary resides will have market and utilization information that may be useful in assessing the relative needs of Primary Beneficiaries within its area or region. Such information is expected to be relevant in assessing the extent to which one such Primary Beneficiary's financial needs and the merits of its Energy Plan are greater or more compelling than those of another such Primary Beneficiary, which comparison may be relevant to the extent that the funds allocable to the Primary Beneficiaries resident in the area or region are otherwise insufficient to meet the requests for funding by all such Primary Beneficiaries.

1.6 Accordingly, it is recognized that, in furthering the Purpose, it is consistent with the Purpose that the recommendations of Electricity Distributors be utilized and relied upon by the Trustee to guide the process of identifying particular Primary Beneficiaries in making distributions to the Primary Beneficiaries.

1.7 If an Electricity Distributor for a particular area or region is unable or unwilling to assess or confirm the application of the Selection Factors to Primary Beneficiaries residing in the area or region or to make recommendations in relation to such matters, one or more of the following may provide a suitable alternative source of information and for information gathering, assessment and confirmation purposes in relation to such area or region:

(i) other Electricity Distributors operating in adjacent or other areas or regions in Ontario;

(ii) the Ontario Energy Board;

(iii) the Independent Electricity System Operator; and

(iv) anyone else having relevant expertise and access to information regarding the electricity market of the Province, in each case as may be considered relevant by the Trustee.

1.8 To the extent that privacy law or other legal requirements limit an Electricity Distributor from providing or making available specific information respecting the application of the Selection Factors to a particular Primary Beneficiary or group of Primary Beneficiaries, it is recognized that, in furthering the Purpose, it may be appropriate to redact or make generic affected information regarding such Primary Beneficiary in connection with the identification and confirmation of a Primary Beneficiary's eligibility and participation in the Program. If such limitations or restrictions would limit an Electricity Distributor from providing or confirming the name of a particular Primary Beneficiary to the Trustee, then it should be sufficient that such information may be obtained or disseminated on a confidential basis if and when required by the Trustee for the proper administration of the Trust and on that basis such impediments should not disqualify a Primary Beneficiary from participating in the benefits of the Program, provided ~~that~~ that the confidential record-keeping of the Electricity Distributor would be available in connection with the application of any applicable legal process predicated on the identification of such Primary Beneficiary for the purposes of substantiating its rights as a Primary Beneficiary of the Trust or as to the validity or subsistence of the Trust.

2. Eligible Measures

2.1 It is expected that the Trust will identify eligible measures that, taking into consideration the principles set forth in the Principles Annex, have regard to the following (the "**Measures Factors**"):

(i) is the measure generally expected to result in reduced electricity consumption by a Primary Beneficiary if properly installed and used;

(ii) is the measure recognized under another Provincial program as being appropriate for achieving electricity conservation among a population analogous to the Primary Beneficiaries;

(iii) does the measure present any unacceptable health or safety considerations, either with respect to the Primary Beneficiary, a party providing or installing the measure, or the physical environment;

(iv) is the measure broadly available to residents across different areas and regions of the Province; or

(v) is the measure a requirement or precursor to another measure, the other measure being one which meets any of the other Measures Factors.

2.2 In identifying and applying the Measures Factors, Electricity Distributors would be expected to have expertise in assessing the suitability of efficiency and conservation measures in their respective areas and regions, which may differ across areas and regions across the Province based on factors (among other things) such as the climate, geography, density, electricity infrastructure, residential structures, and electricity use rates applicable within such areas or regions.

2.3 The measures specified in Schedule A to this Principles Annex may initially be considered to be consistent with the Measures Factors (subject to change as contemplated under the Permitted Delegations Annex).

3. Promotion of the Program

3.1 It is expected that the Trustee will undertake or engage others to undertake diligent efforts to promote the availability, terms and benefits of the Program to Primary and Residual Beneficiaries, including by establishing consistent communications through the ~~Electiricy~~Electricity Distributors.

3.2 It is expected that the Trustee will acknowledge the financial support of the Province in connection with the establishment and the funding for the Program, including in any external communications to or marketing directed at the Electricity Distributors and the Primary ~~Beneficiaries.~~ and Residual Beneficiaries. In its delegation of any duties or powers to the Electricity Distributors through Implementation Agreements it is expected that Electricity Distributors will acknowledge the financial support of the Province in connection with the program including in any communications or marketing to Primary Beneficiaries.

4. Conduct of the Trust and the Program

4.1 It is expected that administrative expenses of the Board of Trustees and its members, including any expenses relating to the Trust, to the establishment of the Trust and any expenses related to the implementation and operation of the Program, including by or through Electricity Distributors and other relevant entities, will be recognized and subject to reimbursement on a basis that is substantially consistent with the accountability provisions contemplated in the Transfer Payment Agreement and the principles in the

Province's Travel, Meal and Hospitality Expenses Directive, the current form of which attached as Schedule B to this Principles Annex.

4.2 The Trustee is expected to conduct its activities in a manner that complies in all material respects with the Transfer Payment Agreement, including to:

(i) act prudently and in furtherance of the Purpose;

(ii) report not less frequently than annually the results of its activities for information purposes to the Province in connection with the Program;

(iii) comply with the Province's request for any independent verification or audit if determined to be necessary or appropriate by the Province;

(iv) return ~~of~~ Assets that have not been distributed if it is determined that the Trustee has breached its Standard of Care in discharging its material duties under the Declaration, and has not cured such material breach despite having been given a reasonable opportunity by the Province to do so in light of the circumstances of such material breach, with the result that all or a significant part of the Assets have not been or are not being applied and distributed in furtherance of the Purpose or are being applied and distributed in a manner that is directly contrary or without regard to the Purpose.~~]~~

4.3 Electricity Distributors are not intended to directly profit from distributions of funds made from the Trust, although it is recognized that the objectives of electricity efficiency and conservation of Primary Beneficiaries located in the service area or region of an Electricity Distributor, and the cost savings and improved credit worthiness of such Primary Beneficiaries, may be financially beneficial to the Electricity Distributor.

4.4 Distributions from the Trust are intended to allow receiving Primary Beneficiaries to undertake Eligible Measures at no or minimal personal cost.

4.5 Without in any way limiting the discretion of the Board of Trustees to extend the period during which the benefits of the Program may be available to the Primary Beneficiaries, up to and including the Final Distribution Date, it is expected that the Trust Assets would be distributed to Primary Beneficiaries during the period from the Original Trustee Replacement Date to April 30, 2019.

SCHEDULE A TO THE PRINCIPLES ANNEX
INDICATIVE ELIGIBLE MEASURES[1]

Initial Specified Measures
Block Heater Timer (just timer) – rated for outdoor use, have at least a 15 amp/1800 watt capacity, be cold weather resistant, bear a C-UL or CSA certification mark
Power bar with integrated timer, and switched power outlets, four each for a total of 8 outlets, have a total capacity of 15 amps. The switched outlets must remain "live", independent of timer settings, so long as the power bar itself remains switched on. The power bar must bear either a C-UL or CSA certification mark.
Efficient Showerheads (standard) - rated at no more than 4.8 Lpm (1.25 U.S. gpm) and be of the laminar flow type (non-aerating).
Efficient Showerhead (handheld) - rated at no more than 4.8 Lpm (1.25 U.S. gpm) and be of the laminar flow type (non-aerating).
Efficient Aerators (kitchen) - rated no more than 5.7 Lpm (1.5 U.S. gpm), dual threaded to allow installation in both thread type faucets, swivel type with pause lever.
Efficient Aerators (bathroom) - rated no more than 3.8 Lpm (1.0 U.S. gpm), be dual threaded to allow installation in both thread type faucets.
Hot Water Tank Pipe Insulation - 1/2" inside diameter – foam, meets ASTM –C547-00, minimum 3/4" thick
Hot Water Tank Pipe Insulation - 3/4 " inside diameter - – foam, meets ASTM –C547-00, minimum 3/4" thick
Hot Water Tank Insulation - fibreglass R10 (fits up to a 60 gal tank) – not bubble wrap
≤11W ENERGY STAR® Qualified LED A Shape (60W) (minimum 600 Lumen output) (Formerly: 7W – 11W ENERGY STAR® Qualified LED A Shape (60W))

[1] These measures are indicative. Eligible measures added to HAP during the administration of the Trust may also be appropriately considered relevant by the Trustee.

Initial Specified Measures
≤14W ENERGY STAR® Qualified LED A Shape (75W) (minimum 800 Lumen output) (Formerly: 10W – 14W ENERGY STAR® Qualified LED A Shape (75W))
≤23W ENERGY STAR® Qualified LED A Shape (100W) (minimum 1600 Lumen output) (Formerly:17W – 23W ENERGY STAR® Qualified LED A Shape (100W))
≤16W ENERGY STAR® Qualified LED PAR 20 (minimum 600 Lumen output) (Formerly: 8W – 12W ENERGY STAR® Qualified LED PAR 20)
≤16W ENERGY STAR® Qualified LED PAR30 & PAR38 (minimum 600 Lumen output) (Formerly: 8W – 12W ENERGY STAR® Qualified LED PAR 30)
≤23W ENERGY STAR® Qualified LED PAR (minimum 1100 Lumen output) (Formerly: 14W – 18W ENERGY STAR® Qualified LED PAR 38)
≤6W ENERGY STAR® Qualified LED MR 16 / PAR 16 (minimum 250 Lumen output) (Formerly: 7W – 10W ENERGY STAR®
Qualified LED MR 16 / PAR 16 - GU 10 Base)
≤11W ENERGY STAR® Qualified LED MR 16 (minimum 400 Lumen output) (Formerly: 7W – 12W ENERGY STAR® Qualified LED MR 16 GU 5.3 Base)
ENERGY STAR® LED Wet Location Rated PAR lamp ≤ 23 Watt (minimum 1100 Lumen output)
Recessed Downlight Fixture including LED with Light Output >600 and <800 lumens (Retrofit Measure List)
Recessed Downlight Fixture including LED with Light Output >800 lumens (Retrofit Measure List)
Indoor Drying Rack

Extended Measures
Replace refrigerator with ENERGY STAR qualified refrigerator - 15.5 - 16.9 cubic foot top freezer, automatic defrost, refrigerator/ freezer, no through the door ice service
Replace refrigerator with ENERGY STAR qualified refrigerator - 17.0 - 18.4 cubic foot top freezer, automatic defrost, refrigerator/ freezer, no through the door ice service
Replace refrigerator with a refrigerator that has a consumption level of less than 425 kwh, 10 – 12.5 cubic foot top freezer, automatic defrost, refrigerator freezer, no through the door ice service
Replace freezer with ENERGY STAR qualified freezer - 12-14.4 cubic foot freezer
Replace freezer with ENERGY STAR qualified freezer - 14.5 - 16.0 cubic foot freezer
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 6,000 – 7,999 BTU/hr with C-UL or CSA certification mark
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 8,000 – 9,999 BTU/hr with C-UL or CSA certification mark
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 10,000 – 12,000 BTU/hr with C-UL or CSA certification mark
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 14.2 - 21.2 l/day (30-44.9 pints/day) dehumidifier
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 21.3 - 25.4 l/day (45-53.9 pints/day) dehumidifier

Extended Measures
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 25.5 - 35.5 l/day (54-75 pints/day) dehumidifier
Programmable Thermostat – line voltage – meets CAN/CSA-C828-06 standard, minimum performance: Droop: 1.5°C, Differential: 0.5°C, Precision 0% within 0.5°C of the original set point of 22°C
Programmable Thermostat – low voltage - meets CAN/CSA-C828-06 standard, minimum performance: Droop: 1.5°C, Differential: 0.5°C, Precision 0% within 0.5°C of the original set point of 22°C

Weatherization Measures
Comprehensive Draftproofing (caulking, foam and weather stripping, and application of same) – lifespan of 20 years plus If one or two component polyurethane foams are used, the products and installations must conform to: • CAN/ULC-S710.1 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 1: Material Specification. • CAN/ULC-S710.2 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 2: Application. • CAN/ULC-S711.1 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification • CAN/ULC-S711.2 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification, and Part 2: Application. **Attic Insulation (including installation):**
cellulose: CAN/ULC-S703-01 Amendment 1 - Cellulose Fibre Insulation (CFI) for Buildings OR 2) Mineral Fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre

Weatherization Measures
for Buildings **Wall Insulation (including installation):**
cellulose: CAN/ULC-S703-01 Amendment 1 - Cellulose Fibre Insulation (CFI) for Buildings OR 2) Mineral Fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre **Basement Insulation (including installation):**
mineral fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre for Buildings Vapour Barrier: 69009-CAN/CGSB-51.34-m86 If one or two component polyurethane foams are used, the products and installations must conform to: • CAN/ULC-S710.1 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 1: Material Specification. • CAN/ULC-S710.2 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 2: Application. • CAN/ULC-S711.1 Standard for Thermal Insulation – Bead Applied Two-Component
Polyurethane Air Sealant Foam, Part 1: Material Specification • CAN/ULC-S711.2 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification, and Part 2: Application.

Heat Pumps (Selection of manufacturers and technologies to meet the US federal minimum efficiency standard for ASHPs, as of 2015, is 13.0 SEER and 7.7 HSPF. Energy Star–certified models offer roughly 9 percent more efficiency than most new uncertified ASHPs and 20 percent more
Ductless Multiport Heat Pump
Cold Climate Ductless Heat Pump

Cold Climate Multiport Ductless Heat Pump
Cold Climate Ducted Heat Pump

SCHEDULE B TO THE PRINCIPLES ANNEX
PERMITTED EXPENSE REIMBURSEMENTS

[NTD: Insert the Province's Travel, Meal and Hospitality Expenses Directive.]

PERMITTED DELEGATION ANNEX

1. Under section 4.2(g) of the Declaration, the Trustee has the power to: (a) appoint, employ or retain ~~Administrative Services~~Implementation Agents for the purpose of discharging its duties and obligations under the Declaration; and (b) enter into, perform, enforce and amend ~~Administrative Services~~Implementation Agreements.

2. In accordance with section 4.2(g) of the Declaration, consistent with the principles set forth in the Principles Annex, the Trustee or its agent will seek to enter into one or more ~~Administrative Services~~Implementation Agreements with individual Electricity Distributors under which the Electricity Distributors will act as ~~Administrative Service~~Implementation Agents to the Trustee. In this manner, the Trustee will delegate certain of its powers and duties to the Electricity Distributors.

3. Under section 5.1 of the Declaration, to the extent the Trustee has delegated any of its duties or powers, it shall be deemed to have satisfied the Standard of Care in respect of the subject matter of such delegation, subject to the Trustee's overall duty to exercise prudent oversight thereof. The Trustee is entitled to rely on an Electricity Distributor to discharge the duties delegated to it, as ~~Administrative Services~~Implementation Agent, pursuant to an ~~Administrative Services~~Implementation Agreement as described in this Annex.

4. Accordingly, and without limiting the Trustee's right to delegate under the Declaration and its other rights, powers and discretion as Trustee, the Trustee will be permitted to, and is expected to seek to, enter into ~~Administrative Services~~Implementation Agreements with Electricity Distributors in order to further the Purpose. Without limiting the Trustee's discretion to negotiate and settle the terms and conditions of such ~~Administrative Services~~Implementation Agreements, it is expected that such ~~Administrative Services~~Implementation Agreements will include customary terms and conditions for an administrative services arrangement of this type and, in addition, would (subject to the acceptance and agreement of the applicable Electricity Distributor counterparty) address the following points in particular:

    a. **Identification of Applicable Primary Beneficiary Payees and Determination of Individual Distribution Amounts**

        i. Each Electricity Distributor would make an initial assessment of the financial needs of Primary Beneficiaries within its designated service area or region, having regard to the Selection Factors set forth in section 1.3 of the Principles Annex, together with applicable economic data, in order to prepare and provide to the Trustee an estimate of the number of Primary Beneficiaries who the Electricity Distributor reasonably expects would satisfy the Selection Factors.

        ii. Each Electricity Distributor would make an initial assessment of the measures it would recommend be included as Eligible Measures, having regard to the Measures Factors set forth in section 2.1 of the Principles Annex, in order to prepare and provide to the Trustee an estimate of the average cost per Primary Beneficiary Payee (as defined below) of such Eligible Measures that the

Electricity Distributor reasonably expects would apply in respect of Primary Beneficiaries resident in its service area or region.

iii. Based on the product of (i) and (ii), above, and such other considerations as it considers to be directly relevant, each Electricity Distributor would make a written recommendation to the Trustee regarding the aggregate funding amount that the Electricity Distributor anticipates would be utilized under the Program by the Primary Beneficiaries resident in its service area or region (the "**Local Funding Estimate**"). Such recommendation would be accompanied, when submitted to the Trustee, by a detailed explanation regarding the assumptions, financial parameters, suitability considerations and other information underlying the Local Funding Estimate (including the type of information contemplated by the Selections Factors and the Measures Factors, which would be relied upon by the Trustee in its assessment regarding the allocation of available funding to or for the benefit of the Primary Beneficiaries across the specified areas and regions of Ontario.

iv. The Trustee would inform the Electricity Distributor regarding the aggregate of the amount determined by the Trustee to be made available under the Program for Primary Beneficiaries in the Electricity Distributor's designated service area or region (for each Electricity Distributor, its "**Maximum Electricity Distributor Allocation**") and as to any maximum amount that may be paid to or for the benefit of any single Primary Beneficiary ~~[or group of related Primary Beneficiaries]~~ located in the servicer area or region of the Electricity Distributor (the "**Maximum Primary Beneficiary Amount**"). The Maximum Electricity Distributor Allocation and Maximum Primary Beneficiary Amount may vary between areas and regions, among the Primary Beneficiaries within such areas and regions, and may be increased by the Trustee from time to time in its discretion.

v. Each Electricity Distributor would apply the principles set forth under "Identification of Primary Beneficiary Payees" in the Principles Annex to identify and make recommendations to the Trustee regarding the amount of funds (if any) to be distributed to or for the benefit of Primary Beneficiaries resident within its service area or region from time to time (the "**Primary Beneficiary Payees**").

vi. Each Electricity Distributor would ensure that the aggregate of the amounts it recommends be distributed to or for the benefit of Primary Beneficiary Payees from time to time does not exceed (1) its Maximum Electricity Distributor Allocation and (2) for any single Primary Beneficiary ~~[or group of related Primary Beneficiaries]~~ located in the service area or region of the Electricity Distributor, the lesser of (x) the applicable Maximum Primary Beneficiary Amount and (y) the estimated costs (including any applicable taxes, but excluding any amount payable to the Electricity Distributor by or on behalf of the Primary Beneficiary) to be incurred by or on behalf of such Primary Beneficiary (whether or not such costs have been paid or remain outstanding)

in respect of Eligible Measures applied or to be applied in respect of the Primary Beneficiary's Ontario residence.

vii. The Trustee would provide written confirmation to each Electricity Distributor:

1. Either (x) that the recommendations specified of the Electricity Distributor in clause (v), above, have been accepted, or (y) as to the specific reasons for any non-acceptance; and

2. The amount of the distributions to be paid to or for the benefit of each Primary Beneficiary Payee that is resident in the Electricity Distributor's service area or region.

viii. With respect to each Primary Beneficiary resident in a Electricity Distributor's service area or region that is confirmed as a Primary Beneficiary Payee, the Electricity Distributor would provide the Trustee written confirmation as to:

1. The identity of such Primary Beneficiary Payee; and

2. The amount of the distribution paid to or for the benefit of such Primary Beneficiary Payee.

ix. If the amount of a distribution to be made to a Primary Beneficiary Payee is based on the estimated costs to be incurred by or on behalf of such Primary Beneficiary and, prior to making the distribution to the Primary Beneficiary Payee, the Electricity Distributor determines that the actual costs (including any applicable taxes but excluding any amount payable to the Electricity Distributor by or on behalf of the Primary Beneficiary) incurred or to be incurred by or on behalf of such Primary Beneficiary in respect of Eligible Measures applied or to be applied in respect of the Primary Beneficiary's Ontario residence has or would be less than such estimated costs, then the amount to be distributed to the Primary Beneficiary shall be based on such actual costs.

b. **Making of Distributions to Primary Beneficiaries**

i. It is expected that promptly after the Trustee confirms the identity of a Primary Beneficiary Payee resident in an Electricity Distributor's service area or region and the amount of the distribution to be paid to or for the benefit of such Primary Beneficiary Payee, the Trustee would arrange for payment to or on the direction of the Electricity Distributor of an amount equal to the amount of such distribution.

ii. It is expected that promptly upon receipt of funds in respect of a distribution to be made to a Primary Beneficiary Payee, the Electricity Distributor would arrange for payment of the full amount of such distribution to or for the benefit of the Primary Beneficiary Payee (including by direct payment to a

third party of, or as a reimbursement or rebate of, the costs of applicable Eligible Measures installed at the residence of and for the benefit of the Primary Beneficiary Payee), without reduction or set-off by the Electricity Distributor.

iii. If the amount paid to an Electricity Distributor in respect of a distribution to be made to a Primary Beneficiary exceeds the actual amount of the distribution made to or on behalf of the Primary Beneficiary, it is expected that the Trustee would require Electricity Distributor to return such excess to the Trustee, whereupon the proceeds of such returned amount shall continue to form part of the Assets.

c. **Establishment of Operational, Administrative, Record-Keeping and Other Systems and Policies by Electricity Distributors to facilitate the Program**

i. It is expected that the Electricity Distributor would establish such operational, administrative, record-keeping and other systems and policies as are necessary to facilitate the Program and perform its duties under the ~~Administrative Services~~Implementation Agreement, including systems or policies to: identify Primary Beneficiary Payees; comply with applicable privacy and regulatory laws; communicate with Primary Beneficiaries on behalf of the Trust; assess Eligible Measures; determine the Local Funding Estimate; monitor its recommendations to the Trustee against its Maximum Electricity Distributor Allocation and the Maximum Primary Beneficiary Amount; receive funds from the Trust in respect of distributions to the Primary Beneficiary Payees and transfer such funds to the appropriate recipients for the benefit of the Primary Beneficiary Payees; preparation and timely delivery to Primary Beneficiary Payees of such documents as are required by the *Income Tax Act* (Canada); and create and maintain records in respect of the foregoing.

ii. The Electricity Distributor would set up a separate bank account for the purpose of receiving funds from the Trust in respect of distributions to the Primary Beneficiary Payees and the transfer of such funds to the appropriate recipients for the benefit of the Primary Beneficiary Payees.

d. **Reporting, Record-Keeping, Inspection and Disclosure and Compliance Matters**

i. The Electricity Distributor would provide record-keeping, clerical and bookkeeping services relating to all matters relating to its recommendations and the performance of its other duties and obligations under its ~~Administrative Services~~Implementation Agreement.

ii. The Electricity Distributor would keep and maintain all financial records and non-financial documents and records relating to the provision of services under its ~~Administrative Services Agreement. **[NTD: Consider specifying any particular records regarding individual Primary Beneficiary Payees needed to ensure the proper function of the Trust or the Program]**~~Implementation Agreement.

iii. The Electricity Distributor would provide to the Trustee quarterly and annual reports ("**Reports**") for the duration of its ~~Administrative Services~~Implementation Agreement. Such Reports would set out, among other things, the amounts of the distributions paid to or for the benefit of applicable Primary Beneficiary Payees, the average distribution amount per such Primary Beneficiary Payee, the Eligible Measures for which distributions have been made, and the uptake of energy efficiency measures.

iv. The Electricity Distributor would agree to provide to the Trustee such information as is necessary for the Trustee to (v) comply with applicable law; (w) prepare financial statements for the Trust; (x) prepare and submit such documents as are required under the *Income Tax Act* (Canada); (y) comply with the Trust's applicable obligations under the Transfer Payment Agreement; and (z) such other matters as the Trustee reasonably requests.

v. The Trustee, its authorized representatives or an independent auditor would be permitted to, at its own expense, on twenty-four hours' notice to the Electricity Distributor and during normal business hours, inspect the records of and information respecting the Electricity Distributor to confirm its compliance with the ~~Administrative Services~~Implementation Agreement, including regarding its processes for recommending the Primary Beneficiary Payees and their respective distribution amounts and regarding the delivery of Trust funds on behalf of the Trustee to or for the benefit of the Primary Beneficiary Payees.

e. **Standard of Care**

i. The Electricity Distributor would be required to agree to perform its duties provided under the ~~Administrative Services~~Implementation Agreement exercising the degree of care, diligence and skill that a reasonably prudent Person would exercise in comparable circumstances.

ii. In performing its duties under the ~~Administrative Services~~Implementation Agreement (including the recommending of Primary Beneficiary Payees to the Trustee), the Electricity Distributor would be required to agree to seek to avoid actual, potential or perceived conflicts of interest.

iii. The Electricity Distributor would be required to agree ~~to~~ that it would not, in performing its obligations under the ~~Administrative Services~~Implementation Agreement, take any action which it knows or ought reasonably to know would cause the Trustee or the Trust to be in violation of any law, rule or regulation applicable to it.

f. **Expenses**

The Electricity Distributor would be eligible to receive reasonable compensation and reimbursement of its actual out-of-pocket costs associated with the performance of its duties and obligations under the ~~Administrative Services~~Implementation Agreement, subject to compliance with requirements substantially equivalent to the Province's

Travel, Meal and Hospitality Expenses Directive. Such compensation amounts and reimbursement entitlements would be specified in the ~~Administrative Services~~Implementation Agreement.

g. **Representations**

The Electricity Distributor would make customary representations to the Trust regarding, among other things, its legal capacity; authorization; non-contravention of law or material contract to which it is a party; and the enforceability of the ~~Administrative Services~~Implementation Agreement.

h. **Indemnification**

The Electricity Distributor would be required to agree to provide customary indemnities to the Trust and the Trustee from and against claims, damages and liabilities which ~~may~~ the Trust or Trustee may suffer or incur as the result of any breach of the ~~Administrative Services~~ Agreement by the Electricity Distributor or its representatives.

TRUSTEE REPLACEMENT ANNEX

1. The Advisory Committee shall consist of the following individuals:

   ~~[Insert Individual Name]~~

   ~~[Insert Individual Name]~~

   ~~[Insert Individual Name]~~

   ~~[Insert Individual Name]~~

   ~~[Insert Individual Name]~~

   Robert Mace, President and Chief Executive Officer at Thunder Bay Hydro

   Bryce Conrad, President and Chief Executive Officer at Hydro Ottawa

   Brian Bentz, President and Chief Executive Officer at Alectra

   Ferio Pugliese, Executive Vice President Customer Care and Corporate Affairs at Hydro One

   Terry Young, Vice President Conservation and Corporate Relations at the Independent Electricity System Operator

2. In the event any member of the Advisory Committee resigns or is unable to act, it is expected that the remaining members of the Advisory Committee would appoint another resident of Ontario as a replacement.

3. On or before •, 2017, the Advisory Committee shall identify six residents of Ontario who have expressed that they are willing to act as members of the Board of Trustees and who, individually and collectively, satisfy the following criteria (collectively, the "**Selection Factors**"):

   a) each member demonstrates an understanding of the electricity sector including the electricity distribution sector;

   b) each member demonstrates an expertise in conservation and low income programs;

   c) three of the identified individuals will be representatives from separate electricity distributors ~~[not under the control of the Government of Ontario]~~, two individuals will be representatives from separate social services agencies ~~[not under the control of the Government of Ontario]~~ and one individual member, who will be a non-voting member, will be an employee or representative of the Government of Ontario; and

   d) it is expected that representation by the Government of Ontario will be non-controlling.

4. If the Advisory Committee determines that changes to the Declaration (including to this Trustee Replacement Annex) are necessary in order to (a) replace, or appoint additional trustees to act with, the Original Trustee prior to the Original Trustee Replacement Date or (b) attract and receive confirmation of appointment of appropriately qualified individuals that the Advisory Committee believes would be suitable candidates to serve as members of the Board of Trustees, the Advisory Committee shall make recommendations regarding such necessary changes, including without limitation in respect of (i) any necessary limitations on the nature or scope of the appointment of the members of the Board of Trustees, (ii) the formation and empowerment of the Board of Trustees, and (iii) the duties, responsibilities, obligations, liabilities, indemnities, protections, limitations, restrictions, compensation, expense reimbursement entitlements of members of the Board of Trustees.

5. The Advisory Committee shall recommend that the ~~existing~~Original Trustee appoint the individuals so identified to become the initial members of the Board of Trustees pursuant to section 5.7 of the Declaration.

6. If any of the individuals recommended under paragraph 4 or under this paragraph are not accepted and appointed by the ~~existing Trustee~~Original Trustee pursuant to section 5.7 of the Declaration, the Advisory Committee shall forthwith identify and recommend an alternative individual or individuals willing to act and ~~who~~ whose presence as a member of the Board of Trustees would result in the Trustee collectively satisfying the criteria in paragraph ~~2~~3 above.

7. Upon the appointment of six trustees (five voting and one non-voting) pursuant to section 5.7 of the Declaration, the Advisory Committee will be functus.

Document comparison by Workshare Compare on Wednesday, March 22, 2017 2:41:50 PM

Input:	
Document 1 ID	PowerDocs://TOR_2024/12887993/17
Description	TOR_2024-#12887993-v17-Affordability_Fund_Trust_–_Declaration_of_Trust_-_Blakes_Comments_(March_14,_2017)
Document 2 ID	PowerDocs://TOR_2024/12887993/18
Description	TOR_2024-#12887993-v18-Affordability_Fund_Trust_–_Declaration_of_Trust_-_Blakes_Comments_(March_14,_2017)
Rendering set	Standard

Legend:	
Insertion	
~~Deletion~~	
~~Moved from~~	
Moved to	
Style change	
Format change	
~~Moved deletion~~	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	99
Deletions	132
Moved from	3
Moved to	3
Style change	0
Format changed	0

Total changes	237

FW_ Affordability Fund Trust.rtf

From: Petsche, Nadine (TBS) []
To: Picard, Michel (mpicard@kpmg.ca) [mpicard@kpmg.ca]
Subject: FW: Affordability Fund Trust
Date: Wednesday, March 22, 2017 15:48:51
Attachment 1: image001.gif

The suggestion as discussed (and I thought was agreed to)…

3.2Extension. The term of the Agreement may be extended by further agreement between the Parties.

3.3 Extension of the Declaration of Trust. ~~If the Province determines that an extension of the Declaration of Trust (beyond the "Final Distribution Date" and time for termination, each as specified or determined thereunder) is consistent with and in furtherance of the Purpose and the Province's original intentions and expectations in establishing the Project, the Province may request that the Recipient extend the Declaration of Trust to a date specified by the Province in a Notice (such date not to be later than •), whereupon the Recipient, Where the parties agree under 3.2, to an extension of the date, it is expected that so long as the Trustee does not have a reasonable basis to believe that such an extension would be inconsistent with the Purpose or weaken the protections intended for the benefit of the Trustee pursuant to the Declaration of Trust~~, If under 3.2, the parties agree that the term of the Agreement may be extended, ~~will~~ it is expected that the Trust will undertake such actions as it may consider to be necessary or appropriate to so extend the Declaration of Trust, including by amending the Declaration of Trust to provide for such an extension and to modify any other term or requirement as would be necessary or prudent to conform such term or requirement in light of such extension.

From: Schwab-Pflug, Emma (ENERGY)
Sent: March 22, 2017 3:32 PM
To: ASHBOURNE, STEPHEN; Petsche, Nadine (TBS); PRESTAGE, JA
Cc: Syed, Usman (ENERGY)
Subject: Re: Affordability Fund Trust

That was my understanding too. No additional edits needed?

We are working to be able to respond shortly on timelines.

Thanks,

Emma

Sent from my BlackBerry 10 smartphone on the Rogers network.

From: ASHBOURNE, STEPHEN

Sent: Wednesday, March 22, 2017 3:12 PM

To: Petsche, Nadine (TBS); PRESTAGE, JA

Cc: Schwab-Pflug, Emma (ENERGY)

Subject: RE: Affordability Fund Trust

We thought that was where the conversation landed, with you saying (1) you (and I believe Michel) can live with it as the only o/s bad fact and (2) Kylie saying she wanted to think about the relevant timeframe. I might be wrong though … Steve

Stephen R. Ashbourne

Partner

stephen.ashbourne@blakes.com

Dir: 416-863-3086

From: Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]
Sent: Wednesday, March 22, 2017 3:07 PM
To: PRESTAGE, JA; ASHBOURNE, STEPHEN
Cc: Schwab-Pflug, Emma (ENERGY)

Subject: RE: Affordability Fund Trust

Stephen,

Please confirm if additional edits (e.g. 3.3 on extension) was supposed to be edited as well? Nadine

From: PRESTAGE, JA [mailto:JA.PRESTAGE@blakes.com]
Sent: March 22, 2017 2:48 PM
To: Johnson, Paul (ENERGY/MEDEI/MRI); Ranalli, David (ENERGY); Schachtschneider, Michelle (ENERGY); Qureshi, Musab (ENERGY); Schwab-Pflug, Emma (ENERGY); Syed, Usman (ENERGY); Petsche, Nadine (TBS)
Cc: ASHBOURNE, STEPHEN
Subject: Affordability Fund Trust

All:

Attached are revised versions of the Declaration of Trust and the TPA which seek to reflect all of the comments received.

There are a few highlighted sections which require specific decisions or attention.

J.A.

J.A. Prestage
Partner
ja.prestage@blakes.com
Dir: 416-863-2955

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FW_ Affordability Fund Trust.rtf

From: Petsche, Nadine (TBS) []
To: Picard, Michel (mpicard@kpmg.ca) [mpicard@kpmg.ca]; samir chhelavda (Samir.Chhelavda@HydroOne.com) [Samir.Chhelavda@HydroOne.com]
Subject: FW: Affordability Fund Trust
Date: Wednesday, March 22, 2017 15:01:53
Attachment 1: imagece5b5f.GIF
Attachment 2: TOR_2024-#12888010-v12-Transfer_Payment_Agreement_(Affordability_Fund_Tr....docx
Attachment 3: 12888010v11_Transfer Payment Agreement (Affordability Fund Trust) - 1288....pdf
Attachment 4: TOR_2024-#12887993-v18-Affordability_Fund_Trust_–_Declaration_of_Trust_-....docx
Attachment 5: 12887993v17_Affordability Fund Trust – Declaration of Trust - Blakes Com....pdf

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fyi

From: PRESTAGE, JA [mailto:JA.PRESTAGE@blakes.com]
Sent: March 22, 2017 2:48 PM
To: Johnson, Paul (ENERGY/MEDEI/MRI); Ranalli, David (ENERGY); Schachtschneider, Michelle (ENERGY); Qureshi, Musab (ENERGY); Schwab-Pflug, Emma (ENERGY); Syed, Usman (ENERGY); Petsche, Nadine (TBS)
Cc: ASHBOURNE, STEPHEN
Subject: Affordability Fund Trust

All:

Attached are revised versions of the Declaration of Trust and the TPA which seek to reflect all of the comments received.

There are a few highlighted sections which require specific decisions or attention.

J.A.

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Partner
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imagece5b5f.pdf

Blakes

TOR_2024-#12888010-v12-Transfer_Payment_Agreement_(Affordability_Fund_Tr....pdf

ONTARIO TRANSFER PAYMENT AGREEMENT

THE AGREEMENT, effective as of the • day of March, 2017 (the **"Effective Date"**)

B E T W E E N :

Her Majesty the Queen in right of Ontario
as represented by the Minister of Energy

(the "Province")

- and -

Computershare Trust Company of Canada, in its capacity as trustee of Affordability Fund Trust

(together with its successors and assigns, the "Recipient" and, together with the Province, the "Parties")

BACKGROUND

Computershare Trust Company of Canada is the original trustee of the Affordability Fund Trust.

The Province wishes to provide Funds to the Recipient to be held, invested, applied and distributed in accordance with the terms of the Declaration of Trust (defined below), in furtherance of the Purpose (as defined in the Declaration of Trust), including having regard to the Principles set forth in Annex A.

CONSIDERATION

In consideration of the mutual covenants and agreements contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is expressly acknowledged, the Parties agree as follows:

ENTIRE AGREEMENT

This agreement (as amended, restated, supplemented or otherwise modified from time to time, the **"Agreement"**), including:

Schedule "A" - General Terms and Conditions
Schedule "B" - Project Specific Information
Schedule "C" - Project - Certain Obligations of the Recipient
Schedule "D" - Budget
Schedule "E" - Payment Plan
Schedule "F" - Reporting
Annex "A" - Principles, and
any amending agreement entered into as provided for below,

constitutes the entire agreement between the Parties with respect to the subject matter contained in this Agreement and supersedes all prior oral or written representations and agreements.

COUNTERPARTS

The Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

AMENDING THE AGREEMENT

The Agreement may only be amended by a written agreement duly executed by the Parties.

ACKNOWLEDGEMENT

The Recipient:

(a) acknowledges that it has read and understands the provisions contained in the entire Agreement; and

(b) agrees to be bound by the terms and conditions contained in the entire Agreement.

IN WITNESS WHEREOF, the Parties have executed the Agreement on the dates set out below.

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO as represented by Minister of Energy

by:

_____ _____

Date Name: Serge Imbrogno

Title: Deputy Minister

Authorized Signing Officer

COMPUTERSHARE TRUST COMPANY OF CANADA, in its capacity as trustee of AFFORDABILITY FUND TRUST

by:

_____ _____

Date Name:

Title:

by:

_____ _____

Date Name:

Title:

I/We have authority to bind the Recipient.

SCHEDULE "A"
GENERAL TERMS AND CONDITIONS

1.0 INTERPRETATION AND DEFINITIONS

1.1 Interpretation. For the purposes of interpretation:

(a) words in the singular include the plural and vice-versa;

(b) words in one gender include all genders;

(c) the headings do not form part of the Agreement; they are for reference only and will not affect the interpretation of the Agreement;

(d) any reference to dollars or currency will be in Canadian dollars and currency;

(e) "include", "includes" and "including" denote that the subsequent list is not exhaustive;

(f) where any reference is made in the Agreement to an act to be performed by or for or on behalf of the Affordability Fund Trust, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Recipient in its capacity as trustee of the Affordability Fund Trust, and, where any reference is made in the Agreement to an act to be performed by or for or on behalf of the Recipient, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Recipient in its capacity as trustee of the Affordability Fund Trust; and

(g) it is intended that the transfer of the Funds to the Recipient will be a transfer made to a "non-controlled trust" (as that term is given meaning in • applicable to the accounting rules and principles applicable to the Province as of the date of the Agreement), and so if a term or condition of the Agreement is determined to conflict with the requirements applicable to the Province recording the transfers to the Recipient of Funds contemplated hereunder as an expense incurred by the Province on the date of the transfer of Funds under the Agreement otherwise in connection with activities undertaken by the Province with such a "non-controlled trust", then such term or condition shall be given a meaning and shall have an effect insofar as it is possible to interpret such term or condition in a manner that eliminates such conflict while preserving the other provisions of the Agreement and furthering the Purpose.

1.2 Definitions. In the Agreement, the following terms will have the following meanings:

"Administrative Services Agent" has the meaning given such term in the Declaration of Trust.

"Affordability Fund Trust" means the trust established and governed by the Declaration of Trust, and for greater certainty includes such trust operating under any other name that may be designated from time to time by the Recipient in accordance with the Declaration of Trust.

"BPSAA" means the Broader Public Sector Accountability Act, 2010 (Ontario).

"**Beneficiary**" has the meaning given to such term in the Declaration of Trust.

"Budget" means the Recipient's budget attached to the Agreement as Schedule "D".

"Business Day" means any working day, Monday to Friday inclusive, excluding statutory and other holidays, namely: New Year's Day; Family Day; Good Friday; Easter Monday; Victoria Day; Canada Day; Civic Holiday; Labour Day; Thanksgiving Day; Remembrance Day; Christmas Day; Boxing Day and any other day on which the Province has elected to be closed for business.

"**Declaration of Trust**" means the declaration of trust made as of March [•], 2017, under which the Affordability Fund Trust was established, as such declaration of trust may be amended, restated, supplemented or otherwise modified from time to time with the consent of the Province.

"Expiration Date" means the date on which this Agreement will expire and is the date set out in Schedule "B".

"Funds" means the money the Province provides to the Recipient pursuant to the Agreement.

"Implementation Agents" has the meaning given such term in the Declaration of Trust.

"Maximum Funds" means the maximum amount of Funds that the Province will provide the Recipient under the Agreement, as set out in Schedule "B".

"Notice" means any communication given or required to be given pursuant to the Agreement.

"Party" means either the Province or the Recipient.

"**Person**" includes any individual, sole proprietorship, corporation, partnership, joint venture, association, society, club, board, chamber, joint-stock company, trust, trustee, unincorporated or incorporated organization or entity or government or any entity, agency or political subdivision thereof.

"**Program**" has the meaning given to such term in the Declaration of Trust.

"Project" means the undertaking described in Schedule "C".

"**Purpose**" has the meaning given to such term in the Declaration of Trust.

"PSSDA" means the *Public Sector Salary Disclosure Act, 1996* (Ontario).

"**Recipient**" means, initially, Computershare Trust Company of Canada, and any additional or replacement trustee in its capacity as trustee of the Affordability Fund Trust pursuant to the Declaration of Trust, including the Board of Trustees (as defined in the Declaration of Trust) and each of their respective successors and permitted assigns.

"Reports" means the reports described in Schedule "F".

2.0 REPRESENTATIONS, WARRANTIES AND COVENANTS

2.1 General. The Recipient represents, warrants and covenants that:

(a) it is the trustee of the Affordability Fund Trust; and

(b) the Affordability Fund Trust is, and will continue to be for the term of the Agreement, a trust existing under and governed by the laws of the Province of Ontario.

2.2 Execution of Agreement. The Recipient represents and warrants that it has:

(a) the full power and authority to enter into the Agreement; and

(b) taken all necessary actions to authorize the execution of the Agreement.

2.3 Governance. The Recipient covenants that it will develop and maintain in writing until the Agreement is no longer in effect:

(a) decision-making mechanisms and procedures to enable the Recipient to hold, invest, manage, apply and distribute the Funds in accordance with the Declaration of Trust in furtherance of the Purpose; and

(b) procedures to enable the preparation and delivery of all Reports required pursuant to Article 7.0.

2.4 Supporting Documentation. Upon request, the Recipient will provide the Province with proof of the matters referred to in this Article 2.0.

3.0 TERM OF THE AGREEMENT

3.1 Term. The term of the Agreement will commence on the Effective Date and will expire on the the Expiration Date.

3.2 Extension. The term of the Agreement may be extended by further agreement between the Parties.

3.3 Extension of the Declaration of Trust. If the Province determines that an extension of the Final Distribution Date (as defined in the Declaration of Trust) and time for termination of the Declaration of Trust is consistent with and in furtherance of the Purpose and the Province's original intentions and expectations in establishing the Project, the Province may request that the Recipient extend such date to a date specified by the Province in a Notice (such date not to be later than December 31, 2024), whereupon the Recipient, so long as the Recipient does not have a reasonable basis to believe that such an extension would be inconsistent with the Purpose or weaken the protections intended for the benefit of the trustee pursuant to the Declaration of Trust, will undertake such actions as it may consider to be necessary or appropriate to so extend the Declaration of Trust, including by amending the Declaration of Trust to provide for such an extension and to modify any other term or requirement as would be necessary or prudent to conform such term or requirement in light of such extension.

4.0 FUNDS AND CARRYING OUT THE PROJECT

4.1 Funds Provided. The Province will:

(a) provide the Recipient up to the Maximum Funds to be held, invested, applied and distributed in accordance with the terms of the Project and the Declaration of Trust;

(b) provide the Funds to the Recipient in accordance with the Payment Plan attached to the Agreement as Schedule "E"; and

(c) deposit the Funds into an account designated by the Recipient, provided that the account:

(i) resides at a Canadian financial institution; and

(ii) is in the name of the Recipient.

4.2 Timing of Distributions to Beneficiaries. The expectations of the Province regarding when Funds will begin to be distributed by the Recipient to Beneficiaries are set out in Schedule C. The Recipient will have regard to those expectations in the exercise of its discretion under the Declaration of Trust, in determining when Funds will be distributed to Beneficiaries in furtherance of the Purpose.

4.3 Use of Funds and Project. The Recipient will exercise its rights, duties and discretions under the Declaration of Trust so that the Funds are used, applied and distributed only for and in furtherance of the Purpose, including having regard to the Principles set forth in Annex A.

4.4 Province's Role Limited to Providing Funds. For greater clarity, the Province's role under the Agreement is limited to providing Funds to the Recipient and the Province is not responsible for carrying out or overseeing the terms of the Declaration of Trust.

4.5 Maximum Funds. The Recipient acknowledges that the Funds available to it pursuant to the Agreement will not exceed the Maximum Funds.

4.6 Funding, Not Procurement. For greater clarity, the Recipient acknowledges that:

(a) it is receiving funding from the Province for the Project and is not providing goods or services to the Province; and

(b) the funding the Province is providing under the Agreement is funding for the purposes of the PSSDA.

5.0 RECIPIENT'S ACQUISITION OF GOODS OR SERVICES, AND DISPOSAL OF ASSETS

5.1 Acquisition. If the Recipient acquires goods, services, or both with or by applying the proceeds of the Funds, it is expected to do so through a process that promotes the best value for money and to take reasonable steps to ensure that its Administrative Services Agents and Implementation Agents also follow a process that promotes the best value for money when acquiring goods and services with or by applying the proceeds of the Funds. In this regard, it is expected that the Recipient will have regard the following procurement principles:

Accountability

Procurement is conducted in a manner that is well-informed and aligned with the public interest and rules of good governance through clear and transparent accountability and decision-making.

Geographic Neutrality and Reciprocal Non-Discrimination

Ontario does not differentiate between competing goods, services, or suppliers based on their geographic origin or location. This is a core principle of Ontario's trade commitments.

Responsible Management

The procurement of goods and services is responsibly, efficiently and effectively managed through appropriate organizational structures, systems, policies, processes and procedures. All parties involved in a procurement process observe the highest standard of ethics, avoiding conflict of interest.

Value for Money

Procurement processes apply a value for money evaluation that takes into account price as well as other costs and benefits, including life cycle costs and relevant non-price attributes such as quality. Where applicable, these non-price attributes can include:

Social Benefit: to secure wider social benefit in support of the government's social policy objectives.

Environmental Benefit: to secure wider environmental benefit in support of the government's environmental policy objectives, including climate change.

Economic Benefit: to promote the economic well-being of the people of Ontario, in alignment with commitments in the province's trade agreements.

Vendor Access, Transparency, and Fairness

Procurement is conducted in a fair and transparent manner, offering all qualified suppliers equal treatment and open access to compete for government business.

6.0 CONFLICT OF INTERESTn

6.1 No Conflict of Interest. Except as expressly permitted by the Declaration of Trust, the Recipient is expected to implement appropriate processes and control to ensure that the Program and the use, application and distribution of the Funds are without an actual, potential or perceived conflict of interest.

6.2 Conflict of Interest Includes. For the purposes of this Article, a conflict of interest includes any circumstances where, except as expressly permitted by the Declaration of Trust:

(a) the Recipient; or
(b) any person who has the capacity to influence the Recipient's decisions,
has outside commitments, relationships or financial interests that could, or could be seen to, interfere with the Recipient's objective, unbiased and impartial judgment relating to the Project, or the Recipient's use, application or distribution of the Funds, or both.

7.0 REPORTING, ACCOUNTING AND REVIEW

7.1 Preparation and Submission. The Recipient will cooperate with the Province to accommodate the Province's on-going information and reporting objectives in order to enable the Province to be aware of the Recipient's activities in furtherance of the Purpose, and to that end the Recipient will be expected, from and following the Original Trustee Replacement Date, to:

(a) submit to the Province at the address referred to in Schedule "B", all Reports in accordance with the timelines and content requirements set out in Schedule "F", or in a form as specified by the Province from time to time, acting reasonably;

(b) submit to the Province at the address referred to in Schedule "B", any other reports as may be reasonably requested by the Province from time to time in accordance with the timelines and content expectations identified by the Province, acting reasonably;

(c) undertake diligent efforts so that such Reports and any such other reports are complete and accurate in all material respects; and

(d) have an authorized signatory of the Recipient sign-off on such Reports and other reports.

7.2 Record Maintenance. The Recipient will keep and maintain financial and other records necessary to permit it to satisfy its obligations under section 7.1 and to permit the Province to exercise its rights under section 7.3.

7.3 Inspection. The Province, its authorized representatives or an independent auditor identified by the Province may, at its own expense, upon twenty-four hours' Notice to the Recipient and during normal business hours, inspect the records of and information respecting the Recipient to confirm its compliance with the terms of this Agreement, including to ensure consistency with the Purpose and, for these purposes, the Province, its authorized representatives or an independent auditor identified by the Province may take one or more of the following actions:

(a) inspect and copy the records and documents referred to in section 7.2;

(b) keep any copies made pursuant to section 7.3(a); and

(c) conduct an audit or investigation of the Recipient in respect of the expenditure of the Funds to confirm that the Funds have been used, applied and distributed for and in furtherance of the Purpose, including a review of the Recipient's processes, records, documents, as well as the processes and controls applied to obtain assurance that Funds disbursed to Electricity Distributors were used, applied and distributed for and in furtherance of the Purpose.

7.4 Disclosure. To assist in respect of the rights set out in section 7.3, the Recipient will disclose any information requested by the Province, its authorized representatives or an independent auditor identified by the Province, and will do so in the form requested by the Province, its authorized representatives or an independent auditor identified by the Province, as the case may be.

7.5 No Control of Records. No provision of the Agreement will be construed so as to give the Province any control whatsoever over the Recipient's records.

7.6 Auditor General. For greater certainty, the Province's rights under this Article are in addition to and do not limit any rights provided to the Auditor General pursuant to section 9.1 of the *Auditor General Act* (Ontario).

8.0 COMMUNICATIONS REQUIREMENTS

8.1 Publication. The Recipient will acknowledge, in any of its Program-related external communications and marketing whether written, oral, or visual, the financial support of the Province in connection with the establishment and funding of the program, while noting that the views expressed in the publication are the views of the Recipient and do not necessarily reflect those of the Province.

9.0 FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY

9.1 FIPPA. The Recipient acknowledges that the Province is bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province in connection with the Project or otherwise in connection with the Agreement may be subject to disclosure in accordance with that Act.

10.0 Intentionally Deleted

11.0 EVENT OF DEFAULT, CORRECTIVE ACTION AND TERMINATION FOR DEFAULT

11.1 Events of Default. An Event of Default will occur if:

(a) the Recipient fails to perform or observe any covenant in this Agreement and such failure has and continues to have a material adverse effect on the Province and remains unremedied during any Notice period applicable under section 11.2 after the earlier of (i) actual knowledge thereof by the Recipient, or (ii) receipt by the Recipient of Notice thereof from the Province;

(b) any representation or warranty made by the Recipient in the Agreement shall prove to have been incorrect in any material respect when made or deemed made, and, if capable of remedy, continues to be incorrect in any material respect during any Notice period applicable under section 11.2 after the earlier to occur of (i) the actual knowledge thereof by the Recipient or (ii) receipt by the Recipient of Notice thereof from the Province;

(c) it is determined that the Recipient has breached its Standard of Care (within the meaning given in and context of the Declaration of Trust) in discharging its material duties under the Declaration of Trust, with the result that all or a significant part of the Funds have not been or are not being applied in furtherance of the Purpose or are being applied in a manner that is directly contrary or without regard to the Purpose, and, if such breach is capable of remedy, it continues and remains unremedied during any Notice Period applicable under section 11.2 after the earlier of (i) actual knowledge thereof by the Recipient, or (ii) receipt by the Recipient of Notice thereof from the Province;

(d) an insolvency event shall have occurred and be continuing with respect to the Recipient.

11.2 Consequences of Events of Default and Corrective Action. If an Event of Default occurs, the Province may, at any time, take one or more of the following actions:

(a) provide the Recipient with Notice allowing the Recipient an opportunity to remedy the Event of Default during a specified Notice Period;

(b) seek an order of specific performance, including an order that the Recipient pursue its available remedies against third parties;

(c) require, by Notice of demand, that the Recipient transfer to the Province (without any need for compensation, indemnity or consideration to the Recipient or any Beneficiary or other third party) any and all Assets remaining in the possession or under the control of the Recipient that can reasonably be traced or attributed to the Funds after first providing for the completion and performance by the Recipient of any unperformed contractual obligations of the Recipient undertaken in compliance with the Declaration of Trust on or prior to transfer; and

(d) terminate the Agreement, including immediately, without liability, penalty or costs to the Province upon giving Notice to the Recipient.

The transfer of Funds in accordance with the Agreement is made by the Province with the expressed intention and reservation that the transferred Funds shall be returned to the Province and the entitlements of the Recipient in remaining Funds shall thereby be revoked with reversion thereof to the Province in the circumstances contemplated in Section 11.2(c).

11.3 Opportunity to Remedy. If, in accordance with section 11.2, the Province provides the Recipient with an opportunity to remedy the Event of Default, the Province will provide Notice to the Recipient of:

(a) the particulars of the Event of Default; and

(b) the length of time within which the Recipient may cure such Event of Default without the Province pursuing any other remedy (the “Notice Period”).

11.4 Recipient not Remedying. If the Province has provided the Recipient with an opportunity to remedy the Event of Default pursuant to section 11.2(a), and:

(a) the Recipient does not remedy the Event of Default within the Notice Period;

(b) it becomes apparent to the Province that the Recipient cannot adequately remedy the Event of Default within the Notice Period; or

(c) the Recipient is not proceeding to remedy the Event of Default in a way that is satisfactory to the Province,

the Province may extend any Notice Period, or initiate any one or more of the actions provided for in section 11.2.

12.0 REPAYMENT

12.1 Debt Due. If, pursuant to the Agreement: the Province demands the payment of any Funds from the Recipient pursuant to section 11.2(c) such Funds or other amount will be deemed to be a debt due and owing to the Province by the Recipient, and the Recipient will pay or return the amount to the Province immediately, unless the Province directs otherwise.

12.2 Payment of Money to Province. The Recipient will pay any money owing to the Province by cheque payable to the "Ontario Minister of Finance" and delivered to the Province at the address referred to in Schedule "B".

12.3 Failure to Repay. Without limiting the application of section 43 of the Financial Administration Act (Ontario), if the Recipient fails to repay any amount owing under the Agreement, Her Majesty the Queen in right of Ontario may deduct any unpaid amount from any money payable to the Recipient by Her Majesty the Queen in right of Ontario.

13.0 NOTICE

13.1 Notice in Writing and Addressed. Notice will be in writing and will be delivered by email, postage-prepaid mail, personal delivery or fax, and will be addressed to the Province and the Recipient respectively as set out in Schedule "B", or as either Party later designates to the other by Notice.

13.2 Notice Given. Notice will be deemed to have been given:

(a) in the case of postage-prepaid mail, five Business Days after the Notice is mailed; or

(b) in the case of email, personal delivery or fax, one Business Day after the Notice is delivered.

13.3 Postal Disruption. Despite section 13.2(a), in the event of a postal disruption:

(a) Notice by postage-prepaid mail will not be deemed to be received; and

(b) the Party giving Notice will provide Notice by email, personal delivery or by fax.

14.0 SEVERABILITY OF PROVISIONS

14.1 Invalidity or Unenforceability of Any Provision. The invalidity or unenforceability of any provision of the Agreement will not affect the validity or enforceability of any other provision of the Agreement. Any invalid or unenforceable provision will be deemed to be severed.

15.0 WAIVER

15.1 Waivers in Writing. If a Party fails to comply with any term of the Agreement, that Party may only rely on a waiver of the other Party if the other Party has provided a written waiver in accordance with the Notice provisions in Article 13.0. Any waiver must refer to a specific failure to comply and will not have the effect of waiving any subsequent failures to comply.

16.0 INDEPENDENT PARTIES

16.1 Parties Independent. The Recipient acknowledges that it is not an agent, joint venturer, partner or employee of the Province, and the Recipient will not represent itself in any way that might be taken by a reasonable person to suggest that it is, or take any actions that could establish or imply such a relationship.

17.0 ASSIGNMENT OF AGREEMENT OR FUNDS

17.1 **Agreement Binding.** All rights and obligations contained in the Agreement will extend to and be binding on the Parties' respective heirs, executors, administrators, successors and permitted assigns.

18.0 LIMITATION OF LIABILITY

18.1 This Agreement has been entered into by the Recipient solely in its capacity as trustee of the Affordability Fund Trust and is not binding on the Recipient in any other capacity, whether in tort, contract or otherwise. The Beneficiaries of the Affordability Fund Trust are not subject to any liability in respect of the Affordability Fund Trust. Resort may not be had to, nor recourse or satisfaction be sought from, the private property of the Recipient (whether owned by it in its personal capacity or in any other capacity other than in its capacity as trustee of the Affordability Fund Trust), its directors, officers, employees, or agents, or the private property of any Beneficiary, and resort will be had solely to the property of the Recipient held in trust for the payment, performance or satisfaction of any liability or obligation of the Recipient under this Agreement. However, the foregoing limitations in this section shall not apply where the Recipient has demonstrated gross negligence, bad faith, fraud or wilful misconduct.

19.0 GOVERNING LAW

19.1 **Governing Law.** The Agreement and the rights, obligations and relations of the Parties will be governed by and construed in accordance with the laws of the Province of Ontario and the applicable federal laws of Canada. Any actions or proceedings arising in connection with the Agreement will be conducted in the courts of Ontario, which will have exclusive jurisdiction over such proceedings.

20.0 FURTHER ASSURANCES

20.1 **Agreement into Effect.** The Recipient will provide such further assurances as the Province may request from time to time with respect to any matter to which the Agreement pertains, and will otherwise do or cause to be done all acts or things necessary to implement and carry into effect the terms and conditions of the Agreement to their full extent.

20.2 **Declaration of Trust.** The Recipient covenants that it shall not amend, restate or terminate the Declaration of Trust without obtaining the written consent of the Province in respect of same, such consent not to be unreasonably withheld or delayed.

21.0 JOINT AND SEVERAL LIABILITY

21.1 **Joint and Several Liability.** Without limiting and subject to section 18.1 and the Declaration of Trust, if the Recipient is comprised of more than one entity, all such entities will be jointly and severally liable to the Province for the fulfillment of the obligations of the Recipient under the Agreement.

22.0 RIGHTS AND REMEDIES CUMULATIVE

22.1 **Rights and Remedies Cumulative.** The rights and remedies of the Province under the Agreement are cumulative and are in addition to, and not in substitution for, any of its rights and remedies provided by law or in equity.

23.0 ACKNOWLEDGEMENT OF OTHER LEGISLATION AND DIRECTIVES

23.1 **Recipient Acknowledges.** The Recipient acknowledges that by receiving Funds it may become subject to legislation applicable to organizations that receive funding from the Government of Ontario, including the BPSAA, the PSSDA, and the *Auditor General Act* (Ontario).

24.0 SURVIVAL

24.1 **Survival.** The following Articles and sections, and all applicable cross-referenced sections and schedules, will continue in full force and effect for a period of seven years from the date of expiry or termination of the Agreement: Article 1.0 and any other applicable definitions, section, 4.5, section 7.1 (to the extent that the Recipient has not provided the Reports to the satisfaction of the Province), sections 7.2, 7.3, 7.4, 7.5, 7.6, Article 8.0, Article 12.0, Article 14.0, Article 16.0, Article 17.0, Article 19.0, Article 21.0, Article 23.0 and Article 24.0.

- END OF GENERAL TERMS AND CONDITIONS -

SCHEDULE "B"

PROJECT SPECIFIC INFORMATION

Maximum Funds	$100 million
Expiration Date	The date upon which the Affordability Fund Trust is terminated in accordance with the Declaration of Trust
Contact information for the purposes of Notice to the Province	**Attention: Usman Syed** **Position: Director** **Address: 77 Grenville St, Toronto, Ontario, M7A 2C1** **Fax: 416-325-6651** **Email: Usman.Syed@ontario.ca**
Contact information for the purposes of Notice to the Recipient	**Attention:** **Position:** **Address:** **Email:**
Contact information for the senior financial person in the Recipient organization (e.g., CFO, CAO) – to respond as required to requests from the Province related to the Agreement	**Attention:** **Position:** **Address:** **Email:**

SCHEDULE "C"

PROJECT

For the purposes of this Agreement, the "Project" is the distribution of the Funds in accordance with the Declaration of Trust.

It is intended the Project will be undertaken by the Recipient in furtherance of the Purpose and in accordance with the Declaration of Trust. In this regard, it is expected that the Recipient will undertake the Program having regard to the Budget and the Principles set forth in Annex A.

The following are the Province's expectations regarding the circumstances in which the Recipient will begin to distribute any Funds to any Beneficiary.

1. The Original Trustee Replacement Date (as defined in the Declaration of Trust) will have occurred.

2. An Administrative Services Agreement (as defined in the Declaration of Trust) will have been entered into between the Recipient and Hydro One Limited under which Hydro One Limited shall provide specified administrative and other services on behalf of the Recipient.

3. Administrative procedures will have been developed and implemented under which Electricity Distributors (as defined in the Declaration of Trust) will be invited to assist with (a) the identification and selection of Primary Beneficiaries under the Declaration of Trust, (b) the determination of the amount of Funds to be distributed to particular Primary Beneficiaries, and (c) the distribution of Funds to or for the benefit of such Primary Beneficiaries (in each case substantially on the basis contemplated in the Permitted Delegations Annex).

4. The Recipient will have obtained commercial general liability insurance from insurers having a secure A.M. Best rating of B+ or greater, or the equivalent, that in the opinion of the Recipient a prudent person similar to the Recipient would maintain, and having an inclusive limit of not less than $2,000,000 per occurrence and providing for contractual liability coverage. If requested, the Recipient will provide the Province (for its information purposes) with copies of the certificates of insurance and policies for such insurance coverage.

The Province recognizes that the foregoing may involve the Recipient entering into agreements as the Recipient considers to be necessary or expedient, including any required amendment or amendment and restatement of the Declaration of Trust. Funds may be expended to pay the expenses of the Recipient in completing these matters. The Recipient is requested to advise the Province through its quarterly reports on the status of the foregoing.

SCHEDULE "D"

Recipient's Budget

1. It is expected that the administrative expenses of the Recipient, including any administrative expenses of any Administrative Services Agents or any Implementation Agents or any other agents retained by the Recipient, relating to the establishment of the Affordability Fund Trust and satisfying the Requirements (as defined in Schedule "C") and any expenses related to the operation of the Affordability Fund Trust and the execution of the Project (including any reimbursable expenses incurred by any Administrative Services Agent or any Implementation Agent (as such terms are defined in the Declaration of Trust)), will be no greater than 10 percent of the total Project budget.

2. The only expenditures incurred by the Recipient that are eligible for reimbursement are actual (excluding HST) administrative overhead expenses incurred by or on behalf of the Recipient that directly related to the Recipient or the establishment of the Affordability Fund Trust.

4. Any expenses that have been or may be reimbursed by other parties should not be reimbursed from the assets of the Affordability Fund Trust.

5. It is expected any travel, meals and hospitality expenses by the Recipient will be consistent with the Province's Travel, Meal and Hospitality Expenses Directive. For purposes of funding entities receiving funding from the Recipient, the following would not be considered eligible claims:

    - Alcohol
    - First-Class travel
    - Meals, snacks and beverages
    - Gratuities
    - Laundry or dry cleaning
    - Valet services
    - Dependent care
    - Home management
    - Personal telephone calls

6. In the event that the Recipient performs any procurements, it is expected that all procurements will reflect the principles of Ontario's Public Service Procurement Directive.

SCHEDULE “E”

PAYMENT PLAN

PAYMENT DATE	MAXIMUM FUNDS TO BE DISBURSED BY THE PROVINCE
Within 7 days of signing the Agreement	$ 100,000,000

SCHEDULE “F”

REPORTING

From and following the Original Trustee Replacement Date, Reports will be quarterly on the basis of the government’s fiscal year starting at the execution of this Agreement and continuing until conclusion of the Agreement. Annual Reports will be on a fiscal basis starting at the execution of this Agreement and continuing until conclusion of the Agreement. Quarterly Reports and Annual Reports would be expected to be submitted to the Province within one month following the end of the reporting period that they represent. The Province expects that these Reports would be prepared to demonstrate the impact of the Province’s funding and address the following:

- Quarterly Reports would include a report back on the trustee-developed performance management criteria. Initially, such Quarterly Reports would include details respecting:
    - Amounts disbursed by the Recipient in the previous quarter. It is expected that this information would be provided at the Electricity Distributor level and in the aggregate.
    - Total Affordability Fund investment income earned and accrued to date.
    - Key activities and achievements from the quarter, including the number of participant households per Electricity Distributor, average participant incentive cost per Electricity Distributor, and uptake of energy efficiency measures per Electricity Distributor.
    - Any challenges or modifications to the application, funding, or eligibility processes/rules of the Recipient.
    - Key activities planned for the upcoming quarter.
    - Details of any situation that a reasonable person might interpret as an actual, potential or perceived conflict of interest.
- Annual Reports would include a report back on the trustee-developed performance management criteria. Initially, such Annual Report would include details respecting:

- A description of an Electricity Distributor's application process and the criteria used by the Recipient to distribute funds.
- Any challenges identified by the Recipient or any Administrative Services Agent in achieving the Purpose and proposed solutions, if applicable.
- Lesson learned.
- Electricity Distributor and customer feedback.
- Amounts distributed to Beneficiaries or otherwise disbursed by the Recipient in the previous year. It is expected that this information will be provided by each Electricity Distributor.
- Key activities and achievements from each quarter being reported, including number of participant households per Electricity Distributor, average participant incentive cost per Electricity Distributor, and uptake of energy efficiency measures per Electricity Distributor.
- Total Affordability Fund interest earned and accrued to date.

As part of an Annual Report, the Recipient would also provide the Province with an audited financial statement for the previous year.

ANNEX A

Principles

[Insert from Principles Annex once settled in the Declaration of Trust]

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ONTARIO TRANSFER PAYMENT AGREEMENT

THE AGREEMENT, effective as of the • day of March, 2017 (the **"Effective Date"**)

B E T W E E N :

Her Majesty the Queen in right of Ontario
as represented by the Minister of Energy

(the "Province")

- and -

Computershare Trust Company of Canada, in its capacity as trustee of Affordability Fund Trust

(together with its successors and assigns, the "Recipient" and, together with the Province, the "Parties")

BACKGROUND

Computershare Trust Company of Canada is the original trustee of the Affordability Fund Trust.

The Province wishes to provide Funds to the Recipient to be held, invested, applied and distributed in accordance with the terms of the Declaration of Trust (defined below), in furtherance of the Purpose (as defined in the Declaration of Trust), including having regard to the Principles set forth in Annex A.

CONSIDERATION

In consideration of the mutual covenants and agreements contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is expressly acknowledged, the Parties agree as follows:

ENTIRE AGREEMENT

This agreement (as amended, restated, supplemented or otherwise modified from time to time, the **"Agreement"**), including:

Schedule "A" - General Terms and Conditions
Schedule "B" - Project Specific Information
Schedule "C" - Project - Certain Obligations of the Recipient
Schedule "D" - Budget
Schedule "E" - Payment Plan
Schedule "F" - Reporting
Annex "A" - Principles, and
any amending agreement entered into as provided for below,

constitutes the entire agreement between the Parties with respect to the subject matter contained in this Agreement and supersedes all prior oral or written representations and agreements.

COUNTERPARTS

The Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

AMENDING THE AGREEMENT

The Agreement may only be amended by a written agreement duly executed by the Parties.

ACKNOWLEDGEMENT

The Recipient:

(a) acknowledges that it has read and understands the provisions contained in the entire Agreement; and

(b) agrees to be bound by the terms and conditions contained in the entire Agreement.

IN WITNESS WHEREOF, the Parties have executed the Agreement on the dates set out below.

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO as represented by Minister of Energy

by:

_____ _____

Date Name: Serge Imbrogno

Title: Deputy Minister

Authorized Signing Officer

COMPUTERSHARE TRUST COMPANY OF CANADA, in its capacity as trustee of AFFORDABILITY FUND TRUST

by:

_____ _____

Date Name:

Title:

by:

_____ _____

Date Name:

Title:

I/We have authority to bind the Recipient.

SCHEDULE "A"
GENERAL TERMS AND CONDITIONS

1.0 INTERPRETATION AND DEFINITIONS

1.1 Interpretation. For the purposes of interpretation:

(a) words in the singular include the plural and vice-versa;

(b) words in one gender include all genders;

(c) the headings do not form part of the Agreement; they are for reference only and will not affect the interpretation of the Agreement;

(d) any reference to dollars or currency will be in Canadian dollars and currency;

(e) "include", "includes" and "including" denote that the subsequent list is not exhaustive;

(f) where any reference is made in the Agreement to an act to be performed by or for or on behalf of the Affordability Fund Trust, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the ~~Trustee~~Recipient in its capacity as trustee of the Affordability Fund Trust, and, where any reference is made in the Agreement to an act to be performed by or for or on behalf of the ~~Trustee~~Recipient, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the ~~Trustee~~Recipient in its capacity as trustee of the Affordability Fund Trust; and

(g) it is intended that the transfer of the Funds to the Recipient will be a transfer made to a "non-controlled trust" (as that term is given meaning in • applicable to the accounting rules and principles applicable to the Province as of the date of the Agreement), and so if a term or condition of the Agreement is determined to conflict with the requirements applicable to the Province recording the transfers to the Recipient of Funds contemplated hereunder as an expense incurred by the Province on the date of the transfer of Funds under the Agreement otherwise in connection with activities undertaken by the Province with such a "non-controlled trust", then such term or condition shall be given a meaning and shall have an effect insofar as it is possible to interpret such term or condition in a manner that eliminates such conflict while preserving the other provisions of the Agreement and furthering the Purpose.

1.2 Definitions. In the Agreement, the following terms will have the following meanings:

"Administrative Services Agent" has the meaning given such term in the Declaration of Trust.

"Affordability Fund Trust" means the trust established and governed by the Declaration of Trust, and for greater certainty includes such trust operating under any other name that may be designated from time to time by the ~~Trustee~~Recipient in accordance with the Declaration of Trust.

"BPSAA" means the Broader Public Sector Accountability Act, 2010 (Ontario).

"**Beneficiary**" has the meaning given to such term in the Declaration of Trust.

"Budget" means the Recipient's budget attached to the Agreement as Schedule "D".

"Business Day" means any working day, Monday to Friday inclusive, excluding statutory and other holidays, namely: New Year's Day; Family Day; Good Friday; Easter Monday; Victoria Day; Canada Day; Civic Holiday; Labour Day; Thanksgiving Day; Remembrance Day; Christmas Day; Boxing Day and any other day on which the Province has elected to be closed for business.

"**Declaration of Trust**" means the declaration of trust made as of March [•], 2017, under which the Affordability Fund Trust was established, as such declaration of trust may be amended, restated, supplemented or otherwise modified from time to time with the consent of the Province.

"Expiration Date" means the date on which this Agreement will expire and is the date set out in Schedule "B".

"Funds" means the money the Province provides to the Recipient pursuant to the Agreement.

"Implementation Agents" has the meaning given such term in the Declaration of Trust.

"Maximum Funds" means the maximum amount of Funds that the Province will provide the Recipient under the Agreement, as set out in Schedule "B".

"Notice" means any communication given or required to be given pursuant to the Agreement.

"Party" means either the Province or the Recipient.

"**Person**" includes any individual, sole proprietorship, corporation, partnership, joint venture, association, society, club, board, chamber, joint-stock company, trust, trustee, unincorporated or incorporated organization or entity or government or any entity, agency or political subdivision thereof.

"**Program**" has the meaning given to such term in the Declaration of Trust.

"Project" means the undertaking described in Schedule "C".

"**Purpose**" has the meaning given to such term in the Declaration of Trust.

"PSSDA" means the *Public Sector Salary Disclosure Act, 1996* (Ontario).

~~**"Reports"** means the reports described in Schedule "F".~~ "~~**Trustee**~~**Recipient**" means, initially, Computershare Trust Company of Canada, and any additional or replacement trustee in its capacity as trustee of the Affordability Fund Trust pursuant to the Declaration of Trust, including the Board of Trustees (as defined in the Declaration of Trust) and each of their respective successors and permitted assigns.

"Reports" means the reports described in Schedule "F".

2.0 REPRESENTATIONS, WARRANTIES AND COVENANTS

2.1 General. The Recipient represents, warrants and covenants that:

(a) ~~the Trustee~~it is the trustee of the Affordability Fund Trust; and

(b) the Affordability Fund Trust is, and will continue to be for the term of the Agreement, a trust existing under and governed by the laws of the Province of Ontario.

2.2 Execution of Agreement. The Recipient represents and warrants that it has:

(a) the full power and authority to enter into the Agreement; and

(b) taken all necessary actions to authorize the execution of the Agreement.

2.3 Governance. The Recipient ~~represents, warrants and~~ covenants that it ~~has, and~~ will develop and maintain~~,~~ in writing ~~for the period during which~~until the Agreement is no longer in effect:

(a) decision-making mechanisms and procedures to enable the Recipient to hold, invest, manage, apply and distribute the Funds in accordance with the Declaration of Trust in furtherance of the Purpose; and

(b) procedures to enable the preparation and delivery of all Reports required pursuant to Article 7.0.

2.4 Supporting Documentation. Upon request, the Recipient will provide the Province with proof of the matters referred to in this Article 2.0.

3.0 TERM OF THE AGREEMENT

3.1 Term. The term of the Agreement will commence on the Effective Date and will expire on the ~~later of~~ the Expiration Date ~~and the date on which the Affordability Fund Trust is terminated in accordance with the Declaration of Trust~~.

3.2 Extension. The term of the Agreement may be extended by further agreement between the Parties.

3.3 Extension of the Declaration of Trust. If the Province determines that an extension of the ~~Declaration of Trust (beyond the "~~Final Distribution Date~~"~~ (as defined in the Declaration of Trust) and time for termination~~, each as specified or determined thereunder)~~ of the Declaration of Trust is consistent with and in furtherance of the Purpose and the Province's original intentions and expectations in establishing the Project, the Province may request that the Recipient extend ~~the Declaration of Trust~~such date to a date specified by the Province in a Notice (such date not to be later than ~~▲~~December 31, 2024), whereupon the Recipient, so long as the ~~Trustee~~Recipient does not have a reasonable basis to believe that such an extension would be inconsistent with the Purpose or weaken the protections intended for the benefit of the ~~Trustee~~trustee pursuant to the Declaration of Trust, will undertake such actions as it may consider to be necessary or appropriate to so extend the Declaration of Trust, including by amending the Declaration of Trust to provide for such an extension and to modify any other term or requirement as would be necessary or prudent to conform such term or requirement in light of such extension.

4.0 FUNDS AND CARRYING OUT THE PROJECT

4.1 Funds Provided. The Province will:

(a) provide the Recipient up to the Maximum Funds to be held, invested, applied and distributed in accordance with the terms of the Project and the Declaration of Trust;

(b) provide the Funds to the Recipient in accordance with the Payment Plan attached to the Agreement as Schedule "E"; and

(c) deposit the Funds into an account designated by the Recipient, provided that the account:

(i) resides at a Canadian financial institution; and

(ii) is in the name of the Recipient.

4.2 Timing of Distributions to Beneficiaries. The expectations of the Province regarding when Funds will begin to be distributed by the Recipient to Beneficiaries are set out in Schedule C. The Recipient will have regard to those expectations in the exercise of its discretion ~~as Trustee~~under the Declaration of Trust, in determining when Funds will be distributed to Beneficiaries in furtherance of the Purpose.

4.3 Use of Funds and Project. The Recipient will exercise its rights, duties and discretions under the Declaration of Trust so that the Funds are used, applied and distributed only for and in

furtherance of the Purpose, including having regard to the Principles set forth in Annex A.

4.4 Province's Role Limited to Providing Funds. For greater clarity, the Province's role under the Agreement is limited to providing Funds to the Recipient and the Province is not responsible for carrying out or overseeing the terms of the Declaration of Trust.

4.5 Maximum Funds. The Recipient acknowledges that the Funds available to it pursuant to the Agreement will not exceed the Maximum Funds.

4.6 Funding, Not Procurement. For greater clarity, the Recipient acknowledges that:

(a) it is receiving funding from the Province for the Project and is not providing goods or services to the Province; and

(b) the funding the Province is providing under the Agreement is funding for the purposes of the PSSDA.

5.0 RECIPIENT'S ACQUISITION OF GOODS OR SERVICES, AND DISPOSAL OF ASSETS

5.1 Acquisition. If the Recipient acquires goods, services, or both with or by applying the proceeds of the Funds, it is expected to do so through a process that promotes the best value for money and to take reasonable steps to ensure that its Administrative Services Agents and Implementation Agents also follow a process that promotes the best value for money when acquiring goods and services with or by applying the proceeds of the Funds. In this regard, it is expected that the Recipient will have regard the following procurement principles:

Accountability

Procurement is conducted in a manner that is well-informed and aligned with the public interest and rules of good governance through clear and transparent accountability and decision-making.

Geographic Neutrality and Reciprocal Non-Discrimination

Ontario does not differentiate between competing goods, services, or suppliers based on their geographic origin or location. This is a core principle of Ontario's trade commitments.

Responsible Management

The procurement of goods and services is responsibly, efficiently and effectively managed through appropriate organizational structures, systems, policies, processes and procedures. All parties involved in a procurement process observe the highest standard of ethics, avoiding conflict of interest.

Value for Money

Procurement processes apply a value for money evaluation that takes into account price as well as other costs and benefits, including life cycle costs and relevant non-price attributes such as quality. Where applicable, these non-price attributes can include:

Social Benefit: to secure wider social benefit in support of the government's social policy objectives.

Environmental Benefit: to secure wider environmental benefit in support of the government's environmental policy objectives, including climate change.

Economic Benefit: to promote the economic well-being of the people of Ontario, in alignment with commitments in the province's trade agreements.

Vendor Access, Transparency, and Fairness

Procurement is conducted in a fair and transparent manner, offering all qualified suppliers equal treatment and open access to compete for government business.

6.0 CONFLICT OF ~~INTEREST~~INTERESTn

6.1 No Conflict of Interest. Except as expressly permitted by the Declaration of Trust, the Recipient is expected to implement appropriate processes and control to ensure that the Program and the use, ~~apply~~application and ~~distribute~~distribution of the Funds are without an actual, potential or perceived conflict of interest.

6.2 Conflict of Interest Includes. For the purposes of this Article, a conflict of interest includes any circumstances where, except as expressly permitted by the Declaration of Trust:

(a) the Recipient; or

(b) any person who has the capacity to influence the Recipient's decisions,

has outside commitments, relationships or financial interests that could, or could be seen to, interfere with the Recipient's objective, unbiased and impartial judgment relating to the Project, or the Recipient's use, application or distribution of the Funds, or both.

7.0 REPORTING, ACCOUNTING AND REVIEW

7.1 Preparation and Submission. The Recipient will cooperate with the Province to accommodate the Province's on-going information and reporting objectives in order to enable the Province to be aware of the Recipient's activities in furtherance of the Purpose, and to that end the Recipient will be expected, from and following the Original Trustee Replacement Date, to:

(a) submit to the Province at the address referred to in Schedule "B", all Reports in accordance with the timelines and content requirements set out in Schedule "F", or in a form as specified by the Province from time to time, acting reasonably;

(b) submit to the Province at the address referred to in Schedule "B", any other reports as may be reasonably requested by the Province from time to time in accordance with the timelines and content expectations identified by the Province, acting reasonably;

(c) undertake diligent efforts so that such Reports and any such other reports are complete and accurate in all material respects; and

(d) have an authorized signatory of the Recipient sign-off on such Reports and other reports.

7.2 Record Maintenance. The Recipient will keep and maintain financial and other records necessary to permit it to satisfy its obligations under section 7.1 and to permit the Province to exercise its rights under section 7.3.

7.3 **Inspection.** The Province, its authorized representatives or an independent auditor identified by the Province may, at its own expense, upon twenty-four hours' Notice to the Recipient and during normal business hours, inspect the records of and information respecting the Recipient to confirm its compliance with the terms of this Agreement, including to ensure consistency with the Purpose and, for these purposes, the Province, its authorized representatives or an independent auditor identified by the Province may take one or more of the following actions:

(a) inspect and copy the records and documents referred to in section 7.2;

(b) keep any copies made pursuant to section 7.3(a); and

(c) conduct an audit or investigation of the Recipient in respect of the expenditure of the Funds to confirm that the Funds have been used, applied and distributed for and in furtherance of the Purpose, including a review of the ~~Trust~~Recipient's processes, records, documents, as well as the processes and controls applied to obtain assurance that Funds disbursed to Electricity Distributors were used, applied and distributed for and in furtherance of the Purpose.

7.4 **Disclosure.** To assist in respect of the rights set out in section 7.3, the Recipient will disclose any information requested by the Province, its authorized representatives or an independent auditor identified by the Province, and will do so in the form requested by the Province, its authorized representatives or an independent auditor identified by the Province, as the case may be.

7.5 **No Control of Records.** No provision of the Agreement will be construed so as to give the Province any control whatsoever over the Recipient's records.

7.6 **Auditor General.** For greater certainty, the Province's rights under this Article are in addition to and do not limit any rights provided to the Auditor General pursuant to section 9.1 of the *Auditor General Act* (Ontario).

8.0 COMMUNICATIONS REQUIREMENTS

8.1 **Publication.** The Recipient will ~~indicate~~acknowledge, in any of its Program-related ~~publications,~~external communications and marketing whether written, oral, or visual, the financial support of the Province in connection with the establishment and funding of the program, while noting that the views expressed in the publication are the views of the Recipient and do not necessarily reflect those of the Province.

9.0 FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY

9.1 **FIPPA.** The Recipient acknowledges that the Province is bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province in connection with the Project or otherwise in connection with the Agreement may be subject to disclosure in accordance with that Act.

10.0 ~~INSURANCE~~Intentionally Deleted

~~**10.1** **Insurance.** The Recipient has made enquiries to confirm that insurance policies of the type contemplated in Schedule C are generally available in Canada.~~

11.0 EVENT OF DEFAULT, CORRECTIVE ACTION AND TERMINATION FOR DEFAULT

11.1 **Events of Default.** An Event of Default will occur if:

(a) the Recipient fails to perform or observe any covenant in this Agreement and such failure has and continues to have a material adverse effect on the Province and remains unremedied during any Notice period applicable under section 11.2 after the earlier of (i) actual

knowledge thereof by the Recipient, or (ii) receipt by the Recipient of Notice thereof from the Province;

(b) any representation or warranty made by the Recipient in the Agreement shall prove to have been incorrect in any material respect when made or deemed made, and, if capable of remedy, continues to be incorrect in any material respect during any Notice period applicable under section 11.2 after the earlier to occur of (i) the actual knowledge thereof by the Recipient or (ii) receipt by the Recipient of Notice thereof from the Province;

(c) it is ~~[~~determined~~]~~~~[manifestly demonstrated by the Province]~~ that the Recipient has breached its Standard of Care (within the meaning given in and context of the Declaration of Trust) in discharging its material duties under the Declaration of Trust, with the result that all or a significant part of the Funds have not been or are not being applied in furtherance of the Purpose or are being applied in a manner that is directly contrary or without regard to the Purpose, and, if such breach is capable of remedy, it continues and remains unremedied during any Notice ~~period~~Period applicable under section 11.2 after the earlier of (i) actual knowledge thereof by the Recipient, or (ii) receipt by the Recipient of Notice thereof from the Province;

(d) an insolvency event shall have occurred and be continuing with respect to the Recipient.

11.2 Consequences of Events of Default and Corrective Action. If an Event of Default occurs, the Province may, at any time, take one or more of the following actions:

(a) provide the Recipient with Notice allowing the Recipient an opportunity to remedy the Event of Default during a specified Notice Period;

(b) seek an order of specific performance, including an order that the Recipient pursue its available remedies against third parties;

(c) require, by Notice of demand, that the Recipient transfer to the Province (without any need for compensation, indemnity or consideration to the Recipient or any Beneficiary or other third party) any and all Assets remaining in the possession or under the control of the Recipient that can reasonably be traced or attributed to the Funds after first providing for the completion and performance by the Recipient of any unperformed contractual obligations of the Recipient undertaken in compliance with the Declaration of Trust on or prior to transfer; and

(d) terminate the Agreement, including immediately, without liability, penalty or costs to the Province upon giving Notice to the Recipient.

The transfer of Funds in accordance with the Agreement is made by the Province with the expressed intention and reservation that the transferred Funds shall be returned to the Province and the entitlements of the Recipient in remaining Funds shall thereby be revoked with reversion thereof to the Province in the circumstances contemplated in Section 11.2(c).

11.3 Opportunity to Remedy. If, in accordance with section 11.2, the Province provides the Recipient with an opportunity to remedy the Event of Default, the Province will provide Notice to the Recipient of:

(a) the particulars of the Event of Default; and

(b) the length of time within which the Recipient may cure such Event of Default without the Province pursuing any other remedy (the "Notice Period").

11.4 Recipient not Remedying. If the Province has provided the Recipient with an opportunity to remedy the Event of Default pursuant to section 11.2(a), and:

(a) the Recipient does not remedy the Event of Default within the Notice Period;

(b) it becomes apparent to the Province that the Recipient cannot adequately remedy the Event of Default within the Notice Period; or

(c) the Recipient is not proceeding to remedy the Event of Default in a way that is satisfactory to the Province,

the Province may extend any Notice ~~period~~Period, or initiate any one or more of the actions provided for in section 11.2.

12.0 REPAYMENT

12.1 Debt Due. If, pursuant to the Agreement: the Province demands the payment of any Funds from the Recipient pursuant to section 11.2(c) such Funds or other amount will be deemed to be a debt due and owing to the Province by the Recipient, and the Recipient will pay or return the amount to the Province immediately, unless the Province directs otherwise.

~~**12.2 Interest Rate.** The Province may charge the Recipient interest on any money owing by the Recipient at the then current interest rate charged by the Province of Ontario on accounts receivable.~~

12.2 ~~**12.3**~~ **Payment of Money to Province.** The Recipient will pay any money owing to the Province by cheque payable to the "Ontario Minister of Finance" and delivered to the Province at the address referred to in ~~[~~Schedule "B"~~]~~.

12.3 ~~**12.4**~~ **Failure to Repay.** Without limiting the application of section 43 of the Financial Administration Act (Ontario), if the Recipient fails to repay any amount owing under the Agreement, Her Majesty the Queen in right of Ontario may deduct any unpaid amount from any money payable to the Recipient by Her Majesty the Queen in right of Ontario.

13.0 NOTICE

13.1 Notice in Writing and Addressed. Notice will be in writing and will be delivered by email, postage-prepaid mail, personal delivery or fax, and will be addressed to the Province and the Recipient respectively as set out in Schedule "B", or as either Party later designates to the other by Notice.

13.2 Notice Given. Notice will be deemed to have been given:

(a) in the case of postage-prepaid mail, five Business Days after the Notice is mailed; or

(b) in the case of email, personal delivery or fax, one Business Day after the Notice is delivered.

13.3 Postal Disruption. Despite section 13.2(a), in the event of a postal disruption:

(a) Notice by postage-prepaid mail will not be deemed to be received; and

(b) the Party giving Notice will provide Notice by email, personal delivery or by fax.

14.0 SEVERABILITY OF PROVISIONS

14.1 Invalidity or Unenforceability of Any Provision. The invalidity or unenforceability of any provision of the Agreement will not affect the validity or enforceability of any other provision of the Agreement. Any invalid or unenforceable provision will be deemed to be severed.

15.0 WAIVER

15.1 **Waivers in Writing.** If a Party fails to comply with any term of the Agreement, that Party may only rely on a waiver of the other Party if the other Party has provided a written waiver in accordance with the Notice provisions in Article 13.0. Any waiver must refer to a specific failure to comply and will not have the effect of waiving any subsequent failures to comply.

16.0 INDEPENDENT PARTIES

16.1 **Parties Independent.** The Recipient acknowledges that it is not an agent, joint venturer, partner or employee of the Province, and the Recipient will not represent itself in any way that might be taken by a reasonable person to suggest that it is, or take any actions that could establish or imply such a relationship.

17.0 ASSIGNMENT OF AGREEMENT OR FUNDS

17.1 **Agreement Binding.** All rights and obligations contained in the Agreement will extend to and be binding on the Parties' respective heirs, executors, administrators, successors and permitted assigns.

18.0 LIMITATION OF LIABILITY

18.1 This Agreement has been entered into by the ~~Trustee~~Recipient solely in its capacity as trustee of the ~~Recipient~~Affordability Fund Trust and is not binding on the ~~Trustee~~Recipient in any other capacity, whether in tort, contract or otherwise. The Beneficiaries of the ~~**Recipient**~~Affordability Fund Trust are not subject to any liability in respect of the ~~**Recipient**~~Affordability Fund Trust. Resort may not be had to, nor recourse or satisfaction be sought from, the private property of the ~~Trustee~~Recipient (whether owned by ~~its~~it in its personal capacity or in any other capacity other than in its capacity as ~~Trustee~~trustee of the ~~Recipient~~Affordability Fund Trust), its directors, officers, employees, or agents, or the private property of any Beneficiary, and resort will be had solely to the property of the Recipient held in trust ~~by the Trustee~~ for the payment, performance or satisfaction of any liability or obligation of the Recipient ~~or the Trustee~~ under this Agreement. However, the foregoing limitations in this section shall not apply where the ~~Trustee~~Recipient has demonstrated gross negligence, bad faith, fraud or wilful misconduct.

19.0 GOVERNING LAW

19.1 **Governing Law.** The Agreement and the rights, obligations and relations of the Parties will be governed by and construed in accordance with the laws of the Province of Ontario and the applicable federal laws of Canada. Any actions or proceedings arising in connection with the Agreement will be conducted in the courts of Ontario, which will have exclusive jurisdiction over such proceedings.

20.0 FURTHER ASSURANCES

20.1 **Agreement into Effect.** The Recipient will provide such further assurances as the Province may request from time to time with respect to any matter to which the Agreement pertains, and will otherwise do or cause to be done all acts or things necessary to implement and carry into effect the terms and conditions of the Agreement to their full extent.

20.2 **Declaration of Trust.** The ~~Trustee~~Recipient covenants that it shall not amend, restate or terminate the Declaration of Trust without obtaining the written consent of the Province in respect of same, such consent not to be unreasonably withheld or delayed.

21.0 JOINT AND SEVERAL LIABILITY

21.1 **Joint and Several Liability.** Without limiting and subject to section 18.1 and the Declaration of Trust, if the Recipient is comprised of more than one entity, all such entities will be jointly and

severally liable to the Province for the fulfillment of the obligations of the Recipient under the Agreement.

22.0 RIGHTS AND REMEDIES CUMULATIVE

22.1 Rights and Remedies Cumulative. The rights and remedies of the Province under the Agreement are cumulative and are in addition to, and not in substitution for, any of its rights and remedies provided by law or in equity.

23.0 ACKNOWLEDGEMENT OF OTHER LEGISLATION AND DIRECTIVES

23.1 Recipient Acknowledges. The Recipient acknowledges that by receiving Funds it may become subject to legislation applicable to organizations that receive funding from the Government of Ontario, including the BPSAA, the PSSDA, and the *Auditor General Act* (Ontario).

24.0 SURVIVAL

24.1 Survival. The following Articles and sections, and all applicable cross-referenced sections and schedules, will continue in full force and effect for a period of seven years from the date of expiry or termination of the Agreement: Article 1.0 and any other applicable definitions, section, 4.5, section 7.1 (to the extent that the Recipient has not provided the Reports to the satisfaction of the Province), sections 7.2, 7.3, 7.4, 7.5, 7.6, Article 8.0, Article 12.0, Article 14.0, Article 16.0, Article 17.0, Article 19.0, Article ~~20.0,~~21.0, Article ~~21.0~~23.0 and Article 24.0.

- END OF GENERAL TERMS AND CONDITIONS -

SCHEDULE "B"

PROJECT SPECIFIC INFORMATION

Maximum Funds	$100 million
Expiration Date	~~Later of [April 30, 2019] and the Final Distribution Date (as defined in~~The date upon which the Affordability Fund Trust is terminated in accordance with the Declaration of Trust~~)~~
Contact information for the purposes of Notice to the Province	**Attention: Usman Syed** **Position: Director** **Address: 77 Grenville St, Toronto, Ontario, M7A 2C1** **Fax: 416-325-6651** **Email: Usman.Syed@ontario.ca**
Contact information for the purposes of Notice to the Recipient	**Attention:** **Position:** **Address:** **Email:**
Contact information for the senior financial person in the Recipient organization (e.g., CFO, CAO) – to respond as required to requests from the Province related to the Agreement	**Attention:** **Position:** **Address:** **Email:**

SCHEDULE "C"

PROJECT

For the purposes of this Agreement, the "Project" is the distribution of the Funds in accordance with the Declaration of Trust.

It is intended the Project will be undertaken by the Recipient in furtherance of the Purpose and in accordance with the Declaration of Trust. In this regard, it is expected that the Recipient will undertake the Program having regard to the Budget and the Principles set forth in Annex A.

The following are the ~~Provinces~~Province's expectations regarding the circumstances in which the Recipient will begin to distribute any Funds to any Beneficiary.

1. The Original Trustee Replacement Date (as defined in the Declaration of Trust) will have occurred.

2. An ~~administrative services agreement~~Administrative Services Agreement (as defined in the Declaration of Trust) will have been entered into between the Recipient and ~~an Administrative Services Agent providing for the~~Hydro One Limited under which Hydro One Limited shall provide specified administrative and other services ~~necessary for~~on behalf of the Recipient ~~to perform its obligations herein and execute the Project.~~ .

3. Administrative procedures will have been developed and implemented under which Electricity Distributors (as defined in the Declaration of Trust) will be invited to assist with (a) the identification and selection of Primary Beneficiaries under the Declaration of Trust, (b) the determination of the amount of Funds to be distributed to particular Primary Beneficiaries, and (c) the distribution of Funds to or for the benefit of such Primary Beneficiaries (in each case substantially on the basis contemplated in the Permitted Delegations Annex).

4. The Recipient will have obtained commercial general liability insurance from insurers having a secure A.M. Best rating of B+ or greater, or the equivalent, that in the opinion of the Recipient a prudent person similar to the Recipient would maintain, and having an inclusive limit of not less than $2,000,000 per occurrence and providing for contractual liability coverage. If requested, the Recipient will provide the Province (for its information purposes) with copies of the certificates of insurance and policies for such insurance coverage.

The Province recognizes that the foregoing may involve the Recipient entering into agreements as ~~may be~~ the Recipient considers to be necessary or expedient, including any required amendment or amendment and restatement of the Declaration of Trust. Funds may be expended to pay the expenses of the ~~Trustee~~Recipient in completing these matters. The Recipient ~~will confirm~~is requested to advise the Province ~~once such matters have been completed~~through its quarterly reports on the status of the foregoing.

SCHEDULE "D"

Recipient's Budget

1. It is expected that the administrative expenses of the ~~Fund~~Recipient, including any administrative expenses of ~~the Recipient (or any administrative services agents or~~any Administrative Services Agents or any Implementation Agents ~~or any~~ other agents retained by the Recipient~~)~~, relating to the establishment of the Affordability Fund Trust and satisfying the Requirements (as defined in Schedule "C") and any expenses related to the operation of the Affordability Fund Trust and the execution of the Project (including any reimbursable expenses incurred by any Administrative Services Agent or any Implementation Agent (as such terms are defined in the Declaration of Trust)), will be no greater than 10 percent of the total Project budget.

2. The only expenditures incurred by the Recipient that are eligible for reimbursement are actual (excluding HST) administrative overhead expenses incurred by or on behalf of the Recipient that directly related to the Recipient or the establishment of the Affordability Fund Trust.

4. Any expenses that have been or may be reimbursed by other parties should not be reimbursed ~~by~~from the assets of the Affordability Fund Trust.

5. It is expected any travel, meals and hospitality expenses by the Recipient will be consistent with the Province's Travel, Meal and Hospitality Expenses Directive. For purposes of funding entities receiving funding from the Recipient, the following would not be considered eligible claims:

    - Alcohol
    - First-Class travel
    - Meals, snacks and beverages
    - Gratuities
    - Laundry or dry cleaning
    - Valet services
    - Dependent care
    - Home management
    - Personal telephone calls

6. In the event that the Recipient performs any procurements, it is expected that all procurements will reflect the principles of Ontario's Public Service Procurement Directive.

SCHEDULE "E"

PAYMENT PLAN

PAYMENT DATE	MAXIMUM FUNDS TO BE DISBURSED BY THE PROVINCE
Within 7 days of signing the Agreement	$ ~~100,000,000~~[1]100,000,000

[1] ~~Investment income and proceeds of the Funds are to be applied for the Purpose in accordance with the Declaration of Trust.~~

SCHEDULE "F"

REPORTING

From and following the Original Trustee Replacement Date, Reports[2] will be [quarterly] on the basis of the government's fiscal year starting at the execution of this Agreement and continuing until conclusion of the Agreement. Annual Reports will be on a fiscal basis starting at the execution of this Agreement and continuing until conclusion of the Agreement. Quarterly Reports and Annual Reports would be expected to be submitted to the Province within one month following the end of the reporting period that they represent. The Province expects that these Reports would be prepared to demonstrate the impact of the Province's funding and address the following:

- Quarterly Reports would include a report back on the ~~Trustee~~trustee-developed performance management criteria. Initially, such Quarterly Reports would include details respecting:
    - Amounts disbursed by the Recipient in the previous quarter. It is expected that this information would be provided at the Electricity Distributor level and in the aggregate.
    - Total Affordability Fund investment income earned and accrued to date.
    - Key activities and achievements from the quarter, including the number of participant households per Electricity Distributor, average participant incentive cost per Electricity Distributor, and uptake of energy efficiency measures per Electricity Distributor.
    - Any challenges or modifications to the application, funding, or eligibility processes/rules of the Recipient.
    - Key activities planned for the upcoming quarter.
    - Details of any situation that a reasonable person might interpret as an actual, potential or perceived conflict of interest.
- Annual Reports would include a report back on the ~~Trustee~~trustee-developed performance management criteria. Initially, such Annual Report would include details respecting:

[2] ~~NTD: Confirm and conform frequency references.~~

- A description of an Electricity Distributor's application process and the criteria used by the Recipient to distribute funds.
- Any challenges identified by the Recipient or any Administrative Services Agent in achieving the Purpose and proposed solutions, if applicable.
- Lesson learned.
- Electricity Distributor and customer feedback.
- Amounts distributed to Beneficiaries or otherwise disbursed by the Recipient in the previous year. It is expected that this information will be provided by each Electricity Distributor.
- Key activities and achievements from each quarter being reported, including number of participant households per Electricity Distributor, average participant incentive cost per Electricity Distributor, and uptake of energy efficiency measures per Electricity Distributor.
- Total Affordability Fund interest earned and accrued to date.

As part of an Annual Report, the Recipient would also provide the Province with an audited financial statement for the previous year.

ANNEX A

Principles

[Insert from Principles Annex once settled in the Declaration of Trust]

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Deletions	79
Moved from	2
Moved to	2
Style change	0
Format changed	0
Total changes	167

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DECLARATION OF TRUST

Made as of March •, 2017

by

COMPUTERSHARE TRUST COMPANY OF CANADA

establishing

AFFORDABILITY FUND TRUST

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DECLARATION OF TRUST

This Declaration of Trust is made as of March •, 2017, by Computershare Trust Company of Canada, a trust company established under the laws of Canada and licensed to carry on business as a trust company in each of the provinces and territories of Canada (together with its successors and assigns and the other trustees (including the Board of Trustees) contemplated herein, the "**Trustee**").

WHEREAS Computershare Trust Company of Canada, as settlor, wishes to establish a trust to acquire, hold, manage, invest, apply and dispose of certain property for the benefit of certain Beneficiaries as herein described.

NOW THEREFORE Computershare Trust Company of Canada hereby declares that it holds in trust as trustee (a) the sum of ONE HUNDRED DOLLARS ($100) contributed by it on this date and (b) all other property of every type and description which it may hereafter acquire or hold in its capacity as trustee of the Trust and all income therefrom and proceeds thereof, to hold, manage, invest, apply and dispose of same on and subject to the provisions set forth in this Declaration of Trust, including the annexes and schedule attached hereto.

SECTION 1
INTERPRETATION

1.1 Definitions

In this Declaration:

(a) "***Administrative Services Agent***" means each agent, which may include any Electricity Distributor or other Person, appointed from time to time under an Administrative Services Agreement, and its successors and permitted assigns solely in such capacity.

(b) "***Administrative Services Agreement***" means each agreement entered into from time to time by the Trust and one or more Administrative Services Agents or other Persons, in furtherance of the Purpose, under which the Administrative Services Agent agrees to provide specified administrative and other services to and on behalf of the Trustee, as such agreement may be amended, supplemented, restated, renewed or replaced from time to time and includes the agreement entered into on or about the date hereof between the Trustee and Hydro One Limited.

(c) "***Assets***" means, collectively, the following:

(i) the $100 Canadian referred to above, contributed by Computershare Trust Company of Canada on the date hereof;

(ii) all other property which is now or which at any time in the future may be issued, assigned, transferred, provided, donated, gifted and contributed to the Trustee (including pursuant to the Transfer Payment Agreement) to be held in trust pursuant to this Declaration (and which the Trustee is willing to accept and hold);

(iii) all acquisitions of property made by the Trust;

(iv) all property which may at any time be substituted for or in respect of the property referred to in clauses (i), (ii) and (iii), above;

(v) all income of the Trust, including investment income generated by the investment of the property referred to in clauses (i), (ii), (iii) and (iv), above; and

(vi) all proceeds of disposition of any of the property referred to in clauses (i) through (v) above,

but excludes any property paid out or distributed (whether out of income or capital) pursuant to the provisions of this Declaration.

(d) "***Beneficiary***" means each Primary Beneficiary and each Residual Beneficiary, as applicable.

(e) "***Board of Trustees***" means (i) as of the Original Trustee Replacement Date, the individual trustees appointed by the Original Trustee pursuant to Section 5.7 on the basis described in the Trustee Replacement Annex, and (ii) thereafter, the group of trustees appointed hereunder and acting in such capacity.

(f) "***Business Day***" means any working day, Monday to Friday inclusive, excluding statutory and other holidays, namely: New Year's Day; Family Day; Good Friday; Easter Monday; Victoria Day; Canada Day; Civic Holiday; Labour Day; Thanksgiving Day; Remembrance Day; Christmas Day; Boxing Day and any other day on which the Province has elected to be closed for business.

(g) "***Declaration***" means this Declaration of Trust, as it may be amended, restated, supplemented or otherwise modified from time to time, and includes each of the annexes and the Schedule attached hereto which constitute and form an integral part of this Declaration.

(h) "***Electricity Distributor***" means, in respect of a designated service area or region in Ontario, the distributor of electricity to residences located in such area or region.

(i) "***Electricity Invoice***" means an invoice issued by an Electricity Distributor in respect of electricity charges and related services and amounts incurred or assessed in respect of a residence located in the Electricity Distributor's designated service area or region in Ontario.

(j) "***Eligible Investments***" means (i) a deposit receipt, note, certificate or instrument issued, guaranteed or endorsed by a bank listed in Schedule I to the *Bank Act* (Canada), which provides that the principal and any interest shall be fully paid no later than one year after the day the investment was made, or (ii) a deposit account at a bank listed in Schedule I to the *Bank Act* (Canada).

(k) "***Eligible Measures***" means electricity efficiency and/or conservation measures determined by the Trustee from time to time on the basis contemplated in the Principles Annex and in the manner specified in and having regard to the Permitted Delegations Annex.

(l) "***Final Distribution Date***" means the earlier of (a) the date (if any) on which the Trustee determines (by a resolution of the Board of Trustees) that no further distributions are likely to be made to any Primary Beneficiary and (b) 20••.

(m) "***HAP Eligible Person***" means an "Eligible Person" as defined in Section 3.1 of the document entitled "Conservation First Framework LDC Took Kit" published by the Independent Electricity System Operator and designated as Final v3.0 – March 11, 2016, as amended in accordance with the Energy Conservation Agreement between the Independent Electricity System Operator and Electricity Distributors.

(n) **"Implementation Agent"** means each agent which may include any Electricity Distributor or other Person, appointed from time to time under an Implementation Agreement, and its successors and assigns solely in such capacity.

(o) **"Implementation Agreement"** means each agreement entered into from time to time by the Trustee and one or more Implementation Agents or other Persons in furtherance of the Purpose under which the Implementation Agent would agree to provide specified services to and on behalf or the Trustee (including, following the Original Trustee Replacement Date, as contemplated by the Permitted Delegations Annex) in connection with the implementation of the Program as such agreement may be amended , supplemented, restated, renewed or replaced from time to time.

(p) "***Minister of Energy***" means the Minister of Energy or such other member of the Executive Council as may be assigned primary ministerial responsibility for the administration of the *Ministry of Energy Act, 2011* under the *Executive Council Act*.

(q) "***Original Trustee***" means Computershare Trust Company of Canada, acting in its capacity as trustee hereunder, together with any additional or replacement Trustee appointed hereunder prior to the Original Trustee Replacement Date and any of their respective successors and assigns.

(r) "***Original Trustee Replacement Date***" has the meaning specified in Section 5.7, being the date on which the Original Trustee is replaced as trustee under this Declaration by the Board of Trustees as contemplated under Section 5.7.

(s) "***Permitted Delegations Annex***" means the Permitted Delegations Annex set forth as an annex to this Declaration.

(t) "***Person***" includes any individual, sole proprietorship, corporation, partnership, joint venture, association, society, club, board, chamber, joint-stock company, trust, trustee, unincorporated or incorporated organization or entity or government or any entity, agency or political subdivision thereof.

(u) "***Primary Beneficiary***" means each individual that, as of a time of determination, satisfies each of the following criteria:

(i) the individual owns, rents or leases a residence located in Ontario and is the primary or secondary electricity utility account holder named on an Electricity Invoice issued in respect of that residence; and

(ii) the individual is not a HAP Eligible Person.

(v) "***Principles Annex***" means the Principles Annex set forth as an annex to this Declaration.

(w) "***Province***" means the Province of Ontario.

(x) "***Program***" means the establishment, promotion, implementation and administration of a program to achieve the Purpose on the basis contemplated in this Declaration.

(y) "***Purpose***" means (i) the making of distributions to Primary Beneficiaries who are identified and whose needs are assessed in accordance with section 3.1 and 3.2 of this Declaration, having regard to (x) the principles set forth in the Principles Annex, (y) the manner and basis of implementation and administration of the Program contemplated in the Permitted Delegations Annex, and (z) the other terms, limitations and requirements set forth in this Declaration, and (ii) to the extent that Assets are available following the distributions made to Primary Beneficiaries as contemplated in (i), above, the making of distributions to Residual Beneficiaries who are identified and whose needs are assessed in accordance with section 3.3 and otherwise having regard to the other terms, limitations and requirements set forth in this Declaration.

(z) ***"Residual Beneficiary"*** means each charitable organization identified by the Trustee and specified as a residual beneficiary hereunder from time to time, selected by the Trustee in consultation with and having regard to the recommendations of the Ontario Energy Board in accordance with section 3.3.

(aa) "***Transfer Payment Agreement***" means the transfer payment agreement dated as of March •, 2017 between the Trustee and Her Majesty the Queen in right of Ontario as represented by the Minister of Energy, as such agreement may be amended, restated, supplemented or otherwise modified by the further agreement of the parties thereto from time to time.

(bb) "***Trust***" means Affordability Fund Trust, a trust established under and governed by the laws of the Province of Ontario pursuant to this Declaration.

(cc) "***Trustee***" means (i) the Original Trustee and (ii) on and after the Original Trustee Replacement Date, the Board of Trustees acting together in accordance with and subject to Section 5.7 and in accordance with the rules and procedures adopted by the Board of Trustees pursuant to Section 5.8.

(dd) "***Trustee Replacement Annex***" means the Trustee Replacement Annex set forth as an annex to this Declaration.

1.2 Headings and Table of Contents

The insertion of headings and the provision of a table of contents are for convenience of reference only and shall not affect the construction or interpretation of this Declaration.

1.3 References

Unless otherwise specified, all references to Sections are to Sections of this Declaration. The words "hereto", "herein", "hereof", "hereunder" and similar expressions refer to this Declaration and not to any particular Section or other provision of this Declaration.

1.4 Number and Gender

Unless otherwise specified, words importing the singular include the plural and vice versa and words importing gender include all genders.

1.5 Governing Law

This Declaration shall be governed by, and construed and interpreted in accordance with, the laws of the Province of Ontario and of Canada applicable therein.

1.6 Severability

Any provision of this Declaration which is illegal, invalid or unenforceable in any jurisdiction shall not affect the legality, validity or enforceability of the remaining provisions and any such illegality, invalidity or unenforceability in any jurisdiction shall not affect the legality, validity or enforceability of such provision in any other jurisdiction.

1.7 Reference to the Trust and the Trustee

For greater certainty, where any reference is made in this Declaration to an act to be performed by or for or on behalf of the Trust, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Trustee in its capacity as trustee of the Trust, and, where any reference is made in this Declaration to an act to be performed by or for or on behalf of the Trustee, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Trustee solely in its capacity as trustee of the Trust. Except as provided under the Transfer Payment Agreement, no Person dealing with the Trust or the Trustee shall be bound to make any enquiry concerning, or has the right to require production of, any evidence of the validity of any act of, or transaction purporting to be made by, the Trustee.

1.8 Defect in Appointment

No action taken by the Trustee will be invalid or ineffective by reason only of any defect in the appointment of the Trustee or the non-compliance by the Trustee with any rules or procedures adopted by the Trustee and which is discovered after the taking of such action.

SECTION 2
CONCERNING THE TRUST

2.1 Objectives

The Trust is established to hold, invest, apply and dispose of the Assets for the benefit of the Beneficiaries in furtherance of the Purpose, as provided for in this Declaration. In furtherance of the Purpose:

(a) the Original Trustee shall hold and invest the Assets as contemplated in this Declaration until the Original Trustee Replacement Date, after which the Board of Trustees shall be duly appointed hereunder; and

(b) the Board of Trustees shall hold, invest, apply and dispose of the Assets in accordance with this Declaration, including by determining the identities of and distributions (if any) to be made to or for the benefit of the Primary Beneficiaries in accordance with Sections 3.1 and 3.2 of this Declaration, having regard to the principles set forth in the Principles Annex and in the manner and on the basis contemplated in the Permitted Delegations Annex, or otherwise by determining the identities of and distributions to be made to or for the benefit of any Residual Beneficiary in accordance with Section 3.3,

in each case and in all respects subject to the terms, limitation and requirements set forth in this Declaration.

2.2 Name of the Trust

The name of the Trust shall be the "Affordability Fund Trust" or such replacement name as the Trustee shall determine and specify from time to time. The Trustee shall hold the Assets and conduct the activities of the Trust under such name or variation thereof (including any variation of such name in the French language). If the Trustee determines to change the name of the Trust, the Trustee may specify and use such other designation or adopt such other name (including any name in the French language) as it considers appropriate and may hold the Assets and conduct the activities of the Trust under such designation or other name.

2.3 Location

The head office and the situs of the administration of the Trust shall be • or such other address in Ontario as the Trustee may determine from time to time.

2.4 Fiscal Year

The fiscal year of the Trust shall end on December 31 of each year.

SECTION 3
DISTRIBUTIONS

3.1 Distributions to Primary Beneficiaries

After the Original Trustee Replacement Date and prior to the Final Distribution Date, the Trustee shall undertake diligent efforts in good faith to distribute the Assets (including capital or income) to the Primary Beneficiaries identified based on the application of the principles specified in the Principles Annex and in the manner and in the amounts determined on the basis contemplated by the Permitted Delegations Annex, in each case in the amounts and to the extent specified herein and therein, subject in all respects to the exercise by the Trustee of its discretion hereunder and to the exclusion of the other Beneficiaries.

3.2 Amount of Distributions to Primary Beneficiaries

For the purposes of determining the amount of distributions to be made to the Primary Beneficiaries, the Trustee shall have regard to and be entitled to rely on the recommendations of and information provided by Electricity Distributors acting as Implementation Agents appointed for the purposes, in the manner and substantially on the terms contemplated in the Permitted Delegations Annex, without any duty or obligation to verify or makes enquiries regarding the basis for or propriety of such recommendations or the accuracy or completeness of such information, except if and to the extent that the Trustee, in its discretion, determines that (i) it has actual knowledge that such recommendations are contrary to the reasonable application of the principles set forth in the Principles Annex or have been made on a basis that is manifestly contrary to such principles or the delegations and activities specified or contemplated to be undertaken under the Permitted Delegations Annex or (b) such information is known by the Trustee to be erroneous, contain a material misrepresentation or is materially incomplete.

3.3 Distributions to Residual Beneficiaries

Prior to the Final Distribution Date, the Trustee shall identify the Residual Beneficiary, or if more than one the Residual Beneficiaries and their respective allocations, by consulting with and having regard to the recommendations of the Ontario Energy Board, based on those charitable organizations which provide support services for Low Income Energy Assistance Program Emergency Financial Assistance (LEAP EFA) and the Ontario Electricity Support Program (OESP) or other charities that OEB may identify as relating to the Purpose. Following the Final Distribution Date, the Trustee shall, subject to compliance with section 7.3 and completion of a final audit, distribute all remaining Assets (including capital or income) to the Residual Beneficiaries, in each case in the amounts and to the extent determined by the Trustee in its discretion hereunder (having consulted with and having had regard to the recommendations of the Ontario Energy Board as aforesaid) and to the exclusion of the other Beneficiaries.

SECTION 4
POWERS OF THE TRUSTEE

4.1 General

Subject to and in compliance with the terms, limitations and restrictions of this Declaration and notwithstanding applicable trust legislation, the Trustee shall have, without other or further

authorization, full, exclusive and absolute power, control and authority over the Assets and over the affairs and activities of the Trust to the same extent as if the Trustee were not a trustee, but rather the sole and absolute owner of the Assets in its own right, including such power, control and authority to do all such acts and things as in its sole judgment and discretion are necessary, incidental or desirable for carrying on the affairs and activities of the Trust, with such powers of delegation as may be permitted or otherwise contemplated by this Declaration. Except as expressly provided in this Declaration, the enumeration in this Declaration of any specific power or authority shall not be construed as limiting the aforesaid general power or authority or any other specific power or authority set out herein. Subject to the terms, limitations and restrictions of this Declaration, every discretion or power hereby conferred on the Trustee is an absolute and uncontrolled discretion or power.

4.2 Specifically Enumerated Powers

The Trustee shall have the following specific powers and authorities:

(a) ***Transfer Payment Agreement.*** The Trustee shall have the power to enter into, amend, supplement, modify and perform its obligation under the Transfer Payment Agreement.

(b) ***Contracts and Undertakings.*** The Trustee shall have the power to enter into, amend, supplement, modify and perform its obligation under any contract entered into or undertaking given by the Trustee in furtherance of the Purpose, including any Administrative Services Agreement and any Implementation Agreement.

(c) ***Power to Own, Hold and Manage.*** Subject to section 4.2(d), the Trustee shall have the power to own, hold and manage the Assets in such manner as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable.

(d) ***Power to Invest in Eligible Investments.*** The Trustee shall have the power to invest the Assets only in Eligible Investments, and to change such Eligible Investments at any time and from time to time, all as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable, but always having regard to the Trustee's expectations regarding the timing of payments to be made to the Beneficiaries hereunder. If an investment of Assets in Eligible Investments would not be authorized under the applicable trust laws of Ontario, the Trustee shall nevertheless be permitted to make an investment of the Assets in such Eligible Investments. The Trustee will have no liability for the diminution in the value of any investment in Eligible Investments made hereunder.

(e) ***Power to Dispose of Assets.*** The Trustee shall have the power to sell, convey, assign, transfer, exchange and in any other manner dispose of the Assets or any part or parts thereof free and clear of any and all trusts established under this Declaration, by public or private sale, for cash or on credit, with or without advertisement, and subject to such restrictions, stipulations, agreements and reservations as the Trustee in its sole and absolute discretion may consider appropriate or advisable, and to execute and deliver and perform any agreement, deed, conveyance, transfer or other document or instrument in connection with the foregoing.

(f) ***Power to Apply Assets and Proceeds to Make Distributions to Beneficiaries.*** The Trustee shall have the power to apply the Assets and the proceeds and income derived therefrom to make distributions to the Beneficiaries contemplated by Section 3, and to execute and deliver

and perform any agreement, deed, conveyance, transfer or other document or instrument in connection therewith.

(g) ***Power to Delegate and to Appoint Agents, etc.*** The Trustee shall have the power to appoint, employ or contract with any Person as the Trustee in its sole and absolute discretion may consider appropriate or advisable in connection with the activities of the Trust. Without limiting the generality of the foregoing:

(i) the Trustee will have the power at any time and from time to time to appoint, employ or retain consultants, financial advisers, technical advisers, legal counsel, accountants, administrative services agents, implementation agents, insurers, insurance agents and insurance brokers, as the Trustee may require for the purpose of discharging its duties hereunder and shall not be responsible for or for the actions of any of them, including to:

(A) act for and on behalf of the Trust in connection with any and all matters in any way relating to the negotiation, settlement, entering into, amending, performance and enforcement of the Transfer Payment Agreement, the Administrative Services Agreements, the Implementation Agreements, and any other agreements and contracts to which the Trust becomes a party in accordance with this Declaration;

(B) to provide or cause to be provided any or all kinds of administrative and other services in any way relating to the activities of the Trust;

(C) to act as attorney in fact, agent or trustee in the acquisition, holding, investment, application, sale or other disposition of the Assets and in the handling, prosecuting, defending or settling of any claims of or made against the Trust;

(D) to value the Assets and determine the net income of the Trust; and

(E) to make any filings, elections and submissions (including in respect of taxation matters) in connection with the Trust's compliance with applicable laws and regulatory requirements; and

(ii) the Trustee may pay remuneration and reimbursements from the Assets for services performed for it or on its behalf in the discharge of the trusts hereof without taxation for costs or fees of any counsel, solicitor or attorney.

Without limiting the foregoing, it is expected that the Board of Trustees will seek to enter into Implementation Agreements with Electricity Distributors for the purposes contemplated by the Permitted Delegations Annex, and on such terms and conditions (including terms and conditions as to the payment of reasonable fees and expenses) not inconsistent therewith as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable.

(h) ***Power to Operate Accounts.*** The Trustee shall have the power to (i) open and operate accounts at any chartered bank, trust company or other financial institution in Canada or

elsewhere, as the Trustee in its sole and absolute discretion may consider appropriate or advisable; (ii) deposit therein any moneys or securities forming part of the Assets whether or not such deposits will earn interest; (iii) withdraw such deposits at such times and in such manner as the Trustee may determine; (iv) draw, make, endorse, deposit or otherwise deal in cheques, bills of exchange, promissory notes, drafts and other kinds of instruments and securities; and (v) enter into contracts or agreements with any such chartered bank, trust company or other financial institution containing such terms and provisions as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable. In connection therewith, the Trustee shall have no liability or responsibility for any loss which may occur by reason of the failure of any such chartered bank, trust company or other financial institution.

(i) ***Power to Collect, etc.*** The Trustee shall have the power to (i) collect, sue for, receive and give receipts for all sums of money or other property due to the Trust; (ii) consent to extensions of time for payment or to the renewal of any securities or obligations; (iii) engage or intervene in, prosecute, defend, compound, compromise, abandon or adjust by arbitration or otherwise, any demands, claims, actions, suits or proceedings relating to the Trust or the Assets; (iv) exercise any and all remedies available to the Trustee under any agreement or as may otherwise be available, including any power of foreclosure or sale available at law; (v) in connection with any such foreclosure or sale, purchase or otherwise acquire title to any property and to convey good title thereto free of any and all trusts hereby established, or to take or retake possession of any property secured under any agreement or instrument; (vi) extend the time, with or without security, for the payment or delivery of any debts or property; (vii) execute and deliver releases, acquittances, discharges, agreements or other instruments related thereto; and (viii) pay or satisfy any debts or claims upon any evidence that the Trustee, in its sole and absolute discretion, may determine to be sufficient.

(j) ***Power to Obtain Insurance***. The Trustee shall have the power to enter into contracts for or in relation to or otherwise obtain policies of insurance for the purpose of insuring the risks associated with the Trust, including to insure the Trustee (including the members of the Board of Trustees) against any risk of loss associated with assuming and performing the duties as Trustee. Without limiting the foregoing, it is expected that the Board of Trustees will obtain commercial general liability insurance from insurers having a secure A.M. Best rating of B+ or greater, or the equivalent, that in the opinion of the Recipient a prudent person similar to the Recipient would maintain, and having an inclusive limit of not less than $2,000,000 per occurrence and providing for contractual liability coverage.

(k) ***Power to Pay Trustee's Fees.*** The Original Trustee shall be entitled to be paid and receive the fees set forth in the Original Trustee's schedule of fees delivered as of the date hereof as compensation for its services under this Declaration, and to be reimbursed for its out-of-pocket expenses reasonably incurred, in each case from the Assets and without the approval of any Beneficiary or any court. The Original Trustee shall be entitled, in its sole and absolute discretion, to withdraw funds from time to time for such purpose from any account of the Trust. Members of the Board of Trustees shall be entitled to reimbursement for and in respect of their out-of-pocket expenses reasonably incurred in discharging their respective duties and obligations under this Declaration, in each case without the approval of any Beneficiary or any court, provided that the members of the Board of Trustees have general regard to sorts of limitations as are set forth in the "Travel, Meal and Hospitality Expenses Directive of the Province" specified

and amended by the Province from time to time, a copy of the current version of which is attached as Exhibit 1 to the Principles Annex.

(l) ***Power to Pay Taxes.*** The Trustee shall have the power to (i) pay, deduct, withhold or remit any taxes or assessments which are required by law to be paid, deducted, withheld or remitted together with or from any payment made by the Trustee; (ii) pay all taxes or assessments of whatever kind or nature imposed upon or against the Trust or the Trustee in connection with the Assets or any part thereof; (iii) collect and remit all taxes and assessments of whatever kind or nature required to be collected and remitted by the Trust or the Trustee in connection with their activities or the Assets or any part thereof; (iv) appeal, settle or compromise tax claims or liabilities; and (v) for the foregoing purposes, to make such returns, elections and submissions and do all such other acts and things as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable.

(m) ***Power to Appoint Auditors.*** The Trustee shall have the power to select and appoint and discharge and re-appoint, in its sole and absolute discretion, an auditor or auditors of the Trust and to settle and pay the fees of any such auditor or auditors from any account of the Trust.

(n) ***Form of Accounts.*** The Trustee shall have the power to determine and change from time to time, in its sole and absolute discretion, the method or form in which the accounts of the Trust will be kept and shall not be required to keep or provide accounts in the form usually required by law to be kept or provided by trustees; provided that such method or form reasonably complies with generally accepted accounting principles in effect in Canada to the extent applicable.

(o) ***Title to Assets.*** The Trustee shall have the power to cause all or any part of the Assets to be held by or registered, in its sole and absolute discretion, in the name of any Person.

(p) ***Delegation of Discretion***. The Trustee shall have the power to delegate the right and power to exercise, or concur in the exercise of any discretion or power, conferred on the Trustee in this Declaration or conferred by law to any one or more of its directors, officers, employees, agents, representatives or to such other Person, as the Trustee, in its sole and absolute discretion, may think is appropriate or advisable, including to one or more Administrative Services Agents under an Administrative Services Agreement and to one or more Implementation Agents and their respective employees, officers and directors under a related Implementation Agreement entered into by the Trust substantially on the basis contemplated in the Permitted Delegations Annex. In particular, the Trustee shall have the power to accept, rely on and follow the recommendations of an Electricity Distributor made under and having regard to the Permitted Delegation Annex with respect to the identification of, and the determination of distributions (if any) to be made to, any Primary Beneficiary, except if and in so far as the Trustee has actual knowledge that (1) such Primary Beneficiary did not in fact satisfy the "Selection Factors" specified in the Principles Annex as of the applicable time of determination; and/or (ii) the amount recommended to be distributed to the Primary Beneficiary was not calculated in substantial compliance with, or was calculated in a manner that is manifestly contrary to the requirements set forth or contemplated in, the Permitted Delegation Annex or the applicable Implementation Agreement.

(q) ***Additional Powers.*** The Trustee shall have the power to perform and do all such other acts, to take such steps and to execute all such deeds, transfers, assignments, agreements and

other documents and instruments as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable for the carrying out of any of its powers hereunder or of any of the activities of the Trust as herein contemplated, or for the carrying out, promotion or advancement of the interests of the Trust, whether or not any of such acts, things, documents or instruments are herein expressly mentioned. Any good faith determination by the Trustee as to what is necessary, desirable or appropriate to carry out its powers or activities of the Trust as contemplated under this Declaration or to carry out, promote or advance the interests of the Trust shall be conclusive. Any construction of this Declaration or any determination as to the activities of the Trust or the existence of any power or authority hereunder made in good faith by the Trustee, relying upon the advice of counsel, shall be conclusive. In construing the provisions of this Declaration, there shall be a presumption in favour of a grant of power to the Trustee.

SECTION 5
CONCERNING THE TRUSTEE

5.1 Duty of Trustee

In performing its duties and exercising its powers under this Declaration, the Trustee shall act honestly, in good faith and with a view to the best interests of the Trust and the Beneficiaries and shall exercise that degree of care, diligence and skill that a reasonably prudent trustee would exercise in comparable circumstances (the "**Standard of Care**"). The Trustee shall observe and act in accordance with the terms of, and shall observe and comply with the limitations and restrictions set forth in, this Declaration, including having due regard to the principles set forth in the Principles Annex. To the extent that the Trustee has so delegated any of its duties or powers, it shall be deemed to have satisfied the Standard of Care in respect of the subject matter of such delegation, subject to the Trustee's overall duty as a trustee to exercise prudent oversight in relation to such delegation. Unless required by law, the Trustee will not be required to give any security, bonds or sureties in any jurisdiction for the performance of any of its duties and obligations under this Declaration. The Trustee (including the individual members of the Board of Trustees) will not be required to devote its entire time to the trust activities.

5.2 Limitation of Liability

The Trustee shall not be personally liable in tort, contract or otherwise to any Beneficiary or any other Person for any loss or diminution in the value of the Assets, or for any action or failure to act on the part of the Trustee or any of its employees or agents or any other Person, and shall not be subject to any personal liability for any debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses incurred by or against the Trust, howsoever arising, and resort will be had solely to the Assets for the payment, performance or satisfaction thereof. No property or assets of the Trustee, owned in its personal capacity or otherwise, will be subject to levy, execution or other enforcement procedure**s** with respect to any obligation under this Declaration. However, the foregoing limitations in this Section shall not apply where the Trustee has demonstrated gross negligence, bad faith, fraud or wilful misconduct.

5.3 Liability of Trustee under Contracts

Any document or instrument creating a liability or obligation of the Trust or of the Trustee will be conclusively deemed to have been executed by the Trustee only in its capacity as Trustee of

the Trust and will be binding upon the Trustee only in its capacity as trustee hereunder and resort may not be had to, nor recourse or satisfaction be sought from, the property of the Trustee other than the Assets, whether owned by its in its personal capacity or in any other capacity other than in its capacity as Trustee of the Trust, or from its employees or agents, and in all cases resort will be had solely to the Assets for the payment, performance or satisfaction of any such liability or obligation. However, the foregoing limitations in this Section shall not apply where the Trustee has demonstrated gross negligence, bad faith, fraud or wilful misconduct. Each document or instrument creating a liability or obligation of the Trust or of the Trustee shall contain a provision providing for the aforesaid limitation of liability.

5.4 Funds of the Trustee

The Trustee shall not be required to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers.

5.5 Indemnification of Trustee

In addition to and without limiting any other protection hereunder or otherwise by law of the Trustee and its respective employees, agents, representatives and assigns (in this Section 5.5, collectively, the "**Representatives**"), the Trustee and its respective Representatives shall be indemnified, defended and saved harmless out of the Assets from, against and in respect of any and all liabilities arising or related to actions taken or omitted to be taken by any agent of the Trustee, losses, claims (including any claim arising out of the assessment of any tax on income by a taxing authority), damages, penalties, fines, actions, suits, demands, levies, assessments, costs, charges, expenses and disbursements (including, without limitation, any and all legal and advisor fees and disbursements) (in this Section 5.5, collectively, the "**Liabilities**") of whatever kind or nature which may at any time be suffered by, imposed upon, incurred by or asserted against the Trustee and its Representatives, whether groundless or otherwise, howsoever arising from or out of any act, omission or error of the Trustee, in each case made in connection with its acting as Trustee hereunder, in each case except and to the extent that the Liabilities are a result from or are caused by gross negligence, wilful misconduct, bad faith or fraud. Further, except as provided in section 5.2, the Trustee shall not be liable to any Beneficiary for any loss or damage relating to any matter regarding the Trust, including any loss or diminution in value of the Assets. Notwithstanding any other provision hereof, the obligations provided for in this section 5.5 shall survive any termination of the Trust, whether by reason of removal or resignation of the Trustee, termination or discharge of this Declaration or otherwise.

5.6 Reliance upon Advice

Subject to section 5.1, in performing its duties and exercising its powers hereunder, the Trustee may rely and may act or not act, and shall be fully protected in relying and acting or not acting, upon (a) any statement, telecopy or other electronic means of communication, writing, notice, resolution, report, opinion or other document or conversation believed by it to be genuine and correct and to have been signed, sent or made by the proper Person; (b) any opinion or advice received or information obtained from auditors, solicitors, or other professional advisers, whether retained by the Trustee or otherwise, and shall not be responsible or held liable for any loss or damage resulting from so relying or acting or not acting; and (c) the advice and actions of any

Administrative Services Agent or Implementation Agent, including in connection with the delegations and reliances contemplated under the Permitted Delegations Annex. For greater certainty, it shall not be necessary for the Trustee to ascertain whether or not the Persons who have executed, signed or otherwise issued, authenticated or receipted such papers, writings or documents (including any Administrative Services Agreement or any Implementation Agreement or any other contract entered into by the Trustee) have authority to do so or that they are the same Persons named therein or otherwise to pass upon any requirement of such papers, writing or documents that may be essential for their validity or effectiveness or upon the truth and acceptability.

5.7 Replacement of the Original Trustee

The Persons identified in the Trustee Replacement Annex are hereby appointed to comprise the Advisory Committee contemplated therein (the "**Advisory Committee**"). The Original Trustee shall promptly request that the Advisory Committee make recommendations with respect to the composition of the "Board of Trustees", as contemplated by the Trustee Replacement Annex. The Original Trustee shall have no duty or obligation to investigate the basis for any of the Advisory Committee's recommendations and may rely on such recommendations without any duty of enquiry, supervision or oversight with respect to the activities and decision-making processes adopted by the Advisory Committee in its discretion, in full satisfaction of the Original Trustee's Standard of Care with respect to such matters hereunder. Except where it is manifestly apparent to the Original Trustee that the individuals recommended by the Advisory Committee to become members of such Board of Trustees are disqualified from so acting on the basis of manifest non-compliance with the "Selection Factors" set forth in the Trustee Replacement Annex, the Original Trustee shall appoint, as members of the Board of Trustees, the six (five voting and one non-voting) individuals recommended for appointment to the Board of Trustees by the Advisory Committee. If the Original Trustee declines to appoint any individual recommended by the Advisory Committee, the Original Trustee will promptly request that the Advisory Committee provide a further recommendation whom the Original Trustee shall appoint as a member of the Board of Trustees unless it is manifestly apparent to the Original Trustee that the individual so recommended is also disqualified from so acting on the basis of manifest non-compliance with the "Selection Factors" set forth in the Trustee Replacement Annex,. Upon the appointment of such six individuals pursuant to this provision and their agreement to act as members of the Board of Trustees, the Original Trustee shall be deemed to have resigned and shall cease to be a trustee (such resignation occurring on the "**Original Trustee Replacement Date**").

5.8 Rules and Procedures of the Board of Trustees

(a) ***Initial Requirements***. As soon as practicable and in any event no later than one month following the Original Trustee Replacement Date, the Board of Trustees id expected to meet to take such decisions and actions as they deem necessary to ensure the proper management and administration of the Trust. The date (and location if in person) of the initial meeting shall be determined by a majority of the Board of Trustees.

(b) ***Meetings.*** Subject to the Board of Trustees' discretion to make such rules and procedures that they may deem desirable, meetings of the Board of Trustees may be held at such time and place as the trustee members of the Board of Trustees may agree upon or as they may

fix by resolution for the purpose or if the meeting is called as hereinafter mentioned then at such time as may be designated in the notice calling the meeting. A meeting of the Board of Trustees may be called at any time by any two members of the Board of Trustees by two Business Days' notice given to the members of the Board of Trustees. No notice of any Board of Trustees' meeting shall be necessary when a quorum is present if those comprising the quorum consent to the transaction of the affairs of the Trust and the absent trustee or trustees, if any, either before or after the meeting shall waive in writing notice of the meeting. Meetings of the Board of Trustees may be conducted in person, by telephone, or in such other manner as determined by the Board of Trustees. The Board of Trustees may elect a Chairperson.

(c) ***Quorum.*** At any meeting of the Board of Trustees, a majority of the voting members of the Board of Trustees shall be a quorum irrespective of the number of members in office. The decision of the majority of the voting members where quorum exists shall govern and shall be binding for all purposes and shall be acted upon and carried out in the same manner and with the same effect as if all the voted members concurred therein; provided always that in the case of equality of votes the Chairperson, if any, shall not be entitled to cast a second or deciding vote.

(d) ***Power to Adopt Rules and Procedures.*** The Board of Trustees may make such rules and procedures not inconsistent herewith as it may deem desirable for the proper management and administration of the Trust and the discharge of the responsibilities of the Board of Trustees.

(e) ***Replacement of Members of the Board of Trustees***. The Board of Trustees shall have the power to replace any vacancy arising following the Original Trustee Replacement Date according to such rules and procedures as they deem appropriate subject to compliance with the Selection Factors specified in Trustee Replacement Annex and having regard for such considerations necessary to ensure that the composition of the Board of Trustees will be able to discharge its responsibilities in respect of the Declaration. If necessary, the Board of Trustees may fill any vacancy by application to the Courts of Ontario in the event of an unfilled vacancy.

(f) ***Decisions of the Board of Trustees.*** Decisions and actions of the Board of Trustees shall be made by voting, with each individual voting member having one vote. Subject to quorum requirements, a majority vote shall be determinative in respect of such decisions and actions. Subject to quorum requirements, any decision or action taken by the majority of voting members will represent the decision or action of the Trustee, and not any member of the Board of Trustees.

(g) ***Conflicts of Interest.*** With respect to any matter before the Board of Trustees, to the extent of a conflict of interest, whether actual, perceived or potential, involving a member of the Board of Trustees' personal interests and a matter concerning the Trust, such member shall abstain from voting on the matter or taking any other discretionary action on the matter. For the purposes of the foregoing, no member of the Board of Trustees shall be deemed to have a conflict by reason only that the member holds any office or position with an Electricity Distributor, social services agency or governmental or quasi-governmental agency or entity (such as the Independent Electricity System Operator); provided, however, that in relation to any decision of the Board of Trustees pertaining specifically to a particular Electricity Distributor, any member of the Board of Trustees who is a director, officer or employee of the Electricity Distributor would be expected to recuse himself or herself from participating in deliberations, discussions or voting in respect of such decision.

(h) ***Expense Reimbursements to Members of the Board of Trustees.*** Members of the Board of Trustees shall be entitled to reimbursement for and in respect of their out-of-pocket expenses reasonably incurred in discharging their duties and obligations as members of the Board of Trustees. Members of the Board of Trustees shall serve without compensation.

5.9 Confidentiality

Notwithstanding the resignation or removal and discharge from the trusts and powers reposed in and conferred on the Trustee by this Declaration, or the termination of this Declaration, the Trustee so resigning or removed shall continue to treat as confidential all information relating to the Trust, the Assets and the Beneficiaries and shall only be entitled to make disclosures concerning such information if disclosure is required in the performance of the functions of the resigning or removed Trustee or is ordered by a court of competent jurisdiction or is otherwise required by law. The Trustee shall not be responsible or liable to any Person for any loss or damage arising out of or in any way sustained or incurred in any way relating to any such required disclosure. The obligations arising under this section 5.9 shall survive the termination of the Trust.

5.10 Vesting in Successor Trustee

Any successor trustee (including any reconstituted Board of Trustees) shall automatically become vested with the Assets and with the same powers, rights, duties, responsibilities and trusts as if it, he or she had originally been named as Trustee under this Declaration, without the requirement of any further instrument or act or conveyance, and the Trustee ceasing to act shall execute all such transfers and other documents and do all such other acts or things as may be necessary or desirable to assign, transfer, deliver to, and vest in, the successor trustee, upon the trusts expressed in this Declaration, all the Assets and all the rights, powers and trusts of the Trustee ceasing to act. The expense of any act, document, deed or other instrument or thing required under this Section 5.10, including for greater certainty, outstanding fees and unreimbursed expenses of the Trustee (including any member of the Board of Trustees) ceasing to act, shall be satisfied from the Assets.

5.11 Execution of Instruments

The Trustee shall have the power to execute all deeds, transfers, agreements, promissory notes and other instruments on behalf of the Trust. Such power may be exercised by any one or more Administrative Services Agents acting in accordance with any delegated right to do so pursuant to an applicable Administrative Services Agreement or by any one or more Implementation Agents acting in accordance with any delegated right to do so pursuant to an applicable Implementation Agreement, and any such execution of instrument by an Administrative Services Agent, acting in such capacity as agent of the Trust pursuant to the terms and conditions of an Administrative Services Agreement or by an Implementation Agent acting in such capacity as agent of the Trust pursuant to the terms and conditions of an Implementation Agreement shall in each case be deemed to be a proper execution of such instrument by the Trustee and shall be binding for all purposes on the Trust.

5.12 Decisions by the Trustee

If there is more than one Trustee, decisions of the Trust may be made by a majority of Trustees eligible to vote on the applicable matter. Whenever the Trustees are unable to agree in relation to the commission or omission of any act or howsoever in the execution of the Trust, the decision of a majority of such Trustees shall prevail.

SECTION 6
AMENDMENTS AND SUPPLEMENTS

6.1 Amendments

Subject to the requirements of the Transfer Payment Agreement, the Trustee shall have the power in its sole and absolute discretion from time to time without the approval of any Beneficiary or any court to amend, vary, supplement, replace or restate this Declaration in its entirety or any portion thereof; provided, however that it is expected that any amendment shall be consistent with the principles set forth in the Principles Annex and with the scope and effect of the permitted delegations and activities of any Implementation Agent pursuant to the Permitted Delegations Annex. Without in any way limiting the foregoing, any such amendments, variations, supplements, replacements or restatements may:

(a) add provisions for the replacement of or appointment of additional trustees to act with the Original Trustee prior to the Original Trustee Replacement Date;

(b) in the case of the Original Trustee, add provisions to those contemplated in the Trustee Replacement Annex in respect of the appointment of the members and the formation and empowerment of the Board of Trustees;

(c) in the case of the Original Trustee, vary the terms and requirements applicable to the duties, responsibilities, obligations, liabilities, indemnities, protections, limitations, restrictions, compensation, expense reimbursements and such other matters, in each case as the Advisory Committee may indicate are necessary to be made in order to attract and receive confirmation of appointment of appropriately qualified individuals that the Advisory Committee specifies are to be appointed as members of the Board of Trustees in accordance with its recommendations;

(d) add additional or replace existing Trustees;

(e) add to or reasonably clarify the principles set forth in the Principles Annex;

(f) add to or reasonably clarify the delegations and activities contemplated to be made in the Permitted Delegation Annex;

(g) include provisions for the management of the Trust by the Trustees, including the making of rules, requirements and procedures governing the decision-making of the Board of Trustees;

(h) add provisions for the replacement of members of the Board of Trustees (in addition to those provisions contemplated in section 5.7 and the Trustee Replacement Annex);

(i) provide for the engagement of any Person or Persons as managers, administrators or other service providers to the Trust, including any additional or replacement Administrative Services Agent or Implementation Agent or representative thereof;

(j) specify supplemental procedures for the identification of Primary Beneficiaries and the exchange of information with Electricity Distributors in connection with identifying such Primary Beneficiaries; or

(k) specify procedures for the transfer and transmission of funds from the Trust or any Implementation Agent acting on its behalf and with delegated responsibility over funds constituting Assets, to or for the benefit of, Beneficiaries or their designated representatives, payees or assignees.

6.2 Supplemental Declarations

The Trustee is authorized to execute any supplemental declaration of trust (including one or more amendments and restatements from time to time of this Declaration) to give effect to amendments to this Declaration made pursuant to section 6.1.

SECTION 7
TERMINATION

7.1 Duration

Subject to sections 7.2 and 7.3, the Trust will continue in full force and effect so long as there are any Assets and until all of the debts, liabilities and obligations of the Trust have been paid and satisfied in full.

7.2 Termination and Distribution of Assets

The Trustee shall terminate the Trust and wind up its affairs as soon as practicable after the Final Distribution Date. In connection with the termination of the Trust, the Trustee shall identify the Residual Beneficiaries and distribute or cause to be distributed the remaining Assets, in cash or in kind or partly in each, to the Residual Beneficiaries, in each case in accordance with section 3.3. Despite the foregoing, the Trust will only be terminated and wound up after the Trustee, in its sole and absolute discretion, determines that all debts, liabilities and obligations of the Trust have been paid or otherwise adequately provided for and satisfied and upon receipt of such releases, indemnities and discharges as the Trustee, relying on the opinion of counsel, deems necessary for the protection of the Beneficiaries and for its own protection.

7.3 Distribution of Assets on Final Distribution Date

If the Trust holds Assets on the Final Distribution Date, the Trustee shall pay or provide reserves for the payment, and otherwise shall satisfy, all debts, liabilities and obligations of the Trust and shall provide or arrange to provide such investigations, audits, releases, indemnities and discharges as the Trustee, relying on the opinion of counsel, deems necessary for the protection of the Beneficiaries and for its own protection. Thereafter, any remaining Assets shall be paid to the Residual Beneficiaries in accordance with section 3.3.

SECTION 8
ACCEPTANCE OF TRUSTS

8.1 Acceptance of Trusts

The Trustee hereby accepts the trusts and duties contained in this Declaration and agrees to perform the same upon the terms and conditions hereof until discharged therefrom.

[Signature Page Follows]

The Trustee has executed this Declaration as of the date first written above.

COMPUTERSHARE TRUST COMPANY OF CANADA,

By: _____
Name:
Title:

By: _____
Name:
Title:

PRINCIPLES ANNEX

The Trustee shall have regard to, but shall not be specifically bound by, the following principles in applying its discretion in relation to the administration of the Trust:

1. Identification of Primary Beneficiary Payees

1.1 Except in exceptional circumstances, a Primary Beneficiary would not be expected to receive a benefit from the Trust unless at the time of consideration it satisfies, in addition to the requirements contemplated in the definition of "Primary Beneficiary", each of the following criteria (the "**Selection Factors**"):

(i) it has a participant agreement with an applicable Electricity Distributor to undertake measures (its "**Energy Plan**") to improve the electricity efficiency and/or promote the conservation of electricity at its Ontario residence;

(ii) its Energy Plan involves one or more Eligible Measures, as may be designated by the Trustee from time to time from;

(iii) it confirms that:

1. the primary purpose of its Energy Plan is the conservation and efficient use by the Primary Beneficiary of electricity, and is not for the purposes of the Primary Beneficiary making a profit;

2. it would otherwise not have the financial resources to undertake the Eligible Measures included in its Energy Plan; and

3. it would otherwise not be eligible to receive amounts in respect of the Eligible Measures as a HAP Eligible Person;

(iv) it has demonstrated a need for financial assistance on the basis that its periodic electricity bills represent a financial burden, relative to its available financial resources; and

(v) such other criteria as the Trustee may determine, including based on the recommendations of Electricity Distributors or other knowledgeable Persons made on the basis and having regard to the delegations contemplated by the Permitted Delegations Annex or any applicable Implementation Agreement.

1.2 It is recognized that, in furthering the Purpose, an efficient basis upon which to allocate funds to the Primary Beneficiaries across different areas and regions within Ontario may be based on the areas and regions serviced by the Electricity Distributors operating within Ontario.

1.3 It would not be contrary to the Purposes if funds are made available by the Trustee to the Primary Beneficiaries unequally across different areas and regions within Ontario, and it is expected that in making such an unequal division it would be appropriate to have regard to:

(i) broad economic parameters of economic activity and the specific financial resources of the residents of the areas and regions, in each case as an indication of the relative need of such residents across the areas and regions;

(ii) electricity use and efficiency levels of residential electricity customers across the areas and regions;

(iii) specific regional indicators of economic weakness and need; and

(iv) such other factors as the Trustee may determine are relevant, including based on the submissions, advice and recommendations of Electricity Distributors or other knowledgeable Persons made on the basis and having regard to the delegations contemplated by the Permitted Delegations Annex or any applicable implementation Agreement.

1.4 It is recognized that, in furthering the Purpose, the designated Electricity Distributor for an area or region in which a Primary Beneficiary resides would be expected to:

(i) be a reliable source for the purpose of assessing and confirming whether the Primary Beneficiary satisfies the Selection Factors;

(ii) be an efficient intermediary for the purpose of communicating with the Primary Beneficiary, including with respect to matters such as regarding the availability, terms, conditions and intended purposes of Program;

(iii) be able to facilitate an efficient payment of distribution determined to be made to or on behalf of the Primary Beneficiary, having regard to the Electricity Distributor's established practices, procedures and systems for dealing with its customers; and

(iv) have established contractual arrangements with the Primary Beneficiary that may apply to the protection and confidentiality of information provided by or respecting the Primary Beneficiary, which information may be useful in the consideration by the Electricity Distributor in its assessment of whether the Primary Beneficiary satisfies the Selection Factors, which information may not otherwise be available or readily accessible or verifiable by the Trustee.

1.5 It is recognized that, in furthering the Purpose, the Electricity Distributor for an area or region in which a Primary Beneficiary resides will have market and utilization information that may be useful in assessing the relative needs of Primary Beneficiaries within its area or region. Such information is expected to be relevant in assessing the extent to which one such Primary Beneficiary's financial needs and the merits of its Energy Plan are greater or more compelling than those of another such Primary Beneficiary, which comparison may be relevant to the extent that the funds allocable to the Primary Beneficiaries resident in the area or region are otherwise insufficient to meet the requests for funding by all such Primary Beneficiaries.

1.6 Accordingly, it is recognized that, in furthering the Purpose, it is consistent with the Purpose that the recommendations of Electricity Distributors be utilized and relied upon

by the Trustee to guide the process of identifying particular Primary Beneficiaries in making distributions to the Primary Beneficiaries.

1.7 If an Electricity Distributor for a particular area or region is unable or unwilling to assess or confirm the application of the Selection Factors to Primary Beneficiaries residing in the area or region or to make recommendations in relation to such matters, one or more of the following may provide a suitable alternative source of information and for information gathering, assessment and confirmation purposes in relation to such area or region:

(i) other Electricity Distributors operating in adjacent or other areas or regions in Ontario;

(ii) the Ontario Energy Board;

(iii) the Independent Electricity System Operator; and

(iv) anyone else having relevant expertise and access to information regarding the electricity market of the Province, in each case as may be considered relevant by the Trustee.

1.8 To the extent that privacy law or other legal requirements limit an Electricity Distributor from providing or making available specific information respecting the application of the Selection Factors to a particular Primary Beneficiary or group of Primary Beneficiaries, it is recognized that, in furthering the Purpose, it may be appropriate to redact or make generic affected information regarding such Primary Beneficiary in connection with the identification and confirmation of a Primary Beneficiary's eligibility and participation in the Program. If such limitations or restrictions would limit an Electricity Distributor from providing or confirming the name of a particular Primary Beneficiary to the Trustee, then it should be sufficient that such information may be obtained or disseminated on a confidential basis if and when required by the Trustee for the proper administration of the Trust and on that basis such impediments should not disqualify a Primary Beneficiary from participating in the benefits of the Program, provided that the confidential record-keeping of the Electricity Distributor would be available in connection with the application of any applicable legal process predicated on the identification of such Primary Beneficiary for the purposes of substantiating its rights as a Primary Beneficiary of the Trust or as to the validity or subsistence of the Trust.

2. Eligible Measures

2.1 It is expected that the Trust will identify eligible measures that, taking into consideration the principles set forth in the Principles Annex, have regard to the following (the "**Measures Factors**"):

(i) is the measure generally expected to result in reduced electricity consumption by a Primary Beneficiary if properly installed and used;

(ii) is the measure recognized under another Provincial program as being appropriate for achieving electricity conservation among a population analogous to the Primary Beneficiaries;

(iii) does the measure present any unacceptable health or safety considerations, either with respect to the Primary Beneficiary, a party providing or installing the measure, or the physical environment;

(iv) is the measure broadly available to residents across different areas and regions of the Province; or

(v) is the measure a requirement or precursor to another measure, the other measure being one which meets any of the other Measures Factors.

2.2 In identifying and applying the Measures Factors, Electricity Distributors would be expected to have expertise in assessing the suitability of efficiency and conservation measures in their respective areas and regions, which may differ across areas and regions across the Province based on factors (among other things) such as the climate, geography, density, electricity infrastructure, residential structures, and electricity use rates applicable within such areas or regions.

2.3 The measures specified in Schedule A to this Principles Annex may initially be considered to be consistent with the Measures Factors (subject to change as contemplated under the Permitted Delegations Annex).

3. Promotion of the Program

3.1 It is expected that the Trustee will undertake or engage others to undertake diligent efforts to promote the availability, terms and benefits of the Program to Primary and Residual Beneficiaries, including by establishing consistent communications through the Electricity Distributors.

3.2 It is expected that the Trustee will acknowledge the financial support of the Province in connection with the establishment and the funding for the Program, including in any external communications to or marketing directed at the Electricity Distributors and the Primary and Residual Beneficiaries. In its delegation of any duties or powers to the Electricity Distributors through Implementation Agreements it is expected that Electricity Distributors will acknowledge the financial support of the Province in connection with the program including in any communications or marketing to Primary Beneficiaries.

4. Conduct of the Trust and the Program

4.1 It is expected that administrative expenses of the Board of Trustees and its members, including any expenses relating to the Trust, to the establishment of the Trust and any expenses related to the implementation and operation of the Program, including by or through Electricity Distributors and other relevant entities, will be recognized and subject to reimbursement on a basis that is substantially consistent with the accountability provisions contemplated in the Transfer Payment Agreement and the principles in the

Province's Travel, Meal and Hospitality Expenses Directive, the current form of which attached as Schedule B to this Principles Annex.

4.2 The Trustee is expected to conduct its activities in a manner that complies in all material respects with the Transfer Payment Agreement, including to:

(i) act prudently and in furtherance of the Purpose;

(ii) report not less frequently than annually the results of its activities for information purposes to the Province in connection with the Program;

(iii) comply with the Province's request for any independent verification or audit if determined to be necessary or appropriate by the Province;

(iv) return Assets that have not been distributed if it is determined that the Trustee has breached its Standard of Care in discharging its material duties under the Declaration, and has not cured such material breach despite having been given a reasonable opportunity by the Province to do so in light of the circumstances of such material breach, with the result that all or a significant part of the Assets have not been or are not being applied and distributed in furtherance of the Purpose or are being applied and distributed in a manner that is directly contrary or without regard to the Purpose.

4.3 Electricity Distributors are not intended to directly profit from distributions of funds made from the Trust, although it is recognized that the objectives of electricity efficiency and conservation of Primary Beneficiaries located in the service area or region of an Electricity Distributor, and the cost savings and improved credit worthiness of such Primary Beneficiaries, may be financially beneficial to the Electricity Distributor.

4.4 Distributions from the Trust are intended to allow receiving Primary Beneficiaries to undertake Eligible Measures at no or minimal personal cost.

4.5 Without in any way limiting the discretion of the Board of Trustees to extend the period during which the benefits of the Program may be available to the Primary Beneficiaries, up to and including the Final Distribution Date, it is expected that the Trust Assets would be distributed to Primary Beneficiaries during the period from the Original Trustee Replacement Date to April 30, 2019.

SCHEDULE A TO THE PRINCIPLES ANNEX
INDICATIVE ELIGIBLE MEASURES[1]

Initial Specified Measures
Block Heater Timer (just timer) – rated for outdoor use, have at least a 15 amp/1800 watt capacity, be cold weather resistant, bear a C-UL or CSA certification mark
Power bar with integrated timer, and switched power outlets, four each for a total of 8 outlets, have a total capacity of 15 amps. The switched outlets must remain "live", independent of timer settings, so long as the power bar itself remains switched on. The power bar must bear either a C-UL or CSA certification mark.
Efficient Showerheads (standard) - rated at no more than 4.8 Lpm (1.25 U.S. gpm) and be of the laminar flow type (non-aerating).
Efficient Showerhead (handheld) - rated at no more than 4.8 Lpm (1.25 U.S. gpm) and be of the laminar flow type (non-aerating).
Efficient Aerators (kitchen) - rated no more than 5.7 Lpm (1.5 U.S. gpm), dual threaded to allow installation in both thread type faucets, swivel type with pause lever.
Efficient Aerators (bathroom) - rated no more than 3.8 Lpm (1.0 U.S. gpm), be dual threaded to allow installation in both thread type faucets.
Hot Water Tank Pipe Insulation - 1/2" inside diameter – foam, meets ASTM –C547-00, minimum 3/4" thick
Hot Water Tank Pipe Insulation - 3/4 " inside diameter - – foam, meets ASTM –C547-00, minimum 3/4" thick
Hot Water Tank Insulation - fibreglass R10 (fits up to a 60 gal tank) – not bubble wrap
≤11W ENERGY STAR® Qualified LED A Shape (60W) (minimum 600 Lumen output) (Formerly: 7W – 11W ENERGY STAR® Qualified LED A Shape (60W))

[1] These measures are indicative. Eligible measures added to HAP during the administration of the Trust may also be appropriately considered relevant by the Trustee.

Initial Specified Measures
≤14W ENERGY STAR® Qualified LED A Shape (75W) (minimum 800 Lumen output) (Formerly: 10W – 14W ENERGY STAR® Qualified LED A Shape (75W))
≤23W ENERGY STAR® Qualified LED A Shape (100W) (minimum 1600 Lumen output) (Formerly:17W – 23W ENERGY STAR® Qualified LED A Shape (100W))
≤16W ENERGY STAR® Qualified LED PAR 20 (minimum 600 Lumen output) (Formerly: 8W – 12W ENERGY STAR® Qualified LED PAR 20)
≤16W ENERGY STAR® Qualified LED PAR30 & PAR38 (minimum 600 Lumen output) (Formerly: 8W – 12W ENERGY STAR® Qualified LED PAR 30)
≤23W ENERGY STAR® Qualified LED PAR (minimum 1100 Lumen output) (Formerly: 14W – 18W ENERGY STAR® Qualified LED PAR 38)
≤6W ENERGY STAR® Qualified LED MR 16 / PAR 16 (minimum 250 Lumen output) (Formerly: 7W – 10W ENERGY STAR®
Qualified LED MR 16 / PAR 16 - GU 10 Base)
≤11W ENERGY STAR® Qualified LED MR 16 (minimum 400 Lumen output) (Formerly: 7W – 12W ENERGY STAR® Qualified LED MR 16 GU 5.3 Base)
ENERGY STAR® LED Wet Location Rated PAR lamp ≤ 23 Watt (minimum 1100 Lumen output)
Recessed Downlight Fixture including LED with Light Output >600 and <800 lumens (Retrofit Measure List)
Recessed Downlight Fixture including LED with Light Output >800 lumens (Retrofit Measure List)
Indoor Drying Rack

Extended Measures
Replace refrigerator with ENERGY STAR qualified refrigerator - 15.5 - 16.9 cubic foot top freezer, automatic defrost, refrigerator/ freezer, no through the door ice service
Replace refrigerator with ENERGY STAR qualified refrigerator - 17.0 - 18.4 cubic foot top freezer, automatic defrost, refrigerator/ freezer, no through the door ice service
Replace refrigerator with a refrigerator that has a consumption level of less than 425 kwh, 10 – 12.5 cubic foot top freezer, automatic defrost, refrigerator freezer, no through the door ice service
Replace freezer with ENERGY STAR qualified freezer - 12-14.4 cubic foot freezer
Replace freezer with ENERGY STAR qualified freezer - 14.5 - 16.0 cubic foot freezer
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 6,000 – 7,999 BTU/hr with C-UL or CSA certification mark
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 8,000 – 9,999 BTU/hr with C-UL or CSA certification mark
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 10,000 – 12,000 BTU/hr with C-UL or CSA certification mark
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 14.2 - 21.2 l/day (30-44.9 pints/day) dehumidifier
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 21.3 - 25.4 l/day (45-53.9 pints/day) dehumidifier

Extended Measures
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 25.5 - 35.5 l/day (54-75 pints/day) dehumidifier
Programmable Thermostat – line voltage – meets CAN/CSA-C828-06 standard, minimum performance: Droop: 1.5°C, Differential: 0.5°C, Precision 0% within 0.5°C of the original set point of 22°C
Programmable Thermostat – low voltage - meets CAN/CSA-C828-06 standard, minimum performance: Droop: 1.5°C, Differential: 0.5°C, Precision 0% within 0.5°C of the original set point of 22°C

Weatherization Measures
Comprehensive Draftproofing (caulking, foam and weather stripping, and application of same) – lifespan of 20 years plus If one or two component polyurethane foams are used, the products and installations must conform to: • CAN/ULC-S710.1 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 1: Material Specification. • CAN/ULC-S710.2 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 2: Application. • CAN/ULC-S711.1 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification • CAN/ULC-S711.2 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification, and Part 2: Application. **Attic Insulation (including installation):**
cellulose: CAN/ULC-S703-01 Amendment 1 - Cellulose Fibre Insulation (CFI) for Buildings OR 2) Mineral Fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre

Weatherization Measures
for Buildings **Wall Insulation (including installation):**
cellulose: CAN/ULC-S703-01 Amendment 1 - Cellulose Fibre Insulation (CFI) for Buildings OR 2) Mineral Fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre **Basement Insulation (including installation):**
mineral fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre for Buildings Vapour Barrier: 69009-CAN/CGSB-51.34-m86 If one or two component polyurethane foams are used, the products and installations must conform to: • CAN/ULC-S710.1 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 1: Material Specification. • CAN/ULC-S710.2 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 2: Application. • CAN/ULC-S711.1 Standard for Thermal Insulation – Bead Applied Two-Component
• Polyurethane Air Sealant Foam, Part 1: Material Specification • CAN/ULC-S711.2 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification, and Part 2: Application.

Heat Pumps (Selection of manufacturers and technologies to meet the US federal minimum efficiency standard for ASHPs, as of 2015, is 13.0 SEER and 7.7 HSPF. Energy Star–certified models offer roughly 9 percent more efficiency than most new uncertified ASHPs and 20 percent more efficiency than existing models that may be in place)
Ductless Multiport Heat Pump
Cold Climate Ductless Heat Pump
Cold Climate Multiport Ductless Heat Pump

Cold Climate Ducted Heat Pump

SCHEDULE B TO THE PRINCIPLES ANNEX
PERMITTED EXPENSE REIMBURSEMENTS

[NTD: Insert the Province's Travel, Meal and Hospitality Expenses Directive.]

PERMITTED DELEGATION ANNEX

1. Under section 4.2(g) of the Declaration, the Trustee has the power to: (a) appoint, employ or retain Implementation Agents for the purpose of discharging its duties and obligations under the Declaration; and (b) enter into, perform, enforce and amend Implementation Agreements.

2. In accordance with section 4.2(g) of the Declaration, consistent with the principles set forth in the Principles Annex, the Trustee or its agent will seek to enter into one or more Implementation Agreements with individual Electricity Distributors under which the Electricity Distributors will act as Implementation Agents to the Trustee. In this manner, the Trustee will delegate certain of its powers and duties to the Electricity Distributors.

3. Under section 5.1 of the Declaration, to the extent the Trustee has delegated any of its duties or powers, it shall be deemed to have satisfied the Standard of Care in respect of the subject matter of such delegation, subject to the Trustee's overall duty to exercise prudent oversight thereof. The Trustee is entitled to rely on an Electricity Distributor to discharge the duties delegated to it, as Implementation Agent, pursuant to an Implementation Agreement as described in this Annex.

4. Accordingly, and without limiting the Trustee's right to delegate under the Declaration and its other rights, powers and discretion as Trustee, the Trustee will be permitted to, and is expected to seek to, enter into Implementation Agreements with Electricity Distributors in order to further the Purpose. Without limiting the Trustee's discretion to negotiate and settle the terms and conditions of such Implementation Agreements, it is expected that such Implementation Agreements will include customary terms and conditions for an administrative services arrangement of this type and, in addition, would (subject to the acceptance and agreement of the applicable Electricity Distributor counterparty) address the following points in particular:

    a. **Identification of Applicable Primary Beneficiary Payees and Determination of Individual Distribution Amounts**

        i. Each Electricity Distributor would make an initial assessment of the financial needs of Primary Beneficiaries within its designated service area or region, having regard to the Selection Factors set forth in section 1.3 of the Principles Annex, together with applicable economic data, in order to prepare and provide to the Trustee an estimate of the number of Primary Beneficiaries who the Electricity Distributor reasonably expects would satisfy the Selection Factors.

        ii. Each Electricity Distributor would make an initial assessment of the measures it would recommend be included as Eligible Measures, having regard to the Measures Factors set forth in section 2.1 of the Principles Annex, in order to prepare and provide to the Trustee an estimate of the average cost per Primary Beneficiary Payee (as defined below) of such Eligible Measures that the Electricity Distributor reasonably expects would apply in respect of Primary Beneficiaries resident in its service area or region.

iii. Based on the product of (i) and (ii), above, and such other considerations as it considers to be directly relevant, each Electricity Distributor would make a written recommendation to the Trustee regarding the aggregate funding amount that the Electricity Distributor anticipates would be utilized under the Program by the Primary Beneficiaries resident in its service area or region (the "**Local Funding Estimate**"). Such recommendation would be accompanied, when submitted to the Trustee, by a detailed explanation regarding the assumptions, financial parameters, suitability considerations and other information underlying the Local Funding Estimate (including the type of information contemplated by the Selections Factors and the Measures Factors, which would be relied upon by the Trustee in its assessment regarding the allocation of available funding to or for the benefit of the Primary Beneficiaries across the specified areas and regions of Ontario.

iv. The Trustee would inform the Electricity Distributor regarding the aggregate of the amount determined by the Trustee to be made available under the Program for Primary Beneficiaries in the Electricity Distributor's designated service area or region (for each Electricity Distributor, its "**Maximum Electricity Distributor Allocation**") and as to any maximum amount that may be paid to or for the benefit of any single Primary Beneficiary located in the servicer area or region of the Electricity Distributor (the "**Maximum Primary Beneficiary Amount**"). The Maximum Electricity Distributor Allocation and Maximum Primary Beneficiary Amount may vary between areas and regions, among the Primary Beneficiaries within such areas and regions, and may be increased by the Trustee from time to time in its discretion.

v. Each Electricity Distributor would apply the principles set forth under "Identification of Primary Beneficiary Payees" in the Principles Annex to identify and make recommendations to the Trustee regarding the amount of funds (if any) to be distributed to or for the benefit of Primary Beneficiaries resident within its service area or region from time to time (the "**Primary Beneficiary Payees**").

vi. Each Electricity Distributor would ensure that the aggregate of the amounts it recommends be distributed to or for the benefit of Primary Beneficiary Payees from time to time does not exceed (1) its Maximum Electricity Distributor Allocation and (2) for any single Primary Beneficiary located in the service area or region of the Electricity Distributor, the lesser of (x) the applicable Maximum Primary Beneficiary Amount and (y) the estimated costs (including any applicable taxes, but excluding any amount payable to the Electricity Distributor by or on behalf of the Primary Beneficiary) to be incurred by or on behalf of such Primary Beneficiary (whether or not such costs have been paid or remain outstanding) in respect of Eligible Measures applied or to be applied in respect of the Primary Beneficiary's Ontario residence.

vii. The Trustee would provide written confirmation to each Electricity Distributor:

1. Either (x) that the recommendations specified of the Electricity Distributor in clause (v), above, have been accepted, or (y) as to the specific reasons for any non-acceptance; and

2. The amount of the distributions to be paid to or for the benefit of each Primary Beneficiary Payee that is resident in the Electricity Distributor's service area or region.

viii. With respect to each Primary Beneficiary resident in a Electricity Distributor's service area or region that is confirmed as a Primary Beneficiary Payee, the Electricity Distributor would provide the Trustee written confirmation as to:

1. The identity of such Primary Beneficiary Payee; and

2. The amount of the distribution paid to or for the benefit of such Primary Beneficiary Payee.

ix. If the amount of a distribution to be made to a Primary Beneficiary Payee is based on the estimated costs to be incurred by or on behalf of such Primary Beneficiary and, prior to making the distribution to the Primary Beneficiary Payee, the Electricity Distributor determines that the actual costs (including any applicable taxes but excluding any amount payable to the Electricity Distributor by or on behalf of the Primary Beneficiary) incurred or to be incurred by or on behalf of such Primary Beneficiary in respect of Eligible Measures applied or to be applied in respect of the Primary Beneficiary's Ontario residence has or would be less than such estimated costs, then the amount to be distributed to the Primary Beneficiary shall be based on such actual costs.

b. **Making of Distributions to Primary Beneficiaries**

i. It is expected that promptly after the Trustee confirms the identity of a Primary Beneficiary Payee resident in an Electricity Distributor's service area or region and the amount of the distribution to be paid to or for the benefit of such Primary Beneficiary Payee, the Trustee would arrange for payment to or on the direction of the Electricity Distributor of an amount equal to the amount of such distribution.

ii. It is expected that promptly upon receipt of funds in respect of a distribution to be made to a Primary Beneficiary Payee, the Electricity Distributor would arrange for payment of the full amount of such distribution to or for the benefit of the Primary Beneficiary Payee (including by direct payment to a third party of, or as a reimbursement or rebate of, the costs of applicable Eligible Measures installed at the residence of and for the benefit of the Primary Beneficiary Payee), without reduction or set-off by the Electricity Distributor.

iii. If the amount paid to an Electricity Distributor in respect of a distribution to be made to a Primary Beneficiary exceeds the actual amount of the

distribution made to or on behalf of the Primary Beneficiary, it is expected that the Trustee would require Electricity Distributor to return such excess to the Trustee, whereupon the proceeds of such returned amount shall continue to form part of the Assets.

c. **Establishment of Operational, Administrative, Record-Keeping and Other Systems and Policies by Electricity Distributors to facilitate the Program**

i. It is expected that the Electricity Distributor would establish such operational, administrative, record-keeping and other systems and policies as are necessary to facilitate the Program and perform its duties under the Implementation Agreement, including systems or policies to: identify Primary Beneficiary Payees; comply with applicable privacy and regulatory laws; communicate with Primary Beneficiaries on behalf of the Trust; assess Eligible Measures; determine the Local Funding Estimate; monitor its recommendations to the Trustee against its Maximum Electricity Distributor Allocation and the Maximum Primary Beneficiary Amount; receive funds from the Trust in respect of distributions to the Primary Beneficiary Payees and transfer such funds to the appropriate recipients for the benefit of the Primary Beneficiary Payees; preparation and timely delivery to Primary Beneficiary Payees of such documents as are required by the *Income Tax Act* (Canada); and create and maintain records in respect of the foregoing.

ii. The Electricity Distributor would set up a separate bank account for the purpose of receiving funds from the Trust in respect of distributions to the Primary Beneficiary Payees and the transfer of such funds to the appropriate recipients for the benefit of the Primary Beneficiary Payees.

d. **Reporting, Record-Keeping, Inspection and Disclosure and Compliance Matters**

i. The Electricity Distributor would provide record-keeping, clerical and bookkeeping services relating to all matters relating to its recommendations and the performance of its other duties and obligations under its Implementation Agreement.

ii. The Electricity Distributor would keep and maintain all financial records and non-financial documents and records relating to the provision of services under its Implementation Agreement.

iii. The Electricity Distributor would provide to the Trustee quarterly and annual reports ("**Reports**") for the duration of its Implementation Agreement. Such Reports would set out, among other things, the amounts of the distributions paid to or for the benefit of applicable Primary Beneficiary Payees, the average distribution amount per such Primary Beneficiary Payee, the Eligible Measures for which distributions have been made, and the uptake of energy efficiency measures.

iv. The Electricity Distributor would agree to provide to the Trustee such information as is necessary for the Trustee to (v) comply with applicable law;

(w) prepare financial statements for the Trust; (x) prepare and submit such documents as are required under the *Income Tax Act* (Canada); (y) comply with the Trust's applicable obligations under the Transfer Payment Agreement; and (z) such other matters as the Trustee reasonably requests.

v. The Trustee, its authorized representatives or an independent auditor would be permitted to, at its own expense, on twenty-four hours' notice to the Electricity Distributor and during normal business hours, inspect the records of and information respecting the Electricity Distributor to confirm its compliance with the Implementation Agreement, including regarding its processes for recommending the Primary Beneficiary Payees and their respective distribution amounts and regarding the delivery of Trust funds on behalf of the Trustee to or for the benefit of the Primary Beneficiary Payees.

e. **Standard of Care**

i. The Electricity Distributor would be required to agree to perform its duties provided under the Implementation Agreement exercising the degree of care, diligence and skill that a reasonably prudent Person would exercise in comparable circumstances.

ii. In performing its duties under the Implementation Agreement (including the recommending of Primary Beneficiary Payees to the Trustee), the Electricity Distributor would be required to agree to seek to avoid actual, potential or perceived conflicts of interest.

iii. The Electricity Distributor would be required to agree that it would not, in performing its obligations under the Implementation Agreement, take any action which it knows or ought reasonably to know would cause the Trustee or the Trust to be in violation of any law, rule or regulation applicable to it.

f. **Expenses**

The Electricity Distributor would be eligible to receive reasonable compensation and reimbursement of its actual out-of-pocket costs associated with the performance of its duties and obligations under the Implementation Agreement, subject to compliance with requirements substantially equivalent to the Province's Travel, Meal and Hospitality Expenses Directive. Such compensation amounts and reimbursement entitlements would be specified in the Implementation Agreement.

g. **Representations**

The Electricity Distributor would make customary representations to the Trust regarding, among other things, its legal capacity; authorization; non-contravention of law or material contract to which it is a party; and the enforceability of the Implementation Agreement.

h. **Indemnification**

The Electricity Distributor would be required to agree to provide customary indemnities to the Trust and the Trustee from and against claims, damages and liabilities which the Trust or Trustee may suffer or incur as the result of any breach of the Agreement by the Electricity Distributor or its representatives.

TRUSTEE REPLACEMENT ANNEX

1. The Advisory Committee shall consist of the following individuals:

   Robert Mace, President and Chief Executive Officer at Thunder Bay Hydro

   Bryce Conrad, President and Chief Executive Officer at Hydro Ottawa

   Brian Bentz, President and Chief Executive Officer at Alectra

   Ferio Pugliese, Executive Vice President Customer Care and Corporate Affairs at Hydro One

   Terry Young, Vice President Conservation and Corporate Relations at the Independent Electricity System Operator

2. In the event any member of the Advisory Committee resigns or is unable to act, it is expected that the remaining members of the Advisory Committee would appoint another resident of Ontario as a replacement.

3. On or before •, 2017, the Advisory Committee shall identify six residents of Ontario who have expressed that they are willing to act as members of the Board of Trustees and who, individually and collectively, satisfy the following criteria (collectively, the "**Selection Factors**"):

   a) each member demonstrates an understanding of the electricity sector including the electricity distribution sector;

   b) each member demonstrates an expertise in conservation and low income programs;

   c) three of the identified individuals will be representatives from separate electricity distributors, two individuals will be representatives from separate social services agencies and one individual member, who will be a non-voting member, will be an employee or representative of the Government of Ontario; and

   d) it is expected that representation by the Government of Ontario will be non-controlling.

4. If the Advisory Committee determines that changes to the Declaration (including to this Trustee Replacement Annex) are necessary in order to (a) replace, or appoint additional trustees to act with, the Original Trustee prior to the Original Trustee Replacement Date or (b) attract and receive confirmation of appointment of appropriately qualified individuals that the Advisory Committee believes would be suitable candidates to serve as members of the Board of Trustees, the Advisory Committee shall make recommendations regarding such necessary changes, including without limitation in respect of (i) any necessary limitations on the nature or scope of the appointment of the members of the Board of Trustees, (ii) the formation and empowerment of the Board of Trustees, and (iii) the duties, responsibilities, obligations, liabilities, indemnities, protections, limitations, restrictions,

compensation, expense reimbursement entitlements of members of the Board of Trustees.

5. The Advisory Committee shall recommend that the Original Trustee appoint the individuals so identified to become the initial members of the Board of Trustees pursuant to section 5.7 of the Declaration.

6. If any of the individuals recommended under paragraph 4 or under this paragraph are not accepted and appointed by the Original Trustee pursuant to section 5.7 of the Declaration, the Advisory Committee shall forthwith identify and recommend an alternative individual or individuals willing to act and whose presence as a member of the Board of Trustees would result in the Trustee collectively satisfying the criteria in paragraph 3 above.

7. Upon the appointment of six trustees (five voting and one non-voting) pursuant to section 5.7 of the Declaration, the Advisory Committee will be functus.

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DECLARATION OF TRUST

Made as of March •, 2017

by

COMPUTERSHARE TRUST COMPANY OF CANADA

establishing

AFFORDABILITY FUND TRUST

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DECLARATION OF TRUST

This Declaration of Trust is made as of March •, 2017, by Computershare Trust Company of Canada, a trust company established under the laws of Canada and licensed to carry on business as a trust company in each of the provinces and territories of Canada (together with its successors and assigns and the other trustees (including the Board of Trustees) contemplated herein, the "**Trustee**").

WHEREAS Computershare Trust Company of Canada, as settlor, wishes to establish a trust to acquire, hold, manage, invest, apply and dispose of certain property for the benefit of certain Beneficiaries as herein described.

NOW THEREFORE Computershare Trust Company of Canada hereby declares that it holds in trust as trustee (a) the sum of ONE HUNDRED DOLLARS ($100) contributed by it on this date and (b) all other property of every type and description which it may hereafter acquire or hold in its capacity as trustee of the Trust and all income therefrom and proceeds thereof, to hold, manage, invest, apply and dispose of same on and subject to the provisions set forth in this Declaration of Trust, including the annexes and schedule attached hereto.

SECTION 1
INTERPRETATION

1.1 Definitions

In this Declaration:

(a) "***Administrative Services Agent***" means each agent, which may include any Electricity Distributor or other Person, appointed from time to time under an Administrative Services Agreement, and its successors and permitted assigns solely in such capacity.

(b) "***Administrative Services Agreement***" means each agreement entered into from time to time by the Trust and one or more Administrative Services Agents or other Persons, in furtherance of the Purpose, under which the Administrative Services Agent ~~would agree~~agrees to provide specified administrative and other services to and on behalf of the Trustee ~~(including, following the Original Trustee Replacement Date, the Permitted Delegations Annex)~~, as such agreement may be amended, supplemented, restated, renewed or replaced from time to time and includes the agreement entered into on or about the date hereof between the Trustee and Hydro One Limited.

(c) "***Assets***" means, collectively, the following:

(i) the $100 Canadian referred to above, contributed by Computershare Trust Company of Canada on the date hereof;

(ii) all other property which is now or which at any time in the future may be issued, assigned, transferred, provided, donated, gifted and contributed to the Trustee (including pursuant to the Transfer Payment Agreement) to be held in trust pursuant to this Declaration (and which the Trustee is willing to accept and hold);

(iii) all acquisitions of property made by the Trust;

(iv) all property which may at any time be substituted for or in respect of the property referred to in clauses (i), (ii) and (iii), above;

(v) all income of the Trust, including investment income generated by the investment of the property referred to in clauses (i), (ii), (iii) and (iv), above; and

(vi) all proceeds of disposition of any of the property referred to in clauses (i) through (v) above,

but excludes any property paid out or distributed (whether out of income or capital) pursuant to the provisions of this Declaration.

(d) "***Beneficiary***" means each Primary Beneficiary and each Residual Beneficiary, as applicable.

(e) "***Board of Trustees***" means (i) as of the Original Trustee Replacement Date, the individual trustees appointed by the Original Trustee pursuant to Section 5.7 on the basis described in the Trustee Replacement Annex, and (ii) thereafter, the group of trustees appointed hereunder and acting in such capacity.

(f) "***Business Day***" means any working day, Monday to Friday inclusive, excluding statutory and other holidays, namely: New Year's Day; Family Day; Good Friday; Easter Monday; Victoria Day; Canada Day; Civic Holiday; Labour Day; Thanksgiving Day; Remembrance Day; Christmas Day; Boxing Day ~~[~~and any other day on which the Province has elected to be closed for business~~]~~.

(g) "***Declaration***" means this Declaration of Trust, as it may be amended, restated, supplemented or otherwise modified from time to time, and includes each of the annexes and the Schedule attached hereto which constitute and form an integral part of this Declaration.

(h) "***Electricity Distributor***" means, in respect of a designated service area or region in Ontario, the distributor of electricity to residences located in such area or region.

(i) "***Electricity Invoice***" means an invoice issued by an Electricity Distributor in respect of electricity charges and related services and amounts incurred or assessed in respect of a residence located in the Electricity Distributor's designated service area or region in Ontario.

(j) "***Eligible Investments***" means (i) a deposit receipt, note, certificate or instrument issued, guaranteed or endorsed by a bank listed in Schedule I to the *Bank Act* (Canada), which provides that the principal and any interest shall be fully paid no later than ~~[~~one year~~]~~ after the day the investment was made, or (ii) a deposit account at a bank listed in Schedule I to the *Bank Act* (Canada).

(k) "***Eligible Measures***" means electricity efficiency and/or conservation measures determined by the Trustee from time to time on the basis contemplated in the Principles Annex and in the manner specified in and having regard to the Permitted Delegations Annex.

(l) "***Final Distribution Date***" means the earlier of (~~i~~a) the date (if any) on which the Trustee determines (by a resolution of the Board of Trustees) that no further distributions are likely to be made to any Primary Beneficiary and (~~ii~~b) ~~•, 20[23]••~~.

(m) "***HAP Eligible Person***" means an "Eligible Person" as defined in Section 3.1 of the document entitled "Conservation First Framework LDC Took Kit" published by the Independent Electricity System Operator and designated as Final v3.0 – March 11, 2016, as amended in accordance with the Energy Conservation Agreement between the Independent Electricity System Operator and Electricity Distributors.

(n) **"Implementation Agent"** means each agent which may include any Electricity Distributor or other Person, appointed from time to time under an Implementation Agreement, and its successors and assigns solely in such capacity.

(o) **"Implementation Agreement"** means each agreement entered into from time to time by the Trustee and one or more Implementation Agents or other Persons in furtherance of the Purpose under which the Implementation Agent would agree to provide specified services to and on behalf or the Trustee (including, following the Original Trustee Replacement Date, as contemplated by the Permitted Delegations Annex) in connection with the implementation of the Program as such agreement may be amended , supplemented, restated, renewed or replaced from time to time.

(p) ~~(n)~~ "***Minister of Energy***" means the Minister of Energy or such other member of the Executive Council as may be assigned primary ministerial responsibility for the administration of the *Ministry of Energy Act, 2011* under the *Executive Council Act*.

(q) ~~(o)~~ "***Original Trustee***" means Computershare Trust Company of Canada, acting in its capacity as trustee hereunder, together with any additional or replacement Trustee appointed hereunder prior to the Original Trustee Replacement Date and any of their respective successors and assigns.

(r) ~~(p)~~ "***Original Trustee Replacement Date***" has the meaning specified in Section 5.7, being the date on which the Original Trustee is replaced as trustee under this Declaration by the Board of Trustees as contemplated under Section 5.7.

(s) ~~(q)~~ "***Permitted Delegations Annex***" means the Permitted Delegations Annex set forth as an annex to this Declaration.

(t) ~~(r)~~ "***Person***" includes any individual, sole proprietorship, corporation, partnership, joint venture, association, society, club, board, chamber, joint-stock company, trust, trustee, unincorporated or incorporated organization or entity or government or any entity, agency or political subdivision thereof.

(u) ~~(s)~~ "***Primary Beneficiary***" means each individual that, as of a time of determination, satisfies each of the following criteria:

(i) the individual owns, rents or leases a residence located in Ontario and is the primary or secondary electricity utility account holder named on an Electricity Invoice issued in respect of that residence; and

(ii) the individual is not a HAP Eligible Person.

(v) ~~(t)~~ "***Principles Annex***" means the Principles Annex set forth as an annex to this Declaration.

(w) ~~(u)~~ "***Province***" means the Province of Ontario.

(x) ~~(v)~~ "***Program***" means the establishment, promotion, implementation and administration of a program to achieve the Purpose on the basis contemplated in this Declaration.

(y) ~~(w)~~ "***Purpose***" means (i) the making of distributions to Primary Beneficiaries who are identified and whose needs are assessed in accordance with section 3.1 and 3.2 of this Declaration, having regard to (x) the principles set forth in the Principles Annex, (y) the manner and basis of implementation and administration of the Program contemplated in the Permitted Delegations Annex, and (z) the other terms, limitations and requirements set forth in this Declaration, and (ii) to the extent that Assets are available following the distributions made to Primary Beneficiaries as contemplated in (i), above, the making of distributions to Residual Beneficiaries who are identified and whose needs are assessed in accordance with section 3.3 and otherwise having regard to the other terms, limitations and requirements set forth in this Declaration.

(z) ~~(x)~~ ***"Residual Beneficiary"*** means each charitable organization identified by the Trustee and specified as a residual beneficiary hereunder from time to time, selected by the Trustee in consultation with and having regard to the recommendations of the Ontario Energy Board in accordance with section 3.3.

(aa) ~~(y)~~ "***Transfer Payment Agreement***" means the transfer payment agreement dated as of March •, 2017 between the Trustee and Her Majesty the Queen in right of Ontario as represented by the Minister of Energy, as such agreement may be amended, restated, supplemented or otherwise modified by the further agreement of the parties thereto from time to time.

(bb) ~~(z)~~ "***Trust***" means Affordability Fund Trust, a trust established under and governed by the laws of the Province of Ontario pursuant to this Declaration.

(cc) ~~(aa)~~ "***Trustee***" means (i) the Original Trustee and (ii) on and after the Original Trustee Replacement Date, the Board of Trustees acting together in accordance with and subject to Section 5.7 and in accordance with the rules and procedures adopted by the Board of Trustees pursuant to Section 5.8.

(dd) ~~(bb)~~ "***Trustee Replacement Annex***" means the Trustee Replacement Annex set forth as an annex to this Declaration.

1.2 Headings and Table of Contents

The insertion of headings and the provision of a table of contents are for convenience of reference only and shall not affect the construction or interpretation of this Declaration.

1.3 References

Unless otherwise specified, all references to Sections are to Sections of this Declaration. The words "hereto", "herein", "hereof", "hereunder" and similar expressions refer to this Declaration and not to any particular Section or other provision of this Declaration.

1.4 Number and Gender

Unless otherwise specified, words importing the singular include the plural and vice versa and words importing gender include all genders.

1.5 Governing Law

This Declaration shall be governed by, and construed and interpreted in accordance with, the laws of the Province of Ontario and of Canada applicable therein.

1.6 Severability

Any provision of this Declaration which is illegal, invalid or unenforceable in any jurisdiction shall not affect the legality, validity or enforceability of the remaining provisions and any such illegality, invalidity or unenforceability in any jurisdiction shall not affect the legality, validity or enforceability of such provision in any other jurisdiction.

1.7 Reference to the Trust and the Trustee

For greater certainty, where any reference is made in this Declaration to an act to be performed by or for or on behalf of the Trust, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Trustee in its capacity as trustee of the Trust, and, where any reference is made in this Declaration to an act to be performed by or for or on behalf of the Trustee, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Trustee solely in its capacity as trustee of the Trust. Except as provided under the Transfer Payment Agreement, no Person dealing with the Trust or the Trustee shall be bound to make any enquiry concerning, or has the right to require production of, any evidence of the validity of any act of, or transaction purporting to be made by, the Trustee.

1.8 Defect in Appointment

No action taken by the Trustee will be invalid or ineffective by reason only of any defect in the appointment of the Trustee or the non-compliance by the Trustee with any rules or procedures adopted by the Trustee and which is discovered after the taking of such action.

SECTION 2
CONCERNING THE TRUST

2.1 Objectives

The Trust is established to hold, invest, apply and dispose of the Assets for the benefit of the Beneficiaries in furtherance of the Purpose, as provided for in this Declaration. In furtherance of the Purpose:

(a) the Original Trustee shall hold and invest the Assets as contemplated in this Declaration until the Original Trustee Replacement Date, after which the Board of Trustees shall be duly appointed hereunder; and

(b) the Board of Trustees shall hold, invest, apply and dispose of the Assets in accordance with this Declaration, including by determining the identities of and distributions (if any) to be made to or for the benefit of the Primary Beneficiaries in accordance with Sections 3.1 and 3.2 of this Declaration, having regard to the principles set forth in the Principles Annex and in the manner and on the basis contemplated in the Permitted Delegations Annex, or otherwise by determining the identities of and distributions to be made to or for the benefit of any Residual Beneficiary in accordance with Section 3.3,

in each case and in all respects subject to the terms, limitation and requirements set forth in this Declaration.

2.2 Name of the Trust

The name of the Trust shall be the "Affordability Fund Trust" or such replacement name as the Trustee shall determine and specify from time to time. The Trustee shall hold the Assets and conduct the activities of the Trust under such name or variation thereof (including any variation of such name in the French language). If the Trustee determines to change the name of the Trust, the Trustee may specify and use such other designation or adopt such other name (including any name in the French language) as it considers appropriate and may hold the Assets and conduct the activities of the Trust under such designation or other name.

2.3 Location

The head office and the situs of the administration of the Trust shall be • or such other address in Ontario as the Trustee may determine from time to time.

2.4 Fiscal Year

The fiscal year of the Trust shall end on December 31 of each year.

SECTION 3
DISTRIBUTIONS

3.1 Distributions to Primary Beneficiaries

~~Prior~~After the Original Trustee Replacement Date and prior to the Final Distribution Date, the Trustee shall undertake diligent efforts in good faith to distribute the Assets (including capital or income) to the Primary Beneficiaries identified based on the application of the principles specified in the Principles Annex and in the manner and in the amounts determined on the basis contemplated by the Permitted Delegations Annex, in each case in the amounts and to the extent specified herein and therein, subject in all respects to the exercise by the Trustee of its discretion hereunder and to the exclusion of the other Beneficiaries.

3.2 Amount of Distributions to Primary Beneficiaries

For the purposes of determining the amount of distributions to be made to the Primary Beneficiaries, the Trustee shall have regard to and be entitled to rely on the recommendations of and information provided by Electricity Distributors acting as ~~Administrative Services~~Implementation Agents appointed for the purposes, in the manner and substantially on the terms contemplated in the Permitted Delegations Annex, without any duty or obligation to verify or makes enquiries regarding the basis for or propriety of such recommendations or the accuracy or completeness of such information, except if and to the extent that the Trustee, in its discretion, determines that (i) it has actual knowledge that such recommendations are contrary to the reasonable application of the principles set forth in the Principles Annex or have been made on a basis that is manifestly contrary to such principles or the delegations and activities specified or contemplated to be undertaken under the Permitted Delegations Annex or (b) such information is known by the Trustee to be erroneous, contain a material misrepresentation or is materially incomplete.

3.3 Distributions to Residual Beneficiaries

Prior to the Final Distribution Date, the Trustee shall identify the Residual Beneficiary, or if more than one the Residual Beneficiaries and their respective allocations, by consulting with and having regard to the recommendations of the Ontario Energy Board, based on those charitable organizations which provide support services for Low Income Energy Assistance Program Emergency Financial Assistance (LEAP EFA) and the Ontario Electricity Support Program (OESP) or other charities that OEB may identify as relating to the Purpose. Following the Final Distribution Date, the Trustee shall, subject to compliance with section 7.3 and completion of a final audit, distribute all remaining Assets (including capital or income) to the Residual Beneficiaries, in each case in the amounts and to the extent determined by the Trustee in its discretion hereunder (having consulted with and having had regard to the recommendations of the Ontario Energy Board as aforesaid) and to the exclusion of the other Beneficiaries.

SECTION 4
POWERS OF THE TRUSTEE

4.1 General

Subject to and in compliance with the terms, limitations and restrictions of this Declaration and notwithstanding applicable trust legislation, the Trustee shall have, without other or further authorization, full, exclusive and absolute power, control and authority over the Assets and over the affairs and activities of the Trust to the same extent as if the Trustee were not a trustee, but rather the sole and absolute owner of the Assets in its own right, including such power, control and authority to do all such acts and things as in its sole judgment and discretion are necessary, incidental or desirable for carrying on the affairs and activities of the Trust, with such powers of delegation as may be permitted or otherwise contemplated by this Declaration. Except as expressly provided in this Declaration, the enumeration in this Declaration of any specific power or authority shall not be construed as limiting the aforesaid general power or authority or any other specific power or authority set out herein. Subject to the terms, limitations and restrictions of this Declaration, every discretion or power hereby conferred on the Trustee is an absolute and uncontrolled discretion or power.

4.2 Specifically Enumerated Powers

The Trustee shall have the following specific powers and authorities:

(a) ***Transfer Payment Agreement.*** The Trustee shall have the power to enter into, amend, supplement, modify and perform its obligation under the Transfer Payment Agreement.

(b) ***Contracts and Undertakings.*** The Trustee shall have the power to enter into, amend, supplement, modify and perform its obligation under any contract entered into or undertaking given by the Trustee in furtherance of the Purpose, including any Administrative Services Agreement and any ~~License~~Implementation Agreement.

(c) ***Power to Own, Hold and Manage.*** Subject to section 4.2(d), the Trustee shall have the power to own, hold and manage the Assets in such manner as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable.

(d) ***Power to Invest in Eligible Investments.*** The Trustee shall have the power to invest the Assets only in Eligible Investments, and to change such Eligible Investments at any time and from time to time, all as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable, but always having regard to the Trustee's expectations regarding the timing of payments to be made to the Beneficiaries hereunder. If an investment of Assets in Eligible Investments would not be authorized under the applicable trust laws of Ontario, the Trustee shall nevertheless be permitted to make an investment of the Assets in such Eligible Investments. The Trustee will have no liability for the diminution in the value of any investment in Eligible Investments made hereunder.

(e) ***Power to Dispose of Assets.*** The Trustee shall have the power to sell, convey, assign, transfer, exchange and in any other manner dispose of the Assets or any part or parts thereof free and clear of any and all trusts established under this Declaration, by public or private sale, for cash or on credit, with or without advertisement, and subject to such restrictions, stipulations,

agreements and reservations as the Trustee in its sole and absolute discretion may consider appropriate or advisable, and to execute and deliver and perform any agreement, deed, conveyance, transfer or other document or instrument in connection with the foregoing.

(f) ***Power to Apply Assets and Proceeds to Make Distributions to Beneficiaries.*** The Trustee shall have the power to apply the Assets and the proceeds and income derived therefrom to make distributions to the Beneficiaries contemplated by Section 3, and to execute and deliver and perform any agreement, deed, conveyance, transfer or other document or instrument in connection ~~with~~ therewith.

(g) ***Power to Delegate and to Appoint Agents, etc.*** The Trustee shall have the power to appoint, employ or contract with any Person as the Trustee in its sole and absolute discretion may consider appropriate or advisable in connection with the activities of the Trust. Without limiting the generality of the foregoing:

(i) the Trustee will have the power at any time and from time to time to appoint, employ or retain consultants, financial advisers, technical advisers, legal counsel, accountants, administrative services agents, implementation agents, insurers, insurance agents and insurance brokers, as the Trustee may require for the purpose of discharging its duties hereunder and shall not be responsible for or for the actions of any of them, including to:

(A) act for and on behalf of the Trust in connection with any and all matters in any way relating to the negotiation, settlement, entering into, amending, performance and enforcement of the Transfer Payment Agreement, the Administrative Services Agreements, ~~any License Agreement~~the Implementation Agreements, and any other agreements and contracts to which the Trust becomes a party in accordance with this Declaration;

(B) to provide or cause to be provided any or all kinds of administrative and other services in any way relating to the activities of the Trust;

(C) to act as attorney in fact, agent or trustee in the acquisition, holding, investment, application, sale or other disposition of the Assets and in the handling, prosecuting, defending or settling of any claims of or made against the Trust;

(D) to value the Assets and determine the net income of the Trust; and

(E) to make any filings, elections and submissions (including in respect of taxation matters) in connection with the Trust's compliance with applicable laws and regulatory requirements; and

(ii) the Trustee may pay remuneration and reimbursements from the Assets for services performed for it or on its behalf in the discharge of the trusts hereof without taxation for costs or fees of any counsel, solicitor or attorney.

Without limiting the foregoing, it is expected that the Board of Trustees will seek to enter into ~~Administrative Services~~Implementation Agreements with Electricity Distributors for the

purposes contemplated by the Permitted Delegations Annex, and on such terms and conditions (including terms and conditions as to the payment of reasonable fees and expenses) not inconsistent therewith as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable.

(h) ***Power to Operate Accounts.*** The Trustee shall have the power to (i) open and operate accounts at any chartered bank, trust company or other financial institution in Canada or elsewhere, as the Trustee in its sole and absolute discretion may consider appropriate or advisable; (ii) deposit therein any moneys or securities forming part of the Assets whether or not such deposits will earn interest; (iii) withdraw such deposits at such times and in such manner as the Trustee may determine; (iv) draw, make, endorse, deposit or otherwise deal in cheques, bills of exchange, promissory notes, drafts and other kinds of instruments and securities; and (v) enter into contracts or agreements with any such chartered bank, trust company or other financial institution containing such terms and provisions as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable. In connection therewith, the Trustee shall have no liability or responsibility for any loss which may occur by reason of the failure of any such chartered bank, trust company or other financial institution.

(i) ***Power to Collect, etc.*** The Trustee shall have the power to (i) collect, sue for, receive and give receipts for all sums of money or other property due to the Trust; (ii) consent to extensions of time for payment or to the renewal of any securities or obligations; (iii) engage or intervene in, prosecute, defend, compound, compromise, abandon or adjust by arbitration or otherwise, any demands, claims, actions, suits or proceedings relating to the Trust or the Assets; (iv) exercise any and all remedies available to the Trustee under any agreement or as may otherwise be available, including any power of foreclosure or sale available at law; (v) in connection with any such foreclosure or sale, purchase or otherwise acquire title to any property and to convey good title thereto free of any and all trusts hereby established, or to take or retake possession of any property secured under any agreement or instrument; (vi) extend the time, with or without security, for the payment or delivery of any debts or property; (vii) execute and deliver releases, acquittances, discharges, agreements or other instruments related thereto; and (viii) pay or satisfy any debts or claims upon any evidence that the Trustee, in its sole and absolute discretion, may determine to be sufficient.

(j) ***Power to Obtain Insurance***. The Trustee shall have the power to enter into contracts for or in relation to or otherwise obtain policies of insurance for the purpose of insuring the risks associated with the Trust, including to insure the Trustee (including the members of the Board of Trustees) against any risk of loss associated with assuming and performing the duties as Trustee. Without limiting the foregoing, it is expected that the Board of Trustees will obtain commercial general liability insurance from insurers having a secure A.M. Best rating of B+ or greater, or the equivalent, that in the opinion of the Recipient a prudent person similar to the Recipient would maintain, and having an inclusive limit of not less than $2,000,000 per occurrence and providing for contractual liability coverage.

(k) ***Power to Pay Trustee's Fees.*** The Original Trustee shall be entitled to be paid and receive the fees set forth in the Original Trustee's ~~[~~schedule of fees delivered as of the date hereof~~]~~ as compensation for its services under this Declaration, and to be reimbursed for its out-of-pocket expenses reasonably incurred, in each case from the Assets and without the

approval of any Beneficiary or any court. The Original Trustee shall be entitled, in its sole and absolute discretion, to withdraw funds from time to time for such purpose from any account of the Trust. Members of the Board of Trustees shall be entitled to reimbursement for and in respect of their out-of-pocket expenses reasonably incurred in discharging their respective duties and obligations under this Declaration, in each case without the approval of any Beneficiary or any court, provided that the members of the Board of Trustees have general regard to sorts of limitations as are set forth in the "Travel, Meal and Hospitality Expenses Directive of the Province" specified and amended by the Province from time to time, a copy of the current version of which is attached as Exhibit 1 to the Principles Annex.

(l) ***Power to Pay Taxes.*** The Trustee shall have the power to (i) pay, deduct, withhold or remit any taxes or assessments which are required by law to be paid, deducted, withheld or remitted together with or from any payment made by the Trustee; (ii) pay all taxes or assessments of whatever kind or nature imposed upon or against the Trust or the Trustee in connection with the Assets or any part thereof; (iii) collect and remit all taxes and assessments of whatever kind or nature required to be collected and remitted by the Trust or the Trustee in connection with their activities or the Assets or any part thereof; (iv) appeal, settle or compromise tax claims or liabilities; and (v) for the foregoing purposes, to make such returns, elections and submissions and do all such other acts and things as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable.

(m) ***Power to Appoint Auditors.*** The Trustee shall have the power to select and appoint and discharge and re-appoint, in its sole and absolute discretion, an auditor or auditors of the Trust and to settle and pay the fees of any such auditor or auditors from any account of the Trust.

(n) ***Form of Accounts.*** The Trustee shall have the power to determine and change from time to time, in its sole and absolute discretion, the method or form in which the accounts of the Trust will be kept and shall not be required to keep or provide accounts in the form usually required by law to be kept or provided by trustees; provided that such method or form reasonably complies with generally accepted accounting principles in effect in Canada to the extent applicable.

(o) ***Title to Assets.*** The Trustee shall have the power to cause all or any part of the Assets to be held by or registered, in its sole and absolute discretion, in the name of any Person.

(p) ***Delegation of Discretion***. The Trustee shall have the power to delegate the right and power to exercise, or concur in the exercise of any discretion or power, conferred on the Trustee in this Declaration or conferred by law to any one or more of its directors, officers, employees, agents, representatives or to such other Person, as the Trustee, in its sole and absolute discretion, may think is appropriate or advisable, including to one or more Administrative Services Agents under an Administrative Services Agreement and to one or more Implementation Agents and their respective employees, officers and directors under a related ~~Administrative Services~~Implementation Agreement entered into by the Trust substantially on the basis contemplated in the Permitted Delegations Annex. In particular, the Trustee shall have the power to accept, rely on and follow the recommendations of an Electricity Distributor made under and having regard to the Permitted Delegation Annex with respect to ~~a~~ the identification of, and the determination of distributions (if any) to be made to, any Primary Beneficiary, except if and in so far as the Trustee has actual knowledge that (1) such Primary Beneficiary did not in fact satisfy the "Selection Factors" specified in the Principles Annex as of the applicable time of

determination; and/or (ii) the amount recommended to be distributed to the Primary Beneficiary was not calculated in substantial compliance with, or was calculated in a manner that is manifestly contrary to the requirements set forth or contemplated in, the Permitted Delegation Annex or the applicable ~~Administrative Services~~Implementation Agreement.

(q) ***Additional Powers.*** The Trustee shall have the power to perform and do all such other acts, to take such steps and to execute all such deeds, transfers, assignments, agreements and other documents and instruments as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable for the carrying out of any of its powers hereunder or of any of the activities of the Trust as herein contemplated, or for the carrying out, promotion or advancement of the interests of the Trust, whether or not any of such acts, things, documents or instruments are herein expressly mentioned. Any good faith determination by the Trustee as to what is necessary, desirable or appropriate to carry out its powers or activities of the Trust as contemplated under this Declaration or to carry out, promote or advance the interests of the Trust shall be conclusive. Any construction of this Declaration or any determination as to the activities of the Trust or the existence of any power or authority hereunder made in good faith by the Trustee, relying upon the advice of counsel, shall be conclusive. In construing the provisions of this Declaration, there shall be a presumption in favour of a grant of power to the Trustee.

SECTION 5
CONCERNING THE TRUSTEE

5.1 Duty of Trustee

In performing its duties and exercising its powers under this Declaration, the Trustee shall act honestly, in good faith and with a view to the best interests of the Trust and the Beneficiaries and shall exercise that degree of care, diligence and skill that a reasonably prudent trustee would exercise in comparable circumstances (the "**Standard of Care**"). The Trustee shall observe and act in accordance with the terms of, and shall observe and comply with the limitations and restrictions set forth in, this Declaration, including having due regard to the principles set forth in the Principles Annex. To the extent that the Trustee has so delegated any of its duties or powers, it shall be deemed to have satisfied the Standard of Care in respect of the subject matter of such delegation, subject to the Trustee's overall duty as a trustee to exercise prudent oversight in relation to such delegation. Unless required by law, the Trustee will not be required to give any security, bonds or sureties in any jurisdiction for the performance of any of its duties and obligations under this Declaration. The Trustee (including the individual members of the Board of Trustees) will not be required to devote its entire time to the trust activities.

5.2 Limitation of Liability

The Trustee shall not be personally liable in tort, contract or otherwise to any Beneficiary or any other Person for any loss or diminution in the value of the Assets, or for any action or failure to act on the part of the Trustee or any of its employees or agents or any other Person, and shall not be subject to any personal liability for any debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses incurred by or against the Trust, howsoever arising, and resort will be had solely to the Assets for the payment, performance or satisfaction thereof. No property or assets of the Trustee, owned in its personal capacity or otherwise, will be subject to levy, execution or other enforcement procedure**s** with respect to any obligation under this

Declaration. However, the foregoing limitations in this Section shall not apply where the Trustee has demonstrated gross negligence, bad faith, fraud or wilful misconduct.

5.3 Liability of Trustee under Contracts

Any document or instrument creating a liability or obligation of the Trust or of the Trustee will be conclusively deemed to have been executed by the Trustee only in its capacity as Trustee of the Trust and will be binding upon the Trustee only in its capacity as trustee hereunder and resort may not be had to, nor recourse or satisfaction be sought from, the property of the Trustee other than the Assets, whether owned by its in its personal capacity or in any other capacity other than in its capacity as Trustee of the Trust, or from its employees or agents, and in all cases resort will be had solely to the Assets for the payment, performance or satisfaction of any such liability or obligation. However, the foregoing limitations in this Section shall not apply where the Trustee has demonstrated gross negligence, bad faith, fraud or wilful misconduct. Each document or instrument creating a liability or obligation of the Trust or of the Trustee shall contain a provision providing for the aforesaid limitation of liability.

5.4 Funds of the Trustee

The Trustee shall not be required to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers.

5.5 Indemnification of Trustee

In addition to and without limiting any other protection hereunder or otherwise by law of the Trustee and its respective employees, agents, representatives and assigns (in this Section 5.5, collectively, the "**Representatives**"), the Trustee and its respective Representatives shall be indemnified, defended and saved harmless out of the Assets from, against and in respect of any and all liabilities arising or related to actions taken or omitted to be taken by any agent of the Trustee, losses, claims (including any claim arising out of the assessment of any tax on income by a taxing authority), damages, penalties, fines, actions, suits, demands, levies, assessments, costs, charges, expenses and disbursements (including, without limitation, any and all legal and advisor fees and disbursements) (in this Section 5.5, collectively, the "**Liabilities**") of whatever kind or nature which may at any time be suffered by, imposed upon, incurred by or asserted against the Trustee and its Representatives, whether groundless or otherwise, howsoever arising from or out of any act, omission or error of the Trustee, in each case made in connection with its acting as Trustee hereunder, in each case except and to the extent that the Liabilities are a result from or are caused by gross negligence, wilful misconduct, bad faith or ~~breach of the Confidentiality obligations described in section 5.9.~~fraud. Further, except as provided in section 5.2, the Trustee shall not be liable to any Beneficiary for any loss or damage relating to any matter regarding the Trust, including any loss or diminution in value of the Assets. Notwithstanding any other provision hereof, the obligations provided for in this section 5.5 shall survive any termination of the Trust, whether by reason of removal or resignation of the Trustee, termination or discharge of this Declaration or otherwise.

5.6 Reliance upon Advice

Subject to section 5.1, in performing its duties and exercising its powers hereunder, the Trustee may rely and may act or not act, and shall be fully protected in relying and acting or not acting, upon (a) any statement, telecopy or other electronic means of communication, writing, notice, resolution, report, opinion or other document or conversation believed by ~~its~~it to be genuine and correct and to have been signed, sent or made by the proper Person; (b) any opinion or advice received or information obtained from auditors, solicitors, or other professional advisers, whether retained by the Trustee or otherwise, and shall not be responsible or held liable for any loss or damage resulting from so relying or acting or not acting; and (c) the advice and actions of any Administrative Services Agent~~,~~ or Implementation Agent, including in connection with the delegations and reliances contemplated under the Permitted Delegations Annex. For greater certainty, it shall not be necessary for the Trustee to ascertain whether or not the Persons who have executed, signed or otherwise issued, authenticated or receipted such papers, writings or documents (including any Administrative Services Agreement~~, License~~ or any Implementation Agreement or any other contract entered into by the Trustee) have authority to do so or that they are the same Persons named therein or otherwise to pass upon any requirement of such papers, writing or documents that may be essential for their validity or effectiveness or upon the truth and acceptability.

5.7 Replacement of the Original Trustee

~~As soon as practicable and in any event on or prior to March 31, 2017, the Original Trustee shall appoint the~~The Persons identified ~~by~~in the Trustee Replacement Annex are hereby appointed to comprise the Advisory Committee contemplated therein (~~once constituted,~~ the "**Advisory Committee**"). ~~As soon as practicable thereafter, the~~The Original Trustee shall promptly request that the Advisory Committee make recommendations with respect to the composition of the "Board of Trustees", as contemplated by the Trustee Replacement Annex. The Original Trustee shall have no duty or obligation to investigate the basis for any of the Advisory Committee's recommendations and may rely on such recommendations without any duty of enquiry, supervision or oversight with respect to the activities and decision-making processes adopted by the Advisory Committee in its discretion, in full satisfaction of the Original Trustee's Standard of Care with respect to such matters hereunder. Except ~~if~~where it is manifestly apparent to the Original Trustee ~~determines~~ that the individuals recommended by the Advisory Committee to become members of such Board of Trustees are disqualified from so acting on the basis of manifest non-compliance with the "Selection Factors" set forth in the Trustee Replacement Annex, the Original Trustee shall appoint, as members of the Board of Trustees, the ~~[~~six~~]~~ (five voting and one non-voting) individuals recommended for appointment to the Board of Trustees by the Advisory Committee. If the Original Trustee declines to appoint any individual recommended by the Advisory Committee, the Original Trustee will promptly request that the Advisory Committee provide a further recommendation whom the Original Trustee shall appoint as a member of the Board of Trustees unless it is manifestly apparent to the Original Trustee that the individual so recommended is also disqualified from so acting on the basis of manifest non-compliance with the "Selection Factors" set forth in the Trustee Replacement Annex,. Upon the appointment of such ~~[~~six~~]~~ individuals pursuant to this provision and their agreement to act as members of the Board of Trustees, the Original Trustee shall be deemed to have resigned and shall cease to be a trustee (such resignation occurring on the "**Original Trustee Replacement Date**").

5.8 Rules and Procedures of the Board of Trustees

(a) ***Initial Requirements***. As soon as practicable and in any event no later than one month following the Original Trustee Replacement Date, the Board of Trustees ~~shall~~id expected to meet to take such decisions and actions as they deem necessary to ensure the proper management and administration of the Trust. The date (and location if in person) of the initial meeting shall be determined by a majority of the Board of Trustees.

(b) ***Meetings.*** Subject to the Board of Trustees' discretion to make such rules and procedures that they may deem desirable, meetings of the Board of Trustees may be held at such time and place as the trustee members of the Board of Trustees may agree upon or as they may fix by resolution for the purpose or if the meeting is called as hereinafter mentioned then at such time as may be designated in the notice calling the meeting. A meeting of the Board of Trustees may be called at any time by any two members of the Board of Trustees by two Business Days' notice given to the members of the Board of Trustees. No notice of any Board of Trustees' meeting shall be necessary when a quorum is present if those comprising the quorum consent to the transaction of the affairs of the Trust and the absent trustee or trustees, if any, either before or after the meeting shall waive in writing notice of the meeting. Meetings of the Board of Trustees may be conducted in person, by telephone, or in such other manner as determined by the Board of Trustees. The Board of Trustees may elect a Chairperson.

(c) ***Quorum.*** At any meeting of the Board of Trustees, a majority of the voting members of the Board of Trustees shall be a quorum irrespective of the number of members in office. The decision of the majority of the voting members where quorum exists shall govern and shall be binding for all purposes and shall be acted upon and carried out in the same manner and with the same effect as if all the voted members concurred therein; provided always that in the case of equality of votes the Chairperson, if any, shall not be entitled to cast a second or deciding vote.

(d) ***Power to Adopt Rules and Procedures.*** The Board of Trustees may make such rules and procedures not inconsistent herewith as it may deem desirable for the proper management and administration of the Trust and the discharge of the responsibilities of the Board of Trustees.

(e) ***Replacement of Members of the Board of Trustees***. The Board of Trustees shall have the power to replace any vacancy arising following the Original Trustee Replacement Date according to such rules and procedures as they deem appropriate subject to compliance with the Selection Factors specified in Trustee Replacement Annex and having regard for such considerations necessary to ensure that the composition of the Board of Trustees will be able to discharge its responsibilities in respect of the Declaration. If necessary, the Board of Trustees may fill any vacancy by application to the Courts of Ontario in the event of an unfilled vacancy.

(f) ***Decisions of the Board of Trustees.*** Decisions and actions of the Board of Trustees shall be made by voting, with each individual voting member having one vote. Subject to quorum requirements, a majority vote shall be determinative in respect of such decisions and actions. Subject to quorum requirements, any decision or action taken by the majority of voting members ~~s~~ will represent the decision or action of the Trustee, and not any member of the Board of Trustees.

(g) ***Conflicts of Interest.*** With respect to any matter before the Board of Trustees, to the extent of a conflict of interest, whether actual, perceived or potential, involving a member of the Board of Trustees' personal interests and a matter concerning the Trust, such member shall abstain from voting on the matter or taking any other discretionary action on the matter. For the purposes of the foregoing, no member of the Board of Trustees shall be deemed to have a conflict by reason only that the member holds any office or position with an Electricity Distributor, social services agency or governmental or quasi-governmental agency or entity (such as the Independent Electricity System Operator); provided, however, that in relation to any decision of the Board of Trustees pertaining specifically to a particular Electricity Distributor, any member of the Board of Trustees who is a director, officer or employee of the Electricity Distributor would be expected to recuse himself or herself from participating in deliberations, discussions or voting in respect of such decision.

(h) ***Expense Reimbursements to Members of the Board of Trustees.*** Members of the Board of Trustees shall be entitled to reimbursement for and in respect of their out-of-pocket expenses reasonably incurred in discharging their duties and obligations as members of the Board of Trustees. Members of the Board of Trustees shall serve without compensation.

5.9 Confidentiality

Notwithstanding the resignation or removal and discharge from the trusts and powers reposed in and conferred on the Trustee by this Declaration, or the termination of this Declaration, the Trustee so resigning or removed shall continue to treat as confidential all information relating to the Trust, the Assets and the Beneficiaries and shall only be entitled to make disclosures concerning such information if disclosure is required in the performance of the functions of the resigning or removed Trustee or is ordered by a court of competent jurisdiction or is otherwise required by law. The Trustee shall not be responsible or liable to any Person for any loss or damage arising out of or in any way sustained or incurred in any way relating to any such required disclosure. The obligations arising under this section 5.9 shall survive the termination of the Trust.

5.10 Vesting in Successor Trustee

Any successor trustee (including any reconstituted Board of Trustees) shall automatically become vested with the Assets and with the same powers, rights, duties, responsibilities and trusts as if it, he or she had originally been named as Trustee under this Declaration, without the requirement of any further instrument or act or conveyance, and the Trustee ceasing to act shall execute all such transfers and other documents and do all such other acts or things as may be necessary or desirable to assign, transfer, deliver to, and vest in, the successor trustee, upon the trusts expressed in this Declaration, all the Assets and all the rights, powers and trusts of the Trustee ceasing to act. The expense of any act, document, deed or other instrument or thing required under this Section 5.10, including for greater certainty, outstanding fees and unreimbursed expenses of the Trustee (including any member of the Board of Trustees) ceasing to act, shall be satisfied from the Assets.

5.11 Execution of Instruments

The Trustee shall have the power to execute all deeds, transfers, agreements, promissory notes and other instruments on behalf of the Trust. Such power may be exercised by any one or more Administrative Services Agents acting in accordance with any delegated right to do so pursuant to an applicable Administrative Services Agreement or by any one or more Implementation Agents acting in accordance with any delegated right to do so pursuant to an applicable Implementation Agreement, and any such execution of instrument by an Administrative Services Agent, acting in such capacity as agent of the Trust pursuant to the terms and conditions of ~~such~~an Administrative Services Agreement ~~shall~~or by an Implementation Agent acting in such capacity as agent of the Trust pursuant to the terms and conditions of an Implementation Agreement shall in each case be deemed to be a proper execution of such instrument by the Trustee and shall be binding for all purposes on the Trust.

5.12 Decisions by the Trustee

If there is more than one Trustee, decisions of the Trust may be made by a majority of Trustees eligible to vote on the applicable matter. Whenever the Trustees are unable to agree in relation to the commission or omission of any act or howsoever in the execution of the Trust, the decision of a majority of such Trustees shall prevail.

SECTION 6
AMENDMENTS AND SUPPLEMENTS

6.1 Amendments

Subject to the requirements of the Transfer Payment Agreement, the Trustee shall have the power in its sole and absolute discretion from time to time without the approval of any Beneficiary or any court to amend, vary, supplement, replace or restate this Declaration in its entirety or any portion thereof; ~~[~~provided, however~~,~~ that ~~no~~it is expected that any amendment shall ~~conflict~~be consistent with the principles set forth in the Principles Annex ~~or as to~~ and with the scope ~~or~~and effect of the permitted delegations and activities of any ~~Administrative Services~~Implementation Agent pursuant to the Permitted Delegations Annex.~~]~~ Without in any way limiting the foregoing, any such amendments, variations, supplements, replacements or restatements may:

(a) add provisions for the replacement of or appointment of additional trustees to act with the Original Trustee prior to the Original Trustee Replacement Date;

(b) in the case of the Original Trustee, add provisions to those contemplated in the Trustee Replacement Annex in respect of the appointment of the members and the formation and empowerment of the Board of Trustees;

(c) in the case of the Original Trustee, vary the terms and requirements applicable to the duties, responsibilities, obligations, liabilities, indemnities, protections, limitations, restrictions, compensation, expense reimbursements and such other matters, in each case as the Advisory Committee may indicate are necessary to be made in order to attract and receive confirmation of appointment of appropriately qualified individuals that the Advisory Committee specifies are to be appointed as members of the Board of Trustees in accordance with its recommendations;

(d) add additional or replace existing Trustees;

(e) add to or reasonably clarify the principles set forth in the Principles Annex;

(f) add to or reasonably clarify the delegations and activities contemplated to be made in the Permitted Delegation Annex;

(g) include provisions for the management of the Trust by the Trustees, including the making of rules, requirements and procedures governing the decision-making of the Board of Trustees;

(h) add provisions for the replacement of members of the Board of Trustees (in addition to those provisions contemplated in section 5.7 and the Trustee Replacement Annex);

(i) provide for the engagement of any Person or Persons as managers, administrators or other service providers to the Trust, including any additional or replacement Administrative Services Agent or Implementation Agent or representative thereof;

(j) specify supplemental procedures for the identification of Primary Beneficiaries and the exchange of information with Electricity Distributors in connection with identifying such Primary Beneficiaries; or

(k) specify procedures for the transfer and transmission of funds from the Trust or any ~~Administrative Services~~Implementation Agent acting on its behalf and with delegated responsibility over funds constituting Assets, to or for the benefit of, Beneficiaries or their designated representatives, payees or assignees.

6.2 Supplemental Declarations

The Trustee is authorized to execute any supplemental declaration of trust (including one or more amendments and restatements from time to time of this Declaration) to give effect to amendments to this Declaration made pursuant to section ~~5.1.~~6.1.

SECTION 7
TERMINATION

7.1 Duration

Subject to sections 7.2 and 7.3, the Trust will continue in full force and effect so long as there are any Assets and until all of the debts, liabilities and obligations of the Trust have been paid and satisfied in full.

7.2 Termination and Distribution of Assets

The Trustee shall terminate the Trust and wind up its affairs as soon as practicable after the Final Distribution Date. In connection with the termination of the Trust, the Trustee shall identify the Residual Beneficiaries and distribute or cause to be distributed the remaining Assets, in cash or in kind or partly in each, to the Residual Beneficiaries, in each case in accordance with section 3.3. Despite the foregoing, the Trust will only be terminated and wound up after the Trustee, in its sole and absolute discretion, determines that all debts, liabilities and obligations of the Trust

have been paid or otherwise adequately provided for and satisfied and upon receipt of such releases, indemnities and discharges as the Trustee, relying on the opinion of counsel, deems necessary for the protection of the Beneficiaries and for its own protection.

7.3 Distribution of Assets on Final Distribution Date

If the Trust holds Assets on the Final Distribution Date, the Trustee shall pay or provide reserves for the payment, and otherwise shall satisfy, all debts, liabilities and obligations of the Trust and shall provide or arrange to provide such investigations, audits, releases, indemnities and discharges as the Trustee, relying on the opinion of counsel, deems necessary for the protection of the Beneficiaries and for its own protection. Thereafter, any remaining Assets shall be paid to the Residual Beneficiaries in accordance with section 3.3.

SECTION 8
ACCEPTANCE OF TRUSTS

8.1 Acceptance of Trusts

The Trustee hereby accepts the trusts and duties contained in this Declaration and agrees to perform the same upon the terms and conditions hereof until discharged therefrom.

[Signature Page Follows]

The Trustee has executed this Declaration as of the date first written above.

COMPUTERSHARE TRUST COMPANY OF CANADA, ~~as Trustee~~

By:
Name:
Title:

By:
Name:
Title:

PRINCIPLES ANNEX

The Trustee shall have regard to~~[~~, but shall not be specifically bound by,~~]~~ the following principles in applying its discretion in relation to the administration of the Trust:

1. Identification of Primary Beneficiary Payees

1.1 ~~[~~Except in exceptional circumstances,~~]~~ a Primary Beneficiary would not be expected to receive a benefit from the Trust unless at the time of consideration it satisfies, in addition to the requirements contemplated in the definition of "Primary Beneficiary", each of the following criteria (the "**Selection Factors**"):

(i) it has a participant agreement ~~[~~with an applicable Electricity Distributor~~]~~ to undertake measures (its "**Energy Plan**") to improve the electricity efficiency and/or promote the conservation of electricity at its Ontario residence;

(ii) its Energy Plan involves one or more Eligible Measures, as may be designated by the Trustee from time to time from;

(iii) it confirms that:

1. the primary purpose of its Energy Plan is the conservation and efficient use by the Primary Beneficiary of electricity, and is not for the purposes of the Primary Beneficiary making a profit;

2. it would otherwise not have the financial resources to undertake the Eligible Measures included in its Energy Plan; and

3. it would otherwise not be ~~[a HAP Eligible Person]~~[eligible to receive amounts in respect of the Eligible Measures ~~under~~as a HAP~~]~~ Eligible Person;

(iv) it has demonstrated a need for financial assistance on the basis that its periodic electricity bills represent a financial burden, relative to its available financial resources; and

(v) such other criteria as the Trustee may determine, including based on the recommendations of Electricity Distributors or other knowledgeable Persons made on the basis and having regard to the delegations contemplated by the Permitted Delegations Annex or any applicable ~~Administrative Services~~Implementation Agreement.

1.2 It is recognized that, in furthering the Purpose, an efficient basis upon which to allocate funds to the Primary Beneficiaries across different areas and regions within Ontario may be based on the areas and regions serviced by the Electricity Distributors operating within Ontario.

1.3 It would not be contrary to the Purposes if funds are made available by the Trustee to the Primary Beneficiaries unequally across different areas and regions within Ontario, and it

is ~~expect~~expected that in making such an unequal division it would be appropriate to have regard to:

(i) broad economic parameters of economic activity and the specific financial resources of the residents of the areas and regions, in each case as an indication of the relative need of such residents across the areas and regions;

(ii) electricity use and efficiency levels of residential electricity customers across the areas and regions;

(iii) specific regional indicators of economic weakness and need; and

(iv) such other factors as the Trustee may determine are relevant, including based on the submissions, advice and recommendations of Electricity Distributors or other knowledgeable Persons made on the basis and having regard to the delegations contemplated by the Permitted Delegations Annex or any applicable ~~Administrative Services~~implementation Agreement.

1.4 It is recognized that, in furthering the Purpose, the designated Electricity Distributor for an area or region in which a Primary Beneficiary resides would be expected to:

(i) be a reliable source for the purpose of assessing and confirming whether the Primary Beneficiary satisfies the Selection Factors;

(ii) be an efficient intermediary for the purpose of communicating with the Primary Beneficiary, including with respect to matters such as regarding the availability, terms, conditions and intended purposes of Program;

(iii) be able to facilitate an efficient payment of distribution determined to be made to or on behalf of the Primary Beneficiary, having regard to the Electricity Distributor's established practices, procedures and systems for dealing with its customers; and

(iv) have established contractual arrangements with the Primary Beneficiary that may apply to the protection and confidentiality of information provided by or respecting the Primary Beneficiary, which information may be useful in the consideration by the Electricity Distributor in its assessment of whether the Primary Beneficiary satisfies the Selection Factors, which information may not otherwise be available or readily accessible or verifiable by the Trustee.

1.5 It is recognized that, in furthering the Purpose, the Electricity Distributor for an area or region in which a Primary Beneficiary resides will have market and utilization information that may be useful in assessing the relative needs of Primary Beneficiaries within its area or region. Such information is expected to be relevant in assessing the extent to which one such Primary Beneficiary's financial needs and the merits of its Energy Plan are greater or more compelling than those of another such Primary Beneficiary, which comparison may be relevant to the extent that the funds allocable to the Primary Beneficiaries resident in the area or region are otherwise insufficient to meet the requests for funding by all such Primary Beneficiaries.

1.6 Accordingly, it is recognized that, in furthering the Purpose, it is consistent with the Purpose that the recommendations of Electricity Distributors be utilized and relied upon by the Trustee to guide the process of identifying particular Primary Beneficiaries in making distributions to the Primary Beneficiaries.

1.7 If an Electricity Distributor for a particular area or region is unable or unwilling to assess or confirm the application of the Selection Factors to Primary Beneficiaries residing in the area or region or to make recommendations in relation to such matters, one or more of the following may provide a suitable alternative source of information and for information gathering, assessment and confirmation purposes in relation to such area or region:

(i) other Electricity Distributors operating in adjacent or other areas or regions in Ontario;

(ii) the Ontario Energy Board;

(iii) the Independent Electricity System Operator; and

(iv) anyone else having relevant expertise and access to information regarding the electricity market of the Province, in each case as may be considered relevant by the Trustee.

1.8 To the extent that privacy law or other legal requirements limit an Electricity Distributor from providing or making available specific information respecting the application of the Selection Factors to a particular Primary Beneficiary or group of Primary Beneficiaries, it is recognized that, in furthering the Purpose, it may be appropriate to redact or make generic affected information regarding such Primary Beneficiary in connection with the identification and confirmation of a Primary Beneficiary's eligibility and participation in the Program. If such limitations or restrictions would limit an Electricity Distributor from providing or confirming the name of a particular Primary Beneficiary to the Trustee, then it should be sufficient that such information may be obtained or disseminated on a confidential basis if and when required by the Trustee for the proper administration of the Trust and on that basis such impediments should not disqualify a Primary Beneficiary from participating in the benefits of the Program, provided ~~that~~ that the confidential record-keeping of the Electricity Distributor would be available in connection with the application of any applicable legal process predicated on the identification of such Primary Beneficiary for the purposes of substantiating its rights as a Primary Beneficiary of the Trust or as to the validity or subsistence of the Trust.

2. Eligible Measures

2.1 It is expected that the Trust will identify eligible measures that, taking into consideration the principles set forth in the Principles Annex, have regard to the following (the "**Measures Factors**"):

(i) is the measure generally expected to result in reduced electricity consumption by a Primary Beneficiary if properly installed and used;

(ii) is the measure recognized under another Provincial program as being appropriate for achieving electricity conservation among a population analogous to the Primary Beneficiaries;

(iii) does the measure present any unacceptable health or safety considerations, either with respect to the Primary Beneficiary, a party providing or installing the measure, or the physical environment;

(iv) is the measure broadly available to residents across different areas and regions of the Province; or

(v) is the measure a requirement or precursor to another measure, the other measure being one which meets any of the other Measures Factors.

2.2 In identifying and applying the Measures Factors, Electricity Distributors would be expected to have expertise in assessing the suitability of efficiency and conservation measures in their respective areas and regions, which may differ across areas and regions across the Province based on factors (among other things) such as the climate, geography, density, electricity infrastructure, residential structures, and electricity use rates applicable within such areas or regions.

2.3 The measures specified in Schedule A to this Principles Annex may initially be considered to be consistent with the Measures Factors (subject to change as contemplated under the Permitted Delegations Annex).

3. Promotion of the Program

3.1 It is expected that the Trustee will undertake or engage others to undertake diligent efforts to promote the availability, terms and benefits of the Program to Primary and Residual Beneficiaries, including by establishing consistent communications through the ~~Electiricy~~Electricity Distributors.

3.2 It is expected that the Trustee will acknowledge the financial support of the Province in connection with the establishment and the funding for the Program, including in any external communications to or marketing directed at the Electricity Distributors and the Primary ~~Beneficiaries.~~ and Residual Beneficiaries. In its delegation of any duties or powers to the Electricity Distributors through Implementation Agreements it is expected that Electricity Distributors will acknowledge the financial support of the Province in connection with the program including in any communications or marketing to Primary Beneficiaries.

4. Conduct of the Trust and the Program

4.1 It is expected that administrative expenses of the Board of Trustees and its members, including any expenses relating to the Trust, to the establishment of the Trust and any expenses related to the implementation and operation of the Program, including by or through Electricity Distributors and other relevant entities, will be recognized and subject to reimbursement on a basis that is substantially consistent with the accountability provisions contemplated in the Transfer Payment Agreement and the principles in the

Province's Travel, Meal and Hospitality Expenses Directive, the current form of which attached as Schedule B to this Principles Annex.

4.2 The Trustee is expected to conduct its activities in a manner that complies in all material respects with the Transfer Payment Agreement, including to:

(i) act prudently and in furtherance of the Purpose;

(ii) report not less frequently than annually the results of its activities for information purposes to the Province in connection with the Program;

(iii) comply with the Province's request for any independent verification or audit if determined to be necessary or appropriate by the Province;

(iv) return ~~of~~ Assets that have not been distributed if it is determined that the Trustee has breached its Standard of Care in discharging its material duties under the Declaration, and has not cured such material breach despite having been given a reasonable opportunity by the Province to do so in light of the circumstances of such material breach, with the result that all or a significant part of the Assets have not been or are not being applied and distributed in furtherance of the Purpose or are being applied and distributed in a manner that is directly contrary or without regard to the Purpose.~~]~~

4.3 Electricity Distributors are not intended to directly profit from distributions of funds made from the Trust, although it is recognized that the objectives of electricity efficiency and conservation of Primary Beneficiaries located in the service area or region of an Electricity Distributor, and the cost savings and improved credit worthiness of such Primary Beneficiaries, may be financially beneficial to the Electricity Distributor.

4.4 Distributions from the Trust are intended to allow receiving Primary Beneficiaries to undertake Eligible Measures at no or minimal personal cost.

4.5 Without in any way limiting the discretion of the Board of Trustees to extend the period during which the benefits of the Program may be available to the Primary Beneficiaries, up to and including the Final Distribution Date, it is expected that the Trust Assets would be distributed to Primary Beneficiaries during the period from the Original Trustee Replacement Date to April 30, 2019.

SCHEDULE A TO THE PRINCIPLES ANNEX
INDICATIVE ELIGIBLE MEASURES[1]

Initial Specified Measures
Block Heater Timer (just timer) – rated for outdoor use, have at least a 15 amp/1800 watt capacity, be cold weather resistant, bear a C-UL or CSA certification mark
Power bar with integrated timer, and switched power outlets, four each for a total of 8 outlets, have a total capacity of 15 amps. The switched outlets must remain "live", independent of timer settings, so long as the power bar itself remains switched on. The power bar must bear either a C-UL or CSA certification mark.
Efficient Showerheads (standard) - rated at no more than 4.8 Lpm (1.25 U.S. gpm) and be of the laminar flow type (non-aerating).
Efficient Showerhead (handheld) - rated at no more than 4.8 Lpm (1.25 U.S. gpm) and be of the laminar flow type (non-aerating).
Efficient Aerators (kitchen) - rated no more than 5.7 Lpm (1.5 U.S. gpm), dual threaded to allow installation in both thread type faucets, swivel type with pause lever.
Efficient Aerators (bathroom) - rated no more than 3.8 Lpm (1.0 U.S. gpm), be dual threaded to allow installation in both thread type faucets.
Hot Water Tank Pipe Insulation - 1/2" inside diameter – foam, meets ASTM –C547-00, minimum 3/4" thick
Hot Water Tank Pipe Insulation - 3/4 " inside diameter - – foam, meets ASTM –C547-00, minimum 3/4" thick
Hot Water Tank Insulation - fibreglass R10 (fits up to a 60 gal tank) – not bubble wrap
≤11W ENERGY STAR® Qualified LED A Shape (60W) (minimum 600 Lumen output) (Formerly: 7W – 11W ENERGY STAR® Qualified LED A Shape (60W))

[1] These measures are indicative. Eligible measures added to HAP during the administration of the Trust may also be appropriately considered relevant by the Trustee.

Initial Specified Measures
≤14W ENERGY STAR® Qualified LED A Shape (75W) (minimum 800 Lumen output) (Formerly: 10W – 14W ENERGY STAR® Qualified LED A Shape (75W))
≤23W ENERGY STAR® Qualified LED A Shape (100W) (minimum 1600 Lumen output) (Formerly:17W – 23W ENERGY STAR® Qualified LED A Shape (100W))
≤16W ENERGY STAR® Qualified LED PAR 20 (minimum 600 Lumen output) (Formerly: 8W – 12W ENERGY STAR® Qualified LED PAR 20)
≤16W ENERGY STAR® Qualified LED PAR30 & PAR38 (minimum 600 Lumen output) (Formerly: 8W – 12W ENERGY STAR® Qualified LED PAR 30)
≤23W ENERGY STAR® Qualified LED PAR (minimum 1100 Lumen output) (Formerly: 14W – 18W ENERGY STAR® Qualified LED PAR 38)
≤6W ENERGY STAR® Qualified LED MR 16 / PAR 16 (minimum 250 Lumen output) (Formerly: 7W – 10W ENERGY STAR®
Qualified LED MR 16 / PAR 16 - GU 10 Base)
≤11W ENERGY STAR® Qualified LED MR 16 (minimum 400 Lumen output) (Formerly: 7W – 12W ENERGY STAR® Qualified LED MR 16 GU 5.3 Base)
ENERGY STAR® LED Wet Location Rated PAR lamp ≤ 23 Watt (minimum 1100 Lumen output)
Recessed Downlight Fixture including LED with Light Output >600 and <800 lumens (Retrofit Measure List)
Recessed Downlight Fixture including LED with Light Output >800 lumens (Retrofit Measure List)
Indoor Drying Rack

Extended Measures
Replace refrigerator with ENERGY STAR qualified refrigerator - 15.5 - 16.9 cubic foot top freezer, automatic defrost, refrigerator/ freezer, no through the door ice service
Replace refrigerator with ENERGY STAR qualified refrigerator - 17.0 - 18.4 cubic foot top freezer, automatic defrost, refrigerator/ freezer, no through the door ice service
Replace refrigerator with a refrigerator that has a consumption level of less than 425 kwh, 10 – 12.5 cubic foot top freezer, automatic defrost, refrigerator freezer, no through the door ice service
Replace freezer with ENERGY STAR qualified freezer - 12-14.4 cubic foot freezer
Replace freezer with ENERGY STAR qualified freezer - 14.5 - 16.0 cubic foot freezer
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 6,000 – 7,999 BTU/hr with C-UL or CSA certification mark
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 8,000 – 9,999 BTU/hr with C-UL or CSA certification mark
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 10,000 – 12,000 BTU/hr with C-UL or CSA certification mark
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 14.2 - 21.2 l/day (30-44.9 pints/day) dehumidifier
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 21.3 - 25.4 l/day (45-53.9 pints/day) dehumidifier

Extended Measures
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 25.5 - 35.5 l/day (54-75 pints/day) dehumidifier
Programmable Thermostat – line voltage – meets CAN/CSA-C828-06 standard, minimum performance: Droop: 1.5°C, Differential: 0.5°C, Precision 0% within 0.5°C of the original set point of 22°C
Programmable Thermostat – low voltage - meets CAN/CSA-C828-06 standard, minimum performance: Droop: 1.5°C, Differential: 0.5°C, Precision 0% within 0.5°C of the original set point of 22°C

Weatherization Measures
Comprehensive Draftproofing (caulking, foam and weather stripping, and application of same) – lifespan of 20 years plus If one or two component polyurethane foams are used, the products and installations must conform to: • CAN/ULC-S710.1 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 1: Material Specification. • CAN/ULC-S710.2 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 2: Application. • CAN/ULC-S711.1 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification • CAN/ULC-S711.2 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification, and Part 2: Application. **Attic Insulation (including installation):**
cellulose: CAN/ULC-S703-01 Amendment 1 - Cellulose Fibre Insulation (CFI) for Buildings OR 2) Mineral Fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre

Weatherization Measures
for Buildings **Wall Insulation (including installation):**
cellulose: CAN/ULC-S703-01 Amendment 1 - Cellulose Fibre Insulation (CFI) for Buildings OR 2) Mineral Fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre **Basement Insulation (including installation):**
mineral fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre for Buildings Vapour Barrier: 69009-CAN/CGSB-51.34-m86 If one or two component polyurethane foams are used, the products and installations must conform to: • CAN/ULC-S710.1 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 1: Material Specification. • CAN/ULC-S710.2 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 2: Application. • CAN/ULC-S711.1 Standard for Thermal Insulation – Bead Applied Two-Component
Polyurethane Air Sealant Foam, Part 1: Material Specification • CAN/ULC-S711.2 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification, and Part 2: Application.

Heat Pumps (Selection of manufacturers and technologies to meet the US federal minimum efficiency standard for ASHPs, as of 2015, is 13.0 SEER and 7.7 HSPF. Energy Star–certified models offer roughly 9 percent more efficiency than most new uncertified ASHPs and 20 percent more
Ductless Multiport Heat Pump
Cold Climate Ductless Heat Pump

Cold Climate Multiport Ductless Heat Pump
Cold Climate Ducted Heat Pump

SCHEDULE B TO THE PRINCIPLES ANNEX
PERMITTED EXPENSE REIMBURSEMENTS

[NTD: Insert the Province's Travel, Meal and Hospitality Expenses Directive.]

PERMITTED DELEGATION ANNEX

1. Under section 4.2(g) of the Declaration, the Trustee has the power to: (a) appoint, employ or retain ~~Administrative Services~~Implementation Agents for the purpose of discharging its duties and obligations under the Declaration; and (b) enter into, perform, enforce and amend ~~Administrative Services~~Implementation Agreements.

2. In accordance with section 4.2(g) of the Declaration, consistent with the principles set forth in the Principles Annex, the Trustee or its agent will seek to enter into one or more ~~Administrative Services~~Implementation Agreements with individual Electricity Distributors under which the Electricity Distributors will act as ~~Administrative Service~~Implementation Agents to the Trustee. In this manner, the Trustee will delegate certain of its powers and duties to the Electricity Distributors.

3. Under section 5.1 of the Declaration, to the extent the Trustee has delegated any of its duties or powers, it shall be deemed to have satisfied the Standard of Care in respect of the subject matter of such delegation, subject to the Trustee's overall duty to exercise prudent oversight thereof. The Trustee is entitled to rely on an Electricity Distributor to discharge the duties delegated to it, as ~~Administrative Services~~Implementation Agent, pursuant to an ~~Administrative Services~~Implementation Agreement as described in this Annex.

4. Accordingly, and without limiting the Trustee's right to delegate under the Declaration and its other rights, powers and discretion as Trustee, the Trustee will be permitted to, and is expected to seek to, enter into ~~Administrative Services~~Implementation Agreements with Electricity Distributors in order to further the Purpose. Without limiting the Trustee's discretion to negotiate and settle the terms and conditions of such ~~Administrative Services~~Implementation Agreements, it is expected that such ~~Administrative Services~~Implementation Agreements will include customary terms and conditions for an administrative services arrangement of this type and, in addition, would (subject to the acceptance and agreement of the applicable Electricity Distributor counterparty) address the following points in particular:

    a. **Identification of Applicable Primary Beneficiary Payees and Determination of Individual Distribution Amounts**

        i. Each Electricity Distributor would make an initial assessment of the financial needs of Primary Beneficiaries within its designated service area or region, having regard to the Selection Factors set forth in section 1.3 of the Principles Annex, together with applicable economic data, in order to prepare and provide to the Trustee an estimate of the number of Primary Beneficiaries who the Electricity Distributor reasonably expects would satisfy the Selection Factors.

        ii. Each Electricity Distributor would make an initial assessment of the measures it would recommend be included as Eligible Measures, having regard to the Measures Factors set forth in section 2.1 of the Principles Annex, in order to prepare and provide to the Trustee an estimate of the average cost per Primary Beneficiary Payee (as defined below) of such Eligible Measures that the

Electricity Distributor reasonably expects would apply in respect of Primary Beneficiaries resident in its service area or region.

iii. Based on the product of (i) and (ii), above, and such other considerations as it considers to be directly relevant, each Electricity Distributor would make a written recommendation to the Trustee regarding the aggregate funding amount that the Electricity Distributor anticipates would be utilized under the Program by the Primary Beneficiaries resident in its service area or region (the "**Local Funding Estimate**"). Such recommendation would be accompanied, when submitted to the Trustee, by a detailed explanation regarding the assumptions, financial parameters, suitability considerations and other information underlying the Local Funding Estimate (including the type of information contemplated by the Selections Factors and the Measures Factors, which would be relied upon by the Trustee in its assessment regarding the allocation of available funding to or for the benefit of the Primary Beneficiaries across the specified areas and regions of Ontario.

iv. The Trustee would inform the Electricity Distributor regarding the aggregate of the amount determined by the Trustee to be made available under the Program for Primary Beneficiaries in the Electricity Distributor's designated service area or region (for each Electricity Distributor, its "**Maximum Electricity Distributor Allocation**") and as to any maximum amount that may be paid to or for the benefit of any single Primary Beneficiary ~~[or group of related Primary Beneficiaries]~~ located in the servicer area or region of the Electricity Distributor (the "**Maximum Primary Beneficiary Amount**"). The Maximum Electricity Distributor Allocation and Maximum Primary Beneficiary Amount may vary between areas and regions, among the Primary Beneficiaries within such areas and regions, and may be increased by the Trustee from time to time in its discretion.

v. Each Electricity Distributor would apply the principles set forth under "Identification of Primary Beneficiary Payees" in the Principles Annex to identify and make recommendations to the Trustee regarding the amount of funds (if any) to be distributed to or for the benefit of Primary Beneficiaries resident within its service area or region from time to time (the "**Primary Beneficiary Payees**").

vi. Each Electricity Distributor would ensure that the aggregate of the amounts it recommends be distributed to or for the benefit of Primary Beneficiary Payees from time to time does not exceed (1) its Maximum Electricity Distributor Allocation and (2) for any single Primary Beneficiary ~~[or group of related Primary Beneficiaries]~~ located in the service area or region of the Electricity Distributor, the lesser of (x) the applicable Maximum Primary Beneficiary Amount and (y) the estimated costs (including any applicable taxes, but excluding any amount payable to the Electricity Distributor by or on behalf of the Primary Beneficiary) to be incurred by or on behalf of such Primary Beneficiary (whether or not such costs have been paid or remain outstanding)

in respect of Eligible Measures applied or to be applied in respect of the Primary Beneficiary's Ontario residence.

vii. The Trustee would provide written confirmation to each Electricity Distributor:

1. Either (x) that the recommendations specified of the Electricity Distributor in clause (v), above, have been accepted, or (y) as to the specific reasons for any non-acceptance; and

2. The amount of the distributions to be paid to or for the benefit of each Primary Beneficiary Payee that is resident in the Electricity Distributor's service area or region.

viii. With respect to each Primary Beneficiary resident in a Electricity Distributor's service area or region that is confirmed as a Primary Beneficiary Payee, the Electricity Distributor would provide the Trustee written confirmation as to:

1. The identity of such Primary Beneficiary Payee; and

2. The amount of the distribution paid to or for the benefit of such Primary Beneficiary Payee.

ix. If the amount of a distribution to be made to a Primary Beneficiary Payee is based on the estimated costs to be incurred by or on behalf of such Primary Beneficiary and, prior to making the distribution to the Primary Beneficiary Payee, the Electricity Distributor determines that the actual costs (including any applicable taxes but excluding any amount payable to the Electricity Distributor by or on behalf of the Primary Beneficiary) incurred or to be incurred by or on behalf of such Primary Beneficiary in respect of Eligible Measures applied or to be applied in respect of the Primary Beneficiary's Ontario residence has or would be less than such estimated costs, then the amount to be distributed to the Primary Beneficiary shall be based on such actual costs.

b. **Making of Distributions to Primary Beneficiaries**

i. It is expected that promptly after the Trustee confirms the identity of a Primary Beneficiary Payee resident in an Electricity Distributor's service area or region and the amount of the distribution to be paid to or for the benefit of such Primary Beneficiary Payee, the Trustee would arrange for payment to or on the direction of the Electricity Distributor of an amount equal to the amount of such distribution.

ii. It is expected that promptly upon receipt of funds in respect of a distribution to be made to a Primary Beneficiary Payee, the Electricity Distributor would arrange for payment of the full amount of such distribution to or for the benefit of the Primary Beneficiary Payee (including by direct payment to a

third party of, or as a reimbursement or rebate of, the costs of applicable Eligible Measures installed at the residence of and for the benefit of the Primary Beneficiary Payee), without reduction or set-off by the Electricity Distributor.

iii. If the amount paid to an Electricity Distributor in respect of a distribution to be made to a Primary Beneficiary exceeds the actual amount of the distribution made to or on behalf of the Primary Beneficiary, it is expected that the Trustee would require Electricity Distributor to return such excess to the Trustee, whereupon the proceeds of such returned amount shall continue to form part of the Assets.

c. **Establishment of Operational, Administrative, Record-Keeping and Other Systems and Policies by Electricity Distributors to facilitate the Program**

i. It is expected that the Electricity Distributor would establish such operational, administrative, record-keeping and other systems and policies as are necessary to facilitate the Program and perform its duties under the ~~Administrative Services~~Implementation Agreement, including systems or policies to: identify Primary Beneficiary Payees; comply with applicable privacy and regulatory laws; communicate with Primary Beneficiaries on behalf of the Trust; assess Eligible Measures; determine the Local Funding Estimate; monitor its recommendations to the Trustee against its Maximum Electricity Distributor Allocation and the Maximum Primary Beneficiary Amount; receive funds from the Trust in respect of distributions to the Primary Beneficiary Payees and transfer such funds to the appropriate recipients for the benefit of the Primary Beneficiary Payees; preparation and timely delivery to Primary Beneficiary Payees of such documents as are required by the *Income Tax Act* (Canada); and create and maintain records in respect of the foregoing.

ii. The Electricity Distributor would set up a separate bank account for the purpose of receiving funds from the Trust in respect of distributions to the Primary Beneficiary Payees and the transfer of such funds to the appropriate recipients for the benefit of the Primary Beneficiary Payees.

d. **Reporting, Record-Keeping, Inspection and Disclosure and Compliance Matters**

i. The Electricity Distributor would provide record-keeping, clerical and bookkeeping services relating to all matters relating to its recommendations and the performance of its other duties and obligations under its ~~Administrative Services~~Implementation Agreement.

ii. The Electricity Distributor would keep and maintain all financial records and non-financial documents and records relating to the provision of services under its ~~Administrative Services Agreement. **[NTD: Consider specifying any particular records regarding individual Primary Beneficiary Payees needed to ensure the proper function of the Trust or the Program]**~~Implementation Agreement.

iii. The Electricity Distributor would provide to the Trustee quarterly and annual reports ("**Reports**") for the duration of its ~~Administrative Services~~Implementation Agreement. Such Reports would set out, among other things, the amounts of the distributions paid to or for the benefit of applicable Primary Beneficiary Payees, the average distribution amount per such Primary Beneficiary Payee, the Eligible Measures for which distributions have been made, and the uptake of energy efficiency measures.

iv. The Electricity Distributor would agree to provide to the Trustee such information as is necessary for the Trustee to (v) comply with applicable law; (w) prepare financial statements for the Trust; (x) prepare and submit such documents as are required under the *Income Tax Act* (Canada); (y) comply with the Trust's applicable obligations under the Transfer Payment Agreement; and (z) such other matters as the Trustee reasonably requests.

v. The Trustee, its authorized representatives or an independent auditor would be permitted to, at its own expense, on twenty-four hours' notice to the Electricity Distributor and during normal business hours, inspect the records of and information respecting the Electricity Distributor to confirm its compliance with the ~~Administrative Services~~Implementation Agreement, including regarding its processes for recommending the Primary Beneficiary Payees and their respective distribution amounts and regarding the delivery of Trust funds on behalf of the Trustee to or for the benefit of the Primary Beneficiary Payees.

e. **Standard of Care**

i. The Electricity Distributor would be required to agree to perform its duties provided under the ~~Administrative Services~~Implementation Agreement exercising the degree of care, diligence and skill that a reasonably prudent Person would exercise in comparable circumstances.

ii. In performing its duties under the ~~Administrative Services~~Implementation Agreement (including the recommending of Primary Beneficiary Payees to the Trustee), the Electricity Distributor would be required to agree to seek to avoid actual, potential or perceived conflicts of interest.

iii. The Electricity Distributor would be required to agree ~~to~~ that it would not, in performing its obligations under the ~~Administrative Services~~Implementation Agreement, take any action which it knows or ought reasonably to know would cause the Trustee or the Trust to be in violation of any law, rule or regulation applicable to it.

f. **Expenses**

The Electricity Distributor would be eligible to receive reasonable compensation and reimbursement of its actual out-of-pocket costs associated with the performance of its duties and obligations under the ~~Administrative Services~~Implementation Agreement, subject to compliance with requirements substantially equivalent to the Province's

Travel, Meal and Hospitality Expenses Directive. Such compensation amounts and reimbursement entitlements would be specified in the ~~Administrative Services~~Implementation Agreement.

g. **Representations**

The Electricity Distributor would make customary representations to the Trust regarding, among other things, its legal capacity; authorization; non-contravention of law or material contract to which it is a party; and the enforceability of the ~~Administrative Services~~Implementation Agreement.

h. **Indemnification**

The Electricity Distributor would be required to agree to provide customary indemnities to the Trust and the Trustee from and against claims, damages and liabilities which ~~may~~ the Trust or Trustee may suffer or incur as the result of any breach of the ~~Administrative Services~~ Agreement by the Electricity Distributor or its representatives.

TRUSTEE REPLACEMENT ANNEX

1. The Advisory Committee shall consist of the following individuals:

   ~~[Insert Individual Name]~~

   ~~[Insert Individual Name]~~

   ~~[Insert Individual Name]~~

   ~~[Insert Individual Name]~~

   ~~[Insert Individual Name]~~

   Robert Mace, President and Chief Executive Officer at Thunder Bay Hydro

   Bryce Conrad, President and Chief Executive Officer at Hydro Ottawa

   Brian Bentz, President and Chief Executive Officer at Alectra

   Ferio Pugliese, Executive Vice President Customer Care and Corporate Affairs at Hydro One

   Terry Young, Vice President Conservation and Corporate Relations at the Independent Electricity System Operator

2. In the event any member of the Advisory Committee resigns or is unable to act, it is expected that the remaining members of the Advisory Committee would appoint another resident of Ontario as a replacement.

3. On or before •, 2017, the Advisory Committee shall identify six residents of Ontario who have expressed that they are willing to act as members of the Board of Trustees and who, individually and collectively, satisfy the following criteria (collectively, the "**Selection Factors**"):

   a) each member demonstrates an understanding of the electricity sector including the electricity distribution sector;

   b) each member demonstrates an expertise in conservation and low income programs;

   c) three of the identified individuals will be representatives from separate electricity distributors ~~[not under the control of the Government of Ontario]~~, two individuals will be representatives from separate social services agencies ~~[not under the control of the Government of Ontario]~~ and one individual member, who will be a non-voting member, will be an employee or representative of the Government of Ontario; and

   d) it is expected that representation by the Government of Ontario will be non-controlling.

4. If the Advisory Committee determines that changes to the Declaration (including to this Trustee Replacement Annex) are necessary in order to (a) replace, or appoint additional trustees to act with, the Original Trustee prior to the Original Trustee Replacement Date or (b) attract and receive confirmation of appointment of appropriately qualified individuals that the Advisory Committee believes would be suitable candidates to serve as members of the Board of Trustees, the Advisory Committee shall make recommendations regarding such necessary changes, including without limitation in respect of (i) any necessary limitations on the nature or scope of the appointment of the members of the Board of Trustees, (ii) the formation and empowerment of the Board of Trustees, and (iii) the duties, responsibilities, obligations, liabilities, indemnities, protections, limitations, restrictions, compensation, expense reimbursement entitlements of members of the Board of Trustees.

5. The Advisory Committee shall recommend that the ~~existing~~Original Trustee appoint the individuals so identified to become the initial members of the Board of Trustees pursuant to section 5.7 of the Declaration.

6. If any of the individuals recommended under paragraph 4 or under this paragraph are not accepted and appointed by the ~~existing Trustee~~Original Trustee pursuant to section 5.7 of the Declaration, the Advisory Committee shall forthwith identify and recommend an alternative individual or individuals willing to act and ~~who~~ whose presence as a member of the Board of Trustees would result in the Trustee collectively satisfying the criteria in paragraph ~~2~~3 above.

7. Upon the appointment of six trustees (five voting and one non-voting) pursuant to section 5.7 of the Declaration, the Advisory Committee will be functus.

Document comparison by Workshare Compare on Wednesday, March 22, 2017 2:41:50 PM

Input:	
Document 1 ID	PowerDocs://TOR_2024/12887993/17
Description	TOR_2024-#12887993-v17-Affordability_Fund_Trust_–_Declaration_of_Trust_-_Blakes_Comments_(March_14,_2017)
Document 2 ID	PowerDocs://TOR_2024/12887993/18
Description	TOR_2024-#12887993-v18-Affordability_Fund_Trust_–_Declaration_of_Trust_-_Blakes_Comments_(March_14,_2017)
Rendering set	Standard

Legend:	
Insertion	
~~Deletion~~	
~~Moved from~~	
Moved to	
Style change	
Format change	
~~Moved deletion~~	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	99
Deletions	132
Moved from	3
Moved to	3
Style change	0
Format changed	0

Total changes	237

FW_ Available for a chat this pm_.rtf

From: Petsche, Nadine (TBS) []
To: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
Subject: FW: Available for a chat this pm?
Date: Monday, March 07, 2016 09:47:39

-----Original Message-----
From: Picard, Michel [mailto:mpicard@kpmg.ca]
Sent: March 7, 2016 8:22 AM
To: Petsche, Nadine (TBS)
Subject: RE: Available for a chat this pm?

Hi Nadine,

Are you free for lunch? I have a spot available at our table for the OEN luncheon of today. The CEO of Fortis Inc is the speaker.

Regards,

Michel

-----Original Message-----
From: Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]
Sent: Monday, March 07, 2016 6:12 AM
To: Picard, Michel
Subject: Available for a chat this pm?

Hi Michel.
I was wondering if you might have 5 mins to chat this afternoon?
Thanks.
Nadine

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If you are unable to access the links above, please cut and paste the URL that follows the link into your browser.

FW_ amendment for extension.rtf

From: Jeannie Kaminski [Jeannie.Kaminski@ca.ey.com]
To: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
CC: Suzie Gignac [suzie.r.gignac@ca.ey.com]
Subject: FW: amendment for extension
Date: Monday, December 18, 2017 15:55:42
Attachment 1: TBS Contract Amendment 001.Dec 18 2017.pdf

Hi Shyrose,

Further to your email to Suzie Gignac of earlier today, attached please find the signed Amendment No. 001 for your files.

Kind Regards,
Jeannie

Jeannie Kaminski | Executive Assistant, Assurance Services
to Stephen McIntyre and Suzie Gignac
Ernst & Young LLP
99 Bank Street, Suite 1200, Ottawa, Ontario K1P 6B9, Canada
Office: 1-613-598-4809 | Fax: 1-613-232-5324 | jeannie.kaminski@ca.ey.com
Website: http://www.ey.com

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-----Original Message-----
From: Virani, Shyrose (TBS) [mailto:Shyrose.Virani@ontario.ca]
Sent: Monday, December 18, 2017 1:40 PM
To: Suzie Gignac <suzie.r.gignac@ca.ey.com>
Subject: amendment for extension

Hi Suzie

Attached, please find an amendment form for extension. We are extending the contract till June 30, 2018. Can you please have the attached paper work sign and return it to me at your earliest.

Thanks
Shyrose

Also, can you please ensure that I receive the invoice for the work done in December by end of December.

Thanks
s

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TBS Contract Amendment 001.Dec 18 2017.pdf

AMENDMENT
To Exercise Optional Extension Period

Name of Project:	Complex Accounting Issues and Accounting for Complex Financing Transactions
Original Agreement Date:	October 31, 2016
Name of Vendor:	Ernst & Young LLP
Original Contract Number:	OSS 227152
Date of Amendment:	December 18, 2017
Amendment Number:	001

1) Amendment Details:

1.1 This amendment hereby exercises the Ministry's right to exercise the optional extension period from January 1, 2018 – June 30, 2018

1.2 This amendment is subject to the terms and conditions of the Master Agreement as well as the Statement of Work.

1.3 All other terms and conditions of the Statement of Work between Ernst & Young and the Ministry are unchanged.

HER MAJESTY THE QUEEN in right of Ontario
as represented by the President of the Treasury Board Secretariat

Per: _____

Print Name: Mark Donaldson

Title: Dir Accounting Policy + Financial Reporting

Ernst & Young LLP

Acknowledged: _____

Print Name: SUZIE GIGNAC

Title: PARTNER

FW_ Call with Province_OPG_E&Y.rtf

From: Virani, Shyrose (TBS) []
To: Patel, Bharat (TBS) [Bharat.Patel3@ontario.ca]
Subject: FW: Call with Province/OPG/E&Y
Date: Monday, November 14, 2016 15:53:35
Attachment 1: disclaimer.html

-----Original Appointment-----
From: janis.kirkley-delis@opg.com [mailto:janis.kirkley-delis@opg.com] **On Behalf Of** CHENG Alec -FIN & C CTRL
Sent: November 11, 2016 11:07 AM
To: CHENG Alec -FIN & C CTRL; MAUTI John -FIN & C CTRL; KABANI Amir -FIN & C CTRL; Petsche, Nadine (TBS); Tracy Brennan; 'Brittany Keenan'; Sabrina Fabina; Virani, Shyrose (TBS)
Subject: Call with Province/OPG/E&Y
When: November 18, 2016 2:00 PM-2:30 PM (UTC-05:00) Eastern Time (US & Canada).
Where: conference call

When: Friday, November 18, 2016 2:00 PM-2:30 PM (UTC-05:00) Eastern Time (US & Canada).
Where: conference call

Note: The GMT offset above does not reflect daylight saving time adjustments.

+~+~+~+~+~+~+~+~+~+~+

Alec Cheng's
CONFERENCE CALL #
Local 416-343-0138
Toll Free 1-866-602-5089
ID# 2265947

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FW_ Complex Accounting - pension merger - ONTC to PSPP.rtf

From: Virani, Shyrose (TBS) []
To: Chan, Vanessa W. (TBS) [Vanessa.W.Chan@ontario.ca]; Ma, Patricia (TBS) [Patricia.Ma2@ontario.ca]; Sun, Alicia (TBS) [Alicia.Sun@ontario.ca]
Subject: FW: Complex Accounting - pension merger - ONTC to PSPP
Date: Monday, January 08, 2018 14:44:57
Attachment 1: ONTC Transfer Summary (Dec 27 2017)-BP.DOCX
Attachment 2: ONTC Proposed Entries.xlsx

-----Original Appointment-----
From: Virani, Shyrose (TBS)
Sent: January 4, 2018 8:38 AM
To: Virani, Shyrose (TBS); Donaldson, Mark (TBS); Patel, Bharat (TBS); LeeAnne.Probert@ca.ey.com; Fong, Pauline (TBS)
Subject: Complex Accounting - pension merger - ONTC to PSPP
When: January 9, 2018 2:00 PM-2:30 PM (UTC-05:00) Eastern Time (US & Canada).
Where: TBS-R-7 Queen's Park Crescent-OTB.OPCD.FS.2ndFl.APFR.Boardroom. teleconferenfe 416 212 8014 passcode 1474532#

Happy New Year LeeAnne!

Please find attached revised draft note with proposed JEs on pension merger from ONTC to PSPP for your review/comments . Just let you know, on the bottom of the note we posed some questions on the timing of recognition, past service cost fiscal impact and consolidation impact.

ONTC Transfer Summary (Dec 27 2017)-BP.pdf

TBS

Office of the Provincial Controller Division

Ontario Northland Transportation Commission (ONTC) Pension Plan merger/transfer to Public Service Pension Plan (PSPP)

Issue:

Will the transfer of Ontario Northland Transportation Commission (ONTC) pension plan transfer/merger to the Public Service Pension Plan (PSPP) create a fiscal impact at the consolidated reporting level of the Province?

Background:

The Ontario Northland Transportation Commission (ONTC) is a Crown Agency of the province of Ontario. The agency is consolidated on a line-by-line basis in the Province's consolidated financial statements.

ONTC currently has a single employer defined benefit plan ("the ONTC Plan") that provides pensions to approximately 1300 retirees and 740 active members as well as former employees of Ontera and the Owen Sound Transportation Company. ONTC Plan has been facing funding pressures since 2008 economic downturn due to persistently low interest rates and the agency is now seeking designation as an employer under the Public Service Pension Plan (PSPP) along with all of its members and all new employees of the ONTC that are eligible to become members and to transfer the assets of the ONTC Plan into PSPP.

Highlights of the Propose Transfer/Merger:

- Designate all permanent employees of ONTC as mandatory members in the PSPP effective April 1, 2018 and to designate ONTC as an employer under PSPP with regard to these employees.

- PSPP to be the successor pension plan to the ONTC pension plan in accordance with Section 81 of the *Pension Benefits Act* with respect to:
  - The service of designated ONTC employees on and after April 1, 2018;
  - The credit of ONTC employees accrued prior to April 1, 2018 that is purchased through transfer of assets from the ONTC pension plan to the PSPP; and
  - The payment of pension benefits for ONTC employees who retire prior to April 1, 2018 or any ONTC Member who is entitled to an annual deferred vested pension from ONTC Plan and does not retire prior to April 1, 2018.

- Amend the PSPP to document the transfer of ONTC assets and liabilities into the PSPP with respect to the active plan members and to provide for a new part that would replicate the ONTC pension benefits payable under PSPP to transferred deferred members and retirees effective April 1, 2018.

- Once the asset transfer to PSPP is complete, ONTC would no longer be required to make Special Payments to their Pension Plan or the PSPP. Under the PSPP, ONTC would only be responsible for their current service cost contributions. PSPP unfunded liabilities are the responsibility of the Province.

- Though both PSPP and ONTC are sole sponsor defined benefit pension plans however there are differences in plan design features (see Appendix 1). The most significant benefit for ONTC joining PSPP is that active members service will be fully indexed to pension, while in ONTC it was ad-hoc and discretionary.

- Based on the most recent information provided by the ONTC's actuary, and assuming the pension plan merger occurs at the end of fiscal 2017-18, $44 million cash is required in order to make the service whole for ONTC members when they transfer into PSPP. The Ministry is requesting $44 million funds with this request for designation under the PSPP to fulfill this requirement.

- Timeline: Requesting approval of Treasury Board sometime December 2017/January 2018.

ONTC Plan Funding Status of January 1, 2017 Valuation

- Going concern deficit of $70 million:
  - Assets of $552 million; liabilities of $592 million;
  - discount rate of 4.80%;
  - 29% of liabilities for active and suspended members; 71% liabilities for pensioners/beneficiaries and deferred vested members.
- Solvency deficit: $201 million and solvency ratio of 72.2%

ONTC Accounting Valuation Results December 31, 2016

($ millions)	Actual December 31, 2016 Reported in financial statements of ONTC	Estimated December 31, 2017 including special contribution of $44M
Accrued Benefit Obligation	($553.2)	($572.4)
Plan Assets	523.1	572.4
Fund Plan Deficit	(30.1)	$-
Unamortized net actuarial losses (before curtailment)	71.6	$81.4
Accrued benefit asset	$41.5	$81.4

Commented [PB(1]: Where this amount coming from? $71.6M + ?

Relevant Accounting Principles:

PS3250 Retirement Benefits

Curtailment/Settlement

.074 A plan settlement and a partial plan settlement consist of the discharge, in whole or in part, of a government's obligation existing under a retirement benefit plan. They are irrevocable events by which a government or a plan is relieved of the primary obligation to pay all or some of the benefits promised and is relieved of significant risks in relation to the obligation or the assets used to make settlement. When a full plan settlement occurs, a future actuarial valuation is not required because the government no longer has an obligation related to that plan. Because the cost of discharging the obligation may differ from the related liability recognized previously, a gain or loss may arise.

.075 A plan curtailment is an event that reduces significantly the expected years of future service of present employees or eliminates, for a significant number of employees, the accrual of defined benefits for some or all of their future services. Plan curtailments include termination of a significant number of employees earlier than expected which may involve eliminating a government organization or program; they also include suspension of a plan so that a significant number of employees do not earn additional defined benefits for future services. When a plan curtailment occurs, future actuarial valuations are required because, even though the government's future obligations have been reduced, the government continues to have an obligation related to that plan.

.077 In some circumstances, there will be unamortized actuarial gains and losses incurred prior to the plan settlement or curtailment. The net unamortized balances related to the obligation settled or to the employees affected by the curtailment would be recognized in the period of settlement or curtailment, and is included as part of the gain or loss arising on settlement or curtailment.

.078 Gains and losses determined upon a plan settlement or curtailment should be accounted for in the period of the settlement or curtailment.

Prior period service costs arising from plan amendments

063 A plan amendment occurs when a benefit plan is changed or initiated. In such circumstances, retroactive credit may be given to employees for services rendered previously and, as a result, prior period service costs are incurred. For example, if the benefit formula is changed from one percent to two percent of final pay per year of service, the extra one percent may be credited to employees for years of service prior to the change.

.064 Plan amendments include the inception of a new plan that grants retroactive credit for past service, an increase in benefits related to past service for active employees, or an increase in benefits for former employees already retired.

.066 The cost of plan amendments related to prior period employee services should be accounted for in the period of the plan amendment.

.068 In the period of a plan amendment related to prior period employee services that results in an increase in the accrued benefit obligation, if net unamortized actuarial gains exist, these should be recognized immediately, to a maximum of the prior period service cost, and offset against the prior period service cost in the statement of operations, with separate disclosure in the notes.

PS2500 Principles of Consolidation

.15 Inter-governmental unit gains and losses arising on the sale or transfer of assets and liabilities remaining within the government reporting entity should be eliminated.

.16 Unless items measured at cost or amortized cost are transferred at their carrying value, elimination of unrealized inter-governmental gains and losses on the sale or transfer of assets and liabilities is required to ensure the consolidated financial statements are presented in accordance with paragraph PS 2500.05.

.16A Operating gains and losses associated with inter-governmental unit sales or transfers of financial assets and financial liabilities in the fair value category require elimination. When the related instrument is still held within the consolidated entity, an adjustment is required to eliminate a gain or loss as it is unrealized. To accomplish this, the gain or loss is reclassified from the consolidated statement of operations and presented on the consolidated statement of remeasurement gains and losses.

PS3430 Restructuring Transactions

.20 Individual assets and liabilities received in a restructuring transaction should be recognized by the recipient if they meet the definitions of assets and liabilities and applicable recognition criteria at the restructuring date. [APRIL 2018]

.37 A transferor should derecognize individual assets and liabilities transferred in a restructuring transaction at their carrying amount at the restructuring date. [APRIL 2018]

.38 A recipient should recognize individual assets and liabilities received in a restructuring transaction at their carrying amount with the following adjustments, where applicable, at the restructuring date:

- *(a) to comply with PSA standards;*
- *(b) to align with accounting policies, methods and assumptions to be adopted by the recipient; and*
- *(c) to reflect the circumstances of the recipient.*

.41 A transferor may have adopted different accounting policies and methods from those to be adopted by the recipient. The economic assumptions used by the transferor, such as the expected inflation escalation and discount rate in determining the long-term liabilities transferred in a restructuring, may not be consistent with those to be used by the recipient.

.42 The carrying amount of the assets and liabilities received may need to be adjusted to align with the accounting policies, methods and assumptions to be adopted by the recipient to establish consistent basis for reporting subsequent to the restructuring date. For example, the carrying amount of a transferred long-term liability at the restructuring date would be adjusted to reflect a different discount rate to be used by the recipient.

Analysis:

ONTC's agency reporting level:

From ONTC's point of view a merger/transfer of ONTC plan to the PSPP, would fall under *PS3250.74/5*, a plan curtailment and or settlement. As expected future services of active ONTC members will be eliminated under the existing ONTC plan on April 1, 2018 and the agency will have no direct or contractual responsibility for the past service obligations, as both the past service obligations and plan assets will be transferred to PSPP as part of the settlement. However, the timing of the recognition of the curtailment and then settlement is unclear.

One may argue recognition of the curtailment/settlement happens when the merger/transfer decision has been approved by the Province and has been communicated to ONTC as the approval and communication commitment provides Province little discretion to avoid the transaction.

On the other hand, one may argue that recognition should be deferred until an actual merger/transfer agreement is signed. Even though the parties are in agreement in principal, the ONTC may not be willing to agree with the terms (i.e. if there is union push back), and actual terms (including timing) may change with further discussions. One may also argue that the timing of the recognition of curtailment/settlement should be further delayed until when Financial Services Commission of Ontario (FSCO) approves the merger. Mergers are reviewed and approved by FSCO and need to meet the minimum requirements covered under the Pension Benefit Act (PBA). FSCO approval may take up to a year or more. Per TBS pension policy, measures have already been taken into consideration to ensure that minimum requirements will be met under PBA and thus it would be unlikely that FSCO would not provide final approval.

The ultimate decision on how the agency will report the merger/transfer as of March 31, 2018 would be up to the agency and their auditors. However OPCD assessment is that recognition of the curtailment would likely occur once the merger agreement is signed. At that time, a curtailment would occur as the active members expected future service in the ONTC plan will cease as of April 1, 2018, and per *PS3250.077,* net unamortized losses carried by the agency would be recognized immediately.

The actual date of de-recognition of plan assets and accrued benefit obligation by ONTC may be different from the date of curtailment depending on the agreement.

Province's Consolidated Reporting Level:

PS3250 does not address how the government should account for merger/transfer of defined benefit pension plans within the reporting entity.

From a Province reporting perspective, a curtailment and settlement has not occurred as the ONTC employees continue to earn a defined benefit pension after the merger/transfer. As the merger/transfer just shifts pension risk from one part of the reporting entity (ONTC) to another part of the same reporting entity (i.e. PSPP Province itself). The associated risks with the pension benefit obligation and the plan asset still remain within the reporting entity. In accordance with PS2500, inter-

governmental unit gains and losses arising on the sale or transfer of assets and liabilities remaining within the government reporting entity should be eliminated.

As expected future services of active ONTC members will still continue under PSPP, the net unamortized losses balance in ONTC should be continued to be amortized (i.e. not recognized immediately on merger) at the consolidated level. A consolidation elimination entry would be needed to reverse the immediate recognition of net unamortized losses and add the net unamortized losses from ONTC to the PSPP amortization schedules. As the ONTC unamortized amounts are small relative to the PSPP unamortized balances, OPCD recommends to amortize the balances over the expected average remaining service life (EARSL) of the all the active members covered under PSPP which would now cover ONTC members as well.

However, the ONTC plan and PSPP are not entirely the same with respect to benefit structure. For instance active ONTC members will have the benefit of guarantee indexation under PSPP while under ONTC plan they only benefited from ad-hoc indexation. In addition, ONTC will be flowing cash payment into the ONTC plan before transfer (i.e. through transfer payment from the Province), to pay off previous unfunded liability including a portion to bring ONTC members to guarantee indexation values before assets are transferred to PSPP. OPCD has confirmed with Treasury Board Secretariat (TBS) Pension Policy that ONTC active members will be receiving a guaranteed indexation for past service. From a reporting entity point of view, one would expect that Province would incur an expense to granting retroactive increase in benefits and in this case indexation. This past service benefit improvement in substance is similar to prior year service cost of plan amendment under *PS3250.63.*

Cost of plan amendments related to prior period employee services should be accounted for in the period of the plan amendment which in this case would be when the merger agreement is signed. As ONTC itself did not carry net unamortized actuarial gains, there is no offset per *PS3250.60*.

Measurement issues:

Per *PS3450.20 & .37* both the transferor and the recipient would recognized and de-recognize the assets and liabilities on the restructuring date. Based on what has been currently proposed the restructuring date will be April 1, 2018 where by ONTC members will cease earning service in ONTC plan and be designated in the PSPP plan. Though actual transfer of assets and liabilities may not occur until after FSCO approval, the effective date would be April 1, 2018 based on the proposed.

Based on *PS3430.38*, the Province would recognized the pension assets and liabilities at their carrying amount adjusting for PSA standards, aligning with accounting policies, methods and assumptions of the Province. Pension Assets would be transferred to the Province at the fair value of the pension assets as of April 1, 2018, as ONTC would also de-recognize their assets at fair value.

Accrued benefit obligation (ABO) reported by the Province will likely be different from the ABO reported by ONTC before transfer, as the Province's management assumption discount rate for PSPP is different from the discount rate used by ONTC to value the accounting obligation. As the Province discount rate of 5.75% is higher than the ONTC discount rate of 5.25%, the PSPP will likely be

reporting a lower ABO in the transfer than what ONTC's will be de-recognizing. In addition there also maybe other differences due to differences in actuarial assumptions that would be factored in the transfer in as part of the accrued benefit obligation. These differences (including discount rate) would be treated as an experience gain/loss or change in assumptions, and should be included in the net unamortized gains of PSPP and amortized over EARSL. In addition unamortized losses from ONTC that was reversed from consolidation would also be included in the net unamortized gains of PSPP.

Conclusion:

ONTC will recognize a curtailment loss once the merger/transfer agreement is signed, though the ultimate decision on curtailment would the decision between ONTC and its auditor.

At the Province's reporting level, no curtailment has occurred and any curtailment loss would be reversed and included in the PSPP net unamortized gains.

The agency and the Province will recognize and de-recognize the transfer of plan assets/liabilities on the effective date of April 1, 2018. Plan assets/liabilities will be transferred at fair value. Any experience gains or assumption gains on the transfer of ABO would be included in PSPP net unamortized gains and amortized over EARSL.

The Province would likely have to request the actuary to break out the past service cost related to the additional benefit ONTC active members out of the experience gain/loss as this would be recognized immediately similar to a plan amendment. The fiscal impact would equal to the value of the past service cost related to the additional benefit. Based on the preliminary funding analysis from AON Hewitt (page 8 of slide) it would be approximately $21M.

Questions for Ernst & Young:

Timing of recognition:

- Should the recognition of the curtailment by ONTC be once the merger/transfer agreement ultimately signed and not when the Province approve and communicate to ONTC?
- Is there an argument that curtailment will not happen until final FSCO approval?
- Should the restructuring date be April 1, 2018 assuming that would be the final date where ONTC members will be earning benefits in ONTC plan? Or would the date be when FSCO approves the merger/transfer which may be a year later?
-

Consolidation impact:

- Is there an argument that in substance at the reporting level that a curtailment/settlement has not occurred and that losses on ONTC curtailment should be reversed and included in PSPP

unamortized gain/loss sub-ledger?

Past service cost - fiscal impact:

- Should be a past service cost expense related to any benefit improvements ONTC active members will get that is different from what they had in ONTC? If so, should the past service cost need to be recognized immediately upon transfer as there are no net amortized gains on ONTC's side? Is there an argument to offset the past service cost against the net unamortized gains in PSPP?

Journal entries:

- In the draft journals provided (i.e. excel document) which are based on preliminary information provided by ONTC actuary and funding information from PSPP actuary. Does the journal entries provided capture the substance of the transaction and necessary eliminations?

- Are there other items that need to be considered?

ONTC Proposed Entries.pdf

The following is a summary of information provided by ONTC Actuary, with $44M special contribution requirement, and assumed settlement as of March 31, 2017:

Plan Assets (PA)		**Accrued Benefit Obligation (ABO)**		**Unamortized actuarial loss**		
Opening	$521.7	Opening	$553.2	Opening	-$71.6	$40.1 Total Opening Balances
Add: Regular Employer Contributions	$11.4	Add: Current Service Cost	$9.1			
Add: Regular Employee Contributions	$2.7					
Add: Special Contributions one-time	$44.0					
Add: Interest Revenue Earned on PA	$26.9	Add: Interest cost on ABO	$28.6	Amortization for current year	$6.0	
Less: Benefit Payments	-$34.3	Less: Benefit Payments	-$34.3			
		Add: Actuarial loss on ABO	$15.8	Add: actuarial loss on ABO	-$15.8	
				Add: Recognition of actuarial loss on curtailment/Settlement)	$81.4	
MV & MRV of PA at End of period	**$572.4**	**ABO at End of Period**	**$572.4**	**Closing unamortized actuarial loss**	$0.0	

(Assume no gain/loss on assets and earned revenue equals interest revenue)

ONTC Agency

JE #1	Dr. Cash	$55.4 M	
	Cr. Grant from Province		$55.4 M
	(To record the grant provided by the Province for pay for ONTC regular employer Contribution $11.4+ special Contribution $44M)		
	The following are agency pension entries broken down by components based on information provide by actuary:		
JE#2	Dr. Pension Plan Assets	$55.4 M	
	Cr. Cash *(employer regular & special contribution)*		$55.4 M
	(To record regular + special employer contribution requirement to ONTC Pension Plan)		
JE#3	Dr. Pension Plan Assets *(interest revenue + employee Contributions)*	$29.6 M	
	Dr. Pension expense *(CSC, interest cost/revenue, amortization, less employee contr.)*	$14.1 M	
	Dr. Unamortized Actuarial loss *(Actuarial loss on ABO less amortization)*	$9.8 M	
	Cr. Accrued Benefit Obligation *(CSC, Int Cost, actuarial loss on ABO)*		$53.5 M
	(To record annual pension expense and true-up of ABO to equal PA)		
	Dr. Accrued Benefit Obligation	$34.3 M	
JE#4	Cr. Pension Plan Assets		$34.3 M
	(To record benefit payments to retirees)		
JE#5	Dr. Pension Expense - Loss due to Settlement (estimated)	$81.4 M	
	Cr. Unamortized Actuarial losses		$81.4 M
	(To recognize plan settlement as of March 31, 2017)		

Summary

JE#1-#5	Dr. Pension Assets	$50.7 M	
	Dr. Pension Expense (annual)	$14.1 M	
	Dr. Pension Expense - Loss due to settlement	$81.4 M	
	Cr. Accrued Benefit Obligation		$19.2 M
	Cr. Unamortized Actuarial Losses		$71.6 M
	Cr. Grant from Province		$55.4 M
	(Summary of JE #1-#5)		
JE#6	Dr. Accrued Benefit Obligation	$572.4 M	
	Cr. Plan Assets		$572.4 M
	(To de-recognize plan assets and ABO upon transfer - timing either at approval date, effective date or actual transfer date???)		

Province Entries

Dr. Transfer Payment Expense (MNDM)	$55.4 M	
Cr. Cash		$55.4 M
(To record the transfer payment expense to ONTC to pay for employer contributions + Special Payments)		
(Entry booked as part of MNDM)		
Dr. Pension Plan Assets PSPP (as transfer in) - assume same as transferee (A)	$572.4 M	
Dr. Pension Expense - Past Service Cost ** (B)	$21.0 M	
Cr. ABO PSPP with Province assumptions (C)		< $572.4 M
Cr. Experience Gain on Transfer (A)+(B)-(C)		???? M
(To record transfer of Plan Assets & ABO to PSPP using management assumptions for PSPP + Past Service Costs. As discount rate used by the Provicne is higher than ONTC, expectation is the ABO would be lower under PSPP)		
*** Amount is estimated based on AON Financial Analysis (PSPP) on funding basis for impact of 85% Minimum, Additional Service Buy back, 100 Accrued Benefit Guarantee Less Excess ONTC transfer Amounts.*		
(Note the following entries would be booked as part of Treasury Board Secretariat (TBS) as PSPP is included in that ministry)		

Consolidation Agency Pick-up to Province's Books in the Ministry of Ministry Northern Development and Mines (MNDM)

Dr. Pension Expense (annual)	$14.1 M	
Dr. Pension Expense - Loss due to settlement	$81.4 M	
Cr. Grant from Province - ONTC		$55.4 M
Cr. Accumulated Deficit *(Opening Accrued Benefit Asset)*		$40.1 M
(To pick up the impact of pension expense and settlement before eliminations)		
(Note assumption is that as of March 31, 2017 ABO and Plan Assets have been de-recognized)		

Consolidation Elimination Entries

Dr. Grant from Province ONTC	$55.4 M	
Cr. Transfer Payment Expense (MNDM)		$55.4 M
(To eliminate grant revenue recorded by the agency with transfer payment expense reported by the ministry MNDM)		
Dr. Unamortized Losses (ONTC)	$81.4 M	
Cr. Pension Expense (Loss due to settlement) - MNDM		$81.4 M
(To reverse impact of loss due to settlement as it is not plan settlement at the reporting entity/consolidated level)		
Dr. Unamortized Losses (TBS/Province)	$81.4 M	
Cr. Unamortized Losses (ONTC)		$81.4 M
(To transfer unamortized losses to TBS ministry were PSPP is reported - use COG elimination accounts)		

Total impact after pick-up and eliminations would be:

MNDM		
Pension Expense Annual	$14.1 M	
TBS/PSPP		
Pension Expense Past Service	$21.0 M	
Pension Assets	$572.4 M	
ABO Province Assumptions (C)	<$572.4 M	

Unamortized Gain/Loss - The net between $81.4M and the experience gain on transfer picked up by the Province. The net would be amortized using EARSL of PSPP.

FW_ Confidentiality Agreement .rtf

From: Manno, Christina C [cmanno@kpmg.ca]
To: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
CC: Picard, Michel [mpicard@kpmg.ca]
Subject: FW: Confidentiality Agreement
Date: Thursday, June 22, 2017 14:12:02
Attachment 1: Signed Confidentiality Agreement.pdf

Hello,

Please find the signed confidentiality agreement attached.

Thank you,

Christina Manno

Administrative Assistant, Audit

KPMG Management Services LP

333 Bay Street, Suite 4600

Toronto, Ontario M5H 2S5

T 416 777 3109

F 416 777 8818

cmanno@kpmg.ca

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Signed Confidentiality Agreement.pdf

CONFIDENTIALITY AGREEMENT

Confidentiality Agreement

During and for 5 years following the term of the Agreement between **KPMG LLP** (the "Vendor") and Her Majesty the Queen in right of Ontario as represented by the **Treasury Board Secretariat** and during and following the term for 5 years of each Statement of Work entered into by the Vendor and pursuant to the Agreement (collectively, the "Agreements"), the undersigned agrees with the Vendor to use commercially reasonable efforts to keep confidential and secure all Confidential Information to which the undersigned may have access to in the course of the performance of services pursuant to any of the Agreements (including requests for services) or otherwise in connection with any of the Agreements (including requests for services). "Confidential Information" means all information of the Ontario Public Service and of the Client's subcontractors at any tier of subcontracting that is confidential by its nature or in the circumstances in which it is received, including all confidential information in the custody or control of the Ontario Public Service, regardless of whether it is identified as confidential or not, and whether recorded or not, and however fixed, stored, expressed or embodied, which comes into the knowledge, possession or control of the Vendor in connection with any of the Agreements. "Ontario Public Service" means the ministries and other administrative units of Her Majesty the Queen in right of Ontario ("Ontario") over which ministers of Ontario preside, and for the purposes of this Confidentiality Agreement, includes Ontario and Ontario's agencies, boards, commissions and Crown corporations, offices of an officer of the Legislative Assembly or of the Ontario Legislature and Listed Entities, and "**OPS**" has the same meaning.

The undersigned acknowledges that the Client is bound to maintain custody of or control over information, material and records, however recorded, within the meaning of the *Freedom of Information and Protection of Privacy Act* ("FIPPA"). The undersigned agrees to comply with the privacy provisions of the Agreements in the course of providing services pursuant to the Agreements.

The undersigned shall not directly or indirectly disclose, destroy, exploit or use any Confidential Information except for the purpose of performing services pursuant to the Agreements, or as otherwise required in compliance with applicable law, regulation or professional standards. The undersigned shall not copy any Confidential Information, in whole or in part, unless copying is essential for the performance of services pursuant to the Agreements. On each copy, the undersigned must reproduce all notices that appear on the original.

The undersigned acknowledges that the Vendor is obliged to implement and maintain commercially reasonable measures to protect the security and integrity of Confidential Information and to protect it against loss, alteration and destruction and against access by unauthorized persons, and to select, implement, use and maintain appropriate products, tools, measures and procedures to do so. The undersigned covenants and agrees to adhere to all of the measures instituted by the Vendor.

Except as otherwise required in compliance with applicable professional standards, the undersigned agrees to return all Confidential Information, including all copies and portions thereof, to the Vendor or to the Client with no copy kept by the undersigned as soon as the need to possess them ends, at the request of the Client, and in any event, prior to concluding the performance of services pursuant to the applicable Agreements.

Nothing in this agreement shall prevent the Vendor from conducting its engagements for the Treasury Board Secretariat in accordance with firm policies and professional standards, or from conducting its normal review and quality assurance processes with regard to engagements for the Treasury Board Secretariat.

Name: Michel PICARD

Signature: Michel Picard

Date: June 22, 2017

Witness: C. Manno

Signature: C. Manno

Date: June 22/17

FW_ Discussion Items for IESO Call.rtf

From: Petsche, Nadine (TBS) []
To: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
Subject: FW: Discussion Items for IESO Call
Date: Thursday, June 22, 2017 16:38:47

-----Original Message-----
From: Susan Nicholson [mailto:susan.nicholson@ieso.ca]
Sent: June 22, 2017 4:28 PM
To: Georgia Ritchie-Wust; Kim Marshall; Petsche, Nadine (TBS); Picard, Michel; leeanne.probert@ca.ey.com
Cc: Jeannette Briggs; Egna Hernandez
Subject: RE: Discussion Items for IESO Call

Tuesday, Wednesday am or Thursday all work for me.

-----Original Message-----
From: Georgia Ritchie-Wust
Sent: June 20, 2017 9:52 AM
To: Kim Marshall; Petsche, Nadine (TBS); Picard, Michel; leeanne.probert@ca.ey.com
Cc: Jeannette Briggs; Susan Nicholson; Egna Hernandez
Subject: RE: Discussion Items for IESO Call

Hi,

Please let me know which of the following dates and times work for scheduling this meeting.

Tuesday, June 27th - 1:30 - 3:30
Wednesday, June 28th - 8:30 - 9:30 or 2:00 - 4:00 Thursday, June 29th - 2:30 - 4:00

Thanks,

Georgia Ritchie-Wust | Executive Assistant to Kim Marshall, VP, Corporate Services & CFO Independent Electricity System Operator (IESO) | T: (905) 855-6379 | T: (416) 969-6012 | F: (905) 855-6459 Postal Station A, Box 4474, Toronto, ON M5W 4E5
Web: www.ieso.ca | Twitter: IESO_Tweets | LinkedIn: IESO

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“F-E-A-R has two meanings: ‘Forget Everything And Run’ or ‘Face Everything And Rise.’ The choice is yours.”

…..(Zig Ziglar)

-----Original Message-----
From: Kim Marshall
Sent: June 20, 2017 8:00 AM
To: Petsche, Nadine (TBS); Picard, Michel; leeanne.probert@ca.ey.com
Cc: Jeannette Briggs; Susan Nicholson; Georgia Ritchie-Wust
Subject: RE: Discussion Items for IESO Call

Georgia will co-ordinate. Can probably do without me

Kimberly Marshall | VP, Corporate Services & CFO Independent Electricity System Operator (IESO) | T: (416) 969-6232 | C: (416) 545-7202
120 Adelaide Street West, Suite 1600, Toronto, ON M5H 1T1
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-----Original Message-----
From: Kim Marshall
Sent: June 15, 2017 3:37 PM
To: 'Petsche, Nadine (TBS)'; Picard, Michel; 'leeanne.probert@ca.ey.com'
Cc: Jeannette Briggs; Susan Nicholson
Subject: RE: Discussion Items for IESO Call

Nadine and Leeanne, Jeannette is the Director of settlements and Susan is our corporate controller. They are best to answer questions re the IESO market accounting and settlement. By cc to Georgia can we pls set up a 1/2 hour with Michel as well re your questions, thanks

Kimberly Marshall | VP, Corporate Services & CFO Independent Electricity System Operator (IESO) | T: (416) 969-6232 | C: (416) 545-7202
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-----Original Message-----
From: Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]
Sent: June 15, 2017 8:01 AM
To: Picard, Michel; Kim Marshall
Subject: Fw: Discussion Items for IESO Call

Good morning.
We had suggested that EY list some of their questions in advance of today's call (see below). I personally think however, that we first need to establish a common understanding of RRA (eg. Clarity of accounting guidance wrt governing board, independence, different types of RRAs), and perhaps address some of EY's questions/confusion following their read of the AG's recent comments/postings and how they might relate (or not) to the IESO's situation.
Just forwarding these Q's as an info item. Talk soon, N

From: Lee Anne Probert <leeanne.probert@ca.ey.com>
Sent: Thursday, June 15, 2017 2:42 AM
To: Petsche, Nadine (TBS)
Cc: Veinot, Cindy (TBS); Suzie Gignac; Blake Langill
Subject: Discussion Items for IESO Call

Hi Nadine,

Below is a list of the items I would like to discuss on our call with the IESO.

Please let me know if you have any questions/concerns with the list.

Regards,
Lee Anne

IESO Financial Statements

Current supply cost variance account

· Where is this recorded on the 2016 balance sheet (Amounts due to/from market participants?)

· Why is this not a regulatory asset? Is it considered to be a financial asset?

· There are similarities between this variance account and the new FHP variance account, but FHP variance account is going to be accounted for a regulatory asset. What is driving different treatment?

Market accounts

· Can we walk through the entries that are booked as part of the settlement process (timing and DRs/CRs)

· What are 'Other liabilities' (Note 3)

Market Administration/Settlement

Confirm/correct the following:

Price consumers pay comprised of:

· Electricity price:

o Electricity commodity price (HOEP)

o Transmission price

o Distribution price

· Global Adjustment

IESO only settles the electricity commodity price component and the related portion of the Global Adjustment

Supply of electricity comes from:

1. OPG (rate set by OEB)

2. Non-utility generators (rate set by contract – contracts held by OEFC)

3. Generation facilities under contract with IESO (rate set by contract)

4. Imports (paid HOEP)

Are there are other suppliers that are paid HOEP?

Portion of Global Adjustment determined by IESO driven by variances relating to #1, #2, #3 above

What is the nature of the contracts IESO enters into?
Participation agreements

- IESO enters into participation agreements with all market participants (buyers and sellers)

- Participation agreements bind IESO and counterparty to follow market rules

- Participation agreement would be the only contract IESO enters into with #1, #2, #4 above

Supply contracts

- Since IESO does not buy and sell electricity, what is the contract for? (IESO paying for commitment that the counterparty will supply electricity into the IESO grid?)

- Does the IESO negotiate the terms of these contracts?

Buyers of electricity from IESO grid are comprised of:

- LDCs

- Large consumers

The electricity commodity price paid by all buyers is HOEP.
IESO determines HOEP.
Although IESO determines HOEP, IESO is not really determining rates charged to buyers because total price is a bundle of electricity at HOEP plus/minus Global Adjustment and OEB mandates that bundle must (over time) equal cost.

[cid:image001.gif@01D2E57B.8F206A10]

LeeAnne Probert | Senior Manager | Assurance Services

Ernst & Young LLP
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FW_ Discussion to take place at the ASAF _ IFASS meetings of September .rtf

From: Petsche, Nadine (TBS) []
To: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
Subject: FW: Discussion to take place at the ASAF / IFASS meetings of September
Date: Monday, September 12, 2016 08:50:16
Attachment 1: image001.png
Attachment 2: AcSB paper.pdf
Attachment 3: KASB Paper.pdf

Please print, including email and put in a file (for take home reading). n

From: Picard, Michel [mailto:mpicard@kpmg.ca]
Sent: September 9, 2016 4:17 PM
To: Picard, Michel
Subject: Discussion to take place at the ASAF / IFASS meetings of September

The contents of this email do not represent the official views of KPMG or the IASB or the AcSB of Canada or the Accounting Standards Advisory Forum (ASAF) or the Korea Accounting Standards Board (KASB). It represents my personal views through a reading of my crystal ball. KPMG accepts no responsibility to anyone for the information contained in this email.

As mentioned in my previous communication, the ASAF will be addressing rate-regulated activities at its meeting of September 2016. Two Agenda Papers have been posted to the IASB website: the first one prepared by the AcSB of Canada and the second one prepared by the KASB (see enclosures and summaries below).

· The AcSB paper takes a fresh look at the topic. It explores what constitutes decision-useful information by assessing data taken from the practical experiences of users of the financial statements of entities with activities subject to rate regulation; and

· The KASB paper examines rationales for recognizing regulatory assets and liabilities based on revenue approach.

The IASB and national standard-setters will be asked to provide input on these two papers. It is my understanding that these two papers will also be presented at the September 2016 meeting of the International Forum of Accounting Standard Setters (IFASS). The IFASS is a grouping of national accounting standard-setters from around the world, chaired by Ms. Tricia O'Malley (former Chair of the AcSB of Canada). IFASS supports the mission of the IASB to develop a single set of high quality, understandable and enforceable global accounting standards.

The Crystal Ball

My views on the two papers:

· The AcSB paper is providing an in-depth analysis of users' needs in our industry. This paper should convince the IASB / ASAF / IFASS that certain regulatory regimes create "real" rights and obligations that affect the value of those entities in the eyes of investors and rating agencies.

· The KASB paper is supporting the recognition of regulatory assets and liabilities. However, the paper refers to the definition of assets and liabilities included in the current conceptual framework, and as a result does not bring any new perspective that has not already been discussed over the past few years.

· The IASB will be paying close attention to discussions that will take place at the ASAF and IFASS meetings of September 2016.

I will keep you informed on the discussions that will take place at the ASAF meeting of September and the reaction of the IASB staff.

Should you have any questions or comments, please do not hesitate to contact me.

Best regards,

Michel Picard, CPA, CA

Partner, Accounting Advisory Services

T 416 777 8414

Summary of the AcSB paper

1. Section I of the paper demonstrates that rate-regulated entities are an important part of the equity and debt markets in Canada and beyond. Projected future global investment requirements in the power sector highlight the need for capital and, thus, the importance of useful financial information to assist users in making informed decisions.

2. The data in Section II emphasizes the need for users to understand the regulatory framework in which the rate-regulated entity operates. The regulatory framework governs the relationship between the rate regulator and the rate-regulated entity, and has many components. The main components are: the legislation underlying the framework; the rules and procedures established by the rate regulator; and the decisions that interpret the legislation and rules. The regulatory framework:

a. defines the environment in which the rate-regulated entity operates;

b. affects whether the entity has rights and obligations resulting from the performance of its rate- regulated activities; and

c. significant bearing on the entity's financial performance and future cash flows.

3. The components of the regulatory framework influence the form of rate regulation chosen by the rate regulator to establish the rates charged to customers for the regulated goods or services. More commonly today, the form of rate regulation includes attributes of both cost-of-service and incentive-based mechanisms in order to balance both entity and customer interests. Understanding the details of the form of rate regulation is necessary in order to account for the economics of the entity's rate-regulated activities.

4. Section III demonstrates that the strength of the regulatory framework affects the enforceability of the economic resources of, and claims against, the entity. In addition, the nature and risk profile of recognized balances arising from rate regulation can vary. This affects the degree of uncertainty associated with such balances and, as a result, their subsequent measurement to capture the economics of rate-regulated activities.

5. In Section IV, the data demonstrates that the regulatory framework in which an entity operates is a key factor considered by debt and equity analysts, as well as credit rating agencies. The various components of the regulatory framework can affect the financial performance and future cash flows of the entity. Prospective purchasers use financial information that reflects the economics of rate- regulated activities in

determining the purchase price to acquire assets used in such activities. The data demonstrates that investors are paying a premium for these assets because they are viewed as capable of generating stable earnings and cash flows when the regulatory framework is strong. For jurisdictions, such as Canada and the U.S., that recognize balances arising from rate regulation on the face of the financial statements, the purchase price allocations examined revealed that the carrying value of these balances generally approximates their fair value.

6. The data presented in the paper supports the conclusion that financial information that reflects the economics of rate-regulated activities is useful. Such financial information has confirmatory and predictive value that is capable of making a difference in the decisions made by users.

Summary of the KASB paper

The KASB supports the revenue approach, and on the basis of the revenue approach, proposes developing a new revenue recognition model for rate-regulated entities, which would reflect the unique natures of rate-regulated environment. A new model based on the revenue approach would be consistent with the definition of asset and the definition of liability in the current *Conceptual Framework for Financial Reporting* (hereinafter referred to as *'Conceptual Framework'*) as well as with the requirements of IFRS 15 *Revenue from Contracts with Customers*. The KASB thinks that the new model would enhance the intercompany comparability among rate-regulated entities and non-regulated entities.

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ASAF Agenda Ref: 3A

September 29, 2016

Accounting Standards Advisory Forum

Project: **Rate-regulated Activities**

Paper Topic: Results of research on the decision-usefulness of financial information that reflects the economics of rate-regulated activities

Prepared By: Staff of the Canadian Accounting Standards Board (AcSB)

This paper has been prepared for discussion at a public meeting of the Accounting Standards Advisory Forum (ASAF). The paper was developed at the direction of the AcSB as part of its research program, and is provided to ASAF members to further the work of the IASB and the national standard setters.

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Executive Summary

1. This paper takes a "fresh look" at the topic of rate-regulated activities. It explores what constitutes decision-useful information by assessing data taken from the practical experiences of users of the financial statements of entities with activities subject to rate regulation ("rate-regulated entities").

2. Section I of the paper demonstrates that rate-regulated entities are an important part of the equity and debt markets in Canada and beyond. Projected future global investment requirements in the power sector highlight the need for capital and, thus, the importance of useful financial information to assist users in making informed decisions.

3. The data in Section II emphasizes the need for users to understand the regulatory framework in which the rate-regulated entity operates. The regulatory framework governs the relationship between the rate regulator and the rate-regulated entity, and has many components. The main components are: the legislation underlying the framework; the rules and procedures established by the rate regulator; and the decisions that interpret the legislation and rules. The regulatory framework:

   (a) defines the environment in which the rate-regulated entity operates;

   (b) affects whether the entity has rights and obligations resulting from the performance of its rate-regulated activities; and

   (c) has a significant bearing on the entity's financial performance and future cash flows.

4. The components of the regulatory framework influence the form of rate regulation chosen by the rate regulator to establish the rates charged to customers for the regulated goods or services. More commonly today, the form of rate regulation includes attributes of both cost-of-service and incentive-based mechanisms in order to balance both entity and customer interests. Understanding the details of the form of rate regulation is necessary in order to account for the economics of the entity's rate-regulated activities.

5. Section III demonstrates that the strength of the regulatory framework affects the enforceability of the economic resources of, and claims against, the entity. In addition, the nature and risk profile of recognized balances arising from rate regulation can vary. This affects the degree of uncertainty associated with such balances and, as a result, their subsequent measurement to capture the economics of rate-regulated activities.

6. In Section IV, the data demonstrates that the regulatory framework in which an entity operates is a key factor considered by debt and equity analysts, as well as credit rating agencies. The various components of the regulatory framework can affect the financial performance and future cash flows of the entity. Prospective purchasers use financial information that reflects the economics of rate-regulated activities in determining the purchase price to acquire assets used in such activities. The data demonstrates that investors are paying a premium for these assets because they are viewed as capable of generating stable earnings and cash flows when the regulatory framework is strong. For jurisdictions, such as Canada and the U.S., that recognize balances arising from rate regulation on the face of the financial statements, the purchase price allocations examined revealed that the carrying value of these balances generally approximates their fair value.

7. The data presented in this paper supports the conclusion that financial information that reflects the economics of rate-regulated activities is useful. Such financial information has confirmatory and predictive value that is capable of making a difference in the decisions made by users.

Introduction

Objective of Research

8. The objective of this paper is to explore what constitutes decision-useful information by assessing data taken from the practical experiences of users of the financial statements of rate-regulated entities.

9. General purpose financial reporting should provide financial information about the reporting entity that is useful to existing and potential investors, lenders and other creditors in making decisions about providing resources to the entity.[1] The decisions of financial statement users depend on the returns they expect, which, in turn, depend on their assessment of the amount, timing and uncertainty of the entity's future cash flows. In order to make such an assessment, users need information about the entity's resources, claims against the entity, and how efficiently the entity's management and governing board have discharged their responsibilities to use the entity's resources.

10. In the case of rate-regulated entities, the amount, timing and degree of certainty or uncertainty of the entity's future cash flows is affected by the presence of rate regulation. The IASB's September 2014 Discussion Paper, "Reporting the Financial Effects of Rate Regulation" notes that users have told standard setters that they need information about the effects of rate regulation when such regulation affects both the price charged to customers, and the management and profitability of the business. The objective of the IASB's Rate-regulated Activities project is to identify what information about the financial effects of rate regulation is most relevant to financial statements users, and determine how best to reflect that information in IFRS financial statements.

11. "Balances arising from rate regulation" are the rights and obligations of an entity resulting from the performance of activities to provide goods or services subject to rate regulation. Users often refer to the strength of the regulatory framework in explaining why including the effects of rate regulation on the face of the financial statements provides useful information. They understand that these balances have risk attributes that can affect the amount and timing of their ultimate recovery or settlement. However, when the regulatory framework is strong, these risk attributes may resemble the risk attributes of other financial statement elements. As such, users view audited financial information that reflects the economics of rate-regulated activities as both vital and

[1] The *Conceptual Framework for Financial Reporting,* paragraph OB1

transparent. In turn, this financial information is helpful to their assessment of the entity's future cash flows and the returns they can expect.

12. In examining the decision-usefulness of financial information that reflects the economics of rate-regulated activities, this paper presents data in several areas pointing to:

    (a) the importance to the capital markets of entities subject to rate regulation; (Section I)

    (b) the importance of understanding the regulatory framework in place, which, in part, determines whether the entity has rights and obligations requiring a particular accounting treatment; (Section II)

    (c) the manner in which the strength or weakness of the regulatory framework can affect the enforceability of the recovery of the entity's economic resources and settlement of claims against it; (Section III) and

    (d) how users have factored financial information that reflects the economics of rate-regulated activities into their decision-making. (Section IV)

Focus

13. Given the time available to prepare this paper and the ability to access the data being sought, this paper focuses mainly on Canadian facts and circumstances. When possible, data from other jurisdictions has also been incorporated as a basis for comparison in a particular area. (See "Next Steps" for further work that could be done to widen the paper's focus and provide a global perspective.) In most cases, the data presented in this paper is from readily available sources such as publications, reports and financial statements. The paper identifies the few instances when published data is not available and anecdotal information has been provided instead.

14. Much information exists on the topic of rate-regulated activities, including information submitted to the IASB as part of its current project. For example, some of the data in this paper is derived from stakeholders' comment letters to the IASB. The AcSB staff has been able to review only a portion of the existing body of information, but thinks the paper addresses points of fundamental significance to the objective of this paper. A neutral approach was taken to collecting the data. That is, pertinent information was sought and included in the paper, regardless of whether a particular piece of information could be viewed by individual readers as either positive or negative in any sense.

Purpose of Discussion

15. The IASB and national standard setters will be asked to provide input on the extent to which:

    (a) the paper's findings apply to their jurisdictions, or

    (b) the data should be updated to be more inclusive from a global perspective.

Section I. Importance to the Capital Markets of Entities Subject to Rate Regulation

Key Observations

- In Canada, rate-regulated entities are mainly in the Utilities and Pipelines sector.
- As of December 31, 2015, approximately $137.3 billion (6%) of the total $2.3 trillion market capitalization in Canada comes from rate-regulated entities. Sizable portions of two of the largest Canadian rate-regulated entities (i.e., Enbridge Inc., and TransCanada Corporation) are owned by investors outside Canada.
- Government-owned rate-regulated entities have over $100 billion of outstanding debt. Investor-owned rate-regulated entities make up over $90 billion of the corporate bond market.
- From a global perspective, the 10 largest utilities (by market capitalization) are located in the U.S. and parts of Europe.
- The International Energy Agency estimates $16.4 trillion of global investment over 2014-2035 will be needed in the power sector to construct new, and refurbish existing, generation plants and transmission and distribution networks. The form of rate regulation used by the regulator will affect an entity's ability to raise capital.

Canadian Rate-regulated Entities

16. There are two main types of rate-regulated entities in Canada:

    (a) Government-owned (i.e., public sector entities that are classified as either "Government Business Enterprises"[2] or "other government enterprises")

    (b) Investor-owned (i.e., publicly-held or privately-held entities)

[2] CPA Canada Public Sector Accounting Handbook defines a Government Business Enterprise as follows: (a) it is a separate entity with the power to contract in its own name and that can sue and be sued; (b) it has been delegated the financial and operational authority to carry on a business; (c) it sells goods and services to individuals and organizations outside of the government reporting entity as its principal activity; (d) it can, in the normal course of its operations, maintain its operations and meet its liabilities from revenues received from sources outside of the government reporting entity.

17. Prior to Canada's adoption of IFRS in 2011, most of these two types of entities applied pre-changeover Canadian GAAP. Similar to United States (U.S.) GAAP, pre-changeover Canadian GAAP permitted the financial statement recognition of balances arising from rate regulation. However, since 2011, greater diversity has appeared in the accounting frameworks being applied by Canadian rate-regulated entities, due in part to efforts by standard setters and Canadian securities regulators to provide some stability for these entities while the IASB completes its work on this topic.

18. The accounting framework landscape for Canadian rate-regulated entities is currently diverse. For annual periods beginning on or after January 1, 2015, rate-regulated entities that are Canadian publicly accountable enterprises[3] are required to apply IFRS. Rate-regulated entities that adopted IFRS for the first time after IFRS 14 *Regulatory Deferral Accounts* was issued continue to recognize these balances. Government Business Enterprises (which operate to generate a profit or on a break-even basis) that are also rate-regulated entities are also directed to apply standards applicable to for-profit entities, and thus apply IFRS. Canadian securities legislation permits dual-listed entities (i.e., Canadian entities also registered with the U.S. Securities and Exchange Commission) to apply U.S. GAAP in the normal course. Temporary exemptive relief is also available from the Canadian Securities Administrators that permits rate-regulated entities that are not dual-listed to apply U.S. GAAP in place of IFRS.[4] If a rate-regulated entity is not a publicly accountable enterprise or a Government Business Enterprise, additional accounting framework options may also include Accounting Standards for Private Enterprises or Public Sector Accounting Standards.[5] A non-GAAP reporting framework is used when legislated by the provincial owner of a government-owned rate-regulated entity.

19. As of December 31, 2015, there were approximately 125 rate-regulated entities in Canada. These entities mainly range in size from small entities owned by municipal governments to large investor-owned entities or entities owned by provincial governments.

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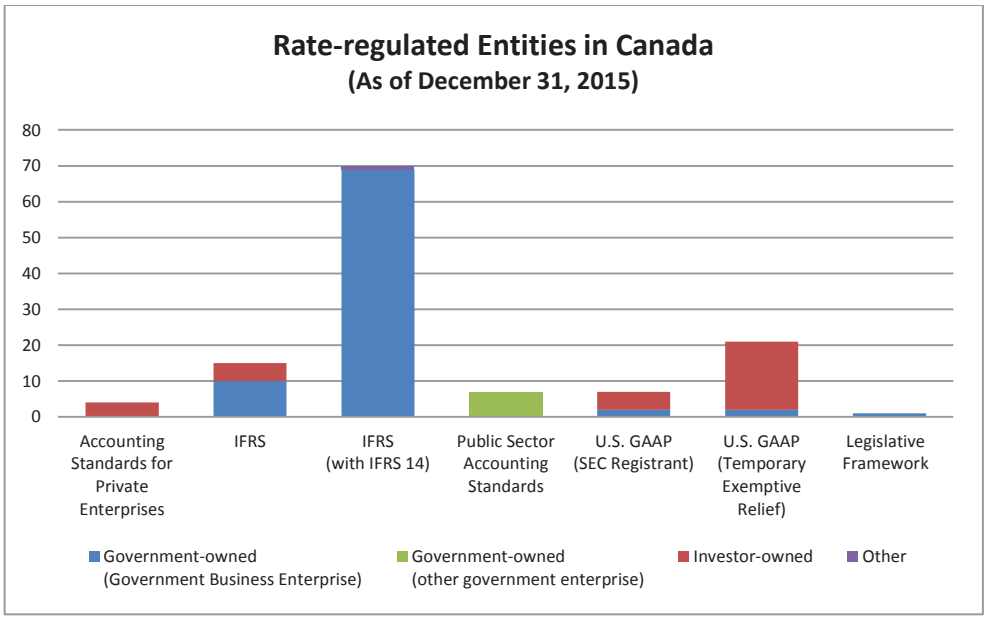
3 CPA Canada Handbook – Accounting defines a publicly accountable enterprise as an entity, other than a not-for-profit organization, that (i) has issued, or is in the process of issuing, debt or equity instruments that are, or will be, outstanding and traded in a public market (a domestic or foreign stock exchange or an over-the-counter market, including local and regional markets); or (ii) holds assets in a fiduciary capacity for a broad group of outsiders as one of its primary businesses.

4 The exemptive relief is in effect until the earlier of January 1, 2019 or the effective date prescribed by the IASB for mandatory application of an IFRS standard specific to entities with activities subject to rate regulation.

5 Accounting Standards for Private Enterprises are domestic standards written by the AcSB and Public Sector Accounting Standards are domestic standards written by the Public Sector Accounting Board, Canada's other accounting standard setter.



Source: Information compiled based on audited financial statements for fiscal year 2015, or information from rate filings that confirmed the accounting framework used by these entities. Due to data collection constraints, the population could be slightly larger.

20. The chart above highlights two key points:

(a) The majority of investor-owned entities have chosen U.S. GAAP over IFRS. A few entities that are not reporting issuers apply Accounting Standards for Private Enterprises. Both U.S. GAAP and Accounting Standards for Private Enterprises permit the recognition of balances arising from rate regulation. Several entities that apply U.S. GAAP have told us this choice was influenced by the need to provide their users with financial statements that accurately reflect the economics of their business. Further, some entities presently using the temporary exemptive relief described in paragraph 18 have said they are considering incurring the cost and effort necessary to become a registrant of the U.S. Securities and Exchange Commission in order to have the permanent ability to apply U.S. GAAP. While such a decision could be primarily for business reasons such as the entity expanding its operations into the U.S., it could also be attributed to the continuing uncertainty about the ultimate outcome of the IASB's Rate-regulated Activities project and the approaching expiry date of the securities regulators' exemptive relief.

(b) Public sector entities that are Government Business Enterprises tend to apply IFRS. The majority of these entities is made up several large provincially-owned utilities, and many small municipally-owned local distribution utilities that do not issue debt or list in the U.S. stock market, and are not subject to Canadian securities legislation. As a result, they cannot apply U.S. GAAP. As shown in the chart, many of these entities adopted IFRS for the first time after

the IASB issued IFRS 14, which allowed them to continue their previous accounting practices for rate-regulated activities.

21. Within the pool of government-owned rate-regulated entities, there are entities that do not meet the characteristics of Government Business Enterprises and are required to apply Public Sector Accounting Standards.

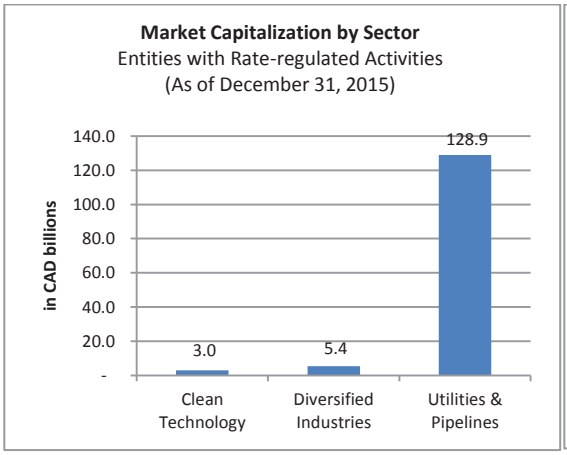
22. The data on the different accounting frameworks in Canada is unique. It demonstrates that when given a choice, rate-regulated entities select an accounting framework that captures the effects of rate regulation on their financial position and financial performance in order to communicate more decision-useful information to users.

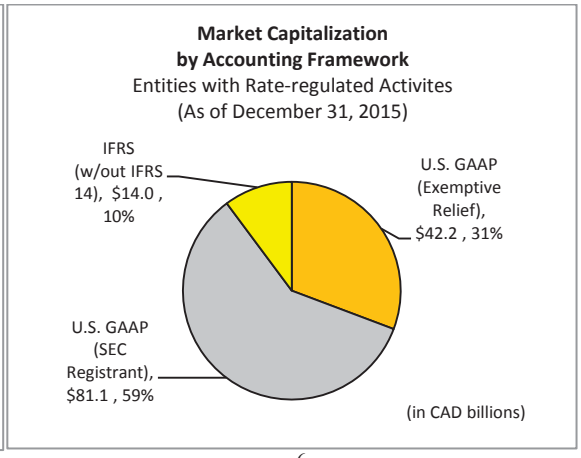
Equity Market

23. Investor-owned rate-regulated entities form an important part of the Canadian equity market.

24. As of December 31, 2015:

- $137.3 billion (6%) of the total $2.3 trillion market capitalization in Canada comes from rate-regulated entities.
- The majority of entities with rate-regulated activities are in the Utilities & Pipelines sector.
- Entities that represent 90% of the total rate-regulated entities' market capitalization apply U.S. GAAP.





Source: Information compiled using data from the entities' financial statements and from the TMX[6].

6 TMX Group is an integrated, multi-asset class exchange group. TMX Group's businesses operate cash and derivative markets for multiple asset classes including equities, fixed income and energy. The Toronto Stock Exchange (TSX) and TSX Venture Exchange (TSXV) are part of the TMX Group.

25. The table below shows the amount of equity capital that continues to be raised year over year by the Canadian Utilities and Pipelines sector as a whole.

in CAD billions

Utilities and Pipelines Sector (includes both rate-regulated and non-rate regulated entities)	**2014**	**2015**
Market Capitalization	$189.0	$164.0
Equity capital raised since 2010	$25.1	$31.9
Equity capital raised in the year	$8.0	$6.8
Average offering size for issuers	$0.4	$0.5
Number of Financings	20	14

Source: TMX

26. Global investors also view rate-regulated entities in Canada as an investment opportunity. Staff looked at the two largest entities with rate-regulated operations in Canada (by market capitalization) and noted that, in each case, a sizable portion of the entity's ownership holdings is outside Canada, primarily in the U.S. The extent of U.S. ownership could be one of the reasons why some Canadian rate-regulated entities with operations in the U.S. have decided to apply U.S. GAAP. Also, Canadian rate-regulated entities compete for capital in the North American markets and want their financial statements to be comparable with their competitors in the U.S.

Enbridge Inc.
(Market Cap approximately $35 billion)

Top Geographic Ownership as of July 26, 2016	
United States	45.22%
Canada	44.46%
Germany	3.34%
Britain	1.53%
Switzerland	1.16%
Australia	0.96%
Norway	0.82%
Netherlands	0.68%
Japan	0.54%

TransCanada Corporation
(Market Cap approximately $47 billion)

Top Geographic Ownership as of July 24, 2016	
Canada	58.29%
United States	27.09%
Germany	5.51%
Britain	2.28%
Switzerland	2.05%
Norway	1.10%
Australia	0.72%
Japan	0.71%
Ireland	0.46%

Debt Market

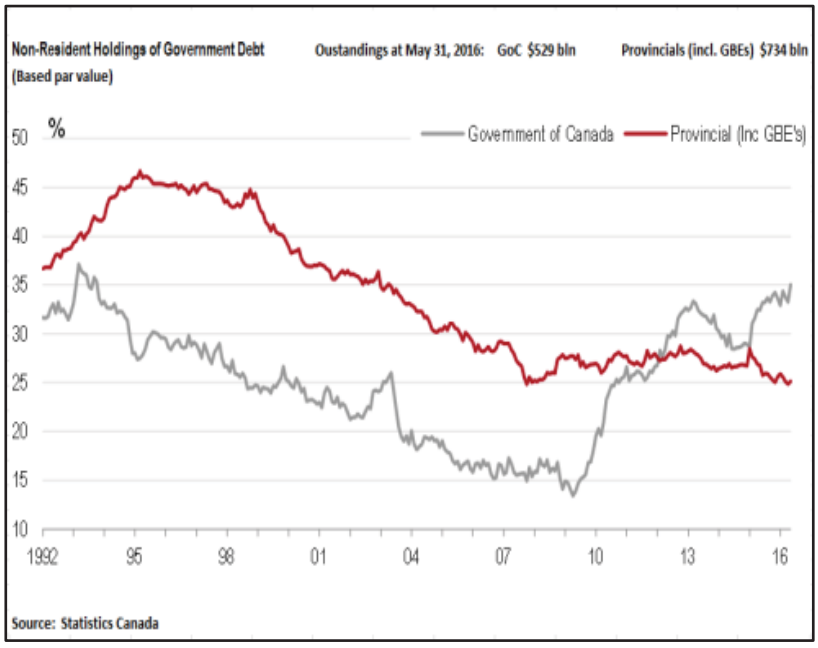
27. Government Business Enterprises are not prominent in the equity market.[7] However, they form an important part of the debt market, as they raise capital by issuing bonds or debentures, and through loan borrowings, in order to carry out their operations and fund their capital infrastructure projects.

28. The following table illustrates the debt outstanding for some of the larger government-owned rate-regulated utilities, and the accounting framework they apply:

Government-owned rate-regulated utility	**Accounting Framework**	**Debt (in CAD billions)**
Hydro-Québec	U.S. GAAP	$46
BC Hydro	Legislative GAAP	18
Manitoba Hydro	IFRS with IFRS 14	15
Hydro One	U.S. GAAP	9
Nalcor Energy	IFRS with IFRS 14	6
Ontario Power Generation	U.S. GAAP	5
New Brunswick Power	IFRS with IFRS 14	5
Toronto Hydro	IFRS with IFRS 14	2
Total of Sampled Entities		**$106**

Source: Information compiled based on the entity's financial statements as of December 31, 2015 (except for BC Hydro, Manitoba Hydro, and New Brunswick Power, which are as of March 31, 2016)

29. Although staff has not been able to gather data indicating how much of the government-owned utilities' debt is held by foreign investors, Statistics Canada shows that the non-resident holdings (i.e., holdings of owners residing outside Canada) of provincial debt that includes Government Business Enterprises was almost 30% in 2015. The chart to the right provides a sense of the percentage of non-resident holdings of government debt from 1992 to 2016.



[7] Due to the recent implementation of the Province of Ontario's privatization plan for Hydro One, this entity currently has shares traded on the TSX.

30. The corporate bond market is equally important for publicly held investor-owned rate-regulated entities in raising capital to fund their capital infrastructure and ongoing business operations. The table below roughly illustrates the portion of the corporate bond market index made up of sub-industry groups containing most of the publicly held investor-owned rate-regulated entities. (Note: The sub-industry groups could also include entities that are not subject to rate regulation.)

Canadian Corporate Bonds (As of July 27, 2016)	**Market Value (in CAD billions)**	**Percentage of Total**
Total Corporate Bonds from Canadian FTSE TMX Universe Bond Index[8]	**$417.4**	**100%**
Industry Group: Energy		
Distribution	19.5	4.7%
Generation	9.1	2.2%
Pipelines	30.5	7.3%
Industry Group: Infrastructure		
Utility	33.2	7.9%
Total Corporate Bonds related to Sub-Industry Groups with Rate-regulated Entities	$92.3	22.1%

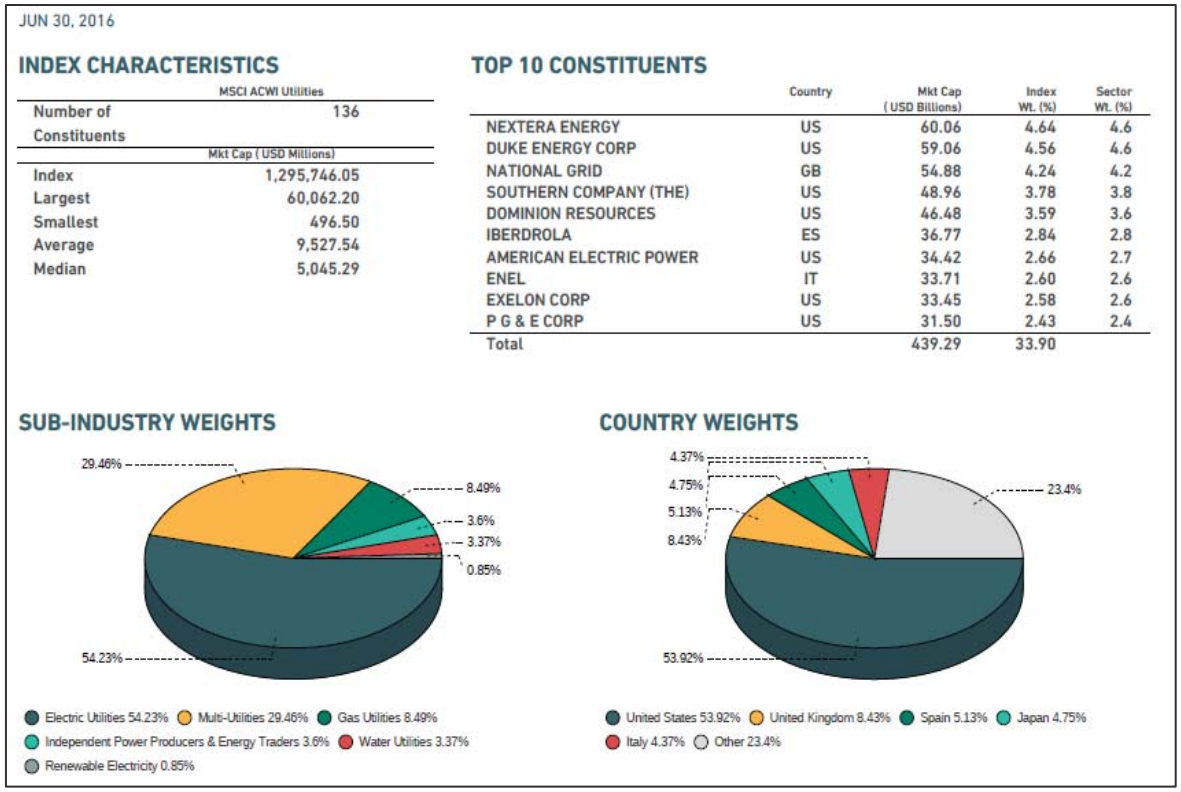
Source: Information compiled based on data from PC Bond.

Global Perspective – Market Capitalization by Geography

31. Staff also wanted to understand which jurisdictions make up a large part of the global market capitalization for utilities. Research efforts identified a utilities index that captures large- and mid-cap representation across 23 "Developed Markets" and 23 "Emerging Markets" countries.[9] This index has some limitations because certain utilities could be government-owned or privatized and, thus, would not be captured. Furthermore, the index could also contain entities that are both rate-regulated and non-rate-regulated. However, the information provides a general sense of the geographic distribution of utilities in the equity market. It appears that many of the large utilities are in the U.S., with several in Europe (for example, United Kingdom, Spain, Italy).

8 The Universe Bond Index is the broadest and most widely used measure of performance of marketable government and corporate bonds outstanding in the Canadian market. The table above only shows figures relating to Canadian corporate bonds.

9 As per the MSCI ACWI Utilities Index, "Developed Markets" countries include: Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Hong Kong, Ireland, Israel, Italy, Japan, Netherlands, New Zealand, Norway, Portugal, Singapore, Spain, Sweden, Switzerland, the UK and the US. "Emerging Markets" countries include: Brazil, Chile, China, Colombia, Czech Republic, Egypt, Greece, Hungary, India, Indonesia, Korea, Malaysia, Mexico, Peru, Philippines, Poland, Russia, Qatar, South Africa, Taiwan, Thailand, Turkey and United Arab Emirates.



Source: MSCI (The MSCI ACWI Utilities Index – All securities in the index are classified in the Utilities sector as per the Global Industry Classification Standard)

Future Trends and Investment Requirements

32. Through the research performed, staff has learned that various jurisdictions are undergoing energy reforms. For example:

(a) The regulatory environment of Europe, the Middle East, India and Africa is dynamic, with many countries focusing on opening their power sectors to competition and private investments.

(b) Reforms are occurring to break up monopolies in China. In 2014, China's National Energy Administration submitted plans to the State Council, advising the breakup of grid operators' monopoly in the distribution and retail sale of electricity to the end customer. These reforms will potentially open the power market to private capital and other investments.

(c) In Japan, it is expected that deregulation and the entrance of new players will transform the country's power market as there is a move towards breaking up vertically-integrated utilities and introducing full retail competition. There are plans to unbundle the 10 integrated utilities

into separate power generation, transmission, distribution and supply entities over the next few years. In June 2014, Japanese lawmakers voted to open up the residential electricity market to full competition.

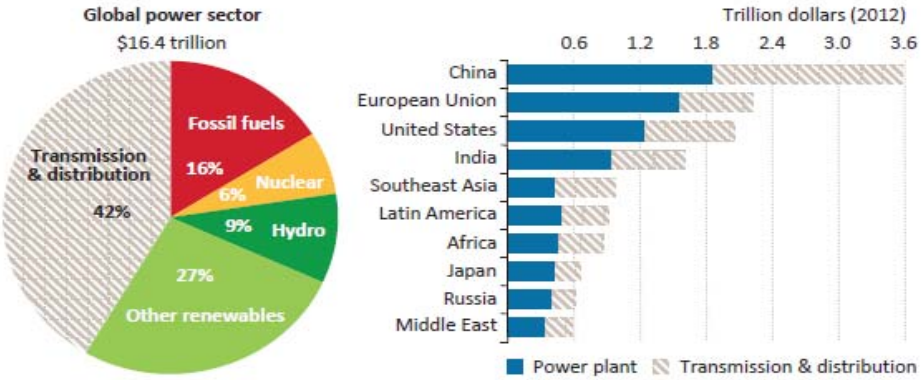
33. Based on statistics from the International Energy Agency, the projected global investment requirements in the power sector are in the area of $16.4 trillion over the period 2014-2035. The International Energy Agency's projections indicate:

> "…by far the greater part of the investment will be needed in markets that are mostly regulated. Over 2014-2035, with current market designs, less than $1 trillion will be required in the competitive parts of electricity markets out of the cumulative $9.6 trillion invested in power plants, with an additional $6.8 trillion needed for T&D [transmission and distribution] grids, for cumulative power sector investment of $16.4 trillion."[10]

Investment requirements

Global investment in the power sector amounts to $16.4 trillion over 2014-2035 in the New Policies Scenario, an annual average of about $740 billion per year. This represents some 40% of investment in energy supply infrastructure during that period. About 58% of power sector investment is allocated to the construction of new power plants and refurbishment of existing ones; the remainder is used to build and refurbish T&D networks. At the regional level, cumulative investment needs are largest in China ($3.6 trillion), followed by the European Union ($2.2 trillion), United States ($2.1 trillion), India ($1.6 trillion) and Southeast Asia ($1.0 trillion) (Figure 3.7).

Figure 3.7 ▷ Cumulative global power sector investment by type and selected region in the New Policies Scenario, 2014-2035



Source: Special Report World Energy Investment Outlook 2014

[10] Source: Special Report World Energy Investment Outlook 2014, Page 107

34. With aging infrastructure, government-imposed environmental targets and changing power demand, energy reforms will continue and the form of rate regulation will evolve to balance the needs of the customers and the financial viability of the entity in attracting capital. Providing information about the economics of rate-regulated activities will help investors and lenders to identify the opportunities and risks created by the regulatory framework in which the entity operates and assist them in making more informed decisions.

What this Section Demonstrates

35. Rate-regulated entities are important to the capital markets, and thus, to users making investment and lending decisions. Financial information that reflects the economics of rate-regulated activities, and is consistent between jurisdictions for entities with similar facts and circumstances increases comparability and is more decision-useful.

Section II. Importance of Understanding the Regulatory Framework

Key Observations

- The regulatory framework governs the relationship between the rate-regulated entity and the rate regulator. The regulatory framework has many components. Understanding those components is important in determining whether there are rights and obligations requiring a particular accounting treatment.
- Legislation forms the basis of the regulatory framework.
- The form of rate regulation can vary, and it is becoming more common that the rate-setting mechanism can include both cost-of-service and incentive-based attributes.
- Regulatory decisions, and subsequent court decisions, provide confirmatory and predictive value of the economic resources of, and claims against, the rate-regulated entity.

Identifying "Rate" Regulation

36. The term "regulation" can cover a broad range of activities. The Oxford Dictionary[11] defines regulation as "a rule or directive made and maintained by an authority." Many sectors (e.g., the financial, communications and media sectors) are regulated in some manner. The IASB's Rate-regulated Activities project, and this paper, focus only on rate regulation.

37. Rate regulation, as defined in the IASB's March 2013 Request for Information, is "the mechanism by which a rate regulator imposes a control over the setting of prices that can be charged for services of products." Generally, rate regulation is imposed when an entity has a monopoly or dominant market position that gives it excessive market power. Without rate regulation, the price that the entity can charge would not be constrained since effective market competition is lacking.

38. This paper does not reproduce or expand upon the complete description of rate regulation included in the IASB's September 2014 Discussion Paper, "Reporting the Financial Effects of Rate Regulation." It simply reminds readers of the importance of ascertaining whether all or part of an entity's activities is subject to rate regulation, as opposed to some other form of regulation.

[11] Website: http://www.oxforddictionaries.com/us/definition/american_english/regulation

Regulatory Framework

39. Users in Canada have said that the regulatory framework, of which the rate-setting mechanism is a part, has a significant bearing on the entity's financial performance and future cash flows. The regulatory framework governs the relationship between the rate regulator and the rate-regulated entity and has many components. The main components include:

- the legislation that underlying the framework,
- the rules and procedures established by the rate regulator through the design of the rate-setting mechanism (i.e., the form of rate regulation); and
- the regulatory decisions, and subsequent court rulings on those decisions, that interpret the legislation and rules.

40. Understanding the regulatory framework is important because it can affect the determination of whether the entity has rights and obligations that arise from the performance of its rate-regulated activities.

Regulatory Framework Component: Legislation

41. An overall objective of rate regulation in Canada is to balance the fair return earned by an entity, with reasonable rates charged to customers based upon prudently incurred costs. In addition, rate regulators attempt to ensure that customers of varying types pay their fair share of the costs incurred to service the entire customer base. The powers and mandates of rate regulators in Canada come from governing federal and provincial legislation. This legislation typically requires that the rate regulator approve tariffs or rates that are just and reasonable.

42. Even though the relationship between the rate regulator and the entity it regulates may not be contractual, the rate regulator has the ability to affect the entity's financial performance and future cash flows through its regulatory decisions. In light of this ability, the strength of the jurisdiction's regulatory framework becomes very important (as discussed in Section III of this paper).

43. In Canada, the legislation relating to rate regulation contributes to the strength of the regulatory framework because it provides a basis for either challenging or upholding a rate regulator's decisions (or "rulings") and the rates those decisions produce. If a rate regulator establishes rates that are contrary to the principles of the legislation, a rate-regulated entity can challenge the decision by a motion to the regulator, or in a court. Similarly, a rate regulator that disallows costs

that are not reasonable or prudently incurred demonstrates rigour in the system to establish reasonable rates for customers.

44. Following are examples of case law that demonstrate the objective of rate regulation, and how legislation can affect the rights and obligations of the rate-regulated entity, as interpreted by the Canadian courts.

Court Interpretations of Canadian Legislation (emphasis added)
The Supreme Court in *Northwestern Utilities Ltd v. Edmonton* [1929] S.C.R. 186 (Northwestern) defined the scope of the utilities' right to price their product and their right as a result to a fair return. The Court stated "By a fair return is meant that the company will be allowed as large a return on the capital invested in its enterprise (which will be net to the company) as it would receive if it were investing the same amount in other securities possessing an attractiveness, stability and certainty equal to that of the company's enterprise".[12]
A fair rate of return to the corporation is paramount and is all that can be considered in arriving at a fair rate. In the unrealistic situation that a fair return worked a hardship on the consumer, the choices before government to provide relief are unlimited but they should not lower the fair rate of return. Indeed the Federal Court of Appeal (FCA) in *TransCanada PipeLines v. Canada National Energy Board* 2004 F.C.A. 149 confirmed that a fair return need not be modified out of deference to its impact upon customers.[13]
In *Ontario (Energy Board) v. Ontario Power Generation Inc.*, the Supreme Court reviewed the Ontario Energy Board ("OEB" or the "Board")'s decision to disallow $145 million in labour compensation costs applied for by Ontario Power Generation ("OPG") in its 2011-2012 rates application. The OEB had disallowed these costs, which were related to OPG's nuclear operations, on the basis that OPG's labour costs were not in line with comparable entities in the nuclear industry. The principal question on appeal was whether the Board should have used the "no-hindsight" prudence test to determine whether the labour compensation costs were reasonable. Applying a standard of review of reasonableness, the Court overturned the decision of the Ontario Court of Appeal and reinstated the decision of the OEB and the Divisional Court, holding that the OEB's decision to disallow the $145 in labour compensation costs was reasonable. The Court found that the costs in question were "best understood as at least partly committed" (as opposed to entirely "forecast" costs) because they resulted from collective agreements entered into between OPG and two of its unions but were also subject to management discretion because OPG had some flexibility to manage total staffing levels by way of, among other things, attrition of the workforce.[14]

Regulatory Framework Component: Form of Rate Regulation

45. Pre-changeover Canadian GAAP defined rate regulation as existing when all of the following criteria were present:

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12 The Fair Return Standard for Return on Investment by Canadian Gas Utilities: Meaning, Application Results and Implications (March 2008), Page 4

13 The Fair Return Standard for Return on Investment by Canadian Gas Utilities: Meaning, Application Results and Implications (March 2008), Page 4

14 McCarthy Tetrault, Extracts, http://www.canadianappeals.com/2015/11/24/oeb-and-atco-blog-case-comments/ (November 2015)

(a) The rates for regulated services or products provided to customers are established by or are subject to approval by a regulator or a governing body empowered by statute or contract to establish rates to be charged for services or products.

(b) The regulated rates are designed to recover the cost of providing the services or products.

(c) It is reasonable to assume that rates set at levels that will recover the cost can be charged to and collected from customers in view of the demand for the services or products and the level of direct and indirect competition.

Based on the **cause-and-effect relationship** between the entity's costs and its rate-based revenue stream

46. Rate regulators in Canada and around the world choose from a variety of forms of rate regulation in order to achieve their objectives. The form of rate regulation is generally based on the terms of the governing legislation. For purposes of this paper, two common forms of rate regulation are described below using information from the IASB's September 2014 Discussion Paper, "Reporting the Financial Effects of Rate Regulation", and other sources.

Cost-of-Service

A mechanism that sets rate to ensure an entity recovers all of its reasonably incurred allowable costs plus a fair return and reasonable return on its capital investment.

Total allowable costs include specific operating costs, and capital costs of assets used to provide regulated goods or services.

The allowed rate of return is what the rate-regulated entity has the opportunity to earn. When applied to the rate base, the allowed rate of return provides an amount equal to the forecast cost of financing the investment required for regulated operations. The financing costs include both the cost of debt and the cost of equity (when an entity has no issued share capital, the rate regulator determines a deemed cost of equity).

Rates are set by means of a rate case based on budget, historical or test year information.

Incentive-Based
(Also referred to as performance-based regulation)

A mechanism that sets rates or components of rates in order to provide an incentive to maximize efficiency, allowing for retaining profits above target level but suffering downside of inefficiency or under-recovery of costs.

The mechanism uses:
- benchmark or target cost and revenue for determining initial rates
- adjusts input measures for inflation and for a variety of output-based objectives, with incentives or penalties applied through the rate formula

Price-cap regulation is a form of incentive-based regulation where limits are set on initial prices and a formula is put in place to allow for future increases in the maximum prices that can be charged.

Hybrid
Combination of cost-of-service and incentive-based mechanisms

47. Rate regulation is designed to ensure that the rate-regulated entity recovers a determinable amount of consideration (the "revenue requirement") in exchange for the rate-regulated activities that it performs.

48. The rate-setting mechanism is an explicit acknowledgement, by the rate regulator, that the original rate determination is provisional to some extent. That is, certain aspects of the approved future rates are adjusted for the difference between the entity's forecasted, and actual, results if the rate regulator has approved the use of variance or deferral accounts. The mechanism works in such a way that the entity has the right to increase, or obligation to decrease, the rate to be charged when the rate-regulated goods or services are provided in the future. Part of that increase or decrease is attributable to the difference between the previous period's provisional rate and actual results for the goods or services rendered in the past.

49. From the research undertaken, the form of rate regulation is constantly evolving as rate regulators try to strike a balance in determining which risks associated with rate-regulated activities:

- are part of the normal cost recovery process and should be assigned to customers; or
- are part of normal business risks that should be borne by an entity's investors or owners as a result of how efficiently the business is managed when providing the rate-regulated goods or services.

This effort to achieve a fair balance between investors and customers is resulting in new forms of rate regulation that are considered hybrid because they encompass attributes of both cost-of-service and performance-based mechanisms. In some cases, different components of an entity's rates could be subject to differing mechanisms.

50. In Canada, most rate-regulated entities are regulated through a cost-of-service mechanism. However, staff has observed that rate regulators are incorporating incentive-based mechanisms to encourage efficiency and productivity among the entities. Typically, the rates set under incentive-based regulation are determined based on the costs of providing the service plus a reasonable return. For subsequent periods, the rates are modified using a formula-based approach that establishes the rates the utility can charge to its customers. There is generally an opportunity to re-

base[15] rates on a cost-plus-return basis periodically and/or if the actual incentive return deviates too far from a fair return.

51. To illustrate how the form of rate regulation used can differ across Canada, staff looked at three provinces and the different components of the electricity business:

Business Component	Province		
	Ontario	**Alberta**	**Manitoba**
Generation	Partially deregulated (one dominant player)	Competitive / market-based (oligopoly in which there are two or more players)	Vertically-integrated regulated electric (and natural gas) utility that is government-owned
Transmission	Fully regulated (one dominant player)	Fully regulated (two major players)	
Distribution	Fully regulated (many local distribution companies that are municipally-owned)	Fully regulated (few major distributors)	
	Form of Regulation		
	Incentive Regulation Mechanism: (Combination of cost-based and incentive-based mechanism. Forecasted costs and revenue information are used to determine a base revenue requirement and the "base" rates that are set to recover the revenue requirement. In subsequent years, the base rates are adjusted by a formula that includes components for inflation, efficiency and productivity gains. At the conclusion of the term, the entity can rebase its rates under cost-of-service.[16])	Generation: not regulated Transmission: Cost-of-service Distribution: Performance-based regulation (Rates using formula that adjusts rate changes to inflation minus an enhanced efficiency or industry productivity factor. Except in limited circumstances, rates can only rise less than inflation.[17])	Cost-of-service

52. In Alberta, although electricity distribution is regulated using performance-based regulation (PBR), there are elements within the PBR that contain some cost-recovery mechanisms. For example, there are adjustments to rates outside the PBR formula involving accounts that are similar to flow-through items found in cost-of-service regulation. There could also be adjustments for events

15 In "rebasing", a utility submits a cost estimate to reset the rate based on a more recent reflection of costs than the ones used in the original rate determination.

16 Based on information from the Ontario Energy Board's Comment Letter to IASB's Request for Information (2013)

17 Alberta Utilities Commission, http://www.auc.ab.ca/items-of-interest/Performance-BasedRegulation/Pages/default.aspx

caused by external factors that are outside the control of the entity and for which there is no other reasonable opportunity to recover the costs within the PBR formula.

53. As for jurisdictions outside Canada, following is an example of an Australian entity that staff thinks helps to illustrate the rules of the rate regulator (see Note 2(g)) and how various components of the rate can have cost-of-service- or incentive-based-like attributes (see Note 2(d)).

TransGrid (Australia) – Extracts from audited financial statements (Accounting framework: IFRS)

2013-2014 audited financial statements

Note 2 – Summary of Significant Accounting Policies (g) Trade and Other Receivables

Prescribed Customer Receivables – As at 30 June 2014, TransGrid's total revenue received for prescribed transmission services, including intra-regional settlement residues and inter-regional settlement residue auction proceeds, was less than the revenue entitlement for the financial year. In accordance with the National Electricity Rules (NER), the under-recovered amount and associated interest was entitled to be recovered when setting future transmission service prices. The revenue under-recovery was recognised in Prescribed Customer Receivables.

2014-2015 audited financial statements

Note 2 – Summary of Significant Accounting Policies, (d) Changes in Accounting Policies

Voluntary Change in Accounting Policy – In 2015, TransGrid changed its accounting policy for recognized revenues from the rendering of prescribed services. The rationale for the change reflects the Australian Accounting Standards Board's (AASB) recent clarification of its position on the recognition of rate-regulated assets. Management believes the new accounting policy reflects the AASB view.

As a result of the change, TransGrid has recognized prescribed services revenue on the basis of amounts received or receivable with no amounts accrued for future receipts from (or credits to) customers allowed under any regulatory pricing mechanism.

Previously TransGrid recognized the Maxmium Allowable Revenue (MAR) determined by the AER by recognizing the amount of revenue exceeding the MAR as a payable or the amount of revenue below the MAR as a receivable.

Refer below for further details about deferred revenues or credits that have not been recognized in profit or loss.

i) Transmission Use of System (TUOS) revenue – TransGrid collects its Maximum Allowed Revenue (MAR) based on the transmission prices set in accordance with the pricing methodology approved by the AER and published in May each year for application in the following financial year. In any given year, revenue may exceed or not achieve the MAR due to differences between demand load forecasts and actual loads for TUOS and volatility in settlement residues. As at 30 June 2015, revenue is a total of $110.6m (2014 - $38.2m) below the MAR, which will be included in transmission prices in following years.

ii) Service Target Performance Incentive Scheme – TransGrid is subject to a Service Target Performance Incentive Scheme (STPIS) which provides for the AER to adjust TransGrid's Maximum Allowable Revenue (MAR) in a financial year by between -1% to +3% based on the performance in the previous calendar year. As at 30 June 2015, a STPIS adjustment of $12.1m (2014 - $8.7m) has been determined by the AER and has been built into 2015-16 transmission price.

iii) Network Support – Network support refers to non-network solutions used by transmission network service providers (TNSPs) as a cost effective means of deferring network augmentation. In the prior regulatory period 2009/10 to 2013/14, TransGrid received a network support pass-through allowance which is required to be adjusted for any under-expenditure. As at the reporting date, a total amount of $8.3m (2014 - $15.3m) is required to be credited in following years.

54. In addition to the different forms of rate regulation in use in Canada, it is common for an entity to have both rate-regulated operations and operations not subject to rate regulation. Although some may think of rate regulation as applying to certain industries or sectors, in reality, rate regulation affects specific business activities or services of the entity. Following is an example to illustrate this point.

- Telus Corporation – This entity undertakes activities subject to price cap regulation by the Canadian Radio-television and Telecommunications Commission (CRTC). Despite the price-cap regulation, Telus determined that the deferral account mechanism put in place by the regulator (according to its decision on amounts collected related to non-high cost serving areas) created an obligation.

Telus (Canada) – Extracts from 2011 annual report (Accounting framework: IFRS)
Management's Discussion & Analysis 10.3 Regulatory Matters TELUS' telecommunications and broadcasting services are regulated under federal legislation by the Canadian Radio-television and Telecommunications Commission (CRTC), Industry Canada and Heritage Canada. The CRTC has taken steps to forbear from the regulation of prices for services offered in competitive markets, such as local residential and business services in selected exchanges, long distance and some data services, and does not regulate the pricing of wireless services. Local telecommunications services that have not been forborne are regulated by the CRTC using a price cap mechanism.
Audited Financial Statements (emphasis added) Note 1 – Summary of Significant Accounting Principles (e) – Revenue recognition Non-high cost service area deferral account – On May 30, 2002, and on July 31, 2002, the CRTC issued Decision 2002-34 and Decision 2002-43, respectively, pronouncements that affected regulated services in the Company's Wireline segment. In an effort to foster competition for residential basic service in non-high cost serving areas, the concept of a deferral account mechanism was introduced by the CRTC, as an alternative to mandating price reductions. The deferral account arises from the CRTC requiring the Company to defer the statement of income recognition of a portion of the monies received in respect of residential basic services provided to non-high cost serving areas. The Company has adopted the liability method of accounting for the deferral account. This resulted in the Company recording incremental liability amounts, subject to reductions for the mitigating activities, during the Decisions' initial four-year periods. The deferral account balance also reflects an interest expense component based on the Company's applicable short-term cost of borrowing, such expense being included in the Consolidated Statements of Income and Other Comprehensive Income as Financing costs. The Company discharges the deferral account liability by undertaking qualifying actions including providing broadband services to rural and remote communities, enhancing the accessibility to telecommunications services for individuals with disabilities and providing customer rebates for the balance. The Company recognizes the drawdown and amortization (over a period no longer than three years) of a proportionate share of the deferral account as qualifying actions are completed; such amortization is included in Other operating income.

Regulatory Framework Component: Regulatory Decisions

55. The rate-setting process generally involves the negotiation of components to be included in the allowed rate. In a rate proceeding, it is common that the rate-regulated entity will not receive everything asked for in its rate case submission. Rate cases submitted by a rate-regulated entity can contain a significant amount of information to support the rate request put forth to the regulator. Similarly, a rate ruling published by a rate regulator is also typically very extensive, in order to explain the regulator's views and set out the reasons for its decision.

56. Regulatory decisions can have both confirmatory and predictive value, as demonstrated below with two examples from Canada. Financial information has confirmatory value if it provides feedback about (confirms or changes) previous evaluations and predictive value if it can be used as an input to processes employed by users to predict future outcomes.[18]

Example 1

57. Staff looked at the impact of a recent regulatory decision issued by the Alberta Utilities Commission on the Generic Cost of Capital on Canadian Utilities Ltd, a rate-regulated entity in that province. The entity's transmission and distribution business activities are subject to cost-of-service and performance-based regulation, respectively. This entity adopted IFRS before IFRS 14 was issued by the IASB, thus the financial effects of rate regulation are not recognized. The following table describes the effects of the regulatory decision.

Regulatory Decision	**Canadian Utilities Ltd.[19] – 2015 audited consolidated financial statements**
In Decisions 2011-474 and 2013-459, the Alberta Utilities Commission approved a placeholder of 8.75% for the 2013 and 2014 return on common equity pending a final decision as part of the 2013 Generic Cost of Capital proceedings. **March 23, 2015** **2013 Generic Cost of Capital** **AUC Decision 2191-D01-2015** The Alberta Utilities Commission recently issued its decision in the 2013 Generic Cost of Capital proceeding for all gas and electric utilities in the	Note 5 – Segmented Information (Extracts) Adjusted earnings are earnings attributable to equity owners of the Company after adjusting for the timing of revenues and expenses for rate-regulated activities and dividends on equity preferred shares of the Company. Adjusted earnings also exclude one-time gains and losses, significant impairments and items that are not in the normal course of business or a result of day-to-day operations. Adjusted earnings are a key measure of segment earnings used by the CODM to assess segment performance and allocate resources. The Canadian and Australian utilities recognize revenues from regulatory decisions when customer rates are changed and amounts are billed to customers. Under rate-regulated accounting, revenues from regulatory decisions that affect

18 The *Conceptual Framework for Financial Reporting*, paragraphs QC8-QC9.

19 Canadian Utilities Ltd. is a subsidiary of ATCO Ltd. (part of the ATCO Group of companies).

Regulatory Decision	Canadian Utilities Ltd.[19] – 2015 audited consolidated financial statements
Province. The allowed ROE for Alberta's gas and electric utilities was set at 8.3% for 2015. In addition, the Alberta Utilities Commission determined that the allowed ROE for 2013 and 2014 would be modified from the previous interim rate of 8.75% to 8.3%. The Alberta Utilities Commission also reduced the deemed common equity ratio by one percentage point for most Alberta regulated utilities and decided to forego returning to an automatic formula at this time. The Alberta utilities have filed applications to appeal this decision.[20]	current and prior periods are recognized when the decision is received. **Generic Cost of Capital Decision** The utilities recorded a reduction in adjusted earnings of $51 million in 2015 for an Alberta Utilities Commission decision which reduced the Return on Equity and deemed common equity ratios for 2013 to 2015. Of the $51 million recorded in 2015, $31 million related to 2013 and 2014. Under IFRS, earnings will be adjusted when the [Alberta Utilities Commission] approves revised customer rates and the amount payable to customers is refunded through future billings; $10 million has been refunded as at the end of the year 2015.

58. Although the interim allowed rate of return of 8.75% had already been billed to customers, through the subsequent regulatory decision, the entity was only permitted to earn an allowed return on equity of 8.3% in 2013 and 2014. This regulatory decision has confirmatory value because it provides feedback about the previous interim rate of return used, and affects the claims against the entity's economic resources. The regulatory decision also has predictive value because it would assist users to understand the effects on the entity's future cash flows, and their assessment of the regulatory framework in Alberta.

Example 2

59. Staff understands that while a rate regulator's decision can affect an entity's economic reality, sometimes certain parts of the decision do not have an immediate financial statement impact unless the entity's current economic resources or claims against it are affected. Nonetheless, because a regulatory decision illustrates how the rate regulator interprets and applies the legislation and rules, it assists the predictability of future cash flows.

60. Users such as credit rating agencies, and debt and equity analysts, take into consideration how such regulatory decisions, and other factors, could affect the risk profile of the entity. The results affect the entity's credit rating, or the analyst's buy/sell recommendation.

61. This example, relating to TransCanada Pipelines, demonstrates how a regulatory decision can have both confirmatory and predictive value. The following table includes excerpts from: a bond analyst report, a credit rating report, the entity's annual report, and the rate regulator's rate ruling (as

[20] Concentric Energy Advisors: Authorized Return on Equity for Canadian and U.S. Gas Electric Utilities, Volume III, May 1, 2015

pertaining to its interpretation of legislation). Together, this information highlights how certain components of a regulatory decision can have both a current financial effect and a future financial effect, and demonstrate the interpretation of legislation. Emphasis has been added to certain parts of the text below to highlight the areas that provide confirmatory and predictive value.

The National Energy Board's TransCanada Pipelines Mainline Decision

Corporate Bond Research

– Excerpts from Weekly Commentary of Scotiabank Global Views, April 5, 2013 (Pg. 11-14)

We think the National Energy Board's TransCanada Pipelines (A/ A-/ A3) Mainline Decision (which was released on Wednesday, March 27), is somewhat credit negative for TransCanada. The NEB granted some of the several changes TransCanada sought in its Restructuring Proposal, but denied some of TransCanada's most significant toll-reducing components, including the key request, the Alberta System Extension. The Decision also granted a key request of some interveners, setting 5-year fixed tolls, rather than TransCanada's application for tolls for 2012 and 2013. The Decision is long and exceptionally complicated, and TransCanada has yet to comment on its meaning for the Mainline's earnings and cash flow for the five-year period. However, this week, TransCanada announced that it will hold a binding open season to obtain firm commitments from shippers for West to East oil transportation service, which we think could materially raise earnings and cash flow, and would very effectively mitigate risks from the Decision.

Two deferral accounts will accumulate a specified cost deferral and annual variances in actual revenues for deferral and recovery in future tolls. The NEB approved an off-ramp, such that, if the Toll Stabilization Adjustment (TSA) deferral account approaches one-ninth of rate base, or if circumstances unfold that make TransCanada expect that the full TSA balance may be unrecoverable, TransCanada could file a new tolls application. The NEB's rationale for the off-ramp is to try to mitigate adverse credit rating actions from deferral of significant cash flows. The NEB also said that if TransCanada "repurposes" (converts to oil service) significant Mainline assets, "this would also likely warrant revisiting Mainline tolls."

The complex Decision includes a range of favourable actions. The NEB approved several elements of the RP, including all proposed changes to cost allocation, and elimination of toll zones and the Risk Alleviation Mechanism.

Regulatory Compact

Throughout the written and oral evidence and argument presented by TransCanada in its RP application, TransCanada played up the importance of the concept widely referred to as "the regulatory compact." TransCanada believed that the regulatory compact would prevent the regulator from setting rates that would prevent TransCanada from having an opportunity to recover its prudently incurred capital costs, including a return on capital.

The NEB disagreed with TransCanada's views on this important point. "We are not prepared to endorse the concept of the regulatory compact, as a concept that compels the Board to set just and reasonable tolls in a particular manner. In our view, the concept is ill defined. TransCanada's interpretation of the regulatory compact would have the effect of protecting the Mainline from the impact of competition." Further, the NEB said, "In adjudicating the current Application, we are mandated with establishing just and reasonable tolls, that are not unjustly discriminatory, in accordance with the provisions of the NEB Act." And further, "In our view, TransCanada's submission that only prudence determines the opportunity for cost recovery cannot be sustained in the context of NEB regulated pipelines."

We believe that the NEB was more concerned about future shippers' potential exposure than with keeping TransCanada's rate base intact. Although the current Decision does not result in any cost disallowance or writedowns, the Decision clearly opens the door to this happening in future: "If throughput is lower than expected … we would anticipate that TransCanada's next toll hearing would

deal with what costs, if any, should be disallowed from recovery in tolls." We believe that this theme in the Decision differs from the financial market's understanding and assumptions of the regulatory compact.

Credit Rating

– Excerpts from DBRS Rating Report, July 4, 2013

On June 18, 2013, DBRS downgraded the Issuer Rating and Unsecured Debentures & Notes rating of TransCanada PipeLines Limited (TCPL) to A (low) from "A", the Junior Subordinated Notes rating of TCPL to BBB from BBB (high) and the Medium-Term Notes & Unsecured Debentures rating of NOVA Gas Transmission Ltd. (NGTL), a wholly owned subsidiary of TCPL, to A (low) from "A", all with Stable trends.

The rating actions followed DBRS's review of the National Energy Board's (NEB) dismissal (the Recent Decision) of TCC's May 1, 2013, application for review and variance (R&V) of the NEB's March 27, 2013, decision (the Original Decision) relating to TCC's 2012-2013 restructuring proposal for tolls and service on its Canadian Mainline.

2013 Annual Report of TransCanada Corporation

– Excerpts (Accounting framework: U.S. GAAP)

2013 Financial Highlights

In March, Canada's National Energy Board (NEB) released its decision on our proposal for restructuring tolls and services on the Canadian Mainline following an extensive public hearing. The decision fundamentally altered some of the long-standing principles of the Mainline's regulated cost-of-service model. TransCanada successfully implemented the NEB decision and shippers have renewed 2.5 Bcf per day of firm contracts on the system through November 2016. In the fall of 2013 we reached a settlement with local natural gas distribution companies in Ontario and Québec that will allow us to continue expanding the eastern portion of the Mainline system to meet the future needs of this growing market. Settlements were also reached with shippers on the NGTL and Great Lakes systems in 2013.

Management's Discussion & Analysis

Canadian Mainline's comparable earnings this year increased by $90 million compared to 2012 because of the impact of the NEB decision. Among other items, the NEB decision approved an ROE of 11.50 per cent on 40 per cent deemed common equity for the years 2012 through 2017 compared to the last approved ROE of 8.08 per cent on 40 per cent deemed common equity that was used to record earnings in 2012.

Consolidated Financial Statement Note 9 – Rate-regulated Business

Canadian Mainline

In March 2013, TransCanada received a decision from the NEB on the comprehensive application it filed to change the business structure and the terms and conditions of service for the Canadian Mainline, including addressing tolls for 2012 and 2013 (the NEB Decision). The decision approved the 2011 revenue requirement as filed, approved tolls charged in 2012 as final with any variance between revenues and costs deferred for recovery in future years, and set tolls for 2013 through 2017 at competitive levels, fixing tolls for some services and providing unlimited pricing discretion for others. The decision established an ROE of 11.5 per cent on a deemed common equity of 40 per cent and included mechanisms to achieve the fixed tolls through the use of a Long Term Adjustment Account (LTAA) as well as the establishment of a Tolls Stabilization Account (TSA) to capture the surplus or the shortfall between our revenues and our cost of service for each year over the five-year term of the decision. In addition, the decision provides an opportunity to generate incentive earnings by increasing revenues and reducing costs. The NEB also identified certain circumstances that would require a new tolls application prior to the end of the five-year term. One of those circumstances is if the TSA balance

The National Energy Board's TransCanada Pipelines Mainline Decision
becomes positive, which occurred in 2013. In December 2013, TransCanada filed an application with the NEB that addresses tolls moving forward.
National Energy Board **– Excerpts from Reasons for Decision, TransCanada PipeLines Limited, NOVA Gas Transmission Ltd., and Foothills Pipe Lines Ltd., RH-003-2011, March 2013, (Pg. 39-40)** Section on "*Regulatory standards for cost recovery*" A rule that imposes an obligation upon the Board to approve tolls that allow recovery of all costs in all circumstances is inconsistent with Parliament's grant of discretion to the Board and may not result in tolls that are just and reasonable. In this regard, we disagree with TransCanada's submission to the effect that the Board must approve tolls that allow recovery of all prudently incurred costs, even if the Board knew that those tolls could not be charged in the market. This would be an inefficient and non-sensical outcome. In our view, a regulatory rule that compels the Board to set tolls that allow the return of and on investment, irrespective of whether assets associated with that investment are used and useful for providing service, erodes management's responsibility for its investment decisions and management's responsibility to keep depreciation rates current. This situation, in our view, does not lend itself to creating efficient energy infrastructure and markets. It also provides no incentive for a pipeline company to find better or higher uses for its assets. Given the foregoing, the prudency standard should not be the only standard that determines the opportunity for cost recovery for NEB-regulated pipelines in all circumstances.

62. As these two examples illustrate, regulatory decisions, which are based on the rate regulators' interpretations of the legislation and rules, have both predictive and confirmatory value regarding the economic resources of, and claims against, the entity. Thus, users of rate-regulated entities' financial statements have great interest in the decisions of the rate regulator, and the current and future financial effect of such decisions.

63. Following is an example of an entity outside Canada that has recognized credit balances arising from rate regulation on the basis of its regulatory framework, given its facts and circumstances.

Elia Group (Belgium) – Extracts from 2015 audited consolidated financial statements (Accounting framework: IFRS, as adopted by the European Union)
Note 7.17 – Accruals and deferred income **Settlement mechanism** A calculation of the amount is given in Note 9.1. The Group operates in a regulated context which states that tariffs must make it possible to realise total revenue consisting of: 1. a reasonable return on invested capital, 2. all reasonable costs which are incurred by the Group. Since the tariffs are based on estimated figures, there is always a difference between the tariffs that are actually charged and the tariffs that should have been charged to cover all reasonable costs of the system operator and to provide shareholders with a reasonable profit margin on their investment. If the applied tariffs result in a surplus or a deficit at the end of the year, this means that the tariffs charged to consumers/the general public could have been respectively lower or higher (and vice versa). A surplus or deficit arising from the settlement mechanism is therefore not classified as revenue or an expense, or as an item under equity. On a cumulative basis, it could be argued that the public has made an advance payment (=surplus) for its future use of the network. As such, the surplus (deficit) is not a commission for a future loss (recovery) of income but instead a deferred/accrued revenue to (with regard to) consumers. On the basis of the Regulatory framework, the Group believes that the surplus (deficit) does not represent an item of revenue (cost). Consequently, the Group booked these amounts under section 'Accruals and deferred income'.

What this Section Demonstrates

64. Financial information is decision-useful when it helps users to understand the regulatory framework in which the entity operates. Such an understanding is important to determine the entity's rights and obligations, and, in turn, assess the amount, timing and uncertainty of its future cash flows.

Section III. Strength of Regulatory Framework and the Effects

Key Observations

- ❖ The strength of the regulatory framework can affect the enforceability of the economic resources of, and claims against, the entity.
- ❖ The nature and risk profile of balances arising from rate regulation can vary, resulting in differing degrees of uncertainty associated with those balances.
- ❖ Regulatory decisions that differ from the entity's interpretation of the legislation and rules can affect the subsequent measurement of recognized balances arising from rate regulation , and reduce the assessed strength of the regulatory framework.

65. One of the primary concerns expressed during the IASB's project on rate-regulated activities relates to the uncertainties about the recoverability of debit balances arising from rate regulation. Staff notes that the strength or weakness of the regulatory framework can affect the enforceability of the recovery of the rate-regulated entity's economic resources and settlement of claims against it.

The Canadian Experience

66. This section looks at data from a sample of rate-regulated entities demonstrating the Canadian experience with:

- the recovery of previously recognized debit balances arising from rate regulation (i.e., the periods over which balances are recovered, and the extent to which they become impaired or are written off);
- the trending of regulatory balances (i.e., are they growing or shrinking in total; how do debit balances arising from rate regulation compare in total with credit balances arising from rate regulation); and
- the different nature and risk profiles of debit balances arising from rate regulation that could influence recoverability patterns.

Write-offs or Impairments of Debit Balances Arising from Rate Regulation

67. Stakeholders have told us that write-offs or impairments of previously recognized debit balances arising from rate regulation have been minimal. Staff has heard anecdotally that a few rate-

regulated entities have obtained a legal opinion to demonstrate their right to recover prudently incurred costs, even in a scenario in which the entity ceases operations.

68. To explore the extent of write-offs or impairments of debit balances arising from rate regulation, staff selected a sample of 12 electric utilities and looked at their audited financial statements over a five-year period.[21]

Sample of Canadian Electric Utilities					
(in millions)	**Debit Balances Arising from Rate Regulation (Note 2)**				
Year	**2011**	**2012**	**2013**	**2014**	**2015**
Yukon Energy	$ 18.7	$ 21.5	$ 20.2	$ 22.9	$ 21.2
Toronto Hydro	143.0	121.2	241.5	197.1	241.7
Newfoundland Power	366.2	417.2	372.3	357.5	345.4
New Brunswick Power	943.0	1,072.0	1,051.0	1,034.0	1,021.0
Manitoba Hydro	330.0	321.0	371.0	410.0	486.0
Hydro-Québec (Note 1)	39.0	40.0	9.0	4,741.0	4,061.0
BC Hydro	4,314.0	4,741.0	4,928.0	5,714.0	6,324.0
ENMAX	123.0	77.2	83.7	66.6	34.5
Hydro Ottawa	12.0	9.6	12.5	20.6	14.4
Emera	453.8	474.1	616.1	602.7	699.5
Ontario Power Generation	5,017.0	6,478.0	5,400.0	7,191.0	5,907.0
AltaLink	33.0	42.7	66.8	117.3	165.9
	$ 11,792.6	$ 13,815.4	$ 13,172.0	$ 20,474.8	$ 19,321.6
	Write-offs or Impairments of Debit Balances Arising from Rate Regulation				
Year	**2011**	**2012**	**2013**	**2014**	**2015**
Yukon Energy	$ -	$ -	$ -	$ -	$ -
Toronto Hydro	3.8	-	-	-	4.4
Newfoundland Power	-	-	-	-	-
New Brunswick Power	-	-	-	-	-
Manitoba Hydro	-	-	-	-	-
Hydro-Québec	-	-	-	-	-
BC Hydro	34.0	-	-	-	-
ENMAX	-	-	-	-	-
Hydro Ottawa	0.3	-	-	-	-
Emera	-	7.2	-	6.0	-
Ontario Power Generation	-	-	7.0	-	-
AltaLink	-	-	-	-	-
	$ 38.1	$ 7.2	$ 7.0	$ 6.0	$ 4.4
Write-offs or Impairments as a percentage of Total Debit Balances Arising from Rate Regulation	0.32%	0.05%	0.05%	0.03%	0.02%

Note 1 - The increase from 2013 to 2014 was primarily due to the rate regulator authorizing changes to certain accounting policies for rate-setting purposes as a result of the entity changing from pre-changeover Canadian GAAP to U.S. GAAP.

Note 2 - Staff notes that there are also debit balances arising from rate regulation related to construction activities, which are capitalized within property, plant and equipment. Those balances are generally not part of the above debit balances (unless the entity applied IFRS 14 which requires regulatory deferral account debit balances to be presented as a separate line item). Regulatory decisions can also affect those non-deferral or non-variance type of accounts.

[21] All the sampled entities have fiscal years ended December 31, except for New Brunswick Power, Manitoba Hydro, and BC Hydro, which have fiscal years ended March 31. For ease of presentation in this table and the table on page 33, the data relating to these three entities is displayed in the column headed the previous calendar year.

69. The data illustrates that write-offs or impairments of debit balances arising from rate regulation have been minimal in Canada. The disallowance of costs is generally a result of a regulatory decision after the rate regulator has further reviewed the cost. In other cases, the entity may decide to set up a provision if there is doubt about the recovery of existing balances arising from rate regulation.

70. Below are examples of note disclosures that explain the reason for writing off, or establishing a provision against, a debit balance arising from rate regulation:

Extracts from Note Disclosures of Audited Consolidated Financial Statement
Toronto Hydro – 2011 (Accounting framework: IFRS) Note 2 – Regulation, (d) Regulation, Contact Voltage (Note, figures below are in dollars) On December 10, 2009, the OEB issued an initial decision in regard to the costs incurred in 2009 for the remediation of safety issues related to contact voltage relating to LDC's electricity distribution infrastructure. The decision provided for the recovery of allowable actual expenditures incurred above the amount deemed as controllable expenses in LDC's 2009 approved electricity distribution rates. At the time of the decision, the Corporation estimated the allowable recovery of costs at $9,050,000. On October 29, 2010, the OEB issued a second decision in the matter, following further review of costs incurred by LDC. In this decision, the OEB deemed the balance allowable for recovery at $5,296,000. The variance from the Corporation's original estimate is mainly due to the OEB's interpretation of the definition of controllable expenses used to determine the final allowable recovery. In connection with this decision from the OEB, the Corporation revised its recovery estimate for contact voltage costs, resulting in an increase in operating expenses of $3,754,000 in 2010. On November 18, 2010, LDC filed a motion to review the decision with the OEB seeking an amendment to allow for recovery in accordance with the initial decision rendered on December 10, 2009. On March 25, 2011, the OEB issued its decision on the LDC motion, denying the requested additional recovery.
BC Hydro – 2011-2012 (Accounting framework: legislative GAAP) Note 4 – Regulation Other Regulatory Accounts – Under Direction 3, total Taxes Regulatory Account liability balance of $14 million was closed and fully amortized into rates and the remaining balance of the PEI asset of $34 million was fully amortized and closed as of March 31, 2012 and will not be included in rates.
Hydro Ottawa – 2011 (Accounting framework: IFRS) Note 7 – Net Regulatory Assets and Liabilities, (d) Provision for doubtful recovery (Note, figures below are in thousands) The Corporation continues to assess the likelihood of recovery of all regulatory assets subject to recovery through a future rate filing. The absence of OEB approval is a consideration in this evaluation. The Corporation has recorded a net provision of $331 [2010 – $2,252] against regulatory assets. If future recovery becomes assured, the Corporation will recognize the recovery in the income for the period during which such a decision is made.
Emera – 2014 (Accounting framework: U.S. GAAP) Note 5 – Regulated Fuel Adjustment Mechanism and Fixed Cost Deferrals The regulated fuel adjustment mechanism ("FAM") included in the Consolidated Statements of Income for NSPI includes the effect of prudently incurred fuel for generation and purchased power and fuel-related costs ("Fuel Costs") in both the current and preceding years, and as detailed in the table below:

- The difference between actual Fuel Costs and amounts recovered from customers in the current year. This amount is deferred to a FAM regulatory asset in "Regulatory assets" or a FAM regulatory liability in "Regulatory liabilities" on the Consolidated Balance Sheets; and
- The recovery from (rebate to) customers of under (over) recovered fuel costs from prior years.

Pursuant to the FAM Plan of Administration, NSPI's fuel costs are subject to independent audit. On July 2, 2014, the FAM audit findings and recommendations relating to fiscal 2012 and 2013 were publicly released and recommended four disallowances totalling $7.0 million. On January 20, 2015, the UARB disallowed $6.0 million of 2012 and 2013 fuel-related costs, which included interest of $0.9 million. The disallowances resulted in a reduction in the amount of FAM deferral at year-end and resulted in an after-tax impact to 2014 net income of $3.3 million.

Ontario Power Generation – 2013 (Accounting framework: U.S. GAAP)

Note 5 – Regulatory Assets and Regulatory Liabilities

In March 2013, the OEB approved the settlement agreement between OPG and intervenors on all aspects of OPG's September 2012 application requesting approval to recover balances in the authorized variance and deferral accounts as at December 31, 2012 (the Settlement Agreement). This resulted in approval of $1,234 million recorded in the authorized variance and deferral accounts as at December 31, 2012, deferral for future review of $34 million recorded in certain accounts as at December 31, 2012, and a write-off of $7 million of interest recorded in certain accounts as at December 31, 2012.

Trending of Balances Arising from Rate Regulation

71. While recoverability of debit balances arising from rate regulation is a primary concern, staff also wanted to understand the trend of balances arising from rate regulation in general. Staff looked at credit balances arising from rate regulation that were recognized by the same 12 electric utilities over the same five-year period.

Sample of Canadian Electric Utilities					
(in millions)	**Credit Balances Arising from Rate Regulation**				
Year	**2011**	**2012**	**2013**	**2014**	**2015**
Yukon Energy	$ 12.2	$ 15.6	$ 19.0	$ 20.3	$ 21.3
Toronto Hydro	211.2	196.8	183.1	173.0	171.6
Newfoundland Power	133.9	133.7	137.8	138.4	139.8
New Brunswick Power	-	-	-	-	-
Manitoba Hydro	53.0	24.0	22.0	23.0	52.0
Hydro-Québec (Note 1)	-	-	-	350.0	441.0
BC Hydro	279.0	307.0	229.0	281.0	416.0
ENMAX	1.2	3.3	1.9	2.5	13.5
Hydro Ottawa	58.1	67.0	52.8	34.2	40.8
Emera	131.0	110.7	151.2	201.9	370.6
Ontario Power Generation	154.0	41.0	24.0	44.0	60.0
AltaLink	27.0	34.5	33.0	8.1	62.5
	$ 1,060.5	$ 933.6	$ 853.8	$ 1,276.4	$ 1,789.1

Note 1 - The increase from 2013 to 2014 was primarily related to the rate regulator's review of useful lives for depreciation purposes of property, plant and equipment related to rate-regulated activities.

Credit Balances as a Percentange of Debit Balances (Arising from Rate Regulation)				
2011	**2012**	**2013**	**2014**	**2015**
9.0%	6.8%	6.5%	6.2%	9.3%

72. The data above demonstrates that credit balances arising from rate regulation are generally far less in magnitude than debit balances arising from rate regulation. This trend could suggest that under-recovery of an entity's revenue requirement (which results in the carry forward of regulator-approved debit balances for inclusion in future rates) is fairly common in Canada.

73. Another contributing factor could be that with aging infrastructure, the cost of replacement or renewal work needs to be spread over time so that customer rates do not fluctuate significantly. Capital infrastructure activities may result in debit balances arising from rate regulation. Rate regulators in Canada usually permit an allowance for funds used during construction to be capitalized as part of property, plant and equipment based on the rate-regulated entity's weighted average cost of capital. This enables the rate-regulated entity to earn a rate of return on these capital infrastructure costs such that the timing of when they are recovered is less significant. The growth in debit balances arising from rate regulation could also relate to temporary timing differences that are reversed when the rate impacts are realized.[22]

74. While increasing debit balances arising from rate regulation do not automatically mean these amounts cannot be recovered, significantly prolonged periods of collection do raise questions about the risk of recoverability, similar to receivables balances.

Influences on Recoverability Patterns of Debit Balances Arising from Rate Regulation

75. Based on the data collected, the period over which a particular debit balance arising from rate regulation is recovered and, indeed, the risks associated with its recovery, are influenced by:

    (a) the nature of the debit balance; and

    (b) the rate regulator's approach to ensuring that the period over which the balance is recovered neither creates rate shocks (i.e., significant increases in customer rates in a particular year) nor unfairly burdens an entity by delaying cash inflows associated with the debit balance.

76. The nature of the debit balance has a direct impact on the risks associated with its recovery, and could affect the period over which it is collected. Members of the IASB's Rate-regulated Activities Consultative Group have suggested that categorizing debit balances according to their risk profile would be more helpful to users of financial statements in predicting future revenue and cash flows.

[22] For example, some rate regulators may require entities to account for pensions or income taxes on a cash basis. In the case of income taxes, entities record a deferred income tax asset or liability for temporary differences, as well as balances arising from rate regulation, to reflect future recoveries from or refunds to ratepayers. These balances are reversed when the temporary differences reverse.

77. The following table describes the possible categories of balances (both debit and credit balances) arising from rate regulation identified by the Consultative Group: [23]

Possible categories of balances arising from rate regulation:
• 'mechanical' adjustment balances that are expected to be recovered/reversed in the short term, such as 'flow-through' commodity price adjustments, which involve little judgment and are relatively easy to measure;
• other adjustment balances that are expected to be recovered/reversed in the short term, but are somewhat subjective, such as bonuses for achieving qualitative performance targets; and
• adjustment balances that may be more readily quantifiable but are only recoverable in the longer term and may be subject to more uncertainty about recovery across multiple regulatory periods.

78. Staff looked at the recovery period and categories of debit balances arising from rate regulation for five of the 12 Canadian rate-regulated entities sampled to provide a general sense of how the recovery periods can vary. The first table presents data on the expected recovery of debit balances arising from rate regulation, broken down by length of recovery period. For each recovery period, the second table analyzes the nature of debit balance having that recovery period.

Recovery Period of Debit Balances Arising from Rate Regulation in Five Sampled Entities as at December 31, 2015 (except for New Brunswich Power and Manitoba Hydro, which is as at March 31, 2016) (in millions)

Remaining recovery/ reversal period (Note 1)	Hydro-Québec	%	New Brunswick Power	%	Manitoba Hydro	%	Newfound-land Power	%	Toronto Hydro	%
1 - 24 months	$ 361.0	8.9%	$ -	0.0%	$ -	0.0%	7.2	2.1%	$ 46.6	19.3%
25 - 60 months	17.0	0.4%	-	0.0%	9.0	1.9%	-	0.0%	112.1	46.4%
60 - 120 months	800.0	19.7%	-	0.0%	323.0	66.5%	45.6	13.2%	-	0.0%
121+ months	6.0	0.1%	1,021.0	100.0%	33.0	6.8%	-	0.0%	-	0.0%
Indeterminate*	2,877.0	70.8%	-	0.0%	121.0	24.9%	292.6	84.7%	83.0	34.3%
Total	$ 4,061.0	100.0%	$ 1,021.0	100.0%	$ 486.0	100.0%	$ 345.4	100.0%	$ 241.7	100.0%

Note 1 – There is a lack of uniformity in the way the recovery period is disclosed across the sampled entities (i.e., sometimes ranges or exact number of months are disclosed). When ranges were disclosed, the mid-point of the range was used for purposes of this table.

* There can be various reasons why the recovery period is indeterminate:
- Some debit balances are reversed when their rate impacts are realized.
- The recovery period is pending determination by the rate regulator as part of a future regulatory proceeding.

23 IASB Rate-regulated Activities Consultative Group, Meeting Summary (March 2015), Paragraph 28

Remaining recovery/ reversal period	Examples of nature of debit balances arising from rate regulation
1 - 24 months	Commodity cost variances
25 - 60 months	Specific items to be spread over longer period authorized by the regulator
60 - 120 months	Costs related to long-term projects and infrastructure planning
121+ months	Programs for construction or or reburbishment infrastructure assets
Indeterminate	Policy difference between the accounting specified by the regulator for rate-setting purposes and general purpose financial reporting requirements (e.g., as occurs sometimes with employee future benefits and income taxes)

79. The two tables above illustrate the diversity in nature of debit balances arising from rate regulation and plans for their recovery, and reaffirm that some balances may be subject to more uncertainty regarding the timeline for recovery than others. Knowledge of the expected recovery pattern for debit balances arising from rate regulation is important to determine whether there could be measurement challenges associated with the balances.

80. Below is an excerpt from a Standard & Poor's Rating Services publication that demonstrates the importance of timely recovery:

> "One of our primary concerns with U.S. regulatory accounting occurs when a company's regulatory assets materially grow with uncertain recovery prospects. The California energy crisis of 2000 and 2001 highlighted this when the regulated utilities could only collect a predetermined amount for electricity but had to purchase electricity at much higher market prices, leading to a material weakening of credit quality. Most companies now have some form of a fuel- or purchased-power adjustment clause that allows for timely recovery of these costs--greatly reducing the risks and enhancing credit quality.
>
> The high credit quality and (mostly) investment grade ratings for the utility industry are predicated on its monopolistic nature, providing an essential service, and credit-supportive rate regulation. Because a utility's ability to effectively manage regulatory risk is an integral component of credit quality, our assessment of a regulatory jurisdiction's credit supportiveness and a utility's ability to manage regulatory risk within its regulatory jurisdiction are major factors for determining a utility's credit risk (see "Utility Regulatory Assessments For U.S. Investor-Owned Utilities," Jan. 7, 2014.)"[24]

81. The concern pointed out in the excerpt above is shared by those who oppose the recognition of debit balances arising from rate regulation because of the uncertainty associated with their recovery. The concern highlights:

(a) the importance of a rate regulator deciding on reasonable and achievable recovery periods in order to mitigate the risk associated with prolonged growing balances; and

[24] S&P: Analyzing U.S. Rate-Regulated Utilities: The Magic of Regulatory Assets and Liabilities (August 2014)

(b) the need for adequate evidence from rate regulators demonstrating the enforceability of rights or obligations created through their regulatory decision that will result in an economic inflow or outflow within a reasonable period.

82. From an international perspective, below are two examples of entities outside Canada that have recognized debit or credit balances arising from rate regulation. Their note disclosures explain the nature of these balances and the expected period of recovery or settlement (emphasis added below).

Extracts from Financial Statements
Korea Gas Corporation (Korea) – 2015 audited consolidated financial statements (Accounting framework: Korean IFRS) Recorded in "Other non-financial assets" Note 15 – Non-Financial Assets In accordance with the standard for natural gas supply price and the guidelines for raw material cost passthrough adjustment system for city gas and power generation, the settled income, the difference between actual cost incurred and current year's revenues, is reflected in following year's rates upon the approval of the government. The Group recognizes settled income by adjusting cost of sales, and relevant assets and liabilities as other non-financial assets and non-financial liabilities, respectively.
CLP Holdings Ltd. (Hong Kong) – 2015 audited consolidated financial statements (Accounting framework: Hong Kong Financial Reporting Standards) Recorded in "Non-current liabilities" Note 22 – Fuel Clause Account Cost of fuel consumed by CLP Power Hong Kong is passed on to the customers. The variations between the actual cost of fuel and the fuel cost billed are captured in the fuel clause account. The balance of the account (inclusive of interest) represents amounts over-recovered or under-recovered and is treated as an amount due to or from customers. Interest charged to customers on the amount under-recovered is based on the actual borrowing cost of CLP Power Hong Kong, whilst interest is credited to customers at prime rate on the amount over-recovered. Note 23 – Scheme of Control Reserve Accounts The Tariff Stabilisation Fund, Rate Reduction Reserve and Rent and Rates Interim Refunds of the Group's major subsidiary, CLP Power Hong Kong, are collectively referred to as SoC reserve accounts. "Scheme of Control" is explained in the following extract from the entity's Annual Report: Since financial year 1964, the electricity-related operations of CLP Power Hong Kong and CAPCO (the SoC Companies) have been governed by a Scheme of Control Agreement (SoC) with the Hong Kong Government. The SoC specifies the SoC Companies' obligations to supply adequate and reliable electricity supplies to customers at the lowest reasonable cost and the mechanism for Hong Kong Government to monitor their financial affairs and operating performance. In return, CLP Power Hong Kong is allowed to charge tariffs designed to recover the operating costs (including tax) and allowed net return of the SoC Companies.

CLP Holdings Ltd. (Hong Kong) – continued

The current SoC took effect from 1 October 2008. The SoC covers a period of 10 years to 30 September 2018, and provides that the SoC Companies will continue to earn the permitted return until 30 September 2023 on all approved investments.

The current SoC includes a provision to give the SoC Companies protection for stranded costs, which may arise as a result of future changes to the market structure which adversely impact on the SoC Companies' ability to recover and to earn returns on existing investments made in good faith in accordance with the SoC. These costs will include the costs of investments, fuel and power purchase agreements previously approved by the Hong Kong Government. If stranded costs arise after the SoC Companies have implemented mitigation measures reasonably required by the Hong Kong Government, the SoC Companies are entitled to recover them from the market, consistent with international practice. Three years before market changes are introduced, the SoC Companies and the Hong Kong Government will agree on the amount of stranded costs and the mechanism for their recovery by the SoC Companies.

What this Section Demonstrates

83. In order to assess the amount, timing and uncertainty of a rate-regulated entity's future cash flows, users need financial information that signals changes in the entity's right or obligation to collect or return amounts identified in previous regulatory decisions. The strength or weakness of the entity's regulatory framework can affect the enforceability of those rights and obligations and, thus, their measurement.

Section IV. Decision-Making Effects of Financial Information on Rate-regulated Activities

Key Observations

- ❖ The regulatory framework is a key factor considered by debt and equity analysts, as well as credit rating agencies, because it can affect the entity's financial performance and future cash flows.
- ❖ Market participants in Canada and the U.S. have used financial information that reflects the economics of rate-regulated activities to determine the purchase price for acquiring assets used in such activities. The acquisition deals reveal that a premium is generally paid by the acquirer. Investors view rate-regulated businesses as capable of generating stable earnings and cash flows, taking into consideration the strength of the regulatory framework in which the entity operates.
- ❖ The purchase price allocation in jurisdictions, such as Canada and the U.S., that recognize debit and credit balances arising from rate regulation indicate that there is commercial substance to these balances because their carrying value generally approximates fair value. Based on anecdotal information, in jurisdictions that do not recognize balances arising from rate regulation, this value is reflected in goodwill or intangible assets.
- ❖ Academic research suggests that the strength of the regulatory framework can influence market valuation of debit balances arising from rate regulation.

84. This section of the paper looks at how users have factored financial information that reflects the economics of rate-regulated activities into their decision-making.

The User Perspective

85. Throughout the IASB's projects on rate-regulated activities, users analyzing rate-regulated entities have contributed their views on what makes the financial statements relevant for them. From their perspective, financial information on rate-regulated activities assists in:

    - predicting future cash flows;
    - estimating the enterprise value;
    - distinguishing the variability in performance that is compensated for through the rate-setting mechanism, from the variability in performance for which there is no compensation;
    - assessing the entity's financial stability and creditworthiness (e.g., ability to repay debts);

- assessing the strength of rate regulation in order to determine the track record of the entity in recovering costs and earning the allowed rate of return; and
- understanding the drivers that affect the allowed rate of return.

86. Through its September 2014 Discussion Paper on "Reporting the Financial Effects of Rate Regulation," the IASB has sought input from stakeholders to identify what information about the financial effects of rate regulation is most relevant to users of financial statements in making investing and lending decisions. Appendix A to this paper provides extracts from comment letters and other material to capture the essentials of this input. This information is grouped into the three main geographical regions: the Americas, EMEA (Europe, Middle East and Africa) and Asia-Pacific. The appendix is not meant to be exhaustive, and is intended to capture comments made from both sides of the views debated.

87. One comment made by users in the Americas region (see Appendix A) relates to how there could be an increased reliance on non-GAAP disclosures if debit and credit balances arising from rate regulation are not recognized under IFRS. Following are financial statement note disclosures of two entities that staff is aware have applied IFRS and provided an adjusted measure to communicate the financial impact of their rate-regulated activities.

Canada	United Kingdom
ATCO Ltd. – Audited Consolidated Financial Statements – December 31, 2015 (Entity adopted IFRS for the first time before IFRS 14 was issued. Staff notes that the segment note referenced below essentially provides the same information about the entity's rate-regulated activities as was provided in previous years under pre-changeover Canadian GAAP.) Note 5 – Segmented Information (excerpt) Adjusted earnings are earnings attributable to equity owners of the Company after adjusting for the timing of revenues and expenses for rate-regulated activities and dividends on equity preferred shares of the Company. Adjusted earnings also exclude one-time gains and losses, significant impairments and items that are not in the normal course of business or a result of day-to-day operations. Adjusted earnings are a key measure of segment earnings used by the CODM to assess segment performance and allocate resources. Other accounts in the consolidated financial statements have not been adjusted as they are not used by the CODM for those purposes.	**National Grid – Audited Consolidated Financial Statements – March 31, 2015** (Entity adopted IFRS for the first time before IFRS 14 was issued) Note 2 – Segment Analysis (excerpt) (Under the title "Unaudited commentary on the results of our principal operations by segment") As a business, we have three measures of operating profit that are used on a regular basis and disclosed in this Annual Report. **Statutory operating profit:** This is operating profit as calculated under International Financial Reporting Standards (IFRS). Statutory operating profit by segment is shown in note 2 on page 98. **Adjusted operating profit:** Adjusted operating profit (business performance) excludes items that if included could distort understanding of our performance for the year and the comparability between periods. Further details of items that are excluded in adjusted operating profit are shown in note 4 on page 103. **Regulatory financial performance:** This is particularly relevant for our UK operations and is a measure of operating profit that reflects the impact of the businesses' regulatory arrangements when presenting financial performance.

88. In jurisdictions where users have benefited from the knowledge gained through an understanding of the way rate regulation can affect an entity's financial performance and financial position, there is a possibility that if future financial statements do not provide such relevant information, non-GAAP disclosures could be used. This is because users need to understand the economics of rate-regulated activities in order to make investing and lending decisions.

89. Staff also notes that comments shown in Appendix A expressing concerns about recognizing balances arising from rate regulation are important and will need to be resolved as the project progresses.

Debt and Equity Analysts, and Credit Rating Agencies – What do they Consider?

90. Canadian debt and equity analysts, as well as credit rating agencies, have told us that utilities with regulated operations are viewed differently from those with non-regulated operations. They have also said that even if the financial effects of rate regulation were not recognized in the financial statements, they would continue to analyze and assess rate-regulated entities based on their view of an entity's economic reality. They would do so by making adjustments to the financial statements to compensate for the differences created by accounting standards.

91. In the case of credit rating agencies, different rating methodologies are used based on whether or not the entity is rate-regulated. The staff looked at the rating methodology for three credit rating agencies (i.e., Moody's, Standard & Poor's (S&P), and Dominion Bond Rating Service (DBRS)). Following is a table that illustrates Moody's rating methodology. The rating factors highlighted in blue are specific to regulated utilities.

Broad Rating Factors	Broad Rating Factor Weighting	Rating Sub-Factor and Sub-Factor Weighting
Regulatory Framework (For utilities which typically operate as a monopoly, the regulatory environment and how the utility adapts to that environment are the most important credit considerations.)	**25%**	Legislative and Judicial Underpinnings of the Regulatory Framework (12.5%): • Consider the scope, clarity, transparency, supportiveness, and rules as they apply to the issuer. • Strength of the regulator's authority over rate-making, other regulatory issues, the effectiveness of the judiciary or other independent body in arbitration • Body of legal precedent for rate-making. • The utility's ability to shape the framework and adapt to it.
		Consistency and Predictability of Regulation (12.5%): • Consider the track record of regulatory decisions in terms of consistency, predictability, and supportiveness.
Ability to Recover Costs and Earn Returns	**25%**	Timeliness of Recovery of Operating and Capital Costs (12.5%)
		Sufficiency of Rates and Returns (12.5%)
Diversification	**10%**	Market position (5%)
		Generation and Fuel Diversity (5%)
Financial Strength, Key Financial Metrics (Metrics focus on Cash Flow from Operations Before Changes in Working Capital (CFO pre-WC) because, unlike Funds from Operations, it captures the changes in long-term regulatory assets and liabilities.)	**40%**	CFO pre-WC + Interest/ Interest (7.5%) • Lower thresholds for regulated utilities (vs. unregulated utilities)
		CFO pre-WC / Debt (15%) • Lower thresholds for regulated utilities (vs. unregulated utilities)
		CFO pre-WC – Dividends / Debt (10%)
		Debt / Capitalization (7.5%)

Source: Information compiled based on Moody's Rating Methodology for Regulated Electric and Gas Utilities (December 2013)

92. Although the components in determining the credit rating in each of the three rating methodologies examined are somewhat different, the quality of the regulatory framework is consistently identified as one of the most important factors in the credit analysis.

Extracts from Credit Rating Agency's Publications
S&P – The regulatory framework/regime's influence is of critical importance when assessing regulated utilities' credit risk because it defines the environment in which a utility operates and has a significant bearing on a utility's financial performance. We base our assessment of the regulatory framework's relative credit supportiveness on our view of how regulatory stability, efficiency of tariff setting procedures, financial stability, and regulatory independence protect a utility's credit quality and its ability to recover its costs and earn a timely return. Our view of these four pillars is the foundation of a utility's regulatory support. We then assess the utility's business strategy, in particular its regulatory strategy and its ability to manage the tariff-setting process, to arrive at a final regulatory advantage assessment."[25]
DBRS – The quality of the regulatory regime is the main driving factor for regulated utilities as it is the most important [Business Risk Assessment] factor. The regulatory framework also influences a company's [Financial Risk Assessment] as the deemed capital structure and return on equity (ROE) are often set by the regulator.[26]

[25] S&P: Key Credit Factors For The Regulated Utilities Industry (November 2013), Pg. 6

[26] DBRS: Rating Companies in the Regulated Electric, Natural Gas and Water Utilities Industry (October 2015), Pg. 6

93. Understanding the risks of the regulatory framework is important because credit rating downgrades can result in increased borrowing costs for entities.

94. One similarity between the three rating methodologies is that a strong assessment of the regulatory framework can result in more favourable ranges being used in assessing the financial metrics of the entity. For example, S&P states:

> "While our final regulatory advantage assessment has a significant influence on a utility's business risk profile, it can have an even greater impact on its financial risk profile. As regulatory advantage declines, we expect higher cash flow volatility; as such, a utility's regulatory advantage score directly affects which of the three cash-flow volatility tables -- low, medial, or standard -- we'll use as a guideline when assessing the issuer's financial risk. Generally speaking, low cash-flow volatility allows for higher debt levels at the same rating category than medial volatility, and medial volatility allows for more debt than standard volatility."[27]

95. A number of factors are taken into consideration when assessing the regulatory framework. Below are the factors that DBRS considers:

	Considerations
Regulation (most important Business Risk Assessment factor)	**Deemed Equity** - Percentage of equity investment in the rate base on which utility can earn a return.
	Allowed ROE - In supportive regulatory environments, utilities' actual rate of returns are generally in line with, or exceed, the allowed rate of return.
	Energy Cost Recovery - Considers whether fuel and purchased energy costs are fully passed through to customers; how often is utility allowed to adjust retail rates; whether rate adjustments are subject to regulatory review.
	Capital and Operating Cost Recovery - Assesses likelihood of a utility's capital expenditure being added to rate base, whether there is mechanism to deal with cost overruns, etc.
	Cost of Service versus Incentive Regulation Mechanism Views cost of service as lower risk than incentive regulation mechanism.
	Political Interference - Influence on regulator's ability to independently arrive at decision, passing legislation to override a decision, and the regulator elected instead of appointed.
	Retail Rate - Average price for residential customers (not applicable for gas distribution, water and waster-water utilities).
	Stranded Cost Recovery - Represents costs incurred but faces uncertainty around recovery. Rating depends on frequency of write-downs, time it takes to recover the costs, magnitude of stranded costs, etc.
	Rate Freeze - Longer rate-freeze periods or higher frequency of occurrence increases risk assessment.
	Market Structure (Deregulation) - Rating depends on degree of regulation. The strongest utilities will have fully-integrated operations (generation, transmission and distribution).

Source: Information compiled based on DBRS Methodology for Rating Companies in the Regulated Electric, Natural Gas and Water Utilities Industry (October 2015)

[27] S&P Article, How Regulatory Advantage Scores Can Affect Ratings on Regulated Utilities (April 2015)

96. As shown in the table above, one of the factors considered is political interference. Below is an excerpt from S&P's rating of Maritime Electric Co. Ltd (MECL) in March 2016, illustrating how political intervention, along with other factors, is taken into consideration when determining this Canadian entity's credit rating (emphasis added below):

> Our view of MECL's business risk profile continues to be excellent, which in part reflects our assessment of the regulatory framework that supports a stable and predictable cash flow model. The [Island Regulatory & Appeals Commission] continues to administer a regulatory framework that allows full recovery of prudently incurred operating, capital and commodity costs. Under the most recent [General Rate Agreement] decision, which expires in February 2019, MECL's maximum allowed return on equity is 9.35% and the company needs to maintain an average equity base of about 40%, which are slightly lower than the previous rate decision but in line with our expectations, given the current low interest rate environment.
>
> The provincial government continues to play a significant and active role in energy policy and establishing rates for island customers. A sign of this is the PEI Energy Accord, which expired in February 2016 and was followed with the latest rate settlement between MECL and the PEI government, although this is subject to regulatory approval. We view the government's active involvement in rate-setting as generally less favorable than an independent regulator with a clear, consistent mandate and an established track record of credit-supportive policies. Due to the track record for political intervention (which could negatively or positively affect credit quality), the regulator's limited strength, and its independence, we view MECL's regulatory environment as less favorable compared with that of regulated utilities operating in other Canadian provinces.
>
> Further supporting the excellent business risk profile is that MECL is the legislated monopoly provider of electricity to about 78,000 customers in PEI, which we believe provides the company with a stable market position. In addition, rates are set on a cost-of-service framework, which allows MECL to fully recover its revenue requirement. The province has a mature-but-stable economy that relies primarily on the public sector, fishing, agriculture, and tourism. We believe that the company's limited scale, scope, and diversity are an offsetting factor, given the relatively small market, a limited number of sources of generation, and some customer concentration (with the largest customer accounting for 5%-6% of sales).
>
> In addition, prudently incurred electricity cost remains a flow-through to ratepayers via the energy cost adjustment mechanism. The utility has successfully renegotiated a power purchase agreement with NB Power, an electricity provider in the Province of New Brunswick, which expires in February 2019. This will ensure adequate supply of electricity at a reasonable cost, reducing regulatory risk of nonrecovery.

Source: S&P Ratings Report

97. Credit rating analysts have said that although the regulatory framework is a key factor in their assessment of an entity, there are many other inputs to their models. One area of focus is certainty of timely recovery of debit balances, or settlement of credit balances, arising from rate regulation, as a predictor of future cash flows. While current period cash flow metrics are not much affected by the recognition of these balances, an accumulation of material debit and credit balances is a "red flag" that communicates risks for the future. Debt and equity analysts have also indicated that without the recognition of debit and credit balances arising from rate regulation, earnings volatility would increase and valuation metrics such as the commonly used price/earnings ratio would be affected.

98. Staff understands that users seek out other sources of information, such as rate filings and regulatory decisions, to complete their assessment of an entity.[28] However, consulting these other sources is intended to corroborate or supplement financial information provided in the financial statements, rather than fundamentally adjust it to reflect the economic reality of the entity.

Acquisitions – Does Rate Regulation Affect Purchase Price?

99. Staff understands that in Canada and the U.S., when prospective purchasers look at the margins and growth of an entity, debit balances arising from rate regulation are viewed as having a greater degree of certainty of generating a defined return in the long term. Lower risk tends to be attached to debit balances arising from rate regulation because of the continuing demand for the essential goods and services being provided by the entity. The rate-setting mechanism provides predictability of the regulated asset's earnings during the regulatory period. Below are two extracts from EY publications that look at transactions in the Power and Utilities sector:

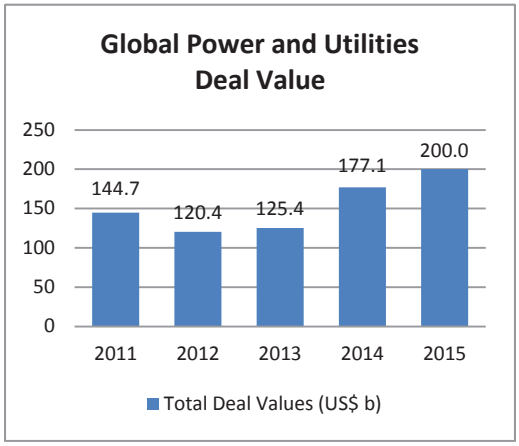
> "The reshaping of the US Sector continued as diversified utilities focused on regulated assets and independent power producers (IPPs) grew their presence. The US sector saw 15 billion-dollar-plus transactions – significantly more than in 2013 – with buyers paying a premium for prized rate-regulated assets." (emphasis added)
>
> ~Source EY: Power transactions and trends, 2014 review and 2015 outlook

> "**Regulated assets still command premiums:** During the year we saw utilities paying above average premiums on regulated assets, which were already trading at the high end of their historical averages — ~37%, higher than last year's average. While low natural gas prices and rising interest rates present a challenge to the sector, strong balance sheets and availability of low-cost debt are enabling utilities to acquire these assets at premium valuations. With predictable cash flows and rates of return, we expect regulated assets to grow more resilient in 2016 and continue to command high valuations."
>
> ~Source EY: Power transactions and trends, 2015 review and 2016 outlook

100. Regulated assets have higher valuation multiples compared with unregulated assets, suggesting market participants factor the effects of the regulatory framework into the purchase price. Following are two charts that provides information on global (i.e., Americas, Europe and Asia-Pacific) Power and Utilities transactions over the last several years.

[28] IASB Staff Agenda Paper 9A, September 2013, Paragraph 7

101. The chart to the left includes the transaction deals of entities in the segments of generation; transmission and distribution; renewables; and integrated, water and others. The chart to the right relates only to the transaction deals of entities in the transmission and distribution segment, which is commonly regulated.

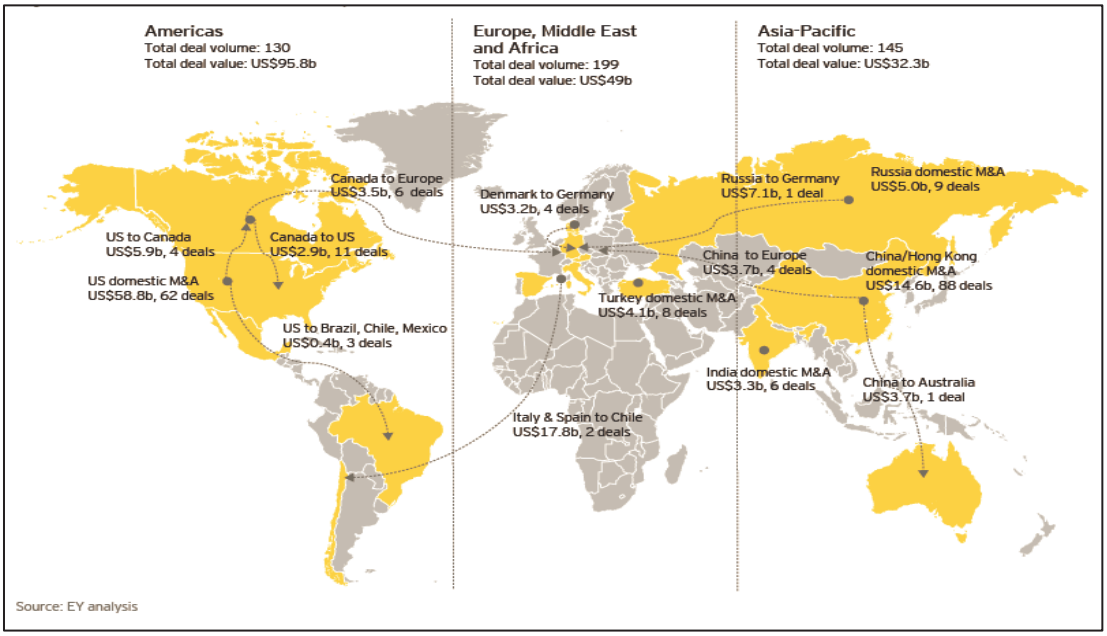


Source: EY Power transactions & trends
(2014 review and 2015 outlook, 2015 review and 2016 outlook)

Tranmission and Distribution (T&D) deal value in Americas, Europe and Asia-Pacific		
Year	US$ (in billions)	Average premiums paid for regulated T&D entities
2015	67.9	30%
2014	41.9	15-35%

Source: EY Power transactions & trends
(2014 review and 2015 outlook, 2015 review and 2016 outlook) and EY Capital outlook: power and utilities

102. Staff notes that while not all the deals over the last five years involve debit and credit balances arising from rate regulation (as it depends on the form of rate regulation and what is purchased), these deals span over different jurisdictions, signaling that investors are looking for opportunities around the globe. Below is a diagram extracted from "EY Power transactions and trends, 2014 review and 2015 outlook" to show the cross-border and domestic capital flow of the 2014 key investment destinations chosen by utilities and financial investors in this dynamic environment.



Canadian and U.S. Acquisitions

103. Since the predominant accounting practice in Canada and the U.S. is to recognize debit and credit balances arising from rate regulation, staff looked at the purchase price in recent acquisitions to determine how investors value these balances. The bidders below apply U.S. GAAP.

in USD millions (unless otherwise specified)

Date of Announcement	Deal Value (USD million)	Segment	Bidder Name & Country	Target Name & Country	Purchase Tender	Balances Arising from Rate Regulation Recognized in Purchase Equation?	Total Purchase Consideration	Fair Value of Net Assets Acquired	Goodwill	Goodwill as a Percentage of Total Purchase Consideration
11-Dec-13	$4,303	Integrated	Fortis Inc. (Canada)	UNS Energy Corporation (US)	Fortis acquired all of the outstanding common shares of UNS Energy for US$60.25 per common share in cash, for an aggregate purchase price of approximately US$4.5 billion, including the assumption of US$2.0 billion of debt on closing. Financing of the net cash purchase price of approximately $2.7 billion (US$2.5 billion) is substantially complete.	Yes - at carrying value (see note disclosure in the next table)	$2,745 CAD	$1,235 CAD	$1,510 CAD	55.0%
30-Apr-14	$12,186	Transmission & Distribution	Exelon Corporation (US)	Pepco Holdings Inc. (US)	The total purchase price consideration of approximately $7.1 billion for the PHI Merger consisted of cash paid to PHI shareholders, cash paid for PHI preferred securities and cash paid for PHI stock-based compensation equity awards.	Yes - at carrying value (see note disclosure in the next table)	$7,142	$3,118	$4,024	56.3%
1-May-14	$5,516	Transmission & Distribution	Berkshire Hathaway Energy Company (US)	AltaLink, L.P. (Canada)	Under the terms of the Share Purchase Agreement, dated May 1, 2014, among BHE and SNC Lavalin Group Inc. ("SNC-Lavalin"), BHE paid C$3.1 billion (US$2.7 billion) in cash to SNC-Lavalin for 100% of the equity interests of AltaLink. BHE funded the total purchase price with $1.5 billion of junior subordinated debentures issued and sold to subsidiaries of Berkshire Hathaway, $1.0 billion borrowed under its commercial paper program and cash on hand.	Yes - at carrying value (see note disclosure in the next table)	$2,728	$984	$1,744	63.9%
4-Sep-15	$10,366	Integrated	Emera, Inc. (Canada)	TECO Energy, Inc. (US)	On July 1, 2016, Emera acquired all of the outstanding common shares of TECO Energy Inc. for $27.55 USD per common share. The net cash purchase price totaled $8.4 billion ($6.5 billion USD), with an aggregate purchase price of $13.9 billion ($10.7 billion USD), including the assumption of $5.5 billion ($4.2 billion USD) in US debt facilities on closing.	Yes - at carrying value (see note disclosure in the next table)	$8,447 CAD	$2,707 CAD	$5,740 CAD	68.0%

Source: Information compiled based on data from EY's Power transactions and trends (2013 review and 2014 outlook, 2014 review and 2015 outlook), PwC North American Power & Utilities Deal (Q3 2015) and Financial Statements of the Bidder.

104. The corresponding note disclosures relating to these acquisitions have been extracted to explain the valuation of the debit and credit balances arising from rate regulation.

Extracts from Financial Statement Note Disclosure Relating to Acquisition
Fortis Inc. (Source: December 31, 2014 Consolidated Financial Statements) Note 29 – Business Acquisitions UNS Energy's operations are regulated by the ACC and FERC (Note 2). The determination of revenue and earnings is based on a regulated rate of return that is applied to historic values, which do not change with a change of ownership. No fair value adjustments, other than goodwill, were recorded for the net assets acquired because all of the economic benefits and obligations associated with them beyond regulated rates of return accrue to the customers.
Exelon Corp. (Source: June 30, 2016 Consolidated Financial Statements) Note 4 – Mergers, Acquisitions and Dispositions (Exelon, Generation, PHI and Pepco) Through its wholly-owned rate regulated utility subsidiaries, most of PHI's assets and liabilities are subject to cost-of-service rate regulation. Under such regulation, rates charged to customers are established by a regulator to provide for recovery of costs and a fair return on invested capital, or rate base, generally measured at historical cost. In applying the acquisition method of accounting, for regulated assets and liabilities included in rate base or otherwise earning a return (primarily property, plant and equipment and regulatory assets earning a return), no fair value adjustments were recorded as historical cost is viewed as a reasonable proxy for fair value. Fair value adjustments were applied to the historical cost bases of other assets and liabilities subject to rate regulation but not earning a return (including debt instruments and pension and OPEB obligations). In these instances, a corresponding offsetting regulatory asset or liability was also established, as the underlying utility asset and liability amounts are recoverable from or refundable to customers at historical cost (and not at fair value) through the rate setting process. Similar treatment was applied for fair value adjustments to record intangible assets and liabilities, such as for electricity and gas energy supply contracts as further described below. Regulatory assets and liabilities established to offset fair value adjustments are amortized in amounts and over time frames consistent with the realization or settlement of the fair value adjustments, with no impact on reported net income. See Note 5 — Regulatory Matters for additional information regarding the fair value of regulatory assets and liabilities established by Exelon and PHI.
Berkshire Hathaway Energy Company (Source: December 31, 2015 Consolidated Financial Statements) Note 3 – Business Acquisitions The operations of ALP are subject to the rate-setting authority of the AUC and are accounted for pursuant to GAAP, including the authoritative guidance for regulated operations. The rate-setting and cost recovery provisions establish rates on a cost-of-service basis designed to allow ALP an opportunity to recover its costs of providing service and a return on its investment in rate base. Except for certain assets not currently in rates, the fair value of ALP's assets acquired and liabilities assumed subject to these rate-setting provisions are assumed to approximate their carrying values and, therefore, no fair value adjustments have been reflected related to these amounts.
Emera, Inc. (Source: June 30, 2016 Condensed Consolidated Interim Financial Statements) Note 31 – Acquisition Except for unregulated long-term debt acquired and deferred taxes, preliminary fair values of tangible and intangible assets and liabilities subject to these rate-setting provisions approximate their carrying values. The goodwill reflects the value paid primarily for access to regulated assets, net income and cash flows in growth markets with constructive regulatory environments, opportunities for adjacency growth, long-term potential for enhanced access to capital as a result of increased scale and business diversity, and an improved earnings risk profile. Allocation of goodwill to the reporting units is not complete as at August 8, 2016.

105. Based on the analysis above, entities with rate-regulated businesses typically attract a premium in purchase price because of the stable earnings and cash flows those businesses can generate. The fair value assigned to the debit and credit balances arising from rate regulation is generally their carrying values, demonstrating there is commercial substance to these balances.

106. Shown in the next table, recent trends also suggest increasing deal activities in the Americas. In Canada, utilities and pipelines are heavily regulated with just a handful of key players in some geographical areas. Therefore, Canadian entities in this sector are looking for opportunities to expand their regulated asset portfolio. They are seeking higher returns in a larger market by buying assets in the U.S. This factor, coupled with the current interest environment, fuels the deal activities in the Americas.

> "As hybrid utilities and financial institutions sought stable earnings in the low interest rate environment by adding regulated assets to their portfolios, transactional activity in the regulated transmission and distribution (T&D) segment increased significantly."
>
> ~Source: EY Power transactions and trends, Q1 2016

Below are examples of some recent major deals that involve Canadian entities and investment funds buying outside the country. The cross border acquisitions demonstrate the need for comparable accounting in order to assist users in making investing and lending decisions.

Announcement		Segment	Bidder Name	Bidder Country	Target Name	Target Country	Rationale for deal
Date	Deal Value (USD million)						
24-Nov-15	$7,377	Transmission & Distribution (Grid)	Caisse de dépôt et Placement du Quebec; Hastings Funds Management Limited; Spark Infrastructure Group; Tawreed Investments Ltd.; Wren House Infrastructure Management Limited	Canada; Australia; United Arab Emirates; Kuwait	TransGrid	Australia	Bidders seeking to add high quality regulated assets with stable cash flows.
9-Feb-16	$11,305	Transmission & Distribution (Electricity)	Fortis Inc.	Canada	ITC Holdings Corp	US	Aligns with Fortis' strategy to diversify its business with regards to regulatory jurisdiction, business risk and regional economic mix.
9-Feb-16	$2,361	Integrated	Algonquin Power & Utilities Corp.	Canada	Empire District Electric Company	US	Strengthens APUC's existing businesses and strategically expands its regulated utility footprint in the Midwest US.
17-Mar-16	$13,076	Integrated	TransCanada Corporation	Canada	Columbia Pipeline Group, Inc.	US	Acquisition represents a rare opportunity to invest in an extensive, competitively-positioned, growing network of regulated natural gas pipeline and storage assets in the Marcellus and Utica shale gas regions.

Source: EY Power transactions and trends (Q1 2016, and 2015 review and 2016 outlook), PwC North American Power & Utilities Deals (Q1 2016), Entity's News Release

107. This research indicates that prospective purchasers look closely at an entity's rate base when considering an acquisition. The rate base is the amount of investment in a rate-regulated operation for which the entity is allowed to earn a return (emphasis added). The rate base generally affects two components of the entity's revenue requirement: depreciation that is allowed to be recovered, and return on capital (i.e., rate base multiplied by the allowed rate of return). Prospective purchasers consider the rate base to be a measure of the net value of the assets used by the entity in its rate-regulated operations. The recent acquisitions that we have seen in Canada are intended to grow the regulatory asset base in order to earn a higher rate of return.

Acquisitions outside Canada and the U.S.

108. We wanted to understand how entities that apply IFRS without recognizing debit and credit balances arising from rate regulation (i.e., the predominant IFRS practice) treat premiums paid for rate-regulated businesses. Accordingly, we made enquiries of a European valuations expert to understand how this difference in accounting possibly affects the purchase price equation.

109. Although anecdotal, the information we obtained was helpful. We were told that, consistent with our understanding, investors generally pay a premium to buy into a monopolistic industry. Theoretically, without the recognition of balances arising from rate regulation, their value would be captured in goodwill. A utility's right to charge a higher tariff in the future or obligation to reduce future prices, provides additional information about the value of the acquired business that could also be captured in the fair value of the licence recognized on acquisition. However, in both cases, it would be difficult to identify amounts attaching specifically to the value placed on the acquiree's rate-regulated activities in IFRS financial statements.

110. Staff corroborated this information by looking at the goodwill note disclosure of an entity in France (see the following table). This entity applies IFRS. While the note disclosure does not confirm that a portion of the goodwill relates to unrecognized debit and credit balances arising from rate regulation, it suggests that there could be a correlation between goodwill and the cash flows from the regulated asset base.

Engie (France) – Extract from 2015 annual consolidated financial statements
Note 12.3.1.2 Goodwill allocated to the Distribution CGU The total amount of goodwill allocated to the Distribution CGU was €4,009 million at December 31, 2015. The Distribution CGU groups together the Group's regulated natural gas distribution activities in France. The value-in-use of the Distribution CGU was calculated using cash flow projections drawn up on the basis of the 2016 budget and the medium-term 2017-2021 business plan, as approved by the Group Management Committee and Board of Directors. The terminal value calculated at the end of the medium-term business plan corresponds to the expected Regulated Asset Base (RAB) with no premium at the end of 2021. The RAB is the value assigned by the regulator (CRE) to the assets operated by the distributor. It is the sum of the future pre-tax cash flows, discounted at a rate that equals the pre-tax rate of return guaranteed by the regulator. The cash flow projections are drawn up based on the tariff for public natural gas distribution networks, known as the "ATRD 4 tariff", which entered into effect for a period of four years on July 1, 2012, and on the overall level of investments agreed by the French Energy Regulatory Commission (CRE) as part of its decision on the ATRD 4 tariff. Given the regulated nature of the businesses grouped within the Distribution CGU, a reasonable change in any of the valuation parameters would not result in the recoverable value falling below the carrying amount.

Academic Research – Views on Market Valuation of Debit Balances Arising from Rate Regulation

111. Staff looked at an academic research paper that examined how markets value debit balances arising from rate regulation. Although the research paper is somewhat dated, staff thinks certain observations made are still relevant in today's environment. Below are two extracts from the research paper, entitled "Market Valuation of Regulatory Assets in Public Utility Firms" (July 1996).

> "We provide evidence that the market values regulatory assets on average, but discounts the reported accounting values of regulatory assets conditional on the uncertainty inherent in the regulatory environment. In other words, investors of utilities operating in unfavorable regulatory environments appear to assign a non-zero probability to the possibility that the firm will fail to receive future revenues sufficient to recover the actual incurred costs that have been previously deferred. These findings are consistent both with those of Clinch and Magliolo (1992), who show that investors in oil and gas firms adjust for uncertainty in the pricing of required reserve disclosures, and with those of Khurana and Loudder (1994), who show that the market of utility firms to the exposure draft of SFAS No. 106 is inversely related to the favorableness of the regulatory environment." (emphasis added)

> "Market participants incur adjustment costs when accounting measures economic events with error, and as accounting measurement error increases, the usefulness of accounting information decreases. Adjustment costs and information quality have important implications for the cost of capital for the individual firm and the economy. Adjustment costs might be reduced and usefulness for utility investors increased by (1) considering the effect on information quality of multiple measurement attributes applied to essentially the same type asset, (2) requiring adequate footnote disclosure about regulatory risk issues, and (3) requiring disclosure of the time periods over which regulatory assets will be recovered." (emphasis added)

112. The above extracts highlight the concerns that some have with including debit and credit balances arising from rate regulation on the face of the financial statements. Mention of this point has already been made in connection with the measurement challenges of such debit balances (see paragraph 79).

What this Section Demonstrates

113. The decision-usefulness of financial information that reflects the economics of rate-regulated activities and the strength of the regulatory framework is evidenced by the fact that such information is factored into investment, lending and credit rating decisions. In acquisition scenarios, the capital markets appear to attach a premium to rate-regulated assets because of the stable earnings and cash flows they are capable of generating when the regulatory framework is strong.

Conclusions

114. Entities subject to rate regulation have a formidable presence in the capital markets, both in terms of market capitalization and bond issuances. Based on projected future investment requirements in the regulated markets, this presence is likely to only increase. Market participants view the rate-setting mechanism as a unique feature that provides stability in earnings and predictable cash flows.

115. The regulatory framework is a key determinant of the success of a rate-regulated entity because it defines the environment in which the rate-regulated entity operates. The regulatory framework governs the relationship between the rate regulator and the rate-regulated entity. The underlying legislation, the form of rate regulation, and the regulatory and court decisions that interpret the legislation and rules, all of which are a part of the regulatory framework, affect the determination of whether the rate-regulated entity has certain rights and obligations. Furthermore, the strength of the regulatory framework can affect the enforceability of those rights and obligations, translating into measurement challenges that affect the value of the economic resources of, and claims against, the rate-regulated entity. An understanding of the regulatory framework is essential in order to reflect the economics of rate-regulated activities in financial information.

116. Users, such as debt and equity analysts, and credit rating agencies, have all emphasized the importance of the regulatory framework. In their view, the components of the regulatory framework are capable of affecting the rate-regulated entity's ability to recover costs and earn a reasonable return for providing the regulated goods or services to customers.

117. Financial information assists users in making decisions when it helps them assess the amount, timing and uncertainty of future cash flows. In the case of rate-regulated entities, users take into consideration the financial effects of rate regulation when making their assessments. For example, entities contemplating an acquisition factor in financial information on rate-regulated activities when the potential acquiree operates in that sector. In fact, the data demonstrates that rate-regulated assets command a premium in purchase price given the stable earnings and predictable cash flows they can offer. In jurisdictions, such as Canada and the U.S., that permit the recognition of debit and credit balances arising from rate regulation, acquisitions demonstrate that there is commercial substance to these balances, as the carrying value of these balances generally approximates the fair value they are assigned in the purchase price allocation. For jurisdictions that do not account for these balances, staff has heard anecdotally that this premium is captured in goodwill or intangible assets.

118. The data in this paper provides evidence, from existing practice, demonstrating what information users need to understand the economics of rate-regulated activities, and how this information factors into their decision-making. This data supports evidence-based standard-setting and should assist the IASB's continued deliberations, and decisions, on how best to reflect the financial effects of rate regulation in IFRS statements.

119. As part of its deliberations, the IASB is encouraged to examine the adaptability of its proposed asset and liability definitions to regulatory frameworks that could give rise to rights and obligations. The manner in which such rights and obligations are reflected in financial statements, both qualitatively and quantitatively, can affect the transparency and comparability of the statements and, therefore, the degree to which they help users to make decisions. As evidenced by the data in this paper, information on the economics of rate-regulated activities appears differently in an entity's financial statements depending on the jurisdiction in which it operates. From a theoretical perspective, such diversity is only justified when the rights and obligations differ between entities.

Next Steps

120. The AcSB will be considering the findings in this paper at its September 21-22, 2016 meeting and discussing the appropriate next steps for the paper. These steps could include obtaining more data in a particular area (e.g., comparative information on the rate regulatory environment in other jurisdictions), or examining other aspects of rate-regulated activities they think the paper should also address.

121. In addition, the views of other national standard setters are being sought. This paper is being discussed at the September 2016 meetings of the International Forum of Accounting Standard Setters and the Accounting Standards Advisory Forum. The IASB and national standard setters will be asked to provide input. The AcSB's views on the paper will be shared orally at those meetings.

122. Once the paper has been updated for the feedback obtained, the AcSB will consider publishing the findings in order to serve as a formal reference document on the topic of rate-regulated activities.

Appendix A

Selected Comments by Region

EMEA (Europe, Middle East and Africa)			
Date	**Area & Group**	**Extract of Comments**	**Source**
Aug – Dec 2014	**Europe** Interviewed 19 equity and credit analysts - 18 from European countries, 1 from U.S.	"IFRS financial statements generally do not provide the information that users regard as relevant to understanding the impact of rate-regulated activities on an entity's revenue and related costs, cash flows and financial position associated with an entity's rate-regulated activities." "Most of the users broadly favour the inclusion of the financial effects of rate-regulated activities in the primary financial statements as this would enhance the usefulness of the information provided. Users believe that recognising the economic effects of rate regulation in the primary statements would: a) result in a measure of performance that reflects what an entity is entitled to earn; b) result in useful financial information to assess prospects of future cash flows; and c) portray the economic reality of entities operating rate-regulated activities. They support separate presentation of the effects of rate regulation on rate-regulated activities as they assess different risks profiles when entities also operate activities that are not rate-regulated."	EFRAG Feedback Statement – Interviews with Investors and Analysts
Dec 2014	Joint outreach event EFRAG, EFFAS, ABAF, IASB	"Some users noted that there are drawbacks to the recognition of these effects of rate regulation mainly because most rate-regulated regimes are complex and continually changing. In their view, the recognition of the effects of rate regulation at the at the expense of reliability and relevance would increase complexity and therefore reduce the understandability of financial statements." "Where enforceable rights and obligations exist, users preferred having this information recognised in the primary financial statements where a certain level of reliability is ensured; but they would be concerned about recognition if the definition of elements (e.g. assets and liabilities) in the Conceptual Framework were not met." "Where recognition of regulatory items in the primary statements were considered, sufficient, supplementary and quantitative disclosures should be mandatory to let users understand how management has exercised judgement and what risks are attached to the regulatory items."	Summary Report on User Event in Brussels
Jan 2015	**Norway** Standard-setter	"We believe that rate regulation schemes create rights and obligations, but think that regulatory assets and liabilities should only be recognized if they meet the definition of assets or liabilities in the framework. We do not believe that they meet the asset or liability definition in the current framework."	Comment Letter (2015)
Jan 2015	**South Africa** Accounting Body	"We are of the view that the IASB should adopt a conceptual approach by linking the rights and obligations created under rate regulation to the definition of assets and liabilities in the *Conceptual Framework for Financial Reporting (Conceptual Framework)*. We strongly feel that this should be the basis for any IFRS on rate regulation." "In our *Submission on the Request for Information on Rate Regulation* dated 29 May 2013, we expressed the view that one of the reasons why debates on this issue struggle to reach consensus, is not so much due to a difference of opinion regarding accounting principles but rather due to a difference in, or inadequate understanding regarding certain concepts and details of rate regulation applied by different rate regulators."	Comment Letter (2015)

EMEA (Europe, Middle East and Africa)			
Date	**Area & Group**	**Extract of Comments**	**Source**
Jan 2015	**Israel** Accounting Body	"Preparers, regulators, and auditors, in Israel are familiar, for almost two decades, with financial statements that recognize regulatory deferral account balances according to the guidelines of ASC 980 (previously "RE-6") in US GAAP. Such accounting is implemented mainly in the financial statements of entities providing utilities such as electricity and water. These entities, although operating as business entities, are owned and controlled by the government and regulated by special governmental authorities. We are not aware of special problems in investment or lending decisions stemming from the recognition of such deferral accounts by these entities. This may partially result from the fact that these entities are owned and controlled by the government and, therefore, lenders usually regard them as part of the government itself (even if the liabilities of such entities are not formally covered by governmental guarantees)."	Comment Letter (2015)

Asia-Pacific			
Date	**Area & Group**	**Extract of Comments**	**Source**
Jan 2015	**China** Standard Setter	"We believe regulatory deferral account balances should not be recognized in IFRS financial statements, therefore, we suggest the IASB not to develop specific accounting requirement for it. This is because regulatory deferral account balances don't meet the definitions of asset and liability in accordance with the Conceptual Framework. And there might be arbitrage opportunity of earning management if the entities are permitted to recognize such balances."	Comment Letter (2015)
Jan 2015	**Australia** Standard Setter	"The AASB considers that , in most cases, regulatory deferral account balances do not meet the definitions of assets and liabilities in the Conceptual Framework, and that an exception should not be introduced into IFRSs to allow their recognition. However, some specific disclosures in the financial statements regarding rate regulation could be useful to identify the financial effects of rate regulation."	Comment Letter (2015)
Jan 2015	**Korea** Standard Setter	"Financial statements should be prepared to provide useful financial information for decision making on supply of resources by the stakeholders such as investors and lenders. If rate regulated entities recognize regulatory deferral account, and sufficient classification and disclosure on notes for this are accompanied, more useful information can be provided to the stakeholders."	Comment Letter (2015)
Jan 2015	**Japan** Standard Setter	"… the ASBJ finds that users are relatively neutral as to whether an asset or a liability should be recognised, although they believe that information relevant to a rate regulation would be useful for users to assess the prospect for future cash inflows to an entity. Thus, the ASBJ is not sure if financial information would become more relevant and provide more faithful representation if assets or liabilities relating to rate regulatory schemes are recognised."	Comment Letter (2015)

Americas			
Date	**Area & Group**	**Extract of Comments**	**Source**
Dec 2014	**U.S.** Roundtable with analysts, preparers, auditors and rate regulators	Extract of some comments made by analysts in the meeting: • Courts support regulatory recovery of prudently incurred costs • Regulator's objectives include maintaining a low cost of capital for utilities • If there is no recognition of regulatory assets and liabilities under IFRS, - will result in an increased reliance on non-GAAP disclosures, thus increasing uncertainty, risk premiums and cost of capital - will require greater resources and costs for FS users to find information from other sources • Rate regulation creates a "new economic reality" • Noted that a major credit rating agency evaluates all 50 states from most supportive to least supportive regulatory environment, which impacts credit quality • Focus is on future cash flows and when expected to be recovered, so useful disclosures include: - analysis of how/why regulatory balances arise - a maturity schedule indicating when balances are expected to be recovered/reversed • Wants to see the information audited – non-GAAP disclosures are not consistent	Meeting summary of outreach event in Washington, D.C.
Jan 2015	**Brazil** Securities and Exchange Commission of Brazil	"… in our view, financial statements, especially those prepared by distribution companies, have been inaccurate since IFRS were adopted in 2010. Market players, such as financial institutions, ANEEL and others share this view and accordingly have required companies to adjust their financial statements by recognizing regulatory assets and liabilities since 2010 in order to analyze the companies' financial position. In this context, many companies have negotiated covenants with financial institutions based on financial information that included regulatory assets and liabilities."	Comment Letter (2015)
	Canada		
Jan 2015	Scotia Capital (Corporate Bond Research)	"…MD&A disclosure may not be uniform, hindering comparability across companies. I think it would be optimal to have recognition and disclosure of regulatory assets and liabilities in the financial statements. In the long run, this will enhance transparency and comparability, and in the long run, transparency and comparability play a big role in determining a firm's cost of capital."	Comment Letter (2015)
Jan 2015	DBRS (Credit Rating Agency)	"In order to properly assess the financials of these entities and to ensure consistency and comparability year-over-year, DBRS adjusts the IFRS financial statements of rate-regulated entities to include the effects of rate-regulated accounts as DBRS views that regulatory assets and liabilities will eventually be reflected in future rates."	Comment Letter (2015)
Nov 2009	RBC Dominion Securities (Equity Analyst)	"…I believe that not allowing companies in the sector to reflect regulatory assets and liabilities in their financial statements has the potential to be misleading, and that I also continue to be concerned about the increased use of non-GAAP measures to communicate financial results following the transition to IFRS."	Comment Letter (2009)

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KASB DISCUSSION PAPER

29 September 2016

Accounting Standards Advisory Forum

Project	**Rate-regulated Activities**
Paper topic	Cover paper

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This paper has been prepared for discussion at a public meeting of the Accounting Standards Advisory Forum (ASAF) and does not represent the views of the International Accounting Standards Board (the Board) or any individual member of the Board. Comments on the application of IFRS® Standards do not purport to set out acceptable or unacceptable application of those Standards. Technical decisions are made in public and reported in an IASB® Update.

Purpose of the session

1. The purpose of this session is to obtain advice and comment from ASAF members on conceptual basis for revenue recognition of rate-regulated activities, expecting to:
   - explore rationales for recognising regulatory assets and liabilities based on revenue approach;
   - contribute to the IASB's development of a new standard for rate-regulated activities; and
   - share and exchange ideas on improving accounting for rate-regulated activities.

Purpose of this paper

2. This agenda paper (Agenda Paper 3B) is a cover note that provides the scope of discussion and an overview of the agenda papers (Agenda Papers 3Ba to 3Bc) on the issues relating to Rate-Regulated Activities project.

Scope of discussion

3. It is expected that the IASB will undertake the Rate-Regulated Activities project as a major project and publish a second Discussion Paper. The discussion for this project up to now can be summarised as three approaches: (a) **revenue approach**; (b) cost deferral approach; and (c) disclosure in foot notes only approach.

4. As the revenue approach was supported by the majority of IASB members, the discussion at the IASB meeting in July 2015 revolved around accounting treatments based on the revenue approach. One of the key issues that the IASB discussed at that meeting relates to the case in which revenue requirement includes consideration for performance obligations that are not directly relevant to the transfer of goods or services to the individual customers.

5. The KASB supports the revenue approach, and on the basis of the revenue approach, proposes developing a new revenue recognition model for rate-regulated entities, which would reflect the unique natures of rate-regulated environment. A new model based on the revenue approach would be consistent with the definition of asset and the definition of liability in the current *Conceptual Framework for Financial Reporting*(hereinafter referred to as *'Conceptual Framework*') as well as with the requirements of IFRS 15 *Revenue from Contracts with Customers*. The KASB thinks that the new model would enhance the intercompany comparability among rate-regulated entities and non-regulated entities.

Overview of Agenda Papers

6. The agenda papers (Agenda Papers 3Ba to 3Bc) are summarised as follows.

   (a) **Agenda Paper 3Ba—**examines differing views on how to account for regulatory revenue requirement in the light of the current *Conceptual Framework* and IFRS 15.

   (b) **Agenda Paper 3Bb—**addresses the differing views in Agenda Paper 3A, using an illustrative example of raw material cost for the adjustment of revenue requirement (simple case).

   (c) **Agenda Paper 3Bc—**addresses the differing views in Agenda Paper 3A, using an illustrative example of construction cost for the adjustment of revenue requirement (complex case).

7. **Agenda Paper 3Ba** compares differing views as to how to account for the difference between regulatory revenue requirement (ie revenue in accordance with rate regulation) and contract revenue (ie revenue in accordance with contracts with customers). Agenda Paper 3Ba explores and assesses the rationales for each differing views in the light of the current *Conceptual Framework* and IFRS 15.

8. To put the scope of **Agenda Papers 3Bb** and **3Bc** in perspective, regulatory revenue requirement can be expressed as the sum of 'required costs' and 'required margin' (ie regulatory revenue requirement = required costs + required margin). Also, for the convenience of discussion, 'required costs' is divided into 'required costs that are currently expensed' and 'required costs to be expensed in future periods' (ie required costs = required costs that are currently expensed + required costs that will be expensed in future periods).

9. In the case of 'required costs that are currently expensed', when there is a difference between the amount billed to and collected from customers and 'required costs that are currently expensed',

the difference (ie the 'revenue requirement adjustment'[1]) is collected or settled through the contracts with customers in the subsequent periods. **Agenda Paper 3Bb** addresses differing views on how to account for this 'adjustment', using a simple example of raw material cost.

10. In the case of 'required costs to be expensed in the future period', there is a rate regulation that allows a rate-regulated entity to collect a certain amount of money to acquire a related asset from customers in advance and the related asset is put to use in future periods. **Agenda Paper 3Bc** addresses differing views on how to account for this revenue requirement adjustment, using an example of construction costs.

[1] See the definition in Appendix 1 of Agenda Paper 3Ba.

KASB DISCUSSION PAPER

29 September 2016

Accounting Standards Advisory Forum

Project	**Rate-regulated Activities**
Paper topic	Conceptual basis for revenue recognition

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Background

1. The IASB published a first Discussion Paper in September 2015. The Discussion Paper defined the term, 'defined rate regulation' and limited the scope of discussion to defined rate regulation. In defined rate regulation, it is believed that there exist unique rights and obligations that would affect the recognition of assets and liabilities. The Discussion Paper considered the following possible approaches:

   (a) recognising the package of rights and obligations established by the regulatory agreement as an intangible asset;

   (b) reporting using the regulatory accounting requirements;

   (c) developing specific IFRS requirements to defer/accelerate the recognition of costs and/or revenue; and

   (d) prohibiting the recognition of regulatory deferral account balances in IFRS financial statements.

2. Among the four approaches, it appears that the most widely supported approach has been 'developing specific IFRS requirements to defer/accelerate the recognition of revenue (ie revenue approach)'. The KASB supports this approach because defined rate regulation gives rise to unique rights and obligations in addition to those created by contracts with customers. Hence the KASB thinks that a new revenue recognition criteria should be developed to reflect unique rights and obligations arising from defined rate regulation.

Overview of this paper

3. This Agenda Paper purports to offer a conceptual basis for a new revenue recognition model for defined rate regulation, drawing upon the definition of assets and liabilities in *the Conceptual Framework for Financial Reporting* (hereinafter referred to as *' Conceptual Framework'*) and the requirements of IFRS 15 *Revenue from Contracts with Customers*.

4. The Agenda Paper consists of three analyses as follows.

   (a) (**Analysis 1**) The economic substance of rate-regulated activities under defined rate regulation

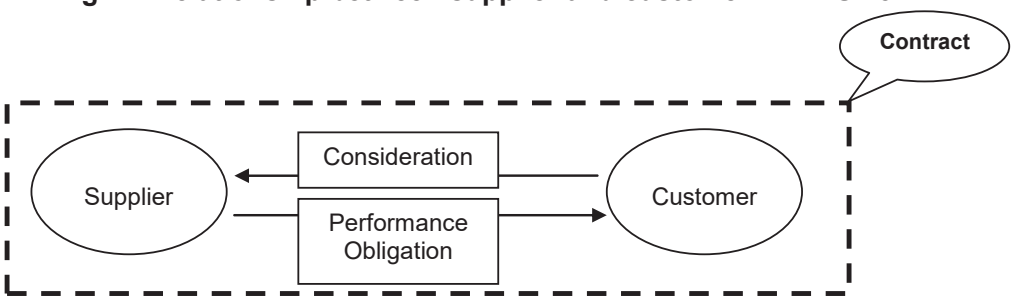
   (b) (**Analysis 2**) Regulatory assets and liabilities in the context of the *Conceptual Framework*

   (c) (**Analysis 3**) Revenue recognition model for rate-regulated activities derived from IFRS 15

Analysis 1–The economic substance of rate-regulated activities under defined rate regulation

5. To consider the economic substance of rate-regulated activities in the context of the revenue approach mentioned above, it would be necessary to understand the accounting requirements in IFRS 15. IFRS 15 addresses accounting treatments based on the **contract** between the supplier and the customer. Specifically, it requires that the supplier recognise the consideration it receives for transferring goods or services to the customer as revenue when the supplier satisfies the performance obligation that is contained in the bilateral contract between the supplier and the customer.

<Fig. 1> Relationship between supplier and customer in IFRS 15

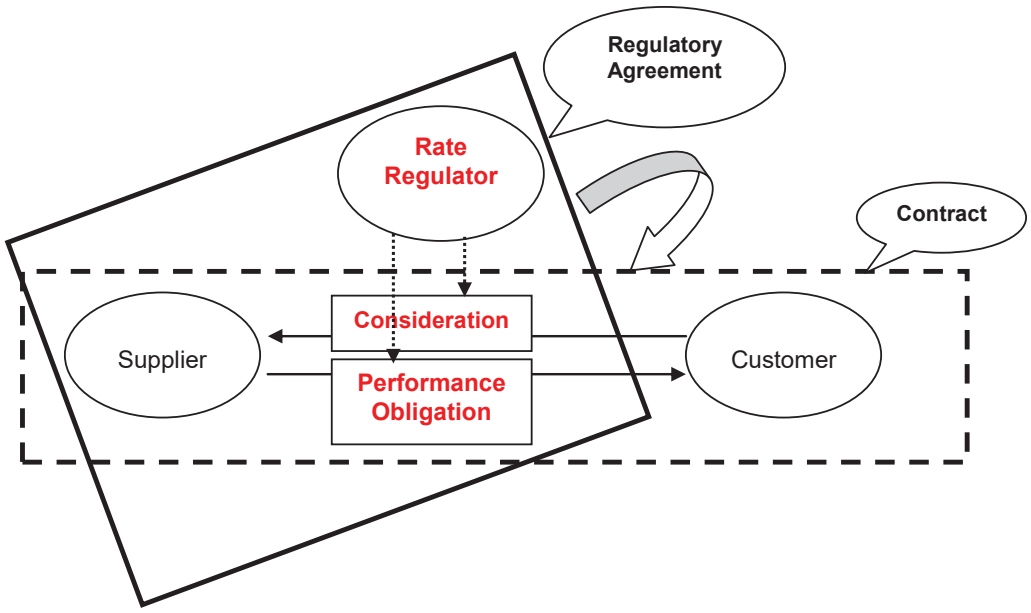


6. The accounting for rate-regulated activities in accordance with IFRS 15 would not fully represent the economic substance because the tripartite (the supplier, the customer and the regulator) relationship of rate-regulated activities affects the mechanism of determining the

consideration for transferring goods or services to customers. The regulatory agreement changes the nature of a contract between the supplier and the customer; it considerably changes the amount, timing, and uncertainty of future cash flows of the supplier. Accordingly, it is necessary to develop a new IFRS standard to faithfully represent the economic substance of rate-regulated activities.

7. As will be discussed further below, the KASB believes that the rate regulator essentially involves the whole process of executing the contract between the supplier and the customer. This means that the effect of the rate regulation should be addressed in terms of the effect on the entire consideration that the supplier receives until the supplier transfers goods or services to the customer in order to satisfy the performance obligation. In other words, the effect of the rate regulation should not be separately addressed in terms of the effect on the part of the consideration that the supplier receives in the input process, for example, repair or construction of a PPE to generate goods or services. Figure 2 illustrates the interaction among the supplier, customer and rate regulator and also the effect of the rate regulation on the relationship between the supplier and the customer.

<Fig. 2> Tripartite relationship among supplier, customer and rate regulator



Analysis 2– Regulatory assets and liabilities in the context of the *Conceptual Framework*

8. Most respondents to the Discussion Paper[1] on rate-regulated activities agreed to recognise the financial effect of rate regulation in IFRS financial statements. However, many respondents maintained that there should be an examination on whether rights and obligations of a rate-regulated entity arising from enforceable rate regulation would meet the definition of asset and liability under the *Conceptual Framework.*

9. There are differing views on this issue. Specifically, the issue is whether the recognition of a regulatory asset would be consistent with the concept of 'control' in the *Conceptual framework* and whether the recognition of a regulatory liability would be in line with the concept of 'present or conditional obligation' in the *Conceptual Framework*.[2] The analysis below looks at how regulatory assets and regulatory liabilities would meet the definition of an asset and the definition of a liability, respectively.

Control in terms of definition of asset

10. The defined rate regulation (ie no effective competition to supply) has the following characteristics:

    (a) the regulatory agreement is enforceable and the rate-setting mechanism therein ensures that the rate-regulated entity recovers a determinable amount of consideration (the 'revenue requirement') from customers.

    (b) the customer has little or no choice but to purchase the rate-regulated goods or services from the rate-regulated entity.

    (c) the rate-regulated entity has an exclusive right to provide the rate-regulated goods or services and is entitled to recover the revenue requirement.

11. The rate-regulated entity would have an enforceable right for the revenue requirement that is not recovered from customers. This is because the rate-regulated entity is able to collect such revenue requirement by adjusting future rates as the revenue requirement represents the consideration that the rate-regulated entity receives in exchange for goods or services it has already provided.

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[1] Discussion Paper, Reporting the Financial Effects of Rate Regulation, September 2014.

[2] See the paragraph 5.14-5.31 of IASB Discussion Paper, Reporting the Financial Effects of Rate Regulation, September 2014.

12. The rate-regulated entity operates in an environment different from the non-regulated entity's: (1) there is a rate regulator; and (2) the regulatory agreement between the rate regulator and the rate-regulated entity entitles the rate-regulated entity to have an exclusive rights to provide goods or services and recover the revenue requirement. Accordingly, the rate-regulated entity has 'control' that could justify the recognition of the revenue requirement for the goods or services transferred to customers as an asset.[3] (See Agenda Paper 3Bb for a relevant illustrative example.)

Present or conditional obligation to transfer an economic resource in terms of definition of liability

13. In defined rate regulation, the rate-regulated entity has an obligation that the entity has no practical ability to avoid through the enforceable regulatory agreement or laws when the entity collected the amount from customers that exceeds the revenue requirement (ie the sum of the current year's required cost and required margin). The collected amount that exceeds the revenue requirement is an amount received in advance that will be part of the next year's revenue requirement (ie the sum of the next year's required actual cost and required margin). When the rate-regulated entity sets the rate for goods and services to provide in future periods, it deducts the overly-charged amount in prior periods from the rate. (See Agenda Paper 3Bb for a relevant illustrative example.)

14. In other words, as the rate-regulated entity is obliged to provide goods or services in future periods, the amount it received that exceeds the revenue requirement (See Agenda Paper 3Bb) or the amount related to consideration for future performance obligation (See Agenda Paper 3Bc) is similar to unearned revenue, which represents an obligation to provide goods or services in future periods.[4]

Analysis 3– Revenue recognition model for rate-regulated activities derived from IFRS 15

15. There are two differing views as to the revenue recognition for rate-regulated activities. **View 1** is that the requirements of IFRS 15 should be applied to rate-regulated activities and thus no new revenue recognition model is necessary. On the other hand, **View 2** is that the revenue recognition for rate-regulated activities should reflect the regulatory agreement in addition to the

[3] Paragraph 3.27 of the Conceptual Framework Discussion Paper, which notes that: 'For an entity to control an economic resource, the economic benefits arising from the resource must flow to the entity (either directly or indirectly) rather than to another party'.

[4] See paragraph 106 of IFRS 15 Revenue from Contracts with Customers

contract with customers and therefore a new revenue recognition model should be established. View 2 supports developing a new revenue recognition model drawing upon the requirements in IFRS 15.

16. The analysis below looks at how the two views (ie View 1 and View 2) are different in the case of unbilled revenue requirement and overbilled revenue requirements. The analysis also addresses how View 2 is split into two sub-views (ie View 2A and View 2B) in the case where the rate-regulated entity has an obligation relating to input activities, which could also be referred as 'indirectly related to delivering goods or services'.

Timing of revenue recognition for unbilled revenue requirement

17. There are two views with respect to how the effect of rate regulation should be considered in terms of timing of revenue recognition for unbilled revenue requirement:

- **View 1—**Recognise in the **future periods** the revenue requirement that is not reflected in the contract with customers in the current period because such revenue requirement will be billed to, and collected from, customers in future periods; and
- **View 2—**Recognise in the **current period** the revenue requirement that is not reflected in the contract with customers in the current period because such revenue requirement is the consideration for transferring goods or services to customers in the current period.

18. **View 1** focuses only on the contract between the supplier and the customers and thus supports that the supplier recognises its revenue when it reflects the 'revenue requirement adjustment'[5] on the contract with customers. According to View 1, an entity recognises its revenue in the period when it satisfies the performance obligation established in the contract with customers. Accordingly the rate-regulated entity should recognise the revenue requirement adjustment in the future periods when it reflects the adjustment in the contract with customers in the future periods; the revenue is a consideration for satisfying the performance obligation in the future periods.

19. **View 2** focuses on the interaction of regulatory agreement and contract with customers. View 2 holds that in the rate regulation, revenue amount should not be determined only by contracts with customers but also by reflecting the revenue requirement adjustment established in the regulatory agreement.

[5] See the definition in Appendix 1 of this paper.

20. The KASB supports View 2 (ie the supplier recognises revenue when it satisfies the performance obligation to the customer) by analogising to the requirements in IFRS 15. There are two aspects to look at the requirements in IFRS 15.

21. The first aspect is the requirements for **progressive revenue recognition over time** in IFRS 15. The KASB notes that the supplier can recognise revenue before the payment is contractually billable to the customer. According to IFRS 15, an entity recognises revenue with a corresponding entry of 'contract asset' to the extent of the progress of construction (for example, up to 25% of the progress when 30% is the contractually billable point), provided the revenue recognition criteria are met, though it is not contractually billable. When the progress of construction reaches up to the contractually billable point (ie 30% in this case), the contract asset that was recognised for the portion of 25% of progress can be replaced with a receivable (ie financial asset).

22. This means that revenue can be recognised even before a financial asset is recognised. In other words, if the supplier satisfies a performance obligation to the customer and has a right to receive a consideration from the customer, the supplier recognises revenue before it bills to the customer.

23. How the rate regulation can be analogised to this requirement in IFRS 15 will be addressed in conjunction with the second point explained below.

24. The second aspect is that the case of adjusted revenue requirements in the rate regulation can be analogised to the concept of **variable consideration** in IFRS 15. The adjusted revenue requirements in the rate regulation means that the amount of the consideration that was set at the beginning of Year 1 is adjusted at the end of Year 1. According to the regulatory agreement at the beginning of Year 1, such adjusted consideration is, by nature, a post-adjustment to the consideration in return for the performance obligation during Year 1. In other words, such post-adjustment represents a variable consideration that is adjusted in response to unexpected changes in circumstances during the year, which was not considered in setting up the revenue requirements at the beginning of the year. In this sense, the adjusted consideration is conceptually similar to the variable consideration described inIFRS 15. And this adjusted consideration is not contractually billable in Year 1, but is contractually billable in Year 2 by adjusting the amount of consideration in the contract.

25. When the first aspect mentioned above is brought into the context of the rate regulation, it can be said that although the adjusted consideration is not billable in Year 1, revenue for that adjusted

consideration can be recognised in Year 1 because it is a consideration in return for satisfying the performance obligation in Year 1. Therefore, a regulatory asset and regulatory revenue will be recognised in Year 1; the regulatory asset recognised in Year 1 will be replaced with a receivable (ie financial asset) and the regulatory revenue recognised in Year 1 will adjust the contract revenue in Year 2 because this adjusting accounting entry should be recorded not to duplicate the revenue.

26. Incidentally, recognising a regulatory asset in Year 1 would not require that there should be the same customer group to bill in Year 1 and Year 2. That is, if the supplier can bill to the customer in Year 2, the regulatory asset that is recognised in Year 1 would meet the definition of asset, regardless of whether the customer group in Year 2 is different from that in Year 1.

Timing of revenue recognition for overbilled revenue requirement

27. In **View 1**, although the entity may have an obligation to reverse the overbilled revenue requirement by lowering the rate for future sales, this does not involve the transfer of an economic resource. Instead, the entity will earn a lower profit for its future sales. Accordingly, the rate-regulated entity should recognise the overbilled revenue requirement as revenue in the current period.

28. In **View 2,** overbilled revenue requirement is not a consideration for transferring goods or services to customers in the current period; it is a consideration relating to performance obligation in the future periods and an over-charged amount. Accordingly, the rate-regulated entity should recognise the amount as revenue in the future period.

29. Analogising to the requirements in IFRS 15[6], the rate-regulated entity should recognise the amount billed to customers as revenue by allocating the amount to current period and future periods. The portion that the entity has satisfied the performance obligation for transferring goods or services in the current period is allocated to the current period and the portion that the entity has to satisfy the performance obligation in the future periods is allocated to the future periods.

30. The method of allocation would be based on the required cost and required margin established in the regulatory agreement, matching the revenue requirement (See Agenda Paper 3Bb and 3Bc). Accordingly, after allocating the amount to the current period, the unallocated amount should be

[6] IFRS 15.73 The objective when allocating the transaction price is for an entity to allocate the transaction price to each performance obligation (or distinct good or service) in an amount that depicts the amount of consideration to which the entity expects to be entitled in exchange for transferring the promised goods or services to the customer.

presented as unearned revenue that represents a consideration for performance obligation in the future periods because the unallocated amount is carried over to the contract with customers in the future periods through the rate-setting mechanism.

Timing of revenue recognition for input activities costs(performance obligation)

31. In defined rate regulation, the rate-regulated entity often has an obligation for indirect activities (hereinafter referred to as 'input activities') as well as direct activities (hereinafter referred to as 'output activities') (ie to transfer goods or services to customers). Examples of the obligation for input activities are: an obligation to construct a PPE to produce goods or services; and an obligation of restoration after a disaster.

32. Assuming that View 2 is taken, there are two views on this issue. **View 2A** is that the rate-regulated entity should separately identify performance obligation for input activities and thus allocate consideration for those activities. **View 2B** is that the rate-regulated entity should regard that performance obligation is satisfied when it ultimately satisfies the obligation for output activities (ie to transfer goods or services to customers). (See Agenda Paper 3Bc for a relevant illustrative example.)

33. From the standpoint of the tripartite relationship, the two views can be summarised as follows:

- **View 2A—**The rate-regulated entity recognises its revenue when it satisfies the performance obligation to the **rate regulator**; and
- **View 2B—**The rate-regulated entity recognises its revenue only when it satisfies the performance obligation to the **customer.**

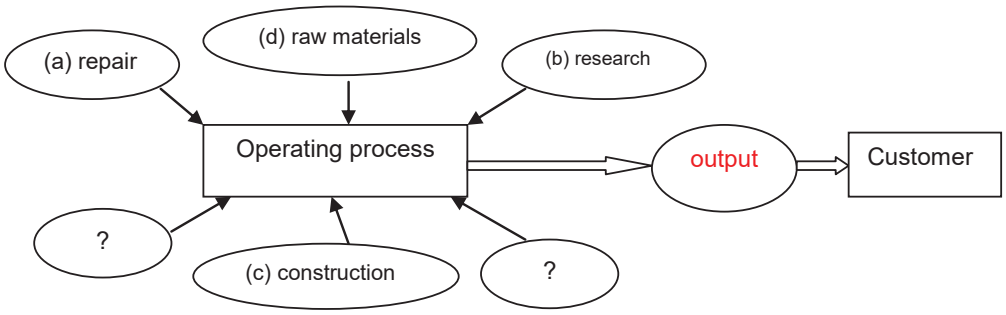
34. **View 2A** focuses on the relationship between the rate-regulated entity and the rate regulator and thus supports that the rate-regulated entity recognises its revenue when it satisfies the performance obligation to the rate regulator.

35. **View 2B** focuses on the whole process of the rate-regulated entity's operating activity until the entity transfers goods or services to the customer and thus supports that the entity recognises its revenue when it satisfies the performance obligation to the customer.

36. The KASB is in favour of **View 2B** because View 2A would give rise to the following issue. If the rate-regulated entity recognises its revenue when it completes the input process of the operating activity, each of the separate input process would become the unit for recognising revenue. This could lead to the complexity of accounting and conceptual inconsistency because

the rate-regulated entity would need to separately identify revenue from input operating process and revenue from output operating process.

<Fig. 3> Input and output operating process of a supplier



37. The KASB thinks that the effect of the rate regulation does not just relate to the input operating activity of the rate-regulated entity. The input operating activity is **a necessary condition** for the entity performing the obligation to transfer the final output to the customer, but **not a sufficient condition** for that. The KASB thinks that the effect of the rate regulation should relate to the entire consideration that the rate-regulated entity receives in exchange for performing the obligation to the customer.

38. Accordingly, the rate-regulated entity should not recognise its revenue when it completes the input operating activity (eg. the construction of a PPE) for providing the output to the customer because the obligation to construct the PPE is not a final obligation. This would also be the case even if the amount for the cost to construct the PPE is billed to the customer because the final output has yet to be transferred to the customer. In our view, the rate-regulated entity should recognise its revenue when the whole process is completed, that is, when the entity transfers goods or services to the customer and thus the costs that incurred during the input activities are expensed.

39. The KASB believes that View 2B (ie the rate-regulated entity recognises revenue when it satisfies the performance obligation to the customer) can be supported by analogising to the requirements in IFRS 15. Paragraph 29 of IFRS 15 states:

> ...
>
> Factors that indicate that two or more promises to transfer goods or services to a customer are not separately identifiable include the following:

(a) the entity provides a significant service of integrating the goods or services with other goods or services promised in the contract into a bundle of goods or services that represent the combined output or outputs for which the customer has contracted. In other words, the entity is using the goods or services as inputs to produce or deliver the combined output or outputs specified by the customer. A combined output or outputs might include more than one phase, element or unit.

(b) ...

(c) the goods or services are highly interdependent or highly interrelated. In other words, each of the goods or services is significantly affected by one or more of the other goods or services in the contract. For example, in some cases, two or more goods or services are significantly affected by each other because the entity would not be able to fulfill its promise by transferring each of the goods or services independently.

40. Analogising rate regulated activity to paragraph 29(a) of IFRS 15 above, the input activity that the regulator requires the rate-regulated entity to perform would be similar to the obligation for 'a bundle of goods or services' that is combined with the obligation to transfer goods or services to customers. By this analogy, View 2B would be more appropriate because the obligation for input activities should not be identified as a distinct performance obligation.

41. Analogising the rate regulation to paragraph 29(c) of IFRS 15 above, it can be said that the obligation for input activities that the regulator requires the rate-regulated entity to perform and the obligation to transfer goods or services to customers are highly interdependent or highly interrelated. In other words, each of the goods or services relating to input activity and output activity is significantly affected by one or more of the other goods or services. By this analogy, View 2B would be more appropriate because the obligation for input activities should not be identified as a distinct performance obligation.

Conclusion

42. The requirements of IFRS 15 would not fully represent the economic substance of rate-regulated activities because the revenue recognition requirements of IFRS 15 are only based on contracts with customers and thus cannot properly consider the effect of the rate regulation. A transaction under the rate regulation would be different from that only based on contracts with customers because the rate regulation would affect the amount, timing and uncertainty of future cash flows of the transaction.

43. The rate regulator engages in the input activities of the entity's operation: (1) it may require a rate-regulated entity to perform a certain type of input obligations; or (2) it may determine the amount and timing of consideration that the entity receives from the customer.

44. This engagement of the rate regulator occurs by virtue of a regulatory agreement. The regulatory agreement between the rate regulator and the entity affects the entity's contracts with customers. This effect results in a timing difference between the receipt of consideration from the customer and the satisfaction of the entity's performance of obligation to the customer; that is, the regulatory agreement requires the entity to satisfy the performance obligation before receiving a consideration and vice versa. Accordingly, it would be necessary to develop a new Standard to reflect the timing difference arising from the existence of the rate regulation.

45. The KASB tentatively views that a new IFRS standard can be developed drawing upon the requirements in IFRS 15. Specifically, the KASB thinks that the accounting for rate-regulated activities can be considered by analogising to the concept of **progressive revenue recognition over time** and **variable consideration** in IFRS 15.

46. On the basis of the analyses above, The KASB proposes developing a new accounting model for rate-regulated activities as follows:

    (a) the rate-regulated entity recognises its revenue reflecting the revenue requirement adjustment when it satisfies the performance obligation to transfer goods or services to customers;

    (b) the timing of revenue recognition is not dependent on when the consideration for transferring goods or services is billed or contractually billable to a customer; and

    (c) the obligation for input activities that the rate regulator requires the rate-regulated entity to perform (for example, the construction of a PPE to produce goods or services to transfer) is not separately identified for revenue recognition, and the revenue requirement (ie consideration) for those input activities will be recognised as revenue when the cost of the related asset is expensed (for example, as the PPE is depreciated).

Questions for ASAF members

1. Do you think that the regulatory agreement affects the timing, amount and uncertainty of revenue recognition from contracts with customers?

2. Do you support View 2 (ie recognise regulatory assets and liabilities) and also View 2B (ie revenue is recognised when the rate-regulated entity completes the whole process of operating activity to transfer goods or services to customers)?

3. Do you have any comments on the proposal of a revenue recognition model for rate-regulated activities provided in Appendix 2 of this paper?

APPENDIX 1 — Defined terms

billable revenue[7]	That is the amount of revenue that the entity bills(invoices) to customers, using the established rate per unit, in exchange for the actual quantity of rate-regulated goods or services delivered in the period (**Notes**) Billable revenue is the same as 'receivable' that is billed to customer through contracts with customers.
billable revenue[8]	That is the amount of revenue that the entity bills(invoices) to customers, using the established rate per unit, in exchange for the actual quantity of rate-regulated goods or services delivered in the period (**Notes**) Billable revenue is the same as 'receivable' that is billed to customer through contracts with customers.
defined rate regulation[9]	Defined rate regulation involves a regulatory pricing (ie rate-setting) framework that includes all of the following: (a) it applies in situations in which customers have little or no choice but to purchase the goods or services from the rate-regulated entity because: (i) there is no effective competition to supply; and (ii) the rate-regulated goods or services are essential to customers (such as clean water or electricity). (b) it establishes parameters to maintain the availability and quality of the supply of the rate-regulated goods or services and other rate-regulated activities of the entity. (c) it establishes parameters for rates (sometimes referred to as prices or tariffs) that provide regulatory protections that: (i) support greater stability of prices for customers; and (ii) support the financial viability of the rate-regulated entity. (d) it creates rights and obligations that are enforceable on the rate-regulated entity and on the rate regulator.
rate regulation[10]	A framework for establishing the prices that can be charged to

[7] IASB Discussion Paper, Reporting the Financial Effects of Rate Regulation, September 2014.
[8] IASB Discussion Paper, Reporting the Financial Effects of Rate Regulation, September 2014.
[9] IASB Discussion Paper, Reporting the Financial Effects of Rate Regulation, September 2014.

customers for goods or services and that framework is subject to oversight and/or approval by a rate regulator.

rate regulator[11] An authorised body that is empowered by statute or regulation to establish the rate or a range of rates that bind an entity. The rate regulator may be a third-party body or a related party of the entity, including the entity's own governing board, if that body is required by statute or regulation to set rates both in the interest of the customers and to ensure the overall financial viability of the entity.

rate-regulated activities[12] An entity's activities that are subject to rate regulation.

regulated rate per unit[13] The entity charges to customers for delivering the rate-regulated goods or services during the regulatory period

(**Notes**) Regulated rate per rate is similar to 'stand-alone selling price (of a good or service)' in IFRS 15. It is the rate set by the regulator through the rate-setting mechanism.

revenue requirement[14] That is the amount of consideration to which the entity is entitled in exchange for carrying out the required rate-regulated activities during the period, including those both directly and indirectly related to delivering the rate-regulated goods or services. The regulatory agreement establishes the total amount of consideration (commonly called the 'revenue requirement', 'allowable revenue' or 'authorised revenue') to which the entity is entitled in exchange for all of its rate-regulated activities. This revenue requirement reflects a targeted rate of return, which is established in the defined rate regulation. The entity is not paid directly by the rate regulator or the government for carrying out these activities. Instead, it receives consideration for these activities through the amounts billed to customers.

(**Notes**) Revenue requirement is a combination of 'transaction price' defined in **IFRS 1**5 (ie The amount of consideration to which an entity expects to be entitled in exchange for transferring promised goods or services to a customer, excluding amounts collected on behalf of third

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[10] IFRS 14 *Regulatory Deferral Accounts*
[11] IFRS 14 *Regulatory Deferral Accounts*
[12] IFRS 14 *Regulatory Deferral Accounts*
[13] IASB Discussion Paper, Reporting the Financial Effects of Rate Regulation, September 2014.
[14] IASB Discussion Paper, Reporting the Financial Effects of Rate Regulation, September 2014.

parties) and 'revenue requirement adjustment' that is added or subtracted through the rate-setting mechanism. Put differently, revenue requirement is similar to the transaction price that includes 'variable consideration' defined in IFRS 15.

revenue requirement adjustment

That is the difference between the revenue requirement established in the regulatory agreement during the regulatory period and the actual amount that has been collected from customers. Revenue requirement adjustment will be collected or reimbursed through the adjustment in the rate in the future periods.

(**Notes**) Revenue requirement adjustment is similar to variable consideration. While the amount of consideration in IFRS 15 is contingent due to discount, rebate, reimbursement, credits, price concessions, incentive, etc, an adjustment of the revenue requirement in the rate regulation is contingent due to a change in purchasing prices, volume different, etc. An adjustment of the revenue requirement occurs when the revenue requirement is adjusted in accordance with the requirements of the regulatory agreement between the regulator and the rate-regulated entity.

APPENDIX 2 — Proposal of a revenue recognition model for rate-regulated activities

The following table is a proposal of revenue recognition model for rate-regulated activities based on IFRS 15. In the table below, the texts added to IFRS 15 are underlined and highlighted.

IFRS 15	A proposal for rate-regulated activities
The core principle of IFRS 15 is that an entity recognises revenue to depict the transfer of promised goods or services to customers in an amount that reflects the consideration to which the entity expects to be entitled in exchange for those goods or services. An entity recognises revenue in accordance with that core principle by applying the following steps:	The core principle of NEW MODEL is that a regulated entity recognises revenue to depict the transfer of promised goods or services to customers in an amount that reflects the consideration to which the entity expects to be entitled in exchange for those goods or services based on the contracts with a customer and the regulatory agreement with a regulator. A regulated entity recognises revenue in accordance with that core principle by applying the following steps:
Step 1: Identify the contract(s) with a customer—a contract is an agreement between two or more parties that creates enforceable rights and obligations. The requirements of IFRS 15 apply to each contract that has been agreed upon with a customer and meets specified criteria. In some cases, IFRS 15 requires an entity to combine contracts and account for them as one contract. IFRS 15 also provides requirements for the accounting for contract modifications.	Step 1: Identify the contract(s) with a customer and the regulatory agreement with a regulator—A contract is an agreement between two or more parties that creates enforceable rights and obligations. A regulatory agreement is an agreement between the regulated entity and the regulator that creates enforceable rights and obligations. The requirements of NEW MODEL apply to each contract and regulatory agreement that has been agreed upon with a customer and with a regulator, and meets specified criteria. The regulated entity should take both the contract and the regulatory agreement into account together. In some cases, NEW MODEL requires a regulated entity to combine contracts and account for them as one contract. NEW MODEL also provides requirements for the accounting for contract or regulatory agreement modifications.
Step 2: Identify the performance obligations in the contract—a contract includes promises to transfer goods or services to a customer. If those goods or services are distinct, the promises are performance obligations and are accounted for separately. A good or service is distinct if the customer can benefit from the good or service on its own or together with other resources that are readily available to the customer and the entity's promise to transfer the good or service to the customer is separately identifiable from other promises in the contract.	Step 2: Identify the performance obligations in the contract and the promises in the regulatory agreement. A contract includes promises to transfer goods or services to a customer. A regulatory agreement may include promises to perfor the activities directly or indirectly relevant to transferring goods or services to a customer. If those goods or services are distinct, the promises are performance obligations and are accounted for separately. A good or service is distinct if the customer can benefit from the good or service on its own or together with other resources that are readily available to the customer and the entity's promise to transfer the good or service to the customer is separately identifiable from other promises in the contract.
Step 3: Determine the transaction price—the transaction price is the amount of consideration in a contract to which an entity expects to be entitled in exchange for transferring promised goods or services to a customer. The transaction price can be a fixed amount of customer consideration, but it	Step 3: Determine the transaction price and revenue requirement adjustment is the amount of consideration in a contract to which a regulated entity expects to be entitled in exchange for transferring promised goods or services to a customer. The transaction price and revenue

IFRS 15	A proposal for rate-regulated activities
may sometimes include variable consideration or consideration in a form other than cash. The transaction price is also adjusted for the effects of the time value of money if the contract includes a significant financing component and for any consideration payable to the customer. If the consideration is variable, an entity estimates the amount of consideration to which it will be entitled in exchange for the promised goods or services. The estimated amount of variable consideration will be included in the transaction price only to the extent that it is highly probable that a significant reversal in the amount of cumulative revenue recognised will not occur when the uncertainty associated with the variable consideration is subsequently resolved.	requirement adjustment can be a fixed amount of customer consideration, but it may sometimes include variable consideration (when a regulator adjusts the amount of consideration, the adjustment may be reflected in the recognition of revenue) or consideration in a form other than cash. The transaction price and revenue requirement adjustment are also adjusted for the effects of the time value of money if the contract includes a significant financing component and for any consideration payable to the customer. If the consideration is variable, a regulated entity estimates the amount of consideration to which it will be entitled in exchange for the promised goods or services. The estimated amount of variable consideration will be included in the transaction price or revenue requirement adjustment only to the extent that it is highly probable that a significant reversal in the amount of cumulative revenue recognised will not occur when the uncertainty associated with the variable consideration is subsequently resolved.
Step 4: Allocate the transaction price to the performance obligations in the contract—an entity typically allocates the transaction price to each performance obligation on the basis of the relative stand-alone selling prices of each distinct good or service promised in the contract. If a stand-alone selling price is not observable, an entity estimates it. Sometimes, the transaction price includes a discount or a variable amount of consideration that relates entirely to a part of the contract. The requirements specify when an entity allocates the discount or variable consideration to one or more, but not all, performance obligations (or distinct goods or services) in the contract.	Step 4: Allocate the transaction price or the adjusted revenue requirement to the performance obligations in the contract—a regulated entity typically allocates the transaction price or the adjusted revenue requirement to each performance obligation on the basis of the relative stand-alone selling prices of each distinct good or service promised in the contract. If a stand-alone selling price is not observable, a regulated entity estimates it. Sometimes, the transaction price or the adjusted revenue requirement includes a discount or a variable amount of consideration that relates entirely to a part of the contract. The requirements specify when a regulated entity allocates the discount or variable consideration to one or more, but not all, performance obligations (or distinct goods or services) in the contract.
Step 5: Recognise revenue when (or as) the entity satisfies a performance obligation—an entity recognises revenue when (or as) it satisfies a performance obligation by transferring a promised good or service to a customer (which is when the customer obtains control of that good or service). The amount of revenue recognised is the amount allocated to the satisfied performance obligation. A performance obligation may be satisfied at a point in time (typically for promises to transfer goods to a customer) or over time (typically for promises to transfer services to a customer). For performance obligations satisfied over time, an entity recognises revenue over time by selecting an appropriate method for measuring the entity's progress towards complete satisfaction of that performance obligation.	Step 5: Recognise revenue when (or as) the entity satisfies a performance obligation—a regulated entity recognises revenue when (or as) it satisfies a performance obligation by transferring a promised good or service to a customer (which is when the customer obtains control of that good or service). The amount of revenue recognised is the amount allocated to the satisfied performance obligation. A performance obligation may be satisfied at a point in time (typically for promises to transfer goods to a customer) or over time (typically for promises to transfer services to a customer). For performance obligations satisfied over time, a regulated entity recognises revenue over time by selecting an appropriate method for measuring the entity's progress towards complete satisfaction of that performance obligation. Performance obligation may include some activities to be performed according to requirement by a regulator. Obligations of those activities related directly or indirectly to the

IFRS 15	A proposal for rate-regulated activities
	performance obligation also should be satisfied to recognise the related revenue. Obligations of those activities would be satisfied when the related expenditures are expensed for the purpose of revenue recognition. When there exists a difference between the regulatory asset or liability/regulatory revenue and the contract asset or liability /contract revenue, the contract asset or liability /contract revenue should be reconciled to reflect the difference.

KASB DISCUSSION PAPER

29 September 2016

Accounting Standards Advisory Forum

Project	**Rate-regulated Activities**
Paper topic	Required costs which are currently expensed

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Purpose of this paper

1. This paper discuses how the rate-regulated activities have financial effect on rights and obligations of the rate-regulated entity in defined rate regulation. There are two views based on the revenue approach, which have been supported by many stakeholders. By using an illustrative example, this paper will address the two views.

2. This paper provides a simple illustrative example, which relates to the rate-regulated entity's activity of purchasing raw materials. Specifically, it relates to 'required costs that are currently expensed' and is one of the entity's activity directly relevant to transferring goods or services to a customer. The issue is when the entity should recognise revenue if the revenue requirement changes due to the purchasing price change in raw materials and thus an adjustment of revenue requirement is made.

Overview

3. As mentioned above, based on the revenue approach, there are two views as follows:

   (a) **View 1**—make no adjustment to the predominant existing IFRS practice; and

   (b) **View 2**—recognise the revenue requirement as the revenue for carrying out the required rate-regulated activities during the period.

4. The two views will be assessed in the light of the *Conceptual Framework* and IFRS 15, using an illustrative example.

5. The fact patterns of the illustrative example are as follows (See also Appendix of this paper).

Fact patterns[1]

The rate regulated entity (the entity) imports natural gas from overseas and provides it to customers after going through manufacturing process. The raw material cost of natural gas is contingent on foreign exchange rate and oil price. The rate regulator approved that the revenue requirement including the raw material cost of natural gas is CU1,000 per annum. The ex-ante revenue requirement is the same from Year 1 throughout Year 5. And assume that there is no required margin. The selling price is set at CU10 as the entity forecasts that it will sell 100 units of the product per annum. For the convenience of discussion, assume that the entity does not have any transactions involving transfer of business, spin-off, discontinuation of business, etc.

Illustrative Example A: a case of asset recognition

In Year 1, the actual cost was CU1,200, which exceeds the estimated cost of CU1,000, due to the fluctuation in foreign exchange rate and oil price. The actual quantity of sold products was 90 units, which is lower than the estimated quantity of 100 units. The revenue requirement for 90 units was CU1,200.

The regulator approves that the entity increases the rate in Year 2 in order to compensate the amount that was caused by the actual cost that exceeded the estimated cost and the actual quantity that was lower than the estimated quantity. Assume that there is no difference between the actual amount and the estimated amount in terms of cost and quantity from Year 2.

Illustrative Example B: a case of liability recognition

In Year 1, the actual cost was CU800, which is lower than the estimated cost of CU1,000, due to the fluctuation in foreign exchange rate and oil price. The actual quantity of sold products was 110 units, which is higher than the estimate quantity of 100 units. The regulator approves that the rate-regulated entity decrease the rate in Year 2 to reflect the less-than-expected actual cost and the more-than-expected actual volume. Assume that there is no difference between the actual amount and the estimated amount in terms of cost and quantity from Year 2.

[1] Monetary amounts are denominated in 'currency units (CU)'.

Assessment 1— *Conceptual Framework* perspective

6. The assessment will show that **View 2** (ie recognise the revenue requirement as the revenue for carrying out the required rate-regulated activities during the period) can be supported by the *Conceptual Framework*. The assessment will be made on the basis of **three aspects relating to the definition of asset and two aspects of the definition of liability** under the *Conceptual Framework*. The five aspects are as follows:

   Illustrative Example A: a case of asset recognition

   (a) result from past transactions or other past event (relating to definition of asset and illustrative Example A of this paper).

   (b) exercising control (relating to definition of asset and illustrative Example A of this paper).

   (c) future economic benefit (relating to definition of asset and illustrative Example A of this paper).

   Illustrative Example B: a case of liability recognition

   (d) no practical ability to avoid (relating to definition of asset and illustrative Example B of this paper).

   (e) present or conditional obligation to transfer an economic resource (relating to definition of asset and illustrative Example B of this paper).

7. The assessment will be performed below on Illustrative Example A (Assessment 1.1) and Illustrative Example B (Assessment 1.2), respectively.

Assessment 1.1— Illustrative Example A: a case of asset recognition

Result from past transactions or other past event

8. The fact patterns of the illustrative example above (See also Appendix of this paper) show that providing natural gas to customers is a past transaction. And the adjustment of revenue requirement (ie CU300) in Year 2 is a result from this transaction. The revenue requirement adjustment is due to the purchasing price increase in raw materials (ie CU200) and the difference between the actual volume and estimated volume (ie CU 100).

Exercising control

9. The rate-regulated entity has an exclusive right to collect the revenue requirement relating to the required cost (ie raw material cost) in the environment of defined rate regulation where there is

no effective competition. And the identified revenue requirement adjustment (ie CU300) is ensured by a regulatory agreement or related law. Accordingly, the revenue requirement adjustment (ie CU300) is an asset that is controlled by the rate-regulated entity.

Future economic benefit in terms of definition of an asset

10. The revenue requirement adjustment (ie CU300) is the amount that will be reflected in the future rate and be collected from customers in the future periods. In other words, there will be future economic benefit to the rate-regulated entity in Year 2.

Assessment 1.2— Illustrative Example B: a case of liability recognition

No practical ability to avoid

11. As the rate-regulated entity billed to the customer more than the revenue requirement in Year 1 (ie CU 300), the rate for the customer in Year 2 is decreased to reflect the amount that exceeds the revenue requirement in Year 1. The rate in Year 2 is determined by deducting the revenue requirement adjustment (ie CU 300) from the revenue requirement in Year 2 calculated on the assumption that there is not unexpected event.

12. The rate-regulated entity has an obligation to continue to provide natural gas to customers at a rate set by the regulator and it should abide by the regulatory agreement or law that enforces the performance of specific activities. Accordingly, the revenue requirement adjustment in Year 1 (ie CU 300) is similar to unearned revenue. The obligation to transfer natural gas is unavoidable by the rate-regulated entity.

Present or conditional obligation to transfer an economic resource

13. The rate-regulated entity has to decrease the rate in Year 2 by the revenue requirement adjustment amount (ie CU 300) in Year 1. In effect, this means that the entity received the revenue requirement of Year 2 in Year 1. In other words, the entity received, in advance, a part of the consideration in return for the goods or services that is to be provided in Year 1. Since the entity does not return this revenue requirement adjustment (ie CU 300) in Year 1 to customers but assumes the obligation to provide natural gas in Year 2, it should recognise such obligation to provide goods or services as non-financial liability. Accordingly, this adjustment meets the definition of liability.

Assessment 2—IFRS 15 perspective

Timing of revenue recognition for unbilled revenue requirement: Two views

14. For the purpose of discussing revenue recognition for unbilled revenue requirement, View 1 and View 2 can be rephrased as follows:

    - **View 1**—Recognise in **Year 2** the revenue requirement adjustment (ie CU 300) that is not reflected in the contract with customers in Year 1 because such revenue requirement will be billed to, and collected from, customers in Year 2; and

    - **View 2**—Recognise in **Year 1** the revenue requirement that is not reflected in the contract with customers in Year 1 because such revenue requirement is the consideration for transferring goods or services to customers in Year 1.

15. In View 1, the revenue requirement adjustment (ie CU300) in Year 1 should be recognised as revenue in Year 2 because it will be reflected in the rate in Year 2 and thus is collectible from customers. The revenue requirement adjustment (ie CU 300) is a consideration for satisfying the performance obligation relating to the contract with customers in Year 2.

16. In View 2, the revenue requirement adjustment (ie CU300) in Year 1 is, by nature, the variable consideration described in IFRS 15 and the rate-regulated entity has satisfied its performance obligation in return for the revenue requirement including the adjustment in accordance with the regulatory agreement in Year 1. Although the revenue requirement including the adjustment in Year 1 is not an explicit variable consideration in the contract with the customers, it is a variable consideration for the performance obligation satisfied in accordance with the regulatory agreement in Year 1.

17. Accordingly, as mentioned in Agenda Paper 3Ba, revenue for this adjusted consideration (ie CU 1,200) can be recognised as revenue in Year 1. This is because it is a consideration in return for satisfying the performance obligation in Year 1 regardless of the fact that this adjusted consideration is not contractually billable in Year 1, but is contractually billable in Year 2 by adjusting the amount of consideration in the contract. This rationale can be analogised to the requirement for progressive revenue recognition over time in IFRS 15.

Question for ASAF members
1. Do you have any comments on the illustrative example in the appendix of this paper?

APPENDIX— Illustrative examples of currently contributed and expensed cost: comparison of View 1 and View 2[2]

Fact patterns

Common fact patterns

The rate regulated entity (the entity) imports natural gas from overseas and provides it to customers after going through manufacturing process. The raw material cost of natural gas is contingent on foreign exchange rate and oil price. The rate regulator approved that the revenue requirement including the raw material cost of natural gas is CU1,000 per annum. The ex-ante revenue requirement is the same from Year 1 throughout Year 5. And assume that there is no required margin. The selling price is set at CU10 as the entity forecast that it will sell 100 units of the product per annum. For the convenience of discussion, assume that the entity does not have any transactions involving transfer of business, spin-off, discontinuation of business, etc.

Illustrative Example A: a case of asset recognition

In Year 1, the actual cost was CU1,200, which exceeds the estimated cost of CU1,000, due to the fluctuation in foreign exchange rate and oil price. The actual quantity of sold products was 90 units, which is lower than the estimated quantity of 100 units. The revenue requirement for 90 units was CU1,200.

The regulator approves that the entity increases the rate in Year 2 in order to compensate the amount that was caused by the actual cost that exceeded the estimated cost and the actual quantity that was lower than the estimated quantity. Assume that there is no difference between actual amount and estimated amount in terms of cost and quantity from Year 2.

Illustrative Example B: a case of liability recognition

In Year 1, the actual cost was CU800, which is lower than the estimated cost of CU1,000, due to the fluctuation in foreign exchange rate and oil price. The actual quantity of sold products was 110 units, which is higher than the estimate quantity of 100 units. The regulator approves that the rate-regulated entity decrease the rate in Year to reflect the less-than-expected actual cost and the more-than-expected actual volume. Assume that there is no difference between actual amount and estimated amount in terms of cost and quantity from Year 2.

[2] Monetary amounts are denominated in 'currency units (CU)'.

Illustrative Example A

CU

	Y1	Y2
Original Revenue Requirement	1,000	1,000
Cash flow for activities	-	-
Volume difference	**(100)**	**100**
Cost difference	**(200)**	**200**
Amounts billed to customers	900	1,300
	(CU10*@90)	(CU13*@100)
View 1 Adjusted Revenue	**900**	**1,300**
View 2 Adjusted Revenue	**1,200**	1,000

Journal entries of raw material costs variances and volume difference under View 1 and View 2

View 1	View 2
Year 1 DR Receivables CU900 CR Revenue CU900 *The CU900 is billed to customers and recognised as revenue in Year1.* *< No adjustment>*	**Year 1** DR Receivables CU900 CR Revenue CU900 *CU900 is billed to customers and recognised as revenue in Year1.* DR Regulatory asset CU300 CR Revenue CU300 *The entity has a right to recover CU200 of raw materials cost that was incurred and to adjust CU100 of the revenue requirement for the volume difference in Year1 through future billing to customers.*
Year 2 DR Receivables CU1,300 CR Revenue CU1,300 *The CU1,300 is billed to customers and recognised as revenue in Year 2.* *< No adjustment>*	**Year 2** DR Receivables CU1,300 CR Revenue CU1,000 CR Regulatory asset CU300 CU1,300 is the amount billed to customers. CU 1,000 is the amount of the required revenue in Year 2 . CU300 , which was recognised as regulatory asset in Year 1, is transferred to receivable and collected from customers in Year 2.

(a) View 1

Year 1

CU

Statement of financial positions

Contract asset(Receivables)	900	Contract liability(Payables)	1,200

Statement of profit or loss

Cost of sales	1,200	Revenue	900

Year 2

Statement of financial positions

Contract asset(Receivables)	1,300	Contract liability(Payables)	1,000

Statement of profit or loss

Cost of sales	1,000	Revenue	1,300

(b) View 2

Year 1

Statement of financial positions

Contract asset(Receivables)	900	Contract liability(Payables)	1,200
Regulatory asset	300		

Statement of profit or loss

Cost of sales	1,200	Revenue	1,200[1]

(Footnote 1) CU1,200 is the sum of CU900, which is revenue from the contract with customers and CU300, which is the revenue requirement adjustment in Year 1.

Year 2

Statement of financial positions

Contract asset(Receivables)	1,300	Contract liability(Payables)	1,300[1]

Statement of profit or loss

Cost of sales	1,000	Revenue	1,000[2]

(Footnote 1) CU1,300 is the sum of CU 300, which is the unsettled amount, and CU1,000, which is the payables for purchasing raw materials.

(Footnote 2) CU1,300 billed to customers is the sum of the contract revenue (ie CU1,000) for providing natural gas and the revenue requirement adjustment (ie CU300), which is the collection of the regulatory asset in Year 1.

Illustrative Example B

CU

	Y1	Y2
Original Revenue Requirement	1,000	1,000
Cash flow for activities	-	-
Volume difference	**100**	**(100)**
Cost difference	**200**	**(200)**
Amounts billed to customers	1,100	700
View 1 Adjusted Revenue	**1,100**	**700**
View 2 Adjusted Revenue	**800**	1,000

Journal entries of raw material costs variances and volume difference under View 1 and View 2

View 1	View 2
Year 1 DR Receivables CU1,100 CR Revenue CU1,100 *The CU1,100 is billed to customers and recognised as revenue in Year 1.* *< No adjustment>*	**Year 1** DR Receivables CU1,100 CR Revenue CU1,100 *CU1,100 is the total amount billed to customers. But the customers are over-billed for the revenue requirement in Year 1 and thus the adjustment entry is made as below.* DR Revenue CU300 CR Regulatory liability CU300 *The entity does not return this revenue requirement adjustment(ie CU300) in Year 1 to customers but assumes the obligation to provide natural gas in Year 2. The entity recognises such obligation to provide natural gas as non-financial liability.*
Year 2 DR Receivables CU700 CR Revenue CU700 *The CU700 is billed to customers and recognised as revenue in Year 2.* *< No adjustment>*	**Year 2** DR Receivables CU700 DR Regulatory liability CU300 CR Revenue CU1,000 *The over-billed amount in Year 1 leads to charging customers less amount for Year 2, which is CU700. The over-billed amount in Year 1 is an unearned revenue for providing goods in Year 2. The entity thus recognises revenue when it completes the*

View 1	View 2
	provision of natural gas.

(a) View 1

Year 1

CU

Statement of financial positions

Contract asset(Receivables)	1,100	Contract liability(Payables)	800

Statement of profit or loss

Cost of sales	800	Revenue	1,100

Year 2

Statement of financial positions

Contract asset(Receivables)	700	Contract liability(Payables)	1,000

Statement of profit or loss

Cost of sales	1,000	Revenue	700

(a) View 2

Year 1

CU

Statement of financial positions

Contract asset(Receivables)	1,100[1]	Contract liability(Payables)	800
		Regulatory liability	300

Statement of profit or loss

Cost of sales	800	Revenue	800

(Footnote 1) The total amount billed to customers (ie CU1,100) is the sum of the contract revenue from customers for providing natural gas in Year 1 (ie CU800) and the advanced receipt for providing natural gas in Years 2 (ie CU300), which is a regulatory liability recognised in the expectation that the future rate will be decreased due to overbilling.

Year 2

Statement of financial positions

Contract asset(Receivables)	1,000[1]	Contract liability(Payables)	1,000[2]

Statement of profit or loss

Cost of sales	1,000	Revenue	1,000[3]

(Footnote 1) CU1,000 is the sum of the balance (ie CU300) after settling the payable by using a part of the amount collected in Year 1 (ie CU1,100) and the amount billed to customers in Year 2 (ie CU700)

(Footnote 2) CU1,000 is the sum of the unsettled amount (ie CU300) of the contract liability (payables) that was recognised as the regulatory liability in Year 1 and the amount payable for purchasing raw materials in Year 2 (ie CU700).

(Footnote 3) CU 1,000 is the revenue from contract with customers (ie CU1,300) in Year 2 minus the revenue requirement adjustment (ie CU300), which is the regulatory liability in Year 1.

KASB DISCUSSION PAPER

29 September 2016

Accounting Standards Advisory Forum

Project	**Rate-regulated Activities**
Paper topic	Required costs which will be expensed in future periods

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Purpose of this paper

1. This paper addresses issues assuming that View 2 as described in the previous Agenda Papers (ie Agenda Papers 3Ba and 3Bb) is taken. Two views (View 2A and View 2B) will be discussed by using an illustrative example.

2. The illustrative example in this paper relates to the activities that are required to be performed as a promise with regulators, which are indirectly relevant to transferring goods or services to customers, whereas the illustrative example in Agenda Paper 3Bb related to the activities performed directly relevant to transferring goods or services to customers.

Overview

3. The illustrative example in this paper is a simplified version of the illustrative case of construction work provided in the agenda paper for the May 2015 IASB meeting. Construction work is one of the obligations required by the regulatory agreement between the rate regulator and the rate-regulated entity; and an obligation to maintain readiness of a related asset to produce goods or services to customers.

4. The rate-setting mechanism in the regulatory agreement reflects the amount to construct or purchase the related asset (ie acquired cost) in the rate as revenue requirement. And the rate-regulated entity recognises depreciation expenses of the related asset over the useful life of the related asset.

5. In practice, the acquired cost, partly or wholly, is often reflected in the rate before the completion of acquiring the asset for the purpose of funding the purchase. In this case, there are three different timings to consider: (i) billing to customers; (ii) completion of the related asset

6. purchase; (iii) the use of the related asset, as part of the activity to provide goods or services to customers. These timing differences raise an issue about the timing of revenue recognition relating to the revenue requirement adjustment.

7. As mentioned above, assuming View 2 is taken, there are two views on this issue.

   (a) **View 2A**—The rate-regulated entity recognises revenue when it satisfies the performance obligation to the rate regulator; and

   (b) **View 2B**—The rate-regulated entity recognises revenue only when it satisfies the performance obligation to the customer.

8. The two views will be assessed in the light of IFRS 15, using an illustrative example.

9. The fact patterns of the illustrative example are as follows. (See Appendix of this paper for more detailed information.)

Fact patterns[1]

In Year 3[2], the rate regulator approved a plan for the entity to build a new natural gas plant to expand its capacity to distribute natural gas. The expansion is required because the local government plans to build a new town within the jurisdiction to deal with an expected population increase related to the development of new industrial and business parks. The rate regulator also approved that the rate reflects the construction cost of CU500, to help fund the construction. The construction commenced in Year 3 and is expected to be completed in Year 4. The entity spends CU500 during Year 4, which is capitalised in accordance with IAS 16. The depreciation expense of the plant will be recognised from Year 5 over its useful life of 10 years with the straight line method.

Assessment—IFRS 15 perspective

View 2A

10. In **View 2A**, the rate regulator represents collective customers and enters into the agreement with the rate-regulated entity in the capacity of collective customers. In this sense, the performance obligation established in the regulatory agreement is the performance obligation of the rate-regulated entity to the customer. Also, the performance obligation in the regulatory agreement

[1] Monetary amounts are denominated in 'currency units (CU)'.

[2] Assume that fact patterns of Year 1 and Year 2 are the same as those in Illustrative Example A of Agenda Paper 3Bb.

includes incidental activities to the main activity of providing goods or services to customers, such as maintaining readiness of the related asset to produce goods or services.

11. In the illustrative example, the rate-regulated entity was required to construct a PPE by the regulatory agreement and thus billed CU 500 as part of revenue requirement in Year 3 to fund the construction. The amount collected in Year 3 is recognised as liability (ie unearned revenue) because the entity has not satisfied the obligation to construct the PPE.

12. The entity recognises CU500 as revenue in Year 4 because it has completed its construction of the PPE and thus satisfied the distinctive performance obligation described in IFRS 15.

13. In View 2A, the obligation to construct a PPE (ie indirect obligation) as well as the obligation to transfer natural gas to customers (ie direct obligation) is considered as distinctive performance obligation for revenue recognition (ie a separate unit of performance obligation).

14. Accordingly, the rate-regulated entity recognises revenue when it satisfies the performance obligation established in the regulatory agreement even before the entity has transferred goods or services to customers.

View 2B

15. In **View 2B**, an input activity, the activity to construct a plant as a promise with the rate regulator, should be combined with the output activity (ie to transfer natural gas to customers) as a 'bundle of goods or services' and these two activities are 'highly interdependent or highly interrelated'. Therefore, the rate-regulated entity should not identify the obligation to construct a plant as a distinct performance obligation and thus recognises its revenue when it satisfies the ultimate performance obligation to transfer natural gas to customers.

16. The plant is used for satisfying the performance obligation to transfer natural gas to customers, as depreciation expense is incurred. Accordingly, the rate-regulated entity recognises its revenue in correspondence with the depreciation amount over the useful life of the plant (ie for 10 years starting from Year 5).

17. Consequently, the entity recognises revenue annually by allocating the revenue requirement collected in Year 3 (ie CU 500) in correspondence to the depreciation expense of the PPE starting from Year 5 for 10 years onwards.

KASB's view

18. The KASB supports View 2B because View 2B would be more consistent with the requirements of IFRS 15. Also, View 2B would be better than View 2A in that it would not undermine the comparability among non-regulated entities and rate-regulated entities for the purpose of presenting revenue.

Question for ASAF members
1. Do you have any comments on the illustrative example in the appendix of this paper?

APPENDIX— Illustrative example of non-currently contributed cost: comparison of View 2 A and View 2 B[3]

Fact patterns[4]

In Year 3, the rate regulator approved a plan for the entity to build a new natural gas plant to expand its capacity to distribute natural gas. The expansion is required because the local government plans to build a new town within the jurisdiction to deal with an expected population increase related to the development of new industrial and business parks. The rate regulator also approved that the rate reflects the construction cost of CU500, to help fund the construction. The construction commenced in Year 3 and is expected to be completed in Year 4. The entity spends CU500 during Year 4, which is capitalised in accordance with IAS 16. The depreciation expense of the plant will be recognised from Year 5 over its useful life of 10 years with the straight line method.

CU

	Y1	Y2	Y3	Y4	Y5
Original Revenue Requirement	1,000	1,000	1,000	1,000	1,000
Cash flow for activities	-	-	-	-	-
Volume difference	(100)	100	-	-	-
Cost difference	(200)	200	-	-	-
Construction work	**-**	**-**	**500**	**(500)**	**-**
Amounts billed to customers	900	1,300	1,500	1,000	1,000
View 2A Adjusted Revenue	1,200	1,000	1,000	**1,500**	1,000
View 2B Adjusted Revenue	1,200	1,000	1,000	1,000	**1,050**

* Depreciation of the new plant starts from Year 5 to Year 14.

Journal entries of funding the construction of the entity's own assets

View 2A	View 2B
Year 3 DR Revenue CU500 CR Regulatory liability CU500 *The entity recognises a regulatory liability as it receives prepayment from customers for the construction work that it expects to carry out in the future.*	**Year 3** DR Revenue CU500 CR Regulatory liability CU500 *The entity has received funding for the construction of an additional plant. The funded amount lowers the rate for customers, which will be payable by customers to the entity for the transfer of natural gas in the future.*

[3] Monetary amounts are denominated in 'currency units (CU)'.

[4] Assume that fact patterns of Year 1 and Year 2 are the same as those of Illustrative Example A of Agenda Paper 3Bb.

View 2A	View 2B
Year 4 DR PP&E CU500 CR Payables CU500 *The construction costs are capitalised as property, plant and equipment.* DR Regulatory liability CU500 CR Revenue CU500 *By completing the construction of a new plant,.it performed the obligation under the regulatory agreement with the regulator as representative of collective customers.*	**Year 4** DR PP&E CU500 CR Payables CU500 *The construction costs are capitalised as property, plant and equipment.*
Year 5 onwards DR Depreciation expense CU50 CR PP&E CU50 *To recognise the depreciation charge for the year, based on the total cost of construction of CU500.*	**Year 5 onwards** DR Depreciation expense CU50 CR PP&E CU50 *To recognise the depreciation charge for the year, based on the total cost of construction of CU500* DR Regulatory liability CU50 CR Revenue CU50 *The entity has billed less for the services transferred to customers during the year because the consideration has been received in Year 3.* *(Acquiring the related asset is part of input operating activity and the performance obligation to customers is completed when the output is transferred to customers.*

(a) View 2A

Year 3

CU

Statement of financial positions

Contract asset(Receivables)	1,500	Contract liability(Payables)	1,000
		Regulatory liability	500

Statement of profit or loss

Cost of sales	1,000	Revenue	1,000

Year 4

Statement of financial positions

Cash	500[1]	Contract liability(Payables)	1,500[2]

Contract asset(Receivables)	1,000		
PP&E	500		

Statement of profit or loss

Cost of sales	1,000	Revenue	1,500[3]

(Footnote 1) CU500 is a cash inflow of CU1,500 resulting from collecting receivables minus a cash outflow of CU1,000 resulting from settling payables. CU500 is carried forward to Year 4.

(Footnote 2) CU1,500 is the sum of the payable (ie CU1,000) for purchasing raw materials and the payable (ie CU500) for purchasing the PP&E.

(Footnote3) CU1,500 is the sum of the contract revenue (ie CU1,000), which is billed to customers for providing goods or services in Year 4, and revenue requirement adjustment (ie CU500).

Year 5

Statement of financial positions

Contract asset(Receivables)	1,000	Contract liability(Payables)	1,000
PP&E	500		
Accumulated amount of depreciation	(50)		

Statement of profit or loss

Cost of sales	1,000	Revenue	1,000
Depreciation	50		

(b) View 2B

Year 3

CU

Statement of financial positions

Contract asset(Receivables)	1,500	Contract liability(Payables)	1,000
		Regulatory liability	500

Statement of profit or loss

Cost of sales	1,000	Revenue	1,000

Year 4

Statement of financial positions

Cash	500[1]	Contract liability(Payables)	1,000
Contract asset(Receivables)	1,000	Regulatory liability	500
PP&E	500		

Statement of profit or loss

Cost of sales	1,000	Revenue	1,000

(Footnote 1) CU500 is a cash inflow of CU1,500 resulting from collecting the receivables in Year 3 minus a cash outflow

of CU1,000 resulting from settling the payables. CU500 is carried forward to Year 4.

Year 5

Statement of financial positions			
Contract asset(Receivables)	1,000	Contract liability(Payables)	1,000
PP&E	500	Regulatory liability	450
Accumulated amount of depreciation	(50)		
Statement of profit or loss			
Cost of sales	1,000	Revenue	1,050[1]
Depreciation	50		

(Footnote 1) CU1,050 is the sum of contract revenue (ie CU1,000) and revenue requirement adjustment (ie CU50).

FW_ Draft TPA.rtf

From: Petsche, Nadine (TBS) []
To: samir chhelavda (Samir.Chhelavda@HydroOne.com) [Samir.Chhelavda@HydroOne.com]; Picard, Michel (mpicard@kpmg.ca) [mpicard@kpmg.ca]
Subject: FW: Draft TPA
Date: Wednesday, March 22, 2017 19:00:19
Attachment 1: imagefe741b.GIF
Attachment 2: TOR_2024-#12888010-v14-Transfer_Payment_Agreement_(Affordability_Fund_Trust).DOCX
Attachment 3: 12888010v13_Transfer Payment Agreement (Affordability Fund Trust) - 12888010v14_Transfer Payment Agreement (Affordability Fund Trust).pdf

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I think we've 'nailed' it! N

From: PRESTAGE, JA [mailto:JA.PRESTAGE@blakes.com]
Sent: March-22-17 6:23 PM
To: Petsche, Nadine (TBS)
Cc: Johnson, Paul (ENERGY/MEDEI/MRI); Ranalli, David (ENERGY); Schachtschneider, Michelle (ENERGY); Qureshi, Musab (ENERGY); Schwab-Pflug, Emma (ENERGY); Syed, Usman (ENERGY); ASHBOURNE, STEPHEN
Subject: Draft TPA

Nadine:

A further draft of the TPA is attached to reflect your most recent comments.

J.A.

J.A. Prestage
Partner
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imagefe741b.pdf

Blakes

TOR_2024-#12888010-v14-Transfer_Payment_Agreement_(Affordability_Fund_Trust).pdf

ONTARIO TRANSFER PAYMENT AGREEMENT

THE AGREEMENT, effective as of the • day of March, 2017 (the **"Effective Date"**)

B E T W E E N :

Her Majesty the Queen in right of Ontario
as represented by the Minister of Energy

(the "Province")

- and -

Computershare Trust Company of Canada, in its capacity as trustee of Affordability Fund Trust

(together with its successors and assigns, the "Recipient" and, together with the Province, the "Parties")

BACKGROUND

Computershare Trust Company of Canada is the original trustee of the Affordability Fund Trust.

The Province wishes to provide Funds to the Recipient to be held, invested, applied and distributed in accordance with the terms of the Declaration of Trust (defined below), in furtherance of the Purpose (as defined in the Declaration of Trust), including having regard to the Principles set forth in Annex A.

CONSIDERATION

In consideration of the mutual covenants and agreements contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is expressly acknowledged, the Parties agree as follows:

ENTIRE AGREEMENT

This agreement (as amended, restated, supplemented or otherwise modified from time to time, the **"Agreement"**), including:

Schedule "A" - General Terms and Conditions
Schedule "B" - Project Specific Information
Schedule "C" - Project - Certain Obligations of the Recipient
Schedule "D" - Budget
Schedule "E" - Payment Plan
Schedule "F" - Reporting
Annex "A" - Principles, and
any amending agreement entered into as provided for below,

constitutes the entire agreement between the Parties with respect to the subject matter contained in this Agreement and supersedes all prior oral or written representations and agreements.

COUNTERPARTS

The Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

AMENDING THE AGREEMENT

The Agreement may only be amended by a written agreement duly executed by the Parties.

ACKNOWLEDGEMENT

The Recipient:

(a) acknowledges that it has read and understands the provisions contained in the entire Agreement; and

(b) agrees to be bound by the terms and conditions contained in the entire Agreement.

IN WITNESS WHEREOF, the Parties have executed the Agreement on the dates set out below.

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO as represented by Minister of Energy

by:

_____ _____

Date Name: Serge Imbrogno

Title: Deputy Minister

Authorized Signing Officer

COMPUTERSHARE TRUST COMPANY OF CANADA, in its capacity as trustee of AFFORDABILITY FUND TRUST

by:

_____ _____

Date Name:

Title:

by:

_____ _____

Date Name:

Title:

I/We have authority to bind the Recipient.

SCHEDULE "A"
GENERAL TERMS AND CONDITIONS

1.0 INTERPRETATION AND DEFINITIONS

1.1 Interpretation. For the purposes of interpretation:

(a) words in the singular include the plural and vice-versa;

(b) words in one gender include all genders;

(c) the headings do not form part of the Agreement; they are for reference only and will not affect the interpretation of the Agreement;

(d) any reference to dollars or currency will be in Canadian dollars and currency;

(e) "include", "includes" and "including" denote that the subsequent list is not exhaustive;

(f) where any reference is made in the Agreement to an act to be performed by or for or on behalf of the Affordability Fund Trust, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Recipient in its capacity as trustee of the Affordability Fund Trust, and, where any reference is made in the Agreement to an act to be performed by or for or on behalf of the Recipient, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Recipient in its capacity as trustee of the Affordability Fund Trust; and

(g) it is intended that the transfer of the Funds to the Recipient will be a transfer made to a trust that is not controlled by the Province (as the term "control" is used in *Government Reporting Entity* at paragraphs PS 1300.07-.24), and so if a term or condition of the Agreement is determined to conflict with the requirements applicable to the Province recording the transfers to the Recipient of Funds contemplated hereunder as an expense incurred by the Province on the date of the transfer of Funds under the Agreement otherwise in connection with activities undertaken by the Province with such a non-controlled trust, then such term or condition shall be given a meaning and shall have an effect insofar as it is possible to interpret such term or condition in a manner that eliminates such conflict while preserving the other provisions of the Agreement and furthering the Purpose.

1.2 Definitions. In the Agreement, the following terms will have the following meanings:

"Administrative Services Agent" has the meaning given such term in the Declaration of Trust.

"Affordability Fund Trust" means the trust established and governed by the Declaration of Trust, and for greater certainty includes such trust operating under any other name that may be designated from time to time by the Recipient in accordance with the Declaration of Trust.

"BPSAA" means the Broader Public Sector Accountability Act, 2010 (Ontario).

"**Beneficiary**" has the meaning given to such term in the Declaration of Trust.

"Budget" means the Recipient's budget attached to the Agreement as Schedule "D".

"Business Day" means any working day, Monday to Friday inclusive, excluding statutory and other holidays, namely: New Year's Day; Family Day; Good Friday; Easter Monday; Victoria Day; Canada Day; Civic Holiday; Labour Day; Thanksgiving Day; Remembrance Day; Christmas Day; Boxing Day and any other day on which the Province has elected to be closed for business.

"**Declaration of Trust**" means the declaration of trust made as of March [•], 2017, under which the Affordability Fund Trust was established, as such declaration of trust may be amended, restated, supplemented or otherwise modified from time to time with the consent of the Province in accordance with Section 20.2.

"Expiration Date" means the date on which this Agreement will expire and is the date set out in Schedule "B".

"Funds" means the money the Province provides to the Recipient pursuant to the Agreement.

"Implementation Agents" has the meaning given such term in the Declaration of Trust.

"Maximum Funds" means the maximum amount of Funds that the Province will provide the Recipient under the Agreement, as set out in Schedule "B".

"Notice" means any communication given or required to be given pursuant to the Agreement.

"Party" means either the Province or the Recipient.

"**Person**" includes any individual, sole proprietorship, corporation, partnership, joint venture, association, society, club, board, chamber, joint-stock company, trust, trustee, unincorporated or incorporated organization or entity or government or any entity, agency or political subdivision thereof.

"**Program**" has the meaning given to such term in the Declaration of Trust.

"Project" means the undertaking described in Schedule "C".

"**Purpose**" has the meaning given to such term in the Declaration of Trust.

"PSSDA" means the *Public Sector Salary Disclosure Act, 1996* (Ontario).

"**Recipient**" means, initially, Computershare Trust Company of Canada, and any additional or replacement trustee in its capacity as trustee of the Affordability Fund Trust pursuant to the Declaration of Trust, including the Board of Trustees (as defined in the Declaration of Trust) and each of their respective successors and permitted assigns.

"Reports" means the reports described in Schedule "F".

2.0 REPRESENTATIONS, WARRANTIES AND COVENANTS

2.1 General. The Recipient represents, warrants and covenants that:

(a) it is the trustee of the Affordability Fund Trust; and

(b) the Affordability Fund Trust is, and will continue to be for the term of the Agreement, a trust existing under and governed by the laws of the Province of Ontario.

2.2 Execution of Agreement. The Recipient represents and warrants that it has:

(a) the full power and authority to enter into the Agreement; and

(b) taken all necessary actions to authorize the execution of the Agreement.

2.3 Governance. The Recipient covenants that it will develop and maintain in writing until the Agreement is no longer in effect:

(a) decision-making mechanisms and procedures to enable the Recipient to hold, invest, manage, apply and distribute the Funds in accordance with the Declaration of Trust in furtherance of the Purpose; and

(b) procedures to enable the preparation and delivery of all Reports required pursuant to Article 7.0.

2.4 Supporting Documentation. Upon request, the Recipient will provide the Province with proof of the matters referred to in this Article 2.0.

3.0 TERM OF THE AGREEMENT

3.1 Term. The term of the Agreement will commence on the Effective Date and will expire on the Expiration Date.

3.2 Extension. The term of the Agreement may be extended by further agreement between the Parties.

3.3 Extension of the Declaration of Trust. If the Province determines that an extension of the Final Distribution Date (as defined in the Declaration of Trust) and time for termination of the Declaration of Trust is consistent with and in furtherance of the Purpose and the Province's original intentions and expectations in establishing the Project, the Province may request that the Recipient extend such date to a date specified by the Province in a Notice (such date not to be later than December 31, 2021, whereupon the Recipient, so long as the Recipient does not have a reasonable basis to believe that such an extension would be inconsistent with the Purpose or weaken the protections intended for the benefit of the trustee pursuant to the Declaration of Trust, will undertake such actions as it may consider to be necessary or appropriate to so extend the Declaration of Trust, including by amending the Declaration of Trust to provide for such an extension and to modify any other term or requirement as would be necessary or prudent to conform such term or requirement in light of such extension.

4.0 FUNDS AND CARRYING OUT THE PROJECT

4.1 Funds Provided. The Province will:

(a) provide the Recipient up to the Maximum Funds to be held, invested, applied and distributed in accordance with the terms of the Project and the Declaration of Trust;

(b) provide the Funds to the Recipient in accordance with the Payment Plan attached to the Agreement as Schedule "E"; and

(c) deposit the Funds into an account designated by the Recipient, provided that the account:

(i) resides at a Canadian financial institution; and

(ii) is in the name of the Recipient.

4.2 Timing of Distributions to Beneficiaries. The expectations of the Province regarding when Funds will begin to be distributed by the Recipient to Beneficiaries are set out in Schedule C. The Recipient will have regard to those expectations in the exercise of its discretion under the Declaration of Trust, in determining when Funds will be distributed to Beneficiaries in furtherance of the Purpose.

4.3 Use of Funds and Project. The Recipient will exercise its rights, duties and discretions under the Declaration of Trust so that the Funds are used, applied and distributed only for and in furtherance of the Purpose, including having regard to the Principles set forth in Annex A.

4.4 Province's Role Limited to Providing Funds. For greater clarity, the Province's role under the Agreement is limited to providing Funds to the Recipient and the Province is not responsible for carrying out or overseeing the terms of the Declaration of Trust.

4.5 Maximum Funds. The Recipient acknowledges that the Funds available to it pursuant to the Agreement will not exceed the Maximum Funds.

4.6 Funding, Not Procurement. For greater clarity, the Recipient acknowledges that:

(a) it is receiving funding from the Province for the Project and is not providing goods or services to the Province; and

(b) the funding the Province is providing under the Agreement is funding for the purposes of the PSSDA.

5.0 RECIPIENT'S ACQUISITION OF GOODS OR SERVICES, AND DISPOSAL OF ASSETS

5.1 Acquisition. If the Recipient acquires goods, services, or both with or by applying the proceeds of the Funds, it is expected to do so through a process that promotes the best value for money and to take reasonable steps to ensure that its Administrative Services Agents and Implementation Agents also follow a process that promotes the best value for money when acquiring goods and services with or by applying the proceeds of the Funds.

6.0 CONFLICT OF INTEREST

6.1 No Conflict of Interest. Except as expressly permitted by the Declaration of Trust, the Recipient is expected to implement appropriate processes and control to ensure that the Program and the use, application and distribution of the Funds are without an actual, potential or perceived conflict of interest.

6.2 Conflict of Interest Includes. For the purposes of this Article, a conflict of interest includes any circumstances where, except as expressly permitted by the Declaration of Trust:

(a) the Recipient; or

(b) any person who has the capacity to influence the Recipient's decisions,

has outside commitments, relationships or financial interests that could, or could be seen to, interfere with the Recipient's objective, unbiased and impartial judgment relating to the Project, or the Recipient's use, application or distribution of the Funds, or both.

7.0 REPORTING, ACCOUNTING AND REVIEW

7.1 Preparation and Submission. The Recipient will cooperate with the Province to accommodate the Province's on-going information and reporting objectives in order to enable the Province to be aware of the Recipient's activities in furtherance of the Purpose, and to that end the Recipient will be expected, from and following the Original Trustee Replacement Date, to:

(a) submit to the Province at the address referred to in Schedule "B", all Reports in accordance with the timelines and content requirements set out in Schedule "F", or in a form as specified by the Province from time to time, acting reasonably;

(b) submit to the Province at the address referred to in Schedule "B", any other reports as may be reasonably requested by the Province from time to time in accordance with the timelines and content expectations identified by the Province, acting reasonably;

(c) undertake diligent efforts so that such Reports and any such other reports are complete and accurate in all material respects; and

(d) have an authorized signatory of the Recipient sign-off on such Reports and other reports.

7.2 **Record Maintenance.** The Recipient will keep and maintain financial and other records necessary to permit it to satisfy its obligations under section 7.1 and to permit the Province to exercise its rights under section 7.3.

7.3 **Inspection.** The Province, its authorized representatives or an independent auditor identified by the Province may, at its own expense, upon twenty-four hours' Notice to the Recipient and during normal business hours, inspect the records of and information respecting the Recipient to confirm its compliance with the terms of this Agreement, including to ensure consistency with the Purpose and, for these purposes, the Province, its authorized representatives or an independent auditor identified by the Province may take one or more of the following actions:

(a) inspect and copy the records and documents referred to in section 7.2;

(b) keep any copies made pursuant to section 7.3(a); and

(c) conduct an audit or investigation of the Recipient in respect of the expenditure of the Funds to confirm that the Funds have been used, applied and distributed for and in furtherance of the Purpose, including a review of the Recipient's processes, records, documents, as well as the processes and controls applied to obtain assurance that Funds disbursed to Electricity Distributors were used, applied and distributed for and in furtherance of the Purpose.

7.4 **Disclosure.** To assist in respect of the rights set out in section 7.3, the Recipient will disclose any information requested by the Province, its authorized representatives or an independent auditor identified by the Province, and will do so in the form requested by the Province, its authorized representatives or an independent auditor identified by the Province, as the case may be.

7.5 **No Control of Records.** No provision of the Agreement will be construed so as to give the Province any control whatsoever over the Recipient's records.

7.6 **Auditor General.** For greater certainty, the Province's rights under this Article are in addition to and do not limit any rights provided to the Auditor General pursuant to section 9.1 of the *Auditor General Act* (Ontario).

8.0 COMMUNICATIONS REQUIREMENTS

8.1 **Publication.** The Recipient will acknowledge, in any of its Program-related external communications and marketing whether written, oral, or visual, the financial support of the Province in connection with the establishment and funding of the program, while noting that the views expressed in the publication are the views of the Recipient and do not necessarily reflect those of the Province.

9.0 FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY

9.1 **FIPPA.** The Recipient acknowledges that the Province is bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province in connection with the Project or otherwise in connection with the Agreement may be subject to disclosure in accordance with that Act.

10.0 Intentionally Deleted

11.0 EVENT OF DEFAULT, CORRECTIVE ACTION AND TERMINATION FOR DEFAULT

11.1 **Events of Default.** An Event of Default will occur if:

(a) the Recipient fails to perform or observe any covenant in this Agreement and such failure has and continues to have a material adverse effect on the Province and remains unremedied during any Notice period applicable under section 11.2 after the earlier of (i)

actual knowledge thereof by the Recipient, or (ii) receipt by the Recipient of Notice thereof from the Province;

(b) any representation or warranty made by the Recipient in the Agreement shall prove to have been incorrect in any material respect when made or deemed made, and, if capable of remedy, continues to be incorrect in any material respect during any Notice period applicable under section 11.2 after the earlier to occur of (i) the actual knowledge thereof by the Recipient or (ii) receipt by the Recipient of Notice thereof from the Province;

(c) it is determined that the Recipient has breached its Standard of Care (within the meaning given in and context of the Declaration of Trust) in discharging its material duties under the Declaration of Trust, with the result that all or a significant part of the Funds have not been or are not being applied in furtherance of the Purpose or are being applied in a manner that is directly contrary or without regard to the Purpose, and, if such breach is capable of remedy, it continues and remains unremedied during any Notice Period applicable under section 11.2 after the earlier of (i) actual knowledge thereof by the Recipient, or (ii) receipt by the Recipient of Notice thereof from the Province;

(d) an insolvency event shall have occurred and be continuing with respect to the Recipient.

11.2 Consequences of Events of Default and Corrective Action. If an Event of Default occurs, the Province may, at any time, take one or more of the following actions:

(a) provide the Recipient with Notice allowing the Recipient an opportunity to remedy the Event of Default during a specified Notice Period;

(b) seek an order of specific performance, including an order that the Recipient pursue its available remedies against third parties;

(c) require, by Notice of demand, that the Recipient transfer to the Province (without any need for compensation, indemnity or consideration to the Recipient or any Beneficiary or other third party) any and all Assets remaining in the possession or under the control of the Recipient that can reasonably be traced or attributed to the Funds after first providing for the completion and performance by the Recipient of any unperformed contractual obligations of the Recipient undertaken in compliance with the Declaration of Trust on or prior to transfer; and

(d) terminate the Agreement, including immediately, without liability, penalty or costs to the Province upon giving Notice to the Recipient.

The transfer of Funds in accordance with the Agreement is made by the Province with the expressed intention and reservation that the transferred Funds shall be returned to the Province and the entitlements of the Recipient in remaining Funds shall thereby be revoked with reversion thereof to the Province in the circumstances contemplated in Section 11.2(c).

11.3 Opportunity to Remedy. If, in accordance with section 11.2, the Province provides the Recipient with an opportunity to remedy the Event of Default, the Province will provide Notice to the Recipient of:

(a) the particulars of the Event of Default; and

(b) the length of time within which the Recipient may cure such Event of Default without the Province pursuing any other remedy (the “Notice Period”).

11.4 Recipient not Remedying. If the Province has provided the Recipient with an opportunity to remedy the Event of Default pursuant to section 11.2(a), and:

(a) the Recipient does not remedy the Event of Default within the Notice Period;

(b) it becomes apparent to the Province that the Recipient cannot adequately remedy the Event of Default within the Notice Period; or

(c) the Recipient is not proceeding to remedy the Event of Default in a way that is satisfactory to the Province,

the Province may extend any Notice Period, or initiate any one or more of the actions provided for in section 11.2.

12.0 REPAYMENT

12.1 Debt Due. If, pursuant to the Agreement: the Province demands the payment of any Funds from the Recipient pursuant to section 11.2(c) such Funds or other amount will be deemed to be a debt due and owing to the Province by the Recipient, and the Recipient will pay or return the amount to the Province immediately, unless the Province directs otherwise.

12.2 Payment of Money to Province. The Recipient will pay any money owing to the Province by cheque payable to the "Ontario Minister of Finance" and delivered to the Province at the address referred to in Schedule "B".

12.3 Failure to Repay. Without limiting the application of section 43 of the Financial Administration Act (Ontario), if the Recipient fails to repay any amount owing under the Agreement, Her Majesty the Queen in right of Ontario may deduct any unpaid amount from any money payable to the Recipient by Her Majesty the Queen in right of Ontario.

13.0 NOTICE

13.1 Notice in Writing and Addressed. Notice will be in writing and will be delivered by email, postage-prepaid mail, personal delivery or fax, and will be addressed to the Province and the Recipient respectively as set out in Schedule "B", or as either Party later designates to the other by Notice.

13.2 Notice Given. Notice will be deemed to have been given:

(a) in the case of postage-prepaid mail, five Business Days after the Notice is mailed; or

(b) in the case of email, personal delivery or fax, one Business Day after the Notice is delivered.

13.3 Postal Disruption. Despite section 13.2(a), in the event of a postal disruption:

(a) Notice by postage-prepaid mail will not be deemed to be received; and

(b) the Party giving Notice will provide Notice by email, personal delivery or by fax.

14.0 SEVERABILITY OF PROVISIONS

14.1 Invalidity or Unenforceability of Any Provision. The invalidity or unenforceability of any provision of the Agreement will not affect the validity or enforceability of any other provision of the Agreement. Any invalid or unenforceable provision will be deemed to be severed.

15.0 WAIVER

15.1 Waivers in Writing. If a Party fails to comply with any term of the Agreement, that Party may only rely on a waiver of the other Party if the other Party has provided a written waiver in accordance with the Notice provisions in Article 13.0. Any waiver must refer to a specific failure to comply and will not have the effect of waiving any subsequent failures to comply.

16.0 INDEPENDENT PARTIES

16.1 **Parties Independent.** The Recipient acknowledges that it is not an agent, joint venturer, partner or employee of the Province, and the Recipient will not represent itself in any way that might be taken by a reasonable person to suggest that it is, or take any actions that could establish or imply such a relationship.

17.0 ASSIGNMENT OF AGREEMENT OR FUNDS

17.1 **Agreement Binding.** All rights and obligations contained in the Agreement will extend to and be binding on the Parties' respective heirs, executors, administrators, successors and permitted assigns.

18.0 LIMITATION OF LIABILITY

18.1 This Agreement has been entered into by the Recipient solely in its capacity as trustee of the Affordability Fund Trust and is not binding on the Recipient in any other capacity, whether in tort, contract or otherwise. The Beneficiaries of the Affordability Fund Trust are not subject to any liability in respect of the Affordability Fund Trust. Resort may not be had to, nor recourse or satisfaction be sought from, the private property of the Recipient (whether owned by it in its personal capacity or in any other capacity other than in its capacity as trustee of the Affordability Fund Trust), its directors, officers, employees, or agents, or the private property of any Beneficiary, and resort will be had solely to the property of the Recipient held in trust for the payment, performance or satisfaction of any liability or obligation of the Recipient under this Agreement. However, the foregoing limitations in this section shall not apply where the Recipient has demonstrated gross negligence, bad faith, fraud or wilful misconduct.

19.0 GOVERNING LAW

19.1 **Governing Law.** The Agreement and the rights, obligations and relations of the Parties will be governed by and construed in accordance with the laws of the Province of Ontario and the applicable federal laws of Canada. Any actions or proceedings arising in connection with the Agreement will be conducted in the courts of Ontario, which will have exclusive jurisdiction over such proceedings.

20.0 FURTHER ASSURANCES

20.1 **Agreement into Effect.** The Recipient will provide such further assurances as the Province may request from time to time with respect to any matter to which the Agreement pertains, and will otherwise do or cause to be done all acts or things necessary to implement and carry into effect the terms and conditions of the Agreement to their full extent.

20.2 **Declaration of Trust.** The Recipient covenants that it shall not amend, restate or terminate the Declaration of Trust without obtaining the written consent of the Province in respect of same, such consent not to be unreasonably withheld or delayed.

21.0 JOINT AND SEVERAL LIABILITY

21.1 **Joint and Several Liability.** Without limiting and subject to section 18.1 and the Declaration of Trust, if the Recipient is comprised of more than one entity, all such entities will be jointly and severally liable to the Province for the fulfillment of the obligations of the Recipient under the Agreement.

22.0 RIGHTS AND REMEDIES CUMULATIVE

22.1 **Rights and Remedies Cumulative.** The rights and remedies of the Province under the Agreement are cumulative and are in addition to, and not in substitution for, any of its rights and remedies provided by law or in equity.

23.0 ACKNOWLEDGEMENT OF OTHER LEGISLATION AND DIRECTIVES

23.1 **Recipient Acknowledges.** The Recipient acknowledges that by receiving Funds it may become

subject to legislation applicable to organizations that receive funding from the Government of Ontario, including the BPSAA, the PSSDA, and the *Auditor General Act* (Ontario).

24.0 SURVIVAL

24.1 Survival. The following Articles and sections, and all applicable cross-referenced sections and schedules, will continue in full force and effect for a period of seven years from the date of expiry or termination of the Agreement: Article 1.0 and any other applicable definitions, section, 4.5, section 7.1 (to the extent that the Recipient has not provided the Reports to the satisfaction of the Province), sections 7.2, 7.3, 7.4, 7.5, 7.6, Article 8.0, Article 12.0, Article 14.0, Article 16.0, Article 17.0, Article 19.0, Article 21.0, Article 23.0 and Article 24.0.

- END OF GENERAL TERMS AND CONDITIONS -

SCHEDULE "B"

PROJECT SPECIFIC INFORMATION

Maximum Funds	$100 million
Expiration Date	The date upon which the Affordability Fund Trust is terminated in accordance with the Declaration of Trust
Contact information for the purposes of Notice to the Province	**Attention: Usman Syed** **Position: Director** **Address: 77 Grenville St, Toronto, Ontario, M7A 2C1** **Fax: 416-325-6651** **Email: Usman.Syed@ontario.ca**
Contact information for the purposes of Notice to the Recipient	**Attention:** **Position:** **Address:** **Email:**
Contact information for the senior financial person in the Recipient organization (e.g., CFO, CAO) – to respond as required to requests from the Province related to the Agreement	**Attention:** **Position:** **Address:** **Email:**

SCHEDULE "C"

PROJECT

For the purposes of this Agreement, the "Project" is the distribution of the Funds in accordance with the Declaration of Trust.

It is intended the Project will be undertaken by the Recipient in furtherance of the Purpose and in accordance with the Declaration of Trust. In this regard, it is expected that the Recipient will undertake the Program having regard to the Budget and the Principles set forth in Annex A.

The following are the Province's expectations regarding the circumstances in which the Recipient will begin to distribute any Funds to any Beneficiary.

1. The Original Trustee Replacement Date (as defined in the Declaration of Trust) will have occurred.

2. An Administrative Services Agreement (as defined in the Declaration of Trust) will have been entered into between the Recipient and Hydro One Limited under which Hydro One Limited shall provide specified administrative and other services on behalf of the Recipient.

3. Administrative procedures will have been developed and implemented under which Electricity Distributors (as defined in the Declaration of Trust) will be invited to assist with (a) the identification and selection of Primary Beneficiaries under the Declaration of Trust, (b) the determination of the amount of Funds to be distributed to particular Primary Beneficiaries, and (c) the distribution of Funds to or for the benefit of such Primary Beneficiaries (in each case substantially on the basis contemplated in the Permitted Delegations Annex).

4. The Recipient will have obtained commercial general liability insurance from insurers having a secure A.M. Best rating of B+ or greater, or the equivalent, that in the opinion of the Recipient a prudent person similar to the Recipient would maintain, and having an inclusive limit of not less than $2,000,000 per occurrence and providing for contractual liability coverage. If requested, the Recipient will provide the Province (for its information purposes) with copies of the certificates of insurance and policies for such insurance coverage.

The Province recognizes that the foregoing may involve the Recipient entering into agreements as the Recipient considers to be necessary or expedient, including any required amendment or amendment and restatement of the Declaration of Trust. Funds may be expended to pay the expenses of the Recipient in completing these matters. The Recipient is requested to advise the Province through its quarterly reports on the status of the foregoing.

SCHEDULE "D"

Recipient's Budget

1. It is expected that the administrative expenses of the Recipient, including any administrative expenses of any Administrative Services Agents or any Implementation Agents or any other agents retained by the Recipient, relating to the establishment of the Affordability Fund Trust and addressing the Province's expectations as enumerated in Schedule "C" and any expenses related to the operation of the Affordability Fund Trust and the execution of the Project (including any reimbursable expenses incurred by any Administrative Services Agent or any Implementation Agent (as such terms are defined in the Declaration of Trust)), will be no greater than 10 percent of the total Project budget.

2. The only expenditures incurred by the Recipient that are eligible for reimbursement are actual (excluding HST) administrative overhead expenses incurred by or on behalf of the Recipient that directly related to the Recipient or the establishment of the Affordability Fund Trust.

4. Any expenses that have been or may be reimbursed by other parties should not be reimbursed from the assets of the Affordability Fund Trust.

5. It is expected any travel, meals and hospitality expenses by the Recipient will be consistent with the Province's Travel, Meal and Hospitality Expenses Directive. For purposes of funding entities receiving funding from the Recipient, the following would not be considered eligible claims:

    - Alcohol
    - First-Class travel
    - Meals, snacks and beverages
    - Gratuities
    - Laundry or dry cleaning
    - Valet services
    - Dependent care
    - Home management
    - Personal telephone calls

6. In the event that the Recipient performs any procurements, it is expected that all procurements will reflect the principles of Ontario's Public Service Procurement Directive.

SCHEDULE “E”

PAYMENT PLAN

PAYMENT DATE	MAXIMUM FUNDS TO BE DISBURSED BY THE PROVINCE
Within 7 days of signing the Agreement	$ 100,000,000

SCHEDULE “F”

REPORTING

From and following the Original Trustee Replacement Date, Reports will be quarterly on the basis of the government’s fiscal year starting at the execution of this Agreement and continuing until conclusion of the Agreement. Annual Reports will be on a fiscal basis starting at the execution of this Agreement and continuing until conclusion of the Agreement. Quarterly Reports and Annual Reports would be expected to be submitted to the Province within one month following the end of the reporting period that they represent. The Province expects that these Reports would be prepared to demonstrate the impact of the Province’s funding and address the following:

- Quarterly Reports would include a report back on the trustee-developed performance management criteria. Initially, such Quarterly Reports would include details respecting:
    - Amounts disbursed by the Recipient in the previous quarter. It is expected that this information would be provided at the Electricity Distributor level and in the aggregate.
    - Total Affordability Fund investment income earned and accrued to date.
    - Key activities and achievements from the quarter, including the number of participant households per Electricity Distributor, average participant incentive cost per Electricity Distributor, and uptake of energy efficiency measures per Electricity Distributor.
    - Any challenges or modifications to the application, funding, or eligibility processes/rules of the Recipient.
    - Key activities planned for the upcoming quarter.
    - Details of any situation that a reasonable person might interpret as an actual, potential or perceived conflict of interest.
- Annual Reports would include a report back on the trustee-developed performance management criteria. Initially, such Annual Report would include details respecting:
    - A description of an Electricity Distributor’s application process and the criteria used by the Recipient to distribute funds.
    - Any challenges identified by the Recipient or any Administrative Services Agent in achieving the Purpose and proposed solutions, if applicable.
    - Lesson learned.
    - Electricity Distributor and customer feedback.
    - Amounts distributed to Beneficiaries or otherwise disbursed by the Recipient in the previous year. It is expected that this information will be provided by each Electricity Distributor.
    - Key activities and achievements from each quarter being reported, including number of participant households per Electricity Distributor, average participant incentive cost per Electricity Distributor, and uptake of energy efficiency measures per Electricity Distributor.
    - Total Affordability Fund interest earned and accrued to date.

    As part of an Annual Report, the Recipient would also provide the Province with an audited financial statement for the previous year.

ANNEX A

Principles

The Trustee shall have regard to, but shall not be specifically bound by, the following principles in applying its discretion in relation to the administration of the Trust:

1. Identification of Primary Beneficiary Payees

1.1 Except in exceptional circumstances, a Primary Beneficiary would not be expected to receive a benefit from the Trust unless at the time of consideration it satisfies, in addition to the requirements contemplated in the definition of "Primary Beneficiary", each of the following criteria (the "**Selection Factors**"):

(i) it has a participant agreement with an applicable Electricity Distributor to undertake measures (its "**Energy Plan**") to improve the electricity efficiency and/or promote the conservation of electricity at its Ontario residence;

(ii) its Energy Plan involves one or more Eligible Measures, as may be designated by the Trustee from time to time from;

(iii) it confirms that:

1. the primary purpose of its Energy Plan is the conservation and efficient use by the Primary Beneficiary of electricity, and is not for the purposes of the Primary Beneficiary making a profit;

2. it would otherwise not have the financial resources to undertake the Eligible Measures included in its Energy Plan; and

3. it would otherwise not be eligible to receive amounts in respect of the Eligible Measures as a HAP Eligible Person;

(iv) it has demonstrated a need for financial assistance on the basis that its periodic electricity bills represent a financial burden, relative to its available financial resources; and

(v) such other criteria as the Trustee may determine, including based on the recommendations of Electricity Distributors or other knowledgeable Persons made on the basis and having regard to the delegations contemplated by the Permitted Delegations Annex or any applicable Implementation Agreement.

1.2 It is recognized that, in furthering the Purpose, an efficient basis upon which to allocate funds to the Primary Beneficiaries across different areas and regions within Ontario may be based on the areas and regions serviced by the Electricity Distributors operating within Ontario.

1.3 It would not be contrary to the Purposes if funds are made available by the Trustee to the Primary Beneficiaries unequally across different areas and regions within Ontario, and it is expected that in making such an unequal division it would be appropriate to have regard to:

(i) broad economic parameters of economic activity and the specific financial resources of the residents of the areas and regions, in each case as an indication of the relative need of such residents across the areas and regions;

(ii) electricity use and efficiency levels of residential electricity customers across the areas and regions;

(iii) specific regional indicators of economic weakness and need; and

(iv) such other factors as the Trustee may determine are relevant, including based on the submissions, advice and recommendations of Electricity Distributors or other knowledgeable Persons made on the basis and having regard to the delegations contemplated by the Permitted Delegations Annex or any applicable implementation Agreement.

1.4 It is recognized that, in furthering the Purpose, the designated Electricity Distributor for an area or region in which a Primary Beneficiary resides would be expected to:

(i) be a reliable source for the purpose of assessing and confirming whether the Primary Beneficiary satisfies the Selection Factors;

(ii) be an efficient intermediary for the purpose of communicating with the Primary Beneficiary, including with respect to matters such as regarding the availability, terms, conditions and intended purposes of Program;

(iii) be able to facilitate an efficient payment of distribution determined to be made to or on behalf of the Primary Beneficiary, having regard to the Electricity Distributor's established practices, procedures and systems for dealing with its customers; and

(iv) have established contractual arrangements with the Primary Beneficiary that may apply to the protection and confidentiality of information provided by or respecting the Primary Beneficiary, which information may be useful in the consideration by the Electricity Distributor in its assessment of whether the Primary Beneficiary satisfies the Selection Factors, which information may not otherwise be available or readily accessible or verifiable by the Trustee.

1.5 It is recognized that, in furthering the Purpose, the Electricity Distributor for an area or region in which a Primary Beneficiary resides will have market and utilization information that may be useful in assessing the relative needs of Primary Beneficiaries within its area or region. Such information is expected to be relevant in assessing the extent to which one such Primary Beneficiary's financial needs and the merits of its Energy Plan are greater or more compelling than those of another such Primary Beneficiary, which comparison may be relevant to the extent that the funds allocable to the Primary Beneficiaries resident in the area or region are otherwise insufficient to meet the requests for funding by all such Primary Beneficiaries.

1.6 Accordingly, it is recognized that, in furthering the Purpose, it is consistent with the Purpose that the recommendations of Electricity Distributors be utilized and relied upon by the Trustee to guide the process of identifying particular Primary Beneficiaries in making distributions to the Primary Beneficiaries.

1.7 If an Electricity Distributor for a particular area or region is unable or unwilling to assess or confirm the application of the Selection Factors to Primary Beneficiaries residing in the area or region or to make recommendations in relation to such matters, one or more of the following may provide a suitable alternative source of information and for information gathering, assessment and confirmation purposes in relation to such area or region:

(i) other Electricity Distributors operating in adjacent or other areas or regions in Ontario;

(ii) the Ontario Energy Board;

(iii) the Independent Electricity System Operator; and

(iv) anyone else having relevant expertise and access to information regarding the electricity market of the Province, in each case as may be considered relevant by the Trustee.

1.8 To the extent that privacy law or other legal requirements limit an Electricity Distributor from providing or making available specific information respecting the application of the Selection Factors to a particular Primary Beneficiary or group of Primary Beneficiaries, it is recognized that, in furthering the Purpose, it may be appropriate to redact or make generic affected information regarding such Primary Beneficiary in connection with the identification and confirmation of a Primary Beneficiary's eligibility and participation in the Program. If such limitations or restrictions would limit an Electricity Distributor from providing or confirming the name of a particular Primary Beneficiary to the Trustee, then it should be sufficient that such information may be obtained or disseminated on a confidential basis if and when required by the Trustee for the proper administration of the Trust and on that basis such impediments should not disqualify a Primary Beneficiary from participating in the benefits of the Program, provided that the confidential record-keeping of the Electricity Distributor would be available in connection with the application of any applicable legal process predicated on the identification of such Primary Beneficiary for the purposes of substantiating its rights as a Primary Beneficiary of the Trust or as to the validity or subsistence of the Trust.

2. Eligible Measures

2.1 It is expected that the Trust will identify eligible measures that, taking into consideration the principles set forth in the Principles Annex, have regard to the following (the "**Measures Factors**"):

(i) is the measure generally expected to result in reduced electricity consumption by a Primary Beneficiary if properly installed and used;

(ii) is the measure recognized under another Provincial program as being appropriate for achieving electricity conservation among a population analogous to the Primary Beneficiaries;

(iii) does the measure present any unacceptable health or safety considerations, either with respect to the Primary Beneficiary, a party providing or installing the measure, or the physical environment;

(iv) is the measure broadly available to residents across different areas and regions of the Province; or

(v) is the measure a requirement or precursor to another measure, the other measure being one which meets any of the other Measures Factors.

2.2 In identifying and applying the Measures Factors, Electricity Distributors would be expected to have expertise in assessing the suitability of efficiency and conservation measures in their respective areas and regions, which may differ across areas and regions across the Province based on factors (among other things) such as the climate, geography, density, electricity infrastructure, residential structures, and electricity use rates applicable within such areas or regions.

2.3 The measures specified in Schedule A to this Principles Annex may initially be considered to be consistent with the Measures Factors (subject to change as contemplated under the Permitted Delegations Annex).

3. Promotion of the Program

3.1 It is expected that the Trustee will undertake or engage others to undertake diligent efforts to promote the availability, terms and benefits of the Program to Primary Beneficiaries, including by establishing consistent communications through the Electricity Distributors.

3.2 It is expected that the Trustee will acknowledge the financial support of the Province in connection with the establishment and the funding for the Program, including in any external communications to or marketing directed at the Electricity Distributors and the Primary and Residual Beneficiaries. In its delegation of any duties or powers to the Electricity Distributors through Implementation Agreements it is expected that Electricity Distributors will acknowledge the financial support of the Province in connection with the program including in any communications or marketing to Primary Beneficiaries.

4. Conduct of the Trust and the Program

4.1 It is expected that administrative expenses of the Board of Trustees and its members, including any expenses relating to the Trust, to the establishment of the Trust and any expenses related to the implementation and operation of the Program, including by or through Electricity Distributors and other relevant entities, will be recognized and subject to reimbursement on a basis that is substantially consistent with the accountability provisions contemplated in the Transfer Payment Agreement and the principles in the Province's Travel, Meal and Hospitality Expenses Directive, as set out in Schedule B to this Principles Annex.

4.2 The Trustee is expected to conduct its activities in a manner that complies in all material respects with the Transfer Payment Agreement, including to:

(i) act prudently and in furtherance of the Purpose;

(ii) report not less frequently than annually the results of its activities for information purposes to the Province in connection with the Program;

(iii) comply with the Province's request for any independent verification or audit if determined to be necessary or appropriate by the Province;

(iv) return Assets that have not been distributed if it is determined that the Trustee has breached its Standard of Care in discharging its material duties under the Declaration, and has not cured such material breach despite having been given a reasonable opportunity by the Province to do so in light of the circumstances of such material breach, with the result that all or a significant part of the Assets have not been or are not being applied and distributed in furtherance of the Purpose or are being applied and distributed in a manner that is directly contrary or without regard to the Purpose.

4.3 Electricity Distributors are not intended to directly profit from distributions of funds made from the Trust, although it is recognized that the objectives of electricity efficiency and conservation of Primary Beneficiaries located in the service area or region of an Electricity Distributor, and the cost savings and improved credit worthiness of such Primary Beneficiaries, may be financially beneficial to the Electricity Distributor.

4.4 Distributions from the Trust are intended to allow receiving Primary Beneficiaries to undertake Eligible Measures at no or minimal personal cost.

4.5 Without in any way limiting the discretion of the Board of Trustees to extend the period during which the benefits of the Program may be available to the Primary Beneficiaries, up to and including the Final Distribution Date, it is expected that the Trust Assets would be distributed to

Primary Beneficiaries during the period from the Original Trustee Replacement Date to April 30, 2019.

SCHEDULE A TO THE PRINCIPLES ANNEX
INDICATIVE ELIGIBLE MEASURES[1]

Initial Specified Measures
Block Heater Timer (just timer) – rated for outdoor use, have at least a 15 amp/1800 watt capacity, be cold weather resistant, bear a C-UL or CSA certification mark
Power bar with integrated timer, and switched power outlets, four each for a total of 8 outlets, have a total capacity of 15 amps. The switched outlets must remain "live", independent of timer settings, so long as the power bar itself remains switched on. The power bar must bear either a C-UL or CSA certification mark.
Efficient Showerheads (standard) - rated at no more than 4.8 Lpm (1.25 U.S. gpm) and be of the laminar flow type (non-aerating).
Efficient Showerhead (handheld) - rated at no more than 4.8 Lpm (1.25 U.S. gpm) and be of the laminar flow type (non-aerating).
Efficient Aerators (kitchen) - rated no more than 5.7 Lpm (1.5 U.S. gpm), dual threaded to allow installation in both thread type faucets, swivel type with pause lever.
Efficient Aerators (bathroom) - rated no more than 3.8 Lpm (1.0 U.S. gpm), be dual threaded to allow installation in both thread type faucets.
Hot Water Tank Pipe Insulation - $^{1}/_{2}$" inside diameter – foam, meets ASTM –C547-00, minimum $^{3}/_{4}$" thick
Hot Water Tank Pipe Insulation - $^{3}/_{4}$ " inside diameter - – foam, meets ASTM –C547-00, minimum $^{3}/_{4}$" thick
Hot Water Tank Insulation - fibreglass R10 (fits up to a 60 gal tank) – not bubble wrap
≤11W ENERGY STAR® Qualified LED A Shape (60W) (minimum 600 Lumen output) (Formerly: 7W – 11W ENERGY STAR® Qualified LED A Shape (60W))

[1] These measures are indicative. Eligible measures added to HAP during the administration of the Trust may also be appropriately considered relevant by the Trustee.

Initial Specified Measures
≤14W ENERGY STAR® Qualified LED A Shape (75W) (minimum 800 Lumen output) (Formerly: 10W – 14W ENERGY STAR® Qualified LED A Shape (75W))
≤23W ENERGY STAR® Qualified LED A Shape (100W) (minimum 1600 Lumen output) (Formerly:17W – 23W ENERGY STAR® Qualified LED A Shape (100W))
≤16W ENERGY STAR® Qualified LED PAR 20 (minimum 600 Lumen output) (Formerly: 8W – 12W ENERGY STAR® Qualified LED PAR 20)
≤16W ENERGY STAR® Qualified LED PAR30 & PAR38 (minimum 600 Lumen output) (Formerly: 8W – 12W ENERGY STAR® Qualified LED PAR 30)
≤23W ENERGY STAR® Qualified LED PAR (minimum 1100 Lumen output) (Formerly: 14W – 18W ENERGY STAR® Qualified LED PAR 38)
≤6W ENERGY STAR® Qualified LED MR 16 / PAR 16 (minimum 250 Lumen output) (Formerly: 7W – 10W ENERGY STAR®
Qualified LED MR 16 / PAR 16 - GU 10 Base)
≤11W ENERGY STAR® Qualified LED MR 16 (minimum 400 Lumen output) (Formerly: 7W – 12W ENERGY STAR® Qualified LED MR 16 GU 5.3 Base)
ENERGY STAR® LED Wet Location Rated PAR lamp ≤ 23 Watt (minimum 1100 Lumen output)
Recessed Downlight Fixture including LED with Light Output >600 and <800 lumens (Retrofit Measure List)
Recessed Downlight Fixture including LED with Light Output >800 lumens (Retrofit Measure List)
Indoor Drying Rack

Extended Measures
Replace refrigerator with ENERGY STAR qualified refrigerator - 15.5 - 16.9 cubic foot top freezer, automatic defrost, refrigerator/ freezer, no through the door ice service
Replace refrigerator with ENERGY STAR qualified refrigerator - 17.0 - 18.4 cubic foot top freezer, automatic defrost, refrigerator/ freezer, no through the door ice service
Replace refrigerator with a refrigerator that has a consumption level of less than 425 kwh, 10 – 12.5 cubic foot top freezer, automatic defrost, refrigerator freezer, no through the door ice service
Replace freezer with ENERGY STAR qualified freezer - 12-14.4 cubic foot freezer
Replace freezer with ENERGY STAR qualified freezer - 14.5 - 16.0 cubic foot freezer
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 6,000 – 7,999 BTU/hr with C-UL or CSA certification mark
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 8,000 – 9,999 BTU/hr with C-UL or CSA certification mark
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 10,000 – 12,000 BTU/hr with C-UL or CSA certification mark
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 14.2 - 21.2 l/day (30-44.9 pints/day) dehumidifier
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 21.3 - 25.4 l/day (45-53.9 pints/day) dehumidifier
Extended Measures
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 25.5 - 35.5 l/day (54-75 pints/day) dehumidifier
Programmable Thermostat – line voltage – meets CAN/CSA-C828-06 standard, minimum performance: Droop: 1.5°C, Differential: 0.5°C, Precision 0% within 0.5°C of the original set point of 22°C
Programmable Thermostat – low voltage - meets CAN/CSA-C828-06 standard, minimum performance: Droop: 1.5°C, Differential: 0.5°C, Precision 0% within 0.5°C of the original set point of 22°C

Weatherization Measures
Comprehensive Draftproofing (caulking, foam and weather stripping, and application of same) – lifespan of 20 years plus If one or two component polyurethane foams are used, the products and installations must conform to: • CAN/ULC-S710.1 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 1: Material Specification. • CAN/ULC-S710.2 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 2: Application. • CAN/ULC-S711.1 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification • CAN/ULC-S711.2 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification, and Part 2: Application. **Attic Insulation (including installation):**
cellulose: CAN/ULC-S703-01 Amendment 1 - Cellulose Fibre Insulation (CFI) for Buildings OR 2) Mineral Fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre

Weatherization Measures
for Buildings **Wall Insulation (including installation):**
cellulose: CAN/ULC-S703-01 Amendment 1 - Cellulose Fibre Insulation (CFI) for Buildings OR 2) Mineral Fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre **Basement Insulation (including installation):**
mineral fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre for Buildings Vapour Barrier: 69009-CAN/CGSB-51.34-m86 If one or two component polyurethane foams are used, the products and installations must conform to: • CAN/ULC-S710.1 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 1: Material Specification. • CAN/ULC-S710.2 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 2: Application. • CAN/ULC-S711.1 Standard for Thermal Insulation – Bead Applied Two-Component
Polyurethane Air Sealant Foam, Part 1: Material Specification • CAN/ULC-S711.2 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification, and Part 2: Application.

Heat Pumps
(Selection of manufacturers and technologies to meet the US federal minimum efficiency standard for ASHPs, as of 2015, is 13.0 SEER and 7.7 HSPF. Energy Star–certified models offer roughly 9 percent more efficiency than most new uncertified ASHPs and 20 percent more efficiency than existing models
Ductless Multiport Heat Pump
Cold Climate Ductless Heat Pump
Cold Climate Multiport Ductless Heat Pump
Cold Climate Ducted Heat Pump

SCHEDULE B TO THE PRINCIPLES ANNEX
PERMITTED EXPENSE REIMBURSEMENTS

Travel, Meal and Hospitality Expenses Directive

Funds should be used prudently and responsibly with a focus on accountability and transparency.

Expenses for travel, meals and hospitality support the Purpose.

Plans for travel, meals, accommodation and hospitality are necessary and economical with due regard for health and safety.

Legitimate authorized expenses incurred during the course of furthering the Purpose may be reimbursed.

Best practices should be followed, including:

Prior approval to incur expenses is appropriately obtained.

Other options for meetings are always considered before travel is approved, including audio or video conferencing.

Corporate travel cards are to be used for authorized business travel and business related expenses.

ONTARIO TRANSFER PAYMENT AGREEMENT

THE AGREEMENT, effective as of the • day of March, 2017 (the **"Effective Date"**)

B E T W E E N :

Her Majesty the Queen in right of Ontario
as represented by the Minister of Energy

(the "Province")

- and -

Computershare Trust Company of Canada, in its capacity as trustee of Affordability Fund Trust

(together with its successors and assigns, the "Recipient" and, together with the Province, the "Parties")

BACKGROUND

Computershare Trust Company of Canada is the original trustee of the Affordability Fund Trust.

The Province wishes to provide Funds to the Recipient to be held, invested, applied and distributed in accordance with the terms of the Declaration of Trust (defined below), in furtherance of the Purpose (as defined in the Declaration of Trust), including having regard to the Principles set forth in Annex A.

CONSIDERATION

In consideration of the mutual covenants and agreements contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is expressly acknowledged, the Parties agree as follows:

ENTIRE AGREEMENT

This agreement (as amended, restated, supplemented or otherwise modified from time to time, the **"Agreement"**), including:

Schedule "A" - General Terms and Conditions
Schedule "B" - Project Specific Information
Schedule "C" - Project - Certain Obligations of the Recipient
Schedule "D" - Budget
Schedule "E" - Payment Plan
Schedule "F" - Reporting
Annex "A" - Principles, and
any amending agreement entered into as provided for below,

constitutes the entire agreement between the Parties with respect to the subject matter contained in this Agreement and supersedes all prior oral or written representations and agreements.

COUNTERPARTS

The Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

AMENDING THE AGREEMENT

The Agreement may only be amended by a written agreement duly executed by the Parties.

ACKNOWLEDGEMENT

The Recipient:

(a) acknowledges that it has read and understands the provisions contained in the entire Agreement; and

(b) agrees to be bound by the terms and conditions contained in the entire Agreement.

IN WITNESS WHEREOF, the Parties have executed the Agreement on the dates set out below.

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO as represented by Minister of Energy

by:

_____ _____

Date Name: Serge Imbrogno

Title: Deputy Minister

Authorized Signing Officer

COMPUTERSHARE TRUST COMPANY OF CANADA, in its capacity as trustee of AFFORDABILITY FUND TRUST

by:

_____ _____

Date Name:

Title:

by:

_____ _____

Date Name:

Title:

I/We have authority to bind the Recipient.

SCHEDULE "A"
GENERAL TERMS AND CONDITIONS

1.0 INTERPRETATION AND DEFINITIONS

1.1 Interpretation. For the purposes of interpretation:

(a) words in the singular include the plural and vice-versa;

(b) words in one gender include all genders;

(c) the headings do not form part of the Agreement; they are for reference only and will not affect the interpretation of the Agreement;

(d) any reference to dollars or currency will be in Canadian dollars and currency;

(e) "include", "includes" and "including" denote that the subsequent list is not exhaustive;

(f) where any reference is made in the Agreement to an act to be performed by or for or on behalf of the Affordability Fund Trust, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Recipient in its capacity as trustee of the Affordability Fund Trust, and, where any reference is made in the Agreement to an act to be performed by or for or on behalf of the Recipient, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Recipient in its capacity as trustee of the Affordability Fund Trust; and

(g) it is intended that the transfer of the Funds to the Recipient will be a transfer made to a ~~"non-controlled~~ trust~~" (as~~ that ~~term is given meaning in • applicable to the accounting rules and principles applicable to the Province as of the date of the Agreement~~is not controlled by the Province (as the term "control" is used in *Government Reporting Entity* at paragraphs PS 1300.07-.24), and so if a term or condition of the Agreement is determined to conflict with the requirements applicable to the Province recording the transfers to the Recipient of Funds contemplated hereunder as an expense incurred by the Province on the date of the transfer of Funds under the Agreement otherwise in connection with activities undertaken by the Province with such a ~~"~~non-controlled trust~~"~~, then such term or condition shall be given a meaning and shall have an effect insofar as it is possible to interpret such term or condition in a manner that eliminates such conflict while preserving the other provisions of the Agreement and furthering the Purpose.

1.2 Definitions. In the Agreement, the following terms will have the following meanings:

"Administrative Services Agent" has the meaning given such term in the Declaration of Trust.

"Affordability Fund Trust" means the trust established and governed by the Declaration of Trust, and for greater certainty includes such trust operating under any other name that may be designated from time to time by the Recipient in accordance with the Declaration of Trust.

"BPSAA" means the Broader Public Sector Accountability Act, 2010 (Ontario).

"**Beneficiary**" has the meaning given to such term in the Declaration of Trust.

"Budget" means the Recipient's budget attached to the Agreement as Schedule "D".

"Business Day" means any working day, Monday to Friday inclusive, excluding statutory and other holidays, namely: New Year's Day; Family Day; Good Friday; Easter Monday; Victoria Day; Canada Day; Civic Holiday; Labour Day; Thanksgiving Day; Remembrance Day; Christmas Day; Boxing Day and any other day on which the Province has elected to be closed for business.

"**Declaration of Trust**" means the declaration of trust made as of March [•], 2017, under which the Affordability Fund Trust was established, as such declaration of trust may be amended, restated, supplemented or otherwise modified from time to time with the consent of the Province in accordance with Section 20.2.

"Expiration Date" means the date on which this Agreement will expire and is the date set out in Schedule "B".

"Funds" means the money the Province provides to the Recipient pursuant to the Agreement.

"Implementation Agents" has the meaning given such term in the Declaration of Trust.

"Maximum Funds" means the maximum amount of Funds that the Province will provide the Recipient under the Agreement, as set out in Schedule "B".

"Notice" means any communication given or required to be given pursuant to the Agreement.

"Party" means either the Province or the Recipient.

"**Person**" includes any individual, sole proprietorship, corporation, partnership, joint venture, association, society, club, board, chamber, joint-stock company, trust, trustee, unincorporated or incorporated organization or entity or government or any entity, agency or political subdivision thereof.

"**Program**" has the meaning given to such term in the Declaration of Trust.

"Project" means the undertaking described in Schedule "C".

"**Purpose**" has the meaning given to such term in the Declaration of Trust.

"PSSDA" means the *Public Sector Salary Disclosure Act, 1996* (Ontario).

"**Recipient**" means, initially, Computershare Trust Company of Canada, and any additional or replacement trustee in its capacity as trustee of the Affordability Fund Trust pursuant to the Declaration of Trust, including the Board of Trustees (as defined in the Declaration of Trust) and each of their respective successors and permitted assigns.

"Reports" means the reports described in Schedule "F".

2.0 REPRESENTATIONS, WARRANTIES AND COVENANTS

2.1 General. The Recipient represents, warrants and covenants that:

(a) it is the trustee of the Affordability Fund Trust; and

(b) the Affordability Fund Trust is, and will continue to be for the term of the Agreement, a trust existing under and governed by the laws of the Province of Ontario.

2.2 Execution of Agreement. The Recipient represents and warrants that it has:

(a) the full power and authority to enter into the Agreement; and

(b) taken all necessary actions to authorize the execution of the Agreement.

2.3 Governance. The Recipient covenants that it will develop and maintain in writing until the Agreement is no longer in effect:

(a) decision-making mechanisms and procedures to enable the Recipient to hold, invest, manage, apply and distribute the Funds in accordance with the Declaration of Trust in furtherance of the Purpose; and

(b) procedures to enable the preparation and delivery of all Reports required pursuant to Article 7.0.

2.4 Supporting Documentation. Upon request, the Recipient will provide the Province with proof of the matters referred to in this Article 2.0.

3.0 TERM OF THE AGREEMENT

3.1 Term. The term of the Agreement will commence on the Effective Date and will expire on the Expiration Date.

3.2 Extension. The term of the Agreement may be extended by further agreement between the Parties.

3.3 Extension of the Declaration of Trust. If the Province determines that an extension of the Final Distribution Date (as defined in the Declaration of Trust) and time for termination of the Declaration of Trust is consistent with and in furtherance of the Purpose and the Province's original intentions and expectations in establishing the Project, the Province may request that the Recipient extend such date to a date specified by the Province in a Notice (such date not to be later than December 31, 2021, whereupon the Recipient, so long as the Recipient does not have a reasonable basis to believe that such an extension would be inconsistent with the Purpose or weaken the protections intended for the benefit of the trustee pursuant to the Declaration of Trust, will undertake such actions as it may consider to be necessary or appropriate to so extend the Declaration of Trust, including by amending the Declaration of Trust to provide for such an extension and to modify any other term or requirement as would be necessary or prudent to conform such term or requirement in light of such extension.

4.0 FUNDS AND CARRYING OUT THE PROJECT

4.1 Funds Provided. The Province will:

(a) provide the Recipient up to the Maximum Funds to be held, invested, applied and distributed in accordance with the terms of the Project and the Declaration of Trust;

(b) provide the Funds to the Recipient in accordance with the Payment Plan attached to the Agreement as Schedule "E"; and

(c) deposit the Funds into an account designated by the Recipient, provided that the account:

(i) resides at a Canadian financial institution; and

(ii) is in the name of the Recipient.

4.2 Timing of Distributions to Beneficiaries. The expectations of the Province regarding when Funds will begin to be distributed by the Recipient to Beneficiaries are set out in Schedule C. The Recipient will have regard to those expectations in the exercise of its discretion under the Declaration of Trust, in determining when Funds will be distributed to Beneficiaries in furtherance of the Purpose.

4.3 Use of Funds and Project. The Recipient will exercise its rights, duties and discretions under the Declaration of Trust so that the Funds are used, applied and distributed only for and in furtherance of the Purpose, including having regard to the Principles set forth in Annex A.

4.4 Province's Role Limited to Providing Funds. For greater clarity, the Province's role under the Agreement is limited to providing Funds to the Recipient and the Province is not responsible for carrying out or overseeing the terms of the Declaration of Trust.

4.5 Maximum Funds. The Recipient acknowledges that the Funds available to it pursuant to the Agreement will not exceed the Maximum Funds.

4.6 Funding, Not Procurement. For greater clarity, the Recipient acknowledges that:

(a) it is receiving funding from the Province for the Project and is not providing goods or services to the Province; and

(b) the funding the Province is providing under the Agreement is funding for the purposes of the PSSDA.

5.0 RECIPIENT'S ACQUISITION OF GOODS OR SERVICES, AND DISPOSAL OF ASSETS

5.1 Acquisition. If the Recipient acquires goods, services, or both with or by applying the proceeds of the Funds, it is expected to do so through a process that promotes the best value for money and to take reasonable steps to ensure that its Administrative Services Agents and Implementation Agents also follow a process that promotes the best value for money when acquiring goods and services with or by applying the proceeds of the Funds. ~~In this regard, it is expected that the Recipient will have regard the following procurement principles:~~

~~(a) ***Accountability*** - Procurement is conducted in a manner that is well-informed and reflects rules of good governance and decision-making.~~

~~(b) ***Geographic Neutrality and Reciprocal Non-Discrimination*** - Procurement should not differentiate between competing goods, services, or suppliers based on their geographic origin or location.~~

~~(c) ***Responsible Management*** - Procurement of goods and services should be responsibly, efficiently and effectively managed and should observe the highest standard of ethics, avoiding conflict of interest.~~

~~(d) ***Value for Money*** - Procurement processes should apply a value for money evaluation that takes into account price as well as other costs and benefits, including life cycle costs and relevant non-price attributes such as quality.~~

~~(e) ***Vendor Access, Transparency, and Fairness*** - Procurement is conducted in a fair and transparent manner, offering all qualified suppliers equal treatment and open access to compete for the opportunity to supply goods and services.~~

6.0 CONFLICT OF INTEREST

6.1 No Conflict of Interest. Except as expressly permitted by the Declaration of Trust, the Recipient is expected to implement appropriate processes and control to ensure that the Program and the use, application and distribution of the Funds are without an actual, potential or perceived conflict of interest.

6.2 Conflict of Interest Includes. For the purposes of this Article, a conflict of interest includes any circumstances where, except as expressly permitted by the Declaration of Trust:

(a) the Recipient; or

(b) any person who has the capacity to influence the Recipient's decisions,

has outside commitments, relationships or financial interests that could, or could be seen to, interfere with the Recipient's objective, unbiased and impartial judgment relating to the Project, or the Recipient's use, application or distribution of the Funds, or both.

7.0 REPORTING, ACCOUNTING AND REVIEW

7.1 Preparation and Submission. The Recipient will cooperate with the Province to accommodate the Province's on-going information and reporting objectives in order to enable the Province to be aware of the Recipient's activities in furtherance of the Purpose, and to that end the Recipient will be expected, from and following the Original Trustee Replacement Date, to:

(a) submit to the Province at the address referred to in Schedule "B", all Reports in accordance with the timelines and content requirements set out in Schedule "F", or in a form as specified by the Province from time to time, acting reasonably;

(b) submit to the Province at the address referred to in Schedule "B", any other reports as may be reasonably requested by the Province from time to time in accordance with the timelines and content expectations identified by the Province, acting reasonably;

(c) undertake diligent efforts so that such Reports and any such other reports are complete and accurate in all material respects; and

(d) have an authorized signatory of the Recipient sign-off on such Reports and other reports.

7.2 Record Maintenance. The Recipient will keep and maintain financial and other records necessary to permit it to satisfy its obligations under section 7.1 and to permit the Province to exercise its rights under section 7.3.

7.3 Inspection. The Province, its authorized representatives or an independent auditor identified by the Province may, at its own expense, upon twenty-four hours' Notice to the Recipient and during normal business hours, inspect the records of and information respecting the Recipient to confirm its compliance with the terms of this Agreement, including to ensure consistency with the Purpose and, for these purposes, the Province, its authorized representatives or an independent auditor identified by the Province may take one or more of the following actions:

(a) inspect and copy the records and documents referred to in section 7.2;

(b) keep any copies made pursuant to section 7.3(a); and

(c) conduct an audit or investigation of the Recipient in respect of the expenditure of the Funds to confirm that the Funds have been used, applied and distributed for and in furtherance of the Purpose, including a review of the Recipient's processes, records, documents, as well as the processes and controls applied to obtain assurance that Funds disbursed to Electricity Distributors were used, applied and distributed for and in furtherance of the Purpose.

7.4 Disclosure. To assist in respect of the rights set out in section 7.3, the Recipient will disclose any information requested by the Province, its authorized representatives or an independent auditor identified by the Province, and will do so in the form requested by the Province, its authorized representatives or an independent auditor identified by the Province, as the case may be.

7.5 No Control of Records. No provision of the Agreement will be construed so as to give the Province any control whatsoever over the Recipient's records.

7.6 Auditor General. For greater certainty, the Province's rights under this Article are in addition to and do not limit any rights provided to the Auditor General pursuant to section 9.1 of the *Auditor General Act* (Ontario).

8.0 COMMUNICATIONS REQUIREMENTS

8.1 **Publication.** The Recipient will acknowledge, in any of its Program-related external communications and marketing whether written, oral, or visual, the financial support of the Province in connection with the establishment and funding of the program, while noting that the views expressed in the publication are the views of the Recipient and do not necessarily reflect those of the Province.

9.0 FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY

9.1 **FIPPA.** The Recipient acknowledges that the Province is bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province in connection with the Project or otherwise in connection with the Agreement may be subject to disclosure in accordance with that Act.

10.0 Intentionally Deleted

11.0 EVENT OF DEFAULT, CORRECTIVE ACTION AND TERMINATION FOR DEFAULT

11.1 **Events of Default.** An Event of Default will occur if:

(a) the Recipient fails to perform or observe any covenant in this Agreement and such failure has and continues to have a material adverse effect on the Province and remains unremedied during any Notice period applicable under section 11.2 after the earlier of (i) actual knowledge thereof by the Recipient, or (ii) receipt by the Recipient of Notice thereof from the Province;

(b) any representation or warranty made by the Recipient in the Agreement shall prove to have been incorrect in any material respect when made or deemed made, and, if capable of remedy, continues to be incorrect in any material respect during any Notice period applicable under section 11.2 after the earlier to occur of (i) the actual knowledge thereof by the Recipient or (ii) receipt by the Recipient of Notice thereof from the Province;

(c) it is determined that the Recipient has breached its Standard of Care (within the meaning given in and context of the Declaration of Trust) in discharging its material duties under the Declaration of Trust, with the result that all or a significant part of the Funds have not been or are not being applied in furtherance of the Purpose or are being applied in a manner that is directly contrary or without regard to the Purpose, and, if such breach is capable of remedy, it continues and remains unremedied during any Notice Period applicable under section 11.2 after the earlier of (i) actual knowledge thereof by the Recipient, or (ii) receipt by the Recipient of Notice thereof from the Province;

(d) an insolvency event shall have occurred and be continuing with respect to the Recipient.

11.2 **Consequences of Events of Default and Corrective Action.** If an Event of Default occurs, the Province may, at any time, take one or more of the following actions:

(a) provide the Recipient with Notice allowing the Recipient an opportunity to remedy the Event of Default during a specified Notice Period;

(b) seek an order of specific performance, including an order that the Recipient pursue its available remedies against third parties;

(c) require, by Notice of demand, that the Recipient transfer to the Province (without any need for compensation, indemnity or consideration to the Recipient or any Beneficiary or other third party) any and all Assets remaining in the possession or under the control of the Recipient that can reasonably be traced or attributed to the Funds after first providing for the completion and performance by the Recipient of any unperformed contractual obligations of the Recipient undertaken in compliance with the Declaration of Trust on or prior to transfer; and

(d) terminate the Agreement, including immediately, without liability, penalty or costs to the Province upon giving Notice to the Recipient.

The transfer of Funds in accordance with the Agreement is made by the Province with the expressed intention and reservation that the transferred Funds shall be returned to the Province and the entitlements of the Recipient in remaining Funds shall thereby be revoked with reversion thereof to the Province in the circumstances contemplated in Section 11.2(c).

11.3 Opportunity to Remedy. If, in accordance with section 11.2, the Province provides the Recipient with an opportunity to remedy the Event of Default, the Province will provide Notice to the Recipient of:

(a) the particulars of the Event of Default; and

(b) the length of time within which the Recipient may cure such Event of Default without the Province pursuing any other remedy (the "Notice Period").

11.4 Recipient not Remedying. If the Province has provided the Recipient with an opportunity to remedy the Event of Default pursuant to section 11.2(a), and:

(a) the Recipient does not remedy the Event of Default within the Notice Period;

(b) it becomes apparent to the Province that the Recipient cannot adequately remedy the Event of Default within the Notice Period; or

(c) the Recipient is not proceeding to remedy the Event of Default in a way that is satisfactory to the Province,

the Province may extend any Notice Period, or initiate any one or more of the actions provided for in section 11.2.

12.0 REPAYMENT

12.1 Debt Due. If, pursuant to the Agreement: the Province demands the payment of any Funds from the Recipient pursuant to section 11.2(c) such Funds or other amount will be deemed to be a debt due and owing to the Province by the Recipient, and the Recipient will pay or return the amount to the Province immediately, unless the Province directs otherwise.

12.2 Payment of Money to Province. The Recipient will pay any money owing to the Province by cheque payable to the "Ontario Minister of Finance" and delivered to the Province at the address referred to in Schedule "B".

12.3 Failure to Repay. Without limiting the application of section 43 of the Financial Administration Act (Ontario), if the Recipient fails to repay any amount owing under the Agreement, Her Majesty the Queen in right of Ontario may deduct any unpaid amount from any money payable to the Recipient by Her Majesty the Queen in right of Ontario.

13.0 NOTICE

13.1 Notice in Writing and Addressed. Notice will be in writing and will be delivered by email, postage-prepaid mail, personal delivery or fax, and will be addressed to the Province and the Recipient respectively as set out in Schedule "B", or as either Party later designates to the other by Notice.

13.2 Notice Given. Notice will be deemed to have been given:

(a) in the case of postage-prepaid mail, five Business Days after the Notice is mailed; or

(b) in the case of email, personal delivery or fax, one Business Day after the Notice is delivered.

13.3 Postal Disruption. Despite section 13.2(a), in the event of a postal disruption:

(a) Notice by postage-prepaid mail will not be deemed to be received; and

(b) the Party giving Notice will provide Notice by email, personal delivery or by fax.

14.0 SEVERABILITY OF PROVISIONS

14.1 Invalidity or Unenforceability of Any Provision. The invalidity or unenforceability of any provision of the Agreement will not affect the validity or enforceability of any other provision of the Agreement. Any invalid or unenforceable provision will be deemed to be severed.

15.0 WAIVER

15.1 Waivers in Writing. If a Party fails to comply with any term of the Agreement, that Party may only rely on a waiver of the other Party if the other Party has provided a written waiver in accordance with the Notice provisions in Article 13.0. Any waiver must refer to a specific failure to comply and will not have the effect of waiving any subsequent failures to comply.

16.0 INDEPENDENT PARTIES

16.1 Parties Independent. The Recipient acknowledges that it is not an agent, joint venturer, partner or employee of the Province, and the Recipient will not represent itself in any way that might be taken by a reasonable person to suggest that it is, or take any actions that could establish or imply such a relationship.

17.0 ASSIGNMENT OF AGREEMENT OR FUNDS

17.1 Agreement Binding. All rights and obligations contained in the Agreement will extend to and be binding on the Parties' respective heirs, executors, administrators, successors and permitted assigns.

18.0 LIMITATION OF LIABILITY

18.1 This Agreement has been entered into by the Recipient solely in its capacity as trustee of the Affordability Fund Trust and is not binding on the Recipient in any other capacity, whether in tort, contract or otherwise. The Beneficiaries of the Affordability Fund Trust are not subject to any liability in respect of the Affordability Fund Trust. Resort may not be had to, nor recourse or satisfaction be sought from, the private property of the Recipient (whether owned by it in its personal capacity or in any other capacity other than in its capacity as trustee of the Affordability Fund Trust), its directors, officers, employees, or agents, or the private property of any Beneficiary, and resort will be had solely to the property of the Recipient held in trust for the payment, performance or satisfaction of any liability or obligation of the Recipient under this Agreement. However, the foregoing limitations in this section shall not apply where the Recipient has demonstrated gross negligence, bad faith, fraud or wilful misconduct.

19.0 GOVERNING LAW

19.1 Governing Law. The Agreement and the rights, obligations and relations of the Parties will be governed by and construed in accordance with the laws of the Province of Ontario and the applicable federal laws of Canada. Any actions or proceedings arising in connection with the Agreement will be conducted in the courts of Ontario, which will have exclusive jurisdiction over such proceedings.

20.0 FURTHER ASSURANCES

20.1 Agreement into Effect. The Recipient will provide such further assurances as the Province may request from time to time with respect to any matter to which the Agreement pertains, and will otherwise do or cause to be done all acts or things necessary to implement and carry into effect the terms and conditions of the Agreement to their full extent.

20.2 **Declaration of Trust.** The Recipient covenants that it shall not amend, restate or terminate the Declaration of Trust without obtaining the written consent of the Province in respect of same, such consent not to be unreasonably withheld or delayed.

21.0 JOINT AND SEVERAL LIABILITY

21.1 **Joint and Several Liability.** Without limiting and subject to section 18.1 and the Declaration of Trust, if the Recipient is comprised of more than one entity, all such entities will be jointly and severally liable to the Province for the fulfillment of the obligations of the Recipient under the Agreement.

22.0 RIGHTS AND REMEDIES CUMULATIVE

22.1 **Rights and Remedies Cumulative.** The rights and remedies of the Province under the Agreement are cumulative and are in addition to, and not in substitution for, any of its rights and remedies provided by law or in equity.

23.0 ACKNOWLEDGEMENT OF OTHER LEGISLATION AND DIRECTIVES

23.1 **Recipient Acknowledges.** The Recipient acknowledges that by receiving Funds it may become subject to legislation applicable to organizations that receive funding from the Government of Ontario, including the BPSAA, the PSSDA, and the *Auditor General Act* (Ontario).

24.0 SURVIVAL

24.1 **Survival.** The following Articles and sections, and all applicable cross-referenced sections and schedules, will continue in full force and effect for a period of seven years from the date of expiry or termination of the Agreement: Article 1.0 and any other applicable definitions, section, 4.5, section 7.1 (to the extent that the Recipient has not provided the Reports to the satisfaction of the Province), sections 7.2, 7.3, 7.4, 7.5, 7.6, Article 8.0, Article 12.0, Article 14.0, Article 16.0, Article 17.0, Article 19.0, Article 21.0, Article 23.0 and Article 24.0.

- END OF GENERAL TERMS AND CONDITIONS -

SCHEDULE "B"

PROJECT SPECIFIC INFORMATION

Maximum Funds	$100 million
Expiration Date	The date upon which the Affordability Fund Trust is terminated in accordance with the Declaration of Trust
Contact information for the purposes of Notice to the Province	**Attention: Usman Syed** **Position: Director** **Address: 77 Grenville St, Toronto, Ontario, M7A 2C1** **Fax: 416-325-6651** **Email: Usman.Syed@ontario.ca**
Contact information for the purposes of Notice to the Recipient	**Attention:** **Position:** **Address:** **Email:**
Contact information for the senior financial person in the Recipient organization (e.g., CFO, CAO) – to respond as required to requests from the Province related to the Agreement	**Attention:** **Position:** **Address:** **Email:**

SCHEDULE "C"

PROJECT

For the purposes of this Agreement, the "Project" is the distribution of the Funds in accordance with the Declaration of Trust.

It is intended the Project will be undertaken by the Recipient in furtherance of the Purpose and in accordance with the Declaration of Trust. In this regard, it is expected that the Recipient will undertake the Program having regard to the Budget and the Principles set forth in Annex A.

The following are the Province's expectations regarding the circumstances in which the Recipient will begin to distribute any Funds to any Beneficiary.

1. The Original Trustee Replacement Date (as defined in the Declaration of Trust) will have occurred.

2. An Administrative Services Agreement (as defined in the Declaration of Trust) will have been entered into between the Recipient and Hydro One Limited under which Hydro One Limited shall provide specified administrative and other services on behalf of the Recipient.

3. Administrative procedures will have been developed and implemented under which Electricity Distributors (as defined in the Declaration of Trust) will be invited to assist with (a) the identification and selection of Primary Beneficiaries under the Declaration of Trust, (b) the determination of the amount of Funds to be distributed to particular Primary Beneficiaries, and (c) the distribution of Funds to or for the benefit of such Primary Beneficiaries (in each case substantially on the basis contemplated in the Permitted Delegations Annex).

4. The Recipient will have obtained commercial general liability insurance from insurers having a secure A.M. Best rating of B+ or greater, or the equivalent, that in the opinion of the Recipient a prudent person similar to the Recipient would maintain, and having an inclusive limit of not less than $2,000,000 per occurrence and providing for contractual liability coverage. If requested, the Recipient will provide the Province (for its information purposes) with copies of the certificates of insurance and policies for such insurance coverage.

The Province recognizes that the foregoing may involve the Recipient entering into agreements as the Recipient considers to be necessary or expedient, including any required amendment or amendment and restatement of the Declaration of Trust. Funds may be expended to pay the expenses of the Recipient in completing these matters. The Recipient is requested to advise the Province through its quarterly reports on the status of the foregoing.

SCHEDULE "D"

Recipient's Budget

1. It is expected that the administrative expenses of the Recipient, including any administrative expenses of any Administrative Services Agents or any Implementation Agents or any other agents retained by the Recipient, relating to the establishment of the Affordability Fund Trust and ~~satisfying the Requirements (as defined~~addressing the Province's expectations as enumerated in Schedule "C"~~)~~ and any expenses related to the operation of the Affordability Fund Trust and the execution of the Project (including any reimbursable expenses incurred by any Administrative Services Agent or any Implementation Agent (as such terms are defined in the Declaration of Trust)), will be no greater than 10 percent of the total Project budget.

2. The only expenditures incurred by the Recipient that are eligible for reimbursement are actual (excluding HST) administrative overhead expenses incurred by or on behalf of the Recipient that directly related to the Recipient or the establishment of the Affordability Fund Trust.

4. Any expenses that have been or may be reimbursed by other parties should not be reimbursed from the assets of the Affordability Fund Trust.

5. It is expected any travel, meals and hospitality expenses by the Recipient will be consistent with the Province's Travel, Meal and Hospitality Expenses Directive. For purposes of funding entities receiving funding from the Recipient, the following would not be considered eligible claims:

   - Alcohol
   - First-Class travel
   - Meals, snacks and beverages
   - Gratuities
   - Laundry or dry cleaning
   - Valet services
   - Dependent care
   - Home management
   - Personal telephone calls

6. In the event that the Recipient performs any procurements, it is expected that all procurements will reflect the principles of Ontario's Public Service Procurement Directive.

SCHEDULE “E”

PAYMENT PLAN

PAYMENT DATE	MAXIMUM FUNDS TO BE DISBURSED BY THE PROVINCE
Within 7 days of signing the Agreement	$ 100,000,000

SCHEDULE "F"

REPORTING

From and following the Original Trustee Replacement Date, Reports will be quarterly on the basis of the government's fiscal year starting at the execution of this Agreement and continuing until conclusion of the Agreement. Annual Reports will be on a fiscal basis starting at the execution of this Agreement and continuing until conclusion of the Agreement. Quarterly Reports and Annual Reports would be expected to be submitted to the Province within one month following the end of the reporting period that they represent. The Province expects that these Reports would be prepared to demonstrate the impact of the Province's funding and address the following:

- Quarterly Reports would include a report back on the trustee-developed performance management criteria. Initially, such Quarterly Reports would include details respecting:
    - Amounts disbursed by the Recipient in the previous quarter. It is expected that this information would be provided at the Electricity Distributor level and in the aggregate.
    - Total Affordability Fund investment income earned and accrued to date.
    - Key activities and achievements from the quarter, including the number of participant households per Electricity Distributor, average participant incentive cost per Electricity Distributor, and uptake of energy efficiency measures per Electricity Distributor.
    - Any challenges or modifications to the application, funding, or eligibility processes/rules of the Recipient.
    - Key activities planned for the upcoming quarter.
    - Details of any situation that a reasonable person might interpret as an actual, potential or perceived conflict of interest.
- Annual Reports would include a report back on the trustee-developed performance management criteria. Initially, such Annual Report would include details respecting:

- A description of an Electricity Distributor's application process and the criteria used by the Recipient to distribute funds.
- Any challenges identified by the Recipient or any Administrative Services Agent in achieving the Purpose and proposed solutions, if applicable.
- Lesson learned.
- Electricity Distributor and customer feedback.
- Amounts distributed to Beneficiaries or otherwise disbursed by the Recipient in the previous year. It is expected that this information will be provided by each Electricity Distributor.
- Key activities and achievements from each quarter being reported, including number of participant households per Electricity Distributor, average participant incentive cost per Electricity Distributor, and uptake of energy efficiency measures per Electricity Distributor.
- Total Affordability Fund interest earned and accrued to date.

As part of an Annual Report, the Recipient would also provide the Province with an audited financial statement for the previous year.

ANNEX A

Principles

The Trustee shall have regard to, but shall not be specifically bound by, the following principles in applying its discretion in relation to the administration of the Trust:

1. ~~4.~~ Identification of Primary Beneficiary Payees

1.1 ~~4.1~~ Except in exceptional circumstances, a Primary Beneficiary would not be expected to receive a benefit from the Trust unless at the time of consideration it satisfies, in addition to the requirements contemplated in the definition of "Primary Beneficiary", each of the following criteria (the "**Selection Factors**"):

(i) it has a participant agreement with an applicable Electricity Distributor to undertake measures (its "**Energy Plan**") to improve the electricity efficiency and/or promote the conservation of electricity at its Ontario residence;

(ii) its Energy Plan involves one or more Eligible Measures, as may be designated by the Trustee from time to time from;

(iii) it confirms that:

1. the primary purpose of its Energy Plan is the conservation and efficient use by the Primary Beneficiary of electricity, and is not for the purposes of the Primary Beneficiary making a profit;

2. it would otherwise not have the financial resources to undertake the Eligible Measures included in its Energy Plan; and

3. it would otherwise not be eligible to receive amounts in respect of the Eligible Measures as a HAP Eligible Person;

(iv) it has demonstrated a need for financial assistance on the basis that its periodic electricity bills represent a financial burden, relative to its available financial resources; and

(v) such other criteria as the Trustee may determine, including based on the recommendations of Electricity Distributors or other knowledgeable Persons made on the basis and having regard to the delegations contemplated by the Permitted Delegations Annex or any applicable Implementation Agreement.

1.2 ~~4.2~~ It is recognized that, in furthering the Purpose, an efficient basis upon which to allocate funds to the Primary Beneficiaries across different areas and regions within Ontario may be based on the areas and regions serviced by the Electricity Distributors operating within Ontario.

1.3 ~~4.3~~ It would not be contrary to the Purposes if funds are made available by the Trustee to the Primary Beneficiaries unequally across different areas and regions within Ontario, and it is expected that in making such an unequal division it would be appropriate to have regard to:

(i) broad economic parameters of economic activity and the specific financial resources of the residents of the areas and regions, in each case as an indication of the relative need of such residents across the areas and regions;

(ii) electricity use and efficiency levels of residential electricity customers across the areas and regions;

(iii) specific regional indicators of economic weakness and need; and

(iv) such other factors as the Trustee may determine are relevant, including based on the submissions, advice and recommendations of Electricity Distributors or other knowledgeable Persons made on the basis and having regard to the delegations contemplated by the Permitted Delegations Annex or any applicable implementation Agreement.

1.4 ~~4.4~~ It is recognized that, in furthering the Purpose, the designated Electricity Distributor for an area or region in which a Primary Beneficiary resides would be expected to:

(i) be a reliable source for the purpose of assessing and confirming whether the Primary Beneficiary satisfies the Selection Factors;

(ii) be an efficient intermediary for the purpose of communicating with the Primary Beneficiary, including with respect to matters such as regarding the availability, terms, conditions and intended purposes of Program;

(iii) be able to facilitate an efficient payment of distribution determined to be made to or on behalf of the Primary Beneficiary, having regard to the Electricity Distributor's established practices, procedures and systems for dealing with its customers; and

(iv) have established contractual arrangements with the Primary Beneficiary that may apply to the protection and confidentiality of information provided by or respecting the Primary Beneficiary, which information may be useful in the consideration by the Electricity Distributor in its assessment of whether the Primary Beneficiary satisfies the Selection Factors, which information may not otherwise be available or readily accessible or verifiable by the Trustee.

1.5 ~~4.5~~ It is recognized that, in furthering the Purpose, the Electricity Distributor for an area or region in which a Primary Beneficiary resides will have market and utilization information that may be useful in assessing the relative needs of Primary Beneficiaries within its area or region. Such information is expected to be relevant in assessing the extent to which one such Primary Beneficiary's financial needs and the merits of its Energy Plan are greater or more compelling than those of another such Primary Beneficiary, which comparison may be relevant to the extent that the funds allocable to the Primary Beneficiaries resident in the area or region are otherwise insufficient to meet the requests for funding by all such Primary Beneficiaries.

1.6 ~~4.6~~ Accordingly, it is recognized that, in furthering the Purpose, it is consistent with the Purpose that the recommendations of Electricity Distributors be utilized and relied upon by the Trustee to guide the process of identifying particular Primary Beneficiaries in making distributions to the Primary Beneficiaries.

1.7 ~~4.7~~ If an Electricity Distributor for a particular area or region is unable or unwilling to assess or confirm the application of the Selection Factors to Primary Beneficiaries residing in the area or region or to make recommendations in relation to such matters, one or more of the following may provide a suitable alternative source of information and for information gathering, assessment and confirmation purposes in relation to such area or region:

(i) other Electricity Distributors operating in adjacent or other areas or regions in Ontario;

(ii) the Ontario Energy Board;

(iii) the Independent Electricity System Operator; and

(iv) anyone else having relevant expertise and access to information regarding the electricity market of the Province, in each case as may be considered relevant by the Trustee.

1.8 ~~4.8~~ To the extent that privacy law or other legal requirements limit an Electricity Distributor from providing or making available specific information respecting the application of the Selection Factors to a particular Primary Beneficiary or group of Primary Beneficiaries, it is recognized that, in furthering the Purpose, it may be appropriate to redact or make generic affected information regarding such Primary Beneficiary in connection with the identification and confirmation of a Primary Beneficiary's eligibility and participation in the Program. If such limitations or restrictions would limit an Electricity Distributor from providing or confirming the name of a particular Primary Beneficiary to the Trustee, then it should be sufficient that such information may be obtained or disseminated on a confidential basis if and when required by the Trustee for the proper administration of the Trust and on that basis such impediments should not disqualify a Primary Beneficiary from participating in the benefits of the Program, provided that the confidential record-keeping of the Electricity Distributor would be available in connection with the application of any applicable legal process predicated on the identification of such Primary Beneficiary for the purposes of substantiating its rights as a Primary Beneficiary of the Trust or as to the validity or subsistence of the Trust.

2. ~~5.~~ Eligible Measures

2.1 ~~5.1~~ It is expected that the Trust will identify eligible measures that, taking into consideration the principles set forth in the Principles Annex, have regard to the following (the "**Measures Factors**"):

(i) is the measure generally expected to result in reduced electricity consumption by a Primary Beneficiary if properly installed and used;

(ii) is the measure recognized under another Provincial program as being appropriate for achieving electricity conservation among a population analogous to the Primary Beneficiaries;

(iii) does the measure present any unacceptable health or safety considerations, either with respect to the Primary Beneficiary, a party providing or installing the measure, or the physical environment;

(iv) is the measure broadly available to residents across different areas and regions of the Province; or

(v) is the measure a requirement or precursor to another measure, the other measure being one which meets any of the other Measures Factors.

2.2 ~~5.2~~ In identifying and applying the Measures Factors, Electricity Distributors would be expected to have expertise in assessing the suitability of efficiency and conservation measures in their respective areas and regions, which may differ across areas and regions across the Province based on factors (among other things) such as the climate, geography, density, electricity infrastructure, residential structures, and electricity use rates applicable within such areas or regions.

2.3 ~~5.3~~ The measures specified in Schedule A to this Principles Annex may initially be considered to be consistent with the Measures Factors (subject to change as contemplated under the Permitted Delegations Annex).

3. ~~6.~~ Promotion of the Program

3.1 ~~6.1~~ It is expected that the Trustee will undertake or engage others to undertake diligent efforts to promote the availability, terms and benefits of the Program to Primary Beneficiaries, including by establishing consistent communications through the Electricity Distributors.

3.2 ~~6.2~~ It is expected that the Trustee will acknowledge the financial support of the Province in connection with the establishment and the funding for the Program, including in any external communications to or marketing directed at the Electricity Distributors and the Primary and Residual Beneficiaries. In its delegation of any duties or powers to the Electricity Distributors through Implementation Agreements it is expected that Electricity Distributors will acknowledge the financial support of the Province in connection with the program including in any communications or marketing to Primary Beneficiaries.

4. ~~7.~~ Conduct of the Trust and the Program

4.1 ~~7.1~~ It is expected that administrative expenses of the Board of Trustees and its members, including any expenses relating to the Trust, to the establishment of the Trust and any expenses related to the implementation and operation of the Program, including by or through Electricity Distributors and other relevant entities, will be recognized and subject to reimbursement on a basis that is substantially consistent with the accountability provisions contemplated in the Transfer Payment Agreement and the principles in the Province's Travel, Meal and Hospitality Expenses Directive, as set out in Schedule B to this Principles Annex.

4.2 ~~7.2~~ The Trustee is expected to conduct its activities in a manner that complies in all material respects with the Transfer Payment Agreement, including to:

(i) act prudently and in furtherance of the Purpose;

(ii) report not less frequently than annually the results of its activities for information purposes to the Province in connection with the Program;

(iii) comply with the Province's request for any independent verification or audit if determined to be necessary or appropriate by the Province;

(iv) return Assets that have not been distributed if it is determined that the Trustee has breached its Standard of Care in discharging its material duties under the Declaration, and has not cured such material breach despite having been given a reasonable opportunity by the Province to do so in light of the circumstances of such material breach, with the result that all or a significant part of the Assets have not been or are not being applied and distributed in furtherance of the Purpose or are being applied and distributed in a manner that is directly contrary or without regard to the Purpose.

4.3 ~~7.3~~ Electricity Distributors are not intended to directly profit from distributions of funds made from the Trust, although it is recognized that the objectives of electricity efficiency and conservation of Primary Beneficiaries located in the service area or region of an Electricity Distributor, and the cost savings and improved credit worthiness of such Primary Beneficiaries, may be financially beneficial to the Electricity Distributor.

4.4 ~~7.4~~ Distributions from the Trust are intended to allow receiving Primary Beneficiaries to undertake Eligible Measures at no or minimal personal cost.

4.5 ~~7.5~~ Without in any way limiting the discretion of the Board of Trustees to extend the period during which the benefits of the Program may be available to the Primary Beneficiaries, up to and including the Final Distribution Date, it is expected that the Trust Assets would be distributed to

Primary Beneficiaries during the period from the Original Trustee Replacement Date to April 30, 2019.

SCHEDULE A TO THE PRINCIPLES ANNEX
INDICATIVE ELIGIBLE MEASURES[1]

Initial Specified Measures
Block Heater Timer (just timer) – rated for outdoor use, have at least a 15 amp/1800 watt capacity, be cold weather resistant, bear a C-UL or CSA certification mark
Power bar with integrated timer, and switched power outlets, four each for a total of 8 outlets, have a total capacity of 15 amps. The switched outlets must remain "live", independent of timer settings, so long as the power bar itself remains switched on. The power bar must bear either a C-UL or CSA certification mark.
Efficient Showerheads (standard) - rated at no more than 4.8 Lpm (1.25 U.S. gpm) and be of the laminar flow type (non-aerating).
Efficient Showerhead (handheld) - rated at no more than 4.8 Lpm (1.25 U.S. gpm) and be of the laminar flow type (non-aerating).
Efficient Aerators (kitchen) - rated no more than 5.7 Lpm (1.5 U.S. gpm), dual threaded to allow installation in both thread type faucets, swivel type with pause lever.
Efficient Aerators (bathroom) - rated no more than 3.8 Lpm (1.0 U.S. gpm), be dual threaded to allow installation in both thread type faucets.
Hot Water Tank Pipe Insulation - 1/2" inside diameter – foam, meets ASTM –C547-00, minimum 3/4" thick
Hot Water Tank Pipe Insulation - 3/4 " inside diameter - – foam, meets ASTM –C547-00, minimum 3/4" thick
Hot Water Tank Insulation - fibreglass R10 (fits up to a 60 gal tank) – not bubble wrap
≤11W ENERGY STAR® Qualified LED A Shape (60W) (minimum 600 Lumen output) (Formerly: 7W – 11W ENERGY STAR® Qualified LED A Shape (60W))

[1] These measures are indicative. Eligible measures added to HAP during the administration of the Trust may also be appropriately considered relevant by the Trustee.

Initial Specified Measures
≤14W ENERGY STAR® Qualified LED A Shape (75W) (minimum 800 Lumen output) (Formerly: 10W – 14W ENERGY STAR® Qualified LED A Shape (75W))
≤23W ENERGY STAR® Qualified LED A Shape (100W) (minimum 1600 Lumen output) (Formerly:17W – 23W ENERGY STAR® Qualified LED A Shape (100W))
≤16W ENERGY STAR® Qualified LED PAR 20 (minimum 600 Lumen output) (Formerly: 8W – 12W ENERGY STAR® Qualified LED PAR 20)
≤16W ENERGY STAR® Qualified LED PAR30 & PAR38 (minimum 600 Lumen output) (Formerly: 8W – 12W ENERGY STAR® Qualified LED PAR 30)
≤23W ENERGY STAR® Qualified LED PAR (minimum 1100 Lumen output) (Formerly: 14W – 18W ENERGY STAR® Qualified LED PAR 38)
≤6W ENERGY STAR® Qualified LED MR 16 / PAR 16 (minimum 250 Lumen output) (Formerly: 7W – 10W ENERGY STAR®
Qualified LED MR 16 / PAR 16 - GU 10 Base)
≤11W ENERGY STAR® Qualified LED MR 16 (minimum 400 Lumen output) (Formerly: 7W – 12W ENERGY STAR® Qualified LED MR 16 GU 5.3 Base)
ENERGY STAR® LED Wet Location Rated PAR lamp ≤ 23 Watt (minimum 1100 Lumen output)
Recessed Downlight Fixture including LED with Light Output >600 and <800 lumens (Retrofit Measure List)
Recessed Downlight Fixture including LED with Light Output >800 lumens (Retrofit Measure List)
Indoor Drying Rack

Extended Measures
Replace refrigerator with ENERGY STAR qualified refrigerator - 15.5 - 16.9 cubic foot top freezer, automatic defrost, refrigerator/ freezer, no through the door ice service
Replace refrigerator with ENERGY STAR qualified refrigerator - 17.0 - 18.4 cubic foot top freezer, automatic defrost, refrigerator/ freezer, no through the door ice service
Replace refrigerator with a refrigerator that has a consumption level of less than 425 kwh, 10 – 12.5 cubic foot top freezer, automatic defrost, refrigerator freezer, no through the door ice service
Replace freezer with ENERGY STAR qualified freezer - 12-14.4 cubic foot freezer
Replace freezer with ENERGY STAR qualified freezer - 14.5 - 16.0 cubic foot freezer
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 6,000 – 7,999 BTU/hr with C-UL or CSA certification mark
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 8,000 – 9,999 BTU/hr with C-UL or CSA certification mark
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 10,000 – 12,000 BTU/hr with C-UL or CSA certification mark
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 14.2 - 21.2 l/day (30-44.9 pints/day) dehumidifier
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 21.3 - 25.4 l/day (45-53.9 pints/day) dehumidifier
Extended Measures
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 25.5 - 35.5 l/day (54-75 pints/day) dehumidifier
Programmable Thermostat – line voltage – meets CAN/CSA-C828-06 standard, minimum performance: Droop: 1.5°C, Differential: 0.5°C, Precision 0% within 0.5°C of the original set point of 22°C
Programmable Thermostat – low voltage - meets CAN/CSA-C828-06 standard, minimum performance: Droop: 1.5°C, Differential: 0.5°C, Precision 0% within 0.5°C of the original set point of 22°C

Weatherization Measures
Comprehensive Draftproofing (caulking, foam and weather stripping, and application of same) – lifespan of 20 years plus If one or two component polyurethane foams are used, the products and installations must conform to: • CAN/ULC-S710.1 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 1: Material Specification. • CAN/ULC-S710.2 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 2: Application. • CAN/ULC-S711.1 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification • CAN/ULC-S711.2 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification, and Part 2: Application. **Attic Insulation (including installation):**
cellulose: CAN/ULC-S703-01 Amendment 1 - Cellulose Fibre Insulation (CFI) for Buildings OR 2) Mineral Fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre

Weatherization Measures
for Buildings **Wall Insulation (including installation):**
cellulose: CAN/ULC-S703-01 Amendment 1 - Cellulose Fibre Insulation (CFI) for Buildings OR 2) Mineral Fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre **Basement Insulation (including installation):**
mineral fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre for Buildings Vapour Barrier: 69009-CAN/CGSB-51.34-m86 If one or two component polyurethane foams are used, the products and installations must conform to: • CAN/ULC-S710.1 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 1: Material Specification. • CAN/ULC-S710.2 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 2: Application. • CAN/ULC-S711.1 Standard for Thermal Insulation – Bead Applied Two-Component
Polyurethane Air Sealant Foam, Part 1: Material Specification • CAN/ULC-S711.2 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification, and Part 2: Application.

Heat Pumps
(Selection of manufacturers and technologies to meet the US federal minimum efficiency standard for ASHPs, as of 2015, is 13.0 SEER and 7.7 HSPF. Energy Star–certified models offer roughly 9 percent
Ductless Multiport Heat Pump
Cold Climate Ductless Heat Pump
Cold Climate Multiport Ductless Heat Pump
Cold Climate Ducted Heat Pump

SCHEDULE B TO THE PRINCIPLES ANNEX
PERMITTED EXPENSE REIMBURSEMENTS

Travel, Meal and Hospitality Expenses Directive

Funds should be used prudently and responsibly with a focus on accountability and transparency.

Expenses for travel, meals and hospitality support the Purpose.

Plans for travel, meals, accommodation and hospitality are necessary and economical with due regard for health and safety.

Legitimate authorized expenses incurred during the course of furthering the Purpose may be reimbursed.

Best practices should be followed, including:

Prior approval to incur expenses is appropriately obtained.

Other options for meetings are always considered before travel is approved, including audio or video conferencing.

Corporate travel cards are to be used for authorized business travel and business related expenses.

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12888010.14

Document comparison by Workshare Compare on Wednesday, March 22, 2017 6:19:04 PM

Input:	
Document 1 ID	PowerDocs://TOR_2024/12888010/13
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Legend:	
Insertion	
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Style change	
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Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	4
Deletions	51
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	55

FW_ Draft TPA.rtf

From: Petsche, Nadine (TBS) []
To: samir chhelavda (Samir.Chhelavda@HydroOne.com) [Samir.Chhelavda@HydroOne.com]; Picard, Michel (mpicard@kpmg.ca) [mpicard@kpmg.ca]
Subject: FW: Draft TPA
Date: Wednesday, March 22, 2017 19:00:19
Attachment 1: imagefe741b.GIF
Attachment 2: TOR_2024-#12888010-v14-Transfer_Payment_Agreement_(Affordability_Fund_Trust).DOCX
Attachment 3: 12888010v13_Transfer Payment Agreement (Affordability Fund Trust) - 12888010v14_Transfer Payment Agreement (Affordability Fund Trust).pdf

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I think we've 'nailed' it! N

From: PRESTAGE, JA [mailto:JA.PRESTAGE@blakes.com]
Sent: March-22-17 6:23 PM
To: Petsche, Nadine (TBS)
Cc: Johnson, Paul (ENERGY/MEDEI/MRI); Ranalli, David (ENERGY); Schachtschneider, Michelle (ENERGY); Qureshi, Musab (ENERGY); Schwab-Pflug, Emma (ENERGY); Syed, Usman (ENERGY); ASHBOURNE, STEPHEN
Subject: Draft TPA

Nadine:

A further draft of the TPA is attached to reflect your most recent comments.

J.A.

J.A. Prestage
Partner
ja.prestage@blakes.com
Dir: 416-863-2955

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ONTARIO TRANSFER PAYMENT AGREEMENT

THE AGREEMENT, effective as of the • day of March, 2017 (the **"Effective Date"**)

B E T W E E N :

Her Majesty the Queen in right of Ontario
as represented by the Minister of Energy

(the "Province")

- and -

Computershare Trust Company of Canada, in its capacity as trustee of Affordability Fund Trust

(together with its successors and assigns, the "Recipient" and, together with the Province, the "Parties")

BACKGROUND

Computershare Trust Company of Canada is the original trustee of the Affordability Fund Trust.

The Province wishes to provide Funds to the Recipient to be held, invested, applied and distributed in accordance with the terms of the Declaration of Trust (defined below), in furtherance of the Purpose (as defined in the Declaration of Trust), including having regard to the Principles set forth in Annex A.

CONSIDERATION

In consideration of the mutual covenants and agreements contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is expressly acknowledged, the Parties agree as follows:

ENTIRE AGREEMENT

This agreement (as amended, restated, supplemented or otherwise modified from time to time, the **"Agreement"**), including:

Schedule "A" - General Terms and Conditions
Schedule "B" - Project Specific Information
Schedule "C" - Project - Certain Obligations of the Recipient
Schedule "D" - Budget
Schedule "E" - Payment Plan
Schedule "F" - Reporting
Annex "A" - Principles, and
any amending agreement entered into as provided for below,

constitutes the entire agreement between the Parties with respect to the subject matter contained in this Agreement and supersedes all prior oral or written representations and agreements.

COUNTERPARTS

The Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

AMENDING THE AGREEMENT

The Agreement may only be amended by a written agreement duly executed by the Parties.

ACKNOWLEDGEMENT

The Recipient:

(a) acknowledges that it has read and understands the provisions contained in the entire Agreement; and

(b) agrees to be bound by the terms and conditions contained in the entire Agreement.

IN WITNESS WHEREOF, the Parties have executed the Agreement on the dates set out below.

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO as represented by Minister of Energy

by:

_____ _____

Date Name: Serge Imbrogno

Title: Deputy Minister

Authorized Signing Officer

COMPUTERSHARE TRUST COMPANY OF CANADA, in its capacity as trustee of AFFORDABILITY FUND TRUST

by:

_____ _____

Date Name:

Title:

by:

_____ _____

Date Name:

Title:

I/We have authority to bind the Recipient.

SCHEDULE "A"
GENERAL TERMS AND CONDITIONS

1.0 INTERPRETATION AND DEFINITIONS

1.1 Interpretation. For the purposes of interpretation:

(a) words in the singular include the plural and vice-versa;

(b) words in one gender include all genders;

(c) the headings do not form part of the Agreement; they are for reference only and will not affect the interpretation of the Agreement;

(d) any reference to dollars or currency will be in Canadian dollars and currency;

(e) "include", "includes" and "including" denote that the subsequent list is not exhaustive;

(f) where any reference is made in the Agreement to an act to be performed by or for or on behalf of the Affordability Fund Trust, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Recipient in its capacity as trustee of the Affordability Fund Trust, and, where any reference is made in the Agreement to an act to be performed by or for or on behalf of the Recipient, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Recipient in its capacity as trustee of the Affordability Fund Trust; and

(g) it is intended that the transfer of the Funds to the Recipient will be a transfer made to a trust that is not controlled by the Province (as the term "control" is used in *Government Reporting Entity* at paragraphs PS 1300.07-.24), and so if a term or condition of the Agreement is determined to conflict with the requirements applicable to the Province recording the transfers to the Recipient of Funds contemplated hereunder as an expense incurred by the Province on the date of the transfer of Funds under the Agreement otherwise in connection with activities undertaken by the Province with such a non-controlled trust, then such term or condition shall be given a meaning and shall have an effect insofar as it is possible to interpret such term or condition in a manner that eliminates such conflict while preserving the other provisions of the Agreement and furthering the Purpose.

1.2 Definitions. In the Agreement, the following terms will have the following meanings:

"Administrative Services Agent" has the meaning given such term in the Declaration of Trust.

"Affordability Fund Trust" means the trust established and governed by the Declaration of Trust, and for greater certainty includes such trust operating under any other name that may be designated from time to time by the Recipient in accordance with the Declaration of Trust.

"BPSAA" means the Broader Public Sector Accountability Act, 2010 (Ontario).

"**Beneficiary**" has the meaning given to such term in the Declaration of Trust.

"Budget" means the Recipient's budget attached to the Agreement as Schedule "D".

"Business Day" means any working day, Monday to Friday inclusive, excluding statutory and other holidays, namely: New Year's Day; Family Day; Good Friday; Easter Monday; Victoria Day; Canada Day; Civic Holiday; Labour Day; Thanksgiving Day; Remembrance Day; Christmas Day; Boxing Day and any other day on which the Province has elected to be closed for business.

"**Declaration of Trust**" means the declaration of trust made as of March [•], 2017, under which the Affordability Fund Trust was established, as such declaration of trust may be amended, restated, supplemented or otherwise modified from time to time with the consent of the Province in accordance with Section 20.2.

"Expiration Date" means the date on which this Agreement will expire and is the date set out in Schedule "B".

"Funds" means the money the Province provides to the Recipient pursuant to the Agreement.

"Implementation Agents" has the meaning given such term in the Declaration of Trust.

"Maximum Funds" means the maximum amount of Funds that the Province will provide the Recipient under the Agreement, as set out in Schedule "B".

"Notice" means any communication given or required to be given pursuant to the Agreement.

"Party" means either the Province or the Recipient.

"**Person**" includes any individual, sole proprietorship, corporation, partnership, joint venture, association, society, club, board, chamber, joint-stock company, trust, trustee, unincorporated or incorporated organization or entity or government or any entity, agency or political subdivision thereof.

"**Program**" has the meaning given to such term in the Declaration of Trust.

"Project" means the undertaking described in Schedule "C".

"**Purpose**" has the meaning given to such term in the Declaration of Trust.

"PSSDA" means the *Public Sector Salary Disclosure Act, 1996* (Ontario).

"**Recipient**" means, initially, Computershare Trust Company of Canada, and any additional or replacement trustee in its capacity as trustee of the Affordability Fund Trust pursuant to the Declaration of Trust, including the Board of Trustees (as defined in the Declaration of Trust) and each of their respective successors and permitted assigns.

"Reports" means the reports described in Schedule "F".

2.0 REPRESENTATIONS, WARRANTIES AND COVENANTS

2.1 General. The Recipient represents, warrants and covenants that:

(a) it is the trustee of the Affordability Fund Trust; and

(b) the Affordability Fund Trust is, and will continue to be for the term of the Agreement, a trust existing under and governed by the laws of the Province of Ontario.

2.2 Execution of Agreement. The Recipient represents and warrants that it has:

(a) the full power and authority to enter into the Agreement; and

(b) taken all necessary actions to authorize the execution of the Agreement.

2.3 Governance. The Recipient covenants that it will develop and maintain in writing until the Agreement is no longer in effect:

(a) decision-making mechanisms and procedures to enable the Recipient to hold, invest, manage, apply and distribute the Funds in accordance with the Declaration of Trust in furtherance of the Purpose; and

(b) procedures to enable the preparation and delivery of all Reports required pursuant to Article 7.0.

2.4 Supporting Documentation. Upon request, the Recipient will provide the Province with proof of the matters referred to in this Article 2.0.

3.0 TERM OF THE AGREEMENT

3.1 Term. The term of the Agreement will commence on the Effective Date and will expire on the Expiration Date.

3.2 Extension. The term of the Agreement may be extended by further agreement between the Parties.

3.3 Extension of the Declaration of Trust. If the Province determines that an extension of the Final Distribution Date (as defined in the Declaration of Trust) and time for termination of the Declaration of Trust is consistent with and in furtherance of the Purpose and the Province's original intentions and expectations in establishing the Project, the Province may request that the Recipient extend such date to a date specified by the Province in a Notice (such date not to be later than December 31, 2021, whereupon the Recipient, so long as the Recipient does not have a reasonable basis to believe that such an extension would be inconsistent with the Purpose or weaken the protections intended for the benefit of the trustee pursuant to the Declaration of Trust, will undertake such actions as it may consider to be necessary or appropriate to so extend the Declaration of Trust, including by amending the Declaration of Trust to provide for such an extension and to modify any other term or requirement as would be necessary or prudent to conform such term or requirement in light of such extension.

4.0 FUNDS AND CARRYING OUT THE PROJECT

4.1 Funds Provided. The Province will:

(a) provide the Recipient up to the Maximum Funds to be held, invested, applied and distributed in accordance with the terms of the Project and the Declaration of Trust;

(b) provide the Funds to the Recipient in accordance with the Payment Plan attached to the Agreement as Schedule "E"; and

(c) deposit the Funds into an account designated by the Recipient, provided that the account:

(i) resides at a Canadian financial institution; and

(ii) is in the name of the Recipient.

4.2 Timing of Distributions to Beneficiaries. The expectations of the Province regarding when Funds will begin to be distributed by the Recipient to Beneficiaries are set out in Schedule C. The Recipient will have regard to those expectations in the exercise of its discretion under the Declaration of Trust, in determining when Funds will be distributed to Beneficiaries in furtherance of the Purpose.

4.3 Use of Funds and Project. The Recipient will exercise its rights, duties and discretions under the Declaration of Trust so that the Funds are used, applied and distributed only for and in furtherance of the Purpose, including having regard to the Principles set forth in Annex A.

4.4 Province's Role Limited to Providing Funds. For greater clarity, the Province's role under the Agreement is limited to providing Funds to the Recipient and the Province is not responsible for carrying out or overseeing the terms of the Declaration of Trust.

4.5 Maximum Funds. The Recipient acknowledges that the Funds available to it pursuant to the Agreement will not exceed the Maximum Funds.

4.6 Funding, Not Procurement. For greater clarity, the Recipient acknowledges that:

(a) it is receiving funding from the Province for the Project and is not providing goods or services to the Province; and

(b) the funding the Province is providing under the Agreement is funding for the purposes of the PSSDA.

5.0 RECIPIENT'S ACQUISITION OF GOODS OR SERVICES, AND DISPOSAL OF ASSETS

5.1 Acquisition. If the Recipient acquires goods, services, or both with or by applying the proceeds of the Funds, it is expected to do so through a process that promotes the best value for money and to take reasonable steps to ensure that its Administrative Services Agents and Implementation Agents also follow a process that promotes the best value for money when acquiring goods and services with or by applying the proceeds of the Funds.

6.0 CONFLICT OF INTEREST

6.1 No Conflict of Interest. Except as expressly permitted by the Declaration of Trust, the Recipient is expected to implement appropriate processes and control to ensure that the Program and the use, application and distribution of the Funds are without an actual, potential or perceived conflict of interest.

6.2 Conflict of Interest Includes. For the purposes of this Article, a conflict of interest includes any circumstances where, except as expressly permitted by the Declaration of Trust:

(a) the Recipient; or

(b) any person who has the capacity to influence the Recipient's decisions,

has outside commitments, relationships or financial interests that could, or could be seen to, interfere with the Recipient's objective, unbiased and impartial judgment relating to the Project, or the Recipient's use, application or distribution of the Funds, or both.

7.0 REPORTING, ACCOUNTING AND REVIEW

7.1 Preparation and Submission. The Recipient will cooperate with the Province to accommodate the Province's on-going information and reporting objectives in order to enable the Province to be aware of the Recipient's activities in furtherance of the Purpose, and to that end the Recipient will be expected, from and following the Original Trustee Replacement Date, to:

(a) submit to the Province at the address referred to in Schedule "B", all Reports in accordance with the timelines and content requirements set out in Schedule "F", or in a form as specified by the Province from time to time, acting reasonably;

(b) submit to the Province at the address referred to in Schedule "B", any other reports as may be reasonably requested by the Province from time to time in accordance with the timelines and content expectations identified by the Province, acting reasonably;

(c) undertake diligent efforts so that such Reports and any such other reports are complete and accurate in all material respects; and

(d) have an authorized signatory of the Recipient sign-off on such Reports and other reports.

7.2 **Record Maintenance.** The Recipient will keep and maintain financial and other records necessary to permit it to satisfy its obligations under section 7.1 and to permit the Province to exercise its rights under section 7.3.

7.3 **Inspection.** The Province, its authorized representatives or an independent auditor identified by the Province may, at its own expense, upon twenty-four hours' Notice to the Recipient and during normal business hours, inspect the records of and information respecting the Recipient to confirm its compliance with the terms of this Agreement, including to ensure consistency with the Purpose and, for these purposes, the Province, its authorized representatives or an independent auditor identified by the Province may take one or more of the following actions:

(a) inspect and copy the records and documents referred to in section 7.2;

(b) keep any copies made pursuant to section 7.3(a); and

(c) conduct an audit or investigation of the Recipient in respect of the expenditure of the Funds to confirm that the Funds have been used, applied and distributed for and in furtherance of the Purpose, including a review of the Recipient's processes, records, documents, as well as the processes and controls applied to obtain assurance that Funds disbursed to Electricity Distributors were used, applied and distributed for and in furtherance of the Purpose.

7.4 **Disclosure.** To assist in respect of the rights set out in section 7.3, the Recipient will disclose any information requested by the Province, its authorized representatives or an independent auditor identified by the Province, and will do so in the form requested by the Province, its authorized representatives or an independent auditor identified by the Province, as the case may be.

7.5 **No Control of Records.** No provision of the Agreement will be construed so as to give the Province any control whatsoever over the Recipient's records.

7.6 **Auditor General.** For greater certainty, the Province's rights under this Article are in addition to and do not limit any rights provided to the Auditor General pursuant to section 9.1 of the *Auditor General Act* (Ontario).

8.0 COMMUNICATIONS REQUIREMENTS

8.1 **Publication.** The Recipient will acknowledge, in any of its Program-related external communications and marketing whether written, oral, or visual, the financial support of the Province in connection with the establishment and funding of the program, while noting that the views expressed in the publication are the views of the Recipient and do not necessarily reflect those of the Province.

9.0 FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY

9.1 **FIPPA.** The Recipient acknowledges that the Province is bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province in connection with the Project or otherwise in connection with the Agreement may be subject to disclosure in accordance with that Act.

10.0 Intentionally Deleted

11.0 EVENT OF DEFAULT, CORRECTIVE ACTION AND TERMINATION FOR DEFAULT

11.1 **Events of Default.** An Event of Default will occur if:

(a) the Recipient fails to perform or observe any covenant in this Agreement and such failure has and continues to have a material adverse effect on the Province and remains unremedied during any Notice period applicable under section 11.2 after the earlier of (i)

actual knowledge thereof by the Recipient, or (ii) receipt by the Recipient of Notice thereof from the Province;

(b) any representation or warranty made by the Recipient in the Agreement shall prove to have been incorrect in any material respect when made or deemed made, and, if capable of remedy, continues to be incorrect in any material respect during any Notice period applicable under section 11.2 after the earlier to occur of (i) the actual knowledge thereof by the Recipient or (ii) receipt by the Recipient of Notice thereof from the Province;

(c) it is determined that the Recipient has breached its Standard of Care (within the meaning given in and context of the Declaration of Trust) in discharging its material duties under the Declaration of Trust, with the result that all or a significant part of the Funds have not been or are not being applied in furtherance of the Purpose or are being applied in a manner that is directly contrary or without regard to the Purpose, and, if such breach is capable of remedy, it continues and remains unremedied during any Notice Period applicable under section 11.2 after the earlier of (i) actual knowledge thereof by the Recipient, or (ii) receipt by the Recipient of Notice thereof from the Province;

(d) an insolvency event shall have occurred and be continuing with respect to the Recipient.

11.2 Consequences of Events of Default and Corrective Action. If an Event of Default occurs, the Province may, at any time, take one or more of the following actions:

(a) provide the Recipient with Notice allowing the Recipient an opportunity to remedy the Event of Default during a specified Notice Period;

(b) seek an order of specific performance, including an order that the Recipient pursue its available remedies against third parties;

(c) require, by Notice of demand, that the Recipient transfer to the Province (without any need for compensation, indemnity or consideration to the Recipient or any Beneficiary or other third party) any and all Assets remaining in the possession or under the control of the Recipient that can reasonably be traced or attributed to the Funds after first providing for the completion and performance by the Recipient of any unperformed contractual obligations of the Recipient undertaken in compliance with the Declaration of Trust on or prior to transfer; and

(d) terminate the Agreement, including immediately, without liability, penalty or costs to the Province upon giving Notice to the Recipient.

The transfer of Funds in accordance with the Agreement is made by the Province with the expressed intention and reservation that the transferred Funds shall be returned to the Province and the entitlements of the Recipient in remaining Funds shall thereby be revoked with reversion thereof to the Province in the circumstances contemplated in Section 11.2(c).

11.3 Opportunity to Remedy. If, in accordance with section 11.2, the Province provides the Recipient with an opportunity to remedy the Event of Default, the Province will provide Notice to the Recipient of:

(a) the particulars of the Event of Default; and

(b) the length of time within which the Recipient may cure such Event of Default without the Province pursuing any other remedy (the “Notice Period”).

11.4 Recipient not Remedying. If the Province has provided the Recipient with an opportunity to remedy the Event of Default pursuant to section 11.2(a), and:

(a) the Recipient does not remedy the Event of Default within the Notice Period;

(b) it becomes apparent to the Province that the Recipient cannot adequately remedy the Event of Default within the Notice Period; or

(c) the Recipient is not proceeding to remedy the Event of Default in a way that is satisfactory to the Province,

the Province may extend any Notice Period, or initiate any one or more of the actions provided for in section 11.2.

12.0 REPAYMENT

12.1 Debt Due. If, pursuant to the Agreement: the Province demands the payment of any Funds from the Recipient pursuant to section 11.2(c) such Funds or other amount will be deemed to be a debt due and owing to the Province by the Recipient, and the Recipient will pay or return the amount to the Province immediately, unless the Province directs otherwise.

12.2 Payment of Money to Province. The Recipient will pay any money owing to the Province by cheque payable to the "Ontario Minister of Finance" and delivered to the Province at the address referred to in Schedule "B".

12.3 Failure to Repay. Without limiting the application of section 43 of the Financial Administration Act (Ontario), if the Recipient fails to repay any amount owing under the Agreement, Her Majesty the Queen in right of Ontario may deduct any unpaid amount from any money payable to the Recipient by Her Majesty the Queen in right of Ontario.

13.0 NOTICE

13.1 Notice in Writing and Addressed. Notice will be in writing and will be delivered by email, postage-prepaid mail, personal delivery or fax, and will be addressed to the Province and the Recipient respectively as set out in Schedule "B", or as either Party later designates to the other by Notice.

13.2 Notice Given. Notice will be deemed to have been given:

(a) in the case of postage-prepaid mail, five Business Days after the Notice is mailed; or

(b) in the case of email, personal delivery or fax, one Business Day after the Notice is delivered.

13.3 Postal Disruption. Despite section 13.2(a), in the event of a postal disruption:

(a) Notice by postage-prepaid mail will not be deemed to be received; and

(b) the Party giving Notice will provide Notice by email, personal delivery or by fax.

14.0 SEVERABILITY OF PROVISIONS

14.1 Invalidity or Unenforceability of Any Provision. The invalidity or unenforceability of any provision of the Agreement will not affect the validity or enforceability of any other provision of the Agreement. Any invalid or unenforceable provision will be deemed to be severed.

15.0 WAIVER

15.1 Waivers in Writing. If a Party fails to comply with any term of the Agreement, that Party may only rely on a waiver of the other Party if the other Party has provided a written waiver in accordance with the Notice provisions in Article 13.0. Any waiver must refer to a specific failure to comply and will not have the effect of waiving any subsequent failures to comply.

16.0 INDEPENDENT PARTIES

16.1 **Parties Independent.** The Recipient acknowledges that it is not an agent, joint venturer, partner or employee of the Province, and the Recipient will not represent itself in any way that might be taken by a reasonable person to suggest that it is, or take any actions that could establish or imply such a relationship.

17.0 ASSIGNMENT OF AGREEMENT OR FUNDS

17.1 **Agreement Binding.** All rights and obligations contained in the Agreement will extend to and be binding on the Parties' respective heirs, executors, administrators, successors and permitted assigns.

18.0 LIMITATION OF LIABILITY

18.1 This Agreement has been entered into by the Recipient solely in its capacity as trustee of the Affordability Fund Trust and is not binding on the Recipient in any other capacity, whether in tort, contract or otherwise. The Beneficiaries of the Affordability Fund Trust are not subject to any liability in respect of the Affordability Fund Trust. Resort may not be had to, nor recourse or satisfaction be sought from, the private property of the Recipient (whether owned by it in its personal capacity or in any other capacity other than in its capacity as trustee of the Affordability Fund Trust), its directors, officers, employees, or agents, or the private property of any Beneficiary, and resort will be had solely to the property of the Recipient held in trust for the payment, performance or satisfaction of any liability or obligation of the Recipient under this Agreement. However, the foregoing limitations in this section shall not apply where the Recipient has demonstrated gross negligence, bad faith, fraud or wilful misconduct.

19.0 GOVERNING LAW

19.1 **Governing Law.** The Agreement and the rights, obligations and relations of the Parties will be governed by and construed in accordance with the laws of the Province of Ontario and the applicable federal laws of Canada. Any actions or proceedings arising in connection with the Agreement will be conducted in the courts of Ontario, which will have exclusive jurisdiction over such proceedings.

20.0 FURTHER ASSURANCES

20.1 **Agreement into Effect.** The Recipient will provide such further assurances as the Province may request from time to time with respect to any matter to which the Agreement pertains, and will otherwise do or cause to be done all acts or things necessary to implement and carry into effect the terms and conditions of the Agreement to their full extent.

20.2 **Declaration of Trust.** The Recipient covenants that it shall not amend, restate or terminate the Declaration of Trust without obtaining the written consent of the Province in respect of same, such consent not to be unreasonably withheld or delayed.

21.0 JOINT AND SEVERAL LIABILITY

21.1 **Joint and Several Liability.** Without limiting and subject to section 18.1 and the Declaration of Trust, if the Recipient is comprised of more than one entity, all such entities will be jointly and severally liable to the Province for the fulfillment of the obligations of the Recipient under the Agreement.

22.0 RIGHTS AND REMEDIES CUMULATIVE

22.1 **Rights and Remedies Cumulative.** The rights and remedies of the Province under the Agreement are cumulative and are in addition to, and not in substitution for, any of its rights and remedies provided by law or in equity.

23.0 ACKNOWLEDGEMENT OF OTHER LEGISLATION AND DIRECTIVES

23.1 **Recipient Acknowledges.** The Recipient acknowledges that by receiving Funds it may become

subject to legislation applicable to organizations that receive funding from the Government of Ontario, including the BPSAA, the PSSDA, and the *Auditor General Act* (Ontario).

24.0 SURVIVAL

24.1 Survival. The following Articles and sections, and all applicable cross-referenced sections and schedules, will continue in full force and effect for a period of seven years from the date of expiry or termination of the Agreement: Article 1.0 and any other applicable definitions, section, 4.5, section 7.1 (to the extent that the Recipient has not provided the Reports to the satisfaction of the Province), sections 7.2, 7.3, 7.4, 7.5, 7.6, Article 8.0, Article 12.0, Article 14.0, Article 16.0, Article 17.0, Article 19.0, Article 21.0, Article 23.0 and Article 24.0.

- END OF GENERAL TERMS AND CONDITIONS -

SCHEDULE "B"

PROJECT SPECIFIC INFORMATION

Maximum Funds	$100 million
Expiration Date	The date upon which the Affordability Fund Trust is terminated in accordance with the Declaration of Trust
Contact information for the purposes of Notice to the Province	**Attention: Usman Syed** **Position: Director** **Address: 77 Grenville St, Toronto, Ontario, M7A 2C1** **Fax: 416-325-6651** **Email: Usman.Syed@ontario.ca**
Contact information for the purposes of Notice to the Recipient	**Attention:** **Position:** **Address:** **Email:**
Contact information for the senior financial person in the Recipient organization (e.g., CFO, CAO) – to respond as required to requests from the Province related to the Agreement	**Attention:** **Position:** **Address:** **Email:**

SCHEDULE "C"

PROJECT

For the purposes of this Agreement, the "Project" is the distribution of the Funds in accordance with the Declaration of Trust.

It is intended the Project will be undertaken by the Recipient in furtherance of the Purpose and in accordance with the Declaration of Trust. In this regard, it is expected that the Recipient will undertake the Program having regard to the Budget and the Principles set forth in Annex A.

The following are the Province's expectations regarding the circumstances in which the Recipient will begin to distribute any Funds to any Beneficiary.

1. The Original Trustee Replacement Date (as defined in the Declaration of Trust) will have occurred.

2. An Administrative Services Agreement (as defined in the Declaration of Trust) will have been entered into between the Recipient and Hydro One Limited under which Hydro One Limited shall provide specified administrative and other services on behalf of the Recipient.

3. Administrative procedures will have been developed and implemented under which Electricity Distributors (as defined in the Declaration of Trust) will be invited to assist with (a) the identification and selection of Primary Beneficiaries under the Declaration of Trust, (b) the determination of the amount of Funds to be distributed to particular Primary Beneficiaries, and (c) the distribution of Funds to or for the benefit of such Primary Beneficiaries (in each case substantially on the basis contemplated in the Permitted Delegations Annex).

4. The Recipient will have obtained commercial general liability insurance from insurers having a secure A.M. Best rating of B+ or greater, or the equivalent, that in the opinion of the Recipient a prudent person similar to the Recipient would maintain, and having an inclusive limit of not less than $2,000,000 per occurrence and providing for contractual liability coverage. If requested, the Recipient will provide the Province (for its information purposes) with copies of the certificates of insurance and policies for such insurance coverage.

The Province recognizes that the foregoing may involve the Recipient entering into agreements as the Recipient considers to be necessary or expedient, including any required amendment or amendment and restatement of the Declaration of Trust. Funds may be expended to pay the expenses of the Recipient in completing these matters. The Recipient is requested to advise the Province through its quarterly reports on the status of the foregoing.

SCHEDULE "D"

Recipient's Budget

1. It is expected that the administrative expenses of the Recipient, including any administrative expenses of any Administrative Services Agents or any Implementation Agents or any other agents retained by the Recipient, relating to the establishment of the Affordability Fund Trust and addressing the Province's expectations as enumerated in Schedule "C" and any expenses related to the operation of the Affordability Fund Trust and the execution of the Project (including any reimbursable expenses incurred by any Administrative Services Agent or any Implementation Agent (as such terms are defined in the Declaration of Trust)), will be no greater than 10 percent of the total Project budget.

2. The only expenditures incurred by the Recipient that are eligible for reimbursement are actual (excluding HST) administrative overhead expenses incurred by or on behalf of the Recipient that directly related to the Recipient or the establishment of the Affordability Fund Trust.

4. Any expenses that have been or may be reimbursed by other parties should not be reimbursed from the assets of the Affordability Fund Trust.

5. It is expected any travel, meals and hospitality expenses by the Recipient will be consistent with the Province's Travel, Meal and Hospitality Expenses Directive. For purposes of funding entities receiving funding from the Recipient, the following would not be considered eligible claims:

    - Alcohol
    - First-Class travel
    - Meals, snacks and beverages
    - Gratuities
    - Laundry or dry cleaning
    - Valet services
    - Dependent care
    - Home management
    - Personal telephone calls

6. In the event that the Recipient performs any procurements, it is expected that all procurements will reflect the principles of Ontario's Public Service Procurement Directive.

SCHEDULE “E”

PAYMENT PLAN

PAYMENT DATE	MAXIMUM FUNDS TO BE DISBURSED BY THE PROVINCE
Within 7 days of signing the Agreement	$ 100,000,000

SCHEDULE “F”

REPORTING

From and following the Original Trustee Replacement Date, Reports will be quarterly on the basis of the government’s fiscal year starting at the execution of this Agreement and continuing until conclusion of the Agreement. Annual Reports will be on a fiscal basis starting at the execution of this Agreement and continuing until conclusion of the Agreement. Quarterly Reports and Annual Reports would be expected to be submitted to the Province within one month following the end of the reporting period that they represent. The Province expects that these Reports would be prepared to demonstrate the impact of the Province’s funding and address the following:

- Quarterly Reports would include a report back on the trustee-developed performance management criteria. Initially, such Quarterly Reports would include details respecting:
    - Amounts disbursed by the Recipient in the previous quarter. It is expected that this information would be provided at the Electricity Distributor level and in the aggregate.
    - Total Affordability Fund investment income earned and accrued to date.
    - Key activities and achievements from the quarter, including the number of participant households per Electricity Distributor, average participant incentive cost per Electricity Distributor, and uptake of energy efficiency measures per Electricity Distributor.
    - Any challenges or modifications to the application, funding, or eligibility processes/rules of the Recipient.
    - Key activities planned for the upcoming quarter.
    - Details of any situation that a reasonable person might interpret as an actual, potential or perceived conflict of interest.
- Annual Reports would include a report back on the trustee-developed performance management criteria. Initially, such Annual Report would include details respecting:
    - A description of an Electricity Distributor’s application process and the criteria used by the Recipient to distribute funds.
    - Any challenges identified by the Recipient or any Administrative Services Agent in achieving the Purpose and proposed solutions, if applicable.
    - Lesson learned.
    - Electricity Distributor and customer feedback.
    - Amounts distributed to Beneficiaries or otherwise disbursed by the Recipient in the previous year. It is expected that this information will be provided by each Electricity Distributor.
    - Key activities and achievements from each quarter being reported, including number of participant households per Electricity Distributor, average participant incentive cost per Electricity Distributor, and uptake of energy efficiency measures per Electricity Distributor.
    - Total Affordability Fund interest earned and accrued to date.

    As part of an Annual Report, the Recipient would also provide the Province with an audited financial statement for the previous year.

ANNEX A

Principles

The Trustee shall have regard to, but shall not be specifically bound by, the following principles in applying its discretion in relation to the administration of the Trust:

1. Identification of Primary Beneficiary Payees

1.1 Except in exceptional circumstances, a Primary Beneficiary would not be expected to receive a benefit from the Trust unless at the time of consideration it satisfies, in addition to the requirements contemplated in the definition of "Primary Beneficiary", each of the following criteria (the "**Selection Factors**"):

(i) it has a participant agreement with an applicable Electricity Distributor to undertake measures (its "**Energy Plan**") to improve the electricity efficiency and/or promote the conservation of electricity at its Ontario residence;

(ii) its Energy Plan involves one or more Eligible Measures, as may be designated by the Trustee from time to time from;

(iii) it confirms that:

1. the primary purpose of its Energy Plan is the conservation and efficient use by the Primary Beneficiary of electricity, and is not for the purposes of the Primary Beneficiary making a profit;

2. it would otherwise not have the financial resources to undertake the Eligible Measures included in its Energy Plan; and

3. it would otherwise not be eligible to receive amounts in respect of the Eligible Measures as a HAP Eligible Person;

(iv) it has demonstrated a need for financial assistance on the basis that its periodic electricity bills represent a financial burden, relative to its available financial resources; and

(v) such other criteria as the Trustee may determine, including based on the recommendations of Electricity Distributors or other knowledgeable Persons made on the basis and having regard to the delegations contemplated by the Permitted Delegations Annex or any applicable Implementation Agreement.

1.2 It is recognized that, in furthering the Purpose, an efficient basis upon which to allocate funds to the Primary Beneficiaries across different areas and regions within Ontario may be based on the areas and regions serviced by the Electricity Distributors operating within Ontario.

1.3 It would not be contrary to the Purposes if funds are made available by the Trustee to the Primary Beneficiaries unequally across different areas and regions within Ontario, and it is expected that in making such an unequal division it would be appropriate to have regard to:

(i) broad economic parameters of economic activity and the specific financial resources of the residents of the areas and regions, in each case as an indication of the relative need of such residents across the areas and regions;

(ii) electricity use and efficiency levels of residential electricity customers across the areas and regions;

(iii) specific regional indicators of economic weakness and need; and

(iv) such other factors as the Trustee may determine are relevant, including based on the submissions, advice and recommendations of Electricity Distributors or other knowledgeable Persons made on the basis and having regard to the delegations contemplated by the Permitted Delegations Annex or any applicable implementation Agreement.

1.4 It is recognized that, in furthering the Purpose, the designated Electricity Distributor for an area or region in which a Primary Beneficiary resides would be expected to:

(i) be a reliable source for the purpose of assessing and confirming whether the Primary Beneficiary satisfies the Selection Factors;

(ii) be an efficient intermediary for the purpose of communicating with the Primary Beneficiary, including with respect to matters such as regarding the availability, terms, conditions and intended purposes of Program;

(iii) be able to facilitate an efficient payment of distribution determined to be made to or on behalf of the Primary Beneficiary, having regard to the Electricity Distributor's established practices, procedures and systems for dealing with its customers; and

(iv) have established contractual arrangements with the Primary Beneficiary that may apply to the protection and confidentiality of information provided by or respecting the Primary Beneficiary, which information may be useful in the consideration by the Electricity Distributor in its assessment of whether the Primary Beneficiary satisfies the Selection Factors, which information may not otherwise be available or readily accessible or verifiable by the Trustee.

1.5 It is recognized that, in furthering the Purpose, the Electricity Distributor for an area or region in which a Primary Beneficiary resides will have market and utilization information that may be useful in assessing the relative needs of Primary Beneficiaries within its area or region. Such information is expected to be relevant in assessing the extent to which one such Primary Beneficiary's financial needs and the merits of its Energy Plan are greater or more compelling than those of another such Primary Beneficiary, which comparison may be relevant to the extent that the funds allocable to the Primary Beneficiaries resident in the area or region are otherwise insufficient to meet the requests for funding by all such Primary Beneficiaries.

1.6 Accordingly, it is recognized that, in furthering the Purpose, it is consistent with the Purpose that the recommendations of Electricity Distributors be utilized and relied upon by the Trustee to guide the process of identifying particular Primary Beneficiaries in making distributions to the Primary Beneficiaries.

1.7 If an Electricity Distributor for a particular area or region is unable or unwilling to assess or confirm the application of the Selection Factors to Primary Beneficiaries residing in the area or region or to make recommendations in relation to such matters, one or more of the following may provide a suitable alternative source of information and for information gathering, assessment and confirmation purposes in relation to such area or region:

(i) other Electricity Distributors operating in adjacent or other areas or regions in Ontario;

(ii) the Ontario Energy Board;

(iii) the Independent Electricity System Operator; and

(iv) anyone else having relevant expertise and access to information regarding the electricity market of the Province, in each case as may be considered relevant by the Trustee.

1.8 To the extent that privacy law or other legal requirements limit an Electricity Distributor from providing or making available specific information respecting the application of the Selection Factors to a particular Primary Beneficiary or group of Primary Beneficiaries, it is recognized that, in furthering the Purpose, it may be appropriate to redact or make generic affected information regarding such Primary Beneficiary in connection with the identification and confirmation of a Primary Beneficiary's eligibility and participation in the Program. If such limitations or restrictions would limit an Electricity Distributor from providing or confirming the name of a particular Primary Beneficiary to the Trustee, then it should be sufficient that such information may be obtained or disseminated on a confidential basis if and when required by the Trustee for the proper administration of the Trust and on that basis such impediments should not disqualify a Primary Beneficiary from participating in the benefits of the Program, provided that the confidential record-keeping of the Electricity Distributor would be available in connection with the application of any applicable legal process predicated on the identification of such Primary Beneficiary for the purposes of substantiating its rights as a Primary Beneficiary of the Trust or as to the validity or subsistence of the Trust.

2. Eligible Measures

2.1 It is expected that the Trust will identify eligible measures that, taking into consideration the principles set forth in the Principles Annex, have regard to the following (the "**Measures Factors**"):

(i) is the measure generally expected to result in reduced electricity consumption by a Primary Beneficiary if properly installed and used;

(ii) is the measure recognized under another Provincial program as being appropriate for achieving electricity conservation among a population analogous to the Primary Beneficiaries;

(iii) does the measure present any unacceptable health or safety considerations, either with respect to the Primary Beneficiary, a party providing or installing the measure, or the physical environment;

(iv) is the measure broadly available to residents across different areas and regions of the Province; or

(v) is the measure a requirement or precursor to another measure, the other measure being one which meets any of the other Measures Factors.

2.2 In identifying and applying the Measures Factors, Electricity Distributors would be expected to have expertise in assessing the suitability of efficiency and conservation measures in their respective areas and regions, which may differ across areas and regions across the Province based on factors (among other things) such as the climate, geography, density, electricity infrastructure, residential structures, and electricity use rates applicable within such areas or regions.

2.3 The measures specified in Schedule A to this Principles Annex may initially be considered to be consistent with the Measures Factors (subject to change as contemplated under the Permitted Delegations Annex).

3. Promotion of the Program

3.1 It is expected that the Trustee will undertake or engage others to undertake diligent efforts to promote the availability, terms and benefits of the Program to Primary Beneficiaries, including by establishing consistent communications through the Electricity Distributors.

3.2 It is expected that the Trustee will acknowledge the financial support of the Province in connection with the establishment and the funding for the Program, including in any external communications to or marketing directed at the Electricity Distributors and the Primary and Residual Beneficiaries. In its delegation of any duties or powers to the Electricity Distributors through Implementation Agreements it is expected that Electricity Distributors will acknowledge the financial support of the Province in connection with the program including in any communications or marketing to Primary Beneficiaries.

4. Conduct of the Trust and the Program

4.1 It is expected that administrative expenses of the Board of Trustees and its members, including any expenses relating to the Trust, to the establishment of the Trust and any expenses related to the implementation and operation of the Program, including by or through Electricity Distributors and other relevant entities, will be recognized and subject to reimbursement on a basis that is substantially consistent with the accountability provisions contemplated in the Transfer Payment Agreement and the principles in the Province's Travel, Meal and Hospitality Expenses Directive, as set out in Schedule B to this Principles Annex.

4.2 The Trustee is expected to conduct its activities in a manner that complies in all material respects with the Transfer Payment Agreement, including to:

(i) act prudently and in furtherance of the Purpose;

(ii) report not less frequently than annually the results of its activities for information purposes to the Province in connection with the Program;

(iii) comply with the Province's request for any independent verification or audit if determined to be necessary or appropriate by the Province;

(iv) return Assets that have not been distributed if it is determined that the Trustee has breached its Standard of Care in discharging its material duties under the Declaration, and has not cured such material breach despite having been given a reasonable opportunity by the Province to do so in light of the circumstances of such material breach, with the result that all or a significant part of the Assets have not been or are not being applied and distributed in furtherance of the Purpose or are being applied and distributed in a manner that is directly contrary or without regard to the Purpose.

4.3 Electricity Distributors are not intended to directly profit from distributions of funds made from the Trust, although it is recognized that the objectives of electricity efficiency and conservation of Primary Beneficiaries located in the service area or region of an Electricity Distributor, and the cost savings and improved credit worthiness of such Primary Beneficiaries, may be financially beneficial to the Electricity Distributor.

4.4 Distributions from the Trust are intended to allow receiving Primary Beneficiaries to undertake Eligible Measures at no or minimal personal cost.

4.5 Without in any way limiting the discretion of the Board of Trustees to extend the period during which the benefits of the Program may be available to the Primary Beneficiaries, up to and including the Final Distribution Date, it is expected that the Trust Assets would be distributed to

Primary Beneficiaries during the period from the Original Trustee Replacement Date to April 30, 2019.

SCHEDULE A TO THE PRINCIPLES ANNEX
INDICATIVE ELIGIBLE MEASURES[1]

Initial Specified Measures
Block Heater Timer (just timer) – rated for outdoor use, have at least a 15 amp/1800 watt capacity, be cold weather resistant, bear a C-UL or CSA certification mark
Power bar with integrated timer, and switched power outlets, four each for a total of 8 outlets, have a total capacity of 15 amps. The switched outlets must remain "live", independent of timer settings, so long as the power bar itself remains switched on. The power bar must bear either a C-UL or CSA certification mark.
Efficient Showerheads (standard) - rated at no more than 4.8 Lpm (1.25 U.S. gpm) and be of the laminar flow type (non-aerating).
Efficient Showerhead (handheld) - rated at no more than 4.8 Lpm (1.25 U.S. gpm) and be of the laminar flow type (non-aerating).
Efficient Aerators (kitchen) - rated no more than 5.7 Lpm (1.5 U.S. gpm), dual threaded to allow installation in both thread type faucets, swivel type with pause lever.
Efficient Aerators (bathroom) - rated no more than 3.8 Lpm (1.0 U.S. gpm), be dual threaded to allow installation in both thread type faucets.
Hot Water Tank Pipe Insulation - $^{1}/_{2}$" inside diameter – foam, meets ASTM –C547-00, minimum $^{3}/_{4}$" thick
Hot Water Tank Pipe Insulation - $^{3}/_{4}$ " inside diameter - – foam, meets ASTM –C547-00, minimum $^{3}/_{4}$" thick
Hot Water Tank Insulation - fibreglass R10 (fits up to a 60 gal tank) – not bubble wrap
≤11W ENERGY STAR® Qualified LED A Shape (60W) (minimum 600 Lumen output) (Formerly: 7W – 11W ENERGY STAR® Qualified LED A Shape (60W))

[1] These measures are indicative. Eligible measures added to HAP during the administration of the Trust may also be appropriately considered relevant by the Trustee.

Initial Specified Measures
≤14W ENERGY STAR® Qualified LED A Shape (75W) (minimum 800 Lumen output) (Formerly: 10W – 14W ENERGY STAR® Qualified LED A Shape (75W))
≤23W ENERGY STAR® Qualified LED A Shape (100W) (minimum 1600 Lumen output) (Formerly:17W – 23W ENERGY STAR® Qualified LED A Shape (100W))
≤16W ENERGY STAR® Qualified LED PAR 20 (minimum 600 Lumen output) (Formerly: 8W – 12W ENERGY STAR® Qualified LED PAR 20)
≤16W ENERGY STAR® Qualified LED PAR30 & PAR38 (minimum 600 Lumen output) (Formerly: 8W – 12W ENERGY STAR® Qualified LED PAR 30)
≤23W ENERGY STAR® Qualified LED PAR (minimum 1100 Lumen output) (Formerly: 14W – 18W ENERGY STAR® Qualified LED PAR 38)
≤6W ENERGY STAR® Qualified LED MR 16 / PAR 16 (minimum 250 Lumen output) (Formerly: 7W – 10W ENERGY STAR®
Qualified LED MR 16 / PAR 16 - GU 10 Base)
≤11W ENERGY STAR® Qualified LED MR 16 (minimum 400 Lumen output) (Formerly: 7W – 12W ENERGY STAR® Qualified LED MR 16 GU 5.3 Base)
ENERGY STAR® LED Wet Location Rated PAR lamp ≤ 23 Watt (minimum 1100 Lumen output)
Recessed Downlight Fixture including LED with Light Output >600 and <800 lumens (Retrofit Measure List)
Recessed Downlight Fixture including LED with Light Output >800 lumens (Retrofit Measure List)
Indoor Drying Rack

Extended Measures
Replace refrigerator with ENERGY STAR qualified refrigerator - 15.5 - 16.9 cubic foot top freezer, automatic defrost, refrigerator/ freezer, no through the door ice service
Replace refrigerator with ENERGY STAR qualified refrigerator - 17.0 - 18.4 cubic foot top freezer, automatic defrost, refrigerator/ freezer, no through the door ice service
Replace refrigerator with a refrigerator that has a consumption level of less than 425 kwh, 10 – 12.5 cubic foot top freezer, automatic defrost, refrigerator freezer, no through the door ice service
Replace freezer with ENERGY STAR qualified freezer - 12-14.4 cubic foot freezer
Replace freezer with ENERGY STAR qualified freezer - 14.5 - 16.0 cubic foot freezer
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 6,000 – 7,999 BTU/hr with C-UL or CSA certification mark
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 8,000 – 9,999 BTU/hr with C-UL or CSA certification mark
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 10,000 – 12,000 BTU/hr with C-UL or CSA certification mark
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 14.2 - 21.2 l/day (30-44.9 pints/day) dehumidifier
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 21.3 - 25.4 l/day (45-53.9 pints/day) dehumidifier
Extended Measures
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 25.5 - 35.5 l/day (54-75 pints/day) dehumidifier
Programmable Thermostat – line voltage – meets CAN/CSA-C828-06 standard, minimum performance: Droop: 1.5°C, Differential: 0.5°C, Precision 0% within 0.5°C of the original set point of 22°C
Programmable Thermostat – low voltage - meets CAN/CSA-C828-06 standard, minimum performance: Droop: 1.5°C, Differential: 0.5°C, Precision 0% within 0.5°C of the original set point of 22°C

Weatherization Measures
Comprehensive Draftproofing (caulking, foam and weather stripping, and application of same) – lifespan of 20 years plus If one or two component polyurethane foams are used, the products and installations must conform to: • CAN/ULC-S710.1 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 1: Material Specification. • CAN/ULC-S710.2 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 2: Application. • CAN/ULC-S711.1 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification • CAN/ULC-S711.2 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification, and Part 2: Application. **Attic Insulation (including installation):**
cellulose: CAN/ULC-S703-01 Amendment 1 - Cellulose Fibre Insulation (CFI) for Buildings OR 2) Mineral Fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre

Weatherization Measures
for Buildings **Wall Insulation (including installation):**
cellulose: CAN/ULC-S703-01 Amendment 1 - Cellulose Fibre Insulation (CFI) for Buildings OR 2) Mineral Fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre **Basement Insulation (including installation):**
mineral fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre for Buildings Vapour Barrier: 69009-CAN/CGSB-51.34-m86 If one or two component polyurethane foams are used, the products and installations must conform to: • CAN/ULC-S710.1 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 1: Material Specification. • CAN/ULC-S710.2 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 2: Application. • CAN/ULC-S711.1 Standard for Thermal Insulation – Bead Applied Two-Component
Polyurethane Air Sealant Foam, Part 1: Material Specification • CAN/ULC-S711.2 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification, and Part 2: Application.

Heat Pumps
(Selection of manufacturers and technologies to meet the US federal minimum efficiency standard for ASHPs, as of 2015, is 13.0 SEER and 7.7 HSPF. Energy Star–certified models offer roughly 9 percent more efficiency than most new uncertified ASHPs and 20 percent more efficiency than existing models
Ductless Multiport Heat Pump
Cold Climate Ductless Heat Pump
Cold Climate Multiport Ductless Heat Pump
Cold Climate Ducted Heat Pump

SCHEDULE B TO THE PRINCIPLES ANNEX
PERMITTED EXPENSE REIMBURSEMENTS

Travel, Meal and Hospitality Expenses Directive

Funds should be used prudently and responsibly with a focus on accountability and transparency.

Expenses for travel, meals and hospitality support the Purpose.

Plans for travel, meals, accommodation and hospitality are necessary and economical with due regard for health and safety.

Legitimate authorized expenses incurred during the course of furthering the Purpose may be reimbursed.

Best practices should be followed, including:

Prior approval to incur expenses is appropriately obtained.

Other options for meetings are always considered before travel is approved, including audio or video conferencing.

Corporate travel cards are to be used for authorized business travel and business related expenses.

ONTARIO TRANSFER PAYMENT AGREEMENT

THE AGREEMENT, effective as of the • day of March, 2017 (the **"Effective Date"**)

B E T W E E N :

Her Majesty the Queen in right of Ontario
as represented by the Minister of Energy

(the "Province")

- and -

Computershare Trust Company of Canada, in its capacity as trustee of Affordability Fund Trust

(together with its successors and assigns, the "Recipient" and, together with the Province, the "Parties")

BACKGROUND

Computershare Trust Company of Canada is the original trustee of the Affordability Fund Trust.

The Province wishes to provide Funds to the Recipient to be held, invested, applied and distributed in accordance with the terms of the Declaration of Trust (defined below), in furtherance of the Purpose (as defined in the Declaration of Trust), including having regard to the Principles set forth in Annex A.

CONSIDERATION

In consideration of the mutual covenants and agreements contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is expressly acknowledged, the Parties agree as follows:

ENTIRE AGREEMENT

This agreement (as amended, restated, supplemented or otherwise modified from time to time, the **"Agreement"**), including:

Schedule "A" - General Terms and Conditions
Schedule "B" - Project Specific Information
Schedule "C" - Project - Certain Obligations of the Recipient
Schedule "D" - Budget
Schedule "E" - Payment Plan
Schedule "F" - Reporting
Annex "A" - Principles, and
any amending agreement entered into as provided for below,

constitutes the entire agreement between the Parties with respect to the subject matter contained in this Agreement and supersedes all prior oral or written representations and agreements.

COUNTERPARTS

The Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

AMENDING THE AGREEMENT

The Agreement may only be amended by a written agreement duly executed by the Parties.

ACKNOWLEDGEMENT

The Recipient:

(a) acknowledges that it has read and understands the provisions contained in the entire Agreement; and

(b) agrees to be bound by the terms and conditions contained in the entire Agreement.

IN WITNESS WHEREOF, the Parties have executed the Agreement on the dates set out below.

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO as represented by Minister of Energy

by:

_____ _____

Date Name: Serge Imbrogno

Title: Deputy Minister

Authorized Signing Officer

COMPUTERSHARE TRUST COMPANY OF CANADA, in its capacity as trustee of AFFORDABILITY FUND TRUST

by:

_____ _____

Date Name:

Title:

by:

_____ _____

Date Name:

Title:

I/We have authority to bind the Recipient.

SCHEDULE "A"
GENERAL TERMS AND CONDITIONS

1.0 INTERPRETATION AND DEFINITIONS

1.1 Interpretation. For the purposes of interpretation:

(a) words in the singular include the plural and vice-versa;

(b) words in one gender include all genders;

(c) the headings do not form part of the Agreement; they are for reference only and will not affect the interpretation of the Agreement;

(d) any reference to dollars or currency will be in Canadian dollars and currency;

(e) "include", "includes" and "including" denote that the subsequent list is not exhaustive;

(f) where any reference is made in the Agreement to an act to be performed by or for or on behalf of the Affordability Fund Trust, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Recipient in its capacity as trustee of the Affordability Fund Trust, and, where any reference is made in the Agreement to an act to be performed by or for or on behalf of the Recipient, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Recipient in its capacity as trustee of the Affordability Fund Trust; and

(g) it is intended that the transfer of the Funds to the Recipient will be a transfer made to a ~~"non-controlled~~ trust~~" (as~~ that ~~term is given meaning in • applicable to the accounting rules and principles applicable to the Province as of the date of the Agreement~~is not controlled by the Province (as the term "control" is used in *Government Reporting Entity* at paragraphs PS 1300.07-.24), and so if a term or condition of the Agreement is determined to conflict with the requirements applicable to the Province recording the transfers to the Recipient of Funds contemplated hereunder as an expense incurred by the Province on the date of the transfer of Funds under the Agreement otherwise in connection with activities undertaken by the Province with such a ~~"~~non-controlled trust~~"~~, then such term or condition shall be given a meaning and shall have an effect insofar as it is possible to interpret such term or condition in a manner that eliminates such conflict while preserving the other provisions of the Agreement and furthering the Purpose.

1.2 Definitions. In the Agreement, the following terms will have the following meanings:

"Administrative Services Agent" has the meaning given such term in the Declaration of Trust.

"Affordability Fund Trust" means the trust established and governed by the Declaration of Trust, and for greater certainty includes such trust operating under any other name that may be designated from time to time by the Recipient in accordance with the Declaration of Trust.

"BPSAA" means the Broader Public Sector Accountability Act, 2010 (Ontario).

"**Beneficiary**" has the meaning given to such term in the Declaration of Trust.

"Budget" means the Recipient's budget attached to the Agreement as Schedule "D".

"Business Day" means any working day, Monday to Friday inclusive, excluding statutory and other holidays, namely: New Year's Day; Family Day; Good Friday; Easter Monday; Victoria Day; Canada Day; Civic Holiday; Labour Day; Thanksgiving Day; Remembrance Day; Christmas Day; Boxing Day and any other day on which the Province has elected to be closed for business.

"**Declaration of Trust**" means the declaration of trust made as of March [•], 2017, under which the Affordability Fund Trust was established, as such declaration of trust may be amended, restated, supplemented or otherwise modified from time to time with the consent of the Province in accordance with Section 20.2.

"Expiration Date" means the date on which this Agreement will expire and is the date set out in Schedule "B".

"Funds" means the money the Province provides to the Recipient pursuant to the Agreement.

"Implementation Agents" has the meaning given such term in the Declaration of Trust.

"Maximum Funds" means the maximum amount of Funds that the Province will provide the Recipient under the Agreement, as set out in Schedule "B".

"Notice" means any communication given or required to be given pursuant to the Agreement.

"Party" means either the Province or the Recipient.

"**Person**" includes any individual, sole proprietorship, corporation, partnership, joint venture, association, society, club, board, chamber, joint-stock company, trust, trustee, unincorporated or incorporated organization or entity or government or any entity, agency or political subdivision thereof.

"**Program**" has the meaning given to such term in the Declaration of Trust.

"Project" means the undertaking described in Schedule "C".

"**Purpose**" has the meaning given to such term in the Declaration of Trust.

"PSSDA" means the *Public Sector Salary Disclosure Act, 1996* (Ontario).

"**Recipient**" means, initially, Computershare Trust Company of Canada, and any additional or replacement trustee in its capacity as trustee of the Affordability Fund Trust pursuant to the Declaration of Trust, including the Board of Trustees (as defined in the Declaration of Trust) and each of their respective successors and permitted assigns.

"Reports" means the reports described in Schedule "F".

2.0 REPRESENTATIONS, WARRANTIES AND COVENANTS

2.1 General. The Recipient represents, warrants and covenants that:

(a) it is the trustee of the Affordability Fund Trust; and

(b) the Affordability Fund Trust is, and will continue to be for the term of the Agreement, a trust existing under and governed by the laws of the Province of Ontario.

2.2 Execution of Agreement. The Recipient represents and warrants that it has:

(a) the full power and authority to enter into the Agreement; and

(b) taken all necessary actions to authorize the execution of the Agreement.

2.3 Governance. The Recipient covenants that it will develop and maintain in writing until the Agreement is no longer in effect:

(a) decision-making mechanisms and procedures to enable the Recipient to hold, invest, manage, apply and distribute the Funds in accordance with the Declaration of Trust in furtherance of the Purpose; and

(b) procedures to enable the preparation and delivery of all Reports required pursuant to Article 7.0.

2.4 Supporting Documentation. Upon request, the Recipient will provide the Province with proof of the matters referred to in this Article 2.0.

3.0 TERM OF THE AGREEMENT

3.1 Term. The term of the Agreement will commence on the Effective Date and will expire on the Expiration Date.

3.2 Extension. The term of the Agreement may be extended by further agreement between the Parties.

3.3 Extension of the Declaration of Trust. If the Province determines that an extension of the Final Distribution Date (as defined in the Declaration of Trust) and time for termination of the Declaration of Trust is consistent with and in furtherance of the Purpose and the Province's original intentions and expectations in establishing the Project, the Province may request that the Recipient extend such date to a date specified by the Province in a Notice (such date not to be later than December 31, 2021, whereupon the Recipient, so long as the Recipient does not have a reasonable basis to believe that such an extension would be inconsistent with the Purpose or weaken the protections intended for the benefit of the trustee pursuant to the Declaration of Trust, will undertake such actions as it may consider to be necessary or appropriate to so extend the Declaration of Trust, including by amending the Declaration of Trust to provide for such an extension and to modify any other term or requirement as would be necessary or prudent to conform such term or requirement in light of such extension.

4.0 FUNDS AND CARRYING OUT THE PROJECT

4.1 Funds Provided. The Province will:

(a) provide the Recipient up to the Maximum Funds to be held, invested, applied and distributed in accordance with the terms of the Project and the Declaration of Trust;

(b) provide the Funds to the Recipient in accordance with the Payment Plan attached to the Agreement as Schedule "E"; and

(c) deposit the Funds into an account designated by the Recipient, provided that the account:

(i) resides at a Canadian financial institution; and

(ii) is in the name of the Recipient.

4.2 Timing of Distributions to Beneficiaries. The expectations of the Province regarding when Funds will begin to be distributed by the Recipient to Beneficiaries are set out in Schedule C. The Recipient will have regard to those expectations in the exercise of its discretion under the Declaration of Trust, in determining when Funds will be distributed to Beneficiaries in furtherance of the Purpose.

4.3 Use of Funds and Project. The Recipient will exercise its rights, duties and discretions under the Declaration of Trust so that the Funds are used, applied and distributed only for and in furtherance of the Purpose, including having regard to the Principles set forth in Annex A.

4.4 Province's Role Limited to Providing Funds. For greater clarity, the Province's role under the Agreement is limited to providing Funds to the Recipient and the Province is not responsible for carrying out or overseeing the terms of the Declaration of Trust.

4.5 Maximum Funds. The Recipient acknowledges that the Funds available to it pursuant to the Agreement will not exceed the Maximum Funds.

4.6 Funding, Not Procurement. For greater clarity, the Recipient acknowledges that:

(a) it is receiving funding from the Province for the Project and is not providing goods or services to the Province; and

(b) the funding the Province is providing under the Agreement is funding for the purposes of the PSSDA.

5.0 RECIPIENT'S ACQUISITION OF GOODS OR SERVICES, AND DISPOSAL OF ASSETS

5.1 Acquisition. If the Recipient acquires goods, services, or both with or by applying the proceeds of the Funds, it is expected to do so through a process that promotes the best value for money and to take reasonable steps to ensure that its Administrative Services Agents and Implementation Agents also follow a process that promotes the best value for money when acquiring goods and services with or by applying the proceeds of the Funds. ~~In this regard, it is expected that the Recipient will have regard the following procurement principles:~~

~~(a) ***Accountability*** - Procurement is conducted in a manner that is well-informed and reflects rules of good governance and decision-making.~~

~~(b) ***Geographic Neutrality and Reciprocal Non-Discrimination*** - Procurement should not differentiate between competing goods, services, or suppliers based on their geographic origin or location.~~

~~(c) ***Responsible Management*** - Procurement of goods and services should be responsibly, efficiently and effectively managed and should observe the highest standard of ethics, avoiding conflict of interest.~~

~~(d) ***Value for Money*** - Procurement processes should apply a value for money evaluation that takes into account price as well as other costs and benefits, including life cycle costs and relevant non-price attributes such as quality.~~

~~(e) ***Vendor Access, Transparency, and Fairness*** - Procurement is conducted in a fair and transparent manner, offering all qualified suppliers equal treatment and open access to compete for the opportunity to supply goods and services.~~

6.0 CONFLICT OF INTEREST

6.1 No Conflict of Interest. Except as expressly permitted by the Declaration of Trust, the Recipient is expected to implement appropriate processes and control to ensure that the Program and the use, application and distribution of the Funds are without an actual, potential or perceived conflict of interest.

6.2 Conflict of Interest Includes. For the purposes of this Article, a conflict of interest includes any circumstances where, except as expressly permitted by the Declaration of Trust:

(a) the Recipient; or

(b) any person who has the capacity to influence the Recipient's decisions,

has outside commitments, relationships or financial interests that could, or could be seen to, interfere with the Recipient's objective, unbiased and impartial judgment relating to the Project, or the Recipient's use, application or distribution of the Funds, or both.

7.0 REPORTING, ACCOUNTING AND REVIEW

7.1 Preparation and Submission. The Recipient will cooperate with the Province to accommodate the Province's on-going information and reporting objectives in order to enable the Province to be aware of the Recipient's activities in furtherance of the Purpose, and to that end the Recipient will be expected, from and following the Original Trustee Replacement Date, to:

(a) submit to the Province at the address referred to in Schedule "B", all Reports in accordance with the timelines and content requirements set out in Schedule "F", or in a form as specified by the Province from time to time, acting reasonably;

(b) submit to the Province at the address referred to in Schedule "B", any other reports as may be reasonably requested by the Province from time to time in accordance with the timelines and content expectations identified by the Province, acting reasonably;

(c) undertake diligent efforts so that such Reports and any such other reports are complete and accurate in all material respects; and

(d) have an authorized signatory of the Recipient sign-off on such Reports and other reports.

7.2 Record Maintenance. The Recipient will keep and maintain financial and other records necessary to permit it to satisfy its obligations under section 7.1 and to permit the Province to exercise its rights under section 7.3.

7.3 Inspection. The Province, its authorized representatives or an independent auditor identified by the Province may, at its own expense, upon twenty-four hours' Notice to the Recipient and during normal business hours, inspect the records of and information respecting the Recipient to confirm its compliance with the terms of this Agreement, including to ensure consistency with the Purpose and, for these purposes, the Province, its authorized representatives or an independent auditor identified by the Province may take one or more of the following actions:

(a) inspect and copy the records and documents referred to in section 7.2;

(b) keep any copies made pursuant to section 7.3(a); and

(c) conduct an audit or investigation of the Recipient in respect of the expenditure of the Funds to confirm that the Funds have been used, applied and distributed for and in furtherance of the Purpose, including a review of the Recipient's processes, records, documents, as well as the processes and controls applied to obtain assurance that Funds disbursed to Electricity Distributors were used, applied and distributed for and in furtherance of the Purpose.

7.4 Disclosure. To assist in respect of the rights set out in section 7.3, the Recipient will disclose any information requested by the Province, its authorized representatives or an independent auditor identified by the Province, and will do so in the form requested by the Province, its authorized representatives or an independent auditor identified by the Province, as the case may be.

7.5 No Control of Records. No provision of the Agreement will be construed so as to give the Province any control whatsoever over the Recipient's records.

7.6 Auditor General. For greater certainty, the Province's rights under this Article are in addition to and do not limit any rights provided to the Auditor General pursuant to section 9.1 of the *Auditor General Act* (Ontario).

8.0 COMMUNICATIONS REQUIREMENTS

8.1 **Publication.** The Recipient will acknowledge, in any of its Program-related external communications and marketing whether written, oral, or visual, the financial support of the Province in connection with the establishment and funding of the program, while noting that the views expressed in the publication are the views of the Recipient and do not necessarily reflect those of the Province.

9.0 FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY

9.1 **FIPPA.** The Recipient acknowledges that the Province is bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province in connection with the Project or otherwise in connection with the Agreement may be subject to disclosure in accordance with that Act.

10.0 Intentionally Deleted

11.0 EVENT OF DEFAULT, CORRECTIVE ACTION AND TERMINATION FOR DEFAULT

11.1 **Events of Default.** An Event of Default will occur if:

(a) the Recipient fails to perform or observe any covenant in this Agreement and such failure has and continues to have a material adverse effect on the Province and remains unremedied during any Notice period applicable under section 11.2 after the earlier of (i) actual knowledge thereof by the Recipient, or (ii) receipt by the Recipient of Notice thereof from the Province;

(b) any representation or warranty made by the Recipient in the Agreement shall prove to have been incorrect in any material respect when made or deemed made, and, if capable of remedy, continues to be incorrect in any material respect during any Notice period applicable under section 11.2 after the earlier to occur of (i) the actual knowledge thereof by the Recipient or (ii) receipt by the Recipient of Notice thereof from the Province;

(c) it is determined that the Recipient has breached its Standard of Care (within the meaning given in and context of the Declaration of Trust) in discharging its material duties under the Declaration of Trust, with the result that all or a significant part of the Funds have not been or are not being applied in furtherance of the Purpose or are being applied in a manner that is directly contrary or without regard to the Purpose, and, if such breach is capable of remedy, it continues and remains unremedied during any Notice Period applicable under section 11.2 after the earlier of (i) actual knowledge thereof by the Recipient, or (ii) receipt by the Recipient of Notice thereof from the Province;

(d) an insolvency event shall have occurred and be continuing with respect to the Recipient.

11.2 **Consequences of Events of Default and Corrective Action.** If an Event of Default occurs, the Province may, at any time, take one or more of the following actions:

(a) provide the Recipient with Notice allowing the Recipient an opportunity to remedy the Event of Default during a specified Notice Period;

(b) seek an order of specific performance, including an order that the Recipient pursue its available remedies against third parties;

(c) require, by Notice of demand, that the Recipient transfer to the Province (without any need for compensation, indemnity or consideration to the Recipient or any Beneficiary or other third party) any and all Assets remaining in the possession or under the control of the Recipient that can reasonably be traced or attributed to the Funds after first providing for the completion and performance by the Recipient of any unperformed contractual obligations of the Recipient undertaken in compliance with the Declaration of Trust on or prior to transfer; and

(d) terminate the Agreement, including immediately, without liability, penalty or costs to the Province upon giving Notice to the Recipient.

The transfer of Funds in accordance with the Agreement is made by the Province with the expressed intention and reservation that the transferred Funds shall be returned to the Province and the entitlements of the Recipient in remaining Funds shall thereby be revoked with reversion thereof to the Province in the circumstances contemplated in Section 11.2(c).

11.3 Opportunity to Remedy. If, in accordance with section 11.2, the Province provides the Recipient with an opportunity to remedy the Event of Default, the Province will provide Notice to the Recipient of:

(a) the particulars of the Event of Default; and

(b) the length of time within which the Recipient may cure such Event of Default without the Province pursuing any other remedy (the "Notice Period").

11.4 Recipient not Remedying. If the Province has provided the Recipient with an opportunity to remedy the Event of Default pursuant to section 11.2(a), and:

(a) the Recipient does not remedy the Event of Default within the Notice Period;

(b) it becomes apparent to the Province that the Recipient cannot adequately remedy the Event of Default within the Notice Period; or

(c) the Recipient is not proceeding to remedy the Event of Default in a way that is satisfactory to the Province,

the Province may extend any Notice Period, or initiate any one or more of the actions provided for in section 11.2.

12.0 REPAYMENT

12.1 Debt Due. If, pursuant to the Agreement: the Province demands the payment of any Funds from the Recipient pursuant to section 11.2(c) such Funds or other amount will be deemed to be a debt due and owing to the Province by the Recipient, and the Recipient will pay or return the amount to the Province immediately, unless the Province directs otherwise.

12.2 Payment of Money to Province. The Recipient will pay any money owing to the Province by cheque payable to the "Ontario Minister of Finance" and delivered to the Province at the address referred to in Schedule "B".

12.3 Failure to Repay. Without limiting the application of section 43 of the Financial Administration Act (Ontario), if the Recipient fails to repay any amount owing under the Agreement, Her Majesty the Queen in right of Ontario may deduct any unpaid amount from any money payable to the Recipient by Her Majesty the Queen in right of Ontario.

13.0 NOTICE

13.1 Notice in Writing and Addressed. Notice will be in writing and will be delivered by email, postage-prepaid mail, personal delivery or fax, and will be addressed to the Province and the Recipient respectively as set out in Schedule "B", or as either Party later designates to the other by Notice.

13.2 Notice Given. Notice will be deemed to have been given:

(a) in the case of postage-prepaid mail, five Business Days after the Notice is mailed; or

(b) in the case of email, personal delivery or fax, one Business Day after the Notice is delivered.

13.3 Postal Disruption. Despite section 13.2(a), in the event of a postal disruption:

(a) Notice by postage-prepaid mail will not be deemed to be received; and

(b) the Party giving Notice will provide Notice by email, personal delivery or by fax.

14.0 SEVERABILITY OF PROVISIONS

14.1 Invalidity or Unenforceability of Any Provision. The invalidity or unenforceability of any provision of the Agreement will not affect the validity or enforceability of any other provision of the Agreement. Any invalid or unenforceable provision will be deemed to be severed.

15.0 WAIVER

15.1 Waivers in Writing. If a Party fails to comply with any term of the Agreement, that Party may only rely on a waiver of the other Party if the other Party has provided a written waiver in accordance with the Notice provisions in Article 13.0. Any waiver must refer to a specific failure to comply and will not have the effect of waiving any subsequent failures to comply.

16.0 INDEPENDENT PARTIES

16.1 Parties Independent. The Recipient acknowledges that it is not an agent, joint venturer, partner or employee of the Province, and the Recipient will not represent itself in any way that might be taken by a reasonable person to suggest that it is, or take any actions that could establish or imply such a relationship.

17.0 ASSIGNMENT OF AGREEMENT OR FUNDS

17.1 Agreement Binding. All rights and obligations contained in the Agreement will extend to and be binding on the Parties' respective heirs, executors, administrators, successors and permitted assigns.

18.0 LIMITATION OF LIABILITY

18.1 This Agreement has been entered into by the Recipient solely in its capacity as trustee of the Affordability Fund Trust and is not binding on the Recipient in any other capacity, whether in tort, contract or otherwise. The Beneficiaries of the Affordability Fund Trust are not subject to any liability in respect of the Affordability Fund Trust. Resort may not be had to, nor recourse or satisfaction be sought from, the private property of the Recipient (whether owned by it in its personal capacity or in any other capacity other than in its capacity as trustee of the Affordability Fund Trust), its directors, officers, employees, or agents, or the private property of any Beneficiary, and resort will be had solely to the property of the Recipient held in trust for the payment, performance or satisfaction of any liability or obligation of the Recipient under this Agreement. However, the foregoing limitations in this section shall not apply where the Recipient has demonstrated gross negligence, bad faith, fraud or wilful misconduct.

19.0 GOVERNING LAW

19.1 Governing Law. The Agreement and the rights, obligations and relations of the Parties will be governed by and construed in accordance with the laws of the Province of Ontario and the applicable federal laws of Canada. Any actions or proceedings arising in connection with the Agreement will be conducted in the courts of Ontario, which will have exclusive jurisdiction over such proceedings.

20.0 FURTHER ASSURANCES

20.1 Agreement into Effect. The Recipient will provide such further assurances as the Province may request from time to time with respect to any matter to which the Agreement pertains, and will otherwise do or cause to be done all acts or things necessary to implement and carry into effect the terms and conditions of the Agreement to their full extent.

20.2 **Declaration of Trust.** The Recipient covenants that it shall not amend, restate or terminate the Declaration of Trust without obtaining the written consent of the Province in respect of same, such consent not to be unreasonably withheld or delayed.

21.0 JOINT AND SEVERAL LIABILITY

21.1 **Joint and Several Liability.** Without limiting and subject to section 18.1 and the Declaration of Trust, if the Recipient is comprised of more than one entity, all such entities will be jointly and severally liable to the Province for the fulfillment of the obligations of the Recipient under the Agreement.

22.0 RIGHTS AND REMEDIES CUMULATIVE

22.1 **Rights and Remedies Cumulative.** The rights and remedies of the Province under the Agreement are cumulative and are in addition to, and not in substitution for, any of its rights and remedies provided by law or in equity.

23.0 ACKNOWLEDGEMENT OF OTHER LEGISLATION AND DIRECTIVES

23.1 **Recipient Acknowledges.** The Recipient acknowledges that by receiving Funds it may become subject to legislation applicable to organizations that receive funding from the Government of Ontario, including the BPSAA, the PSSDA, and the *Auditor General Act* (Ontario).

24.0 SURVIVAL

24.1 **Survival.** The following Articles and sections, and all applicable cross-referenced sections and schedules, will continue in full force and effect for a period of seven years from the date of expiry or termination of the Agreement: Article 1.0 and any other applicable definitions, section, 4.5, section 7.1 (to the extent that the Recipient has not provided the Reports to the satisfaction of the Province), sections 7.2, 7.3, 7.4, 7.5, 7.6, Article 8.0, Article 12.0, Article 14.0, Article 16.0, Article 17.0, Article 19.0, Article 21.0, Article 23.0 and Article 24.0.

- END OF GENERAL TERMS AND CONDITIONS -

SCHEDULE "B"

PROJECT SPECIFIC INFORMATION

Maximum Funds	$100 million
Expiration Date	The date upon which the Affordability Fund Trust is terminated in accordance with the Declaration of Trust
Contact information for the purposes of Notice to the Province	**Attention: Usman Syed** **Position: Director** **Address: 77 Grenville St, Toronto, Ontario, M7A 2C1** **Fax: 416-325-6651** **Email: Usman.Syed@ontario.ca**
Contact information for the purposes of Notice to the Recipient	**Attention:** **Position:** **Address:** **Email:**
Contact information for the senior financial person in the Recipient organization (e.g., CFO, CAO) – to respond as required to requests from the Province related to the Agreement	**Attention:** **Position:** **Address:** **Email:**

SCHEDULE "C"

PROJECT

For the purposes of this Agreement, the "Project" is the distribution of the Funds in accordance with the Declaration of Trust.

It is intended the Project will be undertaken by the Recipient in furtherance of the Purpose and in accordance with the Declaration of Trust. In this regard, it is expected that the Recipient will undertake the Program having regard to the Budget and the Principles set forth in Annex A.

The following are the Province's expectations regarding the circumstances in which the Recipient will begin to distribute any Funds to any Beneficiary.

1. The Original Trustee Replacement Date (as defined in the Declaration of Trust) will have occurred.

2. An Administrative Services Agreement (as defined in the Declaration of Trust) will have been entered into between the Recipient and Hydro One Limited under which Hydro One Limited shall provide specified administrative and other services on behalf of the Recipient.

3. Administrative procedures will have been developed and implemented under which Electricity Distributors (as defined in the Declaration of Trust) will be invited to assist with (a) the identification and selection of Primary Beneficiaries under the Declaration of Trust, (b) the determination of the amount of Funds to be distributed to particular Primary Beneficiaries, and (c) the distribution of Funds to or for the benefit of such Primary Beneficiaries (in each case substantially on the basis contemplated in the Permitted Delegations Annex).

4. The Recipient will have obtained commercial general liability insurance from insurers having a secure A.M. Best rating of B+ or greater, or the equivalent, that in the opinion of the Recipient a prudent person similar to the Recipient would maintain, and having an inclusive limit of not less than $2,000,000 per occurrence and providing for contractual liability coverage. If requested, the Recipient will provide the Province (for its information purposes) with copies of the certificates of insurance and policies for such insurance coverage.

The Province recognizes that the foregoing may involve the Recipient entering into agreements as the Recipient considers to be necessary or expedient, including any required amendment or amendment and restatement of the Declaration of Trust. Funds may be expended to pay the expenses of the Recipient in completing these matters. The Recipient is requested to advise the Province through its quarterly reports on the status of the foregoing.

SCHEDULE "D"

Recipient's Budget

1. It is expected that the administrative expenses of the Recipient, including any administrative expenses of any Administrative Services Agents or any Implementation Agents or any other agents retained by the Recipient, relating to the establishment of the Affordability Fund Trust and ~~satisfying the Requirements (as defined~~addressing the Province's expectations as enumerated in Schedule "C"~~)~~ and any expenses related to the operation of the Affordability Fund Trust and the execution of the Project (including any reimbursable expenses incurred by any Administrative Services Agent or any Implementation Agent (as such terms are defined in the Declaration of Trust)), will be no greater than 10 percent of the total Project budget.

2. The only expenditures incurred by the Recipient that are eligible for reimbursement are actual (excluding HST) administrative overhead expenses incurred by or on behalf of the Recipient that directly related to the Recipient or the establishment of the Affordability Fund Trust.

4. Any expenses that have been or may be reimbursed by other parties should not be reimbursed from the assets of the Affordability Fund Trust.

5. It is expected any travel, meals and hospitality expenses by the Recipient will be consistent with the Province's Travel, Meal and Hospitality Expenses Directive. For purposes of funding entities receiving funding from the Recipient, the following would not be considered eligible claims:

   - Alcohol
   - First-Class travel
   - Meals, snacks and beverages
   - Gratuities
   - Laundry or dry cleaning
   - Valet services
   - Dependent care
   - Home management
   - Personal telephone calls

6. In the event that the Recipient performs any procurements, it is expected that all procurements will reflect the principles of Ontario's Public Service Procurement Directive.

SCHEDULE “E”

PAYMENT PLAN

PAYMENT DATE	MAXIMUM FUNDS TO BE DISBURSED BY THE PROVINCE
Within 7 days of signing the Agreement	$ 100,000,000

SCHEDULE "F"

REPORTING

From and following the Original Trustee Replacement Date, Reports will be quarterly on the basis of the government's fiscal year starting at the execution of this Agreement and continuing until conclusion of the Agreement. Annual Reports will be on a fiscal basis starting at the execution of this Agreement and continuing until conclusion of the Agreement. Quarterly Reports and Annual Reports would be expected to be submitted to the Province within one month following the end of the reporting period that they represent. The Province expects that these Reports would be prepared to demonstrate the impact of the Province's funding and address the following:

- Quarterly Reports would include a report back on the trustee-developed performance management criteria. Initially, such Quarterly Reports would include details respecting:
    - Amounts disbursed by the Recipient in the previous quarter. It is expected that this information would be provided at the Electricity Distributor level and in the aggregate.
    - Total Affordability Fund investment income earned and accrued to date.
    - Key activities and achievements from the quarter, including the number of participant households per Electricity Distributor, average participant incentive cost per Electricity Distributor, and uptake of energy efficiency measures per Electricity Distributor.
    - Any challenges or modifications to the application, funding, or eligibility processes/rules of the Recipient.
    - Key activities planned for the upcoming quarter.
    - Details of any situation that a reasonable person might interpret as an actual, potential or perceived conflict of interest.
- Annual Reports would include a report back on the trustee-developed performance management criteria. Initially, such Annual Report would include details respecting:

- A description of an Electricity Distributor's application process and the criteria used by the Recipient to distribute funds.
- Any challenges identified by the Recipient or any Administrative Services Agent in achieving the Purpose and proposed solutions, if applicable.
- Lesson learned.
- Electricity Distributor and customer feedback.
- Amounts distributed to Beneficiaries or otherwise disbursed by the Recipient in the previous year. It is expected that this information will be provided by each Electricity Distributor.
- Key activities and achievements from each quarter being reported, including number of participant households per Electricity Distributor, average participant incentive cost per Electricity Distributor, and uptake of energy efficiency measures per Electricity Distributor.
- Total Affordability Fund interest earned and accrued to date.

As part of an Annual Report, the Recipient would also provide the Province with an audited financial statement for the previous year.

ANNEX A

Principles

The Trustee shall have regard to, but shall not be specifically bound by, the following principles in applying its discretion in relation to the administration of the Trust:

1. ~~4.~~ Identification of Primary Beneficiary Payees

1.1 ~~4.1~~ Except in exceptional circumstances, a Primary Beneficiary would not be expected to receive a benefit from the Trust unless at the time of consideration it satisfies, in addition to the requirements contemplated in the definition of "Primary Beneficiary", each of the following criteria (the "**Selection Factors**"):

(i) it has a participant agreement with an applicable Electricity Distributor to undertake measures (its "**Energy Plan**") to improve the electricity efficiency and/or promote the conservation of electricity at its Ontario residence;

(ii) its Energy Plan involves one or more Eligible Measures, as may be designated by the Trustee from time to time from;

(iii) it confirms that:

1. the primary purpose of its Energy Plan is the conservation and efficient use by the Primary Beneficiary of electricity, and is not for the purposes of the Primary Beneficiary making a profit;

2. it would otherwise not have the financial resources to undertake the Eligible Measures included in its Energy Plan; and

3. it would otherwise not be eligible to receive amounts in respect of the Eligible Measures as a HAP Eligible Person;

(iv) it has demonstrated a need for financial assistance on the basis that its periodic electricity bills represent a financial burden, relative to its available financial resources; and

(v) such other criteria as the Trustee may determine, including based on the recommendations of Electricity Distributors or other knowledgeable Persons made on the basis and having regard to the delegations contemplated by the Permitted Delegations Annex or any applicable Implementation Agreement.

1.2 ~~4.2~~ It is recognized that, in furthering the Purpose, an efficient basis upon which to allocate funds to the Primary Beneficiaries across different areas and regions within Ontario may be based on the areas and regions serviced by the Electricity Distributors operating within Ontario.

1.3 ~~4.3~~ It would not be contrary to the Purposes if funds are made available by the Trustee to the Primary Beneficiaries unequally across different areas and regions within Ontario, and it is expected that in making such an unequal division it would be appropriate to have regard to:

(i) broad economic parameters of economic activity and the specific financial resources of the residents of the areas and regions, in each case as an indication of the relative need of such residents across the areas and regions;

(ii) electricity use and efficiency levels of residential electricity customers across the areas and regions;

(iii) specific regional indicators of economic weakness and need; and

(iv) such other factors as the Trustee may determine are relevant, including based on the submissions, advice and recommendations of Electricity Distributors or other knowledgeable Persons made on the basis and having regard to the delegations contemplated by the Permitted Delegations Annex or any applicable implementation Agreement.

1.4 ~~4.4~~ It is recognized that, in furthering the Purpose, the designated Electricity Distributor for an area or region in which a Primary Beneficiary resides would be expected to:

(i) be a reliable source for the purpose of assessing and confirming whether the Primary Beneficiary satisfies the Selection Factors;

(ii) be an efficient intermediary for the purpose of communicating with the Primary Beneficiary, including with respect to matters such as regarding the availability, terms, conditions and intended purposes of Program;

(iii) be able to facilitate an efficient payment of distribution determined to be made to or on behalf of the Primary Beneficiary, having regard to the Electricity Distributor's established practices, procedures and systems for dealing with its customers; and

(iv) have established contractual arrangements with the Primary Beneficiary that may apply to the protection and confidentiality of information provided by or respecting the Primary Beneficiary, which information may be useful in the consideration by the Electricity Distributor in its assessment of whether the Primary Beneficiary satisfies the Selection Factors, which information may not otherwise be available or readily accessible or verifiable by the Trustee.

1.5 ~~4.5~~ It is recognized that, in furthering the Purpose, the Electricity Distributor for an area or region in which a Primary Beneficiary resides will have market and utilization information that may be useful in assessing the relative needs of Primary Beneficiaries within its area or region. Such information is expected to be relevant in assessing the extent to which one such Primary Beneficiary's financial needs and the merits of its Energy Plan are greater or more compelling than those of another such Primary Beneficiary, which comparison may be relevant to the extent that the funds allocable to the Primary Beneficiaries resident in the area or region are otherwise insufficient to meet the requests for funding by all such Primary Beneficiaries.

1.6 ~~4.6~~ Accordingly, it is recognized that, in furthering the Purpose, it is consistent with the Purpose that the recommendations of Electricity Distributors be utilized and relied upon by the Trustee to guide the process of identifying particular Primary Beneficiaries in making distributions to the Primary Beneficiaries.

1.7 ~~4.7~~ If an Electricity Distributor for a particular area or region is unable or unwilling to assess or confirm the application of the Selection Factors to Primary Beneficiaries residing in the area or region or to make recommendations in relation to such matters, one or more of the following may provide a suitable alternative source of information and for information gathering, assessment and confirmation purposes in relation to such area or region:

(i) other Electricity Distributors operating in adjacent or other areas or regions in Ontario;

(ii) the Ontario Energy Board;

(iii) the Independent Electricity System Operator; and

(iv) anyone else having relevant expertise and access to information regarding the electricity market of the Province, in each case as may be considered relevant by the Trustee.

1.8 ~~4.8~~ To the extent that privacy law or other legal requirements limit an Electricity Distributor from providing or making available specific information respecting the application of the Selection Factors to a particular Primary Beneficiary or group of Primary Beneficiaries, it is recognized that, in furthering the Purpose, it may be appropriate to redact or make generic affected information regarding such Primary Beneficiary in connection with the identification and confirmation of a Primary Beneficiary's eligibility and participation in the Program. If such limitations or restrictions would limit an Electricity Distributor from providing or confirming the name of a particular Primary Beneficiary to the Trustee, then it should be sufficient that such information may be obtained or disseminated on a confidential basis if and when required by the Trustee for the proper administration of the Trust and on that basis such impediments should not disqualify a Primary Beneficiary from participating in the benefits of the Program, provided that the confidential record-keeping of the Electricity Distributor would be available in connection with the application of any applicable legal process predicated on the identification of such Primary Beneficiary for the purposes of substantiating its rights as a Primary Beneficiary of the Trust or as to the validity or subsistence of the Trust.

2. ~~5.~~ Eligible Measures

2.1 ~~5.1~~ It is expected that the Trust will identify eligible measures that, taking into consideration the principles set forth in the Principles Annex, have regard to the following (the "**Measures Factors**"):

(i) is the measure generally expected to result in reduced electricity consumption by a Primary Beneficiary if properly installed and used;

(ii) is the measure recognized under another Provincial program as being appropriate for achieving electricity conservation among a population analogous to the Primary Beneficiaries;

(iii) does the measure present any unacceptable health or safety considerations, either with respect to the Primary Beneficiary, a party providing or installing the measure, or the physical environment;

(iv) is the measure broadly available to residents across different areas and regions of the Province; or

(v) is the measure a requirement or precursor to another measure, the other measure being one which meets any of the other Measures Factors.

2.2 ~~5.2~~ In identifying and applying the Measures Factors, Electricity Distributors would be expected to have expertise in assessing the suitability of efficiency and conservation measures in their respective areas and regions, which may differ across areas and regions across the Province based on factors (among other things) such as the climate, geography, density, electricity infrastructure, residential structures, and electricity use rates applicable within such areas or regions.

2.3 ~~5.3~~ The measures specified in Schedule A to this Principles Annex may initially be considered to be consistent with the Measures Factors (subject to change as contemplated under the Permitted Delegations Annex).

3. ~~6.~~ Promotion of the Program

3.1 ~~6.1~~ It is expected that the Trustee will undertake or engage others to undertake diligent efforts to promote the availability, terms and benefits of the Program to Primary Beneficiaries, including by establishing consistent communications through the Electricity Distributors.

3.2 ~~6.2~~ It is expected that the Trustee will acknowledge the financial support of the Province in connection with the establishment and the funding for the Program, including in any external communications to or marketing directed at the Electricity Distributors and the Primary and Residual Beneficiaries. In its delegation of any duties or powers to the Electricity Distributors through Implementation Agreements it is expected that Electricity Distributors will acknowledge the financial support of the Province in connection with the program including in any communications or marketing to Primary Beneficiaries.

4. ~~7.~~ Conduct of the Trust and the Program

4.1 ~~7.1~~ It is expected that administrative expenses of the Board of Trustees and its members, including any expenses relating to the Trust, to the establishment of the Trust and any expenses related to the implementation and operation of the Program, including by or through Electricity Distributors and other relevant entities, will be recognized and subject to reimbursement on a basis that is substantially consistent with the accountability provisions contemplated in the Transfer Payment Agreement and the principles in the Province's Travel, Meal and Hospitality Expenses Directive, as set out in Schedule B to this Principles Annex.

4.2 ~~7.2~~ The Trustee is expected to conduct its activities in a manner that complies in all material respects with the Transfer Payment Agreement, including to:

(i) act prudently and in furtherance of the Purpose;

(ii) report not less frequently than annually the results of its activities for information purposes to the Province in connection with the Program;

(iii) comply with the Province's request for any independent verification or audit if determined to be necessary or appropriate by the Province;

(iv) return Assets that have not been distributed if it is determined that the Trustee has breached its Standard of Care in discharging its material duties under the Declaration, and has not cured such material breach despite having been given a reasonable opportunity by the Province to do so in light of the circumstances of such material breach, with the result that all or a significant part of the Assets have not been or are not being applied and distributed in furtherance of the Purpose or are being applied and distributed in a manner that is directly contrary or without regard to the Purpose.

4.3 ~~7.3~~ Electricity Distributors are not intended to directly profit from distributions of funds made from the Trust, although it is recognized that the objectives of electricity efficiency and conservation of Primary Beneficiaries located in the service area or region of an Electricity Distributor, and the cost savings and improved credit worthiness of such Primary Beneficiaries, may be financially beneficial to the Electricity Distributor.

4.4 ~~7.4~~ Distributions from the Trust are intended to allow receiving Primary Beneficiaries to undertake Eligible Measures at no or minimal personal cost.

4.5 ~~7.5~~ Without in any way limiting the discretion of the Board of Trustees to extend the period during which the benefits of the Program may be available to the Primary Beneficiaries, up to and including the Final Distribution Date, it is expected that the Trust Assets would be distributed to

Primary Beneficiaries during the period from the Original Trustee Replacement Date to April 30, 2019.

SCHEDULE A TO THE PRINCIPLES ANNEX
INDICATIVE ELIGIBLE MEASURES[1]

Initial Specified Measures
Block Heater Timer (just timer) – rated for outdoor use, have at least a 15 amp/1800 watt capacity, be cold weather resistant, bear a C-UL or CSA certification mark
Power bar with integrated timer, and switched power outlets, four each for a total of 8 outlets, have a total capacity of 15 amps. The switched outlets must remain "live", independent of timer settings, so long as the power bar itself remains switched on. The power bar must bear either a C-UL or CSA certification mark.
Efficient Showerheads (standard) - rated at no more than 4.8 Lpm (1.25 U.S. gpm) and be of the laminar flow type (non-aerating).
Efficient Showerhead (handheld) - rated at no more than 4.8 Lpm (1.25 U.S. gpm) and be of the laminar flow type (non-aerating).
Efficient Aerators (kitchen) - rated no more than 5.7 Lpm (1.5 U.S. gpm), dual threaded to allow installation in both thread type faucets, swivel type with pause lever.
Efficient Aerators (bathroom) - rated no more than 3.8 Lpm (1.0 U.S. gpm), be dual threaded to allow installation in both thread type faucets.
Hot Water Tank Pipe Insulation - 1/2" inside diameter – foam, meets ASTM –C547-00, minimum 3/4" thick
Hot Water Tank Pipe Insulation - 3/4 " inside diameter - – foam, meets ASTM –C547-00, minimum 3/4" thick
Hot Water Tank Insulation - fibreglass R10 (fits up to a 60 gal tank) – not bubble wrap
≤11W ENERGY STAR® Qualified LED A Shape (60W) (minimum 600 Lumen output) (Formerly: 7W – 11W ENERGY STAR® Qualified LED A Shape (60W))

[1] These measures are indicative. Eligible measures added to HAP during the administration of the Trust may also be appropriately considered relevant by the Trustee.

Initial Specified Measures
≤14W ENERGY STAR® Qualified LED A Shape (75W) (minimum 800 Lumen output) (Formerly: 10W – 14W ENERGY STAR® Qualified LED A Shape (75W))
≤23W ENERGY STAR® Qualified LED A Shape (100W) (minimum 1600 Lumen output) (Formerly:17W – 23W ENERGY STAR® Qualified LED A Shape (100W))
≤16W ENERGY STAR® Qualified LED PAR 20 (minimum 600 Lumen output) (Formerly: 8W – 12W ENERGY STAR® Qualified LED PAR 20)
≤16W ENERGY STAR® Qualified LED PAR30 & PAR38 (minimum 600 Lumen output) (Formerly: 8W – 12W ENERGY STAR® Qualified LED PAR 30)
≤23W ENERGY STAR® Qualified LED PAR (minimum 1100 Lumen output) (Formerly: 14W – 18W ENERGY STAR® Qualified LED PAR 38)
≤6W ENERGY STAR® Qualified LED MR 16 / PAR 16 (minimum 250 Lumen output) (Formerly: 7W – 10W ENERGY STAR®
Qualified LED MR 16 / PAR 16 - GU 10 Base)
≤11W ENERGY STAR® Qualified LED MR 16 (minimum 400 Lumen output) (Formerly: 7W – 12W ENERGY STAR® Qualified LED MR 16 GU 5.3 Base)
ENERGY STAR® LED Wet Location Rated PAR lamp ≤ 23 Watt (minimum 1100 Lumen output)
Recessed Downlight Fixture including LED with Light Output >600 and <800 lumens (Retrofit Measure List)
Recessed Downlight Fixture including LED with Light Output >800 lumens (Retrofit Measure List)
Indoor Drying Rack

Extended Measures
Replace refrigerator with ENERGY STAR qualified refrigerator - 15.5 - 16.9 cubic foot top freezer, automatic defrost, refrigerator/ freezer, no through the door ice service
Replace refrigerator with ENERGY STAR qualified refrigerator - 17.0 - 18.4 cubic foot top freezer, automatic defrost, refrigerator/ freezer, no through the door ice service
Replace refrigerator with a refrigerator that has a consumption level of less than 425 kwh, 10 – 12.5 cubic foot top freezer, automatic defrost, refrigerator freezer, no through the door ice service
Replace freezer with ENERGY STAR qualified freezer - 12-14.4 cubic foot freezer
Replace freezer with ENERGY STAR qualified freezer - 14.5 - 16.0 cubic foot freezer
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 6,000 – 7,999 BTU/hr with C-UL or CSA certification mark
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 8,000 – 9,999 BTU/hr with C-UL or CSA certification mark
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 10,000 – 12,000 BTU/hr with C-UL or CSA certification mark
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 14.2 - 21.2 l/day (30-44.9 pints/day) dehumidifier
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 21.3 - 25.4 l/day (45-53.9 pints/day) dehumidifier
Extended Measures
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 25.5 - 35.5 l/day (54-75 pints/day) dehumidifier
Programmable Thermostat – line voltage – meets CAN/CSA-C828-06 standard, minimum performance: Droop: 1.5°C, Differential: 0.5°C, Precision 0% within 0.5°C of the original set point of 22°C
Programmable Thermostat – low voltage - meets CAN/CSA-C828-06 standard, minimum performance: Droop: 1.5°C, Differential: 0.5°C, Precision 0% within 0.5°C of the original set point of 22°C

Weatherization Measures
Comprehensive Draftproofing (caulking, foam and weather stripping, and application of same) – lifespan of 20 years plus If one or two component polyurethane foams are used, the products and installations must conform to: • CAN/ULC-S710.1 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 1: Material Specification. • CAN/ULC-S710.2 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 2: Application. • CAN/ULC-S711.1 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification • CAN/ULC-S711.2 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification, and Part 2: Application. **Attic Insulation (including installation):**
cellulose: CAN/ULC-S703-01 Amendment 1 - Cellulose Fibre Insulation (CFI) for Buildings OR 2) Mineral Fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre

Weatherization Measures
for Buildings **Wall Insulation (including installation):**
cellulose: CAN/ULC-S703-01 Amendment 1 - Cellulose Fibre Insulation (CFI) for Buildings OR 2) Mineral Fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre **Basement Insulation (including installation):**
mineral fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre for Buildings Vapour Barrier: 69009-CAN/CGSB-51.34-m86 If one or two component polyurethane foams are used, the products and installations must conform to: • CAN/ULC-S710.1 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 1: Material Specification. • CAN/ULC-S710.2 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 2: Application. • CAN/ULC-S711.1 Standard for Thermal Insulation – Bead Applied Two-Component
Polyurethane Air Sealant Foam, Part 1: Material Specification • CAN/ULC-S711.2 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification, and Part 2: Application.

Heat Pumps
(Selection of manufacturers and technologies to meet the US federal minimum efficiency standard for ASHPs, as of 2015, is 13.0 SEER and 7.7 HSPF. Energy Star–certified models offer roughly 9 percent
Ductless Multiport Heat Pump
Cold Climate Ductless Heat Pump
Cold Climate Multiport Ductless Heat Pump
Cold Climate Ducted Heat Pump

SCHEDULE B TO THE PRINCIPLES ANNEX
PERMITTED EXPENSE REIMBURSEMENTS

Travel, Meal and Hospitality Expenses Directive

Funds should be used prudently and responsibly with a focus on accountability and transparency.

Expenses for travel, meals and hospitality support the Purpose.

Plans for travel, meals, accommodation and hospitality are necessary and economical with due regard for health and safety.

Legitimate authorized expenses incurred during the course of furthering the Purpose may be reimbursed.

Best practices should be followed, including:

Prior approval to incur expenses is appropriately obtained.

Other options for meetings are always considered before travel is approved, including audio or video conferencing.

Corporate travel cards are to be used for authorized business travel and business related expenses.

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12888010.14

Document comparison by Workshare Compare on Wednesday, March 22, 2017 6:19:04 PM

Input:	
Document 1 ID	PowerDocs://TOR_2024/12888010/13
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Document 2 ID	PowerDocs://TOR_2024/12888010/14
Description	TOR_2024-#12888010-v14-Transfer_Payment_Agreement_(Affordability_Fund_Trust)
Rendering set	Standard

Legend:	
Insertion	
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~~Moved from~~	
Moved to	
Style change	
Format change	
~~Moved deletion~~	
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Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	4
Deletions	51
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Moved to	0
Style change	0
Format changed	0
Total changes	55

FW_ EXTERNAL - Follow up on request for feedback on GBE analysis.rtf

From: Petsche, Nadine (TBS) []
To: Picard, Michel (mpicard@kpmg.ca) [mpicard@kpmg.ca]
CC: Li, Wendy (TBS) [Wendy.Li@ontario.ca]
Subject: FW: EXTERNAL - Follow up on request for feedback on GBE analysis
Date: Thursday, March 16, 2017 17:07:56
Attachment 1: OPG as GBE analysis Mar1.docx
Attachment 2: Global Adjustment Deferral_White Paper_OPG r1a.pdf
Attachment 3: Global Adjustment Deferral - White Paper - Terms to MOE Feb 21_2017.pdf

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Michel,

Sharing a copy of our analysis of OPG as a GBE (attached) and OPG's comments on review thereof. As the legislation is being drafted, just wanted to share this with you as one of the items that we continue to monitor in managing the risks associated with the proposed transaction.

Thanks,

Nadine

From: MAUTI John -FIN & C CTRL [mailto:john.mauti@opg.com]
Sent: March-16-17 4:52 PM
To: Petsche, Nadine (TBS); JORDA Jenny -FIN & C CTRL
Cc: LEE John -TREASURY; CHENG Alec -FIN & C CTRL; HARTWICK Ken -FINANCE; MAUTI John -FIN & C CTRL; Veinot, Cindy (TBS)
Subject: RE: EXTERNAL - Follow up on request for feedback on GBE analysis

Nadine,

My team has reviewed the attached write up that the Province's assessment of OPG's continuation as a GBE. We can confirm the accuracy of the assertions in your write up, on the condition that the legislation, that is still in an early draft form, will be consistent with the requirements we had articulated in our white paper (attached again for your reference) as well as the advice in the pre cabinet briefing that we had provided (also attached).

Not being a lawyer, the attached statement in your write up:

, the Trust/SPV would be delegated the authority to hold the right to charge customers (of LDCs) for the benefit of debt holders and/or investors.

Not sure the implications….the Trust "holds the right to charge LDC customers". If that is meant to represent the intangible asset the Trust holds, then fine but I'm not clear if that is how to phrase it.

As for whether the facts, in totality, support a GBE conclusion, we cannot comment.

Thanks

John

OPG as GBE analysis Mar1.pdf

Ontario Power Generation Inc.

Section 4 - Summary of Evaluation for Government Business Enterprises (PS 1300)	Criteria Applies Yes/No	
	Status Quo	**Post – Global Adjustment Considerations**
(A) It is a separate legal entity with the power to contract in its own name and that can sue and be sued	Yes. • OPG was incorporated on December 1, 1998 pursuant to the Business Corporations Act (Ontario) (Note 1); • Wholly owned by the Province of Ontario (Note 1); • A corporation has the capacity and the rights, powers and privileges of a natural person. R.S.O. 1990, c. B.16, s. 15; and • OPG is subject to various claims, legal actions and investigations that arise in the normal course of business and can enter contracts in its own name (Note 15, 18, 6).	**Yes** OPG would remain a separate legal entity, and through proposed amendments to the Electricity Act would have expanded powers to engage in establishing the GAM Trust/SPV if OPG's Board of Directors evaluated the opportunity as an attractive business initiative. Trust would also be legislated the power to enter into contracts and transactions with the IESO, OPG and external parties.

(B) It has been delegated the financial and operational authority to carry on a business	Yes. • A corporation has the capacity and the rights, powers and privileges of a natural person. R.S.O. 1990, c. B.16, s. 15; • OPG's Board of Directors is made up of individuals with substantial expertise and has established a number of committees to focus on areas critical to the success of the Company; and • The Board exercises its independent supervision over management, who manages the affairs of corporation to achieve its operational and financial goals (http://www.opg.com/about/management/Pages/management.aspx).	Yes Through legislative changes to the Electricity Act, the Trust/SPV would be delegated the authority to hold the right to charge customers (of LDCs) for the benefit of debt holders and/or investors.

(C) It sells goods and services to individuals and organizations outside of the government reporting entity as its principal activity; and	Yes. • OPG is Ontario's largest energy provider. At Dec. 31, 2015, OPG generating portfolio had an in-service capacity of 17,055 megawatts (MW) (2015 Annual Report); • OPG produces almost half of the electricity used by Ontario homes, schools, hospitals and businesses (http://www.opg.com/about/Pages/about.aspx.); • OPG receives regulated prices for electricity generated from most of its hydroelectric facilities and all of the nuclear facilities that it operates (2015 Annual Report); and • OPG earns revenue from five business segments: nuclear generation, nuclear waste management, Hydroelectric, contracted generation portfolio and services, trading and other non-generation (Note 16).	**Yes.** **OPG's <u>principal</u>, active business activity would remain electricity generation; however, it is acknowledged that the level of debt associated with the GAM Trust/SPV may exceed OPG's debt associated with its primary business activity.** The controlled SPV structure would be used to hold the right to charge customers (of LDCs) for the benefit of debt holders/investors. **With regards to OPG's loan to the Trust/SPV, it is expected that OPG** shall, through its ownership of the most subordinated liability, be able to capture and retain the pricing difference between cost of financing and benchmark for interest on the restructured asset, or any residual risk of restructured asset. The targeted return of the subordinated liability should be reflective of the underlying risks and compensate holders for active management that would be required. The benefit of the structure is intended to provide a service to ratepayers who are individuals and organizations outside of the government reporting entity.

(D) It can, in the normal course of its operations, maintain its operations and meet its liabilities from revenues received from sources outside of the government reporting entity.	Yes. OPG has reported positive financial results, does not receive transfers from the Province of Ontario and has demonstrated its ability of maintaining its operations and meeting its liabilities without relying on the Province of Ontario.	Yes. Liabilities of the Trust/SPV will be funded through a combination of both debt from OPG as well as external financing, the latter of which will exceed 50%. Legislation would allow for recovery of interest, carrying and administrative costs, so that the Trust/SPV is able to sufficiently cover any ongoing costs through future recoveries through LDC billings. (Sources of future economic inflows is outside of the government reporting entity). In order to preserve the Trust's ability to recover deferred costs, and to mitigate risks for external and OPG debt, the right to recover will be irrevocable and, if amended by future governments, debt holders would have the right of action against the government to recover the amount outstanding including interest, fees, expenses and any damages resulting from the amendment.
Conclusion <u>Status Quo</u> OPG meets all the four characteristics and therefore qualifies as a GBE.		<u>Post-GA Implementation</u> assuming the legislation works, we will have a view that OPG can fund its operations between the external market and the OFA

Global Adjustment Deferral_White Paper_OPG r1a.pdf

February 27, 2017

Mr. Serge Imbrogno
Deputy Minister,
Ministry of Energy
4th Floor, Hearst Block
900 Bay Street
Toronto, Ontario
M7A 2E1

Dear Deputy:

Below is a summary of OPG's preliminary views on the implementation of the Province's proposed Global Adjustment Smoothing Account and financing structure. These views are contingent on the proposed terms and conditions that were sent to the Ministry of Energy on February 21, 2017.

Understanding that the finalization of the legal terms, the Trust indentures, financing structure and other detailed terms will take several months and will involve collaboration between legal counsel, input from capital markets, parties involved and other stakeholders, this letter is intended to provide the guideline and framework which could form the foundation of the plan.

Please do not hesitate to contact me if you have any questions regarding this summary.

Sincerely,

Mr. Ken Hartwick
Chief Financial Officer and Senior Vice President, Finance
Ontario Power Generation
W: 416-592-6985
C: 647-544-6985
ken.hartwick@ opg.com

cc. Jeff Lyash, President and CEO, OPG

Background:

The Province has indicated that it will take steps to reduce electricity bills in the near term. It has identified reductions in the Global Adjustment Charge (GAC) charged to electricity customers as a means to achieve its policy goals. The Province is proposing to temporarily reduce the amount of the GAC charged to electricity customers (primarily RPP-eligible customers). The exact quantum and duration of the program is still not known but based on discussions with the Province GAC charges of approximately $2-5B per year for the next 5-10 years would be deferred and collected over future periods commencing after the deferral period. A combination of senior debt and subordinated debt (mainly sourced by additional equity from the shareholder) would be issued to fund the amount deferred. The financing cost of the debt and other costs of running the program would form part of the amounts recovered from customers over the term of the program.

The Province has requested that OPG administer the GAC deferral, because of OPG's participation in the market, regulatory knowledge and the potential ability to consolidate the activity and accounting with OPG. Given the significant amount of financing required for the GAC deferral, OPG has developed a financing structure (depicted below) to:

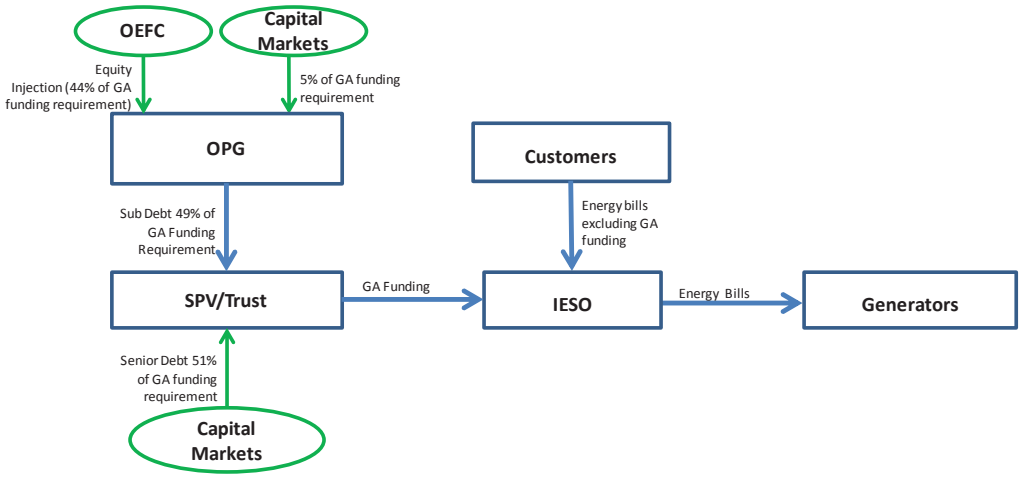
- restrict the risk to OPG;

- maximize the cost-effectiveness of the Trust or the Special Purpose Vehicle ("SPV") financing vehicle; and
- allow for consolidation into OPG financial statements.

The success of this structure is dependent on achieving a number of objectives which are reviewed in the following sections:

A. Ability to Recognize an Asset and Record Revenue
B. Ability to Consolidate the SPV into OPG
C. Ability to Finance
D. External Assessment
E. Risk Summary

All of the percentages shown in the graphic below are indicative and will be highly dependent on the legislation that the Province will enact:



Process:

The IESO will effectively sell the 'right to collect' deferred future revenue from ratepayers (GA Recovery Right asset) to the SPV in return for cash proceeds. In order for the SPV to purchase this asset the SPV will obtain the financing from two key sources: 51% directly from capital markets and 49% as subordinated debt from OPG. OPG will obtain 44% of this financing as an equity injection from the Province and 5% from capital markets.

A. Ability to Recognize an Asset and Record Revenue

Accounting Requirements under International Financial Reporting Standards (IFRS)

1) It is our understanding that the IESO and KPMG have concluded that the sale of this 'right to collect' future revenue (or regulatory asset) is not a financing transaction and will not be recorded as a financial liability. Based on that conclusion, the right to collect will be accounted for as an intangible asset in the SPV.

2) In order to the SPV to record this right as an intangible asset, the right must meet the following conditions:
   - The intangible asset must be separable and arise from a contractual or legal right (i.e. mandated by the Legislation and SPV Indenture Agreement).
   - The SPV must have the control and power to obtain future economic benefits from the intangible asset.
   - The SPV must be able to demonstrate that the intangible asset is purchased at fair value.

3) In order for the SPV to recognize appropriate revenue to offset any ongoing costs, the Legislation must require interest, carrying and administrative costs to be paid to the SPV on a monthly basis. This may result in additional amounts to be deferred to achieve the desired customer impact. Payment of revenue to the SPV is also important to service the interest expenses of the debt.

B. Ability to Consolidate the SPV into OPG under IFRS

OPG 'Control' of the SPV - Accounting Requirements

1) In order to meet the accounting definition of 'control', accounting guidance must be considered. There are no bright lines to determine whether OPG has exposure, or rights, to variable returns from its involvement with the SPV, or whether it has the ability to affect the returns of the SPV through its power over the SPV. Rather, all facts and circumstances are considered when assessing whether an entity has control over another entity. Based on the relevant accounting guidance under IFRS, OPG has proposed terms necessary to demonstrate that OPG has control over the SPV. OPG's external auditors, Ernst & Young, has provided their concurrence that based on the information provided to them to date that the following conditions should permit consolidation of the SPV by OPG.

Directive:

1. The SPV must be undertaken by OPG as a business initiative on its merits. A Shareholder Directive is to be limited to direct OPG to investigate the option of establishing a SPV vehicle to administer, finance and operate the Global Adjustment plan. The control, risk and rewards of that SPV will determine its consolidation into OPG as a business enterprise.

SPV:

2. The SPV should not operate in a predetermined way such that OPG does not have decision-making authority over the SPV's ongoing activities after its formation (i.e. should not operate on 'autopilot').
3. OPG must have the ability to appoint and remove the Trustee (or Board of Trustees), with no veto right by the Province. No party shall have the ability to remove OPG from its role and authority in the SPV.
4. The Province cannot have the right to veto OPG's decisions about the relevant activities of the SPV. OPG must have the power over the relevant activities of the SPV and be compensated. The relevant activities of the SPV include (but are not limited to) the evaluation and decisions on financing alternatives, duration, and the strategy to minimize financing costs. OPG must have the power to establish operating and capital budgets of the SPV.
5. OPG must have the power to determine or change operating and financing policies of the SPV, which will affect the variability of risks and returns.
6. The Province or its agencies must not directly or indirectly fund (through debt or equity) more than 50% of the following:
    - The SPV
    - Any of OPG's investments in the most subordinated debt of the Trust
7. OPG must own greater than 50% of the most subordinated debt and targeted to be no less than 5%[1] of the total debt of the SPV. Such ownership must be financed entirely by OPG through operating cash flows or external debt, without assistance from Provincial sources. A quantitative analysis should be performed at a later date to corroborate the appropriateness of the 5% threshold to support that the 5% subordinated debt investment is sufficient to absorb most of the expected variability in the SPV.
8. OPG must have the ability to earn variable returns by exercising its authority, which shall be accomplished as follows:

[1] While the rest of the letter refers to a 10% investment in the most junior subordinated debt with OPG owning 5%, it should be noted that OPG should own more than 50% of the most subordinate debt. For simplicity, the degree to which OPG's ownership beyond 50% is not shown in this letter.

a. The cash flow from the restructured asset shall include interest determined based on a relevant benchmark that is appropriate relative to the restructured asset, plus an appropriate margin consistent with the relevant market and other risks
b. OPG shall have the authority to determine the financing strategy, which will vary the financing costs with the objective of enabling the SPV to achieve a more favourable return compared to the return from the restructured asset
c. The SPV shall establish classes of liabilities (senior, subordinated and the most subordinated). The classes would allow the SPV to delineate financing of lower risk investment and investment that would bear higher residual risk. The delineation would limit OPG's self-funded investment to a reasonable level in order to allow OPG to remain a self-sustaining entity.
d. OPG shall, through its ownership of the most subordinated liability, be able to capture and retain the pricing difference between cost of financing and benchmark for interest on the restructured asset, or any residual risk of restructured asset. The targeted return of the subordinated liability should be reflective of the underlying risks and compensate holders for active management that would be required.
e. OPG should participate in the detailed design of the above and the SPV documentation to ensure that it has substantive power and variability, which will allow OPG's Board of Directors to evaluate the opportunity as a business initiative instead of through a shareholder directive.

Nothwithstanding the above, under certain Defined Forced Majeure for emergency events (e.g. unlikely credit market event or disruption where it is not possible to borrow from the market at a reasonable rate), the OEFC may provide bridge financing beyond the designated percentage for a defined period. The relevant terms should ensure that this temporary measure does not detract from the rights of OPG to direct all of the relevant activities of the SPV. Additionally, OPG should not be protected from risk of loss by the OEFC with respect to its subordinated investment, nor should it lose its right to derive the residual returns should such bridge financing be required.

Legislation

9. The Legislation must require interest, carrying and administrative costs to be paid to the SPV on a monthly basis, so that the SPV is able to recognize appropriate revenue to offset any ongoing costs.
10. The Legislation must dictate the manner in which the restructured asset would be determined, collected, and the period of collection, so that the determination of the restructured asset will not be subject to the Province's decisions on an ongoing basis, but determined based on a formula. Alternatively, the Legislation may allow for an adjustment to the pre-determined deferral formula based on specific parameters that would limit the adjustment to the restructured asset. Adjustments beyond the specific parameters would require approval by the Board of Trustees.
11. The Legislation must be written to avoid legal or constitutional challenges and be irrevocable to reduce the cost of borrowing and with a specific formula which determines the deferral amount. As irrevocability would be difficult under Canadian law one mitigation would be to provide a Provincial guarantee which only applies with cancellation or amendment of the legislation.
12. The spirit of the above terms should be reflected in the SPV Indenture Agreement as well as Legislation, wherever possible.

2) The Trust is expected to be financed as follows:
   - 51% senior secured debt from external markets
   - 39% senior subordinated debt from OPG (via Province equity injection into OPG)

- 10% junior subordinated debt from OPG (5% from external markets and 5% from Province equity injection into OPG).

When assessing control, an investor shall consider the nature of its relationship with other parties and whether those parties are acting on the investor's behalf (i.e. they are 'de facto agents'). If OPG is assessed to be a 'de facto agent' of the Province, it will compromise the ability for OPG to consolidate the Trust. The split above is to meet the following conditions to ensure that OPG is not considered a 'de facto agent' of the Province:

- The Province or its agencies must not directly or indirectly fund (through debt or equity) more than 50% of the following:
  - The Trust
  - Any of OPG's investments in the most subordinated debt of the Trust
- OPG must own greater than 50% of the most subordinated debt and targeted to own no less than 5% of the total debt of the Trust. Such ownership must be financed entirely by OPG through operating cash flows or external debt, without assistance from Provincial sources.

3) The Province will need to conclude on whether OPG still meets the definition of a Government Business Enterprise as defined under Public Sector Accounting Board standards in order to obtain the preferred consolidation treatment after the transaction. We also recommend that the Province to undertake the analysis deemed necessary to confirm the accounting treatment in its consolidated Public Accounts, including if the recognition of the intangible asset would result in an offsetting liability in the Public Accounts.

C. Ability to Finance

Property Right or Right to Collect
Legislative Requirements for Financing
The GA Recovery Right must be structured to encompass the following elements:

- Right to recover from and bill Ontario electricity customers for (1) the principal amount of GA that is being deferred, (2) all interest and other financing costs incurred in respect of the deferral of the GA, (3) all fees, expenses and other administrative costs associated with such financing;
- Repayment/amortization schedule as agreed by the IESO and any purchaser of such GA Recovery Right (or pursuant to a pre-defined schedule/formula that covers all of the purchaser's principal, interest and ongoing financing costs on a monthly basis);
- Repayment/amortization schedule must include a true up mechanism to ensure all costs associated with the deferral can be recovered from customers;
- IESO may dispose of the GA Recovery Right, provided that any such disposition shall be a true sale and absolute transfer to the purchaser of the IESO's right, title and interest in and to the GA Recovery Right;
- Purchaser will have the right to require the IESO (or any successor) to collect the principal amount of GA Recovery Right, together with interest, financing and administration costs, on the agreed repayment/amortization schedule;
- Right must be irrevocable and, if amended by future governments, debt holders have the right of action against the government to recover the amount outstanding including interest, fees, expenses and any damages resulting from the amendment;
- GA Recovery Right will not be subject to any set-off, counterclaim or other defence by the IESO or any successor or affiliated entity; and
- Make certain amendments to the Electricity Act to allow OPG to implement the SPV financing structure (e.g. allowing OPG to create subsidiaries and holding companies, and to have a beneficial interest in the SPV, etc). This would provide flexibility to accommodate possible variations to the financing structure that may be desirable over time.

Detailed legislative requirements are specified in the attachments as follows:

Attachment 1 Legislative requirements to allow deferral of global adjustment amounts to be financeable

Attachment 2 Statutory amendments

The proposed financing structure for the SPV is:

	Risk Profile	Source	% of Total Funding Requirements
Tranche A Senior Debt	The least risky	Capital Markets	51%
Tranche B Sub Debt	In between A&C	OPG via OEFC	39%
Tranche C Sub Debt)	The most risky	OPG via OEFC	5%
		OPG via Capital Markets	5%

SPV structure is used to accomplish the following:

- SPV holds right to charge customers for the benefit of debt holders;
- Allows the financing vehicle to be ring-fenced from OPG as an SPV structure is set up as generally single purpose entities with no other operations that could add risk to the SPV, dilute debt holder rights, allow parties from other operations to claim rights to the future recovery from customers or allow these other parties to initiate bankruptcy proceedings;
- Enables SPV to potentially get a higher credit rating than OPG;
- Supports consolidation with OPG provided accounting requirements are satisfied;

This approach supports a number of objectives of the GA Recovery Right:

- 51% external senior debt supports separation of the SPV from the Province
- 5% junior subordinated debt establishes OPG's "at risk" equity which supports separation of the SPV from the Province
- Subordinated debt provides flexibility to the financing structure and additional credit support to external debt holders
- Subordinated debt sourced from OPG (mainly funded by equity injection from the Province) minimizes impact on OPG credit metrics reducing risk of an OPG rating downgrade that could result in the SPV being consolidated directly with the Province as the SPV would be considered an arm of the Province.

Recent transactions used as precedents are:

Duke Energy Florida Project Finance LLC
June 2016
5 series of bonds totalling USD$1.3B
Weighted average life from 2 to 19 years with interest rates from 1.2% to 3.1%
Credit rating AAA

Utility Debt Securitization Authority
Sponsored by Long Island Power Authority
March 2016
Amount issued USD$0.6B
Weighted average life of 12 years and weighted average yield of 2.7%

August 2016
Amount issued USD$0.5B
Weighted average life of 7 years and weighted average yield of 2.0%

Credit rating AAA

Cumulative outstanding (including previous issuances): USD$4.2B

D. External Assessment

Shakerhill Partners, an external advisor, identified the following items in an assessment of the structure and financeability of the structure:

- The structure is financeable however there are a number of significant risks to the structure:
  - Canadian and Ontario law does not provide the same protection to property right as exists in the US federal and state constitutions to limit the ability of governments to adversely impair contracts to the detriment of the holder;
  - Legislation could mitigate some of the risks – deferred recovery asset to be "uncapped", regular semi-annual true up to ensure recovery, Province provides sufficient committed liquidity to the IESO so that temporary shortfall in recovery does not affect payments to SPV, term of the deferral recovery substantially exceeds the longest maturity of debt of the SPV and that true-up mechanism take account of potential for currency, interest rate and duration mis-match between the debt of the SPV and the recovery mechanism;
  - Size of the program may be too large for Canadian securitization market requiring access to the US securitization market;
- Final maturity of debt should not exceed 30 years from inception of the program
- True up mechanism should be designed such that the forecast of recovery is less than 10% of the customer bill under downside scenarios to limit growth of the deferral balance as a higher portion of the customer bill increases the political risk to debt holders which could result in a lower credit rating and potential impact on financeability
- Securitized debt products are specialized and price at a premium to other fixed rate instruments however a successful program supported by a strong credit rating this premium could shrink over time to a minor spread over Provincial debt
- OPG's credit rating should be maintained provided sufficient equity is injected to maintain credit metrics
- While the structure is not expected to impact the Province there are risks that the program could negatively impact the rating agencies view of the Province's financial management.

E. Risk Summary

i. Consolidation

- Elements of the proposed structure were established to support consolidation of the SPV into OPG. These items may not be sufficient to establish OPG as risk owner of the SPV and the SPV may need to be consolidated directly with the Province.

ii. Financeability

- The legislation establishing the structure and the property right for recovering the financing and associated costs may not be adequate for financing purposes resulting in more expensive financing or an inability to obtain the required external financing.

iii. Cost of Financing

- Future governments may enact legislation that changes the right of the SPV to recover amounts from customers.
- The right to recover amounts from future customers must be irrevocable and subject to full recovery from the government in the event that future governments reduce or eliminate the recovery. A legal structure that is weaker than the precedent US transactions increases the risk to debt holders and the cost of financing.
- Interest rates on bonds in the securitization market are higher than equivalent rated bonds. Rate for a AAA securitization credit is about 50 bps higher than GOC (rated AAA) for a 5 year term. This difference is attributable to the specialized structure of the bond, smaller investor pool for this bond, smaller size of the market and higher perceived risks of the bond.
- Any regulator involvement must not be seen to modify any terms of debt issued or the property right securing the debt as this would increase risk to debt holders.

- It may not be possible to issue debt to match the terms of the deferred asset so shorter term debt would be used which raises risk to re-finance the maturing debt as the market may no longer be interested in this product. As well, underlying reference interest rates may be higher and the market may require a higher spread to invest in this product.
- With the GA Recovery Right program continuing for 10 years, debt issued over this period is subject to changes in both the underlying reference interest rates and appetite of the market for this product.

iv. OPG Credit Rating

- Minimizing the impact of significant additional debt on OPG's credit rating is dependent on higher EBITDA arising from earned income on the GA Recovery Right in excess of external debt. Ability of the SPV to record revenue reflecting the growth in asset value.
- Potential OPG credit rating downgrade if legislative structure is not adequate to support long term recoverability, inability to record revenue from growth in asset value or agencies view equity injection as debt.
- OPG credit rating downgrade could result in loss of GBE status or result in SPV being consolidated directly with the Province.

Attachment 1

LEGISLATIVE REQUIREMENTS TO ALLOW DEFERRAL OF GLOBAL ADJUSTMENT AMOUNTS TO BE FINANCEABLE

The IESO currently has a right to collect GA monthly from ratepayers through provisions in the *Electricity Act, 1998*. It is proposed that collection of a certain portion of the monthly GA be deferred for collection in the future, and that the right to recover the deferred GA from ratepayers be used as a basis for structured financing/securitization.

The current proposal is for a trust to be created as a financing vehicle (the "**Trust**") in connection the deferred GA. The Trust will finance the deferral of the GA by purchasing the right to recover such deferred GA from the IESO for the principal amount of the GA being deferred. For example, if the amount of GA that is being deferred is $200 million in a given month, the Trust will purchase from the IESO the right to future recovery of the deferred GA and the associated financing costs (including interest and transaction costs) for $200 million in cash.

The Trust is expected to finance these purchases from the IESO through a combination of senior secured financing raised in the capital markets and subordinated financing from OPG (the funding for which will mostly be from equity injections from the OEFC/Province).

For accounting purposes, OPG will need to have the ability to direct the activities of the Trust, through a services agreement and/or through the Trust's constating document.

Based on securitized financing raised by utilities in the US (backed by utility cost recovery orders) and the current regulatory framework in Ontario, the legislation in Ontario would need to be amended to provide the following, at a minimum:

1. The IESO will be empowered to create an asset (the "**Regulatory Asset**") consisting of all right, title and interest in and to:

   (a) right to recover from and bill Ontario electricity ratepayers for:

   (i) the principal amount of GA that is being deferred for collection;
   (ii) all interest and other financing costs incurred in respect of the deferral of the GA (whether through senior debt raised in the public markets or subordinated debt raised from OPG or others); and
   (iii) (subject to the comments in paragraph 5 below in respect of OPG's internal administrative costs only) all fees, expenses and other administrative costs associated with such financing, including up-front and ongoing financing costs and any indemnity payments;

all on such repayment/amortization schedule as agreed by the IESO and any purchaser of such right (or pursuant to a pre-defined schedule/formula in the legislation that covers all of the purchaser's principal, interest and ongoing financing costs on a monthly basis); and

(b) all revenues, collections, claims, rights to payments, money or proceeds arising from the rights and interests set out in paragraph (a) above, regardless of whether such revenues, collections, claims, rights to payments, money or proceeds are imposed, billed, received, collected or maintained together with or commingled with other revenues, collections, rights to payments, payments, money or proceeds.

2. The IESO may dispose of the Regulatory Assets created from time to time on such terms as the IESO determines in accordance with the terms of directives to be issued to the IESO from time to time by the Minister, provided that any such disposition shall be a true sale and absolute transfer of the IESO's right, title and interest in and to a Regulatory Asset to the purchaser of the Regulatory Asset.

3. The Regulatory Assets will not be subject to any set-off, counterclaim or other defence by the IESO or any successor or affiliated entity thereof.

4. The legislation will need to recognize the Regulatory Assets as amounts that may be recovered by the IESO (e.g. it could be designated as a "GA Deferral" and would be included in the amounts collectible by the IESO through the GA collection mechanism, and would include interest and financing costs).

5. The purchaser of the Regulatory Asset will have the right to require the IESO (or any successor) to collect the principal amount of GA deferred, together with interest, financing and administration costs, on the agreed repayment/amortization schedule. **[NTD: In the LIPA securitization rate order, if the entity that is authorized to collect rates to service the bonds ends up defaulting, there is the ability to request a court to order "sequestration" and payments of amounts owing to the owner of the Regulatory Asset. Consider whether to include a similar right here. Alternatively, consider whether a security interest over the moneys collected by the IESO could be provided to the purchaser.]**

OEB would be provided with oversight over the internal administrative costs collected by the Financing Trust. This could be accomplished by (a) providing the purchaser of the Regulatory Asset with the right to require

the IESO or a successor to collect only the principal amount of GA together with interest and financing costs and third party fees and expenses, and (b) requiring the IESO to collect amounts through the global adjustment and make payments to the purchaser of the Regulatory Asset with respect to the internal administrative costs incurred by the purchaser in connection with the purchase and management of the Regulatory Asset and the Financing Trust, in accordance with the order of the OEB then in effect. Under this mechanism, the OEB would be required to review the purchaser's internal administrative costs through a streamlined process and issue such orders in accordance with rules to be prescribed under a new regulation under the OEB Act, which would clearly limit the OEB's scope of review and could establish the basis for the purchaser to receive an appropriate fee for its services.

6. In the event that any action is taken or permitted by the Province or any regulatory authority that limits, alters, or impairs the value of a Regulatory Asset or reduces the ability of the IESO or the purchaser of the Regulatory Asset to collect or recover the costs associated therewith, the owner of the Regulatory Asset and the holders of any bonds or other securities issued to finance the purchase of the Regulatory Asset, will have a right of action against the Province for any damages suffered as a result of such amendment.

STATUTORY AMENDMENTS

The following is preliminary and is based on our current understanding of the proposed structure and objectives. For example, we have assumed that the structure will not entail the insertion of a new Holdco between OPG and the Province. As these aspects are refined, some of the suggested amendments described below may not be needed and other aspects that we are not aware of may need to be considered. Accordingly, these suggested amendments are provided for discussion purposes and are subject to change. We would welcome the opportunity to work with OPG and the Ministry on refining the scope and substance of required legislative and regulatory amendments.

A. Amendments to Implement Structure

Certain *Electricity Act, 1998* amendments would be needed to implement the anticipated structure (which we understand, as noted above, would not include a Holdco), as follows:

- **Section 53.1(1):** Amend to permit owning and operating generation facilities through subsidiaries (not only directly through OPG). In addition, amend to permit OPG to administer, manage, loan moneys to and have a beneficial interest in, if applicable, Financing Trust.

- **Section 53.2:** Amend to permit the Minister to acquire, hold, dispose of or otherwise deal with securities or debt obligations of, or any other interest in, OPG or any subsidiaries. This is to accommodate possible variations to the financing structure that may be desirable over time.

- **Section 53.■ (new):** New statutory section to permit the Minister to enter into arrangements relating to an exercise of powers under 53.2.

- **Section 53.■ (new)**: New statutory section providing that creditors of Financing Trust have no recourse to the assets of OPG or any of its subsidiaries (other than Financing Trust, if applicable). In addition, consideration should be given as to whether the Act should be amended so that the Financing Trust cannot be wound up or liquidated.

B. Miscellaneous Corporate Items to Address

- **OPG Articles:** Amend the OPG's articles to remove the private company restrictions.

- **MOA with Province:** Consider whether any amendments to OPG's MOA with the Province are required to contemplate the Financing Trust.

C. Amendments Under Electricity Act to Implement GA Smoothing

Based on our understanding that the global adjustment smoothing mechanism is intended to benefit residential and small business customers only and that the Minister will be responsible for determining how much global adjustment smoothing is to be applied in a given month, if any, amendments to the *Electricity Act, 1998* and Ontario Regulation 429/04 (Adjustments Under Section 25.33 of the Act) would be needed to implement the mechanism, as follows:

(i) Electricity Act:

- **Section ■ (New):** Establish a new power for the Minister to make directives to the IESO in relation to the global adjustment smoothing mechanism and, particularly, for purposes of establishing global adjustment smoothing amounts from time to time (expected to be monthly). To the extent possible, the directive power should be drafted so as to limit the ability for a future Minister to require the IESO to do anything that would materially and adversely affect the Financing Trust or its lenders. **[NTD: While our understanding is that the Minister would direct this, we note from other materials we have seen that OPG may instead be recommending a formula approach. It is not clear what the formula would look like, where it would be set out or how it would be applied and by whom]**

- **Paragraph 25.33(1):** This section says that IESO shall make adjustments in accordance with the regulations to ensure that, over time, payments by prescribed classes of market participants reflect amounts paid to OPG, OEFC and distributors, as well as amounts paid to entities with whom IESO has a procurement contract. Add new subsection (c) so as to require IESO to ensure that, over time, payments by prescribed classes of market participants also reflect amounts paid to Financing Trust. **[NTD: Not certain this is needed if only to benefit residential and small business consumers, who are not market participants. May be needed in reference to payments from distributors and retailers]**

- **Paragraph 25.33(2):** This section says that distributors and retailers shall make adjustments in accordance with the regulations to ensure that, over time, payments by prescribed classes of consumers reflect amounts paid to OPG, OEFC and distributors, as well as amounts paid to entities with whom IESO has a procurement contract. Add new subsection (c) so as to require distributors and retailers to ensure that, over time, payments by prescribed classes of consumers also reflect amounts paid to Financing Trust.

- **Note**: As described below, the regulation will need to include new requirements for the IESO to record the global adjustment smoothing amounts in one or more variance accounts and to use those amounts to offset amounts otherwise recorded in the variance accounts under Section 25.33(3) of the Act. For context, we note:

    - Section 25.33(3) says that adjustments under (1) or (2) relating to electricity consumed by consumers whose rates are determined by

the OEB under s. 79.16 of the OEB Act (i.e. RPP Customers) shall instead be made in accordance with the regulations to one or more variance accounts established and maintained by the IESO.

- Section 25.33(4) says IESO, distributors and retailers shall make and receive such payments, set-offs and credits as may be required or permitted by the regulations with respect to consumers described in (3), i.e. RPP Customers.

- Section 25.33(5) says that IESO shall establish and maintain such variance accounts as may be needed to record all amounts payable or receivable by it under 25.33.

(ii) O. Reg. 429/04 (Adjustments Under Section 25.33 of the Act):

- **Section 1(1):** Consider adding definitions for "Financing Trust" and "global adjustment smoothing amount" or such other terms as may be preferred.

- **Section 1.2(1) (New):** Add section providing that, for the purposes of this Regulation, the global adjustment smoothing amount for a month is the amount determined by the IESO in accordance with a directive from the Minister under section ■ of the Electricity Act in respect of the month. **[NTD: See above note re use of Minister directives]**

- **Section 1.2(2) (New):** Consider adding a section providing that the IESO shall publish the global adjustment smoothing amount for a month by no later than the 10th business day of the following month [to align with general publication requirements for global adjustment under s. 1.1(2)].

- **Section 10(1):** Amend formula for calculating Class B GA rate by subtracting the global adjustment smoothing amount for a month from "M", which is the total amount of the global adjustment for the month. The global adjustment smoothing amount could be designated as "X", such that the formula would be (M-X-N)/(P-Q). Define "X" as the global adjustment smoothing amount for the month as determined by the IESO in accordance with the Minister's directive under section ■ of the Electricity Act for the month. **[NTD: See above note re use of Minister directives]**

- **Section 10.1 (New):** Add new section to deal with adjustments under subsection 25.33(3) of the Act, i.e. in respect of RPP consumers. This section should require the IESO to establish, within the variance account(s) it maintains pursuant to subsection 25.33(3) of the Act, one or more subaccounts in which it shall record the global adjustment smoothing amounts applicable to the classes of consumers described in subsection 25.33(3) of the Act. This section must also specify that the IESO shall apply the amounts recorded in the subaccounts against the balances in the variance accounts for purposes of section 79.16(3) of the OEB Act.

  - **Note:** This is a key aspect because, when the OEB determines RPP rates, it must take into account the balances in the variance accounts established by the IESO under s. 25.33 of the Electricity Act and make adjustments with a view to eliminating the balances within 12 months. This proposed new section 10.1 causes the IESO to reduce (in the near term) the variance account balances by the global adjustment smoothing amounts, as provided by Financing Trust, thereby enabling the OEB to determine RPP rates that, despite being lower for RPP consumers in the near term, still eliminate the relevant variance account balances within 12 months.

- **Paragraph 11(2)2.ii:** Amend the formula for calculating the allocation of global adjustment for a month to a licensed distributor that is a market participant by subtracting the global adjustment smoothing amount for a month from "M", which has the same meaning as under section 10(1). The global adjustment smoothing amount could be designated as "X", such that the formula would be [(M-X-N) x (R+S-T)]/(P-Q). Define "X" as suggested under section 10(1).

- **Paragraph 11(2)3:** Amend the formula for calculating the allocation of global adjustment for a month to each Class B market participant by subtracting the global adjustment smoothing amount for a month from "M", which has the same meaning as under section 10(1). The global adjustment smoothing amount could be designated as "X", such that the formula would be [(M-X-N) x U]/(P-Q). Define "X" as suggested under section 10(1).

- **Paragraph 16(7)4:** Consider amending the description of "Global Adjustment" that is required to be included on certain invoices so as to inform consumers that their portion of the global adjustment for the month (i) may have been reduced by the application of a global adjustment smoothing amount from the Financing Trust, or (ii) may include amounts payable to the Financing Trust in respect of global adjustment smoothing amounts previously applied.

- **Section 20(1):** This section establishes an obligation for the Ontario Electricity Financial Corporation and every licensed distributor that is a market participant to give the IESO such information as the IESO may require for the purposes of the Regulation in the form specified by the IESO and before the expiry of the period specified by the IESO. Consider amending to extend this obligation to the Financing Trust.

- **Section 20(6):** This section provides that on request by the OEB, the IESO, a licensed distributor, an embedded generator, a retailer or the OEFC shall give the OEB such information relating to this Regulation as the OEB may require, in the form and within the period specified by the OEB. Consider amending to extend this obligation to the Financing Trust.

D. Amendments Under OEB Act to Implement Cost Recovery for Financing Trust

Amendments to the *Ontario Energy Board Act*, including amendments to O. Reg. 95/05 (Classes of Consumers and Determination of Rates) and the introduction of a new regulation, would be needed to implement a cost recovery process for the Financing Trust in relation to the global adjustment smoothing mechanism, potentially with limited OEB oversight, as follows:

(i) Ontario Energy Board Act:

- **Section 78(3.3):** This provision establishes an obligation for the OEB, when determining rates for the retailing of electricity, to take into account balances in variance accounts established under section 25.33 of the Electricity Act and to make adjustments "with a view to eliminating those balances within 12 months or such shorter time periods as the Minister may direct." Consider whether any amendments are needed, and confirm this works with the framework being proposed.

- **Section 78.7 (New):** We understand that the Province may want the OEB to have an oversight role. One possible approach would be to establish a new statutory section establishing that the IESO shall make payments to the Financing Trust with respect to the internal administrative costs incurred by the Financing Trust in connection with the purchase and management of the Regulatory Asset and the Financing Trust. Such payments by the IESO would need to be made in accordance with the order of the OEB then in effect, which orders shall be made by the OEB in accordance with rules prescribed under a new regulation.

    - The new regulation would need to be clear that the OEB does not have jurisdiction to consider the principal amount or any interest, financing costs, third party fees or expenses. Rather, OEB's role would be limited to considering the internal administrative costs of the Financing Trust and ensuring the Financing Trust receives an appropriate fee for its services, all of which would be recovered by the Financing Trust from the IESO, which would collect those amounts in the global adjustment. Note that, if this approach is accepted, the IESO and distributors and retailers would need the authority to collect such amounts as part of the GA and IESO would need the authority to pay such amounts to the Financing Trust. As such, additional amendments would be needed under O. Reg. 429/04.

- **Note:** Section 79.16 of the OEB Act does not require changes, but the significance of this provision should be understood.

    - Section 79.16 gives the OEB responsibility for determining electricity commodity prices for eligible consumers. Eligibility is determined under Reg. 95/05 (Classes of Consumers and Determination of Rates), which is also known as the Regulated Price Plan (RPP) Regulation.
    - Section 4(2) of the RPP Regulation defines RPP-eligible consumers as low volume consumers (i.e. those who annually use less than 150,000 kWh

or such other amount as prescribed), consumers with demand of 50 kW or less, residential consumers that have accounts with distributors, consumers who annually use 150,000 to 250,000 kW of electricity, and consumers who have accounts with distributors if in the farming business.

- Paragraph 6(1)3 of the RPP Regulation provides that "In determining the rates (for RPP-eligible consumers), the Board shall forecast the cost of electricity to be consumed by the consumers to whom the rates apply, taking into consideration adjustments required under section 25.33 of the *Electricity Act, 1998* and shall ensure that the rates reflect those costs."
- The Ontario Energy Board has developed a Regulated Price Plan Manual (revised February 16, 2016) to describe the processes and methodologies it uses for determining electricity commodity prices that are charged to RPP consumers pursuant to Section 79.16 of the OEB Act and paragraph 6(1)3 of the RPP Regulation.

(ii) O. Reg. 95/05 (Classes of Consumers and Determination of Rates)

- **Paragraph 6(1)3:** Amend so as to require the Board, when forecasting the cost of electricity to be consumed by the consumers to whom the rates apply, to take into consideration not only the adjustments required under section 25.33 of the Electricity Act but also the application or prior application of global adjustment smoothing amounts determined by the IESO in accordance with Minister directives under section ■ of the Electricity Act, and to ensure that the RPP rates reflect those amounts. **[NTD: See above note re use of Minister directives]**

(iii) New Regulation (Payments to the Financing Trust)

- If the OEB is to be given the role of reviewing and approving the recovery of OPG's internal administrative costs for the Financing Trust under the potential section 78.7 (see above), then this regulation should describe the process and criteria pursuant through which the OEB would determine the amounts that the IESO would be required to collect through the global adjustment, in accordance with section 25.33 of the Electricity Act, and pay to the Financing Trust in respect of the provision of global adjustment smoothing amounts. This part of the regulation should establish:

    - any reporting requirements from the Financing Trust and/or the IESO to the OEB in connection with the global adjustment smoothing mechanism;
    - the frequency of the OEB making determinations under this part of the regulation;
    - the process through which the OEB shall make these determinations, which should be a streamlined administrative process rather than a public hearing process or, if a hearing is needed, then the scope of the proceeding should be clearly and narrowly constrained so as to deter intervenor involvement, lengthy proceedings and reduce/eliminate risk to recovery by Financing Trust;

- the basis for the OEB's determinations as to the payments that shall be made to the Financing Trust, which should specify that:
  - the Financing Trust shall recover its prudently incurred internal administrative costs on a forecast basis each year;
  - the Financing Trust shall receive an appropriate fee each year (with some guidance as to what would be appropriate); and
  - the approved payment amounts shall be collected by the IESO through the global adjustment and paid to the Financing Trust in accordance with the order of the OEB then in effect. Note that O. Reg. 429/04 would likely need amendments to permit IESO (and distributors and retailers) to collect these amounts through the global adjustment.

Global Adjustment Deferral - White Paper - Terms to MOE Feb 21_2017.pdf

GA Smoothing – OPG Accounting Considerations

- An SPV/Trust is a stand-alone entity able to conduct business separately under a Trust agreement

The conditions required for OPG to consolidate the SPV/Trust are outlined in the following table

Issue	Response
1. Decision Making	• OPG must have decision making authority on the operation of the SPV/Trust (without a veto right by the Province), including naming of trustees, establishing operating plans and budgets, setting or changing financing policies. • The SPV/Trust while operating within the legislation, must be controlled by OPG to operate freely and to alter terms and conditions not specified in the legislation to ensure recovery of the deferred amounts
2. Business Risk	• The SPV/Trust must have variability of returns as a normal business enterprise would, including such things as interest charged on deferred amounts, decisions on how to finance these deferred amounts, the ability to make / lose and keep any spread from financing
3. Funding	• The Province cannot directly or indirectly fund more than 50% of SPV/Trust or any investment in the SPV/Trust • OPG must own at least 50% of the most exposed equity /sub-debt in the SPV/Trust
4. Directive	• Directive that is issued should not be prescriptive or direct OPG to set up this business. The directive should only be “guiding” i.e. to allow OPG to evaluate options and put forward to the OPG Board a recommended plan for Shareholder approval

GA Smoothing – OPG Accounting Considerations - continued

Issue	Response
5. Other required Attributes:	The legislation that supports the formation of the SPV/Trust must have the following attributes: • Must require interest, carrying and administrative costs be paid to the Trust to allow for Revenue recognition • The amount to be deferred must either be specified or be calculated based on a specific formula that is not subject to ongoing decision making by the Province. **The Province cannot have the ability to override this formula** • Legislation should be written to avoid the possibility of being revoked with wording to ensure the SPV/Trust and its debt holders would have their capital guaranteed and paid for directly by the Province if such a situation were to happen • The spirit of the legislation should be reflected in the Trust Indenture Agreement

GA Financing Structure Requirements

KEY ELEMENTS REQUIRED TO ENSURE THE DEFERRAL OF GA CHARGES CAN BE FINANCED:

Creation of Strong Property Rights

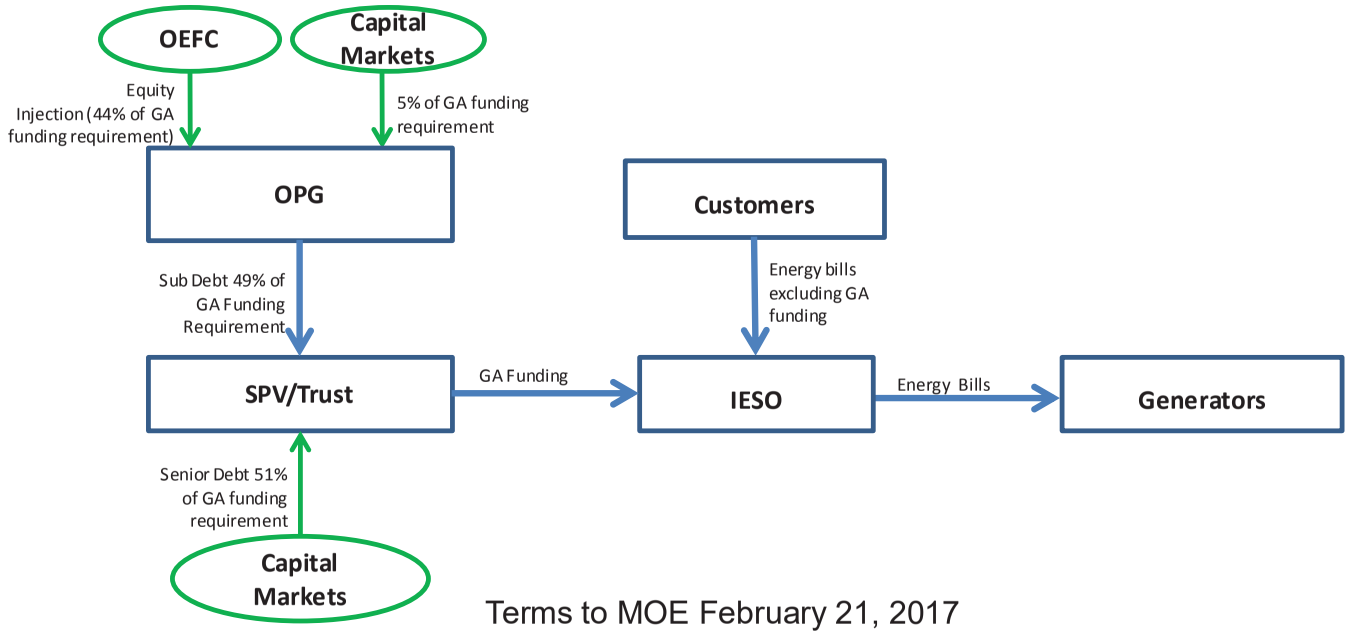
- Legislation enshrines the ability of the IESO to create a Right to charge customers in the future for the Global Adjustment (GA) deferred today including principal amount deferred, interest and other financing costs on the amount deferred and fees, expenses and other administrative costs.
- The Right can be sold to an appropriate Trust or Special Purpose Vehicle (SPV) to obtain funds to pay amounts due to generators under contracts or regulation. These SPVs are generally single purpose entities with no other operations that could add risk to the entity, dilute debt holder rights, allow parties from other operations to claim rights to the future recovery from customers or allow these other parties to initiate bankruptcy proceedings.
- Right must be irrevocable and if the Right is amended by future governments the debt holders have the right of action against the government to recover the amount outstanding including interest, fees, expenses and any damages resulting from the amendment.
- Right must specify the recovery period or the mechanism for setting the recovery rate including true up of the rate to ensure all amounts are recovered

Economic Factors

- Limits on the recovery amount (principal, interest, fees and expenses) charged to customers in future periods must have compensating elements such as longer recovery period to ensure the full amount deferred plus interest, financing and other administration costs is recovered from customers.
- Need to balance customer relief with debt holder risk. Longer recovery periods and larger deferred balances increase risk to the debt holder of future government intervention.
- The amount required by the SPV to purchase and service the Right will be funded 51% from debt holders, 5% from OPG through capital markets and 44% from OPG via equity injection to OPG from the Province. The funding from OPG will be loaned to the SPV as subordinated debt.

GA Financing Structure Requirements - continued

- SPV will be used to raise the GA financing and ring fence OPG from its legal obligations
- SPV will be structured to allow for GBE accounting consolidation into OPG
- Given that SPV will be consolidated into OPG for accounting purposes, the significant amount of debt required to fund the GA deferral will have a severe impact on OPG's credit rating. If 100% of the requirement is funded by debt OPG would be downgraded.
- To manage this exposure and minimize the cost of funding. The required funding would be split into 2 buckets:
    1. 56% from capital markets, and
    2. The remainder provided by the Province via equity injection, which would be loaned to SPV as subordinated debt.
- The use of equity to fund a portion of the GA deferral also allows for an improvement in both Net Income and EBITDA as incremental revenue is captured by the increase in the value of the deferral which would offset the fiscal impact of the borrowing at Province level.
- Credit rating metrics are generally maintained within established limits.



Terms to MOE February 21, 2017

FW_ EXTERNAL - GA Financing.rtf

From: Picard, Michel [mpicard@kpmg.ca]
To: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
Subject: FW: EXTERNAL - GA Financing
Date: Sunday, February 12, 2017 16:43:44

Cindy, Nadine,

I believe what PWC and John have in mind is the intangible asset which is what is included in the Long island Power Authority's financial statements since 2013.

From: Picard, Michel
Sent: Sunday, February 12, 2017 3:41 PM
To: 'CHENG Alec -FIN & C CTRL' <alec.cheng@opg.com>
Subject: FW: EXTERNAL - GA Financing

Alec,

How is different than the asset in Long Island Power Authority?

4126 560 2569

From: Nelms, Scott (ENERGY) [mailto:Scott.Nelms@ontario.ca]
Sent: Sunday, February 12, 2017 2:06 PM
To: Picard, Michel <mpicard@kpmg.ca>
Subject: FW: EXTERNAL - GA Financing

Hi Michel,

See the following update from OPG. Sounds like you may get a call from PWC. Will pass on more if/when I see it.

Thanks,

Scott

From: MAUTI John -FIN & C CTRL [mailto:john.mauti@opg.com]
Sent: February-12-17 1:54 PM
To: Nelms, Scott (ENERGY)
Cc: MAUTI John -FIN & C CTRL
Subject: RE: EXTERNAL - GA Financing

Met with Pwc late Friday. Not a reg asset but they think OPG Finance Co could set up an asset similar to a royalty or franchise fee concept where OPG has the rights to a portion of future cash flows. May be an intangible asset rather than a financial one.

Problem is whether such legislation would have that asset survive on consolidation since it's that legislation that gave rise to this future right and it's the Province enacting this legislation. Relayed this onto the Provincial controllers office and I think they have EY looking into it.

We're pulling out all the stops to try to make this work.

We'll circle back with Pwc who is following up with their government accounting expert.

Ken fully in the loop as I know there's a meeting Monday afternoon to discuss.

Thanks

From: Nelms, Scott (ENERGY) [mailto:Scott.Nelms@ontario.ca]
Sent: Sunday, February 12, 2017 1:25 PM
To: MAUTI John -FIN & C CTRL
Subject: EXTERNAL – GA Financing

*** Exercise caution. This is an EXTERNAL email. DO NOT open attachments or click links from unknown senders or unexpected email. ***

Hi John,

I wanted to circle back on the accounting issue from Friday. My sense is that creating a regulatory asset for OPG is going to be difficult. Have you heard any progress? I am going to get asked tomorrow, how things are going, so if you hear anything please let me know. Is anything the Province can do in legislation to bolster the case that this is OPG's cost?

IIs there any way OPG could finance all of its portion of GA, thereby reducing its annual revenue requirement (akin to nuclear smoothing but on a larger scale)? I realize this would impact OPG's liquidity and solvency ratios. If all borrowing comes from OFA, does the accounting even work? This is a long shot, but I want to make sure we have turned over every stone.

Thanks,

Scott

Scott Nelms

Investment and Governance Secretariat | Ministry of Energy

7th Floor | 77 Grenville St | Toronto, ON

w: (416) 212-6469 | c: (647) 330-2681

scott.nelms@ontario.ca

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browser.

FW_ E&Y - IESO - Accounting for Conservation Costs - Revised DRAFT.rtf

From: Petsche, Nadine (TBS) []
To: Picard, Michel (mpicard@kpmg.ca) [mpicard@kpmg.ca]
Subject: FW: E&Y - IESO - Accounting for Conservation Costs - Revised DRAFT
Date: Wednesday, February 22, 2017 10:58:57
Attachment 1: image001.gif
Attachment 2: IESO - Accounting for Conservation Costs (Revised DRAFT)_February 17 2017.pdf

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As discussed, I wonder if your analysis might also include reference to IESO's contemplation of accounting for conservation costs (as rate regulated assets), in addition to the reversal of the costs previously written off to the IESO's bottom line?

With regards to the various components comprising GAM (below), one could argue for similar accounting treatment for items of similar nature.

· Ontario Power Generation's regulated nuclear and hydro generation;

· IESO (including former Ontario Power Authority) contracts with generators and suppliers of

conservation;

· Contracted rates administered by the Ontario Electricity Financial Corporation paid to existing

generators.

N

From: Kim Marshall [mailto:Kim.Marshall@ieso.ca]
Sent: February 21, 2017 10:28 AM
To: Picard, Michel; Veinot, Cindy (TBS); Petsche, Nadine (TBS)
Subject: E&Y - IESO - Accounting for Conservation Costs - Revised DRAFT

FYI, E&Y added a fair amount of discussion re GASB.

Kimberly Marshall | VP, Corporate Services & CFO

Independent Electricity System Operator (IESO) | T: (416) 969-6232 | C: (416) 545-7202

120 Adelaide Street West, Suite 1600, Toronto, ON M5H 1T1

Web: www.ieso.ca | Twitter: IESO_Tweets | LinkedIn: IESO

Corporate Services collaborates with you to deliver solutions and expertise that enable the IESO to achieve its goals.

Conservation: www.saveONenergy.ca | Twitter: saveONenergyOnt | LinkedIn: saveONenergy

From: Shannon O'Mahony [mailto:shannon.omahony@ca.ey.com]
Sent: February 17, 2017 2:52 PM
To: Phil Bosco; Kim Marshall
Cc: Nadira Singh
Subject: IESO - Accounting for Conservation Costs - Revised DRAFT

*** EXTERNAL email. Please be cautious and evaluate before you click on links, open attachments, or provide credentials. ***

Dear Phil and Kim:

Please find attached a draft version of the revised Report. Please let us know if you have any questions or concerns and then we can finalize the Report (remove the watermark and insert EY signature).

Regards,

S.

--

Shannon O'Mahony | Partner | Financial Accounting Advisory Services

Ernst & Young LLP

222 Bay Street, P.O. Box 251, Toronto, Ontario M5K 1J7, Canada

Office: 416-943-2094 | Cell: 416-884-3422 | shannon.omahony@ca.ey.com

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IESO - Accounting for Conservation Costs (Revised DRAFT)_February 17 2017.pdf

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Mr. Phil Bosco
Manager, Technical Services Conservation & Corporate Relations
Independent Electricity System Operator
120 Adelaide Street West, Suite 1600
Toronto ON, M5H 1T1

February 17, 2017

Dear Mr. Bosco:

We have completed our engagement to assist you with understanding the accounting treatment for conservation and demand initiative costs. Our engagement was performed in accordance with our Statement of Work dated January 10, 2017 under our Agreement during the period January 13 to February 17, 2017. You requested that we amend the original Report to include consideration of the application of the US Governmental Accounting Standards Board guidance. This Report replaces the previously issued report dated January 19, 2017.

Results of our work

Based on our procedures performed during the period January 13 to February 17, 2017, we prepared the attached Report for your use. Management of the Company reviewed these documents for completeness, accuracy and reasonableness. Decisions regarding the Company's application of CPA Public Sector Accounting Standards ("PSAS") were made solely by the Company's management.

Background

Under the Statement of Work, our scope of services was to assist you with understanding the accounting for conservation incentive costs. The Ministry of Energy is currently exploring a potential financing arrangement for conservation and demand management ("CDM") initiative programs that would see the IESO borrow funds from the Ontario Financing Authority ("OFA") to fund eligible CDM costs.

Scope of our work

In connection with our engagement, we held discussions with and made inquiries of the IESO's personnel. We also obtained and read the Company's financial statements, certain limited accounting records, and certain computations prepared by the IESO.

The procedures performed by us is included in our Statement of Work. There were no differences between the procedures set forth in this Report and those set forth in our Statement of Work.

Our work was performed under the direction of yourself and was based on inquiries of, and discussions with, you. We have not sought to confirm the accuracy of the data or the information and explanations provided by management.

We did not provide a professional opinion on the application of accounting principles pursuant to Chartered Professional Accountants of Canada ("CPA Canada") or the AICPA's Standards for Reports on the Application of Accounting Principles (as amended and interpreted).

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The procedures that we performed were advisory in nature and do not constitute an audit or review in accordance with CPA Canada, PCAOB or AICPA auditing or attestation standards, nor do they constitute an examination of prospective financial statements in accordance with standards established by the American Institute of Certified Public Accountants. Additionally, the procedures do not address the effectiveness of internal controls over financial reporting under National Instrument 52-109 issued by the Canadian Securities Administrators or Section 404 of the Sarbanes-Oxley Act. Accordingly, we express no opinion or any other form of assurance on the historical or prospective financial statements, management representations or other data of the Company included in or underlying the accompanying information. While we believe the information obtained is substantially responsive to your request, we are not in a position to assess its sufficiency for your purposes. In addition, we have no responsibility to update the Report for events or circumstances occurring after the date of the Report.

Our work has been limited in scope and time, and more detailed procedures may reveal issues that this engagement has not.

Restrictions on the use of our Report

This Report is intended solely for the information and use of the management of the IESO, and is not intended to be and should not be used by anyone other than these specified parties. EY therefore assumes no responsibility to any user of the Report other than IESO. Any other persons who choose to rely on our Report do so entirely at their own risk.

We appreciate the cooperation and assistance provided to us during the course of our work. If you have any questions, please call Nadira Singh at (416) 943-3896 or me at (416) 943-2094.

Sincerely,

[Signature will be inserted when report is final]

Shannon O'Mahony, CPA, CA
Partner

DRAFT

IESO – Accounting for Conservation Costs

i. Background

The Independent Electricity System Operator ("IESO") is in the process of evaluating the accounting implications of a potential change to the recovery method of conservation costs.

The IESO is a non-profit entity, owned by the government of Ontario, and is governed by the Ministry of Energy ("Minister") and operates pursuant to a license granted by the Ontario Energy Board ("OEB"). As part of the IESO's operations, it is required to submit its proposed expenditures, revenue requirements and fees for the coming year to the OEB for review and approval. The submission may be made only with the approval of the IESO business plan by the Ministry of Energy.

As part of the IESO's operations, it facilitates conservation and demand management ("CDM") initiatives in Ontario, whereby local distribution companies ("LDC") incur expenditures in accordance with the CDM guidelines prescribed by the IESO. The IESO then reimburses the LDCs on a dollar-for-dollar basis. Currently, the IESO is reimbursed through the global adjustment mechanism in the fiscal year in which the expenditure is incurred as outlined in Ontario regulation 429/04 Adjustments under the Act and as provided by the Minister per the directive dated March 31, 2014, *2015-2020 Conservation First Framework.* The IESO receives this reimbursement from the LDCs who collect the global adjustments directly from ratepayers. The calculation of the global adjustment is the difference between the Hourly Ontario Electricity Price ("HOEP") and:

- Ontario Power Generation's regulated nuclear and hydro generation;
- IESO (including former Ontario Power Authority) contracts with generators and suppliers of conservation;
- Contracted rates administered by the Ontario Electricity Financial Corporation paid to existing generators.

The Ministry of Energy has granted authority to the IESO to collect the CDM incentive costs as part of the global adjustment.

The Ministry of Energy is currently exploring a potential financing arrangement for CDM programs that would see the IESO borrow funds from the Ontario Financing Authority ("OFA") to fund eligible CDM costs. This loan would be recognized as a financial liability by IESO. The CDM costs would then be recovered through the global adjustment over an extended period of time. The accounting alternatives for the underlying CDM costs and the loan interest in accordance with Public Sector Accounting Standards is discussed herein.

ii. Accounting guidance

Presently, the IESO accounts for CDM costs as an asset at the time an invoice is received from the entity that has incurred the CDM expenditure eligible for reimbursement (e.g. DR Asset; CR Accounts Payable to the LDC). At the end of each month, the IESO takes the sum of the amounts requested for reimbursement and includes this sum in its submission in the calculation of the total global adjustment for the month. Once the global adjustment is calculated by the IESO, the amount is charged to customers by the LDCs (on the IESO's behalf) and the IESO receives the funds in the subsequent month.

To address the accounting considerations of the inclusion of the CDM costs in the global adjustment over an extended recovery period (that will be determined by the Minister), the IESO must consider the guidance prescribed by the CPA Public Sector Accounting Standards ("PSAS"). PSAS does not provide specific

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guidance to address the accounting for assets that will be recovered through rates from various customers over future years

In the absence of PSAS that specifically applies to a transaction, professional judgement is required to apply an appropriate accounting policy that is consistent with primary sources and financial statement concepts of PSAS. Other accounting pronouncements may be useful but are not required to be consulted as noted in paragraphs 18 to 22 of PS 1150 *Generally accepted accounting principles* which addresses other sources that may be referenced:

> *.19 Pronouncements issued by other bodies authorized to issue accounting standards may be useful sources to consult. For example, accounting pronouncements published with the authority of the Canadian Accounting Standards Board (AcSB), International Accounting Standards Board (IASB), US Federal Accounting Standards Advisory Board (FASAB), US Governmental Accounting Standards Board (GASB), or International Public Sector Accounting Standards Board (IPSASB) are often important sources to consult on matters not covered by primary sources of GAAP or for assistance in applying a primary source of GAAP to specific circumstances.*
>
> *.20 When a public sector reporting entity chooses to consult a source described in paragraph PS 1150.19, it applies professional judgment and evaluates the source in the context of the relative manner in which the standard setter requires its pronouncements to be applied, as well as in the context of the related pronouncement. When an accounting standard setter does not have a conceptual framework that is similar to the concepts referred to in paragraph PS 1150.05(b), the public sector reporting entity needs to ensure that the selected source is consistent with those concepts.*

Consequently, to evaluate the accounting considerations of the accounting for CDM costs being evaluated by the IESO, other sources of GAAP may be considered. The following sources of GAAP were reviewed to determine whether specific guidance was provided addressing the recognition of assets related to regulatory activities:

1) Accounting Standards for Private Enterprises (“ASPE”) as issued by the Canadian Accounting Standards Board (“AcSB”)/ CPA provides the following guidance:

   AcG 19 *Disclosures by entities subject to rate regulation* provides guidance related to the presentation of financial information related to entities with rate regulated activities *when a separate asset or liability has been recognized solely as a result of the effects of rate regulation (AcG 19* paragraph 7(c)).

2) The guidance issued by the US Governmental Accounting Standards Board (“US GASB”) addresses accounting for regulated operations in GASB S62—*Codification of Accounting and Financial Reporting Guidance Contained in Pre-November 30, 1989 FASB and AICPA* Pronouncements. The GASB S62 standard provides clear guidance that regulatory assets may be recognized to the extent certain criteria are met.

3) US GAAP, as issued by the Financial Accounting Standards Board (“FASB”) does provide guidance to address such activities in ASC 980 *Regulated Operations,* addresses the recognition of regulatory assets.

4) IFRS as issued by the IASB no longer precludes the recognition of regulatory assets and liabilities a rate-regulated entity’s financial statements. Rather, the IASB issued a standard, IFRS 14 *Regulatory deferral accounts*, which provides the following relevant guidance:

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Paragraph 2(a) of IFRS 14 notes that the objective of the Standard was to:

> *limit changes to the accounting policies that were applied in accordance with previous generally accepted accounting principles (previous GAAP) for regulatory deferral account balances, which are primarily related to the presentation of these accounts;*

Additionally, paragraph 10 of IFRS 14 notes:

> *Paragraphs 11–12 of IAS 8 specify sources of requirements and guidance that management is required or permitted to consider in developing an accounting policy for an item, if no relevant Standard applies specifically to that item. This Standard exempts an entity from applying paragraph 11 of IAS 8 to its accounting policies for the recognition, measurement, impairment and derecognition of regulatory deferral account balances. Consequently, entities that recognise regulatory deferral account balances, either as separate items or as part of the carrying value of other assets and liabilities, in accordance with their previous GAAP, are permitted to continue to recognise those balances in accordance with this Standard through the exemption from paragraph 11 of IAS 8, subject to any presentation changes required by paragraphs 18–19 of this Standard.*

This IFRS was issued in response to North American entities potentially transitioning to IFRS, because there was a lack of guidance that permitted the continued separate accounting treatment for regulatory assets and liabilities recognized as a result of rate regulated activities. The guidance above, permits rate-regulated entities upon first-time adoption of IFRS to continue to recognize regulatory assets and liabilities in accordance with the framework that was applied previously (i.e. generally, entities recognized assets in accordance with the guidance of ASC 980 (US entities) or AcG 19 (Canadian entities)).

Given the above-noted guidance, an entity can look to the other accounting frameworks while also ensuring that when judgment is applied, the resulting accounting policy is not inconsistent with the accounting guidance of PSAS. For this reason, the evaluation of accounting considerations in the development of the proposed accounting treatment for the recovery of CDM costs, is considered in the following order:

1) Can an asset be recognized in accordance with PS 1000 *Financial statement concepts* as prescribed by PSAS?

2) Can the IESO reference the guidance of other accounting frameworks to support the recognition of the reimbursement of CDM costs as an asset?

3) Failing the above, is the most appropriate accounting treatment to recognize the reimbursement of CDM costs as an expense of the current period and simply recognize revenue in future periods when the cost is recovered?

1. Qualification of reimbursement of CDM costs as an asset in accordance with PSAS:

Although PSAS does not specifically address the recognition of costs incurred that will be recovered through regulatory operations in future periods, this does not result in the conclusion that such costs cannot be recognized as an asset. In particular, paragraph 5 of PS 1150 notes:

> *.05 When the primary sources of GAAP do not deal with the accounting and reporting in financial statements of transactions or events encountered by the public sector reporting entity, or*

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additional guidance is needed to apply a primary source to specific circumstances, the selection of an appropriate accounting policy requires the exercise of professional judgment. In these circumstances, a public sector reporting entity should adopt accounting policies and disclosures that are consistent with:

(a) the primary sources of GAAP; and

(b) the application of the concepts described in FINANCIAL STATEMENT CONCEPTS, Section PS 1000.

In this case, the IESO would consider whether an asset could be supported by the guidance noted in PS 1000 *Financial statement concepts*, as follows:

Recognition of an asset

Paragraphs 35-37:

.35 Assets are economic resources controlled by a government as a result of past transactions or events and from which future economic benefits are expected to be obtained.

.36 Assets have three essential characteristics:

a) they embody future economic benefits that involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows, or to reduce cash outflows;

b) the public sector entity can control the economic resource and access to the future economic benefits; and

c) the transaction or event giving rise to the public sector entity's control has already occurred. [Former paragraph PS 1000.36 retained in Archived Pronouncements.]

.37 An item is not an asset of a government if it lacks one or more of the essential characteristics listed in the preceding paragraph. Thus, for example, an item does not qualify as an asset of a government if the item involves:

(a) no future economic benefit;

(b) future economic benefit, but the government cannot obtain it; or

(c) future economic benefit that the government may obtain, but the events or circumstances that give the government control of the benefit have not yet occurred.

In evaluating the costs incurred by the IESO to reimburse the LDCs, an argument could be made to support the recognition of the costs as an asset as the costs meet the three essential characteristics prescribed by PS 1000. Particularly:

- ***Future economic benefits*** – the CDM costs incurred by the IESO are made to reimburse eligible expenditures from market participants or third-party delivery agents (e.g. an LDC). The IESO can expect to generate future economic benefits from the reimbursement of these expenditures because: a) it has a license with the OEB to operate as a system operator and recover reasonable costs incurred (as noted below) and b) it is mandated by the Minister to charge ratepayers the global adjustment, which results in future cash inflows to recover the reimbursed costs.

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Paragraph 13 of PS 3210 *Assets* notes:

.13 *The future economic benefits embodied in an asset may also be in the form of generating future cash inflows. Cash inflows benefit the public sector entity because cash can be used to purchase or to provide goods and services, redistribute wealth or settle liabilities. Benefits in the form of cash inflows relate to resources, such as loans receivable, inventory for resale and portfolio investments. Also, some public sector resources generate cash inflows because they have user fees associated with them.*

The global adjustment that is charged to ratepayers and calculated by the IESO is not subject to the review or approval of the Ontario Electricity Board ("OEB"). Accordingly, there is limited risk with respect to the IESO's ability to recover the reimbursement costs incurred – even if the costs are recovered over an extended period of time, as the OEB does not have the ability to reject the recovery of these costs. While risk is limited, the recovery of the CDM expenditures reimbursed by the IESO is dependent on future transactions with electricity customers.

Also, while not specifically governed by the OEB, the IESO's license with the OEB provides that reasonable costs of its activities will be recovered:

> 13 *Fees and Charges*
>
> 13.1 *The Licensee may impose fees and charges to recover the cost of its activities in accordance with an order of the Board, or as permitted by law.*
>
> 14 *Books of Accounts and Financial Reporting*
>
> 14.3 *Unless otherwise provided by law, the Licensee shall, no less than 60 days before the beginning of the Licensee's fiscal year submit the Licensee's proposed expenditure and revenue requirements for the following fiscal year and the fees it proposes to charge during that year to the Board for review and approval. The Licensee's submission shall include a copy of the Licensee's annual business plan for the fiscal year as approved by the Minister under section 24 of the Electricity Act.*

Through its mandate from the Ministry of Energy, which provides the IESO with the right to recover costs, in combination with the IESO's license with the OEB, to the extent that CDM costs are incurred (past transaction) in accordance with the IESO's mandate from the Ministry of Energy, these cash inflows (and thus, future economic benefits) are expected to be recovered.

- ***Public sector entity control's economic resource and access to economic benefits*** – The IESO controls access to the future cash inflows that are generated from the incurrence of the CDM expenditures, as it is the IESO who has the mandate from the Ministry of Energy to incur these CDM costs and it is also the IESO who has the directive from this Minister to recover the CDM costs through the global adjustment mechanism charged to rate payers. Specifically, the Electricity Act 1998 notes the following:

> ***Electricity pricing to reflect costs***
>
> ***IESO to make adjustments***
>
> *25.33 (1) The IESO shall, through its billing and settlement systems, make adjustments in accordance with the regulations that ensure that, over time, payments by classes of market participants in Ontario that are prescribed by regulation reflect,*
>
> *a. amounts paid to generators, the Financial Corporation and distributors, whether the amounts are determined under the market rules or under section 78.1, 78.2 or 78.5 of the Ontario Energy Board Act, 1998; and*

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b. *amounts paid to entities with whom the IESO has a procurement contract, as determined under the procurement contract. 2014, c. 7, Sched. 7, s. 8 (1).*

Paragraph 16 of PS 3210 provides additional guidance regarding control of an economic resource and access to future economic benefits, which notes that the public entity:

a) *Can benefit from the economic resource through its capacity to provide goods and services, to provide future cash inflows or to reduce cash outflows;*

b) *Can deny or regulate access to those benefits by others; and*

c) *Is exposed to the risks associated with the economic resource.*

As outlined previously, the IESO has control over the economic resource, as it is the sole entity that is entitled to the cash inflows from ratepayers[1]. Furthermore, while risk is limited, the IESO is exposed to the risk associated with the economic resource – as the Ministry of Energy could change their directive or calculation of the global adjustment, or there could be a change in the economic environment (as discussed above) and thus, alter the ability of the IESO to recover the costs.

- ***Transaction or event giving rise to public sector entity's control has already occurred*** – When evaluating whether a transaction or event gives rise to control, paragraphs 26 and 27 of PS 3210 provides helpful guidance:

  The past transaction or event that gives rise to control of an economic resource resulting from exchange agreements or contracts usually occurs at the point of exchange. This arises when substantially all the benefits and risks of ownership have been transferred to the public sector entity and normally coincides with the disbursement of funds, exchange of other assets or assumption of liabilities.

  Meeting the eligibility criteria under an authorized transfer often determines the past transaction or event giving rise to control of an economic resource in non-exchange contracts or agreements. Shared cost agreements (reimbursement arrangements) are an example where the control of an economic resource arises when the recipient incurs eligible expenditures.

  Consistent with the guidance in paragraph 26, control over the economic benefits of the IESO's reimbursement via the global adjustment mechanism from the LDC occurs once the IESO has distributed funds to the LDC. At this point in time, the IESO has incurred a cash outflow for which it is entitled to recover through the global adjustment as prescribed by the Ministry of Energy and the Electricity Act 1998.

Based on the characteristics, as prescribed by PS 1000 and the additional guidance of PS 3210, the cash outflows disbursed by the IESO to reimburse CDM costs to LDCs could meet the definition of an asset in PS 1000.

In accordance with the principles of PSAS, there are generally two types of assets that the IESO may consider recognizing 1) financial asset; or 2) non-financial asset. To classify the asset, it must fall into one of the two categories.

[1] Although the administrative framework provides that LDCs invoice the global adjustment to ratepayers on the IESO's behalf, the IESO has sole entitlement to the cash inflows that result from the global adjustment. All global adjustment amounts collected by LDCs are required to be submitted to the IESO.

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Financial asset

.39 ***Financial assets*** *are assets that could be used to discharge existing liabilities or finance future operations and are not for consumption in the normal course of operations.*

.40 *A financial asset is any asset that is:*

a) *cash;*

b) *a realizable asset that is convertible to cash;*

c) *a contractual right to receive cash or another financial asset from another party;*

d) *a contractual right to exchange financial instruments with another party under conditions that are potentially favourable to the government;*

e) *an equity instrument of another entity;*

f) *an investment in a government business enterprise or government business partnership;*

g) *a financial claim on an outside organization or individual; or*

h) *an inventory or item for sale that meets the criteria in FINANCIAL STATEMENT PRESENTATION, paragraph PS 1201.055.*

Based on the guidance of PS 1000, paragraphs 39 and 40, it may be difficult to substantiate the IESO's reimbursement of costs is a financial asset. The costs incurred by the IESO creates a right to recover costs as mandated by the Ministry of Energy. However, there is no contract with a specific ratepayer who ultimately reimburses the IESO for the costs incurred if the IESO calculates the global adjustment (i.e. its recovery mechanism) and this amount is then disbursed to all ratepayers in Ontario (regardless of whether an individual ratepayer benefited from the cost incurred). Furthermore, to the extent that a current ratepayer moves outside of Ontario, it could in fact result in a new ratepayer having to incur the additional charge to permit the IESO to recover its costs. It is difficult to argue that there is a contractual right to receive cash from another party, because legislation and the regulatory framework result in the right to future cash inflows from a pool of ratepayers.

An alternative view may be that the LDCs represent the counterparty to the IESO whereby the LDC is responsible for paying the IESO the global adjustment whether or not payment is ultimately received from the ratepayer. In this circumstance, the IESO can argue that a financial asset should be recognized for its contractual right to receive cash is from each specific LDC. An assessment of who is obligated for the global adjustment (e.g. an assessment of whether the LDC is the agent facilitating cash collection or is the entity obligated to pay the amount) would need to support this alternative.

Non-Financial asset

.41 *Non-financial assets include tangible capital assets, and other assets such as prepaid expenses and inventories of supplies.*

.42 *Non-financial assets are acquired, constructed or developed assets that do not normally provide resources to discharge existing liabilities, but instead:*

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(a) are normally employed to deliver government services;

(b) may be consumed in the normal course of operations; and

(c) are not for sale in the normal course of operations.

Another accounting treatment could be a 'non-financial asset' in accordance with paragraphs 41 and 42 of PS 1000. This accounting treatment may be supportable under the PSAS guidance as an 'other asset'. The reimbursement of CDM costs, results in the incurrence of an upfront cost in which the entity will benefit from economic benefits over a period of time.

Subsequent measurement of a non-financial asset

To the extent that the recognition of an asset is supported under the framework discussed above, the entity would then be required to draw the asset down over the recovery period (i.e. as cash is collected from ratepayers through the global adjustment mechanism). The presentation of the 'draw' down of the asset is dependent upon the IESO's accounting for the global adjustment. To the extent that funds received from the global adjustment are recognized in revenue rather than to directly reduce the asset then the IESO might consider recognizing the draw-down of the asset as a reduction in revenues. Nonetheless, depending on the IESO's view of its role (i.e. principal versus agent) or its view of the nature of costs incurred, an alternative accounting treatment may result. For instance, if the IESO is an agent, then it may reduce the asset balance directly for those amounts collected by way of the global adjustment rather than recording two separate entries for the recognition of revenue (i.e. global adjustment) and reduction of revenue (i.e. over the recovery period). At this time, the IESO has not completed a principal versus agency assessment.

Demonstrating that the CDM costs will meet the definition of a financial or non-financial asset is challenging and the IESO may not be able to support either view and should consider if referencing another accounting framework to inform an accounting policy for these costs may be required as discussed below.

2. Reference to other accounting frameworks:

As previously noted above, other accounting frameworks as issued by the AcSB, GASB, FASB and IASB provide accounting guidance related to the recognition of expenditures as an asset due to rate regulated operations. When referencing the other frameworks, it is important that the costs qualify as an asset under the framework set forth by PSAS to ensure that the principles of PSAS are not violated, and only then can reference to other frameworks be made to record the reimbursement of costs as an asset.

As the IASB and AcSB do not provide detailed guidance, the IESO could explore whether the costs incurred meet the specific criteria established by GASB S62 as note below; however consideration will need to be given to the consistent application of an accounting policy to all similar existing rate regulated assets and whether an established accounting policy is already in place that would require criteria to be met to change this policy:

476. Paragraphs 476–500 may be applied to activities reported in business-type activities that have regulated operations that meet all of the following criteria:

a. The regulated business-type activity's rates for regulated services provided to its customers are established by or are subject to approval by an independent, third-party regulator or by its own governing board empowered by statute or contract to establish rates that bind customers.

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b. The regulated rates are designed to recover the specific regulated business-type activity's costs of providing the regulated services.

c. In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume that rates set at levels that will recover the regulated business-type activity's costs can be charged to and collected from customers. This criterion requires consideration of anticipated changes in levels of demand or competition during the recovery period for any capitalized costs.

To the extent that the criteria of paragraph 476 of GASB S62 are met, paragraph 480 then provides the following guidance:

480. Rate actions of a regulator can provide a business-type activity with reasonable assurance of the existence of an asset. A regulated business-type activity should capitalize all or part of an incurred cost that otherwise would be charged to expense if both of the following criteria are met:

a. It is probable that future revenue in an amount at least equal to the capitalized cost will result from inclusion of that cost in allowable costs for rate-making purposes.

b. Based on available evidence, the future revenue will be provided to permit recovery of the previously incurred cost rather than to provide for expected levels of similar future costs. If the revenue will be provided through an automatic rate-adjustment clause, this criterion requires that the regulator's intent clearly be to permit recovery of the previously incurred cost.

By referencing the guidance of GASB S62, the IESO must first establish that it meets the criteria of paragraph 476. In doing so, the IESO should consider:

a. Established rates for regulated services (GASB S62.474 (a)) - The IESO's business activity rates are regulated services subject to approval. In this particular instance, the IESO's CDM expenditures are governed by legislation, Electricity Act 1998 as noted above, and by its own governing board, being, the Ministry of Energy. The Ministry of Energy has established the calculation of the global adjustment mechanism[2], which in turn, is charged to the ultimate customer who consumes the energy.

b. Regulated rates are designed to recover specific costs (GASB S62.474 (b)) - One element of the global adjustment mechanism is designed to recover the CDM expenditures that the IESO reimburses to the respective LDCs. As the IESO's regulated business activities support the LDCs delivery of energy to customers, these costs form an integral part of the IESO's regulated services to support the transmission and distribution of energy in Ontario.

c. Demand for regulated activities results in reasonable assumption that established rates will be collected and will recover cost of activities (GASB S62.474(c)) - Given that the structure of the IESO is a not-for-profit entity governed by the Electricity Act of 1998 and regulated by the Ontario Energy Board to support the transmission and distribution of energy to customers in Ontario, rates approved to be charged to customers are designed to recover the IESO's costs. Since the reimbursement of CDM expenditures is a program initiated and mandated by the Ministry of Energy, an entity that also controls the Ontario Energy Board, the IESO would need to examine and support whether the CDM expenditures will be recovered through cash inflows from customers through the global adjustment mechanism. For example, the historic demand and dependency and projected demand for electricity could be used to support a judgment or assertion by the IESO that there is no significant risk that future demand levels decline and diminish to the extent that IESO would not be able to recover the reimbursement of CDM expenditures through rates (i.e. global adjustment mechanism).

[2] Section 1.7 of the directive from the Ministry of Energy dated March 31, 2014 titled *2015-2020 Conservation First Framework* provides that the Ontario Power Authority (now merged into the IESO) may "*recover payments made under the Province-Wide Distributor CDM Programs and Local Distributor CDM Programs from the Global Adjustment Mechanism up to the budget established…"*

If the IESO can demonstrate that CDM expenditures meet the criteria as noted above, the fact pattern may support recognition of a regulatory asset in accordance with paragraph 480 of GASB S62. The IESO could consider:

a. Probability of future revenues (GASB S62.480 (a)) - The global adjustment mechanism explicitly includes recovery of the CDM expenditures. The directive from the Ministry of Energy could support the IESO's assertion that it is at least probable that future revenue will be generated in an amount at least equal to the capitalized cost related to the CDM expenditures. The IESO will need to assess if the global adjustment is considered future revenue (i.e. as part of the analysis of principal versus agent).

b. Recovery of previously incurred costs (GASB S62.480 (b)) - The IESO recovers the CDM expenditures through the global adjustment mechanism. The calculation of the portion of the global adjustment mechanism that relates to the CDM expenditures is determined by the amount that the IESO has approved to reimburse the LDC (e.g. the LDC requests reimbursement for costs it has *incurred* related to the CDM Requirement[3] and if all criteria are met, the IESO then approves the costs for reimbursement). For this reason, there is evidence that the future revenue earned from the global adjustment mechanism permits the recovery of previously incurred costs (i.e. not future costs).

Using the GASB S62 accounting guidance, and the related considerations noted above, the IESO may be able to reference GASB S62 to support the recognition of CDM expenditures as an asset by way of the GAAP hierarchy prescribed by PS 1150, paragraph 19, which explicitly references GASB as a secondary source of GAAP in the event that PSAS does not address a particular transaction. However, the IESO would also need to consider whether it is appropriate to refer to the GASB. First, consideration should be given to whether the GASB accounting guidance to capitalize rate regulated assets is consistent with the primary sources and financial statement concepts of PSAS. This may be challenging as it was noted in a paper prepared by the PSAB Conceptual Task Force *Consultation Paper 2: Measuring Financial Performance in Public Sector Financial Statements,* that the existing model in the PSA Handbook takes predominately an asset and liability view whereas standards set by the GASB is a financial statement presentation model based on a revenue and expense view. That said, the definition of an asset is similar under both the PSAS and GASB standards (GASB Concepts Statement 4[4]) and because rate regulated assets are not classified as deferred outflows of resources (GASB S65) but rather assets, it may be possible to use the GAAP hierarchy to refer to GASB to formulate an accounting policy. GASB S65 *Items Previously Recognized as Assets and Liabilities* was applicable for periods beginning after December 15, 2012. In paragraph 48 of GASB S65, rate regulated assets retained the definition of an asset and these assets were not required to be reclassified as a deferred outflow which is defined as the consumption of net assets by the government that is applicable to a future period. Secondly, any existing policy that the IESO currently applies to any other assets that could be considered rate regulated assets would require an evaluation of whether an accounting policy change from expensing to one that capitalizes rate regulated assets meets the criteria that the new accounting policy results in a more appropriate presentation of events or transactions in the IESO's financial statements (PS 2120, paragraph 2).

An alternative view is that it is inappropriate to reference GASB S62 because GASB has provided a special accommodation to permit the capitalization of rate regulated assets when they would otherwise be expensed. If an entity that applies PSAS, determines that the definition of an asset under PS 1000 is not met then for the IESO to use a special accommodation in another framework to avoid expensing the CDM costs would not be appropriate.

[3] The Ministry of Energy issued a CDM Directive as per its letter re: 2015-2020 Conservation First Framework, which instructed the Ontario Energy Board to amend the license of each licensed electricity distributor to add a condition that specifies the distributor would make CDM programs available to customers in its licensed area. The CDM programs are required to achieve reductions in electricity consumption. As part of this, the distributor is required to make province-wide CDM programs, funded by the OPA (now the IESO) available to all customers in its licensed service area.

[4] GASB Concepts Statement 4, paragraph 8, defines assets as '*resources with present service capacity that the government presently controls*.'

If the IESO does adopt an accounting policy to capitalize the CDM costs there are examples of entities that capitalize similar rate regulated assets that prepare their financial statements in accordance with GASB in the United States. For instance, the Long Island Power Authority ("LIPA") is an organization that is responsible for supplying electricity to customers within a specified service area. LIPA recognizes regulatory assets on its statement of net position in accordance with the guidance of GASB S62.

The FASB also includes accounting guidance related to the accounting for regulated activities in ASC 980-340-25-1 as follows:

> *Rate actions of a regulator can provide reasonable assurance of the existence of an asset. An entity shall capitalize all or part of an incurred cost that would otherwise be charged to expense if both of the following criteria are met:*
>
> *a) It is probable (as defined in Topic 450) that future revenue in an amount at least equal to the capitalized cost will result from inclusion of that cost in allowable costs for rate-making purposes.*
>
> *b) Based on available evidence, the future revenue will be provided to permit recovery of the previously incurred cost rather than to provide for expected levels of similar future costs. If the revenue will be provided through an automatic rate-adjustment clause, this criterion requires that the regulator's intent clearly be to permit recovery of the previously incurred cost.*
>
> *A cost that does not meet these asset recognition criteria at the date the cost is incurred shall be recognized as a regulatory asset when it does meet those criteria at a later date.*

The guidance provided by US GAAP notes that to the extent that a regulator provides reasonable assurance of the existence of an asset, then the entity should capitalize the incurred cost that would have otherwise been expensed. In this case, the Ministry of Energy has provided that the IESO will be able to recover its costs through the global adjustment mechanism[5]. As a result, the IESO can support meeting criterion a) of 980-340-25-1 that it is probable that future revenue will equal the cost capitalized as the IESO will include those reimbursed CDM costs in its calculation of the global adjustment charged to rate payers. Furthermore, the IESO can support criterion b) is met, because the future recovery relates only to those costs paid by the IESO to reimburse eligible CDM costs.

To further support this accounting position, there are system operators (i.e. similar to the IESO) in the United States who recognize regulatory assets. As an example, ISO New England Inc., a not-for-profit organization that regulates the flow of transactions in accordance with the Federal Energy Regulatory Commission ("FERC") recognizes regulatory assets for those costs incurred subject to rate recovery mechanisms. The ISO New England Inc. operates in a very similar manner to the IESO, in that both organizations are government regulated, system operators who manage the flow of electricity transactions and are not-for-profit. While ISO New England Inc. prepares its financial statements in accordance with US GAAP, rather than GASB, ISO New England Inc.'s treatment of regulatory items is indicative that the capitalization of expenditures related to regulated activities is not an unreasonable treatment for entities of this nature.

As the application of the hierarchy is a choice and not a requirement, another entity with the same fact pattern could account for the recovery of CDM expenditures differently.

Subsequent measurement of asset

To the extent that the recognition of an asset is supported under one of the frameworks discussed above, the entity would then draw the asset down over the recovery period (i.e. as cash is collected from ratepayers

[5] Section 1.7 of the directive from the Ministry of Energy dated March 31, 2014 titled *2015-2020 Conservation First Framework* provides that the Ontario Power Authority (now merged into the IESO) may "*recover payments made under the Province-Wide Distributor CDM Programs and Local Distributor CDM Programs from the Global Adjustment Mechanism up to the budget established…"*

DRAFT

through the global adjustment mechanism). The presentation of the draw down of the asset is dependent upon the IESO's accounting for the global adjustment. To the extent that funds received from the global adjustment are recognized in revenue then the IESO might consider recognizing the recovery of the asset as a reduction in revenues (contra revenue account). Nonetheless, depending on the IESO's view of its role (i.e. principal vs. agent) or its view of the nature of costs incurred, an alternative accounting treatment may result. For instance, if the IESO is an agent, then it may reduce the asset balance directly for those amounts collected by way of the global adjustment – rather than recording two separate entries for the recognition of revenue (i.e. global adjustment) and reduction of revenue (i.e. recovery of asset).

3. Expensing expenditures as incurred

Failing the ability to support that an asset can be recognized from alternatives (1) and (2) above, the IESO would be required to record the reimbursement of an LDC's eligible CDM expenditures as an expense in the period incurred.

Paragraphs 49 to 51 of PS 1000 provide the following guidance related to expenses:

.49 Expenses, including losses, are decreases in economic resources, either by way of decreases in assets or increases in liabilities, resulting from the operations, transactions and events of the accounting period.

.50 Expenses include the cost of economic resources consumed in and identifiable with the operations of the accounting period. For example, the cost of tangible capital assets is amortized to expenses as the assets are used in delivering government programs (see TANGIBLE CAPITAL ASSETS, Section PS 3150). Expenses do not include debt repayments or transfers to other governmental units in the government reporting entity.

.51 Losses can arise from peripheral or incidental transactions and events affecting a government. Such transactions and events include the disposition of assets purchased for use and not for resale, and the liquidation or refinancing of debt.

By referencing paragraphs 49 to 51, it can be noted that the reimbursement of an LDC's CDM expenditures do indeed result in an immediate decrease in the IESO's economic resources – as noted in paragraph 49. If it cannot be substantiated that an asset can be recorded due to the future economic benefits expected to be received through the global adjustment – these expenditures must be recorded as an expense.

4. Accounting for interest costs

The accounting for interest costs related to the loan being considered to finance the IESO's recovery of CDM costs incurred over an extended period of time would be dependent on how the Ministry of Energy proposes that the IESO will recover these costs. To the extent that the Minister revises the calculation of the global adjustment, then the IESO may be able to recognize an asset for these costs (i.e. see the arguments listed in sections (1) and (2) above).

If the Ministry of Energy proposes that the IESO recover the interest costs through the revenue requirement, the IESO will need to evaluate its ability to recover the interest costs through future rates. To the extent that the there is significant risk associated with recovering these costs, interest costs should be recognized as an expense in the current period. Otherwise, the IESO may be able to capitalize the interest costs as an asset by applying the arguments in sections (1) and (2) noted above.

If a recovery mechanism is not established for the interest costs related to the loan, the interest costs would be recognized as an expense of the current period.

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FW_ EY_OPCD Status Updates - SOW.rtf

From: Jeannie Kaminski [Jeannie.Kaminski@ca.ey.com]
To: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]; Donaldson, Mark (TBS) [Mark.Donaldson@ontario.ca]
Subject: FW: EY/OPCD Status Updates - SOW
Date: Wednesday, August 08, 2018 16:21:46
Attachment 1: TBS - Amendment 002 to Extend SoW.pdf

Good afternoon Shyrose,

Attached is the Amendment 002, signed by Suzie Gignac.

Thank you.

Jeannie Kaminski | Executive Assistant, Assurance Services
to Stephen McIntyre and Suzie Gignac
Ernst & Young LLP
99 Bank Street, Suite 1200, Ottawa, Ontario K1P 6B9, Canada
Office: 1-613-598-4809 | Fax: 1-613-232-5324 | jeannie.kaminski@ca.ey.com
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-----Original Message-----
From: Virani, Shyrose (TBS) [mailto:Shyrose.Virani@ontario.ca]
Sent: Wednesday, August 8, 2018 3:05 PM
To: Suzie Gignac <suzie.r.gignac@ca.ey.com>
Subject: RE: EY/OPCD Status Updates - SOW

Hi Suzie,

Attached, please find an extension letter. Pls sign and send it to me at your earliest.

Thanks
Shyrose

-----Original Message-----
From: Donaldson, Mark (TBS)
Sent: August 8, 2018 1:34 PM
To: Suzie Gignac <suzie.r.gignac@ca.ey.com>; Blake Langill <blake.w.langill@ca.ey.com>
Cc: Jeannie Kaminski <Jeannie.Kaminski@ca.ey.com>; Virani, Shyrose (TBS) <Shyrose.Virani@ontario.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>
Subject: RE: EY/OPCD Status Updates - SOW

Hi Suzie, Blake,

We've confirmed that we are able to do an additional one-time extension to the current SOW that is currently in effect to August 10 to March 31, 2019. We are drawing up an amendment to the original SOW for your review and signature. The extension covers the duration of the contract, but keep the ceiling as agreed upon initially.

I will ask Shyrose to send this through to you shortly.

Please call me if you have any questions - 416.325.8027

Thanks,
Mark

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From: Jeannie Kaminski [mailto:Jeannie.Kaminski@ca.ey.com]
Sent: July 23, 2018 3:22 PM
To: Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>
Cc: Suzie Gignac <suzie.r.gignac@ca.ey.com>
Subject: FW: EY/OPCD Status Updates

Good afternoon Mark,

Attached is the Amendment, initialed by Suzie.

Thank you.

Jeannie Kaminski | Executive Assistant, Assurance Services
to Stephen McIntyre and Suzie Gignac Ernst & Young LLP
99 Bank Street, Suite 1200, Ottawa, Ontario K1P 6B9, Canada
Office: 1-613-598-4809 | Fax: 1-613-232-5324 | jeannie.kaminski@ca.ey.com
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Sent: Friday, July 20, 2018 12:43 PM
To: Suzie Gignac <suzie.r.gignac@ca.ey.com>
Cc: Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>
Subject: RE: EY/OPCD Status Updates

Hi Suzie - nice to speak with you.

Further to our t/c, attached is the extension we had signed earlier this year to June 30. It has come to our attention that the applicable dates of the original Statement of Work took us to February 10, 2018 (item #5 in the SOW), not December 30 as previously thought. Therefore, our extension for six months does allow us to go through to August 10. In the attachment, I have amended and initialed the dates that take us up to six months. If that meets with your approval, if you can also initial and return a copy for our files, that would be most helpful.

Under that agreement, we'd like to schedule a quick call for next week with yourself, Blake and Lee Anne just to provide an update on where things are at here w.r.t. reporting for the electricity sector and the 2017-18 Public Accounts. We'll work to make ourselves available based on whatever works best for you.

Thanks in advance,
Mark

Mark Donaldson, CPA, CMA
Director, Financial Reporting and Fiscal Support Office of the Provincial Controller Division, Treasury Board Secretariat
7 Queen's Park Cres, 2nd Floor
Toronto, Ontario
M7A 1Y7
(416) 325-8027

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TBS - Amendment 002 to Extend SoW.pdf

AMENDMENT 002
To Extend SOW

Name of Project:	Complex Accounting Issues and Accounting for Complex Financing Transactions
Original Agreement Date:	October 31, 2016
Name of Vendor:	Ernst & Young LLP
Original Contract Number:	OSS 227152 (RFS# TBS-OTB-OPCD-16)
Date of Amendment:	August 8, 2018
Amendment Number:	002

1) **Amendment Details:**

1.1 This amendment hereby exercises the Ministry's right to extend the Statement of Work (SOW) from August 10, 2018 to March 31, 2019.

1.2 The survivability period of the General Management Consulting Vendor of Record (VOR) OSS-00426611 ends on June 15, 2019 therefore; under no circumstances may the Statement of Work extend beyond June 15, 2019.

1.3 This extension is for time only and shall not alter the scale, scope, or deliverables of the initiative as described in the SOW.

1.4 The ceiling value of this initiative shall remain unchanged at $450,000 plus HST as stipulated in the SOW.

1.5 This amendment is subject to the terms and conditions of the Master Agreement, the Statement of Work, and any subsequent Amendments.

1.6 All other terms and conditions of the Statement of Work between Ernst & Young LLP and the Ministry are unchanged.

HER MAJESTY THE QUEEN in right of Ontario
as represented by the President of the Treasury Board Secretariat

Per: _____

Print Name: Mark Donaldson

Title: DIRECTOR, FRFS, OPCD.

Ernst & Young LLP

Acknowledged: _____

Print Name: SUZIE GIGNAC

Title: PARTNER

FW_ EY_OPCD Status Updates - SOW.rtf

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M7A 1Y7
(416) 325-8027

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TBS - Amendment 002 to Extend SoW.pdf

AMENDMENT 002
To Extend SOW

Name of Project:	Complex Accounting Issues and Accounting for Complex Financing Transactions
Original Agreement Date:	October 31, 2016
Name of Vendor:	Ernst & Young LLP
Original Contract Number:	OSS 227152 (RFS# TBS-OTB-OPCD-16)
Date of Amendment:	August 8, 2018
Amendment Number:	002

1) **Amendment Details:**

1.1 This amendment hereby exercises the Ministry's right to extend the Statement of Work (SOW) from August 10, 2018 to March 31, 2019.

1.2 The survivability period of the General Management Consulting Vendor of Record (VOR) OSS-00426611 ends on June 15, 2019 therefore; under no circumstances may the Statement of Work extend beyond June 15, 2019.

1.3 This extension is for time only and shall not alter the scale, scope, or deliverables of the initiative as described in the SOW.

1.4 The ceiling value of this initiative shall remain unchanged at $450,000 plus HST as stipulated in the SOW.

1.5 This amendment is subject to the terms and conditions of the Master Agreement, the Statement of Work, and any subsequent Amendments.

1.6 All other terms and conditions of the Statement of Work between Ernst & Young LLP and the Ministry are unchanged.

HER MAJESTY THE QUEEN in right of Ontario
as represented by the President of the Treasury Board Secretariat

Per: _____

Print Name: Mark Donaldson

Title: DIRECTOR, FRFS, OPCD.

Ernst & Young LLP

Acknowledged: _____

Print Name: SUZIE GIGNAC

Title: PARTNER

FW_ EY_OPCD Status Updates.rtf

From: Donaldson, Mark (TBS) []
To: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
Subject: FW: EY/OPCD Status Updates
Date: Wednesday, August 08, 2018 12:32:38
Attachment 1: EY - Complex Acctg Extension.pdf

-----Original Message-----
From: Jeannie Kaminski [mailto:Jeannie.Kaminski@ca.ey.com]
Sent: July 23, 2018 3:22 PM
To: Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>
Cc: Suzie Gignac <suzie.r.gignac@ca.ey.com>
Subject: FW: EY/OPCD Status Updates

Good afternoon Mark,

Attached is the Amendment, initialed by Suzie.

Thank you.

Jeannie Kaminski | Executive Assistant, Assurance Services
to Stephen McIntyre and Suzie Gignac Ernst & Young LLP
99 Bank Street, Suite 1200, Ottawa, Ontario K1P 6B9, Canada
Office: 1-613-598-4809 | Fax: 1-613-232-5324 | jeannie.kaminski@ca.ey.com
Website:
https://na01.safelinks.protection.outlook.com/?url=http%3A%2F%2Fwww.ey.com&data=02%7C01%7CMark.Donaldson%40ontario.ca%7C6d0d82ec73db45d4e56208d5f0d19ecf%7Ccddc1229ac2a4b97b78a0e5cacb5865c%7C0%7C0%7C636679705970114995&sdata=%2FiY83izfevMBw6YHZtPmKNotrOrTW%2BjscxlZl1GEYPk%3D&reserved=0

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-----Original Message-----
From: Donaldson, Mark (TBS) [mailto:Mark.Donaldson@ontario.ca]
Sent: Friday, July 20, 2018 12:43 PM
To: Suzie Gignac <suzie.r.gignac@ca.ey.com>
Cc: Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>
Subject: RE: EY/OPCD Status Updates

Hi Suzie - nice to speak with you.

Further to our t/c, attached is the extension we had signed earlier this year to June 30. It has come to our attention that the applicable dates of the original Statement of Work took us to February 10, 2018 (item #5 in the SOW), not December 30 as previously thought. Therefore, our extension for six months does allow us to go through to August 10. In the attachment, I have amended and initialed the dates that take us up to six months. If that meets with your approval, if you can also initial and return a copy for our files, that would be most helpful.

Under that agreement, we'd like to schedule a quick call for next week with yourself, Blake and Lee Anne just to provide an update on where things are at here w.r.t. reporting for the electricity sector and the 2017-18 Public Accounts. We'll work to make ourselves available based on whatever works best for you.

Thanks in advance,
Mark

Mark Donaldson, CPA, CMA
Director, Financial Reporting and Fiscal Support Office of the Provincial Controller Division, Treasury Board Secretariat
7 Queen's Park Cres, 2nd Floor
Toronto, Ontario
M7A 1Y7
(416) 325-8027

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EY - Complex Acctg Extension.pdf

(19)

AMENDMENT
To Exercise Optional Extension Period

Name of Project:	Complex Accounting Issues and Accounting for Complex Financing Transactions
Original Agreement Date:	October 31, 2016
Name of Vendor:	Ernst & Young LLP
Original Contract Number:	OSS 227152
Date of Amendment:	December 18, 2017
Amendment Number:	001

1) **Amendment Details:**

1.1 This amendment hereby exercises the Ministry's right to exercise the optional extension period from ~~January 1~~, 2018 – ~~June 30~~, 2018
February 10, 2018 – August 10, 2018

1.2 This amendment is subject to the terms and conditions of the Master Agreement as well as the Statement of Work.

1.3 All other terms and conditions of the Statement of Work between Ernst & Young and the Ministry are unchanged.

HER MAJESTY THE QUEEN in right of Ontario
as represented by the President of the Treasury Board Secretariat

Per: _____

Print Name: Mark Donaldson

Title: Dir. Accounting Policy + Financial Reporting

Ernst & Young LLP

Acknowledged: _____

Print Name: SUZIE SIGNAC

Title: PARTNER

FORM OF STATEMENT OF WORK – OPS ENTITY

Statement of Work for Management Consulting Services

This Statement of Work no. – **RFS TBS-OTB-OPCD-16 made in duplicate and effective October 31, 2016 ending on February 10, 2018 with a 6 month extension option in favour of the ministry with no increase in ceiling price.**

Ernst & Young LLP (the "Vendor" or "Ernst & Young") and Her Majesty the Queen in right of Ontario as represented by the President of the Treasury Board (the "Client") enter into this Statement of Work pursuant to the Master Agreement for Management Consulting Services made as of **June 16, 2014** between the Vendor and Her Majesty the Queen in Right of Ontario as represented by the Minister of Government and Consumer Services (such Master Agreement, as from time to time amended, is referred to as the "Master Agreement").

In consideration of their respective agreements set out below, the parties agree as follows:

1. *Structure* - The terms and conditions of the Master Agreement are hereby incorporated by reference in this Statement of Work to the same effect as if fully set out in this Statement of Work. This document and the Master Agreement together comprise a separate Statement of Work between the Vendor and the Client. All capitalized terms used in this Statement of Work without definition have the meanings ascribed to them in the Master Agreement. In the event of any conflict or inconsistency between any term or provision of this Statement of Work and any term or provision of the Master Agreement, the terms and provisions of the Master Agreement shall govern.

2. *Statement of Work* - The Vendor agrees to provide to the Client, and the Client agrees to acquire from the Vendor, the Services and Deliverables described in this Statement of Work upon and subject to the terms of this Statement of Work.

3. *Maximum Price:* C$ 450,000.00 does not include HST

4. *Project Start Date:* October 31, 2016

5. *Project End Date:* February 10, 2018 (with a 6 month extension option)

6. *Scope of Services and Deliverables* - The Services and Deliverables to be provided by the Vendor under this Statement of Work include the following

    - Advice on complex accounting issues and accounting for complex financing transactions;
    - Capital investment, joint ventures and private-public partnerships
    - Proposed government acquisitions and divestments;
    - Providing expert advice on specialized issues such as the implications of changes in public sector accounting standards and the interpretation and

application of those standards in an increasingly complex regulatory framework; and

- Implications of accounting decisions on the Province's financial reports, budgets and appropriations.

7. *Ownership and Licences* - Attachment D of the Master Agreement forms a part of this Statement of Work.

8. *Communications and Reporting* - The structure of Ernst & Young's working relationship with OPCD is vital to the success of their engagement. The Project Lead that will handle OPCD work is Ivan Chittenden (partner). Ernst & Young's communication strategy will be centred on periodic project update meetings, the frequency of which will be determined by the OPCD and Ernst & Young.

9. *Work Location* - All meetings will be within Greater Toronto Area.

10. *Working Hours* – The Client's normal working hours are 7.25 hours per day, between 8:15 a.m. to 4:30 p.m. Monday to Friday inclusive.

    If required by the Client, the Vendor must provide Services outside of the normal working hours and/or on non-Business days. The Vendor will not be entitled to charge more than the Fixed Price or Per Diem Rate.

11. *Administrative Services and Supplies* – All administrative services and supplies used by the Vendor to complete the Services will be provided to the Client at no additional charge.

12. *Billing and Payment Process* – The Vendor shall provide the Client with quarterly billing statements that outline the per diem charges no later than 10 Business Days after the end of each quarter.

    Billing statements should include all billing information as set out in the Master Agreement.

13. *Names and Roles of Vendor's Personnel:*

Name of Individual	*Level*
Ivan Chittenden	*Partner*
Lee Ann Probert	*Senior Manager*
Daniel Mortimer	*Manager*
Black Langill	*Partner*
Suzie Gignac	*Partner*

Ivan Chittenden will be supported by Suzie Gignac, Lee Anne Probert, Daniel Mortimer and Blake Langill and other staff as required, depending on the nature of advisory services request, Please note all individuals mentioned above have to sign the confidentiality agreement form and go through security requirements. Any staff who are subsequently assigned to this SOW will be subject to the same procedures.

14. **Invoices** - Invoices for payment of any charges under this Statement of Work shall be sent to:

Client:	Treasury Board Secretariat, Office of the Provincial Controller Division
Branch:	Accounting Policy and Financial Reporting
Representative:	Nadine Petsche
Title:	Director, Accounting Policy and Financial Reporting
Phone number:	416-325-8027
Email:	Nadine.petsche@ontario.ca

15. *Knowledge Transfer:* The Vendor will work closely with the Client to ensure knowledge transfer to the Client's designated staff, and as necessary with the Auditor General.

16. *Destruction of Information* - The Vendor shall destroy all information contained on any media that was provided by the Client or at the direction of the Client, if requested to do so by the Client, except as required to be retained in accordance with professional standards requirements. The Client may choose to witness this destruction. The Vendor shall provide a certificate of destruction to the Client, if requested to do so by the Client.

17. *Indemnity* – the indemnity set out in the Master Agreement applies to this assignment.

18. *Client Representative and Receipt of Notices*

Client's address for receipt of notices:	**Treasury Board Secretariat**
Client Representative:	**Nadine Petsche**
Telephone number:	**416-325-8027**
E-mail:	**Nadine.petsche@ontario.ca**

19. *Vendor Representative and Receipt of Notices*

The name and title of the Vendor's Representative:
Ivan Chittenden
222 Bay Street Toronto ON
M5K 1J7

IN WITNESS WHEREOF the parties hereto have executed this Statement of Work as of the date first above written.

Her Majesty the Queen in right of Ontario as represented by The President of the Treasury Board

Per:

Signature: P. Petsche

Name: Pauline Petsche

Title: Director, Accounting Policy & Financial Reporting

Pursuant to delegated authority.

ERNST & YOUNG LLP.

Per:

Signature: S. Gignac

Name: SUZIE GIGNAC

Title: PARTNER

I have the authority to bind the Vendor.

FW_ EY_OPCD Status Updates.rtf

From: Suzie Gignac [suzie.r.gignac@ca.ey.com]
To: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
Subject: FW: EY/OPCD Status Updates
Date: Wednesday, August 08, 2018 09:35:10
Attachment 1: EY - Complex Acctg Extension.pdf

Hi Shyrose:
See attached.
Thanks,
Suzie

Suzanne Gignac, Partner, CPA, CA
Ernst & Young LLP / Ernst & Young s.r.l./S.E.N.C.R.L.
99 Bank Street, Suite 1200, Ottawa, Ontario K1P 6B9, Canada
Direct: 1 613 598 4376 | Fax: 1 613 232 5324 | suzie.r.gignac@ca.ey.com
Executive Coordinator, Jeannie Kaminski | Phone: 613 598 4809 | jeannie.kaminski@ca.ey.com

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-----Original Message-----
From: Jeannie Kaminski
Sent: Monday, July 23, 2018 3:22 PM
To: Mark.Donaldson@ontario.ca
Cc: Suzie Gignac <suzie.r.gignac@ca.ey.com>
Subject: FW: EY/OPCD Status Updates

Good afternoon Mark,

Attached is the Amendment, initialed by Suzie.

Thank you.

Jeannie Kaminski | Executive Assistant, Assurance Services
to Stephen McIntyre and Suzie Gignac Ernst & Young LLP
99 Bank Street, Suite 1200, Ottawa, Ontario K1P 6B9, Canada
Office: 1-613-598-4809 | Fax: 1-613-232-5324 | jeannie.kaminski@ca.ey.com
Website:
https://na01.safelinks.protection.outlook.com/?url=http%3A%2F%2Fwww.ey.com&data=02%7C01%7CShyrose.Virani%40ontario.ca%7C10fbd1705dd44a90552408d5fd33c719%7Ccddc1229ac2a4b97b78a0e5cacb5865c%7C0%7C0%7C636693321697914435&sdata=SWjhajuTA3MiME1DNyALH%2FUSk70lsl6kBr8jmprXfmw%3D&reserved=0

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-----Original Message-----
From: Donaldson, Mark (TBS) [mailto:Mark.Donaldson@ontario.ca]
Sent: Friday, July 20, 2018 12:43 PM
To: Suzie Gignac <suzie.r.gignac@ca.ey.com>
Cc: Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>
Subject: RE: EY/OPCD Status Updates

Hi Suzie - nice to speak with you.

Further to our t/c, attached is the extension we had signed earlier this year to June 30. It has come to our attention that the applicable dates of the original Statement of Work took us to February 10, 2018 (item #5 in the SOW), not December 30 as previously thought. Therefore, our extension for six months does allow us to go through to August 10. In the attachment, I have amended and initialed the dates that take us up to six months. If that meets with your approval, if you can also initial and return a copy for our files, that would be most helpful.

Under that agreement, we'd like to schedule a quick call for next week with yourself, Blake and Lee Anne just to provide an update on where things are at here w.r.t. reporting for the electricity sector and the 2017-18 Public Accounts. We'll work to make ourselves available based on whatever works best for you.

Thanks in advance,
Mark

Mark Donaldson, CPA, CMA
Director, Financial Reporting and Fiscal Support Office of the Provincial Controller Division, Treasury Board Secretariat
7 Queen's Park Cres, 2nd Floor
Toronto, Ontario
M7A 1Y7
(416) 325-8027

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EY - Complex Acctg Extension.pdf

(19)

AMENDMENT
To Exercise Optional Extension Period

Name of Project:	Complex Accounting Issues and Accounting for Complex Financing Transactions
Original Agreement Date:	October 31, 2016
Name of Vendor:	Ernst & Young LLP
Original Contract Number:	OSS 227152
Date of Amendment:	December 18, 2017
Amendment Number:	001

1) **Amendment Details:**

1.1 This amendment hereby exercises the Ministry's right to exercise the optional extension period from ~~January 1~~, 2018 – ~~June 30~~, 2018
February 10, 2018 – August 10, 2018

1.2 This amendment is subject to the terms and conditions of the Master Agreement as well as the Statement of Work.

1.3 All other terms and conditions of the Statement of Work between Ernst & Young and the Ministry are unchanged.

HER MAJESTY THE QUEEN in right of Ontario
as represented by the President of the Treasury Board Secretariat

Per: _____

Print Name: Mark Donaldson

Title: Dir. Accounting Policy + Financial Reporting

Ernst & Young LLP

Acknowledged: _____

Print Name: SUZIE SIGNAC

Title: PARTNER

FORM OF STATEMENT OF WORK – OPS ENTITY

Statement of Work for Management Consulting Services

This Statement of Work no. – **RFS TBS-OTB-OPCD-16 made in duplicate and effective October 31, 2016 ending on February 10, 2018 with a 6 month extension option in favour of the ministry with no increase in ceiling price.**

Ernst & Young LLP (the "Vendor" or "Ernst & Young") and Her Majesty the Queen in right of Ontario as represented by the President of the Treasury Board (the "Client") enter into this Statement of Work pursuant to the Master Agreement for Management Consulting Services made as of **June 16, 2014** between the Vendor and Her Majesty the Queen in Right of Ontario as represented by the Minister of Government and Consumer Services (such Master Agreement, as from time to time amended, is referred to as the "Master Agreement").

In consideration of their respective agreements set out below, the parties agree as follows:

1. *Structure* - The terms and conditions of the Master Agreement are hereby incorporated by reference in this Statement of Work to the same effect as if fully set out in this Statement of Work. This document and the Master Agreement together comprise a separate Statement of Work between the Vendor and the Client. All capitalized terms used in this Statement of Work without definition have the meanings ascribed to them in the Master Agreement. In the event of any conflict or inconsistency between any term or provision of this Statement of Work and any term or provision of the Master Agreement, the terms and provisions of the Master Agreement shall govern.

2. *Statement of Work* - The Vendor agrees to provide to the Client, and the Client agrees to acquire from the Vendor, the Services and Deliverables described in this Statement of Work upon and subject to the terms of this Statement of Work.

3. *Maximum Price:* C$ 450,000.00 does not include HST

4. *Project Start Date:* October 31, 2016

5. *Project End Date:* February 10, 2018 (with a 6 month extension option)

6. *Scope of Services and Deliverables* - The Services and Deliverables to be provided by the Vendor under this Statement of Work include the following

    - Advice on complex accounting issues and accounting for complex financing transactions;
    - Capital investment, joint ventures and private-public partnerships
    - Proposed government acquisitions and divestments;
    - Providing expert advice on specialized issues such as the implications of changes in public sector accounting standards and the interpretation and

application of those standards in an increasingly complex regulatory framework; and

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9. *Work Location* - All meetings will be within Greater Toronto Area.

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    If required by the Client, the Vendor must provide Services outside of the normal working hours and/or on non-Business days. The Vendor will not be entitled to charge more than the Fixed Price or Per Diem Rate.

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12. *Billing and Payment Process* – The Vendor shall provide the Client with quarterly billing statements that outline the per diem charges no later than 10 Business Days after the end of each quarter.

    Billing statements should include all billing information as set out in the Master Agreement.

13. *Names and Roles of Vendor's Personnel:*

Name of Individual	*Level*
Ivan Chittenden	*Partner*
Lee Ann Probert	*Senior Manager*
Daniel Mortimer	*Manager*
Black Langill	*Partner*
Suzie Gignac	*Partner*

Ivan Chittenden will be supported by Suzie Gignac, Lee Anne Probert, Daniel Mortimer and Blake Langill and other staff as required, depending on the nature of advisory services request, Please note all individuals mentioned above have to sign the confidentiality agreement form and go through security requirements. Any staff who are subsequently assigned to this SOW will be subject to the same procedures.

14. **Invoices** - Invoices for payment of any charges under this Statement of Work shall be sent to:

Client:	Treasury Board Secretariat, Office of the Provincial Controller Division
Branch:	Accounting Policy and Financial Reporting
Representative:	Nadine Petsche
Title:	Director, Accounting Policy and Financial Reporting
Phone number:	416-325-8027
Email:	Nadine.petsche@ontario.ca

15. *Knowledge Transfer:* The Vendor will work closely with the Client to ensure knowledge transfer to the Client's designated staff, and as necessary with the Auditor General.

16. *Destruction of Information* - The Vendor shall destroy all information contained on any media that was provided by the Client or at the direction of the Client, if requested to do so by the Client, except as required to be retained in accordance with professional standards requirements. The Client may choose to witness this destruction. The Vendor shall provide a certificate of destruction to the Client, if requested to do so by the Client.

17. *Indemnity* – the indemnity set out in the Master Agreement applies to this assignment.

18. *Client Representative and Receipt of Notices*

Client's address for receipt of notices:	**Treasury Board Secretariat**
Client Representative:	**Nadine Petsche**
Telephone number:	**416-325-8027**
E-mail:	**Nadine.petsche@ontario.ca**

19. *Vendor Representative and Receipt of Notices*

The name and title of the Vendor's Representative:
Ivan Chittenden
222 Bay Street Toronto ON
M5K 1J7

IN WITNESS WHEREOF the parties hereto have executed this Statement of Work as of the date first above written.

Her Majesty the Queen in right of Ontario as represented by The President of the Treasury Board

Per:

Signature: P. Petsche

Name: Pauline Petsche

Title: Director, Accounting Policy & Financial Reporting

Pursuant to delegated authority.

ERNST & YOUNG LLP.

Per:

Signature: S. Gignac

Name: SUZIE GIGNAC

Title: PARTNER

I have the authority to bind the Vendor.

FW_ EXTERNAL OPG - IFRS - EY Agreed Upon Procedures Report.pdf

From:	Donaldson, Mark (TBS)
To:	Virani, Shyrose (TBS)
Subject:	FW: EXTERNAL – OPG - IFRS - EY Agreed Upon Procedures Report
Date:	June 11, 2018 1:38:08 PM
Attachments:	image001.gif OPG - IFRS Report - Province of Ontario Cover Letter.pdf OPG - IFRS Agreed Upon Procedures Report_May 22 (002).pdf

---

From: Veinot, Cindy (TBS)
Sent: June 11, 2018 1:38:07 PM (UTC-05:00) Eastern Time (US & Canada)
To: Donaldson, Mark (TBS)
Subject: FW: EXTERNAL – OPG - IFRS - EY Agreed Upon Procedures Report

---

From: MAUTI John -FIN & C CTRL [mailto:john.mauti@opg.com]
Sent: May 24, 2018 8:19 AM
To: Veinot, Cindy (TBS)
Cc: MAUTI John -FIN & C CTRL; GORE Michael -FIN & C CTRL
Subject: FW: EXTERNAL â€" OPG - IFRS - EY Agreed Upon Procedures Report

Specific request made of OPG by the AG's office is relation to the specified procedures report for the March 31, 2018 fiscal year end.

Suspect I know why she wanted the details……

FYI

John

From: GORE Michael -FIN & C CTRL
Sent: Thursday, May 24, 2018 7:57 AM
To: susan.klein@auditor.on.ca
Cc: MAUTI John -FIN & C CTRL <john.mauti@opg.com>
Subject: FW: EXTERNAL – OPG - IFRS - EY Agreed Upon Procedures Report

Hi Susan,

From speaking with John, I understand that you wanted to know the impacts of the specific components of the Fair Hydro Trust within OPG's consolidated financial information. A brief summary of this is presented below:

- An intangible asset of $1,639 million, representing the purchase of deferred global adjustment costs from the IESO for collection from ratepayers in the future.
- Long-term debt of $836 million, representing debt issued by the Fair Hydro Trust to external lenders to fund 51% of the consideration for the purchase of the intangible assets.

- Class A shares of $721 million, representing the equity injection by the Province in OPG to fund 44% of the contribution to the Fair Hydro Trust through debt issued to OPG for the purchase of the intangible assets.
- Intercompany debt between OPG and the Fair Hydro Trust (eliminated within OPG's consolidated financial information and therefore not presented within the schedules submitted by Ernst & Young) of $82 million, representing OPG's 5% funding contribution in the Trust for the purchase of the intangible assets.
- Earnings generated from the Fair Hydro Trust of $4 million for the year ended March 31, 2018, representing net earnings from the Fair Hydro Trust attributable to OPG as Financial Services Manager of the Trust.

Please let me know if you have any more queries.

Thanks
Michael

Michael Gore | Director, External Reporting & Accounting Policy | Ontario Power Generation
700 University Avenue, Toronto ON M5G 1X6 | Phone: (416) 592-7779 | E-mail: michael.gore@opg.com

---

From: Sabrina Fabina [mailto:sabrina.b.fabina@ca.ey.com]
Sent: Tuesday, May 22, 2018 10:26 PM
To: Bill.Pelow@auditor.on.ca
Cc: Cindy.Veinot@ontario.ca; susan.klein@auditor.on.ca; MAUTI John -FIN & C CTRL <john.mauti@opg.com>; GORE Michael -FIN & C CTRL <michael.gore@opg.com>; Natalie Kishinovsky <Natalie.Kishinovsky@ca.ey.com>
Subject: EXTERNAL – OPG - IFRS - EY Agreed Upon Procedures Report

*** Exercise caution. This is an EXTERNAL email. DO NOT open attachments or click links from unknown senders or unexpected email. ***

Dear Mr. Pelow,

Please find attached the Agreed Upon Audit Procedures Report performed on the adjustments prepared by Ontario Power Generation Inc. on its reported financial results from United States Generally Accepted Accounting Principles to International Financial Reporting Standards and accompanying cover letter.

Please let me know if you have any questions.

Kind regards,
Sabrina

Sabrina B Fabina, CPA, CA | Associate Partner | Assurance Services

Ernst & Young LLP
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Fw_ Discussion Items for IESO Call.rtf

From: Petsche, Nadine (TBS) []
To: Patel, Bharat (TBS) [Bharat.Patel3@ontario.ca]
CC: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
Subject: Fw: Discussion Items for IESO Call
Date: Tuesday, June 20, 2017 08:31:11

Bharat,
Please plan to attend/observe this call. N

Original Message
From: Kim Marshall <Kim.Marshall@ieso.ca>
Sent: Tuesday, June 20, 2017 8:00 AM
To: Petsche, Nadine (TBS); Picard, Michel; leeanne.probert@ca.ey.com
Cc: Jeannette Briggs; Susan Nicholson; Georgia Ritchie-Wust
Subject: RE: Discussion Items for IESO Call

Georgia will co-ordinate. Can probably do without me

Kimberly Marshall | VP, Corporate Services & CFO
Independent Electricity System Operator (IESO) | T: (416) 969-6232 | C: (416) 545-7202
120 Adelaide Street West, Suite 1600, Toronto, ON M5H 1T1
Web: www.ieso.ca | Twitter: IESO_Tweets | LinkedIn: IESO

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-----Original Message-----
From: Kim Marshall
Sent: June 15, 2017 3:37 PM
To: 'Petsche, Nadine (TBS)'; Picard, Michel; 'leeanne.probert@ca.ey.com'
Cc: Jeannette Briggs; Susan Nicholson
Subject: RE: Discussion Items for IESO Call

Nadine and Leeanne, Jeannette is the Director of settlements and Susan is our corporate controller. They are best to answer questions re the IESO market accounting and settlement. By cc to Georgia can we pls set up a 1/2 hour with Michel as well re your questions, thanks

Kimberly Marshall | VP, Corporate Services & CFO Independent Electricity System Operator (IESO) | T: (416) 969-6232 | C: (416) 545-7202
120 Adelaide Street West, Suite 1600, Toronto, ON M5H 1T1
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-----Original Message-----
From: Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]
Sent: June 15, 2017 8:01 AM
To: Picard, Michel; Kim Marshall

Subject: Fw: Discussion Items for IESO Call

Good morning.
We had suggested that EY list some of their questions in advance of today's call (see below). I personally think however, that we first need to establish a common understanding of RRA (eg. Clarity of accounting guidance wrt governing board, independence, different types of RRAs), and perhaps address some of EY's questions/confusion following their read of the AG's recent comments/postings and how they might relate (or not) to the IESO's situation.
Just forwarding these Q's as an info item. Talk soon, N

From: Lee Anne Probert <leeanne.probert@ca.ey.com>
Sent: Thursday, June 15, 2017 2:42 AM
To: Petsche, Nadine (TBS)
Cc: Veinot, Cindy (TBS); Suzie Gignac; Blake Langill
Subject: Discussion Items for IESO Call

Hi Nadine,

Below is a list of the items I would like to discuss on our call with the IESO.

Please let me know if you have any questions/concerns with the list.

Regards,
Lee Anne

IESO Financial Statements

Current supply cost variance account

· Where is this recorded on the 2016 balance sheet (Amounts due to/from market participants?)

· Why is this not a regulatory asset? Is it considered to be a financial asset?

· There are similarities between this variance account and the new FHP variance account, but FHP variance account is going to be accounted for a regulatory asset. What is driving different treatment?

Market accounts

· Can we walk through the entries that are booked as part of the settlement process (timing and DRs/CRs)

· What are 'Other liabilities' (Note 3)

Market Administration/Settlement

Confirm/correct the following:

Price consumers pay comprised of:

· Electricity price:

o Electricity commodity price (HOEP)

o Transmission price

o Distribution price

· Global Adjustment

IESO only settles the electricity commodity price component and the related portion of the Global Adjustment

Supply of electricity comes from:

1. OPG (rate set by OEB)

2. Non-utility generators (rate set by contract – contracts held by OEFC)

3. Generation facilities under contract with IESO (rate set by contract)

4. Imports (paid HOEP)

Are there are other suppliers that are paid HOEP?

Portion of Global Adjustment determined by IESO driven by variances relating to #1, #2, #3 above

What is the nature of the contracts IESO enters into?
Participation agreements

· IESO enters into participation agreements with all market participants (buyers and sellers)

· Participation agreements bind IESO and counterparty to follow market rules

· Participation agreement would be the only contract IESO enters into with #1, #2, #4 above
Supply contracts

· Since IESO does not buy and sell electricity, what is the contract for? (IESO paying for commitment that the counterparty will supply electricity into the IESO grid?)

· Does the IESO negotiate the terms of these contracts?

Buyers of electricity from IESO grid are comprised of:

· LDCs

· Large consumers

The electricity commodity price paid by all buyers is HOEP.
IESO determines HOEP.
Although IESO determines HOEP, IESO is not really determining rates charged to buyers because total price is a bundle of electricity at HOEP plus/minus Global Adjustment and OEB mandates that bundle must (over time) equal cost.

LeeAnne Probert | Senior Manager | Assurance Services

Ernst & Young LLP
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Fw_ Draft Leg -- Compare Doc 3 vs. 4.rtf

From: Petsche, Nadine (TBS) []
To: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
Subject: Fw: Draft Leg -- Compare Doc 3 vs. 4
Date: Wednesday, April 26, 2017 15:14:27
Attachment 1: Draft Leg -- Compare Doc 3 vs. 4.docx

Please scan and send (can't see track changes)
From: Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>
Sent: Wednesday, April 26, 2017 12:45 PM
To: Petsche, Nadine (TBS); Lee Anne Probert; Suzie Gignac; Blake Langill; Graham, Helen (TBS); Fung, Felix (TBS); Proulx, Didem (TBS); Kandeepan, Ken (OFA); Fenton, Shannon (TBS)
Cc: Hosick, Sarah (TBS)
Subject: Draft Leg -- Compare Doc 3 vs. 4

I ran a compare docs between versions 3 and 4 – attached is the blackline -- Cindy

Draft Leg -- Compare Doc 3 vs. 4.pdf

Version ~~3~~4

This confidential draft document is provided for discussion purposes only. It should not be construed as representing the position adopted by the Government of Ontario on any of the topics included or not included in this document. The notes included in this document are intended only to help facilitate a discussion of the topics to which they relate. Any potential legislation is subject to the approval of the Ontario Legislature.

A proposal to create Legislation.

~~Ontario's Fair Hydro Plan~~An Act~~, 2017~~ to provide for the fair allocation of costs of electricity over time, if enacted

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A proposal to create Legislation.

~~Ontario's Fair Hydro Plan~~An Act~~, 2017~~ to provide for the fair allocation of costs of electricity over time, if enacted

EXPLANATORY ~~NOTE~~NOTE TO BE ADDED BY LEGISLATIVE COUNSEL TO ANY FINAL BILL PRIOR TO INTRODUCTION.

~~[Insert explanatory note.]~~

~~[Notes re this draft:~~
~~- all numbering of provisions may need to be re-done~~
~~- will need to check all definitions to ensure (1) that they are needed; and (2) that they work properly wherever the term is used in the Bill.~~
~~- additional consequential amendments likely required still~~
~~- overall organization of provisions still TBC (for now just trying to get all of the elements drafted and will reconsider architecture later)~~
~~- need to check consistency of various phrases (e.g. *during/for/in respect of* reference period; *owner of RA/IA vs. RA/IA owner; etc.*)]~~

Preamble

The Government of Ontario is committed to fostering the development of a clean, modern and reliable electricity system with a diverse supply mix. The Government is also committed to removing barriers to and promoting opportunities for renewable and clean energy projects.[1] These commitments can only be achieved if costs are shared fairly among consumers, today and in the future.

~~The Government of Ontario has established a regulatory framework related to the generation and sale of electricity, which has promoted and continues to promote significant investment to enable phasing out of coal fired generation, modernizing sites and facilities in the Province for the generation of electrical energy and the production therefrom,~~[2] ~~and conservation and demand management.~~

Electricity rates have risen for two key reasons. First, decades of under-investment in the electricity system resulted in the need to invest more than $50 billion in generation, transmission and distribution assets to ensure the system is clean and reliable. Second,

[1] ~~Note~~FLS: please see the preamble of the *Green Energy Act, 2009.*

[2] ~~Note: please see clause 92A (4) (b) of the Constitution, 1867: "des emplacements et des installations de la province destinés à la production d'énergie électrique, ainsi que de cette production meme".~~

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the decision to eliminate Ontario's use of coal and produce clean, renewable power has created additional costs.

The actions taken to achieve a clean, modern and reliable electricity system have resulted in significant costs to consumers today. The burden of financing these system improvements and funding key programs has unfairly fallen almost entirely on the shoulders of today's consumers.

The Government of Ontario is committed to ensuring that the costs of financing these investments~~,~~ and the ~~raising of money~~associated charges to ~~fund the investments,~~[3] consumers are allocated fairly among present and future generations of consumers.

~~Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:~~

Recognizing that the electricity infrastructure that has been built and the policy decisions that have been made will create benefits for years to come, costs should be allocated fairly over time, so that consumers in the future pay their fair share for the benefits that they receive from the investments already made.

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[3] ~~Note: please see opening flush of s. 92A (4) of the Constitution Act, 1867~~

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PART I
GENERAL

Interpretation
Definitions

1xx. (1) In this Act,

"Board" means the Ontario Energy Board; ("French")

"clean energy adjustment" means the amount determined under section 10xx; ("French")

~~[Note – will need to check throughout the draft that references to CEA are clear as to whether it's the total CEA in respect of a reference period vs. the portion payable by a specified consumer.]~~

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"clean energy benefits" means~~, in respect of a reference period,~~ the value of the benefits determined to be derived by or accruing to the specified consumers ~~during the reference period~~ as a result of the clean energy initiative, including as a result of ~~past, present and expected future incurrences of~~ clean energy costs; ("French")

"clean energy costs" means~~, in respect of a reference period,~~ the value of the costs allocated to specified consumers ~~during the reference period~~ as a result of the clean energy initiative, including as a result of past, present and expected costs incurred in respect of,

(a) the estimated ~~costs~~amounts to be ~~incurred~~paid or reflected by the IESO in adjustments made under section 25.33 of the *Electricity Act, 1998* or any provision that is the successor to that provision, which relate to contracts for,

(i) renewable energy generation or capacity,

(ii) conservation and demand management, ~~including storage,~~

(iii) energy storage,

(iv) energy efficiency,

(~~iv~~v) natural gas generation and capacity, excluding contracts relating to amounts payable by the IESO under section 78.2 of the *Ontario Energy Board Act, 1998* and excluding such other contracts as may be prescribed, or

(~~v~~vi) payments made or expected to be made under section 78.5 of the *Ontario Energy Board Act, 1998*, and

(b) such other estimated costs as may be prescribed; ("French")

"clean energy initiative" means the policies of the Government of Ontario related to,

(a) fostering the growth of and investment in clean and renewable energy sources and technologies,

(b) removing barriers to and promoting opportunities for clean and renewable energy sources and technologies, and

(c) promoting conservation and demand management; ("French")

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"electricity vendor"[4] means ~~the IESO, a licensed distributor, a licensed retailer or such other person as may be prescribed; ("French"),~~

(a) a licensed distributor,

(b) a licensed retailer,

(c) the IESO in circumstances where the IESO directly invoices a specified consumer, or

(d) such other person as may be prescribed; ("French")

"fair ~~adjustment~~allocation amount" means the ~~determination of the rate payable for electricity in accordance with Part II; ("French")~~amount determined in under section 15xx;

"financing entity" means an entity established or caused to be established under subsection 17xx (3); ("French")

"Financial Services Manager" means ~~Ontario Power Generation Inc. [or such other person or entity as may be appointed as~~ the Financial Services Manager ~~by the Minister~~appointed under section ~~**];~~13xx; ("French")

"Financing Plan" means the plan prepared under section ~~X~~16xx, as amended from time to time in accordance with this Act; ("French")

"funding obligation" means,

(a) a payment obligation incurred ~~by or on behalf of~~ in connection with the transfer of a regulatory asset ~~owner~~or the refinancing of an existing funding obligation, or ~~an investment asset owner under section x; ("French")~~

(b) a payment obligation that meets such other criteria as may be prescribed; ("French")

"IESO" means the Independent Electricity System Operator continued under Part II of the *Electricity Act, 1998*; ("SIERE")

[4] ~~Note~~FLS - this is similar to the definition of "electricity vendor" in the Ontario Rebate for Electricity Consumers Act, 2016

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"IESO funding shortfall" means~~, in respect of a reference period,~~ the amount determined under section 20xx ~~for the reference period~~; ("French")

"investment asset" means the ~~investment asset created as~~rights and interests described in section 22xx; ("French")

"investment ~~asset~~interest owner" means a financing entity that ~~acquires~~has acquired and holds an investment interest ~~in the investment asset~~; ("French")

"investment interest" means,

(a) an ownership interest in the investment asset, ~~which entitles an investment asset owner to the~~ and

(b) in circumstances where the ownership interest is transferred, the rights and benefits specified in the agreement under which the ~~ownership~~ interest is transferred; ("French")

"invoice amount" means ~~the amount, determined,~~ in ~~accordance with subsections (2.1) and (2.2) and the regulations, that is payable by a specified consumer for the~~ respect of an invoice period, the sum of the amounts set out in subsection (2.1) in relation to the provision of electricity in Ontario ~~during~~to a specified consumer; ("French")

"invoice period" means the period in respect of ~~time~~which an invoice amount applies, as specified on an invoice issued by an electricity vendor; ("French")

"licensed distributor" means a person licensed under Part V of the *Ontario Energy Board Act, 1998* to own or operate a distribution system; ("French")

"licensed retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity; ("French")

"Minister" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of this Act under the *Executive Council Act*; ("ministre")

"Ontario Power Generation Inc." means the corporation incorporated as Ontario Power Generation Inc. under the *Business Corporations Act* on December 1, 1998; ("Ontario Power Generation Inc.")

"prescribed" means prescribed by the regulations; ("prescrit")

"reference period" means,

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(a) the period beginning on May 1, 2017 and ending on October 31, 2017, and

~~(b~~ (b) during the period beginning on November 1, 2017 and ending on April 30, 2047,

(i) every six-month period following the period mentioned in clause (a~~));~~ or ~~such~~

(ii) any period shorter ~~period~~than six months, as may be ~~set out in the Fair Allocation Plan~~prescribed; ("French")

"refinancing" means ~~a~~, subject to the regulations, a redemption, repayment or repurchase of a funding obligation ~~for cancellation by or on behalf of an investment asset owner by applying the net proceeds obtained by the owner incurring one or more other funding obligations~~; ("French")

"regulation" means a regulation made under this Act; ("règlement")

"regulatory asset" means the right and interest established under section ~~X to recover the IESO funding shortfall~~21xx; ("French")

~~"representative consumer" means a consumer who meets the criteria set out in subsection (3); ("French")~~

"specified consumer" means,

(a) a person who has an account with an electricity vendor for the supply of electricity~~, receives an invoice~~ in ~~respect of the account~~Ontario and meets the criteria set out in subsection (2); or

(b) such other person as may be prescribed; ("French")

"sub-meter customer" means a person who is supplied electricity by a specified consumer, if an invoice for the electricity is issued to the person by the specified consumer, by an agent of the specified consumer or by a unit sub-meter provider providing unit sub-metering for the specified consumer; ("French")

~~"Toronto Hydro" means Toronto Hydro-Electric System Limited; ("French")~~

"transfer" means ~~an assignment, conveyance, disposition or sale;~~[TBD]; ("French")

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"unit sub-metering" has the same meaning as in the *Energy Consumer Protection Act, 2010*; ("activités liées aux compteurs divisionnaires d'unité")

"unit sub-meter provider" has the same meaning as in the *Energy Consumer Protection Act, 2010*; ("fournisseur de compteurs divisionnaires d'unité")

Specified consumers

(2) For the purposes of clause (a) of the definition of "specified consumer" in subsection (1), the person must meet any one of the following criteria:

1. The person has a demand for electricity of 50 kilowatts or less, or such other amount as may be prescribed.

2. The person annually uses not more than 250,000 kilowatt hours of electricity, or such other amount as may be prescribed.

3. The person carries on a business that is a farming business for the purposes of the *Farm Registration and Farm Organizations Funding Act, 1993* and either holds a valid registration number assigned under that Act or the has had the obligation to file a farming business registration form waived pursuant to an order made under subsection 22 (6) of that Act.

4. The person's account with the electricity vendor relates to,

    i. a dwelling,

    ii. a property within the meaning of the *Condominium Act, 1998*,

    iii. a residential complex within the meaning of subsection 2 (1) of the *Residential Tenancies Act, 2006*, without regard to section 5 of that Act, or

    iv. a property that includes one or more housing units and that is owned or leased by a co-operative within the meaning of the *Co-operative Corporations Act*.

5. The person satisfies such criteria as may be prescribed.

Invoice amount

(2.1) Subject to ~~subsection (2.2) and~~ the regulations, the invoice amount for a specified consumer in respect of an invoice period includes the following amounts:

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1. In circumstances where the electricity is provided by a licensed distributor or a licensed retailer, the following amounts in respect of the invoice period:

    i. The commodity price of the electricity used ~~during the invoice period~~.

    ii. The rates and charges set out in the applicable rate order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998* and in effect on April 30, 2017.

    iii. Any adjustment on the invoice required under section 25.33 of the *Electricity Act, 1998*.

    iv. The amount of any harmonized sales tax payable ~~[~~by the consumer~~?]~~ under Part IX of the *Excise Tax Act* (Canada~~),~~) in respect of the amounts mentioned in subparagraphs i, ii and iii;

    v. Any other amounts as may be prescribed.

2. In circumstances where the electricity is provided by the IESO or other prescribed entity, such amounts as may be prescribed in respect of the invoice period. ("French")

Same, exclusions

(2.2) ~~Except as otherwise prescribed by~~Subject to the regulations, ~~the~~an invoice amount does not include any of the following amounts:

1. The balance of any amounts carried forward from previous invoices in respect of previous invoice periods.

2. Penalties or interest.

3. Charges that do not relate to the use of electricity.

4. Any of the following charges that may be set out in an order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*:

    i. A fixed monthly service charge payable by a generation facility within the meaning of section 56 of the *Ontario Energy Board Act, 1998* and classified as "microFIT".

    ii. A charge labelled as a "specific service charge" or "retail service charge".

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iii. A rate rider~~.~~ [of the prescribed type or class].

5. Any other prescribed amounts.

~~**Representative consumer**~~

~~(3) For the purposes of the definition of "representative consumer" in subsection (1), the consumer,~~

~~(a) purchases electricity directly from Toronto Hydro;~~

~~(b) has an account with Toronto Hydro that falls within a residential rate classification as specified in a rate order made by the Board under section 78 of the *Ontario Energy Board Act, 1998*;~~

~~(c) is invoiced by Toronto Hydro on a monthly basis;~~

~~(d) is not invoiced by Toronto Hydro for electricity on an equal monthly payment plan or an equal billing plan; and~~

~~(e) uses, on average, 750 kilowatt hours of electricity each month.~~

~~**Transfer**~~

~~(4) For greater certainty, a transfer of the regulatory asset or a portion of the regulatory asset includes any act of the IESO by which the IESO purports to dispose of its interest in the regulatory asset with the result of a named person becoming the owner of an investment interest.~~

Effect of invalidity, etc.[5]

2xx. (1) For greater certainty, all of the provisions of this Act remain in full force and effect, even if ~~some~~one or more provisions are held to be invalid, the intention of the Legislature being to give separate and independent effect to the extent of its powers to every provision contained in this Act.

Same, funding obligation

(2) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect the validity or enforceability of a funding obligation ~~that was~~ incurred under this Act before the day that the provision ~~was~~is held to be invalid or ~~ceased~~ceases to be in effect, or any rights or obligations associated with the funding obligation.

[5] ~~Note~~FLS: this is from the *Climate Change Mitigation and Low-carbon Economy Act, 2016*

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Purpose

3xx. (1) The purposes of this Act are,[6]

(a) to ensure that clean energy costs are fairly allocated among present and future specified consumers ~~over time and that the process by which the Province raises money to fund the costs reflects~~and reflect the fair allocation; and

(b) to recognize that clean energy benefits ~~that~~ have accrued and ~~that~~ will accrue over time and will continue to benefit present and future electricity consumers in the Province.

Crown bound

4xx. This Act binds the Crown.

Protection and assurances

Prohibition

5xx. (1) The Crown shall not do anything that would,

(a) hinder, delay, impair or prejudice the charging, collection or remittance of amounts in respect of the clean energy adjustment;

(b) except as expressly permitted by this Act, reduce the ~~amount of the~~ clean energy adjustment determined under this Act or lower the priority of the clean energy adjustment over other debts; or

(c) adversely affect an investment asset or a funding obligation.

Clarification with respect to regulations

(2) For greater certainty, the things prohibited under subsection (1) include the making or approving of a regulation under this Act.

Agreements for compensation

(3) The Minister may, with the approval of the Lieutenant Governor in Council, enter into agreements on behalf of the Province of Ontario with any person in respect of this Act, including agreements regarding ~~financial commitments, financial arrangements, indemnities~~the performance of IESO or electricity vendors under this Act or similar transactions.

Guarantee, indemnification

(4) The Lieutenant Governor in Council may by order,

[6] ~~Note~~FLS: Please see the *Electricity Act, 1998* for much of the wording proposed in this section.

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(a) authorize the Minister of Finance, on behalf of the Province,

(i) to agree to guarantee or indemnify any debts, obligations, securities or undertakings associated with an investment interest, and

(ii) to determine terms and conditions and the amount on which the guarantee or indemnity will be given;

(b) impose terms and conditions, as it considers advisable, on which the Minister of Finance may, on behalf of the Province, agree to guarantee or indemnify as described in subclause (a) (ii); and

(c) specify a maximum liability for the guarantee or indemnity.

PART II
FAIR ADJUSTMENT OF ELECTRICITY RATES

~~**Fair adjustment, May 1, 2017 to April 30, 2018**~~
~~**Definition**~~
Definitions

6xx. ~~(1)~~ In this ~~section~~Part,

~~"average baseline invoice amount~~"effective date" means the ~~average monthly invoice amount that would be payable by a representative consumer under the average baseline rate~~date determined under section 6.5xx; ("French")

~~"average baseline~~"RPP rate" means the ~~average rate that would be payable effective May 1, 2017 by the~~ rate determined by the Board under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*, which rate is commonly referred to as the Regulated Price Plan"; ("French")

"specified RPP consumer" means a specified consumer who meets the following criteria:

1. The consumer is a member of the class of consumers prescribed by the regulations made under the *Ontario Energy Board Act, 1998* for the purposes of subsection 79.16 (1) of that Act~~, as~~.

2. The consumer is subject to the RPP rate. ("French")

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Specified RPP consumer, first fair adjustment

6.1xx (1) The rate for electricity payable by a specified RPP consumer for the period beginning on the effective date and ending on April 30, 2018 is the rate required for a specified RPP consumer who meets the prescribed criteria to receive a monthly invoice amount that is 25 per cent lower than the monthly invoice amount for that consumer under the comparison rate described in subsection (2).

Comparison rate

(2) The comparison rate is the rate that would be effective May 1, 2017, determined by the Board ~~by applying~~solely using the method prescribed by the regulations made under clause 79.16 (1) (b) of ~~that~~the *Ontario Energy Board Act*~~; ("French")~~, *1998*.

Same

~~"sub-meter customer" means a person who is supplied electricity by a specified consumer, if an invoice for the electricity is issued to the person by the specified consumer, by an agent of the specified consumer or by a unit sub-meter provider providing unit sub-metering for the specified consumer; ("French")~~

~~**Rate determination**~~

~~(2) Subject to subsection (3),~~ ~~[to more fairly measure and allocate the clean energy costs and clean energy benefits among present and future generations of specified~~) For the purposes of subsection (2), the applicable method is the method on the day this section comes into force.

Specified consumers~~,~~ ~~the~~ (non-RPP), first fair adjustment

6.2xx The rate for electricity payable by a specified consumer who is not a specified RPP consumer for the period beginning on ~~May 1, 2017~~the effective date and ending on April 30, 2018 is the ~~average~~ rate that would be ~~payable by a representative consumer in order for the representative consumer to receive a monthly invoice amount that is 25 per cent less than the average baseline invoice amount.~~

necessary in order for [the monthly global adjustment rate] in respect of a~~Sub-meter customers~~

~~(3) A~~ specified consumer who is not a specified RPP consumer (RPP) and who meets the prescribed criteria to be reduced by the same amount as the difference between the comparison rate referred to in subsection 6.1xx (2) and the rate determined under subsection 6.1xx (1).

Determination by Board

6.3xx The Board shall determine the rates mentioned in sections 6.1xx and 6.2xx no later than seven business days after the day this section receives Royal Assent.

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Implementation of rates

6.4xx Each electricity vendor, [specified consumer who provides electricity to a sub-meter customer and ~~any~~ unit sub-meter provider who provides unit sub-metering for ~~the~~a specified consumer] shall ~~ensure that~~, no later than seven business days after the day on which the ~~rate payable by each sub-meter customer is~~ Board determines the ~~rate determined~~rates under ~~subsection (2).~~section 6.3xx, adapt is billing practices and invoices to reflect the new rates.

~~**Determining rate**~~

~~**(4)**~~**Effective date**

6.5xx The ~~rate mentioned in subsection (2) shall be,~~

~~(a)~~ rates determined ~~by the Board within seven business days after this~~under section ~~receives Royal Assent; and~~

~~(b)~~ 6.3xx are effective ~~as~~on the earlier of the following days:

1. The first day of the ~~calendar~~ month immediately following the ~~determination~~last day of the seven-day period referred to in section 6.4xx.

2. July 1, 2017.

Transition

~~(5) If, for technical or operational reasons,~~ **6.6xx** (1) This section applies if an electricity vendor, specified consumer or unit sub-meter provider is unable to ~~adapt its invoices to~~ comply with ~~this~~ section ~~by~~6.4xx for one of the ~~time it issues its first invoice for electricity consumed on or after May 1, 2017,~~following reasons:

1. There are fewer than seven days between the day of the Board's determination of rates under section 6.3xx and the effective date.

2. Technical or operational reasons.

Same

~~(a)~~ (2) In the circumstances described in subsection (1), the electricity vendor, specified consumer or unit sub-meter provider shall,

(a) adapt its invoices as soon as possible and, in any event, no later than ~~[~~August 1, 2017~~],~~; and

~~(b) the electricity vendor, specified consumer or unit sub-meter provider shall~~ (b) ensure that any specified consumer or sub-meter customer invoiced at a rate higher than the applicable rate determined by the Board receives the difference

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between the rate shown on their invoice and the applicable rate as a lump sum credit on the first invoice issued after the invoices have been adapted or by such other means as may be prescribed by the regulations.

~~**Fair adjustment, May 1, 2018 to April 30, 2022**~~
Subsequent fair adjustments

7xx. The Lieutenant Governor in Council may~~, [to more fairly measure and allocate the clean energy costs and clean energy benefits among present and future generations of specified consumers,]~~ make regulations prescribing the ~~rate~~methodology to be applied by the Board to determine rates for electricity payable by specified consumers and sub-meter customers during the period beginning on May 1, 2018 and ending on April 30, 2022.

Sub-meter customers

7.1xx A specified consumer who provides electricity to a sub-meter customer and any unit sub-meter provider who provides unit sub-metering for the specified consumer shall ensure that the rate payable by each sub-meter customer is the applicable rate determined under this Part.

PART III
CLEAN ENERGY ADJUSTMENT

Specified consumers to pay ~~clean energy adjustment~~

8xx. (1) Upon receipt of an invoice that includes ~~a~~ an amount in respect of the clean energy adjustment, a specified consumer shall pay the ~~clean energy adjustment~~amount to the electricity vendor, as agent of the investment ~~asset~~interest owners, in accordance with such terms of payment as may be specified in the invoice, which may include terms relating to late payment fees and interest charges.

Same

(2) For greater certainty, subsection (1) applies regardless of,

(a) whether the clean energy adjustment ~~is~~was determined in a manner that was inconsistent with ~~the fair allocation calculation applicable at the time when the payment is due~~this Act; and

(b) whether the amount payable in respect of the clean energy adjustment relates to funding obligations that were incurred in a manner that was ~~inconsistent~~not in material conformity with the Financing Plan.

Indebtedness of specified consumer

(4) An unpaid ~~clean energy adjustment~~amount that is required to be paid by a specified consumer under this section constitutes indebtedness of the specified consumer

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to each investment ~~asset~~interest owner ~~in respect~~to the extent of each owner's respective interest in the investment asset.

Same

~~**Same**~~

(5) The indebtedness mentioned in subsection (4) is a single and separate debt obligation owed by the specified consumer and may be enforced independently from any other payment obligation or indebtedness owing by the specified consumer ~~under the invoice or otherwise~~.

~~**Irrevocability of clean energy adjustment**~~
Recovery from sub-meter consumers

(6) A specified consumer who provides electricity to a sub-meter customer may recover amounts in respect of the clean energy adjustment payable under this section from each sub-meter customer on a pro rata basis.

Irrevocability of amount

9xx. (1) ~~The~~An amount in respect of the clean energy adjustment shown on an invoice issued to a specified consumer under this Act is determinative of the amount of the consumer's indebtedness ~~created by~~resulting from the clean energy adjustment and is irrevocable upon invoicing the consumer and may not be set off or by passed.

Exception

(2) Subsection (1) does not apply to the extent that there is a clerical, typographical or calculation-related error by the electricity vendor.

Determination of clean energy adjustment
Financial Services Manager to determine

10xx. (1) The Financial Services Manager shall determine the clean energy adjustment payable by all specified consumers in respect of each month in a reference period ~~shall be determined as follows:~~

~~1. Calculate~~by adding the estimated finance amount ~~for~~ in respect of the reference period ~~in accordance with Schedule 1 and such additional rules as may be prescribed~~to~~.~~

~~2. Add~~ the true up amount ~~for~~ in respect of the reference period~~, as determined in accordance with the prescribed method, to the~~.

Estimated finance amount, true up amount

(2) The estimated finance amount ~~calculated under paragraph 1.~~

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~~**True up amount**~~

~~(2) For the purposes of paragraph 2 of subsection (1), the Lieutenant Governor in Council may make regulations prescribing the method for determining~~ and the true up amount~~, having~~ shall be determined in accordance with the regulations.

Regulations re true up amount

(3) The regulations under subsection (2) shall have regard to the following principles:

1. The true up amount should serve to ensure that the collection of the clean energy adjustment is sufficient to pay the ~~estimated~~ finance amount when it is due.

2. The method for determining the true up amount should take into account historical and reasonably foreseeable,

    i. differences between the estimated and actual finance amount for the immediately preceding reference period,

    ii. differences between amounts ~~billed~~invoiced and amounts collected due to various factors, including applicable taxes, consumer defaults and delays, billing lags and write-offs, and

    ii. variations in billings due to variations in electricity consumption.

~~**IESO to issue remittance notice to electricity vendors**~~

Financial Services Manager to notify Board

(4)~~**11xx.** (1)~~ The ~~IESO~~Financial Services Manager shall, in accordance with the regulations, ~~issue a remittance notice~~notify the Board of the clean energy adjustment and such other information related to the determination of the clean energy adjustment as may be prescribed.

Board to ~~each electricity vendor for the electricity vendor's portion, as determined~~ determine rates

(5) The Board shall, in accordance with the regulations, ~~of~~determine the rate at which specified consumers are invoiced to recover the clean energy adjustment in respect of ~~a~~the reference period.

IESO to ~~collect~~receive amounts

11xx. (2) The IESO shall, as an agent of the investment ~~asset~~interest owners, ~~collect~~receive amounts in respect of the clean energy adjustment paid to it from electricity vendors ~~[~~in accordance with the ~~monthly settlement process set out in~~regulations and the market rules made under section 32 of the *Electricity Act, 1998*~~]~~.

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~~**Collection account**~~
Account

(3) All of the following amounts received by the IESO shall, until paid to or for the benefit of the investment ~~asset~~interest owner in accordance with subsection (5), be deposited promptly into an account established for the purposes of ~~collecting~~receiving those ~~accounts~~amounts:

1. Amounts described in subsection ~~12 (4~~11xx (2).

2. Payments made by specified consumers directly to the IESO as electricity vendor under subsection ~~8~~8xx (1).

Same, held in trust

(4) All amounts received by the IESO in respect of the clean energy adjustment shall, until paid to or for the benefit of the investment ~~asset~~interest owner ~~in accordance with subsection (6),~~ be received and held in trust by the IESO for the investment ~~asset~~interest owners or a secured party to whom a security interest in an investment interest is granted under this Act.

IESO to remit

(5) The IESO shall remit amounts received by it in respect of the clean energy adjustment to or for the benefit of the investment ~~asset~~interest owners in accordance with the regulations.

~~**Collection of outstanding amounts, regulatory asset**~~

~~(6) If the total clean energy adjustment payable by specified consumers in respect of a reference period is less than the amount contemplated to be payable under the applicable fair allocation calculation made by the Financial Services Manager under Part IV, the IESO may collect the difference from specified consumers.~~

Electricity vendor to invoice specified consumers

12xx. (1) ~~The~~Each electricity vendor shall issue an invoice to each of its specified consumers for the amount payable by the consumer ~~for the consumer's amount~~ in respect of the clean energy adjustment, as determined by applying the rate set by the Board under subsection 10xx (2) and in accordance with the regulations.

Electricity vendor to ~~collect~~report

(~~2~~1.1) Each electricity vendor shall, ~~as an~~in accordance with the regulations, promptly report to the IESO the total amount invoiced to its specified consumers in respect of the clean energy adjustment, the amount collected and such further information as may be prescribed.

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Electricity vendor to collect

(2) Each electricity vendor shall, as agent of the ~~IESO and the~~ investment ~~asset~~interest owners, collect amounts in respect of the clean energy adjustment from specified consumers ~~[~~in accordance with the ~~monthly settlement process set out in the market rules made under section 32 of the *Electricity Act, 1998]*~~.regulations.

Pro rating of payments

(3) If an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices and the amount paid is less than the total amount payable, the electricity vendor shall allocate the payment on a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices in respect of electricity charges ~~for~~in respect of the same ~~invoice~~ period.

Held in trust

(4) ~~All of the following amounts~~Payments received by an electricity vendor from or on behalf of specified consumers shall, until paid to or for the benefit of the investment ~~asset~~interest owner in accordance with subsection (5), be received by and held by each electricity vendor in trust for the benefit of the investment ~~asset owners or a secured party to whom a security interest in an investment~~ interest ~~is granted under this Act:~~

~~1. Payments received from or on behalf of specified consumers under subsection 8 (1).~~

~~2. Portions of payments received from or on behalf of specified consumers under subsection 8 (1) that are allocated to the clean energy adjustment under subsection (3~~owners~~).~~

~~3. Any proceeds arising from the exercise and enforcement of any rights and interests under or in respect of the investment asset~~.

Remittance to IESO

(5) Each electricity vendor ~~other than the IESO~~ shall remit amounts described in subsection (5) to the IESO for the benefit of the investment ~~asset~~interest owners ~~or secured parties~~ in accordance with the regulations.

~~**Regulations**~~

~~(6) If an electricity vendor fails, in the manner described in the regulations, to comply with the requirements of this section, the electricity vendor shall take such steps as the regulations may prescribe.~~

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PART IV
IMPLEMENTATION

FINANCIAL SERVICES MANAGER

Appointment

13xx. (1) ~~[Note: To be elaborated.]~~

~~**Termination**~~

~~Subject to subsection~~ (2~~) The Minister may by written order terminate the appointment of an appointee~~), Ontario Power Generation Inc. is appointed as the Financial Services Manager ~~if,~~

~~(a) the Minister has advised the appointee that the Financing Plan is either inconsistent with or is being implemented in a manner that is inconsistent with the principles set out in section x~~for the purposes of this Act~~;~~

~~(b) the appointee has been afforded a reasonable opportunity to consider and address the inconsistency; and~~

~~(c) the appointee is unwilling or unable to address the inconsistency to the satisfaction of the Minister~~.

Replacement

(~~3) Upon terminating~~2) The Minister may terminate an appointment~~, the Minister~~ of a Financial Services Manager and may, in accordance with the regulations, appoint a new person or entity as the Financial Services Manager.

Duties and powers

14xx. (1) The Financial Services Manager shall perform the duties assigned to it under this Act and may administer the investment asset on behalf of the investment ~~asset owner~~interest owners.

Same

(2) The administration of the investment asset may include the following:

1. Providing information, in accordance with the regulations, to the Board in respect of funding obligations and the determination of the clean energy adjustment in accordance with section ~~XX~~10xx.

2. Providing information to ~~electricity vendors, including~~ the IESO~~,~~ in respect of obligations under Part III.

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3. Such other matters as may be prescribed.

Review of costs

(3) The Board shall review the administrative costs of the Financial Services Manager in accordance with the regulations.

FAIR ALLOCATION AMOUNT

Financial Services Manager to calculate fair allocation amount

15xx. (1) The Financial Services Manager shall calculate ~~the~~a fair allocation amount in respect of each reference period, having regard to the need to align that amount with the finance amount payable during the reference period, for the ~~purposes~~purpose of ~~,~~

~~(a)~~ fairly measuring and allocating the estimated clean energy costs and estimated clean energy benefits among the specified consumers in respect of ~~each~~the reference period~~; and~~.

~~(b) aligning funding obligations that may be incurred during each reference period with the allocation of the estimated clean energy costs and estimated clean energy benefits across present and future generations of specified consumers.~~

Timing of calculation

(1.1) The Financial Services Manager shall calculate a fair allocation amount in respect of each reference period before any funding obligation is incurred [by a financing entity during the reference period].

Amount

(1.~~1~~2) The fair allocation amount in respect of a reference period is the sum of the following amounts:

1. The amount, if any, by which, if this Act had not been enacted, the estimated ~~[~~clean energy costs~~] [~~ and estimated clean energy benefits~~] to be~~ allocated to specified consumers in respect of the reference period ~~exceeds~~would have exceeded the estimated amount of ~~[~~the ~~global adjustment]~~adjustments provided for under section 25.33 of the *Electricity Act, 1998* and the regulations made under that provision that would ~~be~~have been borne by the specified consumers in respect of clean energy costs ~~[in~~for the ~~absence of this Act]~~.reference period.

2. ~~An allocable~~A portion of the value of any fair adjustment~~, determined in accordance with subsection (3).~~ that has been made under Part II in respect of any previous reference period.

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Principles

(2) In calculating the ~~fair allocation amount [or in developing the fair allocation calculation?], subject~~estimated clean energy costs and estimated clean energy benefits to ~~subsection (3),~~be allocated to specified consumers in respect of a reference period, the Financial Services Manager shall [comply with the regulations and] have regard to the following principles:

1. Clean energy costs allocated to ~~the~~ specified consumers in respect of a reference period should be allocated in proportion to the clean energy benefits attributed to the specified consumers in respect of the reference period.

2. The clean energy benefits ~~attributed~~allocated to the specified consumers in respect of a reference period should be determined ~~based on *[Insert principles]*.~~ in accordance with the regulations.
3. The fair allocation calculation should include reasonable assumptions regarding the following:

    i. The time value of money or the rate of inflation, for the purpose of equating nominal amounts over time.

    ii. The expected number of specified consumers ~~for~~in respect of each reference period.

    iii. The expected electricity consumption rates ~~for~~ in respect of each reference period.

~~**Allocation of fair adjustment**~~

~~**(3) If, before the Financial Services Manager has calculated the fair allocation amount in respect of a reference period, a fair adjustment has been made under Part II in respect of the reference period, the calculation shall include a portion of the value of the fair adjustment in the fair allocation calculation for each future reference period**~~**Method**

(3) The Financial Services Manager shall calculate a fair allocation amount in accordance with such methods~~.~~

~~Amendments to~~ ~~**the fair allocation calculation**~~

~~(4) The Financial Services Manager may amend the fair allocation calculation from time to time,~~ as the Financial Services Manager considers appropriate, having regard to the requirements of this Act.

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~~Submission of fair allocation~~Notification to Minister

(~~5~~4) The Financial Services Manager shall ~~provide to~~notify the Minister of the ~~fair allocation calculation and any amendments to~~ methods used to calculate the fair allocation ~~calculation~~amount and any changes to those methods.

Effective date

(6) The fair allocation calculation or an amendment to the fair allocation calculation takes effect on the day that is 30 days after the fair allocation calculation or the amendment, as the case may be, is provided to the Minister in writing.

Publication

(7) The Minister shall ensure that the fair allocation calculation and any amendments to it are made available to the public in a manner that the Minister considers appropriate.

FINANCING PLAN

Financial Services Manager to prepare Financing Plan

16xx. (1) The Financial Services Manager shall prepare ~~and provide to the Minister~~ a written plan entitled the Financing Plan to be used by the Financial Services Manager to evaluate whether potential funding obligations should be incurred ~~or potential transfers should be made~~ for the purposes of acquiring an investment interest in accordance with this Act.

Plan to be provided to Minister

(1.1) The Financial Services Manager shall provide the Financing Plan to the Minister.

Principles

(2) In preparing the Financing Plan, the Financial Services Manager shall have regard to the following principles:

1. Any incurrence of a funding obligation should reasonably align with the ~~expected~~estimated finance amount, as determined ~~under Schedule 1~~in accordance with the regulations, that would, subject to any refinancing, become due and payable during a reference period with the fair allocation amount determined ~~for~~in respect of the reference period under this Part as of the time of the incurrence, in each case after reducing the fair allocation calculation by the amount of any fair adjustment ~~for~~in respect of the reference period.

2. Incurrences ~~and transfers~~ should be implemented in a manner that, ~~as~~in the opinion of the Financial Services Manager ~~considers to be~~, is reasonable, ~~is~~ cost effective and that reflects prevailing market terms and conditions.

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3. Reasonable assumptions should be made regarding such matters as may be prescribed.

~~[Note for reference: List of items for consideration in regulation: (a) anticipated IESO funding shortfalls and related transfer amounts; (b) the maturities of funding obligations; (c) the availability of refinancings, redemption opportunities and liquidity terms and conditions in order to achieve the objective contemplated in section X(1)(a); (d) the availability of currency and interest rate hedging facilities for the purpose of mitigating any differences between the expected finance amounts becoming due and payable during a reference period and the fair allocation amount for the reference period; (d) the amount and potential variability of interest rates and related financing costs; (e) available capital markets in which funding obligations may be incurred.]~~

~~**Amendments to approved plan**~~

~~(3) The Financial Services Manager may amend the Financing Plan at any time, without the approval of the Minister, subject to the requirements set out in this section.~~

Limitation, first five year period

(4) In respect of each reference period from May 1, 2017 to April 30, 2022, no funding obligation shall be incurred that would become payable during the reference period and result in ~~a~~amounts payable in respect of the clean energy adjustment ~~for~~in respect of the reference period unless,

(a) no fair adjustment has been made under Part II in respect of the reference period; or

(b) if a fair adjustment has been made under Part II in respect of the reference period, the funding obligations incurred would not be payable during the reference period in an amount that exceeds the [difference between the fair allocation amount ~~for~~in respect of the reference period and the amount of the fair adjustment ~~for~~in respect of the reference period].

Other reports

(3.1) The Financial Services Manager shall submit to the Minister such reports and information as the Minister may require from time to time and shall, if required by the Minister to do so, examine, report and advise on any question relating to the Financing Plan.

Confidentiality ~~of plan~~

(45) The ~~Financing Plan is~~following are deemed to be ~~a record~~records subject to ~~section 17~~clauses 18 (1) (c) and (d) of the *Freedom of Information and Protection of Privacy Act*~~.~~:

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1. The Financing Plan.

2. Reports referred to in subsection (3.1).

3. Any other document that would reveal information contained in the Financing Plan or the reports.

Amendments to plan

(6) The Financial Services Manager may amend the Financing Plan at any time.

Same

(7) In the event that the Financing Plan is amended, any reference in this section to the Financing Plan is deemed to be a reference to the plan as amended.

Implementation of Financing Plan

17xx. (1) The Financial Services Manager shall incur funding obligations ~~and make transfers~~ in material conformity with the applicable Financing Plan.

Same

(2) For greater certainty, ~~section [paramountcy of funding obligations]~~subsection 17xx (5) applies despite the failure of the Financial Services Manager to comply with subsection (1).

Financing entities

(3) In accordance with the Financing Plan, the Financial Services Manager may establish or cause to be established one or more financing entities that may incur funding obligations ~~and make transfers~~.

Prohibition

(3.1) The Financial Services Manager shall not provide for funding obligations to be incurred with any recourse to any assets of an electricity vendor, the Board, Ontario Power Generation Inc., the Province or the Lieutenant Governor in Council, except to the extent that any of these persons or entities may be liable to perform obligations or duties arising under this Act or under the express terms of a funding obligation or other agreement.

Effect of amendment to ~~Fair Allocation Plan~~fair allocation amount

(4) ~~No~~Each funding obligation incurred and ~~no~~each transfer made by ~~the Financial Services Manager shall~~a financing entity is deemed to be ~~affected by any inconsistency~~consistent with the Financing Plan~~, including any inconsistency with the principles set out in section X.~~ and [the fair allocation amount].

PART V
THE REGULATORY ASSET

~~**Interpretation, portion of regulatory asset**~~

~~**18xx.** If a transfer under this Part provides for the transfer of a portion of the regulatory asset, any references in this Part to the regulatory asset are deemed to be references to the portion of the regulatory asset transferred.~~

~~[Note: This is meant to assist with clarity in the subsequent provisions.]~~

~~**Variance account**~~

~~**19xx.** (1) The Board shall issue an accounting order to authorize the IESO to do the following:~~

~~1. Create a variance account for the purposes of this Act.~~

~~2. Record the IESO funding shortfall in the variance account from time to time.~~

~~3. Recover the IESO funding shortfall in accordance with section X and the regulations.~~

~~**No hearing**~~

~~(2) The order of the Board shall be made in writing and without holding a hearing.~~

~~**No appeals, etc.**~~

~~(3) No appeal lies from the order of the Board.~~

IESO funding shortfall

20xx. (1) The IESO ~~shall determine the IESO~~ funding shortfall for each month shall be determined in accordance with the ~~following manner:~~regulations.

~~1. Calculate the sum of all invoice amounts issued to specified consumers for the month if Part II of this Act did not apply.~~

~~2. Calculate the sum of all invoice amounts issued to specified consumers for the month.~~

~~**3. Subtract the amount calculated**~~**Electricity vendors to provide information**

(2) Electricity vendors shall provide to IESO such information as IESO may reasonably request for the purposes of determining the IESO shortfall under ~~paragraph 2 from the amount calculated under paragraph 1,~~subsection (1) and ~~make any other adjustments~~such further information as may be prescribed.

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Same

(~~2) To the extent that the~~3) IESO ~~funding shortfall for any month is based~~may rely on ~~an estimate of the~~ information provided by electricity vendors for the purposes of the determination under subsection (1).

Variance account~~used by specified consumers, the~~ to be established, maintained

20.1xx (1) The IESO shall ~~record an adjustment in the~~establish and maintain a variance account ~~in the following month to reflect the difference between the estimate and the electricity actually used by specified consumers~~for the purposes of this section.

Recording ~~of IESO funding shortfall~~in variance account

(~~3~~)2) The IESO shall record the following in the variance account:

1. The amount of the IESO funding shortfall ~~from time to time, including adjustments~~for each month.

2. All payments received by the IESO resulting from the exercise of the right of recovery under section ~~21~~21xx and any transfer under section ~~22, in the variance account~~22xx.

3. Such other adjustments as may be prescribed.

Recording determinative

(~~4) A~~3) Subject to any finding of [manifest error], a recording ~~of~~by the IESO ~~funding shortfall~~ in the variance account of the balance is, as of the time of the recording, determinative of the ~~amount of IESO funding shortfall~~balance at the time ~~of the recording~~.

Rights of investment interest owner

(4) No change made by IESO to the balance in the variance account shall, if the previous balance was relied upon by an investment interest owner in the context of a transfer under section 22x, affect the rights of the investment interest owner acquired under the transfer.

Regulatory asset established

21xx. (1) The IESO has the right, exercisable in accordance with this Act and the regulations, to recover the ~~IESO funding shortfall~~balance recorded in the variance account from specified consumers.

~~**Same, restrictions**~~

Limitation

(2) ~~The IESO's right to recover~~Despite subsection (1), the IESO ~~funding shortfall under subsection (1) is subject to the following:~~

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~~1. The IESO~~ shall not be entitled to collect ~~the IESO funding shortfall~~all or part of the balance recorded in the variance account from specified consumers before May 1, 2022.

~~2.~~ **Board to set rates**

(3) The ~~process~~Board shall, from time to time, determine and set rates payable by ~~which the~~specified consumers to allow for IESO ~~may~~to recover the ~~IESO funding shortfall~~balance recorded in the variance account.

Same, limitations

(4) The Board's powers under subsection (3) shall be ~~established by~~exercised in accordance with the ~~Board, having regard to the amount of the IESO funding shortfall from time to time and the [fair allocation calculation].~~regulations.

~~3. Such other restrictions as may be prescribed.~~

Transfer of regulatory asset

22xx. (1) The IESO may from time to time transfer all or a portion of the regulatory asset to any financing entity ~~under the Financing Plan, which transfer creates the investment asset~~.

Same

(2) Upon receipt by IESO of ~~any~~ payment in consideration ~~for the~~of a transfer~~,~~

~~(a)~~ of all or a portion of the regulatory asset, the ~~IESO~~transfer shall ~~record the payment as a reduction of~~ be valid and enforceable against the IESO ~~funding shortfall in the variance account; and~~

~~(b) unless otherwise provided for in this Act,~~and the IESO shall ~~have~~retain no further right, title or interest in, or any obligations in respect of, the regulatory asset or in the investment asset created by the transfer.

Same

(3) Upon transfer, the financing entity acquires an investment interest and becomes an investment asset owner ~~and acquires an investment interest~~.

Validity of transfer

23xx. (1) A transfer of a regulatory asset under this Act is a valid and enforceable sale and absolute transfer to the investment ~~asset~~interest owner of the regulatory asset~~,~~ ~~and the investment asset created by the transfer shall be immediately vested in the transferee~~.

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Same

(2) Without limiting subsection (1), any transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of IESO's right to recover the IESO funding shortfall, and not merely as a security interest, and upon the absolute transfer the transferor shall retain no right, title or interest in the regulatory asset, including all rights to recover the IESO funding shortfall.

Deemed perfection, etc.

(3) At the time a transfer of a regulatory asset is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the transferee shall have priority over any liens in favour of those persons.

PART VI
THE INVESTMENT ASSET

~~**Interpretation, investment asset**~~

Effect of~~ 24xx. If a~~ transfer

24xx. ~~under this Part provides for the~~ (1) The first transfer of ~~an investment~~the regulatory asset~~, any references in this Part to~~ or a portion of it creates the investment asset.

Same

(2) Upon any transfer of all or a portion of the regulatory asset to a financing entity, the investment asset resulting from the transfer is immediately vested in the financing entity, free and clear of any adverse claim, and the financing entity becomes an investment interest ~~are deemed to be references to the specific~~owner and acquires an investment interest ~~transferred~~**.**

Investment asset established

25xx. (1) The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests ~~without duplication~~of investment interest owners:

1. The right to impose, ~~bill,~~ invoice, collect ~~and,~~ receive and recover amounts in respect of the clean energy adjustment from specified consumers, including the right to determine the ~~amount of the~~ clean energy adjustment in accordance with this Act.

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2. The right to receive ~~and,~~ collect ~~all~~and recover amounts in respect of the clean energy adjustment that are imposed, ~~billed and~~ invoiced and recoverable under this Act, including any ~~amounts that all~~ amounts in respect of the clean energy adjustment that are held by electricity vendors or other prescribed parties.

3. All rights and entitlements under such accounts as may be prescribed by regulation and all amounts on deposit in such accounts.

4. The right to enforce the duties and obligations under this Act of each electricity vendor to impose, attribute, charge~~, bill~~ and invoice for amounts in respect of the clean energy adjustment.

5. The right to enforce the duties and obligations under this Act of each electricity vendor to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by an electricity vendor to recover payment of amounts in respect of the clean energy adjustment.

6. All rights of any kind ~~(whether in tort, contract or otherwise) that attach or are attendant or incidental~~related to any of the other property rights or interests that comprise the ~~regulatory asset owner's regulatory asset~~investment interest.

7. All revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 6, regardless of whether ~~such revenue, collections, claims, payments and proceeds are imposed,~~it is invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

Not affected by failure to impose etc. clean energy adjustment

(1.1) An investment interest is not affected by any failure to impose, attribute, invoice, accrue or collect amounts in respect of the clean energy adjustment.

No set off, etc.

(2) The investment asset shall not be set off ~~or reduced by any person in any circumstance, including~~,

(a) by a consumer, an electricity vendor, an agent of the investment ~~asset~~interest owner or an owner of distribution system assets in the Province;

(b) in connection with any default~~, bankruptcy, reorganization or other insolvency proceeding~~ of a person mentioned in clause (a); or

(c) by any affiliate or successor of a person mentioned in clause (a).

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Exercise of rights

(3) The rights of the investment asset owner to collect and enforce its rights and interests in, to and in respect of the investment asset against a specified consumer shall be exercised in accordance with ~~section [xx] of the *Personal Property Security*~~Part III of this Act.

Collective action required

(4) If the investment ~~asset~~interest owner owns a right or interest in the investment asset that comprises less than the entire property right and interest constituted by the investment asset, the right or interest shall only be enforced by the investment ~~asset~~interest owner collectively and in coordination with all other investment ~~asset~~interest owners, and any agreement among that collective in furtherance of the collective action shall be valid and binding on the investment ~~asset~~interest owner as a collective in accordance with its terms.

~~[Note: Successors may need to be addressed here.]~~

Transfer of investment interest

26xx. An investment ~~asset~~interest owner may transfer all or a portion of its rights and interests in an investment interest to any other investment ~~asset~~interest owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan.

Validity of transfer

27xx. (1) A transfer of an investment interest under this Act is a valid and enforceable sale and absolute transfer of the investment interest and confers upon the ~~owner of the~~ investment ~~interest acquired~~asset owner a valid property right and interest in, to and under the applicable investment interest in accordance with the terms of the transfer.

Same

(2) Without limiting subsection (1), a transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of an investment ~~asset~~interest owner's right, title and interest in, to and under an investment interest, and not merely as a security interest, and upon such absolute transfer the transferor shall retain no right, title or interest in the investment interest, subject to the transfer, including all rights to the investment interest arising after the transfer.

Deemed perfection, etc.

(3) At the time a transfer of an investment interest is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

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Priority of transfer, assignment, etc.

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the investment ~~asset~~interest owner shall have priority over any liens in favour of such other persons.

Investment ~~asset~~interest owner may grant security interest

28xx. (1) An investment ~~asset~~interest owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under the investment interest to or in favour of any person to secure a funding obligation.

Validity

(2) A security interest granted under this Act shall be valid and enforceable in accordance with its terms.

Perfection and priority of security interests

(3) All provisions of the *Personal Property Security Act* shall apply to the investment asset and each investment interest on the basis that it is intangible personal property, except as otherwise provided for in this section, and any granting of a security interest by the ~~owner of an~~ investment interest owner to secure a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by filing a financing statement under that Act on that basis.

Proceeds

(4) All proceeds of an investment interest that are subject to the security interest and that are received by the applicable investment ~~asset~~interest owner shall immediately be subject to the security interest and shall be perfected without any physical delivery of the proceeds, registration of any financing statement or any further act.

Perfection

(5) The security interest shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may subsequently attach to the property rights and interests in the investment interest subject to the security interest, subject to the written consent of the person to whom the security interest has been granted.

Same

(6) The person to whom the security interest has been granted shall have a perfected security interest in revenues or other proceeds that are deposited in any ~~[investment asset account] or other account~~ccount of any electricity vendor, ~~the IESO,~~ an agent of an

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electricity vendor ~~or the IESO~~ or other person who may have commingled such revenues or other proceeds with other funds.

Notice required

(7) The secured party shall be entitled to exercise the rights of an investment interest owner only after the secured party has given notice of the enforcement of its security interest to the IESO.

Definition

(8) For the purposes of this section, a security interest is perfected when it is perfected as described in the *Personal Property Security Act*.

PART VI
MISCELLANEOUS

Appointment of agent, invoicing or collection

29xx. If a prescribed circumstance applies, the Lieutenant Governor in Council may by regulation appoint a person to carry out some or all of the obligations of an electricity vendor under this Act in the place of an electricity vendor with respect to invoicing or collection.

Not Crown agent

30xx. For greater certainty, no agent appointed under this Act is an agent of the Crown for any purpose, despite the *Crown Agency Act*.

Sequestration

31xx. (1) A court in the Province may, upon application by an investment ~~asset~~interest owner or a secured party, order the sequestration and payment of amounts in respect of the clean energy adjustment, collections and remittances, as applicable, for the benefit of the investment ~~asset~~interest owner or secured party by any person or entity authorized to collect amounts in respect of the clean energy adjustment, including defaults on any required remittance of amounts in respect of the clean energy adjustment, collections or remittances.

Same

(2) An order under subsection (1) does not limit any other remedies available to the applicant.

~~**Same**~~

~~(3) An order under subsection (1) shall remain in full force and effect despite any bankruptcy, reorganization or other insolvency proceedings with respect to the person or entity who is subject to the order.~~

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Choice of law

32xx. The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the regulatory asset, the investment asset, the clean energy adjustment or the undertaking of the Crown under section x shall be the laws of the Province.

Conflict

33xx. The provisions of this Act and the regulations apply despite any provision of any other Act regarding the attachment, assignment or perfection, or the effect of perfection or priority of any transfer or security interest.

No further approvals, etc.

34xx. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required ~~with respect to the actions to be taken in compliance with this Act, including actions~~ to be taken under the Financing Plan or in relation to the ~~establishment~~determination of the ~~Fair Allocation Plan~~fair allocation amount.

Immunity

35xx. (1) No action or other proceeding for damages shall be instituted against any employee of the Province, IESO, OPG or OEB for any act done in good faith in the execution or intended execution of any duty or authority under this Act or for any alleged neglect or default in the execution in good faith of any duty or authority under this Act.

Same

(2) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

References in marketing materials and offering documents

36xx. No person shall include, in marketing materials or offering documents relating to the financing of funding obligations, references to any rights, obligations, guarantees or undertakings arising under ~~this~~ section 5xx unless the prescribed requirements, if any, are satisfied.

Non-application, Financial Administration Act, s. 28[7]

37xx. Section 28 of the *Financial Administration Act* does not apply with respect to any transaction or agreement or undertaking required, permitted, contemplated or authorized, directly or indirectly, under this Act.

[7] ~~Note~~FLS - see s. 51 of the Electricity Act, 1998

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Regulations

38xx. The Lieutenant Governor in Council may make regulations~~,~~ in respect of the following matters:

~~(~~ 1. [8]Governing anything that is required or permitted to be prescribed or that is required or permitted to be done by, or in accordance with, the regulations or as authorized, specified or provided in the regulations.

2. Defining, for the purposes of a~~)~~ ~~defining any term~~ regulation, words and expressions used in this Act~~….~~ that are not defined in the Act.

~~(b) prescribing~~ x. Prescribing types of payment obligations that constitute funding obligations;

~~(a)~~x. governing the calculation [true-up amount] and how the amount is to be applied to the clean energy adjustment~~.~~;

~~(b)~~x. governing the inclusion of ~~adjustments~~information under this Act on invoices, which may include requiring notice to be provided by electricity vendors to specified persons regarding the adjustments~~.~~;

~~[Note: reg-making powers to be dealt with in subsequent draft]~~

x. governing the inclusion of information about the clean energy adjustment and any other matters provided for under this Act on invoices issued to specified consumers, including the form that the information must take and the form of the invoices and any notice to be provided to the specified consumer under this Act[9];

x. prescribing the time within which any action required by this Act may be required to be done;

x. Providing for such other matters as the Lieutenant Governor in Council considers advisable to carry out the purpose of this Act.

[8] FLS - see s. 78 (1) of the Climate Change Mitigation and Low-carbon Economy Act, 2016 - paras. 1 and 2.
[9] FLS - see *OEBA s.79.17 and 88(1)(z.11) and (z.12)*

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PART VII[10]
AMENDMENTS TO OTHER ACTS

ELECTRICITY ACT, 1998

200x. (1) Subsection 6 (1) of the *Electricity Act, 1998* ~~would be~~is amended by adding the following clauses:

(q.0.1) to exercise the powers and rights and to perform the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and to engage in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including,

(i) entering into agreements or arrangements with any person for the purposes of the *Ontario Fair Hydro Plan Act, 2017*;

(ii) engaging in activities related to making payments to and receiving payments as contemplated under the *Ontario Fair Hydro Plan Act, 2017* and to engage in related settlement activities;

(iii) engaging in activities related to the creation, transfer and administration of the regulatory asset created under the *Ontario Fair Hydro Plan Act, 2017*, which activities may include,

(iv) incurring liabilities in relation to the regulatory asset

(v) transferring the regulatory asset for consideration;

(vi) acting as a recovery agent under the *Ontario Fair Hydro Plan Act, 2017*;

200.1xx (1) Subsection 25.33 (1) of the Act is amended by striking out "and" at the end of clause (a) and by adding the following clauses:

(c) amounts paid to or received from a [prescribed] financial services entity or [a financing entity prescribed under] the *Ontario Fair Hydro Plan Act, 2017* and any related amounts; and

[10] FLS: These amendments are drawn from previous drafting contained in gov2016.146.e05 (which was drafted as amendments to the EA, 1998).

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(d) amounts collected from consumers who are [specified consumers within the meaning of] the *Ontario Fair Hydro Plan Act, 2017* in respect of the clean energy adjustment and any related amounts.

(1.1) Subsection 25.33 (2) of the Act is amended by striking out "and" at the end of clause (a) and by adding the following clauses:

(c) amounts paid to or received from a [prescribed] financial services entity or [a financing entity prescribed under] the *Ontario Fair Hydro Plan Act, 2017* and any related amounts; and

(d) amounts collected from consumers who are [specified consumers within the meaning of] the *Ontario Fair Hydro Plan Act, 2017* in respect of the clean energy adjustment and any related amounts.

(2) Subsection 25.33 (3) of the Act is amended by adding the following paragraph:

4. A consumer who is,

i. a [specified consumer within the meaning of] the *Ontario Fair Hydro Plan Act, 2017*, or

ii. prescribed by the regulations [made under the *Ontario Energy Board Act, 1998*].

(3) Clause 25.33 (4) (b) of the Act is amended by adding "or as may be required under a regulation made under the *Ontario Fair Hydro Plan Act, 2017* or the *Ontario Energy Board Act, 1998*" at the end.

(4) Subsection 25.33 (5) of the Act is amended by adding "or under the *Ontario Fair Hydro Plan Act, 2017*" at the end

201x. Section 53.1 of the Act ~~would be~~is amended by adding the following subsections:

Same, *Ontario Fair Hydro Plan Act, 2017*

53.1 (1.1) In addition to the objects mentioned in subsection (1), the objects of Ontario Power Generation Inc. include exercising the powers and rights and performing the duties and obligations assigned to it under ~~that Act~~the *Ontario Fair Hydro Plan Act, 2017* and engaging in activities to facilitate the implementation of ~~the *Ontario Fair Hydro Plan Act, 2017*~~that Act, including entering into contracts and undertakings on

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behalf of financing entities, subject to the ~~following:~~right to be paid by the financing entities for those services.

~~1. Entering into contracts and undertakings on behalf of special purpose financing entities, including pre-formation contracts and undertakings and as principal in relation to matters permitted by the *Ontario Fair Hydro Plan Act, 2017* subject to the right of reimbursement from amounts available to the financing entity.~~

~~2. Preparing reports on behalf of the financing entity.~~

~~3. Enforcing the rights of the financing entity.~~

~~4. Signing offering documents as sponsor or otherwise on behalf of the financing entity.~~

~~5. Exercising the powers and performing the duties of the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*~~

~~6. Issuing non-equity securities in Ontario Power Generation Inc. or on if its subsidiaries, for the purpose of raising funds to acquire debt or equity interests in a financing entity whose activities are limited to the incurrence of funding obligations pursuant to the *Ontario Fair Hydro Plan Act, 2017*.~~

Subsidiaries, etc.

(1.2) Ontario Power Generation Inc. may create or invest in one or more subsidiaries, trusts, partnerships or special purpose entities in order to more efficiently conduct its activities or achieve its objects.

~~**202x. Section 89 of the Act would be amended by adding the following subsection:**~~

~~**Exception**~~

~~**(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply in respect**~~**Deemed assets, entity**

(1.3) Despite any other provision of this Act, the *Business Corporations Act* or any other Act,

(a) the assets and liabilities of ~~amounts payable to~~ a special purpose financing entity shall not form part of the assets and liabilities of Ontario Power Generation Inc. ~~or a subsidiary~~or any of its subsidiaries; and

(b) the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries shall not form part of the assets and liabilities of a financing entity.

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Definition, financing entity

(1.4) For the purposes of this section, "financing entity" has the same meaning as ~~a result of its functions as the Financial Services Manager under the *Ontario* in the~~ *Fair Hydro Plan Act, 2017.*

~~**203x. Section 90 of the Act would be amended by adding the following subsection:**~~

~~**Exception**~~

~~(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply in respect of amounts payable to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a result of its functions as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.~~

~~[Note: Drafting still to be added to the EA consequential amendments: ***All fees charged by OPG as the FSM shall be approved by the OEB before they are included in the calculation of clean energy adjustments.***]~~

AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

204x. Subsection 1 (1) of the *Ontario Energy Board Act, 1998* ~~would be~~is amended by adding the following paragraph:

6. To facilitate the implementation of the ~~[TBD – language should link up with language from new~~*Ontario Fair Hydro Plan Act*~~]~~, *2017.*

205x. ~~Section~~Subsection 70 (2.1) of the Act ~~would be~~is amended by adding the following paragraph:

4. The licensee is required to comply with the *Ontario Fair Hydro Plan Act, 2017.*

206x. Section 78.1 of the Act is amended by adding the following subsection:

Same, limitation re Ontario Power Generation Inc.

(3) The determination of a payment to Ontario Power Generation Inc. under this section shall not include any consideration of amounts related to activities of Ontario Power Generation Inc. carried out in relation to the *Ontario Fair Hydro Plan Act, 2017.*

Same

(3.1) The amounts referred to in subsection (3) include, without limitation, the following:

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1. Amounts related to the appointment of Ontario Power Generation Inc. as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

2. Amounts related to the charging of fees for performing duties as the Financial Services Manager.

3. ~~*[Note - still need to draft new subs. 70 (2.1)]*~~
Amounts related to exercising the powers and performing the duties of the Financial Services Manager.

4. Amounts related to the consolidation of the assets and liabilities for accounting purposes of any special purpose financing entities established under and for the purposes of that Act.

Short Title - this proposal for legislation would, if approved by the Legislature, have a short title to be determined by Government.

Timing – this proposal for legislation would, if approved by the Legislature, come into force on a date to be established by Government.

SCHEDULE 1
ESTIMATED FINANCE AMOUNT

Estimated finance amount

1. The estimated finance amount for a reference period shall be determined by estimating, prior to the start of a reference period, the sum of the following:

1. The sum of all amounts that are payable during the reference period by or on behalf of the investment asset owners to satisfy an obligation to repay, redeem or repurchase, or to provide for the repayment, redemption or repurchase, of all or a portion of the amount advanced to the owners under a funding obligation, excluding any payment made by applying the proceeds of a refinancing.

2. The sum of all funding costs for the reference period, determined as follows:

    i. Calculate the aggregate of all interest, scheduled principal and other periodic finance charges accruing, due and becoming payable or paid by or on behalf of investment assets owners during the reference period in respect of all funding obligations, including such amounts as may be prescribed.

    ii. Calculate the sum of the aggregate of all amounts received by or on behalf of investment asset owners during the reference period in respect of all funding obligations and such other amounts as may be prescribed.

    iii. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1.

3. The sum of all amounts payable during the reference period by or on behalf of investment asset owners to redeem, prepay or repurchase a funding obligation, including any premium, make-whole or other amount becoming payable under a funding obligation to give effect to the redemption, prepayment or repurchase.

4. The balance of the finance reserve at the end of the reference period, as determined under section 3 to this Schedule.

5. The sum of any other amounts payable during the reference period by or on behalf of investment asset owners that were incurred or committed to directly or indirectly in connection with the incurrence of funding obligations under the Financing Plan during the reference period, which may include such amounts as may be prescribed.

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Funding costs

2. For the purposes of paragraph 2 of section 1 to this Schedule, the funding costs for a reference period are determined by taking the following steps:

Finance reserve balance

3. (1) For the purposes of paragraph 4 of section 1 to this Schedule, the balance of the finance reserve at the end of the reference period is determined by taking the following steps:

1. Calculate the sum of all amounts deposited by or on behalf of investment asset owners during the reference period in order to pre-fund, collateralize, over-collateralize or establish reserves for the ultimate payment of funding obligations or for related contingencies specified in the Financing Plan.

2. Calculate the sum of all amounts withdrawn by or on behalf of investment asset owners during the reference period from deposits previously made as described in paragraph 1.

3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1.

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FW_ FA1710 Combined DFR - V14 Ministry Review opcd.rtf

From: Petsche, Nadine (TBS) []
To: Schuurman, Tim (MOF) [Tim.Schuurman@ontario.ca]
CC: Veinot, Cindy (TBS) (Cindy.Veinot@ontario.ca) [Cindy.Veinot@ontario.ca]
Subject: FW: FA1710 Combined DFR - V14 Ministry Review opcd
Date: Tuesday, May 16, 2017 10:44:29
Attachment 1: image001.png

Tim,

On yesterday's call you mentioned restrictions on circulating the draft FAO report. I assume that we would be able to share with IESO, OPG (and they in turn with their external advisors), in advance of the meeting/call?

Nadine

From: Veinot, Cindy (TBS)
Sent: May 16, 2017 9:59 AM
To: Schuurman, Tim (MOF); Hughes, Karen (TBS)
Cc: Petsche, Nadine (TBS)
Subject: RE: FA1710 Combined DFR - V14 Ministry Review opcd

Yes – I believe those in attendance at the briefing should include Kim Marshall – IESO and Michel Picard – KPMG as well as John Mauti or Ken Hartwick from OPG, and perhaps EY (although FAO has not focused on the accounting issues re: OPG that much). In addition, we should also be in attendance. We were not in attendance at the technical briefing held for the FAO on FHP and have not had any discussions with them on the accounting. We can help coordinate those folks.

Cindy

From: Schuurman, Tim (MOF)
Sent: May-16-17 9:55 AM
To: Veinot, Cindy (TBS); Hughes, Karen (TBS)
Subject: RE: FA1710 Combined DFR - V14 Ministry Review opcd

Thanks Cindy – fyi, I've been asked, as part of my call with the FAO this morning, to offer up a briefing for them with KPMG (who provided the external advice on this). Are

you guys supportive of this and could help make those arrangements?

Want your input before I offer this up.

Thanks

Tim Schuurman

Assistant Deputy Minister

Office of the Budget, Ministry of Finance

7 Queen's Park Cres.

Toronto ON M7A 1Z1
Tel: 416-327-0173

From: Veinot, Cindy (TBS)
Sent: May-16-17 9:51 AM
To: Schuurman, Tim (MOF)
Cc: Hosick, Sarah (TBS)
Subject: FW: FA1710 Combined DFR - V14 Ministry Review opcd

Tim – see attached – we have edited the accounting sections vs. providing comments in the table form as the suggested edits are extensive.

Cindy

From: Veinot, Cindy (TBS)
Sent: May-15-17 7:32 PM
To: Hughes, Karen (TBS); Laughton, Patrick (TBS); Hosick, Sarah (TBS); Petsche,

Nadine (TBS)
Subject: FA1710 Combined DFR - V14 Ministry Review opcd

See attached for OPCD's comments – this is a marked draft from the FAO version.

Cindy

image001.pdf

Office of the Budget
MINISTRY of FINANCE

FW_ FAO Report.rtf

From: Petsche, Nadine (TBS) []
To: Veinot, Cindy (TBS) (Cindy.Veinot@ontario.ca) [Cindy.Veinot@ontario.ca]
Subject: FW: FAO Report
Date: Thursday, May 25, 2017 11:34:04

Cindy,

Sharing, in case you're available to join a call this afternoon at 3 pm (see discussion topics below). Nadine

From: Kim Marshall [mailto:Kim.Marshall@ieso.ca]
Sent: May 25, 2017 9:58 AM
To: Picard, Michel; Susan Nicholson; Petsche, Nadine (TBS); mbetik@kpmg.ca
Subject: RE: FAO Report

For this afternoon I would like to talk about preparing a document for delivery to IESO board – more of an auditor general response than an FAO. Cover:

· Her committee statement, comments – what clarifications/opposing views would add value to her comments

· Her previous regulatory accounting view – why this is ifrs 14 specific???

· What is worse case – provincial books opinion

Anything else?

Kimberly Marshall | VP, Corporate Services & CFO

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Conservation: www.saveONenergy.ca | Twitter: saveONenergyOnt | LinkedIn: saveONenergy

-----Original Appointment-----
From: Georgia Ritchie-Wust **On Behalf Of** Kim Marshall
Sent: May 24, 2017 11:58 AM
To: Kim Marshall; 'Picard, Michel'; Susan Nicholson; Nadine.Petsche@ontario.ca
Subject: FAO Report
When: May 25, 2017 3:00 PM-4:00 PM (UTC-05:00) Eastern Time (US & Canada).
Where: Conference Call - Call In Details Below

The call will commence once Kim signs on as the moderator

Local Dial In: 416-343-2654

Toll Free Dial In: 1-866-440-8935

Conference ID: 4149199

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FW_ FAO Report.rtf

From: Petsche, Nadine (TBS) []
To: Veinot, Cindy (TBS) (Cindy.Veinot@ontario.ca) [Cindy.Veinot@ontario.ca]
Subject: FW: FAO Report
Date: Thursday, May 25, 2017 12:58:54

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fyi

From: Picard, Michel [mailto:mpicard@kpmg.ca]
Sent: May 25, 2017 11:54 AM
To: Kim Marshall; Susan Nicholson; Petsche, Nadine (TBS); Betik, Matthew
Subject: RE: FAO Report

· Requesting an agenda from AG for meeting of June 14

· Date the AOG received a briefing on the transaction

· Provide similar structures in the US to OAG

· OAG/Tim Beauchamp proposed solution - GBE + IFRS

· Our national head of the Professional practice to attend the AG meetings next week and June 14

· Consider a 2nd opinion from another firm on PSAB/regulatory accounting – Deloitte independent as PWC/EY advised OPG

From: Kim Marshall [mailto:Kim.Marshall@ieso.ca]
Sent: Thursday, May 25, 2017 9:58 AM
To: Picard, Michel <mpicard@kpmg.ca>; Susan Nicholson <susan.nicholson@ieso.ca>; Nadine.Petsche@ontario.ca; Betik, Matthew <mbetik@kpmg.ca>
Subject: RE: FAO Report

For this afternoon I would like to talk about preparing a document for delivery to IESO board – more of an auditor general response than an FAO. Cover:

- Her committee statement, comments – what clarifications/opposing views would add value to her comments
- Her previous regulatory accounting view – why this is ifrs 14 specific???
- What is worse case – provincial books opinion

Anything else?

Kimberly Marshall | VP, Corporate Services & CFO

Independent Electricity System Operator (IESO) | T: (416) 969-6232 | C: (416) 545-7202

120 Adelaide Street West, Suite 1600, Toronto, ON M5H 1T1

Web: www.ieso.ca | Twitter: IESO_Tweets | LinkedIn: IESO

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Conservation: www.saveONenergy.ca | Twitter: saveONenergyOnt | LinkedIn: saveONenergy

-----Original Appointment-----
From: Georgia Ritchie-Wust **On Behalf Of** Kim Marshall
Sent: May 24, 2017 11:58 AM
To: Kim Marshall; 'Picard, Michel'; Susan Nicholson; Nadine.Petsche@ontario.ca
Subject: FAO Report
When: May 25, 2017 3:00 PM-4:00 PM (UTC-05:00) Eastern Time (US & Canada).
Where: Conference Call - Call In Details Below

The call will commence once Kim signs on as the moderator

Local Dial In: 416-343-2654

Toll Free Dial In: 1-866-440-8935

Conference ID: 4149199

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FW_ Financing of a regulatory asset.rtf

From: Picard, Michel [mpicard@kpmg.ca]
To: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
Subject: FW: Financing of a regulatory asset
Date: Monday, February 13, 2017 14:01:32

From: Picard, Michel
Sent: Monday, February 13, 2017 1:00 PM
To: MAUTI John -FIN & C CTRL <john.mauti@opg.com>; 'CHENG Alec -FIN & C CTRL' <alec.cheng@opg.com>
Subject: Financing of a regulatory asset

Alec, John,

The issue is the following:

· IESO, the System operator, has been asked by the province of Ontario to delay the recovery of 10% of the energy purchased from the generators.

· The 10% will be financed by Ontario Power Generation (OPG) and will be recovered over a period of 20-30 years to smooth the impact on rates.

· IESO and OPG are both rate-regulated by the Ontario Energy Board (OEB).

· IESO is an agent to the market participants – ie. IESO records the energy transactions on a net basis – since it is a pass-through there is no net impact on the statement of income.

· IESO currently recovers most of the energy costs paid to the generators in the same month with the remaining amount being recovered in the following month.

The journal entries to reflect the above discussion are as follows:

1. to record the energy purchased from generators

Dr Energy purchased 100

Cr Generators 100

2. to record the amount collected from the distributors

Dr Cash 90

Cr Revenue 90

3. to record the remaining amount to be collected from the distributors over a period of 20-30 years in accordance with legislation and the OEB ‘s direction

Dr Regulatory asset 10 Can IESO record a regulatory asset?

Cr Revenue 10

4. to record the cash received from OPG to finance the remaining 10% payments to the generators

Dr Cash rec’d OPG 10

Cr Due to OPG 10 The alternative is to eliminate the regulatory asset instead of creating a liability.

5. to record the payments to generators

Dr Generators 100

Cr Cash 100

As noted in the example above, there are a few questions that I need to address.

1. Although IESO is rate-regulated, can it recognize a regulatory asset for the pass-through? The issue at play is that IESO is an agent of the market participants and the definition of a regulatory asset under ASC 980 requires to be an incurred cost by IESO.

2. Assuming IESO can recognize a regulatory asset for the 10% of the uncollected energy costs, does IESO derecognize the regulatory asset when IESO receives the cash from OPG? Or does it maintains the regulatory asset and records cash with an offsetting liability to OPG?

3. What type of asset will OPG recognize? A regulatory asset or an intangible asset?

Michel Picard, CPA, CA

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FW_ For your attention.rtf

From: Petsche, Nadine (TBS) []
To: Picard, Michel (mpicard@kpmg.ca) [mpicard@kpmg.ca]
Subject: FW: For your attention
Date: Wednesday, March 22, 2017 20:46:47

---

fyi

From: Petsche, Nadine (TBS)
Sent: March-22-17 8:46 PM
To: stephen.ashbourne@blakes.com
Subject: For your attention

Stephen,

I'm just updating my control analysis based on the latest version of the Declaration and the TPA. I came across the following extract which also needs to be revised to reflect reference to 'principles' of the directive only. Sorry for the late notice. Just saw it now.
n

Declaration

Power to Pay Trustee's Fees. The Original Trustee shall be entitled to be paid and receive the fees set forth in the Original Trustee's schedule of fees delivered as of or prior to the date hereof as compensation for its services under this Declaration, and to be reimbursed for its out-of-pocket expenses reasonably incurred, in each case from the Assets and without the approval of any Beneficiary or any court. The Original Trustee shall be entitled, in its sole and absolute discretion, to withdraw funds from time to time for such purpose from any account of the Trust. Members of the Board of Trustees shall be entitled to reimbursement for and in respect of their out-of-pocket expenses reasonably incurred in discharging their respective duties and obligations under this Declaration, in each case without the approval of any Beneficiary or any court, provided that the members of the Board of Trustees have general regard to sorts of limitations as are set forth in the "Travel, Meal and Hospitality Expenses Directive of the Province" specified and amended by the Province from time to time, a copy of the current version of which is attached as Exhibit 1 to the Principles Annex.

FW_ GA Refinancing (IESO related doc).rtf

From: Donaldson, Mark (TBS) []
To: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
Subject: FW: GA Refinancing (IESO related doc)
Date: Wednesday, June 20, 2018 13:14:05
Attachment 1: Draft report dated May 17 2017.pdf

From: Lee Anne Probert
Sent: June 20, 2018 1:13:09 PM (UTC-05:00) Eastern Time (US & Canada)
To: Donaldson, Mark (TBS)
Subject: FW: GA Refinancing (IESO related doc)

Please see below.

--

LeeAnne Probert | Senior Manager | Assurance Services

Ernst & Young LLP

Office: 416 943 3554 | leeanne.probert@ca.ey.com

From: Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]
Sent: May-19-17 8:47 AM
To: Suzie Gignac <suzie.r.gignac@ca.ey.com>; Blake Langill <blake.w.langill@ca.ey.com>; Lee Anne Probert <leeanne.probert@ca.ey.com>
Subject: GA Refinancing (IESO related doc)

Suzie/Blake/LeeAnne,

Attached, for your reference, is the final paper related to IESO accounting (subject to change based on future Regs/Commercial Contracts, etc.).

Regards,

Nadine

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Draft report dated May 17 2017.pdf

FINAL DRAFT

KPMG Letter to the Independent Electricity System Operator

An Accounting Opinion on the Application of PSAS to the Consolidation of a Trust and to the Recognition and Derecognition of a Variance Account in Relation to Bill 132, *Ontario Fair Hydro Plan Act, 2017*

This letter has been prepared in draft form and will be updated upon receipt of the adopted legislation, if passed, (including the amendments of the Electricity Act, 1998 and the OEB Act, 1998) and finalized financial structure (including the bylaws and regulations of the Trust to be established by OPG) and other relevant agreements necessary for us to provide our final opinion, of which legislation and other relevant agreements are expected to be enacted/ finalized on or before September 30, 2017.

NOTICE OF NON RELIANCE

This Notice is regarding the accompanying Letter to provide an accounting opinion on the application of Public Sector Accounting Standards to the consolidation of a trust and to the recognition and derecognition of a variance account in relation to Bill 132, *Ontario Fair Hydro Plan Act, 2017* (the "**Letter**") prepared by KPMG LLP for the Independent Electricity System Operator ("Client").

The following terms apply to any review of the Letter and should you not agree to these terms, please do not review the Letter and delete copy of the same.

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Yours very truly,

KPMG LLP

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May 16, 2017

CONFIDENTIAL

120 Adelaide Street West
Suite 1600
Toronto, ON
M5H 1T1

The Board of Directors

Dear Sirs,

We have been engaged to provide you with an accounting opinion on the application of Public Sector Accounting Standards to the consolidation of a trust and to the recognition and derecognition of a variance account in relation to Bill 132, *Ontario Fair Hydro Plan* Act, 2017 as tabled in the first reading ("Bill 132") (Appendix A to this letter). This letter is being issued to the Independent Electricity System Operator ("IESO" or the "Company") in connection with its evaluation of the consolidation requirements and the accounting for the variance account under Canadian Public Sector Accounting Standards ("PSAS"). Our engagement has been conducted in accordance with generally accepted standards in Canada for such engagements.

The ultimate responsibility for the decision on the appropriate application of PSAS for the specific issues described below rests with management of the Company as preparers of the financial statements.

The adoption of Bill 132 (including the subsequent amendments of the Electricity Act, 1998 ("the Electricity Act") and the Ontario Energy Board ("OEB" or the "Board") Act, 1998 ("the OEB Act")), and the finalization of the financing structure (including the bylaws and regulations of the trust to be established by OPG) and other agreements will take several months. Accordingly, our judgment on the appropriate application of PSAS for the specific matters described below is based on the facts, circumstances and assumptions provided to us. The finalization of the legislation, regulations, financing structure and other agreements may impact the comments and conclusions set out herein. Our comments and conclusions are based on Bill 132 and related matters as they exist at the date of this letter.

The following three issues are addressed in this letter:

Issue #1: Can the IESO recognize a regulatory asset related to the variance account created by Bill 132?

Issue #2: Is the trust to be established by Ontario Power Generation (the "OPG Trust") controlled by the IESO according to the guidance issued under PSAS 1300 *Government Reporting Entity* and therefore subject to consolidation by IESO?

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Issue #3: What is the accounting treatment for derecognition of the regulatory asset by the IESO upon transfer of the variance account to the OPG Trust?

Background for issue #1

The facts, circumstances, and assumptions relevant to the specific transactions as provided to us by the management of the Company (responsible party) are as follows:

1. The IESO's legal status is a not-for-profit, non-taxable, corporation established pursuant to Part II of the Electricity Act. Management of the IESO has determined that the Company is an *Other Governmental Organization* and accordingly prepares its financial statements in accordance with PSAS.

2. IESO is rate regulated by the OEB in accordance with the Electricity Act and the OEB Act.

3. *Extract from the 2016 IESO financial statements, note 3 New Accounting Policies, audited by KPMG* "As of January 1, 2016, the IESO changed its accounting policy regarding the recognition of assets and liabilities subject to rate regulation. The change was made to better reflect the economic substance of certain types of expenses that may not be directly recovered through the normal revenue requirement model. This change has been applied retroactively and has increased amounts previously unrecorded for regulatory assets and decreased amounts previously reported for accumulated deficit."

4. *Extract from the 2016 IESO financial statements, note 2(d) Summary of Significant Accounting Policies, Regulatory assets and liabilities.* "As a rate-regulated entity, the IESO, in appropriate circumstances establishes regulated assets or liabilities and thereby defers the impact on the statement of operations of certain expenses or revenues because they are probable to be collected or refunded to market participants through future billings. The IESO applies guidance from United States Generally Accepted Accounting Principles (US GAAP) Topic 980, *Regulated Operations ("ASC 980")*, in this policy."

5. *Extract from Section 78(3.3) of the OEB Act:* In approving or fixing rates under subsection (3.1),

   (a) the Board shall forecast the cost of electricity to be consumed by the consumers to whom the rates apply, taking into consideration the adjustments required under section 25.33 of the Electricity Act, 1998 and shall ensure that the rates reflect these costs; and

   (b) the Board shall take into account balances in the IESO's variance accounts established under section 25.33 of the Electricity Act, 1998 and shall make adjustments with a view to eliminating those balances within 12 months or such shorter time periods as the Minister may direct.

6. Currently, IESO recognizes two regulatory assets for unrecovered smart metering expenses and unrecovered PSAB transition items as permitted by rates approved by the OEB. In addition, in accordance with section 25.33 of the Electricity Act, IESO also recognizes variance accounts (eg. OESP, RPP and RRRP variance accounts) to record all amounts payable or receivable by it in connection with the amounts paid to generators, the Ontario Electricity Financial Corporation ("OEFC"), distributors and to entities with whom the IESO has a procurement contract.

7. The Electricity Act, OEB Act and other regulations will be amended to reflect the following *extracts of Bill 132:*

   Section 1 Definitions, Transfer of regulatory asset

   (3) In this Act, a reference to the transfer of a specified portion of the regulatory asset is a reference to the following, as provided for in subsection 26 (3):

1. A reduction in the balance in the variance account.
2. The adjustment of the regulatory asset.
3. The acquisition by a financing entity of the investment interest corresponding to the specified portion of the regulatory asset.

Section 24 Variance account to be established, maintained

(1) IESO shall establish and maintain a variance account in which it records the following:

1. The IESO deferral for each month.
2. All payments received by IESO resulting from the exercise of the right of recovery under section 25 and any transfer under section 26.
3. Such other adjustments as may be prescribed, including adjustments in respect of the period that commences on or after May 1, 2017 and before the day this section comes into force.

(2) Subject to the correction of any obvious error by the IESO, its recording of the balance in the variance account is determinative of the balance as of the time of the recording.

(3) No change made by IESO to the balance in the variance account shall, if the previous balance was relied upon by an investment interest owner in the context of a transfer under section 26, affect the rights acquired by the investment interest owner under the transfer.

Section 25 Regulatory asset established

(1) Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

(2) Subject to subsection (3), the Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for the IESO to recover the balance recorded in the variance account.

(3) IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2021.

Section 34 Board's Authority

(2) Despite anything to the contrary in the OEB Act, the Board may exercise any of its responsibilities under this Act without a hearing.

8. It is expected that the IESO deferral recorded by the IESO in the variance account (the regulatory asset) will be transferred to an investment asset owner (i.e. a trust to be established by OPG) on a monthly basis and cash collected within a short period of time. The total IESO deferral for the period from May 1, 2017 to April 30, 2047 is estimated at $28 billion plus interest.

Appropriate Accounting Principle for Issue #1

ASC 980 Regulated Operations

– For general-purpose financial reporting, an incurred cost for which a regulator permits recovery in a future period is accounted for like an incurred cost that is reimbursable under a cost-reimbursement-type contract. [980-10-05-6]

- Unless an accounting order indicates the way a cost will be handled for rate-making purposes, it causes no economic effects that would justify deviation from the GAAP applicable to business entities in general. The mere issuance of an accounting order not tied to rate treatment does not change an entity's economic resources or obligations. In other words, the economic effect of regulatory decisions—not the mere existence of regulation—is the pervasive factor that determines the application of GAAP. [980-10-05-8]
- The guidance in the Regulated Operations Topic applies to general-purpose external financial statements of an entity that has regulated operations that meet all of the following criteria:
  (a) The entity's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party regulator or by its own governing board empowered by statute or contract to establish rates that bind customers.
  (b) The regulated rates are designed to recover the specific entity's costs of providing the regulated services or products. This criterion is intended to be applied to the substance of the regulation, rather than its form.
  (c) In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume that rates set at levels that will recover the entity's costs can be charged to and collected from customers. This criterion requires consideration of anticipated changes in levels of demand or competition during the recovery period for any capitalized costs. [980-10-15-2]
- Incurred Cost - A cost arising from cash paid out or obligation to pay for an acquired asset or service, a loss from any cause that has been sustained and has been or must be paid for. [980-10-20] Glossary
- Failure of an entity's operations to continue to meet the criteria in paragraph 980-10-15-2 can result from different causes. Examples include the following:
  (a) Deregulation.
  (b) A change in the regulator's approach to setting rates from cost-based rate-making to another form of regulation.
  (c) Increasing competition that limits the entity's ability to sell utility services or products at rates that will recover costs (as used in paragraph 980-10-15-2).
  (d) Regulatory actions resulting from resistance to rate increases that limit the entity's ability to sell utility services or products at rates that will recover costs if the entity is unable to obtain (or chooses not to seek) relief from prior regulatory actions through appeals to the regulator or the courts. [980-20-15-2]
- Rate actions of a regulator can provide reasonable assurance of the existence of an asset. An entity shall capitalize all or part of an incurred cost that would otherwise be charged to expense if both of the following criteria are met:
  (a) It is probable (as defined in Topic 450) that future revenue in an amount at least equal to the capitalized cost will result from inclusion of that cost in allowable costs for rate-making purposes.
  (b) Based on available evidence, the future revenue will be provided to permit recovery of the previously incurred cost rather than to provide for expected levels of similar future costs. If the revenue will be provided through an automatic rate-adjustment clause, this criterion requires that the regulator's intent clearly be to permit recovery of the previously incurred cost.

A cost that does not meet these asset recognition criteria at the date the cost is incurred shall be recognized as a regulatory asset when it does meet those criteria at a later date. [980-340-25-1]

- Rate actions of a regulator can reduce or eliminate the value of an asset. If a regulator excludes all or part of a cost from allowable costs, the carrying amount of any asset recognized pursuant to paragraph 980-340-25-1 shall be reduced to the extent of the excluded cost. Whether other assets have been impaired shall be judged the same as for entities in general and the Impairment or Disposal of Long-Lived Assets Subsections of Subtopic 360-10 shall apply. [980-340-35-1]
- If at any time an entity's incurred cost no longer meets the criteria for the capitalization of an incurred cost (see paragraph 980-340-25-1), that cost shall be charged to earnings. [980-340-40-1]
- In some cases, a regulator may approve rates that are intended to recover an incurred cost over an extended period without a return on the unrecovered cost during the recovery period. [980-340-55-2]
- The regulator's action provides reasonable assurance of the existence of an asset (see paragraph 980-340-25-1). Accordingly, the regulated entity would capitalize the cost and amortize it over the period during which it will be allowed for rate-making purposes. That cost would not be recorded at discounted present value. An exception to this general rule is provided for costs of abandoned plants. [980-340-55-3]

Issue #1: Can the IESO recognize a regulatory asset related to the variance account created by Bill 132?

As noted above, as of January 1, 2016, the IESO changed its accounting policy to recognize the economic impacts of rate regulation and now applies guidance from US GAAP Topic 980, *Regulated Operations*, as PSAS does not have any specific guidance for entities with rate-regulated activities.

IESO concluded that it met the requirements of PS2120.02, which allows them to reflect the impacts of rate regulation, as it is considered that the change of accounting policy in its 2016 financial statements resulted in a more appropriate presentation of transactions in its financial statements. The change was made to better reflect the economic substance of certain types of expenses that may not be directly recovered through the normal revenue requirement model.

The regulatory framework in Ontario relating to the generation and sale of electricity will be significantly impacted by Bill 132. Currently, a substantial amount of the energy purchased from the generators is collected by IESO from the local distribution companies through the customer billing, with the remaining being recovered through variance accounts over a period of 12 months maximum. As mentioned above, the effect of Bill 132 is to defer the collection of a total estimated amount of $28 billion (plus interest) of energy purchased from the generators over a period of 30 years. Bill 132 will not permit IESO to collect the IESO deferral before May 1, 2021 and the recovery process will be established through regulations. Such a long-term deferred recovery plan requires IESO to consider whether the uncollected energy costs qualify for deferral as a regulatory asset and whether it continues to meet the criteria that allow IESO to use the guidance for regulated operations of Topic 980. These two accounting issues are analyzed in the two tables below.

Criteria for the recognition of regulatory assets

ASC 980-340-25-1 states that rate actions of a regulator can provide reasonable assurance of the existence of an asset. An entity shall capitalize all or part of an incurred cost that would otherwise be charged to expense if both of the following criteria are met:

Criteria	Comment	Evaluation
(a) It is probable that future revenue in an amount at least equal to the capitalized cost will result from inclusion of that cost in allowable costs for rate-making purposes. (b) Based on available evidence, the future revenue will be provided to permit recovery of the previously incurred cost rather than to provide for expected levels of similar future costs. *(emphasis added)* If the revenue will be provided through an automatic rate-adjustment clause, this criterion requires that the regulator's intent clearly be to permit recovery of the previously incurred cost.	Bill 132 notes that, • *A recording of the balance in the variance account is determinative of the balance as of the time of the recording.* • *Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.* • *The Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for IESO to recover the balance recorded in the variance account.* • *The IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2021.* Based on Bill 132, IESO has the right to recover the balance recorded in the variance account. As a result, it is clear that the IESO will be able to recover the amount previously incurred rather than to provide for expected levels of similar future costs.	Met

Criteria for the adoption and continued use of ASC 980 guidance

Deferred recovery plans are plans adopted by regulators or legislations in response to significant increases in costs (e.g. purchased power costs). These plans typically provide for rates to remain fixed or increase moderately with a variance account mechanism to capture costs in excess of the level allowed in current rates. A regulated utility subject to such plans is required to consider whether it continues to meet the criteria that allow it to use the guidance for regulated operations of Topic 980, especially criteria ASC 980-10-15-2 (b).

The proposed plan for the recovery of purchase power costs over a 30 year period is considered a deferred recovery plan as the rates for the first four years will remain fixed and subsequently the rates will increase moderately with a variance account to capture energy costs in excess of the level allowed in current rates. The following is an analysis of the ASC 980-10-15-2 criteria.

Criteria	Comment	Evaluation
(a) The entity's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party	Currently, IESO recognizes regulatory assets related to smart meters and PSAS transition costs as permitted by rates approved by the OEB and regulatory liabilities related to the variance accounts (eg. OESP, RPP and RRRP variance accounts) established under section 25.33 of the Electricity Act related to the procurement of energy.	Met

Criteria	Comment	Evaluation
regulator or by its own governing board empowered by statute or contract to establish rates that bind customers.	It is important to note that both Hydro One and OPG are classified as *Government Business Enterprises* and are reporting under IFRS in their consolidated financial statements, are consolidated by the modified equity method into the province's books, are regulated by the OEB, and their respective regulatory assets and liabilities are reported in the province's books.	

(b) The regulated rates are designed to recover the specific entity's costs of providing the regulated services or products.	Currently, the rates approved by the OEB are designed to recover the IESO's costs of providing the regulated services and the pass-through related to the energy purchased from the generators.
	
	As mentioned above, a regulated utility subject to a deferred recovery plan is required to consider whether it continues to meet the criteria ASC 980-10-15-2 (b).
	
	This criterion requires a cause-and-effect relationship between a reporting entity's costs and its revenue. In addition, the timing of cost recovery and the related frequency of ratemaking is important. A reporting entity should consider its rate case experience, including the design of its rates and timing of recovery, when determining whether this criterion is met. These factors are analyzed below.
	
	Frequency of rate case
	
	- Currently, IESO is subject to OEB's annual reviews.
	- Although the recovery of purchase energy costs will be frozen at the approved rate on May 1, 2017 for the first four years, the IESO will be granted a right to recover after May 1, 2021 the IESO deferral recorded in the variance account during the four-year period.
	  - *A recording of the balance in the variance account is determinative of the balance, as of the time of the recording. (We note that this confirms that there will be no prudence review by the OEB)*
	  - *Right to recover the balance recorded in the variance account.*
	  - *Obligation on the part of the OEB to dispose the variance account in accordance with the regulation.*
	- Subsequent to May 1, 2021, the OEB will be required to determine and set rates payable by specified consumers to allow for IESO to recover the balance recorded in the variance account.
		Met

Criteria	Comment	Evaluation
	- *The Board shall, from time to time, determine and set rates payable by specified consumers to allow for IESO to recover the balance recorded in the variance account.* - *Despite anything to the contrary in the OEB Act, the Board may exercise any of its responsibilities under this Act without a hearing.* *Rates are designed to recover incurred costs* - There is a cause-and-effect relationship between the purchase energy costs and revenue, as IESO will be allowed to recover the costs incurred. - *A recording of the balance in the variance account is determinative of the balance as of the time of the recording* (We note that this confirms that there will be no prudence review). - *Right to recover the balance recorded in the variance account.* - *Obligation on the part of the OEB to ensure IESO will recover the balance recorded in the variance account.* *Periods of alternative ratemaking (e.g., rate freezes)* Evaluation of the second criterion requires additional judgment if the regulated utility is subject to any form of ratemaking that introduces uncertainty about the cause-and-effect relationship between costs and rates. A rate freeze period is defined as a fixed rate that is charged to customers during a period of time (more than two years) and the utilities are exposed to increases in operating and energy costs with no ability to recover the variances. This is not the case as IESO will be granted the right to recover fully the IESO deferral recorded in the variance account, including the first four-year period. - *The Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for the IESO to recover the balance recorded in the variance account.* *Costs uncertainty* As the IESO will be granted the right to fully recover the IESO deferral recorded in the variance account, there is no uncertainty about the recovery of the costs.	

Criteria	Comment	Evaluation
	Disallowances of costs The OEB has never disallowed the recovery of any material costs incurred by the IESO. More importantly, as the IESO will be granted by legislation the right to fully recover the IESO deferral recorded in the variance account, there is no risk of the potential disallowance of the purchase power costs. Based on the analysis of the above factors, there are no indications that this criterion would not be met. The above factors establish that there will be a direct cause-and-effect relationship between IESO's costs and its future collection.	

(c) In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume that rates set at levels that will recover the entity's costs can be charged to and collected from customers. This criterion requires consideration of anticipated changes in levels of demand or competition during the recovery period for any capitalized costs."	The remaining criterion is whether limitations, including considering demand levels at the approved rates, on the extent of recovery of the regulatory asset could prevent the IESO from recognizing a regulatory asset for the entire balance in the recovery right granted to the IESO.
	
	Bill 132 notes that:
	
	- *Effective May 1, 2017, the IESO's right to recover the balance in the variance account is subject to the following:*
	  o *The Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified customers to allow for the IESO to recover the balance recorded in the variance account.*
	  o *IESO shall not be entitled to collect the variance account from specified consumers before May 1, 2021.*
	
	Although the process, especially the timing of the recovery of the regulatory asset has not been established yet by the OEB, the wording and intent of the proposed legislation is clear that it is intended by law to be recoverable over the period of 30 years. Further, given the nature and extent of customer demand for the power generated and distributed in Ontario, both at this time and projected in the future, it is reasonable to conclude that there will be sufficient demand to recover the regulatory asset. As with the other criteria, this will need to be continually evaluated throughout the recovery period.
		Met

Management conclusion

IESO management has concluded that the IESO can recognize a regulatory asset related to the variance account created by Bill 132 based on the foregoing analysis.

The variance account created by Bill 132 is subject to rate regulation by the OEB and the variance account will be established with the right to collect funds against the variance amount in the future. In these circumstances, the IESO is able to establish a regulatory asset. The IESO financial statements are prepared in accordance with Canadian public sector accounting standards. Although PSAB does not provide specific guidance on rate regulated accounting, it does under PS 1150 Generally Accepted Accounting Principles allow for guidance to be followed from other accounting frameworks. IESO has applied guidance from United States Generally Accepted Accounting Principles (US GAAP) Topic 980, *Regulated Operations* in its accounting policies.

Our conclusion

We have considered the foregoing analysis and management's conclusion. We concur that the variance account created by Bill 132 will meet the criteria for the recognition of a regulatory asset stated in ASC 980-340-25-1. Furthermore, we have also considered the criteria stated in ASC 980-10-15-2 and believe that IESO should be allowed to continue to use the guidance for regulated operations of Topic 980.

Background for Issue #2

The facts, circumstances, and assumptions relevant to the specific transactions as provided to us by the management of the Company (responsible party), in addition to those described in the background for issue #1, are as follows:

1. The IESO currently has the right to collect the global adjustment ("GA") monthly from ratepayers through provisions in the Electricity Act. It is proposed that collection of a certain portion of the monthly GA be deferred in a regulatory asset for collection in the future, and that the right to recover the deferred GA from ratepayers be used as the basis for structured financing/ securitization.
2. In connection with Bill 132, it is proposed that a trust be established as a financial vehicle by OPG (the "OPG Trust") in connection with the deferred GA. The OPG Trust will finance the deferral of the GA by purchasing the regulatory asset from the IESO for the principal amount of the GA being deferred.
3. The OPG Trust is expected to finance these purchases from the IESO through a combination of senior secured financing raised in the capital markets, and subordinated financing from OPG (the funding for which will mostly be from equity injections from the OEFC/Province of Ontario).
4. OPG will be appointed as the Financial Services Manager and will be given the responsibility to direct the activities of the OPG Trust, through a services agreement and/or through the Trust's constating documents.

Appropriate Accounting Principle for Issue #2

PS1300 *Government Reporting Entity*:

PSAS refer to government or government organizations. For the purpose of this analysis, the PSAS guidance below relating to government or government organizations should be read and understood as being the IESO (emphasis added).

- The government reporting entity should comprise government components and those organizations that are controlled by the government. [PS 1300.07]
- Control is the power to govern the financial and operating policies of another organization with expected benefits or the risk of loss to the government from the other organization's activities. [PS 1300.08] (emphasis added).
- Whether a government controls an organization is a question of fact that must be determined by reference to the definition of control established in paragraph PS 1300.08 and the particular circumstances of each case. The determination of the fact that control exists will require the application of professional judgment. Government achieves its objectives through a wide range of organizations which individually will fall somewhere along a continuum. At one end of the continuum, it will be clear that an organization does not have the power to act independently and is controlled by the government. At the other end, the organization will have the power to act independently and, while government will have a level of influence on the organization, it will be clear that it does not have control. Along the continuum, consideration needs to be given to the nature of the relationship between the government and the organization in order to determine whether control exists. This Section provides guidance intended to assist in this assessment. [PS 1300.10]
- In applying this guidance, it is necessary to determine the substance of the relationship between the government and the organization. The true nature of certain relationships may not be completely reflected by their legal form. All relevant aspects and implications of the relationship would be considered in determining whether or not the government controls the organization. Where various aspects of the relationship are designed, in effect, to achieve an overall objective, they would be viewed as a whole. [PS 1300.11]
- Financial and operating policies are principles and practices that determine how an organization conducts its activities. The ability to govern these policies is an important element of government control because it establishes the fundamental basis for the conduct of the organization's operations and the achievement of its mission and mandate. [PS 1300.13]
- There are a variety of ways to govern the financial and operating policies of an organization. For example:
  (a) a government may establish an organization's fundamental purpose and eliminate or significantly limit the ability of the organization to make future decisions by predetermining the financial and operating policies of the organization;
  (b) a government may direct the financial and operating policies of an organization on an ongoing basis; or
  (c) a government may veto, overrule or modify the financial and operating policies established by an organization. [PS 1300.14]
- A government does not need to manage an organization's activities on a day-to-day basis to control the organization. It is the government's existing authority to determine the policies governing those activities that is important. [PS 1300.15]

– For the purposes of this Section, it is assumed that where the government has the power to govern the financial and operating policies of an organization, it expects to derive a financial or non-financial benefit. The government may also be exposed to the risk of loss. [PS 1300.16]

Issue #2: Is the trust to be established by OPG (the "OPG Trust") controlled by the IESO according to the guidance issued under PSAS 1300 *Government Reporting Entity* and, therefore, subject to consolidation by IESO?

Under PSAS, IESO is required to consolidate all entities that are considered to be part of its reporting entity, applying the guidance provided in *Section PS 1300 Government Reporting Entity.* Under PS 1300, IESO must consolidate all entities it "controls".

In determining whether or not the OPG Trust should be consolidated by IESO, it must first be determined whether or not the IESO exercises control as a consequence of power to govern the financial and operating policies of the OPG Trust resulting in expected benefits to the IESO or the risk of loss from the activities of the OPG Trust.

PS 1300.17 indicates that "whether a government controls an organization is a question of fact that requires the application of professional judgment based on the definition of control in this Section and the substance of the relationship in each case." Under PS 1300.08 control is defined as "the power to govern the financial and operating policies of another organization with expected benefits or the risk of loss to the government from the other organization's activities". Therefore, the determination of whether IESO will consolidate the OPG Trust will be based on an assessment of whether IESO is considered to control the OPG Trust based on the indicia of control set out in PS 1300. The assessment of the IESO's control of the OPG Trust is made based on Bill 132, facts and nature of the relationship between the IESO and the OPG Trust and based on facts and assumptions provided by IESO. PS 1300.18 and .19 set out 11 potential indicia of control. Several of these indicia have been categorized as more persuasive of a finding of control (see the first four indicators in the table below). For each indicator that applies, the degree of government influence would determine its importance as evidence of control. Finally, the indicia are considered both collectively and individually.

A detailed analysis of the 11 Indicators of control is provided in the following table.

INDICATOR OF CONTROLS	EVIDENCE OF CONTROL	CONTROL EXIST?
Primary (more persuasive) indicators (PS 1300.18):		
Government has the power to unilaterally appoint or remove a majority of the members of the governing body of the organization	- Bill 132 states: - *OPG is appointed as the Financial Services Manager for the purposes of this Act. (Section 18)* - *The Financial Services Manager shall perform the duties assigned to it under this Act and may administer the investment asset on behalf of the investment interest owners. (Section 19 (1))* - *Subject to any prescribed limitations, the Financial Services Manager may establish and charge fees in relation to such matters as may be prescribed in accordance with the regulations, which regulations may provide for the ability to recover costs and expenditures and to earn a return. (Section 19 (3))*	No

INDICATOR OF CONTROLS	EVIDENCE OF CONTROL	CONTROL EXIST?

	- The Electricity Act will be amended as follows:
	  - *In addition to the objects mentioned in subsection (1), the objects of OPG include exercising the powers and rights and performing the duties and obligations assigned to it under the Ontario Fair Hydro Plan Act, 2017 and engaging in activities to facilitate the implementation of that Act, including entering into contracts and undertakings on behalf of financing entities and performing other services on behalf of financing entities, subject to the right to be paid by the financing entities for those services. (Section 53.1 (1.1))*
	  - *OPG may create or invest in one or more subsidiaries, trusts, partnerships or special purpose entities in order to more efficiently conduct its activities or achieve its objects. (Section 53.1 (1.2))*
	- OPG will establish a trust to manage the collection of the regulatory asset and related financing and administrative expenses. The Board of Trustees of the OPG Trust will be the governing body of the Trust and will be appointed by OPG. OPG will have the power to unilaterally appoint or remove all members of the Board of Trustees.
	- The IESO will not have any rights in respect of the appointment or replacement of the Board of Trustees of the OPG Trust.	

Government has ongoing access to the assets of the organization, has the ability to direct the ongoing use of those assets, or has ongoing responsibility for losses	- Section 27 of Bill 132 states:
	  - *A transfer of a specified portion of the regulatory asset under section 26 constitutes a valid and enforceable absolute assignment, conveyance and sale of the corresponding investment interest to the transferee.*
	  - *Without limiting subsection (1), any transfer agreement that states an intention of the parties for the IESO to dispose of a specified portion of the regulatory asset and to assign, convey or sell a corresponding investment interest shall be treated for all purposes as an absolute assignment, conveyance, disposition and sale of the IESO's right to recover the corresponding amount in the variance account and not merely as a security interest.*
		No

INDICATOR OF CONTROLS	EVIDENCE OF CONTROL	CONTROL EXIST?
	- *At the time a transfer of the regulatory asset is made under section 26, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.* - Based on Bill 132, *upon transfer of a specified portion of the regulatory asset to the OPG Trust, the investment asset resulting from the transfer is immediately vested in the OPG Trust, free and clear of any adverse claim.* (Section 28 (2)). - Therefore, upon transfer of the regulatory asset to the OPG Trust, IESO will no longer have access/ability to direct the regulatory asset nor have the ongoing responsibility for losses. - The credit risk related to the collection of the investment asset is borne by the OPG Trust.	
Government holds the majority of the voting shares or a "golden share" that confers the power to govern the financial and operating policies of the organization	- IESO will not have any ownership in the OPG Trust and will not have the power to govern the financial and operating policies of the OPG Trust.	No
Government has the unilateral power to dissolve the organization and thereby access its assets and become responsible for its obligations	- IESO will not have the power to dissolve the organization.	No

INDICATOR OF CONTROLS	EVIDENCE OF CONTROL	CONTROL EXIST?
Other indicators that may provide evidence of control exist when government has the power to (PS 1300.18):		
Provide significant input into the appointment of members of the governing body of the organization by appointing a majority of those members from a list of nominees provided by others or being otherwise involved in the appointment or removal of a significant number of members	- OPG will have the power to unilaterally appoint or remove all members of the Board of Trustees of the OPG Trust. - IESO will not provide any input in the appointment of members of the Board of Trustees.	No
Appoint or remove the CEO or other key personnel	- OPG will have the power to unilaterally appoint or remove all members of the Board of Trustees of the OPG Trust and other key personnel.	No
Establish or amend the mission or mandate of the organization	- The Trust will be established by OPG and the mandate of the Trust will be set based on Bill 132.	No

Approve the business plans or budgets for the organization and require amendments, either on a net or line-by-line basis	- Bill 132 states:
	  - *OPG is appointed as the Financial Services Manager for the purposes of this Act. (Section 18)*
	  - *The Financial Services Manager shall prepare a written plan entitled the Financing Plan to be used by the Financial Services Manager to evaluate whether potential funding obligations should be incurred for the purposes of acquiring and financing an investment asset in accordance with this Act or for the purposes of refinancing. (Section 16 (1))*
	- OPG is the Financial Services Manager, not IESO.
	- IESO is not involved in the preparation or approval of the business plans or budget of the OPG Trust.
		No

Establish borrowing or investment limits or restrict the organization's investments	- Section 22 of Bill 132 states: - *The Financial Services Manager shall ensure that funding obligations incurred for the purposes of this Act are incurred in a manner that is consistent with the applicable Financing Plan.*	No

INDICATOR OF CONTROLS	EVIDENCE OF CONTROL	CONTROL EXIST?
	- OPG not IESO, is responsible for ensuring that the borrowings of the OPG Trust meet the above conditions.	
Restrict the revenue-generating capacity of the organization, notably the sources of revenue	- N/A	No
Establish or amend the policies that the organization uses to manage, such as those relating to accounting, personnel, compensation, collective bargaining or deployment of resources	- As mentioned above, OPG will be granted by legislation the power to establish or amend the policies of the OPG Trust and the ability to appoint and remove all members of the Board of Trustees.	No

Management conclusion

IESO management has concluded that the OPG Trust to be established would not be controlled by the IESO and therefore is not subject to consolidation by the IESO.

Based on the foregoing analysis of the 11 indicators of control as defined in Section PS 1300 *Government Reporting Entity,* considered both individually and collectively there is no evidence of control by the IESO in respect of the OPG Trust. The IESO will not have the power to govern the Trust, nor have ongoing access to Trust's assets. The IESO will also not have any voting shares or future rights to the Trust nor the power to dissolve the Trust. Without control, the Trust is not subject to consolidation within the IESO financial statements.

Our conclusion

We have considered the foregoing analysis and management's conclusion. We concur that based on Bill 132, none of the four primary (more persuasive) indicators of control are considered to be met, and none of the seven other indicators of control are considered to be met. Accordingly, we concur that the IESO does not control the OPG Trust under Bill 132 and hence would not consolidate the OPG Trust.

The adoption of Bill 132 (including the subsequent amendments of the Electricity Act and the OEB Act) and the finalization of the financing structure (including the bylaws and regulations of the OPG Trust) and other agreements will take several months. Accordingly, our judgment on the appropriate application of PSAS to the conclusion on control may change subject to further analysis of any changes to the terms of Bill 132 or review of the final regulations, financing structure and other agreements.

Background for Issue #3

The facts, circumstances, and assumptions relevant to the specific transactions as provided to us by the management of the Company (responsible party), in addition to those described in the background for issues #1 and 2, are as follows:

1. The total IESO deferral for the period from May 1, 2017 to April 30, 2047 is estimated at $28 billion plus interest and will be recorded by the IESO in a variance account recognized as a regulatory asset.
2. The IESO does not currently have the financial capability to finance the regulatory asset and will transfer the variance account to an investment asset owner (i.e. OPG Trust) on a monthly basis.
3. The IESO will obtain a written legal opinion as to the validity and enforceability of the transfer and sale of the regulatory asset.
4. Based on an assessment of control performed under the issue #2, IESO will not consolidate the OPG Trust. We understand that an assessment of control under International Financial Reporting Standards ("IFRS") has been performed by OPG and they have concluded that the OPG Trust will be consolidated by OPG; we note that the financial reporting framework used by OPG in preparing its financial statements for consolidation into the Province's books is IFRS.
5. The Electricity Act, OEB Act and other regulations will be amended to reflect the following *extracts from Bill 132:*

   Section 16 IESO to receive amounts

   (2) The IESO shall, as agent of the investment interest owners, receive amounts in respect of the clean energy adjustment paid to it from electricity vendors in accordance with the market rules made under section 32 of the Electricity Act, 1998 or the regulations.

   (4) All amounts received by the IESO in respect of the clean energy adjustment shall, until remitted to or for the benefit of the investment interest owner, be held in trust by the IESO for the investment interest owners.

   (5) The IESO shall remit amounts received by it in respect of the clean energy adjustment, inclusive of interest earned on the amounts referred to in subsection (1), to or for the benefit of the investment interest owners in accordance with the regulations.

   Section 17 Pro rating of payments

   (4) If an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices and the amount paid is less than the total amount payable, the electricity vendor shall allocate the payment on a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices in respect of electricity charges in respect of the same invoice period.

   Section 26 Transfer of regulatory asset

   (1) The IESO may from time to time, in accordance with this Act and the regulations, transfer a specified portion of the regulatory asset to a financing entity in accordance with this section.

   (2) An agreement between the IESO and a financing entity in relation to the transfer of a specified portion of the regulatory asset shall provide for consideration of a payment by the financing entity to the IESO in an amount equal to the amount of the specified portion.

(3) Upon receipt by the IESO of the payment by the financing entity,

(a) the balance in the variance account shall be reduced by the amount of the payment;

(b) the regulatory asset shall be adjusted accordingly;

(c) the financing entity shall acquire a corresponding investment interest; and

(d) the IESO shall retain no further right, title or interest in the investment interest.

Section 27 Validity of transfer

(1) A transfer of a specified portion of the regulatory asset under section 26 constitutes a valid and enforceable absolute assignment, conveyance and sale of the corresponding investment interest to the transferee.

(2) Without limiting subsection (1), any transfer agreement that states an intention of the parties for IESO to dispose of a specified portion of the regulatory asset and to assign, convey or sell a corresponding investment interest shall be treated for all purposes as an absolute assignment, conveyance, disposition and sale of IESO's right to recover the corresponding amount in the variance account and not merely as a security interest.

(3) At the time a transfer of the regulatory asset is made under section 26, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the transferee shall have priority over any liens in favour of those persons.

Section 29 Investment asset, irrevocable rights and interests

(1) The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests of investment interest owners:

1. The right and interest to impose, invoice, collect, receive and recover the clean energy adjustment from specified consumers, including the right to determine the clean energy adjustment in accordance with this Act.

2. The right to receive, collect and recover the clean energy adjustment that is imposed, invoiced and recoverable under this Act, including any amounts in respect of the clean energy adjustment that are held by electricity vendors, IESO and other prescribed parties.

Section 30 Transfer of investment interest

(2) An investment interest owner may transfer all or a portion of an investment interest to any other investment interest owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan.

Section 32 Investment interest owner may grant security interest

(1) An investment interest owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under the investment interest to or in favour of any person to secure a funding obligation.

(3) All provisions of the Personal Property Security Act shall apply to the investment asset and each investment interest on the basis that the investment asset and each investment interest is intangible personal property, except as otherwise provided for in this section, and any granting of a security interest by an investment interest owner to secure a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by registering a financing statement under that Act on that basis.

6. The terms of the transfer agreement between the IESO and the OPG Trust that will be signed and executed upon transfer of the regulatory assets will be in compliance with the dispositions of Bill 132.

Appropriate Accounting Principle for Issue #3

The Derecognition Section of ASC 980-20-40 provides guidance on determining whether and when an entity should remove an item from the financial statements. For example, the entity would derecognize an asset because it no longer has rights to the asset or it would derecognize a liability because it no longer has any obligation. [ASC 980-20-40]

Failure of an entity's operations to continue to meet the criteria in paragraph 980-10-15-2 can result from different causes. Examples include the following:

(a) Deregulation.

(b) A change in the regulator's approach to setting rates from cost-based rate-making to another form of regulation.

(c) Increasing competition that limits the entity's ability to sell utility services or products at rates that will recover costs (as used in paragraph 980-10-15-2).

(d) Regulatory actions resulting from resistance to rate increases that limit the entity's ability to sell utility services or products at rates that will recover costs if the entity is unable to obtain (or chooses not to seek) relief from prior regulatory actions through appeals to the regulator or the courts. [ASC 980-20-15-2]

PS1000 *Financial statement concepts*:

– This Section is to be used by preparers and auditors of financial statements in exercising their professional judgment as to the application of generally accepted accounting principles and in establishing accounting policies in areas in which accounting principles are developing. [PS1000.03]

– Financial statements should communicate information that is relevant to the needs of those for whom the statements are prepared, reliable, comparable, understandable and clearly presented in a manner that maximizes its usefulness. [PS1000.24]

– An item is not an asset of a government if it lacks one or more of the essential characteristics listed in the preceding paragraph [PS3210.04]. Thus, for example, an item does not qualify as an asset of a government if the item involves:

  (a) no future economic benefit;

  (b) future economic benefit, but the government cannot obtain it; or

  (c) future economic benefit that the government may obtain, but the events or circumstances that give the government control of the benefit have not yet occurred. [PS1000.37]

PS3210 *Assets*:

- Assets are economic resources controlled by a public sector entity as a result of past transactions or events and from which future economic benefits are expected to be obtained. [PS3210.03]
- Assets have three essential characteristics:
  (a) They embody future economic benefits that involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows, or to reduce cash outflows.
  (b) The public sector entity can control the economic resource and access to the future economic benefits.
  (c) The transaction or event giving rise to the public sector entity's control has already occurred. [PS3210.04]
- Control of an economic resource and of access to the future economic benefits are essential characteristics of an asset, whereas possession or ownership is not. [PS3210.22]

PS3430 *Restructuring transactions* [1]

- Individual assets and liabilities transferred in a restructuring transaction should be derecognized by the transferor if they no longer meet the definitions of assets and liabilities and applicable recognition criteria at the restructuring date. [PS3430.21]
- When a transferor continues to be involved in the individual assets and/or liabilities it transferred to a recipient subsequent to the restructuring date, it would assess the nature and extent of its continued involvement against the definitions of assets and liabilities and applicable recognition criteria to evaluate whether:
  (a) derecognition of the asset and liability transferred would be appropriate; and
  (b) its continued involvement gives rise to a new asset or new liability that needs to be recognized. [PS3430.24]
- A new asset or new liability may arise from a restructuring due to a transferor's continued involvement in the individual assets and liabilities transferred (for example, if it agrees to guarantee repayment of all or a portion of a transferred liability or leases back a portion of a transferred asset). As the new asset or new liability is not transferred, together with related program or operating responsibilities, they are not part of the restructuring transaction. They would be accounted for in accordance with individual Sections of the PSA Handbook by both the transferors and recipients. [PS3430.25]

1 This Section applies to fiscal years beginning on or after April 1, 2018. […] Earlier adoption is permitted."

Issue #3: What is the accounting treatment for derecognition of the regulatory asset by the IESO upon transfer of the variance account to the OPG Trust?

Although ASC 980-20-40 states that

> *"Derecognition Section provides guidance on determining whether and when an entity should remove an item from the financial statements. For example, the entity would derecognize an asset because it no longer has rights to the asset or it would derecognize a liability because it no longer has any obligation."*

Subtopic 980-20 relates to discontinuation of rate-regulated accounting when an entity no longer meets the criteria in paragraph 980-10-15-2. ASC 980-20-15-2 provides examples of when an entity no longer meets the criteria, including deregulation and change of the form of regulation. Thus, ASC 980 does not provide clear guidance for the derecognition of a regulatory asset other than in connection with the discontinuation of rate-regulated accounting.

The above guidance in ASC 980-20-40 provides general principles for the derecognition of assets.

It should also be noted that PSAS provide limited guidance on derecognition of non-financial assets and liabilities. Section 3430 *Restructuring transactions,* which is applicable for fiscal years on or after April 1, 2018 with early application permitted, has guidance for the derecognition of assets and liabilities.

- Paragraph 21 states that *individual assets and liabilities transferred in a restructuring transaction should be derecognized by the transferor if they no longer meet the definitions of assets and liabilities and applicable recognition criteria at the restructuring date.*
- As stated in paragraph 24, *when a transferor continues to be involved in the individual assets and/or liabilities it transferred to a recipient subsequent to the restructuring date, it would assess the nature and extent of its continued involvement against the definitions of assets and liabilities and applicable recognition criteria to evaluate whether derecognition of the asset and liability transferred would be appropriate and whether its continued involvement gives rise to a new asset or new liability that needs to be recognized.*

Recognizing the proposed transaction is not a restructuring transaction, Section 3430, which has recently been issued by PSAB, provides current evidence of thinking in the application of the general PSAS principles in respect of the recognition and derecognition of assets and liabilities. Accordingly, the analysis as to whether the regulatory asset transferred to the OPG Trust can be derecognized is based on the foregoing guidance.

Criteria for the recognition of an asset

PS3210.03 states that assets are economic resources controlled by a public sector entity as a result of past transactions or events and from which future economic benefits are expected to be obtained. More generally, PSAS PS1000.37 suggests that an asset would no longer be recognized when it fails to meet the definition of an asset:

Criteria	Comment	Evaluation
Assets (PS3210.04/ PS1000.36): Assets have three essential characteristics: (a) They embody future economic benefits that involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows,	Based on the guidance, the regulatory asset does not qualify as an asset of IESO if it cannot obtain the future economic benefits. Upon transfer of the regulatory asset, IESO will have no further rights or obligations in connection with the asset transferred. - *IESO may from time to time, in accordance with this Act and the regulations, transfer a specified portion of the regulatory asset to a financing entity in accordance with this section.* - *Upon receipt by IESO of the payment by the financing entity, IESO shall retain no further right, title or interest in the corresponding investment interest.*	Not Met

Criteria	Comment	Evaluation
or to reduce cash outflows. (b) The public sector entity can control the economic resource and access to the future economic benefits. (c) The transaction or event giving rise to the public sector entity's control has already occurred. *Financial statement concepts (PS1000.37):* An item is not an asset of a government if it lacks one or more of the essential characteristics listed in the preceding paragraph [see above]. Thus, for example, an item does not qualify as an asset of a government if the item involves: (a) no future economic benefit (b) future economic benefit, but the government cannot obtain it.	- *A transfer of a specified portion of the regulatory asset under section 26 constitutes a valid and enforceable absolute assignment, conveyance and sale of the corresponding investment interest to the transferee.* - *Without limiting subsection (1), any transfer agreement that states an intention of the parties for IESO to dispose of a specified portion of the regulatory asset and to assign, convey or sell a corresponding investment interest shall be treated for all purposes as an absolute assignment, conveyance, disposition and sale of IESO's right to recover the corresponding amount in the variance account and not merely as a security interest.* - *At the time a transfer of the regulatory asset is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.* Upon transfer of the regulatory asset, the OPG Trust will have the right to sell the asset to another party or to grant a security interest in favour of any person to secure a funding obligation. - *Upon transfer, the financing entity becomes an investment asset owner and acquires an investment interest.* - *An investment interest owner may transfer all or a portion of an investment interest to any other investment interest owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan.* - *An investment interest owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under the investment interest to or in favour of any person to secure a funding obligation.* Based on Bill 132, it is clear that IESO will have no rights to the benefits associated with the future cash inflows related to the regulatory asset as it will have transferred its right to recover the IESO deferral to the OPG Trust. Further, it is also clear that IESO will have lost control over the regulatory asset once it is transferred to OPG Trust.	

Management conclusion

IESO management has concluded that the regulatory asset will be derecognized upon transfer of the regulatory asset to the OPG Trust.

The transfer of the regulatory asset transfers the control and the benefits associated with the right to collect funds in the future against the variance amount to the OPG Trust. This will eliminate the IESO asset by the amount of the transfer as the IESO will no longer control an economic resource or have access to future economic benefits for that amount. The funds collected from the transfer will in turn reduce the associated debt held by the IESO, maintaining the IESO's net $ nil balance in the market accounts.

Our conclusion

We have considered the foregoing analysis and management's conclusion. We concur that the regulatory asset should be derecognized on transfer to the OPG Trust as IESO no longer has rights or future economic benefits associated with the asset.

Other Matters

The ultimate responsibility for the decision on the appropriate application of PSAS for the specific transactions rests with management as preparers of the financial statements. Our judgment on the appropriate application of PSAS for the specific transaction is based solely on the facts, circumstances and assumptions provided to us as described above. Should these facts and circumstances differ, our conclusion may change.

This letter has been prepared in draft form and will be updated upon receipt of the adopted legislation, if passed, (including the amendments of the Electricity Act and the OEB Act) and finalized financial structure (including the bylaws and regulations of the OPG Trust) and other relevant agreements necessary for us to provide our final opinion, of which legislation and other relevant agreements are expected to be enacted/ finalized on or before September 30, 2017. This letter will not be updated as a consequence of pronouncements by the Public Sector Accounting Board, or any other authoritative bodies, that occur subsequent to the date of this letter.

This letter is intended solely for the information and use of the Board of Directors and management of the Company, and is not intended to be and should not be used, quoted, relied upon by, or otherwise referred to by anyone other than these specified parties or for any other purpose.

No one other than the Board of Directors and management of the Company is authorized by KPMG to rely upon any information or views expressed herein. KPMG shall have no responsibility or liability for loss or damages or claims, if any, to or by any third party as this letter has not been prepared for, and is not intended for, and should not be used by, any third party or for any other purpose.

Yours very truly,

per Michel Picard
Partner
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Appendix A:

Bill 132, Ontario Fair Hydro Plan Act, 2017

Caution:
Bills are published by the Legislative Assembly in print and on its website. This copy has not been published by the Legislative Assembly and is being provided for convenience only.

Fair Hydro Act, 2017

EXPLANATORY NOTE

The Bill enacts a new Act and makes amendments to the *Electricity Act, 1998* and the *Ontario Energy Board Act, 1998*.

SCHEDULE 1
ONTARIO FAIR HYDRO PLAN ACT, 2017

The Schedule enacts the *Ontario Fair Hydro Plan Act, 2017*. The Act establishes a framework under which the costs and benefits associated with the "clean energy initiative" are to be allocated among present and future consumers of electricity. The "clean energy initiative" is defined in Part I as consisting of the policies of the Government of Ontario related to such matters as eliminating coal generation and fostering the growth of and investment in clean, modern and reliable energy sources and technologies.

Under Part II, the Ontario Energy Board is required to determine reduced electricity rates and to determine other adjustments to be made for certain classes of consumers in respect of specified periods of time. For example, for the class of consumers referred to as "regulated rate consumers", the electricity rates payable for the period beginning on July 1, 2017 and ending on April 30, 2018 are the rates, as determined by the Board, that would achieve a 25 per cent reduction in certain costs for a hypothetical member of the class who meets prescribed criteria. Details regarding the determinations are prescribed by regulations.

Part III requires certain electricity consumers to pay an amount in respect of the "clean energy adjustment". The clean energy adjustment is determined by the Financial Services Manager in accordance with rules set out in the Act and the regulations. (Section 18 of the Act appoints Ontario Power Generation Inc. as the Financial Services Manager.) Part III also specifies the roles and responsibilities of electricity vendors and the Independent Electricity System Operator ("IESO") with respect to the collection and remittance of amounts in respect of the clean energy adjustment.

Part IV requires the Minister of Energy to calculate a "fair allocation amount" by taking specified steps in accordance with principles and assumptions set out in the Act. For example, the Act provides that the purpose of calculating the fair allocation amount is to measure and allocate the estimated clean energy costs and estimated clean energy benefits fairly among certain consumers. Part IV also requires the Financial Services Manager to prepare a written

plan entitled the "Financing Plan", which is to be used to evaluate whether potential funding obligations should be incurred. Principles and limitations regarding the preparation and implementation of the plan are provided.

Part V requires the IESO to determine the "IESO deferral" in accordance with the regulations and to establish and maintain a variance account in which it records the IESO deferral each month. A "regulatory asset" is created under section 25; the IESO has the right to recover the balance recorded in the variance account from certain consumers. The IESO is authorized to transfer a specified portion of the regulatory asset to a financing entity; this transfer results in the creation of the investment asset and the acquisition by the transferee of a corresponding "investment interest". Various rules respecting the validity and priority of a transfer of an investment asset are set out.

In Part VI, rules in respect of the "investment asset" are provided. Section 29 provides that the investment asset constitutes a current and irrevocable property right and interest, consisting collectively of various specified rights and interests of investment interest owners. Rules respecting the validity and priority of such a transfer and the granting of a security interest by an investment interest owner are included.

Part VII deals with various miscellaneous matters, including regulation-making authority of the Lieutenant Governor in Council.

The *Electricity Act, 1998* and the *Ontario Energy Board Act, 1998* are amended to address various matters relating to the enactment of the new Act. For example, the objects of the IESO and Ontario Power Generation Inc. are expanded to address powers and duties under the new Act.

SCHEDULE 2
AMENDMENTS TO THE ONTARIO ENERGY BOARD ACT, 1998

The *Ontario Energy Board Act, 1998* is amended. Among the amendments:

1. Section 79 of the Act is amended so that compensation for the rate protection provided to certain classes of rural or remote consumers may be funded out of money appropriated by the Legislature, rather than by consumers.

2. Section 79.2 of the Act, which governs the Ontario Electricity Support Program, is repealed and replaced. The program is continued, but will be funded out of money appropriated by the Legislature after the variance account maintained by the Independent Electricity System Operator, formerly established under the Plan, is exhausted, rather than by consumers. There are provisions relating to the sharing, use and disclosure of information relating to the administration of the Ontario Electricity Support Program.

3. Programs are established to aid certain distribution rate-protected residential consumers and on-reserve consumers.

4. Various amendments of a technical and administrative nature are made to support the implementation and oversight of these programs including provisions related to auditing, record-keeping, inspections and inquiries, offences and penalties.

Bill **2017**

An Act to enact the Ontario Fair Hydro Plan Act, 2017 and to make amendments to the Electricity Act, 1998 and the Ontario Energy Board Act, 1998

Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Contents of this Act

1. This Act consists of this section, sections 2 and 3 and the Schedules to this Act.

Commencement

2. (1) Subject to subsections (2) and (3), this Act comes into force on the day it receives Royal Assent.

Schedules

(2) The Schedules to this Act come into force as provided in each Schedule.

Different dates for same Schedule

(3) If a Schedule to this Act provides that any of its provisions are to come into force on a day to be named by proclamation of the Lieutenant Governor, a proclamation may apply to one or more of those provisions, and proclamations may be issued at different times with respect to any of those provisions.

Short title

3. The short title of this Act is the *Fair Hydro Act, 2017*.

SCHEDULE 1
ONTARIO FAIR HYDRO PLAN ACT, 2017

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Preamble

The Government of Ontario is committed to fostering the development of a clean, modern and reliable electricity system with a diverse supply mix. The Government is also committed to removing barriers to and promoting opportunities for renewable and clean energy projects. These commitments can only be achieved if costs are shared fairly among consumers, today and in the future.

Electricity rates have risen for two key reasons. First, decades of under-investment in the electricity system resulted in the need to invest more than $50 billion in generation, transmission and distribution assets to ensure the system is clean and reliable. Second, the decision to eliminate Ontario's use of coal and produce clean, renewable power has created additional costs.

The actions taken to achieve a clean, modern and reliable electricity system have resulted in significant costs to residential consumers. The burden of financing these system improvements and funding key programs has unfairly fallen almost entirely on the shoulders of those consumers.

The Government of Ontario is committed to ensuring that the costs of financing these investments and the associated charges to consumers are allocated fairly among present and future generations.

Recognizing that the electricity infrastructure that has been built and the policy decisions that have been made will create benefits for years to come, costs should be allocated fairly over time, so that residential consumers in the future pay their fair share for the benefits that they receive from the investments already made.

PART I
GENERAL

Interpretation

Definitions

1. (1) In this Act,

"Board" means the Ontario Energy Board; ("Commission")

"clean energy adjustment" means the amount determined under section 15 and payable by specified consumers; ("ajustement pour l'énergie propre")

"clean energy benefits" means the value of the benefits determined to be derived by or accruing to specified consumers as a result of the clean energy initiative, including as a result of clean energy costs; ("avantages de l'énergie propre")

"clean energy costs" means the value of the costs allocated to specified consumers as a result of the clean energy initiative, including as a result of past, present and expected costs incurred in respect of,

(a) the amounts to be paid or reflected by the IESO in adjustments made under section 25.33 of the *Electricity Act, 1998* or any provision that is the successor to that provision, which relate to contracts or amounts for,

(i) renewable energy generation or capacity,

(ii) conservation and demand management,

(iii) energy storage,

(iv) energy efficiency,

(v) natural gas generation and capacity, excluding contracts relating to amounts payable by the IESO under section 78.2 of the *Ontario Energy Board Act, 1998* and excluding such other contracts as may be prescribed,

(b) payments made or expected to be made under section 78.5 of the *Ontario Energy Board Act, 1998*, and

(c) such other costs or estimated costs as may be prescribed; ("coûts de l'énergie propre")

"clean energy initiative" means the policies of the Government of Ontario related to,

(a) eliminating coal generation and fostering the growth of and investment in clean, modern and reliable energy sources and technologies,

(b) removing barriers to and promoting opportunities for clean and renewable energy sources and technologies,

(c) promoting conservation, demand management and energy efficiency, and

(d) investing in energy infrastructure to ensure a clean, modern and reliable system; (“initiative pour l’énergie propre”)

“electricity vendor” means,

(a) a licensed distributor,

(b) a licensed retailer,

(c) the IESO in circumstances where it directly invoices a specified consumer for electricity used in Ontario, or

(d) such other person as may be prescribed; (“vendeur d’électricité”)

“fair allocation amount” means an amount calculated under section 20; (“montant de répartition équitable”)

“finance amount” means the finance amount determined in accordance with the regulations; (“montant de financement”)

“Financial Services Manager” means the Financial Services Manager appointed under section 18; (“gestionnaire des services financiers”)

“financing entity” means an entity established or caused to be established by the Financial Services Manager as described in subsection 22 (2); (“entité de financement”)

“Financing Plan” means the plan prepared under section 21; (“Plan de financement”)

“funding obligation” means a payment obligation incurred by or on behalf of an investment interest owner to fund its ownership of an investment interest or a payment obligation that meets such other criteria as may be prescribed; (“obligation de financement”)

“funding rebate” means a payment obligation incurred by the IESO as part of the transfer of the regulatory asset; (“remboursement de financement”)

“IESO” means the Independent Electricity System Operator continued under Part II of the *Electricity Act, 1998*; (“SIERE”)

“IESO deferral” means the amount determined under section 23; (“report de la SIERE”)

"investment asset" means the rights and interests described in section 29; ("actif d'investissement")

"investment interest" means,

(a) an ownership interest in the investment asset, and

(b) in circumstances where the ownership interest is transferred, the rights and benefits specified in the agreement under which the interest is transferred; ("participation d'investissement")

"investment interest owner" means a financing entity that has acquired and holds an investment interest; ("détenteur d'une participation d'investissement")

"licensed distributor" means a person licensed under Part V of the *Ontario Energy Board Act, 1998* to own or operate a distribution system within the meaning of that Act; ("distributeur titulaire d'un permis")

"licensed retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity; ("détaillant titulaire d'un permis")

"Minister" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of this Act under the *Executive Council Act*; ("ministre")

"Ontario Power Generation Inc." means the corporation incorporated as Ontario Power Generation Inc. under the *Business Corporations Act* on December 1, 1998; ("Ontario Power Generation Inc.")

"prescribed" means prescribed by the regulations; ("prescrit")

"reference period" means,

(a) the period beginning on July 1, 2017 and ending on October 31, 2017, and

(b) during the period beginning on November 1, 2017 and ending on either April 30, 2047 or such later day as may be prescribed,

(i) every six-month period following the period mentioned in clause (a); or

(ii) any period shorter than six months, as may be prescribed; ("période de référence")

"refinancing" means, subject to the regulations, the incurrence of debt in connection with a redemption, repayment or repurchase of a funding obligation; ("refinancement")

"regulation" means a regulation made under this Act; ("règlement")

"regulatory asset" means the right established under section 25; ("actif réglementaire")

"specified consumer" means,

(a) a person who has an account with an electricity vendor for the supply of electricity in Ontario and meets the criteria set out in subsection (2), or

(b) such other person as may be prescribed; ("consommateur déterminé")

"transfer" includes, when used in relation to an investment interest, the assignment, conveyance, disposition or sale of the investment interest; ("transfert")

"true up amount" means a true up amount determined in accordance with the regulations; ("montant d'égalisation")

"unit sub-metering" has the same meaning as in the *Energy Consumer Protection Act, 2010;* ("activités liées aux compteurs divisionnaires d'unité")

"unit sub-meter provider" has the same meaning as in the *Energy Consumer Protection Act, 2010;* ("fournisseur de compteurs divisionnaires d'unité")

"variance account" means the variance account established by the IESO under subsection 24 (1). ("compte d'écart")

Specified consumer

(2) For the purposes of clause (a) of the definition of "specified consumer" in subsection (1), the person must meet any one of the following criteria:

1. The person has a demand for electricity of not more than 50 kilowatts, or such other amount as may be prescribed.

2. The person annually uses not more than 250,000 kilowatt hours of electricity, or such other amount as may be prescribed.

3. The person carries on a business that is a farming business for the purposes of the *Farm Registration and Farm Organizations Funding Act, 1993* and either holds a valid registration number assigned under that Act or has had the

obligation to file a farming business registration form waived pursuant to an order made under subsection 22 (6) of that Act.

4. The person's account with the electricity vendor relates to,

   i. a dwelling,

   ii. a property within the meaning of the *Condominium Act, 1998*,

   iii. a residential complex within the meaning of subsection 2 (1) of the *Residential Tenancies Act, 2006*, without regard to section 5 of that Act, or

   iv. a property that includes one or more housing units and that is owned or leased by a co-operative within the meaning of the *Co-operative Corporations Act*.

5. The person satisfies such criteria as may be prescribed.

Transfer of regulatory asset

(3) In this Act, a reference to the transfer of a specified portion of the regulatory asset is a reference to the following, as provided for in subsection 26 (3):

1. A reduction in the balance in the variance account.

2. The adjustment of the regulatory asset.

3. The acquisition by a financing entity of the investment interest corresponding to the specified portion of the regulatory asset.

Effect of invalidity

2. (1) For greater certainty, all of the provisions of this Act remain in full force and effect, even if one or more provisions are held to be invalid, the intention of the Legislature being to give separate and independent effect to the extent of its powers to every provision contained in this Act.

Same, funding obligation

(2) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect the validity or enforceability of a funding obligation incurred before the day that the provision is held to be invalid or ceases to be in effect, or any rights or obligations associated with the funding obligation.

Purposes

3. The purposes of this Act are,

(a) to ensure that clean energy costs and clean energy benefits are fairly allocated among present and future specified consumers;

(b) to recognize that clean energy benefits have accrued and will accrue over time and will continue to benefit present and future electricity consumers in the Province; and

(c) to align clean energy costs with clean energy benefits, in order to provide fairness for specified consumers over time.

Crown bound

4. This Act binds the Crown.

Protection and assurances

Prohibition

5. (1) No action or omission by the Board, the Minister or the Crown shall be effective to reduce, impair, postpone or terminate the obligations of specified consumers to pay amounts in respect of the clean energy adjustment or to impair or postpone the invoicing, collection or remittance of the clean energy adjustment.

Agreements

(2) The Minister and the Minister of Finance may together, with the approval of the Lieutenant Governor in Council, enter into agreements on behalf of the Province of Ontario with any person in respect of this Act, including agreements regarding the performance of the IESO or electricity vendors under this Act or related transactions.

Guarantee, indemnification

(3) The Lieutenant Governor in Council may by order,

(a) authorize the Minister and the Minister of Finance, acting together on behalf of the Province,

(i) to agree to guarantee or indemnify any debts, obligations, securities or undertakings associated with an investment interest, and

(ii) to determine terms and conditions of the guarantee or indemnity and the maximum liability for the guarantee or indemnity;

(b) specify terms and conditions that must be included in any guarantee or indemnity given by the Minister and the Minister of Finance; and

(c) specify a maximum liability for the guarantee or indemnity.

PART II
FAIR ADJUSTMENT

Definition

6. In this Part,

"regulated rate consumer" means a specified consumer who meets the following criteria:

1. The consumer is a member of the class of consumers prescribed by the regulations made under the *Ontario Energy Board Act, 1998* for the purposes of subsection 79.16 (1) of that Act.

2. The consumer would, if the consumer were not subject to this Act, be invoiced the rates determined by the Board under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*.

Regulated rate consumers, first adjustments

7. (1) Despite any order under subsection 78 (3.1) of the *Ontario Energy Board Act, 1998* and despite section 79.16 of that Act, the electricity rates payable by regulated rate consumers for the period beginning on July 1, 2017 and ending on April 30, 2018 are the rates, as determined by the Board, that would result in a hypothetical regulated rate consumer who meets the prescribed criteria being charged an invoice amount that is 25 per cent less than the invoice amount that would have been charged to that consumer under the comparison rates described in subsection (2).

Comparison rates

(2) The comparison rates are the rates that would have been effective May 1, 2017 if they had been determined by the Board solely using the method prescribed by the regulations made under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*, without taking into account any forecasted impact of any other provisions of this Act.

Invoice amounts

(3) The types of amounts to be included or excluded in each invoice amount mentioned in subsection (1) are the types of amounts specified in the regulations.

Other specified consumers, first adjustments

8. (1) For the period beginning on July 1, 2017 and ending on April 30, 2018, the adjustments made by the IESO under section 25.33 of the *Electricity Act, 1998* shall, with respect to specified consumers who are not regulated rate consumers, be further adjusted

by electricity vendors in accordance with the determinations of the Board under subsection (2).

Board to make determinations

(2) The Board shall, in accordance with the regulations, determine the adjustments to be made by electricity vendors.

Same, regulations

(3) The regulations may specify different adjustments to be made in respect of prescribed classes of specified consumers who are not regulated rate consumers.

Determinations by Board

9. The Board shall make the determinations mentioned in sections 7 and 8 no later than 15 business days after the day this section receives Royal Assent and, regardless of whether the Board makes the determinations before or after July 1, 2017, the determinations shall be effective as of July 1, 2017.

Implementation by electricity vendors

10. (1) As soon as possible after the Board makes determinations under section 9, each electricity vendor shall, in respect of electricity used on or after July 1, 2017, ensure that its invoices reflect the determinations of the Board.

Same

(2) The electricity vendor shall ensure that, if any of its customers who are specified consumers have been invoiced in a manner that does not reflect the determinations of the Board under section 9, the specified consumer receives the difference between the amounts shown on the invoice and the amounts reflecting the Board's determinations, provided as a lump sum credit on the first invoice issued after the electricity vendor has adapted its invoices or by such other means as may be prescribed.

Subsequent adjustments

11. (1) Despite clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998* and subject to subsection (2), the Lieutenant Governor in Council may prescribe the methodology to be applied by the Board after April 30, 2018 for the purpose of determining,

(a) electricity rates for regulated rate consumers; or

(b) adjustments to be applied by electricity vendors to the adjustments made by the IESO under section 25.33 of the *Electricity Act, 1998* in respect of prescribed classes of specified consumers who are not regulated rate consumers.

Limitation

(2) Any prescribed methodology shall have regard to the following:

1. The purposes of this Act.

2. The clean energy costs borne by specified consumers over time.

3. Such other matters as may be prescribed.

Sub-metering

12. (1) This section applies if a specified consumer provides to another person electricity in respect of which a determination of the Board referred to in section 9 or 11 applies.

Same

(2) If an invoice for the electricity is issued to the person by the specified consumer or a unit sub-meter provider providing unit sub-metering for the specified consumer, the amount payable for the electricity by the person who is liable to pay the invoice shall be determined in accordance with the regulations.

PART III
CLEAN ENERGY ADJUSTMENT

Specified consumers to pay

13. (1) Upon receipt of an invoice from an electricity vendor that includes an amount in respect of the clean energy adjustment, a specified consumer shall pay the amount to the electricity vendor as agent of the investment interest owners.

Same

(2) For greater certainty, subsection (1) applies regardless of,

(a) whether the clean energy adjustment was determined in a manner that was inconsistent with this Act; and

(b) whether the amount payable in respect of the clean energy adjustment relates to funding obligations that were incurred in a manner that was inconsistent with the Financing Plan, including in a manner that failed to provide for the reasonable alignment of the estimated finance amount with the fair allocation amount.

Terms

(3) The payment shall be made in accordance with such terms of payment as may be specified in the invoice, which may include terms relating to late payment fees and interest charges.

Indebtedness of specified consumer

(4) An unpaid amount that is required to be paid by a specified consumer under this section constitutes indebtedness of the specified consumer to each investment interest owner to the extent of each owner's respective interest in the investment asset.

Same

(5) The indebtedness mentioned in subsection (4) is a single and separate debt obligation owed by the specified consumer and may be enforced independently from any other payment obligation or indebtedness owing by the specified consumer.

Unit sub-metering

(6) A specified consumer who provides electricity through unit sub-metering may collect amounts in respect of the clean energy adjustment payable under this section in accordance with the regulations.

Irrevocability of amount

14. (1) An amount in respect of the clean energy adjustment shown on an invoice issued to a specified consumer under this Act is determinative of the amount of the consumer's indebtedness resulting from the clean energy adjustment and is irrevocable upon invoicing the consumer and may not be set off or bypassed.

Exception

(2) Subsection (1) does not apply to the extent that the invoice reflects a clerical, typographical or calculation-related error.

Determination of clean energy adjustment
Financial Services Manager to determine

15. (1) The Financial Services Manager shall determine the clean energy adjustment payable by all specified consumers in respect of each month in a reference period by taking the following steps:

1. Calculate the sum of the following:

    i. The estimated finance amount in respect of the reference period.

    ii. The true up amount in respect of the reference period.

2. Divide the sum calculated under paragraph 1 by the number of months in the reference period.

Regulations re true up amount

(2) The Lieutenant Governor in Council shall, in making regulations with respect to the determination of the true up amount, have regard to the following principles:

1. The true up amount should serve to ensure that the collection of the clean energy adjustment is sufficient to pay the finance amount when it is due.

2. The method for determining the true up amount should take into account historical and reasonably foreseeable,

    i. differences between the estimated and actual finance amount for the applicable reference period,

    ii. differences between amounts invoiced and amounts collected due to various factors, including applicable taxes, consumer defaults and delays, billing lags and write-offs, and

    iii. variations in billings due to variations in electricity consumption.

Financial Services Manager to notify Board

(3) The Financial Services Manager shall, in accordance with the regulations, notify the Board of the clean energy adjustment in respect of a reference period and such other information related to the determination of the clean energy adjustment as may be prescribed.

Board to determine rates

(4) Without changing the clean energy adjustment, the Board shall, in accordance with the regulations, determine the rates at which specified consumers are invoiced to recover the clean energy adjustment in respect of the reference period.

IESO to receive amounts

16. (1) The IESO shall, as agent of the investment interest owners, receive amounts in respect of the clean energy adjustment paid to it from electricity vendors in accordance with the market rules made under section 32 of the *Electricity Act, 1998* or the regulations.

Account

(2) All of the following amounts received by the IESO shall, until remitted to or for the benefit of the investment interest owners in accordance with subsection (4), be

deposited promptly into an account established for the purposes of receiving those amounts:

1. Amounts described in subsection (1).

2. Payments made by specified consumers directly to the IESO as electricity vendor under subsection 13 (1).

3. Proceeds of amounts described in paragraphs 1 and 2.

Same, held in trust

(3) All amounts received by the IESO in respect of the clean energy adjustment shall, until remitted to or for the benefit of the investment interest owners, be held in trust by the IESO for the investment interest owners.

IESO to remit

(4) The IESO shall remit amounts received by it in respect of the clean energy adjustment, inclusive of interest earned on the amounts referred to in subsection (1), to or for the benefit of the investment interest owners in accordance with the regulations.

Electricity vendor to invoice specified consumers

17. (1) Each electricity vendor shall issue an invoice to each of its customers who is a specified consumer for the amount payable by the consumer in respect of the clean energy adjustment, as determined by applying the rate set by the Board under subsection 15 (4) and in accordance with the regulations.

Electricity vendor to report

(2) Each electricity vendor shall, in accordance with the regulations, promptly report to the IESO the total amount invoiced to its customers who are specified consumers in respect of the clean energy adjustment, the amount collected and such other information as may be prescribed.

Electricity vendor to collect

(3) Each electricity vendor shall, as agent of the investment interest owners, collect amounts in respect of the clean energy adjustment from specified consumers in accordance with the regulations.

Pro rating of payments

(4) If an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices and the amount paid is less than the total amount payable, the electricity vendor shall allocate the payment on a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices in respect of electricity charges in respect of the same invoice period.

Held in trust

(5) Payments received by an electricity vendor from or on behalf of specified consumers in respect of the clean energy adjustment and all proceeds of the payments shall, until remitted to the IESO for the benefit of the investment interest owners in accordance with subsection (6), be held by each electricity vendor in trust for the benefit of the investment interest owners.

Remittance to IESO

(6) Each electricity vendor shall remit amounts in respect of the clean energy adjustment to the IESO for the benefit of the investment interest owners in accordance with the regulations.

PART IV
IMPLEMENTATION

Financial Services Manager

Appointment

18. Ontario Power Generation Inc. is appointed as the Financial Services Manager for the purposes of this Act.

Duties and powers

19. (1) The Financial Services Manager shall perform the duties assigned to it under this Act and may administer the investment asset on behalf of the investment interest owners.

Same

(2) The administration of the investment asset may include providing information to the IESO in respect of obligations under Part III and such other activities as may be prescribed.

Fees

(3) Subject to any prescribed limitations, the Financial Services Manager may establish and charge fees in relation to such matters as may be prescribed in accordance with the regulations, which regulations may provide for the ability to recover costs and expenditures and to earn a return.

Same, Board approval

(4) Before establishing fees under subsection (3), the Financial Services Manager shall submit them to the Board for approval in accordance with the regulations.

Fair Allocation Amount

Minister to calculate fair allocation amount

20. (1) Subject to subsections (2) and (3), before the first funding obligation is incurred the Minister shall calculate a fair allocation amount in respect of each reference period, applying such method as the Minister considers appropriate and in accordance with the following steps:

1. Determine the estimated clean energy costs and estimated clean energy benefits allocated to specified consumers in respect of the reference period.

2. Determine the estimated reduction in the amounts payable by specified consumers as a result of determinations of the Board under Part II in respect of all previous reference periods, including the estimated reduction in clean energy costs described in clause (a) of the definition of "clean energy costs" in subsection 1 (1) that would otherwise have been payable by specified consumers in the absence of this Act.

3. Determine the amount, if any, by which the determination under paragraph 1 exceeds the determination under paragraph 2.

4. Calculate the sum of the amount determined under paragraph 3 and such other amounts as may be prescribed.

Principles

(2) In calculating the fair allocation amount, the Minister shall have regard to the following principles:

1. The purpose of calculating the fair allocation amount is to measure and allocate the estimated clean energy costs and estimated clean energy benefits fairly among the specified consumers in respect of each reference period.

2. Calculations should be made having regard to the need to align each fair allocation amount with the estimated finance amount payable during the reference period.

3. Estimated clean energy costs allocated to specified consumers in respect of a reference period should be allocated in proportion to the estimated clean energy benefits attributed to the specified consumers in respect of the reference period.

4. Such other principles as may be prescribed.

Assumptions

(3) In calculating the fair allocation amount, the Minister shall make such assumptions as the Minister considers to be reasonable regarding the following:

1. The time value of money or the rate of inflation, for the purpose of equating nominal amounts over time.

2. The expected number of specified consumers in respect of each reference period.

3. The expected electricity consumption rates in respect of each reference period.

4. Such other assumptions as may be prescribed.

Minister to provide amount to Financial Services Manager

(4) The Minister shall provide the fair allocation amount in respect of each reference period to the Financial Services Manager.

Recalculation

(5) A calculation of the fair allocation amount under this Part may be changed by such person as may be prescribed in accordance with such requirements as may be prescribed.

Same

(6) No change under subsection (5) shall affect any clean energy adjustment that has already been determined under section 15 or any funding obligations that have already been incurred before the change.

Information

(7) The Minister, the IESO, the Financial Services Manager, the Board and electricity vendors shall provide such information as may be prescribed in accordance with the regulations for the purposes of facilitating a change to a calculation of the fair allocation amount.

FINANCING PLAN

Financial Services Manager to prepare Financing Plan

21. (1) The Financial Services Manager shall prepare a written plan entitled the Financing Plan to be used by the Financial Services Manager to evaluate whether potential funding obligations should be incurred for the purposes of acquiring and financing an investment asset in accordance with this Act or for the purposes of a refinancing.

Plan to be provided to Minister

(2) The Financial Services Manager shall provide the Financing Plan to the Minister.

Principles

(3) In preparing the Financing Plan, the Financial Services Manager shall have regard to the following principles:

1. Funding obligations should be incurred such that, along with any funding obligations already incurred, the estimated finance amount that would, subject to any refinancing, become due and payable during a reference period will reasonably align with the fair allocation amount determined in respect of the reference period, in each case after reducing the fair allocation amount to reflect determinations of the Board under Part II in respect of the reference period.

2. Incurrences should be implemented in a manner that, in the opinion of the Financial Services Manager, is reasonable, cost effective and that reflects prevailing market terms and conditions.

3. Reasonable assumptions should be made regarding such matters as may be prescribed.

4. Such other principles as may be prescribed.

Limitation

(4) In respect of each reference period from July 1, 2017 to April 30, 2021, no funding obligation shall be incurred that would result in amounts payable in respect of the clean energy adjustment in respect of the reference period unless,

(a) the amounts are payable in respect of a reference period in respect of which the Board has not made any determinations under Part II; or

(b) if the Board has made a determination under Part II in respect of the reference period, the funding obligations incurred would not result in amounts payable in respect of the clean energy adjustment during the reference period in an amount that exceeds the limit determined in accordance with the regulations.

Other reports

(5) The Financial Services Manager shall submit to the Minister such reports and information as the Minister may require from time to time and shall, if required by the Minister to do so, examine, report and advise on any question relating to the Financing Plan.

Amendments to plan

(6) The Financial Services Manager may amend the Financing Plan at any time.

Same

(7) In the event that the Financing Plan is amended, any reference in this Act to the Financing Plan is deemed to be a reference to the plan as amended.

Incurrence of funding obligations

22. (1) The Financial Services Manager shall ensure that funding obligations incurred for the purposes of this Act are incurred in a manner that is consistent with the applicable Financing Plan.

Financing entities

(2) In accordance with the Financing Plan, the Financial Services Manager may establish or cause to be established one or more financing entities that may incur funding obligations.

Prohibition

(3) The Financial Services Manager shall not provide for funding obligations to be incurred with any recourse to any assets of an electricity vendor, the Board, Ontario Power Generation Inc., the Province or the Lieutenant Governor in Council, except to the extent that any of these persons or entities may be liable to perform obligations or duties arising under this Act or under the express terms of a funding obligation or other agreement.

Effect of amendment to fair allocation amount

(4) Each funding obligation incurred and each transfer made by a financing entity is deemed to be consistent with the Financing Plan and to provide for the reasonable alignment of the estimated finance amount with the fair allocation amount.

Same

(5) For greater certainty, subsection (4) applies despite the failure of the Financial Services Manager to comply with subsection (1).

PART V
THE REGULATORY ASSET

IESO deferral

23. (1) The IESO deferral for each month, commencing May 1, 2017, shall be determined by the IESO in accordance with the regulations.

Same, retrospective amounts

(2) For greater certainty, the regulations may provide for the IESO deferral to include an amount that was incurred by the IESO on or after May 1, 2017 and before the day this section comes into force.

Electricity vendors to provide information

(3) Electricity vendors shall provide to the IESO such information as the IESO may reasonably request for the purposes of determining the IESO deferral under subsection (1) and such further information as may be prescribed.

Same

(4) The IESO may rely on information provided by electricity vendors for the purposes of the determination under subsection (1).

Variance account to be established, maintained

24. (1) The IESO shall establish and maintain a variance account in which it records the following:

1. The IESO deferral for each month.

2. All payments received by the IESO resulting from the exercise of the right of recovery under section 25 and any transfer under section 26.

3. Such other adjustments as may be prescribed, including adjustments in respect of the period that commences on or after May 1, 2017 and before the day this section comes into force.

Recording determinative

(2) Subject to the correction of any obvious error by the IESO, its recording of the balance in the variance account is determinative of the balance as of the time of the recording.

Rights of investment interest owner

(3) No change made by the IESO to the balance in the variance account shall, if the previous balance was relied upon by an investment interest owner in the context of a transfer under section 26, affect the rights acquired by the investment interest owner under the transfer.

Regulatory asset established

25. (1) Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Board to set rates

(2) Subject to subsection (3), the Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for the IESO to recover the balance recorded in the variance account.

Limitation

(3) The IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2021.

Transfer of regulatory asset

26. (1) The IESO may from time to time, in accordance with this Act and the regulations, transfer a specified portion of the regulatory asset to a financing entity in accordance with this section.

Agreement

(2) An agreement between the IESO and a financing entity in relation to the transfer of a specified portion of the regulatory asset shall provide for consideration of a payment by the financing entity to the IESO in an amount equal to the amount of the specified portion.

Effect of payment

(3) Upon receipt by the IESO of the payment by the financing entity,

(a) the balance in the variance account shall be reduced by the amount of the payment;

(b) the regulatory asset shall be adjusted accordingly;

(c) the financing entity shall acquire a corresponding investment interest; and

(d) the IESO shall retain no further right, title or interest in the corresponding investment interest.

Validity of transfer

27. (1) A transfer of a specified portion of the regulatory asset under section 26 constitutes a valid and enforceable absolute assignment, conveyance and sale of the corresponding investment interest to the transferee.

Same

(2) Without limiting subsection (1), any transfer agreement that states an intention of the parties for the IESO to dispose of a specified portion of the regulatory asset and to assign, convey or sell a corresponding investment interest shall be treated for all purposes as an absolute assignment, conveyance, disposition and sale of the IESO's right to

recover the corresponding amount in the variance account and not merely as a security interest.

Deemed perfection, etc.

(3) At the time a transfer of the regulatory asset is made under section 26, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the transferee shall have priority over any liens in favour of those persons.

PART VI
THE INVESTMENT ASSET

Investment asset established

28. (1) The transfer of a specified portion of the regulatory asset under section 26 creates an investment asset or, if it is not the first transfer, adds to the investment asset.

Same

(2) Upon transfer of a specified portion of the regulatory asset under section 26 to a financing entity, the investment asset resulting from the transfer is immediately vested in the financing entity, free and clear of any adverse claim.

Investment asset, irrevocable rights and interests

29. (1) The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests of investment interest owners:

1. The right and interest to impose, invoice, collect, receive and recover the clean energy adjustment from specified consumers, including the right to determine the clean energy adjustment in accordance with this Act.

2. The right to receive, collect and recover the clean energy adjustment that is imposed, invoiced and recoverable under this Act, including any amounts in respect of the clean energy adjustment that are held by electricity vendors, the IESO and other prescribed parties.

3. All rights and entitlements under such accounts as may be prescribed by regulation and all amounts on deposit in such accounts.

4. The right to enforce the duties and obligations under this Act of each electricity vendor to impose, attribute, charge and invoice for the clean energy adjustment.

5. The right to enforce the duties and obligations under this Act of each electricity vendor and the IESO to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by any electricity vendor to recover payment of the clean energy adjustment.

6. All rights of any kind related to any of the other property rights or interests that comprise the investment interest, including any rights to receive funding rebates.

7. All revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 6, regardless of whether it is invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

Not affected by failure to impose etc. clean energy adjustment

(2) An investment interest is not affected by any failure to impose, attribute, invoice, accrue or collect amounts in respect of the clean energy adjustment.

No set off, etc.

(3) The investment asset shall not be set off,

(a) by a consumer, an electricity vendor, the IESO, an agent of the investment interest owners or an owner in the Province of a distribution system within the meaning of the *Electricity Act, 1998*;

(b) in connection with any default of a person mentioned in clause (a); or

(c) by any affiliate or successor of a person mentioned in clause (a).

Exercise of rights

(4) The rights of the investment interest owners to collect the clean energy adjustment and enforce their rights and interests in, to and in respect of the investment asset against a specified consumer shall be exercised in accordance with Part III of this Act.

Collective action required

(5) If one investment interest owner owns a right or interest in the investment asset that comprises less than the entire property right and interest constituted by the

investment asset, the right or interest shall only be enforced by the investment interest owner collectively and in coordination with all other investment interest owners, and any agreement among that collective in furtherance of the collective action shall be valid and binding on the investment interest owners as a collective in accordance with its terms.

Transfer of investment interest

30. An investment interest owner may transfer all or a portion of an investment interest to any other investment interest owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan.

Validity of transfer

31. (1) A transfer of an investment interest under this Act is a valid and enforceable sale and absolute transfer of the investment interest and confers upon the transferee a valid property right and interest in, to and under the applicable investment interest acquired in accordance with the terms of the transfer.

Same

(2) Without limiting subsection (1), a transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of an investment interest owner's right, title and interest in, to and under an investment interest, and not merely as a security interest, and upon such absolute transfer the transferor shall retain no right, title or interest in the investment interest subject to the transfer, including all rights to the investment interest arising after the transfer.

Deemed perfection, etc.

(3) At the time a transfer of an investment interest is made, the transfer shall be deemed to have been and shall be perfected as described in the *Personal Property Security Act*, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer, assignment, etc.

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer, and the property rights and interests acquired by the investment interest owner shall have priority over any liens in favour of such other persons.

Investment interest owner may grant security interest

32. (1) An investment interest owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under the investment interest to or in favour of any person to secure a funding obligation.

Validity

(2) A security interest granted under this Act shall be valid and enforceable in accordance with its terms.

Perfection and priority of security interests

(3) All provisions of the *Personal Property Security Act* shall apply to the investment asset and each investment interest on the basis that the investment asset and each investment interest is intangible personal property, except as otherwise provided for in this section, and any granting of a security interest by an investment interest owner to secure a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by registering a financing statement under that Act on that basis.

Proceeds

(4) All proceeds of an investment interest that are subject to the security interest and that are received by the investment interest owner shall immediately be subject to the security interest and shall be perfected without any physical delivery of the proceeds, registration of any financing statement or any further act.

Perfection

(5) The security interest shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may subsequently attach to the property rights and interests in the investment interest subject to the security interest, unless the person to whom the security interest has been granted consents otherwise.

Same

(6) The person to whom the security interest has been granted shall have a perfected security interest in revenues or other proceeds that are deposited in any account of any electricity vendor, an agent of an electricity vendor or other person who may have commingled such revenues or other proceeds with other funds.

Notice required

(7) The secured party shall be entitled to exercise the rights of an investment interest owner only after the secured party has given notice of the enforcement of its security interest to the IESO.

Interpretation

(8) For the purposes of this section, a security interest is perfected when it is perfected as described in the *Personal Property Security Act.*

PART VII
MISCELLANEOUS

Appointment of agent, invoicing or collection

33. (1) If a prescribed circumstance applies, the Lieutenant Governor in Council may by regulation appoint a person to carry out some or all of the obligations of an electricity vendor under this Act in the place of an electricity vendor with respect to invoicing or collection.

Same, not Crown agent

(2) For greater certainty, a person appointed under this section is not an agent of the Crown for any purpose, despite the *Crown Agency Act*.

Board's authority

34. (1) Each electricity vendor, the IESO and the Financial Services Manager shall maintain such accounts and provide such information to the Board as the Board may require for the purposes of carrying out its responsibilities under this Act, in the form and manner and within the time required by the Board.

No hearing required

(2) Despite anything to the contrary in the *Ontario Energy Board Act, 1998*, the Board may exercise any of its responsibilities under this Act without a hearing.

Sequestration

35. (1) A court in the Province may, upon application by an investment interest owner or a secured party, order the sequestration and payment of amounts in respect of the clean energy adjustment, collections or remittances, as applicable, for the benefit of the investment interest owner or secured party by any person or entity authorized to collect amounts in respect of the clean energy adjustment.

Same

(2) An order under subsection (1) does not limit any other remedies available to the applicant.

Choice of law

36. The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to a transfer under this Act or the creation of a security interest in the regulatory asset, the investment asset, the clean energy adjustment or the undertaking of the Crown under section 5 shall be the laws of the Province.

Conflict

37. The provisions of this Act and the regulations apply despite any provision of any other Act regarding the attachment, assignment or perfection, or the effect of perfection or priority of any transfer or security interest.

No further approvals, etc.

38. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required under the Financing Plan or in relation to the determination of the fair allocation amount.

Liability

39. (1) No action or other civil proceeding shall be commenced against any employee of the Province or Ontario Power Generation Inc. for any act done in good faith in the exercise or performance or the intended exercise or performance of a power or duty under this Act, the regulations or for any alleged neglect or default in the exercise or performance in good faith of such a power or duty.

Same

(2) Nothing in subsection (1) shall be read as limiting the effect of subsection 19 (1) of the *Electricity Act, 1998* or subsection 11 (1) of the *Ontario Energy Board Act, 1998.*

Same

(3) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act,* subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

References in marketing materials and offering documents

40. No person shall include, in marketing materials or offering documents relating to the financing of funding obligations, references to any rights, obligations, guarantees or undertakings arising under section 5 unless the prescribed requirements, if any, are satisfied.

Regulations

41. (1) The Lieutenant Governor in Council may make regulations in respect of the following matters:

1. Governing anything that is required or permitted to be prescribed or that is required or permitted to be done by, or in accordance with, the regulations or as authorized, specified or provided in the regulations.

2. Defining, for the purposes of a regulation, words and expressions used in this Act that are not defined in the Act.

3. Governing the incurrence of debt for the purposes of the definition of "refinancing" in subsection 1 (1).

4. Governing the inclusion of information under this Act on or with invoices, which may include requiring notice to be provided by electricity vendors to specified consumers and other prescribed persons regarding the adjustments, including providing for different requirements in different circumstances and for different classes of specified consumers.

5. Governing the inclusion of information about the clean energy adjustment and any other matters provided for under this Act on or with invoices issued to specified consumers, including the form that the information must take and the form of the invoices and the form of any notice to be provided to the specified consumer under this Act.

6. Governing the manner by which invoices or notices provided for under this Act are to be provided to specified consumers and other prescribed persons.

7. Providing for a right of compensation for investment interest owners affected by a breach under section 29 and the manner in which such a right may be enforced under this Act.

8. Prescribing the time within which any action required by this Act may be required to be done.

9. Providing for such other matters as the Lieutenant Governor in Council considers advisable to carry out the purpose of this Act.

Limitation

(2) Despite subsection (1) or any other Act, no regulation under this Act shall have the effect of reducing, impairing, postponing or terminating the obligations of specified consumers to pay amounts in respect of the clean energy adjustment or impairing or postponing the invoicing, collection, remittance or recovery of the clean energy adjustment.

PART VIII
AMENDMENTS TO OTHER ACTS

Electricity Act, 1998

42. (1) Subsection 6 (1) of the *Electricity Act, 1998* is amended by adding the following clause:

(q.1) to exercise the powers and rights and to perform the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and to engage in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including,

(i) entering into agreements or arrangements with any person for the purposes of the *Ontario Fair Hydro Plan Act, 2017*,

(ii) engaging in activities related to making payments to and receiving payments as contemplated under the *Ontario Fair Hydro Plan Act, 2017* and related settlement activities,

(iii) engaging in activities related to the transfer and administration of the regulatory asset created under the *Ontario Fair Hydro Plan Act, 2017*, which activities may include,

(A) incurring liabilities in relation to the regulatory asset,

(B) transferring the regulatory asset under section 26 of the *Ontario Fair Hydro Plan Act, 2017* for consideration, and

(C) acting as a recovery agent under the *Ontario Fair Hydro Plan Act, 2017*;

(2) Subsection 25.33 (1) of the Act is amended by striking out "and" at the end of clause (a), by adding "and" at the end of clause (b) and by adding the following clause:

(c) such amounts as may be prescribed that are paid or incurred by the IESO in relation to the *Ontario Fair Hydro Plan Act, 2017*.

(3) Subsection 25.33 (2) of the Act is amended by striking out "and" at the end of clause (a), by adding "and" at the end of clause (b) and by adding the following clause:

(c) such amounts as may be prescribed that are paid or incurred by the IESO in relation to the *Ontario Fair Hydro Plan Act, 2017*.

(4) Clause 25.33 (4) (b) of the Act is amended by adding "or as may be required by a regulation made under this Act or the *Ontario Fair Hydro Plan Act, 2017*" at the end.

(5) Subsection 25.33 (5) of the Act is amended by adding "or under the *Ontario Fair Hydro Plan Act, 2017*" at the end.

(6) Section 53.1 of the Act is amended by adding the following subsections:

Same, *Ontario Fair Hydro Plan Act, 2017*

(1.1) In addition to the objects mentioned in subsection (1), the objects of Ontario Power Generation Inc. include exercising the powers and rights and performing the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and engaging in activities to facilitate the implementation of that Act, including entering into contracts and undertakings on behalf of financing entities and performing other services on behalf of financing entities, subject to the right to be paid by the financing entities for those services.

Subsidiaries, etc.

(1.2) Ontario Power Generation Inc. may create or invest in one or more subsidiaries, trusts, partnerships, limited partnerships or special purpose entities in order to more efficiently conduct its activities or achieve its objects.

Deemed assets, non-subsidiary

(1.3) Despite any other provision of this Act, the *Business Corporations Act* or any other Act, if a financing entity is not a subsidiary of Ontario Power Generation Inc.,

(a) the assets and liabilities of the financing entity shall not form part of the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries; and

(b) the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries shall not form part of the assets and liabilities of the financing entity.

Deemed assets, subsidiary

(1.4) Despite any other provision of this Act, the *Business Corporations Act* or any other Act, if a financing entity is a subsidiary of Ontario Power Generation Inc.,

(a) the assets and liabilities of that financing entity shall not form part of the assets and liabilities of Ontario Power Generation Inc. or any of its other subsidiaries; and

(b) the assets and liabilities of Ontario Power Generation Inc. or any of its other subsidiaries shall not form part of the assets and liabilities of that financing entity.

Definition, financing entity

(1.5) For the purposes of this section,

"financing entity" has the same meaning as in the *Ontario Fair Hydro Plan Act, 2017*.

Ontario Energy Board Act, 1998

43. (1) Subsection 70 (2.1) of the *Ontario Energy Board Act, 1998* is amended by adding the following paragraph:

4. The licensee is required to comply with the *Ontario Fair Hydro Plan Act, 2017*.

(2) Section 70 of the Act is amended by adding the following subsection:

Deemed condition of licences, unit sub-meter provider, *Ontario Fair Hydro Plan Act, 2017*

(2.4) Every licence issued to a unit sub-meter provider is deemed to contain the condition that the unit sub-meter provider is required to comply with the *Ontario Fair Hydro Plan Act, 2017* and the regulations made under it.

(3) Section 78.1 of the Act is amended by adding the following subsections:

Same, limitation re Ontario Power Generation Inc.

(3) The determination of a payment to Ontario Power Generation Inc. under this section shall not include any consideration of amounts related to activities of Ontario Power Generation Inc. carried out in relation to the *Ontario Fair Hydro Plan Act, 2017*.

Same

(3.1) The amounts referred to in subsection (3) include, without limitation, the following:

1. Amounts related to the appointment of Ontario Power Generation Inc. as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

2. Amounts related to the charging of fees for performing duties as the Financial Services Manager.

3. Amounts related to exercising the powers and performing the duties of the Financial Services Manager.

4. Amounts related to the consolidation of the assets and liabilities for accounting purposes of any special purpose financing entities established under and for the purposes of that Act.

(4) Subsection 79.16 (3) of the Act is repealed.

PART IX
COMMENCEMENT AND SHORT TITLE

Commencement

44. This Schedule comes into force on the day the *Fair Hydro Act, 2017 receives* Royal Assent.

Short title

45. The short title of the Act set out in this Schedule is the *Ontario Fair Hydro Plan Act, 2017*.

SCHEDULE 2
AMENDMENTS TO THE ONTARIO ENERGY BOARD ACT, 1998

1. (1) Subsection 79 (4) of the *Ontario Energy Board Act, 1998* is repealed and the following substituted:

Liability

(4) All consumers are required, in accordance with the regulations, to contribute towards the amount of any compensation required under subsection (3) that is not otherwise provided under subsection (4.1).

Payments for certain classes

(4.1) Compensation required under subsection (3) may be provided with respect to one or more prescribed classes of consumers who receive rate protection under this section, in a manner provided for in the regulations.

Money appropriated by the Legislature

(4.2) The compensation provided for in subsection (4.1) shall be paid for out of the money appropriated for those purposes by the Legislature.

Information, etc.

(4.3) If provided for in the regulations, the Board, the IESO and distributors, or any of them, shall provide such information and reports to the Ministry of Energy and to one another as are necessary to facilitate the implementation, administration, funding and delivery of the rate protection or of anything else provided for in this section.

(2) Clause 79 (5) (e) of the Act is repealed and the following substituted:

(e) prescribing rules respecting the amounts that must be collected to compensate distributors, taking into account any compensation provided under subsection (4.1), including rules,

(i) respecting the calculation of those amounts,

(ii) respecting the calculation of any off-set to the liability of consumers under subsection (3) having regard to those amounts,

(iii) establishing the time and manner of collection,

(iv) requiring the amounts to be paid in instalments and requiring the payment of interest or penalties on late payments,

(v) prescribing methods of ensuring that the amounts required cannot be bypassed, and

(vi) respecting the distribution of those amounts to consumers;

(e.1) prescribing classes of consumers for the purposes of subsection (4.1), and governing how and when the compensation is to be provided with respect to the rate protection provided to them, including, without restricting the generality of the foregoing, requiring the IESO to receive payments or amounts from the Minister of Energy and to make payments to licensed distributors or to prescribed persons and prescribing how and when payments are to be made;

2. Section 79.2 of the Act is repealed and the following substituted:

Rate assistance

79.2 (1) The Minister shall make provision for rate assistance for rate-assisted consumers having regard to their economic circumstances, and where the Minister makes such provision, shall do so out of the money provided for in subsection (4).

OESP

(2) The program known as the "Ontario Electricity Support Program" in English and "Programme ontarien d'aide relative aux frais d'électricité" in French is continued for the purpose of providing rate assistance to rate-assisted consumers having regard to their economic circumstances.

Administered by Board

(3) The Ontario Electricity Support Program shall be administered by the Board, or when the regulations so provide, by a Minister of the Crown or other entity provided for in the regulations.

Money appropriated by the Legislature

(4) The money required for the purposes of the Ontario Electricity Support Program shall be paid out of the money appropriated for those purposes by the Legislature, once the amounts recorded in the variance account referred to in subsection (5) are no longer sufficient to provide for the funding of the program when taken on their own.

Variance account

(5) The money required for the purposes of the Ontario Electricity Support Program shall be provided out of the credit balance in the variance account maintained by the IESO under the Program as it existed before the coming into force of section 2 of Schedule 2 to the *Fair Hydro Act, 2017* until the amounts recorded in the account are no longer sufficient, when taken on their own, to fund the Program.

Variance account depleted

(6) The IESO shall provide the Ministry of Energy with advance notice, on a timely basis, of the time the IESO estimates that the amounts reflected in the variance account would be less than the amount required to meet its obligations related to funding the Ontario Electricity Support Program for the upcoming month.

How provided

(7) Rate assistance provided under this section shall be provided with respect to consumers prescribed in the regulations, and shall be provided at the times provided for in the regulations and in the amounts and in the manner provided for in the regulations.

Payments with respect to prior use

(8) The regulations may require provision of rate assistance to prescribed classes of rate-assisted consumers with respect to electricity consumed during a period prior to the date of the making of the regulation, but no such rate assistance shall be required under the regulations with respect to electricity consumed before January 1, 2016.

Transitional

(9) The regulations may require the provision of rate assistance for a rate-assisted consumer with respect to a period prior to the date on which the consumer became a rate-assisted consumer if the consumer meets all of the criteria prescribed by the regulations.

Distributors, etc.

(10) A distributor, a unit sub-meter provider and any other person or entity that may be prescribed is entitled to be compensated from the money referred to in subsection (4) or subsection (5), as the case may be, for any lost revenue resulting from the provision of rate assistance under the Ontario Electricity Support Program.

Deemed licence conditions, IESO, settlements, payments, etc.

(11) Every licence issued to the IESO, a distributor or unit sub-meter provider or a retailer of electricity shall be deemed to contain conditions requiring the licensee to do anything necessary to implement and administer the provision of rate assistance under this section as may be required by the regulations or the Board, including requirements with respect to,

(a) making payments to the IESO, distributors, unit sub-meter providers and other persons and entities identified by the regulations;

(b) receiving payments or other amounts from the IESO, distributors, unit sub-meter providers and other persons and entities identified by the Minister;

(c) requiring licensees to pass any rate assistance provided for under this section through to rate-assisted consumers in the manner provided for in the regulations;

(d) engaging in settlement activities;

(e) providing information to and receiving information from the Ministry of Energy, the Board, the IESO, distributors, unit sub-meter providers, retailers of electricity and any other prescribed persons and entities in the time and in the manner provided for by the Board or as may be prescribed; and

(f) entering into agreements or arrangements with licensees and other persons.

Information, etc.

(12) If provided for in the regulations, the Board, the IESO, distributors, retailers of electricity and unit sub-meter providers, or any of them, shall provide such information and reports to the Ministry of Energy and to one another as are necessary to facilitate the implementation, administration, funding and delivery of rate-assistance or of anything else required under this section.

Conflicts, etc.

(13) Where any conflict exists between an order of the Board, a code issued by the Board or a licence condition and this section or a regulation made under this section, this section or the regulation made under this section shall prevail to the extent of the conflict.

Regulations

(14**)** The Lieutenant Governor in Council may make regulations governing anything dealt with in this section and without limiting the generality of the foregoing, may make regulations,

(a) governing anything that is described in this section as being prescribed or as being provided for in the regulations or that is required to be done in accordance with the regulations;

(b) governing the time or times at which rate assistance shall be paid or become payable to rate-assisted consumers;

(c) governing the determination of classes of consumers who are rate-assisted consumers, including providing for different classes of rate-assisted consumers;

(d) requiring that certain costs and expenditures related to the Ontario Electricity Support Program be only incurred with the prior approval of the Minister, and governing those costs and expenditures;

(e) establishing rules for the calculation of the amount of the rate assistance to be provided;

(f) governing payments under this section, including determining the method or methods of calculating the amount of rate assistance to be provided;

(g) setting maximum amounts of the total annual value of rate assistance that may be provided;

(h) requiring a distributor, the IESO or a unit sub-meter provider or other prescribed person or entity to make or receive payments in respect of rate assistance, including requiring them to make or receive payments directly to or from the Ministry of Energy or to receive overpayments directly or indirectly from consumers or other persons entitled to receive the rate assistance and prescribing the circumstances in which such payments are to be made and received and such overpayments are to be received as well as methods for determining the amounts payable or to be received;

(i) requiring the IESO to receive payments from the Minister and requiring the IESO to make payments to the Board, to licensed distributors, to unit sub-meter providers or to prescribed persons, in respect of the rate assistance provided under this section and governing methods for determining the amounts payable;

(j) governing the Board's or other prescribed entity's administration and program-related costs in administering the Ontario Electricity Support Program;

(k) governing transitional matters arising from the changes made to the Ontario Electricity Support Program as a result of the enactment of the *Fair Hydro Act, 2017*.

Retroactivity

(15) A regulation made under this section is, if it so provides, effective with reference to a period before it is filed.

General or particular

(16) A regulation under this section may be general or particular in application, may provide for different classes of persons and entities and may prescribe different rules for different persons or entities or different classes of persons or entities.

Verification of eligibility

(17) Section 11 of the *Ministry of Revenue Act* applies with respect to the Ontario Electricity Support Program as a government assistance program administered by the Board.

Definitions

(18) In this section,

"Government assistance program" has the meaning provided for in subsection 11 (2) of the *Ministry of Revenue Act*; ("programme d'aide gouvernementale")

"rate-assisted consumer" means a consumer referred to in subsection (7). ("consommateur admissible à l'aide tarifaire")

3. The Act is amended by adding the following section:

Confidentiality, information sharing, etc.

79.2.1 (1) For the purposes of section 79.2, the Board or the Minister or entity having responsibility for administering the Ontario Electricity Support Program may enter into an agreement with the Minister of Community and Social Services to provide the services to the public listed in subsection (2) on behalf of the Board, Minister or the entity, as the case may be, in relation to the administration of the Ontario Electricity Support Program.

Agreement, etc.

(2) The services that may be included in an agreement referred to in subsection (1) are the following:

1. Providing documents and information about the Ontario Electricity Support Program.

2. Processing applications for the Ontario Electricity Support Program.

Arrangements with others

(3) The Minister of Community and Social Services may arrange with another person or entity to provide, on behalf of that Minister, services that that Minister is authorized to provide under an agreement referred to in subsection (1).

Personal information

(4) The Minister of Community and Social Services is authorized to collect, use, disclose and retain personal information necessary to provide the services authorized by

an agreement referred to in subsection (1), but shall not collect, use, disclose or retain more personal information than is reasonably necessary to provide the services.

Limitation

(5) Except where otherwise authorized under subsection (7), the Minister of Community and Social Services shall not collect, use, disclose or retain personal information provided for in subsection (4) without the consent of the individual to whom the information relates.

Duty to transfer personal information

(6) The Minister of Community and Social Services shall transfer an individual's personal information provided for in subsection (4) into the control of the Board, Minister or entity responsible for administering the Ontario Electricity Support Program promptly after processing an application for the Ontario Electricity Support Program, but may retain such personal information as is reasonably necessary to confirm that an individual has been provided a service.

Use of personal information, etc.

(7) The Minister of Community and Social Services may use personal information maintained by that Minister in connection with the administration of the Ontario Disability Support Program and the program established pursuant to the *Ontario Works Act, 1997*, for the purpose of identifying and contacting individuals eligible for the rate assistance provided under the Ontario Electricity Support Program, and to provide services authorized under an agreement referred to in subsection (1).

Deemed compliance

(8) The use of personal information as allowed by subsection (7) is deemed to comply with section 41 of the *Freedom of Information and Protection of Privacy Act*.

Disclosure of list

(9) In order to assist the Minister of Community and Social Services to identify individuals eligible for rate assistance, the Board or the Minister or entity having responsibility for administering the Ontario Electricity Support Program shall, as soon as practicable after the coming into force of this section, disclose to the Minister of Community and Social Services a list of individuals who are enrolled in the Ontario Electricity Support Program, together with their mailing address and other contact information.

Use of list

(10) The Minister of Community and Social Services may use the information on the list provided under subsection (9) to determine whether an individual who is currently enrolled in the Ontario Disability Support Program or the program established under the *Ontario Works Act, 1997* is also enrolled in the Ontario Electricity Support Program.

Destruction of list

(11) The Minister of Community and Social Services shall destroy the list provided under subsection (9) no later than one year after receiving the list.

Notification about the management of personal information

(12) The Minister of Community and Social Services shall ensure that a notice is published on a website describing,

(a) the purpose for which that Minister collects, uses, discloses and retains personal information in connection with the Ontario Electricity Support Program;

(b) the types of personal information that may be collected, used, disclosed and retained in connection with the Ontario Electricity Support Program, and the circumstances in which the personal information may be collected, used, disclosed and retained in connection with that Program; and

(c) the title, and contact information, including an email address, of an employee who can answer an individual's questions about the use of the personal information under this section.

4. The Act is amended by adding the following sections:

Distribution rate-protected consumers

79.3 (1) The Minister shall provide for distribution rate protection to distribution rate-protected residential consumers having regard to the costs of the distribution of electricity to such consumers with respect to electricity consumed on or after the date prescribed by the regulations.

Money appropriated by the Legislature

(2) The money required for the purposes of the provision of distribution rate protection under this section shall be paid out of the money appropriated for those purposes by the Legislature.

Maximum charge

(3) Despite any order of the Board, or anything else under this Act, where the regulations so provide, a prescribed distributor who distributes electricity to distribution rate-protected residential consumers shall not charge those consumers, or a prescribed class of those consumers, any amount for monthly base distribution charges more than,

(a) the maximum amount for the charge that is provided for in the regulations; or

(b) the amount determined by the Board after applying any calculations, processes or methods provided for in the regulations.

Distributors

(4) A distributor who is prescribed under this section is entitled to be compensated from the money referred to in subsection (2) for lost revenue resulting from the provision of the distribution rate protection to distribution rate-protected residential consumers under this section.

Information, etc.

(5) If provided for in the regulations, the Board, the IESO and distributors, or any of them shall provide such information and reports to the Ministry of Energy and to one another as are necessary to facilitate the implementation, administration, funding and delivery of distribution rate protection or of anything else required under this section.

Limitation periods for distribution rate protection, consumer

(6) Despite any past entitlement of a consumer who is eligible to distribution rate protection under this section, no distribution rate protection is payable to a consumer after a limitation period prescribed by the regulations in respect of the consumer, other than in such circumstances as may be prescribed by the regulations.

Limitation, reimbursement of distributor, etc.

(7) Despite any requirement under this Act to reimburse a prescribed distributor or other person for distribution rate protection provided by them to distribution rate-protected residential consumers under this section, no amounts for reimbursement are payable to the prescribed distributor or other person after a limitation period prescribed by the regulations in respect of the prescribed distributor or other person, where such reimbursement is based on a consumer's past entitlement under this section which has not yet been paid or reimbursed under this section, other than in such circumstances as may be prescribed by the regulations.

Transitional

(8) If, for technical or operational reasons, a distributor referred to in subsection (3) is unable to adapt its invoices to comply with this section and the regulations by the time it issues its first invoice for electricity consumed after the prescribed date in respect of an account of a consumer who is eligible for distribution rate protection under this section,

(a) the distributor shall adapt its invoices as soon as possible and, in any event, no later than a date prescribed in the regulations; and

(b) consumers continue to be entitled to receive the distribution rate protection to which they are entitled under this Act and may receive it as a lump sum credit

on the invoice for the first billing period after the invoices have been adapted or by such other means as may be prescribed by the regulations.

Regulations

(9) The Lieutenant Governor in Council may make regulations,

(a) prescribing consumers or classes of consumers as distribution rate-protected residential consumers for the purposes of this section;

(b) prescribing dates for the purposes of subsections (1) and (8);

(c) prescribing distributors for the purposes of this section;

(d) governing anything that is described in this section as being prescribed or as being provided for in the regulations or that is required to be done in accordance with the regulations;

(e) governing the provision of distribution rate protection by the Minister in respect of distribution rate-protected residential consumers under this section including determining the method or methods of calculating the amount of rate protection to be provided;

(f) requiring the IESO to receive payments from the Minister and to make payments to licensed distributors, or to persons prescribed by the regulations, in respect of the distribution rate protection provided for under this section and prescribing methods for determining the amounts payable to distributors or distribution rate-protected residential consumers in respect of that protection.

Interpretation

(10) In this section,

"distribution rate-protected residential consumer" has the meaning provided for in the regulations; ("consommateur résidentiel protégé contre les frais de distribution")

"monthly base distribution charges" has the meaning provided for in the regulations. ("frais de distribution mensuels de base")

Delivery credit for on-reserve consumers

79.4 (1) The Minister shall provide a delivery credit to on-reserve consumers who meet the criteria prescribed under this section with respect to electricity consumed on or after the date prescribed by the regulations.

Money appropriated by the Legislature

(2) The money required for the purposes of the provision of the credits required under this section shall be paid out of the money appropriated for those purposes by the Legislature.

Eligible costs

(3) The eligible costs for the delivery credit referred to in subsection (1) are,

(a) the sum of the following charges for which the consumer would otherwise be liable,

(i) all variable and fixed distribution charges,

(ii) all charges based on the retail transmission network service rate,

(iii) all charges based on the retail transmission connection service rate,

(iv) all charges related to losses incurred in the distribution of electricity, except for such amounts that are included in regulatory charges provided for in the regulations, and

(v) any other charges that may be prescribed in the regulations; or

(b) where no separate charges for delivery are provided for by the distributor or other person or entity that may be prescribed in the regulations, the monthly service charge or such other amount as may be prescribed for or in respect of a prescribed distributor.

Delivery credit

(4) A distributor, person or entity shall, unless the regulations provide otherwise, provide the delivery credit referred to in subsection (1) by crediting the account of an on-reserve consumer.

Same

(5) The regulations may require that distributors and any other persons or entities provide a delivery credit to an on-reserve consumer who is entitled to a delivery credit under subsection (1) in such manner or in accordance with such methods as may be prescribed.

Same

(6) A distributor or any person or entity as may be prescribed is entitled to be compensated from the money referred to in subsection (2) for any lost revenue resulting from the provision of the delivery credits under this section.

Information, etc.

(7) If provided for in the regulations, the Board, the IESO and distributors, and other persons or entities, or any of them, shall provide such information and reports to the Ministry of Energy and to one another as are necessary to facilitate the implementation, administration, funding and delivery of the delivery credits or of anything else required under this section.

Limitation periods for delivery credit, consumer

(8) Despite any past entitlement of an on-reserve consumer who is eligible for a delivery credit under this section, no delivery credit is payable to an on-reserve consumer after a limitation period prescribed by the regulations in respect of the on-reserve consumer, other than in such circumstances as may be prescribed by the regulations.

Limitation, reimbursement of distributor, etc.

(9) Despite any requirement under this Act to reimburse a distributor or other persons or entities for delivery credits provided by them to on-reserve consumers under this section, no amounts for reimbursement are payable to the distributor or other persons or entities after a limitation period prescribed by the regulations in respect of the distributor or other persons or entities, where such reimbursement is based on an on-reserve consumer's past entitlement under this section which has not yet been paid or reimbursed under this section, other than in such circumstances as may be prescribed by the regulations.

Transitional

(10) If, for technical or operational reasons, a distributor referred to in subsection (4) is unable to adapt its invoices to comply with this section and the regulations by the time it issues its first invoice for electricity consumed after the prescribed date in respect of an eligible account,

(a) the distributor shall adapt its invoices as soon as possible and, in any event, no later than a date prescribed in the regulations; and

(b) on-reserve consumers continue to be entitled to receive the delivery credit to which they are entitled under this Act and may receive it as a lump sum credit on the invoice for the first billing period after the invoices have been adapted or by such other means as may be prescribed by the regulations.

Regulations

(11) The Lieutenant Governor in Council may make regulations,

(a) governing who is an on-reserve consumer for the purposes of this section and, without limiting the generality of the foregoing, may provide that consumers

who occupy certain areas are on-reserve consumers, and may do so without regard to whether those areas constitute a "reserve" under any other Act or law;

(b) prescribing dates for the purposes of subsections (1) and (10);

(c) governing provision of the delivery credits provided to on-reserve consumers under this section and, without restricting the generality of the foregoing, governing anything that under this section is to be prescribed or provided for in the regulations, or that is to be done in accordance with the regulations;

(d) determining the method or methods of calculating the amount of the delivery credits to be provided by the Minister in respect of on-reserve consumers under this section;

(e) requiring the IESO to make and receive payments to and from the Minister and to make payments to licensed distributors, or to persons prescribed by the regulations, in respect of the delivery credits provided for under this section and prescribing methods for determining the amounts payable to distributors or on-reserve consumers in respect of the credits provided.

Interpretation

(12) In this section,

"on-reserve consumer" has the meaning provided for in the regulations.

Application

79.5 Sections 79.6 through 79.11 apply to the programs provided for under sections 79, 79.2, 79.3 and 79.4 to the extent that they are funded by money appropriated for those purposes by the Legislature.

Definition

79.6 In sections 79.7 to 79.11,

"Finance Minister" means the Minister of Finance or such other member of the Executive Council to whom the administration of those sections is assigned under the *Executive Council Act*.

Records

79.7 (1) Every distributor and every other person prescribed by regulation shall keep at a location in Ontario such records as are necessary to determine and verify compliance with sections 79, 79.2, 79.3 and 79.4 and the regulations associated with them and any records required by those regulations to be kept.

Electronic records

(2) If a person keeps records in an electronic form, the person shall ensure that, from the time the records are first made and for as long as they are required to be retained,

(a) they remain complete and unaltered, apart from any changes or additions made in the normal course of communication, storage or display; and

(b) they are capable of being printed and of being produced in electronically readable format for inspection, examination or audit.

Retention of records

(3) Records required to be kept under subsection (1) shall not be destroyed unless authorization has been given in writing by the Finance Minister.

Offence

(4) Every person who fails to keep records in accordance with this section is guilty of an offence and, on conviction, is liable to a fine of not less than $50 and not more than $5,000.

Inspections and inquiries

79.8 (1) The Finance Minister may appoint one or more inspectors who are authorized to exercise any of the powers and perform any of the duties of a person authorized by the Minister under subsection 31 (1) of the *Retail Sales Tax Act* for any purpose related to the administration and enforcement of sections 79, 79.2, 79.3 and 79.4 of this Act.

Same

(2) Subsections 31 (1), (2), (2.1) and (2.2) of the *Retail Sales Tax Act* apply, with necessary modifications, with respect to the administration and enforcement of sections 79, 79.2, 79.3 and 79.4 of this Act.

Admission of evidence

(3) The Finance Minister, or a person authorized by the Finance Minister, may, for any purpose related to the administration of sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them, reproduce from original data stored electronically any information previously submitted as required under those sections or regulations in any form by any person, and the electronically reproduced document shall be admissible in evidence and shall have the same probative force as the original document would have had if it had been proved in the ordinary way.

Inquiry

(4) The Finance Minister may, for any purpose related to the administration of sections 79, 79.2, 79.3 and 79.4 of this Act or the regulations made in association with

them, authorize any person, whether or not the person is an employee in the Ministry of the Finance Minister, to make such inquiry as the Finance Minister considers necessary with reference to anything relating to the administration of this Act or the regulations.

Copies

(5) If a book, record or other document is examined or produced under this section, the person by whom it is examined or to whom it is produced or any officer of the Ministry may make, or cause to be made, one or more copies of it, and a document purporting to be certified by the person to be a copy made pursuant to this section is admissible in evidence and has the same probative force as the original document would have if proved in the ordinary way.

Compliance

(6) No person shall hinder or molest or interfere with any person doing anything that the person is authorized by this section to do or prevent or attempt to prevent any person doing any such thing.

Same

(7) Despite any other law to the contrary, every person shall, unless the person is unable to do so, do everything the person is required by this section to do.

Administration of oaths

(8) Declarations or affidavits in connection with statements of information submitted pursuant to this section may be taken before any person having authority to administer an oath or before any person specially authorized for that purpose by the Lieutenant Governor in Council, but any person so specially authorized shall not charge any fee for doing so.

Application of *Public Inquiries Act, 2009*

(9) Section 33 of the *Public Inquiries Act, 2009* applies to an inquiry under subsection (4).

Recovery of overpayments

Definitions

79.9 (1) In this section,

"inspector" means an inspector referred to in section 79.8; ("inspecteur")

"overpayment" means an amount received by a person in excess of that to which the person is entitled under sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them. ("trop-perçu")

Notice of overpayment

(2) If it appears to an inspector that a person has received an overpayment, the Finance Minister may send a written notice to the person advising the person of the following:

1. That the person has received an overpayment.

2. The amount of the overpayment and how it was calculated.

3. The required steps to be taken by the person with respect to the overpayment.

4. The date, not more than six months after the date of the notice, by which these steps must be completed.

5. That the Finance Minister has the authority to assess the person for the amount of the overpayment, plus interest, if the person fails to complete the required steps by the specified date.

Calculation of amount of overpayment

(3) For the purposes of this section, an inspector shall calculate an overpayment or the outstanding balance of an overpayment in the manner and form and using such procedures as the Finance Minister considers adequate and expedient.

Assessment

(4) If a person fails to complete the steps required in a notice under subsection (2) within the time specified in the notice, and any additional time requested by the person and permitted by the Finance Minister, the Finance Minister may assess or reassess the amount of the overpayment, or the outstanding balance of the overpayment, based on the inspector's calculation described in subsection (3).

Penalty

(5) If the Finance Minister makes an assessment or reassessment under subsection (4) and is satisfied that the person's non-compliance with the required steps in the notice was attributable to neglect, carelessness, wilful default or fraud, the Finance Minister may assess a penalty against the person equal to the outstanding balance of the overpayment when the penalty is assessed.

Time limit

(6) The Finance Minister shall not assess or reassess under subsection (4) more than 48 months after the end of the month in which the person received the overpayment.

Exception, where misrepresentation, etc.

(7) Subsection (6) does not apply if the Finance Minister establishes that the person has made a misrepresentation that is attributable to neglect, carelessness or wilful default or has committed any fraud in supplying information under this Act or the regulations or in omitting to disclose information.

Deeming

(8) An amount assessed or reassessed by the Finance Minister under this section is deemed, for the purposes of the administration and enforcement of this Act, to be a debt retirement charge owing and payable, as defined in subsection 85 (1) of the *Electricity Act, 1998,* that has been collected, on the last day of the month in which the person received the overpayment, by the person as a collector appointed under subsection 85.3 (1) of the *Electricity Act, 1998* and, for those purposes,

(a) sections 85.11, 85.12, 85.14, 85.17 and 85.30 of that Act apply with necessary modifications;

(b) in the application of sections 85.11 and 85.14 of that Act and without limiting the generality of clause (a) of this subsection, references to the Financial Corporation are read as references to the Minister of Finance and references to the Minister of Finance are read as references to the Finance Minister as defined in section 79.6 of this Act;

(c) the regulations made under that Act for the purposes of calculating the rate or rates of interest payable under section 85.11 of that Act and the manner of calculating the amount of interest apply with necessary modifications; and

(d) sections 23 and 36, subsections 37 (1), (1.1) and (2) and sections 37.1, 38 and 39 of the *Retail Sales Tax Act* apply with necessary modifications.

Disposition of repaid amounts

(9) If all or part of an overpayment is repaid to the Finance Minister, the Minister of Energy shall make such financial arrangements and payments as may be necessary to ensure that any person entitled to all or part of the overpayment receives the appropriate amount.

Confidentiality

79.10 (1) Except as authorized by this section, no person employed by the Government of Ontario shall,

(a) knowingly communicate or knowingly allow to be communicated to any person any information obtained by or on behalf of the Minister of Energy or

the Finance Minister for the purposes of sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them; or

(b) knowingly allow any person to inspect or to have access to any record or thing obtained by or on behalf of either Minister for the purposes of this Act.

Testimony

(2) No person employed by the Government of Ontario shall be required, in connection with any legal proceedings,

(a) to give evidence relating to any information obtained by or on behalf of the Minister of Energy or Finance Minister for the purposes of this Act; or

(b) to produce any record or thing obtained by or on behalf of either Minister for the purposes of this Act.

Exception

(3) Subsections (1) and (2) do not apply in respect of,

(a) criminal proceedings under any Act of the Parliament of Canada;

(b) proceedings in respect of the trial of any person for an offence under an Act of the Legislature; or

(c) proceedings relating to the administration or enforcement of this Act or Part V.1 or VI of the *Electricity Act, 1998*.

Communication

(4) A person employed by the Government of Ontario may, in the course of duties in connection with the administration or enforcement of sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them,

(a) communicate or allow to be communicated to another person employed by the Government of Ontario in the administration or enforcement of any law or to an employee of the Board information obtained by or on behalf of either Minister for the purposes of sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them; and

(b) allow another person employed by the Government of Ontario in the administration or enforcement of any law or an employee of the Board to inspect or have access to any record or thing obtained by or on behalf of either Minister for the purposes of sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them.

Reciprocal communication

(5) A person who receives information or obtains access to any record or thing under subsection (4) has a duty to communicate or furnish to that Minister on a reciprocal basis any information, record or thing obtained by the person that affects the administration or enforcement of this Act.

Use of information

(6) Any information, record or thing communicated or furnished under this section may be used only for the administration or enforcement of sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them or an Act that is administered or enforced by the person receiving the information, record or thing.

Same

(7) The Finance Minister may permit information or a copy of any record or thing obtained by or on behalf of the Finance Minister for the purposes of sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them to be given to,

(a) the person from whom the information, record or thing was obtained;

(b) any person by whom an amount is payable or has been paid under sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them; or

(c) the legal representative of a person mentioned in clause (a) or (b) or the agent of the person authorized in writing in that behalf.

Information

(8) The Finance Minister may permit information or a copy of any record or thing obtained by or on behalf of the Finance Minister for the purposes of sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them to be given to any person employed by any government if,

(a) the information, record or thing obtained by that government for the purpose of any Act that imposes a tax or duty are communicated or furnished on a reciprocal basis to the Minister; and

(b) the information, record or thing will not be used for any purpose other than the administration or enforcement of a law that provides for the imposition of a tax or duty.

Offence

(9) Every person who contravenes any provision of this section is guilty of an offence and on conviction is liable to a fine of not more than $2,000.

Offences

False statements, etc., and fraud

79.11 (1) Every person who engages in any of the following acts or omissions is guilty of an offence:

1. Making, participating in, assenting to or acquiescing in the making of a false or deceptive statement in any document or answer required or submitted under sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them.

2. Destroying, altering, mutilating, hiding or otherwise disposing of information or records of any person, for the purpose of evading compliance with sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them.

3. Making, assenting to or acquiescing in the making of a false or deceptive entry of a material particular in a record of any person required to maintain records for the purposes of sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them.

4. Omitting to make or assenting to or acquiescing in the omission of an entry of a material particular in a record of any person required to maintain records for the purposes of sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them.

5. Wilfully evading or attempting to evade, in any manner, compliance with an obligation under sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them.

Penalty upon conviction

(2) A person convicted of an offence under subsection (1) is liable to either or both of the following penalties in addition to any other penalty assessed under this Act:

1. A fine in an amount that is not less than $1,000 and not more than $10,000.

2. Imprisonment for a term of not more than two years.

General offence

(3) Every person who contravenes, by any act or omission, any other requirement imposed under sections 79, 79.2, 79.3 and 79.4 is guilty of an offence and, on conviction, is liable, where no other penalty is provided for the offence, to a fine of not less than $50 and not more than $5,000.

Limitation period

(4) A proceeding to prosecute an offence provided for in this section must be commenced within six years after the date on which the matter of the offence arose.

Payment of fines

(5) Fines imposed on conviction of an offence provided for in this section are payable to the Finance Minister on behalf of the Crown in right of Ontario.

Commencement

5. (1) Subject to subsection (2), this Schedule comes into force on the day the *Fair Hydro Act, 2017* receives Royal Assent.

(2) Section 2 comes into force on a day to be named by proclamation of the Lieutenant Governor.

FW_ GA Refinancing (IESO related doc).rtf

From: Virani, Shyrose (TBS) []
To: Donaldson, Mark (TBS) [Mark.Donaldson@ontario.ca]
Subject: FW: GA Refinancing (IESO related doc)
Date: Wednesday, June 20, 2018 15:05:08

Should I set something up?

-----Original Message-----
From: Donaldson, Mark (TBS)
Sent: June 20, 2018 1:22 PM
To: Virani, Shyrose (TBS) <Shyrose.Virani@ontario.ca>
Subject: FW: GA Refinancing (IESO related doc)

From: Lee Anne Probert
Sent: June 20, 2018 1:21:37 PM (UTC-05:00) Eastern Time (US & Canada)
To: Donaldson, Mark (TBS)
Subject: RE: GA Refinancing (IESO related doc)

No problem. Can we connect sometime to catch up?

-----Original Message-----
From: Donaldson, Mark (TBS) [mailto:Mark.Donaldson@ontario.ca]
Sent: June-20-18 1:15 PM
To: Lee Anne Probert <leeanne.probert@ca.ey.com>
Subject: RE: GA Refinancing (IESO related doc)

Thank you.

From: Lee Anne Probert <leeanne.probert@ca.ey.com<mailto:leeanne.probert@ca.ey.com>>
Date: Wednesday, Jun 20, 2018, 1:14 PM
To: Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca<mailto:Mark.Donaldson@ontario.ca>>
Subject: FW: GA Refinancing (IESO related doc)

Please see below.

--
LeeAnne Probert | Senior Manager | Assurance Services

Ernst & Young LLP
Office: 416 943 3554 | leeanne.probert@ca.ey.com<mailto:leeanne.probert@ca.ey.com>
From: Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]
Sent: May-19-17 8:47 AM
To: Suzie Gignac <suzie.r.gignac@ca.ey.com>; Blake Langill <blake.w.langill@ca.ey.com>; Lee Anne Probert <leeanne.probert@ca.ey.com>
Subject: GA Refinancing (IESO related doc)

Suzie/Blake/LeeAnne,
Attached, for your reference, is the final paper related to IESO accounting (subject to change based on future Regs/Commercial Contracts, etc.).

Regards,
Nadine

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FW_ GA Refinancing (IESO related doc).rtf

From: Donaldson, Mark (TBS) []
To: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
Subject: FW: GA Refinancing (IESO related doc)
Date: Wednesday, June 20, 2018 13:21:42

_____
From: Lee Anne Probert
Sent: June 20, 2018 1:21:37 PM (UTC-05:00) Eastern Time (US & Canada)
To: Donaldson, Mark (TBS)
Subject: RE: GA Refinancing (IESO related doc)

No problem. Can we connect sometime to catch up?

-----Original Message-----
From: Donaldson, Mark (TBS) [mailto:Mark.Donaldson@ontario.ca]
Sent: June-20-18 1:15 PM
To: Lee Anne Probert <leeanne.probert@ca.ey.com>
Subject: RE: GA Refinancing (IESO related doc)

Thank you.

From: Lee Anne Probert <leeanne.probert@ca.ey.com<mailto:leeanne.probert@ca.ey.com>>
Date: Wednesday, Jun 20, 2018, 1:14 PM
To: Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca<mailto:Mark.Donaldson@ontario.ca>>
Subject: FW: GA Refinancing (IESO related doc)

Please see below.

--
LeeAnne Probert | Senior Manager | Assurance Services

Ernst & Young LLP
Office: 416 943 3554 | leeanne.probert@ca.ey.com<mailto:leeanne.probert@ca.ey.com>
From: Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]
Sent: May-19-17 8:47 AM
To: Suzie Gignac <suzie.r.gignac@ca.ey.com>; Blake Langill <blake.w.langill@ca.ey.com>; Lee Anne Probert <leeanne.probert@ca.ey.com>
Subject: GA Refinancing (IESO related doc)

Suzie/Blake/LeeAnne,
Attached, for your reference, is the final paper related to IESO accounting (subject to change based on future Regs/Commercial Contracts, etc.).
Regards,
Nadine

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son%40ontario.ca%7C66bc05eec0b8498698ff08d5d6d248b4%7Ccddc1229ac2a4b97b78a0e5cacb5865c%7C0%7C0%7C636651121016634713&sdata=WoMF2%2F6SaujcMaZQx1wWrblZyZJwVrTQRwgcHZntsDI%3D&reserved=0 To unsubscribe from commercial electronic messages / Pour vous désabonner des messages électroniques commerciaux : Unsubscribe@ca.ey.com

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FW_ GA Refinancing (IESO related doc).rtf

From: Donaldson, Mark (TBS) []
To: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
Subject: FW: GA Refinancing (IESO related doc)
Date: Wednesday, June 20, 2018 13:18:38

From: Hosick, Sarah (TBS)
Sent: June 20, 2018 1:18:38 PM (UTC-05:00) Eastern Time (US & Canada)
To: Donaldson, Mark (TBS)
Subject: RE: GA Refinancing (IESO related doc)

Thanks – do you want me to include it with the files to AG or just have it as backpocket in case they ask for it?

From: Donaldson, Mark (TBS)
Sent: June 20, 2018 1:15 PM
To: Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>
Subject: FW: GA Refinancing (IESO related doc)

From: Lee Anne Probert <leeanne.probert@ca.ey.com>

Date: Wednesday, Jun 20, 2018, 1:14 PM

To: Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>

Subject: FW: GA Refinancing (IESO related doc)

Please see below.

--

LeeAnne Probert | Senior Manager | Assurance Services

Ernst & Young LLP

Office: 416 943 3554 | leeanne.probert@ca.ey.com

From: Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]
Sent: May-19-17 8:47 AM
To: Suzie Gignac <suzie.r.gignac@ca.ey.com>; Blake Langill <blake.w.langill@ca.ey.com>; Lee Anne Probert <leeanne.probert@ca.ey.com>
Subject: GA Refinancing (IESO related doc)

Suzie/Blake/LeeAnne,

Attached, for your reference, is the final paper related to IESO accounting (subject to change based on future Regs/Commercial Contracts, etc.).

Regards,

Nadine

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FW_ GA Refinancing (IESO related doc).rtf

From: Donaldson, Mark (TBS) []
To: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
Subject: FW: GA Refinancing (IESO related doc)
Date: Wednesday, June 20, 2018 13:14:05
Attachment 1: Draft report dated May 17 2017.pdf

From: Lee Anne Probert
Sent: June 20, 2018 1:13:09 PM (UTC-05:00) Eastern Time (US & Canada)
To: Donaldson, Mark (TBS)
Subject: FW: GA Refinancing (IESO related doc)

Please see below.

--

LeeAnne Probert | Senior Manager | Assurance Services

Ernst & Young LLP

Office: 416 943 3554 | leeanne.probert@ca.ey.com

From: Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]
Sent: May-19-17 8:47 AM
To: Suzie Gignac <suzie.r.gignac@ca.ey.com>; Blake Langill <blake.w.langill@ca.ey.com>; Lee Anne Probert <leeanne.probert@ca.ey.com>
Subject: GA Refinancing (IESO related doc)

Suzie/Blake/LeeAnne,

Attached, for your reference, is the final paper related to IESO accounting (subject to change based on future Regs/Commercial Contracts, etc.).

Regards,

Nadine

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Draft report dated May 17 2017.pdf

FINAL DRAFT

KPMG Letter to the Independent Electricity System Operator

An Accounting Opinion on the Application of PSAS to the Consolidation of a Trust and to the Recognition and Derecognition of a Variance Account in Relation to Bill 132, *Ontario Fair Hydro Plan Act, 2017*

This letter has been prepared in draft form and will be updated upon receipt of the adopted legislation, if passed, (including the amendments of the Electricity Act, 1998 and the OEB Act, 1998) and finalized financial structure (including the bylaws and regulations of the Trust to be established by OPG) and other relevant agreements necessary for us to provide our final opinion, of which legislation and other relevant agreements are expected to be enacted/ finalized on or before September 30, 2017.

NOTICE OF NON RELIANCE

This Notice is regarding the accompanying Letter to provide an accounting opinion on the application of Public Sector Accounting Standards to the consolidation of a trust and to the recognition and derecognition of a variance account in relation to Bill 132, *Ontario Fair Hydro Plan Act, 2017* (the "**Letter**") prepared by KPMG LLP for the Independent Electricity System Operator ("Client").

The following terms apply to any review of the Letter and should you not agree to these terms, please do not review the Letter and delete copy of the same.

The Letter was prepared in connection with certain services we provided to the Client and should not be used for any other purpose or regarded as suitable for use by any person or persons other than the Client.

No one other than the Client is authorized by KPMG to rely upon any information or views expressed in the Letter. KPMG shall have no responsibility or liability for loss or damages or claims, if any, to or by any third party as the Letter has not been prepared for, and is not intended for, and should not be used by, any third party or for any other purpose.

KPMG in no way accepts any duty of care to you or any other person or accepts any agreement or other arrangement of a contractually binding nature between our firm and such parties.

KPMG neither warrants nor represents that the Letter is accurate, complete, sufficient or appropriate for any purpose contemplated by you or any other person or body. You shall have no right to disclose the Letter to any other party.

Yours very truly,

KPMG LLP

KPMG LLP
Chartered Accountants
Bay Adelaide Centre
Suite 4600
333 Bay Street
Toronto ON
M5H 2S5

Telephone (416) 777-8500
Fax (416) 777-8818
www.kpmg.ca

May 16, 2017

CONFIDENTIAL

120 Adelaide Street West
Suite 1600
Toronto, ON
M5H 1T1

The Board of Directors

Dear Sirs,

We have been engaged to provide you with an accounting opinion on the application of Public Sector Accounting Standards to the consolidation of a trust and to the recognition and derecognition of a variance account in relation to Bill 132, *Ontario Fair Hydro Plan* Act, 2017 as tabled in the first reading ("Bill 132") (Appendix A to this letter). This letter is being issued to the Independent Electricity System Operator ("IESO" or the "Company") in connection with its evaluation of the consolidation requirements and the accounting for the variance account under Canadian Public Sector Accounting Standards ("PSAS"). Our engagement has been conducted in accordance with generally accepted standards in Canada for such engagements.

The ultimate responsibility for the decision on the appropriate application of PSAS for the specific issues described below rests with management of the Company as preparers of the financial statements.

The adoption of Bill 132 (including the subsequent amendments of the Electricity Act, 1998 ("the Electricity Act") and the Ontario Energy Board ("OEB" or the "Board") Act, 1998 ("the OEB Act")), and the finalization of the financing structure (including the bylaws and regulations of the trust to be established by OPG) and other agreements will take several months. Accordingly, our judgment on the appropriate application of PSAS for the specific matters described below is based on the facts, circumstances and assumptions provided to us. The finalization of the legislation, regulations, financing structure and other agreements may impact the comments and conclusions set out herein. Our comments and conclusions are based on Bill 132 and related matters as they exist at the date of this letter.

The following three issues are addressed in this letter:

Issue #1: Can the IESO recognize a regulatory asset related to the variance account created by Bill 132?

Issue #2: Is the trust to be established by Ontario Power Generation (the "OPG Trust") controlled by the IESO according to the guidance issued under PSAS 1300 *Government Reporting Entity* and therefore subject to consolidation by IESO?

KPMG LLP is a Canadian limited liability partnership and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. KPMG Canada provides services to KPMG LLP.

Issue #3: What is the accounting treatment for derecognition of the regulatory asset by the IESO upon transfer of the variance account to the OPG Trust?

Background for issue #1

The facts, circumstances, and assumptions relevant to the specific transactions as provided to us by the management of the Company (responsible party) are as follows:

1. The IESO's legal status is a not-for-profit, non-taxable, corporation established pursuant to Part II of the Electricity Act. Management of the IESO has determined that the Company is an *Other Governmental Organization* and accordingly prepares its financial statements in accordance with PSAS.

2. IESO is rate regulated by the OEB in accordance with the Electricity Act and the OEB Act.

3. *Extract from the 2016 IESO financial statements, note 3 New Accounting Policies, audited by KPMG* "As of January 1, 2016, the IESO changed its accounting policy regarding the recognition of assets and liabilities subject to rate regulation. The change was made to better reflect the economic substance of certain types of expenses that may not be directly recovered through the normal revenue requirement model. This change has been applied retroactively and has increased amounts previously unrecorded for regulatory assets and decreased amounts previously reported for accumulated deficit."

4. *Extract from the 2016 IESO financial statements, note 2(d) Summary of Significant Accounting Policies, Regulatory assets and liabilities.* "As a rate-regulated entity, the IESO, in appropriate circumstances establishes regulated assets or liabilities and thereby defers the impact on the statement of operations of certain expenses or revenues because they are probable to be collected or refunded to market participants through future billings. The IESO applies guidance from United States Generally Accepted Accounting Principles (US GAAP) Topic 980, *Regulated Operations ("ASC 980")*, in this policy."

5. *Extract from Section 78(3.3) of the OEB Act:* In approving or fixing rates under subsection (3.1),

   (a) the Board shall forecast the cost of electricity to be consumed by the consumers to whom the rates apply, taking into consideration the adjustments required under section 25.33 of the Electricity Act, 1998 and shall ensure that the rates reflect these costs; and

   (b) the Board shall take into account balances in the IESO's variance accounts established under section 25.33 of the Electricity Act, 1998 and shall make adjustments with a view to eliminating those balances within 12 months or such shorter time periods as the Minister may direct.

6. Currently, IESO recognizes two regulatory assets for unrecovered smart metering expenses and unrecovered PSAB transition items as permitted by rates approved by the OEB. In addition, in accordance with section 25.33 of the Electricity Act, IESO also recognizes variance accounts (eg. OESP, RPP and RRRP variance accounts) to record all amounts payable or receivable by it in connection with the amounts paid to generators, the Ontario Electricity Financial Corporation ("OEFC"), distributors and to entities with whom the IESO has a procurement contract.

7. The Electricity Act, OEB Act and other regulations will be amended to reflect the following *extracts of Bill 132:*

   Section 1 Definitions, Transfer of regulatory asset

   (3) In this Act, a reference to the transfer of a specified portion of the regulatory asset is a reference to the following, as provided for in subsection 26 (3):

1. A reduction in the balance in the variance account.
2. The adjustment of the regulatory asset.
3. The acquisition by a financing entity of the investment interest corresponding to the specified portion of the regulatory asset.

Section 24 Variance account to be established, maintained

(1) IESO shall establish and maintain a variance account in which it records the following:

1. The IESO deferral for each month.
2. All payments received by IESO resulting from the exercise of the right of recovery under section 25 and any transfer under section 26.
3. Such other adjustments as may be prescribed, including adjustments in respect of the period that commences on or after May 1, 2017 and before the day this section comes into force.

(2) Subject to the correction of any obvious error by the IESO, its recording of the balance in the variance account is determinative of the balance as of the time of the recording.

(3) No change made by IESO to the balance in the variance account shall, if the previous balance was relied upon by an investment interest owner in the context of a transfer under section 26, affect the rights acquired by the investment interest owner under the transfer.

Section 25 Regulatory asset established

(1) Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

(2) Subject to subsection (3), the Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for the IESO to recover the balance recorded in the variance account.

(3) IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2021.

Section 34 Board's Authority

(2) Despite anything to the contrary in the OEB Act, the Board may exercise any of its responsibilities under this Act without a hearing.

8. It is expected that the IESO deferral recorded by the IESO in the variance account (the regulatory asset) will be transferred to an investment asset owner (i.e. a trust to be established by OPG) on a monthly basis and cash collected within a short period of time. The total IESO deferral for the period from May 1, 2017 to April 30, 2047 is estimated at $28 billion plus interest.

Appropriate Accounting Principle for Issue #1

ASC 980 Regulated Operations

– For general-purpose financial reporting, an incurred cost for which a regulator permits recovery in a future period is accounted for like an incurred cost that is reimbursable under a cost-reimbursement-type contract. [980-10-05-6]

- Unless an accounting order indicates the way a cost will be handled for rate-making purposes, it causes no economic effects that would justify deviation from the GAAP applicable to business entities in general. The mere issuance of an accounting order not tied to rate treatment does not change an entity's economic resources or obligations. In other words, the economic effect of regulatory decisions—not the mere existence of regulation—is the pervasive factor that determines the application of GAAP. [980-10-05-8]
- The guidance in the Regulated Operations Topic applies to general-purpose external financial statements of an entity that has regulated operations that meet all of the following criteria:
  (a) The entity's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party regulator or by its own governing board empowered by statute or contract to establish rates that bind customers.
  (b) The regulated rates are designed to recover the specific entity's costs of providing the regulated services or products. This criterion is intended to be applied to the substance of the regulation, rather than its form.
  (c) In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume that rates set at levels that will recover the entity's costs can be charged to and collected from customers. This criterion requires consideration of anticipated changes in levels of demand or competition during the recovery period for any capitalized costs. [980-10-15-2]
- Incurred Cost - A cost arising from cash paid out or obligation to pay for an acquired asset or service, a loss from any cause that has been sustained and has been or must be paid for. [980-10-20] Glossary
- Failure of an entity's operations to continue to meet the criteria in paragraph 980-10-15-2 can result from different causes. Examples include the following:
  (a) Deregulation.
  (b) A change in the regulator's approach to setting rates from cost-based rate-making to another form of regulation.
  (c) Increasing competition that limits the entity's ability to sell utility services or products at rates that will recover costs (as used in paragraph 980-10-15-2).
  (d) Regulatory actions resulting from resistance to rate increases that limit the entity's ability to sell utility services or products at rates that will recover costs if the entity is unable to obtain (or chooses not to seek) relief from prior regulatory actions through appeals to the regulator or the courts. [980-20-15-2]
- Rate actions of a regulator can provide reasonable assurance of the existence of an asset. An entity shall capitalize all or part of an incurred cost that would otherwise be charged to expense if both of the following criteria are met:
  (a) It is probable (as defined in Topic 450) that future revenue in an amount at least equal to the capitalized cost will result from inclusion of that cost in allowable costs for rate-making purposes.
  (b) Based on available evidence, the future revenue will be provided to permit recovery of the previously incurred cost rather than to provide for expected levels of similar future costs. If the revenue will be provided through an automatic rate-adjustment clause, this criterion requires that the regulator's intent clearly be to permit recovery of the previously incurred cost.

A cost that does not meet these asset recognition criteria at the date the cost is incurred shall be recognized as a regulatory asset when it does meet those criteria at a later date. [980-340-25-1]

- Rate actions of a regulator can reduce or eliminate the value of an asset. If a regulator excludes all or part of a cost from allowable costs, the carrying amount of any asset recognized pursuant to paragraph 980-340-25-1 shall be reduced to the extent of the excluded cost. Whether other assets have been impaired shall be judged the same as for entities in general and the Impairment or Disposal of Long-Lived Assets Subsections of Subtopic 360-10 shall apply. [980-340-35-1]
- If at any time an entity's incurred cost no longer meets the criteria for the capitalization of an incurred cost (see paragraph 980-340-25-1), that cost shall be charged to earnings. [980-340-40-1]
- In some cases, a regulator may approve rates that are intended to recover an incurred cost over an extended period without a return on the unrecovered cost during the recovery period. [980-340-55-2]
- The regulator's action provides reasonable assurance of the existence of an asset (see paragraph 980-340-25-1). Accordingly, the regulated entity would capitalize the cost and amortize it over the period during which it will be allowed for rate-making purposes. That cost would not be recorded at discounted present value. An exception to this general rule is provided for costs of abandoned plants. [980-340-55-3]

Issue #1: Can the IESO recognize a regulatory asset related to the variance account created by Bill 132?

As noted above, as of January 1, 2016, the IESO changed its accounting policy to recognize the economic impacts of rate regulation and now applies guidance from US GAAP Topic 980, *Regulated Operations*, as PSAS does not have any specific guidance for entities with rate-regulated activities.

IESO concluded that it met the requirements of PS2120.02, which allows them to reflect the impacts of rate regulation, as it is considered that the change of accounting policy in its 2016 financial statements resulted in a more appropriate presentation of transactions in its financial statements. The change was made to better reflect the economic substance of certain types of expenses that may not be directly recovered through the normal revenue requirement model.

The regulatory framework in Ontario relating to the generation and sale of electricity will be significantly impacted by Bill 132. Currently, a substantial amount of the energy purchased from the generators is collected by IESO from the local distribution companies through the customer billing, with the remaining being recovered through variance accounts over a period of 12 months maximum. As mentioned above, the effect of Bill 132 is to defer the collection of a total estimated amount of $28 billion (plus interest) of energy purchased from the generators over a period of 30 years. Bill 132 will not permit IESO to collect the IESO deferral before May 1, 2021 and the recovery process will be established through regulations. Such a long-term deferred recovery plan requires IESO to consider whether the uncollected energy costs qualify for deferral as a regulatory asset and whether it continues to meet the criteria that allow IESO to use the guidance for regulated operations of Topic 980. These two accounting issues are analyzed in the two tables below.

Criteria for the recognition of regulatory assets

ASC 980-340-25-1 states that rate actions of a regulator can provide reasonable assurance of the existence of an asset. An entity shall capitalize all or part of an incurred cost that would otherwise be charged to expense if both of the following criteria are met:

Criteria	Comment	Evaluation
(a) It is probable that future revenue in an amount at least equal to the capitalized cost will result from inclusion of that cost in allowable costs for rate-making purposes. (b) Based on available evidence, the future revenue will be provided to permit recovery of the previously incurred cost rather than to provide for expected levels of similar future costs. *(emphasis added)* If the revenue will be provided through an automatic rate-adjustment clause, this criterion requires that the regulator's intent clearly be to permit recovery of the previously incurred cost.	Bill 132 notes that, • *A recording of the balance in the variance account is determinative of the balance as of the time of the recording.* • *Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.* • *The Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for IESO to recover the balance recorded in the variance account.* • *The IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2021.* Based on Bill 132, IESO has the right to recover the balance recorded in the variance account. As a result, it is clear that the IESO will be able to recover the amount previously incurred rather than to provide for expected levels of similar future costs.	Met

Criteria for the adoption and continued use of ASC 980 guidance

Deferred recovery plans are plans adopted by regulators or legislations in response to significant increases in costs (e.g. purchased power costs). These plans typically provide for rates to remain fixed or increase moderately with a variance account mechanism to capture costs in excess of the level allowed in current rates. A regulated utility subject to such plans is required to consider whether it continues to meet the criteria that allow it to use the guidance for regulated operations of Topic 980, especially criteria ASC 980-10-15-2 (b).

The proposed plan for the recovery of purchase power costs over a 30 year period is considered a deferred recovery plan as the rates for the first four years will remain fixed and subsequently the rates will increase moderately with a variance account to capture energy costs in excess of the level allowed in current rates. The following is an analysis of the ASC 980-10-15-2 criteria.

Criteria	Comment	Evaluation
(a) The entity's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party	Currently, IESO recognizes regulatory assets related to smart meters and PSAS transition costs as permitted by rates approved by the OEB and regulatory liabilities related to the variance accounts (eg. OESP, RPP and RRRP variance accounts) established under section 25.33 of the Electricity Act related to the procurement of energy.	Met

Criteria	Comment	Evaluation
regulator or by its own governing board empowered by statute or contract to establish rates that bind customers.	It is important to note that both Hydro One and OPG are classified as *Government Business Enterprises* and are reporting under IFRS in their consolidated financial statements, are consolidated by the modified equity method into the province's books, are regulated by the OEB, and their respective regulatory assets and liabilities are reported in the province's books.	

(b) The regulated rates are designed to recover the specific entity's costs of providing the regulated services or products.	Currently, the rates approved by the OEB are designed to recover the IESO's costs of providing the regulated services and the pass-through related to the energy purchased from the generators.
	
	As mentioned above, a regulated utility subject to a deferred recovery plan is required to consider whether it continues to meet the criteria ASC 980-10-15-2 (b).
	
	This criterion requires a cause-and-effect relationship between a reporting entity's costs and its revenue. In addition, the timing of cost recovery and the related frequency of ratemaking is important. A reporting entity should consider its rate case experience, including the design of its rates and timing of recovery, when determining whether this criterion is met. These factors are analyzed below.
	
	Frequency of rate case
	
	- Currently, IESO is subject to OEB's annual reviews.
	- Although the recovery of purchase energy costs will be frozen at the approved rate on May 1, 2017 for the first four years, the IESO will be granted a right to recover after May 1, 2021 the IESO deferral recorded in the variance account during the four-year period.
	  - *A recording of the balance in the variance account is determinative of the balance, as of the time of the recording. (We note that this confirms that there will be no prudence review by the OEB)*
	  - *Right to recover the balance recorded in the variance account.*
	  - *Obligation on the part of the OEB to dispose the variance account in accordance with the regulation.*
	- Subsequent to May 1, 2021, the OEB will be required to determine and set rates payable by specified consumers to allow for IESO to recover the balance recorded in the variance account.
		Met

Criteria	Comment	Evaluation
	- *The Board shall, from time to time, determine and set rates payable by specified consumers to allow for IESO to recover the balance recorded in the variance account.* - *Despite anything to the contrary in the OEB Act, the Board may exercise any of its responsibilities under this Act without a hearing.* *Rates are designed to recover incurred costs* - There is a cause-and-effect relationship between the purchase energy costs and revenue, as IESO will be allowed to recover the costs incurred. - *A recording of the balance in the variance account is determinative of the balance as of the time of the recording* (We note that this confirms that there will be no prudence review). - *Right to recover the balance recorded in the variance account.* - *Obligation on the part of the OEB to ensure IESO will recover the balance recorded in the variance account.* *Periods of alternative ratemaking (e.g., rate freezes)* Evaluation of the second criterion requires additional judgment if the regulated utility is subject to any form of ratemaking that introduces uncertainty about the cause-and-effect relationship between costs and rates. A rate freeze period is defined as a fixed rate that is charged to customers during a period of time (more than two years) and the utilities are exposed to increases in operating and energy costs with no ability to recover the variances. This is not the case as IESO will be granted the right to recover fully the IESO deferral recorded in the variance account, including the first four-year period. - *The Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for the IESO to recover the balance recorded in the variance account.* *Costs uncertainty* As the IESO will be granted the right to fully recover the IESO deferral recorded in the variance account, there is no uncertainty about the recovery of the costs.	

Criteria	Comment	Evaluation
	Disallowances of costs The OEB has never disallowed the recovery of any material costs incurred by the IESO. More importantly, as the IESO will be granted by legislation the right to fully recover the IESO deferral recorded in the variance account, there is no risk of the potential disallowance of the purchase power costs. Based on the analysis of the above factors, there are no indications that this criterion would not be met. The above factors establish that there will be a direct cause-and-effect relationship between IESO's costs and its future collection.	

(c) In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume that rates set at levels that will recover the entity's costs can be charged to and collected from customers. This criterion requires consideration of anticipated changes in levels of demand or competition during the recovery period for any capitalized costs."	The remaining criterion is whether limitations, including considering demand levels at the approved rates, on the extent of recovery of the regulatory asset could prevent the IESO from recognizing a regulatory asset for the entire balance in the recovery right granted to the IESO.
	
	Bill 132 notes that:
	
	- *Effective May 1, 2017, the IESO's right to recover the balance in the variance account is subject to the following:*
	  o *The Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified customers to allow for the IESO to recover the balance recorded in the variance account.*
	  o *IESO shall not be entitled to collect the variance account from specified consumers before May 1, 2021.*
	
	Although the process, especially the timing of the recovery of the regulatory asset has not been established yet by the OEB, the wording and intent of the proposed legislation is clear that it is intended by law to be recoverable over the period of 30 years. Further, given the nature and extent of customer demand for the power generated and distributed in Ontario, both at this time and projected in the future, it is reasonable to conclude that there will be sufficient demand to recover the regulatory asset. As with the other criteria, this will need to be continually evaluated throughout the recovery period.
		Met

Management conclusion

IESO management has concluded that the IESO can recognize a regulatory asset related to the variance account created by Bill 132 based on the foregoing analysis.

The variance account created by Bill 132 is subject to rate regulation by the OEB and the variance account will be established with the right to collect funds against the variance amount in the future. In these circumstances, the IESO is able to establish a regulatory asset. The IESO financial statements are prepared in accordance with Canadian public sector accounting standards. Although PSAB does not provide specific guidance on rate regulated accounting, it does under PS 1150 Generally Accepted Accounting Principles allow for guidance to be followed from other accounting frameworks. IESO has applied guidance from United States Generally Accepted Accounting Principles (US GAAP) Topic 980, *Regulated Operations* in its accounting policies.

Our conclusion

We have considered the foregoing analysis and management's conclusion. We concur that the variance account created by Bill 132 will meet the criteria for the recognition of a regulatory asset stated in ASC 980-340-25-1. Furthermore, we have also considered the criteria stated in ASC 980-10-15-2 and believe that IESO should be allowed to continue to use the guidance for regulated operations of Topic 980.

Background for Issue #2

The facts, circumstances, and assumptions relevant to the specific transactions as provided to us by the management of the Company (responsible party), in addition to those described in the background for issue #1, are as follows:

1. The IESO currently has the right to collect the global adjustment ("GA") monthly from ratepayers through provisions in the Electricity Act. It is proposed that collection of a certain portion of the monthly GA be deferred in a regulatory asset for collection in the future, and that the right to recover the deferred GA from ratepayers be used as the basis for structured financing/ securitization.
2. In connection with Bill 132, it is proposed that a trust be established as a financial vehicle by OPG (the "OPG Trust") in connection with the deferred GA. The OPG Trust will finance the deferral of the GA by purchasing the regulatory asset from the IESO for the principal amount of the GA being deferred.
3. The OPG Trust is expected to finance these purchases from the IESO through a combination of senior secured financing raised in the capital markets, and subordinated financing from OPG (the funding for which will mostly be from equity injections from the OEFC/Province of Ontario).
4. OPG will be appointed as the Financial Services Manager and will be given the responsibility to direct the activities of the OPG Trust, through a services agreement and/or through the Trust's constating documents.

Appropriate Accounting Principle for Issue #2

PS1300 *Government Reporting Entity*:

PSAS refer to government or government organizations. For the purpose of this analysis, the PSAS guidance below relating to government or government organizations should be read and understood as being the IESO (emphasis added).

- The government reporting entity should comprise government components and those organizations that are controlled by the government. [PS 1300.07]
- Control is the power to govern the financial and operating policies of another organization with expected benefits or the risk of loss to the government from the other organization's activities. [PS 1300.08] (emphasis added).
- Whether a government controls an organization is a question of fact that must be determined by reference to the definition of control established in paragraph PS 1300.08 and the particular circumstances of each case. The determination of the fact that control exists will require the application of professional judgment. Government achieves its objectives through a wide range of organizations which individually will fall somewhere along a continuum. At one end of the continuum, it will be clear that an organization does not have the power to act independently and is controlled by the government. At the other end, the organization will have the power to act independently and, while government will have a level of influence on the organization, it will be clear that it does not have control. Along the continuum, consideration needs to be given to the nature of the relationship between the government and the organization in order to determine whether control exists. This Section provides guidance intended to assist in this assessment. [PS 1300.10]
- In applying this guidance, it is necessary to determine the substance of the relationship between the government and the organization. The true nature of certain relationships may not be completely reflected by their legal form. All relevant aspects and implications of the relationship would be considered in determining whether or not the government controls the organization. Where various aspects of the relationship are designed, in effect, to achieve an overall objective, they would be viewed as a whole. [PS 1300.11]
- Financial and operating policies are principles and practices that determine how an organization conducts its activities. The ability to govern these policies is an important element of government control because it establishes the fundamental basis for the conduct of the organization's operations and the achievement of its mission and mandate. [PS 1300.13]
- There are a variety of ways to govern the financial and operating policies of an organization. For example:
  (a) a government may establish an organization's fundamental purpose and eliminate or significantly limit the ability of the organization to make future decisions by predetermining the financial and operating policies of the organization;
  (b) a government may direct the financial and operating policies of an organization on an ongoing basis; or
  (c) a government may veto, overrule or modify the financial and operating policies established by an organization. [PS 1300.14]
- A government does not need to manage an organization's activities on a day-to-day basis to control the organization. It is the government's existing authority to determine the policies governing those activities that is important. [PS 1300.15]

– For the purposes of this Section, it is assumed that where the government has the power to govern the financial and operating policies of an organization, it expects to derive a financial or non-financial benefit. The government may also be exposed to the risk of loss. [PS 1300.16]

Issue #2: Is the trust to be established by OPG (the "OPG Trust") controlled by the IESO according to the guidance issued under PSAS 1300 *Government Reporting Entity* and, therefore, subject to consolidation by IESO?

Under PSAS, IESO is required to consolidate all entities that are considered to be part of its reporting entity, applying the guidance provided in *Section PS 1300 Government Reporting Entity.* Under PS 1300, IESO must consolidate all entities it "controls".

In determining whether or not the OPG Trust should be consolidated by IESO, it must first be determined whether or not the IESO exercises control as a consequence of power to govern the financial and operating policies of the OPG Trust resulting in expected benefits to the IESO or the risk of loss from the activities of the OPG Trust.

PS 1300.17 indicates that "whether a government controls an organization is a question of fact that requires the application of professional judgment based on the definition of control in this Section and the substance of the relationship in each case." Under PS 1300.08 control is defined as "the power to govern the financial and operating policies of another organization with expected benefits or the risk of loss to the government from the other organization's activities". Therefore, the determination of whether IESO will consolidate the OPG Trust will be based on an assessment of whether IESO is considered to control the OPG Trust based on the indicia of control set out in PS 1300. The assessment of the IESO's control of the OPG Trust is made based on Bill 132, facts and nature of the relationship between the IESO and the OPG Trust and based on facts and assumptions provided by IESO. PS 1300.18 and .19 set out 11 potential indicia of control. Several of these indicia have been categorized as more persuasive of a finding of control (see the first four indicators in the table below). For each indicator that applies, the degree of government influence would determine its importance as evidence of control. Finally, the indicia are considered both collectively and individually.

A detailed analysis of the 11 Indicators of control is provided in the following table.

INDICATOR OF CONTROLS	EVIDENCE OF CONTROL	CONTROL EXIST?
Primary (more persuasive) indicators (PS 1300.18):		
Government has the power to unilaterally appoint or remove a majority of the members of the governing body of the organization	- Bill 132 states: - *OPG is appointed as the Financial Services Manager for the purposes of this Act. (Section 18)* - *The Financial Services Manager shall perform the duties assigned to it under this Act and may administer the investment asset on behalf of the investment interest owners. (Section 19 (1))* - *Subject to any prescribed limitations, the Financial Services Manager may establish and charge fees in relation to such matters as may be prescribed in accordance with the regulations, which regulations may provide for the ability to recover costs and expenditures and to earn a return. (Section 19 (3))*	No

INDICATOR OF CONTROLS	EVIDENCE OF CONTROL	CONTROL EXIST?

	- The Electricity Act will be amended as follows:
	  - *In addition to the objects mentioned in subsection (1), the objects of OPG include exercising the powers and rights and performing the duties and obligations assigned to it under the Ontario Fair Hydro Plan Act, 2017 and engaging in activities to facilitate the implementation of that Act, including entering into contracts and undertakings on behalf of financing entities and performing other services on behalf of financing entities, subject to the right to be paid by the financing entities for those services. (Section 53.1 (1.1))*
	  - *OPG may create or invest in one or more subsidiaries, trusts, partnerships or special purpose entities in order to more efficiently conduct its activities or achieve its objects. (Section 53.1 (1.2))*
	- OPG will establish a trust to manage the collection of the regulatory asset and related financing and administrative expenses. The Board of Trustees of the OPG Trust will be the governing body of the Trust and will be appointed by OPG. OPG will have the power to unilaterally appoint or remove all members of the Board of Trustees.
	- The IESO will not have any rights in respect of the appointment or replacement of the Board of Trustees of the OPG Trust.	

Government has ongoing access to the assets of the organization, has the ability to direct the ongoing use of those assets, or has ongoing responsibility for losses	- Section 27 of Bill 132 states:
	  - *A transfer of a specified portion of the regulatory asset under section 26 constitutes a valid and enforceable absolute assignment, conveyance and sale of the corresponding investment interest to the transferee.*
	  - *Without limiting subsection (1), any transfer agreement that states an intention of the parties for the IESO to dispose of a specified portion of the regulatory asset and to assign, convey or sell a corresponding investment interest shall be treated for all purposes as an absolute assignment, conveyance, disposition and sale of the IESO's right to recover the corresponding amount in the variance account and not merely as a security interest.*
		No

INDICATOR OF CONTROLS	EVIDENCE OF CONTROL	CONTROL EXIST?
	- *At the time a transfer of the regulatory asset is made under section 26, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.* - Based on Bill 132, *upon transfer of a specified portion of the regulatory asset to the OPG Trust, the investment asset resulting from the transfer is immediately vested in the OPG Trust, free and clear of any adverse claim.* (Section 28 (2)). - Therefore, upon transfer of the regulatory asset to the OPG Trust, IESO will no longer have access/ability to direct the regulatory asset nor have the ongoing responsibility for losses. - The credit risk related to the collection of the investment asset is borne by the OPG Trust.	
Government holds the majority of the voting shares or a "golden share" that confers the power to govern the financial and operating policies of the organization	- IESO will not have any ownership in the OPG Trust and will not have the power to govern the financial and operating policies of the OPG Trust.	No
Government has the unilateral power to dissolve the organization and thereby access its assets and become responsible for its obligations	- IESO will not have the power to dissolve the organization.	No

INDICATOR OF CONTROLS	EVIDENCE OF CONTROL	CONTROL EXIST?
Other indicators that may provide evidence of control exist when government has the power to (PS 1300.18):		
Provide significant input into the appointment of members of the governing body of the organization by appointing a majority of those members from a list of nominees provided by others or being otherwise involved in the appointment or removal of a significant number of members	- OPG will have the power to unilaterally appoint or remove all members of the Board of Trustees of the OPG Trust. - IESO will not provide any input in the appointment of members of the Board of Trustees.	No
Appoint or remove the CEO or other key personnel	- OPG will have the power to unilaterally appoint or remove all members of the Board of Trustees of the OPG Trust and other key personnel.	No
Establish or amend the mission or mandate of the organization	- The Trust will be established by OPG and the mandate of the Trust will be set based on Bill 132.	No

Approve the business plans or budgets for the organization and require amendments, either on a net or line-by-line basis	- Bill 132 states:
	  - *OPG is appointed as the Financial Services Manager for the purposes of this Act. (Section 18)*
	  - *The Financial Services Manager shall prepare a written plan entitled the Financing Plan to be used by the Financial Services Manager to evaluate whether potential funding obligations should be incurred for the purposes of acquiring and financing an investment asset in accordance with this Act or for the purposes of refinancing. (Section 16 (1))*
	- OPG is the Financial Services Manager, not IESO.
	- IESO is not involved in the preparation or approval of the business plans or budget of the OPG Trust.
		No

Establish borrowing or investment limits or restrict the organization's investments	- Section 22 of Bill 132 states: - *The Financial Services Manager shall ensure that funding obligations incurred for the purposes of this Act are incurred in a manner that is consistent with the applicable Financing Plan.*	No

INDICATOR OF CONTROLS	EVIDENCE OF CONTROL	CONTROL EXIST?
	- OPG not IESO, is responsible for ensuring that the borrowings of the OPG Trust meet the above conditions.	
Restrict the revenue-generating capacity of the organization, notably the sources of revenue	- N/A	No
Establish or amend the policies that the organization uses to manage, such as those relating to accounting, personnel, compensation, collective bargaining or deployment of resources	- As mentioned above, OPG will be granted by legislation the power to establish or amend the policies of the OPG Trust and the ability to appoint and remove all members of the Board of Trustees.	No

Management conclusion

IESO management has concluded that the OPG Trust to be established would not be controlled by the IESO and therefore is not subject to consolidation by the IESO.

Based on the foregoing analysis of the 11 indicators of control as defined in Section PS 1300 *Government Reporting Entity,* considered both individually and collectively there is no evidence of control by the IESO in respect of the OPG Trust. The IESO will not have the power to govern the Trust, nor have ongoing access to Trust's assets. The IESO will also not have any voting shares or future rights to the Trust nor the power to dissolve the Trust. Without control, the Trust is not subject to consolidation within the IESO financial statements.

Our conclusion

We have considered the foregoing analysis and management's conclusion. We concur that based on Bill 132, none of the four primary (more persuasive) indicators of control are considered to be met, and none of the seven other indicators of control are considered to be met. Accordingly, we concur that the IESO does not control the OPG Trust under Bill 132 and hence would not consolidate the OPG Trust.

The adoption of Bill 132 (including the subsequent amendments of the Electricity Act and the OEB Act) and the finalization of the financing structure (including the bylaws and regulations of the OPG Trust) and other agreements will take several months. Accordingly, our judgment on the appropriate application of PSAS to the conclusion on control may change subject to further analysis of any changes to the terms of Bill 132 or review of the final regulations, financing structure and other agreements.

Background for Issue #3

The facts, circumstances, and assumptions relevant to the specific transactions as provided to us by the management of the Company (responsible party), in addition to those described in the background for issues #1 and 2, are as follows:

1. The total IESO deferral for the period from May 1, 2017 to April 30, 2047 is estimated at $28 billion plus interest and will be recorded by the IESO in a variance account recognized as a regulatory asset.
2. The IESO does not currently have the financial capability to finance the regulatory asset and will transfer the variance account to an investment asset owner (i.e. OPG Trust) on a monthly basis.
3. The IESO will obtain a written legal opinion as to the validity and enforceability of the transfer and sale of the regulatory asset.
4. Based on an assessment of control performed under the issue #2, IESO will not consolidate the OPG Trust. We understand that an assessment of control under International Financial Reporting Standards ("IFRS") has been performed by OPG and they have concluded that the OPG Trust will be consolidated by OPG; we note that the financial reporting framework used by OPG in preparing its financial statements for consolidation into the Province's books is IFRS.
5. The Electricity Act, OEB Act and other regulations will be amended to reflect the following *extracts from Bill 132:*

   Section 16 IESO to receive amounts

   (2) The IESO shall, as agent of the investment interest owners, receive amounts in respect of the clean energy adjustment paid to it from electricity vendors in accordance with the market rules made under section 32 of the Electricity Act, 1998 or the regulations.

   (4) All amounts received by the IESO in respect of the clean energy adjustment shall, until remitted to or for the benefit of the investment interest owner, be held in trust by the IESO for the investment interest owners.

   (5) The IESO shall remit amounts received by it in respect of the clean energy adjustment, inclusive of interest earned on the amounts referred to in subsection (1), to or for the benefit of the investment interest owners in accordance with the regulations.

   Section 17 Pro rating of payments

   (4) If an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices and the amount paid is less than the total amount payable, the electricity vendor shall allocate the payment on a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices in respect of electricity charges in respect of the same invoice period.

   Section 26 Transfer of regulatory asset

   (1) The IESO may from time to time, in accordance with this Act and the regulations, transfer a specified portion of the regulatory asset to a financing entity in accordance with this section.

   (2) An agreement between the IESO and a financing entity in relation to the transfer of a specified portion of the regulatory asset shall provide for consideration of a payment by the financing entity to the IESO in an amount equal to the amount of the specified portion.

(3) Upon receipt by the IESO of the payment by the financing entity,

(a) the balance in the variance account shall be reduced by the amount of the payment;

(b) the regulatory asset shall be adjusted accordingly;

(c) the financing entity shall acquire a corresponding investment interest; and

(d) the IESO shall retain no further right, title or interest in the investment interest.

Section 27 Validity of transfer

(1) A transfer of a specified portion of the regulatory asset under section 26 constitutes a valid and enforceable absolute assignment, conveyance and sale of the corresponding investment interest to the transferee.

(2) Without limiting subsection (1), any transfer agreement that states an intention of the parties for IESO to dispose of a specified portion of the regulatory asset and to assign, convey or sell a corresponding investment interest shall be treated for all purposes as an absolute assignment, conveyance, disposition and sale of IESO's right to recover the corresponding amount in the variance account and not merely as a security interest.

(3) At the time a transfer of the regulatory asset is made under section 26, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the transferee shall have priority over any liens in favour of those persons.

Section 29 Investment asset, irrevocable rights and interests

(1) The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests of investment interest owners:

1. The right and interest to impose, invoice, collect, receive and recover the clean energy adjustment from specified consumers, including the right to determine the clean energy adjustment in accordance with this Act.

2. The right to receive, collect and recover the clean energy adjustment that is imposed, invoiced and recoverable under this Act, including any amounts in respect of the clean energy adjustment that are held by electricity vendors, IESO and other prescribed parties.

Section 30 Transfer of investment interest

(2) An investment interest owner may transfer all or a portion of an investment interest to any other investment interest owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan.

Section 32 Investment interest owner may grant security interest

(1) An investment interest owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under the investment interest to or in favour of any person to secure a funding obligation.

(3) All provisions of the Personal Property Security Act shall apply to the investment asset and each investment interest on the basis that the investment asset and each investment interest is intangible personal property, except as otherwise provided for in this section, and any granting of a security interest by an investment interest owner to secure a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by registering a financing statement under that Act on that basis.

6. The terms of the transfer agreement between the IESO and the OPG Trust that will be signed and executed upon transfer of the regulatory assets will be in compliance with the dispositions of Bill 132.

Appropriate Accounting Principle for Issue #3

The Derecognition Section of ASC 980-20-40 provides guidance on determining whether and when an entity should remove an item from the financial statements. For example, the entity would derecognize an asset because it no longer has rights to the asset or it would derecognize a liability because it no longer has any obligation. [ASC 980-20-40]

Failure of an entity's operations to continue to meet the criteria in paragraph 980-10-15-2 can result from different causes. Examples include the following:

(a) Deregulation.

(b) A change in the regulator's approach to setting rates from cost-based rate-making to another form of regulation.

(c) Increasing competition that limits the entity's ability to sell utility services or products at rates that will recover costs (as used in paragraph 980-10-15-2).

(d) Regulatory actions resulting from resistance to rate increases that limit the entity's ability to sell utility services or products at rates that will recover costs if the entity is unable to obtain (or chooses not to seek) relief from prior regulatory actions through appeals to the regulator or the courts. [ASC 980-20-15-2]

PS1000 *Financial statement concepts*:

– This Section is to be used by preparers and auditors of financial statements in exercising their professional judgment as to the application of generally accepted accounting principles and in establishing accounting policies in areas in which accounting principles are developing. [PS1000.03]

– Financial statements should communicate information that is relevant to the needs of those for whom the statements are prepared, reliable, comparable, understandable and clearly presented in a manner that maximizes its usefulness. [PS1000.24]

– An item is not an asset of a government if it lacks one or more of the essential characteristics listed in the preceding paragraph [PS3210.04]. Thus, for example, an item does not qualify as an asset of a government if the item involves:

  (a) no future economic benefit;

  (b) future economic benefit, but the government cannot obtain it; or

  (c) future economic benefit that the government may obtain, but the events or circumstances that give the government control of the benefit have not yet occurred. [PS1000.37]

PS3210 *Assets*:

- Assets are economic resources controlled by a public sector entity as a result of past transactions or events and from which future economic benefits are expected to be obtained. [PS3210.03]
- Assets have three essential characteristics:
  (a) They embody future economic benefits that involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows, or to reduce cash outflows.
  (b) The public sector entity can control the economic resource and access to the future economic benefits.
  (c) The transaction or event giving rise to the public sector entity's control has already occurred. [PS3210.04]
- Control of an economic resource and of access to the future economic benefits are essential characteristics of an asset, whereas possession or ownership is not. [PS3210.22]

PS3430 *Restructuring transactions* [1]

- Individual assets and liabilities transferred in a restructuring transaction should be derecognized by the transferor if they no longer meet the definitions of assets and liabilities and applicable recognition criteria at the restructuring date. [PS3430.21]
- When a transferor continues to be involved in the individual assets and/or liabilities it transferred to a recipient subsequent to the restructuring date, it would assess the nature and extent of its continued involvement against the definitions of assets and liabilities and applicable recognition criteria to evaluate whether:
  (a) derecognition of the asset and liability transferred would be appropriate; and
  (b) its continued involvement gives rise to a new asset or new liability that needs to be recognized. [PS3430.24]
- A new asset or new liability may arise from a restructuring due to a transferor's continued involvement in the individual assets and liabilities transferred (for example, if it agrees to guarantee repayment of all or a portion of a transferred liability or leases back a portion of a transferred asset). As the new asset or new liability is not transferred, together with related program or operating responsibilities, they are not part of the restructuring transaction. They would be accounted for in accordance with individual Sections of the PSA Handbook by both the transferors and recipients. [PS3430.25]

1 This Section applies to fiscal years beginning on or after April 1, 2018. […] Earlier adoption is permitted."

Issue #3: What is the accounting treatment for derecognition of the regulatory asset by the IESO upon transfer of the variance account to the OPG Trust?

Although ASC 980-20-40 states that

> *"Derecognition Section provides guidance on determining whether and when an entity should remove an item from the financial statements. For example, the entity would derecognize an asset because it no longer has rights to the asset or it would derecognize a liability because it no longer has any obligation."*

Subtopic 980-20 relates to discontinuation of rate-regulated accounting when an entity no longer meets the criteria in paragraph 980-10-15-2. ASC 980-20-15-2 provides examples of when an entity no longer meets the criteria, including deregulation and change of the form of regulation. Thus, ASC 980 does not provide clear guidance for the derecognition of a regulatory asset other than in connection with the discontinuation of rate-regulated accounting.

The above guidance in ASC 980-20-40 provides general principles for the derecognition of assets.

It should also be noted that PSAS provide limited guidance on derecognition of non-financial assets and liabilities. Section 3430 *Restructuring transactions,* which is applicable for fiscal years on or after April 1, 2018 with early application permitted, has guidance for the derecognition of assets and liabilities.

- Paragraph 21 states that *individual assets and liabilities transferred in a restructuring transaction should be derecognized by the transferor if they no longer meet the definitions of assets and liabilities and applicable recognition criteria at the restructuring date.*
- As stated in paragraph 24, *when a transferor continues to be involved in the individual assets and/or liabilities it transferred to a recipient subsequent to the restructuring date, it would assess the nature and extent of its continued involvement against the definitions of assets and liabilities and applicable recognition criteria to evaluate whether derecognition of the asset and liability transferred would be appropriate and whether its continued involvement gives rise to a new asset or new liability that needs to be recognized.*

Recognizing the proposed transaction is not a restructuring transaction, Section 3430, which has recently been issued by PSAB, provides current evidence of thinking in the application of the general PSAS principles in respect of the recognition and derecognition of assets and liabilities. Accordingly, the analysis as to whether the regulatory asset transferred to the OPG Trust can be derecognized is based on the foregoing guidance.

Criteria for the recognition of an asset

PS3210.03 states that assets are economic resources controlled by a public sector entity as a result of past transactions or events and from which future economic benefits are expected to be obtained. More generally, PSAS PS1000.37 suggests that an asset would no longer be recognized when it fails to meet the definition of an asset:

Criteria	Comment	Evaluation
Assets (PS3210.04/ PS1000.36): Assets have three essential characteristics: (a) They embody future economic benefits that involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows,	Based on the guidance, the regulatory asset does not qualify as an asset of IESO if it cannot obtain the future economic benefits. Upon transfer of the regulatory asset, IESO will have no further rights or obligations in connection with the asset transferred. - *IESO may from time to time, in accordance with this Act and the regulations, transfer a specified portion of the regulatory asset to a financing entity in accordance with this section.* - *Upon receipt by IESO of the payment by the financing entity, IESO shall retain no further right, title or interest in the corresponding investment interest.*	Not Met

Criteria	Comment	Evaluation
or to reduce cash outflows. (b) The public sector entity can control the economic resource and access to the future economic benefits. (c) The transaction or event giving rise to the public sector entity's control has already occurred. *Financial statement concepts (PS1000.37):* An item is not an asset of a government if it lacks one or more of the essential characteristics listed in the preceding paragraph [see above]. Thus, for example, an item does not qualify as an asset of a government if the item involves: (a) no future economic benefit (b) future economic benefit, but the government cannot obtain it.	- *A transfer of a specified portion of the regulatory asset under section 26 constitutes a valid and enforceable absolute assignment, conveyance and sale of the corresponding investment interest to the transferee.* - *Without limiting subsection (1), any transfer agreement that states an intention of the parties for IESO to dispose of a specified portion of the regulatory asset and to assign, convey or sell a corresponding investment interest shall be treated for all purposes as an absolute assignment, conveyance, disposition and sale of IESO's right to recover the corresponding amount in the variance account and not merely as a security interest.* - *At the time a transfer of the regulatory asset is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.* Upon transfer of the regulatory asset, the OPG Trust will have the right to sell the asset to another party or to grant a security interest in favour of any person to secure a funding obligation. - *Upon transfer, the financing entity becomes an investment asset owner and acquires an investment interest.* - *An investment interest owner may transfer all or a portion of an investment interest to any other investment interest owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan.* - *An investment interest owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under the investment interest to or in favour of any person to secure a funding obligation.* Based on Bill 132, it is clear that IESO will have no rights to the benefits associated with the future cash inflows related to the regulatory asset as it will have transferred its right to recover the IESO deferral to the OPG Trust. Further, it is also clear that IESO will have lost control over the regulatory asset once it is transferred to OPG Trust.	

Management conclusion

IESO management has concluded that the regulatory asset will be derecognized upon transfer of the regulatory asset to the OPG Trust.

The transfer of the regulatory asset transfers the control and the benefits associated with the right to collect funds in the future against the variance amount to the OPG Trust. This will eliminate the IESO asset by the amount of the transfer as the IESO will no longer control an economic resource or have access to future economic benefits for that amount. The funds collected from the transfer will in turn reduce the associated debt held by the IESO, maintaining the IESO's net $ nil balance in the market accounts.

Our conclusion

We have considered the foregoing analysis and management's conclusion. We concur that the regulatory asset should be derecognized on transfer to the OPG Trust as IESO no longer has rights or future economic benefits associated with the asset.

Other Matters

The ultimate responsibility for the decision on the appropriate application of PSAS for the specific transactions rests with management as preparers of the financial statements. Our judgment on the appropriate application of PSAS for the specific transaction is based solely on the facts, circumstances and assumptions provided to us as described above. Should these facts and circumstances differ, our conclusion may change.

This letter has been prepared in draft form and will be updated upon receipt of the adopted legislation, if passed, (including the amendments of the Electricity Act and the OEB Act) and finalized financial structure (including the bylaws and regulations of the OPG Trust) and other relevant agreements necessary for us to provide our final opinion, of which legislation and other relevant agreements are expected to be enacted/ finalized on or before September 30, 2017. This letter will not be updated as a consequence of pronouncements by the Public Sector Accounting Board, or any other authoritative bodies, that occur subsequent to the date of this letter.

This letter is intended solely for the information and use of the Board of Directors and management of the Company, and is not intended to be and should not be used, quoted, relied upon by, or otherwise referred to by anyone other than these specified parties or for any other purpose.

No one other than the Board of Directors and management of the Company is authorized by KPMG to rely upon any information or views expressed herein. KPMG shall have no responsibility or liability for loss or damages or claims, if any, to or by any third party as this letter has not been prepared for, and is not intended for, and should not be used by, any third party or for any other purpose.

Yours very truly,

per Michel Picard
Partner
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Appendix A:

Bill 132, Ontario Fair Hydro Plan Act, 2017

Caution:
Bills are published by the Legislative Assembly in print and on its website. This copy has not been published by the Legislative Assembly and is being provided for convenience only.

Fair Hydro Act, 2017

EXPLANATORY NOTE

The Bill enacts a new Act and makes amendments to the *Electricity Act, 1998* and the *Ontario Energy Board Act, 1998*.

SCHEDULE 1
ONTARIO FAIR HYDRO PLAN ACT, 2017

The Schedule enacts the *Ontario Fair Hydro Plan Act, 2017*. The Act establishes a framework under which the costs and benefits associated with the "clean energy initiative" are to be allocated among present and future consumers of electricity. The "clean energy initiative" is defined in Part I as consisting of the policies of the Government of Ontario related to such matters as eliminating coal generation and fostering the growth of and investment in clean, modern and reliable energy sources and technologies.

Under Part II, the Ontario Energy Board is required to determine reduced electricity rates and to determine other adjustments to be made for certain classes of consumers in respect of specified periods of time. For example, for the class of consumers referred to as "regulated rate consumers", the electricity rates payable for the period beginning on July 1, 2017 and ending on April 30, 2018 are the rates, as determined by the Board, that would achieve a 25 per cent reduction in certain costs for a hypothetical member of the class who meets prescribed criteria. Details regarding the determinations are prescribed by regulations.

Part III requires certain electricity consumers to pay an amount in respect of the "clean energy adjustment". The clean energy adjustment is determined by the Financial Services Manager in accordance with rules set out in the Act and the regulations. (Section 18 of the Act appoints Ontario Power Generation Inc. as the Financial Services Manager.) Part III also specifies the roles and responsibilities of electricity vendors and the Independent Electricity System Operator ("IESO") with respect to the collection and remittance of amounts in respect of the clean energy adjustment.

Part IV requires the Minister of Energy to calculate a "fair allocation amount" by taking specified steps in accordance with principles and assumptions set out in the Act. For example, the Act provides that the purpose of calculating the fair allocation amount is to measure and allocate the estimated clean energy costs and estimated clean energy benefits fairly among certain consumers. Part IV also requires the Financial Services Manager to prepare a written

plan entitled the "Financing Plan", which is to be used to evaluate whether potential funding obligations should be incurred. Principles and limitations regarding the preparation and implementation of the plan are provided.

Part V requires the IESO to determine the "IESO deferral" in accordance with the regulations and to establish and maintain a variance account in which it records the IESO deferral each month. A "regulatory asset" is created under section 25; the IESO has the right to recover the balance recorded in the variance account from certain consumers. The IESO is authorized to transfer a specified portion of the regulatory asset to a financing entity; this transfer results in the creation of the investment asset and the acquisition by the transferee of a corresponding "investment interest". Various rules respecting the validity and priority of a transfer of an investment asset are set out.

In Part VI, rules in respect of the "investment asset" are provided. Section 29 provides that the investment asset constitutes a current and irrevocable property right and interest, consisting collectively of various specified rights and interests of investment interest owners. Rules respecting the validity and priority of such a transfer and the granting of a security interest by an investment interest owner are included.

Part VII deals with various miscellaneous matters, including regulation-making authority of the Lieutenant Governor in Council.

The *Electricity Act, 1998* and the *Ontario Energy Board Act, 1998* are amended to address various matters relating to the enactment of the new Act. For example, the objects of the IESO and Ontario Power Generation Inc. are expanded to address powers and duties under the new Act.

SCHEDULE 2
AMENDMENTS TO THE ONTARIO ENERGY BOARD ACT, 1998

The *Ontario Energy Board Act, 1998* is amended. Among the amendments:

1. Section 79 of the Act is amended so that compensation for the rate protection provided to certain classes of rural or remote consumers may be funded out of money appropriated by the Legislature, rather than by consumers.

2. Section 79.2 of the Act, which governs the Ontario Electricity Support Program, is repealed and replaced. The program is continued, but will be funded out of money appropriated by the Legislature after the variance account maintained by the Independent Electricity System Operator, formerly established under the Plan, is exhausted, rather than by consumers. There are provisions relating to the sharing, use and disclosure of information relating to the administration of the Ontario Electricity Support Program.

3. Programs are established to aid certain distribution rate-protected residential consumers and on-reserve consumers.

4. Various amendments of a technical and administrative nature are made to support the implementation and oversight of these programs including provisions related to auditing, record-keeping, inspections and inquiries, offences and penalties.

Bill **2017**

An Act to enact the Ontario Fair Hydro Plan Act, 2017 and to make amendments to the Electricity Act, 1998 and the Ontario Energy Board Act, 1998

Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Contents of this Act

1. This Act consists of this section, sections 2 and 3 and the Schedules to this Act.

Commencement

2. (1) Subject to subsections (2) and (3), this Act comes into force on the day it receives Royal Assent.

Schedules

(2) The Schedules to this Act come into force as provided in each Schedule.

Different dates for same Schedule

(3) If a Schedule to this Act provides that any of its provisions are to come into force on a day to be named by proclamation of the Lieutenant Governor, a proclamation may apply to one or more of those provisions, and proclamations may be issued at different times with respect to any of those provisions.

Short title

3. The short title of this Act is the *Fair Hydro Act, 2017*.

SCHEDULE 1
ONTARIO FAIR HYDRO PLAN ACT, 2017

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Preamble

The Government of Ontario is committed to fostering the development of a clean, modern and reliable electricity system with a diverse supply mix. The Government is also committed to removing barriers to and promoting opportunities for renewable and clean energy projects. These commitments can only be achieved if costs are shared fairly among consumers, today and in the future.

Electricity rates have risen for two key reasons. First, decades of under-investment in the electricity system resulted in the need to invest more than $50 billion in generation, transmission and distribution assets to ensure the system is clean and reliable. Second, the decision to eliminate Ontario's use of coal and produce clean, renewable power has created additional costs.

The actions taken to achieve a clean, modern and reliable electricity system have resulted in significant costs to residential consumers. The burden of financing these system improvements and funding key programs has unfairly fallen almost entirely on the shoulders of those consumers.

The Government of Ontario is committed to ensuring that the costs of financing these investments and the associated charges to consumers are allocated fairly among present and future generations.

Recognizing that the electricity infrastructure that has been built and the policy decisions that have been made will create benefits for years to come, costs should be allocated fairly over time, so that residential consumers in the future pay their fair share for the benefits that they receive from the investments already made.

PART I
GENERAL

Interpretation

Definitions

1. (1) In this Act,

"Board" means the Ontario Energy Board; ("Commission")

"clean energy adjustment" means the amount determined under section 15 and payable by specified consumers; ("ajustement pour l'énergie propre")

"clean energy benefits" means the value of the benefits determined to be derived by or accruing to specified consumers as a result of the clean energy initiative, including as a result of clean energy costs; ("avantages de l'énergie propre")

"clean energy costs" means the value of the costs allocated to specified consumers as a result of the clean energy initiative, including as a result of past, present and expected costs incurred in respect of,

(a) the amounts to be paid or reflected by the IESO in adjustments made under section 25.33 of the *Electricity Act, 1998* or any provision that is the successor to that provision, which relate to contracts or amounts for,

(i) renewable energy generation or capacity,

(ii) conservation and demand management,

(iii) energy storage,

(iv) energy efficiency,

(v) natural gas generation and capacity, excluding contracts relating to amounts payable by the IESO under section 78.2 of the *Ontario Energy Board Act, 1998* and excluding such other contracts as may be prescribed,

(b) payments made or expected to be made under section 78.5 of the *Ontario Energy Board Act, 1998*, and

(c) such other costs or estimated costs as may be prescribed; ("coûts de l'énergie propre")

"clean energy initiative" means the policies of the Government of Ontario related to,

(a) eliminating coal generation and fostering the growth of and investment in clean, modern and reliable energy sources and technologies,

(b) removing barriers to and promoting opportunities for clean and renewable energy sources and technologies,

(c) promoting conservation, demand management and energy efficiency, and

(d) investing in energy infrastructure to ensure a clean, modern and reliable system; (“initiative pour l’énergie propre”)

“electricity vendor” means,

(a) a licensed distributor,

(b) a licensed retailer,

(c) the IESO in circumstances where it directly invoices a specified consumer for electricity used in Ontario, or

(d) such other person as may be prescribed; (“vendeur d’électricité”)

“fair allocation amount” means an amount calculated under section 20; (“montant de répartition équitable”)

“finance amount” means the finance amount determined in accordance with the regulations; (“montant de financement”)

“Financial Services Manager” means the Financial Services Manager appointed under section 18; (“gestionnaire des services financiers”)

“financing entity” means an entity established or caused to be established by the Financial Services Manager as described in subsection 22 (2); (“entité de financement”)

“Financing Plan” means the plan prepared under section 21; (“Plan de financement”)

“funding obligation” means a payment obligation incurred by or on behalf of an investment interest owner to fund its ownership of an investment interest or a payment obligation that meets such other criteria as may be prescribed; (“obligation de financement”)

“funding rebate” means a payment obligation incurred by the IESO as part of the transfer of the regulatory asset; (“remboursement de financement”)

“IESO” means the Independent Electricity System Operator continued under Part II of the *Electricity Act, 1998*; (“SIERE”)

“IESO deferral” means the amount determined under section 23; (“report de la SIERE”)

"investment asset" means the rights and interests described in section 29; ("actif d'investissement")

"investment interest" means,

(a) an ownership interest in the investment asset, and

(b) in circumstances where the ownership interest is transferred, the rights and benefits specified in the agreement under which the interest is transferred; ("participation d'investissement")

"investment interest owner" means a financing entity that has acquired and holds an investment interest; ("détenteur d'une participation d'investissement")

"licensed distributor" means a person licensed under Part V of the *Ontario Energy Board Act, 1998* to own or operate a distribution system within the meaning of that Act; ("distributeur titulaire d'un permis")

"licensed retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity; ("détaillant titulaire d'un permis")

"Minister" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of this Act under the *Executive Council Act*; ("ministre")

"Ontario Power Generation Inc." means the corporation incorporated as Ontario Power Generation Inc. under the *Business Corporations Act* on December 1, 1998; ("Ontario Power Generation Inc.")

"prescribed" means prescribed by the regulations; ("prescrit")

"reference period" means,

(a) the period beginning on July 1, 2017 and ending on October 31, 2017, and

(b) during the period beginning on November 1, 2017 and ending on either April 30, 2047 or such later day as may be prescribed,

(i) every six-month period following the period mentioned in clause (a); or

(ii) any period shorter than six months, as may be prescribed; ("période de référence")

"refinancing" means, subject to the regulations, the incurrence of debt in connection with a redemption, repayment or repurchase of a funding obligation; ("refinancement")

"regulation" means a regulation made under this Act; ("règlement")

"regulatory asset" means the right established under section 25; ("actif réglementaire")

"specified consumer" means,

(a) a person who has an account with an electricity vendor for the supply of electricity in Ontario and meets the criteria set out in subsection (2), or

(b) such other person as may be prescribed; ("consommateur déterminé")

"transfer" includes, when used in relation to an investment interest, the assignment, conveyance, disposition or sale of the investment interest; ("transfert")

"true up amount" means a true up amount determined in accordance with the regulations; ("montant d'égalisation")

"unit sub-metering" has the same meaning as in the *Energy Consumer Protection Act, 2010;* ("activités liées aux compteurs divisionnaires d'unité")

"unit sub-meter provider" has the same meaning as in the *Energy Consumer Protection Act, 2010;* ("fournisseur de compteurs divisionnaires d'unité")

"variance account" means the variance account established by the IESO under subsection 24 (1). ("compte d'écart")

Specified consumer

(2) For the purposes of clause (a) of the definition of "specified consumer" in subsection (1), the person must meet any one of the following criteria:

1. The person has a demand for electricity of not more than 50 kilowatts, or such other amount as may be prescribed.

2. The person annually uses not more than 250,000 kilowatt hours of electricity, or such other amount as may be prescribed.

3. The person carries on a business that is a farming business for the purposes of the *Farm Registration and Farm Organizations Funding Act, 1993* and either holds a valid registration number assigned under that Act or has had the

obligation to file a farming business registration form waived pursuant to an order made under subsection 22 (6) of that Act.

4. The person's account with the electricity vendor relates to,

   i. a dwelling,

   ii. a property within the meaning of the *Condominium Act, 1998*,

   iii. a residential complex within the meaning of subsection 2 (1) of the *Residential Tenancies Act, 2006*, without regard to section 5 of that Act, or

   iv. a property that includes one or more housing units and that is owned or leased by a co-operative within the meaning of the *Co-operative Corporations Act*.

5. The person satisfies such criteria as may be prescribed.

Transfer of regulatory asset

(3) In this Act, a reference to the transfer of a specified portion of the regulatory asset is a reference to the following, as provided for in subsection 26 (3):

1. A reduction in the balance in the variance account.

2. The adjustment of the regulatory asset.

3. The acquisition by a financing entity of the investment interest corresponding to the specified portion of the regulatory asset.

Effect of invalidity

2. (1) For greater certainty, all of the provisions of this Act remain in full force and effect, even if one or more provisions are held to be invalid, the intention of the Legislature being to give separate and independent effect to the extent of its powers to every provision contained in this Act.

Same, funding obligation

(2) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect the validity or enforceability of a funding obligation incurred before the day that the provision is held to be invalid or ceases to be in effect, or any rights or obligations associated with the funding obligation.

Purposes

3. The purposes of this Act are,

(a) to ensure that clean energy costs and clean energy benefits are fairly allocated among present and future specified consumers;

(b) to recognize that clean energy benefits have accrued and will accrue over time and will continue to benefit present and future electricity consumers in the Province; and

(c) to align clean energy costs with clean energy benefits, in order to provide fairness for specified consumers over time.

Crown bound

4. This Act binds the Crown.

Protection and assurances

Prohibition

5. (1) No action or omission by the Board, the Minister or the Crown shall be effective to reduce, impair, postpone or terminate the obligations of specified consumers to pay amounts in respect of the clean energy adjustment or to impair or postpone the invoicing, collection or remittance of the clean energy adjustment.

Agreements

(2) The Minister and the Minister of Finance may together, with the approval of the Lieutenant Governor in Council, enter into agreements on behalf of the Province of Ontario with any person in respect of this Act, including agreements regarding the performance of the IESO or electricity vendors under this Act or related transactions.

Guarantee, indemnification

(3) The Lieutenant Governor in Council may by order,

(a) authorize the Minister and the Minister of Finance, acting together on behalf of the Province,

(i) to agree to guarantee or indemnify any debts, obligations, securities or undertakings associated with an investment interest, and

(ii) to determine terms and conditions of the guarantee or indemnity and the maximum liability for the guarantee or indemnity;

(b) specify terms and conditions that must be included in any guarantee or indemnity given by the Minister and the Minister of Finance; and

(c) specify a maximum liability for the guarantee or indemnity.

PART II
FAIR ADJUSTMENT

Definition

6. In this Part,

"regulated rate consumer" means a specified consumer who meets the following criteria:

1. The consumer is a member of the class of consumers prescribed by the regulations made under the *Ontario Energy Board Act, 1998* for the purposes of subsection 79.16 (1) of that Act.

2. The consumer would, if the consumer were not subject to this Act, be invoiced the rates determined by the Board under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*.

Regulated rate consumers, first adjustments

7. (1) Despite any order under subsection 78 (3.1) of the *Ontario Energy Board Act, 1998* and despite section 79.16 of that Act, the electricity rates payable by regulated rate consumers for the period beginning on July 1, 2017 and ending on April 30, 2018 are the rates, as determined by the Board, that would result in a hypothetical regulated rate consumer who meets the prescribed criteria being charged an invoice amount that is 25 per cent less than the invoice amount that would have been charged to that consumer under the comparison rates described in subsection (2).

Comparison rates

(2) The comparison rates are the rates that would have been effective May 1, 2017 if they had been determined by the Board solely using the method prescribed by the regulations made under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*, without taking into account any forecasted impact of any other provisions of this Act.

Invoice amounts

(3) The types of amounts to be included or excluded in each invoice amount mentioned in subsection (1) are the types of amounts specified in the regulations.

Other specified consumers, first adjustments

8. (1) For the period beginning on July 1, 2017 and ending on April 30, 2018, the adjustments made by the IESO under section 25.33 of the *Electricity Act, 1998* shall, with respect to specified consumers who are not regulated rate consumers, be further adjusted

by electricity vendors in accordance with the determinations of the Board under subsection (2).

Board to make determinations

(2) The Board shall, in accordance with the regulations, determine the adjustments to be made by electricity vendors.

Same, regulations

(3) The regulations may specify different adjustments to be made in respect of prescribed classes of specified consumers who are not regulated rate consumers.

Determinations by Board

9. The Board shall make the determinations mentioned in sections 7 and 8 no later than 15 business days after the day this section receives Royal Assent and, regardless of whether the Board makes the determinations before or after July 1, 2017, the determinations shall be effective as of July 1, 2017.

Implementation by electricity vendors

10. (1) As soon as possible after the Board makes determinations under section 9, each electricity vendor shall, in respect of electricity used on or after July 1, 2017, ensure that its invoices reflect the determinations of the Board.

Same

(2) The electricity vendor shall ensure that, if any of its customers who are specified consumers have been invoiced in a manner that does not reflect the determinations of the Board under section 9, the specified consumer receives the difference between the amounts shown on the invoice and the amounts reflecting the Board's determinations, provided as a lump sum credit on the first invoice issued after the electricity vendor has adapted its invoices or by such other means as may be prescribed.

Subsequent adjustments

11. (1) Despite clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998* and subject to subsection (2), the Lieutenant Governor in Council may prescribe the methodology to be applied by the Board after April 30, 2018 for the purpose of determining,

(a) electricity rates for regulated rate consumers; or

(b) adjustments to be applied by electricity vendors to the adjustments made by the IESO under section 25.33 of the *Electricity Act, 1998* in respect of prescribed classes of specified consumers who are not regulated rate consumers.

Limitation

(2) Any prescribed methodology shall have regard to the following:

1. The purposes of this Act.

2. The clean energy costs borne by specified consumers over time.

3. Such other matters as may be prescribed.

Sub-metering

12. (1) This section applies if a specified consumer provides to another person electricity in respect of which a determination of the Board referred to in section 9 or 11 applies.

Same

(2) If an invoice for the electricity is issued to the person by the specified consumer or a unit sub-meter provider providing unit sub-metering for the specified consumer, the amount payable for the electricity by the person who is liable to pay the invoice shall be determined in accordance with the regulations.

PART III
CLEAN ENERGY ADJUSTMENT

Specified consumers to pay

13. (1) Upon receipt of an invoice from an electricity vendor that includes an amount in respect of the clean energy adjustment, a specified consumer shall pay the amount to the electricity vendor as agent of the investment interest owners.

Same

(2) For greater certainty, subsection (1) applies regardless of,

(a) whether the clean energy adjustment was determined in a manner that was inconsistent with this Act; and

(b) whether the amount payable in respect of the clean energy adjustment relates to funding obligations that were incurred in a manner that was inconsistent with the Financing Plan, including in a manner that failed to provide for the reasonable alignment of the estimated finance amount with the fair allocation amount.

Terms

(3) The payment shall be made in accordance with such terms of payment as may be specified in the invoice, which may include terms relating to late payment fees and interest charges.

Indebtedness of specified consumer

(4) An unpaid amount that is required to be paid by a specified consumer under this section constitutes indebtedness of the specified consumer to each investment interest owner to the extent of each owner's respective interest in the investment asset.

Same

(5) The indebtedness mentioned in subsection (4) is a single and separate debt obligation owed by the specified consumer and may be enforced independently from any other payment obligation or indebtedness owing by the specified consumer.

Unit sub-metering

(6) A specified consumer who provides electricity through unit sub-metering may collect amounts in respect of the clean energy adjustment payable under this section in accordance with the regulations.

Irrevocability of amount

14. (1) An amount in respect of the clean energy adjustment shown on an invoice issued to a specified consumer under this Act is determinative of the amount of the consumer's indebtedness resulting from the clean energy adjustment and is irrevocable upon invoicing the consumer and may not be set off or bypassed.

Exception

(2) Subsection (1) does not apply to the extent that the invoice reflects a clerical, typographical or calculation-related error.

Determination of clean energy adjustment
Financial Services Manager to determine

15. (1) The Financial Services Manager shall determine the clean energy adjustment payable by all specified consumers in respect of each month in a reference period by taking the following steps:

1. Calculate the sum of the following:

    i. The estimated finance amount in respect of the reference period.

    ii. The true up amount in respect of the reference period.

2. Divide the sum calculated under paragraph 1 by the number of months in the reference period.

Regulations re true up amount

(2) The Lieutenant Governor in Council shall, in making regulations with respect to the determination of the true up amount, have regard to the following principles:

1. The true up amount should serve to ensure that the collection of the clean energy adjustment is sufficient to pay the finance amount when it is due.

2. The method for determining the true up amount should take into account historical and reasonably foreseeable,

    i. differences between the estimated and actual finance amount for the applicable reference period,

    ii. differences between amounts invoiced and amounts collected due to various factors, including applicable taxes, consumer defaults and delays, billing lags and write-offs, and

    iii. variations in billings due to variations in electricity consumption.

Financial Services Manager to notify Board

(3) The Financial Services Manager shall, in accordance with the regulations, notify the Board of the clean energy adjustment in respect of a reference period and such other information related to the determination of the clean energy adjustment as may be prescribed.

Board to determine rates

(4) Without changing the clean energy adjustment, the Board shall, in accordance with the regulations, determine the rates at which specified consumers are invoiced to recover the clean energy adjustment in respect of the reference period.

IESO to receive amounts

16. (1) The IESO shall, as agent of the investment interest owners, receive amounts in respect of the clean energy adjustment paid to it from electricity vendors in accordance with the market rules made under section 32 of the *Electricity Act, 1998* or the regulations.

Account

(2) All of the following amounts received by the IESO shall, until remitted to or for the benefit of the investment interest owners in accordance with subsection (4), be

deposited promptly into an account established for the purposes of receiving those amounts:

1. Amounts described in subsection (1).

2. Payments made by specified consumers directly to the IESO as electricity vendor under subsection 13 (1).

3. Proceeds of amounts described in paragraphs 1 and 2.

Same, held in trust

(3) All amounts received by the IESO in respect of the clean energy adjustment shall, until remitted to or for the benefit of the investment interest owners, be held in trust by the IESO for the investment interest owners.

IESO to remit

(4) The IESO shall remit amounts received by it in respect of the clean energy adjustment, inclusive of interest earned on the amounts referred to in subsection (1), to or for the benefit of the investment interest owners in accordance with the regulations.

Electricity vendor to invoice specified consumers

17. (1) Each electricity vendor shall issue an invoice to each of its customers who is a specified consumer for the amount payable by the consumer in respect of the clean energy adjustment, as determined by applying the rate set by the Board under subsection 15 (4) and in accordance with the regulations.

Electricity vendor to report

(2) Each electricity vendor shall, in accordance with the regulations, promptly report to the IESO the total amount invoiced to its customers who are specified consumers in respect of the clean energy adjustment, the amount collected and such other information as may be prescribed.

Electricity vendor to collect

(3) Each electricity vendor shall, as agent of the investment interest owners, collect amounts in respect of the clean energy adjustment from specified consumers in accordance with the regulations.

Pro rating of payments

(4) If an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices and the amount paid is less than the total amount payable, the electricity vendor shall allocate the payment on a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices in respect of electricity charges in respect of the same invoice period.

Held in trust

(5) Payments received by an electricity vendor from or on behalf of specified consumers in respect of the clean energy adjustment and all proceeds of the payments shall, until remitted to the IESO for the benefit of the investment interest owners in accordance with subsection (6), be held by each electricity vendor in trust for the benefit of the investment interest owners.

Remittance to IESO

(6) Each electricity vendor shall remit amounts in respect of the clean energy adjustment to the IESO for the benefit of the investment interest owners in accordance with the regulations.

PART IV
IMPLEMENTATION

Financial Services Manager

Appointment

18. Ontario Power Generation Inc. is appointed as the Financial Services Manager for the purposes of this Act.

Duties and powers

19. (1) The Financial Services Manager shall perform the duties assigned to it under this Act and may administer the investment asset on behalf of the investment interest owners.

Same

(2) The administration of the investment asset may include providing information to the IESO in respect of obligations under Part III and such other activities as may be prescribed.

Fees

(3) Subject to any prescribed limitations, the Financial Services Manager may establish and charge fees in relation to such matters as may be prescribed in accordance with the regulations, which regulations may provide for the ability to recover costs and expenditures and to earn a return.

Same, Board approval

(4) Before establishing fees under subsection (3), the Financial Services Manager shall submit them to the Board for approval in accordance with the regulations.

Fair Allocation Amount

Minister to calculate fair allocation amount

20. (1) Subject to subsections (2) and (3), before the first funding obligation is incurred the Minister shall calculate a fair allocation amount in respect of each reference period, applying such method as the Minister considers appropriate and in accordance with the following steps:

1. Determine the estimated clean energy costs and estimated clean energy benefits allocated to specified consumers in respect of the reference period.

2. Determine the estimated reduction in the amounts payable by specified consumers as a result of determinations of the Board under Part II in respect of all previous reference periods, including the estimated reduction in clean energy costs described in clause (a) of the definition of "clean energy costs" in subsection 1 (1) that would otherwise have been payable by specified consumers in the absence of this Act.

3. Determine the amount, if any, by which the determination under paragraph 1 exceeds the determination under paragraph 2.

4. Calculate the sum of the amount determined under paragraph 3 and such other amounts as may be prescribed.

Principles

(2) In calculating the fair allocation amount, the Minister shall have regard to the following principles:

1. The purpose of calculating the fair allocation amount is to measure and allocate the estimated clean energy costs and estimated clean energy benefits fairly among the specified consumers in respect of each reference period.

2. Calculations should be made having regard to the need to align each fair allocation amount with the estimated finance amount payable during the reference period.

3. Estimated clean energy costs allocated to specified consumers in respect of a reference period should be allocated in proportion to the estimated clean energy benefits attributed to the specified consumers in respect of the reference period.

4. Such other principles as may be prescribed.

Assumptions

(3) In calculating the fair allocation amount, the Minister shall make such assumptions as the Minister considers to be reasonable regarding the following:

1. The time value of money or the rate of inflation, for the purpose of equating nominal amounts over time.

2. The expected number of specified consumers in respect of each reference period.

3. The expected electricity consumption rates in respect of each reference period.

4. Such other assumptions as may be prescribed.

Minister to provide amount to Financial Services Manager

(4) The Minister shall provide the fair allocation amount in respect of each reference period to the Financial Services Manager.

Recalculation

(5) A calculation of the fair allocation amount under this Part may be changed by such person as may be prescribed in accordance with such requirements as may be prescribed.

Same

(6) No change under subsection (5) shall affect any clean energy adjustment that has already been determined under section 15 or any funding obligations that have already been incurred before the change.

Information

(7) The Minister, the IESO, the Financial Services Manager, the Board and electricity vendors shall provide such information as may be prescribed in accordance with the regulations for the purposes of facilitating a change to a calculation of the fair allocation amount.

FINANCING PLAN

Financial Services Manager to prepare Financing Plan

21. (1) The Financial Services Manager shall prepare a written plan entitled the Financing Plan to be used by the Financial Services Manager to evaluate whether potential funding obligations should be incurred for the purposes of acquiring and financing an investment asset in accordance with this Act or for the purposes of a refinancing.

Plan to be provided to Minister

(2) The Financial Services Manager shall provide the Financing Plan to the Minister.

Principles

(3) In preparing the Financing Plan, the Financial Services Manager shall have regard to the following principles:

1. Funding obligations should be incurred such that, along with any funding obligations already incurred, the estimated finance amount that would, subject to any refinancing, become due and payable during a reference period will reasonably align with the fair allocation amount determined in respect of the reference period, in each case after reducing the fair allocation amount to reflect determinations of the Board under Part II in respect of the reference period.

2. Incurrences should be implemented in a manner that, in the opinion of the Financial Services Manager, is reasonable, cost effective and that reflects prevailing market terms and conditions.

3. Reasonable assumptions should be made regarding such matters as may be prescribed.

4. Such other principles as may be prescribed.

Limitation

(4) In respect of each reference period from July 1, 2017 to April 30, 2021, no funding obligation shall be incurred that would result in amounts payable in respect of the clean energy adjustment in respect of the reference period unless,

(a) the amounts are payable in respect of a reference period in respect of which the Board has not made any determinations under Part II; or

(b) if the Board has made a determination under Part II in respect of the reference period, the funding obligations incurred would not result in amounts payable in respect of the clean energy adjustment during the reference period in an amount that exceeds the limit determined in accordance with the regulations.

Other reports

(5) The Financial Services Manager shall submit to the Minister such reports and information as the Minister may require from time to time and shall, if required by the Minister to do so, examine, report and advise on any question relating to the Financing Plan.

Amendments to plan

(6) The Financial Services Manager may amend the Financing Plan at any time.

Same

(7) In the event that the Financing Plan is amended, any reference in this Act to the Financing Plan is deemed to be a reference to the plan as amended.

Incurrence of funding obligations

22. (1) The Financial Services Manager shall ensure that funding obligations incurred for the purposes of this Act are incurred in a manner that is consistent with the applicable Financing Plan.

Financing entities

(2) In accordance with the Financing Plan, the Financial Services Manager may establish or cause to be established one or more financing entities that may incur funding obligations.

Prohibition

(3) The Financial Services Manager shall not provide for funding obligations to be incurred with any recourse to any assets of an electricity vendor, the Board, Ontario Power Generation Inc., the Province or the Lieutenant Governor in Council, except to the extent that any of these persons or entities may be liable to perform obligations or duties arising under this Act or under the express terms of a funding obligation or other agreement.

Effect of amendment to fair allocation amount

(4) Each funding obligation incurred and each transfer made by a financing entity is deemed to be consistent with the Financing Plan and to provide for the reasonable alignment of the estimated finance amount with the fair allocation amount.

Same

(5) For greater certainty, subsection (4) applies despite the failure of the Financial Services Manager to comply with subsection (1).

PART V
THE REGULATORY ASSET

IESO deferral

23. (1) The IESO deferral for each month, commencing May 1, 2017, shall be determined by the IESO in accordance with the regulations.

Same, retrospective amounts

(2) For greater certainty, the regulations may provide for the IESO deferral to include an amount that was incurred by the IESO on or after May 1, 2017 and before the day this section comes into force.

Electricity vendors to provide information

(3) Electricity vendors shall provide to the IESO such information as the IESO may reasonably request for the purposes of determining the IESO deferral under subsection (1) and such further information as may be prescribed.

Same

(4) The IESO may rely on information provided by electricity vendors for the purposes of the determination under subsection (1).

Variance account to be established, maintained

24. (1) The IESO shall establish and maintain a variance account in which it records the following:

1. The IESO deferral for each month.

2. All payments received by the IESO resulting from the exercise of the right of recovery under section 25 and any transfer under section 26.

3. Such other adjustments as may be prescribed, including adjustments in respect of the period that commences on or after May 1, 2017 and before the day this section comes into force.

Recording determinative

(2) Subject to the correction of any obvious error by the IESO, its recording of the balance in the variance account is determinative of the balance as of the time of the recording.

Rights of investment interest owner

(3) No change made by the IESO to the balance in the variance account shall, if the previous balance was relied upon by an investment interest owner in the context of a transfer under section 26, affect the rights acquired by the investment interest owner under the transfer.

Regulatory asset established

25. (1) Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Board to set rates

(2) Subject to subsection (3), the Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for the IESO to recover the balance recorded in the variance account.

Limitation

(3) The IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2021.

Transfer of regulatory asset

26. (1) The IESO may from time to time, in accordance with this Act and the regulations, transfer a specified portion of the regulatory asset to a financing entity in accordance with this section.

Agreement

(2) An agreement between the IESO and a financing entity in relation to the transfer of a specified portion of the regulatory asset shall provide for consideration of a payment by the financing entity to the IESO in an amount equal to the amount of the specified portion.

Effect of payment

(3) Upon receipt by the IESO of the payment by the financing entity,

(a) the balance in the variance account shall be reduced by the amount of the payment;

(b) the regulatory asset shall be adjusted accordingly;

(c) the financing entity shall acquire a corresponding investment interest; and

(d) the IESO shall retain no further right, title or interest in the corresponding investment interest.

Validity of transfer

27. (1) A transfer of a specified portion of the regulatory asset under section 26 constitutes a valid and enforceable absolute assignment, conveyance and sale of the corresponding investment interest to the transferee.

Same

(2) Without limiting subsection (1), any transfer agreement that states an intention of the parties for the IESO to dispose of a specified portion of the regulatory asset and to assign, convey or sell a corresponding investment interest shall be treated for all purposes as an absolute assignment, conveyance, disposition and sale of the IESO's right to

recover the corresponding amount in the variance account and not merely as a security interest.

Deemed perfection, etc.

(3) At the time a transfer of the regulatory asset is made under section 26, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the transferee shall have priority over any liens in favour of those persons.

PART VI
THE INVESTMENT ASSET

Investment asset established

28. (1) The transfer of a specified portion of the regulatory asset under section 26 creates an investment asset or, if it is not the first transfer, adds to the investment asset.

Same

(2) Upon transfer of a specified portion of the regulatory asset under section 26 to a financing entity, the investment asset resulting from the transfer is immediately vested in the financing entity, free and clear of any adverse claim.

Investment asset, irrevocable rights and interests

29. (1) The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests of investment interest owners:

1. The right and interest to impose, invoice, collect, receive and recover the clean energy adjustment from specified consumers, including the right to determine the clean energy adjustment in accordance with this Act.

2. The right to receive, collect and recover the clean energy adjustment that is imposed, invoiced and recoverable under this Act, including any amounts in respect of the clean energy adjustment that are held by electricity vendors, the IESO and other prescribed parties.

3. All rights and entitlements under such accounts as may be prescribed by regulation and all amounts on deposit in such accounts.

4. The right to enforce the duties and obligations under this Act of each electricity vendor to impose, attribute, charge and invoice for the clean energy adjustment.

5. The right to enforce the duties and obligations under this Act of each electricity vendor and the IESO to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by any electricity vendor to recover payment of the clean energy adjustment.

6. All rights of any kind related to any of the other property rights or interests that comprise the investment interest, including any rights to receive funding rebates.

7. All revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 6, regardless of whether it is invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

Not affected by failure to impose etc. clean energy adjustment

(2) An investment interest is not affected by any failure to impose, attribute, invoice, accrue or collect amounts in respect of the clean energy adjustment.

No set off, etc.

(3) The investment asset shall not be set off,

(a) by a consumer, an electricity vendor, the IESO, an agent of the investment interest owners or an owner in the Province of a distribution system within the meaning of the *Electricity Act, 1998*;

(b) in connection with any default of a person mentioned in clause (a); or

(c) by any affiliate or successor of a person mentioned in clause (a).

Exercise of rights

(4) The rights of the investment interest owners to collect the clean energy adjustment and enforce their rights and interests in, to and in respect of the investment asset against a specified consumer shall be exercised in accordance with Part III of this Act.

Collective action required

(5) If one investment interest owner owns a right or interest in the investment asset that comprises less than the entire property right and interest constituted by the

investment asset, the right or interest shall only be enforced by the investment interest owner collectively and in coordination with all other investment interest owners, and any agreement among that collective in furtherance of the collective action shall be valid and binding on the investment interest owners as a collective in accordance with its terms.

Transfer of investment interest

30. An investment interest owner may transfer all or a portion of an investment interest to any other investment interest owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan.

Validity of transfer

31. (1) A transfer of an investment interest under this Act is a valid and enforceable sale and absolute transfer of the investment interest and confers upon the transferee a valid property right and interest in, to and under the applicable investment interest acquired in accordance with the terms of the transfer.

Same

(2) Without limiting subsection (1), a transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of an investment interest owner's right, title and interest in, to and under an investment interest, and not merely as a security interest, and upon such absolute transfer the transferor shall retain no right, title or interest in the investment interest subject to the transfer, including all rights to the investment interest arising after the transfer.

Deemed perfection, etc.

(3) At the time a transfer of an investment interest is made, the transfer shall be deemed to have been and shall be perfected as described in the *Personal Property Security Act*, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer, assignment, etc.

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer, and the property rights and interests acquired by the investment interest owner shall have priority over any liens in favour of such other persons.

Investment interest owner may grant security interest

32. (1) An investment interest owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under the investment interest to or in favour of any person to secure a funding obligation.

Validity

(2) A security interest granted under this Act shall be valid and enforceable in accordance with its terms.

Perfection and priority of security interests

(3) All provisions of the *Personal Property Security Act* shall apply to the investment asset and each investment interest on the basis that the investment asset and each investment interest is intangible personal property, except as otherwise provided for in this section, and any granting of a security interest by an investment interest owner to secure a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by registering a financing statement under that Act on that basis.

Proceeds

(4) All proceeds of an investment interest that are subject to the security interest and that are received by the investment interest owner shall immediately be subject to the security interest and shall be perfected without any physical delivery of the proceeds, registration of any financing statement or any further act.

Perfection

(5) The security interest shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may subsequently attach to the property rights and interests in the investment interest subject to the security interest, unless the person to whom the security interest has been granted consents otherwise.

Same

(6) The person to whom the security interest has been granted shall have a perfected security interest in revenues or other proceeds that are deposited in any account of any electricity vendor, an agent of an electricity vendor or other person who may have commingled such revenues or other proceeds with other funds.

Notice required

(7) The secured party shall be entitled to exercise the rights of an investment interest owner only after the secured party has given notice of the enforcement of its security interest to the IESO.

Interpretation

(8) For the purposes of this section, a security interest is perfected when it is perfected as described in the *Personal Property Security Act.*

PART VII
MISCELLANEOUS

Appointment of agent, invoicing or collection

33. (1) If a prescribed circumstance applies, the Lieutenant Governor in Council may by regulation appoint a person to carry out some or all of the obligations of an electricity vendor under this Act in the place of an electricity vendor with respect to invoicing or collection.

Same, not Crown agent

(2) For greater certainty, a person appointed under this section is not an agent of the Crown for any purpose, despite the *Crown Agency Act*.

Board's authority

34. (1) Each electricity vendor, the IESO and the Financial Services Manager shall maintain such accounts and provide such information to the Board as the Board may require for the purposes of carrying out its responsibilities under this Act, in the form and manner and within the time required by the Board.

No hearing required

(2) Despite anything to the contrary in the *Ontario Energy Board Act, 1998*, the Board may exercise any of its responsibilities under this Act without a hearing.

Sequestration

35. (1) A court in the Province may, upon application by an investment interest owner or a secured party, order the sequestration and payment of amounts in respect of the clean energy adjustment, collections or remittances, as applicable, for the benefit of the investment interest owner or secured party by any person or entity authorized to collect amounts in respect of the clean energy adjustment.

Same

(2) An order under subsection (1) does not limit any other remedies available to the applicant.

Choice of law

36. The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to a transfer under this Act or the creation of a security interest in the regulatory asset, the investment asset, the clean energy adjustment or the undertaking of the Crown under section 5 shall be the laws of the Province.

Conflict

37. The provisions of this Act and the regulations apply despite any provision of any other Act regarding the attachment, assignment or perfection, or the effect of perfection or priority of any transfer or security interest.

No further approvals, etc.

38. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required under the Financing Plan or in relation to the determination of the fair allocation amount.

Liability

39. (1) No action or other civil proceeding shall be commenced against any employee of the Province or Ontario Power Generation Inc. for any act done in good faith in the exercise or performance or the intended exercise or performance of a power or duty under this Act, the regulations or for any alleged neglect or default in the exercise or performance in good faith of such a power or duty.

Same

(2) Nothing in subsection (1) shall be read as limiting the effect of subsection 19 (1) of the *Electricity Act, 1998* or subsection 11 (1) of the *Ontario Energy Board Act, 1998.*

Same

(3) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act,* subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

References in marketing materials and offering documents

40. No person shall include, in marketing materials or offering documents relating to the financing of funding obligations, references to any rights, obligations, guarantees or undertakings arising under section 5 unless the prescribed requirements, if any, are satisfied.

Regulations

41. (1) The Lieutenant Governor in Council may make regulations in respect of the following matters:

1. Governing anything that is required or permitted to be prescribed or that is required or permitted to be done by, or in accordance with, the regulations or as authorized, specified or provided in the regulations.

2. Defining, for the purposes of a regulation, words and expressions used in this Act that are not defined in the Act.

3. Governing the incurrence of debt for the purposes of the definition of "refinancing" in subsection 1 (1).

4. Governing the inclusion of information under this Act on or with invoices, which may include requiring notice to be provided by electricity vendors to specified consumers and other prescribed persons regarding the adjustments, including providing for different requirements in different circumstances and for different classes of specified consumers.

5. Governing the inclusion of information about the clean energy adjustment and any other matters provided for under this Act on or with invoices issued to specified consumers, including the form that the information must take and the form of the invoices and the form of any notice to be provided to the specified consumer under this Act.

6. Governing the manner by which invoices or notices provided for under this Act are to be provided to specified consumers and other prescribed persons.

7. Providing for a right of compensation for investment interest owners affected by a breach under section 29 and the manner in which such a right may be enforced under this Act.

8. Prescribing the time within which any action required by this Act may be required to be done.

9. Providing for such other matters as the Lieutenant Governor in Council considers advisable to carry out the purpose of this Act.

Limitation

(2) Despite subsection (1) or any other Act, no regulation under this Act shall have the effect of reducing, impairing, postponing or terminating the obligations of specified consumers to pay amounts in respect of the clean energy adjustment or impairing or postponing the invoicing, collection, remittance or recovery of the clean energy adjustment.

PART VIII
AMENDMENTS TO OTHER ACTS

Electricity Act, 1998

42. (1) Subsection 6 (1) of the *Electricity Act, 1998* is amended by adding the following clause:

(q.1) to exercise the powers and rights and to perform the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and to engage in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including,

(i) entering into agreements or arrangements with any person for the purposes of the *Ontario Fair Hydro Plan Act, 2017*,

(ii) engaging in activities related to making payments to and receiving payments as contemplated under the *Ontario Fair Hydro Plan Act, 2017* and related settlement activities,

(iii) engaging in activities related to the transfer and administration of the regulatory asset created under the *Ontario Fair Hydro Plan Act, 2017*, which activities may include,

(A) incurring liabilities in relation to the regulatory asset,

(B) transferring the regulatory asset under section 26 of the *Ontario Fair Hydro Plan Act, 2017* for consideration, and

(C) acting as a recovery agent under the *Ontario Fair Hydro Plan Act, 2017*;

(2) Subsection 25.33 (1) of the Act is amended by striking out "and" at the end of clause (a), by adding "and" at the end of clause (b) and by adding the following clause:

(c) such amounts as may be prescribed that are paid or incurred by the IESO in relation to the *Ontario Fair Hydro Plan Act, 2017*.

(3) Subsection 25.33 (2) of the Act is amended by striking out "and" at the end of clause (a), by adding "and" at the end of clause (b) and by adding the following clause:

(c) such amounts as may be prescribed that are paid or incurred by the IESO in relation to the *Ontario Fair Hydro Plan Act, 2017*.

(4) Clause 25.33 (4) (b) of the Act is amended by adding "or as may be required by a regulation made under this Act or the *Ontario Fair Hydro Plan Act, 2017*" at the end.

(5) Subsection 25.33 (5) of the Act is amended by adding "or under the *Ontario Fair Hydro Plan Act, 2017*" at the end.

(6) Section 53.1 of the Act is amended by adding the following subsections:

Same, *Ontario Fair Hydro Plan Act, 2017*

(1.1) In addition to the objects mentioned in subsection (1), the objects of Ontario Power Generation Inc. include exercising the powers and rights and performing the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and engaging in activities to facilitate the implementation of that Act, including entering into contracts and undertakings on behalf of financing entities and performing other services on behalf of financing entities, subject to the right to be paid by the financing entities for those services.

Subsidiaries, etc.

(1.2) Ontario Power Generation Inc. may create or invest in one or more subsidiaries, trusts, partnerships, limited partnerships or special purpose entities in order to more efficiently conduct its activities or achieve its objects.

Deemed assets, non-subsidiary

(1.3) Despite any other provision of this Act, the *Business Corporations Act* or any other Act, if a financing entity is not a subsidiary of Ontario Power Generation Inc.,

(a) the assets and liabilities of the financing entity shall not form part of the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries; and

(b) the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries shall not form part of the assets and liabilities of the financing entity.

Deemed assets, subsidiary

(1.4) Despite any other provision of this Act, the *Business Corporations Act* or any other Act, if a financing entity is a subsidiary of Ontario Power Generation Inc.,

(a) the assets and liabilities of that financing entity shall not form part of the assets and liabilities of Ontario Power Generation Inc. or any of its other subsidiaries; and

(b) the assets and liabilities of Ontario Power Generation Inc. or any of its other subsidiaries shall not form part of the assets and liabilities of that financing entity.

Definition, financing entity

(1.5) For the purposes of this section,

"financing entity" has the same meaning as in the *Ontario Fair Hydro Plan Act, 2017*.

Ontario Energy Board Act, 1998

43. (1) Subsection 70 (2.1) of the *Ontario Energy Board Act, 1998* is amended by adding the following paragraph:

4. The licensee is required to comply with the *Ontario Fair Hydro Plan Act, 2017*.

(2) Section 70 of the Act is amended by adding the following subsection:

Deemed condition of licences, unit sub-meter provider, *Ontario Fair Hydro Plan Act, 2017*

(2.4) Every licence issued to a unit sub-meter provider is deemed to contain the condition that the unit sub-meter provider is required to comply with the *Ontario Fair Hydro Plan Act, 2017* and the regulations made under it.

(3) Section 78.1 of the Act is amended by adding the following subsections:

Same, limitation re Ontario Power Generation Inc.

(3) The determination of a payment to Ontario Power Generation Inc. under this section shall not include any consideration of amounts related to activities of Ontario Power Generation Inc. carried out in relation to the *Ontario Fair Hydro Plan Act, 2017*.

Same

(3.1) The amounts referred to in subsection (3) include, without limitation, the following:

1. Amounts related to the appointment of Ontario Power Generation Inc. as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

2. Amounts related to the charging of fees for performing duties as the Financial Services Manager.

3. Amounts related to exercising the powers and performing the duties of the Financial Services Manager.

4. Amounts related to the consolidation of the assets and liabilities for accounting purposes of any special purpose financing entities established under and for the purposes of that Act.

(4) Subsection 79.16 (3) of the Act is repealed.

PART IX
COMMENCEMENT AND SHORT TITLE

Commencement

44. This Schedule comes into force on the day the *Fair Hydro Act, 2017 receives* Royal Assent.

Short title

45. The short title of the Act set out in this Schedule is the *Ontario Fair Hydro Plan Act, 2017*.

SCHEDULE 2
AMENDMENTS TO THE ONTARIO ENERGY BOARD ACT, 1998

1. (1) Subsection 79 (4) of the *Ontario Energy Board Act, 1998* is repealed and the following substituted:

Liability

(4) All consumers are required, in accordance with the regulations, to contribute towards the amount of any compensation required under subsection (3) that is not otherwise provided under subsection (4.1).

Payments for certain classes

(4.1) Compensation required under subsection (3) may be provided with respect to one or more prescribed classes of consumers who receive rate protection under this section, in a manner provided for in the regulations.

Money appropriated by the Legislature

(4.2) The compensation provided for in subsection (4.1) shall be paid for out of the money appropriated for those purposes by the Legislature.

Information, etc.

(4.3) If provided for in the regulations, the Board, the IESO and distributors, or any of them, shall provide such information and reports to the Ministry of Energy and to one another as are necessary to facilitate the implementation, administration, funding and delivery of the rate protection or of anything else provided for in this section.

(2) Clause 79 (5) (e) of the Act is repealed and the following substituted:

(e) prescribing rules respecting the amounts that must be collected to compensate distributors, taking into account any compensation provided under subsection (4.1), including rules,

(i) respecting the calculation of those amounts,

(ii) respecting the calculation of any off-set to the liability of consumers under subsection (3) having regard to those amounts,

(iii) establishing the time and manner of collection,

(iv) requiring the amounts to be paid in instalments and requiring the payment of interest or penalties on late payments,

(v) prescribing methods of ensuring that the amounts required cannot be bypassed, and

(vi) respecting the distribution of those amounts to consumers;

(e.1) prescribing classes of consumers for the purposes of subsection (4.1), and governing how and when the compensation is to be provided with respect to the rate protection provided to them, including, without restricting the generality of the foregoing, requiring the IESO to receive payments or amounts from the Minister of Energy and to make payments to licensed distributors or to prescribed persons and prescribing how and when payments are to be made;

2. Section 79.2 of the Act is repealed and the following substituted:

Rate assistance

79.2 (1) The Minister shall make provision for rate assistance for rate-assisted consumers having regard to their economic circumstances, and where the Minister makes such provision, shall do so out of the money provided for in subsection (4).

OESP

(2) The program known as the "Ontario Electricity Support Program" in English and "Programme ontarien d'aide relative aux frais d'électricité" in French is continued for the purpose of providing rate assistance to rate-assisted consumers having regard to their economic circumstances.

Administered by Board

(3) The Ontario Electricity Support Program shall be administered by the Board, or when the regulations so provide, by a Minister of the Crown or other entity provided for in the regulations.

Money appropriated by the Legislature

(4) The money required for the purposes of the Ontario Electricity Support Program shall be paid out of the money appropriated for those purposes by the Legislature, once the amounts recorded in the variance account referred to in subsection (5) are no longer sufficient to provide for the funding of the program when taken on their own.

Variance account

(5) The money required for the purposes of the Ontario Electricity Support Program shall be provided out of the credit balance in the variance account maintained by the IESO under the Program as it existed before the coming into force of section 2 of Schedule 2 to the *Fair Hydro Act, 2017* until the amounts recorded in the account are no longer sufficient, when taken on their own, to fund the Program.

Variance account depleted

(6) The IESO shall provide the Ministry of Energy with advance notice, on a timely basis, of the time the IESO estimates that the amounts reflected in the variance account would be less than the amount required to meet its obligations related to funding the Ontario Electricity Support Program for the upcoming month.

How provided

(7) Rate assistance provided under this section shall be provided with respect to consumers prescribed in the regulations, and shall be provided at the times provided for in the regulations and in the amounts and in the manner provided for in the regulations.

Payments with respect to prior use

(8) The regulations may require provision of rate assistance to prescribed classes of rate-assisted consumers with respect to electricity consumed during a period prior to the date of the making of the regulation, but no such rate assistance shall be required under the regulations with respect to electricity consumed before January 1, 2016.

Transitional

(9) The regulations may require the provision of rate assistance for a rate-assisted consumer with respect to a period prior to the date on which the consumer became a rate-assisted consumer if the consumer meets all of the criteria prescribed by the regulations.

Distributors, etc.

(10) A distributor, a unit sub-meter provider and any other person or entity that may be prescribed is entitled to be compensated from the money referred to in subsection (4) or subsection (5), as the case may be, for any lost revenue resulting from the provision of rate assistance under the Ontario Electricity Support Program.

Deemed licence conditions, IESO, settlements, payments, etc.

(11) Every licence issued to the IESO, a distributor or unit sub-meter provider or a retailer of electricity shall be deemed to contain conditions requiring the licensee to do anything necessary to implement and administer the provision of rate assistance under this section as may be required by the regulations or the Board, including requirements with respect to,

(a) making payments to the IESO, distributors, unit sub-meter providers and other persons and entities identified by the regulations;

(b) receiving payments or other amounts from the IESO, distributors, unit sub-meter providers and other persons and entities identified by the Minister;

(c) requiring licensees to pass any rate assistance provided for under this section through to rate-assisted consumers in the manner provided for in the regulations;

(d) engaging in settlement activities;

(e) providing information to and receiving information from the Ministry of Energy, the Board, the IESO, distributors, unit sub-meter providers, retailers of electricity and any other prescribed persons and entities in the time and in the manner provided for by the Board or as may be prescribed; and

(f) entering into agreements or arrangements with licensees and other persons.

Information, etc.

(12) If provided for in the regulations, the Board, the IESO, distributors, retailers of electricity and unit sub-meter providers, or any of them, shall provide such information and reports to the Ministry of Energy and to one another as are necessary to facilitate the implementation, administration, funding and delivery of rate-assistance or of anything else required under this section.

Conflicts, etc.

(13) Where any conflict exists between an order of the Board, a code issued by the Board or a licence condition and this section or a regulation made under this section, this section or the regulation made under this section shall prevail to the extent of the conflict.

Regulations

(14**)** The Lieutenant Governor in Council may make regulations governing anything dealt with in this section and without limiting the generality of the foregoing, may make regulations,

(a) governing anything that is described in this section as being prescribed or as being provided for in the regulations or that is required to be done in accordance with the regulations;

(b) governing the time or times at which rate assistance shall be paid or become payable to rate-assisted consumers;

(c) governing the determination of classes of consumers who are rate-assisted consumers, including providing for different classes of rate-assisted consumers;

(d) requiring that certain costs and expenditures related to the Ontario Electricity Support Program be only incurred with the prior approval of the Minister, and governing those costs and expenditures;

(e) establishing rules for the calculation of the amount of the rate assistance to be provided;

(f) governing payments under this section, including determining the method or methods of calculating the amount of rate assistance to be provided;

(g) setting maximum amounts of the total annual value of rate assistance that may be provided;

(h) requiring a distributor, the IESO or a unit sub-meter provider or other prescribed person or entity to make or receive payments in respect of rate assistance, including requiring them to make or receive payments directly to or from the Ministry of Energy or to receive overpayments directly or indirectly from consumers or other persons entitled to receive the rate assistance and prescribing the circumstances in which such payments are to be made and received and such overpayments are to be received as well as methods for determining the amounts payable or to be received;

(i) requiring the IESO to receive payments from the Minister and requiring the IESO to make payments to the Board, to licensed distributors, to unit sub-meter providers or to prescribed persons, in respect of the rate assistance provided under this section and governing methods for determining the amounts payable;

(j) governing the Board's or other prescribed entity's administration and program-related costs in administering the Ontario Electricity Support Program;

(k) governing transitional matters arising from the changes made to the Ontario Electricity Support Program as a result of the enactment of the *Fair Hydro Act, 2017*.

Retroactivity

(15) A regulation made under this section is, if it so provides, effective with reference to a period before it is filed.

General or particular

(16) A regulation under this section may be general or particular in application, may provide for different classes of persons and entities and may prescribe different rules for different persons or entities or different classes of persons or entities.

Verification of eligibility

(17) Section 11 of the *Ministry of Revenue Act* applies with respect to the Ontario Electricity Support Program as a government assistance program administered by the Board.

Definitions

(18) In this section,

"Government assistance program" has the meaning provided for in subsection 11 (2) of the *Ministry of Revenue Act*; ("programme d'aide gouvernementale")

"rate-assisted consumer" means a consumer referred to in subsection (7). ("consommateur admissible à l'aide tarifaire")

3. The Act is amended by adding the following section:

Confidentiality, information sharing, etc.

79.2.1 (1) For the purposes of section 79.2, the Board or the Minister or entity having responsibility for administering the Ontario Electricity Support Program may enter into an agreement with the Minister of Community and Social Services to provide the services to the public listed in subsection (2) on behalf of the Board, Minister or the entity, as the case may be, in relation to the administration of the Ontario Electricity Support Program.

Agreement, etc.

(2) The services that may be included in an agreement referred to in subsection (1) are the following:

1. Providing documents and information about the Ontario Electricity Support Program.

2. Processing applications for the Ontario Electricity Support Program.

Arrangements with others

(3) The Minister of Community and Social Services may arrange with another person or entity to provide, on behalf of that Minister, services that that Minister is authorized to provide under an agreement referred to in subsection (1).

Personal information

(4) The Minister of Community and Social Services is authorized to collect, use, disclose and retain personal information necessary to provide the services authorized by

an agreement referred to in subsection (1), but shall not collect, use, disclose or retain more personal information than is reasonably necessary to provide the services.

Limitation

(5) Except where otherwise authorized under subsection (7), the Minister of Community and Social Services shall not collect, use, disclose or retain personal information provided for in subsection (4) without the consent of the individual to whom the information relates.

Duty to transfer personal information

(6) The Minister of Community and Social Services shall transfer an individual's personal information provided for in subsection (4) into the control of the Board, Minister or entity responsible for administering the Ontario Electricity Support Program promptly after processing an application for the Ontario Electricity Support Program, but may retain such personal information as is reasonably necessary to confirm that an individual has been provided a service.

Use of personal information, etc.

(7) The Minister of Community and Social Services may use personal information maintained by that Minister in connection with the administration of the Ontario Disability Support Program and the program established pursuant to the *Ontario Works Act, 1997*, for the purpose of identifying and contacting individuals eligible for the rate assistance provided under the Ontario Electricity Support Program, and to provide services authorized under an agreement referred to in subsection (1).

Deemed compliance

(8) The use of personal information as allowed by subsection (7) is deemed to comply with section 41 of the *Freedom of Information and Protection of Privacy Act*.

Disclosure of list

(9) In order to assist the Minister of Community and Social Services to identify individuals eligible for rate assistance, the Board or the Minister or entity having responsibility for administering the Ontario Electricity Support Program shall, as soon as practicable after the coming into force of this section, disclose to the Minister of Community and Social Services a list of individuals who are enrolled in the Ontario Electricity Support Program, together with their mailing address and other contact information.

Use of list

(10) The Minister of Community and Social Services may use the information on the list provided under subsection (9) to determine whether an individual who is currently enrolled in the Ontario Disability Support Program or the program established under the *Ontario Works Act, 1997* is also enrolled in the Ontario Electricity Support Program.

Destruction of list

(11) The Minister of Community and Social Services shall destroy the list provided under subsection (9) no later than one year after receiving the list.

Notification about the management of personal information

(12) The Minister of Community and Social Services shall ensure that a notice is published on a website describing,

(a) the purpose for which that Minister collects, uses, discloses and retains personal information in connection with the Ontario Electricity Support Program;

(b) the types of personal information that may be collected, used, disclosed and retained in connection with the Ontario Electricity Support Program, and the circumstances in which the personal information may be collected, used, disclosed and retained in connection with that Program; and

(c) the title, and contact information, including an email address, of an employee who can answer an individual's questions about the use of the personal information under this section.

4. The Act is amended by adding the following sections:

Distribution rate-protected consumers

79.3 (1) The Minister shall provide for distribution rate protection to distribution rate-protected residential consumers having regard to the costs of the distribution of electricity to such consumers with respect to electricity consumed on or after the date prescribed by the regulations.

Money appropriated by the Legislature

(2) The money required for the purposes of the provision of distribution rate protection under this section shall be paid out of the money appropriated for those purposes by the Legislature.

Maximum charge

(3) Despite any order of the Board, or anything else under this Act, where the regulations so provide, a prescribed distributor who distributes electricity to distribution rate-protected residential consumers shall not charge those consumers, or a prescribed class of those consumers, any amount for monthly base distribution charges more than,

(a) the maximum amount for the charge that is provided for in the regulations; or

(b) the amount determined by the Board after applying any calculations, processes or methods provided for in the regulations.

Distributors

(4) A distributor who is prescribed under this section is entitled to be compensated from the money referred to in subsection (2) for lost revenue resulting from the provision of the distribution rate protection to distribution rate-protected residential consumers under this section.

Information, etc.

(5) If provided for in the regulations, the Board, the IESO and distributors, or any of them shall provide such information and reports to the Ministry of Energy and to one another as are necessary to facilitate the implementation, administration, funding and delivery of distribution rate protection or of anything else required under this section.

Limitation periods for distribution rate protection, consumer

(6) Despite any past entitlement of a consumer who is eligible to distribution rate protection under this section, no distribution rate protection is payable to a consumer after a limitation period prescribed by the regulations in respect of the consumer, other than in such circumstances as may be prescribed by the regulations.

Limitation, reimbursement of distributor, etc.

(7) Despite any requirement under this Act to reimburse a prescribed distributor or other person for distribution rate protection provided by them to distribution rate-protected residential consumers under this section, no amounts for reimbursement are payable to the prescribed distributor or other person after a limitation period prescribed by the regulations in respect of the prescribed distributor or other person, where such reimbursement is based on a consumer's past entitlement under this section which has not yet been paid or reimbursed under this section, other than in such circumstances as may be prescribed by the regulations.

Transitional

(8) If, for technical or operational reasons, a distributor referred to in subsection (3) is unable to adapt its invoices to comply with this section and the regulations by the time it issues its first invoice for electricity consumed after the prescribed date in respect of an account of a consumer who is eligible for distribution rate protection under this section,

(a) the distributor shall adapt its invoices as soon as possible and, in any event, no later than a date prescribed in the regulations; and

(b) consumers continue to be entitled to receive the distribution rate protection to which they are entitled under this Act and may receive it as a lump sum credit

on the invoice for the first billing period after the invoices have been adapted or by such other means as may be prescribed by the regulations.

Regulations

(9) The Lieutenant Governor in Council may make regulations,

(a) prescribing consumers or classes of consumers as distribution rate-protected residential consumers for the purposes of this section;

(b) prescribing dates for the purposes of subsections (1) and (8);

(c) prescribing distributors for the purposes of this section;

(d) governing anything that is described in this section as being prescribed or as being provided for in the regulations or that is required to be done in accordance with the regulations;

(e) governing the provision of distribution rate protection by the Minister in respect of distribution rate-protected residential consumers under this section including determining the method or methods of calculating the amount of rate protection to be provided;

(f) requiring the IESO to receive payments from the Minister and to make payments to licensed distributors, or to persons prescribed by the regulations, in respect of the distribution rate protection provided for under this section and prescribing methods for determining the amounts payable to distributors or distribution rate-protected residential consumers in respect of that protection.

Interpretation

(10) In this section,

"distribution rate-protected residential consumer" has the meaning provided for in the regulations; ("consommateur résidentiel protégé contre les frais de distribution")

"monthly base distribution charges" has the meaning provided for in the regulations. ("frais de distribution mensuels de base")

Delivery credit for on-reserve consumers

79.4 (1) The Minister shall provide a delivery credit to on-reserve consumers who meet the criteria prescribed under this section with respect to electricity consumed on or after the date prescribed by the regulations.

Money appropriated by the Legislature

(2) The money required for the purposes of the provision of the credits required under this section shall be paid out of the money appropriated for those purposes by the Legislature.

Eligible costs

(3) The eligible costs for the delivery credit referred to in subsection (1) are,

(a) the sum of the following charges for which the consumer would otherwise be liable,

(i) all variable and fixed distribution charges,

(ii) all charges based on the retail transmission network service rate,

(iii) all charges based on the retail transmission connection service rate,

(iv) all charges related to losses incurred in the distribution of electricity, except for such amounts that are included in regulatory charges provided for in the regulations, and

(v) any other charges that may be prescribed in the regulations; or

(b) where no separate charges for delivery are provided for by the distributor or other person or entity that may be prescribed in the regulations, the monthly service charge or such other amount as may be prescribed for or in respect of a prescribed distributor.

Delivery credit

(4) A distributor, person or entity shall, unless the regulations provide otherwise, provide the delivery credit referred to in subsection (1) by crediting the account of an on-reserve consumer.

Same

(5) The regulations may require that distributors and any other persons or entities provide a delivery credit to an on-reserve consumer who is entitled to a delivery credit under subsection (1) in such manner or in accordance with such methods as may be prescribed.

Same

(6) A distributor or any person or entity as may be prescribed is entitled to be compensated from the money referred to in subsection (2) for any lost revenue resulting from the provision of the delivery credits under this section.

Information, etc.

(7) If provided for in the regulations, the Board, the IESO and distributors, and other persons or entities, or any of them, shall provide such information and reports to the Ministry of Energy and to one another as are necessary to facilitate the implementation, administration, funding and delivery of the delivery credits or of anything else required under this section.

Limitation periods for delivery credit, consumer

(8) Despite any past entitlement of an on-reserve consumer who is eligible for a delivery credit under this section, no delivery credit is payable to an on-reserve consumer after a limitation period prescribed by the regulations in respect of the on-reserve consumer, other than in such circumstances as may be prescribed by the regulations.

Limitation, reimbursement of distributor, etc.

(9) Despite any requirement under this Act to reimburse a distributor or other persons or entities for delivery credits provided by them to on-reserve consumers under this section, no amounts for reimbursement are payable to the distributor or other persons or entities after a limitation period prescribed by the regulations in respect of the distributor or other persons or entities, where such reimbursement is based on an on-reserve consumer's past entitlement under this section which has not yet been paid or reimbursed under this section, other than in such circumstances as may be prescribed by the regulations.

Transitional

(10) If, for technical or operational reasons, a distributor referred to in subsection (4) is unable to adapt its invoices to comply with this section and the regulations by the time it issues its first invoice for electricity consumed after the prescribed date in respect of an eligible account,

(a) the distributor shall adapt its invoices as soon as possible and, in any event, no later than a date prescribed in the regulations; and

(b) on-reserve consumers continue to be entitled to receive the delivery credit to which they are entitled under this Act and may receive it as a lump sum credit on the invoice for the first billing period after the invoices have been adapted or by such other means as may be prescribed by the regulations.

Regulations

(11) The Lieutenant Governor in Council may make regulations,

(a) governing who is an on-reserve consumer for the purposes of this section and, without limiting the generality of the foregoing, may provide that consumers

who occupy certain areas are on-reserve consumers, and may do so without regard to whether those areas constitute a "reserve" under any other Act or law;

(b) prescribing dates for the purposes of subsections (1) and (10);

(c) governing provision of the delivery credits provided to on-reserve consumers under this section and, without restricting the generality of the foregoing, governing anything that under this section is to be prescribed or provided for in the regulations, or that is to be done in accordance with the regulations;

(d) determining the method or methods of calculating the amount of the delivery credits to be provided by the Minister in respect of on-reserve consumers under this section;

(e) requiring the IESO to make and receive payments to and from the Minister and to make payments to licensed distributors, or to persons prescribed by the regulations, in respect of the delivery credits provided for under this section and prescribing methods for determining the amounts payable to distributors or on-reserve consumers in respect of the credits provided.

Interpretation

(12) In this section,

"on-reserve consumer" has the meaning provided for in the regulations.

Application

79.5 Sections 79.6 through 79.11 apply to the programs provided for under sections 79, 79.2, 79.3 and 79.4 to the extent that they are funded by money appropriated for those purposes by the Legislature.

Definition

79.6 In sections 79.7 to 79.11,

"Finance Minister" means the Minister of Finance or such other member of the Executive Council to whom the administration of those sections is assigned under the *Executive Council Act*.

Records

79.7 (1) Every distributor and every other person prescribed by regulation shall keep at a location in Ontario such records as are necessary to determine and verify compliance with sections 79, 79.2, 79.3 and 79.4 and the regulations associated with them and any records required by those regulations to be kept.

Electronic records

(2) If a person keeps records in an electronic form, the person shall ensure that, from the time the records are first made and for as long as they are required to be retained,

(a) they remain complete and unaltered, apart from any changes or additions made in the normal course of communication, storage or display; and

(b) they are capable of being printed and of being produced in electronically readable format for inspection, examination or audit.

Retention of records

(3) Records required to be kept under subsection (1) shall not be destroyed unless authorization has been given in writing by the Finance Minister.

Offence

(4) Every person who fails to keep records in accordance with this section is guilty of an offence and, on conviction, is liable to a fine of not less than $50 and not more than $5,000.

Inspections and inquiries

79.8 (1) The Finance Minister may appoint one or more inspectors who are authorized to exercise any of the powers and perform any of the duties of a person authorized by the Minister under subsection 31 (1) of the *Retail Sales Tax Act* for any purpose related to the administration and enforcement of sections 79, 79.2, 79.3 and 79.4 of this Act.

Same

(2) Subsections 31 (1), (2), (2.1) and (2.2) of the *Retail Sales Tax Act* apply, with necessary modifications, with respect to the administration and enforcement of sections 79, 79.2, 79.3 and 79.4 of this Act.

Admission of evidence

(3) The Finance Minister, or a person authorized by the Finance Minister, may, for any purpose related to the administration of sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them, reproduce from original data stored electronically any information previously submitted as required under those sections or regulations in any form by any person, and the electronically reproduced document shall be admissible in evidence and shall have the same probative force as the original document would have had if it had been proved in the ordinary way.

Inquiry

(4) The Finance Minister may, for any purpose related to the administration of sections 79, 79.2, 79.3 and 79.4 of this Act or the regulations made in association with

them, authorize any person, whether or not the person is an employee in the Ministry of the Finance Minister, to make such inquiry as the Finance Minister considers necessary with reference to anything relating to the administration of this Act or the regulations.

Copies

(5) If a book, record or other document is examined or produced under this section, the person by whom it is examined or to whom it is produced or any officer of the Ministry may make, or cause to be made, one or more copies of it, and a document purporting to be certified by the person to be a copy made pursuant to this section is admissible in evidence and has the same probative force as the original document would have if proved in the ordinary way.

Compliance

(6) No person shall hinder or molest or interfere with any person doing anything that the person is authorized by this section to do or prevent or attempt to prevent any person doing any such thing.

Same

(7) Despite any other law to the contrary, every person shall, unless the person is unable to do so, do everything the person is required by this section to do.

Administration of oaths

(8) Declarations or affidavits in connection with statements of information submitted pursuant to this section may be taken before any person having authority to administer an oath or before any person specially authorized for that purpose by the Lieutenant Governor in Council, but any person so specially authorized shall not charge any fee for doing so.

Application of *Public Inquiries Act, 2009*

(9) Section 33 of the *Public Inquiries Act, 2009* applies to an inquiry under subsection (4).

Recovery of overpayments

Definitions

79.9 (1) In this section,

"inspector" means an inspector referred to in section 79.8; ("inspecteur")

"overpayment" means an amount received by a person in excess of that to which the person is entitled under sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them. ("trop-perçu")

Notice of overpayment

(2) If it appears to an inspector that a person has received an overpayment, the Finance Minister may send a written notice to the person advising the person of the following:

1. That the person has received an overpayment.

2. The amount of the overpayment and how it was calculated.

3. The required steps to be taken by the person with respect to the overpayment.

4. The date, not more than six months after the date of the notice, by which these steps must be completed.

5. That the Finance Minister has the authority to assess the person for the amount of the overpayment, plus interest, if the person fails to complete the required steps by the specified date.

Calculation of amount of overpayment

(3) For the purposes of this section, an inspector shall calculate an overpayment or the outstanding balance of an overpayment in the manner and form and using such procedures as the Finance Minister considers adequate and expedient.

Assessment

(4) If a person fails to complete the steps required in a notice under subsection (2) within the time specified in the notice, and any additional time requested by the person and permitted by the Finance Minister, the Finance Minister may assess or reassess the amount of the overpayment, or the outstanding balance of the overpayment, based on the inspector's calculation described in subsection (3).

Penalty

(5) If the Finance Minister makes an assessment or reassessment under subsection (4) and is satisfied that the person's non-compliance with the required steps in the notice was attributable to neglect, carelessness, wilful default or fraud, the Finance Minister may assess a penalty against the person equal to the outstanding balance of the overpayment when the penalty is assessed.

Time limit

(6) The Finance Minister shall not assess or reassess under subsection (4) more than 48 months after the end of the month in which the person received the overpayment.

Exception, where misrepresentation, etc.

(7) Subsection (6) does not apply if the Finance Minister establishes that the person has made a misrepresentation that is attributable to neglect, carelessness or wilful default or has committed any fraud in supplying information under this Act or the regulations or in omitting to disclose information.

Deeming

(8) An amount assessed or reassessed by the Finance Minister under this section is deemed, for the purposes of the administration and enforcement of this Act, to be a debt retirement charge owing and payable, as defined in subsection 85 (1) of the *Electricity Act, 1998,* that has been collected, on the last day of the month in which the person received the overpayment, by the person as a collector appointed under subsection 85.3 (1) of the *Electricity Act, 1998* and, for those purposes,

(a) sections 85.11, 85.12, 85.14, 85.17 and 85.30 of that Act apply with necessary modifications;

(b) in the application of sections 85.11 and 85.14 of that Act and without limiting the generality of clause (a) of this subsection, references to the Financial Corporation are read as references to the Minister of Finance and references to the Minister of Finance are read as references to the Finance Minister as defined in section 79.6 of this Act;

(c) the regulations made under that Act for the purposes of calculating the rate or rates of interest payable under section 85.11 of that Act and the manner of calculating the amount of interest apply with necessary modifications; and

(d) sections 23 and 36, subsections 37 (1), (1.1) and (2) and sections 37.1, 38 and 39 of the *Retail Sales Tax Act* apply with necessary modifications.

Disposition of repaid amounts

(9) If all or part of an overpayment is repaid to the Finance Minister, the Minister of Energy shall make such financial arrangements and payments as may be necessary to ensure that any person entitled to all or part of the overpayment receives the appropriate amount.

Confidentiality

79.10 (1) Except as authorized by this section, no person employed by the Government of Ontario shall,

(a) knowingly communicate or knowingly allow to be communicated to any person any information obtained by or on behalf of the Minister of Energy or

the Finance Minister for the purposes of sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them; or

(b) knowingly allow any person to inspect or to have access to any record or thing obtained by or on behalf of either Minister for the purposes of this Act.

Testimony

(2) No person employed by the Government of Ontario shall be required, in connection with any legal proceedings,

(a) to give evidence relating to any information obtained by or on behalf of the Minister of Energy or Finance Minister for the purposes of this Act; or

(b) to produce any record or thing obtained by or on behalf of either Minister for the purposes of this Act.

Exception

(3) Subsections (1) and (2) do not apply in respect of,

(a) criminal proceedings under any Act of the Parliament of Canada;

(b) proceedings in respect of the trial of any person for an offence under an Act of the Legislature; or

(c) proceedings relating to the administration or enforcement of this Act or Part V.1 or VI of the *Electricity Act, 1998*.

Communication

(4) A person employed by the Government of Ontario may, in the course of duties in connection with the administration or enforcement of sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them,

(a) communicate or allow to be communicated to another person employed by the Government of Ontario in the administration or enforcement of any law or to an employee of the Board information obtained by or on behalf of either Minister for the purposes of sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them; and

(b) allow another person employed by the Government of Ontario in the administration or enforcement of any law or an employee of the Board to inspect or have access to any record or thing obtained by or on behalf of either Minister for the purposes of sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them.

Reciprocal communication

(5) A person who receives information or obtains access to any record or thing under subsection (4) has a duty to communicate or furnish to that Minister on a reciprocal basis any information, record or thing obtained by the person that affects the administration or enforcement of this Act.

Use of information

(6) Any information, record or thing communicated or furnished under this section may be used only for the administration or enforcement of sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them or an Act that is administered or enforced by the person receiving the information, record or thing.

Same

(7) The Finance Minister may permit information or a copy of any record or thing obtained by or on behalf of the Finance Minister for the purposes of sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them to be given to,

(a) the person from whom the information, record or thing was obtained;

(b) any person by whom an amount is payable or has been paid under sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them; or

(c) the legal representative of a person mentioned in clause (a) or (b) or the agent of the person authorized in writing in that behalf.

Information

(8) The Finance Minister may permit information or a copy of any record or thing obtained by or on behalf of the Finance Minister for the purposes of sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them to be given to any person employed by any government if,

(a) the information, record or thing obtained by that government for the purpose of any Act that imposes a tax or duty are communicated or furnished on a reciprocal basis to the Minister; and

(b) the information, record or thing will not be used for any purpose other than the administration or enforcement of a law that provides for the imposition of a tax or duty.

Offence

(9) Every person who contravenes any provision of this section is guilty of an offence and on conviction is liable to a fine of not more than $2,000.

Offences

False statements, etc., and fraud

79.11 (1) Every person who engages in any of the following acts or omissions is guilty of an offence:

1. Making, participating in, assenting to or acquiescing in the making of a false or deceptive statement in any document or answer required or submitted under sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them.

2. Destroying, altering, mutilating, hiding or otherwise disposing of information or records of any person, for the purpose of evading compliance with sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them.

3. Making, assenting to or acquiescing in the making of a false or deceptive entry of a material particular in a record of any person required to maintain records for the purposes of sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them.

4. Omitting to make or assenting to or acquiescing in the omission of an entry of a material particular in a record of any person required to maintain records for the purposes of sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them.

5. Wilfully evading or attempting to evade, in any manner, compliance with an obligation under sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them.

Penalty upon conviction

(2) A person convicted of an offence under subsection (1) is liable to either or both of the following penalties in addition to any other penalty assessed under this Act:

1. A fine in an amount that is not less than $1,000 and not more than $10,000.

2. Imprisonment for a term of not more than two years.

General offence

(3) Every person who contravenes, by any act or omission, any other requirement imposed under sections 79, 79.2, 79.3 and 79.4 is guilty of an offence and, on conviction, is liable, where no other penalty is provided for the offence, to a fine of not less than $50 and not more than $5,000.

Limitation period

(4) A proceeding to prosecute an offence provided for in this section must be commenced within six years after the date on which the matter of the offence arose.

Payment of fines

(5) Fines imposed on conviction of an offence provided for in this section are payable to the Finance Minister on behalf of the Crown in right of Ontario.

Commencement

5. (1) Subject to subsection (2), this Schedule comes into force on the day the *Fair Hydro Act, 2017* receives Royal Assent.

(2) Section 2 comes into force on a day to be named by proclamation of the Lieutenant Governor.

FW_ GA Refinancing (IESO related doc).rtf

From: Donaldson, Mark (TBS) []
To: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
Subject: FW: GA Refinancing (IESO related doc)
Date: Wednesday, June 20, 2018 13:21:42

_____
From: Lee Anne Probert
Sent: June 20, 2018 1:21:37 PM (UTC-05:00) Eastern Time (US & Canada)
To: Donaldson, Mark (TBS)
Subject: RE: GA Refinancing (IESO related doc)

No problem. Can we connect sometime to catch up?

-----Original Message-----
From: Donaldson, Mark (TBS) [mailto:Mark.Donaldson@ontario.ca]
Sent: June-20-18 1:15 PM
To: Lee Anne Probert <leeanne.probert@ca.ey.com>
Subject: RE: GA Refinancing (IESO related doc)

Thank you.

From: Lee Anne Probert <leeanne.probert@ca.ey.com<mailto:leeanne.probert@ca.ey.com>>
Date: Wednesday, Jun 20, 2018, 1:14 PM
To: Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca<mailto:Mark.Donaldson@ontario.ca>>
Subject: FW: GA Refinancing (IESO related doc)

Please see below.

--
LeeAnne Probert | Senior Manager | Assurance Services

Ernst & Young LLP
Office: 416 943 3554 | leeanne.probert@ca.ey.com<mailto:leeanne.probert@ca.ey.com>
From: Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]
Sent: May-19-17 8:47 AM
To: Suzie Gignac <suzie.r.gignac@ca.ey.com>; Blake Langill <blake.w.langill@ca.ey.com>; Lee Anne Probert <leeanne.probert@ca.ey.com>
Subject: GA Refinancing (IESO related doc)

Suzie/Blake/LeeAnne,
Attached, for your reference, is the final paper related to IESO accounting (subject to change based on future Regs/Commercial Contracts, etc.).
Regards,
Nadine

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son%40ontario.ca%7C66bc05eec0b8498698ff08d5d6d248b4%7Ccddc1229ac2a4b97b78a0e5cacb5865c%7C0%7C0%7C636651121016634713&sdata=WoMF2%2F6SaujcMaZQx1wWrblZyZJwVrTQRwgcHZntsDI%3D&reserved=0 To unsubscribe from commercial electronic messages / Pour vous désabonner des messages électroniques commerciaux : Unsubscribe@ca.ey.com

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FW_ GA Refinancing (IESO related doc).rtf

From: Donaldson, Mark (TBS) []
To: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
Subject: FW: GA Refinancing (IESO related doc)
Date: Wednesday, June 20, 2018 13:18:38

From: Hosick, Sarah (TBS)
Sent: June 20, 2018 1:18:38 PM (UTC-05:00) Eastern Time (US & Canada)
To: Donaldson, Mark (TBS)
Subject: RE: GA Refinancing (IESO related doc)

Thanks – do you want me to include it with the files to AG or just have it as backpocket in case they ask for it?

From: Donaldson, Mark (TBS)
Sent: June 20, 2018 1:15 PM
To: Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>
Subject: FW: GA Refinancing (IESO related doc)

From: Lee Anne Probert <leeanne.probert@ca.ey.com>

Date: Wednesday, Jun 20, 2018, 1:14 PM

To: Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>

Subject: FW: GA Refinancing (IESO related doc)

Please see below.

--

LeeAnne Probert | Senior Manager | Assurance Services

Ernst & Young LLP

Office: 416 943 3554 | leeanne.probert@ca.ey.com

From: Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]
Sent: May-19-17 8:47 AM
To: Suzie Gignac <suzie.r.gignac@ca.ey.com>; Blake Langill <blake.w.langill@ca.ey.com>; Lee Anne Probert <leeanne.probert@ca.ey.com>
Subject: GA Refinancing (IESO related doc)

Suzie/Blake/LeeAnne,

Attached, for your reference, is the final paper related to IESO accounting (subject to change based on future Regs/Commercial Contracts, etc.).

Regards,

Nadine

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FW_ GA Refinancing (IESO related doc).rtf

From: Donaldson, Mark (TBS) []
To: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
Subject: FW: GA Refinancing (IESO related doc)
Date: Wednesday, June 20, 2018 13:14:05
Attachment 1: Draft report dated May 17 2017.pdf

From: Lee Anne Probert
Sent: June 20, 2018 1:13:09 PM (UTC-05:00) Eastern Time (US & Canada)
To: Donaldson, Mark (TBS)
Subject: FW: GA Refinancing (IESO related doc)

Please see below.

--

LeeAnne Probert | Senior Manager | Assurance Services

Ernst & Young LLP

Office: 416 943 3554 | leeanne.probert@ca.ey.com

From: Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]
Sent: May-19-17 8:47 AM
To: Suzie Gignac <suzie.r.gignac@ca.ey.com>; Blake Langill <blake.w.langill@ca.ey.com>; Lee Anne Probert <leeanne.probert@ca.ey.com>
Subject: GA Refinancing (IESO related doc)

Suzie/Blake/LeeAnne,

Attached, for your reference, is the final paper related to IESO accounting (subject to change based on future Regs/Commercial Contracts, etc.).

Regards,

Nadine

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Draft report dated May 17 2017.pdf

FINAL DRAFT

KPMG Letter to the Independent Electricity System Operator

An Accounting Opinion on the Application of PSAS to the Consolidation of a Trust and to the Recognition and Derecognition of a Variance Account in Relation to Bill 132, *Ontario Fair Hydro Plan Act, 2017*

This letter has been prepared in draft form and will be updated upon receipt of the adopted legislation, if passed, (including the amendments of the Electricity Act, 1998 and the OEB Act, 1998) and finalized financial structure (including the bylaws and regulations of the Trust to be established by OPG) and other relevant agreements necessary for us to provide our final opinion, of which legislation and other relevant agreements are expected to be enacted/ finalized on or before September 30, 2017.

NOTICE OF NON RELIANCE

This Notice is regarding the accompanying Letter to provide an accounting opinion on the application of Public Sector Accounting Standards to the consolidation of a trust and to the recognition and derecognition of a variance account in relation to Bill 132, *Ontario Fair Hydro Plan Act, 2017* (the "**Letter**") prepared by KPMG LLP for the Independent Electricity System Operator ("Client").

The following terms apply to any review of the Letter and should you not agree to these terms, please do not review the Letter and delete copy of the same.

The Letter was prepared in connection with certain services we provided to the Client and should not be used for any other purpose or regarded as suitable for use by any person or persons other than the Client.

No one other than the Client is authorized by KPMG to rely upon any information or views expressed in the Letter. KPMG shall have no responsibility or liability for loss or damages or claims, if any, to or by any third party as the Letter has not been prepared for, and is not intended for, and should not be used by, any third party or for any other purpose.

KPMG in no way accepts any duty of care to you or any other person or accepts any agreement or other arrangement of a contractually binding nature between our firm and such parties.

KPMG neither warrants nor represents that the Letter is accurate, complete, sufficient or appropriate for any purpose contemplated by you or any other person or body. You shall have no right to disclose the Letter to any other party.

Yours very truly,

KPMG LLP

KPMG LLP
Chartered Accountants
Bay Adelaide Centre
Suite 4600
333 Bay Street
Toronto ON
M5H 2S5

Telephone (416) 777-8500
Fax (416) 777-8818
www.kpmg.ca

May 16, 2017

CONFIDENTIAL

120 Adelaide Street West
Suite 1600
Toronto, ON
M5H 1T1

The Board of Directors

Dear Sirs,

We have been engaged to provide you with an accounting opinion on the application of Public Sector Accounting Standards to the consolidation of a trust and to the recognition and derecognition of a variance account in relation to Bill 132, *Ontario Fair Hydro Plan* Act, 2017 as tabled in the first reading ("Bill 132") (Appendix A to this letter). This letter is being issued to the Independent Electricity System Operator ("IESO" or the "Company") in connection with its evaluation of the consolidation requirements and the accounting for the variance account under Canadian Public Sector Accounting Standards ("PSAS"). Our engagement has been conducted in accordance with generally accepted standards in Canada for such engagements.

The ultimate responsibility for the decision on the appropriate application of PSAS for the specific issues described below rests with management of the Company as preparers of the financial statements.

The adoption of Bill 132 (including the subsequent amendments of the Electricity Act, 1998 ("the Electricity Act") and the Ontario Energy Board ("OEB" or the "Board") Act, 1998 ("the OEB Act")), and the finalization of the financing structure (including the bylaws and regulations of the trust to be established by OPG) and other agreements will take several months. Accordingly, our judgment on the appropriate application of PSAS for the specific matters described below is based on the facts, circumstances and assumptions provided to us. The finalization of the legislation, regulations, financing structure and other agreements may impact the comments and conclusions set out herein. Our comments and conclusions are based on Bill 132 and related matters as they exist at the date of this letter.

The following three issues are addressed in this letter:

Issue #1: Can the IESO recognize a regulatory asset related to the variance account created by Bill 132?

Issue #2: Is the trust to be established by Ontario Power Generation (the "OPG Trust") controlled by the IESO according to the guidance issued under PSAS 1300 *Government Reporting Entity* and therefore subject to consolidation by IESO?

KPMG LLP is a Canadian limited liability partnership and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. KPMG Canada provides services to KPMG LLP.

Issue #3: What is the accounting treatment for derecognition of the regulatory asset by the IESO upon transfer of the variance account to the OPG Trust?

Background for issue #1

The facts, circumstances, and assumptions relevant to the specific transactions as provided to us by the management of the Company (responsible party) are as follows:

1. The IESO's legal status is a not-for-profit, non-taxable, corporation established pursuant to Part II of the Electricity Act. Management of the IESO has determined that the Company is an *Other Governmental Organization* and accordingly prepares its financial statements in accordance with PSAS.

2. IESO is rate regulated by the OEB in accordance with the Electricity Act and the OEB Act.

3. *Extract from the 2016 IESO financial statements, note 3 New Accounting Policies, audited by KPMG* "As of January 1, 2016, the IESO changed its accounting policy regarding the recognition of assets and liabilities subject to rate regulation. The change was made to better reflect the economic substance of certain types of expenses that may not be directly recovered through the normal revenue requirement model. This change has been applied retroactively and has increased amounts previously unrecorded for regulatory assets and decreased amounts previously reported for accumulated deficit."

4. *Extract from the 2016 IESO financial statements, note 2(d) Summary of Significant Accounting Policies, Regulatory assets and liabilities.* "As a rate-regulated entity, the IESO, in appropriate circumstances establishes regulated assets or liabilities and thereby defers the impact on the statement of operations of certain expenses or revenues because they are probable to be collected or refunded to market participants through future billings. The IESO applies guidance from United States Generally Accepted Accounting Principles (US GAAP) Topic 980, *Regulated Operations ("ASC 980")*, in this policy."

5. *Extract from Section 78(3.3) of the OEB Act:* In approving or fixing rates under subsection (3.1),

   (a) the Board shall forecast the cost of electricity to be consumed by the consumers to whom the rates apply, taking into consideration the adjustments required under section 25.33 of the Electricity Act, 1998 and shall ensure that the rates reflect these costs; and

   (b) the Board shall take into account balances in the IESO's variance accounts established under section 25.33 of the Electricity Act, 1998 and shall make adjustments with a view to eliminating those balances within 12 months or such shorter time periods as the Minister may direct.

6. Currently, IESO recognizes two regulatory assets for unrecovered smart metering expenses and unrecovered PSAB transition items as permitted by rates approved by the OEB. In addition, in accordance with section 25.33 of the Electricity Act, IESO also recognizes variance accounts (eg. OESP, RPP and RRRP variance accounts) to record all amounts payable or receivable by it in connection with the amounts paid to generators, the Ontario Electricity Financial Corporation ("OEFC"), distributors and to entities with whom the IESO has a procurement contract.

7. The Electricity Act, OEB Act and other regulations will be amended to reflect the following *extracts of Bill 132:*

   Section 1 Definitions, Transfer of regulatory asset

   (3) In this Act, a reference to the transfer of a specified portion of the regulatory asset is a reference to the following, as provided for in subsection 26 (3):

1. A reduction in the balance in the variance account.
2. The adjustment of the regulatory asset.
3. The acquisition by a financing entity of the investment interest corresponding to the specified portion of the regulatory asset.

Section 24 Variance account to be established, maintained

(1) IESO shall establish and maintain a variance account in which it records the following:

1. The IESO deferral for each month.
2. All payments received by IESO resulting from the exercise of the right of recovery under section 25 and any transfer under section 26.
3. Such other adjustments as may be prescribed, including adjustments in respect of the period that commences on or after May 1, 2017 and before the day this section comes into force.

(2) Subject to the correction of any obvious error by the IESO, its recording of the balance in the variance account is determinative of the balance as of the time of the recording.

(3) No change made by IESO to the balance in the variance account shall, if the previous balance was relied upon by an investment interest owner in the context of a transfer under section 26, affect the rights acquired by the investment interest owner under the transfer.

Section 25 Regulatory asset established

(1) Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

(2) Subject to subsection (3), the Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for the IESO to recover the balance recorded in the variance account.

(3) IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2021.

Section 34 Board's Authority

(2) Despite anything to the contrary in the OEB Act, the Board may exercise any of its responsibilities under this Act without a hearing.

8. It is expected that the IESO deferral recorded by the IESO in the variance account (the regulatory asset) will be transferred to an investment asset owner (i.e. a trust to be established by OPG) on a monthly basis and cash collected within a short period of time. The total IESO deferral for the period from May 1, 2017 to April 30, 2047 is estimated at $28 billion plus interest.

Appropriate Accounting Principle for Issue #1

ASC 980 Regulated Operations

– For general-purpose financial reporting, an incurred cost for which a regulator permits recovery in a future period is accounted for like an incurred cost that is reimbursable under a cost-reimbursement-type contract. [980-10-05-6]

- Unless an accounting order indicates the way a cost will be handled for rate-making purposes, it causes no economic effects that would justify deviation from the GAAP applicable to business entities in general. The mere issuance of an accounting order not tied to rate treatment does not change an entity's economic resources or obligations. In other words, the economic effect of regulatory decisions—not the mere existence of regulation—is the pervasive factor that determines the application of GAAP. [980-10-05-8]
- The guidance in the Regulated Operations Topic applies to general-purpose external financial statements of an entity that has regulated operations that meet all of the following criteria:
  (a) The entity's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party regulator or by its own governing board empowered by statute or contract to establish rates that bind customers.
  (b) The regulated rates are designed to recover the specific entity's costs of providing the regulated services or products. This criterion is intended to be applied to the substance of the regulation, rather than its form.
  (c) In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume that rates set at levels that will recover the entity's costs can be charged to and collected from customers. This criterion requires consideration of anticipated changes in levels of demand or competition during the recovery period for any capitalized costs. [980-10-15-2]
- Incurred Cost - A cost arising from cash paid out or obligation to pay for an acquired asset or service, a loss from any cause that has been sustained and has been or must be paid for. [980-10-20] Glossary
- Failure of an entity's operations to continue to meet the criteria in paragraph 980-10-15-2 can result from different causes. Examples include the following:
  (a) Deregulation.
  (b) A change in the regulator's approach to setting rates from cost-based rate-making to another form of regulation.
  (c) Increasing competition that limits the entity's ability to sell utility services or products at rates that will recover costs (as used in paragraph 980-10-15-2).
  (d) Regulatory actions resulting from resistance to rate increases that limit the entity's ability to sell utility services or products at rates that will recover costs if the entity is unable to obtain (or chooses not to seek) relief from prior regulatory actions through appeals to the regulator or the courts. [980-20-15-2]
- Rate actions of a regulator can provide reasonable assurance of the existence of an asset. An entity shall capitalize all or part of an incurred cost that would otherwise be charged to expense if both of the following criteria are met:
  (a) It is probable (as defined in Topic 450) that future revenue in an amount at least equal to the capitalized cost will result from inclusion of that cost in allowable costs for rate-making purposes.
  (b) Based on available evidence, the future revenue will be provided to permit recovery of the previously incurred cost rather than to provide for expected levels of similar future costs. If the revenue will be provided through an automatic rate-adjustment clause, this criterion requires that the regulator's intent clearly be to permit recovery of the previously incurred cost.

A cost that does not meet these asset recognition criteria at the date the cost is incurred shall be recognized as a regulatory asset when it does meet those criteria at a later date. [980-340-25-1]

- Rate actions of a regulator can reduce or eliminate the value of an asset. If a regulator excludes all or part of a cost from allowable costs, the carrying amount of any asset recognized pursuant to paragraph 980-340-25-1 shall be reduced to the extent of the excluded cost. Whether other assets have been impaired shall be judged the same as for entities in general and the Impairment or Disposal of Long-Lived Assets Subsections of Subtopic 360-10 shall apply. [980-340-35-1]
- If at any time an entity's incurred cost no longer meets the criteria for the capitalization of an incurred cost (see paragraph 980-340-25-1), that cost shall be charged to earnings. [980-340-40-1]
- In some cases, a regulator may approve rates that are intended to recover an incurred cost over an extended period without a return on the unrecovered cost during the recovery period. [980-340-55-2]
- The regulator's action provides reasonable assurance of the existence of an asset (see paragraph 980-340-25-1). Accordingly, the regulated entity would capitalize the cost and amortize it over the period during which it will be allowed for rate-making purposes. That cost would not be recorded at discounted present value. An exception to this general rule is provided for costs of abandoned plants. [980-340-55-3]

Issue #1: Can the IESO recognize a regulatory asset related to the variance account created by Bill 132?

As noted above, as of January 1, 2016, the IESO changed its accounting policy to recognize the economic impacts of rate regulation and now applies guidance from US GAAP Topic 980, *Regulated Operations*, as PSAS does not have any specific guidance for entities with rate-regulated activities.

IESO concluded that it met the requirements of PS2120.02, which allows them to reflect the impacts of rate regulation, as it is considered that the change of accounting policy in its 2016 financial statements resulted in a more appropriate presentation of transactions in its financial statements. The change was made to better reflect the economic substance of certain types of expenses that may not be directly recovered through the normal revenue requirement model.

The regulatory framework in Ontario relating to the generation and sale of electricity will be significantly impacted by Bill 132. Currently, a substantial amount of the energy purchased from the generators is collected by IESO from the local distribution companies through the customer billing, with the remaining being recovered through variance accounts over a period of 12 months maximum. As mentioned above, the effect of Bill 132 is to defer the collection of a total estimated amount of $28 billion (plus interest) of energy purchased from the generators over a period of 30 years. Bill 132 will not permit IESO to collect the IESO deferral before May 1, 2021 and the recovery process will be established through regulations. Such a long-term deferred recovery plan requires IESO to consider whether the uncollected energy costs qualify for deferral as a regulatory asset and whether it continues to meet the criteria that allow IESO to use the guidance for regulated operations of Topic 980. These two accounting issues are analyzed in the two tables below.

Criteria for the recognition of regulatory assets

ASC 980-340-25-1 states that rate actions of a regulator can provide reasonable assurance of the existence of an asset. An entity shall capitalize all or part of an incurred cost that would otherwise be charged to expense if both of the following criteria are met:

Criteria	Comment	Evaluation
(a) It is probable that future revenue in an amount at least equal to the capitalized cost will result from inclusion of that cost in allowable costs for rate-making purposes. (b) Based on available evidence, the future revenue will be provided to permit recovery of the previously incurred cost rather than to provide for expected levels of similar future costs. *(emphasis added)* If the revenue will be provided through an automatic rate-adjustment clause, this criterion requires that the regulator's intent clearly be to permit recovery of the previously incurred cost.	Bill 132 notes that, • *A recording of the balance in the variance account is determinative of the balance as of the time of the recording.* • *Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.* • *The Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for IESO to recover the balance recorded in the variance account.* • *The IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2021.* Based on Bill 132, IESO has the right to recover the balance recorded in the variance account. As a result, it is clear that the IESO will be able to recover the amount previously incurred rather than to provide for expected levels of similar future costs.	Met

Criteria for the adoption and continued use of ASC 980 guidance

Deferred recovery plans are plans adopted by regulators or legislations in response to significant increases in costs (e.g. purchased power costs). These plans typically provide for rates to remain fixed or increase moderately with a variance account mechanism to capture costs in excess of the level allowed in current rates. A regulated utility subject to such plans is required to consider whether it continues to meet the criteria that allow it to use the guidance for regulated operations of Topic 980, especially criteria ASC 980-10-15-2 (b).

The proposed plan for the recovery of purchase power costs over a 30 year period is considered a deferred recovery plan as the rates for the first four years will remain fixed and subsequently the rates will increase moderately with a variance account to capture energy costs in excess of the level allowed in current rates. The following is an analysis of the ASC 980-10-15-2 criteria.

Criteria	Comment	Evaluation
(a) The entity's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party	Currently, IESO recognizes regulatory assets related to smart meters and PSAS transition costs as permitted by rates approved by the OEB and regulatory liabilities related to the variance accounts (eg. OESP, RPP and RRRP variance accounts) established under section 25.33 of the Electricity Act related to the procurement of energy.	Met

Criteria	Comment	Evaluation
regulator or by its own governing board empowered by statute or contract to establish rates that bind customers.	It is important to note that both Hydro One and OPG are classified as *Government Business Enterprises* and are reporting under IFRS in their consolidated financial statements, are consolidated by the modified equity method into the province's books, are regulated by the OEB, and their respective regulatory assets and liabilities are reported in the province's books.	

(b) The regulated rates are designed to recover the specific entity's costs of providing the regulated services or products.	Currently, the rates approved by the OEB are designed to recover the IESO's costs of providing the regulated services and the pass-through related to the energy purchased from the generators.
	
	As mentioned above, a regulated utility subject to a deferred recovery plan is required to consider whether it continues to meet the criteria ASC 980-10-15-2 (b).
	
	This criterion requires a cause-and-effect relationship between a reporting entity's costs and its revenue. In addition, the timing of cost recovery and the related frequency of ratemaking is important. A reporting entity should consider its rate case experience, including the design of its rates and timing of recovery, when determining whether this criterion is met. These factors are analyzed below.
	
	Frequency of rate case
	
	- Currently, IESO is subject to OEB's annual reviews.
	- Although the recovery of purchase energy costs will be frozen at the approved rate on May 1, 2017 for the first four years, the IESO will be granted a right to recover after May 1, 2021 the IESO deferral recorded in the variance account during the four-year period.
	  - *A recording of the balance in the variance account is determinative of the balance, as of the time of the recording. (We note that this confirms that there will be no prudence review by the OEB)*
	  - *Right to recover the balance recorded in the variance account.*
	  - *Obligation on the part of the OEB to dispose the variance account in accordance with the regulation.*
	- Subsequent to May 1, 2021, the OEB will be required to determine and set rates payable by specified consumers to allow for IESO to recover the balance recorded in the variance account.
		Met

Criteria	Comment	Evaluation
	- *The Board shall, from time to time, determine and set rates payable by specified consumers to allow for IESO to recover the balance recorded in the variance account.* - *Despite anything to the contrary in the OEB Act, the Board may exercise any of its responsibilities under this Act without a hearing.* *Rates are designed to recover incurred costs* - There is a cause-and-effect relationship between the purchase energy costs and revenue, as IESO will be allowed to recover the costs incurred. - *A recording of the balance in the variance account is determinative of the balance as of the time of the recording* (We note that this confirms that there will be no prudence review). - *Right to recover the balance recorded in the variance account.* - *Obligation on the part of the OEB to ensure IESO will recover the balance recorded in the variance account.* *Periods of alternative ratemaking (e.g., rate freezes)* Evaluation of the second criterion requires additional judgment if the regulated utility is subject to any form of ratemaking that introduces uncertainty about the cause-and-effect relationship between costs and rates. A rate freeze period is defined as a fixed rate that is charged to customers during a period of time (more than two years) and the utilities are exposed to increases in operating and energy costs with no ability to recover the variances. This is not the case as IESO will be granted the right to recover fully the IESO deferral recorded in the variance account, including the first four-year period. - *The Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for the IESO to recover the balance recorded in the variance account.* *Costs uncertainty* As the IESO will be granted the right to fully recover the IESO deferral recorded in the variance account, there is no uncertainty about the recovery of the costs.	

Criteria	Comment	Evaluation
	Disallowances of costs The OEB has never disallowed the recovery of any material costs incurred by the IESO. More importantly, as the IESO will be granted by legislation the right to fully recover the IESO deferral recorded in the variance account, there is no risk of the potential disallowance of the purchase power costs. Based on the analysis of the above factors, there are no indications that this criterion would not be met. The above factors establish that there will be a direct cause-and-effect relationship between IESO's costs and its future collection.	

(c) In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume that rates set at levels that will recover the entity's costs can be charged to and collected from customers. This criterion requires consideration of anticipated changes in levels of demand or competition during the recovery period for any capitalized costs."	The remaining criterion is whether limitations, including considering demand levels at the approved rates, on the extent of recovery of the regulatory asset could prevent the IESO from recognizing a regulatory asset for the entire balance in the recovery right granted to the IESO.
	
	Bill 132 notes that:
	
	- *Effective May 1, 2017, the IESO's right to recover the balance in the variance account is subject to the following:*
	  o *The Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified customers to allow for the IESO to recover the balance recorded in the variance account.*
	  o *IESO shall not be entitled to collect the variance account from specified consumers before May 1, 2021.*
	
	Although the process, especially the timing of the recovery of the regulatory asset has not been established yet by the OEB, the wording and intent of the proposed legislation is clear that it is intended by law to be recoverable over the period of 30 years. Further, given the nature and extent of customer demand for the power generated and distributed in Ontario, both at this time and projected in the future, it is reasonable to conclude that there will be sufficient demand to recover the regulatory asset. As with the other criteria, this will need to be continually evaluated throughout the recovery period.
		Met

Management conclusion

IESO management has concluded that the IESO can recognize a regulatory asset related to the variance account created by Bill 132 based on the foregoing analysis.

The variance account created by Bill 132 is subject to rate regulation by the OEB and the variance account will be established with the right to collect funds against the variance amount in the future. In these circumstances, the IESO is able to establish a regulatory asset. The IESO financial statements are prepared in accordance with Canadian public sector accounting standards. Although PSAB does not provide specific guidance on rate regulated accounting, it does under PS 1150 Generally Accepted Accounting Principles allow for guidance to be followed from other accounting frameworks. IESO has applied guidance from United States Generally Accepted Accounting Principles (US GAAP) Topic 980, *Regulated Operations* in its accounting policies.

Our conclusion

We have considered the foregoing analysis and management's conclusion. We concur that the variance account created by Bill 132 will meet the criteria for the recognition of a regulatory asset stated in ASC 980-340-25-1. Furthermore, we have also considered the criteria stated in ASC 980-10-15-2 and believe that IESO should be allowed to continue to use the guidance for regulated operations of Topic 980.

Background for Issue #2

The facts, circumstances, and assumptions relevant to the specific transactions as provided to us by the management of the Company (responsible party), in addition to those described in the background for issue #1, are as follows:

1. The IESO currently has the right to collect the global adjustment ("GA") monthly from ratepayers through provisions in the Electricity Act. It is proposed that collection of a certain portion of the monthly GA be deferred in a regulatory asset for collection in the future, and that the right to recover the deferred GA from ratepayers be used as the basis for structured financing/ securitization.
2. In connection with Bill 132, it is proposed that a trust be established as a financial vehicle by OPG (the "OPG Trust") in connection with the deferred GA. The OPG Trust will finance the deferral of the GA by purchasing the regulatory asset from the IESO for the principal amount of the GA being deferred.
3. The OPG Trust is expected to finance these purchases from the IESO through a combination of senior secured financing raised in the capital markets, and subordinated financing from OPG (the funding for which will mostly be from equity injections from the OEFC/Province of Ontario).
4. OPG will be appointed as the Financial Services Manager and will be given the responsibility to direct the activities of the OPG Trust, through a services agreement and/or through the Trust's constating documents.

Appropriate Accounting Principle for Issue #2

PS1300 *Government Reporting Entity*:

PSAS refer to government or government organizations. For the purpose of this analysis, the PSAS guidance below relating to government or government organizations should be read and understood as being the IESO (emphasis added).

- The government reporting entity should comprise government components and those organizations that are controlled by the government. [PS 1300.07]
- Control is the power to govern the financial and operating policies of another organization with expected benefits or the risk of loss to the government from the other organization's activities. [PS 1300.08] (emphasis added).
- Whether a government controls an organization is a question of fact that must be determined by reference to the definition of control established in paragraph PS 1300.08 and the particular circumstances of each case. The determination of the fact that control exists will require the application of professional judgment. Government achieves its objectives through a wide range of organizations which individually will fall somewhere along a continuum. At one end of the continuum, it will be clear that an organization does not have the power to act independently and is controlled by the government. At the other end, the organization will have the power to act independently and, while government will have a level of influence on the organization, it will be clear that it does not have control. Along the continuum, consideration needs to be given to the nature of the relationship between the government and the organization in order to determine whether control exists. This Section provides guidance intended to assist in this assessment. [PS 1300.10]
- In applying this guidance, it is necessary to determine the substance of the relationship between the government and the organization. The true nature of certain relationships may not be completely reflected by their legal form. All relevant aspects and implications of the relationship would be considered in determining whether or not the government controls the organization. Where various aspects of the relationship are designed, in effect, to achieve an overall objective, they would be viewed as a whole. [PS 1300.11]
- Financial and operating policies are principles and practices that determine how an organization conducts its activities. The ability to govern these policies is an important element of government control because it establishes the fundamental basis for the conduct of the organization's operations and the achievement of its mission and mandate. [PS 1300.13]
- There are a variety of ways to govern the financial and operating policies of an organization. For example:
  (a) a government may establish an organization's fundamental purpose and eliminate or significantly limit the ability of the organization to make future decisions by predetermining the financial and operating policies of the organization;
  (b) a government may direct the financial and operating policies of an organization on an ongoing basis; or
  (c) a government may veto, overrule or modify the financial and operating policies established by an organization. [PS 1300.14]
- A government does not need to manage an organization's activities on a day-to-day basis to control the organization. It is the government's existing authority to determine the policies governing those activities that is important. [PS 1300.15]

– For the purposes of this Section, it is assumed that where the government has the power to govern the financial and operating policies of an organization, it expects to derive a financial or non-financial benefit. The government may also be exposed to the risk of loss. [PS 1300.16]

Issue #2: Is the trust to be established by OPG (the "OPG Trust") controlled by the IESO according to the guidance issued under PSAS 1300 *Government Reporting Entity* and, therefore, subject to consolidation by IESO?

Under PSAS, IESO is required to consolidate all entities that are considered to be part of its reporting entity, applying the guidance provided in *Section PS 1300 Government Reporting Entity.* Under PS 1300, IESO must consolidate all entities it "controls".

In determining whether or not the OPG Trust should be consolidated by IESO, it must first be determined whether or not the IESO exercises control as a consequence of power to govern the financial and operating policies of the OPG Trust resulting in expected benefits to the IESO or the risk of loss from the activities of the OPG Trust.

PS 1300.17 indicates that "whether a government controls an organization is a question of fact that requires the application of professional judgment based on the definition of control in this Section and the substance of the relationship in each case." Under PS 1300.08 control is defined as "the power to govern the financial and operating policies of another organization with expected benefits or the risk of loss to the government from the other organization's activities". Therefore, the determination of whether IESO will consolidate the OPG Trust will be based on an assessment of whether IESO is considered to control the OPG Trust based on the indicia of control set out in PS 1300. The assessment of the IESO's control of the OPG Trust is made based on Bill 132, facts and nature of the relationship between the IESO and the OPG Trust and based on facts and assumptions provided by IESO. PS 1300.18 and .19 set out 11 potential indicia of control. Several of these indicia have been categorized as more persuasive of a finding of control (see the first four indicators in the table below). For each indicator that applies, the degree of government influence would determine its importance as evidence of control. Finally, the indicia are considered both collectively and individually.

A detailed analysis of the 11 Indicators of control is provided in the following table.

INDICATOR OF CONTROLS	EVIDENCE OF CONTROL	CONTROL EXIST?
Primary (more persuasive) indicators (PS 1300.18):		
Government has the power to unilaterally appoint or remove a majority of the members of the governing body of the organization	- Bill 132 states: - *OPG is appointed as the Financial Services Manager for the purposes of this Act. (Section 18)* - *The Financial Services Manager shall perform the duties assigned to it under this Act and may administer the investment asset on behalf of the investment interest owners. (Section 19 (1))* - *Subject to any prescribed limitations, the Financial Services Manager may establish and charge fees in relation to such matters as may be prescribed in accordance with the regulations, which regulations may provide for the ability to recover costs and expenditures and to earn a return. (Section 19 (3))*	No

INDICATOR OF CONTROLS	EVIDENCE OF CONTROL	CONTROL EXIST?

	- The Electricity Act will be amended as follows:
	  - *In addition to the objects mentioned in subsection (1), the objects of OPG include exercising the powers and rights and performing the duties and obligations assigned to it under the Ontario Fair Hydro Plan Act, 2017 and engaging in activities to facilitate the implementation of that Act, including entering into contracts and undertakings on behalf of financing entities and performing other services on behalf of financing entities, subject to the right to be paid by the financing entities for those services. (Section 53.1 (1.1))*
	  - *OPG may create or invest in one or more subsidiaries, trusts, partnerships or special purpose entities in order to more efficiently conduct its activities or achieve its objects. (Section 53.1 (1.2))*
	- OPG will establish a trust to manage the collection of the regulatory asset and related financing and administrative expenses. The Board of Trustees of the OPG Trust will be the governing body of the Trust and will be appointed by OPG. OPG will have the power to unilaterally appoint or remove all members of the Board of Trustees.
	- The IESO will not have any rights in respect of the appointment or replacement of the Board of Trustees of the OPG Trust.	

Government has ongoing access to the assets of the organization, has the ability to direct the ongoing use of those assets, or has ongoing responsibility for losses	- Section 27 of Bill 132 states:
	  - *A transfer of a specified portion of the regulatory asset under section 26 constitutes a valid and enforceable absolute assignment, conveyance and sale of the corresponding investment interest to the transferee.*
	  - *Without limiting subsection (1), any transfer agreement that states an intention of the parties for the IESO to dispose of a specified portion of the regulatory asset and to assign, convey or sell a corresponding investment interest shall be treated for all purposes as an absolute assignment, conveyance, disposition and sale of the IESO's right to recover the corresponding amount in the variance account and not merely as a security interest.*
		No

INDICATOR OF CONTROLS	EVIDENCE OF CONTROL	CONTROL EXIST?
	- *At the time a transfer of the regulatory asset is made under section 26, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.* - Based on Bill 132, *upon transfer of a specified portion of the regulatory asset to the OPG Trust, the investment asset resulting from the transfer is immediately vested in the OPG Trust, free and clear of any adverse claim.* (Section 28 (2)). - Therefore, upon transfer of the regulatory asset to the OPG Trust, IESO will no longer have access/ability to direct the regulatory asset nor have the ongoing responsibility for losses. - The credit risk related to the collection of the investment asset is borne by the OPG Trust.	
Government holds the majority of the voting shares or a "golden share" that confers the power to govern the financial and operating policies of the organization	- IESO will not have any ownership in the OPG Trust and will not have the power to govern the financial and operating policies of the OPG Trust.	No
Government has the unilateral power to dissolve the organization and thereby access its assets and become responsible for its obligations	- IESO will not have the power to dissolve the organization.	No

INDICATOR OF CONTROLS	EVIDENCE OF CONTROL	CONTROL EXIST?
Other indicators that may provide evidence of control exist when government has the power to (PS 1300.18):		
Provide significant input into the appointment of members of the governing body of the organization by appointing a majority of those members from a list of nominees provided by others or being otherwise involved in the appointment or removal of a significant number of members	- OPG will have the power to unilaterally appoint or remove all members of the Board of Trustees of the OPG Trust. - IESO will not provide any input in the appointment of members of the Board of Trustees.	No
Appoint or remove the CEO or other key personnel	- OPG will have the power to unilaterally appoint or remove all members of the Board of Trustees of the OPG Trust and other key personnel.	No
Establish or amend the mission or mandate of the organization	- The Trust will be established by OPG and the mandate of the Trust will be set based on Bill 132.	No

Approve the business plans or budgets for the organization and require amendments, either on a net or line-by-line basis	- Bill 132 states:
	  - *OPG is appointed as the Financial Services Manager for the purposes of this Act. (Section 18)*
	  - *The Financial Services Manager shall prepare a written plan entitled the Financing Plan to be used by the Financial Services Manager to evaluate whether potential funding obligations should be incurred for the purposes of acquiring and financing an investment asset in accordance with this Act or for the purposes of refinancing. (Section 16 (1))*
	- OPG is the Financial Services Manager, not IESO.
	- IESO is not involved in the preparation or approval of the business plans or budget of the OPG Trust.
		No

Establish borrowing or investment limits or restrict the organization's investments	- Section 22 of Bill 132 states: - *The Financial Services Manager shall ensure that funding obligations incurred for the purposes of this Act are incurred in a manner that is consistent with the applicable Financing Plan.*	No

INDICATOR OF CONTROLS	EVIDENCE OF CONTROL	CONTROL EXIST?
	- OPG not IESO, is responsible for ensuring that the borrowings of the OPG Trust meet the above conditions.	
Restrict the revenue-generating capacity of the organization, notably the sources of revenue	- N/A	No
Establish or amend the policies that the organization uses to manage, such as those relating to accounting, personnel, compensation, collective bargaining or deployment of resources	- As mentioned above, OPG will be granted by legislation the power to establish or amend the policies of the OPG Trust and the ability to appoint and remove all members of the Board of Trustees.	No

Management conclusion

IESO management has concluded that the OPG Trust to be established would not be controlled by the IESO and therefore is not subject to consolidation by the IESO.

Based on the foregoing analysis of the 11 indicators of control as defined in Section PS 1300 *Government Reporting Entity,* considered both individually and collectively there is no evidence of control by the IESO in respect of the OPG Trust. The IESO will not have the power to govern the Trust, nor have ongoing access to Trust's assets. The IESO will also not have any voting shares or future rights to the Trust nor the power to dissolve the Trust. Without control, the Trust is not subject to consolidation within the IESO financial statements.

Our conclusion

We have considered the foregoing analysis and management's conclusion. We concur that based on Bill 132, none of the four primary (more persuasive) indicators of control are considered to be met, and none of the seven other indicators of control are considered to be met. Accordingly, we concur that the IESO does not control the OPG Trust under Bill 132 and hence would not consolidate the OPG Trust.

The adoption of Bill 132 (including the subsequent amendments of the Electricity Act and the OEB Act) and the finalization of the financing structure (including the bylaws and regulations of the OPG Trust) and other agreements will take several months. Accordingly, our judgment on the appropriate application of PSAS to the conclusion on control may change subject to further analysis of any changes to the terms of Bill 132 or review of the final regulations, financing structure and other agreements.

Background for Issue #3

The facts, circumstances, and assumptions relevant to the specific transactions as provided to us by the management of the Company (responsible party), in addition to those described in the background for issues #1 and 2, are as follows:

1. The total IESO deferral for the period from May 1, 2017 to April 30, 2047 is estimated at $28 billion plus interest and will be recorded by the IESO in a variance account recognized as a regulatory asset.
2. The IESO does not currently have the financial capability to finance the regulatory asset and will transfer the variance account to an investment asset owner (i.e. OPG Trust) on a monthly basis.
3. The IESO will obtain a written legal opinion as to the validity and enforceability of the transfer and sale of the regulatory asset.
4. Based on an assessment of control performed under the issue #2, IESO will not consolidate the OPG Trust. We understand that an assessment of control under International Financial Reporting Standards ("IFRS") has been performed by OPG and they have concluded that the OPG Trust will be consolidated by OPG; we note that the financial reporting framework used by OPG in preparing its financial statements for consolidation into the Province's books is IFRS.
5. The Electricity Act, OEB Act and other regulations will be amended to reflect the following *extracts from Bill 132:*

   Section 16 IESO to receive amounts

   (2) The IESO shall, as agent of the investment interest owners, receive amounts in respect of the clean energy adjustment paid to it from electricity vendors in accordance with the market rules made under section 32 of the Electricity Act, 1998 or the regulations.

   (4) All amounts received by the IESO in respect of the clean energy adjustment shall, until remitted to or for the benefit of the investment interest owner, be held in trust by the IESO for the investment interest owners.

   (5) The IESO shall remit amounts received by it in respect of the clean energy adjustment, inclusive of interest earned on the amounts referred to in subsection (1), to or for the benefit of the investment interest owners in accordance with the regulations.

   Section 17 Pro rating of payments

   (4) If an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices and the amount paid is less than the total amount payable, the electricity vendor shall allocate the payment on a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices in respect of electricity charges in respect of the same invoice period.

   Section 26 Transfer of regulatory asset

   (1) The IESO may from time to time, in accordance with this Act and the regulations, transfer a specified portion of the regulatory asset to a financing entity in accordance with this section.

   (2) An agreement between the IESO and a financing entity in relation to the transfer of a specified portion of the regulatory asset shall provide for consideration of a payment by the financing entity to the IESO in an amount equal to the amount of the specified portion.

(3) Upon receipt by the IESO of the payment by the financing entity,

(a) the balance in the variance account shall be reduced by the amount of the payment;

(b) the regulatory asset shall be adjusted accordingly;

(c) the financing entity shall acquire a corresponding investment interest; and

(d) the IESO shall retain no further right, title or interest in the investment interest.

Section 27 Validity of transfer

(1) A transfer of a specified portion of the regulatory asset under section 26 constitutes a valid and enforceable absolute assignment, conveyance and sale of the corresponding investment interest to the transferee.

(2) Without limiting subsection (1), any transfer agreement that states an intention of the parties for IESO to dispose of a specified portion of the regulatory asset and to assign, convey or sell a corresponding investment interest shall be treated for all purposes as an absolute assignment, conveyance, disposition and sale of IESO's right to recover the corresponding amount in the variance account and not merely as a security interest.

(3) At the time a transfer of the regulatory asset is made under section 26, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the transferee shall have priority over any liens in favour of those persons.

Section 29 Investment asset, irrevocable rights and interests

(1) The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests of investment interest owners:

1. The right and interest to impose, invoice, collect, receive and recover the clean energy adjustment from specified consumers, including the right to determine the clean energy adjustment in accordance with this Act.

2. The right to receive, collect and recover the clean energy adjustment that is imposed, invoiced and recoverable under this Act, including any amounts in respect of the clean energy adjustment that are held by electricity vendors, IESO and other prescribed parties.

Section 30 Transfer of investment interest

(2) An investment interest owner may transfer all or a portion of an investment interest to any other investment interest owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan.

Section 32 Investment interest owner may grant security interest

(1) An investment interest owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under the investment interest to or in favour of any person to secure a funding obligation.

(3) All provisions of the Personal Property Security Act shall apply to the investment asset and each investment interest on the basis that the investment asset and each investment interest is intangible personal property, except as otherwise provided for in this section, and any granting of a security interest by an investment interest owner to secure a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by registering a financing statement under that Act on that basis.

6. The terms of the transfer agreement between the IESO and the OPG Trust that will be signed and executed upon transfer of the regulatory assets will be in compliance with the dispositions of Bill 132.

Appropriate Accounting Principle for Issue #3

The Derecognition Section of ASC 980-20-40 provides guidance on determining whether and when an entity should remove an item from the financial statements. For example, the entity would derecognize an asset because it no longer has rights to the asset or it would derecognize a liability because it no longer has any obligation. [ASC 980-20-40]

Failure of an entity's operations to continue to meet the criteria in paragraph 980-10-15-2 can result from different causes. Examples include the following:

(a) Deregulation.

(b) A change in the regulator's approach to setting rates from cost-based rate-making to another form of regulation.

(c) Increasing competition that limits the entity's ability to sell utility services or products at rates that will recover costs (as used in paragraph 980-10-15-2).

(d) Regulatory actions resulting from resistance to rate increases that limit the entity's ability to sell utility services or products at rates that will recover costs if the entity is unable to obtain (or chooses not to seek) relief from prior regulatory actions through appeals to the regulator or the courts. [ASC 980-20-15-2]

PS1000 *Financial statement concepts*:

– This Section is to be used by preparers and auditors of financial statements in exercising their professional judgment as to the application of generally accepted accounting principles and in establishing accounting policies in areas in which accounting principles are developing. [PS1000.03]

– Financial statements should communicate information that is relevant to the needs of those for whom the statements are prepared, reliable, comparable, understandable and clearly presented in a manner that maximizes its usefulness. [PS1000.24]

– An item is not an asset of a government if it lacks one or more of the essential characteristics listed in the preceding paragraph [PS3210.04]. Thus, for example, an item does not qualify as an asset of a government if the item involves:

  (a) no future economic benefit;

  (b) future economic benefit, but the government cannot obtain it; or

  (c) future economic benefit that the government may obtain, but the events or circumstances that give the government control of the benefit have not yet occurred. [PS1000.37]

PS3210 *Assets*:

- Assets are economic resources controlled by a public sector entity as a result of past transactions or events and from which future economic benefits are expected to be obtained. [PS3210.03]
- Assets have three essential characteristics:
  (a) They embody future economic benefits that involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows, or to reduce cash outflows.
  (b) The public sector entity can control the economic resource and access to the future economic benefits.
  (c) The transaction or event giving rise to the public sector entity's control has already occurred. [PS3210.04]
- Control of an economic resource and of access to the future economic benefits are essential characteristics of an asset, whereas possession or ownership is not. [PS3210.22]

PS3430 *Restructuring transactions* [1]

- Individual assets and liabilities transferred in a restructuring transaction should be derecognized by the transferor if they no longer meet the definitions of assets and liabilities and applicable recognition criteria at the restructuring date. [PS3430.21]
- When a transferor continues to be involved in the individual assets and/or liabilities it transferred to a recipient subsequent to the restructuring date, it would assess the nature and extent of its continued involvement against the definitions of assets and liabilities and applicable recognition criteria to evaluate whether:
  (a) derecognition of the asset and liability transferred would be appropriate; and
  (b) its continued involvement gives rise to a new asset or new liability that needs to be recognized. [PS3430.24]
- A new asset or new liability may arise from a restructuring due to a transferor's continued involvement in the individual assets and liabilities transferred (for example, if it agrees to guarantee repayment of all or a portion of a transferred liability or leases back a portion of a transferred asset). As the new asset or new liability is not transferred, together with related program or operating responsibilities, they are not part of the restructuring transaction. They would be accounted for in accordance with individual Sections of the PSA Handbook by both the transferors and recipients. [PS3430.25]

1 This Section applies to fiscal years beginning on or after April 1, 2018. […] Earlier adoption is permitted."

Issue #3: What is the accounting treatment for derecognition of the regulatory asset by the IESO upon transfer of the variance account to the OPG Trust?

Although ASC 980-20-40 states that

> *"Derecognition Section provides guidance on determining whether and when an entity should remove an item from the financial statements. For example, the entity would derecognize an asset because it no longer has rights to the asset or it would derecognize a liability because it no longer has any obligation."*

Subtopic 980-20 relates to discontinuation of rate-regulated accounting when an entity no longer meets the criteria in paragraph 980-10-15-2. ASC 980-20-15-2 provides examples of when an entity no longer meets the criteria, including deregulation and change of the form of regulation. Thus, ASC 980 does not provide clear guidance for the derecognition of a regulatory asset other than in connection with the discontinuation of rate-regulated accounting.

The above guidance in ASC 980-20-40 provides general principles for the derecognition of assets.

It should also be noted that PSAS provide limited guidance on derecognition of non-financial assets and liabilities. Section 3430 *Restructuring transactions,* which is applicable for fiscal years on or after April 1, 2018 with early application permitted, has guidance for the derecognition of assets and liabilities.

- Paragraph 21 states that *individual assets and liabilities transferred in a restructuring transaction should be derecognized by the transferor if they no longer meet the definitions of assets and liabilities and applicable recognition criteria at the restructuring date.*
- As stated in paragraph 24, *when a transferor continues to be involved in the individual assets and/or liabilities it transferred to a recipient subsequent to the restructuring date, it would assess the nature and extent of its continued involvement against the definitions of assets and liabilities and applicable recognition criteria to evaluate whether derecognition of the asset and liability transferred would be appropriate and whether its continued involvement gives rise to a new asset or new liability that needs to be recognized.*

Recognizing the proposed transaction is not a restructuring transaction, Section 3430, which has recently been issued by PSAB, provides current evidence of thinking in the application of the general PSAS principles in respect of the recognition and derecognition of assets and liabilities. Accordingly, the analysis as to whether the regulatory asset transferred to the OPG Trust can be derecognized is based on the foregoing guidance.

Criteria for the recognition of an asset

PS3210.03 states that assets are economic resources controlled by a public sector entity as a result of past transactions or events and from which future economic benefits are expected to be obtained. More generally, PSAS PS1000.37 suggests that an asset would no longer be recognized when it fails to meet the definition of an asset:

Criteria	Comment	Evaluation
Assets (PS3210.04/ PS1000.36): Assets have three essential characteristics: (a) They embody future economic benefits that involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows,	Based on the guidance, the regulatory asset does not qualify as an asset of IESO if it cannot obtain the future economic benefits. Upon transfer of the regulatory asset, IESO will have no further rights or obligations in connection with the asset transferred. - *IESO may from time to time, in accordance with this Act and the regulations, transfer a specified portion of the regulatory asset to a financing entity in accordance with this section.* - *Upon receipt by IESO of the payment by the financing entity, IESO shall retain no further right, title or interest in the corresponding investment interest.*	Not Met

Criteria	Comment	Evaluation
or to reduce cash outflows. (b) The public sector entity can control the economic resource and access to the future economic benefits. (c) The transaction or event giving rise to the public sector entity's control has already occurred. *Financial statement concepts (PS1000.37):* An item is not an asset of a government if it lacks one or more of the essential characteristics listed in the preceding paragraph [see above]. Thus, for example, an item does not qualify as an asset of a government if the item involves: (a) no future economic benefit (b) future economic benefit, but the government cannot obtain it.	- *A transfer of a specified portion of the regulatory asset under section 26 constitutes a valid and enforceable absolute assignment, conveyance and sale of the corresponding investment interest to the transferee.* - *Without limiting subsection (1), any transfer agreement that states an intention of the parties for IESO to dispose of a specified portion of the regulatory asset and to assign, convey or sell a corresponding investment interest shall be treated for all purposes as an absolute assignment, conveyance, disposition and sale of IESO's right to recover the corresponding amount in the variance account and not merely as a security interest.* - *At the time a transfer of the regulatory asset is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.* Upon transfer of the regulatory asset, the OPG Trust will have the right to sell the asset to another party or to grant a security interest in favour of any person to secure a funding obligation. - *Upon transfer, the financing entity becomes an investment asset owner and acquires an investment interest.* - *An investment interest owner may transfer all or a portion of an investment interest to any other investment interest owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan.* - *An investment interest owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under the investment interest to or in favour of any person to secure a funding obligation.* Based on Bill 132, it is clear that IESO will have no rights to the benefits associated with the future cash inflows related to the regulatory asset as it will have transferred its right to recover the IESO deferral to the OPG Trust. Further, it is also clear that IESO will have lost control over the regulatory asset once it is transferred to OPG Trust.	

Management conclusion

IESO management has concluded that the regulatory asset will be derecognized upon transfer of the regulatory asset to the OPG Trust.

The transfer of the regulatory asset transfers the control and the benefits associated with the right to collect funds in the future against the variance amount to the OPG Trust. This will eliminate the IESO asset by the amount of the transfer as the IESO will no longer control an economic resource or have access to future economic benefits for that amount. The funds collected from the transfer will in turn reduce the associated debt held by the IESO, maintaining the IESO's net $ nil balance in the market accounts.

Our conclusion

We have considered the foregoing analysis and management's conclusion. We concur that the regulatory asset should be derecognized on transfer to the OPG Trust as IESO no longer has rights or future economic benefits associated with the asset.

Other Matters

The ultimate responsibility for the decision on the appropriate application of PSAS for the specific transactions rests with management as preparers of the financial statements. Our judgment on the appropriate application of PSAS for the specific transaction is based solely on the facts, circumstances and assumptions provided to us as described above. Should these facts and circumstances differ, our conclusion may change.

This letter has been prepared in draft form and will be updated upon receipt of the adopted legislation, if passed, (including the amendments of the Electricity Act and the OEB Act) and finalized financial structure (including the bylaws and regulations of the OPG Trust) and other relevant agreements necessary for us to provide our final opinion, of which legislation and other relevant agreements are expected to be enacted/ finalized on or before September 30, 2017. This letter will not be updated as a consequence of pronouncements by the Public Sector Accounting Board, or any other authoritative bodies, that occur subsequent to the date of this letter.

This letter is intended solely for the information and use of the Board of Directors and management of the Company, and is not intended to be and should not be used, quoted, relied upon by, or otherwise referred to by anyone other than these specified parties or for any other purpose.

No one other than the Board of Directors and management of the Company is authorized by KPMG to rely upon any information or views expressed herein. KPMG shall have no responsibility or liability for loss or damages or claims, if any, to or by any third party as this letter has not been prepared for, and is not intended for, and should not be used by, any third party or for any other purpose.

Yours very truly,

per Michel Picard
Partner
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Appendix A:

Bill 132, Ontario Fair Hydro Plan Act, 2017

Caution:
Bills are published by the Legislative Assembly in print and on its website. This copy has not been published by the Legislative Assembly and is being provided for convenience only.

Fair Hydro Act, 2017

EXPLANATORY NOTE

The Bill enacts a new Act and makes amendments to the *Electricity Act, 1998* and the *Ontario Energy Board Act, 1998*.

SCHEDULE 1
ONTARIO FAIR HYDRO PLAN ACT, 2017

The Schedule enacts the *Ontario Fair Hydro Plan Act, 2017*. The Act establishes a framework under which the costs and benefits associated with the "clean energy initiative" are to be allocated among present and future consumers of electricity. The "clean energy initiative" is defined in Part I as consisting of the policies of the Government of Ontario related to such matters as eliminating coal generation and fostering the growth of and investment in clean, modern and reliable energy sources and technologies.

Under Part II, the Ontario Energy Board is required to determine reduced electricity rates and to determine other adjustments to be made for certain classes of consumers in respect of specified periods of time. For example, for the class of consumers referred to as "regulated rate consumers", the electricity rates payable for the period beginning on July 1, 2017 and ending on April 30, 2018 are the rates, as determined by the Board, that would achieve a 25 per cent reduction in certain costs for a hypothetical member of the class who meets prescribed criteria. Details regarding the determinations are prescribed by regulations.

Part III requires certain electricity consumers to pay an amount in respect of the "clean energy adjustment". The clean energy adjustment is determined by the Financial Services Manager in accordance with rules set out in the Act and the regulations. (Section 18 of the Act appoints Ontario Power Generation Inc. as the Financial Services Manager.) Part III also specifies the roles and responsibilities of electricity vendors and the Independent Electricity System Operator ("IESO") with respect to the collection and remittance of amounts in respect of the clean energy adjustment.

Part IV requires the Minister of Energy to calculate a "fair allocation amount" by taking specified steps in accordance with principles and assumptions set out in the Act. For example, the Act provides that the purpose of calculating the fair allocation amount is to measure and allocate the estimated clean energy costs and estimated clean energy benefits fairly among certain consumers. Part IV also requires the Financial Services Manager to prepare a written

plan entitled the "Financing Plan", which is to be used to evaluate whether potential funding obligations should be incurred. Principles and limitations regarding the preparation and implementation of the plan are provided.

Part V requires the IESO to determine the "IESO deferral" in accordance with the regulations and to establish and maintain a variance account in which it records the IESO deferral each month. A "regulatory asset" is created under section 25; the IESO has the right to recover the balance recorded in the variance account from certain consumers. The IESO is authorized to transfer a specified portion of the regulatory asset to a financing entity; this transfer results in the creation of the investment asset and the acquisition by the transferee of a corresponding "investment interest". Various rules respecting the validity and priority of a transfer of an investment asset are set out.

In Part VI, rules in respect of the "investment asset" are provided. Section 29 provides that the investment asset constitutes a current and irrevocable property right and interest, consisting collectively of various specified rights and interests of investment interest owners. Rules respecting the validity and priority of such a transfer and the granting of a security interest by an investment interest owner are included.

Part VII deals with various miscellaneous matters, including regulation-making authority of the Lieutenant Governor in Council.

The *Electricity Act, 1998* and the *Ontario Energy Board Act, 1998* are amended to address various matters relating to the enactment of the new Act. For example, the objects of the IESO and Ontario Power Generation Inc. are expanded to address powers and duties under the new Act.

SCHEDULE 2
AMENDMENTS TO THE ONTARIO ENERGY BOARD ACT, 1998

The *Ontario Energy Board Act, 1998* is amended. Among the amendments:

1. Section 79 of the Act is amended so that compensation for the rate protection provided to certain classes of rural or remote consumers may be funded out of money appropriated by the Legislature, rather than by consumers.

2. Section 79.2 of the Act, which governs the Ontario Electricity Support Program, is repealed and replaced. The program is continued, but will be funded out of money appropriated by the Legislature after the variance account maintained by the Independent Electricity System Operator, formerly established under the Plan, is exhausted, rather than by consumers. There are provisions relating to the sharing, use and disclosure of information relating to the administration of the Ontario Electricity Support Program.

3. Programs are established to aid certain distribution rate-protected residential consumers and on-reserve consumers.

4. Various amendments of a technical and administrative nature are made to support the implementation and oversight of these programs including provisions related to auditing, record-keeping, inspections and inquiries, offences and penalties.

Bill **2017**

An Act to enact the Ontario Fair Hydro Plan Act, 2017 and to make amendments to the Electricity Act, 1998 and the Ontario Energy Board Act, 1998

Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Contents of this Act

1. This Act consists of this section, sections 2 and 3 and the Schedules to this Act.

Commencement

2. (1) Subject to subsections (2) and (3), this Act comes into force on the day it receives Royal Assent.

Schedules

(2) The Schedules to this Act come into force as provided in each Schedule.

Different dates for same Schedule

(3) If a Schedule to this Act provides that any of its provisions are to come into force on a day to be named by proclamation of the Lieutenant Governor, a proclamation may apply to one or more of those provisions, and proclamations may be issued at different times with respect to any of those provisions.

Short title

3. The short title of this Act is the *Fair Hydro Act, 2017*.

SCHEDULE 1
ONTARIO FAIR HYDRO PLAN ACT, 2017

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Preamble

The Government of Ontario is committed to fostering the development of a clean, modern and reliable electricity system with a diverse supply mix. The Government is also committed to removing barriers to and promoting opportunities for renewable and clean energy projects. These commitments can only be achieved if costs are shared fairly among consumers, today and in the future.

Electricity rates have risen for two key reasons. First, decades of under-investment in the electricity system resulted in the need to invest more than $50 billion in generation, transmission and distribution assets to ensure the system is clean and reliable. Second, the decision to eliminate Ontario's use of coal and produce clean, renewable power has created additional costs.

The actions taken to achieve a clean, modern and reliable electricity system have resulted in significant costs to residential consumers. The burden of financing these system improvements and funding key programs has unfairly fallen almost entirely on the shoulders of those consumers.

The Government of Ontario is committed to ensuring that the costs of financing these investments and the associated charges to consumers are allocated fairly among present and future generations.

Recognizing that the electricity infrastructure that has been built and the policy decisions that have been made will create benefits for years to come, costs should be allocated fairly over time, so that residential consumers in the future pay their fair share for the benefits that they receive from the investments already made.

PART I
GENERAL

Interpretation

Definitions

1. (1) In this Act,

"Board" means the Ontario Energy Board; ("Commission")

"clean energy adjustment" means the amount determined under section 15 and payable by specified consumers; ("ajustement pour l'énergie propre")

"clean energy benefits" means the value of the benefits determined to be derived by or accruing to specified consumers as a result of the clean energy initiative, including as a result of clean energy costs; ("avantages de l'énergie propre")

"clean energy costs" means the value of the costs allocated to specified consumers as a result of the clean energy initiative, including as a result of past, present and expected costs incurred in respect of,

(a) the amounts to be paid or reflected by the IESO in adjustments made under section 25.33 of the *Electricity Act, 1998* or any provision that is the successor to that provision, which relate to contracts or amounts for,

(i) renewable energy generation or capacity,

(ii) conservation and demand management,

(iii) energy storage,

(iv) energy efficiency,

(v) natural gas generation and capacity, excluding contracts relating to amounts payable by the IESO under section 78.2 of the *Ontario Energy Board Act, 1998* and excluding such other contracts as may be prescribed,

(b) payments made or expected to be made under section 78.5 of the *Ontario Energy Board Act, 1998*, and

(c) such other costs or estimated costs as may be prescribed; ("coûts de l'énergie propre")

"clean energy initiative" means the policies of the Government of Ontario related to,

(a) eliminating coal generation and fostering the growth of and investment in clean, modern and reliable energy sources and technologies,

(b) removing barriers to and promoting opportunities for clean and renewable energy sources and technologies,

(c) promoting conservation, demand management and energy efficiency, and

(d) investing in energy infrastructure to ensure a clean, modern and reliable system; (“initiative pour l’énergie propre”)

“electricity vendor” means,

(a) a licensed distributor,

(b) a licensed retailer,

(c) the IESO in circumstances where it directly invoices a specified consumer for electricity used in Ontario, or

(d) such other person as may be prescribed; (“vendeur d’électricité”)

“fair allocation amount” means an amount calculated under section 20; (“montant de répartition équitable”)

“finance amount” means the finance amount determined in accordance with the regulations; (“montant de financement”)

“Financial Services Manager” means the Financial Services Manager appointed under section 18; (“gestionnaire des services financiers”)

“financing entity” means an entity established or caused to be established by the Financial Services Manager as described in subsection 22 (2); (“entité de financement”)

“Financing Plan” means the plan prepared under section 21; (“Plan de financement”)

“funding obligation” means a payment obligation incurred by or on behalf of an investment interest owner to fund its ownership of an investment interest or a payment obligation that meets such other criteria as may be prescribed; (“obligation de financement”)

“funding rebate” means a payment obligation incurred by the IESO as part of the transfer of the regulatory asset; (“remboursement de financement”)

“IESO” means the Independent Electricity System Operator continued under Part II of the *Electricity Act, 1998*; (“SIERE”)

“IESO deferral” means the amount determined under section 23; (“report de la SIERE”)

"investment asset" means the rights and interests described in section 29; ("actif d'investissement")

"investment interest" means,

(a) an ownership interest in the investment asset, and

(b) in circumstances where the ownership interest is transferred, the rights and benefits specified in the agreement under which the interest is transferred; ("participation d'investissement")

"investment interest owner" means a financing entity that has acquired and holds an investment interest; ("détenteur d'une participation d'investissement")

"licensed distributor" means a person licensed under Part V of the *Ontario Energy Board Act, 1998* to own or operate a distribution system within the meaning of that Act; ("distributeur titulaire d'un permis")

"licensed retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity; ("détaillant titulaire d'un permis")

"Minister" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of this Act under the *Executive Council Act*; ("ministre")

"Ontario Power Generation Inc." means the corporation incorporated as Ontario Power Generation Inc. under the *Business Corporations Act* on December 1, 1998; ("Ontario Power Generation Inc.")

"prescribed" means prescribed by the regulations; ("prescrit")

"reference period" means,

(a) the period beginning on July 1, 2017 and ending on October 31, 2017, and

(b) during the period beginning on November 1, 2017 and ending on either April 30, 2047 or such later day as may be prescribed,

(i) every six-month period following the period mentioned in clause (a); or

(ii) any period shorter than six months, as may be prescribed; ("période de référence")

"refinancing" means, subject to the regulations, the incurrence of debt in connection with a redemption, repayment or repurchase of a funding obligation; ("refinancement")

"regulation" means a regulation made under this Act; ("règlement")

"regulatory asset" means the right established under section 25; ("actif réglementaire")

"specified consumer" means,

(a) a person who has an account with an electricity vendor for the supply of electricity in Ontario and meets the criteria set out in subsection (2), or

(b) such other person as may be prescribed; ("consommateur déterminé")

"transfer" includes, when used in relation to an investment interest, the assignment, conveyance, disposition or sale of the investment interest; ("transfert")

"true up amount" means a true up amount determined in accordance with the regulations; ("montant d'égalisation")

"unit sub-metering" has the same meaning as in the *Energy Consumer Protection Act, 2010;* ("activités liées aux compteurs divisionnaires d'unité")

"unit sub-meter provider" has the same meaning as in the *Energy Consumer Protection Act, 2010;* ("fournisseur de compteurs divisionnaires d'unité")

"variance account" means the variance account established by the IESO under subsection 24 (1). ("compte d'écart")

Specified consumer

(2) For the purposes of clause (a) of the definition of "specified consumer" in subsection (1), the person must meet any one of the following criteria:

1. The person has a demand for electricity of not more than 50 kilowatts, or such other amount as may be prescribed.

2. The person annually uses not more than 250,000 kilowatt hours of electricity, or such other amount as may be prescribed.

3. The person carries on a business that is a farming business for the purposes of the *Farm Registration and Farm Organizations Funding Act, 1993* and either holds a valid registration number assigned under that Act or has had the

obligation to file a farming business registration form waived pursuant to an order made under subsection 22 (6) of that Act.

4. The person's account with the electricity vendor relates to,

   i. a dwelling,

   ii. a property within the meaning of the *Condominium Act, 1998*,

   iii. a residential complex within the meaning of subsection 2 (1) of the *Residential Tenancies Act, 2006*, without regard to section 5 of that Act, or

   iv. a property that includes one or more housing units and that is owned or leased by a co-operative within the meaning of the *Co-operative Corporations Act*.

5. The person satisfies such criteria as may be prescribed.

Transfer of regulatory asset

(3) In this Act, a reference to the transfer of a specified portion of the regulatory asset is a reference to the following, as provided for in subsection 26 (3):

1. A reduction in the balance in the variance account.

2. The adjustment of the regulatory asset.

3. The acquisition by a financing entity of the investment interest corresponding to the specified portion of the regulatory asset.

Effect of invalidity

2. (1) For greater certainty, all of the provisions of this Act remain in full force and effect, even if one or more provisions are held to be invalid, the intention of the Legislature being to give separate and independent effect to the extent of its powers to every provision contained in this Act.

Same, funding obligation

(2) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect the validity or enforceability of a funding obligation incurred before the day that the provision is held to be invalid or ceases to be in effect, or any rights or obligations associated with the funding obligation.

Purposes

3. The purposes of this Act are,

(a) to ensure that clean energy costs and clean energy benefits are fairly allocated among present and future specified consumers;

(b) to recognize that clean energy benefits have accrued and will accrue over time and will continue to benefit present and future electricity consumers in the Province; and

(c) to align clean energy costs with clean energy benefits, in order to provide fairness for specified consumers over time.

Crown bound

4. This Act binds the Crown.

Protection and assurances

Prohibition

5. (1) No action or omission by the Board, the Minister or the Crown shall be effective to reduce, impair, postpone or terminate the obligations of specified consumers to pay amounts in respect of the clean energy adjustment or to impair or postpone the invoicing, collection or remittance of the clean energy adjustment.

Agreements

(2) The Minister and the Minister of Finance may together, with the approval of the Lieutenant Governor in Council, enter into agreements on behalf of the Province of Ontario with any person in respect of this Act, including agreements regarding the performance of the IESO or electricity vendors under this Act or related transactions.

Guarantee, indemnification

(3) The Lieutenant Governor in Council may by order,

(a) authorize the Minister and the Minister of Finance, acting together on behalf of the Province,

(i) to agree to guarantee or indemnify any debts, obligations, securities or undertakings associated with an investment interest, and

(ii) to determine terms and conditions of the guarantee or indemnity and the maximum liability for the guarantee or indemnity;

(b) specify terms and conditions that must be included in any guarantee or indemnity given by the Minister and the Minister of Finance; and

(c) specify a maximum liability for the guarantee or indemnity.

PART II
FAIR ADJUSTMENT

Definition

6. In this Part,

"regulated rate consumer" means a specified consumer who meets the following criteria:

1. The consumer is a member of the class of consumers prescribed by the regulations made under the *Ontario Energy Board Act, 1998* for the purposes of subsection 79.16 (1) of that Act.

2. The consumer would, if the consumer were not subject to this Act, be invoiced the rates determined by the Board under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*.

Regulated rate consumers, first adjustments

7. (1) Despite any order under subsection 78 (3.1) of the *Ontario Energy Board Act, 1998* and despite section 79.16 of that Act, the electricity rates payable by regulated rate consumers for the period beginning on July 1, 2017 and ending on April 30, 2018 are the rates, as determined by the Board, that would result in a hypothetical regulated rate consumer who meets the prescribed criteria being charged an invoice amount that is 25 per cent less than the invoice amount that would have been charged to that consumer under the comparison rates described in subsection (2).

Comparison rates

(2) The comparison rates are the rates that would have been effective May 1, 2017 if they had been determined by the Board solely using the method prescribed by the regulations made under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*, without taking into account any forecasted impact of any other provisions of this Act.

Invoice amounts

(3) The types of amounts to be included or excluded in each invoice amount mentioned in subsection (1) are the types of amounts specified in the regulations.

Other specified consumers, first adjustments

8. (1) For the period beginning on July 1, 2017 and ending on April 30, 2018, the adjustments made by the IESO under section 25.33 of the *Electricity Act, 1998* shall, with respect to specified consumers who are not regulated rate consumers, be further adjusted

by electricity vendors in accordance with the determinations of the Board under subsection (2).

Board to make determinations

(2) The Board shall, in accordance with the regulations, determine the adjustments to be made by electricity vendors.

Same, regulations

(3) The regulations may specify different adjustments to be made in respect of prescribed classes of specified consumers who are not regulated rate consumers.

Determinations by Board

9. The Board shall make the determinations mentioned in sections 7 and 8 no later than 15 business days after the day this section receives Royal Assent and, regardless of whether the Board makes the determinations before or after July 1, 2017, the determinations shall be effective as of July 1, 2017.

Implementation by electricity vendors

10. (1) As soon as possible after the Board makes determinations under section 9, each electricity vendor shall, in respect of electricity used on or after July 1, 2017, ensure that its invoices reflect the determinations of the Board.

Same

(2) The electricity vendor shall ensure that, if any of its customers who are specified consumers have been invoiced in a manner that does not reflect the determinations of the Board under section 9, the specified consumer receives the difference between the amounts shown on the invoice and the amounts reflecting the Board's determinations, provided as a lump sum credit on the first invoice issued after the electricity vendor has adapted its invoices or by such other means as may be prescribed.

Subsequent adjustments

11. (1) Despite clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998* and subject to subsection (2), the Lieutenant Governor in Council may prescribe the methodology to be applied by the Board after April 30, 2018 for the purpose of determining,

(a) electricity rates for regulated rate consumers; or

(b) adjustments to be applied by electricity vendors to the adjustments made by the IESO under section 25.33 of the *Electricity Act, 1998* in respect of prescribed classes of specified consumers who are not regulated rate consumers.

Limitation

(2) Any prescribed methodology shall have regard to the following:

1. The purposes of this Act.

2. The clean energy costs borne by specified consumers over time.

3. Such other matters as may be prescribed.

Sub-metering

12. (1) This section applies if a specified consumer provides to another person electricity in respect of which a determination of the Board referred to in section 9 or 11 applies.

Same

(2) If an invoice for the electricity is issued to the person by the specified consumer or a unit sub-meter provider providing unit sub-metering for the specified consumer, the amount payable for the electricity by the person who is liable to pay the invoice shall be determined in accordance with the regulations.

PART III
CLEAN ENERGY ADJUSTMENT

Specified consumers to pay

13. (1) Upon receipt of an invoice from an electricity vendor that includes an amount in respect of the clean energy adjustment, a specified consumer shall pay the amount to the electricity vendor as agent of the investment interest owners.

Same

(2) For greater certainty, subsection (1) applies regardless of,

(a) whether the clean energy adjustment was determined in a manner that was inconsistent with this Act; and

(b) whether the amount payable in respect of the clean energy adjustment relates to funding obligations that were incurred in a manner that was inconsistent with the Financing Plan, including in a manner that failed to provide for the reasonable alignment of the estimated finance amount with the fair allocation amount.

Terms

(3) The payment shall be made in accordance with such terms of payment as may be specified in the invoice, which may include terms relating to late payment fees and interest charges.

Indebtedness of specified consumer

(4) An unpaid amount that is required to be paid by a specified consumer under this section constitutes indebtedness of the specified consumer to each investment interest owner to the extent of each owner's respective interest in the investment asset.

Same

(5) The indebtedness mentioned in subsection (4) is a single and separate debt obligation owed by the specified consumer and may be enforced independently from any other payment obligation or indebtedness owing by the specified consumer.

Unit sub-metering

(6) A specified consumer who provides electricity through unit sub-metering may collect amounts in respect of the clean energy adjustment payable under this section in accordance with the regulations.

Irrevocability of amount

14. (1) An amount in respect of the clean energy adjustment shown on an invoice issued to a specified consumer under this Act is determinative of the amount of the consumer's indebtedness resulting from the clean energy adjustment and is irrevocable upon invoicing the consumer and may not be set off or bypassed.

Exception

(2) Subsection (1) does not apply to the extent that the invoice reflects a clerical, typographical or calculation-related error.

Determination of clean energy adjustment
Financial Services Manager to determine

15. (1) The Financial Services Manager shall determine the clean energy adjustment payable by all specified consumers in respect of each month in a reference period by taking the following steps:

1. Calculate the sum of the following:

    i. The estimated finance amount in respect of the reference period.

    ii. The true up amount in respect of the reference period.

2. Divide the sum calculated under paragraph 1 by the number of months in the reference period.

Regulations re true up amount

(2) The Lieutenant Governor in Council shall, in making regulations with respect to the determination of the true up amount, have regard to the following principles:

1. The true up amount should serve to ensure that the collection of the clean energy adjustment is sufficient to pay the finance amount when it is due.

2. The method for determining the true up amount should take into account historical and reasonably foreseeable,

    i. differences between the estimated and actual finance amount for the applicable reference period,

    ii. differences between amounts invoiced and amounts collected due to various factors, including applicable taxes, consumer defaults and delays, billing lags and write-offs, and

    iii. variations in billings due to variations in electricity consumption.

Financial Services Manager to notify Board

(3) The Financial Services Manager shall, in accordance with the regulations, notify the Board of the clean energy adjustment in respect of a reference period and such other information related to the determination of the clean energy adjustment as may be prescribed.

Board to determine rates

(4) Without changing the clean energy adjustment, the Board shall, in accordance with the regulations, determine the rates at which specified consumers are invoiced to recover the clean energy adjustment in respect of the reference period.

IESO to receive amounts

16. (1) The IESO shall, as agent of the investment interest owners, receive amounts in respect of the clean energy adjustment paid to it from electricity vendors in accordance with the market rules made under section 32 of the *Electricity Act, 1998* or the regulations.

Account

(2) All of the following amounts received by the IESO shall, until remitted to or for the benefit of the investment interest owners in accordance with subsection (4), be

deposited promptly into an account established for the purposes of receiving those amounts:

1. Amounts described in subsection (1).

2. Payments made by specified consumers directly to the IESO as electricity vendor under subsection 13 (1).

3. Proceeds of amounts described in paragraphs 1 and 2.

Same, held in trust

(3) All amounts received by the IESO in respect of the clean energy adjustment shall, until remitted to or for the benefit of the investment interest owners, be held in trust by the IESO for the investment interest owners.

IESO to remit

(4) The IESO shall remit amounts received by it in respect of the clean energy adjustment, inclusive of interest earned on the amounts referred to in subsection (1), to or for the benefit of the investment interest owners in accordance with the regulations.

Electricity vendor to invoice specified consumers

17. (1) Each electricity vendor shall issue an invoice to each of its customers who is a specified consumer for the amount payable by the consumer in respect of the clean energy adjustment, as determined by applying the rate set by the Board under subsection 15 (4) and in accordance with the regulations.

Electricity vendor to report

(2) Each electricity vendor shall, in accordance with the regulations, promptly report to the IESO the total amount invoiced to its customers who are specified consumers in respect of the clean energy adjustment, the amount collected and such other information as may be prescribed.

Electricity vendor to collect

(3) Each electricity vendor shall, as agent of the investment interest owners, collect amounts in respect of the clean energy adjustment from specified consumers in accordance with the regulations.

Pro rating of payments

(4) If an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices and the amount paid is less than the total amount payable, the electricity vendor shall allocate the payment on a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices in respect of electricity charges in respect of the same invoice period.

Held in trust

(5) Payments received by an electricity vendor from or on behalf of specified consumers in respect of the clean energy adjustment and all proceeds of the payments shall, until remitted to the IESO for the benefit of the investment interest owners in accordance with subsection (6), be held by each electricity vendor in trust for the benefit of the investment interest owners.

Remittance to IESO

(6) Each electricity vendor shall remit amounts in respect of the clean energy adjustment to the IESO for the benefit of the investment interest owners in accordance with the regulations.

PART IV
IMPLEMENTATION

Financial Services Manager

Appointment

18. Ontario Power Generation Inc. is appointed as the Financial Services Manager for the purposes of this Act.

Duties and powers

19. (1) The Financial Services Manager shall perform the duties assigned to it under this Act and may administer the investment asset on behalf of the investment interest owners.

Same

(2) The administration of the investment asset may include providing information to the IESO in respect of obligations under Part III and such other activities as may be prescribed.

Fees

(3) Subject to any prescribed limitations, the Financial Services Manager may establish and charge fees in relation to such matters as may be prescribed in accordance with the regulations, which regulations may provide for the ability to recover costs and expenditures and to earn a return.

Same, Board approval

(4) Before establishing fees under subsection (3), the Financial Services Manager shall submit them to the Board for approval in accordance with the regulations.

Fair Allocation Amount

Minister to calculate fair allocation amount

20. (1) Subject to subsections (2) and (3), before the first funding obligation is incurred the Minister shall calculate a fair allocation amount in respect of each reference period, applying such method as the Minister considers appropriate and in accordance with the following steps:

1. Determine the estimated clean energy costs and estimated clean energy benefits allocated to specified consumers in respect of the reference period.

2. Determine the estimated reduction in the amounts payable by specified consumers as a result of determinations of the Board under Part II in respect of all previous reference periods, including the estimated reduction in clean energy costs described in clause (a) of the definition of "clean energy costs" in subsection 1 (1) that would otherwise have been payable by specified consumers in the absence of this Act.

3. Determine the amount, if any, by which the determination under paragraph 1 exceeds the determination under paragraph 2.

4. Calculate the sum of the amount determined under paragraph 3 and such other amounts as may be prescribed.

Principles

(2) In calculating the fair allocation amount, the Minister shall have regard to the following principles:

1. The purpose of calculating the fair allocation amount is to measure and allocate the estimated clean energy costs and estimated clean energy benefits fairly among the specified consumers in respect of each reference period.

2. Calculations should be made having regard to the need to align each fair allocation amount with the estimated finance amount payable during the reference period.

3. Estimated clean energy costs allocated to specified consumers in respect of a reference period should be allocated in proportion to the estimated clean energy benefits attributed to the specified consumers in respect of the reference period.

4. Such other principles as may be prescribed.

Assumptions

(3) In calculating the fair allocation amount, the Minister shall make such assumptions as the Minister considers to be reasonable regarding the following:

1. The time value of money or the rate of inflation, for the purpose of equating nominal amounts over time.

2. The expected number of specified consumers in respect of each reference period.

3. The expected electricity consumption rates in respect of each reference period.

4. Such other assumptions as may be prescribed.

Minister to provide amount to Financial Services Manager

(4) The Minister shall provide the fair allocation amount in respect of each reference period to the Financial Services Manager.

Recalculation

(5) A calculation of the fair allocation amount under this Part may be changed by such person as may be prescribed in accordance with such requirements as may be prescribed.

Same

(6) No change under subsection (5) shall affect any clean energy adjustment that has already been determined under section 15 or any funding obligations that have already been incurred before the change.

Information

(7) The Minister, the IESO, the Financial Services Manager, the Board and electricity vendors shall provide such information as may be prescribed in accordance with the regulations for the purposes of facilitating a change to a calculation of the fair allocation amount.

FINANCING PLAN

Financial Services Manager to prepare Financing Plan

21. (1) The Financial Services Manager shall prepare a written plan entitled the Financing Plan to be used by the Financial Services Manager to evaluate whether potential funding obligations should be incurred for the purposes of acquiring and financing an investment asset in accordance with this Act or for the purposes of a refinancing.

Plan to be provided to Minister

(2) The Financial Services Manager shall provide the Financing Plan to the Minister.

Principles

(3) In preparing the Financing Plan, the Financial Services Manager shall have regard to the following principles:

1. Funding obligations should be incurred such that, along with any funding obligations already incurred, the estimated finance amount that would, subject to any refinancing, become due and payable during a reference period will reasonably align with the fair allocation amount determined in respect of the reference period, in each case after reducing the fair allocation amount to reflect determinations of the Board under Part II in respect of the reference period.

2. Incurrences should be implemented in a manner that, in the opinion of the Financial Services Manager, is reasonable, cost effective and that reflects prevailing market terms and conditions.

3. Reasonable assumptions should be made regarding such matters as may be prescribed.

4. Such other principles as may be prescribed.

Limitation

(4) In respect of each reference period from July 1, 2017 to April 30, 2021, no funding obligation shall be incurred that would result in amounts payable in respect of the clean energy adjustment in respect of the reference period unless,

(a) the amounts are payable in respect of a reference period in respect of which the Board has not made any determinations under Part II; or

(b) if the Board has made a determination under Part II in respect of the reference period, the funding obligations incurred would not result in amounts payable in respect of the clean energy adjustment during the reference period in an amount that exceeds the limit determined in accordance with the regulations.

Other reports

(5) The Financial Services Manager shall submit to the Minister such reports and information as the Minister may require from time to time and shall, if required by the Minister to do so, examine, report and advise on any question relating to the Financing Plan.

Amendments to plan

(6) The Financial Services Manager may amend the Financing Plan at any time.

Same

(7) In the event that the Financing Plan is amended, any reference in this Act to the Financing Plan is deemed to be a reference to the plan as amended.

Incurrence of funding obligations

22. (1) The Financial Services Manager shall ensure that funding obligations incurred for the purposes of this Act are incurred in a manner that is consistent with the applicable Financing Plan.

Financing entities

(2) In accordance with the Financing Plan, the Financial Services Manager may establish or cause to be established one or more financing entities that may incur funding obligations.

Prohibition

(3) The Financial Services Manager shall not provide for funding obligations to be incurred with any recourse to any assets of an electricity vendor, the Board, Ontario Power Generation Inc., the Province or the Lieutenant Governor in Council, except to the extent that any of these persons or entities may be liable to perform obligations or duties arising under this Act or under the express terms of a funding obligation or other agreement.

Effect of amendment to fair allocation amount

(4) Each funding obligation incurred and each transfer made by a financing entity is deemed to be consistent with the Financing Plan and to provide for the reasonable alignment of the estimated finance amount with the fair allocation amount.

Same

(5) For greater certainty, subsection (4) applies despite the failure of the Financial Services Manager to comply with subsection (1).

PART V
THE REGULATORY ASSET

IESO deferral

23. (1) The IESO deferral for each month, commencing May 1, 2017, shall be determined by the IESO in accordance with the regulations.

Same, retrospective amounts

(2) For greater certainty, the regulations may provide for the IESO deferral to include an amount that was incurred by the IESO on or after May 1, 2017 and before the day this section comes into force.

Electricity vendors to provide information

(3) Electricity vendors shall provide to the IESO such information as the IESO may reasonably request for the purposes of determining the IESO deferral under subsection (1) and such further information as may be prescribed.

Same

(4) The IESO may rely on information provided by electricity vendors for the purposes of the determination under subsection (1).

Variance account to be established, maintained

24. (1) The IESO shall establish and maintain a variance account in which it records the following:

1. The IESO deferral for each month.

2. All payments received by the IESO resulting from the exercise of the right of recovery under section 25 and any transfer under section 26.

3. Such other adjustments as may be prescribed, including adjustments in respect of the period that commences on or after May 1, 2017 and before the day this section comes into force.

Recording determinative

(2) Subject to the correction of any obvious error by the IESO, its recording of the balance in the variance account is determinative of the balance as of the time of the recording.

Rights of investment interest owner

(3) No change made by the IESO to the balance in the variance account shall, if the previous balance was relied upon by an investment interest owner in the context of a transfer under section 26, affect the rights acquired by the investment interest owner under the transfer.

Regulatory asset established

25. (1) Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Board to set rates

(2) Subject to subsection (3), the Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for the IESO to recover the balance recorded in the variance account.

Limitation

(3) The IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2021.

Transfer of regulatory asset

26. (1) The IESO may from time to time, in accordance with this Act and the regulations, transfer a specified portion of the regulatory asset to a financing entity in accordance with this section.

Agreement

(2) An agreement between the IESO and a financing entity in relation to the transfer of a specified portion of the regulatory asset shall provide for consideration of a payment by the financing entity to the IESO in an amount equal to the amount of the specified portion.

Effect of payment

(3) Upon receipt by the IESO of the payment by the financing entity,

(a) the balance in the variance account shall be reduced by the amount of the payment;

(b) the regulatory asset shall be adjusted accordingly;

(c) the financing entity shall acquire a corresponding investment interest; and

(d) the IESO shall retain no further right, title or interest in the corresponding investment interest.

Validity of transfer

27. (1) A transfer of a specified portion of the regulatory asset under section 26 constitutes a valid and enforceable absolute assignment, conveyance and sale of the corresponding investment interest to the transferee.

Same

(2) Without limiting subsection (1), any transfer agreement that states an intention of the parties for the IESO to dispose of a specified portion of the regulatory asset and to assign, convey or sell a corresponding investment interest shall be treated for all purposes as an absolute assignment, conveyance, disposition and sale of the IESO's right to

recover the corresponding amount in the variance account and not merely as a security interest.

Deemed perfection, etc.

(3) At the time a transfer of the regulatory asset is made under section 26, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the transferee shall have priority over any liens in favour of those persons.

PART VI
THE INVESTMENT ASSET

Investment asset established

28. (1) The transfer of a specified portion of the regulatory asset under section 26 creates an investment asset or, if it is not the first transfer, adds to the investment asset.

Same

(2) Upon transfer of a specified portion of the regulatory asset under section 26 to a financing entity, the investment asset resulting from the transfer is immediately vested in the financing entity, free and clear of any adverse claim.

Investment asset, irrevocable rights and interests

29. (1) The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests of investment interest owners:

1. The right and interest to impose, invoice, collect, receive and recover the clean energy adjustment from specified consumers, including the right to determine the clean energy adjustment in accordance with this Act.

2. The right to receive, collect and recover the clean energy adjustment that is imposed, invoiced and recoverable under this Act, including any amounts in respect of the clean energy adjustment that are held by electricity vendors, the IESO and other prescribed parties.

3. All rights and entitlements under such accounts as may be prescribed by regulation and all amounts on deposit in such accounts.

4. The right to enforce the duties and obligations under this Act of each electricity vendor to impose, attribute, charge and invoice for the clean energy adjustment.

5. The right to enforce the duties and obligations under this Act of each electricity vendor and the IESO to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by any electricity vendor to recover payment of the clean energy adjustment.

6. All rights of any kind related to any of the other property rights or interests that comprise the investment interest, including any rights to receive funding rebates.

7. All revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 6, regardless of whether it is invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

Not affected by failure to impose etc. clean energy adjustment

(2) An investment interest is not affected by any failure to impose, attribute, invoice, accrue or collect amounts in respect of the clean energy adjustment.

No set off, etc.

(3) The investment asset shall not be set off,

(a) by a consumer, an electricity vendor, the IESO, an agent of the investment interest owners or an owner in the Province of a distribution system within the meaning of the *Electricity Act, 1998*;

(b) in connection with any default of a person mentioned in clause (a); or

(c) by any affiliate or successor of a person mentioned in clause (a).

Exercise of rights

(4) The rights of the investment interest owners to collect the clean energy adjustment and enforce their rights and interests in, to and in respect of the investment asset against a specified consumer shall be exercised in accordance with Part III of this Act.

Collective action required

(5) If one investment interest owner owns a right or interest in the investment asset that comprises less than the entire property right and interest constituted by the

investment asset, the right or interest shall only be enforced by the investment interest owner collectively and in coordination with all other investment interest owners, and any agreement among that collective in furtherance of the collective action shall be valid and binding on the investment interest owners as a collective in accordance with its terms.

Transfer of investment interest

30. An investment interest owner may transfer all or a portion of an investment interest to any other investment interest owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan.

Validity of transfer

31. (1) A transfer of an investment interest under this Act is a valid and enforceable sale and absolute transfer of the investment interest and confers upon the transferee a valid property right and interest in, to and under the applicable investment interest acquired in accordance with the terms of the transfer.

Same

(2) Without limiting subsection (1), a transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of an investment interest owner's right, title and interest in, to and under an investment interest, and not merely as a security interest, and upon such absolute transfer the transferor shall retain no right, title or interest in the investment interest subject to the transfer, including all rights to the investment interest arising after the transfer.

Deemed perfection, etc.

(3) At the time a transfer of an investment interest is made, the transfer shall be deemed to have been and shall be perfected as described in the *Personal Property Security Act*, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer, assignment, etc.

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer, and the property rights and interests acquired by the investment interest owner shall have priority over any liens in favour of such other persons.

Investment interest owner may grant security interest

32. (1) An investment interest owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under the investment interest to or in favour of any person to secure a funding obligation.

Validity

(2) A security interest granted under this Act shall be valid and enforceable in accordance with its terms.

Perfection and priority of security interests

(3) All provisions of the *Personal Property Security Act* shall apply to the investment asset and each investment interest on the basis that the investment asset and each investment interest is intangible personal property, except as otherwise provided for in this section, and any granting of a security interest by an investment interest owner to secure a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by registering a financing statement under that Act on that basis.

Proceeds

(4) All proceeds of an investment interest that are subject to the security interest and that are received by the investment interest owner shall immediately be subject to the security interest and shall be perfected without any physical delivery of the proceeds, registration of any financing statement or any further act.

Perfection

(5) The security interest shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may subsequently attach to the property rights and interests in the investment interest subject to the security interest, unless the person to whom the security interest has been granted consents otherwise.

Same

(6) The person to whom the security interest has been granted shall have a perfected security interest in revenues or other proceeds that are deposited in any account of any electricity vendor, an agent of an electricity vendor or other person who may have commingled such revenues or other proceeds with other funds.

Notice required

(7) The secured party shall be entitled to exercise the rights of an investment interest owner only after the secured party has given notice of the enforcement of its security interest to the IESO.

Interpretation

(8) For the purposes of this section, a security interest is perfected when it is perfected as described in the *Personal Property Security Act.*

PART VII
MISCELLANEOUS

Appointment of agent, invoicing or collection

33. (1) If a prescribed circumstance applies, the Lieutenant Governor in Council may by regulation appoint a person to carry out some or all of the obligations of an electricity vendor under this Act in the place of an electricity vendor with respect to invoicing or collection.

Same, not Crown agent

(2) For greater certainty, a person appointed under this section is not an agent of the Crown for any purpose, despite the *Crown Agency Act*.

Board's authority

34. (1) Each electricity vendor, the IESO and the Financial Services Manager shall maintain such accounts and provide such information to the Board as the Board may require for the purposes of carrying out its responsibilities under this Act, in the form and manner and within the time required by the Board.

No hearing required

(2) Despite anything to the contrary in the *Ontario Energy Board Act, 1998*, the Board may exercise any of its responsibilities under this Act without a hearing.

Sequestration

35. (1) A court in the Province may, upon application by an investment interest owner or a secured party, order the sequestration and payment of amounts in respect of the clean energy adjustment, collections or remittances, as applicable, for the benefit of the investment interest owner or secured party by any person or entity authorized to collect amounts in respect of the clean energy adjustment.

Same

(2) An order under subsection (1) does not limit any other remedies available to the applicant.

Choice of law

36. The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to a transfer under this Act or the creation of a security interest in the regulatory asset, the investment asset, the clean energy adjustment or the undertaking of the Crown under section 5 shall be the laws of the Province.

Conflict

37. The provisions of this Act and the regulations apply despite any provision of any other Act regarding the attachment, assignment or perfection, or the effect of perfection or priority of any transfer or security interest.

No further approvals, etc.

38. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required under the Financing Plan or in relation to the determination of the fair allocation amount.

Liability

39. (1) No action or other civil proceeding shall be commenced against any employee of the Province or Ontario Power Generation Inc. for any act done in good faith in the exercise or performance or the intended exercise or performance of a power or duty under this Act, the regulations or for any alleged neglect or default in the exercise or performance in good faith of such a power or duty.

Same

(2) Nothing in subsection (1) shall be read as limiting the effect of subsection 19 (1) of the *Electricity Act, 1998* or subsection 11 (1) of the *Ontario Energy Board Act, 1998.*

Same

(3) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act,* subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

References in marketing materials and offering documents

40. No person shall include, in marketing materials or offering documents relating to the financing of funding obligations, references to any rights, obligations, guarantees or undertakings arising under section 5 unless the prescribed requirements, if any, are satisfied.

Regulations

41. (1) The Lieutenant Governor in Council may make regulations in respect of the following matters:

1. Governing anything that is required or permitted to be prescribed or that is required or permitted to be done by, or in accordance with, the regulations or as authorized, specified or provided in the regulations.

2. Defining, for the purposes of a regulation, words and expressions used in this Act that are not defined in the Act.

3. Governing the incurrence of debt for the purposes of the definition of "refinancing" in subsection 1 (1).

4. Governing the inclusion of information under this Act on or with invoices, which may include requiring notice to be provided by electricity vendors to specified consumers and other prescribed persons regarding the adjustments, including providing for different requirements in different circumstances and for different classes of specified consumers.

5. Governing the inclusion of information about the clean energy adjustment and any other matters provided for under this Act on or with invoices issued to specified consumers, including the form that the information must take and the form of the invoices and the form of any notice to be provided to the specified consumer under this Act.

6. Governing the manner by which invoices or notices provided for under this Act are to be provided to specified consumers and other prescribed persons.

7. Providing for a right of compensation for investment interest owners affected by a breach under section 29 and the manner in which such a right may be enforced under this Act.

8. Prescribing the time within which any action required by this Act may be required to be done.

9. Providing for such other matters as the Lieutenant Governor in Council considers advisable to carry out the purpose of this Act.

Limitation

(2) Despite subsection (1) or any other Act, no regulation under this Act shall have the effect of reducing, impairing, postponing or terminating the obligations of specified consumers to pay amounts in respect of the clean energy adjustment or impairing or postponing the invoicing, collection, remittance or recovery of the clean energy adjustment.

PART VIII
AMENDMENTS TO OTHER ACTS

Electricity Act, 1998

42. (1) Subsection 6 (1) of the *Electricity Act, 1998* is amended by adding the following clause:

(q.1) to exercise the powers and rights and to perform the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and to engage in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including,

(i) entering into agreements or arrangements with any person for the purposes of the *Ontario Fair Hydro Plan Act, 2017*,

(ii) engaging in activities related to making payments to and receiving payments as contemplated under the *Ontario Fair Hydro Plan Act, 2017* and related settlement activities,

(iii) engaging in activities related to the transfer and administration of the regulatory asset created under the *Ontario Fair Hydro Plan Act, 2017*, which activities may include,

(A) incurring liabilities in relation to the regulatory asset,

(B) transferring the regulatory asset under section 26 of the *Ontario Fair Hydro Plan Act, 2017* for consideration, and

(C) acting as a recovery agent under the *Ontario Fair Hydro Plan Act, 2017*;

(2) Subsection 25.33 (1) of the Act is amended by striking out "and" at the end of clause (a), by adding "and" at the end of clause (b) and by adding the following clause:

(c) such amounts as may be prescribed that are paid or incurred by the IESO in relation to the *Ontario Fair Hydro Plan Act, 2017*.

(3) Subsection 25.33 (2) of the Act is amended by striking out "and" at the end of clause (a), by adding "and" at the end of clause (b) and by adding the following clause:

(c) such amounts as may be prescribed that are paid or incurred by the IESO in relation to the *Ontario Fair Hydro Plan Act, 2017*.

(4) Clause 25.33 (4) (b) of the Act is amended by adding "or as may be required by a regulation made under this Act or the *Ontario Fair Hydro Plan Act, 2017*" at the end.

(5) Subsection 25.33 (5) of the Act is amended by adding "or under the *Ontario Fair Hydro Plan Act, 2017*" at the end.

(6) Section 53.1 of the Act is amended by adding the following subsections:

Same, *Ontario Fair Hydro Plan Act, 2017*

(1.1) In addition to the objects mentioned in subsection (1), the objects of Ontario Power Generation Inc. include exercising the powers and rights and performing the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and engaging in activities to facilitate the implementation of that Act, including entering into contracts and undertakings on behalf of financing entities and performing other services on behalf of financing entities, subject to the right to be paid by the financing entities for those services.

Subsidiaries, etc.

(1.2) Ontario Power Generation Inc. may create or invest in one or more subsidiaries, trusts, partnerships, limited partnerships or special purpose entities in order to more efficiently conduct its activities or achieve its objects.

Deemed assets, non-subsidiary

(1.3) Despite any other provision of this Act, the *Business Corporations Act* or any other Act, if a financing entity is not a subsidiary of Ontario Power Generation Inc.,

(a) the assets and liabilities of the financing entity shall not form part of the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries; and

(b) the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries shall not form part of the assets and liabilities of the financing entity.

Deemed assets, subsidiary

(1.4) Despite any other provision of this Act, the *Business Corporations Act* or any other Act, if a financing entity is a subsidiary of Ontario Power Generation Inc.,

(a) the assets and liabilities of that financing entity shall not form part of the assets and liabilities of Ontario Power Generation Inc. or any of its other subsidiaries; and

(b) the assets and liabilities of Ontario Power Generation Inc. or any of its other subsidiaries shall not form part of the assets and liabilities of that financing entity.

Definition, financing entity

(1.5) For the purposes of this section,

"financing entity" has the same meaning as in the *Ontario Fair Hydro Plan Act, 2017*.

Ontario Energy Board Act, 1998

43. (1) Subsection 70 (2.1) of the *Ontario Energy Board Act, 1998* is amended by adding the following paragraph:

4. The licensee is required to comply with the *Ontario Fair Hydro Plan Act, 2017*.

(2) Section 70 of the Act is amended by adding the following subsection:

Deemed condition of licences, unit sub-meter provider, *Ontario Fair Hydro Plan Act, 2017*

(2.4) Every licence issued to a unit sub-meter provider is deemed to contain the condition that the unit sub-meter provider is required to comply with the *Ontario Fair Hydro Plan Act, 2017* and the regulations made under it.

(3) Section 78.1 of the Act is amended by adding the following subsections:

Same, limitation re Ontario Power Generation Inc.

(3) The determination of a payment to Ontario Power Generation Inc. under this section shall not include any consideration of amounts related to activities of Ontario Power Generation Inc. carried out in relation to the *Ontario Fair Hydro Plan Act, 2017*.

Same

(3.1) The amounts referred to in subsection (3) include, without limitation, the following:

1. Amounts related to the appointment of Ontario Power Generation Inc. as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

2. Amounts related to the charging of fees for performing duties as the Financial Services Manager.

3. Amounts related to exercising the powers and performing the duties of the Financial Services Manager.

4. Amounts related to the consolidation of the assets and liabilities for accounting purposes of any special purpose financing entities established under and for the purposes of that Act.

(4) Subsection 79.16 (3) of the Act is repealed.

PART IX
COMMENCEMENT AND SHORT TITLE

Commencement

44. This Schedule comes into force on the day the *Fair Hydro Act, 2017 receives* Royal Assent.

Short title

45. The short title of the Act set out in this Schedule is the *Ontario Fair Hydro Plan Act, 2017*.

SCHEDULE 2
AMENDMENTS TO THE ONTARIO ENERGY BOARD ACT, 1998

1. (1) Subsection 79 (4) of the *Ontario Energy Board Act, 1998* is repealed and the following substituted:

Liability

(4) All consumers are required, in accordance with the regulations, to contribute towards the amount of any compensation required under subsection (3) that is not otherwise provided under subsection (4.1).

Payments for certain classes

(4.1) Compensation required under subsection (3) may be provided with respect to one or more prescribed classes of consumers who receive rate protection under this section, in a manner provided for in the regulations.

Money appropriated by the Legislature

(4.2) The compensation provided for in subsection (4.1) shall be paid for out of the money appropriated for those purposes by the Legislature.

Information, etc.

(4.3) If provided for in the regulations, the Board, the IESO and distributors, or any of them, shall provide such information and reports to the Ministry of Energy and to one another as are necessary to facilitate the implementation, administration, funding and delivery of the rate protection or of anything else provided for in this section.

(2) Clause 79 (5) (e) of the Act is repealed and the following substituted:

(e) prescribing rules respecting the amounts that must be collected to compensate distributors, taking into account any compensation provided under subsection (4.1), including rules,

(i) respecting the calculation of those amounts,

(ii) respecting the calculation of any off-set to the liability of consumers under subsection (3) having regard to those amounts,

(iii) establishing the time and manner of collection,

(iv) requiring the amounts to be paid in instalments and requiring the payment of interest or penalties on late payments,

(v) prescribing methods of ensuring that the amounts required cannot be bypassed, and

(vi) respecting the distribution of those amounts to consumers;

(e.1) prescribing classes of consumers for the purposes of subsection (4.1), and governing how and when the compensation is to be provided with respect to the rate protection provided to them, including, without restricting the generality of the foregoing, requiring the IESO to receive payments or amounts from the Minister of Energy and to make payments to licensed distributors or to prescribed persons and prescribing how and when payments are to be made;

2. Section 79.2 of the Act is repealed and the following substituted:

Rate assistance

79.2 (1) The Minister shall make provision for rate assistance for rate-assisted consumers having regard to their economic circumstances, and where the Minister makes such provision, shall do so out of the money provided for in subsection (4).

OESP

(2) The program known as the "Ontario Electricity Support Program" in English and "Programme ontarien d'aide relative aux frais d'électricité" in French is continued for the purpose of providing rate assistance to rate-assisted consumers having regard to their economic circumstances.

Administered by Board

(3) The Ontario Electricity Support Program shall be administered by the Board, or when the regulations so provide, by a Minister of the Crown or other entity provided for in the regulations.

Money appropriated by the Legislature

(4) The money required for the purposes of the Ontario Electricity Support Program shall be paid out of the money appropriated for those purposes by the Legislature, once the amounts recorded in the variance account referred to in subsection (5) are no longer sufficient to provide for the funding of the program when taken on their own.

Variance account

(5) The money required for the purposes of the Ontario Electricity Support Program shall be provided out of the credit balance in the variance account maintained by the IESO under the Program as it existed before the coming into force of section 2 of Schedule 2 to the *Fair Hydro Act, 2017* until the amounts recorded in the account are no longer sufficient, when taken on their own, to fund the Program.

Variance account depleted

(6) The IESO shall provide the Ministry of Energy with advance notice, on a timely basis, of the time the IESO estimates that the amounts reflected in the variance account would be less than the amount required to meet its obligations related to funding the Ontario Electricity Support Program for the upcoming month.

How provided

(7) Rate assistance provided under this section shall be provided with respect to consumers prescribed in the regulations, and shall be provided at the times provided for in the regulations and in the amounts and in the manner provided for in the regulations.

Payments with respect to prior use

(8) The regulations may require provision of rate assistance to prescribed classes of rate-assisted consumers with respect to electricity consumed during a period prior to the date of the making of the regulation, but no such rate assistance shall be required under the regulations with respect to electricity consumed before January 1, 2016.

Transitional

(9) The regulations may require the provision of rate assistance for a rate-assisted consumer with respect to a period prior to the date on which the consumer became a rate-assisted consumer if the consumer meets all of the criteria prescribed by the regulations.

Distributors, etc.

(10) A distributor, a unit sub-meter provider and any other person or entity that may be prescribed is entitled to be compensated from the money referred to in subsection (4) or subsection (5), as the case may be, for any lost revenue resulting from the provision of rate assistance under the Ontario Electricity Support Program.

Deemed licence conditions, IESO, settlements, payments, etc.

(11) Every licence issued to the IESO, a distributor or unit sub-meter provider or a retailer of electricity shall be deemed to contain conditions requiring the licensee to do anything necessary to implement and administer the provision of rate assistance under this section as may be required by the regulations or the Board, including requirements with respect to,

(a) making payments to the IESO, distributors, unit sub-meter providers and other persons and entities identified by the regulations;

(b) receiving payments or other amounts from the IESO, distributors, unit sub-meter providers and other persons and entities identified by the Minister;

(c) requiring licensees to pass any rate assistance provided for under this section through to rate-assisted consumers in the manner provided for in the regulations;

(d) engaging in settlement activities;

(e) providing information to and receiving information from the Ministry of Energy, the Board, the IESO, distributors, unit sub-meter providers, retailers of electricity and any other prescribed persons and entities in the time and in the manner provided for by the Board or as may be prescribed; and

(f) entering into agreements or arrangements with licensees and other persons.

Information, etc.

(12) If provided for in the regulations, the Board, the IESO, distributors, retailers of electricity and unit sub-meter providers, or any of them, shall provide such information and reports to the Ministry of Energy and to one another as are necessary to facilitate the implementation, administration, funding and delivery of rate-assistance or of anything else required under this section.

Conflicts, etc.

(13) Where any conflict exists between an order of the Board, a code issued by the Board or a licence condition and this section or a regulation made under this section, this section or the regulation made under this section shall prevail to the extent of the conflict.

Regulations

(14**)** The Lieutenant Governor in Council may make regulations governing anything dealt with in this section and without limiting the generality of the foregoing, may make regulations,

(a) governing anything that is described in this section as being prescribed or as being provided for in the regulations or that is required to be done in accordance with the regulations;

(b) governing the time or times at which rate assistance shall be paid or become payable to rate-assisted consumers;

(c) governing the determination of classes of consumers who are rate-assisted consumers, including providing for different classes of rate-assisted consumers;

(d) requiring that certain costs and expenditures related to the Ontario Electricity Support Program be only incurred with the prior approval of the Minister, and governing those costs and expenditures;

(e) establishing rules for the calculation of the amount of the rate assistance to be provided;

(f) governing payments under this section, including determining the method or methods of calculating the amount of rate assistance to be provided;

(g) setting maximum amounts of the total annual value of rate assistance that may be provided;

(h) requiring a distributor, the IESO or a unit sub-meter provider or other prescribed person or entity to make or receive payments in respect of rate assistance, including requiring them to make or receive payments directly to or from the Ministry of Energy or to receive overpayments directly or indirectly from consumers or other persons entitled to receive the rate assistance and prescribing the circumstances in which such payments are to be made and received and such overpayments are to be received as well as methods for determining the amounts payable or to be received;

(i) requiring the IESO to receive payments from the Minister and requiring the IESO to make payments to the Board, to licensed distributors, to unit sub-meter providers or to prescribed persons, in respect of the rate assistance provided under this section and governing methods for determining the amounts payable;

(j) governing the Board's or other prescribed entity's administration and program-related costs in administering the Ontario Electricity Support Program;

(k) governing transitional matters arising from the changes made to the Ontario Electricity Support Program as a result of the enactment of the *Fair Hydro Act, 2017*.

Retroactivity

(15) A regulation made under this section is, if it so provides, effective with reference to a period before it is filed.

General or particular

(16) A regulation under this section may be general or particular in application, may provide for different classes of persons and entities and may prescribe different rules for different persons or entities or different classes of persons or entities.

Verification of eligibility

(17) Section 11 of the *Ministry of Revenue Act* applies with respect to the Ontario Electricity Support Program as a government assistance program administered by the Board.

Definitions

(18) In this section,

"Government assistance program" has the meaning provided for in subsection 11 (2) of the *Ministry of Revenue Act*; ("programme d'aide gouvernementale")

"rate-assisted consumer" means a consumer referred to in subsection (7). ("consommateur admissible à l'aide tarifaire")

3. The Act is amended by adding the following section:

Confidentiality, information sharing, etc.

79.2.1 (1) For the purposes of section 79.2, the Board or the Minister or entity having responsibility for administering the Ontario Electricity Support Program may enter into an agreement with the Minister of Community and Social Services to provide the services to the public listed in subsection (2) on behalf of the Board, Minister or the entity, as the case may be, in relation to the administration of the Ontario Electricity Support Program.

Agreement, etc.

(2) The services that may be included in an agreement referred to in subsection (1) are the following:

1. Providing documents and information about the Ontario Electricity Support Program.

2. Processing applications for the Ontario Electricity Support Program.

Arrangements with others

(3) The Minister of Community and Social Services may arrange with another person or entity to provide, on behalf of that Minister, services that that Minister is authorized to provide under an agreement referred to in subsection (1).

Personal information

(4) The Minister of Community and Social Services is authorized to collect, use, disclose and retain personal information necessary to provide the services authorized by

an agreement referred to in subsection (1), but shall not collect, use, disclose or retain more personal information than is reasonably necessary to provide the services.

Limitation

(5) Except where otherwise authorized under subsection (7), the Minister of Community and Social Services shall not collect, use, disclose or retain personal information provided for in subsection (4) without the consent of the individual to whom the information relates.

Duty to transfer personal information

(6) The Minister of Community and Social Services shall transfer an individual's personal information provided for in subsection (4) into the control of the Board, Minister or entity responsible for administering the Ontario Electricity Support Program promptly after processing an application for the Ontario Electricity Support Program, but may retain such personal information as is reasonably necessary to confirm that an individual has been provided a service.

Use of personal information, etc.

(7) The Minister of Community and Social Services may use personal information maintained by that Minister in connection with the administration of the Ontario Disability Support Program and the program established pursuant to the *Ontario Works Act, 1997*, for the purpose of identifying and contacting individuals eligible for the rate assistance provided under the Ontario Electricity Support Program, and to provide services authorized under an agreement referred to in subsection (1).

Deemed compliance

(8) The use of personal information as allowed by subsection (7) is deemed to comply with section 41 of the *Freedom of Information and Protection of Privacy Act*.

Disclosure of list

(9) In order to assist the Minister of Community and Social Services to identify individuals eligible for rate assistance, the Board or the Minister or entity having responsibility for administering the Ontario Electricity Support Program shall, as soon as practicable after the coming into force of this section, disclose to the Minister of Community and Social Services a list of individuals who are enrolled in the Ontario Electricity Support Program, together with their mailing address and other contact information.

Use of list

(10) The Minister of Community and Social Services may use the information on the list provided under subsection (9) to determine whether an individual who is currently enrolled in the Ontario Disability Support Program or the program established under the *Ontario Works Act, 1997* is also enrolled in the Ontario Electricity Support Program.

Destruction of list

(11) The Minister of Community and Social Services shall destroy the list provided under subsection (9) no later than one year after receiving the list.

Notification about the management of personal information

(12) The Minister of Community and Social Services shall ensure that a notice is published on a website describing,

(a) the purpose for which that Minister collects, uses, discloses and retains personal information in connection with the Ontario Electricity Support Program;

(b) the types of personal information that may be collected, used, disclosed and retained in connection with the Ontario Electricity Support Program, and the circumstances in which the personal information may be collected, used, disclosed and retained in connection with that Program; and

(c) the title, and contact information, including an email address, of an employee who can answer an individual's questions about the use of the personal information under this section.

4. The Act is amended by adding the following sections:

Distribution rate-protected consumers

79.3 (1) The Minister shall provide for distribution rate protection to distribution rate-protected residential consumers having regard to the costs of the distribution of electricity to such consumers with respect to electricity consumed on or after the date prescribed by the regulations.

Money appropriated by the Legislature

(2) The money required for the purposes of the provision of distribution rate protection under this section shall be paid out of the money appropriated for those purposes by the Legislature.

Maximum charge

(3) Despite any order of the Board, or anything else under this Act, where the regulations so provide, a prescribed distributor who distributes electricity to distribution rate-protected residential consumers shall not charge those consumers, or a prescribed class of those consumers, any amount for monthly base distribution charges more than,

(a) the maximum amount for the charge that is provided for in the regulations; or

(b) the amount determined by the Board after applying any calculations, processes or methods provided for in the regulations.

Distributors

(4) A distributor who is prescribed under this section is entitled to be compensated from the money referred to in subsection (2) for lost revenue resulting from the provision of the distribution rate protection to distribution rate-protected residential consumers under this section.

Information, etc.

(5) If provided for in the regulations, the Board, the IESO and distributors, or any of them shall provide such information and reports to the Ministry of Energy and to one another as are necessary to facilitate the implementation, administration, funding and delivery of distribution rate protection or of anything else required under this section.

Limitation periods for distribution rate protection, consumer

(6) Despite any past entitlement of a consumer who is eligible to distribution rate protection under this section, no distribution rate protection is payable to a consumer after a limitation period prescribed by the regulations in respect of the consumer, other than in such circumstances as may be prescribed by the regulations.

Limitation, reimbursement of distributor, etc.

(7) Despite any requirement under this Act to reimburse a prescribed distributor or other person for distribution rate protection provided by them to distribution rate-protected residential consumers under this section, no amounts for reimbursement are payable to the prescribed distributor or other person after a limitation period prescribed by the regulations in respect of the prescribed distributor or other person, where such reimbursement is based on a consumer's past entitlement under this section which has not yet been paid or reimbursed under this section, other than in such circumstances as may be prescribed by the regulations.

Transitional

(8) If, for technical or operational reasons, a distributor referred to in subsection (3) is unable to adapt its invoices to comply with this section and the regulations by the time it issues its first invoice for electricity consumed after the prescribed date in respect of an account of a consumer who is eligible for distribution rate protection under this section,

(a) the distributor shall adapt its invoices as soon as possible and, in any event, no later than a date prescribed in the regulations; and

(b) consumers continue to be entitled to receive the distribution rate protection to which they are entitled under this Act and may receive it as a lump sum credit

on the invoice for the first billing period after the invoices have been adapted or by such other means as may be prescribed by the regulations.

Regulations

(9) The Lieutenant Governor in Council may make regulations,

(a) prescribing consumers or classes of consumers as distribution rate-protected residential consumers for the purposes of this section;

(b) prescribing dates for the purposes of subsections (1) and (8);

(c) prescribing distributors for the purposes of this section;

(d) governing anything that is described in this section as being prescribed or as being provided for in the regulations or that is required to be done in accordance with the regulations;

(e) governing the provision of distribution rate protection by the Minister in respect of distribution rate-protected residential consumers under this section including determining the method or methods of calculating the amount of rate protection to be provided;

(f) requiring the IESO to receive payments from the Minister and to make payments to licensed distributors, or to persons prescribed by the regulations, in respect of the distribution rate protection provided for under this section and prescribing methods for determining the amounts payable to distributors or distribution rate-protected residential consumers in respect of that protection.

Interpretation

(10) In this section,

"distribution rate-protected residential consumer" has the meaning provided for in the regulations; ("consommateur résidentiel protégé contre les frais de distribution")

"monthly base distribution charges" has the meaning provided for in the regulations. ("frais de distribution mensuels de base")

Delivery credit for on-reserve consumers

79.4 (1) The Minister shall provide a delivery credit to on-reserve consumers who meet the criteria prescribed under this section with respect to electricity consumed on or after the date prescribed by the regulations.

Money appropriated by the Legislature

(2) The money required for the purposes of the provision of the credits required under this section shall be paid out of the money appropriated for those purposes by the Legislature.

Eligible costs

(3) The eligible costs for the delivery credit referred to in subsection (1) are,

(a) the sum of the following charges for which the consumer would otherwise be liable,

(i) all variable and fixed distribution charges,

(ii) all charges based on the retail transmission network service rate,

(iii) all charges based on the retail transmission connection service rate,

(iv) all charges related to losses incurred in the distribution of electricity, except for such amounts that are included in regulatory charges provided for in the regulations, and

(v) any other charges that may be prescribed in the regulations; or

(b) where no separate charges for delivery are provided for by the distributor or other person or entity that may be prescribed in the regulations, the monthly service charge or such other amount as may be prescribed for or in respect of a prescribed distributor.

Delivery credit

(4) A distributor, person or entity shall, unless the regulations provide otherwise, provide the delivery credit referred to in subsection (1) by crediting the account of an on-reserve consumer.

Same

(5) The regulations may require that distributors and any other persons or entities provide a delivery credit to an on-reserve consumer who is entitled to a delivery credit under subsection (1) in such manner or in accordance with such methods as may be prescribed.

Same

(6) A distributor or any person or entity as may be prescribed is entitled to be compensated from the money referred to in subsection (2) for any lost revenue resulting from the provision of the delivery credits under this section.

Information, etc.

(7) If provided for in the regulations, the Board, the IESO and distributors, and other persons or entities, or any of them, shall provide such information and reports to the Ministry of Energy and to one another as are necessary to facilitate the implementation, administration, funding and delivery of the delivery credits or of anything else required under this section.

Limitation periods for delivery credit, consumer

(8) Despite any past entitlement of an on-reserve consumer who is eligible for a delivery credit under this section, no delivery credit is payable to an on-reserve consumer after a limitation period prescribed by the regulations in respect of the on-reserve consumer, other than in such circumstances as may be prescribed by the regulations.

Limitation, reimbursement of distributor, etc.

(9) Despite any requirement under this Act to reimburse a distributor or other persons or entities for delivery credits provided by them to on-reserve consumers under this section, no amounts for reimbursement are payable to the distributor or other persons or entities after a limitation period prescribed by the regulations in respect of the distributor or other persons or entities, where such reimbursement is based on an on-reserve consumer's past entitlement under this section which has not yet been paid or reimbursed under this section, other than in such circumstances as may be prescribed by the regulations.

Transitional

(10) If, for technical or operational reasons, a distributor referred to in subsection (4) is unable to adapt its invoices to comply with this section and the regulations by the time it issues its first invoice for electricity consumed after the prescribed date in respect of an eligible account,

(a) the distributor shall adapt its invoices as soon as possible and, in any event, no later than a date prescribed in the regulations; and

(b) on-reserve consumers continue to be entitled to receive the delivery credit to which they are entitled under this Act and may receive it as a lump sum credit on the invoice for the first billing period after the invoices have been adapted or by such other means as may be prescribed by the regulations.

Regulations

(11) The Lieutenant Governor in Council may make regulations,

(a) governing who is an on-reserve consumer for the purposes of this section and, without limiting the generality of the foregoing, may provide that consumers

who occupy certain areas are on-reserve consumers, and may do so without regard to whether those areas constitute a "reserve" under any other Act or law;

(b) prescribing dates for the purposes of subsections (1) and (10);

(c) governing provision of the delivery credits provided to on-reserve consumers under this section and, without restricting the generality of the foregoing, governing anything that under this section is to be prescribed or provided for in the regulations, or that is to be done in accordance with the regulations;

(d) determining the method or methods of calculating the amount of the delivery credits to be provided by the Minister in respect of on-reserve consumers under this section;

(e) requiring the IESO to make and receive payments to and from the Minister and to make payments to licensed distributors, or to persons prescribed by the regulations, in respect of the delivery credits provided for under this section and prescribing methods for determining the amounts payable to distributors or on-reserve consumers in respect of the credits provided.

Interpretation

(12) In this section,

"on-reserve consumer" has the meaning provided for in the regulations.

Application

79.5 Sections 79.6 through 79.11 apply to the programs provided for under sections 79, 79.2, 79.3 and 79.4 to the extent that they are funded by money appropriated for those purposes by the Legislature.

Definition

79.6 In sections 79.7 to 79.11,

"Finance Minister" means the Minister of Finance or such other member of the Executive Council to whom the administration of those sections is assigned under the *Executive Council Act*.

Records

79.7 (1) Every distributor and every other person prescribed by regulation shall keep at a location in Ontario such records as are necessary to determine and verify compliance with sections 79, 79.2, 79.3 and 79.4 and the regulations associated with them and any records required by those regulations to be kept.

Electronic records

(2) If a person keeps records in an electronic form, the person shall ensure that, from the time the records are first made and for as long as they are required to be retained,

(a) they remain complete and unaltered, apart from any changes or additions made in the normal course of communication, storage or display; and

(b) they are capable of being printed and of being produced in electronically readable format for inspection, examination or audit.

Retention of records

(3) Records required to be kept under subsection (1) shall not be destroyed unless authorization has been given in writing by the Finance Minister.

Offence

(4) Every person who fails to keep records in accordance with this section is guilty of an offence and, on conviction, is liable to a fine of not less than $50 and not more than $5,000.

Inspections and inquiries

79.8 (1) The Finance Minister may appoint one or more inspectors who are authorized to exercise any of the powers and perform any of the duties of a person authorized by the Minister under subsection 31 (1) of the *Retail Sales Tax Act* for any purpose related to the administration and enforcement of sections 79, 79.2, 79.3 and 79.4 of this Act.

Same

(2) Subsections 31 (1), (2), (2.1) and (2.2) of the *Retail Sales Tax Act* apply, with necessary modifications, with respect to the administration and enforcement of sections 79, 79.2, 79.3 and 79.4 of this Act.

Admission of evidence

(3) The Finance Minister, or a person authorized by the Finance Minister, may, for any purpose related to the administration of sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them, reproduce from original data stored electronically any information previously submitted as required under those sections or regulations in any form by any person, and the electronically reproduced document shall be admissible in evidence and shall have the same probative force as the original document would have had if it had been proved in the ordinary way.

Inquiry

(4) The Finance Minister may, for any purpose related to the administration of sections 79, 79.2, 79.3 and 79.4 of this Act or the regulations made in association with

them, authorize any person, whether or not the person is an employee in the Ministry of the Finance Minister, to make such inquiry as the Finance Minister considers necessary with reference to anything relating to the administration of this Act or the regulations.

Copies

(5) If a book, record or other document is examined or produced under this section, the person by whom it is examined or to whom it is produced or any officer of the Ministry may make, or cause to be made, one or more copies of it, and a document purporting to be certified by the person to be a copy made pursuant to this section is admissible in evidence and has the same probative force as the original document would have if proved in the ordinary way.

Compliance

(6) No person shall hinder or molest or interfere with any person doing anything that the person is authorized by this section to do or prevent or attempt to prevent any person doing any such thing.

Same

(7) Despite any other law to the contrary, every person shall, unless the person is unable to do so, do everything the person is required by this section to do.

Administration of oaths

(8) Declarations or affidavits in connection with statements of information submitted pursuant to this section may be taken before any person having authority to administer an oath or before any person specially authorized for that purpose by the Lieutenant Governor in Council, but any person so specially authorized shall not charge any fee for doing so.

Application of *Public Inquiries Act, 2009*

(9) Section 33 of the *Public Inquiries Act, 2009* applies to an inquiry under subsection (4).

Recovery of overpayments

Definitions

79.9 (1) In this section,

"inspector" means an inspector referred to in section 79.8; ("inspecteur")

"overpayment" means an amount received by a person in excess of that to which the person is entitled under sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them. ("trop-perçu")

Notice of overpayment

(2) If it appears to an inspector that a person has received an overpayment, the Finance Minister may send a written notice to the person advising the person of the following:

1. That the person has received an overpayment.

2. The amount of the overpayment and how it was calculated.

3. The required steps to be taken by the person with respect to the overpayment.

4. The date, not more than six months after the date of the notice, by which these steps must be completed.

5. That the Finance Minister has the authority to assess the person for the amount of the overpayment, plus interest, if the person fails to complete the required steps by the specified date.

Calculation of amount of overpayment

(3) For the purposes of this section, an inspector shall calculate an overpayment or the outstanding balance of an overpayment in the manner and form and using such procedures as the Finance Minister considers adequate and expedient.

Assessment

(4) If a person fails to complete the steps required in a notice under subsection (2) within the time specified in the notice, and any additional time requested by the person and permitted by the Finance Minister, the Finance Minister may assess or reassess the amount of the overpayment, or the outstanding balance of the overpayment, based on the inspector's calculation described in subsection (3).

Penalty

(5) If the Finance Minister makes an assessment or reassessment under subsection (4) and is satisfied that the person's non-compliance with the required steps in the notice was attributable to neglect, carelessness, wilful default or fraud, the Finance Minister may assess a penalty against the person equal to the outstanding balance of the overpayment when the penalty is assessed.

Time limit

(6) The Finance Minister shall not assess or reassess under subsection (4) more than 48 months after the end of the month in which the person received the overpayment.

Exception, where misrepresentation, etc.

(7) Subsection (6) does not apply if the Finance Minister establishes that the person has made a misrepresentation that is attributable to neglect, carelessness or wilful default or has committed any fraud in supplying information under this Act or the regulations or in omitting to disclose information.

Deeming

(8) An amount assessed or reassessed by the Finance Minister under this section is deemed, for the purposes of the administration and enforcement of this Act, to be a debt retirement charge owing and payable, as defined in subsection 85 (1) of the *Electricity Act, 1998,* that has been collected, on the last day of the month in which the person received the overpayment, by the person as a collector appointed under subsection 85.3 (1) of the *Electricity Act, 1998* and, for those purposes,

(a) sections 85.11, 85.12, 85.14, 85.17 and 85.30 of that Act apply with necessary modifications;

(b) in the application of sections 85.11 and 85.14 of that Act and without limiting the generality of clause (a) of this subsection, references to the Financial Corporation are read as references to the Minister of Finance and references to the Minister of Finance are read as references to the Finance Minister as defined in section 79.6 of this Act;

(c) the regulations made under that Act for the purposes of calculating the rate or rates of interest payable under section 85.11 of that Act and the manner of calculating the amount of interest apply with necessary modifications; and

(d) sections 23 and 36, subsections 37 (1), (1.1) and (2) and sections 37.1, 38 and 39 of the *Retail Sales Tax Act* apply with necessary modifications.

Disposition of repaid amounts

(9) If all or part of an overpayment is repaid to the Finance Minister, the Minister of Energy shall make such financial arrangements and payments as may be necessary to ensure that any person entitled to all or part of the overpayment receives the appropriate amount.

Confidentiality

79.10 (1) Except as authorized by this section, no person employed by the Government of Ontario shall,

(a) knowingly communicate or knowingly allow to be communicated to any person any information obtained by or on behalf of the Minister of Energy or

the Finance Minister for the purposes of sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them; or

(b) knowingly allow any person to inspect or to have access to any record or thing obtained by or on behalf of either Minister for the purposes of this Act.

Testimony

(2) No person employed by the Government of Ontario shall be required, in connection with any legal proceedings,

(a) to give evidence relating to any information obtained by or on behalf of the Minister of Energy or Finance Minister for the purposes of this Act; or

(b) to produce any record or thing obtained by or on behalf of either Minister for the purposes of this Act.

Exception

(3) Subsections (1) and (2) do not apply in respect of,

(a) criminal proceedings under any Act of the Parliament of Canada;

(b) proceedings in respect of the trial of any person for an offence under an Act of the Legislature; or

(c) proceedings relating to the administration or enforcement of this Act or Part V.1 or VI of the *Electricity Act, 1998*.

Communication

(4) A person employed by the Government of Ontario may, in the course of duties in connection with the administration or enforcement of sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them,

(a) communicate or allow to be communicated to another person employed by the Government of Ontario in the administration or enforcement of any law or to an employee of the Board information obtained by or on behalf of either Minister for the purposes of sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them; and

(b) allow another person employed by the Government of Ontario in the administration or enforcement of any law or an employee of the Board to inspect or have access to any record or thing obtained by or on behalf of either Minister for the purposes of sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them.

Reciprocal communication

(5) A person who receives information or obtains access to any record or thing under subsection (4) has a duty to communicate or furnish to that Minister on a reciprocal basis any information, record or thing obtained by the person that affects the administration or enforcement of this Act.

Use of information

(6) Any information, record or thing communicated or furnished under this section may be used only for the administration or enforcement of sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them or an Act that is administered or enforced by the person receiving the information, record or thing.

Same

(7) The Finance Minister may permit information or a copy of any record or thing obtained by or on behalf of the Finance Minister for the purposes of sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them to be given to,

(a) the person from whom the information, record or thing was obtained;

(b) any person by whom an amount is payable or has been paid under sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them; or

(c) the legal representative of a person mentioned in clause (a) or (b) or the agent of the person authorized in writing in that behalf.

Information

(8) The Finance Minister may permit information or a copy of any record or thing obtained by or on behalf of the Finance Minister for the purposes of sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them to be given to any person employed by any government if,

(a) the information, record or thing obtained by that government for the purpose of any Act that imposes a tax or duty are communicated or furnished on a reciprocal basis to the Minister; and

(b) the information, record or thing will not be used for any purpose other than the administration or enforcement of a law that provides for the imposition of a tax or duty.

Offence

(9) Every person who contravenes any provision of this section is guilty of an offence and on conviction is liable to a fine of not more than $2,000.

Offences

False statements, etc., and fraud

79.11 (1) Every person who engages in any of the following acts or omissions is guilty of an offence:

1. Making, participating in, assenting to or acquiescing in the making of a false or deceptive statement in any document or answer required or submitted under sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them.

2. Destroying, altering, mutilating, hiding or otherwise disposing of information or records of any person, for the purpose of evading compliance with sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them.

3. Making, assenting to or acquiescing in the making of a false or deceptive entry of a material particular in a record of any person required to maintain records for the purposes of sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them.

4. Omitting to make or assenting to or acquiescing in the omission of an entry of a material particular in a record of any person required to maintain records for the purposes of sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them.

5. Wilfully evading or attempting to evade, in any manner, compliance with an obligation under sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them.

Penalty upon conviction

(2) A person convicted of an offence under subsection (1) is liable to either or both of the following penalties in addition to any other penalty assessed under this Act:

1. A fine in an amount that is not less than $1,000 and not more than $10,000.

2. Imprisonment for a term of not more than two years.

General offence

(3) Every person who contravenes, by any act or omission, any other requirement imposed under sections 79, 79.2, 79.3 and 79.4 is guilty of an offence and, on conviction, is liable, where no other penalty is provided for the offence, to a fine of not less than $50 and not more than $5,000.

Limitation period

(4) A proceeding to prosecute an offence provided for in this section must be commenced within six years after the date on which the matter of the offence arose.

Payment of fines

(5) Fines imposed on conviction of an offence provided for in this section are payable to the Finance Minister on behalf of the Crown in right of Ontario.

Commencement

5. (1) Subject to subsection (2), this Schedule comes into force on the day the *Fair Hydro Act, 2017* receives Royal Assent.

(2) Section 2 comes into force on a day to be named by proclamation of the Lieutenant Governor.

FW_ GA Refinancing (IESO related doc).rtf

From: Virani, Shyrose (TBS) []
To: Donaldson, Mark (TBS) [Mark.Donaldson@ontario.ca]
Subject: FW: GA Refinancing (IESO related doc)
Date: Wednesday, June 20, 2018 15:05:08

Should I set something up?

-----Original Message-----
From: Donaldson, Mark (TBS)
Sent: June 20, 2018 1:22 PM
To: Virani, Shyrose (TBS) <Shyrose.Virani@ontario.ca>
Subject: FW: GA Refinancing (IESO related doc)

From: Lee Anne Probert
Sent: June 20, 2018 1:21:37 PM (UTC-05:00) Eastern Time (US & Canada)
To: Donaldson, Mark (TBS)
Subject: RE: GA Refinancing (IESO related doc)

No problem. Can we connect sometime to catch up?

-----Original Message-----
From: Donaldson, Mark (TBS) [mailto:Mark.Donaldson@ontario.ca]
Sent: June-20-18 1:15 PM
To: Lee Anne Probert <leeanne.probert@ca.ey.com>
Subject: RE: GA Refinancing (IESO related doc)

Thank you.

From: Lee Anne Probert <leeanne.probert@ca.ey.com<mailto:leeanne.probert@ca.ey.com>>
Date: Wednesday, Jun 20, 2018, 1:14 PM
To: Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca<mailto:Mark.Donaldson@ontario.ca>>
Subject: FW: GA Refinancing (IESO related doc)

Please see below.

--
LeeAnne Probert | Senior Manager | Assurance Services

Ernst & Young LLP
Office: 416 943 3554 | leeanne.probert@ca.ey.com<mailto:leeanne.probert@ca.ey.com>
From: Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]
Sent: May-19-17 8:47 AM
To: Suzie Gignac <suzie.r.gignac@ca.ey.com>; Blake Langill <blake.w.langill@ca.ey.com>; Lee Anne Probert <leeanne.probert@ca.ey.com>
Subject: GA Refinancing (IESO related doc)

Suzie/Blake/LeeAnne,
Attached, for your reference, is the final paper related to IESO accounting (subject to change based on future Regs/Commercial Contracts, etc.).

Regards,
Nadine

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FW_ GA Refinancing (IESO related doc).rtf

From: Donaldson, Mark (TBS) []
To: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
Subject: FW: GA Refinancing (IESO related doc)
Date: Wednesday, June 20, 2018 13:21:42

_____
From: Lee Anne Probert
Sent: June 20, 2018 1:21:37 PM (UTC-05:00) Eastern Time (US & Canada)
To: Donaldson, Mark (TBS)
Subject: RE: GA Refinancing (IESO related doc)

No problem. Can we connect sometime to catch up?

-----Original Message-----
From: Donaldson, Mark (TBS) [mailto:Mark.Donaldson@ontario.ca]
Sent: June-20-18 1:15 PM
To: Lee Anne Probert <leeanne.probert@ca.ey.com>
Subject: RE: GA Refinancing (IESO related doc)

Thank you.

From: Lee Anne Probert <leeanne.probert@ca.ey.com<mailto:leeanne.probert@ca.ey.com>>
Date: Wednesday, Jun 20, 2018, 1:14 PM
To: Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca<mailto:Mark.Donaldson@ontario.ca>>
Subject: FW: GA Refinancing (IESO related doc)

Please see below.

--
LeeAnne Probert | Senior Manager | Assurance Services

Ernst & Young LLP
Office: 416 943 3554 | leeanne.probert@ca.ey.com<mailto:leeanne.probert@ca.ey.com>
From: Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]
Sent: May-19-17 8:47 AM
To: Suzie Gignac <suzie.r.gignac@ca.ey.com>; Blake Langill <blake.w.langill@ca.ey.com>; Lee Anne Probert <leeanne.probert@ca.ey.com>
Subject: GA Refinancing (IESO related doc)

Suzie/Blake/LeeAnne,
Attached, for your reference, is the final paper related to IESO accounting (subject to change based on future Regs/Commercial Contracts, etc.).
Regards,
Nadine

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son%40ontario.ca%7C66bc05eec0b8498698ff08d5d6d248b4%7Ccddc1229ac2a4b97b78a0e5cacb5865c%7C0%7C0%7C636651121016634713&sdata=WoMF2%2F6SaujcMaZQx1wWrblZyZJwVrTQRwgcHZntsDI%3D&reserved=0 To unsubscribe from commercial electronic messages / Pour vous désabonner des messages électroniques commerciaux : Unsubscribe@ca.ey.com

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FW_ GA Refinancing (IESO related doc).rtf

From: Donaldson, Mark (TBS) []
To: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
Subject: FW: GA Refinancing (IESO related doc)
Date: Wednesday, June 20, 2018 13:18:38

From: Hosick, Sarah (TBS)
Sent: June 20, 2018 1:18:38 PM (UTC-05:00) Eastern Time (US & Canada)
To: Donaldson, Mark (TBS)
Subject: RE: GA Refinancing (IESO related doc)

Thanks – do you want me to include it with the files to AG or just have it as backpocket in case they ask for it?

From: Donaldson, Mark (TBS)
Sent: June 20, 2018 1:15 PM
To: Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>
Subject: FW: GA Refinancing (IESO related doc)

From: Lee Anne Probert <leeanne.probert@ca.ey.com>

Date: Wednesday, Jun 20, 2018, 1:14 PM

To: Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>

Subject: FW: GA Refinancing (IESO related doc)

Please see below.

--

LeeAnne Probert | Senior Manager | Assurance Services

Ernst & Young LLP

Office: 416 943 3554 | leeanne.probert@ca.ey.com

From: Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]
Sent: May-19-17 8:47 AM
To: Suzie Gignac <suzie.r.gignac@ca.ey.com>; Blake Langill <blake.w.langill@ca.ey.com>; Lee Anne Probert <leeanne.probert@ca.ey.com>
Subject: GA Refinancing (IESO related doc)

Suzie/Blake/LeeAnne,

Attached, for your reference, is the final paper related to IESO accounting (subject to change based on future Regs/Commercial Contracts, etc.).

Regards,

Nadine

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FW_ GA Refinancing (IESO related doc).rtf

From: Donaldson, Mark (TBS) []
To: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
Subject: FW: GA Refinancing (IESO related doc)
Date: Wednesday, June 20, 2018 13:14:05
Attachment 1: Draft report dated May 17 2017.pdf

From: Lee Anne Probert
Sent: June 20, 2018 1:13:09 PM (UTC-05:00) Eastern Time (US & Canada)
To: Donaldson, Mark (TBS)
Subject: FW: GA Refinancing (IESO related doc)

Please see below.

--

LeeAnne Probert | Senior Manager | Assurance Services

Ernst & Young LLP

Office: 416 943 3554 | leeanne.probert@ca.ey.com

From: Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]
Sent: May-19-17 8:47 AM
To: Suzie Gignac <suzie.r.gignac@ca.ey.com>; Blake Langill <blake.w.langill@ca.ey.com>; Lee Anne Probert <leeanne.probert@ca.ey.com>
Subject: GA Refinancing (IESO related doc)

Suzie/Blake/LeeAnne,

Attached, for your reference, is the final paper related to IESO accounting (subject to change based on future Regs/Commercial Contracts, etc.).

Regards,

Nadine

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Draft report dated May 17 2017.pdf

FINAL DRAFT

KPMG Letter to the Independent Electricity System Operator

An Accounting Opinion on the Application of PSAS to the Consolidation of a Trust and to the Recognition and Derecognition of a Variance Account in Relation to Bill 132, *Ontario Fair Hydro Plan Act, 2017*

This letter has been prepared in draft form and will be updated upon receipt of the adopted legislation, if passed, (including the amendments of the Electricity Act, 1998 and the OEB Act, 1998) and finalized financial structure (including the bylaws and regulations of the Trust to be established by OPG) and other relevant agreements necessary for us to provide our final opinion, of which legislation and other relevant agreements are expected to be enacted/ finalized on or before September 30, 2017.

NOTICE OF NON RELIANCE

This Notice is regarding the accompanying Letter to provide an accounting opinion on the application of Public Sector Accounting Standards to the consolidation of a trust and to the recognition and derecognition of a variance account in relation to Bill 132, *Ontario Fair Hydro Plan Act, 2017* (the "**Letter**") prepared by KPMG LLP for the Independent Electricity System Operator ("Client").

The following terms apply to any review of the Letter and should you not agree to these terms, please do not review the Letter and delete copy of the same.

The Letter was prepared in connection with certain services we provided to the Client and should not be used for any other purpose or regarded as suitable for use by any person or persons other than the Client.

No one other than the Client is authorized by KPMG to rely upon any information or views expressed in the Letter. KPMG shall have no responsibility or liability for loss or damages or claims, if any, to or by any third party as the Letter has not been prepared for, and is not intended for, and should not be used by, any third party or for any other purpose.

KPMG in no way accepts any duty of care to you or any other person or accepts any agreement or other arrangement of a contractually binding nature between our firm and such parties.

KPMG neither warrants nor represents that the Letter is accurate, complete, sufficient or appropriate for any purpose contemplated by you or any other person or body. You shall have no right to disclose the Letter to any other party.

Yours very truly,

KPMG LLP

KPMG LLP
Chartered Accountants
Bay Adelaide Centre
Suite 4600
333 Bay Street
Toronto ON
M5H 2S5

Telephone (416) 777-8500
Fax (416) 777-8818
www.kpmg.ca

May 16, 2017

CONFIDENTIAL

120 Adelaide Street West
Suite 1600
Toronto, ON
M5H 1T1

The Board of Directors

Dear Sirs,

We have been engaged to provide you with an accounting opinion on the application of Public Sector Accounting Standards to the consolidation of a trust and to the recognition and derecognition of a variance account in relation to Bill 132, *Ontario Fair Hydro Plan* Act, 2017 as tabled in the first reading ("Bill 132") (Appendix A to this letter). This letter is being issued to the Independent Electricity System Operator ("IESO" or the "Company") in connection with its evaluation of the consolidation requirements and the accounting for the variance account under Canadian Public Sector Accounting Standards ("PSAS"). Our engagement has been conducted in accordance with generally accepted standards in Canada for such engagements.

The ultimate responsibility for the decision on the appropriate application of PSAS for the specific issues described below rests with management of the Company as preparers of the financial statements.

The adoption of Bill 132 (including the subsequent amendments of the Electricity Act, 1998 ("the Electricity Act") and the Ontario Energy Board ("OEB" or the "Board") Act, 1998 ("the OEB Act")), and the finalization of the financing structure (including the bylaws and regulations of the trust to be established by OPG) and other agreements will take several months. Accordingly, our judgment on the appropriate application of PSAS for the specific matters described below is based on the facts, circumstances and assumptions provided to us. The finalization of the legislation, regulations, financing structure and other agreements may impact the comments and conclusions set out herein. Our comments and conclusions are based on Bill 132 and related matters as they exist at the date of this letter.

The following three issues are addressed in this letter:

Issue #1: Can the IESO recognize a regulatory asset related to the variance account created by Bill 132?

Issue #2: Is the trust to be established by Ontario Power Generation (the "OPG Trust") controlled by the IESO according to the guidance issued under PSAS 1300 *Government Reporting Entity* and therefore subject to consolidation by IESO?

KPMG LLP is a Canadian limited liability partnership and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. KPMG Canada provides services to KPMG LLP.

Issue #3: What is the accounting treatment for derecognition of the regulatory asset by the IESO upon transfer of the variance account to the OPG Trust?

Background for issue #1

The facts, circumstances, and assumptions relevant to the specific transactions as provided to us by the management of the Company (responsible party) are as follows:

1. The IESO's legal status is a not-for-profit, non-taxable, corporation established pursuant to Part II of the Electricity Act. Management of the IESO has determined that the Company is an *Other Governmental Organization* and accordingly prepares its financial statements in accordance with PSAS.

2. IESO is rate regulated by the OEB in accordance with the Electricity Act and the OEB Act.

3. *Extract from the 2016 IESO financial statements, note 3 New Accounting Policies, audited by KPMG* "As of January 1, 2016, the IESO changed its accounting policy regarding the recognition of assets and liabilities subject to rate regulation. The change was made to better reflect the economic substance of certain types of expenses that may not be directly recovered through the normal revenue requirement model. This change has been applied retroactively and has increased amounts previously unrecorded for regulatory assets and decreased amounts previously reported for accumulated deficit."

4. *Extract from the 2016 IESO financial statements, note 2(d) Summary of Significant Accounting Policies, Regulatory assets and liabilities.* "As a rate-regulated entity, the IESO, in appropriate circumstances establishes regulated assets or liabilities and thereby defers the impact on the statement of operations of certain expenses or revenues because they are probable to be collected or refunded to market participants through future billings. The IESO applies guidance from United States Generally Accepted Accounting Principles (US GAAP) Topic 980, *Regulated Operations ("ASC 980")*, in this policy."

5. *Extract from Section 78(3.3) of the OEB Act:* In approving or fixing rates under subsection (3.1),

   (a) the Board shall forecast the cost of electricity to be consumed by the consumers to whom the rates apply, taking into consideration the adjustments required under section 25.33 of the Electricity Act, 1998 and shall ensure that the rates reflect these costs; and

   (b) the Board shall take into account balances in the IESO's variance accounts established under section 25.33 of the Electricity Act, 1998 and shall make adjustments with a view to eliminating those balances within 12 months or such shorter time periods as the Minister may direct.

6. Currently, IESO recognizes two regulatory assets for unrecovered smart metering expenses and unrecovered PSAB transition items as permitted by rates approved by the OEB. In addition, in accordance with section 25.33 of the Electricity Act, IESO also recognizes variance accounts (eg. OESP, RPP and RRRP variance accounts) to record all amounts payable or receivable by it in connection with the amounts paid to generators, the Ontario Electricity Financial Corporation ("OEFC"), distributors and to entities with whom the IESO has a procurement contract.

7. The Electricity Act, OEB Act and other regulations will be amended to reflect the following *extracts of Bill 132:*

   Section 1 Definitions, Transfer of regulatory asset

   (3) In this Act, a reference to the transfer of a specified portion of the regulatory asset is a reference to the following, as provided for in subsection 26 (3):

1. A reduction in the balance in the variance account.
2. The adjustment of the regulatory asset.
3. The acquisition by a financing entity of the investment interest corresponding to the specified portion of the regulatory asset.

Section 24 Variance account to be established, maintained

(1) IESO shall establish and maintain a variance account in which it records the following:

1. The IESO deferral for each month.
2. All payments received by IESO resulting from the exercise of the right of recovery under section 25 and any transfer under section 26.
3. Such other adjustments as may be prescribed, including adjustments in respect of the period that commences on or after May 1, 2017 and before the day this section comes into force.

(2) Subject to the correction of any obvious error by the IESO, its recording of the balance in the variance account is determinative of the balance as of the time of the recording.

(3) No change made by IESO to the balance in the variance account shall, if the previous balance was relied upon by an investment interest owner in the context of a transfer under section 26, affect the rights acquired by the investment interest owner under the transfer.

Section 25 Regulatory asset established

(1) Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

(2) Subject to subsection (3), the Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for the IESO to recover the balance recorded in the variance account.

(3) IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2021.

Section 34 Board's Authority

(2) Despite anything to the contrary in the OEB Act, the Board may exercise any of its responsibilities under this Act without a hearing.

8. It is expected that the IESO deferral recorded by the IESO in the variance account (the regulatory asset) will be transferred to an investment asset owner (i.e. a trust to be established by OPG) on a monthly basis and cash collected within a short period of time. The total IESO deferral for the period from May 1, 2017 to April 30, 2047 is estimated at $28 billion plus interest.

Appropriate Accounting Principle for Issue #1

ASC 980 Regulated Operations

– For general-purpose financial reporting, an incurred cost for which a regulator permits recovery in a future period is accounted for like an incurred cost that is reimbursable under a cost-reimbursement-type contract. [980-10-05-6]

- Unless an accounting order indicates the way a cost will be handled for rate-making purposes, it causes no economic effects that would justify deviation from the GAAP applicable to business entities in general. The mere issuance of an accounting order not tied to rate treatment does not change an entity's economic resources or obligations. In other words, the economic effect of regulatory decisions—not the mere existence of regulation—is the pervasive factor that determines the application of GAAP. [980-10-05-8]
- The guidance in the Regulated Operations Topic applies to general-purpose external financial statements of an entity that has regulated operations that meet all of the following criteria:
  (a) The entity's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party regulator or by its own governing board empowered by statute or contract to establish rates that bind customers.
  (b) The regulated rates are designed to recover the specific entity's costs of providing the regulated services or products. This criterion is intended to be applied to the substance of the regulation, rather than its form.
  (c) In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume that rates set at levels that will recover the entity's costs can be charged to and collected from customers. This criterion requires consideration of anticipated changes in levels of demand or competition during the recovery period for any capitalized costs. [980-10-15-2]
- Incurred Cost - A cost arising from cash paid out or obligation to pay for an acquired asset or service, a loss from any cause that has been sustained and has been or must be paid for. [980-10-20] Glossary
- Failure of an entity's operations to continue to meet the criteria in paragraph 980-10-15-2 can result from different causes. Examples include the following:
  (a) Deregulation.
  (b) A change in the regulator's approach to setting rates from cost-based rate-making to another form of regulation.
  (c) Increasing competition that limits the entity's ability to sell utility services or products at rates that will recover costs (as used in paragraph 980-10-15-2).
  (d) Regulatory actions resulting from resistance to rate increases that limit the entity's ability to sell utility services or products at rates that will recover costs if the entity is unable to obtain (or chooses not to seek) relief from prior regulatory actions through appeals to the regulator or the courts. [980-20-15-2]
- Rate actions of a regulator can provide reasonable assurance of the existence of an asset. An entity shall capitalize all or part of an incurred cost that would otherwise be charged to expense if both of the following criteria are met:
  (a) It is probable (as defined in Topic 450) that future revenue in an amount at least equal to the capitalized cost will result from inclusion of that cost in allowable costs for rate-making purposes.
  (b) Based on available evidence, the future revenue will be provided to permit recovery of the previously incurred cost rather than to provide for expected levels of similar future costs. If the revenue will be provided through an automatic rate-adjustment clause, this criterion requires that the regulator's intent clearly be to permit recovery of the previously incurred cost.

A cost that does not meet these asset recognition criteria at the date the cost is incurred shall be recognized as a regulatory asset when it does meet those criteria at a later date. [980-340-25-1]

- Rate actions of a regulator can reduce or eliminate the value of an asset. If a regulator excludes all or part of a cost from allowable costs, the carrying amount of any asset recognized pursuant to paragraph 980-340-25-1 shall be reduced to the extent of the excluded cost. Whether other assets have been impaired shall be judged the same as for entities in general and the Impairment or Disposal of Long-Lived Assets Subsections of Subtopic 360-10 shall apply. [980-340-35-1]
- If at any time an entity's incurred cost no longer meets the criteria for the capitalization of an incurred cost (see paragraph 980-340-25-1), that cost shall be charged to earnings. [980-340-40-1]
- In some cases, a regulator may approve rates that are intended to recover an incurred cost over an extended period without a return on the unrecovered cost during the recovery period. [980-340-55-2]
- The regulator's action provides reasonable assurance of the existence of an asset (see paragraph 980-340-25-1). Accordingly, the regulated entity would capitalize the cost and amortize it over the period during which it will be allowed for rate-making purposes. That cost would not be recorded at discounted present value. An exception to this general rule is provided for costs of abandoned plants. [980-340-55-3]

Issue #1: Can the IESO recognize a regulatory asset related to the variance account created by Bill 132?

As noted above, as of January 1, 2016, the IESO changed its accounting policy to recognize the economic impacts of rate regulation and now applies guidance from US GAAP Topic 980, *Regulated Operations*, as PSAS does not have any specific guidance for entities with rate-regulated activities.

IESO concluded that it met the requirements of PS2120.02, which allows them to reflect the impacts of rate regulation, as it is considered that the change of accounting policy in its 2016 financial statements resulted in a more appropriate presentation of transactions in its financial statements. The change was made to better reflect the economic substance of certain types of expenses that may not be directly recovered through the normal revenue requirement model.

The regulatory framework in Ontario relating to the generation and sale of electricity will be significantly impacted by Bill 132. Currently, a substantial amount of the energy purchased from the generators is collected by IESO from the local distribution companies through the customer billing, with the remaining being recovered through variance accounts over a period of 12 months maximum. As mentioned above, the effect of Bill 132 is to defer the collection of a total estimated amount of $28 billion (plus interest) of energy purchased from the generators over a period of 30 years. Bill 132 will not permit IESO to collect the IESO deferral before May 1, 2021 and the recovery process will be established through regulations. Such a long-term deferred recovery plan requires IESO to consider whether the uncollected energy costs qualify for deferral as a regulatory asset and whether it continues to meet the criteria that allow IESO to use the guidance for regulated operations of Topic 980. These two accounting issues are analyzed in the two tables below.

Criteria for the recognition of regulatory assets

ASC 980-340-25-1 states that rate actions of a regulator can provide reasonable assurance of the existence of an asset. An entity shall capitalize all or part of an incurred cost that would otherwise be charged to expense if both of the following criteria are met:

Criteria	Comment	Evaluation
(a) It is probable that future revenue in an amount at least equal to the capitalized cost will result from inclusion of that cost in allowable costs for rate-making purposes. (b) Based on available evidence, the future revenue will be provided to permit recovery of the previously incurred cost rather than to provide for expected levels of similar future costs. *(emphasis added)* If the revenue will be provided through an automatic rate-adjustment clause, this criterion requires that the regulator's intent clearly be to permit recovery of the previously incurred cost.	Bill 132 notes that, • *A recording of the balance in the variance account is determinative of the balance as of the time of the recording.* • *Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.* • *The Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for IESO to recover the balance recorded in the variance account.* • *The IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2021.* Based on Bill 132, IESO has the right to recover the balance recorded in the variance account. As a result, it is clear that the IESO will be able to recover the amount previously incurred rather than to provide for expected levels of similar future costs.	Met

Criteria for the adoption and continued use of ASC 980 guidance

Deferred recovery plans are plans adopted by regulators or legislations in response to significant increases in costs (e.g. purchased power costs). These plans typically provide for rates to remain fixed or increase moderately with a variance account mechanism to capture costs in excess of the level allowed in current rates. A regulated utility subject to such plans is required to consider whether it continues to meet the criteria that allow it to use the guidance for regulated operations of Topic 980, especially criteria ASC 980-10-15-2 (b).

The proposed plan for the recovery of purchase power costs over a 30 year period is considered a deferred recovery plan as the rates for the first four years will remain fixed and subsequently the rates will increase moderately with a variance account to capture energy costs in excess of the level allowed in current rates. The following is an analysis of the ASC 980-10-15-2 criteria.

Criteria	Comment	Evaluation
(a) The entity's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party	Currently, IESO recognizes regulatory assets related to smart meters and PSAS transition costs as permitted by rates approved by the OEB and regulatory liabilities related to the variance accounts (eg. OESP, RPP and RRRP variance accounts) established under section 25.33 of the Electricity Act related to the procurement of energy.	Met

Criteria	Comment	Evaluation
regulator or by its own governing board empowered by statute or contract to establish rates that bind customers.	It is important to note that both Hydro One and OPG are classified as *Government Business Enterprises* and are reporting under IFRS in their consolidated financial statements, are consolidated by the modified equity method into the province's books, are regulated by the OEB, and their respective regulatory assets and liabilities are reported in the province's books.	

(b) The regulated rates are designed to recover the specific entity's costs of providing the regulated services or products.	Currently, the rates approved by the OEB are designed to recover the IESO's costs of providing the regulated services and the pass-through related to the energy purchased from the generators.
	
	As mentioned above, a regulated utility subject to a deferred recovery plan is required to consider whether it continues to meet the criteria ASC 980-10-15-2 (b).
	
	This criterion requires a cause-and-effect relationship between a reporting entity's costs and its revenue. In addition, the timing of cost recovery and the related frequency of ratemaking is important. A reporting entity should consider its rate case experience, including the design of its rates and timing of recovery, when determining whether this criterion is met. These factors are analyzed below.
	
	Frequency of rate case
	
	- Currently, IESO is subject to OEB's annual reviews.
	- Although the recovery of purchase energy costs will be frozen at the approved rate on May 1, 2017 for the first four years, the IESO will be granted a right to recover after May 1, 2021 the IESO deferral recorded in the variance account during the four-year period.
	  - *A recording of the balance in the variance account is determinative of the balance, as of the time of the recording. (We note that this confirms that there will be no prudence review by the OEB)*
	  - *Right to recover the balance recorded in the variance account.*
	  - *Obligation on the part of the OEB to dispose the variance account in accordance with the regulation.*
	- Subsequent to May 1, 2021, the OEB will be required to determine and set rates payable by specified consumers to allow for IESO to recover the balance recorded in the variance account.
		Met

Criteria	Comment	Evaluation
	- *The Board shall, from time to time, determine and set rates payable by specified consumers to allow for IESO to recover the balance recorded in the variance account.* - *Despite anything to the contrary in the OEB Act, the Board may exercise any of its responsibilities under this Act without a hearing.* *Rates are designed to recover incurred costs* - There is a cause-and-effect relationship between the purchase energy costs and revenue, as IESO will be allowed to recover the costs incurred. - *A recording of the balance in the variance account is determinative of the balance as of the time of the recording* (We note that this confirms that there will be no prudence review). - *Right to recover the balance recorded in the variance account.* - *Obligation on the part of the OEB to ensure IESO will recover the balance recorded in the variance account.* *Periods of alternative ratemaking (e.g., rate freezes)* Evaluation of the second criterion requires additional judgment if the regulated utility is subject to any form of ratemaking that introduces uncertainty about the cause-and-effect relationship between costs and rates. A rate freeze period is defined as a fixed rate that is charged to customers during a period of time (more than two years) and the utilities are exposed to increases in operating and energy costs with no ability to recover the variances. This is not the case as IESO will be granted the right to recover fully the IESO deferral recorded in the variance account, including the first four-year period. - *The Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for the IESO to recover the balance recorded in the variance account.* *Costs uncertainty* As the IESO will be granted the right to fully recover the IESO deferral recorded in the variance account, there is no uncertainty about the recovery of the costs.	

Criteria	Comment	Evaluation
	Disallowances of costs The OEB has never disallowed the recovery of any material costs incurred by the IESO. More importantly, as the IESO will be granted by legislation the right to fully recover the IESO deferral recorded in the variance account, there is no risk of the potential disallowance of the purchase power costs. Based on the analysis of the above factors, there are no indications that this criterion would not be met. The above factors establish that there will be a direct cause-and-effect relationship between IESO's costs and its future collection.	

(c) In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume that rates set at levels that will recover the entity's costs can be charged to and collected from customers. This criterion requires consideration of anticipated changes in levels of demand or competition during the recovery period for any capitalized costs."	The remaining criterion is whether limitations, including considering demand levels at the approved rates, on the extent of recovery of the regulatory asset could prevent the IESO from recognizing a regulatory asset for the entire balance in the recovery right granted to the IESO.
	
	Bill 132 notes that:
	
	- *Effective May 1, 2017, the IESO's right to recover the balance in the variance account is subject to the following:*
	  o *The Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified customers to allow for the IESO to recover the balance recorded in the variance account.*
	  o *IESO shall not be entitled to collect the variance account from specified consumers before May 1, 2021.*
	
	Although the process, especially the timing of the recovery of the regulatory asset has not been established yet by the OEB, the wording and intent of the proposed legislation is clear that it is intended by law to be recoverable over the period of 30 years. Further, given the nature and extent of customer demand for the power generated and distributed in Ontario, both at this time and projected in the future, it is reasonable to conclude that there will be sufficient demand to recover the regulatory asset. As with the other criteria, this will need to be continually evaluated throughout the recovery period.
		Met

Management conclusion

IESO management has concluded that the IESO can recognize a regulatory asset related to the variance account created by Bill 132 based on the foregoing analysis.

The variance account created by Bill 132 is subject to rate regulation by the OEB and the variance account will be established with the right to collect funds against the variance amount in the future. In these circumstances, the IESO is able to establish a regulatory asset. The IESO financial statements are prepared in accordance with Canadian public sector accounting standards. Although PSAB does not provide specific guidance on rate regulated accounting, it does under PS 1150 Generally Accepted Accounting Principles allow for guidance to be followed from other accounting frameworks. IESO has applied guidance from United States Generally Accepted Accounting Principles (US GAAP) Topic 980, *Regulated Operations* in its accounting policies.

Our conclusion

We have considered the foregoing analysis and management's conclusion. We concur that the variance account created by Bill 132 will meet the criteria for the recognition of a regulatory asset stated in ASC 980-340-25-1. Furthermore, we have also considered the criteria stated in ASC 980-10-15-2 and believe that IESO should be allowed to continue to use the guidance for regulated operations of Topic 980.

Background for Issue #2

The facts, circumstances, and assumptions relevant to the specific transactions as provided to us by the management of the Company (responsible party), in addition to those described in the background for issue #1, are as follows:

1. The IESO currently has the right to collect the global adjustment ("GA") monthly from ratepayers through provisions in the Electricity Act. It is proposed that collection of a certain portion of the monthly GA be deferred in a regulatory asset for collection in the future, and that the right to recover the deferred GA from ratepayers be used as the basis for structured financing/ securitization.
2. In connection with Bill 132, it is proposed that a trust be established as a financial vehicle by OPG (the "OPG Trust") in connection with the deferred GA. The OPG Trust will finance the deferral of the GA by purchasing the regulatory asset from the IESO for the principal amount of the GA being deferred.
3. The OPG Trust is expected to finance these purchases from the IESO through a combination of senior secured financing raised in the capital markets, and subordinated financing from OPG (the funding for which will mostly be from equity injections from the OEFC/Province of Ontario).
4. OPG will be appointed as the Financial Services Manager and will be given the responsibility to direct the activities of the OPG Trust, through a services agreement and/or through the Trust's constating documents.

Appropriate Accounting Principle for Issue #2

PS1300 *Government Reporting Entity*:

PSAS refer to government or government organizations. For the purpose of this analysis, the PSAS guidance below relating to government or government organizations should be read and understood as being the IESO (emphasis added).

- The government reporting entity should comprise government components and those organizations that are controlled by the government. [PS 1300.07]
- Control is the power to govern the financial and operating policies of another organization with expected benefits or the risk of loss to the government from the other organization's activities. [PS 1300.08] (emphasis added).
- Whether a government controls an organization is a question of fact that must be determined by reference to the definition of control established in paragraph PS 1300.08 and the particular circumstances of each case. The determination of the fact that control exists will require the application of professional judgment. Government achieves its objectives through a wide range of organizations which individually will fall somewhere along a continuum. At one end of the continuum, it will be clear that an organization does not have the power to act independently and is controlled by the government. At the other end, the organization will have the power to act independently and, while government will have a level of influence on the organization, it will be clear that it does not have control. Along the continuum, consideration needs to be given to the nature of the relationship between the government and the organization in order to determine whether control exists. This Section provides guidance intended to assist in this assessment. [PS 1300.10]
- In applying this guidance, it is necessary to determine the substance of the relationship between the government and the organization. The true nature of certain relationships may not be completely reflected by their legal form. All relevant aspects and implications of the relationship would be considered in determining whether or not the government controls the organization. Where various aspects of the relationship are designed, in effect, to achieve an overall objective, they would be viewed as a whole. [PS 1300.11]
- Financial and operating policies are principles and practices that determine how an organization conducts its activities. The ability to govern these policies is an important element of government control because it establishes the fundamental basis for the conduct of the organization's operations and the achievement of its mission and mandate. [PS 1300.13]
- There are a variety of ways to govern the financial and operating policies of an organization. For example:
  (a) a government may establish an organization's fundamental purpose and eliminate or significantly limit the ability of the organization to make future decisions by predetermining the financial and operating policies of the organization;
  (b) a government may direct the financial and operating policies of an organization on an ongoing basis; or
  (c) a government may veto, overrule or modify the financial and operating policies established by an organization. [PS 1300.14]
- A government does not need to manage an organization's activities on a day-to-day basis to control the organization. It is the government's existing authority to determine the policies governing those activities that is important. [PS 1300.15]

– For the purposes of this Section, it is assumed that where the government has the power to govern the financial and operating policies of an organization, it expects to derive a financial or non-financial benefit. The government may also be exposed to the risk of loss. [PS 1300.16]

Issue #2: Is the trust to be established by OPG (the "OPG Trust") controlled by the IESO according to the guidance issued under PSAS 1300 *Government Reporting Entity* and, therefore, subject to consolidation by IESO?

Under PSAS, IESO is required to consolidate all entities that are considered to be part of its reporting entity, applying the guidance provided in *Section PS 1300 Government Reporting Entity.* Under PS 1300, IESO must consolidate all entities it "controls".

In determining whether or not the OPG Trust should be consolidated by IESO, it must first be determined whether or not the IESO exercises control as a consequence of power to govern the financial and operating policies of the OPG Trust resulting in expected benefits to the IESO or the risk of loss from the activities of the OPG Trust.

PS 1300.17 indicates that "whether a government controls an organization is a question of fact that requires the application of professional judgment based on the definition of control in this Section and the substance of the relationship in each case." Under PS 1300.08 control is defined as "the power to govern the financial and operating policies of another organization with expected benefits or the risk of loss to the government from the other organization's activities". Therefore, the determination of whether IESO will consolidate the OPG Trust will be based on an assessment of whether IESO is considered to control the OPG Trust based on the indicia of control set out in PS 1300. The assessment of the IESO's control of the OPG Trust is made based on Bill 132, facts and nature of the relationship between the IESO and the OPG Trust and based on facts and assumptions provided by IESO. PS 1300.18 and .19 set out 11 potential indicia of control. Several of these indicia have been categorized as more persuasive of a finding of control (see the first four indicators in the table below). For each indicator that applies, the degree of government influence would determine its importance as evidence of control. Finally, the indicia are considered both collectively and individually.

A detailed analysis of the 11 Indicators of control is provided in the following table.

INDICATOR OF CONTROLS	EVIDENCE OF CONTROL	CONTROL EXIST?
Primary (more persuasive) indicators (PS 1300.18):		
Government has the power to unilaterally appoint or remove a majority of the members of the governing body of the organization	- Bill 132 states: - *OPG is appointed as the Financial Services Manager for the purposes of this Act. (Section 18)* - *The Financial Services Manager shall perform the duties assigned to it under this Act and may administer the investment asset on behalf of the investment interest owners. (Section 19 (1))* - *Subject to any prescribed limitations, the Financial Services Manager may establish and charge fees in relation to such matters as may be prescribed in accordance with the regulations, which regulations may provide for the ability to recover costs and expenditures and to earn a return. (Section 19 (3))*	No

INDICATOR OF CONTROLS	EVIDENCE OF CONTROL	CONTROL EXIST?

	- The Electricity Act will be amended as follows:
	  - *In addition to the objects mentioned in subsection (1), the objects of OPG include exercising the powers and rights and performing the duties and obligations assigned to it under the Ontario Fair Hydro Plan Act, 2017 and engaging in activities to facilitate the implementation of that Act, including entering into contracts and undertakings on behalf of financing entities and performing other services on behalf of financing entities, subject to the right to be paid by the financing entities for those services. (Section 53.1 (1.1))*
	  - *OPG may create or invest in one or more subsidiaries, trusts, partnerships or special purpose entities in order to more efficiently conduct its activities or achieve its objects. (Section 53.1 (1.2))*
	- OPG will establish a trust to manage the collection of the regulatory asset and related financing and administrative expenses. The Board of Trustees of the OPG Trust will be the governing body of the Trust and will be appointed by OPG. OPG will have the power to unilaterally appoint or remove all members of the Board of Trustees.
	- The IESO will not have any rights in respect of the appointment or replacement of the Board of Trustees of the OPG Trust.	

Government has ongoing access to the assets of the organization, has the ability to direct the ongoing use of those assets, or has ongoing responsibility for losses	- Section 27 of Bill 132 states:
	  - *A transfer of a specified portion of the regulatory asset under section 26 constitutes a valid and enforceable absolute assignment, conveyance and sale of the corresponding investment interest to the transferee.*
	  - *Without limiting subsection (1), any transfer agreement that states an intention of the parties for the IESO to dispose of a specified portion of the regulatory asset and to assign, convey or sell a corresponding investment interest shall be treated for all purposes as an absolute assignment, conveyance, disposition and sale of the IESO's right to recover the corresponding amount in the variance account and not merely as a security interest.*
		No

INDICATOR OF CONTROLS	EVIDENCE OF CONTROL	CONTROL EXIST?
	- *At the time a transfer of the regulatory asset is made under section 26, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.* - Based on Bill 132, *upon transfer of a specified portion of the regulatory asset to the OPG Trust, the investment asset resulting from the transfer is immediately vested in the OPG Trust, free and clear of any adverse claim.* (Section 28 (2)). - Therefore, upon transfer of the regulatory asset to the OPG Trust, IESO will no longer have access/ability to direct the regulatory asset nor have the ongoing responsibility for losses. - The credit risk related to the collection of the investment asset is borne by the OPG Trust.	
Government holds the majority of the voting shares or a "golden share" that confers the power to govern the financial and operating policies of the organization	- IESO will not have any ownership in the OPG Trust and will not have the power to govern the financial and operating policies of the OPG Trust.	No
Government has the unilateral power to dissolve the organization and thereby access its assets and become responsible for its obligations	- IESO will not have the power to dissolve the organization.	No

INDICATOR OF CONTROLS	EVIDENCE OF CONTROL	CONTROL EXIST?
Other indicators that may provide evidence of control exist when government has the power to (PS 1300.18):		
Provide significant input into the appointment of members of the governing body of the organization by appointing a majority of those members from a list of nominees provided by others or being otherwise involved in the appointment or removal of a significant number of members	- OPG will have the power to unilaterally appoint or remove all members of the Board of Trustees of the OPG Trust. - IESO will not provide any input in the appointment of members of the Board of Trustees.	No
Appoint or remove the CEO or other key personnel	- OPG will have the power to unilaterally appoint or remove all members of the Board of Trustees of the OPG Trust and other key personnel.	No
Establish or amend the mission or mandate of the organization	- The Trust will be established by OPG and the mandate of the Trust will be set based on Bill 132.	No

Approve the business plans or budgets for the organization and require amendments, either on a net or line-by-line basis	- Bill 132 states:
	  - *OPG is appointed as the Financial Services Manager for the purposes of this Act. (Section 18)*
	  - *The Financial Services Manager shall prepare a written plan entitled the Financing Plan to be used by the Financial Services Manager to evaluate whether potential funding obligations should be incurred for the purposes of acquiring and financing an investment asset in accordance with this Act or for the purposes of refinancing. (Section 16 (1))*
	- OPG is the Financial Services Manager, not IESO.
	- IESO is not involved in the preparation or approval of the business plans or budget of the OPG Trust.
		No

Establish borrowing or investment limits or restrict the organization's investments	- Section 22 of Bill 132 states: - *The Financial Services Manager shall ensure that funding obligations incurred for the purposes of this Act are incurred in a manner that is consistent with the applicable Financing Plan.*	No

INDICATOR OF CONTROLS	EVIDENCE OF CONTROL	CONTROL EXIST?
	- OPG not IESO, is responsible for ensuring that the borrowings of the OPG Trust meet the above conditions.	
Restrict the revenue-generating capacity of the organization, notably the sources of revenue	- N/A	No
Establish or amend the policies that the organization uses to manage, such as those relating to accounting, personnel, compensation, collective bargaining or deployment of resources	- As mentioned above, OPG will be granted by legislation the power to establish or amend the policies of the OPG Trust and the ability to appoint and remove all members of the Board of Trustees.	No

Management conclusion

IESO management has concluded that the OPG Trust to be established would not be controlled by the IESO and therefore is not subject to consolidation by the IESO.

Based on the foregoing analysis of the 11 indicators of control as defined in Section PS 1300 *Government Reporting Entity,* considered both individually and collectively there is no evidence of control by the IESO in respect of the OPG Trust. The IESO will not have the power to govern the Trust, nor have ongoing access to Trust's assets. The IESO will also not have any voting shares or future rights to the Trust nor the power to dissolve the Trust. Without control, the Trust is not subject to consolidation within the IESO financial statements.

Our conclusion

We have considered the foregoing analysis and management's conclusion. We concur that based on Bill 132, none of the four primary (more persuasive) indicators of control are considered to be met, and none of the seven other indicators of control are considered to be met. Accordingly, we concur that the IESO does not control the OPG Trust under Bill 132 and hence would not consolidate the OPG Trust.

The adoption of Bill 132 (including the subsequent amendments of the Electricity Act and the OEB Act) and the finalization of the financing structure (including the bylaws and regulations of the OPG Trust) and other agreements will take several months. Accordingly, our judgment on the appropriate application of PSAS to the conclusion on control may change subject to further analysis of any changes to the terms of Bill 132 or review of the final regulations, financing structure and other agreements.

Background for Issue #3

The facts, circumstances, and assumptions relevant to the specific transactions as provided to us by the management of the Company (responsible party), in addition to those described in the background for issues #1 and 2, are as follows:

1. The total IESO deferral for the period from May 1, 2017 to April 30, 2047 is estimated at $28 billion plus interest and will be recorded by the IESO in a variance account recognized as a regulatory asset.
2. The IESO does not currently have the financial capability to finance the regulatory asset and will transfer the variance account to an investment asset owner (i.e. OPG Trust) on a monthly basis.
3. The IESO will obtain a written legal opinion as to the validity and enforceability of the transfer and sale of the regulatory asset.
4. Based on an assessment of control performed under the issue #2, IESO will not consolidate the OPG Trust. We understand that an assessment of control under International Financial Reporting Standards ("IFRS") has been performed by OPG and they have concluded that the OPG Trust will be consolidated by OPG; we note that the financial reporting framework used by OPG in preparing its financial statements for consolidation into the Province's books is IFRS.
5. The Electricity Act, OEB Act and other regulations will be amended to reflect the following *extracts from Bill 132:*

   Section 16 IESO to receive amounts

   (2) The IESO shall, as agent of the investment interest owners, receive amounts in respect of the clean energy adjustment paid to it from electricity vendors in accordance with the market rules made under section 32 of the Electricity Act, 1998 or the regulations.

   (4) All amounts received by the IESO in respect of the clean energy adjustment shall, until remitted to or for the benefit of the investment interest owner, be held in trust by the IESO for the investment interest owners.

   (5) The IESO shall remit amounts received by it in respect of the clean energy adjustment, inclusive of interest earned on the amounts referred to in subsection (1), to or for the benefit of the investment interest owners in accordance with the regulations.

   Section 17 Pro rating of payments

   (4) If an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices and the amount paid is less than the total amount payable, the electricity vendor shall allocate the payment on a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices in respect of electricity charges in respect of the same invoice period.

   Section 26 Transfer of regulatory asset

   (1) The IESO may from time to time, in accordance with this Act and the regulations, transfer a specified portion of the regulatory asset to a financing entity in accordance with this section.

   (2) An agreement between the IESO and a financing entity in relation to the transfer of a specified portion of the regulatory asset shall provide for consideration of a payment by the financing entity to the IESO in an amount equal to the amount of the specified portion.

(3) Upon receipt by the IESO of the payment by the financing entity,

(a) the balance in the variance account shall be reduced by the amount of the payment;

(b) the regulatory asset shall be adjusted accordingly;

(c) the financing entity shall acquire a corresponding investment interest; and

(d) the IESO shall retain no further right, title or interest in the investment interest.

Section 27 Validity of transfer

(1) A transfer of a specified portion of the regulatory asset under section 26 constitutes a valid and enforceable absolute assignment, conveyance and sale of the corresponding investment interest to the transferee.

(2) Without limiting subsection (1), any transfer agreement that states an intention of the parties for IESO to dispose of a specified portion of the regulatory asset and to assign, convey or sell a corresponding investment interest shall be treated for all purposes as an absolute assignment, conveyance, disposition and sale of IESO's right to recover the corresponding amount in the variance account and not merely as a security interest.

(3) At the time a transfer of the regulatory asset is made under section 26, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the transferee shall have priority over any liens in favour of those persons.

Section 29 Investment asset, irrevocable rights and interests

(1) The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests of investment interest owners:

1. The right and interest to impose, invoice, collect, receive and recover the clean energy adjustment from specified consumers, including the right to determine the clean energy adjustment in accordance with this Act.

2. The right to receive, collect and recover the clean energy adjustment that is imposed, invoiced and recoverable under this Act, including any amounts in respect of the clean energy adjustment that are held by electricity vendors, IESO and other prescribed parties.

Section 30 Transfer of investment interest

(2) An investment interest owner may transfer all or a portion of an investment interest to any other investment interest owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan.

Section 32 Investment interest owner may grant security interest

(1) An investment interest owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under the investment interest to or in favour of any person to secure a funding obligation.

(3) All provisions of the Personal Property Security Act shall apply to the investment asset and each investment interest on the basis that the investment asset and each investment interest is intangible personal property, except as otherwise provided for in this section, and any granting of a security interest by an investment interest owner to secure a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by registering a financing statement under that Act on that basis.

6. The terms of the transfer agreement between the IESO and the OPG Trust that will be signed and executed upon transfer of the regulatory assets will be in compliance with the dispositions of Bill 132.

Appropriate Accounting Principle for Issue #3

The Derecognition Section of ASC 980-20-40 provides guidance on determining whether and when an entity should remove an item from the financial statements. For example, the entity would derecognize an asset because it no longer has rights to the asset or it would derecognize a liability because it no longer has any obligation. [ASC 980-20-40]

Failure of an entity's operations to continue to meet the criteria in paragraph 980-10-15-2 can result from different causes. Examples include the following:

(a) Deregulation.

(b) A change in the regulator's approach to setting rates from cost-based rate-making to another form of regulation.

(c) Increasing competition that limits the entity's ability to sell utility services or products at rates that will recover costs (as used in paragraph 980-10-15-2).

(d) Regulatory actions resulting from resistance to rate increases that limit the entity's ability to sell utility services or products at rates that will recover costs if the entity is unable to obtain (or chooses not to seek) relief from prior regulatory actions through appeals to the regulator or the courts. [ASC 980-20-15-2]

PS1000 *Financial statement concepts*:

– This Section is to be used by preparers and auditors of financial statements in exercising their professional judgment as to the application of generally accepted accounting principles and in establishing accounting policies in areas in which accounting principles are developing. [PS1000.03]

– Financial statements should communicate information that is relevant to the needs of those for whom the statements are prepared, reliable, comparable, understandable and clearly presented in a manner that maximizes its usefulness. [PS1000.24]

– An item is not an asset of a government if it lacks one or more of the essential characteristics listed in the preceding paragraph [PS3210.04]. Thus, for example, an item does not qualify as an asset of a government if the item involves:

  (a) no future economic benefit;

  (b) future economic benefit, but the government cannot obtain it; or

  (c) future economic benefit that the government may obtain, but the events or circumstances that give the government control of the benefit have not yet occurred. [PS1000.37]

PS3210 *Assets*:

- Assets are economic resources controlled by a public sector entity as a result of past transactions or events and from which future economic benefits are expected to be obtained. [PS3210.03]
- Assets have three essential characteristics:
  (a) They embody future economic benefits that involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows, or to reduce cash outflows.
  (b) The public sector entity can control the economic resource and access to the future economic benefits.
  (c) The transaction or event giving rise to the public sector entity's control has already occurred. [PS3210.04]
- Control of an economic resource and of access to the future economic benefits are essential characteristics of an asset, whereas possession or ownership is not. [PS3210.22]

PS3430 *Restructuring transactions* [1]

- Individual assets and liabilities transferred in a restructuring transaction should be derecognized by the transferor if they no longer meet the definitions of assets and liabilities and applicable recognition criteria at the restructuring date. [PS3430.21]
- When a transferor continues to be involved in the individual assets and/or liabilities it transferred to a recipient subsequent to the restructuring date, it would assess the nature and extent of its continued involvement against the definitions of assets and liabilities and applicable recognition criteria to evaluate whether:
  (a) derecognition of the asset and liability transferred would be appropriate; and
  (b) its continued involvement gives rise to a new asset or new liability that needs to be recognized. [PS3430.24]
- A new asset or new liability may arise from a restructuring due to a transferor's continued involvement in the individual assets and liabilities transferred (for example, if it agrees to guarantee repayment of all or a portion of a transferred liability or leases back a portion of a transferred asset). As the new asset or new liability is not transferred, together with related program or operating responsibilities, they are not part of the restructuring transaction. They would be accounted for in accordance with individual Sections of the PSA Handbook by both the transferors and recipients. [PS3430.25]

1 This Section applies to fiscal years beginning on or after April 1, 2018. […] Earlier adoption is permitted."

Issue #3: What is the accounting treatment for derecognition of the regulatory asset by the IESO upon transfer of the variance account to the OPG Trust?

Although ASC 980-20-40 states that

> *"Derecognition Section provides guidance on determining whether and when an entity should remove an item from the financial statements. For example, the entity would derecognize an asset because it no longer has rights to the asset or it would derecognize a liability because it no longer has any obligation."*

Subtopic 980-20 relates to discontinuation of rate-regulated accounting when an entity no longer meets the criteria in paragraph 980-10-15-2. ASC 980-20-15-2 provides examples of when an entity no longer meets the criteria, including deregulation and change of the form of regulation. Thus, ASC 980 does not provide clear guidance for the derecognition of a regulatory asset other than in connection with the discontinuation of rate-regulated accounting.

The above guidance in ASC 980-20-40 provides general principles for the derecognition of assets.

It should also be noted that PSAS provide limited guidance on derecognition of non-financial assets and liabilities. Section 3430 *Restructuring transactions,* which is applicable for fiscal years on or after April 1, 2018 with early application permitted, has guidance for the derecognition of assets and liabilities.

- Paragraph 21 states that *individual assets and liabilities transferred in a restructuring transaction should be derecognized by the transferor if they no longer meet the definitions of assets and liabilities and applicable recognition criteria at the restructuring date.*
- As stated in paragraph 24, *when a transferor continues to be involved in the individual assets and/or liabilities it transferred to a recipient subsequent to the restructuring date, it would assess the nature and extent of its continued involvement against the definitions of assets and liabilities and applicable recognition criteria to evaluate whether derecognition of the asset and liability transferred would be appropriate and whether its continued involvement gives rise to a new asset or new liability that needs to be recognized.*

Recognizing the proposed transaction is not a restructuring transaction, Section 3430, which has recently been issued by PSAB, provides current evidence of thinking in the application of the general PSAS principles in respect of the recognition and derecognition of assets and liabilities. Accordingly, the analysis as to whether the regulatory asset transferred to the OPG Trust can be derecognized is based on the foregoing guidance.

Criteria for the recognition of an asset

PS3210.03 states that assets are economic resources controlled by a public sector entity as a result of past transactions or events and from which future economic benefits are expected to be obtained. More generally, PSAS PS1000.37 suggests that an asset would no longer be recognized when it fails to meet the definition of an asset:

Criteria	Comment	Evaluation
Assets (PS3210.04/ PS1000.36): Assets have three essential characteristics: (a) They embody future economic benefits that involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows,	Based on the guidance, the regulatory asset does not qualify as an asset of IESO if it cannot obtain the future economic benefits. Upon transfer of the regulatory asset, IESO will have no further rights or obligations in connection with the asset transferred. - *IESO may from time to time, in accordance with this Act and the regulations, transfer a specified portion of the regulatory asset to a financing entity in accordance with this section.* - *Upon receipt by IESO of the payment by the financing entity, IESO shall retain no further right, title or interest in the corresponding investment interest.*	Not Met

Criteria	Comment	Evaluation
or to reduce cash outflows. (b) The public sector entity can control the economic resource and access to the future economic benefits. (c) The transaction or event giving rise to the public sector entity's control has already occurred. *Financial statement concepts (PS1000.37):* An item is not an asset of a government if it lacks one or more of the essential characteristics listed in the preceding paragraph [see above]. Thus, for example, an item does not qualify as an asset of a government if the item involves: (a) no future economic benefit (b) future economic benefit, but the government cannot obtain it.	- *A transfer of a specified portion of the regulatory asset under section 26 constitutes a valid and enforceable absolute assignment, conveyance and sale of the corresponding investment interest to the transferee.* - *Without limiting subsection (1), any transfer agreement that states an intention of the parties for IESO to dispose of a specified portion of the regulatory asset and to assign, convey or sell a corresponding investment interest shall be treated for all purposes as an absolute assignment, conveyance, disposition and sale of IESO's right to recover the corresponding amount in the variance account and not merely as a security interest.* - *At the time a transfer of the regulatory asset is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.* Upon transfer of the regulatory asset, the OPG Trust will have the right to sell the asset to another party or to grant a security interest in favour of any person to secure a funding obligation. - *Upon transfer, the financing entity becomes an investment asset owner and acquires an investment interest.* - *An investment interest owner may transfer all or a portion of an investment interest to any other investment interest owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan.* - *An investment interest owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under the investment interest to or in favour of any person to secure a funding obligation.* Based on Bill 132, it is clear that IESO will have no rights to the benefits associated with the future cash inflows related to the regulatory asset as it will have transferred its right to recover the IESO deferral to the OPG Trust. Further, it is also clear that IESO will have lost control over the regulatory asset once it is transferred to OPG Trust.	

Management conclusion

IESO management has concluded that the regulatory asset will be derecognized upon transfer of the regulatory asset to the OPG Trust.

The transfer of the regulatory asset transfers the control and the benefits associated with the right to collect funds in the future against the variance amount to the OPG Trust. This will eliminate the IESO asset by the amount of the transfer as the IESO will no longer control an economic resource or have access to future economic benefits for that amount. The funds collected from the transfer will in turn reduce the associated debt held by the IESO, maintaining the IESO's net $ nil balance in the market accounts.

Our conclusion

We have considered the foregoing analysis and management's conclusion. We concur that the regulatory asset should be derecognized on transfer to the OPG Trust as IESO no longer has rights or future economic benefits associated with the asset.

Other Matters

The ultimate responsibility for the decision on the appropriate application of PSAS for the specific transactions rests with management as preparers of the financial statements. Our judgment on the appropriate application of PSAS for the specific transaction is based solely on the facts, circumstances and assumptions provided to us as described above. Should these facts and circumstances differ, our conclusion may change.

This letter has been prepared in draft form and will be updated upon receipt of the adopted legislation, if passed, (including the amendments of the Electricity Act and the OEB Act) and finalized financial structure (including the bylaws and regulations of the OPG Trust) and other relevant agreements necessary for us to provide our final opinion, of which legislation and other relevant agreements are expected to be enacted/ finalized on or before September 30, 2017. This letter will not be updated as a consequence of pronouncements by the Public Sector Accounting Board, or any other authoritative bodies, that occur subsequent to the date of this letter.

This letter is intended solely for the information and use of the Board of Directors and management of the Company, and is not intended to be and should not be used, quoted, relied upon by, or otherwise referred to by anyone other than these specified parties or for any other purpose.

No one other than the Board of Directors and management of the Company is authorized by KPMG to rely upon any information or views expressed herein. KPMG shall have no responsibility or liability for loss or damages or claims, if any, to or by any third party as this letter has not been prepared for, and is not intended for, and should not be used by, any third party or for any other purpose.

Yours very truly,

per Michel Picard
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Appendix A:

Bill 132, Ontario Fair Hydro Plan Act, 2017

Caution:
Bills are published by the Legislative Assembly in print and on its website. This copy has not been published by the Legislative Assembly and is being provided for convenience only.

Fair Hydro Act, 2017

EXPLANATORY NOTE

The Bill enacts a new Act and makes amendments to the *Electricity Act, 1998* and the *Ontario Energy Board Act, 1998*.

SCHEDULE 1
ONTARIO FAIR HYDRO PLAN ACT, 2017

The Schedule enacts the *Ontario Fair Hydro Plan Act, 2017*. The Act establishes a framework under which the costs and benefits associated with the "clean energy initiative" are to be allocated among present and future consumers of electricity. The "clean energy initiative" is defined in Part I as consisting of the policies of the Government of Ontario related to such matters as eliminating coal generation and fostering the growth of and investment in clean, modern and reliable energy sources and technologies.

Under Part II, the Ontario Energy Board is required to determine reduced electricity rates and to determine other adjustments to be made for certain classes of consumers in respect of specified periods of time. For example, for the class of consumers referred to as "regulated rate consumers", the electricity rates payable for the period beginning on July 1, 2017 and ending on April 30, 2018 are the rates, as determined by the Board, that would achieve a 25 per cent reduction in certain costs for a hypothetical member of the class who meets prescribed criteria. Details regarding the determinations are prescribed by regulations.

Part III requires certain electricity consumers to pay an amount in respect of the "clean energy adjustment". The clean energy adjustment is determined by the Financial Services Manager in accordance with rules set out in the Act and the regulations. (Section 18 of the Act appoints Ontario Power Generation Inc. as the Financial Services Manager.) Part III also specifies the roles and responsibilities of electricity vendors and the Independent Electricity System Operator ("IESO") with respect to the collection and remittance of amounts in respect of the clean energy adjustment.

Part IV requires the Minister of Energy to calculate a "fair allocation amount" by taking specified steps in accordance with principles and assumptions set out in the Act. For example, the Act provides that the purpose of calculating the fair allocation amount is to measure and allocate the estimated clean energy costs and estimated clean energy benefits fairly among certain consumers. Part IV also requires the Financial Services Manager to prepare a written

plan entitled the "Financing Plan", which is to be used to evaluate whether potential funding obligations should be incurred. Principles and limitations regarding the preparation and implementation of the plan are provided.

Part V requires the IESO to determine the "IESO deferral" in accordance with the regulations and to establish and maintain a variance account in which it records the IESO deferral each month. A "regulatory asset" is created under section 25; the IESO has the right to recover the balance recorded in the variance account from certain consumers. The IESO is authorized to transfer a specified portion of the regulatory asset to a financing entity; this transfer results in the creation of the investment asset and the acquisition by the transferee of a corresponding "investment interest". Various rules respecting the validity and priority of a transfer of an investment asset are set out.

In Part VI, rules in respect of the "investment asset" are provided. Section 29 provides that the investment asset constitutes a current and irrevocable property right and interest, consisting collectively of various specified rights and interests of investment interest owners. Rules respecting the validity and priority of such a transfer and the granting of a security interest by an investment interest owner are included.

Part VII deals with various miscellaneous matters, including regulation-making authority of the Lieutenant Governor in Council.

The *Electricity Act, 1998* and the *Ontario Energy Board Act, 1998* are amended to address various matters relating to the enactment of the new Act. For example, the objects of the IESO and Ontario Power Generation Inc. are expanded to address powers and duties under the new Act.

SCHEDULE 2
AMENDMENTS TO THE ONTARIO ENERGY BOARD ACT, 1998

The *Ontario Energy Board Act, 1998* is amended. Among the amendments:

1. Section 79 of the Act is amended so that compensation for the rate protection provided to certain classes of rural or remote consumers may be funded out of money appropriated by the Legislature, rather than by consumers.

2. Section 79.2 of the Act, which governs the Ontario Electricity Support Program, is repealed and replaced. The program is continued, but will be funded out of money appropriated by the Legislature after the variance account maintained by the Independent Electricity System Operator, formerly established under the Plan, is exhausted, rather than by consumers. There are provisions relating to the sharing, use and disclosure of information relating to the administration of the Ontario Electricity Support Program.

3. Programs are established to aid certain distribution rate-protected residential consumers and on-reserve consumers.

4. Various amendments of a technical and administrative nature are made to support the implementation and oversight of these programs including provisions related to auditing, record-keeping, inspections and inquiries, offences and penalties.

Bill **2017**

An Act to enact the Ontario Fair Hydro Plan Act, 2017 and to make amendments to the Electricity Act, 1998 and the Ontario Energy Board Act, 1998

Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Contents of this Act

1. This Act consists of this section, sections 2 and 3 and the Schedules to this Act.

Commencement

2. (1) Subject to subsections (2) and (3), this Act comes into force on the day it receives Royal Assent.

Schedules

(2) The Schedules to this Act come into force as provided in each Schedule.

Different dates for same Schedule

(3) If a Schedule to this Act provides that any of its provisions are to come into force on a day to be named by proclamation of the Lieutenant Governor, a proclamation may apply to one or more of those provisions, and proclamations may be issued at different times with respect to any of those provisions.

Short title

3. The short title of this Act is the *Fair Hydro Act, 2017*.

SCHEDULE 1
ONTARIO FAIR HYDRO PLAN ACT, 2017

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Preamble

The Government of Ontario is committed to fostering the development of a clean, modern and reliable electricity system with a diverse supply mix. The Government is also committed to removing barriers to and promoting opportunities for renewable and clean energy projects. These commitments can only be achieved if costs are shared fairly among consumers, today and in the future.

Electricity rates have risen for two key reasons. First, decades of under-investment in the electricity system resulted in the need to invest more than $50 billion in generation, transmission and distribution assets to ensure the system is clean and reliable. Second, the decision to eliminate Ontario's use of coal and produce clean, renewable power has created additional costs.

The actions taken to achieve a clean, modern and reliable electricity system have resulted in significant costs to residential consumers. The burden of financing these system improvements and funding key programs has unfairly fallen almost entirely on the shoulders of those consumers.

The Government of Ontario is committed to ensuring that the costs of financing these investments and the associated charges to consumers are allocated fairly among present and future generations.

Recognizing that the electricity infrastructure that has been built and the policy decisions that have been made will create benefits for years to come, costs should be allocated fairly over time, so that residential consumers in the future pay their fair share for the benefits that they receive from the investments already made.

PART I
GENERAL

Interpretation

Definitions

1. (1) In this Act,

"Board" means the Ontario Energy Board; ("Commission")

"clean energy adjustment" means the amount determined under section 15 and payable by specified consumers; ("ajustement pour l'énergie propre")

"clean energy benefits" means the value of the benefits determined to be derived by or accruing to specified consumers as a result of the clean energy initiative, including as a result of clean energy costs; ("avantages de l'énergie propre")

"clean energy costs" means the value of the costs allocated to specified consumers as a result of the clean energy initiative, including as a result of past, present and expected costs incurred in respect of,

(a) the amounts to be paid or reflected by the IESO in adjustments made under section 25.33 of the *Electricity Act, 1998* or any provision that is the successor to that provision, which relate to contracts or amounts for,

(i) renewable energy generation or capacity,

(ii) conservation and demand management,

(iii) energy storage,

(iv) energy efficiency,

(v) natural gas generation and capacity, excluding contracts relating to amounts payable by the IESO under section 78.2 of the *Ontario Energy Board Act, 1998* and excluding such other contracts as may be prescribed,

(b) payments made or expected to be made under section 78.5 of the *Ontario Energy Board Act, 1998*, and

(c) such other costs or estimated costs as may be prescribed; ("coûts de l'énergie propre")

"clean energy initiative" means the policies of the Government of Ontario related to,

(a) eliminating coal generation and fostering the growth of and investment in clean, modern and reliable energy sources and technologies,

(b) removing barriers to and promoting opportunities for clean and renewable energy sources and technologies,

(c) promoting conservation, demand management and energy efficiency, and

(d) investing in energy infrastructure to ensure a clean, modern and reliable system; (“initiative pour l’énergie propre”)

“electricity vendor” means,

(a) a licensed distributor,

(b) a licensed retailer,

(c) the IESO in circumstances where it directly invoices a specified consumer for electricity used in Ontario, or

(d) such other person as may be prescribed; (“vendeur d’électricité”)

“fair allocation amount” means an amount calculated under section 20; (“montant de répartition équitable”)

“finance amount” means the finance amount determined in accordance with the regulations; (“montant de financement”)

“Financial Services Manager” means the Financial Services Manager appointed under section 18; (“gestionnaire des services financiers”)

“financing entity” means an entity established or caused to be established by the Financial Services Manager as described in subsection 22 (2); (“entité de financement”)

“Financing Plan” means the plan prepared under section 21; (“Plan de financement”)

“funding obligation” means a payment obligation incurred by or on behalf of an investment interest owner to fund its ownership of an investment interest or a payment obligation that meets such other criteria as may be prescribed; (“obligation de financement”)

“funding rebate” means a payment obligation incurred by the IESO as part of the transfer of the regulatory asset; (“remboursement de financement”)

“IESO” means the Independent Electricity System Operator continued under Part II of the *Electricity Act, 1998*; (“SIERE”)

“IESO deferral” means the amount determined under section 23; (“report de la SIERE”)

"investment asset" means the rights and interests described in section 29; ("actif d'investissement")

"investment interest" means,

(a) an ownership interest in the investment asset, and

(b) in circumstances where the ownership interest is transferred, the rights and benefits specified in the agreement under which the interest is transferred; ("participation d'investissement")

"investment interest owner" means a financing entity that has acquired and holds an investment interest; ("détenteur d'une participation d'investissement")

"licensed distributor" means a person licensed under Part V of the *Ontario Energy Board Act, 1998* to own or operate a distribution system within the meaning of that Act; ("distributeur titulaire d'un permis")

"licensed retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity; ("détaillant titulaire d'un permis")

"Minister" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of this Act under the *Executive Council Act*; ("ministre")

"Ontario Power Generation Inc." means the corporation incorporated as Ontario Power Generation Inc. under the *Business Corporations Act* on December 1, 1998; ("Ontario Power Generation Inc.")

"prescribed" means prescribed by the regulations; ("prescrit")

"reference period" means,

(a) the period beginning on July 1, 2017 and ending on October 31, 2017, and

(b) during the period beginning on November 1, 2017 and ending on either April 30, 2047 or such later day as may be prescribed,

(i) every six-month period following the period mentioned in clause (a); or

(ii) any period shorter than six months, as may be prescribed; ("période de référence")

"refinancing" means, subject to the regulations, the incurrence of debt in connection with a redemption, repayment or repurchase of a funding obligation; ("refinancement")

"regulation" means a regulation made under this Act; ("règlement")

"regulatory asset" means the right established under section 25; ("actif réglementaire")

"specified consumer" means,

(a) a person who has an account with an electricity vendor for the supply of electricity in Ontario and meets the criteria set out in subsection (2), or

(b) such other person as may be prescribed; ("consommateur déterminé")

"transfer" includes, when used in relation to an investment interest, the assignment, conveyance, disposition or sale of the investment interest; ("transfert")

"true up amount" means a true up amount determined in accordance with the regulations; ("montant d'égalisation")

"unit sub-metering" has the same meaning as in the *Energy Consumer Protection Act, 2010;* ("activités liées aux compteurs divisionnaires d'unité")

"unit sub-meter provider" has the same meaning as in the *Energy Consumer Protection Act, 2010;* ("fournisseur de compteurs divisionnaires d'unité")

"variance account" means the variance account established by the IESO under subsection 24 (1). ("compte d'écart")

Specified consumer

(2) For the purposes of clause (a) of the definition of "specified consumer" in subsection (1), the person must meet any one of the following criteria:

1. The person has a demand for electricity of not more than 50 kilowatts, or such other amount as may be prescribed.

2. The person annually uses not more than 250,000 kilowatt hours of electricity, or such other amount as may be prescribed.

3. The person carries on a business that is a farming business for the purposes of the *Farm Registration and Farm Organizations Funding Act, 1993* and either holds a valid registration number assigned under that Act or has had the

obligation to file a farming business registration form waived pursuant to an order made under subsection 22 (6) of that Act.

4. The person's account with the electricity vendor relates to,

   i. a dwelling,

   ii. a property within the meaning of the *Condominium Act, 1998*,

   iii. a residential complex within the meaning of subsection 2 (1) of the *Residential Tenancies Act, 2006*, without regard to section 5 of that Act, or

   iv. a property that includes one or more housing units and that is owned or leased by a co-operative within the meaning of the *Co-operative Corporations Act*.

5. The person satisfies such criteria as may be prescribed.

Transfer of regulatory asset

(3) In this Act, a reference to the transfer of a specified portion of the regulatory asset is a reference to the following, as provided for in subsection 26 (3):

1. A reduction in the balance in the variance account.

2. The adjustment of the regulatory asset.

3. The acquisition by a financing entity of the investment interest corresponding to the specified portion of the regulatory asset.

Effect of invalidity

2. (1) For greater certainty, all of the provisions of this Act remain in full force and effect, even if one or more provisions are held to be invalid, the intention of the Legislature being to give separate and independent effect to the extent of its powers to every provision contained in this Act.

Same, funding obligation

(2) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect the validity or enforceability of a funding obligation incurred before the day that the provision is held to be invalid or ceases to be in effect, or any rights or obligations associated with the funding obligation.

Purposes

3. The purposes of this Act are,

(a) to ensure that clean energy costs and clean energy benefits are fairly allocated among present and future specified consumers;

(b) to recognize that clean energy benefits have accrued and will accrue over time and will continue to benefit present and future electricity consumers in the Province; and

(c) to align clean energy costs with clean energy benefits, in order to provide fairness for specified consumers over time.

Crown bound

4. This Act binds the Crown.

Protection and assurances

Prohibition

5. (1) No action or omission by the Board, the Minister or the Crown shall be effective to reduce, impair, postpone or terminate the obligations of specified consumers to pay amounts in respect of the clean energy adjustment or to impair or postpone the invoicing, collection or remittance of the clean energy adjustment.

Agreements

(2) The Minister and the Minister of Finance may together, with the approval of the Lieutenant Governor in Council, enter into agreements on behalf of the Province of Ontario with any person in respect of this Act, including agreements regarding the performance of the IESO or electricity vendors under this Act or related transactions.

Guarantee, indemnification

(3) The Lieutenant Governor in Council may by order,

(a) authorize the Minister and the Minister of Finance, acting together on behalf of the Province,

(i) to agree to guarantee or indemnify any debts, obligations, securities or undertakings associated with an investment interest, and

(ii) to determine terms and conditions of the guarantee or indemnity and the maximum liability for the guarantee or indemnity;

(b) specify terms and conditions that must be included in any guarantee or indemnity given by the Minister and the Minister of Finance; and

(c) specify a maximum liability for the guarantee or indemnity.

PART II
FAIR ADJUSTMENT

Definition

6. In this Part,

"regulated rate consumer" means a specified consumer who meets the following criteria:

1. The consumer is a member of the class of consumers prescribed by the regulations made under the *Ontario Energy Board Act, 1998* for the purposes of subsection 79.16 (1) of that Act.

2. The consumer would, if the consumer were not subject to this Act, be invoiced the rates determined by the Board under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*.

Regulated rate consumers, first adjustments

7. (1) Despite any order under subsection 78 (3.1) of the *Ontario Energy Board Act, 1998* and despite section 79.16 of that Act, the electricity rates payable by regulated rate consumers for the period beginning on July 1, 2017 and ending on April 30, 2018 are the rates, as determined by the Board, that would result in a hypothetical regulated rate consumer who meets the prescribed criteria being charged an invoice amount that is 25 per cent less than the invoice amount that would have been charged to that consumer under the comparison rates described in subsection (2).

Comparison rates

(2) The comparison rates are the rates that would have been effective May 1, 2017 if they had been determined by the Board solely using the method prescribed by the regulations made under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*, without taking into account any forecasted impact of any other provisions of this Act.

Invoice amounts

(3) The types of amounts to be included or excluded in each invoice amount mentioned in subsection (1) are the types of amounts specified in the regulations.

Other specified consumers, first adjustments

8. (1) For the period beginning on July 1, 2017 and ending on April 30, 2018, the adjustments made by the IESO under section 25.33 of the *Electricity Act, 1998* shall, with respect to specified consumers who are not regulated rate consumers, be further adjusted

by electricity vendors in accordance with the determinations of the Board under subsection (2).

Board to make determinations

(2) The Board shall, in accordance with the regulations, determine the adjustments to be made by electricity vendors.

Same, regulations

(3) The regulations may specify different adjustments to be made in respect of prescribed classes of specified consumers who are not regulated rate consumers.

Determinations by Board

9. The Board shall make the determinations mentioned in sections 7 and 8 no later than 15 business days after the day this section receives Royal Assent and, regardless of whether the Board makes the determinations before or after July 1, 2017, the determinations shall be effective as of July 1, 2017.

Implementation by electricity vendors

10. (1) As soon as possible after the Board makes determinations under section 9, each electricity vendor shall, in respect of electricity used on or after July 1, 2017, ensure that its invoices reflect the determinations of the Board.

Same

(2) The electricity vendor shall ensure that, if any of its customers who are specified consumers have been invoiced in a manner that does not reflect the determinations of the Board under section 9, the specified consumer receives the difference between the amounts shown on the invoice and the amounts reflecting the Board's determinations, provided as a lump sum credit on the first invoice issued after the electricity vendor has adapted its invoices or by such other means as may be prescribed.

Subsequent adjustments

11. (1) Despite clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998* and subject to subsection (2), the Lieutenant Governor in Council may prescribe the methodology to be applied by the Board after April 30, 2018 for the purpose of determining,

(a) electricity rates for regulated rate consumers; or

(b) adjustments to be applied by electricity vendors to the adjustments made by the IESO under section 25.33 of the *Electricity Act, 1998* in respect of prescribed classes of specified consumers who are not regulated rate consumers.

Limitation

(2) Any prescribed methodology shall have regard to the following:

1. The purposes of this Act.

2. The clean energy costs borne by specified consumers over time.

3. Such other matters as may be prescribed.

Sub-metering

12. (1) This section applies if a specified consumer provides to another person electricity in respect of which a determination of the Board referred to in section 9 or 11 applies.

Same

(2) If an invoice for the electricity is issued to the person by the specified consumer or a unit sub-meter provider providing unit sub-metering for the specified consumer, the amount payable for the electricity by the person who is liable to pay the invoice shall be determined in accordance with the regulations.

PART III
CLEAN ENERGY ADJUSTMENT

Specified consumers to pay

13. (1) Upon receipt of an invoice from an electricity vendor that includes an amount in respect of the clean energy adjustment, a specified consumer shall pay the amount to the electricity vendor as agent of the investment interest owners.

Same

(2) For greater certainty, subsection (1) applies regardless of,

(a) whether the clean energy adjustment was determined in a manner that was inconsistent with this Act; and

(b) whether the amount payable in respect of the clean energy adjustment relates to funding obligations that were incurred in a manner that was inconsistent with the Financing Plan, including in a manner that failed to provide for the reasonable alignment of the estimated finance amount with the fair allocation amount.

Terms

(3) The payment shall be made in accordance with such terms of payment as may be specified in the invoice, which may include terms relating to late payment fees and interest charges.

Indebtedness of specified consumer

(4) An unpaid amount that is required to be paid by a specified consumer under this section constitutes indebtedness of the specified consumer to each investment interest owner to the extent of each owner's respective interest in the investment asset.

Same

(5) The indebtedness mentioned in subsection (4) is a single and separate debt obligation owed by the specified consumer and may be enforced independently from any other payment obligation or indebtedness owing by the specified consumer.

Unit sub-metering

(6) A specified consumer who provides electricity through unit sub-metering may collect amounts in respect of the clean energy adjustment payable under this section in accordance with the regulations.

Irrevocability of amount

14. (1) An amount in respect of the clean energy adjustment shown on an invoice issued to a specified consumer under this Act is determinative of the amount of the consumer's indebtedness resulting from the clean energy adjustment and is irrevocable upon invoicing the consumer and may not be set off or bypassed.

Exception

(2) Subsection (1) does not apply to the extent that the invoice reflects a clerical, typographical or calculation-related error.

Determination of clean energy adjustment
Financial Services Manager to determine

15. (1) The Financial Services Manager shall determine the clean energy adjustment payable by all specified consumers in respect of each month in a reference period by taking the following steps:

1. Calculate the sum of the following:

    i. The estimated finance amount in respect of the reference period.

    ii. The true up amount in respect of the reference period.

2. Divide the sum calculated under paragraph 1 by the number of months in the reference period.

Regulations re true up amount

(2) The Lieutenant Governor in Council shall, in making regulations with respect to the determination of the true up amount, have regard to the following principles:

1. The true up amount should serve to ensure that the collection of the clean energy adjustment is sufficient to pay the finance amount when it is due.

2. The method for determining the true up amount should take into account historical and reasonably foreseeable,

    i. differences between the estimated and actual finance amount for the applicable reference period,

    ii. differences between amounts invoiced and amounts collected due to various factors, including applicable taxes, consumer defaults and delays, billing lags and write-offs, and

    iii. variations in billings due to variations in electricity consumption.

Financial Services Manager to notify Board

(3) The Financial Services Manager shall, in accordance with the regulations, notify the Board of the clean energy adjustment in respect of a reference period and such other information related to the determination of the clean energy adjustment as may be prescribed.

Board to determine rates

(4) Without changing the clean energy adjustment, the Board shall, in accordance with the regulations, determine the rates at which specified consumers are invoiced to recover the clean energy adjustment in respect of the reference period.

IESO to receive amounts

16. (1) The IESO shall, as agent of the investment interest owners, receive amounts in respect of the clean energy adjustment paid to it from electricity vendors in accordance with the market rules made under section 32 of the *Electricity Act, 1998* or the regulations.

Account

(2) All of the following amounts received by the IESO shall, until remitted to or for the benefit of the investment interest owners in accordance with subsection (4), be

deposited promptly into an account established for the purposes of receiving those amounts:

1. Amounts described in subsection (1).

2. Payments made by specified consumers directly to the IESO as electricity vendor under subsection 13 (1).

3. Proceeds of amounts described in paragraphs 1 and 2.

Same, held in trust

(3) All amounts received by the IESO in respect of the clean energy adjustment shall, until remitted to or for the benefit of the investment interest owners, be held in trust by the IESO for the investment interest owners.

IESO to remit

(4) The IESO shall remit amounts received by it in respect of the clean energy adjustment, inclusive of interest earned on the amounts referred to in subsection (1), to or for the benefit of the investment interest owners in accordance with the regulations.

Electricity vendor to invoice specified consumers

17. (1) Each electricity vendor shall issue an invoice to each of its customers who is a specified consumer for the amount payable by the consumer in respect of the clean energy adjustment, as determined by applying the rate set by the Board under subsection 15 (4) and in accordance with the regulations.

Electricity vendor to report

(2) Each electricity vendor shall, in accordance with the regulations, promptly report to the IESO the total amount invoiced to its customers who are specified consumers in respect of the clean energy adjustment, the amount collected and such other information as may be prescribed.

Electricity vendor to collect

(3) Each electricity vendor shall, as agent of the investment interest owners, collect amounts in respect of the clean energy adjustment from specified consumers in accordance with the regulations.

Pro rating of payments

(4) If an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices and the amount paid is less than the total amount payable, the electricity vendor shall allocate the payment on a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices in respect of electricity charges in respect of the same invoice period.

Held in trust

(5) Payments received by an electricity vendor from or on behalf of specified consumers in respect of the clean energy adjustment and all proceeds of the payments shall, until remitted to the IESO for the benefit of the investment interest owners in accordance with subsection (6), be held by each electricity vendor in trust for the benefit of the investment interest owners.

Remittance to IESO

(6) Each electricity vendor shall remit amounts in respect of the clean energy adjustment to the IESO for the benefit of the investment interest owners in accordance with the regulations.

PART IV
IMPLEMENTATION

Financial Services Manager

Appointment

18. Ontario Power Generation Inc. is appointed as the Financial Services Manager for the purposes of this Act.

Duties and powers

19. (1) The Financial Services Manager shall perform the duties assigned to it under this Act and may administer the investment asset on behalf of the investment interest owners.

Same

(2) The administration of the investment asset may include providing information to the IESO in respect of obligations under Part III and such other activities as may be prescribed.

Fees

(3) Subject to any prescribed limitations, the Financial Services Manager may establish and charge fees in relation to such matters as may be prescribed in accordance with the regulations, which regulations may provide for the ability to recover costs and expenditures and to earn a return.

Same, Board approval

(4) Before establishing fees under subsection (3), the Financial Services Manager shall submit them to the Board for approval in accordance with the regulations.

Fair Allocation Amount

Minister to calculate fair allocation amount

20. (1) Subject to subsections (2) and (3), before the first funding obligation is incurred the Minister shall calculate a fair allocation amount in respect of each reference period, applying such method as the Minister considers appropriate and in accordance with the following steps:

1. Determine the estimated clean energy costs and estimated clean energy benefits allocated to specified consumers in respect of the reference period.

2. Determine the estimated reduction in the amounts payable by specified consumers as a result of determinations of the Board under Part II in respect of all previous reference periods, including the estimated reduction in clean energy costs described in clause (a) of the definition of "clean energy costs" in subsection 1 (1) that would otherwise have been payable by specified consumers in the absence of this Act.

3. Determine the amount, if any, by which the determination under paragraph 1 exceeds the determination under paragraph 2.

4. Calculate the sum of the amount determined under paragraph 3 and such other amounts as may be prescribed.

Principles

(2) In calculating the fair allocation amount, the Minister shall have regard to the following principles:

1. The purpose of calculating the fair allocation amount is to measure and allocate the estimated clean energy costs and estimated clean energy benefits fairly among the specified consumers in respect of each reference period.

2. Calculations should be made having regard to the need to align each fair allocation amount with the estimated finance amount payable during the reference period.

3. Estimated clean energy costs allocated to specified consumers in respect of a reference period should be allocated in proportion to the estimated clean energy benefits attributed to the specified consumers in respect of the reference period.

4. Such other principles as may be prescribed.

Assumptions

(3) In calculating the fair allocation amount, the Minister shall make such assumptions as the Minister considers to be reasonable regarding the following:

1. The time value of money or the rate of inflation, for the purpose of equating nominal amounts over time.

2. The expected number of specified consumers in respect of each reference period.

3. The expected electricity consumption rates in respect of each reference period.

4. Such other assumptions as may be prescribed.

Minister to provide amount to Financial Services Manager

(4) The Minister shall provide the fair allocation amount in respect of each reference period to the Financial Services Manager.

Recalculation

(5) A calculation of the fair allocation amount under this Part may be changed by such person as may be prescribed in accordance with such requirements as may be prescribed.

Same

(6) No change under subsection (5) shall affect any clean energy adjustment that has already been determined under section 15 or any funding obligations that have already been incurred before the change.

Information

(7) The Minister, the IESO, the Financial Services Manager, the Board and electricity vendors shall provide such information as may be prescribed in accordance with the regulations for the purposes of facilitating a change to a calculation of the fair allocation amount.

FINANCING PLAN

Financial Services Manager to prepare Financing Plan

21. (1) The Financial Services Manager shall prepare a written plan entitled the Financing Plan to be used by the Financial Services Manager to evaluate whether potential funding obligations should be incurred for the purposes of acquiring and financing an investment asset in accordance with this Act or for the purposes of a refinancing.

Plan to be provided to Minister

(2) The Financial Services Manager shall provide the Financing Plan to the Minister.

Principles

(3) In preparing the Financing Plan, the Financial Services Manager shall have regard to the following principles:

1. Funding obligations should be incurred such that, along with any funding obligations already incurred, the estimated finance amount that would, subject to any refinancing, become due and payable during a reference period will reasonably align with the fair allocation amount determined in respect of the reference period, in each case after reducing the fair allocation amount to reflect determinations of the Board under Part II in respect of the reference period.

2. Incurrences should be implemented in a manner that, in the opinion of the Financial Services Manager, is reasonable, cost effective and that reflects prevailing market terms and conditions.

3. Reasonable assumptions should be made regarding such matters as may be prescribed.

4. Such other principles as may be prescribed.

Limitation

(4) In respect of each reference period from July 1, 2017 to April 30, 2021, no funding obligation shall be incurred that would result in amounts payable in respect of the clean energy adjustment in respect of the reference period unless,

(a) the amounts are payable in respect of a reference period in respect of which the Board has not made any determinations under Part II; or

(b) if the Board has made a determination under Part II in respect of the reference period, the funding obligations incurred would not result in amounts payable in respect of the clean energy adjustment during the reference period in an amount that exceeds the limit determined in accordance with the regulations.

Other reports

(5) The Financial Services Manager shall submit to the Minister such reports and information as the Minister may require from time to time and shall, if required by the Minister to do so, examine, report and advise on any question relating to the Financing Plan.

Amendments to plan

(6) The Financial Services Manager may amend the Financing Plan at any time.

Same

(7) In the event that the Financing Plan is amended, any reference in this Act to the Financing Plan is deemed to be a reference to the plan as amended.

Incurrence of funding obligations

22. (1) The Financial Services Manager shall ensure that funding obligations incurred for the purposes of this Act are incurred in a manner that is consistent with the applicable Financing Plan.

Financing entities

(2) In accordance with the Financing Plan, the Financial Services Manager may establish or cause to be established one or more financing entities that may incur funding obligations.

Prohibition

(3) The Financial Services Manager shall not provide for funding obligations to be incurred with any recourse to any assets of an electricity vendor, the Board, Ontario Power Generation Inc., the Province or the Lieutenant Governor in Council, except to the extent that any of these persons or entities may be liable to perform obligations or duties arising under this Act or under the express terms of a funding obligation or other agreement.

Effect of amendment to fair allocation amount

(4) Each funding obligation incurred and each transfer made by a financing entity is deemed to be consistent with the Financing Plan and to provide for the reasonable alignment of the estimated finance amount with the fair allocation amount.

Same

(5) For greater certainty, subsection (4) applies despite the failure of the Financial Services Manager to comply with subsection (1).

PART V
THE REGULATORY ASSET

IESO deferral

23. (1) The IESO deferral for each month, commencing May 1, 2017, shall be determined by the IESO in accordance with the regulations.

Same, retrospective amounts

(2) For greater certainty, the regulations may provide for the IESO deferral to include an amount that was incurred by the IESO on or after May 1, 2017 and before the day this section comes into force.

Electricity vendors to provide information

(3) Electricity vendors shall provide to the IESO such information as the IESO may reasonably request for the purposes of determining the IESO deferral under subsection (1) and such further information as may be prescribed.

Same

(4) The IESO may rely on information provided by electricity vendors for the purposes of the determination under subsection (1).

Variance account to be established, maintained

24. (1) The IESO shall establish and maintain a variance account in which it records the following:

1. The IESO deferral for each month.

2. All payments received by the IESO resulting from the exercise of the right of recovery under section 25 and any transfer under section 26.

3. Such other adjustments as may be prescribed, including adjustments in respect of the period that commences on or after May 1, 2017 and before the day this section comes into force.

Recording determinative

(2) Subject to the correction of any obvious error by the IESO, its recording of the balance in the variance account is determinative of the balance as of the time of the recording.

Rights of investment interest owner

(3) No change made by the IESO to the balance in the variance account shall, if the previous balance was relied upon by an investment interest owner in the context of a transfer under section 26, affect the rights acquired by the investment interest owner under the transfer.

Regulatory asset established

25. (1) Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Board to set rates

(2) Subject to subsection (3), the Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for the IESO to recover the balance recorded in the variance account.

Limitation

(3) The IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2021.

Transfer of regulatory asset

26. (1) The IESO may from time to time, in accordance with this Act and the regulations, transfer a specified portion of the regulatory asset to a financing entity in accordance with this section.

Agreement

(2) An agreement between the IESO and a financing entity in relation to the transfer of a specified portion of the regulatory asset shall provide for consideration of a payment by the financing entity to the IESO in an amount equal to the amount of the specified portion.

Effect of payment

(3) Upon receipt by the IESO of the payment by the financing entity,

(a) the balance in the variance account shall be reduced by the amount of the payment;

(b) the regulatory asset shall be adjusted accordingly;

(c) the financing entity shall acquire a corresponding investment interest; and

(d) the IESO shall retain no further right, title or interest in the corresponding investment interest.

Validity of transfer

27. (1) A transfer of a specified portion of the regulatory asset under section 26 constitutes a valid and enforceable absolute assignment, conveyance and sale of the corresponding investment interest to the transferee.

Same

(2) Without limiting subsection (1), any transfer agreement that states an intention of the parties for the IESO to dispose of a specified portion of the regulatory asset and to assign, convey or sell a corresponding investment interest shall be treated for all purposes as an absolute assignment, conveyance, disposition and sale of the IESO's right to

recover the corresponding amount in the variance account and not merely as a security interest.

Deemed perfection, etc.

(3) At the time a transfer of the regulatory asset is made under section 26, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the transferee shall have priority over any liens in favour of those persons.

PART VI
THE INVESTMENT ASSET

Investment asset established

28. (1) The transfer of a specified portion of the regulatory asset under section 26 creates an investment asset or, if it is not the first transfer, adds to the investment asset.

Same

(2) Upon transfer of a specified portion of the regulatory asset under section 26 to a financing entity, the investment asset resulting from the transfer is immediately vested in the financing entity, free and clear of any adverse claim.

Investment asset, irrevocable rights and interests

29. (1) The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests of investment interest owners:

1. The right and interest to impose, invoice, collect, receive and recover the clean energy adjustment from specified consumers, including the right to determine the clean energy adjustment in accordance with this Act.

2. The right to receive, collect and recover the clean energy adjustment that is imposed, invoiced and recoverable under this Act, including any amounts in respect of the clean energy adjustment that are held by electricity vendors, the IESO and other prescribed parties.

3. All rights and entitlements under such accounts as may be prescribed by regulation and all amounts on deposit in such accounts.

4. The right to enforce the duties and obligations under this Act of each electricity vendor to impose, attribute, charge and invoice for the clean energy adjustment.

5. The right to enforce the duties and obligations under this Act of each electricity vendor and the IESO to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by any electricity vendor to recover payment of the clean energy adjustment.

6. All rights of any kind related to any of the other property rights or interests that comprise the investment interest, including any rights to receive funding rebates.

7. All revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 6, regardless of whether it is invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

Not affected by failure to impose etc. clean energy adjustment

(2) An investment interest is not affected by any failure to impose, attribute, invoice, accrue or collect amounts in respect of the clean energy adjustment.

No set off, etc.

(3) The investment asset shall not be set off,

(a) by a consumer, an electricity vendor, the IESO, an agent of the investment interest owners or an owner in the Province of a distribution system within the meaning of the *Electricity Act, 1998*;

(b) in connection with any default of a person mentioned in clause (a); or

(c) by any affiliate or successor of a person mentioned in clause (a).

Exercise of rights

(4) The rights of the investment interest owners to collect the clean energy adjustment and enforce their rights and interests in, to and in respect of the investment asset against a specified consumer shall be exercised in accordance with Part III of this Act.

Collective action required

(5) If one investment interest owner owns a right or interest in the investment asset that comprises less than the entire property right and interest constituted by the

investment asset, the right or interest shall only be enforced by the investment interest owner collectively and in coordination with all other investment interest owners, and any agreement among that collective in furtherance of the collective action shall be valid and binding on the investment interest owners as a collective in accordance with its terms.

Transfer of investment interest

30. An investment interest owner may transfer all or a portion of an investment interest to any other investment interest owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan.

Validity of transfer

31. (1) A transfer of an investment interest under this Act is a valid and enforceable sale and absolute transfer of the investment interest and confers upon the transferee a valid property right and interest in, to and under the applicable investment interest acquired in accordance with the terms of the transfer.

Same

(2) Without limiting subsection (1), a transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of an investment interest owner's right, title and interest in, to and under an investment interest, and not merely as a security interest, and upon such absolute transfer the transferor shall retain no right, title or interest in the investment interest subject to the transfer, including all rights to the investment interest arising after the transfer.

Deemed perfection, etc.

(3) At the time a transfer of an investment interest is made, the transfer shall be deemed to have been and shall be perfected as described in the *Personal Property Security Act*, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer, assignment, etc.

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer, and the property rights and interests acquired by the investment interest owner shall have priority over any liens in favour of such other persons.

Investment interest owner may grant security interest

32. (1) An investment interest owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under the investment interest to or in favour of any person to secure a funding obligation.

Validity

(2) A security interest granted under this Act shall be valid and enforceable in accordance with its terms.

Perfection and priority of security interests

(3) All provisions of the *Personal Property Security Act* shall apply to the investment asset and each investment interest on the basis that the investment asset and each investment interest is intangible personal property, except as otherwise provided for in this section, and any granting of a security interest by an investment interest owner to secure a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by registering a financing statement under that Act on that basis.

Proceeds

(4) All proceeds of an investment interest that are subject to the security interest and that are received by the investment interest owner shall immediately be subject to the security interest and shall be perfected without any physical delivery of the proceeds, registration of any financing statement or any further act.

Perfection

(5) The security interest shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may subsequently attach to the property rights and interests in the investment interest subject to the security interest, unless the person to whom the security interest has been granted consents otherwise.

Same

(6) The person to whom the security interest has been granted shall have a perfected security interest in revenues or other proceeds that are deposited in any account of any electricity vendor, an agent of an electricity vendor or other person who may have commingled such revenues or other proceeds with other funds.

Notice required

(7) The secured party shall be entitled to exercise the rights of an investment interest owner only after the secured party has given notice of the enforcement of its security interest to the IESO.

Interpretation

(8) For the purposes of this section, a security interest is perfected when it is perfected as described in the *Personal Property Security Act.*

PART VII
MISCELLANEOUS

Appointment of agent, invoicing or collection

33. (1) If a prescribed circumstance applies, the Lieutenant Governor in Council may by regulation appoint a person to carry out some or all of the obligations of an electricity vendor under this Act in the place of an electricity vendor with respect to invoicing or collection.

Same, not Crown agent

(2) For greater certainty, a person appointed under this section is not an agent of the Crown for any purpose, despite the *Crown Agency Act*.

Board's authority

34. (1) Each electricity vendor, the IESO and the Financial Services Manager shall maintain such accounts and provide such information to the Board as the Board may require for the purposes of carrying out its responsibilities under this Act, in the form and manner and within the time required by the Board.

No hearing required

(2) Despite anything to the contrary in the *Ontario Energy Board Act, 1998*, the Board may exercise any of its responsibilities under this Act without a hearing.

Sequestration

35. (1) A court in the Province may, upon application by an investment interest owner or a secured party, order the sequestration and payment of amounts in respect of the clean energy adjustment, collections or remittances, as applicable, for the benefit of the investment interest owner or secured party by any person or entity authorized to collect amounts in respect of the clean energy adjustment.

Same

(2) An order under subsection (1) does not limit any other remedies available to the applicant.

Choice of law

36. The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to a transfer under this Act or the creation of a security interest in the regulatory asset, the investment asset, the clean energy adjustment or the undertaking of the Crown under section 5 shall be the laws of the Province.

Conflict

37. The provisions of this Act and the regulations apply despite any provision of any other Act regarding the attachment, assignment or perfection, or the effect of perfection or priority of any transfer or security interest.

No further approvals, etc.

38. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required under the Financing Plan or in relation to the determination of the fair allocation amount.

Liability

39. (1) No action or other civil proceeding shall be commenced against any employee of the Province or Ontario Power Generation Inc. for any act done in good faith in the exercise or performance or the intended exercise or performance of a power or duty under this Act, the regulations or for any alleged neglect or default in the exercise or performance in good faith of such a power or duty.

Same

(2) Nothing in subsection (1) shall be read as limiting the effect of subsection 19 (1) of the *Electricity Act, 1998* or subsection 11 (1) of the *Ontario Energy Board Act, 1998.*

Same

(3) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act,* subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

References in marketing materials and offering documents

40. No person shall include, in marketing materials or offering documents relating to the financing of funding obligations, references to any rights, obligations, guarantees or undertakings arising under section 5 unless the prescribed requirements, if any, are satisfied.

Regulations

41. (1) The Lieutenant Governor in Council may make regulations in respect of the following matters:

1. Governing anything that is required or permitted to be prescribed or that is required or permitted to be done by, or in accordance with, the regulations or as authorized, specified or provided in the regulations.

2. Defining, for the purposes of a regulation, words and expressions used in this Act that are not defined in the Act.

3. Governing the incurrence of debt for the purposes of the definition of "refinancing" in subsection 1 (1).

4. Governing the inclusion of information under this Act on or with invoices, which may include requiring notice to be provided by electricity vendors to specified consumers and other prescribed persons regarding the adjustments, including providing for different requirements in different circumstances and for different classes of specified consumers.

5. Governing the inclusion of information about the clean energy adjustment and any other matters provided for under this Act on or with invoices issued to specified consumers, including the form that the information must take and the form of the invoices and the form of any notice to be provided to the specified consumer under this Act.

6. Governing the manner by which invoices or notices provided for under this Act are to be provided to specified consumers and other prescribed persons.

7. Providing for a right of compensation for investment interest owners affected by a breach under section 29 and the manner in which such a right may be enforced under this Act.

8. Prescribing the time within which any action required by this Act may be required to be done.

9. Providing for such other matters as the Lieutenant Governor in Council considers advisable to carry out the purpose of this Act.

Limitation

(2) Despite subsection (1) or any other Act, no regulation under this Act shall have the effect of reducing, impairing, postponing or terminating the obligations of specified consumers to pay amounts in respect of the clean energy adjustment or impairing or postponing the invoicing, collection, remittance or recovery of the clean energy adjustment.

PART VIII
AMENDMENTS TO OTHER ACTS

Electricity Act, 1998

42. (1) Subsection 6 (1) of the *Electricity Act, 1998* is amended by adding the following clause:

(q.1) to exercise the powers and rights and to perform the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and to engage in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including,

(i) entering into agreements or arrangements with any person for the purposes of the *Ontario Fair Hydro Plan Act, 2017*,

(ii) engaging in activities related to making payments to and receiving payments as contemplated under the *Ontario Fair Hydro Plan Act, 2017* and related settlement activities,

(iii) engaging in activities related to the transfer and administration of the regulatory asset created under the *Ontario Fair Hydro Plan Act, 2017*, which activities may include,

(A) incurring liabilities in relation to the regulatory asset,

(B) transferring the regulatory asset under section 26 of the *Ontario Fair Hydro Plan Act, 2017* for consideration, and

(C) acting as a recovery agent under the *Ontario Fair Hydro Plan Act, 2017*;

(2) Subsection 25.33 (1) of the Act is amended by striking out "and" at the end of clause (a), by adding "and" at the end of clause (b) and by adding the following clause:

(c) such amounts as may be prescribed that are paid or incurred by the IESO in relation to the *Ontario Fair Hydro Plan Act, 2017*.

(3) Subsection 25.33 (2) of the Act is amended by striking out "and" at the end of clause (a), by adding "and" at the end of clause (b) and by adding the following clause:

(c) such amounts as may be prescribed that are paid or incurred by the IESO in relation to the *Ontario Fair Hydro Plan Act, 2017*.

(4) Clause 25.33 (4) (b) of the Act is amended by adding "or as may be required by a regulation made under this Act or the *Ontario Fair Hydro Plan Act, 2017*" at the end.

(5) Subsection 25.33 (5) of the Act is amended by adding "or under the *Ontario Fair Hydro Plan Act, 2017*" at the end.

(6) Section 53.1 of the Act is amended by adding the following subsections:

Same, *Ontario Fair Hydro Plan Act, 2017*

(1.1) In addition to the objects mentioned in subsection (1), the objects of Ontario Power Generation Inc. include exercising the powers and rights and performing the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and engaging in activities to facilitate the implementation of that Act, including entering into contracts and undertakings on behalf of financing entities and performing other services on behalf of financing entities, subject to the right to be paid by the financing entities for those services.

Subsidiaries, etc.

(1.2) Ontario Power Generation Inc. may create or invest in one or more subsidiaries, trusts, partnerships, limited partnerships or special purpose entities in order to more efficiently conduct its activities or achieve its objects.

Deemed assets, non-subsidiary

(1.3) Despite any other provision of this Act, the *Business Corporations Act* or any other Act, if a financing entity is not a subsidiary of Ontario Power Generation Inc.,

(a) the assets and liabilities of the financing entity shall not form part of the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries; and

(b) the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries shall not form part of the assets and liabilities of the financing entity.

Deemed assets, subsidiary

(1.4) Despite any other provision of this Act, the *Business Corporations Act* or any other Act, if a financing entity is a subsidiary of Ontario Power Generation Inc.,

(a) the assets and liabilities of that financing entity shall not form part of the assets and liabilities of Ontario Power Generation Inc. or any of its other subsidiaries; and

(b) the assets and liabilities of Ontario Power Generation Inc. or any of its other subsidiaries shall not form part of the assets and liabilities of that financing entity.

Definition, financing entity

(1.5) For the purposes of this section,

"financing entity" has the same meaning as in the *Ontario Fair Hydro Plan Act, 2017*.

Ontario Energy Board Act, 1998

43. (1) Subsection 70 (2.1) of the *Ontario Energy Board Act, 1998* is amended by adding the following paragraph:

4. The licensee is required to comply with the *Ontario Fair Hydro Plan Act, 2017*.

(2) Section 70 of the Act is amended by adding the following subsection:

Deemed condition of licences, unit sub-meter provider, *Ontario Fair Hydro Plan Act, 2017*

(2.4) Every licence issued to a unit sub-meter provider is deemed to contain the condition that the unit sub-meter provider is required to comply with the *Ontario Fair Hydro Plan Act, 2017* and the regulations made under it.

(3) Section 78.1 of the Act is amended by adding the following subsections:

Same, limitation re Ontario Power Generation Inc.

(3) The determination of a payment to Ontario Power Generation Inc. under this section shall not include any consideration of amounts related to activities of Ontario Power Generation Inc. carried out in relation to the *Ontario Fair Hydro Plan Act, 2017*.

Same

(3.1) The amounts referred to in subsection (3) include, without limitation, the following:

1. Amounts related to the appointment of Ontario Power Generation Inc. as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

2. Amounts related to the charging of fees for performing duties as the Financial Services Manager.

3. Amounts related to exercising the powers and performing the duties of the Financial Services Manager.

4. Amounts related to the consolidation of the assets and liabilities for accounting purposes of any special purpose financing entities established under and for the purposes of that Act.

(4) Subsection 79.16 (3) of the Act is repealed.

PART IX
COMMENCEMENT AND SHORT TITLE

Commencement

44. This Schedule comes into force on the day the *Fair Hydro Act, 2017 receives* Royal Assent.

Short title

45. The short title of the Act set out in this Schedule is the *Ontario Fair Hydro Plan Act, 2017*.

SCHEDULE 2
AMENDMENTS TO THE ONTARIO ENERGY BOARD ACT, 1998

1. (1) Subsection 79 (4) of the *Ontario Energy Board Act, 1998* is repealed and the following substituted:

Liability

(4) All consumers are required, in accordance with the regulations, to contribute towards the amount of any compensation required under subsection (3) that is not otherwise provided under subsection (4.1).

Payments for certain classes

(4.1) Compensation required under subsection (3) may be provided with respect to one or more prescribed classes of consumers who receive rate protection under this section, in a manner provided for in the regulations.

Money appropriated by the Legislature

(4.2) The compensation provided for in subsection (4.1) shall be paid for out of the money appropriated for those purposes by the Legislature.

Information, etc.

(4.3) If provided for in the regulations, the Board, the IESO and distributors, or any of them, shall provide such information and reports to the Ministry of Energy and to one another as are necessary to facilitate the implementation, administration, funding and delivery of the rate protection or of anything else provided for in this section.

(2) Clause 79 (5) (e) of the Act is repealed and the following substituted:

(e) prescribing rules respecting the amounts that must be collected to compensate distributors, taking into account any compensation provided under subsection (4.1), including rules,

(i) respecting the calculation of those amounts,

(ii) respecting the calculation of any off-set to the liability of consumers under subsection (3) having regard to those amounts,

(iii) establishing the time and manner of collection,

(iv) requiring the amounts to be paid in instalments and requiring the payment of interest or penalties on late payments,

(v) prescribing methods of ensuring that the amounts required cannot be bypassed, and

(vi) respecting the distribution of those amounts to consumers;

(e.1) prescribing classes of consumers for the purposes of subsection (4.1), and governing how and when the compensation is to be provided with respect to the rate protection provided to them, including, without restricting the generality of the foregoing, requiring the IESO to receive payments or amounts from the Minister of Energy and to make payments to licensed distributors or to prescribed persons and prescribing how and when payments are to be made;

2. Section 79.2 of the Act is repealed and the following substituted:

Rate assistance

79.2 (1) The Minister shall make provision for rate assistance for rate-assisted consumers having regard to their economic circumstances, and where the Minister makes such provision, shall do so out of the money provided for in subsection (4).

OESP

(2) The program known as the "Ontario Electricity Support Program" in English and "Programme ontarien d'aide relative aux frais d'électricité" in French is continued for the purpose of providing rate assistance to rate-assisted consumers having regard to their economic circumstances.

Administered by Board

(3) The Ontario Electricity Support Program shall be administered by the Board, or when the regulations so provide, by a Minister of the Crown or other entity provided for in the regulations.

Money appropriated by the Legislature

(4) The money required for the purposes of the Ontario Electricity Support Program shall be paid out of the money appropriated for those purposes by the Legislature, once the amounts recorded in the variance account referred to in subsection (5) are no longer sufficient to provide for the funding of the program when taken on their own.

Variance account

(5) The money required for the purposes of the Ontario Electricity Support Program shall be provided out of the credit balance in the variance account maintained by the IESO under the Program as it existed before the coming into force of section 2 of Schedule 2 to the *Fair Hydro Act, 2017* until the amounts recorded in the account are no longer sufficient, when taken on their own, to fund the Program.

Variance account depleted

(6) The IESO shall provide the Ministry of Energy with advance notice, on a timely basis, of the time the IESO estimates that the amounts reflected in the variance account would be less than the amount required to meet its obligations related to funding the Ontario Electricity Support Program for the upcoming month.

How provided

(7) Rate assistance provided under this section shall be provided with respect to consumers prescribed in the regulations, and shall be provided at the times provided for in the regulations and in the amounts and in the manner provided for in the regulations.

Payments with respect to prior use

(8) The regulations may require provision of rate assistance to prescribed classes of rate-assisted consumers with respect to electricity consumed during a period prior to the date of the making of the regulation, but no such rate assistance shall be required under the regulations with respect to electricity consumed before January 1, 2016.

Transitional

(9) The regulations may require the provision of rate assistance for a rate-assisted consumer with respect to a period prior to the date on which the consumer became a rate-assisted consumer if the consumer meets all of the criteria prescribed by the regulations.

Distributors, etc.

(10) A distributor, a unit sub-meter provider and any other person or entity that may be prescribed is entitled to be compensated from the money referred to in subsection (4) or subsection (5), as the case may be, for any lost revenue resulting from the provision of rate assistance under the Ontario Electricity Support Program.

Deemed licence conditions, IESO, settlements, payments, etc.

(11) Every licence issued to the IESO, a distributor or unit sub-meter provider or a retailer of electricity shall be deemed to contain conditions requiring the licensee to do anything necessary to implement and administer the provision of rate assistance under this section as may be required by the regulations or the Board, including requirements with respect to,

(a) making payments to the IESO, distributors, unit sub-meter providers and other persons and entities identified by the regulations;

(b) receiving payments or other amounts from the IESO, distributors, unit sub-meter providers and other persons and entities identified by the Minister;

(c) requiring licensees to pass any rate assistance provided for under this section through to rate-assisted consumers in the manner provided for in the regulations;

(d) engaging in settlement activities;

(e) providing information to and receiving information from the Ministry of Energy, the Board, the IESO, distributors, unit sub-meter providers, retailers of electricity and any other prescribed persons and entities in the time and in the manner provided for by the Board or as may be prescribed; and

(f) entering into agreements or arrangements with licensees and other persons.

Information, etc.

(12) If provided for in the regulations, the Board, the IESO, distributors, retailers of electricity and unit sub-meter providers, or any of them, shall provide such information and reports to the Ministry of Energy and to one another as are necessary to facilitate the implementation, administration, funding and delivery of rate-assistance or of anything else required under this section.

Conflicts, etc.

(13) Where any conflict exists between an order of the Board, a code issued by the Board or a licence condition and this section or a regulation made under this section, this section or the regulation made under this section shall prevail to the extent of the conflict.

Regulations

(14**)** The Lieutenant Governor in Council may make regulations governing anything dealt with in this section and without limiting the generality of the foregoing, may make regulations,

(a) governing anything that is described in this section as being prescribed or as being provided for in the regulations or that is required to be done in accordance with the regulations;

(b) governing the time or times at which rate assistance shall be paid or become payable to rate-assisted consumers;

(c) governing the determination of classes of consumers who are rate-assisted consumers, including providing for different classes of rate-assisted consumers;

(d) requiring that certain costs and expenditures related to the Ontario Electricity Support Program be only incurred with the prior approval of the Minister, and governing those costs and expenditures;

(e) establishing rules for the calculation of the amount of the rate assistance to be provided;

(f) governing payments under this section, including determining the method or methods of calculating the amount of rate assistance to be provided;

(g) setting maximum amounts of the total annual value of rate assistance that may be provided;

(h) requiring a distributor, the IESO or a unit sub-meter provider or other prescribed person or entity to make or receive payments in respect of rate assistance, including requiring them to make or receive payments directly to or from the Ministry of Energy or to receive overpayments directly or indirectly from consumers or other persons entitled to receive the rate assistance and prescribing the circumstances in which such payments are to be made and received and such overpayments are to be received as well as methods for determining the amounts payable or to be received;

(i) requiring the IESO to receive payments from the Minister and requiring the IESO to make payments to the Board, to licensed distributors, to unit sub-meter providers or to prescribed persons, in respect of the rate assistance provided under this section and governing methods for determining the amounts payable;

(j) governing the Board's or other prescribed entity's administration and program-related costs in administering the Ontario Electricity Support Program;

(k) governing transitional matters arising from the changes made to the Ontario Electricity Support Program as a result of the enactment of the *Fair Hydro Act, 2017*.

Retroactivity

(15) A regulation made under this section is, if it so provides, effective with reference to a period before it is filed.

General or particular

(16) A regulation under this section may be general or particular in application, may provide for different classes of persons and entities and may prescribe different rules for different persons or entities or different classes of persons or entities.

Verification of eligibility

(17) Section 11 of the *Ministry of Revenue Act* applies with respect to the Ontario Electricity Support Program as a government assistance program administered by the Board.

Definitions

(18) In this section,

"Government assistance program" has the meaning provided for in subsection 11 (2) of the *Ministry of Revenue Act*; ("programme d'aide gouvernementale")

"rate-assisted consumer" means a consumer referred to in subsection (7). ("consommateur admissible à l'aide tarifaire")

3. The Act is amended by adding the following section:

Confidentiality, information sharing, etc.

79.2.1 (1) For the purposes of section 79.2, the Board or the Minister or entity having responsibility for administering the Ontario Electricity Support Program may enter into an agreement with the Minister of Community and Social Services to provide the services to the public listed in subsection (2) on behalf of the Board, Minister or the entity, as the case may be, in relation to the administration of the Ontario Electricity Support Program.

Agreement, etc.

(2) The services that may be included in an agreement referred to in subsection (1) are the following:

1. Providing documents and information about the Ontario Electricity Support Program.

2. Processing applications for the Ontario Electricity Support Program.

Arrangements with others

(3) The Minister of Community and Social Services may arrange with another person or entity to provide, on behalf of that Minister, services that that Minister is authorized to provide under an agreement referred to in subsection (1).

Personal information

(4) The Minister of Community and Social Services is authorized to collect, use, disclose and retain personal information necessary to provide the services authorized by

an agreement referred to in subsection (1), but shall not collect, use, disclose or retain more personal information than is reasonably necessary to provide the services.

Limitation

(5) Except where otherwise authorized under subsection (7), the Minister of Community and Social Services shall not collect, use, disclose or retain personal information provided for in subsection (4) without the consent of the individual to whom the information relates.

Duty to transfer personal information

(6) The Minister of Community and Social Services shall transfer an individual's personal information provided for in subsection (4) into the control of the Board, Minister or entity responsible for administering the Ontario Electricity Support Program promptly after processing an application for the Ontario Electricity Support Program, but may retain such personal information as is reasonably necessary to confirm that an individual has been provided a service.

Use of personal information, etc.

(7) The Minister of Community and Social Services may use personal information maintained by that Minister in connection with the administration of the Ontario Disability Support Program and the program established pursuant to the *Ontario Works Act, 1997*, for the purpose of identifying and contacting individuals eligible for the rate assistance provided under the Ontario Electricity Support Program, and to provide services authorized under an agreement referred to in subsection (1).

Deemed compliance

(8) The use of personal information as allowed by subsection (7) is deemed to comply with section 41 of the *Freedom of Information and Protection of Privacy Act*.

Disclosure of list

(9) In order to assist the Minister of Community and Social Services to identify individuals eligible for rate assistance, the Board or the Minister or entity having responsibility for administering the Ontario Electricity Support Program shall, as soon as practicable after the coming into force of this section, disclose to the Minister of Community and Social Services a list of individuals who are enrolled in the Ontario Electricity Support Program, together with their mailing address and other contact information.

Use of list

(10) The Minister of Community and Social Services may use the information on the list provided under subsection (9) to determine whether an individual who is currently enrolled in the Ontario Disability Support Program or the program established under the *Ontario Works Act, 1997* is also enrolled in the Ontario Electricity Support Program.

Destruction of list

(11) The Minister of Community and Social Services shall destroy the list provided under subsection (9) no later than one year after receiving the list.

Notification about the management of personal information

(12) The Minister of Community and Social Services shall ensure that a notice is published on a website describing,

(a) the purpose for which that Minister collects, uses, discloses and retains personal information in connection with the Ontario Electricity Support Program;

(b) the types of personal information that may be collected, used, disclosed and retained in connection with the Ontario Electricity Support Program, and the circumstances in which the personal information may be collected, used, disclosed and retained in connection with that Program; and

(c) the title, and contact information, including an email address, of an employee who can answer an individual's questions about the use of the personal information under this section.

4. The Act is amended by adding the following sections:

Distribution rate-protected consumers

79.3 (1) The Minister shall provide for distribution rate protection to distribution rate-protected residential consumers having regard to the costs of the distribution of electricity to such consumers with respect to electricity consumed on or after the date prescribed by the regulations.

Money appropriated by the Legislature

(2) The money required for the purposes of the provision of distribution rate protection under this section shall be paid out of the money appropriated for those purposes by the Legislature.

Maximum charge

(3) Despite any order of the Board, or anything else under this Act, where the regulations so provide, a prescribed distributor who distributes electricity to distribution rate-protected residential consumers shall not charge those consumers, or a prescribed class of those consumers, any amount for monthly base distribution charges more than,

(a) the maximum amount for the charge that is provided for in the regulations; or

(b) the amount determined by the Board after applying any calculations, processes or methods provided for in the regulations.

Distributors

(4) A distributor who is prescribed under this section is entitled to be compensated from the money referred to in subsection (2) for lost revenue resulting from the provision of the distribution rate protection to distribution rate-protected residential consumers under this section.

Information, etc.

(5) If provided for in the regulations, the Board, the IESO and distributors, or any of them shall provide such information and reports to the Ministry of Energy and to one another as are necessary to facilitate the implementation, administration, funding and delivery of distribution rate protection or of anything else required under this section.

Limitation periods for distribution rate protection, consumer

(6) Despite any past entitlement of a consumer who is eligible to distribution rate protection under this section, no distribution rate protection is payable to a consumer after a limitation period prescribed by the regulations in respect of the consumer, other than in such circumstances as may be prescribed by the regulations.

Limitation, reimbursement of distributor, etc.

(7) Despite any requirement under this Act to reimburse a prescribed distributor or other person for distribution rate protection provided by them to distribution rate-protected residential consumers under this section, no amounts for reimbursement are payable to the prescribed distributor or other person after a limitation period prescribed by the regulations in respect of the prescribed distributor or other person, where such reimbursement is based on a consumer's past entitlement under this section which has not yet been paid or reimbursed under this section, other than in such circumstances as may be prescribed by the regulations.

Transitional

(8) If, for technical or operational reasons, a distributor referred to in subsection (3) is unable to adapt its invoices to comply with this section and the regulations by the time it issues its first invoice for electricity consumed after the prescribed date in respect of an account of a consumer who is eligible for distribution rate protection under this section,

(a) the distributor shall adapt its invoices as soon as possible and, in any event, no later than a date prescribed in the regulations; and

(b) consumers continue to be entitled to receive the distribution rate protection to which they are entitled under this Act and may receive it as a lump sum credit

on the invoice for the first billing period after the invoices have been adapted or by such other means as may be prescribed by the regulations.

Regulations

(9) The Lieutenant Governor in Council may make regulations,

(a) prescribing consumers or classes of consumers as distribution rate-protected residential consumers for the purposes of this section;

(b) prescribing dates for the purposes of subsections (1) and (8);

(c) prescribing distributors for the purposes of this section;

(d) governing anything that is described in this section as being prescribed or as being provided for in the regulations or that is required to be done in accordance with the regulations;

(e) governing the provision of distribution rate protection by the Minister in respect of distribution rate-protected residential consumers under this section including determining the method or methods of calculating the amount of rate protection to be provided;

(f) requiring the IESO to receive payments from the Minister and to make payments to licensed distributors, or to persons prescribed by the regulations, in respect of the distribution rate protection provided for under this section and prescribing methods for determining the amounts payable to distributors or distribution rate-protected residential consumers in respect of that protection.

Interpretation

(10) In this section,

"distribution rate-protected residential consumer" has the meaning provided for in the regulations; ("consommateur résidentiel protégé contre les frais de distribution")

"monthly base distribution charges" has the meaning provided for in the regulations. ("frais de distribution mensuels de base")

Delivery credit for on-reserve consumers

79.4 (1) The Minister shall provide a delivery credit to on-reserve consumers who meet the criteria prescribed under this section with respect to electricity consumed on or after the date prescribed by the regulations.

Money appropriated by the Legislature

(2) The money required for the purposes of the provision of the credits required under this section shall be paid out of the money appropriated for those purposes by the Legislature.

Eligible costs

(3) The eligible costs for the delivery credit referred to in subsection (1) are,

(a) the sum of the following charges for which the consumer would otherwise be liable,

(i) all variable and fixed distribution charges,

(ii) all charges based on the retail transmission network service rate,

(iii) all charges based on the retail transmission connection service rate,

(iv) all charges related to losses incurred in the distribution of electricity, except for such amounts that are included in regulatory charges provided for in the regulations, and

(v) any other charges that may be prescribed in the regulations; or

(b) where no separate charges for delivery are provided for by the distributor or other person or entity that may be prescribed in the regulations, the monthly service charge or such other amount as may be prescribed for or in respect of a prescribed distributor.

Delivery credit

(4) A distributor, person or entity shall, unless the regulations provide otherwise, provide the delivery credit referred to in subsection (1) by crediting the account of an on-reserve consumer.

Same

(5) The regulations may require that distributors and any other persons or entities provide a delivery credit to an on-reserve consumer who is entitled to a delivery credit under subsection (1) in such manner or in accordance with such methods as may be prescribed.

Same

(6) A distributor or any person or entity as may be prescribed is entitled to be compensated from the money referred to in subsection (2) for any lost revenue resulting from the provision of the delivery credits under this section.

Information, etc.

(7) If provided for in the regulations, the Board, the IESO and distributors, and other persons or entities, or any of them, shall provide such information and reports to the Ministry of Energy and to one another as are necessary to facilitate the implementation, administration, funding and delivery of the delivery credits or of anything else required under this section.

Limitation periods for delivery credit, consumer

(8) Despite any past entitlement of an on-reserve consumer who is eligible for a delivery credit under this section, no delivery credit is payable to an on-reserve consumer after a limitation period prescribed by the regulations in respect of the on-reserve consumer, other than in such circumstances as may be prescribed by the regulations.

Limitation, reimbursement of distributor, etc.

(9) Despite any requirement under this Act to reimburse a distributor or other persons or entities for delivery credits provided by them to on-reserve consumers under this section, no amounts for reimbursement are payable to the distributor or other persons or entities after a limitation period prescribed by the regulations in respect of the distributor or other persons or entities, where such reimbursement is based on an on-reserve consumer's past entitlement under this section which has not yet been paid or reimbursed under this section, other than in such circumstances as may be prescribed by the regulations.

Transitional

(10) If, for technical or operational reasons, a distributor referred to in subsection (4) is unable to adapt its invoices to comply with this section and the regulations by the time it issues its first invoice for electricity consumed after the prescribed date in respect of an eligible account,

(a) the distributor shall adapt its invoices as soon as possible and, in any event, no later than a date prescribed in the regulations; and

(b) on-reserve consumers continue to be entitled to receive the delivery credit to which they are entitled under this Act and may receive it as a lump sum credit on the invoice for the first billing period after the invoices have been adapted or by such other means as may be prescribed by the regulations.

Regulations

(11) The Lieutenant Governor in Council may make regulations,

(a) governing who is an on-reserve consumer for the purposes of this section and, without limiting the generality of the foregoing, may provide that consumers

who occupy certain areas are on-reserve consumers, and may do so without regard to whether those areas constitute a "reserve" under any other Act or law;

(b) prescribing dates for the purposes of subsections (1) and (10);

(c) governing provision of the delivery credits provided to on-reserve consumers under this section and, without restricting the generality of the foregoing, governing anything that under this section is to be prescribed or provided for in the regulations, or that is to be done in accordance with the regulations;

(d) determining the method or methods of calculating the amount of the delivery credits to be provided by the Minister in respect of on-reserve consumers under this section;

(e) requiring the IESO to make and receive payments to and from the Minister and to make payments to licensed distributors, or to persons prescribed by the regulations, in respect of the delivery credits provided for under this section and prescribing methods for determining the amounts payable to distributors or on-reserve consumers in respect of the credits provided.

Interpretation

(12) In this section,

"on-reserve consumer" has the meaning provided for in the regulations.

Application

79.5 Sections 79.6 through 79.11 apply to the programs provided for under sections 79, 79.2, 79.3 and 79.4 to the extent that they are funded by money appropriated for those purposes by the Legislature.

Definition

79.6 In sections 79.7 to 79.11,

"Finance Minister" means the Minister of Finance or such other member of the Executive Council to whom the administration of those sections is assigned under the *Executive Council Act*.

Records

79.7 (1) Every distributor and every other person prescribed by regulation shall keep at a location in Ontario such records as are necessary to determine and verify compliance with sections 79, 79.2, 79.3 and 79.4 and the regulations associated with them and any records required by those regulations to be kept.

Electronic records

(2) If a person keeps records in an electronic form, the person shall ensure that, from the time the records are first made and for as long as they are required to be retained,

(a) they remain complete and unaltered, apart from any changes or additions made in the normal course of communication, storage or display; and

(b) they are capable of being printed and of being produced in electronically readable format for inspection, examination or audit.

Retention of records

(3) Records required to be kept under subsection (1) shall not be destroyed unless authorization has been given in writing by the Finance Minister.

Offence

(4) Every person who fails to keep records in accordance with this section is guilty of an offence and, on conviction, is liable to a fine of not less than $50 and not more than $5,000.

Inspections and inquiries

79.8 (1) The Finance Minister may appoint one or more inspectors who are authorized to exercise any of the powers and perform any of the duties of a person authorized by the Minister under subsection 31 (1) of the *Retail Sales Tax Act* for any purpose related to the administration and enforcement of sections 79, 79.2, 79.3 and 79.4 of this Act.

Same

(2) Subsections 31 (1), (2), (2.1) and (2.2) of the *Retail Sales Tax Act* apply, with necessary modifications, with respect to the administration and enforcement of sections 79, 79.2, 79.3 and 79.4 of this Act.

Admission of evidence

(3) The Finance Minister, or a person authorized by the Finance Minister, may, for any purpose related to the administration of sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them, reproduce from original data stored electronically any information previously submitted as required under those sections or regulations in any form by any person, and the electronically reproduced document shall be admissible in evidence and shall have the same probative force as the original document would have had if it had been proved in the ordinary way.

Inquiry

(4) The Finance Minister may, for any purpose related to the administration of sections 79, 79.2, 79.3 and 79.4 of this Act or the regulations made in association with

them, authorize any person, whether or not the person is an employee in the Ministry of the Finance Minister, to make such inquiry as the Finance Minister considers necessary with reference to anything relating to the administration of this Act or the regulations.

Copies

(5) If a book, record or other document is examined or produced under this section, the person by whom it is examined or to whom it is produced or any officer of the Ministry may make, or cause to be made, one or more copies of it, and a document purporting to be certified by the person to be a copy made pursuant to this section is admissible in evidence and has the same probative force as the original document would have if proved in the ordinary way.

Compliance

(6) No person shall hinder or molest or interfere with any person doing anything that the person is authorized by this section to do or prevent or attempt to prevent any person doing any such thing.

Same

(7) Despite any other law to the contrary, every person shall, unless the person is unable to do so, do everything the person is required by this section to do.

Administration of oaths

(8) Declarations or affidavits in connection with statements of information submitted pursuant to this section may be taken before any person having authority to administer an oath or before any person specially authorized for that purpose by the Lieutenant Governor in Council, but any person so specially authorized shall not charge any fee for doing so.

Application of *Public Inquiries Act, 2009*

(9) Section 33 of the *Public Inquiries Act, 2009* applies to an inquiry under subsection (4).

Recovery of overpayments

Definitions

79.9 (1) In this section,

"inspector" means an inspector referred to in section 79.8; ("inspecteur")

"overpayment" means an amount received by a person in excess of that to which the person is entitled under sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them. ("trop-perçu")

Notice of overpayment

(2) If it appears to an inspector that a person has received an overpayment, the Finance Minister may send a written notice to the person advising the person of the following:

1. That the person has received an overpayment.

2. The amount of the overpayment and how it was calculated.

3. The required steps to be taken by the person with respect to the overpayment.

4. The date, not more than six months after the date of the notice, by which these steps must be completed.

5. That the Finance Minister has the authority to assess the person for the amount of the overpayment, plus interest, if the person fails to complete the required steps by the specified date.

Calculation of amount of overpayment

(3) For the purposes of this section, an inspector shall calculate an overpayment or the outstanding balance of an overpayment in the manner and form and using such procedures as the Finance Minister considers adequate and expedient.

Assessment

(4) If a person fails to complete the steps required in a notice under subsection (2) within the time specified in the notice, and any additional time requested by the person and permitted by the Finance Minister, the Finance Minister may assess or reassess the amount of the overpayment, or the outstanding balance of the overpayment, based on the inspector's calculation described in subsection (3).

Penalty

(5) If the Finance Minister makes an assessment or reassessment under subsection (4) and is satisfied that the person's non-compliance with the required steps in the notice was attributable to neglect, carelessness, wilful default or fraud, the Finance Minister may assess a penalty against the person equal to the outstanding balance of the overpayment when the penalty is assessed.

Time limit

(6) The Finance Minister shall not assess or reassess under subsection (4) more than 48 months after the end of the month in which the person received the overpayment.

Exception, where misrepresentation, etc.

(7) Subsection (6) does not apply if the Finance Minister establishes that the person has made a misrepresentation that is attributable to neglect, carelessness or wilful default or has committed any fraud in supplying information under this Act or the regulations or in omitting to disclose information.

Deeming

(8) An amount assessed or reassessed by the Finance Minister under this section is deemed, for the purposes of the administration and enforcement of this Act, to be a debt retirement charge owing and payable, as defined in subsection 85 (1) of the *Electricity Act, 1998,* that has been collected, on the last day of the month in which the person received the overpayment, by the person as a collector appointed under subsection 85.3 (1) of the *Electricity Act, 1998* and, for those purposes,

(a) sections 85.11, 85.12, 85.14, 85.17 and 85.30 of that Act apply with necessary modifications;

(b) in the application of sections 85.11 and 85.14 of that Act and without limiting the generality of clause (a) of this subsection, references to the Financial Corporation are read as references to the Minister of Finance and references to the Minister of Finance are read as references to the Finance Minister as defined in section 79.6 of this Act;

(c) the regulations made under that Act for the purposes of calculating the rate or rates of interest payable under section 85.11 of that Act and the manner of calculating the amount of interest apply with necessary modifications; and

(d) sections 23 and 36, subsections 37 (1), (1.1) and (2) and sections 37.1, 38 and 39 of the *Retail Sales Tax Act* apply with necessary modifications.

Disposition of repaid amounts

(9) If all or part of an overpayment is repaid to the Finance Minister, the Minister of Energy shall make such financial arrangements and payments as may be necessary to ensure that any person entitled to all or part of the overpayment receives the appropriate amount.

Confidentiality

79.10 (1) Except as authorized by this section, no person employed by the Government of Ontario shall,

(a) knowingly communicate or knowingly allow to be communicated to any person any information obtained by or on behalf of the Minister of Energy or

the Finance Minister for the purposes of sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them; or

(b) knowingly allow any person to inspect or to have access to any record or thing obtained by or on behalf of either Minister for the purposes of this Act.

Testimony

(2) No person employed by the Government of Ontario shall be required, in connection with any legal proceedings,

(a) to give evidence relating to any information obtained by or on behalf of the Minister of Energy or Finance Minister for the purposes of this Act; or

(b) to produce any record or thing obtained by or on behalf of either Minister for the purposes of this Act.

Exception

(3) Subsections (1) and (2) do not apply in respect of,

(a) criminal proceedings under any Act of the Parliament of Canada;

(b) proceedings in respect of the trial of any person for an offence under an Act of the Legislature; or

(c) proceedings relating to the administration or enforcement of this Act or Part V.1 or VI of the *Electricity Act, 1998*.

Communication

(4) A person employed by the Government of Ontario may, in the course of duties in connection with the administration or enforcement of sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them,

(a) communicate or allow to be communicated to another person employed by the Government of Ontario in the administration or enforcement of any law or to an employee of the Board information obtained by or on behalf of either Minister for the purposes of sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them; and

(b) allow another person employed by the Government of Ontario in the administration or enforcement of any law or an employee of the Board to inspect or have access to any record or thing obtained by or on behalf of either Minister for the purposes of sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them.

Reciprocal communication

(5) A person who receives information or obtains access to any record or thing under subsection (4) has a duty to communicate or furnish to that Minister on a reciprocal basis any information, record or thing obtained by the person that affects the administration or enforcement of this Act.

Use of information

(6) Any information, record or thing communicated or furnished under this section may be used only for the administration or enforcement of sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them or an Act that is administered or enforced by the person receiving the information, record or thing.

Same

(7) The Finance Minister may permit information or a copy of any record or thing obtained by or on behalf of the Finance Minister for the purposes of sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them to be given to,

(a) the person from whom the information, record or thing was obtained;

(b) any person by whom an amount is payable or has been paid under sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them; or

(c) the legal representative of a person mentioned in clause (a) or (b) or the agent of the person authorized in writing in that behalf.

Information

(8) The Finance Minister may permit information or a copy of any record or thing obtained by or on behalf of the Finance Minister for the purposes of sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them to be given to any person employed by any government if,

(a) the information, record or thing obtained by that government for the purpose of any Act that imposes a tax or duty are communicated or furnished on a reciprocal basis to the Minister; and

(b) the information, record or thing will not be used for any purpose other than the administration or enforcement of a law that provides for the imposition of a tax or duty.

Offence

(9) Every person who contravenes any provision of this section is guilty of an offence and on conviction is liable to a fine of not more than $2,000.

Offences

False statements, etc., and fraud

79.11 (1) Every person who engages in any of the following acts or omissions is guilty of an offence:

1. Making, participating in, assenting to or acquiescing in the making of a false or deceptive statement in any document or answer required or submitted under sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them.

2. Destroying, altering, mutilating, hiding or otherwise disposing of information or records of any person, for the purpose of evading compliance with sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them.

3. Making, assenting to or acquiescing in the making of a false or deceptive entry of a material particular in a record of any person required to maintain records for the purposes of sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them.

4. Omitting to make or assenting to or acquiescing in the omission of an entry of a material particular in a record of any person required to maintain records for the purposes of sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them.

5. Wilfully evading or attempting to evade, in any manner, compliance with an obligation under sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them.

Penalty upon conviction

(2) A person convicted of an offence under subsection (1) is liable to either or both of the following penalties in addition to any other penalty assessed under this Act:

1. A fine in an amount that is not less than $1,000 and not more than $10,000.

2. Imprisonment for a term of not more than two years.

General offence

(3) Every person who contravenes, by any act or omission, any other requirement imposed under sections 79, 79.2, 79.3 and 79.4 is guilty of an offence and, on conviction, is liable, where no other penalty is provided for the offence, to a fine of not less than $50 and not more than $5,000.

Limitation period

(4) A proceeding to prosecute an offence provided for in this section must be commenced within six years after the date on which the matter of the offence arose.

Payment of fines

(5) Fines imposed on conviction of an offence provided for in this section are payable to the Finance Minister on behalf of the Crown in right of Ontario.

Commencement

5. (1) Subject to subsection (2), this Schedule comes into force on the day the *Fair Hydro Act, 2017* receives Royal Assent.

(2) Section 2 comes into force on a day to be named by proclamation of the Lieutenant Governor.

FW_ GA Refinancing (IESO related doc).rtf

From: Virani, Shyrose (TBS) []
To: Donaldson, Mark (TBS) [Mark.Donaldson@ontario.ca]
Subject: FW: GA Refinancing (IESO related doc)
Date: Wednesday, June 20, 2018 15:05:08

Should I set something up?

-----Original Message-----
From: Donaldson, Mark (TBS)
Sent: June 20, 2018 1:22 PM
To: Virani, Shyrose (TBS) <Shyrose.Virani@ontario.ca>
Subject: FW: GA Refinancing (IESO related doc)

From: Lee Anne Probert
Sent: June 20, 2018 1:21:37 PM (UTC-05:00) Eastern Time (US & Canada)
To: Donaldson, Mark (TBS)
Subject: RE: GA Refinancing (IESO related doc)

No problem. Can we connect sometime to catch up?

-----Original Message-----
From: Donaldson, Mark (TBS) [mailto:Mark.Donaldson@ontario.ca]
Sent: June-20-18 1:15 PM
To: Lee Anne Probert <leeanne.probert@ca.ey.com>
Subject: RE: GA Refinancing (IESO related doc)

Thank you.

From: Lee Anne Probert <leeanne.probert@ca.ey.com<mailto:leeanne.probert@ca.ey.com>>
Date: Wednesday, Jun 20, 2018, 1:14 PM
To: Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca<mailto:Mark.Donaldson@ontario.ca>>
Subject: FW: GA Refinancing (IESO related doc)

Please see below.

--
LeeAnne Probert | Senior Manager | Assurance Services

Ernst & Young LLP
Office: 416 943 3554 | leeanne.probert@ca.ey.com<mailto:leeanne.probert@ca.ey.com>
From: Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]
Sent: May-19-17 8:47 AM
To: Suzie Gignac <suzie.r.gignac@ca.ey.com>; Blake Langill <blake.w.langill@ca.ey.com>; Lee Anne Probert <leeanne.probert@ca.ey.com>
Subject: GA Refinancing (IESO related doc)

Suzie/Blake/LeeAnne,
Attached, for your reference, is the final paper related to IESO accounting (subject to change based on future Regs/Commercial Contracts, etc.).

Regards,
Nadine

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FW_ Good evening.rtf

From: Picard, Michel [mpicard@kpmg.ca]
To: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; MAUTI John -FIN & C CTRL [john.mauti@opg.com]; CHENG Alec -FIN & C CTRL [alec.cheng@opg.com]
Subject: FW: Good evening
Date: Monday, February 27, 2017 06:16:55

---

fyi

-----Original Message-----
From: Struthers, Sandy [mailto:strutha@navcanada.ca]
Sent: Sunday, February 26, 2017 11:01 PM
To: Picard, Michel <mpicard@kpmg.ca>
Subject: Re: Good evening

Michel

NAV CANADA is completely separate from the Government of Canada and is sometimes described as a quasi crown even though it is not. In 1996 it purchased the Canadian air navigation assets from Transport Canada. It has no shares and no shareholder. The interest groups are represented on its Board but have no equity rights and no one party can control the Board. The Board also has a number of in dependent directors with no interest group affiliation. The public debt is secured only by the assets of the company and their is no third party guarantee. Pursuant to the Air Navigation Services act the company has the right to set and charge rates related to the services it provides subject to the concept in the act that is a not for profit entity

Hope that helps. Let me know if you need anything else

Best regards

Sandy

Sent from my BlackBerry 10 smartphone on the Bell network.
From: Picard, Michel
Sent: Sunday, February 26, 2017 8:44 PM
To: Struthers, Sandy
Subject: Good evening

Hi Sandy,

Hope this finds you well.

I have a couple of quick questions for you related to NAV Canada.

Is NAV considered an OGO or a GBE? Is NAV consolidated by the GVT of Canada?

Thanks a million.

Michel Picard, CPA, CA

Partner, Accounting Advisory Services

KPMG LLP

333 Bay Street, Suite 4600
Toronto, Ontario, M5H 2S5
T 416 777 8414
M 416 560 2569
mpicard@kpmg.ca<mailto:mpicard@kpmg.ca>
LinkedIn<https://www.linkedin.com/in/michel-picard-8b3b942b?authType=NAME_SEARCH&authToken=oVKr&locale=en_US&trk=tyah&trkInfo=clickedVertical%3Amynetwork%2CclickedEntityId%3A107441415%2CauthType%3ANAME_SEARCH%2Cidx%3A1-1-1%2CtarId%3A1478640064654%2Ctas%3Amichel%20pi>

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Fw_ FHP Opinion.rtf

From: Hosick, Sarah (TBS) []
To: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
Subject: Fw: FHP Opinion
Date: Friday, May 19, 2017 06:55:20
Attachment 1: Draft report dated May 17, 2017.pdf

Apologies for not sharing this earlier!

Sent from my BlackBerry 10 smartphone on the Rogers network.
From: Kim Marshall <Kim.Marshall@ieso.ca>
Sent: Thursday, May 18, 2017 12:28 PM
To: Hosick, Sarah (TBS)
Cc: Schuurman, Tim (MOF)
Subject: RE: FHP Opinion

Tim, as per Sarah's email, attached is the KPMG opinion. Happy to discuss.

Kimberly Marshall | VP, Corporate Services & CFO

Independent Electricity System Operator (IESO) | T: (416) 969-6232 | C: (416) 545-7202

120 Adelaide Street West, Suite 1600, Toronto, ON M5H 1T1

Web: www.ieso.ca | Twitter: IESO_Tweets | LinkedIn: IESO

Corporate Services collaborates with you to deliver solutions and expertise that enable the IESO to achieve its goals.

Conservation: www.saveONenergy.ca | Twitter: saveONenergyOnt | LinkedIn: saveONenergy

From: Hosick, Sarah (TBS) [mailto:Sarah.Hosick@ontario.ca]
Sent: May 18, 2017 12:11 PM
To: Kim Marshall
Subject: FHP Opinion

Hi Kim

As you are likely aware KPMG has provided the government permission to release their draft accounting opinion. Can you please send the opinion to Tim Schuurman at Office of the Budget so he can share with FAO?

Cindy had to head into a meeting for the next couple hours after trying to connect with you just now but please let me know if any questions.

Thanks,

Sarah

Sarah Hosick

Executive Assistant & Special Policy Advisor (A)

Assistant Deputy Minister's Office | Office of the Provincial Controller

Office of the Treasury Board | Treasury Board Secretariat

7 Queen's Park Cres E, 2nd Floor, Toronto, ON, M7A 1Y7

416-212-8512

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Draft report dated May 17, 2017.pdf

FINAL DRAFT

KPMG Letter to the Independent Electricity System Operator

An Accounting Opinion on the Application of PSAS to the Consolidation of a Trust and to the Recognition and Derecognition of a Variance Account in Relation to Bill 132, *Ontario Fair Hydro Plan Act, 2017*

This letter has been prepared in draft form and will be updated upon receipt of the adopted legislation, if passed, (including the amendments of the Electricity Act, 1998 and the OEB Act, 1998) and finalized financial structure (including the bylaws and regulations of the Trust to be established by OPG) and other relevant agreements necessary for us to provide our final opinion, of which legislation and other relevant agreements are expected to be enacted/ finalized on or before September 30, 2017.

NOTICE OF NON RELIANCE

This Notice is regarding the accompanying Letter to provide an accounting opinion on the application of Public Sector Accounting Standards to the consolidation of a trust and to the recognition and derecognition of a variance account in relation to Bill 132, *Ontario Fair Hydro Plan Act, 2017* (the "**Letter**") prepared by KPMG LLP for the Independent Electricity System Operator ("Client").

The following terms apply to any review of the Letter and should you not agree to these terms, please do not review the Letter and delete copy of the same.

The Letter was prepared in connection with certain services we provided to the Client and should not be used for any other purpose or regarded as suitable for use by any person or persons other than the Client.

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Yours very truly,

KPMG LLP

KPMG LLP
Chartered Accountants
Bay Adelaide Centre
Suite 4600
333 Bay Street
Toronto ON
M5H 2S5

Telephone (416) 777-8500
Fax (416) 777-8818
www.kpmg.ca

May 16, 2017

CONFIDENTIAL

120 Adelaide Street West
Suite 1600
Toronto, ON
M5H 1T1

The Board of Directors

Dear Sirs,

We have been engaged to provide you with an accounting opinion on the application of Public Sector Accounting Standards to the consolidation of a trust and to the recognition and derecognition of a variance account in relation to Bill 132, *Ontario Fair Hydro Plan* Act, 2017 as tabled in the first reading ("Bill 132") (Appendix A to this letter). This letter is being issued to the Independent Electricity System Operator ("IESO" or the "Company") in connection with its evaluation of the consolidation requirements and the accounting for the variance account under Canadian Public Sector Accounting Standards ("PSAS"). Our engagement has been conducted in accordance with generally accepted standards in Canada for such engagements.

The ultimate responsibility for the decision on the appropriate application of PSAS for the specific issues described below rests with management of the Company as preparers of the financial statements.

The adoption of Bill 132 (including the subsequent amendments of the Electricity Act, 1998 ("the Electricity Act") and the Ontario Energy Board ("OEB" or the "Board") Act, 1998 ("the OEB Act")), and the finalization of the financing structure (including the bylaws and regulations of the trust to be established by OPG) and other agreements will take several months. Accordingly, our judgment on the appropriate application of PSAS for the specific matters described below is based on the facts, circumstances and assumptions provided to us. The finalization of the legislation, regulations, financing structure and other agreements may impact the comments and conclusions set out herein. Our comments and conclusions are based on Bill 132 and related matters as they exist at the date of this letter.

The following three issues are addressed in this letter:

Issue #1: Can the IESO recognize a regulatory asset related to the variance account created by Bill 132?

Issue #2: Is the trust to be established by Ontario Power Generation (the "OPG Trust") controlled by the IESO according to the guidance issued under PSAS 1300 *Government Reporting Entity* and therefore subject to consolidation by IESO?

KPMG LLP is a Canadian limited liability partnership and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. KPMG Canada provides services to KPMG LLP.

Issue #3: What is the accounting treatment for derecognition of the regulatory asset by the IESO upon transfer of the variance account to the OPG Trust?

Background for issue #1

The facts, circumstances, and assumptions relevant to the specific transactions as provided to us by the management of the Company (responsible party) are as follows:

1. The IESO's legal status is a not-for-profit, non-taxable, corporation established pursuant to Part II of the Electricity Act. Management of the IESO has determined that the Company is an *Other Governmental Organization* and accordingly prepares its financial statements in accordance with PSAS.

2. IESO is rate regulated by the OEB in accordance with the Electricity Act and the OEB Act.

3. *Extract from the 2016 IESO financial statements, note 3 New Accounting Policies, audited by KPMG* "As of January 1, 2016, the IESO changed its accounting policy regarding the recognition of assets and liabilities subject to rate regulation. The change was made to better reflect the economic substance of certain types of expenses that may not be directly recovered through the normal revenue requirement model. This change has been applied retroactively and has increased amounts previously unrecorded for regulatory assets and decreased amounts previously reported for accumulated deficit."

4. *Extract from the 2016 IESO financial statements, note 2(d) Summary of Significant Accounting Policies, Regulatory assets and liabilities.* "As a rate-regulated entity, the IESO, in appropriate circumstances establishes regulated assets or liabilities and thereby defers the impact on the statement of operations of certain expenses or revenues because they are probable to be collected or refunded to market participants through future billings. The IESO applies guidance from United States Generally Accepted Accounting Principles (US GAAP) Topic 980, *Regulated Operations ("ASC 980")*, in this policy."

5. *Extract from Section 78(3.3) of the OEB Act:* In approving or fixing rates under subsection (3.1),

   (a) the Board shall forecast the cost of electricity to be consumed by the consumers to whom the rates apply, taking into consideration the adjustments required under section 25.33 of the Electricity Act, 1998 and shall ensure that the rates reflect these costs; and

   (b) the Board shall take into account balances in the IESO's variance accounts established under section 25.33 of the Electricity Act, 1998 and shall make adjustments with a view to eliminating those balances within 12 months or such shorter time periods as the Minister may direct.

6. Currently, IESO recognizes two regulatory assets for unrecovered smart metering expenses and unrecovered PSAB transition items as permitted by rates approved by the OEB. In addition, in accordance with section 25.33 of the Electricity Act, IESO also recognizes variance accounts (eg. OESP, RPP and RRRP variance accounts) to record all amounts payable or receivable by it in connection with the amounts paid to generators, the Ontario Electricity Financial Corporation ("OEFC"), distributors and to entities with whom the IESO has a procurement contract.

7. The Electricity Act, OEB Act and other regulations will be amended to reflect the following *extracts of Bill 132:*

   Section 1 Definitions, Transfer of regulatory asset

   (3) In this Act, a reference to the transfer of a specified portion of the regulatory asset is a reference to the following, as provided for in subsection 26 (3):

1. A reduction in the balance in the variance account.
2. The adjustment of the regulatory asset.
3. The acquisition by a financing entity of the investment interest corresponding to the specified portion of the regulatory asset.

Section 24 Variance account to be established, maintained

(1) IESO shall establish and maintain a variance account in which it records the following:

1. The IESO deferral for each month.
2. All payments received by IESO resulting from the exercise of the right of recovery under section 25 and any transfer under section 26.
3. Such other adjustments as may be prescribed, including adjustments in respect of the period that commences on or after May 1, 2017 and before the day this section comes into force.

(2) Subject to the correction of any obvious error by the IESO, its recording of the balance in the variance account is determinative of the balance as of the time of the recording.

(3) No change made by IESO to the balance in the variance account shall, if the previous balance was relied upon by an investment interest owner in the context of a transfer under section 26, affect the rights acquired by the investment interest owner under the transfer.

Section 25 Regulatory asset established

(1) Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

(2) Subject to subsection (3), the Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for the IESO to recover the balance recorded in the variance account.

(3) IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2021.

Section 34 Board's Authority

(2) Despite anything to the contrary in the OEB Act, the Board may exercise any of its responsibilities under this Act without a hearing.

8. It is expected that the IESO deferral recorded by the IESO in the variance account (the regulatory asset) will be transferred to an investment asset owner (i.e. a trust to be established by OPG) on a monthly basis and cash collected within a short period of time. The total IESO deferral for the period from May 1, 2017 to April 30, 2047 is estimated at $28 billion plus interest.

Appropriate Accounting Principle for Issue #1

ASC 980 Regulated Operations

– For general-purpose financial reporting, an incurred cost for which a regulator permits recovery in a future period is accounted for like an incurred cost that is reimbursable under a cost-reimbursement-type contract. [980-10-05-6]

- Unless an accounting order indicates the way a cost will be handled for rate-making purposes, it causes no economic effects that would justify deviation from the GAAP applicable to business entities in general. The mere issuance of an accounting order not tied to rate treatment does not change an entity's economic resources or obligations. In other words, the economic effect of regulatory decisions—not the mere existence of regulation—is the pervasive factor that determines the application of GAAP. [980-10-05-8]
- The guidance in the Regulated Operations Topic applies to general-purpose external financial statements of an entity that has regulated operations that meet all of the following criteria:
  (a) The entity's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party regulator or by its own governing board empowered by statute or contract to establish rates that bind customers.
  (b) The regulated rates are designed to recover the specific entity's costs of providing the regulated services or products. This criterion is intended to be applied to the substance of the regulation, rather than its form.
  (c) In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume that rates set at levels that will recover the entity's costs can be charged to and collected from customers. This criterion requires consideration of anticipated changes in levels of demand or competition during the recovery period for any capitalized costs. [980-10-15-2]
- Incurred Cost - A cost arising from cash paid out or obligation to pay for an acquired asset or service, a loss from any cause that has been sustained and has been or must be paid for. [980-10-20] Glossary
- Failure of an entity's operations to continue to meet the criteria in paragraph 980-10-15-2 can result from different causes. Examples include the following:
  (a) Deregulation.
  (b) A change in the regulator's approach to setting rates from cost-based rate-making to another form of regulation.
  (c) Increasing competition that limits the entity's ability to sell utility services or products at rates that will recover costs (as used in paragraph 980-10-15-2).
  (d) Regulatory actions resulting from resistance to rate increases that limit the entity's ability to sell utility services or products at rates that will recover costs if the entity is unable to obtain (or chooses not to seek) relief from prior regulatory actions through appeals to the regulator or the courts. [980-20-15-2]
- Rate actions of a regulator can provide reasonable assurance of the existence of an asset. An entity shall capitalize all or part of an incurred cost that would otherwise be charged to expense if both of the following criteria are met:
  (a) It is probable (as defined in Topic 450) that future revenue in an amount at least equal to the capitalized cost will result from inclusion of that cost in allowable costs for rate-making purposes.
  (b) Based on available evidence, the future revenue will be provided to permit recovery of the previously incurred cost rather than to provide for expected levels of similar future costs. If the revenue will be provided through an automatic rate-adjustment clause, this criterion requires that the regulator's intent clearly be to permit recovery of the previously incurred cost.

A cost that does not meet these asset recognition criteria at the date the cost is incurred shall be recognized as a regulatory asset when it does meet those criteria at a later date. [980-340-25-1]

- Rate actions of a regulator can reduce or eliminate the value of an asset. If a regulator excludes all or part of a cost from allowable costs, the carrying amount of any asset recognized pursuant to paragraph 980-340-25-1 shall be reduced to the extent of the excluded cost. Whether other assets have been impaired shall be judged the same as for entities in general and the Impairment or Disposal of Long-Lived Assets Subsections of Subtopic 360-10 shall apply. [980-340-35-1]
- If at any time an entity's incurred cost no longer meets the criteria for the capitalization of an incurred cost (see paragraph 980-340-25-1), that cost shall be charged to earnings. [980-340-40-1]
- In some cases, a regulator may approve rates that are intended to recover an incurred cost over an extended period without a return on the unrecovered cost during the recovery period. [980-340-55-2]
- The regulator's action provides reasonable assurance of the existence of an asset (see paragraph 980-340-25-1). Accordingly, the regulated entity would capitalize the cost and amortize it over the period during which it will be allowed for rate-making purposes. That cost would not be recorded at discounted present value. An exception to this general rule is provided for costs of abandoned plants. [980-340-55-3]

Issue #1: Can the IESO recognize a regulatory asset related to the variance account created by Bill 132?

As noted above, as of January 1, 2016, the IESO changed its accounting policy to recognize the economic impacts of rate regulation and now applies guidance from US GAAP Topic 980, *Regulated Operations*, as PSAS does not have any specific guidance for entities with rate-regulated activities.

IESO concluded that it met the requirements of PS2120.02, which allows them to reflect the impacts of rate regulation, as it is considered that the change of accounting policy in its 2016 financial statements resulted in a more appropriate presentation of transactions in its financial statements. The change was made to better reflect the economic substance of certain types of expenses that may not be directly recovered through the normal revenue requirement model.

The regulatory framework in Ontario relating to the generation and sale of electricity will be significantly impacted by Bill 132. Currently, a substantial amount of the energy purchased from the generators is collected by IESO from the local distribution companies through the customer billing, with the remaining being recovered through variance accounts over a period of 12 months maximum. As mentioned above, the effect of Bill 132 is to defer the collection of a total estimated amount of $28 billion (plus interest) of energy purchased from the generators over a period of 30 years. Bill 132 will not permit IESO to collect the IESO deferral before May 1, 2021 and the recovery process will be established through regulations. Such a long-term deferred recovery plan requires IESO to consider whether the uncollected energy costs qualify for deferral as a regulatory asset and whether it continues to meet the criteria that allow IESO to use the guidance for regulated operations of Topic 980. These two accounting issues are analyzed in the two tables below.

Criteria for the recognition of regulatory assets

ASC 980-340-25-1 states that rate actions of a regulator can provide reasonable assurance of the existence of an asset. An entity shall capitalize all or part of an incurred cost that would otherwise be charged to expense if both of the following criteria are met:

Criteria	Comment	Evaluation
(a) It is probable that future revenue in an amount at least equal to the capitalized cost will result from inclusion of that cost in allowable costs for rate-making purposes. (b) Based on available evidence, the future revenue will be provided to permit recovery of the previously incurred cost rather than to provide for expected levels of similar future costs. *(emphasis added)* If the revenue will be provided through an automatic rate-adjustment clause, this criterion requires that the regulator's intent clearly be to permit recovery of the previously incurred cost.	Bill 132 notes that, • *A recording of the balance in the variance account is determinative of the balance as of the time of the recording.* • *Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.* • *The Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for IESO to recover the balance recorded in the variance account.* • *The IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2021.* Based on Bill 132, IESO has the right to recover the balance recorded in the variance account. As a result, it is clear that the IESO will be able to recover the amount previously incurred rather than to provide for expected levels of similar future costs.	Met

Criteria for the adoption and continued use of ASC 980 guidance

Deferred recovery plans are plans adopted by regulators or legislations in response to significant increases in costs (e.g. purchased power costs). These plans typically provide for rates to remain fixed or increase moderately with a variance account mechanism to capture costs in excess of the level allowed in current rates. A regulated utility subject to such plans is required to consider whether it continues to meet the criteria that allow it to use the guidance for regulated operations of Topic 980, especially criteria ASC 980-10-15-2 (b).

The proposed plan for the recovery of purchase power costs over a 30 year period is considered a deferred recovery plan as the rates for the first four years will remain fixed and subsequently the rates will increase moderately with a variance account to capture energy costs in excess of the level allowed in current rates. The following is an analysis of the ASC 980-10-15-2 criteria.

Criteria	Comment	Evaluation
(a) The entity's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party	Currently, IESO recognizes regulatory assets related to smart meters and PSAS transition costs as permitted by rates approved by the OEB and regulatory liabilities related to the variance accounts (eg. OESP, RPP and RRRP variance accounts) established under section 25.33 of the Electricity Act related to the procurement of energy.	Met

Criteria	Comment	Evaluation
regulator or by its own governing board empowered by statute or contract to establish rates that bind customers.	It is important to note that both Hydro One and OPG are classified as *Government Business Enterprises* and are reporting under IFRS in their consolidated financial statements, are consolidated by the modified equity method into the province's books, are regulated by the OEB, and their respective regulatory assets and liabilities are reported in the province's books.	

(b) The regulated rates are designed to recover the specific entity's costs of providing the regulated services or products.	Currently, the rates approved by the OEB are designed to recover the IESO's costs of providing the regulated services and the pass-through related to the energy purchased from the generators.
	
	As mentioned above, a regulated utility subject to a deferred recovery plan is required to consider whether it continues to meet the criteria ASC 980-10-15-2 (b).
	
	This criterion requires a cause-and-effect relationship between a reporting entity's costs and its revenue. In addition, the timing of cost recovery and the related frequency of ratemaking is important. A reporting entity should consider its rate case experience, including the design of its rates and timing of recovery, when determining whether this criterion is met. These factors are analyzed below.
	
	Frequency of rate case
	
	- Currently, IESO is subject to OEB's annual reviews.
	- Although the recovery of purchase energy costs will be frozen at the approved rate on May 1, 2017 for the first four years, the IESO will be granted a right to recover after May 1, 2021 the IESO deferral recorded in the variance account during the four-year period.
	  - *A recording of the balance in the variance account is determinative of the balance, as of the time of the recording. (We note that this confirms that there will be no prudence review by the OEB)*
	  - *Right to recover the balance recorded in the variance account.*
	  - *Obligation on the part of the OEB to dispose the variance account in accordance with the regulation.*
	- Subsequent to May 1, 2021, the OEB will be required to determine and set rates payable by specified consumers to allow for IESO to recover the balance recorded in the variance account.
		Met

Criteria	Comment	Evaluation
	- *The Board shall, from time to time, determine and set rates payable by specified consumers to allow for IESO to recover the balance recorded in the variance account.* - *Despite anything to the contrary in the OEB Act, the Board may exercise any of its responsibilities under this Act without a hearing.* *Rates are designed to recover incurred costs* - There is a cause-and-effect relationship between the purchase energy costs and revenue, as IESO will be allowed to recover the costs incurred. - *A recording of the balance in the variance account is determinative of the balance as of the time of the recording* (We note that this confirms that there will be no prudence review). - *Right to recover the balance recorded in the variance account.* - *Obligation on the part of the OEB to ensure IESO will recover the balance recorded in the variance account.* *Periods of alternative ratemaking (e.g., rate freezes)* Evaluation of the second criterion requires additional judgment if the regulated utility is subject to any form of ratemaking that introduces uncertainty about the cause-and-effect relationship between costs and rates. A rate freeze period is defined as a fixed rate that is charged to customers during a period of time (more than two years) and the utilities are exposed to increases in operating and energy costs with no ability to recover the variances. This is not the case as IESO will be granted the right to recover fully the IESO deferral recorded in the variance account, including the first four-year period. - *The Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for the IESO to recover the balance recorded in the variance account.* *Costs uncertainty* As the IESO will be granted the right to fully recover the IESO deferral recorded in the variance account, there is no uncertainty about the recovery of the costs.	

Criteria	Comment	Evaluation
	Disallowances of costs The OEB has never disallowed the recovery of any material costs incurred by the IESO. More importantly, as the IESO will be granted by legislation the right to fully recover the IESO deferral recorded in the variance account, there is no risk of the potential disallowance of the purchase power costs. Based on the analysis of the above factors, there are no indications that this criterion would not be met. The above factors establish that there will be a direct cause-and-effect relationship between IESO's costs and its future collection.	

(c) In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume that rates set at levels that will recover the entity's costs can be charged to and collected from customers. This criterion requires consideration of anticipated changes in levels of demand or competition during the recovery period for any capitalized costs."	The remaining criterion is whether limitations, including considering demand levels at the approved rates, on the extent of recovery of the regulatory asset could prevent the IESO from recognizing a regulatory asset for the entire balance in the recovery right granted to the IESO.
	
	Bill 132 notes that:
	
	- *Effective May 1, 2017, the IESO's right to recover the balance in the variance account is subject to the following:*
	  o *The Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified customers to allow for the IESO to recover the balance recorded in the variance account.*
	  o *IESO shall not be entitled to collect the variance account from specified consumers before May 1, 2021.*
	
	Although the process, especially the timing of the recovery of the regulatory asset has not been established yet by the OEB, the wording and intent of the proposed legislation is clear that it is intended by law to be recoverable over the period of 30 years. Further, given the nature and extent of customer demand for the power generated and distributed in Ontario, both at this time and projected in the future, it is reasonable to conclude that there will be sufficient demand to recover the regulatory asset. As with the other criteria, this will need to be continually evaluated throughout the recovery period.
		Met

Management conclusion

IESO management has concluded that the IESO can recognize a regulatory asset related to the variance account created by Bill 132 based on the foregoing analysis.

The variance account created by Bill 132 is subject to rate regulation by the OEB and the variance account will be established with the right to collect funds against the variance amount in the future. In these circumstances, the IESO is able to establish a regulatory asset. The IESO financial statements are prepared in accordance with Canadian public sector accounting standards. Although PSAB does not provide specific guidance on rate regulated accounting, it does under PS 1150 Generally Accepted Accounting Principles allow for guidance to be followed from other accounting frameworks. IESO has applied guidance from United States Generally Accepted Accounting Principles (US GAAP) Topic 980, *Regulated Operations* in its accounting policies.

Our conclusion

We have considered the foregoing analysis and management's conclusion. We concur that the variance account created by Bill 132 will meet the criteria for the recognition of a regulatory asset stated in ASC 980-340-25-1. Furthermore, we have also considered the criteria stated in ASC 980-10-15-2 and believe that IESO should be allowed to continue to use the guidance for regulated operations of Topic 980.

Background for Issue #2

The facts, circumstances, and assumptions relevant to the specific transactions as provided to us by the management of the Company (responsible party), in addition to those described in the background for issue #1, are as follows:

1. The IESO currently has the right to collect the global adjustment ("GA") monthly from ratepayers through provisions in the Electricity Act. It is proposed that collection of a certain portion of the monthly GA be deferred in a regulatory asset for collection in the future, and that the right to recover the deferred GA from ratepayers be used as the basis for structured financing/ securitization.
2. In connection with Bill 132, it is proposed that a trust be established as a financial vehicle by OPG (the "OPG Trust") in connection with the deferred GA. The OPG Trust will finance the deferral of the GA by purchasing the regulatory asset from the IESO for the principal amount of the GA being deferred.
3. The OPG Trust is expected to finance these purchases from the IESO through a combination of senior secured financing raised in the capital markets, and subordinated financing from OPG (the funding for which will mostly be from equity injections from the OEFC/Province of Ontario).
4. OPG will be appointed as the Financial Services Manager and will be given the responsibility to direct the activities of the OPG Trust, through a services agreement and/or through the Trust's constating documents.

Appropriate Accounting Principle for Issue #2

PS1300 *Government Reporting Entity*:

PSAS refer to government or government organizations. For the purpose of this analysis, the PSAS guidance below relating to government or government organizations should be read and understood as being the IESO (emphasis added).

- The government reporting entity should comprise government components and those organizations that are controlled by the government. [PS 1300.07]
- Control is the power to govern the financial and operating policies of another organization with expected benefits or the risk of loss to the government from the other organization's activities. [PS 1300.08] (emphasis added).
- Whether a government controls an organization is a question of fact that must be determined by reference to the definition of control established in paragraph PS 1300.08 and the particular circumstances of each case. The determination of the fact that control exists will require the application of professional judgment. Government achieves its objectives through a wide range of organizations which individually will fall somewhere along a continuum. At one end of the continuum, it will be clear that an organization does not have the power to act independently and is controlled by the government. At the other end, the organization will have the power to act independently and, while government will have a level of influence on the organization, it will be clear that it does not have control. Along the continuum, consideration needs to be given to the nature of the relationship between the government and the organization in order to determine whether control exists. This Section provides guidance intended to assist in this assessment. [PS 1300.10]
- In applying this guidance, it is necessary to determine the substance of the relationship between the government and the organization. The true nature of certain relationships may not be completely reflected by their legal form. All relevant aspects and implications of the relationship would be considered in determining whether or not the government controls the organization. Where various aspects of the relationship are designed, in effect, to achieve an overall objective, they would be viewed as a whole. [PS 1300.11]
- Financial and operating policies are principles and practices that determine how an organization conducts its activities. The ability to govern these policies is an important element of government control because it establishes the fundamental basis for the conduct of the organization's operations and the achievement of its mission and mandate. [PS 1300.13]
- There are a variety of ways to govern the financial and operating policies of an organization. For example:
  (a) a government may establish an organization's fundamental purpose and eliminate or significantly limit the ability of the organization to make future decisions by predetermining the financial and operating policies of the organization;
  (b) a government may direct the financial and operating policies of an organization on an ongoing basis; or
  (c) a government may veto, overrule or modify the financial and operating policies established by an organization. [PS 1300.14]
- A government does not need to manage an organization's activities on a day-to-day basis to control the organization. It is the government's existing authority to determine the policies governing those activities that is important. [PS 1300.15]

– For the purposes of this Section, it is assumed that where the government has the power to govern the financial and operating policies of an organization, it expects to derive a financial or non-financial benefit. The government may also be exposed to the risk of loss. [PS 1300.16]

Issue #2: Is the trust to be established by OPG (the "OPG Trust") controlled by the IESO according to the guidance issued under PSAS 1300 *Government Reporting Entity* and, therefore, subject to consolidation by IESO?

Under PSAS, IESO is required to consolidate all entities that are considered to be part of its reporting entity, applying the guidance provided in *Section PS 1300 Government Reporting Entity.* Under PS 1300, IESO must consolidate all entities it "controls".

In determining whether or not the OPG Trust should be consolidated by IESO, it must first be determined whether or not the IESO exercises control as a consequence of power to govern the financial and operating policies of the OPG Trust resulting in expected benefits to the IESO or the risk of loss from the activities of the OPG Trust.

PS 1300.17 indicates that "whether a government controls an organization is a question of fact that requires the application of professional judgment based on the definition of control in this Section and the substance of the relationship in each case." Under PS 1300.08 control is defined as "the power to govern the financial and operating policies of another organization with expected benefits or the risk of loss to the government from the other organization's activities". Therefore, the determination of whether IESO will consolidate the OPG Trust will be based on an assessment of whether IESO is considered to control the OPG Trust based on the indicia of control set out in PS 1300. The assessment of the IESO's control of the OPG Trust is made based on Bill 132, facts and nature of the relationship between the IESO and the OPG Trust and based on facts and assumptions provided by IESO. PS 1300.18 and .19 set out 11 potential indicia of control. Several of these indicia have been categorized as more persuasive of a finding of control (see the first four indicators in the table below). For each indicator that applies, the degree of government influence would determine its importance as evidence of control. Finally, the indicia are considered both collectively and individually.

A detailed analysis of the 11 Indicators of control is provided in the following table.

INDICATOR OF CONTROLS	EVIDENCE OF CONTROL	CONTROL EXIST?
Primary (more persuasive) indicators (PS 1300.18):		
Government has the power to unilaterally appoint or remove a majority of the members of the governing body of the organization	- Bill 132 states: - *OPG is appointed as the Financial Services Manager for the purposes of this Act. (Section 18)* - *The Financial Services Manager shall perform the duties assigned to it under this Act and may administer the investment asset on behalf of the investment interest owners. (Section 19 (1))* - *Subject to any prescribed limitations, the Financial Services Manager may establish and charge fees in relation to such matters as may be prescribed in accordance with the regulations, which regulations may provide for the ability to recover costs and expenditures and to earn a return. (Section 19 (3))*	No

INDICATOR OF CONTROLS	EVIDENCE OF CONTROL	CONTROL EXIST?

	- The Electricity Act will be amended as follows:
	  - *In addition to the objects mentioned in subsection (1), the objects of OPG include exercising the powers and rights and performing the duties and obligations assigned to it under the Ontario Fair Hydro Plan Act, 2017 and engaging in activities to facilitate the implementation of that Act, including entering into contracts and undertakings on behalf of financing entities and performing other services on behalf of financing entities, subject to the right to be paid by the financing entities for those services. (Section 53.1 (1.1))*
	  - *OPG may create or invest in one or more subsidiaries, trusts, partnerships or special purpose entities in order to more efficiently conduct its activities or achieve its objects. (Section 53.1 (1.2))*
	- OPG will establish a trust to manage the collection of the regulatory asset and related financing and administrative expenses. The Board of Trustees of the OPG Trust will be the governing body of the Trust and will be appointed by OPG. OPG will have the power to unilaterally appoint or remove all members of the Board of Trustees.
	- The IESO will not have any rights in respect of the appointment or replacement of the Board of Trustees of the OPG Trust.	

Government has ongoing access to the assets of the organization, has the ability to direct the ongoing use of those assets, or has ongoing responsibility for losses	- Section 27 of Bill 132 states:
	  - *A transfer of a specified portion of the regulatory asset under section 26 constitutes a valid and enforceable absolute assignment, conveyance and sale of the corresponding investment interest to the transferee.*
	  - *Without limiting subsection (1), any transfer agreement that states an intention of the parties for the IESO to dispose of a specified portion of the regulatory asset and to assign, convey or sell a corresponding investment interest shall be treated for all purposes as an absolute assignment, conveyance, disposition and sale of the IESO's right to recover the corresponding amount in the variance account and not merely as a security interest.*
		No

INDICATOR OF CONTROLS	EVIDENCE OF CONTROL	CONTROL EXIST?
	- *At the time a transfer of the regulatory asset is made under section 26, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.* - Based on Bill 132, *upon transfer of a specified portion of the regulatory asset to the OPG Trust, the investment asset resulting from the transfer is immediately vested in the OPG Trust, free and clear of any adverse claim.* (Section 28 (2)). - Therefore, upon transfer of the regulatory asset to the OPG Trust, IESO will no longer have access/ability to direct the regulatory asset nor have the ongoing responsibility for losses. - The credit risk related to the collection of the investment asset is borne by the OPG Trust.	
Government holds the majority of the voting shares or a "golden share" that confers the power to govern the financial and operating policies of the organization	- IESO will not have any ownership in the OPG Trust and will not have the power to govern the financial and operating policies of the OPG Trust.	No
Government has the unilateral power to dissolve the organization and thereby access its assets and become responsible for its obligations	- IESO will not have the power to dissolve the organization.	No

INDICATOR OF CONTROLS	EVIDENCE OF CONTROL	CONTROL EXIST?
Other indicators that may provide evidence of control exist when government has the power to (PS 1300.18):		
Provide significant input into the appointment of members of the governing body of the organization by appointing a majority of those members from a list of nominees provided by others or being otherwise involved in the appointment or removal of a significant number of members	- OPG will have the power to unilaterally appoint or remove all members of the Board of Trustees of the OPG Trust. - IESO will not provide any input in the appointment of members of the Board of Trustees.	No
Appoint or remove the CEO or other key personnel	- OPG will have the power to unilaterally appoint or remove all members of the Board of Trustees of the OPG Trust and other key personnel.	No
Establish or amend the mission or mandate of the organization	- The Trust will be established by OPG and the mandate of the Trust will be set based on Bill 132.	No

Approve the business plans or budgets for the organization and require amendments, either on a net or line-by-line basis	- Bill 132 states:
	  - *OPG is appointed as the Financial Services Manager for the purposes of this Act. (Section 18)*
	  - *The Financial Services Manager shall prepare a written plan entitled the Financing Plan to be used by the Financial Services Manager to evaluate whether potential funding obligations should be incurred for the purposes of acquiring and financing an investment asset in accordance with this Act or for the purposes of refinancing. (Section 16 (1))*
	- OPG is the Financial Services Manager, not IESO.
	- IESO is not involved in the preparation or approval of the business plans or budget of the OPG Trust.
		No

Establish borrowing or investment limits or restrict the organization's investments	- Section 22 of Bill 132 states: - *The Financial Services Manager shall ensure that funding obligations incurred for the purposes of this Act are incurred in a manner that is consistent with the applicable Financing Plan.*	No

INDICATOR OF CONTROLS	EVIDENCE OF CONTROL	CONTROL EXIST?
	- OPG not IESO, is responsible for ensuring that the borrowings of the OPG Trust meet the above conditions.	
Restrict the revenue-generating capacity of the organization, notably the sources of revenue	- N/A	No
Establish or amend the policies that the organization uses to manage, such as those relating to accounting, personnel, compensation, collective bargaining or deployment of resources	- As mentioned above, OPG will be granted by legislation the power to establish or amend the policies of the OPG Trust and the ability to appoint and remove all members of the Board of Trustees.	No

Management conclusion

IESO management has concluded that the OPG Trust to be established would not be controlled by the IESO and therefore is not subject to consolidation by the IESO.

Based on the foregoing analysis of the 11 indicators of control as defined in Section PS 1300 *Government Reporting Entity,* considered both individually and collectively there is no evidence of control by the IESO in respect of the OPG Trust. The IESO will not have the power to govern the Trust, nor have ongoing access to Trust's assets. The IESO will also not have any voting shares or future rights to the Trust nor the power to dissolve the Trust. Without control, the Trust is not subject to consolidation within the IESO financial statements.

Our conclusion

We have considered the foregoing analysis and management's conclusion. We concur that based on Bill 132, none of the four primary (more persuasive) indicators of control are considered to be met, and none of the seven other indicators of control are considered to be met. Accordingly, we concur that the IESO does not control the OPG Trust under Bill 132 and hence would not consolidate the OPG Trust.

The adoption of Bill 132 (including the subsequent amendments of the Electricity Act and the OEB Act) and the finalization of the financing structure (including the bylaws and regulations of the OPG Trust) and other agreements will take several months. Accordingly, our judgment on the appropriate application of PSAS to the conclusion on control may change subject to further analysis of any changes to the terms of Bill 132 or review of the final regulations, financing structure and other agreements.

Background for Issue #3

The facts, circumstances, and assumptions relevant to the specific transactions as provided to us by the management of the Company (responsible party), in addition to those described in the background for issues #1 and 2, are as follows:

1. The total IESO deferral for the period from May 1, 2017 to April 30, 2047 is estimated at $28 billion plus interest and will be recorded by the IESO in a variance account recognized as a regulatory asset.
2. The IESO does not currently have the financial capability to finance the regulatory asset and will transfer the variance account to an investment asset owner (i.e. OPG Trust) on a monthly basis.
3. The IESO will obtain a written legal opinion as to the validity and enforceability of the transfer and sale of the regulatory asset.
4. Based on an assessment of control performed under the issue #2, IESO will not consolidate the OPG Trust. We understand that an assessment of control under International Financial Reporting Standards ("IFRS") has been performed by OPG and they have concluded that the OPG Trust will be consolidated by OPG; we note that the financial reporting framework used by OPG in preparing its financial statements for consolidation into the Province's books is IFRS.
5. The Electricity Act, OEB Act and other regulations will be amended to reflect the following *extracts from Bill 132:*

   Section 16 IESO to receive amounts

   (2) The IESO shall, as agent of the investment interest owners, receive amounts in respect of the clean energy adjustment paid to it from electricity vendors in accordance with the market rules made under section 32 of the Electricity Act, 1998 or the regulations.

   (4) All amounts received by the IESO in respect of the clean energy adjustment shall, until remitted to or for the benefit of the investment interest owner, be held in trust by the IESO for the investment interest owners.

   (5) The IESO shall remit amounts received by it in respect of the clean energy adjustment, inclusive of interest earned on the amounts referred to in subsection (1), to or for the benefit of the investment interest owners in accordance with the regulations.

   Section 17 Pro rating of payments

   (4) If an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices and the amount paid is less than the total amount payable, the electricity vendor shall allocate the payment on a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices in respect of electricity charges in respect of the same invoice period.

   Section 26 Transfer of regulatory asset

   (1) The IESO may from time to time, in accordance with this Act and the regulations, transfer a specified portion of the regulatory asset to a financing entity in accordance with this section.

   (2) An agreement between the IESO and a financing entity in relation to the transfer of a specified portion of the regulatory asset shall provide for consideration of a payment by the financing entity to the IESO in an amount equal to the amount of the specified portion.

(3) Upon receipt by the IESO of the payment by the financing entity,

(a) the balance in the variance account shall be reduced by the amount of the payment;

(b) the regulatory asset shall be adjusted accordingly;

(c) the financing entity shall acquire a corresponding investment interest; and

(d) the IESO shall retain no further right, title or interest in the investment interest.

Section 27 Validity of transfer

(1) A transfer of a specified portion of the regulatory asset under section 26 constitutes a valid and enforceable absolute assignment, conveyance and sale of the corresponding investment interest to the transferee.

(2) Without limiting subsection (1), any transfer agreement that states an intention of the parties for IESO to dispose of a specified portion of the regulatory asset and to assign, convey or sell a corresponding investment interest shall be treated for all purposes as an absolute assignment, conveyance, disposition and sale of IESO's right to recover the corresponding amount in the variance account and not merely as a security interest.

(3) At the time a transfer of the regulatory asset is made under section 26, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the transferee shall have priority over any liens in favour of those persons.

Section 29 Investment asset, irrevocable rights and interests

(1) The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests of investment interest owners:

1. The right and interest to impose, invoice, collect, receive and recover the clean energy adjustment from specified consumers, including the right to determine the clean energy adjustment in accordance with this Act.

2. The right to receive, collect and recover the clean energy adjustment that is imposed, invoiced and recoverable under this Act, including any amounts in respect of the clean energy adjustment that are held by electricity vendors, IESO and other prescribed parties.

Section 30 Transfer of investment interest

(2) An investment interest owner may transfer all or a portion of an investment interest to any other investment interest owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan.

Section 32 Investment interest owner may grant security interest

(1) An investment interest owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under the investment interest to or in favour of any person to secure a funding obligation.

(3) All provisions of the Personal Property Security Act shall apply to the investment asset and each investment interest on the basis that the investment asset and each investment interest is intangible personal property, except as otherwise provided for in this section, and any granting of a security interest by an investment interest owner to secure a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by registering a financing statement under that Act on that basis.

6. The terms of the transfer agreement between the IESO and the OPG Trust that will be signed and executed upon transfer of the regulatory assets will be in compliance with the dispositions of Bill 132.

Appropriate Accounting Principle for Issue #3

The Derecognition Section of ASC 980-20-40 provides guidance on determining whether and when an entity should remove an item from the financial statements. For example, the entity would derecognize an asset because it no longer has rights to the asset or it would derecognize a liability because it no longer has any obligation. [ASC 980-20-40]

Failure of an entity's operations to continue to meet the criteria in paragraph 980-10-15-2 can result from different causes. Examples include the following:

(a) Deregulation.

(b) A change in the regulator's approach to setting rates from cost-based rate-making to another form of regulation.

(c) Increasing competition that limits the entity's ability to sell utility services or products at rates that will recover costs (as used in paragraph 980-10-15-2).

(d) Regulatory actions resulting from resistance to rate increases that limit the entity's ability to sell utility services or products at rates that will recover costs if the entity is unable to obtain (or chooses not to seek) relief from prior regulatory actions through appeals to the regulator or the courts. [ASC 980-20-15-2]

PS1000 *Financial statement concepts*:

– This Section is to be used by preparers and auditors of financial statements in exercising their professional judgment as to the application of generally accepted accounting principles and in establishing accounting policies in areas in which accounting principles are developing. [PS1000.03]

– Financial statements should communicate information that is relevant to the needs of those for whom the statements are prepared, reliable, comparable, understandable and clearly presented in a manner that maximizes its usefulness. [PS1000.24]

– An item is not an asset of a government if it lacks one or more of the essential characteristics listed in the preceding paragraph [PS3210.04]. Thus, for example, an item does not qualify as an asset of a government if the item involves:

  (a) no future economic benefit;

  (b) future economic benefit, but the government cannot obtain it; or

  (c) future economic benefit that the government may obtain, but the events or circumstances that give the government control of the benefit have not yet occurred. [PS1000.37]

PS3210 *Assets*:

- Assets are economic resources controlled by a public sector entity as a result of past transactions or events and from which future economic benefits are expected to be obtained. [PS3210.03]
- Assets have three essential characteristics:
  (a) They embody future economic benefits that involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows, or to reduce cash outflows.
  (b) The public sector entity can control the economic resource and access to the future economic benefits.
  (c) The transaction or event giving rise to the public sector entity's control has already occurred. [PS3210.04]
- Control of an economic resource and of access to the future economic benefits are essential characteristics of an asset, whereas possession or ownership is not. [PS3210.22]

PS3430 *Restructuring transactions* [1]

- Individual assets and liabilities transferred in a restructuring transaction should be derecognized by the transferor if they no longer meet the definitions of assets and liabilities and applicable recognition criteria at the restructuring date. [PS3430.21]
- When a transferor continues to be involved in the individual assets and/or liabilities it transferred to a recipient subsequent to the restructuring date, it would assess the nature and extent of its continued involvement against the definitions of assets and liabilities and applicable recognition criteria to evaluate whether:
  (a) derecognition of the asset and liability transferred would be appropriate; and
  (b) its continued involvement gives rise to a new asset or new liability that needs to be recognized. [PS3430.24]
- A new asset or new liability may arise from a restructuring due to a transferor's continued involvement in the individual assets and liabilities transferred (for example, if it agrees to guarantee repayment of all or a portion of a transferred liability or leases back a portion of a transferred asset). As the new asset or new liability is not transferred, together with related program or operating responsibilities, they are not part of the restructuring transaction. They would be accounted for in accordance with individual Sections of the PSA Handbook by both the transferors and recipients. [PS3430.25]

1 This Section applies to fiscal years beginning on or after April 1, 2018. […] Earlier adoption is permitted."

Issue #3: What is the accounting treatment for derecognition of the regulatory asset by the IESO upon transfer of the variance account to the OPG Trust?

Although ASC 980-20-40 states that

> *"Derecognition Section provides guidance on determining whether and when an entity should remove an item from the financial statements. For example, the entity would derecognize an asset because it no longer has rights to the asset or it would derecognize a liability because it no longer has any obligation."*

Subtopic 980-20 relates to discontinuation of rate-regulated accounting when an entity no longer meets the criteria in paragraph 980-10-15-2. ASC 980-20-15-2 provides examples of when an entity no longer meets the criteria, including deregulation and change of the form of regulation. Thus, ASC 980 does not provide clear guidance for the derecognition of a regulatory asset other than in connection with the discontinuation of rate-regulated accounting.

The above guidance in ASC 980-20-40 provides general principles for the derecognition of assets.

It should also be noted that PSAS provide limited guidance on derecognition of non-financial assets and liabilities. Section 3430 *Restructuring transactions,* which is applicable for fiscal years on or after April 1, 2018 with early application permitted, has guidance for the derecognition of assets and liabilities.

- Paragraph 21 states that *individual assets and liabilities transferred in a restructuring transaction should be derecognized by the transferor if they no longer meet the definitions of assets and liabilities and applicable recognition criteria at the restructuring date.*
- As stated in paragraph 24, *when a transferor continues to be involved in the individual assets and/or liabilities it transferred to a recipient subsequent to the restructuring date, it would assess the nature and extent of its continued involvement against the definitions of assets and liabilities and applicable recognition criteria to evaluate whether derecognition of the asset and liability transferred would be appropriate and whether its continued involvement gives rise to a new asset or new liability that needs to be recognized.*

Recognizing the proposed transaction is not a restructuring transaction, Section 3430, which has recently been issued by PSAB, provides current evidence of thinking in the application of the general PSAS principles in respect of the recognition and derecognition of assets and liabilities. Accordingly, the analysis as to whether the regulatory asset transferred to the OPG Trust can be derecognized is based on the foregoing guidance.

Criteria for the recognition of an asset

PS3210.03 states that assets are economic resources controlled by a public sector entity as a result of past transactions or events and from which future economic benefits are expected to be obtained. More generally, PSAS PS1000.37 suggests that an asset would no longer be recognized when it fails to meet the definition of an asset:

Criteria	Comment	Evaluation
Assets (PS3210.04/ PS1000.36): Assets have three essential characteristics: (a) They embody future economic benefits that involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows,	Based on the guidance, the regulatory asset does not qualify as an asset of IESO if it cannot obtain the future economic benefits. Upon transfer of the regulatory asset, IESO will have no further rights or obligations in connection with the asset transferred. - *IESO may from time to time, in accordance with this Act and the regulations, transfer a specified portion of the regulatory asset to a financing entity in accordance with this section.* - *Upon receipt by IESO of the payment by the financing entity, IESO shall retain no further right, title or interest in the corresponding investment interest.*	Not Met

Criteria	Comment	Evaluation
or to reduce cash outflows. (b) The public sector entity can control the economic resource and access to the future economic benefits. (c) The transaction or event giving rise to the public sector entity's control has already occurred. *Financial statement concepts (PS1000.37):* An item is not an asset of a government if it lacks one or more of the essential characteristics listed in the preceding paragraph [see above]. Thus, for example, an item does not qualify as an asset of a government if the item involves: (a) no future economic benefit (b) future economic benefit, but the government cannot obtain it.	- *A transfer of a specified portion of the regulatory asset under section 26 constitutes a valid and enforceable absolute assignment, conveyance and sale of the corresponding investment interest to the transferee.* - *Without limiting subsection (1), any transfer agreement that states an intention of the parties for IESO to dispose of a specified portion of the regulatory asset and to assign, convey or sell a corresponding investment interest shall be treated for all purposes as an absolute assignment, conveyance, disposition and sale of IESO's right to recover the corresponding amount in the variance account and not merely as a security interest.* - *At the time a transfer of the regulatory asset is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.* Upon transfer of the regulatory asset, the OPG Trust will have the right to sell the asset to another party or to grant a security interest in favour of any person to secure a funding obligation. - *Upon transfer, the financing entity becomes an investment asset owner and acquires an investment interest.* - *An investment interest owner may transfer all or a portion of an investment interest to any other investment interest owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan.* - *An investment interest owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under the investment interest to or in favour of any person to secure a funding obligation.* Based on Bill 132, it is clear that IESO will have no rights to the benefits associated with the future cash inflows related to the regulatory asset as it will have transferred its right to recover the IESO deferral to the OPG Trust. Further, it is also clear that IESO will have lost control over the regulatory asset once it is transferred to OPG Trust.	

Management conclusion

IESO management has concluded that the regulatory asset will be derecognized upon transfer of the regulatory asset to the OPG Trust.

The transfer of the regulatory asset transfers the control and the benefits associated with the right to collect funds in the future against the variance amount to the OPG Trust. This will eliminate the IESO asset by the amount of the transfer as the IESO will no longer control an economic resource or have access to future economic benefits for that amount. The funds collected from the transfer will in turn reduce the associated debt held by the IESO, maintaining the IESO's net $ nil balance in the market accounts.

Our conclusion

We have considered the foregoing analysis and management's conclusion. We concur that the regulatory asset should be derecognized on transfer to the OPG Trust as IESO no longer has rights or future economic benefits associated with the asset.

Other Matters

The ultimate responsibility for the decision on the appropriate application of PSAS for the specific transactions rests with management as preparers of the financial statements. Our judgment on the appropriate application of PSAS for the specific transaction is based solely on the facts, circumstances and assumptions provided to us as described above. Should these facts and circumstances differ, our conclusion may change.

This letter has been prepared in draft form and will be updated upon receipt of the adopted legislation, if passed, (including the amendments of the Electricity Act and the OEB Act) and finalized financial structure (including the bylaws and regulations of the OPG Trust) and other relevant agreements necessary for us to provide our final opinion, of which legislation and other relevant agreements are expected to be enacted/ finalized on or before September 30, 2017. This letter will not be updated as a consequence of pronouncements by the Public Sector Accounting Board, or any other authoritative bodies, that occur subsequent to the date of this letter.

This letter is intended solely for the information and use of the Board of Directors and management of the Company, and is not intended to be and should not be used, quoted, relied upon by, or otherwise referred to by anyone other than these specified parties or for any other purpose.

No one other than the Board of Directors and management of the Company is authorized by KPMG to rely upon any information or views expressed herein. KPMG shall have no responsibility or liability for loss or damages or claims, if any, to or by any third party as this letter has not been prepared for, and is not intended for, and should not be used by, any third party or for any other purpose.

Yours very truly,

per Michel Picard
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Appendix A:

Bill 132, Ontario Fair Hydro Plan Act, 2017

Caution:
Bills are published by the Legislative Assembly in print and on its website. This copy has not been published by the Legislative Assembly and is being provided for convenience only.

Fair Hydro Act, 2017

EXPLANATORY NOTE

The Bill enacts a new Act and makes amendments to the *Electricity Act, 1998* and the *Ontario Energy Board Act, 1998*.

SCHEDULE 1
ONTARIO FAIR HYDRO PLAN ACT, 2017

The Schedule enacts the *Ontario Fair Hydro Plan Act, 2017*. The Act establishes a framework under which the costs and benefits associated with the "clean energy initiative" are to be allocated among present and future consumers of electricity. The "clean energy initiative" is defined in Part I as consisting of the policies of the Government of Ontario related to such matters as eliminating coal generation and fostering the growth of and investment in clean, modern and reliable energy sources and technologies.

Under Part II, the Ontario Energy Board is required to determine reduced electricity rates and to determine other adjustments to be made for certain classes of consumers in respect of specified periods of time. For example, for the class of consumers referred to as "regulated rate consumers", the electricity rates payable for the period beginning on July 1, 2017 and ending on April 30, 2018 are the rates, as determined by the Board, that would achieve a 25 per cent reduction in certain costs for a hypothetical member of the class who meets prescribed criteria. Details regarding the determinations are prescribed by regulations.

Part III requires certain electricity consumers to pay an amount in respect of the "clean energy adjustment". The clean energy adjustment is determined by the Financial Services Manager in accordance with rules set out in the Act and the regulations. (Section 18 of the Act appoints Ontario Power Generation Inc. as the Financial Services Manager.) Part III also specifies the roles and responsibilities of electricity vendors and the Independent Electricity System Operator ("IESO") with respect to the collection and remittance of amounts in respect of the clean energy adjustment.

Part IV requires the Minister of Energy to calculate a "fair allocation amount" by taking specified steps in accordance with principles and assumptions set out in the Act. For example, the Act provides that the purpose of calculating the fair allocation amount is to measure and allocate the estimated clean energy costs and estimated clean energy benefits fairly among certain consumers. Part IV also requires the Financial Services Manager to prepare a written

plan entitled the "Financing Plan", which is to be used to evaluate whether potential funding obligations should be incurred. Principles and limitations regarding the preparation and implementation of the plan are provided.

Part V requires the IESO to determine the "IESO deferral" in accordance with the regulations and to establish and maintain a variance account in which it records the IESO deferral each month. A "regulatory asset" is created under section 25; the IESO has the right to recover the balance recorded in the variance account from certain consumers. The IESO is authorized to transfer a specified portion of the regulatory asset to a financing entity; this transfer results in the creation of the investment asset and the acquisition by the transferee of a corresponding "investment interest". Various rules respecting the validity and priority of a transfer of an investment asset are set out.

In Part VI, rules in respect of the "investment asset" are provided. Section 29 provides that the investment asset constitutes a current and irrevocable property right and interest, consisting collectively of various specified rights and interests of investment interest owners. Rules respecting the validity and priority of such a transfer and the granting of a security interest by an investment interest owner are included.

Part VII deals with various miscellaneous matters, including regulation-making authority of the Lieutenant Governor in Council.

The *Electricity Act, 1998* and the *Ontario Energy Board Act, 1998* are amended to address various matters relating to the enactment of the new Act. For example, the objects of the IESO and Ontario Power Generation Inc. are expanded to address powers and duties under the new Act.

SCHEDULE 2
AMENDMENTS TO THE ONTARIO ENERGY BOARD ACT, 1998

The *Ontario Energy Board Act, 1998* is amended. Among the amendments:

1. Section 79 of the Act is amended so that compensation for the rate protection provided to certain classes of rural or remote consumers may be funded out of money appropriated by the Legislature, rather than by consumers.

2. Section 79.2 of the Act, which governs the Ontario Electricity Support Program, is repealed and replaced. The program is continued, but will be funded out of money appropriated by the Legislature after the variance account maintained by the Independent Electricity System Operator, formerly established under the Plan, is exhausted, rather than by consumers. There are provisions relating to the sharing, use and disclosure of information relating to the administration of the Ontario Electricity Support Program.

3. Programs are established to aid certain distribution rate-protected residential consumers and on-reserve consumers.

4. Various amendments of a technical and administrative nature are made to support the implementation and oversight of these programs including provisions related to auditing, record-keeping, inspections and inquiries, offences and penalties.

Bill **2017**

An Act to enact the Ontario Fair Hydro Plan Act, 2017 and to make amendments to the Electricity Act, 1998 and the Ontario Energy Board Act, 1998

Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Contents of this Act

1. This Act consists of this section, sections 2 and 3 and the Schedules to this Act.

Commencement

2. (1) Subject to subsections (2) and (3), this Act comes into force on the day it receives Royal Assent.

Schedules

(2) The Schedules to this Act come into force as provided in each Schedule.

Different dates for same Schedule

(3) If a Schedule to this Act provides that any of its provisions are to come into force on a day to be named by proclamation of the Lieutenant Governor, a proclamation may apply to one or more of those provisions, and proclamations may be issued at different times with respect to any of those provisions.

Short title

3. The short title of this Act is the *Fair Hydro Act, 2017*.

SCHEDULE 1
ONTARIO FAIR HYDRO PLAN ACT, 2017

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Preamble

The Government of Ontario is committed to fostering the development of a clean, modern and reliable electricity system with a diverse supply mix. The Government is also committed to removing barriers to and promoting opportunities for renewable and clean energy projects. These commitments can only be achieved if costs are shared fairly among consumers, today and in the future.

Electricity rates have risen for two key reasons. First, decades of under-investment in the electricity system resulted in the need to invest more than $50 billion in generation, transmission and distribution assets to ensure the system is clean and reliable. Second, the decision to eliminate Ontario's use of coal and produce clean, renewable power has created additional costs.

The actions taken to achieve a clean, modern and reliable electricity system have resulted in significant costs to residential consumers. The burden of financing these system improvements and funding key programs has unfairly fallen almost entirely on the shoulders of those consumers.

The Government of Ontario is committed to ensuring that the costs of financing these investments and the associated charges to consumers are allocated fairly among present and future generations.

Recognizing that the electricity infrastructure that has been built and the policy decisions that have been made will create benefits for years to come, costs should be allocated fairly over time, so that residential consumers in the future pay their fair share for the benefits that they receive from the investments already made.

PART I
GENERAL

Interpretation

Definitions

1. (1) In this Act,

"Board" means the Ontario Energy Board; ("Commission")

"clean energy adjustment" means the amount determined under section 15 and payable by specified consumers; ("ajustement pour l'énergie propre")

"clean energy benefits" means the value of the benefits determined to be derived by or accruing to specified consumers as a result of the clean energy initiative, including as a result of clean energy costs; ("avantages de l'énergie propre")

"clean energy costs" means the value of the costs allocated to specified consumers as a result of the clean energy initiative, including as a result of past, present and expected costs incurred in respect of,

(a) the amounts to be paid or reflected by the IESO in adjustments made under section 25.33 of the *Electricity Act, 1998* or any provision that is the successor to that provision, which relate to contracts or amounts for,

(i) renewable energy generation or capacity,

(ii) conservation and demand management,

(iii) energy storage,

(iv) energy efficiency,

(v) natural gas generation and capacity, excluding contracts relating to amounts payable by the IESO under section 78.2 of the *Ontario Energy Board Act, 1998* and excluding such other contracts as may be prescribed,

(b) payments made or expected to be made under section 78.5 of the *Ontario Energy Board Act, 1998*, and

(c) such other costs or estimated costs as may be prescribed; ("coûts de l'énergie propre")

"clean energy initiative" means the policies of the Government of Ontario related to,

(a) eliminating coal generation and fostering the growth of and investment in clean, modern and reliable energy sources and technologies,

(b) removing barriers to and promoting opportunities for clean and renewable energy sources and technologies,

(c) promoting conservation, demand management and energy efficiency, and

(d) investing in energy infrastructure to ensure a clean, modern and reliable system; (“initiative pour l’énergie propre”)

“electricity vendor” means,

(a) a licensed distributor,

(b) a licensed retailer,

(c) the IESO in circumstances where it directly invoices a specified consumer for electricity used in Ontario, or

(d) such other person as may be prescribed; (“vendeur d’électricité”)

“fair allocation amount” means an amount calculated under section 20; (“montant de répartition équitable”)

“finance amount” means the finance amount determined in accordance with the regulations; (“montant de financement”)

“Financial Services Manager” means the Financial Services Manager appointed under section 18; (“gestionnaire des services financiers”)

“financing entity” means an entity established or caused to be established by the Financial Services Manager as described in subsection 22 (2); (“entité de financement”)

“Financing Plan” means the plan prepared under section 21; (“Plan de financement”)

“funding obligation” means a payment obligation incurred by or on behalf of an investment interest owner to fund its ownership of an investment interest or a payment obligation that meets such other criteria as may be prescribed; (“obligation de financement”)

“funding rebate” means a payment obligation incurred by the IESO as part of the transfer of the regulatory asset; (“remboursement de financement”)

“IESO” means the Independent Electricity System Operator continued under Part II of the *Electricity Act, 1998*; (“SIERE”)

“IESO deferral” means the amount determined under section 23; (“report de la SIERE”)

"investment asset" means the rights and interests described in section 29; ("actif d'investissement")

"investment interest" means,

(a) an ownership interest in the investment asset, and

(b) in circumstances where the ownership interest is transferred, the rights and benefits specified in the agreement under which the interest is transferred; ("participation d'investissement")

"investment interest owner" means a financing entity that has acquired and holds an investment interest; ("détenteur d'une participation d'investissement")

"licensed distributor" means a person licensed under Part V of the *Ontario Energy Board Act, 1998* to own or operate a distribution system within the meaning of that Act; ("distributeur titulaire d'un permis")

"licensed retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity; ("détaillant titulaire d'un permis")

"Minister" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of this Act under the *Executive Council Act*; ("ministre")

"Ontario Power Generation Inc." means the corporation incorporated as Ontario Power Generation Inc. under the *Business Corporations Act* on December 1, 1998; ("Ontario Power Generation Inc.")

"prescribed" means prescribed by the regulations; ("prescrit")

"reference period" means,

(a) the period beginning on July 1, 2017 and ending on October 31, 2017, and

(b) during the period beginning on November 1, 2017 and ending on either April 30, 2047 or such later day as may be prescribed,

(i) every six-month period following the period mentioned in clause (a); or

(ii) any period shorter than six months, as may be prescribed; ("période de référence")

"refinancing" means, subject to the regulations, the incurrence of debt in connection with a redemption, repayment or repurchase of a funding obligation; ("refinancement")

"regulation" means a regulation made under this Act; ("règlement")

"regulatory asset" means the right established under section 25; ("actif réglementaire")

"specified consumer" means,

(a) a person who has an account with an electricity vendor for the supply of electricity in Ontario and meets the criteria set out in subsection (2), or

(b) such other person as may be prescribed; ("consommateur déterminé")

"transfer" includes, when used in relation to an investment interest, the assignment, conveyance, disposition or sale of the investment interest; ("transfert")

"true up amount" means a true up amount determined in accordance with the regulations; ("montant d'égalisation")

"unit sub-metering" has the same meaning as in the *Energy Consumer Protection Act, 2010;* ("activités liées aux compteurs divisionnaires d'unité")

"unit sub-meter provider" has the same meaning as in the *Energy Consumer Protection Act, 2010;* ("fournisseur de compteurs divisionnaires d'unité")

"variance account" means the variance account established by the IESO under subsection 24 (1). ("compte d'écart")

Specified consumer

(2) For the purposes of clause (a) of the definition of "specified consumer" in subsection (1), the person must meet any one of the following criteria:

1. The person has a demand for electricity of not more than 50 kilowatts, or such other amount as may be prescribed.

2. The person annually uses not more than 250,000 kilowatt hours of electricity, or such other amount as may be prescribed.

3. The person carries on a business that is a farming business for the purposes of the *Farm Registration and Farm Organizations Funding Act, 1993* and either holds a valid registration number assigned under that Act or has had the

obligation to file a farming business registration form waived pursuant to an order made under subsection 22 (6) of that Act.

4. The person's account with the electricity vendor relates to,

   i. a dwelling,

   ii. a property within the meaning of the *Condominium Act, 1998*,

   iii. a residential complex within the meaning of subsection 2 (1) of the *Residential Tenancies Act, 2006*, without regard to section 5 of that Act, or

   iv. a property that includes one or more housing units and that is owned or leased by a co-operative within the meaning of the *Co-operative Corporations Act*.

5. The person satisfies such criteria as may be prescribed.

Transfer of regulatory asset

(3) In this Act, a reference to the transfer of a specified portion of the regulatory asset is a reference to the following, as provided for in subsection 26 (3):

1. A reduction in the balance in the variance account.

2. The adjustment of the regulatory asset.

3. The acquisition by a financing entity of the investment interest corresponding to the specified portion of the regulatory asset.

Effect of invalidity

2. (1) For greater certainty, all of the provisions of this Act remain in full force and effect, even if one or more provisions are held to be invalid, the intention of the Legislature being to give separate and independent effect to the extent of its powers to every provision contained in this Act.

Same, funding obligation

(2) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect the validity or enforceability of a funding obligation incurred before the day that the provision is held to be invalid or ceases to be in effect, or any rights or obligations associated with the funding obligation.

Purposes

3. The purposes of this Act are,

(a) to ensure that clean energy costs and clean energy benefits are fairly allocated among present and future specified consumers;

(b) to recognize that clean energy benefits have accrued and will accrue over time and will continue to benefit present and future electricity consumers in the Province; and

(c) to align clean energy costs with clean energy benefits, in order to provide fairness for specified consumers over time.

Crown bound

4. This Act binds the Crown.

Protection and assurances

Prohibition

5. (1) No action or omission by the Board, the Minister or the Crown shall be effective to reduce, impair, postpone or terminate the obligations of specified consumers to pay amounts in respect of the clean energy adjustment or to impair or postpone the invoicing, collection or remittance of the clean energy adjustment.

Agreements

(2) The Minister and the Minister of Finance may together, with the approval of the Lieutenant Governor in Council, enter into agreements on behalf of the Province of Ontario with any person in respect of this Act, including agreements regarding the performance of the IESO or electricity vendors under this Act or related transactions.

Guarantee, indemnification

(3) The Lieutenant Governor in Council may by order,

(a) authorize the Minister and the Minister of Finance, acting together on behalf of the Province,

(i) to agree to guarantee or indemnify any debts, obligations, securities or undertakings associated with an investment interest, and

(ii) to determine terms and conditions of the guarantee or indemnity and the maximum liability for the guarantee or indemnity;

(b) specify terms and conditions that must be included in any guarantee or indemnity given by the Minister and the Minister of Finance; and

(c) specify a maximum liability for the guarantee or indemnity.

PART II
FAIR ADJUSTMENT

Definition

6. In this Part,

"regulated rate consumer" means a specified consumer who meets the following criteria:

1. The consumer is a member of the class of consumers prescribed by the regulations made under the *Ontario Energy Board Act, 1998* for the purposes of subsection 79.16 (1) of that Act.

2. The consumer would, if the consumer were not subject to this Act, be invoiced the rates determined by the Board under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*.

Regulated rate consumers, first adjustments

7. (1) Despite any order under subsection 78 (3.1) of the *Ontario Energy Board Act, 1998* and despite section 79.16 of that Act, the electricity rates payable by regulated rate consumers for the period beginning on July 1, 2017 and ending on April 30, 2018 are the rates, as determined by the Board, that would result in a hypothetical regulated rate consumer who meets the prescribed criteria being charged an invoice amount that is 25 per cent less than the invoice amount that would have been charged to that consumer under the comparison rates described in subsection (2).

Comparison rates

(2) The comparison rates are the rates that would have been effective May 1, 2017 if they had been determined by the Board solely using the method prescribed by the regulations made under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*, without taking into account any forecasted impact of any other provisions of this Act.

Invoice amounts

(3) The types of amounts to be included or excluded in each invoice amount mentioned in subsection (1) are the types of amounts specified in the regulations.

Other specified consumers, first adjustments

8. (1) For the period beginning on July 1, 2017 and ending on April 30, 2018, the adjustments made by the IESO under section 25.33 of the *Electricity Act, 1998* shall, with respect to specified consumers who are not regulated rate consumers, be further adjusted

by electricity vendors in accordance with the determinations of the Board under subsection (2).

Board to make determinations

(2) The Board shall, in accordance with the regulations, determine the adjustments to be made by electricity vendors.

Same, regulations

(3) The regulations may specify different adjustments to be made in respect of prescribed classes of specified consumers who are not regulated rate consumers.

Determinations by Board

9. The Board shall make the determinations mentioned in sections 7 and 8 no later than 15 business days after the day this section receives Royal Assent and, regardless of whether the Board makes the determinations before or after July 1, 2017, the determinations shall be effective as of July 1, 2017.

Implementation by electricity vendors

10. (1) As soon as possible after the Board makes determinations under section 9, each electricity vendor shall, in respect of electricity used on or after July 1, 2017, ensure that its invoices reflect the determinations of the Board.

Same

(2) The electricity vendor shall ensure that, if any of its customers who are specified consumers have been invoiced in a manner that does not reflect the determinations of the Board under section 9, the specified consumer receives the difference between the amounts shown on the invoice and the amounts reflecting the Board's determinations, provided as a lump sum credit on the first invoice issued after the electricity vendor has adapted its invoices or by such other means as may be prescribed.

Subsequent adjustments

11. (1) Despite clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998* and subject to subsection (2), the Lieutenant Governor in Council may prescribe the methodology to be applied by the Board after April 30, 2018 for the purpose of determining,

(a) electricity rates for regulated rate consumers; or

(b) adjustments to be applied by electricity vendors to the adjustments made by the IESO under section 25.33 of the *Electricity Act, 1998* in respect of prescribed classes of specified consumers who are not regulated rate consumers.

Limitation

(2) Any prescribed methodology shall have regard to the following:

1. The purposes of this Act.

2. The clean energy costs borne by specified consumers over time.

3. Such other matters as may be prescribed.

Sub-metering

12. (1) This section applies if a specified consumer provides to another person electricity in respect of which a determination of the Board referred to in section 9 or 11 applies.

Same

(2) If an invoice for the electricity is issued to the person by the specified consumer or a unit sub-meter provider providing unit sub-metering for the specified consumer, the amount payable for the electricity by the person who is liable to pay the invoice shall be determined in accordance with the regulations.

PART III
CLEAN ENERGY ADJUSTMENT

Specified consumers to pay

13. (1) Upon receipt of an invoice from an electricity vendor that includes an amount in respect of the clean energy adjustment, a specified consumer shall pay the amount to the electricity vendor as agent of the investment interest owners.

Same

(2) For greater certainty, subsection (1) applies regardless of,

(a) whether the clean energy adjustment was determined in a manner that was inconsistent with this Act; and

(b) whether the amount payable in respect of the clean energy adjustment relates to funding obligations that were incurred in a manner that was inconsistent with the Financing Plan, including in a manner that failed to provide for the reasonable alignment of the estimated finance amount with the fair allocation amount.

Terms

(3) The payment shall be made in accordance with such terms of payment as may be specified in the invoice, which may include terms relating to late payment fees and interest charges.

Indebtedness of specified consumer

(4) An unpaid amount that is required to be paid by a specified consumer under this section constitutes indebtedness of the specified consumer to each investment interest owner to the extent of each owner's respective interest in the investment asset.

Same

(5) The indebtedness mentioned in subsection (4) is a single and separate debt obligation owed by the specified consumer and may be enforced independently from any other payment obligation or indebtedness owing by the specified consumer.

Unit sub-metering

(6) A specified consumer who provides electricity through unit sub-metering may collect amounts in respect of the clean energy adjustment payable under this section in accordance with the regulations.

Irrevocability of amount

14. (1) An amount in respect of the clean energy adjustment shown on an invoice issued to a specified consumer under this Act is determinative of the amount of the consumer's indebtedness resulting from the clean energy adjustment and is irrevocable upon invoicing the consumer and may not be set off or bypassed.

Exception

(2) Subsection (1) does not apply to the extent that the invoice reflects a clerical, typographical or calculation-related error.

Determination of clean energy adjustment
Financial Services Manager to determine

15. (1) The Financial Services Manager shall determine the clean energy adjustment payable by all specified consumers in respect of each month in a reference period by taking the following steps:

1. Calculate the sum of the following:

    i. The estimated finance amount in respect of the reference period.

    ii. The true up amount in respect of the reference period.

2. Divide the sum calculated under paragraph 1 by the number of months in the reference period.

Regulations re true up amount

(2) The Lieutenant Governor in Council shall, in making regulations with respect to the determination of the true up amount, have regard to the following principles:

1. The true up amount should serve to ensure that the collection of the clean energy adjustment is sufficient to pay the finance amount when it is due.

2. The method for determining the true up amount should take into account historical and reasonably foreseeable,

    i. differences between the estimated and actual finance amount for the applicable reference period,

    ii. differences between amounts invoiced and amounts collected due to various factors, including applicable taxes, consumer defaults and delays, billing lags and write-offs, and

    iii. variations in billings due to variations in electricity consumption.

Financial Services Manager to notify Board

(3) The Financial Services Manager shall, in accordance with the regulations, notify the Board of the clean energy adjustment in respect of a reference period and such other information related to the determination of the clean energy adjustment as may be prescribed.

Board to determine rates

(4) Without changing the clean energy adjustment, the Board shall, in accordance with the regulations, determine the rates at which specified consumers are invoiced to recover the clean energy adjustment in respect of the reference period.

IESO to receive amounts

16. (1) The IESO shall, as agent of the investment interest owners, receive amounts in respect of the clean energy adjustment paid to it from electricity vendors in accordance with the market rules made under section 32 of the *Electricity Act, 1998* or the regulations.

Account

(2) All of the following amounts received by the IESO shall, until remitted to or for the benefit of the investment interest owners in accordance with subsection (4), be

deposited promptly into an account established for the purposes of receiving those amounts:

1. Amounts described in subsection (1).

2. Payments made by specified consumers directly to the IESO as electricity vendor under subsection 13 (1).

3. Proceeds of amounts described in paragraphs 1 and 2.

Same, held in trust

(3) All amounts received by the IESO in respect of the clean energy adjustment shall, until remitted to or for the benefit of the investment interest owners, be held in trust by the IESO for the investment interest owners.

IESO to remit

(4) The IESO shall remit amounts received by it in respect of the clean energy adjustment, inclusive of interest earned on the amounts referred to in subsection (1), to or for the benefit of the investment interest owners in accordance with the regulations.

Electricity vendor to invoice specified consumers

17. (1) Each electricity vendor shall issue an invoice to each of its customers who is a specified consumer for the amount payable by the consumer in respect of the clean energy adjustment, as determined by applying the rate set by the Board under subsection 15 (4) and in accordance with the regulations.

Electricity vendor to report

(2) Each electricity vendor shall, in accordance with the regulations, promptly report to the IESO the total amount invoiced to its customers who are specified consumers in respect of the clean energy adjustment, the amount collected and such other information as may be prescribed.

Electricity vendor to collect

(3) Each electricity vendor shall, as agent of the investment interest owners, collect amounts in respect of the clean energy adjustment from specified consumers in accordance with the regulations.

Pro rating of payments

(4) If an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices and the amount paid is less than the total amount payable, the electricity vendor shall allocate the payment on a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices in respect of electricity charges in respect of the same invoice period.

Held in trust

(5) Payments received by an electricity vendor from or on behalf of specified consumers in respect of the clean energy adjustment and all proceeds of the payments shall, until remitted to the IESO for the benefit of the investment interest owners in accordance with subsection (6), be held by each electricity vendor in trust for the benefit of the investment interest owners.

Remittance to IESO

(6) Each electricity vendor shall remit amounts in respect of the clean energy adjustment to the IESO for the benefit of the investment interest owners in accordance with the regulations.

PART IV
IMPLEMENTATION

Financial Services Manager

Appointment

18. Ontario Power Generation Inc. is appointed as the Financial Services Manager for the purposes of this Act.

Duties and powers

19. (1) The Financial Services Manager shall perform the duties assigned to it under this Act and may administer the investment asset on behalf of the investment interest owners.

Same

(2) The administration of the investment asset may include providing information to the IESO in respect of obligations under Part III and such other activities as may be prescribed.

Fees

(3) Subject to any prescribed limitations, the Financial Services Manager may establish and charge fees in relation to such matters as may be prescribed in accordance with the regulations, which regulations may provide for the ability to recover costs and expenditures and to earn a return.

Same, Board approval

(4) Before establishing fees under subsection (3), the Financial Services Manager shall submit them to the Board for approval in accordance with the regulations.

Fair Allocation Amount

Minister to calculate fair allocation amount

20. (1) Subject to subsections (2) and (3), before the first funding obligation is incurred the Minister shall calculate a fair allocation amount in respect of each reference period, applying such method as the Minister considers appropriate and in accordance with the following steps:

1. Determine the estimated clean energy costs and estimated clean energy benefits allocated to specified consumers in respect of the reference period.

2. Determine the estimated reduction in the amounts payable by specified consumers as a result of determinations of the Board under Part II in respect of all previous reference periods, including the estimated reduction in clean energy costs described in clause (a) of the definition of "clean energy costs" in subsection 1 (1) that would otherwise have been payable by specified consumers in the absence of this Act.

3. Determine the amount, if any, by which the determination under paragraph 1 exceeds the determination under paragraph 2.

4. Calculate the sum of the amount determined under paragraph 3 and such other amounts as may be prescribed.

Principles

(2) In calculating the fair allocation amount, the Minister shall have regard to the following principles:

1. The purpose of calculating the fair allocation amount is to measure and allocate the estimated clean energy costs and estimated clean energy benefits fairly among the specified consumers in respect of each reference period.

2. Calculations should be made having regard to the need to align each fair allocation amount with the estimated finance amount payable during the reference period.

3. Estimated clean energy costs allocated to specified consumers in respect of a reference period should be allocated in proportion to the estimated clean energy benefits attributed to the specified consumers in respect of the reference period.

4. Such other principles as may be prescribed.

Assumptions

(3) In calculating the fair allocation amount, the Minister shall make such assumptions as the Minister considers to be reasonable regarding the following:

1. The time value of money or the rate of inflation, for the purpose of equating nominal amounts over time.

2. The expected number of specified consumers in respect of each reference period.

3. The expected electricity consumption rates in respect of each reference period.

4. Such other assumptions as may be prescribed.

Minister to provide amount to Financial Services Manager

(4) The Minister shall provide the fair allocation amount in respect of each reference period to the Financial Services Manager.

Recalculation

(5) A calculation of the fair allocation amount under this Part may be changed by such person as may be prescribed in accordance with such requirements as may be prescribed.

Same

(6) No change under subsection (5) shall affect any clean energy adjustment that has already been determined under section 15 or any funding obligations that have already been incurred before the change.

Information

(7) The Minister, the IESO, the Financial Services Manager, the Board and electricity vendors shall provide such information as may be prescribed in accordance with the regulations for the purposes of facilitating a change to a calculation of the fair allocation amount.

FINANCING PLAN

Financial Services Manager to prepare Financing Plan

21. (1) The Financial Services Manager shall prepare a written plan entitled the Financing Plan to be used by the Financial Services Manager to evaluate whether potential funding obligations should be incurred for the purposes of acquiring and financing an investment asset in accordance with this Act or for the purposes of a refinancing.

Plan to be provided to Minister

(2) The Financial Services Manager shall provide the Financing Plan to the Minister.

Principles

(3) In preparing the Financing Plan, the Financial Services Manager shall have regard to the following principles:

1. Funding obligations should be incurred such that, along with any funding obligations already incurred, the estimated finance amount that would, subject to any refinancing, become due and payable during a reference period will reasonably align with the fair allocation amount determined in respect of the reference period, in each case after reducing the fair allocation amount to reflect determinations of the Board under Part II in respect of the reference period.

2. Incurrences should be implemented in a manner that, in the opinion of the Financial Services Manager, is reasonable, cost effective and that reflects prevailing market terms and conditions.

3. Reasonable assumptions should be made regarding such matters as may be prescribed.

4. Such other principles as may be prescribed.

Limitation

(4) In respect of each reference period from July 1, 2017 to April 30, 2021, no funding obligation shall be incurred that would result in amounts payable in respect of the clean energy adjustment in respect of the reference period unless,

(a) the amounts are payable in respect of a reference period in respect of which the Board has not made any determinations under Part II; or

(b) if the Board has made a determination under Part II in respect of the reference period, the funding obligations incurred would not result in amounts payable in respect of the clean energy adjustment during the reference period in an amount that exceeds the limit determined in accordance with the regulations.

Other reports

(5) The Financial Services Manager shall submit to the Minister such reports and information as the Minister may require from time to time and shall, if required by the Minister to do so, examine, report and advise on any question relating to the Financing Plan.

Amendments to plan

(6) The Financial Services Manager may amend the Financing Plan at any time.

Same

(7) In the event that the Financing Plan is amended, any reference in this Act to the Financing Plan is deemed to be a reference to the plan as amended.

Incurrence of funding obligations

22. (1) The Financial Services Manager shall ensure that funding obligations incurred for the purposes of this Act are incurred in a manner that is consistent with the applicable Financing Plan.

Financing entities

(2) In accordance with the Financing Plan, the Financial Services Manager may establish or cause to be established one or more financing entities that may incur funding obligations.

Prohibition

(3) The Financial Services Manager shall not provide for funding obligations to be incurred with any recourse to any assets of an electricity vendor, the Board, Ontario Power Generation Inc., the Province or the Lieutenant Governor in Council, except to the extent that any of these persons or entities may be liable to perform obligations or duties arising under this Act or under the express terms of a funding obligation or other agreement.

Effect of amendment to fair allocation amount

(4) Each funding obligation incurred and each transfer made by a financing entity is deemed to be consistent with the Financing Plan and to provide for the reasonable alignment of the estimated finance amount with the fair allocation amount.

Same

(5) For greater certainty, subsection (4) applies despite the failure of the Financial Services Manager to comply with subsection (1).

PART V
THE REGULATORY ASSET

IESO deferral

23. (1) The IESO deferral for each month, commencing May 1, 2017, shall be determined by the IESO in accordance with the regulations.

Same, retrospective amounts

(2) For greater certainty, the regulations may provide for the IESO deferral to include an amount that was incurred by the IESO on or after May 1, 2017 and before the day this section comes into force.

Electricity vendors to provide information

(3) Electricity vendors shall provide to the IESO such information as the IESO may reasonably request for the purposes of determining the IESO deferral under subsection (1) and such further information as may be prescribed.

Same

(4) The IESO may rely on information provided by electricity vendors for the purposes of the determination under subsection (1).

Variance account to be established, maintained

24. (1) The IESO shall establish and maintain a variance account in which it records the following:

1. The IESO deferral for each month.

2. All payments received by the IESO resulting from the exercise of the right of recovery under section 25 and any transfer under section 26.

3. Such other adjustments as may be prescribed, including adjustments in respect of the period that commences on or after May 1, 2017 and before the day this section comes into force.

Recording determinative

(2) Subject to the correction of any obvious error by the IESO, its recording of the balance in the variance account is determinative of the balance as of the time of the recording.

Rights of investment interest owner

(3) No change made by the IESO to the balance in the variance account shall, if the previous balance was relied upon by an investment interest owner in the context of a transfer under section 26, affect the rights acquired by the investment interest owner under the transfer.

Regulatory asset established

25. (1) Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Board to set rates

(2) Subject to subsection (3), the Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for the IESO to recover the balance recorded in the variance account.

Limitation

(3) The IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2021.

Transfer of regulatory asset

26. (1) The IESO may from time to time, in accordance with this Act and the regulations, transfer a specified portion of the regulatory asset to a financing entity in accordance with this section.

Agreement

(2) An agreement between the IESO and a financing entity in relation to the transfer of a specified portion of the regulatory asset shall provide for consideration of a payment by the financing entity to the IESO in an amount equal to the amount of the specified portion.

Effect of payment

(3) Upon receipt by the IESO of the payment by the financing entity,

(a) the balance in the variance account shall be reduced by the amount of the payment;

(b) the regulatory asset shall be adjusted accordingly;

(c) the financing entity shall acquire a corresponding investment interest; and

(d) the IESO shall retain no further right, title or interest in the corresponding investment interest.

Validity of transfer

27. (1) A transfer of a specified portion of the regulatory asset under section 26 constitutes a valid and enforceable absolute assignment, conveyance and sale of the corresponding investment interest to the transferee.

Same

(2) Without limiting subsection (1), any transfer agreement that states an intention of the parties for the IESO to dispose of a specified portion of the regulatory asset and to assign, convey or sell a corresponding investment interest shall be treated for all purposes as an absolute assignment, conveyance, disposition and sale of the IESO's right to

recover the corresponding amount in the variance account and not merely as a security interest.

Deemed perfection, etc.

(3) At the time a transfer of the regulatory asset is made under section 26, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the transferee shall have priority over any liens in favour of those persons.

PART VI
THE INVESTMENT ASSET

Investment asset established

28. (1) The transfer of a specified portion of the regulatory asset under section 26 creates an investment asset or, if it is not the first transfer, adds to the investment asset.

Same

(2) Upon transfer of a specified portion of the regulatory asset under section 26 to a financing entity, the investment asset resulting from the transfer is immediately vested in the financing entity, free and clear of any adverse claim.

Investment asset, irrevocable rights and interests

29. (1) The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests of investment interest owners:

1. The right and interest to impose, invoice, collect, receive and recover the clean energy adjustment from specified consumers, including the right to determine the clean energy adjustment in accordance with this Act.

2. The right to receive, collect and recover the clean energy adjustment that is imposed, invoiced and recoverable under this Act, including any amounts in respect of the clean energy adjustment that are held by electricity vendors, the IESO and other prescribed parties.

3. All rights and entitlements under such accounts as may be prescribed by regulation and all amounts on deposit in such accounts.

4. The right to enforce the duties and obligations under this Act of each electricity vendor to impose, attribute, charge and invoice for the clean energy adjustment.

5. The right to enforce the duties and obligations under this Act of each electricity vendor and the IESO to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by any electricity vendor to recover payment of the clean energy adjustment.

6. All rights of any kind related to any of the other property rights or interests that comprise the investment interest, including any rights to receive funding rebates.

7. All revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 6, regardless of whether it is invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

Not affected by failure to impose etc. clean energy adjustment

(2) An investment interest is not affected by any failure to impose, attribute, invoice, accrue or collect amounts in respect of the clean energy adjustment.

No set off, etc.

(3) The investment asset shall not be set off,

(a) by a consumer, an electricity vendor, the IESO, an agent of the investment interest owners or an owner in the Province of a distribution system within the meaning of the *Electricity Act, 1998*;

(b) in connection with any default of a person mentioned in clause (a); or

(c) by any affiliate or successor of a person mentioned in clause (a).

Exercise of rights

(4) The rights of the investment interest owners to collect the clean energy adjustment and enforce their rights and interests in, to and in respect of the investment asset against a specified consumer shall be exercised in accordance with Part III of this Act.

Collective action required

(5) If one investment interest owner owns a right or interest in the investment asset that comprises less than the entire property right and interest constituted by the

investment asset, the right or interest shall only be enforced by the investment interest owner collectively and in coordination with all other investment interest owners, and any agreement among that collective in furtherance of the collective action shall be valid and binding on the investment interest owners as a collective in accordance with its terms.

Transfer of investment interest

30. An investment interest owner may transfer all or a portion of an investment interest to any other investment interest owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan.

Validity of transfer

31. (1) A transfer of an investment interest under this Act is a valid and enforceable sale and absolute transfer of the investment interest and confers upon the transferee a valid property right and interest in, to and under the applicable investment interest acquired in accordance with the terms of the transfer.

Same

(2) Without limiting subsection (1), a transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of an investment interest owner's right, title and interest in, to and under an investment interest, and not merely as a security interest, and upon such absolute transfer the transferor shall retain no right, title or interest in the investment interest subject to the transfer, including all rights to the investment interest arising after the transfer.

Deemed perfection, etc.

(3) At the time a transfer of an investment interest is made, the transfer shall be deemed to have been and shall be perfected as described in the *Personal Property Security Act*, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer, assignment, etc.

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer, and the property rights and interests acquired by the investment interest owner shall have priority over any liens in favour of such other persons.

Investment interest owner may grant security interest

32. (1) An investment interest owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under the investment interest to or in favour of any person to secure a funding obligation.

Validity

(2) A security interest granted under this Act shall be valid and enforceable in accordance with its terms.

Perfection and priority of security interests

(3) All provisions of the *Personal Property Security Act* shall apply to the investment asset and each investment interest on the basis that the investment asset and each investment interest is intangible personal property, except as otherwise provided for in this section, and any granting of a security interest by an investment interest owner to secure a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by registering a financing statement under that Act on that basis.

Proceeds

(4) All proceeds of an investment interest that are subject to the security interest and that are received by the investment interest owner shall immediately be subject to the security interest and shall be perfected without any physical delivery of the proceeds, registration of any financing statement or any further act.

Perfection

(5) The security interest shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may subsequently attach to the property rights and interests in the investment interest subject to the security interest, unless the person to whom the security interest has been granted consents otherwise.

Same

(6) The person to whom the security interest has been granted shall have a perfected security interest in revenues or other proceeds that are deposited in any account of any electricity vendor, an agent of an electricity vendor or other person who may have commingled such revenues or other proceeds with other funds.

Notice required

(7) The secured party shall be entitled to exercise the rights of an investment interest owner only after the secured party has given notice of the enforcement of its security interest to the IESO.

Interpretation

(8) For the purposes of this section, a security interest is perfected when it is perfected as described in the *Personal Property Security Act.*

PART VII
MISCELLANEOUS

Appointment of agent, invoicing or collection

33. (1) If a prescribed circumstance applies, the Lieutenant Governor in Council may by regulation appoint a person to carry out some or all of the obligations of an electricity vendor under this Act in the place of an electricity vendor with respect to invoicing or collection.

Same, not Crown agent

(2) For greater certainty, a person appointed under this section is not an agent of the Crown for any purpose, despite the *Crown Agency Act*.

Board's authority

34. (1) Each electricity vendor, the IESO and the Financial Services Manager shall maintain such accounts and provide such information to the Board as the Board may require for the purposes of carrying out its responsibilities under this Act, in the form and manner and within the time required by the Board.

No hearing required

(2) Despite anything to the contrary in the *Ontario Energy Board Act, 1998*, the Board may exercise any of its responsibilities under this Act without a hearing.

Sequestration

35. (1) A court in the Province may, upon application by an investment interest owner or a secured party, order the sequestration and payment of amounts in respect of the clean energy adjustment, collections or remittances, as applicable, for the benefit of the investment interest owner or secured party by any person or entity authorized to collect amounts in respect of the clean energy adjustment.

Same

(2) An order under subsection (1) does not limit any other remedies available to the applicant.

Choice of law

36. The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to a transfer under this Act or the creation of a security interest in the regulatory asset, the investment asset, the clean energy adjustment or the undertaking of the Crown under section 5 shall be the laws of the Province.

Conflict

37. The provisions of this Act and the regulations apply despite any provision of any other Act regarding the attachment, assignment or perfection, or the effect of perfection or priority of any transfer or security interest.

No further approvals, etc.

38. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required under the Financing Plan or in relation to the determination of the fair allocation amount.

Liability

39. (1) No action or other civil proceeding shall be commenced against any employee of the Province or Ontario Power Generation Inc. for any act done in good faith in the exercise or performance or the intended exercise or performance of a power or duty under this Act, the regulations or for any alleged neglect or default in the exercise or performance in good faith of such a power or duty.

Same

(2) Nothing in subsection (1) shall be read as limiting the effect of subsection 19 (1) of the *Electricity Act, 1998* or subsection 11 (1) of the *Ontario Energy Board Act, 1998.*

Same

(3) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act,* subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

References in marketing materials and offering documents

40. No person shall include, in marketing materials or offering documents relating to the financing of funding obligations, references to any rights, obligations, guarantees or undertakings arising under section 5 unless the prescribed requirements, if any, are satisfied.

Regulations

41. (1) The Lieutenant Governor in Council may make regulations in respect of the following matters:

1. Governing anything that is required or permitted to be prescribed or that is required or permitted to be done by, or in accordance with, the regulations or as authorized, specified or provided in the regulations.

2. Defining, for the purposes of a regulation, words and expressions used in this Act that are not defined in the Act.

3. Governing the incurrence of debt for the purposes of the definition of "refinancing" in subsection 1 (1).

4. Governing the inclusion of information under this Act on or with invoices, which may include requiring notice to be provided by electricity vendors to specified consumers and other prescribed persons regarding the adjustments, including providing for different requirements in different circumstances and for different classes of specified consumers.

5. Governing the inclusion of information about the clean energy adjustment and any other matters provided for under this Act on or with invoices issued to specified consumers, including the form that the information must take and the form of the invoices and the form of any notice to be provided to the specified consumer under this Act.

6. Governing the manner by which invoices or notices provided for under this Act are to be provided to specified consumers and other prescribed persons.

7. Providing for a right of compensation for investment interest owners affected by a breach under section 29 and the manner in which such a right may be enforced under this Act.

8. Prescribing the time within which any action required by this Act may be required to be done.

9. Providing for such other matters as the Lieutenant Governor in Council considers advisable to carry out the purpose of this Act.

Limitation

(2) Despite subsection (1) or any other Act, no regulation under this Act shall have the effect of reducing, impairing, postponing or terminating the obligations of specified consumers to pay amounts in respect of the clean energy adjustment or impairing or postponing the invoicing, collection, remittance or recovery of the clean energy adjustment.

PART VIII
AMENDMENTS TO OTHER ACTS

Electricity Act, 1998

42. (1) Subsection 6 (1) of the *Electricity Act, 1998* is amended by adding the following clause:

(q.1) to exercise the powers and rights and to perform the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and to engage in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including,

(i) entering into agreements or arrangements with any person for the purposes of the *Ontario Fair Hydro Plan Act, 2017*,

(ii) engaging in activities related to making payments to and receiving payments as contemplated under the *Ontario Fair Hydro Plan Act, 2017* and related settlement activities,

(iii) engaging in activities related to the transfer and administration of the regulatory asset created under the *Ontario Fair Hydro Plan Act, 2017*, which activities may include,

(A) incurring liabilities in relation to the regulatory asset,

(B) transferring the regulatory asset under section 26 of the *Ontario Fair Hydro Plan Act, 2017* for consideration, and

(C) acting as a recovery agent under the *Ontario Fair Hydro Plan Act, 2017*;

(2) Subsection 25.33 (1) of the Act is amended by striking out "and" at the end of clause (a), by adding "and" at the end of clause (b) and by adding the following clause:

(c) such amounts as may be prescribed that are paid or incurred by the IESO in relation to the *Ontario Fair Hydro Plan Act, 2017*.

(3) Subsection 25.33 (2) of the Act is amended by striking out "and" at the end of clause (a), by adding "and" at the end of clause (b) and by adding the following clause:

(c) such amounts as may be prescribed that are paid or incurred by the IESO in relation to the *Ontario Fair Hydro Plan Act, 2017*.

(4) Clause 25.33 (4) (b) of the Act is amended by adding "or as may be required by a regulation made under this Act or the *Ontario Fair Hydro Plan Act, 2017*" at the end.

(5) Subsection 25.33 (5) of the Act is amended by adding "or under the *Ontario Fair Hydro Plan Act, 2017*" at the end.

(6) Section 53.1 of the Act is amended by adding the following subsections:

Same, *Ontario Fair Hydro Plan Act, 2017*

(1.1) In addition to the objects mentioned in subsection (1), the objects of Ontario Power Generation Inc. include exercising the powers and rights and performing the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and engaging in activities to facilitate the implementation of that Act, including entering into contracts and undertakings on behalf of financing entities and performing other services on behalf of financing entities, subject to the right to be paid by the financing entities for those services.

Subsidiaries, etc.

(1.2) Ontario Power Generation Inc. may create or invest in one or more subsidiaries, trusts, partnerships, limited partnerships or special purpose entities in order to more efficiently conduct its activities or achieve its objects.

Deemed assets, non-subsidiary

(1.3) Despite any other provision of this Act, the *Business Corporations Act* or any other Act, if a financing entity is not a subsidiary of Ontario Power Generation Inc.,

(a) the assets and liabilities of the financing entity shall not form part of the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries; and

(b) the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries shall not form part of the assets and liabilities of the financing entity.

Deemed assets, subsidiary

(1.4) Despite any other provision of this Act, the *Business Corporations Act* or any other Act, if a financing entity is a subsidiary of Ontario Power Generation Inc.,

(a) the assets and liabilities of that financing entity shall not form part of the assets and liabilities of Ontario Power Generation Inc. or any of its other subsidiaries; and

(b) the assets and liabilities of Ontario Power Generation Inc. or any of its other subsidiaries shall not form part of the assets and liabilities of that financing entity.

Definition, financing entity

(1.5) For the purposes of this section,

"financing entity" has the same meaning as in the *Ontario Fair Hydro Plan Act, 2017*.

Ontario Energy Board Act, 1998

43. (1) Subsection 70 (2.1) of the *Ontario Energy Board Act, 1998* is amended by adding the following paragraph:

4. The licensee is required to comply with the *Ontario Fair Hydro Plan Act, 2017*.

(2) Section 70 of the Act is amended by adding the following subsection:

Deemed condition of licences, unit sub-meter provider, *Ontario Fair Hydro Plan Act, 2017*

(2.4) Every licence issued to a unit sub-meter provider is deemed to contain the condition that the unit sub-meter provider is required to comply with the *Ontario Fair Hydro Plan Act, 2017* and the regulations made under it.

(3) Section 78.1 of the Act is amended by adding the following subsections:

Same, limitation re Ontario Power Generation Inc.

(3) The determination of a payment to Ontario Power Generation Inc. under this section shall not include any consideration of amounts related to activities of Ontario Power Generation Inc. carried out in relation to the *Ontario Fair Hydro Plan Act, 2017*.

Same

(3.1) The amounts referred to in subsection (3) include, without limitation, the following:

1. Amounts related to the appointment of Ontario Power Generation Inc. as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

2. Amounts related to the charging of fees for performing duties as the Financial Services Manager.

3. Amounts related to exercising the powers and performing the duties of the Financial Services Manager.

4. Amounts related to the consolidation of the assets and liabilities for accounting purposes of any special purpose financing entities established under and for the purposes of that Act.

(4) Subsection 79.16 (3) of the Act is repealed.

PART IX
COMMENCEMENT AND SHORT TITLE

Commencement

44. This Schedule comes into force on the day the *Fair Hydro Act, 2017 receives* Royal Assent.

Short title

45. The short title of the Act set out in this Schedule is the *Ontario Fair Hydro Plan Act, 2017*.

SCHEDULE 2
AMENDMENTS TO THE ONTARIO ENERGY BOARD ACT, 1998

1. (1) Subsection 79 (4) of the *Ontario Energy Board Act, 1998* is repealed and the following substituted:

Liability

(4) All consumers are required, in accordance with the regulations, to contribute towards the amount of any compensation required under subsection (3) that is not otherwise provided under subsection (4.1).

Payments for certain classes

(4.1) Compensation required under subsection (3) may be provided with respect to one or more prescribed classes of consumers who receive rate protection under this section, in a manner provided for in the regulations.

Money appropriated by the Legislature

(4.2) The compensation provided for in subsection (4.1) shall be paid for out of the money appropriated for those purposes by the Legislature.

Information, etc.

(4.3) If provided for in the regulations, the Board, the IESO and distributors, or any of them, shall provide such information and reports to the Ministry of Energy and to one another as are necessary to facilitate the implementation, administration, funding and delivery of the rate protection or of anything else provided for in this section.

(2) Clause 79 (5) (e) of the Act is repealed and the following substituted:

(e) prescribing rules respecting the amounts that must be collected to compensate distributors, taking into account any compensation provided under subsection (4.1), including rules,

(i) respecting the calculation of those amounts,

(ii) respecting the calculation of any off-set to the liability of consumers under subsection (3) having regard to those amounts,

(iii) establishing the time and manner of collection,

(iv) requiring the amounts to be paid in instalments and requiring the payment of interest or penalties on late payments,

(v) prescribing methods of ensuring that the amounts required cannot be bypassed, and

(vi) respecting the distribution of those amounts to consumers;

(e.1) prescribing classes of consumers for the purposes of subsection (4.1), and governing how and when the compensation is to be provided with respect to the rate protection provided to them, including, without restricting the generality of the foregoing, requiring the IESO to receive payments or amounts from the Minister of Energy and to make payments to licensed distributors or to prescribed persons and prescribing how and when payments are to be made;

2. Section 79.2 of the Act is repealed and the following substituted:

Rate assistance

79.2 (1) The Minister shall make provision for rate assistance for rate-assisted consumers having regard to their economic circumstances, and where the Minister makes such provision, shall do so out of the money provided for in subsection (4).

OESP

(2) The program known as the "Ontario Electricity Support Program" in English and "Programme ontarien d'aide relative aux frais d'électricité" in French is continued for the purpose of providing rate assistance to rate-assisted consumers having regard to their economic circumstances.

Administered by Board

(3) The Ontario Electricity Support Program shall be administered by the Board, or when the regulations so provide, by a Minister of the Crown or other entity provided for in the regulations.

Money appropriated by the Legislature

(4) The money required for the purposes of the Ontario Electricity Support Program shall be paid out of the money appropriated for those purposes by the Legislature, once the amounts recorded in the variance account referred to in subsection (5) are no longer sufficient to provide for the funding of the program when taken on their own.

Variance account

(5) The money required for the purposes of the Ontario Electricity Support Program shall be provided out of the credit balance in the variance account maintained by the IESO under the Program as it existed before the coming into force of section 2 of Schedule 2 to the *Fair Hydro Act, 2017* until the amounts recorded in the account are no longer sufficient, when taken on their own, to fund the Program.

Variance account depleted

(6) The IESO shall provide the Ministry of Energy with advance notice, on a timely basis, of the time the IESO estimates that the amounts reflected in the variance account would be less than the amount required to meet its obligations related to funding the Ontario Electricity Support Program for the upcoming month.

How provided

(7) Rate assistance provided under this section shall be provided with respect to consumers prescribed in the regulations, and shall be provided at the times provided for in the regulations and in the amounts and in the manner provided for in the regulations.

Payments with respect to prior use

(8) The regulations may require provision of rate assistance to prescribed classes of rate-assisted consumers with respect to electricity consumed during a period prior to the date of the making of the regulation, but no such rate assistance shall be required under the regulations with respect to electricity consumed before January 1, 2016.

Transitional

(9) The regulations may require the provision of rate assistance for a rate-assisted consumer with respect to a period prior to the date on which the consumer became a rate-assisted consumer if the consumer meets all of the criteria prescribed by the regulations.

Distributors, etc.

(10) A distributor, a unit sub-meter provider and any other person or entity that may be prescribed is entitled to be compensated from the money referred to in subsection (4) or subsection (5), as the case may be, for any lost revenue resulting from the provision of rate assistance under the Ontario Electricity Support Program.

Deemed licence conditions, IESO, settlements, payments, etc.

(11) Every licence issued to the IESO, a distributor or unit sub-meter provider or a retailer of electricity shall be deemed to contain conditions requiring the licensee to do anything necessary to implement and administer the provision of rate assistance under this section as may be required by the regulations or the Board, including requirements with respect to,

(a) making payments to the IESO, distributors, unit sub-meter providers and other persons and entities identified by the regulations;

(b) receiving payments or other amounts from the IESO, distributors, unit sub-meter providers and other persons and entities identified by the Minister;

(c) requiring licensees to pass any rate assistance provided for under this section through to rate-assisted consumers in the manner provided for in the regulations;

(d) engaging in settlement activities;

(e) providing information to and receiving information from the Ministry of Energy, the Board, the IESO, distributors, unit sub-meter providers, retailers of electricity and any other prescribed persons and entities in the time and in the manner provided for by the Board or as may be prescribed; and

(f) entering into agreements or arrangements with licensees and other persons.

Information, etc.

(12) If provided for in the regulations, the Board, the IESO, distributors, retailers of electricity and unit sub-meter providers, or any of them, shall provide such information and reports to the Ministry of Energy and to one another as are necessary to facilitate the implementation, administration, funding and delivery of rate-assistance or of anything else required under this section.

Conflicts, etc.

(13) Where any conflict exists between an order of the Board, a code issued by the Board or a licence condition and this section or a regulation made under this section, this section or the regulation made under this section shall prevail to the extent of the conflict.

Regulations

(14**)** The Lieutenant Governor in Council may make regulations governing anything dealt with in this section and without limiting the generality of the foregoing, may make regulations,

(a) governing anything that is described in this section as being prescribed or as being provided for in the regulations or that is required to be done in accordance with the regulations;

(b) governing the time or times at which rate assistance shall be paid or become payable to rate-assisted consumers;

(c) governing the determination of classes of consumers who are rate-assisted consumers, including providing for different classes of rate-assisted consumers;

(d) requiring that certain costs and expenditures related to the Ontario Electricity Support Program be only incurred with the prior approval of the Minister, and governing those costs and expenditures;

(e) establishing rules for the calculation of the amount of the rate assistance to be provided;

(f) governing payments under this section, including determining the method or methods of calculating the amount of rate assistance to be provided;

(g) setting maximum amounts of the total annual value of rate assistance that may be provided;

(h) requiring a distributor, the IESO or a unit sub-meter provider or other prescribed person or entity to make or receive payments in respect of rate assistance, including requiring them to make or receive payments directly to or from the Ministry of Energy or to receive overpayments directly or indirectly from consumers or other persons entitled to receive the rate assistance and prescribing the circumstances in which such payments are to be made and received and such overpayments are to be received as well as methods for determining the amounts payable or to be received;

(i) requiring the IESO to receive payments from the Minister and requiring the IESO to make payments to the Board, to licensed distributors, to unit sub-meter providers or to prescribed persons, in respect of the rate assistance provided under this section and governing methods for determining the amounts payable;

(j) governing the Board's or other prescribed entity's administration and program-related costs in administering the Ontario Electricity Support Program;

(k) governing transitional matters arising from the changes made to the Ontario Electricity Support Program as a result of the enactment of the *Fair Hydro Act, 2017*.

Retroactivity

(15) A regulation made under this section is, if it so provides, effective with reference to a period before it is filed.

General or particular

(16) A regulation under this section may be general or particular in application, may provide for different classes of persons and entities and may prescribe different rules for different persons or entities or different classes of persons or entities.

Verification of eligibility

(17) Section 11 of the *Ministry of Revenue Act* applies with respect to the Ontario Electricity Support Program as a government assistance program administered by the Board.

Definitions

(18) In this section,

"Government assistance program" has the meaning provided for in subsection 11 (2) of the *Ministry of Revenue Act*; ("programme d'aide gouvernementale")

"rate-assisted consumer" means a consumer referred to in subsection (7). ("consommateur admissible à l'aide tarifaire")

3. The Act is amended by adding the following section:

Confidentiality, information sharing, etc.

79.2.1 (1) For the purposes of section 79.2, the Board or the Minister or entity having responsibility for administering the Ontario Electricity Support Program may enter into an agreement with the Minister of Community and Social Services to provide the services to the public listed in subsection (2) on behalf of the Board, Minister or the entity, as the case may be, in relation to the administration of the Ontario Electricity Support Program.

Agreement, etc.

(2) The services that may be included in an agreement referred to in subsection (1) are the following:

1. Providing documents and information about the Ontario Electricity Support Program.

2. Processing applications for the Ontario Electricity Support Program.

Arrangements with others

(3) The Minister of Community and Social Services may arrange with another person or entity to provide, on behalf of that Minister, services that that Minister is authorized to provide under an agreement referred to in subsection (1).

Personal information

(4) The Minister of Community and Social Services is authorized to collect, use, disclose and retain personal information necessary to provide the services authorized by

an agreement referred to in subsection (1), but shall not collect, use, disclose or retain more personal information than is reasonably necessary to provide the services.

Limitation

(5) Except where otherwise authorized under subsection (7), the Minister of Community and Social Services shall not collect, use, disclose or retain personal information provided for in subsection (4) without the consent of the individual to whom the information relates.

Duty to transfer personal information

(6) The Minister of Community and Social Services shall transfer an individual's personal information provided for in subsection (4) into the control of the Board, Minister or entity responsible for administering the Ontario Electricity Support Program promptly after processing an application for the Ontario Electricity Support Program, but may retain such personal information as is reasonably necessary to confirm that an individual has been provided a service.

Use of personal information, etc.

(7) The Minister of Community and Social Services may use personal information maintained by that Minister in connection with the administration of the Ontario Disability Support Program and the program established pursuant to the *Ontario Works Act, 1997*, for the purpose of identifying and contacting individuals eligible for the rate assistance provided under the Ontario Electricity Support Program, and to provide services authorized under an agreement referred to in subsection (1).

Deemed compliance

(8) The use of personal information as allowed by subsection (7) is deemed to comply with section 41 of the *Freedom of Information and Protection of Privacy Act*.

Disclosure of list

(9) In order to assist the Minister of Community and Social Services to identify individuals eligible for rate assistance, the Board or the Minister or entity having responsibility for administering the Ontario Electricity Support Program shall, as soon as practicable after the coming into force of this section, disclose to the Minister of Community and Social Services a list of individuals who are enrolled in the Ontario Electricity Support Program, together with their mailing address and other contact information.

Use of list

(10) The Minister of Community and Social Services may use the information on the list provided under subsection (9) to determine whether an individual who is currently enrolled in the Ontario Disability Support Program or the program established under the *Ontario Works Act, 1997* is also enrolled in the Ontario Electricity Support Program.

Destruction of list

(11) The Minister of Community and Social Services shall destroy the list provided under subsection (9) no later than one year after receiving the list.

Notification about the management of personal information

(12) The Minister of Community and Social Services shall ensure that a notice is published on a website describing,

(a) the purpose for which that Minister collects, uses, discloses and retains personal information in connection with the Ontario Electricity Support Program;

(b) the types of personal information that may be collected, used, disclosed and retained in connection with the Ontario Electricity Support Program, and the circumstances in which the personal information may be collected, used, disclosed and retained in connection with that Program; and

(c) the title, and contact information, including an email address, of an employee who can answer an individual's questions about the use of the personal information under this section.

4. The Act is amended by adding the following sections:

Distribution rate-protected consumers

79.3 (1) The Minister shall provide for distribution rate protection to distribution rate-protected residential consumers having regard to the costs of the distribution of electricity to such consumers with respect to electricity consumed on or after the date prescribed by the regulations.

Money appropriated by the Legislature

(2) The money required for the purposes of the provision of distribution rate protection under this section shall be paid out of the money appropriated for those purposes by the Legislature.

Maximum charge

(3) Despite any order of the Board, or anything else under this Act, where the regulations so provide, a prescribed distributor who distributes electricity to distribution rate-protected residential consumers shall not charge those consumers, or a prescribed class of those consumers, any amount for monthly base distribution charges more than,

(a) the maximum amount for the charge that is provided for in the regulations; or

(b) the amount determined by the Board after applying any calculations, processes or methods provided for in the regulations.

Distributors

(4) A distributor who is prescribed under this section is entitled to be compensated from the money referred to in subsection (2) for lost revenue resulting from the provision of the distribution rate protection to distribution rate-protected residential consumers under this section.

Information, etc.

(5) If provided for in the regulations, the Board, the IESO and distributors, or any of them shall provide such information and reports to the Ministry of Energy and to one another as are necessary to facilitate the implementation, administration, funding and delivery of distribution rate protection or of anything else required under this section.

Limitation periods for distribution rate protection, consumer

(6) Despite any past entitlement of a consumer who is eligible to distribution rate protection under this section, no distribution rate protection is payable to a consumer after a limitation period prescribed by the regulations in respect of the consumer, other than in such circumstances as may be prescribed by the regulations.

Limitation, reimbursement of distributor, etc.

(7) Despite any requirement under this Act to reimburse a prescribed distributor or other person for distribution rate protection provided by them to distribution rate-protected residential consumers under this section, no amounts for reimbursement are payable to the prescribed distributor or other person after a limitation period prescribed by the regulations in respect of the prescribed distributor or other person, where such reimbursement is based on a consumer's past entitlement under this section which has not yet been paid or reimbursed under this section, other than in such circumstances as may be prescribed by the regulations.

Transitional

(8) If, for technical or operational reasons, a distributor referred to in subsection (3) is unable to adapt its invoices to comply with this section and the regulations by the time it issues its first invoice for electricity consumed after the prescribed date in respect of an account of a consumer who is eligible for distribution rate protection under this section,

(a) the distributor shall adapt its invoices as soon as possible and, in any event, no later than a date prescribed in the regulations; and

(b) consumers continue to be entitled to receive the distribution rate protection to which they are entitled under this Act and may receive it as a lump sum credit

on the invoice for the first billing period after the invoices have been adapted or by such other means as may be prescribed by the regulations.

Regulations

(9) The Lieutenant Governor in Council may make regulations,

(a) prescribing consumers or classes of consumers as distribution rate-protected residential consumers for the purposes of this section;

(b) prescribing dates for the purposes of subsections (1) and (8);

(c) prescribing distributors for the purposes of this section;

(d) governing anything that is described in this section as being prescribed or as being provided for in the regulations or that is required to be done in accordance with the regulations;

(e) governing the provision of distribution rate protection by the Minister in respect of distribution rate-protected residential consumers under this section including determining the method or methods of calculating the amount of rate protection to be provided;

(f) requiring the IESO to receive payments from the Minister and to make payments to licensed distributors, or to persons prescribed by the regulations, in respect of the distribution rate protection provided for under this section and prescribing methods for determining the amounts payable to distributors or distribution rate-protected residential consumers in respect of that protection.

Interpretation

(10) In this section,

"distribution rate-protected residential consumer" has the meaning provided for in the regulations; ("consommateur résidentiel protégé contre les frais de distribution")

"monthly base distribution charges" has the meaning provided for in the regulations. ("frais de distribution mensuels de base")

Delivery credit for on-reserve consumers

79.4 (1) The Minister shall provide a delivery credit to on-reserve consumers who meet the criteria prescribed under this section with respect to electricity consumed on or after the date prescribed by the regulations.

Money appropriated by the Legislature

(2) The money required for the purposes of the provision of the credits required under this section shall be paid out of the money appropriated for those purposes by the Legislature.

Eligible costs

(3) The eligible costs for the delivery credit referred to in subsection (1) are,

(a) the sum of the following charges for which the consumer would otherwise be liable,

(i) all variable and fixed distribution charges,

(ii) all charges based on the retail transmission network service rate,

(iii) all charges based on the retail transmission connection service rate,

(iv) all charges related to losses incurred in the distribution of electricity, except for such amounts that are included in regulatory charges provided for in the regulations, and

(v) any other charges that may be prescribed in the regulations; or

(b) where no separate charges for delivery are provided for by the distributor or other person or entity that may be prescribed in the regulations, the monthly service charge or such other amount as may be prescribed for or in respect of a prescribed distributor.

Delivery credit

(4) A distributor, person or entity shall, unless the regulations provide otherwise, provide the delivery credit referred to in subsection (1) by crediting the account of an on-reserve consumer.

Same

(5) The regulations may require that distributors and any other persons or entities provide a delivery credit to an on-reserve consumer who is entitled to a delivery credit under subsection (1) in such manner or in accordance with such methods as may be prescribed.

Same

(6) A distributor or any person or entity as may be prescribed is entitled to be compensated from the money referred to in subsection (2) for any lost revenue resulting from the provision of the delivery credits under this section.

Information, etc.

(7) If provided for in the regulations, the Board, the IESO and distributors, and other persons or entities, or any of them, shall provide such information and reports to the Ministry of Energy and to one another as are necessary to facilitate the implementation, administration, funding and delivery of the delivery credits or of anything else required under this section.

Limitation periods for delivery credit, consumer

(8) Despite any past entitlement of an on-reserve consumer who is eligible for a delivery credit under this section, no delivery credit is payable to an on-reserve consumer after a limitation period prescribed by the regulations in respect of the on-reserve consumer, other than in such circumstances as may be prescribed by the regulations.

Limitation, reimbursement of distributor, etc.

(9) Despite any requirement under this Act to reimburse a distributor or other persons or entities for delivery credits provided by them to on-reserve consumers under this section, no amounts for reimbursement are payable to the distributor or other persons or entities after a limitation period prescribed by the regulations in respect of the distributor or other persons or entities, where such reimbursement is based on an on-reserve consumer's past entitlement under this section which has not yet been paid or reimbursed under this section, other than in such circumstances as may be prescribed by the regulations.

Transitional

(10) If, for technical or operational reasons, a distributor referred to in subsection (4) is unable to adapt its invoices to comply with this section and the regulations by the time it issues its first invoice for electricity consumed after the prescribed date in respect of an eligible account,

(a) the distributor shall adapt its invoices as soon as possible and, in any event, no later than a date prescribed in the regulations; and

(b) on-reserve consumers continue to be entitled to receive the delivery credit to which they are entitled under this Act and may receive it as a lump sum credit on the invoice for the first billing period after the invoices have been adapted or by such other means as may be prescribed by the regulations.

Regulations

(11) The Lieutenant Governor in Council may make regulations,

(a) governing who is an on-reserve consumer for the purposes of this section and, without limiting the generality of the foregoing, may provide that consumers

who occupy certain areas are on-reserve consumers, and may do so without regard to whether those areas constitute a "reserve" under any other Act or law;

(b) prescribing dates for the purposes of subsections (1) and (10);

(c) governing provision of the delivery credits provided to on-reserve consumers under this section and, without restricting the generality of the foregoing, governing anything that under this section is to be prescribed or provided for in the regulations, or that is to be done in accordance with the regulations;

(d) determining the method or methods of calculating the amount of the delivery credits to be provided by the Minister in respect of on-reserve consumers under this section;

(e) requiring the IESO to make and receive payments to and from the Minister and to make payments to licensed distributors, or to persons prescribed by the regulations, in respect of the delivery credits provided for under this section and prescribing methods for determining the amounts payable to distributors or on-reserve consumers in respect of the credits provided.

Interpretation

(12) In this section,

"on-reserve consumer" has the meaning provided for in the regulations.

Application

79.5 Sections 79.6 through 79.11 apply to the programs provided for under sections 79, 79.2, 79.3 and 79.4 to the extent that they are funded by money appropriated for those purposes by the Legislature.

Definition

79.6 In sections 79.7 to 79.11,

"Finance Minister" means the Minister of Finance or such other member of the Executive Council to whom the administration of those sections is assigned under the *Executive Council Act*.

Records

79.7 (1) Every distributor and every other person prescribed by regulation shall keep at a location in Ontario such records as are necessary to determine and verify compliance with sections 79, 79.2, 79.3 and 79.4 and the regulations associated with them and any records required by those regulations to be kept.

Electronic records

(2) If a person keeps records in an electronic form, the person shall ensure that, from the time the records are first made and for as long as they are required to be retained,

(a) they remain complete and unaltered, apart from any changes or additions made in the normal course of communication, storage or display; and

(b) they are capable of being printed and of being produced in electronically readable format for inspection, examination or audit.

Retention of records

(3) Records required to be kept under subsection (1) shall not be destroyed unless authorization has been given in writing by the Finance Minister.

Offence

(4) Every person who fails to keep records in accordance with this section is guilty of an offence and, on conviction, is liable to a fine of not less than $50 and not more than $5,000.

Inspections and inquiries

79.8 (1) The Finance Minister may appoint one or more inspectors who are authorized to exercise any of the powers and perform any of the duties of a person authorized by the Minister under subsection 31 (1) of the *Retail Sales Tax Act* for any purpose related to the administration and enforcement of sections 79, 79.2, 79.3 and 79.4 of this Act.

Same

(2) Subsections 31 (1), (2), (2.1) and (2.2) of the *Retail Sales Tax Act* apply, with necessary modifications, with respect to the administration and enforcement of sections 79, 79.2, 79.3 and 79.4 of this Act.

Admission of evidence

(3) The Finance Minister, or a person authorized by the Finance Minister, may, for any purpose related to the administration of sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them, reproduce from original data stored electronically any information previously submitted as required under those sections or regulations in any form by any person, and the electronically reproduced document shall be admissible in evidence and shall have the same probative force as the original document would have had if it had been proved in the ordinary way.

Inquiry

(4) The Finance Minister may, for any purpose related to the administration of sections 79, 79.2, 79.3 and 79.4 of this Act or the regulations made in association with

them, authorize any person, whether or not the person is an employee in the Ministry of the Finance Minister, to make such inquiry as the Finance Minister considers necessary with reference to anything relating to the administration of this Act or the regulations.

Copies

(5) If a book, record or other document is examined or produced under this section, the person by whom it is examined or to whom it is produced or any officer of the Ministry may make, or cause to be made, one or more copies of it, and a document purporting to be certified by the person to be a copy made pursuant to this section is admissible in evidence and has the same probative force as the original document would have if proved in the ordinary way.

Compliance

(6) No person shall hinder or molest or interfere with any person doing anything that the person is authorized by this section to do or prevent or attempt to prevent any person doing any such thing.

Same

(7) Despite any other law to the contrary, every person shall, unless the person is unable to do so, do everything the person is required by this section to do.

Administration of oaths

(8) Declarations or affidavits in connection with statements of information submitted pursuant to this section may be taken before any person having authority to administer an oath or before any person specially authorized for that purpose by the Lieutenant Governor in Council, but any person so specially authorized shall not charge any fee for doing so.

Application of *Public Inquiries Act, 2009*

(9) Section 33 of the *Public Inquiries Act, 2009* applies to an inquiry under subsection (4).

Recovery of overpayments

Definitions

79.9 (1) In this section,

"inspector" means an inspector referred to in section 79.8; ("inspecteur")

"overpayment" means an amount received by a person in excess of that to which the person is entitled under sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them. ("trop-perçu")

Notice of overpayment

(2) If it appears to an inspector that a person has received an overpayment, the Finance Minister may send a written notice to the person advising the person of the following:

1. That the person has received an overpayment.

2. The amount of the overpayment and how it was calculated.

3. The required steps to be taken by the person with respect to the overpayment.

4. The date, not more than six months after the date of the notice, by which these steps must be completed.

5. That the Finance Minister has the authority to assess the person for the amount of the overpayment, plus interest, if the person fails to complete the required steps by the specified date.

Calculation of amount of overpayment

(3) For the purposes of this section, an inspector shall calculate an overpayment or the outstanding balance of an overpayment in the manner and form and using such procedures as the Finance Minister considers adequate and expedient.

Assessment

(4) If a person fails to complete the steps required in a notice under subsection (2) within the time specified in the notice, and any additional time requested by the person and permitted by the Finance Minister, the Finance Minister may assess or reassess the amount of the overpayment, or the outstanding balance of the overpayment, based on the inspector's calculation described in subsection (3).

Penalty

(5) If the Finance Minister makes an assessment or reassessment under subsection (4) and is satisfied that the person's non-compliance with the required steps in the notice was attributable to neglect, carelessness, wilful default or fraud, the Finance Minister may assess a penalty against the person equal to the outstanding balance of the overpayment when the penalty is assessed.

Time limit

(6) The Finance Minister shall not assess or reassess under subsection (4) more than 48 months after the end of the month in which the person received the overpayment.

Exception, where misrepresentation, etc.

(7) Subsection (6) does not apply if the Finance Minister establishes that the person has made a misrepresentation that is attributable to neglect, carelessness or wilful default or has committed any fraud in supplying information under this Act or the regulations or in omitting to disclose information.

Deeming

(8) An amount assessed or reassessed by the Finance Minister under this section is deemed, for the purposes of the administration and enforcement of this Act, to be a debt retirement charge owing and payable, as defined in subsection 85 (1) of the *Electricity Act, 1998,* that has been collected, on the last day of the month in which the person received the overpayment, by the person as a collector appointed under subsection 85.3 (1) of the *Electricity Act, 1998* and, for those purposes,

(a) sections 85.11, 85.12, 85.14, 85.17 and 85.30 of that Act apply with necessary modifications;

(b) in the application of sections 85.11 and 85.14 of that Act and without limiting the generality of clause (a) of this subsection, references to the Financial Corporation are read as references to the Minister of Finance and references to the Minister of Finance are read as references to the Finance Minister as defined in section 79.6 of this Act;

(c) the regulations made under that Act for the purposes of calculating the rate or rates of interest payable under section 85.11 of that Act and the manner of calculating the amount of interest apply with necessary modifications; and

(d) sections 23 and 36, subsections 37 (1), (1.1) and (2) and sections 37.1, 38 and 39 of the *Retail Sales Tax Act* apply with necessary modifications.

Disposition of repaid amounts

(9) If all or part of an overpayment is repaid to the Finance Minister, the Minister of Energy shall make such financial arrangements and payments as may be necessary to ensure that any person entitled to all or part of the overpayment receives the appropriate amount.

Confidentiality

79.10 (1) Except as authorized by this section, no person employed by the Government of Ontario shall,

(a) knowingly communicate or knowingly allow to be communicated to any person any information obtained by or on behalf of the Minister of Energy or

the Finance Minister for the purposes of sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them; or

(b) knowingly allow any person to inspect or to have access to any record or thing obtained by or on behalf of either Minister for the purposes of this Act.

Testimony

(2) No person employed by the Government of Ontario shall be required, in connection with any legal proceedings,

(a) to give evidence relating to any information obtained by or on behalf of the Minister of Energy or Finance Minister for the purposes of this Act; or

(b) to produce any record or thing obtained by or on behalf of either Minister for the purposes of this Act.

Exception

(3) Subsections (1) and (2) do not apply in respect of,

(a) criminal proceedings under any Act of the Parliament of Canada;

(b) proceedings in respect of the trial of any person for an offence under an Act of the Legislature; or

(c) proceedings relating to the administration or enforcement of this Act or Part V.1 or VI of the *Electricity Act, 1998*.

Communication

(4) A person employed by the Government of Ontario may, in the course of duties in connection with the administration or enforcement of sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them,

(a) communicate or allow to be communicated to another person employed by the Government of Ontario in the administration or enforcement of any law or to an employee of the Board information obtained by or on behalf of either Minister for the purposes of sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them; and

(b) allow another person employed by the Government of Ontario in the administration or enforcement of any law or an employee of the Board to inspect or have access to any record or thing obtained by or on behalf of either Minister for the purposes of sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them.

Reciprocal communication

(5) A person who receives information or obtains access to any record or thing under subsection (4) has a duty to communicate or furnish to that Minister on a reciprocal basis any information, record or thing obtained by the person that affects the administration or enforcement of this Act.

Use of information

(6) Any information, record or thing communicated or furnished under this section may be used only for the administration or enforcement of sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them or an Act that is administered or enforced by the person receiving the information, record or thing.

Same

(7) The Finance Minister may permit information or a copy of any record or thing obtained by or on behalf of the Finance Minister for the purposes of sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them to be given to,

(a) the person from whom the information, record or thing was obtained;

(b) any person by whom an amount is payable or has been paid under sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them; or

(c) the legal representative of a person mentioned in clause (a) or (b) or the agent of the person authorized in writing in that behalf.

Information

(8) The Finance Minister may permit information or a copy of any record or thing obtained by or on behalf of the Finance Minister for the purposes of sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them to be given to any person employed by any government if,

(a) the information, record or thing obtained by that government for the purpose of any Act that imposes a tax or duty are communicated or furnished on a reciprocal basis to the Minister; and

(b) the information, record or thing will not be used for any purpose other than the administration or enforcement of a law that provides for the imposition of a tax or duty.

Offence

(9) Every person who contravenes any provision of this section is guilty of an offence and on conviction is liable to a fine of not more than $2,000.

Offences

False statements, etc., and fraud

79.11 (1) Every person who engages in any of the following acts or omissions is guilty of an offence:

1. Making, participating in, assenting to or acquiescing in the making of a false or deceptive statement in any document or answer required or submitted under sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them.

2. Destroying, altering, mutilating, hiding or otherwise disposing of information or records of any person, for the purpose of evading compliance with sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them.

3. Making, assenting to or acquiescing in the making of a false or deceptive entry of a material particular in a record of any person required to maintain records for the purposes of sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them.

4. Omitting to make or assenting to or acquiescing in the omission of an entry of a material particular in a record of any person required to maintain records for the purposes of sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them.

5. Wilfully evading or attempting to evade, in any manner, compliance with an obligation under sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them.

Penalty upon conviction

(2) A person convicted of an offence under subsection (1) is liable to either or both of the following penalties in addition to any other penalty assessed under this Act:

1. A fine in an amount that is not less than $1,000 and not more than $10,000.

2. Imprisonment for a term of not more than two years.

General offence

(3) Every person who contravenes, by any act or omission, any other requirement imposed under sections 79, 79.2, 79.3 and 79.4 is guilty of an offence and, on conviction, is liable, where no other penalty is provided for the offence, to a fine of not less than $50 and not more than $5,000.

Limitation period

(4) A proceeding to prosecute an offence provided for in this section must be commenced within six years after the date on which the matter of the offence arose.

Payment of fines

(5) Fines imposed on conviction of an offence provided for in this section are payable to the Finance Minister on behalf of the Crown in right of Ontario.

Commencement

5. (1) Subject to subsection (2), this Schedule comes into force on the day the *Fair Hydro Act, 2017* receives Royal Assent.

(2) Section 2 comes into force on a day to be named by proclamation of the Lieutenant Governor.

FW_ Invoice for Services Rendered Enclosed.rtf

From: Suzie Gignac [suzie.r.gignac@ca.ey.com]
To: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
Subject: FW: Invoice for Services Rendered Enclosed
Date: Monday, June 26, 2017 22:51:55
Attachment 1: image003.jpg
Attachment 2: image001.gif
Attachment 3: Invoice-C100085052.pdf

Hi Shyrose:

We sent the attached invoice in mid-May and our year end is June 30th so we were really hoping to collect by then. Is it possible to get a status on this invoice and try to get it paid by end of week?

Thanks,

Suzie

Suzanne Gignac, Partner, CPA, CA

Ernst & Young LLP / Ernst & Young s.r.l./S.E.N.C.R.L.

99 Bank Street, Suite 1200, Ottawa, Ontario K1P 6B9, Canada

Direct: 1 613 598 4376 | Fax: 1 613 232 5324 | suzie.r.gignac@ca.ey.com

Executive Coordinator, Carolyn Roberts | Phone: 613 598 4844 | carolyn.roberts@ca.ey.com

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From: Carolyn Roberts
Sent: Wednesday, May 17, 2017 2:00 PM
To: Virani, Shyrose (TBS) <Shyrose.Virani@ontario.ca>
Cc: Petsche, Nadine (TBS) <Nadine.Petsche@ontario.ca>; Suzie Gignac <suzie.r.gignac@ca.ey.com>

Subject: Invoice for Services Rendered Enclosed

Please find attached our invoice for services provided under PO OSS 227152. If you need any further information, please do not hesitate to contact us. Thank you.

Best regards,

--

Carolyn Roberts | Executive Coordinator

Ernst & Young LLP

99 Bank Street, Suite 1200, Ottawa, Ontario K1P 6B9, Canada

Office: 1-613-598-4844 | Fax: 1-613-232-5324 | carolyn.roberts@ca.ey.com

EY/Comm: 3025243

Website: http://www.ey.com

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image003.pdf

EY

image001.pdf

Invoice-C100085052.pdf

Ernst & Young LLP
Ottawa, ON

Invoice

Treasury Board Secretariat
Nadine Petsche
777 Bay Street, 25th Floor
Toronto, ON M5G 2E5
Canada

Invoice No.: CA01C100085052
Please include this number with payment

Invoice Date:	17 May 2017
Due Date:	Upon receipt
Client No.:	0011426981
Engagement No.:	E-65062708

Remit To:
P.O. Box 57104, Postal Station A
Toronto, Ontario M5W 5M5
A/R Queries:
1-416-943-3851
1-800-311-1104

Description of Services: RFS-TBS-OTB-OPCD-16 PO number OSS 227152

Time incurred with regards to Complex Accounting Support.

Blake Langill - 19 hrs
Lee Anne Probert - 41 hrs
Suzie Gignac - 30.5 hrs

		Net	Tax	Rate	Tax Amount	CAD Total
Fee		37,650.00	HST	13 %	4,894.50	42,544.50
		37,650.00			**4,894.50**	**42,544.50**
Invoice summary		**37,650.00**				
Tax :	13% HST				4,894.50	
Total:		**37,650.00**			**4,894.50**	**42,544.50**

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Terms: Payment due upon receipt. Interest is charged at the rate of 12 % per annum on balances unpaid after 30 days from date of invoice. Any disbursements not charged to your account on the date of this invoice will be billed later.
GST/HST: R130866262 **QST:** 1006241791

Wire transfer instructions:
Send direct and pay to: Bank of Montreal, International Banking, H.O. Montreal, SWIFT BIC Address BOFMCAM2, Ernst & Young LLP, Transit #2411 Account #24111000237, 6 King Street West, Toronto, Ontario, Canada, M5H 1C3. Reference the name and address of remitter, invoice number and engagement number.

FW_ Invoice for Services Rendered Enclosed.rtf

From: Petsche, Nadine (TBS) []
To: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
Subject: FW: Invoice for Services Rendered Enclosed
Date: Wednesday, May 17, 2017 14:14:21
Attachment 1: image003.jpg
Attachment 2: Invoice-C100085052.pdf

Shyrose,

Approved for payment.

Please update me on the remaining $ on the contract after taking this into account. Thanks> N

From: Carolyn Roberts [mailto:carolyn.roberts@ca.ey.com]
Sent: May 17, 2017 2:00 PM
To: Virani, Shyrose (TBS)
Cc: Petsche, Nadine (TBS); Suzie Gignac
Subject: Invoice for Services Rendered Enclosed

Please find attached our invoice for services provided under PO OSS 227152. If you need any further information, please do not hesitate to contact us. Thank you.

Best regards,

--

Carolyn Roberts | Executive Coordinator

Ernst & Young LLP

99 Bank Street, Suite 1200, Ottawa, Ontario K1P 6B9, Canada

Office: 1-613-598-4844 | Fax: 1-613-232-5324 | carolyn.roberts@ca.ey.com

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image003.pdf

EY

Invoice-C100085052.pdf

Ernst & Young LLP
Ottawa, ON

Invoice

Treasury Board Secretariat
Nadine Petsche
777 Bay Street, 25th Floor
Toronto, ON M5G 2E5
Canada

Invoice No.: CA01C100085052
Please include this number with payment

Invoice Date:	17 May 2017
Due Date:	Upon receipt
Client No.:	0011426981
Engagement No.:	E-65062708

Remit To:
P.O. Box 57104, Postal Station A
Toronto, Ontario M5W 5M5
A/R Queries:
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1-800-311-1104

Description of Services: RFS-TBS-OTB-OPCD-16 PO number OSS 227152

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Lee Anne Probert - 41 hrs
Suzie Gignac - 30.5 hrs

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GST/HST: R130866262 **QST:** 1006241791

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Send direct and pay to: Bank of Montreal, International Banking, H.O. Montreal, SWIFT BIC Address BOFMCAM2, Ernst & Young LLP, Transit #2411 Account #24111000237, 6 King Street West, Toronto, Ontario, Canada, M5H 1C3. Reference the name and address of remitter, invoice number and engagement number.

FW_ KPMG Performance Evaluation..rtf

From: Virani, Shyrose (TBS) []
To: Bernard, Dena (TBS) [Dena.Bernard@ontario.ca]
Subject: FW: KPMG Performance Evaluation.
Date: Wednesday, November 09, 2016 14:11:37

From: Petsche, Nadine (TBS)
Sent: November 9, 2016 1:06 PM
To: Virani, Shyrose (TBS)
Subject: Re: KPMG Performance Evaluation.

Yes it was. I did speak with Michel Picard and their performance on the contract was satsfactory. Nadine

From: Virani, Shyrose (TBS)

Sent: Wednesday, November 9, 2016 12:58 PM

To: Petsche, Nadine (TBS)

Cc: Bernard, Dena (TBS)

Subject: FW: KPMG Performance Evaluation.

Hi Nadine

Can you please send an email to me stating that verbal evaluation for KPMG was made and it was satisfactory.

Thanks

Shyrose

From: Bernard, Dena (TBS)
Sent: November 3, 2016 12:05 PM
To: Virani, Shyrose (TBS)
Subject: KPMG Performance Evaluation.

Hi Shyrose, Can you ask Nadine to provide an evaluation on the KPMG file. I know that there is no form available on line but an email to me or you stating that she was satisfied with the services provided would be fine.

Thanks

Dena

From: Virani, Shyrose (TBS)
Sent: September 8, 2016 3:11 PM
To: Bernard, Dena (TBS)
Subject: RE: QAR - Hi Shyrose, did we not hand in the KPMG file? Can I have it please or we can scan it.

I have left it in your desk

From: Bernard, Dena (TBS)
Sent: September 8, 2016 3:07 PM
To: Virani, Shyrose (TBS)
Subject: FW: QAR - Hi Shyrose, did we not hand in the KPMG file? Can I have it please or we can scan it.

KPMG LLP

211280

8.001E+09

$24,999.00

$3,249.87

$28,248.87

985503

OPCD

544010

FY 15/16 KPMG - Rate Regulated Accounting on the Consolidated Financial Statements

Dec-15 Purchase Invoices CAD

From: Dawson, Carolyn (TBS)
Sent: September 8, 2016 2:41 PM
To: Bernard, Dena (TBS)
Cc: Khan, Nowshin (TBS)
Subject: QAR

Hi Dena,

Hope you're doing well. I'm following up on the consulting and goods & non-consulting samples our team picked for the Quality Assurance Review. We have Modis Canada here in hard copy but the rest of the files have not come in yet from OPCD.

Consulting:

DELOITTE LLP

KPMG LLP

MODIS CANADA INC - received

Goods & non-consulting:

ACHIEVE GLOBAL CANADA INC

WILSONHCG CANADA INC

Please let me know when I can expect these.

Thanks!

Carolyn

Carolyn Dawson, CPA, CA, CIA

(A) Senior Controllership Analyst

Office of the Controller

Business Planning & Financial Management Branch

Corporate Services Division | Treasury Board Secretariat

5th Floor, Ferguson Block, 77 Wellesley St W Toronto, ON M7A 1N3

416 326 8328

FW_ Legal and Accounting Call.rtf

From: Montgomery, Kaitlin (MOF) []
To: john.mauti@opg.com [john.mauti@opg.com]; alec.cheng@opg.com [alec.cheng@opg.com]; les.wong@opg.com [les.wong@opg.com]; tyler.mcauley@opg.com [tyler.mcauley@opg.com]; mpicard@kpmg.com [mpicard@kpmg.com]; judy.wilson@blakes.com [judy.wilson@blakes.com]; kim.marshall@ieso.com [kim.marshall@ieso.com]; michael.boll@ieso.com [michael.boll@ieso.com]; Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; Johnson, Paul (ENERGY/MEDEI/MRI) [Paul.Johnson3@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Kacaba, Jennifer (ENERGY) [Jennifer.Kacaba@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]
CC: Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Waddell, Colleen (MOF) [Colleen.Waddell@ontario.ca]
Subject: FW: Legal and Accounting Call
Date: Thursday, March 09, 2017 14:23:12
Attachment 1: Legal and Policy Working Group - Contact List.docx

---

Hi everyone,

Just wanted to pass along the contact list for our legal and policy working group.

Please let me know if I've missed anyone or any updates are required.

Thanks,

Kaitlin

From: Nelms, Scott (MOF)
Sent: March 6, 2017 9:35 AM
To: Hume, Steen (ENERGY); Petsche, Nadine (TBS); Picard, Michel; Kim Marshall; Shear, Dan (ENERGY); Rehob, James (ENERGY); Kacaba, Jennifer (ENERGY); Calwell, Carolyn (ENERGY/MEDEI/MRI); John Lee - Ontario Power Generation (john.s.lee@opg.com); Waddell, Colleen (MOF); Montgomery, Kaitlin (MOF)
Cc: Hosick, Sarah (TBS); Cox, Hilary (ENERGY); Judy Wilson; Christie, Tim (ENERGY); 'CROZZOLI Carlo -CBUSDEV&STRT'
Subject: RE: Legal and Accounting Call

Hi all,

Thanks again for your time on Friday.

As per our conversation, could each organization please send on a list of key day to day contacts that can interface with lawyers? I would suggest either one point of contact with back-ups, or if relevant, specific subject matter experts. We will combine the list and send it back around.

Again thank you,

Scott

From: Nelms, Scott (MOF)
Sent: March 3, 2017 2:59 PM
To: Hume, Steen (ENERGY); Veinot, Cindy (TBS); Petsche, Nadine (TBS); Picard, Michel; Kim Marshall; Shear, Dan (ENERGY); Rehob, James (ENERGY); Kacaba, Jennifer (ENERGY); Calwell, Carolyn (ENERGY/MEDEI/MRI); John Lee - Ontario Power Generation (john.s.lee@opg.com); Waddell, Colleen (MOF); Montgomery, Kaitlin (MOF)
Cc: Hosick, Sarah (TBS); Cox, Hilary (ENERGY); Judy Wilson; Christie, Tim (ENERGY); 'CROZZOLI Carlo -CBUSDEV&STRT'
Subject: Legal and Accounting Call

Hi All,

As discussed on the call, please see the attached documents from IESO, OPG and Treasury Board.

Thanks,

Scott

Scott Nelms

Electricity Investment and Governance Secretariat | Ministry of Finance

7th Floor | 375 University ave. | Toronto, ON

w: (416) 212-6469 | c: (647) 330-2681

scott.nelms@ontario.ca

Legal and Policy Working Group - Contact List.pdf

Legal/Policy Working Group

Entity	Department/Area	Contact	Email/Phone
OPG	Accounting	John Mauti	John.mauti@opg.com
		Alec Cheng (backup)	Alec.cheng@opg.com
	Legal	Les Wong	Les.wong@opg.com
		Tyler Mcauley (backup)	Tyler.mcauley@opg.com
KPMG	Accounting	Michel Picard	mpicard@kpmg.com Office: 416.777.8417 Cell: 416.560.2569
Blakes	Legal	Judy Wilson	Judy.Wilson@blakes.com
IESO	Accounting	Kim Marshall	Kim.marshall@ieso.com
	Legal	Michael Boll	Michael.boll@ieso.com
Province	ENE Legal	Carolyn Calwell	Carolyn.calwell@ontario.ca 416.212.8392
		Paul Johnson	Paul.johnson3@ontario.ca 416.325.1834
		Dan Shear (Entity)	Dan.shear@ontario.ca 416.325.6685
		James Rehob (GAM)	James.rehob@ontario.ca 416.325.6676
	MOF Policy	Jennifer Kacaba	Jennifer.kacaba@ontario.ca 416.212.4867
		Scott Nelms	Scott.nelms@ontario.ca 416.212.6469
		Kaitlin Montgomery	Kaitlin.montgomery@ontario.ca 647.823.3428
	ENE Policy	Steen Hume	Steen.hume@ontario.ca 416.314.6190
		Tim Christie	Tim.christie@ontario.ca 416.325.6708
	OPCD – Accounting	Nadine Petsche	Nadine.petsche@ontario.ca 416.325.8027
	OFA – Accounting	Ken Kandeepan	Ken.kandeepan@ofina.on.ca 416.325.9814

FW_ March 17 comments_ Declaration and TPA.rtf

From: Petsche, Nadine (TBS) []
To: Picard, Michel (mpicard@kpmg.ca) [mpicard@kpmg.ca]
Subject: FW: March 17 comments: Declaration and TPA
Date: Saturday, March 18, 2017 06:26:03

Hi Michel.
Just as an FYI, it appears that the timelines are even tighter now.
Nadine

-----Original Message-----
From: Qureshi, Musab (ENERGY)
Sent: March-18-17 6:17 AM
To: Petsche, Nadine (TBS)
Cc: Schwab-Pflug, Emma (ENERGY); Syed, Usman (ENERGY)
Subject: RE: March 17 comments: Declaration and TPA

Hi Nadine,

Just checking in to see if you have heard back from KPMG.

We will likely need to make a decision on the control language by EOD today or tomorrow afternoon.

Thanks,
Musab

FW_ Michel Picard- RFS feedback to KPMG Nov 1 1_30 pm.rtf

From: Petsche, Nadine (TBS) []
To: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
Subject: FW: Michel Picard- RFS feedback to KPMG Nov 1 1:30 pm
Date: Tuesday, November 01, 2016 14:56:17

For your files

From: Petsche, Nadine (TBS)
Sent: November 1, 2016 1:48 PM

Not an exclusive contract

When time permits, will want to go to other firms as well (make sure have the best partner available) vs. spending a lot of time on procurement related matters

Took estimated fee at 250 working days and averaged per diem rates to compare (KPMG was 3rd)

Was in top 3 for assessment

RFS response was very high quality in terms of layout against criteria and level of detail on examples (great for future reference)

P3s – PSAB future standard

Involvement with Federal TB on Accounting Standards

Involvement with Auditors of BC (not just ON) useful and relevant

References to position paper – good (shared experience with pension asset documentation)

PAC work and Rate Regulated file noted

FW_ OAG IFRS Discussion to be rescheduled to June 9th.rtf

From: Petsche, Nadine (TBS) []
To: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
CC: Picard, Michel (mpicard@kpmg.ca) [mpicard@kpmg.ca]
Subject: FW: OAG IFRS Discussion to be rescheduled to June 9th
Date: Monday, June 01, 2015 09:43:34

Shyrose,
Please schedule a call between Michel and I for one of the times indicated below. Nadine

-----Original Message-----
From: Picard, Michel [mailto:mpicard@kpmg.ca]
Sent: June 1, 2015 9:37 AM
To: Petsche, Nadine (TBS)
Subject: Re: OAG IFRS Discussion to be rescheduled to June 9th

I will be doing a presentation at that time and then heading to the airport to fly to Vancouver. I could do a call between 12:15 to 1:30pm on Wednesday or 10am on Thursday and Friday.

Sent from my iPhone

> On Jun 1, 2015, at 9:28 AM, Petsche, Nadine (TBS) <Nadine.Petsche@ontario.ca> wrote:
>
> Sure Michel. Wednesday between 11 - 12 looks good for now. Nadine
>
> -----Original Message-----
> From: Picard, Michel [mailto:mpicard@kpmg.ca]
> Sent: June 1, 2015 9:28 AM
> To: Petsche, Nadine (TBS)
> Subject: Re: OAG IFRS Discussion to be rescheduled to June 9th
>
> Hi Nadine,
> Great news! Do we need to meet before on Tuesday morning? Should I cal you later this week? I am currently at the airport going to the U.S.
> Have a great day! Michel
>
> Sent from my iPhone
>
> On Jun 1, 2015, at 9:17 AM, Petsche, Nadine (TBS)
<Nadine.Petsche@ontario.ca<mailto:Nadine.Petsche@ontario.ca>> wrote:
>
> Good morning Michel.
> Just wanted to let you know that we've talked to the AG's office and they are willing to reschedule our IFRS discussion to June 9th. Shyrose will be sending out the invite shortly.
> Regards,
> Nadine
>
>
>
> ---
> -- This email was sent to you by KPMG (http://info.kpmg.ca). To sign
> up to receive event invitations and other communications from us (we have some informative publications that may be of interest to you), or to stop receiving electronic messages sent by KPMG, visit the KPMG Online Subscription Centre (http://subscribe.kpmg.ca).
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> Our lawyers have recommended that we provide certain disclaimer language with our messages. Rather than including them here, we're drawing your attention to the following links where the full legal wording appears.
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>
> If you are unable to access the links above, please cut and paste the URL that follows the link into your browser.
> ---
> --
>
>

FW_ OPG White Paper - GAC deferral.rtf

From: Petsche, Nadine (TBS) []
To: Picard, Michel (mpicard@kpmg.ca) [mpicard@kpmg.ca]; Kim Marshall (Kim.Marshall@ieso.ca) [Kim.Marshall@ieso.ca]
Subject: FW: OPG White Paper - GAC deferral
Date: Monday, February 27, 2017 23:04:16
Attachment 1: Global Adjustment Deferral_White Paper_OPG r1a.pdf
Attachment 2: ATT00001.htm
Attachment 3: Global Adjustment Deferral - White Paper - Terms to MOE Feb 21_2017.pdf
Attachment 4: ATT00002.htm

Michel/Kim,

Not sure if you have these docs, so sharing (please excuse if you've already received).
n

From: Veinot, Cindy (TBS)
Sent: February-27-17 2:14 PM
To: Petsche, Nadine (TBS)
Subject: Fw: OPG White Paper - GAC deferral

Sent from my BlackBerry 10 smartphone on the Rogers network.

From: Imbrogno, Serge (ENERGY) <Serge.Imbrogno@ontario.ca>

Sent: Monday, February 27, 2017 2:07 PM

To: Orsini, Steve (CAB); Davidson, Steven (CAB); Angus, Helen (TBS); Thompson, Scott (MOF); Veinot, Cindy (TBS); Mayman, Gadi (OFA)

Cc: Bromm, William (CAB); Katona, Keley (ENERGY)

Subject: Fwd: OPG White Paper - GAC deferral

Latest from OPG.

Sent from my iPad

Begin forwarded message:

From: "LEE John -TREASURY" <john.s.lee@opg.com>
To: "Imbrogno, Serge (ENERGY)" <Serge.Imbrogno@ontario.ca>
Cc: "Nelms, Scott (ENERGY)" <Scott.Nelms@ontario.ca>, "Katona, Keley (ENERGY)" <Keley.Katona@ontario.ca>, "HARTWICK Ken -FINANCE" <ken.hartwick@opg.com>, "KING Catriona -OFFCORPSEC" <catriona.king@opg.com>, "LYASH Jeffrey -PRESIDENT" <jeffrey.lyash@opg.com>
Subject: OPG White Paper - GAC deferral

Serge:

As requested, please find attached the OPG "White Paper" which reflects OPG view and understanding of the proposed Global Adjustment Smoothing Account and financing structure. I have also attached the "proposed terms and conditions" referenced in the white paper which was original sent to Energy on February 21st.

John

John Lee | Vice President Treasurer |

Ontario Power Generation | 700 University Avenue, H18 A6, Toronto, Ontario M5G 1X6 |

416.592.6392 | john.s.lee@opg.com

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Global Adjustment Deferral_White Paper_OPG r1a.pdf

February 27, 2017

Mr. Serge Imbrogno
Deputy Minister,
Ministry of Energy
4th Floor, Hearst Block
900 Bay Street
Toronto, Ontario
M7A 2E1

Dear Deputy:

Below is a summary of OPG's preliminary views on the implementation of the Province's proposed Global Adjustment Smoothing Account and financing structure. These views are contingent on the proposed terms and conditions that were sent to the Ministry of Energy on February 21, 2017.

Understanding that the finalization of the legal terms, the Trust indentures, financing structure and other detailed terms will take several months and will involve collaboration between legal counsel, input from capital markets, parties involved and other stakeholders, this letter is intended to provide the guideline and framework which could form the foundation of the plan.

Please do not hesitate to contact me if you have any questions regarding this summary.

Sincerely,

Mr. Ken Hartwick
Chief Financial Officer and Senior Vice President, Finance
Ontario Power Generation
W: 416-592-6985
C: 647-544-6985
ken.hartwick@ opg.com

cc. Jeff Lyash, President and CEO, OPG

Background:

The Province has indicated that it will take steps to reduce electricity bills in the near term. It has identified reductions in the Global Adjustment Charge (GAC) charged to electricity customers as a means to achieve its policy goals. The Province is proposing to temporarily reduce the amount of the GAC charged to electricity customers (primarily RPP-eligible customers). The exact quantum and duration of the program is still not known but based on discussions with the Province GAC charges of approximately $2-5B per year for the next 5-10 years would be deferred and collected over future periods commencing after the deferral period. A combination of senior debt and subordinated debt (mainly sourced by additional equity from the shareholder) would be issued to fund the amount deferred. The financing cost of the debt and other costs of running the program would form part of the amounts recovered from customers over the term of the program.

The Province has requested that OPG administer the GAC deferral, because of OPG's participation in the market, regulatory knowledge and the potential ability to consolidate the activity and accounting with OPG. Given the significant amount of financing required for the GAC deferral, OPG has developed a financing structure (depicted below) to:

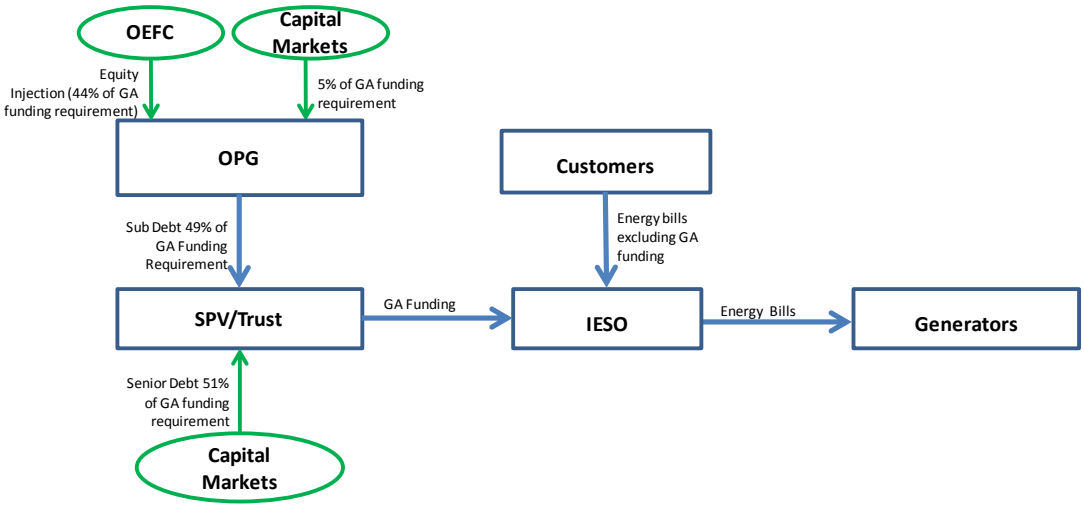
- restrict the risk to OPG;

- maximize the cost-effectiveness of the Trust or the Special Purpose Vehicle ("SPV") financing vehicle; and
- allow for consolidation into OPG financial statements.

The success of this structure is dependent on achieving a number of objectives which are reviewed in the following sections:

A. Ability to Recognize an Asset and Record Revenue
B. Ability to Consolidate the SPV into OPG
C. Ability to Finance
D. External Assessment
E. Risk Summary

All of the percentages shown in the graphic below are indicative and will be highly dependent on the legislation that the Province will enact:



Process:

The IESO will effectively sell the 'right to collect' deferred future revenue from ratepayers (GA Recovery Right asset) to the SPV in return for cash proceeds. In order for the SPV to purchase this asset the SPV will obtain the financing from two key sources: 51% directly from capital markets and 49% as subordinated debt from OPG. OPG will obtain 44% of this financing as an equity injection from the Province and 5% from capital markets.

A. Ability to Recognize an Asset and Record Revenue

Accounting Requirements under International Financial Reporting Standards (IFRS)

1) It is our understanding that the IESO and KPMG have concluded that the sale of this 'right to collect' future revenue (or regulatory asset) is not a financing transaction and will not be recorded as a financial liability. Based on that conclusion, the right to collect will be accounted for as an intangible asset in the SPV.

2) In order to the SPV to record this right as an intangible asset, the right must meet the following conditions:
   - The intangible asset must be separable and arise from a contractual or legal right (i.e. mandated by the Legislation and SPV Indenture Agreement).
   - The SPV must have the control and power to obtain future economic benefits from the intangible asset.
   - The SPV must be able to demonstrate that the intangible asset is purchased at fair value.

3) In order for the SPV to recognize appropriate revenue to offset any ongoing costs, the Legislation must require interest, carrying and administrative costs to be paid to the SPV on a monthly basis. This may result in additional amounts to be deferred to achieve the desired customer impact. Payment of revenue to the SPV is also important to service the interest expenses of the debt.

B. Ability to Consolidate the SPV into OPG under IFRS

OPG 'Control' of the SPV - Accounting Requirements

1) In order to meet the accounting definition of 'control', accounting guidance must be considered. There are no bright lines to determine whether OPG has exposure, or rights, to variable returns from its involvement with the SPV, or whether it has the ability to affect the returns of the SPV through its power over the SPV. Rather, all facts and circumstances are considered when assessing whether an entity has control over another entity. Based on the relevant accounting guidance under IFRS, OPG has proposed terms necessary to demonstrate that OPG has control over the SPV. OPG's external auditors, Ernst & Young, has provided their concurrence that based on the information provided to them to date that the following conditions should permit consolidation of the SPV by OPG.

Directive:

1. The SPV must be undertaken by OPG as a business initiative on its merits. A Shareholder Directive is to be limited to direct OPG to investigate the option of establishing a SPV vehicle to administer, finance and operate the Global Adjustment plan. The control, risk and rewards of that SPV will determine its consolidation into OPG as a business enterprise.

SPV:

2. The SPV should not operate in a predetermined way such that OPG does not have decision-making authority over the SPV's ongoing activities after its formation (i.e. should not operate on 'autopilot').
3. OPG must have the ability to appoint and remove the Trustee (or Board of Trustees), with no veto right by the Province. No party shall have the ability to remove OPG from its role and authority in the SPV.
4. The Province cannot have the right to veto OPG's decisions about the relevant activities of the SPV. OPG must have the power over the relevant activities of the SPV and be compensated. The relevant activities of the SPV include (but are not limited to) the evaluation and decisions on financing alternatives, duration, and the strategy to minimize financing costs. OPG must have the power to establish operating and capital budgets of the SPV.
5. OPG must have the power to determine or change operating and financing policies of the SPV, which will affect the variability of risks and returns.
6. The Province or its agencies must not directly or indirectly fund (through debt or equity) more than 50% of the following:
    - The SPV
    - Any of OPG's investments in the most subordinated debt of the Trust
7. OPG must own greater than 50% of the most subordinated debt and targeted to be no less than 5%[1] of the total debt of the SPV. Such ownership must be financed entirely by OPG through operating cash flows or external debt, without assistance from Provincial sources. A quantitative analysis should be performed at a later date to corroborate the appropriateness of the 5% threshold to support that the 5% subordinated debt investment is sufficient to absorb most of the expected variability in the SPV.
8. OPG must have the ability to earn variable returns by exercising its authority, which shall be accomplished as follows:

[1] While the rest of the letter refers to a 10% investment in the most junior subordinated debt with OPG owning 5%, it should be noted that OPG should own more than 50% of the most subordinate debt. For simplicity, the degree to which OPG's ownership beyond 50% is not shown in this letter.

a. The cash flow from the restructured asset shall include interest determined based on a relevant benchmark that is appropriate relative to the restructured asset, plus an appropriate margin consistent with the relevant market and other risks
b. OPG shall have the authority to determine the financing strategy, which will vary the financing costs with the objective of enabling the SPV to achieve a more favourable return compared to the return from the restructured asset
c. The SPV shall establish classes of liabilities (senior, subordinated and the most subordinated). The classes would allow the SPV to delineate financing of lower risk investment and investment that would bear higher residual risk. The delineation would limit OPG's self-funded investment to a reasonable level in order to allow OPG to remain a self-sustaining entity.
d. OPG shall, through its ownership of the most subordinated liability, be able to capture and retain the pricing difference between cost of financing and benchmark for interest on the restructured asset, or any residual risk of restructured asset. The targeted return of the subordinated liability should be reflective of the underlying risks and compensate holders for active management that would be required.
e. OPG should participate in the detailed design of the above and the SPV documentation to ensure that it has substantive power and variability, which will allow OPG's Board of Directors to evaluate the opportunity as a business initiative instead of through a shareholder directive.

Nothwithstanding the above, under certain Defined Forced Majeure for emergency events (e.g. unlikely credit market event or disruption where it is not possible to borrow from the market at a reasonable rate), the OEFC may provide bridge financing beyond the designated percentage for a defined period. The relevant terms should ensure that this temporary measure does not detract from the rights of OPG to direct all of the relevant activities of the SPV. Additionally, OPG should not be protected from risk of loss by the OEFC with respect to its subordinated investment, nor should it lose its right to derive the residual returns should such bridge financing be required.

Legislation

9. The Legislation must require interest, carrying and administrative costs to be paid to the SPV on a monthly basis, so that the SPV is able to recognize appropriate revenue to offset any ongoing costs.
10. The Legislation must dictate the manner in which the restructured asset would be determined, collected, and the period of collection, so that the determination of the restructured asset will not be subject to the Province's decisions on an ongoing basis, but determined based on a formula. Alternatively, the Legislation may allow for an adjustment to the pre-determined deferral formula based on specific parameters that would limit the adjustment to the restructured asset. Adjustments beyond the specific parameters would require approval by the Board of Trustees.
11. The Legislation must be written to avoid legal or constitutional challenges and be irrevocable to reduce the cost of borrowing and with a specific formula which determines the deferral amount. As irrevocability would be difficult under Canadian law one mitigation would be to provide a Provincial guarantee which only applies with cancellation or amendment of the legislation.
12. The spirit of the above terms should be reflected in the SPV Indenture Agreement as well as Legislation, wherever possible.

2) The Trust is expected to be financed as follows:
   - 51% senior secured debt from external markets
   - 39% senior subordinated debt from OPG (via Province equity injection into OPG)

- 10% junior subordinated debt from OPG (5% from external markets and 5% from Province equity injection into OPG).

When assessing control, an investor shall consider the nature of its relationship with other parties and whether those parties are acting on the investor's behalf (i.e. they are 'de facto agents'). If OPG is assessed to be a 'de facto agent' of the Province, it will compromise the ability for OPG to consolidate the Trust. The split above is to meet the following conditions to ensure that OPG is not considered a 'de facto agent' of the Province:

- The Province or its agencies must not directly or indirectly fund (through debt or equity) more than 50% of the following:
  - The Trust
  - Any of OPG's investments in the most subordinated debt of the Trust
- OPG must own greater than 50% of the most subordinated debt and targeted to own no less than 5% of the total debt of the Trust. Such ownership must be financed entirely by OPG through operating cash flows or external debt, without assistance from Provincial sources.

3) The Province will need to conclude on whether OPG still meets the definition of a Government Business Enterprise as defined under Public Sector Accounting Board standards in order to obtain the preferred consolidation treatment after the transaction. We also recommend that the Province to undertake the analysis deemed necessary to confirm the accounting treatment in its consolidated Public Accounts, including if the recognition of the intangible asset would result in an offsetting liability in the Public Accounts.

C. Ability to Finance

Property Right or Right to Collect
Legislative Requirements for Financing
The GA Recovery Right must be structured to encompass the following elements:

- Right to recover from and bill Ontario electricity customers for (1) the principal amount of GA that is being deferred, (2) all interest and other financing costs incurred in respect of the deferral of the GA, (3) all fees, expenses and other administrative costs associated with such financing;
- Repayment/amortization schedule as agreed by the IESO and any purchaser of such GA Recovery Right (or pursuant to a pre-defined schedule/formula that covers all of the purchaser's principal, interest and ongoing financing costs on a monthly basis);
- Repayment/amortization schedule must include a true up mechanism to ensure all costs associated with the deferral can be recovered from customers;
- IESO may dispose of the GA Recovery Right, provided that any such disposition shall be a true sale and absolute transfer to the purchaser of the IESO's right, title and interest in and to the GA Recovery Right;
- Purchaser will have the right to require the IESO (or any successor) to collect the principal amount of GA Recovery Right, together with interest, financing and administration costs, on the agreed repayment/amortization schedule;
- Right must be irrevocable and, if amended by future governments, debt holders have the right of action against the government to recover the amount outstanding including interest, fees, expenses and any damages resulting from the amendment;
- GA Recovery Right will not be subject to any set-off, counterclaim or other defence by the IESO or any successor or affiliated entity; and
- Make certain amendments to the Electricity Act to allow OPG to implement the SPV financing structure (e.g. allowing OPG to create subsidiaries and holding companies, and to have a beneficial interest in the SPV, etc). This would provide flexibility to accommodate possible variations to the financing structure that may be desirable over time.

Detailed legislative requirements are specified in the attachments as follows:

Attachment 1 Legislative requirements to allow deferral of global adjustment amounts to be financeable

Attachment 2 Statutory amendments

The proposed financing structure for the SPV is:

	Risk Profile	Source	% of Total Funding Requirements
Tranche A Senior Debt	The least risky	Capital Markets	51%
Tranche B Sub Debt	In between A&C	OPG via OEFC	39%
Tranche C Sub Debt)	The most risky	OPG via OEFC	5%
		OPG via Capital Markets	5%

SPV structure is used to accomplish the following:

- SPV holds right to charge customers for the benefit of debt holders;
- Allows the financing vehicle to be ring-fenced from OPG as an SPV structure is set up as generally single purpose entities with no other operations that could add risk to the SPV, dilute debt holder rights, allow parties from other operations to claim rights to the future recovery from customers or allow these other parties to initiate bankruptcy proceedings;
- Enables SPV to potentially get a higher credit rating than OPG;
- Supports consolidation with OPG provided accounting requirements are satisfied;

This approach supports a number of objectives of the GA Recovery Right:

- 51% external senior debt supports separation of the SPV from the Province
- 5% junior subordinated debt establishes OPG's "at risk" equity which supports separation of the SPV from the Province
- Subordinated debt provides flexibility to the financing structure and additional credit support to external debt holders
- Subordinated debt sourced from OPG (mainly funded by equity injection from the Province) minimizes impact on OPG credit metrics reducing risk of an OPG rating downgrade that could result in the SPV being consolidated directly with the Province as the SPV would be considered an arm of the Province.

Recent transactions used as precedents are:

Duke Energy Florida Project Finance LLC
June 2016
5 series of bonds totalling USD$1.3B
Weighted average life from 2 to 19 years with interest rates from 1.2% to 3.1%
Credit rating AAA

Utility Debt Securitization Authority
Sponsored by Long Island Power Authority
March 2016
Amount issued USD$0.6B
Weighted average life of 12 years and weighted average yield of 2.7%

August 2016
Amount issued USD$0.5B
Weighted average life of 7 years and weighted average yield of 2.0%

Credit rating AAA

Cumulative outstanding (including previous issuances): USD$4.2B

D. External Assessment

Shakerhill Partners, an external advisor, identified the following items in an assessment of the structure and financeability of the structure:

- The structure is financeable however there are a number of significant risks to the structure:
  - Canadian and Ontario law does not provide the same protection to property right as exists in the US federal and state constitutions to limit the ability of governments to adversely impair contracts to the detriment of the holder;
  - Legislation could mitigate some of the risks – deferred recovery asset to be "uncapped", regular semi-annual true up to ensure recovery, Province provides sufficient committed liquidity to the IESO so that temporary shortfall in recovery does not affect payments to SPV, term of the deferral recovery substantially exceeds the longest maturity of debt of the SPV and that true-up mechanism take account of potential for currency, interest rate and duration mis-match between the debt of the SPV and the recovery mechanism;
  - Size of the program may be too large for Canadian securitization market requiring access to the US securitization market;
- Final maturity of debt should not exceed 30 years from inception of the program
- True up mechanism should be designed such that the forecast of recovery is less than 10% of the customer bill under downside scenarios to limit growth of the deferral balance as a higher portion of the customer bill increases the political risk to debt holders which could result in a lower credit rating and potential impact on financeability
- Securitized debt products are specialized and price at a premium to other fixed rate instruments however a successful program supported by a strong credit rating this premium could shrink over time to a minor spread over Provincial debt
- OPG's credit rating should be maintained provided sufficient equity is injected to maintain credit metrics
- While the structure is not expected to impact the Province there are risks that the program could negatively impact the rating agencies view of the Province's financial management.

E. Risk Summary

i. Consolidation

- Elements of the proposed structure were established to support consolidation of the SPV into OPG. These items may not be sufficient to establish OPG as risk owner of the SPV and the SPV may need to be consolidated directly with the Province.

ii. Financeability

- The legislation establishing the structure and the property right for recovering the financing and associated costs may not be adequate for financing purposes resulting in more expensive financing or an inability to obtain the required external financing.

iii. Cost of Financing

- Future governments may enact legislation that changes the right of the SPV to recover amounts from customers.
- The right to recover amounts from future customers must be irrevocable and subject to full recovery from the government in the event that future governments reduce or eliminate the recovery. A legal structure that is weaker than the precedent US transactions increases the risk to debt holders and the cost of financing.
- Interest rates on bonds in the securitization market are higher than equivalent rated bonds. Rate for a AAA securitization credit is about 50 bps higher than GOC (rated AAA) for a 5 year term. This difference is attributable to the specialized structure of the bond, smaller investor pool for this bond, smaller size of the market and higher perceived risks of the bond.
- Any regulator involvement must not be seen to modify any terms of debt issued or the property right securing the debt as this would increase risk to debt holders.

- It may not be possible to issue debt to match the terms of the deferred asset so shorter term debt would be used which raises risk to re-finance the maturing debt as the market may no longer be interested in this product. As well, underlying reference interest rates may be higher and the market may require a higher spread to invest in this product.
- With the GA Recovery Right program continuing for 10 years, debt issued over this period is subject to changes in both the underlying reference interest rates and appetite of the market for this product.

iv. OPG Credit Rating

- Minimizing the impact of significant additional debt on OPG's credit rating is dependent on higher EBITDA arising from earned income on the GA Recovery Right in excess of external debt. Ability of the SPV to record revenue reflecting the growth in asset value.
- Potential OPG credit rating downgrade if legislative structure is not adequate to support long term recoverability, inability to record revenue from growth in asset value or agencies view equity injection as debt.
- OPG credit rating downgrade could result in loss of GBE status or result in SPV being consolidated directly with the Province.

Attachment 1

LEGISLATIVE REQUIREMENTS TO ALLOW DEFERRAL OF GLOBAL ADJUSTMENT AMOUNTS TO BE FINANCEABLE

The IESO currently has a right to collect GA monthly from ratepayers through provisions in the *Electricity Act, 1998*. It is proposed that collection of a certain portion of the monthly GA be deferred for collection in the future, and that the right to recover the deferred GA from ratepayers be used as a basis for structured financing/securitization.

The current proposal is for a trust to be created as a financing vehicle (the "**Trust**") in connection the deferred GA. The Trust will finance the deferral of the GA by purchasing the right to recover such deferred GA from the IESO for the principal amount of the GA being deferred. For example, if the amount of GA that is being deferred is $200 million in a given month, the Trust will purchase from the IESO the right to future recovery of the deferred GA and the associated financing costs (including interest and transaction costs) for $200 million in cash.

The Trust is expected to finance these purchases from the IESO through a combination of senior secured financing raised in the capital markets and subordinated financing from OPG (the funding for which will mostly be from equity injections from the OEFC/Province).

For accounting purposes, OPG will need to have the ability to direct the activities of the Trust, through a services agreement and/or through the Trust's constating document.

Based on securitized financing raised by utilities in the US (backed by utility cost recovery orders) and the current regulatory framework in Ontario, the legislation in Ontario would need to be amended to provide the following, at a minimum:

1. The IESO will be empowered to create an asset (the "**Regulatory Asset**") consisting of all right, title and interest in and to:

   (a) right to recover from and bill Ontario electricity ratepayers for:

   (i) the principal amount of GA that is being deferred for collection;
   (ii) all interest and other financing costs incurred in respect of the deferral of the GA (whether through senior debt raised in the public markets or subordinated debt raised from OPG or others); and
   (iii) (subject to the comments in paragraph 5 below in respect of OPG's internal administrative costs only) all fees, expenses and other administrative costs associated with such financing, including up-front and ongoing financing costs and any indemnity payments;

all on such repayment/amortization schedule as agreed by the IESO and any purchaser of such right (or pursuant to a pre-defined schedule/formula in the legislation that covers all of the purchaser's principal, interest and ongoing financing costs on a monthly basis); and

(b) all revenues, collections, claims, rights to payments, money or proceeds arising from the rights and interests set out in paragraph (a) above, regardless of whether such revenues, collections, claims, rights to payments, money or proceeds are imposed, billed, received, collected or maintained together with or commingled with other revenues, collections, rights to payments, payments, money or proceeds.

2. The IESO may dispose of the Regulatory Assets created from time to time on such terms as the IESO determines in accordance with the terms of directives to be issued to the IESO from time to time by the Minister, provided that any such disposition shall be a true sale and absolute transfer of the IESO's right, title and interest in and to a Regulatory Asset to the purchaser of the Regulatory Asset.

3. The Regulatory Assets will not be subject to any set-off, counterclaim or other defence by the IESO or any successor or affiliated entity thereof.

4. The legislation will need to recognize the Regulatory Assets as amounts that may be recovered by the IESO (e.g. it could be designated as a "GA Deferral" and would be included in the amounts collectible by the IESO through the GA collection mechanism, and would include interest and financing costs).

5. The purchaser of the Regulatory Asset will have the right to require the IESO (or any successor) to collect the principal amount of GA deferred, together with interest, financing and administration costs, on the agreed repayment/amortization schedule. **[NTD: In the LIPA securitization rate order, if the entity that is authorized to collect rates to service the bonds ends up defaulting, there is the ability to request a court to order "sequestration" and payments of amounts owing to the owner of the Regulatory Asset. Consider whether to include a similar right here. Alternatively, consider whether a security interest over the moneys collected by the IESO could be provided to the purchaser.]**

OEB would be provided with oversight over the internal administrative costs collected by the Financing Trust. This could be accomplished by (a) providing the purchaser of the Regulatory Asset with the right to require

the IESO or a successor to collect only the principal amount of GA together with interest and financing costs and third party fees and expenses, and (b) requiring the IESO to collect amounts through the global adjustment and make payments to the purchaser of the Regulatory Asset with respect to the internal administrative costs incurred by the purchaser in connection with the purchase and management of the Regulatory Asset and the Financing Trust, in accordance with the order of the OEB then in effect. Under this mechanism, the OEB would be required to review the purchaser's internal administrative costs through a streamlined process and issue such orders in accordance with rules to be prescribed under a new regulation under the OEB Act, which would clearly limit the OEB's scope of review and could establish the basis for the purchaser to receive an appropriate fee for its services.

6. In the event that any action is taken or permitted by the Province or any regulatory authority that limits, alters, or impairs the value of a Regulatory Asset or reduces the ability of the IESO or the purchaser of the Regulatory Asset to collect or recover the costs associated therewith, the owner of the Regulatory Asset and the holders of any bonds or other securities issued to finance the purchase of the Regulatory Asset, will have a right of action against the Province for any damages suffered as a result of such amendment.

STATUTORY AMENDMENTS

The following is preliminary and is based on our current understanding of the proposed structure and objectives. For example, we have assumed that the structure will not entail the insertion of a new Holdco between OPG and the Province. As these aspects are refined, some of the suggested amendments described below may not be needed and other aspects that we are not aware of may need to be considered. Accordingly, these suggested amendments are provided for discussion purposes and are subject to change. We would welcome the opportunity to work with OPG and the Ministry on refining the scope and substance of required legislative and regulatory amendments.

A. Amendments to Implement Structure

Certain *Electricity Act, 1998* amendments would be needed to implement the anticipated structure (which we understand, as noted above, would not include a Holdco), as follows:

- **Section 53.1(1):** Amend to permit owning and operating generation facilities through subsidiaries (not only directly through OPG). In addition, amend to permit OPG to administer, manage, loan moneys to and have a beneficial interest in, if applicable, Financing Trust.

- **Section 53.2:** Amend to permit the Minister to acquire, hold, dispose of or otherwise deal with securities or debt obligations of, or any other interest in, OPG or any subsidiaries. This is to accommodate possible variations to the financing structure that may be desirable over time.

- **Section 53.■ (new):** New statutory section to permit the Minister to enter into arrangements relating to an exercise of powers under 53.2.

- **Section 53.■ (new)**: New statutory section providing that creditors of Financing Trust have no recourse to the assets of OPG or any of its subsidiaries (other than Financing Trust, if applicable). In addition, consideration should be given as to whether the Act should be amended so that the Financing Trust cannot be wound up or liquidated.

B. Miscellaneous Corporate Items to Address

- **OPG Articles:** Amend the OPG's articles to remove the private company restrictions.

- **MOA with Province:** Consider whether any amendments to OPG's MOA with the Province are required to contemplate the Financing Trust.

C. Amendments Under Electricity Act to Implement GA Smoothing

Based on our understanding that the global adjustment smoothing mechanism is intended to benefit residential and small business customers only and that the Minister will be responsible for determining how much global adjustment smoothing is to be applied in a given month, if any, amendments to the *Electricity Act, 1998* and Ontario Regulation 429/04 (Adjustments Under Section 25.33 of the Act) would be needed to implement the mechanism, as follows:

(i) Electricity Act:

- **Section ■ (New):** Establish a new power for the Minister to make directives to the IESO in relation to the global adjustment smoothing mechanism and, particularly, for purposes of establishing global adjustment smoothing amounts from time to time (expected to be monthly). To the extent possible, the directive power should be drafted so as to limit the ability for a future Minister to require the IESO to do anything that would materially and adversely affect the Financing Trust or its lenders. **[NTD: While our understanding is that the Minister would direct this, we note from other materials we have seen that OPG may instead be recommending a formula approach. It is not clear what the formula would look like, where it would be set out or how it would be applied and by whom]**

- **Paragraph 25.33(1):** This section says that IESO shall make adjustments in accordance with the regulations to ensure that, over time, payments by prescribed classes of market participants reflect amounts paid to OPG, OEFC and distributors, as well as amounts paid to entities with whom IESO has a procurement contract. Add new subsection (c) so as to require IESO to ensure that, over time, payments by prescribed classes of market participants also reflect amounts paid to Financing Trust. **[NTD: Not certain this is needed if only to benefit residential and small business consumers, who are not market participants. May be needed in reference to payments from distributors and retailers]**

- **Paragraph 25.33(2):** This section says that distributors and retailers shall make adjustments in accordance with the regulations to ensure that, over time, payments by prescribed classes of consumers reflect amounts paid to OPG, OEFC and distributors, as well as amounts paid to entities with whom IESO has a procurement contract. Add new subsection (c) so as to require distributors and retailers to ensure that, over time, payments by prescribed classes of consumers also reflect amounts paid to Financing Trust.

- **Note**: As described below, the regulation will need to include new requirements for the IESO to record the global adjustment smoothing amounts in one or more variance accounts and to use those amounts to offset amounts otherwise recorded in the variance accounts under Section 25.33(3) of the Act. For context, we note:

    - Section 25.33(3) says that adjustments under (1) or (2) relating to electricity consumed by consumers whose rates are determined by

the OEB under s. 79.16 of the OEB Act (i.e. RPP Customers) shall instead be made in accordance with the regulations to one or more variance accounts established and maintained by the IESO.

- Section 25.33(4) says IESO, distributors and retailers shall make and receive such payments, set-offs and credits as may be required or permitted by the regulations with respect to consumers described in (3), i.e. RPP Customers.

- Section 25.33(5) says that IESO shall establish and maintain such variance accounts as may be needed to record all amounts payable or receivable by it under 25.33.

(ii) O. Reg. 429/04 (Adjustments Under Section 25.33 of the Act):

- **Section 1(1):** Consider adding definitions for "Financing Trust" and "global adjustment smoothing amount" or such other terms as may be preferred.

- **Section 1.2(1) (New):** Add section providing that, for the purposes of this Regulation, the global adjustment smoothing amount for a month is the amount determined by the IESO in accordance with a directive from the Minister under section ■ of the Electricity Act in respect of the month. **[NTD: See above note re use of Minister directives]**

- **Section 1.2(2) (New):** Consider adding a section providing that the IESO shall publish the global adjustment smoothing amount for a month by no later than the 10th business day of the following month [to align with general publication requirements for global adjustment under s. 1.1(2)].

- **Section 10(1):** Amend formula for calculating Class B GA rate by subtracting the global adjustment smoothing amount for a month from "M", which is the total amount of the global adjustment for the month. The global adjustment smoothing amount could be designated as "X", such that the formula would be (M-X-N)/(P-Q). Define "X" as the global adjustment smoothing amount for the month as determined by the IESO in accordance with the Minister's directive under section ■ of the Electricity Act for the month. **[NTD: See above note re use of Minister directives]**

- **Section 10.1 (New):** Add new section to deal with adjustments under subsection 25.33(3) of the Act, i.e. in respect of RPP consumers. This section should require the IESO to establish, within the variance account(s) it maintains pursuant to subsection 25.33(3) of the Act, one or more subaccounts in which it shall record the global adjustment smoothing amounts applicable to the classes of consumers described in subsection 25.33(3) of the Act. This section must also specify that the IESO shall apply the amounts recorded in the subaccounts against the balances in the variance accounts for purposes of section 79.16(3) of the OEB Act.

  - **Note:** This is a key aspect because, when the OEB determines RPP rates, it must take into account the balances in the variance accounts established by the IESO under s. 25.33 of the Electricity Act and make adjustments with a view to eliminating the balances within 12 months. This proposed new section 10.1 causes the IESO to reduce (in the near term) the variance account balances by the global adjustment smoothing amounts, as provided by Financing Trust, thereby enabling the OEB to determine RPP rates that, despite being lower for RPP consumers in the near term, still eliminate the relevant variance account balances within 12 months.

- **Paragraph 11(2)2.ii:** Amend the formula for calculating the allocation of global adjustment for a month to a licensed distributor that is a market participant by subtracting the global adjustment smoothing amount for a month from "M", which has the same meaning as under section 10(1). The global adjustment smoothing amount could be designated as "X", such that the formula would be [(M-X-N) x (R+S-T)]/(P-Q). Define "X" as suggested under section 10(1).

- **Paragraph 11(2)3:** Amend the formula for calculating the allocation of global adjustment for a month to each Class B market participant by subtracting the global adjustment smoothing amount for a month from "M", which has the same meaning as under section 10(1). The global adjustment smoothing amount could be designated as "X", such that the formula would be [(M-X-N) x U]/(P-Q). Define "X" as suggested under section 10(1).

- **Paragraph 16(7)4:** Consider amending the description of "Global Adjustment" that is required to be included on certain invoices so as to inform consumers that their portion of the global adjustment for the month (i) may have been reduced by the application of a global adjustment smoothing amount from the Financing Trust, or (ii) may include amounts payable to the Financing Trust in respect of global adjustment smoothing amounts previously applied.

- **Section 20(1):** This section establishes an obligation for the Ontario Electricity Financial Corporation and every licensed distributor that is a market participant to give the IESO such information as the IESO may require for the purposes of the Regulation in the form specified by the IESO and before the expiry of the period specified by the IESO. Consider amending to extend this obligation to the Financing Trust.

- **Section 20(6):** This section provides that on request by the OEB, the IESO, a licensed distributor, an embedded generator, a retailer or the OEFC shall give the OEB such information relating to this Regulation as the OEB may require, in the form and within the period specified by the OEB. Consider amending to extend this obligation to the Financing Trust.

D. Amendments Under OEB Act to Implement Cost Recovery for Financing Trust

Amendments to the *Ontario Energy Board Act*, including amendments to O. Reg. 95/05 (Classes of Consumers and Determination of Rates) and the introduction of a new regulation, would be needed to implement a cost recovery process for the Financing Trust in relation to the global adjustment smoothing mechanism, potentially with limited OEB oversight, as follows:

(i) Ontario Energy Board Act:

- **Section 78(3.3):** This provision establishes an obligation for the OEB, when determining rates for the retailing of electricity, to take into account balances in variance accounts established under section 25.33 of the Electricity Act and to make adjustments "with a view to eliminating those balances within 12 months or such shorter time periods as the Minister may direct." Consider whether any amendments are needed, and confirm this works with the framework being proposed.

- **Section 78.7 (New):** We understand that the Province may want the OEB to have an oversight role. One possible approach would be to establish a new statutory section establishing that the IESO shall make payments to the Financing Trust with respect to the internal administrative costs incurred by the Financing Trust in connection with the purchase and management of the Regulatory Asset and the Financing Trust. Such payments by the IESO would need to be made in accordance with the order of the OEB then in effect, which orders shall be made by the OEB in accordance with rules prescribed under a new regulation.

    - The new regulation would need to be clear that the OEB does not have jurisdiction to consider the principal amount or any interest, financing costs, third party fees or expenses. Rather, OEB's role would be limited to considering the internal administrative costs of the Financing Trust and ensuring the Financing Trust receives an appropriate fee for its services, all of which would be recovered by the Financing Trust from the IESO, which would collect those amounts in the global adjustment. Note that, if this approach is accepted, the IESO and distributors and retailers would need the authority to collect such amounts as part of the GA and IESO would need the authority to pay such amounts to the Financing Trust. As such, additional amendments would be needed under O. Reg. 429/04.

- **Note:** Section 79.16 of the OEB Act does not require changes, but the significance of this provision should be understood.

    - Section 79.16 gives the OEB responsibility for determining electricity commodity prices for eligible consumers. Eligibility is determined under Reg. 95/05 (Classes of Consumers and Determination of Rates), which is also known as the Regulated Price Plan (RPP) Regulation.
    - Section 4(2) of the RPP Regulation defines RPP-eligible consumers as low volume consumers (i.e. those who annually use less than 150,000 kWh

or such other amount as prescribed), consumers with demand of 50 kW or less, residential consumers that have accounts with distributors, consumers who annually use 150,000 to 250,000 kW of electricity, and consumers who have accounts with distributors if in the farming business.

- Paragraph 6(1)3 of the RPP Regulation provides that "In determining the rates (for RPP-eligible consumers), the Board shall forecast the cost of electricity to be consumed by the consumers to whom the rates apply, taking into consideration adjustments required under section 25.33 of the *Electricity Act, 1998* and shall ensure that the rates reflect those costs."
- The Ontario Energy Board has developed a Regulated Price Plan Manual (revised February 16, 2016) to describe the processes and methodologies it uses for determining electricity commodity prices that are charged to RPP consumers pursuant to Section 79.16 of the OEB Act and paragraph 6(1)3 of the RPP Regulation.

(ii) O. Reg. 95/05 (Classes of Consumers and Determination of Rates)

- **Paragraph 6(1)3:** Amend so as to require the Board, when forecasting the cost of electricity to be consumed by the consumers to whom the rates apply, to take into consideration not only the adjustments required under section 25.33 of the Electricity Act but also the application or prior application of global adjustment smoothing amounts determined by the IESO in accordance with Minister directives under section ■ of the Electricity Act, and to ensure that the RPP rates reflect those amounts. **[NTD: See above note re use of Minister directives]**

(iii) New Regulation (Payments to the Financing Trust)

- If the OEB is to be given the role of reviewing and approving the recovery of OPG's internal administrative costs for the Financing Trust under the potential section 78.7 (see above), then this regulation should describe the process and criteria pursuant through which the OEB would determine the amounts that the IESO would be required to collect through the global adjustment, in accordance with section 25.33 of the Electricity Act, and pay to the Financing Trust in respect of the provision of global adjustment smoothing amounts. This part of the regulation should establish:

    - any reporting requirements from the Financing Trust and/or the IESO to the OEB in connection with the global adjustment smoothing mechanism;
    - the frequency of the OEB making determinations under this part of the regulation;
    - the process through which the OEB shall make these determinations, which should be a streamlined administrative process rather than a public hearing process or, if a hearing is needed, then the scope of the proceeding should be clearly and narrowly constrained so as to deter intervenor involvement, lengthy proceedings and reduce/eliminate risk to recovery by Financing Trust;

- the basis for the OEB's determinations as to the payments that shall be made to the Financing Trust, which should specify that:
  - the Financing Trust shall recover its prudently incurred internal administrative costs on a forecast basis each year;
  - the Financing Trust shall receive an appropriate fee each year (with some guidance as to what would be appropriate); and
  - the approved payment amounts shall be collected by the IESO through the global adjustment and paid to the Financing Trust in accordance with the order of the OEB then in effect. Note that O. Reg. 429/04 would likely need amendments to permit IESO (and distributors and retailers) to collect these amounts through the global adjustment.

ATT00001.pdf

Global Adjustment Deferral - White Paper - Terms to MOE Feb 21_2017.pdf

GA Smoothing – OPG Accounting Considerations

- An SPV/Trust is a stand-alone entity able to conduct business separately under a Trust agreement

The conditions required for OPG to consolidate the SPV/Trust are outlined in the following table

Issue	Response
1. Decision Making	• OPG must have decision making authority on the operation of the SPV/Trust (without a veto right by the Province), including naming of trustees, establishing operating plans and budgets, setting or changing financing policies. • The SPV/Trust while operating within the legislation, must be controlled by OPG to operate freely and to alter terms and conditions not specified in the legislation to ensure recovery of the deferred amounts
2. Business Risk	• The SPV/Trust must have variability of returns as a normal business enterprise would, including such things as interest charged on deferred amounts, decisions on how to finance these deferred amounts, the ability to make / lose and keep any spread from financing
3. Funding	• The Province cannot directly or indirectly fund more than 50% of SPV/Trust or any investment in the SPV/Trust • OPG must own at least 50% of the most exposed equity /sub-debt in the SPV/Trust
4. Directive	• Directive that is issued should not be prescriptive or direct OPG to set up this business. The directive should only be “guiding” i.e. to allow OPG to evaluate options and put forward to the OPG Board a recommended plan for Shareholder approval

GA Smoothing – OPG Accounting Considerations - continued

Issue	Response
5. Other required Attributes:	The legislation that supports the formation of the SPV/Trust must have the following attributes: • Must require interest, carrying and administrative costs be paid to the Trust to allow for Revenue recognition • The amount to be deferred must either be specified or be calculated based on a specific formula that is not subject to ongoing decision making by the Province. **The Province cannot have the ability to override this formula** • Legislation should be written to avoid the possibility of being revoked with wording to ensure the SPV/Trust and its debt holders would have their capital guaranteed and paid for directly by the Province if such a situation were to happen • The spirit of the legislation should be reflected in the Trust Indenture Agreement

GA Financing Structure Requirements

KEY ELEMENTS REQUIRED TO ENSURE THE DEFERRAL OF GA CHARGES CAN BE FINANCED:

Creation of Strong Property Rights

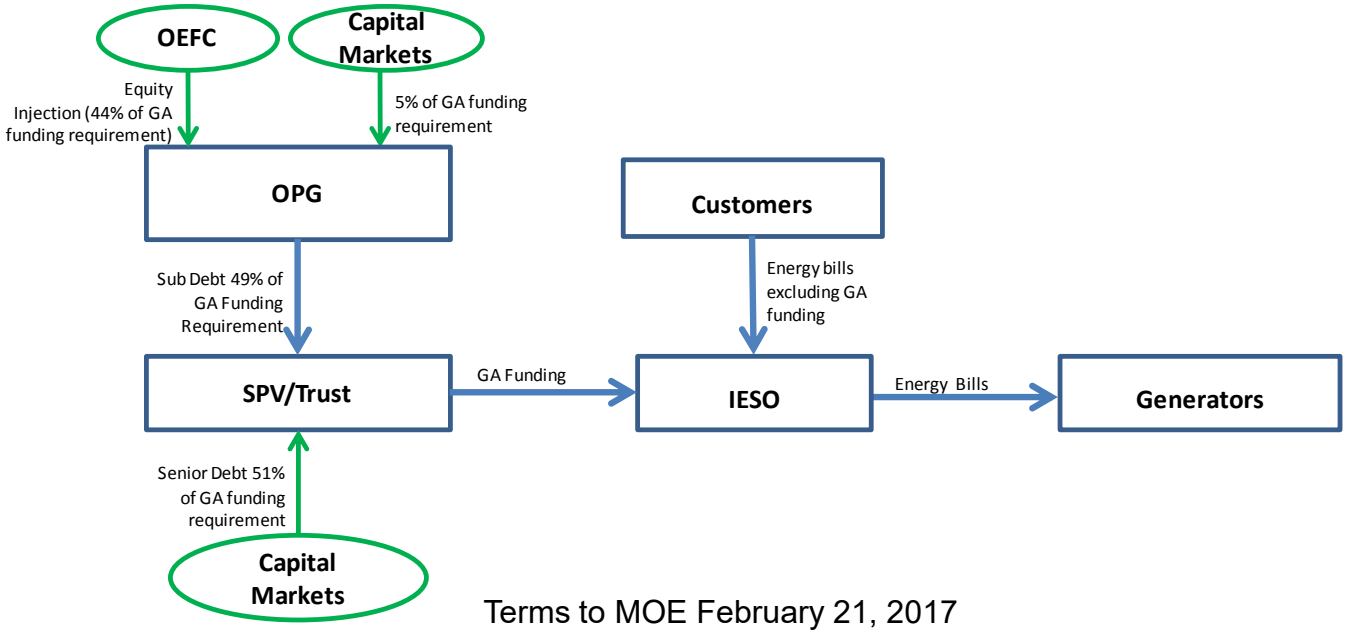
- Legislation enshrines the ability of the IESO to create a Right to charge customers in the future for the Global Adjustment (GA) deferred today including principal amount deferred, interest and other financing costs on the amount deferred and fees, expenses and other administrative costs.
- The Right can be sold to an appropriate Trust or Special Purpose Vehicle (SPV) to obtain funds to pay amounts due to generators under contracts or regulation. These SPVs are generally single purpose entities with no other operations that could add risk to the entity, dilute debt holder rights, allow parties from other operations to claim rights to the future recovery from customers or allow these other parties to initiate bankruptcy proceedings.
- Right must be irrevocable and if the Right is amended by future governments the debt holders have the right of action against the government to recover the amount outstanding including interest, fees, expenses and any damages resulting from the amendment.
- Right must specify the recovery period or the mechanism for setting the recovery rate including true up of the rate to ensure all amounts are recovered

Economic Factors

- Limits on the recovery amount (principal, interest, fees and expenses) charged to customers in future periods must have compensating elements such as longer recovery period to ensure the full amount deferred plus interest, financing and other administration costs is recovered from customers.
- Need to balance customer relief with debt holder risk. Longer recovery periods and larger deferred balances increase risk to the debt holder of future government intervention.
- The amount required by the SPV to purchase and service the Right will be funded 51% from debt holders, 5% from OPG through capital markets and 44% from OPG via equity injection to OPG from the Province. The funding from OPG will be loaned to the SPV as subordinated debt.

GA Financing Structure Requirements - continued

- SPV will be used to raise the GA financing and ring fence OPG from its legal obligations
- SPV will be structured to allow for GBE accounting consolidation into OPG
- Given that SPV will be consolidated into OPG for accounting purposes, the significant amount of debt required to fund the GA deferral will have a severe impact on OPG's credit rating. If 100% of the requirement is funded by debt OPG would be downgraded.
- To manage this exposure and minimize the cost of funding. The required funding would be split into 2 buckets:
    1. 56% from capital markets, and
    2. The remainder provided by the Province via equity injection, which would be loaned to SPV as subordinated debt.
- The use of equity to fund a portion of the GA deferral also allows for an improvement in both Net Income and EBITDA as incremental revenue is captured by the increase in the value of the deferral which would offset the fiscal impact of the borrowing at Province level.
- Credit rating metrics are generally maintained within established limits.



ATT00002.pdf

FW_ Ontario pension funding changes.rtf

From: Picard, Michel [mpicard@kpmg.ca]
To: Picard, Michel [mpicard@kpmg.ca]
CC: Hafeman, Laura S [lhafeman@kpmg.ca]
Subject: FW: Ontario pension funding changes
Date: Friday, May 26, 2017 12:44:41

Announcement on the changes to funding rules affecting the industry in Ontario.

Stay put!

Michel

From: Hafeman, Laura S
Sent: Friday, May 26, 2017 12:31 PM
To: Picard, Michel <mpicard@kpmg.ca>
Subject: Ontario pension funding changes

The Ontario government recently announced changes to the defined benefit pension framework, which include significant changes to funding rules (resulting from its funding framework review which began July 2016). The funding changes are designed to reduce volatility of cash costs and to help ensure benefit security for members.

Key changes to the funding framework include:

- Elimination of solvency funding requirements for plans which are over 85% funded on a solvency basis.
- Shortening the period of funding for going concern deficits from 15 to 10 years, and consolidation of existing going concern special payments into a single payment schedule.
- Requirement for funding of a reserve called a Provision for Adverse Deviation (PfAD) within the plan.

Further details are expected to be released later this spring, with draft legislation to be introduced in the fall. The changes will include interim measures (expected to be

released in the coming weeks) applicable to plans that are filing valuation reports with effective dates between December 31, 2016 and December 31, 2017, which will address cases where solvency funding would otherwise be required.

As many plans are funded above 85% on a solvency basis, the changes may result in a greater emphasis from plan sponsors and other interested parties (e.g. unions, regulators) on the going concern valuation and underlying assumptions.

Please feel free to contact me with any questions.

Thank you,

Laura

Laura Hafeman, FSA, FCIA

Senior Manager, Life & Pensions Actuarial Practice

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FW_ Potential discussion with FAO (request for availability confirmation - May 17, after 2 pm).rtf

From: Petsche, Nadine (TBS) []
To: Hosick, Sarah (TBS) (Sarah.Hosick@ontario.ca) [Sarah.Hosick@ontario.ca]
CC: Kim Marshall (Kim.Marshall@ieso.ca) [Kim.Marshall@ieso.ca]; Veinot, Cindy (TBS) (Cindy.Veinot@ontario.ca) [Cindy.Veinot@ontario.ca]
Subject: FW: Potential discussion with FAO (request for availability confirmation - May 17, after 2 pm)
Date: Tuesday, May 16, 2017 15:36:57

Sarah,

Not sure what the current status is w.r.t. the FAO meeting, but I assume that we're subject to the FAO's availability? Can you check if there are further details available w.r.t timing? I assume that the FAO has suggested an afternoon meeting which is the reason for the request to confirm availability after 2 pm? n

From: Kim Marshall [mailto:Kim.Marshall@ieso.ca]
Sent: May 16, 2017 3:18 PM
To: Picard, Michel; Petsche, Nadine (TBS)
Cc: Hosick, Sarah (TBS); Veinot, Cindy (TBS)
Subject: RE: Potential discussion with FAO (request for availability confirmation - May 17, after 2 pm)

Any chance for a morning meeting?

Kimberly Marshall | VP, Corporate Services & CFO

Independent Electricity System Operator (IESO) | T: (416) 969-6232 | C: (416) 545-7202

120 Adelaide Street West, Suite 1600, Toronto, ON M5H 1T1

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From: Picard, Michel [mailto:mpicard@kpmg.ca]
Sent: May 16, 2017 2:48 PM
To: Petsche, Nadine (TBS); Kim Marshall
Cc: Hosick, Sarah (TBS); Veinot, Cindy (TBS)
Subject: RE: Potential discussion with FAO (request for availability confirmation - May 17, after 2 pm)

I am working on it.

From: Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]
Sent: Tuesday, May 16, 2017 2:43 PM
To: Picard, Michel <mpicard@kpmg.ca>; Kim Marshall (Kim.Marshall@ieso.ca) <Kim.Marshall@ieso.ca>
Cc: Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>
Subject: RE: Potential discussion with FAO (request for availability confirmation - May 17, after 2 pm)

Thanks Michel.

I have copied Cindy's assistant, Sarah Hosick, so that she is aware of the requirements. We are still awaiting confirmation of the details for a meeting. Given the short turnaround time, do you think it would be prudent to initiate the requisite approvals on a 'contingency' basis?

Thanks again.

Nadine

From: Picard, Michel [mailto:mpicard@kpmg.ca]
Sent: May 16, 2017 2:37 PM
To: Petsche, Nadine (TBS); Kim Marshall (Kim.Marshall@ieso.ca)
Cc: Hosick, Sarah (TBS)

Subject: RE: Potential discussion with FAO (request for availability confirmation - May 17, after 2 pm)

Hi Nadine,

I have availability to attend a meeting after 2pm tomorrow. It should not be a call. However, I am required to obtain authorization from our risk management department. Assuming they accept, we will need, as a minimum, to obtain from IESO a consent, release and indemnity letter.

Regards,

Michel

From: Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]
Sent: Tuesday, May 16, 2017 1:31 PM
To: Picard, Michel <mpicard@kpmg.ca>; Kim Marshall (Kim.Marshall@ieso.ca) <Kim.Marshall@ieso.ca>
Cc: Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>
Subject: Potential discussion with FAO (request for availability confirmation - May 17, after 2 pm)

Kim/Michel,

I understand that a call/meeting is being contemplated for tomorrow afternoon with staff from the FAO to discuss accounting for the FHP. The primary purpose for the meeting is to help the FAO staff to better understand the accounting elements of the GA Refinancing structure to help them as they finalize a report on the topic.

I have been asked to confirm your availability for a 1 hour meeting/call tomorrow afternoon after 2 pm.

Thanks in advance.

Nadine

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FW_ invoice.rtf

From: Suzie Gignac [suzie.r.gignac@ca.ey.com]
To: Donaldson, Mark (TBS) [Mark.Donaldson@ontario.ca]
CC: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
Subject: FW: invoice
Date: Friday, December 08, 2017 11:56:44
Attachment 1: image001.gif

Hi Mark:

Shyrose makes a good point below. The contract ends December 31. Should we be looking to extend it for six months to get through the rest of the memo and the other accounting issue we are considering at the moment?

Thanks,

Suzie

Suzanne Gignac, Partner, CPA, CA

Ernst & Young LLP / Ernst & Young s.r.l./S.E.N.C.R.L.

99 Bank Street, Suite 1200, Ottawa, Ontario K1P 6B9, Canada

Direct: 1 613 598 4376 | Fax: 1 613 232 5324 | suzie.r.gignac@ca.ey.com

Executive Coordinator, Carolyn Roberts | Phone: 613 598 4844 | carolyn.roberts@ca.ey.com

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From: Virani, Shyrose (TBS) [mailto:Shyrose.Virani@ontario.ca]
Sent: Friday, December 8, 2017 10:53 AM
To: Suzie Gignac <suzie.r.gignac@ca.ey.com>
Subject: FW: invoice

Hi Suzie

Would you be able to let me know the amount that you are billing me? I am forecasting my budget and I would like to know that amount, also would you be planning to send me any more invoices, since this contract is ending on December 30th?

Thanks

Shyrose

From: Donaldson, Mark (TBS)
Sent: December 8, 2017 10:29 AM
To: Suzie Gignac
Cc: Jeannie Kaminski; Virani, Shyrose (TBS)
Subject: RE: invoice

Hi Suzie,

Yes, that would be fine.

Thanks.

Mark

Sent with BlackBerry Work
(www.blackberry.com)

From: Suzie Gignac <suzie.r.gignac@ca.ey.com>

Date: Friday, Dec 08, 2017, 10:22 AM

To: Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>

Cc: Jeannie Kaminski <Jeannie.Kaminski@ca.ey.com>

Subject: invoice

Hi Mark:

We are preparing our invoice through mid-November and wanted to know who we should send it to? It used to go to Nadine. Should we send it to you now?

Thanks,

Suzie

Suzanne Gignac, Partner, CPA, CA

Ernst & Young LLP / Ernst & Young s.r.l./S.E.N.C.R.L.

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image001.pdf

FW_ invoice.rtf

From: Virani, Shyrose (TBS) []
To: suzie.r.gignac@ca.ey.com [suzie.r.gignac@ca.ey.com]
Subject: FW: invoice
Date: Friday, December 08, 2017 11:52:47
Attachment 1: image001.gif

Hi Suzie

Would you be able to let me know the amount that you are billing me? I am forecasting my budget and I would like to know that amount, also would you be planning to send me any more invoices, since this contract is ending on December 30th?

Thanks

Shyrose

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To: Suzie Gignac
Cc: Jeannie Kaminski; Virani, Shyrose (TBS)
Subject: RE: invoice

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Thanks.

Mark

Sent with BlackBerry Work
(www.blackberry.com)

From: Suzie Gignac <suzie.r.gignac@ca.ey.com>

Date: Friday, Dec 08, 2017, 10:22 AM

To: Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>

Cc: Jeannie Kaminski <Jeannie.Kaminski@ca.ey.com>

Subject: invoice

Hi Mark:

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Thanks,

Suzie

Suzanne Gignac, Partner, CPA, CA

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image001.pdf

FW_ legislative drafting.rtf

From: Petsche, Nadine (TBS) []
To: Nelms, Scott (ENERGY) [Scott.Nelms@ontario.ca]
Subject: FW: legislative drafting
Date: Monday, February 27, 2017 15:11:51

Please let us know how we can help. n

From: Kim Marshall [mailto:Kim.Marshall@ieso.ca]
Sent: February 27, 2017 2:06 PM
To: Petsche, Nadine (TBS); Picard, Michel (mpicard@kpmg.ca)
Cc: Veinot, Cindy (TBS); Nelms, Scott (ENERGY)
Subject: RE: legislative drafting

Ok thx for the heads up

Kimberly Marshall | VP, Corporate Services & CFO

Independent Electricity System Operator (IESO) | T: (416) 969-6232 | C: (416) 545-7202

120 Adelaide Street West, Suite 1600, Toronto, ON M5H 1T1

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Conservation: www.saveONenergy.ca | Twitter: saveONenergyOnt | LinkedIn: saveONenergy

From: Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]
Sent: February 27, 2017 2:01 PM
To: Picard, Michel (mpicard@kpmg.ca); Kim Marshall
Cc: Veinot, Cindy (TBS); Nelms, Scott (ENERGY)

Subject: FW: legislative drafting
Importance: High

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Michel/Kim,

Please be aware that Energy's legal team may reach out for your advice.

Nadine

From: Nelms, Scott (ENERGY)

Sent: Monday, February 27, 2017 1:42 PM

To: Petsche, Nadine (TBS)

Cc: Veinot, Cindy (TBS)

Subject: legislative drafting

Hi Nadine,

I am getting questions from Energy lawyers on what is needed to meet accounting requirements as drafting proceeds. They are getting the OPG perspective, but would like to cross check with OPCD to ensure this aligns with the Province's views. I wonder if you or someone from your team involved in this initiative could spare a few minutes. Tons going on, but legal drafting is probably now on the critical path.

Thanks,

Scott

Scott Nelms

Electricity Investment and Governance Secretariat | Ministry of Finance

7th Floor | 375 University ave. | Toronto, ON

w: (416) 212-6469 | c: (647) 330-2681

scott.nelms@ontario.ca

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FW_ legislative drafting.rtf

From: Petsche, Nadine (TBS) []
To: Picard, Michel (mpicard@kpmg.ca) [mpicard@kpmg.ca]; Kim Marshall (Kim.Marshall@ieso.ca) [Kim.Marshall@ieso.ca]
CC: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Nelms, Scott (ENERGY) [Scott.Nelms@ontario.ca]
Subject: FW: legislative drafting
Date: Monday, February 27, 2017 15:00:57

Michel/Kim,

Please be aware that Energy's legal team may reach out for your advice.

Nadine

From: Nelms, Scott (ENERGY)

Sent: Monday, February 27, 2017 1:42 PM

To: Petsche, Nadine (TBS)

Cc: Veinot, Cindy (TBS)

Subject: legislative drafting

Hi Nadine,

I am getting questions from Energy lawyers on what is needed to meet accounting requirements as drafting proceeds. They are getting the OPG perspective, but would like to cross check with OPCD to ensure this aligns with the Province's views. I wonder if you or someone from your team involved in this initiative could spare a few minutes. Tons going on, but legal drafting is probably now on the critical path.

Thanks,

Scott

Scott Nelms

Electricity Investment and Governance Secretariat | Ministry of Finance

7th Floor | 375 University ave. | Toronto, ON

w: (416) 212-6469 | c: (647) 330-2681

scott.nelms@ontario.ca

Fw_ Hydro One assessment.rtf

From: Petsche, Nadine (TBS) []
To: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
Subject: Fw: Hydro One assessment
Date: Monday, July 10, 2017 09:53:08

From: Picard, Michel <mpicard@kpmg.ca>
Sent: Monday, July 10, 2017 9:39 AM
To: Petsche, Nadine (TBS)
Cc: Church, Bailey J
Subject: Hydro One assessment

Hi Nadine, Are you available today after 2pm for a call?

Michel Picard, CPA, CA

Partner, Accounting Advisory Services

KPMG LLP

333 Bay Street, Suite 4600
Toronto, Ontario, M5H 2S5
T 416 777 8414
M 416 560 2569
mpicard@kpmg.ca
LinkedIn

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Fw_ Importance of setting up regulatory accounting in 2016.rtf

From: Petsche, Nadine (TBS) []
To: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
Subject: Fw: Importance of setting up regulatory accounting in 2016
Date: Thursday, February 16, 2017 10:40:49

Please check with Cindy's office. Maybe 2:30?
Original Message
From: Kim Marshall <Kim.Marshall@ieso.ca>
Sent: Thursday, February 16, 2017 9:19 AM
To: Veinot, Cindy (TBS)
Cc: Picard, Michel; Petsche, Nadine (TBS); Jack, Shannon (TBS); Hosick, Sarah (TBS)
Subject: Re: Importance of setting up regulatory accounting in 2016

Can we do before or after that, I have a call with chair of our governance committee

Sent from my iPad

> On Feb 16, 2017, at 9:16 AM, Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca> wrote:
>
> I'll be at FPC
>
> Does 2 pm work for a call?
>
>
>
> -----Original Message-----
> From: Kim Marshall [mailto:Kim.Marshall@ieso.ca]
> Sent: February-16-17 8:06 AM
> To: Picard, Michel; Veinot, Cindy (TBS); Petsche, Nadine (TBS)
> Subject: RE: Importance of setting up regulatory accounting in 2016
>
> Attached is an updated paper from the KPMG audit partner on IESO. In Matt's own words he has : added additional insights around the components of assets/liabilities, recognizing the differing views and significantly updated the conclusions to indicate that multiple conclusions could be reached. Happy to revisit as needed.
>
> Matt and I have had a conversation about potential impacts and what we should say to the IESO board and when. So happy to discuss next steps.
>
> E&Y will deliver an updated memo by tomorrow.
>
> Michel, when can we have the other KPMG memo?
>
> Should we have a conf call at some point today before the 4pm meeting, although Cindy maybe you are not at the 4pm meeting?
>
> Kimberly Marshall | VP, Corporate Services & CFO Independent Electricity System Operator (IESO) | T: (416) 969-6232 | C: (416) 545-7202
> 120 Adelaide Street West, Suite 1600, Toronto, ON M5H 1T1
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>
> Conservation: www.saveONenergy.ca | Twitter: saveONenergyOnt | LinkedIn: saveONenergy
>
>
> -----Original Message-----
> From: Picard, Michel [mailto:mpicard@kpmg.ca]
> Sent: February 15, 2017 8:22 PM
> To: Cindy.Veinot@ontario.ca; Nadine Petsche; Kim Marshall
> Subject: Importance of setting up regulatory accounting in 2016
>
> *** EXTERNAL email. Please be cautious and evaluate before you click on links, open attachments, or provide credentials. ***
>
>
> Ladies,
>
> I believe it is important for IESO to recognize the economic impacts of rate regulation in 2016 under PSAB. Assuming that the AG rejects it under PSAB, then it will require IESO to move to option b) ie. to create a GBE in 2017 to execute the contemplated transaction. As you will remember, IFRS 14 requires IESO to have recognized regulatory balances in its prior year FS. This would be an easier sale than the market books.
>
> Regards,
>
> Michel
>
> Sent from my iPhone
>
>
>
> ---
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>
>
>
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Fw_ Importance of setting up regulatory accounting in 2016.rtf

From: Petsche, Nadine (TBS) []
To: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
Subject: Fw: Importance of setting up regulatory accounting in 2016
Date: Thursday, February 16, 2017 10:16:41

I could likely call in for 2 pm. N

Original Message
From: Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>
Sent: Thursday, February 16, 2017 9:15 AM
To: Kim Marshall; Picard, Michel; Petsche, Nadine (TBS)
Cc: Jack, Shannon (TBS); Hosick, Sarah (TBS)
Subject: RE: Importance of setting up regulatory accounting in 2016

I'll be at FPC

Does 2 pm work for a call?

-----Original Message-----
From: Kim Marshall [mailto:Kim.Marshall@ieso.ca]
Sent: February-16-17 8:06 AM
To: Picard, Michel; Veinot, Cindy (TBS); Petsche, Nadine (TBS)
Subject: RE: Importance of setting up regulatory accounting in 2016

Attached is an updated paper from the KPMG audit partner on IESO. In Matt's own words he has : added additional insights around the components of assets/liabilities, recognizing the differing views and significantly updated the conclusions to indicate that multiple conclusions could be reached. Happy to revisit as needed.

Matt and I have had a conversation about potential impacts and what we should say to the IESO board and when. So happy to discuss next steps.

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-----Original Message-----
From: Picard, Michel [mailto:mpicard@kpmg.ca]

Sent: February 15, 2017 8:22 PM
To: Cindy.Veinot@ontario.ca; Nadine Petsche; Kim Marshall
Subject: Importance of setting up regulatory accounting in 2016

*** EXTERNAL email. Please be cautious and evaluate before you click on links, open attachments, or provide credentials. ***

Ladies,

I believe it is important for IESO to recognize the economic impacts of rate regulation in 2016 under PSAB. Assuming that the AG rejects it under PSAB, then it will require IESO to move to option b) ie. to create a GBE in 2017 to execute the contemplated transaction. As you will remember, IFRS 14 requires IESO to have recognized regulatory balances in its prior year FS. This would be an easier sale than the market books.

Regards,

Michel

Sent from my iPhone

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Fw_ Invoice.rtf

From: Petsche, Nadine (TBS) []
To: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
Subject: Fw: Invoice
Date: Tuesday, December 15, 2015 23:35:21

Hi Shyrose. Can we please check on the status of the KPMG invoice. thx. N

From: Picard, Michel [mailto:mpicard@kpmg.ca]
Sent: Tuesday, December 15, 2015 05:22 PM
To: Petsche, Nadine (TBS)
Subject: Invoice

Hi Nadine,

I would appreciate if you could arrange for our invoice to be paid before Christmas.

Thanks a million!

Best regards,

Michel Picard, CPA, CA

Partner, Accounting Advisory Services

T 416 777 8414

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Fw_ Meeting tomorrow.rtf

From: Petsche, Nadine (TBS) []
To: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
Subject: Fw: Meeting tomorrow
Date: Monday, April 25, 2016 15:25:09

Please confirm address for Michel. Thx.n
From: Nadine.Petsche@ontario.ca
Sent: Monday, April 25, 2016 3:24 PM
To: Picard, Michel
Cc: Shyrose Virani
Subject: Re: Meeting tomorrow

Hi Michel. It is a meeting with the OAG so it will be at the AG's office, same as last time. Shyrose will send the details as a reminder. N

From: Picard, Michel
Sent: Monday, April 25, 2016 2:50 PM
To: Petsche, Nadine (TBS)
Subject: FW: Meeting tomorrow

Hi Nadine,

What the address and floor?

Merci,

Michel

From: Picard, Michel
Sent: Monday, April 25, 2016 2:48 PM
To: Susan Klein <Susan.Klein@auditor.on.ca>
Subject: RE: Meeting tomorrow

See you there. I presume your number is on the door.

From: Susan Klein [mailto:Susan.Klein@auditor.on.ca]
Sent: Monday, April 25, 2016 12:00 PM
To: Picard, Michel <mpicard@kpmg.ca>
Subject: RE: Meeting tomorrow

That's fine Michel. As it's early, please just ring the bell (beside the elevators) when you get here or call my number, and I will let you in.

Best,

Susan

From: Picard, Michel [mailto:mpicard@kpmg.ca]
Sent: Monday, April 25, 2016 11:21 AM
To: Susan Klein
Subject: Meeting tomorrow

Hi Susan,

Can I attend the meeting tomorrow in person rather than over the phone?

Best regards,

Michel Picard, CPA, CA

Partner, Accounting Advisory Services

T 416 777 8414

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Fw_ Public Accounts Audit (IFRS vs. US GAAP).rtf

From: Petsche, Nadine (TBS) []
To: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
Subject: Fw: Public Accounts Audit (IFRS vs. US GAAP)
Date: Friday, January 22, 2016 09:56:43

Please forward to John Mauti on my behalf. N

----- Original Message -----
From: Narula, Gurdev [mailto:gurdevnarula@kpmg.ca]
Sent: Friday, January 22, 2016 08:01 AM
To: Picard, Michel <mpicard@kpmg.ca>
Cc: Petsche, Nadine (TBS)
Subject: Re: Public Accounts Audit (IFRS vs. US GAAP)

Thanks Michel. Nadine, Tuesday any time after 11pm will work for me. Thank you!

On Jan 22, 2016, at 7:56 AM, Picard, Michel <mpicard@kpmg.ca<mailto:mpicard@kpmg.ca>> wrote:

Hi Nadine,

Gurdev Narula, the audit partner will need to attend as well.

My availability is:

- Today, any time after 10am.
- Monday after 9:30 till 11:30 or after 2pm.
- Tuesday anytime except for lunch time.

Gurdev, when are you available?

Regards,

Michel

From: Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]
Sent: Thursday, January 21, 2016 9:53 PM
To: Picard, Michel
Subject: Public Accounts Audit (IFRS vs. US GAAP)

Hi Michel.
I just wanted to check on your availability over the next few days (Fri/Mon/Tues) to participate in a meeting with OPG/H1 and their external auditors to discuss potential approach to IFRS info and assurance.
We've heard that the AG may be planning to reach out to the respective orgs directly in the near term and there is a desire to have a 'huddle' in advance of receiving the AG's suggestions to confirm that we are on a common front as to what might be reasonable to expect. Your experience with Quebec Hydro would be invaluable to our discussion.
Thanks in advance.
Nadine

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FW_ Questions.rtf

From: Donaldson, Mark (TBS) []
To: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
Subject: FW: Questions
Date: Wednesday, January 10, 2018 17:38:30

Can you please set a up a meeting for myself, Cindy, Michel Picard and Bailey Church here on Jan 23 after 3pm? Thanks.

-----Original Message-----
From: Church, Bailey J [mailto:bchurch@kpmg.ca]
Sent: January 9, 2018 6:08 PM
To: Donaldson, Mark (TBS)
Cc: Picard, Michel
Subject: RE: Questions

Thanks Mark, looking forward to it. Please include Michel as well.

Cheers

Bailey

-----Original Message-----
From: Donaldson, Mark (TBS) [mailto:Mark.Donaldson@ontario.ca]
Sent: Tuesday, January 9, 2018 6:05 PM
To: Church, Bailey J <bchurch@kpmg.ca>
Subject: RE: Questions

Perfect. I will send out an invite from us.

Mark

Sent with BlackBerry Work
(https://urldefense.proofpoint.com/v2/url?u=http-3A__www.blackberry.com&d=DwIF-g&c=0TzQCy9lgR5hSW-bDg5HA76y7nf4lvOzvVop5GM3Y80&r=ddv70b-Sjbfm_HtWvaSFvg&m=rmSBczW3qLuWCmspVjqrNNteqUK3XMNFHbuA1-GUDwY&s=yKKyf-wwchbiRuzDdNcjKHQ2sHR85diDy-EFsJaJZLI&e=)

From: Church, Bailey J <bchurch@kpmg.ca<mailto:bchurch@kpmg.ca>>
Date: Tuesday, Jan 09, 2018, 4:34 PM
To: Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca<mailto:Mark.Donaldson@ontario.ca>>
Subject: RE: Questions

Hi Mark

That would work for me. Hows your availability 3pm onwards?

Cheers

Bailey

From: Donaldson, Mark (TBS) [mailto:Mark.Donaldson@ontario.ca]
Sent: Tuesday, January 9, 2018 2:52 PM
To: Church, Bailey J <bchurch@kpmg.ca>
Subject: RE: Questions

Can we shoot for the afternoon of the 23rd?

From: Church, Bailey J [mailto:bchurch@kpmg.ca]
Sent: January 8, 2018 10:37 PM
To: Donaldson, Mark (TBS)
Subject: RE: Questions

Hi Mark

I will be in Toronto January 22nd and 23rd. Would there be a time then we could plan to meet?

Cheers

Bailey

From: Donaldson, Mark (TBS) [mailto:Mark.Donaldson@ontario.ca]
Sent: Monday, January 8, 2018 8:16 PM
To: Church, Bailey J <bchurch@kpmg.ca<mailto:bchurch@kpmg.ca>>
Subject: RE: Questions

Thanks Bailey.

Sounds great -- if you can provide some dates/times, we can set up some time while you're in town.

Cheers,
Mark

From: Church, Bailey J [mailto:bchurch@kpmg.ca]
Sent: December 22, 2017 3:28 PM
To: Donaldson, Mark (TBS)
Cc: Picard, Michel
Subject: RE: Questions

Hi Mark

Thanks very much - I appreciate the clarification. A mid-January check in would be valuable. I will be in Toronto for PSAB meetings around that time, so perhaps we could meet in person. We hope to have a near final draft for your consideration by that point.

All the best. Happy holidays!

Bailey

From: Donaldson, Mark (TBS) [mailto:Mark.Donaldson@ontario.ca]
Sent: Friday, December 22, 2017 1:34 PM
To: Church, Bailey J <bchurch@kpmg.ca<mailto:bchurch@kpmg.ca>>
Cc: Picard, Michel <mpicard@kpmg.ca<mailto:mpicard@kpmg.ca>>
Subject: RE: Questions

Hi Bailey,

Hope all is well ... the calculations outlined below are consistent with what we are carrying/forecasting. On the latter question, the answer is yes, the 53.55% should be referenced as common shares.

Hope this helps. Let me know if you want to have a check-in around mid-January to discuss any

outstanding items and confirm a timeframe to bring this home.

Much appreciated ... happy holidays!
Mark

Mark Donaldson, CPA, CMA
Director, Accounting Policy and Financial Reporting Office of the Provincial Controller Division, Treasury Board Secretariat
7 Queen's Park Cres, 2nd Floor
Toronto, Ontario
M7A 1Y7
(416) 325-8027

From: Church, Bailey J [mailto:bchurch@kpmg.ca]
Sent: December 19, 2017 4:16 PM
To: Donaldson, Mark (TBS)
Cc: Picard, Michel
Subject: RE: Questions

Hi Mark

Thanks very much for sharing this additional information for our H1 analysis. I just wanted to clarify the document that you provided which outlined the percentage of share ownership for the Province in H1. Based on our calculations, we estimate the Province's ownership interest at 47.3% at March 31st 2018 after distributions for the long term incentive plan, the Power Workers Union, and potential distributions to First Nation's from the Province's holdings. We have made a number of assumptions for 2019 regarding incentive plan distributions, which would bring the ownership percentage to 42.2%. Does this match your understanding of the Province's position, or are there alternative assumptions we should reflect? The document "Institutional Share Ownership and 3Q17 Buyers/Sellers" references the top 20 institutional investors as having a 53.55% of the shares. Should this be read as 53.55% of total publically owned common shares?

[cid:image001.png@01D38967.B6CB4D10]

Many thanks

Bailey

From: Picard, Michel
Sent: Wednesday, November 29, 2017 6:23 PM
To: Church, Bailey J <bchurch@kpmg.ca<mailto:bchurch@kpmg.ca>>
Subject: FW: Questions

From: Donaldson, Mark (TBS) [mailto:Mark.Donaldson@ontario.ca]
Sent: Wednesday, November 29, 2017 5:23 PM
To: Picard, Michel <mpicard@kpmg.ca<mailto:mpicard@kpmg.ca>>
Cc: Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca<mailto:Cindy.Veinot@ontario.ca>>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca<mailto:Sarah.Hosick@ontario.ca>>
Subject: FW: Questions

Hi Michel,

Attached are several documents which should help to clarify some of the points discussed at our last meeting w.r.t. Hydro One control assessment. If there's any follow-up required, happy to assist.

Regards,
Mark

Mark Donaldson, CPA, CMA
Director, Accounting Policy and Financial Reporting Office of the Provincial Controller Division, Treasury Board Secretariat
7 Queen's Park Cres, 2nd Floor
Toronto, Ontario
M7A 1Y7
416-325-8027

From: Katona, Keley (MOF)
Sent: November 27, 2017 1:59 PM
To: Veinot, Cindy (TBS)
Cc: Nelms, Scott (MOF); Hosick, Sarah (TBS); Donaldson, Mark (TBS)
Subject: FW: Questions

Hi Cindy,

We now have answers and supporting material to the questions below.

Please let us know if you have any questions.

Thanks,
Keley

From: Veinot, Cindy (TBS)
Sent: October 13, 2017 12:33 PM
To: Nelms, Scott (MOF); Katona, Keley (MOF)
Cc: Hosick, Sarah (TBS); Donaldson, Mark (TBS)
Subject: FW: Questions

Scott and Keley - please see below for the questions from KPMG re: the control analysis they are completing for Hydro One.

Thx

From: Picard, Michel [mailto:mpicard@kpmg.ca]
Sent: October 11, 2017 3:25 PM
To: Veinot, Cindy (TBS)
Cc: Church, Bailey J
Subject: Questions

Hi Cindy,

Subsequent to our call of last Thursday, we have the following questions for you.

Questions to be asked of H1 by the Province
1. KPMG would like to obtain a listing of major Hydro One common shareholders. Could investor relations please provide a listing of the top 20 common shareholders? See attached.

2. What process is followed by investor relations to verify that no investor other than the Province of Ontario accumulates a common share position in excess of 10%? Hydro One does not track ownership levels

Questions for the Province

3. During our Thursday meeting we had discussed the question of when voting rights would be granted on common shares provided to First Nations. First Nations in Ontario will obtain up to 15 million common shares directly from the Province's existing share ownership, subject to an agreement in principle pending ratification by affected First Nations. We understand that the share purchases will be financed by loans from the Province, for which the underlying Hydro One shares will serve as collateral. We would like to clarify if the First Nations receive full voting rights on the common shares at the time of transfer, or only upon repayment of the loan from the Province.
Voting rights are immediate, and are not linked to repayment of the loan.
4. Are there any further documents which support the Province's role in establishing the mission of Hydro One prior to the IPO, beyond what is established in the Electricity Act? What do the constating documents include?
We have attached the articles of incorporation and bylaws. Torys has advised that OBCA corporations do not typically include a mission statement in these documents however in Hydro One's case, the Governance Agreement includes key provisions regarding how the company is governed and is relevant. As well, the initial board of directors (which sets strategy and continues to have the same composition today) was appointed by the Province.
Torys has also dug up some previous notes that were developed at the time of the IPO to advise on accounting/consolidation/control in case its helpful, and are happy to help if there's any follow ups on these items.

Best regards,

Michel Picard, CPA, CA

Partner, Accounting Advisory Services

KPMG LLP

333 Bay Street, Suite 4600
Toronto, Ontario, M5H 2S5
T 416 777 8414
M 416 560 2569
mpicard@kpmg.ca<mailto:mpicard@kpmg.ca>
LinkedIn<https://urldefense.proofpoint.com/v2/url?u=https-3A__www.linkedin.com_in_michel-2Dpicard-2D8b3b942b-3FauthType-3DNAME-5FSEARCH-26authToken-3DoVKr-26locale-3Den-5FUS-26trk-3Dtyah-26trkInfo-3DclickedVertical-253Amynetwork-252CclickedEntityId-253A107441415-252CauthType-253ANAME-5FSEARCH-252Cidx-253A1-2D1-2D1-252Ctarld-253A1478640064654-252Ctas-253Amichel-2520pi&d=DwMFAg&c=0TzQCy9lgR5hSW-bDg5HA76y7nf4lvOzvVop5GM3Y80&r=DAOe89GuHpPZrONj_IODmw&m=w5dA2gwxJa-s_2LLO6fJAsHQI1ytX-_MZP8LjG2buOM&s=sar5sNPbm4HgAphLZc-WGpHzYmAhEA2yH3xAyYfJvkc&e=>

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At KPMG we are passionate about earning your trust and building a long-term relationship through service excellence. This extends to our communications with you.

Our lawyers have recommended that we provide certain disclaimer language with our messages. Rather than including them here, we're drawing your attention to the following links where the full legal wording appears.

* Disclaimer concerning confidential and privileged information/unintended recipient<https://home.kpmg.com/ca/en/home/misc/disclaimer-confidential.html> (http://disclaimer.kpmg.ca<https://home.kpmg.com/ca/en/home/misc/disclaimer-confidential.html>).
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If you are unable to access the links above, please cut and paste the URL that follows the link into your browser.

FW_ RFS-TBS-OTB-OPCD-16.rtf

From: Virani, Shyrose (TBS) []
To: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
Subject: FW: RFS-TBS-OTB-OPCD-16
Date: Monday, November 14, 2016 14:52:00
Attachment 1: image002.jpg
Attachment 2: RFS-TBS-OTB-OPCD-16 - Signed - 31 October 2016.pdf

---

fyi

From: Carolyn Roberts [mailto:carolyn.roberts@ca.ey.com]
Sent: November 14, 2016 1:39 PM
To: Virani, Shyrose (TBS)
Cc: Suzie Gignac
Subject: RFS-TBS-OTB-OPCD-16

Please find the attached document signed. Thank you.

Best regards,

--

Carolyn Roberts | Executive Coordinator

Ernst & Young LLP

99 Bank Street, Suite 1200, Ottawa, Ontario K1P 6B9, Canada

Office: 1-613-598-4844 | Fax: 1-613-232-5324 | carolyn.roberts@ca.ey.com

EY/Comm: 3025243

Website: http://www.ey.com

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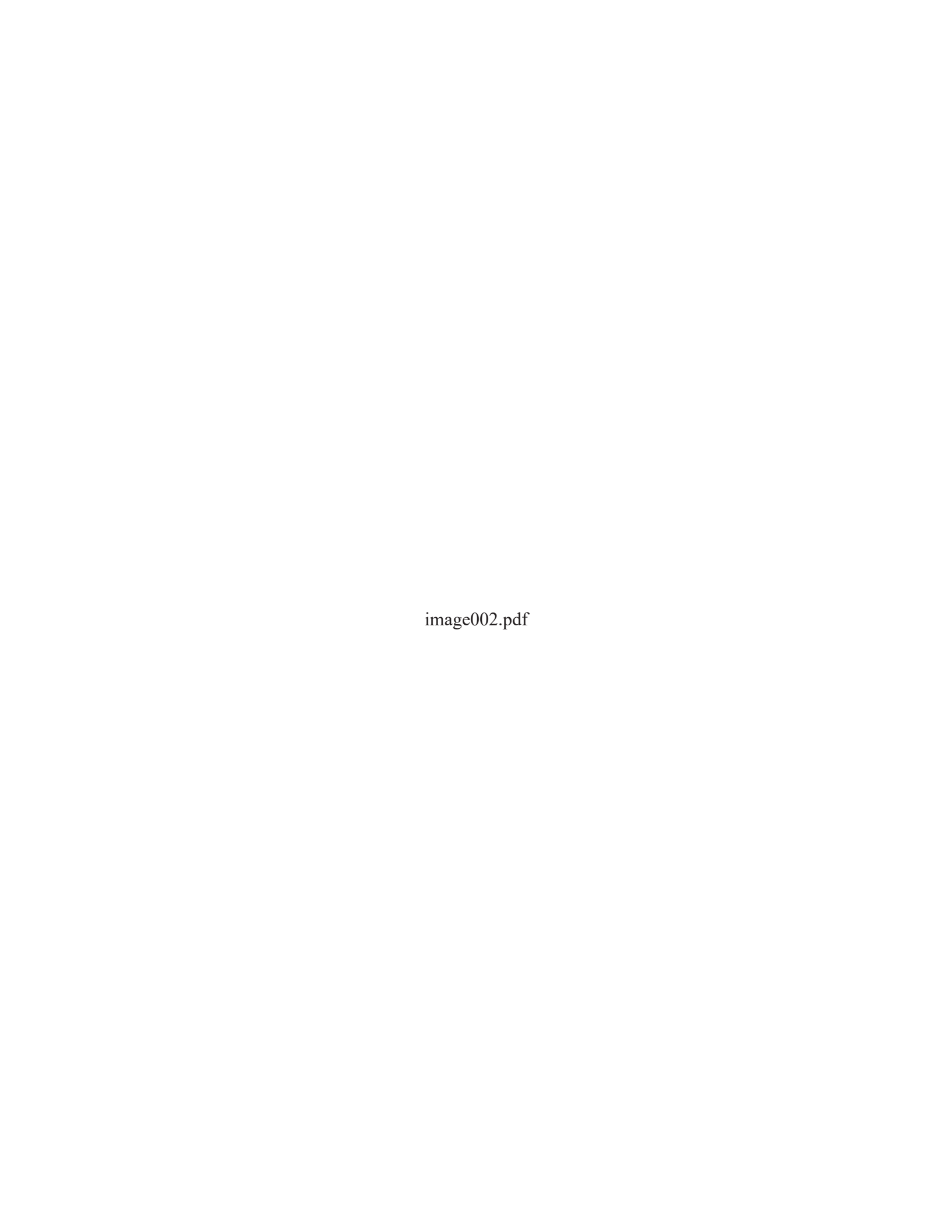
image002.pdf

RFS-TBS-OTB-OPCD-16 - Signed - 31 October 2016.pdf

Treasury Board Secretariat

Office of the Treasury Board
Office of the Provincial Controller Division
Accounting Policy & Financial Reporting Branch
Frost Building South, 2nd Floor
7 Queen's Park Crescent
Toronto ON M7A 1Y7
Tel. (416) 325-8027

Secrétariat du Conseil du Trésor

Bureau du Conseil du Trésor
Bureau du contrôleur provincial
Direction de la méthode comptable et des rapports financiers
Édifice Frost Sud, 2e étage
7 Queen's Park Cr.
Toronto ON M7A 1Y7
Téléphone. 416-325-8027

Ontario

October 31, 2016

Ms. Anna Pesme
Ernst & Young LLP
222 Bay Street
Toronto ON
M5K 1J7

Ms. Pesme

RE: RFS-TBS-OTB-OPCD-16

The Ministry is pleased to advise that you are the selected proponent pursuant to the above-noted procurement process.

Enclosed please find two (2) copies of the Agreement for your signature. Please return one copy of the executed Agreement within ten (10) business days of receipt of this notice:

Please be advised that this notice of selection letter should not be construed as permission from the Ministry to begin the work detailed in the Agreement. The Ministry will not be responsible or liable for any expenses related to the Deliverables, and the selected proponent is not to accept work requests prior to the execution of the Agreement by the Ministry. Work may begin pursuant to the Agreement when:

(a) the Agreement signed by both parties is returned to the selected proponent, and

(b) written permission is expressly given to the Supplier by the Ministry Representative to begin work under the Agreement.

.../2

FORM OF STATEMENT OF WORK – OPS ENTITY

Statement of Work for Management Consulting Services

This Statement of Work no. – **RFS TBS-OTB-OPCD-16 made in duplicate and effective October 31, 2016 ending on February 10, 2018 with a 6 month extension option in favour of the ministry with no increase in ceiling price.**

Ernst & Young LLP (the "Vendor" or "Ernst & Young") and Her Majesty the Queen in right of Ontario as represented by the President of the Treasury Board (the "Client") enter into this Statement of Work pursuant to the Master Agreement for Management Consulting Services made as of **June 16, 2014** between the Vendor and Her Majesty the Queen in Right of Ontario as represented by the Minister of Government and Consumer Services (such Master Agreement, as from time to time amended, is referred to as the "Master Agreement").

In consideration of their respective agreements set out below, the parties agree as follows:

1. *Structure* - The terms and conditions of the Master Agreement are hereby incorporated by reference in this Statement of Work to the same effect as if fully set out in this Statement of Work. This document and the Master Agreement together comprise a separate Statement of Work between the Vendor and the Client. All capitalized terms used in this Statement of Work without definition have the meanings ascribed to them in the Master Agreement. In the event of any conflict or inconsistency between any term or provision of this Statement of Work and any term or provision of the Master Agreement, the terms and provisions of the Master Agreement shall govern.

2. *Statement of Work* - The Vendor agrees to provide to the Client, and the Client agrees to acquire from the Vendor, the Services and Deliverables described in this Statement of Work upon and subject to the terms of this Statement of Work.

3. *Maximum Price:* C$ 450,000.00 does not include HST

4. *Project Start Date:* October 31, 2016

5. *Project End Date:* February 10, 2018 (with a 6 month extension option)

6. *Scope of Services and Deliverables* - The Services and Deliverables to be provided by the Vendor under this Statement of Work include the following

    - Advice on complex accounting issues and accounting for complex financing transactions;
    - Capital investment, joint ventures and private-public partnerships
    - Proposed government acquisitions and divestments;
    - Providing expert advice on specialized issues such as the implications of changes in public sector accounting standards and the interpretation and

Ivan Chittenden will be supported by Suzie Gignac, Lee Anne Probert, Daniel Mortimer and Blake Langill and other staff as required, depending on the nature of advisory services request, Please note all individuals mentioned above have to sign the confidentiality agreement form and go through security requirements. Any staff who are subsequently assigned to this SOW will be subject to the same procedures.

14. **Invoices** - Invoices for payment of any charges under this Statement of Work shall be sent to:

Client:	Treasury Board Secretariat, Office of the Provincial Controller Division
Branch:	Accounting Policy and Financial Reporting
Representative:	Nadine Petsche
Title:	Director, Accounting Policy and Financial Reporting
Phone number:	416-325-8027
Email:	Nadine.petsche@ontario.ca

15. *Knowledge Transfer:* The Vendor will work closely with the Client to ensure knowledge transfer to the Client's designated staff, and as necessary with the Auditor General.

16. *Destruction of Information* - The Vendor shall destroy all information contained on any media that was provided by the Client or at the direction of the Client, if requested to do so by the Client, except as required to be retained in accordance with professional standards requirements. The Client may choose to witness this destruction. The Vendor shall provide a certificate of destruction to the Client, if requested to do so by the Client.

17. *Indemnity* – the indemnity set out in the Master Agreement applies to this assignment.

18. *Client Representative and Receipt of Notices*

Client's address for receipt of notices:	**Treasury Board Secretariat**
Client Representative:	**Nadine Petsche**
Telephone number:	**416-325-8027**
E-mail:	**Nadine.petsche@ontario.ca**

CONFIDENTIALITY AGREEMENT

Confidentiality Agreement

During and following the term of the Agreement between **Ernst & Young LLP** (the "Vendor") and Her Majesty the Queen in right of Ontario as represented by the **Treasury Board Secretariat** and during and following the term of each Statement of Work entered into by the Vendor and pursuant to the Agreement (collectively, the "Agreements"), the undersigned agrees with the Vendor to keep confidential and secure all Confidential Information to which the undersigned may have access to in the course of the performance of services pursuant to any of the Agreements (including requests for services) or otherwise in connection with any of the Agreements (including requests for services). "Confidential Information" means all information of the Ontario Public Service and of the Client's subcontractors at any tier of subcontracting that is confidential by its nature or in the circumstances in which it is received, including all confidential information in the custody or control of the Ontario Public Service, regardless of whether it is identified as confidential or not, and whether recorded or not, and however fixed, stored, expressed or embodied, which comes into the knowledge, possession or control of the Vendor in connection with any of the Agreements. "Ontario Public Service" means the ministries and other administrative units of Her Majesty the Queen in right of Ontario ("Ontario") over which ministers of Ontario preside, and for the purposes of this Confidentiality Agreement, includes Ontario and Ontario's agencies, boards, commissions and Crown corporations, offices of an officer of the Legislative Assembly or of the Ontario Legislature and Listed Entities, and "**OPS**" has the same meaning.

The undersigned acknowledges that the Client is bound to maintain custody of or control over information, material and records, however recorded, within the meaning of the *Freedom of Information and Protection of Privacy Act* ("FIPPA"). The undersigned agrees to comply with the privacy provisions of the Agreements in the course of providing services pursuant to the Agreements.

The undersigned shall not directly or indirectly disclose, destroy, exploit or use any Confidential Information except for the purpose of performing services pursuant to the Agreements. The undersigned shall not copy any Confidential Information, in whole or in part, unless copying is essential for the performance of services pursuant to the Agreements. On each copy, the undersigned must reproduce all notices that appear on the original.

The undersigned acknowledges that the Vendor is obliged to implement and maintain measures to ensure the security and integrity of Confidential Information and to protect it against loss, alteration and destruction and against access by unauthorized persons, and to select, implement, use and maintain the most appropriate products, tools, measures and procedures to do so. The undersigned covenants and agrees to adhere to all of the measures instituted by the Vendor.

The undersigned agrees to return all Confidential Information, including all copies and portions thereof, to the Vendor or to the Client with no copy kept by the undersigned as soon as the need to possess them ends, at the request of the Client, and in any event, prior to concluding the performance of services pursuant to the applicable Agreements.

Name: Suzanne Gignac

Signature: S Gignac

Date: Nov 2/16.

Witness: Donna Monaghan

Signature: D Monaghan

Date: Nov 2/16

Appendix D – Tax Compliance Declaration Form

The Ontario Government expects all suppliers to meet their Ontario tax obligations on a timely basis. In this regard, proponents are advised that their Ontario tax obligations, if any, must be in good standing in order to be considered for a contract award (see Section 3.2.3 of the RFP). In order to be considered for a contract award, the proponent must submit the following tax compliance status statement and the following consent to disclosure:

Declaration

I/WE hereby certify that **Ernst & Young LLP** (the "Proponent") at the time of submitting its proposal, is in full compliance with all applicable Ontario tax statutes, whether administered by the Treasury Board Secretariat or by the Canada Revenue Agency, and that, in particular, all returns required to be filed have been filed and all taxes due and payable under those statutes have been paid or satisfactory arrangements for their payment have been made and maintained; or the Proponent will take all necessary steps prior to being considered for contract award in order to be in full compliance with all applicable Ontario tax statutes.

(Please check applicable box)
The Proponent ☐ is / ☐ is not a corporation subject to Ontario corporate tax under the *Taxation Act, 2007* (Ontario).
(Please insert Proponent's Business Number) ***BN# 13086 6262***

Consent to Disclosure

The Proponent consents to the Ministry of Finance releasing the taxpayer information to the Ministry of Finance as necessary for the purpose of verifying the Proponent's compliance with Ontario tax statutes.

The Proponent consents to the Ministry of Finance releasing taxpayer information to the Requesting Ministry as necessary for the purpose of verifying the Proponent's compliance with Ontario tax statutes.

Dated at Toronto this 7 day of November 2016

(Authorized signing officer)

ALAN SMITH CFO, Partner.

(Print Name) **(Title)**

I have authority to bind the Proponent.

CONFIDENTIALITY AGREEMENT

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During and following the term of the Agreement between **Ernst & Young LLP** (the "Vendor") and Her Majesty the Queen in right of Ontario as represented by the **Treasury Board Secretariat** and during and following the term of each Statement of Work entered into by the Vendor and pursuant to the Agreement (collectively, the "Agreements"), the undersigned agrees with the Vendor to keep confidential and secure all Confidential Information to which the undersigned may have access to in the course of the performance of services pursuant to any of the Agreements (including requests for services) or otherwise in connection with any of the Agreements (including requests for services). "Confidential Information" means all information of the Ontario Public Service and of the Client's subcontractors at any tier of subcontracting that is confidential by its nature or in the circumstances in which it is received, including all confidential information in the custody or control of the Ontario Public Service, regardless of whether it is identified as confidential or not, and whether recorded or not, and however fixed, stored, expressed or embodied, which comes into the knowledge, possession or control of the Vendor in connection with any of the Agreements. "Ontario Public Service" means the ministries and other administrative units of Her Majesty the Queen in right of Ontario ("Ontario") over which ministers of Ontario preside, and for the purposes of this Confidentiality Agreement, includes Ontario and Ontario's agencies, boards, commissions and Crown corporations, offices of an officer of the Legislative Assembly or of the Ontario Legislature and Listed Entities, and "**OPS**" has the same meaning.

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Name: BLAKE LANGILL

Signature:

Date: Nov 1/16

Witness: Nabeel Pabani

Signature:

Date: Nov 1/16

CONFIDENTIALITY AGREEMENT

Confidentiality Agreement

During and following the term of the Agreement between **Ernst & Young LLP** (the "Vendor") and Her Majesty the Queen in right of Ontario as represented by the **Treasury Board Secretariat** and during and following the term of each Statement of Work entered into by the Vendor and pursuant to the Agreement (collectively, the "Agreements"), the undersigned agrees with the Vendor to keep confidential and secure all Confidential Information to which the undersigned may have access to in the course of the performance of services pursuant to any of the Agreements (including requests for services) or otherwise in connection with any of the Agreements (including requests for services). "Confidential Information" means all information of the Ontario Public Service and of the Client's subcontractors at any tier of subcontracting that is confidential by its nature or in the circumstances in which it is received, including all confidential information in the custody or control of the Ontario Public Service, regardless of whether it is identified as confidential or not, and whether recorded or not, and however fixed, stored, expressed or embodied, which comes into the knowledge, possession or control of the Vendor in connection with any of the Agreements. "Ontario Public Service" means the ministries and other administrative units of Her Majesty the Queen in right of Ontario ("Ontario") over which ministers of Ontario preside, and for the purposes of this Confidentiality Agreement, includes Ontario and Ontario's agencies, boards, commissions and Crown corporations, offices of an officer of the Legislative Assembly or of the Ontario Legislature and Listed Entities, and "**OPS**" has the same meaning.

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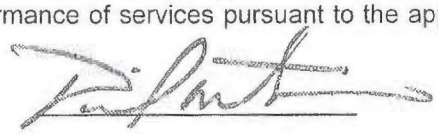
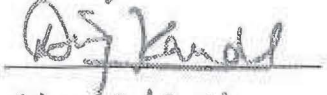
The undersigned agrees to return all Confidential Information, including all copies and portions thereof, to the Vendor or to the Client with no copy kept by the undersigned as soon as the need to possess them ends, at the request of the Client, and in any event, prior to concluding the performance of services pursuant to the applicable Agreements.

Name: DANIEL MORTIMER

Signature: 

Date: NOV 2/2016

Witness: Divya Kamath

Signature: 

Date: NOV 2/2016

CONFIDENTIALITY AGREEMENT

Confidentiality Agreement

During and following the term of the Agreement between **Ernst & Young LLP** (the "Vendor") and Her Majesty the Queen in right of Ontario as represented by the **Treasury Board Secretariat** and during and following the term of each Statement of Work entered into by the Vendor and pursuant to the Agreement (collectively, the "Agreements"), the undersigned agrees with the Vendor to keep confidential and secure all Confidential Information to which the undersigned may have access to in the course of the performance of services pursuant to any of the Agreements (including requests for services) or otherwise in connection with any of the Agreements (including requests for services). "Confidential Information" means all information of the Ontario Public Service and of the Client's subcontractors at any tier of subcontracting that is confidential by its nature or in the circumstances in which it is received, including all confidential information in the custody or control of the Ontario Public Service, regardless of whether it is identified as confidential or not, and whether recorded or not, and however fixed, stored, expressed or embodied, which comes into the knowledge, possession or control of the Vendor in connection with any of the Agreements. "Ontario Public Service" means the ministries and other administrative units of Her Majesty the Queen in right of Ontario ("Ontario") over which ministers of Ontario preside, and for the purposes of this Confidentiality Agreement, includes Ontario and Ontario's agencies, boards, commissions and Crown corporations, offices of an officer of the Legislative Assembly or of the Ontario Legislature and Listed Entities, and "**OPS**" has the same meaning.

The undersigned acknowledges that the Client is bound to maintain custody of or control over information, material and records, however recorded, within the meaning of the *Freedom of Information and Protection of Privacy Act* ("FIPPA"). The undersigned agrees to comply with the privacy provisions of the Agreements in the course of providing services pursuant to the Agreements.

The undersigned shall not directly or indirectly disclose, destroy, exploit or use any Confidential Information except for the purpose of performing services pursuant to the Agreements. The undersigned shall not copy any Confidential Information, in whole or in part, unless copying is essential for the performance of services pursuant to the Agreements. On each copy, the undersigned must reproduce all notices that appear on the original.

The undersigned acknowledges that the Vendor is obliged to implement and maintain measures to ensure the security and integrity of Confidential Information and to protect it against loss, alteration and destruction and against access by unauthorized persons, and to select, implement, use and maintain the most appropriate products, tools, measures and procedures to do so. The undersigned covenants and agrees to adhere to all of the measures instituted by the Vendor.

The undersigned agrees to return all Confidential Information, including all copies and portions thereof, to the Vendor or to the Client with no copy kept by the undersigned as soon as the need to possess them ends, at the request of the Client, and in any event, prior to concluding the performance of services pursuant to the applicable Agreements.

Name: Ivan Chi-Henden

Signature:

Date: Nov 4/16

Witness: BLAKE LANGILL

Signature:

Date: Nov 4/16

CONFIDENTIALITY AGREEMENT

Confidentiality Agreement

During and following the term of the Agreement between **Ernst & Young LLP** (the "Vendor") and Her Majesty the Queen in right of Ontario as represented by the **Treasury Board Secretariat** and during and following the term of each Statement of Work entered into by the Vendor and pursuant to the Agreement (collectively, the "Agreements"), the undersigned agrees with the Vendor to keep confidential and secure all Confidential Information to which the undersigned may have access to in the course of the performance of services pursuant to any of the Agreements (including requests for services) or otherwise in connection with any of the Agreements (including requests for services). "Confidential Information" means all information of the Ontario Public Service and of the Client's subcontractors at any tier of subcontracting that is confidential by its nature or in the circumstances in which it is received, including all confidential information in the custody or control of the Ontario Public Service, regardless of whether it is identified as confidential or not, and whether recorded or not, and however fixed, stored, expressed or embodied, which comes into the knowledge, possession or control of the Vendor in connection with any of the Agreements. "Ontario Public Service" means the ministries and other administrative units of Her Majesty the Queen in right of Ontario ("Ontario") over which ministers of Ontario preside, and for the purposes of this Confidentiality Agreement, includes Ontario and Ontario's agencies, boards, commissions and Crown corporations, offices of an officer of the Legislative Assembly or of the Ontario Legislature and Listed Entities, and "**OPS**" has the same meaning.

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Name: LEE ANNE PIGGOTT

Signature: [signature]

Date: NOVEMBER 2, 2016

Witness: CHRIS MADSEN

Signature: [signature]

Date: 11/02/2016

FW_ Request for deadline extension - RFS for complex accounting services.rtf

From: Virani, Shyrose (TBS) []
To: Petsche, Nadine (FIN) [Nadine.Petsche@ontario.ca]
Subject: FW: Request for deadline extension - RFS for complex accounting services
Date: Wednesday, April 26, 2017 17:01:28
Attachment 1: image001.gif

From: Suzie Gignac [suzie.r.gignac@ca.ey.com]
Sent: April 26, 2017 3:55 PM
To: Virani, Shyrose (TBS)
Cc: Blake Langill
Subject: RE: Request for deadline extension - RFS for complex accounting services

That is greatly appreciated.

Thank you,

Suzie

Suzanne Gignac, Partner, CPA, CA

Ernst & Young LLP / Ernst & Young s.r.l./S.E.N.C.R.L.

99 Bank Street, Suite 1200, Ottawa, Ontario K1P 6B9, Canada

Direct: 1 613 598 4376 | Fax: 1 613 232 5324 | suzie.r.gignac@ca.ey.com

Executive Coordinator, Carolyn Roberts | Phone: 613 598 4844 | carolyn.roberts@ca.ey.com

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From: Virani, Shyrose (TBS) [mailto:Shyrose.Virani@ontario.ca]
Sent: Wednesday, April 26, 2017 3:55 PM
To: Suzie Gignac <suzie.r.gignac@ca.ey.com>
Cc: Blake Langill <blake.w.langill@ca.ey.com>
Subject: RE: Request for deadline extension - RFS for complex accounting services

Hi Suzie:

At the most we can give you one week extension i.e. Friday, May 5, 2017. Please confirm.

Thanks

Shyrose

From: Suzie Gignac [mailto:suzie.r.gignac@ca.ey.com]
Sent: April 26, 2017 1:48 PM
To: Virani, Shyrose (TBS)
Cc: Petsche, Nadine (TBS); Blake Langill
Subject: Request for deadline extension - RFS for complex accounting services

Hi Shyrose:
With respect to the RFS for complex accounting services related to Electricity Sector Entities currently due April 28, 2017, we would like to request an extension to the deadline to Friday, May 12, 2017.
Thank you,
Suzie

Suzanne Gignac, CPA, CA
Ernst & Young LLP
613 598 4376

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image001.pdf

FW_ Response to RFS TBS-OTB-OPCD-15.rtf

From: Petsche, Nadine (TBS) []
To: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
Subject: FW: Response to RFS TBS-OTB-OPCD-15
Date: Tuesday, July 05, 2016 08:32:24
Attachment 1: image001.gif
Attachment 2: EY Submission RFS TBS-OTB-OPCD-15 - Main Submission.pdf
Attachment 3: EY Submission RFS TBS-OTB-OPCD-15 - Pricing Supplement.pdf

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From: Blake Langill [mailto:blake.w.langill@ca.ey.com]
Sent: June 30, 2016 3:07 PM
To: Petsche, Nadine (TBS)
Cc: Ivan Chittenden; Suzie Gignac; Lee Anne Probert
Subject: Response to RFS TBS-OTB-OPCD-15

Nadine,

Thank you very much for allowing us to respond to your RFS. Please find attached our response; as per the instructions, we have separately attached the pricing supplement.

We look forward to hopefully working with you again.

Have a great weekend.

Best regards,

-blake

--

Blake Langill | Partner

Ernst & Young LLP

222 Bay St., P.O. Box 251, Toronto, ON M5K 1J7, Canada

Office: +1-416-943-3556 | blake.w.langill@ca.ey.com

Website: http://www.ey.com

Assistant: Amanda Craig | Phone: +1-416-943-4581 | amanda.craig@ca.ey.com

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image001.pdf

EY Submission RFS TBS-OTB-OPCD-15 - Main Submission.stub.pdf

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EY Submission RFS TBS-OTB-OPCD-15 - Pricing Supplement.stub.pdf

y settings or invalid file format do not permit using EY Submission RFS TBS-OTB-OPCD-15 - Pricing Supplement.pdf (16458

FW_ SOW.rtf

From: Petsche, Nadine (TBS) []
To: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
Subject: FW: SOW
Date: Monday, June 19, 2017 15:48:15
Attachment 1: OTB.PDF

From: Picard, Michel [mailto:mpicard@kpmg.ca]
Sent: June 19, 2017 11:31 AM
To: Petsche, Nadine (TBS)
Subject: SOW

Hi Nadine,

As requested, please find enclosed the affirmation letter relating to conflicts.

I also enclosed other professional staff that may be involved on the engagement and their per diem based on their geographical locations.

1. Lois Ouellette, partner in St-Catherines ($2,350)

2. Jeremy Destefanis, senior manager in Toronto ($2,800)

3. Clever Ngorima, senior manager in Toronto ($2,800)

4. Alexandra Duret, Senior manager in Ottawa ($1,975)

5. Dennis Weatherdon, Senior 3 in Ottawa ($1,275)

Should you require any additional information, please do not hesitate to contact me.

Michel Picard, CPA, CA

Partner, Accounting Advisory Services

KPMG LLP

333 Bay Street, Suite 4600

Toronto, Ontario, M5H 2S5

T 416 777 8414

M 416 560 2569

mpicard@kpmg.ca

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Our lawyers have recommended that we provide certain disclaimer language with our messages. Rather than including them here, we're drawing your attention to the following links where the full legal wording appears.

- **Disclaimer concerning confidential and privileged information/unintended recipient** (http://disclaimer.kpmg.ca).
- **Disclaimer concerning tax advice** (http://taxdisclaimer.kpmg.ca).

If you are unable to access the links above, please cut and paste the URL that follows the link into your browser.

OTB.PDF

KPMG LLP
Chartered Accountants
Bay Adelaide Centre
Suite 4600
333 Bay Street
Toronto ON
M5H 2S5

Telephone (416) 777-8500
Fax (416) 777-8818
www.kpmg.ca

Private & Confidential

Ministry of Finance
7 Queen's Park Crescent
Toronto ON M7A 1Y7
Attention: Nadine Petsche

June 16, 2017

RE: RFS-TBS-OTB-OPCD-21

This letter shall serve as our affirmation, in connection with the first project described in the Statement of Work for Management Consulting Services between KPMG LLP ("KPMG") and Her Majesty the Queen in Right of Ontario dated June 7, 2017 (the "SOW"), of the absence of a conflict of interest on the part of KPMG.

It is KPMG's understanding that the first project under the SOW shall be to provide advice in respect of whether Hydro One is controlled by the Province of Ontario such that Hydro One may be consolidated for provincial accounting purposes using the modified equity accounting method.

Based on the information provided to KPMG in respect of the first project under the SOW as described above, KPMG confirms that it does not have a legal or professional conflict of interest in connection with such first project. However, as the definition of the term "conflict of interest" in the Master Services Agreement between the parties goes beyond legal and professional conflicts of interest to also potentially capture business conflicts, KPMG hereby advises the Office of the Treasury Board ("OTB") that it is the auditor of Hydro One, and that KPMG performs significant tax and advisory services for Hydro One.

Out of an abundance of caution, KPMG will establish an ethical wall between the engagement team performing work in respect of the first project under the SOW and the engagement team performing the audit of Hydro One.

We understand that OTB acknowledges the foregoing potential business conflict, and that OTB is comfortable proceeding with the first project under the SOW notwithstanding such potential business conflict.

We further understand that OTB acknowledges and agrees that, in connection with each project under the SOW, KPMG shall be entitled to take all steps as are required in order to comply with its legal, regulatory and professional obligations, and that KPMG shall not be required to perform any services under the SOW which would result in non-compliance by KPMG with its legal, regulatory and professional obligations.

KPMG LLP is a Canadian limited liability partnership and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. KPMG Canada provides services to KPMG LLP.

If OTB does not agree with any of the foregoing, please advise me accordingly.

Yours truly,

Michel Picard
Partner

FW_ SOW.rtf

From: Virani, Shyrose (TBS) []
To: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
Subject: FW: SOW
Date: Wednesday, June 21, 2017 10:37:06
Attachment 1: confidentiality agreement.doc
Attachment 2: SOW.DOCX

Nadine, please let me know if you are okay with the changes

From: Picard, Michel [mailto:mpicard@kpmg.ca]
Sent: June 21, 2017 10:22 AM
To: Virani, Shyrose (TBS)
Subject: SOW

Hi Shyrose,

Please find enclosed our comments on the SOW and confidentiality agreement.

Michel Picard, CPA, CA

Partner, Accounting Advisory Services

KPMG LLP

333 Bay Street, Suite 4600

Toronto, Ontario, M5H 2S5

T 416 777 8414

M 416 560 2569

mpicard@kpmg.ca

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Our lawyers have recommended that we provide certain disclaimer language with our messages. Rather than including them here, we're drawing your attention to the following links where the full legal wording appears.

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- **Disclaimer concerning tax advice** (http://taxdisclaimer.kpmg.ca).

If you are unable to access the links above, please cut and paste the URL that follows the link into your browser.

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confidentiality agreement.pdf

CONFIDENTIALITY AGREEMENT

Confidentiality Agreement

During and for 5 years following the term of the Agreement between **KPMG LLP** (the "Vendor") and Her Majesty the Queen in right of Ontario as represented by the **Treasury Board Secretariat** and during and following the term for 5 years of each Statement of Work entered into by the Vendor and pursuant to the Agreement (collectively, the "Agreements"), the undersigned agrees with the Vendor to use commercially reasonable efforts to keep confidential and secure all Confidential Information to which the undersigned may have access to in the course of the performance of services pursuant to any of the Agreements (including requests for services) or otherwise in connection with any of the Agreements (including requests for services). "Confidential Information" means all information of the Ontario Public Service and of the Client's subcontractors at any tier of subcontracting that is confidential by its nature or in the circumstances in which it is received, including all confidential information in the custody or control of the Ontario Public Service, regardless of whether it is identified as confidential or not, and whether recorded or not, and however fixed, stored, expressed or embodied, which comes into the knowledge, possession or control of the Vendor in connection with any of the Agreements. "Ontario Public Service" means the ministries and other administrative units of Her Majesty the Queen in right of Ontario ("Ontario") over which ministers of Ontario preside, and for the purposes of this Confidentiality Agreement, includes Ontario and Ontario's agencies, boards, commissions and Crown corporations, offices of an officer of the Legislative Assembly or of the Ontario Legislature and Listed Entities, and "**OPS**" has the same meaning.

The undersigned acknowledges that the Client is bound to maintain custody of or control over information, material and records, however recorded, within the meaning of the *Freedom of Information and Protection of Privacy Act* ("FIPPA"). The undersigned agrees to comply with the privacy provisions of the Agreements in the course of providing services pursuant to the Agreements.

The undersigned shall not directly or indirectly disclose, destroy, exploit or use any Confidential Information except for the purpose of performing services pursuant to the Agreements, or as otherwise required in compliance with applicable law, regulation or professional standards. The undersigned shall not copy any Confidential Information, in whole or in part, unless copying is essential for the performance of services pursuant to the Agreements. On each copy, the undersigned must reproduce all notices that appear on the original.

The undersigned acknowledges that the Vendor is obliged to implement and maintain commercially reasonable measures to ~~ensure~~ protect the security and integrity of Confidential Information and to protect it against loss, alteration and destruction and against access by unauthorized persons, and to select, implement, use and maintain ~~the most~~ appropriate products, tools, measures and procedures to do so. The undersigned covenants and agrees to adhere to all of the measures instituted by the Vendor.

Except as otherwise required in compliance with applicable professional standards, t~~T~~he undersigned agrees to return all Confidential Information, including all copies and portions thereof, to the Vendor or to the Client with no copy kept by the undersigned as soon as the need to possess them ends, at the request of the Client, and in any event, prior to concluding the performance of services pursuant to the applicable Agreements.

Nothing in this agreement shall prevent the Vendor from conducting its engagements for the Treasury Board Secretariat in accordance with firm policies and professional standards, or from conducting its normal review and quality assurance processes with regard to engagements for the Treasury Board Secretariat.

Name: _____ Signature: _____

Date: _____

Witness: _____ Signature: _____

Date: _____

SOW.pdf

STATEMENT OF WORK- MINISTRIES

Statement of Work for Management Consulting Services

This Statement of Work no. **TBS-OTB-OPCD-21** made in duplicate and effective **June 7, 2017**

KPMG LLP (the "Vendor") and Her Majesty the Queen in Right of Ontario (the "Client") as represented by the President of the Treasury Board enter into this Statement of Work pursuant to the Master Agreement for Management Consulting Services made as of **June 16, 2014** between the Vendor and Her Majesty the Queen in Right of Ontario as represented by the Minister of Government and Consumer Services (such Master Agreement, as from time to time amended, is referred to as the "Master Agreement"). This document and the Master Agreement together comprise a separate Statement of Work between the Vendor and the Client.

In consideration of their respective agreements set out below, the parties agree as follows:

1. *Structure* - The terms and conditions of the Master Agreement are hereby incorporated by reference in this Statement of Work to the same effect as if fully set out in this Statement of Work. This document and the Master Agreement together comprise a separate Statement of Work between the Vendor and the Client. All capitalized terms used in this Statement of Work without definition have the meanings ascribed to them in the Master Agreement. In the event of any conflict or inconsistency between any term or provision of this Statement of Work and any term or provision of the Master Agreement, the terms and provisions of the Master Agreement shall govern.

2. *Statement of Work* — Except where prohibited by applicable law, regulation or professional standards, t~~T~~he Vendor agrees to provide to the Client, and the Client agrees to acquire from the Vendor, the Services and Deliverables described in this Statement of Work upon and subject to the terms of this Statement of Work.

3. *Maximum Price:* C$**$299,000,** plus HST

4. *Project Start Date:* **June 7, 2017**

5. *Project End Date:* **August 30, 2018 (with an option to extend 4 months with no increase to the Maximum Price)**

   The Client may, by giving written notice to the Vendor no later than 10 days before the initial Project End Date, extend the agreement for up to 4 additional months, ending December 31, 2018. Additionally, the Client may engage the Vendor in optional follow-on work that will result in changes to the scale and/or scope of the engagement. All additional work will be set out in a mutually agreed upon Change Order in accordance with the terms of the Master Agreement.

6. *Scope of Services and Deliverables* - The Services and Deliverables to be provided by the Vendor under this Statement of Work include the following:

   Working with management of OPCD's Accounting Policy and Financial Reporting Branch (APFR), the consultants will be expected to provide support for accounting analysis related to:

   - Consolidation of the Province's electricity sector entities,
   - Control assessments related to electricity sector entities
   - The impact of accounting changes by consolidated organizations on the Province's consolidated financial statements.
   - If required the service provider will be expected to work with OPCD to present findings and analysis to the Office of the Auditor General.

The consultants may be required to perform the following duties

- Develop issues notes summarizing the analysis and conclusions as input to the Province's financial accounting and reporting processes.
- Collaborate with OPCD and other stakeholders to gather and assess relevant information necessary to inform the analysis
- Present issues paper to senior management
- Support OPCD in presentation of issues analysis and conclusions to the Office of the Auditor General

7. *Ownership and Licences* - **Attachment D** of the Master Agreement forms a part of this Statement of Work.

8. *Communications and Reporting* – The Vendor must keep the Client informed of status, including progress reports and any other types of reports or reporting requirements, as described in the Vendor's submission.

9. *Contingency Plan* – The Vendor must manage potential areas wherein problems may arise in accordance with its contingency planning practices as described in the Vendor's submission.

10. *Work Location* – All meetings will be within Greater Toronto Area.

11. *Working Hours* – The Client's normal working hours are 7.25 hours per day, normal working hours are between 8:15 a.m. to 4:30 p.m., Monday to Friday inclusive. If required, the Vendor must provide Services outside of these normal working hours and on non-Business Day(s).

12. *Administrative Services and Supplies* – All administrative services and supplies used by the Vendor to complete the Services will be provided to the Client at no additional charge.

13. *Billing and Payment Process* - **The Vendor shall provide the Client with quarterly billing statements that outline the Per Diem Charges no later than 10 Business Days after the end of each quarter.**

    Billing statements should include **dates, hours worked and services performed** .

14. Names and Roles of Vendor's Personnel:

Individual's Legal Name	Individual's Role and Experience Level	Service Category
Michel Picard	Senior Consultant	Accounting
Bailey Church	Intermediate Consultant	
Andrew Newman	Back-up/Subject Matter Expert	
Janet Allen	Back-up/Subject Matter Expert	
Lois Ouellette	Partner	
Jeremy Destefanis	Senior Manager	
Clever Ngorima	Senior Manager	
Alexandra Duret	Senior Manager	
Dennis Weatherdon	Senior 3 in Ottawa	

15. *Invoices* - Invoices for payment of any charges under this Statement of Work shall be sent to:

Client: **Treasury Board Secretariat**
Office of the Provincial Controller Division
Branch: **Accounting Policy and Financial Reporting**

Phone number: **416-325-8027**
Email: **Nadine.petsche@ontario.ca**

16. *Knowledge Transfer:* The Vendor will work closely with the client to ensure knowledge transfer to the client's designated staff through each phase of the project and at key milestone opportunities. The Client will also be able to access to the Vendor's Collaboration Site which will help with Knowledge Transfer.

17. *Destruction of Information* - The Vendor shall destroy all information contained on any media, if requested to do so by the Client, except as required to be retained in accordance with professional standards requirements. The Client may choose to witness this destruction. The Vendor shall provide a certificate of destruction to the Client, if requested to do so by the Client.

18. "Future Engagements/Transactions – The information that will be handled by the Vendor under this Statement of Work is highly confidential and can provide the holder with a potential unfair or improper advantage in future engagements/transactions related to the scope of this Statement of Work ("Future Engagement/Transaction") where open competition or negotiation occurs. As a result, the Vendor acknowledges that the firms or persons that have been contracted with or retained to work on this initiative can, depending on the engagement/transaction, become ineligible to submit a submission, assist in the preparation of a submission, or provide advice on any Future Engagement/Transaction that arises from or follows this assignment, where a potential unfair or improper advantage arises as a result of the confidential information obtained under this Statement of Work.

    The names of all advisors to this process may be published in any such Future Transactions to ensure adherence by potential bidders to the above requirement.

19. Indemnity – the indemnity set out in the Master Agreement applies to this assignment.

20. *Client Representative and Receipt of Notices*

Client's address for receipt of notices:	Treasury Board Secretariat Office of the Provincial Controller Division Accounting Policy and Financial Reporting Branch 7 Queen's Park Cres, 2nd Flr Toronto ON M7A 1Y7
Client Representative:	Nadine Petsche
Telephone number:	416-325-8027
E-mail:	Nadine.Petsche@ontario.ca
Backup Client Representative:	Shyrose Virani
Telephone number:	416-325-1448
E-mail:	Shyrose.Virani@ontario.ca

21. *Vendor Representative and Receipt of Notices*

Vendor's address for receipt of notices:	333 Bay Street, Suite 4600 Toronto ON M5H 2S5
Vendor Representative:	Michel Picard, Partner, Accounting Advisory
Telephone number:	416-777-8414
E-mail:	mpicard@KPMG.ca
Backup Vendor Representative:	Bailey Church, Partner, Accounting Advisory
Telephone number:	613-212-3698
E-mail:	bchurch@kpmg.ca

IN WITNESS WHEREOF the parties hereto have executed this Statement of Work as of the date first above written.

HER MAJESTY THE QUEEN in right of Ontario as represented by **the President of the Treasury Board**

Per:

Signature: _____

Name: _____

Title: _____

Pursuant to delegated authority.

[INSTRUCTIONS: INSERT LEGAL NAME OF THE VENDOR]

Per:

Signature: _____

Name: _____

Title: _____

I have the authority to bind the Vendor.

FW_ Suggestions for edits (NPP) .rtf

From: Petsche, Nadine (TBS) []
To: Picard, Michel (mpicard@kpmg.ca) [mpicard@kpmg.ca]; samir chhelavda (Samir.Chhelavda@HydroOne.com) [Samir.Chhelavda@HydroOne.com]
CC: Schwab-Pflug, Emma (ENERGY) [Emma.Schwab-Pflug@ontario.ca]
Subject: FW: Suggestions for edits (NPP)
Date: Tuesday, March 21, 2017 22:23:50

Michel/Samir,

I understand that there will likely be a call at 9 am to discuss possible edits to the docs (see below). It would be good if you were available to participate. Will forward details when they become available.

Thanks.

Nadine

From: Petsche, Nadine (TBS)
Sent: March-21-17 10:02 PM
To: stephen.ashbourne@blakes.com; Schwab-Pflug, Emma (ENERGY)
Subject: Suggestions for edits (NPP)

Thanks Stephen.

For Emma's (MOE's) purpose, the PSAS reference I quoted earlier as quite relevant to addressing the remaining terminology is:

0.14 There are a variety of ways to govern the financial and operating policies of an organization. For example:

(a) a government may establish an organization's fundamental purpose and eliminate or significantly limit the ability of the organization to make future decisions by predetermining the financial and operating policies of the organization;

(b) a government may direct the financial and operating policies of an organization on an ongoing basis; or

(c) a government may veto, overrule or modify the financial and operating policies established by an organization.

With the above guidance in mind, to further mitigate the accounting risk, I would further suggest edits as noted below. I will review additional feedback from H1 and provide additional comments, if in any, shortly (I hope).

Nadine

****

"Any Trustee initiated changes to the Trust Declaration ARE EXPECTED TO BE consistent (vs. can't conflict with) with the Principles Annex, although the Trustee may amend the Trust Declaration to, among other things, add to or reasonably MODIFY (vs. clarify) the principles set forth in the Principles [npp – these changes will ensure consistency with messaging that the principles are non-compulsory and subject to change vs. clarification]

Trust Declaration:

Section 6.1 of the Trust Declaration …subject to the TPA, the Trustee shall have the power in its sole and absolute discretion to amend the Declaration [provided that ~~no~~ any amendments are expected to be consistent with ~~shall not conflict with~~ the principles set forth in the Principles Annex and to take into consideration the suggested scope or effect of the permitted delegations and activities of any Administrative Services Agent pursuant to the Permitted Delegations Annex.] [npp – see above – consistency in messaging important]

3.2Extension. The term of the Agreement may be extended by further agreement between the Parties.

3.3 Extension of the Declaration of Trust. ~~If the Province determines that an extension~~

~~of the Declaration of Trust (beyond the "Final Distribution Date" and time for termination, each as specified or determined thereunder) is consistent with and in furtherance of the Purpose and the Province's original intentions and expectations in establishing the Project, the Province may request that the Recipient extend the Declaration of Trust to a date specified by the Province in a Notice (such date not to be later than •), whereupon the Recipient, Where the parties agree under 3.2, to an extension of the date, it is expected that so long as the Trustee does not have a reasonable basis to believe that such an extension would be inconsistent with the Purpose or weaken the protections intended for the benefit of the Trustee pursuant to the Declaration of Trust~~, If under 3.2, the parties agree that the term of the Agreement may be extended, ~~will~~ it is expected that the Trust will undertake such actions as it may consider to be necessary or appropriate to so extend the Declaration of Trust, including by amending the Declaration of Trust to provide for such an extension and to modify any other term or requirement as would be necessary or prudent to conform such term or requirement in light of such extension.

Schedule C (last para)

The Province recognizes that the foregoing may involve the Recipient entering into agreements as may be the Recipient considers to be necessary or expedient, including any required amendment or amendment and restatement of the Declaration of Trust. Funds may be expended to pay the expenses of the Trustee in completing these matters. The Recipient is requested to advise the Province through the quarterly report back process on the status of any activities involving the above suggested activities. (insert requirement under report backs) [npp – change recommended to eliminate suggestion that activities as noted are compulsory]

5.8 Rules and Procedures of the Board of Trustees

(a) ***Initial Requirements***. As soon as practicable and in any event no later than one month following the Original Trustee Replacement Date, the Board of Trustees ~~shall~~ is expected to meet to take such decisions and actions as they deem necessary to ensure the proper management and administration of the Trust. The date (and location if in person) of the initial meeting shall be determined by a majority of the Board of Trustees.

<u>Other matters:</u>

-

Consider if current description of Board of Trustees would preclude H1 from being a Trustee.

5.1RECIPIENT'S ACQUISITION OF GOODS OR SERVICES, AND DISPOSAL OF ASSETS

Acquisition. If the Recipient acquires goods, services, or both with or by applying the proceeds of the Funds, it is expected to do so through a process that promotes the best value for money and to take reasonable steps to ensure that its Administrative Services Agents also follow a process that promotes the best value for money when acquiring goods and services with or by applying the proceeds of the Funds. (Npp- can refer to alignment with principles in province's procurement directive (provided in separate email).

FW_ TPA and Declaration of Trust Feedback (Declaration np mar 20).rtf

From: Virani, Shyrose (TBS) []
To: 'PETSCHE Nadine -CORPORATE' [nadine.petsche@opg.com]
Subject: FW: TPA and Declaration of Trust Feedback (Declaration np mar 20)
Date: Tuesday, October 16, 2018 08:55:58
Attachment 1: image001.gif
Attachment 2: TOR_2024-#12887993-v16-Affordability_Fund_Trust__Declaration_of_Trust_-_Blakes_Comments_(March_14__2017)np mar20.docx

---

From: Petsche, Nadine (TBS)
Sent: March 20, 2017 2:59 PM
To: ASHBOURNE, STEPHEN <STEPHEN.ASHBOURNE@blakes.com>; Schwab-Pflug, Emma (ENERGY) <Emma.Schwab-Pflug@ontario.ca>
Cc: PRESTAGE, JA <JA.PRESTAGE@blakes.com>; Johnson, Paul (ENERGY/MEDEI/MRI) <Paul.Johnson3@ontario.ca>; Qureshi, Musab (ENERGY) <Musab.Qureshi@ontario.ca>; Syed, Usman (ENERGY) <Usman.Syed@ontario.ca>; Sermat-Harding, Kaili (ENERGY) <Kaili.Sermat-Harding@ontario.ca>
Subject: RE: TPA and Declaration of Trust Feedback (Declaration np mar 20)

Stephen/Emma,

Attached are my comments on the Declaration of Trust.

Nadine

From: Petsche, Nadine (TBS)
Sent: March-20-17 2:44 PM
To: 'ASHBOURNE, STEPHEN'; Schwab-Pflug, Emma (ENERGY)
Cc: 'PRESTAGE, JA'; Johnson, Paul (ENERGY/MEDEI/MRI); Qureshi, Musab (ENERGY); Syed, Usman (ENERGY); Sermat-Harding, Kaili (ENERGY)
Subject: RE: TPA and Declaration of Trust Feedback

My apologies. Forgot the attachment. Comments on Declaration to follow in 5 mins.n

From: Petsche, Nadine (TBS)

Sent: March-20-17 2:04 PM
To: 'ASHBOURNE, STEPHEN'; Schwab-Pflug, Emma (ENERGY)
Cc: PRESTAGE, JA; Johnson, Paul (ENERGY/MEDEI/MRI); Qureshi, Musab (ENERGY); Syed, Usman (ENERGY); Sermat-Harding, Kaili (ENERGY)
Subject: RE: TPA and Declaration of Trust Feedback

Stephen/Emma,

Please see comments on the revised TPA (looks great). Will provide comments on the Trust Declaration shortly. N

From: ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
Sent: March-20-17 1:02 PM
To: Johnson, Paul (ENERGY/MEDEI/MRI); Ranalli, David (ENERGY); Schachtschneider, Michelle (ENERGY); Qureshi, Musab (ENERGY); Schwab-Pflug, Emma (ENERGY); Syed, Usman (ENERGY); Petsche, Nadine (TBS)
Cc: PRESTAGE, JA; RAND, PAUL; VINER, JON
Subject: RE: TPA and Declaration of Trust Feedback

Please see the updated versions of the Documents, attached. Steve

Stephen R. Ashbourne

Partner

stephen.ashbourne@blakes.com

Dir: 416-863-3086

Blake, Cassels & Graydon LLP

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From: ASHBOURNE, STEPHEN
Sent: Sunday, March 19, 2017 1:42 PM
To: Paul.Johnson3@ontario.ca; David.Ranalli@ontario.ca; Michelle.Schachtschneider@ontario.ca; Musab.Qureshi@ontario.ca; Emma.Schwab-Pflug@ontario.ca; Usman.Syed@ontario.ca; 'Petsche, Nadine (TBS)'
Cc: PRESTAGE, JA; RAND, PAUL; VINER, JON
Subject: RE: TPA and Deed Feedback

Hi everyone. Here are revised versions of the Declaration and the TPA, which try to reflect the consolidated comments passed on over the past few days. Please note that the attached blacklines show changes back to the versions of these documents we last circulated (early Thursday, see below). I appreciate that you may have been working with a later version, but I have gone back to the earlier versions so we can get everyone onto the same page. Also, please let me know if you would like to see the cumulative bubble notes (Track Changes) from earlier versions – we can generate these separately if useful, but our 'cleaning software' has automatically deleted these in making this particular circulation of documents. Lastly, I do not have Michel (KPMG)'s coordinates (I was copied into the appointment yesterday so my invite does not include all of the attendees). Would one of you please forward this to Michel (cc. me) and anyone else who should be looking at these drafts at this time. Regards, Steve

Stephen R. Ashbourne

Partner

stephen.ashbourne@blakes.com

Dir: 416-863-3086

From: RAND, PAUL
Sent: Thursday, March 16, 2017 1:41 AM
To: Paul.Johnson3@ontario.ca; David.Ranalli@ontario.ca; Michelle.Schachtschneider@ontario.ca; Musab.Qureshi@ontario.ca; Emma.Schwab-Pflug@ontario.ca; Usman.Syed@ontario.ca
Cc: ASHBOURNE, STEPHEN; PRESTAGE, JA
Subject: RE: TPA and Deed Feedback

Attached are updated drafts reflecting comments discussed today.

Please forward to internal colleagues who may not be on the distribution.

Thanks.

Paul

Paul Rand

Counsel

paul.rand@blakes.com

Dir: 416-863-3051

Begin forwarded message:

From: "Ranalli, David (ENERGY)" <David.Ranalli@ontario.ca>
To: "ASHBOURNE, STEPHEN" <STEPHEN.ASHBOURNE@blakes.com>, "PRESTAGE, JA" <JA.PRESTAGE@blakes.com>
Cc: "Johnson, Paul (ENERGY/MEDEI/MRI)" <Paul.Johnson3@ontario.ca>, "Schachtschneider, Michelle (ENERGY)" <Michelle.Schachtschneider@ontario.ca>
Subject: Fw: TPA and Deed Feedback

Hello Stephen and Jay, please find attached Ministry of Energy comments attached.

Sent from my BlackBerry 10 smartphone on the Rogers network.
From: Schwab-Pflug, Emma (ENERGY) <Emma.Schwab-Pflug@ontario.ca>
Sent: Tuesday, March 14, 2017 7:51 PM
To: Ranalli, David (ENERGY); Johnson, Paul (ENERGY/MEDEI/MRI)
Cc: Syed, Usman (ENERGY); Qureshi, Musab (ENERGY); Di Tullio, Yvonne (ENERGY); Teare, Rebecca (ENERGY); Cook, Cory (ENERGY); Gounden, Pratima (ENERGY); An, Tai (ENERGY); Lim, Janet (ENERGY); Sadasivan, Asokan (MEDG/MRIS); Petsche, Nadine (TBS); Desouza, Charlotte (ENERGY)
Subject: FW: TPA and Deed Feedback

Hi David, Paul,

Find attached our comments on Blake's edits and comments on the TPA and the Trust Declaration. Also attached is the one time AG guidance on accounting principles (we realize Blakes may already have this, but OPCD's comments refer to this document).

Could you kindly share these with Blakes this evening. We have left some placeholders for additional input from CSD and OPCD (cc'd) and will look to provide additional comments at our call tomorrow with Blakes.

Our comments to the Trust Deed are on top of a clean version Blakes had sent. Our comments on the TPA are on top of a tracked version Blakes had sent. Apologies for the inconsistency – we ran into some version control issues on our end.

Charlotte (cc'd) will be in touch with regards to setting up a call with Blakes, as well

as LSB, CSD and OPCD, tomorrow morning.

Thank you,
Emma

image001.pdf

Blakes

OR_2024-#12887993-v16-Affordability_Fund_Trust_Declaration_of_Trust_-_Blakes_Comments_(March_14_2017)np mar20.p

Draft: March 20, 2017

DECLARATION OF TRUST

Made as of March ●, 2017

by

COMPUTERSHARE TRUST COMPANY OF CANADA

establishing

AFFORDABILITY FUND TRUST

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DECLARATION OF TRUST

This Declaration of Trust is made as of March •, 2017, by Computershare Trust Company of Canada, a trust company established under the laws of Canada and licensed to carry on business as a trust company in each of the provinces and territories of Canada (together with its successors and assigns and the other trustees (including the Board of Trustees) contemplated herein, the "**Trustee**").

WHEREAS Computershare Trust Company of Canada, as settlor, wishes to establish a trust to acquire, hold, manage, invest, apply and dispose of certain property for the benefit of certain Beneficiaries as herein described.

NOW THEREFORE Computershare Trust Company of Canada hereby declares that it holds in trust as trustee (a) the sum of ONE HUNDRED DOLLARS ($100) contributed by it on this date and (b) all other property of every type and description which it may hereafter acquire or hold in its capacity as trustee of the Trust and all income therefrom and proceeds thereof, to hold, manage, invest, apply and dispose of same on and subject to the provisions set forth in this Declaration of Trust, including the annexes and schedule attached hereto.

SECTION 1
INTERPRETATION

1.1 Definitions

In this Declaration:

(a) "***Administrative Services Agent***" means each agent, which may include any Electricity Distributor or other Person, appointed from time to time under an Administrative Services Agreement, and its successors and permitted assigns solely in such capacity.

(b) "***Administrative Services Agreement***" means each agreement entered into from time to time by the Trust and one or more Administrative Services Agents or other Persons, in furtherance of the Purpose, under which the Administrative Services Agent would agree to provide specified administrative and other services to and on behalf of the Trustee (including, following the Original Trustee Replacement Date, the Permitted Delegations Annex), as such agreement may be amended, supplemented, restated, renewed or replaced from time to time.

(c) "***Assets***" means, collectively, the following:

(i) the $100 Canadian referred to above, contributed by Computershare Trust Company of Canada on the date hereof;

(ii) all other property which is now or which at any time in the future may be issued, assigned, transferred, provided, donated, gifted and contributed to the Trustee (including pursuant to the Transfer Payment Agreement) to be held in trust pursuant to this Declaration (and which the Trustee is willing to accept and hold);

(iii) all acquisitions of property made by the Trust;

(iv) all property which may at any time be substituted for or in respect of the property referred to in clauses (i), (ii) and (iii), above;

(v) all income of the Trust, including investment income generated by the investment of the property referred to in clauses (i), (ii), (iii) and (iv), above; and

(vi) all proceeds of disposition of any of the property referred to in clauses (i) through (v) above,

but excludes any property paid out or distributed (whether out of income or capital) pursuant to the provisions of this Declaration.

(d) "***Beneficiary***" means each Primary Beneficiary and each Residual Beneficiary, as applicable.

(e) "***Board of Trustees***" means (i) as of the Original Trustee Replacement Date, the individual trustees appointed by the Original Trustee pursuant to Section 5.7 on the basis described in the Trustee Replacement Annex, and (ii) thereafter, the group of trustees appointed hereunder and acting in such capacity.

(f) "***Business Day***" means any working day, Monday to Friday inclusive, excluding statutory and other holidays, namely: New Year's Day; Family Day; Good Friday; Easter Monday; Victoria Day; Canada Day; Civic Holiday; Labour Day; Thanksgiving Day; Remembrance Day; Christmas Day; Boxing Day [and any other day on which the Province has elected to be closed for business].

(g) "***Declaration***" means this Declaration of Trust, as it may be amended, restated, supplemented or otherwise modified from time to time, and includes each of the annexes and the Schedule attached hereto which constitute and form an integral part of this Declaration.

(h) "***Electricity Distributor***" means, in respect of a designated service area or region in Ontario, the distributor of electricity to residences located in such area or region.

(i) "***Electricity Invoice***" means an invoice issued by an Electricity Distributor in respect of electricity charges and related services and amounts incurred or assessed in respect of a residence located in the Electricity Distributor's designated service area or region in Ontario.

(j) "***Eligible Investments***" means (i) a deposit receipt, note, certificate or instrument issued, guaranteed or endorsed by a bank listed in Schedule I to the *Bank Act* (Canada), which provides that the principal and any interest shall be fully paid no later than [one year] after the day the investment was made, or (ii) a deposit account at a bank listed in Schedule I to the *Bank Act* (Canada).

(k) "***Eligible Measures***" means electricity efficiency and/or conservation measures determined by the Trustee from time to time on the basis contemplated in the Principles Annex and in the manner specified in and having regard to the Permitted Delegations Annex.

(l) "***Final Distribution Date***" means the earlier of (i) the date (if any) on which the Trustee determines (by a resolution of the Board of Trustees) that no further distributions are likely to be made to any Primary Beneficiary and (ii) •, 20[23].

(m) "***HAP Eligible Person***" means an "Eligible Person" as defined in Section 3.1 of the document entitled "Conservation First Framework LDC Took Kit" published by the Independent Electricity System Operator and designated as Final v3.0 – March 11, 2016, as amended in accordance with the Energy Conservation Agreement between the Independent Electricity System Operator and Electricity Distributors.

(n) "***License Agreement***" means any agreement under which the Trust or any Electricity Distributor possesses or acquires rights to use any trademarks, names, logos, copyrights, patents or other intellectual property for use in connection with communications or other dealings undertaken in relation to the Program, including for the purpose of branding, marketing and promoting the availability, terms and benefits of the Program to Primary Beneficiaries.

(o) "***Minister of Energy***" means the Minister of Energy or such other member of the Executive Council as may be assigned primary ministerial responsibility for the administration of the *Ministry of Energy Act, 2011* under the *Executive Council Act*.

(p) "***Original Trustee***" means Computershare Trust Company of Canada, acting in its capacity as trustee hereunder, together with any additional or replacement Trustee appointed hereunder prior to the Original Trustee Replacement Date and any of their respective successors and assigns.

(q) "***Original Trustee Replacement Date***" has the meaning specified in Section 5.7, being the date on which the Original Trustee is replaced as trustee under this Declaration by the Board of Trustees as contemplated under Section 5.7.

(r) "***Permitted Delegations Annex***" means the Permitted Delegations Annex set forth as an annex to this Declaration.

(s) "***Person***" includes any individual, sole proprietorship, corporation, partnership, joint venture, association, society, club, board, chamber, joint-stock company, trust, trustee, unincorporated or incorporated organization or entity or government or any entity, agency or political subdivision thereof.

(t) "***Primary Beneficiary***" means each individual that, as of a time of determination, satisfies each of the following criteria:

(i) the individual owns, rents or leases a residence located in Ontario and is the primary or secondary electricity utility account holder named on an Electricity Invoice issued in respect of that residence; and

(ii) the individual is not a HAP Eligible Person.

(u) "***Principles Annex***" means the Principles Annex set forth as an annex to this Declaration.

(v) "***Province***" means the Province of Ontario.

(w) "***Program***" means the establishment, promotion, implementation and administration of a program to achieve the Purpose on the basis contemplated in this Declaration.

(x) "***Purpose***" means (i) the making of distributions to Primary Beneficiaries who are identified and whose needs are assessed in accordance with section 3.1 and 3.2 of this Declaration, having regard to (x) the principles set forth in the Principles Annex, (y) the manner and basis of implementation and administration of the Program contemplated in the Permitted Delegations Annex, and (z) the other terms, limitations and requirements set forth in this Declaration, and (ii) to the extent that Assets are available following the distributions made to Primary Beneficiaries as contemplated in (i), above, the making of distributions to Residual Beneficiaries who are identified and whose needs are assessed in accordance with section 3.3 and otherwise having regard to the other terms, limitations and requirements set forth in this Declaration.

(y) ***"Residual Beneficiary"*** means each charitable organization identified by the Trustee and specified as a residual beneficiary hereunder from time to time, selected by the Trustee in consultation with and having regard to the recommendations of the [Ontario Energy Board] in accordance with section 3.3.

Commented [A1]: ok

(z) "***Transfer Payment Agreement***" means the transfer payment agreement dated as of March •, 2017 between the Trustee and Her Majesty the Queen in right of Ontario as represented by the Minister of Energy, as such agreement may be amended, restated, supplemented or otherwise modified by the further agreement of the parties thereto from time to time.

(aa) "***Trust***" means Affordability Fund Trust, a trust established under and governed by the laws of the Province of Ontario pursuant to this Declaration.

(bb) "***Trustee***" means (i) the Original Trustee and (ii) on and after the Original Trustee Replacement Date, the Board of Trustees acting together in accordance with and subject to Section 5.7 and in accordance with the rules and procedures adopted by the Board of Trustees pursuant to Section 5.8.

(cc) "***Trustee Replacement Annex***" means the Trustee Replacement Annex set forth as an annex to this Declaration.

1.2 Headings and Table of Contents

The insertion of headings and the provision of a table of contents are for convenience of reference only and shall not affect the construction or interpretation of this Declaration.

1.3 References

Unless otherwise specified, all references to Sections are to Sections of this Declaration. The words "hereto", "herein", "hereof", "hereunder" and similar expressions refer to this Declaration and not to any particular Section or other provision of this Declaration.

1.4 Number and Gender

Unless otherwise specified, words importing the singular include the plural and vice versa and words importing gender include all genders.

1.5 Governing Law

This Declaration shall be governed by, and construed and interpreted in accordance with, the laws of the Province of Ontario and of Canada applicable therein.

1.6 Severability

Any provision of this Declaration which is illegal, invalid or unenforceable in any jurisdiction shall not affect the legality, validity or enforceability of the remaining provisions and any such illegality, invalidity or unenforceability in any jurisdiction shall not affect the legality, validity or enforceability of such provision in any other jurisdiction.

1.7 Reference to the Trust and the Trustee

For greater certainty, where any reference is made in this Declaration to an act to be performed by or for or on behalf of the Trust, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Trustee in its capacity as trustee of the Trust, and, where any reference is made in this Declaration to an act to be performed by or for or on behalf of the Trustee, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Trustee solely in its capacity as trustee of the Trust. Except as provided under the Transfer Payment Agreement, no Person dealing with the Trust or the Trustee shall be bound to make any enquiry concerning, or has the right to require production of, any evidence of the validity of any act of, or transaction purporting to be made by, the Trustee.

1.8 Defect in Appointment

No action taken by the Trustee will be invalid or ineffective by reason only of any defect in the appointment of the Trustee or the compliance by the Trustee of any rules or procedures adopted by the Trustee and which is discovered after the taking of such action.

SECTION 2
CONCERNING THE TRUST

2.1 Objectives

The Trust is established to hold, invest, apply and dispose of the Assets for the benefit of the Beneficiaries in furtherance of the Purpose, as provided for in this Declaration. In furtherance of the Purpose:

(a) the Original Trustee shall hold and invest the Assets as contemplated in this Declaration until the Original Trustee Replacement Date, after which the Board of Trustees shall be duly appointed hereunder; and

Commented [A2]: is expected to? (language for consistency purposes)

(b) the Board of Trustees shall hold, invest, apply and dispose of the Assets in accordance with this Declaration, including by determining the identities of and distributions (if any) to be made to or for the benefit of the Primary Beneficiaries in accordance with Sections 3.1 and 3.2 of this Declaration, having regard to the principles set forth in the Principles Annex and in the manner and on the basis contemplated in the Permitted Delegations Annex, or otherwise by determining the identities of and distributions to be made to or for the benefit of any Residual Beneficiary in accordance with Section 3.3,

Commented [A3]: Are expected to?

in each case and in all respects subject to the terms, limitation and requirements set forth in this Declaration.

2.2 Name of the Trust

The name of the Trust shall be the "Affordability Fund Trust" or such replacement name as the Trustee shall determine and specify from time to time. The Trustee shall hold the Assets and conduct the activities of the Trust under such name or variation thereof (including any variation of such name in the French language). If the Trustee determines to change the name of the Trust, the Trustee may specify and use such other designation or adopt such other name (including any name in the French language) as it considers appropriate and may hold the Assets and conduct the activities of the Trust under such designation or other name.

2.3 Location

The head office and the situs of the administration of the Trust shall be • or such other address in Ontario as the Trustee may determine from time to time.

2.4 Fiscal Year

The fiscal year of the Trust shall end on December 31 of each year.

SECTION 3
DISTRIBUTIONS

3.1 Distributions to Primary Beneficiaries

Prior to the Final Distribution Date, the Trustee shall distribute the Assets (including capital or income) to the Primary Beneficiaries identified based on the application of the principles specified in the Principles Annex and in the manner and in the amounts determined on the basis contemplated by the Permitted Delegations Annex, in each case in the amounts and to the extent specified herein and therein, subject in all respects to the exercise by the Trustee of its discretion hereunder and to the exclusion of the other Beneficiaries.

3.2 Amount of Distributions to Primary Beneficiaries

For the purposes of determining the amount of distributions to be made to the Primary Beneficiaries, the Trustee shall have regard to and be entitled to rely on the recommendations of and information provided by Electricity Distributors acting as Administrative Services Agents appointed for the purposes, in the manner and substantially on the terms contemplated in the Permitted Delegations Annex, without any duty or obligation to verify or makes enquiries

regarding the basis for or propriety of such recommendations or the accuracy or completeness of such information, except if and to the extent that the Trustee, in its discretion, determines that (i) it has actual knowledge that such recommendations are contrary to the reasonable application of the principles set forth in the Principles Annex or have been made on a basis that is manifestly contrary to such principles or the delegations and activities specified or contemplated to be undertaken under the Permitted Delegations Annex or (b) such information is known by the Trustee to be erroneous, contain a material misrepresentation or is materially incomplete.

3.3 Distributions to Residual Beneficiaries

Prior to the Final Distribution Date, the Trustee shall identify the Residual Beneficiaries by consulting with and having regard to the recommendations of the Ontario Energy Board, based on **[Identify criteria that will narrow the scope to charities to those having an energy/social focus]**. Following the Final Distribution Date, the Trustee shall, subject to compliance with section 7.3, distribute all remaining Assets (including capital or income) to the Residual Beneficiaries, in each case in the amounts and to the extent determined by the Trustee in its discretion hereunder[1] and to the exclusion of the other potential Residual Beneficiaries.

Commented [A4]: Per footnote below, suggest including 'and potential allocations'?

Commented [A5]: I don't think we ever inserted language to require a final audit to confirm amount? (to ensure any outstanding liabilities are taken into account, for example)

Commented [A6]: Having considered the recommendations of the OEB

SECTION 4
POWERS OF THE TRUSTEE

4.1 General

Subject to and in compliance with the terms, limitations and restrictions of this Declaration and notwithstanding applicable trust legislation, the Trustee shall have, without other or further authorization, full, exclusive and absolute power, control and authority over the Assets and over the affairs and activities of the Trust to the same extent as if the Trustee were not a trustee, but rather the sole and absolute owner of the Assets in its own right, including such power, control and authority to do all such acts and things as in its sole judgment and discretion are necessary, incidental or desirable for carrying on the affairs and activities of the Trust, with such powers of delegation as may be permitted or otherwise contemplated by this Declaration. Except as expressly provided in this Declaration, the enumeration in this Declaration of any specific power or authority shall not be construed as limiting the aforesaid general power or authority or any other specific power or authority set out herein. Subject to the terms, limitations and restrictions of this Declaration, every discretion or power hereby conferred on the Trustee is an absolute and uncontrolled discretion or power.

4.2 Specifically Enumerated Powers

The Trustee shall have the following specific powers and authorities:

(a) ***Transfer Payment Agreement.*** The Trustee shall have the power to enter into, amend, supplement, modify and perform its obligation under the Transfer Payment Agreement.

Commented [A7]: Subject to the consent of the Province which will not be unreasonably withheld, and provided in a timely fashion.

[1] **NTD:** Consider if principles should be included regarding the maximum amount any particular charity may receive.

(b) ***Contracts and Undertakings.*** The Trustee shall have the power to enter into, amend, supplement, modify and perform its obligation under any contract entered into or undertaking given by the Trustee in furtherance of the Purpose, including any Administrative Services Agreement and any License Agreement.

(c) ***Power to Own, Hold and Manage.*** Subject to section 4.2(d), the Trustee shall have the power to own, hold and manage the Assets in such manner as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable.

(d) ***Power to Invest in Eligible Investments.*** The Trustee shall have the power to invest the Assets only in Eligible Investments, and to change such Eligible Investments at any time and from time to time, all as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable, but always having regard to the Trustee's expectations regarding the timing of payments to be made to the Beneficiaries hereunder. If an investment of Assets in Eligible Investments would not be authorized under the applicable trust laws of Ontario, the Trustee shall nevertheless be permitted to make an investment of the Assets in such Eligible Investments. The Trustee will have no liability for the diminution in the value of any investment in Eligible Investments made hereunder.

Commented [A8]: Restriction noted in the control analysis. Not major.

(e) ***Power to Dispose of Assets.*** The Trustee shall have the power to sell, convey, assign, transfer, exchange and in any other manner dispose of the Assets or any part or parts thereof free and clear of any and all trusts established under this Declaration, by public or private sale, for cash or on credit, with or without advertisement, and subject to such restrictions, stipulations, agreements and reservations as the Trustee in its sole and absolute discretion may consider appropriate or advisable, and to execute and deliver and perform any agreement, deed, conveyance, transfer or other document or instrument in connection with the foregoing.

(f) ***Power to Apply Assets and Proceeds to Make Distributions to Beneficiaries.*** The Trustee shall have the power to apply the Assets and the proceeds and income derived therefrom to make distributions to the Beneficiaries contemplated by Section 3, and to execute and deliver and perform any agreement, deed, conveyance, transfer or other document or instrument in connection with therewith.

(g) ***Power to Delegate and to Appoint Agents, etc.*** The Trustee shall have the power to appoint, employ or contract with any Person as the Trustee in its sole and absolute discretion may consider appropriate or advisable in connection with the activities of the Trust. Without limiting the generality of the foregoing:

(i) the Trustee will have the power at any time and from time to time to appoint, employ or retain consultants, financial advisers, technical advisers, legal counsel, accountants, administrative services agents, insurers, insurance agents and insurance brokers, as the Trustee may require for the purpose of discharging its duties hereunder and shall not be responsible for or for the actions of any of them, including to:

(A) act for and on behalf of the Trust in connection with any and all matters in any way relating to the negotiation, settlement, entering into, amending, performance and enforcement of the Transfer Payment Agreement, the

Administrative Services Agreements, any License Agreement and any other agreements and contracts to which the Trust becomes a party in accordance with this Declaration;

(B) to provide or cause to be provided any or all kinds of administrative services in any way relating to the activities of the Trust;

(C) to act as attorney in fact, agent or trustee in the acquisition, holding, investment, application, sale or other disposition of the Assets and in the handling, prosecuting, defending or settling of any claims of or made against the Trust;

(D) to value the Assets and determine the net income of the Trust; and

(E) to make any filings, elections and submissions (including in respect of taxation matters) in connection with the Trust's compliance with applicable laws and regulatory requirements; and

(ii) the Trustee may pay remuneration and reimbursements from the Assets for services performed for it or on its behalf in the discharge of the trusts hereof without taxation for costs or fees of any counsel, solicitor or attorney.

Without limiting the foregoing, it is expected that the Board of Trustees will seek to enter into Administrative Services Agreements with Electricity Distributors for the purposes contemplated by the Permitted Delegations Annex, and on such terms and conditions (including terms and conditions as to the payment of reasonable fees and expenses) not inconsistent therewith as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable.

(h) ***Power to Operate Accounts.*** The Trustee shall have the power to (i) open and operate accounts at any chartered bank, trust company or other financial institution in Canada or elsewhere, as the Trustee in its sole and absolute discretion may consider appropriate or advisable; (ii) deposit therein any moneys or securities forming part of the Assets whether or not such deposits will earn interest; (iii) withdraw such deposits at such times and in such manner as the Trustee may determine; (iv) draw, make, endorse, deposit or otherwise deal in cheques, bills of exchange, promissory notes, drafts and other kinds of instruments and securities; and (v) enter into contracts or agreements with any such chartered bank, trust company or other financial institution containing such terms and provisions as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable. In connection therewith, the Trustee shall have no liability or responsibility for any loss which may occur by reason of the failure of any such chartered bank, trust company or other financial institution.

(i) ***Power to Collect, etc.*** The Trustee shall have the power to (i) collect, sue for, receive and give receipts for all sums of money or other property due to the Trust; (ii) consent to extensions of time for payment or to the renewal of any securities or obligations; (iii) engage or intervene in, prosecute, defend, compound, compromise, abandon or adjust by arbitration or otherwise, any demands, claims, actions, suits or proceedings relating to the Trust or the Assets; (iv) exercise any and all remedies available to the Trustee under any agreement or as may otherwise be

available, including any power of foreclosure or sale available at law; (v) in connection with any such foreclosure or sale, purchase or otherwise acquire title to any property and to convey good title thereto free of any and all trusts hereby established, or to take or retake possession of any property secured under any agreement or instrument; (vi) extend the time, with or without security, for the payment or delivery of any debts or property; (vii) execute and deliver releases, acquittances, discharges, agreements or other instruments related thereto; and (viii) pay or satisfy any debts or claims upon any evidence that the Trustee, in its sole and absolute discretion, may determine to be sufficient.

Commented [A9]: Might the province want to include an item in the quarterly report back listing on any circumstances where this clause may be exercised? Since province is associated with the Trust, might be a good means to manage risks.

(j) ***Power to Obtain Insurance***. The Trustee shall have the power to enter into contracts for or in relation to or otherwise obtain policies of insurance for the purpose of insuring the risks associated with the Trust, including to insure the Trustee (including the members of the Board of Trustees) against any risk of loss associated with assuming and performing the duties as Trustee. Without limiting the foregoing, it is expected that the Board of Trustees will obtain commercial general liability insurance from insurers having a secure A.M. Best rating of B+ or greater, or the equivalent, that in the opinion of the Recipient a prudent person similar to the Recipient would maintain, and having an inclusive limit of not less than $2,000,000 per occurrence and providing for contractual liability coverage.

(k) ***Power to Pay Trustee's Fees.*** The Original Trustee shall be entitled to be paid and receive the fees set forth in the Original Trustee's schedule of fees delivered as of the date hereof as compensation for its services under this Declaration, and to be reimbursed for its out-of-pocket expenses reasonably incurred, in each case from the Assets and without the approval of any Beneficiary or any court. The Original Trustee shall be entitled, in its sole and absolute discretion, to withdraw funds from time to time for such purpose from any account of the Trust. Members of the Board of Trustees shall be entitled to reimbursement for and in respect of their out-of-pocket expenses reasonably incurred in discharging their respective duties and obligations under this Declaration, in each case without the approval of any Beneficiary or any court, provided that the members of the Board of Trustees have general regard to sorts of limitations as are set forth in the "Travel, Meal and Hospitality Expenses Directive of the Province" specified and amended by the Province from time to time, a copy of the current version of which is attached as Exhibit 1 to the Principles Annex.

(l) ***Power to Pay Taxes.*** The Trustee shall have the power to (i) pay, deduct, withhold or remit any taxes or assessments which are required by law to be paid, deducted, withheld or remitted together with or from any payment made by the Trustee; (ii) pay all taxes or assessments of whatever kind or nature imposed upon or against the Trust or the Trustee in connection with the Assets or any part thereof; (iii) collect and remit all taxes and assessments of whatever kind or nature required to be collected and remitted by the Trust or the Trustee in connection with their activities or the Assets or any part thereof; (iv) appeal, settle or compromise tax claims or liabilities; and (v) for the foregoing purposes, to make such returns, elections and submissions and do all such other acts and things as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable.

(m) ***Power to Appoint Auditors.*** The Trustee shall have the power to select and appoint and discharge and re-appoint, in its sole and absolute discretion, an auditor or auditors of the Trust and to settle and pay the fees of any such auditor or auditors from any account of the Trust.

(n) ***Form of Accounts.*** The Trustee shall have the power to determine and change from time to time, in its sole and absolute discretion, the method or form in which the accounts of the Trust will be kept and shall not be required to keep or provide accounts in the form usually required by law to be kept or provided by trustees; provided that such method or form reasonably complies with generally accepted accounting principles in effect in Canada to the extent applicable.

(o) ***Title to Assets.*** The Trustee shall have the power to cause all or any part of the Assets to be held by or registered, in its sole and absolute discretion, in the name of any Person.

(p) ***Delegation of Discretion***. The Trustee shall have the power to delegate the right and power to exercise, or concur in the exercise of any discretion or power, conferred on the Trustee in this Declaration or conferred by law to any one or more of its directors, officers, employees, agents, representatives or to such other Person, as the Trustee, in its sole and absolute discretion, may think is appropriate or advisable, including to one or more Administrative Services Agents and their respective employees, officers and directors under a related Administrative Services Agreement entered into by the Trust substantially on the basis contemplated in the Permitted Delegations Annex. In particular, the Trustee shall have the power to accept, rely on and follow the recommendations of an Electricity Distributor made under and having regard to the Permitted Delegation Annex with respect to a the identification of, and the determination of distributions (if any) to be made to, any Primary Beneficiary, except if and in so far as the Trustee has actual knowledge that (1) such Primary Beneficiary did not in fact satisfy the "Selection Factors" specified in the Principles Annex as of the applicable time of determination; and/or (ii) the amount recommended to be distributed to the Primary Beneficiary was not calculated in substantial compliance with, or was calculated in a manner that is manifestly contrary to the requirements set forth or contemplated in, the Permitted Delegation Annex or the applicable Administrative Services Agreement.

(q) ***Additional Powers.*** The Trustee shall have the power to perform and do all such other acts, to take such steps and to execute all such deeds, transfers, assignments, agreements and other documents and instruments as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable for the carrying out of any of its powers hereunder or of any of the activities of the Trust as herein contemplated, or for the carrying out, promotion or advancement of the interests of the Trust, whether or not any of such acts, things, documents or instruments are herein expressly mentioned. Any good faith determination by the Trustee as to what is necessary, desirable or appropriate to carry out its powers or activities of the Trust as contemplated under this Declaration or to carry out, promote or advance the interests of the Trust shall be conclusive. Any construction of this Declaration or any determination as to the activities of the Trust or the existence of any power or authority hereunder made in good faith by the Trustee, relying upon the advice of counsel, shall be conclusive. In construing the provisions of this Declaration, there shall be a presumption in favour of a grant of power to the Trustee.

SECTION 5
CONCERNING THE TRUSTEE

5.1 Duty of Trustee

In performing its duties and exercising its powers under this Declaration, the Trustee shall act honestly, in good faith and with a view to the best interests of the Trust and the Beneficiaries and

shall exercise that degree of care, diligence and skill that a reasonably prudent trustee would exercise in comparable circumstances (the "**Standard of Care**"). The Trustee shall observe and act in accordance with the terms of, and shall observe and comply with the limitations and restrictions set forth in, this Declaration, including having due regard to the principles set forth in the Principles Annex. To the extent that the Trustee has so delegated any of its duties or powers, it shall be deemed to have satisfied the Standard of Care in respect of the subject matter of such delegation, subject to the Trustee's overall duty as a trustee to exercise prudent oversight in relation to such delegation. Unless required by law, the Trustee will not be required to give any security, bonds or sureties in any jurisdiction for the performance of any of its duties and obligations under this Declaration. The Trustee (including the individual members of the Board of Trustees) will not be required to devote its entire time to the trust activities.

Commented [A10]: Can we please check the language here (comply with)

5.2 Limitation of Liability

The Trustee shall not be personally liable in tort, contract or otherwise to any Beneficiary or any other Person for any loss or diminution in the value of the Assets, or for any action or failure to act on the part of the Trustee or any of its employees or agents or any other Person, and shall not be subject to any personal liability for any debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses incurred by or against the Trust, howsoever arising, and resort will be had solely to the Assets for the payment, performance or satisfaction thereof. No property or assets of the Trustee, owned in its personal capacity or otherwise, will be subject to levy, execution or other enforcement procedures with respect to any obligation under this Declaration. However, the foregoing limitations in this Section shall not apply where the Trustee has demonstrated gross negligence, bad faith, fraud or wilful misconduct.

5.3 Liability of Trustee under Contracts

Any document or instrument creating a liability or obligation of the Trust or of the Trustee will be conclusively deemed to have been executed by the Trustee only in its capacity as Trustee of the Trust and will be binding upon the Trustee only in its capacity as trustee hereunder and resort may not be had to, nor recourse or satisfaction be sought from, the property of the Trustee other than the Assets, whether owned by its in its personal capacity or in any other capacity other than in its capacity as Trustee of the Trust, or from its employees or agents, and in all cases resort will be had solely to the Assets for the payment, performance or satisfaction of any such liability or obligation. However, the foregoing limitations in this Section shall not apply where the Trustee has demonstrated gross negligence, bad faith, fraud or wilful misconduct. Each document or instrument creating a liability or obligation of the Trust or of the Trustee shall contain a provision providing for the aforesaid limitation of liability.

5.4 Funds of the Trustee

The Trustee shall not be required to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers.

5.5 Indemnification of Trustee

In addition to and without limiting any other protection hereunder or otherwise by law of the Trustee and its respective employees, agents, representatives and assigns (in this Section 5.5,

collectively, the "**Representatives**"), the Trustee and its respective Representatives shall be indemnified, defended and saved harmless out of the Assets from, against and in respect of any and all liabilities arising or related to actions taken or omitted to be taken by any agent of the Trustee, losses, claims (including any claim arising out of the assessment of any tax on income by a taxing authority), damages, penalties, fines, actions, suits, demands, levies, assessments, costs, charges, expenses and disbursements (including, without limitation, any and all legal and advisor fees and disbursements) (in this Section 5.5, collectively, the "**Liabilities**") of whatever kind or nature which may at any time be suffered by, imposed upon, incurred by or asserted against the Trustee and its Representatives, whether groundless or otherwise, howsoever arising from or out of any act, omission or error of the Trustee, in each case made in connection with its acting as Trustee hereunder, in each case except and to the extent that the Liabilities are a result from or are caused by gross negligence, wilful misconduct, bad faith or breach of the Confidentiality obligations described in section 5.9. Further, except as provided in section 5.2, the Trustee shall not be liable to any Beneficiary for any loss or damage relating to any matter regarding the Trust, including any loss or diminution in value of the Assets. Notwithstanding any other provision hereof, the obligations provided for in this section 5.5 shall survive any termination of the Trust, whether by reason of removal or resignation of the Trustee, termination or discharge of this Declaration or otherwise.

5.6 Reliance upon Advice

Subject to section 5.1, in performing its duties and exercising its powers hereunder, the Trustee may rely and may act or not act, and shall be fully protected in relying and acting or not acting, upon (a) any statement, telecopy or other electronic means of communication, writing, notice, resolution, report, opinion or other document or conversation believed by its to be genuine and correct and to have been signed, sent or made by the proper Person; (b) any opinion or advice received or information obtained from auditors, solicitors, or other professional advisers, whether retained by the Trustee or otherwise, and shall not be responsible or held liable for any loss or damage resulting from so relying or acting or not acting; and (c) the advice and actions of any Administrative Services Agent, including in connection with the delegations and reliances contemplated under the Permitted Delegations Annex. For greater certainty, it shall not be necessary for the Trustee to ascertain whether or not the Persons who have executed, signed or otherwise issued, authenticated or receipted such papers, writings or documents (including any Administrative Services Agreement, License Agreement or any other contract entered into by the Trustee) have authority to do so or that they are the same Persons named therein or otherwise to pass upon any requirement of such papers, writing or documents that may be essential for their validity or effectiveness or upon the truth and acceptability.

5.7 Replacement of the Original Trustee

As soon as practicable and in any event prior to March 31, 2017, the Original Trustee shall appoint the Persons identified by the Trustee Replacement Annex to comprise the Advisory Committee contemplated therein (once constituted, the "**Advisory Committee**"). As soon as practicable thereafter, the Original Trustee shall request that the Advisory Board make recommendations with respect to the composition of the "Board of Trustees", as contemplated by the Trustee Replacement Annex. The Trustee shall have no duty or obligation to investigate the basis for any of the Advisory Committee's recommendations and may rely on such recommendations without any duty of enquiry, supervision or oversight with respect to the

Commented [A11]: This different term continues to appear. Should it be Committee?

Commented [A12]: Was there going to be explicit acknowledgment that the Trustee can seek external advice prior to accepting?

activities and decision-making processes adopted by the Advisory Committee in its discretion, in full satisfaction of the Original Trustee's Standard of Care with respect to such matters hereunder. Except if the Original Trustee determines that the individuals recommended by the Advisory Committee to become members of such Board of Trustees are disqualified from so acting on the basis of manifest non-compliance with the "Selection Factors" set forth in the Trustee Replacement Annex, the Original Trustee shall appoint, as members of the Board of Trustees, the [six] (five voting and one non-voting) individuals recommended for appointment to the Board of Trustees by the Advisory Committee. Upon the appointment of such [six] individuals pursuant to this provision and their agreement to act as members of the Board of Trustees, the Original Trustee shall be deemed to have resigned and shall cease to be a trustee (such resignation occurring on the "**Original Trustee Replacement Date**").

5.8 Rules and Procedures of the Board of Trustees

(a) ***Initial Requirements***. As soon as practicable and in any event no later than [one] month following the Original Trustee Replacement Date, the Board of Trustees shall meet to take such decisions and actions as they deem necessary to ensure the proper management and administration of the Trust. The date (and location if in person) of the initial meeting shall be determined by a majority of the Board of Trustees.

(b) ***Meetings.*** Subject to the Board of Trustees' discretion to make such rules and procedures that they may deem desirable, meetings of the Board of Trustees may be held at such time and place as the trustee members of the Board of Trustees may agree upon or as they may fix by resolution for the purpose or if the meeting is called as hereinafter mentioned then at such time as may be designated in the notice calling the meeting. A meeting of the Board of Trustees may be called at any time by any two members of the Board of Trustees by two Business Days' notice given to the members of the Board of Trustees. No notice of any Board of Trustees' meeting shall be necessary when a quorum is present if those comprising the quorum consent to the transaction of the affairs of the Trust and the absent trustee or trustees, if any, either before or after the meeting shall waive in writing notice of the meeting. Meetings of the Board of Trustees may be conducted in person, by telephone, or in such other manner as determined by the Board of Trustees. The Board of Trustees may elect a Chairperson.

(c) ***Quorum.*** At any meeting of the Board of Trustees, a majority of the members of the Board of Trustees shall be a quorum irrespective of the number of members in office, provided that quorum will not exist if the majority of members voting on a decision are Provincial employees or representatives, who would not be eligible to vote in any event as they are non-voting members). The decision of the majority of the members where quorum exists shall govern and shall be binding for all purposes and shall be acted upon and carried out in the same manner and with the same effect as if all the members concurred therein; provided always that in the case of equality of votes the Chairperson, if any, shall not be entitled to cast a second or deciding vote.

(d) ***Power to Adopt Rules and Procedures.*** The Board of Trustees may make such rules and procedures not inconsistent herewith as it may deem desirable for the proper management and administration of the Trust and the discharge of the responsibilities of the Board of Trustees.

(e) ***Replacement of Members of the Board of Trustees***. The Board of Trustees shall have the power to replace any vacancy arising following the Original Trustee Replacement Date according to such rules and procedures as they deem appropriate, having regard for such considerations necessary to ensure that the composition of the Board of Trustees will be able to discharge its responsibilities in respect of the Declaration. If necessary, the Board of Trustees may fill any vacancy by application to the Courts of Ontario in the event of an unfilled vacancy.

(f) ***Decisions of the Board of Trustees.*** Decisions and actions of the Board of Trustees shall be made by voting, with each individual member having one vote. Subject to quorum requirements, a majority vote shall be determinative in respect of such decisions and actions. Subject to quorum requirements, any decision or action taken by the majority of trustees will represent the decision or action of the Trustee, and not any member of the Board of Trustees.

(g) ***Conflicts of Interest.*** With respect to any matter before the Board of Trustees, to the extent of a conflict of interest, whether actual, perceived or potential, involving a member of the Board of Trustees' personal interests and a matter concerning the Trust, such member shall abstain from voting on the matter or taking any other discretionary action on the matter. For the purposes of the foregoing, no member of the Board of Trustees shall be deemed to have a conflict by reason only that the member holds any office or position with an Electricity Distributor, social services agency or governmental or quasi-governmental agency or entity (such as the Independent Electricity System Operator); provided, however, that in relation to any decision of the Board of Trustees pertaining specifically to a particular Electricity Distributor, any member of the Board of Trustees who is a director, officer or employee of the Electricity Distributor ~~shall~~ would be expected to recuse himself or herself from participating in deliberations, discussions or voting in respect of such decision.

Commented [A13]: Specific, and in the public interest, but suggested wording change so not seen as Province directing Trust (consistent with other elements of doc).

(h) ***Expense Reimbursements to Members of the Board of Trustees.*** Members of the Board of Trustees shall be entitled to reimbursement for and in respect of their out-of-pocket expenses reasonably incurred in discharging their duties and obligations as members of the Board of Trustees. Members of the Board of Trustees shall serve without compensation.

5.9 Confidentiality

Notwithstanding the resignation or removal and discharge from the trusts and powers reposed in and conferred on the Trustee by this Declaration, or the termination of this Declaration, the Trustee so resigning or removed shall continue to treat as confidential all information relating to the Trust, the Assets and the Beneficiaries and shall only be entitled to make disclosures concerning such information if disclosure is required in the performance of the functions of the resigning or removed Trustee or is ordered by a court of competent jurisdiction or is otherwise required by law. The Trustee shall not be responsible or liable to any Person for any loss or damage arising out of or in any way sustained or incurred in any way relating to any such required disclosure. The obligations arising under this section 5.9 shall survive the termination of the Trust.

5.10 Vesting in Successor Trustee

Any successor trustee (including any reconstituted Board of Trustees) shall automatically become vested with the Assets and with the same powers, rights, duties, responsibilities and

trusts as if it, he or she had originally been named as Trustee under this Declaration, without the requirement of any further instrument or act or conveyance, and the Trustee ceasing to act shall execute all such transfers and other documents and do all such other acts or things as may be necessary or desirable to assign, transfer, deliver to, and vest in, the successor trustee, upon the trusts expressed in this Declaration, all the Assets and all the rights, powers and trusts of the Trustee ceasing to act. The expense of any act, document, deed or other instrument or thing required under this Section 5.10, including for greater certainty, outstanding fees and unreimbursed expenses of the Trustee (including any member of the Board of Trustees) ceasing to act, shall be satisfied from the Assets.

5.11 Execution of Instruments

The Trustee shall have the power to execute all deeds, transfers, agreements, promissory notes and other instruments on behalf of the Trust. Such power may be exercised by any one or more Administrative Services Agents acting in accordance with any delegated right to do so pursuant to an applicable Administrative Services Agreement, and any such execution of instrument by an Administrative Services Agent, acting in such capacity as agent of the Trust pursuant to the terms and conditions of such Administrative Services Agreement shall be deemed to be a proper execution of such instrument by the Trustee and shall be binding for all purposes on the Trust.

5.12 Decisions by the Trustee

If there is more than one Trustee, decisions of the Trust may be made by a majority of Trustees. Whenever the Trustees are unable to agree in relation to the commission or omission of any act or howsoever in the execution of the Trust, the decision of a majority of the Trustees shall prevail.

SECTION 6
AMENDMENTS AND SUPPLEMENTS

6.1 Amendments

Subject to the requirements of the Transfer Payment Agreement, the Trustee shall have the power in its sole and absolute discretion from time to time without the approval of any Beneficiary or any court to amend, vary, supplement, replace or restate this Declaration in its entirety or any portion thereof.[2] Without in any way limiting the foregoing, any such amendments, variations, supplements, replacements or restatements may:

Commented [A14]: Yes, would suggest adding back the Proviso, or that subject to the consent of the province which shall not be unreasonably withheld and which will be provide in a timely fashion.

(a) add provisions for the replacement of or appointment of additional trustees to act with the Original Trustee prior to the Original Trustee Replacement Date;

(b) in the case of the Original Trustee, add provisions to those contemplated in the Trustee Replacement Annex in respect of the appointment of the members and the formation and empowerment of the Board of Trustees;

[2] **NTD:** Add back the proviso?: "; provided that no amendment shall conflict with the principles set forth in the Principles Annex or as to the scope or effect of the permitted delegations and activities of any Administrative Services Agent pursuant to the Permitted Delegations Annex."

(c) in the case of the Original Trustee, vary the terms and requirements applicable to the duties, responsibilities, obligations, liabilities, indemnities, protections, limitations, restrictions, compensation, expense reimbursements and such other matters, in each case as the Advisory Committee may indicate are necessary be made in order to attract and receive confirmation of appointment of appropriately qualified individuals that the Advisory Committee specifies are to be appointed as members of the Board of Trustees in accordance with its recommendations;

(d) add additional or replace existing Trustees;

(e) add to or reasonably clarify the principles set forth in the Principles Annex;

(f) add to or reasonably clarify the delegations and activities contemplated to be made in the Permitted Delegation Annex;

(g) include provisions for the management of the Trust by the Trustees, including the making of rules, requirements and procedures governing the decision-making of the Board of Trustees;

(h) add provisions for the replacement of members of the Board of Trustees (in addition to those provisions contemplated in section 5.7 and the Trustee Replacement Annex);

(i) provide for the engagement of any Person or Persons as managers, administrators or other service providers to the Trust, including any additional or replacement Administrative Services Agent or representative thereof;

(j) specify supplemental procedures for the identification of Primary Beneficiaries and the exchange of information with Electricity Distributors in connection with identifying such Primary Beneficiaries; or

(k) specify procedures for the transfer and transmission of funds from the Trust or any Administrative Services Agent acting on its behalf and with delegated responsibility over funds constituting Assets, to or for the benefit of, Beneficiaries or their designated representatives, payees or assignees.

6.2 Supplemental Declarations

The Trustee is authorized to execute any supplemental declaration of trust (including one or more amendments and restatements from time to time of this Declaration) to give effect to amendments to this Declaration made pursuant to section 5.1.

SECTION 7
TERMINATION

7.1 Duration

Subject to sections 7.2 and 7.3, the Trust will continue in full force and effect so long as there are any Assets and until all of the debts, liabilities and obligations of the Trust have been paid and satisfied in full.

7.2 Termination and Distribution of Assets

The Trustee shall terminate the Trust and wind up its affairs as soon as practicable after the Final Distribution Date. In connection with the termination of the Trust, the Trustee shall identify the Residual Beneficiaries and distribute or cause to be distributed the remaining Assets, in cash or in kind or partly in each, to the Residual Beneficiaries, in each case in accordance with section 3.3. Despite the foregoing, the Trust will only be terminated and wound up date after the Trustee, in its sole and absolute discretion, determines that all debts, liabilities and obligations of the Trust have been paid or otherwise adequately provided for and satisfied and upon receipt of such releases, indemnities and discharges as the Trustee, relying on the opinion of counsel, deems necessary for the protection of the Beneficiaries and for its own protection.

7.3 Distribution of Assets on Final Distribution Date

If the Trust holds Assets on the Final Distribution Date, the Trustee shall pay or provide reserves for the payment, and otherwise shall satisfy, all debts, liabilities and obligations of the Trust and shall provide or arrange to provide such releases, indemnities and discharges as the Trustee, relying on the opinion of counsel, deems necessary for the protection of the Beneficiaries and for its own protection. Thereafter, any remaining Assets shall be paid to the Residual Beneficiaries in accordance with section 3.3.

Commented [A15]: Subject to an audit to confirm amounts available for final distribution to Residual Beneficiaries?

SECTION 8
ACCEPTANCE OF TRUSTS

8.1 Acceptance of Trusts

The Trustee hereby accepts the trusts and duties contained in this Declaration and agrees to perform the same upon the terms and conditions hereof until discharged therefrom.

[Signature Page Follows]

The Trustee has executed this Declaration as of the date first written above.

COMPUTERSHARE TRUST COMPANY OF CANADA, as Trustee

By: _____
Name:
Title:

By: _____
Name:
Title:

PRINCIPLES ANNEX

The Trustee shall have regard to **[, but shall not be specifically bound by,]** the following principles in applying its discretion in relation to the administration of the Trust:

1. Identification of Primary Beneficiary Payees

1.1 **[Except in exceptional circumstances,]** a Primary Beneficiary would not be expected to receive a benefit from the Trust unless at the time of consideration it satisfies, in addition to the requirements contemplated in the definition of "Primary Beneficiary", each of the following criteria (the "**Selection Factors**"):

(i) it has a participant agreement **[with an applicable Electricity Distributor]** to undertake measures (its "**Energy Plan**") to improve the electricity efficiency and/or promote the conservation of electricity at its Ontario residence;

(ii) its Energy Plan involves one or more Eligible Measures, as may be designated by the Trustee from time to time from;

(iii) it confirms that:

1. the primary purpose of its Energy Plan is the conservation and efficient use by the Primary Beneficiary of electricity, and is not for the purposes of the Primary Beneficiary making a profit;

2. it would otherwise not have the financial resources to undertake the Eligible Measures included in its Energy Plan; and

3. it would otherwise not be **[a HAP Eligible Person||eligible to receive amounts in respect of the Eligible Measures under HAP]**;

(iv) it has demonstrated a need for financial assistance on the basis that its periodic electricity bills represent a financial burden, relative to its available financial resources; and

(v) such other criteria as the Trustee may determine, including based on the recommendations of Electricity Distributors or other knowledgeable Persons made on the basis and having regard to the delegations contemplated by the Permitted Delegations Annex or any applicable Administrative Services Agreement.

1.2 It is recognized that, in furthering the Purpose, an efficient basis upon which to allocate funds to the Primary Beneficiaries across different areas and regions within Ontario may be based on the areas and regions serviced by the Electricity Distributors operating within Ontario.

1.3 It would not be contrary to the Purposes if funds are made available by the Trustee to the Primary Beneficiaries unequally across different areas and regions within Ontario, and it is expect that in making such an unequal division it would be appropriate to have regard to:

(i) broad economic parameters of economic activity and the specific financial resources of the residents of the areas and regions, in each case as an indication of the relative need of such residents across the areas and regions;

(ii) electricity use and efficiency levels of non-commercial electricity customers across the areas and regions;

(iii) specific regional indicators of economic weakness and need; and

(iv) such other factors as the Trustee may determine are relevant, including based on the submissions, advice and recommendations of Electricity Distributors or other knowledgeable Persons made on the basis and having regard to the delegations contemplated by the Permitted Delegations Annex or any applicable Administrative Services Agreement.

1.4 It is recognized that, in furthering the Purpose, the designated Electricity Distributor for an area or region in which a Primary Beneficiary resides would be expected to:

(i) be a reliable source for the purpose of assessing and confirming whether the Primary Beneficiary satisfies the Selection Factors;

(ii) be an efficient intermediary for the purpose of communicating with the Primary Beneficiary, including regarding the availability, terms, conditions and intended purposes of Program[3];

(iii) be able to facilitate an efficient payment of distribution determined to be made to or on behalf of the Primary Beneficiary, having regard to the Electricity Distributor's established practices, procedures and systems for dealing with its customers; and

(iv) have established contractual arrangements with the Primary Beneficiary that may apply to the protection and confidentiality of information provided by or respecting the Primary Beneficiary, which information may be useful in the consideration by the Electricity Distributor in its assessment of whether the Primary Beneficiary satisfies the Selection Factors, which information may not otherwise be available or readily accessible or verifiable by the Trustee.

1.5 It is recognized that, in furthering the Purpose, the Electricity Distributor for an area or region in which a Primary Beneficiary resides will have market and utilization information that may be useful in assessing the relative needs of Primary Beneficiaries within its area or region. Such information is expected to be relevant in assessing the extent to which one such Primary Beneficiary's financial needs and the merits of its Energy Plan are greater or more compelling than those of another such Primary Beneficiary, which comparison may be relevant to the extent that the funds allocable to the Primary Beneficiaries resident in the area or region are otherwise insufficient to meet the requests for funding by all such Primary Beneficiaries.

Commented [A16]: Re: footnote – suggestive language might be included, but avoid 'shall'

[3] **NTD:** Consider if the Trustees should control the messaging to ensure consistency across the Province.

1.6 Accordingly, it is recognized that, in furthering the Purpose, it is consistent with the Purpose that the recommendations of Electricity Distributors be utilized and relied upon by the Trustee to guide the process of identifying particular Primary Beneficiaries in making distributions to the Primary Beneficiaries.

1.7 If an Electricity Distributor for a particular area or region is unable or unwilling to assess or confirm the application of the Selection Factors to Primary Beneficiaries residing in the area or region or to make recommendations in relation to such matters, one or more of the following may provide a suitable alternative source of information and for information gathering, assessment and confirmation purposes in relation to such area or region:

(i) other Electricity Distributors operating in adjacent or other areas or regions in Ontario;

(ii) **[the Ontario Energy Board];**

(iii) the Independent Electricity System Operator; and

(iv) anyone else having relevant expertise and access to information regarding the electricity market of the Province, in each case as may be considered relevant by the Trustee.

1.8 To the extent that privacy law or other legal requirements limit an Electricity Distributor from providing or making available specific information respecting the application of the Selection Factors to a particular Primary Beneficiary or group of Primary Beneficiaries, it is recognized that, in furthering the Purpose, it may be appropriate to redact or make generic affected information regarding such Primary Beneficiary in connection with the identification and confirmation of a Primary Beneficiary's eligibility and participation in the Program. If such limitations or restrictions would limit an Electricity Distributor from providing or confirming the name of a particular Primary Beneficiary to the Trustee, then it should be sufficient that such information may be obtained or disseminated on a confidential basis if and when required by the Trustee for the proper administration of the Trust and on that basis such impediments should not disqualify a Primary Beneficiary from participating in the benefits of the Program, provided that that the confidential record-keeping of the Electricity Distributor would be available in connection with the application of any applicable legal process predicated on the identification of such Primary Beneficiary for the purposes of substantiating its rights as a Primary Beneficiary of the Trust or as to the validity or subsistence of the Trust.

2. Eligible Measures

2.1 It is expected that the Trust will identify eligible measures that, taking into consideration the principles set forth in the Principles Annex, have regard to the following (the "**Measures Factors**"):

(i) electricity cost savings **[NTD: Insert generic list of considerations relevant to the identification of the applicable spending uses].**

(ii) primary home heating sources

[Blakes: MOE may wish to consider:

(iii) **is the measure generally expected to result in improved energy conservation by a Primary Beneficiary if properly installed and used;**

(iv) **is the measure recognized under another Provincial program as being appropriate for achieving electricity conservation among a population analogous to the Primary Beneficiaries;**

(v) **has an independent source recognized the measure as being (x) energy efficient in design, (y) more energy efficient than similar products available in the market intended for similar usage, or (z) effective in promoting energy conservation;**

(vi) **does the measure present any unacceptable health or safety considerations, either with respect to the Primary Beneficiary, a party providing or installing the measure, or the physical environment;**

(vii) **is the measure broadly available to residents across different areas and regions of the Province;**

(viii) **is it reasonable to expect that the measure would, over its anticipated useful life, generate greater costs savings in respect of electricity efficiency or conservation than the cost of the measure itself; or**

(ix) **is the measure a requirement or precursor to another measure, the other measure being one which meets any of the other Measures Factors.]**

2.2 In identifying and applying the Measures Factors, Electricity Distributors would be expected to have expertise in assessing the suitability of efficiency and conservation measures in their respective areas and regions, which may differ across areas and regions across the Province based on factors (among other things) such as the climate, geography, density, electricity infrastructure, residential structures, and electricity use rates applicable within such areas or regions.

2.3 The measures specified in Schedule A to this Principles Annex may initially be considered to be consistent with the Measures Factors (subject to change as contemplated under the Permitted Delegations Annex).

3. Promotion of the Program

3.1 It is expected that the Trustee will undertake or engage others to undertake efforts to promote the availability, terms and benefits of the Program to Primary Beneficiaries.

Commented [A17]: Per comment above – could insert expectation that the Trust will provide comms materials for LDCs to use

3.2 **[NTD: Insert any expectations of the Province regarding associating the Program to the Government, including in any external communications to or marketing directed at Electricity Distributors and Primary Beneficiaries.]**

3.3 **[NTD: Indicate that the Trustee would be free to enter into License Agreements with the Province, provided that the terms of such License Agreements are consistent with the Purpose and the Program, and that such License Agreements may permit the sub-license of IP to Electricity Distributors and permit the engagement of the Province to provide services related to the use of related IP rights.]**

3.4 **[NTD: Insert any expectations regarding the observance of License Agreements]**

4. Conduct of the Trust and the Program

4.1 It is expected that administrative expenses of the Board of Trustees and its members, including any expenses relating to the Trust, to the establishment of the **[Trust][Affordability Fund]** and any expenses related to the implementation and operation of the Program, including by or through Electricity Distributors and other relevant entities, will be recognized and subject to reimbursement on a basis that is substantially consistent with the accountability provisions contemplated in the Transfer Payment Agreement and the principles in the [~~**Province's Transfer Payment Accountability Directive**~~/**Travel, Meal and Hospitality Expenses Directive**[4]], the current form of which attached as Schedule B to this Principles Annex.

4.2 The Trustee is expected to conduct its activities in a manner that complies in all material respects with the Transfer Payment Agreement, including to:

(i) act prudently and in furtherance of the Purpose;

(ii) report not less frequently than annually the results of its activities for information purposes to the Province in connection with the Program;

(iii) comply with the Province's request for any independent verification or audit if determined to be necessary or appropriate by the Province;

(iv) return of Assets that have not been distributed if it is **[determined][manifestly demonstrated by the Province]** that the Trustee has breached its Standard of Care in discharging its material duties under the Declaration, and has not cured such material breach despite having been given a reasonable opportunity by the Province to do so in light of the circumstances of such material breach, with the result that all or a significant part of the Assets have not been or are not being applied and distributed in furtherance of the Purpose or are being applied and distributed in a manner that is directly contrary or without regard to the Purpose.]

4.3 Electricity Distributors are not intended to directly profit from distributions of funds made from the Trust, although it is recognized that the objectives of electricity efficiency and conservation of Primary Beneficiaries located in the service area or region of an Electricity Distributor, and the cost savings and improved credit worthiness of such Primary Beneficiaries, may be financially beneficial to the Electricity Distributor.

Commented [A18]: Deleted reference to TP Directive as not relevant.

Commented [A19]: So if these are not honoured then the Trust would be assessed as in 'material breach'. In other words, a material break is only in connection with these requirements? If yes, should 4.2 (1) refer specifically to the principles and delegation annex?

[4] **NTD:** Ministry to confirm applicable Directive(s).

4.4 Distributions from the Trust are intended to allow receiving Primary Beneficiaries to undertake Eligible Measures at no or minimal personal cost.

4.5 Without in any way limiting the discretion of the Board of Trustees to extend the period during which the benefits of the Program may be available to the Primary Beneficiaries, up to and including the Final Distribution Date, it is expected that the Trust Assets would be distributed to Primary Beneficiaries during the period from the Original Trustee Replacement Date to **[March 31, 2019]**.

Commented [A20]: Confirm if Apr.

SCHEDULE A TO THE PRINCIPLES ANNEX
INDICATIVE ELIGIBLE MEASURES[5]

Initial Specified Measures
Block Heater Timer (just timer) – rated for outdoor use, have at least a 15 amp/1800 watt capacity, be cold weather resistant, bear a C-UL or CSA certification mark
Power bar with integrated timer, and switched power outlets, four each for a total of 8 outlets, have a total capacity of 15 amps. The switched outlets must remain "live", independent of timer settings, so long as the power bar itself remains switched on. The power bar must bear either a C-UL or CSA certification mark.
Efficient Showerheads (standard) - rated at no more than 4.8 Lpm (1.25 U.S. gpm) and be of the laminar flow type (non-aerating).
Efficient Showerhead (handheld) - rated at no more than 4.8 Lpm (1.25 U.S. gpm) and be of the laminar flow type (non-aerating).
Efficient Aerators (kitchen) - rated no more than 5.7 Lpm (1.5 U.S. gpm), dual threaded to allow installation in both thread type faucets, swivel type with pause lever.
Efficient Aerators (bathroom) - rated no more than 3.8 Lpm (1.0 U.S. gpm), be dual threaded to allow installation in both thread type faucets.
Hot Water Tank Pipe Insulation - $^1/_2$" inside diameter – foam, meets ASTM –C547-00, minimum $^3/_4$" thick
Hot Water Tank Pipe Insulation - $^3/_4$ " inside diameter - – foam, meets ASTM –C547-00, minimum $^3/_4$" thick
Hot Water Tank Insulation - fibreglass R10 (fits up to a 60 gal tank) – not bubble wrap
≤11W ENERGY STAR® Qualified LED A Shape (60W) (minimum 600 Lumen output) (Formerly: 7W – 11W ENERGY STAR® Qualified LED A Shape (60W))

[5] These measures are indicative. Eligible measures added to HAP during the administration of the Trust may also be appropriately considered relevant by the Trustee.

Initial Specified Measures
≤14W ENERGY STAR® Qualified LED A Shape (75W) (minimum 800 Lumen output) (Formerly: 10W – 14W ENERGY STAR® Qualified LED A Shape (75W))
≤23W ENERGY STAR® Qualified LED A Shape (100W) (minimum 1600 Lumen output) (Formerly:17W – 23W ENERGY STAR® Qualified LED A Shape (100W))
≤16W ENERGY STAR® Qualified LED PAR 20 (minimum 600 Lumen output) (Formerly: 8W – 12W ENERGY STAR® Qualified LED PAR 20)
≤16W ENERGY STAR® Qualified LED PAR30 & PAR38 (minimum 600 Lumen output) (Formerly: 8W – 12W ENERGY STAR® Qualified LED PAR 30)
≤23W ENERGY STAR® Qualified LED PAR (minimum 1100 Lumen output) (Formerly: 14W – 18W ENERGY STAR® Qualified LED PAR 38)
≤6W ENERGY STAR® Qualified LED MR 16 / PAR 16 (minimum 250 Lumen output) (Formerly: 7W – 10W ENERGY STAR®
Qualified LED MR 16 / PAR 16 - GU 10 Base)
≤11W ENERGY STAR® Qualified LED MR 16 (minimum 400 Lumen output) (Formerly: 7W – 12W ENERGY STAR® Qualified LED MR 16 GU 5.3 Base)
ENERGY STAR® LED Wet Location Rated PAR lamp ≤ 23 Watt (minimum 1100 Lumen output)
Recessed Downlight Fixture including LED with Light Output >600 and <800 lumens (Retrofit Measure List)
Recessed Downlight Fixture including LED with Light Output >800 lumens (Retrofit Measure List)
Indoor Drying Rack

Extended Measures
Replace refrigerator with ENERGY STAR qualified refrigerator - 15.5 - 16.9 cubic foot top freezer, automatic defrost, refrigerator/ freezer, no through the door ice service
Replace refrigerator with ENERGY STAR qualified refrigerator - 17.0 - 18.4 cubic foot top freezer, automatic defrost, refrigerator/ freezer, no through the door ice service
Replace refrigerator with a refrigerator that has a consumption level of less than 425 kwh, 10 – 12.5 cubic foot top freezer, automatic defrost, refrigerator freezer, no through the door ice service
Replace freezer with ENERGY STAR qualified freezer - 12-14.4 cubic foot freezer
Replace freezer with ENERGY STAR qualified freezer - 14.5 - 16.0 cubic foot freezer
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 6,000 – 7,999 BTU/hr with C-UL or CSA certification mark
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 8,000 – 9,999 BTU/hr with C-UL or CSA certification mark
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 10,000 – 12,000 BTU/hr with C-UL or CSA certification mark
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 14.2 - 21.2 l/day (30-44.9 pints/day) dehumidifier
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 21.3 - 25.4 l/day (45-53.9 pints/day) dehumidifier

Extended Measures
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 25.5 - 35.5 l/day (54-75 pints/day) dehumidifier
Programmable Thermostat – line voltage – meets CAN/CSA-C828-06 standard, minimum performance: Droop: 1.5°C, Differential: 0.5°C, Precision 0% within 0.5°C of the original set point of 22°C
Programmable Thermostat – low voltage - meets CAN/CSA-C828-06 standard, minimum performance: Droop: 1.5°C, Differential: 0.5°C, Precision 0% within 0.5°C of the original set point of 22°C

Weatherization Measures
Comprehensive Draftproofing (caulking, foam and weather stripping, and application of same) – lifespan of 20 years plus If one or two component polyurethane foams are used, the products and installations must conform to: • CAN/ULC-S710.1 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 1: Material Specification. • CAN/ULC-S710.2 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 2: Application. • CAN/ULC-S711.1 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification • CAN/ULC-S711.2 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification, and Part 2: Application. **Attic Insulation (including installation):**
cellulose: CAN/ULC-S703-01 Amendment 1 - Cellulose Fibre Insulation (CFI) for Buildings OR 2) Mineral Fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre

Weatherization Measures
for Buildings **Wall Insulation (including installation):**
cellulose: CAN/ULC-S703-01 Amendment 1 - Cellulose Fibre Insulation (CFI) for Buildings OR 2) Mineral Fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre **Basement Insulation (including installation):**
mineral fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre for Buildings Vapour Barrier: 69009-CAN/CGSB-51.34-m86 If one or two component polyurethane foams are used, the products and installations must conform to: • CAN/ULC-S710.1 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 1: Material Specification. • CAN/ULC-S710.2 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 2: Application. • CAN/ULC-S711.1 Standard for Thermal Insulation – Bead Applied Two-Component
• Polyurethane Air Sealant Foam, Part 1: Material Specification • CAN/ULC-S711.2 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification, and Part 2: Application.

Heat Pumps (Selection of manufacturers and technologies to meet the US federal minimum efficiency standard for ASHPs, as of 2015, is 13.0 SEER and 7.7 HSPF. Energy Star–certified models offer roughly 9 percent more efficiency than most new uncertified ASHPs and 20 percent more efficiency than existing models that may be in place)
Ductless Multiport Heat Pump **[NTD: Add details pertaining to heat pumps]**
Cold Climate Ductless Heat Pump **[NTD: Add details pertaining to heat pumps]**
Cold Climate Multiport Ductless Heat Pump **[NTD: Add details pertaining to heat pumps]**

Cold Climate Ducted Heat Pump **[NTD: Add details pertaining to heat pumps]**

SCHEDULE B TO THE PRINCIPLES ANNEX
PERMITTED EXPENSE REIMBURSEMENTS

[NTD: Insert the Province's ~~Transfer Payment Accountability Directive~~/Travel, Meal and Hospitality Expenses Directive. Please forward a Word version if available.]

Commented [A21]: Will send

PERMITTED DELEGATION ANNEX

1. Under section 4.2(g) of the Declaration, the Trustee has the power to: **[(a) appoint, employ or retain Administrative Services Agents for the purpose of discharging its duties and obligations under the Declaration; and (b) enter into, perform, enforce and amend Administrative Services Agreements].**

2. In accordance with section 4.2(g) of the Declaration, consistent with the principles set forth in the Principles Annex, the Trustee or its agent will seek to enter into one or more Administrative Services Agreements with individual Electricity Distributors under which the Electricity Distributors will act as Administrative Service Agents to the Trustee. In this manner, the Trustee will delegate certain of its powers and duties to the Electricity Distributors.

3. Under section 5.1 of the Declaration, to the extent the Trustee has delegated any of its duties or powers, it shall be deemed to have satisfied the Standard of Care in respect of the subject matter of such delegation, subject to the Trustee's overall duty to exercise prudent oversight thereof. The Trustee is entitled to rely on an Electricity Distributor to discharge the duties delegated to it, as Administrative Services Agent, pursuant to an Administrative Services Agreement as described in this Annex.

4. Accordingly, and without limiting the Trustee's right to delegate under the Declaration and its other rights, powers and discretion as Trustee, the Trustee will be permitted to, and is expected to seek to, enter into Administrative Services Agreements with Electricity Distributors in order to further the Purpose. Without limiting the Trustee's discretion to negotiate and settle the terms and conditions of such Administrative Services Agreements, it is expected that such Administrative Services Agreements will include customary terms and conditions for an administrative services arrangement of this type and, in addition, ~~would~~ might (subject to the acceptance and agreement of the applicable Electricity Distributor counterparty) address the following points in particular:

    a. **Identification of Applicable Primary Beneficiary Payees and Determination of Individual Distribution Amounts**

        i. Each Electricity Distributor would make an initial assessment of the financial needs of Primary Beneficiaries within its designated service area or region, having regard to the Selection Factors set forth in section 1.3 of the Principles Annex, together with applicable economic data, in order to prepare and provide to the Trustee an estimate of the number of Primary Beneficiaries who the Electricity Distributor reasonably expects would satisfy the Selection Factors.

        ii. Each Electricity Distributor would make an initial assessment of the measures it would recommend be included as Eligible Measures, having regard to the Measures Factors set forth in section 2.1 of the Principles Annex, in order to prepare and provide to the Trustee an estimate of the average cost per Primary Beneficiary Payee (as defined below) of such Eligible Measures that the Electricity Distributor reasonably expects would apply in respect of Primary Beneficiaries resident in its service area or region.

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Commented [A22]: Suggest wording change (AG may feel this is very specific and indicative of control)

iii. Based on the product of (i) and (ii), above, and such other considerations as it considers to be directly relevant, each Electricity Distributor would make a written recommendation to the Trustee regarding the aggregate funding amount that the Electricity Distributor anticipates would be utilized under the Program by the Primary Beneficiaries resident in its service area or region (the "**Local Funding Estimate**"). Such recommendation would be accompanied, when submitted to the Trustee, by a detailed explanation regarding the assumptions, financial parameters, suitability considerations and other information underlying the Local Funding Estimate (including the type of information contemplated by the Selections Factors and the Measures Factors, which would be relied upon by the Trustee in its assessment regarding the allocation of available funding to or for the benefit of the Primary Beneficiaries across the specified areas and regions of Ontario.

iv. The Trustee would inform the Electricity Distributor regarding the aggregate of the amount determined by the Trustee to be made available under the Program for Primary Beneficiaries in the Electricity Distributor's designated service area or region (for each Electricity Distributor, its "**Maximum Electricity Distributor Allocation**") and as to any maximum amount that may be paid to or for the benefit of any single Primary Beneficiary **[or group of related Primary Beneficiaries]** located in the servicer area or region of the Electricity Distributor (the "**Maximum Primary Beneficiary Amount**"). The Maximum Electricity Distributor Allocation and Maximum Primary Beneficiary Amount may vary between areas and regions, among the Primary Beneficiaries within such areas and regions, and may be increased by the Trustee from time to time in its discretion.

v. Each Electricity Distributor would apply the principles set forth under "Identification of Primary Beneficiary Payees" in the Principles Annex to identify and make recommendations to the Trustee regarding the amount of funds (if any) to be distributed to or for the benefit of Primary Beneficiaries resident within its service area or region from time to time (the "**Primary Beneficiary Payees**").

vi. Each Electricity Distributor would ensure that the aggregate of the amounts it recommends be distributed to or for the benefit of Primary Beneficiary Payees from time to time does not exceed (1) its Maximum Electricity Distributor Allocation and (2) for any single Primary Beneficiary **[or group of related Primary Beneficiaries]** located in the service area or region of the Electricity Distributor, the lesser of (x) the applicable Maximum Primary Beneficiary Amount and (y) the estimated costs (including any applicable taxes, but excluding any amount payable to the Electricity Distributor by or on behalf of the Primary Beneficiary) to be incurred by or on behalf of such Primary Beneficiary (whether or not such costs have been paid or remain outstanding) in respect of Eligible Measures applied or to be applied in respect of the Primary Beneficiary's Ontario residence.

vii. The Trustee would provide written confirmation to each Electricity Distributor:

1. Either (x) that the recommendations specified of the Electricity Distributor in clause (v), above, have been accepted, or (y) as to the specific reasons for any non-acceptance; and

2. The amount of the distributions to be paid to or for the benefit of each Primary Beneficiary Payee that is resident in the Electricity Distributor's service area or region.

viii. With respect to each Primary Beneficiary resident in a Electricity Distributor's service area or region that is confirmed as a Primary Beneficiary Payee, the Electricity Distributor would provide the Trustee written confirmation as to:

1. The identity of such Primary Beneficiary Payee; and

2. The amount of the distribution paid to or for the benefit of such Primary Beneficiary Payee.

ix. If the amount of a distribution to be made to a Primary Beneficiary Payee is based on the estimated costs to be incurred by or on behalf of such Primary Beneficiary and, prior to making the distribution to the Primary Beneficiary Payee, the Electricity Distributor determines that the actual costs (including any applicable taxes but excluding any amount payable to the Electricity Distributor by or on behalf of the Primary Beneficiary) incurred or to be incurred by or on behalf of such Primary Beneficiary in respect of Eligible Measures applied or to be applied in respect of the Primary Beneficiary's Ontario residence has or would be less than such estimated costs, then the amount to be distributed to the Primary Beneficiary shall be based on such actual costs.

b. **Making of Distributions to Primary Beneficiaries**

i. It is expected that promptly after the Trustee confirms the identity of a Primary Beneficiary Payee resident in an Electricity Distributor's service area or region and the amount of the distribution to be paid to or for the benefit of such Primary Beneficiary Payee, the Trustee would arrange for payment to or on the direction of the Electricity Distributor of an amount equal to the amount of such distribution.

ii. It is expected that promptly upon receipt of funds in respect of a distribution to be made to a Primary Beneficiary Payee, the Electricity Distributor would arrange for payment of the full amount of such distribution to or for the benefit of the Primary Beneficiary Payee (including by direct payment to a third party of, or as a reimbursement or rebate of, the costs of applicable Eligible Measures installed at the residence of and for the benefit of the Primary Beneficiary Payee), without reduction or set-off by the Electricity Distributor.

iii. If the amount paid to an Electricity Distributor in respect of a distribution to be made to a Primary Beneficiary exceeds the actual amount of the

distribution made to or on behalf of the Primary Beneficiary, it is expected that the Trustee would require Electricity Distributor to promptly return such excess to the Trustee, whereupon the proceeds of such returned amount shall continue to form part of the Assets.

c. **Promotion of the Program**

   i. **[NTD: Insert any specific items regarding the use of IP by Electricity Distributors]**

d. **Establishment of Operational, Administrative, Record-Keeping and Other Systems and Policies by Electricity Distributors to facilitate the Program**

   i. It is expected that the Electricity Distributor would establish such operational, administrative, record-keeping and other systems and policies as are necessary to facilitate the Program and perform its duties under the Administrative Services Agreement, including systems or policies to: identify Primary Beneficiary Payees; comply with applicable privacy and regulatory laws; communicate with Primary Beneficiaries on behalf of the Trust; assess Eligible Measures; determine the Local Funding Estimate; monitor its recommendations to the Trustee against its Maximum Electricity Distributor Allocation and the Maximum Primary Beneficiary Amount; receive funds from the Trust in respect of distributions to the Primary Beneficiary Payees and transfer such funds to the appropriate recipients for the benefit of the Primary Beneficiary Payees; preparation and timely delivery to Primary Beneficiary Payees of such documents as are required by the *Income Tax Act* (Canada); and create and maintain records in respect of the foregoing.

   ii. The Electricity Distributor would set up a separate bank account for the purpose of receiving funds from the Trust in respect of distributions to the Primary Beneficiary Payees and the transfer of such funds to the appropriate recipients for the benefit of the Primary Beneficiary Payees.

e. **Reporting, Record-Keeping, Inspection and Disclosure and Compliance Matters**

   i. The Electricity Distributor would provide record-keeping, clerical and bookkeeping services relating to all matters relating to its recommendations and the performance of its other duties and obligations under its Administrative Services Agreement.

   ii. The Electricity Distributor would keep and maintain all financial records and non-financial documents and records relating to the provision of services under its Administrative Services Agreement. **[NTD: Consider specifying any particular records regarding individual Primary Beneficiary Payees needed to ensure the proper function of the Trust or the Program]**

   iii. The Electricity Distributor would provide to the Trustee quarterly and annual reports ("**Reports**") for the duration of its Administrative Services Agreement. Such Reports would set out, among other things, the amounts of

the distributions paid to or for the benefit of applicable Primary Beneficiary Payees, the average distribution amount per such Primary Beneficiary Payee, the Eligible Measures for which distributions have been made, and the uptake of energy efficiency measures.

iv. The Electricity Distributor would agree to provide to the Trustee such information as is necessary for the Trustee to (v) comply with applicable law; (w) prepare financial statements for the Trust; (x) prepare and submit such documents as are required under the *Income Tax Act* (Canada); (y) comply with the Trust's applicable obligations under the Transfer Payment Agreement; and (z) such other matters as the Trustee reasonably requests.

v. The Trustee, its authorized representatives or an independent auditor would be permitted to, at its own expense, on twenty-four hours' notice to the Electricity Distributor and during normal business hours, inspect the records of and information respecting the Electricity Distributor to confirm its compliance with the Administrative Services Agreement, including regarding its processes for recommending the Primary Beneficiary Payees and their respective distribution amounts and regarding the delivery of Trust funds on behalf of the Trustee to or for the benefit of the Primary Beneficiary Payees.

f. **Standard of Care**

i. The Electricity Distributor would be required to agree to perform its duties provided under the Administrative Services Agreement exercising the degree of care, diligence and skill that a reasonably prudent Person would exercise in comparable circumstances.

ii. In performing its duties under the Administrative Services Agreement (including the recommending of Primary Beneficiary Payees to the Trustee), the Electricity Distributor would be required to agree to seek to avoid actual, potential or perceived conflicts of interest.

iii. The Electricity Distributor would be required to agree to that it would not, in performing its obligations under the Administrative Services Agreement, take any action which it knows or ought reasonably to know would cause the Trustee or the Trust to be in violation of any law, rule or regulation applicable to it.

g. **Expenses**

The Electricity Distributor would be eligible to receive reasonable compensation and reimbursement of its actual out-of-pocket costs associated with the performance of its duties and obligations under the Administrative Services Agreement, subject to compliance with requirements substantially equivalent to the Province's Travel, Meal and Hospitality Expenses Directive. Such compensation amounts and reimbursement entitlements would be specified in the Administrative Services Agreement.

h. **Representations**

The Electricity Distributor would make customary representations to the Trust regarding, among other things, its legal capacity; authorization; non-contravention of law or material contract to which it is a party; and the enforceability of the Administrative Services Agreement.

i. **Indemnification**

The Electricity Distributor would be required to agree to provide customary indemnities to the Trust and the Trustee from and against claims, damages and liabilities which may the Trust or Trustee may suffer or incur as the result of any breach of the Administrative Services Agreement by the Electricity Distributor or its representatives.

[NTD: MOE, please advise whether you wish to address any of the following matters upfront in an administrative services agreement: (1) LDC compliance with privacy law requirements/ money laundering laws; (2) legal representation if joined in any product warranty claims (i.e., to the extent the Trust is sued in connection with a purchase of Eligible Measures); (3)specific manner of flowing money to manufacturers and suppliers of Eligible Measures;(4) logistics of banking and cash flow mechanics and related record-keeping; (5) production of information for Trustee to satisfy legal requirements applicable to the Trust (i.e., tax; record keeping); (6) preparation of tax remittances for beneficiaries (applicable?);(7) required communications to Primary Beneficiaries on behalf of the Trust (including to comply with applicable laws);(8) preparation and submission of applications, etc., that may be contemplated by the Program; and (9) LDC fault-based termination scenarios]

TRUSTEE REPLACEMENT ANNEX

1. The Advisory Committee shall consist of the following individuals:

   [Insert Individual Name]

   [Insert Individual Name]

   [Insert Individual Name]

   [Insert Individual Name]

   [Insert Individual Name]

   [NTD: Selection criteria are under consideration, including to address any accounting considerations]

2. In the event any member of the Advisory Committee resigns or is unable to act, it is expected that the remaining members of the Advisory Committee would appoint another resident of Ontario as a replacement.

3. On or before •, 2017, the Advisory Committee shall identify **[six]** residents of Ontario who have expressed that they are willing to act as members of the Board of Trustees and who, individually and collectively satisfy the following criteria (collectively, the "**Selection Factors**"):

   a) each member demonstrates an understanding of the electricity sector including the electricity distribution sector;

   b) each member demonstrates an expertise in conservation and low income programs;

   c) three of the identified individuals will be representatives from separate electricity distributors [not under the control of the Government of Ontario], two individuals will be representatives from separate social services agencies [not under the control of the Government of Ontario] and one individual member, who will be a non-voting member, will be an employee or representative of the Government of Ontario; and

   d) it is expected that representation by the Government of Ontario will be non-controlling.

4. If the Advisory Committee determines that changes to the Declaration (including to this Trustee Replacement Annex) are necessary in order to (a) replace, or appoint additional trustees to act with, the Original Trustee prior to the Original Trustee Replacement Date or (b) attract and receive confirmation of appointment of appropriately qualified individuals that the Advisory Committee believes would be suitable candidates to serve as members of the Board of Trustees, the Advisory shall make recommendations regarding such necessary changes, including without limitation in respect of (i) any necessary limitations on the nature or scope of the appointment of the members of the Board of Trustees, (ii) the formation and

Formatted: Highlight

Commented [A23]: These individuals will not have an understanding of the electricity market – perhaps that needs to be acknowledged

empowerment of the Board of Trustees, and (iii) the duties, responsibilities, obligations, liabilities, indemnities, protections, limitations, restrictions, compensation, expense reimbursement entitlements of members of the Board of Trustees.

5. The Advisory Committee shall recommend that the existing Trustee appoint the individuals so identified to become the initial members of the Board of Trustees pursuant to section 5.7 of the Declaration.

6. If any of the individuals recommended under paragraph 4 or under this paragraph are not accepted and appointed by the existing Trustee pursuant to section 5.7 of the Declaration, the Advisory Committee shall forthwith identify and recommend an alternative individual(s) who is willing to act and who whose presence as a member of the Board of Trustees would result in the Trustee collectively satisfying the criteria in paragraph 2 above.

7. Upon the appointment of **[six]** trustees (five voting and one non-voting) pursuant to section 5.7 of the Declaration, the Advisory Committee will be functus.

Commented [A24]: Who are they to make recommendations to, and what is needed for such recommendations to be accepted?

Commented [A25]: Unless the Trustee decides to retain them for other purposes, subject to their agreement.

FW_ TPA and Deed Feedback.rtf

From: Petsche, Nadine (TBS) []
To: Picard, Michel (mpicard@kpmg.ca) [mpicard@kpmg.ca]; samir chhelavda (Samir.Chhelavda@HydroOne.com) [Samir.Chhelavda@HydroOne.com]
Subject: FW: TPA and Deed Feedback
Date: Sunday, March 19, 2017 14:07:11
Attachment 1: image324794.GIF
Attachment 2: TOR_2024-#12888010-v9-TPA_Draft_Afund__-_Blakes_Comments_(March_14__2017)_(2).DOCX
Attachment 3: TOR_2024-#12888010-vpdf-TPA_Draft_Afund__-_Blakes_Comments_(March_14__2017)_(2).PDF
Attachment 4: TOR_2024-#12887993-v15-Affordability_Fund_Trust_–_Declaration_of_Trust_-_Blakes_Comments_(March_14__2017).DOCX
Attachment 5: TOR_2024-#12887993-vpdf-Affordability_Fund_Trust_–_Declaration_of_Trust_-_Blakes_Comments_(March_14__2017).PDF

Hi Michel/Samir.

Please see revised docs attached. Thanks. Nadine

From: ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
Sent: March-19-17 1:42 PM
To: Johnson, Paul (ENERGY/MEDEI/MRI); Ranalli, David (ENERGY); Schachtschneider, Michelle (ENERGY); Qureshi, Musab (ENERGY); Schwab-Pflug, Emma (ENERGY); Syed, Usman (ENERGY); Petsche, Nadine (TBS)
Cc: PRESTAGE, JA; RAND, PAUL; VINER, JON
Subject: RE: TPA and Deed Feedback

Hi everyone. Here are revised versions of the Declaration and the TPA, which try to reflect the consolidated comments passed on over the past few days. Please note that the attached blacklines show changes back to the versions of these documents we last circulated (early Thursday, see below). I appreciate that you may have been working with a later version, but I have gone back to the earlier versions so we can get everyone onto the same page. Also, please let me know if you would like to see the cumulative bubble notes (Track Changes) from earlier versions – we can generate these separately if useful, but our 'cleaning software' has automatically deleted these in making this particular circulation of documents. Lastly, I do not have Michel (KPMG)'s coordinates (I was copied into the appointment yesterday so my invite does not include all of the attendees). Would one of you please forward this to Michel (cc. me) and anyone else who should be looking at these drafts at this time. Regards, Steve

Stephen R. Ashbourne

Partner

stephen.ashbourne@blakes.com

Dir: 416-863-3086

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From: RAND, PAUL
Sent: Thursday, March 16, 2017 1:41 AM
To: Paul.Johnson3@ontario.ca; David.Ranalli@ontario.ca; Michelle.Schachtschneider@ontario.ca; Musab.Qureshi@ontario.ca; Emma.Schwab-Pflug@ontario.ca; Usman.Syed@ontario.ca
Cc: ASHBOURNE, STEPHEN; PRESTAGE, JA
Subject: RE: TPA and Deed Feedback

Attached are updated drafts reflecting comments discussed today.

Please forward to internal colleagues who may not be on the distribution.

Thanks.

Paul

Paul Rand

Counsel

paul.rand@blakes.com

Dir: 416-863-3051

Begin forwarded message:

From: "Ranalli, David (ENERGY)" <David.Ranalli@ontario.ca>
To: "ASHBOURNE, STEPHEN" <STEPHEN.ASHBOURNE@blakes.com>, "PRESTAGE, JA" <JA.PRESTAGE@blakes.com>
Cc: "Johnson, Paul (ENERGY/MEDEI/MRI)" <Paul.Johnson3@ontario.ca>, "Schachtschneider, Michelle (ENERGY)" <Michelle.Schachtschneider@ontario.ca>
Subject: Fw: TPA and Deed Feedback

Hello Stephen and Jay, please find attached Ministry of Energy comments attached.

Sent from my BlackBerry 10 smartphone on the Rogers network.
From: Schwab-Pflug, Emma (ENERGY) <Emma.Schwab-Pflug@ontario.ca>

Sent: Tuesday, March 14, 2017 7:51 PM
To: Ranalli, David (ENERGY); Johnson, Paul (ENERGY/MEDEI/MRI)
Cc: Syed, Usman (ENERGY); Qureshi, Musab (ENERGY); Di Tullio, Yvonne (ENERGY); Teare, Rebecca (ENERGY); Cook, Cory (ENERGY); Gounden, Pratima (ENERGY); An, Tai (ENERGY); Lim, Janet (ENERGY); Sadasivan, Asokan (MEDG/MRIS); Petsche, Nadine (TBS); Desouza, Charlotte (ENERGY)
Subject: FW: TPA and Deed Feedback

Hi David, Paul,

Find attached our comments on Blake's edits and comments on the TPA and the Trust Declaration. Also attached is the one time AG guidance on accounting principles (we realize Blakes may already have this, but OPCD's comments refer to this document).

Could you kindly share these with Blakes this evening. We have left some placeholders for additional input from CSD and OPCD (cc'd) and will look to provide additional comments at our call tomorrow with Blakes.

Our comments to the Trust Deed are on top of a clean version Blakes had sent. Our comments on the TPA are on top of a tracked version Blakes had sent. Apologies for the inconsistency – we ran into some version control issues on our end.

Charlotte (cc'd) will be in touch with regards to setting up a call with Blakes, as well as LSB, CSD and OPCD, tomorrow morning.

Thank you,
Emma

image324794.pdf

Blakes

TOR_2024-#12888010-v9-TPA_Draft_Afund_-_Blakes_Comments_(March_14_2017)_(2).pdf

ONTARIO TRANSFER PAYMENT AGREEMENT

THE AGREEMENT, effective as of the • day of March, 2017 (the **"Effective Date"**)

B E T W E E N :

Her Majesty the Queen in right of Ontario
as represented by the Minister of Energy

(the "Province")

- and -

Computershare Trust Company of Canada, in its capacity as trustee of Affordability Fund Trust

(together with its successors and assigns, the "Recipient" and, together with the Province, the "Parties")

BACKGROUND

Computershare Trust Company of Canada is the original trustee of the Affordability Fund Trust.

The Province wishes to provide Funds to the Recipient to be held, invested, applied and distributed in accordance with the terms of the Declaration of Trust (defined below), in furtherance of the Purpose (as defined in the Declaration of Trust), including having regard to the Principles set forth in Annex A.

CONSIDERATION

In consideration of the mutual covenants and agreements contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is expressly acknowledged, the Parties agree as follows:

ENTIRE AGREEMENT

This agreement (as amended, restated, supplemented or otherwise modified from time to time, the **"Agreement"**), including:

Schedule "A" - General Terms and Conditions
Schedule "B" - Project Specific Information
Schedule "C" - Project - Certain Obligations of the Recipient
Schedule "D" - Budget
Schedule "E" - Payment Plan
Schedule "F" - Reporting
Annex "A" - Principles, and
any amending agreement entered into as provided for below,

constitutes the entire agreement between the Parties with respect to the subject matter contained in this Agreement and supersedes all prior oral or written representations and agreements.

COUNTERPARTS

The Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

AMENDING THE AGREEMENT

The Agreement may only be amended by a written agreement duly executed by the Parties.

ACKNOWLEDGEMENT

The Recipient:

(a) acknowledges that it has read and understands the provisions contained in the entire Agreement; and

(b) agrees to be bound by the terms and conditions contained in the entire Agreement.

IN WITNESS WHEREOF, the Parties have executed the Agreement on the dates set out below.

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO as represented by Minister of Energy

by:

_____ _____

Date Name: Serge Imbrogno

Title: Deputy Minister

Authorized Signing Officer

COMPUTERSHARE TRUST COMPANY OF CANADA, in its capacity as trustee of AFFORDABILITY FUND TRUST

by:

_____ _____

Date Name:

Title:

by:

_____ _____

Date Name:

Title:

I/We have authority to bind the Recipient.

SCHEDULE "A"
GENERAL TERMS AND CONDITIONS

1.0 INTERPRETATION AND DEFINITIONS

1.1 Interpretation. For the purposes of interpretation:

(a) words in the singular include the plural and vice-versa;

(b) words in one gender include all genders;

(c) the headings do not form part of the Agreement; they are for reference only and will not affect the interpretation of the Agreement;

(d) any reference to dollars or currency will be in Canadian dollars and currency;

(e) "include", "includes" and "including" denote that the subsequent list is not exhaustive;

(f) where any reference is made in the Agreement to an act to be performed by or for or on behalf of the Affordability Fund Trust, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Trustee in its capacity as trustee of the Affordability Fund Trust, and, where any reference is made in the Agreement to an act to be performed by or for or on behalf of the Trustee, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Trustee in its capacity as trustee of the Affordability Fund Trust; and

(g) [it is intended that the transfer of the Funds to the Recipient will be a transfer made to a "non-controlled trust" (as that term is given meaning in • applicable to the accounting rules and principles applicable to the Province as of the date of the Agreement), and so if a term or condition of the Agreement is determined to conflict with the requirements applicable to the Province recording the transfers to the Recipient of Funds contemplated hereunder as an expense incurred by the Province on the date of the transfer of Funds under the Agreement otherwise in connection with activities undertaken by the Province with such a "non-controlled trust", then such term or condition shall be given a meaning and shall have an effect insofar as it is possible to interpret such term or condition in a manner that eliminates such conflict while preserving the other provisions of the Agreement and furthering the Purpose.][1]

1.2 Definitions. In the Agreement, the following terms will have the following meanings:

"Affordability Fund Trust" means the trust established and governed by the Declaration of Trust, and for greater certainty includes such trust operating under any other name that may be designated from time to time by the Trustee in accordance with the Declaration of Trust.

"BPSAA" means the Broader Public Sector Accountability Act, 2010 (Ontario).

"**Beneficiary**" has the meaning given to such term in the Declaration of Trust.

"Budget" means the Recipient's budget attached to the Agreement as Schedule "D".

"Business Day" means any working day, Monday to Friday inclusive, excluding statutory and other holidays, namely: New Year's Day; Family Day; Good Friday; Easter Monday; Victoria Day; Canada Day; Civic Holiday; Labour Day; Thanksgiving Day; Remembrance Day; Christmas Day; Boxing Day and any other day on which the Province has elected to be closed for business.

[1] NTD: Consider if this sort of fail-safe is helpful.

"**Declaration of Trust**" means the declaration of trust made as of March [•], 2017, under which the Affordability Fund Trust was established by the Trustee, as such declaration of trust may be amended, restated, supplemented or otherwise modified from time to time with the consent of the Province.

"Expiration Date" means the date on which this Agreement will expire and is the date set out in Schedule "B".

"Funds" means the money the Province provides to the Recipient pursuant to the Agreement.

"Maximum Funds" means the maximum amount of Funds that the Province will provide the Recipient under the Agreement, as set out in Schedule "B".

"Notice" means any communication given or required to be given pursuant to the Agreement.

"Party" means either the Province or the Recipient.

"**Person**" includes any individual, sole proprietorship, corporation, partnership, joint venture, association, society, club, board, chamber, joint-stock company, trust, trustee, unincorporated or incorporated organization or entity or government or any entity, agency or political subdivision thereof.

"**Program**" has the meaning given to such term in the Declaration of Trust.

"Project" means the undertaking described in Schedule "C".

"**Purpose**" has the meaning given to such term in the Declaration of Trust.

"PSSDA" means the *Public Sector Salary Disclosure Act, 1996* (Ontario).

"Reports" means the reports described in Schedule "F".

"**Trustee**" means, initially, Computershare Trust Company of Canada, and any additional or replacement trustee in its capacity as trustee of the Affordability Fund Trust pursuant to the Declaration of Trust, including the Board of Trustees (as defined in the Declaration of Trust) and each of their respective successors and permitted assigns.

2.0 REPRESENTATIONS, WARRANTIES AND COVENANTS

2.1 General. The Recipient represents, warrants and covenants that:

(a) the Trustee is the trustee of the Affordability Fund Trust; and

(b) the Affordability Fund Trust is, and will continue to be for the term of the Agreement, a trust existing under and governed by the laws of the Province of Ontario.

2.2 Execution of Agreement. The Recipient represents and warrants that it has:

(a) the full power and authority to enter into the Agreement; and

(b) taken all necessary actions to authorize the execution of the Agreement.

2.3 Governance. The Recipient represents, warrants and covenants that it has, and will maintain, in writing for the period during which the Agreement is in effect:

(a) decision-making mechanisms and procedures to enable the Recipient to hold, invest, manage, apply and distribute the Funds in accordance with the Declaration of Trust in furtherance of the Purpose; and

(b) procedures to enable the preparation and delivery of all Reports required pursuant to Article 5.0.

2.4 Supporting Documentation. Upon request, the Recipient will provide the Province with proof of the matters referred to in this Article 2.0.

3.0 TERM OF THE AGREEMENT

3.1 Term. The term of the Agreement will commence on the Effective Date and will expire on the later of the Expiration Date and the date on which the Affordability Fund Trust is terminated in accordance with the Declaration of Trust.

3.2 Extension. The term of the Agreement may be extended by further agreement between the Parties.

3.3 Extension of the Declaration of Trust. If the Province determines that an extension of the Declaration of Trust (beyond the "Final Distribution Date" and time for termination, each as specified or determined thereunder) is consistent with and in furtherance of the Purpose and the Province's original intentions and expectations in establishing the Project, the Province may request that the Recipient extend the Declaration of Trust to a date specified by the Province in a Notice (such date not to be later than •), whereupon the Recipient, so long as the Trustee does not have a reasonable basis to believe that such an extension would be inconsistent with the Purpose or weaken the protections intended for the benefit of the Trustee pursuant to the Declaration of Trust, will undertake such actions as it may consider to be necessary or appropriate to so extend the Declaration of Trust, including by amending the Declaration of Trust to provide for such an extension and to modify any other term or requirement as would be necessary or prudent to conform such term or requirement in light of such extension.

4.0 FUNDS AND CARRYING OUT THE PROJECT

4.1 Funds Provided. The Province will:

(a) provide the Recipient up to the Maximum Funds to be held, invested, applied and distributed in accordance with the terms of the Project and the Declaration of Trust;

(b) provide the Funds to the Recipient in accordance with the Payment Plan attached to the Agreement as Schedule "E"; and

(c) deposit the Funds into an account designated by the Recipient, provided that the account:

(i) resides at a Canadian financial institution; and

(ii) is in the name of the Recipient.

4.2 Limitation on Payment of Funds. Despite section 4.1, the Province is not obligated to provide any Funds to the Recipient until the Requirements (as specified and defined in Schedule C) have been satisfied.

4.3 Use of Funds and Project. The Recipient will use, apply and distribute the Funds only for and in furtherance of the Purpose, including having regard to the Principles set forth in Annex A.

4.4 Province's Role Limited to Providing Funds. For greater clarity, the Province's role under the Agreement is limited to providing Funds to the Recipient and the Province is not responsible for carrying out or overseeing the terms of the Declaration of Trust.

4.5 Maximum Funds. The Recipient acknowledges that the Funds available to it pursuant to the Agreement will not exceed the Maximum Funds.

4.6 Funding, Not Procurement. For greater clarity, the Recipient acknowledges that:

(a) it is receiving funding from the Province for the Project and is not providing goods or services to the Province[2]; and

(b) the funding the Province is providing under the Agreement is funding for the purposes of the PSSDA.

5.0 RECIPIENT'S ACQUISITION OF GOODS OR SERVICES, AND DISPOSAL OF ASSETS

5.1 Acquisition. If the Recipient acquires goods, services, or both with or by applying the proceeds of the Funds, it will do so through a process that promotes the best value for money and will take reasonable steps to ensure that its Administrative Services Agents also follow a process that promotes the best value for money when acquiring goods and services with or by applying the proceeds of the Funds.

6.0 CONFLICT OF INTEREST

6.1 No Conflict of Interest. The Recipient will carry out the Program and use, apply and distribute the Funds without an actual, potential or perceived conflict of interest.

6.2 Conflict of Interest Includes. For the purposes of this Article, a conflict of interest includes any circumstances where:

(a) the Recipient; or
(b) any person who has the capacity to influence the Recipient's decisions[3],
has outside commitments, relationships or financial interests that could, or could be seen to, interfere with the Recipient's objective, unbiased and impartial judgment relating to the Project, or the Recipient's use, application or distribution of the Funds, or both.

6.3 Disclosure to Province. The Recipient will disclose to the Province, without delay, any situation that a reasonable person would interpret as an actual, potential or perceived conflict of interest.

7.0 REPORTING, ACCOUNTING AND REVIEW

7.1 Preparation and Submission. The Recipient will:

(a) submit to the Province at the address referred to in Schedule "B", all Reports in accordance with the timelines and content requirements set out in Schedule "F", or in a form as specified by the Province from time to time;

(b) submit to the Province at the address referred to in Schedule "B", any other reports as may be requested by the Province from time to time in accordance with the timelines and content requirements specified by the Province;

---

[2] NTD: Consider in relation to promotional objectives and in the context of any License Agreement.
[3] NTD: Need to consider how this works in relation to Administrative Services Agents. Is the intention that the Trustee will be in breach of the Agreement if an Administrative Services Agent is itself in a conflict, or should this be recast to require the Trustee to seek remedies (i.e., termination) if an Administrative Agent is determined to be (diligence requirement?) in breach of the conflicts of interest requirements contemplated in the Permitted Delegations Annex?

(c) ensure that all Reports and other reports are completed to the satisfaction of the Province; and

(d) ensure that all Reports and other reports are signed on behalf of the Recipient by an authorized signatory.

7.2 Record Maintenance. The Recipient will keep and maintain financial and other records necessary to permit it to satisfy its obligations under section 7.1 and to permit the Province to exercise its rights under section 7.3.

7.3 Inspection. The Province, its authorized representatives or an independent auditor identified by the Province may, at its own expense, upon twenty-four hours' Notice to the Recipient and during normal business hours, inspect the records of and information respecting the Recipient to confirm its compliance with the terms of this Agreement, including to ensure consistency with the Purpose and, for these purposes, the Province, its authorized representatives or an independent auditor identified by the Province may take one or more of the following actions:

(a) inspect and copy the records and documents referred to in section 7.2;

(b) keep any copies made pursuant to section 7.3(a); and

(c) conduct an audit or investigation of the Recipient in respect of the expenditure of the Funds to confirm that the Funds have been used, applied and distributed for and in furtherance of the Purpose, including a review of the Trust's processes, records, documents and information to ensure that funds disbursed to Electricity Distributors were used, applied and distributed for and in furtherance of the Purpose.

7.4 Disclosure. To assist in respect of the rights set out in section 7.3, the Recipient will disclose any information requested by the Province, its authorized representatives or an independent auditor identified by the Province, and will do so in the form requested by the Province, its authorized representatives or an independent auditor identified by the Province, as the case may be.

7.5 No Control of Records. No provision of the Agreement will be construed so as to give the Province any control whatsoever over the Recipient's records.

7.6 Auditor General. For greater certainty, the Province's rights under this Article are in addition to and do not limit any rights[4] provided to the Auditor General pursuant to section 9.1 of the *Auditor General Act* (Ontario).

8.0 COMMUNICATIONS REQUIREMENTS

8.1 Publication. The Recipient will indicate, in any of its Program -related publications, whether written, oral, or visual, that the views expressed in the publication are the views of the Recipient and do not necessarily reflect those of the Province.[5]

9.0 FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY

9.1 FIPPA. The Recipient acknowledges that the Province is bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province in connection with the Project or otherwise in connection with the Agreement may be subject to disclosure in accordance with that Act.

---

[4] NTD: Does the AG have any authority in respect of an non-controlled trust? If not, this probably needs to be rephrased so that the Trustee agrees to facilitate the Province's compliance with this statutute.
[5] NTD: Consider in light of possible additions to the Declaration/Principles regarding the promotion of the Program.

10.0 INSURANCE

10.1 Insurance. The Recipient [has made enquiries to confirm][believes] that insurance policies of the type contemplated in Schedule C are generally available in Canada.[6]

11.0 EVENT OF DEFAULT, CORRECTIVE ACTION AND TERMINATION FOR DEFAULT

11.1 Events of Default. An Event of Default will occur if:

(a) the Recipient fails to perform or observe any covenant in this Agreement and such failure has and continues to have a material adverse effect on the Province and remains unremedied during any Notice period applicable under section 11.2 after the earlier of (i) actual knowledge thereof by the Recipient, or (ii) receipt by the Recipient of Notice thereof from the Province;

(b) any representation or warranty made by the Recipient in the Agreement shall prove to have been incorrect in any material respect when made or deemed made, and, if capable of remedy, continues to be incorrect in any material respect during any Notice period applicable under section 11.2 after the earlier to occur of (i) the actual knowledge thereof by the Recipient or (ii) receipt by the Recipient of Notice thereof from the Province;

(c) it is [determined][manifestly demonstrated by the Province] that the Recipient has breached its Standard of Care (within the meaning given in and context of the Declaration of Trust) in discharging its material duties under the Declaration of Trust, with the result that all or a significant part of the Funds have not been or are not being applied in furtherance of the Purpose or are being applied in a manner that is directly contrary or without regard to the Purpose, and, if such breach is capable of remedy, it continues and remains unremedied during any Notice period applicable under section 11.2 after the earlier of (i) actual knowledge thereof by the Recipient, or (ii) receipt by the Recipient of Notice thereof from the Province;

(d) an [Insolvency Event] shall have occurred and be continuing with respect to the Recipient.

11.2 Consequences of Events of Default and Corrective Action. If an Event of Default occurs, the Province may, at any time, take one or more of the following actions:

(a) provide the Recipient with Notice allowing the Recipient an opportunity to remedy the Event of Default during a specified Notice Period[7];

(b) seek an order of specific performance, including an order that the Recipient pursue its available remedies under the Agreement against third parties;

(c) require, by Notice of demand, that the Recipient transfer to the Province (without any need for compensation, indemnity or consideration to the Recipient or any Beneficiary or other third party) any and all Assets remaining in the possession or under the control of the Recipient [that can reasonably be traced or attributed to the Funds][after first providing for the completion and performance by the Recipient of any unperformed contractual obligations of the Recipient undertaken in compliance with the Declaration of Trust on or prior to transfer]; and

(d) terminate the Agreement, including immediately, without liability, penalty or costs to the Province upon giving Notice to the Recipient.

---

[6] NTD: Consider if this is helpful from an accounting perspective.
[7] NTD: Consider whether to provide for a notice period within the specific Events of Default, rather than making cures entirely in the Provinces discretion.

The transfer of Funds in accordance with the Agreement is made by the Province with the expressed intention and reservation that the transferred Funds shall be returned to the Province and the entitlements of the Recipient in remaining Funds shall thereby be revoked with reversion thereof to the Province in the circumstances contemplated in Section 11.2(c).

11.3 Opportunity to Remedy. If, in accordance with section 11.2, the Province provides the Recipient with an opportunity to remedy the Event of Default, the Province will provide Notice to the Recipient of:

(a) the particulars of the Event of Default; and

(b) the Notice Period.

11.4 Recipient not Remedying. If the Province has provided the Recipient with an opportunity to remedy the Event of Default pursuant to section 11.2(a), and:

(a) the Recipient does not remedy the Event of Default within the Notice Period;

(b) it becomes apparent to the Province that the Recipient cannot adequately remedy the Event of Default within the Notice Period; or

(c) the Recipient is not proceeding to remedy the Event of Default in a way that is satisfactory to the Province,

the Province may extend any Notice period, or initiate any one or more of the actions provided for in section 11.2.

12.0 REPAYMENT

12.1 Debt Due. If, pursuant to the Agreement: the Province demands the payment of any Funds from the Recipient pursuant to section 11.2(c) such Funds or other amount will be deemed to be a debt due and owing to the Province by the Recipient, and the Recipient will pay or return the amount to the Province immediately, unless the Province directs otherwise.

12.2 Interest Rate. The Province may charge the Recipient interest on any money owing by the Recipient at the then current interest rate charged by the Province of Ontario on accounts receivable.

12.3 Payment of Money to Province. The Recipient will pay any money owing to the Province by cheque payable to the "Ontario Minister of Finance" and delivered to the Province at the address referred to in **[Schedule "B"]**.

12.4 Failure to Repay. Without limiting the application of section 43 of the Financial Administration Act (Ontario), if the Recipient fails to repay any amount owing under the Agreement, Her Majesty the Queen in right of Ontario may deduct any unpaid amount from any money payable to the Recipient by Her Majesty the Queen in right of Ontario. [8]

13.0 NOTICE

13.1 Notice in Writing and Addressed. Notice will be in writing and will be delivered by email, postage-prepaid mail, personal delivery or fax, and will be addressed to the Province and the Recipient respectively as set out in Schedule "B", or as either Party later designates to the other by Notice.

13.2 Notice Given. Notice will be deemed to have been given:

[8] NTD: Discuss.

(a) in the case of postage-prepaid mail, five Business Days after the Notice is mailed; or

(b) in the case of email, personal delivery or fax, one Business Day after the Notice is delivered.

13.3 Postal Disruption. Despite section 13.2(a), in the event of a postal disruption:

(a) Notice by postage-prepaid mail will not be deemed to be received; and

(b) the Party giving Notice will provide Notice by email, personal delivery or by fax.

14.0 SEVERABILITY OF PROVISIONS

14.1 Invalidity or Unenforceability of Any Provision. The invalidity or unenforceability of any provision of the Agreement will not affect the validity or enforceability of any other provision of the Agreement. Any invalid or unenforceable provision will be deemed to be severed.

15.0 WAIVER

15.1 Waivers in Writing. If a Party fails to comply with any term of the Agreement, that Party may only rely on a waiver of the other Party if the other Party has provided a written waiver in accordance with the Notice provisions in Article 13.0. Any waiver must refer to a specific failure to comply and will not have the effect of waiving any subsequent failures to comply.

16.0 INDEPENDENT PARTIES

16.1 Parties Independent. The Recipient acknowledges that it is not an agent, joint venturer, partner or employee of the Province, and the Recipient will not represent itself in any way that might be taken by a reasonable person to suggest that it is, or take any actions that could establish or imply such a relationship.

17.0 ASSIGNMENT OF AGREEMENT OR FUNDS

17.1 Agreement Binding. All rights and obligations contained in the Agreement will extend to and be binding on the Parties' respective heirs, executors, administrators, successors and permitted assigns.

18.0 LIMITATION OF LIABILITY

18.1 This Agreement has been entered into by the Trustee solely in its capacity as trustee of the Recipient and is not binding on the Trustee in any other capacity, whether in tort, contract or otherwise. **The Beneficiaries of the Recipient are not subject to any liability in respect of the Recipient.** Resort may not be had to, nor recourse or satisfaction be sought from, the private property of the Trustee (whether owned by its in its personal capacity or in any other capacity other than in its capacity as Trustee of the Recipient), its directors, officers, employees, or agents, or the private property of any Beneficiary, and resort will be had solely to the property of the Recipient held in trust by the Trustee for the payment, performance or satisfaction of any liability or obligation of the Recipient or the Trustee under this Agreement. However, the foregoing limitations in this section shall not apply where the Trustee has demonstrated gross negligence, bad faith, fraud or wilful misconduct.

19.0 GOVERNING LAW

19.1 Governing Law. The Agreement and the rights, obligations and relations of the Parties will be governed by and construed in accordance with the laws of the Province of Ontario and the applicable federal laws of Canada. Any actions or proceedings arising in connection with the Agreement will be conducted in the courts of Ontario, which will have exclusive jurisdiction over such proceedings.

20.0 FURTHER ASSURANCES

20.1 Agreement into Effect. The Recipient will provide such further assurances as the Province may request from time to time with respect to any matter to which the Agreement pertains, and will otherwise do or cause to be done all acts or things necessary to implement and carry into effect the terms and conditions of the Agreement to their full extent.

20.2 Declaration of Trust. The Trustee covenants that it shall not amend, restate or terminate the Declaration of Trust without obtaining the written consent of the Province in respect of same.

21.0 JOINT AND SEVERAL LIABILITY

21.1 Joint and Several Liability. Where the Recipient is comprised of more than one entity, all such entities will be jointly and severally liable to the Province for the fulfillment of the obligations of the Recipient under the Agreement.[9]

22.0 RIGHTS AND REMEDIES CUMULATIVE

22.1 Rights and Remedies Cumulative. The rights and remedies of the Province under the Agreement are cumulative and are in addition to, and not in substitution for, any of its rights and remedies provided by law or in equity.

23.0 ACKNOWLEDGEMENT OF OTHER LEGISLATION AND DIRECTIVES

23.1 Recipient Acknowledges. The Recipient acknowledges that by receiving Funds it may become subject to legislation applicable to organizations that receive funding from the Government of Ontario, including the BPSAA, the PSSDA, and the *Auditor General Act* (Ontario).

24.0 SURVIVAL

24.1 Survival. The following Articles and sections, and all applicable cross-referenced sections and schedules, will continue in full force and effect for a period of seven years from the date of expiry or termination of the Agreement: Article 1.0 and any other applicable definitions, section, 4.5, section 7.1 (to the extent that the Recipient has not provided the Reports to the satisfaction of the Province), sections 7.2, 7.3, 7.4, 7.5, 7.6, Article 8.0, Article 12.0, Article 14.0, Article 16.0, Article 17.0, Article 19.0, Article 20.0, Article 21.0 and Article 24.0. [NTD: References to be update/confirmed.]

- END OF GENERAL TERMS AND CONDITIONS -

[9] NTD: Consider further in the context of the Board of Trustees

SCHEDULE "B"

PROJECT SPECIFIC INFORMATION

Maximum Funds	$100 million
Expiration Date	Later of [April 30, 2019] and the Final Distribution Date (as defined in the Declaration of Trust)
Contact information for the purposes of Notice to the Province	**Attention: Usman Syed** **Position: Director** **Address: 77 Grenville St, Toronto, Ontario, M7A 2C1** **Fax: 416-325-6651** **Email: Usman.Syed@ontario.ca**
Contact information for the purposes of Notice to the Recipient	**Attention:** **Position:** **Address:** **Email:**
Contact information for the senior financial person in the Recipient organization (e.g., CFO, CAO) – to respond as required to requests from the Province related to the Agreement	**Attention:** **Position:** **Address:** **Email:**

SCHEDULE "C"

PROJECT

For the purposes of this Agreement, the "Project" is the distribution of the Funds in accordance with the Declaration of Trust.

It is intended the Project will be undertaken by the Recipient in furtherance of the Purpose and in accordance with the Declaration of Trust. In this regard, it is expected that the Recipient will undertake the Program having regard to the Budget and the Principles set forth in Annex A.

Notwithstanding anything to the contrary contained in the Agreement or the Declaration of Trust, until such time as each of the following conditions have been completed to the satisfaction of or waived by the Province (the "**Requirements**"), the Recipient shall not distribute any Funds to any Beneficiary.

1. The Original Trustee Replacement Date (as defined in the Declaration of Trust) shall have occurred.

2. An administrative services agreement[10] shall have been entered into between the Recipient and an Administrative Services Agent providing for the administrative services necessary for the Recipient to perform its obligations herein and execute the Project.

3. Procedures have been developed and implemented under which Electricity Distributors (as defined in the Declaration of Trust) will be invited to assist with (a) the identification and selection of Primary Beneficiaries under the Declaration of Trust, (b) the determination of the amount of Funds to be distributed to particular Primary Beneficiaries, and (c) the distribution of Funds to or for the benefit of such Primary Beneficiaries (in each case on the basis contemplated in the Permitted Delegations Annex).

4. The Recipient has obtained commercial general liability insurance from insurers having a secure A.M. Best rating of B+ or greater, or the equivalent, that in the opinion of the Recipient a prudent person similar to the Recipient would maintain, and having an inclusive limit of not less than $2,000,000 per occurrence and providing for contractual liability coverage. To demonstrate satisfaction, the Recipient will provide the Province with certificates of insurance, or other proof as may be requested by the Province, that confirms such insurance coverage and will make available to the Province a copy of each applicable insurance policy.

Each of the Requirements may be accomplished by the Recipient entering into such agreements as may be necessary or expedient, including any required amendment or amendment and restatement of the Declaration of Trust that the Trustee determines is reasonably required in order to accomplish the Requirements. The Province shall provide notice in writing to the Recipient when the Requirements have been completed to the satisfaction of the Province. Funds may be expended to pay the expenses of the Trustee in completing the Requirements.

[10] NTD: Consider this in light of the need for individual administrative services agreements with each of the Electricity Distributors. This may relate to the original idea that a single administrative services agreement would be entered into with Hydro One.

SCHEDULE “D”

Recipient’s Budget

1. It is expected that the administrative expenses of the Fund, including any administrative expenses of the Recipient (or any administrative services agents or other agents retained by the Recipient), relating to the establishment of the Affordability Fund Trust and satisfying the Requirements (as defined in Schedule “C”) and any expenses related to the operation of the Trust and the execution of the Project (including any reimbursable expenses incurred by any Administrative Services Agent (as such terms are defined in the Declaration of Trust), will be no greater than 10 percent of the total Project budget.

2. The only expenditures incurred by the Recipient that are eligible for reimbursement are actual (excluding HST) administrative overhead expenses incurred by or on behalf of the Recipient that directly related to the Recipient or the establishment of the Affordability Fund Trust.

4. Any expenses that have been or may be reimbursed by other parties should not be reimbursed by the Fund.

5. It is expected any travel, meals and hospitality expenses by the Recipient will be consistent with the Province’s Travel, Meal and Hospitality Expenses Directive. Entities receiving funding from the Recipient are also expected to adhere to the Province’s Travel, Meal and Hospitality Expenses Directive and the Recipient is expected to request the same of such Entities. Alcohol and First-Class travel are not considered eligible claims and disbursements for hospitality, incidental or food expenses shall not be covered by the Funds, including the following:

    - Meals, snacks and beverages
    - Gratuities
    - Laundry or dry cleaning
    - Valet services
    - Dependent care
    - Home management
    - Personal telephone calls

6. In the event that the Recipient performs any procurements, it is expected that all procurements will reflect the principles of Ontario’s Public Service Procurement Directive.

SCHEDULE “E”

PAYMENT PLAN

PAYMENT DATE	MAXIMUM FUNDS TO BE DISBURSED BY THE PROVINCE
Within 7 days of signing the Agreement	$ 100,000,000[11]

[11] Investment income and proceeds of the Funds are to be applied for the Purpose in accordance with the Declaration of Trust.

SCHEDULE "F"

REPORTING

Reports will be provided quarterly on the basis of the government's fiscal year starting at the execution of this Agreement and continuing until conclusion of the Agreement. Annual Reports will be provided annually on a fiscal basis starting at the execution of this Agreement and continuing until conclusion of the Agreement. Quarterly Reports and Annual Reports shall be submitted to the Province within one month following the end of the reporting period that they represent.

The Recipient shall prepare six (6) Quarterly Reports and two (2) Annual Report as outlined below. Reports shall explicitly demonstrate impact of Province's funding and address report detail requirements listed below.

NAME OF REPORT	DUE DATE
Quarterly Report #1	July 31, 2017
Quarterly Report #2	October 31, 2017
Quarterly Report #3	January 31, 2018
Annual Report #1	April 30, 2018
Quarterly Report #4	July 31, 2018
Quarterly Report #5	October 31, 2018
Quarterly Report #6	January 31, 2019
Annual Report #2	April 30, 2019

Requirements for Quarterly Reports

- The Recipient will provide Quarterly Reports which will include a report back on the Trustee-developed performance management criteria. Quarterly Report requirements will be determined from time to time by the Province, and initially will include:

25.0 Amounts disbursed by the Recipient in the previous quarter. It is expected that this information will be provided at the electricity distributor level.
26.0 Total Affordability Fund interest accrued to date
27.0 Key activities and achievements from the quarter being reported, including number of participant households per electricity distributor, average participant incentive cost per electricity distributor, and uptake of energy efficiency measures per electricity distributor
28.0 Any challenges or modifications required to the application, funding, or eligibility processes/rules
29.0 Key activities planned for the upcoming quarter

Requirements for Annual Report

- The Recipient will provide an Annual Report to the Province which will include a report back on the Trustee-developed performance management criteria. Annual Report requirements include:

30.0 A description of electricity distributor application process and the criteria used by the Recipient to manage funds.
31.0 Identify and describe any challenges with achieving goals and proposed solutions, if applicable.
32.0 Lesson learned.

33.0 Electricity distributor and customer feedback
34.0 Amounts disbursed by the Recipient in the previous year. It is expected that this information will be provided at the electricity distributor level.
35.0 Key activities and achievements from the quarter being reported, including number of participant households per electricity distributor, average participant incentive cost per electricity distributor, and uptake of energy efficiency measures per electricity distributor
36.0 Total Affordability Fund interest accrued to date

- As part of the Annual Report, the Recipient will also provide the Province with an audited financial statement for the previous year.

ANNEX A

Principles

12888010.9

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ONTARIO TRANSFER PAYMENT AGREEMENT

THE AGREEMENT, effective as of the • day of March, 2017 (the **"Effective Date"**)

B E T W E E N :

Her Majesty the Queen in right of Ontario
as represented by the Minister of Energy

(the "Province")

- and -

Computershare Trust Company of Canada, in its capacity as trustee of Affordability Fund Trust

(together with its successors and assigns, the "Recipient" and, together with the Province, the "Parties")

BACKGROUND

Computershare Trust Company of Canada is the original trustee of the Affordability Fund Trust.

The Province wishes to provide Funds to the Recipient to be held, invested, applied and distributed in accordance with the terms of the Declaration of Trust (defined below) ~~and~~, in furtherance of the Purpose (as defined in the Declaration of Trust), including having regard to the Principles set forth in Annex A.

CONSIDERATION

In consideration of the mutual covenants and agreements contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is expressly acknowledged, the Parties agree as follows:

ENTIRE AGREEMENT

This agreement (as amended, restated, supplemented or otherwise modified from time to time, the **"Agreement"**), including:

Schedule "A" - General Terms and Conditions
Schedule "B" - Project Specific Information
Schedule "C" - Project - Certain Obligations of the Recipient
Schedule "D" - Budget
Schedule "E" - Payment Plan
Schedule "F" - Reporting
Annex "A" - Principles, and
any amending agreement entered into as provided for below,

constitutes the entire agreement between the Parties with respect to the subject matter contained in this Agreement and supersedes all prior oral or written representations and agreements.

COUNTERPARTS

The Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

AMENDING THE AGREEMENT

The Agreement may only be amended by a written agreement duly executed by the Parties.

ACKNOWLEDGEMENT

The Recipient:

(a) acknowledges that it has read and understands the provisions contained in the entire Agreement; and

(b) agrees to be bound by the terms and conditions contained in the entire Agreement.

IN WITNESS WHEREOF, the Parties have executed the Agreement on the dates set out below.

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO as represented by Minister of Energy

by:

_____ _____

Date Name: Serge Imbrogno

Title: Deputy Minister

Authorized Signing Officer

COMPUTERSHARE TRUST COMPANY OF CANADA, in its capacity as trustee of AFFORDABILITY FUND TRUST

by:

_____ _____

Date Name:

Title:

by:

_____ _____

Date Name:

Title:

I/We have authority to bind the Recipient.

SCHEDULE "A"
GENERAL TERMS AND CONDITIONS

1.0 INTERPRETATION AND DEFINITIONS

1.1 Interpretation. For the purposes of interpretation:

(a) words in the singular include the plural and vice-versa;

(b) words in one gender include all genders;

(c) the headings do not form part of the Agreement; they are for reference only and will not affect the interpretation of the Agreement;

(d) any reference to dollars or currency will be in Canadian dollars and currency;

(e) "include", "includes" and "including" denote that the subsequent list is not exhaustive; ~~and~~

(f) where any reference is made in the Agreement to an act to be performed by or for or on behalf of the Affordability Fund Trust, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Trustee in its capacity as trustee of the Affordability Fund Trust, and, where any reference is made in the Agreement to an act to be performed by or for or on behalf of the Trustee, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Trustee in its capacity as trustee of the Affordability Fund Trust~~.~~; and

(g) [it is intended that the transfer of the Funds to the Recipient will be a transfer made to a "non-controlled trust" (as that term is given meaning in • applicable to the accounting rules and principles applicable to the Province as of the date of the Agreement), and so if a term or condition of the Agreement is determined to conflict with the requirements applicable to the Province recording the transfers to the Recipient of Funds contemplated hereunder as an expense incurred by the Province on the date of the transfer of Funds under the Agreement otherwise in connection with activities undertaken by the Province with such a "non-controlled trust", then such term or condition shall be given a meaning and shall have an effect insofar as it is possible to interpret such term or condition in a manner that eliminates such conflict while preserving the other provisions of the Agreement and furthering the Purpose.][1]

1.2 Definitions. In the Agreement, the following terms will have the following meanings:

"**Affordability Fund Trust**" means the trust established and governed by the Declaration of Trust, and for greater certainty includes such trust operating under any other name that may be designated from time to time by the Trustee in accordance with the Declaration of Trust.

"BPSAA" means the Broader Public Sector Accountability Act, 2010 (Ontario).

"**Beneficiary**" has the meaning given to such term in the Declaration of Trust.

"Budget" means the Recipient's budget attached to the Agreement as Schedule "D".

"Business Day" means any working day, Monday to Friday inclusive, excluding statutory and other holidays, namely: New Year's Day; Family Day; Good Friday; Easter Monday; Victoria Day; Canada Day; Civic Holiday; Labour Day; Thanksgiving Day; Remembrance Day; Christmas Day; Boxing Day and any other day on which the Province has elected to be closed for business.

[1] NTD: Consider if this sort of fail-safe is helpful.

"**Declaration of Trust**" means the declaration of trust made as of March [•], 2017, under which the Affordability Fund Trust was established by the Trustee, as such declaration of trust may be amended, restated, supplemented or otherwise modified from time to time with the consent of the Province.

"Expiration Date" means the date on which this Agreement will expire and is the date set out in Schedule "B".

"Funds" means the money the Province provides to the Recipient pursuant to the Agreement.

"Maximum Funds" means the maximum amount of Funds that the Province will provide the Recipient under the Agreement, as set out in Schedule "B".

"Notice" means any communication given or required to be given pursuant to the Agreement.

"Party" means either the Province or the Recipient.

"**Person**" includes any individual, sole proprietorship, corporation, partnership, joint venture, association, society, club, board, chamber, joint-stock company, trust, trustee, unincorporated or incorporated organization or entity or government or any entity, agency or political subdivision thereof.

"**Program**" has the meaning given to such term in the Declaration of Trust.

"Project" means the undertaking described in Schedule "C".

"**Purpose**" has the meaning given to such term in the Declaration of Trust.

"PSSDA" means the *Public Sector Salary Disclosure Act, 1996* (Ontario).

"Reports" means the reports described in Schedule "F".

"**Trustee**" means, initially, Computershare Trust Company of Canada ~~or~~, and any additional or replacement trustee in its capacity as trustee of the Affordability Fund Trust pursuant to the Declaration of Trust, including the Board of Trustees (as defined in the Declaration of Trust) and each of their respective successors and permitted assigns.

2.0 REPRESENTATIONS, WARRANTIES AND COVENANTS

2.1 General. The Recipient represents, warrants and covenants that:

(a) ~~The~~the Trustee is the trustee of the Affordability Fund Trust; and

(b) ~~The~~the Affordability Fund Trust is, and will continue to be for the term of the Agreement, a trust existing under and governed by the laws of the Province of Ontario.

2.2 Execution of Agreement. The Recipient represents and warrants that it has:

(a) the full power and authority to enter into the Agreement; and

(b) taken all necessary actions to authorize the execution of the Agreement.

2.3 Governance. The Recipient represents, warrants and covenants that it has, and will maintain, in writing for the period during which the Agreement is in effect:

(a) decision-making mechanisms and procedures to enable the Recipient to hold, invest, manage, apply and distribute the Funds in accordance with the Declaration of Trust in furtherance of the Purpose; and

(b) procedures to enable the preparation and delivery of all Reports required pursuant to Article 5.0.

2.4 Supporting Documentation. Upon request, the Recipient will provide the Province with proof of the matters referred to in this Article 2.0.

3.0 TERM OF THE AGREEMENT

3.1 Term. The term of the Agreement will commence on the Effective Date and will expire on the later of the Expiration Date and the date on which the Affordability Fund Trust is terminated in accordance with the Declaration of Trust.

3.2 Extension. The term of the Agreement may be extended by further agreement between the Parties.

3.3 Extension of the Declaration of Trust. If the Province determines that an extension of the Declaration of Trust (beyond the "Final Distribution Date" and time for termination, each as specified or determined thereunder) is consistent with and in furtherance of the Purpose and the Province's original intentions and expectations in establishing the Project, the Province may request that the Recipient extend the Declaration of Trust to a date specified by the Province in a Notice (such date not to be later than •), whereupon the Recipient, so long as the Trustee does not have a reasonable basis to believe that such an extension would be inconsistent with the Purpose or weaken the protections intended for the benefit of the Trustee pursuant to the Declaration of Trust, will undertake such actions as it may consider to be necessary or appropriate to so extend the Declaration of Trust, including by amending the Declaration of Trust to provide for such an extension and to modify any other term or requirement as would be necessary or prudent to conform such term or requirement in light of such extension.

4.0 FUNDS AND CARRYING OUT THE PROJECT

4.1 Funds Provided. The Province will:

(a) provide the Recipient up to the Maximum Funds to be held, invested, applied and distributed in accordance with the terms of the Project and the Declaration of Trust;

(b) provide the Funds to the Recipient in accordance with the Payment Plan attached to the Agreement as Schedule "E"; and

(c) deposit the Funds into an account designated by the Recipient, provided that the account:

(i) resides at a Canadian financial institution; and

(ii) is in the name of the Recipient.

4.2 Limitation on Payment of Funds. Despite section 4.1, the Province is not obligated to provide any Funds to the Recipient until the ~~Recipient provides the insurance certificate or other proof as the Province may request pursuant to [section 10.2]~~Requirements (as specified and defined in Schedule C) have been satisfied.

4.3 Use of Funds and Project. The Recipient will use, apply and distribute the Funds only for ~~the purpose contemplated by the Project, the Declaration of Trust and~~and in furtherance of the Purpose, including having regard to the Principles set forth in Annex A.

4.4 Province's Role Limited to Providing Funds. For greater clarity, the Province's role under the Agreement is limited to providing Funds to the Recipient and the Province is not responsible for carrying out or overseeing the terms of the Declaration of Trust.

4.5 Maximum Funds. The Recipient acknowledges that the Funds available to it pursuant to the

Agreement will not exceed the Maximum Funds.

4.6 Funding, Not Procurement. For greater clarity, the Recipient acknowledges that:

(a) it is receiving funding from the Province for the Project and is not providing goods or services to the Province[2]; and

(b) the funding the Province is providing under the Agreement is funding for the purposes of the PSSDA.

5.0 RECIPIENT'S ACQUISITION OF GOODS OR SERVICES, AND DISPOSAL OF ASSETS

5.1 Acquisition. If the Recipient acquires goods, services, or both with or by applying the proceeds of the Funds, it will do so through a process that promotes the best value for money and will take reasonable steps to ensure that its Administrative Services Agents also follow a process that promotes the best value for money when acquiring goods and services with or by applying the proceeds of the Funds.

6.0 CONFLICT OF INTEREST

6.1 No Conflict of Interest. The Recipient will carry out the ~~Project~~Program and use, apply and distribute the Funds without an actual, potential or perceived conflict of interest.

6.2 Conflict of Interest Includes. For the purposes of this Article, a conflict of interest includes any circumstances where:

(a) the Recipient; or

(b) any person who has the capacity to influence the Recipient's decisions[3],

has outside commitments, relationships or financial interests that could, or could be seen to, interfere with the Recipient's objective, unbiased and impartial judgment relating to the Project, or the ~~use~~Recipient's use, application or distribution of the Funds, or both.

~~**6.3 Disclosure to Province.** The Recipient will:~~

6.3 ~~(a)~~ **Disclosure to Province.** The Recipient will disclose to the Province, without delay, any situation that a reasonable person would interpret as an actual, potential or perceived conflict of interest~~; and~~.

7.0 REPORTING, ACCOUNTING AND REVIEW

7.1 Preparation and Submission. The Recipient will:

[2] NTD: Consider in relation to promotional objectives and in the context of any License Agreement.
[3] NTD: Need to consider how this works in relation to Administrative Services Agents. Is the intention that the Trustee will be in breach of the Agreement if an Administrative Services Agent is itself in a conflict, or should this be recast to require the Trustee to seek remedies (i.e., termination) if an Administrative Agent is determined to be (diligence requirement?) in breach of the conflicts of interest requirements contemplated in the Permitted Delegations Annex?

(a) submit to the Province at the address referred to in Schedule "B", all Reports in accordance with the timelines and content requirements set out in Schedule "F", or in a form as specified by the Province from time to time;

(b) submit to the Province at the address referred to in Schedule "B", any other reports as may be requested by the Province from time to time in accordance with the timelines and content requirements specified by the Province;

(c) ensure that all Reports and other reports are completed to the satisfaction of the Province; and

(d) ensure that all Reports and other reports are signed on behalf of the Recipient by an authorized signatory.

7.2 Record Maintenance. The Recipient will keep and maintain financial and other records necessary to permit it to satisfy its obligations under section 7.1 and to permit the Province to exercise its rights under section 7.3.

7.3 Inspection. The Province, its authorized representatives or an independent auditor identified by the Province may, at its own expense, upon twenty-four hours' Notice to the Recipient and during normal business hours, inspect the records of and information respecting the Recipient to confirm its compliance with the terms of this Agreement, including to ensure consistency with the ~~purposes of the Project and regarding the Recipient's allocation and expenditure of the Funds~~Purpose and, for these purposes, the Province, its authorized representatives or an independent auditor identified by the Province may take one or more of the following actions:

(a) inspect and copy the records and documents referred to in section 7.2;

(b) keep any copies made pursuant to section 7.3(a); and

(c) conduct an audit or investigation of the Recipient in respect of the expenditure of the Funds to confirm that the Funds have been used, applied and distributed for and in furtherance of the Purpose, including a review of the Trust's processes, records, documents and information to ensure that funds disbursed to Electricity Distributors were used, applied and distributed for and in furtherance of the Purpose.

7.4 Disclosure. To assist in respect of the rights set out in section ~~7.3~~7.3, the Recipient will disclose any information requested by the Province, its authorized representatives or an independent auditor identified by the Province, and will do so in the form requested by the Province, its authorized representatives or an independent auditor identified by the Province, as the case may be.

7.5 No Control of Records. No provision of the Agreement will be construed so as to give the Province any control whatsoever over the Recipient's records.

7.6 Auditor General. For greater certainty, the Province's rights under this Article are in addition to and do not limit any rights[4] provided to the Auditor General pursuant to section 9.1 of the *Auditor General Act* (Ontario).

8.0 COMMUNICATIONS REQUIREMENTS

[4] NTD: Does the AG have any authority in respect of an non-controlled trust? If not, this probably needs to be rephrased so that the Trustee agrees to facilitate the Province's compliance with this statutute.

8.1 **Publication.** The Recipient will indicate, in any of its ~~Project~~Program -related publications, whether written, oral, or visual, that the views expressed in the publication are the views of the Recipient and do not necessarily reflect those of the Province.[5]

9.0 FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY

9.1 **FIPPA.** The Recipient acknowledges that the Province is bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province in connection with the Project or otherwise in connection with the Agreement may be subject to disclosure in accordance with that Act.

10.0 INSURANCE

10.1 ~~**Recipient's Insurance.** The Recipient represents and warrants that it has, and will maintain for the term of the Agreement, at its own cost and expense, with insurers having a secure A.M. Best rating of B+ or greater, or the equivalent, all the necessary and appropriate insurance that a prudent person similar to the Recipient would maintain, including commercial general liability insurance on an occurrence basis for third party bodily injury, personal injury and property damage, to an inclusive limit of not less than the amount set out in Schedule "B" per occurrence. The policy will include the following:~~**Insurance.** The Recipient [has made enquiries to confirm][believes] that insurance policies of the type contemplated in Schedule C are generally available in Canada.[6]

~~(a) contractual liability coverage; and~~

~~(b) a 30 day written notice of cancellation.~~

~~**10.2** **Proof of Insurance.** The Recipient will provide the Province with certificates of insurance, or other proof as may be requested by the Province, that confirms the insurance coverage as provided for in section 10.1. Upon the request of the Province, the Recipient will make available to the Province a copy of each insurance policy.~~

11.0 EVENT OF DEFAULT, CORRECTIVE ACTION AND TERMINATION FOR DEFAULT

11.1 **Events of Default.** An Event of Default will occur if ~~the Recipient breaches any representation, warranty, covenant or other term of this Agreement.~~:

(a) the Recipient fails to perform or observe any covenant in this Agreement and such failure has and continues to have a material adverse effect on the Province and remains unremedied during any Notice period applicable under section 11.2 after the earlier of (i) actual knowledge thereof by the Recipient, or (ii) receipt by the Recipient of Notice thereof from the Province;

(b) any representation or warranty made by the Recipient in the Agreement shall prove to have been incorrect in any material respect when made or deemed made, and, if capable of remedy, continues to be incorrect in any material respect during any Notice period applicable under section 11.2 after the earlier to occur of (i) the actual knowledge thereof by the Recipient or (ii) receipt by the Recipient of Notice thereof from the Province;

(c) it is [determined][manifestly demonstrated by the Province] that the Recipient has breached its Standard of Care (within the meaning given in and context of the Declaration of Trust) in discharging its material duties under the Declaration of Trust, with the result that all or a significant part of the Funds have not been or are not being applied in furtherance of the

[5] NTD: Consider in light of possible additions to the Declaration/Principles regarding the promotion of the Program.
[6] NTD: Consider if this is helpful from an accounting perspective.

Purpose or are being applied in a manner that is directly contrary or without regard to the Purpose, and, if such breach is capable of remedy, it continues and remains unremedied during any Notice period applicable under section 11.2 after the earlier of (i) actual knowledge thereof by the Recipient, or (ii) receipt by the Recipient of Notice thereof from the Province;

(d) an [Insolvency Event] shall have occurred and be continuing with respect to the Recipient.

11.2 Consequences of Events of Default and Corrective Action. If an Event of Default occurs, the Province may, at any time, take one or more of the following actions:

(a) provide the Recipient with Notice allowing the Recipient an opportunity to remedy the Event of Default during a specified Notice Period[7];

(b) seek an order of specific performance, including an order that the Recipient pursue its available remedies under the Agreement against third parties;

(c) ~~recover any Funds~~require, by Notice of demand, that the Recipient transfer to the Province (without any need for compensation, indemnity or consideration to the Recipient or any Beneficiary or other third party) any and all Assets remaining in the possession or under the control of the Recipient [that can reasonably be traced or attributed to the Funds][after first providing for the completion and performance by the Recipient of any unperformed contractual obligations of the Recipient undertaken in compliance with the Declaration of Trust on or prior to transfer]; and

(d) terminate the Agreement ~~at any time~~, including immediately, without liability, penalty or costs to the Province upon giving Notice to the Recipient.

The transfer of Funds in accordance with the Agreement is made by the Province with the expressed intention and reservation that the transferred Funds shall be returned to the Province and the entitlements of the Recipient in remaining Funds shall thereby be revoked with reversion thereof to the Province in the circumstances contemplated in Section 11.2(c).

11.3 Opportunity to Remedy. If, in accordance with section ~~9.2(a),~~11.2, the Province provides the Recipient with an opportunity to remedy the Event of Default, the Province will provide Notice to the Recipient of:

(a) the particulars of the Event of Default; and

(b) the Notice Period.

11.4 Recipient not Remedying. If the Province has provided the Recipient with an opportunity to remedy the Event of Default pursuant to section 11.2(a), and:

(a) the Recipient does not remedy the Event of Default within the Notice Period;

(b) it becomes apparent to the Province that the Recipient cannot adequately remedy the Event of Default within the Notice Period; or

(c) the Recipient is not proceeding to remedy the Event of Default in a way that is satisfactory to the Province,

the Province may extend ~~the~~any Notice ~~Period~~period, or initiate any one or more of the actions provided for in section 11.2.

[7] NTD: Consider whether to provide for a notice period within the specific Events of Default, rather than making cures entirely in the Provinces discretion.

~~**11.5 When Termination Effective.** Termination under this Article will take effect as set out in the Notice.~~

12.0 REPAYMENT

12.1 Debt Due. If, pursuant to the Agreement: the Province demands the payment of any Funds from the Recipient pursuant to section 11.2 (c) such Funds or other amount will be deemed to be a debt due and owing to the Province by the Recipient, and the Recipient will pay or return the amount to the Province immediately, unless the Province directs otherwise.

12.2 Interest Rate. The Province may charge the Recipient interest on any money owing by the Recipient at the then current interest rate charged by the Province of Ontario on accounts receivable.

12.3 Payment of Money to Province. The Recipient will pay any money owing to the Province by cheque payable to the "Ontario Minister of Finance" and delivered to the Province at the address referred to in **[Schedule "B"]**.

12.4 Failure to Repay. Without limiting the application of section 43 of the Financial Administration Act (Ontario), if the Recipient fails to repay any amount owing under the Agreement, Her Majesty the Queen in right of Ontario may deduct any unpaid amount from any money payable to the Recipient by Her Majesty the Queen in right of Ontario. [8]

13.0 NOTICE

13.1 Notice in Writing and Addressed. Notice will be in writing and will be delivered by email, postage-prepaid mail, personal delivery or fax, and will be addressed to the Province and the Recipient respectively as set out in Schedule "B", or as either Party later designates to the other by Notice.

13.2 Notice Given. Notice will be deemed to have been given:

(a) in the case of postage-prepaid mail, five Business Days after the Notice is mailed; or

(b) in the case of email, personal delivery or fax, one Business Day after the Notice is delivered.

13.3 Postal Disruption. Despite section 13.2(a), in the event of a postal disruption:

(a) Notice by postage-prepaid mail will not be deemed to be received; and

(b) the Party giving Notice will provide Notice by email, personal delivery or by fax.

14.0 SEVERABILITY OF PROVISIONS

14.1 Invalidity or Unenforceability of Any Provision. The invalidity or unenforceability of any provision of the Agreement will not affect the validity or enforceability of any other provision of the Agreement. Any invalid or unenforceable provision will be deemed to be severed.

15.0 WAIVER

15.1 Waivers in Writing. If a Party fails to comply with any term of the Agreement, that Party may only rely on a waiver of the other Party if the other Party has provided a written waiver in accordance with the Notice provisions in Article 13.0. Any waiver must refer to a specific failure to comply and will not have the effect of waiving any subsequent failures to comply.

16.0 INDEPENDENT PARTIES

[8] NTD: Discuss.

16.1 **Parties Independent.** The Recipient acknowledges that it is not an agent, joint venturer, partner or employee of the Province, and the Recipient will not represent itself in any way that might be taken by a reasonable person to suggest that it is, or take any actions that could establish or imply such a relationship.

17.0 ASSIGNMENT OF AGREEMENT OR FUNDS

17.1 **Agreement Binding.** All rights and obligations contained in the Agreement will extend to and be binding on the Parties' respective heirs, executors, administrators, successors and permitted assigns.

18.0 LIMITATION OF LIABILITY

18.1 This Agreement has been entered into by the Trustee solely in its capacity as trustee of the Recipient and is not binding on the Trustee in any other capacity, whether in tort, contract or otherwise. **The Beneficiaries of the Recipient are not subject to any liability in respect of the Recipient.** Resort may not be had to, nor recourse or satisfaction be sought from, the private property of the Trustee (whether owned by its in its personal capacity or in any other capacity other than in its capacity as Trustee of the Recipient), its directors, officers, employees, or agents, or the private property of any Beneficiary, and resort will be had solely to the property of the Recipient held in trust by the Trustee for the payment, performance or satisfaction of any liability or obligation of the Recipient or the Trustee under this Agreement. However, the foregoing limitations in this section shall not apply where the Trustee has demonstrated gross negligence, bad faith, fraud or wilful misconduct.

19.0 GOVERNING LAW

19.1 **Governing Law.** The Agreement and the rights, obligations and relations of the Parties will be governed by and construed in accordance with the laws of the Province of Ontario and the applicable federal laws of Canada. Any actions or proceedings arising in connection with the Agreement will be conducted in the courts of Ontario, which will have exclusive jurisdiction over such proceedings.

20.0 FURTHER ASSURANCES

20.1 **Agreement into Effect.** The Recipient will provide such further assurances as the Province may request from time to time with respect to any matter to which the Agreement pertains, and will otherwise do or cause to be done all acts or things necessary to implement and carry into effect the terms and conditions of the Agreement to their full extent.

20.2 **Declaration of Trust.** The Trustee covenants that it shall not amend, restate or terminate the Declaration of Trust without obtaining the written consent of the Province in respect of same.

21.0 JOINT AND SEVERAL LIABILITY

21.1 **Joint and Several Liability.** Where the Recipient is comprised of more than one entity, all such entities will be jointly and severally liable to the Province for the fulfillment of the obligations of the Recipient under the Agreement.[9]

22.0 RIGHTS AND REMEDIES CUMULATIVE

22.1 **Rights and Remedies Cumulative.** The rights and remedies of the Province under the Agreement are cumulative and are in addition to, and not in substitution for, any of its rights and remedies provided by law or in equity.

23.0 ACKNOWLEDGEMENT OF OTHER LEGISLATION AND DIRECTIVES

[9] NTD: Consider further in the context of the Board of Trustees

23.1 **Recipient Acknowledges.** The Recipient acknowledges that by receiving Funds it may become subject to legislation applicable to organizations that receive funding from the Government of Ontario, including the BPSAA, the PSSDA, and the *Auditor General Act* (Ontario).

24.0 SURVIVAL

24.1 **Survival.** The following Articles and sections, and all applicable cross-referenced sections and schedules, will continue in full force and effect for a period of seven years from the date of expiry or termination of the Agreement: Article 1.0 and any other applicable definitions, section, 4.5, section 7.1 (to the extent that the Recipient has not provided the Reports to the satisfaction of the Province), sections 7.2, 7.3, 7.4,~~7.5~~ 7.5, 7.6, Article 8.0, Article 12.0, Article ~~12.0~~14.0, Article ~~14.0,~~16.0, Article 17.0, Article ~~17.0~~19.0, Article 20.0, Article 21.0 and Article 24.0. [NTD: References to be update/confirmed.]

- END OF GENERAL TERMS AND CONDITIONS -

SCHEDULE "B"

PROJECT SPECIFIC INFORMATION

Maximum Funds	~~_____~~$100 million
Expiration Date	Later of [April 30, 2019] and the Final Distribution Date (as defined in the Declaration of Trust)
~~**Insurance**~~	~~$2,000,000~~
Contact information for the purposes of Notice to the Province	**Attention: Usman Syed** **Position: Director** **Address: 77 Grenville St, Toronto, Ontario, M7A 2C1** **Fax: 416-325-6651** **Email: Usman.Syed@ontario.ca**
Contact information for the purposes of Notice to the Recipient	**Attention:** **Position:** **Address:** **Email:**
Contact information for the senior financial person in the Recipient organization (e.g., CFO, CAO) – to respond as required to requests from the Province related to the Agreement	**Attention:** **Position:** **Address:** **Email:**

SCHEDULE "C"

PROJECT

For the purposes of this Agreement, the "Project" is the distribution of the Funds in accordance with the Declaration of Trust.

~~The Project will be completed subject to the requirements of the Budget and in accordance with the Principles set forth in Annex A.~~

~~SCHEDULE "D"~~

It is intended the Project will be undertaken by the Recipient in furtherance of the Purpose and in accordance with the Declaration of Trust. In this regard, it is expected that the Recipient will undertake the Program having regard to the Budget and the Principles set forth in Annex A.

Notwithstanding anything to the contrary contained in the Agreement or the Declaration of Trust, until such time as each of the following conditions have been completed to the satisfaction of or waived by the Province (the "**Requirements**"), the Recipient shall not distribute any Funds to any Beneficiary.

1. The Original Trustee Replacement Date (as defined in the Declaration of Trust) shall have occurred.

2. An administrative services agreement[10] shall have been entered into between the Recipient and an Administrative Services Agent providing for the administrative services necessary for the Recipient to perform its obligations herein and execute the Project.

3. Procedures have been developed and implemented under which Electricity Distributors (as defined in the Declaration of Trust) will be invited to assist with (a) the identification and selection of Primary Beneficiaries under the Declaration of Trust, (b) the determination of the amount of Funds to be distributed to particular Primary Beneficiaries, and (c) the distribution of Funds to or for the benefit of such Primary Beneficiaries (in each case on the basis contemplated in the Permitted Delegations Annex).

4. The Recipient has obtained commercial general liability insurance from insurers having a secure A.M. Best rating of B+ or greater, or the equivalent, that in the opinion of the Recipient a prudent person similar to the Recipient would maintain, and having an inclusive limit of not less than $2,000,000 per occurrence and providing for contractual liability coverage. To demonstrate satisfaction, the Recipient will provide the Province with certificates of insurance, or other proof as may be requested by the Province, that confirms such insurance coverage and will make available to the Province a copy of each applicable insurance policy.

Each of the Requirements may be accomplished by the Recipient entering into such agreements as may be necessary or expedient, including any required amendment or amendment and restatement of the Declaration of Trust that the Trustee determines is reasonably required in order to accomplish the Requirements. The Province shall provide notice in writing to the Recipient when the Requirements have been completed to the satisfaction of the Province. Funds may be expended to pay the expenses of the Trustee in completing the Requirements.

[10] NTD: Consider this in light of the need for individual administrative services agreements with each of the Electricity Distributors. This may relate to the original idea that a single administrative services agreement would be entered into with Hydro One.

SCHEDULE "D"

Recipient's Budget

1. It is expected that the administrative expenses of the Fund, including any administrative expenses of the Recipient (or any administrative services agents or other agents retained by the Recipient), relating to the establishment of the Affordability Fund Trust and satisfying the Requirements (as defined in Schedule "C") and any expenses related to the operation of the Trust and the execution of the Project (including any reimbursable expenses incurred by any Administrative Services Agent (as such terms are defined in the Declaration of Trust), will be no greater than 10 percent of the total Project budget.

2. ~~Only actual (excluding HST) incurred~~The only expenditures incurred by the Recipient that are eligible for reimbursement are actual (excluding HST) administrative overhead expenses incurred by or on behalf of the Recipient that directly related to the Recipient or the establishment of the Affordability Fund Trust.

4. Any expenses that have been or may be reimbursed by other parties should not be reimbursed by the Fund.

~~3.~~5. It is expected any travel, meals and hospitality expenses by the Recipient will be consistent with the Province's Travel, Meal and Hospitality Expenses Directive. Entities receiving funding from the Recipient are also expected to adhere to the Province's Travel, Meal and Hospitality Expenses Directive and the Recipient is expected to request the same of such Entities. Alcohol and First-Class travel are not considered eligible claims and disbursements for hospitality, incidental or food expenses shall not be covered by the Funds, including the following:

   - Meals, snacks and beverages
   - Gratuities
   - Laundry or dry cleaning
   - Valet services
   - Dependent care
   - Home management
   - Personal telephone calls

~~4. Overhead expenses that are not directly related to the Recipient and establishment of the Affordability Fund should not be reimbursed.~~

~~5. Any expenses that have been or may be reimbursed by other parties should not be reimbursed by the Fund.~~

6. In the event that the Recipient performs any procurements, it is expected that all procurements will reflect the principles of Ontario's Public Service Procurement Directive.

SCHEDULE "E"

PAYMENT PLAN

PAYMENT DATE	MAXIMUM FUNDS TO BE DISBURSED BY THE PROVINCE
Within 7 days of signing the Agreement	$ ~~X~~100,000,000[11]

[11] Investment income and proceeds of the Funds are to be applied for the Purpose in accordance with the Declaration of Trust.

SCHEDULE "F"

REPORTING

~~Quarterly~~ Reports will be provided quarterly on the basis of the government's fiscal year starting at the execution of this Agreement and continuing until conclusion of the Agreement. Annual Reports will be provided annually on a fiscal basis starting at the execution of this Agreement and continuing until conclusion of the Agreement. Quarterly Reports and Annual Reports shall be submitted to the Province within one month following the end of the reporting period that they represent.

The Recipient shall prepare six (6) Quarterly Reports and two (2) Annual Report as outlined below. Reports shall explicitly demonstrate impact of Province's funding and address report detail requirements listed below.

NAME OF REPORT	DUE DATE
Quarterly Report #1	July 31, 2017
Quarterly Report #2	October 31, 2017
Quarterly Report #3	January 31, 2018
Annual Report #1	April 30, 2018
Quarterly Report #4	July 31, 2018
Quarterly Report #5	October 31, 2018
Quarterly Report #6	January 31, 2019
Annual Report #2	April 30, 2019

Requirements for Quarterly Reports

- The Recipient will provide Quarterly Reports which will include a report back on the Trustee-developed performance management criteria. Quarterly Report requirements will be determined from time to time by the Province, and initially will include:

25.0 ~~o~~ Amounts disbursed by the Recipient in the previous quarter. It is expected that this information will be provided at the electricity distributor level.

26.0 ~~o~~ Total Affordability Fund interest accrued to date

27.0 ~~o~~ Key activities and achievements from the quarter being reported, including number of participant households per electricity distributor, average participant incentive cost per electricity distributor, and uptake of energy efficiency measures per electricity distributor

28.0 ~~o~~ Any challenges or modifications required to the application, funding, or eligibility processes/rules

29.0 ~~o~~ Key activities planned for the upcoming quarter

Requirements for Annual Report

- The Recipient will provide an Annual Report to the Province which will include a report back on the Trustee-developed performance management criteria. Annual Report requirements include:

30.0 ~~o~~ A description of electricity distributor application process and the criteria used by the Recipient to manage funds.

31.0 ~~o~~ Identify and describe any challenges with achieving goals and proposed solutions, if applicable.

32.0 ~~o~~ Lesson learned.

33.0 ~~o~~ Electricity distributor and customer feedback

34.0 ~~o~~ Amounts disbursed by the Recipient in the previous year. It is expected that this information will be provided at the electricity distributor level.

35.0 ~~o~~ Key activities and achievements from the quarter being reported, including number of participant households per electricity distributor, average participant incentive cost per electricity distributor, and uptake of energy efficiency measures per electricity distributor

36.0 ~~o~~ Total Affordability Fund interest accrued to date

- As part of the Annual Report, the Recipient will also provide the Province with an audited financial statement for the previous year.

ANNEX A

Principles

~~12888010.5~~

12888010.9

Document comparison by Workshare Compare on Sunday, March 19, 2017 1:26:48 PM

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Document 2 ID	PowerDocs://TOR_2024/12888010/9
Description	TOR_2024-#12888010-v9-TPA_Draft_Afund__-_Blakes_Comments_(March_14,_2017)_(2)
Rendering set	Standard

Legend:	
Insertion	
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Style change	
Format change	
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Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

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Deletions	70
Moved from	11
Moved to	11
Style change	0
Format changed	0
Total changes	218

TOR_2024-#12887993-v15-Affordability_Fund_Trust_□Declaration_of_Trust_-_Blakes_Comments_(March_14_2017).pdf

DECLARATION OF TRUST

Made as of March •, 2017

by

COMPUTERSHARE TRUST COMPANY OF CANADA

establishing

AFFORDABILITY FUND TRUST

TABLE OF CONTENTS

Page

[RELABEL HEADINGS AND REGENERATE TABLE OF CONTENTS]

DECLARATION OF TRUST

This Declaration of Trust is made as of March •, 2017, by Computershare Trust Company of Canada, a trust company established under the laws of Canada and licensed to carry on business as a trust company in each of the provinces and territories of Canada (together with its successors and assigns and the other trustees (including the Board of Trustees) contemplated herein, the "**Trustee**").

WHEREAS Computershare Trust Company of Canada, as the Trustee, wishes to establish a trust to acquire, hold, manage, invest, apply and dispose of certain property for the benefit of certain Beneficiaries as herein described.

NOW THEREFORE Computershare Trust Company of Canada, as the Trustee, hereby declares that it holds in trust as trustee (a) the sum of ONE HUNDRED DOLLARS ($100) contributed by it on this date and (b) all other property of every type and description which it may hereafter acquire or hold in its capacity as trustee of the Trust and all income therefrom and proceeds thereof, to hold, manage, invest, apply and dispose of same on and subject to the provisions set forth in this Declaration of Trust, including the annexes and schedule attached hereto.

SECTION 1
INTERPRETATION

1.1 Definitions

In this Declaration:

(a) "***Administrative Services Agent***" means each agent, which may include any Electricity Distributor or other Person, appointed from time to time under an Administrative Services Agreement, and its successors and permitted assigns solely in such capacity.

(b) "***Administrative Services Agreement***" means each agreement entered into from time to time by the Trust and one or more Administrative Services Agents or other Persons, in furtherance of the Purpose, under which the Administrative Services Agent would agree to provide specified administrative and other services to and on behalf of the Trustee (including, following the Original Trustee Replacement Date, the Permitted Delegations Annex), as such agreement may be amended, supplemented, restated, renewed or replaced from time to time. [Blakes: A Day 1 Administrative Services Agreement would likely be requested by Computershare to address the possibility of interim administrative issues. It would also be useful to the extent that it is necessary for someone to advise Computershare if an unforeseen event arises or amendments are required to the Declaration, in the event initial changes are necessary to make the Declaration acceptable to potential Board members. All of this is trying to avoid potential gridlock if something comes up and Computershare is unwilling to act without direction.]

(c) "***Assets***" means, collectively, the following:

(i) the $100 Canadian referred to above, contributed by Computershare Trust Company of Canada on the date hereof;

(ii) all other property which is now or which at any time in the future may be issued, assigned, transferred, provided, donated, gifted and contributed to the Trustee (including pursuant to the Transfer Payment Agreement) to be held in trust pursuant to this Declaration (and which the Trustee is willing to accept and hold);

(iii) all acquisitions of property made by the Trust;

(iv) all property which may at any time be substituted for or in respect of the property referred to in clauses (i), (ii) and (iii), above;

(v) all income of the Trust, including investment income generated by the investment of the property referred to in clauses (i), (ii), (iii) and (iv), above; and

(vi) all proceeds of disposition of any of the property referred to in clauses (i) through (v) above,

but excludes any property paid out or distributed (whether out of income or capital) pursuant to the provisions of this Declaration.

(d) "***Beneficiary***" means each Primary Beneficiary and each Residual Beneficiary, as applicable.

(e) "***Board of Trustees***" means (i) as of the Original Trustee Replacement Date, the individual trustees appointed by the Original Trustee pursuant to Section 5.7 on the basis described in the Trustee Replacement Annex, and (ii) thereafter, the group of trustees appointed hereunder and acting in such capacity.

(f) "***Business Day***" means any working day, Monday to Friday inclusive, excluding statutory and other holidays, namely: New Year's Day; Family Day; Good Friday; Easter Monday; Victoria Day; Canada Day; Civic Holiday; Labour Day; Thanksgiving Day; Remembrance Day; Christmas Day; Boxing Day [and any other day on which the Province has elected to be closed for business].

(g) "***Declaration***" means this Declaration of Trust, as it may be amended, restated, supplemented or otherwise modified from time to time, and includes each of the annexes and the Schedule attached hereto which constitute and form an integral part of this Declaration.

(h) "***Electricity Distributor***" means, in respect of a designated service area or region in Ontario, the distributor of electricity to residences located in such area or region.

(i) "***Electricity Invoice***" means an invoice issued by an Electricity Distributor in respect of electricity charges and related services and amounts incurred or assessed in respect of a residence located in the Electricity Distributor's designated service area or region in Ontario.

(j) "***Eligible Investments***" means (i) a deposit receipt, note, certificate or instrument issued, guaranteed or endorsed by a bank listed in Schedule I to the *Bank Act* (Canada), which provides that the principal and any interest shall be fully paid no later than [one year] after the day the investment was made, or (ii) a deposit account at a bank listed in Schedule I to the *Bank Act* (Canada).

(k) "***Eligible Measures***" means electricity efficiency and/or conservation measures determined by the Trustee from time to time on the basis contemplated in the Principles Annex and in the manner specified in and having regard to the Permitted Delegations Annex.

(l) "***Final Distribution Date***" means the earlier of (i) the date specified as such or determined pursuant to the Transfer Payment Agreement[1], and (ii) the later of (x) the date (if any) on which the Trustee determines (by a resolution of the Board of Trustees) that no further distributions are likely to be made to any Primary Beneficiary and (y) •, 20[23].

(m) "***HAP Eligible Person***" means an "Eligible Person" as defined in Section 3.1 of the document entitled "Conservation First Framework LDC Took Kit" published by the Independent Electricity System Operator and designated as Final v3.0 – March 11, 2016, as amended in accordance with the Energy Conservation Agreement between the Independent Electricity System Operator and Electricity Distributors.

(n) "***License Agreement***" means any agreement under which the Trust or any Electricity Distributor possesses or acquires rights to use any trademarks, names, logos, copyrights, patents or other intellectual property for use in connection with communications or other dealings undertaken in relation to the Program, including for the purpose of branding, marketing and promoting the availability, terms and benefits of the Program to Primary Beneficiaries.

(o) "***Minister of Energy***" means the Minister of Energy or such other member of the Executive Council as may be assigned primary ministerial responsibility for the administration of the *Ministry of Energy Act, 2011* under the *Executive Council Act*.

(p) "***Original Trustee***" means Computershare Trust Company of Canada, acting in its capacity as trustee hereunder, together with any additional or replacement Trustee appointed hereunder prior to the Original Trustee Replacement Date and any of their respective successors and assigns.

(q) "***Original Trustee Replacement Date***" has the meaning specified in Section 5.7, being the date on which the Original Trustee is replaced as trustee under this Declaration by the Board of Trustees as contemplated under Section 5.7.

(r) "***Person***" includes any individual, sole proprietorship, corporation, partnership, joint venture, association, society, club, board, chamber, joint-stock company, trust, trustee, unincorporated or incorporated organization or entity or government or any entity, agency or political subdivision thereof.

(s) "***Primary Beneficiary***" means each individual that, as of a time of determination, satisfies each of the following criteria:

[1] NTD: The TPA will provide that on an Event of Default (KPMG Comment- No! This is a problem…OPC Comment: Please see correspondence between the Province and the OAG w.r.t. transfer payment accountability provisions.) the remaining Assets will be paid over to the Government, on the basis that the Government's transfer thereunder is subject to such a reservation in circumstances of non-compliance. The TPA should also specify that the Trust will thereafter be wound up, which will tie in to this definition by way of the date so specified in the TPA. Accounting considerations to be discussed.

(i) the individual owns, rents or leases a residence located in Ontario and is the primary or secondary electricity utility account holder named on an Electricity Invoice issued in respect of that residence; and

(ii) the individual is not a HAP Eligible Person.

(t) "***Principles Annex***" means the Principles Annex set forth as an annex to this Declaration.

(u) "***Province***" means the Province of Ontario.

(v) "***Program***" means the establishment, promotion, implementation and administration of a program to achieve the Purpose on the basis contemplated in this Declaration.

(w) "***Permitted Delegations Annex***" means the Permitted Delegations Annex set forth as an annex to this Declaration.

(x) "***Purpose***" means (i) the making of distributions to Primary Beneficiaries who are identified and whose needs are assessed in accordance with section 3.1 and 3.1 of this Declaration, having regard to (x) the principles set forth in the Principles Annex, (y) the manner and basis of implementation and administration of the Program contemplated in the Permitted Delegations Annex, and (z) the other terms, limitations and requirements set forth in this Declaration, and (ii) to the extent that Assets are available following the distributions made to Primary Beneficiaries as contemplated in (i), above, the making of distributions to Residual Beneficiaries who are identified and whose needs are assessed in accordance with section 3.3 and otherwise having regard to the other terms, limitations and requirements set forth in this Declaration.

(y) ***"Residual Beneficiary"*** means each charitable organization identified by the Trustee and specified as a residual beneficiary hereunder from time to time, selected by the Trustee in consultation with and having regard to the recommendations of the Ontario Energy Board in accordance with section 3.3.

(z) "***Transfer Payment Agreement***" means the transfer payment agreement dated as of March •, 2017 between the Trustee and Her Majesty the Queen in right of Ontario as represented by the Minister of Energy, as such agreement may be amended, restated, supplemented or otherwise modified by the further agreement of the parties thereto from time to time.

(aa) "***Trust***" means Affordability Fund Trust, a trust established under and governed by the laws of the Province of Ontario pursuant to this Declaration.

(bb) "***Trustee***" means (i) the Original Trustee and (ii) on and after the Original Trustee Replacement Date, the Board of Trustees acting together in accordance with and subject to Section 5.7 and in accordance with the rules and procedures adopted by the Board of Trustees pursuant to Section 5.8.

(cc) "***Trustee Replacement Annex***" means the Trustee Replacement Annex set forth as an annex to this Declaration.

1.2 Headings and Table of Contents

The insertion of headings and the provision of a table of contents are for convenience of reference only and shall not affect the construction or interpretation of this Declaration.

1.3 References

Unless otherwise specified, all references to Sections are to Sections of this Declaration. The words "hereto", "herein", "hereof", "hereunder" and similar expressions refer to this Declaration and not to any particular Section or other provision of this Declaration.

1.4 Number and Gender

Unless otherwise specified, words importing the singular include the plural and vice versa and words importing gender include all genders.

1.5 Governing Law

This Declaration shall be governed by, and construed and interpreted in accordance with, the laws of the Province of Ontario and of Canada applicable therein.

1.6 Severability

Any provision of this Declaration which is illegal, invalid or unenforceable in any jurisdiction shall not affect the legality, validity or enforceability of the remaining provisions and any such illegality, invalidity or unenforceability in any jurisdiction shall not affect the legality, validity or enforceability of such provision in any other jurisdiction.

1.7 Reference to the Trust and the Trustee

For greater certainty, where any reference is made in this Declaration to an act to be performed by or for or on behalf of the Trust, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Trustee in its capacity as trustee of the Trust, and, where any reference is made in this Declaration to an act to be performed by or for or on behalf of the Trustee, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Trustee solely in its capacity as trustee of the Trust. Except as provided under the Transfer Payment Agreement, no Person dealing with the Trust or the Trustee shall be bound to make any enquiry concerning, or has the right to require production of, any evidence of the validity of any act of, or transaction purporting to be made by, the Trustee.

1.8 Defect in Appointment

No action taken by the Trustee will be invalid or ineffective by reason only of any defect in the appointment of the Trustee or the compliance by the Trustee of any rules or procedures adopted by the Trustee and which is discovered after the taking of such action.

SECTION 2
CONCERNING THE TRUST

2.1 Objectives

The Trust is established to hold, invest, apply and dispose of the Assets for the benefit of the Beneficiaries in furtherance of the Purpose, as provided for in this Declaration. In furtherance of the Purpose:

(a) the Original Trustee shall hold and invest the Assets as contemplated in this Declaration until the Original Trustee Replacement Date, after which the Board of Trustees shall be duly appointed hereunder; and

(b) the Board of Trustees shall hold, invest, apply and dispose of the Assets in accordance with this Declaration, including by determining the identities of and distributions (if any) to be made to or for the benefit of the Primary Beneficiaries in accordance with Sections 3.1 and 3.2 of this Declaration, having regard to the principles set forth in the Principles Annex and in the manner and on the basis contemplated in the Permitted Delegations Annex, or otherwise by determining the identities of and distributions to be made to or for the benefit of any Residual Beneficiary in accordance with Section 3.3,

in each case and in all respects subject to the terms, limitation and requirements set forth in this Declaration.

2.2 Name of the Trust

The name of the Trust shall be the "Affordability Fund Trust" or such replacement name as the Trustee shall determine and specify from time to time. The Trustee shall hold the Assets and conduct the activities of the Trust under such name or variation thereof (including any variation of such name in the French language). If the Trustee determines to change the name of the Trust, the Trustee may specify and use such other designation or adopt such other name (including any name in the French language) as it considers appropriate and may hold the Assets and conduct the activities of the Trust under such designation or other name.

2.3 Location

The head office and the situs of the administration of the Trust shall be • or such other address in Ontario as the Trustee may determine from time to time.

2.4 Fiscal Year

The fiscal year of the Trust shall end on December 31 of each year.

SECTION 3
DISTRIBUTIONS

3.1 Distributions to Primary Beneficiaries

Prior to the Final Distribution Date, the Trustee shall distribute the Assets (including capital or income) to the Primary Beneficiaries identified based on the application of the principles

specified in the Principles Annex and in the manner and in the amounts determined on the basis contemplated by the Permitted Delegations Annex, in each case in the amounts and to the extent specified herein and therein, subject in all respects to the exercise by the Trustee of its discretion hereunder and to the exclusion of the other Beneficiaries. [Blakes: The intention has been to make the Principles and the Delegations clear and firm, so that MOE has greater certainty. There is scope for the Trustees to add to Principles. Uncertain why firm direction and delegations to LDCs would raise issues for the Trustee.]

3.2 Amount of Distributions to Primary Beneficiaries

For the purposes of determining the amount of distributions to be made to the Primary Beneficiaries, the Trustee shall have regard to and be entitled to rely on the recommendations of and information provided by Electricity Distributors acting as Administrative Services Agents appointed for the purposes, in the manner and substantially on the terms contemplated in the Permitted Delegations Annex, without any duty or obligation to verify or makes enquiries regarding the basis for or propriety of such recommendations or the accuracy or completeness of such information, except if and to the extent that the Trustee, in its discretion, determines that (i) it has actual knowledge that such recommendations are contrary to the reasonable application of the principles set forth in the Principles Annex or have been made on a basis that is manifestly contrary to such principles or the delegations and activities specified or contemplated to be undertaken under the Permitted Delegations Annex or (b) such information is known by the Trustee to be erroneous, contain a material misrepresentation or is materially incomplete.

3.3 Distributions to Residual Beneficiaries

Prior to the Final Distribution Date, the Trustee shall identify the Residual Beneficiaries by consulting with and having regard to the recommendations of the Ontario Energy Board, based on **[Identify criteria that will narrow the scope to charities to those having an energy/social focus]**. On or as soon as practicable following the Final Distribution Date, the Trustee shall distribute all of the Assets (including capital or income) existing at that time to the Residual Beneficiaries, in each case in the amounts and to the extent determined by Trustee in its discretion hereunder[2] and to the exclusion of the other Beneficiaries.

SECTION 4
POWERS OF THE TRUSTEE

4.1 General

Subject to and in compliance with the terms, limitations and restrictions of this Declaration and notwithstanding applicable trust legislation, the Trustee shall have, without other or further authorization, full, exclusive and absolute power, control and authority over the Assets and over the affairs and activities of the Trust to the same extent as if the Trustee were not a trustee, but rather the sole and absolute owner of the Assets in its own right, including such power, control and authority to do all such acts and things as in its sole judgment and discretion are necessary, incidental or desirable for carrying on the affairs and activities of the Trust, with such powers of delegation as may be permitted or otherwise contemplated by this Declaration. Except as

[2] NTD: Consider if principles should be included regarding the maximum amount any particular charity may receive.

expressly provided in this Declaration, the enumeration in this Declaration of any specific power or authority shall not be construed as limiting the aforesaid general power or authority or any other specific power or authority set out herein. Subject to the terms, limitations and restrictions of this Declaration, every discretion or power hereby conferred on the Trustee is an absolute and uncontrolled discretion or power.

4.2 Specifically Enumerated Powers

The Trustee shall have the following specific powers and authorities:

(a) ***Transfer Payment Agreement.*** The Trustee shall have the power to enter into, amend, supplement, modify and perform its obligation under the Transfer Payment Agreement.

(b) ***Contracts and Undertakings.*** The Trustee shall have the power to enter into, amend, supplement, modify and perform its obligation under any contract entered into or undertaking given by the Trustee in furtherance of the Purpose, including any Administrative Services Agreement and any License Agreement.

(c) ***Power to Own, Hold and Manage.*** Subject to section 4.2(d), the Trustee shall have the power to own, hold and manage the Assets in such manner as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable.[3]

(d) ***Power to Invest in Eligible Investments.*** The Trustee shall have the power to invest the Assets only in Eligible Investments, and to change such Eligible Investments at any time and from time to time, all as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable, but always having regard to the Trustee's expectations regarding the timing of payments to be made to the Beneficiaries hereunder. If an investment of Assets in Eligible Investments would not be authorized under the applicable trust laws of Ontario, the Trustee shall nevertheless be permitted to make an investment of the Assets in such Eligible Investments. The Trustee will have no liability for the diminution in the value of any investment in Eligible Investments made hereunder.

(e) ***Power to Dispose of Assets.*** The Trustee shall have the power to sell, convey, assign, transfer, exchange and in any other manner dispose of the Assets or any part or parts thereof free and clear of any and all trusts established under this Declaration, by public or private sale, for cash or on credit, with or without advertisement, and subject to such restrictions, stipulations, agreements and reservations as the Trustee in its sole and absolute discretion may consider appropriate or advisable, and to execute and deliver and perform any agreement, deed, conveyance, transfer or other document or instrument in connection with the foregoing.[4]

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[3] Consider limiting this broad power. (KPMG Comment: Why? Be careful) OPC Comment: Not sure what these comments refer to, but worth discussing to confirm. . [Blakes: See response as #4 (below) with respect to "manage" the assets.]

[4] Consider limiting this broad power. (KPMG Comment: Why? Be careful) OPC Comment: Not sure what these comments refer to, but worth discussing to confirm. [Blakes: We could not think of a case where the trustee would be required to dispose of assets, and wondered if a broad power should recognize

(f) ***Power to Apply Assets and Proceeds to Make Distributions to Beneficiaries.*** The Trustee shall have the power to apply the Assets and the proceeds and income derived therefrom to make distributions to the Beneficiaries contemplated by Section 3, and to execute and deliver and perform any agreement, deed, conveyance, transfer or other document or instrument in connection with therewith.

(g) ***Power to Delegate and to Appoint Agents, etc.*** The Trustee shall have the power to appoint, employ or contract with any Person as the Trustee in its sole and absolute discretion may consider appropriate or advisable in connection with the activities of the Trust. Without limiting the generality of the foregoing:

(i) the Trustee will have the power at any time and from time to time to appoint, employ or retain consultants, financial advisers, technical advisers, legal counsel, accountants, administrative services agents, insurers, insurance agents and insurance brokers, as the Trustee may require for the purpose of discharging its duties hereunder and shall not be responsible for or for the actions of any of them, including to:

(A) act for and on behalf of the Trust in connection with any and all matters in any way relating to the negotiation, settlement, entering into, amending, performance and enforcement of the Transfer Payment Agreement, the Administrative Services Agreements, any License Agreement and any other agreements and contracts to which the Trust becomes a party in accordance with this Declaration;

(B) to provide or cause to be provided any or all kinds of administrative services in any way relating to the activities of the Trust;

(C) to act as attorney in fact, agent or trustee in the acquisition, holding, investment, application, sale or other disposition of the Assets and in the handling, prosecuting, defending or settling of any claims of or made against the Trust;

(D) to value the Assets and determine the net income of the Trust; and

(E) to make any filings, elections and submissions (including in respect of taxation matters) in connection with the Trust's compliance with applicable laws and regulatory requirements; and

(ii) the Trustee may pay remuneration and reimbursements from the Assets for services performed for it or on its behalf in the discharge of the trusts hereof without taxation for costs or fees of any counsel, solicitor or attorney.

Without limiting the foregoing, it is expected that the Board of Trustees will (a) seek to enter into Administrative Services Agreements with Electricity Distributors for the purposes

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that dispositions are not intended. We are okay if the power is intact, as long as MOE is comfortable with that as a possibility.]

contemplated by the Permitted Delegations Annex, and on such terms and conditions (including terms and conditions as to the payment of reasonable fees and expenses) not inconsistent therewith as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable, and (b) obtain commercial general liability insurance from insurers having a secure A.M. Best rating of B+ or greater, or the equivalent, that in the opinion of the Recipient a prudent person similar to the Recipient would maintain, and having an inclusive limit of not less than $2,000,000 per occurrence and providing for contractual liability coverage.

(h) ***Power to Operate Accounts.*** The Trustee shall have the power to (i) open and operate accounts at any chartered bank, trust company or other financial institution in Canada or elsewhere, as the Trustee in its sole and absolute discretion may consider appropriate or advisable; (ii) deposit therein any moneys or securities forming part of the Assets whether or not such deposits will earn interest; (iii) withdraw such deposits at such times and in such manner as the Trustee may determine; (iv) draw, make, endorse, deposit or otherwise deal in cheques, bills of exchange, promissory notes, drafts and other kinds of instruments and securities; and (v) enter into contracts or agreements with any such chartered bank, trust company or other financial institution containing such terms and provisions as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable. In connection therewith, the Trustee shall have no liability or responsibility for any loss which may occur by reason of the failure of any such chartered bank, trust company or other financial institution.

(i) ***Power to Collect, etc.*** The Trustee shall have the power to (i) collect, sue for, receive and give receipts for all sums of money or other property due to the Trust; (ii) consent to extensions of time for payment or to the renewal of any securities or obligations; (iii) engage or intervene in, prosecute, defend, compound, compromise, abandon or adjust by arbitration or otherwise, any demands, claims, actions, suits or proceedings relating to the Trust or the Assets; (iv) exercise any and all remedies available to the Trustee under any agreement or as may otherwise be available, including any power of foreclosure or sale available at law; (v) in connection with any such foreclosure or sale, purchase or otherwise acquire title to any property and to convey good title thereto free of any and all trusts hereby established, or to take or retake possession of any property secured under any agreement or instrument; (vi) extend the time, with or without security, for the payment or delivery of any debts or property; (vii) execute and deliver releases, acquittances, discharges, agreements or other instruments related thereto; and (viii) pay or satisfy any debts or claims upon any evidence that the Trustee, in its sole and absolute discretion, may determine to be sufficient.

(j) ***Power to Pay Trustee's Fees.*** The Original Trustee shall be entitled to be paid and receive the fees set forth in the Original Trustee's schedule of fees delivered as of the date hereof as compensation for its services under this Declaration, and to be reimbursed for its out-of-pocket expenses reasonably incurred, in each case from the Assets and without the approval of any Beneficiary or any court. The Original Trustee shall [Blakes: Someone will need to settle funds to create a valid trust] be entitled, in its sole and absolute discretion, to withdraw funds from time to time for such purpose from any account of the Trust. Members of the Board of Trustees shall be entitled to reimbursement for and in respect of their out-of-pocket expenses reasonably incurred in discharging their respective duties and obligations under this Declaration and any contract of the Trust entered into in accordance with this Declaration, in each case

without the approval of any Beneficiary or any court, provided that the members of the Board of Trustees have general regard to sorts of limitations as are set forth in the "Travel, Meal and Hospitality Expenses Directive of the Province" specified and amended by the Province from time to time, a copy of the current version of which is attached as Exhibit 1 to the Principles Annex.

(k) ***Power to Pay Taxes.*** The Trustee shall have the power to (i) pay, deduct, withhold or remit any taxes or assessments which are required by law to be paid, deducted, withheld or remitted together with or from any payment made by the Trustee; (ii) pay all taxes or assessments of whatever kind or nature imposed upon or against the Trust or the Trustee in connection with the Assets or any part thereof; (iii) collect and remit all taxes and assessments of whatever kind or nature required to be collected and remitted by the Trust or the Trustee in connection with their activities or the Assets or any part thereof; (iv) appeal, settle or compromise tax claims or liabilities; and (v) for the foregoing purposes, to make such returns, elections and submissions and do all such other acts and things as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable.

(l) ***Power to Appoint Auditors.*** The Trustee shall have the power to select and appoint and discharge and re-appoint, in its sole and absolute discretion, an auditor or auditors of the Trust and to settle and pay the fees of any such auditor or auditors from any account of the Trust.

(m) ***Form of Accounts.*** The Trustee shall have the power to determine and change from time to time, in its sole and absolute discretion, the method or form in which the accounts of the Trust will be kept and shall not be required to keep or provide accounts in the form usually required by law to be kept or provided by trustees; provided that such method or form reasonably complies with generally accepted accounting principles in effect in Canada to the extent applicable.

(n) ***Title to Assets.*** The Trustee shall have the power to cause all or any part of the Assets to be held by or registered, in its sole and absolute discretion, in the name of any Person.

(o) ***Delegation of Discretion***. The Trustee shall have the power to delegate the right and power to exercise, or concur in the exercise of any discretion or power, conferred on the Trustee in this Declaration or conferred by law to any one or more of its directors, officers, employees, agents, representatives or to such other Person, as the Trustee, in its sole and absolute discretion, may think is appropriate or advisable, including to one or more Administrative Services Agents and their respective employees, officers and directors under a related Administrative Services Agreement entered into by the Trust substantially on the basis contemplated in the Permitted Delegations Annex. In particular, the Trustee shall have the power to accept, rely on and follow the recommendations of an Electricity Distributor made under and in accordance with the Permitted Delegation Annex with respect to a the identification of, and the determination of distributions (if any) to be made to, any Primary Beneficiary, except if and in so far as the Trustee has actual knowledge that (1) such Primary Beneficiary did not in fact satisfy the "Selection Factors" specified in the Principles Annex as of the applicable time of determination; and/or (ii) the amount recommended to be distributed to the Primary Beneficiary was not calculated in substantial compliance with, or was calculated in a manner that is manifestly contrary to the requirements set forth or contemplated in, the Permitted Delegation Annex or the applicable Administrative Services Agreement.

(p) ***Additional Powers.*** The Trustee shall have the power to perform and do all such other acts, to take such steps and to execute all such deeds, transfers, assignments, agreements and other documents and instruments as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable for the carrying out of any of its powers hereunder or of any of the activities of the Trust as herein contemplated, or for the carrying out, promotion or advancement of the interests of the Trust, whether or not any of such acts, things, documents or instruments are herein expressly mentioned. Any good faith determination by the Trustee as to what is necessary, desirable or appropriate to carry out its powers or activities of the Trust as contemplated under this Declaration or to carry out, promote or advance the interests of the Trust shall be conclusive. Any construction of this Declaration or any determination as to the activities of the Trust or the existence of any power or authority hereunder made in good faith by the Trustee, relying upon the advice of counsel, shall be conclusive. In construing the provisions of this Declaration, there shall be a presumption in favour of a grant of power to the Trustee.

SECTION 5
CONCERNING THE TRUSTEE

5.1 Duty of Trustee

In performing its duties and exercising its powers under this Declaration, the Trustee shall act honestly, in good faith and with a view to the best interests of the Trust and the Beneficiaries and shall exercise that degree of care, diligence and skill that a reasonably prudent trustee would exercise in comparable circumstances (the "**Standard of Care**"). The Trustee shall observe and act in accordance with the terms of, and shall observe and comply with the limitations and restrictions set forth in, this Declaration, including having due regard to the principles set forth in the Principles Annex. To the extent that the Trustee has so delegated any of its duties or powers, it shall be deemed to have satisfied the Standard of Care in respect of the subject matter of such delegation, subject to the Trustee's overall duty as a trustee to exercise prudent oversight in relation to such delegation. Unless required by law, the Trustee will not be required to give any security, bonds or sureties in any jurisdiction for the performance of any of its duties and obligations under this Declaration. The Trustee (including the individual members of the Board of Trustees) will not be required to devote its entire time to the trust activities.

5.2 Limitation of Liability

The Trustee shall not be personally liable in tort, contract or otherwise to any Beneficiary or any other Person for any loss or diminution in the value of the Assets, or for any action or failure to act on the part of the Trustee or any of its employees or agents or any other Person, and shall not be subject to any personal liability for any debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses incurred by or against the Trust, howsoever arising, and resort will be had solely to the Assets for the payment, performance or satisfaction thereof. No property or assets of the Trustee, owned in its personal capacity or otherwise, will be subject to levy, execution or other enforcement procedure**s** with respect to any obligation under this Declaration. However, the foregoing limitations in this Section shall not apply where the Trustee has demonstrated gross negligence, bad faith, fraud or wilful misconduct.

5.3 Liability of Trustee under Contracts

Any document or instrument creating a liability or obligation of the Trust or of the Trustee will be conclusively deemed to have been executed by the Trustee only in its capacity as Trustee of the Trust and will be binding upon the Trustee only in its capacity as trustee hereunder and resort may not be had to, nor recourse or satisfaction be sought from, the property of the Trustee other than the Assets, whether owned by its in its personal capacity or in any other capacity other than in its capacity as Trustee of the Trust, or from its employees or agents, and in all cases resort will be had solely to the Assets for the payment, performance or satisfaction of any such liability or obligation. However, the foregoing limitations in this Section shall not apply where the Trustee has demonstrated gross negligence, bad faith, fraud or wilful misconduct. Each document or instrument creating a liability or obligation of the Trust or of the Trustee shall contain a provision providing for the aforesaid limitation of liability.

5.4 Funds of the Trustee

The Trustee shall not be required to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers.

5.5 Indemnification of Trustee

In addition to and without limiting any other protection hereunder or otherwise by law of the Trustee and its respective employees, agents, representatives and assigns (in this Section 5.5, collectively, the "**Representatives**"), the Trustee and its respective Representatives shall be indemnified, defended and saved harmless out of the Assets from, against and in respect of any and all liabilities arising or related to actions taken or omitted to be taken by any agent of the Trustee, losses, claims (including any claim arising out of the assessment of any tax on income by a taxing authority), damages, penalties, fines, actions, suits, demands, levies, assessments, costs, charges, expenses and disbursements (including, without limitation, any and all legal and advisor fees and disbursements) (in this Section 5.5, collectively, the "**Liabilities**") of whatever kind or nature which may at any time be suffered by, imposed upon, incurred by or asserted against the Trustee and its Representatives, whether groundless or otherwise, howsoever arising from or out of any act, omission or error of the Trustee, in each case made in connection with its acting as Trustee hereunder, in each case except and to the extent that the Liabilities are a result from or are caused by gross negligence, wilful misconduct, bad faith or breach of the Confidentiality obligations described in section 5.9. Further, except as provided in section 5.2, the Trustee shall not be liable to any Beneficiary for any loss or damage relating to any matter regarding the Trust, including any loss or diminution in value of the Assets. Notwithstanding any other provision hereof, the obligations provided for in this section 5.5 shall survive any termination of the Trust, whether by reason of removal or resignation of the Trustee, termination or discharge of this Declaration or otherwise.

5.6 Reliance upon Advice

Subject to section 5.1, in performing its duties and exercising its powers hereunder, the Trustee may rely and may act or not act, and shall be fully protected in relying and acting or not acting, upon (a) any statement, telecopy or other electronic means of communication, writing, notice, resolution, report, opinion or other document or conversation believed by its to be genuine and

correct and to have been signed, sent or made by the proper Person; (b) any opinion or advice received or information obtained from auditors, solicitors, or other professional advisers, whether retained by the Trustee or otherwise, and shall not be responsible or held liable for any loss or damage resulting from so relying or acting or not acting; and (c) the advice and actions of any Administrative Services Agent, including in connection with the delegations and reliances contemplated under the Permitted Delegations Annex. For greater certainty, it shall not be necessary for the Trustee to ascertain whether or not the Persons who have executed, signed or otherwise issued, authenticated or receipted such papers, writings or documents (including any Administrative Services Agreement, License Agreement or any other contract entered into by the Trustee) have authority to do so or that they are the same Persons named therein or otherwise to pass upon any requirement of such papers, writing or documents that may be essential for their validity or effectiveness or upon the truth and acceptability.

5.7 Replacement of the Original Trustee

As soon as practicable and in any event prior to •, 2017, the Original Trustee shall appoint the Persons contemplated by the Trustee Replacement Annex to comprise the Advisory Committee contemplated therein (once constituted, the "**Advisory Committee**"). As soon as practicable thereafter, the Original Trustee shall request that the Advisory Board make recommendations with respect to the composition of the "Board of Trustees", as contemplated by the Trustee Replacement Annex. The Trustee shall have no duty or obligation to investigate the basis for any of the Advisory Committee's recommendations and may rely on such recommendations without any duty of enquiry, supervision or oversight with respect to the activities and decision-making processes adopted by the Advisory Committee in its discretion, in full satisfaction of the Original Trustee's Standard of Care with respect to such matters hereunder. Except if the Trustee determines that the individuals recommended by the Advisory Committee to become members of such Board of Trustees are disqualified from so acting on the basis of manifest non-compliance with the "Selection Factors" set forth in the Trustee Replacement Annex, the Original Trustee shall appoint, as members of the Board of Trustees, [six] (five voting and one non-voting) of individuals from among those individuals who have been recommended for appointment to the Board of Trustees by the Advisory Committee. The Original Trustee may exercise its discretion in selecting such individuals for such appointment subject to compliance with the "Selection Factors" set forth in the Trustee Replacement Annex or, in the absence of such exercise, shall select from among individuals who would, if appointed, provide for compliance with the "Selection Factors" set forth in the Trustee Replacement Annex based on the alphabetic order of the their respective surnames. Upon the appointment of [six] individuals pursuant to this provision and their agreement to act as members of the Board of Trustees, the Original Trustee shall be deemed to have resigned and shall cease to be a trustee (such resignation occurring on the "**Original Trustee Replacement Date**").

5.8 Rules and Procedures of the Board of Trustees

(a) ***Initial Requirements***. As soon as practicable and in any event no later than [one] month following the Original Trustee Replacement Date, the Board of Trustees shall meet to take such decisions and actions as they deem necessary to ensure the proper management and administration of the Trust. The date (and location if in person) of the initial meeting shall be determined by a majority of the Board of Trustees.

(b) ***Meetings.*** Subject to the Board of Trustees' discretion to make such rules and procedures that they may deem desirable, meetings of the Board of Trustees may be held at such time and place as the trustee members of the Board of Trustees may agree upon or as they may fix by resolution for the purpose or if the meeting is called as hereinafter mentioned then at such time as may be designated in the notice calling the meeting. A meeting of the Board of Trustees may be called at any time by any two members of the Board of Trustees by two Business Days' notice given to the members of the Board of Trustees. No notice of any Board of Trustees' meeting shall be necessary when a quorum is present if those comprising the quorum consent to the transaction of the affairs of the Trust and the absent trustee or trustees, if any, either before or after the meeting shall waive in writing notice of the meeting. Meetings of the Board of Trustees may be conducted in person, by telephone, or in such other manner as determined by the Board of Trustees. The Board of Trustees may elect a Chairperson.

(c) ***Quorum.*** At any meeting of the Board of Trustees, a majority of the members of the Board of Trustees shall be a quorum irrespective of the number of members in office, provided that quorum will not exist if the majority of members voting on a decision are Provincial employees or representatives. The decision of the majority of the members where quorum exists shall govern and shall be binding for all purposes and shall be acted upon and carried out in the same manner and with the same effect as if all the members concurred therein; provided always that in the case of equality of votes the Chairperson, if any, shall not be entitled to cast a second or deciding vote.

(d) ***Power to Adopt Rules and Procedures.*** The Board of Trustees may make such rules and procedures not inconsistent herewith as it may deem desirable for the proper management and administration of the Trust and the discharge of the responsibilities of the Board of Trustees.

(e) ***Replacement of Members of the Board of Trustees***. The Board of Trustees shall have the power to replace any vacancy arising following the Original Trustee Replacement Date according to such rules and procedures as they deem appropriate, having regard for such considerations necessary to ensure that the composition of the Board of Trustees will be able to discharge its responsibilities in respect of the Declaration. If necessary, the Board of Trustees may fill any vacancy by application to the Courts of Ontario in the event of an unfilled vacancy.

(f) ***Decisions of the Board of Trustees.*** Decisions and actions of the Board of Trustees shall be made by voting, with each individual member having one vote. Subject to quorum requirements, a majority vote shall be determinative in respect of such decisions and actions. Subject to quorum requirements, any decision or action taken by the majority of trustees will represent the decision or action of the Trustee, and not any member of the Board of Trustees.

(g) ***Conflicts of Interest.*** With respect to any matter before the Board of Trustees, to the extent of a conflict of interest, whether actual, perceived or potential, involving a member of the Board of Trustees' personal interests and a matter concerning the Trust, such member shall abstain from voting on the matter or taking any other discretionary action on the matter. For the purposes of the foregoing, no member of the Board of Trustees shall be deemed to have a conflict by reason only that the member holds any office or position with an Electricity Distributor, social services agency or governmental or quasi-governmental agency or entity (such as the Independent Electricity System Operator); provided, however, that in relation to any decision of the Board of Trustees pertaining specifically to a particular Electricity Distributor, any member of the Board of Trustees who is a director, officer or employee of the Electricity

Distributor shall recuse himself or herself from participating in deliberations, discussions or voting in respect of such decision.

(h) ***Expenses*** and ***Reimbursements to Trustees.*** Members of the Board of Trustees shall be entitled to reimbursement for and in respect of their out-of-pocket expenses reasonably incurred in discharging their duties and obligations as members of the Board of Trustees. The Board of Trustees shall serve without compensation.

5.9 Confidentiality

Notwithstanding the resignation or removal and discharge from the trusts and powers reposed in and conferred on the Trustee by this Declaration, or the termination of this Declaration, the Trustee so resigning or removed shall continue to treat as confidential all information relating to the Trust, the Assets and the Beneficiaries and shall only be entitled to make disclosures concerning such information if disclosure is required in the performance of the functions of the resigning or removed Trustee or is ordered by a court of competent jurisdiction or is otherwise required by law. The Trustee shall not be responsible or liable to any Person for any loss or damage arising out of or in any way sustained or incurred in any way relating to any such required disclosure. The obligations arising under this section 5.9 shall survive the termination of the Trust.

5.10 Vesting in Successor Trustee

Any successor trustee (including any reconstituted Board of Trustees) shall automatically become vested with the Assets and with the same powers, rights, duties, responsibilities and trusts as if it, he or she had originally been named as Trustee under this Declaration, without the requirement of any further instrument or act or conveyance, and the Trustee ceasing to act shall execute all such transfers and other documents and do all such other acts or things as may be necessary or desirable to assign, transfer, deliver to, and vest in, the successor trustee, upon the trusts expressed in this Declaration, all the Assets and all the rights, powers and trusts of the Trustee ceasing to act. The expense of any act, document, deed or other instrument or thing required under this Section 5.10, including for greater certainty, outstanding fees and unreimbursed expenses of the Trustee (including any member of the Board of Trustees) ceasing to act, shall be satisfied from the Assets.

5.11 Execution of Instruments

The Trustee shall have the power to execute all deeds, transfers, agreements, promissory notes and other instruments on behalf of the Trust. Such power may be exercised by any one or more Administrative Services Agents acting in accordance with any delegated right to do so pursuant to an applicable Administrative Services Agreement, and any such execution of instrument by an Administrative Services Agent, acting in such capacity as agent of the Trust pursuant to the terms and conditions of such Administrative Services Agreement shall be deemed to be a proper execution of such instrument by the Trustee and shall be binding for all purposes on the Trust.

5.12 Decisions by the Trustee

If there is more than one Trustee, decisions of the Trust may be made by a majority of Trustees. Whenever the Trustees are unable to agree in relation to the commission or omission of any act

or howsoever in the execution of the Trust, the decision of a majority of the Trustees shall prevail.[5]

SECTION 6
AMENDMENTS AND SUPPLEMENTS

6.1 Amendments

Subject to the requirements of the Transfer Payment Agreement, the Trustee shall have the power in its sole and absolute discretion from time to time without the approval of any Beneficiary or any court to amend, vary, supplement, replace or restate this Declaration in its entirety or any portion thereof. [ADD BACK THE PROVISO?] Without in any way limiting the foregoing, any such amendments, variations, supplements, replacements or restatements may:[Blakes: Discuss MOE certainty of Declaration and why this flexibility/Trustee discretion would be needed or appropriate. Deletion assumes that TPA may include limitations on amendments.]

(a) add provisions for the replacement of or appointment of additional trustees to act with the Original Trustee prior to the Original Trustee Replacement Date;

(b) in the case of the Original Trustee, add provisions to those contemplated in the Trustee Replacement Annex in respect of the appointment of the members and the formation and empowerment of the Board of Trustees;

(c) in the case of the Original Trustee, vary the terms and requirements applicable to the duties, responsibilities, obligations, liabilities, indemnities, protections, limitations, restrictions, compensation, expense reimbursements and such other matters, in each case as the Advisory Committee may indicate are necessary be made in order to attract and receive confirmation of appointment of appropriately qualified individuals that the Advisory Committee specifies are to be appointed as members of the Board of Trustees in accordance with its recommendations;

(d) add additional or replace existing Trustees[6];

(e) add to or reasonably clarify the principles set forth in the Principles Annex;

(f) add to or reasonably clarify the delegations and activities contemplated to be made in the Permitted Delegation Annex;

(g) include provisions for the management of the Trust by the Trustees, including the making of rules, requirements and procedures governing the decision-making of the Board of Trustees;

(h) add provisions for the replacement of members of the Board of Trustees (in addition to those provisions contemplated in section 5.7 and the Trustee Replacement Annex);

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[5] NTD: KPMG Comment: Watch carefully OPC Comment: Agree – need to watch the final details as developed.

[6] NTD: Consider and, if retained, integrate with Board concepts.

(i) provide for the engagement of any Person or Persons as managers, administrators or other service providers to the Trust, including any additional or replacement Administrative Services Agent or representative thereof;

(j) specify supplemental procedures for the identification of Primary Beneficiaries and the exchange of information with Electricity Distributors in connection with identifying such Primary Beneficiaries; or

(k) specify procedures for the transfer and transmission of funds from the Trust or any Administrative Services Agent acting on its behalf and with delegated responsibility over funds constituting Assets, to or for the benefit of, Beneficiaries or their designated representatives, payees or assignees.

6.2 Supplemental Declarations

The Trustee is authorized to execute any supplemental declaration of trust (including one or more amendments and restatements from time to time of this Declaration) to give effect to amendments to this Declaration made pursuant to section 5.1.

SECTION 7
TERMINATION

7.1 Duration

Subject to section 7.2, the Trust will continue in full force and effect so long as there are any Assets and until all of the debts, liabilities and obligations of the Trust have been paid and satisfied in full.[7]

7.2 Termination and Distribution of Assets

Subject as hereinafter provided, the Trustee may terminate the Trust and wind up its affairs on such date as the Trustee, in its sole and absolute discretion, may determine and after paying or adequately providing for the payment and satisfaction of all debts, liabilities and obligations of the Trust and upon receipt of such releases, indemnities and discharges as the Trustee, relying on the opinion of counsel, deems necessary for the protection of the Beneficiaries and for its own protection. Notwithstanding the foregoing, the Trustee shall in any event terminate the Trust and wind up its affairs as soon as practicable after the Final Distribution Date. In connection with the termination of the Trust, the Trustee shall identify the Residual Beneficiaries and distribute or cause to be distributed the remaining Assets, in cash or in kind or partly in each, to the Residual Beneficiaries, in each case in accordance with section 3.3.

7.3 Distribution of Assets on Final Distribution Date

If the Trust holds Assets on the Final Distribution Date, such assets shall promptly be paid to the Residual Beneficiaries in accordance with Section 3.3.

[7] NTD: Consider early termination scenarios.

SECTION 8
ACCEPTANCE OF TRUSTS

8.1 Acceptance of Trusts

The Trustee hereby accepts the trusts and duties contained in this Declaration and agrees to perform the same upon the terms and conditions hereof until discharged therefrom.

[Signature Page Follows]

The Trustee has executed this Declaration as of the date first written above.

COMPUTERSHARE TRUST COMPANY OF CANADA, as Trustee

By: _____
Name:
Title:

By: _____
Name:
Title:

PRINCIPLES ANNEX

The Trustee shall have regard to [, but shall not be specifically bound by,] the following principles in applying its discretion in relation to the administration of the Trust:

1. Identification of Primary Beneficiary Payees

1.1 [Except in exceptional circumstances,] a Primary Beneficiary would not be expected to receive a benefit from the Trust unless at the time of consideration it satisfies, in addition to the requirements contemplated in the definition of "Primary Beneficiary", each of the following criteria (the "**Selection Factors**"):

(i) it has a participant agreement [with an applicable Electricity Distributor] to undertake measures (its "**Energy Plan**") to improve the electricity efficiency and/or promote the conservation of electricity at its Ontario residence;

(ii) its Energy Plan involves one or more Eligible Measures, as may be designated by the Trustee from time to time from;

(iii) it confirms that:

1. the primary purpose of its Energy Plan is the conservation and efficient use by the Primary Beneficiary of electricity, and is not for the purposes of the Primary Beneficiary making a profit;

2. it would otherwise not have the financial resources to undertake the Eligible Measures included in its Energy Plan; and

3. it would otherwise not be [a HAP Eligible Person][eligible to receive amounts in respect of the Eligible Measures under HAP];

(iv) it has demonstrated a need for financial assistance on the basis that its periodic electricity bills represent a financial burden, relative to its available financial resources; and

(v) such other criteria as the Trustee may determine, including based on the recommendations of Electricity Distributors or other knowledgeable Persons made on the basis and in accordance with the delegations contemplated by the Permitted Delegations Annex or any applicable Administrative Services Agreement.

1.2 It is recognized that, in furthering the Purpose, an efficient basis upon which to allocate funds to the Primary Beneficiaries across different areas and regions within Ontario may be based on the areas and regions serviced by the Electricity Distributors operating within Ontario.

1.3 It would not be contrary to the Purposes if funds are made available by the Trustee to the Primary Beneficiaries unequally across different areas and regions within Ontario, and it

is expect that in making such an unequal division it would be appropriate to have regard to:

(i) broad economic parameters of economic activity and the specific financial resources of the residents of the areas and regions, in each case as an indication of the relative need of such residents across the areas and regions;

(ii) electricity use and efficiency levels of non-commercial electricity customers across the areas and regions;

(iii) specific regional indicators of economic weakness and need; and

(iv) such other factors as the Trustee may determine are relevant, including based on the submissions, advice and recommendations of Electricity Distributors or other knowledgeable Persons made on the basis and in accordance with the delegations contemplated by the Permitted Delegations Annex or any applicable Administrative Services Agreement.

1.4 It is recognized that, in furthering the Purpose, the designated Electricity Distributor for an area or region in which a Primary Beneficiary resides would be expected to:

(i) be a reliable source for the purpose of assessing and confirming whether the Primary Beneficiary satisfies the Selection Factors;

(ii) be an efficient intermediary for the purpose of communicating with the Primary Beneficiary, including regarding the availability, terms, conditions and intended purposes of Program[8];

(iii) be able to facilitate an efficient payment of distribution determined to be made to or on behalf of the Primary Beneficiary, having regard to the Electricity Distributor's established practices, procedures and systems for dealing with its customers; and

(iv) have established contractual arrangements with the Primary Beneficiary that may apply to the protection and confidentiality of information provided by or respecting the Primary Beneficiary, which information may be useful in the consideration by the Electricity Distributor in its assessment of whether the Primary Beneficiary satisfies the Selection Factors, which information may not otherwise be available or readily accessible or verifiable by the Trustee. [Blakes: These statements are included to substantiate the very significant delegation of decision making (dispositive powers) to and influence of the Electricity Distributors.]

1.5 It is recognized that, in furthering the Purpose, the Electricity Distributor for an area or region in which a Primary Beneficiary resides will have market and utilization information that may be useful in assessing the relative needs of Primary Beneficiaries within its area or region. Such information is expected to be relevant in assessing the

[8] Consider if the Trustees should control the messaging to ensure consistency across the Province.

extent to which one such Primary Beneficiary's financial needs and the merits of its Energy Plan are greater or more compelling than those of another such Primary Beneficiary, which comparison may be relevant to the extent that the funds allocable to the Primary Beneficiaries resident in the area or region are otherwise insufficient to meet the requests for funding by all such Primary Beneficiaries.

1.6 Accordingly, it is recognized that, in furthering the Purpose, it is consistent with the Purpose that the recommendations of Electricity Distributors be utilized and relied upon by the Trustee to guide the process of identifying particular Primary Beneficiaries in making distributions to the Primary Beneficiaries.

1.7 If an Electricity Distributor for a particular area or region is unable or unwilling to assess or confirm the application of the Selection Factors to Primary Beneficiaries residing in the area or region or to make recommendations in relation to such matters, one or more of the following may provide a suitable alternative source of information and for information gathering, assessment and confirmation purposes in relation to such area or region:

(i) other Electricity Distributors operating in adjacent or other areas or regions in Ontario;

(ii) [the Ontario Energy Board];

(iii) the Independent Electricity System Operator; and

(iv) anyone else having relevant expertise and access to information regarding the electricity market of the Province, in each case as may be considered relevant by the Trustee.

1.8 To the extent that privacy law or other legal requirements limit an Electricity Distributor from providing or making available specific information respecting the application of the Selection Factors to a particular Primary Beneficiary or group of Primary Beneficiaries, it is recognized that, in furthering the Purpose, it may be appropriate to redact or make generic affected information regarding such Primary Beneficiary in connection with the identification and confirmation of a Primary Beneficiary's eligibility and participation in the Program. If such limitations or restrictions would limit an Electricity Distributor from providing or confirming the name of a particular Primary Beneficiary to the Trustee, then it should be sufficient that such information may be obtained or disseminated on a confidential basis if and when required by the Trustee for the proper administration of the Trust and on that basis such impediments should not disqualify a Primary Beneficiary from participating in the benefits of the Program, provided that that the confidential record-keeping of the Electricity Distributor would be available in connection with the application of any applicable legal process predicated on the identification of such Primary Beneficiary for the purposes of substantiating its rights as a Primary Beneficiary of the Trust or as to the validity or subsistence of the Trust.

2. Eligible Measures

2.1 Eligible Measures shall be identified having regard to the following (the "**Measures Factors**"):

(i) electricity cost savings [NTD: Insert generic list of considerations relevant to the identification of the applicable spending uses].

(ii) primary home heating sources

[Blakes: MOE may wish to consider:

(iii) is the measure generally expected to result in improved energy conservation by a Primary Beneficiary if properly installed and used;

(iv) is the measure recognized under another Provincial program as being appropriate for achieving electricity conservation among a population analogous to the Primary Beneficiaries;

(v) has an independent source recognized the measure as being (x) energy efficient in design, (y) more energy efficient than similar products available in the market intended for similar usage, or (z) effective in promoting energy conservation;

(vi) does the measure present any unacceptable health or safety considerations, either with respect to the Primary Beneficiary, a party providing or installing the measure, or the physical environment;

(vii) is the measure broadly available to residents across different areas and regions of the Province;

(viii) is it reasonable to expect that the measure would, over its anticipated useful life, generate greater costs savings in respect of electricity efficiency or conservation than the cost of the measure itself; or

(ix) is the measure a requirement or precursor to another measure, the other measure being one which meets any of the other Measures Factors.]

2.2 In identifying and applying the Measures Factors, Electricity Distributors would be expected to have expertise in assessing the suitability of efficiency and conservation measures in their respective areas and regions, which may differ across areas and regions across the Province based on factors (among other things) such as the climate, geography, density, electricity infrastructure, residential structures, and electricity use rates applicable within such areas or regions.

2.3 Unless otherwise specified by the Board of Trustees, the measures specified in Schedule A to this Principles Annex may initially be considered to be consistent with the Measures Factors (subject to change as contemplated under the Permitted Delegations Annex).

3. Promotion of the Program

3.1 It is expected that the Trustee will undertake or engage others to undertake efforts to promote the availability, terms and benefits of the Program to Primary Beneficiaries.

3.2 [NTD: Insert any expectations of the Province regarding associating the Program to the Government, including in any external communications to or marketing directed at Electricity Distributors and Primary Beneficiaries.]

3.3 [NTD: Indicate that the Trustee would be free to enter into License Agreements with the Province, provided that the terms of such License Agreements are consistent with the Purpose and the Program, and that such License Agreements may permit the sub-license of IP to Electricity Distributors and permit the engagement of the Province to provide services related to the use of related IP rights.

3.4 [NTD: Insert any expectations regarding the observance of License Agreements]

4. Conduct of the Trust and the Program

4.1 It is expected that administrative expenses of the Board of Trustees and its members, including any expenses relating to the Trust, to the establishment of the [Trust][Affordability Fund] and any expenses related to the implementation and operation of the Program, including by or through Electricity Distributors and other relevant entities, will be recognized and subject to reimbursement on a basis that is substantially consistent with the principles outlined in the [Province's Transfer Payment Accountability Directive/Travel, Meal and Hospitality Expenses Directive][9], the current form of which attached as Schedule B to this Principles Annex.

4.2 The Trustee is expected to conduct its activities in a manner that complies in all material respects with the Transfer Payment Agreement, including to:

(i) act prudently and in furtherance of the Purpose;

(ii) report annually the results of its activities for information purposes to the Province in connection with the Program;

(iii) comply with the Province's request for any independent verification or audit if determined to be necessary or appropriate by the Province;

(iv) return of Assets that have not been distributed if it is [determined][manifestly demonstrated by the Province] that the Trustee has breached its Standard of Care in discharging its material duties under the Declaration, and has not cured such material breach despite having been given a reasonable opportunity by the Province to do so in light of the circumstances of such material breach, with the result that all or a significant part of the Assets have not been or are not being applied in furtherance of the Purpose or are being applied in a manner that is directly contrary or without regard to the Purpose.]

[9] NTD: Ministry to confirm applicable Directive(s).

4.3 Electricity Distributors are not intended to directly profit from distributions of funds made from the Trust, although it is recognized that the objectives of electricity efficiency and conservation of Primary Beneficiaries located in the service area or region of an Electricity Distributor, and the cost savings and improved credit worthiness of such Primary Beneficiaries, may be financially beneficial to the Electricity Distributor.

4.4 Distributions from the Trust are intended to allow receiving Primary Beneficiaries to undertake Eligible Measures at no or minimal personal cost.

4.5 Without in any way limiting the discretion of the Board of Trustees to extend the period during which the benefits of the Program may be available to the Primary Beneficiaries, up to and including the Final Distribution Date, it is expected that the Trust Assets would be distributed to Primary Beneficiaries during the period from the Original Trustee Replacement Date to [March 31, 2019].

SCHEDULE A TO THE PRINCIPLES ANNEX
INITIAL ELIGIBLE MEASURES[10]

Initial Specified Measures
Block Heater Timer (just timer) – rated for outdoor use, have at least a 15 amp/1800 watt capacity, be cold weather resistant, bear a C-UL or CSA certification mark
Power bar with integrated timer, and switched power outlets, four each for a total of 8 outlets, have a total capacity of 15 amps. The switched outlets must remain "live", independent of timer settings, so long as the power bar itself remains switched on. The power bar must bear either a C-UL or CSA certification mark.
Efficient Showerheads (standard) - rated at no more than 4.8 Lpm (1.25 U.S. gpm) and be of the laminar flow type (non-aerating).
Efficient Showerhead (handheld) - rated at no more than 4.8 Lpm (1.25 U.S. gpm) and be of the laminar flow type (non-aerating).
Efficient Aerators (kitchen) - rated no more than 5.7 Lpm (1.5 U.S. gpm), dual threaded to allow installation in both thread type faucets, swivel type with pause lever.
Efficient Aerators (bathroom) - rated no more than 3.8 Lpm (1.0 U.S. gpm), be dual threaded to allow installation in both thread type faucets.
Hot Water Tank Pipe Insulation - $^1/_2$" inside diameter – foam, meets ASTM –C547-00, minimum $^3/_4$" thick
Hot Water Tank Pipe Insulation - $^3/_4$ " inside diameter - – foam, meets ASTM –C547-00, minimum $^3/_4$" thick
Hot Water Tank Insulation - fibreglass R10 (fits up to a 60 gal tank) – not bubble wrap
≤11W ENERGY STAR® Qualified LED A Shape (60W) (minimum 600 Lumen output) (Formerly: 7W – 11W ENERGY STAR® Qualified LED A Shape (60W))

[10] These measures are indicative. Eligible measures added to HAP during the administration of the Trust may also be appropriately considered relevant by the Trustee.

Initial Specified Measures
≤14W ENERGY STAR® Qualified LED A Shape (75W) (minimum 800 Lumen output) (Formerly: 10W – 14W ENERGY STAR® Qualified LED A Shape (75W))
≤23W ENERGY STAR® Qualified LED A Shape (100W) (minimum 1600 Lumen output) (Formerly:17W – 23W ENERGY STAR® Qualified LED A Shape (100W))
≤16W ENERGY STAR® Qualified LED PAR 20 (minimum 600 Lumen output) (Formerly: 8W – 12W ENERGY STAR® Qualified LED PAR 20)
≤16W ENERGY STAR® Qualified LED PAR30 & PAR38 (minimum 600 Lumen output) (Formerly: 8W – 12W ENERGY STAR® Qualified LED PAR 30)
≤23W ENERGY STAR® Qualified LED PAR (minimum 1100 Lumen output) (Formerly: 14W – 18W ENERGY STAR® Qualified LED PAR 38)
≤6W ENERGY STAR® Qualified LED MR 16 / PAR 16 (minimum 250 Lumen output) (Formerly: 7W – 10W ENERGY STAR®
Qualified LED MR 16 / PAR 16 - GU 10 Base)
≤11W ENERGY STAR® Qualified LED MR 16 (minimum 400 Lumen output) (Formerly: 7W – 12W ENERGY STAR® Qualified LED MR 16 GU 5.3 Base)
ENERGY STAR® LED Wet Location Rated PAR lamp ≤ 23 Watt (minimum 1100 Lumen output)
Recessed Downlight Fixture including LED with Light Output >600 and <800 lumens (Retrofit Measure List)
Recessed Downlight Fixture including LED with Light Output >800 lumens (Retrofit Measure List)
Indoor Drying Rack

Extended Measures
Replace refrigerator with ENERGY STAR qualified refrigerator - 15.5 - 16.9 cubic foot top freezer, automatic defrost, refrigerator/ freezer, no through the door ice service
Replace refrigerator with ENERGY STAR qualified refrigerator - 17.0 - 18.4 cubic foot top freezer, automatic defrost, refrigerator/ freezer, no through the door ice service
Replace refrigerator with a refrigerator that has a consumption level of less than 425 kwh, 10 – 12.5 cubic foot top freezer, automatic defrost, refrigerator freezer, no through the door ice service
Replace freezer with ENERGY STAR qualified freezer - 12-14.4 cubic foot freezer
Replace freezer with ENERGY STAR qualified freezer - 14.5 - 16.0 cubic foot freezer
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 6,000 – 7,999 BTU/hr with C-UL or CSA certification mark
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 8,000 – 9,999 BTU/hr with C-UL or CSA certification mark
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 10,000 – 12,000 BTU/hr with C-UL or CSA certification mark
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 14.2 - 21.2 l/day (30-44.9 pints/day) dehumidifier
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 21.3 - 25.4 l/day (45-53.9 pints/day) dehumidifier

Extended Measures
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 25.5 - 35.5 l/day (54-75 pints/day) dehumidifier
Programmable Thermostat – line voltage – meets CAN/CSA-C828-06 standard, minimum performance: Droop: 1.5°C, Differential: 0.5°C, Precision 0% within 0.5°C of the original set point of 22°C
Programmable Thermostat – low voltage - meets CAN/CSA-C828-06 standard, minimum performance: Droop: 1.5°C, Differential: 0.5°C, Precision 0% within 0.5°C of the original set point of 22°C

Weatherization Measures
Comprehensive Draftproofing (caulking, foam and weather stripping, and application of same) – lifespan of 20 years plus If one or two component polyurethane foams are used, the products and installations must conform to: • CAN/ULC-S710.1 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 1: Material Specification. • CAN/ULC-S710.2 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 2: Application. • CAN/ULC-S711.1 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification • CAN/ULC-S711.2 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification, and Part 2: Application. **Attic Insulation (including installation):**
cellulose: CAN/ULC-S703-01 Amendment 1 - Cellulose Fibre Insulation (CFI) for Buildings OR 2) Mineral Fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre

Weatherization Measures

for Buildings

Wall Insulation (including installation):

cellulose: CAN/ULC-S703-01 Amendment 1 - Cellulose Fibre Insulation (CFI) for Buildings OR 2) Mineral Fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre

Basement Insulation (including installation):

mineral fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre for Buildings

Vapour Barrier: 69009-CAN/CGSB-51.34-m86

If one or two component polyurethane foams are used, the products and installations must conform to:

- CAN/ULC-S710.1 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 1: Material Specification.
- CAN/ULC-S710.2 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 2: Application.
- CAN/ULC-S711.1 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification
- CAN/ULC-S711.2 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification, and Part 2: Application.

Heat Pumps

(Selection of manufacturers and technologies to meet the US federal minimum efficiency standard for ASHPs, as of 2015, is 13.0 SEER and 7.7 HSPF. Energy Star–certified models offer roughly 9 percent more efficiency than most new uncertified ASHPs and 20 percent more efficiency than existing models that may be in place)

Ductless Multiport Heat Pump **[NTD: Add details pertaining to heat pumps]**

Cold Climate Ductless Heat Pump **[NTD: Add details pertaining to heat pumps]**

Cold Climate Multiport Ductless Heat Pump **[NTD: Add details pertaining to heat pumps]**

Cold Climate Ducted Heat Pump **[NTD: Add details pertaining to heat pumps]**

SCHEDULE B TO THE PRINCIPLES ANNEX
PERMITTED EXPENSE REIMBURSEMENTS

[NTD: Insert the Province's Transfer Payment Accountability Directive/Travel, Meal and Hospitality Expenses Directive. Please forward a Word version if available.]

PERMITTED DELEGATION ANNEX

1. Under section 4.2(g) of the Declaration, the Trustee has the power to: [(a) appoint, employ or retain Administrative Services Agents for the purpose of discharging its duties and obligations under the Declaration; and (b) enter into, perform, enforce and amend Administrative Services Agreements].

2. In accordance with section 4.2(g) of the Declaration, consistent with the principles set forth in the Principles Annex, the Trustee or its agent will seek to enter into one or more Administrative Services Agreements with individual Electricity Distributors under which the Electricity Distributors will act as Administrative Service Agents to the Trustee. In this manner, the Trustee will delegate certain of its powers and duties to the Electricity Distributors.

3. Under section 5.1 of the Declaration, to the extent the Trustee has delegated any of its duties or powers, it shall be deemed to have satisfied the Standard of Care in respect of the subject matter of such delegation, subject to the Trustee's overall duty to exercise prudent oversight thereof. The Trustee is entitled to rely on an Electricity Distributor to discharge the duties delegated to it, as Administrative Services Agent, pursuant to an Administrative Services Agreement as described in this Annex.

4. Accordingly, and without limiting the Trustee's right to delegate under the Declaration and its other rights, powers and discretion as Trustee, the Trustee will be permitted to, and is expected to seek to, enter into Administrative Services Agreements with Electricity Distributors in order to further the Purpose. It is expected that such Administrative Services Agreements will include customary terms and conditions for an administrative services arrangement of this type and, in addition, would be expected (subject to the acceptance and agreement of the applicable Electricity Distributor counterparty) to address the following points in particular:

    a. **Identification of Applicable Primary Beneficiary Payees and Determination of Individual Distribution Amounts**

        i. Each Electricity Distributor would make an initial assessment of the financial needs of Primary Beneficiaries within its designated service area or region, having regard to the Selection Factors set forth in section 1.3 of the Principles Annex, together with applicable economic data, in order to prepare and provide to the Trustee an estimate of the number of Primary Beneficiaries who the Electricity Distributor reasonably expects would satisfy the Selection Factors.

        ii. Each Electricity Distributor would make an initial assessment of the measures it would recommend be included as Eligible Measures, having regard to the Measures Factors set forth in section 2.1 of the Principles Annex, in order to prepare and provide to the Trustee an estimate of the average cost per Primary Beneficiary Payee (as defined below) of such Eligible Measures that the Electricity Distributor reasonably expects would apply in respect of Primary Beneficiaries resident in its service area or region.

iii. Based on the product of (i) and (ii), above, and such other considerations as it considers to be directly relevant, each Electricity Distributor would make a written recommendation to the Trustee regarding the aggregate funding amount that the Electricity Distributor anticipates would be utilized under the Program by the Primary Beneficiaries resident in its service area or region (the "**Local Funding Estimate**"). Such recommendation would be accompanied, when submitted to the Trustee, by a detailed explanation regarding the assumptions, financial parameters, suitability considerations and other information underlying the Local Funding Estimate (including the type of information contemplated by the Selections Factors and the Measures Factors, which would be relied upon by the Trustee in its assessment regarding the allocation of available funding to or for the benefit of the Primary Beneficiaries across the specified areas and regions of Ontario.

iv. The Trustee would inform the Electricity Distributor regarding the aggregate of the amount determined by the Trustee to be made available under the Program for Primary Beneficiaries in the Electricity Distributor's designated service area or region (for each Electricity Distributor, its "**Maximum Electricity Distributor Allocation**") and as to any maximum amount that may be paid to or for the benefit of any single Primary Beneficiary [or group of related Primary Beneficiaries] located in the servicer area or region of the Electricity Distributor (the "**Maximum Primary Beneficiary Amount**"). The Maximum Electricity Distributor Allocation and Maximum Primary Beneficiary Amount may vary between areas and regions, among the Primary Beneficiaries within such areas and regions, and may be increased by the Trustee from time to time in its discretion.

v. Each Electricity Distributor would apply the principles set forth under "Identification of Primary Beneficiary Payees" in the Principles Annex to identify and make recommendations to the Trustee regarding the amount of funds (if any) to be distributed to or for the benefit of Primary Beneficiaries resident within its service area or region from time to time (the "**Primary Beneficiary Payees**").

vi. Each Electricity Distributor would ensure that the aggregate of the amounts it recommends be distributed to or for the benefit of Primary Beneficiary Payees from time to time does not exceed (1) its Maximum Electricity Distributor Allocation and (2) for any single Primary Beneficiary [or group of related Primary Beneficiaries] located in the service area or region of the Electricity Distributor, the lesser of (x) the applicable Maximum Primary Beneficiary Amount and (y) the estimated costs (including any applicable taxes, but excluding any amount payable to the Electricity Distributor by or on behalf of the Primary Beneficiary) to be incurred by or on behalf of such Primary Beneficiary (whether or not such costs have been paid or remain outstanding) in respect of Eligible Measures applied or to be applied in respect of the Primary Beneficiary's Ontario residence.

vii. The Trustee would provide written confirmation to each Electricity Distributor:

1. Either (x) that the recommendations specified of the Electricity Distributor in clause (v), above, have been accepted, or (y) as to the specific reasons for any non-acceptance; and

2. The amount of the distributions to be paid to or for the benefit of each Primary Beneficiary Payee that is resident in the Electricity Distributor's service area or region.

viii. With respect to each Primary Beneficiary resident in a Electricity Distributor's service area or region that is confirmed as a Primary Beneficiary Payee, the Electricity Distributor would provide the Trustee written confirmation as to:

1. The identity of such Primary Beneficiary Payee; and

2. The amount of the distribution paid to or for the benefit of such Primary Beneficiary Payee.

ix. If the amount of a distribution to be made to a Primary Beneficiary Payee is based on the estimated costs to be incurred by or on behalf of such Primary Beneficiary and, prior to making the distribution to the Primary Beneficiary Payee, the Electricity Distributor determines that the actual costs (including any applicable taxes but excluding any amount payable to the Electricity Distributor by or on behalf of the Primary Beneficiary) incurred or to be incurred by or on behalf of such Primary Beneficiary in respect of Eligible Measures applied or to be applied in respect of the Primary Beneficiary's Ontario residence has or would be less than such estimated costs, then the amount to be distributed to the Primary Beneficiary shall be based on such actual costs.

b. **Making of Distributions to Primary Beneficiaries**

i. Promptly after the Trustee confirms the identity of a Primary Beneficiary Payee resident in an Electricity Distributor's service area or region and the amount of the distribution to be paid to or for the benefit of such Primary Beneficiary Payee, the Trustee would arrange for payment to or on the direction of the Electricity Distributor of an amount equal to the amount of such distribution.

ii. Promptly upon receipt of funds in respect of a distribution to be made to a Primary Beneficiary Payee, the Electricity Distributor would arrange for payment of the full amount of such distribution to or for the benefit of the Primary Beneficiary Payee (including by direct payment to a third party of, or as a reimbursement or rebate of, the costs of applicable Eligible Measures installed at the residence of and for the benefit of the Primary Beneficiary Payee), without reduction or set-off by the Electricity Distributor.

iii. If the amount paid to an Electricity Distributor in respect of a distribution to be made to a Primary Beneficiary exceeds the actual amount of the distribution made to or on behalf of the Primary Beneficiary, the Electricity

Distributor shall promptly return such excess to the Trustee, whereupon the proceeds of such returned amount shall continue to form part of the Assets.

c. **Promotion of the Program**

i. [NTD: Insert any specific items regarding the use of IP by Electricity Distributors]

d. **Establishment of Operational, Administrative, Record-Keeping and Other Systems and Policies to facilitate the Program**

i. The Electricity Distributor would establish such operational, administrative, record-keeping and other systems and policies as are necessary to facilitate the Program and perform its duties under the Administrative Services Agreement, including systems or policies to: identify Primary Beneficiary Payees; comply with applicable privacy and regulatory laws; communicate with Primary Beneficiaries on behalf of the Trust; assess Eligible Measures; determine the Local Funding Estimate; monitor its recommendations to the Trustee against its Maximum Electricity Distributor Allocation and the Maximum Primary Beneficiary Amount; receive funds from the Trust in respect of distributions to the Primary Beneficiary Payees and transfer such funds to the appropriate recipients for the benefit of the Primary Beneficiary Payees; preparation and timely delivery to Primary Beneficiary Payees of such documents as are required by the *Income Tax Act* (Canada); and create and maintain records in respect of the foregoing.

ii. The Electricity Distributor would set up a separate bank account for the purpose of receiving funds from the Trust in respect of distributions to the Primary Beneficiary Payees and the transfer of such funds to the appropriate recipients for the benefit of the Primary Beneficiary Payees.

e. **Reporting, Record-Keeping, Inspection and Disclosure and Compliance Matters**

i. The Electricity Distributor would provide record-keeping, clerical and bookkeeping services relating to all matters relating to its recommendations and the performance of its other duties and obligations under its Administrative Services Agreement.

ii. The Electricity Distributor would keep and maintain all financial records and non-financial documents and records relating to the provision of services under its Administrative Services Agreement. [NTD: Consider specifying any particular records regarding individual Primary Beneficiary Payees needed to ensure the proper function of the Trust or the Program]

iii. The Electricity Distributor would provide to the Trustee quarterly and annual reports ("**Reports**") for the duration of its Administrative Services Agreement. Such Reports would set out, among other things, the amounts of the distributions paid to or for the benefit of applicable Primary Beneficiary Payees, the average distribution amount per such Primary Beneficiary Payee,

the Eligible Measures for which distributions have been made, and the uptake of energy efficiency measures.

iv. The Electricity Distributor would agree to provide to the Trustee such information as is necessary for the Trustee to (v) comply with applicable law; (w) prepare financial statements for the Trust; (x) prepare and submit such documents as are required under the *Income Tax Act* (Canada); (y) comply with the Trust's applicable obligations under the Transfer Payment Agreement; and (z) such other matters as the Trustee reasonably requests.

v. The Trustee, its authorized representatives or an independent auditor would be permitted to, at its own expense, on twenty-four hours' notice to the Electricity Distributor and during normal business hours, inspect the records of and information respecting the Electricity Distributor to confirm its compliance with the Administrative Services Agreement, including regarding its processes for recommending the Primary Beneficiary Payees and their respective distribution amounts and regarding the delivery of Trust funds on behalf of the Trustee to or for the benefit of the Primary Beneficiary Payees.

f. **Standard of Care**

i. The Electricity Distributor would be required to agree to perform its duties provided under the Administrative Services Agreement exercising the degree of care, diligence and skill that a reasonably prudent Person would exercise in comparable circumstances.

ii. In performing its duties under the Administrative Services Agreement (including the recommending of Primary Beneficiary Payees to the Trustee), the Electricity Distributor would be required to agree to seek to avoid actual, potential or perceived conflicts of interest.

iii. The Electricity Distributor would be required to agree to that it would not, in performing its obligations under the Administrative Services Agreement, take any action which it knows or ought reasonably to know would cause the Trustee or the Trust to be in violation of any law, rule or regulation applicable to it.

g. **Expenses**

The Electricity Distributor would be eligible to receive reasonable compensation and reimbursement of its actual out-of-pocket costs associated with the performance of its duties and obligations under the Administrative Services Agreement, subject to compliance with requirements substantially equivalent to the Province's Travel, Meal and Hospitality Expenses Directive. Such compensation amounts and reimbursement entitlements would be specified in the Administrative Services Agreement.

h. **Representations**

The Electricity Distributor would make customary representations to the Trust regarding, among other things, its legal capacity; authorization; non-contravention of law or material contract to which it is a party; and the enforceability of the Administrative Services Agreement.

i. **Indemnification**

The Electricity Distributor would be required to agree to provide customary indemnities to the Trust and the Trustee from and against claims, damages and liabilities which may the Trust or Trustee may suffer or incur as the result of any breach of the Administrative Services Agreement by the Electricity Distributor or its representatives.

[NTD: MOE, please advise whether you wish to address any of the following matters upfront in an administrative services agreement: (1) LDC compliance with privacy law requirements/ money laundering laws; (2)legal representation if joined in any product warranty claims (i.e., to the extent the Trust is sued in connection with a purchase of Eligible Measures); (3)specific manner of flowing money to manufacturers and suppliers of Eligible Measures;(4) logistics of banking and cash flow mechanics and related record-keeping; (5) production of information for Trustee to satisfy legal requirements applicable to the Trust (i.e., tax; record keeping); (6) preparation of tax remittances for beneficiaries (applicable?);(7) required communications to Primary Beneficiaries on behalf of the Trust (including to comply with applicable laws);(8) preparation and submission of applications, etc., that may be contemplated by the Program;and (9) LDC fault-based termination scenarios]

TRUSTEE REPLACEMENT ANNEX

1. The Advisory Committee shall consist of the following individuals:

   [Insert Individual Name]

   [Insert Individual Name]

   [Insert Individual Name]

   [Insert Individual Name]

   [Insert Individual Name]

   [Insert Individual Name]

   [Insert Individual Name]

   [NTD: Selection criteria are under consideration, including to address any accounting considerations]

2. In the event any member of the Advisory Committee resigns or is unable to act, it is expected that the remaining members of the Advisory Committee would appoint another resident of Ontario as a replacement.

3. On or before •, 2017, the Advisory Committee shall identify [six] residents of Ontario who have expressed that they are willing to act as members of the Board of Trustees and who, individually and collectively satisfy the following criteria (collectively, the "**Selection Factors**"):

   a) each member demonstrates an understanding of the electricity sector including the electricity distribution sector;

   b) each member demonstrates an expertise in conservation and low income programs;

   c) three of the identified individuals will be representatives from separate electricity distributors, two individuals will be representatives from separate social services agencies and one individual member, who will be a non-voting member, will be a representative of the Government of Ontario; and

   d) it is expected that representation by the Government of Ontario will be non-controlling.

4. If the Advisory Committee determines that changes to the Declaration (including to this Trustee Replacement Annex) are necessary in order to (a) replace, or appoint additional trustees to act with, the Original Trustee prior to the Original Trustee Replacement Date or (b) attract and receive confirmation of appointment of appropriately qualified individuals that the Advisory Committee believes would be suitable candidates to serve as members of the Board of Trustees, the Advisory shall make recommendations regarding such necessary changes, including without

limitation in respect of (i) any necessary limitations on the nature or scope of the appointment of the members of the Board of Trustees, (ii) the formation and empowerment of the Board of Trustees, and (iii) the duties, responsibilities, obligations, liabilities, indemnities, protections, limitations, restrictions, compensation, expense reimbursement entitlements of members of the Board of Trustees.

5. The Advisory Committee shall recommend that the existing Trustee appoint the individuals so identified to become the initial members of the Board of Trustees pursuant to section 5.7 of the Declaration.

6. If any of the individuals recommended under paragraph 4 or under this paragraph are not accepted and appointed by the existing Trustee pursuant to section 5.7 of the Declaration, the Advisory Committee shall forthwith identify and recommend an alternative individual who is willing to act and who whose presence as a member of the Board of Trustees would result in the Trustee collectively satisfying the criteria in paragraph 2 above.

7. Upon the appointment of [six] trustees (five voting and one non-voting) pursuant to section 5.7 of the Declaration, the Advisory Committee will be functus.

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DECLARATION OF TRUST

Made as of March •, 2017

by

COMPUTERSHARE TRUST COMPANY OF CANADA

establishing

AFFORDABILITY FUND TRUST

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[RELABEL HEADINGS AND REGENERATE TABLE OF CONTENTS]

DECLARATION OF TRUST

This Declaration of Trust is made as of March •, 2017, by Computershare Trust Company of Canada, a trust company established under the laws of Canada and licensed to carry on business as a trust company in each of the provinces and territories of Canada (together with its successors and assigns and the other trustees (including the Board of Trustees) contemplated herein, the "**Trustee**").

WHEREAS Computershare Trust Company of Canada, as the Trustee, wishes to establish a trust to acquire, hold, manage, invest, apply and dispose of certain property for the benefit of certain Beneficiaries as herein described.

NOW THEREFORE Computershare Trust Company of Canada, as the Trustee, hereby declares that it holds in trust as trustee (a) the sum of ONE HUNDRED DOLLARS ($100) contributed by it on this date and (b) all other property of every type and description which it may hereafter acquire or hold in its capacity as trustee of the Trust and all income therefrom and proceeds thereof, to hold, manage, invest, apply and dispose of ~~the~~ same on and subject to the provisions ~~contained~~set forth in this Declaration of Trust, including the annexes and schedule attached hereto.

SECTION 1
INTERPRETATION

1.1 Definitions

In this Declaration:

(a) "***Administrative Services Agent***" means each agent, which may include any Electricity Distributor or other Person, appointed from time to time under an Administrative Services Agreement, and its successors and permitted assigns solely in such capacity.

(b) "***Administrative Services Agreement***" means each agreement entered into from time to time by the Trust ~~with an~~and one or more Administrative Services ~~Agent~~Agents or other Persons, in furtherance of the ~~purpose of the Trust described in section 2.1 of this Declaration~~Purpose, under which the Administrative Services Agent ~~agrees~~would agree to provide specified administrative and other services to and on behalf of the Trustee (including, following the Original Trustee Replacement Date, the Permitted Delegations Annex), as such agreement may be amended, supplemented, restated, renewed or replaced from time to time. [Blakes: A Day 1 Administrative Services Agreement would likely be requested by Computershare to address the possibility of interim administrative issues. It would also be useful to the extent that it is necessary for someone to advise Computershare if an unforeseen event arises or amendments are required to the Declaration, in the event initial changes are necessary to make the Declaration acceptable to potential Board members. All of this is trying to avoid potential gridlock if something comes up and Computershare is unwilling to act without direction.]

(c) "***Assets***" means, collectively, the following:

(i) the $100 Canadian referred to above, contributed by Computershare Trust Company of Canada on the date hereof;

(ii) all other property which is now or which at any time in the future may be issued, assigned, transferred, provided, donated, gifted and contributed to the Trustee (including pursuant to the Transfer Payment Agreement) to be held in trust pursuant to this Declaration (and which the Trustee is willing to accept and hold);

(iii) all acquisitions of property made by the Trust;

(iv) ~~(iii)~~ all property which may at any time be substituted ~~therefor;~~

~~(iv)~~ ~~all capital depreciations to or acquisitions by the Trust;~~for or in respect of the property referred to in clauses (i), (ii) and (iii), above;

(v) all income of the Trust, including investment income generated by the investment of the property referred to in clauses (i), (ii), (iii) and (iv), above; and

(vi) all proceeds of disposition of any of the property referred to in clauses (i) through (v) above,

but excludes ~~anything~~any property paid out or distributed (whether out of income or capital) ~~in the normal course of administration or~~ pursuant to the provisions of this Declaration.

(d) "***Beneficiary***" means each Primary Beneficiary and each Residual Beneficiary, as applicable.

(e) "***Board of Trustees***" means (i) as of the Original Trustee Replacement Date, the individual trustees appointed by the Original Trustee pursuant to Section 5.7 on the basis described in the Trustee Replacement Annex, and (ii) thereafter, the group of trustees appointed hereunder and acting in such capacity.

(f) "***Business Day***" means any working day, Monday to Friday inclusive, excluding statutory and other holidays, namely: New Year's Day; Family Day; Good Friday; Easter Monday; Victoria Day; Canada Day; Civic Holiday; Labour Day; Thanksgiving Day; Remembrance Day; Christmas Day; Boxing Day [and any other day on which the Province has elected to be closed for business].

(g) ~~(e)~~ "***Declaration***" means this Declaration of Trust, as it may be amended, restated, supplemented or otherwise modified from time to time, ~~including each of the Annexes hereto~~and includes each of the annexes and the Schedule attached hereto which constitute and form an integral part of this Declaration.

(h) ~~(f)~~ "***Electricity Distributor***" means, in respect of a designated service area or region in Ontario, the ~~distributer~~distributor of electricity to residences located in such area or region.

(i) ~~(g)~~ "***Electricity Invoice***" means an invoice issued by an Electricity Distributor in respect of electricity charges and related services and amounts incurred or assessed in respect of a residence located in the Electricity Distributor's designated service area or region in Ontario.

(j) ~~(h)~~ "***Eligible Investments***" means ~~[~~(i) a deposit ~~instruments or accounts~~receipt, note, certificate or instrument issued, guaranteed or ~~established by one or more Schedule I Canadian chartered banks].~~endorsed by a bank listed in Schedule I to the *Bank Act* (Canada), which

provides that the principal and any interest shall be fully paid no later than [one year] after the day the investment was made, or (ii) a deposit account at a bank listed in Schedule I to the *Bank Act* (Canada).

(k) ~~(i)~~ "***Eligible Measures***" means electricity efficiency and/or conservation measures determined by the Trustee from time to time~~, as more particularly determined in accordance with~~ on the basis contemplated in the Principles Annex and in the manner specified in and having regard to the Permitted Delegations Annex.

(l) ~~(j)~~ "***Final Distribution Date***" means the earlier of (i) the date specified as such or determined pursuant to the ~~TPA~~Transfer Payment Agreement[1], and (ii) the later of (x) the date (if any) on which the Trustee determines (by a resolution of the Board of Trustees) that no further distributions are likely to be made to any Primary Beneficiary and (y) •, 20[23].

(m) ~~(k)~~ "***HAP Eligible Person***" means an "Eligible Person" as defined in Section 3.1 of the document entitled "Conservation First Framework LDC Took Kit" published by the Independent Electricity System Operator and designated as Final v3.0 – March 11, ~~2016.~~2016, as amended in accordance with the Energy Conservation Agreement between the Independent Electricity System Operator and Electricity Distributors.

(n) "***License Agreement***" means any agreement under which the Trust or any Electricity Distributor possesses or acquires rights to use any trademarks, names, logos, copyrights, patents or other intellectual property for use in connection with communications or other dealings undertaken in relation to the Program, including for the purpose of branding, marketing and promoting the availability, terms and benefits of the Program to Primary Beneficiaries.

(o) ~~(l)~~ "***Minister of Energy***" means the Minister ~~under the Ontario *Electricity Act*, *1998*, S.O. 1998, as amended~~of Energy or such other member of the Executive Council as may be assigned primary ministerial responsibility for the administration of the *Ministry of Energy Act, 2011* under the *Executive Council Act*.

(p) ~~(m)~~ "***Original Trustee***" means Computershare Trust Company of Canada ~~and any successor~~, acting in its capacity as trustee hereunder, together with any additional or replacement Trustee appointed hereunder prior to the Original Trustee Replacement Date and any of their respective successors and assigns.

(q) "***Original Trustee Replacement Date***" has the meaning specified in Section 5.7, being the date on which the Original Trustee is replaced as trustee under this Declaration by the Board of Trustees as contemplated under Section 5.7.

(r) ~~(n)~~ "***Person***" includes any individual, sole proprietorship, corporation, partnership, joint venture, association, society, club, board, chamber, joint-stock company, trust, trustee, unincorporated or incorporated organization or entity or government or any entity, agency or political subdivision thereof.

[1] NTD: The TPA will provide that on an Event of Default (KPMG Comment- No! This is a problem…OPC Comment: Please see correspondence between the Province and the OAG w.r.t. transfer payment accountability provisions.) the remaining Assets will be paid over to the Government, on the basis that the Government's transfer thereunder is subject to such a reservation in circumstances of non-compliance. The TPA should also specify that the Trust will thereafter be wound up, which will tie in to this definition by way of the date so specified in the TPA. Accounting considerations to be discussed.

(s) ~~(o)~~ "***Primary Beneficiary***" means each individual that, as of a time of determination, satisfies each of the following criteria:

(i) the individual owns, rents or leases a residence located in Ontario and is the primary or secondary electricity utility account holder named on an Electricity Invoice issued in respect of that residence; and

(ii) the individual is not a HAP Eligible Person.

(t) ~~(p)~~ "***Principles Annex***" means the ~~annex entitled~~ Principles Annex ~~attached~~set forth as an annex to this Declaration.

(u) "***Province***" means the Province of Ontario.

(v) "***Program***" means the establishment, promotion, implementation and administration of a program to achieve the Purpose on the basis contemplated in this Declaration.

(w) "***Permitted Delegations Annex***" means the Permitted Delegations Annex set forth as an annex to this Declaration.

(x) ~~(q) "*Permitted Delegations Annex*" means the annex entitled Permitted Delegations Annex attached to this Declaration.~~"***Purpose***" means (i) the making of distributions to Primary Beneficiaries who are identified and whose needs are assessed in accordance with section 3.1 and 3.1 of this Declaration, having regard to (x) the principles set forth in the Principles Annex, (y) the manner and basis of implementation and administration of the Program contemplated in the Permitted Delegations Annex, and (z) the other terms, limitations and requirements set forth in this Declaration, and (ii) to the extent that Assets are available following the distributions made to Primary Beneficiaries as contemplated in (i), above, the making of distributions to Residual Beneficiaries who are identified and whose needs are assessed in accordance with section 3.3 and otherwise having regard to the other terms, limitations and requirements set forth in this Declaration.

(y) ~~(r) **"Residual Beneficiary"**~~ means each charitable organization identified by the Trustee and specified as a residual beneficiary hereunder from time to time ~~from among the list of charitable organizations specified on Schedule • (or their respective successor charitable organizations).~~, selected by the Trustee in consultation with and having regard to the recommendations of the Ontario Energy Board in accordance with section 3.3.

(z) ~~(s)~~ "***Transfer Payment Agreement***" means the transfer payment agreement dated as of March •, 2017 between the Trustee and Her Majesty the Queen in right of Ontario as represented by the Minister of Energy, as such agreement may be amended, restated, supplemented or otherwise modified by the further agreement of the parties thereto from time to time.

(aa) ~~(t)~~ "***Trust***" means Affordability Fund Trust, a trust established under and governed by the laws of the Province of Ontario pursuant to this Declaration.

(bb) ~~(u)~~ "***Trustee***" means (i) the Original Trustee and (ii) on and after the Original Trustee Replacement Date, the Board of Trustees ~~appointed by the Original Trustee pursuant to Section • on the basis described in the Trustee Replacement Annex.~~acting together in accordance with and

subject to Section 5.7 and in accordance with the rules and procedures adopted by the Board of Trustees pursuant to Section 5.8.

(cc) ~~(v)~~ "***Trustee Replacement Annex***" means the ~~annex entitled~~ Trustee Replacement Annex ~~attached~~set forth as an annex to this Declaration.

1.2 Headings and Table of Contents

The insertion of headings and the provision of a table of contents are for convenience of reference only and shall not affect the construction or interpretation of this Declaration.

1.3 References

Unless otherwise specified, all references to Sections are to Sections of this Declaration. The words "hereto~~,~~" "herein~~,~~" "hereof~~,~~" "hereunder" and similar expressions refer to this Declaration and not to any particular Section or other provision of this Declaration.

1.4 Number and Gender

Unless otherwise specified, words importing the singular include the plural and vice versa and words importing gender include all genders.

1.5 Governing Law

This Declaration shall be governed by, and construed and interpreted in accordance with, the laws of the Province of Ontario and of Canada applicable therein.

1.6 Severability

Any provision of this Declaration which is illegal, invalid or unenforceable in any jurisdiction shall not affect the legality, validity or enforceability of the remaining provisions and any such illegality, invalidity or unenforceability in any jurisdiction shall not affect the legality, validity or enforceability of such provision in any other jurisdiction.

1.7 Reference to the Trust and the Trustee

For greater certainty, where any reference is made in this Declaration to an act to be performed by or for or on behalf of the Trust, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Trustee in its capacity as trustee of the Trust, and, where any reference is made in this Declaration to an act to be performed by or for or on behalf of the Trustee, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Trustee solely in its capacity as trustee of the Trust. ~~No~~Except as provided under the Transfer Payment Agreement, no Person dealing with the Trust or the Trustee shall be bound to make any enquiry concerning, or has the right to require production of, any evidence of the validity of any act of, or transaction purporting to be made by, the Trustee.

1.8 Defect in Appointment

No action taken by the Trustee will be invalid or ineffective by reason only of any defect in the appointment of the Trustee or the compliance by the Trustee of any rules or procedures adopted by the Trustee and which is discovered after the taking of such action.

SECTION 2
CONCERNING THE TRUST

2.1 Objectives

The Trust is established to hold, invest, apply and dispose of the Assets for the benefit of the Beneficiaries in furtherance of the Purpose, as provided for in this Declaration. In furtherance of the Purpose:

(a) the Original Trustee shall hold and invest the Assets as contemplated in this Declaration until the Original Trustee Replacement Date, after which the Board of Trustees shall be duly appointed hereunder; and

(b) ~~The Trust is established for the sole purpose of providing holding and applying the Assets for the benefit of the Beneficiaries as provided in this Declaration. The activities of the Trust shall be to hold the Assets as contemplated in this Declaration until such time as the Trustee determines that the Assets are to be distributed~~the Board of Trustees shall hold, invest, apply and dispose of the Assets in accordance with this Declaration, including by determining the identities of and distributions (if any) to be made to or for the benefit of the Primary Beneficiaries in accordance with Sections 3.1 and 3.2 of this Declaration, having regard ~~and in accordance the Principles Annex, or otherwise to the Residual Beneficiary, in each case~~to the principles set forth in the Principles Annex and in the manner and on the basis contemplated in the Permitted Delegations Annex, or otherwise by determining the identities of and distributions to be made to or for the benefit of any Residual Beneficiary in accordance with ~~this Declaration.~~Section 3.3,

in each case and in all respects subject to the terms, limitation and requirements set forth in this Declaration.

2.2 Name of the Trust

The name of the Trust shall be the "Affordability Fund Trust" or such replacement name as the Trustee shall determine and specify from time to time. The Trustee shall hold the Assets and conduct the activities of the Trust under such name or variation thereof (including any variation of such name in the French language). If the Trustee determines to change the name of the Trust, the Trustee may specify and use such other designation or adopt such other name (including any name in the French language) as it considers appropriate and may hold the Assets and conduct the activities of the Trust under such ~~other~~ designation or other name.

2.3 Location

The head office and the situs of the administration of the Trust shall be • or such other address in Ontario as the Trustee ~~determined~~may determine from time to time.

2.4 Fiscal Year

The fiscal year of the Trust shall end on December 31 ~~in~~of each year.

SECTION 3
DISTRIBUTIONS

3.1 Distributions to ~~Identified~~ Primary Beneficiaries

Prior to the Final Distribution Date, the Trustee shall distribute the Assets (including capital or income) to the Primary Beneficiaries identified based on the application of the principles specified in the Principles Annex and in the manner and in the amounts determined on the basis contemplated by the Permitted Delegations Annex, in each case in the amounts and to the extent specified herein and therein, subject in all respects to the exercise by the Trustee of its discretion hereunder and to the exclusion of the other Beneficiaries. [Blakes: The intention has been to make the Principles and the Delegations clear and firm, so that MOE has greater certainty. There is scope for the Trustees to add to Principles. Uncertain why firm direction and delegations to LDCs would raise issues for the Trustee.]

3.2 ~~Maximum Amount of Distributions to Primary Beneficiaries~~Amount of Distributions to Primary Beneficiaries

~~The amount distributed by the Trustee to or for the benefit of any Primary Beneficiary shall not exceed the costs (including applicable taxes) incurred by or on behalf of such Primary Beneficiary (whether or not such costs have been paid or remain outstanding) in respect of Eligible Measures applied in respect of the Primary Beneficiary's Ontario residence. An amount distributed by the Trustee to a Primary Beneficiary shall not include any amount that would allow an Electricity Distributor to earn a profit.~~

For the purposes of determining the amount of distributions to be made to the Primary Beneficiaries, the Trustee shall have regard to and be entitled to rely on the recommendations of and information provided by Electricity Distributors acting as Administrative Services Agents appointed for the purposes, in the manner and substantially on the terms contemplated in the Permitted Delegations Annex, without any duty or obligation to verify or makes enquiries regarding the basis for or propriety of such recommendations or the accuracy or completeness of such information, except if and to the extent that the Trustee, in its discretion, determines that (i) it has actual knowledge that such recommendations are contrary to the reasonable application of the principles set forth in the Principles Annex or have been made on a basis that is manifestly contrary to such principles or the delegations and activities specified or contemplated to be undertaken under the Permitted Delegations Annex or (b) such information is known by the Trustee to be erroneous, contain a material misrepresentation or is materially incomplete.

3.3 Distributions to Residual Beneficiaries

~~On~~Prior to the Final Distribution Date, the Trustee shall ~~distribute~~identify the Residual Beneficiaries by consulting with and having regard to the recommendations of the Ontario Energy Board, based on **[Identify criteria that will narrow the scope to charities to those having an energy/social focus]**. On or as soon as practicable following the Final Distribution Date, the Trustee shall distribute all of the Assets (including capital or income) ~~to the Residual~~

~~Beneficiaries~~existing at that time to the Residual Beneficiaries, in each case in the amounts and to the extent determined by Trustee in its discretion hereunder[2] and to the exclusion of the other Beneficiaries.

SECTION 4
POWERS OF THE TRUSTEE

4.1 General

Subject to and in compliance with the terms, limitations and restrictions of this Declaration and notwithstanding applicable trust legislation, the Trustee shall have, without other or further authorization, full, exclusive and absolute power, control and authority over the Assets and over the affairs and activities of the Trust to the same extent as if the Trustee were not a trustee, but rather the sole and absolute owner of the Assets in its own right, including such power, control and authority to do all such acts and things as in its sole judgment and discretion are necessary, incidental or desirable for carrying on the affairs and activities of the Trust, with such powers of delegation as may be permitted or otherwise contemplated by this Declaration. Except as expressly provided in this Declaration, the enumeration in this Declaration of any specific power or authority shall not be construed as limiting the aforesaid general power or authority or any other specific power or authority set out herein. Subject to the terms, limitations and restrictions of this Declaration, every discretion or power hereby conferred on the Trustee is an absolute and uncontrolled discretion or power.

4.2 Specifically Enumerated Powers

The Trustee shall have the following specific powers and authorities:

(a) ***Transfer Payment Agreement.*** The Trustee shall have the power to enter into, amend, supplement, modify and perform its obligation under the Transfer Payment Agreement.

(b) ***Contracts and Undertakings.*** The Trustee shall have the power to enter into, amend, supplement, modify and perform its obligation under any contract entered into or undertaking given by the Trustee in furtherance of the Purpose, including any Administrative Services Agreement and any License Agreement.

(c) ***Power to Own, Hold and Manage.*** Subject to section 4.2(d), the Trustee shall have the power to own, hold and manage the Assets in such manner as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable.[3]

(d) ***Power to Invest in Eligible Investments.*** The Trustee shall have the power to invest the Assets only in Eligible Investments, and to change such Eligible Investments at any time and from time to time, all as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable, but always having regard to the Trustee's expectations regarding the timing of payments to be made to the Beneficiaries hereunder. If an investment of Assets in Eligible Investments would not be authorized under the applicable trust laws of Ontario, the Trustee shall

[2] NTD: Consider if principles should be included regarding the maximum amount any particular charity may receive.

[3] Consider limiting this broad power. (KPMG Comment: Why? Be careful) OPC Comment: Not sure what these comments refer to, but worth discussing to confirm. . [Blakes: See response as #4 (below) with respect to "manage" the assets.]

nevertheless be permitted to make an investment of the Assets in such Eligible Investments. The Trustee will have no liability for the diminution in the value of any investment in Eligible Investments made hereunder.

(e) ~~(b)~~ ***Power to Dispose of Assets.*** The Trustee shall have the power to sell, convey, assign, transfer, exchange and in any other manner dispose of the Assets or any part or parts thereof free and clear of any and all trusts established under this Declaration, by public or private sale, for cash or on credit, with or without advertisement, and subject to such restrictions, stipulations, agreements and reservations as the Trustee in its sole and absolute discretion may consider appropriate or advisable, and to execute and deliver and perform any agreement, deed, conveyance, transfer or other document or instrument in connection with the foregoing.~~1~~[14]

(f) ~~(c)~~ ***Power to Manage and Invest.*** ~~The Trustee shall have the power to own, hold and manage the Assets in such manner as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable.~~[2] ~~The Trustee shall have the power to invest the Assets in Eligible Investments, and to change such Eligible Investments at any time and from time to time, all as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable. The Trustee shall not be limited to investments authorized by law for trustees. The Trustee will have no liability for the depreciation of any investment.~~ ***Apply Assets and Proceeds to Make Distributions to Beneficiaries.*** The Trustee shall have the power to apply the Assets and the proceeds and income derived therefrom to make distributions to the Beneficiaries contemplated by Section 3, and to execute and deliver and perform any agreement, deed, conveyance, transfer or other document or instrument in connection with therewith.

(g) ***Power to Delegate and to Appoint Agents, etc.*** The Trustee shall have the power to appoint, employ or contract with any Person as the Trustee in its sole and absolute discretion may consider appropriate or advisable in connection with the activities of the Trust. Without limiting the generality of the foregoing:

(i) ~~(d) ***Power to Delegate and to Appoint Agents, etc.*** The Trustee shall have the power to appoint, employ or contract with any Person as the Trustee in its sole and absolute discretion may consider appropriate or advisable in connection with the activities of the Trust. Without limiting the generality of the foregoing,~~ the Trustee will have the power at any time and from time to time to appoint, employ or retain consultants, financial advisers, technical advisers, legal counsel, accountants, administrative services agents, insurers, insurance agents and insurance brokers, as the Trustee may require for the purpose of discharging its duties hereunder and shall not be responsible for ~~any of them. The Trustee may pay remuneration from the Assets for all services performed for it in the discharge of the trusts hereof without taxation for costs or fees of any counsel, solicitor or attorney. Without limiting the generality of the forgoing, the Trustee may appoint, employ or retain any Person~~or for the actions of any of them, including to:

[14] Consider limiting this broad power. (KPMG Comment: Why? Be careful) OPC Comment: Not sure what these comments refer to, but worth discussing to confirm. [Blakes: We could not think of a case where the trustee would be required to dispose of assets, and wondered if a broad power should recognize that dispositions are not intended. We are okay if the power is intact, as long as MOE is comfortable with that as a possibility.]

~~[2] Consider limiting this broad power.~~

(A) ~~(i) to~~ act for and on behalf of the Trust in connection with any and all matters in any way relating to the negotiation, settlement, entering into, amending, performance and enforcement of the Transfer Payment Agreement, the Administrative Services Agreements, any License Agreement and any ~~related~~other agreements and contracts~~;~~ to which the Trust becomes a party in accordance with this Declaration;

(B) ~~(ii)~~ to provide or cause to be provided any or all kinds of administrative services in any way relating to the activities of the Trust;

(C) ~~(iii)~~ to act as attorney in fact, agent or trustee in the ~~purchase~~acquisition, holding ~~or~~, investment, application, sale or other disposition of the Assets and in the handling, prosecuting, defending or settling of any claims of or made against the Trust; ~~and~~

(D) ~~(iv)~~ to value the Assets and determine the net income of the Trust~~.~~; and

(E) to make any filings, elections and submissions (including in respect of taxation matters) in connection with the Trust's compliance with applicable laws and regulatory requirements; and

(ii) the Trustee may pay remuneration and reimbursements from the Assets for services performed for it or on its behalf in the discharge of the trusts hereof without taxation for costs or fees of any counsel, solicitor or attorney.

Without limiting the foregoing, ~~the Trustee may~~it is expected that the Board of Trustees will (a) seek to enter into Administrative Services Agreements with Electricity Distributors for the purposes contemplated by the Permitted Delegations Annex, and on such ~~other~~ terms and conditions (including terms and conditions as to the payment of reasonable fees and expenses) not inconsistent therewith as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable, and (b) obtain commercial general liability insurance from insurers having a secure A.M. Best rating of B+ or greater, or the equivalent, that in the opinion of the Recipient a prudent person similar to the Recipient would maintain, and having an inclusive limit of not less than $2,000,000 per occurrence and providing for contractual liability coverage.

(h) ~~(c)~~ ***Power to Operate Accounts.*** The Trustee shall have the power to (i) open and operate accounts at any chartered bank, trust company or other financial institution in Canada or elsewhere, as the Trustee in its sole and absolute discretion may consider appropriate or advisable; ~~to~~(ii) deposit therein any moneys or securities forming part of the Assets whether or not such deposits will earn interest; ~~to~~(iii) withdraw such deposits at such times and in such manner as the Trustee may determine; ~~to~~(iv) draw, make, endorse, deposit or otherwise deal in cheques, bills of exchange, promissory notes, drafts and other kinds of instruments and securities; ~~to~~and (v) enter into contracts or agreements with any such chartered bank, trust company or other financial institution containing such terms and provisions as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable~~; and~~. In connection

therewith, the Trustee shall have no liability or responsibility for any loss which may occur by reason of the failure of any such chartered bank, trust company or other financial institution.

(i) ~~(f)~~ ***Power to Collect, etc.*** The Trustee shall have the power to (i) collect, sue for, receive and give receipts for all sums of money or other property due to the Trust; ~~to~~(ii) consent to extensions of time for payment or to the renewal of any securities or obligations; ~~to~~(iii) engage or intervene in, prosecute, defend, compound, compromise, abandon or adjust by arbitration or otherwise, any demands, claims, actions, suits or proceedings relating to the Trust or the Assets; ~~to~~(iv) exercise any and all remedies available to the Trustee under any agreement or as may otherwise be available, including any power of foreclosure or sale available at law ~~and,~~; (v) in connection with any such foreclosure or sale, ~~to~~ purchase or otherwise acquire title to any property and to convey good title thereto free of any and all trusts hereby established, or to take or retake possession of any property secured under any agreement or instrument; ~~to~~(vi) extend the time, with or without security, for the payment or delivery of any debts or property ~~and to~~; (vii) execute and deliver releases, acquittances, discharges, agreements or other instruments related thereto; and ~~to~~(viii) pay or satisfy any debts or claims upon any evidence that the Trustee, in its sole and absolute discretion, may determine to be sufficient.

(j) ~~(g)~~ ***Power to Pay Trustee's Fees.*** The Original Trustee shall be entitled to be paid and receive ~~reasonable fees from the Assets~~the fees set forth in the Original Trustee's schedule of fees delivered as of the date hereof as compensation for its services under this Declaration, and to be reimbursed for its out-of-pocket expenses reasonably incurred, in each case from the Assets and without the approval of any Beneficiary or any court. The Original Trustee shall [Blakes: Someone will need to settle funds to create a valid trust] be entitled, in its sole and absolute discretion, to withdraw funds from time to time ~~funds~~ for such purpose from any account of the Trust. ~~The Successor Trustee~~Members of the Board of Trustees shall be entitled to reimbursement for ~~its~~and in respect of their out-of-pocket expenses reasonably incurred in discharging ~~its services~~their respective duties and obligations under this Declaration~~,~~ and any contract of the Trust entered into in accordance with this Declaration, in each case without the approval of any Beneficiary or any court, ~~but subject to the~~ provided that the members of the Board of Trustees have general regard to sorts of limitations as are set forth in the "Travel, Meal and Hospitality Expenses Directive of the Province~~, a copy~~" specified and amended by the Province from time to time, a copy of the current version of which is attached as Exhibit 1 to the Principles Annex.

(k) ~~(h)~~ ***Power to Pay Taxes.*** The Trustee shall have the power to (i) pay, deduct, withhold or remit any taxes or assessments which are required by law to be paid, deducted, withheld or remitted together with or from any payment made by the Trustee; ~~to~~(ii) pay all taxes or assessments of whatever kind or nature imposed upon or against the Trust or the Trustee in connection with the Assets or any part thereof; ~~to~~(iii) collect and remit all taxes and assessments of whatever kind or nature required to be collected and remitted by the Trust or the Trustee in connection with their activities or the Assets or any part thereof; ~~to~~(iv) appeal, settle or compromise tax claims or liabilities; and~~,~~ (v) for the foregoing purposes, to make such returns, elections and submissions and do all such other acts and things as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable.

(l) ~~(i)~~ ***Power to Appoint Auditors.*** The Trustee shall have the power to select and appoint and discharge and re-appoint, in its sole and absolute discretion, an auditor or auditors of the Trust and to settle and pay the fees of any such auditor or auditors from any account of the Trust.

(m) ~~(j)~~ ***Form of Accounts.*** The Trustee shall have the power to determine and change from time to time, in its sole and absolute discretion, the method or form in which the accounts of the Trust will be kept and shall not be required to keep ~~and~~or provide accounts in the form usually required by law to be kept or provided by trustees; provided that such method or form reasonably complies with generally accepted accounting principles in effect in Canada to the extent applicable.

(n) ~~(k)~~ ***Title to Assets.*** The Trustee shall have the power to cause all or any part of the Assets to be held by or registered, in its sole and absolute discretion, in the name of any Person.

(o) ~~(l)~~ ***Delegation of Discretion***. The Trustee shall have the power to delegate the right and power to exercise, or concur in the exercise of any discretion or power, conferred on the Trustee in this Declaration or conferred by law to any one or more of its directors, officers, employees, agents, representatives or to such other Person, as the Trustee, in its sole and absolute discretion, may think is appropriate or advisable, including~~, without limitation,~~ to one or more Administrative Services Agents and their respective employees, officers and directors~~, in each case~~ under a related Administrative Services Agreement ~~and~~entered into by the Trust substantially on the basis contemplated in the Permitted Delegations Annex. ~~The~~In particular, the Trustee shall have the power to accept, rely on and follow the recommendations of an Electricity Distributor made under and in accordance with ~~clauses 4(a)(i) to 4(a)(vi) of~~ the Permitted Delegation Annex with respect to a the identification of, and the determination of distributions (if any) to be made to, any Primary Beneficiary, except if and in so far as the Trustee has actual knowledge that (~~a~~1) such Primary Beneficiary did not in fact satisfy the "Selection Factors" specified in the Principles Annex ~~at~~as of the applicable time of determination; and/or (~~b~~ii) the amount recommended to be distributed to the Primary Beneficiary was not calculated in substantial compliance with, or was calculated in a manner that is manifestly contrary to the requirements ~~of~~set forth or contemplated in, the Permitted Delegation Annex or the applicable Administrative Services Agreement.

(p) ~~(m)~~ ***Additional Powers.*** The Trustee shall have the power to perform and do all such other acts, to take such steps and to execute all such deeds, transfers, assignments, agreements and other documents and instruments as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable for the carrying out of any of its powers hereunder or of any of the activities of the Trust as herein contemplated, or for the carrying out, promotion or advancement of the interests of the Trust, whether or not any of such acts, things, documents or instruments are herein expressly mentioned. Any good faith determination by the Trustee as to what is necessary, desirable or appropriate to carry out its powers or activities of the Trust as contemplated under this Declaration or to carry out, promote or advance the interests of the Trust shall be conclusive. Any construction of this Declaration or any determination as to the activities of the Trust or the existence of any power or authority hereunder made in good faith by the Trustee, relying upon the advice of counsel, shall be conclusive. In construing the provisions of this Declaration, there shall be a presumption in favour of a grant of power to the Trustee.

SECTION 5
CONCERNING THE TRUSTEE

5.1 Duty of Trustee

In performing its duties and exercising its powers under this Declaration, the Trustee shall act honestly, in good faith and with a view to the best interests of the Trust and the Beneficiaries and shall exercise that degree of care, diligence and skill that a reasonably prudent trustee would exercise in comparable circumstances (the "**Standard of Care**"). The Trustee shall observe and act in accordance with the terms of, and shall observe and comply with the limitations and restrictions set forth in, this Declaration, including having due regard to the principles set forth in the Principles Annex. To the extent that the Trustee has so delegated any of its duties or powers, it shall be deemed to have satisfied the Standard of Care in respect of the subject matter of such delegation, subject to the Trustee's overall duty as a trustee to exercise prudent oversight in relation to such delegation. Unless required by law, the Trustee will not be required to give any security, bonds or sureties in any jurisdiction for the performance of any of its duties and obligations under this Declaration. The Trustee (including the individual members of the Board of Trustees) will not be required to devote its entire time to the trust activities.

5.2 Limitation of Liability

The Trustee shall not be personally liable in tort, contract or otherwise to any Beneficiary or any other Person for any loss or diminution in the value of the Assets, or for any action or failure to act on the part of the Trustee or any of its employees or agents or any other Person, and shall not be subject to any personal liability for any debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses incurred by or against the Trust, howsoever arising, and resort will be had solely to the Assets for the payment, performance or satisfaction thereof. No property or assets of the Trustee, owned in its personal capacity or otherwise, will be subject to levy, execution or other enforcement procedures with respect to any obligation under this Declaration. However, the foregoing limitations in this Section ~~5.2~~ shall not apply where the Trustee has demonstrated gross negligence, bad faith, fraud or wilful misconduct.

5.3 Liability of Trustee under Contracts

Any document or instrument creating a liability or obligation of the Trust or of the Trustee will be conclusively deemed to have been executed by the Trustee only in its capacity as Trustee of the Trust and will be binding upon the Trustee only in its capacity as trustee hereunder and resort may not be had to, nor recourse or satisfaction be sought from, the property of the Trustee other than the Assets, whether owned by its in its personal capacity or in any other capacity other than in its capacity as Trustee of the Trust, or from its employees or agents, and in all cases resort will be had solely to the Assets for the payment, performance or satisfaction of any such liability or obligation. ~~Each such document or instrument shall contain a provision providing for the aforesaid limitation of liability.~~ However, the foregoing limitations in this Section ~~5.3~~ shall not apply where the Trustee has demonstrated gross negligence, bad faith, fraud or wilful misconduct. Each document or instrument creating a liability or obligation of the Trust or of the Trustee shall contain a provision providing for the aforesaid limitation of liability.

5.4 Funds of the Trustee

The Trustee shall not be required to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers.

5.5 Indemnification of Trustee

In addition to and without limiting any other protection hereunder or otherwise by law of the Trustee and its respective employees, agents, representatives and assigns (in this Section 5.5, collectively, the "**Representatives**"), the Trustee and its respective Representatives shall be indemnified, defended and saved harmless out of the Assets from, against and in respect of any and all liabilities arising or related to actions taken or omitted to be taken by any agent of the Trustee, losses, claims (including any claim arising out of the assessment of any tax on income by a taxing authority), damages, penalties, fines, actions, suits, demands, levies, assessments, costs, charges, expenses and disbursements (including, without limitation, any and all legal and advisor fees and disbursements) (in this Section 5.5, collectively, the "**Liabilities**") of whatever kind or nature which may at any time be suffered by, imposed upon, incurred by or asserted against the Trustee and its Representatives, whether groundless or otherwise, howsoever arising from or out of any act, omission or error of the Trustee, in each case made in connection with its acting as Trustee hereunder, in each case except and to the extent that the Liabilities are a result from or are caused by gross negligence, wilful misconduct, bad faith or breach of the Confidentiality obligations described in ~~Section~~section 5.9. Further, except as provided in ~~Section~~section 5.2, the Trustee shall not be liable to any Beneficiary for any loss or damage relating to any matter regarding the Trust, including any loss or diminution in value of the Assets. Notwithstanding any other provision hereof, the obligations provided for in this ~~Section~~section 5.5 shall survive any termination of the Trust ~~created hereby~~, whether by reason of removal or resignation of the Trustee, termination or discharge of this Declaration or otherwise.

5.6 Reliance upon Advice

Subject to ~~Section~~section 5.1, in performing its duties and exercising its powers hereunder, the Trustee may rely and may act or not act, and shall be fully protected in relying and acting or not acting, upon (a) any statement, telecopy or other electronic means of communication, writing, notice, resolution, report, opinion or other document or conversation believed by its to be genuine and correct and to have been signed, sent or made by the proper Person; (b) any opinion or advice received or information obtained from auditors, solicitors, or other professional advisers, whether retained by the Trustee or otherwise, and shall not be responsible or held liable for any loss or damage resulting from so relying or acting or not acting; and (c) the advice and actions of ~~the~~any Administrative Services Agent, including in connection with the delegations and reliances contemplated under the Permitted Delegations Annex. For greater certainty, it shall not be necessary for the Trustee to ascertain whether or not the Persons who have executed, signed or otherwise issued, authenticated or receipted such papers, writings or documents (including any Administrative Services Agreement, License Agreement or any other contract entered into by the Trustee) have authority to do so or that they are the same Persons named therein or otherwise to pass upon any requirement of such papers, writing or documents that may be essential for their validity or effectiveness or upon the truth and acceptability.

5.7 ~~Resignation~~Replacement of the Original Trustee

~~On or before •, 2017 or as soon thereafter as is practicable,~~

As soon as practicable and in any event prior to •, 2017, the Original Trustee shall ~~receive the recommendations of the Advisory Committee contemplated by and for the purposes described in~~appoint the Persons contemplated by the Trustee Replacement Annex ~~(the "**Advisory Committee**") and, in accordance with the procedures set forth in~~to comprise the Advisory Committee contemplated therein (once constituted, the "**Advisory Committee**"). As soon as practicable thereafter, the Original Trustee shall request that the Advisory Board make recommendations with respect to the composition of the "Board of Trustees", as contemplated by the Trustee Replacement Annex~~ and upon being satisfied that the persons recommended to become members of the Advisory Committee satisfy the criteria~~. The Trustee shall have no duty or obligation to investigate the basis for any of the Advisory Committee's recommendations and may rely on such recommendations without any duty of enquiry, supervision or oversight with respect to the activities and decision-making processes adopted by the Advisory Committee in its discretion, in full satisfaction of the Original Trustee's Standard of Care with respect to such matters hereunder. Except if the Trustee determines that the individuals recommended by the Advisory Committee to become members of such Board of Trustees are disqualified from so acting on the basis of manifest non-compliance with the "Selection Factors" set forth in the Trustee Replacement Annex, the Original Trustee shall appoint~~ as additional Trustees [number] of individuals recommended~~, as members of the Board of Trustees, [six] (five voting and one non-voting) of individuals from among those individuals who have been recommended for appointment to the Board of Trustees by the Advisory Committee. The Original Trustee may exercise its discretion in selecting such individuals for such appointment subject to compliance with the "Selection Factors" set forth in the Trustee Replacement Annex or, in the absence of such exercise, shall select from among individuals who would, if appointed, provide for compliance with the "Selection Factors" set forth in the Trustee Replacement Annex based on the alphabetic order of the their respective surnames. Upon the appointment of [~~number] additional trustees~~six] individuals pursuant to this provision and their agreement to act as members of the Board of Trustees, the Original Trustee shall be deemed to have resigned and shall cease to be a trustee~~. [Insert bare bones governance for the Board's initial purposes.]~~ (such resignation occurring on the "**Original Trustee Replacement Date**").

5.8 ~~Appointment of Successor Trustee~~Rules and Procedures of the Board of Trustees

(a) ***Initial Requirements***. As soon as practicable and in any event no later than [one] month following the Original Trustee Replacement Date, the Board of Trustees shall meet to take such decisions and actions as they deem necessary to ensure the proper management and administration of the Trust. The date (and location if in person) of the initial meeting shall be determined by a majority of the Board of Trustees.

(b) ***Meetings.*** Subject to the Board of Trustees' discretion to make such rules and procedures that they may deem desirable, meetings of the Board of Trustees may be held at such time and place as the trustee members of the Board of Trustees may agree upon or as they may fix by resolution for the purpose or if the meeting is called as hereinafter mentioned then at such time as may be designated in the notice calling the meeting. A meeting of the Board of Trustees may be called at any time by any two members of the Board of Trustees by two Business Days' notice given to the members of the Board of Trustees. No notice of any Board of Trustees' meeting

shall be necessary when a quorum is present if those comprising the quorum consent to the transaction of the affairs of the Trust and the absent trustee or trustees, if any, either before or after the meeting shall waive in writing notice of the meeting. Meetings of the Board of Trustees may be conducted in person, by telephone, or in such other manner as determined by the Board of Trustees. The Board of Trustees may elect a Chairperson.

(c) ***Quorum.*** At any meeting of the Board of Trustees, a majority of the members of the Board of Trustees shall be a quorum irrespective of the number of members in office, provided that quorum will not exist if the majority of members voting on a decision are Provincial employees or representatives. The decision of the majority of the members where quorum exists shall govern and shall be binding for all purposes and shall be acted upon and carried out in the same manner and with the same effect as if all the members concurred therein; provided always that in the case of equality of votes the Chairperson, if any, shall not be entitled to cast a second or deciding vote.

(d) ***Power to Adopt Rules and Procedures.*** The Board of Trustees may make such rules and procedures not inconsistent herewith as it may deem desirable for the proper management and administration of the Trust and the discharge of the responsibilities of the Board of Trustees.

(e) ~~[Add governance provisions to permit remaining trustees~~***Replacement of Members of the Board of Trustees***. The Board of Trustees shall have the power to replace any vacancy arising ~~after Board of Trustees is first constituted under Section 5.7 and to prohibit last trustee from resigning until replacement appointed, subject to an~~following the Original Trustee Replacement Date according to such rules and procedures as they deem appropriate, having regard for such considerations necessary to ensure that the composition of the Board of Trustees will be able to discharge its responsibilities in respect of the Declaration. If necessary, the Board of Trustees may fill any vacancy by application to the Courts of Ontario in the event of an unfilled vacancy.~~]~~

(f) ***Decisions of the Board of Trustees.*** Decisions and actions of the Board of Trustees shall be made by voting, with each individual member having one vote. Subject to quorum requirements, a majority vote shall be determinative in respect of such decisions and actions. Subject to quorum requirements, any decision or action taken by the majority of trustees will represent the decision or action of the Trustee, and not any member of the Board of Trustees.

(g) ***Conflicts of Interest.*** With respect to any matter before the Board of Trustees, to the extent of a conflict of interest, whether actual, perceived or potential, involving a member of the Board of Trustees' personal interests and a matter concerning the Trust, such member shall abstain from voting on the matter or taking any other discretionary action on the matter. For the purposes of the foregoing, no member of the Board of Trustees shall be deemed to have a conflict by reason only that the member holds any office or position with an Electricity Distributor, social services agency or governmental or quasi-governmental agency or entity (such as the Independent Electricity System Operator); provided, however, that in relation to any decision of the Board of Trustees pertaining specifically to a particular Electricity Distributor, any member of the Board of Trustees who is a director, officer or employee of the Electricity Distributor shall recuse himself or herself from participating in deliberations, discussions or voting in respect of such decision.

(h) ***Expenses*** and ***Reimbursements to Trustees.*** Members of the Board of Trustees shall be entitled to reimbursement for and in respect of their out-of-pocket expenses reasonably incurred

in discharging their duties and obligations as members of the Board of Trustees. The Board of Trustees shall serve without compensation.

5.9 Confidentiality

Notwithstanding the resignation or removal and discharge from the trusts and powers reposed in and conferred on the Trustee by this Declaration, or the termination of this Declaration, the Trustee so resigning or removed shall continue to treat as confidential all information relating to the Trust, the Assets and the Beneficiaries and shall only be entitled to make disclosures concerning such information if disclosure is required in the performance of the functions of the resigning or removed Trustee or is ordered by a court of competent jurisdiction or is otherwise required by law. The Trustee shall not be responsible or liable to any Person for any loss or damage arising out of or in any way sustained or incurred in any way relating to any such required disclosure. The obligations arising under this ~~Section [~~section 5.9~~]~~ shall survive the termination of the Trust.

5.10 Vesting in Successor Trustee

Any successor trustee (including any reconstituted Board of Trustees) shall automatically become vested with the Assets and with the same powers, rights, duties, responsibilities and trusts as if it, he or she had ~~been~~ originally been named as Trustee under this Declaration, without the requirement of any further instrument or act or conveyance, and the Trustee ceasing to act shall execute all such transfers and other documents and do all such other acts or things as may be necessary or desirable to assign, transfer, deliver to, and vest in, the successor trustee, upon the trusts expressed in this Declaration, all the Assets and all the rights, powers and trusts of the Trustee ceasing to act. The expense of any act, document, deed or other instrument or thing required under this Section ~~5.10,~~5.10, including for greater certainty, outstanding fees and unreimbursed expenses of the Trustee (including any member of the Board of Trustees) ceasing to act, shall be satisfied from the Assets.

5.11 Execution of ~~Documents~~Instruments

The Trustee shall have the power to execute all deeds, transfers, agreements, promissory notes and other instruments on behalf of the Trust.[3] Such power may be exercised by any one or more Administrative Services Agents acting in accordance with any delegated right to do so pursuant to an applicable Administrative Services Agreement, and any such execution of instrument by an Administrative Services Agent, acting in such capacity as agent of the Trust pursuant to the terms and conditions of such Administrative Services Agreement shall be deemed to be a proper execution of such instrument by the Trustee and shall be binding for all purposes on the Trust.

5.12 Decisions by the Trustee

If there is more than one Trustee, decisions of the Trust may be made by a majority of Trustees. Whenever the Trustees are unable to agree in relation to the commission or omission of any act or howsoever in the execution of the Trust, the decision of a majority of the Trustees shall prevail.[5]

[3] ~~Consider extending this power to the Administrative Services Agent.~~

[5] NTD: KPMG Comment: Watch carefully OPC Comment: Agree – need to watch the final details as developed.

SECTION 6
AMENDMENTS AND SUPPLEMENTS

6.1 ~~Amendment~~Amendments

~~The~~Subject to the requirements of the Transfer Payment Agreement, the Trustee shall have the power in its sole and absolute discretion from time to time without the approval of any Beneficiary or any court to amend, vary, supplement, replace or restate this Declaration in its entirety or any portion thereof. [ADD BACK THE PROVISO?] Without in any way limiting the foregoing ~~and in addition to the principles and procedures set forth in the Principles Annex and the Permitted Delegation Annex~~, any such amendments, variations, supplements, replacements or restatements may:[Blakes: Discuss MOE certainty of Declaration and why this flexibility/Trustee discretion would be needed or appropriate. Deletion assumes that TPA may include limitations on amendments.]

(a) add ~~additional Trustees;~~provisions for the replacement of or appointment of additional trustees to act with the Original Trustee prior to the Original Trustee Replacement Date;

(b) in the case of the Original Trustee, add provisions to those contemplated in the Trustee Replacement Annex in respect of the appointment of the members and the formation and empowerment of the Board of Trustees;

(c) in the case of the Original Trustee, vary the terms and requirements applicable to the duties, responsibilities, obligations, liabilities, indemnities, protections, limitations, restrictions, compensation, expense reimbursements and such other matters, in each case as the Advisory Committee may indicate are necessary be made in order to attract and receive confirmation of appointment of appropriately qualified individuals that the Advisory Committee specifies are to be appointed as members of the Board of Trustees in accordance with its recommendations;

(d) add additional or replace existing Trustees[6];

(e) add to or reasonably clarify the principles set forth in the Principles Annex;

(f) add to or reasonably clarify the delegations and activities contemplated to be made in the Permitted Delegation Annex;

(g) ~~(b)~~ include provisions for the management of the Trust by the Trustees, including the making of rules, requirements and procedures ~~for meetings~~governing the decision-making of the Board of Trustees;

(h) ~~(c)~~ add provisions for the replacement of members of the Board of Trustees (in addition to those provisions contemplated in section 5.7 and the Trustee Replacement Annex);

(i) ~~(d)~~ provide for the engagement of any Person or Persons as managers, administrators or other service providers to the Trust, including any additional or replacement Administrative Services Agent or representative thereof;

[6] NTD: Consider and, if retained, integrate with Board concepts.

(j) ~~(e)~~ specify supplemental procedures for the identification of Primary Beneficiaries and the exchange of information with Electricity Distributors in connection with identifying such Primary Beneficiaries ~~who will be the recipients~~; or

(k) ~~(f)~~ specify procedures for the transfer and transmission of funds from the Trust or any Administrative Services Agent acting on its behalf and with delegated responsibility over funds constituting Assets, to~~,~~ or for the benefit of, Beneficiaries or their designated representatives, payees or assignees.

6.2 Supplemental Declarations

The Trustee is authorized to execute any supplemental declaration of trust (including one or more amendments and restatements from time to time of this Declaration) to give effect to amendments to this Declaration made pursuant to ~~this Section 6.~~section 5.1.

SECTION 7
TERMINATION

7.1 Duration

Subject to ~~Section 7.3, [and Section~~section 7.2~~]~~, the Trust will continue in full force and effect so long as there ~~is~~are any Assets and until all of the debts, liabilities and obligations of the Trust have been paid and satisfied in full.[47]

~~**7.2 [Termination for Non-Performance**~~

~~**[NTD: Mechanism to address non-performance by Trustees?]**~~

7.2 ~~7.3~~ Termination and Distribution of Assets

Subject as hereinafter provided, the Trustee may terminate the Trust and wind up its affairs on such date as the Trustee, in its sole and absolute discretion, may determine and after paying or adequately providing for the payment and satisfaction of all debts, liabilities and obligations of the Trust and upon receipt of such releases, indemnities and discharges as the Trustee, relying on the opinion of counsel, deems necessary for the protection of the Beneficiaries and for its own protection. Notwithstanding the foregoing, the Trustee shall in any event terminate the Trust and wind up its affairs ~~not later than [December 31, 2037~~as soon as practicable after the Final Distribution Date~~] (the "**Termination Date**"). Upon~~. In connection with the termination of the Trust, the Trustee shall identify the Residual Beneficiaries and distribute or cause to be distributed the remaining Assets, in cash or in kind or partly in each, to the Residual ~~Beneficiary. [NTD: This section subject to ongoing review.]~~Beneficiaries, in each case in accordance with section 3.3.

7.3 ~~7.4~~ Distribution of Assets on Final Distribution Date

If the Trust holds Assets on the Final Distribution Date, such assets shall promptly be paid to the Residual ~~Beneficiary on such date.~~Beneficiaries in accordance with Section 3.3.

[47] NTD: Consider early termination scenarios.

SECTION 8
ACCEPTANCE OF TRUSTS

8.1 Acceptance of Trusts

The Trustee hereby accepts the trusts and duties contained in this Declaration and agrees to perform the same upon the terms and conditions hereof until discharged therefrom.

[Signature Page Follows]

The Trustee has executed this Declaration as of the date first written above.

COMPUTERSHARE TRUST COMPANY OF CANADA, as Trustee

By:
Name:
Title:

By:
Name:
Title:

PRINCIPLES ANNEX

The Trustee shall have regard to [, but shall not be specifically bound by,] the following principles ~~apply~~in applying its discretion in relation to the administration of the Trust:

1. Identification of Primary Beneficiary Payees

1.1 ~~A~~[Except in exceptional circumstances,] a Primary Beneficiary ~~should~~would not be expected to receive a ~~payment~~benefit from the Trust unless at the time of consideration it satisfies, in addition to the requirements contemplated in the definition of "Primary Beneficiary", each of the following criteria (the "**Selection ~~Criteria~~Factors**"):

~~(i) it is an [owner-occupied,] [non-commercial] electricity customer;~~

(i) ~~(ii)~~ it has ~~[committed] [made arrangements] [proposed] [indicated its willingness~~a participant agreement [with an applicable Electricity Distributor] to undertake measures (its "**Energy Plan**") to improve the electricity efficiency and/or promote the conservation of electricity at its Ontario residence;

(ii) ~~(iii)~~ its Energy Plan involves one or more Eligible Measures, as may be designated by the Trustee from time to time from;

(iii) ~~(iv)~~ it confirms that :

1. the primary purpose of its Energy Plan is the conservation and efficient use by the Primary Beneficiary of electricity, and is not for the purposes of the Primary Beneficiary making a profit;

2. ~~(v)~~ it would otherwise not have the financial resources to undertake the Eligible Measures included in its Energy Plan; and

3. ~~(vi) the Eligible Measures to be undertaken by it under its Energy Plan~~it would ~~not~~ otherwise not be ~~eligible for reimbursement from third parties, including under any efficiency or conservation program implemented by a governmental agency~~[a HAP Eligible Person][eligible to receive amounts in respect of the Eligible Measures under HAP];

(iv) ~~(vii)~~ it has demonstrated a need for financial assistance on the basis that its periodic electricity bills represent a financial burden, relative to its available financial resources; and

(v) ~~(viii) Such~~such other criteria as the Trustee may determine ~~after consultation with~~, including based on the recommendations of Electricity Distributors or other knowledgeable Persons made on the basis and in accordance with the delegations contemplated by the Permitted Delegations Annex or any applicable Administrative Services Agreement.

1.2 ~~The availability of~~It is recognized that, in furthering the Purpose, an efficient basis upon which to allocate funds to the Primary Beneficiaries ~~should be allocated on an equitable and consistent basis~~ across different areas and regions within ~~the Province, having regard to:~~Ontario may be based on the areas and regions serviced by the Electricity Distributors operating within Ontario.

1.3 It would not be contrary to the Purposes if funds are made available by the Trustee to the Primary Beneficiaries unequally across different areas and regions within Ontario, and it is expect that in making such an unequal division it would be appropriate to have regard to:

(i) broad economic parameters of economic activity and the specific financial resources of the residents of the areas and regions, in each case as an indication of the relative need of such residents across the areas and regions;

(ii) electricity use and efficiency levels of non-commercial electricity customers across the areas and regions;

(iii) specific regional indicators of economic weakness and need~~.~~; and

(iv) ~~1.3 An efficient basis upon which to allocate funds to the Beneficiaries across different areas and regions within the Province will be based on the designated areas and regions serviced by the Electricity Distributors operating within the Province.~~ such other factors as the Trustee may determine are relevant, including based on the submissions, advice and recommendations of Electricity Distributors or other knowledgeable Persons made on the basis and in accordance with the delegations contemplated by the Permitted Delegations Annex or any applicable Administrative Services Agreement.

1.4 ~~The~~It is recognized that, in furthering the Purpose, the designated Electricity Distributor for an area or region in which a Primary Beneficiary resides ~~will~~would be expected to:

(i) be a reliable source for the purpose of assessing and confirming whether ~~a~~ the Primary Beneficiary satisfies the Selection ~~Criteria~~Factors;

(ii) be an efficient intermediary for the purpose of communicating with the Primary Beneficiary, including regarding the availability, terms, conditions and intended purposes of ~~[Project]~~Program[8];

(iii) be able to ~~efficiently integrate and reflect any~~facilitate an efficient payment of distribution ~~payments~~ determined to be made to or on behalf of the Primary Beneficiary ~~within its~~, having regard to the Electricity Distributor's established practices, procedures and systems for dealing with its customers; and

(iv) have established contractual arrangements with the Primary Beneficiary that may apply to the protection and confidentiality of information provided by or respecting the Primary Beneficiary, which information may be useful in the consideration by the Electricity Distributor in its assessment of whether the

[8] Consider if the Trustees should control the messaging to ensure consistency across the Province.

Primary Beneficiary satisfies the Selection ~~Criteria~~Factors, which information may not otherwise be available or readily accessible ~~by the Trustee.~~or verifiable by the Trustee. [Blakes: These statements are included to substantiate the very significant delegation of decision making (dispositive powers) to and influence of the Electricity Distributors.]

1.5 ~~The designated~~It is recognized that, in furthering the Purpose, the Electricity Distributor for an area or region in which a Primary Beneficiary resides will have market and utilization information that may be useful in assessing the relative needs of Primary Beneficiaries within its ~~designated~~ area or region. Such information ~~will~~is expected to be relevant in assessing the extent to which one such Primary Beneficiary's financial needs and the merits of its Energy Plan are greater or more compelling than those of another such Primary Beneficiary, which comparison may be relevant to the extent that the funds allocable to the Primary Beneficiaries resident in the area or region are otherwise insufficient to meet the requests for funding by all such Primary Beneficiaries.

1.6 Accordingly, it is recognized that, in furthering the Purpose, it is consistent with the ~~Purposes of the Trust~~Purpose that the recommendations of Electricity Distributors be utilized and relied upon by the Trustee to guide the process of identifying particular Primary Beneficiaries ~~for~~in making distributions ~~under~~to the ~~[Project]~~Primary Beneficiaries.

1.7 If an Electricity Distributor for a particular area or region is unable or unwilling to assess or confirm the application of the Selection ~~Criteria~~Factors to Primary Beneficiaries residing in the area or region or to make recommendations in relation to such matters, one or more of the following may provide a suitable alternative source of information and for information gathering, assessment and confirmation purposes in relation to such area or region:

(i) other Electricity Distributors operating in adjacent or other areas or regions in ~~the Province~~Ontario;

(ii) [the Ontario Energy Board];

(iii) the Independent Electricity System Operator; and

(iv) anyone else having relevant expertise and access to information regarding the electricity market of the Province, in each case as may be considered relevant by the Trustee.

1.8 To the extent that privacy law or other legal requirements limit an Electricity Distributor from providing or making available specific information respecting the application of the Selection ~~Criteria~~Factors to a particular Primary Beneficiary or group of Primary Beneficiaries, it is recognized that, in furthering the Purpose, it may be appropriate to redact or make generic affected information regarding such Primary Beneficiary in connection with the identification and confirmation of a Primary Beneficiary's eligibility and participation in the ~~[Project]~~Program. If such limitations or restrictions would limit an Electricity ~~Distributors~~Distributor from providing or confirming the name of a particular Primary Beneficiary~~,~~ to the Trustee, then it should be sufficient that such

information may be obtained or disseminated on a confidential basis ~~and~~if and when required by the Trustee for the proper administration of the Trust and on that basis such impediments should not disqualify a Primary Beneficiary from participating in the benefits of the ~~[Project] to the extent~~Program, provided that that the confidential record-keeping of the Electricity Distributor would be available in connection with the application of any applicable legal process predicated on the identification of such Primary Beneficiary for the purposes of substantiating its rights as a Primary Beneficiary of the Trust or as to the validity or subsistence of the Trust.

2. Eligible Measures

2.1 Eligible Measures shall be identified having regard to the following (the "**Measures ~~Criteria~~Factors**"):

(i) ~~[~~electricity cost savings [NTD: Insert generic list of considerations relevant to the identification of the applicable spending uses].

(ii) primary home heating sources

[Blakes: MOE may wish to consider:

(iii) is the measure generally expected to result in improved energy conservation by a Primary Beneficiary if properly installed and used;

(iv) is the measure recognized under another Provincial program as being appropriate for achieving electricity conservation among a population analogous to the Primary Beneficiaries;

(v) has an independent source recognized the measure as being (x) energy efficient in design, (y) more energy efficient than similar products available in the market intended for similar usage, or (z) effective in promoting energy conservation;

(vi) does the measure present any unacceptable health or safety considerations, either with respect to the Primary Beneficiary, a party providing or installing the measure, or the physical environment;

(vii) is the measure broadly available to residents across different areas and regions of the Province;

(viii) is it reasonable to expect that the measure would, over its anticipated useful life, generate greater costs savings in respect of electricity efficiency or conservation than the cost of the measure itself; or

(ix) is the measure a requirement or precursor to another measure, the other measure being one which meets any of the other Measures Factors.]

2.2 In identifying and applying the Measures ~~Criteria~~Factors, Electricity Distributors ~~will~~would be expected to have expertise in assessing the suitability of efficiency and conservation measures in their respective areas and regions, which may differ across areas and regions across the Province based on factors (among other things) such as the

climate, geography, density, electricity infrastructure, residential structures, and electricity use rates applicable within such areas or regions.

2.3 Unless otherwise specified by the Board of Trustees, the ~~following~~ measures ~~will be considered Eligible Measures: See Schedule A~~ specified in Schedule A to this Principles Annex may initially be considered to be consistent with the Measures Factors (subject to change as contemplated under the Permitted Delegations Annex).

3. ~~Other~~Promotion of the Program

3.1 It is expected that the Trustee will undertake or engage others to undertake efforts to promote the availability, terms and benefits of the Program to Primary Beneficiaries.

3.2 [NTD: Insert any expectations of the Province regarding associating the Program to the Government, including in any external communications to or marketing directed at Electricity Distributors and Primary Beneficiaries.]

3.3 [NTD: Indicate that the Trustee would be free to enter into License Agreements with the Province, provided that the terms of such License Agreements are consistent with the Purpose and the Program, and that such License Agreements may permit the sub-license of IP to Electricity Distributors and permit the engagement of the Province to provide services related to the use of related IP rights.

3.4 [NTD: Insert any expectations regarding the observance of License Agreements]

4. Conduct of the Trust and the Program

4.1 ~~3.1~~ It is expected that administrative expenses of the ~~Trustee~~Board of Trustees and its members, including any expenses relating to the Trust, to the establishment of the [Trust][Affordability Fund] and any expenses related to ~~delivery of the program by~~the implementation and operation of the Program, including by or through Electricity Distributors~~, will be in accordance~~ and other relevant entities, will be recognized and subject to reimbursement on a basis that is substantially consistent with the principles outlined in the [Province's Transfer Payment Accountability Directive/Travel, Meal and Hospitality Expenses Directive][~~5~~9], ~~in~~ the current form of which attached as Schedule B to this Principles Annex ~~as Exhibit 1.~~ .

4.2 ~~3.2~~ The Trustee is expected to conduct its activities ~~to ensure that~~in a manner that complies in all material respects with the Transfer Payment Agreement, including to:

(i) ~~public funds are spent~~act prudently and in furtherance of the Purpose;

(ii) ~~the Trustee is accountable~~report annually the results of its activities for information purposes to the Province ~~for program activities~~in connection with the Program;

[~~5~~9] NTD: Ministry to confirm applicable Directive(s).

(iii) ~~it complies~~comply with the Province's request for any independent verification~~/audit~~ or audit if determined to be necessary or appropriate by the Province;

(iv) ~~the Province can recover the funds if they are not being used for the purposes intended.~~return of Assets that have not been distributed if it is [determined][manifestly demonstrated by the Province] that the Trustee has breached its Standard of Care in discharging its material duties under the Declaration, and has not cured such material breach despite having been given a reasonable opportunity by the Province to do so in light of the circumstances of such material breach, with the result that all or a significant part of the Assets have not been or are not being applied in furtherance of the Purpose or are being applied in a manner that is directly contrary or without regard to the Purpose.]

4.3 ~~3.3 It is expected that~~ Electricity Distributors ~~will~~are not intended to directly profit from distributions ~~made from the Trust~~of funds made from the Trust, although it is recognized that the objectives of electricity efficiency and conservation of Primary Beneficiaries located in the service area or region of an Electricity Distributor, and the cost savings and improved credit worthiness of such Primary Beneficiaries, may be financially beneficial to the Electricity Distributor.

4.4 ~~3.4 It is expected that distributions~~Distributions from the Trust ~~will~~are intended to allow receiving Primary Beneficiaries to undertake Eligible Measures at no or minimal personal cost.

4.5 ~~3.5 It~~Without in any way limiting the discretion of the Board of Trustees to extend the period during which the benefits of the Program may be available to the Primary Beneficiaries, up to and including the Final Distribution Date, it is expected that the Trust Assets ~~will~~would be distributed ~~between April 1, 2017 and March 31, 2019.~~to Primary Beneficiaries during the period from the Original Trustee Replacement Date to [March 31, 2019].

SCHEDULE A TO THE PRINCIPLES ANNEX
INITIAL ELIGIBLE MEASURES[10]

~~Basic~~Initial Specified **Measures**
Block Heater Timer (just timer) – rated for outdoor use, have at least a 15 amp/1800 watt capacity, be cold weather resistant, bear a C-UL or CSA certification mark
Power bar with integrated timer, and switched power outlets, four each for a total of 8 outlets, have a total capacity of 15 amps. The switched outlets must remain "live", independent of timer settings, so long as the power bar itself remains switched on. The power bar must bear either a C-UL or CSA certification mark.
Efficient Showerheads (standard) - rated at no more than 4.8 Lpm (1.25 U.S. gpm) and be of the laminar flow type (non-aerating).
Efficient Showerhead (handheld) - rated at no more than 4.8 Lpm (1.25 U.S. gpm) and be of the laminar flow type (non-aerating).
Efficient Aerators (kitchen) - rated no more than 5.7 Lpm (1.5 U.S. gpm), dual threaded to allow installation in both thread type faucets, swivel type with pause lever.
Efficient Aerators (bathroom) - rated no more than 3.8 Lpm (1.0 U.S. gpm), be dual threaded to allow installation in both thread type faucets.
Hot Water Tank Pipe Insulation - 1/2" inside diameter – foam, meets ASTM –C547-00, minimum 3/4" thick
Hot Water Tank Pipe Insulation - 3/4 " inside diameter - – foam, meets ASTM –C547-00, minimum 3/4" thick
Hot Water Tank Insulation - fibreglass R10 (fits up to a 60 gal tank) – not bubble wrap
≤11W ENERGY STAR® Qualified LED A Shape (60W) (minimum 600 Lumen output) (Formerly: 7W – 11W ENERGY STAR® Qualified LED A Shape (60W))

[10] These measures are indicative. Eligible measures added to HAP during the administration of the Trust may also be appropriately considered relevant by the Trustee.

~~Basic~~Initial Specified Measures
≤14W ENERGY STAR® Qualified LED A Shape (75W) (minimum 800 Lumen output) (Formerly: 10W – 14W ENERGY STAR® Qualified LED A Shape (75W))
≤23W ENERGY STAR® Qualified LED A Shape (100W) (minimum 1600 Lumen output) (Formerly:17W – 23W ENERGY STAR® Qualified LED A Shape (100W))
≤16W ENERGY STAR® Qualified LED PAR 20 (minimum 600 Lumen output) (Formerly: 8W – 12W ENERGY STAR® Qualified LED PAR 20)
≤16W ENERGY STAR® Qualified LED PAR30 & PAR38 (minimum 600 Lumen output) (Formerly: 8W – 12W ENERGY STAR® Qualified LED PAR 30)
≤23W ENERGY STAR® Qualified LED PAR (minimum 1100 Lumen output) (Formerly: 14W – 18W ENERGY STAR® Qualified LED PAR 38)
≤6W ENERGY STAR® Qualified LED MR 16 / PAR 16 (minimum 250 Lumen output) (Formerly: 7W – 10W ENERGY STAR®
Qualified LED MR 16 / PAR 16 - GU 10 Base)
≤11W ENERGY STAR® Qualified LED MR 16 (minimum 400 Lumen output) (Formerly: 7W – 12W ENERGY STAR® Qualified LED MR 16 GU 5.3 Base)
ENERGY STAR® LED Wet Location Rated PAR lamp ≤ 23 Watt (minimum 1100 Lumen output)
Recessed Downlight Fixture including LED with Light Output >600 and <800 lumens (Retrofit Measure List)
Recessed Downlight Fixture including LED with Light Output >800 lumens (Retrofit Measure List)
Indoor Drying Rack

Extended Measures
Replace refrigerator with ENERGY STAR qualified refrigerator - 15.5 - 16.9 cubic foot top freezer, automatic defrost, refrigerator/ freezer, no through the door ice service
Replace refrigerator with ENERGY STAR qualified refrigerator - 17.0 - 18.4 cubic foot top freezer, automatic defrost, refrigerator/ freezer, no through the door ice service
Replace refrigerator with a refrigerator that has a consumption level of less than 425 kwh, 10 – 12.5 cubic foot top freezer, automatic defrost, refrigerator freezer, no through the door ice service
Replace freezer with ENERGY STAR qualified freezer - 12-14.4 cubic foot freezer
~~12-14.4 cubic foot freezer~~
Replace freezer with ENERGY STAR qualified freezer - 14.5 - 16.0 cubic foot freezer
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 6,000 – 7,999 BTU/hr with C-UL or CSA certification mark
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 8,000 – 9,999 BTU/hr with C-UL or CSA certification mark
~~certification mark~~
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 10,000 – 12,000 BTU/hr with C-UL or CSA certification mark
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 14.2 - 21.2 l/day (30-44.9 pints/day) dehumidifier
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 21.3 - 25.4 l/day (45-53.9 pints/day) dehumidifier

Extended Measures
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 25.5 - 35.5 l/day (54-75 pints/day) dehumidifier ~~dehumidifier dehumidifier~~
Programmable Thermostat – line voltage – meets CAN/CSA-C828-06 standard, minimum performance: Droop: 1.5°C, Differential: 0.5°C, Precision 0% within 0.5°C of the original set point of 22°C
Programmable Thermostat – low voltage - meets CAN/CSA-C828-06 standard, minimum performance: Droop: 1.5°C, Differential: 0.5°C, Precision 0% within 0.5°C of the original set point of 22°C

Weatherization Measures
Comprehensive Draftproofing (caulking, foam and weather stripping, and application of same) – lifespan of 20 years plus If one or two component polyurethane foams are used, the products and installations must conform to: • CAN/ULC-S710.1 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 1: Material Specification. • CAN/ULC-S710.2 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 2: Application. • CAN/ULC-S711.1 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification • CAN/ULC-S711.2 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification, and Part 2: Application. **Attic Insulation (including installation):**
cellulose: CAN/ULC-S703-01 Amendment 1 - Cellulose Fibre Insulation (CFI) for Buildings OR 2) Mineral Fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre

Weatherization Measures
for Buildings **Wall Insulation (including installation):**
cellulose: CAN/ULC-S703-01 Amendment 1 - Cellulose Fibre Insulation (CFI) for Buildings OR 2) Mineral Fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre **Basement Insulation (including installation):**
mineral fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre for Buildings Vapour Barrier: 69009-CAN/CGSB-51.34-m86 If one or two component polyurethane foams are used, the products and installations must conform to: • CAN/ULC-S710.1 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 1: Material Specification. • CAN/ULC-S710.2 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 2: Application. • CAN/ULC-S711.1 Standard for Thermal Insulation – Bead Applied Two-Component
Polyurethane Air Sealant Foam, Part 1: Material Specification • CAN/ULC-S711.2 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification, and Part 2: Application.

~~**[NTD: Add details pertaining to heat pumps]**~~

Heat Pumps
(Selection of manufacturers and technologies to meet the US federal minimum efficiency standard for ASHPs, as of 2015, is 13.0 SEER and 7.7 HSPF. Energy Star–certified models offer roughly 9 percent more efficiency than most new uncertified ASHPs and 20 percent more
Ductless Multiport Heat Pump **[NTD: Add details pertaining to heat pumps]**
Cold Climate Ductless Heat Pump **[NTD: Add details pertaining to heat pumps]**

Cold Climate Multiport Ductless Heat Pump **[NTD: Add details pertaining to heat pumps]**
Cold Climate Ducted Heat Pump **[NTD: Add details pertaining to heat pumps]**

~~EXHIBIT 1~~SCHEDULE B TO THE PRINCIPLES ANNEX
PERMITTED EXPENSE REIMBURSEMENTS

[NTD: Insert the Province's Transfer Payment Accountability Directive/Travel, Meal and Hospitality Expenses Directive. Please forward a Word version if available.]

PERMITTED DELEGATION ANNEX

1. Under ~~Section~~section 4.2(~~d~~g) of the Declaration, the Trustee has the power to: [(~~A~~a) appoint, employ or retain Administrative Services Agents for the purpose of discharging its duties and obligations under the Declaration; and (~~B~~b) enter into, perform, enforce and amend Administrative Services Agreements].

2. In accordance with ~~Section~~section 4.2(g) of the Declaration, consistent with the principles set forth in the Principles Annex, the Trustee or its agent will seek to enter into one or more Administrative Services Agreements with individual Electricity Distributors under which the Electricity Distributors will act as Administrative Service Agents to the Trustee. In this manner, the Trustee will delegate certain of its powers and duties to the Electricity Distributors.

3. Under ~~Section~~section 5.1 of the Declaration, to the extent the Trustee has delegated any of its duties or powers, it shall be deemed to have satisfied the Standard of Care in respect of the subject matter of such delegation, subject to the Trustee's overall duty to exercise prudent oversight thereof. The Trustee is entitled to rely on an Electricity Distributor to discharge the duties delegated to it, as Administrative Services Agent, pursuant to an Administrative Services Agreement as described in this Annex.

4. ~~Without limitation, the Administrative Services Agreements may provide for the following:~~Accordingly, and without limiting the Trustee's right to delegate under the Declaration and its other rights, powers and discretion as Trustee, the Trustee will be permitted to, and is expected to seek to, enter into Administrative Services Agreements with Electricity Distributors in order to further the Purpose. It is expected that such Administrative Services Agreements will include customary terms and conditions for an administrative services arrangement of this type and, in addition, would be expected (subject to the acceptance and agreement of the applicable Electricity Distributor counterparty) to address the following points in particular:

    a. **Identification of Applicable Primary Beneficiary Payees and Determination of Individual Distribution Amounts**

        i. Each Electricity Distributor ~~will~~would make an initial assessment of the financial needs of Primary Beneficiaries within its designated service area or region, having regard to ~~[~~the Selection Factors set forth in section 1.3 of the Principles Annex, together with applicable economic data~~]~~, in order to prepare and provide to the Trustee an estimate of the number of Primary Beneficiaries who the Electricity Distributor reasonably expects would satisfy the ~~selection factors set forth under clause 1.1 ["Identification of Beneficiary Payees"] in the Principles Annex~~Selection Factors.

        ii. Each Electricity Distributor ~~will~~would make an initial assessment of the measures it would recommend be included as Eligible Measures, having regard to ~~[considerations]~~the Measures Factors set forth in section 2.1 of the Principles Annex, in order to prepare and provide to the Trustee an estimate of

the average cost per Primary Beneficiary Payee (as defined below) of such Eligible Measures that the Electricity Distributor reasonably expects would apply in respect of Primary Beneficiaries resident in its service area or region.

iii. Based on the product of (i) and (ii), above, and such other considerations as it considers to be directly relevant, each Electricity Distributor ~~will~~would make a written recommendation to the Trustee regarding the aggregate funding amount that the Electricity Distributor anticipates ~~may~~would be utilized under the ~~[Project]~~Program by the Primary Beneficiaries resident in its service area or region (the "**Local Funding Estimate**"). Such recommendation ~~will~~would be accompanied, when submitted to the Trustee, by a detailed explanation regarding the assumptions, financial parameters, suitability considerations and other information underlying the Local Funding Estimate (including the type of information contemplated by ~~"[Insert]" under the Principles Annex, which will~~the Selections Factors and the Measures Factors, which would be relied upon by the Trustee in its assessment regarding the allocation of available funding to or for the benefit of the Primary Beneficiaries across the specified areas and regions of ~~the Province of~~ Ontario ~~(the "**Province**")~~.

iv. The Trustee ~~will~~would inform the Electricity Distributor regarding the aggregate of the amount determined by the Trustee to be made available under the ~~[Project]~~Program for Primary Beneficiaries in the Electricity Distributor's designated service area or region (for each ~~LDC~~Electricity Distributor, its "**Maximum ~~LDC~~Electricity Distributor Allocation**") and as to any maximum amount that may be paid to or for the benefit of any single Primary Beneficiary [or group of related Primary Beneficiaries] located in the servicer area or region of the Electricity Distributor (the "**Maximum Primary Beneficiary Amount**"). The Maximum ~~LDC Amount~~Electricity Distributor Allocation and Maximum Primary Beneficiary Amount may vary between areas and regions, among the Primary Beneficiaries within such areas and regions, and may be increased by the Trustee~~,~~ from time to time in its discretion.

v. Each Electricity Distributor ~~will~~would apply the principles set forth under ~~[~~"Identification of Primary Beneficiary Payees" in the Principles Annex~~]~~ to identify and make recommendations to the Trustee regarding the amount of funds (if any) to be distributed to or for the benefit of Primary Beneficiaries resident within its ~~designated~~ service area or region from time to time (the "**Primary Beneficiary Payees**").

vi. Each Electricity Distributor ~~will~~would ensure that the aggregate of the amounts it recommends be distributed to or for the benefit of Primary Beneficiary Payees from time to time does not exceed (1) its Maximum ~~LDC~~Electricity Distributor Allocation and (2) for any single Primary Beneficiary [or group of related Primary Beneficiaries] located in the ~~servicer~~service area or region of the Electricity Distributor, the lesser of (x) the applicable Maximum ~~Beneficiary Amount~~Primary Beneficiary Amount and (y) the estimated costs (including any applicable taxes, but excluding any

amount payable to the Electricity Distributor by or on behalf of the Primary Beneficiary) to be incurred by or on behalf of such Primary Beneficiary (whether or not such costs have been paid or remain outstanding) in respect of Eligible Measures applied or to be applied in respect of the Primary Beneficiary's Ontario residence.

vii. The Trustee ~~will~~would provide written confirmation to each Electricity Distributor:

1. Either (x) that the recommendations specified of the Electricity Distributor in clause (v), above, have been accepted, or (y) as to the specific reasons for any non-acceptance; and

2. The amount of the distributions to be paid to or for the benefit of each Primary Beneficiary Payee that is resident in the Electricity Distributor's service area or region.

viii. With respect to each Primary Beneficiary resident in a Electricity Distributor's service area or region that is confirmed as a Primary Beneficiary Payee, the Electricity Distributor would provide the Trustee written confirmation as to:

1. ~~2.~~ The identity of ~~each~~such Primary Beneficiary Payee ~~resident in the Electricity Distributor's service area or region and its residential address;~~; and

2. The amount of the distribution paid to or for the benefit of such Primary Beneficiary Payee.

ix. ~~3. The amount of the distribution to be paid to or for the benefit of each such Beneficiary Payee.~~If the amount of a distribution to be made to a Primary Beneficiary Payee is based on the estimated costs to be incurred by or on behalf of such Primary Beneficiary and, prior to making the distribution to the Primary Beneficiary Payee, the Electricity Distributor determines that the actual costs (including any applicable taxes but excluding any amount payable to the Electricity Distributor by or on behalf of the Primary Beneficiary) incurred or to be incurred by or on behalf of such Primary Beneficiary in respect of Eligible Measures applied or to be applied in respect of the Primary Beneficiary's Ontario residence has or would be less than such estimated costs, then the amount to be distributed to the Primary Beneficiary shall be based on such actual costs.

b. **Making of Distributions to Primary Beneficiaries**

i. Promptly after the Trustee confirms the identity of a Primary Beneficiary Payee resident in ~~a~~an Electricity Distributor's service area or region and the amount of the distribution to be paid to or for the benefit of such Primary Beneficiary Payee, the Trustee ~~will~~would arrange for payment to or on the

direction of the Electricity Distributor of an amount equal to the amount of such distribution.

ii. Promptly upon receipt of funds in respect of a distribution to ~~a~~be made to a Primary Beneficiary Payee, the Electricity Distributor ~~will~~would arrange for payment of the full amount of such distribution to or for the benefit of the ~~Beneficiary Payee~~Primary Beneficiary Payee (including by direct payment to a third party of, or as a reimbursement or rebate of, the costs of applicable Eligible Measures installed at the residence of and for the benefit of the Primary Beneficiary Payee), without reduction or set-off by the Electricity Distributor.

iii. If the amount paid to an Electricity Distributor in respect of a distribution to be made to a Primary Beneficiary exceeds the actual amount of the distribution made to or on behalf of the Primary Beneficiary, the Electricity Distributor shall promptly return such excess to the Trustee, whereupon the proceeds of such returned amount shall continue to form part of the Assets.

c. **Promotion of the Program**

i. [NTD: Insert any specific items regarding the use of IP by Electricity Distributors]

d. **Establishment of Operational, Administrative, Record-Keeping and Other Systems and Policies to facilitate the Program**

i. The Electricity Distributor would establish such operational, administrative, record-keeping and other systems and policies as are necessary to facilitate the Program and perform its duties under the Administrative Services Agreement, including systems or policies to: identify Primary Beneficiary Payees; comply with applicable privacy and regulatory laws; communicate with Primary Beneficiaries on behalf of the Trust; assess Eligible Measures; determine the Local Funding Estimate; monitor its recommendations to the Trustee against its Maximum Electricity Distributor Allocation and the Maximum Primary Beneficiary Amount; receive funds from the Trust in respect of distributions to the Primary Beneficiary Payees and transfer such funds to the appropriate recipients for the benefit of the Primary Beneficiary Payees; preparation and timely delivery to Primary Beneficiary Payees of such documents as are required by the *Income Tax Act* (Canada); and create and maintain records in respect of the foregoing.

ii. The Electricity Distributor would set up a separate bank account for the purpose of receiving funds from the Trust in respect of distributions to the Primary Beneficiary Payees and the transfer of such funds to the appropriate recipients for the benefit of the Primary Beneficiary Payees.

e. ~~c.~~ **Reporting, Record-Keeping, Inspection and Disclosure and Compliance Matters**

i. The Electricity Distributor ~~will provide to the Trustee quarterly and annual reports ("**Reports**") for the duration of the~~would provide record-keeping, clerical and bookkeeping services relating to all matters relating to its recommendations and the performance of its other duties and obligations under its Administrative Services Agreement.

ii. The Electricity Distributor ~~will~~would keep and maintain all financial records and non-financial documents and records relating to the provision of services under ~~the~~its Administrative Services Agreement. [~~Specify required~~NTD: Consider specifying any particular records regarding individual Primary Beneficiary Payees needed to ensure the proper function of the Trust or the Program]

iii. The Electricity Distributor would provide to the Trustee quarterly and annual reports ("**Reports**") for the duration of its Administrative Services Agreement. Such Reports would set out, among other things, the amounts of the distributions paid to or for the benefit of applicable Primary Beneficiary Payees, the average distribution amount per such Primary Beneficiary Payee, the Eligible Measures for which distributions have been made, and the uptake of energy efficiency measures.

iv. The Electricity Distributor would agree to provide to the Trustee such information as is necessary for the Trustee to (v) comply with applicable law; (w) prepare financial statements for the Trust; (x) prepare and submit such documents as are required under the *Income Tax Act* (Canada); (y) comply with the Trust's applicable obligations under the Transfer Payment Agreement; and (z) such other matters as the Trustee reasonably requests.

v. ~~iii.~~ The Trustee, its authorized representatives or an independent auditor ~~may~~would be permitted to, at its own expense, on twenty-four hours' notice to the Electricity Distributor and during normal business hours, inspect the records of and information respecting the Electricity Distributor to confirm its compliance with the Administrative Services Agreement, including regarding its ~~process~~processes for ~~determining~~recommending the Primary Beneficiary Payees~~,~~ and their respective distribution amounts and regarding the delivery of Trust funds ~~to [or for the benefit of] the Beneficiary Payees. The Trustee, its authorized representatives or an independent auditor may inspect and copy all records and documents kept in accordance with the Administrative Services Agreement and conduct an audit or investigation of the Electricity Distributor in respect of the identification of the applicable Beneficiary Payees, the amount of distributions made to or for the benefit of the Beneficiary Payees; and the delivery of funds to or for the benefit of the Beneficiary Payees.~~on behalf of the Trustee to or for the benefit of the Primary Beneficiary Payees.

f. ~~d.~~ **Standard of Care**

i. The Electricity Distributor ~~will~~would be required to agree to perform its duties provided under the Administrative Services Agreement exercising the

degree of care, diligence and skill that a reasonably prudent Person would exercise in comparable circumstances.

ii. In performing its duties under the Administrative Services Agreement (including the recommending of Primary Beneficiary Payees to the Trustee), the Electricity Distributor ~~will~~would be required to agree to seek to avoid actual, potential or perceived conflicts of interest.

iii. The Electricity Distributor would be required to agree to that it would not, in performing its obligations under the Administrative Services Agreement, take any action which it knows or ought reasonably to know would cause the Trustee or the Trust to be in violation of any law, rule or regulation applicable to it.

g. ~~e.~~ **Expenses**

~~i.~~ The Electricity Distributor ~~will~~would be eligible to receive reasonable compensation and reimbursement of its actual out-of-pocket costs associated with the performance of its duties and obligations under the Administrative Services Agreement, subject to compliance with requirements substantially equivalent to the Province's Travel, Meal and Hospitality Expenses Directive. Such compensation amounts and reimbursement entitlements ~~will~~would be specified in the Administrative Services Agreement.

h. **Representations**

The Electricity Distributor would make customary representations to the Trust regarding, among other things, its legal capacity; authorization; non-contravention of law or material contract to which it is a party; and the enforceability of the Administrative Services Agreement.

i. **Indemnification**

The Electricity Distributor would be required to agree to provide customary indemnities to the Trust and the Trustee from and against claims, damages and liabilities which may the Trust or Trustee may suffer or incur as the result of any breach of the Administrative Services Agreement by the Electricity Distributor or its representatives.

~~[Other matters you may consider dealing with here include~~ *[NTD: MOE, please advise whether you wish to address any of the following matters upfront in an administrative services agreement: (1) LDC compliance with privacy law~~/confidentiality/legal considerations and~~ requirements~~;~~/ money laundering~~; preparation of accounting and tax statements by the Trust; compliance with regulatory~~ laws; (2)legal representation if joined in any product warranty claims (i.e., to the extent the Trust is sued in connection with a purchase of Eligible Measures); (3)specific manner of flowing money to manufacturers and suppliers of Eligible Measures;~~ appropriate reps and indemnities from LDCs; specific reporting of cash and allocations;~~(4) logistics of banking and cash flow mechanics and related record-keeping; (5) production of*

information for Trustee to satisfy legal requirements applicable to the Trust (i.e., tax; record keeping); (6) preparation of tax remittances for beneficiaries~~; preparation of reports for the Government and cooperation with other compliance by the Trust with the TPA;~~ (applicable?);(7) required communications to Primary Beneficiaries on behalf of the Trust (including to comply with applicable laws);(8) preparation and submission of applications, etc., that may be contemplated by the ~~[Project];~~Program;and (9) LDC fault-based termination scenarios]

TRUSTEE REPLACEMENT ANNEX

1. The Advisory Committee shall consist of the following individuals:

   •

   •

   •

   [Insert Individual Name]

   [Insert Individual Name]

   [Insert Individual Name]

   [Insert Individual Name]

   [Insert Individual Name]

   [Insert Individual Name]

   [Insert Individual Name]

   [NTD: Selection criteria are under consideration, including to address any accounting considerations]

2. In the event any member of the Advisory Committee resigns or is unable to act, it is expected that the remaining members ~~may~~of the Advisory Committee would appoint ~~a~~another resident of Ontario as a replacement.

3. On or before •, 2017, the Advisory Committee shall identify ~~[number~~[six] residents of Ontario who have expressed that they are willing to act as members of the Board of Trustees ~~of the Affordability Fund Trust~~ and who, individually and collectively satisfy the following criteria (collectively, the "**Selection Factors**"):

   a) ~~Demonstrate~~each member demonstrates an understanding of the electricity sector including the electricity distribution sector;

   b) ~~Have~~each member demonstrates an expertise in conservation and low income ~~electricity support~~ programs;~~\~~

   c) ~~Are geographically representative; and~~three of the identified individuals will be representatives from separate electricity distributors, two individuals will be representatives from separate social services agencies and one individual member, who will be a non-voting member, will be a representative of the Government of Ontario; and

   d) ~~Include~~it is expected that representation ~~from a cross-section of electricity distributor sizes.~~ by the Government of Ontario will be non-controlling.

4. If the Advisory Committee determines that changes to the Declaration (including to this Trustee Replacement Annex) are necessary in order to (a) replace, or appoint additional trustees to act with, the Original Trustee prior to the Original Trustee Replacement Date or (b) attract and receive confirmation of appointment of appropriately qualified individuals that the Advisory Committee believes would be suitable candidates to serve as members of the Board of Trustees, the Advisory shall make recommendations regarding such necessary changes, including without limitation in respect of (i) any necessary limitations on the nature or scope of the appointment of the members of the Board of Trustees, (ii) the formation and empowerment of the Board of Trustees, and (iii) the duties, responsibilities, obligations, liabilities, indemnities, protections, limitations, restrictions, compensation, expense reimbursement entitlements of members of the Board of Trustees.

5. ~~4.~~ The Advisory Committee shall recommend that the existing Trustee appoint the individuals so identified to become ~~replacement~~the initial members of the Board of Trustees ~~of the Affordability Fund Trust~~ pursuant to section 5.7 of the Declaration.

6. ~~5.~~ If any of the ~~persons~~individuals recommended under paragraph 4 or under this paragraph are not accepted and appointed by the existing Trustee pursuant to section ~~[~~5.7~~]~~ of the Declaration, the Advisory Committee shall forthwith identify and recommend an alternative individual who is willing to act and who whose presence as a ~~Trustee~~member of the Board of Trustees would result in the ~~Trustees~~Trustee collectively satisfying the criteria in paragraph 2 above.

7. ~~6.~~ Upon the appointment of [~~number~~six] trustees (five voting and one non-voting) pursuant to section ~~.~~5.7 of the Declaration, the Advisory Committee will be functus.

Document comparison by Workshare Compare on Sunday, March 19, 2017 1:26:00 PM

Input:	
Document 1 ID	PowerDocs://TOR_2024/12887993/10
Description	TOR_2024-#12887993-v10-Affordability_Fund_Trust_–_Declaration_of_Trust_-_Blakes_Comments_(March_14,_2017)
Document 2 ID	PowerDocs://TOR_2024/12887993/15
Description	TOR_2024-#12887993-v15-Affordability_Fund_Trust_–_Declaration_of_Trust_-_Blakes_Comments_(March_14,_2017)
Rendering set	Standard

Legend:	
Insertion	
~~Deletion~~	
~~Moved from~~	
Moved to	
Style change	
Format change	
~~Moved deletion~~	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	696
Deletions	441
Moved from	19
Moved to	19
Style change	0
Format changed	0

Total changes	1175

FW_ To review the OPG and H1 IFRS analysis.rtf

From: Petsche, Nadine (TBS) []
To: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
Subject: FW: To review the OPG and H1 IFRS analysis
Date: Monday, June 08, 2015 08:24:13
Attachment 1: OPG -IFRS Analysis Jun 2.pptx

Please confirm that Bharat is in the office. Thx.

-----Original Appointment-----
From: Virani, Shyrose (TBS) **On Behalf Of** Petsche, Nadine (TBS)
Sent: June-03-15 10:06 AM
To: Petsche, Nadine (TBS); Patel, Bharat (TBS); alec.cheng@opg.com; john.mauti@opg.com; Picard, Michel (mpicard@kpmg.ca)
Subject: To review the OPG and H1 IFRS analysis
When: June-08-15 2:00 PM-2:30 PM (UTC-05:00) Eastern Time (US & Canada).
Where: APFR Boardroom, teleconference 416-212-8014 passcode 1474532#

OPG -IFRS Analysis Jun 2.pdf

Office of the Provincial Controller Division

Draft Slide Deck

OPG- Preliminary IFRS Analysis and Impact on the Province's Consolidated Financial Statements

Confidential – For Internal Discussion Purposes

Overall comments:

- We need to discuss the application of IAS 19.122 to ensure we are aligned in our understanding as well as the positioning of the AcSB's comment
- Are you summarizing Hydro One's IFRS result for the AG?

Background

- OPG is regulated by the OEB based on US GAAP, and reports its financial results using US GAAP as required by Regulation 395/11 under the F.A.A. OPG has been directed by the Province to report under Canadian GAAP (CGAAP) for consolidation purposes.
- To date, the Province has been consolidating OPG on a CGAAP basis in accordance with AcSB's extension for the deferral of the mandatory IFRS changeover date for entities with qualifying rate-regulated activities which expired on January 1, 2015. Since AcSB has not extended the deferral period, the AG may argue that the results of the entity must be consolidated in accordance with IFRS as of January 1, 2015.
- For GBEs with a different reporting year-end, the Province's accounting policy is to reflect the change in the Province's subsequent reporting period (without restatement to prior periods). Therefore, for the 2014-15 Public Accounts, the Province would consolidate OPG's results using CGAAP for the full 12-month period.
- The AG has asked for comparative IFRS vs.CGAAP analysis be provided for Q1 2015 to assess the impact on the Province's Public Accounts. Note that she has requested that it be done to the entity's level of materiality.
- This analysis reflects OPG's preliminary analysis reflecting 9 months CGAAP results and 3 months IFRS results (including transitional b/s adjustments as at January 1, 2015). Further details on P&L impacts for the three months ended March 31, 2015 are forthcoming. ~~Note that the figures presented are preliminary and have not been audited~~.

IFRS 14 – Regulatory Deferral Accounts

- In 2014, the IASB issued IFRS 14 Regulatory Deferral Accounts effective January 1, 2016 (early adoption permitted), which is an interim standard in effect while the IASB undertakes its comprehensive project on rate regulated activities. IFRS 14 grandfathers regulatory accounting for first time adopters.

- For purposes of this analysis, it is assumed that OPG will elect to apply IFRS 14 upon transition.

- Note that IFRS 14 is expected to be removed or replaced with different guidance after completion of the IASB's comprehensive project. There is no assurance that the IASB will conclude on standards for Regulatory Accounting that will mirror OPG's current policies / practices. In that case, OPG may have to stop recording some or all regulatory balances it would have recognized under IFRS 14 (i.e. accounts which do not meet the IFRS definition of an asset or liability under the conceptual framework or another IFRS standard). This would result in material adjustments to the consolidated results.

Preliminary IFRS Analysis

- OPG identified the following significant items that would impact opening equity (transitional b/s impact) on transition to IFRS as well as net income on a go-forward basis:
  - Nuclear Asset Retirement Obligations (ARO)
  - Pension and Other Post Retirement Benefits (OPEB)
- In addition, if the Province adopts IFRS based reporting for OPG (and H1), future IFRS changes with potential impact would also include:
  - IFRS 14 may be eliminated if the IASB decides against RRA in the future
  - Financial Instruments – IFRS 9 *
  - Lease Accounting *
  - Revenue Accounting *

  * Changes may also occur under US GAAP (which is OPG's basis for rate recovery), but may not be converged with IFRS. The impact of any un-converged differences would need to be assessed for regulatory offset treatment under IFRS 14 or other IASB RRA guidance, if any, in effect at that time. There is a risk that results reported under OPG's US-GAAP based financial reports would require further reconciliation and could be complex.
- In addition, any accounting implications of the OEB's recently announced sector-wide consultation on rate recovery mechanisms for pension/OPEB costs would need to be considered.

Pension & OPEB Transition Balance Sheet Adjustments

$ Millions Pre-tax ~~DR (CR)~~	CGAAP to US GAAP ADJUSTMENTS DR (CR)	CGAAP to IFRS ADJUSTMENTS DR (CR)	Comments
Balance-sheet (before IAS 19 paragraph 122 reclass - see next slide)			
Pension/OPEB (Liability) CGAAP = ($1,900)	(4,800)	(4,800)	US GAAP and IFRS require the full *funded status to be reported*.
Regulatory Asset	4,300	4,300	Represents regulated business portion of the pension/OPEB liability adjustment
Transitional Impact before Tax – R/E	-	1,050	Due to CGAAP/IFRS differences that result in reclassification of amounts within equity (R/E vs AOCI)
Transitional Impact before Tax – AOCI	500	(550)	

Potential Application of IAS 19, para. 122 (Re-class)

- Under current IAS 19, amounts recognized in AOCI for pension/OPEB (such as differences between discount rate and expected return on assets) are not recycled through the income statement and remain in AOCI permanently. The AcSB has previously advised the IASB of its concerns with the inconsistency between the IASB treatment for the return on assets, which creates a mismatch on the P&L. IAS 19 includes an accounting policy election to reclassify amounts from OCI to Retained Earnings.
- Since OPG's regulated revenue is determined based on US GAAP, which includes the impact of recycling, it may be considered whether this option could be used in addressing the mismatch between income and expense. [note: this affect H1 as well]
- At the Province's direction, OPG could apply this option in providing its IFRS results for the Province's consolidation and reflect a transfer of the OCI amount to better match OPG's recovery basis.
- For purposes of this analysis, it is argued that recycling ~~of the regulated portion~~ is appropriate (annual impact on the CFS annual? surplus/deficit immaterial).

pre-tax	Retained Earnings	Accumulated Other Comprehensive Income
Per IAS 19 without Para 122 re-class	1,050	(550)
With application of IAS 19.122 to re-class amount that has been recorded through P&L and recovered in rates	(1,050)	1,050
After Para 122 re-class	-	500

- Notes for Province's consideration: Do we need to discuss how AOCI would be included?

Preliminary IFRS Analysis – Nuclear ARO

- OPG has identified two significant adjustments in Nuclear ARO which will impact equity:
  a. Change in discount rate
  b. Treatment of certain lifecycle costs

a) Discount Rate

- Under IFRS, a single current discount rate is used in measuring ARO. Under CGAAP, historical rates are retained for existing obligations when additions to ARO are recorded.
- Given that the rate recovery mechanism for OPG's ARO for the Bruce assets includes the recovery of accretion expense, any impact from a change in discount rate would be offset with a regulatory balance under IFRS 14.
- For the prescribed facilities (Pickering and Darlington), accretion expense is not a component of the ARO rate recovery mechanism; therefore, the impact of a discount rate change would not be offset by a regulatory balance.
- On transition, the ARO will be updated to the current discount rate with the net impact for the prescribed facilities charged to retained earnings on transition. After the transition, OPG expects that under its IFRS methodology, the discount rate will likely not change after the transition date, other than in years of an ONFA update. The next ONFA update is expected at the end of 2016 and, therefore the next change would likely significantly impact the Province's 2016/2017 CFS.

Nuclear ARO Change in Discount Rate to 5% - Transition Balance Sheet Adjustments

$ Millions (Note – current average US GAAP discount rate is 5.4%) Pre-tax	OPG's Prescribed facilities (Pickering & Darlington) 5% Discount Rate	OPG's facilities on lease to Bruce Power 5% Discount Rate	Combined
Balance-sheet Dr/(Cr)			
Nuclear Asset Retirement Obligation ~~(IFRS)~~ – Adjustment to changes to discount rate	(800)	400	(400)
Asset Retirement Cost (PP&E) – Calculated using a short-cut method allowed for IFRS transition purposes due to a different discount rate	100	(100)	-
Offset by Reg. Asset/(Liability) under IFRS 14	-	(300)	(300)
Retained Earnings - Net ARO Transitional Impact to opening balance sheet – pre-tax	700	-	700

Prescribed facilities: OPG does not recover accretion expense or credit ratepayers with segregated fund earnings related to Pickering or Darlington under the methodology established by the OEB. Since those two components are not part of the items that are eligible for recovery, a change in the discount rate that impacts accretion expense ~~those two components~~ is not eligible for IFRS 14 offset.

Bruce facilities: The Bruce rate recovery method prescribed by the OEB produces no profit (return) for OPG but does cover OPG for all accounting costs, including accretion and other ~~the~~ costs of the nuclear ARO. Therefore, a regulatory balance is recognized for differences in discount rates, resulting in no net equity impact.

Nuclear ARO - Treatment of certain lifecycle costs ~~on transition~~

b) Treatment of certain lifecycle costs

- Certain costs included in the nuclear ARO and ARC (fixed assets) under Canadian GAAP and US GAAP are reflected under IFRS in different time periods.
- This results in the removal of a portion of the lifecycle costs included in the Canadian GAAP ARO and ARC upon transition to IFRS. The changes in accounting result in certain differences in the timing of OEB cost recovery and their recognition under IFRS. Accordingly, a regulatory balance is recognized.
- However, certain of the differences related to the Prescribed Facilities would ~~are~~ not be offset through the OEB recovery mechanism, because the recovery mechanism does not include an accretion component for the time value of money. As such, a regulatory balance is not recorded for these time value of money differences resulting in a net increase in retained earnings on transition. The higher retained earnings will be offset by higher future period expenses, resulting in a reduction to income in future years.
- [note: moved the table to the next slide]

Nuclear ARO - Treatment of certain lifecycle costs ~~on transition~~

[note: inserted a new slide]

b) Treatment of certain lifecycle costs

Account (pre-tax)	Impact DR / (CR)
Asset Retirement Cost (PP&E) – adjust asset retirement costs that are to be recognized through P&L under IFRS.	(1,500)
Asset Retirement Obligation (ARO) – remove certain lifecycle costs that are not recognized under IFRS.	1,300
Net Regulatory Balance – record regulatory balance based on the existing regulatory mechanism	600
Retained Earnings (Net Debt decrease) – impact of not recording certain regulatory balance related to the prescribed facilities due to the recovery mechanism as described in the previous slide	(400)

Risks to Annual Surplus/Deficit

1. Volatility due to mismatch between income statement and OCI for pension and OPEB expenses and associated regulated rate revenue, if IAS 19 para. 122 is not included in annual surplus/deficit results. OPCD recommends to reclassify AOCI balances (using IAS 19.122) consistent with US GAAP and record the reclassification through P&L each year to eliminate the risk of mismatch and potentially misleading results (annual impact on CFS surplus/deficit immaterial).

2. Surplus / deficits could be affected by changes in ARO and changes in related period costs, which are not offset by a regulatory balance as described further on slides 13 and 14 (check). The high volatility is likely given the IFRS requirement to fair value and flow changes through P&L.

3. Future IFRS Changes:
   - Permanency of IFRS rate regulated accounting is uncertain (IFRS 14 is an interim standard, final outcome of RRA project is not known)
   - Other uncertainty of IFRS changes to lease accounting, financial instruments and revenue standards, which could diverge from US GAAP and therefore require evaluation for regulatory offset treatment under IFRS 14 (or other IASB RRA guidance then in effect, if any).

4. Any accounting implications resulting from the outcome of the OEB's

Additional considerations

- Cost of OPG maintaining 2 sets of books (running detailed models, monitoring for future differences, and internal staff time).
- Costs of experts (including external actuary and Nuclear Waste Management Organization) to prepare estimates for OPG under two frameworks.
- Cost of consulting with external auditors and accounting advisors.
- OEB is expected to continue to regulate OPG based on US GAAP; there is no user need for IFRS based financial information ~~statements~~.
- OEFC calculation of Electricity Sector Dedicated Income will be impacted.

Fiscal Risk- IFRS current discount rate for Nuclear ARO

- Rate of 5% used at transition is calculated based on a 20 year rolling average of a 30 year Provincial bond (using 15 years of historical rates and 5 of forecasted rates). Under this methodology, the discount rate is expected to drop significantly over time to reflect a higher weighting on the current discount rate level. Rates would be updated at ONFA update time (likely in 2016/2017 fiscal year). The full impact related to the prescribed facilities would be reportable in year of change. This change in discount rate is likely to result in an increase in ARO in the magnitude of up to a few billion dollars. (note: will not be available in time for the meeting).

- The IFRS discount rate compares to a weighted average historical rate for US GAAP of 5.4%, which does not change for the existing ARO tranches when an additional tranche is recognized. IFRS requires the ARO to be valued using a single discount rate for the entire balance of the obligation rather than the tranche approach under US GAAP.

Fiscal Risk- Future Change in Valuation of ARO

- Future changes, such as changes in station useful lives or changes in certain lifecycle cost estimates, may have a more significant impact under IFRS due to the ARO valuation methodology and the interaction with OEB recovery mechanisms.

- Change in discount rate would also impact Province's fiscal plans in future years (as a result of accretion not being recoverable through rates for prescribed facilities and therefore no IFRS14 protection).

- For amounts already collected through US GAAP-based rates for expenses that will be recognized in the future under IFRS, reductions in future IFRS income are expected when these expenses are recognized, due to reflecting the time value of money discount.

Impact Analysis on CFS if IFRS reporting for OPG adopted effective January 1, 2015 ~~on CFS~~

Preliminary Estimated Accumulated Deficit, Net Debt and Annual Deficit Impacts ($ Millions)

Increase/(decrease)
Unaudited / Pre-tax

2014-15	Accum. Def	Net Debt	2014-15 Annual Deficit [4]
Potential IFRS Transitional Impact on 2014-15 CFS [1]	[Note not sure what is the dif		
Pension & OPEB $1,050M ~~($550 regulated, $500 non-regulated)~~ [2]	1,050	1,050	TBD
ARO-Accretion/Discount rate (PN/DN OPG' sPrescribed facilities) [3]	700	700	TBD
ARO- lifecycle cost [5] - [footnote missing]	(400)	(400)	TBD

Notes:

(1) IFRS transitional impact (before tax) is reflected as at Jan 1, 2015.

(2) Under IFRS there is no recycling of amounts from OCI to net income (USGAAP recycles the OCI to net income). IAS 19 paragraph 122 as a minimum permits the reclassification of amounts from AOCI to retained earnings which would preserve the balance sheet. For purposes of this analysis, a policy choice would be made to recycle amounts from OCI through net income on a basis consistent with US GAAP. Annual impact on CFS not material.

(3) OPG does not recover accretion expense or credit seg fund earnings related to nuclear waste decommissioning obligations for Pickering or Darlington. As under the OEB directed methodology, these components are not part of the costs eligible for rate recovery by the OEB, a change in the discount rate that impacts accretion expense is, by definition, not recoverable and therefore not eligible for IFRS 14 offset. The net increase in the liabiltiy would therefore directly impact the Province's balance sheet under IFRS. In the future, any changes to the discount rate would immediately impact the Province's books in the year in which the update occurs.

(4) P&L impact for Q1 TBD (estimated to be received in June, 2015)

FW_ Triton Request A Quote Form - Company or Organization.rtf

From: Picard, Michel [mpicard@kpmg.ca]
To: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
Subject: FW: Triton Request A Quote Form - Company or Organization
Date: Tuesday, July 18, 2017 10:30:05
Attachment 1: image001.jpg
Attachment 2: image002.jpg

It is being sent to my PA as I did not receive it. Very strange…

From: Picard, Michel
Sent: Tuesday, July 18, 2017 10:29 AM
To: 'Melynda Coffey' <melynda@tritonverify.com>
Cc: Manno, Christina C <cmanno@kpmg.ca>
Subject: RE: Triton Request A Quote Form - Company or Organization

cmanno@kpmg.ca

From: Melynda Coffey [mailto:melynda@tritonverify.com]
Sent: Tuesday, July 18, 2017 10:15 AM
To: Picard, Michel <mpicard@kpmg.ca>
Subject: RE: Triton Request A Quote Form - Company or Organization

Hi Michel,

Were would you like me to send it to?

Regards,

Melynda Coffey

Customer Service Agent

TRITON

2235 Sheppard Ave East

Suite 1503

Toronto, Ontario.

M2J 5B5

Phone: 416-494-4444 Ext. 200

Toll Free: 1-844-874-8667

Fax: 866-284-3149

From: Picard, Michel [mailto:mpicard@kpmg.ca]
Sent: July 18, 2017 10:00 AM
To: Melynda Coffey <melynda@tritonverify.com>
Cc: Manno, Christina C <cmanno@kpmg.ca>
Subject: RE: Triton Request A Quote Form - Company or Organization

Hi Melynda,

I received this email but the email with the link. It is not in my spam.

Can you send to my PA and she will forward it to me?

Michel

From: Melynda Coffey [mailto:melynda@tritonverify.com]

Sent: Tuesday, July 18, 2017 9:51 AM
To: Picard, Michel <mpicard@kpmg.ca>
Subject: RE: Triton Request A Quote Form - Company or Organization

Hello Michel,

I just resent the link again to the email address below. mpicard@kpmg.ca

Regards,

Melynda Coffey

Customer Service Agent

TRITON

2235 Sheppard Ave East

Suite 1503

Toronto, Ontario.

M2J 5B5

Phone: 416-494-4444 Ext. 200

Toll Free: 1-844-874-8667

Fax: 866-284-3149

From: Alysha Feasby [mailto:alysha@tritonverify.com]
Sent: July 18, 2017 9:31 AM

To: 'Melynda Coffey' <melynda@tritonverify.com>
Subject: FW: Triton Request A Quote Form - Company or Organization

Thank you,

Alysha Feasby

Account Manager

2235 Sheppard Ave East

Suite 1503

Toronto, Ontario

M2J 5B5

Phone: 416-494-4444 Ext. 201

Toll Free: 1-844-874-8667

Fax: 866-284-3149

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From: customerservice@tritoncanada.ca [mailto:customerservice@tritoncanada.ca]
Sent: July 17, 2017 4:23 PM
To: alysha@tritonverify.com
Subject: Triton Request A Quote Form - Company or Organization

Triton Request A Quote Form - Company or Organization

Name:

Michel Picard

Email:

mpicard@kpmg.ca

Phone:

4167778414

Industry:

# of Employees:

City:

Province:

Comments:

Hello, I am working with Virani Shyrose, and was told I would be receiving an email from you regarding a background check. I have received no email, and I have nothing in Spam/ Junk. Can you please let me know if a message was sent to mpicard@kpmg.ca? Thanks

Date time:

7/17/2017 4:22:50 PM

Client tag:

CONTACT US CANADA SITE

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recipient (http://disclaimer.kpmg.ca).

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If you are unable to access the links above, please cut and paste the URL that follows the link into your browser.

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image001.pdf

TRITON

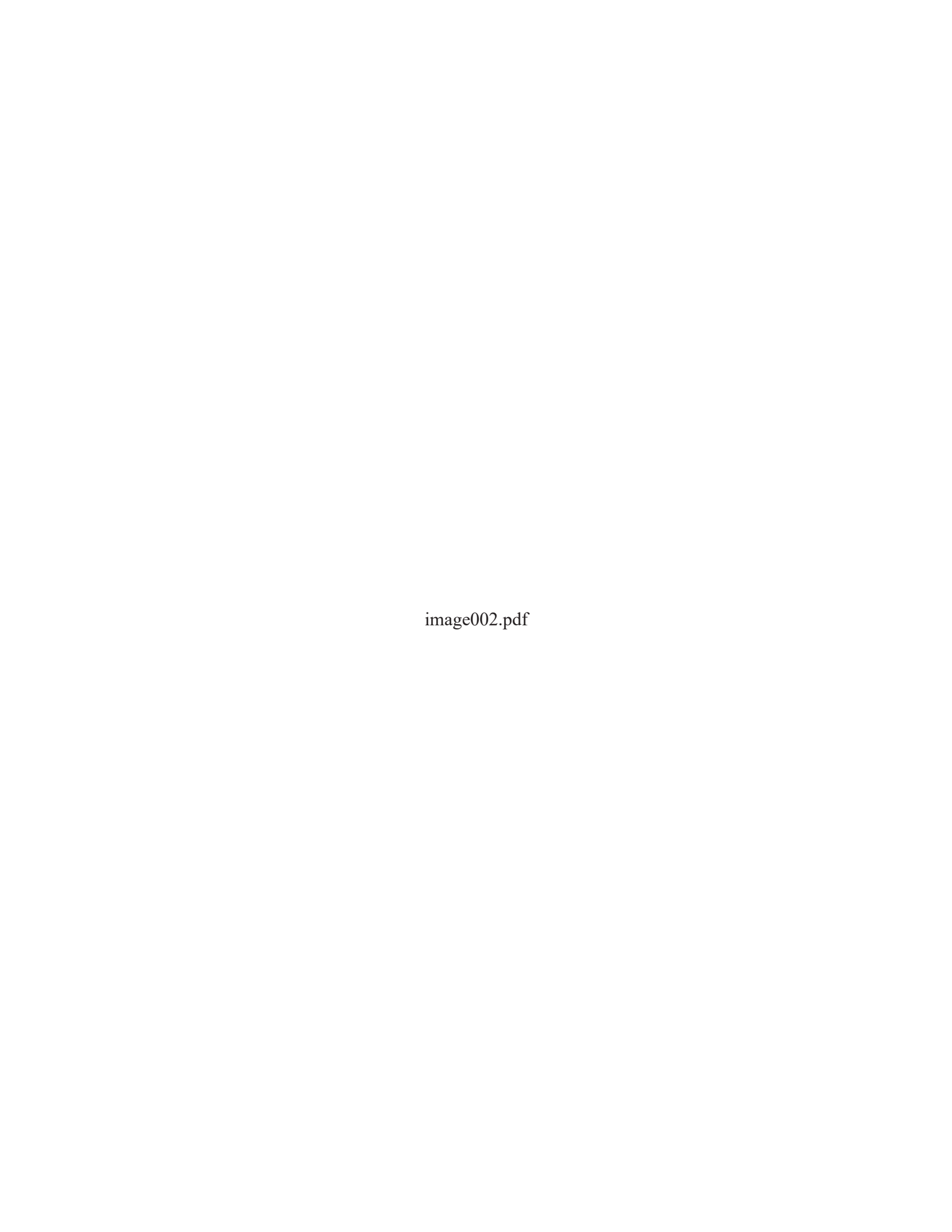
image002.pdf

FW_ Update Affordability Fund.rtf

From: Virani, Shyrose (TBS) []
To: 'PETSCHE Nadine -CORPORATE' [nadine.petsche@opg.com]
Subject: FW: Update Affordability Fund
Date: Tuesday, October 16, 2018 08:55:42

-----Original Message-----
From: Petsche, Nadine (TBS)
Sent: March 21, 2017 6:44 PM
To: Syed, Usman (ENERGY) <Usman.Syed@ontario.ca>
Cc: Sermat-Harding, Kaili (ENERGY) <Kaili.Sermat-Harding@ontario.ca>; Schwab-Pflug, Emma (ENERGY) <Emma.Schwab-Pflug@ontario.ca>; Qureshi, Musab (ENERGY) <Musab.Qureshi@ontario.ca>; Johnson, Paul (ENERGY/MEDEI/MRI) <Paul.Johnson3@ontario.ca>; An, Tai (ENERGY) <Tai.An@ontario.ca>; Gounden, Pratima (ENERGY) <Pratima.Gounden@ontario.ca>; 'ASHBOURNE, STEPHEN' <STEPHEN.ASHBOURNE@blakes.com>; 'PRESTAGE, JA' <JA.PRESTAGE@blakes.com>
Subject: RE: Update Affordability Fund

Hi Usman.

This should not be an issue. It would be good to know the proposed wording. I assume that the wording will reflect H1 as the interim admin service provider, to be confirmed by the Trustee (preferrably prior to March 31). Nadine

From: Syed, Usman (ENERGY)
Sent: March-21-17 6:31 PM
To: Petsche, Nadine (TBS)
Cc: Sermat-Harding, Kaili (ENERGY); Schwab-Pflug, Emma (ENERGY); Qureshi, Musab (ENERGY); Johnson, Paul (ENERGY/MEDEI/MRI); An, Tai (ENERGY); Gounden, Pratima (ENERGY); 'ASHBOURNE, STEPHEN'; 'PRESTAGE, JA'
Subject: FW: Update Affordability Fund

Hi Nadine – Hydro One is proposing some further changes to the TPA and Declaration. Specifically, they would like to have Hydro One explicitly named in the documents as the administrative service provider. KPMG thinks there is no control issue (see email chain below), but wanted to get your opinion, thanks…

- Usman

From: Alexandra.Phillips@HydroOne.com [mailto:Alexandra.Phillips@HydroOne.com]
Sent: March 21, 2017 5:50 PM
To: Syed, Usman (ENERGY); Schwab-Pflug, Emma (ENERGY)
Subject: FW: Update Affordability Fund

Alex Phillips

Manager, External Relations

Hydro One Networks Inc.

483 Bay St, Toronto, ON

(O) 416-345-1375

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From: Picard, Michel [mailto:mpicard@kpmg.ca]
Sent: Monday, March 20, 2017 1:14 PM
To: CHHELAVDA Samir; PHILLIPS Alexandra; PMilligan@osler.com
Subject: RE: Update Affordability Fund

Agree with Samir, not an accounting issue if provide back office only.

From: Samir.Chhelavda@HydroOne.com [mailto:Samir.Chhelavda@HydroOne.com]
Sent: Monday, March 20, 2017 12:12 PM
To: Alexandra.Phillips@HydroOne.com; PMilligan@osler.com
Cc: Picard, Michel <mpicard@kpmg.ca>
Subject: RE: Update Affordability Fund

Alex – I do not see an issue on this as we are only providing administrative support. I have copied Michel Picard from KPMG to get his thoughts as well.

Samir

From: PHILLIPS Alexandra
Sent: Monday, March 20, 2017 11:27 AM
To: CHHELAVDA Samir; PMilligan@osler.com

Subject: RE: Update Affordability Fund

Hi Samir: Is there any control issues with naming Hydro One as the service provider in the docs?

Best,

Alex Phillips

Manager, External Relations

Hydro One Networks Inc.

483 Bay St, Toronto, ON

(O) 416-345-1375

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FW_ security clearance.rtf

From: Laughton, Patrick (TBS) []
To: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]; Bernard, Dena (TBS) [Dena.Bernard@ontario.ca]
CC: Chen, Raymond (TBS) [Raymond.Chen@ontario.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]
Subject: FW: security clearance
Date: Thursday, September 22, 2016 18:21:43
Attachment 1: OSS-00389272_VOR_User_Guide-Security_Screening_Services-2016-05-02.pdf
Attachment 2: VOR_Price_List_Security_Screening_Services-2016-07-04_v02.pdf

---

Hi Shyrose/Dena –

I need your help in moving this forward. The names I was provided were:

Deloitte:

Ms. Kelly Danyluk

Ms. Clair Grindley

PWC:

Sean Cable

Martin Boucher

Michael Walke

You may wish to confirm spelling with Nadine.

I will reply to Michael and let him know you may be in touch if further assistance is required. Please copy Ray and I when you reach out to Supply Chain Ontario at OSS, if they are being slow we can expedite this (by harassing Brain Khoo J).

As a reminder, Cindy is screened from all these matters so will be important to ensure she remains out of the loop.

Thanks very much.

P.

From: Chamberlin, Michael (TBS)
Sent: September-22-16 4:29 PM
To: Laughton, Patrick (TBS)
Cc: Cheung, Clara (TBS); Virani, Shyrose (TBS); Laughton, Jane (TBS); Chen, Raymond (TBS); Monteiro, Belinda (TBS)
Subject: RE: security clearance

Hi Patrick,

Supply Chain maintains a vendor of record to facilitate security screening. The vendor's name is Triton Canada Inc and the VOR is set-up as a user-pay model. This means, the successful vendor supplying the consultants will need to engage Triton to have their people screened. There is a small cost for this however; this cost is paid by the vendor – not TBS.

I have attached the VOR user guide for easy reference. There is only 1 vendor on the VOR so there is no second stage selection process. You simply select the type of screening required and direct the supplier to Triton using OPS pricing through this VOR. Once the screening has been completed, Triton will provide each consultant with a clearance number that lasts for 5 years. This is the number you will need to retain to prove that the consultants were screened before beginning work at TBS.

Incidentally, before you direct the consultants to Triton, it might be worth asking them for their 10-didgit clearance number up front (assuming they have one). Many of the consultants have already been screened for prior work so if their clearance number is still valid, there is no need to rescreen them. On the other hand, if they haven't worked for the OPS before, or if they haven't been screened in the past 5 years, they will need to pay Triton to be screened.

Program and Policy Enablement Branch, Supply Chain Ontario (SCO), MGCS is responsible for administering Ontario's Contractor Security Screening Program. They use a general contact email address however; once you are assigned a screening analyst, they can search their database to see if any of the consultants you are bringing in are already screened. Their contact info is in the user guide.

Best Regards,

Michael Chamberlin

From: Laughton, Patrick (TBS)
Sent: September 22, 2016 4:11 PM
To: Chamberlin, Michael (TBS)
Cc: Cheung, Clara (TBS); Virani, Shyrose (TBS); Laughton, Jane (TBS); Chen, Raymond (TBS)
Subject: FW: security clearance

Hi Michael –

Looking for some assistance in having a few consultants providing services for one of our divisions put through screening process (per the below). Hoping you can advise on the steps required, any necessary forms/paperwork, anything else of relevance etc.

Please let me know if you need anything else or wish to chat.

Many thanks,

P.

From: Virani, Shyrose (TBS)
Sent: September-21-16 9:41 AM
To: Laughton, Patrick (TBS)
Subject: security clearance

2.2.5 Contractor Security Screening

Any director or officer of the Vendor, and any employee, agent or subcontractor (including the subcontractor's directors, officers, shareholders, employees, agents or contractors) engaged in the performance of the Services under the SOW resulting from this RFS process, may be required to undergo a Security Screening Check.

Upon notification, a Vendor is expected to provide the necessary information for each individual requiring Security Clearance, as may be requested. The OPS **Contractor Security Screening Operating Policy** (**CSSOP**) has been revised effective November 30, 2013. Contractors will obtain and pay for their criminal record checks through an OPS Vendor of Record arrangement, local police, or a RCMP accredited agency.

Security Screening Checks, when required, must be completed before the Vendor and the Client enter into the SOW.

Failure of the Vendor to provide all of the necessary information or failure of the Vendor (or any individual required to undergo a Contractor Security Screening Check) to be issued a Security Clearance number or failure of any individual required to undergo a Security Screening Check to be issued a Security Clearance number may result in the selection of another Vendor and may adversely impact the Vendor's eligibility to participate in future RFS processes.

OSS-00389272_VOR_User_Guide-Security_Screening_Services-2016-05-02.pdf

Vendor of Record User Guide

Security Screening Services

OSS_00389272

OSS # 00389272

Status: Final

Version Number: 3

Version Date: May 2016

Version Number: 3

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1. Introduction

1.1. Purpose of this Guide

This User Guide was developed by the Program and Policy Enablement Branch (PPEB), Supply Chain Ontario (SCO), Ministry of Government and Consumer Services (MGCS) to provide instructions to Ontario Public Service (OPS) ministries, commission public bodies (CPB) that appoint employees under the *Public Service of Ontario Act*, *2006*, and Infrastructure Ontario (IO) [but only with respect to those activities formerly carried out by the Ontario Realty Corporation] on how to acquire services under the non-mandatory Vendor of Record (VOR) arrangement OSS_00389272 for Security Screening Services. Clients are encouraged to read this User Guide before utilizing the Vendor for security screening services.

This VOR arrangement enables OPS ministries, CPBs and IO to have access to a qualified security screening service provider.

Further information regarding the new Vendor of Record arrangement may be obtained at the Contractor Security Screening intranet site.

1.2 Eligibility to Use This VOR Arrangement

This VOR arrangement is eligible to be used by all OPS ministries, CPBs and IO.

This is a non-mandatory enterprise-wide VOR arrangement. While PPEB, SCO, MGCS encourages the use of the Vendor of Record to administer security screening checks, other service provider options remain available. Ministries, CPBs or IO may permit contractors or employees and may also include appointees to obtain a general check from a local police service or a RCMP accredited third party agency.

1.3 Benefits of Using This VOR Arrangement

- Convenience of "one stop shopping"; the Vendor offers a variety of screening services (i.e. criminal record checks, driver's record checks, and out of country checks);
- Guaranteed pricing and service times;
- Secure electronic process is efficient, paperless, and available 24/7;
- Paper based process remains an option, for those who require it; and
- Safeguards on the protection of personal and confidential information.

2. VOR General Information

2.1. Term of the VOR Arrangement

The Security Screening Services VOR Arrangement is a non-mandatory enterprise-wide contract. The duration of the Contract is three years, from November 1, 2013 and expires on October 30, 2016. There are two, one-year extension options identified in the Agreement with the final expiry date of this VOR Arrangement, once all extension options have been exercised, of October 30, 2018.

2.2. Categories of Services

The following categories of services are included in this VOR Arrangement (see Appendix A for detailed descriptions of these services):

2.2.1 Service Category One: General Level Checks

Criminal record (CPIC) checks, out-of-country police certificates and driver's record checks.

2.2.2 Service Category Two: Other/Enhanced Level Checks

Credit checks, local police record checks, and fingerprint-based criminal record (CPIC) checks are available, in addition to general level checks under Service Category One. Services will be utilized by PPEB, SCO, MGCS as deemed necessary.

2.3. Vendor Selected to Perform the Services

Triton Canada, Inc. is the only Vendor under the VOR Arrangement.

Triton is contracted to perform services in support of Service Category One and Service Category Two.

2.4. Objectives of the Services

The objective of using this VOR Arrangement is to support the efficient and effective delivery of security screening services to OPS contractors and employees and provide high quality, cost effective and timely services.

3. Acquiring Services

3.1 Service Provider Selection Process

Individuals requiring security screening will determine which service provider to utilize to obtain and pay for their general level screening check. As the VOR Arrangement is non-mandatory, all individuals must be provided with information about the VOR and alternative check processing options.

Ministry Program Area Managers (PAMs) and Company Security Officers (CSOs) play coordinating roles in the security screening process.

Information on the security screening processes and instructions on the use of the Vendor services can be found on the Contractor Security Screening intranet site.

3.2 Service and Vendor Specific Pricing Information

The Vendor's guaranteed fixed pricing is provided under the following appendices:

Appendix B: Vendor Pricing for Service Category One – Triton Canada Inc.

Appendix C: Vendor Pricing for Service Category Two – Triton Canada Inc.

3.3 Distribution of Services

The Vendor under this non-mandatory VOR Arrangement provides services across the province of Ontario. Services are also accessible by applicants outside Ontario.

The Vendor's website is to be available 24 hours a day, seven days a week, and 365 days a year, with the exception of when upgrades or servicing is required. The Vendor will endeavour to post a notice in such circumstances.

The MBC Procurement Directive governs the acquisition of these services. Refer to the MBC Procurement Directive for details on the acquisition process.

3.4 Payment Arrangements

As this is a user pay model, the Vendor under the VOR Arrangement will receive payments from recipients for services provided on an individualized basis for general screening checks. However, there may be some exceptions.

In the case of general level contractor screening checks, companies may arrange payment for some or all of their workers. Program Area Managers are to work with the PPEB, SCO, MGCS to process such requests for centralized or bulk billing.

Where enhanced level checks are required, individuals will not pay for the enhanced portion of screening checks. These checks will be paid for by the Ministry. The general portion of screening checks will be paid by the individual.

The Vendor under the VOR Arrangement provides for the use of on line processes to facilitate convenient, secure payments for services. This will require an individual to have a credit card. Alternative methods of making payments may also be possible, for those who do not wish to make use of the online system.

3.5 Forms

In the case of security screening involving a VOR arrangement, the VOR will provide the applicant (contractor/employee) or hiring manager as appropriate with a link. This link will direct the applicant to the Vendor's secure website, where he or she will land on an application web page specifically established by the Vendor for the OPS contractor security screening program.

The applicant will then proceed to move forward with his/her security screening check by completing Vendor generated online forms, which will include consent and declaration components. These forms were developed by the Vendor under the VOR Arrangement and approved by the PPEB, SCO, MGCS. Online applications will also include an electronic identification verification component (E-IV).

Alternatively, the Vendor will also provide paper based application forms, downloadable and printable from their site, as an alternative application process. Information on the security screening process and instructions on the use of the Vendor's services are available on the Contractor Security Screening intranet site.

3.6 Process

Individuals may utilize the Vendor for Service Category One screening checks and Service Category Two enhanced checks. Prior authorization from PPEB, SCO, MGCS is required before PAMs may request enhanced checks from the Vendor. Ministry PAMs

may not move forward with any enhanced screening check requests, without prior consultation and recommendation by PPEB, SCO, MGCS.

If an alternative service provider is used (other than a Vendor of Record), the individual must obtain and provide the screening check and complete the MGCS security screening forms. It should be noted that the electronic application and administration process (end-to-end service) provided by the VOR are not supported through the use of alternative service providers (e.g. local police). For more information, visit the Contractor Security Screening intranet site.

3.7 Further Information

Should Program Area Managers have questions or require additional information on how to acquire security screening check services from the Vendor of Record, they should refer to the Contractor Security Screening intranet site for more detailed information.

PAM questions may be directed to the general email account at AskContractorScreening@ontario.ca.

For general instructions and information, contractors may refer to the Doing Business with Government website, Supply Chain Ontario (SCO), Ministry of Government and Consumer Services.

4. Background Information

4.1 Security Screening Services in the OPS

Security screening checks are an important security tool intended to assess the reliability of individuals and who will have access to people, sensitive information and assets across the Ontario Public Service (OPS). Security screening checks are an integral part of any enterprise wide risk management program.

The Program and Policy Enablement Branch (PPEB), Supply Chain Ontario (SCO), Ministry of Government and Consumer Services (MGCS) is responsible for administering the Security Screening Program. PPEB is responsible for contract management of the VOR Arrangement. The branch maintains responsibility for the evaluation of security screening results, decision making, and the communication of all

decisions to ministries, commission public bodies and Infrastructure Ontario for all security screening checks.

4.2 Vendor Service Standards

PPEB, SCO, MGCS has a service standard for processing security screening checks, providing a security clearance decision for every applicant's screening check to ministry program areas in no more than 15 business days.

The Vendor under the VOR Arrangement is also subject to internal service standards with respect to security screening services. These service standards are intended to support the 15 day turnaround time.

Additional standards include:

VOR Activity	VOR Activity Description	Service Level Targets
Send link to individual or PAM	Once the PAM requests a check the Vendor will generate and send a link to the individual to initiate the check.	100% within 1 day
Call Centre Activity (Calls)	Live calls answered by Vendor.	90%
Call Centre Activity (Messages)	For recorded messages, calls are returned.	100% within 1 day
Client Satisfaction (PAM)	PAM satisfaction rate for Vendor service	90% overall
Client Satisfaction (Individuals)	Individuals satisfaction rate for Vendor service	90% overall

5. Issue Administration

The Vendor is responsible for having in place qualified resources to process security screening checks, and to effectively deliver services.

PPEB, SCO, MGCS is responsible for security screening program management and monitoring the Vendor's provided services. Ministry PAMs may report service concerns or issues to PPEB, SCO, MGCS.

Individuals who make use of the Vendor under the VOR Arrangement to administer their screening checks may evaluate the Vendor by way of completion of a survey. PPEB,

SCO, MGCS will evaluate the results of these surveys and follow up with the Vendor to address issues.

The Vendor of Record will be subject to an annual audit.

6. Security and Privacy of Information

The Vendor under the VOR Arrangement is responsible for ensuring safeguards are in place to protect information in accordance with the Freedom of Information and Protection of Privacy Act (FIPPA). All personal information collected is treated as highly sensitive information and is housed in a secure area.

Personal information provided in accordance with the completion of the security screening forms is collected for the purposes of conducting and assigning an OPS security screening clearance in accordance with the Freedom of Information and Protection of Privacy Act (FIPPA).

Access to an individual's personal information is restricted to those who have been specifically authorized to have access for the purposes of conducting or administering the security screening checks.

7. Contact Information

7.1 Contractor Security Screening Unit (CSS)

Contractor Security Screening Unit
Program and Policy Enablement Branch
Supply Chain Ontario
Ontario Shared Services
Ministry of Government and Consumer Services
222 Jarvis St. Toronto, ON M7A 0B6
E-mail address: AskContractorScreening@ontario.ca

7.2 Vendor

Instructions on how to utilize the Vendor under the VOR Arrangement are provided on the Contractor Security Screening intranet site.

Triton Canada Inc. is authorized to perform security screening services in Service Category One and Service Category Two.

Triton Canada Inc.
72 Devon Road, Suite 16
Brampton, ON
L6T 5B4

Appendix A: Detailed Descriptions of Service Categories

I. Service Category One: General Level Security Screening Checks

Individuals (contractors, employees and may also include appointees) will be advised by ministries, commission public bodies that appoint employees under the *Public Service of Ontario Act, 2006* or by Infrastructure Ontario (but only with respect to those activities formerly carried out by the Ontario Realty Corporation) that a security screening check is required.

Security screening checks may be performed by the Vendor under this VOR Arrangement, as follows:

i. Name-based Criminal Record Check (CPIC)
ii. Fingerprinting services
iii. Driver's Record Checks (contractors only)
iv. Out-of-Country Police Certificates (US and/or International)
v. Out-of-Country Driver's Records Checks (US and/or International) (contractors only)

II. Service Category Two: Other/Enhanced Security Screening Checks

Vendor services may be utilized as determined by PPEB, SCO, MGCS to provide enhanced level security screening services to individuals (contractors, employees, and may also include appointees).

Security screening checks in this second category would be requested by PPEB, SCO, MGCS.

The Vendor under this VOR Arrangement may provide the following services:

i. Name-based Criminal Record Checks (CPIC)
ii. Fingerprinting services
iii. Driver's Record Checks (contractors only)
iv. Out-of-Country Police Certificates (US and/or International)
v. Out-of-Country Driver's Record Checks (US and/or International) (contractors only)
vi. Fingerprint-based Criminal Record Checks
vii. Credit Checks
viii. Local Police Records Checks

Appendix B: Vendor Pricing for Service Category One – Triton Canada Inc.

Table 1: Vendor Pricing Summary Service Category 1: General Level Checks - TRITON

Security Screening Services	Standard Rate (excluding HST)	Rush Rate (excluding HST)
Name-based criminal record check	$14.95	$14.95
Fingerprinting service (excludes cost of CPIC)	$35.00	$35.00
Driver's record check (Ontario only) (contractors only)	$17.95	$17.95

Table 2: Vendor Pricing Summary Service Category 1: Driver's Record Checks Canadian Provinces (excluding Ontario) – TRITON

Canadian Provinces (excluding Ontario)	Standard Rate (excluding HST)	Rush Rate (excluding HST)
Alberta	n/a	n/a
British Columbia	$25.00	$25.00
Manitoba	$25.00	$25.00
New Brunswick	$25.00	$25.00
Newfoundland	$25.00	$25.00
North West Territories	$25.00	$25.00
Nova Scotia	$25.00	$25.00
Nunavut	$25.00	$25.00
Prince Edward Island	$25.00	$25.00
Quebec	$25.00	$25.00
Saskatchewan	$25.00	$25.00
Yukon	$25.00	$25.00

Table 3: Vendor Pricing Summary Service Category 1: United States (US) Police Certificates – TRITON

US Police Certificate	Rate (excluding HST)
All 50 US states	$27.00

Table 4: Vendor Pricing Summary Service Category 1: United States (US) Driver's Record Check – TRITON

US Driver's Record Check	Rate (excluding HST)
All 50 US states	$25.00

Table 5: Vendor Pricing Summary Service Category 1: International Police Certificates (excluding the US) – TRITON

International Police Certificates (excluding the US)	Rate (excluding HST)
Albania	$120.00
Afghanistan	$120.00
American Samoa	$120.00
Andorra	$120.00
Angola	$120.00
Antigua	$120.00
Argentina	$120.00
Armenia	$120.00
Aruba	$120.00
Australia	$120.00
Austria	$120.00
Azerbaijan	$120.00
Bahamas	$120.00
Bahrain	$120.00
Barbados	$120.00
Bangladesh	$120.00
Belarus	$120.00
Belgium	$120.00
Belize	$120.00
Benin	$120.00

International Police Certificates (excluding the US)	Rate (excluding HST)
Bermuda	$120.00
Bhutan	$120.00
Bolivia	$120.00
Bosnia and Herzegovina	$120.00
Botswana	$120.00
Brazil	$120.00
Brunei	$120.00
Bulgaria	$120.00
Burkina Faso	$120.00
Burma	$120.00
Burundi	$120.00
Caicos Islands	$120.00
Cameroon	$120.00
Cambodia	$120.00
Cape Verde	$120.00
Cayman Islands	$120.00
Central African Republic	$120.00
Chad	$120.00
Chile	$120.00
China	$120.00
Colombia	$120.00
Congo	$120.00
Congo, Republic of	$120.00
Cook Islands	$120.00
Costa Rica	$120.00
Croatia	$120.00
Cuba	$120.00
Cyprus	$120.00
Denmark	$120.00
Dominican Republic	$120.00
East Timor	$120.00
Ecuador	$120.00
Egypt	$120.00
El Salvador	$120.00
England	$120.00

International Police Certificates (excluding the US)	Rate (excluding HST)
Eritrea	$120.00
Estonia	$120.00
Ethiopia	$120.00
Fiji	$120.00
Finland	$120.00
France	$120.00
Georgia	$120.00
Germany	$120.00
Ghana	$120.00
Gibraltar	$120.00
Greece	$120.00
Greenland	$120.00
Grenada	$120.00
Guadalupe	$120.00
Guam	$120.00
Guatemala	$120.00
Guinea	$120.00
Guyana	$120.00
Haiti	$120.00
Holland	$120.00
Honduras	$120.00
Hong Kong	$120.00
Hungary	$120.00
Iceland	$120.00
India	$120.00
Iran	$120.00
Iraq	$120.00
Indonesia	$120.00
Ireland	$120.00
Italy	$120.00
Israel	$120.00
Ivory Coast	$120.00
Japan	$120.00
Jamaica	$120.00
Jordan	$120.00

International Police Certificates (excluding the US)	Rate (excluding HST)
Kazakhstan	$120.00
Kenya	$120.00
Korea, South	$120.00
Kosovo	$120.00
Kuwait	$120.00
Kyrgyzstan	$120.00
Laos	$120.00
Latvia	$120.00
Lebanon	$120.00
Lesotho	$120.00
Liberia	$120.00
Libya	$120.00
Lithuania	$120.00
Luxembourg	$120.00
Macau	$120.00
Macedonia	$120.00
Madagascar	$120.00
Malawi	$120.00
Malaysia	$120.00
Mali	$120.00
Malta	$120.00
Mauritania	$120.00
Mauritius	$120.00
Mariana Islands	$120.00
Marshall Islands	$120.00
Mexico	$120.00
Moldova	$120.00
Morocco	$120.00
Monaco	$120.00
Mozambique	$120.00
Muscat	$120.00
Myanmar (Burma)	$120.00
Namibia	$120.00
Nepal	$120.00
Netherland Antilles	$120.00

International Police Certificates (excluding the US)	Rate (excluding HST)
Netherlands	$120.00
New Guinea	$120.00
New Zealand	$120.00
Nicaragua	$120.00
Niger	$120.00
Nigeria	$120.00
Northern Ireland	$120.00
Northern Marianna Islands	$120.00
Norway	$120.00
Oman	$120.00
Pakistan	$120.00
Panama	$120.00
Paraguay	$120.00
Peru	$120.00
Philippines	$120.00
Poland	$120.00
Portugal	$120.00
Puerto Rico	$120.00
Qatar	$120.00
Romania	$120.00
Russia	$120.00
Rwanda	$120.00
Santo Domingo	$120.00
Saudi Arabia	$120.00
Serbia and Montenegro	$120.00
Senegal	$120.00
Sierra Leone	$120.00
Singapore	$120.00
Slovakia	$120.00
Slovenia	$120.00
South Africa	$120.00
Spain	$120.00
Sri Lanka	$120.00
Sudan	$120.00
Suriname	$120.00

International Police Certificates (excluding the US)	Rate (excluding HST)
Sweden	$120.00
Switzerland	$120.00
Syria	$120.00
Tanzania	$120.00
Taiwan	$120.00
Thailand	$120.00
Trinidad/Tobago	$120.00
Togo	$120.00
Tunisia	$120.00
Turkey	$120.00
Turkmenistan	$120.00
Uganda	$120.00
Ukraine	$120.00
United Arab Emirates (UAE)	$120.00
United Kingdom	$120.00
Uruguay	$120.00
Uzbekistan	$120.00
Venezuela	$120.00
Vietnam	$120.00
Virgin Islands	$120.00
Yemen	$120.00
Wales	$120.00
West Indies	$120.00
Zimbabwe	$120.00
Zambia	$120.00

Table 6: Vendor Pricing Summary Service Category 1: International Driver's Record Check – TRITON

International Driver's Record Check	Standard Rate (excluding HST)
US	$120.00
United Kingdom	$120.00
Mexico	$120.00
US Virgin Islands	$120.00
Guam	$120.00

Australia	$120.00
New Zealand	$120.00
Saudi Arabia	$120.00
United Arab Emirates	$120.00
India	$120.00

Appendix C: Vendor Pricing for Service Category Two – Triton Canada Inc.

Table 7: Vendor Pricing Summary Service Category 2: Other/Enhanced Level Checks - TRITON

Security Screening Services	Standard Rate (excluding HST)
Name-based criminal record check	$14.95
Fingerprinting service (excludes cost of CPIC)	$35.00
Driver's record check (Ontario only) (contractors only)	$17.95
Driver's record check (Canada - outside of Ontario) (contractors only)	$25.00
Out-of-country police certificate (US)	$27.00
Out-of-country police certificate (International)	$120.00
Out-of-country driver's check (US) (contractors only)	$25.00
Out-of-country driver's check (International) (contractors only)	$120.00
Fingerprint-based criminal record check	$60.00
Local police record check	$16.95
Credit history check	$12.95

Note: This is an optional service to be utilized by PPEB, SCO, MGCS as necessary.

VOR_Price_List_Security_Screening_Services-2016-07-04_v02.pdf

Appendix B: Vendor Pricing for Service Category One – Triton Canada Inc.

Table 1: Vendor Pricing Summary Service Category 1: General Level Checks - TRITON

Security Screening Services	Standard Rate (excluding HST)	Rush Rate (excluding HST)
Name-based criminal record check	$14.95	$14.95
Fingerprinting service (excludes cost of CPIC)	$35.00	$35.00
Driver's record check (Ontario only) (contractors only)	$17.95	$17.95

Appendix C: Vendor Pricing for Service Category Two – Triton Canada Inc.

Table 7: Vendor Pricing Summary Service Category 2: Other/Enhanced Level Checks - TRITON

Security Screening Services	Standard Rate (excluding HST)
Name-based criminal record check	$14.95
Fingerprinting service (excludes cost of CPIC)	$35.00
Driver's record check (Ontario only) (contractors only)	$17.95
Driver's record check (Canada - outside of Ontario) (contractors only)	$25.00
Out-of-country police certificate (US)	$27.00
Out-of-country police certificate (International)	$120.00
Out-of-country driver's check (US) (contractors only)	$25.00
Out-of-country driver's check (International) (contractors only)	$120.00
Fingerprint-based criminal record check	$60.00
Local police record check	$16.95
Credit history check	$12.95

Note: This is an optional service to be utilized by PPEB, SCO, MGCS as necessary.

FW_ To review the OPG and H1 IFRS analysis (1).pdf

From:	Petsche, Nadine (TBS)
To:	Virani, Shyrose (TBS); Patel, Bharat (TBS); alec.cheng@opg.com; john.mauti@opg.com; Picard, Michel (mpicard@kpmg.ca)
Subject:	FW: To review the OPG and H1 IFRS analysis
Start:	June 8, 2015 2:00:00 PM
End:	June 8, 2015 2:30:00 PM
Location:	APFR Boardroom, teleconference 416-212-8014 passcode 1474532#
Attachments:	OPG -IFRS Analysis Jun 2.pptx

Please confirm that Bharat is in the office. Thx.

-----Original Appointment-----
From: Virani, Shyrose (TBS) On Behalf Of Petsche, Nadine (TBS)
Sent: June-03-15 10:06 AM
To: Petsche, Nadine (TBS); Patel, Bharat (TBS); <mailto:alec.cheng@opg.com> alec.cheng@opg.com; <mailto:john.mauti@opg.com> john.mauti@opg.com; Picard, Michel (<mailto:mpicard@kpmg.ca> mpicard@kpmg.ca)
Subject: To review the OPG and H1 IFRS analysis
When: June-08-15 2:00 PM-2:30 PM (UTC-05:00) Eastern Time (US & Canada).
Where: APFR Boardroom, teleconference 416-212-8014 passcode 1474532#

OPG -IFRS Analysis Jun 2.pdf

Office of the Provincial Controller Division

Draft Slide Deck

OPG- Preliminary IFRS Analysis and Impact on the Province's Consolidated Financial Statements

Confidential – For Internal Discussion Purposes

Overall comments:

- We need to discuss the application of IAS 19.122 to ensure we are aligned in our understanding as well as the positioning of the AcSB's comment
- Are you summarizing Hydro One's IFRS result for the AG?

Background

- OPG is regulated by the OEB based on US GAAP, and reports its financial results using US GAAP as required by Regulation 395/11 under the F.A.A. OPG has been directed by the Province to report under Canadian GAAP (CGAAP) for consolidation purposes.
- To date, the Province has been consolidating OPG on a CGAAP basis in accordance with AcSB's extension for the deferral of the mandatory IFRS changeover date for entities with qualifying rate-regulated activities which expired on January 1, 2015. Since AcSB has not extended the deferral period, the AG may argue that the results of the entity must be consolidated in accordance with IFRS as of January 1, 2015.
- For GBEs with a different reporting year-end, the Province's accounting policy is to reflect the change in the Province's subsequent reporting period (without restatement to prior periods). Therefore, for the 2014-15 Public Accounts, the Province would consolidate OPG's results using CGAAP for the full 12-month period.
- The AG has asked for comparative IFRS vs.CGAAP analysis be provided for Q1 2015 to assess the impact on the Province's Public Accounts. Note that she has requested that it be done to the entity's level of materiality.
- This analysis reflects OPG's preliminary analysis reflecting 9 months CGAAP results and 3 months IFRS results (including transitional b/s adjustments as at January 1, 2015). Further details on P&L impacts for the three months ended March 31, 2015 are forthcoming. ~~Note that the figures presented are preliminary and have not been audited~~.

IFRS 14 – Regulatory Deferral Accounts

- In 2014, the IASB issued IFRS 14 Regulatory Deferral Accounts effective January 1, 2016 (early adoption permitted), which is an interim standard in effect while the IASB undertakes its comprehensive project on rate regulated activities. IFRS 14 grandfathers regulatory accounting for first time adopters.

- For purposes of this analysis, it is assumed that OPG will elect to apply IFRS 14 upon transition.

- Note that IFRS 14 is expected to be removed or replaced with different guidance after completion of the IASB's comprehensive project. There is no assurance that the IASB will conclude on standards for Regulatory Accounting that will mirror OPG's current policies / practices. In that case, OPG may have to stop recording some or all regulatory balances it would have recognized under IFRS 14 (i.e. accounts which do not meet the IFRS definition of an asset or liability under the conceptual framework or another IFRS standard). This would result in material adjustments to the consolidated results.

Preliminary IFRS Analysis

- OPG identified the following significant items that would impact opening equity (transitional b/s impact) on transition to IFRS as well as net income on a go-forward basis:
  - Nuclear Asset Retirement Obligations (ARO)
  - Pension and Other Post Retirement Benefits (OPEB)
- In addition, if the Province adopts IFRS based reporting for OPG (and H1), future IFRS changes with potential impact would also include:
  - IFRS 14 may be eliminated if the IASB decides against RRA in the future
  - Financial Instruments – IFRS 9 *
  - Lease Accounting *
  - Revenue Accounting *

  * Changes may also occur under US GAAP (which is OPG's basis for rate recovery), but may not be converged with IFRS. The impact of any un-converged differences would need to be assessed for regulatory offset treatment under IFRS 14 or other IASB RRA guidance, if any, in effect at that time. There is a risk that results reported under OPG's US-GAAP based financial reports would require further reconciliation and could be complex.
- In addition, any accounting implications of the OEB's recently announced sector-wide consultation on rate recovery mechanisms for pension/OPEB costs would need to be considered.

Pension & OPEB Transition Balance Sheet Adjustments

$ Millions Pre-tax ~~DR (CR)~~	CGAAP to US GAAP ADJUSTMENTS DR (CR)	CGAAP to IFRS ADJUSTMENTS DR (CR)	Comments
Balance-sheet (before IAS 19 paragraph 122 reclass - see next slide)			
Pension/OPEB (Liability) CGAAP = ($1,900)	(4,800)	(4,800)	US GAAP and IFRS require the full *funded status to be reported*.
Regulatory Asset	4,300	4,300	Represents regulated business portion of the pension/OPEB liability adjustment
Transitional Impact before Tax – R/E	-	1,050	Due to CGAAP/IFRS differences that result in reclassification of amounts within equity (R/E vs AOCI)
Transitional Impact before Tax – AOCI	500	(550)	

Potential Application of IAS 19, para. 122 (Re-class)

- Under current IAS 19, amounts recognized in AOCI for pension/OPEB (such as differences between discount rate and expected return on assets) are not recycled through the income statement and remain in AOCI permanently. The AcSB has previously advised the IASB of its concerns with the inconsistency between the IASB treatment for the return on assets, which creates a mismatch on the P&L. IAS 19 includes an accounting policy election to reclassify amounts from OCI to Retained Earnings.
- Since OPG's regulated revenue is determined based on US GAAP, which includes the impact of recycling, it may be considered whether this option could be used in addressing the mismatch between income and expense. [note: this affect H1 as well]
- At the Province's direction, OPG could apply this option in providing its IFRS results for the Province's consolidation and reflect a transfer of the OCI amount to better match OPG's recovery basis.
- For purposes of this analysis, it is argued that recycling ~~of the regulated portion~~ is appropriate (annual impact on the CFS annual? surplus/deficit immaterial).

pre-tax	Retained Earnings	Accumulated Other Comprehensive Income
Per IAS 19 without Para 122 re-class	1,050	(550)
With application of IAS 19.122 to re-class amount that has been recorded through P&L and recovered in rates	(1,050)	1,050
After Para 122 re-class	-	500

- Notes for Province's consideration: Do we need to discuss how AOCI would be included?

Preliminary IFRS Analysis – Nuclear ARO

- OPG has identified two significant adjustments in Nuclear ARO which will impact equity:
  a. Change in discount rate
  b. Treatment of certain lifecycle costs

a) Discount Rate

- Under IFRS, a single current discount rate is used in measuring ARO. Under CGAAP, historical rates are retained for existing obligations when additions to ARO are recorded.
- Given that the rate recovery mechanism for OPG's ARO for the Bruce assets includes the recovery of accretion expense, any impact from a change in discount rate would be offset with a regulatory balance under IFRS 14.
- For the prescribed facilities (Pickering and Darlington), accretion expense is not a component of the ARO rate recovery mechanism; therefore, the impact of a discount rate change would not be offset by a regulatory balance.
- On transition, the ARO will be updated to the current discount rate with the net impact for the prescribed facilities charged to retained earnings on transition. After the transition, OPG expects that under its IFRS methodology, the discount rate will likely not change after the transition date, other than in years of an ONFA update. The next ONFA update is expected at the end of 2016 and, therefore the next change would likely significantly impact the Province's 2016/2017 CFS.

Nuclear ARO Change in Discount Rate to 5% - Transition Balance Sheet Adjustments

$ Millions (Note – current average US GAAP discount rate is 5.4%) Pre-tax	OPG's Prescribed facilities (Pickering & Darlington) 5% Discount Rate	OPG's facilities on lease to Bruce Power 5% Discount Rate	Combined
Balance-sheet Dr/(Cr)			
Nuclear Asset Retirement Obligation ~~(IFRS)~~ – Adjustment to changes to discount rate	(800)	400	(400)
Asset Retirement Cost (PP&E) – Calculated using a short-cut method allowed for IFRS transition purposes due to a different discount rate	100	(100)	-
Offset by Reg. Asset/(Liability) under IFRS 14	-	(300)	(300)
Retained Earnings - Net ARO Transitional Impact to opening balance sheet – pre-tax	700	-	700

Prescribed facilities: OPG does not recover accretion expense or credit ratepayers with segregated fund earnings related to Pickering or Darlington under the methodology established by the OEB. Since those two components are not part of the items that are eligible for recovery, a change in the discount rate that impacts accretion expense ~~those two components~~ is not eligible for IFRS 14 offset.

Bruce facilities: The Bruce rate recovery method prescribed by the OEB produces no profit (return) for OPG but does cover OPG for all accounting costs, including accretion and other ~~the~~ costs of the nuclear ARO. Therefore, a regulatory balance is recognized for differences in discount rates, resulting in no net equity impact.

Nuclear ARO - Treatment of certain lifecycle costs ~~on transition~~

b) Treatment of certain lifecycle costs

- Certain costs included in the nuclear ARO and ARC (fixed assets) under Canadian GAAP and US GAAP are reflected under IFRS in different time periods.
- This results in the removal of a portion of the lifecycle costs included in the Canadian GAAP ARO and ARC upon transition to IFRS. The changes in accounting result in certain differences in the timing of OEB cost recovery and their recognition under IFRS. Accordingly, a regulatory balance is recognized.
- However, certain of the differences related to the Prescribed Facilities would ~~are~~ not be offset through the OEB recovery mechanism, because the recovery mechanism does not include an accretion component for the time value of money. As such, a regulatory balance is not recorded for these time value of money differences resulting in a net increase in retained earnings on transition. The higher retained earnings will be offset by higher future period expenses, resulting in a reduction to income in future years.
- [note: moved the table to the next slide]

Nuclear ARO - Treatment of certain lifecycle costs ~~on transition~~

[note: inserted a new slide]

b) Treatment of certain lifecycle costs

Account (pre-tax)	Impact DR / (CR)
Asset Retirement Cost (PP&E) – adjust asset retirement costs that are to be recognized through P&L under IFRS.	(1,500)
Asset Retirement Obligation (ARO) – remove certain lifecycle costs that are not recognized under IFRS.	1,300
Net Regulatory Balance – record regulatory balance based on the existing regulatory mechanism	600
Retained Earnings (Net Debt decrease) – impact of not recording certain regulatory balance related to the prescribed facilities due to the recovery mechanism as described in the previous slide	(400)

Risks to Annual Surplus/Deficit

1. Volatility due to mismatch between income statement and OCI for pension and OPEB expenses and associated regulated rate revenue, if IAS 19 para. 122 is not included in annual surplus/deficit results. OPCD recommends to reclassify AOCI balances (using IAS 19.122) consistent with US GAAP and record the reclassification through P&L each year to eliminate the risk of mismatch and potentially misleading results (annual impact on CFS surplus/deficit immaterial).

2. Surplus / deficits could be affected by changes in ARO and changes in related period costs, which are not offset by a regulatory balance as described further on slides 13 and 14 (check). The high volatility is likely given the IFRS requirement to fair value and flow changes through P&L.

3. Future IFRS Changes:
   - Permanency of IFRS rate regulated accounting is uncertain (IFRS 14 is an interim standard, final outcome of RRA project is not known)
   - Other uncertainty of IFRS changes to lease accounting, financial instruments and revenue standards, which could diverge from US GAAP and therefore require evaluation for regulatory offset treatment under IFRS 14 (or other IASB RRA guidance then in effect, if any).

4. Any accounting implications resulting from the outcome of the OEB's

Additional considerations

- Cost of OPG maintaining 2 sets of books (running detailed models, monitoring for future differences, and internal staff time).
- Costs of experts (including external actuary and Nuclear Waste Management Organization) to prepare estimates for OPG under two frameworks.
- Cost of consulting with external auditors and accounting advisors.
- OEB is expected to continue to regulate OPG based on US GAAP; there is no user need for IFRS based financial information ~~statements~~.
- OEFC calculation of Electricity Sector Dedicated Income will be impacted.

Fiscal Risk- IFRS current discount rate for Nuclear ARO

- Rate of 5% used at transition is calculated based on a 20 year rolling average of a 30 year Provincial bond (using 15 years of historical rates and 5 of forecasted rates). Under this methodology, the discount rate is expected to drop significantly over time to reflect a higher weighting on the current discount rate level. Rates would be updated at ONFA update time (likely in 2016/2017 fiscal year). The full impact related to the prescribed facilities would be reportable in year of change. This change in discount rate is likely to result in an increase in ARO in the magnitude of up to a few billion dollars. (note: will not be available in time for the meeting).

- The IFRS discount rate compares to a weighted average historical rate for US GAAP of 5.4%, which does not change for the existing ARO tranches when an additional tranche is recognized. IFRS requires the ARO to be valued using a single discount rate for the entire balance of the obligation rather than the tranche approach under US GAAP.

Fiscal Risk- Future Change in Valuation of ARO

- Future changes, such as changes in station useful lives or changes in certain lifecycle cost estimates, may have a more significant impact under IFRS due to the ARO valuation methodology and the interaction with OEB recovery mechanisms.

- Change in discount rate would also impact Province's fiscal plans in future years (as a result of accretion not being recoverable through rates for prescribed facilities and therefore no IFRS14 protection).

- For amounts already collected through US GAAP-based rates for expenses that will be recognized in the future under IFRS, reductions in future IFRS income are expected when these expenses are recognized, due to reflecting the time value of money discount.

Impact Analysis on CFS if IFRS reporting for OPG adopted effective January 1, 2015 ~~on CFS~~

Preliminary Estimated Accumulated Deficit, Net Debt and Annual Deficit Impacts ($ Millions)

Increase/(decrease)
Unaudited / Pre-tax

2014-15	Accum. Def	Net Debt	2014-15 Annual Deficit [4]
Potential IFRS Transitional Impact on 2014-15 CFS [1]	[Note not sure what is the dif		
Pension & OPEB $1,050M ~~($550 regulated, $500 non-regulated)~~ [2]	1,050	1,050	TBD
ARO-Accretion/Discount rate (PN/DN OPG' sPrescribed facilities) [3]	700	700	TBD
ARO- lifecycle cost [5] - [footnote missing]	(400)	(400)	TBD

Notes:

(1) IFRS transitional impact (before tax) is reflected as at Jan 1, 2015.

(2) Under IFRS there is no recycling of amounts from OCI to net income (USGAAP recycles the OCI to net income). IAS 19 paragraph 122 as a minimum permits the reclassification of amounts from AOCI to retained earnings which would preserve the balance sheet. For purposes of this analysis, a policy choice would be made to recycle amounts from OCI through net income on a basis consistent with US GAAP. Annual impact on CFS not material.

(3) OPG does not recover accretion expense or credit seg fund earnings related to nuclear waste decommissioning obligations for Pickering or Darlington. As under the OEB directed methodology, these components are not part of the costs eligible for rate recovery by the OEB, a change in the discount rate that impacts accretion expense is, by definition, not recoverable and therefore not eligible for IFRS 14 offset. The net increase in the liabiltiy would therefore directly impact the Province's balance sheet under IFRS. In the future, any changes to the discount rate would immediately impact the Province's books in the year in which the update occurs.

(4) P&L impact for Q1 TBD (estimated to be received in June, 2015)

FW_ To review the OPG and H1 IFRS analysis.pdf

From:	Petsche, Nadine (TBS)
To:	Virani, Shyrose (TBS); "Bill Pelow <Bill.Pelow@auditor.on.ca> (Bill.Pelow@auditor.on.ca)"; "barry.neilson@auditor.on.ca"; Patel, Bharat (TBS); Rozic, Mark (TBS); "Samir.Chhelavda@HydroOne.com"; "alec.cheng@opg.com"; "john.mauti@opg.com"; "Kamil.Baig@HydroOne.com"; "alexander.kogan@opg.com"; "Picard, Michel (mpicard@kpmg.ca)"; "john.macdowell@auditor.ca"
Cc:	"John McDowell"; "Walter Allan"
Subject:	FW: To review the OPG and H1 IFRS analysis
Start:	June 9, 2015 10:00:00 AM
End:	June 9, 2015 11:30:00 AM
Location:	7 Queen"s Park Crescent, 1st Floor, Treasury Boardroom

---

Do we need to get visitor badges for each of the participants?n

-----Original Appointment-----
From: Virani, Shyrose (TBS) On Behalf Of Petsche, Nadine (TBS)
Sent: May-26-15 12:54 PM
To: Petsche, Nadine (TBS); 'Bill Pelow < <mailto:Bill.Pelow@auditor.on.ca> Bill.Pelow@auditor.on.ca> (<mailto:Bill.Pelow@auditor.on.ca> Bill.Pelow@auditor.on.ca)'; 'barry.neilson@auditor.on.ca'; Patel, Bharat (TBS); Rozic, Mark (TBS); 'Samir.Chhelavda@HydroOne.com'; 'alec.cheng@opg.com'; 'john.mauti@opg.com'; 'Kamil.Baig@HydroOne.com'; 'alexander.kogan@opg.com'; 'Picard, Michel (<mailto:mpicard@kpmg.ca> mpicard@kpmg.ca)'; 'john.macdowell@auditor.ca'
Cc: 'John McDowell'; 'Walter Allan'
Subject: To review the OPG and H1 IFRS analysis
When: June-09-15 10:00 AM-11:30 AM (UTC-05:00) Eastern Time (US & Canada).
Where: 7 Queen's Park Crescent, 1st Floor, Treasury Boardroom

Upon arrival, please call Shyrose Virani at 416-325-1448 to gain entry into our boardroom.

Thanks

Shyrose

Fw_ Public Accounts Audit (IFRS vs. US GAAP).rtf

From: Petsche, Nadine (TBS) []
To: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
Subject: Fw: Public Accounts Audit (IFRS vs. US GAAP)
Date: Friday, January 22, 2016 09:39:12

From: Picard, Michel [mailto:mpicard@kpmg.ca]
Sent: Friday, January 22, 2016 07:56 AM
To: Petsche, Nadine (TBS)
Cc: Narula, Gurdev <gurdevnarula@kpmg.ca>
Subject: RE: Public Accounts Audit (IFRS vs. US GAAP)

Hi Nadine,

Gurdev Narula, the audit partner will need to attend as well.

My availability is:

- Today, any time after 10am.
- Monday after 9:30 till 11:30 or after 2pm.
- Tuesday anytime except for lunch time.

Gurdev, when are you available?

Regards,

Michel

From: Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]
Sent: Thursday, January 21, 2016 9:53 PM
To: Picard, Michel
Subject: Public Accounts Audit (IFRS vs. US GAAP)

Hi Michel.

I just wanted to check on your availability over the next few days (Fri/Mon/Tues) to participate in a meeting with OPG/H1 and their external auditors to discuss potential approach to IFRS info and assurance.

We've heard that the AG may be planning to reach out to the respective orgs directly in the near term and there is a desire to have a 'huddle' in advance of receiving the AG's suggestions to confirm that we are on a common front as to what might be reasonable to expect. Your experience with Quebec Hydro would be invaluable to our discussion.

Thanks in advance.

Nadine

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Our lawyers have recommended that we provide certain disclaimer language with our messages. Rather than including them here, we're drawing your attention to the following links where the full legal wording

appears.

- **Disclaimer concerning confidential and privileged information/unintended recipient** (http://disclaimer.kpmg.ca).
- **Disclaimer concerning tax advice** (http://taxdisclaimer.kpmg.ca).

If you are unable to access the links above, please cut and paste the URL that follows the link into your browser.

Fw_ Request for deadline extension - RFS for complex accounting services.rtf

From: Petsche, Nadine (TBS) []
To: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
Subject: Fw: Request for deadline extension - RFS for complex accounting services
Date: Wednesday, April 26, 2017 13:53:01

Please see if a one week extension would work. N
From: Suzie Gignac <suzie.r.gignac@ca.ey.com>
Sent: Wednesday, April 26, 2017 1:48 PM
To: Virani, Shyrose (TBS)
Cc: Petsche, Nadine (TBS); Blake Langill
Subject: Request for deadline extension - RFS for complex accounting services

Hi Shyrose:
With respect to the RFS for complex accounting services related to Electricity Sector Entities currently due April 28, 2017, we would like to request an extension to the deadline to Friday, May 12, 2017.
Thank you,
Suzie

Suzanne Gignac, CPA, CA
Ernst & Young LLP
613 598 4376

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Fw_ To review the OPG and H1 IFRS analysis.rtf

From: Petsche, Nadine (TBS) []
To: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
Subject: Fw: To review the OPG and H1 IFRS analysis
Date: Friday, May 29, 2015 15:16:09

Michel Picard from KPMG would also be able to attend if we deferred to the 9th. Please check with Bill to see if it's an option. N

From: Kamil.Baig@HydroOne.com [mailto:Kamil.Baig@HydroOne.com]
Sent: Friday, May 29, 2015 03:03 PM
To: Petsche, Nadine (TBS); Virani, Shyrose (TBS)
Subject: RE: To review the OPG and H1 IFRS analysis

Hi Shyrose & Nadine,

Unfortunately I'm out of the office (out of town) on Monday, June 8th and not able to attend on this rescheduled date. Is there any way that we can reschedule for Tuesday June 9th instead so that I can attend as well?

Thanks,

Kamil Baig
(416) 345-5681

-----Original Appointment-----
From: Shyrose.Virani@ontario.ca [mailto:Shyrose.Virani@ontario.ca] **On Behalf Of** Petsche, Nadine (TBS)
Sent: Thursday, May 28, 2015 10:16 AM
To: 'Bill Pelow <Bill.Pelow@auditor.on.ca> (Bill.Pelow@auditor.on.ca)'; 'barry.neilson@auditor.on.ca'; Patel, Bharat (TBS); Rozic, Mark (TBS); CHHELAVDA Samir; alec.cheng@opg.com; 'john.mauti@opg.com'; BAIG Kamil; alexander.kogan@opg.com
Subject: To review the OPG and H1 IFRS analysis
When: Monday, June 08, 2015 1:00 PM-2:00 PM (UTC-05:00) Eastern Time (US & Canada).
Where: 7 Queen's Park Crescent, 1st Floor, Treasury Boardroom

Upon arrival, please call Shyrose Virani at 416-325-1448 to gain entry into our boardroom.

Thanks
Shyrose

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forwards) of the initial email.

Fw_ reference materials.rtf

From: Petsche, Nadine (TBS) []
To: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
Subject: Fw: reference materials
Date: Monday, June 19, 2017 10:58:37
Attachment 1: English Wabigoon Memo to H. Taylor MOECC - Mar 8-17.pdf
Attachment 2: English Wabigoon Memo to H Taylor MOECC - May 25 2017 approved final.pdf

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Please print. N

From: Petsche, Nadine (TBS) <Nadine.Petsche@ontario.ca>
Sent: Friday, June 16, 2017 6:45 PM
To: Suzie Gignac (suzie.r.gignac@ca.ey.com); LeeAnne.Probert@ca.ey.com
Cc: Blake Langill (blake.w.langill@ca.ey.com)
Subject: reference materials

Suzie/Lee Anne,

Further to our discussion yesterday, please find attached the legal letters referenced on the call. You will note specific references to both the mill site as well as the river. If you have any questions in advance of our call, please advise.

Have a great weekend.

Nadine

English Wabigoon Memo to H. Taylor MOECC - Mar 8-17.pdf

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LEGAL ADVICE/CONSIDERATIONS - Subject to Solicitor-Client Privilege

MEMORANDUM

TO: Heather Taylor, Assistant Deputy Minister
Corporate Management Division

FROM: Halyna Perun
Director

DATE: March 8, 2017

RE: Mercury Contamination at the Dryden Industrial Site – Analysis of legal obligations to inform the considerations of liability for the purposes of the application of the Section 3260 "Liability for Contaminated Sites" of the Public Sector Accounting Board standards

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You have asked us whether Ontario has a legal obligation to expend funds related to the delineation and remediation of mercury contamination within the Dryden Industrial Site, which includes the Mercury Waste Disposal Site owned by the numbered company as well as the Gordon Road Property and the Mill portions of the site owned by Domtar, and at various sites within the English and Wabigoon rivers. The advice is provided to assist the Provincial Controller in the Controller's application of the public sector accounting standards on accounting for and reporting liabilities associated with the remediation of contaminated sites.

This analysis considers: (1) the honour of the Crown and its relationship to the Premier's meeting with Chief Fobister on February 10, 2017 (the Meeting), the public statement issued jointly by the Minister of Indigenous Relations and Reconciliation and the Minister of the Environment and Climate Change on February 13, 2017 (the Statement), and the radio interview given on February 14, 2017 (the Interview) by Ministers of the Crown; (2) Ontario's ownership of the beds of the English and Wabigoon rivers; and (3) the 1985 Indemnity provided by Ontario, as it has been interpreted by the courts in the Weyerhaeuser litigation.

In our view, based on the facts as we currently understand them, there is a moderately low risk that a court would find that Ontario is legally required to expend funds to remediate the Dryden Industrial Site and contaminated sites within the rivers outside of what is already required as a result of the Weyerhaeuser litigation. A moderately low risk means that although it is difficult to predict the outcome because there are good arguments on both sides, the court would be more likely than not to dismiss a claim that the Crown has a legal obligation to effect the remediation.

The level of risk would increase significantly were the Crown to look to the owners or previous owners to undertake delineation or remediation work on the broader Dryden Industrial Site or to do further work on the smaller Mercury Waste Disposal Site portion, as the 1985 Indemnity provided by Ontario is likely to apply to create further and larger financial obligations for Ontario.

As the Ministry of the Environment and Climate Change (MOECC) moves forward with an assessment of the delineation and remediation options the Crown should be cognizant that, while the Statement itself does not raise any concerns in relation to negligence, there is an underlying risk that in the event the Crown does not meet the commitments made in the Statement that it, together with the Crown's long involvement in the matter, could be used to form an assertion of negligence.

Honour of the Crown

Our opinion is that there is a moderately low risk that the Statement engages the honour of the Crown in a manner that gives rise to a legal obligation to pay for the remediation costs related to both the Dryden Industrial Site and contaminated sites within the rivers. This means that there is a moderately low risk that if the government were to proceed in a manner different to the commitment made in the Statement, a court would, if asked, declare that the Crown had a legal obligation to remediate, and that the change in government direction amounted to breach of the honour of the Crown and of that legal obligation.

Our analysis in this area is limited by the lack of jurisprudence, but we are able to draw on a number of contextual factors that point to how a court might approach the problem.

1. Factors that may mitigate risk

The honour of the Crown is always at stake in dealings with Aboriginal peoples, but that does not mean the doctrine is always engaged in a legal sense. Under the law as it currently stands, the honour of the Crown does not add legal force to political commitments – rather it provides a standard against which to assess the Crown's satisfaction of already existing constitutional commitments. We are not aware of legal authority that has found that political commitments such as those contained in the Statement have a sufficient degree of formality or solemnity to engage the honour of the Crown. In general the courts have been cautious to avoid giving legal force to commitments that would traditionally be seen as political in nature.

The following additional factors specific to the present commitment also suggest a lower than moderate risk. The first factor is that the government did not indicate expressly or

implicitly that it would be legally bound, from which it can reasonably be inferred that the government did not intend to be legally bound. Not only did the government choose not to confirm the commitment through legislation, executive order or a contract, the commitment lacked a degree of solemnity associated with commitments concerning constitutional interests. The commitment could have been made more formally than via a private meeting, a press release and a CBC radio interview.

A second factor is that the exercise of constitutional rights is not explicitly stated to be a purpose of the commitment, nor can this be reasonably inferred as the purpose. There is reference to "ensuring the First Nations' rights and interests are at the forefront of decision making around options and implementation", but that is concerned with the manner of remediation, and is not enough, in our view, to ground the commitment in constitutional rights.

The third factor is that at the same time that Ontario communicated the commitment to the First Nations, and although it stated that commitment in clear terms, Ontario also indicated that its commitment may be subject to other interests. We understand that the Premier told Chief Fobister on February 10th that a remediation plan would have to go to Treasury Board for approval. This implies that the commitment was conditional on a balancing exercise involving not only the First Nation's interests but other interests as well, including fiscal realities. Such balancing of interests between First Nation and general public interests is a factor that suggests that there is no legal obligation to remediate.

2. Factors that may increase risk

There are contextual factors that suggest the risk is greater than low. First, the case law is evolving and courts are, in general terms, expanding the reach and operation of the doctrine of the honour of the Crown. Second, satisfaction of the commitment in the Statement would likely affect the capacity of certain First Nations to exercise their constitutional rights, which is the subject matter generally engaged by the honour of the Crown. Third, the equities of the present situation, including the pollution of the river system and the effect of that pollution on the First Nations' fishing rights and general community well-being, would make a court more inclined to conclude that the honour of the Crown was engaged.

There are additional factors specific to the Statement that also move the risk from low to moderately low. First, the commitment was written in the Statement, spoken to the First Nations, and repeated to the public, in clear and definite terms. The Statement itself says that the Ministers are "completely committed…to creating and implementing a comprehensive remediation plan". Further, in a Toronto Star article on February 13, 2017, Chief Fobister is quoted as saying that the Premier told him in the Meeting that the river and mill site would be cleaned. We assume that this accurately reflects what the Premier said and that Chief Fobister would swear to that effect. Next, Minister Murray said in the Interview that Ontario was "absolutely" committed to funding the remediation.

Second, in the February 13, 2017, Toronto Star article, Chief Fobister referred to the commitment as "historic". This suggests that from the First Nation's perspective the

commitment has a degree of importance that goes beyond the merely short-term and contingent.

Third, a court might consider whether the commitment, political or otherwise, was made in good faith. A court will be more comfortable concluding that the honour of the Crown was engaged where the facts show that the Crown made a commitment in bad faith. Evidence that the Crown did not take steps necessary to meet this commitment, could be taken to suggest the Crown never intended to meet the commitment and so had acted in bad faith.

3. Summary of risk

We expect that there are individual Superior Court judges who would likely declare that the Province breached the honour of the Crown if the commitment were not kept, particularly if a different position was taken by the current government in the absence of materially altered circumstances. But the ultimate question is what an appeal court would do when confronted with such a case, possibly in the context of a decision made by a different government. It remains our view that it is more likely than not that an appeal court would decline to declare that the honour of the Crown had been breached by a decision not to remediate.

The precedents that are available indicate that the legal doctrine of the honour of the Crown does not apply here. But we also have a body of law that is still developing, very sympathetic circumstances, and a judicial trend to develop Aboriginal law to respond to bad facts. For all these reasons we continue to assess the risk as moderately low, although we would place the risk within the upper end of that band.

Crown Ownership of the beds of the river system

The MNRF has the authority to manage public lands through the *Public Lands Act*. The MOECC has the statutory responsibility to determine the appropriate remediation options for the Dryden Industrial Site and contaminated sites within the rivers. The Statement alone, however, does not create any obligations on either of these Ministries to effect remediation. In the absence of an order issued by the MOECC or some other legal instrument, there is no legal responsibility on Ontario to remediate either the Dryden Industrial Site or contaminated sites within the rivers.

Impact of the 1985 Indemnity and the effect on Weyerhaeuser litigation

Should the Crown look to the current or previous owners to undertake delineation or remediation work on the Dryden Industrial Site, subject to the appeal referenced below, the 1985 Indemnity provided by Ontario is likely to apply to create a financial obligation for Ontario.

The 1985 Indemnity applies in respect of the presence of “any pollutant” on the Dryden Industrial Site as of 1979, and the discharge of any pollutants, including mercury, from the site. The application of the 1985 Indemnity to work required as a result of a 2011

Order issued by the MOECC to previous owners of the mercury waste disposal site portion of the broader site, Resolute and Weyerhaeuser, has been confirmed by the Superior Court of Ontario. Ontario has appealed this decision to the Court of Appeal. The appeal is scheduled to be heard on May 2nd and 3rd, 2017.

Domtar has now asserted that it benefits from the 1985 Indemnity such that Ontario is required to reimburse Domtar's costs of compliance with an order. The decision of the Ontario Superior Court in Weyerhaeuser would support this view. If Ontario disagrees litigation similar to the ongoing Weyerhaeuser litigation (currently before the Court of Appeal) would be required.

This means that if the Superior Court's judgment is upheld by the Court of Appeal (and subject to any further appeal to the Supreme Court of Canada) then Ontario will be liable to repay Resolute and Weyerhaeuser for costs they incur or have incurred as a result of the order. This would be the case as well for any future orders that might be issued to Resolute, Weyerhaeuser and Domtar or to any future owner of the Site. In light of equally good arguments on both sides, the outcome of the appeal is not reasonably predictable.

Negligence

It is unlikely that the statement would, by itself, give rise to civil liability under the law of either contract or negligence. However, there is an underlying risk that in the event the Crown does not meet the commitments made in the statement that it together with the Crown's long involvement in the matter could be used to form an assertion of negligence on the part of the Crown.

The law of negligence does not normally impose any affirmative duty on parties to take positive steps to protect possible plaintiffs from anticipated risks of harm. Duties to take positive action in the face of a known risk or danger are not free-standing; the mere fact that a person faces danger does not itself impose any kind of duty on those in a position to become involved. As a result the law of negligence would not ordinarily impose any positive duty on the Crown to take any action to mitigate that risk.

However, the situation is complicated by the fact that, as the responsible regulator, MOECC has been involved in the efforts to address the risk of mercury contamination at Grassy Narrows for decades. The courts have been clear that regulatory authorities may owe a duty of care in negligence to members of the public who are adversely affected by the regulator's activities. Claims based on alleged regulatory negligence are highly fact-specific and going forward the MOECC and other Ministries involved will need to carefully consider the applicable regulatory frameworks and the full history of the government's factual involvement in this matter, including, most notably, any interactions between government officials and the affected FN communities.

A claim for regulatory negligence could relate exclusively to MOECC's recent efforts to address mercury contamination at Grassy Narrows and may also incorporate issues related to the Crown's past conduct. However, it is clear that the recent commitments made by the Minister could be asserted as part of the contextual foundation for a duty of

care on the part of MOECC. Canadian courts have been clear that representations made by responsible regulatory authorities, coupled with reasonable reliance on the part of affected members of the public, will be a highly significant feature of the proximity analysis. Depending on all of the surrounding facts, a court could construe the Ministers' Statement as evidence of either:

(a) a voluntary assumption by the Crown of a duty to take positive action to ensure the remediation of the Grassy Narrows mercury contamination on a going forward basis; or

(b) an acknowledgement of the Crown's broader involvement in the risk of harm resulting from the mercury contamination at Grassy Narrows.

Obviously, the precise manner that the Minister's commitment might be presented by an injured plaintiff will turn entirely on the surrounding circumstances and it is not possible to exhaustively assess the risks associated with the Statement in the abstract. However, we would point out that the legal risk that a court would recognize a duty of care against the Crown in this case may be aggravated by the fact that the affected First Nation communities are unusually vulnerable and dependent upon the Crown to take steps to protect their interests and, therefore, more likely to reasonably rely on the commitments made in respect of them and to them by the Minister.

English Wabigoon Memo to H Taylor MOECC - May 25 2017 approved final.pdf

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LEGAL ADVICE/CONSIDERATIONS - Subject to Solicitor-Client Privilege

MEMORANDUM

TO: Heather Taylor, Assistant Deputy Minister
Corporate Management Division

FROM: Halyna Perun
Director

DATE: May 25, 2017

RE: Mercury Contamination at the Dryden Industrial Site – Analysis of legal obligations to inform the considerations of liability for the purposes of the application of the Section 3260 "Liability for Contaminated Sites" of the Public Sector Accounting Board standards

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You have asked us to update the opinion we provided dated March 8, 2017 (attached), concerning whether Ontario has a legal obligation to expend funds related to the delineation and remediation of mercury contamination within the Dryden Industrial Site, which includes a mercury waste disposal site owned by a numbered company as well as the Gordon Road Property and the mill portions of the site owned by Domtar Inc. (the "Mill site"), and at various sites within the English and Wabigoon rivers. We understand that you have requested this advice to assist the Provincial Controller in the Controller's application of the public sector accounting standards on accounting for and reporting liabilities associated with the remediation of contaminated sites.

This updated opinion adds the consideration of the following information that has come to our knowledge after the preparation of the March 8, 2017 opinion:

- statements made by Minister Murray on May 2, 2017, in the Legislative Assembly and repeated in a subsequent meeting between Ministers Murray and Zimmer

and other Ontario Representatives with Grassy Narrows First Nation and Wabaseemoong Independent Nations; and

- the owner of the Mill site, Domtar Inc., will be required to investigate the extent of mercury contamination at the Mill site and within leased portions of the Wabigoon River to determine whether the site is an ongoing source of mercury contamination through the issuance of an order under the *Environmental Protection Act*, R.S.O. 1990 c. 19 ("EPA") (the "EPA Order").

Background

During the 1960s and 1970s, a chlor-alkali plant in Dryden discharged approximately 10 metric tonnes of mercury into the Wabigoon River, affecting the English-Wabigoon River system. In 1970, this release was reduced by 99 percent, and in 1975 the plant was decommissioned. In 1977, Grassy Narrows First Nation and Wabaseemoong Independent Nations brought a lawsuit against the current and former property owners with respect to the contamination. A settlement to the litigation was reached in 1985 and was participated in by Canada and Ontario (the "1985 Settlement Agreement").

The *English and Wabigoon River Systems Mercury Contamination Settlement Agreement Act*[1], gave effect to the 1985 Settlement Agreement and established the Mercury Disability Board. Canada enacted its own more limited enabling legislation.[2]. The 1985 Settlement Agreement also included for an indemnity granted by Ontario to a the 1985 owner of the site, Great Lakes Inc., and its immediate predecessor, Reed Ltd., in respect of the presence of "any pollutant" on the Dryden Industrial Site as of December 17, 1979, and the discharge of any of those pollutants, including mercury, from the site (the "1985 Indemnity").

Wastes from the decommissioning of the chlor-alkali plant were deposited in an on-site mercury waste disposal site, the ownership of which was subsequently transferred to a numbered company (the "Mercury Waste Disposal Site"). Natural attenuation of the mercury in the rivers through sediment deposition and movement, rather than active remediation, has been the remediation method adopted since the historic mercury discharges occurred. Ontario considered other remediation options in 1986 but decided, based on scientific, fiscal and socio-economic evidence available at the time, that more active remediation options were not viable.

While mercury levels in fish in parts of the English and Wabigoon Rivers have declined since the 1970s, fish sampling has shown that mercury levels in fish remain high and consumption advisories remain in effect in many parts of the rivers for both the general and sensitive populations. Recent ground water and river sediment testing have also shown high levels of mercury. In response, Ontario has committed to "addressing mercury contamination in the river *[sic]* by collaborating with the First Nations and other

[1] S.O. 1986, C.23
[2] *Grassy Narrows and Islington Indian Bands Mercury Pollution Claims Settlement Act*, S.C. 1986, c. 23

partners on solutions based on the best available science and research". Part of this commitment includes funding Grassy Narrows First Nation and Wabaseemoong Independent Nations to undertaken sediment sampling and related research within the English-Wabigoon River system. There is also a proposal to issue the EPA Order to Domtar Inc. to determine whether the Mill site is an ongoing source of mercury contamination.

Three other First Nation communities also fish and hunt within the English- Wabigoon River system: Eagle Lake First Nation, Wabigoon First Nation and the Wabauskang First Nation; and as a result may also be affected by contamination in the rivers.

Summary

The 1985 Indemnity and the Weyerhaeuser Litigation

In our view, based on the facts as we currently understand them, there is a high risk that a court would find that Ontario has a legal obligation to repay costs incurred by Domtar Inc. in respect of the remediation of the Dryden Industrial Site and sites within the leased areas of the Wabigoon River. We reach this conclusion because of the 2016 decision of the Ontario Superior Court of Justice in *Weyerhaeuser v. Ontario (AG),* which applied the 1985 Indemnity to a procedural order issued under the EPA to Weyerhaeuser Company Ltd ("Weyerhaeuser") and Resolute FP Canada Inc. ("Resolute") in 2011 (the "2011 Director's Order"). A high risk means that, while there are credible arguments to dismiss a challenge, the relevant court would very likely find against Ontario.

The level of risk has increased to high since the March 8, 2017 opinion because of the intention to issue the EPA Order to Domtar Inc. as the 1985 Indemnity provided by Ontario is likely to apply to create financial obligations for Ontario in respect of such work.

Honour of the Crown

In addition, our view is that there is a moderate risk that a court would find that Ontario has a legal obligation arising from the honour of the Crown to expend funds to remediate the English-Wabigoon River system generally, as well as the Dryden Industrial Site, including leased areas of the Wabigoon River. A moderate risk means that, in light of good arguments on each side, the outcome is not reasonably predictable.

Regulatory Negligence

We would also like to restate and expand upon our concerns with respect to the significant negligence risks inherent in the remediation approach that is being contemplated for the English- Wabigoon River system. The proposal as we understand it would have Grassy Narrows First Nation and Wabaseemoong Independent Nations as the principal actors in the remediation efforts in the river. The same concerns apply

to the Mill site should the government return to its previous position of having Grassy Narrows First Narion lead that work. While these concerns do not create a current financial liability, the level of the Crown's liability would increase if there is a successful claim for regulatory negligence. A claim alleging regulatory negligence could relate to MOECC's recent efforts to address mercury contamination and may also incorporate issues related to the Crown's past conduct. Claims based on regulatory negligence are highly fact specific and consideration will need to be given to the applicable regulatory framework and the full history of government involvement including any interactions between government officials and the affected First Nation.

To the extent that the MOECC is seen to be abrogating its role as a regulatory authority by allowing Grassy Narrows First Nation and Wabaseemoong Independent Nations to take the lead in addressing environmental contamination, this may attract a regulatory negligence claim if the MOECC does not exercise its regulatory oversight in its usual way and if the contamination is not adequately addressed. Further, should those remediation efforts not result in a satisfactory remediation of the mercury contamination, there is a significant risk that Ontario will be liable in negligence for future harms resulting from that contamination. Therefore, while Ontario has committed repeatedly to an active role for both First Nations in the remediation work it will be advisable to ensure that their role does not amount to an abdication of Ontario's regulatory responsibilities.

While a relatively strong argument may be made that the 1985 Settlement Agreement and the *English and Wabigoon River Systems Mercury Contamination Settlement Agreement Act* extinguished the First Nations' rights to all damages, even under a head of action for "Regulatory Negligence", Grassy Narrows and Wabaseemoong First Nations could reasonably argue that the settlement was not intended to apply to any negligent conduct occurring after the settlement was reached. In so far as post settlement discharges from the Dryden Industrial Site are concerned, the settlement does not release Ontario or the then or subsequent owners of the land in relation to new omissions or commissions that created new damages or which increased the pollution level of the river system. Early identification of issues, regular contact, and appropriate regulatory oversight of those effecting the remediation may assist in mitigating some of the risk. The settlement would also not preclude claims being made by the Eagle Lake First Nation, Wabigoon First Nation or the Wabauskang First Nation.

And finally, Grassy Narrows First Nation has asserted that at the time of the settlement it was not aware of the establishment of the mercury waste disposal site within the Dryden Industrial Site. Either Grassy Narrows or Wabaseemoong Independent Nations could assert this fact in an attempt to attack the legality of the 1985 Settlement Agreement including the extinguishment of future claims. This is an issue that would have to be further assessed if asserted by the First Nations.

Discussion

This following analysis considers:

- the 1985 Indemnity provided by Ontario, as it has been interpreted by the courts in the Weyerhaeuser litigation;

- the honour of the Crown and its relationship to: the Premier's meeting with Chief Fobister on February 10, 2017 (the February Meeting); the public statement (the Statement) issued jointly by the Minister of Indigenous Relations and Reconciliation (Minister Zimmer) and the Minister of the Environment and Climate Change (Minister Murray) on February 13, 2017; the radio interview given on February 14, 2017 by Ministers of the Crown (the Interview); Minister Murray's statements to the Legislative Assembly on May 2, 2017; and statements made by Ontario's representatives at the meeting with Chief Fobister on May 2, 2017 (the May Meeting);

- Ontario's ownership of the beds of the English and Wabigoon rivers; and

- the law of contract and the law of negligence.

Impact of the 1985 Indemnity and the effect on the Weyerhaeuser litigation

Subsequent to our March 8, 2017 opinion, MOECC has indicated an intention to require Domtar Inc. to investigate the extent of mercury contamination within the Mill site and the portions of the Wabigoon River leased by Domtar Inc. in accordance with the EPA Order. If contamination is found, additional orders requiring the mercury contamination to be contained and remediated are probable. Subject to a successful appeal (referenced below), the 1985 Indemnity provided by Ontario will apply to create a financial obligation on Ontario for the costs of Domtar Inc. and others to comply with such requirements.

We reach this conclusion because the 2016 decision of the Ontario Superior Court of Justice in *Weyerhaeuser v. Ontario (AG)*. There, the Court held that the 1985 Indemnity which provides for indemnification in respect of any claim, action or proceeding in respect of the presence of "any pollutant" on the Dryden Industrial Site as of December 17, 1979, and the discharge of any of those pollutants, including mercury, from the site, included the 2011 Director's Order issued to Weyerhaeuser and Resolute.

The decision was premised on the findings that Weyerhaeuser, as a successor in title to a portion of the Dryden Industrial Site, could benefit from the 1985 Indemnity. Domtar Inc. has indicated that it will assert that it is also such a beneficiary of the 1985 Indemnity and will seek reimbursement of its costs.

Ontario has appealed this Superior Court decision to the Court of Appeal. The appeal was heard on May 2 and 3, 2017. The decision has been reserved and is expected by

November 3, 2017. For practical purposes, Ontario's obligation to Weyerhaeuser and Resolute is stayed pending the outcome of the appeal.

If the Superior Court's judgment is upheld by the Court of Appeal (and subject to any further appeal to the Supreme Court of Canada), Ontario is liable to repay Resolute and Weyerhaeuser for costs they incur or have incurred as a result of the 2011 Director's Order. This would be the case as well for the EPA Order proposed to be issued to Domtar Inc. and any future orders that might be issued to Resolute, Weyerhaeuser, Domtar Inc. or to any future owner of the Site.

Honour of the Crown

This part considers the application of the legal doctrine of the honour of the Crown to public and private statements made by the Premier and Ministers Murray and Zimmer in February 2017 and in May 2017. In the first set of statements, in February, Ontario committed publicly *via* media release and by radio interview, and in person directly to the First Nations' Chiefs, that it would remediate the Dryden Industrial Site and the English-Wabigoon River system. This commitment was repeated in the second set of statements on May 2, 2017 by Minister Murray in the Legislature, and by Ministers Murray and Zimmer in person directly to the First Nations' Chiefs.

We have considered these statements in light of the emerging and relatively undeveloped legal doctrine of the honour of the Crown. Our opinion is that there is a moderate risk that the government's statements made to Grassy Narrows and Wabaseemoong Independent Nations directly and indirectly engage the honour of the Crown in a manner that gives rise to a legal obligation to pay for the remediation costs related to both the Dryden Industrial Site and contaminated sites within the rivers. More specifically, there is a moderate risk that if the current or a subsequent government were to proceed in a manner that differs from the stated commitment to remediate, a court would, if asked, declare that the Crown had a legal obligation to remediate, and that the change in government direction amounted to breach of the honour of the Crown and of that legal obligation. We further note that to the extent a court concluded that a failure to carry out commitments jeopardized constitutional rights, a court might also be willing to grant injunctive relief against the Crown and order that it honour its commitments.

On the one hand, the legal precedents that are available have not applied the doctrine of the honour of the Crown to any set of facts similar to those present here. Traditional Western formal markers of legal commitment such as a contract, or the creation of a trust, are so far absent, and there is present uncertainty over the cost of remediation and hence the bounds of the Crown commitment. Based on the existing case law it also remains open to us to argue that the honour of the Crown does not itself give rise to obligations. On the other hand, the law relating to the honour of the Crown is still developing, Ontario has made repeated public and private commitments to Grassy Narrows to remediate the river, there are very sympathetic circumstances, and there is a judicial trend to develop Aboriginal law principles expansively to respond to bad facts.

The ultimate question is what an appeal court would do when confronted with an assertion that the Province had breached the honour of the Crown if the commitment were not kept. Our view is that there is a moderate risk that an appeal court would declare that Ontario's commitments have engaged the honour of the Crown thereby creating an obligation to remediate, and that failure to do so, either by the current or a subsequent government, would represent a breach of the Crown's honour and that obligation.

As noted above, our analysis in this area is limited by the lack of jurisprudence directly on point, but we are able to draw the following contextual factors that point to how a court might approach the problem.

1. Factors that may mitigate risk

The honour of the Crown is always at stake in dealings with Aboriginal peoples, but that does not mean the doctrine is always engaged in a legal sense. Under the law as the courts have described it to date, the honour of the Crown does not add legal force to political commitments – rather, it provides a standard against which to assess the Crown's satisfaction of already existing commitments that have a constitutional character. In some respects, the issue may be framed in terms of whether the commitment was made on behalf of the Crown or merely the government as currently constituted. We are not aware of legal authority that has found that political commitments such as those contained in the Statement, and repeated since, have a sufficient degree of formality or solemnity to engage the honour of the Crown. In general the courts have been cautious to avoid giving legal force to commitments that would traditionally be seen as political in nature.

The following additional factors specific to the present commitment tend to lower the risk. The first factor is that the government did not indicate expressly that it would be legally bound, from which could reasonably be inferred that the government did not intend to be legally bound. The government has chosen not to confirm the commitment through legislation, executive order, contract, or the creation of a trust, in spite of direct requests by Grassy Narrows; moreover, the commitment lacked some of the solemnity associated with commitments concerning constitutional interests. The commitment could have been made more formally than *via* private meetings, a press release, a CBC radio interview, and answers to questions in the Legislative Assembly.

A second factor is that the exercise of constitutional rights is not explicitly stated to be a purpose of the commitment, nor can this be clearly inferred as the purpose. There is reference in the Statement to "ensuring the First Nations' rights and interests are at the forefront of decision making around options and implementation", but that is more concerned with the manner of remediation, and is likely not enough on its own, in our view, to ground the commitment in constitutional rights.

The third factor is that at the same time that Ontario first communicated the commitment to Grassy Narrows, and although it stated that commitment in clear terms, Ontario also

indicated that its commitment may be subject to other interests. Specifically, we understand that the Premier told Chief Fobister at the February Meeting that a remediation plan would have to go to Treasury Board for approval. This implies that the commitment was conditional on a balancing exercise involving not only the First Nation's interests but other interests as well, including fiscal realities. Such balancing of interests between those of a First Nation and those of the general public is a factor that may suggest that there is no legal obligation to remediate.

At the May Meeting, Ministers Murray and Zimmer again referred to the need for a remediation plan to go to Treasury Board. On this occasion, however, they did not do so in a manner that clearly qualified the government's commitment to remediate.

2. Factors that increase risk

There are contextual factors that increase the risk. First, the case law is evolving and courts are, in general terms, expanding the reach and operation of the doctrine of the honour of the Crown. While there is no established legal principle that would apply to and govern these facts, courts have shown a willingness in this developing area of law to shape principles and to fashion results that accord with their underlying conception of fairness in relations between the Crown and Aboriginal peoples. Second, satisfaction of the commitment to remediate would likely affect the capacity of certain First Nations to exercise their constitutional rights, which is the subject matter generally engaged by the honour of the Crown. Third, the equities of the present situation, including the pollution of the river system and the effect of that pollution on the First Nations' treaty-protected fishing rights and general community well-being, would make a court more inclined to conclude that the honour of the Crown was engaged.

There are additional factors specific to the commitment that also in our view increase the risk from moderately low to moderate. First, the commitment was written in the Statement, spoken to the First Nations, repeated to the public, and stated in the Legislative Assembly, in clear and definite terms. The Statement itself says that the Ministers are "completely committed…to creating and implementing a comprehensive remediation plan". Further, in a Toronto Star article on February 13, 2017, Chief Fobister is quoted as saying that the Premier told him in the February Meeting that the river and mill site would be cleaned. We assume that this accurately reflects what the Premier said and that Chief Fobister would testify to that effect. Next, Minister Murray said in the Interview that Ontario was "absolutely" committed to funding the remediation. More recently, in the Legislative Assembly Minister Murray said "This government will fully fund and implement Dr. Rudd's recommendations. …the money is on its way to Grassy Narrows, as the bills come in. Mr. Speaker, the cost of this may well be far in excess of $84 million. As a matter of fact, I am guessing that this government's commitment to Grassy Narrows is going to exceed that amount of money."

Second, in the February 13, 2017, Toronto Star article, Chief Fobister referred to the commitment as "historic". This suggests that from the First Nation's perspective the commitment has a degree of importance that goes beyond the merely short-term and contingent.

Third, at the May Meeting, Minister Zimmer read to Grassy Narrows the statements that Minister Murray had made to the Legislative Assembly earlier that same day, and responded to the First Nation's complaint that the commitment was not reflected in the budget. Ontario's representatives explained that Ontario was not able to "book" remediation as a liability in government accounts until it had received remediation recommendations from the environmental scientist Dr. Rudd. Ontario said that it needed to "fill the gaps" before it could book a liability, which we believe would reasonably be understood as referring to the need to obtain clarity on projected costs – not whether Ontario would incur costs. Minister Murray spoke of processes that must be followed to ensure due diligence. In response to a request that money be put aside into a trust as in the 1985 settlement, Minister Murray said that a trust would be complicated and would take the parties away from the progress to date. In essence, at the May Meeting, Ontario said that it was fully committed to remediation, but that it could not yet put money aside in its internal processes until a plan for remediation was developed and a more precise figure for the cost of that remediation was determined. Ontario said it was committed to remediate; the only reason it has not yet put the money aside is that it does not yet know how much to put aside. We understand Ontario representatives at the meeting also made statements that could reasonably be interpreted as suggesting that Ontario was already subject to a legal obligation to remediate, under the EPA; that the discussion was not merely political but directed at the satisfaction of legal obligations.

Fourth, a court might consider whether the commitment, political or otherwise, was made in good faith. A court would be more comfortable concluding that the honour of the Crown was engaged and breached where the facts show that the Crown made a commitment in bad faith. Evidence that the Crown did not take steps necessary to meet this commitment, could be taken to suggest the Crown never intended to meet the commitment and so had acted in bad faith. The more often the commitment is repeated in clear terms, directly, by Ministers of the Crown and senior public servants, and in person-to-person meetings, the greater will be the reasonable expectation of Grassy Narrows that it will be met, and the less will be a court's patience with a failure to meet the commitment. Further, a court will be more likely to conclude that the commitment was made on behalf of the Crown rather than by the government as currently constituted.

For all these reasons above we assess the risk associated with the honour of the Crown as moderate.

Crown Ownership of the beds of the river system

The Ministry of Natural Resources and Forests (MNRF) has the authority to manage public lands through the *Public Lands Act*. The MOECC has the statutory responsibility to determine the appropriate remediation options for the Dryden Industrial Site and contaminated sites within the rivers. In the absence of an order issued by the MOECC to MNRF, some other legal instrument, or a legal obligation engaging the honour of the

Crown, there is no legal responsibility on Ontario to remediate either the Dryden Industrial Site or contaminated sites within the rivers.

Law of Contract and Negligence

Crown Liability for Regulatory Negligence

The law of negligence does not normally impose any affirmative duty on parties to take positive steps to protect possible plaintiffs from anticipated risks of harm. Duties to take positive action in the face of a known risk or danger are not free-standing; the mere fact that a person faces danger does not itself impose any kind of duty on those in a position to become involved. As a result, the law of negligence would not ordinarily impose any positive duty on the Crown to take any action to mitigate that risk.

However, the situation is complicated by the fact that, as the responsible regulator, the MOECC has been involved in the efforts to address the risk of mercury contamination at Grassy Narrows for decades. The courts have been clear that regulatory authorities may owe a duty of care in negligence to members of the public who are adversely affected by the regulator's activities. . In determining whether a regulatory authority owes a duty of care to a member of the public, the court will consider:

- whether the harm suffered by the member of the public was reasonably foreseeable; and
- whether the member of the public was in a "close and direct relationship" with the regulatory authority (i.e., proximity). This proximity analysis will focus on (i) the applicable regulatory scheme and (ii) the interactions between the regulatory authority and the member of the public.

Claims based on alleged regulatory negligence are highly fact-specific and, going forward, the MOECC and other Ministries involved will need to carefully consider the applicable regulatory frameworks and the full history of the province's factual involvement in this matter, including, most notably, any interactions between government officials and the affected First Nations communities. A claim for regulatory negligence could relate exclusively to the MOECC's recent efforts to address mercury contamination at Grassy Narrows and may also incorporate issues related to the Crown's past conduct.

Given the recent events on this file, including the MOECC's review of the most recent proposal by Dr. Rudd, the consultant retained by Grassy Narrows First Nation to investigate the extent of mercury contamination in the English-Wabigoon River system and implement remedial measures, we would restate our concerns with respect to the significant regulatory negligence risks inherent in the remediation approach that is being contemplated for the English-Wabigoon River system: essentially having the Grassy Narrows First Nation and Wabaseemoong Independent Nations as the principal actors in the remediation efforts in the river system. The same concerns apply to the Mill site

should the government return to its previous position of having Grassy Narrows First Nation lead that work as well. We have noted these concerns in the advice we provided in respect of the Statement, as well as in oral briefings and in related materials, notably the presentation prepared for the briefing of Minister Murray on March 30, 2017.

To the extent that the MOECC is seen to be abrogating its regulatory authority by allowing Grassy Narrows First Nation and Wabaseemoong Independent Nations to take the lead in addressing environmental contamination, which is a role customarily taken by the MOECC, in accordance with applicable legislation and employing the MOECC's significant resources and expertise, this may attract a regulatory negligence claim if the MOECC does not exercise its regulatory oversight in its usual way and if the contamination is not adequately addressed. Even if Grassy Narrows First Nation and Wabaseemoong Independent Nations are directly involved in the remediation efforts, Ontario could nevertheless be liable to them or to individual members of these First Nations for any negligence committed by the MOECC in regulating such efforts (of course, if the First Nations themselves acted negligently, it is possible that they could be liable for contributory negligence).

Further, should those remediation efforts not result in a satisfactory remediation of the mercury contamination, there is a significant risk that Ontario will be liable in negligence for future harms resulting from that contamination. This concern is heightened given the historic relationship between Grassy Narrows First Nation, Wabaseemoong Independent Nations and Ontario in the matter such that there is likely a sufficient proximity between the parties to raise a duty of care on the part of Ontario in how it proceeds with the remedial work. A sufficient proximity may also exist between Ontario and other stakeholders, which may include the property owners along the river systems, Domtar Inc., and the City of Dryden, as well as other users of the river system.

The following factors contribute to these risks:

- The matter has been ongoing for decades without a satisfactory resolution, despite remediation efforts led by Ontario in the 1980s.
- Ontario would be permitting Grassy Narrows First Nation and Wabaseemoong Independent Nations to undertake remedial work in relation to mercury contamination in place of the normally responsible parties, Domtar, former property owners and the Crown, despite Grassy Narrows Fist Nation and Wabaseemoong Independent Nations not being responsible for the mercury contamination, and not being experienced parties in terms of conducting environmental remediation of this nature.
- We understand that the remedial work currently proposed by Grassy Narrows First Nation is likely insufficient and does not meet the MOECC's requirements. Further, Grassy Narrows' own scientists have acknowledged that they do not have experience managing such a large and complex project (acknowledging that there are recent efforts in place seeking to address these gaps).
- Stakeholders beyond Grassy Narrows First Nation, including Wabaseemoong Independent Nations, Domtar Inc., the City of Dryden, other property owners and the broader public have not been consulted on the proposed work.

- Domtar Inc. and the other former property owners, who may suffer economic and legal impacts if remediation is not effected properly, have not been given a significant opportunity to address the remediation proposals, most notably the proposal for the rivers.
- The actions taken to date by all parties have not been consistent with the MOECC's compliance policies in respect to environmental contamination nor the MOECC's usual operating practices.
- Statements of government representatives as discussed below.

Therefore, while Ontario has committed repeatedly to an active role for both First nations in the remediation work it will be advisable to ensure that their role does not amount to an abdication of Ontario's regulatory responsibilities. Early identification of issues, regular contact with those effecting the remediation, and appropriate regulatory oversight may assist in mitigating some of the risk. Counsel can assist in developing mitigation strategies.

Impact of the Statements by Government Representatives

It is unlikely that the statements by the Ministers and other representatives of the government, listed above, would, by themselves, give rise to civil liability under the law of either contract or negligence. However, there is an underlying risk that in the event the Crown does not meet the commitments made in the statements that the statements together with the Crown's long involvement in the matter could be used to form an assertion of negligence on the part of the Crown. It is clear that the recent commitments made by government representatives could be asserted as part of the contextual foundation for a duty of care on the part of the MOECC. Canadian courts have been clear that representations made by responsible regulatory authorities, coupled with reasonable reliance on the part of affected members of the public, will be a highly significant feature of the proximity analysis. Depending on all of the surrounding facts, a court could construe the statements as evidence of either:

(a) a voluntary assumption by the Crown of a duty to take positive action to ensure the remediation of the mercury contamination on a going forward basis; or

(b) an acknowledgement of the Crown's broader involvement in the risk of harm resulting from the mercury contamination.

The precise manner in which the statements might be presented by an injured plaintiff will turn entirely on the surrounding circumstances and it is not possible to exhaustively assess the risks associated with the statements in the abstract. However, we would point out that the legal risk that a court would recognize a duty of care against the Crown in this case may be aggravated by the fact that the affected First Nation communities are unusually vulnerable and dependent upon the Crown to take steps to

protect their interests and, therefore, more likely to reasonably rely on the commitments made in respect of them and to them by the government.

Finally, we note that the Crown could potentially argue that any statements made by the Minister in the legislature are not admissible as evidence in a court proceeding because those statements are protected by parliamentary privilege.[3] However, parliamentary privilege would not apply to a statement made by the Minister in the legislature that was subsequently repeated by the Minister outside of the legislature.

Impact of the 1986 English and Wabigoon River Systems Mercury Contamination Settlement Agreement Act

As many as five First Nation communities may be impacted by the mercury contamination of the English and Wabigoon river system: Grassy Narrows First Nations, Wabaseemoong Independent Nations, Eagle Lake First Nation, Wabigoon First Nation and Wabauskang First Nation. It is possible that Eagle Lake First Nation, Wabigoon First Nation and Wabauskang First Nation could bring claims in negligence and regulatory negligence, as set out above.

In so far as Grassy Narrows First Nation and Wabaseemoong Independent Nations are concerned, If either of these communities sought to bring an action against the Crown, the community would need to establish that its cause of action against the Crown was not abolished pursuant to the 1985 Settlement Agreement and s. 39 of the *English and Wabigoon River Systems Mercury Contamination Settlement Agreement Act* which provides:

> **39**. All existing and future rights of action of the Bands and of every past, existing or future member of the Bands, and the estates thereof, in respect of claims and causes of action which are the subject of the settlement are, in consideration of and pursuant to the settlement, abolished.

The Act specifically defines the “settlement” as a settlement of disputes relating to the discharge of certain pollutants into the English and Wabigoon and related river systems and the effects which such pollutants, “and the continuing but now diminished presence of methylmercury in the related ecosystems may have had and may continue to have upon…the social and economic circumstances and the health of present and future members of the Bands”.[4]

A relatively strong argument may be made that Grassy Narrows First Nation and Wabaseemoong Independent Nations extinguished their rights to all damages, even under a head of action for “Regulatory Negligence”, for claims arising from the contamination level of the River pre-1985 and as of the date of settlement.

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[3] *Capital Markets Technologies, Inc. v. Prince Edward Island*, 2016 PESC 4 at paras. 32-36

[4] *English and Wabigoon River Systems Mercury Contamination Settlement Agreement Act*, s. 1, “settlement”.

However, Grassy Narrows First Nation and Wabaseemoong Independent Nations could reasonably argue that the settlement was not intended to apply to any possible future negligent conduct occurring after the settlement was reached. Thus, the communities could claim against Ontario and the companies for damages caused since 1985 through new omissions or commissions that created new damages or which increased the pollution level of the river system.

In so far as discharges from the Dryden Industrial Site, including the Mercury Waste Disposal Site, are concerned, the settlement does not release Ontario or the then or subsequent owners of the land from actions for damages arising from further discharges of mercury onto or into neighbouring treaty land or water.

Finally, it should be noted that in March 2016, the Chief of the Grassy Narrows First Nation wrote to Minister Murray alleging that the community had never been made aware at the time of the settlement of the existence of the Mercury Waste Disposal Site. This allegation would need to be further researched against the historical record in order to be assessed We are not aware if Wabaseemoong Independent Nations would make a similar allegation, nor whether either of the two First Nations would assert this fact in an attempt to attack the legality of the settlement agreement including the extinguishment of future claims. This is an issue that would have to be further assessed if asserted by the First Nations.

Fw_ reference materials.rtf

From: Petsche, Nadine (TBS) []
To: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
Subject: Fw: reference materials
Date: Monday, June 19, 2017 10:58:37
Attachment 1: English Wabigoon Memo to H. Taylor MOECC - Mar 8-17.pdf
Attachment 2: English Wabigoon Memo to H Taylor MOECC - May 25 2017 approved final.pdf

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Please print. N

From: Petsche, Nadine (TBS) <Nadine.Petsche@ontario.ca>
Sent: Friday, June 16, 2017 6:45 PM
To: Suzie Gignac (suzie.r.gignac@ca.ey.com); LeeAnne.Probert@ca.ey.com
Cc: Blake Langill (blake.w.langill@ca.ey.com)
Subject: reference materials

Suzie/Lee Anne,

Further to our discussion yesterday, please find attached the legal letters referenced on the call. You will note specific references to both the mill site as well as the river. If you have any questions in advance of our call, please advise.

Have a great weekend.

Nadine

English Wabigoon Memo to H. Taylor MOECC - Mar 8-17.pdf

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LEGAL ADVICE/CONSIDERATIONS - Subject to Solicitor-Client Privilege

MEMORANDUM

TO: Heather Taylor, Assistant Deputy Minister
Corporate Management Division

FROM: Halyna Perun
Director

DATE: March 8, 2017

RE: Mercury Contamination at the Dryden Industrial Site – Analysis of legal obligations to inform the considerations of liability for the purposes of the application of the Section 3260 "Liability for Contaminated Sites" of the Public Sector Accounting Board standards

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You have asked us whether Ontario has a legal obligation to expend funds related to the delineation and remediation of mercury contamination within the Dryden Industrial Site, which includes the Mercury Waste Disposal Site owned by the numbered company as well as the Gordon Road Property and the Mill portions of the site owned by Domtar, and at various sites within the English and Wabigoon rivers. The advice is provided to assist the Provincial Controller in the Controller's application of the public sector accounting standards on accounting for and reporting liabilities associated with the remediation of contaminated sites.

This analysis considers: (1) the honour of the Crown and its relationship to the Premier's meeting with Chief Fobister on February 10, 2017 (the Meeting), the public statement issued jointly by the Minister of Indigenous Relations and Reconciliation and the Minister of the Environment and Climate Change on February 13, 2017 (the Statement), and the radio interview given on February 14, 2017 (the Interview) by Ministers of the Crown; (2) Ontario's ownership of the beds of the English and Wabigoon rivers; and (3) the 1985 Indemnity provided by Ontario, as it has been interpreted by the courts in the Weyerhaeuser litigation.

In our view, based on the facts as we currently understand them, there is a moderately low risk that a court would find that Ontario is legally required to expend funds to remediate the Dryden Industrial Site and contaminated sites within the rivers outside of what is already required as a result of the Weyerhaeuser litigation. A moderately low risk means that although it is difficult to predict the outcome because there are good arguments on both sides, the court would be more likely than not to dismiss a claim that the Crown has a legal obligation to effect the remediation.

The level of risk would increase significantly were the Crown to look to the owners or previous owners to undertake delineation or remediation work on the broader Dryden Industrial Site or to do further work on the smaller Mercury Waste Disposal Site portion, as the 1985 Indemnity provided by Ontario is likely to apply to create further and larger financial obligations for Ontario.

As the Ministry of the Environment and Climate Change (MOECC) moves forward with an assessment of the delineation and remediation options the Crown should be cognizant that, while the Statement itself does not raise any concerns in relation to negligence, there is an underlying risk that in the event the Crown does not meet the commitments made in the Statement that it, together with the Crown's long involvement in the matter, could be used to form an assertion of negligence.

Honour of the Crown

Our opinion is that there is a moderately low risk that the Statement engages the honour of the Crown in a manner that gives rise to a legal obligation to pay for the remediation costs related to both the Dryden Industrial Site and contaminated sites within the rivers. This means that there is a moderately low risk that if the government were to proceed in a manner different to the commitment made in the Statement, a court would, if asked, declare that the Crown had a legal obligation to remediate, and that the change in government direction amounted to breach of the honour of the Crown and of that legal obligation.

Our analysis in this area is limited by the lack of jurisprudence, but we are able to draw on a number of contextual factors that point to how a court might approach the problem.

1. Factors that may mitigate risk

The honour of the Crown is always at stake in dealings with Aboriginal peoples, but that does not mean the doctrine is always engaged in a legal sense. Under the law as it currently stands, the honour of the Crown does not add legal force to political commitments – rather it provides a standard against which to assess the Crown's satisfaction of already existing constitutional commitments. We are not aware of legal authority that has found that political commitments such as those contained in the Statement have a sufficient degree of formality or solemnity to engage the honour of the Crown. In general the courts have been cautious to avoid giving legal force to commitments that would traditionally be seen as political in nature.

The following additional factors specific to the present commitment also suggest a lower than moderate risk. The first factor is that the government did not indicate expressly or

implicitly that it would be legally bound, from which it can reasonably be inferred that the government did not intend to be legally bound. Not only did the government choose not to confirm the commitment through legislation, executive order or a contract, the commitment lacked a degree of solemnity associated with commitments concerning constitutional interests. The commitment could have been made more formally than via a private meeting, a press release and a CBC radio interview.

A second factor is that the exercise of constitutional rights is not explicitly stated to be a purpose of the commitment, nor can this be reasonably inferred as the purpose. There is reference to "ensuring the First Nations' rights and interests are at the forefront of decision making around options and implementation", but that is concerned with the manner of remediation, and is not enough, in our view, to ground the commitment in constitutional rights.

The third factor is that at the same time that Ontario communicated the commitment to the First Nations, and although it stated that commitment in clear terms, Ontario also indicated that its commitment may be subject to other interests. We understand that the Premier told Chief Fobister on February 10th that a remediation plan would have to go to Treasury Board for approval. This implies that the commitment was conditional on a balancing exercise involving not only the First Nation's interests but other interests as well, including fiscal realities. Such balancing of interests between First Nation and general public interests is a factor that suggests that there is no legal obligation to remediate.

2. Factors that may increase risk

There are contextual factors that suggest the risk is greater than low. First, the case law is evolving and courts are, in general terms, expanding the reach and operation of the doctrine of the honour of the Crown. Second, satisfaction of the commitment in the Statement would likely affect the capacity of certain First Nations to exercise their constitutional rights, which is the subject matter generally engaged by the honour of the Crown. Third, the equities of the present situation, including the pollution of the river system and the effect of that pollution on the First Nations' fishing rights and general community well-being, would make a court more inclined to conclude that the honour of the Crown was engaged.

There are additional factors specific to the Statement that also move the risk from low to moderately low. First, the commitment was written in the Statement, spoken to the First Nations, and repeated to the public, in clear and definite terms. The Statement itself says that the Ministers are "completely committed…to creating and implementing a comprehensive remediation plan". Further, in a Toronto Star article on February 13, 2017, Chief Fobister is quoted as saying that the Premier told him in the Meeting that the river and mill site would be cleaned. We assume that this accurately reflects what the Premier said and that Chief Fobister would swear to that effect. Next, Minister Murray said in the Interview that Ontario was "absolutely" committed to funding the remediation.

Second, in the February 13, 2017, Toronto Star article, Chief Fobister referred to the commitment as "historic". This suggests that from the First Nation's perspective the

commitment has a degree of importance that goes beyond the merely short-term and contingent.

Third, a court might consider whether the commitment, political or otherwise, was made in good faith. A court will be more comfortable concluding that the honour of the Crown was engaged where the facts show that the Crown made a commitment in bad faith. Evidence that the Crown did not take steps necessary to meet this commitment, could be taken to suggest the Crown never intended to meet the commitment and so had acted in bad faith.

3. Summary of risk

We expect that there are individual Superior Court judges who would likely declare that the Province breached the honour of the Crown if the commitment were not kept, particularly if a different position was taken by the current government in the absence of materially altered circumstances. But the ultimate question is what an appeal court would do when confronted with such a case, possibly in the context of a decision made by a different government. It remains our view that it is more likely than not that an appeal court would decline to declare that the honour of the Crown had been breached by a decision not to remediate.

The precedents that are available indicate that the legal doctrine of the honour of the Crown does not apply here. But we also have a body of law that is still developing, very sympathetic circumstances, and a judicial trend to develop Aboriginal law to respond to bad facts. For all these reasons we continue to assess the risk as moderately low, although we would place the risk within the upper end of that band.

Crown Ownership of the beds of the river system

The MNRF has the authority to manage public lands through the *Public Lands Act*. The MOECC has the statutory responsibility to determine the appropriate remediation options for the Dryden Industrial Site and contaminated sites within the rivers. The Statement alone, however, does not create any obligations on either of these Ministries to effect remediation. In the absence of an order issued by the MOECC or some other legal instrument, there is no legal responsibility on Ontario to remediate either the Dryden Industrial Site or contaminated sites within the rivers.

Impact of the 1985 Indemnity and the effect on Weyerhaeuser litigation

Should the Crown look to the current or previous owners to undertake delineation or remediation work on the Dryden Industrial Site, subject to the appeal referenced below, the 1985 Indemnity provided by Ontario is likely to apply to create a financial obligation for Ontario.

The 1985 Indemnity applies in respect of the presence of “any pollutant” on the Dryden Industrial Site as of 1979, and the discharge of any pollutants, including mercury, from the site. The application of the 1985 Indemnity to work required as a result of a 2011

Order issued by the MOECC to previous owners of the mercury waste disposal site portion of the broader site, Resolute and Weyerhaeuser, has been confirmed by the Superior Court of Ontario. Ontario has appealed this decision to the Court of Appeal. The appeal is scheduled to be heard on May 2nd and 3rd, 2017.

Domtar has now asserted that it benefits from the 1985 Indemnity such that Ontario is required to reimburse Domtar's costs of compliance with an order. The decision of the Ontario Superior Court in Weyerhaeuser would support this view. If Ontario disagrees litigation similar to the ongoing Weyerhaeuser litigation (currently before the Court of Appeal) would be required.

This means that if the Superior Court's judgment is upheld by the Court of Appeal (and subject to any further appeal to the Supreme Court of Canada) then Ontario will be liable to repay Resolute and Weyerhaeuser for costs they incur or have incurred as a result of the order. This would be the case as well for any future orders that might be issued to Resolute, Weyerhaeuser and Domtar or to any future owner of the Site. In light of equally good arguments on both sides, the outcome of the appeal is not reasonably predictable.

Negligence

It is unlikely that the statement would, by itself, give rise to civil liability under the law of either contract or negligence. However, there is an underlying risk that in the event the Crown does not meet the commitments made in the statement that it together with the Crown's long involvement in the matter could be used to form an assertion of negligence on the part of the Crown.

The law of negligence does not normally impose any affirmative duty on parties to take positive steps to protect possible plaintiffs from anticipated risks of harm. Duties to take positive action in the face of a known risk or danger are not free-standing; the mere fact that a person faces danger does not itself impose any kind of duty on those in a position to become involved. As a result the law of negligence would not ordinarily impose any positive duty on the Crown to take any action to mitigate that risk.

However, the situation is complicated by the fact that, as the responsible regulator, MOECC has been involved in the efforts to address the risk of mercury contamination at Grassy Narrows for decades. The courts have been clear that regulatory authorities may owe a duty of care in negligence to members of the public who are adversely affected by the regulator's activities. Claims based on alleged regulatory negligence are highly fact-specific and going forward the MOECC and other Ministries involved will need to carefully consider the applicable regulatory frameworks and the full history of the government's factual involvement in this matter, including, most notably, any interactions between government officials and the affected FN communities.

A claim for regulatory negligence could relate exclusively to MOECC's recent efforts to address mercury contamination at Grassy Narrows and may also incorporate issues related to the Crown's past conduct. However, it is clear that the recent commitments made by the Minister could be asserted as part of the contextual foundation for a duty of

care on the part of MOECC. Canadian courts have been clear that representations made by responsible regulatory authorities, coupled with reasonable reliance on the part of affected members of the public, will be a highly significant feature of the proximity analysis. Depending on all of the surrounding facts, a court could construe the Ministers' Statement as evidence of either:

(a) a voluntary assumption by the Crown of a duty to take positive action to ensure the remediation of the Grassy Narrows mercury contamination on a going forward basis; or

(b) an acknowledgement of the Crown's broader involvement in the risk of harm resulting from the mercury contamination at Grassy Narrows.

Obviously, the precise manner that the Minister's commitment might be presented by an injured plaintiff will turn entirely on the surrounding circumstances and it is not possible to exhaustively assess the risks associated with the Statement in the abstract. However, we would point out that the legal risk that a court would recognize a duty of care against the Crown in this case may be aggravated by the fact that the affected First Nation communities are unusually vulnerable and dependent upon the Crown to take steps to protect their interests and, therefore, more likely to reasonably rely on the commitments made in respect of them and to them by the Minister.

English Wabigoon Memo to H Taylor MOECC - May 25 2017 approved final.pdf

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LEGAL ADVICE/CONSIDERATIONS - Subject to Solicitor-Client Privilege

MEMORANDUM

TO: Heather Taylor, Assistant Deputy Minister
Corporate Management Division

FROM: Halyna Perun
Director

DATE: May 25, 2017

RE: Mercury Contamination at the Dryden Industrial Site – Analysis of legal obligations to inform the considerations of liability for the purposes of the application of the Section 3260 "Liability for Contaminated Sites" of the Public Sector Accounting Board standards

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You have asked us to update the opinion we provided dated March 8, 2017 (attached), concerning whether Ontario has a legal obligation to expend funds related to the delineation and remediation of mercury contamination within the Dryden Industrial Site, which includes a mercury waste disposal site owned by a numbered company as well as the Gordon Road Property and the mill portions of the site owned by Domtar Inc. (the "Mill site"), and at various sites within the English and Wabigoon rivers. We understand that you have requested this advice to assist the Provincial Controller in the Controller's application of the public sector accounting standards on accounting for and reporting liabilities associated with the remediation of contaminated sites.

This updated opinion adds the consideration of the following information that has come to our knowledge after the preparation of the March 8, 2017 opinion:

- statements made by Minister Murray on May 2, 2017, in the Legislative Assembly and repeated in a subsequent meeting between Ministers Murray and Zimmer

and other Ontario Representatives with Grassy Narrows First Nation and Wabaseemoong Independent Nations; and

- the owner of the Mill site, Domtar Inc., will be required to investigate the extent of mercury contamination at the Mill site and within leased portions of the Wabigoon River to determine whether the site is an ongoing source of mercury contamination through the issuance of an order under the *Environmental Protection Act*, R.S.O. 1990 c. 19 ("EPA") (the "EPA Order").

Background

During the 1960s and 1970s, a chlor-alkali plant in Dryden discharged approximately 10 metric tonnes of mercury into the Wabigoon River, affecting the English-Wabigoon River system. In 1970, this release was reduced by 99 percent, and in 1975 the plant was decommissioned. In 1977, Grassy Narrows First Nation and Wabaseemoong Independent Nations brought a lawsuit against the current and former property owners with respect to the contamination. A settlement to the litigation was reached in 1985 and was participated in by Canada and Ontario (the "1985 Settlement Agreement").

The *English and Wabigoon River Systems Mercury Contamination Settlement Agreement Act*[1], gave effect to the 1985 Settlement Agreement and established the Mercury Disability Board. Canada enacted its own more limited enabling legislation.[2]. The 1985 Settlement Agreement also included for an indemnity granted by Ontario to a the 1985 owner of the site, Great Lakes Inc., and its immediate predecessor, Reed Ltd., in respect of the presence of "any pollutant" on the Dryden Industrial Site as of December 17, 1979, and the discharge of any of those pollutants, including mercury, from the site (the "1985 Indemnity").

Wastes from the decommissioning of the chlor-alkali plant were deposited in an on-site mercury waste disposal site, the ownership of which was subsequently transferred to a numbered company (the "Mercury Waste Disposal Site"). Natural attenuation of the mercury in the rivers through sediment deposition and movement, rather than active remediation, has been the remediation method adopted since the historic mercury discharges occurred. Ontario considered other remediation options in 1986 but decided, based on scientific, fiscal and socio-economic evidence available at the time, that more active remediation options were not viable.

While mercury levels in fish in parts of the English and Wabigoon Rivers have declined since the 1970s, fish sampling has shown that mercury levels in fish remain high and consumption advisories remain in effect in many parts of the rivers for both the general and sensitive populations. Recent ground water and river sediment testing have also shown high levels of mercury. In response, Ontario has committed to "addressing mercury contamination in the river *[sic]* by collaborating with the First Nations and other

[1] S.O. 1986, C.23
[2] *Grassy Narrows and Islington Indian Bands Mercury Pollution Claims Settlement Act*, S.C. 1986, c. 23

partners on solutions based on the best available science and research". Part of this commitment includes funding Grassy Narrows First Nation and Wabaseemoong Independent Nations to undertaken sediment sampling and related research within the English-Wabigoon River system. There is also a proposal to issue the EPA Order to Domtar Inc. to determine whether the Mill site is an ongoing source of mercury contamination.

Three other First Nation communities also fish and hunt within the English- Wabigoon River system: Eagle Lake First Nation, Wabigoon First Nation and the Wabauskang First Nation; and as a result may also be affected by contamination in the rivers.

Summary

The 1985 Indemnity and the Weyerhaeuser Litigation

In our view, based on the facts as we currently understand them, there is a high risk that a court would find that Ontario has a legal obligation to repay costs incurred by Domtar Inc. in respect of the remediation of the Dryden Industrial Site and sites within the leased areas of the Wabigoon River. We reach this conclusion because of the 2016 decision of the Ontario Superior Court of Justice in *Weyerhaeuser v. Ontario (AG),* which applied the 1985 Indemnity to a procedural order issued under the EPA to Weyerhaeuser Company Ltd ("Weyerhaeuser") and Resolute FP Canada Inc. ("Resolute") in 2011 (the "2011 Director's Order"). A high risk means that, while there are credible arguments to dismiss a challenge, the relevant court would very likely find against Ontario.

The level of risk has increased to high since the March 8, 2017 opinion because of the intention to issue the EPA Order to Domtar Inc. as the 1985 Indemnity provided by Ontario is likely to apply to create financial obligations for Ontario in respect of such work.

Honour of the Crown

In addition, our view is that there is a moderate risk that a court would find that Ontario has a legal obligation arising from the honour of the Crown to expend funds to remediate the English-Wabigoon River system generally, as well as the Dryden Industrial Site, including leased areas of the Wabigoon River. A moderate risk means that, in light of good arguments on each side, the outcome is not reasonably predictable.

Regulatory Negligence

We would also like to restate and expand upon our concerns with respect to the significant negligence risks inherent in the remediation approach that is being contemplated for the English- Wabigoon River system. The proposal as we understand it would have Grassy Narrows First Nation and Wabaseemoong Independent Nations as the principal actors in the remediation efforts in the river. The same concerns apply

to the Mill site should the government return to its previous position of having Grassy Narrows First Narion lead that work. While these concerns do not create a current financial liability, the level of the Crown's liability would increase if there is a successful claim for regulatory negligence. A claim alleging regulatory negligence could relate to MOECC's recent efforts to address mercury contamination and may also incorporate issues related to the Crown's past conduct. Claims based on regulatory negligence are highly fact specific and consideration will need to be given to the applicable regulatory framework and the full history of government involvement including any interactions between government officials and the affected First Nation.

To the extent that the MOECC is seen to be abrogating its role as a regulatory authority by allowing Grassy Narrows First Nation and Wabaseemoong Independent Nations to take the lead in addressing environmental contamination, this may attract a regulatory negligence claim if the MOECC does not exercise its regulatory oversight in its usual way and if the contamination is not adequately addressed. Further, should those remediation efforts not result in a satisfactory remediation of the mercury contamination, there is a significant risk that Ontario will be liable in negligence for future harms resulting from that contamination. Therefore, while Ontario has committed repeatedly to an active role for both First Nations in the remediation work it will be advisable to ensure that their role does not amount to an abdication of Ontario's regulatory responsibilities.

While a relatively strong argument may be made that the 1985 Settlement Agreement and the *English and Wabigoon River Systems Mercury Contamination Settlement Agreement Act* extinguished the First Nations' rights to all damages, even under a head of action for "Regulatory Negligence", Grassy Narrows and Wabaseemoong First Nations could reasonably argue that the settlement was not intended to apply to any negligent conduct occurring after the settlement was reached. In so far as post settlement discharges from the Dryden Industrial Site are concerned, the settlement does not release Ontario or the then or subsequent owners of the land in relation to new omissions or commissions that created new damages or which increased the pollution level of the river system. Early identification of issues, regular contact, and appropriate regulatory oversight of those effecting the remediation may assist in mitigating some of the risk. The settlement would also not preclude claims being made by the Eagle Lake First Nation, Wabigoon First Nation or the Wabauskang First Nation.

And finally, Grassy Narrows First Nation has asserted that at the time of the settlement it was not aware of the establishment of the mercury waste disposal site within the Dryden Industrial Site. Either Grassy Narrows or Wabaseemoong Independent Nations could assert this fact in an attempt to attack the legality of the 1985 Settlement Agreement including the extinguishment of future claims. This is an issue that would have to be further assessed if asserted by the First Nations.

Discussion

This following analysis considers:

- the 1985 Indemnity provided by Ontario, as it has been interpreted by the courts in the Weyerhaeuser litigation;

- the honour of the Crown and its relationship to: the Premier's meeting with Chief Fobister on February 10, 2017 (the February Meeting); the public statement (the Statement) issued jointly by the Minister of Indigenous Relations and Reconciliation (Minister Zimmer) and the Minister of the Environment and Climate Change (Minister Murray) on February 13, 2017; the radio interview given on February 14, 2017 by Ministers of the Crown (the Interview); Minister Murray's statements to the Legislative Assembly on May 2, 2017; and statements made by Ontario's representatives at the meeting with Chief Fobister on May 2, 2017 (the May Meeting);

- Ontario's ownership of the beds of the English and Wabigoon rivers; and

- the law of contract and the law of negligence.

Impact of the 1985 Indemnity and the effect on the Weyerhaeuser litigation

Subsequent to our March 8, 2017 opinion, MOECC has indicated an intention to require Domtar Inc. to investigate the extent of mercury contamination within the Mill site and the portions of the Wabigoon River leased by Domtar Inc. in accordance with the EPA Order. If contamination is found, additional orders requiring the mercury contamination to be contained and remediated are probable. Subject to a successful appeal (referenced below), the 1985 Indemnity provided by Ontario will apply to create a financial obligation on Ontario for the costs of Domtar Inc. and others to comply with such requirements.

We reach this conclusion because the 2016 decision of the Ontario Superior Court of Justice in *Weyerhaeuser v. Ontario (AG)*. There, the Court held that the 1985 Indemnity which provides for indemnification in respect of any claim, action or proceeding in respect of the presence of "any pollutant" on the Dryden Industrial Site as of December 17, 1979, and the discharge of any of those pollutants, including mercury, from the site, included the 2011 Director's Order issued to Weyerhaeuser and Resolute.

The decision was premised on the findings that Weyerhaeuser, as a successor in title to a portion of the Dryden Industrial Site, could benefit from the 1985 Indemnity. Domtar Inc. has indicated that it will assert that it is also such a beneficiary of the 1985 Indemnity and will seek reimbursement of its costs.

Ontario has appealed this Superior Court decision to the Court of Appeal. The appeal was heard on May 2 and 3, 2017. The decision has been reserved and is expected by

November 3, 2017. For practical purposes, Ontario's obligation to Weyerhaeuser and Resolute is stayed pending the outcome of the appeal.

If the Superior Court's judgment is upheld by the Court of Appeal (and subject to any further appeal to the Supreme Court of Canada), Ontario is liable to repay Resolute and Weyerhaeuser for costs they incur or have incurred as a result of the 2011 Director's Order. This would be the case as well for the EPA Order proposed to be issued to Domtar Inc. and any future orders that might be issued to Resolute, Weyerhaeuser, Domtar Inc. or to any future owner of the Site.

Honour of the Crown

This part considers the application of the legal doctrine of the honour of the Crown to public and private statements made by the Premier and Ministers Murray and Zimmer in February 2017 and in May 2017. In the first set of statements, in February, Ontario committed publicly *via* media release and by radio interview, and in person directly to the First Nations' Chiefs, that it would remediate the Dryden Industrial Site and the English-Wabigoon River system. This commitment was repeated in the second set of statements on May 2, 2017 by Minister Murray in the Legislature, and by Ministers Murray and Zimmer in person directly to the First Nations' Chiefs.

We have considered these statements in light of the emerging and relatively undeveloped legal doctrine of the honour of the Crown. Our opinion is that there is a moderate risk that the government's statements made to Grassy Narrows and Wabaseemoong Independent Nations directly and indirectly engage the honour of the Crown in a manner that gives rise to a legal obligation to pay for the remediation costs related to both the Dryden Industrial Site and contaminated sites within the rivers. More specifically, there is a moderate risk that if the current or a subsequent government were to proceed in a manner that differs from the stated commitment to remediate, a court would, if asked, declare that the Crown had a legal obligation to remediate, and that the change in government direction amounted to breach of the honour of the Crown and of that legal obligation. We further note that to the extent a court concluded that a failure to carry out commitments jeopardized constitutional rights, a court might also be willing to grant injunctive relief against the Crown and order that it honour its commitments.

On the one hand, the legal precedents that are available have not applied the doctrine of the honour of the Crown to any set of facts similar to those present here. Traditional Western formal markers of legal commitment such as a contract, or the creation of a trust, are so far absent, and there is present uncertainty over the cost of remediation and hence the bounds of the Crown commitment. Based on the existing case law it also remains open to us to argue that the honour of the Crown does not itself give rise to obligations. On the other hand, the law relating to the honour of the Crown is still developing, Ontario has made repeated public and private commitments to Grassy Narrows to remediate the river, there are very sympathetic circumstances, and there is a judicial trend to develop Aboriginal law principles expansively to respond to bad facts.

The ultimate question is what an appeal court would do when confronted with an assertion that the Province had breached the honour of the Crown if the commitment were not kept. Our view is that there is a moderate risk that an appeal court would declare that Ontario's commitments have engaged the honour of the Crown thereby creating an obligation to remediate, and that failure to do so, either by the current or a subsequent government, would represent a breach of the Crown's honour and that obligation.

As noted above, our analysis in this area is limited by the lack of jurisprudence directly on point, but we are able to draw the following contextual factors that point to how a court might approach the problem.

1. Factors that may mitigate risk

The honour of the Crown is always at stake in dealings with Aboriginal peoples, but that does not mean the doctrine is always engaged in a legal sense. Under the law as the courts have described it to date, the honour of the Crown does not add legal force to political commitments – rather, it provides a standard against which to assess the Crown's satisfaction of already existing commitments that have a constitutional character. In some respects, the issue may be framed in terms of whether the commitment was made on behalf of the Crown or merely the government as currently constituted. We are not aware of legal authority that has found that political commitments such as those contained in the Statement, and repeated since, have a sufficient degree of formality or solemnity to engage the honour of the Crown. In general the courts have been cautious to avoid giving legal force to commitments that would traditionally be seen as political in nature.

The following additional factors specific to the present commitment tend to lower the risk. The first factor is that the government did not indicate expressly that it would be legally bound, from which could reasonably be inferred that the government did not intend to be legally bound. The government has chosen not to confirm the commitment through legislation, executive order, contract, or the creation of a trust, in spite of direct requests by Grassy Narrows; moreover, the commitment lacked some of the solemnity associated with commitments concerning constitutional interests. The commitment could have been made more formally than *via* private meetings, a press release, a CBC radio interview, and answers to questions in the Legislative Assembly.

A second factor is that the exercise of constitutional rights is not explicitly stated to be a purpose of the commitment, nor can this be clearly inferred as the purpose. There is reference in the Statement to "ensuring the First Nations' rights and interests are at the forefront of decision making around options and implementation", but that is more concerned with the manner of remediation, and is likely not enough on its own, in our view, to ground the commitment in constitutional rights.

The third factor is that at the same time that Ontario first communicated the commitment to Grassy Narrows, and although it stated that commitment in clear terms, Ontario also

indicated that its commitment may be subject to other interests. Specifically, we understand that the Premier told Chief Fobister at the February Meeting that a remediation plan would have to go to Treasury Board for approval. This implies that the commitment was conditional on a balancing exercise involving not only the First Nation's interests but other interests as well, including fiscal realities. Such balancing of interests between those of a First Nation and those of the general public is a factor that may suggest that there is no legal obligation to remediate.

At the May Meeting, Ministers Murray and Zimmer again referred to the need for a remediation plan to go to Treasury Board. On this occasion, however, they did not do so in a manner that clearly qualified the government's commitment to remediate.

2. Factors that increase risk

There are contextual factors that increase the risk. First, the case law is evolving and courts are, in general terms, expanding the reach and operation of the doctrine of the honour of the Crown. While there is no established legal principle that would apply to and govern these facts, courts have shown a willingness in this developing area of law to shape principles and to fashion results that accord with their underlying conception of fairness in relations between the Crown and Aboriginal peoples. Second, satisfaction of the commitment to remediate would likely affect the capacity of certain First Nations to exercise their constitutional rights, which is the subject matter generally engaged by the honour of the Crown. Third, the equities of the present situation, including the pollution of the river system and the effect of that pollution on the First Nations' treaty-protected fishing rights and general community well-being, would make a court more inclined to conclude that the honour of the Crown was engaged.

There are additional factors specific to the commitment that also in our view increase the risk from moderately low to moderate. First, the commitment was written in the Statement, spoken to the First Nations, repeated to the public, and stated in the Legislative Assembly, in clear and definite terms. The Statement itself says that the Ministers are "completely committed…to creating and implementing a comprehensive remediation plan". Further, in a Toronto Star article on February 13, 2017, Chief Fobister is quoted as saying that the Premier told him in the February Meeting that the river and mill site would be cleaned. We assume that this accurately reflects what the Premier said and that Chief Fobister would testify to that effect. Next, Minister Murray said in the Interview that Ontario was "absolutely" committed to funding the remediation. More recently, in the Legislative Assembly Minister Murray said "This government will fully fund and implement Dr. Rudd's recommendations. …the money is on its way to Grassy Narrows, as the bills come in. Mr. Speaker, the cost of this may well be far in excess of $84 million. As a matter of fact, I am guessing that this government's commitment to Grassy Narrows is going to exceed that amount of money."

Second, in the February 13, 2017, Toronto Star article, Chief Fobister referred to the commitment as "historic". This suggests that from the First Nation's perspective the commitment has a degree of importance that goes beyond the merely short-term and contingent.

Third, at the May Meeting, Minister Zimmer read to Grassy Narrows the statements that Minister Murray had made to the Legislative Assembly earlier that same day, and responded to the First Nation's complaint that the commitment was not reflected in the budget. Ontario's representatives explained that Ontario was not able to "book" remediation as a liability in government accounts until it had received remediation recommendations from the environmental scientist Dr. Rudd. Ontario said that it needed to "fill the gaps" before it could book a liability, which we believe would reasonably be understood as referring to the need to obtain clarity on projected costs – not whether Ontario would incur costs. Minister Murray spoke of processes that must be followed to ensure due diligence. In response to a request that money be put aside into a trust as in the 1985 settlement, Minister Murray said that a trust would be complicated and would take the parties away from the progress to date. In essence, at the May Meeting, Ontario said that it was fully committed to remediation, but that it could not yet put money aside in its internal processes until a plan for remediation was developed and a more precise figure for the cost of that remediation was determined. Ontario said it was committed to remediate; the only reason it has not yet put the money aside is that it does not yet know how much to put aside. We understand Ontario representatives at the meeting also made statements that could reasonably be interpreted as suggesting that Ontario was already subject to a legal obligation to remediate, under the EPA; that the discussion was not merely political but directed at the satisfaction of legal obligations.

Fourth, a court might consider whether the commitment, political or otherwise, was made in good faith. A court would be more comfortable concluding that the honour of the Crown was engaged and breached where the facts show that the Crown made a commitment in bad faith. Evidence that the Crown did not take steps necessary to meet this commitment, could be taken to suggest the Crown never intended to meet the commitment and so had acted in bad faith. The more often the commitment is repeated in clear terms, directly, by Ministers of the Crown and senior public servants, and in person-to-person meetings, the greater will be the reasonable expectation of Grassy Narrows that it will be met, and the less will be a court's patience with a failure to meet the commitment. Further, a court will be more likely to conclude that the commitment was made on behalf of the Crown rather than by the government as currently constituted.

For all these reasons above we assess the risk associated with the honour of the Crown as moderate.

Crown Ownership of the beds of the river system

The Ministry of Natural Resources and Forests (MNRF) has the authority to manage public lands through the *Public Lands Act*. The MOECC has the statutory responsibility to determine the appropriate remediation options for the Dryden Industrial Site and contaminated sites within the rivers. In the absence of an order issued by the MOECC to MNRF, some other legal instrument, or a legal obligation engaging the honour of the

Crown, there is no legal responsibility on Ontario to remediate either the Dryden Industrial Site or contaminated sites within the rivers.

Law of Contract and Negligence

Crown Liability for Regulatory Negligence

The law of negligence does not normally impose any affirmative duty on parties to take positive steps to protect possible plaintiffs from anticipated risks of harm. Duties to take positive action in the face of a known risk or danger are not free-standing; the mere fact that a person faces danger does not itself impose any kind of duty on those in a position to become involved. As a result, the law of negligence would not ordinarily impose any positive duty on the Crown to take any action to mitigate that risk.

However, the situation is complicated by the fact that, as the responsible regulator, the MOECC has been involved in the efforts to address the risk of mercury contamination at Grassy Narrows for decades. The courts have been clear that regulatory authorities may owe a duty of care in negligence to members of the public who are adversely affected by the regulator's activities. . In determining whether a regulatory authority owes a duty of care to a member of the public, the court will consider:

- whether the harm suffered by the member of the public was reasonably foreseeable; and
- whether the member of the public was in a "close and direct relationship" with the regulatory authority (i.e., proximity). This proximity analysis will focus on (i) the applicable regulatory scheme and (ii) the interactions between the regulatory authority and the member of the public.

Claims based on alleged regulatory negligence are highly fact-specific and, going forward, the MOECC and other Ministries involved will need to carefully consider the applicable regulatory frameworks and the full history of the province's factual involvement in this matter, including, most notably, any interactions between government officials and the affected First Nations communities. A claim for regulatory negligence could relate exclusively to the MOECC's recent efforts to address mercury contamination at Grassy Narrows and may also incorporate issues related to the Crown's past conduct.

Given the recent events on this file, including the MOECC's review of the most recent proposal by Dr. Rudd, the consultant retained by Grassy Narrows First Nation to investigate the extent of mercury contamination in the English-Wabigoon River system and implement remedial measures, we would restate our concerns with respect to the significant regulatory negligence risks inherent in the remediation approach that is being contemplated for the English-Wabigoon River system: essentially having the Grassy Narrows First Nation and Wabaseemoong Independent Nations as the principal actors in the remediation efforts in the river system. The same concerns apply to the Mill site

should the government return to its previous position of having Grassy Narrows First Nation lead that work as well. We have noted these concerns in the advice we provided in respect of the Statement, as well as in oral briefings and in related materials, notably the presentation prepared for the briefing of Minister Murray on March 30, 2017.

To the extent that the MOECC is seen to be abrogating its regulatory authority by allowing Grassy Narrows First Nation and Wabaseemoong Independent Nations to take the lead in addressing environmental contamination, which is a role customarily taken by the MOECC, in accordance with applicable legislation and employing the MOECC's significant resources and expertise, this may attract a regulatory negligence claim if the MOECC does not exercise its regulatory oversight in its usual way and if the contamination is not adequately addressed. Even if Grassy Narrows First Nation and Wabaseemoong Independent Nations are directly involved in the remediation efforts, Ontario could nevertheless be liable to them or to individual members of these First Nations for any negligence committed by the MOECC in regulating such efforts (of course, if the First Nations themselves acted negligently, it is possible that they could be liable for contributory negligence).

Further, should those remediation efforts not result in a satisfactory remediation of the mercury contamination, there is a significant risk that Ontario will be liable in negligence for future harms resulting from that contamination. This concern is heightened given the historic relationship between Grassy Narrows First Nation, Wabaseemoong Independent Nations and Ontario in the matter such that there is likely a sufficient proximity between the parties to raise a duty of care on the part of Ontario in how it proceeds with the remedial work. A sufficient proximity may also exist between Ontario and other stakeholders, which may include the property owners along the river systems, Domtar Inc., and the City of Dryden, as well as other users of the river system.

The following factors contribute to these risks:

- The matter has been ongoing for decades without a satisfactory resolution, despite remediation efforts led by Ontario in the 1980s.
- Ontario would be permitting Grassy Narrows First Nation and Wabaseemoong Independent Nations to undertake remedial work in relation to mercury contamination in place of the normally responsible parties, Domtar, former property owners and the Crown, despite Grassy Narrows Fist Nation and Wabaseemoong Independent Nations not being responsible for the mercury contamination, and not being experienced parties in terms of conducting environmental remediation of this nature.
- We understand that the remedial work currently proposed by Grassy Narrows First Nation is likely insufficient and does not meet the MOECC's requirements. Further, Grassy Narrows' own scientists have acknowledged that they do not have experience managing such a large and complex project (acknowledging that there are recent efforts in place seeking to address these gaps).
- Stakeholders beyond Grassy Narrows First Nation, including Wabaseemoong Independent Nations, Domtar Inc., the City of Dryden, other property owners and the broader public have not been consulted on the proposed work.

- Domtar Inc. and the other former property owners, who may suffer economic and legal impacts if remediation is not effected properly, have not been given a significant opportunity to address the remediation proposals, most notably the proposal for the rivers.
- The actions taken to date by all parties have not been consistent with the MOECC's compliance policies in respect to environmental contamination nor the MOECC's usual operating practices.
- Statements of government representatives as discussed below.

Therefore, while Ontario has committed repeatedly to an active role for both First nations in the remediation work it will be advisable to ensure that their role does not amount to an abdication of Ontario's regulatory responsibilities. Early identification of issues, regular contact with those effecting the remediation, and appropriate regulatory oversight may assist in mitigating some of the risk. Counsel can assist in developing mitigation strategies.

Impact of the Statements by Government Representatives

It is unlikely that the statements by the Ministers and other representatives of the government, listed above, would, by themselves, give rise to civil liability under the law of either contract or negligence. However, there is an underlying risk that in the event the Crown does not meet the commitments made in the statements that the statements together with the Crown's long involvement in the matter could be used to form an assertion of negligence on the part of the Crown. It is clear that the recent commitments made by government representatives could be asserted as part of the contextual foundation for a duty of care on the part of the MOECC. Canadian courts have been clear that representations made by responsible regulatory authorities, coupled with reasonable reliance on the part of affected members of the public, will be a highly significant feature of the proximity analysis. Depending on all of the surrounding facts, a court could construe the statements as evidence of either:

(a) a voluntary assumption by the Crown of a duty to take positive action to ensure the remediation of the mercury contamination on a going forward basis; or

(b) an acknowledgement of the Crown's broader involvement in the risk of harm resulting from the mercury contamination.

The precise manner in which the statements might be presented by an injured plaintiff will turn entirely on the surrounding circumstances and it is not possible to exhaustively assess the risks associated with the statements in the abstract. However, we would point out that the legal risk that a court would recognize a duty of care against the Crown in this case may be aggravated by the fact that the affected First Nation communities are unusually vulnerable and dependent upon the Crown to take steps to

protect their interests and, therefore, more likely to reasonably rely on the commitments made in respect of them and to them by the government.

Finally, we note that the Crown could potentially argue that any statements made by the Minister in the legislature are not admissible as evidence in a court proceeding because those statements are protected by parliamentary privilege.[3] However, parliamentary privilege would not apply to a statement made by the Minister in the legislature that was subsequently repeated by the Minister outside of the legislature.

Impact of the 1986 English and Wabigoon River Systems Mercury Contamination Settlement Agreement Act

As many as five First Nation communities may be impacted by the mercury contamination of the English and Wabigoon river system: Grassy Narrows First Nations, Wabaseemoong Independent Nations, Eagle Lake First Nation, Wabigoon First Nation and Wabauskang First Nation. It is possible that Eagle Lake First Nation, Wabigoon First Nation and Wabauskang First Nation could bring claims in negligence and regulatory negligence, as set out above.

In so far as Grassy Narrows First Nation and Wabaseemoong Independent Nations are concerned, If either of these communities sought to bring an action against the Crown, the community would need to establish that its cause of action against the Crown was not abolished pursuant to the 1985 Settlement Agreement and s. 39 of the *English and Wabigoon River Systems Mercury Contamination Settlement Agreement Act* which provides:

> **39**. All existing and future rights of action of the Bands and of every past, existing or future member of the Bands, and the estates thereof, in respect of claims and causes of action which are the subject of the settlement are, in consideration of and pursuant to the settlement, abolished.

The Act specifically defines the “settlement” as a settlement of disputes relating to the discharge of certain pollutants into the English and Wabigoon and related river systems and the effects which such pollutants, “and the continuing but now diminished presence of methylmercury in the related ecosystems may have had and may continue to have upon…the social and economic circumstances and the health of present and future members of the Bands”.[4]

A relatively strong argument may be made that Grassy Narrows First Nation and Wabaseemoong Independent Nations extinguished their rights to all damages, even under a head of action for “Regulatory Negligence”, for claims arising from the contamination level of the River pre-1985 and as of the date of settlement.

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[3] *Capital Markets Technologies, Inc. v. Prince Edward Island*, 2016 PESC 4 at paras. 32-36

[4] *English and Wabigoon River Systems Mercury Contamination Settlement Agreement Act*, s. 1, “settlement”.

However, Grassy Narrows First Nation and Wabaseemoong Independent Nations could reasonably argue that the settlement was not intended to apply to any possible future negligent conduct occurring after the settlement was reached. Thus, the communities could claim against Ontario and the companies for damages caused since 1985 through new omissions or commissions that created new damages or which increased the pollution level of the river system.

In so far as discharges from the Dryden Industrial Site, including the Mercury Waste Disposal Site, are concerned, the settlement does not release Ontario or the then or subsequent owners of the land from actions for damages arising from further discharges of mercury onto or into neighbouring treaty land or water.

Finally, it should be noted that in March 2016, the Chief of the Grassy Narrows First Nation wrote to Minister Murray alleging that the community had never been made aware at the time of the settlement of the existence of the Mercury Waste Disposal Site. This allegation would need to be further researched against the historical record in order to be assessed We are not aware if Wabaseemoong Independent Nations would make a similar allegation, nor whether either of the two First Nations would assert this fact in an attempt to attack the legality of the settlement agreement including the extinguishment of future claims. This is an issue that would have to be further assessed if asserted by the First Nations.

FW_ Response to RFS TBS-OTB-OPCD-15.rtf

From: Petsche, Nadine (TBS) []
To: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
Subject: FW: Response to RFS TBS-OTB-OPCD-15
Date: Tuesday, July 05, 2016 08:32:24
Attachment 1: image001.gif
Attachment 2: EY Submission RFS TBS-OTB-OPCD-15 - Main Submission.pdf
Attachment 3: EY Submission RFS TBS-OTB-OPCD-15 - Pricing Supplement.pdf

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From: Blake Langill [mailto:blake.w.langill@ca.ey.com]
Sent: June 30, 2016 3:07 PM
To: Petsche, Nadine (TBS)
Cc: Ivan Chittenden; Suzie Gignac; Lee Anne Probert
Subject: Response to RFS TBS-OTB-OPCD-15

Nadine,

Thank you very much for allowing us to respond to your RFS. Please find attached our response; as per the instructions, we have separately attached the pricing supplement.

We look forward to hopefully working with you again.

Have a great weekend.

Best regards,

-blake

--

Blake Langill | Partner

Ernst & Young LLP

222 Bay St., P.O. Box 251, Toronto, ON M5K 1J7, Canada

Office: +1-416-943-3556 | blake.w.langill@ca.ey.com

Website: http://www.ey.com

Assistant: Amanda Craig | Phone: +1-416-943-4581 | amanda.craig@ca.ey.com

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FW_ Triton Request A Quote Form - Company or Organization.rtf

From: Picard, Michel [mpicard@kpmg.ca]
To: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
Subject: FW: Triton Request A Quote Form - Company or Organization
Date: Tuesday, July 18, 2017 10:30:05
Attachment 1: image001.jpg
Attachment 2: image002.jpg

It is being sent to my PA as I did not receive it. Very strange…

From: Picard, Michel
Sent: Tuesday, July 18, 2017 10:29 AM
To: 'Melynda Coffey' <melynda@tritonverify.com>
Cc: Manno, Christina C <cmanno@kpmg.ca>
Subject: RE: Triton Request A Quote Form - Company or Organization

cmanno@kpmg.ca

From: Melynda Coffey [mailto:melynda@tritonverify.com]
Sent: Tuesday, July 18, 2017 10:15 AM
To: Picard, Michel <mpicard@kpmg.ca>
Subject: RE: Triton Request A Quote Form - Company or Organization

Hi Michel,

Were would you like me to send it to?

Regards,

Melynda Coffey

Customer Service Agent

TRITON

2235 Sheppard Ave East

Suite 1503

Toronto, Ontario.

M2J 5B5

Phone: 416-494-4444 Ext. 200

Toll Free: 1-844-874-8667

Fax: 866-284-3149

From: Picard, Michel [mailto:mpicard@kpmg.ca]
Sent: July 18, 2017 10:00 AM
To: Melynda Coffey <melynda@tritonverify.com>
Cc: Manno, Christina C <cmanno@kpmg.ca>
Subject: RE: Triton Request A Quote Form - Company or Organization

Hi Melynda,

I received this email but the email with the link. It is not in my spam.

Can you send to my PA and she will forward it to me?

Michel

From: Melynda Coffey [mailto:melynda@tritonverify.com]

Sent: Tuesday, July 18, 2017 9:51 AM
To: Picard, Michel <mpicard@kpmg.ca>
Subject: RE: Triton Request A Quote Form - Company or Organization

Hello Michel,

I just resent the link again to the email address below. mpicard@kpmg.ca

Regards,

Melynda Coffey

Customer Service Agent

TRITON

2235 Sheppard Ave East

Suite 1503

Toronto, Ontario.

M2J 5B5

Phone: 416-494-4444 Ext. 200

Toll Free: 1-844-874-8667

Fax: 866-284-3149

From: Alysha Feasby [mailto:alysha@tritonverify.com]
Sent: July 18, 2017 9:31 AM

To: 'Melynda Coffey' <melynda@tritonverify.com>
Subject: FW: Triton Request A Quote Form - Company or Organization

Thank you,

Alysha Feasby

Account Manager

2235 Sheppard Ave East

Suite 1503

Toronto, Ontario

M2J 5B5

Phone: 416-494-4444 Ext. 201

Toll Free: 1-844-874-8667

Fax: 866-284-3149

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From: customerservice@tritoncanada.ca [mailto:customerservice@tritoncanada.ca]
Sent: July 17, 2017 4:23 PM
To: alysha@tritonverify.com
Subject: Triton Request A Quote Form - Company or Organization

Triton Request A Quote Form - Company or Organization

Name:

Michel Picard

Email:

mpicard@kpmg.ca

Phone:

4167778414

Industry:

# of Employees:

City:

Province:

Comments:

Hello, I am working with Virani Shyrose, and was told I would be receiving an email from you regarding a background check. I have received no email, and I have nothing in Spam/ Junk. Can you please let me know if a message was sent to mpicard@kpmg.ca? Thanks

Date time:

7/17/2017 4:22:50 PM

Client tag:

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· **Disclaimer concerning tax advice** (http://taxdisclaimer.kpmg.ca).

If you are unable to access the links above, please cut and paste the URL that follows the link into your browser.

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image001.pdf

TRITON

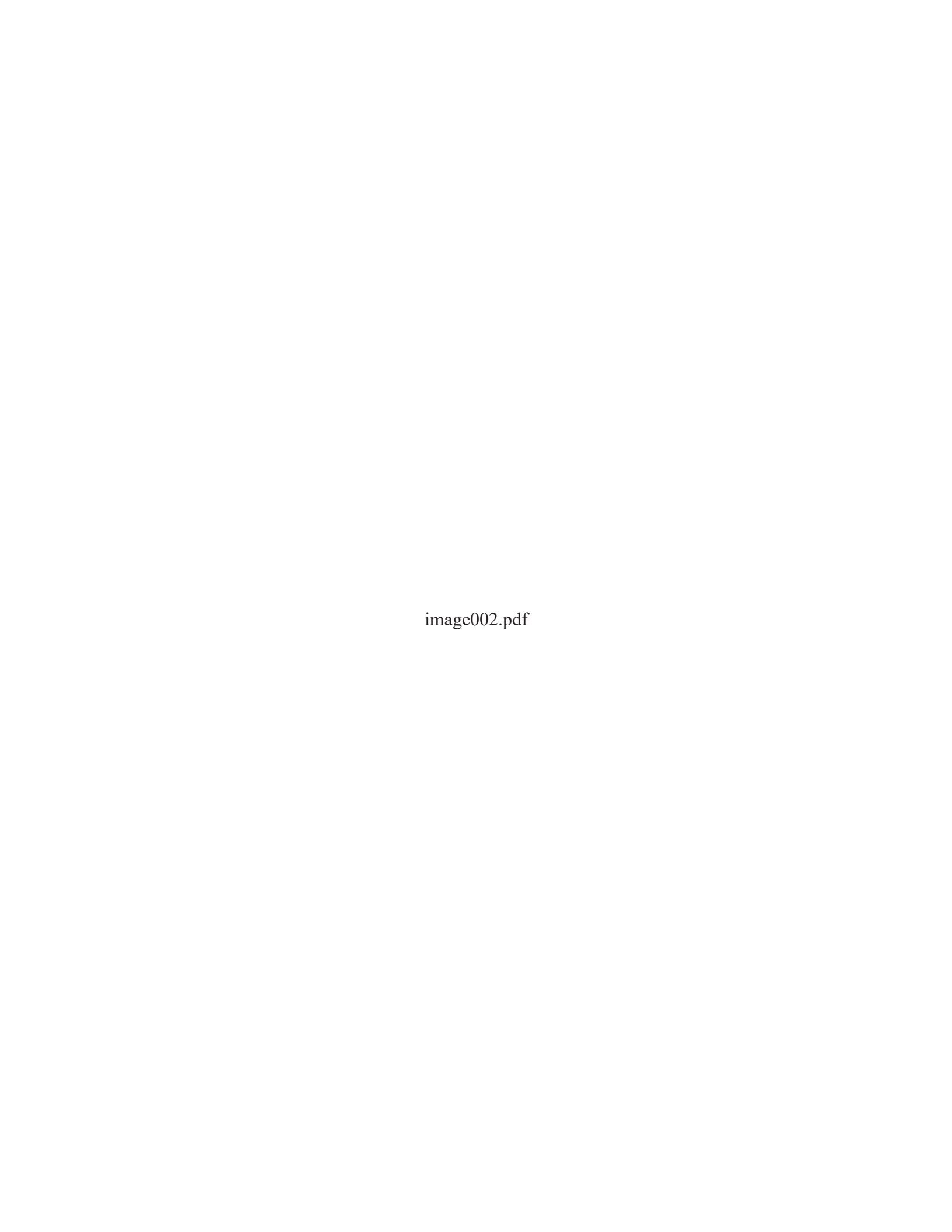
image002.pdf

FW_ Update Affordability Fund.rtf

From: Virani, Shyrose (TBS) []
To: 'PETSCHE Nadine -CORPORATE' [nadine.petsche@opg.com]
Subject: FW: Update Affordability Fund
Date: Tuesday, October 16, 2018 08:55:42

-----Original Message-----
From: Petsche, Nadine (TBS)
Sent: March 21, 2017 6:44 PM
To: Syed, Usman (ENERGY) <Usman.Syed@ontario.ca>
Cc: Sermat-Harding, Kaili (ENERGY) <Kaili.Sermat-Harding@ontario.ca>; Schwab-Pflug, Emma (ENERGY) <Emma.Schwab-Pflug@ontario.ca>; Qureshi, Musab (ENERGY) <Musab.Qureshi@ontario.ca>; Johnson, Paul (ENERGY/MEDEI/MRI) <Paul.Johnson3@ontario.ca>; An, Tai (ENERGY) <Tai.An@ontario.ca>; Gounden, Pratima (ENERGY) <Pratima.Gounden@ontario.ca>; 'ASHBOURNE, STEPHEN' <STEPHEN.ASHBOURNE@blakes.com>; 'PRESTAGE, JA' <JA.PRESTAGE@blakes.com>
Subject: RE: Update Affordability Fund

Hi Usman.

This should not be an issue. It would be good to know the proposed wording. I assume that the wording will reflect H1 as the interim admin service provider, to be confirmed by the Trustee (preferrably prior to March 31). Nadine

From: Syed, Usman (ENERGY)
Sent: March-21-17 6:31 PM
To: Petsche, Nadine (TBS)
Cc: Sermat-Harding, Kaili (ENERGY); Schwab-Pflug, Emma (ENERGY); Qureshi, Musab (ENERGY); Johnson, Paul (ENERGY/MEDEI/MRI); An, Tai (ENERGY); Gounden, Pratima (ENERGY); 'ASHBOURNE, STEPHEN'; 'PRESTAGE, JA'
Subject: FW: Update Affordability Fund

Hi Nadine – Hydro One is proposing some further changes to the TPA and Declaration. Specifically, they would like to have Hydro One explicitly named in the documents as the administrative service provider. KPMG thinks there is no control issue (see email chain below), but wanted to get your opinion, thanks…

- Usman

From: Alexandra.Phillips@HydroOne.com [mailto:Alexandra.Phillips@HydroOne.com]
Sent: March 21, 2017 5:50 PM
To: Syed, Usman (ENERGY); Schwab-Pflug, Emma (ENERGY)
Subject: FW: Update Affordability Fund

Alex Phillips

Manager, External Relations

Hydro One Networks Inc.

483 Bay St, Toronto, ON

(O) 416-345-1375

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From: Picard, Michel [mailto:mpicard@kpmg.ca]
Sent: Monday, March 20, 2017 1:14 PM
To: CHHELAVDA Samir; PHILLIPS Alexandra; PMilligan@osler.com
Subject: RE: Update Affordability Fund

Agree with Samir, not an accounting issue if provide back office only.

From: Samir.Chhelavda@HydroOne.com [mailto:Samir.Chhelavda@HydroOne.com]
Sent: Monday, March 20, 2017 12:12 PM
To: Alexandra.Phillips@HydroOne.com; PMilligan@osler.com
Cc: Picard, Michel <mpicard@kpmg.ca>
Subject: RE: Update Affordability Fund

Alex – I do not see an issue on this as we are only providing administrative support. I have copied Michel Picard from KPMG to get his thoughts as well.

Samir

From: PHILLIPS Alexandra
Sent: Monday, March 20, 2017 11:27 AM
To: CHHELAVDA Samir; PMilligan@osler.com

Subject: RE: Update Affordability Fund

Hi Samir: Is there any control issues with naming Hydro One as the service provider in the docs?

Best,

Alex Phillips

Manager, External Relations

Hydro One Networks Inc.

483 Bay St, Toronto, ON

(O) 416-345-1375

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FW_ Updated Control Assessment (for your review and feedback).rtf

From: Petsche, Nadine (TBS) []
To: Picard, Michel (mpicard@kpmg.ca) [mpicard@kpmg.ca]
Subject: FW: Updated Control Assessment (for your review and feedback)
Date: Tuesday, March 21, 2017 14:14:57
Attachment 1: image43340f.GIF
Attachment 2: TOR_2528-#23100883-v2-Blakes_Comments_-_Control_Assessment_Affordability_Fund__Mar_20_np.DOC
Attachment 3: TOR_2528-#23100883-vpdf-Blakes_Comments_-_Control_Assessment_Affordability_Fund__Mar_20_np.PDF

Michel,

I haven't had a chance to review these yet…too busy, but sharing. n

From: ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
Sent: March 21, 2017 12:22 PM
To: Petsche, Nadine (TBS)
Cc: VINER, JON
Subject: RE: Updated Control Assessment (for your review and feedback)

Nadine, please see the attached mark-up of the first few pages of your summary. I have not been able to work through all of your table this morning, sorry. Jon has been involved so his earlier email hopefully gives you some sense of asymmetries. You'll see that the first few pages included a fair number of disconnects, so I am a bit concerned that the document does not fully reflect the anticipated terms of the documents. I will be tied up for several hours at this point, but if it is useful I will read the back of your document when I can this evening. I hope that's somewhat useful. Steve

Stephen R. Ashbourne

Partner

stephen.ashbourne@blakes.com

Dir: 416-863-3086

Blake, Cassels & Graydon LLP
199 Bay Street, Suite 4000, Toronto ON M5L 1A9
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From: VINER, JON
Sent: Tuesday, March 21, 2017 11:33 AM
To: Nadine.Petsche@ontario.ca
Cc: ASHBOURNE, STEPHEN
Subject: RE: Updated Control Assessment (for your review and feedback)

Nadine,

Please find attached comments on Appendix 1.

I note that, given the time constraints, some of the comments may be more detailed than what you are interested in looking for/revising at this point.

Please let us know if you'd like to discuss.

Best,

Jon

Jon Viner

Associate

jon.viner@blakes.com

Dir: 416-863-2499

Begin forwarded message:

> **From:** "Petsche, Nadine (TBS)" <Nadine.Petsche@ontario.ca>
> **Date:** March 20, 2017 at 10:32:54 PM EDT
> **To:** "stephen.ashbourne@blakes.com" <stephen.ashbourne@blakes.com>, "Picard, Michel (mpicard@kpmg.ca)" <mpicard@kpmg.ca>
> **Cc:** "samir chhelavda (Samir.Chhelavda@HydroOne.com)" <Samir.Chhelavda@HydroOne.com>
> **Subject: Updated Control Assessment (for your review and feedback)**
>
> Stephen/Michel,
>
> Attached is an updated DRAFT control analysis reflecting current information based on the updated draft TPA and Declaration (5:30 pm version) attached.
>
> Your review of the analysis in Appendix 1 would be valuable as follows:
>
> *Stephen* – please advise of any factual inaccuracies in the extracts listed
>
> *Michel* – please advise of any additional elements that should be reflected, comments inserted and conclusions for each of the control criteria w.r.t. control (yes or no).

MOE is expecting the updated control analysis as soon as possible. Your feedback by tomorrow at noon would be most appreciated, if possible.

Thanks in advance.

Nadine

image43340f.pdf

Blakes

TOR_2528-#23100883-v2-Blakes_Comments_-_Control_Assessment_Affordability_Fund_Mar_20_np.pdf

BLAKES COMMENTS ADDED IN COMMENT BUBBLES (3/21/2017)

Draft Control Assessment of Affordability Fund Trust (Rev. Mar 20, 2017)
for Inclusion in the Government's Reporting Entity

ISSUE

Would the Ministry of Energy's proposed Affordability Fund Trust be assessed as controlled under Public Sector Accounting Board (PSAB) standard on the Government Reporting Entity (PS 1300) and therefore be included in the Province's consolidated financial statements?

RECOMMENDATION

Conclusion outstanding pending confirmation of accuracy of extracts/references in Appendix 1.

[Elements of] the Trust Declaration and Transfer Payment Agreement have been assessed by OPCD as aligned with both OPCD's One-Time Guidance on Transfers as well as OPCD's Trust Guidance document, both of which are attached as Appendices to this analysis. Both of these documents have been reviewed and concurred to with the Office of the Auditor General in the past and have been important references in ensuring that [the public interest will continue to be served through the establishment and administration of the Affordability Fund Trust.][UNSURE WHY THIS IS HERE]

BACKGROUND

The Ministry of Energy plans to transfer $100M to a recently formed, limited purpose Trust in relation to a new Affordability Fund for the purpose of providing energy efficiency measures to electricity customers who do not qualify for existing low income conservation programs (e.g. the existing Home Assistance Program (HAP), delivered by LDCs under the Conservation First Framework) [and who have difficulty paying their electricity bills] [THIS DOES NOT STRICTLY APPEAR ANYWHERE IN THE DOCUMENTS].

The Affordability Fund would be available for distributions to beneficiaries, to be identified based on recommendations from LDCs based on factors listed in the Declaration of Trust [and could include customers in frequent arrears or facing disconnection. Priority would be given to homes primarily heated by electricity.] [THIS DOES NOT STRICTLY APPEAR ANYWHERE IN THE DOCUMENTS]

In order to provide funding to the Trust, the Ministry of Energy plans to enter in a Transfer Payment Agreement (TPA) with the Trustee of the Trust (Computershare). Computershare will shortly thereafter be replaced by an independent Board of Trustees, to be appointed based on the advice of an independent Advisory Committee. The Ministry of Energy anticipates entering into TPA with Computershare and flowing the approved funding prior to March 31st.

The Board of Trustees is expected to be comprised of:

- [six] residents of Ontario who have expressed that they are willing to act as members of the Board of Trustees and who, individually and collectively, satisfy the following criteria (collectively, the "**Selection Factors**"):
  a) each member demonstrates an understanding of the electricity sector including the electricity distribution sector;
  b) each member demonstrates an expertise in conservation and low income programs;

c) three of the identified individuals will be representatives from separate electricity distributors [not under the control of the Government of Ontario], two individuals will be representatives from separate social services agencies [not under the control of the Government of Ontario] and one individual member, who will be a non-voting member, will be an employee or representative of the Government of Ontario; and
d) it is expected that representation by the Government of Ontario will be non-controlling. [RED TO BE CONFIRMED. THIS COULD PRECLUDE H1 FROM BEING ON THE BOARD?]

The Board of Trustees, once selected is expected to include 6 persons (five voting and one non-voting) of individuals from among those individuals who have been recommended for appointment to the Board of Trustees by the Advisory Committee. [REDUNDANT GIVEN ABOVE?]

The Trustees will have the discretion to hire Hydro One or other entities as service providers to assist with administering the Trust, using Administrative Services Agreements to clearly document services and expectations. The Trust would distribute funds to identified customers of LDCs across the province (including Hydro One) at the discretion of the Trustees, based primarily on the recommendations of the applicable LDCs.

The Declaration of Trust confers broad powers and discretion to the Trustee, to act in the best interest of the beneficiaries. The Trustees are expected to conduct themselves in good faith and give regard to guiding principles set out in the Declaration of Trust (and agreed by the Province in the TPA) in exercising their duties under the Trust Declaration and TPA in distributing funds to LDCs for the benefit of beneficiaries across the province, including Hydro One.

The Trust Declaration will be subject to further modification by the Trustee, subject to the Province's right under the TPA to consent, not to be unreasonably withheld The input and involvement of LDCs across the province is anticipated and integral to the success of the Trust in meeting its purpose. The **Principles, which the Trustee is required to consider in the exercise of its discretion,** will be set out in both the Trust Declaration and the TPA.

In addition, a **Permitted Delegation Annex** forms part of the Declaration of Trust, which refers to an expectation that the Trust would rely on participating LDCs to assist with achieving the purpose of the Trust, including an expectation to (a) appoint, employ or retain Administrative Services Agents for the purpose of discharging its duties and obligations under the Declaration; and (b) enter into, perform, enforce and amend Administrative Services Agreements.

Without limiting the Trustee's discretion to negotiate and settle the terms and conditions of the above-mentioned Administrative Services Agreements, the Permitted Delegation Annex also outlines certain terms and conditions that are expected to be included in the administrative services agreements, recognizing that the ultimate agreements would be subject to the acceptance and agreement of the applicable Electricity Distributor counterparty. While the Annex appears quite specific in nature, it is subject to the Trustee's overall discretion. As noted, the Trustees are not bound to use the guidance.

Commented [A1]: But there is a suggestion that they would as referenced in the audit clause which states that the scope of the audit would include review/validation of processes and control related to LDCs.

There is also a requirement under the Declaration that any changes would only be possible if they are in agreement with the Principles.

CONTROL ANALYSIS

In accordance with PSAB, "the Government Reporting Entity should comprise the organizations that are controlled by the government" (PS 1300.07). PSAB defines control as "the power to govern the financial and operating policies of another organization with expected benefits or the risk of loss to the government from the other organizations activities" (PS 1300.08). Benefits may be financial or non-financial, for

example, the government may require the organization to cooperate in pursuing the government's public policy objectives.

PSAB's "indicators of control" are the relevant guidance in determining the degree of control for inclusion of the Affordability Fund Trust in the Government Reporting Entity (GRE). In applying this guidance, it is necessary to determine the substance of the relationship between a government and an organization in addition to its legal form. All relevant aspects and implications of the relationship would be considered in determining whether or not the government controls the organization. In addition to PS 1300, consideration is also given the Trust Guidance and One-Time Transfer Guidance developed by OPCD in conjunction with the Office of the Auditor General which are attached as Appendices.

There are a total of 11 PSAB prescribed control indicators that provide evidence of control: 4 persuasive indicators of control and 7 other control indicators. It is the **preponderance of evidence** that would be considered in assessing whether a government controls an organization.

The following governing documents were reviewed in support of the analysis of the Province's control over the Affordability Fund Trust:

1) Draft Trust Declaration (March 20 5:30 pm), including related schedules (Principles Annex, Delegations Annex)
2) Draft Transfer Payment Agreement (March 20 5:30 pm)
3) OPCD Trust Guidance
4) OPCD Guidance on One-Time Transfers

Appendix I shows the detailed analysis of the PSAB indicators of control. Based on this assessment and the preponderance of evidence, informed by a review of the wording in the draft Trust Declaration and Transfer Payment Agreement, there are a number of features of the proposed arrangements which may be pertinent in assessing whether, an overall basis, the Affordability Fund Trust might be controlled by the Province as at March 31, 2017.

DRAFT

APPENDIX I

Affordability Fund Trust
Indicators of Control Analysis
DRAFT

INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
Primary (i.e., more persuasive) indicators (CICA PS 1300.18):		
1. Government has the power to unilaterally appoint or remove a majority of the members of the governing body of the organization	• Original Trustee (Computershare) is the governing body of the Trust until the Replacement Board of Trustees is selected. The Declaration describes the process expected to be used to establish the Replacement Board. The government will not control the Original Trustee, the Advisory Committee, or the appointment of the Replacement Board of Trustees.	X
2. Government has ongoing access to the assets of the organization, has the ability to direct the ongoing use of those assets, or has ongoing responsibility for losses	• The government will not have an on-going access to assets transferred to the Trust, and any future access will only be through protective clauses (termination/default for material breach). At the Final Distribution Date, any excess funds will be distributed to a non-controlled Residual Beneficiary in accordance with clause 3.3 of the Trust Declaration. • The government will not have any exposure to losses of the Trust. In addition, section 1.1 (interpretations) of the TPA includes the following: it is intended that the transfer of the Funds to the Recipient will be a transfer made to a "non-controlled trust" (as that term is given meaning in - applicable to the accounting rules and principles applicable to the Province as of the date of the Agreement), and so if a term or condition of the Agreement is determined to conflict with the requirements applicable to the Province recording the transfers to the Recipient of Funds contemplated hereunder as an expense incurred by the Province on the date of the transfer of Funds under the Agreement otherwise in connection with activities undertaken by the Province with such a "non-controlled trust", then such term or condition shall be given a meaning and shall have an effect insofar as it is possible to interpret such term or condition in a manner that eliminates such conflict while preserving the other provisions of the Agreement and furthering the Purpose.	X
3. Government holds the majority of the voting shares or a "golden share" that confers the power to govern the financial and operating policies of the	• Neither in the Trust Declaration or the TPA can the government unilaterally direct the financial and operating policies of the Trust. Any Trustee initiated changes to the Declaration or TPA would need to be consistent with the Principles Annex. • • The Trust Declaration and TPA do not conflict with the overall	

Commented [A2]: Blakes

Note that clause 3.3 states that the Residual Beneficiaries will be identified by consulting with and having regard to the recommendations of the Ontario Energy Board.

Commented [A3]: Blakes

Changes to TPA: The TPA is silent on amendments to the TPA.

The TPA states in section 20.2 that the Trustee covenants that it shall not amend, restate or terminate the Declaration without the written consent of the Province, such consent not to be unreasonably withheld.

Changes to Trust Declaration:
Section 6.1 of the Trust Declaration states that, subject to the TPA, the Trustee shall have the power in its sole and absolute discretion to amend the Declaration [provided that no amendment shall conflict with the principles set forth in the Principles Annex or as to the scope or effect of the permitted delegations and activities of any Administrative Services Agent pursuant to the Permitted Delegations Annex.]

Section 6.1(e) permits the Trustee to add to or reasonably clarify the principles set forth in the Principles Annex.

Consider:
Consider stating "Any Trustee initiated changes to the Trust Declaration would need to be consistent with the Principles Annex, although the Trustee may amend the Trust Declaration to, among other things, add to or reasonably clarify the principles set forth in the Principles Annex."

Commented [A4]: Check against Mar 20 (proviso)

INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
organization	discretion of the Trustees in exercising their fiduciary duties on behalf of the beneficiaries. The 'Principles Annex' describes principles to be considered by the Trustees in applying their discretion in relation to administration of the Trust. The Annex clearly indicates that the Trustees shall **only have regard to** the principles but that they shall not be specifically bound by the listed principles. Furthermore, the declaration and TPA are subject to change. Under the Declaration of Trust, section 1.2 Definitions , "**Declaration of Trust**" means the declaration of trust made as of March [□], 2017, under which o the Affordability Fund Trust was established, as such declaration of trust may be amended, restated, supplemented or otherwise modified from time to time with the consent of the Province. • The Trust Declaration also includes a schedule which lists 'suggested' initial eligible measures for consideration by the Trustees, and elements for consideration in the Administrative Services Agreements that the Trust may eventually enter into with LDCs. • The Trust Declaration does not direct a specific governance structure, but rather includes the following reference under **2.3 Governance. The Recipient represents, warrants and covenants that it has, and will maintain, in writing for the period during which the Agreement is in effect:** (a) decision-making mechanisms and procedures to enable the Recipient to hold, invest, manage, apply and distribute the Funds in accordance with the Declaration of Trust in furtherance of the Purpose; and (b) procedures to enable the preparation and delivery of all Reports required pursuant to Article 7.0	✓
4. Government has the unilateral power to dissolve the organization and thereby access its assets and become responsible for its obligations	Only after the Final Distribution Date or in the event of default will the government have any power or rights in relation to the remaining funds in the Trust, including the power to redirect distribution of remaining funds and seek remediation for any mis-used funds. **SECTION 7 - TERMINATION** **7.1 Duration** Subject to sections 7.2 and 7.3, the Trust will continue in full force and effect so long as there are any Assets and until all of the debts, liabilities and obligations of the Trust have been paid and satisfied in full. **7.2 Termination and Distribution of Assets** The Trustee shall terminate the Trust and wind up its affairs as soon as practicable after the Final Distribution Date. In connection with the termination of the Trust, the Trustee shall identify the Residual Beneficiaries and distribute or cause to be distributed the remaining Assets, in cash or in kind or partly in each, to the Residual Beneficiaries, in each case in accordance with section	

Commented [A5]: Not mandatory (will AG have concerns with level of specificity)

Commented [A6]: **Blakes**

This definition and section reference is from the TPA, not the Trust Declaration.

Commented [A7]: XXX Mar 20 – no reference to timeliness or not unreasonably withholding (no proviso) see sec. 4.2

Commented [A8]: **Blakes**

Section 2.3 of the Declaration describes the measures specified in Schedule A as measures that "may initially be considered to be consistent with the Measures Factors (subject to change as contemplated under the Permitted Delegations Annex)".

Consider: Explaining the expectation that the Trustees identify eligible measures (as set out in section 2.1) and stating that Schedule A provides a list of measures which may initially be considered to be consistent with the Measures Factors (which are the factors specified in section 2.1 to identify eligible measures.)

Commented [A9]: Not mandatory (will AG have concerns with level of specificity)

Commented [A10]: **Blakes**

Consider: "and a Permitted Delegation Annex which identifies matters that it is expected would be addressed in Administrative Services Agreements that the Trust may choose to enter into with LDCs (without limiting the Trustee's discretion to negotiate and settle the terms and conditions of such agreements).

(for more consistency with language in the Permitted Delegation Annex).

Commented [A11]: **Blakes**

This is a reference to the TPA, not the Trust Declaration.

Please see section 5.8 of the Trust Declaration for governance provisions regarding the Trust.

Commented [A12]: **Blakes**

Confirm whether this refers to section 3.3, which provides that the Residual Beneficiaries shall be identified by consulting with and having regard to the recommendations of the Ontario Energy Board.

Commented [A13]: **Blakes**

Section 11.2(c) of the TPA - This is less of a "remediation for mis-used funds" and more of a right of the Province, on specified event of defaults, to require that the trustees transfer to the Province assets in its possession or under its control that can reasonably be traced or attributed to the funds originally transferred by the Province to the trustee.

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
	3.3. Despite the foregoing, the Trust will only be terminated and wound up date after the Trustee, in its sole and absolute discretion, determines that all debts, liabilities and obligations of the Trust have been paid or otherwise adequately provided for and satisfied and upon receipt of such releases, indemnities and discharges as the Trustee, relying on the opinion of counsel, deems necessary for the protection of the Beneficiaries and for its own protection. **7.3 Distribution of Assets on Final Distribution Date** If the Trust holds Assets on the Final Distribution Date, the Trustee shall pay or provide reserves for the payment, and otherwise shall satisfy, all debts, liabilities and obligations of the Trust and shall provide or arrange to provide such investigations, audits, releases, indemnities and discharges as the Trustee, relying on the opinion of counsel, deems necessary for the protection of the Beneficiaries and for its own protection. Thereafter, any remaining Assets shall be paid to the Residual Beneficiaries in accordance with section 3.3. Right to assets under default (material breach provisions only, and after notice period). **11EVENT OF DEFAULT, CORRECTIVE ACTION AND TERMINATION FOR DEFAULT** **11.1 Events of Default.** An Event of Default will occur if: (a) the Recipient fails to perform or observe any covenant in this Agreement and such failure has and continues to have a material adverse effect on the Province and remains unremedied during any Notice period applicable under section 11.2 after the earlier of (i) actual knowledge thereof by the Recipient, or (ii) receipt by the Recipient of Notice thereof from the Province; (b) any representation or warranty made by the Recipient in the Agreement shall prove to have been incorrect in any material respect when made or deemed made, and, if capable of remedy, continues to be incorrect in any material respect during any Notice period applicable under section 11.2 after the earlier to occur of (i) the actual knowledge thereof by the Recipient or (ii) receipt by the Recipient of Notice thereof from the Province; (c) it is [determined][manifestly demonstrated by the Province] that the Recipient has breached its Standard of Care (within the meaning given in and context of the Declaration of Trust) in discharging its material duties under the Declaration of Trust, with the result that all or a significant part of the Funds have not been or are not being applied in furtherance of the Purpose or are being applied in a manner that is directly contrary or without regard to the Purpose, and, if such breach is capable of remedy, it continues and remains unremedied during any Notice period applicable under section 11.2 after the earlier of (i) actual knowledge thereof by the Recipient, or (ii) receipt by the Recipient of Notice thereof from the Province; (d) an insolvency event shall have occurred and be continuing with respect to the Recipient.	X

Commented [A14]: Blakes

May want to clarify which provisions are from the Trust Declaration and which are from the TPA.

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
	11.2 Consequences of Events of Default and Corrective Action. If an Event of Default occurs, the Province may, at any time, take one or more of the following actions: (a) provide the Recipient with Notice allowing the Recipient an opportunity to remedy the Event of Default during a specified Notice Period; No right to access assets following Final Date of Distribution: **3.3 Distributions to Residual Beneficiaries** Prior to the Final Distribution Date, the Trustee shall identify the Residual Beneficiary, or if more than one the Residual Beneficiaries and their respective allocations, by consulting with and having regard to the recommendations of the Ontario Energy Board, based on **[Identify criteria that will narrow the scope to charities to those having an energy/social focus]**those charitable organizations which provide support services for Low Income Energy Assistance Program Emergency Financial Assistance (LEAP EFA) and the Ontario Electricity Support Program (OESP) or other charities that OEB may identify as relating to the Purpose. Following the Final Distribution Date, the Trustee shall, subject to compliance with section 7.3,7.3 and completion of a final audit, distribute all remaining Assets (including capital or income) to the Residual Beneficiaries, in each case in the amounts and to the extent determined by the Trustee in its discretion hereunder (having consulted with and having had regard the recommendations of the Ontario Energy Board as aforesaid) and to the exclusion of the other Beneficiaries. The government also cannot unilaterally extend the term of the agreement. Rather, the term of the Agreement can only be extended by further agreement between the Parties. **3.3 Extension of the Declaration of Trust.** If the Province determines that an extension of the Declaration of Trust (beyond the "Final Distribution Date" and time for termination, each as specified or determined thereunder) is consistent with and in furtherance of the Purpose and the Province's original intentions and expectations in establishing the Project, the Province may request that the Recipient extend the Declaration of Trust to a date specified by the Province in a Notice (such date not to be later than •), whereupon the Recipient, so long as the Trustee does not have a reasonable basis to believe that such an extension would be inconsistent with the Purpose or weaken the protections intended for the benefit of the Trustee pursuant to the Declaration of Trust, will undertake such actions as it may consider to be necessary or appropriate to so extend the Declaration of Trust, including by amending the Declaration of Trust to provide for such an extension and to modify any other term or requirement as would be necessary or prudent to conform such term or requirement in light of such extension.	

Commented [A15]: Blakes

Consider including the other provisions of section 11.2

Commented [A16]: Blakes

Consider double-checking that this is section 3.3 from the draft of the Trust Declaration dated March 20, 5:30 pm (*which is the draft that is cited for this assessment*)

Consider double-checking other quoted sections in similar manner.

Commented [A17]: Blakes

Section 3.3 of the TPA (quoted below) refers to the fact that the government cannot unilaterally extend the term of the Trust Declaration – if the Province wishes to extend the Trust Declaration, section 3.3 governs.

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
5. Provide significant input into the appointment of members of the governing body of the organization by appointing a majority of those members from a list of nominees provided by others or being otherwise involved in the appointment or removal of a significant number of members	In accordance with the Trust Declaration and the TPA, the government will not control the Original Trustee, and will not have a controlling interest in either the Advisory Committee nor the Replacement Trustee Board. The process Replacement of the Original Trustee is described in section 5.7 of the Trust Declaration which describes a logical process to select subsequent trustees but which does not result in a Trust that will be controlled by the government (as above). Although the Ministry of Energy provided input to the selection of the Advisory Committee with will help the Trustee to select the Replacement Trustees by nominating candidates based on the selection criteria, the Advisory Committee is not the governing body. As at March 31st, the Original Trustee is the governing body and although selection thereof may have been influenced by the government, the Trust Declaration and Transfer Payment Agreement have been drafted to reflect a non-controlling relationship. PSAS also includes the following guidance w.r.t. government involvement in appointing governing bodies: 20 For each indicator that applies in a particular circumstance, the degree of government influence would determine its importance as evidence of control. In weighing the evidence, it would be necessary to consider the indicators collectively as well as individually. For example, where an organization is governed by a publicly elected board, this is not necessarily, in and of itself, sufficient evidence to conclude that the government does not control the organization. Similarly, where a government appoints a majority of the members of the governing body of an organization, this is not necessarily, in and of itself, sufficient evidence that the government controls the organization In addition, section 1.1 (interpretations) of the TPA includes the following: it is intended that the transfer of the Funds to the Recipient will be a transfer made to a “non-controlled trust” (as that term is given meaning in • applicable to the accounting rules and principles applicable to the Province as of the date of the Agreement), and so if a term or condition of the Agreement is determined to conflict with the requirements applicable to the Province recording the transfers to the Recipient of Funds contemplated hereunder as an expense incurred by the Province on the date of the transfer of Funds under the Agreement otherwise in connection with activities undertaken by the Province with such a “non-controlled trust”, then such term or condition shall be given a meaning and shall have an effect insofar as it is possible to interpret such term or condition in a manner that eliminates such conflict while preserving the other provisions of the Agreement and furthering the Purpose.	X

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
6. Appoint or remove the CEO or other key personnel	Right does not exist. N/A	X
7. Establish or amend the mission or mandate of the organization	Province established the Trust and has provided Principles which help to guide the Trust.	✓
8. Approve the business plans or budgets for the organization and require amendments, either on a net or line-by-line basis	Right does not exist. No intention for province to manage or influence the Trust on a line by line basis.	X
9. Establish borrowing or investment limits or restrict the organization's investments	Trust Declaration references: (j) "***Eligible Investments***" means (i) a deposit receipt, note, certificate or instrument issued, guaranteed or endorsed by a bank listed in Schedule I to the *Bank Act* (Canada), which provides that the principal and any interest shall be fully paid no later than [one year] after the day the investment was made, or (ii) a deposit account at a bank listed in Schedule I to the *Bank Act* (Canada). 4.2 (a) ***Power to Own, Hold and Manage.*** Subject to section 4.2(d), the Trustee shall have the power to own, hold and manage the Assets in such manner as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable. (b) ***Power to Invest in Eligible Investments.*** The Trustee shall have the power to invest the Assets only in Eligible Investments, and to change such Eligible Investments at any time and from time to time, all as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable, but always having regard to the Trustee's expectations regarding the timing of payments to be made to the Beneficiaries hereunder. If an investment of Assets in Eligible Investments would not be authorized under the applicable trust laws of Ontario, the Trustee shall nevertheless be permitted to make an investment of the Assets in such Eligible Investments. The Trustee will have no liability for the diminution in the value of any investment in Eligible Investments made hereunder. *Although some restrictions, given the need for liquidity for the funds and envisioned short term nature of the program, it is unlikely that the Trust would have contemplated investing the funds in any different types of instruments as designated in the Trust docs.*	✓
10.Restrict the revenue-generating capacity of the organization, notably the sources of revenue	There are no revenue generating restrictions in the Trust documents; however, there are references indicating that the Funds are expected to be used for not for profit purposes. It should also be noted that the nature of a Trust is not to generate revenue or make a profit, but to fulfil a fiduciary duty on behalf of the beneficiaries. No explicit restriction mentioned in the Trust Declaration or TPA related to other activities of the trust; however,	X

Commented [A18]: Blakes

Computershare, as settlor and Computershare as trustee established the trust. Consider stating that the Province influenced the establishment of the trust and the drafting of principles to help guide the trust.

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
	expectation that funds provided by the province will not be used for profitable purposes by the LDCs.	
11. Establish or amend the policies that the organization uses to manage, such as those relating to accounting, personnel, compensation, collective bargaining or deployment of resources (Suggestions for Admin Services Agreements and Principles in Trust docs are not mandatory. Replacement Board of Trustees can initiate changes which can reasonably be anticipated to be accepted if not contradictory to the Principles. References to provinces procurement directive and meals, entertaining and hospitalitiy directive only state expectation that Trust's processes would align with the principles.)	**NO UNILATERAL GOVT POWER TO MAKE CHANGES**: Trustees would have power to consider change in the policies in the Trust Declaration and/or modify the TPA, subject to provincial approval. Declaration: 1.1 (y) "'***Transfer Payment Agreement***" means the transfer payment agreement dated as of March •, 2017 between the Trustee and Her Majesty the Queen in right of Ontario as represented by the Minister of Energy, as such agreement may be amended, restated, supplemented or otherwise modified by the further agreement of the parties thereto from time to time. **4.2Specifically Enumerated Powers** The Trustee shall have the following specific powers and authorities: (c) ***Transfer Payment Agreement.*** The Trustee shall have the power to enter into, amend, supplement, modify and perform its obligation under the Transfer Payment Agreement. ***NO GOVT CONTROL OVER OPERATING OR FINANCIAL POLICIES*** ***j)Power to Pay Trustee's Fees*** Trustees have general regard to sorts of limitations as are set forth in the "Travel, Meal and Hospitality Expenses Directive of the Province" **5.8 Rules and Procedures of the Board of Trustees** (d) ***Initial Requirements.*** As soon as practicable and in any event no later than one month following the Original Trustee Replacement Date, the Board of Trustees shall meet to take such decisions and actions as they deem necessary to ensure the proper management and administration of the Trust. The date (and location if in person) of the initial meeting shall be determined by a majority of the Board of Trustees. 4.2 The Trustee is expected to conduct its activities in a manner that complies in all material respects with the Transfer Payment Agreement, including to:	X

Commented [A19]: **Blakes**

Consider that section 6.1 of the Trust Declaration states that, subject to the TPA, the trustee shall have power in its discretion to amend the Trust Declaration provided that no amendment shall conflict with the Principles Annex or as as to the scope or effect of the permitted delegations and activities of any Administrative Services Agent pursuant to the Permitted Delegation Annex.

Consider reference to the language in section 20.2 of the TPA - The Trustee covenants that it shall not amend, restate or terminate the Declaration of Trust without obtaining the written consent of the Province in respect of same, such consent not to be unreasonably withheld or delayed

Commented [A20]: Inconsistent w.r.t expectation of agreement between the two parties

Commented [A21]: **Blakes**

This is clause 4.2(a). Consider double-checking sources cited to ensure citation to May 20, 5:30pm version.

This clause speaks to the *power* of the Trustee to amend the TPA – however, it does not necessarily state that, contractually, the Trustee is permitted to amend the TPA unilaterally.

This clause should not be quoted for support that the trustee can make changes to the TPA without consequence.

Commented [A22]: Supposed to say 'is expected that)

Commented [A23]: **Blakes**

This is clause 5.8(a). Consider double-checking sources cited to ensure citation to May 20, 5:30pm version.

Commented [A24]: Terminology

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
	(a) act prudently and in furtherance of the Purpose; (b) report annually the results of its activities for information purposes to the Province in connection with the Program; (c) comply with the Province's request for any independent verification or audit if determined to be necessary or appropriate by the Province; (d) return of Assets that have not been distributed if it is [determined][by the Province] that the Trustee has breached its Standard of Care in discharging its material duties under the Declaration, and has not cured such material breach despite having been given a reasonable opportunity by the Province to do so in light of the circumstances of such material breach, with the result that all or a significant part of the Assets have not been or are not being applied in furtherance of the Purpose or are being applied in a manner that is directly contrary or without regard to the Purpose.] The Trust Declaration includes a Permitted Delegation Annex, which describes administratively, how the Trust might consider delegating its powers and duties to LDCs (non-controlled by the province) and satisfy the Standard of Care required under the Trust Declaration. Certain sections of the Delegation Annex go beyond general accountability provisions and suggest very specific requirements/expectations in relation to the Trustee's arrangements with LDCs and LDCs own administration of Fund monies. As currently worded, the Delegations Annex, when taken together with the Principles Annex and Listing of Eligible Measures, may be assessed substantively as 'controlling' the trust, regardless of wording which refers to the exercise of Trustee discretion. **5.1RECIPIENT'S ACQUISITION OF GOODS OR SERVICES, AND DISPOSAL OF ASSETS** **Acquisition.** If the Recipient acquires goods, services, or both with or by applying the proceeds of the Funds, it is expected to do so through a process that promotes the best value for money and to take reasonable steps to ensure that its Administrative Services Agents also follow a process that promotes the best value for money when acquiring goods and services with or by applying the proceeds of the Funds. .	

Commented [A25]: Aligned with OPCD guidance on One-time Transfers and Trust Guidance (previously discussed and agreed to by OAG)

Commented [A26]: **Blakes**

Consider: "The Trust Declaration includes a Permitted Delegation Annex, which provides that the Trustee will be permitted, and is expected to seek to delegate its powers and duties to LDCs…."

Commented [A27]: **Blakes**

Section 5.1 of the Trust Declaration itself provides that the trustee may satisfy its Standard of Care by delegation, subject to prudent oversight.

Commented [A28]: **Blakes**

Consider that these "very specific" sections are descriptions of matters that it is expected an Administrative Services Agreement would be expected to address (without limiting the discretion of the trustee to negotiate and settle the terms and conditions of such agreement).

Commented [A29]: Some audit risk

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
	PRINCIPLES ANNEX The Trustee shall have regard to **[, but shall not be specifically bound by,]** the following principles in applying its discretion in relation to the administration of the Trust. **DECLARATION OF TRUST** **6.1 Amendments** Subject to the requirements of the Transfer Payment Agreement, the Trustee shall have the power in its sole and absolute discretion from time to time without the approval of any Beneficiary or any court to amend, vary, supplement, replace or restate this Declaration in its entirety or any portion thereof. provided, however, that no amendment shall conflict with the principles set forth in the Principles Annex or as to the scope or effect of the permitted delegations and activities of any Administrative Services Agent pursuant to the Permitted Delegations Annex.] 6. In the event that the Recipient performs any procurements, it is expected that all procurements will reflect the principles of Ontario's Public Service Procurement Directive. From and following the Original Trustee Replacement Date, Reports will be provided [quarterly] on the basis of the government's fiscal year starting at the execution of this Agreement and continuing until conclusion of the Agreement. Annual Reports will be on a fiscal basis starting at the execution of this Agreement and continuing until conclusion of the Agreement. Quarterly Reports and Annual Reports would be expected to be submitted to the Province within one month following the end of the reporting period that they represent. The Province expects that these Reports would be prepared to demonstrate the impact of the Province's funding. **5.0 RECIPIENT'S ACQUISITION OF GOODS OR SERVICES, AND DISPOSAL OF ASSETS** **5.1 Acquisition.** If the Recipient acquires goods, services, or both with or by applying the proceeds of the Funds, it is expected to do so through a process that promotes the best value for money and to take reasonable steps to ensure that its Administrative services Agents also follow a process that promotes the best value for money when acquiring goods and services with or by applying the proceeds of the Funds. **Conduct of the Trust and the Program** 4.1 It is expected that administrative expenses of the Board of Trustees and its members, including any expenses relating to the Trust, to the establishment of the [Trust]and any expenses related to the implementation and operation of the Program, including by or through Electricity Distributors and other relevant entities, will be recognized and subject to reimbursement on a basis that is	

Commented [A30]: Conflicting with suggestion that the Principles are guidelines only?

Commented [A31]: No accounting issue, but not sure that this was included in the appendix?

Commented [A32]: For information purposes, in accordance with OPCD TP Guidance and Trust Guidance.

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
	substantially consistent the principles in the Travel, Meal and Hospitality Expenses Directive, the current form of which attached as Schedule B to this Principles Annex. Permitted Delegation Annex (not mandatory) 4. Accordingly, and without limiting the Trustee's right to delegate under the Declaration and its other rights, powers and discretion as Trustee, the Trustee will be permitted to, and is expected to seek to, enter into Administrative Services Agreements with Electricity Distributors in order to further the Purpose. Without limiting the Trustee's discretion to negotiate and settle the terms and conditions of such Administrative Services Agreements, it is expected that such Administrative Services Agreements will include customary terms and conditions for an administrative services arrangement of this type and, in addition, would (subject to the acceptance and agreement of the applicable Electricity Distributor counterparty) address certain aspects.	

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Appendix II

ACCOUNTING CONSIDERATIONS FOR GOVERNMENT-FUNDED TRUSTS

Purpose:

The purpose of this guidance is to explore accounting-related considerations related to government-funded trusts which are established by the government to fund a specific purpose or activity. This guidance deals specifically with the difference between controlled and non-controlled trusts, the introduction of accountability provisions which can now be reflected in trust agreements, and key timing considerations for trusts contemplated towards year-end. It is important that these factors be taken into account when establishing a trust, in order to achieve the intended fiscal impact and appropriate accountability over the use of public funds.

Introduction:

Trusts are usually established by way of trust declaration or trust agreement, and are one of several means by which the government can direct funding to support key policy initiatives. Simply stated, trustees hold title to property for the benefit of, and stand in a fiduciary relationship to the beneficiaries. Trustees are accountable to third parties (beneficiaries) for the use and disposition of trust assets and for the funds derived from those trust activities. The trust itself is not a separate legal entity. The trustees carry out the activities of the trust in the name of the trustees.

Generally, direct year-end transfers are the preferred alternative over trusts where the province wants to retain ultimate decision-making authority regarding amounts to be transferred to recipients. Direct transfers are more appropriate where the identity of eligible transfer payment recipients is known and the amounts to be transferred to each recipient can be or has been determined.

Year-end transfers to a trust might be considered where the province desires to delegate to third parties ultimate decision-making authority regarding allocation of amounts amongst eligible beneficiaries.

A trust must be valid for legal purposes in order to be recognized for accounting purposes. Key requirements for a trust to be valid include: an intention to create a trust ('certainty of intention'), certainty of subject-matter of the trust ("certainty of subject matter") and the objects of the trust must be certain ('certainty of objects"). There are generally two different types of trust, a trust in which the objects are the "beneficiaries" and trust in which the objects are a "purpose" (e.g. for charitable purposes). Where a trust is under serious consideration, it is imperative that ministries seek legal advice to ensure that the contemplated trust will be valid.

Trustees are obligated to follow the terms of the trust declaration or trust agreement which will usually detail the powers and duties of the trustees including the number of trustees and how decisions will be made by the trustees.

Controlled versus Non-Controlled Government-Funded Trusts

From an accounting perspective, it is important to distinguish whether the design and governance of a particular trust results in the trust being controlled by the Province for accounting purposes. Control stems from the nature of the relationship between the government and the trust. Financial and operating policies are principles that determine how an organization conducts its activities. The ability to govern these policies is an important element of government control.

The means by which a trust is established, the government's representation among the trustees, the government's involvement in the trust's governance processes and ability to impact trustee discretion in decision-making are but some of the factors to be considered in assessing whether a trust is 'controlled' or 'not controlled' by the government.

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In establishing a trust, it is important to achieve the intended relationship between the province and the trust in order to achieve the intended fiscal impact.

Non-Controlled Trusts:

Where trusts are not controlled by the Province, they are excluded from the government reporting entity. For non-controlled trusts, the following accounting would apply to trust funding:

- Where funds provided to the "trust" are unconditional, the Province would record a transfer payment expense for any transfers approved in the current period (and flowed by finalization of public accounts).

- Where funds provided to the "trust" are conditional (i.e. upon the trust completing some specific task or result), the Province would initially record funding to the trust as a prepaid expense until the conditions are met at which time the Province would record a transfer payment expense, with the corresponding credit to prepaid expense. This may occur over a number of fiscal years.

In determining whether a trust is controlled, there are a variety of ways that a government might be perceived to be governing the financial and operating policies of a trust. These include:
- Eliminating or significantly limiting the ability of the trustees to make future decisions
- Directing the financial and operating policies of the trust
- Overruling, modifying or vetoing the financial and operating policies established by the trust.

Specific factors that should be considered in establishing a non-controlled trust include:
- Government representation in the trustees (should be in a minority position), and non-government trustees should be nominated by non-government sources
- Government influence over day-to-day trust governance and trustee discretion to make decisions (e.g. selection of eligibility criteria, selection of recipients).
- degree of influence over how funds are disbursed (i.e. the Declaration of Trust can provide general guidelines but not be overly prescriptive)
- the government's power to unilaterally appoint or remove the majority of trustees
- the government's on-going access to the trust's assets, or right to direct decisions regarding the flow of those assets to specific beneficiaries
- the government's unilateral power to dissolve the trust, except under specified circumstances as stipulated by the trust agreement (i.e. corrective action)
- the government's ability to establish or amend the policies used by the trust to manage accounting, personnel, deployment of resources, etc.

In some cases, it may be advantageous for ministries to provide administrative support to trusts. In these cases it is important that the extent of such support is not so pervasive as to influence or direct the day-to-day financial or operating policies of the trust, otherwise the trust will be deemed controlled and will be subject to consolidation in the government reporting entity.

Controlled Trusts:

If the Province controls the trust (for example, through its power to appoint a majority of the trustees on the board of trustees), the Province would be deemed to have control of the trust, resulting in the trust being accounted for in the same manner as other organizations controlled by the province (i.e. on a consolidated basis). As a result, the Province's contribution to the trust would not be expensed when it is transferred, but rather over time as the funds are disbursed to trust beneficiaries.

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Accountability Related Considerations:

The Auditor General has confirmed that the new accountability provisions developed for one-time transfers can also be applied to trusts without impacting the expense treatment of any transfers to non-controlled trusts.

These new accountability provisions will enable the government and the Legislature to:

- obtain assurance that a trust is spending public funds prudently and for the purposes intended and to take corrective action if it is not;
- ensure ministerial accountability to the Legislative Assembly for the trust's activities; and
- ensure that the province is able to take corrective action where warranted and as stipulated under terms of the trust agreement.

It should also be noted that the Auditor General's Act now allows the Province's Legislative Auditor to conduct special audits of any person or organization receiving transfers from the government, including trusts.

To enhance accountability controls over government transfers to non-controlled trusts, Ministries can consider incorporating some or all of the following accountability provisions as part of their trust agreement/declaration without impacting the accounting treatment of the trust.

The inclusion of any of these provisions should not result in a trust being assessed as 'controlled'. Note that the key determinant in identifying appropriate provisions for any individual trust is a ministry's assessment of the **risk** associated with a particular trust, as per the Transfer Payment Directive.

1. **Description of intended use of trust funds**;
    - specific purpose(s) for which the funds are to be used;
    - description of intended recipients and related eligibility criteria*; and,
    - the nature of eligible expenditures relevant to the transfers.

    *Note: avoid *overly prescriptive* eligibility criteria which would effectively eliminate or significantly limit the trustees' discretion to make funding decisions.

2. **Requirement for information**
    - Information to be provided by the trust at a future date (e.g. requirement for trustees to advise the government of trustee-developed performance criteria, and provide annual assessments against those criteria)

3. **Report-back requirement for Public Accountability**
    - information to be provided by the trust at a future date with respect to the stewardship and payment of transfer funds (e.g. audited financial statements, audited list of recipients and amounts funded).

4. **Right to independent verification/audit**
    - The Province reserves the right to audit any transfer payment recipients. The trust agreement should make reference to this fact.

5. **Right to take corrective action**
    - Where stipulated under the trust agreement, the Province reserves the right to re-direct unused funds where results of a trust assessment (where required by the trust agreement) indicate original purpose of the trust is not being achieved, or if there remain unused funds at the end of the trust term.
    - Province may also reserve the right to extend the term of the trust agreement, where funds remain at the end of the trust period.

To qualify for in-year expense treatment, the non-controlled trusts must satisfy the following:

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- the decision to establish the trust must have been approved by Treasury Board/Management Board of Cabinet and ratified by Cabinet by March 31st;
- the ministry providing the transfer must have approved appropriations and spending authority by March 31st;
- Trustees must have been identified and signed the trust declaration or agreement to establish a valid trust by March 31st ;
- the trust must be set up and ready to receive funds, and a nominal amount transferred to the trust by March 31s;t ; and,
- the government should have communicated publicly (e.g. in the Budget document) the pending or final establishment of the trust.

In addition, all remaining funds beyond those initially transferred at March 31st should be transferred to the trust by June 30th.

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Appendix II (continued)

Trusts
Questions and Answers on Trust Guidance

Question: *Where a trust is announced in the Budget document, must the trust be established by March 31st, or could such a trust be established shortly thereafter without impacting the expensing of transfers to the trust in 2007-08?*

Answer: *A trust would have to be established prior to the end of a fiscal period in order to satisfy the recognition criteria for government transfers. If the intended recipient for a government transfer does not exist at March 31st, the province cannot record a payable owing to it under existing accounting standards.*

Question*: Does the transfer of funds to a non-controlled trust need to occur by March 31st or before the date of Public Accounts finalization?*

Answer: *Consistent with the new requirements for one-time transfers, as long as the trust is established by March 31st, the transfer is authorized and a reasonable estimate of the amount can be made, cash payments can be made after year-end.*

Question: *Can beneficiaries of a non-controlled trust include consolidated entities provided that the ultimate selection of recipients is at the discretion of the Trustees?*

Answer: *Any amounts provided to a trust which are in turn be provided to an organization inside the government reporting entity should not be expensed at the time of the transfer to the trust. Any amount that is flowed to a trust with the intention of subsequently flowing the funds to a consolidated entity should not be recorded as an expense to the government.*

Question: *Can a Ministry provide administrative support to a trust without compromising the non-controlled status of the trust?*

Answer: *The government can provide administrative support as long as the extent of government administrative support is <u>not so pervasive</u> so that the government is in substance establishing and managing the trust's policies in the areas of accounting, personnel, compensation, collective bargaining or deployment of resources. Where such administrative support is assessed as pervasive, it could impair the trust's non-controlled trust and the trust will be consolidated onto the province's financial statements.*

Can the following clauses appear in a trust agreement for a non-controlled trust to ensure adequate accountability over public funds without impacting the expense treatment of such trusts?

Question*: Specific description of purpose of the trust (possibly including nominal allocation among various objectives)*
Answer: Yes.

Question: *Can the trust agreement include a specific description of the intended groups of beneficiaries and detailed eligibility criteria.*

Answer: *Specificity should be applied cautiously, so as not to limit the discretion of the trustees in their subsequent grant making processes. For the trust to be considered 'not controlled' it should not be seen as 'establishing the trust's fundamental purpose and eliminating or significantly limiting the ability of the trust to make future decisions by predetermining the financial and operating policies of the trust.*

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Question: *Can trustees stipulate that funding is to be provided to beneficiaries on a cost-sharing basis?*
Answer: *Yes.*

Question: *Can the trust agreement include a requirement for a trust to report back to the province on trustee-established performance criteria and results, audit of financial statements, audited recipients and amounts, confirmation that trustees communicated to beneficiaries the intended purpose of the funding, etc.*
Answer: *Yes.*

Question*: Requirement for Trust to publicly post communications on existence, availability of funds, eligibility criteria, recipients and amounts granted to each recipient.*
Answer: *Yes*

Question: *Inclusion of a 'suggested' drawdown schedule over a period of years, with discretion left to Trustees as to actual results.*
Answer: *The inclusion of a drawdown schedule is not suggested for one-time, up-front transfers.*

Question: *Trust agreement can suggest accountability provisions which might be attached by Trustees to beneficiary payments (e.g. specific purpose of funding, requirement for report-back, right to audit, corrective actions).*
Answer: *Yes*

Question: *Trust agreement to reserve the province's right to re-direct any unspent funds to specified parties (e.g. non-consolidated entities or another non-controlled trust) at the end of the trust term, or alternatively to extend the term of the trust where unspent funds remain.*
Answer: *Yes*

Question*: Can the trust agreement include the requirement for evaluations of the trust at certain times (e.g. years 3, 7, 10 of the trust agreement), with the right for the government to decide either to terminate the trust (corrective action) based on the results of the assessment, or extend the trust beyond the initial term as per the agreement.*
Answer: *Yes.*

Question: *Trust agreement can require Trustees to request as part of the funding process that beneficiaries acknowledge receipt of government funding in their public communications on specific projects.*
Answer: *Yes.*

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Appendix III

ACCOUNTING TREATMENT FOR ONE-TIME TRANSFERS WITH ENHANCED ACCOUNTABILITY PROVISIONS

Purpose:

The purpose of this guidance is to identify the nature of the accountability provisions which may be associated with one-time transfer payments that qualify for immediate expense treatment in the current period.

Definition of One-time transfers:

One-time transfers are defined as lump-sum operating or capital transfers that

- are not advancing currently planned future transfer payments under an existing on-going program, or
- are not identified as being intended to be spent in specified future periods or over a specified period of time.

Background:

Transfer payments are a means by which the government works with third parties to deliver public services. Transfer payment recipients must be held responsible by the government to deliver the provincially-funded services and be accountable for the funds they receive. Consistent with the *Transfer Payment Accountability Directive, August, 2007*, a risk-based approach is to be followed in designing the appropriate accountability and reporting mechanisms for specific funding agreements.

The current *PSAB Handbook Section 3410, Government Transfers requires that a government transfer should be recognized by a transferring government as an expense in the period the transfer is authorized and all eligibility criteria have been met by the recipient.*

To recognize a liability and expense as at year-end:

- the government must create a valid expectation of the recipient by year-end, leaving the government little or no discretion to avoid but to settle its obligation;
- no significant, contingent actions should be outstanding which if unfulfilled by year end might cause the transfer not to occur.

It is understood that the intention of negotiating a transfer payment agreement following the government's commitment to the recipient is to work out the administrative details of the arrangement, not to change any key elements of the government's commitment. As such, any correspondence which indicates that funds will not be flowed until a TPA is signed should make clear that the nature of additional details to be negotiated is logistical and administrative in nature (bank account info, reporting requirements, etc.)

The government should not suggest or direct the recipients to use the funding for future periods.

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To enhance accountability controls over one-time transfers accountability provisions one through five below are required for one-time transfers.

1. **Description of intended use of one-time transfer funds**;
   - specific purpose(s) for which the funds are to be used; and,
   - the nature of eligible expenditures relevant to the transfers.

2. **Report-back requirement for Public Accountability**
   - Periodic reporting on the use of transfer funds, service deliverables, outputs or outcomes achieved.

3. **Right to independent verification/audit**
   - at the discretion of the Province to verify/audit information submitted by the recipient is complete and accurate, and that funds were used for purposes intended.

4. **Right to recover funds (corrective action)**
   - If the funds were not used, or will not be used, for the intended purpose(s), specified services were not delivered, or intended outputs were not achieved, the Province has the right at a future date to recover funds transferred.

5. **Requirement for information** (*this item optional*)
   - information to be provided by the recipient at a future date with respect to the use of transfer funds, service deliverables, outputs or outcomes achieved.

To qualify for in-year expense treatment, the transfers must satisfy the following:

- be approved by Treasury Board / Management Board of Cabinet and then ratified by Cabinet by March 31st;
- the ministry providing the transfer must have approved appropriations and spending authority by March 31st;
- the recipients must be eligible to receive the grant by March 31st (i.e. eligibility criteria have been met prior to March 31st), and the intent to make the transfer payment must be communicated to the recipients by March 31st;
- In addition, funding details including accountability provisions must be communicated to the recipients, and the transfer payments must be made to the recipients prior to the finalization of the Public Accounts (currently June 30th);
- Where funds are flowed to recipients by March 31st, all eligibility criteria are assumed met for accounting purposes[1], and all amounts flowed are recorded as an expense, even where conditions might exist which remain unmet at March 31st.

[1] PS 3410, Government Transfers, states that "no matter how a transfer term is identified in legislation, regulations, by-laws or a transfer agreement (i.e., as an eligibility criterion or a stipulation), the crucial characteristic that distinguishes the substance of these two types of transfer terms is when they are required to be or are met by a recipient. If a term is required to be and is met before the transfer is provided, it is an eligibility criterion for the purposes of this Section. If a transfer term is met after the transfer is provided, it is a stipulation for the purposes of this Section".

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SCHEDULE "C"
PROJECT

For the purposes of this Agreement, the "Project" is the distribution of the Funds in accordance with the Declaration of Trust.

It is intended the Project will be undertaken by the Recipient in furtherance of the Purpose and in accordance with the Declaration of Trust. In this regard, it is expected that the Recipient will undertake the Program having regard to the Budget and the Principles set forth in Annex A.

The following are the Provinces expectations regarding the circumstances in which the Recipient will begin to distribute any Funds to any Beneficiary.

1. The Original Trustee Replacement Date (as defined in the Declaration of Trust) will have occurred.
2. An administrative services agreement will have been entered into between the Recipient and an Administrative Services Agent providing for the administrative services necessary for the Recipient to perform its obligations herein and execute the Project.
3. Administrative procedures will have been developed and implemented under which Electricity Distributors (as defined in the Declaration of Trust) will be invited to assist with (a) the identification and selection of Primary Beneficiaries under the Declaration of Trust, (b) the determination of the amount of Funds to be distributed to particular Primary Beneficiaries, and (c) the distribution of Funds to or for the benefit of such Primary Beneficiaries (in each case substantially on the basis contemplated in the Permitted Delegations Annex).
4. The Recipient will have obtained commercial general liability insurance from insurers having a secure A.M. Best rating of B+ or greater, or the equivalent, that in the opinion of the Recipient a prudent person similar to the Recipient would maintain, and having an inclusive limit of not less than $2,000,000 per occurrence and providing for contractual liability coverage. If requested, the Recipient will provide the Province (for its information purposes) with copies of the certificates of insurance and policies for such insurance coverage.

The Province recognizes that the foregoing may involve the Recipient entering into agreements as may be the Recipient considers to be necessary or expedient, including any required amendment or amendment and restatement of the Declaration of Trust. Funds may be expended to pay the expenses of the Trustee in completing these matters. The Recipient will confirm to the Province once such matters have been completed.

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5.7 Replacement of the Original Trustee

As soon as practicable and in any event on or prior to March 31, 2017, the Original Trustee shall appoint the Persons identified by the Trustee Replacement Annex to comprise the Advisory Committee contemplated therein (once constituted, the "**Advisory Committee**"). As soon as practicable thereafter, the Original Trustee shall request that the Advisory Committee make recommendations with respect to the composition of the "Board of Trustees", as contemplated by the Trustee Replacement Annex. The Trustee shall have no duty or obligation to investigate the basis for any of the Advisory Committee's recommendations and may rely on such recommendations without any duty of enquiry, supervision or oversight with respect to the activities and decision-making processes adopted by the Advisory Committee in its discretion, in full satisfaction of the Original Trustee's Standard of Care with respect to such matters hereunder. Except if the Original Trustee determines that the individuals recommended by the Advisory Committee to become members of such Board of Trustees are disqualified from so acting on the basis of manifest non-compliance with the "Selection Factors" set forth in the Trustee Replacement Annex, the Original Trustee shall appoint, as members of the Board of Trustees, the [six] (five voting and one non-voting) individuals recommended for appointment to the Board of Trustees by the Advisory Committee. Upon the appointment of such [six] individuals pursuant to this provision and their agreement to act as members of the Board of Trustees, the Original Trustee shall be deemed to have resigned and shall cease to be a trustee (such resignation occurring on the "**Original Trustee Replacement Date**").

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Draft Control Assessment of Affordability Fund Trust (Rev. Mar 20, 2017)
for Inclusion in the Government's Reporting Entity

ISSUE

BLAKES COMMENTS ADDED IN COMMENT BUBBLES
(3/21/2017

Would the Ministry of Energy's proposed Affordability Fund Trust be assessed as controlled under Public Sector Accounting Board (PSAB) standard on the Government Reporting Entity (PS 1300) and therefore be included in the Province's consolidated financial statements?

RECOMMENDATION

Conclusion outstanding pending confirmation of accuracy of extracts/references in Appendix 1.

[Elements of] the Trust Declaration and Transfer Payment Agreement have been assessed by OPCD as aligned with both OPCD's One-Time Guidance on Transfers as well as OPCD's Trust Guidance document, both of which are attached as Appendices to this analysis. Both of these documents have been reviewed and concurred to with the Office of the Auditor General in the past and have been important references in ensuring that [the public interest will continue to be served through the establishment and administration of the Affordability Fund Trust.][UNSURE WHY THIS IS HERE]

BACKGROUND

The Ministry of Energy plans to transfer $100M to a recently formed, limited purpose Trust in relation to a new Affordability Fund for the purpose of providing energy efficiency measures to electricity customers who do not qualify for existing low income conservation programs (e.g. the existing Home Assistance Program (HAP), delivered by LDCs under the Conservation First Framework) [and who have difficulty paying their electricity bills] [THIS DOES NOT STRICTLY APPEAR ANYWHERE IN THE DOCUMENTS].

The Affordability Fund would be available ~~to LDCs who would identify eligible customers in accordance with criteria established by the Trustees~~ for distributions to beneficiaries, to be identified based on recommendations from LDCs based on factors listed in the Declaration of Trust [and could include customers in frequent arrears or facing disconnection. Priority would be given to homes primarily heated by electricity.] [THIS DOES NOT STRICTLY APPEAR ANYWHERE IN THE DOCUMENTS]

In order to ~~establish~~provide funding to the ~~Fund~~Trust, the Ministry of Energy plans to enter in a ~~Trust Declaration and a~~ Transfer Payment Agreement (TPA) with ~~a non-controlled~~the Trustee of the Trust (Computershare) ~~which~~. Computershare will shortly thereafter be replaced by an independent Board of Trustees, to be appointed based on the advice of an independent Advisory Committee. The Ministry of Energy anticipates entering into ~~the Trust Declaration and~~ TPA with Computershare and flowing the approved funding prior to March 31st.

The Board of Trustees is expected to be comprised of:

- [six] residents of Ontario who have expressed that they are willing to act as members of the Board of Trustees and who, individually and collectively, satisfy the following criteria (collectively, the "**Selection Factors**"):
  a) each member demonstrates an understanding of the electricity sector including the electricity distribution sector;

b) each member demonstrates an expertise in conservation and low income programs;
c) three of the identified individuals will be representatives from separate electricity distributors [not under the control of the Government of Ontario], two individuals will be representatives from separate social services agencies [not under the control of the Government of Ontario] and one individual member, who will be ~~anon~~a non-voting member, will be an employee or representative of the Government of Ontario; and
d) it is expected that representation by the Government of Ontario will be non-controlling. [RED TO BE CONFIRMED. THIS COULD PRECLUDE H1 FROM BEING ON THE BOARD?]

The Board of Trustees, once selected is expected to include 6 persons (five voting and one non-voting) of individuals from among those individuals who have been recommended for appointment to the Board of Trustees by the Advisory Committee. [REDUNDANT GIVEN ABOVE?]

The Trustees will have the discretion to hire Hydro One or other entities as service providers to assist with administering the ~~Fund~~Trust, using Administrative Services Agreements to clearly document services and expectations. The Trust would distribute funds to identified customers of LDCs across the province (including Hydro One) at the discretion of the Trustees, based primarily on the recommendations of the applicable LDCs.

The ~~draft TPA includes terms which allow for unfettered control by the Trust to operate~~Declaration of Trust confers broad powers and discretion to the Trustee, to act in the best interest of the beneficiaries~~, including making decisions on the administration and distribution of funds to LDCs across the province~~. The Trustees are expected to conduct themselves in good faith and give regard to guiding principles ~~established~~set out in the Declaration of Trust (and agreed by the Province in the TPA) in exercising their duties under the Trust Declaration and TPA in distributing funds to LDCs for the benefit of beneficiaries across the province, including Hydro One.

The Trust Declaration will be subject to further modification ~~based on agreement by both parties, but not unilaterally by either party.~~ by the Trustee, subject to the Province's right under the TPA to consent, not to be unreasonably withheld The input and involvement of LDCs across the province is anticipated and integral to the success of the Trust in meeting its purpose. The ~~non-compulsory **Principles** of the Fund will be clearly articulated~~**Principles, which the Trustee is required to consider in the exercise of its discretion,** will be set out in both the Trust Declaration and the TPA~~. Language in the documents will clearly reflect that the principles are not mandatory requirements~~.

In addition, a **Permitted Delegation Annex** ~~will be included~~forms part of the Declaration of Trust, which refers to an expectation ~~between the parties~~ that the Trust would ~~plan to~~ rely on participating LDCs to assist with achieving ~~its purpose, while maintaining unfettered discretion and power~~the purpose of the Trust, including an expectation to (a) appoint, employ or retain Administrative Services Agents for the purpose of discharging its duties and obligations under the Declaration; and (b) enter into, perform, enforce and amend Administrative Services Agreements.

Without limiting the Trustee's discretion to negotiate and settle the terms and conditions of the above-mentioned Administrative Services Agreements, the Permitted Delegation Annex also outlines certain terms and conditions that ~~the Trustees might consider for inclusion~~are expected to be included in the administrative services agreements, recognizing that the ultimate agreements would be subject to the acceptance and agreement of the applicable Electricity Distributor counterparty. While the Annex appears quite specific in nature, it is ~~non-mandatory and intended as guidance only which may be helpful as the Trust seeks to commence discussions with LDCs in the spirit of serving the interests of the primary~~

~~beneficiaries~~subject to the Trustee's overall discretion. As noted, the Trustees are not bound to use the guidance.

CONTROL ANALYSIS

In accordance with PSAB, "the Government Reporting Entity should comprise the organizations that are controlled by the government" (PS 1300.07). PSAB defines control as "the power to govern the financial and operating policies of another organization with expected benefits or the risk of loss to the government from the other organizations activities" (PS 1300.08). Benefits may be financial or non-financial, for example, the government may require the organization to cooperate in pursuing the government's public policy objectives.

PSAB's "indicators of control" are the relevant guidance in determining the degree of control for inclusion of the Affordability Fund Trust in the Government Reporting Entity (GRE). In applying this guidance, it is necessary to determine the substance of the relationship between a government and an organization in addition to its legal form. All relevant aspects and implications of the relationship would be considered in determining whether or not the government controls the organization. In addition to PS 1300, consideration is also given the Trust Guidance and One-Time Transfer Guidance developed by OPCD in conjunction with the Office of the Auditor General which are attached as Appendices.

There are a total of 11 PSAB prescribed control indicators that provide evidence of control: 4 persuasive indicators of control and 7 other control indicators. It is the **preponderance of evidence** that would be considered in assessing whether a government controls an organization.

The following governing documents were reviewed in support of the analysis of the Province's control over the Affordability Fund Trust:

1) Draft Trust Declaration (March 20 5:30 pm), including related schedules (Principles Annex, Delegations Annex)
2) Draft Transfer Payment Agreement (March 20 5:30 pm)
3) OPCD Trust Guidance
4) OPCD Guidance on One-Time Transfers

Appendix I shows the detailed analysis of the PSAB indicators of control. Based on this assessment and the preponderance of evidence, informed by a review of the wording in the draft Trust Declaration and Transfer Payment Agreement, there are a number of features of the proposed arrangements which may be pertinent in assessing whether, an overall basis, the Affordability Fund Trust might be controlled by the Province as at March 31, 2017.

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APPENDIX I

Affordability Fund Trust
Indicators of Control Analysis
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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
Primary (i.e., more persuasive) indicators (CICA PS 1300.18):		
1. Government has the power to unilaterally appoint or remove a majority of the members of the governing body of the organization	• Original Trustee (Computershare) is the governing body of the Trust until the Replacement Board of Trustees is selected. The Declaration describes the process expected to be used to establish the Replacement Board. The government will not control the Original Trustee, the Advisory Committee, or the appointment of the Replacement Board of Trustees.	X
2. Government has ongoing access to the assets of the organization, has the ability to direct the ongoing use of those assets, or has ongoing responsibility for losses	• The government will not have an on-going access to assets transferred to the Trust, and any future access will only be through protective clauses (termination/default for material breach). At the Final Distribution Date, any excess funds will be distributed to a non-controlled Residual Beneficiary in accordance with clause 3.3 of the Trust Declaration. • The government will not have any exposure to losses of the Trust. In addition, section 1.1 (interpretations) of the TPA includes the following: it is intended that the transfer of the Funds to the Recipient will be a transfer made to a "non-controlled trust" (as that term is given meaning in • applicable to the accounting rules and principles applicable to the Province as of the date of the Agreement), and so if a term or condition of the Agreement is determined to conflict with the requirements applicable to the Province recording the transfers to the Recipient of Funds contemplated hereunder as an expense incurred by the Province on the date of the transfer of Funds under the Agreement otherwise in connection with activities undertaken by the Province with such a "non-controlled trust", then such term or condition shall be given a meaning and shall have an effect insofar as it is possible to interpret such term or condition in a manner that eliminates such conflict while preserving the other provisions of the Agreement and furthering the Purpose.	X
3. Government holds the majority of the voting shares or a "golden share" that confers the power to govern the financial and operating policies of the	• Neither in the Trust Declaration or the TPA can the government unilaterally direct the financial and operating policies of the Trust. Any Trustee initiated changes to the Declaration or TPA would need to be consistent with the Principles Annex. • • The Trust Declaration and TPA do not ~~interfere~~conflict with the	

INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
organization	~~unfettered~~overall discretion of the Trustees in exercising their fiduciary duties on behalf of the beneficiaries. The 'Principles Annex' describes~~ non-mandatory guiding~~ principles to be considered by the Trustees in applying their discretion in relation to administration of the Trust. The Annex clearly indicates that the Trustees shall **only have regard to** the principles but that they shall not be specifically bound by the listed principles. Furthermore, the declaration and TPA are subject to change. Under the Declaration of Trust, section 1.2 Definitions , "**Declaration of Trust**" means the declaration of trust made as of March [□], 2017, under which ○ the Affordability Fund Trust was established, as such declaration of trust may be amended, restated, supplemented or otherwise modified from time to time with the consent of the Province. • The Trust Declaration also includes a schedule which lists 'suggested' initial eligible measures for consideration by the Trustees, and elements for consideration in the Administrative Services Agreements that the Trust may ~~chose to~~eventually enter into with LDCs. • The Trust Declaration does not direct a specific governance structure, but rather includes the following reference under **2.3 Governance. The Recipient represents, warrants and covenants that it has, and will maintain, in writing for the period during which the Agreement is in effect:** (a) decision-making mechanisms and procedures to enable the Recipient to hold, invest, manage, apply and distribute the Funds in accordance with the Declaration of Trust in furtherance of the Purpose; and (b) procedures to enable the preparation and delivery of all Reports required pursuant to Article 7.0	✓
4. Government has the unilateral power to dissolve the organization and thereby access its assets and become responsible for its obligations	Only after the Final Distribution Date or in the event of default will the government have any power or rights in relation to the remaining funds in the Trust, including the power to redirect distribution of remaining funds and seek remediation for any mis-used funds. **SECTION 7 - TERMINATION** **7.1 Duration** Subject to sections 7.2 and 7.3, the Trust will continue in full force and effect so long as there are any Assets and until all of the debts, liabilities and obligations of the Trust have been paid and satisfied in full. **7.2 Termination and Distribution of Assets** The Trustee shall terminate the Trust and wind up its affairs as soon as practicable after the Final Distribution Date. In connection with the termination of the Trust, the Trustee shall identify the Residual Beneficiaries and distribute or cause to be distributed the remaining Assets, in cash or in kind or partly in each, to the Residual Beneficiaries, in each case in accordance with section	

INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
	3.3. Despite the foregoing, the Trust will only be terminated and wound up date after the Trustee, in its sole and absolute discretion, determines that all debts, liabilities and obligations of the Trust have been paid or otherwise adequately provided for and satisfied and upon receipt of such releases, indemnities and discharges as the Trustee, relying on the opinion of counsel, deems necessary for the protection of the Beneficiaries and for its own protection. **7.3 Distribution of Assets on Final Distribution Date** If the Trust holds Assets on the Final Distribution Date, the Trustee shall pay or provide reserves for the payment, and otherwise shall satisfy, all debts, liabilities and obligations of the Trust and shall provide or arrange to provide such investigations, audits, releases, indemnities and discharges as the Trustee, relying on the opinion of counsel, deems necessary for the protection of the Beneficiaries and for its own protection. Thereafter, any remaining Assets shall be paid to the Residual Beneficiaries in accordance with section 3.3. Right to assets under default (material breach provisions only, and after notice period). **11EVENT OF DEFAULT, CORRECTIVE ACTION AND TERMINATION FOR DEFAULT** **11.1 Events of Default.** An Event of Default will occur if: (a) the Recipient fails to perform or observe any covenant in this Agreement and such failure has and continues to have a material adverse effect on the Province and remains unremedied during any Notice period applicable under section 11.2 after the earlier of (i) actual knowledge thereof by the Recipient, or (ii) receipt by the Recipient of Notice thereof from the Province; (b) any representation or warranty made by the Recipient in the Agreement shall prove to have been incorrect in any material respect when made or deemed made, and, if capable of remedy, continues to be incorrect in any material respect during any Notice period applicable under section 11.2 after the earlier to occur of (i) the actual knowledge thereof by the Recipient or (ii) receipt by the Recipient of Notice thereof from the Province; (c) it is [determined][manifestly demonstrated by the Province] that the Recipient has breached its Standard of Care (within the meaning given in and context of the Declaration of Trust) in discharging its material duties under the Declaration of Trust, with the result that all or a significant part of the Funds have not been or are not being applied in furtherance of the Purpose or are being applied in a manner that is directly contrary or without regard to the Purpose, and, if such breach is capable of remedy, it continues and remains unremedied during any Notice period applicable under section 11.2 after the earlier of (i) actual knowledge thereof by the Recipient, or (ii) receipt by the Recipient of Notice thereof from the Province; (d) an insolvency event shall have occurred and be continuing with respect to the Recipient. **11.2 Consequences of Events of Default and Corrective Action.**	X

INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
	If an Event of Default occurs, the Province may, at any time, take one or more of the following actions: (a) provide the Recipient with Notice allowing the Recipient an opportunity to remedy the Event of Default during a specified Notice Period; No right to access assets following Final Date of Distribution: **3.3 Distributions to Residual Beneficiaries** Prior to the Final Distribution Date, the Trustee shall identify the Residual Beneficiary, or if more than one the Residual Beneficiaries and their respective allocations, by consulting with and having regard to the recommendations of the Ontario Energy Board, based on **[Identify criteria that will narrow the scope to charities to those having an energy/social focus]**those charitable organizations which provide support services for Low Income Energy Assistance Program Emergency Financial Assistance (LEAP EFA) and the Ontario Electricity Support Program (OESP) or other charities that OEB may identify as relating to the Purpose. Following the Final Distribution Date, the Trustee shall, subject to compliance with section 7.3,7.3 and completion of a final audit, distribute all remaining Assets (including capital or income) to the Residual Beneficiaries, in each case in the amounts and to the extent determined by the Trustee in its discretion hereunder (having consulted with and having had regard the recommendations of the Ontario Energy Board as aforesaid) and to the exclusion of the other Beneficiaries. The government also cannot unilaterally extend the term of the agreement. Rather, the term of the Agreement can only be extended by further agreement between the Parties. **3.3 Extension of the Declaration of Trust.** If the Province determines that an extension of the Declaration of Trust (beyond the "Final Distribution Date" and time for termination, each as specified or determined thereunder) is consistent with and in furtherance of the Purpose and the Province's original intentions and expectations in establishing the Project, the Province may request that the Recipient extend the Declaration of Trust to a date specified by the Province in a Notice (such date not to be later than •), whereupon the Recipient, so long as the Trustee does not have a reasonable basis to believe that such an extension would be inconsistent with the Purpose or weaken the protections intended for the benefit of the Trustee pursuant to the Declaration of Trust, will undertake such actions as it may consider to be necessary or appropriate to so extend the Declaration of Trust, including by amending the Declaration of Trust to provide for such an extension and to modify any other term or requirement as would be necessary or prudent to conform such term or requirement in light of such extension.	
5. Provide significant input	In accordance with the Trust Declaration and the TPA, the	

INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
into the appointment of members of the governing body of the organization by appointing a majority of those members from a list of nominees provided by others or being otherwise involved in the appointment or removal of a significant number of members	government will not control the Original Trustee, and will not have a controlling interest in either the Advisory Committee nor the Replacement Trustee Board. The process Replacement of the Original Trustee is described in section 5.7 of the Trust Declaration which describes a logical process to select subsequent trustees but which does not result in a Trust that will be controlled by the government (as above). Although the Ministry of Energy provided input to the selection of the Advisory Committee with will help the Trustee to select the Replacement Trustees by nominating candidates based on the selection criteria, the Advisory Committee is not the governing body. As at March 31st, the Original Trustee is the governing body and although selection thereof may have been influenced by the government, the Trust Declaration and Transfer Payment Agreement have been drafted to reflect a non-controlling relationship. PSAS also includes the following guidance w.r.t. government involvement in appointing governing bodies: 20 For each indicator that applies in a particular circumstance, the degree of government influence would determine its importance as evidence of control. In weighing the evidence, it would be necessary to consider the indicators collectively as well as individually. For example, where an organization is governed by a publicly elected board, this is not necessarily, in and of itself, sufficient evidence to conclude that the government does not control the organization. Similarly, where a government appoints a majority of the members of the governing body of an organization, this is not necessarily, in and of itself, sufficient evidence that the government controls the organization In addition, section 1.1 (interpretations) of the TPA includes the following: it is intended that the transfer of the Funds to the Recipient will be a transfer made to a “non-controlled trust” (as that term is given meaning in • applicable to the accounting rules and principles applicable to the Province as of the date of the Agreement), and so if a term or condition of the Agreement is determined to conflict with the requirements applicable to the Province recording the transfers to the Recipient of Funds contemplated hereunder as an expense incurred by the Province on the date of the transfer of Funds under the Agreement otherwise in connection with activities undertaken by the Province with such a “non-controlled trust”, then such term or condition shall be given a meaning and shall have an effect insofar as it is possible to interpret such term or condition in a manner that eliminates such conflict while preserving the other provisions of the Agreement and furthering the Purpose.	X
6. Appoint or remove the CEO or other key personnel	Right does not exist. N/A	X

INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
7. Establish or amend the mission or mandate of the organization	Province established the Trust and has provided Principles which help to guide the Trust.	✓
8. Approve the business plans or budgets for the organization and require amendments, either on a net or line-by-line basis	Right does not exist. No intention for province to manage or influence the Trust on a line by line basis.	X
9. Establish borrowing or investment limits or restrict the organization's investments	Trust Declaration references: (j) "***Eligible Investments***" means (i) a deposit receipt, note, certificate or instrument issued, guaranteed or endorsed by a bank listed in Schedule I to the *Bank Act* (Canada), which provides that the principal and any interest shall be fully paid no later than [one year] after the day the investment was made, or (ii) a deposit account at a bank listed in Schedule I to the *Bank Act* (Canada). 4.2 (a) ***Power to Own, Hold and Manage.*** Subject to section 4.2(d), the Trustee shall have the power to own, hold and manage the Assets in such manner as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable. (b) ***Power to Invest in Eligible Investments.*** The Trustee shall have the power to invest the Assets only in Eligible Investments, and to change such Eligible Investments at any time and from time to time, all as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable, but always having regard to the Trustee's expectations regarding the timing of payments to be made to the Beneficiaries hereunder. If an investment of Assets in Eligible Investments would not be authorized under the applicable trust laws of Ontario, the Trustee shall nevertheless be permitted to make an investment of the Assets in such Eligible Investments. The Trustee will have no liability for the diminution in the value of any investment in Eligible Investments made hereunder. *Although some restrictions, given the need for liquidity for the funds and envisioned short term nature of the program, it is unlikely that the Trust would have contemplated investing the funds in any different types of instruments as designated in the Trust docs.*	✓
10.Restrict the revenue-generating capacity of the organization, notably the sources of revenue	There are no revenue generating restrictions in the Trust documents; however, there are references indicating that the Funds are expected to be used for not for profit purposes. It should also be noted that the nature of a Trust is not to generate revenue or make a profit, but to fulfil a fiduciary duty on behalf of the beneficiaries. No explicit restriction mentioned in the Trust Declaration or TPA related to other activities of the trust; however, expectation that funds provided by the province will not be used for profitable purposes by the LDCs.	X
11. Establish or amend	**NO UNILATERAL GOVT POWER TO MAKE CHANGES**:	

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
the policies that the organization uses to manage, such as those relating to accounting, personnel, compensation, collective bargaining or deployment of resources (Suggestions for Admin Services Agreements and Principles in Trust docs are not mandatory. Replacement Board of Trustees can initiate changes which can reasonably be anticipated to be accepted if not contradictory to the Principles. References to provinces procurement directive and meals, entertaining and hospitalitiy directive only state expectation that Trust's processes would align with the principles.)	Trustees would have power to consider change in the policies in the Trust Declaration and/or modify the TPA, subject to provincial approval. Declaration: 1.1 (y) "'***Transfer Payment Agreement***" means the transfer payment agreement dated as of March •, 2017 between the Trustee and Her Majesty the Queen in right of Ontario as represented by the Minister of Energy, as such agreement may be amended, restated, supplemented or otherwise modified by the further agreement of the parties thereto from time to time. **4.2Specifically Enumerated Powers** The Trustee shall have the following specific powers and authorities: (c) ***Transfer Payment Agreement.*** The Trustee shall have the power to enter into, amend, supplement, modify and perform its obligation under the Transfer Payment Agreement. ***NO GOVT CONTROL OVER OPERATING OR FINANCIAL POLICIES*** ***j)Power to Pay Trustee's Fees*** Trustees have general regard to sorts of limitations as are set forth in the "Travel, Meal and Hospitality Expenses Directive of the Province" **5.8 Rules and Procedures of the Board of Trustees** (d) ***Initial Requirements***. As soon as practicable and in any event no later than one month following the Original Trustee Replacement Date, the Board of Trustees shall meet to take such decisions and actions as they deem necessary to ensure the proper management and administration of the Trust. The date (and location if in person) of the initial meeting shall be determined by a majority of the Board of Trustees. 4.2 The Trustee is expected to conduct its activities in a manner that complies in all material respects with the Transfer Payment Agreement, including to: (a) act prudently and in furtherance of the Purpose; (b) report annually the results of its activities for information purposes to the Province in connection with the Program;	X

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
	(c) comply with the Province's request for any independent verification or audit if determined to be necessary or appropriate by the Province; (d) return of Assets that have not been distributed if it is [determined][by the Province] that the Province has breached its Standard of Care in discharging its material duties under the Declaration, and has not cured such material breach despite having been given a reasonable opportunity by the Province to do so in light of the circumstances of such material breach, with the result that all or a significant part of the Assets have not been or are not being applied in furtherance of the Purpose or are being applied in a manner that is directly contrary or without regard to the Purpose.] The Trust Declaration includes a Permitted Delegation Annex, which describes administratively, how the Trust might consider delegating its powers and duties to LDCs (non-controlled by the province) and satisfy the Standard of Care required under the Trust Declaration. Certain sections of the Delegation Annex go beyond general accountability provisions and suggest very specific requirements/expectations in relation to the Trustee's arrangements with LDCs and LDCs own administration of Fund monies. As currently worded, the Delegations Annex, when taken together with the Principles Annex and Listing of Eligible Measures, may be assessed substantively as 'controlling' the trust, regardless of wording which refers to the exercise of Trustee discretion. **5.1RECIPIENT'S ACQUISITION OF GOODS OR SERVICES, AND DISPOSAL OF ASSETS** **Acquisition.** If the Recipient acquires goods, services, or both with or by applying the proceeds of the Funds, it is expected to do so through a process that promotes the best value for money and to take reasonable steps to ensure that its Administrative Services Agents also follow a process that promotes the best value for money when acquiring goods and services with or by applying the proceeds of the Funds. . **PRINCIPLES ANNEX** The Trustee shall have regard to **[, but shall not be specifically bound by,]** the following principles in applying its discretion in relation to the administration of the Trust.	

INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
	DECLARATION OF TRUST **6.1 Amendments** Subject to the requirements of the Transfer Payment Agreement, the Trustee shall have the power in its sole and absolute discretion from time to time without the approval of any Beneficiary or any court to amend, vary, supplement, replace or restate this Declaration in its entirety or any portion thereof. provided, however, that no amendment shall conflict with the principles set forth in the Principles Annex or as to the scope or effect of the permitted delegations and activities of any Administrative Services Agent pursuant to the Permitted Delegations Annex.] 6. In the event that the Recipient performs any procurements, it is expected that all procurements will reflect the principles of Ontario's Public Service Procurement Directive. From and following the Original Trustee Replacement Date, Reports will be provided [quarterly] on the basis of the government's fiscal year starting at the execution of this Agreement and continuing until conclusion of the Agreement. Annual Reports will be on a fiscal basis starting at the execution of this Agreement and continuing until conclusion of the Agreement. Quarterly Reports and Annual Reports would be expected to be submitted to the Province within one month following the end of the reporting period that they represent. The Province expects that these Reports would be prepared to demonstrate the impact of the Province's funding. **5.0 RECIPIENT'S ACQUISITION OF GOODS OR SERVICES, AND DISPOSAL OF ASSETS** **5.1 Acquisition.** If the Recipient acquires goods, services, or both with or by applying the proceeds of the Funds, it is expected to do so through a process that promotes the best value for money and to take reasonable steps to ensure that its Administrative services Agents also follow a process that promotes the best value for money when acquiring goods and services with or by applying the proceeds of the Funds. **Conduct of the Trust and the Program** 4.1 It is expected that administrative expenses of the Board of Trustees and its members, including any expenses relating to the Trust, to the establishment of the [Trust]and any expenses related to the implementation and operation of the Program, including by or through Electricity Distributors and other relevant entities, will be recognized and subject to reimbursement on a basis that is substantially consistent the principles in the Travel, Meal and Hospitality Expenses Directive, the current form of which attached as Schedule B to this Principles Annex. Permitted Delegation Annex (not mandatory) 4. Accordingly, and without limiting the Trustee's right to delegate	

INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
	under the Declaration and its other rights, powers and discretion as Trustee, the Trustee will be permitted to, and is expected to seek to, enter into Administrative Services Agreements with Electricity Distributors in order to further the Purpose. Without limiting the Trustee's discretion to negotiate and settle the terms and conditions of such Administrative Services Agreements, it is expected that such Administrative Services Agreements will include customary terms and conditions for an administrative services arrangement of this type and, in addition, would (subject to the acceptance and agreement of the applicable Electricity Distributor counterparty) address certain aspects.	

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TING CONSIDERATIONS FOR GOVERNMENT-FUNDED TRUSTS

Purpose:

The purpose of this guidance is to explore accounting-related considerations related to government-funded trusts which are established by the government to fund a specific purpose or activity. This guidance deals specifically with the difference between controlled and non-controlled trusts, the introduction of accountability provisions which can now be reflected in trust agreements, and key timing considerations for trusts contemplated towards year-end. It is important that these factors be taken into account when establishing a trust, in order to achieve the intended fiscal impact and appropriate accountability over the use of public funds.

Introduction:

Trusts are usually established by way of trust declaration or trust agreement, and are one of several means by which the government can direct funding to support key policy initiatives. Simply stated, trustees hold title to property for the benefit of, and stand in a fiduciary relationship to the beneficiaries. Trustees are accountable to third parties (beneficiaries) for the use and disposition of trust assets and for the funds derived from those trust activities. The trust itself is not a separate legal entity. The trustees carry out the activities of the trust in the name of the trustees.

Generally, direct year-end transfers are the preferred alternative over trusts where the province wants to retain ultimate decision-making authority regarding amounts to be transferred to recipients. Direct transfers are more appropriate where the identity of eligible transfer payment recipients is known and the amounts to be transferred to each recipient can be or has been determined.

Year-end transfers to a trust might be considered where the province desires to delegate to third parties ultimate decision-making authority regarding allocation of amounts amongst eligible beneficiaries.

A trust must be valid for legal purposes in order to be recognized for accounting purposes. Key requirements for a trust to be valid include: an intention to create a trust ('certainty of intention'), certainty of subject-matter of the trust ("certainty of subject matter") and the objects of the trust must be certain ('certainty of objects"). There are generally two different types of trust, a trust in which the objects are the "beneficiaries" and trust in which the objects are a "purpose" (e.g. for charitable purposes). Where a trust is under serious consideration, it is imperative that ministries seek legal advice to ensure that the contemplated trust will be valid.

Trustees are obligated to follow the terms of the trust declaration or trust agreement which will usually detail the powers and duties of the trustees including the number of trustees and how decisions will be made by the trustees.

Controlled versus Non-Controlled Government-Funded Trusts

From an accounting perspective, it is important to distinguish whether the design and governance of a particular trust results in the trust being controlled by the Province for accounting purposes. Control stems from the nature of the relationship between the government and the trust. Financial and operating policies are principles that determine how an organization conducts its activities. The ability to govern these policies is an important element of government control.

The means by which a trust is established, the government's representation among the trustees, the government's involvement in the trust's governance processes and ability to impact trustee discretion in decision-making are but some of the factors to be considered in assessing whether a trust is 'controlled' or 'not controlled' by the government.

In establishing a trust, it is important to achieve the intended relationship between the province and the trust in order to achieve the intended fiscal impact.

Non-Controlled Trusts:

Where trusts are not controlled by the Province, they are excluded from the government reporting entity. For non-controlled trusts, the following accounting would apply to trust funding:

- Where funds provided to the "trust" are unconditional, the Province would record a transfer payment expense for any transfers approved in the current period (and flowed by finalization of public accounts).

- Where funds provided to the "trust" are conditional (i.e. upon the trust completing some specific task or result), the Province would initially record funding to the trust as a prepaid expense until the conditions are met at which time the Province would record a transfer payment expense, with the corresponding credit to prepaid expense. This may occur over a number of fiscal years.

In determining whether a trust is controlled, there are a variety of ways that a government might be perceived to be governing the financial and operating policies of a trust. These include:

- Eliminating or significantly limiting the ability of the trustees to make future decisions
- Directing the financial and operating policies of the trust
- Overruling, modifying or vetoing the financial and operating policies established by the trust.

Specific factors that should be considered in establishing a non-controlled trust include:

- Government representation in the trustees (should be in a minority position), and non-government trustees should be nominated by non-government sources
- Government influence over day-to-day trust governance and trustee discretion to make decisions (e.g. selection of eligibility criteria, selection of recipients).
- degree of influence over how funds are disbursed (i.e. the Declaration of Trust can provide general guidelines but not be overly prescriptive)
- the government's power to unilaterally appoint or remove the majority of trustees
- the government's on-going access to the trust's assets, or right to direct decisions regarding the flow of those assets to specific beneficiaries
- the government's unilateral power to dissolve the trust, except under specified circumstances as stipulated by the trust agreement (i.e. corrective action)
- the government's ability to establish or amend the policies used by the trust to manage accounting, personnel, deployment of resources, etc.

In some cases, it may be advantageous for ministries to provide administrative support to trusts. In these cases it is important that the extent of such support is not so pervasive as to influence or direct the day-to-day financial or operating policies of the trust, otherwise the trust will be deemed controlled and will be subject to consolidation in the government reporting entity.

Controlled Trusts:

If the Province controls the trust (for example, through its power to appoint a majority of the trustees on the board of trustees), the Province would be deemed to have control of the trust, resulting in the trust being accounted for in the same manner as other organizations controlled by the province (i.e. on a consolidated basis). As a result, the Province's contribution to the trust would not be expensed when it is transferred, but rather over time as the funds are disbursed to trust beneficiaries.

Accountability Related Considerations:

The Auditor General has confirmed that the new accountability provisions developed for one-time transfers can also be applied to trusts without impacting the expense treatment of any transfers to non-controlled trusts.

These new accountability provisions will enable the government and the Legislature to:

- obtain assurance that a trust is spending public funds prudently and for the purposes intended and to take corrective action if it is not;

- ensure ministerial accountability to the Legislative Assembly for the trust's activities; and

- ensure that the province is able to take corrective action where warranted and as stipulated under terms of the trust agreement.

It should also be noted that the Auditor General's Act now allows the Province's Legislative Auditor to conduct special audits of any person or organization receiving transfers from the government, including trusts.

To enhance accountability controls over government transfers to non-controlled trusts, Ministries can consider incorporating some or all of the following accountability provisions as part of their trust agreement/declaration without impacting the accounting treatment of the trust.

The inclusion of any of these provisions should not result in a trust being assessed as 'controlled'. Note that the key determinant in identifying appropriate provisions for any individual trust is a ministry's assessment of the **risk** associated with a particular trust, as per the Transfer Payment Directive.

1. **Description of intended use of trust funds**;
   - specific purpose(s) for which the funds are to be used;
   - description of intended recipients and related eligibility criteria*; and,
   - the nature of eligible expenditures relevant to the transfers.

   *Note: avoid *overly prescriptive* eligibility criteria which would effectively eliminate or significantly limit the trustees' discretion to make funding decisions.

2. **Requirement for information**
   - Information to be provided by the trust at a future date (e.g. requirement for trustees to advise the government of trustee-developed performance criteria, and provide annual assessments against those criteria)

3. **Report-back requirement for Public Accountability**
   - information to be provided by the trust at a future date with respect to the stewardship and payment of transfer funds (e.g. audited financial statements, audited list of recipients and amounts funded).

4. **Right to independent verification/audit**
   - The Province reserves the right to audit any transfer payment recipients. The trust agreement should make reference to this fact.

5. **Right to take corrective action**
   - Where stipulated under the trust agreement, the Province reserves the right to re-direct unused funds where results of a trust assessment (where required by the trust agreement) indicate original purpose of the trust is not being achieved, or if there remain unused funds at the end of the trust term.

- Province may also reserve the right to extend the term of the trust agreement, where funds remain at the end of the trust period.

To qualify for in-year expense treatment, the non-controlled trusts must satisfy the following:

- the decision to establish the trust must have been approved by Treasury Board/Management Board of Cabinet and ratified by Cabinet by March 31st;
- the ministry providing the transfer must have approved appropriations and spending authority by March 31st;
- Trustees must have been identified and signed the trust declaration or agreement to establish a valid trust by March 31st ;
- the trust must be set up and ready to receive funds, and a nominal amount transferred to the trust by March 31s;t ; and,
- the government should have communicated publicly (e.g. in the Budget document) the pending or final establishment of the trust.

In addition, all remaining funds beyond those initially transferred at March 31st should be transferred to the trust by June 30th.

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Trusts
Questions and Answers on Trust Guidance

Question: *Where a trust is announced in the Budget document, must the trust be established by March 31st, or could such a trust be established shortly thereafter without impacting the expensing of transfers to the trust in 2007-08?*

Answer: *A trust would have to be established prior to the end of a fiscal period in order to satisfy the recognition criteria for government transfers. If the intended recipient for a government transfer does not exist at March 31st, the province cannot record a payable owing to it under existing accounting standards.*

Question*: Does the transfer of funds to a non-controlled trust need to occur by March 31st or before the date of Public Accounts finalization?*

Answer: *Consistent with the new requirements for one-time transfers, as long as the trust is established by March 31st, the transfer is authorized and a reasonable estimate of the amount can be made, cash payments can be made after year-end.*

Question: *Can beneficiaries of a non-controlled trust include consolidated entities provided that the ultimate selection of recipients is at the discretion of the Trustees?*

Answer: *Any amounts provided to a trust which are in turn be provided to an organization inside the government reporting entity should not be expensed at the time of the transfer to the trust. Any amount that is flowed to a trust with the intention of subsequently flowing the funds to a consolidated entity should not be recorded as an expense to the government.*

Question: *Can a Ministry provide administrative support to a trust without compromising the non-controlled status of the trust?*

Answer: *The government can provide administrative support as long as the extent of government administrative support is not so pervasive so that the government is in substance establishing and managing the trust's policies in the areas of accounting, personnel, compensation, collective bargaining or deployment of resources. Where such administrative support is assessed as pervasive, it could impair the trust's non-controlled trust and the trust will be consolidated onto the province's financial statements.*

Can the following clauses appear in a trust agreement for a non-controlled trust to ensure adequate accountability over public funds without impacting the expense treatment of such trusts?

Question*: Specific description of purpose of the trust (possibly including nominal allocation among various objectives)*
Answer: Yes.

Question: *Can the trust agreement include a specific description of the intended groups of beneficiaries and detailed eligibility criteria.*

Answer: *Specificity should be applied cautiously, so as not to limit the discretion of the trustees in their subsequent grant making processes. For the trust to be considered 'not controlled' it should not be seen as 'establishing the trust's fundamental purpose and eliminating or significantly limiting the ability of the trust to make future decisions by predetermining the financial and operating policies of the trust.*

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Question: *Can trustees stipulate that funding is to be provided to beneficiaries on a cost-sharing basis?*
Answer: *Yes.*

Question: *Can the trust agreement include a requirement for a trust to report back to the province on trustee-established performance criteria and results, audit of financial statements, audited recipients and amounts, confirmation that trustees communicated to beneficiaries the intended purpose of the funding, etc.*
Answer: *Yes.*

Question*: Requirement for Trust to publicly post communications on existence, availability of funds, eligibility criteria, recipients and amounts granted to each recipient.*
Answer: *Yes*

Question: *Inclusion of a 'suggested' drawdown schedule over a period of years, with discretion left to Trustees as to actual results.*
Answer: *The inclusion of a drawdown schedule is not suggested for one-time, up-front transfers.*

Question: *Trust agreement can suggest accountability provisions which might be attached by Trustees to beneficiary payments (e.g. specific purpose of funding, requirement for report-back, right to audit, corrective actions).*
Answer: *Yes*

Question: *Trust agreement to reserve the province's right to re-direct any unspent funds to specified parties (e.g. non-consolidated entities or another non-controlled trust) at the end of the trust term, or alternatively to extend the term of the trust where unspent funds remain.*
Answer: *Yes*

Question*: Can the trust agreement include the requirement for evaluations of the trust at certain times (e.g. years 3, 7, 10 of the trust agreement), with the right for the government to decide either to terminate the trust (corrective action) based on the results of the assessment, or extend the trust beyond the initial term as per the agreement.*
Answer: *Yes.*

Question: *Trust agreement can require Trustees to request as part of the funding process that beneficiaries acknowledge receipt of government funding in their public communications on specific projects.*
Answer: *Yes.*

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Appendix III

ACCOUNTING TREATMENT FOR ONE-TIME TRANSFERS WITH ENHANCED ACCOUNTABILITY PROVISIONS

Purpose:

The purpose of this guidance is to identify the nature of the accountability provisions which may be associated with one-time transfer payments that qualify for immediate expense treatment in the current period.

Definition of One-time transfers:

One-time transfers are defined as lump-sum operating or capital transfers that

- are not advancing currently planned future transfer payments under an existing on-going program, or
- are not identified as being intended to be spent in specified future periods or

  over a specified period of time.

Background:

Transfer payments are a means by which the government works with third parties to deliver public services. Transfer payment recipients must be held responsible by the government to deliver the provincially-funded services and be accountable for the funds they receive. Consistent with the *Transfer Payment Accountability Directive, August, 2007*, a risk-based approach is to be followed in designing the appropriate accountability and reporting mechanisms for specific funding agreements.

The current *PSAB Handbook Section 3410, Government Transfers requires that a government transfer should be recognized by a transferring government as an expense in the period the transfer is authorized and all eligibility criteria have been met by the recipient.*

To recognize a liability and expense as at year-end:

- the government must create a valid expectation of the recipient by year-end, leaving the government little or no discretion to avoid but to settle its obligation;
- no significant, contingent actions should be outstanding which if unfulfilled by year end might cause the transfer not to occur.

It is understood that the intention of negotiating a transfer payment agreement following the government's commitment to the recipient is to work out the administrative details of the arrangement, not to change any key elements of the government's commitment. As such, any correspondence which indicates that funds

will not be flowed until a TPA is signed should make clear that the nature of additional details to be negotiated is logistical and administrative in nature (bank account info, reporting requirements, etc.)

The government should not suggest or direct the recipients to use the funding for future periods.

To enhance accountability controls over one-time transfers accountability provisions one through five below are required for one-time transfers.

1. **Description of intended use of one-time transfer funds**;
   - specific purpose(s) for which the funds are to be used; and,
   - the nature of eligible expenditures relevant to the transfers.

2. **Report-back requirement for Public Accountability**
   - Periodic reporting on the use of transfer funds, service deliverables, outputs or outcomes achieved.

3. **Right to independent verification/audit**
   - at the discretion of the Province to verify/audit information submitted by the recipient is complete and accurate, and that funds were used for purposes intended.

4. **Right to recover funds (corrective action)**
   - If the funds were not used, or will not be used, for the intended purpose(s), specified services were not delivered, or intended outputs were not achieved, the Province has the right at a future date to recover funds transferred.

5. **Requirement for information** (*this item optional*)
   - information to be provided by the recipient at a future date with respect to the use of transfer funds, service deliverables, outputs or outcomes achieved.

To qualify for in-year expense treatment, the transfers must satisfy the following:

- be approved by Treasury Board / Management Board of Cabinet and then ratified by Cabinet by March 31st;
- the ministry providing the transfer must have approved appropriations and spending authority by March 31st;
- the recipients must be eligible to receive the grant by March 31st (i.e. eligibility criteria have been met prior to March 31st), and the intent to make the transfer payment must be communicated to the recipients by March 31st;

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- In addition, funding details including accountability provisions must be communicated to the recipients, and the transfer payments must be made to the recipients prior to the finalization of the Public Accounts (currently June 30th);

- Where funds are flowed to recipients by March 31st, all eligibility criteria are assumed met for accounting purposes[1], and all amounts flowed are recorded as an expense, even where conditions might exist which remain unmet at March 31st.

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[1] PS 3410, Government Transfers, states that "no matter how a transfer term is identified in legislation, regulations, by-laws or a transfer agreement (i.e., as an eligibility criterion or a stipulation), the crucial characteristic that distinguishes the substance of these two types of transfer terms is when they are required to be or are met by a recipient. If a term is required to be and is met before the transfer is provided, it is an eligibility criterion for the purposes of this Section. If a transfer term is met after the transfer is provided, it is a stipulation for the purposes of this Section".

SCHEDULE "C"
PROJECT

For the purposes of this Agreement, the "Project" is the distribution of the Funds in accordance with the Declaration of Trust.

It is intended the Project will be undertaken by the Recipient in furtherance of the Purpose and in accordance with the Declaration of Trust. In this regard, it is expected that the Recipient will undertake the Program having regard to the Budget and the Principles set forth in Annex A.

The following are the Provinces expectations regarding the circumstances in which the Recipient will begin to distribute any Funds to any Beneficiary.

1. The Original Trustee Replacement Date (as defined in the Declaration of Trust) will have occurred.
2. An administrative services agreement will have been entered into between the Recipient and an Administrative Services Agent providing for the administrative services necessary for the Recipient to perform its obligations herein and execute the Project.
3. Administrative procedures will have been developed and implemented under which Electricity Distributors (as defined in the Declaration of Trust) will be invited to assist with (a) the identification and selection of Primary Beneficiaries under the Declaration of Trust, (b) the determination of the amount of Funds to be distributed to particular Primary Beneficiaries, and (c) the distribution of Funds to or for the benefit of such Primary Beneficiaries (in each case substantially on the basis contemplated in the Permitted Delegations Annex).
4. The Recipient will have obtained commercial general liability insurance from insurers having a secure A.M. Best rating of B+ or greater, or the equivalent, that in the opinion of the Recipient a prudent person similar to the Recipient would maintain, and having an inclusive limit of not less than $2,000,000 per occurrence and providing for contractual liability coverage. If requested, the Recipient will provide the Province (for its information purposes) with copies of the certificates of insurance and policies for such insurance coverage.

The Province recognizes that the foregoing may involve the Recipient entering into agreements as may be the Recipient considers to be necessary or expedient, including any required amendment or amendment and restatement of the Declaration of Trust. Funds may be expended to pay the expenses of the Trustee in completing these matters. The Recipient will confirm to the Province once such matters have been completed.

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5.7 Replacement of the Original Trustee

As soon as practicable and in any event on or prior to March 31, 2017, the Original Trustee shall appoint the Persons identified by the Trustee Replacement Annex to comprise the Advisory Committee contemplated therein (once constituted, the "**Advisory Committee**"). As soon as practicable thereafter, the Original Trustee shall request that the Advisory Committee make recommendations with respect to the composition of the "Board of Trustees", as contemplated by the Trustee Replacement Annex. The Trustee shall have no duty or obligation to investigate the basis for any of the Advisory Committee's recommendations and may rely on such recommendations without any duty of enquiry, supervision or oversight with respect to the activities and decision-making processes adopted by the Advisory Committee in its discretion, in full satisfaction of the Original Trustee's Standard of Care with respect to such matters hereunder. Except if the Original Trustee determines that the individuals recommended by the Advisory Committee to become members of such Board of Trustees are disqualified from so acting on the basis of manifest non-compliance with the "Selection Factors" set forth in the Trustee Replacement Annex, the Original Trustee shall appoint, as members of the Board of Trustees, the [six] (five voting and one non-voting) individuals recommended for appointment to the Board of Trustees by the Advisory Committee. Upon the appointment of such [six] individuals pursuant to this provision and their agreement to act as members of the Board of Trustees, the Original Trustee shall be deemed to have resigned and shall cease to be a trustee (such resignation occurring on the "**Original Trustee Replacement Date**").

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Document comparison by Workshare Compare on Tuesday, March 21, 2017 12:11:57 PM

Input:	
Document 1 ID	PowerDocs://TOR_2528/23100883/1
Description	TOR_2528-#23100883-v1-Blakes_Comments_-_Control_Assessment_Affordability_Fund__Mar_20_np
Document 2 ID	PowerDocs://TOR_2528/23100883/2
Description	TOR_2528-#23100883-v2-Blakes_Comments_-_Control_Assessment_Affordability_Fund__Mar_20_np
Rendering set	Standard

Legend:	
Insertion	
~~Deletion~~	
~~Moved from~~	
Moved to	
Style change	
Format change	
~~Moved deletion~~	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	40
Deletions	27
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	67

FW_ Updated Control Assessment (for your review and feedback).rtf

From: Petsche, Nadine (TBS) []
To: Picard, Michel (mpicard@kpmg.ca) [mpicard@kpmg.ca]
Subject: FW: Updated Control Assessment (for your review and feedback)
Date: Tuesday, March 21, 2017 11:43:14
Attachment 1: image56e288.GIF
Attachment 2: Blakes Comments - Control Assessment_Affordability Fund Mar 20 np.doc

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From: VINER, JON [mailto:JON.VINER@blakes.com]
Sent: March 21, 2017 11:33 AM
To: Petsche, Nadine (TBS)
Cc: ASHBOURNE, STEPHEN
Subject: RE: Updated Control Assessment (for your review and feedback)

Nadine,

Please find attached comments on Appendix 1.

I note that, given the time constraints, some of the comments may be more detailed than what you are interested in looking for/revising at this point.

Please let us know if you'd like to discuss.

Best,

Jon

Jon Viner

Associate

jon.viner@blakes.com

Dir: 416-863-2499

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Begin forwarded message:

> **From:** "Petsche, Nadine (TBS)" <Nadine.Petsche@ontario.ca>
> **Date:** March 20, 2017 at 10:32:54 PM EDT
> **To:** "stephen.ashbourne@blakes.com" <stephen.ashbourne@blakes.com>, "Picard, Michel (mpicard@kpmg.ca)" <mpicard@kpmg.ca>
> **Cc:** "samir chhelavda (Samir.Chhelavda@HydroOne.com)" <Samir.Chhelavda@HydroOne.com>
> **Subject: Updated Control Assessment (for your review and feedback)**

Stephen/Michel,

Attached is an updated DRAFT control analysis reflecting current information based on the updated draft TPA and Declaration (5:30 pm version) attached.

Your review of the analysis in Appendix 1 would be valuable as follows:

Stephen – please advise of any factual inaccuracies in the extracts listed

Michel – please advise of any additional elements that should be reflected, comments inserted and conclusions for each of the control criteria w.r.t. control (yes or no).

MOE is expecting the updated control analysis as soon as possible. Your feedback by tomorrow at noon would be most appreciated, if possible.

Thanks in advance.

Nadine

image56e288.pdf

Blakes

Blakes Comments - Control Assessment_Affordability Fund Mar 20 np.pdf

BLAKES COMMENTS ADDED IN COMMENT BUBBLES (3/21/2017)

Draft Control Assessment of Affordability Fund Trust (Rev. Mar 20, 2017) for Inclusion in the Government's Reporting Entity

ISSUE

Would the Ministry of Energy's proposed Affordability Fund Trust be assessed as controlled under Public Sector Accounting Board (PSAB) standard on the Government Reporting Entity (PS 1300) and therefore be included in the Province's consolidated financial statements?

RECOMMENDATION

Conclusion outstanding pending confirmation of accuracy of extracts/references in Appendix 1.

Elements of the Trust Declaration and Transfer Payment Agreement have been assessed by OPCD as aligned with both OPCD's One-Time Guidance on Transfers as well as OPCD's Trust Guidance document, both of which are attached as Appendices to this analysis. Both of these documents have been reviewed and concurred to with the Office of the Auditor General in the past and have been important references in ensuring that the public interest will continue to be served through the establishment and administration of the Affordability Fund Trust.

BACKGROUND

The Ministry of Energy plans to transfer $100M to a Trust in relation to a new Affordability Fund for the purpose of providing energy efficiency measures to electricity customers who do not qualify for existing low income conservation programs (e.g. the existing Home Assistance Program (HAP), delivered by LDCs under the Conservation First Framework) and who have difficulty paying their electricity bills.

The Affordability Fund would be available to LDCs who would identify eligible customers in accordance with criteria established by the Trustees and could include customers in frequent arrears or facing disconnection. Priority would be given to homes primarily heated by electricity.

In order to establish the Fund, the Ministry of Energy plans to enter in a Trust Declaration and a Transfer Payment Agreement (TPA) with a non-controlled Trustee (Computershare) which will shortly thereafter be replaced by an independent Board of Trustees based on the advice of an independent Advisory Committee. The Ministry of Energy anticipates entering into the Trust Declaration and TPA with Computershare and flowing the approved funding prior to March 31st.

The Board is expected to be comprised of:

- [six] residents of Ontario who have expressed that they are willing to act as members of the Board of Trustees and who, individually and collectively, satisfy the following criteria (collectively, the "**Selection Factors**"):
  a) each member demonstrates an understanding of the electricity sector including the electricity distribution sector;
  b) each member demonstrates an expertise in conservation and low income programs;
  c) three of the identified individuals will be representatives from separate electricity distributors [not under the control of the Government of Ontario], two individuals will be representatives from

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separate social services agencies [not under the control of the Government of Ontario] and one individual member, who will be anon-voting member, will be an employee or representative of the Government of Ontario; and
d) it is expected that representation by the Government of Ontario will be non-controlling. The Board of Trustees, once selected is expected to include 6 persons (five voting and one non-voting) of individuals from among those individuals who have been recommended for appointment to the Board of Trustees by the Advisory Committee.

The Trustees will have the discretion to hire Hydro One or other entities as service providers to assist with administering the Fund, using Administrative Services Agreements to clearly document services and expectations. The Trust would distribute funds to LDCs across the province (including Hydro One) at the discretion of the Trustees.

The draft TPA includes terms which allow for unfettered control by the Trust to operate in the best interest of the beneficiaries, including making decisions on the administration and distribution of funds to LDCs across the province. The Trustees are expected to conduct themselves in good faith and give regard to guiding principles established by the Province in exercising their duties under the Trust Declaration and TPA in distributing funds to LDCs for the benefit of beneficiaries across the province, including Hydro One.

The Trust Declaration will be subject to further modification based on agreement by both parties, but not unilaterally by either party. The input and involvement of LDCs across the province is anticipated and integral to the success of the Trust in meeting its purpose. The non-compulsory **Principles** of the Fund will be clearly articulated in the Trust Declaration and the TPA. Language in the documents will clearly reflect that the principles are not mandatory requirements.

In addition, a **Permitted Delegation Annex** will be included which refers to expectation between the parties that the Trust would plan to rely on LDCs to assist with achieving its purpose, while maintaining unfettered discretion and power to (a) appoint, employ or retain Administrative Services Agents for the purpose of discharging its duties and obligations under the Declaration; and (b) enter into, perform, enforce and amend Administrative Services Agreements.

Without limiting the Trustee's discretion to negotiate and settle the terms and conditions of the above-mentioned Administrative Services Agreements, the Permitted Delegation Annex also outlines certain terms and conditions that the Trustees might consider for inclusion in the services agreements, recognizing that the ultimate agreements would be subject to the acceptance and agreement of the applicable Electricity Distributor counterparty. While the Annex appears quite specific in nature, it is non-mandatory and intended as guidance only which may be helpful as the Trust seeks to commence discussions with LDCs in the spirit of serving the interests of the primary beneficiaries. As noted, the Trustees are not bound to use the guidance.

Commented [NP1]: But there is a suggestion that they would as referenced in the audit clause which states that the scope of the audit would include review/validation of processes and control related to LDCs.

There is also a requirement under the Declaration that any changes would only be possible if they are in agreement with the Principles.

CONTROL ANALYSIS

In accordance with PSAB, "the Government Reporting Entity should comprise the organizations that are controlled by the government" (PS 1300.07). PSAB defines control as "the power to govern the financial and operating policies of another organization with expected benefits or the risk of loss to the government from the other organizations activities" (PS 1300.08). Benefits may be financial or non-financial, for example, the government may require the organization to cooperate in pursuing the government's public policy objectives.

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PSAB's "indicators of control" are the relevant guidance in determining the degree of control for inclusion of the Affordability Fund Trust in the Government Reporting Entity (GRE). In applying this guidance, it is necessary to determine the substance of the relationship between a government and an organization in addition to its legal form. All relevant aspects and implications of the relationship would be considered in determining whether or not the government controls the organization. In addition to PS 1300, consideration is also given the Trust Guidance and One-Time Transfer Guidance developed by OPCD in conjunction with the Office of the Auditor General which are attached as Appendices.

There are a total of 11 PSAB prescribed control indicators that provide evidence of control: 4 persuasive indicators of control and 7 other control indicators. It is the **preponderance of evidence** that would be considered in assessing whether a government controls an organization.

The following governing documents were reviewed in support of the analysis of the Province's control over the Affordability Fund Trust:

1) Draft Trust Declaration (March 20 5:30 pm), including related schedules (Principles Annex, Delegations Annex)
2) Draft Transfer Payment Agreement (March 20 5:30 pm)
3) OPCD Trust Guidance
4) OPCD Guidance on One-Time Transfers

Appendix I shows the detailed analysis of the PSAB indicators of control. Based on this assessment and the preponderance of evidence, informed by a review of the wording in the draft Trust Declaration and Transfer Payment Agreement, there are a number of features of the proposed arrangements which may be pertinent in assessing whether, an overall basis, the Affordability Fund Trust might be controlled by the Province as at March 31, 2017.

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APPENDIX I

Affordability Fund Trust
Indicators of Control Analysis
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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
Primary (i.e., more persuasive) indicators (CICA PS 1300.18):		
1. Government has the power to unilaterally appoint or remove a majority of the members of the governing body of the organization	• Original Trustee (Computershare) is the governing body of the Trust until the Replacement Board of Trustees is selected. The Declaration describes the process expected to be used to establish the Replacement Board. The government will not control the Original Trustee, the Advisory Committee, or the appointment of the Replacement Board of Trustees.	X
2. Government has ongoing access to the assets of the organization, has the ability to direct the ongoing use of those assets, or has ongoing responsibility for losses	• The government will not have an on-going access to assets transferred to the Trust, and any future access will only be through protective clauses (termination/default for material breach). At the Final Distribution Date, any excess funds will be distributed to a non-controlled Residual Beneficiary in accordance with clause 3.3 of the Trust Declaration. • The government will not have any exposure to losses of the Trust. In addition, section 1.1 (interpretations) of the TPA includes the following: it is intended that the transfer of the Funds to the Recipient will be a transfer made to a "non-controlled trust" (as that term is given meaning in - applicable to the accounting rules and principles applicable to the Province as of the date of the Agreement), and so if a term or condition of the Agreement is determined to conflict with the requirements applicable to the Province recording the transfers to the Recipient of Funds contemplated hereunder as an expense incurred by the Province on the date of the transfer of Funds under the Agreement otherwise in connection with activities undertaken by the Province with such a "non-controlled trust", then such term or condition shall be given a meaning and shall have an effect insofar as it is possible to interpret such term or condition in a manner that eliminates such conflict while preserving the other provisions of the Agreement and furthering the Purpose.	X
3. Government holds the majority of the voting shares or a "golden share" that confers the power to govern the financial and operating policies of the	• Neither in the Trust Declaration or the TPA can the government unilaterally direct the financial and operating policies of the Trust. Any Trustee initiated changes to the Declaration or TPA would need to be consistent with the Principles Annex. • • The Trust Declaration and TPA do not interfere with the	

Commented [JV2]: Blakes

Note that clause 3.3 states that the Residual Beneficiaries will be identified by consulting with and having regard to the recommendations of the Ontario Energy Board.

Commented [JV3]: Blakes

TPA: The TPA is silent on amendments to the TPA.

The TPA states in section 20.2 that the Trustee covenants that it shall not amend, restate or terminate the Declaration without the written consent of the Province, such consent not to be unreasonably withheld.

Trust Declaration:
Section 6.1 of the Trust Declaration states that, subject to the TPA, the Trustee shall have the power in its sole and absolute discretion to amend the Declaration [provided that no amendment shall conflict with the principles set forth in the Principles Annex or as to the scope or effect of the permitted delegations and activities of any Administrative Services Agent pursuant to the Permitted Delegations Annex.]

Section 6.1(e) permits the Trustee to add to or reasonably clarify the principles set forth in the Principles Annex.

Consider:
Consider stating "Any Trustee initiated changes to the Trust Declaration would need to be consistent with the Principles Annex, although the Trustee may amend the Trust Declaration to, among other things, add to or reasonably clarify the principles set forth in the Principles Annex."

Commented [NP4]: Check against Mar 20 (proviso)

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
organization	unfettered discretion of the Trustees in exercising their fiduciary duties on behalf of the beneficiaries. The 'Principles Annex' describes non-mandatory guiding principles to be considered by the Trustees in applying their discretion in relation to administration of the Trust. The Annex clearly indicates that the Trustees shall **only have regard to** the principles but that they shall not be specifically bound by the listed principles. Furthermore, the declaration and TPA are subject to change. Under the Declaration of Trust, section 1.2 Definitions , "**Declaration of Trust**" means the declaration of trust made as of March [□], 2017, under whi o the Affordability Fund Trust was established, as such declaration of trust may be amended, restated, supplemented or otherwise modified from time to time with the consent of the Province. • The Trust Declaration also includes a schedule which lists 'suggested' initial eligible measures for consideration by the Trustees, and elements for consideration in the Administrative Services Agreements that the Trust may chose to enter into with LDCs. • The Trust Declaration does not direct a specific governance structure, but rather includes the following reference under **2.3 Governance. The Recipient represents, warrants and covenants that it has, and will maintain, in writing for the period during which the Agreement is in effect:** (a) decision-making mechanisms and procedures to enable the Recipient to hold, invest, manage, apply and distribute the Funds in accordance with the Declaration of Trust in furtherance of the Purpose; and (b) procedures to enable the preparation and delivery of all Reports required pursuant to Article 7.0	✓
4. Government has the unilateral power to dissolve the organization and thereby access its assets and become responsible for its obligations	Only after the Final Distribution Date or in the event of default will the government have any power or rights in relation to the remaining funds in the Trust, including the power to redirect distribution of remaining funds and seek remediation for any mis-used funds. **SECTION 7 - TERMINATION** **7.1 Duration** Subject to sections 7.2 and 7.3, the Trust will continue in full force and effect so long as there are any Assets and until all of the debts, liabilities and obligations of the Trust have been paid and satisfied in full. **7.2 Termination and Distribution of Assets** The Trustee shall terminate the Trust and wind up its affairs as soon as practicable after the Final Distribution Date. In connection with the termination of the Trust, the Trustee shall identify the Residual Beneficiaries and distribute or cause to be distributed the remaining Assets, in cash or in kind or partly in each, to the Residual Beneficiaries, in each case in accordance with section	

Commented [NP5]: Not mandatory (will AG have concerns with level of specificity)

Commented [JV6]: **Blakes**

This definition and section reference is from the TPA, not the Trust Declaration.

Commented [NP7]: XXX Mar 20 – no reference to timeliness or not unreasonably withholding (no proviso) see sec. 4.2

Commented [JV8]: **Blakes**

Section 2.3 of the Declaration describes the measures specified in Schedule A as measures that "may initially be considered to be consistent with the Measures Factors (subject to change as contemplated under the Permitted Delegations Annex)".

Consider: Explaining the expectation that the Trustees identify eligible measures (as set out in section 2.1) and stating that Schedule A provides a list of measures which may initially be considered to be consistent with the Measures Factors (which are the factors specified in section 2.1 to identify eligible measures.)

Commented [NP9]: Not mandatory (will AG have concerns with level of specificity)

Commented [JV10]: **Blakes**

Consider: "and a Permitted Delegation Annex which identifies matters that it is expected would be addressed in Administrative Services Agreements that the Trust may choose to enter into with LDCs (without limiting the Trustee's discretion to negotiate and settle the terms and conditions of such agreements).

(for more consistency with language in the Permitted Delegation Annex).

Commented [JV11]: **Blakes**

This is a reference to the TPA, not the Trust Declaration.

Please see section 5.8 of the Trust Declaration for governance provisions regarding the Trust.

Commented [JV12]: **Blakes**

Confirm whether this refers to section 3.3, which provides that the Residual Beneficiaries shall be identified by consulting with and having regard to the recommendations of the Ontario Energy Board.

Commented [JV13]: **Blakes**

Section 11.2(c) of the TPA - This is less of a "remediation for mis-used funds" and more of a right of the Province, on specified event of defaults, to require that the trustees transfer to the Province assets in its possession or under its control that can reasonably be traced or attributed to the funds originally transferred by the Province to the trustee.

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
	3.3. Despite the foregoing, the Trust will only be terminated and wound up date after the Trustee, in its sole and absolute discretion, determines that all debts, liabilities and obligations of the Trust have been paid or otherwise adequately provided for and satisfied and upon receipt of such releases, indemnities and discharges as the Trustee, relying on the opinion of counsel, deems necessary for the protection of the Beneficiaries and for its own protection. **7.3 Distribution of Assets on Final Distribution Date** If the Trust holds Assets on the Final Distribution Date, the Trustee shall pay or provide reserves for the payment, and otherwise shall satisfy, all debts, liabilities and obligations of the Trust and shall provide or arrange to provide such investigations, audits, releases, indemnities and discharges as the Trustee, relying on the opinion of counsel, deems necessary for the protection of the Beneficiaries and for its own protection. Thereafter, any remaining Assets shall be paid to the Residual Beneficiaries in accordance with section 3.3. Right to assets under default (material breach provisions only, and after notice period). **11EVENT OF DEFAULT, CORRECTIVE ACTION AND TERMINATION FOR DEFAULT** **11.1 Events of Default.** An Event of Default will occur if: (a) the Recipient fails to perform or observe any covenant in this Agreement and such failure has and continues to have a material adverse effect on the Province and remains unremedied during any Notice period applicable under section 11.2 after the earlier of (i) actual knowledge thereof by the Recipient, or (ii) receipt by the Recipient of Notice thereof from the Province; (b) any representation or warranty made by the Recipient in the Agreement shall prove to have been incorrect in any material respect when made or deemed made, and, if capable of remedy, continues to be incorrect in any material respect during any Notice period applicable under section 11.2 after the earlier to occur of (i) the actual knowledge thereof by the Recipient or (ii) receipt by the Recipient of Notice thereof from the Province; (c) it is [determined][manifestly demonstrated by the Province] that the Recipient has breached its Standard of Care (within the meaning given in and context of the Declaration of Trust) in discharging its material duties under the Declaration of Trust, with the result that all or a significant part of the Funds have not been or are not being applied in furtherance of the Purpose or are being applied in a manner that is directly contrary or without regard to the Purpose, and, if such breach is capable of remedy, it continues and remains unremedied during any Notice period applicable under section 11.2 after the earlier of (i) actual knowledge thereof by the Recipient, or (ii) receipt by the Recipient of Notice thereof from the Province; (d) an insolvency event shall have occurred and be continuing with respect to the Recipient.	X

Commented [JV14]: Blakes

May want to clarify which provisions are from the Trust Declaration and which are from the TPA.

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
	11.2 Consequences of Events of Default and Corrective Action. If an Event of Default occurs, the Province may, at any time, take one or more of the following actions: (a) provide the Recipient with Notice allowing the Recipient an opportunity to remedy the Event of Default during a specified Notice Period; No right to access assets following Final Date of Distribution: **3.3 Distributions to Residual Beneficiaries** Prior to the Final Distribution Date, the Trustee shall identify the Residual Beneficiary, or if more than one the Residual Beneficiaries and their respective allocations, by consulting with and having regard to the recommendations of the Ontario Energy Board, based on **[Identify criteria that will narrow the scope to charities to those having an energy/social focus]**those charitable organizations which provide support services for Low Income Energy Assistance Program Emergency Financial Assistance (LEAP EFA) and the Ontario Electricity Support Program (OESP) or other charities that OEB may identify as relating to the Purpose. Following the Final Distribution Date, the Trustee shall, subject to compliance with section 7.3,7.3 and completion of a final audit, distribute all remaining Assets (including capital or income) to the Residual Beneficiaries, in each case in the amounts and to the extent determined by the Trustee in its discretion hereunder (having consulted with and having had regard the recommendations of the Ontario Energy Board as aforesaid) and to the exclusion of the other Beneficiaries. The government also cannot unilaterally extend the term of the agreement. Rather, the term of the Agreement can only be extended by further agreement between the Parties. **3.3 Extension of the Declaration of Trust.** If the Province determines that an extension of the Declaration of Trust (beyond the "Final Distribution Date" and time for termination, each as specified or determined thereunder) is consistent with and in furtherance of the Purpose and the Province's original intentions and expectations in establishing the Project, the Province may request that the Recipient extend the Declaration of Trust to a date specified by the Province in a Notice (such date not to be later than •), whereupon the Recipient, so long as the Trustee does not have a reasonable basis to believe that such an extension would be inconsistent with the Purpose or weaken the protections intended for the benefit of the Trustee pursuant to the Declaration of Trust, will undertake such actions as it may consider to be necessary or appropriate to so extend the Declaration of Trust, including by amending the Declaration of Trust to provide for such an extension and to modify any other term or requirement as would be necessary or prudent to conform such term or requirement in light of such extension.	

Commented [JV15]: Blakes

Consider including the other provisions of section 11.2

Commented [JV16]: Blakes

Consider double-checking that this is section 3.3 from the draft of the Trust Declaration dated March 20, 5:30 pm (*which is the draft that is cited for this assessment*)

Consider double-checking other quoted sections in similar manner.

Commented [JV17]: Blakes

Section 3.3 of the TPA (quoted below) refers to the fact that the government cannot unilaterally extend the term of the Trust Declaration – if the Province wishes to extend the Trust Declaration, section 3.3 governs.

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
5. Provide significant input into the appointment of members of the governing body of the organization by appointing a majority of those members from a list of nominees provided by others or being otherwise involved in the appointment or removal of a significant number of members	In accordance with the Trust Declaration and the TPA, the government will not control the Original Trustee, and will not have a controlling interest in either the Advisory Committee nor the Replacement Trustee Board. The process Replacement of the Original Trustee is described in section 5.7 of the Trust Declaration which describes a logical process to select subsequent trustees but which does not result in a Trust that will be controlled by the government (as above). Although the Ministry of Energy provided input to the selection of the Advisory Committee with will help the Trustee to select the Replacement Trustees by nominating candidates based on the selection criteria, the Advisory Committee is not the governing body. As at March 31st, the Original Trustee is the governing body and although selection thereof may have been influenced by the government, the Trust Declaration and Transfer Payment Agreement have been drafted to reflect a non-controlling relationship. PSAS also includes the following guidance w.r.t. government involvement in appointing governing bodies: 20 For each indicator that applies in a particular circumstance, the degree of government influence would determine its importance as evidence of control. In weighing the evidence, it would be necessary to consider the indicators collectively as well as individually. For example, where an organization is governed by a publicly elected board, this is not necessarily, in and of itself, sufficient evidence to conclude that the government does not control the organization. Similarly, where a government appoints a majority of the members of the governing body of an organization, this is not necessarily, in and of itself, sufficient evidence that the government controls the organization In addition, section 1.1 (interpretations) of the TPA includes the following: it is intended that the transfer of the Funds to the Recipient will be a transfer made to a “non-controlled trust” (as that term is given meaning in • applicable to the accounting rules and principles applicable to the Province as of the date of the Agreement), and so if a term or condition of the Agreement is determined to conflict with the requirements applicable to the Province recording the transfers to the Recipient of Funds contemplated hereunder as an expense incurred by the Province on the date of the transfer of Funds under the Agreement otherwise in connection with activities undertaken by the Province with such a “non-controlled trust”, then such term or condition shall be given a meaning and shall have an effect insofar as it is possible to interpret such term or condition in a manner that eliminates such conflict while preserving the other provisions of the Agreement and furthering the Purpose.	X

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
6. Appoint or remove the CEO or other key personnel	Right does not exist. N/A	X
7. Establish or amend the mission or mandate of the organization	Province established the Trust and has provided Principles which help to guide the Trust.	✓
8. Approve the business plans or budgets for the organization and require amendments, either on a net or line-by-line basis	Right does not exist. No intention for province to manage or influence the Trust on a line by line basis.	X
9. Establish borrowing or investment limits or restrict the organization's investments	Trust Declaration references: (j) "***Eligible Investments***" means (i) a deposit receipt, note, certificate or instrument issued, guaranteed or endorsed by a bank listed in Schedule I to the *Bank Act* (Canada), which provides that the principal and any interest shall be fully paid no later than [one year] after the day the investment was made, or (ii) a deposit account at a bank listed in Schedule I to the *Bank Act* (Canada). 4.2 (a) ***Power to Own, Hold and Manage.*** Subject to section 4.2(d), the Trustee shall have the power to own, hold and manage the Assets in such manner as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable. (b) ***Power to Invest in Eligible Investments.*** The Trustee shall have the power to invest the Assets only in Eligible Investments, and to change such Eligible Investments at any time and from time to time, all as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable, but always having regard to the Trustee's expectations regarding the timing of payments to be made to the Beneficiaries hereunder. If an investment of Assets in Eligible Investments would not be authorized under the applicable trust laws of Ontario, the Trustee shall nevertheless be permitted to make an investment of the Assets in such Eligible Investments. The Trustee will have no liability for the diminution in the value of any investment in Eligible Investments made hereunder. *Although some restrictions, given the need for liquidity for the funds and envisioned short term nature of the program, it is unlikely that the Trust would have contemplated investing the funds in any different types of instruments as designated in the Trust docs.*	✓
10.Restrict the revenue-generating capacity of the organization, notably the sources of revenue	There are no revenue generating restrictions in the Trust documents; however, there are references indicating that the Funds are expected to be used for not for profit purposes. It should also be noted that the nature of a Trust is not to generate revenue or make a profit, but to fulfil a fiduciary duty on behalf of the beneficiaries. No explicit restriction mentioned in the Trust Declaration or TPA related to other activities of the trust; however,	X

Commented [JV18]: Blakes

Computershare, as settlor and Computershare as trustee established the trust. Consider stating that the Province contributed funds to the trust.

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
	expectation that funds provided by the province will not be used for profitable purposes by the LDCs.	
11. Establish or amend the policies that the organization uses to manage, such as those relating to accounting, personnel, compensation, collective bargaining or deployment of resources (Suggestions for Admin Services Agreements and Principles in Trust docs are not mandatory. Replacement Board of Trustees can initiate changes which can reasonably be anticipated to be accepted if not contradictory to the Principles. References to provinces procurement directive and meals, entertaining and hospitalitiy directive only state expectation that Trust's processes would align with the principles.)	**NO UNILATERAL GOVT POWER TO MAKE CHANGES**: Trustees would have power to consider change in the policies in the Trust Declaration and/or modify the TPA, subject to provincial approval. Declaration: 1.1 (y) "'***Transfer Payment Agreement***" means the transfer payment agreement dated as of March •, 2017 between the Trustee and Her Majesty the Queen in right of Ontario as represented by the Minister of Energy, as such agreement may be amended, restated, supplemented or otherwise modified by the further agreement of the parties thereto from time to time. **4.2Specifically Enumerated Powers** The Trustee shall have the following specific powers and authorities: (c) ***Transfer Payment Agreement.*** The Trustee shall have the power to enter into, amend, supplement, modify and perform its obligation under the Transfer Payment Agreement. ***NO GOVT CONTROL OVER OPERATING OR FINANCIAL POLICIES*** ***j)Power to Pay Trustee's Fees*** Trustees have general regard to sorts of limitations as are set forth in the "Travel, Meal and Hospitality Expenses Directive of the Province" **5.8 Rules and Procedures of the Board of Trustees** (d) ***Initial Requirements***. As soon as practicable and in any event no later than one month following the Original Trustee Replacement Date, the Board of Trustees shall meet to take such decisions and actions as they deem necessary to ensure the proper management and administration of the Trust. The date (and location if in person) of the initial meeting shall be determined by a majority of the Board of Trustees. 4.2 The Trustee is expected to conduct its activities in a manner that complies in all material respects with the Transfer Payment Agreement, including to:	X

Commented [JV19]: Blakes

Consider that section 6.1 of the Trust Declaration states that, subject to the TPA, the trustee shall have power in its discretion to amend the Trust Declaration provided that no amendment shall conflict with the Principles Annex or as to the scope or effect of the permitted delegations and activities of any Administrative Services Agent pursuant to the Permitted Delegation Annex.

Consider reference to the language in section 20.2 of the TPA - The Trustee covenants that it shall not amend, restate or terminate the Declaration of Trust without obtaining the written consent of the Province in respect of same, such consent not to be unreasonably withheld or delayed

Commented [NP20]: Inconsistent w.r.t expectation of agreement between the two parties

Commented [JV21]: Blakes

This is clause 4.2(a). Consider double-checking sources cited to ensure citation to May 20, 5:30pm version.

This clause speaks to the *power* of the Trustee to amend the TPA – however, it does not necessarily state that, contractually, the Trustee is permitted to amend the TPA unilaterally.

This clause should not be quoted for support that the trustee can make changes to the TPA without consequence.

Commented [NP22]: Supposed to say 'is expected that)

Commented [JV23]: Blakes

This is clause 5.8(a). Consider double-checking sources cited to ensure citation to May 20, 5:30pm version.

Commented [NP24]: Terminology

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
	(a) act prudently and in furtherance of the Purpose; (b) report annually the results of its activities for information purposes to the Province in connection with the Program; (c) comply with the Province's request for any independent verification or audit if determined to be necessary or appropriate by the Province; (d) return of Assets that have not been distributed if it is [determined][by the Province] that the Trustee has breached its Standard of Care in discharging its material duties under the Declaration, and has not cured such material breach despite having been given a reasonable opportunity by the Province to do so in light of the circumstances of such material breach, with the result that all or a significant part of the Assets have not been or are not being applied in furtherance of the Purpose or are being applied in a manner that is directly contrary or without regard to the Purpose.] The Trust Declaration includes a Permitted Delegation Annex, which describes administratively, how the Trust might consider delegating its powers and duties to LDCs (non-controlled by the province) and satisfy the Standard of Care required under the Trust Declaration. Certain sections of the Delegation Annex go beyond general accountability provisions and suggest very specific requirements/expectations in relation to the Trustee's arrangements with LDCs and LDCs own administration of Fund monies. As currently worded, the Delegations Annex, when taken together with the Principles Annex and Listing of Eligible Measures, may be assessed substantively as 'controlling' the trust, regardless of wording which refers to the exercise of Trustee discretion. **5.1RECIPIENT'S ACQUISITION OF GOODS OR SERVICES, AND DISPOSAL OF ASSETS** **Acquisition.** If the Recipient acquires goods, services, or both with or by applying the proceeds of the Funds, it is expected to do so through a process that promotes the best value for money and to take reasonable steps to ensure that its Administrative Services Agents also follow a process that promotes the best value for money when acquiring goods and services with or by applying the proceeds of the Funds. .	

Commented [NP25]: Aligned with OPCD guidance on One-time Transfers and Trust Guidance (previously discussed and agreed to by OAG)

Commented [JV26]: Blakes

Consider: "The Trust Declaration includes a Permitted Delegation Annex, which provides that the Trustee will be permitted, and is expected to seek to delegate its powers and duties to LDCs…."

Commented [JV27]: Blakes

Section 5.1 of the Trust Declaration itself provides that the trustee may satisfy its Standard of Care by delegation, subject to prudent oversight.

Commented [JV28]: Blakes

Consider that these "very specific" sections are descriptions of matters that it is expected an Administrative Services Agreement would be expected to address (without limiting the discretion of the trustee to negotiate and settle the terms and conditions of such agreement).

Commented [NP29]: Some audit risk

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
	PRINCIPLES ANNEX The Trustee shall have regard to **[, but shall not be specifically bound by,]** the following principles in applying its discretion in relation to the administration of the Trust. **DECLARATION OF TRUST** **6.1 Amendments** Subject to the requirements of the Transfer Payment Agreement, the Trustee shall have the power in its sole and absolute discretion from time to time without the approval of any Beneficiary or any court to amend, vary, supplement, replace or restate this Declaration in its entirety or any portion thereof. provided, however, that no amendment shall conflict with the principles set forth in the Principles Annex or as to the scope or effect of the permitted delegations and activities of any Administrative Services Agent pursuant to the Permitted Delegations Annex.] 6. In the event that the Recipient performs any procurements, it is expected that all procurements will reflect the principles of Ontario's Public Service Procurement Directive. From and following the Original Trustee Replacement Date, Reports will be provided [quarterly] on the basis of the government's fiscal year starting at the execution of this Agreement and continuing until conclusion of the Agreement. Annual Reports will be on a fiscal basis starting at the execution of this Agreement and continuing until conclusion of the Agreement. Quarterly Reports and Annual Reports would be expected to be submitted to the Province within one month following the end of the reporting period that they represent. The Province expects that these Reports would be prepared to demonstrate the impact of the Province's funding. **5.0 RECIPIENT'S ACQUISITION OF GOODS OR SERVICES, AND DISPOSAL OF ASSETS** **5.1 Acquisition.** If the Recipient acquires goods, services, or both with or by applying the proceeds of the Funds, it is expected to do so through a process that promotes the best value for money and to take reasonable steps to ensure that its Administrative services Agents also follow a process that promotes the best value for money when acquiring goods and services with or by applying the proceeds of the Funds. **Conduct of the Trust and the Program** 4.1 It is expected that administrative expenses of the Board of Trustees and its members, including any expenses relating to the Trust, to the establishment of the [Trust]and any expenses related to the implementation and operation of the Program, including by or through Electricity Distributors and other relevant entities, will be recognized and subject to reimbursement on a basis that is	

Commented [NP30]: Conflicting with suggestion that the Principles are guidelines only?

Commented [NP31]: No accounting issue, but not sure that this was included in the appendix?

Commented [NP32]: For information purposes, in accordance with OPCD TP Guidance and Trust Guidance.

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
	substantially consistent the principles in the Travel, Meal and Hospitality Expenses Directive, the current form of which attached as Schedule B to this Principles Annex. Permitted Delegation Annex (not mandatory) 4. Accordingly, and without limiting the Trustee's right to delegate under the Declaration and its other rights, powers and discretion as Trustee, the Trustee will be permitted to, and is expected to seek to, enter into Administrative Services Agreements with Electricity Distributors in order to further the Purpose. Without limiting the Trustee's discretion to negotiate and settle the terms and conditions of such Administrative Services Agreements, it is expected that such Administrative Services Agreements will include customary terms and conditions for an administrative services arrangement of this type and, in addition, would (subject to the acceptance and agreement of the applicable Electricity Distributor counterparty) address certain aspects.	

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Appendix II

ACCOUNTING CONSIDERATIONS FOR GOVERNMENT-FUNDED TRUSTS

Purpose:

The purpose of this guidance is to explore accounting-related considerations related to government-funded trusts which are established by the government to fund a specific purpose or activity. This guidance deals specifically with the difference between controlled and non-controlled trusts, the introduction of accountability provisions which can now be reflected in trust agreements, and key timing considerations for trusts contemplated towards year-end. It is important that these factors be taken into account when establishing a trust, in order to achieve the intended fiscal impact and appropriate accountability over the use of public funds.

Introduction:

Trusts are usually established by way of trust declaration or trust agreement, and are one of several means by which the government can direct funding to support key policy initiatives. Simply stated, trustees hold title to property for the benefit of, and stand in a fiduciary relationship to the beneficiaries. Trustees are accountable to third parties (beneficiaries) for the use and disposition of trust assets and for the funds derived from those trust activities. The trust itself is not a separate legal entity. The trustees carry out the activities of the trust in the name of the trustees.

Generally, direct year-end transfers are the preferred alternative over trusts where the province wants to retain ultimate decision-making authority regarding amounts to be transferred to recipients. Direct transfers are more appropriate where the identity of eligible transfer payment recipients is known and the amounts to be transferred to each recipient can be or has been determined.

Year-end transfers to a trust might be considered where the province desires to delegate to third parties ultimate decision-making authority regarding allocation of amounts amongst eligible beneficiaries.

A trust must be valid for legal purposes in order to be recognized for accounting purposes. Key requirements for a trust to be valid include: an intention to create a trust ('certainty of intention'), certainty of subject-matter of the trust ("certainty of subject matter") and the objects of the trust must be certain ('certainty of objects"). There are generally two different types of trust, a trust in which the objects are the "beneficiaries" and trust in which the objects are a "purpose" (e.g. for charitable purposes). Where a trust is under serious consideration, it is imperative that ministries seek legal advice to ensure that the contemplated trust will be valid.

Trustees are obligated to follow the terms of the trust declaration or trust agreement which will usually detail the powers and duties of the trustees including the number of trustees and how decisions will be made by the trustees.

Controlled versus Non-Controlled Government-Funded Trusts

From an accounting perspective, it is important to distinguish whether the design and governance of a particular trust results in the trust being controlled by the Province for accounting purposes. Control stems from the nature of the relationship between the government and the trust. Financial and operating policies are principles that determine how an organization conducts its activities. The ability to govern these policies is an important element of government control.

The means by which a trust is established, the government's representation among the trustees, the government's involvement in the trust's governance processes and ability to impact trustee discretion in decision-making are but some of the factors to be considered in assessing whether a trust is 'controlled' or 'not controlled' by the government.

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In establishing a trust, it is important to achieve the intended relationship between the province and the trust in order to achieve the intended fiscal impact.

Non-Controlled Trusts:

Where trusts are not controlled by the Province, they are excluded from the government reporting entity. For non-controlled trusts, the following accounting would apply to trust funding:

- Where funds provided to the "trust" are unconditional, the Province would record a transfer payment expense for any transfers approved in the current period (and flowed by finalization of public accounts).

- Where funds provided to the "trust" are conditional (i.e. upon the trust completing some specific task or result), the Province would initially record funding to the trust as a prepaid expense until the conditions are met at which time the Province would record a transfer payment expense, with the corresponding credit to prepaid expense. This may occur over a number of fiscal years.

In determining whether a trust is controlled, there are a variety of ways that a government might be perceived to be governing the financial and operating policies of a trust. These include:
- Eliminating or significantly limiting the ability of the trustees to make future decisions
- Directing the financial and operating policies of the trust
- Overruling, modifying or vetoing the financial and operating policies established by the trust.

Specific factors that should be considered in establishing a non-controlled trust include:
- Government representation in the trustees (should be in a minority position), and non-government trustees should be nominated by non-government sources
- Government influence over day-to-day trust governance and trustee discretion to make decisions (e.g. selection of eligibility criteria, selection of recipients).
- degree of influence over how funds are disbursed (i.e. the Declaration of Trust can provide general guidelines but not be overly prescriptive)
- the government's power to unilaterally appoint or remove the majority of trustees
- the government's on-going access to the trust's assets, or right to direct decisions regarding the flow of those assets to specific beneficiaries
- the government's unilateral power to dissolve the trust, except under specified circumstances as stipulated by the trust agreement (i.e. corrective action)
- the government's ability to establish or amend the policies used by the trust to manage accounting, personnel, deployment of resources, etc.

In some cases, it may be advantageous for ministries to provide administrative support to trusts. In these cases it is important that the extent of such support is not so pervasive as to influence or direct the day-to-day financial or operating policies of the trust, otherwise the trust will be deemed controlled and will be subject to consolidation in the government reporting entity.

Controlled Trusts:

If the Province controls the trust (for example, through its power to appoint a majority of the trustees on the board of trustees), the Province would be deemed to have control of the trust, resulting in the trust being accounted for in the same manner as other organizations controlled by the province (i.e. on a consolidated basis). As a result, the Province's contribution to the trust would not be expensed when it is transferred, but rather over time as the funds are disbursed to trust beneficiaries.

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Accountability Related Considerations:

The Auditor General has confirmed that the new accountability provisions developed for one-time transfers can also be applied to trusts without impacting the expense treatment of any transfers to non-controlled trusts.

These new accountability provisions will enable the government and the Legislature to:

- obtain assurance that a trust is spending public funds prudently and for the purposes intended and to take corrective action if it is not;
- ensure ministerial accountability to the Legislative Assembly for the trust's activities; and
- ensure that the province is able to take corrective action where warranted and as stipulated under terms of the trust agreement.

It should also be noted that the Auditor General's Act now allows the Province's Legislative Auditor to conduct special audits of any person or organization receiving transfers from the government, including trusts.

To enhance accountability controls over government transfers to non-controlled trusts, Ministries can consider incorporating some or all of the following accountability provisions as part of their trust agreement/declaration without impacting the accounting treatment of the trust.

The inclusion of any of these provisions should not result in a trust being assessed as 'controlled'. Note that the key determinant in identifying appropriate provisions for any individual trust is a ministry's assessment of the **risk** associated with a particular trust, as per the Transfer Payment Directive.

1. **Description of intended use of trust funds**;
    - specific purpose(s) for which the funds are to be used;
    - description of intended recipients and related eligibility criteria*; and,
    - the nature of eligible expenditures relevant to the transfers.

    *Note: avoid *overly prescriptive* eligibility criteria which would effectively eliminate or significantly limit the trustees' discretion to make funding decisions.

2. **Requirement for information**
    - Information to be provided by the trust at a future date (e.g. requirement for trustees to advise the government of trustee-developed performance criteria, and provide annual assessments against those criteria)

3. **Report-back requirement for Public Accountability**
    - information to be provided by the trust at a future date with respect to the stewardship and payment of transfer funds (e.g. audited financial statements, audited list of recipients and amounts funded).

4. **Right to independent verification/audit**
    - The Province reserves the right to audit any transfer payment recipients. The trust agreement should make reference to this fact.

5. **Right to take corrective action**
    - Where stipulated under the trust agreement, the Province reserves the right to re-direct unused funds where results of a trust assessment (where required by the trust agreement) indicate original purpose of the trust is not being achieved, or if there remain unused funds at the end of the trust term.
    - Province may also reserve the right to extend the term of the trust agreement, where funds remain at the end of the trust period.

To qualify for in-year expense treatment, the non-controlled trusts must satisfy the following:

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- the decision to establish the trust must have been approved by Treasury Board/Management Board of Cabinet and ratified by Cabinet by March 31st;
- the ministry providing the transfer must have approved appropriations and spending authority by March 31st;
- Trustees must have been identified and signed the trust declaration or agreement to establish a valid trust by March 31st ;
- the trust must be set up and ready to receive funds, and a nominal amount transferred to the trust by March 31s;t ; and,
- the government should have communicated publicly (e.g. in the Budget document) the pending or final establishment of the trust.

In addition, all remaining funds beyond those initially transferred at March 31st should be transferred to the trust by June 30th.

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Trusts
Questions and Answers on Trust Guidance

Question: *Where a trust is announced in the Budget document, must the trust be established by March 31st, or could such a trust be established shortly thereafter without impacting the expensing of transfers to the trust in 2007-08?*

Answer: *A trust would have to be established prior to the end of a fiscal period in order to satisfy the recognition criteria for government transfers. If the intended recipient for a government transfer does not exist at March 31st, the province cannot record a payable owing to it under existing accounting standards.*

Question*: Does the transfer of funds to a non-controlled trust need to occur by March 31st or before the date of Public Accounts finalization?*

Answer: *Consistent with the new requirements for one-time transfers, as long as the trust is established by March 31st, the transfer is authorized and a reasonable estimate of the amount can be made, cash payments can be made after year-end.*

Question: *Can beneficiaries of a non-controlled trust include consolidated entities provided that the ultimate selection of recipients is at the discretion of the Trustees?*

Answer: *Any amounts provided to a trust which are in turn be provided to an organization inside the government reporting entity should not be expensed at the time of the transfer to the trust. Any amount that is flowed to a trust with the intention of subsequently flowing the funds to a consolidated entity should not be recorded as an expense to the government.*

Question: *Can a Ministry provide administrative support to a trust without compromising the non-controlled status of the trust?*

Answer: *The government can provide administrative support as long as the extent of government administrative support is <u>not so pervasive</u> so that the government is in substance establishing and managing the trust's policies in the areas of accounting, personnel, compensation, collective bargaining or deployment of resources. Where such administrative support is assessed as pervasive, it could impair the trust's non-controlled trust and the trust will be consolidated onto the province's financial statements.*

Can the following clauses appear in a trust agreement for a non-controlled trust to ensure adequate accountability over public funds without impacting the expense treatment of such trusts?

Question*: Specific description of purpose of the trust (possibly including nominal allocation among various objectives)*
Answer: Yes.

Question: *Can the trust agreement include a specific description of the intended groups of beneficiaries and detailed eligibility criteria.*

Answer: *Specificity should be applied cautiously, so as not to limit the discretion of the trustees in their subsequent grant making processes. For the trust to be considered 'not controlled' it should not be seen as 'establishing the trust's fundamental purpose and eliminating or significantly limiting the ability of the trust to make future decisions by predetermining the financial and operating policies of the trust.*

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Question: *Can trustees stipulate that funding is to be provided to beneficiaries on a cost-sharing basis?*
Answer: *Yes.*

Question: *Can the trust agreement include a requirement for a trust to report back to the province on trustee-established performance criteria and results, audit of financial statements, audited recipients and amounts, confirmation that trustees communicated to beneficiaries the intended purpose of the funding, etc.*
Answer: *Yes.*

Question*: Requirement for Trust to publicly post communications on existence, availability of funds, eligibility criteria, recipients and amounts granted to each recipient.*
Answer: *Yes*

Question: *Inclusion of a 'suggested' drawdown schedule over a period of years, with discretion left to Trustees as to actual results.*
Answer: *The inclusion of a drawdown schedule is not suggested for one-time, up-front transfers.*

Question: *Trust agreement can suggest accountability provisions which might be attached by Trustees to beneficiary payments (e.g. specific purpose of funding, requirement for report-back, right to audit, corrective actions).*
Answer: *Yes*

Question: *Trust agreement to reserve the province's right to re-direct any unspent funds to specified parties (e.g. non-consolidated entities or another non-controlled trust) at the end of the trust term, or alternatively to extend the term of the trust where unspent funds remain.*
Answer: *Yes*

Question*: Can the trust agreement include the requirement for evaluations of the trust at certain times (e.g. years 3, 7, 10 of the trust agreement), with the right for the government to decide either to terminate the trust (corrective action) based on the results of the assessment, or extend the trust beyond the initial term as per the agreement.*
Answer: *Yes.*

Question: *Trust agreement can require Trustees to request as part of the funding process that beneficiaries acknowledge receipt of government funding in their public communications on specific projects.*
Answer: *Yes.*

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Appendix III

ACCOUNTING TREATMENT FOR ONE-TIME TRANSFERS WITH ENHANCED ACCOUNTABILITY PROVISIONS

Purpose:

The purpose of this guidance is to identify the nature of the accountability provisions which may be associated with one-time transfer payments that qualify for immediate expense treatment in the current period.

Definition of One-time transfers:

One-time transfers are defined as lump-sum operating or capital transfers that

- are not advancing currently planned future transfer payments under an existing on-going program, or
- are not identified as being intended to be spent in specified future periods or over a specified period of time.

Background:

Transfer payments are a means by which the government works with third parties to deliver public services. Transfer payment recipients must be held responsible by the government to deliver the provincially-funded services and be accountable for the funds they receive. Consistent with the *Transfer Payment Accountability Directive, August, 2007*, a risk-based approach is to be followed in designing the appropriate accountability and reporting mechanisms for specific funding agreements.

The current *PSAB Handbook Section 3410, Government Transfers requires that a government transfer should be recognized by a transferring government as an expense in the period the transfer is authorized and all eligibility criteria have been met by the recipient.*

To recognize a liability and expense as at year-end:

- the government must create a valid expectation of the recipient by year-end, leaving the government little or no discretion to avoid but to settle its obligation;
- no significant, contingent actions should be outstanding which if unfulfilled by year end might cause the transfer not to occur.

It is understood that the intention of negotiating a transfer payment agreement following the government's commitment to the recipient is to work out the administrative details of the arrangement, not to change any key elements of the government's commitment. As such, any correspondence which indicates that funds will not be flowed until a TPA is signed should make clear that the nature of additional details to be negotiated is logistical and administrative in nature (bank account info, reporting requirements, etc.)

The government should not suggest or direct the recipients to use the funding for future periods.

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To enhance accountability controls over one-time transfers accountability provisions one through five below are required for one-time transfers.

1. **Description of intended use of one-time transfer funds**;
   - specific purpose(s) for which the funds are to be used; and,
   - the nature of eligible expenditures relevant to the transfers.

2. **Report-back requirement for Public Accountability**
   - Periodic reporting on the use of transfer funds, service deliverables, outputs or outcomes achieved.

3. **Right to independent verification/audit**
   - at the discretion of the Province to verify/audit information submitted by the recipient is complete and accurate, and that funds were used for purposes intended.

4. **Right to recover funds (corrective action)**
   - If the funds were not used, or will not be used, for the intended purpose(s), specified services were not delivered, or intended outputs were not achieved, the Province has the right at a future date to recover funds transferred.

5. **Requirement for information** (*this item optional*)
   - information to be provided by the recipient at a future date with respect to the use of transfer funds, service deliverables, outputs or outcomes achieved.

To qualify for in-year expense treatment, the transfers must satisfy the following:

- be approved by Treasury Board / Management Board of Cabinet and then ratified by Cabinet by March 31st;
- the ministry providing the transfer must have approved appropriations and spending authority by March 31st;
- the recipients must be eligible to receive the grant by March 31st (i.e. eligibility criteria have been met prior to March 31st), and the intent to make the transfer payment must be communicated to the recipients by March 31st;
- In addition, funding details including accountability provisions must be communicated to the recipients, and the transfer payments must be made to the recipients prior to the finalization of the Public Accounts (currently June 30th);
- Where funds are flowed to recipients by March 31st, all eligibility criteria are assumed met for accounting purposes[1], and all amounts flowed are recorded as an expense, even where conditions might exist which remain unmet at March 31st.

[1] PS 3410, Government Transfers, states that "no matter how a transfer term is identified in legislation, regulations, by-laws or a transfer agreement (i.e., as an eligibility criterion or a stipulation), the crucial characteristic that distinguishes the substance of these two types of transfer terms is when they are required to be or are met by a recipient. If a term is required to be and is met before the transfer is provided, it is an eligibility criterion for the purposes of this Section. If a transfer term is met after the transfer is provided, it is a stipulation for the purposes of this Section".

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SCHEDULE "C"
PROJECT

For the purposes of this Agreement, the "Project" is the distribution of the Funds in accordance with the Declaration of Trust.

It is intended the Project will be undertaken by the Recipient in furtherance of the Purpose and in accordance with the Declaration of Trust. In this regard, it is expected that the Recipient will undertake the Program having regard to the Budget and the Principles set forth in Annex A.

The following are the Provinces expectations regarding the circumstances in which the Recipient will begin to distribute any Funds to any Beneficiary.

1. The Original Trustee Replacement Date (as defined in the Declaration of Trust) will have occurred.
2. An administrative services agreement will have been entered into between the Recipient and an Administrative Services Agent providing for the administrative services necessary for the Recipient to perform its obligations herein and execute the Project.
3. Administrative procedures will have been developed and implemented under which Electricity Distributors (as defined in the Declaration of Trust) will be invited to assist with (a) the identification and selection of Primary Beneficiaries under the Declaration of Trust, (b) the determination of the amount of Funds to be distributed to particular Primary Beneficiaries, and (c) the distribution of Funds to or for the benefit of such Primary Beneficiaries (in each case substantially on the basis contemplated in the Permitted Delegations Annex).
4. The Recipient will have obtained commercial general liability insurance from insurers having a secure A.M. Best rating of B+ or greater, or the equivalent, that in the opinion of the Recipient a prudent person similar to the Recipient would maintain, and having an inclusive limit of not less than $2,000,000 per occurrence and providing for contractual liability coverage. If requested, the Recipient will provide the Province (for its information purposes) with copies of the certificates of insurance and policies for such insurance coverage.

The Province recognizes that the foregoing may involve the Recipient entering into agreements as may be the Recipient considers to be necessary or expedient, including any required amendment or amendment and restatement of the Declaration of Trust. Funds may be expended to pay the expenses of the Trustee in completing these matters. The Recipient will confirm to the Province once such matters have been completed.

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5.7 Replacement of the Original Trustee

As soon as practicable and in any event on or prior to March 31, 2017, the Original Trustee shall appoint the Persons identified by the Trustee Replacement Annex to comprise the Advisory Committee contemplated therein (once constituted, the "**Advisory Committee**"). As soon as practicable thereafter, the Original Trustee shall request that the Advisory Committee make recommendations with respect to the composition of the "Board of Trustees", as contemplated by the Trustee Replacement Annex. The Trustee shall have no duty or obligation to investigate the basis for any of the Advisory Committee's recommendations and may rely on such recommendations without any duty of enquiry, supervision or oversight with respect to the activities and decision-making processes adopted by the Advisory Committee in its discretion, in full satisfaction of the Original Trustee's Standard of Care with respect to such matters hereunder. Except if the Original Trustee determines that the individuals recommended by the Advisory Committee to become members of such Board of Trustees are disqualified from so acting on the basis of manifest non-compliance with the "Selection Factors" set forth in the Trustee Replacement Annex, the Original Trustee shall appoint, as members of the Board of Trustees, the [six] (five voting and one non-voting) individuals recommended for appointment to the Board of Trustees by the Advisory Committee. Upon the appointment of such [six] individuals pursuant to this provision and their agreement to act as members of the Board of Trustees, the Original Trustee shall be deemed to have resigned and shall cease to be a trustee (such resignation occurring on the "**Original Trustee Replacement Date**").

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FW_ Updated Control Assessment (for your review and feedback).rtf

From: Petsche, Nadine (TBS) []
To: Picard, Michel (mpicard@kpmg.ca) [mpicard@kpmg.ca]
Subject: FW: Updated Control Assessment (for your review and feedback)
Date: Tuesday, March 21, 2017 11:43:14
Attachment 1: image56e288.GIF
Attachment 2: Blakes Comments - Control Assessment_Affordability Fund Mar 20 np.doc

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From: VINER, JON [mailto:JON.VINER@blakes.com]
Sent: March 21, 2017 11:33 AM
To: Petsche, Nadine (TBS)
Cc: ASHBOURNE, STEPHEN
Subject: RE: Updated Control Assessment (for your review and feedback)

Nadine,

Please find attached comments on Appendix 1.

I note that, given the time constraints, some of the comments may be more detailed than what you are interested in looking for/revising at this point.

Please let us know if you'd like to discuss.

Best,

Jon

Jon Viner

Associate

jon.viner@blakes.com

Dir: 416-863-2499

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Begin forwarded message:

> **From:** "Petsche, Nadine (TBS)" <Nadine.Petsche@ontario.ca>
> **Date:** March 20, 2017 at 10:32:54 PM EDT
> **To:** "stephen.ashbourne@blakes.com" <stephen.ashbourne@blakes.com>, "Picard, Michel (mpicard@kpmg.ca)" <mpicard@kpmg.ca>
> **Cc:** "samir chhelavda (Samir.Chhelavda@HydroOne.com)" <Samir.Chhelavda@HydroOne.com>
> **Subject: Updated Control Assessment (for your review and feedback)**

Stephen/Michel,

Attached is an updated DRAFT control analysis reflecting current information based on the updated draft TPA and Declaration (5:30 pm version) attached.

Your review of the analysis in Appendix 1 would be valuable as follows:

Stephen – please advise of any factual inaccuracies in the extracts listed

Michel – please advise of any additional elements that should be reflected, comments inserted and conclusions for each of the control criteria w.r.t. control (yes or no).

MOE is expecting the updated control analysis as soon as possible. Your feedback by tomorrow at noon would be most appreciated, if possible.

Thanks in advance.

Nadine

image56e288.pdf

Blakes

Blakes Comments - Control Assessment_Affordability Fund Mar 20 np.pdf

BLAKES COMMENTS ADDED IN COMMENT BUBBLES (3/21/2017)

Draft Control Assessment of Affordability Fund Trust (Rev. Mar 20, 2017) for Inclusion in the Government's Reporting Entity

ISSUE

Would the Ministry of Energy's proposed Affordability Fund Trust be assessed as controlled under Public Sector Accounting Board (PSAB) standard on the Government Reporting Entity (PS 1300) and therefore be included in the Province's consolidated financial statements?

RECOMMENDATION

Conclusion outstanding pending confirmation of accuracy of extracts/references in Appendix 1.

Elements of the Trust Declaration and Transfer Payment Agreement have been assessed by OPCD as aligned with both OPCD's One-Time Guidance on Transfers as well as OPCD's Trust Guidance document, both of which are attached as Appendices to this analysis. Both of these documents have been reviewed and concurred to with the Office of the Auditor General in the past and have been important references in ensuring that the public interest will continue to be served through the establishment and administration of the Affordability Fund Trust.

BACKGROUND

The Ministry of Energy plans to transfer $100M to a Trust in relation to a new Affordability Fund for the purpose of providing energy efficiency measures to electricity customers who do not qualify for existing low income conservation programs (e.g. the existing Home Assistance Program (HAP), delivered by LDCs under the Conservation First Framework) and who have difficulty paying their electricity bills.

The Affordability Fund would be available to LDCs who would identify eligible customers in accordance with criteria established by the Trustees and could include customers in frequent arrears or facing disconnection. Priority would be given to homes primarily heated by electricity.

In order to establish the Fund, the Ministry of Energy plans to enter in a Trust Declaration and a Transfer Payment Agreement (TPA) with a non-controlled Trustee (Computershare) which will shortly thereafter be replaced by an independent Board of Trustees based on the advice of an independent Advisory Committee. The Ministry of Energy anticipates entering into the Trust Declaration and TPA with Computershare and flowing the approved funding prior to March 31st.

The Board is expected to be comprised of:

- [six] residents of Ontario who have expressed that they are willing to act as members of the Board of Trustees and who, individually and collectively, satisfy the following criteria (collectively, the "**Selection Factors**"):
  a) each member demonstrates an understanding of the electricity sector including the electricity distribution sector;
  b) each member demonstrates an expertise in conservation and low income programs;
  c) three of the identified individuals will be representatives from separate electricity distributors [not under the control of the Government of Ontario], two individuals will be representatives from

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separate social services agencies [not under the control of the Government of Ontario] and one individual member, who will be anon-voting member, will be an employee or representative of the Government of Ontario; and
d) it is expected that representation by the Government of Ontario will be non-controlling. The Board of Trustees, once selected is expected to include 6 persons (five voting and one non-voting) of individuals from among those individuals who have been recommended for appointment to the Board of Trustees by the Advisory Committee.

The Trustees will have the discretion to hire Hydro One or other entities as service providers to assist with administering the Fund, using Administrative Services Agreements to clearly document services and expectations. The Trust would distribute funds to LDCs across the province (including Hydro One) at the discretion of the Trustees.

The draft TPA includes terms which allow for unfettered control by the Trust to operate in the best interest of the beneficiaries, including making decisions on the administration and distribution of funds to LDCs across the province. The Trustees are expected to conduct themselves in good faith and give regard to guiding principles established by the Province in exercising their duties under the Trust Declaration and TPA in distributing funds to LDCs for the benefit of beneficiaries across the province, including Hydro One.

The Trust Declaration will be subject to further modification based on agreement by both parties, but not unilaterally by either party. The input and involvement of LDCs across the province is anticipated and integral to the success of the Trust in meeting its purpose. The non-compulsory **Principles** of the Fund will be clearly articulated in the Trust Declaration and the TPA. Language in the documents will clearly reflect that the principles are not mandatory requirements.

In addition, a **Permitted Delegation Annex** will be included which refers to expectation between the parties that the Trust would plan to rely on LDCs to assist with achieving its purpose, while maintaining unfettered discretion and power to (a) appoint, employ or retain Administrative Services Agents for the purpose of discharging its duties and obligations under the Declaration; and (b) enter into, perform, enforce and amend Administrative Services Agreements.

Without limiting the Trustee's discretion to negotiate and settle the terms and conditions of the above-mentioned Administrative Services Agreements, the Permitted Delegation Annex also outlines certain terms and conditions that the Trustees might consider for inclusion in the services agreements, recognizing that the ultimate agreements would be subject to the acceptance and agreement of the applicable Electricity Distributor counterparty. While the Annex appears quite specific in nature, it is non-mandatory and intended as guidance only which may be helpful as the Trust seeks to commence discussions with LDCs in the spirit of serving the interests of the primary beneficiaries. As noted, the Trustees are not bound to use the guidance.

Commented [NP1]: But there is a suggestion that they would as referenced in the audit clause which states that the scope of the audit would include review/validation of processes and control related to LDCs.

There is also a requirement under the Declaration that any changes would only be possible if they are in agreement with the Principles.

CONTROL ANALYSIS

In accordance with PSAB, "the Government Reporting Entity should comprise the organizations that are controlled by the government" (PS 1300.07). PSAB defines control as "the power to govern the financial and operating policies of another organization with expected benefits or the risk of loss to the government from the other organizations activities" (PS 1300.08). Benefits may be financial or non-financial, for example, the government may require the organization to cooperate in pursuing the government's public policy objectives.

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PSAB's "indicators of control" are the relevant guidance in determining the degree of control for inclusion of the Affordability Fund Trust in the Government Reporting Entity (GRE). In applying this guidance, it is necessary to determine the substance of the relationship between a government and an organization in addition to its legal form. All relevant aspects and implications of the relationship would be considered in determining whether or not the government controls the organization. In addition to PS 1300, consideration is also given the Trust Guidance and One-Time Transfer Guidance developed by OPCD in conjunction with the Office of the Auditor General which are attached as Appendices.

There are a total of 11 PSAB prescribed control indicators that provide evidence of control: 4 persuasive indicators of control and 7 other control indicators. It is the **preponderance of evidence** that would be considered in assessing whether a government controls an organization.

The following governing documents were reviewed in support of the analysis of the Province's control over the Affordability Fund Trust:

1) Draft Trust Declaration (March 20 5:30 pm), including related schedules (Principles Annex, Delegations Annex)
2) Draft Transfer Payment Agreement (March 20 5:30 pm)
3) OPCD Trust Guidance
4) OPCD Guidance on One-Time Transfers

Appendix I shows the detailed analysis of the PSAB indicators of control. Based on this assessment and the preponderance of evidence, informed by a review of the wording in the draft Trust Declaration and Transfer Payment Agreement, there are a number of features of the proposed arrangements which may be pertinent in assessing whether, an overall basis, the Affordability Fund Trust might be controlled by the Province as at March 31, 2017.

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APPENDIX I

Affordability Fund Trust
Indicators of Control Analysis
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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
Primary (i.e., more persuasive) indicators (CICA PS 1300.18):		
1. Government has the power to unilaterally appoint or remove a majority of the members of the governing body of the organization	• Original Trustee (Computershare) is the governing body of the Trust until the Replacement Board of Trustees is selected. The Declaration describes the process expected to be used to establish the Replacement Board. The government will not control the Original Trustee, the Advisory Committee, or the appointment of the Replacement Board of Trustees.	X
2. Government has ongoing access to the assets of the organization, has the ability to direct the ongoing use of those assets, or has ongoing responsibility for losses	• The government will not have an on-going access to assets transferred to the Trust, and any future access will only be through protective clauses (termination/default for material breach). At the Final Distribution Date, any excess funds will be distributed to a non-controlled Residual Beneficiary in accordance with clause 3.3 of the Trust Declaration. • The government will not have any exposure to losses of the Trust. In addition, section 1.1 (interpretations) of the TPA includes the following: it is intended that the transfer of the Funds to the Recipient will be a transfer made to a "non-controlled trust" (as that term is given meaning in - applicable to the accounting rules and principles applicable to the Province as of the date of the Agreement), and so if a term or condition of the Agreement is determined to conflict with the requirements applicable to the Province recording the transfers to the Recipient of Funds contemplated hereunder as an expense incurred by the Province on the date of the transfer of Funds under the Agreement otherwise in connection with activities undertaken by the Province with such a "non-controlled trust", then such term or condition shall be given a meaning and shall have an effect insofar as it is possible to interpret such term or condition in a manner that eliminates such conflict while preserving the other provisions of the Agreement and furthering the Purpose.	X
3. Government holds the majority of the voting shares or a "golden share" that confers the power to govern the financial and operating policies of the	• Neither in the Trust Declaration or the TPA can the government unilaterally direct the financial and operating policies of the Trust. Any Trustee initiated changes to the Declaration or TPA would need to be consistent with the Principles Annex. • • The Trust Declaration and TPA do not interfere with the	

Commented [JV2]: Blakes

Note that clause 3.3 states that the Residual Beneficiaries will be identified by consulting with and having regard to the recommendations of the Ontario Energy Board.

Commented [JV3]: Blakes

TPA: The TPA is silent on amendments to the TPA.

The TPA states in section 20.2 that the Trustee covenants that it shall not amend, restate or terminate the Declaration without the written consent of the Province, such consent not to be unreasonably withheld.

Trust Declaration:
Section 6.1 of the Trust Declaration states that, subject to the TPA, the Trustee shall have the power in its sole and absolute discretion to amend the Declaration [provided that no amendment shall conflict with the principles set forth in the Principles Annex or as to the scope or effect of the permitted delegations and activities of any Administrative Services Agent pursuant to the Permitted Delegations Annex.]

Section 6.1(e) permits the Trustee to add to or reasonably clarify the principles set forth in the Principles Annex.

Consider:
Consider stating "Any Trustee initiated changes to the Trust Declaration would need to be consistent with the Principles Annex, although the Trustee may amend the Trust Declaration to, among other things, add to or reasonably clarify the principles set forth in the Principles Annex."

Commented [NP4]: Check against Mar 20 (proviso)

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
organization	unfettered discretion of the Trustees in exercising their fiduciary duties on behalf of the beneficiaries. The 'Principles Annex' describes non-mandatory guiding principles to be considered by the Trustees in applying their discretion in relation to administration of the Trust. The Annex clearly indicates that the Trustees shall **only have regard to** the principles but that they shall not be specifically bound by the listed principles. Furthermore, the declaration and TPA are subject to change. Under the Declaration of Trust, section 1.2 Definitions , "**Declaration of Trust**" means the declaration of trust made as of March [□], 2017, under whi o the Affordability Fund Trust was established, as such declaration of trust may be amended, restated, supplemented or otherwise modified from time to time with the consent of the Province. • The Trust Declaration also includes a schedule which lists 'suggested' initial eligible measures for consideration by the Trustees, and elements for consideration in the Administrative Services Agreements that the Trust may chose to enter into with LDCs. • The Trust Declaration does not direct a specific governance structure, but rather includes the following reference under **2.3 Governance. The Recipient represents, warrants and covenants that it has, and will maintain, in writing for the period during which the Agreement is in effect:** (a) decision-making mechanisms and procedures to enable the Recipient to hold, invest, manage, apply and distribute the Funds in accordance with the Declaration of Trust in furtherance of the Purpose; and (b) procedures to enable the preparation and delivery of all Reports required pursuant to Article 7.0	✓
4. Government has the unilateral power to dissolve the organization and thereby access its assets and become responsible for its obligations	Only after the Final Distribution Date or in the event of default will the government have any power or rights in relation to the remaining funds in the Trust, including the power to redirect distribution of remaining funds and seek remediation for any mis-used funds. **SECTION 7 - TERMINATION** **7.1 Duration** Subject to sections 7.2 and 7.3, the Trust will continue in full force and effect so long as there are any Assets and until all of the debts, liabilities and obligations of the Trust have been paid and satisfied in full. **7.2 Termination and Distribution of Assets** The Trustee shall terminate the Trust and wind up its affairs as soon as practicable after the Final Distribution Date. In connection with the termination of the Trust, the Trustee shall identify the Residual Beneficiaries and distribute or cause to be distributed the remaining Assets, in cash or in kind or partly in each, to the Residual Beneficiaries, in each case in accordance with section	

Commented [NP5]: Not mandatory (will AG have concerns with level of specificity)

Commented [JV6]: **Blakes**

This definition and section reference is from the TPA, not the Trust Declaration.

Commented [NP7]: XXX Mar 20 – no reference to timeliness or not unreasonably withholding (no proviso) see sec. 4.2

Commented [JV8]: **Blakes**

Section 2.3 of the Declaration describes the measures specified in Schedule A as measures that "may initially be considered to be consistent with the Measures Factors (subject to change as contemplated under the Permitted Delegations Annex)".

Consider: Explaining the expectation that the Trustees identify eligible measures (as set out in section 2.1) and stating that Schedule A provides a list of measures which may initially be considered to be consistent with the Measures Factors (which are the factors specified in section 2.1 to identify eligible measures.)

Commented [NP9]: Not mandatory (will AG have concerns with level of specificity)

Commented [JV10]: **Blakes**

Consider: "and a Permitted Delegation Annex which identifies matters that it is expected would be addressed in Administrative Services Agreements that the Trust may choose to enter into with LDCs (without limiting the Trustee's discretion to negotiate and settle the terms and conditions of such agreements).

(for more consistency with language in the Permitted Delegation Annex).

Commented [JV11]: **Blakes**

This is a reference to the TPA, not the Trust Declaration.

Please see section 5.8 of the Trust Declaration for governance provisions regarding the Trust.

Commented [JV12]: **Blakes**

Confirm whether this refers to section 3.3, which provides that the Residual Beneficiaries shall be identified by consulting with and having regard to the recommendations of the Ontario Energy Board.

Commented [JV13]: **Blakes**

Section 11.2(c) of the TPA - This is less of a "remediation for mis-used funds" and more of a right of the Province, on specified event of defaults, to require that the trustees transfer to the Province assets in its possession or under its control that can reasonably be traced or attributed to the funds originally transferred by the Province to the trustee.

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
	3.3. Despite the foregoing, the Trust will only be terminated and wound up date after the Trustee, in its sole and absolute discretion, determines that all debts, liabilities and obligations of the Trust have been paid or otherwise adequately provided for and satisfied and upon receipt of such releases, indemnities and discharges as the Trustee, relying on the opinion of counsel, deems necessary for the protection of the Beneficiaries and for its own protection. **7.3 Distribution of Assets on Final Distribution Date** If the Trust holds Assets on the Final Distribution Date, the Trustee shall pay or provide reserves for the payment, and otherwise shall satisfy, all debts, liabilities and obligations of the Trust and shall provide or arrange to provide such investigations, audits, releases, indemnities and discharges as the Trustee, relying on the opinion of counsel, deems necessary for the protection of the Beneficiaries and for its own protection. Thereafter, any remaining Assets shall be paid to the Residual Beneficiaries in accordance with section 3.3. Right to assets under default (material breach provisions only, and after notice period). **11EVENT OF DEFAULT, CORRECTIVE ACTION AND TERMINATION FOR DEFAULT** **11.1 Events of Default.** An Event of Default will occur if: (a) the Recipient fails to perform or observe any covenant in this Agreement and such failure has and continues to have a material adverse effect on the Province and remains unremedied during any Notice period applicable under section 11.2 after the earlier of (i) actual knowledge thereof by the Recipient, or (ii) receipt by the Recipient of Notice thereof from the Province; (b) any representation or warranty made by the Recipient in the Agreement shall prove to have been incorrect in any material respect when made or deemed made, and, if capable of remedy, continues to be incorrect in any material respect during any Notice period applicable under section 11.2 after the earlier to occur of (i) the actual knowledge thereof by the Recipient or (ii) receipt by the Recipient of Notice thereof from the Province; (c) it is [determined][manifestly demonstrated by the Province] that the Recipient has breached its Standard of Care (within the meaning given in and context of the Declaration of Trust) in discharging its material duties under the Declaration of Trust, with the result that all or a significant part of the Funds have not been or are not being applied in furtherance of the Purpose or are being applied in a manner that is directly contrary or without regard to the Purpose, and, if such breach is capable of remedy, it continues and remains unremedied during any Notice period applicable under section 11.2 after the earlier of (i) actual knowledge thereof by the Recipient, or (ii) receipt by the Recipient of Notice thereof from the Province; (d) an insolvency event shall have occurred and be continuing with respect to the Recipient.	X

Commented [JV14]: Blakes

May want to clarify which provisions are from the Trust Declaration and which are from the TPA.

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
	11.2 Consequences of Events of Default and Corrective Action. If an Event of Default occurs, the Province may, at any time, take one or more of the following actions: (a) provide the Recipient with Notice allowing the Recipient an opportunity to remedy the Event of Default during a specified Notice Period; No right to access assets following Final Date of Distribution: **3.3 Distributions to Residual Beneficiaries** Prior to the Final Distribution Date, the Trustee shall identify the Residual Beneficiary, or if more than one the Residual Beneficiaries and their respective allocations, by consulting with and having regard to the recommendations of the Ontario Energy Board, based on **[Identify criteria that will narrow the scope to charities to those having an energy/social focus]**those charitable organizations which provide support services for Low Income Energy Assistance Program Emergency Financial Assistance (LEAP EFA) and the Ontario Electricity Support Program (OESP) or other charities that OEB may identify as relating to the Purpose. Following the Final Distribution Date, the Trustee shall, subject to compliance with section 7.3,7.3 and completion of a final audit, distribute all remaining Assets (including capital or income) to the Residual Beneficiaries, in each case in the amounts and to the extent determined by the Trustee in its discretion hereunder (having consulted with and having had regard the recommendations of the Ontario Energy Board as aforesaid) and to the exclusion of the other Beneficiaries. The government also cannot unilaterally extend the term of the agreement. Rather, the term of the Agreement can only be extended by further agreement between the Parties. **3.3 Extension of the Declaration of Trust.** If the Province determines that an extension of the Declaration of Trust (beyond the "Final Distribution Date" and time for termination, each as specified or determined thereunder) is consistent with and in furtherance of the Purpose and the Province's original intentions and expectations in establishing the Project, the Province may request that the Recipient extend the Declaration of Trust to a date specified by the Province in a Notice (such date not to be later than •), whereupon the Recipient, so long as the Trustee does not have a reasonable basis to believe that such an extension would be inconsistent with the Purpose or weaken the protections intended for the benefit of the Trustee pursuant to the Declaration of Trust, will undertake such actions as it may consider to be necessary or appropriate to so extend the Declaration of Trust, including by amending the Declaration of Trust to provide for such an extension and to modify any other term or requirement as would be necessary or prudent to conform such term or requirement in light of such extension.	

Commented [JV15]: Blakes

Consider including the other provisions of section 11.2

Commented [JV16]: Blakes

Consider double-checking that this is section 3.3 from the draft of the Trust Declaration dated March 20, 5:30 pm (*which is the draft that is cited for this assessment*)

Consider double-checking other quoted sections in similar manner.

Commented [JV17]: Blakes

Section 3.3 of the TPA (quoted below) refers to the fact that the government cannot unilaterally extend the term of the Trust Declaration – if the Province wishes to extend the Trust Declaration, section 3.3 governs.

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
5. Provide significant input into the appointment of members of the governing body of the organization by appointing a majority of those members from a list of nominees provided by others or being otherwise involved in the appointment or removal of a significant number of members	In accordance with the Trust Declaration and the TPA, the government will not control the Original Trustee, and will not have a controlling interest in either the Advisory Committee nor the Replacement Trustee Board. The process Replacement of the Original Trustee is described in section 5.7 of the Trust Declaration which describes a logical process to select subsequent trustees but which does not result in a Trust that will be controlled by the government (as above). Although the Ministry of Energy provided input to the selection of the Advisory Committee with will help the Trustee to select the Replacement Trustees by nominating candidates based on the selection criteria, the Advisory Committee is not the governing body. As at March 31st, the Original Trustee is the governing body and although selection thereof may have been influenced by the government, the Trust Declaration and Transfer Payment Agreement have been drafted to reflect a non-controlling relationship. PSAS also includes the following guidance w.r.t. government involvement in appointing governing bodies: 20 For each indicator that applies in a particular circumstance, the degree of government influence would determine its importance as evidence of control. In weighing the evidence, it would be necessary to consider the indicators collectively as well as individually. For example, where an organization is governed by a publicly elected board, this is not necessarily, in and of itself, sufficient evidence to conclude that the government does not control the organization. Similarly, where a government appoints a majority of the members of the governing body of an organization, this is not necessarily, in and of itself, sufficient evidence that the government controls the organization In addition, section 1.1 (interpretations) of the TPA includes the following: it is intended that the transfer of the Funds to the Recipient will be a transfer made to a “non-controlled trust” (as that term is given meaning in • applicable to the accounting rules and principles applicable to the Province as of the date of the Agreement), and so if a term or condition of the Agreement is determined to conflict with the requirements applicable to the Province recording the transfers to the Recipient of Funds contemplated hereunder as an expense incurred by the Province on the date of the transfer of Funds under the Agreement otherwise in connection with activities undertaken by the Province with such a “non-controlled trust”, then such term or condition shall be given a meaning and shall have an effect insofar as it is possible to interpret such term or condition in a manner that eliminates such conflict while preserving the other provisions of the Agreement and furthering the Purpose.	X

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
6. Appoint or remove the CEO or other key personnel	Right does not exist. N/A	X
7. Establish or amend the mission or mandate of the organization	Province established the Trust and has provided Principles which help to guide the Trust.	✓
8. Approve the business plans or budgets for the organization and require amendments, either on a net or line-by-line basis	Right does not exist. No intention for province to manage or influence the Trust on a line by line basis.	X
9. Establish borrowing or investment limits or restrict the organization's investments	Trust Declaration references: (j) "***Eligible Investments***" means (i) a deposit receipt, note, certificate or instrument issued, guaranteed or endorsed by a bank listed in Schedule I to the *Bank Act* (Canada), which provides that the principal and any interest shall be fully paid no later than [one year] after the day the investment was made, or (ii) a deposit account at a bank listed in Schedule I to the *Bank Act* (Canada). 4.2 (a) ***Power to Own, Hold and Manage.*** Subject to section 4.2(d), the Trustee shall have the power to own, hold and manage the Assets in such manner as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable. (b) ***Power to Invest in Eligible Investments.*** The Trustee shall have the power to invest the Assets only in Eligible Investments, and to change such Eligible Investments at any time and from time to time, all as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable, but always having regard to the Trustee's expectations regarding the timing of payments to be made to the Beneficiaries hereunder. If an investment of Assets in Eligible Investments would not be authorized under the applicable trust laws of Ontario, the Trustee shall nevertheless be permitted to make an investment of the Assets in such Eligible Investments. The Trustee will have no liability for the diminution in the value of any investment in Eligible Investments made hereunder. *Although some restrictions, given the need for liquidity for the funds and envisioned short term nature of the program, it is unlikely that the Trust would have contemplated investing the funds in any different types of instruments as designated in the Trust docs.*	✓
10.Restrict the revenue-generating capacity of the organization, notably the sources of revenue	There are no revenue generating restrictions in the Trust documents; however, there are references indicating that the Funds are expected to be used for not for profit purposes. It should also be noted that the nature of a Trust is not to generate revenue or make a profit, but to fulfil a fiduciary duty on behalf of the beneficiaries. No explicit restriction mentioned in the Trust Declaration or TPA related to other activities of the trust; however,	X

Commented [JV18]: Blakes

Computershare, as settlor and Computershare as trustee established the trust. Consider stating that the Province contributed funds to the trust.

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
	expectation that funds provided by the province will not be used for profitable purposes by the LDCs.	
11. Establish or amend the policies that the organization uses to manage, such as those relating to accounting, personnel, compensation, collective bargaining or deployment of resources (Suggestions for Admin Services Agreements and Principles in Trust docs are not mandatory. Replacement Board of Trustees can initiate changes which can reasonably be anticipated to be accepted if not contradictory to the Principles. References to provinces procurement directive and meals, entertaining and hospitalitiy directive only state expectation that Trust's processes would align with the principles.)	**NO UNILATERAL GOVT POWER TO MAKE CHANGES**: Trustees would have power to consider change in the policies in the Trust Declaration and/or modify the TPA, subject to provincial approval. Declaration: 1.1 (y) "'***Transfer Payment Agreement***" means the transfer payment agreement dated as of March •, 2017 between the Trustee and Her Majesty the Queen in right of Ontario as represented by the Minister of Energy, as such agreement may be amended, restated, supplemented or otherwise modified by the further agreement of the parties thereto from time to time. **4.2Specifically Enumerated Powers** The Trustee shall have the following specific powers and authorities: (c) ***Transfer Payment Agreement.*** The Trustee shall have the power to enter into, amend, supplement, modify and perform its obligation under the Transfer Payment Agreement. ***NO GOVT CONTROL OVER OPERATING OR FINANCIAL POLICIES*** ***j)Power to Pay Trustee's Fees*** Trustees have general regard to sorts of limitations as are set forth in the "Travel, Meal and Hospitality Expenses Directive of the Province" **5.8 Rules and Procedures of the Board of Trustees** (d) ***Initial Requirements***. As soon as practicable and in any event no later than one month following the Original Trustee Replacement Date, the Board of Trustees shall meet to take such decisions and actions as they deem necessary to ensure the proper management and administration of the Trust. The date (and location if in person) of the initial meeting shall be determined by a majority of the Board of Trustees. 4.2 The Trustee is expected to conduct its activities in a manner that complies in all material respects with the Transfer Payment Agreement, including to:	X

Commented [JV19]: Blakes

Consider that section 6.1 of the Trust Declaration states that, subject to the TPA, the trustee shall have power in its discretion to amend the Trust Declaration provided that no amendment shall conflict with the Principles Annex or as to the scope or effect of the permitted delegations and activities of any Administrative Services Agent pursuant to the Permitted Delegation Annex.

Consider reference to the language in section 20.2 of the TPA - The Trustee covenants that it shall not amend, restate or terminate the Declaration of Trust without obtaining the written consent of the Province in respect of same, such consent not to be unreasonably withheld or delayed

Commented [NP20]: Inconsistent w.r.t expectation of agreement between the two parties

Commented [JV21]: Blakes

This is clause 4.2(a). Consider double-checking sources cited to ensure citation to May 20, 5:30pm version.

This clause speaks to the *power* of the Trustee to amend the TPA – however, it does not necessarily state that, contractually, the Trustee is permitted to amend the TPA unilaterally.

This clause should not be quoted for support that the trustee can make changes to the TPA without consequence.

Commented [NP22]: Supposed to say 'is expected that)

Commented [JV23]: Blakes

This is clause 5.8(a). Consider double-checking sources cited to ensure citation to May 20, 5:30pm version.

Commented [NP24]: Terminology

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
	(a) act prudently and in furtherance of the Purpose; (b) report annually the results of its activities for information purposes to the Province in connection with the Program; (c) comply with the Province's request for any independent verification or audit if determined to be necessary or appropriate by the Province; (d) return of Assets that have not been distributed if it is [determined][by the Province] that the Trustee has breached its Standard of Care in discharging its material duties under the Declaration, and has not cured such material breach despite having been given a reasonable opportunity by the Province to do so in light of the circumstances of such material breach, with the result that all or a significant part of the Assets have not been or are not being applied in furtherance of the Purpose or are being applied in a manner that is directly contrary or without regard to the Purpose.] The Trust Declaration includes a Permitted Delegation Annex, which describes administratively, how the Trust might consider delegating its powers and duties to LDCs (non-controlled by the province) and satisfy the Standard of Care required under the Trust Declaration. Certain sections of the Delegation Annex go beyond general accountability provisions and suggest very specific requirements/expectations in relation to the Trustee's arrangements with LDCs and LDCs own administration of Fund monies. As currently worded, the Delegations Annex, when taken together with the Principles Annex and Listing of Eligible Measures, may be assessed substantively as 'controlling' the trust, regardless of wording which refers to the exercise of Trustee discretion. **5.1RECIPIENT'S ACQUISITION OF GOODS OR SERVICES, AND DISPOSAL OF ASSETS** **Acquisition.** If the Recipient acquires goods, services, or both with or by applying the proceeds of the Funds, it is expected to do so through a process that promotes the best value for money and to take reasonable steps to ensure that its Administrative Services Agents also follow a process that promotes the best value for money when acquiring goods and services with or by applying the proceeds of the Funds. .	

Commented [NP25]: Aligned with OPCD guidance on One-time Transfers and Trust Guidance (previously discussed and agreed to by OAG)

Commented [JV26]: Blakes

Consider: "The Trust Declaration includes a Permitted Delegation Annex, which provides that the Trustee will be permitted, and is expected to seek to delegate its powers and duties to LDCs…."

Commented [JV27]: Blakes

Section 5.1 of the Trust Declaration itself provides that the trustee may satisfy its Standard of Care by delegation, subject to prudent oversight.

Commented [JV28]: Blakes

Consider that these "very specific" sections are descriptions of matters that it is expected an Administrative Services Agreement would be expected to address (without limiting the discretion of the trustee to negotiate and settle the terms and conditions of such agreement).

Commented [NP29]: Some audit risk

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
	PRINCIPLES ANNEX The Trustee shall have regard to **[, but shall not be specifically bound by,]** the following principles in applying its discretion in relation to the administration of the Trust. **DECLARATION OF TRUST** **6.1 Amendments** Subject to the requirements of the Transfer Payment Agreement, the Trustee shall have the power in its sole and absolute discretion from time to time without the approval of any Beneficiary or any court to amend, vary, supplement, replace or restate this Declaration in its entirety or any portion thereof. provided, however, that no amendment shall conflict with the principles set forth in the Principles Annex or as to the scope or effect of the permitted delegations and activities of any Administrative Services Agent pursuant to the Permitted Delegations Annex.] 6. In the event that the Recipient performs any procurements, it is expected that all procurements will reflect the principles of Ontario's Public Service Procurement Directive. From and following the Original Trustee Replacement Date, Reports will be provided [quarterly] on the basis of the government's fiscal year starting at the execution of this Agreement and continuing until conclusion of the Agreement. Annual Reports will be on a fiscal basis starting at the execution of this Agreement and continuing until conclusion of the Agreement. Quarterly Reports and Annual Reports would be expected to be submitted to the Province within one month following the end of the reporting period that they represent. The Province expects that these Reports would be prepared to demonstrate the impact of the Province's funding. **5.0 RECIPIENT'S ACQUISITION OF GOODS OR SERVICES, AND DISPOSAL OF ASSETS** **5.1 Acquisition.** If the Recipient acquires goods, services, or both with or by applying the proceeds of the Funds, it is expected to do so through a process that promotes the best value for money and to take reasonable steps to ensure that its Administrative services Agents also follow a process that promotes the best value for money when acquiring goods and services with or by applying the proceeds of the Funds. **Conduct of the Trust and the Program** 4.1 It is expected that administrative expenses of the Board of Trustees and its members, including any expenses relating to the Trust, to the establishment of the [Trust]and any expenses related to the implementation and operation of the Program, including by or through Electricity Distributors and other relevant entities, will be recognized and subject to reimbursement on a basis that is	

Commented [NP30]: Conflicting with suggestion that the Principles are guidelines only?

Commented [NP31]: No accounting issue, but not sure that this was included in the appendix?

Commented [NP32]: For information purposes, in accordance with OPCD TP Guidance and Trust Guidance.

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
	substantially consistent the principles in the Travel, Meal and Hospitality Expenses Directive, the current form of which attached as Schedule B to this Principles Annex. Permitted Delegation Annex (not mandatory) 4. Accordingly, and without limiting the Trustee's right to delegate under the Declaration and its other rights, powers and discretion as Trustee, the Trustee will be permitted to, and is expected to seek to, enter into Administrative Services Agreements with Electricity Distributors in order to further the Purpose. Without limiting the Trustee's discretion to negotiate and settle the terms and conditions of such Administrative Services Agreements, it is expected that such Administrative Services Agreements will include customary terms and conditions for an administrative services arrangement of this type and, in addition, would (subject to the acceptance and agreement of the applicable Electricity Distributor counterparty) address certain aspects.	

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Appendix II

ACCOUNTING CONSIDERATIONS FOR GOVERNMENT-FUNDED TRUSTS

Purpose:

The purpose of this guidance is to explore accounting-related considerations related to government-funded trusts which are established by the government to fund a specific purpose or activity. This guidance deals specifically with the difference between controlled and non-controlled trusts, the introduction of accountability provisions which can now be reflected in trust agreements, and key timing considerations for trusts contemplated towards year-end. It is important that these factors be taken into account when establishing a trust, in order to achieve the intended fiscal impact and appropriate accountability over the use of public funds.

Introduction:

Trusts are usually established by way of trust declaration or trust agreement, and are one of several means by which the government can direct funding to support key policy initiatives. Simply stated, trustees hold title to property for the benefit of, and stand in a fiduciary relationship to the beneficiaries. Trustees are accountable to third parties (beneficiaries) for the use and disposition of trust assets and for the funds derived from those trust activities. The trust itself is not a separate legal entity. The trustees carry out the activities of the trust in the name of the trustees.

Generally, direct year-end transfers are the preferred alternative over trusts where the province wants to retain ultimate decision-making authority regarding amounts to be transferred to recipients. Direct transfers are more appropriate where the identity of eligible transfer payment recipients is known and the amounts to be transferred to each recipient can be or has been determined.

Year-end transfers to a trust might be considered where the province desires to delegate to third parties ultimate decision-making authority regarding allocation of amounts amongst eligible beneficiaries.

A trust must be valid for legal purposes in order to be recognized for accounting purposes. Key requirements for a trust to be valid include: an intention to create a trust ('certainty of intention'), certainty of subject-matter of the trust ("certainty of subject matter") and the objects of the trust must be certain ('certainty of objects"). There are generally two different types of trust, a trust in which the objects are the "beneficiaries" and trust in which the objects are a "purpose" (e.g. for charitable purposes). Where a trust is under serious consideration, it is imperative that ministries seek legal advice to ensure that the contemplated trust will be valid.

Trustees are obligated to follow the terms of the trust declaration or trust agreement which will usually detail the powers and duties of the trustees including the number of trustees and how decisions will be made by the trustees.

Controlled versus Non-Controlled Government-Funded Trusts

From an accounting perspective, it is important to distinguish whether the design and governance of a particular trust results in the trust being controlled by the Province for accounting purposes. Control stems from the nature of the relationship between the government and the trust. Financial and operating policies are principles that determine how an organization conducts its activities. The ability to govern these policies is an important element of government control.

The means by which a trust is established, the government's representation among the trustees, the government's involvement in the trust's governance processes and ability to impact trustee discretion in decision-making are but some of the factors to be considered in assessing whether a trust is 'controlled' or 'not controlled' by the government.

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In establishing a trust, it is important to achieve the intended relationship between the province and the trust in order to achieve the intended fiscal impact.

Non-Controlled Trusts:

Where trusts are not controlled by the Province, they are excluded from the government reporting entity. For non-controlled trusts, the following accounting would apply to trust funding:

- Where funds provided to the "trust" are unconditional, the Province would record a transfer payment expense for any transfers approved in the current period (and flowed by finalization of public accounts).

- Where funds provided to the "trust" are conditional (i.e. upon the trust completing some specific task or result), the Province would initially record funding to the trust as a prepaid expense until the conditions are met at which time the Province would record a transfer payment expense, with the corresponding credit to prepaid expense. This may occur over a number of fiscal years.

In determining whether a trust is controlled, there are a variety of ways that a government might be perceived to be governing the financial and operating policies of a trust. These include:
- Eliminating or significantly limiting the ability of the trustees to make future decisions
- Directing the financial and operating policies of the trust
- Overruling, modifying or vetoing the financial and operating policies established by the trust.

Specific factors that should be considered in establishing a non-controlled trust include:
- Government representation in the trustees (should be in a minority position), and non-government trustees should be nominated by non-government sources
- Government influence over day-to-day trust governance and trustee discretion to make decisions (e.g. selection of eligibility criteria, selection of recipients).
- degree of influence over how funds are disbursed (i.e. the Declaration of Trust can provide general guidelines but not be overly prescriptive)
- the government's power to unilaterally appoint or remove the majority of trustees
- the government's on-going access to the trust's assets, or right to direct decisions regarding the flow of those assets to specific beneficiaries
- the government's unilateral power to dissolve the trust, except under specified circumstances as stipulated by the trust agreement (i.e. corrective action)
- the government's ability to establish or amend the policies used by the trust to manage accounting, personnel, deployment of resources, etc.

In some cases, it may be advantageous for ministries to provide administrative support to trusts. In these cases it is important that the extent of such support is not so pervasive as to influence or direct the day-to-day financial or operating policies of the trust, otherwise the trust will be deemed controlled and will be subject to consolidation in the government reporting entity.

Controlled Trusts:

If the Province controls the trust (for example, through its power to appoint a majority of the trustees on the board of trustees), the Province would be deemed to have control of the trust, resulting in the trust being accounted for in the same manner as other organizations controlled by the province (i.e. on a consolidated basis). As a result, the Province's contribution to the trust would not be expensed when it is transferred, but rather over time as the funds are disbursed to trust beneficiaries.

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Accountability Related Considerations:

The Auditor General has confirmed that the new accountability provisions developed for one-time transfers can also be applied to trusts without impacting the expense treatment of any transfers to non-controlled trusts.

These new accountability provisions will enable the government and the Legislature to:

- obtain assurance that a trust is spending public funds prudently and for the purposes intended and to take corrective action if it is not;
- ensure ministerial accountability to the Legislative Assembly for the trust's activities; and
- ensure that the province is able to take corrective action where warranted and as stipulated under terms of the trust agreement.

It should also be noted that the Auditor General's Act now allows the Province's Legislative Auditor to conduct special audits of any person or organization receiving transfers from the government, including trusts.

To enhance accountability controls over government transfers to non-controlled trusts, Ministries can consider incorporating some or all of the following accountability provisions as part of their trust agreement/declaration without impacting the accounting treatment of the trust.

The inclusion of any of these provisions should not result in a trust being assessed as 'controlled'. Note that the key determinant in identifying appropriate provisions for any individual trust is a ministry's assessment of the **risk** associated with a particular trust, as per the Transfer Payment Directive.

1. **Description of intended use of trust funds**;
    - specific purpose(s) for which the funds are to be used;
    - description of intended recipients and related eligibility criteria*; and,
    - the nature of eligible expenditures relevant to the transfers.

    *Note: avoid *overly prescriptive* eligibility criteria which would effectively eliminate or significantly limit the trustees' discretion to make funding decisions.

2. **Requirement for information**
    - Information to be provided by the trust at a future date (e.g. requirement for trustees to advise the government of trustee-developed performance criteria, and provide annual assessments against those criteria)

3. **Report-back requirement for Public Accountability**
    - information to be provided by the trust at a future date with respect to the stewardship and payment of transfer funds (e.g. audited financial statements, audited list of recipients and amounts funded).

4. **Right to independent verification/audit**
    - The Province reserves the right to audit any transfer payment recipients. The trust agreement should make reference to this fact.

5. **Right to take corrective action**
    - Where stipulated under the trust agreement, the Province reserves the right to re-direct unused funds where results of a trust assessment (where required by the trust agreement) indicate original purpose of the trust is not being achieved, or if there remain unused funds at the end of the trust term.
    - Province may also reserve the right to extend the term of the trust agreement, where funds remain at the end of the trust period.

To qualify for in-year expense treatment, the non-controlled trusts must satisfy the following:

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- the decision to establish the trust must have been approved by Treasury Board/Management Board of Cabinet and ratified by Cabinet by March 31st;
- the ministry providing the transfer must have approved appropriations and spending authority by March 31st;
- Trustees must have been identified and signed the trust declaration or agreement to establish a valid trust by March 31st ;
- the trust must be set up and ready to receive funds, and a nominal amount transferred to the trust by March 31s;t ; and,
- the government should have communicated publicly (e.g. in the Budget document) the pending or final establishment of the trust.

In addition, all remaining funds beyond those initially transferred at March 31st should be transferred to the trust by June 30th.

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Trusts
Questions and Answers on Trust Guidance

Question: *Where a trust is announced in the Budget document, must the trust be established by March 31st, or could such a trust be established shortly thereafter without impacting the expensing of transfers to the trust in 2007-08?*

Answer: *A trust would have to be established prior to the end of a fiscal period in order to satisfy the recognition criteria for government transfers. If the intended recipient for a government transfer does not exist at March 31st, the province cannot record a payable owing to it under existing accounting standards.*

Question*: Does the transfer of funds to a non-controlled trust need to occur by March 31st or before the date of Public Accounts finalization?*

Answer: *Consistent with the new requirements for one-time transfers, as long as the trust is established by March 31st, the transfer is authorized and a reasonable estimate of the amount can be made, cash payments can be made after year-end.*

Question: *Can beneficiaries of a non-controlled trust include consolidated entities provided that the ultimate selection of recipients is at the discretion of the Trustees?*

Answer: *Any amounts provided to a trust which are in turn be provided to an organization inside the government reporting entity should not be expensed at the time of the transfer to the trust. Any amount that is flowed to a trust with the intention of subsequently flowing the funds to a consolidated entity should not be recorded as an expense to the government.*

Question: *Can a Ministry provide administrative support to a trust without compromising the non-controlled status of the trust?*

Answer: *The government can provide administrative support as long as the extent of government administrative support is <u>not so pervasive</u> so that the government is in substance establishing and managing the trust's policies in the areas of accounting, personnel, compensation, collective bargaining or deployment of resources. Where such administrative support is assessed as pervasive, it could impair the trust's non-controlled trust and the trust will be consolidated onto the province's financial statements.*

Can the following clauses appear in a trust agreement for a non-controlled trust to ensure adequate accountability over public funds without impacting the expense treatment of such trusts?

Question*: Specific description of purpose of the trust (possibly including nominal allocation among various objectives)*
Answer: Yes.

Question: *Can the trust agreement include a specific description of the intended groups of beneficiaries and detailed eligibility criteria.*

Answer: *Specificity should be applied cautiously, so as not to limit the discretion of the trustees in their subsequent grant making processes. For the trust to be considered 'not controlled' it should not be seen as 'establishing the trust's fundamental purpose and eliminating or significantly limiting the ability of the trust to make future decisions by predetermining the financial and operating policies of the trust.*

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Question: *Can trustees stipulate that funding is to be provided to beneficiaries on a cost-sharing basis?*
Answer: *Yes.*

Question: *Can the trust agreement include a requirement for a trust to report back to the province on trustee-established performance criteria and results, audit of financial statements, audited recipients and amounts, confirmation that trustees communicated to beneficiaries the intended purpose of the funding, etc.*
Answer: *Yes.*

Question*: Requirement for Trust to publicly post communications on existence, availability of funds, eligibility criteria, recipients and amounts granted to each recipient.*
Answer: *Yes*

Question: *Inclusion of a 'suggested' drawdown schedule over a period of years, with discretion left to Trustees as to actual results.*
Answer: *The inclusion of a drawdown schedule is not suggested for one-time, up-front transfers.*

Question: *Trust agreement can suggest accountability provisions which might be attached by Trustees to beneficiary payments (e.g. specific purpose of funding, requirement for report-back, right to audit, corrective actions).*
Answer: *Yes*

Question: *Trust agreement to reserve the province's right to re-direct any unspent funds to specified parties (e.g. non-consolidated entities or another non-controlled trust) at the end of the trust term, or alternatively to extend the term of the trust where unspent funds remain.*
Answer: *Yes*

Question*: Can the trust agreement include the requirement for evaluations of the trust at certain times (e.g. years 3, 7, 10 of the trust agreement), with the right for the government to decide either to terminate the trust (corrective action) based on the results of the assessment, or extend the trust beyond the initial term as per the agreement.*
Answer: *Yes.*

Question: *Trust agreement can require Trustees to request as part of the funding process that beneficiaries acknowledge receipt of government funding in their public communications on specific projects.*
Answer: *Yes.*

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Appendix III

ACCOUNTING TREATMENT FOR ONE-TIME TRANSFERS WITH ENHANCED ACCOUNTABILITY PROVISIONS

Purpose:

The purpose of this guidance is to identify the nature of the accountability provisions which may be associated with one-time transfer payments that qualify for immediate expense treatment in the current period.

Definition of One-time transfers:

One-time transfers are defined as lump-sum operating or capital transfers that

- are not advancing currently planned future transfer payments under an existing on-going program, or
- are not identified as being intended to be spent in specified future periods or over a specified period of time.

Background:

Transfer payments are a means by which the government works with third parties to deliver public services. Transfer payment recipients must be held responsible by the government to deliver the provincially-funded services and be accountable for the funds they receive. Consistent with the *Transfer Payment Accountability Directive, August, 2007*, a risk-based approach is to be followed in designing the appropriate accountability and reporting mechanisms for specific funding agreements.

The current *PSAB Handbook Section 3410, Government Transfers requires that a government transfer should be recognized by a transferring government as an expense in the period the transfer is authorized and all eligibility criteria have been met by the recipient.*

To recognize a liability and expense as at year-end:

- the government must create a valid expectation of the recipient by year-end, leaving the government little or no discretion to avoid but to settle its obligation;
- no significant, contingent actions should be outstanding which if unfulfilled by year end might cause the transfer not to occur.

It is understood that the intention of negotiating a transfer payment agreement following the government's commitment to the recipient is to work out the administrative details of the arrangement, not to change any key elements of the government's commitment. As such, any correspondence which indicates that funds will not be flowed until a TPA is signed should make clear that the nature of additional details to be negotiated is logistical and administrative in nature (bank account info, reporting requirements, etc.)

The government should not suggest or direct the recipients to use the funding for future periods.

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To enhance accountability controls over one-time transfers accountability provisions one through five below are required for one-time transfers.

1. **Description of intended use of one-time transfer funds**;
   - specific purpose(s) for which the funds are to be used; and,
   - the nature of eligible expenditures relevant to the transfers.

2. **Report-back requirement for Public Accountability**
   - Periodic reporting on the use of transfer funds, service deliverables, outputs or outcomes achieved.

3. **Right to independent verification/audit**
   - at the discretion of the Province to verify/audit information submitted by the recipient is complete and accurate, and that funds were used for purposes intended.

4. **Right to recover funds (corrective action)**
   - If the funds were not used, or will not be used, for the intended purpose(s), specified services were not delivered, or intended outputs were not achieved, the Province has the right at a future date to recover funds transferred.

5. **Requirement for information** (*this item optional*)
   - information to be provided by the recipient at a future date with respect to the use of transfer funds, service deliverables, outputs or outcomes achieved.

To qualify for in-year expense treatment, the transfers must satisfy the following:

- be approved by Treasury Board / Management Board of Cabinet and then ratified by Cabinet by March 31st;
- the ministry providing the transfer must have approved appropriations and spending authority by March 31st;
- the recipients must be eligible to receive the grant by March 31st (i.e. eligibility criteria have been met prior to March 31st), and the intent to make the transfer payment must be communicated to the recipients by March 31st;
- In addition, funding details including accountability provisions must be communicated to the recipients, and the transfer payments must be made to the recipients prior to the finalization of the Public Accounts (currently June 30th);
- Where funds are flowed to recipients by March 31st, all eligibility criteria are assumed met for accounting purposes[1], and all amounts flowed are recorded as an expense, even where conditions might exist which remain unmet at March 31st.

[1] PS 3410, Government Transfers, states that "no matter how a transfer term is identified in legislation, regulations, by-laws or a transfer agreement (i.e., as an eligibility criterion or a stipulation), the crucial characteristic that distinguishes the substance of these two types of transfer terms is when they are required to be or are met by a recipient. If a term is required to be and is met before the transfer is provided, it is an eligibility criterion for the purposes of this Section. If a transfer term is met after the transfer is provided, it is a stipulation for the purposes of this Section".

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SCHEDULE "C"
PROJECT

For the purposes of this Agreement, the "Project" is the distribution of the Funds in accordance with the Declaration of Trust.

It is intended the Project will be undertaken by the Recipient in furtherance of the Purpose and in accordance with the Declaration of Trust. In this regard, it is expected that the Recipient will undertake the Program having regard to the Budget and the Principles set forth in Annex A.

The following are the Provinces expectations regarding the circumstances in which the Recipient will begin to distribute any Funds to any Beneficiary.

1. The Original Trustee Replacement Date (as defined in the Declaration of Trust) will have occurred.
2. An administrative services agreement will have been entered into between the Recipient and an Administrative Services Agent providing for the administrative services necessary for the Recipient to perform its obligations herein and execute the Project.
3. Administrative procedures will have been developed and implemented under which Electricity Distributors (as defined in the Declaration of Trust) will be invited to assist with (a) the identification and selection of Primary Beneficiaries under the Declaration of Trust, (b) the determination of the amount of Funds to be distributed to particular Primary Beneficiaries, and (c) the distribution of Funds to or for the benefit of such Primary Beneficiaries (in each case substantially on the basis contemplated in the Permitted Delegations Annex).
4. The Recipient will have obtained commercial general liability insurance from insurers having a secure A.M. Best rating of B+ or greater, or the equivalent, that in the opinion of the Recipient a prudent person similar to the Recipient would maintain, and having an inclusive limit of not less than $2,000,000 per occurrence and providing for contractual liability coverage. If requested, the Recipient will provide the Province (for its information purposes) with copies of the certificates of insurance and policies for such insurance coverage.

The Province recognizes that the foregoing may involve the Recipient entering into agreements as may be the Recipient considers to be necessary or expedient, including any required amendment or amendment and restatement of the Declaration of Trust. Funds may be expended to pay the expenses of the Trustee in completing these matters. The Recipient will confirm to the Province once such matters have been completed.

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5.7 Replacement of the Original Trustee

As soon as practicable and in any event on or prior to March 31, 2017, the Original Trustee shall appoint the Persons identified by the Trustee Replacement Annex to comprise the Advisory Committee contemplated therein (once constituted, the "**Advisory Committee**"). As soon as practicable thereafter, the Original Trustee shall request that the Advisory Committee make recommendations with respect to the composition of the "Board of Trustees", as contemplated by the Trustee Replacement Annex. The Trustee shall have no duty or obligation to investigate the basis for any of the Advisory Committee's recommendations and may rely on such recommendations without any duty of enquiry, supervision or oversight with respect to the activities and decision-making processes adopted by the Advisory Committee in its discretion, in full satisfaction of the Original Trustee's Standard of Care with respect to such matters hereunder. Except if the Original Trustee determines that the individuals recommended by the Advisory Committee to become members of such Board of Trustees are disqualified from so acting on the basis of manifest non-compliance with the "Selection Factors" set forth in the Trustee Replacement Annex, the Original Trustee shall appoint, as members of the Board of Trustees, the [six] (five voting and one non-voting) individuals recommended for appointment to the Board of Trustees by the Advisory Committee. Upon the appointment of such [six] individuals pursuant to this provision and their agreement to act as members of the Board of Trustees, the Original Trustee shall be deemed to have resigned and shall cease to be a trustee (such resignation occurring on the "**Original Trustee Replacement Date**").

DRAFT

FW_ Urgent (FAO attendees from KPMG).rtf

From: Petsche, Nadine (TBS) []
To: Picard, Michel (mpicard@kpmg.ca) [mpicard@kpmg.ca]
Subject: FW: Urgent (FAO attendees from KPMG)
Date: Wednesday, May 17, 2017 14:12:38

---

done

From: Veinot, Cindy (TBS)
Sent: May 17, 2017 2:12 PM
To: Petsche, Nadine (TBS); Schuurman, Tim (MOF); Esmail, Selena (MOF)
Cc: Hosick, Sarah (TBS)
Subject: RE: Urgent (FAO attendees from KPMG)

Shannon has taken care of this – thanks,

From: Petsche, Nadine (TBS)
Sent: May 17, 2017 2:12 PM
To: Schuurman, Tim (MOF); Esmail, Selena (MOF)
Cc: Veinot, Cindy (TBS); Hosick, Sarah (TBS)
Subject: FW: Urgent (FAO attendees from KPMG)
Importance: High

Please add name noted to the attendee listing for the FAO meeting. Also, in case you haven't been advised, I believe that Susan Nicholson from the IESO is also planning to attend. Thanks. Nadine

From: Picard, Michel
Sent: Wednesday, May 17, 2017 1:48 PM
To: Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>
Subject: FW: Urgent

Hi Cindy,

Assuming I have a signed indemnity letter, I would like to bring a senior manager to take notes during the meeting. Can you please arrange for his name to be on the list at your reception desk - David Brownridge?

Regards,

Michel

From: Picard, Michel
Sent: Wednesday, May 17, 2017 1:43 PM
To: 'Kim Marshall' <Kim.Marshall@ieso.ca>; Michael Boll <Michael.Boll@ieso.ca>; John Rattray <John.Rattray@ieso.ca>
Subject: Urgent

All,

I have been instructed by our National Risk Management partner that in the absence of a signed indemnity letter, I will not be able to attend the meeting with the FAO.

Michel Picard, CPA, CA

Partner, Accounting Advisory Services

KPMG LLP

333 Bay Street, Suite 4600

Toronto, Ontario, M5H 2S5

T 416 777 8414

M 416 560 2569

mpicard@kpmg.ca

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FW_ Urgent (FAO attendees from KPMG).rtf

From: Petsche, Nadine (TBS) []
To: Schuurman, Tim (MOF) [Tim.Schuurman@ontario.ca]; Esmail, Selena (MOF) [Selena.Esmail@ontario.ca]
CC: Veinot, Cindy (TBS) (Cindy.Veinot@ontario.ca) [Cindy.Veinot@ontario.ca]; Hosick, Sarah (TBS) (Sarah.Hosick@ontario.ca) [Sarah.Hosick@ontario.ca]
Subject: FW: Urgent (FAO attendees from KPMG)
Date: Wednesday, May 17, 2017 14:11:47

Please add name noted to the attendee listing for the FAO meeting. Also, in case you haven't been advised, I believe that Susan Nicholson from the IESO is also planning to attend. Thanks. Nadine

From: Picard, Michel
Sent: Wednesday, May 17, 2017 1:48 PM
To: Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>
Subject: FW: Urgent

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Sent: Wednesday, May 17, 2017 1:43 PM
To: 'Kim Marshall' <Kim.Marshall@ieso.ca>; Michael Boll <Michael.Boll@ieso.ca>; John Rattray <John.Rattray@ieso.ca>
Subject: Urgent

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FW_ Urgent.rtf

From: Picard, Michel [mpicard@kpmg.ca]
To: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
Subject: FW: Urgent
Date: Wednesday, May 17, 2017 14:09:36

See yellow

From: Picard, Michel
Sent: Wednesday, May 17, 2017 1:48 PM
To: Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>
Subject: FW: Urgent

Hi Cindy,

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Regards,

Michel

From: Picard, Michel
Sent: Wednesday, May 17, 2017 1:43 PM
To: 'Kim Marshall' <Kim.Marshall@ieso.ca>; Michael Boll <Michael.Boll@ieso.ca>; John Rattray <John.Rattray@ieso.ca>
Subject: Urgent

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Michel Picard, CPA, CA

Partner, Accounting Advisory Services

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FW_ V3.rtf

From: Petsche, Nadine (TBS) []
To: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
Subject: FW: V3
Date: Tuesday, July 25, 2017 13:20:04
Attachment 1: image001.gif
Attachment 2: FHP Memo - Draft V3 21-Jul-2017 .docx

Please print 4 copies. thx

From: Blake Langill [mailto:blake.w.langill@ca.ey.com]
Sent: July 21, 2017 8:48 AM
To: Veinot, Cindy (TBS); Petsche, Nadine (TBS)
Cc: Suzie Gignac; Lee Anne Probert
Subject: V3

Cindy & Nadine,

Attached is the latest draft from late yesterday based on Monday's call; Suzie and I have not had a chance to review but wanted it in your hands as a just in case when Lee Anne talks through what she's done and the areas she's still thinking about and/or is looking for your thoughts – she'll cover that on this morning's call.

Both Suzie and Lee Anne will be joining too but from calling from cars.

Talk soon.

-blake

--

Blake Langill | Partner

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P.O. Box 1, Toronto, Ontario M5H 0B3, Canada

Office: +1-416-943-3556 | blake.w.langill@ca.ey.com

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FHP Memo - Draft V3 21-Jul-2017 .pdf

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EY did not perform an audit, review, examination or other form of attestation (as those terms are defined by the CPA Canada) of the financial statements of the Province or any other entities involved. Accordingly, EY did not express any form of assurance on the accounting matters, financial statements, any financial or other information or internal controls of the Province or any of the other entities involved. EY did not conclude on the appropriate accounting treatment based on specific facts or recommend which accounting policy/treatment the Province or any of the other entities involved should select or adopt.

The observations relating to accounting matters that EY provided to the OPCD were designed to assist them in reaching their own conclusions and do not constitute our concurrence with or support of the accounting or reporting of the Province or the other entities involved. The Province and the other entities involved are each responsible for the preparation of their own financial statements, including all of the judgments inherent in preparing them.

Introduction

Ontario's consolidated financial reports are prepared in accordance with the accounting principles for governments recommended by the Public Sector Accounting Board (PSAB) of the Chartered Professional Accountants of Canada (CPA Canada). In order to meet the needs of users, including the legislature and the public, for accountability in government reporting and decision making, it is essential that public sector financial statements reflect the economic substance of the government's activities.

In March 2017, the Government of Ontario (the Province) announced its Fair Hydro Plan (FHP). In assessing the appropriate accounting treatment for the Global Adjustment refinancing (GA Refinancing) component of the FHP on Ontario's consolidated financial statements, the Office of the Provincial Controller considered the authoritative guidance issued by PSAB, as well as the accounting assessments of the Independent Electricity System Operator (IESO) and Ontario Power Generation (OPG) management, including the accounting opinions of their external accounting advisors. Given the complexity of the GA Refinancing structure, the exercise of professional judgement is necessary to ensure that key financial reporting objectives of transparency and accountability are best served. This accounting analysis considers currently available information, including efforts underway by the International Accounting Standards Board as related to rate regulated accounting. It also draws upon publicly available information including previous studies and bases for conclusions dealing with rate-regulated accounting, both in the public sector and the private sector.

Background

The FHP will reduce electricity bills for Regulated Price Plan (RPP) customers (as well as those non-RPP consumers who receive the 8% rebate as specified in the Ontario Rebate for Electricity Act, 2016) by approximately 25% for a period of one year, starting in the summer of 2017, and limit the increase in electricity bills to the rate of inflation over the following four years.

Because distribution rates vary across the province and customers use different amounts of electricity, the goal in calculating the new RPP electricity prices is to achieve a 25% reduction for a "proxy" customer, which is established under the Fair Hydro Act, 2017 (FHP Act) as a residential customer of Toronto Hydro who uses 750 kWh of electricity a month, pays time-of-use RPP electricity prices and has the time-of-use consumption profile of a typical residential customer.

The measures that make up the 25% average reduction include:

1. Spreading the cost of Ontario's clean energy investments over the expected lifecycle of the generation infrastructure assets. This is expected to account for ~~15~~18-~~17~~19% of the overall reduction.
2. Shifting the cost of the Ontario Electricity Support Program (OESP) and Rural or Remote Rate Protection (RRRP) program from ratepayers to taxpayer-funded programs.
3. An 8% rebate equal to the provincial portion of the HST, which took effect on January 1, 2017.

Under the first measure, the Province will borrow funds to pay a portion of current electricity costs, thereby temporarily reducing the amount paid by eligible ratepayers. The deferred amounts, including

interest and other costs, will be recoverable from ratepayers through future rates over an estimated 18-year period starting in approximately 2028. In other words, the impact of #1 above is fully borne by the ratepayers – it is a shift in the timing of payment for the clean energy investments, while the impacts of #2 and #3 are reducing the cost to the ratepayer, but at the cost of the taxpayer.

Objective

The objective of this memo is to assess the impact of the first measure of the FHP (i.e. deferred recovery of clean energy costs) on the consolidated financial statements of the Province. **[NTD – Consider if document should discuss #2 and #3. This would contrast the different treatment by the Province]**

Background

The Ontario Energy Board (OEB) has been established by the Province to be Ontario's independent energy regulator.

In accordance with Section 78(3.1) of the Ontario Energy Board Act, 1998 (the OEB Act), the OEB is responsible for determining electricity commodity prices for RPP consumers. Section 78(3.3) of the OEB Act requires the OEB to forecast the cost of electricity used by RPP consumers and ensure the prices they are charged reflect that cost. The rate setting process is highly complex and involves numerous forecasts and estimates. As a result, the OEB regulatory framework allows for variances between the actual cost of supplying electricity and the amount collected from RPP consumers.

In setting the rates for RPP consumers, Section 78(3.3) of the OEB Act requires the OEB to settle any such variances through rates over a 12-month period. This is achieved through a price adjustment charged or credited to RPP consumers. This adjustment forms part of the Global Adjustment paid by consumers.

The IESO is the administrator of Ontario's wholesale electricity market. The IESO settles the market with all participants, as an agent.

As part of its role as market administrator, the IESO calculates the market price for electricity (the Market Clearing Price, or MCP) by running the bids and offers of the market participants through an algorithm. The actual cost of supplying electricity, however, is greater than the MCP as certain generators are paid additional amounts relating to the cost of clean energy initiatives they have undertaken. From a government policy perspective, decisions as to what is in the best interest of the public regarding electricity generation in Ontario are not based solely on economics, they are also influenced by environmental, social and political factors. Accordingly, generators receive compensation for investing in clean energy infrastructure when it is relatively less economical. In these instances, the IESO (and previously the XXX) entered into contracts to pay the generators the excess costs (plus a reasonable rate of return thereon) over an extended period of time, typically 20 years. The amounts paid to the generators under the terms of these contracts are currently included in the rates set by the OEB (as part of the Global Adjustment) with the intention they will be recovered from consumers in the same period they are paid to the generators. As previously noted, the complexity of the rate setting process results in variances between the amount paid to the generators and the amount collected from RPP consumers.

Under existing legislation, the IESO is required to fund any cash shortfall relating to differences arising between the actual cost of supplying electricity and the amount collected from RPP consumers. In

accordance with Section 25.33(5) of the Electricity Act, 1998 (the Electricity Act), the IESO has established and maintains a variance account to track these temporary differences (the original variance account) for subsequent settlement with ratepayers. Cash shortfalls in the IESO arising from the original variance account are funded through financing provided by the OFA.

As described below, once the FHP is implemented, the cost of supplying electricity to RPP consumers that is paid to generators will no longer be fully collected over a 12-month period~~, but over a longer period defined by legislation~~.

Under the FHP, while generators would continue to be paid over a twenty year period as contracted, the amounts paid by the IESO to the generators would be recovered from ratepayers over a thirty year period. Deferring the recovery of these costs from the consumers on a longer-term basis would create a significant interim cash shortfall for the IESO.

Section 24(1) of the Ontario Fair Hydro Plan Act (the FHP Act) requires the IESO to establish and maintain a variance account (separate from the original variance account described above) to track the cash shortfall specifically resulting from the implementation of the FHP (the FHP variance account). Due to the longer recovery period, and additional recoverable financing and management fee costs, the balance in the account is forecast to increase significantly. The balance in this variance account is defined in Section 1(1) of the FHP Act to be a regulatory asset[1]. The IESO is entitled under Section 25 of the FHP Act to recover the regulatory asset from RPP consumers in the future, which will be achieved through the OEB setting rates to allow for such recovery. Section 26 of the FHP Act also permits the IESO to transfer or sell the regulatory asset to a financing entity to fund its cash shortfall, thus commoditizing the future cash flow stream.

The Province has requested that OPG administer the deferral of the Global Adjustment under the FHP because of OPG's participation in the market, the regulatory knowledge OPG possesses and the ~~potential~~ expected ability to consolidate the accounting of the related activity ~~and accounting with~~ in the financial statements of OPG. To fulfill this role, OPG intends to establish a financing entity (OPG Trust) to purchase the IESO's regulatory asset on a monthly basis and eliminate any cash shortfall in the IESO. Through this arrangement, OPG Trust will finance these purchases through a combination of provincial borrowing (flowed through OPG as an equity investment), amounts advanced from OPG and direct borrowing from capital markets.

Basis of Accounting

In accordance with PSAS 1300.07, the government reporting entity (GRE) for the Province comprises government components and those organizations that are controlled by the government.

As defined in the Introduction to PSAS, the following types of organizations are controlled by the government: (a) government business enterprises (GBE), government non-for profit organizations (GNPO), and other government organizations (OGO).

[1] To avoid confusion in the remainder of this document, the term regulatory asset will refer to the defined term in the FHP Act and the term regulated asset or rate-regulated asset (RRA) will refer to an asset recognized for accounting purposes.

GNPOs and OGOs are considered government units and, in accordance with PSAS 1300.27, are consolidated in the GRE on a line-by-line basis. For consolidation purposes, the financial information of government units is required to be prepared in accordance with PSAS.

GBEs, on the other hand, are accounted for in the GRE using the modified equity method as prescribed by PSAS 1300.35. Under the modified equity method, which is described in detail in PSAS 3070, INVESTMENTS IN GOVERNMENT BUSINESS ENTERPRISES, the equity method of accounting is modified only to the extent that the GBE's accounting principles (which are required to be IFRS in accordance with paragraph 17 of the Introduction to PSAS) are not adjusted to conform to those of the government.

As documented in Schedule 8 to the consolidated financial statements of the Province, the IESO is an OGO and OPG is a GBE. The current accounting for these entities is as follows:

		ENTITY STATEMENTS	GRE STATEMENTS	
ENTITY	**CLASSIFICATION**	**GAAP**	**ACCOUNTING METHOD**	**GAAP**
IESO	OGO	PSAS[1]	Consolidation	PSAS
OPG	GBE	US GAAP[2]	Modified equity method	IFRS[3]

1. For purposes of preparing general purpose financial statements, an OGO applies PSAS unless those standards do not meet the needs of its financial statement users. In that situation, IFRS should be considered and the most appropriate set of standards applied.
2. Although a GBE is required to apply IFRS for purposes of preparing general purpose financial statements, the Ontario Securities Commission has approved an exemption that allows OPG to apply US GAAP up to January 1, 2019 for purposes of filing its financial statements with the OSC.
3. OPG applies IFRS 14, which permits it to continue to account for rate-regulated activities using US GAAP guidance for its general purpose financial statements.

This memo does not reconsider the classification of these existing entities.

As discussed in detail in a subsequent section, OPG expects that it will control OPG Trust. If this is the case, OPG Trust will be consolidated by OPG and, therefore, reflected in the GRE through the modified equity accounting of OPG under IFRS. If, however, it is determined that OPG Trust is controlled by the Province, OPG Trust will either (a) be consolidated in the GRE on a line-by-line basis under PSAS if determined to be an OGO, or (b) reflected in the GRE through modified equity accounting under IFRS if determined to be a GBE.

Example

For simplicity, the following example will be used in this document to illustrate the accounting impact of the FHP on the various entities involved:

- Ratepayer bill is currently $588, and the 17% reduction related to the FHP is $100.
- The Province directly borrows 44%, or $44, to make an equity contribution to OPG, which OPG then loans to OPG Trust.
- OPG directly borrows 5%, or $5, and loans it to OPG Trust.
- OPG Trust directly borrows 51%, or $51, from capital markets.

Analysis

IESO

The IESO is presently classified as an OGO and prepares its standalone, general purpose financial statements in accordance with PSAS, which is consistent with the basis of presentation required for purposes of consolidating the IESO into the GRE. ~~Under PSAS, the IESO would also have the option of reporting based on IFRS. If the IESO were classified as a GBE, it would also report based on IFRS. Since the IESO has rate regulated balances, it would likely report using IFRS14, consistent with the IFRS related information provided by both Hydro One and OPG which are rate regulated.~~

Current State

Effective January 1, 2016, the IESO adopted on a retrospective basis a new accounting policy that requires its market-settlement activities[2] to be reflected in the financial statements. Under the new policy, the assets and liabilities recognized on the IESO's statement of financial position relating to the IESO-administered markets include cash, amounts due from market participants, interest receivable, revolving line of credit, HST receivable, amounts due to market participants and other liabilities. The IESO's statement of operations and accumulated surplus ~~financial statements~~ does not include the revenue and expenses of the financial transactions of market participants within the IESO-administered markets. This indicates IESO management has taken the position that the IESO is an agent, not a principal, in the IESO-administered markets and, accordingly, records revenue on a net basis.

PSAS doesn't provide any specific guidance as to how it should be determined whether an entity is acting as a principal or an agent in the context of revenue recognition, but both IFRS and US GAAP do. The relevant guidance in IFRS is as follows:

IAS 18.8

Revenue includes only the gross inflows of economic benefits received and receivable by the entity on its own account. Amounts collected on behalf of third parties such as sales taxes, goods and services taxes and value added taxes are not economic benefits which flow to the entity and do not result in increases in equity. Therefore, they are excluded from revenue. Similarly, in an agency relationship, the gross inflows of economic benefits include amounts collected on behalf of the principal and which do not result in increases in equity for the entity. The amounts collected on behalf of the principal are not revenue. Instead, revenue is the amount of commission.

IAS 18.IE21

Determining whether an entity is acting as a principal or as an agent (2009 amendment).

Paragraph 8 states that 'in an agency relationship, the gross inflows of economic benefits include amounts collected on behalf of the principal and which do not result in increases in equity for the entity. The amounts collected on behalf of the principal are not revenue. Instead, revenue is the amount of commission.' Determining whether an entity is acting as a principal or as an agent requires judgement and consideration of all relevant facts and circumstances.

An entity is acting as a principal when it has exposure to the significant risks and rewards associated with the sale of goods or the rendering of services. Features that indicate that an entity is acting as a principal include:

a) the entity has the primary responsibility for providing the goods or services to the customer or for fulfilling the order, for example by being responsible for the acceptability of the products or services ordered or purchased by the customer;
b) the entity has inventory risk before or after the customer order, during shipping or on return;

[2] The IESO itself does not buy or sell electricity. It administers the wholesale electricity market by authorizing market participants, publishing system forecasts and market information, producing statements and invoices, and performing financial settlement transactions for the markets.

c) the entity has latitude in establishing prices, either directly or indirectly, for example by providing additional goods or services; and

d) the entity bears the customer's credit risk for the amount receivable from the customer.

An entity is acting as an agent when it does not have exposure to the significant risks and rewards associated with the sale of goods or the rendering of services. One feature indicating that an entity is acting as an agent is that the amount the entity earns is predetermined, being either a fixed fee per transaction or a stated percentage of the amount billed to the customer.

Application of the above IFRS guidance supports the conclusion that the IESO is an agent in the market-settlement process and, therefore, recognizing revenue on a net basis is appropriate. IESO has completed a more thorough analysis of their position that it is an agent in the settlement of the market and reconsideration of that decision is not the topic of this memo.

The IESO is required by legislation to carry out its operations without the purpose of gain or profit~~, making the IESO a self-sustaining entity~~. Other than the amounts the IESO is permitted to keep in accordance with its own rate order from the OEB to cover its internal operating costs, which makes it a self-sustaining entity, all amounts the IESO receives from market participants must be paid out to other market participants who have regulatory or contractual rights to receive payments from those collected amounts.

In the context of applying the principal vs. agent guidance, the amounts the IESO is permitted to keep in accordance with its own rate order from the OEB to cover its internal operating costs are recorded as system fee revenue in the IESO's financial statements. System fees are not characterized as being part of the IESO-administered markets. Accordingly, any references to the IESO-administered markets in this document exclude system fees.

As stated in the IESO financial statements, the IESO-administered markets is a balancing system, and as such, the net position of market accounts will ultimately settle to a nil balance in accordance with market rules. However, due to settlement timing differences, the net position of market accounts will not be in a nil position from a cash flow perspective at the end of any reporting period.

This raises a question as to how a cash flow deficit related to the market-settlement process should be accounted for in the financial statements of the IESO. Two approaches are as follows:

1. The cash flow deficit is recognized as an asset when it occurs and then derecognized in the period in which it is settled. Under this approach, the net position of market accounts will always be in a nil balance in the IESO's balance sheet and there is no impact on the IESO's income statement.
2. The cash flow deficit is recognized as a charge to income when it occurs and then reversed through income in the period in which it is settled.

IESO management has concluded it is appropriate to recognize existing cash flow deficits arising from the market-settlement process as an asset. This is evidenced by the fact the components of the market accounts net to a nil closing balance at year end in the IESO's financial statements for the year ended December 31, 2016. These financial statements also explicitly state there is no impact to the accumulated deficit or revenues and expenses as the IESO is not party to these transactions as per the market rules.

Although the IESO's financial statements include the following accounting policy on regulated assets and liabilities, the asset relating to the cash flow deficit discussed above has not been specifically labeled as a regulated asset:

As a rate-regulated entity, the IESO, in appropriate circumstances establishes regulated assets or liabilities and thereby defers the impact on the statement of operations of certain expenses or revenues because they are probable to be collected or refunded to market participants through future billings. The IESO has applied guidance from United States Generally Accepted Accounting Principles (US GAAP) Topic 980, Regulated Operations, in this policy.

The only two balances specifically labeled as being recognized in the IESO's financial statements under the above policy are (i) unrecovered smart metering expenses, and (ii) unrecovered PSAB transition items. IESO management has, however, indicated in discussions that the cash flow deficit/surplus associated with the original variance account is also considered to be a regulated asset/liability under ASC 980 even though it has been presented as part of the Market Accounts balances in the statement of financial position.

Impact of FHP

The implementation of the FHP results in the IESO establishing and maintaining the FHP variance account to track the resulting cash flow deficit, the balance of which is defined for the purposes of the FHP Act to be a 'regulatory asset'.

The act of legislating the balance in the FHP variance account to be a regulatory asset does not, in and of itself, result in its recognition as an asset for accounting purposes. Accordingly, the primary issue at hand is whether the legislated regulatory asset is eligible for recognition as an asset in both the standalone financial statements of the IESO and the consolidated financial statements of the GRE. As discussed in a later section, the conclusion reached with respect to ~~When~~ the standalone financial statements of the IESO ~~are considered in isolation, the impact of the conclusion reached on this issue would be eliminated to the extent the regulatory asset has been sold to OPG Trust by the end of the reporting period. The conclusion remains significant, however, due to its~~may impact ~~on~~ the consolidated financial statements of the GRE~~, which is discussed in a later section~~.

As noted above, the IESO has adopted a policy to apply the U.S. GAAP guidance in ASC 980 in connection with accounting for rate regulated assets. IESO management has applied this guidance and concluded the regulatory asset created by the FHP can be recognized as a regulated asset for accounting purposes in the financial statements of the IESO. The IESO's auditors, KPMG, concur with this position, as evidenced from the following excerpt from a draft letter issued by KPMG on May 16, 2017 (the KPMG Letter):

We have considered the foregoing analysis and management's conclusion. We concur that the variance account created by Bill 132 will meet the criteria for the recognition of a regulatory asset stated in ASC 980-340-25-1. Furthermore, we have also considered the criteria stated in ASC 980-10-15-2 and believe that IESO should be allowed to continue to use the guidance for regulated operations of Topic 980.

Commented [NPP1]: Insert reference to consistency with previous treatment of OPA (2013 Terry Gabriel email).

Recognizing the regulatory asset as a regulated asset for accounting purposes in the financial statements of the IESO in accordance with ASC 980 is appropriate only if all of the following conditions are met:

a) the operations of the IESO (or the relevant portion thereof) are within the scope of ASC 980 based on the criteria in ASC 980-10-15-2,
b) the FHP variance account meets the criteria in ASC 980-340-25-1 for capitalization as a regulatory asset, and
c) ASC 980 is an appropriate source of GAAP under PSAS.

Each of these items is addressed in turn:

a) Scope of ASC 980

ASC 980-10-15-2 states the following:

The guidance in the Regulated Operations Topic applies to general-purpose external financial statements of an entity that has regulated operations that meet all of the following criteria:

a) The entity's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party regulator or by its own governing board empowered by statute or contract to establish rates that bind customers.
b) The regulated rates are designed to recover the specific entity's costs of providing the regulated services or products. This criterion is intended to be applied to the substance of the regulation, rather than its form. If an entity's regulated rates are based on the costs of a group of entities and the entity is so large in relation to the group of entities that its costs are, in essence, the group's costs, the regulation would meet this criterion for that entity.
c) In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume that rates set at levels that will recover the entity's costs can be charged to and collected from customers.

The Office of the Auditor General of Ontario (OAGO) does not believe the IESO meets the criteria to be within the scope of ASC 980. This is evidenced by the following statement included in *Legislated Accounting Included in Bill 132, Including the Proposed Ontario Fair Hydro Plan Act, 2017 – Submission to Standing Committee on Justice Policy* dated May 25, 2017 (OAGO Submission):

Moreover, IESO is not engaging in rate-regulated activities, and the contracts under its administration were never subject to rate regulation.

Ontario's electricity industry is rate-regulated. Rates paid by electricity consumers are regulated by the OEB such that over time rates equal cost plus, where applicable, a reasonable rate of return. Providing electricity to consumers involves several different parties, including generators, transmitters, distributors and the IESO. Some of these parties engage in rate-regulated activities, some do not.

The IESO serves an important and active role in Ontario's electricity market, irrespective of the fact that it records market transactions on net basis in the financial statements. The IESO balances the supply of and demand for electricity in Ontario and directs its flow across the province's transmission lines, oversees the wholesale electricity market, where the price of energy is determined, and administers the rules that govern the market. In determining whether the IESO has regulated operations, the focus is on whether the rates the IESO charges its customers are regulated and not whether the costs incurred by the IESO are regulated (although a number of them are).

The following supports the position of IESO management that the above criteria are met and the IESO's operations are within the scope of ASC 980:

The entity's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party regulator or by its own governing board empowered by statute or contract to establish rates that bind customers.
As noted in a research paper issued in 2001 by a taskforce established by the CICA (the CICA Research Report), there is a view held by some that, with respect to rate regulation in the public sector, there is usually no *independent, third-party regulator* because the government controls both the enterprise and the regulatory agency. Accordingly, it is important to point out that independence is not required to meet the criteria in ASC 980-10-15-2(a). The requirement is an *independent, third-party regulator* or *its own governing board empowered by statute or contract*. In fact, paragraph 64 of the Basis for Conclusions for FAS 71, ACCOUNTING FOR THE EFFECTS OF CERTAIN TYPES OF REGULATION (which is the pre-codified version of ASC 980), specifically states that the criteria in ASC 980-10-15-2(a) was modified so as not to preclude application by government utilities with rates set by their own governing board. The OEB has been established by the Province to be Ontario's independent energy regulator and, therefore, is considered the governing board of the IESO. The OEB's mandate and authority come from the *Ontario Energy Board Act, 1998*, the *Electricity Act, 1998*, and a number of other provincial statutes. As described in more detail below, the IESO's rates are established in accordance with these statutes. In the context of its market-settlement role, the IESO's 'customers' are the Market Participants buying electricity from the IESO-controlled grid. All Market Participants are required to execute a Participation Agreement with the IESO. In accordance with Article 3.1 of the standard Participation Agreement, each Market Participant has agreed to be bound by and to comply with all of the provisions of the Market Rules, which includes the following: *Chapter 9, Section 1.2.3* *Notwithstanding any other provision within the market rules, market participants shall remit to the IESO such applicable settlement amounts and other payments as may be required under the relevant provisions of the Electricity Act, 1998, the Ontario Energy Board Act, 1998 and any related regulations, as amended from time to time.* The IESO's operations meet the criteria in ASC 980-10-15-2(a) because the rates charged by the IESO are based on statutes. As discussed in more detail below, the rates are designed to recover the IESO's

expenditure for providing the regulated services and the pass-through costs related to the energy purchased from the generators and to government programs.

The main components of invoices issued by the IESO to Market Participants are as follows:

- Commodity Charges
  - Hourly Ontario Energy Price
  - Global Adjustment
- Wholesale Market Service Charges
  - IESO Administration Fee
  - Uplift Charges
  - Rural and Remote Electricity Rate Protection
- Wholesale Transmission Charges
- Debt Retirement Charge

Each component is determined as follows:

Commodity Charges

In accordance with Section 25.33(1) of the Electricity Act, the IESO is required to price electricity to recover costs:

Electricity pricing to reflect costs

IESO to make adjustments

25.33 (1) The IESO shall, through its billing and settlement systems, make adjustments in accordance with the regulations that ensure that, over time, payments by classes of market participants in Ontario that are prescribed by regulation reflect,

a) amounts paid to generators, the Financial Corporation and distributors, whether the amounts are determined under the market rules or under section 78.1, 78.2 or 78.5 of the Ontario Energy Board Act, 1998;

b) amounts paid to entities with whom the IESO has a procurement contract, as determined under the procurement contract; and

c) such amounts as may be prescribed that are paid or incurred by the IESO in relation to the Ontario Fair Hydro Plan Act, 2017. *2014, c. 7, Sched. 7, s. 8 (1); 2017, c. 16, Sched. 1, s. 43 (2).*

Market Participants are initially invoiced for consumed electricity at the Hourly Ontario Energy Price (HOEP), which is calculated as the average of the twelve market clearing prices set in each hour. In accordance with Section 25.33(5) of the Electricity Act, the IESO is required to track differences between the amounts invoiced to Market Participants at HOEP and actual costs incurred in a variance account:

Variance accounts

(5) The IESO shall establish and maintain such variance accounts as may be necessary to record all amounts payable or receivable by it under this section or under the Ontario Fair Hydro Plan Act, 2017. *2004, c. 23, Sched. A, s. 37; 2014, c. 7, Sched. 7, s. 8 (5); 2017, c. 16, Sched. 1, s. 43 (5).*

Sections 3.1 and 3.3 of the OEB Act require the variance account to be settled over a twelve-month period, which is done through the Global Adjustment on a Market Participant's invoice:

Annual rate plan and separate rates for situations prescribed by regulation

(3.1) The Board shall, in accordance with rules prescribed by the regulations, approve or fix separate rates for the retailing of electricity,

a) to such different classes of consumers as may be prescribed by the regulations; and

b) for such different situations as may be prescribed by the regulations. 2004, c. 23, Sched. B, s. 14 (1).

Rates to reflect cost of electricity

(3.3) In approving or fixing rates under subsection (3.1),

a) the Board shall forecast the cost of electricity to be consumed by the consumers to whom the rates apply, taking into consideration the adjustments required under section 25.33 of the Electricity Act, 1998 *and shall ensure that the rates reflect these costs; and*

b) the Board shall take into account balances in the IESO's variance accounts established under section 25.33 of the Electricity Act, 1998 *and shall make adjustments with a view to eliminating those balances within 12 months or such shorter time periods as the Minister may direct. 2004, c. 23, Sched. B, s. 14 (1); 2014, c. 7, Sched. 23, s. 6 (2).*

Although the implementation of the FHP involves the deferral of costs over an extended period of time, it does not change the IESO's obligation under the OEB Act to price electricity to recover incurred costs in full. The deferral relating to the FHP is tracked in a separate variance account in accordance with Section 24(1) of the Fair Hydro Plan Act, 2017 (the FHP Act):

Variance account to be established, maintained

24 (1) The IESO shall establish and maintain a variance account in which it records the following:

1. The IESO deferral for each month.

2. All payments received by the IESO resulting from the exercise of the right of recovery under section 25 and any transfer under section 26.

3. Such other adjustments as may be prescribed, including adjustments in respect of the period that commences on or after May 1, 2017 and before the day this section comes into force.

The right for the IESO to recover the variance account is set out in Section 25 of the FHP Act:

Regulatory asset established

25 (1) Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Board to set rates

(2) Subject to subsection (3), the Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for the IESO to recover the balance recorded in the variance account.

Limitation

(3) The IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2021.

Wholesale Market Service Charges

The IESO charges Market Participants administrative fees to operate the wholesale electricity market and manage the electric power system in Ontario. These fees are required to be approved by the OEB under Section 25(1) of the Electricity Act on an annual basis.

Review of requirements and fees

25 (1) The IESO shall, at least 60 days before the beginning of each fiscal year, submit its proposed expenditure and revenue requirements for the fiscal year and the fees it proposes to charge during the fiscal year to the Board for review, but shall not do so until after the Minister approves the IESO's proposed business plan for the fiscal year under section 24. 2014, c. 7, Sched. 7, s. 3 (1).

Uplift charges

Commented [LAP2]: Uplift charges are comprised of a number of things. To ask IESO for help to summarize succinctly.

Need details

RRRP charges

The RRRP program provides a rate subsidy to rural and remote residential customers who face higher distribution costs. Under the FHP Act, the cost of the RRRP program has shifted from ratepayers to provincial revenues and, therefore, is no longer a component of the IESO's invoice.

Wholesale Transmission Charge

This charge to LDCs and some large consumers covers the cost incurred by transmission companies to construct and maintain the high-voltage transmission lines needed to transport electricity from generating stations to LDCs or consumers. In accordance with Section 78(1) of the OEB Act, the rate for this service is approved by the OEB.

Debt Retirement Charge

When the Ontario electricity sector was restructured in April 1999, the Ontario Electricity Financial Corporation (OEFC) took on $20.9 million of stranded debt from Ontario Hydro. The OEFC services and retires the stranded debt with cash flows from a number of sources in the electricity sector, one of those currently being debt retirement charges paid by certain ratepayers (ratepayers cease paying debt retirement charges April 1, 2018).

Under Regulation 494/01, DEBT RETIREMENT CHARGE – ADMINISTRATION, the IESO is appointed as a collector of debt retirement charges (Section 2) and is required to collect a debt retirement charge on behalf of the OEFA from every entity who withdraws electricity from the IESO-controlled grid (Section 6(2)). The prescribed rate for the debt retirement charge is set out in Regulation 493/01, DEBT RETIREMENT CHARGE – RATES AND EXEMPTIONS.

The regulated rates are designed to recover the specific entity's costs of providing the regulated services or products.

As discussed in detail above, the IESO is required by statute to set prices to recover costs.

In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume that rates set at levels that will recover the entity's costs can be charged to and collected from customers.

As discussed in detail above, the IESO is required by statute to set prices to recover costs.

The majority of the monthly amount invoiced by the IESO to Market Participants represents a direct flow through of costs as they are incurred, but there are certain types of costs for which recovery may be deferred. For those deferred costs, the IESO is dependent on the future consumption of electricity by rate-payers to fully recover costs.

Based on relatively short recovery periods, it is reasonable to assume there will be sufficient demand to recover the deferred costs that currently exist. Specifically:

- RPP and RRRP variance accounts are recovered over twelve months in accordance with Section 3.3(b) of the OEB Act. *(Note - Under the FHP, responsibility for the cost of the RRRP program is being transferred to the Provincial budget and rate-payers will no longer be directly charged)*

Commented [LAP3]: To confirm with Energy if all costs have shifted.

Commented [LAP4]: CV to determine if there is anything else to add from IESO's analysis.

Commented [LAP5]: To confirm with Energy if all costs have shifted.

- The Smart Metering Entity charge is recovered over the period from May 1, 2013 to October 31, 2018 in accordance with ~~XX~~OEB Decision and Order EB-2015-0298.

Under the FHP, responsibility for the cost of the OESP program is being transferred to the Provincial budget and rate-payers will no longer be charged for the cost of this program. The OESP variance account, which is currently in a credit balance, will be used to fund the cost of the program until depleted.

Although the timing of the recovery of the FHP variance account has not yet been established by the OEB, the wording and intent of the proposed legislation is clear that it is intended by law to be recoverable over a period of 30 years. Given the nature and extent of customer demand for the power generated and distributed in Ontario, both at this time and projected in the future, it is reasonable to conclude that there will be sufficient demand to recover the regulatory asset. This conclusion, which is supported by Figure 19: Ontario's Forecast Electricity Production in Achieving Balance – Ontario's Long-Term Energy Plan, will need to be continually evaluated throughout the recovery period. The willingness of unrelated third parties to fund the purchase of the regulatory asset from the IESO by OPG Trust also demonstrates the belief that sufficient demand will exist to permit its future recovery.

In addition to the general scope requirements of ASC 980 discussed above, specific consideration is made as to whether the following scope exception in ASC 980-10-15-7 applies to the FHP:

The guidance in the Regulated Operations Topic does not apply to any of the following transactions:

a) *Accounting for price controls that are imposed by governmental action in times of emergency, high inflation, or other unusual conditions, or accounting for contracts in general. However, if the terms of a contract between an entity and its customer are subject to regulation and the criteria of paragraph 980-10-15-2 are met with respect to that contract, the guidance in this Topic shall apply.*

Based on the discussion below, this scope exemption is not applicable to the FHP.

Electricity cost reductions resulting from the FHP do not represent price controls imposed by the Province in a time of emergency, high inflation, or other unusual conditions. As noted in the 2017 budget speech, the 2017 Ontario Budget – A Stronger, Healthier Ontario, the FHP is a fairer way to share the costs of building a cleaner, more modern and reliable electricity generation system. In particular, the budget speech states:

Commented [NPP6]: Navigant report/other support

Recognizing that existing electricity infrastructure is expected to last for decades to come, the Province would refinance the cost of those capital investments to ensure that system costs are more equitably distributed over time.

The following paragraph from the Basis for Conclusion for FAS 71 also provides some insight as to the specific concerns relating to government imposed price controls that resulted in the scope exception in ASC 980-10-15-7(a):

70. The first scope limitation of paragraph 8—excluding accounting for price controls imposed by governmental action in times of emergency, high inflation, or other unusual conditions—was included in

the Discussion Memorandum. Price controls imposed in periods of unusual conditions are not expected to be applied consistently over an extended period. Indeed, their duration usually is limited by statute. In that environment, assurance of future benefits cannot be provided by probable future actions of the price control regulator because that regulator may not exist at a given future date.

The implementation of the FHP does not create the type of environment described in FAS 71.BC70 as it is governed by the OEB and there is no concern the OEB will not continue to exist.

The second part of the scope exception in ASC 980-10-15-7(a) relating to the accounting for contracts is further explained in the following paragraph from the Basis for Conclusion for FAS 71:

71. Accounting for contracts in general was also excluded from the scope of the Discussion Memorandum. The economic effects of cost reimbursement contracts are in some respects similar to the economic effects of the type of regulation addressed by this Statement. However, most contracts tend to be relatively short-term, whereas regulation of enterprises covered by this Statement is expected to continue beyond the foreseeable future. The Board noted that other authoritative literature addresses contract accounting and concluded that it should exclude the general issue of contract accounting from the scope of this Statement.

Although the impetus for the FHP relates to term of contracts the IESO has entered into with certain generators, the FHP does not change the existing accounting for these contracts.

Application of ASC 980-340-25-1 to the regulatory asset

ASC 980-340-25-1 states the following:

Rate actions of a regulator can provide reasonable assurance of the existence of an asset. An entity shall capitalize all or part of an incurred cost that would otherwise be charged to expense if both of the following criteria are met:

a) *It is probable (as defined in Topic 450) that future revenue in an amount at least equal to the capitalized cost will result from inclusion of that cost in allowable costs for rate-making purposes.*
b) *Based on available evidence, the future revenue will be provided to permit recovery of the previously incurred cost rather than to provide for expected levels of similar future costs. If the revenue will be provided through an automatic rate-adjustment clause, this criterion requires that the regulator's intent clearly be to permit recovery of the previously incurred cost.*

A cost that does not meet these asset recognition criteria at the date the cost is incurred shall be recognized as a regulatory asset when it does meet those criteria at a later date.

The following supports the IESO's position that the FHP variance account meets the above criteria for capitalization:

It is probable (as defined in Topic 450) that future revenue in an amount at least equal to the capitalized cost will result from inclusion of that cost in allowable costs for rate-making purposes.
The following excerpts from the FHP Act make it clear that the IESO is entitled to recover the regulatory asset through rates in the future:

Variance account to be established, maintained

24 (1) The IESO shall establish and maintain a variance account in which it records the following:

1. The IESO deferral for each month.

2. All payments received by the IESO resulting from the exercise of the right of recovery under section 25 and any transfer under section 26.

3. Such other adjustments as may be prescribed, including adjustments in respect of the period that commences on or after May 1, 2017 and before the day this section comes into force.

Recording determinative

(2) Subject to the correction of any obvious error by the IESO, its recording of the balance in the variance account is determinative of the balance as of the time of the recording.

Regulatory asset established

25 (1) Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Board to set rates

(2) Subject to subsection (3), the Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for the IESO to recover the balance recorded in the variance account.

Limitation

(3) The IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2021.

The recovery of the regulatory asset is, however, dependent on future consumption of electricity by rate-payers. Although the timing of the recovery of the regulatory asset has not yet been established by statute, the recovery period is intended to be 30 years. Given the nature and extent of customer demand for the power generated and distributed in Ontario, both at this time and projected in the future, it is reasonable to conclude that it is probable there will be sufficient demand in the future to recover the regulatory asset. This conclusion, which is supported by Figure 19: Ontario's Forecast Electricity Production in Achieving Balance – Ontario's Long-Term Energy Plan (Appendix B), will need to be continually evaluated throughout the recovery period. The willingness of unrelated third parties (e.g., investors) to fund the purchase of the regulatory asset from the IESO by OPG Trust also demonstrates the belief that sufficient demand will exist to permit its future recovery.

Based on available evidence, the future revenue will be provided to permit recovery of the previously incurred cost rather than to provide for expected levels of similar future costs. If the revenue will be provided through an automatic rate-adjustment clause, this criterion requires that the regulator's intent clearly be to permit recovery of the previously incurred cost.

Based on the above excerpts from the FHP Act, it is clear the IESO will be recovering costs previously incurred rather than providing for expected levels of similar future costs.

ASC 980 is an acceptable source of guidance under PSAS[3]

In assessing whether ASC 980-340-25-1 is an acceptable source of guidance under PSAS, Paragraph 5 of PSAS 1150, GENERALLY ACCEPTED ACCOUNTED PRINCIPLES, states the following:

[3] If the accounting for GBEs were to change in the future such that line by line consolidation is required using PSAS, the importance of this consideration increases significantly.

When the primary sources of GAAP do not deal with the accounting and reporting in financial statements of transactions or events encountered by the public sector reporting entity, or additional guidance is needed to apply a primary source to specific circumstances, the selection of an appropriate accounting policy requires the exercise of professional judgment. In these circumstances, a public sector reporting entity should adopt accounting policies and disclosures that are consistent with:

a) the primary sources of GAAP; and

b) the application of the concepts described in FINANCIAL STATEMENT CONCEPTS, Section PS 1000.

Related guidance is also provided in PSAS 1150.18-.20:

Paragraphs PS 1150.19-.24 identify some of the other sources that a public sector reporting entity might consult to assist in selecting accounting policies and disclosures that comply with paragraph PS 1150.05.

Pronouncements issued by other bodies authorized to issue accounting standards may be useful sources to consult. For example, accounting pronouncements published with the authority of the Canadian Accounting Standards Board (AcSB), International Accounting Standards Board (IASB), US Federal Accounting Standards Advisory Board (FASAB), US Governmental Accounting Standards Board (GASB), or International Public Sector Accounting Standards Board (IPSASB) are often important sources to consult on matters not covered by primary sources of GAAP or for assistance in applying a primary source of GAAP to specific circumstances.

When a public sector reporting entity chooses to consult a source described in paragraph PS 1150.19, it applies professional judgment and evaluates the source in the context of the relative manner in which the standard setter requires its pronouncements to be applied, as well as in the context of the related pronouncement. When an accounting standard setter does not have a conceptual framework that is similar to the concepts referred to in paragraph PS 1150.05(b), the public sector reporting entity needs to ensure that the selected source is consistent with those concepts.

Since PSAS does not specifically address the treatment of costs incurred that will be recovered through regulatory operations in future periods, the IESO would not be precluded from following the guidance in ASC 980-340-25-1. However, PSAS 1000.05 makes it clear that in order to do so, it must first be demonstrated that such guidance is consistent with the application of the concepts described in PSAS 1000, FINANCIAL STATEMENT CONCEPTS.

The relevant guidance in PSAS 1000 relating to the recognition of an asset is as follows:

PSAS 1000.35

Assets are economic resources controlled by a government as a result of past transactions or events and from which future economic benefits are expected to be obtained.

PSAS 1000.36

Assets have three essential characteristics:

a) they embody future economic benefits that involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows, or to reduce cash outflows;

b) *the public sector entity can control the economic resource and access to the future economic benefits; and*
c) *the transaction or event giving rise to the public sector entity's control has already occurred.*

PSAS 1000.37

An item is not an asset of a government if it lacks one or more of the essential characteristics listed in the preceding paragraph. Thus, for example, an item does not qualify as an asset of a government if the item involves:

a) *no future economic benefit;*
b) *future economic benefit, but the government cannot obtain it; or*
c) *future economic benefit that the government may obtain, but the events or circumstances that give the government control of the benefit have not yet occurred*

The following supports the IESO's position that the regulatory asset possesses the three essential characteristics of an asset:

Embody future economic benefits that involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows, or to reduce cash outflows

The following excerpts from the FHP Act make it clear that the IESO is entitled to recover the regulatory asset through rates in the future:

Variance account to be established, maintained

24 (1) The IESO shall establish and maintain a variance account in which it records the following:

1. The IESO deferral for each month.

2. All payments received by the IESO resulting from the exercise of the right of recovery under section 25 and any transfer under section 26.

3. Such other adjustments as may be prescribed, including adjustments in respect of the period that commences on or after May 1, 2017 and before the day this section comes into force.

Recording determinative

(2) Subject to the correction of any obvious error by the IESO, its recording of the balance in the variance account is determinative of the balance as of the time of the recording.

Regulatory asset established

25 (1) Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Board to set rates

(2) Subject to subsection (3), the Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for the IESO to recover the balance recorded in the variance account.

Limitation

(3) The IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2021.

Accordingly, the regulatory asset, by statute, has the capacity to provide future cash inflows.

While perhaps obvious, paragraph 13 of PSAS 3210, ASSETS, confirms the generation of future cash flows represents a future economic benefit:

The future economic benefits embodied in an asset may also be in the form of generating future cash inflows. Cash inflows benefit the public sector entity because cash can be used to purchase or to provide goods and services, redistribute wealth or settle liabilities. Benefits in the form of cash inflows relate to resources, such as loans receivable, inventory for resale and

portfolio investments. Also, some public sector resources generate cash inflows because they have user fees associated with them.

The ability of the regulatory asset to generate future cash flows is dependent on the future consumption of electricity by rate-payers. Although the timing of the recovery of the regulatory asset has not yet been established by statute, the recovery period is intended to be 30 years. Given the nature and extent of customer demand for the power generated and distributed in Ontario, both at this time and projected in the future, sufficient demand is expected to exist in the future to recover the regulatory asset. This conclusion, which is supported by Figure 19: Ontario's Forecast Electricity Production in Achieving Balance – Ontario's Long-Term Energy Plan, will need to be continually evaluated throughout the recovery period. The willingness of unrelated third parties to fund the purchase of the regulatory asset from the IESO by OPG Trust also demonstrates the belief that sufficient demand will exist to permit its future recovery.

The public sector entity can control the economic resource and access to the future economic benefits

Paragraph 16 of PSAS 3210, ASSETS, states the following:

A public sector entity controls the economic resource and access to the future economic benefits when it:

- *a) can benefit from the economic resource through its capacity to provide goods and services, to provide future cash inflows or to reduce cash outflows;*
- *b) can deny or regulate access to those benefits by others; and*
- *c) is exposed to the risks associated with the economic resource.*

The IESO can benefit from the regulatory asset through its capacity to provide future cash inflows in one of two ways:

1. *Collection through future rates*

Section 25 of the FHP gives the IESO the right to recover the regulatory asset through future rates:

Regulatory asset established

25 (1) Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Board to set rates

(2) Subject to subsection (3), the Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for the IESO to recover the balance recorded in the variance account.

2. *Sale to a financing entity*

Section 26 of the FHP Act permits the IESO to sell the regulatory asset:

Commented [LAP7]: CV - Are there other examples to provide as analogies – anything in tangible capital assets?

.31 *When conditions indicate that a tangible capital asset no longer contributes to a government's ability to provide goods and services, or that the value*

.07 *When there has been a loss in value of a portfolio investment that is other than a temporary decline, the investment should be written down to recognize the loss. The write-down should be included in the statement of operations. In the case of an item in the fair value category, a reversal of any net remeasurements should be reported in the statement of remeasurement gains and losses.*

26 (1) The IESO may from time to time, in accordance with this Act and the regulations, transfer a specified portion of the regulatory asset to a financing entity in accordance with this section.

Agreement

(2) An agreement between the IESO and a financing entity in relation to the transfer of a specified portion of the regulatory asset shall provide for consideration of a payment by the financing entity to the IESO in an amount equal to the amount of the specified portion.

Effect of payment

(3) Upon receipt by the IESO of the payment by the financing entity,

(a) the balance in the variance account shall be reduced by the amount of the payment;

(b) the regulatory asset shall be adjusted accordingly;

(c) the financing entity shall acquire a corresponding investment interest; and

(d) the IESO shall retain no further right, title or interest in the corresponding investment interest.

Since (a) the statutory right to recover the regulatory asset belongs solely to the IESO, and (b) the IESO is permitted, but not required, to sell the regulatory asset, the IESO can deny or regulate access to the future economic benefits of the regulatory asset by others.

The IESO is exposed to the risks associated with the regulatory asset, with the primary risk being that collection through the mechanism set out in Section 25 of the FHP Act is dependent on the future consumption of electricity by rate-payers.

The above analysis supports the position that the IESO controls the regulatory asset and access to the future economic benefits.

In reaching this conclusion, consideration was given to the following excerpt included on Page 37 of the 2008 Annual Report of the OAGO:

With regard to the second characteristic, we simply point again to the legacy of the former Ontario Hydro and its stranded debt. This in our view provides concrete evidence that even in monopoly situations governments do not have sufficient assurance that an enterprise will generate enough profits in future years to recover all of its past costs.

Although there needs to be sufficient assurance regarding the recovery of past costs, all relevant facts and circumstances need to be taken into consideration. Accordingly, the stranded debt of Ontario Hydro can be a relevant to the analysis, but not determinative on its own. As noted in the previous section, the recoverability of past costs will be continually assessed.

The transaction or event giving rise to the public sector entity's control has already occurred

When evaluating whether a transaction or event gives rise to control, the following guidance from PSAS 3210, ASSETS, provides helpful guidance:

.26
The past transaction or event that gives rise to control of an economic resource resulting from exchange agreements or contracts usually occurs at the point of exchange. This arises when substantially all the benefits and risks of ownership have been transferred to the public sector entity and normally coincides with the disbursement of funds, exchange of other assets or assumption of liabilities.
.28
The existence of a law, by-law or policy in relation to a particular program is not a past transaction or event that gives rise to control of an economic resource. Control does not exist until the underlying event occurs.
.29

The past transaction or event giving rise to control of an economic resource must have occurred by the financial statement date. Legislation having retroactive application cannot create a past transaction or event. Any economic resources related to that legislation would be accounted for in the current and relevant future periods, not in the period of the effective date of the legislation.

In the case of the regulatory asset, the above guidance in PSAS 3210 makes it clear that it is not the statute itself that is the transaction or event giving rise to the asset, it is the incurrence of costs for which recovery is provided for under statute. Accordingly, control over the economic benefits of the regulatory asset occurs when the IESO incurs a cash flow deficit that is recorded in the FHP variance account in accordance with Section 24(1) of the FHP Act:

24 (1) The IESO shall establish and maintain a variance account in which it records the following:

1. The IESO deferral for each month.

2. All payments received by the IESO resulting from the exercise of the right of recovery under section 25 and any transfer under section 26.

3. Such other adjustments as may be prescribed, including adjustments in respect of the period that commences on or after May 1, 2017 and before the day this section comes into force.

At this point in time, the IESO has incurred a cash outflow for which it is entitled to recover under Section 25 of the FHP Act:

Regulatory asset established

25 (1) Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Board to set rates

(2) Subject to subsection (3), the Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for the IESO to recover the balance recorded in the variance account.

The following excerpt from the IFRS Staff Paper on Rate-Regulated Activities prepared for discussion at the June 2017 IASB meeting presents a consistent view and dismisses the potential dissenting view that the transaction or event giving rise to the IESO's control is the future consumption of electricity by rate-payers:

A right arises from the rate-adjustment mechanism if the entity has already partially or fully fulfilled a regulatory requirement (past event) but the current regulated rate does not yet reflect the compensation that the entity is entitled to in exchange. Even though the entity cannot compel its customers to buy the regulated goods or services, the entity's right to charge an increased future regulated rate has the potential to produce for the entity an inflow of economic benefits that are not available to other parties. That right will be consumed as the entity includes the rate increase in future regulated rates and will lead to an inflow of economic benefits if customers pay the increased future regulated rate for the future delivery of goods or services.

In April 2011, Torys LLP issued a letter to OPG relating to the legal basis of OPG's regulatory deferral and variance accounts which, as evidenced by the following excerpts, also takes the position that the transaction or event giving rise to the asset is the incurrence of costs for which recovery is provided for under statute:

OPG's deferral and variance accounts are established either by regulation or by orders of the Ontario Energy Board (the "OEB") through the proper exercise of its jurisdiction as the administrative tribunal responsible for regulating the electricity industry in Ontario. The establishing of such an account pursuant to regulation or the granting of approval by the OEB to establish such an account confers upon OPG a right to record amounts in the account and to account for the amounts recorded on the basis that they have been prudently incurred.

The OEB has broad jurisdiction in setting payment amounts for OPG and it would not be reasonable for the legislature to

have given the OEB the legislative power to authorize the establishment of accounts without also giving the OEB the power to dispose of the amounts recorded in such accounts, including in circumstances where there is no future output. Moreover, to interpret the applicable legislation in a manner that only allows for payment amounts on a volumetric basis is in our view unreasonable because it would not be consistent with the rules of statutory interpretation.

Another potential dissenting view is contained on page 37 of the 2008 Annual Report of the OAGO:

With regard to the third characteristic, we do not believe that a rate-regulation decision can be considered a transaction or event giving rise to an asset or obligation because, as stated above, from the level of the government's consolidated financial statements such a decision is an internal event between two government-controlled entities. An equivalent analysis for rate-regulated liabilities leads to the same conclusion. PSAB standards preclude the inclusion of both gains and losses from such inter-company transactions. Therefore, our contention is that, at the consolidated financial statement level, rate-regulated assets and liabilities have no place and should be removed upon consolidation of the government's controlled entities.

It should be noted, however, that the OAGO's belief that a rate-regulation decision cannot be considered a transaction or event giving rise to an asset or obligation is not contrary to the IESO's position. As noted above, it is not the statute itself that is being considered the transaction or event giving rise to the asset, it is the incurrence of costs for which recovery is provided for under statute.

In addition, one could argue the creation of the relevant statutes is not an internal event from the point of view of the consolidated government. Statutes must be passed by the Legislative Assembly of Ontario to become law. Since the Legislative Assembly is comprised of elected members, it can be viewed as the government's governing body.

Concluding the regulatory asset possesses the three essential characteristics of an asset in PSAS 1000.05 then begs the question as to whether the application of the guidance in ASC 980 is even necessary in this particular situation. Consistent with the statement in ASC 980 –340-25-1 that *rate actions of a regulator can provide reasonable assurance of the existence of an asset,* ASC 980 provides guidance as to how to apply the primary source of PSAS in the regulatory environment.

In a letter from the OAGO to the Board of Directors of the IESO dated June 22, 2017 (the OAGO Letter), the OAGO makes the following statement:

The definitions of an asset in the PSAS and FASB Conceptual Framework are similar. Similar to PSAS, rate regulated deferral accounts do not generally meet the definition of an asset in the FASB's Conceptual Framework.

However, the following excerpts from the Basis for Conclusions for FAS 71 (paragraph 58 in particular), clearly support that ASC 980 is an application of, not an exception from, the basic definition of an asset in the Conceptual Framework:

Economic Effects of Regulation

56. The second threshold issue in the Discussion Memorandum was: "Does rate regulation introduce an economic dimension in some circumstances that should affect the application of generally accepted accounting principles to rate-regulated enterprises?"

57. Most respondents to the Discussion Memorandum indicated that rate regulation does introduce such an economic dimension in some circumstances. Respondents cited the cause-and-effect relationship of costs and revenues as the principal economic effect of regulation that affects accounting for regulated

enterprises. They noted that cost might be one factor used by unregulated enterprises to establish prices, but it would often not be the most important factor. Usually, prices are limited by the market. An unregulated enterprise might desire to price its goods or services at a level that would recover all costs and a reasonable profit; however, the market might not permit that price. Alternatively, an unregulated enterprise might be able to increase its prices and its profit if competition does not limit its prices. In either case, cost often is not the principal determinant of prices. In contrast, for an enterprise with prices regulated on the basis of its costs, allowable costs are the principal factor that influences its prices.

58. The economic effect cited by most respondents is the ability of a regulatory action to create a future economic benefit—the essence of an asset. For example, consider a regulated enterprise that incurs costs to repair damage caused by a major storm. If the regulator approves recovery of the costs through rates over some future period or is expected to do so, the rate action of the regulator creates a new asset that offsets the reduction in the damaged asset. The enterprise has probable future economic benefits—the additional revenue that will result from including the cost in allowable costs for rate-making purposes. The future benefits are obtained or controlled by the enterprise as a result of a past event—incurring the cost that results in the rate order. Thus, the criteria of Concepts Statement 3 for an asset are met.

The fact that many Canadian rate-regulated entities recognized regulated assets under Part V of the CPA Canada Handbook – *Pre-changeover Accounting Standards* (Part V GAAP) further supports the position that regulated assets do meet the basic definition of an asset under PSAS. Although Part V GAAP refers to rate regulation in several standards, it does not include cost capitalization guidance equivalent to ASC 980-340-25-1. It does, however, specify in paragraph 32B of Section 1100, *Generally accepted accounting principles*, that Section 1100 applies to the recognition and measurement of assets and liabilities arising from rate regulation beginning January 1, 2009. Since Section 1100.04 only permits the use of an alternate source of GAAP if it is consistent with Part V GAAP, regulated assets need to meet the basic definition of an asset under Part V GAAP in order to be recognized. The Part V GAAP definition of an asset in Section 1000, *Financial Statement Concepts* is consistent with the PSAS definition.

Commented [npp8]: And where reporting under IFRS14, ASC980 continues to be the basis for reporting such assets.

Commented [LAP9R8]: To discuss

The CICA Research Report also concluded regulated assets meet the basic definition of an asset under Part V GAAP:

In the Study Group's view, the economic benefits and obligations created by rate regulation and resulting from past transactions or events, and the changes in these amounts, meet the definition of a financial statement element set out in Handbook Section 1000.

The OAGO Letter suggests that IFRS should be consulted prior to referring to ASC 980 under PSAS's GAAP hierarchy in PSAS 1150 and points out the following:

- In 2005 the International Financial Reporting Interpretations Committee (IFRIC) indicated the US GAAP recognition criteria for regulated assets were not fully consistent with IFRS and could not be applied by analogy.
- When the question of rate regulated accounting was posed to the IFRIC again in 2008, the IFRIC noted the topic had been previously addressed and there was a well-established practice of first time IFRS adopters ceasing rate regulated accounting and removing regulatory deferral accounts from their financial statements.
- In the Basis for Conclusions on IFRS 14, IFRS 14.BC30 noted the differences in the recognition criteria between IFRS and ASC 980 resulted in almost all existing regulatory deferral accounts being derecognized upon transition to IFRS.

It should be noted, however, that the IASB's project on rate-regulated activities is still in progress and the OAGO Letter does not reference more recent and relevant activity. In September 2014, the IASB issued Discussion Paper DP/2014/02, *Reporting the Financial Effects of Rate Regulation*. The Discussion Paper presents the opposing views as to whether regulatory deferral account balances meet the definitions of an asset or a liability and specifically states the following in paragraph 5.09:

Consequently, the IASB has not formed a preliminary view on whether regulatory deferral account balances meet either the current or proposed revised Conceptual Framework definitions of an asset and a liability. It will use the input received from the responses to this Discussion Paper and the Conceptual Framework project to help it assess whether to develop any specific accounting guidance or requirements for rate-regulated activities.

In addition, the most recent paper issued by the IASB staff in June 2017 includes the following:

17. During the May 2017 Board meeting we also considered the interaction between the definitions of assets and liabilities and the characteristics of defined rate regulation (see paragraphs 5 and 6). We concluded that a combination of those characteristics suggested that the rights and obligations created by the rate-adjustment mechanism are assets and liabilities, as those terms are expected to be defined in the forthcoming revised Conceptual Framework for Financial Reporting.

The Exposure Draft ED/2015/3, *Conceptual Framework for Financial Reporting*, defines an asset as follows:

4.5 An asset is a present economic resource controlled by the entity as a result of past events.
4.6 An economic resource is a right that has the potential to produce economic benefits.

This recent activity suggests that it would be premature to assume that the IASB will conclude that regulatory deferral account balances will not meet the definitions of an asset or a liability.

Once it is determined that the regulatory asset meets the basic characteristics of an asset in PSAS 1000.36, consideration also needs to be made as to what type of asset it is. This is important because PSAS 1000.58 does not permit the recognition of intangible assets:

In the absence of appropriate public sector recognition and measurement criteria for intangibles, all intangibles, including those that have been purchased, developed, constructed or inherited in right of the Crown, are not recognized as assets in government financial statements. The intangible often called "human capital" that embodies the talent or intellectual capital of government employees is not recognized as an asset under existing accounting principles.

PSAS 1000 identifies two types of assets: financial assets and non-financial assets and provides the following commentary:

.39 Financial assets are assets that could be used to discharge existing liabilities or finance future operations and are not for consumption in the normal course of operations.

.40 A financial asset is any asset that is:

- *a) Cash*
- *b) a realizable asset that is convertible to cash;*
- *c) a contractual right to receive cash or another financial asset from another party;*
- *d) a contractual right to exchange financial instruments with another party under conditions that are potentially favourable to the government;*
- *e) an equity instrument of another entity;*
- *f) an investment in a government business enterprise or government business partnership;*
- *g) a financial claim on an outside organization or individual; or*

h) an inventory or item for sale that meets the criteria in FINANCIAL STATEMENT PRESENTATION, paragraph PS 1201.055.

.41 Non-financial assets include tangible capital assets, and other assets such as prepaid expenses and inventories of supplies.

.42 Non-financial assets are acquired, constructed or developed assets that do not normally provide resources to discharge existing liabilities, but instead:

a) are normally employed to deliver government services;
b) may be consumed in the normal course of operations; and
c) are not for sale in the normal course of operations.

PSAS 3210, ASSETS, also provides some relevant guidance:

.24 Non-financial resources include all items of a fixed or permanent nature (such as tangible capital property), claims to goods and services (such as prepaid items) and consumable goods (such as inventories of supplies). Non-financial resources also include intangibles, Crown lands and natural resources.

.25 Certain non-financial resources are, however, not given accounting recognition as assets in government financial statements. For example, all government intangibles, and all natural resources and Crown lands that have not been purchased by the government, are not given accounting recognition in government financial statements. A government's non-financial assets, as defined in FINANCIAL STATEMENT CONCEPTS, Section PS 1000, comprise the recognized non-financial resources of a government.

Although PSAS does not permit the recognition of intangibles, it also does not provide a definition of intangibles. In absence of specific guidance in PSAS as to what constitutes an intangible, U.S. GAAP is probably the most appropriate source to consult, in light of the fact that it deals specifically with regulated assets. Under U.S. GAAP, a regulated asset is not treated as an intangible. ASC 980 contains separate subsections for 'Intangibles – Goodwill and Other' and 'Other Assets and Deferred Costs' and regulated assets are included in the guidance on 'Other Assets and Deferred Costs'.

In accordance with PSAS 1201.040(a), financial assets are presented separately on the statement of financial position. The IESO classifies its regulated assets (i.e., the original variance account and the regulated assets relating to unrecovered smart metering expenses and unrecovered PSAB transition items) as financial assets. Consistent with these other regulated assets, ~~The~~ the regulatory asset created under the FHP meets the definition of a financial asset in PSAS 1000.39 since it will be available to discharge existing liabilities or finance future operations. Although the regulatory asset is not available to discharge liabilities existing at the date of the statement of financial position, that is no different than, for example, accounts receivable. ~~does not meet the criteria in PSAS 1000.40 to be a financial asset as it does not represent a current contractual right to receive cash. Accordingly, the regulatory asset is a non-financial resource. As noted above, to be recognized as an asset in the financial statements a non-financial resource cannot be an intangible.~~

~~Although PSAS does not permit the recognition of intangibles, it also does not provide a definition of intangibles. While PSAS 1000.40 provides a finite list of items that represent financial assets, the guidance in PSAS 1000.41 .42 on non-financial assets is less definitive, using words like "such as" and "normally". In absence of specific guidance in PSAS as to what constitutes an intangible, U.S. GAAP is probably the most appropriate source to consult, in light of the fact that it deals specifically with regulated assets. Under U.S. GAAP, a regulated asset is not treated as an intangible. ASC 980 contains separate subsections for 'Intangibles – Goodwill and Other' and 'Other Assets and Deferred Costs' and regulated assets are included in the guidance on 'Other Assets and Deferred Costs'. Consistent with the treatment under U.S. GAAP, the regulatory asset is categorized as an other asset under PSAS and recognized in the financial statements as a non-financial asset.~~

By recognizing the regulatory asset as a financial asset, the FHP will have a neutral impact on both the Province's net debt and accumulated deficit, which is consistent with the guidance in PSAS 1100, Financial statement objectives:

Financial statements should present information to describe the government's financial position at the end of the accounting period. Such information should be useful in evaluating:

a) the government's ability to finance its activities and to meet its liabilities and contractual obligations; and
b) *the government's ability to provide future services.*

A government's net debt is an important indicator of a government's financial position, highlighting the financial affordability of future government service provision. A net debt position represents a "lien" on the ability of the government to apply financial resources and future revenues to provide services. Non-financial assets are added to net debt to calculate the other indicator of a government's financial position — its accumulated surplus or deficit. Non-financial assets are "prepaid service potential". Reporting a government's recognized non-financial resources as part of its financial position provides information necessary for a more complete understanding of a government's debt position, financial position and future operating requirements.

Governments provide public services and redistribute wealth for a variety of social and economic purposes. To meet those objectives, governments need information about the cost of services and the affordability of services. An understanding of the extent of the financial "lien" the government has on its ability to provide future services as a result of past transactions and events is essential information. Governments also need to have an appreciation of the magnitude of the total economic resources they have on hand to deliver services. A government's net financial resources / net debt position, assessed in combination with the non-financial resources position of the government, provides a measure of the net recognized economic resources available to the government at the financial statement date to provide services in the future.

If the regulatory asset is not recognized as a financial asset, the Province's net debt will increase significantly, suggesting that the Province has a much higher future revenue requirement. This would be inaccurate, however, since the regulatory asset is going to be recovered under statute from electricity consumers, not taxpayers.

……

Debits and Credits

Based on the example provided earlier, the IESO pays the contracted power generator $400 for electricity used by the ratepayer and collects $300 from the ratepayer through their local distribution company (LDC). The $100 recovery shortfall is recorded in a variance account created by Bill 132 and deemed to be a regulatory asset. The IESO sells the regulatory asset to OPG Trust for $100 to obtain cash to make up the shortfall.

The accounting for the above transactions in the financial statements of the IESO, which are prepared in accordance with PSAS, depends on whether the regulatory asset is eligible for recognition as an asset for accounting purposes under PSAS. To avoid confusion in the remainder of this document, the term regulatory asset will refer to the defined term in the FHP Act and the term regulated asset or rate-

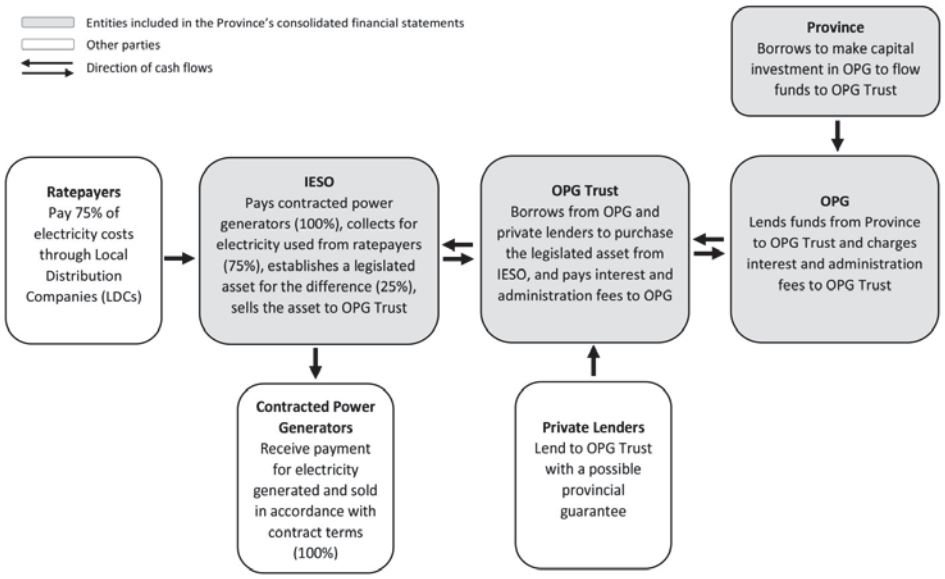
regulated asset (RRA) will refer to an asset recognized for accounting purposes. The following table illustrates the journal entries to be booked by the IESO under both scenarios:

Scenario A – Regulated Asset			Scenario B – Not a Regulated Asset		
Market Settlement					
DR	Cash	300	DR	Cash	300
DR	Asset	100	DR	Expense	100
CR	Cash	(400)	CR	Cash	(400)
Sale of Regulatory Asset to OPG Trust					
DR	Cash	100	DR	Cash	100
CR	Asset	(100)	CR	Gain	(100)

At any given point in time, the accounting result will be the same under both scenarios provided the cash shortfall has been fully funded. If a funding deficit exists, however, the deficit would be recognized as an asset under Scenario A and recognized as an expense under Scenario B. A funding deficit may arise due to, for example, temporary timing differences between the creation and sale of a regulatory asset. A funding deficit may also arise if OPG Trust (or another financing entity) ceases to purchase the IESO's regulatory assets on an on-going basis.

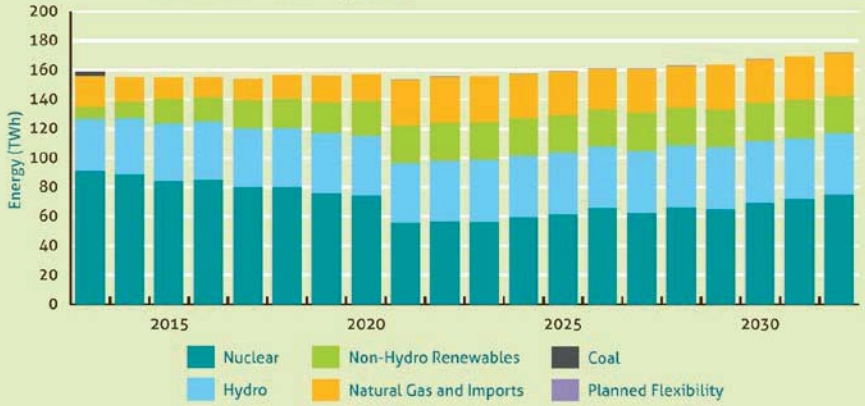
APPENDIX A

Proposed Legislated Transaction Structure
Prepared by the Office of the Auditor General of Ontario



APPENDIX B

Figure 19: Ontario's Forecast Electricity Production (TWh)



Notes: The Planned Flexibility identified in Figure 19 is required to meet peak requirements and represents less than 1 TWh of energy per year. Forecasting of electricity production includes the expectation of imports and exports of electricity in all years. Imports and exports are an important component in managing the operation of the electricity system. As a result, electricity production forecast exceeds the forecast Ontario consumer demand.

FW_ V3.rtf

From: Petsche, Nadine (TBS) []
To: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
Subject: FW: V3
Date: Tuesday, July 25, 2017 13:20:04
Attachment 1: image001.gif
Attachment 2: FHP Memo - Draft V3 21-Jul-2017 .docx

Please print 4 copies. thx

From: Blake Langill [mailto:blake.w.langill@ca.ey.com]
Sent: July 21, 2017 8:48 AM
To: Veinot, Cindy (TBS); Petsche, Nadine (TBS)
Cc: Suzie Gignac; Lee Anne Probert
Subject: V3

Cindy & Nadine,

Attached is the latest draft from late yesterday based on Monday's call; Suzie and I have not had a chance to review but wanted it in your hands as a just in case when Lee Anne talks through what she's done and the areas she's still thinking about and/or is looking for your thoughts – she'll cover that on this morning's call.

Both Suzie and Lee Anne will be joining too but from calling from cars.

Talk soon.

-blake

--

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image001.pdf

FHP Memo - Draft V3 21-Jul-2017 .pdf

Disclaimer

Ernst & Young LLP (“EY”) prepared the attached Report only for the OPCD. EY did not perform its services on behalf of, or to serve the needs of, any other person or entity. Accordingly, EY expressly disclaims any duties or obligations to any other person or entity based its use of the attached Report. Any other person or entity must perform its own due diligence inquiries and procedures for all purposes, including, but not limited to, satisfying itself as to the financial condition and control environment of the Province or any of the other entities involved, as well as the appropriateness of the accounting for any particular situation addressed by the Report.

EY did not perform an audit, review, examination or other form of attestation (as those terms are defined by the CPA Canada) of the financial statements of the Province or any other entities involved. Accordingly, EY did not express any form of assurance on the accounting matters, financial statements, any financial or other information or internal controls of the Province or any of the other entities involved. EY did not conclude on the appropriate accounting treatment based on specific facts or recommend which accounting policy/treatment the Province or any of the other entities involved should select or adopt.

The observations relating to accounting matters that EY provided to the OPCD were designed to assist them in reaching their own conclusions and do not constitute our concurrence with or support of the accounting or reporting of the Province or the other entities involved. The Province and the other entities involved are each responsible for the preparation of their own financial statements, including all of the judgments inherent in preparing them.

Introduction

Ontario's consolidated financial reports are prepared in accordance with the accounting principles for governments recommended by the Public Sector Accounting Board (PSAB) of the Chartered Professional Accountants of Canada (CPA Canada). In order to meet the needs of users, including the legislature and the public, for accountability in government reporting and decision making, it is essential that public sector financial statements reflect the economic substance of the government's activities.

In March 2017, the Government of Ontario (the Province) announced its Fair Hydro Plan (FHP). In assessing the appropriate accounting treatment for the Global Adjustment refinancing (GA Refinancing) component of the FHP on Ontario's consolidated financial statements, the Office of the Provincial Controller considered the authoritative guidance issued by PSAB, as well as the accounting assessments of the Independent Electricity System Operator (IESO) and Ontario Power Generation (OPG) management, including the accounting opinions of their external accounting advisors. Given the complexity of the GA Refinancing structure, the exercise of professional judgement is necessary to ensure that key financial reporting objectives of transparency and accountability are best served. This accounting analysis considers currently available information, including efforts underway by the International Accounting Standards Board as related to rate regulated accounting. It also draws upon publicly available information including previous studies and bases for conclusions dealing with rate-regulated accounting, both in the public sector and the private sector.

Background

The FHP will reduce electricity bills for Regulated Price Plan (RPP) customers (as well as those non-RPP consumers who receive the 8% rebate as specified in the Ontario Rebate for Electricity Act, 2016) by approximately 25% for a period of one year, starting in the summer of 2017, and limit the increase in electricity bills to the rate of inflation over the following four years.

Because distribution rates vary across the province and customers use different amounts of electricity, the goal in calculating the new RPP electricity prices is to achieve a 25% reduction for a "proxy" customer, which is established under the Fair Hydro Act, 2017 (FHP Act) as a residential customer of Toronto Hydro who uses 750 kWh of electricity a month, pays time-of-use RPP electricity prices and has the time-of-use consumption profile of a typical residential customer.

The measures that make up the 25% average reduction include:

1. Spreading the cost of Ontario's clean energy investments over the expected lifecycle of the generation infrastructure assets. This is expected to account for ~~15~~18-~~17~~19% of the overall reduction.
2. Shifting the cost of the Ontario Electricity Support Program (OESP) and Rural or Remote Rate Protection (RRRP) program from ratepayers to taxpayer-funded programs.
3. An 8% rebate equal to the provincial portion of the HST, which took effect on January 1, 2017.

Under the first measure, the Province will borrow funds to pay a portion of current electricity costs, thereby temporarily reducing the amount paid by eligible ratepayers. The deferred amounts, including

interest and other costs, will be recoverable from ratepayers through future rates over an estimated 18-year period starting in approximately 2028. In other words, the impact of #1 above is fully borne by the ratepayers – it is a shift in the timing of payment for the clean energy investments, while the impacts of #2 and #3 are reducing the cost to the ratepayer, but at the cost of the taxpayer.

Objective

The objective of this memo is to assess the impact of the first measure of the FHP (i.e. deferred recovery of clean energy costs) on the consolidated financial statements of the Province. **[NTD – Consider if document should discuss #2 and #3. This would contrast the different treatment by the Province]**

Background

The Ontario Energy Board (OEB) has been established by the Province to be Ontario's independent energy regulator.

In accordance with Section 78(3.1) of the Ontario Energy Board Act, 1998 (the OEB Act), the OEB is responsible for determining electricity commodity prices for RPP consumers. Section 78(3.3) of the OEB Act requires the OEB to forecast the cost of electricity used by RPP consumers and ensure the prices they are charged reflect that cost. The rate setting process is highly complex and involves numerous forecasts and estimates. As a result, the OEB regulatory framework allows for variances between the actual cost of supplying electricity and the amount collected from RPP consumers.

In setting the rates for RPP consumers, Section 78(3.3) of the OEB Act requires the OEB to settle any such variances through rates over a 12-month period. This is achieved through a price adjustment charged or credited to RPP consumers. This adjustment forms part of the Global Adjustment paid by consumers.

The IESO is the administrator of Ontario's wholesale electricity market. The IESO settles the market with all participants, as an agent.

As part of its role as market administrator, the IESO calculates the market price for electricity (the Market Clearing Price, or MCP) by running the bids and offers of the market participants through an algorithm. The actual cost of supplying electricity, however, is greater than the MCP as certain generators are paid additional amounts relating to the cost of clean energy initiatives they have undertaken. From a government policy perspective, decisions as to what is in the best interest of the public regarding electricity generation in Ontario are not based solely on economics, they are also influenced by environmental, social and political factors. Accordingly, generators receive compensation for investing in clean energy infrastructure when it is relatively less economical. In these instances, the IESO (and previously the XXX) entered into contracts to pay the generators the excess costs (plus a reasonable rate of return thereon) over an extended period of time, typically 20 years. The amounts paid to the generators under the terms of these contracts are currently included in the rates set by the OEB (as part of the Global Adjustment) with the intention they will be recovered from consumers in the same period they are paid to the generators. As previously noted, the complexity of the rate setting process results in variances between the amount paid to the generators and the amount collected from RPP consumers.

Under existing legislation, the IESO is required to fund any cash shortfall relating to differences arising between the actual cost of supplying electricity and the amount collected from RPP consumers. In

accordance with Section 25.33(5) of the Electricity Act, 1998 (the Electricity Act), the IESO has established and maintains a variance account to track these temporary differences (the original variance account) for subsequent settlement with ratepayers. Cash shortfalls in the IESO arising from the original variance account are funded through financing provided by the OFA.

As described below, once the FHP is implemented, the cost of supplying electricity to RPP consumers that is paid to generators will no longer be fully collected over a 12-month period~~, but over a longer period defined by legislation~~.

Under the FHP, while generators would continue to be paid over a twenty year period as contracted, the amounts paid by the IESO to the generators would be recovered from ratepayers over a thirty year period. Deferring the recovery of these costs from the consumers on a longer-term basis would create a significant interim cash shortfall for the IESO.

Section 24(1) of the Ontario Fair Hydro Plan Act (the FHP Act) requires the IESO to establish and maintain a variance account (separate from the original variance account described above) to track the cash shortfall specifically resulting from the implementation of the FHP (the FHP variance account). Due to the longer recovery period, and additional recoverable financing and management fee costs, the balance in the account is forecast to increase significantly. The balance in this variance account is defined in Section 1(1) of the FHP Act to be a regulatory asset[1]. The IESO is entitled under Section 25 of the FHP Act to recover the regulatory asset from RPP consumers in the future, which will be achieved through the OEB setting rates to allow for such recovery. Section 26 of the FHP Act also permits the IESO to transfer or sell the regulatory asset to a financing entity to fund its cash shortfall, thus commoditizing the future cash flow stream.

The Province has requested that OPG administer the deferral of the Global Adjustment under the FHP because of OPG's participation in the market, the regulatory knowledge OPG possesses and the ~~potential~~ expected ability to consolidate the accounting of the related activity ~~and accounting with~~ in the financial statements of OPG. To fulfill this role, OPG intends to establish a financing entity (OPG Trust) to purchase the IESO's regulatory asset on a monthly basis and eliminate any cash shortfall in the IESO. Through this arrangement, OPG Trust will finance these purchases through a combination of provincial borrowing (flowed through OPG as an equity investment), amounts advanced from OPG and direct borrowing from capital markets.

Basis of Accounting

In accordance with PSAS 1300.07, the government reporting entity (GRE) for the Province comprises government components and those organizations that are controlled by the government.

As defined in the Introduction to PSAS, the following types of organizations are controlled by the government: (a) government business enterprises (GBE), government non-for profit organizations (GNPO), and other government organizations (OGO).

[1] To avoid confusion in the remainder of this document, the term regulatory asset will refer to the defined term in the FHP Act and the term regulated asset or rate-regulated asset (RRA) will refer to an asset recognized for accounting purposes.

GNPOs and OGOs are considered government units and, in accordance with PSAS 1300.27, are consolidated in the GRE on a line-by-line basis. For consolidation purposes, the financial information of government units is required to be prepared in accordance with PSAS.

GBEs, on the other hand, are accounted for in the GRE using the modified equity method as prescribed by PSAS 1300.35. Under the modified equity method, which is described in detail in PSAS 3070, INVESTMENTS IN GOVERNMENT BUSINESS ENTERPRISES, the equity method of accounting is modified only to the extent that the GBE's accounting principles (which are required to be IFRS in accordance with paragraph 17 of the Introduction to PSAS) are not adjusted to conform to those of the government.

As documented in Schedule 8 to the consolidated financial statements of the Province, the IESO is an OGO and OPG is a GBE. The current accounting for these entities is as follows:

		ENTITY STATEMENTS	GRE STATEMENTS	
ENTITY	**CLASSIFICATION**	**GAAP**	**ACCOUNTING METHOD**	**GAAP**
IESO	OGO	PSAS[1]	Consolidation	PSAS
OPG	GBE	US GAAP[2]	Modified equity method	IFRS[3]

1. For purposes of preparing general purpose financial statements, an OGO applies PSAS unless those standards do not meet the needs of its financial statement users. In that situation, IFRS should be considered and the most appropriate set of standards applied.
2. Although a GBE is required to apply IFRS for purposes of preparing general purpose financial statements, the Ontario Securities Commission has approved an exemption that allows OPG to apply US GAAP up to January 1, 2019 for purposes of filing its financial statements with the OSC.
3. OPG applies IFRS 14, which permits it to continue to account for rate-regulated activities using US GAAP guidance for its general purpose financial statements.

This memo does not reconsider the classification of these existing entities.

As discussed in detail in a subsequent section, OPG expects that it will control OPG Trust. If this is the case, OPG Trust will be consolidated by OPG and, therefore, reflected in the GRE through the modified equity accounting of OPG under IFRS. If, however, it is determined that OPG Trust is controlled by the Province, OPG Trust will either (a) be consolidated in the GRE on a line-by-line basis under PSAS if determined to be an OGO, or (b) reflected in the GRE through modified equity accounting under IFRS if determined to be a GBE.

Example

For simplicity, the following example will be used in this document to illustrate the accounting impact of the FHP on the various entities involved:

- Ratepayer bill is currently $588, and the 17% reduction related to the FHP is $100.
- The Province directly borrows 44%, or $44, to make an equity contribution to OPG, which OPG then loans to OPG Trust.
- OPG directly borrows 5%, or $5, and loans it to OPG Trust.
- OPG Trust directly borrows 51%, or $51, from capital markets.

Analysis

IESO

The IESO is presently classified as an OGO and prepares its standalone, general purpose financial statements in accordance with PSAS, which is consistent with the basis of presentation required for purposes of consolidating the IESO into the GRE. ~~Under PSAS, the IESO would also have the option of reporting based on IFRS. If the IESO were classified as a GBE, it would also report based on IFRS. Since the IESO has rate regulated balances, it would likely report using IFRS14, consistent with the IFRS related information provided by both Hydro One and OPG which are rate regulated.~~

Current State

Effective January 1, 2016, the IESO adopted on a retrospective basis a new accounting policy that requires its market-settlement activities[2] to be reflected in the financial statements. Under the new policy, the assets and liabilities recognized on the IESO's statement of financial position relating to the IESO-administered markets include cash, amounts due from market participants, interest receivable, revolving line of credit, HST receivable, amounts due to market participants and other liabilities. The IESO's statement of operations and accumulated surplus ~~financial statements~~ does not include the revenue and expenses of the financial transactions of market participants within the IESO-administered markets. This indicates IESO management has taken the position that the IESO is an agent, not a principal, in the IESO-administered markets and, accordingly, records revenue on a net basis.

PSAS doesn't provide any specific guidance as to how it should be determined whether an entity is acting as a principal or an agent in the context of revenue recognition, but both IFRS and US GAAP do. The relevant guidance in IFRS is as follows:

IAS 18.8

Revenue includes only the gross inflows of economic benefits received and receivable by the entity on its own account. Amounts collected on behalf of third parties such as sales taxes, goods and services taxes and value added taxes are not economic benefits which flow to the entity and do not result in increases in equity. Therefore, they are excluded from revenue. Similarly, in an agency relationship, the gross inflows of economic benefits include amounts collected on behalf of the principal and which do not result in increases in equity for the entity. The amounts collected on behalf of the principal are not revenue. Instead, revenue is the amount of commission.

IAS 18.IE21

Determining whether an entity is acting as a principal or as an agent (2009 amendment).

Paragraph 8 states that 'in an agency relationship, the gross inflows of economic benefits include amounts collected on behalf of the principal and which do not result in increases in equity for the entity. The amounts collected on behalf of the principal are not revenue. Instead, revenue is the amount of commission.' Determining whether an entity is acting as a principal or as an agent requires judgement and consideration of all relevant facts and circumstances.

An entity is acting as a principal when it has exposure to the significant risks and rewards associated with the sale of goods or the rendering of services. Features that indicate that an entity is acting as a principal include:

a) the entity has the primary responsibility for providing the goods or services to the customer or for fulfilling the order, for example by being responsible for the acceptability of the products or services ordered or purchased by the customer;
b) the entity has inventory risk before or after the customer order, during shipping or on return;

[2] The IESO itself does not buy or sell electricity. It administers the wholesale electricity market by authorizing market participants, publishing system forecasts and market information, producing statements and invoices, and performing financial settlement transactions for the markets.

c) the entity has latitude in establishing prices, either directly or indirectly, for example by providing additional goods or services; and

d) the entity bears the customer's credit risk for the amount receivable from the customer.

An entity is acting as an agent when it does not have exposure to the significant risks and rewards associated with the sale of goods or the rendering of services. One feature indicating that an entity is acting as an agent is that the amount the entity earns is predetermined, being either a fixed fee per transaction or a stated percentage of the amount billed to the customer.

Application of the above IFRS guidance supports the conclusion that the IESO is an agent in the market-settlement process and, therefore, recognizing revenue on a net basis is appropriate. IESO has completed a more thorough analysis of their position that it is an agent in the settlement of the market and reconsideration of that decision is not the topic of this memo.

The IESO is required by legislation to carry out its operations without the purpose of gain or profit~~, making the IESO a self-sustaining entity~~. Other than the amounts the IESO is permitted to keep in accordance with its own rate order from the OEB to cover its internal operating costs, which makes it a self-sustaining entity, all amounts the IESO receives from market participants must be paid out to other market participants who have regulatory or contractual rights to receive payments from those collected amounts.

In the context of applying the principal vs. agent guidance, the amounts the IESO is permitted to keep in accordance with its own rate order from the OEB to cover its internal operating costs are recorded as system fee revenue in the IESO's financial statements. System fees are not characterized as being part of the IESO-administered markets. Accordingly, any references to the IESO-administered markets in this document exclude system fees.

As stated in the IESO financial statements, the IESO-administered markets is a balancing system, and as such, the net position of market accounts will ultimately settle to a nil balance in accordance with market rules. However, due to settlement timing differences, the net position of market accounts will not be in a nil position from a cash flow perspective at the end of any reporting period.

This raises a question as to how a cash flow deficit related to the market-settlement process should be accounted for in the financial statements of the IESO. Two approaches are as follows:

1. The cash flow deficit is recognized as an asset when it occurs and then derecognized in the period in which it is settled. Under this approach, the net position of market accounts will always be in a nil balance in the IESO's balance sheet and there is no impact on the IESO's income statement.
2. The cash flow deficit is recognized as a charge to income when it occurs and then reversed through income in the period in which it is settled.

IESO management has concluded it is appropriate to recognize existing cash flow deficits arising from the market-settlement process as an asset. This is evidenced by the fact the components of the market accounts net to a nil closing balance at year end in the IESO's financial statements for the year ended December 31, 2016. These financial statements also explicitly state there is no impact to the accumulated deficit or revenues and expenses as the IESO is not party to these transactions as per the market rules.

Although the IESO's financial statements include the following accounting policy on regulated assets and liabilities, the asset relating to the cash flow deficit discussed above has not been specifically labeled as a regulated asset:

As a rate-regulated entity, the IESO, in appropriate circumstances establishes regulated assets or liabilities and thereby defers the impact on the statement of operations of certain expenses or revenues because they are probable to be collected or refunded to market participants through future billings. The IESO has applied guidance from United States Generally Accepted Accounting Principles (US GAAP) Topic 980, Regulated Operations, in this policy.

The only two balances specifically labeled as being recognized in the IESO's financial statements under the above policy are (i) unrecovered smart metering expenses, and (ii) unrecovered PSAB transition items. IESO management has, however, indicated in discussions that the cash flow deficit/surplus associated with the original variance account is also considered to be a regulated asset/liability under ASC 980 even though it has been presented as part of the Market Accounts balances in the statement of financial position.

Impact of FHP

The implementation of the FHP results in the IESO establishing and maintaining the FHP variance account to track the resulting cash flow deficit, the balance of which is defined for the purposes of the FHP Act to be a 'regulatory asset'.

The act of legislating the balance in the FHP variance account to be a regulatory asset does not, in and of itself, result in its recognition as an asset for accounting purposes. Accordingly, the primary issue at hand is whether the legislated regulatory asset is eligible for recognition as an asset in both the standalone financial statements of the IESO and the consolidated financial statements of the GRE. As discussed in a later section, the conclusion reached with respect to ~~When~~ the standalone financial statements of the IESO ~~are considered in isolation, the impact of the conclusion reached on this issue would be eliminated to the extent the regulatory asset has been sold to OPG Trust by the end of the reporting period. The conclusion remains significant, however, due to its~~may impact ~~on~~ the consolidated financial statements of the GRE~~, which is discussed in a later section~~.

As noted above, the IESO has adopted a policy to apply the U.S. GAAP guidance in ASC 980 in connection with accounting for rate regulated assets. IESO management has applied this guidance and concluded the regulatory asset created by the FHP can be recognized as a regulated asset for accounting purposes in the financial statements of the IESO. The IESO's auditors, KPMG, concur with this position, as evidenced from the following excerpt from a draft letter issued by KPMG on May 16, 2017 (the KPMG Letter):

We have considered the foregoing analysis and management's conclusion. We concur that the variance account created by Bill 132 will meet the criteria for the recognition of a regulatory asset stated in ASC 980-340-25-1. Furthermore, we have also considered the criteria stated in ASC 980-10-15-2 and believe that IESO should be allowed to continue to use the guidance for regulated operations of Topic 980.

Commented [NPP1]: Insert reference to consistency with previous treatment of OPA (2013 Terry Gabriel email).

Recognizing the regulatory asset as a regulated asset for accounting purposes in the financial statements of the IESO in accordance with ASC 980 is appropriate only if all of the following conditions are met:

a) the operations of the IESO (or the relevant portion thereof) are within the scope of ASC 980 based on the criteria in ASC 980-10-15-2,
b) the FHP variance account meets the criteria in ASC 980-340-25-1 for capitalization as a regulatory asset, and
c) ASC 980 is an appropriate source of GAAP under PSAS.

Each of these items is addressed in turn:

a) Scope of ASC 980

ASC 980-10-15-2 states the following:

The guidance in the Regulated Operations Topic applies to general-purpose external financial statements of an entity that has regulated operations that meet all of the following criteria:

a) The entity's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party regulator or by its own governing board empowered by statute or contract to establish rates that bind customers.
b) The regulated rates are designed to recover the specific entity's costs of providing the regulated services or products. This criterion is intended to be applied to the substance of the regulation, rather than its form. If an entity's regulated rates are based on the costs of a group of entities and the entity is so large in relation to the group of entities that its costs are, in essence, the group's costs, the regulation would meet this criterion for that entity.
c) In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume that rates set at levels that will recover the entity's costs can be charged to and collected from customers.

The Office of the Auditor General of Ontario (OAGO) does not believe the IESO meets the criteria to be within the scope of ASC 980. This is evidenced by the following statement included in *Legislated Accounting Included in Bill 132, Including the Proposed Ontario Fair Hydro Plan Act, 2017 – Submission to Standing Committee on Justice Policy* dated May 25, 2017 (OAGO Submission):

Moreover, IESO is not engaging in rate-regulated activities, and the contracts under its administration were never subject to rate regulation.

Ontario's electricity industry is rate-regulated. Rates paid by electricity consumers are regulated by the OEB such that over time rates equal cost plus, where applicable, a reasonable rate of return. Providing electricity to consumers involves several different parties, including generators, transmitters, distributors and the IESO. Some of these parties engage in rate-regulated activities, some do not.

The IESO serves an important and active role in Ontario's electricity market, irrespective of the fact that it records market transactions on net basis in the financial statements. The IESO balances the supply of and demand for electricity in Ontario and directs its flow across the province's transmission lines, oversees the wholesale electricity market, where the price of energy is determined, and administers the rules that govern the market. In determining whether the IESO has regulated operations, the focus is on whether the rates the IESO charges its customers are regulated and not whether the costs incurred by the IESO are regulated (although a number of them are).

The following supports the position of IESO management that the above criteria are met and the IESO's operations are within the scope of ASC 980:

The entity's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party regulator or by its own governing board empowered by statute or contract to establish rates that bind customers.
As noted in a research paper issued in 2001 by a taskforce established by the CICA (the CICA Research Report), there is a view held by some that, with respect to rate regulation in the public sector, there is usually no *independent, third-party regulator* because the government controls both the enterprise and the regulatory agency. Accordingly, it is important to point out that independence is not required to meet the criteria in ASC 980-10-15-2(a). The requirement is an *independent, third-party regulator* or *its own governing board empowered by statute or contract*. In fact, paragraph 64 of the Basis for Conclusions for FAS 71, ACCOUNTING FOR THE EFFECTS OF CERTAIN TYPES OF REGULATION (which is the pre-codified version of ASC 980), specifically states that the criteria in ASC 980-10-15-2(a) was modified so as not to preclude application by government utilities with rates set by their own governing board. The OEB has been established by the Province to be Ontario's independent energy regulator and, therefore, is considered the governing board of the IESO. The OEB's mandate and authority come from the *Ontario Energy Board Act, 1998*, the *Electricity Act, 1998*, and a number of other provincial statutes. As described in more detail below, the IESO's rates are established in accordance with these statutes. In the context of its market-settlement role, the IESO's 'customers' are the Market Participants buying electricity from the IESO-controlled grid. All Market Participants are required to execute a Participation Agreement with the IESO. In accordance with Article 3.1 of the standard Participation Agreement, each Market Participant has agreed to be bound by and to comply with all of the provisions of the Market Rules, which includes the following: *Chapter 9, Section 1.2.3* *Notwithstanding any other provision within the market rules, market participants shall remit to the IESO such applicable settlement amounts and other payments as may be required under the relevant provisions of the Electricity Act, 1998, the Ontario Energy Board Act, 1998 and any related regulations, as amended from time to time.* The IESO's operations meet the criteria in ASC 980-10-15-2(a) because the rates charged by the IESO are based on statutes. As discussed in more detail below, the rates are designed to recover the IESO's

expenditure for providing the regulated services and the pass-through costs related to the energy purchased from the generators and to government programs.

The main components of invoices issued by the IESO to Market Participants are as follows:

- Commodity Charges
  - Hourly Ontario Energy Price
  - Global Adjustment
- Wholesale Market Service Charges
  - IESO Administration Fee
  - Uplift Charges
  - Rural and Remote Electricity Rate Protection
- Wholesale Transmission Charges
- Debt Retirement Charge

Each component is determined as follows:

Commodity Charges

In accordance with Section 25.33(1) of the Electricity Act, the IESO is required to price electricity to recover costs:

Electricity pricing to reflect costs

IESO to make adjustments

25.33 (1) The IESO shall, through its billing and settlement systems, make adjustments in accordance with the regulations that ensure that, over time, payments by classes of market participants in Ontario that are prescribed by regulation reflect,

a) amounts paid to generators, the Financial Corporation and distributors, whether the amounts are determined under the market rules or under section 78.1, 78.2 or 78.5 of the Ontario Energy Board Act, 1998;

b) amounts paid to entities with whom the IESO has a procurement contract, as determined under the procurement contract; and

c) such amounts as may be prescribed that are paid or incurred by the IESO in relation to the Ontario Fair Hydro Plan Act, 2017. *2014, c. 7, Sched. 7, s. 8 (1); 2017, c. 16, Sched. 1, s. 43 (2).*

Market Participants are initially invoiced for consumed electricity at the Hourly Ontario Energy Price (HOEP), which is calculated as the average of the twelve market clearing prices set in each hour. In accordance with Section 25.33(5) of the Electricity Act, the IESO is required to track differences between the amounts invoiced to Market Participants at HOEP and actual costs incurred in a variance account:

Variance accounts

(5) The IESO shall establish and maintain such variance accounts as may be necessary to record all amounts payable or receivable by it under this section or under the Ontario Fair Hydro Plan Act, 2017. *2004, c. 23, Sched. A, s. 37; 2014, c. 7, Sched. 7, s. 8 (5); 2017, c. 16, Sched. 1, s. 43 (5).*

Sections 3.1 and 3.3 of the OEB Act require the variance account to be settled over a twelve-month period, which is done through the Global Adjustment on a Market Participant's invoice:

Annual rate plan and separate rates for situations prescribed by regulation

(3.1) The Board shall, in accordance with rules prescribed by the regulations, approve or fix separate rates for the retailing of electricity,

a) to such different classes of consumers as may be prescribed by the regulations; and

b) for such different situations as may be prescribed by the regulations. 2004, c. 23, Sched. B, s. 14 (1).

Rates to reflect cost of electricity

(3.3) In approving or fixing rates under subsection (3.1),

a) the Board shall forecast the cost of electricity to be consumed by the consumers to whom the rates apply, taking into consideration the adjustments required under section 25.33 of the Electricity Act, 1998 *and shall ensure that the rates reflect these costs; and*

b) the Board shall take into account balances in the IESO's variance accounts established under section 25.33 of the Electricity Act, 1998 *and shall make adjustments with a view to eliminating those balances within 12 months or such shorter time periods as the Minister may direct. 2004, c. 23, Sched. B, s. 14 (1); 2014, c. 7, Sched. 23, s. 6 (2).*

Although the implementation of the FHP involves the deferral of costs over an extended period of time, it does not change the IESO's obligation under the OEB Act to price electricity to recover incurred costs in full. The deferral relating to the FHP is tracked in a separate variance account in accordance with Section 24(1) of the Fair Hydro Plan Act, 2017 (the FHP Act):

Variance account to be established, maintained

24 (1) The IESO shall establish and maintain a variance account in which it records the following:

1. The IESO deferral for each month.

2. All payments received by the IESO resulting from the exercise of the right of recovery under section 25 and any transfer under section 26.

3. Such other adjustments as may be prescribed, including adjustments in respect of the period that commences on or after May 1, 2017 and before the day this section comes into force.

The right for the IESO to recover the variance account is set out in Section 25 of the FHP Act:

Regulatory asset established

25 (1) Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Board to set rates

(2) Subject to subsection (3), the Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for the IESO to recover the balance recorded in the variance account.

Limitation

(3) The IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2021.

Wholesale Market Service Charges

The IESO charges Market Participants administrative fees to operate the wholesale electricity market and manage the electric power system in Ontario. These fees are required to be approved by the OEB under Section 25(1) of the Electricity Act on an annual basis.

Review of requirements and fees

25 (1) The IESO shall, at least 60 days before the beginning of each fiscal year, submit its proposed expenditure and revenue requirements for the fiscal year and the fees it proposes to charge during the fiscal year to the Board for review, but shall not do so until after the Minister approves the IESO's proposed business plan for the fiscal year under section 24. 2014, c. 7, Sched. 7, s. 3 (1).

Uplift charges

Commented [LAP2]: Uplift charges are comprised of a number of things. To ask IESO for help to summarize succinctly.

Need details

RRRP charges

The RRRP program provides a rate subsidy to rural and remote residential customers who face higher distribution costs. Under the FHP Act, the cost of the RRRP program has shifted from ratepayers to provincial revenues and, therefore, is no longer a component of the IESO's invoice.

Wholesale Transmission Charge

This charge to LDCs and some large consumers covers the cost incurred by transmission companies to construct and maintain the high-voltage transmission lines needed to transport electricity from generating stations to LDCs or consumers. In accordance with Section 78(1) of the OEB Act, the rate for this service is approved by the OEB.

Debt Retirement Charge

When the Ontario electricity sector was restructured in April 1999, the Ontario Electricity Financial Corporation (OEFC) took on $20.9 million of stranded debt from Ontario Hydro. The OEFC services and retires the stranded debt with cash flows from a number of sources in the electricity sector, one of those currently being debt retirement charges paid by certain ratepayers (ratepayers cease paying debt retirement charges April 1, 2018).

Under Regulation 494/01, DEBT RETIREMENT CHARGE – ADMINISTRATION, the IESO is appointed as a collector of debt retirement charges (Section 2) and is required to collect a debt retirement charge on behalf of the OEFA from every entity who withdraws electricity from the IESO-controlled grid (Section 6(2)). The prescribed rate for the debt retirement charge is set out in Regulation 493/01, DEBT RETIREMENT CHARGE – RATES AND EXEMPTIONS.

The regulated rates are designed to recover the specific entity's costs of providing the regulated services or products.

As discussed in detail above, the IESO is required by statute to set prices to recover costs.

In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume that rates set at levels that will recover the entity's costs can be charged to and collected from customers.

As discussed in detail above, the IESO is required by statute to set prices to recover costs.

The majority of the monthly amount invoiced by the IESO to Market Participants represents a direct flow through of costs as they are incurred, but there are certain types of costs for which recovery may be deferred. For those deferred costs, the IESO is dependent on the future consumption of electricity by rate-payers to fully recover costs.

Based on relatively short recovery periods, it is reasonable to assume there will be sufficient demand to recover the deferred costs that currently exist. Specifically:

- RPP and RRRP variance accounts are recovered over twelve months in accordance with Section 3.3(b) of the OEB Act. *(Note - Under the FHP, responsibility for the cost of the RRRP program is being transferred to the Provincial budget and rate-payers will no longer be directly charged)*

Commented [LAP3]: To confirm with Energy if all costs have shifted.

Commented [LAP4]: CV to determine if there is anything else to add from IESO's analysis.

Commented [LAP5]: To confirm with Energy if all costs have shifted.

- The Smart Metering Entity charge is recovered over the period from May 1, 2013 to October 31, 2018 in accordance with ~~XX~~OEB Decision and Order EB-2015-0298.

Under the FHP, responsibility for the cost of the OESP program is being transferred to the Provincial budget and rate-payers will no longer be charged for the cost of this program. The OESP variance account, which is currently in a credit balance, will be used to fund the cost of the program until depleted.

Although the timing of the recovery of the FHP variance account has not yet been established by the OEB, the wording and intent of the proposed legislation is clear that it is intended by law to be recoverable over a period of 30 years. Given the nature and extent of customer demand for the power generated and distributed in Ontario, both at this time and projected in the future, it is reasonable to conclude that there will be sufficient demand to recover the regulatory asset. This conclusion, which is supported by Figure 19: Ontario's Forecast Electricity Production in Achieving Balance – Ontario's Long-Term Energy Plan, will need to be continually evaluated throughout the recovery period. The willingness of unrelated third parties to fund the purchase of the regulatory asset from the IESO by OPG Trust also demonstrates the belief that sufficient demand will exist to permit its future recovery.

In addition to the general scope requirements of ASC 980 discussed above, specific consideration is made as to whether the following scope exception in ASC 980-10-15-7 applies to the FHP:

The guidance in the Regulated Operations Topic does not apply to any of the following transactions:

a) *Accounting for price controls that are imposed by governmental action in times of emergency, high inflation, or other unusual conditions, or accounting for contracts in general. However, if the terms of a contract between an entity and its customer are subject to regulation and the criteria of paragraph 980-10-15-2 are met with respect to that contract, the guidance in this Topic shall apply.*

Based on the discussion below, this scope exemption is not applicable to the FHP.

Electricity cost reductions resulting from the FHP do not represent price controls imposed by the Province in a time of emergency, high inflation, or other unusual conditions. As noted in the 2017 budget speech, the 2017 Ontario Budget – A Stronger, Healthier Ontario, the FHP is a fairer way to share the costs of building a cleaner, more modern and reliable electricity generation system. In particular, the budget speech states:

Commented [NPP6]: Navigant report/other support

Recognizing that existing electricity infrastructure is expected to last for decades to come, the Province would refinance the cost of those capital investments to ensure that system costs are more equitably distributed over time.

The following paragraph from the Basis for Conclusion for FAS 71 also provides some insight as to the specific concerns relating to government imposed price controls that resulted in the scope exception in ASC 980-10-15-7(a):

70. The first scope limitation of paragraph 8—excluding accounting for price controls imposed by governmental action in times of emergency, high inflation, or other unusual conditions—was included in

the Discussion Memorandum. Price controls imposed in periods of unusual conditions are not expected to be applied consistently over an extended period. Indeed, their duration usually is limited by statute. In that environment, assurance of future benefits cannot be provided by probable future actions of the price control regulator because that regulator may not exist at a given future date.

The implementation of the FHP does not create the type of environment described in FAS 71.BC70 as it is governed by the OEB and there is no concern the OEB will not continue to exist.

The second part of the scope exception in ASC 980-10-15-7(a) relating to the accounting for contracts is further explained in the following paragraph from the Basis for Conclusion for FAS 71:

71. Accounting for contracts in general was also excluded from the scope of the Discussion Memorandum. The economic effects of cost reimbursement contracts are in some respects similar to the economic effects of the type of regulation addressed by this Statement. However, most contracts tend to be relatively short-term, whereas regulation of enterprises covered by this Statement is expected to continue beyond the foreseeable future. The Board noted that other authoritative literature addresses contract accounting and concluded that it should exclude the general issue of contract accounting from the scope of this Statement.

Although the impetus for the FHP relates to term of contracts the IESO has entered into with certain generators, the FHP does not change the existing accounting for these contracts.

Application of ASC 980-340-25-1 to the regulatory asset

ASC 980-340-25-1 states the following:

Rate actions of a regulator can provide reasonable assurance of the existence of an asset. An entity shall capitalize all or part of an incurred cost that would otherwise be charged to expense if both of the following criteria are met:

a) *It is probable (as defined in Topic 450) that future revenue in an amount at least equal to the capitalized cost will result from inclusion of that cost in allowable costs for rate-making purposes.*
b) *Based on available evidence, the future revenue will be provided to permit recovery of the previously incurred cost rather than to provide for expected levels of similar future costs. If the revenue will be provided through an automatic rate-adjustment clause, this criterion requires that the regulator's intent clearly be to permit recovery of the previously incurred cost.*

A cost that does not meet these asset recognition criteria at the date the cost is incurred shall be recognized as a regulatory asset when it does meet those criteria at a later date.

The following supports the IESO's position that the FHP variance account meets the above criteria for capitalization:

It is probable (as defined in Topic 450) that future revenue in an amount at least equal to the capitalized cost will result from inclusion of that cost in allowable costs for rate-making purposes.
The following excerpts from the FHP Act make it clear that the IESO is entitled to recover the regulatory asset through rates in the future:

Variance account to be established, maintained

24 (1) The IESO shall establish and maintain a variance account in which it records the following:

1. The IESO deferral for each month.

2. All payments received by the IESO resulting from the exercise of the right of recovery under section 25 and any transfer under section 26.

3. Such other adjustments as may be prescribed, including adjustments in respect of the period that commences on or after May 1, 2017 and before the day this section comes into force.

Recording determinative

(2) Subject to the correction of any obvious error by the IESO, its recording of the balance in the variance account is determinative of the balance as of the time of the recording.

Regulatory asset established

25 (1) Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Board to set rates

(2) Subject to subsection (3), the Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for the IESO to recover the balance recorded in the variance account.

Limitation

(3) The IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2021.

The recovery of the regulatory asset is, however, dependent on future consumption of electricity by rate-payers. Although the timing of the recovery of the regulatory asset has not yet been established by statute, the recovery period is intended to be 30 years. Given the nature and extent of customer demand for the power generated and distributed in Ontario, both at this time and projected in the future, it is reasonable to conclude that it is probable there will be sufficient demand in the future to recover the regulatory asset. This conclusion, which is supported by Figure 19: Ontario's Forecast Electricity Production in Achieving Balance – Ontario's Long-Term Energy Plan (Appendix B), will need to be continually evaluated throughout the recovery period. The willingness of unrelated third parties (e.g., investors) to fund the purchase of the regulatory asset from the IESO by OPG Trust also demonstrates the belief that sufficient demand will exist to permit its future recovery.

Based on available evidence, the future revenue will be provided to permit recovery of the previously incurred cost rather than to provide for expected levels of similar future costs. If the revenue will be provided through an automatic rate-adjustment clause, this criterion requires that the regulator's intent clearly be to permit recovery of the previously incurred cost.

Based on the above excerpts from the FHP Act, it is clear the IESO will be recovering costs previously incurred rather than providing for expected levels of similar future costs.

ASC 980 is an acceptable source of guidance under PSAS[3]

In assessing whether ASC 980-340-25-1 is an acceptable source of guidance under PSAS, Paragraph 5 of PSAS 1150, GENERALLY ACCEPTED ACCOUNTED PRINCIPLES, states the following:

[3] If the accounting for GBEs were to change in the future such that line by line consolidation is required using PSAS, the importance of this consideration increases significantly.

When the primary sources of GAAP do not deal with the accounting and reporting in financial statements of transactions or events encountered by the public sector reporting entity, or additional guidance is needed to apply a primary source to specific circumstances, the selection of an appropriate accounting policy requires the exercise of professional judgment. In these circumstances, a public sector reporting entity should adopt accounting policies and disclosures that are consistent with:

a) the primary sources of GAAP; and

b) the application of the concepts described in FINANCIAL STATEMENT CONCEPTS, Section PS 1000.

Related guidance is also provided in PSAS 1150.18-.20:

Paragraphs PS 1150.19-.24 identify some of the other sources that a public sector reporting entity might consult to assist in selecting accounting policies and disclosures that comply with paragraph PS 1150.05.

Pronouncements issued by other bodies authorized to issue accounting standards may be useful sources to consult. For example, accounting pronouncements published with the authority of the Canadian Accounting Standards Board (AcSB), International Accounting Standards Board (IASB), US Federal Accounting Standards Advisory Board (FASAB), US Governmental Accounting Standards Board (GASB), or International Public Sector Accounting Standards Board (IPSASB) are often important sources to consult on matters not covered by primary sources of GAAP or for assistance in applying a primary source of GAAP to specific circumstances.

When a public sector reporting entity chooses to consult a source described in paragraph PS 1150.19, it applies professional judgment and evaluates the source in the context of the relative manner in which the standard setter requires its pronouncements to be applied, as well as in the context of the related pronouncement. When an accounting standard setter does not have a conceptual framework that is similar to the concepts referred to in paragraph PS 1150.05(b), the public sector reporting entity needs to ensure that the selected source is consistent with those concepts.

Since PSAS does not specifically address the treatment of costs incurred that will be recovered through regulatory operations in future periods, the IESO would not be precluded from following the guidance in ASC 980-340-25-1. However, PSAS 1000.05 makes it clear that in order to do so, it must first be demonstrated that such guidance is consistent with the application of the concepts described in PSAS 1000, FINANCIAL STATEMENT CONCEPTS.

The relevant guidance in PSAS 1000 relating to the recognition of an asset is as follows:

PSAS 1000.35

Assets are economic resources controlled by a government as a result of past transactions or events and from which future economic benefits are expected to be obtained.

PSAS 1000.36

Assets have three essential characteristics:

a) they embody future economic benefits that involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows, or to reduce cash outflows;

b) *the public sector entity can control the economic resource and access to the future economic benefits; and*
c) *the transaction or event giving rise to the public sector entity's control has already occurred.*

PSAS 1000.37

An item is not an asset of a government if it lacks one or more of the essential characteristics listed in the preceding paragraph. Thus, for example, an item does not qualify as an asset of a government if the item involves:

a) *no future economic benefit;*
b) *future economic benefit, but the government cannot obtain it; or*
c) *future economic benefit that the government may obtain, but the events or circumstances that give the government control of the benefit have not yet occurred*

The following supports the IESO's position that the regulatory asset possesses the three essential characteristics of an asset:

Embody future economic benefits that involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows, or to reduce cash outflows

The following excerpts from the FHP Act make it clear that the IESO is entitled to recover the regulatory asset through rates in the future:

Variance account to be established, maintained

24 (1) The IESO shall establish and maintain a variance account in which it records the following:

1. The IESO deferral for each month.

2. All payments received by the IESO resulting from the exercise of the right of recovery under section 25 and any transfer under section 26.

3. Such other adjustments as may be prescribed, including adjustments in respect of the period that commences on or after May 1, 2017 and before the day this section comes into force.

Recording determinative

(2) Subject to the correction of any obvious error by the IESO, its recording of the balance in the variance account is determinative of the balance as of the time of the recording.

Regulatory asset established

25 (1) Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Board to set rates

(2) Subject to subsection (3), the Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for the IESO to recover the balance recorded in the variance account.

Limitation

(3) The IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2021.

Accordingly, the regulatory asset, by statute, has the capacity to provide future cash inflows.

While perhaps obvious, paragraph 13 of PSAS 3210, ASSETS, confirms the generation of future cash flows represents a future economic benefit:

The future economic benefits embodied in an asset may also be in the form of generating future cash inflows. Cash inflows benefit the public sector entity because cash can be used to purchase or to provide goods and services, redistribute wealth or settle liabilities. Benefits in the form of cash inflows relate to resources, such as loans receivable, inventory for resale and

portfolio investments. Also, some public sector resources generate cash inflows because they have user fees associated with them.

The ability of the regulatory asset to generate future cash flows is dependent on the future consumption of electricity by rate-payers. Although the timing of the recovery of the regulatory asset has not yet been established by statute, the recovery period is intended to be 30 years. Given the nature and extent of customer demand for the power generated and distributed in Ontario, both at this time and projected in the future, sufficient demand is expected to exist in the future to recover the regulatory asset. This conclusion, which is supported by Figure 19: Ontario's Forecast Electricity Production in Achieving Balance – Ontario's Long-Term Energy Plan, will need to be continually evaluated throughout the recovery period. The willingness of unrelated third parties to fund the purchase of the regulatory asset from the IESO by OPG Trust also demonstrates the belief that sufficient demand will exist to permit its future recovery.

The public sector entity can control the economic resource and access to the future economic benefits

Paragraph 16 of PSAS 3210, ASSETS, states the following:

A public sector entity controls the economic resource and access to the future economic benefits when it:

- *a) can benefit from the economic resource through its capacity to provide goods and services, to provide future cash inflows or to reduce cash outflows;*
- *b) can deny or regulate access to those benefits by others; and*
- *c) is exposed to the risks associated with the economic resource.*

The IESO can benefit from the regulatory asset through its capacity to provide future cash inflows in one of two ways:

1. *Collection through future rates*

Section 25 of the FHP gives the IESO the right to recover the regulatory asset through future rates:

Regulatory asset established

25 (1) Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Board to set rates

(2) Subject to subsection (3), the Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for the IESO to recover the balance recorded in the variance account.

2. *Sale to a financing entity*

Section 26 of the FHP Act permits the IESO to sell the regulatory asset:

Commented [LAP7]: CV - Are there other examples to provide as analogies – anything in tangible capital assets?

.31 *When conditions indicate that a tangible capital asset no longer contributes to a government's ability to provide goods and services, or that the value*

.07 *When there has been a loss in value of a portfolio investment that is other than a temporary decline, the investment should be written down to recognize the loss. The write-down should be included in the statement of operations. In the case of an item in the fair value category, a reversal of any net remeasurements should be reported in the statement of remeasurement gains and losses.*

26 (1) The IESO may from time to time, in accordance with this Act and the regulations, transfer a specified portion of the regulatory asset to a financing entity in accordance with this section.

Agreement

(2) An agreement between the IESO and a financing entity in relation to the transfer of a specified portion of the regulatory asset shall provide for consideration of a payment by the financing entity to the IESO in an amount equal to the amount of the specified portion.

Effect of payment

(3) Upon receipt by the IESO of the payment by the financing entity,

(a) the balance in the variance account shall be reduced by the amount of the payment;

(b) the regulatory asset shall be adjusted accordingly;

(c) the financing entity shall acquire a corresponding investment interest; and

(d) the IESO shall retain no further right, title or interest in the corresponding investment interest.

Since (a) the statutory right to recover the regulatory asset belongs solely to the IESO, and (b) the IESO is permitted, but not required, to sell the regulatory asset, the IESO can deny or regulate access to the future economic benefits of the regulatory asset by others.

The IESO is exposed to the risks associated with the regulatory asset, with the primary risk being that collection through the mechanism set out in Section 25 of the FHP Act is dependent on the future consumption of electricity by rate-payers.

The above analysis supports the position that the IESO controls the regulatory asset and access to the future economic benefits.

In reaching this conclusion, consideration was given to the following excerpt included on Page 37 of the 2008 Annual Report of the OAGO:

With regard to the second characteristic, we simply point again to the legacy of the former Ontario Hydro and its stranded debt. This in our view provides concrete evidence that even in monopoly situations governments do not have sufficient assurance that an enterprise will generate enough profits in future years to recover all of its past costs.

Although there needs to be sufficient assurance regarding the recovery of past costs, all relevant facts and circumstances need to be taken into consideration. Accordingly, the stranded debt of Ontario Hydro can be a relevant to the analysis, but not determinative on its own. As noted in the previous section, the recoverability of past costs will be continually assessed.

The transaction or event giving rise to the public sector entity's control has already occurred

When evaluating whether a transaction or event gives rise to control, the following guidance from PSAS 3210, ASSETS, provides helpful guidance:

.26
The past transaction or event that gives rise to control of an economic resource resulting from exchange agreements or contracts usually occurs at the point of exchange. This arises when substantially all the benefits and risks of ownership have been transferred to the public sector entity and normally coincides with the disbursement of funds, exchange of other assets or assumption of liabilities.
.28
The existence of a law, by-law or policy in relation to a particular program is not a past transaction or event that gives rise to control of an economic resource. Control does not exist until the underlying event occurs.
.29

The past transaction or event giving rise to control of an economic resource must have occurred by the financial statement date. Legislation having retroactive application cannot create a past transaction or event. Any economic resources related to that legislation would be accounted for in the current and relevant future periods, not in the period of the effective date of the legislation.

In the case of the regulatory asset, the above guidance in PSAS 3210 makes it clear that it is not the statute itself that is the transaction or event giving rise to the asset, it is the incurrence of costs for which recovery is provided for under statute. Accordingly, control over the economic benefits of the regulatory asset occurs when the IESO incurs a cash flow deficit that is recorded in the FHP variance account in accordance with Section 24(1) of the FHP Act:

24 (1) The IESO shall establish and maintain a variance account in which it records the following:

1. The IESO deferral for each month.

2. All payments received by the IESO resulting from the exercise of the right of recovery under section 25 and any transfer under section 26.

3. Such other adjustments as may be prescribed, including adjustments in respect of the period that commences on or after May 1, 2017 and before the day this section comes into force.

At this point in time, the IESO has incurred a cash outflow for which it is entitled to recover under Section 25 of the FHP Act:

Regulatory asset established

25 (1) Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Board to set rates

(2) Subject to subsection (3), the Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for the IESO to recover the balance recorded in the variance account.

The following excerpt from the IFRS Staff Paper on Rate-Regulated Activities prepared for discussion at the June 2017 IASB meeting presents a consistent view and dismisses the potential dissenting view that the transaction or event giving rise to the IESO's control is the future consumption of electricity by rate-payers:

A right arises from the rate-adjustment mechanism if the entity has already partially or fully fulfilled a regulatory requirement (past event) but the current regulated rate does not yet reflect the compensation that the entity is entitled to in exchange. Even though the entity cannot compel its customers to buy the regulated goods or services, the entity's right to charge an increased future regulated rate has the potential to produce for the entity an inflow of economic benefits that are not available to other parties. That right will be consumed as the entity includes the rate increase in future regulated rates and will lead to an inflow of economic benefits if customers pay the increased future regulated rate for the future delivery of goods or services.

In April 2011, Torys LLP issued a letter to OPG relating to the legal basis of OPG's regulatory deferral and variance accounts which, as evidenced by the following excerpts, also takes the position that the transaction or event giving rise to the asset is the incurrence of costs for which recovery is provided for under statute:

OPG's deferral and variance accounts are established either by regulation or by orders of the Ontario Energy Board (the "OEB") through the proper exercise of its jurisdiction as the administrative tribunal responsible for regulating the electricity industry in Ontario. The establishing of such an account pursuant to regulation or the granting of approval by the OEB to establish such an account confers upon OPG a right to record amounts in the account and to account for the amounts recorded on the basis that they have been prudently incurred.

The OEB has broad jurisdiction in setting payment amounts for OPG and it would not be reasonable for the legislature to

have given the OEB the legislative power to authorize the establishment of accounts without also giving the OEB the power to dispose of the amounts recorded in such accounts, including in circumstances where there is no future output. Moreover, to interpret the applicable legislation in a manner that only allows for payment amounts on a volumetric basis is in our view unreasonable because it would not be consistent with the rules of statutory interpretation.

Another potential dissenting view is contained on page 37 of the 2008 Annual Report of the OAGO:

With regard to the third characteristic, we do not believe that a rate-regulation decision can be considered a transaction or event giving rise to an asset or obligation because, as stated above, from the level of the government's consolidated financial statements such a decision is an internal event between two government-controlled entities. An equivalent analysis for rate-regulated liabilities leads to the same conclusion. PSAB standards preclude the inclusion of both gains and losses from such inter-company transactions. Therefore, our contention is that, at the consolidated financial statement level, rate-regulated assets and liabilities have no place and should be removed upon consolidation of the government's controlled entities.

It should be noted, however, that the OAGO's belief that a rate-regulation decision cannot be considered a transaction or event giving rise to an asset or obligation is not contrary to the IESO's position. As noted above, it is not the statute itself that is being considered the transaction or event giving rise to the asset, it is the incurrence of costs for which recovery is provided for under statute.

In addition, one could argue the creation of the relevant statutes is not an internal event from the point of view of the consolidated government. Statutes must be passed by the Legislative Assembly of Ontario to become law. Since the Legislative Assembly is comprised of elected members, it can be viewed as the government's governing body.

Concluding the regulatory asset possesses the three essential characteristics of an asset in PSAS 1000.05 then begs the question as to whether the application of the guidance in ASC 980 is even necessary in this particular situation. Consistent with the statement in ASC 980 –340-25-1 that *rate actions of a regulator can provide reasonable assurance of the existence of an asset,* ASC 980 provides guidance as to how to apply the primary source of PSAS in the regulatory environment.

In a letter from the OAGO to the Board of Directors of the IESO dated June 22, 2017 (the OAGO Letter), the OAGO makes the following statement:

The definitions of an asset in the PSAS and FASB Conceptual Framework are similar. Similar to PSAS, rate regulated deferral accounts do not generally meet the definition of an asset in the FASB's Conceptual Framework.

However, the following excerpts from the Basis for Conclusions for FAS 71 (paragraph 58 in particular), clearly support that ASC 980 is an application of, not an exception from, the basic definition of an asset in the Conceptual Framework:

Economic Effects of Regulation

56. The second threshold issue in the Discussion Memorandum was: "Does rate regulation introduce an economic dimension in some circumstances that should affect the application of generally accepted accounting principles to rate-regulated enterprises?"

57. Most respondents to the Discussion Memorandum indicated that rate regulation does introduce such an economic dimension in some circumstances. Respondents cited the cause-and-effect relationship of costs and revenues as the principal economic effect of regulation that affects accounting for regulated

enterprises. They noted that cost might be one factor used by unregulated enterprises to establish prices, but it would often not be the most important factor. Usually, prices are limited by the market. An unregulated enterprise might desire to price its goods or services at a level that would recover all costs and a reasonable profit; however, the market might not permit that price. Alternatively, an unregulated enterprise might be able to increase its prices and its profit if competition does not limit its prices. In either case, cost often is not the principal determinant of prices. In contrast, for an enterprise with prices regulated on the basis of its costs, allowable costs are the principal factor that influences its prices.

58. The economic effect cited by most respondents is the ability of a regulatory action to create a future economic benefit—the essence of an asset. For example, consider a regulated enterprise that incurs costs to repair damage caused by a major storm. If the regulator approves recovery of the costs through rates over some future period or is expected to do so, the rate action of the regulator creates a new asset that offsets the reduction in the damaged asset. The enterprise has probable future economic benefits—the additional revenue that will result from including the cost in allowable costs for rate-making purposes. The future benefits are obtained or controlled by the enterprise as a result of a past event—incurring the cost that results in the rate order. Thus, the criteria of Concepts Statement 3 for an asset are met.

The fact that many Canadian rate-regulated entities recognized regulated assets under Part V of the CPA Canada Handbook – *Pre-changeover Accounting Standards* (Part V GAAP) further supports the position that regulated assets do meet the basic definition of an asset under PSAS. Although Part V GAAP refers to rate regulation in several standards, it does not include cost capitalization guidance equivalent to ASC 980-340-25-1. It does, however, specify in paragraph 32B of Section 1100, *Generally accepted accounting principles*, that Section 1100 applies to the recognition and measurement of assets and liabilities arising from rate regulation beginning January 1, 2009. Since Section 1100.04 only permits the use of an alternate source of GAAP if it is consistent with Part V GAAP, regulated assets need to meet the basic definition of an asset under Part V GAAP in order to be recognized. The Part V GAAP definition of an asset in Section 1000, *Financial Statement Concepts* is consistent with the PSAS definition.

Commented [npp8]: And where reporting under IFRS14, ASC980 continues to be the basis for reporting such assets.

Commented [LAP9R8]: To discuss

The CICA Research Report also concluded regulated assets meet the basic definition of an asset under Part V GAAP:

In the Study Group's view, the economic benefits and obligations created by rate regulation and resulting from past transactions or events, and the changes in these amounts, meet the definition of a financial statement element set out in Handbook Section 1000.

The OAGO Letter suggests that IFRS should be consulted prior to referring to ASC 980 under PSAS's GAAP hierarchy in PSAS 1150 and points out the following:

- In 2005 the International Financial Reporting Interpretations Committee (IFRIC) indicated the US GAAP recognition criteria for regulated assets were not fully consistent with IFRS and could not be applied by analogy.
- When the question of rate regulated accounting was posed to the IFRIC again in 2008, the IFRIC noted the topic had been previously addressed and there was a well-established practice of first time IFRS adopters ceasing rate regulated accounting and removing regulatory deferral accounts from their financial statements.
- In the Basis for Conclusions on IFRS 14, IFRS 14.BC30 noted the differences in the recognition criteria between IFRS and ASC 980 resulted in almost all existing regulatory deferral accounts being derecognized upon transition to IFRS.

It should be noted, however, that the IASB's project on rate-regulated activities is still in progress and the OAGO Letter does not reference more recent and relevant activity. In September 2014, the IASB issued Discussion Paper DP/2014/02, *Reporting the Financial Effects of Rate Regulation*. The Discussion Paper presents the opposing views as to whether regulatory deferral account balances meet the definitions of an asset or a liability and specifically states the following in paragraph 5.09:

Consequently, the IASB has not formed a preliminary view on whether regulatory deferral account balances meet either the current or proposed revised Conceptual Framework definitions of an asset and a liability. It will use the input received from the responses to this Discussion Paper and the Conceptual Framework project to help it assess whether to develop any specific accounting guidance or requirements for rate-regulated activities.

In addition, the most recent paper issued by the IASB staff in June 2017 includes the following:

17. During the May 2017 Board meeting we also considered the interaction between the definitions of assets and liabilities and the characteristics of defined rate regulation (see paragraphs 5 and 6). We concluded that a combination of those characteristics suggested that the rights and obligations created by the rate-adjustment mechanism are assets and liabilities, as those terms are expected to be defined in the forthcoming revised Conceptual Framework for Financial Reporting.

The Exposure Draft ED/2015/3, *Conceptual Framework for Financial Reporting*, defines an asset as follows:

4.5 An asset is a present economic resource controlled by the entity as a result of past events.
4.6 An economic resource is a right that has the potential to produce economic benefits.

This recent activity suggests that it would be premature to assume that the IASB will conclude that regulatory deferral account balances will not meet the definitions of an asset or a liability.

Once it is determined that the regulatory asset meets the basic characteristics of an asset in PSAS 1000.36, consideration also needs to be made as to what type of asset it is. This is important because PSAS 1000.58 does not permit the recognition of intangible assets:

In the absence of appropriate public sector recognition and measurement criteria for intangibles, all intangibles, including those that have been purchased, developed, constructed or inherited in right of the Crown, are not recognized as assets in government financial statements. The intangible often called "human capital" that embodies the talent or intellectual capital of government employees is not recognized as an asset under existing accounting principles.

PSAS 1000 identifies two types of assets: financial assets and non-financial assets and provides the following commentary:

.39 Financial assets are assets that could be used to discharge existing liabilities or finance future operations and are not for consumption in the normal course of operations.

.40 A financial asset is any asset that is:

- *a) Cash*
- *b) a realizable asset that is convertible to cash;*
- *c) a contractual right to receive cash or another financial asset from another party;*
- *d) a contractual right to exchange financial instruments with another party under conditions that are potentially favourable to the government;*
- *e) an equity instrument of another entity;*
- *f) an investment in a government business enterprise or government business partnership;*
- *g) a financial claim on an outside organization or individual; or*

h) an inventory or item for sale that meets the criteria in FINANCIAL STATEMENT PRESENTATION, paragraph PS 1201.055.

.41 Non-financial assets include tangible capital assets, and other assets such as prepaid expenses and inventories of supplies.

.42 Non-financial assets are acquired, constructed or developed assets that do not normally provide resources to discharge existing liabilities, but instead:

a) are normally employed to deliver government services;
b) may be consumed in the normal course of operations; and
c) are not for sale in the normal course of operations.

PSAS 3210, ASSETS, also provides some relevant guidance:

.24 Non-financial resources include all items of a fixed or permanent nature (such as tangible capital property), claims to goods and services (such as prepaid items) and consumable goods (such as inventories of supplies). Non-financial resources also include intangibles, Crown lands and natural resources.

.25 Certain non-financial resources are, however, not given accounting recognition as assets in government financial statements. For example, all government intangibles, and all natural resources and Crown lands that have not been purchased by the government, are not given accounting recognition in government financial statements. A government's non-financial assets, as defined in FINANCIAL STATEMENT CONCEPTS, Section PS 1000, comprise the recognized non-financial resources of a government.

Although PSAS does not permit the recognition of intangibles, it also does not provide a definition of intangibles. In absence of specific guidance in PSAS as to what constitutes an intangible, U.S. GAAP is probably the most appropriate source to consult, in light of the fact that it deals specifically with regulated assets. Under U.S. GAAP, a regulated asset is not treated as an intangible. ASC 980 contains separate subsections for 'Intangibles – Goodwill and Other' and 'Other Assets and Deferred Costs' and regulated assets are included in the guidance on 'Other Assets and Deferred Costs'.

In accordance with PSAS 1201.040(a), financial assets are presented separately on the statement of financial position. The IESO classifies its regulated assets (i.e., the original variance account and the regulated assets relating to unrecovered smart metering expenses and unrecovered PSAB transition items) as financial assets. Consistent with these other regulated assets, ~~The~~ the regulatory asset created under the FHP meets the definition of a financial asset in PSAS 1000.39 since it will be available to discharge existing liabilities or finance future operations. Although the regulatory asset is not available to discharge liabilities existing at the date of the statement of financial position, that is no different than, for example, accounts receivable. ~~does not meet the criteria in PSAS 1000.40 to be a financial asset as it does not represent a current contractual right to receive cash. Accordingly, the regulatory asset is a non-financial resource. As noted above, to be recognized as an asset in the financial statements a non-financial resource cannot be an intangible.~~

~~Although PSAS does not permit the recognition of intangibles, it also does not provide a definition of intangibles. While PSAS 1000.40 provides a finite list of items that represent financial assets, the guidance in PSAS 1000.41 .42 on non-financial assets is less definitive, using words like "such as" and "normally". In absence of specific guidance in PSAS as to what constitutes an intangible, U.S. GAAP is probably the most appropriate source to consult, in light of the fact that it deals specifically with regulated assets. Under U.S. GAAP, a regulated asset is not treated as an intangible. ASC 980 contains separate subsections for 'Intangibles – Goodwill and Other' and 'Other Assets and Deferred Costs' and regulated assets are included in the guidance on 'Other Assets and Deferred Costs'. Consistent with the treatment under U.S. GAAP, the regulatory asset is categorized as an other asset under PSAS and recognized in the financial statements as a non-financial asset.~~

By recognizing the regulatory asset as a financial asset, the FHP will have a neutral impact on both the Province's net debt and accumulated deficit, which is consistent with the guidance in PSAS 1100, Financial statement objectives:

Financial statements should present information to describe the government's financial position at the end of the accounting period. Such information should be useful in evaluating:

a) the government's ability to finance its activities and to meet its liabilities and contractual obligations; and
b) *the government's ability to provide future services.*

A government's net debt is an important indicator of a government's financial position, highlighting the financial affordability of future government service provision. A net debt position represents a "lien" on the ability of the government to apply financial resources and future revenues to provide services. Non-financial assets are added to net debt to calculate the other indicator of a government's financial position — its accumulated surplus or deficit. Non-financial assets are "prepaid service potential". Reporting a government's recognized non-financial resources as part of its financial position provides information necessary for a more complete understanding of a government's debt position, financial position and future operating requirements.

Governments provide public services and redistribute wealth for a variety of social and economic purposes. To meet those objectives, governments need information about the cost of services and the affordability of services. An understanding of the extent of the financial "lien" the government has on its ability to provide future services as a result of past transactions and events is essential information. Governments also need to have an appreciation of the magnitude of the total economic resources they have on hand to deliver services. A government's net financial resources / net debt position, assessed in combination with the non-financial resources position of the government, provides a measure of the net recognized economic resources available to the government at the financial statement date to provide services in the future.

If the regulatory asset is not recognized as a financial asset, the Province's net debt will increase significantly, suggesting that the Province has a much higher future revenue requirement. This would be inaccurate, however, since the regulatory asset is going to be recovered under statute from electricity consumers, not taxpayers.

……

Debits and Credits

Based on the example provided earlier, the IESO pays the contracted power generator $400 for electricity used by the ratepayer and collects $300 from the ratepayer through their local distribution company (LDC). The $100 recovery shortfall is recorded in a variance account created by Bill 132 and deemed to be a regulatory asset. The IESO sells the regulatory asset to OPG Trust for $100 to obtain cash to make up the shortfall.

The accounting for the above transactions in the financial statements of the IESO, which are prepared in accordance with PSAS, depends on whether the regulatory asset is eligible for recognition as an asset for accounting purposes under PSAS. To avoid confusion in the remainder of this document, the term regulatory asset will refer to the defined term in the FHP Act and the term regulated asset or rate-

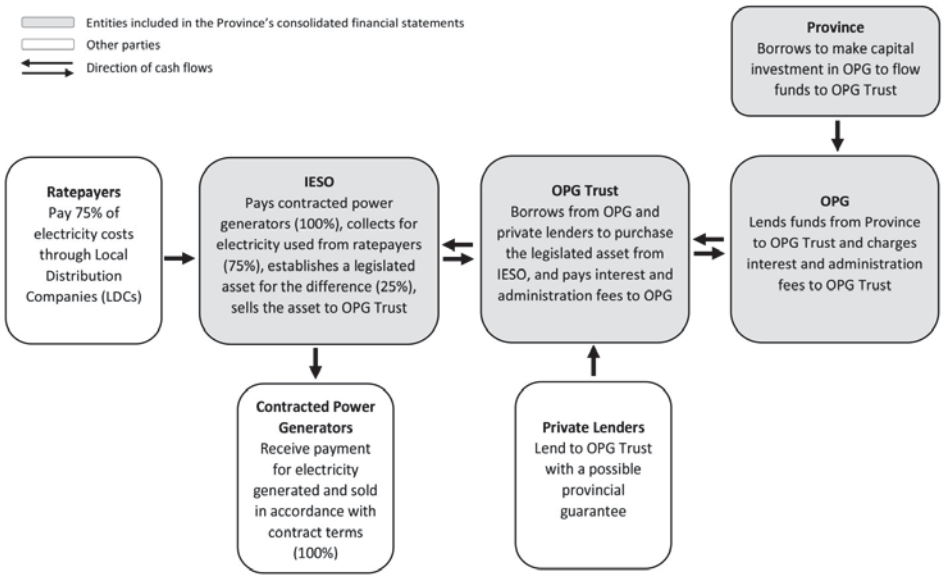
regulated asset (RRA) will refer to an asset recognized for accounting purposes. The following table illustrates the journal entries to be booked by the IESO under both scenarios:

Scenario A – Regulated Asset			Scenario B – Not a Regulated Asset		
Market Settlement					
DR	Cash	300	DR	Cash	300
DR	Asset	100	DR	Expense	100
CR	Cash	(400)	CR	Cash	(400)
Sale of Regulatory Asset to OPG Trust					
DR	Cash	100	DR	Cash	100
CR	Asset	(100)	CR	Gain	(100)

At any given point in time, the accounting result will be the same under both scenarios provided the cash shortfall has been fully funded. If a funding deficit exists, however, the deficit would be recognized as an asset under Scenario A and recognized as an expense under Scenario B. A funding deficit may arise due to, for example, temporary timing differences between the creation and sale of a regulatory asset. A funding deficit may also arise if OPG Trust (or another financing entity) ceases to purchase the IESO's regulatory assets on an on-going basis.

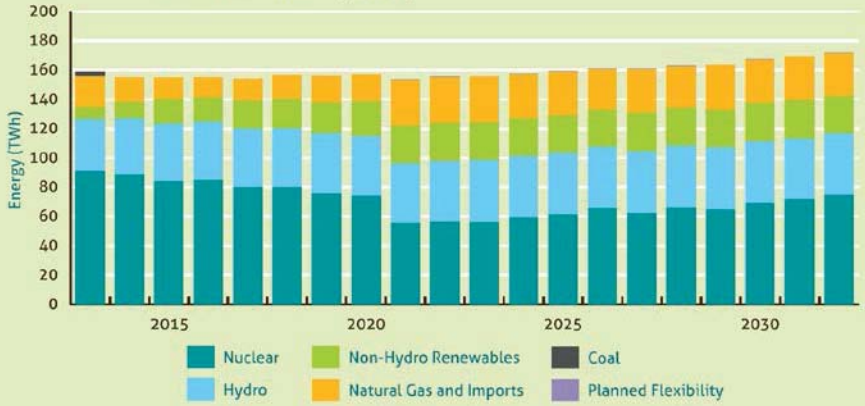
APPENDIX A

Proposed Legislated Transaction Structure
Prepared by the Office of the Auditor General of Ontario



APPENDIX B

Figure 19: Ontario's Forecast Electricity Production (TWh)



Notes: The Planned Flexibility identified in Figure 19 is required to meet peak requirements and represents less than 1 TWh of energy per year. Forecasting of electricity production includes the expectation of imports and exports of electricity in all years. Imports and exports are an important component in managing the operation of the electricity system. As a result, electricity production forecast exceeds the forecast Ontario consumer demand.

FW_ year end.rtf

From: Virani, Shyrose (TBS) []
To: Provis, Ian (TBS) [Ian.Provis@ontario.ca]
Subject: FW: year end
Date: Tuesday, April 03, 2018 14:14:57
Attachment 1: image001.gif

For your approval please.

Thanks

shyrose

From: Suzie Gignac [mailto:suzie.r.gignac@ca.ey.com]
Sent: April 2, 2018 12:22 PM
To: Virani, Shyrose (TBS)
Cc: Jeannie Kaminski
Subject: RE: year end

Hi Shyrose:
We are preparing an invoice for March as of end of last week. It is related primarily to transfer payment work we did for Ian Provis in the last two weeks and will be for approx. $7,500.

Thanks,

Suzie

Suzanne Gignac, Partner, CPA, CA

Ernst & Young LLP / Ernst & Young s.r.l./S.E.N.C.R.L.

99 Bank Street, Suite 1200, Ottawa, Ontario K1P 6B9, Canada

Direct: 1 613 598 4376 | Fax: 1 613 232 5324 | suzie.r.gignac@ca.ey.com

Executive Coordinator, Carolyn Roberts | Phone: 613 598 4844 |
carolyn.roberts@ca.ey.com

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From: Virani, Shyrose (TBS) [mailto:Shyrose.Virani@ontario.ca]
Sent: March-12-18 9:02 AM
To: Suzie Gignac <suzie.r.gignac@ca.ey.com>
Subject: year end

Hi Suzie:

As March is our fiscal year end, we would appreciate receiving invoice for the month of March if any. Please let me know.

Thanks

Shyrose

p.s. I did receive invoice for February.

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image001.pdf

FW_ year end.rtf

From: Virani, Shyrose (TBS) []
To: Jeannie.Kaminski@ca.ey.com [Jeannie.Kaminski@ca.ey.com]
Subject: FW: year end
Date: Monday, March 12, 2018 09:03:50

From: Virani, Shyrose (TBS)
Sent: March 12, 2018 9:02 AM
To: 'suzie.r.gignac@ca.ey.com'
Subject: year end

Hi Suzie:

As March is our fiscal year end, we would appreciate receiving invoice for the month of March if any. Please let me know.

Thanks

Shyrose

p.s. I did receive invoice for February.

FW_ EXTERNAL RE_ Implications of moratorium.pdf

From: Veinot, Cindy (TBS)
To: Kim Marshall
Subject: FW: EXTERNAL – RE: Implications of moratorium
Date: July 11, 2017 1:01:00 PM

From: JORDA Jenny -FIN & C CTRL [mailto:jenny.jorda@opg.com]
Sent: July 4, 2017 3:45 PM
To: Veinot, Cindy (TBS)
Subject: RE: EXTERNAL – RE: Implications of moratorium

Hi Cindy - the anticipated impact of the moratorium on OPG results in a negative impact of $39 million, $101 million, $176 million and $259 million in years 2018 – 2021 respectively.

From: Veinot, Cindy (TBS) [mailto:Cindy.Veinot@ontario.ca]
Sent: Tuesday, July 04, 2017 1:43 PM
To: JORDA Jenny -FIN & C CTRL <jenny.jorda@opg.com>
Cc: MAUTI John -FIN & C CTRL <john.mauti@opg.com>
Subject: EXTERNAL – RE: Implications of moratorium

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_____

Thanks Jenny – can you send me the impacts on the f/s in $s.

Cindy

From: JORDA Jenny -FIN & C CTRL [mailto:jenny.jorda@opg.com]
Sent: July 4, 2017 1:40 PM
To: Veinot, Cindy (TBS)
Cc: MAUTI John -FIN & C CTRL
Subject: Implications of moratorium

Hi Cindy,

Further to our meeting last week at the EY Tower on the implications of the moratorium and IESO accounting, please find below a table which compares the credit metrics between OPG Business Plan (BP), BP with FHP and "BP with FHP & Moratorium accounting". The primary metric which will drive the Credit analysis is the FFO/Total Debt ratio. As noted below in yellow this metric is breached in 3 of the 4 years if the IESO accounting under the moratorium as currently contemplated moves forward. This will have negative credit rating implications resulting in a likely downgrade. Further, there will be additional accounting risk that E&Y would have concerns about the "commercial" aspects of us entering into a transaction which will result in a credit downgrade thus jeopardizing OPG's ability to consolidate the trust. Further, when the Trust is consolidated with OPG, OPG would have losses from the FHP Trust for the entire moratorium period since there is no interest revenue to offset the interest expense that the Trust incurs.

Let me know if you have any further questions.

Jenny Q Jorda, CPA, CA | Senior Manager, Accounting Policy and Controls | Ontario Power Generation
700 University Avenue, Toronto ON M5G 1X6 | Phone: (416) 592-2531| Fax: (416) 592-7758 |E-mail: jenny.jorda@opg.com <mailto:jenny.jorda@opg.com>

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FW_ FHP Memo - Draft V5 17-Aug-2017_cv.pdf

From:	Susan Nicholson
To:	Veinot, Cindy (TBS); Hosick, Sarah (TBS); Donaldson, Mark (TBS)
Cc:	Susan Nicholson; Kim Marshall
Subject:	FW: FHP Memo - Draft V5 17-Aug-2017_cv
Date:	October 12, 2017 2:32:01 PM
Attachments:	FHP Memo - Draft V5 17-Aug-2017_ieso (2).docx

Please find attached comments and changes from the IESO. Please let me know if any further clarifications are needed.

Thank you, Susan

Susan Nicholson | Corporate Controller, IESO | Station A, Box 4474, Toronto, Ontario M5W 4E5

T: 905.855.6290| C: 905.301.6499 |Email: susan.nicholson@ieso.ca

Web: www.ieso.ca <http://www.ieso.ca/> | Twitter: IESO_Tweets <http://www.twitter.com/ieso_tweets> | LinkedIn: IESO <https://www.linkedin.com/company/ieso>

Conservation: www.saveONenergy.ca <http://www.saveonenergy.ca/> | Twitter: saveONenergyOnt <https://twitter.com/saveonenergyont> | LinkedIn: saveONenergy <https://www.linkedin.com/company/saveONenergyONT>

"Corporate Services collaborates with you to deliver solutions and expertise that enable the IESO to achieve its goals"

Begin forwarded message:

> From: "Veinot, Cindy (TBS)" <Cindy.Veinot@ontario.ca>
> Date: October 5, 2017 at 12:26:55 PM EDT
> To: Kim Marshall <Kim.Marshall@ieso.ca>
> Cc: "Hosick, Sarah (TBS)" <Sarah.Hosick@ontario.ca>, "Donaldson, Mark (TBS)" <Mark.Donaldson@ontario.ca>
> Subject: FHP Memo - Draft V5 17-Aug-2017_cv
>
> Hi Kim,

Attached is the current version of the Province's memo on the FHP. It is not final, but I wanted to share it with you at this point and ask you to read it and let us know if you have any comments. You have our permission to also share it with your advisors.

Could you let us know if you have any comments by next Thursday – October 12.

Thanks,

Cindy

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FHP Memo - Draft V5 17-Aug-2017_ieso (2).pdf

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Ernst & Young LLP (“EY”) prepared the attached Report only for the OPCD. EY did not perform its services on behalf of, or to serve the needs of, any other person or entity. Accordingly, EY expressly disclaims any duties or obligations to any other person or entity based its use of the attached Report. Any other person or entity must perform its own due diligence inquiries and procedures for all purposes, including, but not limited to, satisfying itself as to the financial condition and control environment of the Province or any of the other entities involved, as well as the appropriateness of the accounting for any particular situation addressed by the Report.

EY did not perform an audit, review, examination or other form of attestation (as those terms are defined by the CPA Canada) of the financial statements of the Province or any other entities involved. Accordingly, EY did not express any form of assurance on the accounting matters, financial statements, any financial or other information or internal controls of the Province or any of the other entities involved. EY did not conclude on the appropriate accounting treatment based on specific facts or recommend which accounting policy/treatment the Province or any of the other entities involved should select or adopt.

The observations relating to accounting matters that EY provided to the OPCD were designed to assist them in reaching their own conclusions and do not constitute our concurrence with or support of the accounting or reporting of the Province or the other entities involved. The Province and the other entities involved are each responsible for the preparation of their own financial statements, including all of the judgments inherent in preparing them.

Introduction

Ontario's consolidated financial reports are prepared in accordance with the accounting principles for governments recommended by the Public Sector Accounting Board (PSAB) of the Chartered Professional Accountants of Canada (CPA Canada). In order to meet the needs of users, including the legislature and the public, for accountability in government reporting and for decision making, it is essential that public sector financial statements reflect the economic substance of the government's activities.

In March 2017, the Government of Ontario (the Province) announced its Fair Hydro Plan (FHP). In assessing the appropriate accounting treatment for the Global Adjustment refinancing (GA Refinancing) component of the FHP on Ontario's consolidated financial statements, the Office of the Provincial Controller considered the authoritative guidance issued by PSAB, as well as the accounting assessments of the Independent Electricity System Operator (IESO) and Ontario Power Generation (OPG) management and their external auditors and/or advisors. Given the complexity of the GA Refinancing structure, the exercise of professional judgement is necessary to ensure that key financial reporting objectives of transparency and accountability are best served.

Background

The FHP ~~will~~ reduces electricity bills for Regulated Price Plan (RPP) customers (as well as those non-RPP consumers who receive the 8% rebate as specified in the Ontario Rebate for Electricity Act, 2016) by approximately 25% for a period of one year, starting in the summer of 2017, and limits the increase in electricity bills to the rate of inflation over the next four years.

Because distribution rates vary across the province and customers use different amounts of electricity, the goal in calculating the new RPP electricity prices ~~is~~ was to achieve a 25% reduction for a "proxy" customer, ~~which is~~ established under the Fair Hydro Act, 2017 and related regulations (FHP Act) as a residential customer of Toronto Hydro who uses 750 kWh of electricity a month, pays time-of-use RPP electricity prices and has the time-of-use consumption profile of a typical residential customer. From this analysis, a modifier for non-RPP consumers to achieve similar savings was also established.

The measures that make up the 25% average reduction include:

1. Spreading the cost of Ontario's clean energy investments over the expected lifecycle of the generation infrastructure assets. This is expected to account for 18-19% of the overall reduction.
2. Shifting the cost of the Ontario Electricity Support Program (OESP) and most of the Rural or Remote Rate Protection (RRRP) program costs from ratepayers to taxpayer-funded programs.
3. An 8% rebate equal to the provincial portion of the HST, which took effect on January 1, 2017.

Under the first measure, the Province (i.e. the government reporting entity) will borrow funds to pay a portion of current electricity costs, thereby temporarily reducing the amount paid by eligible ratepayers. The deferred amounts, including interest and other costs, will be recoverable from ratepayers through future rates over a future period, ending in 30 years (2047). In other words, the impact of #1 above is

fully borne by the ratepayers – it is a shift in the timing of payment for the clean energy investments, while the impacts of #2 and #3 are reducing the cost to the ratepayer, but at the cost of the taxpayer.

Objective

The objective of this memo is to assess the appropriate accounting for the first measure of the FHP (i.e. deferred recovery of clean energy costs) on the consolidated financial statements of the Province in accordance with PSAS. **[NTD – Consider if document should discuss #2 and #3. This would contrast the different treatment by the Province]**

Background

The Ontario Energy Board (OEB) has been established by the Province to be Ontario's independent energy regulator.

Prior to consideration of the Ontario Fair Hydro Plan Act (~~-~~FHP Act), in accordance with Section 78(3.1) of the Ontario Energy Board Act, 1998 (the OEB Act), the OEB is responsible for determining ~~electricity commodity prices for~~ RPP prices for consumers. Section 78(3.3) of the OEB Act requires the OEB to forecast the cost of electricity (commodity charge) used by RPP consumers in the rate setting. ~~and ensure the prices they are charged reflect that cost.~~ The rate setting process is highly complex and involves numerous forecasts and estimates. As a result, the OEB regulatory framework allows for variances between the actual commodity charge ~~os~~t of supplying electricity and the amount collected from RPP consumers.

In setting the rates for RPP consumers, Section 78(3.3) of the OEB Act requires the OEB to settle any such variances through rates over a 12-month period. This is achieved through a price adjustment charged or credited when~~to RPP consumers. This adjustment forms part of the Global Adjustment~~ setting the next RPP rate to be paid by RPP consumers. The monthly accumulated variance account balance is held by the Independent Electricity System Operator (IESO).

The IESO is the administrator of Ontario's wholesale electricity market. The IESO settles the market with all participants, as an agent.

As part of its role as market administrator, the IESO ~~calculates~~ oversees the market price for electricity (the Market Clearing Price, or MCP) by running the bids and offers of the market participants through an algorithm. The ~~actual~~ total commodity cost of ~~supplying~~ electricity, however, is ~~higher or lower than the~~not simply the MCP. ~~The actual cost can be higher than the MCP as~~ For example, certain generators are paid additional amounts relating to the cost of clean energy initiatives they have undertaken. From a government policy perspective, decisions as to what is in the best interest of the public regarding electricity generation in Ontario are not based solely on economics, they are also influenced by environmental, social and political factors. Accordingly, generators may receive compensation for investing in clean energy infrastructure ~~when it is relatively less economical~~. In these instances, the IESO (and previously the Ontario Power Authority) entered into contracts to pay the generators ~~ther~~their costs (plus a reasonable rate of return thereon) over an extended period of time, typically 20 years. The amounts paid to the generators under the terms of these contracts that are in excess of the MCP are currently included in the RPP rates set by the OEB (as part of the commodity charges ~~Global Adjustment)~~ with the intention they will be recovered from RPP consumers within 12 months. ~~in the~~

Commented [VC(1]: Agreed – need to have the accounting documented

Commented [NS2]: I believe the AG is stating that the OEB is not independent from IESO in the same way as OPG.

Commented [VC(3]: ? do we need to document the independence of the regulator – evidence –supreme court case re: OPG

Commented [BJ4]: Commodity charge as posted to the IESO website is energy plus class B GA and RPP consumers do not see GA per se but their LDC does through class A and class B GA charges.

Commented [BJ5]: For many reason one of which is the clean energy initiatives

Commented [BJ6]: There is much more in GA than clean energy initiatives such as prescribed asset regulated rates and OECF NUG contracts.

~~same period they are paid to the generators. As previously noted, the complexity of the rate setting process results in variances between the amount paid to the generators and the amount collected from RPP consumers.~~

Under existing legislation, the IESO is ~~required~~ permitted to fund any cash shortfall relating to differences arising between the actual commodity cost ~~of supplying electricity~~ and the amount collected from RPP consumers. In accordance with Section 25.33(5) of the Electricity Act, 1998 (the Electricity Act), the IESO has established and maintains a variance account to track these temporary differences (the original variance account) for subsequent ~~settlement with~~RPP rate setting by the OEB ~~ratepayers~~. Cash shortfalls in the IESO arising from the original variance account are funded through financing provided by the OFA.

As described below, once the FHP is implemented, ~~the~~ the total commodity cost of ~~supplying~~ electricity to RPP consumers ~~that is paid to generators~~ will no longer be fully collected over a 12-month period. As well, FHP includes non-RPP consumers who receive the 8% rebate as specified in the Ontario Rebate for Electricity Act, 2016). Together these ratepayers are called specified consumers.

Under the FHP, while generators would continue to be paid over a twenty year period as contracted, the amounts paid by the IESO to the generators would be recovered from specified ~~ratepayers~~ consumers over a longer period. Deferring the recovery of these costs from the specified consumers on a longer-term basis would create a significant interim cash shortfall for the IESO.

Section 24(1) of the ~~Ontario Fair Hydro Plan Act (the~~ FHP Act~~)~~ requires that IESO establish and maintain a variance account (separate from the original variance account described above) to track the cash shortfall specifically resulting from the implementation of the FHP (the FHP variance account). Due to the longer recovery period, and additional recoverable financing and management fee costs, the balance in the account is forecast to increase significantly. The balance in this variance account is defined in Section 1(1) of the FHP Act to be a regulatory asset[1]. The IESO is entitled under Section 25 of the FHP Act to recover the regulatory asset from ~~RPP~~ specified consumers in the future, which will be achieved through the OEB setting rates to allow for such recovery. This role of the OEB is not dissimilar to its ~~current~~ past role with respect to the setting of RPP rates to recover the ~~global adjustment~~commodity charge of supplying electricity, albeit over 12 months. Section 26 of the FHP Act also permits the IESO to transfer ~~or sell~~ the regulatory asset from time to time to a financing entity to fund its cash shortfall, thus commoditizing the future cash flow stream.

The Province has ~~requested that~~appointed OPG as the first Financial Services Manager to administer ~~the deferral of the Global Adjustment under the FHP because of OPG's participation in the market and the regulatory knowledge OPG possesses.~~the investment asset. To fulfill this role as outlined in the FHP Act, OPG ~~intends~~ must~~to~~ establish a financing entity (OPG Trust) to purchase the IESO's regulatory asset ~~on a monthly basis~~ and eliminate any cash shortfall in the IESO. OPG Trust will not be required to purchase the regulatory assets from IESO. ~~Reasons for it deciding not to purchase the regulatory assets could relate to a capital markets disruption such that OPG Trust would not be able to finance the~~

[1] To avoid confusion in the remainder of this document, the term regulatory asset will refer to the defined term in the FHP Act and the term regulated asset or rate-regulated asset (RRA) will refer to an asset recognized for accounting purposes.

Commented [BJ7]: By virtue of the variance this does not happen.

Commented [BJ8]: The market rules **require** us to pay generators as does the contract language in contracts where the IESO is counter-party.

Commented [BJ9]: FHP goes beyond RPP consumers. So I think we should call them specified consumers from here on….

Commented [BJ10]: This stopped on July 1, 2017

Commented [BJ11]: I do not believe it has anything to do with market participation but rather their treasury and commodity knowledge

Commented [BJ12]: Likely to be no more than twice a year – do we need to include the "monthly" in this?

Commented [BJ13]: Why are they speculating on the reasons not to purchase?

~~acquisition.~~ OPG Trust i~~ntends to~~ will be financin~~g~~e these purchases through a combination of provincial borrowing (flowed through OPG as an equity investment), amounts advanced from OPG and direct borrowing from capital markets.

Basis of Accounting

In accordance with PSAS 1300.07, the government reporting entity (GRE) for the Province comprises government components and those organizations that are controlled by the government.

As defined in the Introduction to PSAS, the following types of organizations are controlled by the government: (a) government business enterprises (GBE), government non-for profit organizations (GNPO), and other government organizations (OGO).

GNPOs and OGOs are considered government units and, in accordance with PSAS 1300.27, are consolidated in the GRE on a line-by-line basis. For consolidation purposes, the financial information of government units is required to be prepared in accordance with PSAS.

GBEs, on the other hand, are accounted for in the GRE using the modified equity method as prescribed by PSAS 1300.35. Under the modified equity method, which is described in detail in PSAS 3070, INVESTMENTS IN GOVERNMENT BUSINESS ENTERPRISES, the equity method of accounting is modified only to the extent that the GBE's accounting principles (which are required to be IFRS in accordance with paragraph 17 of the Introduction to PSAS) are not adjusted to conform to those of the government.

As documented in Schedule 8 to the consolidated financial statements of the Province, the IESO is an OGO and OPG is a GBE. The current accounting for these entities is as follows:

		ENTITY STATEMENTS	GRE STATEMENTS	
ENTITY	**CLASSIFICATION**	**GAAP**	**ACCOUNTING METHOD**	**GAAP**
IESO	OGO	PSAS[1]	Consolidation	PSAS
OPG	GBE	US GAAP[2]	Modified equity method	IFRS[3]

1. For purposes of preparing general purpose financial statements, an OGO applies PSAS unless those standards do not meet the needs of its financial statement users. In that situation, IFRS should be considered and the most appropriate set of standards applied.
2. Although a GBE is required to apply IFRS for purposes of preparing general purpose financial statements, the Ontario Securities Commission has approved an exemption that allows OPG to apply US GAAP up to January 1, 2019 for purposes of filing its financial statements with the OSC. US GAAP to IFRS adjustments are made for the purposes of preparing the consolidated provincial accounts.
3. OPG applies IFRS 14, which permits it to continue to account for rate-regulated activities using US GAAP guidance for purposes of determining the differences between US GAAP and IFRS..

This memo does not reconsider the classification of these existing entities (i.e., such classifications are based on past published Public Accounts).

As discussed in detail in a subsequent section, OPG expects that under IFRS it will be considered to control OPG Trust. As such, OPG Trust will be consolidated by OPG and, therefore, reflected in the GRE through the modified equity accounting of OPG under IFRS.

Example

For simplicity, the following example will be used in this document to illustrate the accounting impact of the FHP on the various entities involved:

- Ratepayer bill is currently $588, and the 17% reduction related to the FHP is $100.
- The Province directly borrows 44%, or $44, to make an equity contribution to OPG, which OPG then loans to OPG Trust.
- OPG directly borrows 5%, or $5, and loans it to OPG Trust.
- OPG Trust directly borrows 51%, or $51, from capital markets.

Analysis

IESO

The IESO is presently classified as an OGO and prepares its standalone, general purpose financial statements in accordance with PSAS based on an assessment of its user needs, which is consistent with the basis of presentation required for purposes of consolidating the IESO into the GRE.

Current State

Effective January 1, 2016, the IESO adopted on a retrospective basis a new accounting policy that requires its market ~~settlement activities~~[2] accounts – namely assets and liabilities as of the statement date to be reflected ~~in~~ on the ~~financial statements~~statement of financial position. Under the new policy, the assets and liabilities ~~recognized on the IESO's statement of financial position~~ relating to the IESO-administered markets include cash, amounts due from market participants, interest receivable, revolving line of credit, HST receivable, amounts due to market participants and other liabilities. The IESO statement of operations and accumulated surplus does not include the revenue and expenses of the financial transactions of market participants within the IESO-administered markets. This indicates IESO management has taken the position that the IESO is an agent, not a principal, in the IESO-administered markets and, accordingly, records revenue on a net basis.

PSAS does not provide any specific guidance as to how it should be determined whether an entity is acting as a principal or an agent in the context of revenue recognition, but both IFRS and US GAAP do. The relevant guidance in IFRS is as follows:

IAS 18.8

Revenue includes only the gross inflows of economic benefits received and receivable by the entity on its own account. Amounts collected on behalf of third parties such as sales taxes, goods and services taxes and value added taxes are not economic benefits which flow to the entity and do not result in increases in equity. Therefore, they are excluded from revenue. Similarly, in an agency relationship, the gross inflows of economic benefits include amounts collected on behalf of the principal and which do not result in increases in equity for the entity. The amounts collected on behalf of the principal are not revenue. Instead, revenue is the amount of commission.

IAS 18.IE21

Determining whether an entity is acting as a principal or as an agent (2009 amendment).

Paragraph 8 states that 'in an agency relationship, the gross inflows of economic benefits include amounts collected on behalf of the principal and which do not result in increases in equity for the entity. The amounts collected on behalf of the principal are not revenue. Instead, revenue is the amount of commission.' Determining whether an entity is acting as a principal or as an agent requires judgement and consideration of all relevant facts and circumstances.

[2] The IESO administers the wholesale electricity market by authorizing market participants, publishing system forecasts and market information, producing statements and invoices, and performing financial settlement transactions for the markets.

An entity is acting as a principal when it has exposure to the significant risks and rewards associated with the sale of goods or the rendering of services. Features that indicate that an entity is acting as a principal include:

a) the entity has the primary responsibility for providing the goods or services to the customer or for fulfilling the order, for example by being responsible for the acceptability of the products or services ordered or purchased by the customer;
b) the entity has inventory risk before or after the customer order, during shipping or on return;
c) the entity has latitude in establishing prices, either directly or indirectly, for example by providing additional goods or services; and
d) the entity bears the customer's credit risk for the amount receivable from the customer.

An entity is acting as an agent when it does not have exposure to the significant risks and rewards associated with the sale of goods or the rendering of services. One feature indicating that an entity is acting as an agent is that the amount the entity earns is predetermined, being either a fixed fee per transaction or a stated percentage of the amount billed to the customer.

Application of the above IFRS guidance supports the conclusion that the IESO is an agent in the market-settlement process and, therefore, recognizing revenue on a net basis is appropriate. IESO has completed a more thorough analysis of their position that it is an agent in the settlement of the market and reconsideration of that decision is not the topic of this memo.

The IESO is required by legislation to carry out its operations without the purpose of gain or profit. Other than the amounts the IESO is permitted to keep in accordance with its own rate order from the OEB to cover its internal operating costs, which makes it a self-sustaining entity, all amounts the IESO receives from market participants must be paid out to other market participants who have regulatory or contractual rights to receive payments from those collected amounts.

Commented [VC(14]: Does the legislation speak to IESO incurring a loss?

In the context of applying the principal vs. agent guidance, the amounts the IESO is permitted to keep in accordance with its own rate order from the OEB to cover its internal operating costs are recorded as system fee revenue in the IESO financial statements. System fees are not characterized as being part of the IESO-administered markets. Accordingly, any references to the IESO-administered markets in this document exclude system fees.

As stated in the IESO financial statements, the IESO-administered markets is a balancing system, and as such, the net position of market accounts will ultimately settle to a nil balance in accordance with market rules. However, due to settlement timing differences, the net position of market accounts will not be in a nil position from a cash flow perspective at the end of any reporting period.

This raises a question as to how a cash flow deficit related to the market-settlement process should be accounted for in the financial statements of the IESO. Two approaches are as follows:

1. The cash flow deficit is recognized as an asset when it occurs and then derecognized in the period in which it is settled. Under this approach, the net position of market accounts will always be in a nil balance in the IESO's balance sheet and there is no impact on the IESO's income statement.
2. The cash flow deficit is recognized as a charge to income when it occurs and then reversed through income in the period in which it is settled.

IESO management has concluded it is appropriate to recognize existing cash flow deficits arising from the market-settlement process as an asset. This is evidenced by the fact the components of the market accounts net to a nil closing balance at year end in the IESO financial statements for the year ended December 31, 2016. These financial statements also explicitly state there is no impact to the accumulated deficit or revenues and expenses as the IESO is not party to these transactions as per the market rules. This treatment is consistent with the conclusion that the IESO is acting as an agent in the market-settlement process.

Commented [VC(15]: Is there a reference for this statement?

Commented [BJ16]: Is this true? We are counter-party to contracts, Not party to transactions from a rules perspective means we do not put in bids and offers and we are permitted to socialize losses – we are net neutral.

Although the IESO's financial statements include the following accounting policy on regulated assets and liabilities, the asset relating to the cash flow deficit discussed above has not been specifically labeled as a regulated asset:

As a rate-regulated entity, the IESO, in appropriate circumstances establishes regulated assets or liabilities and thereby defers the impact on the statement of operations of certain expenses or revenues because they are probable to be collected or refunded to market participants through future billings. The IESO has applied guidance from United States Generally Accepted Accounting Principles (US GAAP) Topic 980, Regulated Operations, in this policy.

The only two balances specifically labeled as being recognized in the IESO's financial statements under the above policy are (i) unrecovered smart metering expenses, and (ii) unrecovered PSAB transition items. IESO management has, however, indicated in discussions that the cash flow deficit/surplus associated with the original variance account is also considered to be a regulated asset/liability under ASC 980 even though it has been presented as part of the Market Accounts balances in the statement of financial position.

Impact of FHP

The implementation of the FHP results in the IESO establishing and maintaining the FHP variance account to track the resulting cash flow deficit, the balance of which is ~~defined~~ recognized by the IESO ~~for the purposes of the FHP Act~~ to be a 'regulatory asset'. This variance account is similar in nature to the current variance account established under Section 25.33(5) of the Electricity Act, 1998 , discussed in the Background Section to this memo.

The act of legislating the balance in the FHP variance account ~~to be a regulatory asset~~ does not, in and of itself, result in its recognition as an asset for accounting purposes. Accordingly, the primary issue at hand is whether the legislated variance account value ~~regulatory asset~~ is eligible for recognition as an asset in both the standalone financial statements of the IESO and the consolidated financial statements of the GRE. As discussed in a later section, the conclusion reached with respect to the appropriate accounting for the FHP in the standalone financial statements of the IESO as an OGO reporting under PSAS may impact the consolidated financial statements of the GRE.

As noted above, the IESO has adopted a policy to apply the U.S. GAAP guidance in ASC 980 in connection with accounting for rate regulated assets. IESO management has applied this guidance and concluded the value of the variance account~~regulatory asset~~ created by the FHP can be recognized as a regulated asset for accounting purposes in the financial statements of the IESO. The IESO's auditors, KPMG, concur with this position, as evidenced from the following excerpt from a draft letter issued by KPMG on May 16, 2017 (the KPMG Letter):

We have considered the foregoing analysis and management's conclusion. We concur that the variance account created by Bill 132 will meet the criteria for the recognition of a regulatory asset stated in ASC 980-340-25-1. Furthermore, we have also considered the criteria stated in ASC 980-10-15-2 and believe that IESO should be allowed to continue to use the guidance for regulated operations of Topic 980.

Recognizing the regulatory asset as a regulated asset for accounting purposes in the financial statements of the IESO in accordance with ASC 980 is appropriate only if all of the following conditions are met:

a) the operations of the IESO (or the relevant portion thereof) are within the scope of ASC 980 based on the criteria in ASC 980-10-15-2,
b) the FHP variance account meets the criteria in ASC 980-340-25-1 for capitalization as a regulatory asset, and
c) ASC 980 is an appropriate source of GAAP under PSAS.

Each of these items is addressed in turn:

a) Scope of ASC 980

ASC 980-10-15-2 states the following:

The guidance in the Regulated Operations Topic applies to general-purpose external financial statements of an entity that has regulated operations that meet all of the following criteria:

a) The entity's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party regulator or by its own governing board empowered by statute or contract to establish rates that bind customers.
b) The regulated rates are designed to recover the specific entity's costs of providing the regulated services or products. This criterion is intended to be applied to the substance of the regulation, rather than its form. If an entity's regulated rates are based on the costs of a group of entities and the entity is so large in relation to the group of entities that its costs are, in essence, the group's costs, the regulation would meet this criterion for that entity.
c) In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume that rates set at levels that will recover the entity's costs can be charged to and collected from customers.

The Office of the Auditor General of Ontario (OAGO) has publicly stated that it does not believe the IESO meets the criteria to be within the scope of ASC 980. This is evidenced by the following statement included in *Legislated Accounting Included in Bill 132, Including the Proposed Ontario Fair Hydro Plan Act, 2017 – Submission to Standing Committee on Justice Policy* dated May 25, 2017 (OAGO Submission):

Moreover, IESO is not engaging in rate-regulated activities, and the contracts under its administration were never subject to rate regulation.

Ontario's electricity industry is rate-regulated. Rates paid by electricity consumers are regulated by the OEB such that over time rates equal cost plus, where applicable, a reasonable rate of return. Providing electricity to consumers involves several different parties, including generators, transmitters, distributors and the IESO. Some of these parties engage in rate-regulated activities, some do not.

The IESO serves an important and active role in Ontario's electricity market, irrespective of the fact that it records market transactions on net basis in the financial statements. The IESO balances the supply of and demand for electricity in Ontario and directs its flow across the province's transmission lines, oversees the wholesale electricity market, where the price of energy is determined, and administers the rules that govern the market. In determining whether the IESO has regulated operations, the focus is on whether the rates the IESO charges its customers are regulated and not whether the costs incurred by the IESO are regulated (although a number of them are).

The following supports the position of IESO management that the above criteria are met and the IESO's operations are within the scope of ASC 980:

The entity's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party regulator or by its own governing board empowered by statute or contract to establish rates that bind customers.

As noted in a research paper issued in 2001 by a taskforce established by the CICA (the CICA Research Report), there is a view held by some that, with respect to rate regulation in the public sector, there is usually no *independent, third-party regulator* because the government controls both the enterprise and the regulatory agency. Accordingly, it is important to point out that independence is not required to meet the criteria in ASC 980-10-15-2(a). The requirement is an *independent, third-party regulator* or *its own governing board empowered by statute or contract*. In fact, paragraph 64 of the Basis for Conclusions for FAS 71, ACCOUNTING FOR THE EFFECTS OF CERTAIN TYPES OF REGULATION (which is the pre-codified version of ASC 980), specifically states that the criteria in ASC 980-10-15-2(a) was modified so as not to preclude application by government utilities with rates set by their own governing board.

The OEB has been established by the Province to be Ontario's independent energy regulator and, therefore, is considered the governing board of the IESO. The OEB's mandate and authority come from the *Ontario Energy Board Act, 1998*, the *Electricity Act, 1998*, and a number of other provincial statutes. As described in more detail below, the IESO's rates are established in accordance with these statutes.

In the context of its market-settlement role, the IESO's 'customers' are the Market Participants buying electricity from the IESO-controlled grid. All Market Participants are required to execute a Participation Agreement with the IESO. In accordance with Article 3.1 of the standard Participation Agreement, each Market Participant has agreed to be bound by and to comply with all of the provisions of the Market Rules, which includes the following:

Chapter 9, Section 1.2.3
Notwithstanding any other provision within the market rules, market participants shall remit to the IESO such applicable settlement amounts and other payments as may be required under the relevant provisions of the Electricity Act, 1998, the Ontario Energy Board Act, 1998 and any related regulations, as amended from time to time.

The IESO's operations meet the criteria in ASC 980-10-15-2(a) because the rates charged by the IESO are based on statutes. As discussed in more detail below, the rates are designed to recover the IESO's

expenditure for providing the regulated services and the pass-through costs related to the energy purchased from the generators and to government programs.

The main components of invoices issued by the IESO to Market Participants are as follows:

- Commodity Charges
  - Hourly Ontario Energy Price
  - Global Adjustment
- Wholesale Market Service Charges
  - IESO Administration Fee
  - Uplift Charges
  - Rural and Remote Electricity Rate Protection
- Wholesale Transmission Charges
- Debt Retirement Charge

Each component is determined as follows:

Commodity Charges

In accordance with Section 25.33(1) of the Electricity Act, the IESO is required to price electricity to recover costs:

Electricity pricing to reflect costs

IESO to make adjustments

25.33 (1) The IESO shall, through its billing and settlement systems, make adjustments in accordance with the regulations that ensure that, over time, payments by classes of market participants in Ontario that are prescribed by regulation reflect,

a) amounts paid to generators, the Financial Corporation and distributors, whether the amounts are determined under the market rules or under section 78.1, 78.2 or 78.5 of the Ontario Energy Board Act, 1998;

b) amounts paid to entities with whom the IESO has a procurement contract, as determined under the procurement contract; and

c) such amounts as may be prescribed that are paid or incurred by the IESO in relation to the Ontario Fair Hydro Plan Act, 2017. *2014, c. 7, Sched. 7, s. 8 (1); 2017, c. 16, Sched. 1, s. 43 (2).*

Market Participants are ~~initially~~ invoiced for consumed electricity at the Hourly Ontario Energy Price (HOEP), which is calculated as the average of the twelve market clearing prices set in each hour. In addition and in accordance with Section 25.33(5) of the Electricity Act, the IESO charges for global adjustment. In advance of IESO's monthly invoicing, LDCs submit to the IESO their excess/shortfall related to RPP prices which is included on their IESO invoice. The monthly accumulated excess/shortfall is held separately in a variance account. ~~is required to track differences between the amounts invoiced to Market Participants at HOEP and actual costs incurred in a variance account:~~

~~*Variance accounts*~~

~~*(5) The IESO shall establish and maintain such variance accounts as may be necessary to record all amounts payable or receivable by it under this section or under the* Ontario Fair Hydro Plan Act, 2017. *2004, c. 23, Sched. A, s. 37; 2014, c. 7, Sched. 7, s. 8 (5); 2017, c. 16, Sched. 1, s. 43 (5).~~

~~Sections 3.1 and 3.3 of the OEB Act require the variance account to be settled over a twelve-month period, which is done through the Global Adjustment on a Market Participant's invoice:~~

~~*Annual rate plan and separate rates for situations prescribed by regulation*~~

~~*(3.1) The Board shall, in accordance with rules prescribed by the regulations, approve or fix separate rates for the retailing of electricity,*~~

Commented [BJ17]: But not dispatchable consumer they are on the 5-minutes basis not the average

Commented [BJ18]: This is only for RPP customers and this is not how this is settled by the IESO. The IESO bills MPs including LDCs for the full commodity cost (energy costs and GA class A and Class B. LDCs bill some of their ratepayers based on RPP prices.

~~*a) to such different classes of consumers as may be prescribed by the regulations; and*~~

~~*b) for such different situations as may be prescribed by the regulations. 2004, c. 23, Sched. B, s. 14 (1).*~~

~~*Rates to reflect cost of electricity*~~

~~*(3.3) In approving or fixing rates under subsection (3.1),*~~

~~*a) the Board shall forecast the cost of electricity to be consumed by the consumers to whom the rates apply, taking into consideration the adjustments required under section 25.33 of the Electricity Act, 1998 and shall ensure that the rates reflect these costs; and*~~

~~*b) the Board shall take into account balances in the IESO's variance accounts established under section 25.33 of the Electricity Act, 1998 and shall make adjustments with a view to eliminating those balances within 12 months or such shorter time periods as the Minister may direct. 2004, c. 23, Sched. B, s. 14 (1); 2014, c. 7, Sched. 23, s. 6 (2).*~~

Although the implementation of the FHP involves the deferral of costs over an extended period of time, it does not change the IESO's obligation under the OEB Act to price electricity to recover incurred costs in full. The deferral relating to the FHP is tracked in a separate variance account in accordance with Section 24(1) of the Fair Hydro Plan Act, 2017 (the FHP Act):

Variance account to be established, maintained

24 (1) The IESO shall establish and maintain a variance account in which it records the following:

1. The IESO deferral for each month.

2. All payments received by the IESO resulting from the exercise of the right of recovery under section 25 and any transfer under section 26.

3. Such other adjustments as may be prescribed, including adjustments in respect of the period that commences on or after May 1, 2017 and before the day this section comes into force.

The right for the IESO to recover the variance account is set out in Section 25 of the FHP Act:

Regulatory asset established

25 (1) Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Board to set rates

(2) Subject to subsection (3), the Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for the IESO to recover the balance recorded in the variance account.

Limitation

(3) The IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2021.

Wholesale Market Service Charges

The IESO charges Market Participants an administration~~ve~~ fee~~s~~ to operate the wholesale electricity market and manage the electric power system in Ontario. ~~These~~ This fee~~s are~~ is required to be approved by the OEB under Section 25(1) of the Electricity Act on an annual basis.

Review of requirements and fees

25 (1) The IESO shall, at least 60 days before the beginning of each fiscal year, submit its proposed expenditure and revenue requirements for the fiscal year and the fees it proposes to charge during the fiscal year to the Board for review, but shall not do so until after the Minister approves the IESO's proposed business plan for the fiscal year under section 24. 2014, c. 7, Sched. 7, s. 3 (1).

~~*Uplift charges*~~

~~Need details~~

~~*RRRP charges*~~

Commented [BJ19]: To be clear other hourly and non-hourly fees are set by the market rules not by the OEB.

Commented [LAP20]: Uplift charges are comprised of a number of things. To ask IESO for help to summarize succinctly.

Commented [DM(21]: Will provide ASAP (Following up with IESO)

The RRRP program provides a rate subsidy to rural and remote residential customers who face higher distribution costs. Under the FHP Act, ~~the~~ a significant portion of the cost of the RRRP program has shifted from ratepayers to provincial revenues and, therefore, ~~is no longer a~~the component on the ~~of the~~ IESO invoice is much smaller (reduc~~moved~~ from $3.10 to $0.30/ MWh.

Wholesale Transmission Charge

This charge to LDCs and some large consumers covers the cost incurred by transmission companies to construct and maintain the high-voltage transmission lines needed to transport electricity from generating stations to LDCs or consumers. In accordance with Section 78(1) of the OEB Act, the rate for this service is approved by the OEB.

Debt Retirement Charge

When the Ontario electricity sector was restructured in April 1999, the Ontario Electricity Financial Corporation (OEFC) took on $20.9 million of stranded debt from Ontario Hydro. The OEFC services and retires the stranded debt with cash flows from a number of sources in the electricity sector, one of those currently being debt retirement charges paid by certain ratepayers (ratepayers cease paying debt retirement charges April 1, 2018).

Under Regulation 494/01, DEBT RETIREMENT CHARGE – ADMINISTRATION, the IESO is appointed as a collector of debt retirement charges (Section 2) and is required to collect a debt retirement charge on behalf of the OEFA from every entity who withdraws electricity from the IESO-controlled grid (Section 6(2)). The prescribed rate for the debt retirement charge is set out in Regulation 493/01, DEBT RETIREMENT CHARGE – RATES AND EXEMPTIONS.

The regulated rates are designed to recover the specific entity's costs of providing the regulated services or products.

As discussed in detail above, the IESO is required by statute to set prices to recover costs.

In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume that rates set at levels that will recover the entity's costs can be charged to and collected from customers.

As discussed in detail above, the IESO is required by statute to set prices to recover costs.

The majority of the monthly amount invoiced by the IESO to Market Participants represents a direct flow through of costs as they are incurred, but there are certain types of costs for which recovery may be deferred. For those deferred costs, the IESO is dependent on the future consumption of electricity by rate-payers to fully recover costs.

Based on relatively short recovery periods, it is reasonable to assume there will be sufficient demand to recover the deferred costs that currently exist. Specifically:

- RPP and RRRP variance accounts are recovered over twelve months in accordance with Section 3.3(b) of the OEB Act. *(Note - Under the FHP, responsibility for the most of the cost of the RRRP program is being transferred to the Provincial budget and rate-payers will no longer be directly charged)*
- The Smart Metering Entity charge is recovered over the period from May 1, 2013 to October 31, 2018 in accordance with OEB Decision and Order EB-2015-0298.

Commented [DM(22]: Understanding is not all costs have shifted; need to confirm where the line is drawn

Commented [LAP23]: To confirm with Energy if all costs have shifted.

Commented [LAP24]: CV to determine if there is anything else to add from IESO's analysis.

Commented [LAP25]: To confirm with Energy if all costs have shifted.

Under the FHP, responsibility for the cost of the OESP program is being transferred to the Provincial budget and rate-payers will no longer be charged for the cost of this program. The OESP variance account, which is currently in a credit balance, will be used to fund the cost of the program until depleted.

Although the timing of the recovery of the FHP variance account has not yet been established by the OEB, the wording and intent of the proposed legislation is clear that it is intended by law to be recoverable over a period of 30 years. Given the nature and extent of customer demand for the power generated and distributed in Ontario, both at this time and projected in the future, it is reasonable to conclude that there will be sufficient demand to recover the regulatory asset. This conclusion, which is supported by Figure 19: Ontario's Forecast Electricity Production in Achieving Balance – Ontario's Long-Term Energy Plan, will need to be continually evaluated throughout the recovery period. The willingness of unrelated third parties to fund the purchase of the regulatory asset from the IESO by OPG Trust also demonstrates the belief that sufficient demand will exist to permit its future recovery.

In addition to the general scope requirements of ASC 980 discussed above, specific consideration is made as to whether the following scope exception in ASC 980-10-15-7 applies to the FHP:

The guidance in the Regulated Operations Topic does not apply to any of the following transactions:

a) *Accounting for price controls that are imposed by governmental action in times of emergency, high inflation, or other unusual conditions, or accounting for contracts in general. However, if the terms of a contract between an entity and its customer are subject to regulation and the criteria of paragraph 980-10-15-2 are met with respect to that contract, the guidance in this Topic shall apply.*

Based on the discussion below, this scope exemption is not applicable to the FHP.

Electricity cost reductions resulting from the FHP do not represent price controls imposed by the Province in a time of emergency, high inflation, or other unusual conditions. As noted in the 2017 budget speech, the 2017 Ontario Budget – A Stronger, Healthier Ontario, the FHP is a fairer way to share the costs of building a cleaner, more modern and reliable electricity generation system. In particular, the budget speech states:

Commented [LAP26]: Consider Navigant report if/when becomes available

Recognizing that existing electricity infrastructure is expected to last for decades to come, the Province would refinance the cost of those capital investments to ensure that system costs are more equitably distributed over time.

The following paragraph from the Basis for Conclusion for FAS 71 also provides some insight as to the specific concerns relating to government imposed price controls that resulted in the scope exception in ASC 980-10-15-7(a):

70. The first scope limitation of paragraph 8—excluding accounting for price controls imposed by governmental action in times of emergency, high inflation, or other unusual conditions—was included in the Discussion Memorandum. Price controls imposed in periods of unusual conditions are not expected to be applied consistently over an extended period. Indeed, their duration usually is limited by statute. In

that environment, assurance of future benefits cannot be provided by probable future actions of the price control regulator because that regulator may not exist at a given future date.

The implementation of the FHP does not create the type of environment described in FAS 71.BC70 as it is governed by the OEB and there is no concern the OEB will not continue to exist.

The second part of the scope exception in ASC 980-10-15-7(a) relating to the accounting for contracts is further explained in the following paragraph from the Basis for Conclusion for FAS 71:

71. Accounting for contracts in general was also excluded from the scope of the Discussion Memorandum. The economic effects of cost reimbursement contracts are in some respects similar to the economic effects of the type of regulation addressed by this Statement. However, most contracts tend to be relatively short-term, whereas regulation of enterprises covered by this Statement is expected to continue beyond the foreseeable future. The Board noted that other authoritative literature addresses contract accounting and concluded that it should exclude the general issue of contract accounting from the scope of this Statement.

Although the impetus for the FHP relates to term of contracts the IESO has entered into with certain generators, the FHP does not change the existing accounting for these contracts.

Application of ASC 980-340-25-1 to the regulatory asset

ASC 980-340-25-1 states the following:

Rate actions of a regulator can provide reasonable assurance of the existence of an asset. An entity shall capitalize all or part of an incurred cost that would otherwise be charged to expense if both of the following criteria are met:

a) *It is probable (as defined in Topic 450) that future revenue in an amount at least equal to the capitalized cost will result from inclusion of that cost in allowable costs for rate-making purposes.*
b) *Based on available evidence, the future revenue will be provided to permit recovery of the previously incurred cost rather than to provide for expected levels of similar future costs. If the revenue will be provided through an automatic rate-adjustment clause, this criterion requires that the regulator's intent clearly be to permit recovery of the previously incurred cost.*

A cost that does not meet these asset recognition criteria at the date the cost is incurred shall be recognized as a regulatory asset when it does meet those criteria at a later date.

The following supports the IESO's position that the FHP variance account meets the above criteria for capitalization:

It is probable (as defined in Topic 450) that future revenue in an amount at least equal to the capitalized cost will result from inclusion of that cost in allowable costs for rate-making purposes.
The following excerpts from the FHP Act make it clear that the IESO is entitled to recover the regulatory asset through rates in the future: *Variance account to be established, maintained* *24 (1) The IESO shall establish and maintain a variance account in which it records the following:* *1. The IESO deferral for each month.*

2. All payments received by the IESO resulting from the exercise of the right of recovery under section 25 and any transfer under section 26.

3. Such other adjustments as may be prescribed, including adjustments in respect of the period that commences on or after May 1, 2017 and before the day this section comes into force.

Recording determinative

(2) Subject to the correction of any obvious error by the IESO, its recording of the balance in the variance account is determinative of the balance as of the time of the recording.

Regulatory asset established

25 (1) Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Board to set rates

(2) Subject to subsection (3), the Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for the IESO to recover the balance recorded in the variance account.

Limitation

(3) The IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2021.

The recovery of the regulatory asset is, however, dependent on future consumption of electricity by rate-payers. The recovery period is intended to be 30 years. Given the nature and extent of customer demand for the power generated and distributed in Ontario, both at this time and projected in the future, it is reasonable to conclude that it is probable there will be sufficient demand in the future to recover the regulatory asset. This conclusion, which is supported by Figure 19: Ontario's Forecast Electricity Production in Achieving Balance – Ontario's Long-Term Energy Plan (Appendix B), will need to be continually evaluated throughout the recovery period.

The willingness of unrelated third parties (e.g., investors) to fund the purchase of the regulatory asset from the IESO by OPG Trust also demonstrates the belief that sufficient demand will exist to permit its future recovery.

Based on available evidence, the future revenue will be provided to permit recovery of the previously incurred cost rather than to provide for expected levels of similar future costs. If the revenue will be provided through an automatic rate-adjustment clause, this criterion requires that the regulator's intent clearly be to permit recovery of the previously incurred cost.

Based on the above excerpts from the FHP Act, it is clear the IESO will be recovering costs previously incurred rather than providing for expected levels of similar future costs.

The IESO is considered an agent in the market-settlement process and, therefore, recognizes revenue on a net basis. Although this conclusion impacts whether the recovery of costs through rates are presented as revenue in the financial statements of the IESO, it is not considered to preclude these amounts from being considered 'future revenue' for purposes of assessing the criteria in ASC 980-340-25-1. In fact, the capitalization of the incurred costs in the FHP variance account preserves the treatment of the IESO as an agent (i.e., if these costs are not capitalized, it results the recognition of costs in the period incurred and the recognition of revenue in a subsequent period when electricity is consumed, which, in effect, is gross presentation). To put another way, not capitalizing the costs in FHP variance account treats the IESO as a principal in the transaction by showing costs and revenue.

Commented [VC(27]: Suggest we expand this analysis – not sure this is technically true (the price set would just be very high), but practically, this would probably not be permitted to occur

Commented [LAP28]: Once the terms of the guarantee are finalized, I think we should comment (if true) that the guarantee relates to regulatory changes and does not cover lack of demand.

CV – will share a copy of the current agreement – does not cover lack of demand

Is ASC 980 an acceptable source of guidance under PSAS[3]

In assessing whether ASC 980-340-25-1 is an acceptable source of guidance under PSAS, Paragraph 5 of PSAS 1150, GENERALLY ACCEPTED ACCOUNTED PRINCIPLES, states the following:

When the primary sources of GAAP do not deal with the accounting and reporting in financial statements of transactions or events encountered by the public sector reporting entity, or additional guidance is needed to apply a primary source to specific circumstances, the selection of an appropriate accounting policy requires the exercise of professional judgment. In these circumstances, a public sector reporting entity should adopt accounting policies and disclosures that are consistent with:

a) the primary sources of GAAP; and

b) the application of the concepts described in FINANCIAL STATEMENT CONCEPTS, Section PS 1000.

Related guidance is also provided in PSAS 1150.18-.20:

Paragraphs PS 1150.19-.24 identify some of the other sources that a public sector reporting entity might consult to assist in selecting accounting policies and disclosures that comply with paragraph PS 1150.05.

Pronouncements issued by other bodies authorized to issue accounting standards may be useful sources to consult. For example, accounting pronouncements published with the authority of the Canadian Accounting Standards Board (AcSB), International Accounting Standards Board (IASB), US Federal Accounting Standards Advisory Board (FASAB), US Governmental Accounting Standards Board (GASB), or International Public Sector Accounting Standards Board (IPSASB) are often important sources to consult on matters not covered by primary sources of GAAP or for assistance in applying a primary source of GAAP to specific circumstances.

When a public sector reporting entity chooses to consult a source described in paragraph PS 1150.19, it applies professional judgment and evaluates the source in the context of the relative manner in which the standard setter requires its pronouncements to be applied, as well as in the context of the related pronouncement. When an accounting standard setter does not have a conceptual framework that is similar to the concepts referred to in paragraph PS 1150.05(b), the public sector reporting entity needs to ensure that the selected source is consistent with those concepts.

Since PSAS does not specifically address the treatment of costs incurred that will be recovered through regulatory operations in future periods, the IESO would not be precluded from following the guidance in ASC 980-340-25-1 (i.e., silence under PSAS on this specific topic does not, on its own, mean that such guidance is to be ignored). However, PSAS 1000.05 makes it clear that in order to do so, it must first be demonstrated that such guidance is consistent with the application of the concepts described in PSAS 1000, FINANCIAL STATEMENT CONCEPTS.

The relevant guidance in PSAS 1000 relating to the recognition of an asset is as follows:

PSAS 1000.35

Assets are economic resources controlled by a government as a result of past transactions or events and from which future economic benefits are expected to be obtained.

[3] If the accounting for GBEs were to change in the future such that line by line consolidation is required using PSAS, the importance of this consideration increases significantly.

PSAS 1000.36

Assets have three essential characteristics:

a) *they embody future economic benefits that involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows, or to reduce cash outflows;*
b) *the public sector entity can control the economic resource and access to the future economic benefits; and*
c) *the transaction or event giving rise to the public sector entity's control has already occurred.*

PSAS 1000.37

An item is not an asset of a government if it lacks one or more of the essential characteristics listed in the preceding paragraph. Thus, for example, an item does not qualify as an asset of a government if the item involves:

a) *no future economic benefit;*
b) *future economic benefit, but the government cannot obtain it; or*
c) *future economic benefit that the government may obtain, but the events or circumstances that give the government control of the benefit have not yet occurred*

The following supports the IESO's position that the regulatory asset possesses the three essential characteristics of an asset:

Embody future economic benefits that involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows, or to reduce cash outflows

The following excerpts from the FHP Act make it clear that the IESO is entitled to recover the regulatory asset through rates in the future:

Variance account to be established, maintained

24 (1) The IESO shall establish and maintain a variance account in which it records the following:

1. The IESO deferral for each month.

2. All payments received by the IESO resulting from the exercise of the right of recovery under section 25 and any transfer under section 26.

3. Such other adjustments as may be prescribed, including adjustments in respect of the period that commences on or after May 1, 2017 and before the day this section comes into force.

Recording determinative

(2) Subject to the correction of any obvious error by the IESO, its recording of the balance in the variance account is determinative of the balance as of the time of the recording.

Regulatory asset established

25 (1) Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Board to set rates

(2) Subject to subsection (3), the Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for the IESO to recover the balance recorded in the variance account.

Limitation

(3) The IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2021.

Accordingly, the regulatory asset, by statute, has the capacity to provide future cash inflows.

While perhaps obvious, paragraph 13 of PSAS 3210, ASSETS, confirms the generation of future cash flows represents a future economic benefit:

The future economic benefits embodied in an asset may also be in the form of generating future cash inflows. Cash inflows benefit the public sector entity because cash can be used to purchase or to provide goods and services, redistribute wealth or settle liabilities. Benefits in the form of cash inflows relate to resources, such as loans receivable, inventory for resale and portfolio investments. Also, some public sector resources generate cash inflows because they have user fees associated with them.

The ability of the regulatory asset to generate future cash flows is dependent on the future consumption of electricity by rate-payers. Although the timing of the recovery of the regulatory asset has not yet been established by statute, the recovery period is intended to be 30 years. Given the nature and extent of customer demand for the power generated and distributed in Ontario, both at this time and projected in the future, sufficient demand is expected to exist in the future to recover the regulatory asset. This conclusion, which is supported by Figure 19: Ontario's Forecast Electricity Production in Achieving Balance – Ontario's Long-Term Energy Plan, will need to be continually evaluated throughout the recovery period.

The willingness of unrelated third parties to fund the purchase of the regulatory asset from the IESO by OPG Trust also demonstrates the belief that sufficient demand will exist to permit its future recovery.

The guidance on forgivable loans in PSAS 3050, Loans receivable, provides an example where an asset can be recognized under PSAS based on the existence of sufficient evidence of a reasonable expectation of its recovery.

The public sector entity can control the economic resource and access to the future economic benefits

Paragraph 16 of PSAS 3210, ASSETS, states the following:

A public sector entity controls the economic resource and access to the future economic benefits when it:

- *a) can benefit from the economic resource through its capacity to provide goods and services, to provide future cash inflows or to reduce cash outflows;*
- *b) can deny or regulate access to those benefits by others; and*
- *c) is exposed to the risks associated with the economic resource.*

The IESO can benefit from the regulatory asset through its capacity to provide future cash inflows in one of two ways:

1. *Collection through future rates*

Section 25 of the FHP gives the IESO the right to recover the regulatory asset through future rates:

Regulatory asset established

25 (1) Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Board to set rates

(2) Subject to subsection (3), the Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for the IESO to recover the balance recorded in the variance account.

Commented [VC(29]: To update based on the new LTEP to be issued this fall.

Commented [LAP30]: Once the terms of the guarantee are finalized, I think we should comment (if true) that the guarantee relates to regulatory changes and does not cover lack of demand.

Also need to consider whether a different conclusion is reached on consolidation

CV -- agreed

2. *Sale to a financing entity*

Section 26 of the FHP Act permits the IESO to sell the regulatory asset:

26 (1) The IESO may from time to time, in accordance with this Act and the regulations, transfer a specified portion of the regulatory asset to a financing entity in accordance with this section.

Agreement

(2) An agreement between the IESO and a financing entity in relation to the transfer of a specified portion of the regulatory asset shall provide for consideration of a payment by the financing entity to the IESO in an amount equal to the amount of the specified portion.

Effect of payment

(3) Upon receipt by the IESO of the payment by the financing entity,

(a) the balance in the variance account shall be reduced by the amount of the payment;

(b) the regulatory asset shall be adjusted accordingly;

(c) the financing entity shall acquire a corresponding investment interest; and

(d) the IESO shall retain no further right, title or interest in the corresponding investment interest.

Since (a) the statutory right to recover the regulatory asset belongs solely to the IESO, and (b) the IESO is permitted, but not required, to sell the regulatory asset, the IESO can deny or regulate access to the future economic benefits of the regulatory asset by others.

The IESO is exposed to the risks associated with the regulatory asset, with the primary risk being that collection through the mechanism set out in Section 25 of the FHP Act is dependent on the future consumption of electricity by rate-payers.

The above analysis supports the position that the IESO controls the regulatory asset and access to the future economic benefits.

In reaching this conclusion, consideration was given to the following excerpt included on Page 37 of the 2008 Annual Report of the OAGO:

With regard to the second characteristic, we simply point again to the legacy of the former Ontario Hydro and its stranded debt. This in our view provides concrete evidence that even in monopoly situations governments do not have sufficient assurance that an enterprise will generate enough profits in future years to recover all of its past costs.

Although there needs to be sufficient assurance regarding the recovery of past costs, all relevant facts and circumstances need to be taken into consideration. Accordingly, the stranded debt of Ontario Hydro may be relevant to the analysis, but not determinative on its own. As noted in the previous section, the recoverability of past costs will be continually assessed.

The transaction or event giving rise to the public sector entity's control has already occurred

When evaluating whether a transaction or event gives rise to control, the following guidance from PSAS 3210, ASSETS, provides helpful guidance:

.26
The past transaction or event that gives rise to control of an economic resource resulting from exchange agreements or contracts usually occurs at the point of exchange. This arises when substantially all the benefits and risks of ownership have been transferred to the public sector entity and normally coincides with the disbursement of funds, exchange of other assets or assumption of liabilities.
.28

Commented [NS31]: Transfer instead of sale

Commented [LAP32]: Once terms of guarantee are finalized, need to consider if it impacts this discussion. Impact may not be at IESO level, but on consolidation.

Commented [VC(33]: See previous point – to reference to that discussion.

The existence of a law, by-law or policy in relation to a particular program is not a past transaction or event that gives rise to control of an economic resource. Control does not exist until the underlying event occurs.
.29
The past transaction or event giving rise to control of an economic resource must have occurred by the financial statement date. Legislation having retroactive application cannot create a past transaction or event. Any economic resources related to that legislation would be accounted for in the current and relevant future periods, not in the period of the effective date of the legislation.

In the case of the regulatory asset, the above guidance in PSAS 3210 makes it clear that it is not the statute itself that is the transaction or event giving rise to the asset, it is the incurrence of costs for which recovery is provided for under statute. Accordingly, control over the economic benefits of the regulatory asset occurs when the IESO incurs a cash flow deficit that is recorded in the FHP variance account in accordance with Section 24(1) of the FHP Act:

24 (1) The IESO shall establish and maintain a variance account in which it records the following:

1. The IESO deferral for each month.

2. All payments received by the IESO resulting from the exercise of the right of recovery under section 25 and any transfer under section 26.

3. Such other adjustments as may be prescribed, including adjustments in respect of the period that commences on or after May 1, 2017 and before the day this section comes into force.

At this point in time, the IESO has incurred a cash outflow for which it is entitled to recover under Section 25 of the FHP Act:

Regulatory asset established

25 (1) Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Board to set rates

(2) Subject to subsection (3), the Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for the IESO to recover the balance recorded in the variance account.

The following excerpt from the IFRS Staff Paper on Rate-Regulated Activities prepared for discussion at the June 2017 IASB meeting presents a consistent view and dismisses the potential dissenting view that the transaction or event giving rise to the IESO's control is the future consumption of electricity by rate-payers:

A right arises from the rate-adjustment mechanism if the entity has already partially or fully fulfilled a regulatory requirement (past event) but the current regulated rate does not yet reflect the compensation that the entity is entitled to in exchange. Even though the entity cannot compel its customers to buy the regulated goods or services, the entity's right to charge an increased future regulated rate has the potential to produce for the entity an inflow of economic benefits that are not available to other parties. That right will be consumed as the entity includes the rate increase in future regulated rates and will lead to an inflow of economic benefits if customers pay the increased future regulated rate for the future delivery of goods or services.

Another potential dissenting view is contained on page 37 of the 2008 Annual Report of the OAGO:

With regard to the third characteristic, we do not believe that a rate-regulation decision can be considered a transaction or event giving rise to an asset or obligation because, as stated above, from the level of the government's consolidated financial statements such a decision is an internal event between two government-controlled entities. An equivalent analysis for rate-regulated liabilities leads to the same conclusion. PSAB standards preclude the inclusion of both gains and losses from such inter-company transactions. Therefore, our contention is that, at the consolidated financial statement level, rate-regulated assets and liabilities have no place and should be removed upon consolidation of the government's controlled entities.

It should be noted, however, that the OAGO's belief that a rate-regulation decision cannot be considered a transaction or event giving rise to an asset or obligation is not contrary to the IESO position. As noted above, it is not the statute itself that is being considered the transaction or event giving rise to the asset, it is the incurrence of costs for which recovery is provided for under statute.

In addition, one could argue the creation of the relevant statutes is not an internal event from the point of view of the consolidated government. Statutes must be passed by the Legislative Assembly of Ontario to become law. Since the Legislative Assembly is comprised of elected members, it can be viewed as the government's governing body.

Concluding the regulatory asset possesses the three essential characteristics of an asset in PSAS 1000.05 then begs the question as to whether the application of the guidance in ASC 980 is even necessary in this particular situation. Consistent with the statement in ASC 980 –340-25-1 that *rate actions of a regulator can provide reasonable assurance of the existence of an asset,* ASC 980 provides guidance as to how to apply the primary source of PSAS in the regulatory environment.

In a letter from the OAGO to the Board of Directors of the IESO dated June 22, 2017 (the OAGO Letter), the OAGO makes the following statement:

The definitions of an asset in the PSAS and FASB Conceptual Framework are similar. Similar to PSAS, rate regulated deferral accounts do not generally meet the definition of an asset in the FASB's Conceptual Framework.

However, the following excerpts from the Basis for Conclusions for FAS 71 (paragraph 58 in particular), clearly support that ASC 980 is an application of, not an exception from, the basic definition of an asset in the Conceptual Framework:

Economic Effects of Regulation

56. The second threshold issue in the Discussion Memorandum was: "Does rate regulation introduce an economic dimension in some circumstances that should affect the application of generally accepted accounting principles to rate-regulated enterprises?"

57. Most respondents to the Discussion Memorandum indicated that rate regulation does introduce such an economic dimension in some circumstances. Respondents cited the cause-and-effect relationship of costs and revenues as the principal economic effect of regulation that affects accounting for regulated enterprises. They noted that cost might be one factor used by unregulated enterprises to establish prices, but it would often not be the most important factor. Usually, prices are limited by the market. An unregulated enterprise might desire to price its goods or services at a level that would recover all costs and a reasonable profit; however, the market might not permit that price. Alternatively, an unregulated enterprise might be able to increase its prices and its profit if competition does not limit its prices. In either case, cost often is not the principal determinant of prices. In contrast, for an enterprise with prices regulated on the basis of its costs, allowable costs are the principal factor that influences its prices.

58. The economic effect cited by most respondents is the ability of a regulatory action to create a future economic benefit—the essence of an asset. For example, consider a regulated enterprise that incurs costs to repair damage caused by a major storm. If the regulator approves recovery of the costs through rates over some future period or is expected to do so, the rate action of the regulator creates a new asset that offsets the reduction in the damaged asset. The enterprise has probable future economic

benefits—the additional revenue that will result from including the cost in allowable costs for rate-making purposes. The future benefits are obtained or controlled by the enterprise as a result of a past event—incurring the cost that results in the rate order. Thus, the criteria of Concepts Statement 3 for an asset are met.

The fact that many Canadian rate-regulated entities recognized regulated assets under Part V of the CPA Canada Handbook – *Pre-changeover Accounting Standards* (Part V GAAP) further supports the position that regulated assets do meet the basic definition of an asset under PSAS. Although Part V GAAP refers to rate regulation in several standards, it does not include cost capitalization guidance equivalent to ASC 980-340-25-1. It does, however, specify in paragraph 32B of Section 1100, *Generally accepted accounting principles*, that Section 1100 applies to the recognition and measurement of assets and liabilities arising from rate regulation beginning January 1, 2009. Since Section 1100.04 only permits the use of an alternate source of GAAP if it is consistent with Part V GAAP, regulated assets need to meet the basic definition of an asset under Part V GAAP in order to be recognized. The Part V GAAP definition of an asset in Section 1000, *Financial Statement Concepts* is consistent with the PSAS definition.

The CICA Research Report also concluded regulated assets meet the basic definition of an asset under Part V GAAP:

In the Study Group's view, the economic benefits and obligations created by rate regulation and resulting from past transactions or events, and the changes in these amounts, meet the definition of a financial statement element set out in Handbook Section 1000.

The OAGO Letter suggests that IFRS should be consulted prior to referring to ASC 980 under PSAS's GAAP hierarchy in PSAS 1150 and points out the following:

- In 2005 the International Financial Reporting Interpretations Committee (IFRIC) indicated the US GAAP recognition criteria for regulated assets were not fully consistent with IFRS and could not be applied by analogy.
- When the question of rate regulated accounting was posed to the IFRIC again in 2008, the IFRIC noted the topic had been previously addressed and there was a well-established practice of first time IFRS adopters ceasing rate regulated accounting and removing regulatory deferral accounts from their financial statements.
- In the Basis for Conclusions on IFRS 14, IFRS 14.BC30 noted the differences in the recognition criteria between IFRS and ASC 980 resulted in almost all existing regulatory deferral accounts being derecognized upon transition to IFRS.

While PSAS does not prescribe an ordering of consideration for sources other than primary sources, the statements made with respect to IFRS by the OAG have been considered. It should be noted, however, that the IASB's project on rate-regulated activities is still in progress and the OAGO Letter does not reference more recent and relevant activity. In September 2014, the IASB issued Discussion Paper DP/2014/02, *Reporting the Financial Effects of Rate Regulation*. The Discussion Paper presents the opposing views as to whether regulatory deferral account balances meet the definitions of an asset or a liability and specifically states the following in paragraph 5.09:

Consequently, the IASB has not formed a preliminary view on whether regulatory deferral account balances meet either the current or proposed revised Conceptual Framework definitions of an asset and a liability. It will use the input received from the responses to this Discussion Paper and the Conceptual Framework project to help it assess whether to develop any specific accounting guidance or requirements for rate-regulated activities.

In addition, the most recent paper issued by the IASB staff in June 2017 includes the following:

17. During the May 2017 Board meeting we also considered the interaction between the definitions of assets and liabilities and the characteristics of defined rate regulation (see paragraphs 5 and 6). We concluded that a combination of those characteristics suggested that the rights and obligations created by the rate-adjustment mechanism are assets and liabilities, as those terms are expected to be defined in the forthcoming revised Conceptual Framework for Financial Reporting.

The Exposure Draft ED/2015/3, *Conceptual Framework for Financial Reporting*, defines an asset as follows:

4.5 An asset is a present economic resource controlled by the entity as a result of past events.
4.6 An economic resource is a right that has the potential to produce economic benefits.

This recent activity suggests that it would be premature to assume that the IASB will conclude that regulatory deferral account balances will not meet the definitions of an asset or a liability.

Once it is determined that the regulatory asset meets the basic characteristics of an asset in PSAS 1000.36, consideration also needs to be made as to what type of asset it is. This is important because PSAS 1000.58 does not permit the recognition of intangible assets:

In the absence of appropriate public sector recognition and measurement criteria for intangibles, all intangibles, including those that have been purchased, developed, constructed or inherited in right of the Crown, are not recognized as assets in government financial statements. The intangible often called "human capital" that embodies the talent or intellectual capital of government employees is not recognized as an asset under existing accounting principles.

PSAS 1000 identifies two types of assets: financial assets and non-financial assets and provides the following commentary:

.39 Financial assets are assets that could be used to discharge existing liabilities or finance future operations and are not for consumption in the normal course of operations.

.40 A financial asset is any asset that is:

- *a) Cash*
- *b) a realizable asset that is convertible to cash;*
- *c) a contractual right to receive cash or another financial asset from another party;*
- *d) a contractual right to exchange financial instruments with another party under conditions that are potentially favourable to the government;*
- *e) an equity instrument of another entity;*
- *f) an investment in a government business enterprise or government business partnership;*
- *g) a financial claim on an outside organization or individual; or*
- *h) an inventory or item for sale that meets the criteria in FINANCIAL STATEMENT PRESENTATION, paragraph PS 1201.055.*

.41 Non-financial assets include tangible capital assets, and other assets such as prepaid expenses and inventories of supplies.

.42 Non-financial assets are acquired, constructed or developed assets that do not normally provide resources to discharge existing liabilities, but instead:

- *a) are normally employed to deliver government services;*
- *b) may be consumed in the normal course of operations; and*
- *c) are not for sale in the normal course of operations.*

PSAS 3210, ASSETS, also provides some relevant guidance:

.24 Non-financial resources include all items of a fixed or permanent nature (such as tangible capital property), claims to goods and services (such as prepaid items) and consumable goods (such as inventories of supplies). Non-financial resources also include intangibles, Crown lands and natural resources.

.25 Certain non-financial resources are, however, not given accounting recognition as assets in government financial statements. For example, all government intangibles, and all natural resources and Crown lands that have not been purchased by the government, are not given accounting recognition in government financial statements. A government's non-financial assets, as defined in FINANCIAL STATEMENT CONCEPTS, Section PS 1000, comprise the recognized non-financial resources of a government.

Although PSAS does not permit the recognition of intangibles, it also does not provide a definition of intangibles. In absence of specific guidance in PSAS as to what constitutes an intangible, U.S. GAAP is probably the most appropriate source to consult, in light of the fact that it deals specifically with regulated assets. Under U.S. GAAP, a regulated asset is not treated as an intangible. ASC 980 contains separate subsections for 'Intangibles – Goodwill and Other' and 'Other Assets and Deferred Costs' and regulated assets are included in the guidance on 'Other Assets and Deferred Costs'.

In accordance with PSAS 1201.040(a), financial assets are presented separately on the statement of financial position. The IESO classifies its regulated assets (i.e., the original variance account and the regulated assets relating to unrecovered smart metering expenses and unrecovered PSAB transition items) as financial assets.

Although the regulatory asset created under the FHP does not clearly meet the definition of either a financial asset or a non-financial asset under PSAS, it possesses characteristics more consistent with that of a financial asset since it will be available to discharge existing liabilities or finance future operations and is not for consumption in the normal course of operations.

Commented [LAP34]: Consider need to specifically address PS 3450.

The FHP is expected to be executed in a manner such that the regulatory asset will be available to discharge existing liabilities or finance future operations in the short term through its commoditization (i.e., transfer to the OPG Trust). However, even if not commoditized, the regulatory asset will be available to discharge existing liabilities or finance future operations in the future similar to, for example, a long-term receivable.

By recognizing the regulatory asset in a manner consistent with that of a financial asset, the FHP will have a neutral impact on both the Province's net debt and accumulated deficit, which appears appropriate and aligned with the intent of guidance in PSAS 1100, Financial statement objectives:

Financial statements should present information to describe the government's financial position at the end of the accounting period. Such information should be useful in evaluating:

a) *the government's ability to finance its activities and to meet its liabilities and contractual obligations; and*
b) *the government's ability to provide future services.*

A government's net debt is an important indicator of a government's financial position, highlighting the financial affordability of future government service provision. A net debt position represents a "lien" on the ability of the government to apply financial resources and future revenues to provide services. Non-financial assets are added to net debt to calculate the other indicator of a government's financial position — its accumulated surplus or deficit. Non-financial assets are "prepaid service potential". Reporting a government's recognized non-financial resources as part of its financial position provides information necessary for a more complete understanding of a government's debt position, financial position and future operating requirements.

Governments provide public services and redistribute wealth for a variety of social and economic purposes. To meet those objectives, governments need information about the cost of services and the affordability of services. An understanding of the extent of the financial "lien" the government has on its ability to provide future services as a result of past transactions and events is essential information. Governments also need to have an appreciation of the magnitude of the total economic resources they have on hand to deliver services. A government's net financial resources / net debt position, assessed in combination with the non-financial resources position of the government, provides a measure of the net recognized economic resources available to the government at the financial statement date to provide services in the future.

If the regulatory asset is not recognized in a manner consistent with that of a financial asset by the GRE, the Province's net debt will increase significantly, suggesting that the Province has a much higher future revenue requirement. This would be inaccurate, however, since the regulatory asset is going to be recovered under statute from electricity consumers, not taxpayers.

Commented [LAP35]: Consider if Balanced Budget Legislation should be addressed

Additionally, while an increase in net debt and/or accumulated deficit in the financial statements of the GRE would be an indicator the Province's financial position has deteriorated in accordance with PSAS 1200.036, the FHP is designed to, in substance, have a neutral impact on the Province's financial position.

Sale of the Regulatory Asset [NTD – Need to consider impact of guarantee when finalized, but may only impact at consolidated level if IESO not a party to guarantee]

Commented [VC(36]: To add

As discussed above, IESO management has concluded the value of the variance account ~~regulatory asset~~ created by the FHP can be recognized as a regulated asset for accounting purposes in the financial statements of the IESO in accordance with the guidance in ASC 980.

Since the IESO does not have the financial capability to finance the regulatory asset, ~~OPG intends to establish~~ a separate financing ~~entity~~ entities (currently only OPG Trust) ~~to~~ will purchase the IESO's regulatory asset from time to time ~~on a monthly basis~~ to eliminate any cash shortfall in the IESO. Through this arrangement, OPG Trust will finance these purchases through a combination of provincial borrowing (flowed through OPG as an equity investment), amounts advanced from OPG and direct borrowing from capital markets.

The sale of the regulatory asset to OPG Trust is permitted under Section 26 of the FHP Act:

> *26 (1) The IESO may from time to time, in accordance with this Act and the regulations, transfer a specified portion of the regulatory asset to a financing entity in accordance with this section.*
>
> *Agreement*
>
> *(2) An agreement between the IESO and a financing entity in relation to the transfer of a specified portion of the regulatory asset shall provide for consideration of a payment by the financing entity to the IESO in an amount equal to the amount of the specified portion.*
>
> *Effect of payment*
>
> *(3) Upon receipt by the IESO of the payment by the financing entity,*
>
> *(a) the balance in the variance account shall be reduced by the amount of the payment;*
>
> *(b) the regulatory asset shall be adjusted accordingly;*
>
> *(c) the financing entity shall acquire a corresponding investment interest; and*
>
> *(d) the IESO shall retain no further right, title or interest in the corresponding investment interest.*

Consideration needs to be made as to whether the sale of the regulatory asset is accounted for as a sale transaction or a financing transaction. If treated as a sale transaction, the existing regulated asset is

derecognized (DR Expense, CR Regulated Asset) and the cash received is recognized as sales proceeds (DR Cash, CR Revenue). Since the cash proceeds received are equal to the book value of the regulated asset, there is no net impact to income. If treated as a financing transaction, the existing regulated asset continues to be recognized and the cash proceeds received are treated as a loan (DR Cash, CR Payable).

Commented [VC(37]: Do you think IESO should recognize revenue and expense – vs. a gain of NIL?

Commented [NS38]: This is my expectation, i.e. no income statement transactions.

IESO management has concluded the sale of the regulatory asset to OPG Trust will result in the derecognition of the regulated asset (i.e., sale transaction). The IESO's auditors, KPMG, concur with this position, as evidenced from the following excerpt from the KPMG Letter:

We have considered the foregoing analysis and management's conclusion. We concur that the regulatory asset should be derecognized on transfer to the OPG Trust as IESO no longer has rights or future economic benefits associated with the asset.

PSAS provides little guidance relating to the derecognition of an asset. In particular, PSAS 1000, *Financial statement concepts*, PSAS 3210, *Assets*, and PSAS 3450, *Financial instruments*, are all silent on the topic. Although the transfer of the regulatory asset is not within the scope of PSAS 3430, *Restructuring Transactions*, the following derecognition guidance in this standard provides some relevant insight:

.21 Individual assets and liabilities transferred in a restructuring transaction should be derecognized by the transferor if they no longer meet the definitions of assets and liabilities and applicable recognition criteria at the restructuring date.

.24 When a transferor continues to be involved in the individual assets and/or liabilities it transferred to a recipient subsequent to the restructuring date, it would assess the nature and extent of its continued involvement against the definitions of assets and liabilities and applicable recognition criteria to evaluate whether:

(a) derecognition of the asset and liability transferred would be appropriate; and
(b) its continued involvement gives rise to a new asset or new liability that needs to be recognized.

.25 A new asset or new liability may arise from a restructuring due to a transferor's continued involvement in the individual assets and liabilities transferred (for example, if it agrees to guarantee repayment of all or a portion of a transferred liability or leases back a portion of a transferred asset). As the new asset or new liability is not transferred, together with related program or operating responsibilities, they are not part of the restructuring transaction. They would be accounted for in accordance with individual Sections of the PSA Handbook by both the transferors and recipients.

The IESO should derecognize the regulated asset when transferred to OPG Trust if it no longer meets the definition of an asset in PSAS 1000.35-.36. However, consideration should also be made as to whether the IESO has any continued involvement in the regulatory asset that would result in the recognition of a new asset and/or a new liability (i.e. financing transaction).

The following supports the IESO's position that subsequent to the transfer to OPG Trust, the regulatory asset no longer possesses the three essential characteristics of an asset in PSAS 1000.36 and, therefore, should be derecognized:

Embody future economic benefits that involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows, or to reduce cash outflows
The future economic benefits embodied in the regulated asset are realized by the IESO through the

transfer of the regulatory asset to OPG Trust in exchange for cash. As noted above, under Section 26(2)(d) of the FHP, the IESO retains no further right, title or interest in the regulatory asset transferred to OPG Trust. Accordingly, there is no remaining future economic benefit to the IESO.

The public sector entity can control the economic resource and access to the future economic benefits

Although the IESO will collect funds on behalf of OPG Trust, the following sections of the FHP support that control of and access to the future economic benefits of the regulatory asset pass to OPG Trust:

Section 16 - IESO to receive amounts

2) *The IESO shall, as agent of the investment interest owners, receive amounts in respect of the clean energy adjustment paid to it from electricity vendors in accordance with the market rules made under section 32 of the Electricity Act, 1998 or the regulations.*
4) *All amounts received by the IESO in respect of the clean energy adjustment shall, until remitted to or for the benefit of the investment interest owner, be held in trust by the IESO for the investment interest owners.*
5) *The IESO shall remit amounts received by it in respect of the clean energy adjustment, inclusive of interest earned on the amounts referred to in subsection (1), to or for the benefit of the investment interest owners in accordance with the regulations.*

Section 29 - Irrevocable rights and interests

1) *The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests of investment interest owners:*
    1. *The right and interest to impose, invoice, collect, receive and recover the clean energy adjustment from specified consumers, including the right to determine the clean energy adjustment in accordance with this Act.*
    2. *The right to receive, collect and recover the clean energy adjustment that is imposed, invoiced and recoverable under this Act, including any amounts in respect of the clean energy adjustment that are held by electricity vendors, IESO and other prescribed parties.*

The transaction or event giving rise to the public sector entity's control has already occurred

Not applicable as IESO does not control.

As previously noted, the IESO relinquishes its rights, title and interest in the regulatory asset upon transfer to OPG Trust. Subsequent to the transfer, the IESO's only continuing involvement is to act as agent of OPG Trust, which involves receiving funds and holding them in trust on behalf of OPG Trust. This level of continuing involvement does not result in the recognition of a new asset and/or a new liability by the IESO. Accordingly, it is appropriate to account for the transfer of the regulatory asset as a sale and derecognize the regulated asset.

Derecognition of the regulated asset is also consistent with ASC 980. ASC 980-340-40-1 provides the following guidance on the derecognition of an asset that has been recognized in accordance with ASC 980-340-25-1:

If at any time an entity's incurred cost no longer meets the criteria for the capitalization of an incurred cost (see paragraph 980-340-25-1), that cost shall be charged to earnings.

In order for an incurred cost to be capitalized, ASC 980-340-25-1(a) requires the following:

It is probable (as defined in Topic 450) that future revenue in an amount at least equal to the capitalized cost will result from inclusion of that cost in allowable costs for rate-making purposes.

The capitalization criterion in ASC 980-340-25-1(a) is no longer met after the regulatory asset is transferred to OPG Trust because there are no future cash inflows that benefit the IESO. As mentioned above, the IESO realized the economic benefits associated with the regulatory asset upon the transfer. In accordance with Section 16 of the FHP, any future cash collected by the IESO is on behalf of OPG Trust.

Debits and Credits

Based on the example provided earlier, the IESO pays the contracted power generator $400 for electricity used by the ratepayer and collects $300 from the ratepayer through their local distribution company (LDC). The $100 recovery shortfall is recorded in a variance account created by Bill 132 and deemed to be a regulatory asset. The IESO sells the regulatory asset to OPG Trust for $100 to obtain cash to make up the shortfall.

The accounting for the above transactions in the financial statements of the IESO, which are prepared in accordance with PSAS are set out in Scenario A in the table below. For comparison purposes, Scenario B in the table below sets out the accounting if it is determined the regulatory asset is not eligible for recognition as an asset under PSAS.

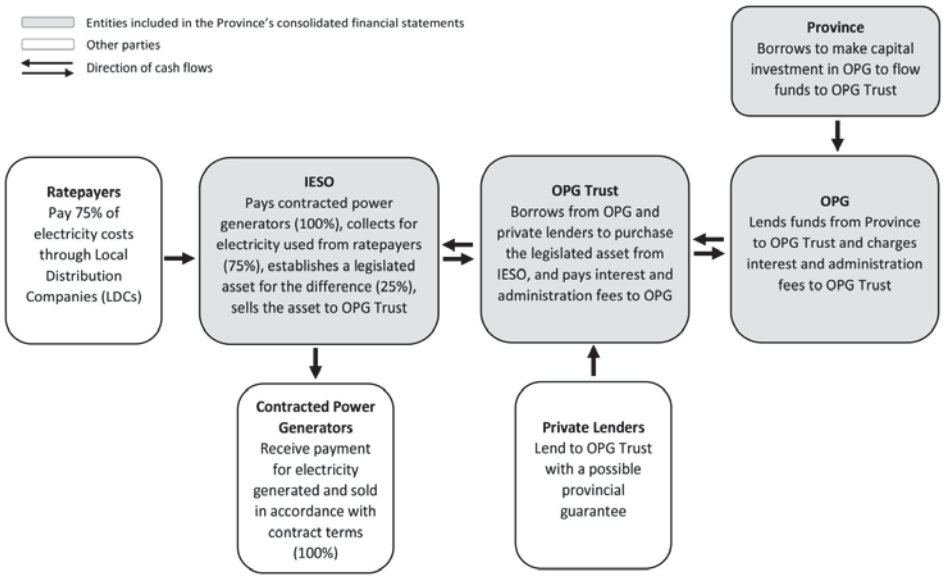
Scenario A – Regulated Asset			**Scenario B – Not a Regulated Asset**		
Market Settlement					
DR	Cash	300	DR	Cash	300
DR	Asset	100	DR	Expense	100
CR	Cash	(400)	CR	Cash	(400)
Sale of Regulatory Asset to OPG Trust					
DR	Cash	100	DR	Cash	100
CR	Revenue	(100)	CR	Gain	(100)
DR	Expense	100			
CR	Asset	(100)			

Commented [LAP39]: Maybe better to do once we add the consolidation section which would reverse the gain.

At any given point in time, the accounting result will be the same under both scenarios provided the cash shortfall has been fully funded. If a funding deficit exists, however, the deficit would be recognized as an asset under Scenario A and recognized as an expense under Scenario B. A funding deficit may arise due to, for example, temporary timing differences between the creation and sale of a regulatory asset. A funding deficit may also arise if OPG Trust (or another financing entity) ceases to purchase the IESO's regulatory assets on an on-going basis.

APPENDIX A

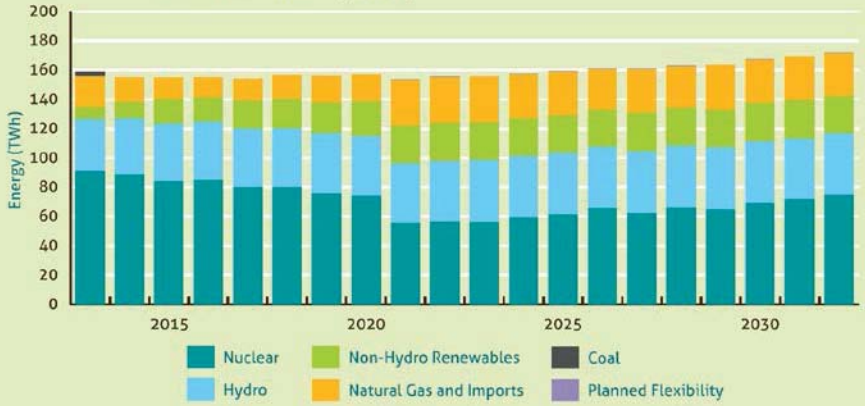
Proposed Legislated Transaction Structure
Prepared by the Office of the Auditor General of Ontario



Commented [OPCD40]: Can chart be expanded to include impact on CFS (consolidation of IESO reflecting RRA on CFS, Interest Income from OPG through revenue of GBE will help to offset borrowing costs incurred by Province on equity injection).

APPENDIX B

Figure 19: Ontario's Forecast Electricity Production (TWh)



Notes: The Planned Flexibility identified in Figure 19 is required to meet peak requirements and represents less than 1 TWh of energy per year. Forecasting of electricity production includes the expectation of imports and exports of electricity in all years. Imports and exports are an important component in managing the operation of the electricity system. As a result, electricity production forecast exceeds the forecast Ontario consumer demand.

FW_ Fair Hydro - financing entity costs.pdf

From:	Kim Marshall
To:	Hume, Steen (ENERGY); Calwell, Carolyn (ENERGY/MEDEI/MRI); Veinot, Cindy (TBS); john.s.lee@opg.com
Cc:	Michael Boll
Subject:	FW: Fair Hydro - financing entity costs
Date:	August 23, 2017 8:38:11 AM
Attachments:	reg_framework_IESO Ministry draft_170713.doc

In conversation with OPG, KPMG and E&Y, it seems that the regulatory option to financing costs during the moratorium period is a good approach to pursue. Attached is the material Michael previously sent. Can we touch on next steps, if not tomorrow early next week? thanks

Kimberly Marshall | VP, Corporate Services & CFO

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Conservation: www.saveONenergy.ca <http://www.saveONenergy.ca> | Twitter: saveONenergyOnt <https://twitter.com/saveonenergyont> | LinkedIn: saveONenergy <https://www.linkedin.com/company/saveonenergy-ontario>

From: Michael Boll
Sent: July 20, 2017 3:28 PM
To: Kim Marshall
Subject: FW: Fair Hydro - financing entity costs

This is what was sent to the Ministry.

From: Michael Boll
Sent: July 13, 2017 12:09 PM
To: Kim Marshall
Subject: FW: Fair Hydro - financing entity costs

FYI – now that we have an initial impression from Michel, I have forwarded to Carolyn so they can start considering from their perspective.

From: Michael Boll
Sent: July 13, 2017 12:07 PM
To: 'Calwell, Carolyn (ENERGY/MEDEI/MRI)'
Subject: Fair Hydro - financing entity costs

Common Interest Privilege and Confidential

Hi Carolyn,

Attached for discussion is an outline of a potential regulatory option that may enable the financing entity's cost recovery from the market. This has not been socialized outside the IESO and its advisors. We wanted to send it to you so you could assess whether it seemed viable, including from a regulation making authority perspective.

Please let me know if you would like to discuss.

Regards,

Michael

Michael Boll | Associate General Counsel

Independent Electricity System Operator (IESO) | T: (416) 969-6023

120 Adelaide Street West, Suite 1600, Toronto, ON, M5H 1T1

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reg_framework _IESO Ministry draft_170713.pdf

Privileged & Confidential Draft

Regulatory Option for Temporary Funding of Financing Entity's Cost/Interests

For discussion purposes, the following is a potential regulatory mechanism whereby IESO market settlement mechanisms might be used to fund the financing entity's costs until the clean energy adjustment may be charged to specified consumers. This is subject to the there being sufficient regulation making authority to enact the regulations contemplated below.

1. A regulation could be passed (possibly pursuant to section 26(1) of FHA) requiring IESO, as part of the regulatory asset transfer, to fund financing entity's costs/interest in relation to such transferred regulatory asset for the period during which the clean energy adjustment may not be recovered from specified consumers. The regulation may indicate these funding amounts will be added to the global adjustment (GA) but only allocated to specified consumers (i.e. not form part of GA payable by Class A or Class B consumers who are not also specified consumers under Fair Hydro).
    a. This regulatory funding mechanism would be similar to other existing mechanisms whereby a third party's costs are funded from the GA via IESO settlement processes. For example, section 26.1 of the Ontario Energy Board Act creates a mechanism for IESO to collect costs incurred by the Ministry from consumers. Likewise, section 78.5 of the Ontario Energy Board Act requires the IESO to make payments to distributors with respect to amounts approved by the OEB for CDM programs and to recover such payment amounts from prescribed consumers as part of the GA.

2. A regulation could be passed (or amend O. Reg for 430/04 and/or O. Reg 429/04) pursuant to section 25.33(1)(c) and 25.33(2)(c) of the Electricity Act:

    - prescribing funding amounts incurred/paid for by the IESO pursuant to paragraph 1 above

    - prescribing specified consumers (as defined in Fair Hydro Act) as class of market participants and class of consumers for which adjustments will be made relating to funding amounts

    - prescribing, as necessary, payment adjustments and variance account treatment

3. If the above regulations were passed, amounts the IESO invoices electricity vendors monthly would include each electricity vendor's proportionate share of the funding amount. Proportionate share would likely be determined based on volume of electricity withdrawn by the electricity vendor's specified consumers during that month compared to total electricity withdrawn by all specified consumers in province for that month.

4. Difference between gross amounts billed by IESO to electricity vendors (which include funding amounts referred to above) and net amounts received by IESO from electricity vendors taking into account fair hydro adjustment constitutes IESO deferral (s. 23, FHA and s. 15, O. Reg 206/17).

5. IESO deferral is included in a variance account (s. 24(1), FHA)

6. All amounts in variance account constitute a regulatory asset (s. 25, FHA), which the IESO:

    - may transfer to the financing entity (s. 26(1), FHA)

    - or, if any balance remains in the variance account, recover through OEB-approved rates from specified consumers on or after May 1, 2021 (s. 25, FHA)

FW_ IESO - Follow up question.pdf

From: Veinot, Cindy (TBS)
To: Kim Marshall
Cc: Hosick, Sarah (TBS); Donaldson, Mark (TBS)
Subject: FW: IESO - Follow up question
Date: November 28, 2017 1:30:00 PM

Hi Kim – can you take a first crack these questions?

From: Umar Saeed [mailto:usaeed@psabcanada.ca]
Sent: November 28, 2017 11:12 AM
To: Veinot, Cindy (TBS); Kim.Marshall@ieso.ca
Cc: Michael Puskaric
Subject: IESO - Follow up question

Dear Kim and Cindy,

We wanted to thank you again for your time the other day. I am going through my notes and I had a few questions for clarification.

I suspect these will be fairly straightforward for you to answer, but I also want to be respectful of your time and if they are too complicated – please let me know.

Would it be the IESO or would it be OPG that would ultimately go to the Ontario Energy Board to recover these costs?

If it is the IESO, my understanding is the OFHPA creates the deferral and variance account that enables the IESO to recover costs from future rates. If it is OPG, would they already have a deferral and variance account to house these costs until it is recovered? Or does the legislation apply to OPG as well?

Finally, when it comes time to recover those costs, would it go through the OEB prudence review or is that not necessary as a result of the OFHPA legislation?

I want to ensure I am understanding the process for recovering costs through future rates and the role of the OEB, OFHPA accurately.

I know this is a busy time for both of you and your help is very much appreciated.

Sincerely,

Umar

Umar Saeed, MAcc, CPA, CA

Principal / Directeur de projets

Public Sector Accounting Board / Conseil sur la comptabilité dans le secteur public

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Fw_ V3.rtf

From: Petsche, Nadine (TBS) []
To: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
Subject: Fw: V3
Date: Friday, July 21, 2017 08:57:54
Attachment 1: image001.gif
Attachment 2: FHP Memo - Draft V3 21-Jul-2017 .docx

Was a mtg deleted from my calendar?

From: Blake Langill <blake.w.langill@ca.ey.com>
Sent: Friday, July 21, 2017 8:47 AM
To: Veinot, Cindy (TBS); Petsche, Nadine (TBS)
Cc: Suzie Gignac; Lee Anne Probert
Subject: V3

Cindy & Nadine,

Attached is the latest draft from late yesterday based on Monday's call; Suzie and I have not had a chance to review but wanted it in your hands as a just in case when Lee Anne talks through what she's done and the areas she's still thinking about and/or is looking for your thoughts – she'll cover that on this morning's call.

Both Suzie and Lee Anne will be joining too but from calling from cars.

Talk soon.

-blake

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EY did not perform an audit, review, examination or other form of attestation (as those terms are defined by the CPA Canada) of the financial statements of the Province or any other entities involved. Accordingly, EY did not express any form of assurance on the accounting matters, financial statements, any financial or other information or internal controls of the Province or any of the other entities involved. EY did not conclude on the appropriate accounting treatment based on specific facts or recommend which accounting policy/treatment the Province or any of the other entities involved should select or adopt.

The observations relating to accounting matters that EY provided to the OPCD were designed to assist them in reaching their own conclusions and do not constitute our concurrence with or support of the accounting or reporting of the Province or the other entities involved. The Province and the other entities involved are each responsible for the preparation of their own financial statements, including all of the judgments inherent in preparing them.

Introduction

Ontario's consolidated financial reports are prepared in accordance with the accounting principles for governments recommended by the Public Sector Accounting Board (PSAB) of the Chartered Professional Accountants of Canada (CPA Canada). In order to meet the needs of users, including the legislature and the public, for accountability in government reporting and decision making, it is essential that public sector financial statements reflect the economic substance of the government's activities.

In March 2017, the Government of Ontario (the Province) announced its Fair Hydro Plan (FHP). In assessing the appropriate accounting treatment for the Global Adjustment refinancing (GA Refinancing) component of the FHP on Ontario's consolidated financial statements, the Office of the Provincial Controller considered the authoritative guidance issued by PSAB, as well as the accounting assessments of the Independent Electricity System Operator (IESO) and Ontario Power Generation (OPG) management, including the accounting opinions of their external accounting advisors. Given the complexity of the GA Refinancing structure, the exercise of professional judgement is necessary to ensure that key financial reporting objectives of transparency and accountability are best served. This accounting analysis considers currently available information, including efforts underway by the International Accounting Standards Board as related to rate regulated accounting. It also draws upon publicly available information including previous studies and bases for conclusions dealing with rate-regulated accounting, both in the public sector and the private sector.

Background

The FHP will reduce electricity bills for Regulated Price Plan (RPP) customers (as well as those non-RPP consumers who receive the 8% rebate as specified in the Ontario Rebate for Electricity Act, 2016) by approximately 25% for a period of one year, starting in the summer of 2017, and limit the increase in electricity bills to the rate of inflation over the following four years.

Because distribution rates vary across the province and customers use different amounts of electricity, the goal in calculating the new RPP electricity prices is to achieve a 25% reduction for a "proxy" customer, which is established under the Fair Hydro Act, 2017 (FHP Act) as a residential customer of Toronto Hydro who uses 750 kWh of electricity a month, pays time-of-use RPP electricity prices and has the time-of-use consumption profile of a typical residential customer.

The measures that make up the 25% average reduction include:

1. Spreading the cost of Ontario's clean energy investments over the expected lifecycle of the generation infrastructure assets. This is expected to account for ~~15~~18-~~17~~19% of the overall reduction.
2. Shifting the cost of the Ontario Electricity Support Program (OESP) and Rural or Remote Rate Protection (RRRP) program from ratepayers to taxpayer-funded programs.
3. An 8% rebate equal to the provincial portion of the HST, which took effect on January 1, 2017.

Under the first measure, the Province will borrow funds to pay a portion of current electricity costs, thereby temporarily reducing the amount paid by eligible ratepayers. The deferred amounts, including

interest and other costs, will be recoverable from ratepayers through future rates over an estimated 18-year period starting in approximately 2028. In other words, the impact of #1 above is fully borne by the ratepayers – it is a shift in the timing of payment for the clean energy investments, while the impacts of #2 and #3 are reducing the cost to the ratepayer, but at the cost of the taxpayer.

Objective

The objective of this memo is to assess the impact of the first measure of the FHP (i.e. deferred recovery of clean energy costs) on the consolidated financial statements of the Province. **[NTD – Consider if document should discuss #2 and #3. This would contrast the different treatment by the Province]**

Background

The Ontario Energy Board (OEB) has been established by the Province to be Ontario's independent energy regulator.

In accordance with Section 78(3.1) of the Ontario Energy Board Act, 1998 (the OEB Act), the OEB is responsible for determining electricity commodity prices for RPP consumers. Section 78(3.3) of the OEB Act requires the OEB to forecast the cost of electricity used by RPP consumers and ensure the prices they are charged reflect that cost. The rate setting process is highly complex and involves numerous forecasts and estimates. As a result, the OEB regulatory framework allows for variances between the actual cost of supplying electricity and the amount collected from RPP consumers.

In setting the rates for RPP consumers, Section 78(3.3) of the OEB Act requires the OEB to settle any such variances through rates over a 12-month period. This is achieved through a price adjustment charged or credited to RPP consumers. This adjustment forms part of the Global Adjustment paid by consumers.

The IESO is the administrator of Ontario's wholesale electricity market. The IESO settles the market with all participants, as an agent.

As part of its role as market administrator, the IESO calculates the market price for electricity (the Market Clearing Price, or MCP) by running the bids and offers of the market participants through an algorithm. The actual cost of supplying electricity, however, is greater than the MCP as certain generators are paid additional amounts relating to the cost of clean energy initiatives they have undertaken. From a government policy perspective, decisions as to what is in the best interest of the public regarding electricity generation in Ontario are not based solely on economics, they are also influenced by environmental, social and political factors. Accordingly, generators receive compensation for investing in clean energy infrastructure when it is relatively less economical. In these instances, the IESO (and previously the XXX) entered into contracts to pay the generators the excess costs (plus a reasonable rate of return thereon) over an extended period of time, typically 20 years. The amounts paid to the generators under the terms of these contracts are currently included in the rates set by the OEB (as part of the Global Adjustment) with the intention they will be recovered from consumers in the same period they are paid to the generators. As previously noted, the complexity of the rate setting process results in variances between the amount paid to the generators and the amount collected from RPP consumers.

Under existing legislation, the IESO is required to fund any cash shortfall relating to differences arising between the actual cost of supplying electricity and the amount collected from RPP consumers. In

accordance with Section 25.33(5) of the Electricity Act, 1998 (the Electricity Act), the IESO has established and maintains a variance account to track these temporary differences (the original variance account) for subsequent settlement with ratepayers. Cash shortfalls in the IESO arising from the original variance account are funded through financing provided by the OFA.

As described below, once the FHP is implemented, the cost of supplying electricity to RPP consumers that is paid to generators will no longer be fully collected over a 12-month period~~, but over a longer period defined by legislation~~.

Under the FHP, while generators would continue to be paid over a twenty year period as contracted, the amounts paid by the IESO to the generators would be recovered from ratepayers over a thirty year period. Deferring the recovery of these costs from the consumers on a longer-term basis would create a significant interim cash shortfall for the IESO.

Section 24(1) of the Ontario Fair Hydro Plan Act (the FHP Act) requires the IESO to establish and maintain a variance account (separate from the original variance account described above) to track the cash shortfall specifically resulting from the implementation of the FHP (the FHP variance account). Due to the longer recovery period, and additional recoverable financing and management fee costs, the balance in the account is forecast to increase significantly. The balance in this variance account is defined in Section 1(1) of the FHP Act to be a regulatory asset[1]. The IESO is entitled under Section 25 of the FHP Act to recover the regulatory asset from RPP consumers in the future, which will be achieved through the OEB setting rates to allow for such recovery. Section 26 of the FHP Act also permits the IESO to transfer or sell the regulatory asset to a financing entity to fund its cash shortfall, thus commoditizing the future cash flow stream.

The Province has requested that OPG administer the deferral of the Global Adjustment under the FHP because of OPG's participation in the market, the regulatory knowledge OPG possesses and the ~~potential~~ expected ability to consolidate the accounting of the related activity ~~and accounting with~~ in the financial statements of OPG. To fulfill this role, OPG intends to establish a financing entity (OPG Trust) to purchase the IESO's regulatory asset on a monthly basis and eliminate any cash shortfall in the IESO. Through this arrangement, OPG Trust will finance these purchases through a combination of provincial borrowing (flowed through OPG as an equity investment), amounts advanced from OPG and direct borrowing from capital markets.

Basis of Accounting

In accordance with PSAS 1300.07, the government reporting entity (GRE) for the Province comprises government components and those organizations that are controlled by the government.

As defined in the Introduction to PSAS, the following types of organizations are controlled by the government: (a) government business enterprises (GBE), government non-for profit organizations (GNPO), and other government organizations (OGO).

[1] To avoid confusion in the remainder of this document, the term regulatory asset will refer to the defined term in the FHP Act and the term regulated asset or rate-regulated asset (RRA) will refer to an asset recognized for accounting purposes.

GNPOs and OGOs are considered government units and, in accordance with PSAS 1300.27, are consolidated in the GRE on a line-by-line basis. For consolidation purposes, the financial information of government units is required to be prepared in accordance with PSAS.

GBEs, on the other hand, are accounted for in the GRE using the modified equity method as prescribed by PSAS 1300.35. Under the modified equity method, which is described in detail in PSAS 3070, INVESTMENTS IN GOVERNMENT BUSINESS ENTERPRISES, the equity method of accounting is modified only to the extent that the GBE's accounting principles (which are required to be IFRS in accordance with paragraph 17 of the Introduction to PSAS) are not adjusted to conform to those of the government.

As documented in Schedule 8 to the consolidated financial statements of the Province, the IESO is an OGO and OPG is a GBE. The current accounting for these entities is as follows:

		ENTITY STATEMENTS	GRE STATEMENTS	
ENTITY	**CLASSIFICATION**	**GAAP**	**ACCOUNTING METHOD**	**GAAP**
IESO	OGO	PSAS[1]	Consolidation	PSAS
OPG	GBE	US GAAP[2]	Modified equity method	IFRS[3]

1. For purposes of preparing general purpose financial statements, an OGO applies PSAS unless those standards do not meet the needs of its financial statement users. In that situation, IFRS should be considered and the most appropriate set of standards applied.
2. Although a GBE is required to apply IFRS for purposes of preparing general purpose financial statements, the Ontario Securities Commission has approved an exemption that allows OPG to apply US GAAP up to January 1, 2019 for purposes of filing its financial statements with the OSC.
3. OPG applies IFRS 14, which permits it to continue to account for rate-regulated activities using US GAAP guidance for its general purpose financial statements.

This memo does not reconsider the classification of these existing entities.

As discussed in detail in a subsequent section, OPG expects that it will control OPG Trust. If this is the case, OPG Trust will be consolidated by OPG and, therefore, reflected in the GRE through the modified equity accounting of OPG under IFRS. If, however, it is determined that OPG Trust is controlled by the Province, OPG Trust will either (a) be consolidated in the GRE on a line-by-line basis under PSAS if determined to be an OGO, or (b) reflected in the GRE through modified equity accounting under IFRS if determined to be a GBE.

Example

For simplicity, the following example will be used in this document to illustrate the accounting impact of the FHP on the various entities involved:

- Ratepayer bill is currently $588, and the 17% reduction related to the FHP is $100.
- The Province directly borrows 44%, or $44, to make an equity contribution to OPG, which OPG then loans to OPG Trust.
- OPG directly borrows 5%, or $5, and loans it to OPG Trust.
- OPG Trust directly borrows 51%, or $51, from capital markets.

Analysis

IESO

The IESO is presently classified as an OGO and prepares its standalone, general purpose financial statements in accordance with PSAS, which is consistent with the basis of presentation required for purposes of consolidating the IESO into the GRE. ~~Under PSAS, the IESO would also have the option of reporting based on IFRS. If the IESO were classified as a GBE, it would also report based on IFRS. Since the IESO has rate regulated balances, it would likely report using IFRS14, consistent with the IFRS related information provided by both Hydro One and OPG which are rate regulated.~~

Current State

Effective January 1, 2016, the IESO adopted on a retrospective basis a new accounting policy that requires its market-settlement activities[2] to be reflected in the financial statements. Under the new policy, the assets and liabilities recognized on the IESO's statement of financial position relating to the IESO-administered markets include cash, amounts due from market participants, interest receivable, revolving line of credit, HST receivable, amounts due to market participants and other liabilities. The IESO's statement of operations and accumulated surplus ~~financial statements~~ does not include the revenue and expenses of the financial transactions of market participants within the IESO-administered markets. This indicates IESO management has taken the position that the IESO is an agent, not a principal, in the IESO-administered markets and, accordingly, records revenue on a net basis.

PSAS doesn't provide any specific guidance as to how it should be determined whether an entity is acting as a principal or an agent in the context of revenue recognition, but both IFRS and US GAAP do. The relevant guidance in IFRS is as follows:

IAS 18.8

Revenue includes only the gross inflows of economic benefits received and receivable by the entity on its own account. Amounts collected on behalf of third parties such as sales taxes, goods and services taxes and value added taxes are not economic benefits which flow to the entity and do not result in increases in equity. Therefore, they are excluded from revenue. Similarly, in an agency relationship, the gross inflows of economic benefits include amounts collected on behalf of the principal and which do not result in increases in equity for the entity. The amounts collected on behalf of the principal are not revenue. Instead, revenue is the amount of commission.

IAS 18.IE21

Determining whether an entity is acting as a principal or as an agent (2009 amendment).

Paragraph 8 states that 'in an agency relationship, the gross inflows of economic benefits include amounts collected on behalf of the principal and which do not result in increases in equity for the entity. The amounts collected on behalf of the principal are not revenue. Instead, revenue is the amount of commission.' Determining whether an entity is acting as a principal or as an agent requires judgement and consideration of all relevant facts and circumstances.

An entity is acting as a principal when it has exposure to the significant risks and rewards associated with the sale of goods or the rendering of services. Features that indicate that an entity is acting as a principal include:

a) the entity has the primary responsibility for providing the goods or services to the customer or for fulfilling the order, for example by being responsible for the acceptability of the products or services ordered or purchased by the customer;
b) the entity has inventory risk before or after the customer order, during shipping or on return;

[2] The IESO itself does not buy or sell electricity. It administers the wholesale electricity market by authorizing market participants, publishing system forecasts and market information, producing statements and invoices, and performing financial settlement transactions for the markets.

c) the entity has latitude in establishing prices, either directly or indirectly, for example by providing additional goods or services; and

d) the entity bears the customer's credit risk for the amount receivable from the customer.

An entity is acting as an agent when it does not have exposure to the significant risks and rewards associated with the sale of goods or the rendering of services. One feature indicating that an entity is acting as an agent is that the amount the entity earns is predetermined, being either a fixed fee per transaction or a stated percentage of the amount billed to the customer.

Application of the above IFRS guidance supports the conclusion that the IESO is an agent in the market-settlement process and, therefore, recognizing revenue on a net basis is appropriate. IESO has completed a more thorough analysis of their position that it is an agent in the settlement of the market and reconsideration of that decision is not the topic of this memo.

The IESO is required by legislation to carry out its operations without the purpose of gain or profit~~, making the IESO a self-sustaining entity~~. Other than the amounts the IESO is permitted to keep in accordance with its own rate order from the OEB to cover its internal operating costs, which makes it a self-sustaining entity, all amounts the IESO receives from market participants must be paid out to other market participants who have regulatory or contractual rights to receive payments from those collected amounts.

In the context of applying the principal vs. agent guidance, the amounts the IESO is permitted to keep in accordance with its own rate order from the OEB to cover its internal operating costs are recorded as system fee revenue in the IESO's financial statements. System fees are not characterized as being part of the IESO-administered markets. Accordingly, any references to the IESO-administered markets in this document exclude system fees.

As stated in the IESO financial statements, the IESO-administered markets is a balancing system, and as such, the net position of market accounts will ultimately settle to a nil balance in accordance with market rules. However, due to settlement timing differences, the net position of market accounts will not be in a nil position from a cash flow perspective at the end of any reporting period.

This raises a question as to how a cash flow deficit related to the market-settlement process should be accounted for in the financial statements of the IESO. Two approaches are as follows:

1. The cash flow deficit is recognized as an asset when it occurs and then derecognized in the period in which it is settled. Under this approach, the net position of market accounts will always be in a nil balance in the IESO's balance sheet and there is no impact on the IESO's income statement.
2. The cash flow deficit is recognized as a charge to income when it occurs and then reversed through income in the period in which it is settled.

IESO management has concluded it is appropriate to recognize existing cash flow deficits arising from the market-settlement process as an asset. This is evidenced by the fact the components of the market accounts net to a nil closing balance at year end in the IESO's financial statements for the year ended December 31, 2016. These financial statements also explicitly state there is no impact to the accumulated deficit or revenues and expenses as the IESO is not party to these transactions as per the market rules.

Although the IESO's financial statements include the following accounting policy on regulated assets and liabilities, the asset relating to the cash flow deficit discussed above has not been specifically labeled as a regulated asset:

As a rate-regulated entity, the IESO, in appropriate circumstances establishes regulated assets or liabilities and thereby defers the impact on the statement of operations of certain expenses or revenues because they are probable to be collected or refunded to market participants through future billings. The IESO has applied guidance from United States Generally Accepted Accounting Principles (US GAAP) Topic 980, Regulated Operations, in this policy.

The only two balances specifically labeled as being recognized in the IESO's financial statements under the above policy are (i) unrecovered smart metering expenses, and (ii) unrecovered PSAB transition items. IESO management has, however, indicated in discussions that the cash flow deficit/surplus associated with the original variance account is also considered to be a regulated asset/liability under ASC 980 even though it has been presented as part of the Market Accounts balances in the statement of financial position.

Impact of FHP

The implementation of the FHP results in the IESO establishing and maintaining the FHP variance account to track the resulting cash flow deficit, the balance of which is defined for the purposes of the FHP Act to be a 'regulatory asset'.

The act of legislating the balance in the FHP variance account to be a regulatory asset does not, in and of itself, result in its recognition as an asset for accounting purposes. Accordingly, the primary issue at hand is whether the legislated regulatory asset is eligible for recognition as an asset in both the standalone financial statements of the IESO and the consolidated financial statements of the GRE. As discussed in a later section, the conclusion reached with respect to ~~When~~ the standalone financial statements of the IESO ~~are considered in isolation, the impact of the conclusion reached on this issue would be eliminated to the extent the regulatory asset has been sold to OPG Trust by the end of the reporting period. The conclusion remains significant, however, due to its~~may impact ~~on~~ the consolidated financial statements of the GRE~~, which is discussed in a later section~~.

As noted above, the IESO has adopted a policy to apply the U.S. GAAP guidance in ASC 980 in connection with accounting for rate regulated assets. IESO management has applied this guidance and concluded the regulatory asset created by the FHP can be recognized as a regulated asset for accounting purposes in the financial statements of the IESO. The IESO's auditors, KPMG, concur with this position, as evidenced from the following excerpt from a draft letter issued by KPMG on May 16, 2017 (the KPMG Letter):

We have considered the foregoing analysis and management's conclusion. We concur that the variance account created by Bill 132 will meet the criteria for the recognition of a regulatory asset stated in ASC 980-340-25-1. Furthermore, we have also considered the criteria stated in ASC 980-10-15-2 and believe that IESO should be allowed to continue to use the guidance for regulated operations of Topic 980.

Commented [NPP1]: Insert reference to consistency with previous treatment of OPA (2013 Terry Gabriel email).

Recognizing the regulatory asset as a regulated asset for accounting purposes in the financial statements of the IESO in accordance with ASC 980 is appropriate only if all of the following conditions are met:

a) the operations of the IESO (or the relevant portion thereof) are within the scope of ASC 980 based on the criteria in ASC 980-10-15-2,
b) the FHP variance account meets the criteria in ASC 980-340-25-1 for capitalization as a regulatory asset, and
c) ASC 980 is an appropriate source of GAAP under PSAS.

Each of these items is addressed in turn:

a) Scope of ASC 980

ASC 980-10-15-2 states the following:

The guidance in the Regulated Operations Topic applies to general-purpose external financial statements of an entity that has regulated operations that meet all of the following criteria:

a) The entity's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party regulator or by its own governing board empowered by statute or contract to establish rates that bind customers.
b) The regulated rates are designed to recover the specific entity's costs of providing the regulated services or products. This criterion is intended to be applied to the substance of the regulation, rather than its form. If an entity's regulated rates are based on the costs of a group of entities and the entity is so large in relation to the group of entities that its costs are, in essence, the group's costs, the regulation would meet this criterion for that entity.
c) In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume that rates set at levels that will recover the entity's costs can be charged to and collected from customers.

The Office of the Auditor General of Ontario (OAGO) does not believe the IESO meets the criteria to be within the scope of ASC 980. This is evidenced by the following statement included in *Legislated Accounting Included in Bill 132, Including the Proposed Ontario Fair Hydro Plan Act, 2017 – Submission to Standing Committee on Justice Policy* dated May 25, 2017 (OAGO Submission):

Moreover, IESO is not engaging in rate-regulated activities, and the contracts under its administration were never subject to rate regulation.

Ontario's electricity industry is rate-regulated. Rates paid by electricity consumers are regulated by the OEB such that over time rates equal cost plus, where applicable, a reasonable rate of return. Providing electricity to consumers involves several different parties, including generators, transmitters, distributors and the IESO. Some of these parties engage in rate-regulated activities, some do not.

The IESO serves an important and active role in Ontario's electricity market, irrespective of the fact that it records market transactions on net basis in the financial statements. The IESO balances the supply of and demand for electricity in Ontario and directs its flow across the province's transmission lines, oversees the wholesale electricity market, where the price of energy is determined, and administers the rules that govern the market. In determining whether the IESO has regulated operations, the focus is on whether the rates the IESO charges its customers are regulated and not whether the costs incurred by the IESO are regulated (although a number of them are).

The following supports the position of IESO management that the above criteria are met and the IESO's operations are within the scope of ASC 980:

The entity's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party regulator or by its own governing board empowered by statute or contract to establish rates that bind customers.
As noted in a research paper issued in 2001 by a taskforce established by the CICA (the CICA Research Report), there is a view held by some that, with respect to rate regulation in the public sector, there is usually no *independent, third-party regulator* because the government controls both the enterprise and the regulatory agency. Accordingly, it is important to point out that independence is not required to meet the criteria in ASC 980-10-15-2(a). The requirement is an *independent, third-party regulator* or *its own governing board empowered by statute or contract*. In fact, paragraph 64 of the Basis for Conclusions for FAS 71, ACCOUNTING FOR THE EFFECTS OF CERTAIN TYPES OF REGULATION (which is the pre-codified version of ASC 980), specifically states that the criteria in ASC 980-10-15-2(a) was modified so as not to preclude application by government utilities with rates set by their own governing board. The OEB has been established by the Province to be Ontario's independent energy regulator and, therefore, is considered the governing board of the IESO. The OEB's mandate and authority come from the *Ontario Energy Board Act, 1998*, the *Electricity Act, 1998*, and a number of other provincial statutes. As described in more detail below, the IESO's rates are established in accordance with these statutes. In the context of its market-settlement role, the IESO's 'customers' are the Market Participants buying electricity from the IESO-controlled grid. All Market Participants are required to execute a Participation Agreement with the IESO. In accordance with Article 3.1 of the standard Participation Agreement, each Market Participant has agreed to be bound by and to comply with all of the provisions of the Market Rules, which includes the following: *Chapter 9, Section 1.2.3* *Notwithstanding any other provision within the market rules, market participants shall remit to the IESO such applicable settlement amounts and other payments as may be required under the relevant provisions of the Electricity Act, 1998, the Ontario Energy Board Act, 1998 and any related regulations, as amended from time to time.* The IESO's operations meet the criteria in ASC 980-10-15-2(a) because the rates charged by the IESO are based on statutes. As discussed in more detail below, the rates are designed to recover the IESO's

expenditure for providing the regulated services and the pass-through costs related to the energy purchased from the generators and to government programs.

The main components of invoices issued by the IESO to Market Participants are as follows:

- Commodity Charges
  - Hourly Ontario Energy Price
  - Global Adjustment
- Wholesale Market Service Charges
  - IESO Administration Fee
  - Uplift Charges
  - Rural and Remote Electricity Rate Protection
- Wholesale Transmission Charges
- Debt Retirement Charge

Each component is determined as follows:

Commodity Charges

In accordance with Section 25.33(1) of the Electricity Act, the IESO is required to price electricity to recover costs:

Electricity pricing to reflect costs

IESO to make adjustments

25.33 (1) The IESO shall, through its billing and settlement systems, make adjustments in accordance with the regulations that ensure that, over time, payments by classes of market participants in Ontario that are prescribed by regulation reflect,

a) amounts paid to generators, the Financial Corporation and distributors, whether the amounts are determined under the market rules or under section 78.1, 78.2 or 78.5 of the Ontario Energy Board Act, 1998;

b) amounts paid to entities with whom the IESO has a procurement contract, as determined under the procurement contract; and

c) such amounts as may be prescribed that are paid or incurred by the IESO in relation to the Ontario Fair Hydro Plan Act, 2017. *2014, c. 7, Sched. 7, s. 8 (1); 2017, c. 16, Sched. 1, s. 43 (2).*

Market Participants are initially invoiced for consumed electricity at the Hourly Ontario Energy Price (HOEP), which is calculated as the average of the twelve market clearing prices set in each hour. In accordance with Section 25.33(5) of the Electricity Act, the IESO is required to track differences between the amounts invoiced to Market Participants at HOEP and actual costs incurred in a variance account:

Variance accounts

(5) The IESO shall establish and maintain such variance accounts as may be necessary to record all amounts payable or receivable by it under this section or under the Ontario Fair Hydro Plan Act, 2017. *2004, c. 23, Sched. A, s. 37; 2014, c. 7, Sched. 7, s. 8 (5); 2017, c. 16, Sched. 1, s. 43 (5).*

Sections 3.1 and 3.3 of the OEB Act require the variance account to be settled over a twelve-month period, which is done through the Global Adjustment on a Market Participant's invoice:

Annual rate plan and separate rates for situations prescribed by regulation

(3.1) The Board shall, in accordance with rules prescribed by the regulations, approve or fix separate rates for the retailing of electricity,

a) to such different classes of consumers as may be prescribed by the regulations; and

b) for such different situations as may be prescribed by the regulations. 2004, c. 23, Sched. B, s. 14 (1).

Rates to reflect cost of electricity

(3.3) In approving or fixing rates under subsection (3.1),

a) the Board shall forecast the cost of electricity to be consumed by the consumers to whom the rates apply, taking into consideration the adjustments required under section 25.33 of the Electricity Act, 1998 *and shall ensure that the rates reflect these costs; and*

b) the Board shall take into account balances in the IESO's variance accounts established under section 25.33 of the Electricity Act, 1998 *and shall make adjustments with a view to eliminating those balances within 12 months or such shorter time periods as the Minister may direct. 2004, c. 23, Sched. B, s. 14 (1); 2014, c. 7, Sched. 23, s. 6 (2).*

Although the implementation of the FHP involves the deferral of costs over an extended period of time, it does not change the IESO's obligation under the OEB Act to price electricity to recover incurred costs in full. The deferral relating to the FHP is tracked in a separate variance account in accordance with Section 24(1) of the Fair Hydro Plan Act, 2017 (the FHP Act):

Variance account to be established, maintained

24 (1) The IESO shall establish and maintain a variance account in which it records the following:

1. The IESO deferral for each month.

2. All payments received by the IESO resulting from the exercise of the right of recovery under section 25 and any transfer under section 26.

3. Such other adjustments as may be prescribed, including adjustments in respect of the period that commences on or after May 1, 2017 and before the day this section comes into force.

The right for the IESO to recover the variance account is set out in Section 25 of the FHP Act:

Regulatory asset established

25 (1) Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Board to set rates

(2) Subject to subsection (3), the Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for the IESO to recover the balance recorded in the variance account.

Limitation

(3) The IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2021.

Wholesale Market Service Charges

The IESO charges Market Participants administrative fees to operate the wholesale electricity market and manage the electric power system in Ontario. These fees are required to be approved by the OEB under Section 25(1) of the Electricity Act on an annual basis.

Review of requirements and fees

25 (1) The IESO shall, at least 60 days before the beginning of each fiscal year, submit its proposed expenditure and revenue requirements for the fiscal year and the fees it proposes to charge during the fiscal year to the Board for review, but shall not do so until after the Minister approves the IESO's proposed business plan for the fiscal year under section 24. 2014, c. 7, Sched. 7, s. 3 (1).

Uplift charges

Commented [LAP2]: Uplift charges are comprised of a number of things. To ask IESO for help to summarize succinctly.

Need details

RRRP charges

The RRRP program provides a rate subsidy to rural and remote residential customers who face higher distribution costs. Under the FHP Act, the cost of the RRRP program has shifted from ratepayers to provincial revenues and, therefore, is no longer a component of the IESO's invoice.

Wholesale Transmission Charge

This charge to LDCs and some large consumers covers the cost incurred by transmission companies to construct and maintain the high-voltage transmission lines needed to transport electricity from generating stations to LDCs or consumers. In accordance with Section 78(1) of the OEB Act, the rate for this service is approved by the OEB.

Debt Retirement Charge

When the Ontario electricity sector was restructured in April 1999, the Ontario Electricity Financial Corporation (OEFC) took on $20.9 million of stranded debt from Ontario Hydro. The OEFC services and retires the stranded debt with cash flows from a number of sources in the electricity sector, one of those currently being debt retirement charges paid by certain ratepayers (ratepayers cease paying debt retirement charges April 1, 2018).

Under Regulation 494/01, DEBT RETIREMENT CHARGE – ADMINISTRATION, the IESO is appointed as a collector of debt retirement charges (Section 2) and is required to collect a debt retirement charge on behalf of the OEFA from every entity who withdraws electricity from the IESO-controlled grid (Section 6(2)). The prescribed rate for the debt retirement charge is set out in Regulation 493/01, DEBT RETIREMENT CHARGE – RATES AND EXEMPTIONS.

The regulated rates are designed to recover the specific entity's costs of providing the regulated services or products.

As discussed in detail above, the IESO is required by statute to set prices to recover costs.

In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume that rates set at levels that will recover the entity's costs can be charged to and collected from customers.

As discussed in detail above, the IESO is required by statute to set prices to recover costs.

The majority of the monthly amount invoiced by the IESO to Market Participants represents a direct flow through of costs as they are incurred, but there are certain types of costs for which recovery may be deferred. For those deferred costs, the IESO is dependent on the future consumption of electricity by rate-payers to fully recover costs.

Based on relatively short recovery periods, it is reasonable to assume there will be sufficient demand to recover the deferred costs that currently exist. Specifically:

- RPP and RRRP variance accounts are recovered over twelve months in accordance with Section 3.3(b) of the OEB Act. *(Note - Under the FHP, responsibility for the cost of the RRRP program is being transferred to the Provincial budget and rate-payers will no longer be directly charged)*

Commented [LAP3]: To confirm with Energy if all costs have shifted.

Commented [LAP4]: CV to determine if there is anything else to add from IESO's analysis.

Commented [LAP5]: To confirm with Energy if all costs have shifted.

- The Smart Metering Entity charge is recovered over the period from May 1, 2013 to October 31, 2018 in accordance with ~~XX~~OEB Decision and Order EB-2015-0298.

Under the FHP, responsibility for the cost of the OESP program is being transferred to the Provincial budget and rate-payers will no longer be charged for the cost of this program. The OESP variance account, which is currently in a credit balance, will be used to fund the cost of the program until depleted.

Although the timing of the recovery of the FHP variance account has not yet been established by the OEB, the wording and intent of the proposed legislation is clear that it is intended by law to be recoverable over a period of 30 years. Given the nature and extent of customer demand for the power generated and distributed in Ontario, both at this time and projected in the future, it is reasonable to conclude that there will be sufficient demand to recover the regulatory asset. This conclusion, which is supported by Figure 19: Ontario's Forecast Electricity Production in Achieving Balance – Ontario's Long-Term Energy Plan, will need to be continually evaluated throughout the recovery period. The willingness of unrelated third parties to fund the purchase of the regulatory asset from the IESO by OPG Trust also demonstrates the belief that sufficient demand will exist to permit its future recovery.

In addition to the general scope requirements of ASC 980 discussed above, specific consideration is made as to whether the following scope exception in ASC 980-10-15-7 applies to the FHP:

The guidance in the Regulated Operations Topic does not apply to any of the following transactions:

a) *Accounting for price controls that are imposed by governmental action in times of emergency, high inflation, or other unusual conditions, or accounting for contracts in general. However, if the terms of a contract between an entity and its customer are subject to regulation and the criteria of paragraph 980-10-15-2 are met with respect to that contract, the guidance in this Topic shall apply.*

Based on the discussion below, this scope exemption is not applicable to the FHP.

Electricity cost reductions resulting from the FHP do not represent price controls imposed by the Province in a time of emergency, high inflation, or other unusual conditions. As noted in the 2017 budget speech, the 2017 Ontario Budget – A Stronger, Healthier Ontario, the FHP is a fairer way to share the costs of building a cleaner, more modern and reliable electricity generation system. In particular, the budget speech states:

Commented [NPP6]: Navigant report/other support

Recognizing that existing electricity infrastructure is expected to last for decades to come, the Province would refinance the cost of those capital investments to ensure that system costs are more equitably distributed over time.

The following paragraph from the Basis for Conclusion for FAS 71 also provides some insight as to the specific concerns relating to government imposed price controls that resulted in the scope exception in ASC 980-10-15-7(a):

70. The first scope limitation of paragraph 8—excluding accounting for price controls imposed by governmental action in times of emergency, high inflation, or other unusual conditions—was included in

the Discussion Memorandum. Price controls imposed in periods of unusual conditions are not expected to be applied consistently over an extended period. Indeed, their duration usually is limited by statute. In that environment, assurance of future benefits cannot be provided by probable future actions of the price control regulator because that regulator may not exist at a given future date.

The implementation of the FHP does not create the type of environment described in FAS 71.BC70 as it is governed by the OEB and there is no concern the OEB will not continue to exist.

The second part of the scope exception in ASC 980-10-15-7(a) relating to the accounting for contracts is further explained in the following paragraph from the Basis for Conclusion for FAS 71:

71. Accounting for contracts in general was also excluded from the scope of the Discussion Memorandum. The economic effects of cost reimbursement contracts are in some respects similar to the economic effects of the type of regulation addressed by this Statement. However, most contracts tend to be relatively short-term, whereas regulation of enterprises covered by this Statement is expected to continue beyond the foreseeable future. The Board noted that other authoritative literature addresses contract accounting and concluded that it should exclude the general issue of contract accounting from the scope of this Statement.

Although the impetus for the FHP relates to term of contracts the IESO has entered into with certain generators, the FHP does not change the existing accounting for these contracts.

Application of ASC 980-340-25-1 to the regulatory asset

ASC 980-340-25-1 states the following:

Rate actions of a regulator can provide reasonable assurance of the existence of an asset. An entity shall capitalize all or part of an incurred cost that would otherwise be charged to expense if both of the following criteria are met:

a) *It is probable (as defined in Topic 450) that future revenue in an amount at least equal to the capitalized cost will result from inclusion of that cost in allowable costs for rate-making purposes.*
b) *Based on available evidence, the future revenue will be provided to permit recovery of the previously incurred cost rather than to provide for expected levels of similar future costs. If the revenue will be provided through an automatic rate-adjustment clause, this criterion requires that the regulator's intent clearly be to permit recovery of the previously incurred cost.*

A cost that does not meet these asset recognition criteria at the date the cost is incurred shall be recognized as a regulatory asset when it does meet those criteria at a later date.

The following supports the IESO's position that the FHP variance account meets the above criteria for capitalization:

It is probable (as defined in Topic 450) that future revenue in an amount at least equal to the capitalized cost will result from inclusion of that cost in allowable costs for rate-making purposes.
The following excerpts from the FHP Act make it clear that the IESO is entitled to recover the regulatory asset through rates in the future:

Variance account to be established, maintained

24 (1) The IESO shall establish and maintain a variance account in which it records the following:

1. The IESO deferral for each month.

2. All payments received by the IESO resulting from the exercise of the right of recovery under section 25 and any transfer under section 26.

3. Such other adjustments as may be prescribed, including adjustments in respect of the period that commences on or after May 1, 2017 and before the day this section comes into force.

Recording determinative

(2) Subject to the correction of any obvious error by the IESO, its recording of the balance in the variance account is determinative of the balance as of the time of the recording.

Regulatory asset established

25 (1) Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Board to set rates

(2) Subject to subsection (3), the Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for the IESO to recover the balance recorded in the variance account.

Limitation

(3) The IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2021.

The recovery of the regulatory asset is, however, dependent on future consumption of electricity by rate-payers. Although the timing of the recovery of the regulatory asset has not yet been established by statute, the recovery period is intended to be 30 years. Given the nature and extent of customer demand for the power generated and distributed in Ontario, both at this time and projected in the future, it is reasonable to conclude that it is probable there will be sufficient demand in the future to recover the regulatory asset. This conclusion, which is supported by Figure 19: Ontario's Forecast Electricity Production in Achieving Balance – Ontario's Long-Term Energy Plan (Appendix B), will need to be continually evaluated throughout the recovery period. The willingness of unrelated third parties (e.g., investors) to fund the purchase of the regulatory asset from the IESO by OPG Trust also demonstrates the belief that sufficient demand will exist to permit its future recovery.

Based on available evidence, the future revenue will be provided to permit recovery of the previously incurred cost rather than to provide for expected levels of similar future costs. If the revenue will be provided through an automatic rate-adjustment clause, this criterion requires that the regulator's intent clearly be to permit recovery of the previously incurred cost.

Based on the above excerpts from the FHP Act, it is clear the IESO will be recovering costs previously incurred rather than providing for expected levels of similar future costs.

ASC 980 is an acceptable source of guidance under PSAS[3]

In assessing whether ASC 980-340-25-1 is an acceptable source of guidance under PSAS, Paragraph 5 of PSAS 1150, GENERALLY ACCEPTED ACCOUNTED PRINCIPLES, states the following:

[3] If the accounting for GBEs were to change in the future such that line by line consolidation is required using PSAS, the importance of this consideration increases significantly.

When the primary sources of GAAP do not deal with the accounting and reporting in financial statements of transactions or events encountered by the public sector reporting entity, or additional guidance is needed to apply a primary source to specific circumstances, the selection of an appropriate accounting policy requires the exercise of professional judgment. In these circumstances, a public sector reporting entity should adopt accounting policies and disclosures that are consistent with:

a) the primary sources of GAAP; and

b) the application of the concepts described in FINANCIAL STATEMENT CONCEPTS, Section PS 1000.

Related guidance is also provided in PSAS 1150.18-.20:

Paragraphs PS 1150.19-.24 identify some of the other sources that a public sector reporting entity might consult to assist in selecting accounting policies and disclosures that comply with paragraph PS 1150.05.

Pronouncements issued by other bodies authorized to issue accounting standards may be useful sources to consult. For example, accounting pronouncements published with the authority of the Canadian Accounting Standards Board (AcSB), International Accounting Standards Board (IASB), US Federal Accounting Standards Advisory Board (FASAB), US Governmental Accounting Standards Board (GASB), or International Public Sector Accounting Standards Board (IPSASB) are often important sources to consult on matters not covered by primary sources of GAAP or for assistance in applying a primary source of GAAP to specific circumstances.

When a public sector reporting entity chooses to consult a source described in paragraph PS 1150.19, it applies professional judgment and evaluates the source in the context of the relative manner in which the standard setter requires its pronouncements to be applied, as well as in the context of the related pronouncement. When an accounting standard setter does not have a conceptual framework that is similar to the concepts referred to in paragraph PS 1150.05(b), the public sector reporting entity needs to ensure that the selected source is consistent with those concepts.

Since PSAS does not specifically address the treatment of costs incurred that will be recovered through regulatory operations in future periods, the IESO would not be precluded from following the guidance in ASC 980-340-25-1. However, PSAS 1000.05 makes it clear that in order to do so, it must first be demonstrated that such guidance is consistent with the application of the concepts described in PSAS 1000, FINANCIAL STATEMENT CONCEPTS.

The relevant guidance in PSAS 1000 relating to the recognition of an asset is as follows:

PSAS 1000.35

Assets are economic resources controlled by a government as a result of past transactions or events and from which future economic benefits are expected to be obtained.

PSAS 1000.36

Assets have three essential characteristics:

a) they embody future economic benefits that involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows, or to reduce cash outflows;

b) *the public sector entity can control the economic resource and access to the future economic benefits; and*
c) *the transaction or event giving rise to the public sector entity's control has already occurred.*

PSAS 1000.37

An item is not an asset of a government if it lacks one or more of the essential characteristics listed in the preceding paragraph. Thus, for example, an item does not qualify as an asset of a government if the item involves:

a) *no future economic benefit;*
b) *future economic benefit, but the government cannot obtain it; or*
c) *future economic benefit that the government may obtain, but the events or circumstances that give the government control of the benefit have not yet occurred*

The following supports the IESO's position that the regulatory asset possesses the three essential characteristics of an asset:

Embody future economic benefits that involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows, or to reduce cash outflows

The following excerpts from the FHP Act make it clear that the IESO is entitled to recover the regulatory asset through rates in the future:

Variance account to be established, maintained

24 (1) The IESO shall establish and maintain a variance account in which it records the following:

1. The IESO deferral for each month.

2. All payments received by the IESO resulting from the exercise of the right of recovery under section 25 and any transfer under section 26.

3. Such other adjustments as may be prescribed, including adjustments in respect of the period that commences on or after May 1, 2017 and before the day this section comes into force.

Recording determinative

(2) Subject to the correction of any obvious error by the IESO, its recording of the balance in the variance account is determinative of the balance as of the time of the recording.

Regulatory asset established

25 (1) Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Board to set rates

(2) Subject to subsection (3), the Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for the IESO to recover the balance recorded in the variance account.

Limitation

(3) The IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2021.

Accordingly, the regulatory asset, by statute, has the capacity to provide future cash inflows.

While perhaps obvious, paragraph 13 of PSAS 3210, ASSETS, confirms the generation of future cash flows represents a future economic benefit:

The future economic benefits embodied in an asset may also be in the form of generating future cash inflows. Cash inflows benefit the public sector entity because cash can be used to purchase or to provide goods and services, redistribute wealth or settle liabilities. Benefits in the form of cash inflows relate to resources, such as loans receivable, inventory for resale and

portfolio investments. Also, some public sector resources generate cash inflows because they have user fees associated with them.

The ability of the regulatory asset to generate future cash flows is dependent on the future consumption of electricity by rate-payers. Although the timing of the recovery of the regulatory asset has not yet been established by statute, the recovery period is intended to be 30 years. Given the nature and extent of customer demand for the power generated and distributed in Ontario, both at this time and projected in the future, sufficient demand is expected to exist in the future to recover the regulatory asset. This conclusion, which is supported by Figure 19: Ontario's Forecast Electricity Production in Achieving Balance – Ontario's Long-Term Energy Plan, will need to be continually evaluated throughout the recovery period. The willingness of unrelated third parties to fund the purchase of the regulatory asset from the IESO by OPG Trust also demonstrates the belief that sufficient demand will exist to permit its future recovery.

The public sector entity can control the economic resource and access to the future economic benefits

Paragraph 16 of PSAS 3210, ASSETS, states the following:

A public sector entity controls the economic resource and access to the future economic benefits when it:

- *a) can benefit from the economic resource through its capacity to provide goods and services, to provide future cash inflows or to reduce cash outflows;*
- *b) can deny or regulate access to those benefits by others; and*
- *c) is exposed to the risks associated with the economic resource.*

The IESO can benefit from the regulatory asset through its capacity to provide future cash inflows in one of two ways:

1. *Collection through future rates*

Section 25 of the FHP gives the IESO the right to recover the regulatory asset through future rates:

Regulatory asset established

25 (1) Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Board to set rates

(2) Subject to subsection (3), the Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for the IESO to recover the balance recorded in the variance account.

2. *Sale to a financing entity*

Section 26 of the FHP Act permits the IESO to sell the regulatory asset:

Commented [LAP7]: CV - Are there other examples to provide as analogies – anything in tangible capital assets?

.31 *When conditions indicate that a tangible capital asset no longer contributes to a government's ability to provide goods and services, or that the value*

.07 *When there has been a loss in value of a portfolio investment that is other than a temporary decline, the investment should be written down to recognize the loss. The write-down should be included in the statement of operations. In the case of an item in the fair value category, a reversal of any net remeasurements should be reported in the statement of remeasurement gains and losses.*

26 (1) The IESO may from time to time, in accordance with this Act and the regulations, transfer a specified portion of the regulatory asset to a financing entity in accordance with this section.

Agreement

(2) An agreement between the IESO and a financing entity in relation to the transfer of a specified portion of the regulatory asset shall provide for consideration of a payment by the financing entity to the IESO in an amount equal to the amount of the specified portion.

Effect of payment

(3) Upon receipt by the IESO of the payment by the financing entity,

(a) the balance in the variance account shall be reduced by the amount of the payment;

(b) the regulatory asset shall be adjusted accordingly;

(c) the financing entity shall acquire a corresponding investment interest; and

(d) the IESO shall retain no further right, title or interest in the corresponding investment interest.

Since (a) the statutory right to recover the regulatory asset belongs solely to the IESO, and (b) the IESO is permitted, but not required, to sell the regulatory asset, the IESO can deny or regulate access to the future economic benefits of the regulatory asset by others.

The IESO is exposed to the risks associated with the regulatory asset, with the primary risk being that collection through the mechanism set out in Section 25 of the FHP Act is dependent on the future consumption of electricity by rate-payers.

The above analysis supports the position that the IESO controls the regulatory asset and access to the future economic benefits.

In reaching this conclusion, consideration was given to the following excerpt included on Page 37 of the 2008 Annual Report of the OAGO:

With regard to the second characteristic, we simply point again to the legacy of the former Ontario Hydro and its stranded debt. This in our view provides concrete evidence that even in monopoly situations governments do not have sufficient assurance that an enterprise will generate enough profits in future years to recover all of its past costs.

Although there needs to be sufficient assurance regarding the recovery of past costs, all relevant facts and circumstances need to be taken into consideration. Accordingly, the stranded debt of Ontario Hydro can be a relevant to the analysis, but not determinative on its own. As noted in the previous section, the recoverability of past costs will be continually assessed.

The transaction or event giving rise to the public sector entity's control has already occurred

When evaluating whether a transaction or event gives rise to control, the following guidance from PSAS 3210, ASSETS, provides helpful guidance:

.26
The past transaction or event that gives rise to control of an economic resource resulting from exchange agreements or contracts usually occurs at the point of exchange. This arises when substantially all the benefits and risks of ownership have been transferred to the public sector entity and normally coincides with the disbursement of funds, exchange of other assets or assumption of liabilities.
.28
The existence of a law, by-law or policy in relation to a particular program is not a past transaction or event that gives rise to control of an economic resource. Control does not exist until the underlying event occurs.
.29

The past transaction or event giving rise to control of an economic resource must have occurred by the financial statement date. Legislation having retroactive application cannot create a past transaction or event. Any economic resources related to that legislation would be accounted for in the current and relevant future periods, not in the period of the effective date of the legislation.

In the case of the regulatory asset, the above guidance in PSAS 3210 makes it clear that it is not the statute itself that is the transaction or event giving rise to the asset, it is the incurrence of costs for which recovery is provided for under statute. Accordingly, control over the economic benefits of the regulatory asset occurs when the IESO incurs a cash flow deficit that is recorded in the FHP variance account in accordance with Section 24(1) of the FHP Act:

24 (1) The IESO shall establish and maintain a variance account in which it records the following:

1. The IESO deferral for each month.

2. All payments received by the IESO resulting from the exercise of the right of recovery under section 25 and any transfer under section 26.

3. Such other adjustments as may be prescribed, including adjustments in respect of the period that commences on or after May 1, 2017 and before the day this section comes into force.

At this point in time, the IESO has incurred a cash outflow for which it is entitled to recover under Section 25 of the FHP Act:

Regulatory asset established

25 (1) Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Board to set rates

(2) Subject to subsection (3), the Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for the IESO to recover the balance recorded in the variance account.

The following excerpt from the IFRS Staff Paper on Rate-Regulated Activities prepared for discussion at the June 2017 IASB meeting presents a consistent view and dismisses the potential dissenting view that the transaction or event giving rise to the IESO's control is the future consumption of electricity by rate-payers:

A right arises from the rate-adjustment mechanism if the entity has already partially or fully fulfilled a regulatory requirement (past event) but the current regulated rate does not yet reflect the compensation that the entity is entitled to in exchange. Even though the entity cannot compel its customers to buy the regulated goods or services, the entity's right to charge an increased future regulated rate has the potential to produce for the entity an inflow of economic benefits that are not available to other parties. That right will be consumed as the entity includes the rate increase in future regulated rates and will lead to an inflow of economic benefits if customers pay the increased future regulated rate for the future delivery of goods or services.

In April 2011, Torys LLP issued a letter to OPG relating to the legal basis of OPG's regulatory deferral and variance accounts which, as evidenced by the following excerpts, also takes the position that the transaction or event giving rise to the asset is the incurrence of costs for which recovery is provided for under statute:

OPG's deferral and variance accounts are established either by regulation or by orders of the Ontario Energy Board (the "OEB") through the proper exercise of its jurisdiction as the administrative tribunal responsible for regulating the electricity industry in Ontario. The establishing of such an account pursuant to regulation or the granting of approval by the OEB to establish such an account confers upon OPG a right to record amounts in the account and to account for the amounts recorded on the basis that they have been prudently incurred.

The OEB has broad jurisdiction in setting payment amounts for OPG and it would not be reasonable for the legislature to

have given the OEB the legislative power to authorize the establishment of accounts without also giving the OEB the power to dispose of the amounts recorded in such accounts, including in circumstances where there is no future output. Moreover, to interpret the applicable legislation in a manner that only allows for payment amounts on a volumetric basis is in our view unreasonable because it would not be consistent with the rules of statutory interpretation.

Another potential dissenting view is contained on page 37 of the 2008 Annual Report of the OAGO:

With regard to the third characteristic, we do not believe that a rate-regulation decision can be considered a transaction or event giving rise to an asset or obligation because, as stated above, from the level of the government's consolidated financial statements such a decision is an internal event between two government-controlled entities. An equivalent analysis for rate-regulated liabilities leads to the same conclusion. PSAB standards preclude the inclusion of both gains and losses from such inter-company transactions. Therefore, our contention is that, at the consolidated financial statement level, rate-regulated assets and liabilities have no place and should be removed upon consolidation of the government's controlled entities.

It should be noted, however, that the OAGO's belief that a rate-regulation decision cannot be considered a transaction or event giving rise to an asset or obligation is not contrary to the IESO's position. As noted above, it is not the statute itself that is being considered the transaction or event giving rise to the asset, it is the incurrence of costs for which recovery is provided for under statute.

In addition, one could argue the creation of the relevant statutes is not an internal event from the point of view of the consolidated government. Statutes must be passed by the Legislative Assembly of Ontario to become law. Since the Legislative Assembly is comprised of elected members, it can be viewed as the government's governing body.

Concluding the regulatory asset possesses the three essential characteristics of an asset in PSAS 1000.05 then begs the question as to whether the application of the guidance in ASC 980 is even necessary in this particular situation. Consistent with the statement in ASC 980 –340-25-1 that *rate actions of a regulator can provide reasonable assurance of the existence of an asset,* ASC 980 provides guidance as to how to apply the primary source of PSAS in the regulatory environment.

In a letter from the OAGO to the Board of Directors of the IESO dated June 22, 2017 (the OAGO Letter), the OAGO makes the following statement:

The definitions of an asset in the PSAS and FASB Conceptual Framework are similar. Similar to PSAS, rate regulated deferral accounts do not generally meet the definition of an asset in the FASB's Conceptual Framework.

However, the following excerpts from the Basis for Conclusions for FAS 71 (paragraph 58 in particular), clearly support that ASC 980 is an application of, not an exception from, the basic definition of an asset in the Conceptual Framework:

Economic Effects of Regulation

56. The second threshold issue in the Discussion Memorandum was: "Does rate regulation introduce an economic dimension in some circumstances that should affect the application of generally accepted accounting principles to rate-regulated enterprises?"

57. Most respondents to the Discussion Memorandum indicated that rate regulation does introduce such an economic dimension in some circumstances. Respondents cited the cause-and-effect relationship of costs and revenues as the principal economic effect of regulation that affects accounting for regulated

enterprises. They noted that cost might be one factor used by unregulated enterprises to establish prices, but it would often not be the most important factor. Usually, prices are limited by the market. An unregulated enterprise might desire to price its goods or services at a level that would recover all costs and a reasonable profit; however, the market might not permit that price. Alternatively, an unregulated enterprise might be able to increase its prices and its profit if competition does not limit its prices. In either case, cost often is not the principal determinant of prices. In contrast, for an enterprise with prices regulated on the basis of its costs, allowable costs are the principal factor that influences its prices.

58. The economic effect cited by most respondents is the ability of a regulatory action to create a future economic benefit—the essence of an asset. For example, consider a regulated enterprise that incurs costs to repair damage caused by a major storm. If the regulator approves recovery of the costs through rates over some future period or is expected to do so, the rate action of the regulator creates a new asset that offsets the reduction in the damaged asset. The enterprise has probable future economic benefits—the additional revenue that will result from including the cost in allowable costs for rate-making purposes. The future benefits are obtained or controlled by the enterprise as a result of a past event—incurring the cost that results in the rate order. Thus, the criteria of Concepts Statement 3 for an asset are met.

The fact that many Canadian rate-regulated entities recognized regulated assets under Part V of the CPA Canada Handbook – *Pre-changeover Accounting Standards* (Part V GAAP) further supports the position that regulated assets do meet the basic definition of an asset under PSAS. Although Part V GAAP refers to rate regulation in several standards, it does not include cost capitalization guidance equivalent to ASC 980-340-25-1. It does, however, specify in paragraph 32B of Section 1100, *Generally accepted accounting principles*, that Section 1100 applies to the recognition and measurement of assets and liabilities arising from rate regulation beginning January 1, 2009. Since Section 1100.04 only permits the use of an alternate source of GAAP if it is consistent with Part V GAAP, regulated assets need to meet the basic definition of an asset under Part V GAAP in order to be recognized. The Part V GAAP definition of an asset in Section 1000, *Financial Statement Concepts* is consistent with the PSAS definition.

Commented [npp8]: And where reporting under IFRS14, ASC980 continues to be the basis for reporting such assets.

Commented [LAP9R8]: To discuss

The CICA Research Report also concluded regulated assets meet the basic definition of an asset under Part V GAAP:

In the Study Group's view, the economic benefits and obligations created by rate regulation and resulting from past transactions or events, and the changes in these amounts, meet the definition of a financial statement element set out in Handbook Section 1000.

The OAGO Letter suggests that IFRS should be consulted prior to referring to ASC 980 under PSAS's GAAP hierarchy in PSAS 1150 and points out the following:

- In 2005 the International Financial Reporting Interpretations Committee (IFRIC) indicated the US GAAP recognition criteria for regulated assets were not fully consistent with IFRS and could not be applied by analogy.
- When the question of rate regulated accounting was posed to the IFRIC again in 2008, the IFRIC noted the topic had been previously addressed and there was a well-established practice of first time IFRS adopters ceasing rate regulated accounting and removing regulatory deferral accounts from their financial statements.
- In the Basis for Conclusions on IFRS 14, IFRS 14.BC30 noted the differences in the recognition criteria between IFRS and ASC 980 resulted in almost all existing regulatory deferral accounts being derecognized upon transition to IFRS.

It should be noted, however, that the IASB's project on rate-regulated activities is still in progress and the OAGO Letter does not reference more recent and relevant activity. In September 2014, the IASB issued Discussion Paper DP/2014/02, *Reporting the Financial Effects of Rate Regulation*. The Discussion Paper presents the opposing views as to whether regulatory deferral account balances meet the definitions of an asset or a liability and specifically states the following in paragraph 5.09:

Consequently, the IASB has not formed a preliminary view on whether regulatory deferral account balances meet either the current or proposed revised Conceptual Framework definitions of an asset and a liability. It will use the input received from the responses to this Discussion Paper and the Conceptual Framework project to help it assess whether to develop any specific accounting guidance or requirements for rate-regulated activities.

In addition, the most recent paper issued by the IASB staff in June 2017 includes the following:

17. During the May 2017 Board meeting we also considered the interaction between the definitions of assets and liabilities and the characteristics of defined rate regulation (see paragraphs 5 and 6). We concluded that a combination of those characteristics suggested that the rights and obligations created by the rate-adjustment mechanism are assets and liabilities, as those terms are expected to be defined in the forthcoming revised Conceptual Framework for Financial Reporting.

The Exposure Draft ED/2015/3, *Conceptual Framework for Financial Reporting*, defines an asset as follows:

4.5 An asset is a present economic resource controlled by the entity as a result of past events.
4.6 An economic resource is a right that has the potential to produce economic benefits.

This recent activity suggests that it would be premature to assume that the IASB will conclude that regulatory deferral account balances will not meet the definitions of an asset or a liability.

Once it is determined that the regulatory asset meets the basic characteristics of an asset in PSAS 1000.36, consideration also needs to be made as to what type of asset it is. This is important because PSAS 1000.58 does not permit the recognition of intangible assets:

In the absence of appropriate public sector recognition and measurement criteria for intangibles, all intangibles, including those that have been purchased, developed, constructed or inherited in right of the Crown, are not recognized as assets in government financial statements. The intangible often called "human capital" that embodies the talent or intellectual capital of government employees is not recognized as an asset under existing accounting principles.

PSAS 1000 identifies two types of assets: financial assets and non-financial assets and provides the following commentary:

.39 Financial assets are assets that could be used to discharge existing liabilities or finance future operations and are not for consumption in the normal course of operations.

.40 A financial asset is any asset that is:

- *a) Cash*
- *b) a realizable asset that is convertible to cash;*
- *c) a contractual right to receive cash or another financial asset from another party;*
- *d) a contractual right to exchange financial instruments with another party under conditions that are potentially favourable to the government;*
- *e) an equity instrument of another entity;*
- *f) an investment in a government business enterprise or government business partnership;*
- *g) a financial claim on an outside organization or individual; or*

h) an inventory or item for sale that meets the criteria in FINANCIAL STATEMENT PRESENTATION, paragraph PS 1201.055.

.41 Non-financial assets include tangible capital assets, and other assets such as prepaid expenses and inventories of supplies.

.42 Non-financial assets are acquired, constructed or developed assets that do not normally provide resources to discharge existing liabilities, but instead:

a) are normally employed to deliver government services;
b) may be consumed in the normal course of operations; and
c) are not for sale in the normal course of operations.

PSAS 3210, ASSETS, also provides some relevant guidance:

.24 Non-financial resources include all items of a fixed or permanent nature (such as tangible capital property), claims to goods and services (such as prepaid items) and consumable goods (such as inventories of supplies). Non-financial resources also include intangibles, Crown lands and natural resources.

.25 Certain non-financial resources are, however, not given accounting recognition as assets in government financial statements. For example, all government intangibles, and all natural resources and Crown lands that have not been purchased by the government, are not given accounting recognition in government financial statements. A government's non-financial assets, as defined in FINANCIAL STATEMENT CONCEPTS, Section PS 1000, comprise the recognized non-financial resources of a government.

Although PSAS does not permit the recognition of intangibles, it also does not provide a definition of intangibles. In absence of specific guidance in PSAS as to what constitutes an intangible, U.S. GAAP is probably the most appropriate source to consult, in light of the fact that it deals specifically with regulated assets. Under U.S. GAAP, a regulated asset is not treated as an intangible. ASC 980 contains separate subsections for 'Intangibles – Goodwill and Other' and 'Other Assets and Deferred Costs' and regulated assets are included in the guidance on 'Other Assets and Deferred Costs'.

In accordance with PSAS 1201.040(a), financial assets are presented separately on the statement of financial position. The IESO classifies its regulated assets (i.e., the original variance account and the regulated assets relating to unrecovered smart metering expenses and unrecovered PSAB transition items) as financial assets. Consistent with these other regulated assets, ~~The~~ the regulatory asset created under the FHP meets the definition of a financial asset in PSAS 1000.39 since it will be available to discharge existing liabilities or finance future operations. Although the regulatory asset is not available to discharge liabilities existing at the date of the statement of financial position, that is no different than, for example, accounts receivable. ~~does not meet the criteria in PSAS 1000.40 to be a financial asset as it does not represent a current contractual right to receive cash. Accordingly, the regulatory asset is a non-financial resource. As noted above, to be recognized as an asset in the financial statements a non-financial resource cannot be an intangible.~~

~~Although PSAS does not permit the recognition of intangibles, it also does not provide a definition of intangibles. While PSAS 1000.40 provides a finite list of items that represent financial assets, the guidance in PSAS 1000.41 .42 on non-financial assets is less definitive, using words like "such as" and "normally". In absence of specific guidance in PSAS as to what constitutes an intangible, U.S. GAAP is probably the most appropriate source to consult, in light of the fact that it deals specifically with regulated assets. Under U.S. GAAP, a regulated asset is not treated as an intangible. ASC 980 contains separate subsections for 'Intangibles – Goodwill and Other' and 'Other Assets and Deferred Costs' and regulated assets are included in the guidance on 'Other Assets and Deferred Costs'. Consistent with the treatment under U.S. GAAP, the regulatory asset is categorized as an other asset under PSAS and recognized in the financial statements as a non-financial asset.~~

By recognizing the regulatory asset as a financial asset, the FHP will have a neutral impact on both the Province's net debt and accumulated deficit, which is consistent with the guidance in PSAS 1100, Financial statement objectives:

Financial statements should present information to describe the government's financial position at the end of the accounting period. Such information should be useful in evaluating:

a) the government's ability to finance its activities and to meet its liabilities and contractual obligations; and
b) *the government's ability to provide future services.*

A government's net debt is an important indicator of a government's financial position, highlighting the financial affordability of future government service provision. A net debt position represents a "lien" on the ability of the government to apply financial resources and future revenues to provide services. Non-financial assets are added to net debt to calculate the other indicator of a government's financial position — its accumulated surplus or deficit. Non-financial assets are "prepaid service potential". Reporting a government's recognized non-financial resources as part of its financial position provides information necessary for a more complete understanding of a government's debt position, financial position and future operating requirements.

Governments provide public services and redistribute wealth for a variety of social and economic purposes. To meet those objectives, governments need information about the cost of services and the affordability of services. An understanding of the extent of the financial "lien" the government has on its ability to provide future services as a result of past transactions and events is essential information. Governments also need to have an appreciation of the magnitude of the total economic resources they have on hand to deliver services. A government's net financial resources / net debt position, assessed in combination with the non-financial resources position of the government, provides a measure of the net recognized economic resources available to the government at the financial statement date to provide services in the future.

If the regulatory asset is not recognized as a financial asset, the Province's net debt will increase significantly, suggesting that the Province has a much higher future revenue requirement. This would be inaccurate, however, since the regulatory asset is going to be recovered under statute from electricity consumers, not taxpayers.

……

Debits and Credits

Based on the example provided earlier, the IESO pays the contracted power generator $400 for electricity used by the ratepayer and collects $300 from the ratepayer through their local distribution company (LDC). The $100 recovery shortfall is recorded in a variance account created by Bill 132 and deemed to be a regulatory asset. The IESO sells the regulatory asset to OPG Trust for $100 to obtain cash to make up the shortfall.

The accounting for the above transactions in the financial statements of the IESO, which are prepared in accordance with PSAS, depends on whether the regulatory asset is eligible for recognition as an asset for accounting purposes under PSAS. To avoid confusion in the remainder of this document, the term regulatory asset will refer to the defined term in the FHP Act and the term regulated asset or rate-

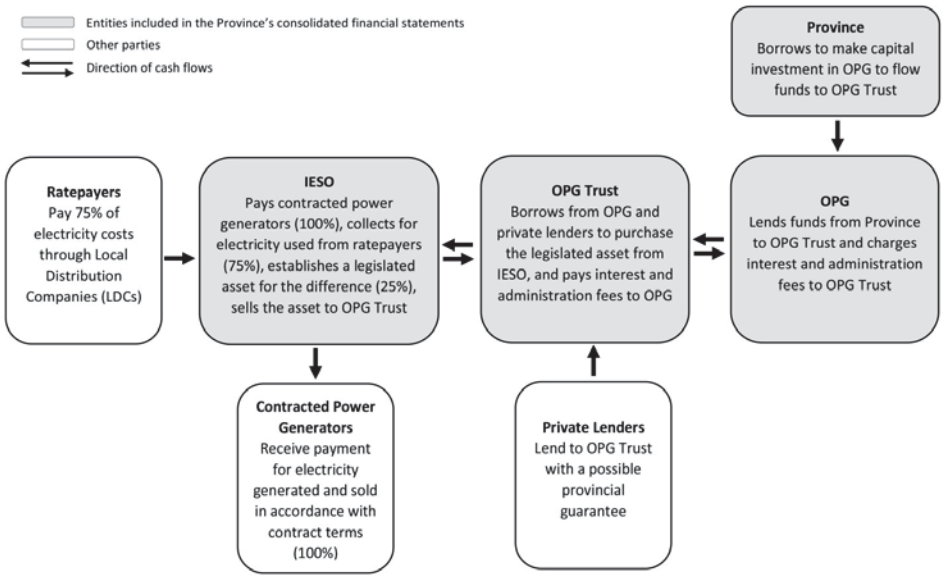
regulated asset (RRA) will refer to an asset recognized for accounting purposes. The following table illustrates the journal entries to be booked by the IESO under both scenarios:

Scenario A – Regulated Asset			Scenario B – Not a Regulated Asset		
Market Settlement					
DR	Cash	300	DR	Cash	300
DR	Asset	100	DR	Expense	100
CR	Cash	(400)	CR	Cash	(400)
Sale of Regulatory Asset to OPG Trust					
DR	Cash	100	DR	Cash	100
CR	Asset	(100)	CR	Gain	(100)

At any given point in time, the accounting result will be the same under both scenarios provided the cash shortfall has been fully funded. If a funding deficit exists, however, the deficit would be recognized as an asset under Scenario A and recognized as an expense under Scenario B. A funding deficit may arise due to, for example, temporary timing differences between the creation and sale of a regulatory asset. A funding deficit may also arise if OPG Trust (or another financing entity) ceases to purchase the IESO's regulatory assets on an on-going basis.

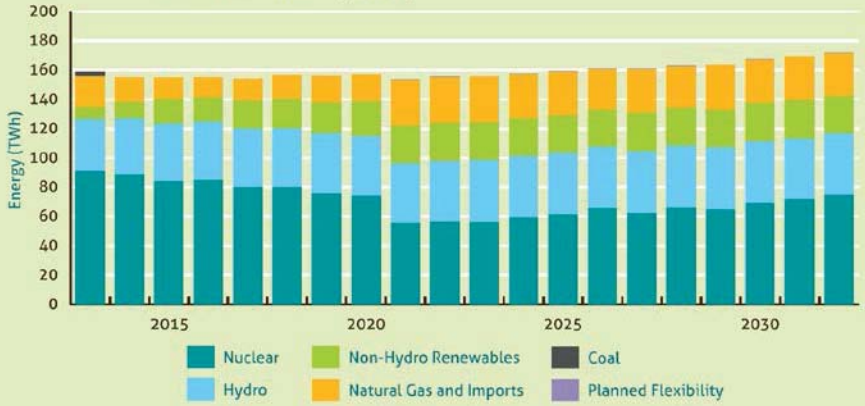
APPENDIX A

Proposed Legislated Transaction Structure
Prepared by the Office of the Auditor General of Ontario



APPENDIX B

Figure 19: Ontario's Forecast Electricity Production (TWh)



Notes: The Planned Flexibility identified in Figure 19 is required to meet peak requirements and represents less than 1 TWh of energy per year. Forecasting of electricity production includes the expectation of imports and exports of electricity in all years. Imports and exports are an important component in managing the operation of the electricity system. As a result, electricity production forecast exceeds the forecast Ontario consumer demand.

Fw_ Discussion Items for IESO Call.pdf

From: Petsche, Nadine (TBS)
To: Picard, Michel; Kim Marshall
Bcc: Veinot, Cindy (TBS)
Subject: Fw: Discussion Items for IESO Call
Date: June 15, 2017 8:01:26 AM

Good morning.
We had suggested that EY list some of their questions in advance of today's call (see below). I personally think however, that we first need to establish a common understanding of RRA (eg. Clarity of accounting guidance wrt governing board, independence, different types of RRAs), and perhaps address some of EY's questions/confusion following their read of the AG's recent comments/postings and how they might relate (or not) to the IESO's situation.
Just forwarding these Q's as an info item. Talk soon,
N

From: Lee Anne Probert <leeanne.probert@ca.ey.com>
Sent: Thursday, June 15, 2017 2:42 AM
To: Petsche, Nadine (TBS)
Cc: Veinot, Cindy (TBS); Suzie Gignac; Blake Langill
Subject: Discussion Items for IESO Call

Hi Nadine,

Below is a list of the items I would like to discuss on our call with the IESO.

Please let me know if you have any questions/concerns with the list.

Regards,
Lee Anne

IESO Financial Statements

Current supply cost variance account

- Where is this recorded on the 2016 balance sheet (Amounts due to/from market participants?)
- Why is this not a regulatory asset? Is it considered to be a financial asset?
- There are similarities between this variance account and the new FHP variance account, but FHP variance account is going to be accounted for a regulatory asset. What is driving different treatment?

Market accounts

- Can we walk through the entries that are booked as part of the settlement process (timing and DRs/CRs)
- What are 'Other liabilities' (Note 3)

Market Administration/Settlement

Confirm/correct the following:

Price consumers pay comprised of:

- Electricity price:
  - Electricity commodity price (HOEP)
  - Transmission price
  - Distribution price
- Global Adjustment

IESO only settles the electricity commodity price component and the related portion of the Global Adjustment

Supply of electricity comes from:

1. OPG (rate set by OEB)
2. Non-utility generators (rate set by contract – contracts held by OEFC)
3. Generation facilities under contract with IESO (rate set by contract)
4. Imports (paid HOEP)

Are there are other suppliers that are paid HOEP?

Portion of Global Adjustment determined by IESO driven by variances relating to #1, #2, #3 above

What is the nature of the contracts IESO enters into?

Participation agreements

- IESO enters into participation agreements with all market participants (buyers and sellers)
- Participation agreements bind IESO and counterparty to follow market rules
- Participation agreement would be the only contract IESO enters into with #1, #2, #4 above

Supply contracts

- Since IESO does not buy and sell electricity, what is the contract for? (IESO paying for commitment that the counterparty will supply electricity into the IESO grid?)
- Does the IESO negotiate the terms of these contracts?

Buyers of electricity from IESO grid are comprised of:

- LDCs
- Large consumers

The electricity commodity price paid by all buyers is HOEP.
IESO determines HOEP.
Although IESO determines HOEP, IESO is not really determining rates charged to buyers because total price is a bundle of electricity at HOEP plus/minus Global Adjustment and OEB mandates that bundle must (over time) equal cost.

Ernst & Young LLP
EY Tower, 100 Adelaide Street West, P.O. Box 1, Toronto, Ontario M5H 0B3, Canada
Office: 416 943 3554 | Cell: 416 888 6997 | leeanne.probert@ca.ey.com
Fax: 416 943 3767 | EY/Comm: 1657762

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FW_ Market participants.pdf

From: Kim Marshall
To: Veinot, Cindy (TBS)
Cc: Donaldson, Mark (TBS); Hosick, Sarah (TBS)
Subject: FW: Market participants
Date: August 31, 2017 3:21:09 PM

Kimberly Marshall | VP, Corporate Services & CFO

Independent Electricity System Operator (IESO) | T: (416) 969-6232 | C: (416) 545-7202

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Corporate Services collaborates with you to deliver solutions and expertise that enable the IESO to achieve its goals.

Conservation: www.saveONenergy.ca <http://www.saveONenergy.ca> | Twitter: saveONenergyOnt <https://twitter.com/saveonenergyont> | LinkedIn: saveONenergy <https://www.linkedin.com/company/saveonenergy-ontario>

From: Marina Mogus
Sent: August 31, 2017 3:19 PM
To: Natalie Schaus; Susan Nicholson; Kim Marshall
Cc: Beth Barrington; Marina Mogus
Subject: FW: Market participants

Hello,

Some of the largest Generators are:

Bruce Power, Brookfield Renewable Power, Goreway Station Partnership, Portlands Energy Centre LP, Iroquois Falls Power Corp and Portlands Energy Centre LP. OPG is typically within the top 10.

Our top LDCs include:

Toronto Hydro, Hydro One Networks Inc., Alectra Utilities, Hydro Ottawa and HQ Energy Marketing Inc.

Thanks,

Marina

From: Susan Nicholson
Sent: August 31, 2017 1:02 PM
To: Marina Mogus; Natalie Schaus; Beth Barrington
Cc: Kim Marshall
Subject: Fwd: Market participants

Can you please send Kim a quick list of generators and LDCs. Thanks.

Sent from my iPhone

Begin forwarded message:

> From: "Veinot, Cindy (TBS)" <Cindy.Veinot@ontario.ca>
> Date: August 31, 2017 at 12:34:44 PM EDT
> To: Susan Nicholson <susan.nicholson@ieso.ca>, Kim Marshall <Kim.Marshall@ieso.ca>
> Cc: "Donaldson, Mark (TBS)" <Mark.Donaldson@ontario.ca>, "Hosick, Sarah (TBS)" <Sarah.Hosick@ontario.ca>
> Subject: Market participants
>
> Hi Susan and Kim – do you have a list of the market participants divided by producers and users that you could share with us. I've included the following in a deck re: the market accounts and wanted to have a few other entity names to reference. I don't need a complete list, so even 5 of the largest on each side would be great. Today if possible.
>
> Thanks,
>
> Cindy
>
> Slide content
>
> § The IESO is a party to the contracts with each market participant, and each market participant either owes an amount to the IESO or is owed an amount from the IESO.
>
> § For example:

- Ontario Power Generation has a receivable from IESO recorded on its financial statements related to power generated, and historically, IESO did not have a payable recorded to Ontario Power Generation – now it does

- Hydro One has a payable to IESO recorded on its financial statements related to power purchases, and historically, IESO did not have a receivable recorded from Hydro One – now it does

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FW_ Meeting between AGO and Elio Luongo - Privileged and Confidential .pdf

From: Kim Marshall
To: Wetzel, Cindy (IESO)
Subject: FW: Meeting between AGO and Elio Luongo - Privileged and Confidential
Date: February 27, 2018 2:36:11 PM

---

fyi

Kimberly Marshall | VP, Corporate Services & CFO
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---

From: John Rattray
Sent: February 24, 2018 4:29 PM
To: Kim Marshall; Terry Young; Peter Gregg; Tim O'Neill; carole.workman@bell.net
Subject: Fwd: Meeting between AGO and Elio Luongo - Privileged and Confidential

FYI

Sent from my iPhone

Begin forwarded message:

> **From:** Ed Waitzer <EWaitzer@stikeman.com>
> **Date:** February 24, 2018 at 9:24:40 AM GMT-5
> **To:** "John.Rattray@ieso.ca" <John.Rattray@ieso.ca>
> **Subject: Fwd: Meeting between AGO and Elio Luongo - Privileged and Confidential**
>
>
> Edward J. Waitzer
>
> Direct: +1 416 869 5587<tel:+1%20416%20869%205587>
> Mobile: +1 416 617 9748<tel:+1%20416%20617%209748>
> Email: ewaitzer@stikeman.com<mailto:ewaitzer@stikeman.com>
>
> Begin forwarded message:
>
> [cid:ec0f760f46f5403c9cba05203282938a]<https://na01.safelinks.protection.outlook.com/?url=http%3A%2F%2Fwww.stikeman.com&data=01%7C01%7Cjohn.rattray%40ieso.ca%7C77b6964607314033a83f308d457b925acb%7C7cd55abd63f243c58f8bd38ea458add8%7C0&sdata=7xxzX%2BPX4HDruUn1zv5VnfsMVpoHCz1QKC7MPz7y6M%3D&reserved=0>
>
> Follow us: LinkedIn<https://na01.safelinks.protection.outlook.com/?url=http%3A%2F%2Fwww.linkedin.com%2Fcompany%2Fstikeman-elliott-llp&data=01%7C01%7Cjohn.rattray%40ieso.ca%7C77b6964607314033a83f308d457b925acb%7C7cd55abd63f243c58f8bd38ea458add8%7C0&sdata=PSTpquRqFM2FM1psEhVnsmXn0no65SdQjYUuhvHCPVE%3D&reserved=0> / Twitter<https://na01.safelinks.protection.outlook.com/?url=https%3A%2F%2Ftwitter.com%2Fstikemanelliott&data=01%7C01%7Cjohn.rattray%40ieso.ca%7C77b6964607314033a83f308d457b925acb%7C7cd55abd63f243c58f8bd38ea458add8%7C0&sdata=4ww139JqHCB3dCduEFkdTX7rUtO3er3gn2Pgc%2FeW6uA%3D&reserved=0> / stikeman.com<https://na01.safelinks.protection.outlook.com/?url=http%3A%2F%2Fwww.stikeman.com&data=01%7C01%7Cjohn.rattray%40ieso.ca%7C77b6964607314033a83f308d457b925acb%7C7cd55abd63f243c58f8bd38ea458add8%7C0&sdata=7xxzX%2BPX4HDruUn1zv5VnfsMVpoHCz1QKC7MPz7y6M%3D&reserved=0>
>
> Stikeman Elliott LLP Barristers & Solicitors
>
> 5300 Commerce Court West, 199 Bay Street, Toronto, ON M5L 1B9 Canada<https://na01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fstikeman.com%2Fen-ca%2Foffices%2Ftoronto&data=01%7C01%7Cjohn.rattray%40ieso.ca%7C77b6964607314033a83f308d457b925acb%7C7cd55abd63f243c58f8bd38ea458add8%7C0&sdata=xYUPHvLyEjY8Y%2FSLH0o1VUfVbvgre3aBqi3CAqfEPqO%3D&reserved=0>
>
> This email is confidential and may contain privileged information. If you are not an intended recipient, please delete this email and notify us immediately. Any unauthorized use or disclosure is prohibited.
>
>
> From: "BERG, BRAD" <BRAD.BERG@blakes.com<mailto:BRAD.BERG@blakes.com>>
> Date: February 24, 2018 at 9:20:25 AM EST
> To: "Mr. Edward J. Waitzer" <EWaitzer@stikeman.com<mailto:EWaitzer@stikeman.com>>, Peter Howard <PHoward@stikeman.com<mailto:PHoward@stikeman.com>>
> Cc: "DIMATTEO, CHRISTOPHER" <CHRISTOPHER.DIMATTEO@blakes.com<mailto:CHRISTOPHER.DIMATTEO@blakes.com>>
> Subject: Fwd: Meeting between AGO and Elio Luongo - Privileged and Confidential
>
> I've been asked to share the account below with you.
>
> The Globe is also pressing KPMG with more questions. We will likely respond on Monday with the same answers as before, repackaged. If the substance is different, we will canvass you first as usual.
>
> My observation (not my client's) - this has been an arduous experience. Obviously, for your client too.
>
> Let's stay close as this unfolds.
>
> Brad
>
> Bradley E. Berg, FCIArb
> Partner
> brad.berg@blakes.com<mailto:brad.berg@blakes.com><mailto:brad.berg@blakes.com>
> Direct: 416.863.4316<tel:416.863.4316>
>
> _____
> [cid:image67ab9.GIF@aaa29fa5.4bb4b5a6]
>
> Blake, Cassels & Graydon LLP
> 199 Bay Street, Suite 4000, Toronto ON M5L 1A9
> Tel: 416-863-2400 Fax: 416-863-2653
> blakes.com<https://na01.safelinks.protection.outlook.com/?url=http%3A%2F%2Fblakes.com&data=01%7C01%7Cjohn.rattray%40ieso.ca%7C77b6964607314033a83f308d457b925acb%7C7cd55abd63f243c58f8bd38ea458add8%7C0&sdata=eZ5cwaHwfbkeDb1ZTY6fizg%2EfZTx11vpARfOzpss2Y%3D&reserved=0>;<https://na01.safelinks.protection.outlook.com/?url=http%3A%2F%2Fwww.blakes.com&data=01%7C01%7Cjohn.rattray%40ieso.ca%7C77b6964607314033a83f308d457b925acb%7C7cd55abd63f243c58f8bd38ea458add8%7C0&sdata=vHL25ykBvnKeX%2FyzX6fFeOAmeXIbSNMerY%7CPrLc1KE%3D&reserved=0> | Twitter<https://na01.safelinks.protection.outlook.com/?url=http%3A%2F%2Ftwitter.com%2FBlakesLaw%2F&data=01%7C01%7Cjohn.rattray%40ieso.ca%7C77b6964607314033a83f308d457b925acb%7C7cd55abd63f243c58f8bd38ea458add8%7C0&sdata=hAuDn5Y%2BfI9xyhjevpGN%2BX8IcEODY2OdU1Ao2IP%2Fg8%3D&reserved=0> | Unsubscribe<https://na01.safelinks.protection.outlook.com/?url=http%3A%2F%2Fwww.blakes.com%2FEnglish%2FResources%2FBulletins%2FPages%2Funsubscribe.aspx&data=01%7C01%7Cjohn.rattray%40ieso.ca%7C77b6964607314033a83f308d457b925acb%7C7cd55abd63f243c58f8bd38ea458add8%7C0&sdata=vvlx2iBfEfd03vHM93Fzg%2FVenbmXKn5n111sUZKZ4%3D&reserved=0>
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>
> Begin forwarded message:
>
> From: "Gordon, John A" <johngordon@kpmg.ca<mailto:johngordon@kpmg.ca><mailto:johngordon@kpmg.ca>>
> Date: February 24, 2018 at 9:08:02 AM EST
> To: "Sahagian, Peter B" <psahagian@kpmg.ca<mailto:psahagian@kpmg.ca><mailto:psahagian@kpmg.ca>>, "Winton, Paul" <pwinton@kpmg.ca<mailto:pwinton@kpmg.ca><mailto:pwinton@kpmg.ca>>, "Betik, Matthew" <mbetik@kpmg.ca<mailto:mbetik@kpmg.ca><mailto:mbetik@kpmg.ca>>, "Luongo, Elio" <eluongo@kpmg.ca<mailto:eluongo@kpmg.ca><mailto:eluongo@kpmg.ca>>, "BERG, BRAD" <BRAD.BERG@blakes.com<mailto:BRAD.BERG@blakes.com><mailto:BRAD.BERG@blakes.com>>, "DIMATTEO, CHRISTOPHER" <CHRISTOPHER.DIMATTEO@blakes.com<mailto:CHRISTOPHER.DIMATTEO@blakes.com><mailto:CHRISTOPHER.DIMATTEO@blakes.com>>
> Cc: "Maher, Mary Lou" <mmaher@kpmg.ca<mailto:mmaher@kpmg.ca><mailto:mmaher@kpmg.ca>>, "Gordon, John A" <johngordon@kpmg.ca<mailto:johngordon@kpmg.ca><mailto:johngordon@kpmg.ca>>
> Subject: Meeting between AGO and Elio Luongo - Privileged and Confidential
>
> Elio and I went to AGO office on Thursday afternoon. In attendance from AGO were bonnie Lysyk, Susan Klein and an individual that took notes. There was no indication of any reason why we wouldn't share the outcome of this discussion with our client.
>
> Summary of the discussion:
>
> · Bonnie talked through the background, providing Elio with her perspective on the problem and concern. Her comments here were similar to those of previous meetings
> · She talked about how she knows that they are right, because they understand government accounting;
> · She referred to her due diligence involving Tim Beauchamp (former director/staff at PSAB);
> · She referred to letters from other AG offices in Canada
> · She referred to letters from other firms. She acknowledged the comments in our letter of earlier in the day. Elio asked about whether any of those firms were big 4 firms. Again she refused to provide any info on who they were, noting that to do so would make it difficult for them to work with her in the future (which is a curious comment that transparency of their work would be concern to them)
> · She criticized us for not engaging in discussion with her team on the technical aspects of the materials provided to us.
> · She asked about our internal due diligence. We indicated that we had involved many senior people including Dowad, Owen, Dotzlaw, Janet Allen, Picard, and Betik. She asked about Janel Allen, and we indicated that she was a retired partner that had been involved prior to her retirement. Bonnie made a somewhat vague comment about how she understood that someone that had left the firm might now have a different view. (I Subsequently spoke to Janet Allen and she has not had any discussions with AGO reps since retirement).
> · Bonnie referred to emails that indicated contrary views to the final view. She did not seem to accept that the thought process, and accordingly the emails, reflected a process of research, and evolving thinking on basis of that research.
> · Bonnie referred to her right to timely communication on accounting policy changes, and how we had missed those deadlines in Feb 2017, until it was too late. She did not acknowledge that the Province reporting timeline is 3 months later;
> · Bonnie referred to our participation in the press briefing with our client and reps from the Province. I indicated that our role there was no different than at any AGM. Our client asked us to attend in case there were questions about our audit. (there were no questions)
> · Bonnie referred to Mat advising the Board/AC of IESO that "this" wasn't a good idea (subsequently Mat Betik advises that he has not recollection of any such comments)
> · Bonnie referred to conflict (from her perspective) of being involved in advising IESO and also as auditors;
> · Bonnie asked us why we would not accept her suggestion of changing to "an appropriately disclosed basis of accounting". I indicated that this would require a regulation to be issued, and IESO to make a different decision on accounting policies, both of which were out of our control. She suggested that a regulation could be passed quickly. I suggested that it might be unlikely that the Government would do that
> · Bonnie asked again why we didn't encourage our client to have us do a joint audit. We indicated that this was a matter for them to decide. We indicated that we ensured they were aware of her comments, but that this was out of our control;
> · Bonnie encouraged us to resign for a period of 1 or 2 years, and that the AGO could "clean this up" and we could resume our role as auditors after that – noted that "I don't want to be auditors for the long term". It was not clear whether she was referring to resigning before the completion of our 2017 audit, or form future audits.
> · Bonnie referred to the Board of IESO saying that "I have never seen anything like it". Not clear what she meant.
> · Elio spoke about how Bill Thomas had advised him of this matter after the AGO call to Bill last year, and how he had ensured we were taking this matter seriously, and had ensure we had the right people involved such as Gordon and our most senior technical people, and that we had engaged DT
> · Bonnie asked about our process to select the partner at DT. We indicated again, that our request was to the leader of their professional Practice Group. She indicated that Kerry Danyluk did not have experience in the area. We indicated that our report was from DT as a firm, and that we were aware that they had involved a number of people rather than just KD.
> · I indicated that while our team had previous opportunities to hear the AGOs perspective, this discussion had been useful for Elio, and that it would be constructive for him to go back and discuss with our team. We referred to the acceptance (as noted in our letter) of the AGOs request for another technical session. She had not yet had a chance to read that letter, or share it with her team. She asked about the adjustment to the iESO process/timing and we referred to our understanding that they were willing to wait until after March 6th .
>
> JAG
>
>
> ---
>
> This email was sent to you by KPMG<https://na01.safelinks.protection.outlook.com/?url=http%3A%2F%2Finfo.kpmg.ca%2F&data=01%7C01%7Cjohn.rattray%40ieso.ca%7C77b6964607314033a83f308d457b925acb%7C7cd55abd63f243c58f8bd38ea458add8%7C0&sdata=fDtMVWsiVOnoT8Z3G2zvIDwzibK7RvrBpDyjV6D14Cg%3D&reserved=0> (https://na01.safelinks.protection.outlook.com/?url=http%3A%2F%2Finfo.kpmg.ca&data=01%7C01%7Cjohn.rattray%40ieso.ca%7C77b6964607314033a83f308d457b925acb%7C7cd55abd63f243c58f8bd38ea458add8%7C0&sdata=FiEkuu4ieyhj%2F9O3IG5%2BE79YbDYVX7bboFOQXUHmMg%3D&reserved=0<https://na01.safelinks.protection.outlook.com/?url=http%3A%2F%2Finfo.kpmg.ca%2F&data=01%7C01%7Cjohn.rattray%40ieso.ca%7C77b6964607314033a83f308d457b925acb%7C7cd55abd63f243c58f8bd38ea458add8%7C0&sdata=fDtMVWsiVOnoT8Z3G2zvIDwzibK7RvrBpDyjV6D14Cg%3D&reserved=0>). To sign up to receive event invitations and other communications from us (we have some informative publications that may be of interest to you), or to stop receiving electronic messages sent by KPMG, visit the KPMG Online Subscription Centre<https://na01.safelinks.protection.outlook.com/?url=http%3A%2F%2Fpages.kpmgemail.com%2Fpage.aspx%3FQS%3D2e4c31a3756cb940af903f205c1f1e041bdb833db55bad706ad9d7762cb174d4&data=01%7C01%7Cjohn.rattray%40ieso.ca%7C77b6964607314033a83f308d457b925acb%7C7cd55abd63f243c58f8bd38ea458add8%7C0&sdata=ANYc%2BhD2t1vDUose4nJodly5PUh9eUld5lLZA3v5sKY%3D&reserved=0> (https://na01.safelinks.protection.outlook.com/?url=http%3A%2F%2Fpages.kpmgemail.com%2Fpage.aspx%3FQS%3D2e4c31a3756cb940af903f205c1f1e041bdb833db55bad706ad9d7762cb174d4&data=01%7C01%7Cjohn.rattray%40ieso.ca%7C77b6964607314033a83f308d457b925acb%7C7cd55abd63f243c58f8bd38ea458add8%7C0&sdata=ANYc%2BhD2t1vDUose4nJodly5PUh9eUld5lLZA3v5sKY%3D&reserved=0>). To subscribe, visit https://na01.safelinks.protection.outlook.com/?url=http%3A%2F%2Fsubscribe.kpmg.ca&data=01%7C01%7Cjohn.rattray%40ieso.ca%7C77b6964607314033a83f308d457b925acb%7C7cd55abd63f243c58f8bd38ea458add8%7C0&sdata=ngNWBAKONQUAF3p80AzJBNhWAIf%2BpAWDH7XwezW9v8d0%3D&reserved=0<https://na01.safelinks.protection.outlook.com/?url=http%3A%2F%2Fpages.kpmgemail.com%2Fpage.aspx%3FQS%3D2e4c31a3756cb940af903f205c1f1e041bdb833db55bad706ad9d7762cb174d4&data=01%7C01%7Cjohn.rattray%40ieso.ca%7C77b6964607314033a83f308d457b925acb%7C7cd55abd63f243c58f8bd38ea458add8%7C0&sdata=ANYc%2BhD2t1vDUose4nJodly5PUh9eUld5lLZA3v5sKY%3D&reserved=0>).
>
> At KPMG we are passionate about earning your trust and building a long-term relationship through service excellence. This extends to our communications with you.
>
> Our lawyers have recommended that we provide certain disclaimer language with our messages. Rather than including them here, we're drawing your attention to the following links where the full legal wording appears.
>
> * Disclaimer concerning confidential and privileged information/unintended recipient<https://na01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fhome.kpmg.com%2Fca%2Fen%2Fhome%2Fmisc%2Fdisclaimer-confidential.html&data=01%7C01%7Cjohn.rattray%40ieso.ca%7C77b6964607314033a83f308d457b925acb%7C7cd55abd63f243c58f8bd38ea458add8%7C0&sdata=R%2F41ZFcdqp9b6SSh8lrjLip0CkGnkoA5UCY%2FqrDwSZ6A%3D&reserved=0> (https://na01.safelinks.protection.outlook.com/?url=http%3A%2F%2Fdisclaimer.kpmg.ca&data=01%7C01%7Cjohn.rattray%40ieso.ca%7C77b6964607314033a83f308d457b925acb%7C7cd55abd63f243c58f8bd38ea458add8%7C0&sdata=mvf%2FBr7%2FeiFkWc3%2BmsIvNxSYoz5D4reveC%2BWRrbbAao%3D&reserved=0<https://na01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fhome.kpmg.com%2Fca%2Fen%2Fhome%2Fmisc%2Fdisclaimer-confidential.html&data=01%7C01%7Cjohn.rattray%40ieso.ca%7C77b6964607314033a83f308d457b925acb%7C7cd55abd63f243c58f8bd38ea458add8%7C0&sdata=R%2F41ZFcdqp9b6SSh8lrjLip0CkGnkoA5UCY%2FqrDwSZ6A%3D&reserved=0>).
> * Disclaimer concerning tax advice<https://na01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fhome.kpmg.com%2Fca%2Fen%2Fhome%2Fmisc%2Fdisclaimer-tax.html&data=01%7C01%7Cjohn.rattray%40ieso.ca%7C77b6964607314033a83f308d457b925acb%7C7cd55abd63f243c58f8bd38ea458add8%7C0&sdata=RICEpCtwGfyQ%2Bc189eJhNUwnGkFyezL4NkSwTP%2B2dEsc%3D&reserved=0> (https://na01.safelinks.protection.outlook.com/?url=http%3A%2F%2Fantidisclaimer.kpmg.ca&data=01%7C01%7Cjohn.rattray%40ieso.ca%7C77b6964607314033a83f308d457b925acb%7C7cd55abd63f243c58f8bd38ea458add8%7C0&sdata=%2BYw%2BHZxciFWFgYaXah%2F9hvVHbrchs%2FdmuiP8g9k8eY%3D&reserved=0<https://na01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fhome.kpmg.com%2Fca%2Fen%2Fhome%2Fmisc%2Fdisclaimer-tax.html&data=01%7C01%7Cjohn.rattray%40ieso.ca%7C77b6964607314033a83f308d457b925acb%7C7cd55abd63f243c58f8bd38ea458add8%7C0&sdata=RICEpCtwGfyQ%2Bc189eJhNUwnGkFyezL4NkSwTP%2B2dEsc%3D&reserved=0>).
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FW_ Please advise.pdf

From: Petsche, Nadine (TBS)
To: Natalie Schaus (Natalie.Schaus@ieso.ca)
Subject: FW: Please advise
Date: July 17, 2017 1:38:00 PM

Hi Natalie.

In Susan's absence, are you able to help?

N

From: Petsche, Nadine (TBS)
Sent: July-17-17 1:37 PM
To: 'Susan Nicholson'
Subject: Please advise

Hi Susan.

Hoping you can help fill in the blank below. Thanks. N

The Smart Metering Entity charge is recovered over the period from May 1, 2013 to October 31, 2018 in accordance with XX[LAP1] .

_____

To add statute reference.

FW_ Please confirm.pdf

From:	Susan Nicholson
To:	Kim Marshall; mpicard@kpmg.ca; mbetik@kpmg.ca
Cc:	Susan Nicholson; Petsche, Nadine (TBS)
Subject:	FW: Please confirm
Date:	May 25, 2017 4:10:06 PM

As discussed, Kim will add some other key dates.

Thanks. Susan

From: Susan Nicholson
Sent: May 09, 2017 9:59 AM
To: Nadine.Petsche@ontario.ca
Cc: Kim Marshall; Susan Nicholson
Subject: FW: Please confirm

Nadine - timing of the events surrounding the approval of the audited IESO financial statements was as follows:

- February 28 – in accordance with the audit committee calendar, KPMG and management presented financial statements prior to accounting policy changes to the Audit Committee for information purposes. Management and KPMG discussed the proposed accounting policy changes with the objective of bringing policies and revised financial statements back to the Audit Committee in March.
- March 1 – the Board delegated authority to the Audit Committee to review the accounting policy changes, adjust financial statements for the changes and approve on behalf of the Board
- March 15 – KPMG and management presented the accounting policy changes for rate regulated assets and market accounts to the Audit Committee at a special meeting. The presentation of materials included a memo from KPMG on the accounting policies as well as pro forma financial statements and proposed changes to the notes of the financial statements
- March 22 – KPMG and management presented the audited financial statements to the Audits Committee for approval based on the delegated authority of Board from March 1st. The financial statements were approved on March 22nd.

Nadine, happy to have a discussion

Susan

Susan Nicholson | Corporate Controller, IESO | Station A, Box 4474, Toronto, Ontario M5W 4E5
T: 905.855.6290| C: 905.301.6499 |Email: susan.nicholson@ieso.ca
Web: www.ieso.ca | Twitter: IESO_Tweets | LinkedIn: IESO
Conservation: www.saveONenergy.ca | Twitter: saveONenergyOnt | LinkedIn: saveONenergy

"Corporate Services collaborates with you to deliver solutions and expertise that enable the IESO to achieve its goals"

Begin forwarded message:

From: "Petsche, Nadine (TBS)" <Nadine.Petsche@ontario.ca>
Date: May 8, 2017 at 5:08:55 PM EDT
To: "Kim Marshall (Kim.Marshall@ieso.ca)" <Kim.Marshall@ieso.ca>
Subject: Please confirm

Hi Kim.
Cindy has asked that I follow up regarding a comment made by the AG in a meeting last week. With regards to the IESO's recent decision to adopt rate regulated accounting, the AG said that a set of IESO f/s had presented to the IESO Board on March 21st which did not reflect rate regulated accounting even though IESO management and the external auditors would have known about the impending accounting and the anticipated adoption of rate regulated accounting to follow shortly thereafter.
Can you please confirm the accuracy of the AG's statement.
Thanks in advance.
Nadine

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FW_ Scanned Copy - KPMG (2).pdf

From: Veinot, Cindy (TBS)
To: Picard, Michel
Cc: Hosick, Sarah (TBS); Donaldson, Mark (TBS)
Subject: FW: Scanned Copy - KPMG
Date: October 13, 2017 9:32:00 AM
Attachments: KPMG - July 25, 2017 Memorandum to File - August 29, 2017.pdf

---

Hi Michel – please see the attached. Please confirm back that we are OK to provide the KPMG memo to EY.

Thanks,

Cindy

From: Jack, Shannon (TBS)
Sent: October 13, 2017 9:30 AM
To: Veinot, Cindy (TBS)
Subject: Scanned Copy - KPMG

Hi Cindy,

Per your request, please find attached a scanned copy of the KPMG letter that you signed.

Thanks,

Shannon Jack
Administrative Coordinator
Assistant Deputy Minister's Office
Office of the Provincial Controller Division
Treasury Board Secretariat
416-327-2727

KPMG - July 25, 2017 Memorandum to File - Aug.pdf

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Ms. Cindy Veinot
Treasury Board Secretariat, Office of the Provincial Controller
Frost Building South
7 Queen's Park Crescent East
Toronto, Ontario, M7A 1Y7
Canada

August 29, 2017

Dear Madam:

In connection with the preparation of a technical accounting paper by the Office of the Provincial Controller Division, Treasury Board Secretariat (the "OPCD") related to the Fair Hydro Plan, 2017, KPMG LLP ("KPMG") understands that the OPCD has requested that a copy of our Memorandum to File dated July 25, 2017 be provided to their accounting adviser, Ernst and Young LLP ("EY"). In regards to this request, the Independent Electricity System Operator ("the IESO") has asked that we allow EY access to our Memorandum to File prepared in connection with our audit of the 2016 financial statements of the IESO. We have received authorization from IESO management to allow EY such access to our Memorandum prepared in the course of the audit.

Our audit of the 2016 financial statements of the IESO was conducted in accordance with generally accepted auditing standards, the objective of which was to form an opinion on whether the financial statements, which are the responsibility and representations of management of the IESO, present fairly, in all material respects, the financial position and results of operations and cash flows of the IESO in conformity with generally accepted accounting principles. Under those standards, we have the responsibility, within the inherent limitations of the auditing process, to design our audit to provide reasonable assurance of detecting errors and irregularities that are material to the financial statements and to exercise due care in the conduct of our audit. The concept of selective testing of the data being audited, which involves judgment regarding both the number of transactions to be audited and the areas to be tested, has been generally accepted as a valid and sufficient basis for an auditor to express an opinion on financial statements. Thus, our audit, based on the concept of selective testing, is subject to the inherent risk that material errors or irregularities, if they exist, will not be detected. In addition, an audit does not address the possibility that material errors or irregularities may occur in the future. The conduct of an audit requires the application of professional judgment and the assessment of materiality in connection with financial statement assertions.

Our audit of the IESO's 2016 financial statements was not planned or conducted in contemplation of the preparation of a technical accounting paper related to the Fair Hydro Plan and may not be appropriate for your purposes. Items of possible interest to OPCD may not have been specifically addressed.

We have not reported on the IESO's financial statements for any period subsequent to December 31, 2016 and significant events may have occurred since that date. Our Memorandum prepared in connection therewith and our responses to EY's questions, should not be taken to supplant other inquiries

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KPMG

and procedures that OPCD should undertake for the preparation of the technical accounting paper described above or for any other purpose.

We accept no responsibility whatsoever for any reliance that OPCD, EY or any other person or body may place on the information provided by us.

In consideration of our permitting access to the Memorandum referred to above and for providing explanations relating to it if asked, and to the information contained therein, OPCD (on behalf of itself and all parties for which it is legally responsible - "the OPCD Parties") and EY agree that:

a) such access to our Memorandum and provision of information and explanations is not provided pursuant to any agreement or other arrangements of a contractually binding nature between our firm and any of the OPCD Parties or EY;

b) the OPCD Parties and EY do not acquire any rights against our firm or otherwise as a result of such access or as a result of what our Memorandum contain;

c) our firm, our partners and staff do not have any duties, responsibilities, liabilities, or obligations to the OPCD Parties or to EY as a result of permitting such access or providing such information and explanations;

d) the OPCD Parties and EY will not commence any action, suit or proceeding or make any demand, complaint or claim against us arising out of permitting such access or providing such information and explanation, or for any omission therein unless such action, suit or proceeding arises from our willful misconduct or failure to act in good faith in responding to specific questions raised by Ernst and Young.

OPCD also agrees that except as required by law, the information acquired as a result of the review of our Memorandum will be maintained in confidence and will not be disclosed to any third party (except as otherwise permitted herein) and will be used by it and EY in connection with the preparation of the technical accounting paper described above and that it will show this letter to, and secure the commitment to the provisions of this paragraph by EY.

Please confirm your agreement with the foregoing by signing and dating a copy of this letter and returning it to us.

Yours very truly

Michel Picard

Michel Picard
Partner
416) 777 -8414

KPMG

We are in agreement with the terms of this letter.

Office of the Provincial Controller Department of the Province of Ontario

by: Cynthia Veinot Oct 13, 2017

Signature: Date:

Name: Ms Cindy Veinot

Title: Treasury Board Secretariat, Office of the Provincial Controller

We acknowledge that we have read the foregoing and agree to be bound by the foregoing agreement in connection with our access to KPMG' Memorandum.

Ernst and Young LLP

by: October 10, 2017

Signature: Date:

Name:

Title:

Fwd_ _Fair_ Legislation (Discussion Draft).rtf

From: Calwell, Carolyn (ENERGY/MEDEI/MRI) []
To: Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
Subject: Fwd: "Fair" Legislation (Discussion Draft)
Date: Saturday, April 08, 2017 09:34:06
Attachment 1: image002.jpg
Attachment 2: ATT00001.htm
Attachment 3: image003.gif
Attachment 4: ATT00002.htm
Attachment 5: image004.jpg
Attachment 6: ATT00003.htm
Attachment 7: HW_US 64648661 v2-c.docx
Attachment 8: ATT00004.htm
Attachment 9: Redline - HW_US 64648661 v1 and HW_US 64648661 v2-c.pdf
Attachment 10: ATT00005.htm

FYI - feedback from US counsel

Carolyn Calwell
416.212.8392

Begin forwarded message:

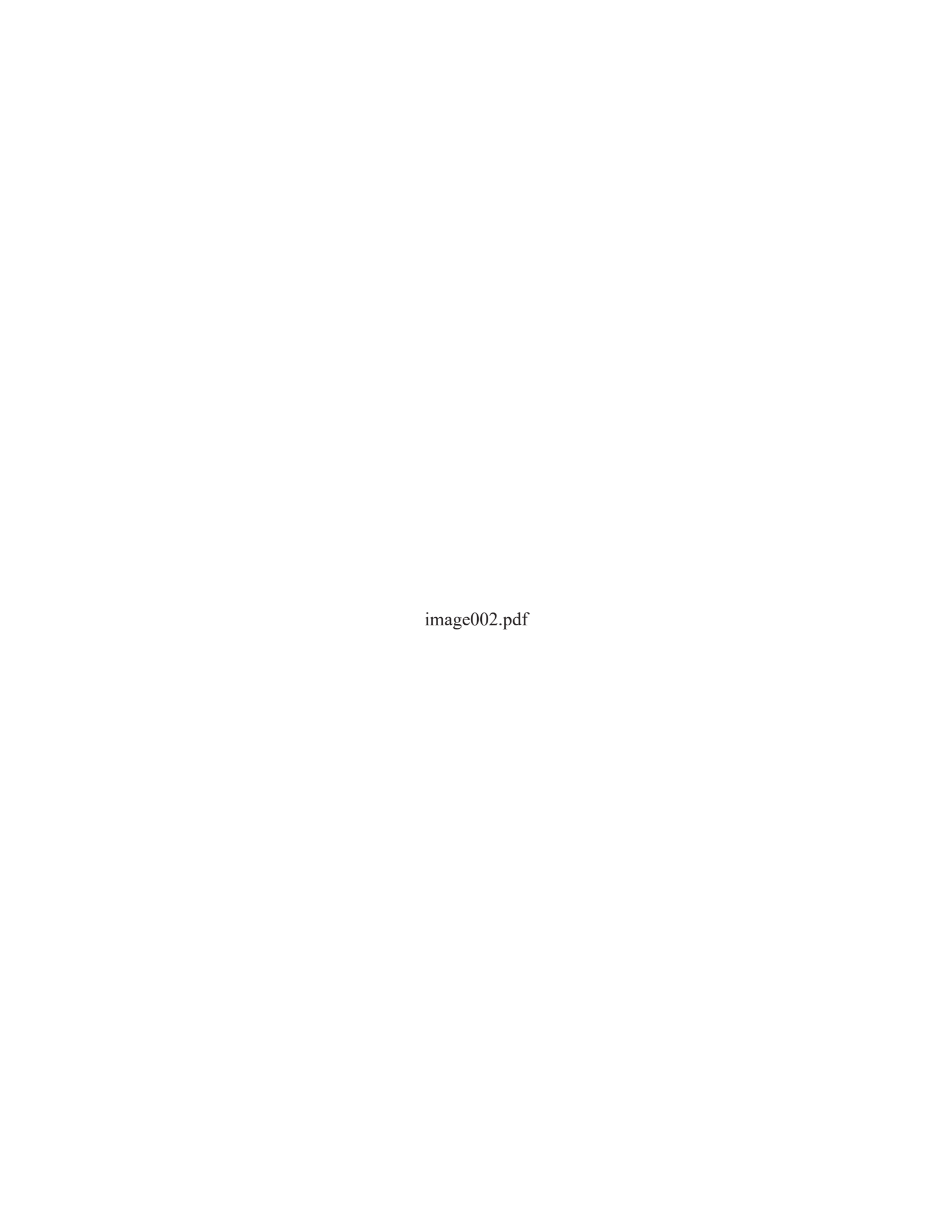
From: "O'Brian, Adam" <aobrian@hunton.com>
Date: April 7, 2017 at 8:15:28 PM EDT
To: "ASHBOURNE, STEPHEN" <STEPHEN.ASHBOURNE@blakes.com>, "Feldman, Michael" <mfeldman@torys.com>, "JACKSON, ADAM" <ADAM.JACKSON@blakes.com>, "Peter Hamilton (PHamilton@stikeman.com)" <PHamilton@stikeman.com>, "LEE John -TREASURY" <john.s.lee@opg.com>, RYFA Ken -TREASURY <ken.ryfa@opg.com>, WONG Leslie -LAWDIV <leslie.wong@opg.com>, MCAULEY Tyler -LAWDIV <tyler.mcauley@opg.com>, "WILSON, JUDY" <JUDY.WILSON@blakes.com>, "STOKES, BRYSON" <BRYSON.STOKES@blakes.com>, "Hill, Krista" <khill@torys.com>, "Ramchandani, Rima" <rramchandani@torys.com>, "Keizer, Charles" <ckeizer@torys.com>, "Myers, Jonathan" <jmyers@torys.com>, "Emes, Aaron" <aemes@torys.com>, "Mansoori, Nina" <nmansoori@torys.com>, "Wortsman, Jerald" <jwortsman@torys.com>, "Bomhof, Scott" <sbomhof@torys.com>, "Estey, Bill" <bestey@torys.com>, "Watson, Gwen" <gwatson@torys.com>, "James.Rehob@ontario.ca" <James.Rehob@ontario.ca>, Alan Hibben <alan.hibben@rogers.com>, "'Shear, Dan (ENERGY)'" <Dan.Shear@ontario.ca>, "Carolyn.Calwell@ontario.ca" <Carolyn.Calwell@ontario.ca>, "STOKES, BRYSON" <BRYSON.STOKES@blakes.com>, "VINER, JON" <JON.VINER@blakes.com>
Cc: "Fitzpatrick, Michael F." <MFitzpatrick@hunton.com>
Subject: RE: "Fair" Legislation (Discussion Draft)

Good evening-

In order to assist everyone as we prepare for Monday's call, attached please find a mark-up of the draft of the legislation that Stephen sent last night. I have attempted to highlight our thoughts to explain some of the changes throughout the document.

Have a nice weekend,

Adam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From: ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
Sent: Friday, April 07, 2017 1:22 AM
To: Feldman, Michael
Cc: JACKSON, ADAM; Peter Hamilton (PHamilton@stikeman.com); LEE John -TREASURY; RYFA Ken -TREASURY; WONG Leslie -LAWDIV; MCAULEY Tyler -LAWDIV; WILSON, JUDY; STOKES, BRYSON; Hill, Krista; Ramchandani, Rima; Keizer, Charles; Myers, Jonathan; Emes, Aaron; Mansoori, Nina; Wortsman, Jerald; Bomhof, Scott; Estey, Bill; Watson, Gwen; James.Rehob@ontario.ca; Alan Hibben; 'Shear, Dan (ENERGY)'; Carolyn.Calwell@ontario.ca; O'Brian, Adam; Fitzpatrick, Michael F.; STOKES, BRYSON; VINER, JON
Subject: "Fair" Legislation (Discussion Draft)

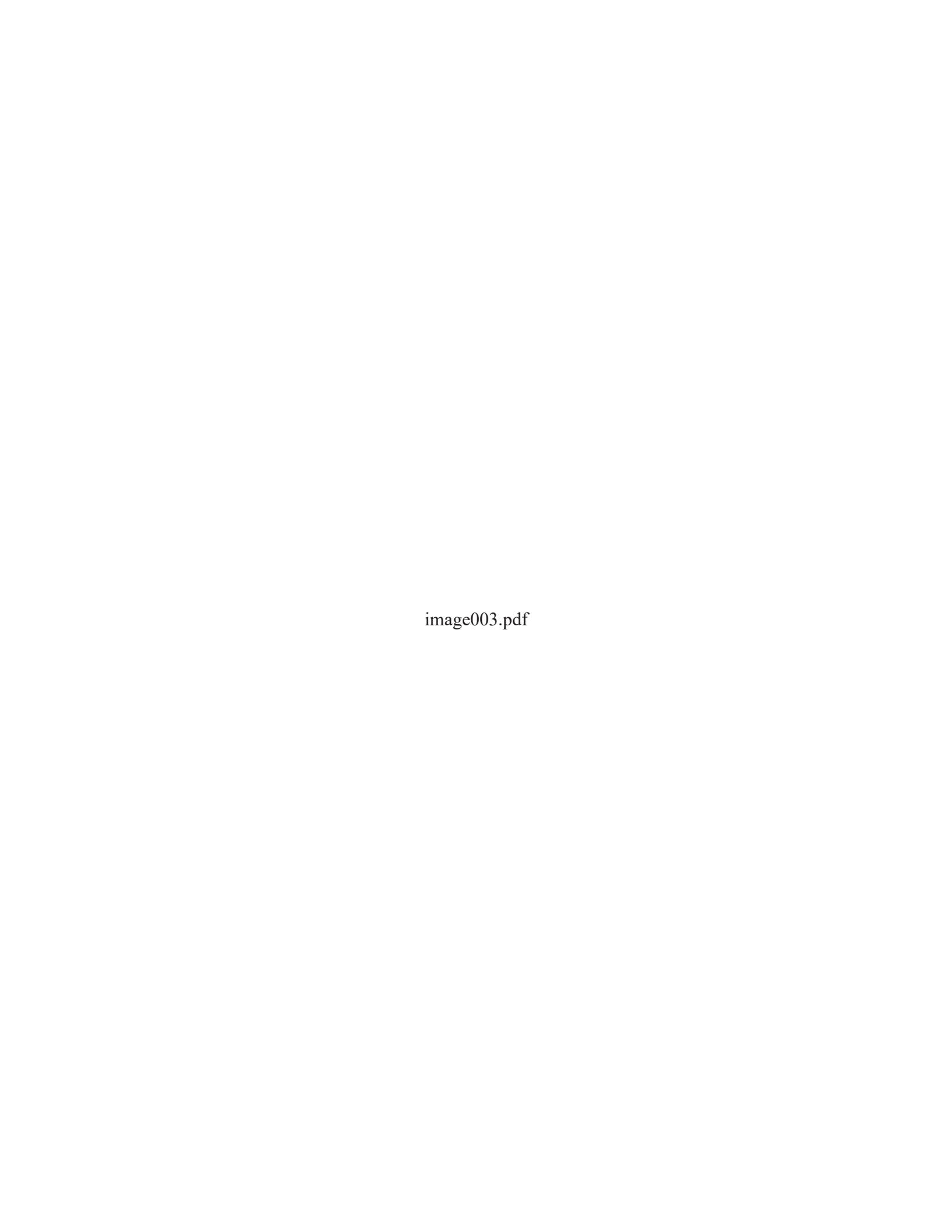
Thanks for your comments, Michael. The attached version picks up many of your, Peter's and H&W's comments. In some cases it defers consideration, pending dealer input (such as your suggestion of tracking individual, standalone Regulatory Assets per transaction; delinking the investors from the LDCs, in favour of having IESO be the main servicer; and deleting some of the US precedent language). The regulatory input included in your mark-up was particularly helpful, although not easily dealt with tonight without the Province's input, so many of those points have simply been brought forward with additional footnotes for now. The manner and extent of delegations (primarily the Financing Plan and the Fair Allocation Plan), the nature of OEB review and regulatory actions, the scope of the undertaking and other similar issues, are still under consideration by MOE. Your comments to the effect that nothing can affect a funding obligation once incurred were referenced, as I think that is a pervasive and correct idea. The ultimate location of provisions (Part of the Electricity Act; new Act; Regulations) is still under consideration – for now it's all in this document to facilitate this group review. Finally, there are a number of "validity" type points, which arose in your mark-up and which we are still thinking about. We can discuss those further in the morning. Steve

Stephen R. Ashbourne

Partner

stephen.ashbourne@blakes.com

Dir: 416-863-3086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From: Feldman, Michael [mailto:mfeldman@torys.com]
Sent: Thursday, April 06, 2017 4:26 PM
To: ASHBOURNE, STEPHEN
Cc: JACKSON, ADAM; Peter Hamilton (PHamilton@stikeman.com); LEE John -TREASURY; RYFA Ken -TREASURY; WONG Leslie -LAWDIV; MCAULEY Tyler -LAWDIV; WILSON, JUDY; STOKES, BRYSON; Hill, Krista; Ramchandani, Rima; Keizer, Charles; Myers, Jonathan; Emes, Aaron; Mansoori, Nina; Wortsman, Jerald; Bomhof, Scott; Estey, Bill; Feldman, Michael; Watson, Gwen; James.Rehob@ontario.ca; Alan Hibben; 'Shear, Dan (ENERGY)'; Carolyn.Calwell@ontario.ca; O'Brian, Adam; Fitzpatrick, Michael F.
Subject: Torys Comments on Blakes Draft Legislation

All,

I am attaching our comments on the last version of the draft legislation sent to us by Blakes. Both a clean and blacklined version are attached.

This is being distributed to OPG at the same time as everyone else and so remains subject to their comments as this is very much a work in process.

We also just received comments from Hunton & Williams but in the interests of time we have not been able to include those in our mark up, but expect to be in a position to raise any of their big issues at our meeting tomorrow. Also, I will send their comments separately to Blakes.

Regards,

Michael K. Feldman

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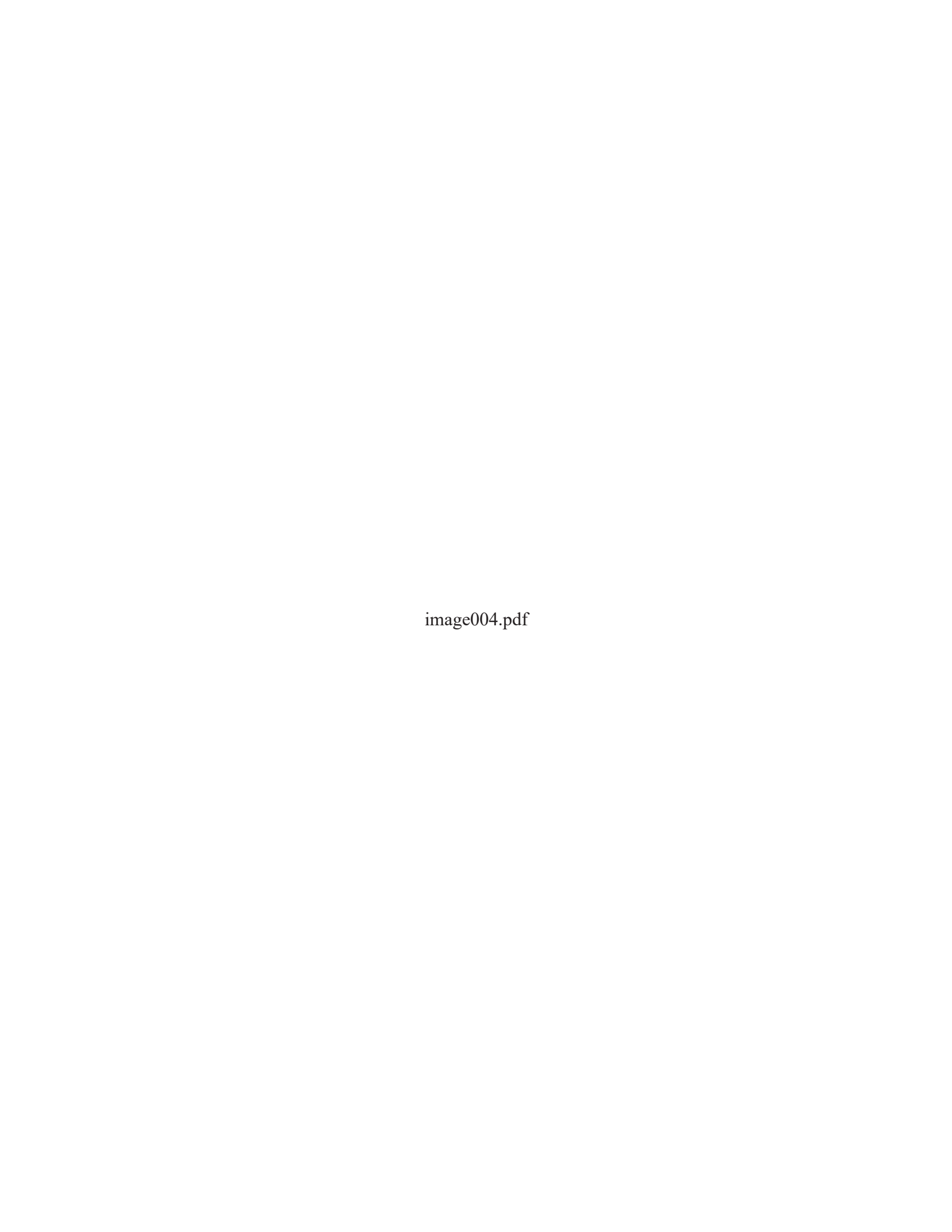
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Preliminary Draft for Discussion Purposes Only

"Fair Hydro" – Part V.2

Article 1 – Purpose[1]

IESO has entered into Power Contracts with Generators. The agreed-upon reference prices and quantities set out therein were determined based on commitments made by IESO to provide Generators with long-term price certainty, so as to encourage the construction and development of facilities for the purpose of long-term operation and generation of electricity using sustainable, lower carbon-based technologies such as new gas-fired generation, renewable facilities, energy from waste and biomass, including under the Province's various procurement, standard offer and feed in tariff programs (the "Green Generation Initiative"). [The terms of the Power Contracts were intended to approximate the anticipated useful life of the related generation assets]; however, it has been determined that the useful life of many of these assets will be well in excess of the actual term of the related Power Contracts and will extend over more than one generation of ratepayers. The long-term benefits of the Green Generation Initiative accrue over time and have benefited and will benefit present and future ratepayers of the Province. Currently, market prices for electricity are less than the reference prices set out in the Power Contracts, leaving a gap in funding which is funded by charging consumers a "Global Adjustment" (part of which is available to IESO to pay this shortfall).

Each month, the IESO determines the Global Adjustment payable by consumers for the consumption of electricity in the Province. A component of the Global Adjustment is the amount by which the reference prices in the Power Contracts exceed the market price for electricity for the quantities of electricity specified under the Power Contracts for the relevant period[2]. The relationship between the past, present and future benefits to Ratepayers from the Green Generation Initiative, on the one hand, and the costs of the Green Generation Initiative borne by past, present and future Ratepayers through their respective allocations of the Global Adjustment, on the other hand, do not necessarily reflect an equitable allocation of such benefits and costs over time, with the result that an adjustment may be appropriate to address inter-generational fairness considerations. Such an adjustment should reflect principles and parameters that can be applied from time to time in order to establish a reasonable basis for measuring and allocating the relative costs and benefits of the Green Generation Initiative across present and future Ratepayers. A plan to allocate such costs and benefits equitably across present and future Ratepayers may be developed based on those principles and parameters (a "Fair Allocation Plan").

If a Fair Allocation Plan determines that the equitable allocation of the Global Adjustment to the Ratepayers of a particular time period in respect of the Power Contracts should be reduced below the amount otherwise determined, the amount payable by such Ratepayers to Electricity Distributors in respect of such period, and in turn by the Electricity Distributors to the IESO, would, in the aggregate, be less than the amount payable by the IESO to the Generators under

---

[1] Consider the scope and breadth of the Purpose section. This text is considered to be useful to establish the legislative basis for the statute, which text will be useful in the event of a challenge.

[2] Consider modifying this to also refer to gas contracts and hydroelectric contracts, which provide for mechanics that are not based on contracts for differences.

the Power Contracts in respect of such period. If the difference is greater than any net Power Contract surpluses available to IESO from earlier periods, IESO will have a funding shortfall.[3] In order for IESO to cover such a funding shortfall for a period, IESO will need to obtain funding from another source, which could include funding from third party sources operating in public and private capital markets. If a funding obligation is incurred in order to enable the IESO to cover a funding shortfall during one period, the repayment of such funding obligation will be required in a future period, and any related repayments, finance costs, hedging costs and other transaction costs will be incurred and may become payable in one or more other periods.

It will be necessary to provide a reliable and committed source of cash flows to enable IESO to repay such funding obligations and to pay related funding costs with certainty when the funding obligations become due and payable. This Part imposes irrevocable and non-bypassable financial obligations of Ratepayers to pay amounts incurred in respect of such funding obligations when they become due and payable and establishes a right to invoice and collect such amounts . The right and interest in and to collect such financial obligations, which will take the form of the Regulatory Asset contemplated in this Part and will constitute property rights and interests. The Regulatory Asset will be sold and absolutely assigned and will belong to one or more newly created financing entities, which in turn will finance their purchase of such Regulatory Asset by incurring funding obligations. The incurrence and payment of such funding obligations will be administered on behalf the financing entities by an administrative agent (initially OPG), under the Financing Plan contemplated in this Part. The Financing Plan will seek to reasonably match the payment obligations arising under funding obligations and borne by the future Ratepayers of the period in which such payment obligations become due, with the costs and benefits of the Green Generation Initiative charged to such future Ratepayers under the Fair Allocation Plan.

The purpose of this Part is to establish the basis upon which intergenerational fairness can be achieved by charging the costs and benefits of the Green Generation Initiative to present and future Ratepayers on an equitable and cost effective basis.

Article 2 - Definitions

In this Part:

> “Absolute Assignee” means a person to whom a Regulatory Asset Owner effects a Disposition.
>
> “Actual” means, in relation to costs, expenses or payments in respect of Funding Obligations during a Reference Period, the actual amount of such costs, expenses or payments paid or made (net of any Finance Reserve Withdrawals applied to pay such amounts), which amounts shall be recorded by the Administrative Agent whose records shall be determinative for the purposes of this Part in the absence of a manifest calculation error.
>
> “Additional Funding Charges” means, for a Reference Period, the fees, charges, expenses, costs, indemnities, reimbursements and other amounts (including any

[3] Confirm whether any RPP forecasting variance is to be included in (i) a funding shortfall; and (ii) related IESO financing costs to be included in Transition Charges.]

applicable tax amounts) that are or become payable by or on behalf of the Regulatory Asset Owners during the Reference Period and that were incurred or committed to directly or indirectly in connection with the incurrence of Funding Obligations under the Financing Plan (whether at the time of such incurrence or over the term of the Funding Obligation and whether directly or indirectly), including (without duplication and without limitation): (a) any payment required under an ancillary agreement entered into by, or by the Administrative Agent on behalf of, a Regulatory Asset Owner under the Financing Plan; (b) any federal, provincial or local taxes, payments in lieu of taxes, franchise fees or license fees imposed on a Regulatory Asset Owner or incurred by on behalf of a Regulatory Asset Owner under any obligation to pay tax gross-up amounts to counterparties under Funding Obligations; (c) any amounts payable to the Administrative Agent, including amounts payable to its advisors and outside counsel; (d) any amounts incurred to prepare, confirm, amend and implement the Financing Plan; (e) any amounts payable to any Alternative Collection Agent or Alternative Servicer, including amounts payable to each's advisors and outside counsel; (f) any amounts incurred to make the calculations, determinations or confirmations to be made by or on behalf of a Regulatory Asset Owner; (g) any servicing fees and expenses; (h) any trustee fees and expenses; (i) any legal fees, expenses and disbursements; (j) any accounting fees and expenses; (k) any administrative fees and expenses; (l) any manager or director fees of a Financing Entity; (m) any registration fees and expenses; (n) any placement fees, underwriting fees, fees and related issuing expenses; (o) any rating agency fees; and (p) any other related fees, charges, expenses, costs, indemnities, reimbursements and other amounts that are approved [**NTD: APPROVED BY WHOM?**] in good faith for recovery and payment under the Financing Plan.

"Administrative Agent" means [OPG] or, following any Replacement Event, such other person or persons who may be appointed as the administrative agent of the Regulatory Asset Owner under the Financing Plan in compliance with the requirements set out in Schedule 3. [**NTD: We should understand what will be the responsibility of the Administrative Agent and the Servicing Agent. Note: Why should OPG be the Administrative Agent if the Regulatory Asset Owner is a third party?**]

"Allocation Factor" means, in respect of a Ratepayer for a Reference Period, the schedule (expressed as a percentage) determined in respect of the Ratepayer by [OPG] [**To the extent the schedule is in the Financing Plan, it would be OPG**] based on the application of the Attribution Methodology in respect of the Reference Period.[4] [**NTD: a schedule will need to be set forth in the [Financing Plan] to spell out the percentage of the Period Transition Amount to be applied to each rate class.**]

"Alternative Collection Agent" means a person appointed under Section 5(11) and in compliance with the requirements set out in Schedule 2 to assume the collection activities and activities of any Electricity Distributor or IESO under Article 5, as agent for and on behalf of the Regulatory Asset Owners.

[4] Consider basing this on forecast volumes of demand (like RPP). To the extent amounts do not get recovered due to differences between forecast and actual, those would be identified and rolled into the True-Up.

"Alternative Servicer" means a person appointed under Section 4(8) to assume the obligations of the Servicer under Article 4, as agent for and on behalf of the Regulatory Asset Owners.

"Attribution Methodology"[5] means the methodology specified in the [Financing Plan] [**Shouldn't the methodology be specified in the Financing Plan? Concern is if the methodology is specified in the Fair Allocation Plan, it would cause rating agency implications if such methodology was amended after a debt issuance through a change in the Fair Allocation Plan**] for allocating the Period Transition Amount.

"Bypass Charge" means [To be developed].[6] [**As discussed, is this necessary?**]

["Collected Amount Adjustment" means, in respect of a Reference Period, the amount (which may be a negative amount) calculated by the Servicer or the Administrative Agent, as applicable, equal to (a) the Estimate of the Finance Amount for the True-Up Period, minus (b) the sum of all Transition Charge Collections for the True-Up Period.][7] [**Could this concept be moved to the Financing Plan where we can include a more detailed discussion of the true-up mechanism?**]

"Collective Rights Agreement" means an agreement among all of the Regulatory Asset Owners (including each Absolute Assignee) and each Pledgee that governs the enforcement of their respective rights and interests in, to and under the Regulatory Asset on a coordinated and collective basis. [**NTD: This sounds like an intercreditor arrangement. If so, it should also include IESO, any Alternate Servicer or subservicer.**]

"Disposition" means an assignment, transfer, conveyance, sale, contribution, set-over, exchange or other disposition of all or a specified portion (including a specified portion on a divided basis or by way of an undivided interest) of a Regulatory Asset Owner's right, title and interest in, to and under the Regulatory Asset to an Absolute Assignee pursuant to a Disposition Document.

"Disposition Document" means the agreement, deed, conveyance, instrument or other document under which a Regulatory Asset Owner effects a Disposition to an Absolute Assignee.

"Electricity Distributor" means, in respect of a Service Area, the distributor licensed by the OEB in respect of such Service Area.

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[5] A key question will be how the overall costs will be spread across the rate base. For example, the allocation may be volumetric or not, or some combination of a flat amount and a volumetric charge. This will also impact any discussion regarding any bypass (e.g., grid exit) charge in connection with the bypass discussion. [**NTD: At H&W we are assuming that allocations will be volumetric based on usage?**]

[6] Consideration needs to be given to any amount that will be charged to a ratepayer who successfully bypasses (e.g., leaves the grid). In allocating Transition Charges, considerations would include whether to reserve Bypass Charges and spread them over the life of the program, and correspondingly how to factor those into the calculation of Transition Charges.

[7] This would pick up adjustments based on actual collection experience, changes in the Consumer Base, changes in the actual costs (versus earlier estimates) included in the Transition Charge calculation, etc.

“Electricity Distributor Remittances” means, for an Electricity Distributor on a Remittance Date, all Transition Charge Collections received or deemed received [**How will the Electricity Distributors calculate this?**] by the Electricity Distributor prior to the Remittance Date and that have not otherwise been remitted to IESO or if applicable the Alternative Collection Agent in accordance with Section 5(3) , including the proceeds of any enforcement action undertaken by the Electricity Distributor or if applicable the Alternative Collection Agent to recover payment of Transition Charges in accordance with Article 5.

“Electricity Invoice” means an invoice issued by an Electricity Distributor (or in its stead, an Alternative Servicer) or by the Servicer in respect of electricity charges and related services and amounts incurred, assessed or charged in respect of connectivity to a distribution network in the Electricity Distributor’s designated Service Area.

“Estimate” means, in relation to costs, expenses or payments in respect of Funding Obligations or any Finance Amount for a Reference Period, the estimated amount of such costs, expenses or payments determined by the Administrative Agent having regard to the applicable principles and parameters set out in Schedule 1, which estimated amounts shall be determinative as the applicable estimate for the purposes of this Part in the absence of a manifest calculation error.

“Fair Allocation Plan” [has the meaning given in Article 1].

“Finance Amount” means, in respect of a Reference Period, the sum (without duplication) of the following amounts that are or become payable during the Reference Period: (a) Repayments; (b) Funding Costs; (c) Redemption Amounts; (d) Finance Reserve Deposits; and (e) Additional Funding Charges.

“Finance Receipts” means, for a Reference Period, all amounts received by or on behalf of the Regulatory Asset Owners during the Reference Period in respect of a Funding Obligation, including from any reimbursement of standby commitment fees or charges paid by a lender, any reimbursement of credit enhancement fees or charges paid by any credit enhancer, any reimbursement of liquidity fees or charges paid by any liquidity provider, any amounts (including any termination payments) paid to the Regulatory Asset Owners under derivatives and any withdrawal made or required to be made from a debt service reserve account or other account established under any indenture, ancillary agreement or other financing document relating to a Funding Obligation.

“Finance Reserve Deposits” means, for a Reference Period, the amount by which (a) deposits made or to be made during the Reference Period in order to pre-fund, collateralize, over-collateralize or establish reserves for the ultimate payment of Funding Obligations or for related contingencies specified in the Financing Plan, exceed (b) any Finance Reserve Withdrawals.

“Finance Reserve Withdrawals” means, for a Reference Period, the amount withdrawn during the Reference Period from deposits previously made to pre-fund, collateralize, over-collateralize or establish reserves for the payment of Funding Obligations or to pay amounts in respect of related contingencies that had been specified in the Financing Plan.

"Financing Entity" means an entity established in accordance with the Financing Plan to acquire all or an interest in the Regulatory Asset as an Absolute Assignee and to enter into Funding Obligations to finance such acquisition.[8]

"Financing Plan" means the written plan [prepared by the Administrative Agent] in compliance with Article 8 to set forth the basis upon which, among other things: (a) any Disposition may be made or effected; (b) any Funding Obligations may be incurred in order to fund a Funding Shortfall, including any Refinancing; (c) any Pledge may be given or effected; (d) any Funding Obligations may be redeemed, prepaid, repurchased, amended or otherwise effected; (e) any obligations for Additional Funding Charges may be incurred and paid; (f) any Repayments, Funding Costs and Redemption Amounts may be paid or provided for; (g) any Finance Reserve Deposits may be made; (h) the establishment and operation of any Financing Entity; and (i) the cash flows arising from time to time or otherwise derived from the Regulatory Asset may otherwise be applied.

"Funding Costs" means, for a Reference Period, the amount by which (a) the aggregate of all schedule payments of principal, interest and other periodic finance charges accruing due and becoming payable or paid by or on behalf of the Regulatory Asset Owner during the Reference Period in respect of all Funding Obligations, including any standby commitment fees or charges paid to any lender, credit enhancement fees or charges paid to any credit enhancer, liquidity fees or charges paid to any liquidity provider, amounts (including any termination payments) paid under derivatives and any deposit amount made or required to fund or replenish a debt service reserve account or other account established under any indenture, ancillary agreement or other financing document relating to a Funding Obligation, exceeds (b) the aggregate of all Finance Receipts for the Reference Period.

"Funding Obligation" means each payment obligation (including[9] indebtedness, payment obligations arising under or in respect of derivatives, payment obligations owing to service providers, administrative agents, finance entity intermediaries, capital markets intermediaries, advisors, lenders, credit enhancement providers, liquidity providers, disbursement counterparties, regulatory agencies and rating agencies and [all taxes payable in connection with the foregoing] [**NTD: Shouldn't taxes be Additional Funding Charges?**]) incurred by or on behalf of a Regulatory Asset Owner under the Financing Plan in order to fund a Funding Shortfall for a Reference Period, including any Refinancing of another such payment obligation.[10]

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[8] OPG has suggested that the legislation provide that any Financing Entity that is a wholly-owned subsidiary of OPG (1) would not be subject to Part VI of the *Electricity Act* (Ontario) and (2) in the case of any Financing Entity that is a trust, any income of such trust (for purposes of the *Income Tax Act* (Canada) or the *Taxation Act, 2007* Ontario)) which is paid or made payable to OPG or a wholly-owned subsidiary of OPG as a beneficiary of such trust will not be taken into account in calculating the amount of a payment required to be made by OPG (or such subsidiary) by section 89 or 90 of the Electricity Act. These raise issues for consideration by the stakeholders.

[9] Note: Payments of scheduled principal, interest and other financing charges was moved to the definition of funding costs.

[10] OPG has asked whether this should include IESO finance arrangements.

"Funding Shortfall" means, for a Reference Period, (a) the amount, if any, by which (i) the IESO Power Contract Net Payment for the Reference Periods, exceeds (ii) the GA Power Contract Contribution for Reference Period, minus (b) the IESO Applied Surplus for the Reference Period.[11]

"GA Power Contract Contribution" means, for a Reference Period, the aggregate of the payments to be made by the applicable Ratepayer Group in respect of the portion of the Global Adjustment [attributable to the Power Contracts] in accordance with the Fair Allocation Plan.[12]

"Generator" means a generator of electricity that is subject to [this Act][13].

"Global Adjustment" means the amount calculated from time to time under [Section • of the *Electricity Act*], which includes among other things an amount determined in respect of the costs associated with the Green Generation Initiative, including amounts attributable to the Power Contracts.[14]

"Green Generation Initiative" [has the meaning given in Article 1].

"IESO" means the Independent Electricity System Operator created pursuant to [insert].

"IESO Applied Surplus" means, for a Reference Period, the lesser of (a) the amount, if any, by which (i) the IESO Power Contract Net Payment for the Reference Period, exceeds (ii) the GA Power Contract Contribution for the Reference Period and (b) the IESO Unapplied Surplus on the last day of the immediately preceding Reference Period.

"IESO Power Contract Net Payment" means, for a Reference Period, the amount by which (a) the sum of amounts payable by IESO to the Generators under all Power Contracts for the Reference Period, exceeds (b) the sum of amounts payable by the Generators to IESO under all Power Contracts for the Reference Period.

"IESO Power Contract Net Receipt" means, for a Reference Period, the amount by which (a) the sum of amounts payable by the Generators to IESO under all Power

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[11] Consider whether to simplify by referring to the calculations of GA, with vs. without Fair. The issue would be that Fair is then linked into the GA calculation specifically, rather than to the specific assets that are subject to revised amortization under Fair. The constitutional position requires a clear nexus to the assets. Also, confirm whether RPP forecasting variances are to be included.

[12] IESO to confirm its ability to allocate a shortfall in a given month between what it receives and what it owes under the GA, in order to calculate (a) existing volume-based variances which are rolled into subsequent month GA and trued-up every 6 months under RPP, (b) existing variances attributable to OREC which are funded by the Province, and (c) new variances attributable to Fair Hydro program.]

[13] Revise once determine whether this will be a standalone Act or remain part of the *Electricity Act*. "Generator is a defined term in other legislation (OEB Act, Electricity Act) so this should ultimately be a distinct term such as "FH Generator" to avoid confusion.

[14] Note that if adjustments for Fair Hydro program are to be applied after existing GA adjustments, then this may need a new name (such as "FH Adjustment").

Contracts for the Reference Period, exceeds (b) the sum of amounts payable by IESO to the Generators under all Power Contracts for the Reference Period.

"IESO Remittances" means, for a Settlement Date, all Electricity Distributor Remittances received by IESO or if applicable the Alternative Collection Agent prior to the Settlement Date and that have not otherwise been remitted to the Regulatory Asset Owners (each with respect to its Regulatory Asset) in accordance with Section 5(6), including the proceeds of any enforcement action undertaken by IESO or if applicable the Alternative Collection Agent to recover payment of amounts payable by Electricity Distributors to IESO in accordance with Article 5.

"IESO Successor" means the entity appointed by the Province to succeed to the rights and obligations of IESO as the entity responsible for [managing the Province's power system].

"IESO Unapplied Surplus" means, at a particular time, the amount, if any, by which (a) the sum of (i) all IESO Power Contract Net Receipts for Reference Periods occurring prior to the time, and (ii) all GA Power Contract Contributions for Reference Periods occurring prior to the time, exceeds (b) the sum of (i) all IESO Power Contract Net Payments for Reference Periods occurring prior to the time, and (ii) all IESO Applied Surpluses for Reference Periods occurring prior to the time.

"Period Transition Amount" means, for a Reference Period, the sum of (a) the Estimate of the Finance Amount and (b) the True-Up Amount in respect of the immediately preceding Reference Period.

"Pledge" means a lien, mortgage, charge or security interest granted to or in favour of a Pledgee by a Regulatory Asset Owner in, to and over all or a specified portion (including a specified portion on a divided basis or by way of an undivided interest) of the Regulatory Asset.

"Pledgee" means a person to whom a Regulatory Asset Owner grants a Pledge.

"Power Contracts" means long-term power contracts entered into by IESO with certain Generators, under which IESO has agreed to pay such Generators amounts, determined in respect of quantities of electricity over specified periods, to the extent that applicable market prices for such quantities of electricity during a specified period are less than specified reference prices for such quantities of electricity, and, correspondingly, Generators have agreed to pay IESO amounts if the market prices for such quantities exceed the applicable reference prices for such quantities.[15]

"Province" means the Province of Ontario.

"Ratepayer" means present and future [retail] consumers of electricity [in the Province] who are [RPP][or OREC-eligible] consumers, which shall include all such retail consumers who are connected, directly or indirectly and whether a customer of an

[15] Consider expanding to include PPAs that are not contracts for differences. Should this contemplate the possibility of additional or amended power contracts?

Electricity Distributor or not, to the transmission and distribution system assets located in the Province and who are taking electric delivery service within the Province, whether or not such retail consumers produce their own electricity or purchase electric generation services from a provider of electric generation services other than the owner of the Province's transmission and distribution system assets and whether or not the transmission and distribution system assets continue to be owned or operated by Electricity Distributors or operated by IESO.[16]

"Ratepayer Group" means, in relation to a Reference Period, the Ratepayers who receive Electricity Invoices[17] during the Reference Period.

"Redemption Amount" means the amount payable by or on behalf of a Regulatory Asset Owner to redeem, prepay or repurchase a Funding Obligation, including any premium, make-whole or other additional amount becoming payable under the Funding Obligation to give effect to such redemption, prepayment or repurchase.

"Reference Period" means (a) the period from (and including) the [Legislation Implementation Date] to (and including) June 30, 2017, (b) each six month period commencing [May 1st and November 1st] thereafter and (c) any other period specified as such in the Fair Allocation Plan.

"Refinancing" means that a Funding Obligation is repaid or repurchased for cancellation by or on behalf of a Regulatory Asset Owner by applying the net proceeds obtained by a Regulatory Asset Owner incurring one or more other Funding Obligations.

"Regulatory Asset" means the property right and interest described in Section 6(1), or if the context requires, a specified portion or undivided interest in such property right and interest that is described in the applicable Disposition Document.

"Regulatory Asset Account" means (a) for an Electricity Distributor, any bank account into which the Electricity Distributor deposits or receives Transition Charge Collections; (b) for the Servicer, any bank account into which the Servicer deposits or receives Transition Charges, Electricity Distributor Remittances or IESO Remittances; and (c) if applicable, for the Alternative Collection Agent, any bank account into which the Alternative Collection Agent deposits or receives Transition Charge Collections, Electricity Distributor Remittances or IESO Remittances.

"Regulatory Asset Owner" means each Absolute Assignee, to the extent that it has acquired and owns any ownership interest (including a specified portion on a divided basis or by way of an undivided interest) in, to or under the Regulatory Asset, and "Regulatory Asset Owners" means collectively all of the Regulatory Asset Owners, who

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[16] Need to describe consumers in a fashion that is broad and not weakened by a bypass risk. Consider terminology to align with the description of the eligible customer class provided by the Ministry, e.g., same as OREC-eligible consumers except for consumers served by Independent Power Authorities (who do not pay GA). Also, consider use of the word "retail", to avoid limiting to customers of retailers and confirm removal of reference to transmission-connected customers.

[17] Expand to include eligible consumers who are not customers of Electricity Distributors (e.g., suite-metered customers).

together own the entirety of the Regulatory Asset and are required to exercise their individual rights of ownership in accordance with Section 6(7). For greater certainty, where one Regulatory Asset Owner owns the entirety of the Regulatory Asset, "Regulatory Asset Owners" refers to this Regulatory Asset Owner. [**NTD: For purposes of the legislation and the financing to the capital markets, we look at it as though the IESO owns a different type of "regulatory asset". The whole idea of this financing structure is to "ring fence" the asset owned by the Absolute Assignee.**]

"Related Generation Assets" means the [facilities, plants and equipment] constructed, acquired or developed in connection with the Green Generation Initiative.

"Related Rights" means, with respect to a Regulatory Asset Owner's Regulatory Asset, all rights of any kind (whether in tort, contract or otherwise) that attach or are attendant or incidental to any of the other property rights or interests that comprise such Regulatory Asset.

"Remittance Date" means, in respect of an Electricity Distributor, each day on which it is required to remit Electricity Distribution Remittances to IESO or if applicable the Alternative Collection Agent in accordance with any Funding Obligation or, if no such day is specified in relation to any Funding Obligation, then the Business Day preceding each Settlement Date.

"Repayment Obligation" means an obligation to repay, redeem or repurchase, or to provide for the repayment, redemption or repurchase (including by making a Finance Reserve Deposit) of, all or a portion of the amount advanced to the Regulatory Asset Owner under a Funding Obligation.

"Repayment" means a payment by a Regulatory Asset Owner made to satisfy a Repayment Obligation, other than to the extent that the payment is made by applying the proceeds of a Refinancing.

"Replacement Event" means any event specified as such in a Funding Obligation.

"Service Area" means, in respect of an Electricity Distributor, the geographic area or region in which it is licensed to distribute electricity in accordance with [this Act[18]].

"Servicer" means [To be determined], as agent for and on behalf of the Regulatory Asset Owner [To be determined – collective invoicing agent, and consider expanding].

"Settlement Date" means the [last Business Day of any month].

"Transition Charge" means the nonbypassable charge based on usage or availability of electric service to fully recover amounts sufficient for all payments of Funding Obligations and such Transition Charges would be subject to a true-up adjustment mechanism. [**NTD: This should be a usage based charge. We suggest this more general definition with the calculation of Transition Charges should go into the Financing Plan.**]

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[18] Revise once determine whether this will be a standalone Act or remain part of the *Electricity Act*.

"Transition Charge Collection" means any amount received or deemed by this Part to have been received upon the collection of a Transition Charge paid by or on behalf of a Ratepayer, including any proceeds arising from the exercise and enforcement of any related rights and interests under or in respect of the Regulatory Asset.

["True-Up Amount" means, in respect of a Reference Period, the amount (which may be a negative amount) calculated by the Administrative Agent equal to (a) the Estimate of the Finance Amount for the related True-Up Period, minus (b) the Actual Finance Amount for such related True-Up Period, plus (c) the Collected Amount Adjustment.] [**NTD: Can we move this to the Financing Plan where we can get into a discussion of the breakdown of Transition Charges as applied to each rate class?**]

"True-Up Period" means, in relation to a Reference Period, the period from and including the [30th] day immediately preceding the first day of the Reference Period, to but excluding the [30th] day immediately preceding the last day of the Reference Period.

"Undertaking of the Lieutenant Governor in Council" means the undertaking of the Lieutenant Governor in Council given under Section 10(2).

"Unrecovered Transition Costs" means the [unrecovered][unamortized] costs incurred in connection with the creation, adoption and implementation of the Green Generation Initiative, including any negative value of the Power Contracts and [other].[19]

Article 3 – Transition Charges

(1) **Ratepayer Obligation to Pay a Transition Charge** – Each Ratepayer shall pay each Transition Charge charged to it in any Electricity Invoice issued to such Ratepayer by its Electricity Distributor or by an Alternative Servicer under Section 4(1), in each case on the terms of payment specified in the related Electricity Invoice.

(2) **Indebtedness of Ratepayers** – Until paid, a Transition Charge charged to a Ratepayer in an Electricity Invoice shall, together with any applicable late payment fees and finance charges arising under the terms of the Electricity Invoice with respect to such Transition Charge, constitute non-bypassable indebtedness of the Ratepayer to the Regulatory Asset Owners (each with respect to its Regulatory Asset). Such indebtedness shall constitute a single and separate debt obligation owing by the Ratepayer, which subject to Article 5 may be enforced independently from any other payment obligation or indebtedness owing by the Ratepayer under the Electricity Invoice or otherwise.[20]

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[19] Note that this is the term that describes the "asset" that we are amortizing over a longer period of time.

[20] Torys suggests that we not create a debtor/creditor relationship between ratepayers and regulatory asset owners. Instead, ratepayers would only have relationships with electricity distributors and the Fair program would rely on consumers paying distributors and distributors to collecting those amounts and remitting them to IESO. The current draft goes further to bridge the investors more directly with ratepayers. There are differences in the approaches, including reliance from a credit perspective on the LDCs (rather than an ability to replace the individual LDCs with the investors choice). This depends on the credit analysis, and comfort that a later requirement will not be accommodated without a change in

(3) **No Set-Off or Reduction** – A Ratepayer may not set-off or reduce (by counterclaim, defense or otherwise) the amount payable by it in respect of any Transition Charge, including any set-off against or in respect of any amount owing or becoming payable to such Ratepayer by its Electricity Distributor, any Regulatory Asset Owner or any other person.

(4) **Allocation of Ratepayer Payments** – If an Electricity Distributor receives a payment made by or on behalf of a Ratepayer in respect of amounts due and payable under one or more Electricity Invoices that is less than the total amount payable thereunder, such payment shall be allocated on a *pro rata* basis to the payment of related Transition Charges and other invoiced amounts and the amount so allocated as a payment of related Transition Charges shall be deemed to constitute a Transition Charge Collection.

(5) **Transition Charges are Irrevocable** – The Transition Charges arising under or in respect of Funding Obligations incurred under the Financing Plan (including any adjustments based on modifications to such Funding Obligations made in compliance with the Financing Plan or as a result of amendments to the Financing Plan made in accordance with Section 8(3)) are deemed to be irrevocable, final and effective without any further action, in the absence of manifest calculation error. For greater certainty, a Transition Charge may include Finance Amounts for a Reference Period whether or not the payment of such Finance Amounts are inconsistent with the Fair Allocation Plan applicable at the time such payments are due and payable whether or not the related Funding Obligation was properly incurred under the Financing Plan. In no case shall a Funding Obligation incurred under the Financing Plan be affected by a subsequent amendment to the Fair Allocation Plan.

(6) **[Anti-avoidance; No-by-pass** – Transition Charges charged to a Ratepayer in respect of any Finance Amount incurred under with the Financing Plan applicable at the time the related Funding Obligation was incurred may not be avoided and shall be [non-by-passable].]

(7) **True-up Mechanism** – The [Financing Plan] shall include a mechanism requiring the Transition Charges be reviewed and adjusted by the Servicer at least [semi-annually] to correct for any overcollections or undercollections of the preceding Reference Period and to ensure the expected recovery of amounts sufficient to timely provide all payments of Funding Obligations.

Article 4 – Invoicing of Transition Charges[21]

(1) **Inclusion of Transition Charges in Electricity Invoices** – Each Electricity Distributor and if applicable any Alternative Servicer shall, as an agent of the Regulatory Asset

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the legislation. Torys has also suggested that deemed conditions of licenses for distributors, retailers and unit sub-metering providers, could be included as conditions, to require them to collect and remit amounts in accordance with this legislation. Consideration should be given to whether that achieves the same direct relationship and whether the effectiveness of the current regulatory licensing regime should be suggested as the basis for a market-based credit decision.

[21] Details concerning Invoicing of Transition Charges (Article 4) and Collections and Remittances (Article 5) are complex. Consider how much of this can be addressed through regulations, or if acceptable based on existing OEB license conditions/codes, IESO market rules/manuals, etc.

Owners, specify the Transition Charge to be charged to a Ratepayer pursuant to Section 4(4) in respect of a related Reference Period in each Electricity Invoice issued by the Electricity Distributor or if applicable by the Alternative Servicer to the Ratepayer in respect of such Reference Period. Upon the inclusion of a Transition Charge in an Electricity Invoice, the obligation to pay such amount shall be binding on the applicable Ratepayer.

(2) **Calculation of the Period Transition Amount** – Not later than [35] days prior to the first day of a Reference Period, each Regulatory Asset Owner (or the Administrative Agent on its behalf) shall provide the Servicer with written notice of each Estimate of a Finance Amount payable by it or on its behalf in respect of the Reference Period. Not later than one month prior to the first day of a Reference Period, the Servicer or if applicable the Alternative Servicer[22] shall calculate the Period Transition Amount applicable to the Reference Period based on the calculations and information set forth in such written notices received from the Regulatory Asset Owners, which shall be determinative in the absence of manifest calculation error or misstatement.

(3) **Calculation and Attribution of Transition Charges** – Not later than 25 days prior to the first day of a Reference Period, the Servicer or if applicable the Alternative Servicer shall apply the Attribution Methodology to determine the Allocation Factor for each Ratepayer of the applicable Ratepayer Group.

(4) **Notice of Transition Charges** – Not later than 20 days prior to the first day of a Reference Period, the Servicer or if applicable the Alternative Servicer shall inform each Electricity Distributor and if applicable any Alternative Servicer of the Transition Charges to be specified in the Electricity Invoices to be issued to each Ratepayer of the applicable Ratepayer Group who has a billing address in the Electricity Distributor's Service Area.

(5) **Adjustments** – The amount of any Transition Charge charged to a Ratepayer by the Servicer and specified as such in an Electricity Invoice shall be determinative of the amount of indebtedness created thereby and owing in respect of such Transition Charge, in the absence of any manifest calculation error.

(6) **Successors of Electricity Distributors** – Any successor of an Electricity Distributor shall be bound by the requirements of Article 4 and shall perform and satisfy all duties and obligations of such Electricity Distributor under Article 4 in the same manner and to the same extent as such Electricity Distributor, including the obligation under Article 4 to impose, attribute, charge, bill and invoice the Transition Charges.

(7) **IESO Successor** – Any IESO Successor shall be bound by the requirements of Article 4 and shall perform and satisfy all duties and obligations of IESO under Article 4 in the same manner and to the same extent as IESO, including the obligation to calculate and provide notice of Transition Charges.

(8) **Appointment of an Alternative Servicer** – If a Replacement Event occurs in respect of any Electricity Distributor, the Regulatory Asset Owners shall, in accordance with the

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[22] Should this be a designated government official, rather than an agent appointed by investors?

Collective Rights Agreement, be permitted, by an instrument in writing, to appoint an Alternative Servicer to perform some or all of the obligations and duties required to be undertaken by such Electricity Distributor under this Article 4, as and to the extent specified in such appointment. Upon acceptance of such appointment, the Alternative Servicer shall become obligated to perform such assumed obligations in replacement of such Electricity Distributor. Any Electricity Distributor that is replaced under this Section 4(8) shall promptly transfer all rights, powers, privileges and property interests in its possession or within its control in the performance of such obligations and duties to the Alternative Servicer and shall take such further actions, including the execution of instruments, necessary to give full and final effect to such transfer and to permit the Alternative Servicer to perform such obligations and duties on behalf of the Regulatory Asset Owners.

(9) **Regulatory Asset Owners have Standing** – The Regulatory Asset Owners may bring actions against any Electricity Distributor, IESO, the Servicer, Alternative Servicer or any other person who may be authorized to issue Electricity Invoices to Ratepayers for a failure to impose, attribute, charge, bill or invoice Transition Charges. Any court of the Province [and the OEB] shall have jurisdiction over any actions brought before it by the Regulatory Asset Owners in relation to any such failure.[23]

(10) **No Set-Off or Reduction –** No Servicer or Electricity Distributor may set off or reduce (by counterclaim, defence or otherwise) the amount payable by it pursuant to this Article 4.

(11) **Regulations** – Regulations may be enacted for the purpose of specifying further rights, powers, privileges, duties and obligations that shall apply to IESO, any Electricity Distributor, any Alternative Servicer or any [Alternative Collection Agent] to ensure that Transition Charges are properly charged to Ratepayers and specified as such in Electricity Invoices.

Article 5 – Collections and Remittances

(1) **Duty to Collect as Agent** – Electricity Distributors or if applicable any Alternative Collection Agent shall, as an agent of the Regulatory Asset Owners, undertake [diligent efforts] to collect amounts owing by Ratepayers in respect of Transition Charges charged to such Ratepayers in Electricity Invoices issued by the Electricity Distributor or if applicable such Alternative Collection Agent.

(2) **Segregation of Transition Charge Collections** – An Electricity Distributor or if applicable any Alternative Collection Agent shall promptly segregate Transition Charge Collections from other payments received by it from Ratepayers and deposit such Transition Charge Collections into its Regulatory Asset Account. Prior to and following a deposit of Transition Charge Collections having been made into its Regulatory Asset Account, the Electricity Distributor or if applicable any Alternative Collection Agent shall hold such amounts in trust for each Regulatory Asset Owner.

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[23] Consider having such matters first go through the OEB, particularly if the obligation to bill, collect or remit is deemed to be a condition of license for distributors, IESO, retailers and unit sub-metering providers, which would be enforceable provisions under the OEB Act and within OEB jurisdiction to enforce.

(3) **Electricity Distributor Remittances** – On each [applicable Remittance Date], an Electricity Distributor shall remit all Transition Charge Collections received by it from Ratepayers in respect of the related Reference Period to or to the account of IESO or if applicable the Alternative Collection Agent.

(4) **Duty to Collect Electricity Distributor Remittances** – IESO or if applicable any Alternative Collection Agent shall, as an agent of the Regulatory Asset Owners, undertake [diligent][reasonable] efforts to accept and collect Electricity Distributor Remittances from Electricity Distributors and Transition Charge Collections from Ratepayers that pay their Electricity Invoices directly to the Servicer.[24]

(5) **Segregation of Electricity Distributor Remittances** – IESO and if applicable the Alternative Collection Agent shall [promptly] segregate Electricity Distributor Remittances from other payments received or held by it and deposit such Electricity Distributor Remittances into its Regulatory Asset Account. Prior to and following a deposit of Electricity Distributor Remittances having been made into its Regulatory Asset Account, IESO or if applicable any Alternative Collection Agent shall hold such amounts in trust for each Regulatory Asset Owner.

(6) **IESO Remittances** – On each [Settlement Date][25], IESO and if applicable the Alternative Collection Agent shall remit all amounts on deposit in its Regulatory Asset Account to or to the account of the Regulatory Asset Owner.

(7) **Successors of Electricity Distributors** – Any successor of an Electricity Distributor shall be bound by the requirements of Article 5 and shall perform and satisfy all duties and obligations of such Electricity Distributor under Article 5 in the same manner and to the same extent as such Electricity Distributor, including the obligation under Article 5 to collect Transition Charges and make remittances of Electricity Distributor Remittances.

(8) **Successors of IESO** – Any successor of IESO shall be bound by the requirements of Article 5 and shall perform and satisfy all duties and obligations of IESO under Article 5 in the same manner and to the same extent as IESO, including the obligation to collect Transition Charge Collections, Electricity Distributor Remittances and to remit IESO Remittances.

(9) **Owners of Distribution Assets** - If any person other than an Electricity Distributor acquires distribution system assets in the Province or invoices or collects electricity distribution rates in the Province[26], then such person shall, if requested by the Regulatory Asset Owners, be obligated to act diligently to (a) facilitate the invoicing and collection of any Transition Charges applicable to Ratepayers in its applicable service area, including all consumers connected to the electricity distribution system assets and taking electric delivery service located within such service area; (b) allocate partial payments by Ratepayers as provided in this Part; (c) terminate service to non-paying

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[24] Consider building this obligation into a deemed condition of licence for the IESO.

[25] Consider frequency of remittances in light of rating requirements.

[26] This is in anticipation of a possible future restructuring of the distribution system. Also, this would cover any OREC-eligible customer (market participant) of IESO.

Ratepayers on the same basis as termination of service is permitted for non-payment of electricity transmission and distribution rates; (d) exercise all enforcement rights of the Regulatory Asset Owners or Pledgee for the benefit of a Regulatory Asset Owner or Pledgee; and (e) remit any Transition Charge Collections to the Regulatory Asset Owner or Pledgee, as applicable, each in accordance with its Regulatory Asset.

(10) **Regulatory Asset Owners have Standing** – The Regulatory Asset Owners and any Pledgee may bring actions against any Electricity Distributor, IESO, Alternative Servicer, any owner of electricity distribution system assets in the Province or any other person who may be authorized to collect electricity distribution and use charges from Ratepayers for a failure to collect Transition Charges, remit or collect Electricity Distributor Remittances or remit IESO Remittances, as and to the extent applicable under Article 5. Any court of the Province [and the OEB] shall have jurisdiction over any actions brought before it by the Regulatory Asset Owners in relation to any such failure. [27]

(11) **Appointment of an Alternative Collection Agent** – If a Replacement Event occurs in respect of any Electricity Distributor or IESO, the Regulatory Asset Owners shall, in accordance with the Collective Rights Agreement, be permitted, by an instrument in writing, to appoint an Alternative Collection Agent to perform some or all of the collection, segregation and remittance obligations otherwise required to be undertaken by such Electricity Distributor or IESO, as applicable, under Article 5, as and to the extent specified in such appointment. Upon acceptance of such appointment, the Alternative Collection Agent shall become obligated to perform such assumed obligations in replacement of such Electricity Distributor or IESO, as applicable. Any Electricity Distributor or IESO, as applicable, that is replaced under this Section 5(11) shall promptly transfer all rights, powers, privileges and property interests in its possession or within its control in, to and over the Regulatory Asset, including its Regulatory Asset Account, to the Alternative Collection Agent and shall take such further actions, including the execution of instruments, necessary to give full and final effect to such transfer and to permit the Alternative Collection Agent to enforce the Regulatory Asset on behalf of the Regulatory Asset Owners.

(12) **No Set-off, etc.** - The Regulatory Asset, including rights in Transition Charges, Transition Charge Collections, and the interests of a Regulatory Asset Owner, an Absolute Assignee and a Pledgee therein, may not be setoff or reduced (including by counterclaim, surcharge or defense) by any Ratepayer, any Electricity Distributor, IESO, Alternative Collection Agent or any owner of distribution system assets in the Province or any other person or in connection with any default, bankruptcy, reorganization or other insolvency proceeding of any Electricity Distributor, IESO, Alternative Collection Agent or any owner of distribution system assets in the Province, any affiliate or successor thereof or any other entity or otherwise.[28]

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[27] Consider having such matters first go through the OEB, particularly if the obligation to bill, collect or remit is deemed to be a condition of license for distributors, IESO, retailers and unit sub-metering providers, which would be enforceable provisions under the OEB Act and within OEB jurisdiction to enforce.

[28] Consider whether it makes sense to create a "deemed collection" payment obligation on Electricity Distributors to the extent a Ratepayer reduces its payment of Transition Charges, despite this language, and same for Electricity Distributor Remittances and IESO Remittances.

(13) **Sequestration** – If any Electricity Distributor, IESO, Alternative Collection Agent or any owner of distribution system assets in the Province or any other person or entity authorized to collect Transition Charges, defaults on any required remittance of Transition Charge Collections, Electricity Distribution Remittances or IESO Remittances under Article 5, any court in the Province, upon application by the Regulatory Asset Owners or Pledgee and without limiting any other remedies available to the applying party, shall order the sequestration and payment of the Transition Charge Collections, Electricity Distribution Remittances and IESO Remittances, as applicable, for the benefit of the Regulatory Asset Owners or Pledgee, each with respect to its Regulatory Asset. [Such order shall remain in full force and effect notwithstanding any bankruptcy, reorganization, or other insolvency proceeding with respect to any Electricity Distributor, IESO, Alternative Collection Agent or any owner of distribution system assets in the Province or other person or entity authorized to collection Transition Charges, as applicable.] [**NTD: Is it possible to include the bracketed language under Ontario bankruptcy law?**]

(14) Regulations – Regulations may be enacted for the purpose of specifying further rights, powers, privileges, duties and obligations that shall apply to IESO, any Electricity Distributor or any Alternative Collection Agent to ensure that rights, interests, entitlements, benefits and proceeds in, to, under and from the Regulatory Asset are of fully realized by the Regulatory Asset Owner.

Article 6 – The Regulatory Asset

(1) **Composition** – The Regulatory Asset shall constitute an existing, present property right and interest consisting, collectively, of the following rights and interests of a Regulatory Asset Owner in the following (without duplication):

a. the right of a Regulatory Asset Owner to record its portion of the Regulatory Asset in its accounts;

b. the right to impose, bill, invoice, collect and receive Transition Charges from Ratepayers, including the right to determine the amount of Transition Charges in accordance with this Part;

c. the right to enforce the obligations and indebtedness of each Ratepayer to pay the Transition Charges charged to the Ratepayer from time to time in accordance with Article 2, together with all related late payment fees or interest charges arising in respect thereof under the related Electricity Invoices;

d. the right to enforce the duties and obligations of each Electricity Distributor and if applicable the Alternative Servicer to impose, attribute, charge, bill and invoice the Transition Charges in accordance with Article 4;

e. the right to enforce the duties and obligations of each Electricity Distributor and if applicable the Alternative Collection Agent to collect, receive and remit amounts received by it in respect of Transition Charges as Electricity Distributor Remittances to or to the account of IESO or if applicable the Alternative Collection Agent in accordance with Article 5, including all collections and the proceeds of any enforcement action undertaken by the Electricity Distributor or if

applicable the Alternative Collection Agent to recover payment of Transition Charges in accordance with Article 4;

f. the right to enforce the duties and obligations of IESO and if applicable the Alternative Collection Agent to collect and receive Electricity Distributor Remittances and to remit IESO Remittances to or to the accounts of the Regulatory Asset Owners, each with respect to its Regulatory Asset, in each case in accordance with Article 5, including all collections and the proceeds of any enforcement action undertaken by it to recover payment of Electricity Distributor Remittances in accordance with Article 4;

g. the right to receive and collect all Transition Charge Collections, all Electricity Distributor Remittances and all IESO Remittances in accordance with Article 5;

h. all rights and entitlements under each Regulatory Asset Account and all amounts on deposit in any such Regulatory Asset Account;

i. all Related Rights; and

j. all revenue, collections, claims, payments, money and proceeds of or derived from the rights described in (a) through (i), regardless of whether such revenue, collections, claims, payments and proceeds are imposed, invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

A Regulatory Asset and the property rights and interests therein shall exist whether or not Transition Charges have been imposed, charged, invoiced, accrued or collected and notwithstanding that the imposition, attribution, invoicing and collection of Transition Charges will depend on further actions that may not have occurred.

(2) **Validity of Dispositions** – Despite any limitations or restrictions on a Disposition that may arise by contract or by operation of any applicable law of the Province [or any consent requirement applicable to a Disposition that may arise by contract or by operation of any applicable law of the Province], a Disposition by a Regulatory Asset Owner made under the Financing Plan pursuant to a Disposition Document shall be permitted and when made shall be valid and enforceable in accordance with its terms and shall be effective to confer upon the Absolute Assignee a valid property right and interest in, to and under the Regulatory Asset (or relevant portion thereof) in accordance with the terms of such Disposition, provided that the parties to the applicable Disposition Document have expressly stated therein that such Disposition is a sale or other absolute transfer. Without limiting the foregoing, any Disposition that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as a true sale and absolute transfer of the Regulatory Asset Owner's applicable right, title, and interest in, to and under the Regulatory Asset (or relevant portion thereof), and not merely as a Pledge thereof. [A Disposition shall not be subject to recharacterization or challenge on any other basis and the validity of a Disposition shall not be affected or impaired by: (a) the commingling of Transition Charge Collections or other proceeds from Transition Charges with other amounts; (b) the retention of any interest (including any partial, residual or subordinated interest, whether direct or indirect) in the Regulatory Asset by the transferring Regulatory Asset Owner; (c) any right to repurchase the Regulatory Asset in favour of the transferring Regulatory Asset Owner; (d) any recourse that an

Absolute Assignee may have against the transferring Regulatory Asset Owner; (e) any indemnification rights or obligations provided by the transferring Regulatory Asset Owner; (f) any obligation of the transferring Regulatory Asset Owner to collect and remit Transition Charge Collections on behalf of an Absolute Assignee, including but not limited to, any retention by the transferring Regulatory Asset Owner to bare legal title for the purpose of collecting Transition Charges; or (g) the ascribed or intended treatment of the Disposition by the transferring Regulatory Asset Owner or the Absolute Assignee on any different basis including for tax, financial reporting or other purposes.][29] [**NTD: Should we include language that provides for the Regulatory Asset to continue to exist until all Funding Obligations and other costs are repaid?**]

(3) **Perfection and Priority[30] of Dispositions** – Any Disposition of an interest in a Regulatory Asset shall be vested, valid, binding and perfected from the time when such Disposition is made. Such Disposition shall be perfected, vested, valid and binding as against the transferring Regulatory Asset Owner and all other persons who have claims of any kind (whether in tort, contract or otherwise) against the transferring Regulatory Asset Owner, irrespective of whether such persons have notice of the Disposition and the property rights and interests acquired by the Absolute Assignee under such Disposition shall be free and clear of any liens in favour of such other persons.

(4) **Validity of Pledges** – Despite any limitations or restriction on a Pledge that may arise by contract or by operation of any applicable law of the Province [or any consent requirement applicable to a Pledge that may arise by contract or by operation of any applicable law of the Province], a Pledge by a Regulatory Asset Owner may be made to secure any Funding Obligation and when made shall be valid and enforceable in accordance with its terms and shall be effective to confer upon the Pledgee a valid security interest in, to and in respect of the Regulatory Asset in accordance with the terms of the Pledge. Other than as required by the Financing Plan, no consent of any person shall be required to give effect to a Pledge made to secure any Funding Obligation.

(5) **Perfection and Priority of Pledges** - Any Pledge made by a Regulatory Asset Owner in respect of a Funding Obligation incurred under the Financing Plan shall be perfected, valid and binding from the time when the Pledge is made and shall be valid and binding as against the Regulatory Asset, the Regulatory Asset Owner making the Pledge and all other persons who have claims of any kind (whether in tort, contract or otherwise) against the Regulatory Asset or the pledging Regulatory Asset Owner, irrespective of whether such persons have notice of the Pledge and the security interests of the Pledgee under such Pledge shall have priority over any liens in favour of such other persons. All proceeds of the Regulatory Asset that are subject to such a Pledge that are received by the Regulatory Asset Owner shall immediately be subject to the such Pledge, and the security interest in such proceeds shall be perfected, without any physical delivery thereof, registration of any financing statement with respect thereto pursuant to the [PPSA] or any other further act.[31] A Pledge shall be a continuously

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[29] Consider if helpful to investors, or delete. **H&W: We consider this helpful**

[30] It looks like Priority was deleted from this clause.

[31] Consider whether to simply leave this and have a financing statement be filed under the PPSA. This would normalize the security interest and reduce any adverse suggestion that security would not otherwise arise.

perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may subsequently attach to the property rights and interests in the Regulatory Asset subject to the Pledge unless the Pledgee has otherwise agreed in writing. Any Pledgee shall have a perfected security interest in Transition Charge Collections or other related proceeds that are deposited in any Regulatory Asset Account or other account of any Electricity Distributor, IESO, Alternative Collection Agent or other person who may have commingled such Transition Charge Collections or such other proceeds with other funds. [A Pledgee shall cause a financing statement to be filed in respect of a Pledge on the basis that the Regulatory Asset is "intangible" property, for informational purposes only under the [PPSA].

(6) **Enforcement of Property Rights** – The rights of any Regulatory Asset Owner to collect and enforce its rights and interests in, to or in respect of the Regulatory Asset shall be exercised in the manner set forth in Article 5.

(7) **Owners of a Specified Portion of the Regulatory Asset** – A Regulatory Asset Owner may effect a Disposition to an Absolute Assignee of a specified portion of its rights and interests in the Regulatory Asset, including by way of a Disposition of a divided or an undivided interest therein. In no circumstance may the specified portions of the rights and interests in the Regulatory Asset owned by all Regulatory Asset Owners be greater than all of the rights and interests that comprise the Regulatory Asset in the aggregate.

(8) **Collective Action Required** – If a Regulatory Asset Owner's right and interest in the Regulatory Asset comprises less than the entire property right and interest constituted by the Regulatory Asset, such Regulatory Asset Owner shall only enforce such right and interest on a collective [and joint] basis with each other Regulatory Asset Owner in accordance with the Collective Rights Agreement.[32]

Article 7 – Establishment of the Fair Allocation Plan[33]

(1) Adoption of the Fair Allocation Plan – The [Minister of Energy][34] may by written order designate and adopt a Fair Allocation Plan in compliance with Article 7. The Fair Allocation Plan so designated and adopted shall be the Fair Allocation Plan for all purposes of this Part, [except if amended, amended and restated or terminated by a further written order issued by the Minister of Energy in compliance with Section •].

(2) Principles and Parameters[35] – A Fair Allocation Plan shall seek to allocate Unrecovered Transition Costs across present and future Ratepayer Groups on a basis

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[32] This is necessary to ensure that if there are multiple regulatory asset owners and pledgees, they will be coordinated in the application of their rights of enforcement, etc.

33 The idea is that the Fair Allocation Plan will be set once at the outset based on the principles and parameters described here, all applied based on information available and the reasonable expectations and discretion of the delegate at such time. If the expectations are not fulfilled (e.g., generators may choose to retire their facilities at the end of their current Power Contracts and not invest in extending service lives to secure further power contracts), the Fair Allocation Plan will be unaffected, unless it is specifically amended (assuming amendments will be permitted by the legislation).

[34] Input required. If the MOE is given this power, conform to applicable authorities (e.g., plans and directives).

[35] Consideration will be given as to whether these details should be included in the Regulation.

that the Minister of Energy, in its sole and absolute discretion, determines to be equitable, having regard to the following principles and parameters[36]:

1. Unrecovered Transition Costs should be allocated over a period not to exceed the later of (a) the estimated remaining useful life of the Related Generating Assets and (b) the remaining term of IESO's commitments under the Power Contracts.

2. The Fair Allocation Plan should specify the Reference Periods (e.g., 6 month periods), for the purpose of identifying applicable Ratepayer Groups and allocating among them responsibility to bear the Unrecovered Transition Costs on a relative basis over time.

3. The share of Unrecovered Transition Costs allocable to a particular Ratepayer Group in respect of a Reference Period should be proportionate to a reasonable assessment of the benefits of the Green Generation Initiative to the Ratepayer Group over such Reference Period.

4. The estimated Unrecovered Transition Costs to be allocated to a Ratepayer Group and any future Ratepayer Group at a particular time should not exceed the estimated value of the Related Generating Assets based on their remaining useful lives or terms, measured in respect of the period following such particular time.

5. No future Ratepayer Group should bear an unreasonably disproportionate share of the Unrecovered Transition Costs. Except in exceptional circumstances or in the case of any backward-looking adjustment made as contemplated in 7, below, the share of the Unrecovered Transition Costs to be allocated under a Fair Allocation Plan to any future Ratepayer Group should have regard to [Insert formula if a year-over-year maximum amount is determined to be appropriate][37].

6. A reasonable estimate of the rate of inflation should be applied to equate the relative values of the nominal amount of Unrecovered Transition Costs to be allocable to Ratepayer Groups over time.

7. Backward-looking adjustments to a Fair Allocation Plan may be made to achieve a fair distribution among Ratepayers of the benefits of the Green Generation Initiative.

(3) Attribution Methodology – The Fair Allocation Plan [shall] specify an objective methodology (the "Attribution Methodology") for the purposes of allocating the Period Transition Amount across all of the Ratepayers of a particular Ratepayer Group. The Attribution Methodology shall result in an attribution of such Transition Charges that are

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[36] We have provided a few examples of what could be the basic principles. These will depend on market considerations, the Province's decision on the required amount of detail and the ability to sustain the legal basis for the program. These examples are not meant to suggest the appropriate balance – just illustrative to advance a discussion among the stakeholders.

[37] Consider if a quantitative limit needs to be included in the legislation.

considered by the Minister of Energy to be equitable, and may have regard to such principles and parameters as may be further set forth in a Regulation.

(4) [Confirmation][Review] of the Fair Allocation Plan – [OEB?][38]

Article 8 – The Financing Plan[39]

(1) Power to Prepare and Implement the Financing Plan – In compliance with a [written order][***MOE to confirm process.***] of the Minister of Energy, the Administrative Agent shall prepare and propose the adoption of a Financing Plan. If the Administrative Agent is unwilling or unable to prepare and propose the adoption of a Financing Plan, the Minister of Energy may by written order designate one or more other persons to prepare and implement such a Financing Plan.

(2) Required Terms and Conditions of the Financing Plan – The Financing Plan shall establish the basis for funding decisions that have the effect of allocating the Unrecovered Transition Costs across present and future Ratepayer Groups on a basis that is consistent with the Fair Allocation Plan. The Financing Plan shall be consistent with the principles, parameters, requirements and conditions set forth in Schedule 3 and such other conditions and requirements as may be specified in a written order of the Minister of Energy [or in accordance with the Regulation].

(3) Power to Review and Approve the Financing Plan – The Minister of Energy may, by written order, designate one or more persons to review the Financing Plan and to review and assess the consistency of the Funding Obligations incurred with such Financing Plan, and the Minister of Energy may specify requirements in respect of such review in such written order. The Administrative Agent, or such other person(s) as may be designated by written order of the Minister of Energy made pursuant to Section 8(1), shall make any such amendments to the Financing Plan, and submit a revised Financing Plan to the designated reviewer for approval within [the time period specified in such written order]/[[●] days of such written order].[***Consider periodic amendments to the Financing Plan following an annual review; provided that amendments cannot affect the existing Funding Obligations. Consider the level of oversight the MoE/OEB will have over this process?***]

(4) Approval of Financing Plan – The **[OEB]** shall have the power to and shall approve or disapprove of the Financing Plan based solely on whether the Financing Plan is consistent with (i) the principles, parameters, requirements and conditions set forth in Schedule 3, (ii) such other conditions and requirements as may be specified in a written order of the Minister of Energy [or in accordance with the Regulation] [and (iii) the Fair Allocation Plan]. If the **[OEB]** approves the Financing Plan, then such Financing Plan

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[38] Any approvals or consents by the OEB will be obtained before any Funding Obligation that is dependent on such approval or consent is incurred. Any such approval or consent will be irrevocable and non-appealable. Any regulatory action occurring after any incurrence will not affect the related Funding Obligation or underlying rights in the Regulatory Asset.

[39] Consideration will be given as to whether these details should be included in the Regulation.

shall be implemented by the Administrative Agent. If the OEB disapproves of the Financing Plan or otherwise fails to approve the Financing Plan, then the Administrative Agent shall re-submit the Financing Plan with such amendments as the Administrative Agent shall consider necessary for the Financing Plan to be approved by the OEB.[40]

(5) Consistency with the Fair Allocation Plan - Funding Obligations should only be incurred if Repayments and Funding Costs would be borne by present and future Designated Ratepayers on a basis that is [generally] consistent with their respective allocations of the costs and benefits of the Green Generation Initiative contemplated in the Fair Allocation Plan. In that regard, at the time of setting the Fair Allocation Plan for any particular period, the aggregate amount payable during future Reference Periods on account of Funding Obligations incurred on or before the date on which a new Funding Obligation is incurred should not exceed the allocation of the costs and benefits of the Green Generation Initiative to the applicable Ratepayer Group contemplated in the Fair Allocation Plan. If, despite the foregoing, the Administrative Agent determines that the anticipated amount of any Repayment (together with payments of other Finance Amounts) to be made in respect of a Reference Period would materially exceed the allocation of the costs and benefits of the Green Generation Initiative to the applicable Ratepayer Group under the then current Fair Allocation Plan, the Financing Plan shall require the Administrative Agent to make diligent efforts to determine whether a Refinancing or deferral of such Repayment may be reasonably and cost-effectively effected based on then prevailing market terms, conditions an circumstances, if such a Refinancing or deferral is determined to be available the Financing Plan shall require the Administrative Agent to make diligent efforts to implement such Refinancing or deferral on a basis that is consistent with the Fair Allocation Plan.

(6) Establishment of Special Purpose Entities – If the implementation of the Financing Plan contemplates the establishment of one or more special purpose finance entities to incur Funding Obligations as a Financing Entity under the Financing Plan, as an Absolute Assignee and on a basis that limits the recourse for the payment of such Funding Obligations to such Absolute Assignee's interest in, to and under the Regulatory Asset, the Administrative Agent shall have regard to the characteristics specified in Schedule 4 in establishing such special purpose entity.]

(7) Obligation to Apply IESO Remittances – The Administrative Agent shall ensure that amounts transferred to it under Article 5, as agent for and on behalf of the Regulatory Asset Owners, or otherwise in respect of or as proceeds from the Regulatory Asset shall only be applied or used to pay Finance Amounts when they are due and payable and for no other purpose.[41]

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[40] Once the Financing Plan is reviewed and approved there would be no further OEB review. If there is opportunity for further review, such review will have no impact on prior issued debt. Any further financings would be put on hold until such review is completed (during which time the IESO would again need to fund the shortfall on an interim basis and obtain necessary funding).

[41] We need to work in the idea that there may be Finance Reserve Deposits or other amounts that remain after paying Finance Amounts. Those surplus amounts should be credited back to Ratepayers.

(8) Non-Recourse – The Financing Plan shall be implemented so that Funding Obligations incurred shall be without recourse to or to any assets of the Electricity Distributors, IESO, any Alternative Servicer, and Alternative Collection Agent, the Administrative Agent, the OEB, the Province or the Lieutenant Governor in Council, other than if and to the extent that such persons or entities are liable for the performance of obligations or duties arising under this Part or expressly pursuant to any Funding Obligation or obligation in relation to a Finance Amount. [All Funding Obligations shall contain a statement to the following effect: "Neither the full faith and credit nor the taxing power of the Province of Ontario is pledged to the payment of the principal of, or interest on, this [obligation].]

(9) Incurrences are Binding – Despite any failure to adhere to the Financing Plan or to comply with any requirement of this Part, all amounts payable or becoming due and payable by or on behalf of a Regulatory Asset Owner under or in connection with any obligation purporting to be a Funding Obligation, shall be binding for the purposes of this Part, including in determining the amount of Transition Charges, despite any impairment or defect resulting from such failure.

Article 9 – Compliance Matters[42]

(1) **Right of the [OEB] to Inspect Books and Records** - For the purpose of investigating compliance with the provisions of this Part, the [OEB] shall have the right, jurisdiction, power and authority to examine the books and records of any person who is or may become obligated or have duties that arise under this Part or any Funding Obligation.

(2) **Power to Investigate Compliance and Impose Regulatory Sanctions** - Subject to the limitations set forth regarding the irrevocability of Transition Charges and the Undertaking of the Lieutenant Governor in Council, nothing in this Part shall (a) prevent or preclude the [OEB] from investigating the compliance of any person who is or may become obligated or have duties that arise under this Part [or any Funding Obligation] with the terms and conditions of this Part and requiring compliance by such person therewith; or (b) prevent or preclude the [OEB] or any successor regulator from imposing regulatory sanctions against any person who is or may become obligated or have duties that arise under this Part for its failure to comply with the terms and conditions of this Part[43].[**NTD: We this this best practice would be to exclude any Financing Entity or Absolute Assignee from any Regulatory Sanctions or Regulatory Oversight**]

(3) **[Other Rating Settings** – When setting other rates for or in respect of any person who is or may become obligated or have duties that arise under this Part, including any Electricity Distributor, IESO, Generator or the Administrative Agent, nothing in this Part shall prevent the [OEB] or any successor regulator from taking into account the collection by or attribution to such person of administrative or servicing fees in excess of

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[42] As noted above, the outcome of any regulatory action undertaken by the OEB will not affect Funding Obligations that have been incurred under the Financing Plan. This Article is under consideration.

[43] Consider scope of OEB regulation and whether a Financing Entity should be subject to this sort of provision in any event.

the actual incremental costs incurred by such person of providing administrative or servicing services.][44]

Article 10 – Undertaking of the Lieutenant Governor in Council[45]

(1) **No Action to limit, alter, or impair or terminate Transition Charges, the Regulatory Asset or Collections** – The [Lieutenant Governor in Council] shall not in any way take or permit any action to reduce, impair, postpone or terminate the obligation of Ratepayers to pay Transition Charges or impair the Regulatory Asset or the collection or recovery of Transition Charge Collections, either directly or indirectly[,including through the introduction of any bill or the passing of any legislation or regulation]. The amount of Transition Charges determined hereunder shall not be subject in any way to reduction, impairment, postponement or termination as a result of any action taken or failure by the Lieutenant Governor in Council[,including through the introduction of any bill or the passing of any legislation or regulation].

(2) **Undertaking and Agreement** – The Lieutenant Governor in Council shall not in any way take or permit any action that limits, alters or impairs the value of the Regulatory Asset or, except as required by the estimates and adjustments made in determining the True-up Amount, reduce, alter or impair Transition Charges that are imposed, collected and remitted for the benefit of the Regulatory Asset Owners, including any Absolute Assignee from time to time, and any Pledgee from time to time[,including through the introduction of any bill or the passing of any legislation or regulation].

[If IESO becomes insolvent or otherwise incapable of performing its obligations under this Part, an IESO Successor will be established that is capable of performing such obligations in order that the Regulatory Asset Owners may appoint the IESO Successor as an Alternative Servicer or Alternative Collection Agent. Regulatory Asset Owners shall be fully compensated for any failure by the Lieutenant Governor in Council to comply with its undertakings and agreements in this Article 10(2) for any loss suffered by the Regulatory Asset Owner as a result of such failure.[46]]

(3) **References to the Undertaking and Agreement** – Any non-confidential reference to the Undertaking of the Lieutenant Governor in Council, including in marketing materials and other documentation authorized for use by the Administrative in connection with any Funding Obligation, may be made provided that [*Add conditions to protect the Province*].

Article 11 – Regulations

Regulations may be made under this Part for the purposes described in Sections •,•,• and • and may be promulgated for any of the following purposes:

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[44] OPG has indicated that the risks and cost consequences to OPG of being an Administrative Agent or of consolidating a Financing Entity for accounting purposes should not be considered by the OEB in setting the regulated payment amounts for OPG. To be discussed.]

[45] Under consideration.

[46] Requested by Torys. For discussion.

(a) to set standards and measures regarding the commercially reasonable requirements of the Province associated with a Regulatory Asset Owner incurring Funding Obligations or becoming obligated to pay any Finance Amount, including to establish guidelines regarding all-in funding costs; permitted Additional Funding Costs; required maturities and redemption and termination rights of Funding Obligations; liquidity requirements, in each case to a Financing Plan that is consistent in its effect with the Fair Allocation Plan;

(b) to establish and empower one or more regulated entities to undertake decision-making activities with respect to this Part;

(c) to set out reasonable requirements regarding the appointment or retention of advisors, agents, service providers, contract counterparties, including in relation to 'market terms and conditions' parameters;

(d) to provide for audit and compliance standards applicable to those persons who are or may become obligated or have duties that arise under this Part [or under any Funding Obligation];

(e) to provide for any pre-vetting and approval requirements in relation to any incurrence by a Regulatory Asset Owner of any Funding Obligation or obligation to pay any Finance Amount; and

(f) to provide for appeal and due process considerations in connection with the establishment, adoption, implementation and review of the Fair Allocation Plan or the Financing Plan.

Article 12- Miscellaneous[47]

(1) **Choice of law** – The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the Regulatory Asset, any Transition Charge or the Undertaking of the Province shall be the laws of the Province.

(2) **Conflict of law** – In the event of conflict between this Part and any other law of the Province regarding the attachment, assignment or perfection, or the effect of perfection, or priority of any Disposition or Pledge, this Part shall govern to the extent of the conflict.

(3) **No further acts or approvals required** - Notwithstanding any provisions of any law of the Province to the contrary, no approvals, notices or authorizations other than those specified in this Part shall be required with respect to the actions to be taken in compliance with this Part, including under the Financing Plan or in relation to the establishment of the Fair Allocation Plan, and the transactions and contracts authorized in or contemplated by this Part or the Financing Plan, including the incurrence of any Funding Obligation, any Disposition, any Pledge or in the payment and performance of

[47] OPG would like the specific amendments related to OPG to be included in the Bill.]

any attendant or incidental contract and any related expenses incurred to facilitate the preparation and implementation of the Financing Plan.

(4) **Effect of invalidity after the Incurrence of any Funding Obligation** - Effective on the date that a Funding Obligation is incurred under this Part, if any provision of this Part is held to be invalid or is invalidated, superseded, replaced, repealed or expires for any reason, that occurrence shall not affect any action allowed under this Part that is taken by any person who is or may become obligated or have duties that arise under this Part and any such action shall remain in full force and effect.

(5) **Severability** - If any Article, Section, paragraph or subparagraph of this Part or the application thereof to any person, circumstance or transaction is held by a court of competent jurisdiction to be unconstitutional or invalid, the unconstitutionality or invalidity shall not affect the constitutionality or validity of any other Article, Section, paragraph or subparagraph of this act or its application or validity to any person, circumstance or transaction, including the irrevocability of Transition Charges, the validity of the Regulatory Asset, the incurrence of any Funding Obligation, any Disposition, any Pledge, or the collection and recovery of Transition Charge Collections. To these ends, the Legislature hereby declares that the provisions of this Part are intended to be severable and that the Legislature would have enacted this Part even if any Article, Section, paragraph or subparagraph of this Part held to be unconstitutional or invalid had not been included in this Part.

Schedule 1

Guidelines for Estimates

[To be considered.]

Schedule 2

Requirements Applicable to Alternative Invoicing Agent/ Alternative Collection Agent

[To be considered.]

Schedule 3

Principles, Parameters, Requirements and Conditions for Establishing the Financing Plan

The Financing Plan shall have regard to the following principles, parameters, requirements and conditions:[***Consider others.***]

(1) the Financing Plan shall, in respect of each Reference Period, describe the allocations of Unrecovered Transition Costs to each Reference Group as contemplated by the Fair Allocation Plan;

(2) the Administrative Agent shall make a good faith estimate of the Funding Shortfalls for each Reference Period, based on the terms of the Power Contracts and assumptions considered to be reasonable respecting forward market prices for electricity;

(3) the Administrative Agent shall describe alternative funding arrangements considered to be suitable for the purpose of funding the estimated Funding Shortfalls, including by reference to short term and/or long term Funding Obligations that could reasonably be incurred by the Regulatory Asset Owners for such purpose;

(4) such Funding Obligations shall reflect quantities, maturities, payment obligations, prepayment or redemption rights and such other features so that the effect of incurring such Funding Obligations would be that the payments made thereunder in respect of each Reference Period (including the anticipated Finance Amounts becoming payable in relation to such Funding Obligations) would reasonably correspond to the allocations of Unrecovered Transition Costs to the applicable Reference Group under the Fair Allocation Plan;

(5) the Financing Plan shall reflect the outcome of a financial model that incorporates the assumptions and requirements specified in any contemplated Funding Obligation (e.g., any limit on the maximum amount of Transition Charges charged to a hypothetical Ratepayer relative to his or her monthly electricity bill, as prescribed by any rating agency that ascribes its credit rating to or in respect of the Funding Obligation having regard to the application of the Allocation Methodology); [***Consider what outputs from OPG will be tested by the OEB and when. The modelling in the Financing Plan may permit the OEB to check progress against the model from time to time, which may provide a basis for the MoE/OEB to require a review/amendment to the Financing Plan if the ongoing operation of the program results in significant deviation from the model. Consider whether this flexibility is desirable.***]

(6) the Administrative Agent, for and on behalf of each Regulatory Asset Owner, shall seek to incur Funding Obligations from time to time on the best terms available at such time for a financing transaction of the size and type contemplated, and having regarding to the following parameters:

a. whether the Regulatory Asset Owners will require committed access to short term liquidity to cover estimated Funding Shortfalls prior to incurring fixed term Funding Obligations, and the amount and repayment terms of any such required liquidity; provided that any Repayment required to be made under the terms of such short-term liquidity would not obligate a Regulatory Asset Owner to repay

an amount in relation to a Reference Period that would have the effect of the Financing Plan permitting incurrences of Funding Obligations payable in such Reference Period that would exceed the allocations of Unrecovered Transition Costs to the applicable Reference Group under the Fair Allocation Plan;

b. the basis upon which the Administrative Agent will select the term to maturity of any other Funding Obligations; provided that any Repayments required to be made under the terms of such Funding Obligations shall not obligate a Regulatory Asset Owner to repay an amount in relation to a Reference Period that would have the effect of the Financing Plan permitting incurrences of Funding Obligations payable in such Reference Period that would exceed the allocations of Unrecovered Transition Costs to the applicable Reference Group under the Fair Allocation Plan;

c. the basis upon which the interest rates applicable to such Funding Obligations would be determined;

d. the reference capital or finance market in which such Funding Obligation would be incurred, including markets outside of Canada if considered by the Administrative Agent to be appropriate in the circumstances;

e. the currency of payments under such Funding Obligations and, if the Funding Obligations are denominated in a currency other than Canadian dollars, the basis upon which the Administrative Agent shall cause the applicable Regulatory Asset Owner to enter into hedging transactions to mitigate currency risk, including acceptable minimum and maximum coverage levels, having regard to the availability of related derivatives having notional amounts corresponding to the repayment and maturity profile of such Funding Obligations;

f. the basis upon which the Administrative Agent will select counterparties under any transaction to be entered into by a Regulatory Asset Owner, including any paying agent, servicer, cash manager, liquidity provider, hedge counterparty, account bank, lender, note trustee, security trustee, paying agent, registrar/transfer agent, financial services agent, arranger or manager;

g. the basis upon which the Administrative Agent will manage counterparty risk, including by providing for maximum counterparty exposure limits having regard to concentration, credit and other identified risks with respect to individual counterparties or countries;

h. the basis upon which the Administrative Agent will negotiate and settle Finance Amounts, including the amount of any Redemption Amounts, Finance Reserve Deposits and Additional Funding Charges;

(7) the basis upon which Funding Obligations may be redeemed, prepaid, repurchased or otherwise affected, having regard for the need to minimize debt service charges and other Funding Costs, and the need to maintain a stable funding platform to finance the Funding Shortfall from time to time on a basis that is consistent with the allocations of Unrecovered Transition Costs to applicable Reference Groups under the Fair Allocation Plan;

(8) the basis upon which any Repayments, Funding Costs and Redemption Amounts will be paid, including any defeasance, sinking fund or through other reserves or liquidity facilities;

(9) the basis upon which fees, charges, expenses, costs, indemnities, reimbursements and other amounts payable to or for the benefit of the Administrative Agent and other agents and service providers to the Regulatory Asset Owners may be determined, allocated and paid;

(10) the timing and basis upon which Finance Reserve Deposits and Finance Reserve Withdrawals may be made;

(11) the basis upon which any obligations for any other Additional Funding Charges may be incurred and paid;

(12) the basis upon which the cash flows arising from time to time or otherwise derived from the Regulatory Asset may otherwise be applied, including in relation to any counterparty enforcement and realization scenario;

(13) the transmittal to [the IESO] of information related to the amounts to be included in the determination of the Period Transition Amount for a Reference Period;

(14) the basis upon which any Disposition may be made or effected by a Regulatory Asset Owner, including parameters for determining the purchase price for the interest in the Regulatory Asset that is the subject matter of such Disposition, and any consents and releases that may be usefully obtained in connection with such Disposition;

(15) a description of each special purchase entity that will purchase the Regulatory Asset from the IESO, including proposed capitalization, governance, and restrictions on their powers and activities having regard to the parameters in Schedule 4; and

(16) the basis on which any Pledge may be given or effected.

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Schedule 4

Creation of any Special Purpose Entity to become a Regulatory Asset Owner]

(1) Powers and Abilities:

a. No part of the revenue or assets of a Regulatory Asset Owner shall enure to the benefit or be distributable to its trustees, officers or directors, as the case may be, or any other private persons, except as may be provided for actual services rendered;

b. Each Regulatory Asset Owner shall be authorized to:

i. incur the Funding Obligations contemplated by a Financing Plan and use the proceeds thereof to purchase or acquire, and to own, hold and use the Regulatory Asset;

ii. contract for servicing of the Restructuring Asset and any bonds contemplated by a Financing Plan and for administrative services; and

iii. pledge the Regulatory Asset to secure the Funding Obligations incurred by the Regulatory Asset Owner;

c. So long as any Funding Obligations contemplated under a Financing Plan are outstanding, a Regulatory Asset Owner shall not be authorized to merge or consolidate, directly or indirectly, with any person or entity;

d. a Regulatory Asset Owner shall not have the power or authority to incur or guarantee or otherwise become obligated to pay any debt or obligations other than what is contemplated under a Financing Plan;

e. a Regulatory Asset Owner shall cause the proceeds obtained by incurring any Funding Obligation to be placed in one or more separate accounts and used only to purchase the Regulatory Asset and pay any costs as provided for in a Financing Plan; and

f. so long as the Regulatory Asset is pledged to secure Funding Obligations, the Regulatory Asset Owner must apply revenues from the collection of Transition Charges only to repay such Funding Obligations and other costs as provided for in a Financing Plan.

(2) Governance of Regulatory Asset Owner – A Regulatory Asset Owner shall be created having regard to the following principles:[***OPG to confirm if SPE will be a trust or another type of entity.***]

a. **[Number of trustees]**

b. **[Replacement of trustees; vacancies; appointment of successors]**

c. **[Removal of trustees for neglect of duty or misconduct]**

d. **[Quorum and meetings]**

e. **[Fiduciary duty]**

f. **[Isolation, separateness and other "non-consolidation" and "bankruptcy remoteness" criteria]**

g. **[Delegation of powers and duties to administrative agents]**

h. **[Delegation of powers and duties to administrative agents]**

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"Fair Hydro" – Part V.2

Article 1 – Purpose[1]

IESO has entered into Power Contracts with Generators. The agreed-upon reference prices and quantities set out therein were determined based on commitments made by IESO to provide Generators with long-term price certainty, so as to encourage the construction and development of facilities for the purpose of long-term operation and generation of electricity using sustainable, lower carbon-based technologies such as new gas-fired generation, renewable facilities, energy from waste and biomass, including under the Province's various procurement, standard offer and feed in tariff programs (the "Green Generation Initiative"). [The terms of the Power Contracts were intended to approximate the anticipated useful life of the related generation assets]; however, it has been determined that the useful life of many of these assets will be well in excess of the actual term of the related Power Contracts and will extend over more than one generation of ratepayers. The long-term benefits of the Green Generation Initiative accrue over time and have benefited and will benefit present and future ratepayers of the Province. Currently, market prices for electricity are less than the reference prices set out in the Power Contracts, leaving a gap in funding which is funded by charging consumers a "Global Adjustment" (part of which is available to IESO to pay this shortfall).

Each month, the IESO determines the Global Adjustment payable by consumers for the consumption of electricity in the Province. A component of the Global Adjustment is the amount by which the reference prices in the Power Contracts exceed the market price for electricity for the quantities of electricity specified under the Power Contracts for the relevant period[2]. The relationship between the past, present and future benefits to Ratepayers from the Green Generation Initiative, on the one hand, and the costs of the Green Generation Initiative borne by past, present and future Ratepayers through their respective allocations of the Global Adjustment, on the other hand, do not necessarily reflect an equitable allocation of such benefits and costs over time, with the result that an adjustment may be appropriate to address inter-generational fairness considerations. Such an adjustment should reflect principles and parameters that can be applied from time to time in order to establish a reasonable basis for measuring and allocating the relative costs and benefits of the Green Generation Initiative across present and future Ratepayers. A plan to allocate such costs and benefits equitably across present and future Ratepayers may be developed based on those principles and parameters (a "Fair Allocation Plan").

If a Fair Allocation Plan determines that the equitable allocation of the Global Adjustment to the Ratepayers of a particular time period in respect of the Power Contracts should be reduced below the amount otherwise determined, the amount payable by such Ratepayers to Electricity Distributors in respect of such period, and in turn by the Electricity Distributors to the IESO, would, in the aggregate, be less than the amount payable by the IESO to the Generators under the Power Contracts in respect of such period. If the difference is greater than any net

[1] Consider the scope and breadth of the Purpose section. This text is considered to be useful to establish the legislative basis for the statute, which text will be useful in the event of a challenge.

[2] Consider modifying this to also refer to gas contracts and hydroelectric contracts, which provide for mechanics that are not based on contracts for differences.

Power Contract surpluses available to IESO from earlier periods, IESO will have a funding shortfall.[3] In order for IESO to cover such a funding shortfall for a period, IESO will need to obtain funding from another source, which could include funding from third party sources operating in public and private capital markets. If a funding obligation is incurred in order to enable the IESO to cover a funding shortfall during one period, the repayment of such funding obligation will be required in a future period, and any related repayments, finance costs, hedging costs and other transaction costs will be incurred and may become payable in one or more other periods.

It will be necessary to provide a reliable and committed source of cash flows to enable IESO to repay such funding obligations and to pay related funding costs with certainty when the funding obligations become due and payable. This Part imposes irrevocable and non-bypassable financial obligations of Ratepayers to pay amounts incurred in respect of such funding obligations when they become due and payable and establishes a right to invoice and collect such amounts . The right and interest in and to collect such financial obligations, which will take the form of the Regulatory Asset contemplated in this Part and will constitute property rights and interests. The Regulatory Asset will be sold and absolutely assigned and will belong to one or more newly created financing entities, which in turn will finance their purchase of such Regulatory Asset by incurring funding obligations. The incurrence and payment of such funding obligations will be administered on behalf the financing entities by an administrative agent (initially OPG), under the Financing Plan contemplated in this Part. The Financing Plan will seek to reasonably match the payment obligations arising under funding obligations and borne by the future Ratepayers of the period in which such payment obligations become due, with the costs and benefits of the Green Generation Initiative charged to such future Ratepayers under the Fair Allocation Plan.

The purpose of this Part is to establish the basis upon which intergenerational fairness can be achieved by charging the costs and benefits of the Green Generation Initiative to present and future Ratepayers on an equitable and cost effective basis.

Article 2 - Definitions

In this Part:

> “Absolute Assignee” means a person to whom a Regulatory Asset Owner effects a Disposition.
>
> “Actual” means, in relation to costs, expenses or payments in respect of Funding Obligations during a Reference Period, the actual amount of such costs, expenses or payments paid or made (net of any Finance Reserve Withdrawals applied to pay such amounts), which amounts shall be recorded by the Administrative Agent whose records shall be determinative for the purposes of this Part in the absence of a manifest calculation error.
>
> “Additional Funding Charges” means, for a Reference Period, the fees, charges, expenses, costs, indemnities, reimbursements and other amounts (including any applicable tax amounts) that are or become payable by **or on behalf of** the Regulatory

[3] Confirm whether any RPP forecasting variance is to be included in (i) a funding shortfall; and (ii) related IESO financing costs to be included in Transition Charges.]

Asset Owners during the Reference Period and that were incurred or committed to directly or indirectly in connection with the incurrence of Funding Obligations under the Financing Plan (whether at the time of such incurrence or over the term of the Funding Obligation and whether directly or indirectly), including (without duplication and without limitation): (a) any payment required under an ancillary agreement entered into by, or by the Administrative Agent on behalf of, a Regulatory Asset Owner under the Financing Plan; (b) any federal, provincial or local taxes, payments in lieu of taxes, franchise fees or license fees imposed on a Regulatory Asset Owner or incurred by on behalf of a Regulatory Asset Owner under any obligation to pay tax gross-up amounts to counterparties under Funding Obligations; (c) any amounts payable to the Administrative Agent, including amounts payable to its advisors and outside counsel; (d) any amounts incurred to prepare, confirm, amend and implement the Financing Plan; (e) any amounts payable to any Alternative Collection Agent or Alternative Servicer, including amounts payable to each's advisors and outside counsel; (f) any amounts incurred to make the calculations, determinations or confirmations to be made by or on behalf of a Regulatory Asset Owner; (g) any servicing fees and expenses; (h) any trustee fees and expenses; (i) any legal fees, expenses and disbursements; (j) any accounting fees and expenses; (k) any administrative fees and expenses; (l) any manager ~~of~~or director fees of a Financing Entity; (m) any registration fees and expenses; (n) any placement fees, underwriting fees, fees and related issuing expenses; (o) any rating agency fees; and (p) any other related fees, charges, expenses, costs, indemnities, reimbursements and other amounts that are approved [NTD: APPROVED BY WHOM?] in good faith for recovery and payment under the Financing Plan.

"Administrative Agent" means [OPG] or, following any Replacement Event, such other person or persons who may be appointed as the administrative agent of the Regulatory Asset Owner under the Financing Plan in compliance with the requirements set out in Schedule ~~2.~~3. [NTD: We should understand what will be the responsibility of the Administrative Agent and the Servicing Agent. Note: Why should OPG be the Administrative Agent if the Regulatory Asset Owner is a third party?]

"Allocation Factor" means, in respect of a Ratepayer for a Reference Period, the ~~number~~schedule (expressed as a percentage) determined in respect of the Ratepayer by [~~IESO~~OPG] [To the extent the schedule is in the Financing Plan, it would be OPG] based on the application of the Attribution Methodology in respect of the Reference Period.[4] [NTD: a schedule will need to be set forth in the [Financing Plan] to spell out the percentage of the Period Transition Amount to be applied to each rate class.]

"Alternative Collection Agent" means a person appointed under Section 5(11) and in compliance with the requirements set out in Schedule 2 to assume the collection activities and activities of any Electricity Distributor or IESO under Article 5, as agent for and on behalf of the Regulatory Asset Owners.

[4] Consider basing this on forecast volumes of demand (like RPP). To the extent amounts do not get recovered due to differences between forecast and actual, those would be identified and rolled into the True-Up.

"Alternative Servicer" means a person appointed under Section 4(8) to assume the obligations of the Servicer under Article 4, as agent for and on behalf of the Regulatory Asset Owners.

"Attribution Methodology"[5] means the methodology specified in the **[Financing Plan] [Shouldn't the methodology be specified in the Financing Plan? Concern is if the methodology is specified in the Fair Allocation Plan, it would cause rating agency implications if such methodology was amended after a debt issuance through a change in the Fair Allocation Plan]** for allocating the Period Transition ~~**Charges for a Reference Period to the individual Ratepayers of the applicable Ratepayer Group based on its Allocation Factor**~~**Amount**.

"Bypass Charge" means [To be developed].[6] **[As discussed, is this necessary?]**

["Collected Amount Adjustment" means, in respect of a Reference Period, the amount (which may be a negative amount) calculated by the Servicer or the Administrative Agent, as applicable, equal to (a) the Estimate of the Finance Amount for the True-Up Period, minus (b) the sum of all Transition Charge Collections for the True-Up Period.**]**[7] **[Could this concept be moved to the Financing Plan where we can include a more detailed discussion of the true-up mechanism?]**

"Collective Rights Agreement" means an agreement among all of the Regulatory Asset Owners (including each Absolute Assignee) and each Pledgee that governs the enforcement of their respective rights and interests in, to and under the Regulatory Asset on a coordinated and collective basis. **[NTD: This sounds like an intercreditor arrangement. If so, it should also include IESO, any Alternate Servicer or subservicer.]**

"Disposition" means an assignment, transfer, conveyance, sale, contribution, set-over, exchange or other disposition of all or a specified portion (including a specified portion on a divided basis or by way of an undivided interest) of a Regulatory Asset Owner's right, title and interest in, to and under the Regulatory Asset to an Absolute Assignee pursuant to a Disposition Document.

"Disposition Document" means the agreement, deed, conveyance, instrument or other document under which a Regulatory Asset Owner effects a Disposition to an Absolute Assignee.

[5] A key question will be how the overall costs will be spread across the rate base. For example, the allocation may be volumetric or not, or some combination of a flat amount and a volumetric charge. This will also impact any discussion regarding any bypass (e.g., grid exit) charge in connection with the bypass discussion. **[NTD: At H&W we are assuming that allocations will be volumetric based on usage?]**

[6] Consideration needs to be given to any amount that will be charged to a ratepayer who successfully bypasses (e.g., leaves the grid). In allocating Transition Charges, considerations would include whether to reserve Bypass Charges and spread them over the life of the program, and correspondingly how to factor those into the calculation of Transition Charges.

[7] This would pick up adjustments based on actual collection experience, changes in the Consumer Base, changes in the actual costs (versus earlier estimates) included in the Transition Charge calculation, etc.

"Electricity Distributor" means, in respect of a Service Area, the distributor licensed by the OEB in respect of such Service Area.

"Electricity Distributor Remittances" means, for an Electricity Distributor on a Remittance Date, all Transition Charge Collections received **or deemed received [How will the Electricity Distributors calculate this?]** by the Electricity Distributor prior to the Remittance Date and that have not otherwise been remitted to IESO or if applicable the Alternative Collection Agent in accordance with Section 5(3) , including the proceeds of any enforcement action undertaken by the Electricity Distributor or if applicable the Alternative Collection Agent to recover payment of Transition Charges in accordance with Article 5.

"Electricity Invoice" means an invoice issued by an Electricity Distributor (or in its stead, an Alternative Servicer) or by the Servicer in respect of electricity charges and related services and amounts incurred, assessed or charged in respect of connectivity to a distribution network in the Electricity Distributor's designated Service Area.

"Estimate" means, in relation to costs, expenses or payments in respect of Funding Obligations or any Finance Amount for a Reference Period, the estimated amount of such costs, expenses or payments determined by the Administrative Agent having regard to the applicable principles and parameters set out in Schedule 1, which estimated amounts shall be determinative as the applicable estimate for the purposes of this Part in the absence of a manifest calculation error.

"Fair Allocation Plan" [has the meaning given in Article 1].

"Finance Amount" means, in respect of a Reference Period, the sum (without duplication) of the following amounts ~~for~~**that are or become payable during** the Reference Period: (a) Repayments; (b) Funding Costs; (c) Redemption Amounts; (d) Finance Reserve Deposits; and (e) Additional Funding Charges.

"Finance Receipts" means, for a Reference Period, all amounts received by or on behalf of the Regulatory Asset Owners during the Reference Period in respect of a Funding Obligation, including from any reimbursement of standby commitment fees or charges paid by a lender, any reimbursement of credit enhancement fees or charges paid by any credit enhancer, any reimbursement of liquidity fees or charges paid by any liquidity provider, any amounts (including any termination payments) paid to the Regulatory Asset Owners under derivatives and any withdrawal made or required to be made from a debt service reserve account or other account established under any indenture, ancillary agreement or other financing document relating to a Funding Obligation.

"Finance Reserve Deposits" means, for a Reference Period, the amount by which (a) deposits made or to be made during the Reference Period in order to pre-fund, collateralize, over-collateralize or establish reserves for the ultimate payment of Funding Obligations or for related contingencies specified in the Financing Plan, exceed (b) any Finance Reserve Withdrawals.

"Finance Reserve Withdrawals" means, for a Reference Period, the amount withdrawn during the Reference Period from deposits previously made to pre-fund, collateralize, over-collateralize or establish reserves for the payment of Funding Obligations or to pay

amounts in respect of related contingencies that had been specified in the Financing Plan.

"Financing Entity" means an entity established in accordance with the Financing Plan to acquire all or an interest in the Regulatory Asset as an Absolute Assignee and to enter into Funding Obligations to finance such acquisition.[8]

"Financing Plan" means the written plan [prepared by the Administrative Agent] in compliance with Article 8 to set forth the basis upon which, among other things: (a) any Disposition may be made or effected; (b) any Funding Obligations may be incurred in order to fund a Funding Shortfall, including any Refinancing; (c) any Pledge may be given or effected; (d) any Funding Obligations may be redeemed, prepaid, repurchased, amended or otherwise effected; (e) any obligations for Additional Funding Charges may be incurred and paid; (f) any Repayments, Funding Costs and Redemption Amounts may be paid or provided for; (g) any Finance Reserve Deposits may be made; (h) the establishment and operation of any Financing Entity; and (i) the cash flows arising from time to time or otherwise derived from the Regulatory Asset may otherwise be applied.

"Funding Costs" means, for a Reference Period, the amount by which (a) the aggregate of all **schedule payments of principal,** interest and other periodic finance charges accruing due and becoming payable or paid by or on behalf of the Regulatory Asset Owner during the Reference Period in respect of all Funding Obligations, including any standby commitment fees or charges paid to any lender, credit enhancement fees or charges paid to any credit enhancer, liquidity fees or charges paid to any liquidity provider, amounts (including any termination payments) paid under derivatives and any deposit amount made or required to fund or replenish a debt service reserve account or other account established under any indenture, ancillary agreement or other financing document relating to a Funding Obligation, exceeds (b) the aggregate of all Finance Receipts for the Reference Period.

"Funding Obligation" means each payment obligation (including ~~**principal, interest and other financing charges,**~~ [9] indebtedness, payment obligations arising under or in respect of derivatives, payment obligations owing to service providers, administrative agents, finance entity intermediaries, capital markets intermediaries, advisors, lenders, credit enhancement providers, liquidity providers, disbursement counterparties, regulatory agencies and rating agencies and **[**all taxes payable in connection with the foregoing**]** **[NTD: Shouldn't taxes be Additional Funding Charges?]**) incurred by or on behalf of a Regulatory Asset Owner under the Financing Plan in order to fund a

[8] OPG has suggested that the legislation provide that any Financing Entity that is a wholly-owned subsidiary of OPG (1) would not be subject to Part VI of the *Electricity Act* (Ontario) and (2) in the case of any Financing Entity that is a trust, any income of such trust (for purposes of the *Income Tax Act* (Canada) or the *Taxation Act, 2007* Ontario)) which is paid or made payable to OPG or a wholly-owned subsidiary of OPG as a beneficiary of such trust will not be taken into account in calculating the amount of a payment required to be made by OPG (or such subsidiary) by section 89 or 90 of the Electricity Act. These raise issues for consideration by the stakeholders.

[9] **Note: Payments of scheduled principal, interest and other financing charges was moved to the definition of funding costs.**

Funding Shortfall for a Reference Period, including any Refinancing of another such payment obligation.[9][10]

"Funding Shortfall" means, for a Reference Period, (a) the amount, if any, by which (i) the IESO Power Contract Net Payment for the Reference Periods, exceeds (ii) the GA Power Contract Contribution for Reference Period, minus (b) the IESO Applied Surplus for the Reference Period.[10][11]

"GA Power Contract Contribution" means, for a Reference Period, the aggregate of the payments to be made by the applicable Ratepayer Group in respect of the portion of the Global Adjustment [attributable to the Power Contracts] in accordance with the Fair Allocation Plan.[11][12]

"Generator" means a generator of electricity that is subject to [this Act][12][13].

"Global Adjustment" means the amount calculated from time to time under [Section • of the *Electricity Act*], which includes among other things an amount determined in respect of the costs associated with the Green Generation Initiative, including amounts attributable to the Power Contracts.[13][14]

"Green Generation Initiative" [has the meaning given in Article 1].

"IESO" means the Independent Electricity System Operator created pursuant to [insert].

"IESO Applied Surplus" means, for a Reference Period, the lesser of (a) the amount, if any, by which (i) the IESO Power Contract Net Payment for the Reference Period, exceeds (ii) the GA Power Contract Contribution for the Reference Period and (b) the IESO Unapplied Surplus on the last day of the immediately preceding Reference Period.

[9][10] OPG has asked whether this should include IESO finance arrangements.

[10][11] Consider whether to simplify by referring to the calculations of GA, with vs. without Fair. The issue would be that Fair is then linked into the GA calculation specifically, rather than to the specific assets that are subject to revised amortization under Fair. The constitutional position requires a clear nexus to the assets. Also, confirm whether RPP forecasting variances are to be included.

[11][12] IESO to confirm its ability to allocate a shortfall in a given month between what it receives and what it owes under the GA, in order to calculate (a) existing volume-based variances which are rolled into subsequent month GA and trued-up every 6 months under RPP, (b) existing variances attributable to OREC which are funded by the Province, and (c) new variances attributable to Fair Hydro program.]

[12][13] Revise once determine whether this will be a standalone Act or remain part of the *Electricity Act*. "Generator is a defined term in other legislation (OEB Act, Electricity Act) so this should ultimately be a distinct term such as "FH Generator" to avoid confusion.

[13][14] Note that if adjustments for Fair Hydro program are to be applied after existing GA adjustments, then this may need a new name (such as "FH Adjustment").

"IESO Power Contract Net Payment" means, for a Reference Period, the amount by which (a) the sum of amounts payable by IESO to the Generators under all Power Contracts for the Reference Period, exceeds (b) the sum of amounts payable by the Generators to IESO under all Power Contracts for the Reference Period.

"IESO Power Contract Net Receipt" means, for a Reference Period, the amount by which (a) the sum of amounts payable by the Generators to IESO under all Power Contracts for the Reference Period, exceeds (b) the sum of amounts payable by IESO to the Generators under all Power Contracts for the Reference Period.

"IESO Remittances" means, for a Settlement Date, all Electricity Distributor Remittances received by IESO or if applicable the Alternative Collection Agent prior to the Settlement Date and that have not otherwise been remitted to the Regulatory Asset Owners (each with respect to its Regulatory Asset) in accordance with Section 5(6), including the proceeds of any enforcement action undertaken by IESO or if applicable the Alternative Collection Agent to recover payment of amounts payable by Electricity Distributors to IESO in accordance with Article 5.

"IESO Successor" means the entity appointed by the Province to succeed to the rights and obligations of IESO as the entity responsible for [managing the Province's power system].

"IESO Unapplied Surplus" means, at a particular time, the amount, if any, by which (a) the sum of (i) all IESO Power Contract Net Receipts for Reference Periods occurring prior to the time, and (ii) all GA Power Contract Contributions for Reference Periods occurring prior to the time, exceeds (b) the sum of (i) all IESO Power Contract Net Payments for Reference Periods occurring prior to the time, and (ii) all IESO Applied Surpluses for Reference Periods occurring prior to the time.

"Period Transition ~~Charge~~Amount" means, for a Reference Period, the sum of (a) the Estimate of the Finance Amount and (b) the True-Up Amount in respect of the immediately preceding Reference Period.

"Pledge" means a lien, mortgage, charge or security interest granted to or in favour of a Pledgee by a Regulatory Asset Owner in, to and over all or a specified portion (including a specified portion on a divided basis or by way of an undivided interest) of the Regulatory Asset.

"Pledgee" means a person to whom a Regulatory Asset Owner grants a Pledge.

"Power Contracts" means long-term power contracts entered into by IESO with certain Generators, under which IESO has agreed to pay such Generators amounts, determined in respect of quantities of electricity over specified periods, to the extent that applicable market prices for such quantities of electricity during a specified period are less than specified reference prices for such quantities of electricity, and, correspondingly, Generators have agreed to pay IESO amounts if the market prices for such quantities exceed the applicable reference prices for such quantities.[~~14~~15]

[~~14~~15] Consider expanding to include PPAs that are not contracts for differences. Should this contemplate the possibility of additional or amended power contracts?

"Province" means the Province of Ontario.

"Ratepayer" means present and future [retail] consumers of electricity [in the Province] who are [RPP][or OREC-eligible] consumers, which shall include all such retail consumers who are connected, directly or indirectly and whether a customer of an Electricity Distributor or not, to the transmission and distribution system assets located in the Province and who are taking electric delivery service within the Province, whether or not such retail consumers produce their own electricity or purchase electric generation services from a provider of electric generation services other than the owner of the Province's transmission and distribution system assets and whether or not the transmission and distribution system assets continue to be owned or operated by Electricity Distributors or operated by IESO.[~~15~~16]

"Ratepayer Group" means, in relation to a Reference Period, the Ratepayers who receive Electricity Invoices[~~16~~17] during the Reference Period.

"Redemption Amount" means the amount payable by or on behalf of a Regulatory Asset Owner to redeem, prepay or repurchase a Funding Obligation, including any premium, make-whole or other additional amount becoming payable under the Funding Obligation to give effect to such redemption, prepayment or repurchase.

"Reference Period" means (a) the period from (and including) the [Legislation Implementation Date] to (and including) June 30, 2017, (b) each six month period commencing [May 1st and November 1st] thereafter and (c) any other period specified as such in the Fair Allocation Plan.

"Refinancing" means that a Funding Obligation is repaid or repurchased for cancellation by or on behalf of a Regulatory Asset Owner by applying the net proceeds obtained by ~~the~~a Regulatory Asset Owner incurring one or more other Funding Obligations.

"Regulatory Asset" means the property right and interest described in Section 6(1), or if the context requires, a specified portion or undivided interest in such property right and interest that is described in the applicable Disposition Document.

"Regulatory Asset Account" means (a) for an Electricity Distributor, any bank account into which the Electricity Distributor deposits or receives Transition Charge Collections; (b) for the Servicer, any bank account into which the Servicer deposits or receives Transition Charges, Electricity Distributor Remittances or IESO Remittances; and (c) if applicable, for the Alternative Collection Agent, any bank account into which the Alternative Collection Agent deposits or receives Transition Charge Collections, Electricity Distributor Remittances or IESO Remittances.

[~~15~~16] Need to describe consumers in a fashion that is broad and not weakened by a bypass risk. Consider terminology to align with the description of the eligible customer class provided by the Ministry, e.g., same as OREC-eligible consumers except for consumers served by Independent Power Authorities (who do not pay GA). Also, consider use of the word "retail", to avoid limiting to customers of retailers and confirm removal of reference to transmission-connected customers.

[~~16~~17] Expand to include eligible consumers who are not customers of Electricity Distributors (e.g., suite-metered customers).

"Regulatory Asset Owner" means each ~~of (a) IESO, to the extent that it has retained any ownership interest in, to or under the Regulatory Asset and (b) each~~ Absolute Assignee, to the extent that it has acquired and owns any ownership interest (including a specified portion on a divided basis or by way of an undivided interest) in, to or under the Regulatory Asset, and "Regulatory Asset Owners" means collectively all of the Regulatory Asset Owners, who together own the entirety of the Regulatory Asset and are required to exercise their individual rights of ownership in accordance with Section 6(7). For greater certainty, where one Regulatory Asset Owner owns the entirety of the Regulatory Asset, "Regulatory Asset Owners" refers to this Regulatory Asset Owner. **[NTD: For purposes of the legislation and the financing to the capital markets, we look at it as though the IESO owns a different type of "regulatory asset". The whole idea of this financing structure is to "ring fence" the asset owned by the Absolute Assignee.]**

"Related Generation Assets" means the [facilities, plants and equipment] constructed, acquired or developed in connection with the Green Generation Initiative.

"Related Rights" means, with respect to a Regulatory Asset Owner's Regulatory Asset, all rights of any kind (whether in tort, contract or otherwise) that attach or are attendant or incidental to any of the other property rights or interests that comprise such Regulatory Asset.

"Remittance Date" means, in respect of an Electricity Distributor, each day on which it is required to remit Electricity Distribution Remittances to IESO or if applicable the Alternative Collection Agent in accordance with any Funding Obligation or, if no such day is specified in relation to any Funding Obligation, then the Business Day preceding each Settlement Date.

"Repayment Obligation" means an obligation to repay, redeem or repurchase, or to provide for the repayment, redemption or repurchase (including by making a Finance Reserve Deposit) of, all or a portion of the amount advanced to the Regulatory Asset Owner under a Funding Obligation.

"Repayment" means a payment by a Regulatory Asset Owner made to satisfy a Repayment Obligation, other than to the extent that the payment is made by applying the proceeds of a Refinancing.

"Replacement Event" means any event specified as such in a Funding Obligation.

"Service Area" means, in respect of an Electricity Distributor, the geographic area or region in which it is licensed to distribute electricity in accordance with [this Act~~17~~18].

"Servicer" means [To be determined], as agent for and on behalf of the Regulatory Asset Owner [To be determined – collective invoicing agent, and consider expanding].

"Settlement Date" means the [last Business Day of any month].

~~17~~18 Revise once determine whether this will be a standalone Act or remain part of the *Electricity Act*.

"Transition Charge" means~~, for a Ratepayer in respect of a Reference Period, the sum of (a) [one-sixth] of the Period Transition Charge multiplied by its Allocation Factor and (b) any Bypass Charge charged to the Ratepayer in respect of the Reference Period.~~ the nonbypassable charge based on usage or availability of electric service to fully recover amounts sufficient for all payments of Funding Obligations and such Transition Charges would be subject to a true-up adjustment mechanism. [NTD: This should be a usage based charge. We suggest this more general definition with the calculation of Transition Charges should go into the Financing Plan.]

"Transition Charge Collection" means any amount received or deemed by this Part to have been received upon the collection of a Transition Charge paid by or on behalf of a Ratepayer, including any proceeds arising from the exercise and enforcement of any related rights and interests under or in respect of the Regulatory Asset.

[~~"True-Up Amount" means, in respect of a Reference Period, the amount (which may be a negative amount) calculated by the Administrative Agent equal to (a) the Estimate of the Finance Amount for the related True-Up Period, minus (b) the Actual Finance Amount for such related True-Up Period, plus (c) the Collected Amount Adjustment.~~] [NTD: Can we move this to the Financing Plan where we can get into a discussion of the breakdown of Transition Charges as applied to each rate class?]

"True-Up Period" means, in relation to a Reference Period, the period from and including the [30th] day immediately preceding the first day of the Reference Period, to but excluding the [30th] day immediately preceding the last day of the Reference Period.

"Undertaking of the Lieutenant Governor in Council" means the undertaking of the Lieutenant Governor in Council given under Section 10(2).

"Unrecovered Transition Costs" means the [unrecovered][unamortized] costs incurred in connection with the creation, adoption and implementation of the Green Generation Initiative, including any negative value of the Power Contracts and [other].~~18~~19

Article 3 – Transition Charges

(1) **Ratepayer Obligation to Pay a Transition Charge** – Each Ratepayer shall pay each Transition Charge charged to it in any Electricity Invoice issued to such Ratepayer by its Electricity Distributor or by an Alternative Servicer under Section 4(1), in each case on the terms of payment specified in the related Electricity Invoice.

(2) **Indebtedness of Ratepayers** – Until paid, a Transition Charge charged to a Ratepayer in an Electricity Invoice shall, together with any applicable late payment fees and finance charges arising under the terms of the Electricity Invoice with respect to such Transition Charge, constitute non-bypassable indebtedness of the Ratepayer to the

~~18~~19 Note that this is the term that describes the "asset" that we are amortizing over a longer period of time.

Regulatory Asset Owners (each with respect to its Regulatory Asset). Such indebtedness shall constitute a single and separate debt obligation owing by the Ratepayer, which subject to Article 5 may be enforced independently from any other payment obligation or indebtedness owing by the Ratepayer under the Electricity Invoice or otherwise.[1920]

(3) **No Set-Off or Reduction** – A Ratepayer may not set-off or reduce (by counterclaim, defense or otherwise) the amount payable by it in respect of any Transition Charge, including any set-off against or in respect of any amount owing or becoming payable to such Ratepayer by its Electricity Distributor, any Regulatory Asset Owner or any other person.

(4) **Allocation of Ratepayer Payments** – If an Electricity Distributor receives a payment made by or on behalf of a Ratepayer in respect of amounts due and payable under one or more Electricity Invoices that is less than the total amount payable thereunder, such payment shall be allocated on a *pro rata* basis to the payment of related Transition Charges and other invoiced amounts and the amount so allocated as a payment of related Transition Charges shall be deemed to constitute a Transition Charge Collection.

(5) **Transition Charges are Irrevocable** – The Transition Charges arising under or in respect of Funding Obligations incurred under the Financing Plan (including any adjustments based on modifications to such Funding Obligations made in compliance with the Financing Plan or as a result of amendments to the Financing Plan made in accordance with Section 8(3)) are deemed to be irrevocable, final and effective without any further action, in the absence of manifest calculation error. For greater certainty, a Transition Charge may include Finance Amounts for a Reference Period whether or not the payment of such Finance Amounts are inconsistent with the Fair Allocation Plan applicable at the time such payments are due and payable whether or not the related Funding Obligation was properly incurred under the Financing Plan. In no case shall a Funding Obligation incurred under the Financing Plan be affected by a subsequent amendment to the Fair Allocation Plan.

(6) **[Anti-avoidance; No-by-pass** – Transition Charges charged to a Ratepayer in respect of any Finance Amount incurred under with the Financing Plan applicable at the time

[1920] Torys suggests that we not create a debtor/creditor relationship between ratepayers and regulatory asset owners. Instead, ratepayers would only have relationships with electricity distributors and the Fair program would rely on consumers paying distributors and distributors to collecting those amounts and remitting them to IESO. The current draft goes further to bridge the investors more directly with ratepayers. There are differences in the approaches, including reliance from a credit perspective on the LDCs (rather than an ability to replace the individual LDCs with the investors choice). This depends on the credit analysis, and comfort that a later requirement will not be accommodated without a change in the legislation. Torys has also suggested that deemed conditions of licenses for distributors, retailers and unit sub-metering providers, could be included as conditions, to require them to collect and remit amounts in accordance with this legislation. Consideration should be given to whether that achieves the same direct relationship and whether the effectiveness of the current regulatory licensing regime should be suggested as the basis for a market-based credit decision.

the related Funding Obligation was incurred may not be avoided and shall be [non-by-passable].]

(7) True-up Mechanism – The [Financing Plan] shall include a mechanism requiring the Transition Charges be reviewed and adjusted by the Servicer at least [semi-annually] to correct for any overcollections or undercollections of the preceding Reference Period and to ensure the expected recovery of amounts sufficient to timely provide all payments of Funding Obligations.

Article 4 – Invoicing of Transition Charges[2021]

(1) **Inclusion of Transition Charges in Electricity Invoices** – Each Electricity Distributor and if applicable any Alternative Servicer shall, as an agent of the Regulatory Asset Owners, specify the Transition Charge to be charged to a Ratepayer pursuant to Section 4(4) in respect of a related Reference Period in each Electricity Invoice issued by the Electricity Distributor or if applicable by the Alternative Servicer to the Ratepayer in respect of such Reference Period. Upon the inclusion of a Transition Charge in an Electricity Invoice, the obligation to pay such amount shall be binding on the applicable Ratepayer.

(2) **Calculation of the Period Transition ~~Charge~~Amount** – Not later than [35] days prior to the first day of a Reference Period, each Regulatory Asset Owner (or the Administrative Agent on its behalf) shall provide the Servicer with written notice of each Estimate of a Finance Amount payable by it or on its behalf in respect of the Reference Period. Not later than one month prior to the first day of a Reference Period, the Servicer or if applicable the Alternative Servicer[2122] shall calculate the Period Transition ~~Charge~~Amount applicable to the Reference Period based on the calculations and information set forth in such written notices received from the Regulatory Asset Owners, which shall be determinative in the absence of manifest calculation error or misstatement.

(3) **Calculation and Attribution of Transition Charges** – Not later than 25 days prior to the first day of a Reference Period, the Servicer or if applicable the Alternative Servicer shall apply the Attribution Methodology to determine the Allocation Factor for each Ratepayer of the applicable Ratepayer Group.

(4) **Notice of Transition Charges** – Not later than 20 days prior to the first day of a Reference Period, the Servicer or if applicable the Alternative Servicer shall inform each Electricity Distributor and if applicable any Alternative Servicer of the Transition Charges to be specified in the Electricity Invoices to be issued to each Ratepayer of the applicable Ratepayer Group who has a billing address in the Electricity Distributor's Service Area.

(5) **Adjustments** – The amount of any Transition Charge charged to a Ratepayer by the Servicer and specified as such in an Electricity Invoice shall be determinative of the

[2021] Details concerning Invoicing of Transition Charges (Article 4) and Collections and Remittances (Article 5) are complex. Consider how much of this can be addressed through regulations, or if acceptable based on existing OEB license conditions/codes, IESO market rules/manuals, etc.

[2122] Should this be a designated government official, rather than an agent appointed by investors?

amount of indebtedness created thereby and owing in respect of such Transition Charge, in the absence of any manifest calculation error.

(6) **Successors of Electricity Distributors** – Any successor of an Electricity Distributor shall be bound by the requirements of Article 4 and shall perform and satisfy all duties and obligations of such Electricity Distributor under Article 4 in the same manner and to the same extent as such Electricity Distributor, including the obligation under Article 4 to impose, attribute, charge, bill and invoice the Transition Charges.

(7) **IESO Successor** – Any IESO Successor shall be bound by the requirements of Article 4 and shall perform and satisfy all duties and obligations of IESO under Article 4 in the same manner and to the same extent as IESO, including the obligation to calculate and provide notice of Transition Charges.

(8) **Appointment of an Alternative Servicer** – If a Replacement Event occurs in respect of any Electricity Distributor, the Regulatory Asset Owners shall, in accordance with the Collective Rights Agreement, be permitted, by an instrument in writing, to appoint an Alternative Servicer to perform some or all of the obligations and duties required to be undertaken by such Electricity Distributor under this Article 4, as and to the extent specified in such appointment. Upon acceptance of such appointment, the Alternative Servicer shall become obligated to perform such assumed obligations in replacement of such Electricity Distributor. Any Electricity Distributor that is replaced under this Section 4(8) shall promptly transfer all rights, powers, privileges and property interests in its possession or within its control in the performance of such obligations and duties to the Alternative Servicer and shall take such further actions, including the execution of instruments, necessary to give full and final effect to such transfer and to permit the Alternative Servicer to perform such obligations and duties on behalf of the Regulatory Asset Owners.

(9) **Regulatory Asset Owners have Standing** – The Regulatory Asset Owners may bring actions against any Electricity Distributor, IESO, the Servicer, Alternative Servicer or any other person who may be authorized to issue Electricity Invoices to Ratepayers for a failure to impose, attribute, charge, bill or invoice Transition Charges. Any court of the Province [and the OEB] shall have jurisdiction over any actions brought before it by the Regulatory Asset Owners in relation to any such failure.[~~22~~23]

(10) **No Set-Off or Reduction –** No Servicer or Electricity Distributor may set off or reduce (by counterclaim, defence or otherwise) the amount payable by it pursuant to this Article 4.

(11) **Regulations** – Regulations may be enacted for the purpose of specifying further rights, powers, privileges, duties and obligations that shall apply to IESO, any Electricity Distributor, any Alternative Servicer or any [Alternative Collection Agent] to ensure that Transition Charges are properly charged to Ratepayers and specified as such in Electricity Invoices.

[~~22~~23] Consider having such matters first go through the OEB, particularly if the obligation to bill, collect or remit is deemed to be a condition of license for distributors, IESO, retailers and unit sub-metering providers, which would be enforceable provisions under the OEB Act and within OEB jurisdiction to enforce.

Article 5 – Collections and Remittances

(1) **Duty to Collect as Agent** – Electricity Distributors or if applicable any Alternative Collection Agent shall, as an agent of the Regulatory Asset Owners, undertake [diligent efforts] to collect amounts owing by Ratepayers in respect of Transition Charges charged to such Ratepayers in Electricity Invoices issued by the Electricity Distributor or if applicable such Alternative Collection Agent.

(2) **Segregation of Transition Charge Collections** – An Electricity Distributor or if applicable any Alternative Collection Agent shall promptly segregate Transition Charge Collections from other payments received by it from Ratepayers and deposit such Transition Charge Collections into its Regulatory Asset Account. Prior to and following a deposit of Transition Charge Collections having been made into its Regulatory Asset Account, the Electricity Distributor or if applicable any Alternative Collection Agent shall hold such amounts in trust for each Regulatory Asset Owner.

(3) **Electricity Distributor Remittances** – On each [applicable Remittance Date], an Electricity Distributor shall remit all Transition Charge Collections received by it from Ratepayers in respect of the related Reference Period to or to the account of IESO or if applicable the Alternative Collection Agent.

(4) **Duty to Collect Electricity Distributor Remittances** – IESO or if applicable any Alternative Collection Agent shall, as an agent of the Regulatory Asset Owners, undertake [diligent][reasonable] efforts to accept and collect Electricity Distributor Remittances from Electricity Distributors and Transition Charge Collections from Ratepayers that pay their Electricity Invoices directly to the Servicer.[~~23~~24]

(5) **Segregation of Electricity Distributor Remittances** – IESO and if applicable the Alternative Collection Agent shall [promptly] segregate Electricity Distributor Remittances from other payments received or held by it and deposit such Electricity Distributor Remittances into its Regulatory Asset Account. Prior to and following a deposit of Electricity Distributor Remittances having been made into its Regulatory Asset Account, IESO or if applicable any Alternative Collection Agent shall hold such amounts in trust for each Regulatory Asset Owner.

(6) **IESO Remittances** – On each [Settlement Date][~~24~~25], IESO and if applicable the Alternative Collection Agent shall remit all amounts on deposit in its Regulatory Asset Account to or to the account of the Regulatory Asset Owner.

(7) **Successors of Electricity Distributors** – Any successor of an Electricity Distributor shall be bound by the requirements of Article 5 and shall perform and satisfy all duties and obligations of such Electricity Distributor under Article 5 in the same manner and to

[~~23~~24] Consider building this obligation into a deemed condition of licence for the IESO.

[~~24~~25] Consider frequency of remittances in light of rating requirements.

the same extent as such Electricity Distributor, including the obligation under Article 5 to collect Transition Charges and make remittances of Electricity Distributor Remittances.

(8) **Successors of IESO** – Any successor of IESO shall be bound by the requirements of Article 5 and shall perform and satisfy all duties and obligations of IESO under Article 5 in the same manner and to the same extent as IESO, including the obligation to collect Transition Charge Collections, Electricity Distributor Remittances and to remit IESO Remittances.

(9) **Owners of Distribution Assets** - If any person other than an Electricity Distributor acquires distribution system assets in the Province or invoices or collects electricity distribution rates in the Province[25][26], then such person shall, if requested by the Regulatory Asset Owners, be obligated to act diligently to (a) facilitate the invoicing and collection of any Transition Charges applicable to Ratepayers in its applicable service area, including all consumers connected to the electricity distribution system assets and taking electric delivery service located within such service area; (b) allocate partial payments by Ratepayers as provided in this Part; (c) terminate service to non-paying Ratepayers on the same basis as termination of service is permitted for non-payment of electricity transmission and distribution rates; (d) exercise all enforcement rights of the Regulatory Asset Owners or Pledgee for the benefit of a Regulatory Asset Owner or Pledgee; and (e) remit any Transition Charge Collections to the Regulatory Asset Owner or Pledgee, as applicable, each in accordance with its Regulatory Asset.

(10) **Regulatory Asset Owners have Standing** – The Regulatory Asset Owners and any Pledgee may bring actions against any Electricity Distributor, IESO, Alternative Servicer, any owner of electricity distribution system assets in the Province or any other person who may be authorized to collect electricity distribution and use charges from Ratepayers for a failure to collect Transition Charges, remit or collect Electricity Distributor Remittances or remit IESO Remittances, as and to the extent applicable under Article 5. Any court of the Province [and the OEB] shall have jurisdiction over any actions brought before it by the Regulatory Asset Owners in relation to any such failure. [26][27]

(11) **Appointment of an Alternative Collection Agent** – If a Replacement Event occurs in respect of any Electricity Distributor or IESO, the Regulatory Asset Owners shall, in accordance with the Collective Rights Agreement, be permitted, by an instrument in writing, to appoint an Alternative Collection Agent to perform some or all of the collection, segregation and remittance obligations otherwise required to be undertaken by such Electricity Distributor or IESO, as applicable, under Article 5, as and to the extent specified in such appointment. Upon acceptance of such appointment, the Alternative Collection Agent shall become obligated to perform such assumed obligations in replacement of such Electricity Distributor or IESO, as applicable. Any Electricity Distributor or IESO, as applicable, that is replaced under this Section 5(11)

[25][26] This is in anticipation of a possible future restructuring of the distribution system. Also, this would cover any OREC-eligible customer (market participant) of IESO.

[26][27] Consider having such matters first go through the OEB, particularly if the obligation to bill, collect or remit is deemed to be a condition of license for distributors, IESO, retailers and unit sub-metering providers, which would be enforceable provisions under the OEB Act and within OEB jurisdiction to enforce.

shall promptly transfer all rights, powers, privileges and property interests in its possession or within its control in, to and over the Regulatory Asset, including its Regulatory Asset Account, to the Alternative Collection Agent and shall take such further actions, including the execution of instruments, necessary to give full and final effect to such transfer and to permit the Alternative Collection Agent to enforce the Regulatory Asset on behalf of the Regulatory Asset Owners.

(12) **No Set-off, etc.** - The Regulatory Asset, including rights in Transition Charges, Transition Charge Collections, and the interests of a Regulatory Asset Owner, an Absolute Assignee and a Pledgee therein, may not be setoff or reduced (including by counterclaim, surcharge or defense) by any Ratepayer, any Electricity Distributor, IESO, Alternative Collection Agent or any owner of distribution system assets in the Province or any other person or in connection with any default, bankruptcy, reorganization or other insolvency proceeding of any Electricity Distributor, IESO, Alternative Collection Agent or any owner of distribution system assets in the Province, any affiliate or successor thereof or any other entity or otherwise.[~~27~~28]

(13) **Sequestration** – If any Electricity Distributor, IESO, Alternative Collection Agent or any owner of distribution system assets in the Province or any other person or entity authorized to collect Transition Charges, defaults on any required remittance of Transition Charge Collections, Electricity Distribution Remittances or IESO Remittances under Article 5, any court in the Province, upon application by the Regulatory Asset Owners or Pledgee and without limiting any other remedies available to the applying party, shall order the sequestration and payment of the Transition Charge Collections, Electricity Distribution Remittances and IESO Remittances, as applicable, for the benefit of the Regulatory Asset Owners or Pledgee, each with respect to its Regulatory Asset. **[Such order shall remain in full force and effect notwithstanding any bankruptcy, reorganization, or other insolvency proceeding with respect to any Electricity Distributor, IESO, Alternative Collection Agent or any owner of distribution system assets in the Province or other person or entity authorized to collection Transition Charges, as applicable.] [NTD: Is it possible to include the bracketed language under Ontario bankruptcy law?]**

(14) Regulations – Regulations may be enacted for the purpose of specifying further rights, powers, privileges, duties and obligations that shall apply to IESO, any Electricity Distributor or any Alternative Collection Agent to ensure that rights, interests, entitlements, benefits and proceeds in, to, under and from the Regulatory Asset are of fully realized by the Regulatory Asset Owner.

Article 6 – The Regulatory Asset

(1) **Composition** – The Regulatory Asset shall constitute an existing, present property right and interest consisting, collectively, of the following rights and interests of a Regulatory Asset Owner in the following (without duplication):

[~~27~~28] Consider whether it makes sense to create a "deemed collection" payment obligation on Electricity Distributors to the extent a Ratepayer reduces its payment of Transition Charges, despite this language, and same for Electricity Distributor Remittances and IESO Remittances.

a. the right of a Regulatory Asset Owner to record its portion of the Regulatory Asset in its accounts;

b. the right to impose, bill, invoice, collect and receive Transition Charges from Ratepayers, including the right to determine the amount of Transition Charges in accordance with this Part;

c. the right to enforce the obligations and indebtedness of each Ratepayer to pay the Transition Charges charged to the Ratepayer from time to time in accordance with Article 2, together with all related late payment fees or interest charges arising in respect thereof under the related Electricity Invoices;

d. the right to enforce the duties and obligations of each Electricity Distributor and if applicable the Alternative Servicer to impose, attribute, charge, bill and invoice the Transition Charges in accordance with Article 4;

e. the right to enforce the duties and obligations of each Electricity Distributor and if applicable the Alternative Collection Agent to collect, receive and remit amounts received by it in respect of Transition Charges as Electricity Distributor Remittances to or to the account of IESO or if applicable the Alternative Collection Agent in accordance with Article 5, including all collections and the proceeds of any enforcement action undertaken by the Electricity Distributor or if applicable the Alternative Collection Agent to recover payment of Transition Charges in accordance with Article 4;

f. the right to enforce the duties and obligations of IESO and if applicable the Alternative Collection Agent to collect and receive Electricity Distributor Remittances and to remit IESO Remittances to or to the accounts of the Regulatory Asset Owners, each with respect to its Regulatory Asset, in each case in accordance with Article 5, including all collections and the proceeds of any enforcement action undertaken by it to recover payment of Electricity Distributor Remittances in accordance with Article 4;

g. the right to receive and collect all Transition Charge Collections, all Electricity Distributor Remittances and all IESO Remittances in accordance with Article 5;

h. all rights and entitlements under each Regulatory Asset Account and all amounts on deposit in any such Regulatory Asset Account;

i. all Related Rights; and

j. all revenue, collections, claims, payments, money and proceeds of or derived from the rights described in (a) through (i), regardless of whether such revenue, collections, claims, payments and proceeds are imposed, invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

A Regulatory Asset and the property rights and interests therein shall exist whether or not Transition Charges have been imposed, charged, invoiced, accrued or collected

and notwithstanding that the imposition, attribution, invoicing and collection of Transition Charges will depend on further actions that may not have occurred.

(2) **Validity of Dispositions** – Despite any limitations or restrictions on a Disposition that may arise by contract or by operation of any applicable law of the Province [or any consent requirement applicable to a Disposition that may arise by contract or by operation of any applicable law of the Province], a Disposition by a Regulatory Asset Owner made under the Financing Plan pursuant to a Disposition Document shall be permitted and when made shall be valid and enforceable in accordance with its terms and shall be effective to confer upon the Absolute Assignee a valid property right and interest in, to and under the Regulatory Asset (or relevant portion thereof) in accordance with the terms of such Disposition, provided that the parties to the applicable Disposition Document have expressly stated therein that such Disposition is a sale or other absolute transfer. Without limiting the foregoing, any Disposition that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as a true sale and absolute transfer of the Regulatory Asset Owner's applicable right, title, and interest in, to and under the Regulatory Asset (or relevant portion thereof), and not merely as a Pledge thereof. [A Disposition shall not be subject to recharacterization or challenge on any other basis and the validity of a Disposition shall not be affected or impaired by: (a) the commingling of Transition Charge Collections or other proceeds from Transition Charges with other amounts; (b) the retention of any interest (including any partial, residual or subordinated interest, whether direct or indirect) in the Regulatory Asset by the transferring Regulatory Asset Owner; (c) any right to repurchase the Regulatory Asset in favour of the transferring Regulatory Asset Owner; (d) any recourse that an Absolute Assignee may have against the transferring Regulatory Asset Owner; (e) any indemnification rights or obligations provided by the transferring Regulatory Asset Owner; (f) any obligation of the transferring Regulatory Asset Owner to collect and remit Transition Charge Collections on behalf of an Absolute Assignee, including but not limited to, any retention by the transferring Regulatory Asset Owner to bare legal title for the purpose of collecting Transition Charges; or (g) the ascribed or intended treatment of the Disposition by the transferring Regulatory Asset Owner or the Absolute Assignee on any different basis including for tax, financial reporting or other purposes.][28][29] **[NTD: Should we include language that provides for the Regulatory Asset to continue to exist until all Funding Obligations and other costs are repaid?]**

(3) **Perfection and Priority[30] of Dispositions** – Any Disposition of an interest in a Regulatory Asset shall be vested, valid, binding and perfected from the time when such Disposition is made. Such Disposition shall be perfected, vested, valid and binding as against the transferring Regulatory Asset Owner and all other persons who have claims of any kind (whether in tort, contract or otherwise) against the transferring Regulatory Asset Owner, irrespective of whether such persons have notice of the Disposition and the property rights and interests acquired by the Absolute Assignee under such Disposition shall be free and clear of any liens in favour of such other persons.

[28][29] Consider if helpful to investors, or delete. **H&W: We consider this helpful**

[30] **It looks like Priority was deleted from this clause.**

(4) **Validity of Pledges** – Despite any limitations or restriction on a Pledge that may arise by contract or by operation of any applicable law of the Province [or any consent requirement applicable to a Pledge that may arise by contract or by operation of any applicable law of the Province], a Pledge by a Regulatory Asset Owner may be made to secure any Funding Obligation and when made shall be valid and enforceable in accordance with its terms and shall be effective to confer upon the Pledgee a valid security interest in, to and in respect of the Regulatory Asset in accordance with the terms of the Pledge. Other than as required by the Financing Plan, no consent of any person shall be required to give effect to a Pledge made to secure any Funding Obligation.

(5) **Perfection and Priority of Pledges** - Any Pledge made by a Regulatory Asset Owner in respect of a Funding Obligation incurred under the Financing Plan shall be perfected, valid and binding from the time when the Pledge is made and shall be valid and binding as against the Regulatory Asset, the Regulatory Asset Owner making the Pledge and all other persons who have claims of any kind (whether in tort, contract or otherwise) against the Regulatory Asset or the pledging Regulatory Asset Owner, irrespective of whether such persons have notice of the Pledge and the security interests of the Pledgee under such Pledge shall have priority over any liens in favour of such other persons. All proceeds of the Regulatory Asset that are subject to such a Pledge that are received by the Regulatory Asset Owner shall immediately be subject to the such Pledge, and the security interest in such proceeds shall be perfected, without any physical delivery thereof, registration of any financing statement with respect thereto pursuant to the [PPSA] or any other further act.[~~29~~31] A Pledge shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may subsequently attach to the property rights and interests in the Regulatory Asset subject to the Pledge unless the Pledgee has otherwise agreed in writing. Any Pledgee shall have a perfected security interest in Transition Charge Collections or other related proceeds that are deposited in any Regulatory Asset Account or other account of any Electricity Distributor, IESO, Alternative Collection Agent or other person who may have commingled such Transition Charge Collections or such other proceeds with other funds. [A Pledgee shall cause a financing statement to be filed in respect of a Pledge on the basis that the Regulatory Asset is "intangible" property, for informational purposes only under the [PPSA].

(6) **Enforcement of Property Rights** – The rights of any Regulatory Asset Owner to collect and enforce its rights and interests in, to or in respect of the Regulatory Asset shall be exercised in the manner set forth in Article 5.

(7) **Owners of a Specified Portion of the Regulatory Asset** – A Regulatory Asset Owner may effect a Disposition to an Absolute Assignee of a specified portion of its rights and interests in the Regulatory Asset, including by way of a Disposition of a divided or an undivided interest therein. In no circumstance may the specified portions of the rights and interests in the Regulatory Asset owned by all Regulatory Asset Owners be greater than all of the rights and interests that comprise the Regulatory Asset in the aggregate.

[~~29~~31] Consider whether to simply leave this and have a financing statement be filed under the PPSA. This would normalize the security interest and reduce any adverse suggestion that security would not otherwise arise.

(8) **Collective Action Required** – If a Regulatory Asset Owner's right and interest in the Regulatory Asset comprises less than the entire property right and interest constituted by the Regulatory Asset, such Regulatory Asset Owner shall only enforce such right and interest on a collective [and joint] basis with each other Regulatory Asset Owner in accordance with the Collective Rights Agreement.[30][32]

Article 7 – Establishment of the Fair Allocation Plan[31][33]

(1) Adoption of the Fair Allocation Plan – The [Minister of Energy][32][34] may by written order designate and adopt a Fair Allocation Plan in compliance with Article 7. The Fair Allocation Plan so designated and adopted shall be the Fair Allocation Plan for all purposes of this Part, [except if amended, amended and restated or terminated by a further written order issued by the Minister of Energy in compliance with Section •].

(2) Principles and Parameters[33][35] – A Fair Allocation Plan shall seek to allocate Unrecovered Transition Costs across present and future Ratepayer Groups on a basis that the Minister of Energy, in its sole and absolute discretion, determines to be equitable, having regard to the following principles and parameters[34][36]:

1. Unrecovered Transition Costs should be allocated over a period not to exceed the later of (a) the estimated remaining useful life of the Related Generating Assets and (b) the remaining term of IESO's commitments under the Power Contracts.

2. The Fair Allocation Plan should specify the Reference Periods (e.g., 6 month periods), for the purpose of identifying applicable Ratepayer Groups and allocating among them responsibility to bear the Unrecovered Transition Costs on a relative basis over time.

3. The share of Unrecovered Transition Costs allocable to a particular Ratepayer Group in respect of a Reference Period should be proportionate to a reasonable assessment of the benefits of the Green Generation Initiative to the Ratepayer Group over such Reference Period.

[30][32] This is necessary to ensure that if there are multiple regulatory asset owners and pledgees, they will be coordinated in the application of their rights of enforcement, etc.

[31][33] The idea is that the Fair Allocation Plan will be set once at the outset based on the principles and parameters described here, all applied based on information available and the reasonable expectations and discretion of the delegate at such time. If the expectations are not fulfilled (e.g., generators may choose to retire their facilities at the end of their current Power Contracts and not invest in extending service lives to secure further power contracts), the Fair Allocation Plan will be unaffected, unless it is specifically amended (assuming amendments will be permitted by the legislation).

[32][34] Input required. If the MOE is given this power, conform to applicable authorities (e.g., plans and directives).

[33][35] Consideration will be given as to whether these details should be included in the Regulation.

[34][36] We have provided a few examples of what could be the basic principles. These will depend on market considerations, the Province's decision on the required amount of detail and the ability to sustain the legal basis for the program. These examples are not meant to suggest the appropriate balance – just illustrative to advance a discussion among the stakeholders.

4. The estimated Unrecovered Transition Costs to be allocated to a Ratepayer Group and any future Ratepayer Group at a particular time should not exceed the estimated value of the Related Generating Assets based on their remaining useful lives or terms, measured in respect of the period following such particular time.

5. No future Ratepayer Group should bear an unreasonably disproportionate share of the Unrecovered Transition Costs. Except in exceptional circumstances or in the case of any backward-looking adjustment made as contemplated in 7, below, the share of the Unrecovered Transition Costs to be allocated under a Fair Allocation Plan to any future Ratepayer Group should have regard to [Insert formula if a year-over-year maximum amount is determined to be appropriate][~~35~~37].

6. A reasonable estimate of the rate of inflation should be applied to equate the relative values of the nominal amount of Unrecovered Transition Costs to be allocable to Ratepayer Groups over time.

7. Backward-looking adjustments to a Fair Allocation Plan may be made to achieve a fair distribution among Ratepayers of the benefits of the Green Generation Initiative.

(3) Attribution Methodology – The Fair Allocation Plan [shall] specify an objective methodology (the "Attribution Methodology") for the purposes of allocating the Period Transition ~~Charges~~Amount across all of the Ratepayers of a particular Ratepayer Group. The Attribution Methodology shall result in an attribution of such Transition Charges that are considered by the Minister of Energy to be equitable, and may have regard to such principles and parameters as may be further set forth in a Regulation.

(4) [Confirmation][Review] of the Fair Allocation Plan – [OEB?][~~36~~38]

Article 8 – The Financing Plan[~~37~~39]

(1) Power to Prepare and Implement the Financing Plan – In compliance with a [written order][***MOE to confirm process.***] of the Minister of Energy, the Administrative Agent shall prepare and propose the adoption of a Financing Plan. If the Administrative Agent is unwilling or unable to prepare and propose the adoption of a Financing Plan, the Minister of Energy may by written order designate one or more other persons to prepare and implement such a Financing Plan.

[~~35~~37] Consider if a quantitative limit needs to be included in the legislation.

[~~36~~38] Any approvals or consents by the OEB will be obtained before any Funding Obligation that is dependent on such approval or consent is incurred. Any such approval or consent will be irrevocable and non-appealable. Any regulatory action occurring after any incurrence will not affect the related Funding Obligation or underlying rights in the Regulatory Asset.

[~~37~~39] Consideration will be given as to whether these details should be included in the Regulation.

(2) **Required Terms and Conditions of the Financing Plan** – The Financing Plan shall establish the basis for funding decisions that have the effect of allocating the Unrecovered Transition Costs across present and future Ratepayer Groups on a basis that is consistent with the Fair Allocation Plan. The Financing Plan shall be consistent with the principles, parameters, requirements and conditions set forth in Schedule 3 and such other conditions and requirements as may be specified in a written order of the Minister of Energy [or in accordance with the Regulation].

(3) **Power to Review and Approve the Financing Plan** – The Minister of Energy may, by written order, designate one or more persons to review the Financing Plan and to review and assess the consistency of the Funding Obligations incurred with such Financing Plan, and the Minister of Energy may specify requirements in respect of such review in such written order. The Administrative Agent, or such other person(s) as may be designated by written order of the Minister of Energy made pursuant to Section 8(1), shall make any such amendments to the Financing Plan, and submit a revised Financing Plan to the designated reviewer for approval within [the time period specified in such written order]/[[●] days of such written order].[***Consider periodic amendments to the Financing Plan following an annual review; provided that amendments cannot affect the existing Funding Obligations. Consider the level of oversight the MoE/OEB will have over this process?***]

(4) **Approval of Financing Plan –** The **[OEB]** shall have the power to and shall approve or disapprove of the Financing Plan based solely on whether the Financing Plan is consistent with (i) the principles, parameters, requirements and conditions set forth in Schedule 3, (ii) such other conditions and requirements as may be specified in a written order of the Minister of Energy [or in accordance with the Regulation] [and (iii) the Fair Allocation Plan]. If the **[OEB]** approves the Financing Plan, then such Financing Plan shall be implemented by the Administrative Agent. If the OEB disapproves of the Financing Plan or otherwise fails to approve the Financing Plan, then the Administrative Agent shall re-submit the Financing Plan with such amendments as the Administrative Agent shall consider necessary for the Financing Plan to be approved by the OEB.[38~~38~~40]

(5) **Consistency with the Fair Allocation Plan** - Funding Obligations should only be incurred if Repayments and Funding Costs would be borne by present and future Designated Ratepayers on a basis that is [generally] consistent with their respective allocations of the costs and benefits of the Green Generation Initiative contemplated in the Fair Allocation Plan. In that regard, at the time of setting the Fair Allocation Plan for any particular period, the aggregate amount payable during future Reference Periods on account of Funding Obligations incurred on or before the date on which a new Funding Obligation is incurred should not exceed the allocation of the costs and benefits of the Green Generation Initiative to the applicable Ratepayer Group contemplated in the Fair Allocation Plan. If, despite the foregoing, the Administrative

[38~~38~~40] Once the Financing Plan is reviewed and approved there would be no further OEB review. If there is opportunity for further review, such review will have no impact on prior issued debt. Any further financings would be put on hold until such review is completed (during which time the IESO would again need to fund the shortfall on an interim basis and obtain necessary funding).

Agent determines that the anticipated amount of any Repayment (together with payments of other Finance Amounts) to be made in respect of a Reference Period would materially exceed the allocation of the costs and benefits of the Green Generation Initiative to the applicable Ratepayer Group under the then current Fair Allocation Plan, the Financing Plan shall require the Administrative Agent to make diligent efforts to determine whether a Refinancing or deferral of such Repayment may be reasonably and cost-effectively effected based on then prevailing market terms, conditions an circumstances, if such a Refinancing or deferral is determined to be available the Financing Plan shall require the Administrative Agent to make diligent efforts to implement such Refinancing or deferral on a basis that is consistent with the Fair Allocation Plan.

(6) Establishment of Special Purpose Entities – If the implementation of the Financing Plan contemplates the establishment of one or more special purpose finance entities to incur Funding Obligations as a Financing Entity under the Financing Plan, as an Absolute Assignee and on a basis that limits the recourse for the payment of such Funding Obligations to such Absolute Assignee's interest in, to and under the Regulatory Asset, the Administrative Agent shall have regard to the characteristics specified in Schedule 4 in establishing such special purpose entity.]

(7) Obligation to Apply IESO Remittances – The Administrative Agent shall ensure that amounts transferred to it under Article 5, as agent for and on behalf of the Regulatory Asset Owners, or otherwise in respect of or as proceeds from the Regulatory Asset shall only be applied or used to pay Finance Amounts when they are due and payable and for no other purpose.[39][41]

(8) Non-Recourse – The Financing Plan shall be implemented so that Funding Obligations incurred shall be without recourse to or to any assets of the Electricity Distributors, IESO, any Alternative Servicer, and Alternative Collection Agent, the Administrative Agent, the OEB, the Province or the Lieutenant Governor in Council, other than if and to the extent that such persons or entities are liable for the performance of obligations or duties arising under this Part or expressly pursuant to any Funding Obligation or obligation in relation to a Finance Amount. [All Funding Obligations shall contain a statement to the following effect: "Neither the full faith and credit nor the taxing power of the Province of Ontario is pledged to the payment of the principal of, or interest on, this [obligation].]

(9) Incurrences are Binding – Despite any failure to adhere to the Financing Plan or to comply with any requirement of this Part, all amounts payable or becoming due and payable by or on behalf of a Regulatory Asset Owner under or in connection with any obligation purporting to be a Funding Obligation, shall be binding for the purposes of this Part, including in determining the amount of Transition Charges, despite any impairment or defect resulting from such failure.

[39][41] We need to work in the idea that there may be Finance Reserve Deposits or other amounts that remain after paying Finance Amounts. Those surplus amounts should be credited back to Ratepayers.

Article 9 – Compliance Matters[40][42]

(1) **Right of the [OEB] to Inspect Books and Records** - For the purpose of investigating compliance with the provisions of this Part, the [OEB] shall have the right, jurisdiction, power and authority to examine the books and records of any person who is or may become obligated or have duties that arise under this Part or any Funding Obligation.

(2) **Power to Investigate Compliance and Impose Regulatory Sanctions** - Subject to the limitations set forth regarding the irrevocability of Transition Charges and the Undertaking of the Lieutenant Governor in Council, nothing in this Part shall (a) prevent or preclude the [OEB] from investigating the compliance of any person who is or may become obligated or have duties that arise under this Part [or any Funding Obligation] with the terms and conditions of this Part and requiring compliance by such person therewith; or (b) prevent or preclude the [OEB] or any successor regulator from imposing regulatory sanctions against any person who is or may become obligated or have duties that arise under this Part for its failure to comply with the terms and conditions of this Part[41].[43] **[NTD: We this this best practice would be to exclude any Financing Entity or Absolute Assignee from any Regulatory Sanctions or Regulatory Oversight]**

(3) **[Other Rating Settings** – When setting other rates for or in respect of any person who is or may become obligated or have duties that arise under this Part, including any Electricity Distributor, IESO, Generator or the Administrative Agent, nothing in this Part shall prevent the [OEB] or any successor regulator from taking into account the collection by or attribution to such person of administrative or servicing fees in excess of the actual incremental costs incurred by such person of providing administrative or servicing services.][42][44]

Article 10 – Undertaking of the Lieutenant Governor in Council[43][45]

(1) **No Action to limit, alter, or impair or terminate Transition Charges, the Regulatory Asset or Collections** – The [Lieutenant Governor in Council] shall not in any way take or permit any action to reduce, impair, postpone or terminate the obligation of Ratepayers to pay Transition Charges or impair the Regulatory Asset or the collection or recovery of Transition Charge Collections, either directly or indirectly[,including through the introduction of any bill or the passing of any legislation or regulation]. The amount of Transition Charges determined hereunder shall not be subject in any way to reduction, impairment, postponement or termination as a result of any action taken or

[40][42] As noted above, the outcome of any regulatory action undertaken by the OEB will not affect Funding Obligations that have been incurred under the Financing Plan. This Article is under consideration.

[41] ~~**Consider scope of OEB regulation and whether a Financing Entity should be subject to this sort of provision in any event.**~~

[43] **Consider scope of OEB regulation and whether a Financing Entity should be subject to this sort of provision in any event.**

[42][44] OPG has indicated that the risks and cost consequences to OPG of being an Administrative Agent or of consolidating a Financing Entity for accounting purposes should not be considered by the OEB in setting the regulated payment amounts for OPG. To be discussed.]

[43][45] Under consideration.

failure by the Lieutenant Governor in Council[,including through the introduction of any bill or the passing of any legislation or regulation].

(2) **Undertaking and Agreement** – The Lieutenant Governor in Council shall not in any way take or permit any action that limits, alters or impairs the value of the Regulatory Asset or, except as required by the estimates and adjustments made in determining the True-up Amount, reduce, alter or impair Transition Charges that are imposed, collected and remitted for the benefit of the Regulatory Asset Owners, including any Absolute Assignee from time to time, and any Pledgee from time to time[,including through the introduction of any bill or the passing of any legislation or regulation].

[If IESO becomes insolvent or otherwise incapable of performing its obligations under this Part, an IESO Successor will be established that is capable of performing such obligations in order that the Regulatory Asset Owners may appoint the IESO Successor as an Alternative Servicer or Alternative Collection Agent. Regulatory Asset Owners shall be fully compensated for any failure by the Lieutenant Governor in Council to comply with its undertakings and agreements in this Article 10(2) for any loss suffered by the Regulatory Asset Owner as a result of such failure.[4446]]

(3) **References to the Undertaking and Agreement** – Any non-confidential reference to the Undertaking of the Lieutenant Governor in Council, including in marketing materials and other documentation authorized for use by the Administrative in connection with any Funding Obligation, may be made provided that [*Add conditions to protect the Province*].

Article 11 – Regulations

Regulations may be made under this Part for the purposes described in Sections •,•,• and • and may be promulgated for any of the following purposes:

(a) to set standards and measures regarding the commercially reasonable requirements of the Province associated with a Regulatory Asset Owner incurring Funding Obligations or becoming obligated to pay any Finance Amount, including to establish guidelines regarding all-in funding costs; permitted Additional Funding Costs; required maturities and redemption and termination rights of Funding Obligations; liquidity requirements, in each case to a Financing Plan that is consistent in its effect with the Fair Allocation Plan;

(b) to establish and empower one or more regulated entities to undertake decision-making activities with respect to this Part;

(c) to set out reasonable requirements regarding the appointment or retention of advisors, agents, service providers, contract counterparties, including in relation to 'market terms and conditions' parameters;

[4446] Requested by Torys. For discussion.

(d) to provide for audit and compliance standards applicable to those persons who are or may become obligated or have duties that arise under this Part [or under any Funding Obligation];

(e) to provide for any pre-vetting and approval requirements in relation to any incurrence by a Regulatory Asset Owner of any Funding Obligation or obligation to pay any Finance Amount; and

(f) to provide for appeal and due process considerations in connection with the establishment, adoption, implementation and review of the Fair Allocation Plan or the Financing Plan.

Article 12- Miscellaneous[4547]

(1) **Choice of law** – The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the Regulatory Asset, any Transition Charge or the Undertaking of the Province shall be the laws of the Province.

(2) **Conflict of law** – In the event of conflict between this Part and any other law of the Province regarding the attachment, assignment or perfection, or the effect of perfection, or priority of any Disposition or Pledge, this Part shall govern to the extent of the conflict.

(3) **No further acts or approvals required** - Notwithstanding any provisions of any law of the Province to the contrary, no approvals, notices or authorizations other than those specified in this Part shall be required with respect to the actions to be taken in compliance with this Part, including under the Financing Plan or in relation to the establishment of the Fair Allocation Plan, and the transactions and contracts authorized in or contemplated by this Part or the Financing Plan, including the incurrence of any Funding Obligation, any Disposition, any Pledge or in the payment and performance of any attendant or incidental contract and any related expenses incurred to facilitate the preparation and implementation of the Financing Plan.

(4) **Effect of invalidity after the Incurrence of any Funding Obligation** - Effective on the date that a Funding Obligation is incurred under this Part, if any provision of this Part is held to be invalid or is invalidated, superseded, replaced, repealed or expires for any reason, that occurrence shall not affect any action allowed under this Part that is taken by any person who is or may become obligated or have duties that arise under this Part and any such action shall remain in full force and effect.

(5) **Severability** - If any Article, Section, paragraph or subparagraph of this Part or the application thereof to any person, circumstance or transaction is held by a court of

[4547] OPG would like the specific amendments related to OPG to be included in the Bill.]

competent jurisdiction to be unconstitutional or invalid, the unconstitutionality or invalidity shall not affect the constitutionality or validity of any other Article, Section, paragraph or subparagraph of this act or its application or validity to any person, circumstance or transaction, including the irrevocability of Transition Charges, the validity of the Regulatory Asset, the incurrence of any Funding Obligation, any Disposition, any Pledge, or the collection and recovery of Transition Charge Collections. To these ends, the Legislature hereby declares that the provisions of this Part are intended to be severable and that the Legislature would have enacted this Part even if any Article, Section, paragraph or subparagraph of this Part held to be unconstitutional or invalid had not been included in this Part.

Schedule 1

Guidelines for Estimates

[To be considered.]

Schedule 2

Requirements Applicable to Alternative Invoicing Agent/ Alternative Collection Agent

[To be considered.]

Schedule 3

Principles, Parameters, Requirements and Conditions for Establishing the Financing Plan

The Financing Plan shall have regard to the following principles, parameters, requirements and conditions:[***Consider others.***]

(1) the Financing Plan shall, in respect of each Reference Period, describe the allocations of Unrecovered Transition Costs to each Reference Group as contemplated by the Fair Allocation Plan;

(2) the Administrative Agent shall make a good faith estimate of the Funding Shortfalls for each Reference Period, based on the terms of the Power Contracts and assumptions considered to be reasonable respecting forward market prices for electricity;

(3) the Administrative Agent shall describe alternative funding arrangements considered to be suitable for the purpose of funding the estimated Funding Shortfalls, including by reference to short term and/or long term Funding Obligations that could reasonably be incurred by the Regulatory Asset Owners for such purpose;

(4) such Funding Obligations shall reflect quantities, maturities, payment obligations, prepayment or redemption rights and such other features so that the effect of incurring such Funding Obligations would be that the payments made thereunder in respect of each Reference Period (including the anticipated Finance Amounts becoming payable in relation to such Funding Obligations) would reasonably correspond to the allocations of Unrecovered Transition Costs to the applicable Reference Group under the Fair Allocation Plan;

(5) the Financing Plan shall reflect the outcome of a financial model that incorporates the assumptions and requirements specified in any contemplated Funding Obligation (e.g., any limit on the maximum amount of Transition Charges charged to a hypothetical Ratepayer relative to his or her monthly electricity bill, as prescribed by any rating agency that ascribes its credit rating to or in respect of the Funding Obligation having regard to the application of the Allocation Methodology); [***Consider what outputs from OPG will be tested by the OEB and when. The modelling in the Financing Plan may permit the OEB to check progress against the model from time to time, which may provide a basis for the MoE/OEB to require a review/amendment to the Financing Plan if the ongoing operation of the program results in significant deviation from the model. Consider whether this flexibility is desirable.***]

(6) the Administrative Agent, for and on behalf of each Regulatory Asset Owner, shall seek to incur Funding Obligations from time to time on the best terms available at such time for a financing transaction of the size and type contemplated, and having regarding to the following parameters:

a. whether the Regulatory Asset Owners will require committed access to short term liquidity to cover estimated Funding Shortfalls prior to incurring fixed term Funding Obligations, and the amount and repayment terms of any such required liquidity; provided that any Repayment required to be made under the terms of

such short-term liquidity would not obligate a Regulatory Asset Owner to repay an amount in relation to a Reference Period that would have the effect of the Financing Plan permitting incurrences of Funding Obligations payable in such Reference Period that would exceed the allocations of Unrecovered Transition Costs to the applicable Reference Group under the Fair Allocation Plan;

b. the basis upon which the Administrative Agent will select the term to maturity of any other Funding Obligations; provided that any Repayments required to be made under the terms of such Funding Obligations shall not obligate a Regulatory Asset Owner to repay an amount in relation to a Reference Period that would have the effect of the Financing Plan permitting incurrences of Funding Obligations payable in such Reference Period that would exceed the allocations of Unrecovered Transition Costs to the applicable Reference Group under the Fair Allocation Plan;

c. the basis upon which the interest rates applicable to such Funding Obligations would be determined;

d. the reference capital or finance market in which such Funding Obligation would be incurred, including markets outside of Canada if considered by the Administrative Agent to be appropriate in the circumstances;

e. the currency of payments under such Funding Obligations and, if the Funding Obligations are denominated in a currency other than Canadian dollars, the basis upon which the Administrative Agent shall cause the applicable Regulatory Asset Owner to enter into hedging transactions to mitigate currency risk, including acceptable minimum and maximum coverage levels, having regard to the availability of related derivatives having notional amounts corresponding to the repayment and maturity profile of such Funding Obligations;

f. the basis upon which the Administrative Agent will select counterparties under any transaction to be entered into by a Regulatory Asset Owner, including any paying agent, servicer, cash manager, liquidity provider, hedge counterparty, account bank, lender, note trustee, security trustee, paying agent, registrar/transfer agent, financial services agent, arranger or manager;

g. the basis upon which the Administrative Agent will manage counterparty risk, including by providing for maximum counterparty exposure limits having regard to concentration, credit and other identified risks with respect to individual counterparties or countries;

h. the basis upon which the Administrative Agent will negotiate and settle Finance Amounts, including the amount of any Redemption Amounts, Finance Reserve Deposits and Additional Funding Charges;

(7) the basis upon which Funding Obligations may be redeemed, prepaid, repurchased or otherwise affected, having regard for the need to minimize debt service charges and other Funding Costs, and the need to maintain a stable funding platform to finance the Funding Shortfall from time to time on a basis that is consistent with the allocations of

Unrecovered Transition Costs to applicable Reference Groups under the Fair Allocation Plan;

(8) the basis upon which any Repayments, Funding Costs and Redemption Amounts will be paid, including any defeasance, sinking fund or through other reserves or liquidity facilities;

(9) the basis upon which fees, charges, expenses, costs, indemnities, reimbursements and other amounts payable to or for the benefit of the Administrative Agent and other agents and service providers to the Regulatory Asset Owners may be determined, allocated and paid;

(10) the timing and basis upon which Finance Reserve Deposits and Finance Reserve Withdrawals may be made;

(11) the basis upon which any obligations for any other Additional Funding Charges may be incurred and paid;

(12) the basis upon which the cash flows arising from time to time or otherwise derived from the Regulatory Asset may otherwise be applied, including in relation to any counterparty enforcement and realization scenario;

(13) the transmittal to [the IESO] of information related to the amounts to be included in the determination of the Period Transition ~~**Charge**~~**Amount** for a Reference Period;

(14) the basis upon which any Disposition may be made or effected by a Regulatory Asset Owner, including parameters for determining the purchase price for the interest in the Regulatory Asset that is the subject matter of such Disposition, and any consents and releases that may be usefully obtained in connection with such Disposition;

(15) a description of each special purchase entity that will purchase the Regulatory Asset from the IESO, including proposed capitalization, governance, and restrictions on their powers and activities having regard to the parameters in Schedule 4; and

(16) the basis on which any Pledge may be given or effected.

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Preliminary Draft for Discussion Purposes Only

Schedule 4

Creation of any Special Purpose Entity to become a Regulatory Asset Owner]

(1) Powers and Abilities:

a. No part of the revenue or assets of a Regulatory Asset Owner shall enure to the benefit or be distributable to its trustees, officers or directors, as the case may be, or any other private persons, except as may be provided for actual services rendered;

b. Each Regulatory Asset Owner shall be authorized to:

i. incur the Funding Obligations contemplated by a Financing Plan and use the proceeds thereof to purchase or acquire, and to own, hold and use the Regulatory Asset;

ii. contract for servicing of the Restructuring Asset and any bonds contemplated by a Financing Plan and for administrative services; and

iii. pledge the Regulatory Asset to secure the Funding Obligations incurred by the Regulatory Asset Owner;

c. So long as any Funding Obligations contemplated under a Financing Plan are outstanding, a Regulatory Asset Owner shall not be authorized to merge or consolidate, directly or indirectly, with any person or entity;

d. a Regulatory Asset Owner shall not have the power or authority to incur or guarantee or otherwise become obligated to pay any debt or obligations other than what is contemplated under a Financing Plan;

e. a Regulatory Asset Owner shall cause the proceeds obtained by incurring any Funding Obligation to be placed in one or more separate accounts and used only to purchase the Regulatory Asset and pay any costs as provided for in a Financing Plan; and

f. so long as the Regulatory Asset is pledged to secure Funding Obligations, the Regulatory Asset Owner must apply revenues from the collection of Transition Charges only to repay such Funding Obligations and other costs as provided for in a Financing Plan.

(2) Governance of Regulatory Asset Owner – A Regulatory Asset Owner shall be created having regard to the following principles:[***OPG to confirm if SPE will be a trust or another type of entity.***]

a. **[Number of trustees]**

b. **[Replacement of trustees; vacancies; appointment of successors]**

c. **[Removal of trustees for neglect of duty or misconduct]**

d. **[Quorum and meetings]**

e. **[Fiduciary duty]**

f. **[Isolation, separateness and other "non-consolidation" and "bankruptcy remoteness" criteria]**

g. **[Delegation of powers and duties to administrative agents]**

h. **[Delegation of powers and duties to administrative agents]**

Summary report: Litéra® Change-Pro TDC 7.5.0.196 Document comparison done on 04/07/2017 8:09:55 PM	
Style name: H&W Standard	
Intelligent Table Comparison: Active	
Original DMS: iw://EMF_US/HW_US/64648661/1	
Modified DMS: iw://EMF_US/HW_US/64648661/2	
Changes:	
Add	119
~~**Delete**~~	93
~~Move From~~	0
Move To	0
Table Insert	0
~~**Table Delete**~~	0
Table moves to	0
~~Table moves from~~	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
Total Changes:	212

ATT00005.pdf

Fwd_ Access letter.rtf

From: Kim Marshall [Kim.Marshall@ieso.ca]
To: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
CC: Michel Picard [mpicard@kpmg.ca]
Subject: Fwd: Access letter
Date: Tuesday, June 13, 2017 15:35:11
Attachment 1: EY Access Letter.doc
Attachment 2: ATT00001.htm

Nadine a letter for you to forward to e&y

Sent from my iPhone

Begin forwarded message:

> **From:** "Picard, Michel" <mpicard@kpmg.ca>
> **Date:** June 12, 2017 at 1:22:41 PM EDT
> **To:** Kim Marshall <Kim.Marshall@ieso.ca>
> **Subject: Access letter**
>
> Hi Kim,
>
> Please find enclosed the access letters to be signed by IESO and EY in relation to our meeting on Thursday. These letters need to be signed before we meet with them.
>
> Thanks in advance,
>
> **Michel Picard, CPA, CA**
>
> Partner, Accounting Advisory Services
>
> KPMG LLP

333 Bay Street, Suite 4600

Toronto, Ontario, M5H 2S5

T 416 777 8414

M 416 560 2569

mpicard@kpmg.ca

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[ON KPMG LETTERHEAD]

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Ernst & Young LLP (the "Recipient")
[Address]

Attention: [X]

June 12, 2017

Re: Independent Electricity System Operator ("IESO")

In connection with the accounting advisory work performed by KPMG LLP ("KPMG") for IESO, IESO has requested that KPMG attend a meeting with IESO, the Province of Ontario's Treasury Board Secretariat ("TBS"), and the Recipient, in your capacity as external advisor to TBS, in order to answer your questions related to:

1 IESO's market related activities and their potential adoption of rate regulated accounting; and

2 the interpretation and application of Generally Accepted Accounting Principles regarding regulator independence

(collectively, the "Information").

The Information was derived solely in accordance with the specific terms of reference (the "**Engagement Letter**") agreed between ourselves and IESO for their exclusive use and for no other purpose.

The Information should not be regarded as suitable for use by any person or persons other than IESO or for any purpose other than set out in the Engagement Letter. We accept no responsibility or liability for any reliance that the Recipient may place on the Information.

You should note that we have not sought to update the Information for events subsequent to **[X]** and significant events may well have occurred since that date.

In consideration of our providing to the Recipient the Information the parties hereto agree to the following:

a) No one at KPMG is authorized by KPMG to make any representations to the Recipient with respect to IESO. Nor may anyone at KPMG provide the Recipient with the Information on any basis which is inconsistent with or varies or adds to the terms of this letter;

b) KPMG neither warrants nor represents that the Information is accurate, complete, sufficient or appropriate for any purpose contemplated by the Recipient;

c) The Information is not provided pursuant to any agreement or other arrangement of a contractually binding nature between our firm and the Recipient;

d) The Recipient does not acquire any rights against our firm or otherwise as a result of our providing the Information;

e) Our firm and personnel do not have any duties, responsibilities, liabilities or obligations to the Recipient as a result of our providing the Information; and

f) The Recipient will not commence any action, suit or proceeding or make any demand, complaint or claim against us as a result of KPMG providing the Information or for any omission thereto.

Further, the Recipient agrees that the Information will be maintained by them in strict confidence and not disclosed to any other party, and will be used by them only in connection with purpose described above. The Recipient agrees to notify KPMG promptly of any request received by the Recipient from any court or applicable regulatory authority with respect to the Information.

This letter sets out the entire understanding of the parties in relation to the conditions upon which access to the Information is provided and replaces all prior understandings, if any, made by KPMG.

Please indicate your acceptance to the terms of this letter by signing and returning one copy of this letter to the undersigned.

Yours very truly,

KPMG LLP

Michel Picard
Partner

****

The Recipient hereby acknowledges that it understands and agrees to the conditions upon which the Information is provided.

by: _____ _____
signature Date:

Name:

Title: _____

ATT00001.pdf

Fwd_ Amended indemnity letters.rtf

From: Kim Marshall [Kim.Marshall@ieso.ca]
To: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
Subject: Fwd: Amended indemnity letters
Date: Wednesday, February 14, 2018 18:13:01
Attachment 1: @

This message has been archived. View the original item
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> From: "Picard, Michel" <mpicard@kpmg.ca>
> Date: February 14, 2018 at 5:09:32 PM EST
> To: Kim Marshall <Kim.Marshall@ieso.ca>
> Subject: Amen

Attachments:
OPCD indemnity letter.pdf (446 KB)
https://ctsbigdcapmvs05.cihs.ad.gov.on.ca/EnterpriseVault/ViewMessage.asp?VaultId=184971630C5FAB646A01170AFB6CF78EC1110000ctsbigdcapmvs01&SavesetId=201803201571016~201802142213070000~Z~C08431A0528C3F69B7EB9E3830C80D01&AttachmentId=1OPCD indemnity letter.pdf

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Fwd_ Amended indemnity letters.rtf

From: Kim Marshall [Kim.Marshall@ieso.ca]
To: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
Subject: Fwd: Amended indemnity letters
Date: Wednesday, February 14, 2018 18:13:01
Attachment 1: OPCD indemnity letter.pdf
Attachment 2: ATT00001.htm
Attachment 3: IESO indemnity letter.pdf
Attachment 4: ATT00002.htm

Sent from my iPad

Begin forwarded message:

From: "Picard, Michel" <mpicard@kpmg.ca>
Date: February 14, 2018 at 5:09:32 PM EST
To: Kim Marshall <Kim.Marshall@ieso.ca>
Subject: Amended indemnity letters

Hi Kim,

I have amended the indemnity letters based on my discussion with Cindy.

Regards,

Michel Picard, CPA, CA

Partner, Accounting Advisory Services

KPMG LLP

333 Bay Street, Suite 4600

Toronto, Ontario, M5H 2S5

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M 416 560 2569

mpicard@kpmg.ca

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Ms. Cindy Veinot
Treasury Board Secretariat, Office of the Provincial Controller
Frost Building South
7 Queen's Park Crescent East
Toronto, Ontario, M7A 1 Y7
Canada

Ernst & Young LLP
[address]

February 14, 2018

In connection with the preparation of a technical accounting paper (the "Accounting Paper") by the Office of the Provincial Controller Division, Treasury Board Secretariat (the "OPC") and their advisors at Ernst & Young LLP ("EY") (OPC and EY collectively being the "Recipients") related to the Fair Hydro Plan, 2017, KPMG LLP ("KPMG") understands that the Recipients have requested a copy of our letter to IESO dated February 12, 2018 regarding the application of PSAS to the consolidation of a trust and to the recognition and derecognition of a variance account in relation to the Ontario Fair Hydro Plan Act, 2017 (the "Document").

KPMG is prepared to consent to IESO providing the Recipients with a copy of the Document subject to their agreement to the terms of this letter agreement.

The Document was prepared solely in accordance with the specific terms of reference (the "Engagement Letter") agreed between ourselves and IESO for their exclusive use and for no other purpose.

The Document should not be regarded as suitable for use by any person or persons other than the addressees of the Document or for any purpose other than set out in the Engagement Letter. We accept no responsibility or liability for any reliance that the Recipients may place on the Document.

The Recipients should note that we have not sought to update the Document for events subsequent to February 12, 2018 and significant events may well have occurred since that date.

In consideration of IESO providing the Document to the Recipients, the Recipients hereby agrees to the following:

a) No one at KPMG is authorized by KPMG to make any representations to the Recipients with respect to IESO. Nor may anyone at KPMG provide the Recipients with the

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Document on any basis which is inconsistent with or varies or adds to the terms of this letter;

b) KPMG neither warrants nor represents that the Document is accurate, complete, sufficient or appropriate for any purpose contemplated by the Recipients;

c) The Document is not provided pursuant to any agreement or other arrangement of a contractually binding nature between our firm and the Recipients;

d) The Recipients do not acquire any rights against our firm or otherwise as a result of our agreement to disclose the Document to the Recipients;

e) Our firm and personnel do not have any duties, responsibilities, liabilities or obligations to the Recipients relating to the Document;

f) The Recipients will not commence any action, suit or proceeding or make any demand, complaint or claim against us relating to the Document; and

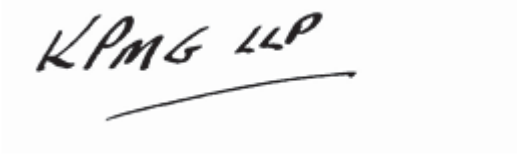
g) The Recipients will provide KPMG with a copy of the Accounting Paper as soon as it is available.

Further the Recipients agree that the Document will be maintained by them in strict confidence and not disclosed to any other party, will be used by them only in connection with purpose described above, and that the Recipients will notify KPMG promptly of any request received by Recipients from any court, regulatory authority or other person or entity with respect to the Document.

This letter sets out the entire understanding of the parties in relation to the conditions upon which access to the Document is provided and replaces all prior understandings, if any, made by KPMG.

Please indicate your acceptance to the terms of this letter by signing and returning one copy of this letter to the undersigned.

Yours very truly



Michel Picard
Partner

****

The Recipients hereby acknowledges that it understands and agrees to the conditions upon which the Document is provided.

Office of the Provincial Controller, Ontario Treasury Board Secretariat

by: _____ _____

Signature Date

Name: Ms. Cindy Veinot
Title: Treasury Board Secretariat, Office of the Provincial Controller

Ernst & Young LLP

by: _____ _____

Signature Date

Name: _____

Title: _____

ATT00001.pdf

IESO indemnity letter.pdf

KPMG LLP
Bay Adelaide Centre
Suite 4600
333 Bay Street
Toronto ON
M5H 2S5

Telephone (416) 777-8500
Fax (416) 777-8818
www.kpmg.ca

Private & Confidential

Ms. Kim Marshall
VP, Corporate Services & CFO
Independent Electricity System Operator ("**IESO**")

120 Adelaide Street West Suite 1600
Toronto, ON
M5H 1T1

February 14, 2018

Dear Madam:

In connection with the Government of Ontario's Fair Hydro Plan, IESO has requested that KPMG LLP ("**KPMG**") consent to the provision of a copy of our letter to IESO dated February 12, 2018 regarding the application of PSAS to the consolidation of a trust and to the recognition and derecognition of a variance account in relation to the Ontario Fair Hydro Plan Act, 2017 (the "**Document**") to the Office of the Provincial Controller, Ontario Treasury Board Secretariat and their advisors at Ernst & Young LLP (collectively, the "**Recipients**").

We are prepared to agree to IESO providing the Document to the Recipients subject to the Recipients agreeing to KPMG's terms and conditions for such disclosure, and to your agreement to the terms of this letter.

IESO will accept the risk, and not hold KPMG responsible, if providing the Document to the Recipients directly or indirectly results in any actions, damages, claims, fines, penalties, complaints, demands, suits, proceedings, liabilities, costs, expenses, or losses (collectively "Claims") against or to IESO.

In the event of any Claims by any third party against KPMG that directly or indirectly arise out of or relate to IESO providing a copy of the Document to the Recipients, IESO will indemnify and hold harmless KPMG from all such Claims, including without limitation, reasonable legal fees, except to the extent finally determined to have resulted from intentional, deliberate or fraudulent misconduct of KPMG.

For purposes of this letter, the term KPMG shall include it subsidiaries, its associated and affiliated entities and their respective current and former partners, directors, officers, employees, agents and representatives. This letter shall apply regardless of the form of the Claim, whether in contract, statute, tort (including, without limitation, negligence) or otherwise.

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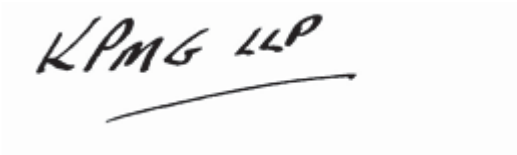
Please indicate your acceptance to the terms of this letter by signing and returning a copy of this letter to the undersigned.

Yours very truly,



Michel Picard
Partner

****

We are in agreement with the terms of this letter agreement.

INDEPENDENT ELECTRICITY SYSTEM OPERATOR

by: _____ _____
Signature: Date:

Name: Ms. Kim Marshall
Title: VP, Corporate Services & CFO

ATT00002.pdf

Fwd_ Deloitte Quote.rtf

From: Kim Marshall [Kim.Marshall@ieso.ca]
To: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
Subject: Fwd: Deloitte Quote
Date: Monday, October 16, 2017 20:38:27

Fyi

Sent from my iPad

Begin forwarded message:

From: Jordan Penic <jordan.penic@ieso.ca>
Date: October 16, 2017 at 8:17:27 PM EDT
To: "Teliszewsky, Andrew (ENERGY)" <Andrew.Teliszewsky@ontario.ca>, "Schlaepfer, Martin (ENERGY)" <Martin.Schlaepfer@ontario.ca>, "Hume, Steen (ENERGY)" <Steen.Hume@ontario.ca>
Cc: Kim Marshall <Kim.Marshall@ieso.ca>, Kate Longmoore <Kate.Longmoore@ieso.ca>
Subject: Deloitte Quote

Hello,

In the interest of time I'm sending to several at once.

Please find below the paragraph provided by Deloitte:

Summary of Deloitte Report

KPMG is the auditor of the IESO. Deloitte was engaged by KPMG to provide its opinion (the “Deloitte Report”) asson whether a public sector entity could use rate regulated accounting under Canadian Public Sector Accounting Standards (“PSAS”), as established by CPA Canada.

PSAS are silent on the question of how to account for the impacts of rate regulation.

Through an analysis of the guidance provided in PSAS, the Deloitte Report concluded that it is appropriate for a public sector entity to select accounting policies that would result in the recognition of the impacts of rate regulation, by analogy to US accounting standards and the related eligibility criteria on the topic. The Deloitte report further concluded that any regulatory assets and liabilities recognized through the appropriate application of these policies would meet the criteria for recognition under PSAS.

It should be noted, however, that the Deloitte Report did not include in its scope an assessment of the specific regulatory assets or liabilities recognized by the IESO through the application of this accounting policy under PSAS."

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Fwd_ Fair Hydro- Financing Entity costs.rtf

From: Kim Marshall [Kim.Marshall@ieso.ca]
To: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
Subject: Fwd: Fair Hydro- Financing Entity costs
Date: Tuesday, July 11, 2017 12:34:47
Attachment 1: reg_framework _IESO internal draft_170707.doc
Attachment 2: ATT00001.htm

Sent from my iPad

Begin forwarded message:

From: Michael Boll <Michael.Boll@ieso.ca>
Date: July 10, 2017 at 9:08:39 AM EDT
To: Susan Nicholson <susan.nicholson@ieso.ca>, Kim Marshall <Kim.Marshall@ieso.ca>, "Picard, Michel" <mpicard@kpmg.ca>
Cc: "Glenn Zacher (GZacher@stikeman.com)" <GZacher@stikeman.com>, Peter Hamilton <PHamilton@stikeman.com>, Jeannette Briggs <jeannette.briggs@ieso.ca>, Anthony Martinello <Anthony.Martinello@ieso.ca>
Subject: Fair Hydro- Financing Entity costs

Privileged and Confidential

At the meeting at E&Y on June 28, the prospect of the IESO funding the Financing Entity's costs in the early years through a regulatory mechanism, as opposed to contract, was raised. Attached is a rough outline of what such a regulatory mechanism may look like. Before discussing this with the Ministry, we would like to understand how this regulatory funding mechanism would be treated from an IESO accounting perspective.

Regards,

Michael

Michael Boll | Associate General Counsel

Independent Electricity System Operator (IESO) | T: (416) 969-6023

120 Adelaide Street West, Suite 1600, Toronto, ON, M5H 1T1

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reg_framework _IESO internal draft_170707.pdf

Privileged & Confidential

Regulatory Option for Temporary Funding of Financing Entity's Cost/Interests during Moratorium Period

The following is a potential regulatory mechanism whereby IESO settlement mechanisms would be used to fund the financing entity's costs until the clean energy adjustment may be charged to specified consumers. We want to confirm how this would be treated from an accounting perspective prior to discussing it with the Ministry. Since we have not yet discussed with the Ministry, we do not know whether the government will agree that this mechanism can be implemented with the existing regulatory tools.

1. A regulation could be passed (possibly pursuant to section 26(1) of FHA) requiring IESO, as part of regulatory asset transfer, to fund financing entity's costs/interest in relation to such transferred regulatory asset for the period during which clean energy adjustment may not be recovered directly from specified consumers. The regulation may indicate these funding amounts will be added to the global adjustment (GA) but only allocated to specified consumers (i.e. not form part of GA payable by Class A or Class B consumers who are not also specified consumers under Fair Hydro).
    a. This regulatory funding mechanism would be similar to other existing mechanisms whereby a third party's costs are funded from the GA via IESO settlement processes. For example, section 26.1 of the Ontario Energy Board Act creates a mechanism for IESO to collect costs incurred by the Ministry from consumers. Likewise, section 78.5 of the Ontario Energy Board Act, requires the IESO to make payments to distributors with respect to amounts approved by the OEB for CDM programs and to recover such payment amounts from prescribed consumers as part of the GA.

2. A regulation could be passed (or amend O. Reg for 430/04 and/or O. Reg 429/04) pursuant to section 25.33(1)(c) and 25.33(2)(c) of the Electricity Act:

    - prescribing funding amounts incurred/paid for by the IESO pursuant to paragraph 1 above.

    - prescribing specified consumers (as defined in Fair Hydro Act) as class of market participants and class of consumers for which adjustments will be made relating to funding amounts

    - prescribing, as necessary, payment adjustments and variance account treatment

3. If the above regulations were passed, amounts IESO invoices electricity vendors monthly would include each electricity vendor's proportionate share of the funding amount. Proportionate share will likely be determined based on volume of electricity

withdrawn by the electricity vendor's specified consumers during that month compared to total electricity withdrawn by all specified consumers in province.

4. Difference between gross amounts billed by IESO to electricity vendors (which include funding amounts referred to above) and net amounts received by IESO from electricity vendors taking into account fair hydro adjustment constitutes IESO deferral (s. 23, FHA and s. 15, O. Reg 206/17).

5. IESO deferral is included in a variance account (s. 24(1), FHA)

6. All amounts in variance account constitute a regulatory asset (s. 25, FHA), which the IESO:

    - may transfer to the financing entity (s. 26(1), FHA)

    - or, if any balance remains in the variance account, recover through OEB-approved rates from specified consumers on or after May 1, 2021 (s. 25, FHA)

ATT00001.pdf

Fwd_ Lawyers proposed wording on IESO funding mechanism.rtf

From: Kim Marshall [Kim.Marshall@ieso.ca]
To: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
Subject: Fwd: Lawyers proposed wording on IESO funding mechanism
Date: Thursday, June 22, 2017 10:13:34

FYI

Sent from my iPhone

Begin forwarded message:

From: JORDA Jenny -FIN & C CTRL <jenny.jorda@opg.com>
Date: June 22, 2017 at 10:00:22 AM EDT
To: Laney Doyle <laney.doyle@ca.ey.com>, "'Picard, Michel'" <mpicard@kpmg.ca>, 'Brittany Keenan' <Brittany.Keenan@ca.ey.com>, 'Susan Nicholson' <susan.nicholson@ieso.ca>
Cc: 'Kim Marshall' <Kim.Marshall@ieso.ca>, MAUTI John -FIN & C CTRL <john.mauti@opg.com>
Subject: Lawyers proposed wording on IESO funding mechanism

Hi All,

See below for the lawyer's proposed draft on how the language around the funding mechanism is supposed to work. In speaking with them, it sounds like the IESO will have to be contractually obligated to pay the interest and fees to the Trust.

. From July 1, 2017 – April 30, 2021 (the "moratorium period"), it is not expected that any clean energy adjustment amounts will be charged to specified consumers. As a result, there will need to be another source of cash flow to fund financing costs incurred by the financing entity to acquire investment interests during the moratorium period.
2. During the moratorium period, it is proposed that at any time the IESO transfers a specified portion of the regulatory asset to the financing entity (which is expected to occur on a monthly basis), the IESO will, as part of the consideration for the transfer, agree to pay all (i) Funding Costs, (ii) Finance Reserve Deposits, (iii) Expenses and (iv) Tax Liabilities net of Tax Refunds (as such terms are defined in the attached proposed definition of "Finance Amount") which are incurred by the financing entity relating to the purchase of the specified portion of the regulatory asset. (The attached definition of "Finance Amount" is a working draft of what OPG and the Dealers are expecting to be in the Regulations – it is still being reviewed by the Dealers and does not yet reflect any impact of funds coming from IESO through funding rebates or otherwise.)
Any such amounts paid by the IESO to the financing entity are referred to as "funding rebates". These funding rebates can be viewed as inducement payments made by the IESO in order to induce the financing entity to pay par for the regulatory asset in light of the moratorium period.
3. It is expected that the Regulations will provide that concurrent with the payment of any funding rebate by the IESO, the IESO will be entitled to record an amount equal to such funding rebate in the variance account it maintains for the Fair Hydro program. As a result, any funding rebates paid by the IESO will form part of the regulatory asset that may be subsequently transferred to a financing entity (and recoverable by the financing entity through the clean energy adjustment after the moratorium period). We did not discuss how the IESO's carrying

costs for providing the funding rebates would be dealt with. One option is that these costs are dealt with in the same way as the carrying costs of the IESO's current credit facility are dealt with; that is, they are socialized among all ratepayers. However, if the carrying costs are to be funded only from Specified Consumers then these IESO costs would also have to be tracked separately and added to the IESO Deferral pursuant to the Regulations. Michel – can you let us know how this proposed wording will impact IESO accounting? Thanks.

Jenny Q Jorda, CPA, CA | Senior Manager, Accounting Policy and Controls | Ontario Power Generation
700 University Avenue, Toronto ON M5G 1X6 | Phone: (416) 592-2531| Fax: (416) 592-7758 |E-mail: jenny.jorda@opg.com

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Fwd_ Opinion-Fair Hydro Transaction.rtf

From: Kim Marshall [Kim.Marshall@ieso.ca]
To: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
Subject: Fwd: Opinion-Fair Hydro Transaction
Date: Wednesday, February 14, 2018 18:44:27
Attachment 1: stikemanelliott_logo_rgb_120px.png
Attachment 2: ATT00001.htm
Attachment 3: Revised SE Opinion re IESO.PDF
Attachment 4: ATT00002.htm

Sent from my iPad

Begin forwarded message:

From: Peter Hamilton <PHamilton@stikeman.com>
Date: February 12, 2018 at 5:11:59 PM EST
To: Kim Marshall <Kim.Marshall@ieso.ca>, Michael Boll <Michael.Boll@ieso.ca>
Cc: "Picard, Michel" <mpicard@kpmg.ca>, Glenn Zacher <GZacher@stikeman.com>
Subject: Opinion-Fair Hydro Transaction

No worries, see below.

I refer to my firm's opinion, dated December 21, 2017, attached. This opinion is identical to what you have previously reviewed with the exception that there is a broader list of addressees.

With respect to this opinion I can confirm as follows:

Notwithstanding any language to the contrary in our opinion of even date with respect to certain bankruptcy issues relating to the above-referenced transaction, you are authorized to make available to your auditors such opinion solely as evidential matter in support of their evaluation of management's assertion that the transfer of the specified portion of the regulatory asset pursuant to which the financing entity will acquire a corresponding investment interest (Sections 26 and 27 of the FHP Act) meets the conditions for derecognition under Canadian Public

Sector Accounting Standards, provided a copy of this letter is furnished to them in connection therewith. In authorizing you to make copies of such opinions available to your auditors for such purpose, we are not undertaking or assuming any duty or obligation to your auditors or establishing any lawyer-client relationship with them. Further, we do not undertake or assume any responsibility with respect to financial statements of you or your affiliates.

https://na01.safelinks.protection.outlook.com/?url=http%3A%2F%2Fwww.stikeman.com&data=01%7C01%7Ckim.marshall%40ieso.ca%7Ca2027238a4d442948e9508d57265d07a%7C7cd55abd63f243c58f4bd38ea458add8%7C0&sdata=1PJyY6%2BFl3ENygSPUXzEsLsbcIR%2FwomzPrmQn%2BiXU38%3D&reserved=0

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stikemanelliott_logo_rgb_120px.pdf

Stikeman Elliott

ATT00001.pdf

Stikeman Elliott LLP Barristers & Solicitors

5300 Commerce Court West, 199 Bay Street, Toronto, ON M5L 1B9 Canada

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Revised SE Opinion re IESO.PDF

Stikeman Elliott

Stikeman Elliott LLP
Barristers & Solicitors
5300 Commerce Court West
199 Bay Street
Toronto, ON Canada M5L 1B9

Main: 416 869 5500
Fax: 416 947 0866
www.stikeman.com

December 21, 2017

BNY Trust Company of Canada, in its capacity as Indenture Trustee for the Specified Creditors from time to time
One York Street, 6th Floor
Toronto, Ontario M5J 0B6

Fair Hydro Trust, as Issuer
c/o Computershare Trust Company of Canada
100 University Avenue
11th Floor
Toronto, Ontario M5J 2Y1

Ontario Power Generation Inc., as Manager
700 University Avenue
Toronto, Ontario M5G 1X6

Computershare Trust Company of Canada, as Issuer Trustee
100 University Avenue
11th Floor
Toronto, Ontario M5J 2Y1

Moody's Investors Service Inc.
70 York St
Toronto, Ontario M5J 1S9

DBRS Limited
DBRS Tower
181 University Avenue, Suite 700
Toronto, Ontario M5H 3M7 Canada

Dear Sirs:

We have acted as counsel for Independent System Operator (the "**IESO**") in connection with a Master Transfer and Services Agreement dated December 21, 2017 (the "**Master Agreement**") entered into between the IESO and Fair Hydro Trust (the "**Trust**").

The opinions expressed herein relate only to the laws of the Province of Ontario (the "**Province**") and the federal laws of Canada applicable therein in effect on the date hereof, and no opinions are expressed as to the laws of any other jurisdiction.

Interpretation

Terms with initial capital letters in this opinion have the meanings given to them in the Master Agreement unless otherwise defined herein. Terms both underlined and in italics have the meanings given to them in the *Ontario Fair Hydro Plan Act* (the "**Act**").

Documents

As such counsel, we have participated in the preparation of and examined an executed copy of each of:

(a) the Master Agreement;

(b) a Transfer Notice dated December 21, 2017 executed by the Trust and accepted by the IESO (the "**Initial Transfer Notice**");

(c) an acknowledgment and indemnity agreement dated December 21, 2017 entered into between the IESO and the Trust (the "**Indenture Trustee**") (the "**Acknowledgment**"); and

(d) a security agreement dated December 21, 2017 made by the IESO in favour of the Trust (the "**Security Agreement**").

The Master Agreement and the Initial Transfer Notice are referred to as the "**Initial Transfer Documents**." The Initial Transfer Documents, the Acknowledgment and the Security Agreement are referred to as the "**Documents**".

Assumptions

For the purposes of the opinions expressed herein, we have assumed:

(a) the genuineness of all signatures of all parties and the legal capacity of all individuals signing any documents;

(b) the authenticity of all documents submitted to us as originals, the conformity to originals of all documents submitted to us as certified or photostatic or electronically transmitted copies or facsimiles thereof and the authenticity of the originals of such certified, photostatic or electronically transmitted copies or facsimiles;

(c) that each of the parties, other than the IESO, to the Documents has all requisite capacity, power and authority to execute and deliver the Documents and to perform its obligations thereunder, and has taken all necessary action to authorize the execution and delivery of each of the Documents and the performance of its obligations thereunder;

(d) the Trust has all requisite capacity, power and authority to acquire and hold an *investment asset*;

(e) that each of the parties, other than the IESO, to the Documents has duly executed and delivered the Documents;

(f) that each of the Documents is a legal, valid and binding obligation of each of the parties thereto, other than the IESO, enforceable against each such party by each other party thereto, in accordance with its terms;

(g) that, as at the date of the Transfer specified in the Initial Transfer Notice, all of the conditions precedent to a "Transfer" under the Master Agreement have been satisfied or waived;

(h) that the Trust is a *financing entity*;

(i) that the parties to the Security Agreement have not agreed orally or in any written agreement to postpone the time for attachment of any security interest expressed to have been created under the Security Agreement;

(j) that the property and assets subject to security interests created by the Security Agreement do not include consumer goods (as defined in the *Personal Property Security Act* (Ontario) (the "**PPSA**");

(k) that the Act and the regulations thereunder (the "**Regulations**", and together with the Act, the "**Fair Hydro Legislation**") are constitutional, have been duly enacted and are in full force and effect and in the event of any conflict or inconsistency between the Fair Hydro Legislation and any other legislation, guidelines or rules, such inconsistency will be resolved in favour of the Fair Hydro Legislation;

(l) the IESO has received payment by the Trust pursuant to the Initial Transfer Notice of an amount equal to the portion of the *regulatory asset* set out in the Initial Transfer Notice;

(m) the value of the portion of the *regulatory asset* set out in the Initial Transfer Notice is not greater than the consideration received for it by the IESO.

For greater certainty, a specific assumption, limitation or qualification in this opinion is not to be interpreted to restrict the generality of an assumption, limitation or qualification expressed in general terms that include the subject matter of the specific assumption, limitation or qualification.

Searches

We have conducted, or have caused to be conducted, the searches identified in Schedule "A" for filings or registrations made in those offices of public record, as of December 19, 2017. These searches were conducted in respect of the current name of the IESO. The results of these searches are set out in Schedule "A".

Opinions

Based on and subject to the foregoing and the assumptions and qualifications set out at the end of this opinion, we are of the opinion that:

1. The IESO is a corporation without share capital continued under Part II of the *Electricity Act*.

2. The IESO has the necessary corporate power and authority to execute and deliver the Documents and to perform its obligations thereunder.

3. All necessary corporate action has been taken to authorize the execution and delivery of the Documents by the IESO and the performance of its obligations thereunder.

4. The Documents have been duly executed and delivered on behalf of the IESO.

5. Each of the Documents constitutes a legal, valid and binding obligation of the IESO, enforceable against the IESO in accordance with its terms.

6. The execution and delivery by the IESO of the Documents and the performance by the IESO of its obligations thereunder, and the performance by IESO of its obligations thereunder, do not and will not violate or result in a breach of any statute or regulation of the Province or of Canada that is applicable therein.

7. The execution and delivery by the IESO of the Documents and the performance of its obligations thereunder do not require the IESO to obtain any consent, authorization or approval of any governmental authority or any court or tribunal, in the Province, or to make any filing or provide any notice to any such entity, other than such consents and approvals as have been obtained or filings or notices that have been made, in each case copies of which have been provided to you.

8. The Security Agreement creates a valid security interest in favour of the Trust in the personal property described in the Security Agreement as being subject to a security interest (the "**Collateral**") in which the IESO now has rights and is sufficient to create a valid security interest in favour of the Trust in any such Collateral in which the IESO acquires rights after the date of this opinion when those rights are acquired by the IESO, in each case to secure payment and performance of the obligations described in the Security Agreement as being secured by it.

9. Registration has been made in all public offices provided for under the laws of Ontario where such registration is necessary at this time to perfect the security interests created by the Security Agreement with respect to the personal property of the IESO and particulars of the registration are set forth in Schedule "B" hereto.

10. Section 26(3) of the Act provides that upon receipt by the IESO of payment by the Trust pursuant to the Initial Transfer Notice of an amount equal to the portion of the IESO's *regulatory asset* set out in the Initial Transfer Notice, (a) the balance in the *variance account* shall be reduced by the amount of the payment; (b) the *regulatory asset* shall be adjusted accordingly; (c) the Trust shall acquire a corresponding *investment interest*; and (d) the IESO shall retain no further right, title or interest in the corresponding *investment interest*.

11. Section 27(1) of the Act, provides that a *transfer* in favour of the Trust of a specified portion of a *regulatory asset* under Section 26 of the Act constitutes a "valid and enforceable absolute assignment, conveyance and sale by the IESO to the Trust of the corresponding *investment interest*". Pursuant to Section 27(3) and (4) of the Act such *transfer* "shall be deemed to have been and shall be perfected, vested, valid and binding as against the IESO", regardless of whether such persons having claims "have received notice of the transfer, and the property rights and interests acquired by the Trust in the corresponding investment interest shall have priority over any liens in favour of those persons".

Insolvency

For the purposes of our opinions below, "Insolvency Statutes" means the Bankruptcy and Insolvency Act (Canada) (the "BIA"), the Companies' Creditors Arrangement Act (Canada) (the "CCAA"), the Assignments and Preferences Act (Ontario), the Winding-Up and Restructuring Act (Canada) (the "WURA") and the Fraudulent Conveyances Act (Ontario).

For purposes of our opinions in paragraphs 12 and 13 below, we have assumed that,

(a) the IESO is not an insolvent person, in insolvent circumstances or on the eve of or in contemplation of insolvency or unable to meet its engagements, as applicable, within the meaning of any of the Insolvency Statutes;

(b) the IESO will not become an insolvent person or be put in insolvent circumstances or become unable to meet its engagements, as applicable, within the meaning of any of the Insolvency Statutes by entering into, or immediately after completing the transactions contemplated by the Documents;

(c) there has not been filed by or in respect of the IESO a petition for a receiving order, an assignment in bankruptcy, a notice of intention to file a proposal in bankruptcy, a proposal, an application to hold a meeting of creditors, an application seeking to propose a plan to creditors or an application seeking to obtain a stay, or any similar proceedings under any of the Insolvency Statutes;

(d) at the date of the *transfer*, no person shall have assumed control of any portion of the *regulatory asset* through execution, attachment, garnishment, charging order, equitable execution or other legal process;

(e) the IESO has entered into the Initial Transfer Documents for the purpose of effecting a *transfer* of the portion of the *regulatory asset* set out in the Initial Transfer Notice in return for payment by the Trust of an amount equal to the portion of the *regulatory asset* set out in the Initial Transfer Notice;

(f) the IESO has entered into the Documents in good faith and not with a view to giving the Trust or any other person a preference over creditors of the IESO and not for the purpose or with the intent of injuring, obstructing, impeding, defeating, hindering, delaying, prejudicing or defrauding the rights and claims of Creditors or others against the IESO, providing payment or security for

payment to the Trust or for any other purpose relating in any way to the claims of Creditors or others against the IESO; and

(g) the (i) consideration given by the Trust for the portion of the *regulatory asset* set out in the Initial Transfer Notice represents fair and reasonable value for such portion of the *regulatory asset* as at the time of the *transfer*; and (ii) lesser of the value and fair market value of such consideration is not less than the approximate value or fair market value of such portion of the *regulatory asset* as at the time of the *transfer*.

For purposes of our opinion in paragraph 13 below we have assumed that,

(a) the IESO is not a party to any agreement with the Trust under which the Trust would be legally responsible for the obligations of the IESO;

(b) the creditors of the Trust will on a timely basis oppose any attempt to obtain (and will not consent to) the substantive consolidation of the assets and liabilities of the Trust with the assets and liabilities of the IESO and the creditors of the Trust would be materially prejudiced by substantive consolidation; and

(c) the IESO will not be involved in the day-to-day management of the Trust;

(d) the IESO will maintain separate organizational records and books of account from the Trust;

(e) the IESO's consolidated financial statements made available to the public will not consolidate the Trust;

(f) the IESO will maintain its funds and assets separately from the assets of the Trust, and, except for current collections not yet remitted to the Trust, the Trust's assets, funds, and records relating thereto, have not been, are not, and will not be, commingled with those of the IESO or any other Person;

(g) none of the Trust's business correspondence and other communications will be conducted in the name of the IESO;

(h) except as servicer under the Master Agreement and the Fair Hydro Legislation, the IESO will not act as an agent for the Trust, and will not present itself to the public as an agent for the Trust and will present itself as a legal entity separate from the Trust;

(i) the IESO will not directly pay any liabilities of the Trust out of its own funds or assets;

(j) the IESO will not assume or guarantee or become obligated for the debts of the Trust; and

(k) except pursuant to the Fair Hydro Legislation, the IESO will not enter into, or be a party to, any transaction with the Trust, except in the ordinary course of its business and on terms which are intrinsically fair and not less favorable to it than would be obtained in a comparable arm's-length transaction with an unrelated third party.

12. The *transfer* by the IESO of the specified portion of the *regulatory asset* provided for in the Initial Transfer Notice would not be declared void or be set aside by a court as a preference or a fraudulent conveyance upon the application of a Creditor pursuant to the applicable preferences and fraudulent conveyances provisions of any of the Insolvency Statutes and would not be held by a court to constitute a transfer at undervalue under the Insolvency Statutes.

13. The Trust is a separate entity from the IESO, and absent an agreement to the contrary or a further transfer of the *investment interest*, (i) in a bankruptcy or insolvency proceeding under the Insolvency Statutes in relation to the IESO, the corresponding *investment interest* would not constitute property of the IESO within the meaning of the applicable Insolvency Statutes (ii) the Trust would not be legally responsible for the general obligations of the IESO and (iii) creditors of the IESO could not look successfully to the corresponding *investment interest* to satisfy a claim which they may have against the IESO.

Assumptions, Limitations and Qualifications

The foregoing opinions are subject to the following assumptions, limitations and qualifications:

(a) with respect to opinions 1 to 11, inclusive, enforceability of the rights and remedies provided in the Documents may be limited by bankruptcy, insolvency, reorganization, arrangement, fraudulent preference and conveyance, transfer at undervalue, assignment and preference and other similar laws of general application relating to or affecting creditors' rights;

(b) the availability of equitable remedies, including, without limitation, the remedies of specific performance and injunctive relief, may only be granted in the discretion of a court of competent jurisdiction;

(c) indemnification provisions set out in any of the Documents may be unenforceable to the extent that a court decides that any payment required thereunder would derogate from the court's discretion in respect of indemnified amounts, or would be inconsistent with the court's determination by whom and to what extent indemnified amounts shall be paid;

(d) the awarding of costs of or incidental to proceedings authorized to be taken in court or before a judge are in the discretion of the court or judge and the court or judge has the full power to determine by whom and to what extent such costs shall be paid;

(e) the provisions contained in any of the Documents which purport to sever any provision therein which is prohibited or unenforceable under applicable law without affecting the enforceability or validity of the remainder of such Agreement would be enforced only to the extent that a court determined that such prohibited or unenforceable provision could be severed without impairing the interpretation and application of the remainder of such Document;

(f) the effectiveness of terms exculpating a party from a liability or duty otherwise owed by it to another may be limited by law;

(g) enforcement may be limited to the extent that a court construes any provision of the Documents to constitute a penalty or forfeiture;

(h) the records or a certificate, determination, notification or opinion of a party to the Documents as to any matter provided for in the Documents may be held by a court not to be conclusive if it can be shown to have an unreasonable or arbitrary basis or in the event of manifest error;

(i) a court may give effect to waivers or amendments notwithstanding that they are not in writing and executed by the parties;

(j) no opinion is expressed as to the enforceability of Section 7.2 of the Master Agreement (i) as it relates to the right of the Trust to appoint a Successor Servicer by reason that the IESO is insolvent or that a notice of intention or a proposal has been filed in respect of the IESO pursuant to the BIA; or (ii) in the face of any applicable order made by a court of competent jurisdiction pursuant to the CCAA;

Stikeman Elliott

(k) the *Personal Property Security Act* (Ontario) may affect the enforcement of certain rights and remedies under the Initial Transfer Documents and the Security Agreement to the extent that these rights and remedies are inconsistent with or contrary to such legislation;

(l) we express no opinion as to the creation or perfection of a security interest in, nor have we effected any registrations or given any notices in respect of, any security interest in any property to which the PPSA does not apply pursuant to Section 4 of the PPSA;

(m) we express no opinion as to (i) the title of the IESO to any property; or (ii) the rank or priority of any security interest created by the Security Agreement;

(n) we express no opinion as to whether any security interest is created by the Security Agreement with respect to any property or assets which are not identifiable or traceable;

(o) no opinion is expressed with respect to the effectiveness of any covenant of any party to any Document not to institute bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings or take any action to appoint a receiver or order the winding-up or liquidation of another Person;

(p) no opinion is expressed as to compliance with the *Personal Information Protection and Electronic Documents Act* (Canada) or any other privacy laws; and

(q) the enforceability of the Agreements is subject to the limitations contained in the *Limitations Act, 2002* (Ontario).

This opinion is given in connection with the transactions contemplated by the Agreements, for the benefit of the addressees, and is not to be relied upon for any other purposes or by any other party (except the permitted assigns of the addressees), nor is it to be quoted from or made public in any way, without our prior written consent.

Yours truly,

Stikeman Elliott LLP

SCHEDULE "A"

PPSA SEARCHES

1. **Registration No.:** 20171214 1653 1862 1867

   Term: 99 (Perpetual)

   Business Debtors: INDEPENDENT ELECTRICITY SYSTEM OPERATOR

   SOCIETE INDEPENDANTE D'EXPLOITATION DU RESEAU D'ELECTRICITE

   INDEPENDENT ELECTRICITY SYSTEM OPERATOR SOCIETE INDEPENDANTE D'EXP LOITATION DU RESEAU D'ELECTRICITE

   SOCIETE INDEPENDANTE D'EXPLOITATION DU RESEAU D'ELECTRICITE INDEPE NDENT ELECTRICITY SYSTEM OPERATOR

   Secured Party: Fair Hydro Trust

   Collateral: Accounts, Other

   General Collateral: A Security Interest Is Granted By The Debtor In Favour Of The Secured Party In All Of The Following, (I) All Accounts (As Defined In The Personal Property Security Act (Ontario), Which Are Now Due, Owing Or Accruing Or Growing Due To, Or Which May Hereafter Become Due, Owing Or Accruing Or Growing Due, To The Debtor By A Licensed Distributor And A Licensed Retailer, Each As Defined In The Ontario Fair Hydro Act, And (Ii) All Proceeds (As Defined In The Personal Property Security Act (Ontario), And Renewals Of The Foregoing, In Whatever Form, Together With All Substitutions Therefore.

   (Discharged December 18, 2017)

2. **Registration No.:** 20171220 1030 1862 2420

   Term: 99 (Perpetual)

   Business Debtors: INDEPENDENT ELECTRICITY SYSTEM OPERATOR

   SOCIETE INDEPENDANTE D'EXPLOITATION DU RESEAU D'ELECTRICITE

   INDEPENDENT ELECTRICITY SYSTEM OPERATOR SOCIETE INDEPENDANTE D'EXP LOITATION DU RESEAU D'ELECTRICITE

   SOCIETE INDEPENDANTE D'EXPLOITATION DU RESEAU D'ELECTRICITE INDEPE NDENT ELECTRICITY SYSTEM OPERATOR

   Secured Party: Fair Hydro Trust

   Collateral: Accounts, Other

Stikeman Elliott

General Collateral:		A Security Interest Is Granted By The Debtor In Favour Of The Secured Party In All Of The Following, (I) All Accounts (As Defined In The Personal Property Security Act (Ontario), Which Are Now Due, Owing Or Accruing Or Growing Due To, Or Which May Hereafter Become Due, Owing Or Accruing Or Growing Due, To The Debtor By A Licensed Distributor And A Licensed Retailer, Each As Defined In The Ontario Fair Hydro Act, And (Ii) All Proceeds (As Defined In The Personal Property Security Act (Ontario), And Renewals Of The Foregoing, In Whatever Form, Together With All Substitutions Therefore.
3.	**Registration No.:**	20160112 1435 8077 8193
	Term:	5 years
	Business Debtor:	Independent Electricity System Operator [IESO]
	Secured Parties:	Dell Financial Services Canada Limited
	Collateral:	Equipment, Accounts, Other
	General Collateral:	All dell and non dell computer equipment and peripherals wherever located heretofore or hereafter leased to debtor by secured party pursuant to a master lease agreement number 2146577 together with all substitutions, additions, accessions and replacements thereto and thereof now and hereafter installed in, affixed to, or used in conjunction with such equipment and proceeds thereof together with all rental or installment payments, insurance proceeds, other proceeds and payments due or to become due and arising from or relating to such equipment. Proceeds all present and after-acquired personal property
4.	**Registration No.:**	19980923 1042 1529 0180
	Maturity Date:	September 18, 2003
	Term:	5 years
	Business Debtor:	Ontario Hydro Corporation
	Secured Parties:	Dell Financial Services Canada Limited
	Collateral:	Equipment, Accounts, Other
	General Collateral:	All dell and non dell computer equipment and peripherals wherever located heretofore or hereafter leased to debtor by secured party pursuant to a master lease agreement number 2146577 together with all substitutions, additions, accessions and replacements thereto and thereof now and hereafter installed in, affixed to, or used in conjunction with such equipment and proceeds thereof together with all rental or installment payments, insurance proceeds, other proceeds and payments due or to become due and arising from or relating to such equipment. Proceeds all present and after-acquired personal property.

Amended to amend debtor name, add IESO as a debtor and renewed.

Stikeman Elliott

SCHEDULE "B"

PPSA REGISTRATIONS

Registration No.:	20171220 1030 1862 2420
Term:	99 (Perpetual)
Business Debtors:	INDEPENDENT ELECTRICITY SYSTEM OPERATOR
	SOCIETE INDEPENDANTE D'EXPLOITATION DU RESEAU D'ELECTRICITE
	INDEPENDENT ELECTRICITY SYSTEM OPERATOR SOCIETE INDEPENDANTE D'EXP LOITATION DU RESEAU D'ELECTRICITE
	SOCIETE INDEPENDANTE D'EXPLOITATION DU RESEAU D'ELECTRICITE INDEPENDENT ELECTRICITY SYSTEM OPERATOR
Secured Parties:	Fair Hydro Trust
Collateral:	Accounts, Other

General Collateral Description:

A Security Interest Is Granted By The Debtor In Favour Of The Secured Party In All Of The Following, (I) All Accounts (As Defined In The Personal Property Security Act (Ontario), Which Are Now Due, Owing Or Accruing Or Growing Due To, Or Which May Hereafter Become Due, Owing Or Accruing Or Growing Due, To The Debtor By A Licensed Distributor And A Licensed Retailer, Each As Defined In The Ontario Fair Hydro Act, And (Ii) All Proceeds (As Defined In The Personal Property Security Act (Ontario), And Renewals Of The Foregoing, In Whatever Form, Together With All Substitutions Therefore

ATT00002.pdf

Fwd_ ASC 980.rtf

From: Picard, Michel [mpicard@kpmg.ca]
To: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
Subject: Fwd: ASC 980
Date: Friday, February 24, 2017 23:02:34
Attachment 1: image003.png

View?

Sent from my iPhone

Begin forwarded message:

From: "Picard, Michel" <mpicard@kpmg.ca<mailto:mpicard@kpmg.ca>>
Date: February 24, 2017 at 21:44:00 EST
To: Kim Marshall <Kim.Marshall@ieso.ca<mailto:Kim.Marshall@ieso.ca>>
Cc: "Ouellette, Lois A" <louellette@kpmg.ca<mailto:louellette@kpmg.ca>>, "Betik, Matthew" <mbetik@kpmg.ca<mailto:mbetik@kpmg.ca>>, "Nelms, Scott (ENERGY)" <Scott.Nelms@ontario.ca<mailto:Scott.Nelms@ontario.ca>>, "Steen.Hume@ontario.ca<mailto:Steen.Hume@ontario.ca>" <Steen.Hume@ontario.ca<mailto:Steen.Hume@ontario.ca>>
Subject: Re: ASC 980

What would be the impact if IESO was not allowed to recognize a regulatory asset?

Assuming that the right is sold to OPG on a daily basis, then IESO would have an expense for the energy cost and a revenue for the sale of an unrecognized right for the same amount. Since IESO is acting as an agent then the revenue and expense would be shown net.

Sent from my iPhone

On Feb 24, 2017, at 18:40, Picard, Michel <mpicard@kpmg.ca<mailto:mpicard@kpmg.ca>> wrote:

Kim,

Further to our meeting of today, I have the following comments:

1. Based on the following requirements, I believe IESO can only recognize a regulatory asset if the activities are rate regulated i.e. meet the criteria in par. 15-2.

980-10-15-2 The guidance in the Regulated Operations Topic applies to general-purpose external financial statements of an entity that has regulated operations that meet all of the following criteria:

a. A) The entity's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party regulator or by its own governing board empowered by statute or contract to establish rates that bind customers. [Is this test met – maybe another body could regulate the GAM recovery but it needs to be a body that meet the requirements in 980-10-15-7 below)

b. b) The regulated rates are designed to recover the specific entity's costs of providing the regulated services or products. This criterion is intended to be applied to the substance of the regulation, rather than its form. If an entity's regulated rates are based on the costs of a group of entities and the entity is so large in relation to the group of entities that its costs are, in essence, the group's costs, the regulation would meet this criterion for that entity.

c. C) In view of the demand for the regulated services or products and the level of competition, direct

and indirect, it is reasonable to assume that rates set at levels that will recover the entity's costs can be charged to and collected from customers. This criterion requires consideration of anticipated changes in levels of demand or competition during the recovery period for any capitalized costs. This last criterion is not intended as a requirement that the entity earn a fair return on shareholders' investment under all conditions; an entity can earn less than a fair return for many reasons unrelated to the ability to bill and collect rates that will recover allowable costs<https://workspaces.ema.kworld.kpmg.com/aro/AROWeb/documentwindow.aspx?from=Doc&ref=US_FASB_COD_TOC_980_10&sec=4&q=&csw=>. For example, mild weather might reduce demand for energy utility services. In that case, rates that were expected to recover an entity's allowable costs might not do so. The resulting decreased earnings do not demonstrate an inability to charge and collect rates that would recover the entity's costs; rather, they demonstrate the uncertainty inherent in estimating weather conditions. This requirement must also be evaluated in light of the circumstances. For example, if the entity has an exclusive franchise to provide regulated services or products in an area and competition from other services or products is minimal, there is usually a reasonable expectation that it will continue to meet the other criteria. Exclusive franchises can be revoked, but they seldom are. If the entity has no exclusive franchise but has made the very large capital investment required to provide either the regulated services or products or an acceptable substitute, future competition also may be unlikely.

2. As indicated in par. 15-4, if the “market books” are not rate regulated then IESO cannot adopt regulatory accounting – ie cannot recognize regulatory assets. I was under the impression that the RPP variance accounts were approved by the OEB. Today, I learned that they are not.

980-10-15-4 If some of an entity's operations are regulated and meet the criteria of paragraph 980-10-15-2, this Topic shall be applied to only that portion of the entity's operations.

3. According to 5-08, IESO needs an accounting order from a regulator.

980-10-05-8 Unless an accounting order indicates the way a cost will be handled for rate-making purposes, it causes no economic effects that would justify deviation from the GAAP applicable to business entities in general. The mere issuance of an accounting order not tied to rate treatment does not change an entity's economic resources or obligations. In other words, the economic effect of regulatory decisions—not the mere existence of regulation—is the pervasive factor that determines the application of GAAP.

4. According to 15-7, you need a regulator that is not a party to the contract.

<image003.png>980-10-15-7 The guidance in the Regulated Operations Topic does not apply to any of the following transactions:

a. <image003.png>a) Accounting for price controls that are imposed by governmental action in times of emergency, high inflation, or other unusual conditions, or accounting for contracts in general. However, if the terms of a contract between an entity and its customer are subject to regulation and the criteria of paragraph 980-10-15-2 are met with respect to that contract, the guidance in this Topic shall apply.

b. C) The criterion in paragraph 980-10-15-2(a)<https://workspaces.ema.kworld.kpmg.com/aro/AROWeb/documentwindow.aspx?from=Doc&ref=US_FASB_COD_TOC_980_10&sec=4&q=&csw=#US_FASB_ASC_980_010_15_2> is intended to exclude contractual arrangements in which the government, or another party that could be viewed as a regulator, is a party to a contract and is the entity's principal customer.

5. I am not sure how to read this next par.

980-10-05-7 Accounting requirements that are not directly related to the economic effects of rate actions may be imposed on regulated businesses by orders of regulatory authorities and occasionally by court decisions or statutes. This does not necessarily mean that those accounting requirements conform with

generally accepted accounting principles (GAAP). For example, a regulatory authority may order an entity to capitalize<https://workspaces.ema.kworld.kpmg.com/aro/AROWeb/documentwindow.aspx?from=Doc&ref=US_FASB_COD_TOC_980_10&sec=4&q=&csw=> and amortize a cost that would be charged to income currently by an unregulated entity. Unless capitalization of that cost is appropriate under this Topic, GAAP requires the regulated entity to charge the cost to current income.

I still believe that absent a rate regulator or a governing body approving the rates, then there is no recognition of regulatory asset.

Since the MOE can change the rule, I would suggest that the OEB Act be amended requiring the OEB to oversee the GAM recovery.

Can we discuss over the weekend?

Michel
416 560 2569

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Our lawyers have recommended that we provide certain disclaimer language with our messages. Rather than including them here, we're drawing your attention to the following links where the full legal wording appears.
Disclaimer concerning confidential and privileged information/unintended recipient (http://disclaimer.kpmg.ca). Disclaimer concerning tax advice (http://taxdisclaimer.kpmg.ca).

If you are unable to access the links above, please cut and paste the URL that follows the link into your browser.

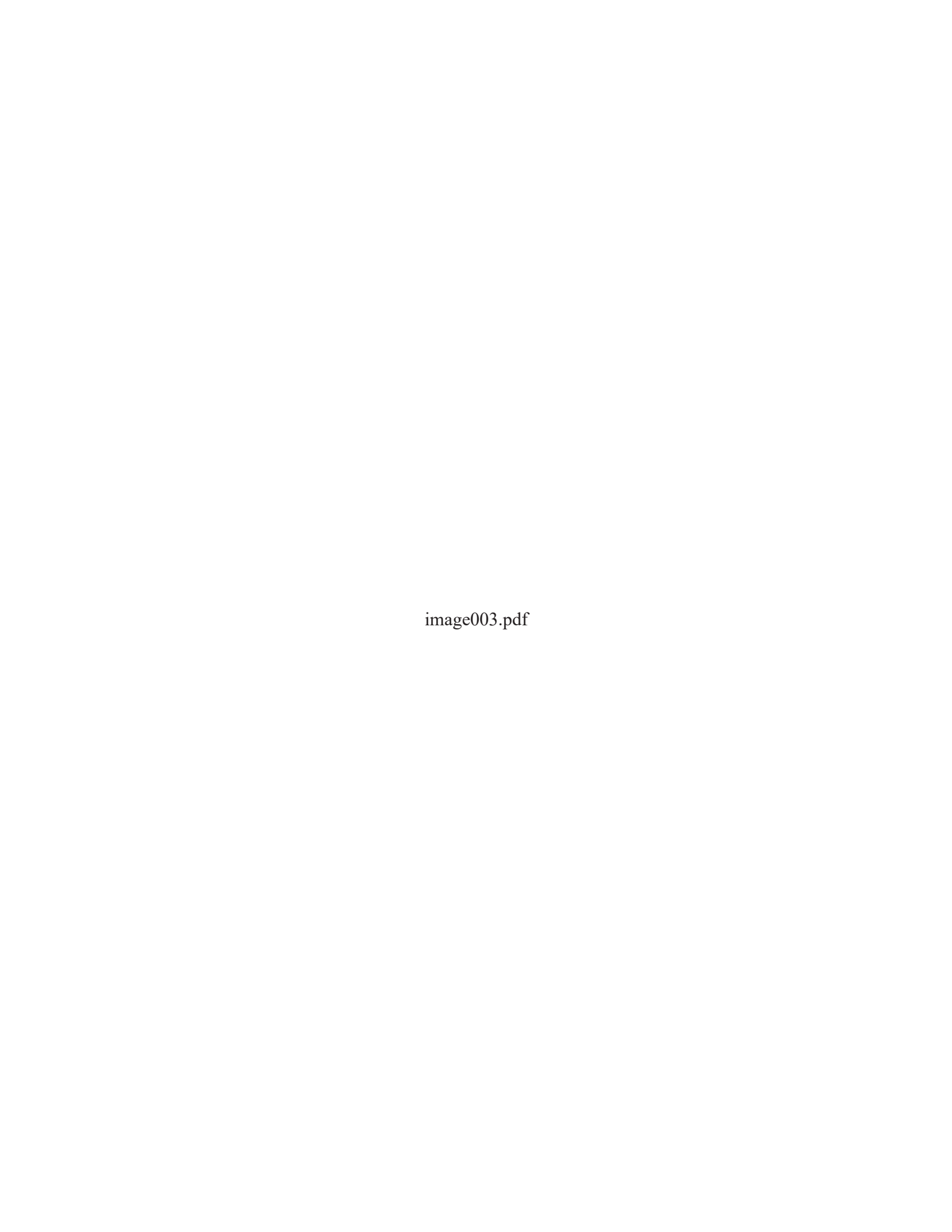
image003.pdf

Fwd_ ASC 980.rtf

From: Picard, Michel [mpicard@kpmg.ca]
To: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
Subject: Fwd: ASC 980
Date: Friday, February 24, 2017 20:30:30
Attachment 1: image003.png
Attachment 2: image003.png

Cindy, Nadine,

We had a meeting with the OEB today. They do not believe they have a role to play in the review of the GAM recovery if the legislation is not leaving any room for them to regulate.

See my comments below on the analysis.

This will be discussed on Monday. Happy to chat before if needed.

Michel

Sent from my iPhone

Begin forwarded message:

From: "Picard, Michel" <mpicard@kpmg.ca<mailto:mpicard@kpmg.ca>>
Date: February 24, 2017 at 18:40:08 EST
To: Kim Marshall <Kim.Marshall@ieso.ca<mailto:Kim.Marshall@ieso.ca>>
Cc: "Ouellette, Lois A" <louellette@kpmg.ca<mailto:louellette@kpmg.ca>>, "Betik, Matthew" <mbetik@kpmg.ca<mailto:mbetik@kpmg.ca>>, "Nelms, Scott (ENERGY)" <Scott.Nelms@ontario.ca<mailto:Scott.Nelms@ontario.ca>>
Subject: ASC 980

Kim,

Further to our meeting of today, I have the following comments:

1. Based on the following requirements, I believe IESO can only recognize a regulatory asset if the activities are rate regulated i.e. meet the criteria in par. 15-2.

980-10-15-2 The guidance in the Regulated Operations Topic applies to general-purpose external financial statements of an entity that has regulated operations that meet all of the following criteria:

a. A) The entity's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party regulator or by its own governing board empowered by statute or contract to establish rates that bind customers. [Is this test met – maybe another body could regulate the GAM recovery but it needs to be a body that meet the requirements in 980-10-15-7 below)

b. b) The regulated rates are designed to recover the specific entity's costs of providing the regulated services or products. This criterion is intended to be applied to the substance of the regulation, rather than its form. If an entity's regulated rates are based on the costs of a group of entities and the entity is so large in relation to the group of entities that its costs are, in essence, the group's costs, the regulation would meet this criterion for that entity.

c. C) In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume that rates set at levels that will recover the entity's costs can be charged to and collected from customers. This criterion requires consideration of anticipated changes in

levels of demand or competition during the recovery period for any capitalized costs. This last criterion is not intended as a requirement that the entity earn a fair return on shareholders' investment under all conditions; an entity can earn less than a fair return for many reasons unrelated to the ability to bill and collect rates that will recover allowable costs<https://workspaces.ema.kworld.kpmg.com/aro/AROWeb/documentwindow.aspx?from=Doc&ref=US_FASB_COD_TOC_980_10&sec=4&q=&csw=>. For example, mild weather might reduce demand for energy utility services. In that case, rates that were expected to recover an entity's allowable costs might not do so. The resulting decreased earnings do not demonstrate an inability to charge and collect rates that would recover the entity's costs; rather, they demonstrate the uncertainty inherent in estimating weather conditions. This requirement must also be evaluated in light of the circumstances. For example, if the entity has an exclusive franchise to provide regulated services or products in an area and competition from other services or products is minimal, there is usually a reasonable expectation that it will continue to meet the other criteria. Exclusive franchises can be revoked, but they seldom are. If the entity has no exclusive franchise but has made the very large capital investment required to provide either the regulated services or products or an acceptable substitute, future competition also may be unlikely.

2. As indicated in par. 15-4, if the “market books” are not rate regulated then IESO cannot adopt regulatory accounting – ie cannot recognize regulatory assets. I was under the impression that the RPP variance accounts were approved by the OEB. Today, I learned that they are not.

980-10-15-4 If some of an entity's operations are regulated and meet the criteria of paragraph 980-10-15-2, this Topic shall be applied to only that portion of the entity's operations.

3. According to 5-08, IESO needs an accounting order from a regulator.

980-10-05-8 Unless an accounting order indicates the way a cost will be handled for rate-making purposes, it causes no economic effects that would justify deviation from the GAAP applicable to business entities in general. The mere issuance of an accounting order not tied to rate treatment does not change an entity's economic resources or obligations. In other words, the economic effect of regulatory decisions—not the mere existence of regulation—is the pervasive factor that determines the application of GAAP.

4. According to 15-7, you need a regulator that is not a party to the contract.

980-10-15-7 The guidance in the Regulated Operations Topic does not apply to any of the following transactions:

a. a) Accounting for price controls that are imposed by governmental action in times of emergency, high inflation, or other unusual conditions, or accounting for contracts in general. However, if the terms of a contract between an entity and its customer are subject to regulation and the criteria of paragraph 980-10-15-2 are met with respect to that contract, the guidance in this Topic shall apply.

b. C) The criterion in paragraph 980-10-15-2(a)<https://workspaces.ema.kworld.kpmg.com/aro/AROWeb/documentwindow.aspx?from=Doc&ref=US_FASB_COD_TOC_980_10&sec=4&q=&csw=#US_FASB_ASC_980_010_15_2> is intended to exclude contractual arrangements in which the government, or another party that could be viewed as a regulator, is a party to a contract and is the entity's principal customer.

5. I am not sure how to read this next par.

980-10-05-7 Accounting requirements that are not directly related to the economic effects of rate actions may be imposed on regulated businesses by orders of regulatory authorities and occasionally by court decisions or statutes. This does not necessarily mean that those accounting requirements conform with generally accepted accounting principles (GAAP). For example, a regulatory authority may order an entity to capitalize<https://workspaces.ema.kworld.kpmg.com/aro/AROWeb/documentwindow.aspx?from=Doc&ref

=US_FASB_COD_TOC_980_10&sec=4&q=&csw=> and amortize a cost that would be charged to income currently by an unregulated entity. Unless capitalization of that cost is appropriate under this Topic, GAAP requires the regulated entity to charge the cost to current income.

I still believe that absent a rate regulator or a governing body approving the rates, then there is no recognition of regulatory asset.

Since the MOE can change the rule, I would suggest that the OEB Act be amended requiring the OEB to oversee the GAM recovery.

Can we discuss over the weekend?

Michel
416 560 2569

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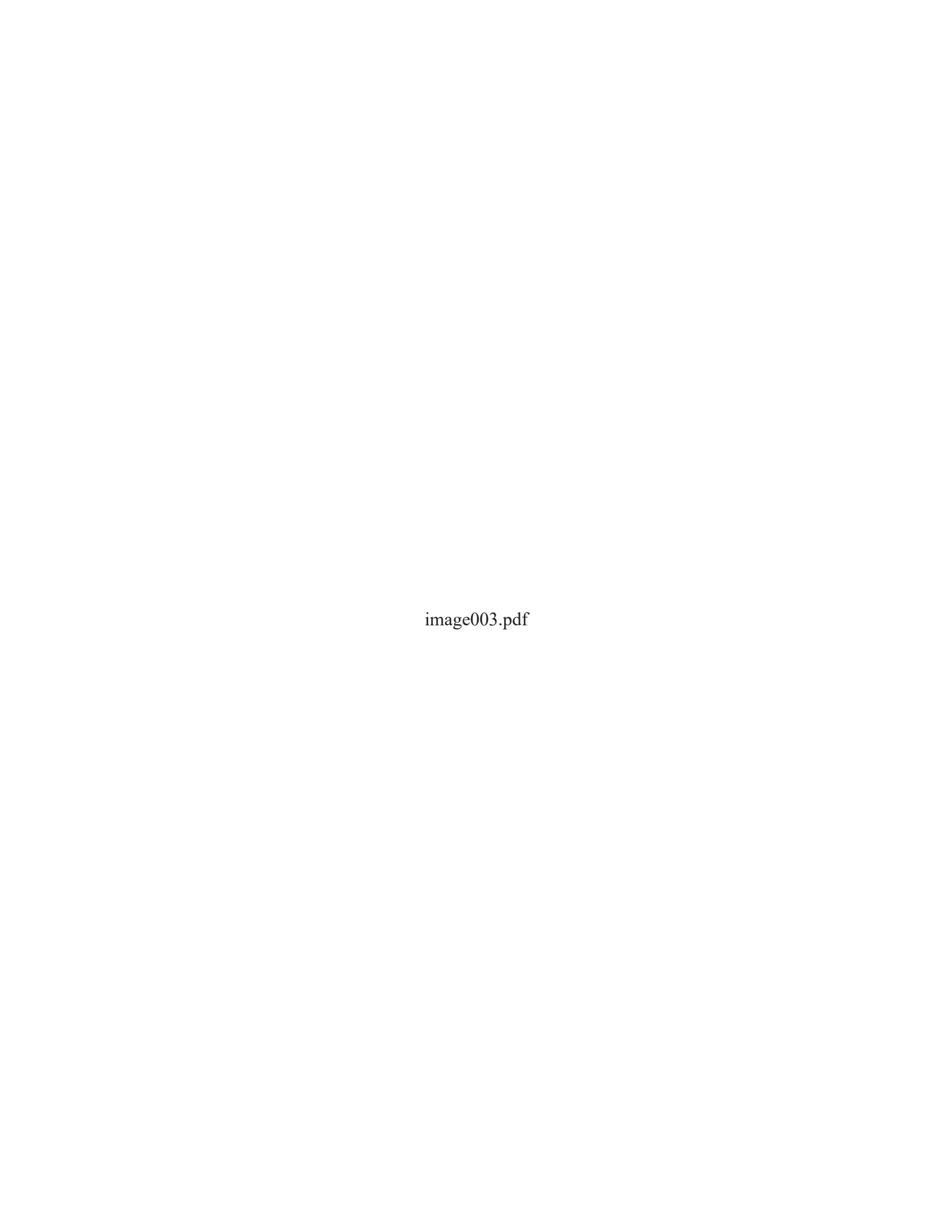
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FYI.rtf

From: Petsche, Nadine (TBS) []
To: LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]
Subject: FYI
Date: Saturday, June 17, 2017 13:27:24
Attachment 1: OEB-Report_OPEB_20170518.pdf

Hi Lee Anne.

The attached report was referenced on our call this past week. See page 9, footnote 4 w.r.t. the OEB's status as a rate regulated entity (from the OEB's perspective).

Thanks.

Nadine

OEB-Report_OPEB_20170518.pdf

Ontario Energy Board | Commission de l'énergie de l'Ontario

MAY 18, 2017

Report of the Ontario Energy Board

Regulatory Treatment of Pension and Other Post-employment Benefits (OPEBs) Costs

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Introduction and Context

This Report describes the policy of the Ontario Energy Board (OEB) for the regulatory treatment of the cost of pensions and other post-employment benefits (OPEBs) incurred by rate-regulated Ontario energy utilities as part of the overall compensation paid to their employees. Specifically, this Report addresses the manner in which approved pension and OPEB costs are recovered from customers, and establishes principles for the review of the level of these costs for future rate proceedings.

Ontario energy utilities, such as electricity and natural gas distributors and Ontario Power Generation, recover their labour costs in the rates or charges their customers pay. The compensation packages utilities offer their employees include pension plans and OPEBs such as health and dental care. The OEB, consumer advocates and the general public have raised concerns about the generosity of the pensions and benefits offered by utilities.

It is not the role of the OEB to design or require a particular compensation package that utilities must offer. It is the role of the OEB to ensure that the costs that go into the rates paid by customers are reasonable. In deciding what is reasonable, the OEB has to consider present and future ratepayers, as well as the financial health of the utilities. Customers are not well served if a utility cannot afford to maintain reliable service or if they are unable to attract employees with the necessary skills to operate and manage the utility.

This Report does not address the magnitude or level of these costs. The longer term intention of the OEB is to use benchmarking, comparing a utility's proposed costs to those of similar businesses, to assess whether costs are reasonable. The labour costs of utilities, whether outsourced or internal, could be compared to the labour costs of others in the energy industry, and to businesses with employees with comparable skill sets outside the energy industry. The determinations made in this Report are intended to facilitate benchmarking, or at least not to hinder it.

This Report is the conclusion of the consultation on the issues identified by the OEB regarding the recovery of utility pension and OPEB expense. The materials from the consultation are available on the OEB's website. This Report provides principles to guide the review of the costs, addresses mechanisms by which costs are to be presented to the OEB, and considers customer protection from the risk of over-charging both now and in the future.

In summary, this Report establishes the use of the accrual accounting method as the default method on which to set rates for pension and OPEB amounts in cost-based[1] applications. A panel of the OEB can use another method if accrual accounting does not result in just and reasonable rates. This Report also provides for the establishment of a variance account to track the difference between the forecasted accrual amount in rates and actual cash payment(s) made, with an asymmetric carrying charge in favour of ratepayers applied to the differential. The variance account will be effective from the 1st of the month following issuance of this Report, unless otherwise ordered by the OEB.

For some utilities, the OEB has set rates using the cash method and used variance accounts to keep these prior periods open to further adjustments pending the outcome of this consultation. For these utilities, disposition of the variance account would be considered in the next cost-based rate application, if the OEB approves the accrual method to recover pension and OPEB costs in rates. In addition, the new variance account provided for in this Report will be effective upon a transition to the accrual method (if approved) as of the date of a utility's next cost-based rate order.

The OEB will continue to assess compensation strategies in cost-based applications when establishing revenue requirements. As the OEB updates filing requirements for utility rate applications, it will consider the extent to which additional information filings are required to support the assessment of pension and OPEB costs as part of a utility's total cost of compensation.

[1] Cost of Service or Custom Incentive Rate-setting

Principles and Practices

The regulatory principles developed in this Report are intended to guide the OEB, rate regulated utilities, and other stakeholders in evaluating proposals for the recovery of pension and OPEB costs in rates and charges. The OEB reviewed three main sources in establishing the principles:

- Principles put forward by KPMG in a report prepared for the OEB consultation (see Appendix B for consultation process)
- Submissions made by participants in the consultation
- Principles enunciated by the OEB in its *Report of the Board: Transition to International Financial Reporting Standards*

The OEB has concluded that there is no need for separate and distinct principles to guide its approach to the treatment of utility pension and OPEB costs. The regulatory treatment of pension and OPEB costs will be based on established regulatory principles. These principles are:

- fairness
- minimizing intergenerational inequity
- minimizing rate volatility
- appropriate allocation of risk
- transparency
- providing value to customers

The OEB believes that adherence to these principles should achieve a stable, reasonable and efficient level of these costs for ratepayers, and a predictable and fair level of recovery of these costs by utilities. The objective of approving or setting just and reasonable rates will continue to be the primary driver of the regulatory treatment of pension and OPEB costs. The OEB has and will retain the authority to establish regulatory requirements and rate setting methods consistent with these principles.

The policy of the OEB for reviewing utility pension and OPEB costs will be based on principles, and supported by best practices. The OEB will adopt the following practices in its treatment of these costs:

> The regulatory treatment of pension and OPEB costs will be aligned with the financial accounting treatment of these costs where that alignment is consistent with sound rate-making principles and the setting of just and reasonable rates.

The OEB will generally keep its choice of regulatory treatment of pension and OPEB costs (e.g. method used to determine recovery) consistent over time for any given utility.

The OEB, when assessing the reasonableness of pension and OPEB costs, will consider the entire compensation package of a utility, and will in the future be developing more detailed benchmarking for utility costs.

Description of Recovery Methods

A. Pensions

Pension plans are generally identified as Defined Benefit (DB) or Defined Contribution (DC) plans. In a DB plan, the benefits are defined – the amount to be paid out to the retiree is guaranteed. In a DC plan, the amount to be paid out is not guaranteed. It is the contribution which is defined. The eventual payout will depend on the monies accumulated through the contributions made and the returns generated over time.

Pension plans may be multi-employer or single employer. Enbridge Gas Distribution Inc., Union Gas Ltd., Ontario Power Generation Inc., the Independent Electricity System Operator, Hydro One Networks Inc. and some other utilities have single employer plans. Some of these utilities have DB plans, and others a mix of DB and DC plans.

The *Pension Benefits Act* (PBA) establishes minimum standards for registered pension plans in Ontario, including entitlements under the plan, plan administration and funding. For DB pension plans in particular, the PBA mandates that these plans must be funded; in other words, the plan's assets must be sufficient to pay for its liabilities, as determined by a triennial actuarial valuation. The PBA requirements, however, do not apply to non-registered pension plans such as supplemental employee retirement pension plans. For these types of plans, cash payments are often paid directly from the employer to the plan beneficiaries.

Most municipally-owned electricity distributors are under a multi-employer plan, the Ontario Municipal Employees Retirement System (OMERS) Plan. While OMERS is a DB plan, for accounting purposes, it is effectively treated as a DC plan by the participating distributors. This means that the annual employer contributions made to the plan are the same as the accrual accounting expense recorded for financial statement purposes. OMERS determines the level of contribution required from each of the participating organizations and all plan risks are borne and shared by its participating organizations and the organizations' employees.

Currently, there are two main ways in which pension costs are recovered in rates.

Accrual accounting is the method required for financial statement reporting purposes and is based on the underlying accounting standard for pension costs. On an accrual accounting basis, pension expenses are incurred and recognized when an employee's service is rendered and the benefit is earned, not when the actual benefit payments are made to retirees, nor when the contributions to the plan are made by the employer. Amounts recovered in rates represent the estimated cost of the benefits earned by a

utility's employees in a given year as determined by an accounting based actuarial valuation.

The second method used to recover pension costs is the funding contribution method, sometimes referred to as the "cash" method. Under this method, costs recovered are based on estimated annual employer contributions to the pension plan, calculated through an actuarial funding valuation. The funding valuation calculates the annual contribution necessary to fund the future pension liabilities. It is prepared in accordance with the requirements of the PBA and the assumptions and methods recommended by the actuary as discussed with the management of the utility.

Since most electricity distributors in Ontario participate in the OMERS pension plan, they are not affected by the accrual versus funding contribution debate for recovery of pension costs. As OMERS is accounted for as a DC plan for financial statement reporting purposes, the annual contributions made to the plan (funding contribution method) will equal the accrual accounting cost (accrual method).

However, for those utilities that have single employer pension plans, the difference between the costs calculated under the accrual method and the funding contribution method can be significant (see example in Appendix A to this Report). While these utilities must record the amounts generated by the accrual method in their financial statements, there is no requirement that the OEB must set rates to recover the accrual amount. Because of the current economic situation with persistent low interest rates and other factors, for some utilities with single employer DB plans, the actuarial accounting valuations have led to an accrual number that is higher than the number calculated on a funding contribution basis. However, there is no guarantee that this trend will continue in the future.

The OEB's consultant, KPMG, put forward a third method for recovering pension costs in the rates of utilities with single employer DB or mixed plans. This "modified funding contribution" method uses a subset of the costs included in a utility's required funding contribution as governed by the PBA, along with a deferral account for the remainder (which may include any voluntary payments that a utility may wish to include for strategic reasons[2]).

[2] The strategic reasons typically include consideration of such factors as: the corporate tax benefits, market risk management strategy for fund assets, lower Pension Benefits Guarantee Fund fees and the potential to avoid the necessity of an annual funding valuation. (KMPG Report, page 26)

B. OPEBs

Most Ontario energy utilities recover their OPEB costs based on the accrual method. This method, as for pensions, recognizes the cost of OPEBs as an employee's service is rendered and the benefit is earned. An alternative is the cash or "pay-as-you-go" method, in which the OPEB costs for a given year are based on what the utility actually pays to retired employees (or more likely, pays in premiums to an insurer) for OPEBs. The cash method fails to consider the level of post-retirement benefits that a current employee has earned in a given year. Along with the absence of a funding plan, this means that the difference between the OPEB costs calculated under the accrual method and the cash method can be significant for some utilities (see example in Appendix A to this Report).

Some utilities that do not incur material amounts of OPEB costs may not conduct actuarial valuations for accounting purposes, and therefore the OPEB expense reported on their financial statements may be equivalent to the pay-as-you-go amount.

KPMG also put forward a potential third method for recovering OPEB costs in the rates of utilities, the "adjusted pay-as-you-go" method. Under this approach, the cash method would be the starting point and would then be increased by an additional amount that is established by the OEB. KPMG suggested that this additional amount could be based on an approach such as the annual amortization of OPEB costs that are included in Other Comprehensive Income plus a portion of the OPEB costs determined using the accrual accounting method.

Policy of the OEB

A. Accrual Method

The OEB will use the pension and OPEB amounts determined through accrual accounting in rate-setting, unless that method does not result in just and reasonable rates. If the accrual accounting method is used, a variance account will be used to track the difference between the forecasted accrual amount in rates and actual cash payment(s) made. An asymmetric carrying charge sub-account in favour of ratepayers will be used, for the reasons given in the next section.

Aligning regulatory treatment with the financial accounting treatment of the costs supports using the accrual method as the default method for calculating the amount of pension and OPEB costs to go into rates. However, OEB panels are not bound by this policy to use the accrual method for rate-setting if the use of that method produces a result that is not just and reasonable in the circumstances of any given utility. The principles enunciated above can assist the OEB and stakeholders in determining the best method for setting rates.

Utilities currently on the accrual method, and proposing to remain on accrual for rate-setting, are not required to justify the use of that method, but must still file the evidence required by the OEB to support the quantum . The approved accrual amount embedded in rates is not expected to change or escalate during an IRM or Custom IR term expect in cases where in a Custom IR term, updated forecasts for subsequent years of the term were approved. The OEB has determined that the actual cash payments (including any special payments for pensions), should be supported by an objective source such as an actuarial report or audited financial statements.

The result of setting rates based on the accrual method could be unacceptable in some cases. As setting just and reasonable rates is the primary driver of the regulatory treatment of pension and OPEB costs, providing value to customers and assuring fairness to both present and future ratepayers is a necessary component of the regulatory treatment of pension and OPEB costs.

Utilities proposing to set rates using a method other than accrual must support such a proposal with evidence giving consideration to these factors, and the principles and practices enunciated in this Report. The intended practice of maintaining a consistent method used to determine recovery over time may be one reason for not adopting the accrual method for rate setting. Stability and predictability in regulation are desirable unless unintended and undesirable effects occur.

The issues raised by transitioning between recovery methods may be serious and difficult to resolve fairly, whether the transition is from or to the accrual method. For example, a change to the cash method could involve a difficult calculation to determine the cumulative amount that a regulated utility has already recovered from customers in the rates charged to date, compared to what would have been collected in the rates to date had these amounts been recovered using the cash method (the cumulative difference to date). The KPMG Report refers to this cumulative difference to date as a potential "windfall" for regulated entities because customers could end up paying for the same cost twice[3].

The OEB is of the view that if a particular case demonstrates that a transition is necessary to set just and reasonable rates and the transition issues are manageable for that particular utility, it is open to a panel to require a transition to a recovery mechanism suitable for that utility's particular circumstances. In such a case, the OEB could require the utility to calculate the cumulative difference to date for disposition.

Having considered the modified funding contribution method for pensions and the adjusted pay-as-you-go method for OPEBs, the OEB has determined that these methods are complicated and involve significant judgement on the part of the regulator. The OEB finds that the accrual method, supplemented with a mechanism to address over-collection, is the best alternative for most Ontario utilities[4].

While consistency in the choice of recovery method among utilities might be desirable, the movement towards greater benchmarking is not compromised if an inconsistency exists. Benchmarking will be performed on the basis of the figures in utility financial statements, not the amount that is collected in rates in a given year. In addition, pension and OPEB costs are one part of the compensation package offered by a utility and therefore only a portion of its labour costs. The OEB intends to compare costs at a higher level than the pension and OPEB amounts.

B. Variance Tracking Account

The difference between the costs calculated under the accrual method and the cash payment(s) made in a specific time period (e.g. a year) can be significant. There is no

[3] KPMG Report, pages 37-38 (pensions) and 78 (OPEBs)

[4] In its submission, the IESO stated that due to its unique nature and structure as a not-for-profit entity, it does not believe it is practical or beneficial to ratepayers for the OEB to apply the same reporting (and recovery) methods as it may determine for other enterprises with share capital. The OEB is of the view that the IESO is a rate regulated entity and the extent that the mechanism established in this Report (or an alternative mechanism that meets the spirit of this policy) should apply to the IESO will be reviewed and determined in the IESO's next fees case.

guarantee that any particular method will produce a lower cost in a given year.[5] Whatever method is selected on which to base cost recovery, the principles of fairness, appropriate allocation of risk, and value to customers dictate that some response to over-collection should be part of the OEB's regulatory treatment of pension and OPEB costs.

Where pension and OPEB amounts collected in rates are higher than payments made by the utility, current ratepayers are in effect lending money to the utility to fund future obligations. KPMG suggested four possible methods to provide value to customers for this loan. Two methods dealt with over-collection and the other two dealt with ensuring solvency. The solvency issue, which primarily concerns OPEBs, is dealt with in the next section of this Report. The two mechanisms suggested for over-collection were a regulatory variance tracking account that attracts carrying charges which would be returned to ratepayers and a reduction to rate base by an amount equivalent to the excess recoveries.

The OEB finds that using a variance account is preferable to adjusting rate base, given the principles established in this Report. A reduction to rate base results in a return to ratepayers at a utility's weighted average cost of capital, which may not be an accurate reflection of what a utility's borrowing cost would be at a point in time. As current ratepayers are in effect lending money to the utility to fund future obligations, the tracking account option would provide the OEB with flexibility to ensure that the value being returned to ratepayers is fair, that it reasonably approximates what the utility would pay for a loan made against its borrowing capacity, and that is within the utility's debt capacity. The OEB also finds that the use of a tracking account provides for greater transparency to facilitate the eventual disposition of the carrying charges.

The application of the carrying charges will be asymmetric, similar to the asymmetric approaches established by the OEB from time to time for capital cost variances and earnings sharing mechanisms. The utility will not be compensated for under-recoveries unless the financial viability of the utility would be compromised by such an arrangement.

The account will be established at a point in time, and for most utilities it is difficult to know with certainty whether over- or under-collection occurred in the past. Whatever the past trends, the utilities had and continue to have, significant control over the costs of their pension and OPEB plans: they design their compensation structure, negotiate collective bargaining agreements, and have input on the actuarial assumptions upon which the costs in the financial statements are based. Ratepayers are required to pay

[5] See example in Appendix A

the rates the OEB approves based on a review of information filed by the utilities. Therefore, where the amount collected in rates exceeds the monies paid out by a utility for its pension and OPEB plans, ratepayers should be paid a return on the money they have "lent" the utility.

A control variance account (with appropriate sub-accounts) will be established on a generic basis effective on the 1st of the month following the issuance of this Report, to be used by all rate regulated utilities subject to the parameters outlined in Appendix C. The variance account will act as a tracking account and only carrying charges applied to the account will be subject to disposition. Utility-specific accounting orders will not be required for the use of this account. Guidance is provided with respect to journal entries in Appendix D. It is open to panels of the OEB in future rate applications to issue revised accounting orders if the evidence in a particular case requires deviations from this policy.

For some utilities, the OEB approved the recovery of their pension and OPEB costs on a cash basis as an interim measure pending the outcome of this pension and OPEB consultation. Variance accounts were used to capture the difference between the cash and accrual methods in order to keep the period open for final adjustments once the outcome of the consultation was known. These utilities are required to continue to record amounts into the previously approved account(s) until the effective date of a utility's next cost-based rate order. Utilities will be expected to dispose of the account(s) at their next cost-based application[6] if the OEB approves the accrual method to recover pension and OPEB costs in rates. The affected utilities may have to consider mitigation measures if the net impact on ratepayers from the disposition of these accounts is significant. Presuming that the OEB orders that these utilities will recover costs for that interim period based on the accrual method, they will be required to credit to ratepayers the carrying charges on the balance on a prospective basis. Appendix C of this Report provides guidance as to how this is to be done.

These utilities are also required to begin recording entries in the new variance account, effective from the date that the utilities' rates are set based on the accrual amount for pensions and OPEBs (i.e. typically the effective date of the rate order of its next cost-based application).

[6] This will depend on the timing of a cost-based application (cost of service or Custom IR) and the availability of audited financial statements to support balances.

C. Interest Rate

Carrying charges on the new tracking account will be assessed on the monthly opening account balance at the OEB's prescribed Construction Work In Progress (CWIP) rate. Several different interest rate options were considered in this consultation ranging from the low end of the OEB's prescribed rate for deferral and variance accounts (currently at 1.1%) to a utility's weighted average cost of capital (WACC), which may be in the 6.5% range for most utilities. The OEB views the prescribed CWIP rate (currently at 2.81%) as establishing a balance between the longer term nature of financial loans and investments required to support pension and OPEB costs and the shorter term nature of the time required for a utility to carry any differential between the accrual and cash amounts (typically five years at the maximum).

The OEB is of the view that ideally, the CWIP rate (representing more of a mid-term rate) could apply for amounts expensed, while a utility's WACC could apply for amounts that a utility may capitalize. However, this approach may not provide sufficient incremental value to justify the added complexity of tracking amounts that are capitalized separately from those that are expensed. Utilities are instead expected to track the gross cost flowing from their actuarial valuations. Utilities that do experience a material impact due to the capitalization of a significant portion of pensions and OPEBs may propose an enhanced methodology for determining the account balance and the appropriate carrying charge to be applied.

D. Accounting Frameworks

As noted in the KPMG report, a utility's accounting framework would affect the level of accrual expense a utility recognizes for its pension and OPEBs. This is partially due to the difference in the accounting treatment of actuarial gains and losses, which are the gains and losses that arise from experience adjustments and changes in actuarial assumptions. Under United States Generally Accepted Accounting Principles, a utility can choose to recognize these gains and losses immediately in net income, or initially in Other Comprehensive Income (OCI) and then amortize them into net income over time. Under International Financial Reporting Standards (IFRS), a utility must recognize all actuarial gains and losses in OCI, but these amounts are never amortized into net income. Under Accounting Standards for Private Enterprises, all actuarial gains and losses are immediately recognized in net income. As the pension and OPEBs accrual amount that is recovered in rates is derived from the accounting expense recognized in net income, utilities who are recovering their pension and OPEB costs on an accrual basis under IFRS will not be able to dispose of any amounts pertaining to actuarial gains and losses because they will never form part of net income.

The OEB recognizes that this issue may not affect a large number of utilities because most utilities under IFRS participate in the OMERS pension plan, where the accrual expense equals the employer contributions made to the plan. Furthermore, for those utilities with OPEB plans, their OPEB expense and any actuarial gains and losses may not be significant relative to other costs incurred by these utilities. For some utilities, the OEB has already approved the use of a deferral account to capture the cumulative actuarial gains or losses in post-retirement benefits.

As at the date of this Report, utilities that have approved deferral accounts have not requested disposition.[7] In some cases, gains and losses may offset each other over time, and no material amount may remain for disposition. In these cases, the account may act only as a tracking account. In addition, this matter was not the focus of this consultation. For these reasons, the OEB has not made a determination on a generic approach to the regulatory treatment of actuarial gains and losses under IFRS. The OEB will consider the potential need for further analysis and guidance on this matter in due course.

E. Set-Aside Mechanism

Solvency of the pension and OPEB plans of Ontario utilities is important: will the money be there to provide the promised benefits to future retirees? The OEB is not the regulator responsible for ensuring solvency of pension plans. In Ontario, the PBA legislates the solvency requirements for defined benefit pension plans and, in particular, requires that a registered defined benefit pension plan must be fully funded (the assets of the plan are adequate to cover its liabilities). The funding status of a plan is determined by a triennial actuarial valuation. If the valuation identifies a funding shortfall (liabilities greater than assets), then the PBA requires that the employer make special payments in addition to the employer's usual contributions to the plan, over a specified period of time in order to fund this shortfall. In addition, due partially to the funding requirements of pension plans, it is likely that neither the accrual nor cash (funding contribution) method will consistently produce a higher cost. The direction of the variance would generally be expected to reverse over time (see Appendix A: example of OPG's pension costs for the next five year period). No set-aside mechanism is necessary for pensions at this time.

Regulations and requirements for OPEBs and unregistered pension plans are less rigorous than for registered pension plans. There is no legislative requirement imposed on plan administrators to ensure that these plans are adequately funded. Most utilities

[7] Four of the seven utilities with this deferral account have had the opportunity to request disposition of this account but have proposed to defer disposition.

have used amounts collected in rates for OPEBs for example, to pay benefits to employees who are already retired, and where the amount collected exceeded the amount needed for this purpose, the excess has been used for “general corporate purposes”, e.g. to fund capital investments or ongoing operating costs.

KPMG suggested two possible set-aside mechanisms that could be used to ensure the funds collected for future OPEB costs remain available for their intended purpose: a separate trust fund, similar to a retirement compensation arrangement, or an internally segregated account.

The OEB recognizes that the disadvantages to these set-aside mechanisms could include:

- Tax implications: Neither mechanism is tax-efficient, and the taxes paid by utilities (and recovered from ratepayers) may increase
- Potential implications for credit risk: Internally segregated funds remove cash from general funds. This means the utility may need to increase its debt, possibly affecting its credit risk profile
- Potential increase in debt costs: Costs to ratepayers could increase to cover increased debt costs

In its letter following the consultation[8], the OEB recognized the concerns with internally segregated accounts and retirement compensation arrangements.

The OEB will not prescribe a set-aside mechanism for OPEBs as part of this policy. However, the OEB expects that utilities will manage and accept the risks inherent in funding OPEB plans. Utilities have the responsibility to manage their cash flows over time. The OEB expects that utilities will not seek further recovery from ratepayers if their cash requirements exceed their accrual expense in the future.

The OEB monitors the performance of utilities and the financial viability of the sector. For some utilities, OPEB costs can be a significant component of their overall compensation envelope and have the potential to adversely affect the financial health of utilities if not managed appropriately. The OEB will consider if and how a further reporting mechanism related to OPEBs can assist in enhancing the OEB’s existing monitoring of overall financial viability. The OEB will consider the best way to monitor how a utility is demonstrating accountability for management of OPEB funding and the steps taken to ensure that it will have sufficient cash available as a corporation when its cash needs exceed accrual amounts in any given year.

[8] August 10, 2016

If the OEB observes over time that utilities are in general not taking responsibility for adequate OPEB funding and not accepting the risk of under-funding, the OEB will consider a further review of set-aside mechanisms on a generic basis.

Appendix A: Examples of differential between accrual and funding/cash methods

The following is Ontario Power's Generation accrual versus cash differential for pensions and OPEBs:

	$ million	2008 Actual	2009 Actual	2010 Actual	2011 Actual	2012 Actual	2013 Actual	Total 2008-13	2014 Plan	2015 Plan
	Pension									
1	Accrual Basis-recoverable in payment amounts	121.4	141.4	150.1	195.0	286.1	383.3		471.3	405.3
2	Cash Basis	198.6	206.1	208.5	235.5	297.1	242.9		321.9	329.6
3	Difference (1-2)	(77.2)	(64.7)	(58.4)	(40.5)	(11.0)	140.4	(111.4)	149.4	75.7
	Other Post-Employment Benefits									
4	Accrual Basis-recoverable in payment amounts	119.2	162.5	161.0	173.2	203.0	231.3		204.6	212.8
5	Cash Basis	44.2	43.1	43.4	48.4	57.9	61.2		89.6	95.8
6	Difference (4-5)	75.0	119.4	117.6	124.8	145.1	170.1	752.0	115.0	117.0

2008-2013 excludes newly regulated hydroelectric

Source: EB-2013-0321, OEB Decision with Reasons, dated November 20, 2014, Page 84

Updated Forecast of Nuclear Pension and OPEB Accrual to Cash Differential* ($M)

	2017	2018	2019	2020	2021
Pension	14.4	(28.9)	(77.2)	(84.4)	(86.8)
OPEB	78.7	78.8	78.6	78.4	78.5
	93.1	49.9	1.4	(6.0)	(8.3)

*positive values represent excess of accrual costs over cash amounts

Source: EB-2016-0152, Exhibit N1, Tab 1, Schedule 1, Page 13

Appendix B: The Consultation Process

The OEB used a consultative process to gather information and advice from stakeholders for the preparation of this Report. The OEB dedicated a specific page on its website to the consultation, which provides links to all materials considered by the OEB.

The main steps in the consultation were:

May 14, 2015 Initiation letter

The OEB issued a letter on May 14, 2015, in which the OEB:

- Set out the objectives of the consultation
- Described the initial steps in the consultation
- Invited registration for participation in the consultation
- Invited applications for cost award eligibility
- Invited submissions on an initial set of questions in three areas: general principles, information requirements, and accounting and recovery in rates of pension and OPEB costs (as well as any other issues participants cared to address)
- Announced the retention of the accounting firm KPMG by the OEB to provide assistance on relevant technical issues

June 10, 2015 letter

In this letter the OEB:

- Noted the registration of 28 participants, including rate regulated utilities, labour unions of energy sector employees and representatives of energy consumers
- Granted cost eligibility to six associations representing energy consumers
- Extended the filing deadline for initial submissions, in response to requests from participants

July 31, 2015 submissions filed

Nineteen registrants filed submissions on July 31, 2015.

Over the following nine months, KPMG prepared a Report for the OEB, and the OEB received the report and considered the next steps for the consultation.

May 19, 2016 letter

By way of a letter dated May 19, 2016, the OEB provided a link to the KPMG Report which was posted on the OEB website, and announced a stakeholder forum to be held July 19 and 20, 2016. With respect to the forum, the OEB:

- Set out the structure of the forum
- Provided a draft issues list for the forum and invited comments on the draft issues
- Invited registrants to indicate their intention to make a presentation at the forum

July 19 and 20, 2016 Stakeholder Forum

The forum was held over two days in July, 2016, and consisted of three parts:

- A presentation by KPMG consultants giving an overview of pension and OPEB accounting, and methods presently used by Ontario regulated utilities for accounting and recovery of these costs
- A presentation by KPMG of the content of the KPMG Report
- Presentations from representatives of five regulated utilities

At each stage of the forum, presenters answered questions posed by forum participants. Participation was available by webcast and telephone.

August 10, 2016 letter

In its letter of August 10, 2016, the OEB provided guidance for written submissions to be filed on September 22, 2016. The OEB asked that participants focus their submissions on:

- The principles the OEB should adopt in considering the regulatory treatment of pension and OPEB costs
- The best options for cost recovery mechanisms for these costs
- Two of the “set-aside” mechanisms proposed by KPMG should accrual accounting values be used in rate setting

September 22, 2016 submissions received

Fourteen submissions were filed by participants on this date. The OEB considered these submissions, as well as the other material obtained through this consultation, in preparing this Report.

Appendix C: Accounting Guidance

Pension and OPEB Forecast Accrual versus Actual Cash Payment Differential variance account

The OEB provides for the establishment of the Pension and OPEB Forecast Accrual versus Actual Cash Payment Differential variance account on a generic basis in this Report. This account will track the differences between the forecast accrual amounts recovered in rates and the actual cash payments made for both pension and OPEBs in one account, on a go-forward basis from the date the account is established. The account will not capture differences that occurred in the past, although the OEB may have previously approved a variance account to capture the accrual versus cash differential for certain utilities, pending the outcome of this consultation. This is discussed further below.

For most utilities, the account will be effective on the 1st of the month following the issuance of this Report. For those utilities with a previously approved variance account, the new account will be effective as of their next approved cost-based rate order if the accrual numbers for pension and OPEB costs are included in rates.

The forecast accrual reference amount that will be used to calculate the entries recorded in this new account assumes that the total gross accrual cost as determined by an actuarial valuation is what is recorded in a utility's total OM&A expense. If a utility capitalizes a material portion of its total pension and OPEB accrual costs, and there is sufficient incremental value to warrant the added complexity of tracking amounts that are capitalized separately from those that are expensed, the utility may propose an enhanced methodology for determining the reference amount and the appropriate carrying charge to be applied, including journal entries consistent with the intent of the account as outlined in this Report.

The actual cash payments would include all cash payments a utility makes for its pension and OPEB obligations. For pensions, the word "cash" refers to the funding contribution method.

Utilities who are members of OMERS do not need to post pension entries to the account. Utilities do not need to post OPEB entries if both the amount embedded in rates and recognized on the financial statements is based on the cash paid to beneficiaries for the period. This would likely be the case for smaller utilities with OPEB plans that are not material and therefore, do not warrant the cost of an actuarial valuation.

The account is to be used by utilities that are approved to recover their pension and OPEB costs on an accrual basis. Therefore, pension and/or OPEB entries will not need to be posted to the account if the OEB approves the cash method to recover these costs in a utility's rates.

A primary sub-account (as described) and a second, contra sub-account to enable book-keeping with offsetting entries must be established. When the cumulative accrual amount exceeds the cumulative cash payments, the primary account will hold a credit balance. When the cumulative cash payments exceed the cumulative accrual amount, the primary account will hold a debit balance. The primary account will accrue carrying charges to be returned to ratepayers when the cumulative opening monthly balance of the account is in a credit position. The contra account will not accrue carrying charges. The primary sub-account and contra sub-account are offsetting. Disposition can only result in a credit refund of carrying charges to ratepayers.

Effective the 1st of the month following the issuance of this Report, utilities will establish three sub-accounts:

- Pension & OPEB Forecast Accrual versus Actual Cash Payment Differential
- Pension & OPEB Forecast Accrual versus Actual Cash Payment Differential Contra Account
- Pension & OPEB Forecast Accrual versus Actual Cash Payment Differential Carrying Charges

Electricity distributors and transmitters are to establish sub-accounts under Account 1522. Gas distributors are to establish sub-accounts under Account 179.

Separate monthly entries for pension and OPEBs are required to be recorded into the sub-accounts of the variance account. Entries will be based on the approved accrual amount embedded in rates (normally a forecast number) and the actual cash payments made. The OEB has determined that the actual cash payments (including any special payments for pensions), should be supported by an objective source such as an actuarial report or audited financial statements. The approved accrual amount embedded in rates is not expected to change or escalate during an IRM or Custom IR term expect in cases where in a Custom IR term, updated forecasts for subsequent years of the term were approved.

Carrying charges shall apply to the primary sub-account only (not the contra sub-account), calculated using simple interest applied to the monthly opening balances in the primary sub-account. The interest rate shall be the CWIP rate prescribed by the OEB.

Previously Approved Accounts: Accrual versus Cash Variances

For some utilities, the OEB approved the recovery of their pension and OPEB costs on a cash basis as an interim measure pending the outcome of this consultation, and directed them to establish a variance account(s) to capture the difference between the cash and accrual methods in order to keep the period open for final adjustments once the outcome of the consultation is known. These utilities are required to continue to record amounts into this account(s) until the effective date of the utility's next cost based rate order. Utilities will be expected to dispose of this account(s) at their next cost-based rate application through a separate rate rider, provided that the OEB approves rates using the accrual method.[9] Recoveries from this rate rider should be applied against the approved balance within this account(s) until the recovery period has expired. No carrying charges will apply on the existing account after disposition consistent with the OEB's approach to accounts that track non-cash items. Any residual balance within the account will not be subject to true-up.

As these utilities are collecting amounts from monthly rate riders relating to the previously approved account(s), they will also be required to record a corresponding monthly entry to the new Pension & OPEB Forecast Accrual versus Actual Cash Payment Differential variance account. Generally, the disposition of the previously approved account balance will be a recovery from ratepayers (i.e. the previously approved account is in a debit position). Accordingly, a credit entry to the new Pension & OPEB Forecast Accrual versus Actual Cash Payment Differential variance account will be made with an offsetting debit entry to the contra account on a monthly basis to capture the portion of the previously approved account balance that is now being collected from ratepayers.

Carrying charges will be required to apply against the net balance in the new variance account. The intent is that carrying charges on the previously approved account balance are calculated on the amounts as they are actually recovered from ratepayers on a month to month basis prospectively. Carrying charges will be applied asymmetrically as amounts are recorded in the new Pension & OPEB Forecast Accrual versus Actual Cash Payment Differential variance account in accordance with the accounting treatment outlined for this variance account in the section above. These entries will be recorded simultaneously with the accounting requirements for the new variance account, as described in the section above.

[9] This will depend on the timing of a cost-based application (cost of service or Custom IR) and the availability of audited financial statements to support balances.

Appendix D: Journal Entries

The following is a simplified example that illustrates the accounting treatment for recording transactions in the sub-accounts of Pension & OPEB Forecast Accrual versus Actual Cash Payment Differential Account. The specific accounting treatment that may apply to a distributor may vary depending on the specific circumstances of the distributor.

Assumptions:

- Pension and OPEB costs are approved for recovery on an accrual basis.
- In utility A's rate application, pension and OPEBs are forecasted to be $1,000 ($700 pension, $300 OPEBs) on an accrual basis and $700 ($500 pension, $200 OPEBs) on a cash basis as supported by the latest actuarial valuation for the test year (Year 1).
- Capitalized pension and OPEB amounts are assumed to be immaterial and therefore, have no impact on the differential calculation.
- After rates have been set and implemented, utility A receives an updated actuarial funding valuation during year 1 that changes the cash payment requirements for years 2 and 3 to $1,200 ($800 pension, $400 OPEBs) and $1,500 ($1,000 pension, $500 OPEBs), respectively. These are the actual amounts the utility pays in years 2 and 3. The utility's accrual versus cash payment differential for years 1 to 3 is summarized as follows:

	Year 1			Year 2			Year 3		
	Pension	**OPEB**	**Total**	**Pension**	**OPEB**	**Total**	**Pension**	**OPEB**	**Total**
Accrual in Rates	700	300	1000	700	300	1000	700	300	1000
Cash Payments Made	500	200	700	800	400	1200	1000	500	1500
Difference	-200	-100	-300	100	100	200	300	200	500
Cumulative Difference			-300			-100			400

- In its next rebasing application in year 6, utility A requests to dispose and refund the cumulative net carrying charge balance of $75 in the carrying charges sub-account. Disposition of this sub-account is approved.
- Assumes no previously approved variance account to capture the difference between the cash and accrual methods that the OEB approved for some utilities as an interim measure pending the outcome of this consultation. If such an account exists, utilities must follow the accounting treatment in Appendix C.

For illustrative purposes, the journal entries required to record the accrual versus cash differential amounts and corresponding carrying charges into the Pension & OPEB Forecast Accrual versus Actual Cash Payment Differential sub-accounts are shown below only for years 1-3. Instead of the required monthly journal entries, the journal entries below are simplified to reflect the cumulative annual amounts that would be recorded in the accounts.

Also note the asymmetric nature of the carrying charges as shown in year 3, where no carrying charges have been calculated. Recording of carrying charges ceases once the balance within the Pension & OPEB Forecast Accrual versus Actual Cash Payment Differential sub-account is no longer in a credit position (i.e. once the cumulative cash payments equal or exceed the cumulative accrual amount).

Year 1

Dr. P&OPEB Forecast Accrual versus Actual Cash Payment Differential Contra Account	200	
Cr. P&OPEB Forecast Accrual versus Actual Cash Payment Differential		200
To record the difference between the total pension accrual amount approved in rates and the actual cash amount paid		
Dr. P&OPEB Forecast Accrual versus Actual Cash Payment Differential Contra Account	100	
Cr. P&OPEB Forecast Accrual versus Actual Cash Payment Differential		100
To record the difference between the total OPEB accrual amount approved in rates and the actual cash amount paid		
Dr. Interest Expense	8	
Cr. P&OPEB Forecast Accrual versus Actual Cash Payment Differential Carrying Charges		8
To record carrying charges on the monthly opening cumulative credit balance in the primary account at the OEB prescribed CWIP rate		

Year 2

Dr. P&OPEB Forecast Accrual versus Actual Cash Payment Differential	100	
Cr. P&OPEB Forecast Accrual versus Actual Cash Payment Contra Account		100
To record the difference between the total pension accrual amount approved in rates and the actual cash amount paid		
Dr. P&OPEB Forecast Accrual versus Actual Cash Payment Differential	100	
Cr. P&OPEB Forecast Accrual versus Actual Cash Payment Differential Contra Account		100
To record the difference between the total OPEB accrual amount approved in rates and the actual cash amount paid		

Dr. Interest Expense	3	
Cr. P&OPEB Forecast Accrual versus Actual Cash Payment Differential Carrying Charges		3

To record carrying charges on the monthly opening cumulative credit balance in the primary account at the OEB prescribed CWIP rate

Year 3

Dr. P&OPEB Forecast Accrual versus Actual Cash Payment Differential	300	
Cr. P&OPEB Forecast Accrual versus Actual Cash Payment Differential Contra Account		300

To record the difference between the total pension accrual amount approved in rates and the actual cash amount paid

Dr. P&OPEB Forecast Accrual versus Actual Cash Payment Differential	200	
Cr. P&OPEB Forecast Accrual versus Actual Cash Payment Differential Contra Account		200

To record the difference between the total OPEB accrual amount approved in rates and the actual cash amount paid

Disposition Year

Dr. P&OPEB Forecast Accrual versus Actual Cash Payment Differential Carrying Charges	75	
Cr. Disposition and Recovery/Refund of Regulatory Balances		75

To record the approved disposition of the cumulative carrying charges

Fwd_ Importance of setting up regulatory accounting in 2016.rtf

From: Kim Marshall [Kim.Marshall@ieso.ca]
To: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
Subject: Fwd: Importance of setting up regulatory accounting in 2016
Date: Friday, February 17, 2017 14:59:33

Consistent with your understanding?

Sent from my iPad

Begin forwarded message:

From: "Picard, Michel" <mpicard@kpmg.ca>
Date: February 17, 2017 at 11:54:33 AM EST
To: Kim Marshall <Kim.Marshall@ieso.ca>
Cc: "Betik, Matthew" <mbetik@kpmg.ca>, "Ouellette, Lois A" <louellette@kpmg.ca>
Subject: RE: Importance of setting up regulatory accounting in 2016

*** EXTERNAL email. Please be cautious and evaluate before you click on links, open attachments, or provide credentials. ***

Hi Kim,

Cindy will only need an opinion for the recognition and derecognition of the regulatory assets when the transaction is finalized. In the meantime, she needs a white paper on those two items by Tuesday.

She also needs a white paper on the Market books that should hopefully conclude that recognition of the market books is acceptable, if not required. If the view is that it cannot be in the books, then the she needs to know ASAP.

She does not need a white paper on the adoption of regulatory accounting under PSAB since the firm will be issuing an audit opinion in the coming weeks that will

include regulatory assets for smart meters/pension costs charged to OCI.

Happy to discuss further.

Michel

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Fwd_ Access letter.pdf

From:	Kim Marshall
To:	Petsche, Nadine (TBS)
Cc:	Michel Picard
Subject:	Fwd: Access letter
Date:	June 13, 2017 3:35:19 PM
Attachments:	EY Access Letter.doc ATT00001.htm

Nadine a letter for you to forward to e&y

Sent from my iPhone

Begin forwarded message:

From: "Picard, Michel" <mpicard@kpmg.ca>
Date: June 12, 2017 at 1:22:41 PM EDT
To: Kim Marshall <Kim.Marshall@ieso.ca>
Subject: Access letter

Hi Kim,

Please find enclosed the access letters to be signed by IESO and EY in relation to our meeting on Thursday. These letters need to be signed before we meet with them.

Thanks in advance,

Michel Picard, CPA, CA

Partner, Accounting Advisory Services

KPMG LLP

333 Bay Street, Suite 4600
Toronto, Ontario, M5H 2S5
T 416 777 8414
M 416 560 2569
mpicard@kpmg.ca
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EY Access Letter.pdf

[ON KPMG LETTERHEAD]

Private & Confidential

Ernst & Young LLP (the "Recipient")
[Address]

Attention: [X]

June 12, 2017

Re: Independent Electricity System Operator ("IESO")

In connection with the accounting advisory work performed by KPMG LLP ("KPMG") for IESO, IESO has requested that KPMG attend a meeting with IESO, the Province of Ontario's Treasury Board Secretariat ("TBS"), and the Recipient, in your capacity as external advisor to TBS, in order to answer your questions related to:

1 IESO's market related activities and their potential adoption of rate regulated accounting; and

2 the interpretation and application of Generally Accepted Accounting Principles regarding regulator independence

(collectively, the "Information").

The Information was derived solely in accordance with the specific terms of reference (the "**Engagement Letter**") agreed between ourselves and IESO for their exclusive use and for no other purpose.

The Information should not be regarded as suitable for use by any person or persons other than IESO or for any purpose other than set out in the Engagement Letter. We accept no responsibility or liability for any reliance that the Recipient may place on the Information.

You should note that we have not sought to update the Information for events subsequent to **[X]** and significant events may well have occurred since that date.

In consideration of our providing to the Recipient the Information the parties hereto agree to the following:

a) No one at KPMG is authorized by KPMG to make any representations to the Recipient with respect to IESO. Nor may anyone at KPMG provide the Recipient with the Information on any basis which is inconsistent with or varies or adds to the terms of this letter;

b) KPMG neither warrants nor represents that the Information is accurate, complete, sufficient or appropriate for any purpose contemplated by the Recipient;

c) The Information is not provided pursuant to any agreement or other arrangement of a contractually binding nature between our firm and the Recipient;

d) The Recipient does not acquire any rights against our firm or otherwise as a result of our providing the Information;

e) Our firm and personnel do not have any duties, responsibilities, liabilities or obligations to the Recipient as a result of our providing the Information; and

f) The Recipient will not commence any action, suit or proceeding or make any demand, complaint or claim against us as a result of KPMG providing the Information or for any omission thereto.

Further, the Recipient agrees that the Information will be maintained by them in strict confidence and not disclosed to any other party, and will be used by them only in connection with purpose described above. The Recipient agrees to notify KPMG promptly of any request received by the Recipient from any court or applicable regulatory authority with respect to the Information.

This letter sets out the entire understanding of the parties in relation to the conditions upon which access to the Information is provided and replaces all prior understandings, if any, made by KPMG.

Please indicate your acceptance to the terms of this letter by signing and returning one copy of this letter to the undersigned.

Yours very truly,

KPMG LLP

Michel Picard
Partner

****

The Recipient hereby acknowledges that it understands and agrees to the conditions upon which the Information is provided.

by: _____ _____
signature Date:

Name:

Title: _____

ATT00001.pdf

Fwd_ Deloitte Opinion.pdf

From: Picard, Michel
To: Veinot, Cindy (TBS)
Subject: Fwd: Deloitte Opinion
Date: July 26, 2017 4:14:30 PM

Sent from my iPhone

Begin forwarded message:

From: "Winton, Paul E" <pwinton@kpmg.ca<mailto:pwinton@kpmg.ca>>
Date: July 26, 2017 at 16:13:19 EDT
To: "Picard, Michel" <mpicard@kpmg.ca<mailto:mpicard@kpmg.ca>>
Subject: RE: Deloitte Opinion

It can be shared within TBS on an as needed basis, but the full covering letter disclaimer and restrictions must be passed along to anyone within TBS that receives it.

From: Picard, Michel
Sent: Wednesday, July 26, 2017 4:12 PM
To: Winton, Paul E <pwinton@kpmg.ca<mailto:pwinton@kpmg.ca>>
Subject: Fwd: Deloitte Opinion

See question

Sent from my iPhone

Begin forwarded message:
From: "Veinot, Cindy (TBS)" <Cindy.Veinot@ontario.ca<mailto:Cindy.Veinot@ontario.ca>>
Date: July 26, 2017 at 15:18:54 EDT
To: "Picard, Michel" <mpicard@kpmg.ca<mailto:mpicard@kpmg.ca>>
Subject: Re: Deloitte Opinion
Thanks Michel. Quick question for you. Is the Deloitte restriction re disclosure for Treasury Board as a ministry or me as an individual. In other words, do I need permission to share this letter with my Associate DM and DM?

Thanks,

Cindy

Sent from my BlackBerry 10 smartphone on the Rogers network.
From: Picard, Michel
Sent: Wednesday, July 26, 2017 10:36 AM
To: Veinot, Cindy (TBS)
Subject: Deloitte Opinion

Hi Cindy,

Please find enclosed the Deloitte Opinion and our covering letter, which addresses the terms and conditions for the use of the Deloitte Opinion.

Should you have any questions, please do not hesitate to contact me.

Michel Picard, CPA, CA

Partner, Accounting Advisory Services

KPMG LLP

333 Bay Street, Suite 4600
Toronto, Ontario, M5H 2S5
T 416 777 8414
M 416 560 2569
mpicard@kpmg.ca<mailto:mpicard@kpmg.ca><mailto:mpicard@kpmg.ca>
LinkedIn<https://urldefense.proofpoint.com/v2/url?u=https-3A__www.linkedin.com_in_michel-2Dpicard-2D8b3b942b-3FauthType-3DNAME-5FSEARCH-26authToken-3DoVKr-26locale-3Den-5FUS-26trk-3Dtyah-26trkInfo-3DclickedVertical-253Amynetwork-252CclickedEntityId-253A107441415-252CauthType-253ANAME-5FSEARCH-252Cidx-253A1-2D1-2D1-252CtarId-253A1478640064654-252Ctas-253Amichel-2520pi&d=DwIFAg&c=0TzQCy9lgR5hSW-bDg5HA76y7nf4lvOzvVop5GM3Y80&r=DAOe89GuHpPZrONj_IODmw&m=cyGuqYyDx7vcC7pYxjOBM4GQsZfCdFvTyeS4zCbYpBw&s=X8Ga5JswZkcnAGrX1mMy-xKRevzH5hu-96mASLSSj2U&e= >

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3A__pages.kpmgemail.com_page.aspx-3FQS-3D2e4c31a3756cb940af903f205e1f1e041bdb8334b58bad706ad9d7762eb124d4&d=DwIFAg&c=0TzQCy9lgR5hSW-bDg5HA76y7nf4lvOzvVop5GM3Y80&r=DAOe89GuHpPZrONj_IODmw&m=cyGuqYyDx7vcC7pYxjOBM4GQsZfCdFvTyeS4zCbYpBw&s=_b5E5JfsOWTb0yEYMg26FS-wyoXIRVM3-Ovu0efGyd4&e= >).

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* Disclaimer concerning tax advice<https://home.kpmg.com/ca/en/home/misc/disclaimer-tax.html> (http://taxdisclaimer.kpmg.ca<https://home.kpmg.com/ca/en/home/misc/disclaimer-tax.html> <http://taxdisclaimer.kpmg.ca%3chttps:/home.kpmg.com/ca/en/home/misc/disclaimer-tax.html%3e>).

If you are unable to access the links above, please cut and paste the URL that follows the link into your browser.

Fwd_ Deloitte Quote 1.pdf

From: Kim Marshall
To: Veinot, Cindy (TBS)
Subject: Fwd: Deloitte Quote
Date: October 16, 2017 8:38:33 PM

Fyi

Sent from my iPad

Begin forwarded message:

From: Jordan Penic <jordan.penic@ieso.ca>
Date: October 16, 2017 at 8:17:27 PM EDT
To: "Teliszewsky, Andrew (ENERGY)" <Andrew.Teliszewsky@ontario.ca>, "Schlaepfer, Martin (ENERGY)" <Martin.Schlaepfer@ontario.ca>, "Hume, Steen (ENERGY)" <Steen.Hume@ontario.ca>
Cc: Kim Marshall <Kim.Marshall@ieso.ca>, Kate Longmoore <Kate.Longmoore@ieso.ca>
Subject: Deloitte Quote

Hello,

In the interest of time I'm sending to several at once.

Please find below the paragraph provided by Deloitte:

Summary of Deloitte Report

KPMG is the auditor of the IESO. Deloitte was engaged by KPMG to provide its opinion (the "Deloitte Report") asson whether a public sector entity could use rate regulated accounting under Canadian Public Sector Accounting Standards ("PSAS"), as established by CPA Canada.

PSAS are silent on the question of how to account for the impacts of rate regulation. Through an analysis of the guidance provided in PSAS, the Deloitte Report concluded that it is appropriate for a public sector entity to select accounting policies that would result in the recognition of the impacts of rate regulation, by analogy to US accounting standards and the related eligibility criteria on the topic. The Deloitte report further concluded that any regulatory assets and liabilities recognized through the appropriate application of these policies would meet the criteria for recognition under PSAS.

It should be noted, however, that the Deloitte Report did not include in its scope an assessment of the specific regulatory assets or liabilities recognized by the IESO through the application of this accounting policy under PSAS."

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Fwd_ Deloitte Quote.pdf

From: Kim Marshall
To: Veinot, Cindy (TBS)
Subject: Fwd: Deloitte Quote
Date: October 16, 2017 8:38:33 PM

Fyi

Sent from my iPad

Begin forwarded message:

From: Jordan Penic <jordan.penic@ieso.ca>
Date: October 16, 2017 at 8:17:27 PM EDT
To: "Teliszewsky, Andrew (ENERGY)" <Andrew.Teliszewsky@ontario.ca>, "Schlaepfer, Martin (ENERGY)" <Martin.Schlaepfer@ontario.ca>, "Hume, Steen (ENERGY)" <Steen.Hume@ontario.ca>
Cc: Kim Marshall <Kim.Marshall@ieso.ca>, Kate Longmoore <Kate.Longmoore@ieso.ca>
Subject: Deloitte Quote

Hello,

In the interest of time I'm sending to several at once.

Please find below the paragraph provided by Deloitte:

Summary of Deloitte Report

KPMG is the auditor of the IESO. Deloitte was engaged by KPMG to provide its opinion (the "Deloitte Report") asson whether a public sector entity could use rate regulated accounting under Canadian Public Sector Accounting Standards ("PSAS"), as established by CPA Canada.

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Fwd_ Lawyers proposed wording on IESO funding mechanism.pdf

From: Kim Marshall
To: Veinot, Cindy (TBS)
Subject: Fwd: Lawyers proposed wording on IESO funding mechanism
Date: June 22, 2017 10:13:42 AM

FYI

Sent from my iPhone

Begin forwarded message:

> **From:** JORDA Jenny -FIN & C CTRL <jenny.jorda@opg.com>
> **Date:** June 22, 2017 at 10:00:22 AM EDT
> **To:** Laney Doyle <laney.doyle@ca.ey.com>, "'Picard, Michel'" <mpicard@kpmg.ca>, 'Brittany Keenan' <Brittany.Keenan@ca.ey.com>, 'Susan Nicholson' <susan.nicholson@ieso.ca>
> **Cc:** 'Kim Marshall' <Kim.Marshall@ieso.ca>, MAUTI John -FIN & C CTRL <john.mauti@opg.com>
> **Subject: Lawyers proposed wording on IESO funding mechanism**
>
> Hi All,
>
> See below for the lawyer's proposed draft on how the language around the funding mechanism is supposed to work. In speaking with them, it sounds like the IESO will have to be contractually obligated to pay the interest and fees to the Trust.

. From July 1, 2017 – April 30, 2021 (the "moratorium period"), it is not expected that any clean energy adjustment amounts will be charged to specified consumers. As a result, there will need to be another source of cash flow to fund financing costs incurred by the financing entity to acquire investment interests during the moratorium period.

2. During the moratorium period, it is proposed that at any time the IESO transfers a specified portion of the regulatory asset to the financing entity (which is expected to occur on a monthly basis), the IESO will, as part of the consideration for the transfer, agree to pay all (i) Funding Costs, (ii) Finance Reserve Deposits, (iii) Expenses and (iv) Tax Liabilities net of Tax Refunds (as such terms are defined in the attached proposed definition of "Finance Amount") which are incurred by the financing entity relating to the purchase of the specified portion of the regulatory asset. (The attached definition of "Finance Amount" is a working draft of what OPG and the Dealers are expecting to be in the Regulations – it is still being reviewed by the Dealers and does not yet reflect any impact of funds coming from IESO through funding rebates or otherwise.)

   Any such amounts paid by the IESO to the financing entity are referred to as "funding rebates". These funding rebates can be viewed as inducement payments made by the IESO in order to induce the financing entity to pay par for the regulatory asset in light of the moratorium period.

3. It is expected that the Regulations will provide that concurrent with the payment of any funding rebate by the IESO, the IESO will be entitled to record an amount equal to such funding rebate in the variance account it maintains for the Fair Hydro program. As a

result, any funding rebates paid by the IESO will form part of the regulatory asset that may be subsequently transferred to a financing entity (and recoverable by the financing entity through the clean energy adjustment after the moratorium period). We did not discuss how the IESO's carrying costs for providing the funding rebates would be dealt with. One option is that these costs are dealt with in the same way as the carrying costs of the IESO's current credit facility are dealt with; that is, they are socialized among all ratepayers. However, if the carrying costs are to be funded only from Specified Consumers then these IESO costs would also have to be tracked separately and added to the IESO Deferral pursuant to the Regulations.

Michel – can you let us know how this proposed wording will impact IESO accounting? Thanks.

Jenny Q Jorda, CPA, CA | Senior Manager, Accounting Policy and Controls | Ontario Power Generation
700 University Avenue, Toronto ON M5G 1X6 | Phone: (416) 592-2531| Fax: (416) 592-7758 |E-mail: jenny.jorda@opg.com

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Fwd_ Opinion-Fair Hydro Transaction 1.pdf

From: Kim Marshall
To: Veinot, Cindy (TBS)
Subject: Fwd: Opinion-Fair Hydro Transaction
Date: February 14, 2018 5:44:35 PM
Attachments: stikemanelliott_logo_rgb_120px.png
ATT00001.htm
Revised SE Opinion re IESO.PDF
ATT00002.htm

Sent from my iPad

Begin forwarded message:

From: Peter Hamilton <PHamilton@stikeman.com>
Date: February 12, 2018 at 5:11:59 PM EST
To: Kim Marshall <Kim.Marshall@ieso.ca>, Michael Boll <Michael.Boll@ieso.ca>
Cc: "Picard, Michel" <mpicard@kpmg.ca>, Glenn Zacher <GZacher@stikeman.com>
Subject: Opinion-Fair Hydro Transaction

No worries, see below.

I refer to my firm's opinion, dated December 21, 2017, attached. This opinion is identical to what you have previously reviewed with the exception that there is a broader list of addressees.

With respect to this opinion I can confirm as follows:

Notwithstanding any language to the contrary in our opinion of even date with respect to certain bankruptcy issues relating to the above-referenced transaction, you are authorized to make available to your auditors such opinion solely as evidential matter in support of their evaluation of management's assertion that the transfer of the specified portion of the regulatory asset pursuant to which the financing entity will acquire a corresponding investment interest (Sections 26 and 27 of the FHP Act) meets the conditions for derecognition under Canadian Public Sector Accounting Standards, provided a copy of this letter is furnished to them in connection therewith. In authorizing you to make copies of such opinions available to your auditors for such purpose, we are not undertaking or assuming any duty or obligation to your auditors or establishing any lawyer-client relationship with them. Further, we do not undertake or assume any responsibility with respect to financial statements of you or your affiliates.

<https://na01.safelinks.protection.outlook.com/?url=http%3A%2F%2Fwww.stikeman.com&data=01%7C01%7Ckim.marshall%40ieso.ca%7Ca2027238a4d442948e9508d57265d07a%7C7cd55abd63f243c58f4bd38ea458add8%7C0&sdata=1PJyY6%2BFl3ENygSPUXzEsLsbcIR%2FwomzPrmQn%2BiXU38%3D&reserved=0>

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stikemanelliott_logo_rgb_120px.pdf

Stikeman Elliott

ATT00001_1.pdf

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Stikeman Elliott LLP Barristers & Solicitors

5300 Commerce Court West, 199 Bay Street, Toronto, ON M5L 1B9 Canada

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Revised SE Opinion re IESO.PDF

Stikeman Elliott

Stikeman Elliott LLP
Barristers & Solicitors
5300 Commerce Court West
199 Bay Street
Toronto, ON Canada M5L 1B9

Main: 416 869 5500
Fax: 416 947 0866
www.stikeman.com

December 21, 2017

BNY Trust Company of Canada, in its capacity as Indenture Trustee for the Specified Creditors from time to time
One York Street, 6th Floor
Toronto, Ontario M5J 0B6

Fair Hydro Trust, as Issuer
c/o Computershare Trust Company of Canada
100 University Avenue
11th Floor
Toronto, Ontario M5J 2Y1

Ontario Power Generation Inc., as Manager
700 University Avenue
Toronto, Ontario M5G 1X6

Computershare Trust Company of Canada, as Issuer Trustee
100 University Avenue
11th Floor
Toronto, Ontario M5J 2Y1

Moody's Investors Service Inc.
70 York St
Toronto, Ontario M5J 1S9

DBRS Limited
DBRS Tower
181 University Avenue, Suite 700
Toronto, Ontario M5H 3M7 Canada

Dear Sirs:

We have acted as counsel for Independent System Operator (the "**IESO**") in connection with a Master Transfer and Services Agreement dated December 21, 2017 (the "**Master Agreement**") entered into between the IESO and Fair Hydro Trust (the "**Trust**").

The opinions expressed herein relate only to the laws of the Province of Ontario (the "**Province**") and the federal laws of Canada applicable therein in effect on the date hereof, and no opinions are expressed as to the laws of any other jurisdiction.

Interpretation

Terms with initial capital letters in this opinion have the meanings given to them in the Master Agreement unless otherwise defined herein. Terms both underlined and in italics have the meanings given to them in the *Ontario Fair Hydro Plan Act* (the "**Act**").

Documents

As such counsel, we have participated in the preparation of and examined an executed copy of each of:

(a) the Master Agreement;

(b) a Transfer Notice dated December 21, 2017 executed by the Trust and accepted by the IESO (the "**Initial Transfer Notice**");

(c) an acknowledgment and indemnity agreement dated December 21, 2017 entered into between the IESO and the Trust (the "**Indenture Trustee**") (the "**Acknowledgment**"); and

(d) a security agreement dated December 21, 2017 made by the IESO in favour of the Trust (the "**Security Agreement**").

The Master Agreement and the Initial Transfer Notice are referred to as the "**Initial Transfer Documents**." The Initial Transfer Documents, the Acknowledgment and the Security Agreement are referred to as the "**Documents**".

Assumptions

For the purposes of the opinions expressed herein, we have assumed:

(a) the genuineness of all signatures of all parties and the legal capacity of all individuals signing any documents;

(b) the authenticity of all documents submitted to us as originals, the conformity to originals of all documents submitted to us as certified or photostatic or electronically transmitted copies or facsimiles thereof and the authenticity of the originals of such certified, photostatic or electronically transmitted copies or facsimiles;

(c) that each of the parties, other than the IESO, to the Documents has all requisite capacity, power and authority to execute and deliver the Documents and to perform its obligations thereunder, and has taken all necessary action to authorize the execution and delivery of each of the Documents and the performance of its obligations thereunder;

(d) the Trust has all requisite capacity, power and authority to acquire and hold an *investment asset*;

(e) that each of the parties, other than the IESO, to the Documents has duly executed and delivered the Documents;

(f) that each of the Documents is a legal, valid and binding obligation of each of the parties thereto, other than the IESO, enforceable against each such party by each other party thereto, in accordance with its terms;

(g) that, as at the date of the Transfer specified in the Initial Transfer Notice, all of the conditions precedent to a "Transfer" under the Master Agreement have been satisfied or waived;

(h) that the Trust is a *financing entity*;

(i) that the parties to the Security Agreement have not agreed orally or in any written agreement to postpone the time for attachment of any security interest expressed to have been created under the Security Agreement;

(j) that the property and assets subject to security interests created by the Security Agreement do not include consumer goods (as defined in the *Personal Property Security Act* (Ontario) (the "**PPSA**");

(k) that the Act and the regulations thereunder (the "**Regulations**", and together with the Act, the "**Fair Hydro Legislation**") are constitutional, have been duly enacted and are in full force and effect and in the event of any conflict or inconsistency between the Fair Hydro Legislation and any other legislation, guidelines or rules, such inconsistency will be resolved in favour of the Fair Hydro Legislation;

(l) the IESO has received payment by the Trust pursuant to the Initial Transfer Notice of an amount equal to the portion of the *regulatory asset* set out in the Initial Transfer Notice;

(m) the value of the portion of the *regulatory asset* set out in the Initial Transfer Notice is not greater than the consideration received for it by the IESO.

For greater certainty, a specific assumption, limitation or qualification in this opinion is not to be interpreted to restrict the generality of an assumption, limitation or qualification expressed in general terms that include the subject matter of the specific assumption, limitation or qualification.

Searches

We have conducted, or have caused to be conducted, the searches identified in Schedule "A" for filings or registrations made in those offices of public record, as of December 19, 2017. These searches were conducted in respect of the current name of the IESO. The results of these searches are set out in Schedule "A".

Opinions

Based on and subject to the foregoing and the assumptions and qualifications set out at the end of this opinion, we are of the opinion that:

1. The IESO is a corporation without share capital continued under Part II of the *Electricity Act*.

2. The IESO has the necessary corporate power and authority to execute and deliver the Documents and to perform its obligations thereunder.

3. All necessary corporate action has been taken to authorize the execution and delivery of the Documents by the IESO and the performance of its obligations thereunder.

4. The Documents have been duly executed and delivered on behalf of the IESO.

5. Each of the Documents constitutes a legal, valid and binding obligation of the IESO, enforceable against the IESO in accordance with its terms.

6. The execution and delivery by the IESO of the Documents and the performance by the IESO of its obligations thereunder, and the performance by IESO of its obligations thereunder, do not and will not violate or result in a breach of any statute or regulation of the Province or of Canada that is applicable therein.

7. The execution and delivery by the IESO of the Documents and the performance of its obligations thereunder do not require the IESO to obtain any consent, authorization or approval of any governmental authority or any court or tribunal, in the Province, or to make any filing or provide any notice to any such entity, other than such consents and approvals as have been obtained or filings or notices that have been made, in each case copies of which have been provided to you.

8. The Security Agreement creates a valid security interest in favour of the Trust in the personal property described in the Security Agreement as being subject to a security interest (the "**Collateral**") in which the IESO now has rights and is sufficient to create a valid security interest in favour of the Trust in any such Collateral in which the IESO acquires rights after the date of this opinion when those rights are acquired by the IESO, in each case to secure payment and performance of the obligations described in the Security Agreement as being secured by it.

9. Registration has been made in all public offices provided for under the laws of Ontario where such registration is necessary at this time to perfect the security interests created by the Security Agreement with respect to the personal property of the IESO and particulars of the registration are set forth in Schedule "B" hereto.

10. Section 26(3) of the Act provides that upon receipt by the IESO of payment by the Trust pursuant to the Initial Transfer Notice of an amount equal to the portion of the IESO's *regulatory asset* set out in the Initial Transfer Notice, (a) the balance in the *variance account* shall be reduced by the amount of the payment; (b) the *regulatory asset* shall be adjusted accordingly; (c) the Trust shall acquire a corresponding *investment interest*; and (d) the IESO shall retain no further right, title or interest in the corresponding *investment interest*.

11. Section 27(1) of the Act, provides that a *transfer* in favour of the Trust of a specified portion of a *regulatory asset* under Section 26 of the Act constitutes a "valid and enforceable absolute assignment, conveyance and sale by the IESO to the Trust of the corresponding *investment interest*". Pursuant to Section 27(3) and (4) of the Act such *transfer* "shall be deemed to have been and shall be perfected, vested, valid and binding as against the IESO", regardless of whether such persons having claims "have received notice of the transfer, and the property rights and interests acquired by the Trust in the corresponding investment interest shall have priority over any liens in favour of those persons".

Insolvency

For the purposes of our opinions below, "Insolvency Statutes" means the Bankruptcy and Insolvency Act (Canada) (the "BIA"), the Companies' Creditors Arrangement Act (Canada) (the "CCAA"), the Assignments and Preferences Act (Ontario), the Winding-Up and Restructuring Act (Canada) (the "WURA") and the Fraudulent Conveyances Act (Ontario).

For purposes of our opinions in paragraphs 12 and 13 below, we have assumed that,

(a) the IESO is not an insolvent person, in insolvent circumstances or on the eve of or in contemplation of insolvency or unable to meet its engagements, as applicable, within the meaning of any of the Insolvency Statutes;

(b) the IESO will not become an insolvent person or be put in insolvent circumstances or become unable to meet its engagements, as applicable, within the meaning of any of the Insolvency Statutes by entering into, or immediately after completing the transactions contemplated by the Documents;

(c) there has not been filed by or in respect of the IESO a petition for a receiving order, an assignment in bankruptcy, a notice of intention to file a proposal in bankruptcy, a proposal, an application to hold a meeting of creditors, an application seeking to propose a plan to creditors or an application seeking to obtain a stay, or any similar proceedings under any of the Insolvency Statutes;

(d) at the date of the *transfer*, no person shall have assumed control of any portion of the *regulatory asset* through execution, attachment, garnishment, charging order, equitable execution or other legal process;

(e) the IESO has entered into the Initial Transfer Documents for the purpose of effecting a *transfer* of the portion of the *regulatory asset* set out in the Initial Transfer Notice in return for payment by the Trust of an amount equal to the portion of the *regulatory asset* set out in the Initial Transfer Notice;

(f) the IESO has entered into the Documents in good faith and not with a view to giving the Trust or any other person a preference over creditors of the IESO and not for the purpose or with the intent of injuring, obstructing, impeding, defeating, hindering, delaying, prejudicing or defrauding the rights and claims of Creditors or others against the IESO, providing payment or security for

payment to the Trust or for any other purpose relating in any way to the claims of Creditors or others against the IESO; and

(g) the (i) consideration given by the Trust for the portion of the *regulatory asset* set out in the Initial Transfer Notice represents fair and reasonable value for such portion of the *regulatory asset* as at the time of the *transfer*; and (ii) lesser of the value and fair market value of such consideration is not less than the approximate value or fair market value of such portion of the *regulatory asset* as at the time of the *transfer*.

For purposes of our opinion in paragraph 13 below we have assumed that,

(a) the IESO is not a party to any agreement with the Trust under which the Trust would be legally responsible for the obligations of the IESO;

(b) the creditors of the Trust will on a timely basis oppose any attempt to obtain (and will not consent to) the substantive consolidation of the assets and liabilities of the Trust with the assets and liabilities of the IESO and the creditors of the Trust would be materially prejudiced by substantive consolidation; and

(c) the IESO will not be involved in the day-to-day management of the Trust;

(d) the IESO will maintain separate organizational records and books of account from the Trust;

(e) the IESO's consolidated financial statements made available to the public will not consolidate the Trust;

(f) the IESO will maintain its funds and assets separately from the assets of the Trust, and, except for current collections not yet remitted to the Trust, the Trust's assets, funds, and records relating thereto, have not been, are not, and will not be, commingled with those of the IESO or any other Person;

(g) none of the Trust's business correspondence and other communications will be conducted in the name of the IESO;

(h) except as servicer under the Master Agreement and the Fair Hydro Legislation, the IESO will not act as an agent for the Trust, and will not present itself to the public as an agent for the Trust and will present itself as a legal entity separate from the Trust;

(i) the IESO will not directly pay any liabilities of the Trust out of its own funds or assets;

(j) the IESO will not assume or guarantee or become obligated for the debts of the Trust; and

(k) except pursuant to the Fair Hydro Legislation, the IESO will not enter into, or be a party to, any transaction with the Trust, except in the ordinary course of its business and on terms which are intrinsically fair and not less favorable to it than would be obtained in a comparable arm's-length transaction with an unrelated third party.

12. The *transfer* by the IESO of the specified portion of the *regulatory asset* provided for in the Initial Transfer Notice would not be declared void or be set aside by a court as a preference or a fraudulent conveyance upon the application of a Creditor pursuant to the applicable preferences and fraudulent conveyances provisions of any of the Insolvency Statutes and would not be held by a court to constitute a transfer at undervalue under the Insolvency Statutes.

13. The Trust is a separate entity from the IESO, and absent an agreement to the contrary or a further transfer of the *investment interest*, (i) in a bankruptcy or insolvency proceeding under the Insolvency Statutes in relation to the IESO, the corresponding *investment interest* would not constitute property of the IESO within the meaning of the applicable Insolvency Statutes (ii) the Trust would not be legally responsible for the general obligations of the IESO and (iii) creditors of the IESO could not look successfully to the corresponding *investment interest* to satisfy a claim which they may have against the IESO.

Assumptions, Limitations and Qualifications

The foregoing opinions are subject to the following assumptions, limitations and qualifications:

(a) with respect to opinions 1 to 11, inclusive, enforceability of the rights and remedies provided in the Documents may be limited by bankruptcy, insolvency, reorganization, arrangement, fraudulent preference and conveyance, transfer at undervalue, assignment and preference and other similar laws of general application relating to or affecting creditors' rights;

(b) the availability of equitable remedies, including, without limitation, the remedies of specific performance and injunctive relief, may only be granted in the discretion of a court of competent jurisdiction;

(c) indemnification provisions set out in any of the Documents may be unenforceable to the extent that a court decides that any payment required thereunder would derogate from the court's discretion in respect of indemnified amounts, or would be inconsistent with the court's determination by whom and to what extent indemnified amounts shall be paid;

(d) the awarding of costs of or incidental to proceedings authorized to be taken in court or before a judge are in the discretion of the court or judge and the court or judge has the full power to determine by whom and to what extent such costs shall be paid;

(e) the provisions contained in any of the Documents which purport to sever any provision therein which is prohibited or unenforceable under applicable law without affecting the enforceability or validity of the remainder of such Agreement would be enforced only to the extent that a court determined that such prohibited or unenforceable provision could be severed without impairing the interpretation and application of the remainder of such Document;

(f) the effectiveness of terms exculpating a party from a liability or duty otherwise owed by it to another may be limited by law;

(g) enforcement may be limited to the extent that a court construes any provision of the Documents to constitute a penalty or forfeiture;

(h) the records or a certificate, determination, notification or opinion of a party to the Documents as to any matter provided for in the Documents may be held by a court not to be conclusive if it can be shown to have an unreasonable or arbitrary basis or in the event of manifest error;

(i) a court may give effect to waivers or amendments notwithstanding that they are not in writing and executed by the parties;

(j) no opinion is expressed as to the enforceability of Section 7.2 of the Master Agreement (i) as it relates to the right of the Trust to appoint a Successor Servicer by reason that the IESO is insolvent or that a notice of intention or a proposal has been filed in respect of the IESO pursuant to the BIA; or (ii) in the face of any applicable order made by a court of competent jurisdiction pursuant to the CCAA;

Stikeman Elliott

(k) the *Personal Property Security Act* (Ontario) may affect the enforcement of certain rights and remedies under the Initial Transfer Documents and the Security Agreement to the extent that these rights and remedies are inconsistent with or contrary to such legislation;

(l) we express no opinion as to the creation or perfection of a security interest in, nor have we effected any registrations or given any notices in respect of, any security interest in any property to which the PPSA does not apply pursuant to Section 4 of the PPSA;

(m) we express no opinion as to (i) the title of the IESO to any property; or (ii) the rank or priority of any security interest created by the Security Agreement;

(n) we express no opinion as to whether any security interest is created by the Security Agreement with respect to any property or assets which are not identifiable or traceable;

(o) no opinion is expressed with respect to the effectiveness of any covenant of any party to any Document not to institute bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings or take any action to appoint a receiver or order the winding-up or liquidation of another Person;

(p) no opinion is expressed as to compliance with the *Personal Information Protection and Electronic Documents Act* (Canada) or any other privacy laws; and

(q) the enforceability of the Agreements is subject to the limitations contained in the *Limitations Act, 2002* (Ontario).

This opinion is given in connection with the transactions contemplated by the Agreements, for the benefit of the addressees, and is not to be relied upon for any other purposes or by any other party (except the permitted assigns of the addressees), nor is it to be quoted from or made public in any way, without our prior written consent.

Yours truly,

Stikeman Elliott LLP

SCHEDULE "A"

PPSA SEARCHES

1. **Registration No.:** 20171214 1653 1862 1867

   Term: 99 (Perpetual)

   Business Debtors: INDEPENDENT ELECTRICITY SYSTEM OPERATOR

   SOCIETE INDEPENDANTE D'EXPLOITATION DU RESEAU D'ELECTRICITE

   INDEPENDENT ELECTRICITY SYSTEM OPERATOR SOCIETE INDEPENDANTE D'EXP LOITATION DU RESEAU D'ELECTRICITE

   SOCIETE INDEPENDANTE D'EXPLOITATION DU RESEAU D'ELECTRICITE INDEPE NDENT ELECTRICITY SYSTEM OPERATOR

   Secured Party: Fair Hydro Trust

   Collateral: Accounts, Other

   General Collateral: A Security Interest Is Granted By The Debtor In Favour Of The Secured Party In All Of The Following, (I) All Accounts (As Defined In The Personal Property Security Act (Ontario), Which Are Now Due, Owing Or Accruing Or Growing Due To, Or Which May Hereafter Become Due, Owing Or Accruing Or Growing Due, To The Debtor By A Licensed Distributor And A Licensed Retailer, Each As Defined In The Ontario Fair Hydro Act, And (Ii) All Proceeds (As Defined In The Personal Property Security Act (Ontario), And Renewals Of The Foregoing, In Whatever Form, Together With All Substitutions Therefore.

   (Discharged December 18, 2017)

2. **Registration No.:** 20171220 1030 1862 2420

   Term: 99 (Perpetual)

   Business Debtors: INDEPENDENT ELECTRICITY SYSTEM OPERATOR

   SOCIETE INDEPENDANTE D'EXPLOITATION DU RESEAU D'ELECTRICITE

   INDEPENDENT ELECTRICITY SYSTEM OPERATOR SOCIETE INDEPENDANTE D'EXP LOITATION DU RESEAU D'ELECTRICITE

   SOCIETE INDEPENDANTE D'EXPLOITATION DU RESEAU D'ELECTRICITE INDEPE NDENT ELECTRICITY SYSTEM OPERATOR

   Secured Party: Fair Hydro Trust

   Collateral: Accounts, Other

Stikeman Elliott

General Collateral:		A Security Interest Is Granted By The Debtor In Favour Of The Secured Party In All Of The Following, (I) All Accounts (As Defined In The Personal Property Security Act (Ontario), Which Are Now Due, Owing Or Accruing Or Growing Due To, Or Which May Hereafter Become Due, Owing Or Accruing Or Growing Due, To The Debtor By A Licensed Distributor And A Licensed Retailer, Each As Defined In The Ontario Fair Hydro Act, And (Ii) All Proceeds (As Defined In The Personal Property Security Act (Ontario), And Renewals Of The Foregoing, In Whatever Form, Together With All Substitutions Therefore.
3.	**Registration No.:**	20160112 1435 8077 8193
	Term:	5 years
	Business Debtor:	Independent Electricity System Operator [IESO]
	Secured Parties:	Dell Financial Services Canada Limited
	Collateral:	Equipment, Accounts, Other
	General Collateral:	All dell and non dell computer equipment and peripherals wherever located heretofore or hereafter leased to debtor by secured party pursuant to a master lease agreement number 2146577 together with all substitutions, additions, accessions and replacements thereto and thereof now and hereafter installed in, affixed to, or used in conjunction with such equipment and proceeds thereof together with all rental or installment payments, insurance proceeds, other proceeds and payments due or to become due and arising from or relating to such equipment. Proceeds all present and after-acquired personal property
4.	**Registration No.:**	19980923 1042 1529 0180
	Maturity Date:	September 18, 2003
	Term:	5 years
	Business Debtor:	Ontario Hydro Corporation
	Secured Parties:	Dell Financial Services Canada Limited
	Collateral:	Equipment, Accounts, Other
	General Collateral:	All dell and non dell computer equipment and peripherals wherever located heretofore or hereafter leased to debtor by secured party pursuant to a master lease agreement number 2146577 together with all substitutions, additions, accessions and replacements thereto and thereof now and hereafter installed in, affixed to, or used in conjunction with such equipment and proceeds thereof together with all rental or installment payments, insurance proceeds, other proceeds and payments due or to become due and arising from or relating to such equipment. Proceeds all present and after-acquired personal property.

Amended to amend debtor name, add IESO as a debtor and renewed.

Stikeman Elliott

SCHEDULE "B"

PPSA REGISTRATIONS

Registration No.:	20171220 1030 1862 2420
Term:	99 (Perpetual)
Business Debtors:	INDEPENDENT ELECTRICITY SYSTEM OPERATOR
	SOCIETE INDEPENDANTE D'EXPLOITATION DU RESEAU D'ELECTRICITE
	INDEPENDENT ELECTRICITY SYSTEM OPERATOR SOCIETE INDEPENDANTE D'EXP LOITATION DU RESEAU D'ELECTRICITE
	SOCIETE INDEPENDANTE D'EXPLOITATION DU RESEAU D'ELECTRICITE INDEPENDENT ELECTRICITY SYSTEM OPERATOR
Secured Parties:	Fair Hydro Trust
Collateral:	Accounts, Other

General Collateral Description:

A Security Interest Is Granted By The Debtor In Favour Of The Secured Party In All Of The Following, (I) All Accounts (As Defined In The Personal Property Security Act (Ontario), Which Are Now Due, Owing Or Accruing Or Growing Due To, Or Which May Hereafter Become Due, Owing Or Accruing Or Growing Due, To The Debtor By A Licensed Distributor And A Licensed Retailer, Each As Defined In The Ontario Fair Hydro Act, And (Ii) All Proceeds (As Defined In The Personal Property Security Act (Ontario), And Renewals Of The Foregoing, In Whatever Form, Together With All Substitutions Therefore

ATT00002.pdf

Fwd_ Opinion-Fair Hydro Transaction.pdf

From: Kim Marshall
To: Veinot, Cindy (TBS)
Subject: Fwd: Opinion-Fair Hydro Transaction
Date: February 14, 2018 5:44:35 PM
Attachments: stikemanelliott_logo_rgb_120px.png
ATT00001.htm
Revised SE Opinion re IESO.PDF
ATT00002.htm

Sent from my iPad

Begin forwarded message:

From: Peter Hamilton <PHamilton@stikeman.com>
Date: February 12, 2018 at 5:11:59 PM EST
To: Kim Marshall <Kim.Marshall@ieso.ca>, Michael Boll <Michael.Boll@ieso.ca>
Cc: "Picard, Michel" <mpicard@kpmg.ca>, Glenn Zacher <GZacher@stikeman.com>
Subject: Opinion-Fair Hydro Transaction

No worries, see below.

I refer to my firm's opinion, dated December 21, 2017, attached. This opinion is identical to what you have previously reviewed with the exception that there is a broader list of addressees.

With respect to this opinion I can confirm as follows:

Notwithstanding any language to the contrary in our opinion of even date with respect to certain bankruptcy issues relating to the above-referenced transaction, you are authorized to make available to your auditors such opinion solely as evidential matter in support of their evaluation of management's assertion that the transfer of the specified portion of the regulatory asset pursuant to which the financing entity will acquire a corresponding investment interest (Sections 26 and 27 of the FHP Act) meets the conditions for derecognition under Canadian Public Sector Accounting Standards, provided a copy of this letter is furnished to them in connection therewith. In authorizing you to make copies of such opinions available to your auditors for such purpose, we are not undertaking or assuming any duty or obligation to your auditors or establishing any lawyer-client relationship with them. Further, we do not undertake or assume any responsibility with respect to financial statements of you or your affiliates.

<https://na01.safelinks.protection.outlook.com/?url=http%3A%2F%2Fwww.stikeman.com&data=01%7C01%7Ckim.marshall%40ieso.ca%7Ca2027238a4d442948e9508d57265d07a%7C7cd55abd63f243c58f4bd38ea458add8%7C0&sdata=1PJyY6%2BFl3ENygSPUXzEsLsbcIR%2FwomzPrmQn%2BiXU38%3D&reserved=0>

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ATT00001_2.pdf

Stikeman Elliott LLP Barristers & Solicitors

5300 Commerce Court West, 199 Bay Street, Toronto, ON M5L 1B9 Canada

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Revised SE Opinion re IESO_1.PDF

Stikeman Elliott

Stikeman Elliott LLP
Barristers & Solicitors
5300 Commerce Court West
199 Bay Street
Toronto, ON Canada M5L 1B9

Main: 416 869 5500
Fax: 416 947 0866
www.stikeman.com

December 21, 2017

BNY Trust Company of Canada, in its capacity as Indenture Trustee for the Specified Creditors from time to time
One York Street, 6th Floor
Toronto, Ontario M5J 0B6

Fair Hydro Trust, as Issuer
c/o Computershare Trust Company of Canada
100 University Avenue
11th Floor
Toronto, Ontario M5J 2Y1

Ontario Power Generation Inc., as Manager
700 University Avenue
Toronto, Ontario M5G 1X6

Computershare Trust Company of Canada, as Issuer Trustee
100 University Avenue
11th Floor
Toronto, Ontario M5J 2Y1

Moody's Investors Service Inc.
70 York St
Toronto, Ontario M5J 1S9

DBRS Limited
DBRS Tower
181 University Avenue, Suite 700
Toronto, Ontario M5H 3M7 Canada

Dear Sirs:

We have acted as counsel for Independent System Operator (the "**IESO**") in connection with a Master Transfer and Services Agreement dated December 21, 2017 (the "**Master Agreement**") entered into between the IESO and Fair Hydro Trust (the "**Trust**").

The opinions expressed herein relate only to the laws of the Province of Ontario (the "**Province**") and the federal laws of Canada applicable therein in effect on the date hereof, and no opinions are expressed as to the laws of any other jurisdiction.

Interpretation

Terms with initial capital letters in this opinion have the meanings given to them in the Master Agreement unless otherwise defined herein. Terms both underlined and in italics have the meanings given to them in the *Ontario Fair Hydro Plan Act* (the "**Act**").

Documents

As such counsel, we have participated in the preparation of and examined an executed copy of each of:

(a) the Master Agreement;

(b) a Transfer Notice dated December 21, 2017 executed by the Trust and accepted by the IESO (the "**Initial Transfer Notice**");

(c) an acknowledgment and indemnity agreement dated December 21, 2017 entered into between the IESO and the Trust (the "**Indenture Trustee**") (the "**Acknowledgment**"); and

(d) a security agreement dated December 21, 2017 made by the IESO in favour of the Trust (the "**Security Agreement**").

The Master Agreement and the Initial Transfer Notice are referred to as the "**Initial Transfer Documents**." The Initial Transfer Documents, the Acknowledgment and the Security Agreement are referred to as the "**Documents**".

Assumptions

For the purposes of the opinions expressed herein, we have assumed:

(a) the genuineness of all signatures of all parties and the legal capacity of all individuals signing any documents;

(b) the authenticity of all documents submitted to us as originals, the conformity to originals of all documents submitted to us as certified or photostatic or electronically transmitted copies or facsimiles thereof and the authenticity of the originals of such certified, photostatic or electronically transmitted copies or facsimiles;

(c) that each of the parties, other than the IESO, to the Documents has all requisite capacity, power and authority to execute and deliver the Documents and to perform its obligations thereunder, and has taken all necessary action to authorize the execution and delivery of each of the Documents and the performance of its obligations thereunder;

(d) the Trust has all requisite capacity, power and authority to acquire and hold an *investment asset*;

(e) that each of the parties, other than the IESO, to the Documents has duly executed and delivered the Documents;

(f) that each of the Documents is a legal, valid and binding obligation of each of the parties thereto, other than the IESO, enforceable against each such party by each other party thereto, in accordance with its terms;

(g) that, as at the date of the Transfer specified in the Initial Transfer Notice, all of the conditions precedent to a "Transfer" under the Master Agreement have been satisfied or waived;

(h) that the Trust is a *financing entity*;

(i) that the parties to the Security Agreement have not agreed orally or in any written agreement to postpone the time for attachment of any security interest expressed to have been created under the Security Agreement;

(j) that the property and assets subject to security interests created by the Security Agreement do not include consumer goods (as defined in the *Personal Property Security Act* (Ontario) (the "**PPSA**");

(k) that the Act and the regulations thereunder (the "**Regulations**", and together with the Act, the "**Fair Hydro Legislation**") are constitutional, have been duly enacted and are in full force and effect and in the event of any conflict or inconsistency between the Fair Hydro Legislation and any other legislation, guidelines or rules, such inconsistency will be resolved in favour of the Fair Hydro Legislation;

(l) the IESO has received payment by the Trust pursuant to the Initial Transfer Notice of an amount equal to the portion of the *regulatory asset* set out in the Initial Transfer Notice;

(m) the value of the portion of the *regulatory asset* set out in the Initial Transfer Notice is not greater than the consideration received for it by the IESO.

For greater certainty, a specific assumption, limitation or qualification in this opinion is not to be interpreted to restrict the generality of an assumption, limitation or qualification expressed in general terms that include the subject matter of the specific assumption, limitation or qualification.

Searches

We have conducted, or have caused to be conducted, the searches identified in Schedule "A" for filings or registrations made in those offices of public record, as of December 19, 2017. These searches were conducted in respect of the current name of the IESO. The results of these searches are set out in Schedule "A".

Opinions

Based on and subject to the foregoing and the assumptions and qualifications set out at the end of this opinion, we are of the opinion that:

1. The IESO is a corporation without share capital continued under Part II of the *Electricity Act*.

2. The IESO has the necessary corporate power and authority to execute and deliver the Documents and to perform its obligations thereunder.

3. All necessary corporate action has been taken to authorize the execution and delivery of the Documents by the IESO and the performance of its obligations thereunder.

4. The Documents have been duly executed and delivered on behalf of the IESO.

5. Each of the Documents constitutes a legal, valid and binding obligation of the IESO, enforceable against the IESO in accordance with its terms.

6. The execution and delivery by the IESO of the Documents and the performance by the IESO of its obligations thereunder, and the performance by IESO of its obligations thereunder, do not and will not violate or result in a breach of any statute or regulation of the Province or of Canada that is applicable therein.

7. The execution and delivery by the IESO of the Documents and the performance of its obligations thereunder do not require the IESO to obtain any consent, authorization or approval of any governmental authority or any court or tribunal, in the Province, or to make any filing or provide any notice to any such entity, other than such consents and approvals as have been obtained or filings or notices that have been made, in each case copies of which have been provided to you.

8. The Security Agreement creates a valid security interest in favour of the Trust in the personal property described in the Security Agreement as being subject to a security interest (the "**Collateral**") in which the IESO now has rights and is sufficient to create a valid security interest in favour of the Trust in any such Collateral in which the IESO acquires rights after the date of this opinion when those rights are acquired by the IESO, in each case to secure payment and performance of the obligations described in the Security Agreement as being secured by it.

9. Registration has been made in all public offices provided for under the laws of Ontario where such registration is necessary at this time to perfect the security interests created by the Security Agreement with respect to the personal property of the IESO and particulars of the registration are set forth in Schedule "B" hereto.

10. Section 26(3) of the Act provides that upon receipt by the IESO of payment by the Trust pursuant to the Initial Transfer Notice of an amount equal to the portion of the IESO's *regulatory asset* set out in the Initial Transfer Notice, (a) the balance in the *variance account* shall be reduced by the amount of the payment; (b) the *regulatory asset* shall be adjusted accordingly; (c) the Trust shall acquire a corresponding *investment interest*; and (d) the IESO shall retain no further right, title or interest in the corresponding *investment interest*.

11. Section 27(1) of the Act, provides that a *transfer* in favour of the Trust of a specified portion of a *regulatory asset* under Section 26 of the Act constitutes a "valid and enforceable absolute assignment, conveyance and sale by the IESO to the Trust of the corresponding *investment interest*". Pursuant to Section 27(3) and (4) of the Act such *transfer* "shall be deemed to have been and shall be perfected, vested, valid and binding as against the IESO", regardless of whether such persons having claims "have received notice of the transfer, and the property rights and interests acquired by the Trust in the corresponding investment interest shall have priority over any liens in favour of those persons".

Insolvency

For the purposes of our opinions below, "Insolvency Statutes" means the Bankruptcy and Insolvency Act (Canada) (the "BIA"), the Companies' Creditors Arrangement Act (Canada) (the "CCAA"), the Assignments and Preferences Act (Ontario), the Winding-Up and Restructuring Act (Canada) (the "WURA") and the Fraudulent Conveyances Act (Ontario).

For purposes of our opinions in paragraphs 12 and 13 below, we have assumed that,

(a) the IESO is not an insolvent person, in insolvent circumstances or on the eve of or in contemplation of insolvency or unable to meet its engagements, as applicable, within the meaning of any of the Insolvency Statutes;

(b) the IESO will not become an insolvent person or be put in insolvent circumstances or become unable to meet its engagements, as applicable, within the meaning of any of the Insolvency Statutes by entering into, or immediately after completing the transactions contemplated by the Documents;

(c) there has not been filed by or in respect of the IESO a petition for a receiving order, an assignment in bankruptcy, a notice of intention to file a proposal in bankruptcy, a proposal, an application to hold a meeting of creditors, an application seeking to propose a plan to creditors or an application seeking to obtain a stay, or any similar proceedings under any of the Insolvency Statutes;

(d) at the date of the *transfer*, no person shall have assumed control of any portion of the *regulatory asset* through execution, attachment, garnishment, charging order, equitable execution or other legal process;

(e) the IESO has entered into the Initial Transfer Documents for the purpose of effecting a *transfer* of the portion of the *regulatory asset* set out in the Initial Transfer Notice in return for payment by the Trust of an amount equal to the portion of the *regulatory asset* set out in the Initial Transfer Notice;

(f) the IESO has entered into the Documents in good faith and not with a view to giving the Trust or any other person a preference over creditors of the IESO and not for the purpose or with the intent of injuring, obstructing, impeding, defeating, hindering, delaying, prejudicing or defrauding the rights and claims of Creditors or others against the IESO, providing payment or security for

payment to the Trust or for any other purpose relating in any way to the claims of Creditors or others against the IESO; and

(g) the (i) consideration given by the Trust for the portion of the *regulatory asset* set out in the Initial Transfer Notice represents fair and reasonable value for such portion of the *regulatory asset* as at the time of the *transfer*; and (ii) lesser of the value and fair market value of such consideration is not less than the approximate value or fair market value of such portion of the *regulatory asset* as at the time of the *transfer*.

For purposes of our opinion in paragraph 13 below we have assumed that,

(a) the IESO is not a party to any agreement with the Trust under which the Trust would be legally responsible for the obligations of the IESO;

(b) the creditors of the Trust will on a timely basis oppose any attempt to obtain (and will not consent to) the substantive consolidation of the assets and liabilities of the Trust with the assets and liabilities of the IESO and the creditors of the Trust would be materially prejudiced by substantive consolidation; and

(c) the IESO will not be involved in the day-to-day management of the Trust;

(d) the IESO will maintain separate organizational records and books of account from the Trust;

(e) the IESO's consolidated financial statements made available to the public will not consolidate the Trust;

(f) the IESO will maintain its funds and assets separately from the assets of the Trust, and, except for current collections not yet remitted to the Trust, the Trust's assets, funds, and records relating thereto, have not been, are not, and will not be, commingled with those of the IESO or any other Person;

(g) none of the Trust's business correspondence and other communications will be conducted in the name of the IESO;

(h) except as servicer under the Master Agreement and the Fair Hydro Legislation, the IESO will not act as an agent for the Trust, and will not present itself to the public as an agent for the Trust and will present itself as a legal entity separate from the Trust;

(i) the IESO will not directly pay any liabilities of the Trust out of its own funds or assets;

(j) the IESO will not assume or guarantee or become obligated for the debts of the Trust; and

(k) except pursuant to the Fair Hydro Legislation, the IESO will not enter into, or be a party to, any transaction with the Trust, except in the ordinary course of its business and on terms which are intrinsically fair and not less favorable to it than would be obtained in a comparable arm's-length transaction with an unrelated third party.

12. The *transfer* by the IESO of the specified portion of the *regulatory asset* provided for in the Initial Transfer Notice would not be declared void or be set aside by a court as a preference or a fraudulent conveyance upon the application of a Creditor pursuant to the applicable preferences and fraudulent conveyances provisions of any of the Insolvency Statutes and would not be held by a court to constitute a transfer at undervalue under the Insolvency Statutes.

13. The Trust is a separate entity from the IESO, and absent an agreement to the contrary or a further transfer of the *investment interest*, (i) in a bankruptcy or insolvency proceeding under the Insolvency Statutes in relation to the IESO, the corresponding *investment interest* would not constitute property of the IESO within the meaning of the applicable Insolvency Statutes (ii) the Trust would not be legally responsible for the general obligations of the IESO and (iii) creditors of the IESO could not look successfully to the corresponding *investment interest* to satisfy a claim which they may have against the IESO.

Assumptions, Limitations and Qualifications

The foregoing opinions are subject to the following assumptions, limitations and qualifications:

(a) with respect to opinions 1 to 11, inclusive, enforceability of the rights and remedies provided in the Documents may be limited by bankruptcy, insolvency, reorganization, arrangement, fraudulent preference and conveyance, transfer at undervalue, assignment and preference and other similar laws of general application relating to or affecting creditors' rights;

(b) the availability of equitable remedies, including, without limitation, the remedies of specific performance and injunctive relief, may only be granted in the discretion of a court of competent jurisdiction;

(c) indemnification provisions set out in any of the Documents may be unenforceable to the extent that a court decides that any payment required thereunder would derogate from the court's discretion in respect of indemnified amounts, or would be inconsistent with the court's determination by whom and to what extent indemnified amounts shall be paid;

(d) the awarding of costs of or incidental to proceedings authorized to be taken in court or before a judge are in the discretion of the court or judge and the court or judge has the full power to determine by whom and to what extent such costs shall be paid;

(e) the provisions contained in any of the Documents which purport to sever any provision therein which is prohibited or unenforceable under applicable law without affecting the enforceability or validity of the remainder of such Agreement would be enforced only to the extent that a court determined that such prohibited or unenforceable provision could be severed without impairing the interpretation and application of the remainder of such Document;

(f) the effectiveness of terms exculpating a party from a liability or duty otherwise owed by it to another may be limited by law;

(g) enforcement may be limited to the extent that a court construes any provision of the Documents to constitute a penalty or forfeiture;

(h) the records or a certificate, determination, notification or opinion of a party to the Documents as to any matter provided for in the Documents may be held by a court not to be conclusive if it can be shown to have an unreasonable or arbitrary basis or in the event of manifest error;

(i) a court may give effect to waivers or amendments notwithstanding that they are not in writing and executed by the parties;

(j) no opinion is expressed as to the enforceability of Section 7.2 of the Master Agreement (i) as it relates to the right of the Trust to appoint a Successor Servicer by reason that the IESO is insolvent or that a notice of intention or a proposal has been filed in respect of the IESO pursuant to the BIA; or (ii) in the face of any applicable order made by a court of competent jurisdiction pursuant to the CCAA;

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(k) the *Personal Property Security Act* (Ontario) may affect the enforcement of certain rights and remedies under the Initial Transfer Documents and the Security Agreement to the extent that these rights and remedies are inconsistent with or contrary to such legislation;

(l) we express no opinion as to the creation or perfection of a security interest in, nor have we effected any registrations or given any notices in respect of, any security interest in any property to which the PPSA does not apply pursuant to Section 4 of the PPSA;

(m) we express no opinion as to (i) the title of the IESO to any property; or (ii) the rank or priority of any security interest created by the Security Agreement;

(n) we express no opinion as to whether any security interest is created by the Security Agreement with respect to any property or assets which are not identifiable or traceable;

(o) no opinion is expressed with respect to the effectiveness of any covenant of any party to any Document not to institute bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings or take any action to appoint a receiver or order the winding-up or liquidation of another Person;

(p) no opinion is expressed as to compliance with the *Personal Information Protection and Electronic Documents Act* (Canada) or any other privacy laws; and

(q) the enforceability of the Agreements is subject to the limitations contained in the *Limitations Act, 2002* (Ontario).

This opinion is given in connection with the transactions contemplated by the Agreements, for the benefit of the addressees, and is not to be relied upon for any other purposes or by any other party (except the permitted assigns of the addressees), nor is it to be quoted from or made public in any way, without our prior written consent.

Yours truly,

Stikeman Elliott LLP

SCHEDULE "A"

PPSA SEARCHES

1. **Registration No.:** 20171214 1653 1862 1867

   Term: 99 (Perpetual)

   Business Debtors: INDEPENDENT ELECTRICITY SYSTEM OPERATOR

   SOCIETE INDEPENDANTE D'EXPLOITATION DU RESEAU D'ELECTRICITE

   INDEPENDENT ELECTRICITY SYSTEM OPERATOR SOCIETE INDEPENDANTE D'EXP LOITATION DU RESEAU D'ELECTRICITE

   SOCIETE INDEPENDANTE D'EXPLOITATION DU RESEAU D'ELECTRICITE INDEPE NDENT ELECTRICITY SYSTEM OPERATOR

   Secured Party: Fair Hydro Trust

   Collateral: Accounts, Other

   General Collateral: A Security Interest Is Granted By The Debtor In Favour Of The Secured Party In All Of The Following, (I) All Accounts (As Defined In The Personal Property Security Act (Ontario), Which Are Now Due, Owing Or Accruing Or Growing Due To, Or Which May Hereafter Become Due, Owing Or Accruing Or Growing Due, To The Debtor By A Licensed Distributor And A Licensed Retailer, Each As Defined In The Ontario Fair Hydro Act, And (Ii) All Proceeds (As Defined In The Personal Property Security Act (Ontario), And Renewals Of The Foregoing, In Whatever Form, Together With All Substitutions Therefore.

   (Discharged December 18, 2017)

2. **Registration No.:** 20171220 1030 1862 2420

   Term: 99 (Perpetual)

   Business Debtors: INDEPENDENT ELECTRICITY SYSTEM OPERATOR

   SOCIETE INDEPENDANTE D'EXPLOITATION DU RESEAU D'ELECTRICITE

   INDEPENDENT ELECTRICITY SYSTEM OPERATOR SOCIETE INDEPENDANTE D'EXP LOITATION DU RESEAU D'ELECTRICITE

   SOCIETE INDEPENDANTE D'EXPLOITATION DU RESEAU D'ELECTRICITE INDEPE NDENT ELECTRICITY SYSTEM OPERATOR

   Secured Party: Fair Hydro Trust

   Collateral: Accounts, Other

Stikeman Elliott

General Collateral:		A Security Interest Is Granted By The Debtor In Favour Of The Secured Party In All Of The Following, (I) All Accounts (As Defined In The Personal Property Security Act (Ontario), Which Are Now Due, Owing Or Accruing Or Growing Due To, Or Which May Hereafter Become Due, Owing Or Accruing Or Growing Due, To The Debtor By A Licensed Distributor And A Licensed Retailer, Each As Defined In The Ontario Fair Hydro Act, And (Ii) All Proceeds (As Defined In The Personal Property Security Act (Ontario), And Renewals Of The Foregoing, In Whatever Form, Together With All Substitutions Therefore.
3.	**Registration No.:**	20160112 1435 8077 8193
	Term:	5 years
	Business Debtor:	Independent Electricity System Operator [IESO]
	Secured Parties:	Dell Financial Services Canada Limited
	Collateral:	Equipment, Accounts, Other
	General Collateral:	All dell and non dell computer equipment and peripherals wherever located heretofore or hereafter leased to debtor by secured party pursuant to a master lease agreement number 2146577 together with all substitutions, additions, accessions and replacements thereto and thereof now and hereafter installed in, affixed to, or used in conjunction with such equipment and proceeds thereof together with all rental or installment payments, insurance proceeds, other proceeds and payments due or to become due and arising from or relating to such equipment. Proceeds all present and after-acquired personal property
4.	**Registration No.:**	19980923 1042 1529 0180
	Maturity Date:	September 18, 2003
	Term:	5 years
	Business Debtor:	Ontario Hydro Corporation
	Secured Parties:	Dell Financial Services Canada Limited
	Collateral:	Equipment, Accounts, Other
	General Collateral:	All dell and non dell computer equipment and peripherals wherever located heretofore or hereafter leased to debtor by secured party pursuant to a master lease agreement number 2146577 together with all substitutions, additions, accessions and replacements thereto and thereof now and hereafter installed in, affixed to, or used in conjunction with such equipment and proceeds thereof together with all rental or installment payments, insurance proceeds, other proceeds and payments due or to become due and arising from or relating to such equipment. Proceeds all present and after-acquired personal property.

Amended to amend debtor name, add IESO as a debtor and renewed.

Stikeman Elliott

SCHEDULE "B"

PPSA REGISTRATIONS

Registration No.:	20171220 1030 1862 2420
Term:	99 (Perpetual)
Business Debtors:	INDEPENDENT ELECTRICITY SYSTEM OPERATOR
	SOCIETE INDEPENDANTE D'EXPLOITATION DU RESEAU D'ELECTRICITE
	INDEPENDENT ELECTRICITY SYSTEM OPERATOR SOCIETE INDEPENDANTE D'EXP LOITATION DU RESEAU D'ELECTRICITE
	SOCIETE INDEPENDANTE D'EXPLOITATION DU RESEAU D'ELECTRICITE INDEPENDENT ELECTRICITY SYSTEM OPERATOR
Secured Parties:	Fair Hydro Trust
Collateral:	Accounts, Other

General Collateral Description:

A Security Interest Is Granted By The Debtor In Favour Of The Secured Party In All Of The Following, (I) All Accounts (As Defined In The Personal Property Security Act (Ontario), Which Are Now Due, Owing Or Accruing Or Growing Due To, Or Which May Hereafter Become Due, Owing Or Accruing Or Growing Due, To The Debtor By A Licensed Distributor And A Licensed Retailer, Each As Defined In The Ontario Fair Hydro Act, And (Ii) All Proceeds (As Defined In The Personal Property Security Act (Ontario), And Renewals Of The Foregoing, In Whatever Form, Together With All Substitutions Therefore

ATT00002_1.pdf

GA Refinancing (IESO related doc).rtf

From: Petsche, Nadine (TBS) []
To: Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]
Subject: GA Refinancing (IESO related doc)
Date: Friday, May 19, 2017 08:47:03
Attachment 1: Draft report dated May 17 2017.pdf

Suzie/Blake/LeeAnne,

Attached, for your reference, is the final paper related to IESO accounting (subject to change based on future Regs/Commercial Contracts, etc.).

Regards,

Nadine

Draft report dated May 17 2017.pdf

FINAL DRAFT

KPMG Letter to the Independent Electricity System Operator

An Accounting Opinion on the Application of PSAS to the Consolidation of a Trust and to the Recognition and Derecognition of a Variance Account in Relation to Bill 132, *Ontario Fair Hydro Plan Act, 2017*

This letter has been prepared in draft form and will be updated upon receipt of the adopted legislation, if passed, (including the amendments of the Electricity Act, 1998 and the OEB Act, 1998) and finalized financial structure (including the bylaws and regulations of the Trust to be established by OPG) and other relevant agreements necessary for us to provide our final opinion, of which legislation and other relevant agreements are expected to be enacted/ finalized on or before September 30, 2017.

NOTICE OF NON RELIANCE

This Notice is regarding the accompanying Letter to provide an accounting opinion on the application of Public Sector Accounting Standards to the consolidation of a trust and to the recognition and derecognition of a variance account in relation to Bill 132, *Ontario Fair Hydro Plan Act, 2017* (the "**Letter**") prepared by KPMG LLP for the Independent Electricity System Operator ("Client").

The following terms apply to any review of the Letter and should you not agree to these terms, please do not review the Letter and delete copy of the same.

The Letter was prepared in connection with certain services we provided to the Client and should not be used for any other purpose or regarded as suitable for use by any person or persons other than the Client.

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KPMG neither warrants nor represents that the Letter is accurate, complete, sufficient or appropriate for any purpose contemplated by you or any other person or body. You shall have no right to disclose the Letter to any other party.

Yours very truly,

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May 16, 2017

CONFIDENTIAL

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The Board of Directors

Dear Sirs,

We have been engaged to provide you with an accounting opinion on the application of Public Sector Accounting Standards to the consolidation of a trust and to the recognition and derecognition of a variance account in relation to Bill 132, *Ontario Fair Hydro Plan* Act, 2017 as tabled in the first reading ("Bill 132") (Appendix A to this letter). This letter is being issued to the Independent Electricity System Operator ("IESO" or the "Company") in connection with its evaluation of the consolidation requirements and the accounting for the variance account under Canadian Public Sector Accounting Standards ("PSAS"). Our engagement has been conducted in accordance with generally accepted standards in Canada for such engagements.

The ultimate responsibility for the decision on the appropriate application of PSAS for the specific issues described below rests with management of the Company as preparers of the financial statements.

The adoption of Bill 132 (including the subsequent amendments of the Electricity Act, 1998 ("the Electricity Act") and the Ontario Energy Board ("OEB" or the "Board") Act, 1998 ("the OEB Act")), and the finalization of the financing structure (including the bylaws and regulations of the trust to be established by OPG) and other agreements will take several months. Accordingly, our judgment on the appropriate application of PSAS for the specific matters described below is based on the facts, circumstances and assumptions provided to us. The finalization of the legislation, regulations, financing structure and other agreements may impact the comments and conclusions set out herein. Our comments and conclusions are based on Bill 132 and related matters as they exist at the date of this letter.

The following three issues are addressed in this letter:

Issue #1: Can the IESO recognize a regulatory asset related to the variance account created by Bill 132?

Issue #2: Is the trust to be established by Ontario Power Generation (the "OPG Trust") controlled by the IESO according to the guidance issued under PSAS 1300 *Government Reporting Entity* and therefore subject to consolidation by IESO?

KPMG LLP is a Canadian limited liability partnership and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. KPMG Canada provides services to KPMG LLP.

Issue #3: What is the accounting treatment for derecognition of the regulatory asset by the IESO upon transfer of the variance account to the OPG Trust?

Background for issue #1

The facts, circumstances, and assumptions relevant to the specific transactions as provided to us by the management of the Company (responsible party) are as follows:

1. The IESO's legal status is a not-for-profit, non-taxable, corporation established pursuant to Part II of the Electricity Act. Management of the IESO has determined that the Company is an *Other Governmental Organization* and accordingly prepares its financial statements in accordance with PSAS.

2. IESO is rate regulated by the OEB in accordance with the Electricity Act and the OEB Act.

3. *Extract from the 2016 IESO financial statements, note 3 New Accounting Policies, audited by KPMG* "As of January 1, 2016, the IESO changed its accounting policy regarding the recognition of assets and liabilities subject to rate regulation. The change was made to better reflect the economic substance of certain types of expenses that may not be directly recovered through the normal revenue requirement model. This change has been applied retroactively and has increased amounts previously unrecorded for regulatory assets and decreased amounts previously reported for accumulated deficit."

4. *Extract from the 2016 IESO financial statements, note 2(d) Summary of Significant Accounting Policies, Regulatory assets and liabilities.* "As a rate-regulated entity, the IESO, in appropriate circumstances establishes regulated assets or liabilities and thereby defers the impact on the statement of operations of certain expenses or revenues because they are probable to be collected or refunded to market participants through future billings. The IESO applies guidance from United States Generally Accepted Accounting Principles (US GAAP) Topic 980, *Regulated Operations ("ASC 980")*, in this policy."

5. *Extract from Section 78(3.3) of the OEB Act:* In approving or fixing rates under subsection (3.1),

   (a) the Board shall forecast the cost of electricity to be consumed by the consumers to whom the rates apply, taking into consideration the adjustments required under section 25.33 of the Electricity Act, 1998 and shall ensure that the rates reflect these costs; and

   (b) the Board shall take into account balances in the IESO's variance accounts established under section 25.33 of the Electricity Act, 1998 and shall make adjustments with a view to eliminating those balances within 12 months or such shorter time periods as the Minister may direct.

6. Currently, IESO recognizes two regulatory assets for unrecovered smart metering expenses and unrecovered PSAB transition items as permitted by rates approved by the OEB. In addition, in accordance with section 25.33 of the Electricity Act, IESO also recognizes variance accounts (eg. OESP, RPP and RRRP variance accounts) to record all amounts payable or receivable by it in connection with the amounts paid to generators, the Ontario Electricity Financial Corporation ("OEFC"), distributors and to entities with whom the IESO has a procurement contract.

7. The Electricity Act, OEB Act and other regulations will be amended to reflect the following *extracts of Bill 132:*

   Section 1 Definitions, Transfer of regulatory asset

   (3) In this Act, a reference to the transfer of a specified portion of the regulatory asset is a reference to the following, as provided for in subsection 26 (3):

1. A reduction in the balance in the variance account.
2. The adjustment of the regulatory asset.
3. The acquisition by a financing entity of the investment interest corresponding to the specified portion of the regulatory asset.

Section 24 Variance account to be established, maintained

(1) IESO shall establish and maintain a variance account in which it records the following:

1. The IESO deferral for each month.
2. All payments received by IESO resulting from the exercise of the right of recovery under section 25 and any transfer under section 26.
3. Such other adjustments as may be prescribed, including adjustments in respect of the period that commences on or after May 1, 2017 and before the day this section comes into force.

(2) Subject to the correction of any obvious error by the IESO, its recording of the balance in the variance account is determinative of the balance as of the time of the recording.

(3) No change made by IESO to the balance in the variance account shall, if the previous balance was relied upon by an investment interest owner in the context of a transfer under section 26, affect the rights acquired by the investment interest owner under the transfer.

Section 25 Regulatory asset established

(1) Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

(2) Subject to subsection (3), the Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for the IESO to recover the balance recorded in the variance account.

(3) IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2021.

Section 34 Board's Authority

(2) Despite anything to the contrary in the OEB Act, the Board may exercise any of its responsibilities under this Act without a hearing.

8. It is expected that the IESO deferral recorded by the IESO in the variance account (the regulatory asset) will be transferred to an investment asset owner (i.e. a trust to be established by OPG) on a monthly basis and cash collected within a short period of time. The total IESO deferral for the period from May 1, 2017 to April 30, 2047 is estimated at $28 billion plus interest.

Appropriate Accounting Principle for Issue #1

ASC 980 Regulated Operations

– For general-purpose financial reporting, an incurred cost for which a regulator permits recovery in a future period is accounted for like an incurred cost that is reimbursable under a cost-reimbursement-type contract. [980-10-05-6]

- Unless an accounting order indicates the way a cost will be handled for rate-making purposes, it causes no economic effects that would justify deviation from the GAAP applicable to business entities in general. The mere issuance of an accounting order not tied to rate treatment does not change an entity's economic resources or obligations. In other words, the economic effect of regulatory decisions—not the mere existence of regulation—is the pervasive factor that determines the application of GAAP. [980-10-05-8]
- The guidance in the Regulated Operations Topic applies to general-purpose external financial statements of an entity that has regulated operations that meet all of the following criteria:
  (a) The entity's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party regulator or by its own governing board empowered by statute or contract to establish rates that bind customers.
  (b) The regulated rates are designed to recover the specific entity's costs of providing the regulated services or products. This criterion is intended to be applied to the substance of the regulation, rather than its form.
  (c) In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume that rates set at levels that will recover the entity's costs can be charged to and collected from customers. This criterion requires consideration of anticipated changes in levels of demand or competition during the recovery period for any capitalized costs. [980-10-15-2]
- Incurred Cost - A cost arising from cash paid out or obligation to pay for an acquired asset or service, a loss from any cause that has been sustained and has been or must be paid for. [980-10-20] Glossary
- Failure of an entity's operations to continue to meet the criteria in paragraph 980-10-15-2 can result from different causes. Examples include the following:
  (a) Deregulation.
  (b) A change in the regulator's approach to setting rates from cost-based rate-making to another form of regulation.
  (c) Increasing competition that limits the entity's ability to sell utility services or products at rates that will recover costs (as used in paragraph 980-10-15-2).
  (d) Regulatory actions resulting from resistance to rate increases that limit the entity's ability to sell utility services or products at rates that will recover costs if the entity is unable to obtain (or chooses not to seek) relief from prior regulatory actions through appeals to the regulator or the courts. [980-20-15-2]
- Rate actions of a regulator can provide reasonable assurance of the existence of an asset. An entity shall capitalize all or part of an incurred cost that would otherwise be charged to expense if both of the following criteria are met:
  (a) It is probable (as defined in Topic 450) that future revenue in an amount at least equal to the capitalized cost will result from inclusion of that cost in allowable costs for rate-making purposes.
  (b) Based on available evidence, the future revenue will be provided to permit recovery of the previously incurred cost rather than to provide for expected levels of similar future costs. If the revenue will be provided through an automatic rate-adjustment clause, this criterion requires that the regulator's intent clearly be to permit recovery of the previously incurred cost.

A cost that does not meet these asset recognition criteria at the date the cost is incurred shall be recognized as a regulatory asset when it does meet those criteria at a later date. [980-340-25-1]

- Rate actions of a regulator can reduce or eliminate the value of an asset. If a regulator excludes all or part of a cost from allowable costs, the carrying amount of any asset recognized pursuant to paragraph 980-340-25-1 shall be reduced to the extent of the excluded cost. Whether other assets have been impaired shall be judged the same as for entities in general and the Impairment or Disposal of Long-Lived Assets Subsections of Subtopic 360-10 shall apply. [980-340-35-1]
- If at any time an entity's incurred cost no longer meets the criteria for the capitalization of an incurred cost (see paragraph 980-340-25-1), that cost shall be charged to earnings. [980-340-40-1]
- In some cases, a regulator may approve rates that are intended to recover an incurred cost over an extended period without a return on the unrecovered cost during the recovery period. [980-340-55-2]
- The regulator's action provides reasonable assurance of the existence of an asset (see paragraph 980-340-25-1). Accordingly, the regulated entity would capitalize the cost and amortize it over the period during which it will be allowed for rate-making purposes. That cost would not be recorded at discounted present value. An exception to this general rule is provided for costs of abandoned plants. [980-340-55-3]

Issue #1: Can the IESO recognize a regulatory asset related to the variance account created by Bill 132?

As noted above, as of January 1, 2016, the IESO changed its accounting policy to recognize the economic impacts of rate regulation and now applies guidance from US GAAP Topic 980, *Regulated Operations*, as PSAS does not have any specific guidance for entities with rate-regulated activities.

IESO concluded that it met the requirements of PS2120.02, which allows them to reflect the impacts of rate regulation, as it is considered that the change of accounting policy in its 2016 financial statements resulted in a more appropriate presentation of transactions in its financial statements. The change was made to better reflect the economic substance of certain types of expenses that may not be directly recovered through the normal revenue requirement model.

The regulatory framework in Ontario relating to the generation and sale of electricity will be significantly impacted by Bill 132. Currently, a substantial amount of the energy purchased from the generators is collected by IESO from the local distribution companies through the customer billing, with the remaining being recovered through variance accounts over a period of 12 months maximum. As mentioned above, the effect of Bill 132 is to defer the collection of a total estimated amount of $28 billion (plus interest) of energy purchased from the generators over a period of 30 years. Bill 132 will not permit IESO to collect the IESO deferral before May 1, 2021 and the recovery process will be established through regulations. Such a long-term deferred recovery plan requires IESO to consider whether the uncollected energy costs qualify for deferral as a regulatory asset and whether it continues to meet the criteria that allow IESO to use the guidance for regulated operations of Topic 980. These two accounting issues are analyzed in the two tables below.

Criteria for the recognition of regulatory assets

ASC 980-340-25-1 states that rate actions of a regulator can provide reasonable assurance of the existence of an asset. An entity shall capitalize all or part of an incurred cost that would otherwise be charged to expense if both of the following criteria are met:

Criteria	Comment	Evaluation
(a) It is probable that future revenue in an amount at least equal to the capitalized cost will result from inclusion of that cost in allowable costs for rate-making purposes. (b) Based on available evidence, the future revenue will be provided to permit recovery of the previously incurred cost rather than to provide for expected levels of similar future costs. *(emphasis added)* If the revenue will be provided through an automatic rate-adjustment clause, this criterion requires that the regulator's intent clearly be to permit recovery of the previously incurred cost.	Bill 132 notes that, • *A recording of the balance in the variance account is determinative of the balance as of the time of the recording.* • *Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.* • *The Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for IESO to recover the balance recorded in the variance account.* • *The IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2021.* Based on Bill 132, IESO has the right to recover the balance recorded in the variance account. As a result, it is clear that the IESO will be able to recover the amount previously incurred rather than to provide for expected levels of similar future costs.	Met

Criteria for the adoption and continued use of ASC 980 guidance

Deferred recovery plans are plans adopted by regulators or legislations in response to significant increases in costs (e.g. purchased power costs). These plans typically provide for rates to remain fixed or increase moderately with a variance account mechanism to capture costs in excess of the level allowed in current rates. A regulated utility subject to such plans is required to consider whether it continues to meet the criteria that allow it to use the guidance for regulated operations of Topic 980, especially criteria ASC 980-10-15-2 (b).

The proposed plan for the recovery of purchase power costs over a 30 year period is considered a deferred recovery plan as the rates for the first four years will remain fixed and subsequently the rates will increase moderately with a variance account to capture energy costs in excess of the level allowed in current rates. The following is an analysis of the ASC 980-10-15-2 criteria.

Criteria	Comment	Evaluation
(a) The entity's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party	Currently, IESO recognizes regulatory assets related to smart meters and PSAS transition costs as permitted by rates approved by the OEB and regulatory liabilities related to the variance accounts (eg. OESP, RPP and RRRP variance accounts) established under section 25.33 of the Electricity Act related to the procurement of energy.	Met

Criteria	Comment	Evaluation
regulator or by its own governing board empowered by statute or contract to establish rates that bind customers.	It is important to note that both Hydro One and OPG are classified as *Government Business Enterprises* and are reporting under IFRS in their consolidated financial statements, are consolidated by the modified equity method into the province's books, are regulated by the OEB, and their respective regulatory assets and liabilities are reported in the province's books.	

(b) The regulated rates are designed to recover the specific entity's costs of providing the regulated services or products.	Currently, the rates approved by the OEB are designed to recover the IESO's costs of providing the regulated services and the pass-through related to the energy purchased from the generators.
	
	As mentioned above, a regulated utility subject to a deferred recovery plan is required to consider whether it continues to meet the criteria ASC 980-10-15-2 (b).
	
	This criterion requires a cause-and-effect relationship between a reporting entity's costs and its revenue. In addition, the timing of cost recovery and the related frequency of ratemaking is important. A reporting entity should consider its rate case experience, including the design of its rates and timing of recovery, when determining whether this criterion is met. These factors are analyzed below.
	
	Frequency of rate case
	
	- Currently, IESO is subject to OEB's annual reviews.
	- Although the recovery of purchase energy costs will be frozen at the approved rate on May 1, 2017 for the first four years, the IESO will be granted a right to recover after May 1, 2021 the IESO deferral recorded in the variance account during the four-year period.
	  - *A recording of the balance in the variance account is determinative of the balance, as of the time of the recording. (We note that this confirms that there will be no prudence review by the OEB)*
	  - *Right to recover the balance recorded in the variance account.*
	  - *Obligation on the part of the OEB to dispose the variance account in accordance with the regulation.*
	- Subsequent to May 1, 2021, the OEB will be required to determine and set rates payable by specified consumers to allow for IESO to recover the balance recorded in the variance account.
		Met

Criteria	Comment	Evaluation
	- *The Board shall, from time to time, determine and set rates payable by specified consumers to allow for IESO to recover the balance recorded in the variance account.* - *Despite anything to the contrary in the OEB Act, the Board may exercise any of its responsibilities under this Act without a hearing.* *Rates are designed to recover incurred costs* - There is a cause-and-effect relationship between the purchase energy costs and revenue, as IESO will be allowed to recover the costs incurred. - *A recording of the balance in the variance account is determinative of the balance as of the time of the recording* (We note that this confirms that there will be no prudence review). - *Right to recover the balance recorded in the variance account.* - *Obligation on the part of the OEB to ensure IESO will recover the balance recorded in the variance account.* *Periods of alternative ratemaking (e.g., rate freezes)* Evaluation of the second criterion requires additional judgment if the regulated utility is subject to any form of ratemaking that introduces uncertainty about the cause-and-effect relationship between costs and rates. A rate freeze period is defined as a fixed rate that is charged to customers during a period of time (more than two years) and the utilities are exposed to increases in operating and energy costs with no ability to recover the variances. This is not the case as IESO will be granted the right to recover fully the IESO deferral recorded in the variance account, including the first four-year period. - *The Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for the IESO to recover the balance recorded in the variance account.* *Costs uncertainty* As the IESO will be granted the right to fully recover the IESO deferral recorded in the variance account, there is no uncertainty about the recovery of the costs.	

Criteria	Comment	Evaluation
	Disallowances of costs The OEB has never disallowed the recovery of any material costs incurred by the IESO. More importantly, as the IESO will be granted by legislation the right to fully recover the IESO deferral recorded in the variance account, there is no risk of the potential disallowance of the purchase power costs. Based on the analysis of the above factors, there are no indications that this criterion would not be met. The above factors establish that there will be a direct cause-and-effect relationship between IESO's costs and its future collection.	

(c) In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume that rates set at levels that will recover the entity's costs can be charged to and collected from customers. This criterion requires consideration of anticipated changes in levels of demand or competition during the recovery period for any capitalized costs."	The remaining criterion is whether limitations, including considering demand levels at the approved rates, on the extent of recovery of the regulatory asset could prevent the IESO from recognizing a regulatory asset for the entire balance in the recovery right granted to the IESO.
	
	Bill 132 notes that:
	
	- *Effective May 1, 2017, the IESO's right to recover the balance in the variance account is subject to the following:*
	  o *The Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified customers to allow for the IESO to recover the balance recorded in the variance account.*
	  o *IESO shall not be entitled to collect the variance account from specified consumers before May 1, 2021.*
	
	Although the process, especially the timing of the recovery of the regulatory asset has not been established yet by the OEB, the wording and intent of the proposed legislation is clear that it is intended by law to be recoverable over the period of 30 years. Further, given the nature and extent of customer demand for the power generated and distributed in Ontario, both at this time and projected in the future, it is reasonable to conclude that there will be sufficient demand to recover the regulatory asset. As with the other criteria, this will need to be continually evaluated throughout the recovery period.
		Met

Management conclusion

IESO management has concluded that the IESO can recognize a regulatory asset related to the variance account created by Bill 132 based on the foregoing analysis.

The variance account created by Bill 132 is subject to rate regulation by the OEB and the variance account will be established with the right to collect funds against the variance amount in the future. In these circumstances, the IESO is able to establish a regulatory asset. The IESO financial statements are prepared in accordance with Canadian public sector accounting standards. Although PSAB does not provide specific guidance on rate regulated accounting, it does under PS 1150 Generally Accepted Accounting Principles allow for guidance to be followed from other accounting frameworks. IESO has applied guidance from United States Generally Accepted Accounting Principles (US GAAP) Topic 980, *Regulated Operations* in its accounting policies.

Our conclusion

We have considered the foregoing analysis and management's conclusion. We concur that the variance account created by Bill 132 will meet the criteria for the recognition of a regulatory asset stated in ASC 980-340-25-1. Furthermore, we have also considered the criteria stated in ASC 980-10-15-2 and believe that IESO should be allowed to continue to use the guidance for regulated operations of Topic 980.

Background for Issue #2

The facts, circumstances, and assumptions relevant to the specific transactions as provided to us by the management of the Company (responsible party), in addition to those described in the background for issue #1, are as follows:

1. The IESO currently has the right to collect the global adjustment ("GA") monthly from ratepayers through provisions in the Electricity Act. It is proposed that collection of a certain portion of the monthly GA be deferred in a regulatory asset for collection in the future, and that the right to recover the deferred GA from ratepayers be used as the basis for structured financing/ securitization.
2. In connection with Bill 132, it is proposed that a trust be established as a financial vehicle by OPG (the "OPG Trust") in connection with the deferred GA. The OPG Trust will finance the deferral of the GA by purchasing the regulatory asset from the IESO for the principal amount of the GA being deferred.
3. The OPG Trust is expected to finance these purchases from the IESO through a combination of senior secured financing raised in the capital markets, and subordinated financing from OPG (the funding for which will mostly be from equity injections from the OEFC/Province of Ontario).
4. OPG will be appointed as the Financial Services Manager and will be given the responsibility to direct the activities of the OPG Trust, through a services agreement and/or through the Trust's constating documents.

Appropriate Accounting Principle for Issue #2

PS1300 *Government Reporting Entity*:

PSAS refer to government or government organizations. For the purpose of this analysis, the PSAS guidance below relating to government or government organizations should be read and understood as being the IESO (emphasis added).

- The government reporting entity should comprise government components and those organizations that are controlled by the government. [PS 1300.07]
- Control is the power to govern the financial and operating policies of another organization with expected benefits or the risk of loss to the government from the other organization's activities. [PS 1300.08] (emphasis added).
- Whether a government controls an organization is a question of fact that must be determined by reference to the definition of control established in paragraph PS 1300.08 and the particular circumstances of each case. The determination of the fact that control exists will require the application of professional judgment. Government achieves its objectives through a wide range of organizations which individually will fall somewhere along a continuum. At one end of the continuum, it will be clear that an organization does not have the power to act independently and is controlled by the government. At the other end, the organization will have the power to act independently and, while government will have a level of influence on the organization, it will be clear that it does not have control. Along the continuum, consideration needs to be given to the nature of the relationship between the government and the organization in order to determine whether control exists. This Section provides guidance intended to assist in this assessment. [PS 1300.10]
- In applying this guidance, it is necessary to determine the substance of the relationship between the government and the organization. The true nature of certain relationships may not be completely reflected by their legal form. All relevant aspects and implications of the relationship would be considered in determining whether or not the government controls the organization. Where various aspects of the relationship are designed, in effect, to achieve an overall objective, they would be viewed as a whole. [PS 1300.11]
- Financial and operating policies are principles and practices that determine how an organization conducts its activities. The ability to govern these policies is an important element of government control because it establishes the fundamental basis for the conduct of the organization's operations and the achievement of its mission and mandate. [PS 1300.13]
- There are a variety of ways to govern the financial and operating policies of an organization. For example:
  (a) a government may establish an organization's fundamental purpose and eliminate or significantly limit the ability of the organization to make future decisions by predetermining the financial and operating policies of the organization;
  (b) a government may direct the financial and operating policies of an organization on an ongoing basis; or
  (c) a government may veto, overrule or modify the financial and operating policies established by an organization. [PS 1300.14]
- A government does not need to manage an organization's activities on a day-to-day basis to control the organization. It is the government's existing authority to determine the policies governing those activities that is important. [PS 1300.15]

– For the purposes of this Section, it is assumed that where the government has the power to govern the financial and operating policies of an organization, it expects to derive a financial or non-financial benefit. The government may also be exposed to the risk of loss. [PS 1300.16]

Issue #2: Is the trust to be established by OPG (the "OPG Trust") controlled by the IESO according to the guidance issued under PSAS 1300 *Government Reporting Entity* and, therefore, subject to consolidation by IESO?

Under PSAS, IESO is required to consolidate all entities that are considered to be part of its reporting entity, applying the guidance provided in *Section PS 1300 Government Reporting Entity.* Under PS 1300, IESO must consolidate all entities it "controls".

In determining whether or not the OPG Trust should be consolidated by IESO, it must first be determined whether or not the IESO exercises control as a consequence of power to govern the financial and operating policies of the OPG Trust resulting in expected benefits to the IESO or the risk of loss from the activities of the OPG Trust.

PS 1300.17 indicates that "whether a government controls an organization is a question of fact that requires the application of professional judgment based on the definition of control in this Section and the substance of the relationship in each case." Under PS 1300.08 control is defined as "the power to govern the financial and operating policies of another organization with expected benefits or the risk of loss to the government from the other organization's activities". Therefore, the determination of whether IESO will consolidate the OPG Trust will be based on an assessment of whether IESO is considered to control the OPG Trust based on the indicia of control set out in PS 1300. The assessment of the IESO's control of the OPG Trust is made based on Bill 132, facts and nature of the relationship between the IESO and the OPG Trust and based on facts and assumptions provided by IESO. PS 1300.18 and .19 set out 11 potential indicia of control. Several of these indicia have been categorized as more persuasive of a finding of control (see the first four indicators in the table below). For each indicator that applies, the degree of government influence would determine its importance as evidence of control. Finally, the indicia are considered both collectively and individually.

A detailed analysis of the 11 Indicators of control is provided in the following table.

INDICATOR OF CONTROLS	EVIDENCE OF CONTROL	CONTROL EXIST?
Primary (more persuasive) indicators (PS 1300.18):		
Government has the power to unilaterally appoint or remove a majority of the members of the governing body of the organization	- Bill 132 states: - *OPG is appointed as the Financial Services Manager for the purposes of this Act. (Section 18)* - *The Financial Services Manager shall perform the duties assigned to it under this Act and may administer the investment asset on behalf of the investment interest owners. (Section 19 (1))* - *Subject to any prescribed limitations, the Financial Services Manager may establish and charge fees in relation to such matters as may be prescribed in accordance with the regulations, which regulations may provide for the ability to recover costs and expenditures and to earn a return. (Section 19 (3))*	No

INDICATOR OF CONTROLS	EVIDENCE OF CONTROL	CONTROL EXIST?

	- The Electricity Act will be amended as follows:
	  - *In addition to the objects mentioned in subsection (1), the objects of OPG include exercising the powers and rights and performing the duties and obligations assigned to it under the Ontario Fair Hydro Plan Act, 2017 and engaging in activities to facilitate the implementation of that Act, including entering into contracts and undertakings on behalf of financing entities and performing other services on behalf of financing entities, subject to the right to be paid by the financing entities for those services. (Section 53.1 (1.1))*
	  - *OPG may create or invest in one or more subsidiaries, trusts, partnerships or special purpose entities in order to more efficiently conduct its activities or achieve its objects. (Section 53.1 (1.2))*
	- OPG will establish a trust to manage the collection of the regulatory asset and related financing and administrative expenses. The Board of Trustees of the OPG Trust will be the governing body of the Trust and will be appointed by OPG. OPG will have the power to unilaterally appoint or remove all members of the Board of Trustees.
	- The IESO will not have any rights in respect of the appointment or replacement of the Board of Trustees of the OPG Trust.	

Government has ongoing access to the assets of the organization, has the ability to direct the ongoing use of those assets, or has ongoing responsibility for losses	- Section 27 of Bill 132 states:
	  - *A transfer of a specified portion of the regulatory asset under section 26 constitutes a valid and enforceable absolute assignment, conveyance and sale of the corresponding investment interest to the transferee.*
	  - *Without limiting subsection (1), any transfer agreement that states an intention of the parties for the IESO to dispose of a specified portion of the regulatory asset and to assign, convey or sell a corresponding investment interest shall be treated for all purposes as an absolute assignment, conveyance, disposition and sale of the IESO's right to recover the corresponding amount in the variance account and not merely as a security interest.*
		No

INDICATOR OF CONTROLS	EVIDENCE OF CONTROL	CONTROL EXIST?
	- *At the time a transfer of the regulatory asset is made under section 26, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.* - Based on Bill 132, *upon transfer of a specified portion of the regulatory asset to the OPG Trust, the investment asset resulting from the transfer is immediately vested in the OPG Trust, free and clear of any adverse claim.* (Section 28 (2)). - Therefore, upon transfer of the regulatory asset to the OPG Trust, IESO will no longer have access/ability to direct the regulatory asset nor have the ongoing responsibility for losses. - The credit risk related to the collection of the investment asset is borne by the OPG Trust.	
Government holds the majority of the voting shares or a "golden share" that confers the power to govern the financial and operating policies of the organization	- IESO will not have any ownership in the OPG Trust and will not have the power to govern the financial and operating policies of the OPG Trust.	No
Government has the unilateral power to dissolve the organization and thereby access its assets and become responsible for its obligations	- IESO will not have the power to dissolve the organization.	No

INDICATOR OF CONTROLS	EVIDENCE OF CONTROL	CONTROL EXIST?
Other indicators that may provide evidence of control exist when government has the power to (PS 1300.18):		
Provide significant input into the appointment of members of the governing body of the organization by appointing a majority of those members from a list of nominees provided by others or being otherwise involved in the appointment or removal of a significant number of members	- OPG will have the power to unilaterally appoint or remove all members of the Board of Trustees of the OPG Trust. - IESO will not provide any input in the appointment of members of the Board of Trustees.	No
Appoint or remove the CEO or other key personnel	- OPG will have the power to unilaterally appoint or remove all members of the Board of Trustees of the OPG Trust and other key personnel.	No
Establish or amend the mission or mandate of the organization	- The Trust will be established by OPG and the mandate of the Trust will be set based on Bill 132.	No

Approve the business plans or budgets for the organization and require amendments, either on a net or line-by-line basis	- Bill 132 states:
	  - *OPG is appointed as the Financial Services Manager for the purposes of this Act. (Section 18)*
	  - *The Financial Services Manager shall prepare a written plan entitled the Financing Plan to be used by the Financial Services Manager to evaluate whether potential funding obligations should be incurred for the purposes of acquiring and financing an investment asset in accordance with this Act or for the purposes of refinancing. (Section 16 (1))*
	- OPG is the Financial Services Manager, not IESO.
	- IESO is not involved in the preparation or approval of the business plans or budget of the OPG Trust.
		No

Establish borrowing or investment limits or restrict the organization's investments	- Section 22 of Bill 132 states: - *The Financial Services Manager shall ensure that funding obligations incurred for the purposes of this Act are incurred in a manner that is consistent with the applicable Financing Plan.*	No

INDICATOR OF CONTROLS	EVIDENCE OF CONTROL	CONTROL EXIST?
	- OPG not IESO, is responsible for ensuring that the borrowings of the OPG Trust meet the above conditions.	
Restrict the revenue-generating capacity of the organization, notably the sources of revenue	- N/A	No
Establish or amend the policies that the organization uses to manage, such as those relating to accounting, personnel, compensation, collective bargaining or deployment of resources	- As mentioned above, OPG will be granted by legislation the power to establish or amend the policies of the OPG Trust and the ability to appoint and remove all members of the Board of Trustees.	No

Management conclusion

IESO management has concluded that the OPG Trust to be established would not be controlled by the IESO and therefore is not subject to consolidation by the IESO.

Based on the foregoing analysis of the 11 indicators of control as defined in Section PS 1300 *Government Reporting Entity,* considered both individually and collectively there is no evidence of control by the IESO in respect of the OPG Trust. The IESO will not have the power to govern the Trust, nor have ongoing access to Trust's assets. The IESO will also not have any voting shares or future rights to the Trust nor the power to dissolve the Trust. Without control, the Trust is not subject to consolidation within the IESO financial statements.

Our conclusion

We have considered the foregoing analysis and management's conclusion. We concur that based on Bill 132, none of the four primary (more persuasive) indicators of control are considered to be met, and none of the seven other indicators of control are considered to be met. Accordingly, we concur that the IESO does not control the OPG Trust under Bill 132 and hence would not consolidate the OPG Trust.

The adoption of Bill 132 (including the subsequent amendments of the Electricity Act and the OEB Act) and the finalization of the financing structure (including the bylaws and regulations of the OPG Trust) and other agreements will take several months. Accordingly, our judgment on the appropriate application of PSAS to the conclusion on control may change subject to further analysis of any changes to the terms of Bill 132 or review of the final regulations, financing structure and other agreements.

Background for Issue #3

The facts, circumstances, and assumptions relevant to the specific transactions as provided to us by the management of the Company (responsible party), in addition to those described in the background for issues #1 and 2, are as follows:

1. The total IESO deferral for the period from May 1, 2017 to April 30, 2047 is estimated at $28 billion plus interest and will be recorded by the IESO in a variance account recognized as a regulatory asset.
2. The IESO does not currently have the financial capability to finance the regulatory asset and will transfer the variance account to an investment asset owner (i.e. OPG Trust) on a monthly basis.
3. The IESO will obtain a written legal opinion as to the validity and enforceability of the transfer and sale of the regulatory asset.
4. Based on an assessment of control performed under the issue #2, IESO will not consolidate the OPG Trust. We understand that an assessment of control under International Financial Reporting Standards ("IFRS") has been performed by OPG and they have concluded that the OPG Trust will be consolidated by OPG; we note that the financial reporting framework used by OPG in preparing its financial statements for consolidation into the Province's books is IFRS.
5. The Electricity Act, OEB Act and other regulations will be amended to reflect the following *extracts from Bill 132:*

   Section 16 IESO to receive amounts

   (2) The IESO shall, as agent of the investment interest owners, receive amounts in respect of the clean energy adjustment paid to it from electricity vendors in accordance with the market rules made under section 32 of the Electricity Act, 1998 or the regulations.

   (4) All amounts received by the IESO in respect of the clean energy adjustment shall, until remitted to or for the benefit of the investment interest owner, be held in trust by the IESO for the investment interest owners.

   (5) The IESO shall remit amounts received by it in respect of the clean energy adjustment, inclusive of interest earned on the amounts referred to in subsection (1), to or for the benefit of the investment interest owners in accordance with the regulations.

   Section 17 Pro rating of payments

   (4) If an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices and the amount paid is less than the total amount payable, the electricity vendor shall allocate the payment on a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices in respect of electricity charges in respect of the same invoice period.

   Section 26 Transfer of regulatory asset

   (1) The IESO may from time to time, in accordance with this Act and the regulations, transfer a specified portion of the regulatory asset to a financing entity in accordance with this section.

   (2) An agreement between the IESO and a financing entity in relation to the transfer of a specified portion of the regulatory asset shall provide for consideration of a payment by the financing entity to the IESO in an amount equal to the amount of the specified portion.

(3) Upon receipt by the IESO of the payment by the financing entity,

(a) the balance in the variance account shall be reduced by the amount of the payment;

(b) the regulatory asset shall be adjusted accordingly;

(c) the financing entity shall acquire a corresponding investment interest; and

(d) the IESO shall retain no further right, title or interest in the investment interest.

Section 27 Validity of transfer

(1) A transfer of a specified portion of the regulatory asset under section 26 constitutes a valid and enforceable absolute assignment, conveyance and sale of the corresponding investment interest to the transferee.

(2) Without limiting subsection (1), any transfer agreement that states an intention of the parties for IESO to dispose of a specified portion of the regulatory asset and to assign, convey or sell a corresponding investment interest shall be treated for all purposes as an absolute assignment, conveyance, disposition and sale of IESO's right to recover the corresponding amount in the variance account and not merely as a security interest.

(3) At the time a transfer of the regulatory asset is made under section 26, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the transferee shall have priority over any liens in favour of those persons.

Section 29 Investment asset, irrevocable rights and interests

(1) The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests of investment interest owners:

1. The right and interest to impose, invoice, collect, receive and recover the clean energy adjustment from specified consumers, including the right to determine the clean energy adjustment in accordance with this Act.

2. The right to receive, collect and recover the clean energy adjustment that is imposed, invoiced and recoverable under this Act, including any amounts in respect of the clean energy adjustment that are held by electricity vendors, IESO and other prescribed parties.

Section 30 Transfer of investment interest

(2) An investment interest owner may transfer all or a portion of an investment interest to any other investment interest owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan.

Section 32 Investment interest owner may grant security interest

(1) An investment interest owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under the investment interest to or in favour of any person to secure a funding obligation.

(3) All provisions of the Personal Property Security Act shall apply to the investment asset and each investment interest on the basis that the investment asset and each investment interest is intangible personal property, except as otherwise provided for in this section, and any granting of a security interest by an investment interest owner to secure a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by registering a financing statement under that Act on that basis.

6. The terms of the transfer agreement between the IESO and the OPG Trust that will be signed and executed upon transfer of the regulatory assets will be in compliance with the dispositions of Bill 132.

Appropriate Accounting Principle for Issue #3

The Derecognition Section of ASC 980-20-40 provides guidance on determining whether and when an entity should remove an item from the financial statements. For example, the entity would derecognize an asset because it no longer has rights to the asset or it would derecognize a liability because it no longer has any obligation. [ASC 980-20-40]

Failure of an entity's operations to continue to meet the criteria in paragraph 980-10-15-2 can result from different causes. Examples include the following:

(a) Deregulation.

(b) A change in the regulator's approach to setting rates from cost-based rate-making to another form of regulation.

(c) Increasing competition that limits the entity's ability to sell utility services or products at rates that will recover costs (as used in paragraph 980-10-15-2).

(d) Regulatory actions resulting from resistance to rate increases that limit the entity's ability to sell utility services or products at rates that will recover costs if the entity is unable to obtain (or chooses not to seek) relief from prior regulatory actions through appeals to the regulator or the courts. [ASC 980-20-15-2]

PS1000 *Financial statement concepts*:

– This Section is to be used by preparers and auditors of financial statements in exercising their professional judgment as to the application of generally accepted accounting principles and in establishing accounting policies in areas in which accounting principles are developing. [PS1000.03]

– Financial statements should communicate information that is relevant to the needs of those for whom the statements are prepared, reliable, comparable, understandable and clearly presented in a manner that maximizes its usefulness. [PS1000.24]

– An item is not an asset of a government if it lacks one or more of the essential characteristics listed in the preceding paragraph [PS3210.04]. Thus, for example, an item does not qualify as an asset of a government if the item involves:

  (a) no future economic benefit;

  (b) future economic benefit, but the government cannot obtain it; or

  (c) future economic benefit that the government may obtain, but the events or circumstances that give the government control of the benefit have not yet occurred. [PS1000.37]

PS3210 *Assets*:

- Assets are economic resources controlled by a public sector entity as a result of past transactions or events and from which future economic benefits are expected to be obtained. [PS3210.03]
- Assets have three essential characteristics:
  (a) They embody future economic benefits that involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows, or to reduce cash outflows.
  (b) The public sector entity can control the economic resource and access to the future economic benefits.
  (c) The transaction or event giving rise to the public sector entity's control has already occurred. [PS3210.04]
- Control of an economic resource and of access to the future economic benefits are essential characteristics of an asset, whereas possession or ownership is not. [PS3210.22]

PS3430 *Restructuring transactions* [1]

- Individual assets and liabilities transferred in a restructuring transaction should be derecognized by the transferor if they no longer meet the definitions of assets and liabilities and applicable recognition criteria at the restructuring date. [PS3430.21]
- When a transferor continues to be involved in the individual assets and/or liabilities it transferred to a recipient subsequent to the restructuring date, it would assess the nature and extent of its continued involvement against the definitions of assets and liabilities and applicable recognition criteria to evaluate whether:
  (a) derecognition of the asset and liability transferred would be appropriate; and
  (b) its continued involvement gives rise to a new asset or new liability that needs to be recognized. [PS3430.24]
- A new asset or new liability may arise from a restructuring due to a transferor's continued involvement in the individual assets and liabilities transferred (for example, if it agrees to guarantee repayment of all or a portion of a transferred liability or leases back a portion of a transferred asset). As the new asset or new liability is not transferred, together with related program or operating responsibilities, they are not part of the restructuring transaction. They would be accounted for in accordance with individual Sections of the PSA Handbook by both the transferors and recipients. [PS3430.25]

1 This Section applies to fiscal years beginning on or after April 1, 2018. […] Earlier adoption is permitted."

Issue #3: What is the accounting treatment for derecognition of the regulatory asset by the IESO upon transfer of the variance account to the OPG Trust?

Although ASC 980-20-40 states that

> *"Derecognition Section provides guidance on determining whether and when an entity should remove an item from the financial statements. For example, the entity would derecognize an asset because it no longer has rights to the asset or it would derecognize a liability because it no longer has any obligation."*

Subtopic 980-20 relates to discontinuation of rate-regulated accounting when an entity no longer meets the criteria in paragraph 980-10-15-2. ASC 980-20-15-2 provides examples of when an entity no longer meets the criteria, including deregulation and change of the form of regulation. Thus, ASC 980 does not provide clear guidance for the derecognition of a regulatory asset other than in connection with the discontinuation of rate-regulated accounting.

The above guidance in ASC 980-20-40 provides general principles for the derecognition of assets.

It should also be noted that PSAS provide limited guidance on derecognition of non-financial assets and liabilities. Section 3430 *Restructuring transactions,* which is applicable for fiscal years on or after April 1, 2018 with early application permitted, has guidance for the derecognition of assets and liabilities.

- Paragraph 21 states that *individual assets and liabilities transferred in a restructuring transaction should be derecognized by the transferor if they no longer meet the definitions of assets and liabilities and applicable recognition criteria at the restructuring date.*
- As stated in paragraph 24, *when a transferor continues to be involved in the individual assets and/or liabilities it transferred to a recipient subsequent to the restructuring date, it would assess the nature and extent of its continued involvement against the definitions of assets and liabilities and applicable recognition criteria to evaluate whether derecognition of the asset and liability transferred would be appropriate and whether its continued involvement gives rise to a new asset or new liability that needs to be recognized.*

Recognizing the proposed transaction is not a restructuring transaction, Section 3430, which has recently been issued by PSAB, provides current evidence of thinking in the application of the general PSAS principles in respect of the recognition and derecognition of assets and liabilities. Accordingly, the analysis as to whether the regulatory asset transferred to the OPG Trust can be derecognized is based on the foregoing guidance.

Criteria for the recognition of an asset

PS3210.03 states that assets are economic resources controlled by a public sector entity as a result of past transactions or events and from which future economic benefits are expected to be obtained. More generally, PSAS PS1000.37 suggests that an asset would no longer be recognized when it fails to meet the definition of an asset:

Criteria	Comment	Evaluation
Assets (PS3210.04/ PS1000.36): Assets have three essential characteristics: (a) They embody future economic benefits that involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows,	Based on the guidance, the regulatory asset does not qualify as an asset of IESO if it cannot obtain the future economic benefits. Upon transfer of the regulatory asset, IESO will have no further rights or obligations in connection with the asset transferred. - *IESO may from time to time, in accordance with this Act and the regulations, transfer a specified portion of the regulatory asset to a financing entity in accordance with this section.* - *Upon receipt by IESO of the payment by the financing entity, IESO shall retain no further right, title or interest in the corresponding investment interest.*	Not Met

Criteria	Comment	Evaluation
or to reduce cash outflows. (b) The public sector entity can control the economic resource and access to the future economic benefits. (c) The transaction or event giving rise to the public sector entity's control has already occurred. *Financial statement concepts (PS1000.37):* An item is not an asset of a government if it lacks one or more of the essential characteristics listed in the preceding paragraph [see above]. Thus, for example, an item does not qualify as an asset of a government if the item involves: (a) no future economic benefit (b) future economic benefit, but the government cannot obtain it.	- *A transfer of a specified portion of the regulatory asset under section 26 constitutes a valid and enforceable absolute assignment, conveyance and sale of the corresponding investment interest to the transferee.* - *Without limiting subsection (1), any transfer agreement that states an intention of the parties for IESO to dispose of a specified portion of the regulatory asset and to assign, convey or sell a corresponding investment interest shall be treated for all purposes as an absolute assignment, conveyance, disposition and sale of IESO's right to recover the corresponding amount in the variance account and not merely as a security interest.* - *At the time a transfer of the regulatory asset is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.* Upon transfer of the regulatory asset, the OPG Trust will have the right to sell the asset to another party or to grant a security interest in favour of any person to secure a funding obligation. - *Upon transfer, the financing entity becomes an investment asset owner and acquires an investment interest.* - *An investment interest owner may transfer all or a portion of an investment interest to any other investment interest owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan.* - *An investment interest owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under the investment interest to or in favour of any person to secure a funding obligation.* Based on Bill 132, it is clear that IESO will have no rights to the benefits associated with the future cash inflows related to the regulatory asset as it will have transferred its right to recover the IESO deferral to the OPG Trust. Further, it is also clear that IESO will have lost control over the regulatory asset once it is transferred to OPG Trust.	

Management conclusion

IESO management has concluded that the regulatory asset will be derecognized upon transfer of the regulatory asset to the OPG Trust.

The transfer of the regulatory asset transfers the control and the benefits associated with the right to collect funds in the future against the variance amount to the OPG Trust. This will eliminate the IESO asset by the amount of the transfer as the IESO will no longer control an economic resource or have access to future economic benefits for that amount. The funds collected from the transfer will in turn reduce the associated debt held by the IESO, maintaining the IESO's net $ nil balance in the market accounts.

Our conclusion

We have considered the foregoing analysis and management's conclusion. We concur that the regulatory asset should be derecognized on transfer to the OPG Trust as IESO no longer has rights or future economic benefits associated with the asset.

Other Matters

The ultimate responsibility for the decision on the appropriate application of PSAS for the specific transactions rests with management as preparers of the financial statements. Our judgment on the appropriate application of PSAS for the specific transaction is based solely on the facts, circumstances and assumptions provided to us as described above. Should these facts and circumstances differ, our conclusion may change.

This letter has been prepared in draft form and will be updated upon receipt of the adopted legislation, if passed, (including the amendments of the Electricity Act and the OEB Act) and finalized financial structure (including the bylaws and regulations of the OPG Trust) and other relevant agreements necessary for us to provide our final opinion, of which legislation and other relevant agreements are expected to be enacted/ finalized on or before September 30, 2017. This letter will not be updated as a consequence of pronouncements by the Public Sector Accounting Board, or any other authoritative bodies, that occur subsequent to the date of this letter.

This letter is intended solely for the information and use of the Board of Directors and management of the Company, and is not intended to be and should not be used, quoted, relied upon by, or otherwise referred to by anyone other than these specified parties or for any other purpose.

No one other than the Board of Directors and management of the Company is authorized by KPMG to rely upon any information or views expressed herein. KPMG shall have no responsibility or liability for loss or damages or claims, if any, to or by any third party as this letter has not been prepared for, and is not intended for, and should not be used by, any third party or for any other purpose.

Yours very truly,

per Michel Picard
Partner
(416) 777 8414
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Appendix A:

Bill 132, Ontario Fair Hydro Plan Act, 2017

Caution:
Bills are published by the Legislative Assembly in print and on its website. This copy has not been published by the Legislative Assembly and is being provided for convenience only.

Fair Hydro Act, 2017

EXPLANATORY NOTE

The Bill enacts a new Act and makes amendments to the *Electricity Act, 1998* and the *Ontario Energy Board Act, 1998*.

SCHEDULE 1
ONTARIO FAIR HYDRO PLAN ACT, 2017

The Schedule enacts the *Ontario Fair Hydro Plan Act, 2017*. The Act establishes a framework under which the costs and benefits associated with the "clean energy initiative" are to be allocated among present and future consumers of electricity. The "clean energy initiative" is defined in Part I as consisting of the policies of the Government of Ontario related to such matters as eliminating coal generation and fostering the growth of and investment in clean, modern and reliable energy sources and technologies.

Under Part II, the Ontario Energy Board is required to determine reduced electricity rates and to determine other adjustments to be made for certain classes of consumers in respect of specified periods of time. For example, for the class of consumers referred to as "regulated rate consumers", the electricity rates payable for the period beginning on July 1, 2017 and ending on April 30, 2018 are the rates, as determined by the Board, that would achieve a 25 per cent reduction in certain costs for a hypothetical member of the class who meets prescribed criteria. Details regarding the determinations are prescribed by regulations.

Part III requires certain electricity consumers to pay an amount in respect of the "clean energy adjustment". The clean energy adjustment is determined by the Financial Services Manager in accordance with rules set out in the Act and the regulations. (Section 18 of the Act appoints Ontario Power Generation Inc. as the Financial Services Manager.) Part III also specifies the roles and responsibilities of electricity vendors and the Independent Electricity System Operator ("IESO") with respect to the collection and remittance of amounts in respect of the clean energy adjustment.

Part IV requires the Minister of Energy to calculate a "fair allocation amount" by taking specified steps in accordance with principles and assumptions set out in the Act. For example, the Act provides that the purpose of calculating the fair allocation amount is to measure and allocate the estimated clean energy costs and estimated clean energy benefits fairly among certain consumers. Part IV also requires the Financial Services Manager to prepare a written

plan entitled the "Financing Plan", which is to be used to evaluate whether potential funding obligations should be incurred. Principles and limitations regarding the preparation and implementation of the plan are provided.

Part V requires the IESO to determine the "IESO deferral" in accordance with the regulations and to establish and maintain a variance account in which it records the IESO deferral each month. A "regulatory asset" is created under section 25; the IESO has the right to recover the balance recorded in the variance account from certain consumers. The IESO is authorized to transfer a specified portion of the regulatory asset to a financing entity; this transfer results in the creation of the investment asset and the acquisition by the transferee of a corresponding "investment interest". Various rules respecting the validity and priority of a transfer of an investment asset are set out.

In Part VI, rules in respect of the "investment asset" are provided. Section 29 provides that the investment asset constitutes a current and irrevocable property right and interest, consisting collectively of various specified rights and interests of investment interest owners. Rules respecting the validity and priority of such a transfer and the granting of a security interest by an investment interest owner are included.

Part VII deals with various miscellaneous matters, including regulation-making authority of the Lieutenant Governor in Council.

The *Electricity Act, 1998* and the *Ontario Energy Board Act, 1998* are amended to address various matters relating to the enactment of the new Act. For example, the objects of the IESO and Ontario Power Generation Inc. are expanded to address powers and duties under the new Act.

SCHEDULE 2
AMENDMENTS TO THE ONTARIO ENERGY BOARD ACT, 1998

The *Ontario Energy Board Act, 1998* is amended. Among the amendments:

1. Section 79 of the Act is amended so that compensation for the rate protection provided to certain classes of rural or remote consumers may be funded out of money appropriated by the Legislature, rather than by consumers.

2. Section 79.2 of the Act, which governs the Ontario Electricity Support Program, is repealed and replaced. The program is continued, but will be funded out of money appropriated by the Legislature after the variance account maintained by the Independent Electricity System Operator, formerly established under the Plan, is exhausted, rather than by consumers. There are provisions relating to the sharing, use and disclosure of information relating to the administration of the Ontario Electricity Support Program.

3. Programs are established to aid certain distribution rate-protected residential consumers and on-reserve consumers.

4. Various amendments of a technical and administrative nature are made to support the implementation and oversight of these programs including provisions related to auditing, record-keeping, inspections and inquiries, offences and penalties.

Bill **2017**

An Act to enact the Ontario Fair Hydro Plan Act, 2017 and to make amendments to the Electricity Act, 1998 and the Ontario Energy Board Act, 1998

Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Contents of this Act

1. This Act consists of this section, sections 2 and 3 and the Schedules to this Act.

Commencement

2. (1) Subject to subsections (2) and (3), this Act comes into force on the day it receives Royal Assent.

Schedules

(2) The Schedules to this Act come into force as provided in each Schedule.

Different dates for same Schedule

(3) If a Schedule to this Act provides that any of its provisions are to come into force on a day to be named by proclamation of the Lieutenant Governor, a proclamation may apply to one or more of those provisions, and proclamations may be issued at different times with respect to any of those provisions.

Short title

3. The short title of this Act is the *Fair Hydro Act, 2017*.

SCHEDULE 1
ONTARIO FAIR HYDRO PLAN ACT, 2017

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Preamble

The Government of Ontario is committed to fostering the development of a clean, modern and reliable electricity system with a diverse supply mix. The Government is also committed to removing barriers to and promoting opportunities for renewable and clean energy projects. These commitments can only be achieved if costs are shared fairly among consumers, today and in the future.

Electricity rates have risen for two key reasons. First, decades of under-investment in the electricity system resulted in the need to invest more than $50 billion in generation, transmission and distribution assets to ensure the system is clean and reliable. Second, the decision to eliminate Ontario's use of coal and produce clean, renewable power has created additional costs.

The actions taken to achieve a clean, modern and reliable electricity system have resulted in significant costs to residential consumers. The burden of financing these system improvements and funding key programs has unfairly fallen almost entirely on the shoulders of those consumers.

The Government of Ontario is committed to ensuring that the costs of financing these investments and the associated charges to consumers are allocated fairly among present and future generations.

Recognizing that the electricity infrastructure that has been built and the policy decisions that have been made will create benefits for years to come, costs should be allocated fairly over time, so that residential consumers in the future pay their fair share for the benefits that they receive from the investments already made.

PART I
GENERAL

Interpretation

Definitions

1. (1) In this Act,

"Board" means the Ontario Energy Board; ("Commission")

"clean energy adjustment" means the amount determined under section 15 and payable by specified consumers; ("ajustement pour l'énergie propre")

"clean energy benefits" means the value of the benefits determined to be derived by or accruing to specified consumers as a result of the clean energy initiative, including as a result of clean energy costs; ("avantages de l'énergie propre")

"clean energy costs" means the value of the costs allocated to specified consumers as a result of the clean energy initiative, including as a result of past, present and expected costs incurred in respect of,

(a) the amounts to be paid or reflected by the IESO in adjustments made under section 25.33 of the *Electricity Act, 1998* or any provision that is the successor to that provision, which relate to contracts or amounts for,

(i) renewable energy generation or capacity,

(ii) conservation and demand management,

(iii) energy storage,

(iv) energy efficiency,

(v) natural gas generation and capacity, excluding contracts relating to amounts payable by the IESO under section 78.2 of the *Ontario Energy Board Act, 1998* and excluding such other contracts as may be prescribed,

(b) payments made or expected to be made under section 78.5 of the *Ontario Energy Board Act, 1998*, and

(c) such other costs or estimated costs as may be prescribed; ("coûts de l'énergie propre")

"clean energy initiative" means the policies of the Government of Ontario related to,

(a) eliminating coal generation and fostering the growth of and investment in clean, modern and reliable energy sources and technologies,

(b) removing barriers to and promoting opportunities for clean and renewable energy sources and technologies,

(c) promoting conservation, demand management and energy efficiency, and

(d) investing in energy infrastructure to ensure a clean, modern and reliable system; (“initiative pour l’énergie propre”)

“electricity vendor” means,

(a) a licensed distributor,

(b) a licensed retailer,

(c) the IESO in circumstances where it directly invoices a specified consumer for electricity used in Ontario, or

(d) such other person as may be prescribed; (“vendeur d’électricité”)

“fair allocation amount” means an amount calculated under section 20; (“montant de répartition équitable”)

“finance amount” means the finance amount determined in accordance with the regulations; (“montant de financement”)

“Financial Services Manager” means the Financial Services Manager appointed under section 18; (“gestionnaire des services financiers”)

“financing entity” means an entity established or caused to be established by the Financial Services Manager as described in subsection 22 (2); (“entité de financement”)

“Financing Plan” means the plan prepared under section 21; (“Plan de financement”)

“funding obligation” means a payment obligation incurred by or on behalf of an investment interest owner to fund its ownership of an investment interest or a payment obligation that meets such other criteria as may be prescribed; (“obligation de financement”)

“funding rebate” means a payment obligation incurred by the IESO as part of the transfer of the regulatory asset; (“remboursement de financement”)

“IESO” means the Independent Electricity System Operator continued under Part II of the *Electricity Act, 1998*; (“SIERE”)

“IESO deferral” means the amount determined under section 23; (“report de la SIERE”)

"investment asset" means the rights and interests described in section 29; ("actif d'investissement")

"investment interest" means,

(a) an ownership interest in the investment asset, and

(b) in circumstances where the ownership interest is transferred, the rights and benefits specified in the agreement under which the interest is transferred; ("participation d'investissement")

"investment interest owner" means a financing entity that has acquired and holds an investment interest; ("détenteur d'une participation d'investissement")

"licensed distributor" means a person licensed under Part V of the *Ontario Energy Board Act, 1998* to own or operate a distribution system within the meaning of that Act; ("distributeur titulaire d'un permis")

"licensed retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity; ("détaillant titulaire d'un permis")

"Minister" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of this Act under the *Executive Council Act*; ("ministre")

"Ontario Power Generation Inc." means the corporation incorporated as Ontario Power Generation Inc. under the *Business Corporations Act* on December 1, 1998; ("Ontario Power Generation Inc.")

"prescribed" means prescribed by the regulations; ("prescrit")

"reference period" means,

(a) the period beginning on July 1, 2017 and ending on October 31, 2017, and

(b) during the period beginning on November 1, 2017 and ending on either April 30, 2047 or such later day as may be prescribed,

(i) every six-month period following the period mentioned in clause (a); or

(ii) any period shorter than six months, as may be prescribed; ("période de référence")

"refinancing" means, subject to the regulations, the incurrence of debt in connection with a redemption, repayment or repurchase of a funding obligation; ("refinancement")

"regulation" means a regulation made under this Act; ("règlement")

"regulatory asset" means the right established under section 25; ("actif réglementaire")

"specified consumer" means,

(a) a person who has an account with an electricity vendor for the supply of electricity in Ontario and meets the criteria set out in subsection (2), or

(b) such other person as may be prescribed; ("consommateur déterminé")

"transfer" includes, when used in relation to an investment interest, the assignment, conveyance, disposition or sale of the investment interest; ("transfert")

"true up amount" means a true up amount determined in accordance with the regulations; ("montant d'égalisation")

"unit sub-metering" has the same meaning as in the *Energy Consumer Protection Act, 2010;* ("activités liées aux compteurs divisionnaires d'unité")

"unit sub-meter provider" has the same meaning as in the *Energy Consumer Protection Act, 2010;* ("fournisseur de compteurs divisionnaires d'unité")

"variance account" means the variance account established by the IESO under subsection 24 (1). ("compte d'écart")

Specified consumer

(2) For the purposes of clause (a) of the definition of "specified consumer" in subsection (1), the person must meet any one of the following criteria:

1. The person has a demand for electricity of not more than 50 kilowatts, or such other amount as may be prescribed.

2. The person annually uses not more than 250,000 kilowatt hours of electricity, or such other amount as may be prescribed.

3. The person carries on a business that is a farming business for the purposes of the *Farm Registration and Farm Organizations Funding Act, 1993* and either holds a valid registration number assigned under that Act or has had the

obligation to file a farming business registration form waived pursuant to an order made under subsection 22 (6) of that Act.

4. The person's account with the electricity vendor relates to,

   i. a dwelling,

   ii. a property within the meaning of the *Condominium Act, 1998*,

   iii. a residential complex within the meaning of subsection 2 (1) of the *Residential Tenancies Act, 2006*, without regard to section 5 of that Act, or

   iv. a property that includes one or more housing units and that is owned or leased by a co-operative within the meaning of the *Co-operative Corporations Act*.

5. The person satisfies such criteria as may be prescribed.

Transfer of regulatory asset

(3) In this Act, a reference to the transfer of a specified portion of the regulatory asset is a reference to the following, as provided for in subsection 26 (3):

1. A reduction in the balance in the variance account.

2. The adjustment of the regulatory asset.

3. The acquisition by a financing entity of the investment interest corresponding to the specified portion of the regulatory asset.

Effect of invalidity

2. (1) For greater certainty, all of the provisions of this Act remain in full force and effect, even if one or more provisions are held to be invalid, the intention of the Legislature being to give separate and independent effect to the extent of its powers to every provision contained in this Act.

Same, funding obligation

(2) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect the validity or enforceability of a funding obligation incurred before the day that the provision is held to be invalid or ceases to be in effect, or any rights or obligations associated with the funding obligation.

Purposes

3. The purposes of this Act are,

(a) to ensure that clean energy costs and clean energy benefits are fairly allocated among present and future specified consumers;

(b) to recognize that clean energy benefits have accrued and will accrue over time and will continue to benefit present and future electricity consumers in the Province; and

(c) to align clean energy costs with clean energy benefits, in order to provide fairness for specified consumers over time.

Crown bound

4. This Act binds the Crown.

Protection and assurances

Prohibition

5. (1) No action or omission by the Board, the Minister or the Crown shall be effective to reduce, impair, postpone or terminate the obligations of specified consumers to pay amounts in respect of the clean energy adjustment or to impair or postpone the invoicing, collection or remittance of the clean energy adjustment.

Agreements

(2) The Minister and the Minister of Finance may together, with the approval of the Lieutenant Governor in Council, enter into agreements on behalf of the Province of Ontario with any person in respect of this Act, including agreements regarding the performance of the IESO or electricity vendors under this Act or related transactions.

Guarantee, indemnification

(3) The Lieutenant Governor in Council may by order,

(a) authorize the Minister and the Minister of Finance, acting together on behalf of the Province,

(i) to agree to guarantee or indemnify any debts, obligations, securities or undertakings associated with an investment interest, and

(ii) to determine terms and conditions of the guarantee or indemnity and the maximum liability for the guarantee or indemnity;

(b) specify terms and conditions that must be included in any guarantee or indemnity given by the Minister and the Minister of Finance; and

(c) specify a maximum liability for the guarantee or indemnity.

PART II
FAIR ADJUSTMENT

Definition

6. In this Part,

"regulated rate consumer" means a specified consumer who meets the following criteria:

1. The consumer is a member of the class of consumers prescribed by the regulations made under the *Ontario Energy Board Act, 1998* for the purposes of subsection 79.16 (1) of that Act.

2. The consumer would, if the consumer were not subject to this Act, be invoiced the rates determined by the Board under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*.

Regulated rate consumers, first adjustments

7. (1) Despite any order under subsection 78 (3.1) of the *Ontario Energy Board Act, 1998* and despite section 79.16 of that Act, the electricity rates payable by regulated rate consumers for the period beginning on July 1, 2017 and ending on April 30, 2018 are the rates, as determined by the Board, that would result in a hypothetical regulated rate consumer who meets the prescribed criteria being charged an invoice amount that is 25 per cent less than the invoice amount that would have been charged to that consumer under the comparison rates described in subsection (2).

Comparison rates

(2) The comparison rates are the rates that would have been effective May 1, 2017 if they had been determined by the Board solely using the method prescribed by the regulations made under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*, without taking into account any forecasted impact of any other provisions of this Act.

Invoice amounts

(3) The types of amounts to be included or excluded in each invoice amount mentioned in subsection (1) are the types of amounts specified in the regulations.

Other specified consumers, first adjustments

8. (1) For the period beginning on July 1, 2017 and ending on April 30, 2018, the adjustments made by the IESO under section 25.33 of the *Electricity Act, 1998* shall, with respect to specified consumers who are not regulated rate consumers, be further adjusted

by electricity vendors in accordance with the determinations of the Board under subsection (2).

Board to make determinations

(2) The Board shall, in accordance with the regulations, determine the adjustments to be made by electricity vendors.

Same, regulations

(3) The regulations may specify different adjustments to be made in respect of prescribed classes of specified consumers who are not regulated rate consumers.

Determinations by Board

9. The Board shall make the determinations mentioned in sections 7 and 8 no later than 15 business days after the day this section receives Royal Assent and, regardless of whether the Board makes the determinations before or after July 1, 2017, the determinations shall be effective as of July 1, 2017.

Implementation by electricity vendors

10. (1) As soon as possible after the Board makes determinations under section 9, each electricity vendor shall, in respect of electricity used on or after July 1, 2017, ensure that its invoices reflect the determinations of the Board.

Same

(2) The electricity vendor shall ensure that, if any of its customers who are specified consumers have been invoiced in a manner that does not reflect the determinations of the Board under section 9, the specified consumer receives the difference between the amounts shown on the invoice and the amounts reflecting the Board's determinations, provided as a lump sum credit on the first invoice issued after the electricity vendor has adapted its invoices or by such other means as may be prescribed.

Subsequent adjustments

11. (1) Despite clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998* and subject to subsection (2), the Lieutenant Governor in Council may prescribe the methodology to be applied by the Board after April 30, 2018 for the purpose of determining,

(a) electricity rates for regulated rate consumers; or

(b) adjustments to be applied by electricity vendors to the adjustments made by the IESO under section 25.33 of the *Electricity Act, 1998* in respect of prescribed classes of specified consumers who are not regulated rate consumers.

Limitation

(2) Any prescribed methodology shall have regard to the following:

1. The purposes of this Act.

2. The clean energy costs borne by specified consumers over time.

3. Such other matters as may be prescribed.

Sub-metering

12. (1) This section applies if a specified consumer provides to another person electricity in respect of which a determination of the Board referred to in section 9 or 11 applies.

Same

(2) If an invoice for the electricity is issued to the person by the specified consumer or a unit sub-meter provider providing unit sub-metering for the specified consumer, the amount payable for the electricity by the person who is liable to pay the invoice shall be determined in accordance with the regulations.

PART III
CLEAN ENERGY ADJUSTMENT

Specified consumers to pay

13. (1) Upon receipt of an invoice from an electricity vendor that includes an amount in respect of the clean energy adjustment, a specified consumer shall pay the amount to the electricity vendor as agent of the investment interest owners.

Same

(2) For greater certainty, subsection (1) applies regardless of,

(a) whether the clean energy adjustment was determined in a manner that was inconsistent with this Act; and

(b) whether the amount payable in respect of the clean energy adjustment relates to funding obligations that were incurred in a manner that was inconsistent with the Financing Plan, including in a manner that failed to provide for the reasonable alignment of the estimated finance amount with the fair allocation amount.

Terms

(3) The payment shall be made in accordance with such terms of payment as may be specified in the invoice, which may include terms relating to late payment fees and interest charges.

Indebtedness of specified consumer

(4) An unpaid amount that is required to be paid by a specified consumer under this section constitutes indebtedness of the specified consumer to each investment interest owner to the extent of each owner's respective interest in the investment asset.

Same

(5) The indebtedness mentioned in subsection (4) is a single and separate debt obligation owed by the specified consumer and may be enforced independently from any other payment obligation or indebtedness owing by the specified consumer.

Unit sub-metering

(6) A specified consumer who provides electricity through unit sub-metering may collect amounts in respect of the clean energy adjustment payable under this section in accordance with the regulations.

Irrevocability of amount

14. (1) An amount in respect of the clean energy adjustment shown on an invoice issued to a specified consumer under this Act is determinative of the amount of the consumer's indebtedness resulting from the clean energy adjustment and is irrevocable upon invoicing the consumer and may not be set off or bypassed.

Exception

(2) Subsection (1) does not apply to the extent that the invoice reflects a clerical, typographical or calculation-related error.

Determination of clean energy adjustment
Financial Services Manager to determine

15. (1) The Financial Services Manager shall determine the clean energy adjustment payable by all specified consumers in respect of each month in a reference period by taking the following steps:

1. Calculate the sum of the following:

    i. The estimated finance amount in respect of the reference period.

    ii. The true up amount in respect of the reference period.

2. Divide the sum calculated under paragraph 1 by the number of months in the reference period.

Regulations re true up amount

(2) The Lieutenant Governor in Council shall, in making regulations with respect to the determination of the true up amount, have regard to the following principles:

1. The true up amount should serve to ensure that the collection of the clean energy adjustment is sufficient to pay the finance amount when it is due.

2. The method for determining the true up amount should take into account historical and reasonably foreseeable,

    i. differences between the estimated and actual finance amount for the applicable reference period,

    ii. differences between amounts invoiced and amounts collected due to various factors, including applicable taxes, consumer defaults and delays, billing lags and write-offs, and

    iii. variations in billings due to variations in electricity consumption.

Financial Services Manager to notify Board

(3) The Financial Services Manager shall, in accordance with the regulations, notify the Board of the clean energy adjustment in respect of a reference period and such other information related to the determination of the clean energy adjustment as may be prescribed.

Board to determine rates

(4) Without changing the clean energy adjustment, the Board shall, in accordance with the regulations, determine the rates at which specified consumers are invoiced to recover the clean energy adjustment in respect of the reference period.

IESO to receive amounts

16. (1) The IESO shall, as agent of the investment interest owners, receive amounts in respect of the clean energy adjustment paid to it from electricity vendors in accordance with the market rules made under section 32 of the *Electricity Act, 1998* or the regulations.

Account

(2) All of the following amounts received by the IESO shall, until remitted to or for the benefit of the investment interest owners in accordance with subsection (4), be

deposited promptly into an account established for the purposes of receiving those amounts:

1. Amounts described in subsection (1).

2. Payments made by specified consumers directly to the IESO as electricity vendor under subsection 13 (1).

3. Proceeds of amounts described in paragraphs 1 and 2.

Same, held in trust

(3) All amounts received by the IESO in respect of the clean energy adjustment shall, until remitted to or for the benefit of the investment interest owners, be held in trust by the IESO for the investment interest owners.

IESO to remit

(4) The IESO shall remit amounts received by it in respect of the clean energy adjustment, inclusive of interest earned on the amounts referred to in subsection (1), to or for the benefit of the investment interest owners in accordance with the regulations.

Electricity vendor to invoice specified consumers

17. (1) Each electricity vendor shall issue an invoice to each of its customers who is a specified consumer for the amount payable by the consumer in respect of the clean energy adjustment, as determined by applying the rate set by the Board under subsection 15 (4) and in accordance with the regulations.

Electricity vendor to report

(2) Each electricity vendor shall, in accordance with the regulations, promptly report to the IESO the total amount invoiced to its customers who are specified consumers in respect of the clean energy adjustment, the amount collected and such other information as may be prescribed.

Electricity vendor to collect

(3) Each electricity vendor shall, as agent of the investment interest owners, collect amounts in respect of the clean energy adjustment from specified consumers in accordance with the regulations.

Pro rating of payments

(4) If an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices and the amount paid is less than the total amount payable, the electricity vendor shall allocate the payment on a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices in respect of electricity charges in respect of the same invoice period.

Held in trust

(5) Payments received by an electricity vendor from or on behalf of specified consumers in respect of the clean energy adjustment and all proceeds of the payments shall, until remitted to the IESO for the benefit of the investment interest owners in accordance with subsection (6), be held by each electricity vendor in trust for the benefit of the investment interest owners.

Remittance to IESO

(6) Each electricity vendor shall remit amounts in respect of the clean energy adjustment to the IESO for the benefit of the investment interest owners in accordance with the regulations.

PART IV
IMPLEMENTATION

Financial Services Manager

Appointment

18. Ontario Power Generation Inc. is appointed as the Financial Services Manager for the purposes of this Act.

Duties and powers

19. (1) The Financial Services Manager shall perform the duties assigned to it under this Act and may administer the investment asset on behalf of the investment interest owners.

Same

(2) The administration of the investment asset may include providing information to the IESO in respect of obligations under Part III and such other activities as may be prescribed.

Fees

(3) Subject to any prescribed limitations, the Financial Services Manager may establish and charge fees in relation to such matters as may be prescribed in accordance with the regulations, which regulations may provide for the ability to recover costs and expenditures and to earn a return.

Same, Board approval

(4) Before establishing fees under subsection (3), the Financial Services Manager shall submit them to the Board for approval in accordance with the regulations.

Fair Allocation Amount

Minister to calculate fair allocation amount

20. (1) Subject to subsections (2) and (3), before the first funding obligation is incurred the Minister shall calculate a fair allocation amount in respect of each reference period, applying such method as the Minister considers appropriate and in accordance with the following steps:

1. Determine the estimated clean energy costs and estimated clean energy benefits allocated to specified consumers in respect of the reference period.

2. Determine the estimated reduction in the amounts payable by specified consumers as a result of determinations of the Board under Part II in respect of all previous reference periods, including the estimated reduction in clean energy costs described in clause (a) of the definition of "clean energy costs" in subsection 1 (1) that would otherwise have been payable by specified consumers in the absence of this Act.

3. Determine the amount, if any, by which the determination under paragraph 1 exceeds the determination under paragraph 2.

4. Calculate the sum of the amount determined under paragraph 3 and such other amounts as may be prescribed.

Principles

(2) In calculating the fair allocation amount, the Minister shall have regard to the following principles:

1. The purpose of calculating the fair allocation amount is to measure and allocate the estimated clean energy costs and estimated clean energy benefits fairly among the specified consumers in respect of each reference period.

2. Calculations should be made having regard to the need to align each fair allocation amount with the estimated finance amount payable during the reference period.

3. Estimated clean energy costs allocated to specified consumers in respect of a reference period should be allocated in proportion to the estimated clean energy benefits attributed to the specified consumers in respect of the reference period.

4. Such other principles as may be prescribed.

Assumptions

(3) In calculating the fair allocation amount, the Minister shall make such assumptions as the Minister considers to be reasonable regarding the following:

1. The time value of money or the rate of inflation, for the purpose of equating nominal amounts over time.

2. The expected number of specified consumers in respect of each reference period.

3. The expected electricity consumption rates in respect of each reference period.

4. Such other assumptions as may be prescribed.

Minister to provide amount to Financial Services Manager

(4) The Minister shall provide the fair allocation amount in respect of each reference period to the Financial Services Manager.

Recalculation

(5) A calculation of the fair allocation amount under this Part may be changed by such person as may be prescribed in accordance with such requirements as may be prescribed.

Same

(6) No change under subsection (5) shall affect any clean energy adjustment that has already been determined under section 15 or any funding obligations that have already been incurred before the change.

Information

(7) The Minister, the IESO, the Financial Services Manager, the Board and electricity vendors shall provide such information as may be prescribed in accordance with the regulations for the purposes of facilitating a change to a calculation of the fair allocation amount.

FINANCING PLAN

Financial Services Manager to prepare Financing Plan

21. (1) The Financial Services Manager shall prepare a written plan entitled the Financing Plan to be used by the Financial Services Manager to evaluate whether potential funding obligations should be incurred for the purposes of acquiring and financing an investment asset in accordance with this Act or for the purposes of a refinancing.

Plan to be provided to Minister

(2) The Financial Services Manager shall provide the Financing Plan to the Minister.

Principles

(3) In preparing the Financing Plan, the Financial Services Manager shall have regard to the following principles:

1. Funding obligations should be incurred such that, along with any funding obligations already incurred, the estimated finance amount that would, subject to any refinancing, become due and payable during a reference period will reasonably align with the fair allocation amount determined in respect of the reference period, in each case after reducing the fair allocation amount to reflect determinations of the Board under Part II in respect of the reference period.

2. Incurrences should be implemented in a manner that, in the opinion of the Financial Services Manager, is reasonable, cost effective and that reflects prevailing market terms and conditions.

3. Reasonable assumptions should be made regarding such matters as may be prescribed.

4. Such other principles as may be prescribed.

Limitation

(4) In respect of each reference period from July 1, 2017 to April 30, 2021, no funding obligation shall be incurred that would result in amounts payable in respect of the clean energy adjustment in respect of the reference period unless,

(a) the amounts are payable in respect of a reference period in respect of which the Board has not made any determinations under Part II; or

(b) if the Board has made a determination under Part II in respect of the reference period, the funding obligations incurred would not result in amounts payable in respect of the clean energy adjustment during the reference period in an amount that exceeds the limit determined in accordance with the regulations.

Other reports

(5) The Financial Services Manager shall submit to the Minister such reports and information as the Minister may require from time to time and shall, if required by the Minister to do so, examine, report and advise on any question relating to the Financing Plan.

Amendments to plan

(6) The Financial Services Manager may amend the Financing Plan at any time.

Same

(7) In the event that the Financing Plan is amended, any reference in this Act to the Financing Plan is deemed to be a reference to the plan as amended.

Incurrence of funding obligations

22. (1) The Financial Services Manager shall ensure that funding obligations incurred for the purposes of this Act are incurred in a manner that is consistent with the applicable Financing Plan.

Financing entities

(2) In accordance with the Financing Plan, the Financial Services Manager may establish or cause to be established one or more financing entities that may incur funding obligations.

Prohibition

(3) The Financial Services Manager shall not provide for funding obligations to be incurred with any recourse to any assets of an electricity vendor, the Board, Ontario Power Generation Inc., the Province or the Lieutenant Governor in Council, except to the extent that any of these persons or entities may be liable to perform obligations or duties arising under this Act or under the express terms of a funding obligation or other agreement.

Effect of amendment to fair allocation amount

(4) Each funding obligation incurred and each transfer made by a financing entity is deemed to be consistent with the Financing Plan and to provide for the reasonable alignment of the estimated finance amount with the fair allocation amount.

Same

(5) For greater certainty, subsection (4) applies despite the failure of the Financial Services Manager to comply with subsection (1).

PART V
THE REGULATORY ASSET

IESO deferral

23. (1) The IESO deferral for each month, commencing May 1, 2017, shall be determined by the IESO in accordance with the regulations.

Same, retrospective amounts

(2) For greater certainty, the regulations may provide for the IESO deferral to include an amount that was incurred by the IESO on or after May 1, 2017 and before the day this section comes into force.

Electricity vendors to provide information

(3) Electricity vendors shall provide to the IESO such information as the IESO may reasonably request for the purposes of determining the IESO deferral under subsection (1) and such further information as may be prescribed.

Same

(4) The IESO may rely on information provided by electricity vendors for the purposes of the determination under subsection (1).

Variance account to be established, maintained

24. (1) The IESO shall establish and maintain a variance account in which it records the following:

1. The IESO deferral for each month.

2. All payments received by the IESO resulting from the exercise of the right of recovery under section 25 and any transfer under section 26.

3. Such other adjustments as may be prescribed, including adjustments in respect of the period that commences on or after May 1, 2017 and before the day this section comes into force.

Recording determinative

(2) Subject to the correction of any obvious error by the IESO, its recording of the balance in the variance account is determinative of the balance as of the time of the recording.

Rights of investment interest owner

(3) No change made by the IESO to the balance in the variance account shall, if the previous balance was relied upon by an investment interest owner in the context of a transfer under section 26, affect the rights acquired by the investment interest owner under the transfer.

Regulatory asset established

25. (1) Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Board to set rates

(2) Subject to subsection (3), the Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for the IESO to recover the balance recorded in the variance account.

Limitation

(3) The IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2021.

Transfer of regulatory asset

26. (1) The IESO may from time to time, in accordance with this Act and the regulations, transfer a specified portion of the regulatory asset to a financing entity in accordance with this section.

Agreement

(2) An agreement between the IESO and a financing entity in relation to the transfer of a specified portion of the regulatory asset shall provide for consideration of a payment by the financing entity to the IESO in an amount equal to the amount of the specified portion.

Effect of payment

(3) Upon receipt by the IESO of the payment by the financing entity,

(a) the balance in the variance account shall be reduced by the amount of the payment;

(b) the regulatory asset shall be adjusted accordingly;

(c) the financing entity shall acquire a corresponding investment interest; and

(d) the IESO shall retain no further right, title or interest in the corresponding investment interest.

Validity of transfer

27. (1) A transfer of a specified portion of the regulatory asset under section 26 constitutes a valid and enforceable absolute assignment, conveyance and sale of the corresponding investment interest to the transferee.

Same

(2) Without limiting subsection (1), any transfer agreement that states an intention of the parties for the IESO to dispose of a specified portion of the regulatory asset and to assign, convey or sell a corresponding investment interest shall be treated for all purposes as an absolute assignment, conveyance, disposition and sale of the IESO's right to

recover the corresponding amount in the variance account and not merely as a security interest.

Deemed perfection, etc.

(3) At the time a transfer of the regulatory asset is made under section 26, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the transferee shall have priority over any liens in favour of those persons.

PART VI
THE INVESTMENT ASSET

Investment asset established

28. (1) The transfer of a specified portion of the regulatory asset under section 26 creates an investment asset or, if it is not the first transfer, adds to the investment asset.

Same

(2) Upon transfer of a specified portion of the regulatory asset under section 26 to a financing entity, the investment asset resulting from the transfer is immediately vested in the financing entity, free and clear of any adverse claim.

Investment asset, irrevocable rights and interests

29. (1) The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests of investment interest owners:

1. The right and interest to impose, invoice, collect, receive and recover the clean energy adjustment from specified consumers, including the right to determine the clean energy adjustment in accordance with this Act.

2. The right to receive, collect and recover the clean energy adjustment that is imposed, invoiced and recoverable under this Act, including any amounts in respect of the clean energy adjustment that are held by electricity vendors, the IESO and other prescribed parties.

3. All rights and entitlements under such accounts as may be prescribed by regulation and all amounts on deposit in such accounts.

4. The right to enforce the duties and obligations under this Act of each electricity vendor to impose, attribute, charge and invoice for the clean energy adjustment.

5. The right to enforce the duties and obligations under this Act of each electricity vendor and the IESO to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by any electricity vendor to recover payment of the clean energy adjustment.

6. All rights of any kind related to any of the other property rights or interests that comprise the investment interest, including any rights to receive funding rebates.

7. All revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 6, regardless of whether it is invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

Not affected by failure to impose etc. clean energy adjustment

(2) An investment interest is not affected by any failure to impose, attribute, invoice, accrue or collect amounts in respect of the clean energy adjustment.

No set off, etc.

(3) The investment asset shall not be set off,

(a) by a consumer, an electricity vendor, the IESO, an agent of the investment interest owners or an owner in the Province of a distribution system within the meaning of the *Electricity Act, 1998*;

(b) in connection with any default of a person mentioned in clause (a); or

(c) by any affiliate or successor of a person mentioned in clause (a).

Exercise of rights

(4) The rights of the investment interest owners to collect the clean energy adjustment and enforce their rights and interests in, to and in respect of the investment asset against a specified consumer shall be exercised in accordance with Part III of this Act.

Collective action required

(5) If one investment interest owner owns a right or interest in the investment asset that comprises less than the entire property right and interest constituted by the

investment asset, the right or interest shall only be enforced by the investment interest owner collectively and in coordination with all other investment interest owners, and any agreement among that collective in furtherance of the collective action shall be valid and binding on the investment interest owners as a collective in accordance with its terms.

Transfer of investment interest

30. An investment interest owner may transfer all or a portion of an investment interest to any other investment interest owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan.

Validity of transfer

31. (1) A transfer of an investment interest under this Act is a valid and enforceable sale and absolute transfer of the investment interest and confers upon the transferee a valid property right and interest in, to and under the applicable investment interest acquired in accordance with the terms of the transfer.

Same

(2) Without limiting subsection (1), a transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of an investment interest owner's right, title and interest in, to and under an investment interest, and not merely as a security interest, and upon such absolute transfer the transferor shall retain no right, title or interest in the investment interest subject to the transfer, including all rights to the investment interest arising after the transfer.

Deemed perfection, etc.

(3) At the time a transfer of an investment interest is made, the transfer shall be deemed to have been and shall be perfected as described in the *Personal Property Security Act*, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer, assignment, etc.

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer, and the property rights and interests acquired by the investment interest owner shall have priority over any liens in favour of such other persons.

Investment interest owner may grant security interest

32. (1) An investment interest owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under the investment interest to or in favour of any person to secure a funding obligation.

Validity

(2) A security interest granted under this Act shall be valid and enforceable in accordance with its terms.

Perfection and priority of security interests

(3) All provisions of the *Personal Property Security Act* shall apply to the investment asset and each investment interest on the basis that the investment asset and each investment interest is intangible personal property, except as otherwise provided for in this section, and any granting of a security interest by an investment interest owner to secure a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by registering a financing statement under that Act on that basis.

Proceeds

(4) All proceeds of an investment interest that are subject to the security interest and that are received by the investment interest owner shall immediately be subject to the security interest and shall be perfected without any physical delivery of the proceeds, registration of any financing statement or any further act.

Perfection

(5) The security interest shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may subsequently attach to the property rights and interests in the investment interest subject to the security interest, unless the person to whom the security interest has been granted consents otherwise.

Same

(6) The person to whom the security interest has been granted shall have a perfected security interest in revenues or other proceeds that are deposited in any account of any electricity vendor, an agent of an electricity vendor or other person who may have commingled such revenues or other proceeds with other funds.

Notice required

(7) The secured party shall be entitled to exercise the rights of an investment interest owner only after the secured party has given notice of the enforcement of its security interest to the IESO.

Interpretation

(8) For the purposes of this section, a security interest is perfected when it is perfected as described in the *Personal Property Security Act.*

PART VII
MISCELLANEOUS

Appointment of agent, invoicing or collection

33. (1) If a prescribed circumstance applies, the Lieutenant Governor in Council may by regulation appoint a person to carry out some or all of the obligations of an electricity vendor under this Act in the place of an electricity vendor with respect to invoicing or collection.

Same, not Crown agent

(2) For greater certainty, a person appointed under this section is not an agent of the Crown for any purpose, despite the *Crown Agency Act*.

Board's authority

34. (1) Each electricity vendor, the IESO and the Financial Services Manager shall maintain such accounts and provide such information to the Board as the Board may require for the purposes of carrying out its responsibilities under this Act, in the form and manner and within the time required by the Board.

No hearing required

(2) Despite anything to the contrary in the *Ontario Energy Board Act, 1998*, the Board may exercise any of its responsibilities under this Act without a hearing.

Sequestration

35. (1) A court in the Province may, upon application by an investment interest owner or a secured party, order the sequestration and payment of amounts in respect of the clean energy adjustment, collections or remittances, as applicable, for the benefit of the investment interest owner or secured party by any person or entity authorized to collect amounts in respect of the clean energy adjustment.

Same

(2) An order under subsection (1) does not limit any other remedies available to the applicant.

Choice of law

36. The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to a transfer under this Act or the creation of a security interest in the regulatory asset, the investment asset, the clean energy adjustment or the undertaking of the Crown under section 5 shall be the laws of the Province.

Conflict

37. The provisions of this Act and the regulations apply despite any provision of any other Act regarding the attachment, assignment or perfection, or the effect of perfection or priority of any transfer or security interest.

No further approvals, etc.

38. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required under the Financing Plan or in relation to the determination of the fair allocation amount.

Liability

39. (1) No action or other civil proceeding shall be commenced against any employee of the Province or Ontario Power Generation Inc. for any act done in good faith in the exercise or performance or the intended exercise or performance of a power or duty under this Act, the regulations or for any alleged neglect or default in the exercise or performance in good faith of such a power or duty.

Same

(2) Nothing in subsection (1) shall be read as limiting the effect of subsection 19 (1) of the *Electricity Act, 1998* or subsection 11 (1) of the *Ontario Energy Board Act, 1998.*

Same

(3) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act,* subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

References in marketing materials and offering documents

40. No person shall include, in marketing materials or offering documents relating to the financing of funding obligations, references to any rights, obligations, guarantees or undertakings arising under section 5 unless the prescribed requirements, if any, are satisfied.

Regulations

41. (1) The Lieutenant Governor in Council may make regulations in respect of the following matters:

1. Governing anything that is required or permitted to be prescribed or that is required or permitted to be done by, or in accordance with, the regulations or as authorized, specified or provided in the regulations.

2. Defining, for the purposes of a regulation, words and expressions used in this Act that are not defined in the Act.

3. Governing the incurrence of debt for the purposes of the definition of "refinancing" in subsection 1 (1).

4. Governing the inclusion of information under this Act on or with invoices, which may include requiring notice to be provided by electricity vendors to specified consumers and other prescribed persons regarding the adjustments, including providing for different requirements in different circumstances and for different classes of specified consumers.

5. Governing the inclusion of information about the clean energy adjustment and any other matters provided for under this Act on or with invoices issued to specified consumers, including the form that the information must take and the form of the invoices and the form of any notice to be provided to the specified consumer under this Act.

6. Governing the manner by which invoices or notices provided for under this Act are to be provided to specified consumers and other prescribed persons.

7. Providing for a right of compensation for investment interest owners affected by a breach under section 29 and the manner in which such a right may be enforced under this Act.

8. Prescribing the time within which any action required by this Act may be required to be done.

9. Providing for such other matters as the Lieutenant Governor in Council considers advisable to carry out the purpose of this Act.

Limitation

(2) Despite subsection (1) or any other Act, no regulation under this Act shall have the effect of reducing, impairing, postponing or terminating the obligations of specified consumers to pay amounts in respect of the clean energy adjustment or impairing or postponing the invoicing, collection, remittance or recovery of the clean energy adjustment.

PART VIII
AMENDMENTS TO OTHER ACTS

Electricity Act, 1998

42. (1) Subsection 6 (1) of the *Electricity Act, 1998* is amended by adding the following clause:

(q.1) to exercise the powers and rights and to perform the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and to engage in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including,

(i) entering into agreements or arrangements with any person for the purposes of the *Ontario Fair Hydro Plan Act, 2017*,

(ii) engaging in activities related to making payments to and receiving payments as contemplated under the *Ontario Fair Hydro Plan Act, 2017* and related settlement activities,

(iii) engaging in activities related to the transfer and administration of the regulatory asset created under the *Ontario Fair Hydro Plan Act, 2017*, which activities may include,

(A) incurring liabilities in relation to the regulatory asset,

(B) transferring the regulatory asset under section 26 of the *Ontario Fair Hydro Plan Act, 2017* for consideration, and

(C) acting as a recovery agent under the *Ontario Fair Hydro Plan Act, 2017*;

(2) Subsection 25.33 (1) of the Act is amended by striking out "and" at the end of clause (a), by adding "and" at the end of clause (b) and by adding the following clause:

(c) such amounts as may be prescribed that are paid or incurred by the IESO in relation to the *Ontario Fair Hydro Plan Act, 2017*.

(3) Subsection 25.33 (2) of the Act is amended by striking out "and" at the end of clause (a), by adding "and" at the end of clause (b) and by adding the following clause:

(c) such amounts as may be prescribed that are paid or incurred by the IESO in relation to the *Ontario Fair Hydro Plan Act, 2017*.

(4) Clause 25.33 (4) (b) of the Act is amended by adding "or as may be required by a regulation made under this Act or the *Ontario Fair Hydro Plan Act, 2017*" at the end.

(5) Subsection 25.33 (5) of the Act is amended by adding "or under the *Ontario Fair Hydro Plan Act, 2017*" at the end.

(6) Section 53.1 of the Act is amended by adding the following subsections:

Same, *Ontario Fair Hydro Plan Act, 2017*

(1.1) In addition to the objects mentioned in subsection (1), the objects of Ontario Power Generation Inc. include exercising the powers and rights and performing the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and engaging in activities to facilitate the implementation of that Act, including entering into contracts and undertakings on behalf of financing entities and performing other services on behalf of financing entities, subject to the right to be paid by the financing entities for those services.

Subsidiaries, etc.

(1.2) Ontario Power Generation Inc. may create or invest in one or more subsidiaries, trusts, partnerships, limited partnerships or special purpose entities in order to more efficiently conduct its activities or achieve its objects.

Deemed assets, non-subsidiary

(1.3) Despite any other provision of this Act, the *Business Corporations Act* or any other Act, if a financing entity is not a subsidiary of Ontario Power Generation Inc.,

(a) the assets and liabilities of the financing entity shall not form part of the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries; and

(b) the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries shall not form part of the assets and liabilities of the financing entity.

Deemed assets, subsidiary

(1.4) Despite any other provision of this Act, the *Business Corporations Act* or any other Act, if a financing entity is a subsidiary of Ontario Power Generation Inc.,

(a) the assets and liabilities of that financing entity shall not form part of the assets and liabilities of Ontario Power Generation Inc. or any of its other subsidiaries; and

(b) the assets and liabilities of Ontario Power Generation Inc. or any of its other subsidiaries shall not form part of the assets and liabilities of that financing entity.

Definition, financing entity

(1.5) For the purposes of this section,

"financing entity" has the same meaning as in the *Ontario Fair Hydro Plan Act, 2017*.

Ontario Energy Board Act, 1998

43. (1) Subsection 70 (2.1) of the *Ontario Energy Board Act, 1998* is amended by adding the following paragraph:

4. The licensee is required to comply with the *Ontario Fair Hydro Plan Act, 2017*.

(2) Section 70 of the Act is amended by adding the following subsection:

Deemed condition of licences, unit sub-meter provider, *Ontario Fair Hydro Plan Act, 2017*

(2.4) Every licence issued to a unit sub-meter provider is deemed to contain the condition that the unit sub-meter provider is required to comply with the *Ontario Fair Hydro Plan Act, 2017* and the regulations made under it.

(3) Section 78.1 of the Act is amended by adding the following subsections:

Same, limitation re Ontario Power Generation Inc.

(3) The determination of a payment to Ontario Power Generation Inc. under this section shall not include any consideration of amounts related to activities of Ontario Power Generation Inc. carried out in relation to the *Ontario Fair Hydro Plan Act, 2017*.

Same

(3.1) The amounts referred to in subsection (3) include, without limitation, the following:

1. Amounts related to the appointment of Ontario Power Generation Inc. as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

2. Amounts related to the charging of fees for performing duties as the Financial Services Manager.

3. Amounts related to exercising the powers and performing the duties of the Financial Services Manager.

4. Amounts related to the consolidation of the assets and liabilities for accounting purposes of any special purpose financing entities established under and for the purposes of that Act.

(4) Subsection 79.16 (3) of the Act is repealed.

PART IX
COMMENCEMENT AND SHORT TITLE

Commencement

44. This Schedule comes into force on the day the *Fair Hydro Act, 2017 receives* Royal Assent.

Short title

45. The short title of the Act set out in this Schedule is the *Ontario Fair Hydro Plan Act, 2017*.

SCHEDULE 2
AMENDMENTS TO THE ONTARIO ENERGY BOARD ACT, 1998

1. (1) Subsection 79 (4) of the *Ontario Energy Board Act, 1998* is repealed and the following substituted:

Liability

(4) All consumers are required, in accordance with the regulations, to contribute towards the amount of any compensation required under subsection (3) that is not otherwise provided under subsection (4.1).

Payments for certain classes

(4.1) Compensation required under subsection (3) may be provided with respect to one or more prescribed classes of consumers who receive rate protection under this section, in a manner provided for in the regulations.

Money appropriated by the Legislature

(4.2) The compensation provided for in subsection (4.1) shall be paid for out of the money appropriated for those purposes by the Legislature.

Information, etc.

(4.3) If provided for in the regulations, the Board, the IESO and distributors, or any of them, shall provide such information and reports to the Ministry of Energy and to one another as are necessary to facilitate the implementation, administration, funding and delivery of the rate protection or of anything else provided for in this section.

(2) Clause 79 (5) (e) of the Act is repealed and the following substituted:

(e) prescribing rules respecting the amounts that must be collected to compensate distributors, taking into account any compensation provided under subsection (4.1), including rules,

(i) respecting the calculation of those amounts,

(ii) respecting the calculation of any off-set to the liability of consumers under subsection (3) having regard to those amounts,

(iii) establishing the time and manner of collection,

(iv) requiring the amounts to be paid in instalments and requiring the payment of interest or penalties on late payments,

(v) prescribing methods of ensuring that the amounts required cannot be bypassed, and

(vi) respecting the distribution of those amounts to consumers;

(e.1) prescribing classes of consumers for the purposes of subsection (4.1), and governing how and when the compensation is to be provided with respect to the rate protection provided to them, including, without restricting the generality of the foregoing, requiring the IESO to receive payments or amounts from the Minister of Energy and to make payments to licensed distributors or to prescribed persons and prescribing how and when payments are to be made;

2. Section 79.2 of the Act is repealed and the following substituted:

Rate assistance

79.2 (1) The Minister shall make provision for rate assistance for rate-assisted consumers having regard to their economic circumstances, and where the Minister makes such provision, shall do so out of the money provided for in subsection (4).

OESP

(2) The program known as the "Ontario Electricity Support Program" in English and "Programme ontarien d'aide relative aux frais d'électricité" in French is continued for the purpose of providing rate assistance to rate-assisted consumers having regard to their economic circumstances.

Administered by Board

(3) The Ontario Electricity Support Program shall be administered by the Board, or when the regulations so provide, by a Minister of the Crown or other entity provided for in the regulations.

Money appropriated by the Legislature

(4) The money required for the purposes of the Ontario Electricity Support Program shall be paid out of the money appropriated for those purposes by the Legislature, once the amounts recorded in the variance account referred to in subsection (5) are no longer sufficient to provide for the funding of the program when taken on their own.

Variance account

(5) The money required for the purposes of the Ontario Electricity Support Program shall be provided out of the credit balance in the variance account maintained by the IESO under the Program as it existed before the coming into force of section 2 of Schedule 2 to the *Fair Hydro Act, 2017* until the amounts recorded in the account are no longer sufficient, when taken on their own, to fund the Program.

Variance account depleted

(6) The IESO shall provide the Ministry of Energy with advance notice, on a timely basis, of the time the IESO estimates that the amounts reflected in the variance account would be less than the amount required to meet its obligations related to funding the Ontario Electricity Support Program for the upcoming month.

How provided

(7) Rate assistance provided under this section shall be provided with respect to consumers prescribed in the regulations, and shall be provided at the times provided for in the regulations and in the amounts and in the manner provided for in the regulations.

Payments with respect to prior use

(8) The regulations may require provision of rate assistance to prescribed classes of rate-assisted consumers with respect to electricity consumed during a period prior to the date of the making of the regulation, but no such rate assistance shall be required under the regulations with respect to electricity consumed before January 1, 2016.

Transitional

(9) The regulations may require the provision of rate assistance for a rate-assisted consumer with respect to a period prior to the date on which the consumer became a rate-assisted consumer if the consumer meets all of the criteria prescribed by the regulations.

Distributors, etc.

(10) A distributor, a unit sub-meter provider and any other person or entity that may be prescribed is entitled to be compensated from the money referred to in subsection (4) or subsection (5), as the case may be, for any lost revenue resulting from the provision of rate assistance under the Ontario Electricity Support Program.

Deemed licence conditions, IESO, settlements, payments, etc.

(11) Every licence issued to the IESO, a distributor or unit sub-meter provider or a retailer of electricity shall be deemed to contain conditions requiring the licensee to do anything necessary to implement and administer the provision of rate assistance under this section as may be required by the regulations or the Board, including requirements with respect to,

(a) making payments to the IESO, distributors, unit sub-meter providers and other persons and entities identified by the regulations;

(b) receiving payments or other amounts from the IESO, distributors, unit sub-meter providers and other persons and entities identified by the Minister;

(c) requiring licensees to pass any rate assistance provided for under this section through to rate-assisted consumers in the manner provided for in the regulations;

(d) engaging in settlement activities;

(e) providing information to and receiving information from the Ministry of Energy, the Board, the IESO, distributors, unit sub-meter providers, retailers of electricity and any other prescribed persons and entities in the time and in the manner provided for by the Board or as may be prescribed; and

(f) entering into agreements or arrangements with licensees and other persons.

Information, etc.

(12) If provided for in the regulations, the Board, the IESO, distributors, retailers of electricity and unit sub-meter providers, or any of them, shall provide such information and reports to the Ministry of Energy and to one another as are necessary to facilitate the implementation, administration, funding and delivery of rate-assistance or of anything else required under this section.

Conflicts, etc.

(13) Where any conflict exists between an order of the Board, a code issued by the Board or a licence condition and this section or a regulation made under this section, this section or the regulation made under this section shall prevail to the extent of the conflict.

Regulations

(14**)** The Lieutenant Governor in Council may make regulations governing anything dealt with in this section and without limiting the generality of the foregoing, may make regulations,

(a) governing anything that is described in this section as being prescribed or as being provided for in the regulations or that is required to be done in accordance with the regulations;

(b) governing the time or times at which rate assistance shall be paid or become payable to rate-assisted consumers;

(c) governing the determination of classes of consumers who are rate-assisted consumers, including providing for different classes of rate-assisted consumers;

(d) requiring that certain costs and expenditures related to the Ontario Electricity Support Program be only incurred with the prior approval of the Minister, and governing those costs and expenditures;

(e) establishing rules for the calculation of the amount of the rate assistance to be provided;

(f) governing payments under this section, including determining the method or methods of calculating the amount of rate assistance to be provided;

(g) setting maximum amounts of the total annual value of rate assistance that may be provided;

(h) requiring a distributor, the IESO or a unit sub-meter provider or other prescribed person or entity to make or receive payments in respect of rate assistance, including requiring them to make or receive payments directly to or from the Ministry of Energy or to receive overpayments directly or indirectly from consumers or other persons entitled to receive the rate assistance and prescribing the circumstances in which such payments are to be made and received and such overpayments are to be received as well as methods for determining the amounts payable or to be received;

(i) requiring the IESO to receive payments from the Minister and requiring the IESO to make payments to the Board, to licensed distributors, to unit sub-meter providers or to prescribed persons, in respect of the rate assistance provided under this section and governing methods for determining the amounts payable;

(j) governing the Board's or other prescribed entity's administration and program-related costs in administering the Ontario Electricity Support Program;

(k) governing transitional matters arising from the changes made to the Ontario Electricity Support Program as a result of the enactment of the *Fair Hydro Act, 2017*.

Retroactivity

(15) A regulation made under this section is, if it so provides, effective with reference to a period before it is filed.

General or particular

(16) A regulation under this section may be general or particular in application, may provide for different classes of persons and entities and may prescribe different rules for different persons or entities or different classes of persons or entities.

Verification of eligibility

(17) Section 11 of the *Ministry of Revenue Act* applies with respect to the Ontario Electricity Support Program as a government assistance program administered by the Board.

Definitions

(18) In this section,

"Government assistance program" has the meaning provided for in subsection 11 (2) of the *Ministry of Revenue Act*; ("programme d'aide gouvernementale")

"rate-assisted consumer" means a consumer referred to in subsection (7). ("consommateur admissible à l'aide tarifaire")

3. The Act is amended by adding the following section:

Confidentiality, information sharing, etc.

79.2.1 (1) For the purposes of section 79.2, the Board or the Minister or entity having responsibility for administering the Ontario Electricity Support Program may enter into an agreement with the Minister of Community and Social Services to provide the services to the public listed in subsection (2) on behalf of the Board, Minister or the entity, as the case may be, in relation to the administration of the Ontario Electricity Support Program.

Agreement, etc.

(2) The services that may be included in an agreement referred to in subsection (1) are the following:

1. Providing documents and information about the Ontario Electricity Support Program.

2. Processing applications for the Ontario Electricity Support Program.

Arrangements with others

(3) The Minister of Community and Social Services may arrange with another person or entity to provide, on behalf of that Minister, services that that Minister is authorized to provide under an agreement referred to in subsection (1).

Personal information

(4) The Minister of Community and Social Services is authorized to collect, use, disclose and retain personal information necessary to provide the services authorized by

an agreement referred to in subsection (1), but shall not collect, use, disclose or retain more personal information than is reasonably necessary to provide the services.

Limitation

(5) Except where otherwise authorized under subsection (7), the Minister of Community and Social Services shall not collect, use, disclose or retain personal information provided for in subsection (4) without the consent of the individual to whom the information relates.

Duty to transfer personal information

(6) The Minister of Community and Social Services shall transfer an individual's personal information provided for in subsection (4) into the control of the Board, Minister or entity responsible for administering the Ontario Electricity Support Program promptly after processing an application for the Ontario Electricity Support Program, but may retain such personal information as is reasonably necessary to confirm that an individual has been provided a service.

Use of personal information, etc.

(7) The Minister of Community and Social Services may use personal information maintained by that Minister in connection with the administration of the Ontario Disability Support Program and the program established pursuant to the *Ontario Works Act, 1997*, for the purpose of identifying and contacting individuals eligible for the rate assistance provided under the Ontario Electricity Support Program, and to provide services authorized under an agreement referred to in subsection (1).

Deemed compliance

(8) The use of personal information as allowed by subsection (7) is deemed to comply with section 41 of the *Freedom of Information and Protection of Privacy Act*.

Disclosure of list

(9) In order to assist the Minister of Community and Social Services to identify individuals eligible for rate assistance, the Board or the Minister or entity having responsibility for administering the Ontario Electricity Support Program shall, as soon as practicable after the coming into force of this section, disclose to the Minister of Community and Social Services a list of individuals who are enrolled in the Ontario Electricity Support Program, together with their mailing address and other contact information.

Use of list

(10) The Minister of Community and Social Services may use the information on the list provided under subsection (9) to determine whether an individual who is currently enrolled in the Ontario Disability Support Program or the program established under the *Ontario Works Act, 1997* is also enrolled in the Ontario Electricity Support Program.

Destruction of list

(11) The Minister of Community and Social Services shall destroy the list provided under subsection (9) no later than one year after receiving the list.

Notification about the management of personal information

(12) The Minister of Community and Social Services shall ensure that a notice is published on a website describing,

(a) the purpose for which that Minister collects, uses, discloses and retains personal information in connection with the Ontario Electricity Support Program;

(b) the types of personal information that may be collected, used, disclosed and retained in connection with the Ontario Electricity Support Program, and the circumstances in which the personal information may be collected, used, disclosed and retained in connection with that Program; and

(c) the title, and contact information, including an email address, of an employee who can answer an individual's questions about the use of the personal information under this section.

4. The Act is amended by adding the following sections:

Distribution rate-protected consumers

79.3 (1) The Minister shall provide for distribution rate protection to distribution rate-protected residential consumers having regard to the costs of the distribution of electricity to such consumers with respect to electricity consumed on or after the date prescribed by the regulations.

Money appropriated by the Legislature

(2) The money required for the purposes of the provision of distribution rate protection under this section shall be paid out of the money appropriated for those purposes by the Legislature.

Maximum charge

(3) Despite any order of the Board, or anything else under this Act, where the regulations so provide, a prescribed distributor who distributes electricity to distribution rate-protected residential consumers shall not charge those consumers, or a prescribed class of those consumers, any amount for monthly base distribution charges more than,

(a) the maximum amount for the charge that is provided for in the regulations; or

(b) the amount determined by the Board after applying any calculations, processes or methods provided for in the regulations.

Distributors

(4) A distributor who is prescribed under this section is entitled to be compensated from the money referred to in subsection (2) for lost revenue resulting from the provision of the distribution rate protection to distribution rate-protected residential consumers under this section.

Information, etc.

(5) If provided for in the regulations, the Board, the IESO and distributors, or any of them shall provide such information and reports to the Ministry of Energy and to one another as are necessary to facilitate the implementation, administration, funding and delivery of distribution rate protection or of anything else required under this section.

Limitation periods for distribution rate protection, consumer

(6) Despite any past entitlement of a consumer who is eligible to distribution rate protection under this section, no distribution rate protection is payable to a consumer after a limitation period prescribed by the regulations in respect of the consumer, other than in such circumstances as may be prescribed by the regulations.

Limitation, reimbursement of distributor, etc.

(7) Despite any requirement under this Act to reimburse a prescribed distributor or other person for distribution rate protection provided by them to distribution rate-protected residential consumers under this section, no amounts for reimbursement are payable to the prescribed distributor or other person after a limitation period prescribed by the regulations in respect of the prescribed distributor or other person, where such reimbursement is based on a consumer's past entitlement under this section which has not yet been paid or reimbursed under this section, other than in such circumstances as may be prescribed by the regulations.

Transitional

(8) If, for technical or operational reasons, a distributor referred to in subsection (3) is unable to adapt its invoices to comply with this section and the regulations by the time it issues its first invoice for electricity consumed after the prescribed date in respect of an account of a consumer who is eligible for distribution rate protection under this section,

(a) the distributor shall adapt its invoices as soon as possible and, in any event, no later than a date prescribed in the regulations; and

(b) consumers continue to be entitled to receive the distribution rate protection to which they are entitled under this Act and may receive it as a lump sum credit

on the invoice for the first billing period after the invoices have been adapted or by such other means as may be prescribed by the regulations.

Regulations

(9) The Lieutenant Governor in Council may make regulations,

(a) prescribing consumers or classes of consumers as distribution rate-protected residential consumers for the purposes of this section;

(b) prescribing dates for the purposes of subsections (1) and (8);

(c) prescribing distributors for the purposes of this section;

(d) governing anything that is described in this section as being prescribed or as being provided for in the regulations or that is required to be done in accordance with the regulations;

(e) governing the provision of distribution rate protection by the Minister in respect of distribution rate-protected residential consumers under this section including determining the method or methods of calculating the amount of rate protection to be provided;

(f) requiring the IESO to receive payments from the Minister and to make payments to licensed distributors, or to persons prescribed by the regulations, in respect of the distribution rate protection provided for under this section and prescribing methods for determining the amounts payable to distributors or distribution rate-protected residential consumers in respect of that protection.

Interpretation

(10) In this section,

"distribution rate-protected residential consumer" has the meaning provided for in the regulations; ("consommateur résidentiel protégé contre les frais de distribution")

"monthly base distribution charges" has the meaning provided for in the regulations. ("frais de distribution mensuels de base")

Delivery credit for on-reserve consumers

79.4 (1) The Minister shall provide a delivery credit to on-reserve consumers who meet the criteria prescribed under this section with respect to electricity consumed on or after the date prescribed by the regulations.

Money appropriated by the Legislature

(2) The money required for the purposes of the provision of the credits required under this section shall be paid out of the money appropriated for those purposes by the Legislature.

Eligible costs

(3) The eligible costs for the delivery credit referred to in subsection (1) are,

(a) the sum of the following charges for which the consumer would otherwise be liable,

(i) all variable and fixed distribution charges,

(ii) all charges based on the retail transmission network service rate,

(iii) all charges based on the retail transmission connection service rate,

(iv) all charges related to losses incurred in the distribution of electricity, except for such amounts that are included in regulatory charges provided for in the regulations, and

(v) any other charges that may be prescribed in the regulations; or

(b) where no separate charges for delivery are provided for by the distributor or other person or entity that may be prescribed in the regulations, the monthly service charge or such other amount as may be prescribed for or in respect of a prescribed distributor.

Delivery credit

(4) A distributor, person or entity shall, unless the regulations provide otherwise, provide the delivery credit referred to in subsection (1) by crediting the account of an on-reserve consumer.

Same

(5) The regulations may require that distributors and any other persons or entities provide a delivery credit to an on-reserve consumer who is entitled to a delivery credit under subsection (1) in such manner or in accordance with such methods as may be prescribed.

Same

(6) A distributor or any person or entity as may be prescribed is entitled to be compensated from the money referred to in subsection (2) for any lost revenue resulting from the provision of the delivery credits under this section.

Information, etc.

(7) If provided for in the regulations, the Board, the IESO and distributors, and other persons or entities, or any of them, shall provide such information and reports to the Ministry of Energy and to one another as are necessary to facilitate the implementation, administration, funding and delivery of the delivery credits or of anything else required under this section.

Limitation periods for delivery credit, consumer

(8) Despite any past entitlement of an on-reserve consumer who is eligible for a delivery credit under this section, no delivery credit is payable to an on-reserve consumer after a limitation period prescribed by the regulations in respect of the on-reserve consumer, other than in such circumstances as may be prescribed by the regulations.

Limitation, reimbursement of distributor, etc.

(9) Despite any requirement under this Act to reimburse a distributor or other persons or entities for delivery credits provided by them to on-reserve consumers under this section, no amounts for reimbursement are payable to the distributor or other persons or entities after a limitation period prescribed by the regulations in respect of the distributor or other persons or entities, where such reimbursement is based on an on-reserve consumer's past entitlement under this section which has not yet been paid or reimbursed under this section, other than in such circumstances as may be prescribed by the regulations.

Transitional

(10) If, for technical or operational reasons, a distributor referred to in subsection (4) is unable to adapt its invoices to comply with this section and the regulations by the time it issues its first invoice for electricity consumed after the prescribed date in respect of an eligible account,

(a) the distributor shall adapt its invoices as soon as possible and, in any event, no later than a date prescribed in the regulations; and

(b) on-reserve consumers continue to be entitled to receive the delivery credit to which they are entitled under this Act and may receive it as a lump sum credit on the invoice for the first billing period after the invoices have been adapted or by such other means as may be prescribed by the regulations.

Regulations

(11) The Lieutenant Governor in Council may make regulations,

(a) governing who is an on-reserve consumer for the purposes of this section and, without limiting the generality of the foregoing, may provide that consumers

who occupy certain areas are on-reserve consumers, and may do so without regard to whether those areas constitute a "reserve" under any other Act or law;

(b) prescribing dates for the purposes of subsections (1) and (10);

(c) governing provision of the delivery credits provided to on-reserve consumers under this section and, without restricting the generality of the foregoing, governing anything that under this section is to be prescribed or provided for in the regulations, or that is to be done in accordance with the regulations;

(d) determining the method or methods of calculating the amount of the delivery credits to be provided by the Minister in respect of on-reserve consumers under this section;

(e) requiring the IESO to make and receive payments to and from the Minister and to make payments to licensed distributors, or to persons prescribed by the regulations, in respect of the delivery credits provided for under this section and prescribing methods for determining the amounts payable to distributors or on-reserve consumers in respect of the credits provided.

Interpretation

(12) In this section,

"on-reserve consumer" has the meaning provided for in the regulations.

Application

79.5 Sections 79.6 through 79.11 apply to the programs provided for under sections 79, 79.2, 79.3 and 79.4 to the extent that they are funded by money appropriated for those purposes by the Legislature.

Definition

79.6 In sections 79.7 to 79.11,

"Finance Minister" means the Minister of Finance or such other member of the Executive Council to whom the administration of those sections is assigned under the *Executive Council Act*.

Records

79.7 (1) Every distributor and every other person prescribed by regulation shall keep at a location in Ontario such records as are necessary to determine and verify compliance with sections 79, 79.2, 79.3 and 79.4 and the regulations associated with them and any records required by those regulations to be kept.

Electronic records

(2) If a person keeps records in an electronic form, the person shall ensure that, from the time the records are first made and for as long as they are required to be retained,

(a) they remain complete and unaltered, apart from any changes or additions made in the normal course of communication, storage or display; and

(b) they are capable of being printed and of being produced in electronically readable format for inspection, examination or audit.

Retention of records

(3) Records required to be kept under subsection (1) shall not be destroyed unless authorization has been given in writing by the Finance Minister.

Offence

(4) Every person who fails to keep records in accordance with this section is guilty of an offence and, on conviction, is liable to a fine of not less than $50 and not more than $5,000.

Inspections and inquiries

79.8 (1) The Finance Minister may appoint one or more inspectors who are authorized to exercise any of the powers and perform any of the duties of a person authorized by the Minister under subsection 31 (1) of the *Retail Sales Tax Act* for any purpose related to the administration and enforcement of sections 79, 79.2, 79.3 and 79.4 of this Act.

Same

(2) Subsections 31 (1), (2), (2.1) and (2.2) of the *Retail Sales Tax Act* apply, with necessary modifications, with respect to the administration and enforcement of sections 79, 79.2, 79.3 and 79.4 of this Act.

Admission of evidence

(3) The Finance Minister, or a person authorized by the Finance Minister, may, for any purpose related to the administration of sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them, reproduce from original data stored electronically any information previously submitted as required under those sections or regulations in any form by any person, and the electronically reproduced document shall be admissible in evidence and shall have the same probative force as the original document would have had if it had been proved in the ordinary way.

Inquiry

(4) The Finance Minister may, for any purpose related to the administration of sections 79, 79.2, 79.3 and 79.4 of this Act or the regulations made in association with

them, authorize any person, whether or not the person is an employee in the Ministry of the Finance Minister, to make such inquiry as the Finance Minister considers necessary with reference to anything relating to the administration of this Act or the regulations.

Copies

(5) If a book, record or other document is examined or produced under this section, the person by whom it is examined or to whom it is produced or any officer of the Ministry may make, or cause to be made, one or more copies of it, and a document purporting to be certified by the person to be a copy made pursuant to this section is admissible in evidence and has the same probative force as the original document would have if proved in the ordinary way.

Compliance

(6) No person shall hinder or molest or interfere with any person doing anything that the person is authorized by this section to do or prevent or attempt to prevent any person doing any such thing.

Same

(7) Despite any other law to the contrary, every person shall, unless the person is unable to do so, do everything the person is required by this section to do.

Administration of oaths

(8) Declarations or affidavits in connection with statements of information submitted pursuant to this section may be taken before any person having authority to administer an oath or before any person specially authorized for that purpose by the Lieutenant Governor in Council, but any person so specially authorized shall not charge any fee for doing so.

Application of *Public Inquiries Act, 2009*

(9) Section 33 of the *Public Inquiries Act, 2009* applies to an inquiry under subsection (4).

Recovery of overpayments

Definitions

79.9 (1) In this section,

"inspector" means an inspector referred to in section 79.8; ("inspecteur")

"overpayment" means an amount received by a person in excess of that to which the person is entitled under sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them. ("trop-perçu")

Notice of overpayment

(2) If it appears to an inspector that a person has received an overpayment, the Finance Minister may send a written notice to the person advising the person of the following:

1. That the person has received an overpayment.

2. The amount of the overpayment and how it was calculated.

3. The required steps to be taken by the person with respect to the overpayment.

4. The date, not more than six months after the date of the notice, by which these steps must be completed.

5. That the Finance Minister has the authority to assess the person for the amount of the overpayment, plus interest, if the person fails to complete the required steps by the specified date.

Calculation of amount of overpayment

(3) For the purposes of this section, an inspector shall calculate an overpayment or the outstanding balance of an overpayment in the manner and form and using such procedures as the Finance Minister considers adequate and expedient.

Assessment

(4) If a person fails to complete the steps required in a notice under subsection (2) within the time specified in the notice, and any additional time requested by the person and permitted by the Finance Minister, the Finance Minister may assess or reassess the amount of the overpayment, or the outstanding balance of the overpayment, based on the inspector's calculation described in subsection (3).

Penalty

(5) If the Finance Minister makes an assessment or reassessment under subsection (4) and is satisfied that the person's non-compliance with the required steps in the notice was attributable to neglect, carelessness, wilful default or fraud, the Finance Minister may assess a penalty against the person equal to the outstanding balance of the overpayment when the penalty is assessed.

Time limit

(6) The Finance Minister shall not assess or reassess under subsection (4) more than 48 months after the end of the month in which the person received the overpayment.

Exception, where misrepresentation, etc.

(7) Subsection (6) does not apply if the Finance Minister establishes that the person has made a misrepresentation that is attributable to neglect, carelessness or wilful default or has committed any fraud in supplying information under this Act or the regulations or in omitting to disclose information.

Deeming

(8) An amount assessed or reassessed by the Finance Minister under this section is deemed, for the purposes of the administration and enforcement of this Act, to be a debt retirement charge owing and payable, as defined in subsection 85 (1) of the *Electricity Act, 1998,* that has been collected, on the last day of the month in which the person received the overpayment, by the person as a collector appointed under subsection 85.3 (1) of the *Electricity Act, 1998* and, for those purposes,

(a) sections 85.11, 85.12, 85.14, 85.17 and 85.30 of that Act apply with necessary modifications;

(b) in the application of sections 85.11 and 85.14 of that Act and without limiting the generality of clause (a) of this subsection, references to the Financial Corporation are read as references to the Minister of Finance and references to the Minister of Finance are read as references to the Finance Minister as defined in section 79.6 of this Act;

(c) the regulations made under that Act for the purposes of calculating the rate or rates of interest payable under section 85.11 of that Act and the manner of calculating the amount of interest apply with necessary modifications; and

(d) sections 23 and 36, subsections 37 (1), (1.1) and (2) and sections 37.1, 38 and 39 of the *Retail Sales Tax Act* apply with necessary modifications.

Disposition of repaid amounts

(9) If all or part of an overpayment is repaid to the Finance Minister, the Minister of Energy shall make such financial arrangements and payments as may be necessary to ensure that any person entitled to all or part of the overpayment receives the appropriate amount.

Confidentiality

79.10 (1) Except as authorized by this section, no person employed by the Government of Ontario shall,

(a) knowingly communicate or knowingly allow to be communicated to any person any information obtained by or on behalf of the Minister of Energy or

the Finance Minister for the purposes of sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them; or

(b) knowingly allow any person to inspect or to have access to any record or thing obtained by or on behalf of either Minister for the purposes of this Act.

Testimony

(2) No person employed by the Government of Ontario shall be required, in connection with any legal proceedings,

(a) to give evidence relating to any information obtained by or on behalf of the Minister of Energy or Finance Minister for the purposes of this Act; or

(b) to produce any record or thing obtained by or on behalf of either Minister for the purposes of this Act.

Exception

(3) Subsections (1) and (2) do not apply in respect of,

(a) criminal proceedings under any Act of the Parliament of Canada;

(b) proceedings in respect of the trial of any person for an offence under an Act of the Legislature; or

(c) proceedings relating to the administration or enforcement of this Act or Part V.1 or VI of the *Electricity Act, 1998*.

Communication

(4) A person employed by the Government of Ontario may, in the course of duties in connection with the administration or enforcement of sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them,

(a) communicate or allow to be communicated to another person employed by the Government of Ontario in the administration or enforcement of any law or to an employee of the Board information obtained by or on behalf of either Minister for the purposes of sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them; and

(b) allow another person employed by the Government of Ontario in the administration or enforcement of any law or an employee of the Board to inspect or have access to any record or thing obtained by or on behalf of either Minister for the purposes of sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them.

Reciprocal communication

(5) A person who receives information or obtains access to any record or thing under subsection (4) has a duty to communicate or furnish to that Minister on a reciprocal basis any information, record or thing obtained by the person that affects the administration or enforcement of this Act.

Use of information

(6) Any information, record or thing communicated or furnished under this section may be used only for the administration or enforcement of sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them or an Act that is administered or enforced by the person receiving the information, record or thing.

Same

(7) The Finance Minister may permit information or a copy of any record or thing obtained by or on behalf of the Finance Minister for the purposes of sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them to be given to,

(a) the person from whom the information, record or thing was obtained;

(b) any person by whom an amount is payable or has been paid under sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them; or

(c) the legal representative of a person mentioned in clause (a) or (b) or the agent of the person authorized in writing in that behalf.

Information

(8) The Finance Minister may permit information or a copy of any record or thing obtained by or on behalf of the Finance Minister for the purposes of sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them to be given to any person employed by any government if,

(a) the information, record or thing obtained by that government for the purpose of any Act that imposes a tax or duty are communicated or furnished on a reciprocal basis to the Minister; and

(b) the information, record or thing will not be used for any purpose other than the administration or enforcement of a law that provides for the imposition of a tax or duty.

Offence

(9) Every person who contravenes any provision of this section is guilty of an offence and on conviction is liable to a fine of not more than $2,000.

Offences

False statements, etc., and fraud

79.11 (1) Every person who engages in any of the following acts or omissions is guilty of an offence:

1. Making, participating in, assenting to or acquiescing in the making of a false or deceptive statement in any document or answer required or submitted under sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them.

2. Destroying, altering, mutilating, hiding or otherwise disposing of information or records of any person, for the purpose of evading compliance with sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them.

3. Making, assenting to or acquiescing in the making of a false or deceptive entry of a material particular in a record of any person required to maintain records for the purposes of sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them.

4. Omitting to make or assenting to or acquiescing in the omission of an entry of a material particular in a record of any person required to maintain records for the purposes of sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them.

5. Wilfully evading or attempting to evade, in any manner, compliance with an obligation under sections 79, 79.2, 79.3 and 79.4 or the regulations made in association with them.

Penalty upon conviction

(2) A person convicted of an offence under subsection (1) is liable to either or both of the following penalties in addition to any other penalty assessed under this Act:

1. A fine in an amount that is not less than $1,000 and not more than $10,000.

2. Imprisonment for a term of not more than two years.

General offence

(3) Every person who contravenes, by any act or omission, any other requirement imposed under sections 79, 79.2, 79.3 and 79.4 is guilty of an offence and, on conviction, is liable, where no other penalty is provided for the offence, to a fine of not less than $50 and not more than $5,000.

Limitation period

(4) A proceeding to prosecute an offence provided for in this section must be commenced within six years after the date on which the matter of the offence arose.

Payment of fines

(5) Fines imposed on conviction of an offence provided for in this section are payable to the Finance Minister on behalf of the Crown in right of Ontario.

Commencement

5. (1) Subject to subsection (2), this Schedule comes into force on the day the *Fair Hydro Act, 2017* receives Royal Assent.

(2) Section 2 comes into force on a day to be named by proclamation of the Lieutenant Governor.

GA leg meeting tomorrow.rtf

From: Veinot, Cindy (TBS) []
To: 'Kim Marshall' [Kim.Marshall@ieso.ca]; 'HARTWICK Ken -FINANCE' [ken.hartwick@opg.com]; 'MAUTI John -FIN & C CTRL' [john.mauti@opg.com]
CC: Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]
Subject: GA leg meeting tomorrow
Date: Wednesday, April 05, 2017 11:07:43
Attachment 1: RE: Materials for Review draft OFHP legislation
Attachment 2: Materials for Review draft OFHP legislation

Kim and Ken – just confirming that this is the draft of the legislation that we will use for tomorrow – it was sent to Kim and John Lee at OPG previously. Please forward to others from your orgs that are attending as well as any advisors.

Thanks,

RE_ Materials for Review draft OFHP legislation .pdf

From: Cox, Hilary (ENERGY) []
To: Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; Johnson, Paul (ENERGY) [Paul.Johnson3@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Kwan, Ronald (OFA) [Ronald.Kwan@ofina.on.ca]; He, Gavin (OFA) [Gavin.He@ofina.on.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; kim.marshall@ieso.ca [kim.marshall@ieso.ca]; 'LEE John -TREASURY' (john.s.lee@opg.com) [john.s.lee@opg.com]
CC: 'WONG Leslie -LAWDIV' [leslie.wong@opg.com]; 'Peter Hamilton' [PHamilton@stikeman.com]; Whitfield, Tobias P. (MOF) [Tobias.Whitfield@ontario.ca]; 'Ramchandani, Rima' [rramchandani@torys.com]; 'Glenn Zacher' [GZacher@stikeman.com]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; 'Anthony Martinello' [Anthony.Martinello@ieso.ca]; 'Mansoori, Nina' [nmansoori@torys.com]; 'Olusoga, Yinka' [yolusoga@torys.com]; 'Myers, Jonathan' [jmyers@torys.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; 'ASHBOURNE, STEPHEN' [STEPHEN.ASHBOURNE@blakes.com]
Subject: RE: Materials for Review draft OFHP legislation
Date: Monday, April 03, 2017 15:48:34

Pw: snowplow

From: Cox, Hilary (ENERGY)
Sent: April 3, 2017 3:26 PM
To: Christie, Tim (ENERGY); Calwell, Carolyn (ENERGY/MEDEI/MRI); Johnson, Paul (ENERGY/MEDEI/MRI); Shear, Dan (ENERGY); Rehob, James (ENERGY); Kwan, Ronald (OFA); 'Gavin He'; Veinot, Cindy (TBS); Hosick, Sarah (TBS); Nelms, Scott (MOF); kim.marshall@ieso.ca; 'LEE John -TREASURY' (john.s.lee@opg.com); Cox, Hilary (ENERGY)
Cc: 'WONG Leslie -LAWDIV'; 'Peter Hamilton'; Whitfield, Tobias P. (MOF); 'Ramchandani, Rima'; 'Glenn Zacher'; Petsche, Nadine (TBS); 'Anthony Martinello'; 'Mansoori, Nina'; 'Olusoga, Yinka'; 'Myers, Jonathan'; JUDY.WILSON@blakes.com; 'ASHBOURNE, STEPHEN'
Subject: Materials for Review draft OFHP legislation

Please see attached materials for Review of Draft OFHP legislation meeting tomorrow morning.

Hilary

Hilary Cox
Executive Assistant/Sr. Policy Advisor (A) | Assistant Deputy Minister's Office
Energy Supply Policy Division | Ministry of Energy

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E: Hilary.cox@ontario.ca

Materials for Review draft OFHP legislation .pdf

From: Cox, Hilary (ENERGY) []
To: Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; Johnson, Paul (ENERGY) [Paul.Johnson3@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Kwan, Ronald (OFA) [Ronald.Kwan@ofina.on.ca]; He, Gavin (OFA) [Gavin.He@ofina.on.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; kim.marshall@ieso.ca [kim.marshall@ieso.ca]; 'LEE John -TREASURY' (john.s.lee@opg.com) [john.s.lee@opg.com]; Cox, Hilary (ENERGY) [Hilary.Cox@ontario.ca]
CC: 'WONG Leslie -LAWDIV' [leslie.wong@opg.com]; 'Peter Hamilton' [PHamilton@stikeman.com]; Whitfield, Tobias P. (MOF) [Tobias.Whitfield@ontario.ca]; 'Ramchandani, Rima' [rramchandani@torys.com]; 'Glenn Zacher' [GZacher@stikeman.com]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; 'Anthony Martinello' [Anthony.Martinello@ieso.ca]; 'Mansoori, Nina' [nmansoori@torys.com]; 'Olusoga, Yinka' [yolusoga@torys.com]; 'Myers, Jonathan' [jmyers@torys.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; 'ASHBOURNE, STEPHEN' [STEPHEN.ASHBOURNE@blakes.com]
Subject: Materials for Review draft OFHP legislation
Date: Monday, April 03, 2017 15:25:53
Attachment 1: External - Draft 5 Annotated (Blks DS) GOV2016.146.e05 (April 3 2017).docx

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Please see attached materials for Review of Draft OFHP legislation meeting tomorrow morning.

Hilary

Hilary Cox
Executive Assistant/Sr. Policy Advisor (A) | Assistant Deputy Minister's Office
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E: Hilary.cox@ontario.ca

GBE dilution template_invoice process.rtf

From: []
To:
Subject: GBE dilution template/invoice process
Date:
Attachment 1: GBE dilution template/invoice process

Subject: GBE dilution template/invoice process
Location: Suzie to call Nadine at 416 325 8027

Start: Fri 01/13/2017 11:30 AM
End: Fri 01/13/2017 12:00 PM

Recurrence: (none)

Meeting Status: Meeting organizer

Organizer: Virani, Shyrose (TBS)
Required Attendees: suzie.r.gignac@ca.ey.com; Petsche, Nadine (TBS)

From: Suzie Gignac [mailto:suzie.r.gignac@ca.ey.com]
Sent: January 10, 2017 12:33 PM
To: Petsche, Nadine (TBS)
Subject: GBE dilution template/invoice process

Hi Nadine:

Happy New Year – hope you enjoyed a wonderful holiday season with friends and family!

My assistant is working on an invoice for the work performed re: GBE dilution prior to the holidays but, before issuing, I wanted to discuss process with you (and the template Blake sent over just before the holidays). Do you have time to discuss at some point this week?

Thanks,

Suzie

cid:image001.gif@01D09D66.7AD0BE70

Suzanne Gignac, Partner, CPA, CA

Ernst & Young LLP / Ernst & Young s.r.l./S.E.N.C.R.L.

99 Bank Street, Suite 1200, Ottawa, Ontario K1P 6B9, Canada

Direct: 1 613 598 4376 | Fax: 1 613 232 5324 | suzie.r.gignac@ca.ey.com

Executive Coordinator, Carolyn Roberts | Phone: 613 598 4844 | carolyn.roberts@ca.ey.com

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GBE dilution template_invoice process1.pdf

From: Virani, Shyrose (TBS) []
To: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]; 'suzie.r.gignac@ca.ey.com' [suzie.r.gignac@ca.ey.com]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
Subject: GBE dilution template/invoice process
Date: Tuesday, January 10, 2017 14:17:58

From: Suzie Gignac [mailto:suzie.r.gignac@ca.ey.com]
Sent: January 10, 2017 12:33 PM
To: Petsche, Nadine (TBS)
Subject: GBE dilution template/invoice process

Hi Nadine:

Happy New Year – hope you enjoyed a wonderful holiday season with friends and family!

My assistant is working on an invoice for the work performed re: GBE dilution prior to the holidays but, before issuing, I wanted to discuss process with you (and the template Blake sent over just before the holidays). Do you have time to discuss at some point this week?

Thanks,

Suzie

cid:image001.gif@01D09D66.7AD0BE70

Suzanne Gignac, Partner, CPA, CA

Ernst & Young LLP / Ernst & Young s.r.l./S.E.N.C.R.L.

99 Bank Street, Suite 1200, Ottawa, Ontario K1P 6B9, Canada

Direct: 1 613 598 4376 | Fax: 1 613 232 5324 | suzie.r.gignac@ca.ey.com

Executive Coordinator, Carolyn Roberts | Phone: 613 598 4844 |
carolyn.roberts@ca.ey.com

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General Terms and Conditions.rtf

From: Colley, Matthew (CA - Toronto) [mcolley@deloitte.ca]
To: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]; Danyluk, Kerry (CA - Toronto) [kdanyluk@deloitte.ca]
Subject: General Terms and Conditions
Date: Saturday, September 17, 2016 10:28:12

Appendix D
General business terms

Treasury Board Secretariat, Office of the Provincial Controller
September 14, 2016

The following general business terms (the "Terms") apply to the engagement except as otherwise provided in the specific engagement letter agreement (the "engagement letter") between Firm LLP ("XXX") and the Office of the Provincial Controller (the "OPCD") to which these Terms are attached.

1. **Timely performance** - Deloitte will not be liable for failures or delays in performance that arise from causes beyond Deloitte's control, including the untimely performance by the OPCD of its obligations as set out in the engagement letter.
2. **Right to terminate services** - If the OPCD terminates the engagement or requests that Deloitte resign from the engagement prior to its completion, the OPCD will pay for time and expenses incurred by Deloitte up to the termination or resignation date together with reasonable time and expenses incurred to bring the services to a close in a prompt and orderly manner. Deloitte will not be responsible for any loss, cost or expense resulting from such termination or resignation. Should the OPCD not fulfill its obligations set out herein or in the engagement letter, and in the absence of rectification by the OPCD within thirty (30) days of notification in writing by Deloitte, upon written notification Deloitte may terminate its services immediately and will not be responsible for any loss, cost or expense resulting from such early termination.
3. **Fees and taxes** - Any fee estimates take into account the agreed-upon level of preparation and assistance from OPCD personnel. Deloitte undertakes to advise management of the OPCD on a timely basis should this preparation and assistance not be provided or should any other circumstances arise which cause actual time to exceed that estimate. The OPCD is responsible for the payment of any applicable federal, provincial or other goods and services or sales taxes, or any other taxes or duties, in connection with the services provided by Deloitte.
4. **Expenses** - In addition to professional fees, the OPCD will reimburse Deloitte for its reasonable out-of-pocket expenses including travel, meals and hotels incurred in connection with this engagement.
5. **Billing** - Invoices will be rendered periodically as agreed in advance. All invoices shall be due and payable when rendered. Interest shall be calculated at a simple daily rate of 0.0493% (equivalent to 18% per annum). Interest shall be charged and payable at this rate on any part of an invoice which remains unpaid from thirty (30) days after the invoice date to the date on which the outstanding invoice is paid. To the extent that as part of the services to be performed by Deloitte as described in the engagement letter, Deloitte personnel are required to perform the services in the United States of America ("U.S. Business"), the OPCD and Deloitte agree to assign performance of the U.S. Business to Deloitte Canada LLP, an affiliate of Deloitte. All services performed by Deloitte Canada LLP shall be performed under the direction of Deloitte which shall remain responsible to the OPCD for such services. Deloitte Canada LLP shall invoice the OPCD with respect to the U.S. Business and Deloitte will invoice for services performed in Canada ("Canadian Business"). Payment for U.S. Business and/or Canadian Business can be settled with one payment to Deloitte.
6. **Governing law** - The engagement will be governed by the laws of the Province where Deloitte's principal office performing the engagement is located and all disputes related to the engagement shall be subject to the exclusive jurisdiction of the courts of such Province.

7. **Working papers** - All working papers, files and other internal materials created or produced by Deloitte related to the engagement are the property of Deloitte. In the event that Deloitte is requested by the OPCD or required by subpoena or other legal or regulatory process to produce its files related to this engagement in proceedings to which Deloitte is not a party, the OPCD will reimburse Deloitte for its professional time and expenses, including legal fees, incurred in dealing with such matters.
8. **Privacy** - Deloitte and the OPCD acknowledge and agree that, during the course of this engagement, Deloitte may collect, use and disclose personal information about identifiable individuals ("Personal Information"). Deloitte's services are provided on the basis that the OPCD has obtained any required consents for collection, use and disclosure to Deloitte of Personal Information required under applicable privacy legislation. The OPCD and Deloitte agree that Deloitte will collect, use, transfer, store, disclose or otherwise process Personal Information on behalf of the OPCD solely for purposes related to completing this engagement, related engagements, or providing services to the OPCD or as otherwise permitted by these Terms.
9. **Third parties** - Deloitte's engagement is not planned or conducted in contemplation of or for the purpose of reliance by any third party (other than the OPCD and any party to whom Deloitte's report is addressed) or with respect to any specific transaction. Therefore, items of possible interest to a third party will not be addressed and matters may exist that would be assessed differently by a third party, possibly in connection with a specific transaction.
10. **Confidentiality** - To the extent that, in connection with this engagement, Deloitte comes into possession of Personal Information or any proprietary or confidential information of the OPCD (collectively, "Confidential Information"), Deloitte will not disclose such information to any third party without the OPCD's consent, except:

a. as may be required or permitted by legal authority, the rules of professional conduct/code of ethics;
b. to Deloitte Entities (as such term is defined below in section 12), component auditors, permitted subcontractors and third parties that provide services to Deloitte; or
c. to the extent that such information shall have otherwise become publicly available.

Except as instructed otherwise in writing, each party consents to properly addressed fax, email (including email exchanged via Internet media) and voicemail communication of both sensitive confidential and non-sensitive documents, information and other communications concerning this Agreement, as well as other means of communication used or accepted by the other. It is recognized that the Internet may be insecure and each party will be responsible for protecting its own systems and interests and, to the fullest extent permitted by law, will not be responsible to the other on any basis (contract, tort or otherwise) for any loss, damage or omission in any way arising from the use of the Internet or from access by any Client or Deloitte personnel, including personnel of Deloitte Entities and third parties that provide services to Deloitte, to networks, applications, electronic data or other systems of the other party.

11. **Assignment** - Except as provided below in section 12, no party may assign, transfer, or delegate any of its rights or obligations relating to this engagement without the prior written consent of the other parties.
12. **Subcontracting -** Deloitte may use the services of any of its affiliates or any member firm of Deloitte Touche Tohmatsu Limited ('DTTL") and its respective subsidiaries and affiliates, including those operating outside Canada ("Deloitte Entities"), component auditors or any other party. Deloitte remains responsible to the OPCD for services performed by Deloitte Entities and other parties under this engagement. Each member firm of DTTL is a separate and independent legal entity operating under the names "Deloitte", "Deloitte & Touche", "Deloitte Touche Tohmatsu" or other related names; and services are provided by member firms or their subsidiaries or affiliates and not by DTTL.
13. **Survival of terms** - The agreements and undertakings of the OPCD contained in the engagement letter, together with the appendices to the engagement letter including these Terms, will survive the completion or

termination of this engagement.

14. **Electronic messaging** - In accordance with Canadian anti-spam legislation, the OPCD consents to Deloitte contacting the OPCD and its personnel through electronic messages relating to Deloitte's services, products **and** other matters of interest to the OPCD after the completion of this engagement. The OPCD may withdraw any such consent by contacting Deloitte at unsubscribe@deloitte.ca.
15. **Proportionate liability** - The OPCD and Deloitte acknowledge where the engagement is conducted pursuant to a statute governing the OPCD that contains proportionate liability provisions that apply to an auditor, such as the Canada Business Corporations Act, the terms of the statute shall apply to this engagement. In the event that the OPCD and Deloitte are not subject to such statutory provisions regarding proportionate liability, the OPCD agrees that in any action, claim, loss or damage arising out of the engagement, Deloitte's liability will be several and not joint and several and the OPCD may only claim payment from Deloitte of Deloitte's proportionate share of the total liability based on the degree of fault of Deloitte as finally determined by a court of competent jurisdiction.
16. **Client misrepresentation** - Deloitte shall not be liable to the OPCD, and the OPCD releases Deloitte, for all liabilities, claims, damages, costs, charges and expenses incurred or suffered by the OPCD related to or in any way associated with the engagement that arise from or are based on any deliberate misstatement or omission in any material information or representation provided by or approved by any member of management of the OPCD, officer of the OPCD or member of the board of directors of the OPCD.

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Global Adjustment.rtf

From: CHENG Alec -FIN & C CTRL [alec.cheng@opg.com]
To: 'Picard, Michel' [mpicard@kpmg.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; MAUTI John -FIN & C CTRL [john.mauti@opg.com]
Subject: Global Adjustment
Date: Monday, February 13, 2017 13:52:17

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Sorry, this is last minute.

But I think we can all benefit having a call so we can focus on looking at options. Do you have time to discuss at 1pm?

Alec

Globe and Mail Media Questions.rtf

From: Hosick, Sarah (TBS) []
To: 'kim.marshall@ieso.ca' [kim.marshall@ieso.ca]
CC: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
Subject: Globe and Mail Media Questions
Date: Friday, March 23, 2018 15:22:27

Hi Kim,

I believe Cindy gave you a heads up that we've received some questions from the Globe and Mail. We've put together a response that will go through our Communications team, but wanted to make sure you were comfortable.

Here are the reporter's questions:

1) On what date did Ms. Veinot ask the IESO to "look at" the issue of market accounts on the IESO's financial statements?

2) What form did this request take? (Letter, memo, personal conversation, etc.)

3) To whom at IESO did Ms. Veinot direct this request?

4) Did Ms. Veinot indicate to the IESO a time frame in which her instructions were to be executed? If so, what was that timeframe?

And here is our proposed response:

During the week of January 16, 2017, Cindy Veinot, Assistant Deputy Minister and Provincial Controller had a conversation with Kim Marshall, Vice President,

Corporate Services and Chief Financial Officer regarding IESO taking a closer look at the appropriate use of market accounts on their financial statements. While no specific timeframe was discussed during the conversation, the intention of the request was to have this review completed before the province's year-end of March 31, 2017.

We need to provide a response by end of day – please let me know if any concerns as soon as possible.

Thanks

Sarah

Sarah Hosick

Executive Assistant & Special Policy Advisor (A)

Assistant Deputy Minister's Office | Office of the Provincial Controller

Office of the Treasury Board | Treasury Board Secretariat

7 Queen's Park Cres E, 2nd Floor, Toronto, ON, M7A 1Y7

416-212-8512

Globe and Mail Media Questions.rtf

From: Hosick, Sarah (TBS) []
To: 'kim.marshall@ieso.ca' [kim.marshall@ieso.ca]
CC: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
Subject: Globe and Mail Media Questions
Date: Friday, March 23, 2018 15:22:27

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Hi Kim,

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Globe and Mail Media Questions.rtf

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CC: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
Subject: Globe and Mail Media Questions
Date: Friday, March 23, 2018 15:22:27

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View the original item

Hi Kim,

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Grassy Narrows (Accounting for 2016_17 Public Accounts).rtf

From: Petsche, Nadine (TBS) []
To: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]; Keates, James (TBS) [James.Keates@ontario.ca]; Chiu, Jenny (MOECC) [Jenny.Chiu@ontario.ca]; Johnston, Scott (MOECC) [Scott.Johnston@ontario.ca]; Lau, Lucia (MOECC) [Lucia.Lau@ontario.ca]; Sharp, Tim (MOECC) [Tim.Sharp@ontario.ca]; 'LeeAnne.Probert@ca.ey.com' [LeeAnne.Probert@ca.ey.com]; 'Suzie Gignac' [suzie.r.gignac@ca.ey.com]; 'Blake Langill' [blake.w.langill@ca.ey.com]
CC: Taylor, Heather (MOECC) [Heather.Taylor@ontario.ca]; Chen, Doris (MOECC) [Doris.Chen@ontario.ca]
Subject: Grassy Narrows (Accounting for 2016/17 Public Accounts)
Date: Thursday, June 15, 2017 09:39:09

Slightly delayed start time. Hopefully this is the last change☺
-----Original Appointment-----
From: Virani, Shyrose (TBS)
Sent: June 14, 2017 3:50 PM
To: Virani, Shyrose (TBS); Keates, James (TBS); Petsche, Nadine (TBS); Chiu, Jenny (MOECC); Johnston, Scott (MOECC); Lau, Lucia (MOECC); Sharp, Tim (MOECC); LeeAnne.Probert@ca.ey.com; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com)
Cc: Veinot, Cindy (TBS); Taylor, Heather (MOECC); Chen, Doris (MOECC)
Subject: Grassy Narrows (Accounting for 2016/17 Public Accounts)
When: June 16, 2017 10:00 AM-10:00 AM (UTC-05:00) Eastern Time (US & Canada).
Where: teleconference 416 212 8014 passcode 1474532#

Nadine to moderate

The purpose of the meeting will be for MOECC to walk E&Y through the attached document and answer any questions that E & Y might have.

<< File: 6 -Wabigoon River_PS 3260 criteria assessment_MOECC June 13_For Discussi....docx >>

Grassy Narrows (Accounting for 2016_17 Public Accounts).rtf

From: Petsche, Nadine (TBS) []
To: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]; Keates, James (TBS) [James.Keates@ontario.ca]; Chiu, Jenny (MOECC) [Jenny.Chiu@ontario.ca]; Johnston, Scott (MOECC) [Scott.Johnston@ontario.ca]; Lau, Lucia (MOECC) [Lucia.Lau@ontario.ca]; Sharp, Tim (MOECC) [Tim.Sharp@ontario.ca]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Suzie Gignac [suzie.r.gignac@ca.ey.com]; Blake Langill [blake.w.langill@ca.ey.com]
CC: Taylor, Heather (MOECC) [Heather.Taylor@ontario.ca]; Chen, Doris (MOECC) [Doris.Chen@ontario.ca]
Subject: Grassy Narrows (Accounting for 2016/17 Public Accounts)
Date: Wednesday, June 14, 2017 21:39:58

-----Original Appointment-----
From: Virani, Shyrose (TBS)
Sent: June 14, 2017 3:50 PM
To: Virani, Shyrose (TBS); Keates, James (TBS); Petsche, Nadine (TBS); Chiu, Jenny (MOECC); Johnston, Scott (MOECC); Lau, Lucia (MOECC); Sharp, Tim (MOECC); LeeAnne.Probert@ca.ey.com; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com)
Cc: Veinot, Cindy (TBS); Taylor, Heather (MOECC); Chen, Doris (MOECC)
Subject: Grassy Narrows (Accounting for 2016/17 Public Accounts)
When: June 16, 2017 10:00 AM-10:00 AM (UTC-05:00) Eastern Time (US & Canada).
Where: teleconference 416 212 8014 passcode 1474532#

Nadine to moderate

The purpose of the meeting will be for MOECC to walk E&Y through the attached document and answer any questions that E & Y might have.

<< File: 6 -Wabigoon River_PS 3260 criteria assessment_MOECC June 13_For Discussi....docx >>

Grassy Narrows (Accounting for 2016_17 Public Accounts).rtf

From: Virani, Shyrose (TBS) []
To: Keates, James (TBS) [James.Keates@ontario.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; Chiu, Jenny (MOECC) [Jenny.Chiu@ontario.ca]; Johnston, Scott (MOECC) [Scott.Johnston@ontario.ca]; Lau, Lucia (MOECC) [Lucia.Lau@ontario.ca]; Sharp, Tim (MOECC) [Tim.Sharp@ontario.ca]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]
CC: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Taylor, Heather (MOECC) [Heather.Taylor@ontario.ca]; Chen, Doris (MOECC) [Doris.Chen@ontario.ca]
Subject: Grassy Narrows (Accounting for 2016/17 Public Accounts)
Date: Wednesday, June 14, 2017 15:49:35
Attachment 1: 6 -Wabigoon River_PS 3260 criteria assessment_MOECC June 13_For Discussi....docx

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Nadine to moderate

The purpose of the meeting will be for MOECC to walk E&Y through the attached document and answer any questions that E & Y might have.

6 -Wabigoon River_PS 3260 criteria assessment_MOECC June 13_For Discussi....pdf

For Discussion Purposes Only – Do Not Distribute

Wabigoon River Remediation Project

Site Description

The Wabigoon River is located in the District of Kenora in Northwestern Ontario. It flows from Raleigh Lake to Wabigoon Lake to join the English River downstream of the City of Dryden. The area of interest is a 150-kilometre stretch of the river between Wabigoon Lake and the English River, and work is underway to determine the extent of contamination and confirm whether there is an ongoing source of contamination. The contaminant of concern is mercury.

The Dryden mill site has the potential to be included as an additional site in this project for reasons described below.

Five PS 3260 Criteria	Evaluation
An environmental standard exists	Sediment: Guidelines for Identifying, Assessing and Managing Contaminated Sediments in Ontario: An Integrated Approach, Ministry of the Environment, 2008 Fish: Guide to Eating Ontario Fish, Ontario Ministry of the Environment and Climate Change, 2017 (consumption advice is based mainly on Health Canada guidelines) Groundwater: Soil, Ground Water and Sediment Standards for Use Under Part XV.1 of the Environmental Protection Act, April 15, 2001, and incorporated by reference into O. Reg. 153/04 Records of Site Condition – Part XV.1 of the Environmental Protection Act, Ministry of the Environment, 2011
Contamination exceeds the environmental standard	**Background** During the 1960s and 1970s, a chlor-alkali plant in Dryden discharged approximately 10 metric tonnes of mercury into the Wabigoon River, affecting both the English and Wabigoon Rivers. In 1970, in response to an order from the province, actions were taken and levels of mercury in wastewater were reduced. The plant was decommissioned in 1975. In 1971, Ontario suspended the commercial fishing licences for walleye, pike and sauger for

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	the Wabigoon and English river systems due to the elevated levels of mercury in fish; the pollution has impacted both the economies and health of the Grassy Narrows First Nation and Wabaseemoong Independent Nations. Studies by the federal and provincial governments were conducted in the 1980s in the English Wabigoon River to determine the location and the extent of contamination. Natural recovery was advised based on consideration of six factors: • Mercury discharges to the system were essentially eliminated. • Background mercury levels in lakes in the immediate area of the English Wabigoon River, but not affected by the discharges, were in most cases higher than the recommended levels for human consumption. • Concerns about the risk of possible remobilization of mercury. • Focus, at the time, was primarily on social and economic agreements and secondarily on drinking water. • Most parties contacted preferred natural recovery. • Northern communities and tourism industry did not want further attention drawn to the river system. In 1985, a settlement agreement was reached between the relevant corporate parties, Wabaseemoong, Grassy Narrows and the provincial and federal governments. The settlement provided $16.67 million in monetary compensation to the First Nations and includes a release of liability from the First Nations to the Crown and the corporate parties. It also includes an indemnification of the corporate parties by Ontario for certain potential future liability. Despite significant declines in mercury levels in fish in some areas of the English Wabigoon River system, mercury levels in fish in other areas remain high and restrictions on consumption remain in place. Grassy Narrows First Nation and Wabaseemoong Independent Nations have treaty rights to fish; the communities rely on fish from the river system for food and have expressed concerns with ongoing methylmercury levels. On May 30, 2016, Grassy Narrows First Nation publically released the report “Advice on Mercury Remediation Options for the Wabigoon-English River System” commissioned by the community and authored by Reed Harris, Dr. Patricia Sellers and Dr. John Rudd.

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- The report called for extensive field work to determine current levels of mercury in the environment and identify the most appropriate approaches for remediation.
- This field work has been identified by the Grassy Narrows Council as their top priority and Ontario is providing funding to the community to support that work.

On September 20, 2016, Dr. Masanori Hanada (Dean of Social Welfare & Policy, Minamata Studies, Kumamoto Gakuen University) and Grassy Narrows Chief Simon Fobister Sr. held a press conference to present Dr. Hanada's research findings that more than 90 per cent of the people tested in 2014, from Grassy Narrows and Wabaseemoong showed signs of mercury poisoning.

Current Status

There is limited data on current environmental conditions in the Wabigoon River, outside of contaminant levels in fish. The ministry working with Grassy Narrows First Nation and Wabaseemoong Independent Nations and stakeholders to identify mercury contaminated sites in the Wabigoon River. This work is in the preliminary stages, steps 2-4, of the 17-step contaminated sites assessment process depicted in the file attached below. The ministry has yet to confirm the extent of contamination in the river or whether there is an ongoing source of contamination from the mill property (e.g. from groundwater).

Contaminated Sites -
from identification to

Recent work indicates that sediment in the Wabigoon River continues to exceed provincial guidelines, fish caught in some areas of the river are not safe to eat due to mercury contamination, and groundwater on the mill property exceeds provincial guidelines for mercury. The following description of exceedances of environmental standards is excerpted from the draft Director's Order to Domtar Inc. as posted on the Environmental Registry on May 29, 2017.

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	Sediment A February 1, 2017 report titled “Evidence that the former chlor-alkali Site in Dryden, Ontario is still leaking mercury into the Wabigoon River” prepared for Grassy Narrows by Sellers et al. provided results of sediment sampling carried out in the Wabigoon River in August 2016. The report concludes mercury levels in sediment increased significantly as the river passed the mill. The sediment concentrations in samples collected adjacent to the mill and downstream of the mill exceed the Severe Effects Level as described in the “Guidelines for Identifying, Assessing and Managing Contaminated Sediments in Ontario: An Integrated Approach.” The report recommends that a “detailed ground water and soil study of the former chlor-alkali plant site and its surroundings” be undertaken to confirm whether the mill property is an ongoing source of mercury to the Wabigoon River. Fish In October 2016, ministry staff collected fish samples from the Wabigoon River system and neighbouring lakes and rivers. Mercury concentrations in tested walleye (40-50 cm) were 2.1 to 2.7 µg/g from Clay Lake and 1.3 to 1.7 µg/g in the Wabigoon River downstream from the mill. The range for Clay Lake exceeds both the general population (1.8 µg/g) and the “do not eat” benchmark for sensitive population (0.5 µg/g). The range for the Wabigoon River downstream from the mill exceeds the “do not eat” benchmark for the sensitive population. Groundwater A July 15, 2016 report titled “Domtar Inc., Summary of Available Monitoring Data, Domtar Dryden Mill, 1 Duke Street, Dryden, Ontario” prepared for Domtar Inc. by True Grit Consulting Ltd. reported that mercury levels at one well located in the vicinity of the former chlor-alkali plant exceeded the values that the ministry currently applies to assess groundwater quality (Table 9 of the “Soil, Ground Water and Sediment Standards for Use Under Part XV.1 of the Environmental Protection Act”, dated April 15, 2001, and incorporated by reference into O. Reg. 153/04 “Records of Site Condition – Part XV.1 of the EPA). In December 2016, the ministry received the results of a re-sampling of these wells, which again identified that the one well located in the vicinity of the former chlor-alkali plant exceeded the values that the ministry

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	currently applies to assess groundwater quality.
The government: *(i) is directly responsible; or* *(ii) accepts responsibility*	While the government may not be directly responsible for remediation, it accepted a degree of responsibility in the February 13, 2017 statement made by Ministers Murray and Zimmer: "we are completely committed to working with all partners to identify all potentially contaminated sites, and to creating and implementing a comprehensive remediation action plan." Additional public and private statements made by Minister Murray to Grassy Narrows First Nation and Wabaseemoong Independent Nations have reiterated this commitment. With respect to the costs of remediating the Wabigoon River, an opinion by the MOECC's Legal Services Branch on May 25, 2017 concludes that there is a moderate risk that a court would find that Ontario has a legal obligation arising from the honour of the Crown to expend funds to remediate the Wabigoon River generally, as well as the Dryden mill site, including leased areas of the Wabigoon River. A moderate risk means that, in light of good arguments on each side, the outcome is not reasonably predictable. Remediation at the Dryden mill site, if deemed required by the ministry, has the potential to be included as an additional site in this project. An opinion by the MOECC's Legal Services Branch on May 25, 2017 concludes that there is a high risk that a court would find that Ontario has a legal obligation to repay costs incurred by Domtar Inc. in respect of the remediation of the Dryden mill site and sites within the leased areas of the Wabigoon River. A high risk means that, while there are credible arguments to dismiss a challenge, the relevant court would very likely find against Ontario. This conclusion is based on the 2016 decision of the Ontario Superior Court of Justice in *Weyerhaeuser v. Ontario (AG),* which applied the 1985 Indemnity to a procedural order issued under the Environmental Protection Act to Weyerhaeuser Company Ltd. ("Weyerhaeuser") and Resolute FP Canada Inc. ("Resolute") in 2011 (the "2011 Director's Order").
It is expected that future economic benefits will be given up	During Question Period on May 2, 2017, Ministry Murray was asked why funding for the English Wabigoon River clean-up was not included in the 2017/18 budget. The minister replied that, "…the money is on its way to Grassy Narrows, as the bills come in. Mr. Speaker, the cost of this may well be far in excess of $84 million. As a matter of fact, I am guessing that this government's commitment to Grassy Narrows is going to exceed that amount of money. Many

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	other projects that were done in-year over last year...that were $150 million and under—were not explicitly stated in the budget. That didn't mean the government is less committed to it." At a meeting with the chiefs of Grassy Narrows First Nation and Wabaseemoong Independent Nations held later that day, Minister Zimmer read an excerpt of the Minister's statement above from the Hansard (attached below) and Minister Murray stated that the ministry would be preparing a Treasury Board submission for the remediation project. Ontario Hansard Issue_ L075_May 2 2
A reasonable estimate of the amount can be made	There is limited data on current environmental conditions in the Wabigoon River, outside of contaminant levels in fish. The ministry is in the preliminary stages of the contaminated sites assessment process and has yet to determine the extent of contamination in the river or whether there is an ongoing source of contamination from the mill property. The 2017 planned fieldwork will better inform the ministry on the contamination source and extent of contamination. This information will allow the ministry to better understand remediation options and next steps. However, the ministry has received and reviewed a proposal that included a cost estimate submitted by Grassy Narrows First Nation and has reviewed comparable riverine contaminated sites and their association remediation costs. **Remediation proposal submitted by Grassy Narrows First Nation, May 2016 (Rudd Report)** In May 2016, Grassy Narrows First Nation provided a cost estimate for remediation in the amount for $80.7 – 85.7M as part of a proposal by their science team to conduct additional assessment. This estimate cannot be relied upon to determine the cost of remediation because the proposal does not provide adequate detail on how the estimate was developed. In addition, the assessment approach outlined in the proposal omits a number of key steps required to determine the extent of contamination. Without sufficient knowledge of the dynamics of the river system (e.g. flow rates, sedimentation rates) and the extent of the contamination, it is not possible to determine the best course of action for remediation.

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Conclusion	
	The 2017 planned fieldwork will better inform the ministry on the contamination source and extent of contamination. Until this information is available, the ministry is not able to assess remediation options and their associated costs. As a result, a reasonable estimate of the liability cannot be made at this time.

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CC: Taylor, Heather (MOECC) [Heather.Taylor@ontario.ca]; Chen, Doris (MOECC) [Doris.Chen@ontario.ca]
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Subject: Grassy Narrows (Accounting for 2016/17 Public Accounts)
When: June 16, 2017 10:00 AM-10:00 AM (UTC-05:00) Eastern Time (US & Canada).
Where: teleconference 416 212 8014 passcode 1474532#

Nadine to moderate

The purpose of the meeting will be for MOECC to walk E&Y through the attached document and answer any questions that E & Y might have.

<< File: 6 -Wabigoon River_PS 3260 criteria assessment_MOECC June 13_For Discussi....docx >>

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Wabigoon River Remediation Project

Site Description

The Wabigoon River is located in the District of Kenora in Northwestern Ontario. It flows from Raleigh Lake to Wabigoon Lake to join the English River downstream of the City of Dryden. The area of interest is a 150-kilometre stretch of the river between Wabigoon Lake and the English River, and work is underway to determine the extent of contamination and confirm whether there is an ongoing source of contamination. The contaminant of concern is mercury.

The Dryden mill site has the potential to be included as an additional site in this project for reasons described below.

Five PS 3260 Criteria	Evaluation
An environmental standard exists	Sediment: Guidelines for Identifying, Assessing and Managing Contaminated Sediments in Ontario: An Integrated Approach, Ministry of the Environment, 2008 Fish: Guide to Eating Ontario Fish, Ontario Ministry of the Environment and Climate Change, 2017 (consumption advice is based mainly on Health Canada guidelines) Groundwater: Soil, Ground Water and Sediment Standards for Use Under Part XV.1 of the Environmental Protection Act, April 15, 2001, and incorporated by reference into O. Reg. 153/04 Records of Site Condition – Part XV.1 of the Environmental Protection Act, Ministry of the Environment, 2011
Contamination exceeds the environmental standard	**Background** During the 1960s and 1970s, a chlor-alkali plant in Dryden discharged approximately 10 metric tonnes of mercury into the Wabigoon River, affecting both the English and Wabigoon Rivers. In 1970, in response to an order from the province, actions were taken and levels of mercury in wastewater were reduced. The plant was decommissioned in 1975. In 1971, Ontario suspended the commercial fishing licences for walleye, pike and sauger for

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	the Wabigoon and English river systems due to the elevated levels of mercury in fish; the pollution has impacted both the economies and health of the Grassy Narrows First Nation and Wabaseemoong Independent Nations. Studies by the federal and provincial governments were conducted in the 1980s in the English Wabigoon River to determine the location and the extent of contamination. Natural recovery was advised based on consideration of six factors: • Mercury discharges to the system were essentially eliminated. • Background mercury levels in lakes in the immediate area of the English Wabigoon River, but not affected by the discharges, were in most cases higher than the recommended levels for human consumption. • Concerns about the risk of possible remobilization of mercury. • Focus, at the time, was primarily on social and economic agreements and secondarily on drinking water. • Most parties contacted preferred natural recovery. • Northern communities and tourism industry did not want further attention drawn to the river system. In 1985, a settlement agreement was reached between the relevant corporate parties, Wabaseemoong, Grassy Narrows and the provincial and federal governments. The settlement provided $16.67 million in monetary compensation to the First Nations and includes a release of liability from the First Nations to the Crown and the corporate parties. It also includes an indemnification of the corporate parties by Ontario for certain potential future liability. Despite significant declines in mercury levels in fish in some areas of the English Wabigoon River system, mercury levels in fish in other areas remain high and restrictions on consumption remain in place. Grassy Narrows First Nation and Wabaseemoong Independent Nations have treaty rights to fish; the communities rely on fish from the river system for food and have expressed concerns with ongoing methylmercury levels. On May 30, 2016, Grassy Narrows First Nation publically released the report “Advice on Mercury Remediation Options for the Wabigoon-English River System” commissioned by the community and authored by Reed Harris, Dr. Patricia Sellers and Dr. John Rudd.

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- The report called for extensive field work to determine current levels of mercury in the environment and identify the most appropriate approaches for remediation.
- This field work has been identified by the Grassy Narrows Council as their top priority and Ontario is providing funding to the community to support that work.

On September 20, 2016, Dr. Masanori Hanada (Dean of Social Welfare & Policy, Minamata Studies, Kumamoto Gakuen University) and Grassy Narrows Chief Simon Fobister Sr. held a press conference to present Dr. Hanada's research findings that more than 90 per cent of the people tested in 2014, from Grassy Narrows and Wabaseemoong showed signs of mercury poisoning.

Current Status

There is limited data on current environmental conditions in the Wabigoon River, outside of contaminant levels in fish. The ministry working with Grassy Narrows First Nation and Wabaseemoong Independent Nations and stakeholders to identify mercury contaminated sites in the Wabigoon River. This work is in the preliminary stages, steps 2-4, of the 17-step contaminated sites assessment process depicted in the file attached below. The ministry has yet to confirm the extent of contamination in the river or whether there is an ongoing source of contamination from the mill property (e.g. from groundwater).

Contaminated Sites -
from identification to

Recent work indicates that sediment in the Wabigoon River continues to exceed provincial guidelines, fish caught in some areas of the river are not safe to eat due to mercury contamination, and groundwater on the mill property exceeds provincial guidelines for mercury. The following description of exceedances of environmental standards is excerpted from the draft Director's Order to Domtar Inc. as posted on the Environmental Registry on May 29, 2017.

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	Sediment A February 1, 2017 report titled “Evidence that the former chlor-alkali Site in Dryden, Ontario is still leaking mercury into the Wabigoon River” prepared for Grassy Narrows by Sellers et al. provided results of sediment sampling carried out in the Wabigoon River in August 2016. The report concludes mercury levels in sediment increased significantly as the river passed the mill. The sediment concentrations in samples collected adjacent to the mill and downstream of the mill exceed the Severe Effects Level as described in the “Guidelines for Identifying, Assessing and Managing Contaminated Sediments in Ontario: An Integrated Approach.” The report recommends that a “detailed ground water and soil study of the former chlor-alkali plant site and its surroundings” be undertaken to confirm whether the mill property is an ongoing source of mercury to the Wabigoon River. Fish In October 2016, ministry staff collected fish samples from the Wabigoon River system and neighbouring lakes and rivers. Mercury concentrations in tested walleye (40-50 cm) were 2.1 to 2.7 µg/g from Clay Lake and 1.3 to 1.7 µg/g in the Wabigoon River downstream from the mill. The range for Clay Lake exceeds both the general population (1.8 µg/g) and the “do not eat” benchmark for sensitive population (0.5 µg/g). The range for the Wabigoon River downstream from the mill exceeds the “do not eat” benchmark for the sensitive population. Groundwater A July 15, 2016 report titled “Domtar Inc., Summary of Available Monitoring Data, Domtar Dryden Mill, 1 Duke Street, Dryden, Ontario” prepared for Domtar Inc. by True Grit Consulting Ltd. reported that mercury levels at one well located in the vicinity of the former chlor-alkali plant exceeded the values that the ministry currently applies to assess groundwater quality (Table 9 of the “Soil, Ground Water and Sediment Standards for Use Under Part XV.1 of the Environmental Protection Act”, dated April 15, 2001, and incorporated by reference into O. Reg. 153/04 “Records of Site Condition – Part XV.1 of the EPA). In December 2016, the ministry received the results of a re-sampling of these wells, which again identified that the one well located in the vicinity of the former chlor-alkali plant exceeded the values that the ministry

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	currently applies to assess groundwater quality.
The government: *(i) is directly responsible; or* *(ii) accepts responsibility*	While the government may not be directly responsible for remediation, it accepted a degree of responsibility in the February 13, 2017 statement made by Ministers Murray and Zimmer: "we are completely committed to working with all partners to identify all potentially contaminated sites, and to creating and implementing a comprehensive remediation action plan." Additional public and private statements made by Minister Murray to Grassy Narrows First Nation and Wabaseemoong Independent Nations have reiterated this commitment. With respect to the costs of remediating the Wabigoon River, an opinion by the MOECC's Legal Services Branch on May 25, 2017 concludes that there is a moderate risk that a court would find that Ontario has a legal obligation arising from the honour of the Crown to expend funds to remediate the Wabigoon River generally, as well as the Dryden mill site, including leased areas of the Wabigoon River. A moderate risk means that, in light of good arguments on each side, the outcome is not reasonably predictable. Remediation at the Dryden mill site, if deemed required by the ministry, has the potential to be included as an additional site in this project. An opinion by the MOECC's Legal Services Branch on May 25, 2017 concludes that there is a high risk that a court would find that Ontario has a legal obligation to repay costs incurred by Domtar Inc. in respect of the remediation of the Dryden mill site and sites within the leased areas of the Wabigoon River. A high risk means that, while there are credible arguments to dismiss a challenge, the relevant court would very likely find against Ontario. This conclusion is based on the 2016 decision of the Ontario Superior Court of Justice in *Weyerhaeuser v. Ontario (AG),* which applied the 1985 Indemnity to a procedural order issued under the Environmental Protection Act to Weyerhaeuser Company Ltd. ("Weyerhaeuser") and Resolute FP Canada Inc. ("Resolute") in 2011 (the "2011 Director's Order").
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A reasonable estimate of the amount can be made	There is limited data on current environmental conditions in the Wabigoon River, outside of contaminant levels in fish. The ministry is in the preliminary stages of the contaminated sites assessment process and has yet to determine the extent of contamination in the river or whether there is an ongoing source of contamination from the mill property. The 2017 planned fieldwork will better inform the ministry on the contamination source and extent of contamination. This information will allow the ministry to better understand remediation options and next steps. However, the ministry has received and reviewed a proposal that included a cost estimate submitted by Grassy Narrows First Nation and has reviewed comparable riverine contaminated sites and their association remediation costs. **Remediation proposal submitted by Grassy Narrows First Nation, May 2016 (Rudd Report)** In May 2016, Grassy Narrows First Nation provided a cost estimate for remediation in the amount for $80.7 – 85.7M as part of a proposal by their science team to conduct additional assessment. This estimate cannot be relied upon to determine the cost of remediation because the proposal does not provide adequate detail on how the estimate was developed. In addition, the assessment approach outlined in the proposal omits a number of key steps required to determine the extent of contamination. Without sufficient knowledge of the dynamics of the river system (e.g. flow rates, sedimentation rates) and the extent of the contamination, it is not possible to determine the best course of action for remediation.

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Subject: Grassy Narrows (Accounting for 2016/17 Public Accounts)
Date: Wednesday, June 14, 2017 21:39:58

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Wabigoon River Remediation Project

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Contaminated Sites -
from identification to

Recent work indicates that sediment in the Wabigoon River continues to exceed provincial guidelines, fish caught in some areas of the river are not safe to eat due to mercury contamination, and groundwater on the mill property exceeds provincial guidelines for mercury. The following description of exceedances of environmental standards is excerpted from the draft Director's Order to Domtar Inc. as posted on the Environmental Registry on May 29, 2017.

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	Sediment A February 1, 2017 report titled “Evidence that the former chlor-alkali Site in Dryden, Ontario is still leaking mercury into the Wabigoon River” prepared for Grassy Narrows by Sellers et al. provided results of sediment sampling carried out in the Wabigoon River in August 2016. The report concludes mercury levels in sediment increased significantly as the river passed the mill. The sediment concentrations in samples collected adjacent to the mill and downstream of the mill exceed the Severe Effects Level as described in the “Guidelines for Identifying, Assessing and Managing Contaminated Sediments in Ontario: An Integrated Approach.” The report recommends that a “detailed ground water and soil study of the former chlor-alkali plant site and its surroundings” be undertaken to confirm whether the mill property is an ongoing source of mercury to the Wabigoon River. Fish In October 2016, ministry staff collected fish samples from the Wabigoon River system and neighbouring lakes and rivers. Mercury concentrations in tested walleye (40-50 cm) were 2.1 to 2.7 µg/g from Clay Lake and 1.3 to 1.7 µg/g in the Wabigoon River downstream from the mill. The range for Clay Lake exceeds both the general population (1.8 µg/g) and the “do not eat” benchmark for sensitive population (0.5 µg/g). The range for the Wabigoon River downstream from the mill exceeds the “do not eat” benchmark for the sensitive population. Groundwater A July 15, 2016 report titled “Domtar Inc., Summary of Available Monitoring Data, Domtar Dryden Mill, 1 Duke Street, Dryden, Ontario” prepared for Domtar Inc. by True Grit Consulting Ltd. reported that mercury levels at one well located in the vicinity of the former chlor-alkali plant exceeded the values that the ministry currently applies to assess groundwater quality (Table 9 of the “Soil, Ground Water and Sediment Standards for Use Under Part XV.1 of the Environmental Protection Act”, dated April 15, 2001, and incorporated by reference into O. Reg. 153/04 “Records of Site Condition – Part XV.1 of the EPA). In December 2016, the ministry received the results of a re-sampling of these wells, which again identified that the one well located in the vicinity of the former chlor-alkali plant exceeded the values that the ministry

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	currently applies to assess groundwater quality.
The government: *(i) is directly responsible; or* *(ii) accepts responsibility*	While the government may not be directly responsible for remediation, it accepted a degree of responsibility in the February 13, 2017 statement made by Ministers Murray and Zimmer: "we are completely committed to working with all partners to identify all potentially contaminated sites, and to creating and implementing a comprehensive remediation action plan." Additional public and private statements made by Minister Murray to Grassy Narrows First Nation and Wabaseemoong Independent Nations have reiterated this commitment. With respect to the costs of remediating the Wabigoon River, an opinion by the MOECC's Legal Services Branch on May 25, 2017 concludes that there is a moderate risk that a court would find that Ontario has a legal obligation arising from the honour of the Crown to expend funds to remediate the Wabigoon River generally, as well as the Dryden mill site, including leased areas of the Wabigoon River. A moderate risk means that, in light of good arguments on each side, the outcome is not reasonably predictable. Remediation at the Dryden mill site, if deemed required by the ministry, has the potential to be included as an additional site in this project. An opinion by the MOECC's Legal Services Branch on May 25, 2017 concludes that there is a high risk that a court would find that Ontario has a legal obligation to repay costs incurred by Domtar Inc. in respect of the remediation of the Dryden mill site and sites within the leased areas of the Wabigoon River. A high risk means that, while there are credible arguments to dismiss a challenge, the relevant court would very likely find against Ontario. This conclusion is based on the 2016 decision of the Ontario Superior Court of Justice in *Weyerhaeuser v. Ontario (AG),* which applied the 1985 Indemnity to a procedural order issued under the Environmental Protection Act to Weyerhaeuser Company Ltd. ("Weyerhaeuser") and Resolute FP Canada Inc. ("Resolute") in 2011 (the "2011 Director's Order").
It is expected that future economic benefits will be given up	During Question Period on May 2, 2017, Ministry Murray was asked why funding for the English Wabigoon River clean-up was not included in the 2017/18 budget. The minister replied that, "…the money is on its way to Grassy Narrows, as the bills come in. Mr. Speaker, the cost of this may well be far in excess of $84 million. As a matter of fact, I am guessing that this government's commitment to Grassy Narrows is going to exceed that amount of money. Many

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	other projects that were done in-year over last year...that were $150 million and under—were not explicitly stated in the budget. That didn't mean the government is less committed to it." At a meeting with the chiefs of Grassy Narrows First Nation and Wabaseemoong Independent Nations held later that day, Minister Zimmer read an excerpt of the Minister's statement above from the Hansard (attached below) and Minister Murray stated that the ministry would be preparing a Treasury Board submission for the remediation project. Ontario Hansard Issue_ L075_May 2 2
A reasonable estimate of the amount can be made	There is limited data on current environmental conditions in the Wabigoon River, outside of contaminant levels in fish. The ministry is in the preliminary stages of the contaminated sites assessment process and has yet to determine the extent of contamination in the river or whether there is an ongoing source of contamination from the mill property. The 2017 planned fieldwork will better inform the ministry on the contamination source and extent of contamination. This information will allow the ministry to better understand remediation options and next steps. However, the ministry has received and reviewed a proposal that included a cost estimate submitted by Grassy Narrows First Nation and has reviewed comparable riverine contaminated sites and their association remediation costs. **Remediation proposal submitted by Grassy Narrows First Nation, May 2016 (Rudd Report)** In May 2016, Grassy Narrows First Nation provided a cost estimate for remediation in the amount for $80.7 – 85.7M as part of a proposal by their science team to conduct additional assessment. This estimate cannot be relied upon to determine the cost of remediation because the proposal does not provide adequate detail on how the estimate was developed. In addition, the assessment approach outlined in the proposal omits a number of key steps required to determine the extent of contamination. Without sufficient knowledge of the dynamics of the river system (e.g. flow rates, sedimentation rates) and the extent of the contamination, it is not possible to determine the best course of action for remediation.

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	A consultant hired by Grassy Narrows First Nation also reviewed this proposal and stated that “the remedial designs for the different aspects of the program are conceptual in nature” and “need to be validated as being feasible for the English Wabigoon River system prior to progressing to detailed design.” Refer to the file below for a detailed assessment of this cost estimate. Assessment of GNFN Cost Estimate from R
Conclusion	
	The 2017 planned fieldwork will better inform the ministry on the contamination source and extent of contamination. Until this information is available, the ministry is not able to assess remediation options and their associated costs. As a result, a reasonable estimate of the liability cannot be made at this time.

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House Book Note -- Fair Hydro Plan.pdf

From:	Veinot, Cindy (TBS)
To:	Kim Marshall
Subject:	House Book Note -- Fair Hydro Plan
Date:	August 22, 2017 9:50:00 AM
Attachments:	FHP HBN - August 21 2017 v1.doc

Hi Kim – attached is a draft house book note for the Fair Hydro Plan – GA refinancing. Can you take a read through and we can discuss during our call later today. I want to ensure there are no inaccurate statements from IESO's perspective. I will also draft one for the market accounts and send that over when its ready.

Thanks,

Cindy

FHP HBN - August 21 2017 v1.pdf

Confidential **Drafted: August 21, 2017**

FAIR HYDRO PLAN ACCOUNTING (GLOBAL ADJUSTMENT REFINANCING)

ISSUE: What is the basis for the proposed accounting for the Global Adjustment Refinancing on the Province's books?

CONTEXT: The Global Adjustment Refinancing is one component of the Fair Hydro Plan announced in March 2017, and is the most significant contributor to the reduction in hydro rates for residential consumers. The other parts of the Plan for residential consumers include: (a) expansion of the Ontario Electricity Support Program, (b) reductions in distribution rates for consumers in rural and remote areas, (c) reductions for First Nations residential consumers living on-reserve, (d) a fund set up to assist consumers in making their homes more energy efficient.

The only impacts on the 2016-17 consolidated financial statements from the Fair Hydro Plan is (d) the fund set up to assist consumers in making their homes more energy efficient, which was expensed in the year and increases the annual deficit. In addition, the 8% rebate on electricity bills, introduced as of January 1, 2017, while not part of the March 2017 announcement, also impacts the 2016-17 as an expense that increases the annual deficit.

KEY MESSAGES:

GA Financing Status and Structure

- In order to meet the needs of users, including the legislature and the public, for accountability in government reporting and decision making, it is essential that public sector financial statements reflect the economic substance of the government's activities.

- All of the agreements necessary for the Global Adjustment (GA) Refinancing are not yet complete. The final accounting for the GA Refinancing will be completed once all of the elements are complete. The balance of the note is based on the expected outcome. As previously noted, there is no impact on the 2016-17 consolidated financial statements from the GA Refinancing.

- In analyzing the appropriate accounting treatment for the GA refinancing component of the Fair Hydro Plan on the Province's consolidated financial statements in 2017-18 and forward, the Province considered authoritative guidance issued by the Public Sector Accounting Board, as well as the accounting assessments of the Independent Electricity System Operator (IESO) and Ontario Power Generation (OPG) management, including the accounting opinions of their external auditors.

- The complexity and unique structure of the GA Refinancing structure requires the use of professional judgment to ensure that key financial reporting objectives of transparency and accountability are best served.

- Under GA Refinancing, the Province will borrow funds to pay a portion of electricity costs charged by the electricity generators, thereby temporarily reducing the amount paid by eligible consumers (or ratepayers). The deferred amounts, including interest and other costs, will be recoverable from consumers/ratepayers in the future.

- Specifically, the Independent Electricity System Operator (IESO), a not-for-profit organization controlled by the Province, operates the IESO-administered markets, meaning that it makes payments to the electricity generators with cash received from the local distribution companies (and ultimately the consumers/ratepayers).

- Over the last 10+ years, payments have been made for major refurbishments to the electricity grid as well as the cost to move away from coal and to cleaner, but more expensive methods of electricity generation, including wind and solar. These payments were passed on to consumers/ratepayers as incurred or based on contractual payment terms, but not based on period of benefit. The GA refinancing acknowledges that the current generation has paid more than its share for these costs, and spreads these costs incurred out over more years.

- In simple terms, the IESO will continue to make payments to the electricity generators based on their contractual terms, but will collect less from the local distribution companies, as the consumers or ratepayers will pay a reduced amount. The

amount not collected from the consumers now, or the shortfall, will be collected from consumers/ratepayers in the future.

- The FHP Act permits the IESO sell that shortfall, also referred to in the Act as a regulatory asset, which represents the right to collect payments from consumers/ratepayers in the future, to a financing entity. To recap, the IESO will pay the electricity generators with cash collected from the local distribution companies for electricity consumed, but at a reduced rate, and cash received from the financing entity for the sale of the regulatory asset.

- The financing entity will be part of Ontario Power Generation (OPG Trust), a government business enterprise, wholly owned by the Province. The operations of Ontario Power Generation have been and will continue to be included in the consolidated financial statements of the Province using the modified equity method, the method Public Sector Accounting Standards (PSAS) require for government business enterprises.

- At its discretion, OPG Trust would purchase the shortfall amounts (or regulatory asset) through a combination of provincial borrowing (flowed through OPG as an equity investment), amounts advanced from OPG and direct borrowing from capital markets.

- In the future, when the consumers/ratepayers pay for the deferred amount or shortfall to the local distribution companies, those amounts will be used to repay the accumulated debt, whether that be direct borrowing from the capital markets, amounts advanced from OPG or provincial borrowing.

IESO Accounting

- There is no impact on the 2016-17 consolidated financial statements from the GA Refinancing. The GA refinancing is expected to impact the 2017-18 consolidated financial statements.

- In 2017-18, the shortfall or regulatory asset that the IESO incurs as a result of collecting less from the local distribution

companies than it pays to the electricity generators would be accounted for as a rate-regulated asset. The rate-regulated asset would then be sold to OPG Trust for cash used to pay the electricity generators.

- For 2016, IESO adopted the use of rate-regulated accounting for costs incurred unrelated to the GA Refinancing; however, the impact to the financial statements of the Province was immaterial (impact on annual deficit of $24 million).
- PSAS is silent on the use of rate regulated accounting, however, like all major accounting frameworks, PSAS encourages both preparers and auditors to consider guidance in other accounting frameworks when accounting for transactions not specifically addressed by the specific standards.
- IESO management, their audit committee, their board of directors and their external auditors, agree with the adoption of rate-regulated accounting by IESO. The Office of the Provincial Controller also supports the adoption of rate-regulated accounting by IESO.
- In her opinion on the 2016-17 consolidated financial statements, the Auditor General (AG) has included an "Other Matter" paragraph, drawing attention to the adoption of rate-regulated accounting by IESO. Her view is expressed as stating PSAS does not permit rate regulated accounting, but that she has not qualified her opinion on this matter because the impact is not material to the 2016-17 consolidated financial statements.
- The AG further notes, "However, the consolidated financial statements may become materially misstated in future periods, as a result of the legislated accounting prescribed under the *Ontario Fair Hydro Plan Act, 2017* (Fair Hydro Plan) and its related regulations, as it is not in accordance with Canadian public sector accounting standards."

- Neither the IESO nor OPCD agree with the statements that (a) PSAS does not permit rate-regulated accounting (as previously noted, PSAS is silent with respect to rate-regulated accounting)

or (b) Fair Hydro Plan and its related regulations legislate the accounting for GA Refinancing.

OPG Accounting

- The Auditor General has not raised any concerns to date with the intended accounting for the OPG Trust on the Province's books.
- OPG Trust will be controlled and consolidated by OPG.
- Purchases by OPG Trust of the rate regulated assets from the IESO will be reflected on OPG's books as intangible assets which will be included in the Province's financial statements as part of its investments in government business enterprises.

The Province's Accounting

- In assessing the appropriate accounting for the Fair Hydro Plan on the Province's books, OPCD worked closely with key ministries, the OEB, the IESO, OPG and their respective external advisors.
- The final accounting treatment for FHP related activities will be confirmed once all elements of the GA Refinancing framework are finalized, including provincial guarantees and financing arrangements.
- Once the details and commercial agreements of the FHP are finalized, the external auditors of the IESO and OPG are expected to provide independent accounting opinions on the accounting treatment on IESO and OPG's financial statements.
- The Office of the Provincial Controller will rely on those independent accounting opinions, the audited financial statements of the IESO and OPG as of December 31, 2017 and its own research and analysis in determining the impact of the GA Refinancing on the 2017-18 consolidated financial statements.

IF PRESSED: AG ACCUSATION OF LEGISLATED ACCOUNTING

- The Auditor General has made several incorrect references to legislated accounting which should be addressed to ensure clarity and transparency in terms of the government's accounting treatment for the Fair Hydro Plan.
- In particular, that Auditor General has referred to legislated accounting prescribed by the FHP Act that is designed to in some way manipulate the Province's financial reporting in its consolidated financial statements.
- The Province's financial statements are based on Public Sector Accounting Standards as issued by the Public Sector Accounting Board of CPA Canada. There is no legislated accounting that applies to the Province's consolidated financial statements.
- While the FHP Act does, under Section 24, require that the IESO set up a variance account to track the cash shortfall amount resulting from the deferred recovery amount, it is just another type of regulatory account, similar to those that OPG reports and for which the OEB is responsible for approving rates.
- As far as the Province's financial reporting practices go, whether the deferred amounts reported in the IESO's variance account are assessed as assets for financial reporting purposes will be determined by the interpretation and application of Public Sector Accounting Standards, not by the legislation or regulations.

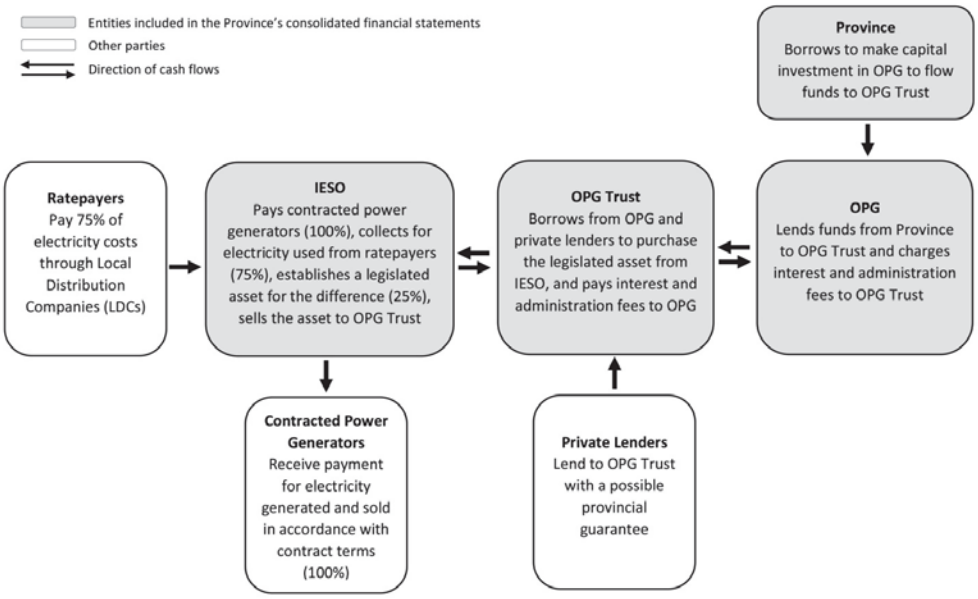
Prepared by: Nadine Petsche, Director, Accounting Policy and Financial Reporting

Approved by:	**Name:**	**Date Approved:**
ADM, Office of the Provincial Controller	Cindy Veinot	August 21, 2017
Communications Branch	Sofie Di Muzio	XXX

Appendix

Proposed Legislated Transaction Structure

Prepared by the Office of the Auditor General of Ontario



Hydro One assessment.rtf

From: Virani, Shyrose (TBS) []
To: 'mpicard@kpmg.ca' [mpicard@kpmg.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
Subject: Hydro One assessment
Date: Monday, July 10, 2017 10:03:03

From: Petsche, Nadine (TBS)
Sent: July 10, 2017 9:53 AM
To: Virani, Shyrose (TBS)
Subject: Fw: Hydro One assessment

From: Picard, Michel <mpicard@kpmg.ca>
Sent: Monday, July 10, 2017 9:39 AM
To: Petsche, Nadine (TBS)
Cc: Church, Bailey J
Subject: Hydro One assessment

Hi Nadine, Are you available today after 2pm for a call?

Michel Picard, CPA, CA

Partner, Accounting Advisory Services

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Hydro One assessment.pdf

From: Virani, Shyrose (TBS)
To: "mpicard@kpmg.ca"; Petsche, Nadine (TBS)
Subject: Hydro One assessment
Start: July 10, 2017 2:30:00 PM
End: July 10, 2017 3:00:00 PM
Location: Michel to call Nadine at 416 325 8027

From: Petsche, Nadine (TBS)
Sent: July 10, 2017 9:53 AM
To: Virani, Shyrose (TBS)
Subject: Fw: Hydro One assessment

From: Picard, Michel <mpicard@kpmg.ca>
Sent: Monday, July 10, 2017 9:39 AM
To: Petsche, Nadine (TBS)
Cc: Church, Bailey J
Subject: Hydro One assessment

Hi Nadine, Are you available today after 2pm for a call?

Michel Picard, CPA, CA

Partner, Accounting Advisory Services

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IESO (miscellaneous).rtf

From: Petsche, Nadine (TBS) []
To: LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]
Subject: IESO (miscellaneous)
Date: Monday, February 06, 2017 12:27:32
Attachment 1: IESO GBE analysis Febr 5 (draft #1).docx
Attachment 2: IESO Control analysis (draft #1).docx
Attachment 3: IESO 2015 basis of reporting.docx

Hi LeeAnne.

This is the last of the 3 items that I hope to cover with you this afternoon (as an intro).

Talk soon,

Nadine

IESO GBE analysis Febr 5 (draft #1).pdf

IESO (draft #1)

Government Business Enterprise ("GBE") analysis

References: IESO's 2015 Financial statements, PS 1300, Electricity Act, 1998 ("EA")

A GBE is defined in the CPA Accounting Handbook, Public Sector Accounting, Introduction to public sector accounting standards paragraph 6.

A GBE is a government organization that has all of the following characteristics:

Characteristics	Guidance and comments	Weighting	Recommendations
(a) It is a separate entity with the power to contract in its own name and that can sue and be sued.	• IESO is a not-for-profit organization, non-taxable, corporation established pursuant to Part II of the *Electricity Act*, 1998. (note 1 to FS) • The IESO is not an agent of the Crown for any purpose, despite the Crown Agency Act. 2014. (EA, 8) • The IESO has the capacity, rights, powers and privileges of a natural person for the purpose of carrying out its objects (EA, 6(3)). • The IESO is subject to various claims, legal actions and investigations that arise in the normal course of business. (note 15 to FS)	• Characteristic is met.	
(b) It has been delegated the financial and operational authority to carry on a business?	• A business is an integrated set of activities and assets that is capable of being conducted and managed for the purpose of providing a return in the form of dividends, lower costs or other economic benefits directly to investors or other owners, members or participants. (IFRS 3, Appendix A))	• Characteristic is met. • IESO's board of directors has been delegated the financial and operational authority to carry on the business. IESO is managing its business to provide other economic benefits to market participants. • The key benefits include: – to direct the operation and maintain the reliability of the IESO-controlled grid; and	• Changing the type of organization from not-for-profit organization to be a for-profit organization would strengthen the argument that IESO is carrying business.

	• For example, a GBE may be required to earn a profit while operating within a specified pricing structure. (PS 6420) • The IESO is not an agent of the Crown for any purpose, despite the Crown Agency Act. 2014. (EA, 8) • The business and affairs of the IESO shall be carried on without the purpose of gain and any profits shall be used by the IESO for the purpose of carrying out its objects. (EA, 6(2)) • The IESO's board of directors shall manage and supervise the management of the IESO's business and affairs. (EA, 10(1)) • The board of directors of the IESO may make by-laws regulating the business and affairs of the IESO. (EA, 22(1)) • At least 120 days before the beginning of each fiscal year, the IESO shall submit its proposed business plan for the fiscal year to the Minister for approval. (EA, 24(1)) • The IESO may establish and charge fees to recover, (a) the costs of anything done in connection with the IESO-controlled grid or the IESO-administered markets; (b) the costs of doing anything the IESO is required or permitted to do under this or any other Act; and	– to forecast electricity demand and the adequacy and reliability of electricity resources for Ontario for the short term, medium term and long term. • The OEB has allowed the IESO to retain $10 million of profits in surplus, which is shown as a regulatory deferral account balance in the accumulated surplus (deficit) of the statement of Financial Position.	

	(c) any other type of expenditure the recovery of which is permitted by the regulations (EA, 25(1)) • The Board may approve the proposed expenditure and revenue requirements and the proposed fees or may refer them back to the IESO for further consideration with the Board's recommendations. (EA, 25(4))		
(c) It sells goods and services to individuals and organizations outside of the government reporting entity as its principal activity.	• Selling goods and services involves a direct exchange relationship between the revenues and the goods and services provided. Selling prices are related to the quantity and quality of goods or services sold, and not just to the recovery of administrative costs. Imposed fees and penalties, such as licenses and fines, do not represent sales of goods and services. Insurance premiums charged by a government organization are a sale of a service and not an imposed fee. (PS 1300.29). IESO is permitted to recover the costs of anything done in connection with the IESO-controlled grid or the IESO-administered markets (see above EA, 25(1)). • The objects of IESO include: (a) to exercise the powers and perform the duties assigned to it under this Act, the regulations, directions, the market rules and its licence; (b) to enter into agreements with transmitters to give it authority to	• Characteristic is met. • IESO does not sell goods but provide various services and ancillary services to market participants for the ultimate benefits of the customers of Ontario. • Principal activity is providing services outside of the government reporting entity. • IESO has two OEB approved fees: one for exports and one for withdrawals for use in Ontario and embedded generation, which is generation within an LDCs service territory. All parties charged are market participants registered with the IESO and are charged based on meter readings. • The fees charged to exporters are approximately 20% higher than the other market participants. • The fees charged for the services are determined based on meter readings and a rate per KWh, similar to LDCs and transmission companies in Ontario.	

	direct the operation of their transmission systems; (c) to direct the operation and maintain the reliability of the IESO-controlled grid to promote the purposes of this Act; (d) to participate in the development by any standards authority of criteria and standards relating to the reliability of the integrated power system; (e) to establish and enforce criteria and standards relating to the reliability of the integrated power system; (f) to work with the responsible authorities outside of Ontario to co-ordinate the IESO's activities with the activities of those authorities; (g) to operate the IESO-administered markets to promote the purposes of this Act; (h) to engage in activities related to contracting for the procurement of electricity supply, electricity capacity, electricity storage, transmission systems or any part of such systems and conservation resources; (i) to engage in activities related to settlements, payments under a contract entered into under the authority of this Act and payments provided for under this Act or the *Ontario Energy Board Act, 1998*; (j) to engage in activities in support of the goal of ensuring adequate, reliable		

	and secure electricity supply and resources in Ontario; (k) to forecast electricity demand and the adequacy and reliability of electricity resources for Ontario for the short term, medium term and long term; (l) to conduct independent planning for electricity generation, demand management, conservation and transmission; (m) to engage in activities to facilitate the diversification of sources of electricity supply by promoting the use of cleaner energy sources and technologies, including alternative energy sources and renewable energy sources; (n) to engage in activities in support of system-wide goals for the amount of electricity to be produced from different energy sources; (o) to engage in activities that facilitate load management; (p) to engage in activities that promote electricity conservation and the efficient use of electricity; (q) to assist the Board by facilitating stability in rates for certain types of consumers; (r) to collect and make public information relating to the short term, medium term and long term electricity needs of Ontario and the adequacy		

	and reliability of the integrated power system to meet those needs; and (s) to engage in such other objects as may be prescribed by the regulations. (EA, 6) **Part I of the EA, Interpretation:** • "Ancillary services" means services necessary to maintain the reliability of the IESO-controlled grid, including frequency control, voltage control, reactive power and operating reserve services. • "Fees" means, with respect to the IESO, amounts charged by the IESO to recover its costs of operations. • "IESO-controlled grid" means the transmission systems with respect to which, pursuant to agreements, the IESO has authority to direct operations. • "Integrated power system" means the IESO-controlled grid and the structures, equipment and other things that connect the IESO-controlled grid with transmission systems and distribution systems in Ontario and transmission systems outside Ontario. • **Regulations** 161.4 (1) The Lieutenant Governor in Council may make regulations, (d) requiring the IESO, OPA and the Board to enter into contracts relating to the provision of services and such other matters as the Lieutenant		

	Governor in Council considers necessary or advisable, (i) to assist the Board and the Market Surveillance Panel with respect to market surveillance of the IESO-administered markets, (ii) to assist the OPA with respect to the forecasting of electricity demand and the adequacy and reliability of electricity resources for the medium and long term **Conservation measures** • Subject to section 71 of the *Ontario Energy Board Act, 1998* and such limits and criteria as may be prescribed by the regulations, a transmitter, distributor or the IESO may provide services that would assist the Government of Ontario in achieving its goals in electricity conservation, including services related to, (a) the promotion of electricity conservation and the efficient use of electricity; (b) electricity load management; or (c) the promotion of cleaner energy sources, including alternative energy sources and renewable energy sources.		
(d) It can, in the normal course of its operations, maintain its operations and	• IESO is a not-for-profit organization, non-taxable, corporation established pursuant to Part II of the *Electricity Act*, 1998.	• Characteristic is met. • IESO does not receive transfers from the Province of Ontario and has demonstrated its ability of maintaining its operations and meeting its liabilities	

meet its liabilities from revenues received from sources outside of the government reporting entity.	• IESO does not receive transfer from the Province. All its costs are to be recovered from the market participants.	without relying on the Province of Ontario.	

A GBE should, in the normal course of its operations, be able to maintain its operations and meet its liabilities from revenues received from sources outside of the government reporting entity. These revenues include not only amounts from the sale of goods and services, but also transfers received from other governments or sources outside of the government reporting entity. (PS 1300.30)

When determining if an organization can maintain its operations and meet its liabilities with revenues received from outside of the government reporting entity, the following factors should be considered:

(a) the organization's history of maintaining its operations and meeting its liabilities;

(b) whether the organization would continue to maintain its operations and meet its liabilities without relying on sales to, or subsidies in cash or kind from, the government reporting entity;

(c) past, present and future economic conditions within which the organization operates; and

(d) whether the organization has realistic and specific plans that show how it expects to be able to maintain its operations and meet its liabilities in the future. (PS 1300.31)

IESO does not receive transfers from the Province of Ontario and has demonstrated its ability of maintaining its operations and meeting its liabilities without relying on the Province of Ontario. As per the EA, IESO is permitted to recover the costs of anything done in connection with the IESO-controlled grid or the IESO-administered markets. As a result, the fees charged to the market participants cover all the costs incurred by IESO.

Although the IESO has a note payable to the OEFC of $90 million, loans are not considered transfers from a government provided it has the ability to repay the loans received.

Other considerations

The majority of the market participants reports either under IFRS (or US GAAP for OPG and Hydro One). The use of IFRS by IESO would facilitate the comparison with the market participants. It should be noted that the Alberta Electric System Operator (“AESO”) a\has adopted IFRS as its accounting framework.

Many of the WSIB organizations across Canada are considered GBE and, as a result, report under IFRS.

Although IESO has received rate orders to recover in its future rates certain costs charged to either the statement of operations or accumulated deficit (e.g. smart metering expenses charge to statement of operations and, actuarial losses and other PSAB transition item charged to accumulated deficit), these costs have not been recognized as regulatory assets as it is unclear whether PSAB permits the recognition of the

economic impacts of rate regulation. As IESO is an entity regulated by the OEB, the use of IFRS by IESO would permit to recognize the economic impacts of rate regulation approved by the OEB.

Conclusion: IESO

PS 1300, DEFINITIONS

.04 A **government component** is an integral part of government, such as a department, ministry or fund. It is not a separate entity with the power to contract in its own name and that can sue and be sued.

.05 A **government organization** is any organization controlled by a government that is a separate entity with the power to contract in its own name and that can sue and be sued.

.06 A **government business enterprise** is a government organization that has all of the following characteristics:

(a) It is a separate entity with the power to contract in its own name and that can sue and be sued.

(b) It has been delegated the financial and operational authority to carry on a business**.**

(c) It sells goods and services to individuals and organizations outside of the government reporting entity as its principal activity.

(d) It can, in the normal course of its operations, maintain its operations and meet its liabilities from revenues received from sources outside of the government reporting entity.

.07 A **government not-for-profit organization** is a government organization that has all of the following characteristics:

(a) It is a separate entity with the power to contract in its own name and that can sue and be sued.

(b) It has counterparts outside the public sector as defined in paragraph .02.

(c) It is an entity normally without transferable ownership interests.

(d) It is an entity organized and operated exclusively for social, educational, professional, religious, health, charitable or any other not-for-profit purpose.

(e) Its members, contributors and other resource providers do not, in such capacity, receive any financial return directly from the organization.

.08 An **other government organization** is a government organization that has all of the following characteristics:

(a) It is a separate entity with the power to contract in its own name and that can sue and be sued.

(b) It is neither a government business enterprise nor a government not-for-profit organization.

.09 A **government partnership** is not a government organization but is a contractual arrangement between the government or a government organization and a party or parties outside of the reporting entity that has all of the following characteristics:

(a) The partners co-operate toward achieving significant, clearly defined common goals.

(b) The partners make a financial investment in the government partnership.

(c) The partners share control of decisions related to the financial and operating policies of the government partnership on an ongoing basis.

(d) The partners share, on an equitable basis, the significant risks and benefits associated with the operations of the government partnership.

25A A **governmental unit** is a government component, government not-for-profit organization or other government organization.

Conclusion: Based on the above definitions, IESO is neither a government component, nor a government not-for-profit organization nor a government partnership. If it is determined that IESO is not a GBE then it would therefore be classified as an OGO.

- For purposes of preparing general purpose financial statements, **GBEs** apply the standards for **publicly accountable enterprises** in Part I of the CPA Canada Handbook – Accounting (i.e. IFRS). (Introduction to public sector accounting standards, paragraph 17)

- For purposes of preparing general purpose financial statements, **OGOs** would normally apply the standards for governments in the PSA Handbook. When these standards do not meet their financial statement users' needs, the standards applicable to publicly accountable enterprises in Part I of the CPA Canada Handbook – Accounting should be considered. The standards determined to be most appropriate should be disclosed and consistently applied. (Introduction to public sector accounting standards, paragraph 19)

PS 1000, GOVERNMENT OPERATIONS

.06 Governments are inherently different from businesses. The unique characteristics of government have reporting implications as outlined in Appendix A.

.07 The objectives of financial reporting for governments and business are not the same. Specifically, the accounting standards for business do not adequately prescribe the recognition, measurement, presentation and disclosure of government financial information that is needed for accountability by governments and useful for decision making by the users of government financial statements.

.08 The goals of government are not the same as those of business. The primary goal of a business is profit and its resources are employed to that end. Investors put up capital in expectation of a return, and financial statements report the success or failure of the business in providing that return. Results of operations are measured and reported in terms of profit or loss and it is added to or deducted from the owners' investment to measure financial position. Annual and accumulated earnings or losses are key measures of the performance of a business.

.09 Governments differ from business in both their objectives and financing. In general, governments provide public services and redistribute wealth for a variety of social and economic purposes. The delivery of a service does not, however, normally give rise to revenue, and the payment of taxes does not necessarily entitle a taxpayer to any particular public service or benefit. Because governments are granted the power to tax, their revenues are not substantially dependent upon voluntary contributions nor on the profitable sale of goods and services in the marketplace. Thus, except for commercial-type activities, the relationship between revenues and costs in any given period is not the same for government as it is for business.

.10 In any given period, a government may finance its operations from tax and other revenues or by borrowing or incurring other liabilities. The financial resources required are forecast and the government's financing plan is set out in the budget. Financial statements report the actual results of government operations and the extent to which revenues raised in the period were or were not sufficient to meet the expenses of that period. Users of the statements look to the operating surplus or deficit for the period, both on its own and in relation to the government's plan, in evaluating the government's fiscal management. Expenses, however, do not necessarily represent the total financial resources required. Governments, for example, also spend, lend and invest in addition to consuming economic resources in each accounting period. It is, therefore, also important to provide information about how a government financed its activities and met its cash requirements.

.11 Over the years, a government accumulates liabilities that must be settled and assets that provide resources for future operations. Information that reports the extent of the financial obligations that will have to be settled, or the extent of the assets that are available for future operations, is useful because it bears directly on future revenue requirements and on a government's ability to settle its obligations and finance its operations.

.12 The information needed to promote accountability and to aid understanding and assessments of government operations extends beyond reporting surpluses or deficits. For example, financial statements should provide information that describes the nature and purpose of government spending and the sources of its revenues and financing. They should also provide information that describes a government's non-financial resources that can be used in future operations and the cost of using those resources in service delivery. They should also provide information on investments and on potential obligations that may result from guarantees or indemnities.

IESO Control analysis (draft #1).pdf

IESO (draft #1)

Provincial control analysis

References: PS 1300, Electricity Act, 1998 ("EA")

PS 1300.08 to 1300.24 sets out the considerations for determining whether control exists. Control is defined as *"the power to govern the financial and operating policies of another organization* ***with expected benefits or the risk of loss to the government from the other organization's activities****."* Paragraph 10 indicates that determining control is a question of fact that must be determined by reference to the definition of control established in paragraph PS 1300.08 and the particular circumstances of each case. Paragraphs 18 and 19 set out indicators of control that must be considered "*in the context of the definition of control and the particular circumstances of each case*" (PS 1300.17).

The indicators of control are as follows:

Reference	Indicator	Comments	Weighting	Recommendation
	Persuasive indicators:			
1300.18(a)	*Government has the power to unilaterally appoint or remove a majority of the members of the governing body of the organization*	Board of directors composed of the CEO and 8 to 10 independent members appointed by the Minister. (EA subparagraph 10(2). Directors hold office as independent directors and not as a representative of any class of persons (subparagraph 10(3).	Moderate (Ability to appoint the board is not necessarily, in and of itself, sufficient evidence that the government controls the organization (1300.20).	Allowing the IESO to appoint their own board would strengthen the argument that the province does not control IESO.
1300.18(b)	*Government has ongoing access to the assets of the organization, has the ability to direct the ongoing use of those assets, or has ongoing responsibility for losses*	The government does not have access to the assets nor responsibility for losses. The market participants are responsible for the losses and the assets are owed	Low	

		back to them. Any profits are to be used for the operations of the IESO (EA paragraph 2) Market participants are responsible for the settlement amounts relating to operation of the market (Market rules Chapter 9.1.2.3)		
1300.18(c)	*Government holds the majority of the voting shares or a "golden share" 1 that confers the power to govern the financial and operating policies of the organization*	n/a IESO is a corporation without share capital (EA sub paragraph 5(1)).	n/a	
1300.18(d)	*Government has the unilateral power to dissolve the organization and thereby access its assets and become responsible for its obligations*	The government can dissolve the organization and access its assets. (EA paragraph 7). The EA is silent on what happens if there are obligations outstanding on dissolution.	High	Remove paragraph 7 and replace with assets to be distributed to market participants.
1300.19(a)	*Provide significant input into the appointment of members of the governing body of the organization by appointing a majority of those members from a list of nominees provided by others or being otherwise involved in the*	All of the board members are appointed by the Minister with the exception of the CEO who is appointed by the board.	Moderate	Allowing the IESO to appoint their own board would strengthen the argument that the province does not control IESO.

	appointment or removal of a significant number of members			
1300.19(b)	*Appoint or remove the CEO or other key personnel*	CEO is appointed by the board (EA paragraph 11)	Low	
1300.19(c)	*Establish or amend the mission or mandate of the organization*	The objects/ mission of the IESO are set out in the EA. (paragraph 6)	High	
1300.19(d)	*Approve the business plans or budgets for the organization and require amendments, either on a net or line-by-line basis*	The business plan must be submitted to the Minister for approval (EA sub paragraph 24(1) & 24(2). Budgets are submitted to the Ontario Energy Board ("OEB") to establish the rates to be charged (EA subparagraphs 25(1) & 25(2)).	Moderate	Remove the requirement that the province approves the business plan.
1300.19(e)	*Establish borrowing or investment limits or restrict the organization's investments*	The EA restricts IESO's power to borrow and invest funds (EA subparagraph 6(4)).	Moderate	Remove this ability.
1300.19(f)	*Restrict the revenue-generating capacity of the organization, notably the sources of revenue*	The OEB, not the province can restrict the revenue and sources of revenue of the IESO (EA sub-paragraph 25(6)(a) & 25(6)(b))	Low	
1300.19(g)	*Establish or amend the policies that the organization uses to manage,*	The board of directors establish the policies, rules, guidelines and	Low	

	such as those relating to accounting, personnel, compensation, collective bargaining or deployment of resource	codes of the organization as long as they are not in conflict with the EA. (EA paragraph 14)		

The risk of loss to the province from the IESO's activities is very low since the market rules establish that the market participants bear this risk. The EA sets out that any profits of IESO are to be used for the operations of the IESO. Based upon 1300.08, the province does not bear risk or benefits from the operations of the IESO.

Conclusion: Based upon the preponderance of evidence (1300.17), the province does not control IESO.

IESO 2015 basis of reporting.pdf

Independent Electricity System Operator

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Memorandum

To: THE AUDIT COMMITTEE OF
THE BOARD OF DIRECTORS
of the Independent Electricity System Operator

From: Susan Nicholson
Corporate Controller

Date: March 17, 2015

Re: Item 5 - Accounting Standards and Statutory Financial Statements

The merger of the Independent Electricity System Operator (IESO) and the Ontario Power Authority (OPA) created a need to establish one accounting standard for the amalgamated entity (IESO).

BACKGROUND

Pre-merger Standards

Prior to the merger, IESO and OPA followed different accounting standards. IESO followed Public Sector Accounting Standard Board (PSA) standards for government organizations as an Other Government Organization (OGO) whereas OPA followed PSA standards plus the 4200 series of CPA Canada Public Sector Accounting Handbook standards applicable to government not-for-profit organizations (GNFPO).

The main users of the amalgamated IESO financial statements will be the Ministry, OEFC and banks, OEB, and the provincial controller's office. Either standard would satisfy the needs of our financial statements users. The recommended standard aligns with the Province's accounting policy and consolidation requirements.

RATIONALE

Type of Government Enterprise

In determining what standard should be applied to IESO, we evaluated our organization type. The different types of organizations are summarized in the table below.

The activities of the amalgamated IESO are heavily characterized by the market operations. Based on a review of Canadian and select American system operators (Alberta, New York, New England), none of these entities meet the tests above as private counterparties. As such, IESO will be considered an OGO and will not qualify as a GNFPO. This is consistent with the organization type of the pre-merger IESO.

RECOMMENDATION

PSAB or IFRS
The IESO should adopt PSA standards, excluding section 4200.

OGOs have a choice of adopting either PSA standards or IFRS. If an OGO considers itself a publicly accountable enterprise (e.g. LCBO) then it could voluntarily adopt IFRS. Otherwise, an OGO should adopt PSA standards. The IESO is not an independent publicly accountable enterprise and therefore it should adopt PSA standards.

In recent discussions with both the Office of the Provincial Controller and our external auditors KPMG, there was agreement that PSA standards are the most applicable for the IESO.

Government Organization	Description	Accounting Standards
Government	• Federal, provincial, territorial & local governments	PSA standards
Government business enterprises (GBEs)	• Separate legal entity; • Delegated financial and operational authority; • Sells goods & services outside the reporting entity; and • Can maintain operations & meet liabilities from revenues received from outside the reporting entity	International Financial Reporting Standards (IFRS)
Government not-for-profit organizations (GNFPO)	• Normally without transferable ownership interests; • Organized & operated exclusively for a not-for-profit purpose; and • Has counterparts outside the public sector	PSA including section 4200
Other government organizations (OGOs)	• Is not a government; and • Does not meet the criteria of a GBE, or GNFPO	PSA standards or IFRS

IMPACT ON FINANCIAL REPORTING

It was noted at the Audit Committee meeting in February that the financial statement presentation was different between the pre-merger organizations. The presentation of the pre-merger IESO financial statements and notes are aligned with the recommended PSA standards.

Highlights of some major difference in PSA Standards in comparison to PSA +4200 formerly used by the OPA:

	PSA Standards
Statement of financial position	o Net debt[1] is derived from the net of financial assets[2] and liabilities o Accumulated surplus or deficit resulted from sum of net debt and non-financial assets[3]
Statement of Operations	o Budget is required to be presented o Expenses reported by segment with disclosure of expenses by object (type). o Accumulated surplus is presented by sum of current year net income and previous year's accumulated surplus balance
Statement of changes in net debt	o Prior year balance and budget are required to be presented
Statement of cash flows	o Separate capital activities are presented

The attachment below shows the "unaudited" opening statement of financial position for the amalgamated entity as of January 1, 2015, including the adjusting entries to remove market transactions relating to the Global Adjustment and to increase the Other Post-Employment Benefit (OPEB) liability in accordance with the actuarial calculation.

As discussed in February, the market transactions relating to Global Adjustment will be moved to the market accounting process and the reporting of these transactions will be captured within the Monthly Market Report, which will provide transparency on this information. This removes these transactions from the corporate assets and liabilities. It is also in line with one of the significant accounting policies of the pre-merger IESO which is the "financial statements do not include the financial transactions of market participants with the IESO-administered markets."

[1] Net debt provides a measure of the future revenues required to pay for past transactions and events.
[2] Financial assets are defined as "assets that could be used to discharge existing liabilities or finance future operations and are not for consumption in the normal course of operations."
[3] Non-financial asset is any asset acquired, constructed or developed that does not normally provide resources to discharge existing liabilities, but:

- Is normally employed to delivered government services;
- May be consumed in the normal course of operations.
- Is not for sale in the normal course of operations.

The attached statement of operations and accumulated deficit depicts the amalgamated entity using the December 31, 2014 financial information and presents expenses by object within each segment.

Susan Nicholson

Attachment

ATTACHMENT

Independent Electricity System Operator
Statement of Financial Position (unaudited)
As at (in thousands of Canadian dollars)

	IESO Dec. 31, 2014	OPA Dec. 31, 2014	Adjusting Entries	IESO Jan. 1, 2015
FINANCIAL ASSETS				
Cash and cash equivalents	11,886	138,812	(42,036)	108,662
Accounts receivable	17,813	539,485	(538,700)[4]	18,598
Long-term investments	33,979	-	-	33,979
TOTAL FINANCIAL ASSETS	**63,678**	**678,297**	**(580,736)**	**161,239**
LIABILITIES				
Accounts payable and accrued liabilities	25,862	479,889	(398,809)[5]	106,942
Accrued interest on debt	364	-	-	364
Deferred rent	-	114	-	114
Debt	129,000	-	-	129,000
Other financial liabilities – RPP	-	181,927	(181,927)[6]	-
Contract deposits	-	16,978	-	16,978
Accrued pension liability	36,943	-	-	36,943
Accrued OPEB liability	79,914	-	6,567[7]	86,481
TOTAL LIABILITIES	**272,083**	**678,908**	**(574,169)**	**376,822**
NET DEBT	**(208,405)**	**(611)**	**(6,567)**	**(215,583)**
NON-FINANCIAL ASSETS				
Net tangible capital assets	95,051	4,498	-	99,549
Prepaid expenses	5,468	702	-	6,170
TOTAL NON-FINANCIAL ASSETS	**100,519**	**5,200**	**-**	**105,719**
ACCUMULATED DEFICIT				
Accumulated deficit from operations	(114,248)	91	(2,069)	(116,226)
Accumulated remeasurement losses	6,362	-	-	6,362
Invested in capital assets	-	4,498	(4,498)[8]	-
ACCUMULATED DEFICIT	**(107,886)**	**4,589**	**(6,567)**	**(109,864)**

[4] Market receivables as of December 31, 2014
[5] Market payables as of December 31, 2014
[6] RPP payables as of December 31, 2014
[7] Increase in OPEB liability as of January 1, 2015
[8] Move to accumulated deficit from operations

Independent Electricity System Operator
Statement of Operations and Accumulated Deficit (unaudited)
Restated for the year ended December 31 (in thousands of Canadian dollars)

	2014 Budget	2014 Actual	2013 Actual
WHOLESALE MARKET OPERATIONS			
System fees	186,916	189,754	191,617
Other revenue	3,291	6,254	4,863
Interest and investment income	1,012	2,816	2,395
Wholesale market operations revenue	**191,219**	**198,824**	**198,875**
Compensation and benefits	110,400	116,727	109,709
Professional and consulting	25,744	20,035	19,762
Operating and administration	30,557	31,374	31,053
Wholesale market operating expenses	**166,701**	**168,136**	**160,524**
Amortization	20,051	16,582	17,172
Net interest	1,189	1,375	912
Wholesale market expenses	**187,941**	**186,093**	**178,608**
IESO-OPA amalgamation expenses	-	10,883	-
Wholesale market operations annual surplus	**3,278**	**1,848**	**20,267**
MARKET SANCTIONS AND PAYMENT ADJUSTMENTS			
Market sanctions and payment adjustments	**-**	**2,687**	**3,191**
Compensation and benefits	2,568	2,592	2,591
Professional and consulting	1,515	1,677	1,244
Operating and administration	-	94	21
Customer education and market enforcement expenses	**4,083**	**4,363**	**3,856**
Market sanctions and payment adjustments annual deficit	**(4,083)**	**(1,676)**	**(665)**
SMART METERING ENTITY			
Smart metering charge	**45,207**	**45,735**	**30,144**
Compensation and benefits	3,378	2,909	2,634
Professional and consulting	22,530	16,169	17,650
Operating and administration	1,683	2,931	850
Smart metering operating expenses	**27,591**	**22,009**	**21,134**
Amortization	3,905	4,543	3,836
Net interest	1,831	1,317	1,561
Smart metering expenses	**33,327**	**27,869**	**26,531**
Smart metering entity annual surplus	**11,880**	**17,866**	**3,613**
ANNUAL SURPLUS	**11,075**	**18,038**	**23,215**
ACC. DEFICIT FROM OPERATIONS, BEGINNING OF PERIOD	(127,697)	(127,697)	(122,126)
ACC. DEFICIT FROM OPERATIONS, END OF PERIOD	**(116,622)**	**(109,659)**	**(98,911)**

IESO - Follow up question.pdf

From:	Umar Saeed
To:	Veinot, Cindy (TBS); Kim.Marshall@ieso.ca
Cc:	Michael Puskaric
Subject:	IESO - Follow up question
Date:	November 28, 2017 11:12:05 AM

Dear Kim and Cindy,

We wanted to thank you again for your time the other day. I am going through my notes and I had a few questions for clarification.

I suspect these will be fairly straightforward for you to answer, but I also want to be respectful of your time and if they are too complicated – please let me know.

Would it be the IESO or would it be OPG that would ultimately go to the Ontario Energy Board to recover these costs?

If it is the IESO, my understanding is the OFHPA creates the deferral and variance account that enables the IESO to recover costs from future rates. If it is OPG, would they already have a deferral and variance account to house these costs until it is recovered? Or does the legislation apply to OPG as well?

Finally, when it comes time to recover those costs, would it go through the OEB prudence review or is that not necessary as a result of the OFHPA legislation?

I want to ensure I am understanding the process for recovering costs through future rates and the role of the OEB, OFHPA accurately.

I know this is a busy time for both of you and your help is very much appreciated.

Sincerely,

Umar

Umar Saeed, MAcc, CPA, CA

Principal / Directeur de projets

Public Sector Accounting Board / Conseil sur la comptabilité dans le secteur public

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IESO Audited Financial Statements.pdf

From: Veinot, Cindy (TBS)
To: Kim Marshall
Subject: IESO Audited Financial Statements
Date: March 28, 2018 1:34:00 PM

Hi Kim – do you know when your audited financial statements will be made public?

Thx

IESO Paper.rtf

From: Lee Anne Probert [leeanne.probert@ca.ey.com]
To: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
CC: Suzie Gignac [suzie.r.gignac@ca.ey.com]; Blake Langill [blake.w.langill@ca.ey.com]
Subject: IESO Paper
Date: Thursday, April 20, 2017 21:00:35
Attachment 1: image001.gif
Attachment 2: Rate Mitigation (ENERGY) - Appendix - Cabinet - March 1 2017 with EY comments (20-April-2017).pdf

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Hi Nadine,

Attached is a copy of the cabinet document that includes our initial comments on the IESO paper. It was more difficult to insert comments because it is a PDF document, I hope they're not too hard to follow. Please let me know when you would like to discuss.

We reached out to our global network earlier this week, but they have not yet identified any entities that can be used to support the IESO's position. We will keep you posted.

Regards,

Lee Anne

--

LeeAnne Probert | Senior Manager | Assurance Services

Ernst & Young LLP

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Rate Mitigation (ENERGY) - Appendix - Cabinet - March 1 2017 with EY comments (20-April-2017).pdf

Electricity Price Mitigation – Appendix

Ministry of Energy

March 1, 2017

Electricity Bonds - Asset Securitization Transactions in U.S.: Long Island Power Authority and Duke Energy

	Long Island Power Authority (LIPA)	Duke Energy
Key Terms	Up to $4.5 billion, in one or more series/tranches, with maturity no longer than 30 years. Fixed interest rates for each tranche. Estimated net present value savings to ratepayers from securitization: $446 million.	$1.283 billion plus bond issuance costs, in one or more series/tranches, with maturity up to 23 years. Fixed interest rates for each tranche. Estimated total savings to ratepayers from securitization: $708 million.
Bond Issuer	Special-purpose “public benefit” corporation created by statute.	Wholly owned “limited liability corporation” (structure not available in Ontario) of investor-owned Utility.
Covered Costs	Outstanding debt arising mostly from the closing of Shoreham nuclear power plant.	Costs from early retirement or abandonment of nuclear power plants and ongoing financing costs.
Collateral Property	Revenues from usage-based “transition charges” (part of delivery charge) on all customer bills.	Revenues from usage-based Asset Securitization Charge (separate line item on all customer bills.
Covered Customers	All existing and future grid-connected customers; charges not by-passable.	All existing and future customers; charges not by-passable.
Issuance Approval Process	Financing order issued by LIPA setting out the amount and terms of bond. Public hearings must be held before order finalized.	Utility petitions for financing order from Florida Public Service Commission (FPSC), which sets out details of bond issuance, including amount and terms. Final structure of transaction reviewed by FPSC for limited purpose of ensuring all requirements of law and financing order are met.
Status of Bond	Not debt of the State, although State provides statutory pledge not to impair the value of the collateral property.	Not debt of the State, although State provides statutory pledge not to impair the value of the collateral property.
Governance of Bond Issuer	Board of Trustees appointed by Governor	“Bond team” is established by order of the FPSC, which is “visibly involved”.
Adjustment Mechanisms	“Transition charges” adjusted annually based on mathematical formula in financing order, to ensure charges are adequate for servicing the bond; transitions charges may increase or decrease depending on variations in consumption.	Mandatory biannual petition by Utility to FPSC to adjust charges for any over or under collection, based on mathematical formula provided in the financing order and estimates of consumption for each rate class.

CONFIDENTIAL CABINET DOCUMENT

IESO Memo

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Powering Tomorrow.

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February 28, 2017

Deputy Minister Serge Imbrogno
Ontario Ministry of Energy
900 Bay Street
Hearst Block, 4th Floor
Toronto, ON M7A 2E1

Dear Deputy Imbrogno:

Attached are two documents prepared in conjunction with our KPMG advisors. The first outlines the proposed adoption by the IESO of the guidance in *ASC980 Regulated Operations* and the recognition of regulatory assets, as a more appropriate and transparent presentation in our financial statements.

The second is associated with the potential recognition and de-recognition of the regulatory assets associated with the IESO's role under the Global Adjustment Smoothing Account.

The conclusions of the second analysis are based on the structure of the account as the IESO currently understands it, and may vary depending on the final legislative materials.

We are available to address any questions you may have on these matters.

Sincerely,

Bruce B. Campbell

Attach.

Bruce B. Campbell
President and CEO
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White Paper - Adoption of the guidance in ASC 980 Regulated Operations

Independent Electricity System Operator ("IESO" or the "Company") is considering making changes in its accounting policies to reflect the balances of market participants within the IESO-administered markets (see separate technical analysis) and the economic impacts of rate regulation, as the changes would result in a more appropriate presentation of events or transactions in its financial statements.

Issue being considered in this document is: Can the IESO adopt the guidance in ASC 980 *Regulated Operations (US GAAP in FASB)*?

Background and Assumptions

The facts, circumstances, and assumptions relevant to the specific transactions are as follows:

1. The IESO's legal status is a not-for-profit, non-taxable, corporation established pursuant to Part II of the *Electricity Act, 1998*. IESO is classified as an Other Governmental Organization and prepares its financial statements in accordance with Canadian public sector accounting standards (PSAB).
2. IESO is rate regulated by the OEB in accordance with the Electricity Act, 1998 and the Ontario Energy Board ("OEB") Act, 1998 but currently does not recognize the economic impacts of rate regulation in its general purpose financial statements.
3. The IESO is required to obtain approval from the OEB under s. 25(1) of the Electricity Act, 1998 for the approval of its own expenditures, revenue requirement and fees. The last rate approval was obtained on December 29, 2016[1].
4. The OEB issued a Decision and Order on March 28, 2013 that permits IESO to recover the MDMR costs (the Smart Metering Charge) (see Appendix A). *(i.e. Costs incurred in the past will be fully recovered through future rates)*
5. Furthermore, in accordance with the *Electricity Act, 1998* and the *OEB Act, 1998*, the IESO has approved variance accounts to record all amounts payable or receivable by it in connection with the amounts paid to generators, the Financial Corporation, distributors and to entities with whom the IESO has a procurement contract. (i.e. costs incurred in the past will be fully recovered through future rates)
6. The IESO would change its accounting policies to permit the recognition of the economic impacts of rate regulation as from the 2016 financial year. IESO would adopt the guidance of ASC 980 *Regulated Operations* to better reflect the economic substance of its operations and enhance the transparency and accountability of its financial reporting.

Appropriate Accounting Principle

PS2120.02, "*a change in an accounting policy may be made… if it is considered that the change would result in a more appropriate presentation of events or transactions in the financial statements of the government.*"

PS1150.05 "*When the primary sources of GAAP do not deal with the accounting and reporting in financial statements of transactions or events encountered by the public sector reporting entity, or additional guidance is needed to apply a primary source to specific circumstances, the selection of an appropriate accounting policy requires the exercise of professional judgment. In these circumstances, a public sector reporting entity should adopt accounting policies and disclosures that are consistent with:*

[1] http://www.rds.ontarioenergyboard.ca/webdrawer/webdrawer.dll/webdrawer/rec/556699/view/Dec_Order_IESO_20161229.PDF

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(a) *the primary sources of GAAP; and*

(b) *the application of the concepts described in FINANCIAL STATEMENT CONCEPTS, Section PS 1000."*

PS1150.19 *"Pronouncements issued by other bodies authorized to issue accounting standards may be useful sources to consult. For example, accounting pronouncements published with the authority of the Canadian Accounting Standards Board (AcSB), International Accounting Standards Board (IASB), US Federal Accounting Standards Advisory Board (FASB), US Governmental Accounting Standards Board (GASB), or International Public Sector Accounting Standards Board (IPSASB) are often important sources to consult on matters not covered by primary sources of GAAP or for assistance in applying a primary source of GAAP to specific circumstances."*

PS1150.08 "A public sector reporting entity consults sources other than primary sources of GAAP to assist in selecting accounting policies and disclosures only when these sources comply with paragraph PS1150.05. The public sector reporting entity evaluates sources in selecting the appropriate accounting policies and disclosures based on all of the following criteria:

(a) *The specificity of the source — A source that deals with the specific circumstances is likely to be more relevant than one from which the public sector reporting entity must analogize.*

(b) *The authority of the issuer or author — A source issued by an accounting standard setter in its own jurisdiction is likely to be more relevant than a source issued by others in the same jurisdiction.*

(c) *The continued relevance of the source — The passage of time may diminish the relevance of certain sources.*

(d) *The development process for the source — A source developed after extensive consultation and debate is likely to be more relevant than a source developed without such discipline."*

PS1150.10 "PSAB considers a source to be consistent with the concepts in paragraph PS 1150.05(b) when the guidance in that source is compatible with the (i) qualitative characteristics of financial information, (ii) the elements of financial statements, and (iii) the recognition and measurement criteria in paragraph PS 1150.05(b)."

PS1000.58 "In the absence of appropriate public sector recognition and measurement criteria for intangibles, all intangibles, including those that have been purchased, developed, constructed or inherited in right of the Crown, are not recognized as assets in government financial statements. The intangible often called "human capital" that embodies the talent or intellectual capital of government employees is not recognized as an asset under existing accounting principles."

PS3210.03 "Assets are economic resources controlled by a public sector entity as a result of past transactions or events and from which future economic benefits are expected to be obtained."

PS3210.04 "Assets have three essential characteristics:

(a) *They embody future economic benefits that involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows, or to reduce cash outflows.*

(b) *The public sector entity can control the economic resource and access to the future economic benefits.*

(c) *The transaction or event giving rise to the public sector entity's control has already occurred."*

Issue: Can the IESO adopt the guidance in ASC 980 *Regulated Operations*?

In accordance with PS2120.02, the IESO can reflect the economic impacts of rate regulation only if it is considered that the change of accounting policy would result in a more appropriate presentation of events or transactions in the financial statements of the government. As mentioned in the Agenda ref. 9A of the IASB meeting of February 2017[2], rate regulated entities have long argued that, without recognizing regulatory assets and regulatory liabilities, the entity's performance is distorted by the rate regulator's intervention in the imposition of performance obligations on the entity and the timing of cash flows from the ratepayers.

[2] http://www.ifrs.org/Meetings/MeetingDocs/IASB/2017/February/AP09-Rate-regulated-Activities.pdf

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The recognition of regulatory assets and liabilities would better reflect the economic substance of IESO's operations and enhance the transparency and accountability of its financial reporting. For example, during the period from 2007 to April 2013 the IESO incurred costs relating to the Smart Meter Program amounting to $90.9 million, and these costs were expensed and are included in the accumulated deficit. In the absence of applicable regulatory accounting under PSAS, the IESO was unable to recognize a regulatory asset for this charge, despite receiving a rate order to recover it over the period from May 1, 2013 to October 31, 2018. Should the IESO choose to adopt ASC 980, a regulatory asset for the Smart Metering Charge would be recognized at December 31, 2016 for an amount of approximately $21.6 million, which would represent the remaining unamortized amount that would have been reported if the asset was recognized originally in 2013.

PSAS does not address accounting concepts in a rate regulated environment. Since there is no guidance in PSAS regarding the recognition and measurement of regulatory assets and liabilities, IESO may consider other sources based upon PSAS 1150.05 in the GAAP hierarchy to determine appropriate accounting policies in a rate regulated environment.

Within AcSB, Accounting Standards for Private Enterprises (ASPE) defines a rate regulated entity but provides no guidance on regulatory assets and liabilities however requires disclosure of such balances if they are recognized. IASB has not completed their project on rate regulated activities and current standards only include a holding standard based upon what was done under previous GAAP. It will be important for the IESO to monitor the IASB's ongoing project on rate regulated activities as this may affect the recognition, measurement, presentation and disclosures of the regulatory assets and liabilities. Both FASB and GASB have guidance on accounting in a regulatory environment. IPSASB does not provide any guidance on accounting by rate regulated entities.

It is important to note that rate regulated entities in Canada that prepare their general purpose financial statements in accordance with US GAAP (e.g. Hydro One and Ontario Power Generation), ASPE (e.g. the three Fortis subsidiaries in Ontario), as well as those rate regulated entities that are eligible to elect to apply the requirements of IFRS 14 and elected to do so when they adopted IFRS (e.g. over 60 LDCs in Ontario), generally all recognize regulatory deferral and variance accounts in accordance with US GAAP accounting principles set out ASC 980 *Regulated Operations*.

Statement 62 issued by GASB in December 2010 is effective for financial statements for periods beginning after December 15, 2011. The objective of the Statement is to incorporate into the GASB's authoritative literature certain accounting and financial reporting guidance that is included in the Financial Accounting Standards Board (FASB) Statements and Interpretations issued on or before November 30, 1989, which does not conflict with or contradict GASB pronouncements. Paragraphs 476–500 may be applied to activities reported in business-type activities that have regulated operations that meet all of the three criteria in paragraph 476 as follows:

(a) The regulated business-type activity's rates for regulated services provided to its customers are established by or are subject to approval by an independent, third-party regulator or by its own governing board empowered by statute or contract to establish rates that bind customers.

(b) The regulated rates are designed to recover the specific regulated business-type activity's costs of providing the regulated services.

(c) In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume that rates set at levels that will recover the regulated business-type activity's costs can be charged to and collected from customers. This criterion requires consideration of anticipated changes in levels of demand or competition during the recovery period for any capitalized costs.

The criteria above and the guidance in paragraphs 476-500 are based on ASC 980 *Regulated Operations*.

It is also important to note that in its statement of financial position, the Ontario Electricity Financial Corporation ("OEFC"), which reports under Canadian public sector accounting standards, recognizes a net unamortized liability balance for power purchase contracts, as detailed in the summary of significant accounting policies:

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"The liability for power purchase contracts was originally calculated by discounting estimated losses over the life of the contracts. Under the *Electricity Restructuring Act, 2004*, OEFC began receiving actual contract prices for power from electricity consumers, effective January 1, 2005, and no longer incurs losses on these power purchase contracts. At that time, the Ministry of Finance estimated that the bulk of the liability would be eliminated over 12 years as existing electricity contracts expire. As a result, the bulk of the liability is being amortized to revenue over that period."

Although this liability is not defined as a regulatory liability in the OEFC's financial statements, the argument can be made that it substantively meets the definition under ASC 980 of a regulatory liability, as the OEFC had no further obligation and should have reversed the liability into income. After consultation with the AG at that time, it was decided to amortize the gain over the remaining term of the contracts.

In summary

Rate regulated entities in North America reporting under US GAAP, ASPE, IFRS (entities which have elected to use IFRS 14) and GASB generally all recognize regulatory deferral and variance accounts in accordance with US GAAP accounting principles based on ASC 980 *Regulated Operations* (see Appendix B for the accounting framework used by the Canadian rate regulated entities).

Evaluation of Other Sources of GAAP

When looking to other sources of GAAP, PSAS requires the other sources of GAAP to be evaluated

1. *as to whether they are consistent with accounting policies and disclosure within PSAS,*
2. *as to whether they are consistent with the application of concepts in PS 1000 and*
3. *as to all of the following criteria:*
   - *(a) Source deals with the specific circumstance*
   - *(b) Source is issued by an accounting standard setter*
   - *(c) Source continues to be relevant*
   - *(d) Source uses a consultative process and deliberation when developing policies*

As required by PS 1150.05(b), we need to analyze whether the concepts in the other source (i.e. ASC 980) are compatible with the (i) qualitative characteristics of financial information, (ii) the elements of financial statements, and (iii) the recognition and measurement criteria in PS 1000.

(i) Qualitative Characteristics of Financial Information

FASB	PSAS 1000	Evaluation
Concepts and objectives are for both business and non-business organizations as well as governmental units (Concept #4.3 to 4.5)	Public, legislators, councilors, investors, analysts, other governments (par. 14)	FASB considers governmental units
Financial reporting should: – Be useful in making resource allocation decisions – Be useful in assessing services and ability to provide services – Be useful in assessing management stewardship and performance – Provide information about economic resources, obligations, net resources and changes in them (Concept # 4.33-.54)	Financial statements should be relevant to the needs of the users and reliable. Relevance is achieved through timeliness, predictability and accountability value. Reliable information has the following characteristics: representational faithfulness, completeness, neutrality, conservatism and verifiability. (par. 28-29)	Similar

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(ii) Elements of Financial Statements

FASB	PSAS	Evaluation
Assets		
Probable future economic benefits obtained or controlled by the entity as a result of past transactions or events. (Concept #6.25-.34)	Economic resources controlled by a government as a result of past transactions or event and from which future economic benefits are expected to be obtained. (par. 35)	Essential characteristics similar
Liabilities		
Probable future sacrifices of economic benefits arising from present obligations of the entity to transfer assets or provide services in the future as a result of past transactions or events. (Concept #6.35-.43)	Present obligations to others arising from past transactions or events, the settlement of which is expected to result in the future sacrifice of economic benefits with little or no discretion to avoid settlement. (par. 44)	Essential characteristics similar
Revenues		
Inflows from delivering or producing goods, rendering services or other activities that constitute the entity's central operations. (Concept #6.78-.79)	Increases in economic resources resulting from operations, transactions and events of the accounting period. (par. 46)	Similar
Expenses		
Outflows from delivering or producing goods, rendering services or carrying out other activities that constitute the entity's central operations. (Concept # 6.80-.81)	Decreases in economic resources resulting from operations, transactions and events of the accounting period. (par. 49)	Similar

(iii) Recognition Criteria

FASB	PSAS	Evaluation
To be recognized, an item must meet the definition of an element of the financial statements, must be measurable with sufficient reliability, be relevant and be reliable. (Concept # 5.64)	Item must have an appropriate basis of measurement, a reasonable estimate can be made of the amount and if the item involves obtaining or giving up future economic benefits, it is expected those benefits will be obtained or given up. (par. 55)	Similar

(iii) Measurement Criteria

FASB	PSAS	Evaluation
Measurement basis dependent upon nature of item. Historical cost basis, replacement cost, market value. (Concept # 5.65-.70)	Primarily using historical cost basis. Replacement cost and realizable value are also used, but in limited circumstances. (par. 60)	Similar

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Criteria of PS 1150.08

Criteria	Evaluation
Source deals with the specific circumstance	Yes, ASC 980 Regulated Operations
Source is issued by an accounting standard setter	Yes, FASB
Source continues to be relevant	Yes, still used by rate regulated entities
Source uses a consultative process and deliberation when developing policies	Yes, comprehensive consultative process and deliberation

Evaluation whether regulatory assets meet the definition of Assets as per Section PS3210

PS3210 defines assets as *"economic resources controlled by a public sector entity as a result of past transactions or events and from which future economic benefits are expected to be obtained."* (par. 03)

The analysis of the three essential characteristics as defined by PS3210.4 are analyzed in the next table.

Characteristics	Additional guidance	Comments
They embody future economic benefits that involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows, or to reduce cash outflows. (par. 4(a))	The essence of assets are their future economic benefits. Assets embody future economic benefits that allow public sector entities to achieve their objectives. The future economic benefits embodied in assets involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows or to reduce cash outflows. (par. 11) The future economic benefits embodied in an asset may also be in the form of generating future cash inflows. Cash inflows benefit the public sector entity because cash can be used to purchase or to provide goods and services, redistribute wealth or settle liabilities. (par. 13)	The economic benefit embodied in the variance accounts (i.e regulatory asset) is the right to collect the incurred costs from ratepayers in order to settle the liability for the energy already consumed by the ratepayers. The electricity Act, 1998 ("EA") section 25.33(1) states: *"The IESO shall, through its billing and settlement systems, make adjustments in accordance with the regulations that ensure that, over time, payments by classes of market participants in Ontario that are prescribed by regulation reflect,* *a) amounts paid to generators, the Financial Corporation and distributors, whether the amounts are determined under the market rules or under section 78.1, 78.2 or 78.5 of the Ontario Energy Board Act, 1998; and* *b) amounts paid to entities with whom the IESO has a procurement contract, as determined under the procurement contract."*
The public sector entity can control the economic resource and access to the future economic benefits. (par. 4(b))	Economic resources can arise from, but are not limited to, the following: government's own legislation (for example, taxes, fines and penalties); (par. 08(c)) A public sector entity controls the economic resource and access to the	The economic resources is the right created by the legislation that the energy costs IESO incurs will result in future cash flows. In the regulatory environments, incurring costs creates an enforceable right to set rates at a level that permits

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	future economic benefits when it: a. can benefit from the economic resource through its capacity to provide goods and services, to provide future cash inflows or to reduce cash outflows; b. can deny or regulate access to those benefits by others; and c. is exposed to the risks associated with the economic resource. (par.16)	IESO to recover those costs. The adjustment of future rates is the mechanism the OEB uses to implement the right. Currently, the EA section 25.33(5) states: *"The IESO shall establish and maintain such variance accounts as may be necessary to record all amounts payable or receivable by it under this section."* The legislation would be amended to permit IESO to collect specifically the deferral of the energy costs and the related interest and administrative costs.
The transaction or event giving rise to the public sector entity's control has already occurred. (par.4(c))	It is the occurrence of a past transaction or event on or before the financial statement date that distinguishes a present economic resource controlled by a public sector entity from an economic resource that may be controlled by a public sector entity in the future. (par. 25) The past transaction or event that gives rise to control of an economic resource resulting from exchange agreements or contracts usually occurs at the point of exchange. This arises when substantially all the benefits and risks of ownership have been transferred to the public sector entity and normally coincides with the disbursement of funds, exchange of other assets or assumption of liabilities. (par. 26)	The past event giving rise to IESO's control occurs as the energy cost is incurred, as IESO has a right to collect it from the ratepayers.
Conclusion: The right to collect the deferral of the energy costs and the related interest and administrative costs meets the definition of assets.		

When concepts are in conflict with PSAS then PSAS prevails (PS 1150.12). For example, PSAS does not recognize intangible assets (PS 3150.03, .14 and PS1000.58). So if regulatory assets are considered to be intangible assets, they would not be allowed to be recognized through another source of GAAP.

It is worth noting that the economic impacts of rate regulation are not recognized under US GAAP as intangible assets as the FASB has specific guidance to deal with this type of asset. It is also worth noting that the IASB has an ongoing project on rate regulated activities and are currently developing an accounting model based on the principles of IFRS 15 *Revenue from contracts with customers* to provide a principle-based framework for recognizing regulatory assets (see Agenda Ref. 9 for the IASB meeting on February 23, 2017). Furthermore, the Summary Comment Letter Analysis related to the ED/2009/8 on Rate Regulated Activities published by the IASB in July 2009 states on page 2 of 50:

"The International Financial Reporting Interpretations Committee ("IFRIC") observed that it had previously discussed whether a regulatory asset should be recognized in the context of service concession arrangements, either as deferred costs or as an intangible asset to reflect an expectation that the entity will

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recover these costs as part of the price charged in future periods. It had concluded that entities applying IFRSs should recognize only assets that qualified for recognition in accordance with the IASB's *Framework for the Preparation and Presentation of Financial Statements* and relevant accounting standards, such as IAS 11 *Construction Contracts*, IAS 18 *Revenue*, IAS 16 *Property, Plant and Equipment* and IAS 38 *Intangible Assets*."

Entities that are not eligible to elect to apply the requirements of IFRS 14 do not recognize regulatory assets because in 2009 the IFRIC determined they did not meet the criteria for recognition of an intangible asset under IAS 38.

Therefore, we can conclude that ASC 980 is NOT in conflict with PS 3150.03, .14 and PS1000.58 with respect to intangible assets.

Conclusion:
FASB is appropriate to use as "*other source of GAAP*". FASB standard ASC 980 has extensive guidance for rate regulated entities including the recognition of regulatory assets and use of rate regulated accounting by IESO would be consistent with current reporting practices of H1, OPG and OEFC.

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Appendix A:

Extract from the "DECISION and ORDER issued by the OEB on March 28, 2013" available on the IFRS website

Proceeding on the Ontario Energy Board's own motion to review the options for and ultimately determine the appropriate allocation and recovery of the Smart Metering Charge pursuant to section 19 of the Ontario Energy Board Act, 1998.

THE BOARD ORDERS THAT:

Effective May 1, 2013, the Smart Metering Entity charge to be levied and collected by the Smart Metering Entity from all Distributors identified in the Board's annual Yearbook of Electricity Distributors shall be $0.788 per month for each Residential and General Service <50kW customers for each distributor. The Smart Metering Entity charge shall be in effect from May 1, 2013 to October 31, 2018. The number of Residential and General Service <50kW customers to which the Smart Metering Entity charge will be applied to shall be in accordance with the methodology set forth in the Settlement Agreement attached as Appendix A.

http://www.ontarioenergyboard.ca/oeb/_Documents/EB-2012-0100/dec_order_IESO-SME_20130328.pdf

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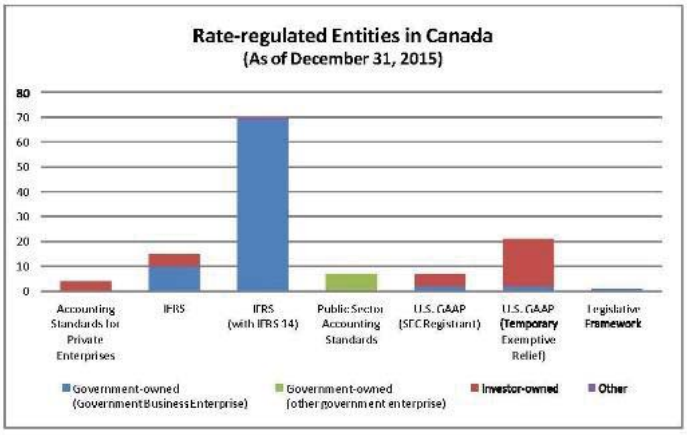
Appendix B:

Extract from the "Accounting Standards Advisory Forum Agenda Ref: 3A dated September 29, 2016" available on the IFRS website

Canadian Rate-regulated Entities

18. The accounting framework landscape for Canadian rate-regulated entities is currently diverse. For annual periods beginning on or after January 1, 2015, rate-regulated entities that are Canadian publicly accountable enterprises are required to apply IFRS. Rate-regulated entities that adopted IFRS for the first time after IFRS 14 *Regulatory Deferral Accounts* was issued continue to recognize these balances. Government Business Enterprises (which operate to generate a profit or on a break-even basis) that are also rate-regulated entities are also directed to apply standards applicable to for-profit entities, and thus apply IFRS. Canadian securities legislation permits dual-listed entities (i.e., Canadian entities also registered with the U.S. Securities and Exchange Commission) to apply U.S. GAAP in the normal course. Temporary exemptive relief is also available from the Canadian Securities Administrators that permits rate-regulated entities that are not dual-listed to apply U.S. GAAP in place of IFRS. If a rate-regulated entity is not a publicly accountable enterprise or a Government Business Enterprise, additional accounting framework options may also include Accounting Standards for Private Enterprises or Public Sector Accounting Standards. A non-GAAP reporting framework is used when legislated by the provincial owner of a government-owned rate-regulated entity.

19. As of December 31, 2015, there were approximately 125 rate-regulated entities in Canada. These entities mainly range in size from small entities owned by municipal governments to large investor-owned entities or entities owned by provincial governments.



Source: Information compiled based on audited financial statements for fiscal year 2015, or information from rate filings that confirmed the accounting framework used by these entities. Due to data collection constraints, the population could be slightly larger.

20. The chart above highlights two key points:

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(a) The majority of investor-owned entities have chosen U.S. GAAP over IFRS. A few entities that are not reporting issuers apply Accounting Standards for Private Enterprises. Both U.S. GAAP and Accounting Standards for Private Enterprises permit the recognition of balances arising from rate regulation. Several entities that apply U.S. GAAP have told us this choice was influenced by the need to provide their users with financial statements that accurately reflect the economics of their business. Further, some entities presently using the temporary exemptive relief described in paragraph18 have said they are considering incurring the cost and effort necessary to become a registrant of the U.S. Securities and Exchange Commission in order to have the permanent ability to apply U.S. GAAP. While such a decision could be primarily for business reasons such as the entity expanding its operations into the U.S., it could also be attributed to the continuing uncertainty about the ultimate outcome of the IASB's Rate-regulated Activities project and the approaching expiry date of the securities regulators' exemptive relief.

(b) Public sector entities that are Government Business Enterprises tend to apply IFRS. The majority of these entities is made up of several large provincially-owned utilities, and many small municipally-owned local distribution utilities that do not issue debt or list in the U.S. stock market, and are not subject to Canadian securities legislation. As a result, they cannot apply U.S. GAAP. As shown in the chart, many of these entities adopted IFRS for the first time after the IASB issued IFRS 14, which allowed them to continue their previous accounting practices for rate-regulated activities.

21. Within the pool of government-owned rate-regulated entities, there are entities that do not meet the characteristics of Government Business Enterprises and are required to apply Public Sector Accounting Standards.

22. The data on the different accounting frameworks in Canada is unique. It demonstrates that when given a choice, rate-regulated entities select an accounting framework that captures the effects of rate regulation on their financial position and financial performance in order to communicate more decision-useful information to users.

http://www.ifrs.org/Meetings/MeetingDocs/ASAF/2016/September/1609-ASAF-03A-Rate-regulated-Activities-Canada.pdf

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White Paper on the Province's proposed Global Adjustment Smoothing Account

Below is a summary of IESO's preliminary views on the implementation of the Province's proposed Global Adjustment Smoothing Account.

Understanding that the finalization of the legal terms, the financing structure and other detailed terms will take several months and will involve collaboration between legal counsel, parties involved and other stakeholders, this letter is intended to provide the guideline and framework which could form the foundation of the plan.

Issues being considered in this document are:

Issue #1: Can the IESO recognize deferral or variance accounts related to the annual Global Adjustment Smoothing Account as a regulatory asset on its statement of financial position?

Issue #2: Can the IESO derecognize the deferral or variance accounts related to the Global Adjustment Smoothing Account upon sale to the OPG Trust?

1. Recognition of regulatory assets (deferral and variance accounts)

Background and Assumptions for issue #1

The facts, circumstances, and assumptions relevant to the specific transactions are as follows:

1. The IESO's legal status is a not-for-profit, non-taxable, corporation established pursuant to Part II of the *Electricity Act, 1998*. IESO is classified as an Other Governmental Organization and prepares its financial statements in accordance with Canadian public sector accounting standards (PSAB).
2. IESO is rate regulated by the OEB in accordance with the Electricity Act, 1998 and the Ontario Energy Board ("OEB") Act, 1998 but currently does not recognize the economic impacts of rate regulation in its general purpose financial statements.
3. The IESO is required to obtain approval from the OEB under s. 25(1) of the Electricity Act, 1998 for the approval of its own expenditures, revenue requirement and fees. The last rate approval was obtained on December 29, 2016[1].
4. The OEB issued a Decision and Order on March 28, 2013 that permits IESO to recover the MDMR costs (the Smart Metering Charge) (see Appendix A). *(i.e. Costs incurred in the past will be fully recovered through future rates)*
5. Furthermore, in accordance with the *Electricity Act, 1998* and the *OEB Act, 1998*, the IESO has approved variance accounts to record all amounts payable or receivable by it in connection with the amounts paid to generators, the Financial Corporation, distributors and to entities with whom the IESO has a procurement contract. (i.e. costs incurred in the past will be fully recovered through future rates)
6. The province is contemplating deferring the recovery of a portion of the annual Global Adjustment Smoothing Account (comprised primarily of the electricity costs paid to the generators) over a period of 25-30 years, so that costs incurred would be fully recovered through future rates.
7. The *Electricity Act, 1998* and the *OEB Act, 1998* would be amended through legislation to require the deferral of the recovery of the Global Adjustment Smoothing Account and the future recovery in rates charged to customers.

[1] http://www.rds.ontarioenergyboard.ca/webdrawer/webdrawer.dll/webdrawer/rec/556699/view/Dec_Order_IESO_20161229.PDF

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8. The OEB would grant generic deferral or variance accounts to capture the difference between the amounts paid to generators and others, and the amounts collected in rates. Furthermore, the interest and ancillary costs related to the contemplated transaction would also be included in future rates charged to customers. In summary, the legislation would create a right to collect the incurred cost.

9. The IESO would change its accounting policies to permit the recognition of the economic impacts of rate regulation as from the 2016 financial year. IESO would adopt the guidance of ASC 980 *Regulated Operations* to better reflect the economic substance of its operations and enhance the transparency and accountability of its financial reporting.

Appropriate Accounting Principle for issue #1

ASC 980 Regulated Operations

- 980-10-15-2 *"The guidance in the Regulated Operations Topic applies to general-purpose external financial statements of an entity that has regulated operations that meet all of the following criteria:*

  (a) The entity's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party regulator or by its own governing board empowered by statute or contract to establish rates that bind customers.

  (b) The regulated rates are designed to recover the specific entity's costs of providing the regulated services or products. This criterion is intended to be applied to the substance of the regulation, rather than its form. If an entity's regulated rates are based on the costs of a group of entities and the entity is so large in relation to the group of entities that its costs are, in essence, the group's costs, the regulation would meet this criterion for that entity.

  (c) In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume that rates set at levels that will recover the entity's costs can be charged to and collected from customers. This criterion requires consideration of anticipated changes in levels of demand or competition during the recovery period for any capitalized costs."

- 980-10-20 Glossary, Definition of incurred costs *"A cost arising from cash paid out or obligation to pay for an acquired asset or service, a loss from any cause that has been sustained and has been or must be paid for."*

- 980-10-05-8 *"Unless an accounting order indicates the way a cost will be handled for rate-making purposes, it causes no economic effects that would justify deviation from the GAAP applicable to business entities in general. The mere issuance of an accounting order not tied to rate treatment does not change an entity's economic resources or obligations. In other words, the economic effect of regulatory decisions—not the mere existence of regulation—is the pervasive factor that determines the application of GAAP. 980-340 – Other Assets and Deferred Costs."*

- 980-340-25-1 *"Rate actions of a regulator can provide reasonable assurance of the existence of an asset. An entity shall capitalize all or part of an incurred cost that would otherwise be charged to expense if both of the following criteria are met:*

  (a) It is probable (as defined in Topic 450) that future revenue in an amount at least equal to the capitalized cost will result from inclusion of that cost in allowable costs for rate-making purposes.

  (b) Based on available evidence, the future revenue will be provided to permit recovery of the previously incurred cost rather than to provide for expected levels of similar future costs. If the revenue will be provided through an automatic rate-adjustment clause, this criterion requires that the regulator's intent clearly be to permit recovery of the previously incurred cost.

  A cost that does not meet these asset recognition criteria at the date the cost is incurred shall be recognized as a regulatory asset when it does meet those criteria at a later date."

- 980-340-40-1: *"If at any time an entity's incurred cost no longer meets the criteria for the capitalization of an incurred cost (see paragraph 980-340-25-1), that cost shall be charged to earnings."*

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- 980-350-50-1: *"In some cases, a regulator may permit an entity to include a cost that would be charged to expense by an unregulated entity as an allowable cost over a period of time by amortizing that cost for rate-making purposes, but the regulator does not include the unrecovered amount in the rate base. That procedure does not provide a return on investment during the recovery period. If recovery of such major costs is provided without a return on investment during the recovery period, the entity shall disclose the remaining amounts of such assets and the remaining recovery period applicable to them."*
- 980-340-55-2: *"In some cases, a regulator may approve rates that are intended to recover an incurred cost over an extended period without a return on the unrecovered cost during the recovery period."*
- 980-340-55-3: *"The regulator's action provides reasonable assurance of the existence of an asset (see paragraph 980-340-25-1). Accordingly, the regulated entity would capitalize the cost and amortize it over the period during which it will be allowed for rate-making purposes. That cost would not be recorded at discounted present value. An exception to this general rule is provided for costs of abandoned plants."*

Issue #1: Can the IESO recognize deferral or variance accounts related to the annual Global Adjustment Smoothing Account as a regulatory asset on its statement of financial position?

US GAAP includes special accounting provisions that are applicable to entities with activities that are subject to rate regulation (see White Paper - Adoption of the Guidance in ASC 980 Regulated Operations). The result is that rate regulated entities are required to recognize regulatory assets and liabilities provided the following three criteria are met:

Criteria	Comment	Evaluation
The entity's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party regulator or by its own governing board empowered by statute or contract to establish rates that bind customers.	IESO has unrecognized variance accounts related to the MDMR (smart meters), that have been approved by the OEB in accordance with the Electricity Act and the OEB Act (see Appendix A). It is important to note that Hydro One and OPG are both consolidated into the province's books, are both regulated by the OEB and their respective regulatory assets and liabilities are reported in the province`s books.	Met
The regulated rates are designed to recover the specific entity's costs of providing the regulated services or products.	Currently, the rates approved by the OEB are designed to recover the IESO's costs of providing the regulated services and the pass-through related to the energy purchased from the generators. The contemplated transaction is based on the fact that the OEB would grant generic deferral or variance accounts to capture the difference between the amounts paid to generators and others, and the amounts collected in rates. Furthermore, the interest and ancillary costs related to the contemplated transaction would also be included in future rates charged to customers. In summary, the legislation would create a right to collect the incurred costs.	Met

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In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume that rates set at levels that will recover the entity's costs can be charged to and collected from customers. This criterion requires consideration of anticipated changes in levels of demand or competition during the recovery period for any capitalized costs."	Since the deferral or variance accounts would be sold to the OPG Trust at least on a monthly basis and cash would be received on the same day, this criteria would be met. This criteria would need to be monitored on a yearly basis to ensure that IESO and the OPG Trust would be able to recover the future deferred amount taking into account the levels of demand or competition during the recovery period.	Met
Conclusion: The three criteria would be met.		

Conclusion: Based on the assumptions mentioned above, IESO should be able to recognize a regulatory asset for the deferral of the annual Global Adjustment Smoothing Account. As mentioned in the ASC 980 guidance above, it is important that an accounting order be issued by the OEB which indicates the way the incurred costs would be handled for rate-making purposes as the OEB's action provides reasonable assurance of the existence of a regulatory asset.

2. Derecognition of regulatory assets (deferral and variance accounts)

Background and Assumptions for issue #2

The facts, circumstances, and assumptions relevant to the specific transactions are as follows:

1. The annual Global Adjustment Smoothing Account that would be deferred in the deferral or variance accounts (the "Asset") would be significant.
2. The IESO does not currently have the financial capability to finance the Asset and is contemplating selling the Asset to a Trust to be set-up by OPG (the "OPG Trust").
3. The OPG Trust would be consolidated by OPG.
4. Proposed terms of the sale agreement between the IESO and the OPG Trust:
   - The sale contract would be structured as an absolute sale, which would assign future economic benefits or cash flows related to the Asset exclusively to the OPG Trust.
   - The arrangement would be structured whereby there is no recourse or obligations remaining of IESO related to the Asset.
   - The arrangement is not considered to be a financing transaction as IESO would have no obligations to the OPG Trust after the Asset is sold to the OPG Trust.
   - IESO would not retain any rights or benefits from the Asset.
   - IESO would not have any rights to interest or penalties on the Asset once it has been transferred to the OPG Trust.
   - The contract would be clear that IESO cannot pledge the Asset as collateral to obtain future cash flows or financing.
   - IESO would continue to collect related cash flows on the OPG Trust's behalf and remit those cash flows to the OPG Trust without material delay. In addition, IESO would not be entitled to reinvest such cash flows, except for investments in cash or cash equivalents during the short settlement period from the collection date to the date of required remittance to the OPG Trust, and interest earned on such cash and cash equivalents is passed to the OPG Trust. The contract would define IESO's role strictly as that of agent, under a pass-through arrangement.
   - Servicing, origination, and arrangement fees, would be collected by IESO in rates charged to ratepayers as part of its market dealings.
   - The Asset would be sold to the OPG Trust at least, on a monthly basis and cash would be received on the same day.

Appropriate Accounting Principles for issue #2

Public Sector Accounting Standard ("PSAS") 3210, *Assets*, defines an asset as "*... economic resources controlled by a government as a result of past transactions or events and from which future economic benefits are expected to be obtained.*" [par. 3]

.04 *"Assets have three essential characteristics:*

(a) they embody future economic benefits that involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows, or to reduce cash outflows;

(b) the public sector entity can control the economic resource and access to the future economic benefits; and

(c) the transaction or event giving rise to the public sector entity's control has already occurred."

.22 *"Control of an economic resource and of access to the future economic benefits are essential characteristics of an asset, whereas possession or ownership is not."*

.24 *"A public sector entity may act as trustee when it administers trusts on behalf of the beneficiaries specified in the agreement or statute. As trustee, the public sector entity merely administers the assets, following the terms*

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and conditions set out in the agreement. It does not control the asset because it does not have access to the future economic benefits. Those benefits flow to the beneficiaries."

As noted in PS1000 Financial statement concepts:

.37 *"An item is not an asset of a government if it lacks one or more of the essential characteristics listed in the preceding paragraph. Thus, for example, an item does not qualify as an asset of a government if the item involves:*

(a) no future economic benefit;

(b) future economic benefit, but the government cannot obtain it; or

(c) future economic benefit that the government may obtain, but the events or circumstances that give the government control of the benefit have not yet occurred."

As noted in PS3450, derecognition of a financial liability:

.042 *"A government should remove a financial liability (or part of a financial liability) from its statement of financial position when, and only when, it is extinguished (i.e., when the obligation specified in the contract is discharged or cancelled, or expires)."*

.043 *"A financial liability (or part of a financial liability) is extinguished when the debtor either:*

(a) discharges the liability (or part of it) by paying the creditor, normally with cash, other financial assets, goods or services; or

(b) is legally released from primary responsibility for the liability (or part of it) either by process of law or by the creditor. (When the debtor has given a guarantee, this condition may still be met.)"

.046 *"Payment to a third party, including a trust (sometimes called "in-substance defeasance"), does not, by itself, relieve the debtor of its primary obligation to the creditor in the absence of legal release."*

.047 *"If a debtor pays a third party to assume an obligation and notifies its creditor that the third party has assumed its debt obligation, the debtor does not derecognize the debt obligation, unless the condition in paragraph PS 3450.043(b) is met. If the debtor pays a third party to assume an obligation and obtains a legal release from its creditor, the debtor has extinguished the debt. However, if the debtor agrees to make payments on the debt to the third party or direct to the original creditor, the debtor recognizes a new debt obligation to the third party."*

Issue #2: Can the IESO derecognize the deferral or variance accounts related to the annual Global Adjustment Smoothing Account upon sale to the OPG Trust?

PS3210 does not specifically address the derecognition of a regulatory asset as the concept of a regulatory asset does not exist under PSAS.

As mentioned above, regulatory assets do not meet the definition of intangible asset or financial asset. Specifically, regulatory assets do not meet the definition of financial asset because they are imposed on customers through the tariff (i.e., imposed by the OEB) and do not represent a right to receive payments from another party as a result of a contract.

More generally, PSAS.3210.37 suggests that an asset would no longer be recognized when it fails to meet the definition of an asset.

Based on PS1000.37(b), an item does not qualify as an asset of a government if the item involves future economic benefit, but the government cannot obtain it.

Based on the assumptions mentioned above, the legal title of the Asset would be transferred to the OPG Trust, as well as, ALL risks and rewards, including the following:

- the contract would define IESO's role strictly as that of agent, under a pass-through arrangement;
- all cash flows related to the Asset would be transferred without material delay to the OPG Trust;
- rights to interest or penalties on the Asset would be for the benefits of the OPG Trust;
- IESO cannot pledge the Asset; and
- no recourse or obligations remaining of IESO related to the Asset.

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IESO should also evaluate whether the sale of the Asset should in fact be considered as a borrowing arrangement. In the absence of detailed guidance on this subject, we can analogize to the guidance in PS3450 *Financial Instruments* for the derecognition of a financial liability. Par. 43 states that *"A financial liability (or part of a financial liability) is extinguished when the debtor is legally released from primary responsibility for the liability (or part of it) either by process of law or by the creditor. (When the debtor has given a guarantee, this condition may still be met.)"* Based on the assumptions mentioned above, since the legal title of the Asset would be transferred to the OPG Trust, as well as, ALL risks and rewards, it can be concluded that the sale of the Asset is not a borrowing arrangement.

Conclusion: Based on the proposed terms of the sale agreement between the IESO and OPG Trust mentioned above, the deferral or variance accounts would be derecognized at the point where the IESO would derive no future economic benefit from it. This would occur where the IESO ultimately transfers the rights, risk and rewards related to those deferral or variance accounts to the OPG Trust. This would occur on the receipt of cash from the OPG Trust.

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Appendix A:

Extract from the "DECISION and ORDER issued by the OEB on March 28, 2013" available on the IFRS website

Proceeding on the Ontario Energy Board's own motion to review the options for and ultimately determine the appropriate allocation and recovery of the Smart Metering Charge pursuant to section 19 of the Ontario Energy Board Act, 1998.

THE BOARD ORDERS THAT:

Effective May 1, 2013, the Smart Metering Entity charge to be levied and collected by the Smart Metering Entity from all Distributors identified in the Board's annual Yearbook of Electricity Distributors shall be $0.788 per month for each Residential and General Service <50kW customers for each distributor. The Smart Metering Entity charge shall be in effect from May 1, 2013 to October 31, 2018. The number of Residential and General Service <50kW customers to which the Smart Metering Entity charge will be applied to shall be in accordance with the methodology set forth in the Settlement Agreement attached as Appendix A.

http://www.ontarioenergyboard.ca/oeb/_Documents/EB-2012-0100/dec_order_IESO-SME_20130328.pdf

Ontario

OPG Memo

ONTARIO POWER GENERATION

February 27, 2017

Mr. Serge Imbrogno
Deputy Minister,
Ministry of Energy
4th Floor, Hearst Block
900 Bay Street
Toronto, Ontario
M7A 2E1

Dear Deputy:

Below is a summary of OPG's preliminary views on the implementation of the Province's proposed Global Adjustment Smoothing Account and financing structure. These views are contingent on the proposed terms and conditions that were sent to the Ministry of Energy on February 21, 2017.

Understanding that the finalization of the legal terms, the Trust indentures, financing structure and other detailed terms will take several months and will involve collaboration between legal counsel, input from capital markets, parties involved and other stakeholders, this letter is intended to provide the guideline and framework which could form the foundation of the plan.

Please do not hesitate to contact me if you have any questions regarding this summary.

Sincerely,

Mr. Ken Hartwick
Chief Financial Officer and Senior Vice President, Finance
Ontario Power Generation
W: 416-592-6985
C: 647-544-6985
ken.hartwick@ opg.com

cc. Jeff Lyash, President and CEO, OPG

Background:

The Province has indicated that it will take steps to reduce electricity bills in the near term. It has identified reductions in the Global Adjustment Charge (GAC) charged to electricity customers as a means to achieve its policy goals. The Province is proposing to temporarily reduce the amount of the GAC charged to electricity customers (primarily RPP-eligible customers). The exact quantum and duration of the program is still not known but based on discussions with the Province GAC charges of approximately $2-5B per year for the next 5-10 years would be deferred and collected over future periods commencing after the deferral period. A combination of senior debt and subordinated debt (mainly sourced by additional equity from the shareholder) would be issued to fund the amount deferred. The financing cost of the debt and other costs of running the program would form part of the amounts recovered from customers over the term of the program.

The Province has requested that OPG administer the GAC deferral, because of OPG's participation in the market, regulatory knowledge and the potential ability to consolidate the activity and accounting with OPG. Given the significant amount of financing required for the GAC deferral, OPG has developed a financing structure (depicted below) to:

- restrict the risk to OPG;

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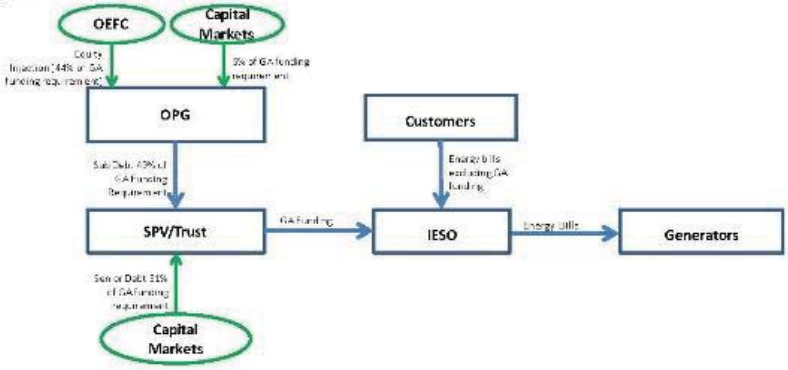
- maximize the cost-effectiveness of the Trust or the Special Purpose Vehicle ("SPV") financing vehicle; and
- allow for consolidation into OPG financial statements.

The success of this structure is dependent on achieving a number of objectives which are reviewed in the following sections:

A. Ability to Recognize an Asset and Record Revenue
B. Ability to Consolidate the SPV into OPG
C. Ability to Finance
D. External Assessment
E. Risk Summary

All of the percentages shown in the graphic below are indicative and will be highly dependent on the legislation that the Province will enact:



Process:

The IESO will effectively sell the 'right to collect' deferred future revenue from ratepayers (GA Recovery Right asset) to the SPV in return for cash proceeds. In order for the SPV to purchase this asset the SPV will obtain the financing from two key sources: 51% directly from capital markets and 49% as subordinated debt from OPG. OPG will obtain 44% of this financing as an equity injection from the Province and 5% from capital markets.

A. Ability to Recognize an Asset and Record Revenue

Accounting Requirements under International Financial Reporting Standards (IFRS)

1) It is our understanding that the IESO and KPMG have concluded that the sale of this 'right to collect' future revenue (or regulatory asset) is not a financing transaction and will not be recorded as a financial liability. Based on that conclusion, the right to collect will be accounted for as an intangible asset in the SPV.

2) In order to the SPV to record this right as an intangible asset, the right must meet the following conditions:
   - The intangible asset must be separable and arise from a contractual or legal right (i.e. mandated by the Legislation and SPV Indenture Agreement).
   - The SPV must have the control and power to obtain future economic benefits from the intangible asset.
   - The SPV must be able to demonstrate that the intangible asset is purchased at fair value.

3) In order for the SPV to recognize appropriate revenue to offset any ongoing costs, the Legislation must require interest, carrying and administrative costs to be paid to the SPV on a monthly basis. This may result in additional amounts to be deferred to achieve the desired customer impact. Payment of revenue to the SPV is also important to service the interest expenses of the debt.

B. Ability to Consolidate the SPV into OPG under IFRS

OPG 'Control' of the SPV - Accounting Requirements

1) In order to meet the accounting definition of 'control', accounting guidance must be considered. There are no bright lines to determine whether OPG has exposure, or rights, to variable returns from its involvement with the SPV, or whether it has the ability to affect the returns of the SPV through its power over the SPV. Rather, all facts and circumstances are considered when assessing whether an entity has control over another entity. Based on the relevant accounting guidance under IFRS, OPG has proposed terms necessary to demonstrate that OPG has control over the SPV. OPG's external auditors, Ernst & Young, has provided their concurrence that based on the information provided to them to date that the following conditions should permit consolidation of the SPV by OPG.

Directive:

1. The SPV must be undertaken by OPG as a business initiative on its merits. A Shareholder Directive is to be limited to direct OPG to investigate the option of establishing a SPV vehicle to administer, finance and operate the Global Adjustment plan. The control, risk and rewards of that SPV will determine its consolidation into OPG as a business enterprise.

SPV:

2. The SPV should not operate in a predetermined way such that OPG does not have decision-making authority over the SPV's ongoing activities after its formation (i.e. should not operate on 'autopilot').
3. OPG must have the ability to appoint and remove the Trustee (or Board of Trustees), with no veto right by the Province. No party shall have the ability to remove OPG from its role and authority in the SPV.
4. The Province cannot have the right to veto OPG's decisions about the relevant activities of the SPV. OPG must have the power over the relevant activities of the SPV and be compensated. The relevant activities of the SPV include (but are not limited to) the evaluation and decisions on financing alternatives, duration, and the strategy to minimize financing costs. OPG must have the power to establish operating and capital budgets of the SPV.
5. OPG must have the power to determine or change operating and financing policies of the SPV, which will affect the variability of risks and returns.
6. The Province or its agencies must not directly or indirectly fund (through debt or equity) more than 50% of the following:
    - The SPV
    - Any of OPG's investments in the most subordinated debt of the Trust
7. OPG must own greater than 50% of the most subordinated debt and targeted to be no less than 5%[1] of the total debt of the SPV. Such ownership must be financed entirely by OPG through operating cash flows or external debt, without assistance from Provincial sources. A quantitative analysis should be performed at a later date to corroborate the appropriateness of the 5% threshold to support that the 5% subordinated debt investment is sufficient to absorb most of the expected variability in the SPV.
8. OPG must have the ability to earn variable returns by exercising its authority, which shall be accomplished as follows:

[1] While the rest of the letter refers to a 10% investment in the most junior subordinated debt with OPG owning 5%, it should be noted that OPG should own more than 50% of the most subordinate debt. For simplicity, the degree to which OPG's ownership beyond 50% is not shown in this letter.

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a. The cash flow from the restructured asset shall include interest determined based on a relevant benchmark that is appropriate relative to the restructured asset, plus an appropriate margin consistent with the relevant market and other risks
b. OPG shall have the authority to determine the financing strategy, which will vary the financing costs with the objective of enabling the SPV to achieve a more favourable return compared to the return from the restructured asset
c. The SPV shall establish classes of liabilities (senior, subordinated and the most subordinated). The classes would allow the SPV to delineate financing of lower risk investment and investment that would bear higher residual risk. The delineation would limit OPG's self-funded investment to a reasonable level in order to allow OPG to remain a self-sustaining entity.
d. OPG shall, through its ownership of the most subordinated liability, be able to capture and retain the pricing difference between cost of financing and benchmark for interest on the restructured asset, or any residual risk of restructured asset. The targeted return of the subordinated liability should be reflective of the underlying risks and compensate holders for active management that would be required.
e. OPG should participate in the detailed design of the above and the SPV documentation to ensure that it has substantive power and variability, which will allow OPG's Board of Directors to evaluate the opportunity as a business initiative instead of through a shareholder directive.

Nothwithstanding the above, under certain Defined Forced Majeure for emergency events (e.g. unlikely credit market event or disruption where it is not possible to borrow from the market at a reasonable rate), the OEFC may provide bridge financing beyond the designated percentage for a defined period. The relevant terms should ensure that this temporary measure does not detract from the rights of OPG to direct all of the relevant activities of the SPV. Additionally, OPG should not be protected from risk of loss by the OEFC with respect to its subordinated investment, nor should it lose its right to derive the residual returns should such bridge financing be required.

Legislation

9. The Legislation must require interest, carrying and administrative costs to be paid to the SPV on a monthly basis, so that the SPV is able to recognize appropriate revenue to offset any ongoing costs.
10. The Legislation must dictate the manner in which the restructured asset would be determined, collected, and the period of collection, so that the determination of the restructured asset will not be subject to the Province's decisions on an ongoing basis, but determined based on a formula. Alternatively, the Legislation may allow for an adjustment to the pre-determined deferral formula based on specific parameters that would limit the adjustment to the restructured asset. Adjustments beyond the specific parameters would require approval by the Board of Trustees.
11. The Legislation must be written to avoid legal or constitutional challenges and be irrevocable to reduce the cost of borrowing and with a specific formula which determines the deferral amount. As irrevocability would be difficult under Canadian law one mitigation would be to provide a Provincial guarantee which only applies with cancellation or amendment of the legislation.
12. The spirit of the above terms should be reflected in the SPV Indenture Agreement as well as Legislation, wherever possible.

2) The Trust is expected to be financed as follows:
- 51% senior secured debt from external markets
- 39% senior subordinated debt from OPG (via Province equity injection into OPG)

- 10% junior subordinated debt from OPG (5% from external markets and 5% from Province equity injection into OPG).

When assessing control, an investor shall consider the nature of its relationship with other parties and whether those parties are acting on the investor's behalf (i.e. they are 'de facto agents'). If OPG is assessed to be a 'de facto agent' of the Province, it will compromise the ability for OPG to consolidate the Trust. The split above is to meet the following conditions to ensure that OPG is not considered a 'de facto agent' of the Province:

- The Province or its agencies must not directly or indirectly fund (through debt or equity) more than 50% of the following:
  - The Trust
  - Any of OPG's investments in the most subordinated debt of the Trust
- OPG must own greater than 50% of the most subordinated debt and targeted to own no less than 5% of the total debt of the Trust. Such ownership must be financed entirely by OPG through operating cash flows or external debt, without assistance from Provincial sources.

3) The Province will need to conclude on whether OPG still meets the definition of a Government Business Enterprise as defined under Public Sector Accounting Board standards in order to obtain the preferred consolidation treatment after the transaction. We also recommend that the Province to undertake the analysis deemed necessary to confirm the accounting treatment in its consolidated Public Accounts, including if the recognition of the intangible asset would result in an offsetting liability in the Public Accounts.

C. Ability to Finance

Property Right or Right to Collect
Legislative Requirements for Financing
The GA Recovery Right must be structured to encompass the following elements:

- Right to recover from and bill Ontario electricity customers for (1) the principal amount of GA that is being deferred, (2) all interest and other financing costs incurred in respect of the deferral of the GA, (3) all fees, expenses and other administrative costs associated with such financing;
- Repayment/amortization schedule as agreed by the IESO and any purchaser of such GA Recovery Right (or pursuant to a pre-defined schedule/formula that covers all of the purchaser's principal, interest and ongoing financing costs on a monthly basis);
- Repayment/amortization schedule must include a true up mechanism to ensure all costs associated with the deferral can be recovered from customers;
- IESO may dispose of the GA Recovery Right, provided that any such disposition shall be a true sale and absolute transfer to the purchaser of the IESO's right, title and interest in and to the GA Recovery Right;
- Purchaser will have the right to require the IESO (or any successor) to collect the principal amount of GA Recovery Right, together with interest, financing and administration costs, on the agreed repayment/amortization schedule;
- Right must be irrevocable and, if amended by future governments, debt holders have the right of action against the government to recover the amount outstanding including interest, fees, expenses and any damages resulting from the amendment;
- GA Recovery Right will not be subject to any set-off, counterclaim or other defence by the IESO or any successor or affiliated entity; and
- Make certain amendments to the Electricity Act to allow OPG to implement the SPV financing structure (e.g. allowing OPG to create subsidiaries and holding companies, and to have a beneficial interest in the SPV, etc). This would provide flexibility to accommodate possible variations to the financing structure that may be desirable over time.

Detailed legislative requirements are specified in the attachments as follows:

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Attachment 1 Legislative requirements to allow deferral of global adjustment amounts to be financeable

Attachment 2 Statutory amendments

The proposed financing structure for the SPV is:

	Risk Profile	Source	% of Total Funding Requirements
Tranche A Senior Debt	The least risky	Capital Markets	51%
Tranche B Sub Debt	In between A&C	OPG via OEFC	39%
Tranche C Sub Debt)	The most risky	OPG via OEFC	5%
		OPG via Capital Markets	5%

SPV structure is used to accomplish the following:

- SPV holds right to charge customers for the benefit of debt holders;
- Allows the financing vehicle to be ring-fenced from OPG as an SPV structure is set up as generally single purpose entities with no other operations that could add risk to the SPV, dilute debt holder rights, allow parties from other operations to claim rights to the future recovery from customers or allow these other parties to initiate bankruptcy proceedings;
- Enables SPV to potentially get a higher credit rating than OPG;
- Supports consolidation with OPG provided accounting requirements are satisfied;

This approach supports a number of objectives of the GA Recovery Right:

- 51% external senior debt supports separation of the SPV from the Province
- 5% junior subordinated debt establishes OPG's "at risk" equity which supports separation of the SPV from the Province
- Subordinated debt provides flexibility to the financing structure and additional credit support to external debt holders
- Subordinated debt sourced from OPG (mainly funded by equity injection from the Province) minimizes impact on OPG credit metrics reducing risk of an OPG rating downgrade that could result in the SPV being consolidated directly with the Province as the SPV would be considered an arm of the Province.

Recent transactions used as precedents are:

Duke Energy Florida Project Finance LLC
June 2016
5 series of bonds totalling USD$1.3B
Weighted average life from 2 to 19 years with interest rates from 1.2% to 3.1%
Credit rating AAA

Utility Debt Securitization Authority
Sponsored by Long Island Power Authority
March 2016
Amount issued USD$0.6B
Weighted average life of 12 years and weighted average yield of 2.7%

August 2016
Amount issued USD$0.5B
Weighted average life of 7 years and weighted average yield of 2.0%

Credit rating AAA

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Cumulative outstanding (including previous issuances): USD$4.2B

D. External Assessment

Shakerhill Partners, an external advisor, identified the following items in an assessment of the structure and financeability of the structure:

- The structure is financeable however there are a number of significant risks to the structure:
  - Canadian and Ontario law does not provide the same protection to property right as exists in the US federal and state constitutions to limit the ability of governments to adversely impair contracts to the detriment of the holder;
  - Legislation could mitigate some of the risks – deferred recovery asset to be "uncapped", regular semi-annual true up to ensure recovery, Province provides sufficient committed liquidity to the IESO so that temporary shortfall in recovery does not affect payments to SPV, term of the deferral recovery substantially exceeds the longest maturity of debt of the SPV and that true-up mechanism take account of potential for currency, interest rate and duration mis-match between the debt of the SPV and the recovery mechanism;
  - Size of the program may be too large for Canadian securitization market requiring access to the US securitization market;
- Final maturity of debt should not exceed 30 years from inception of the program
- True up mechanism should be designed such that the forecast of recovery is less than 10% of the customer bill under downside scenarios to limit growth of the deferral balance as a higher portion of the customer bill increases the political risk to debt holders which could result in a lower credit rating and potential impact on financeability
- Securitized debt products are specialized and price at a premium to other fixed rate instruments however a successful program supported by a strong credit rating this premium could shrink over time to a minor spread over Provincial debt
- OPG's credit rating should be maintained provided sufficient equity is injected to maintain credit metrics
- While the structure is not expected to impact the Province there are risks that the program could negatively impact the rating agencies view of the Province's financial management.

E. Risk Summary

i. Consolidation

- Elements of the proposed structure were established to support consolidation of the SPV into OPG. These items may not be sufficient to establish OPG as risk owner of the SPV and the SPV may need to be consolidated directly with the Province.

ii. Financeability

- The legislation establishing the structure and the property right for recovering the financing and associated costs may not be adequate for financing purposes resulting in more expensive financing or an inability to obtain the required external financing.

iii. Cost of Financing

- Future governments may enact legislation that changes the right of the SPV to recover amounts from customers.
- The right to recover amounts from future customers must be irrevocable and subject to full recovery from the government in the event that future governments reduce or eliminate the recovery. A legal structure that is weaker than the precedent US transactions increases the risk to debt holders and the cost of financing.
- Interest rates on bonds in the securitization market are higher than equivalent rated bonds. Rate for a AAA securitization credit is about 50 bps higher than GOC (rated AAA) for a 5 year term. This difference is attributable to the specialized structure of the bond, smaller investor pool for this bond, smaller size of the market and higher perceived risks of the bond.
- Any regulator involvement must not be seen to modify any terms of debt issued or the property right securing the debt as this would increase risk to debt holders.

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- It may not be possible to issue debt to match the terms of the deferred asset so shorter term debt would be used which raises risk to re-finance the maturing debt as the market may no longer be interested in this product. As well, underlying reference interest rates may be higher and the market may require a higher spread to invest in this product.
- With the GA Recovery Right program continuing for 10 years, debt issued over this period is subject to changes in both the underlying reference interest rates and appetite of the market for this product.

iv. OPG Credit Rating

- Minimizing the impact of significant additional debt on OPG's credit rating is dependent on higher EBITDA arising from earned income on the GA Recovery Right in excess of external debt. Ability of the SPV to record revenue reflecting the growth in asset value.
- Potential OPG credit rating downgrade if legislative structure is not adequate to support long term recoverability, inability to record revenue from growth in asset value or agencies view equity injection as debt.
- OPG credit rating downgrade could result in loss of GBE status or result in SPV being consolidated directly with the Province.

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Attachment 1

LEGISLATIVE REQUIREMENTS TO ALLOW DEFERRAL OF GLOBAL ADJUSTMENT AMOUNTS TO BE FINANCEABLE

The IESO currently has a right to collect GA monthly from ratepayers through provisions in the *Electricity Act, 1998*. It is proposed that collection of a certain portion of the monthly GA be deferred for collection in the future, and that the right to recover the deferred GA from ratepayers be used as a basis for structured financing/securitization.

The current proposal is for a trust to be created as a financing vehicle (the "**Trust**") in connection the deferred GA. The Trust will finance the deferral of the GA by purchasing the right to recover such deferred GA from the IESO for the principal amount of the GA being deferred. For example, if the amount of GA that is being deferred is $200 million in a given month, the Trust will purchase from the IESO the right to future recovery of the deferred GA and the associated financing costs (including interest and transaction costs) for $200 million in cash.

The Trust is expected to finance these purchases from the IESO through a combination of senior secured financing raised in the capital markets and subordinated financing from OPG (the funding for which will mostly be from equity injections from the OEFC/Province).

For accounting purposes, OPG will need to have the ability to direct the activities of the Trust, through a services agreement and/or through the Trust's constating document.

Based on securitized financing raised by utilities in the US (backed by utility cost recovery orders) and the current regulatory framework in Ontario, the legislation in Ontario would need to be amended to provide the following, at a minimum:

1. The IESO will be empowered to create an asset (the "**Regulatory Asset**") consisting of all right, title and interest in and to:

   (a) right to recover from and bill Ontario electricity ratepayers for:

   (i) the principal amount of GA that is being deferred for collection;
   (ii) all interest and other financing costs incurred in respect of the deferral of the GA (whether through senior debt raised in the public markets or subordinated debt raised from OPG or others); and
   (iii) (subject to the comments in paragraph 5 below in respect of OPG's internal administrative costs only) all fees, expenses and other administrative costs associated with such financing, including up-front and ongoing financing costs and any indemnity payments;

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all on such repayment/amortization schedule as agreed by the IESO and any purchaser of such right (or pursuant to a pre-defined schedule/formula in the legislation that covers all of the purchaser's principal, interest and ongoing financing costs on a monthly basis); and

(b) all revenues, collections, claims, rights to payments, money or proceeds arising from the rights and interests set out in paragraph (a) above, regardless of whether such revenues, collections, claims, rights to payments, money or proceeds are imposed, billed, received, collected or maintained together with or commingled with other revenues, collections, rights to payments, payments, money or proceeds.

2. The IESO may dispose of the Regulatory Assets created from time to time on such terms as the IESO determines in accordance with the terms of directives to be issued to the IESO from time to time by the Minister, provided that any such disposition shall be a true sale and absolute transfer of the IESO's right, title and interest in and to a Regulatory Asset to the purchaser of the Regulatory Asset.

3. The Regulatory Assets will not be subject to any set-off, counterclaim or other defence by the IESO or any successor or affiliated entity thereof.

4. The legislation will need to recognize the Regulatory Assets as amounts that may be recovered by the IESO (e.g. it could be designated as a "GA Deferral" and would be included in the amounts collectible by the IESO through the GA collection mechanism, and would include interest and financing costs).

5. The purchaser of the Regulatory Asset will have the right to require the IESO (or any successor) to collect the principal amount of GA deferred, together with interest, financing and administration costs, on the agreed repayment/amortization schedule. **[NTD: In the LIPA securitization rate order, if the entity that is authorized to collect rates to service the bonds ends up defaulting, there is the ability to request a court to order "sequestration" and payments of amounts owing to the owner of the Regulatory Asset. Consider whether to include a similar right here. Alternatively, consider whether a security interest over the moneys collected by the IESO could be provided to the purchaser.]**

OEB would be provided with oversight over the internal administrative costs collected by the Financing Trust. This could be accomplished by (a) providing the purchaser of the Regulatory Asset with the right to require

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the IESO or a successor to collect only the principal amount of GA together with interest and financing costs and third party fees and expenses, and (b) requiring the IESO to collect amounts through the global adjustment and make payments to the purchaser of the Regulatory Asset with respect to the internal administrative costs incurred by the purchaser in connection with the purchase and management of the Regulatory Asset and the Financing Trust, in accordance with the order of the OEB then in effect. Under this mechanism, the OEB would be required to review the purchaser's internal administrative costs through a streamlined process and issue such orders in accordance with rules to be prescribed under a new regulation under the OEB Act, which would clearly limit the OEB's scope of review and could establish the basis for the purchaser to receive an appropriate fee for its services.

6. In the event that any action is taken or permitted by the Province or any regulatory authority that limits, alters, or impairs the value of a Regulatory Asset or reduces the ability of the IESO or the purchaser of the Regulatory Asset to collect or recover the costs associated therewith, the owner of the Regulatory Asset and the holders of any bonds or other securities issued to finance the purchase of the Regulatory Asset, will have a right of action against the Province for any damages suffered as a result of such amendment.

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Attachment 2

STATUTORY AMENDMENTS

The following is preliminary and is based on our current understanding of the proposed structure and objectives. For example, we have assumed that the structure will not entail the insertion of a new Holdco between OPG and the Province. As these aspects are refined, some of the suggested amendments described below may not be needed and other aspects that we are not aware of may need to be considered. Accordingly, these suggested amendments are provided for discussion purposes and are subject to change. We would welcome the opportunity to work with OPG and the Ministry on refining the scope and substance of required legislative and regulatory amendments.

A. Amendments to Implement Structure

Certain *Electricity Act, 1998* amendments would be needed to implement the anticipated structure (which we understand, as noted above, would not include a Holdco), as follows:

- **Section 53.1(1):** Amend to permit owning and operating generation facilities through subsidiaries (not only directly through OPG). In addition, amend to permit OPG to administer, manage, loan moneys to and have a beneficial interest in, if applicable, Financing Trust.

- **Section 53.2:** Amend to permit the Minister to acquire, hold, dispose of or otherwise deal with securities or debt obligations of, or any other interest in, OPG or any subsidiaries. This is to accommodate possible variations to the financing structure that may be desirable over time.

- **Section 53.■ (new):** New statutory section to permit the Minister to enter into arrangements relating to an exercise of powers under 53.2.

- **Section 53.■ (new):** New statutory section providing that creditors of Financing Trust have no recourse to the assets of OPG or any of its subsidiaries (other than Financing Trust, if applicable). In addition, consideration should be given as to whether the Act should be amended so that the Financing Trust cannot be wound up or liquidated.

B. Miscellaneous Corporate Items to Address

- **OPG Articles:** Amend the OPG's articles to remove the private company restrictions.

- **MOA with Province:** Consider whether any amendments to OPG's MOA with the Province are required to contemplate the Financing Trust.

C. Amendments Under Electricity Act to Implement GA Smoothing

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Based on our understanding that the global adjustment smoothing mechanism is intended to benefit residential and small business customers only and that the Minister will be responsible for determining how much global adjustment smoothing is to be applied in a given month, if any, amendments to the *Electricity Act, 1998* and Ontario Regulation 429/04 (Adjustments Under Section 25.33 of the Act) would be needed to implement the mechanism, as follows:

(i) Electricity Act:

- **Section ■ (New):** Establish a new power for the Minister to make directives to the IESO in relation to the global adjustment smoothing mechanism and, particularly, for purposes of establishing global adjustment smoothing amounts from time to time (expected to be monthly). To the extent possible, the directive power should be drafted so as to limit the ability for a future Minister to require the IESO to do anything that would materially and adversely affect the Financing Trust or its lenders. **[NTD: While our understanding is that the Minister would direct this, we note from other materials we have seen that OPG may instead be recommending a formula approach. It is not clear what the formula would look like, where it would be set out or how it would be applied and by whom]**

- **Paragraph 25.33(1):** This section says that IESO shall make adjustments in accordance with the regulations to ensure that, over time, payments by prescribed classes of market participants reflect amounts paid to OPG, OEFC and distributors, as well as amounts paid to entities with whom IESO has a procurement contract. Add new subsection (c) so as to require IESO to ensure that, over time, payments by prescribed classes of market participants also reflect amounts paid to Financing Trust. **[NTD: Not certain this is needed if only to benefit residential and small business consumers, who are not market participants. May be needed in reference to payments from distributors and retailers]**

- **Paragraph 25.33(2):** This section says that distributors and retailers shall make adjustments in accordance with the regulations to ensure that, over time, payments by prescribed classes of consumers reflect amounts paid to OPG, OEFC and distributors, as well as amounts paid to entities with whom IESO has a procurement contract. Add new subsection (c) so as to require distributors and retailers to ensure that, over time, payments by prescribed classes of consumers also reflect amounts paid to Financing Trust.

- **Note**: As described below, the regulation will need to include new requirements for the IESO to record the global adjustment smoothing amounts in one or more variance accounts and to use those amounts to offset amounts otherwise recorded in the variance accounts under Section 25.33(3) of the Act. For context, we note:

    - Section 25.33(3) says that adjustments under (1) or (2) relating to electricity consumed by consumers whose rates are determined by

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the OEB under s. 79.16 of the OEB Act (i.e. RPP Customers) shall instead be made in accordance with the regulations to one or more variance accounts established and maintained by the IESO.

- Section 25.33(4) says IESO, distributors and retailers shall make and receive such payments, set-offs and credits as may be required or permitted by the regulations with respect to consumers described in (3), i.e. RPP Customers.

- Section 25.33(5) says that IESO shall establish and maintain such variance accounts as may be needed to record all amounts payable or receivable by it under 25.33.

(ii) O. Reg. 429/04 (Adjustments Under Section 25.33 of the Act):

- **Section 1(1):** Consider adding definitions for "Financing Trust" and "global adjustment smoothing amount" or such other terms as may be preferred.

- **Section 1.2(1) (New):** Add section providing that, for the purposes of this Regulation, the global adjustment smoothing amount for a month is the amount determined by the IESO in accordance with a directive from the Minister under section ■ of the Electricity Act in respect of the month. **[NTD: See above note re use of Minister directives]**

- **Section 1.2(2) (New):** Consider adding a section providing that the IESO shall publish the global adjustment smoothing amount for a month by no later than the 10th business day of the following month [to align with general publication requirements for global adjustment under s. 1.1(2)].

- **Section 10(1):** Amend formula for calculating Class B GA rate by subtracting the global adjustment smoothing amount for a month from "M", which is the total amount of the global adjustment for the month. The global adjustment smoothing amount could be designated as "X", such that the formula would be (M-X-N)/(P-Q). Define "X" as the global adjustment smoothing amount for the month as determined by the IESO in accordance with the Minister's directive under section ■ of the Electricity Act for the month. **[NTD: See above note re use of Minister directives]**

- **Section 10.1 (New):** Add new section to deal with adjustments under subsection 25.33(3) of the Act, i.e. in respect of RPP consumers. This section should require the IESO to establish, within the variance account(s) it maintains pursuant to subsection 25.33(3) of the Act, one or more subaccounts in which it shall record the global adjustment smoothing amounts applicable to the classes of consumers described in subsection 25.33(3) of the Act. This section must also specify that the IESO shall apply the amounts recorded in the subaccounts against the balances in the variance accounts for purposes of section 79.16(3) of the OEB Act.

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- **Note:** This is a key aspect because, when the OEB determines RPP rates, it must take into account the balances in the variance accounts established by the IESO under s. 25.33 of the Electricity Act and make adjustments with a view to eliminating the balances within 12 months. This proposed new section 10.1 causes the IESO to reduce (in the near term) the variance account balances by the global adjustment smoothing amounts, as provided by Financing Trust, thereby enabling the OEB to determine RPP rates that, despite being lower for RPP consumers in the near term, still eliminate the relevant variance account balances within 12 months.

- **Paragraph 11(2)2.ii:** Amend the formula for calculating the allocation of global adjustment for a month to a licensed distributor that is a market participant by subtracting the global adjustment smoothing amount for a month from "M", which has the same meaning as under section 10(1). The global adjustment smoothing amount could be designated as "X", such that the formula would be [(M-X-N) x (R+S-T)]/(P-Q). Define "X" as suggested under section 10(1).

- **Paragraph 11(2)3:** Amend the formula for calculating the allocation of global adjustment for a month to each Class B market participant by subtracting the global adjustment smoothing amount for a month from "M", which has the same meaning as under section 10(1). The global adjustment smoothing amount could be designated as "X", such that the formula would be [(M-X-N) x U]/(P-Q). Define "X" as suggested under section 10(1).

- **Paragraph 16(7)4:** Consider amending the description of "Global Adjustment" that is required to be included on certain invoices so as to inform consumers that their portion of the global adjustment for the month (i) may have been reduced by the application of a global adjustment smoothing amount from the Financing Trust, or (ii) may include amounts payable to the Financing Trust in respect of global adjustment smoothing amounts previously applied.

- **Section 20(1):** This section establishes an obligation for the Ontario Electricity Financial Corporation and every licensed distributor that is a market participant to give the IESO such information as the IESO may require for the purposes of the Regulation in the form specified by the IESO and before the expiry of the period specified by the IESO. Consider amending to extend this obligation to the Financing Trust.

- **Section 20(6):** This section provides that on request by the OEB, the IESO, a licensed distributor, an embedded generator, a retailer or the OEFC shall give the OEB such information relating to this Regulation as the OEB may require, in the form and within the period specified by the OEB. Consider amending to extend this obligation to the Financing Trust.

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D. Amendments Under OEB Act to Implement Cost Recovery for Financing Trust

Amendments to the *Ontario Energy Board Act*, including amendments to O. Reg. 95/05 (Classes of Consumers and Determination of Rates) and the introduction of a new regulation, would be needed to implement a cost recovery process for the Financing Trust in relation to the global adjustment smoothing mechanism, potentially with limited OEB oversight, as follows:

(i) Ontario Energy Board Act:

- **Section 78(3.3):** This provision establishes an obligation for the OEB, when determining rates for the retailing of electricity, to take into account balances in variance accounts established under section 25.33 of the Electricity Act and to make adjustments "with a view to eliminating those balances within 12 months or such shorter time periods as the Minister may direct." Consider whether any amendments are needed, and confirm this works with the framework being proposed.

- **Section 78.7 (New):** We understand that the Province may want the OEB to have an oversight role. One possible approach would be to establish a new statutory section establishing that the IESO shall make payments to the Financing Trust with respect to the internal administrative costs incurred by the Financing Trust in connection with the purchase and management of the Regulatory Asset and the Financing Trust. Such payments by the IESO would need to be made in accordance with the order of the OEB then in effect, which orders shall be made by the OEB in accordance with rules prescribed under a new regulation.

    - The new regulation would need to be clear that the OEB does not have jurisdiction to consider the principal amount or any interest, financing costs, third party fees or expenses. Rather, OEB's role would be limited to considering the internal administrative costs of the Financing Trust and ensuring the Financing Trust receives an appropriate fee for its services, all of which would be recovered by the Financing Trust from the IESO, which would collect those amounts in the global adjustment. Note that, if this approach is accepted, the IESO and distributors and retailers would need the authority to collect such amounts as part of the GA and IESO would need the authority to pay such amounts to the Financing Trust. As such, additional amendments would be needed under O. Reg. 429/04.

- **Note:** Section 79.16 of the OEB Act does not require changes, but the significance of this provision should be understood.

    - Section 79.16 gives the OEB responsibility for determining electricity commodity prices for eligible consumers. Eligibility is determined under Reg. 95/05 (Classes of Consumers and Determination of Rates), which is also known as the Regulated Price Plan (RPP) Regulation.
    - Section 4(2) of the RPP Regulation defines RPP-eligible consumers as low volume consumers (i.e. those who annually use less than 150,000 kWh

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or such other amount as prescribed), consumers with demand of 50 kW or less, residential consumers that have accounts with distributors, consumers who annually use 150,000 to 250,000 kW of electricity, and consumers who have accounts with distributors if in the farming business.

- Paragraph 6(1)3 of the RPP Regulation provides that "In determining the rates (for RPP-eligible consumers), the Board shall forecast the cost of electricity to be consumed by the consumers to whom the rates apply, taking into consideration adjustments required under section 25.33 of the *Electricity Act, 1998* and shall ensure that the rates reflect those costs."
- The Ontario Energy Board has developed a Regulated Price Plan Manual (revised February 16, 2016) to describe the processes and methodologies it uses for determining electricity commodity prices that are charged to RPP consumers pursuant to Section 79.16 of the OEB Act and paragraph 6(1)3 of the RPP Regulation.

(ii) O. Reg. 95/05 (Classes of Consumers and Determination of Rates)

- **Paragraph 6(1)3:** Amend so as to require the Board, when forecasting the cost of electricity to be consumed by the consumers to whom the rates apply, to take into consideration not only the adjustments required under section 25.33 of the Electricity Act but also the application or prior application of global adjustment smoothing amounts determined by the IESO in accordance with Minister directives under section ■ of the Electricity Act, and to ensure that the RPP rates reflect those amounts. **[NTD: See above note re use of Minister directives]**

(iii) New Regulation (Payments to the Financing Trust)

- If the OEB is to be given the role of reviewing and approving the recovery of OPG's internal administrative costs for the Financing Trust under the potential section 78.7 (see above), then this regulation should describe the process and criteria pursuant through which the OEB would determine the amounts that the IESO would be required to collect through the global adjustment, in accordance with section 25.33 of the Electricity Act, and pay to the Financing Trust in respect of the provision of global adjustment smoothing amounts. This part of the regulation should establish:

  - any reporting requirements from the Financing Trust and/or the IESO to the OEB in connection with the global adjustment smoothing mechanism;
  - the frequency of the OEB making determinations under this part of the regulation;
  - the process through which the OEB shall make these determinations, which should be a streamlined administrative process rather than a public hearing process or, if a hearing is needed, then the scope of the proceeding should be clearly and narrowly constrained so as to deter intervenor involvement, lengthy proceedings and reduce/eliminate risk to recovery by Financing Trust;

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- the basis for the OEB's determinations as to the payments that shall be made to the Financing Trust, which should specify that:
  - the Financing Trust shall recover its prudently incurred internal administrative costs on a forecast basis each year;
  - the Financing Trust shall receive an appropriate fee each year (with some guidance as to what would be appropriate); and
  - the approved payment amounts shall be collected by the IESO through the global adjustment and paid to the Financing Trust in accordance with the order of the OEB then in effect. Note that O. Reg. 429/04 would likely need amendments to permit IESO (and distributors and retailers) to collect these amounts through the global adjustment.

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BY E-MAIL & REGULAR MAIL

Mr. Patrick Monahan
Deputy Attorney General
Ministry of the Attorney General
720 Bay Street
8th Floor
Toronto, ON M7A 2S9

Dear Mr. Deputy Attorney General:

RE: Proposal to Reconfigure Global Adjustment Charges

You have asked for my opinion on the degree of constitutional risk if the government were to reconfigure the Global Adjustment Charge to residential and small business users so as to pay down the debt over 30 years instead of the current 20 year period. The 20 year period was designed to coincide with the duration of current contracts between ISEO and the relevant electrical generation companies. The 30 year period is the assumed useful life of 30 years of the relevant electricity generating equipment.

To the extent either the 1 to 20 year consumer group or the 20-30 year consumer group is subsidizing one or other, there will be a mismatch between the cost of facilities and those whom the facilities benefit, which may attract a constitutional challenge on the basis that the Global Adjustment has become a tax rather than a regulatory charge.

The degree of constitutional risk, in my opinion, is in direct proportion to the extent the government is **not** able to show a proper match between the cost of providing facilities

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for electricity generation and the group of consumers who benefit year to year from electricity generated by those facilities.

The legal principles applicable to regulatory charges are quite straight-forward (although there is not much jurisprudence in the area). The hurdle for the government in any constitutional challenge will be to assemble credible expert evidence to demonstrate that (1) indeed the relevant electricity generating facilities *do* have a useful life of 30 years or more, subject to maintenance and refurbishment costs, and (2) that the allocation of the Global Adjustment aligns, to the extent practicable, with the costs and benefits of the electricity generators and avoids cross-subsidization of current consumers by future consumers.

In terms of Risk Assessment, I understand the government has not yet obtained an expert opinion from outside experts on the expected economic lifetime of the electrical generators now subject to the Global Assessment. I suspect there may be difficulty in obtaining such a comprehensive opinion from credible experts for the reasons discussed below. On that basis, I would assess the current proposal as **moderately high risk**, defined as being an outcome difficult to predict because there are good arguments on both sides, but in the end the Supreme Court of Canada would be more likely than not to find *against* constitutional validity.

If the government were able to assemble the necessary expert evidence, of course, the risk would be re-assessed at a lower level, but how much lower depends on the quality of the expert evidence and the extent to which the Global Adjustment is shifted, i.e. reduced

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to current consumers at the expense of the back end (20 to 30 year) consumers, who are assumed to be still benefitting from the current generating equipment.

Overview

The Global Adjustment Charge reflects all of the fixed costs, including capital costs, of Ontario's electrical generation facilities subject to 20 year contracts[1], as well as the premium paid to renewal energy producers and the cost of conservation programs (such as subsidies to small scale manufactures to replace inefficient equipment with more efficient equipment). In 2016, the Global Adjustment Charge, allocated in different amounts to different classes of consumer, stood at $12.3 billion dollars.

Much of the Global Adjustment was necessitated by substantial capital investment promoted by the Province with financial incentives to reduce greenhouse gas emissions and decarbonize and modernize Ontario's electricity infrastructure.

The Global Adjustment paid by consumers is a regulatory charge. Residential and small business users [class B consumers] pay the Global Adjustment based on the volume of electricity they use each month. One of the requirements of a valid regulatory charge (as opposed to a tax) is that the person paying the charge either benefits from the facilities that are subject to the regulatory scheme or they create the need for (and benefit from) those facilities in the future.

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[1] Most generators in Ontario are on 20 year contracts. Assets with longer operating lives are provided longer term contracts in recognition of their extended benefit. These longer term assets are not part of the current proposal.

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The Ministry of Energy is concerned that the present allocation of the Global Adjustment over 20 years is "*front*-end loaded" in that the consumers in the initial 20 year period are paying upfront for facilities that will still be utilized to provide electricity to consumers in the 20-30 period who will, to that extent, get a free ride. There is an equal and opposite concern that by shifting costs to the 20-30 year customers, the government may in reality be disproportionality *back*-end loading the Global Adjustment with the effect that the 20-30 year users will be subsidizing the 1-20 year users.

Accordingly, the Ministry of Energy anticipates a constitutional challenge based on the shifting of a portion of the existing Global Adjustment charges from current users to the 20-30 year group.

The judges can be expected to be aware of the difficult political problem of high energy costs in Ontario, and will therefore take a careful look at the government's evidence in support of the re-allocation of the Global Adjustment.

The Elements of a Proper Regulatory Scheme

In *Westbank First Nation vs. British Columbia Hydro and Power Authority*, 1999 [3 SCR] 134 at para. 30, the Supreme Court of Canada grappled with the distinction between a tax, a user fee and a regulatory charge. This was said to depend on:

> ...whether the levy's primary purpose is, in pith and substance; (1) to tax, i.e. to raise revenue for general purposes; (2) to finance or constitute a regulatory scheme i.e. to be a regulatory charge or to be ancillary or adhesive to a regulatory scheme; or (3) to charge for services directly rendered i.e. to be a user fee

In a regulatory scheme, as stated, the regulator is expected to align costs and benefits. While this can rarely be done with precision, and the courts will defer to some extent to

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the regulator's attempt to approximate a "smoothing out" of the allocation of the costs associated with the regulatory scheme, nevertheless a court would have to be satisfied that the regulator is attempting in good faith to match the cost of facilities with the class of consumers who will benefit from the generation capacity of those facilities, or whose energy needs have required their creation. As Gonthier J. stated in *Westbank* at para. 28:

> **Finally, the individual subject to the regulatory charge will usually either benefit from the regulation, or cause the need for the regulation:** *Magnet*, supra at page 459. In *Allard*, supra, the gravel trucks caused the need for the repair to the roads; in *Ontario Home Builders*, supra, the developers and the new homeowners caused the need for the new schools. In both cases, the individuals being charged also benefited from the regulation. (emphasis added)

A levy will be held to be **a regulatory charge** where there is:

(i) A complete, complex and detailed code of regulation;

(ii) A regulatory purpose which seeks to affect some behaviour;

(iii) The presence of actual or properly estimated costs of the regulation; and

(iv) A relationship between the person being regulated and the regulation, where the person being regulated either benefits from, or causes the need for, the regulation.

See: *620 Connaught Limited vs. Canada (Attorney General)*, 2008 SCC 7, 2008 1 SCR 132 While each of these four elements would have to be addressed in the evidence, the third and fourth elements can be expected to be the most contentious.

On the other hand, a levy will be held to be **a tax** if it is:

(i) Enforceable by law;

(ii) Imposed under the authority of the legislature;

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(iii) Levied by a public body;

(iv) Intended for a public purpose; and

(v) Unconnected to any form of regulatory scheme.

Re: Eurig Estate, [1998] 2 SCR 565 at paras. 15 and 43. The anticipated constitutional challenge is expected to argue that the Global Adjustment imposed on the 20-30 year consumers is a direct tax beyond the legislative competence of the Province.

The Estimated Costs and Useful Life of the Generating Facilities

(i) "Smoothing" the Charges Over 30 Years

The Global Adjustment would be funded by loans. The OPG or OPG Trust would need to borrow an additional amount each year equivalent to the shortfall brought about by the reduction in the Global Adjustment charge to current consumers. If for example the OPG Trust were to borrow $2.2 billion dollars in the current year, and transfer that amount to ISEO, the need to impose a Global Adjustment for 2017 would be reduced by that amount, and the charge to the 2017 consumer would be lowered. However, the shortfall will have to be recouped from future consumers to repay the loan. In other words, the total debt shifted into the 20-30 year period would be increased by a like amount (plus accumulating interest). The court would require an explanation of how the debt is created, financed, and allocated year by year to year 30.

Of course the lower the amount of Global Adjustment allocated in the early years, the higher the borrowings that will have to be paid off in subsequent years and the greater the need to demonstrate that consumers in those later years will still benefit economically and proportionally from the current generating equipment.

Ontario

In the figures I have been shown, the borrowings necessary to defray part of the Global Adjustment otherwise to be imposed on Ontario Consumers in years 1 to 20 would peak around the midpoint of the 30 year period and thereafter decline to zero.

(ii) Impact of Projections of Potential Reductions in the Cost of Generating Electricity in years 1 to 20

The Ministry of Energy has projected electricity demand over the 30 year period. It is noted that if energy demand in Ontario is not as great in year 25 as predicted, there will be fewer consumers paying higher electricity bills than anticipated. Equally, of course, there could be developments (a drop in the price of natural gas for example) that will reduce the actual cost of generating electricity (as represented in the wholesale "spot" market). Such forecasts are inevitably somewhat speculative over this period. Such speculation is **not** relevant to the Global Adjustment analysis, in my opinion, because the Global Adjustment will be paid *in addition to* the cost of generation, whether the cost of generation is eventually shown to be higher or lower than anticipated. Declining costs would not affect the Global Adjustment levy, but would bring the overall burden on the consumer in year 25 below the currently anticipated level.

(iii) Useful Life of the Assets Financed by the General Adjustment

I am asked to assume that the bulk of the electricity generating assets have a useful life well beyond 20 years, but if (as expected) there is a challenge to the provincial re-allocation of the Global Adjustment, the Province will of course have to call expert evidence on that point.

Ontario

It may be a very complicated calculus to address the relative useful lifetimes of different types of electrical generators including wind, solar and biomass. There seem to be a number of question marks in this respect. Renewable energy technology is advancing rapidly. Prices of solar panels, it seems, have dropped over 20% in the last year. How much will 25 year old wind turbine technology be worth in 2040? Who can say? Developers of solar and wind power are obliged to put in place a "decommissioning" plan backed up (at least in some cases) by a performance bond. It will have to be established that the decommissioning is not triggered at the conclusion of the 20 year FIT plan (and the use of the land then restored to landowners). Much of Ontario's renewable energy facilities may have little economic value to consumers in the 20-30 year period, even though still able to produce electricity inefficiently.

If the government fails to establish that the relevant electricity generating assets will continue to perform economically over the 30 year period, thereby failing to justify the imposition of an amortization of current equipment cost over the extended 30 year period, or if the Global Adjustment Charge is in the opinion of the Court disproportionality backend loaded in light of that declining benefit to future consumers, the Global Adjustment will not qualify as a regulatory charge.

(iv) Impact of Choosing Option 1 (Residential Bills Lowered 25%), Option 2 (20%) or Option 3 (18%)

The choice of option is significant because the greater the reduction of bills to current residential consumers, the greater the debt load pushed onto future consumers, and the more the Ministry's 30 year projections will attract judicial scrutiny. I expect the

Ontario

Province's expert would have to concede that projections into the 20-30 year time frame are inherently speculative (as to the useful economic life of the current renewable energy technology for example).

The constitutional issue remains the same: can it be demonstrated that the Global Adjustment will match costs and benefits as closely as is practicable, and not operate as a cross-subsidy of present consumers, who are the source of considerable political pressure. Judges do, as we know, read newspapers. The more the debt load is pushed onto future consumers based on 20-30 year projections, the bigger the challenge to the Province's experts to satisfy a court that the reduction is based on sound economics and a realistic appraisal of the future value of the current electrical generation facilities. In short, the bigger the reduction in charges to current consumers, the greater the constitutional risk, in my opinion.

Conclusion

If it can be established that the underlying electricity generating assets have useful life-expectancies beyond the terms of their 20 year contracts, with the result that future consumers whose electricity needs require the existence of the electricity generating infrastructure put in place in the initial 1 to 20 year period, and who will benefit from the existence of that capacity, I believe a Court would, in those circumstances, conclude that the consumers in the 20 to 30 year period could constitutionally be required to share equitably and proportionately in the cost of financing the required assets.

The challenge, in my view, is not with establishing the legal principles. The problem will be to find leading experts to convincingly establish the necessary facts.

Ontario

I would be glad to expand on this analysis or respond to any questions.

Yours truly,

Hon. Ian Binnie, C.C., Q.C.

IB/pc/kb

Ontario

IESO Slide in Deck for Cabinet.rtf

From: Veinot, Cindy (TBS) []
To: Kim Marshall [Kim.Marshall@ieso.ca]
CC: Picard, Michel [mpicard@kpmg.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
Subject: IESO Slide in Deck for Cabinet
Date: Sunday, February 26, 2017 21:42:01

Re: the IESO slide that is included in the deck for tomorrow morning – the first bullet of issue #2 currently states:

"Rates are established by or are subject to approval by an independent, third-party regulator"

Given our discussion on this last call re: OEB not being considered independent of the Province, can you adjust the wording please and let Energy know.

Thanks,

Cindy

IESO related reg (info).rtf

From: Petsche, Nadine (TBS) []
To: Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]
CC: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
Subject: IESO related reg (info)
Date: Friday, June 09, 2017 06:25:01

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Suzie/Blake/LeeAnne,

Further to my update yesterday, for your reference please find below the reg (extract) as related to IESO’s borrowing. Nadine

(IESO: ELIGIBLE INVESTMENTS AND BORRO

IESO related reg (info).rtf

From: Petsche, Nadine (TBS) []
To: Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]
CC: Veinot, Cindy (TBS) (Cindy.Veinot@ontario.ca) [Cindy.Veinot@ontario.ca]
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Date: Friday, June 09, 2017 06:25:01

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(IESO: ELIGIBLE INVESTMENTS AND BORROWING)

1. Subsection 3 (2) of Ontario Regulation 280/14 is amended by adding the following paragraph:

5. To provide such funds as may be required for the purposes of the *Ontario Fair Hydro Plan Act, 2017*, including borrowing,

i. to fund IESO deferrals under section 23 of that Act, and

ii. to fund the activities in which the IESO is authorized or required to engage under that Act.

Commencement

2. This Regulation comes into force on the later of July 1, 2017 and the day it is filed.

IESO related reg (info).rtf

From: Petsche, Nadine (TBS) []
To: Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]
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Date: Friday, June 09, 2017 06:25:01

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Commencement

2. This Regulation comes into force on the later of July 1, 2017 and the day it is filed.

house note changes.rtf

From: Kim Marshall [Kim.Marshall@ieso.ca]
To: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
CC: Jordan Penic [jordan.penic@ieso.ca]
Subject: house note changes
Date: Thursday, August 31, 2017 15:20:21
Attachment 1: FHP HBN - August 21 2017 v1 ieso edits.doc
Attachment 2: Market accounts HBN - August 23 2017 v1 ieso edits.doc

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Happy to discuss

Kimberly Marshall | VP, Corporate Services & CFO

Independent Electricity System Operator (IESO) | T: (416) 969-6232 | C: (416) 545-7202

120 Adelaide Street West, Suite 1600, Toronto, ON M5H 1T1

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From: Jordan Penic
Sent: August 31, 2017 8:57 AM
To: Kim Marshall; Terry Young
Cc: Susan Nicholson
Subject: RE: Updated KMs and Q&As re: Accounting Changes

Kim,

Please find attached the TBS house book notes edited to reflect the messaging developed by the IESO. These notes get into more detail around accounting practices

than ours, so let me know if I have misunderstood anything with my edits.

Cheers,

Jordan

Jordan Penic | Senior Manager, Communications & Government Affairs

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Conservation: www.saveONenergy.ca | Twitter: saveONenergyOnt | LinkedIn: saveONenergy

From: Kim Marshall
Sent: August 31, 2017 8:18 AM
To: Jordan Penic; Terry Young
Subject: RE: Updated KMs and Q&As re: Accounting Changes

I would like to share with kpmg as fyi, but am ok doing that after ministry. Provincial controller followed up wit me yesterday so whatever you need let me know, thx

Kimberly Marshall | VP, Corporate Services & CFO

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From: Jordan Penic
Sent: August 30, 2017 9:30 PM
To: Terry Young; Kim Marshall
Subject: Updated KMs and Q&As re: Accounting Changes

The updated key messages and Q&A is attached (clean and tracked changes) incorporating the feedback from earlier today. Please let me know if you think I have missed anything.

Kim – earlier today you mentioned there may be some next steps in regards to KPMG, I believe that Michael Boll had flagged that as well. Can you advise on whether we need to engage them on anything in this document?

If we've landed on our messages we can use them to update the TBS messages, which I can do first thing in the morning. I will also need to share the KM and Q&A with the Ministry tomorrow.

Regards,

Jordan

Jordan Penic | Senior Manager, Communications & Government Affairs

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Confidential **Drafted: August 21, 2017**

FAIR HYDRO PLAN ACCOUNTING (GLOBAL ADJUSTMENT REFINANCING)

ISSUE: What is the basis for the proposed accounting for the Global Adjustment Refinancing on the Province's books?

CONTEXT: The Global Adjustment Refinancing is one component of the Fair Hydro Plan announced in March 2017, and is the most significant contributor to the reduction in hydro rates for residential consumers. The other parts of the Plan for residential consumers include: (a) expansion of the Ontario Electricity Support Program, (b) reductions in distribution rates for consumers in rural and remote areas, (c) reductions for First Nations residential consumers living on-reserve, (d) a fund set up to assist consumers in making their homes more energy efficient.

The only impacts on the 2016-17 consolidated financial statements from the Fair Hydro Plan is (d) the fund set up to assist consumers in making their homes more energy efficient, which was expensed in the year and increases the annual deficit. In addition, the 8% rebate on electricity bills, introduced as of January 1, 2017, while not part of the March 2017 announcement, also impacts the 2016-17 as an expense that increases the annual deficit.

KEY MESSAGES:

GA Financing Status and Structure

- In order to meet the needs of users, including the legislature and the public, for accountability in government reporting and decision making, it is essential that public sector financial statements reflect the economic substance of the government's activities.

- All of the agreements necessary for the Global Adjustment (GA) Refinancing are not yet complete. The final accounting for the GA Refinancing will be completed once all of the elements are complete. The balance of the note is based on the expected outcome. As previously noted, there is no impact on the 2016-17 consolidated financial statements from the GA Refinancing.

- In analyzing the appropriate accounting treatment for the GA refinancing component of the Fair Hydro Plan on the Province's consolidated financial statements in 2017-18 and forward, the Province considered authoritative guidance issued by the Public Sector Accounting Board, as well as the accounting assessments of the Independent Electricity System Operator (IESO) and Ontario Power Generation (OPG) management, including the accounting opinions of their external auditors.
- The complexity and unique structure of the GA Refinancing structure requires the use of professional judgment to ensure that key financial reporting objectives of transparency and accountability are best served.
- Under GA Refinancing, the Province will borrow funds to pay a portion of electricity costs charged by the electricity generators, thereby temporarily reducing the amount paid by eligible consumers (or ratepayers). The deferred amounts, including interest and other costs, will be recoverable from consumers/ratepayers in the future.
- Specifically, the Independent Electricity System Operator (IESO), a not-for-profit organization controlled by the Province, operates the IESO-administered markets, meaning that it makes payments to the electricity generators with cash received from the local distribution companies (and ultimately the consumers/ratepayers).
- Over the last 10+ years, payments have been made for major refurbishments to the electricity grid as well as the cost to move away from coal and to cleaner, but more expensive methods of electricity generation, including wind and solar. These payments were passed on to consumers/ratepayers as incurred or based on contractual payment terms, but not based on period of benefit. The GA refinancing acknowledges that the current generation has paid more than its share for these costs, and spreads these costs incurred out over more years.
- In simple terms, the IESO will continue to make payments to the electricity generators based on their contractual terms, but will collect less from the local distribution companies, as the consumers or ratepayers will pay a reduced amount. The

amount not collected from the consumers now, or the shortfall, will be collected from consumers/ratepayers in the future.

- The FHP Act permits the IESO sell that shortfall, also referred to in the Act as a regulatory asset, which represents the right to collect payments from consumers/ratepayers in the future, to a financing entity. To recap, the IESO will pay the electricity generators with cash collected from the local distribution companies for electricity consumed, but at a reduced rate, and cash received from the financing entity for the sale of the regulatory asset.

- The financing entity will be part of Ontario Power Generation (OPG Trust), a government business enterprise, wholly owned by the Province. The operations of Ontario Power Generation have been and will continue to be included in the consolidated financial statements of the Province using the modified equity method, the method Public Sector Accounting Standards (PSAS) require for government business enterprises.

- At its discretion, OPG Trust would purchase the shortfall amounts (or regulatory asset) through a combination of provincial borrowing (flowed through OPG as an equity investment), amounts advanced from OPG and direct borrowing from capital markets.

- In the future, when the consumers/ratepayers pay for the deferred amount or shortfall to the local distribution companies, those amounts will be used to repay the accumulated debt, whether that be direct borrowing from the capital markets, amounts advanced from OPG or provincial borrowing.

IESO Accounting

- There is no impact on the 2016-17 consolidated financial statements from the GA Refinancing. The GA refinancing is expected to impact the 2017-18 consolidated financial statements.

- In 2017-18, the shortfall or regulatory asset that the IESO incurs as a result of collecting less from the local distribution

companies than it pays to the electricity generators would be accounted for as a rate-regulated asset. The rate-regulated asset would then be sold to OPG Trust for cash used to pay the electricity generators.

- For 2016, IESO adopted the use of rate-regulated accounting to better reflect the economic substance of certain types of IESO expenses. This change is in line with accounting practices followed by (6 of 7) other independent system operators in North America; however, the impact to the financial statements of the Province was immaterial (impact on annual deficit of $24 million).~~For 2016, IESO adopted the use of rate-regulated accounting for costs incurred unrelated to the GA Refinancing; however, the impact to the financial statements of the Province was immaterial (impact on annual deficit of $24 million).~~

- PSAS is silent on the use of rate regulated accounting, however, like all major accounting frameworks, PSAS encourages both preparers and auditors to consider guidance in other accounting frameworks when accounting for transactions not specifically addressed by the specific standards.

- IESO management, their audit committee, their board of directors and their external auditors, agree with the adoption of rate-regulated accounting by IESO. The Office of the Provincial Controller also supports the adoption of rate-regulated accounting by IESO.

- In her opinion on the 2016-17 consolidated financial statements, the Auditor General (AG) has included an “Other Matter” paragraph, drawing attention to the adoption of rate-regulated accounting by IESO. Her view is expressed as stating PSAS does not permit rate regulated accounting, but that she has not qualified her opinion on this matter because the impact is not material to the 2016-17 consolidated financial statements.

- The AG further notes, “However, the consolidated financial statements may become materially misstated in future periods, as a result of the legislated accounting prescribed under the

Ontario Fair Hydro Plan Act, 2017 (Fair Hydro Plan) and its related regulations, as it is not in accordance with Canadian public sector accounting standards."

- Neither the IESO nor OPCD agree with the statements that (a) PSAS does not permit rate-regulated accounting (as previously noted, PSAS is silent with respect to rate-regulated accounting) or (b) Fair Hydro Plan and its related regulations legislate the accounting for GA Refinancing.

- The change to rate regulated accounting enables more transparency around the IESO's right to collect the deferred costs described in the Fair Hydro Plan, in the future. However, the IESO would maintain this accounting change regardless of government policy.

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OPG Accounting

- The Auditor General has not raised any concerns to date with the intended accounting for the OPG Trust on the Province's books.
- OPG Trust will be controlled and consolidated by OPG.
- Purchases by OPG Trust of the rate regulated assets from the IESO will be reflected on OPG's books as intangible assets which will be included in the Province's financial statements as part of its investments in government business enterprises.

The Province's Accounting

- In assessing the appropriate accounting for the Fair Hydro Plan on the Province's books, OPCD worked closely with key ministries, the OEB, the IESO, OPG and their respective external advisors.
- The final accounting treatment for FHP related activities will be confirmed once all elements of the GA Refinancing framework are finalized, including provincial guarantees and financing arrangements.

- Once the details and commercial agreements of the FHP are finalized, the external auditors of the IESO and OPG are expected to provide independent accounting opinions on the accounting treatment on IESO and OPG's financial statements.

- The Office of the Provincial Controller will rely on those independent accounting opinions, the audited financial statements of the IESO and OPG as of December 31, 2017 and its own research and analysis in determining the impact of the GA Refinancing on the 2017-18 consolidated financial statements.

IF PRESSED: AG ACCUSATION OF LEGISLATED ACCOUNTING

- The Auditor General has made several incorrect references to legislated accounting which should be addressed to ensure clarity and transparency in terms of the government's accounting treatment for the Fair Hydro Plan.
- In particular, that Auditor General has referred to legislated accounting prescribed by the FHP Act that is designed to in some way manipulate the Province's financial reporting in its consolidated financial statements.
- The Province's financial statements are based on Public Sector Accounting Standards as issued by the Public Sector Accounting Board of CPA Canada. There is no legislated accounting that applies to the Province's consolidated financial statements.
- While the FHP Act does, under Section 24, require that the IESO set up a variance account to track the cash shortfall amount resulting from the deferred recovery amount, it is just another type of regulatory account, similar to those that OPG reports and for which the OEB is responsible for approving rates.
- As far as the Province's financial reporting practices go, whether the deferred amounts reported in the IESO's variance account are assessed as assets for financial reporting purposes will be determined by the interpretation

and application of Public Sector Accounting Standards, not by the legislation or regulations.

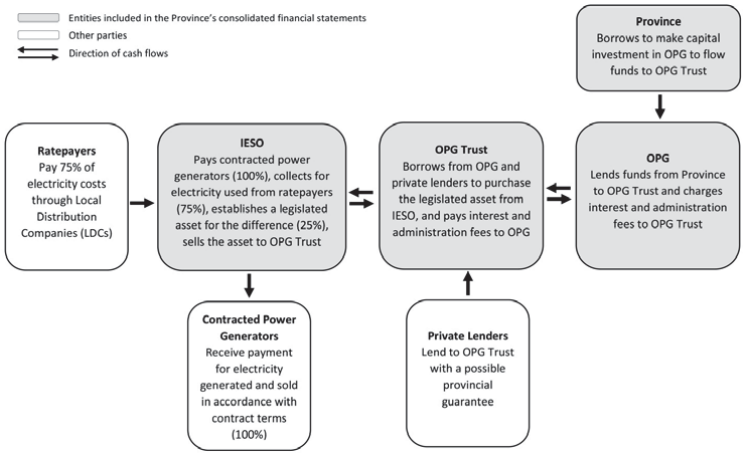
Prepared by: Nadine Petsche, Director, Accounting Policy and Financial Reporting

Approved by:	**Name:**	**Date Approved:**
ADM, Office of the Provincial Controller	Cindy Veinot	August 21, 2017
Communications Branch	Sofie Di Muzio	XXX

Appendix

Proposed Legislated Transaction Structure

Prepared by the Office of the Auditor General of Ontario



Market accounts HBN - August 23 2017 v1 ieso edits.pdf

Confidential **Drafted: August 23, 2017**

FAIR HYDRO PLAN ACCOUNTING (GLOBAL ADJUSTMENT REFINANCING)

ISSUE: Why did the Auditor General qualify her opinion on the 2016-17 consolidated financial statements for including the market accounts of IESO in the consolidated financial statements?

CONTEXT: The Auditor General included the following qualification in her opinion on the 2016-17 consolidated financial statements:

> As described in Note 16c to these consolidated financial statements, the IESO changed its accounting policy and applied it retroactively to recognize market account assets and liabilities. The market accounts track mainly buy and sell transactions between market participants (electricity power generators and power distributors). These market accounts, as recorded on the Province of Ontario's consolidated financial statements are not assets and liabilities of the Province of Ontario. The Government has no access or discretion to use the market account assets for their own benefit, nor does the Government have an obligation to settle the market account liabilities in the event of default by market participants. As a result, Other Assets and Other Liabilities are both overstated by $1.652 billion (2016- $1.443 billion). There is no effect on the Consolidated Statement of Operations.

KEY MESSAGES:

- IESO financial statements are prepared in accordance with Public Sector Accounting Standards (PSAS) and audited by a public accounting firm. IESO received an unqualified audit opinion on their December 31, 2016 financial statements that included the market accounts.
- IESO revisited its accounting for the market accounts in 2016 ~~to determine what~~and determined that including the market accounts on ~~accounting policy~~ its financial statements was more transparent to the users of the financial statements.

- ~~In completing its research, IESO analyzed the accounting used by the other independent system operators in North America, of which one is in Alberta and the balance (7) are in the United States. Seven of eight of these entities (excluding IESO) recognize the assets and liabilities of the market participants on a gross basis (i.e. they recognize their market accounts in their financial statements as IESO now does.) While none of these other entities prepare their financial statements in accordance with PSAS, the definitions of an asset and liability are very similar between PSAS and the accounting frameworks used by the North American ISOs (US GAAP and GASB).~~

- In its role as the market administrator, the IESO operates and settles approximately $17 billion through the electricity market, where money is constantly flowing to and from market participants, such as consumers and generators. This role requires the IESO to temporarily hold and transfer money between market participants (like Local Distribution Companies and Generators), including recovering costs associated with Global Adjustment.

- The change to include market account assets and liabilities on their financial statements provides increased transparency around the costs associated with the administration of Ontario's electricity market.

- ~~2016 is not the first year that amounts due to power generators have been included in the financial statements.~~

    - ~~IESO is the amalgamation of the former IESO and the Ontario Power Authority (OPA).~~

    - ~~OPA, when it was a standalone entity, prepared its financial statements in accordance with Public Sector Accounting Standards, and recognized on its financial statements, the amounts due to the power generators and the amounts due from the IESO. These financial statements were audited by a public accounting firm, and an unqualified opinion was issued. The inclusion of the amounts due to the power generators was not~~

Commented [IESO1]: The 6 of 7 ISOs statement applies to the use of regulatory accounting, not market accounts on other ISO financial statements.

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raised as a concern by the current auditor general in 2013-14 or 2014-15 or by previous auditors general in the years since the OPA was established in fiscal 2004-2005.

- OPA and IESO were amalgamated during 2015-16 and 2015-16 was the only year that balances related to a portion of the market accounts were not included in the province's consolidated financial statements.

- IESO is the contractual counterparty to the legal agreements with market participants – both power generators and local distribution companies. IESO has the responsibility for procuring supply, capacity and conservation measures, all of which are managed through the contracting with the generators. While IESO does not take ownership or control of the power generated prior to delivery to the ultimate consumers, it is nonetheless a party to the contracts, with an obligation to settle the market by paying the power generators and collecting from the local distribution entities, supporting recognition of the assets and liabilities.

Commented [VC(2]: Need a similar sentence for the LDCs

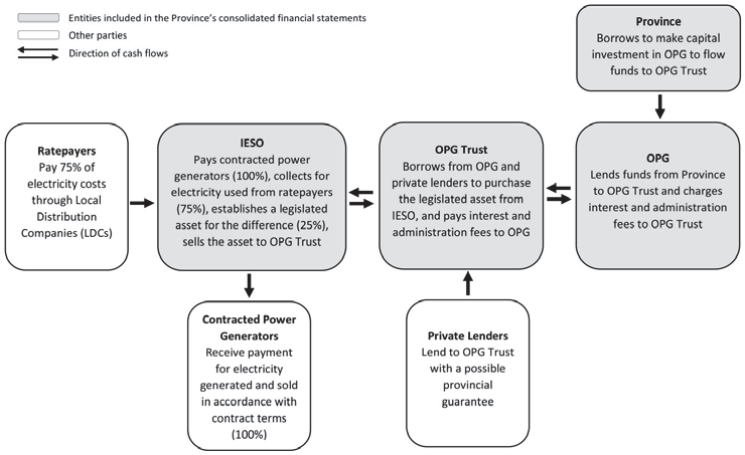
Commented [IESO3]: This confuses the market vs. the contractual aspects of our business.

Prepared by: Cindy Veinot, ADM and Provincial Controller, Office of the Provincial Controller

Appendix

Proposed Legislated Transaction Structure

Prepared by the Office of the Auditor General of Ontario



IESO white papers draft #6.rtf

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Subject: IESO white papers draft #6
Date: Thursday, February 23, 2017 08:18:14
Attachment 1: IESO white papers draft #6.docx

Hi Michel.

Additional points for your consideration.

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IESO white papers draft #6.pdf

WHITE PAPERS – WORKING DRAFT #6

Independent Electricity System Operator ("IESO" or the "Company") is considering making changes in its accounting policies to reflect the balances of market participants within the IESO-administered markets (see separate technical analysis) and the economic impacts of rate regulation, as the Company believes that the changes would result in a more appropriate presentation of events or transactions in its financial statements.

Issues being considered in this document are:

Issue #1: Can the IESO adopt the guidance in ASC 980 *Regulated Operations (US GAAP in FASB)*?

Issue #2: Can the IESO recognize deferral or variance accounts related to the deferral of the annual Global Adjustment account as a regulatory asset on its statement of financial position?

Issue #3: Can the IESO derecognize the variance accounts related to the deferral of the annual Global Adjustment account**?**

1. Adoption of the guidance in ASC 980 Regulated Operations

Background and Assumptions for issues #1 and #2

The facts, circumstances, and assumptions relevant to the specific transactions are as follows:

1. The IESO's legal status is a not-for-profit, non-taxable, corporation established pursuant to Part II of the *Electricity Act, 1998*. IESO is classified as an Other Governmental Organization and prepares its financial statements in accordance with Canadian public sector accounting standards (PSAB).
2. The IESO is required to submit its proposed expenditures, revenue requirements and fees yearly to the OEB for review and approval.
3. IESO is rate regulated by the OEB in accordance with the *Electricity Act, 1998* and the *Ontario Energy Board ("OEB") Act, 1998* but currently does not recognize the economic impacts of rate regulation on its financial reports.
4. The OEB issued a Decision and Order on March 28, 2013 that permits IESO to recover the MDMR costs (the Smart Metering Charge) (see Appendix B). *(i.e. Costs incurred in the past will be fully recovered through future rates)*
5. Furthermore, in accordance with the *Electricity Act, 1998* and the *OEB Act, 1998*, the IESO has approved variance accounts to record all amounts payable or receivable by it in connection with the amounts paid to generators, the Financial Corporation, distributors and to entities with whom the IESO has a procurement contract. (i.e. costs incurred in the past will be fully recovered through future rates)
6. The province is contemplating deferring the recovery of a portion of the annual Global Adjustment account (comprised primarily of the electricity costs paid to the generators) over a period of 25-30 years, so that costs incurred would be fully recovered through future rates.
7. The *Electricity Act, 1998* and the *OEB Act, 1998* ~~will~~ would be amended through legislation to require the deferral of the recovery of the Global Adjustment account and the future recovery in rates charged to customers.
8. The OEB ~~will~~ would grant generic deferral or variance accounts to capture the difference between the amounts paid to generators and others, and the amounts collected in rates. Furthermore, the interest and ancillary costs related to the contemplated transaction ~~will~~ would also be included in future rates charged to customers. In summary, the legislation will create a right to collect the incurred cost.
9. Regardless of whether the GAM initiative proceeds, the IESO will change its accounting policies to permit the recognition of the economic impacts of rate regulation as from the 2016 financial year. IESO will adopt the guidance of ASC 980 *Regulated Operations* to better reflect the economic substance of its operations and enhance the transparency and accountability of its financial reporting~~.~~

Commented [NP1]: Same as OPG and H1, OEFC?

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Appropriate Accounting Principle for issue #1

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PS1150.05 "*When the primary sources of GAAP do not deal with the accounting and reporting in financial statements of transactions or events encountered by the public sector reporting entity, or additional guidance is needed to apply a primary source to specific circumstances, the selection of an appropriate accounting policy requires the exercise of professional judgment. In these circumstances, a public sector reporting entity should adopt accounting policies and disclosures that are consistent with:*

(a) the primary sources of GAAP; and

(b) the application of the concepts described in FINANCIAL STATEMENT CONCEPTS, Section PS 1000."

PS1150.19 "*Pronouncements issued by other bodies authorized to issue accounting standards may be useful sources to consult. For example, accounting pronouncements published with the authority of the Canadian Accounting Standards Board (AcSB), International Accounting Standards Board (IASB), US Federal Accounting Standards Advisory Board (FASB), US Governmental Accounting Standards Board (GASB), or International Public Sector Accounting Standards Board (IPSASB) are often important sources to consult on matters not covered by primary sources of GAAP or for assistance in applying a primary source of GAAP to specific circumstances*."

PS1150.08 "A public sector reporting entity consults sources other than primary sources of GAAP to assist in selecting accounting policies and disclosures only when these sources comply with paragraph PS1150.05. The public sector reporting entity evaluates sources in selecting the appropriate accounting policies and disclosures based on all of the following criteria:

(a) The specificity of the source — A source that deals with the specific circumstances is likely to be more relevant than one from which the public sector reporting entity must analogize.

(b) The authority of the issuer or author — A source issued by an accounting standard setter in its own jurisdiction is likely to be more relevant than a source issued by others in the same jurisdiction.

(c) The continued relevance of the source — The passage of time may diminish the relevance of certain sources.

(d) The development process for the source — A source developed after extensive consultation and debate is likely to be more relevant than a source developed without such discipline."

PS1150.10 "PSAB considers a source to be consistent with the concepts in paragraph PS 1150.05(b) when the guidance in that source is compatible with the (i) qualitative characteristics of financial information, (ii) the elements of financial statements, and (iii) the recognition and measurement criteria in paragraph PS 1150.05(b)."

PS1000.58 "In the absence of appropriate public sector recognition and measurement criteria for intangibles, all intangibles, including those that have been purchased, developed, constructed or inherited in right of the Crown, are not recognized as assets in government financial statements. The intangible often called "human capital" that embodies the talent or intellectual capital of government employees is not recognized as an asset under existing accounting principles."

PS3210.03 "Assets are economic resources controlled by a public sector entity as a result of past transactions or events and from which future economic benefits are expected to be obtained."

PS3210.04 "Assets have three essential characteristics:

(a) They embody future economic benefits that involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows, or to reduce cash outflows.

(b) The public sector entity can control the economic resource and access to the future economic benefits.

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(c) The transaction or event giving rise to the public sector entity's control has already occurred."

Issue #1: Can the IESO adopt the guidance in ASC 980 *Regulated Operations*?

PSAS does not address accounting concepts in a rate regulated environment. Since there is no guidance in PSAS regarding the recognition and measurement of regulatory assets and liabilities, IESO may consider other sources based upon PSAS 1150.05 in the GAAP hierarchy to determine appropriate accounting policies in a rate regulated environment.

Within AcSB, Accounting Standards for Private Enterprises (ASPE) defines a rate regulated entity but provides no guidance on regulatory assets and liabilities, however requires disclosure of such balances if they are recognized. IASB has not completed their project on rate regulated activities and current standards only include a holding standard based upon what was done under previous GAAP. It will be important for the IESO to monitor the IASB's ongoing project on rate regulated activities as this may affect the recognition, measurement, presentation and disclosures of the regulatory assets and liabilities. Both FASB and GASB have guidance on accounting in a regulatory environment. IPSASB does not provide any guidance on accounting by rate regulated entities.

It is important to note that rate regulated entities that prepare their general purpose financial statements in accordance with ASPE (e.g. the three Fortis subsidiaries in Ontario), as well as those rate regulated entities that are eligible to elect to apply the requirements of IFRS 14 and elected to do so when they adopted IFRS, generally all recognize regulatory deferral and variance accounts in accordance with US GAAP accounting principles set out ASC 980 *Regulated Operations.*

Statement 62 issued by GASB in December 2010 is effective for financial statements for periods beginning after December 15, 2011. The objective of the Statement is to incorporate into the GASB's authoritative literature certain accounting and financial reporting guidance that is included in the Financial Accounting Standards Board (FASB) Statements and Interpretations issued on or before November 30, 1989, which does not conflict with or contradict GASB pronouncements. Paragraphs 476–500 may be applied to activities reported in business-type activities that have regulated operations that meet all of the three criteria in paragraph 476 as follows:

(a) The regulated business-type activity's rates for regulated services provided to its customers are established by or are subject to approval by an independent, third-party regulator or by its own governing board empowered by statute or contract to establish rates that bind customers.

(b) The regulated rates are designed to recover the specific regulated business-type activity's costs of providing the regulated services.

(c) In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume that rates set at levels that will recover the regulated business-type activity's costs can be charged to and collected from customers. This criterion requires consideration of anticipated changes in levels of demand or competition during the recovery period for any capitalized costs.

The criteria above and the guidance in paragraphs 476-500 are based on ASC 980 *Regulated Operations*.

It is also important to note that in its statement of financial position, the Ontario Electricity Financial Corporation ("OEFC") recognizes a net unamortized liability balance for power purchase contracts, as detailed in the summary of significant accounting policies:

"The liability for power purchase contracts was originally calculated by discounting estimated losses over the life of the contracts. Under the *Electricity Restructuring Act, 2004*, OEFC began receiving actual contract prices for power from electricity consumers, effective January 1, 2005, and no longer incurs losses on these power purchase contracts. At that time, the Ministry of Finance estimated that the bulk of the liability would be eliminated over 12 years as existing electricity contracts expire. As a result, the bulk of the liability is being amortized to revenue over that period."

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Although this liability is not defined as a regulatory liability in the OEFC's financial statements, the argument can be made that it substantively meets the criteria under ASC 980.

In summary

Rate regulated entities in North America reporting under ASPE, IFRS (entities which have elected to use IFRS 14) and GASB generally all recognize regulatory deferral and variance accounts in accordance with US GAAP accounting principles based on ASC 980 *Regulated Operations* (see Appendix A for the accounting framework used by the Canadian rate regulated entities).

Evaluation of Other Sources of GAAP

As required by PS 1150.05(b), we need to analyze whether the concepts in the other source (i.e. ASC 980) are compatible with the (i) qualitative characteristics of financial information, (ii) the elements of financial statements, and (iii) the recognition and measurement criteria in PS 1000.

When looking to other sources of GAAP, PSAS requires the other sources of GAAP to be evaluated

1. *as to whether they are consistent with accounting policies and disclosure within PSAS,*
2. *as to whether they are consistent with the application of concepts in PS 1000 and*
3. *as to all of the following criteria:*
   - *(a) Source deals with the specific circumstance*
   - *(b) Source is issued by an accounting standard setter*
   - *(c) Source continues to be relevant*
   - *(d) Source uses a consultative process and deliberation when developing policies*

(i) Qualitative Characteristics of Financial Information

FASB	**PSAS 1000**	**Evaluation**
Concepts and objectives are for both business and non-business organizations as well as governmental units (Concept #4.3 to 4.5)	Public, legislators, councilors, investors, analysts, other governments (par. 14)	FASB considers governmental units
Financial reporting should: – Be useful in making resource allocation decisions – Be useful in assessing services and ability to provide services – Be useful in assessing management stewardship and performance – Provide information about economic resources, obligations, net resources and changes in them (Concept # 4.33-.54)	Financial statements should be relevant to the needs of the users and reliable. Relevance is achieved through timeliness, predictability and accountability value. Reliable information has the following characteristics: representational faithfulness, completeness, neutrality, conservatism and verifiability. (par. 28-29)	Similar

(ii) Elements of Financial Statements

FASB	**PSAS**	**Evaluation**
Assets (Concept #6.25-.34)		

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Probable future economic benefits obtained or controlled by the entity as a result of past transactions or events.	Economic resources controlled by a government as a result of past transactions or event and from which future economic benefits are expected to be obtained. (par. 35)	Essential characteristics similar
Liabilities (Concept #6.35-.43)		
Probable future sacrifices of economic benefits arising from present obligations of the entity to transfer assets or provide services in the future as a result of past transactions or events.	Present obligations to others arising from past transactions or events, the settlement of which is expected to result in the future sacrifice of economic benefits with little or no discretion to avoid settlement. (par. 44)	Essential characteristics similar
Revenues (Concept #6.78-.79)		
Inflows from delivering or producing goods, rendering services or other activities that constitute the entity's central operations.	Increases in economic resources resulting from operations, transactions and events of the accounting period. (par. 46)	Similar
Expenses (Concept # 6.80-.81)		
Outflows from delivering or producing goods, rendering services or carrying out other activities that constitute the entity's central operations.	Decreases in economic resources resulting from operations, transactions and events of the accounting period. (par. 49)	Similar

(iii) Recognition Criteria

FASB	**PSAS**	**Evaluation**
To be recognized, an item must meet the definition of an element of the financial statements, must be measurable with sufficient reliability, be relevant and be reliable. (Concept # 5.64)	Item must have an appropriate basis of measurement, a reasonable estimate can be made of the amount and if the item involves obtaining or giving up future economic benefits, it is expected those benefits will be obtained or given up. (par. 55)	Similar

(iii) Measurement Criteria

FASB	**PSAS**	**Evaluation**
Measurement basis dependent upon nature of item. Historical cost basis, replacement cost, market value. (Concept # 5.65-.70)	Primarily using historical cost basis. Replacement cost and realizable value are also used, but in limited circumstances. (par. 60)	Similar

Criteria of PS 1150.08

Criteria	**Evaluation**
Source deals with the specific circumstance	Yes, ASC 980 Regulated Operations
Source is issued by an accounting standard setter	Yes, FASB

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Source continues to be relevant	Yes, still used by rate regulated entities
Source uses a consultative process and deliberation when developing policies	Yes, comprehensive consultative process and deliberation

Characteristics	**Additional guidance**	**Comments**

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Evaluation whether a deferral or variance accounts meet the definition of Assets as per Section PS3210

PS3210 defines assets as *"economic resources controlled by a public sector entity as a result of past transactions or events and from which future economic benefits are expected to be obtained."* (par. 03)

The analysis of the three essential characteristics as defined by PS3210.4 are analyzed in the next table.

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They embody future economic benefits that involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows, or to reduce cash outflows. (par. 4(a))	The essence of assets are their future economic benefits. Assets embody future economic benefits that allow public sector entities to achieve their objectives. The future economic benefits embodied in assets involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows or to reduce cash outflows. (par. 11) The future economic benefits embodied in an asset may also be in the form of generating future cash inflows. Cash inflows benefit the public sector entity because cash can be used to purchase or to provide goods and services, redistribute wealth or settle liabilities. (par. 13)	The economic benefit embodied in the variance accounts (i.e regulatory asset) is the right to collect the incurred costs from ratepayers in order to settle the liability for the energy already consumed by the ratepayers. The electricity Act, 1998 ("EA") section 25.33(1) states: *"The IESO shall, through its billing and settlement systems, make adjustments in accordance with the regulations that ensure that, over time, payments by classes of market participants in Ontario that are prescribed by regulation reflect,* *a) amounts paid to generators, the Financial Corporation and distributors, whether the amounts are determined under the market rules or under section 78.1, 78.2 or 78.5 of the Ontario Energy Board Act, 1998; and* *b) amounts paid to entities with whom the IESO has a procurement contract, as determined under the procurement contract."*
The public sector entity can control the economic resource and access to the future economic benefits. (par. 4(b))	Economic resources can arise from, but are not limited to, the following: government's own legislation (for example, taxes, fines and penalties); (par. 08(c)) A public sector entity controls the economic resource and access to the future economic benefits when it: a. can benefit from the economic resource through its capacity to provide goods and services, to provide future cash inflows or to reduce cash outflows; b. can deny or regulate access to those benefits by others; and c. is exposed to the risks associated with the economic resource. (par.16)	The economic resources is the right created by the legislation that the energy costs IESO incurs will result in future cash flows. In the regulatory environments, incurring costs creates an enforceable right to set rates at a level that permits IESO to recover those costs. The adjustment of future rates is the mechanism the OEB uses to implement the right. Currently, the EA section 25.33(5) states: *"The IESO shall establish and maintain such variance accounts as may be necessary to record all amounts payable or receivable by it under this section."* The legislation will be amended to permit IESO to collect specifically the deferral of the energy costs and the related interest and administrative costs.

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The transaction or event giving rise to the public sector entity's control has already occurred. (par.4(c))	It is the occurrence of a past transaction or event on or before the financial statement date that distinguishes a present economic resource controlled by a public sector entity from an economic resource that may be controlled by a public sector entity in the future. (par. 25) The past transaction or event that gives rise to control of an economic resource resulting from exchange agreements or contracts usually occurs at the point of exchange. This arises when substantially all the benefits and risks of ownership have been transferred to the public sector entity and normally coincides with the disbursement of funds, exchange of other assets or assumption of liabilities. (par. 26)	The past event giving rise to IESO's control occurs as the energy cost is incurred, as IESO has a right to collect it from the ratepayers.
Conclusion: The right to collect the deferral of the energy costs and the related interest and administrative costs meets the definition of assets.		

When concepts are in conflict with PSAS then PSAS prevails (PS 1150.12). For example, PSAS does not recognize intangible assets (PS 3150.03, .14 and PS1000.58). So if regulatory assets are considered to be intangible assets, they would not be allowed to be recognized through another source of GAAP.

It is worth noting that the economic impacts of rate regulation are not recognized under US GAAP as intangible assets as the FASB has specific guidance to deal with this type of asset. It is also worth noting that the IASB has an ongoing project on rate regulated activities and are currently developing an accounting model based on the principles of IFRS 15 *Revenue from contracts with customers* to provide a principle-based framework for recognizing regulatory assets (see Agenda Ref. 9 for the IASB meeting on February 23, 2017). Furthermore, the Summary Comment Letter Analysis related to the ED/2009/8 on Rate Regulated Activities published by the IASB in July 2009 states on page 2 of 50

"The IFRIC observed that it had previously discussed whether a regulatory asset should be ~~recognised~~recognized in the context of service concession arrangements, either as deferred costs or as an intangible asset to reflect an expectation that the entity will recover these costs as part of the price charged in future periods. It had concluded that entities applying IFRSs should ~~recognise~~recognize only assets that qualified for recognition in accordance with the IASB's *Framework for the Preparation and Presentation of Financial Statements* and relevant accounting standards, such as IAS 11 *Construction Contracts*, IAS 18 *Revenue*, IAS 16 *Property, Plant and Equipment* and IAS 38 *Intangible Assets*."

Therefore, we can conclude that ASC 980 is NOT in conflict with PS 3150.03, .14 and PS1000.58 with respect to intangible assets.

Conclusion:
FASB is appropriate to use as "*other source of GAAP*". FASB standard ASC 980 has extensive guidance for rate regulated entities including the recognition of regulatory assets and use of rate regulated accounting by IESO would be consistent with current reporting practices of H1, OPG and OEFC.~~.~~

Appropriate Accounting Principle for issue #2

ASC 980 Regulated Operations

– 980-10-15-2 "*The guidance in the Regulated Operations Topic applies to general-purpose external financial statements of an entity that has regulated operations that meet all of the following criteria:*

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(a) The entity's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party regulator or by its own governing board empowered by statute or contract to establish rates that bind customers.

(b) The regulated rates are designed to recover the specific entity's costs of providing the regulated services or products. This criterion is intended to be applied to the substance of the regulation, rather than its form. If an entity's regulated rates are based on the costs of a group of entities and the entity is so large in relation to the group of entities that its costs are, in essence, the group's costs, the regulation would meet this criterion for that entity.

(c) In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume that rates set at levels that will recover the entity's costs can be charged to and collected from customers. This criterion requires consideration of anticipated changes in levels of demand or competition during the recovery period for any capitalized costs."

- 980-10-20 Glossary, Definition of incurred costs *"A cost arising from cash paid out or obligation to pay for an acquired asset or service, a loss from any cause that has been sustained and has been or must be paid for."*
- 980-10-05-8 "*Unless an accounting order indicates the way a cost will be handled for rate-making purposes, it causes no economic effects that would justify deviation from the GAAP applicable to business entities in general. The mere issuance of an accounting order not tied to rate treatment does not change an entity's economic resources or obligations. In other words, the economic effect of regulatory decisions—not the mere existence of regulation—is the pervasive factor that determines the application of GAAP.980-340 – Other Assets and Deferred Costs."*
- 980-340-25-1 "*Rate actions of a regulator can provide reasonable assurance of the existence of an asset. An entity shall capitalize all or part of an incurred cost that would otherwise be charged to expense if both of the following criteria are met:*

  (a) It is probable (as defined in Topic 450) that future revenue in an amount at least equal to the capitalized cost will result from inclusion of that cost in allowable costs for rate-making purposes.

  (b) Based on available evidence, the future revenue will be provided to permit recovery of the previously incurred cost rather than to provide for expected levels of similar future costs. If the revenue will be provided through an automatic rate-adjustment clause, this criterion requires that the regulator's intent clearly be to permit recovery of the previously incurred cost.

  A cost that does not meet these asset recognition criteria at the date the cost is incurred shall be recognized as a regulatory asset when it does meet those criteria at a later date."
- 980-340-40-1: "*If at any time an entity's incurred cost no longer meets the criteria for the capitalization of an incurred cost (see paragraph 980-340-25-1), that cost shall be charged to earnings."*
- 980-350-50-1: "*In some cases, a regulator may permit an entity to include a cost that would be charged to expense by an unregulated entity as an allowable cost over a period of time by amortizing that cost for rate-making purposes, but the regulator does not include the unrecovered amount in the rate base. That procedure does not provide a return on investment during the recovery period. If recovery of such major costs is provided without a return on investment during the recovery period, the entity shall disclose the remaining amounts of such assets and the remaining recovery period applicable to them."*
- 980-340-55-2: "*In some cases, a regulator may approve rates that are intended to recover an incurred cost over an extended period without a return on the unrecovered cost during the recovery period."*
- 980-340-55-3: "*The regulator's action provides reasonable assurance of the existence of an asset (see paragraph 980-340-25-1). Accordingly, the regulated entity would capitalize the cost and amortize it over the period during which it will be allowed for rate-making purposes. That cost would not be recorded at discounted present value. An exception to this general rule is provided for costs of abandoned plants."*

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Issue #2: Can the IESO recognize deferral or variance accounts related to the deferral of the annual Global Adjustment account as a regulatory asset on its statement of financial position?

As described in issue #1, US GAAP includes special accounting provisions that are applicable to entities with activities that are subject to rate regulation. The result is that rate regulated entities are required to recognize regulatory assets and liabilities provided the following three criteria are met:

Criteria	Comment	Evaluation
The entity's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party regulator or by its own governing board empowered by statute or contract to establish rates that bind customers.	IESO has unrecognized variance accounts related to the MDMR (smart meters), that have been approved by the OEB in accordance with the Electricity Act and the OEB Act (see Appendix B). It is important to note that Hydro One and OPG are both consolidated into the province's books, are both regulated by the OEB and their respective regulatory assets and liabilities are reported in the province's books.	Met
The regulated rates are designed to recover the specific entity's costs of providing the regulated services or products.	Currently, the rates approved by the OEB are designed to recover the IESO's costs of providing the regulated services and the pass-through related to the energy purchased from the generators. The contemplated transaction is based on the fact that the OEB will grant generic deferral or variance accounts to capture the difference between the amounts paid to generators and others, and the amounts collected in rates. Furthermore, the interest and ancillary costs related to the contemplated transaction will also be included in future rates charged to customers. In summary, the legislation will create a right to collect the incurred costs.	Met
In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume that rates set at levels that will recover the entity's costs can be charged to and collected from customers. This criterion requires consideration of anticipated changes in levels of demand or competition during the recovery period for any capitalized costs."	Since the deferral or variance accounts will be sold to the OPG Trust at least on a monthly basis and cash will be received on the same day, this criteria will be met. This criteria will need to be monitored on a yearly basis to ensure that IESO and the OPG Trust will be able to recover the future deferred amount taking into account the levels of demand or competition during the recovery period.	Met
Conclusion: Since the three criteria are met, IESO should be able to adopt the guidance in ASC 980.		

Conclusion: Based on the assumptions mentioned above, IESO should be able to recognize a regulatory asset for the deferral of the annual Global Adjustment account. As mentioned in the ASC 980 guidance above, it is important that an accounting order be issued by the OEB which indicates the way the incurred costs will be

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handled for rate-making purposes as the OEB's action provides reasonable assurance of the existence of a regulatory asset.

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2. Derecognition of the regulatory assets

Background and Assumptions for issue #3

The facts, circumstances, and assumptions relevant to the specific transactions are as follows:

1. The annual Global Adjustment account that will be deferred in the deferral or variance accounts (the "Asset") will be significant.
2. The IESO does not currently have the financial capability to finance the Asset and is contemplating selling the Asset to a Trust to be set-up by OPG (the "OPG Trust").
3. The OPG Trust will be consolidated by OPG.
4. Proposed terms of the sale agreement between the IESO and the OPG Trust:
   - The sale contract will be structured as an absolute sale, which will assign future economic benefits or cash flows related to the Asset exclusively to the OPG Trust.
   - The arrangement will be structured whereby there is no recourse or obligations remaining of IESO related to the Asset.
   - The arrangement is not considered to be a financing transaction as IESO will have no obligations to the OPG Trust after the Asset is sold to the OPG Trust.
   - IESO will not retain any rights or benefits from the Asset.
   - IESO would not have any rights to interest or penalties on the Asset once it has been transferred to the OPG Trust.
   - The contract will be clear that IESO cannot pledge the Asset as collateral to obtain future cash flows or financing.
   - IESO will continue to collect related cash flows on the OPG Trust's behalf and remit those cash flows to the OPG Trust without material delay. In addition, IESO will not be entitled to reinvest such cash flows, except for investments in cash or cash equivalents during the short settlement period from the collection date to the date of required remittance to the OPG Trust, and interest earned on such cash and cash equivalents is passed to the OPG Trust. The contract will define IESO's role strictly as that of agent, under a pass-through arrangement.
   - Servicing, origination, and arrangement fees, will be collected by IESO in rates charged to ratepayers as part of its market dealings.
   - The Asset will be sold to the OPG Trust at least, on a monthly basis and cash will be received on the same day.

Commented [NP4]: Consider use of will vs. would?

Commented [NP5]: Vs. OPG doc

Appropriate Accounting Principles for issue #3

Public Sector Accounting Standard ("PSAS") 3210, *Assets*, defines an asset as "…*economic resources controlled by a government as a result of past transactions or events and from which future economic benefits are expected to be obtained*." [par. 3]

.04 "Assets have three essential characteristics:

(a) they embody future economic benefits that involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows, or to reduce cash outflows;

(b) the public sector entity can control the economic resource and access to the future economic benefits; and

(c) the transaction or event giving rise to the public sector entity's control has already occurred."

.22 "Control of an economic resource and of access to the future economic benefits are essential characteristics of an asset, whereas possession or ownership is not."

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.24 "A public sector entity may act as trustee when it administers trusts on behalf of the beneficiaries specified in the agreement or statute. As trustee, the public sector entity merely administers the assets, following the terms and conditions set out in the agreement. It does not control the asset because it does not have access to the future economic benefits. Those benefits flow to the beneficiaries."

As noted in PS1000 Financial statement concepts:

".37 An item is not an asset of a government if it lacks one or more of the essential characteristics listed in the preceding paragraph. Thus, for example, an item does not qualify as an asset of a government if the item involves:

(a) no future economic benefit;

(b) future economic benefit, but the government cannot obtain it; or

(c) future economic benefit that the government may obtain, but the events or circumstances that give the government control of the benefit have not yet occurred."

Issue #3: Can the IESO derecognize the variance accounts related to the deferral of the annual Global Adjustment account (upon sale to OPGTrust)?

PS3210 does not specifically address the derecognition of a regulatory asset. The concept of a regulatory asset does not exist under PSAS.

Commented [NP6]: AG will look to accounting for securitized assets. Consider other alternative accounting treatments?

It is also well understood in this industry that regulatory assets do not meet the definition of intangible asset or financial asset. Specifically, regulatory assets do not meet the definition of financial asset because they are imposed on customers through the tariff (i.e., imposed by the OEB) and do not represent a right to receive payments from another party as a result of a contract.

More generally, PSAS.3210.37 suggests that an asset would no longer be recognized when it fails to meet the definition of an asset.

Based on PS1000.37(b), an item does not qualify as an asset of a government if the item involves future economic benefit, but the government cannot obtain it.

Based on the assumptions mentioned above, ALL risks and rewards will be transferred to the OPG Trust including the following:

- the contract will define IESO's role strictly as that of agent, under a pass-through arrangement;
- all cash flows related to the Asset will be transferred without material delay to the OPG Trust;
- rights to interest or penalties on the Asset will be for the benefits of the OPG Trust;
- IESO cannot pledge the Asset; and
- no recourse or obligations remaining of IESO related to the Asset.

Conclusion: Based on the proposed terms of the sale agreement between the IESO and OPG Trust mentioned above, the deferral or variance accounts would be derecognized at the point where the IESO will derive no future economic benefit from it. This would occur where the IESO ultimately transfers the rights, risk and rewards related to those deferral or variance accounts to the OPG Trust.

Commented [NP7]: Should conclude at which point this is envisioned to be.

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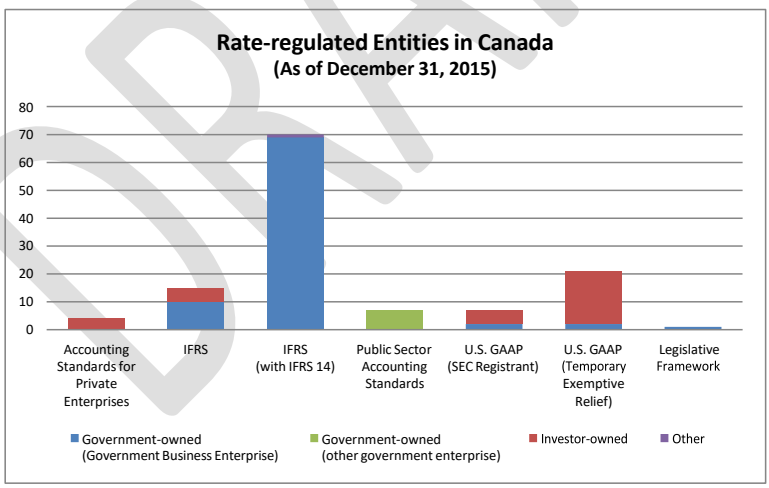
Appendix A:

Extract from the "Accounting Standards Advisory Forum Agenda Ref: 3A dated September 29, 2016" available on the IFRS website

Canadian Rate-regulated Entities

18. The accounting framework landscape for Canadian rate-regulated entities is currently diverse. For annual periods beginning on or after January 1, 2015, rate-regulated entities that are Canadian publicly accountable enterprises are required to apply IFRS. Rate-regulated entities that adopted IFRS for the first time after IFRS 14 *Regulatory Deferral Accounts* was issued continue to recognize these balances. Government Business Enterprises (which operate to generate a profit or on a break-even basis) that are also rate-regulated entities are also directed to apply standards applicable to for-profit entities, and thus apply IFRS. Canadian securities legislation permits dual-listed entities (i.e., Canadian entities also registered with the U.S. Securities and Exchange Commission) to apply U.S. GAAP in the normal course. Temporary exemptive relief is also available from the Canadian Securities Administrators that permits rate-regulated entities that are not dual-listed to apply U.S. GAAP in place of IFRS. If a rate-regulated entity is not a publicly accountable enterprise or a Government Business Enterprise, additional accounting framework options may also include Accounting Standards for Private Enterprises or Public Sector Accounting Standards. A non-GAAP reporting framework is used when legislated by the provincial owner of a government-owned rate-regulated entity.

19. As of December 31, 2015, there were approximately 125 rate-regulated entities in Canada. These entities mainly range in size from small entities owned by municipal governments to large investor-owned entities or entities owned by provincial governments.



Source: Information compiled based on audited financial statements for fiscal year 2015, or information from rate filings that confirmed the accounting framework used by these entities. Due to data collection constraints, the population could be slightly larger.

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20. The chart above highlights two key points:

    (a) The majority of investor-owned entities have chosen U.S. GAAP over IFRS. A few entities that are not reporting issuers apply Accounting Standards for Private Enterprises. Both U.S. GAAP and Accounting Standards for Private Enterprises permit the recognition of balances arising from rate regulation. Several entities that apply U.S. GAAP have told us this choice was influenced by the need to provide their users with financial statements that accurately reflect the economics of their business. Further, some entities presently using the temporary exemptive relief described in paragraph18 have said they are considering incurring the cost and effort necessary to become a registrant of the U.S. Securities and Exchange Commission in order to have the permanent ability to apply U.S. GAAP. While such a decision could be primarily for business reasons such as the entity expanding its operations into the U.S., it could also be attributed to the continuing uncertainty about the ultimate outcome of the IASB's Rate-regulated Activities project and the approaching expiry date of the securities regulators' exemptive relief.

    (b) Public sector entities that are Government Business Enterprises tend to apply IFRS. The majority of these entities is made up of several large provincially-owned utilities, and many small municipally-owned local distribution utilities that do not issue debt or list in the U.S. stock market, and are not subject to Canadian securities legislation. As a result, they cannot apply U.S. GAAP. As shown in the chart, many of these entities adopted IFRS for the first time after the IASB issued IFRS 14, which allowed them to continue their previous accounting practices for rate-regulated activities.

21. Within the pool of government-owned rate-regulated entities, there are entities that do not meet the characteristics of Government Business Enterprises and are required to apply Public Sector Accounting Standards.

22. The data on the different accounting frameworks in Canada is unique. It demonstrates that when given a choice, rate-regulated entities select an accounting framework that captures the effects of rate regulation on their financial position and financial performance in order to communicate more decision-useful information to users.

http://www.ifrs.org/Meetings/MeetingDocs/ASAF/2016/September/1609-ASAF-03A-Rate-regulated-Activities-Canada.pdf

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Appendix B:

Extract from the "DECISION and ORDER issued by the OEB on March 28, 2013" available on the IFRS website

Proceeding on the Ontario Energy Board's own motion to review the options for and ultimately determine the appropriate allocation and recovery of the Smart Metering Charge pursuant to section 19 of the Ontario Energy Board Act, 1998.

THE BOARD ORDERS THAT:

Effective May 1, 2013, the Smart Metering Entity charge to be levied and collected by the Smart Metering Entity from all Distributors identified in the Board's annual Yearbook of Electricity Distributors shall be $0.788 per month for each Residential and General Service <50kW customers for each distributor. The Smart Metering Entity charge shall be in effect from May 1, 2013 to October 31, 2018. The number of Residential and General Service <50kW customers to which the Smart Metering Entity charge will be applied to shall be in accordance with the methodology set forth in the Settlement Agreement attached as Appendix A.

http://www.ontarioenergyboard.ca/oeb/_Documents/EB-2012-0100/dec_order_IESO-SME_20130328.pdf

DRAFT

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IESO white papers draft #9np.docx.rtf

From: Petsche, Nadine (TBS) []
To: Picard, Michel (mpicard@kpmg.ca) [mpicard@kpmg.ca]
CC: Kim Marshall (Kim.Marshall@ieso.ca) [Kim.Marshall@ieso.ca]
Subject: IESO white papers draft #9np.docx
Date: Monday, February 27, 2017 16:23:21
Attachment 1: IESO white papers draft #9np.docx

Michel,

Comments inserted for your consideration. Nadine

IESO white papers draft #9np.pdf

WHITE PAPERS – WORKING DRAFT #~~9~~7

Independent Electricity System Operator ("IESO" or the "Company") is considering making changes in its accounting policies to reflect the balances of market participants within the IESO-administered markets (see separate technical analysis) and the economic impacts of rate regulation, as the Company believes that the changes would result in a more appropriate presentation of events or transactions in its financial statements.

Issues being considered in this document are:

Issue #1: Can the IESO adopt the guidance in ASC 980 *Regulated Operations (US GAAP in FASB)*?

Issue #2: Can the IESO recognize deferral or variance accounts related to the deferral of the annual Global Adjustment account as a regulatory asset on its statement of financial position?

Issue #3: Can the IESO derecognize the variance accounts related to the deferral of the annual Global Adjustment account upon sale to OPG Trust**?**

1. Adoption of the guidance in ASC 980 Regulated Operations

Background and Assumptions for issues #1 and #2

The facts, circumstances, and assumptions relevant to the specific transactions are as follows:

1. The IESO's legal status is a not-for-profit, non-taxable, corporation established pursuant to Part II of the *Electricity Act, 1998*. IESO is classified as an Other Governmental Organization and prepares its financial statements in accordance with Canadian public sector accounting standards (PSAB).
2. The IESO is required to submit its proposed expenditures, revenue requirements and fees yearly to the OEB for review and approval.
3. IESO is rate regulated by the OEB in accordance with the Electricity Act, 1998 and the Ontario Energy Board ("OEB") Act, 1998 but currently does not recognize the economic impacts of rate regulation in its general purpose financial statements. The IESO is required to obtain approval from the OEB under s. 25(1) of the Electricity Act, 1998 for the approval of its own expenditures, revenue requirement and fees. The last rate approval was obtained on December 29, 2016[1].
4. The OEB issued a Decision and Order on March 28, 2013 that permits IESO to recover the MDMR costs (the Smart Metering Charge) (see Appendix B). *(i.e. Costs incurred in the past will be fully recovered through future rates)*
5. Furthermore, in accordance with the *Electricity Act, 1998* and the *OEB Act, 1998*, the IESO has approved variance accounts to record all amounts payable or receivable by it in connection with the amounts paid to generators, the Financial Corporation, distributors and to entities with whom the IESO has a procurement contract. (i.e. costs incurred in the past will be fully recovered through future rates)
6. The province is contemplating deferring the recovery of a portion of the annual Global Adjustment account (comprised primarily of the electricity costs paid to the generators) over a period of 25-30 years, so that costs incurred would be fully recovered through future rates.
7. The *Electricity Act, 1998* and the *OEB Act, 1998* would be amended through legislation to require the deferral of the recovery of the Global Adjustment account and the future recovery in rates charged to customers.
8. The OEB would grant generic deferral or variance accounts to capture the difference between the amounts paid to generators and others, and the amounts collected in rates. Furthermore, the interest and ancillary costs related to the contemplated transaction would also be included in future rates charged to customers. In summary, the legislation would create a right to collect the incurred cost.

[1] http://www.rds.ontarioenergyboard.ca/webdrawer/webdrawer.dll/webdrawer/rec/556699/view/Dec_Order_IESO_20161229.PDF

Commented [CV1]: To clarify what parts of the IESO's operations are regulated.

Commented [CV2]: To determine if this assumption remains

Commented [np3]: I thought that Serge suggested that the OEB's role might be more akin to oversight w.r.t. compliance with the legislation, applying prudence tests, etc.? That is a different risk profile than if they are to regulate over actual periods of recovery, rates, etc.

Commented [m4]: Based on today's discussion, I believe it is correct.

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9. The IESO would change its accounting policies to permit the recognition of the economic impacts of rate regulation as from the 2016 financial year. IESO would adopt the guidance of ASC 980 *Regulated Operations* to better reflect the economic substance of its operations and enhance the transparency and accountability of its financial reporting.

Appropriate Accounting Principle for issue #1

PSAS requires

PS2120.02, *"a change in an accounting policy may be made… if it is considered that the change would result in a more appropriate presentation of events or transactions in the financial statements of the government."*

PS1150.05 "*When the primary sources of GAAP do not deal with the accounting and reporting in financial statements of transactions or events encountered by the public sector reporting entity, or additional guidance is needed to apply a primary source to specific circumstances, the selection of an appropriate accounting policy requires the exercise of professional judgment. In these circumstances, a public sector reporting entity should adopt accounting policies and disclosures that are consistent with:*

(a) the primary sources of GAAP; and

(b) the application of the concepts described in FINANCIAL STATEMENT CONCEPTS, Section PS 1000."

PS1150.19 "*Pronouncements issued by other bodies authorized to issue accounting standards may be useful sources to consult. For example, accounting pronouncements published with the authority of the Canadian Accounting Standards Board (AcSB), International Accounting Standards Board (IASB), US Federal Accounting Standards Advisory Board (FASB), US Governmental Accounting Standards Board (GASB), or International Public Sector Accounting Standards Board (IPSASB) are often important sources to consult on matters not covered by primary sources of GAAP or for assistance in applying a primary source of GAAP to specific circumstances."*

PS1150.08 "A public sector reporting entity consults sources other than primary sources of GAAP to assist in selecting accounting policies and disclosures only when these sources comply with paragraph PS1150.05. The public sector reporting entity evaluates sources in selecting the appropriate accounting policies and disclosures based on all of the following criteria:

(a) The specificity of the source — A source that deals with the specific circumstances is likely to be more relevant than one from which the public sector reporting entity must analogize.

(b) The authority of the issuer or author — A source issued by an accounting standard setter in its own jurisdiction is likely to be more relevant than a source issued by others in the same jurisdiction.

(c) The continued relevance of the source — The passage of time may diminish the relevance of certain sources.

(d) The development process for the source — A source developed after extensive consultation and debate is likely to be more relevant than a source developed without such discipline."

PS1150.10 "PSAB considers a source to be consistent with the concepts in paragraph PS 1150.05(b) when the guidance in that source is compatible with the (i) qualitative characteristics of financial information, (ii) the elements of financial statements, and (iii) the recognition and measurement criteria in paragraph PS 1150.05(b)."

PS1000.58 "In the absence of appropriate public sector recognition and measurement criteria for intangibles, all intangibles, including those that have been purchased, developed, constructed or inherited in right of the Crown, are not recognized as assets in government financial statements. The intangible often called "human capital" that embodies the talent or intellectual capital of government employees is not recognized as an asset under existing accounting principles."

PS3210.03 "Assets are economic resources controlled by a public sector entity as a result of past transactions or events and from which future economic benefits are expected to be obtained."

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PS3210.04 "Assets have three essential characteristics:

(a) They embody future economic benefits that involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows, or to reduce cash outflows.

(b) The public sector entity can control the economic resource and access to the future economic benefits.

(c) The transaction or event giving rise to the public sector entity's control has already occurred."

Issue #1: Can the IESO adopt the guidance in ASC 980 *Regulated Operations*?

In accordance with PS2120.02, the IESO can reflect the economic impacts of rate regulation only if it is considered that the change of accounting policy would result in a more appropriate presentation of events or transactions in the financial statements of the government. As mentioned in the Agenda ref. 9A of the IASB meeting of February 2017[2], rRate regulated entities have long argued that, without recognizing regulatory assets and regulatory liabilities, the entity's performance is distorted by the rate regulator's intervention in the imposition of performance obligations on the entity and the timing of cash flows from the ratepayers.. The recognition of regulatory assets and liabilities would better reflect the economic substance of IESO's operations and enhance the transparency and accountability of its financial reporting. For example, in 20XX the IESO incurred a cost relating to the smart meter program amounting to $ million. The cost was expensed and is included in the accumulated deficit, as the IESO did not have the ability to recognize a regulatory asset despite receiving a rate order to recover it over a period from May 1, 2013 to October 31, 2018. As a result of adopting ASC 980, a regulatory asset for the Smart metering Charge would be recognized at December 31, 2016 for an amount of approximately $ which is the balance that would have been reported if the IESO had applied rate regulated accounting effective XXX.

~~Currently, the IESO has received a rate order to recover the Smart Metering Charge over a period from May 1, 2013 to October 31, 2018. The initial costs related to the smart meter program amounting to $ million has been expensed and is included in the accumulated deficit, as the IESO did not recognize a regulatory asset.~~

PSAS does not address accounting concepts in a rate regulated environment. Since there is no guidance in PSAS regarding the recognition and measurement of regulatory assets and liabilities, IESO may consider other sources based upon PSAS 1150.05 in the GAAP hierarchy to determine appropriate accounting policies in a rate regulated environment.

Within AcSB, Accounting Standards for Private Enterprises (ASPE) defines a rate regulated entity but provides no guidance on regulatory assets and ~~liabilities,~~liabilities however requires disclosure of such balances if they are recognized. IASB has not completed their project on rate regulated activities and current standards only include a holding standard based upon what was done under previous GAAP. It will be important for the IESO to monitor the IASB's ongoing project on rate regulated activities as this may affect the recognition, measurement, presentation and disclosures of the regulatory assets and liabilities. Both FASB and GASB have guidance on accounting in a regulatory environment. IPSASB does not provide any guidance on accounting by rate regulated entities.

It is important to note that rate regulated entities in Canada that prepare their general purpose financial statements in accordance ~~with~~with US GAAP, ASPE (e.g. the three Fortis subsidiaries in Ontario, Hydro One and Ontario Power Generation), as well as those rate regulated entities that are eligible to elect to apply the requirements of IFRS 14 and elected to do so when they adopted IFRS, generally all recognize regulatory deferral and variance accounts in accordance with US GAAP accounting principles set out ASC

[2] http://www.ifrs.org/Meetings/MeetingDocs/IASB/2017/February/AP09-Rate-regulated-Activities.pdf

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Commented [CV5]: Are there any documents to reference here – is the AcSB document from September helpful?

Michel- Done

Commented [CV6]: Should this memo also address the regulatory assets/liabilities that will be recognized re: moving the market books on-book?

This was an example to explain the impact.

Commented [np7]: Similar transactions should be treated the same (where in substance they are the same)

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980 *Regulated Operations.*

Statement 62 issued by GASB in December 2010 is effective for financial statements for periods beginning after December 15, 2011. The objective of the Statement is to incorporate into the GASB's authoritative literature certain accounting and financial reporting guidance that is included in the Financial Accounting Standards Board (FASB) Statements and Interpretations issued on or before November 30, 1989, which does not conflict with or contradict GASB pronouncements. Paragraphs 476–500 may be applied to activities reported in business-type activities that have regulated operations that meet all of the three criteria in paragraph 476 as follows:

(a) The regulated business-type activity's rates for regulated services provided to its customers are established by or are subject to approval by an independent, third-party regulator or by its own governing board empowered by statute or contract to establish rates that bind customers.

(b) The regulated rates are designed to recover the specific regulated business-type activity's costs of providing the regulated services.

(c) In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume that rates set at levels that will recover the regulated business-type activity's costs can be charged to and collected from customers. This criterion requires consideration of anticipated changes in levels of demand or competition during the recovery period for any capitalized costs.

The criteria above and the guidance in paragraphs 476-500 are based on ASC 980 *Regulated Operations*.

It is also important to note that in its statement of financial position, the Ontario Electricity Financial Corporation ("OEFC") recognizes a net unamortized liability balance for power purchase contracts, as detailed in the summary of significant accounting policies:

"The liability for power purchase contracts was originally calculated by discounting estimated losses over the life of the contracts. Under the *Electricity Restructuring Act, 2004*, OEFC began receiving actual contract prices for power from electricity consumers, effective January 1, 2005, and no longer incurs losses on these power purchase contracts. At that time, the Ministry of Finance estimated that the bulk of the liability would be eliminated over 12 years as existing electricity contracts expire. As a result, the bulk of the liability is being amortized to revenue over that period."

Although this liability is not defined as a regulatory liability in the OEFC's financial statements, the argument can be made that it substantively meets the ~~criteria~~ definition under ASC 980 of a regulatory liability, as the OEFC has~~ds~~ no further obligation and should have reversed the liability into income. After consultation with the AG at that time, it was decided to amortize the gain over the remaining term of the contracts.

In summary

Rate regulated entities in North America reporting under ASPE, IFRS (entities which have elected to use IFRS 14) and GASB generally all recognize regulatory deferral and variance accounts in accordance with US GAAP accounting principles based on ASC 980 *Regulated Operations* (see Appendix A for the accounting framework used by the Canadian rate regulated entities).

Evaluation of Other Sources of GAAP

When looking to other sources of GAAP, PSAS requires the other sources of GAAP to be evaluated

1. *as to whether they are consistent with accounting policies and disclosure within PSAS,*
2. *as to whether they are consistent with the application of concepts in PS 1000 and*
3. *as to all of the following criteria:*
   - *(a) Source deals with the specific circumstance*
   - *(b) Source is issued by an accounting standard setter*
   - *(c) Source continues to be relevant*

Commented [CV8]: Should we also add a comment that many rate regulated entities prepare there f/s in accordance with US GAAP and therefore, also follow ASC 980.

Michel Done

Commented [CV9]: I'm not sure this is totally accurate – my understanding is the liability that remains related to the NUGs corresponds to the NUG contracts that continue to exist. Also, I think that the liability was calculated as the difference between the contractual rate in the NUG contracts and the fair value of the value of electricity being generated and I suspect this was part of the stranded debt that was booked directly to the accumulated deficit of the Province when Ontario Hydro was split up. How is this a regulatory liability?

Kim – can you check this wording with Ken Kandeepan if you haven't already done that.

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(d) Source uses a consultative process and deliberation when developing policies

As required by PS 1150.05(b), we need to analyze whether the concepts in the other source (i.e. ASC 980) are compatible with the (i) qualitative characteristics of financial information, (ii) the elements of financial statements, and (iii) the recognition and measurement criteria in PS 1000.

(i) Qualitative Characteristics of Financial Information

FASB	PSAS 1000	Evaluation
Concepts and objectives are for both business and non-business organizations as well as governmental units (Concept #4.3 to 4.5)	Public, legislators, councilors, investors, analysts, other governments (par. 14)	FASB considers governmental units
Financial reporting should: – Be useful in making resource allocation decisions – Be useful in assessing services and ability to provide services – Be useful in assessing management stewardship and performance – Provide information about economic resources, obligations, net resources and changes in them (Concept # 4.33-.54)	Financial statements should be relevant to the needs of the users and reliable. Relevance is achieved through timeliness, predictability and accountability value. Reliable information has the following characteristics: representational faithfulness, completeness, neutrality, conservatism and verifiability. (par. 28-29)	Similar

(ii) Elements of Financial Statements

FASB	PSAS	Evaluation
Assets		
Probable future economic benefits obtained or controlled by the entity as a result of past transactions or events. (Concept #6.25-.34)	Economic resources controlled by a government as a result of past transactions or event and from which future economic benefits are expected to be obtained. (par. 35)	Essential characteristics similar
Liabilities		
Probable future sacrifices of economic benefits arising from present obligations of the entity to transfer assets or provide services in the future as a result of past transactions or events. (Concept #6.35-.43)	Present obligations to others arising from past transactions or events, the settlement of which is expected to result in the future sacrifice of economic benefits with little or no discretion to avoid settlement. (par. 44)	Essential characteristics similar
Revenues		
Inflows from delivering or producing goods, rendering services or other activities that constitute the entity's central operations. (Concept #6.78-.79)	Increases in economic resources resulting from operations, transactions and events of the accounting period. (par. 46)	Similar
Expenses		
Outflows from delivering or producing goods, rendering services	Decreases in economic resources resulting from operations,	Similar

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or carrying out other activities that constitute the entity's central operations. (Concept # 6.80-.81)	transactions and events of the accounting period. (par. 49)	

(iii) Recognition Criteria

FASB	PSAS	Evaluation
To be recognized, an item must meet the definition of an element of the financial statements, must be measurable with sufficient reliability, be relevant and be reliable. (Concept # 5.64)	Item must have an appropriate basis of measurement, a reasonable estimate can be made of the amount and if the item involves obtaining or giving up future economic benefits, it is expected those benefits will be obtained or given up. (par. 55)	Similar

(iii) Measurement Criteria

FASB	PSAS	Evaluation
Measurement basis dependent upon nature of item. Historical cost basis, replacement cost, market value. (Concept # 5.65-.70)	Primarily using historical cost basis. Replacement cost and realizable value are also used, but in limited circumstances. (par. 60)	Similar

Criteria of PS 1150.08

Criteria	Evaluation
Source deals with the specific circumstance	Yes, ASC 980 Regulated Operations
Source is issued by an accounting standard setter	Yes, FASB
Source continues to be relevant	Yes, still used by rate regulated entities
Source uses a consultative process and deliberation when developing policies	Yes, comprehensive consultative process and deliberation

Evaluation whether the deferral of the Global Adjustment account meet the definition of Assets as per Section PS3210

PS3210 defines assets as *"economic resources controlled by a public sector entity as a result of past transactions or events and from which future economic benefits are expected to be obtained."* (par. 03)

The analysis of the three essential characteristics as defined by PS3210.4 are analyzed in the next table.

Characteristics	Additional guidance	Comments
They embody future economic benefits that involve a capacity, singly or in combination with other assets, to	The essence of assets are their future economic benefits. Assets embody future economic benefits that allow public sector entities to achieve their objectives. The future economic benefits embodied in assets involve a	The economic benefit embodied in the variance accounts (i.e regulatory asset) is the right to collect the incurred costs from ratepayers in order to settle the liability for the energy already

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provide goods and services, to provide future cash inflows, or to reduce cash outflows. (par. 4(a))	capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows or to reduce cash outflows. (par. 11) The future economic benefits embodied in an asset may also be in the form of generating future cash inflows. Cash inflows benefit the public sector entity because cash can be used to purchase or to provide goods and services, redistribute wealth or settle liabilities. (par. 13)	consumed by the ratepayers. The electricity Act, 1998 ("EA") section 25.33(1) states: "*The IESO shall, through its billing and settlement systems, make adjustments in accordance with the regulations that ensure that, over time, payments by classes of market participants in Ontario that are prescribed by regulation reflect,* *a) amounts paid to generators, the Financial Corporation and distributors, whether the amounts are determined under the market rules or under section 78.1, 78.2 or 78.5 of the Ontario Energy Board Act, 1998; and* *b) amounts paid to entities with whom the IESO has a procurement contract, as determined under the procurement contract."*
The public sector entity can control the economic resource and access to the future economic benefits. (par. 4(b))	Economic resources can arise from, but are not limited to, the following: government's own legislation (for example, taxes, fines and penalties); (par. 08(c)) A public sector entity controls the economic resource and access to the future economic benefits when it: a. can benefit from the economic resource through its capacity to provide goods and services, to provide future cash inflows or to reduce cash outflows; b. can deny or regulate access to those benefits by others; and c. is exposed to the risks associated with the economic resource. (par.16)	The economic resources is the right created by the legislation that the energy costs IESO incurs will result in future cash flows. In the regulatory environments, incurring costs creates an enforceable right to set rates at a level that permits IESO to recover those costs. The adjustment of future rates is the mechanism the OEB uses to implement the right. Currently, the EA section 25.33(5) states: *"The IESO shall establish and maintain such variance accounts as may be necessary to record all amounts payable or receivable by it under this section."* The legislation would be amended to permit IESO to collect specifically the deferral of the energy costs and the related interest and administrative costs.
The transaction or event giving rise to the public sector entity's control has already occurred. (par.4(c))	It is the occurrence of a past transaction or event on or before the financial statement date that distinguishes a present economic resource controlled by a public sector entity from an economic resource that may be	The past event giving rise to IESO's control occurs as the energy cost is incurred, as IESO has a right to collect it from the ratepayers.

Commented [CV10]: Can we also analyze control from the context of being able to sell the asset – while related party at the initial point, there is private financing that is based on the strength of the legislation which permits the government to monetize the asset (hence control the economic benefits from the asset)

Is there anything in the IFRS14 papers that would be helpful here?

Michel: There is nothing under PSAB, IFRS, US GAAP or conceptual framework that link control and monetize.

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	controlled by a public sector entity in the future. (par. 25) The past transaction or event that gives rise to control of an economic resource resulting from exchange agreements or contracts usually occurs at the point of exchange. This arises when substantially all the benefits and risks of ownership have been transferred to the public sector entity and normally coincides with the disbursement of funds, exchange of other assets or assumption of liabilities. (par. 26)	
Conclusion: The right to collect the deferral of the energy costs and the related interest and administrative costs meets the definition of assets.		

When concepts are in conflict with PSAS then PSAS prevails (PS 1150.12). For example, PSAS does not recognize intangible assets (PS 3150.03, .14 and PS1000.58). So if regulatory assets are considered to be intangible assets, they would not be allowed to be recognized through another source of GAAP.

It is worth noting that the economic impacts of rate regulation are not recognized under US GAAP as intangible assets as the FASB has specific guidance to deal with this type of asset. It is also worth noting that the IASB has an ongoing project on rate regulated activities and are currently developing an accounting model based on the principles of IFRS 15 *Revenue from contracts with customers* to provide a principle-based framework for recognizing regulatory assets (see Agenda Ref. 9 for the IASB meeting on February 23, 2017). Furthermore, the Summary Comment Letter Analysis related to the ED/2009/8 on Rate Regulated Activities published by the IASB in July 2009 states on page 2 of 50:-

"The International Financial Reporting Interpretations Committee ("IFRIC") observed that it had previously discussed whether a regulatory asset should be recognized in the context of service concession arrangements, either as deferred costs or as an intangible asset to reflect an expectation that the entity will recover these costs as part of the price charged in future periods. It had concluded that entities applying IFRSs should recognize only assets that qualified for recognition in accordance with the IASB's *Framework for the Preparation and Presentation of Financial Statements* and relevant accounting standards, such as IAS 11 *Construction Contracts*, IAS 18 *Revenue*, IAS 16 *Property, Plant and Equipment* and IAS 38 *Intangible Assets*.","

Entities that are not eligible to elect to apply the requirements of IFRS 14 do not recognize regulatory assets because in 2009 the IFRIC determined they did not meet the criteria for recognition of an intangible asset under IAS 38".

Therefore, we can conclude that ASC 980 is NOT in conflict with PS 3150.03, .14 and PS1000.58 with respect to intangible assets.

Conclusion:
FASB is appropriate to use as "*other source of GAAP*". FASB standard ASC 980 has extensive guidance for rate regulated entities including the recognition of regulatory assets and use of rate regulated accounting by IESO would be consistent with current reporting practices of H1, OPG and OEFC.

Appropriate Accounting Principle for issue #2

ASC 980 Regulated Operations

- 980-10-15-2 "*The guidance in the Regulated Operations Topic applies to general-purpose external financial statements of an entity that has regulated operations that meet all of the following criteria:*

Commented [CV11]: Does this paragraph need an ending -- e.g. are we saying that a reg asset is not an intangible under IFRS because in 2009 the IASB determined they did not meet the criteria for recognition of an intangible asset under IAS 38? I think we're missing that last part.

Michel Done

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Commented [np12]: Is this a question mark?

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Commented [CV13]: This section causes me some concern – any additional ideas re: strengthening it?

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(a) The entity's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party regulator or by its own governing board empowered by statute or contract to establish rates that bind customers.

(b) The regulated rates are designed to recover the specific entity's costs of providing the regulated services or products. This criterion is intended to be applied to the substance of the regulation, rather than its form. If an entity's regulated rates are based on the costs of a group of entities and the entity is so large in relation to the group of entities that its costs are, in essence, the group's costs, the regulation would meet this criterion for that entity.

(c) In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume that rates set at levels that will recover the entity's costs can be charged to and collected from customers. This criterion requires consideration of anticipated changes in levels of demand or competition during the recovery period for any capitalized costs."

- 980-10-20 Glossary, Definition of incurred costs *"A cost arising from cash paid out or obligation to pay for an acquired asset or service, a loss from any cause that has been sustained and has been or must be paid for."*
- 980-10-05-8 "*Unless an accounting order indicates the way a cost will be handled for rate-making purposes, it causes no economic effects that would justify deviation from the GAAP applicable to business entities in general. The mere issuance of an accounting order not tied to rate treatment does not change an entity's economic resources or obligations. In other words, the economic effect of regulatory decisions—not the mere existence of regulation—is the pervasive factor that determines the application of GAAP.980-340 – Other Assets and Deferred Costs."*
- 980-340-25-1 "*Rate actions of a regulator can provide reasonable assurance of the existence of an asset. An entity shall capitalize all or part of an incurred cost that would otherwise be charged to expense if both of the following criteria are met:*

  (a) It is probable (as defined in Topic 450) that future revenue in an amount at least equal to the capitalized cost will result from inclusion of that cost in allowable costs for rate-making purposes.

  (b) Based on available evidence, the future revenue will be provided to permit recovery of the previously incurred cost rather than to provide for expected levels of similar future costs. If the revenue will be provided through an automatic rate-adjustment clause, this criterion requires that the regulator's intent clearly be to permit recovery of the previously incurred cost.

  A cost that does not meet these asset recognition criteria at the date the cost is incurred shall be recognized as a regulatory asset when it does meet those criteria at a later date."
- 980-340-40-1: "*If at any time an entity's incurred cost no longer meets the criteria for the capitalization of an incurred cost (see paragraph 980-340-25-1), that cost shall be charged to earnings."*
- 980-350-50-1: "*In some cases, a regulator may permit an entity to include a cost that would be charged to expense by an unregulated entity as an allowable cost over a period of time by amortizing that cost for rate-making purposes, but the regulator does not include the unrecovered amount in the rate base. That procedure does not provide a return on investment during the recovery period. If recovery of such major costs is provided without a return on investment during the recovery period, the entity shall disclose the remaining amounts of such assets and the remaining recovery period applicable to them."*
- 980-340-55-2: "*In some cases, a regulator may approve rates that are intended to recover an incurred cost over an extended period without a return on the unrecovered cost during the recovery period."*
- 980-340-55-3: "*The regulator's action provides reasonable assurance of the existence of an asset (see paragraph 980-340-25-1). Accordingly, the regulated entity would capitalize the cost and amortize it over the period during which it will be allowed for rate-making purposes. That cost would not be recorded at discounted present value. An exception to this general rule is provided for costs of abandoned plants."*

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Issue #2: Can the IESO recognize deferral or variance accounts related to the deferral of the annual Global Adjustment account as a regulatory asset on its statement of financial position?

As described in issue #1, US GAAP includes special accounting provisions that are applicable to entities with activities that are subject to rate regulation. The result is that rate regulated entities are required to recognize regulatory assets and liabilities provided the following three criteria are met:

Criteria	Comment	Evaluation
The entity's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party regulator or by its own governing board empowered by statute or contract to establish rates that bind customers.	IESO has unrecognized variance accounts related to the MDMR (smart meters), that have been approved by the OEB in accordance with the Electricity Act and the OEB Act (see Appendix B). It is important to note that Hydro One and OPG are both consolidated into the province's books, are both regulated by the OEB and their respective regulatory assets and liabilities are reported in the province's books.	Met
The regulated rates are designed to recover the specific entity's costs of providing the regulated services or products.	Currently, the rates approved by the OEB are designed to recover the IESO's costs of providing the regulated services and the pass-through related to the energy purchased from the generators. The contemplated transaction is based on the fact that the OEB would grant generic deferral or variance accounts to capture the difference between the amounts paid to generators and others, and the amounts collected in rates. Furthermore, the interest and ancillary costs related to the contemplated transaction would also be included in future rates charged to customers. In summary, the legislation would create a right to collect the incurred costs.	Met
In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume that rates set at levels that will recover the entity's costs can be charged to and collected from customers. This criterion requires consideration of anticipated changes in levels of demand or competition during the recovery period for any capitalized costs."	Since the deferral or variance accounts would be sold to the OPG Trust at least on a monthly basis and cash would be received on the same day, this criteria would be met. This criteria would need to be monitored on a yearly basis to ensure that IESO and the OPG Trust would be able to recover the future deferred amount taking into account the levels of demand or competition during the recovery period.	Met
Conclusion: Since the three criteria are met, IESO should be able to adopt the guidance in ASC 980.		

Conclusion: Based on the assumptions mentioned above, IESO should be able to recognize a regulatory asset for the deferral of the annual Global Adjustment account. As mentioned in the ASC 980 guidance above, it is important that an accounting order be issued by the OEB which indicates the way the incurred costs would

Commented [np14]: These types of costs are normally allowed for under regulatory frameworks? Perhaps we should state that since the Trust will be planning to report them as recoverable.

Commented [CV15]: May need to think about this wording given how OPG Trust views the interest revenue

Michel Not sure what to write. I believe this is generic enough to cover all the costs.

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Commented [CV16]: Is this an issue for IESO if the structure remains in place? I'm not sure it's clear what risk IESO has.

Yes for the future deferred amount. IESO may not be able to sell them to OPG if the level of demand has decreased.

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be handled for rate-making purposes as the OEB's action provides reasonable assurance of the existence of a regulatory asset.

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2. Derecognition of the regulatory assets

Background and Assumptions for issue #3

The facts, circumstances, and assumptions relevant to the specific transactions are as follows:

1. The annual Global Adjustment account that would be deferred in the deferral or variance accounts (the "Asset") would be significant.
2. The IESO does not currently have the financial capability to finance the Asset and is contemplating selling the Asset to a Trust to be set-up by OPG (the "OPG Trust").
3. The OPG Trust would be consolidated by OPG.
4. Proposed terms of the sale agreement between the IESO and the OPG Trust:
   - The sale contract would be structured as an absolute sale, which would assign future economic benefits or cash flows related to the Asset exclusively to the OPG Trust.
   - The arrangement would be structured whereby there is no recourse or obligations remaining of IESO related to the Asset.
   - The arrangement is not considered to be a financing transaction as IESO would have no obligations to the OPG Trust after the Asset is sold to the OPG Trust.
   - IESO would not retain any rights or benefits from the Asset.
   - IESO would not have any rights to interest or penalties on the Asset once it has been transferred to the OPG Trust.
   - The contract would be clear that IESO cannot pledge the Asset as collateral to obtain future cash flows or financing.
   - IESO would continue to collect related cash flows on the OPG Trust's behalf and remit those cash flows to the OPG Trust without material delay. In addition, IESO would not be entitled to reinvest such cash flows, except for investments in cash or cash equivalents during the short settlement period from the collection date to the date of required remittance to the OPG Trust, and interest earned on such cash and cash equivalents is passed to the OPG Trust. The contract would define IESO's role strictly as that of agent, under a pass-through arrangement.
   - Servicing, origination, and arrangement fees, would be collected by IESO in rates charged to ratepayers as part of its market dealings.
   - The Asset would be sold to the OPG Trust at least, on a monthly basis and cash would be received on the same day.

Appropriate Accounting Principles for issue #3

Public Sector Accounting Standard ("PSAS") 3210, *Assets*, defines an asset as "…*economic resources controlled by a government as a result of past transactions or events and from which future economic benefits are expected to be obtained*." [par. 3]

.04 *"Assets have three essential characteristics:*

(a) they embody future economic benefits that involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows, or to reduce cash outflows;

(b) the public sector entity can control the economic resource and access to the future economic benefits; and

(c) the transaction or event giving rise to the public sector entity's control has already occurred."

.22 *"Control of an economic resource and of access to the future economic benefits are essential characteristics of an asset, whereas possession or ownership is not*."

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.24 *"A public sector entity may act as trustee when it administers trusts on behalf of the beneficiaries specified in the agreement or statute. As trustee, the public sector entity merely administers the assets, following the terms and conditions set out in the agreement. It does not control the asset because it does not have access to the future economic benefits. Those benefits flow to the beneficiaries."*

As noted in PS1000 Financial statement concepts:

.37 *"An item is not an asset of a government if it lacks one or more of the essential characteristics listed in the preceding paragraph. Thus, for example, an item does not qualify as an asset of a government if the item involves:*

(a) no future economic benefit;

(b) future economic benefit, but the government cannot obtain it; or

(c) future economic benefit that the government may obtain, but the events or circumstances that give the government control of the benefit have not yet occurred."

As noted in PS3450, derecognition of a financial liability:

.042 *"A government should remove a financial liability (or part of a financial liability) from its statement of financial position when, and only when, it is extinguished (i.e., when the obligation specified in the contract is discharged or cancelled, or expires)."*

.043 *"A financial liability (or part of a financial liability) is extinguished when the debtor either:*

(a) discharges the liability (or part of it) by paying the creditor, normally with cash, other financial assets, goods or services; or

(b) is legally released from primary responsibility for the liability (or part of it) either by process of law or by the creditor. (When the debtor has given a guarantee, this condition may still be met.)"

.046 *"Payment to a third party, including a trust (sometimes called "in-substance defeasance"), does not, by itself, relieve the debtor of its primary obligation to the creditor in the absence of legal release."*

.047 *"If a debtor pays a third party to assume an obligation and notifies its creditor that the third party has assumed its debt obligation, the debtor does not derecognize the debt obligation, unless the condition in paragraph PS 3450.043(b) is met. If the debtor pays a third party to assume an obligation and obtains a legal release from its creditor, the debtor has extinguished the debt. However, if the debtor agrees to make payments on the debt to the third party or direct to the original creditor, the debtor recognizes a new debt obligation to the third party."*

Issue #3: Can the IESO derecognize the variance accounts related to the deferral of the annual Global Adjustment account upon sale to OPG Trust?

PS3210 does not specifically address the derecognition of a regulatory asset as the concept of a regulatory asset does not exist under PSAS.

As mentioned above, regulatory assets do not meet the definition of intangible asset or financial asset. Specifically, regulatory assets do not meet the definition of financial asset because they are imposed on customers through the tariff (i.e., imposed by the OEB) and do not represent a right to receive payments from another party as a result of a contract.

More generally, PSAS.3210.37 suggests that an asset would no longer be recognized when it fails to meet the definition of an asset.

Based on PS1000.37(b), an item does not qualify as an asset of a government if the item involves future economic benefit, but the government cannot obtain it.

Based on the assumptions mentioned above, the legal title of the Asset would be transferred to the OPG Trust, as well as, ALL risks and rewards, including the following:

- the contract would define IESO's role strictly as that of agent, under a pass-through arrangement;

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- all cash flows related to the Asset would be transferred without material delay to the OPG Trust;
- rights to interest or penalties on the Asset would be for the benefits of the OPG Trust;
- IESO cannot pledge the Asset; and
- no recourse or obligations remaining of IESO related to the Asset.

IESO should also evaluate whether the sale of the Asset should in fact be considered as a borrowing arrangement. In the absence of detailed guidance on this subject, we can analogize to the guidance in PS3450 *Financial Instruments* for the derecognition of a financial liability. Par. 43 states that *"A financial liability (or part of a financial liability) is extinguished when the debtor is legally released from primary responsibility for the liability (or part of it) either by process of law or by the creditor. (When the debtor has given a guarantee, this condition may still be met.)"* Based on the assumptions mentioned above, since the legal title of the Asset would be transferred to the OPG Trust, as well as, ALL risks and rewards, it can be concluded that the sale of the Asset is not a borrowing arrangement.

Conclusion: Based on the proposed terms of the sale agreement between the IESO and OPG Trust mentioned above, the deferral or variance accounts would be derecognized at the point where the IESO would derive no future economic benefit from it. This would occur where the IESO ultimately transfers the rights, risk and rewards related to those deferral or variance accounts to the OPG Trust. This would occur on the receiptption of cash from the OPG Trust.

Commented [CV17]: Receipt

OK

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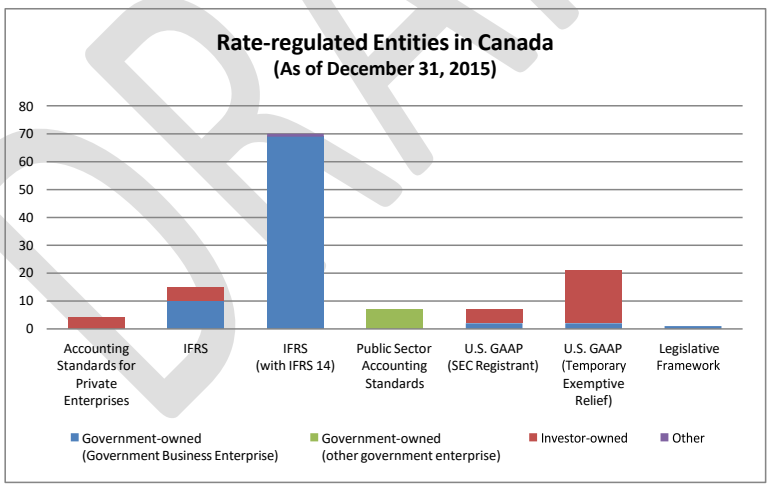
Appendix A:

Extract from the "Accounting Standards Advisory Forum Agenda Ref: 3A dated September 29, 2016" available on the IFRS website

Canadian Rate-regulated Entities

18. The accounting framework landscape for Canadian rate-regulated entities is currently diverse. For annual periods beginning on or after January 1, 2015, rate-regulated entities that are Canadian publicly accountable enterprises are required to apply IFRS. Rate-regulated entities that adopted IFRS for the first time after IFRS 14 *Regulatory Deferral Accounts* was issued continue to recognize these balances. Government Business Enterprises (which operate to generate a profit or on a break-even basis) that are also rate-regulated entities are also directed to apply standards applicable to for-profit entities, and thus apply IFRS. Canadian securities legislation permits dual-listed entities (i.e., Canadian entities also registered with the U.S. Securities and Exchange Commission) to apply U.S. GAAP in the normal course. Temporary exemptive relief is also available from the Canadian Securities Administrators that permits rate-regulated entities that are not dual-listed to apply U.S. GAAP in place of IFRS. If a rate-regulated entity is not a publicly accountable enterprise or a Government Business Enterprise, additional accounting framework options may also include Accounting Standards for Private Enterprises or Public Sector Accounting Standards. A non-GAAP reporting framework is used when legislated by the provincial owner of a government-owned rate-regulated entity.

19. As of December 31, 2015, there were approximately 125 rate-regulated entities in Canada. These entities mainly range in size from small entities owned by municipal governments to large investor-owned entities or entities owned by provincial governments.



Source: Information compiled based on audited financial statements for fiscal year 2015, or information from rate filings that confirmed the accounting framework used by these entities. Due to data collection constraints, the population could be slightly larger.

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20. The chart above highlights two key points:

(a) The majority of investor-owned entities have chosen U.S. GAAP over IFRS. A few entities that are not reporting issuers apply Accounting Standards for Private Enterprises. Both U.S. GAAP and Accounting Standards for Private Enterprises permit the recognition of balances arising from rate regulation. Several entities that apply U.S. GAAP have told us this choice was influenced by the need to provide their users with financial statements that accurately reflect the economics of their business. Further, some entities presently using the temporary exemptive relief described in paragraph18 have said they are considering incurring the cost and effort necessary to become a registrant of the U.S. Securities and Exchange Commission in order to have the permanent ability to apply U.S. GAAP. While such a decision could be primarily for business reasons such as the entity expanding its operations into the U.S., it could also be attributed to the continuing uncertainty about the ultimate outcome of the IASB's Rate-regulated Activities project and the approaching expiry date of the securities regulators' exemptive relief.

(b) Public sector entities that are Government Business Enterprises tend to apply IFRS. The majority of these entities is made up of several large provincially-owned utilities, and many small municipally-owned local distribution utilities that do not issue debt or list in the U.S. stock market, and are not subject to Canadian securities legislation. As a result, they cannot apply U.S. GAAP. As shown in the chart, many of these entities adopted IFRS for the first time after the IASB issued IFRS 14, which allowed them to continue their previous accounting practices for rate-regulated activities.

21. Within the pool of government-owned rate-regulated entities, there are entities that do not meet the characteristics of Government Business Enterprises and are required to apply Public Sector Accounting Standards.

22. The data on the different accounting frameworks in Canada is unique. It demonstrates that when given a choice, rate-regulated entities select an accounting framework that captures the effects of rate regulation on their financial position and financial performance in order to communicate more decision-useful information to users.

http://www.ifrs.org/Meetings/MeetingDocs/ASAF/2016/September/1609-ASAF-03A-Rate-regulated-Activities-Canada.pdf

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Appendix B:

Extract from the "DECISION and ORDER issued by the OEB on March 28, 2013" available on the IFRS website

Proceeding on the Ontario Energy Board's own motion to review the options for and ultimately determine the appropriate allocation and recovery of the Smart Metering Charge pursuant to section 19 of the Ontario Energy Board Act, 1998.

THE BOARD ORDERS THAT:

Effective May 1, 2013, the Smart Metering Entity charge to be levied and collected by the Smart Metering Entity from all Distributors identified in the Board's annual Yearbook of Electricity Distributors shall be $0.788 per month for each Residential and General Service <50kW customers for each distributor. The Smart Metering Entity charge shall be in effect from May 1, 2013 to October 31, 2018. The number of Residential and General Service <50kW customers to which the Smart Metering Entity charge will be applied to shall be in accordance with the methodology set forth in the Settlement Agreement attached as Appendix A.

http://www.ontarioenergyboard.ca/oeb/_Documents/EB-2012-0100/dec_order_IESO-SME_20130328.pdf

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IFRS 14.rtf

From: Lee Anne Probert [leeanne.probert@ca.ey.com]
To: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
Subject: IFRS 14
Date: Wednesday, February 08, 2017 22:46:41
Attachment 1: @

This message has been archived. View the original item
https://ctsbigdcapmvs11.cihs.ad.gov.on.ca/EnterpriseVault/ViewMessage.asp?VaultId=1DF5C15A266170E45894733349661D6AD1110000ctsbigdcapmvs01&SavesetId=201703149503736~201702090246460000~Z~915556B1044B35CA3925A184EA2765D1View the original item

Hi Nadine,

Not sure if you’re checking e-mails this evening, but I’ve been doing some more thinking……

If the Province sets up a new entity and can demonstrate that it meets the definit
Attachments:
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https://ctsbigdcapmvs11.cihs.ad.gov.on.ca/EnterpriseVault/ViewMessage.asp?VaultId=1DF5C15A266170E45894733349661D6AD1110000ctsbigdcapmvs01&SavesetId=201703149503736~201702090246460000~Z~915556B1044B35CA3925A184EA2765D1&AttachmentId=1image001.gif

IFRS 14.rtf

From: Lee Anne Probert [leeanne.probert@ca.ey.com]
To: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
Subject: IFRS 14
Date: Wednesday, February 08, 2017 22:46:41
Attachment 1: image001.gif

Hi Nadine,

Not sure if you're checking e-mails this evening, but I've been doing some more thinking……

If the Province sets up a new entity and can demonstrate that it meets the definition of a GBE (which may not be possible), I don't think that new entity will be able to apply IFRS 14 in its financial statements.

The following is an excerpt from the scope section of IFRS 14:

5 An entity is permitted to apply the requirements of this Standard in its first IFRS financial statements if and only if it:

(a) conducts rate-regulated activities; and

(b) recognised amounts that qualify as regulatory deferral account balances in its financial statements in accordance with its previous GAAP.

Even if the activities of the new entity meet the definition of "rate-regulated activities" (which I'm not sure they will), the entity has not recognized regulatory amounts in its financial statement in accordance with its previous GAAP (IFRS will be its one and only GAAP).

Since IFRS 14 was issued to permit certain entities to continue recognizing regulatory assets and liabilities until the IASB concludes whether they meet the definition of an

asset/liability under IFRS, I think most people would be reluctant to take a position that a regulatory asset can be recognized under IFRS without relying on IFRS 14.

Let me know when you have a few minutes to discuss.

Regards,

Lee Anne

--

LeeAnne Probert | Senior Manager | Assurance Services

Ernst & Young LLP

Ernst & Young Tower, 222 Bay Street, P. O. Box 251, Toronto, ON M5K 1J7, Canada

Office: 416 943 3554 | Cell: 416 888 6997 | leeanne.probert@ca.ey.com

Fax: 416 943 3767 | EY/Comm: 1657762

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image001.pdf

IFRS Discussion.pdf

From:	Virani, Shyrose (TBS) on behalf of Petsche, Nadine (TBS)
To:	Picard, Michel (mpicard@kpmg.ca); Petsche, Nadine (TBS)
Cc:	Virani, Shyrose (TBS); Patel, Bharat (TBS)
Subject:	IFRS Discussion
Start:	June 4, 2015 10:00:00 AM
End:	June 4, 2015 11:00:00 AM
Location:	APFR Boardroom, teleconference 416-212-8014 passcode 1474532#

Bharat – moderator code 2121

IFRS Presentation by KPMG.pdf

From:	Virani, Shyrose (TBS)
To:	Petsche, Nadine (TBS); "Picard, Michel"; Patel, Bharat (TBS); "alec.cheng@opg.com"; "Samir.Chhelavda@HydroOne.com"
Cc:	"KOGAN Alex -FIN & C CTRL"; "Zeeshan.Majid@HydroOne.com"; "Arthur.MCGLASHAN@HydroOne.com"; "Giovanna.Baragetti@HydroOne.com"; "Dagmara.Korzeniak@HydroOne.com"; "MAUTI John -FIN & C CTRL"; "MADAMBI Tarisai -FIN & C CTRL"
Subject:	IFRS Presentation by KPMG
Start:	October 15, 2014 1:30:00 PM
End:	October 15, 2014 3:30:00 PM
Location:	7 Queen"s Park Crescent, 1st Floor, TBO Boardroom, Frost South

---

Upon arrival, please call Shyrose at 416-325-1448

Thanks

Shyrose

Importance of setting up regulatory accounting in 2016.rtf

From: Picard, Michel [mpicard@kpmg.ca]
To: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; Kimberly Marshall [kim.marshall@ieso.ca]
Subject: Importance of setting up regulatory accounting in 2016
Date: Wednesday, February 15, 2017 21:21:59

Ladies,

I believe it is important for IESO to recognize the economic impacts of rate regulation in 2016 under PSAB. Assuming that the AG rejects it under PSAB, then it will require IESO to move to option b) ie. to create a GBE in 2017 to execute the contemplated transaction. As you will remember, IFRS 14 requires IESO to have recognized regulatory balances in its prior year FS. This would be an easier sale than the market books.

Regards,

Michel

Sent from my iPhone

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Importance of setting up regulatory accounting in 2016.pdf

From:	Virani, Shyrose (TBS)
To:	Petsche, Nadine (TBS); Veinot, Cindy (TBS); "kim.marshall@ieso.ca"; "mpicard@kpmg.ca"
Subject:	Importance of setting up regulatory accounting in 2016
Start:	February 16, 2017 2:30:00 PM
End:	February 16, 2017 3:00:00 PM
Location:	teleconference 416 212 8014 passcode 1474532#

Nadine – Chair

Original Message

From: Veinot, Cindy (TBS) < <mailto:Cindy.Veinot@ontario.ca> Cindy.Veinot@ontario.ca>

Sent: Thursday, February 16, 2017 9:15 AM

To: Kim Marshall; Picard, Michel; Petsche, Nadine (TBS)

Cc: Jack, Shannon (TBS); Hosick, Sarah (TBS)

Subject: RE: Importance of setting up regulatory accounting in 2016

I'll be at FPC

Does 2 pm work for a call?

-----Original Message-----

From: Kim Marshall [<mailto:Kim.Marshall@ieso.ca> mailto:Kim.Marshall@ieso.ca]

Sent: February-16-17 8:06 AM

To: Picard, Michel; Veinot, Cindy (TBS); Petsche, Nadine (TBS)

Subject: RE: Importance of setting up regulatory accounting in 2016

Attached is an updated paper from the KPMG audit partner on IESO. In Matt's own words he has : added additional insights around the components of assets/liabilities, recognizing the differing views and significantly updated the conclusions to indicate that multiple conclusions could be reached. Happy to revisit as needed.

Matt and I have had a conversation about potential impacts and what we should say to the IESO board and when. So happy to discuss next steps.

E&Y will deliver an updated memo by tomorrow.

Michel, when can we have the other KPMG memo?

Should we have a conf call at some point today before the 4pm meeting, although Cindy maybe you are not at the 4pm meeting?

Kimberly Marshall | VP, Corporate Services & CFO Independent Electricity System Operator (IESO) | T: (416) 969-6232 | C: (416) 545-7202

120 Adelaide Street West, Suite 1600, Toronto, ON M5H 1T1

Web: <http://www.ieso.ca> www.ieso.ca | Twitter: IESO_Tweets | LinkedIn: IESO

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Conservation: <http://www.saveONenergy.ca> www.saveONenergy.ca | Twitter: saveONenergyOnt | LinkedIn: saveONenergy

-----Original Message-----

From: Picard, Michel [<mailto:mpicard@kpmg.ca> mailto:mpicard@kpmg.ca]

Sent: February 15, 2017 8:22 PM

To: <mailto:Cindy.Veinot@ontario.ca> Cindy.Veinot@ontario.ca; Nadine Petsche; Kim Marshall

Subject: Importance of setting up regulatory accounting in 2016

*** EXTERNAL email. Please be cautious and evaluate before you click on links, open attachments, or provide credentials. ***

Ladies,

I believe it is important for IESO to recognize the economic impacts of rate regulation in 2016 under PSAB. Assuming that the AG rejects it under PSAB, then it will require IESO to move to option b) ie. to create a GBE in 2017 to execute the contemplated transaction. As you will remember, IFRS 14 requires IESO to have recognized regulatory balances in its prior year FS. This would be an easier sale than the market books.

Regards,

Michel

Sent from my iPhone

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In advance of Wednesday’s call with the IESO.rtf

From: Jeannette Briggs [jeannette.briggs@ieso.ca]
To: leeanne.probert@ca.ey.com [leeanne.probert@ca.ey.com]
CC: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
Subject: In advance of Wednesday's call with the IESO
Date: Monday, June 26, 2017 17:00:54

This message has been archived. View the original item
https://ctsbigdcapmvs11.cihs.ad.gov.on.ca/EnterpriseVault/ViewMessage.asp?VaultId=1DF5C15A266170E45894733349661D6AD1110000ctsbigdcapmvs01&SavesetId=2017 07271180346~201706262101010000~Z~C073BC31D57C028BE72C64CB4C0152C1View the original item

LeeAnne,

Here are the responses to your questions on Market Settlement. Susan Nicholson will answer the questions around accounting verbally. However, given the number of questions you had o

In car 4165457202.rtf

From: Kim Marshall [Kim.Marshall@ieso.ca]
To: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
Subject: In car 4165457202
Date: Tuesday, July 25, 2017 17:23:08

Sent from my iPhone

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Indemnity letter - signed.rtf

From: Carolyn Roberts [carolyn.roberts@ca.ey.com]
To: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
Subject: Indemnity letter - signed
Date: Tuesday, October 10, 2017 16:12:17
Attachment 1: image002.jpg
Attachment 2: Correspondence 29 Aug 2017 IESO - OPCD - EY.pdf

---

Please find attached the Indemnity letter signed by Suzie Gignac. Thank you.

Best regards,

--

Carolyn Roberts | Executive Coordinator

Ernst & Young LLP

99 Bank Street, Suite 1200, Ottawa, Ontario K1P 6B9, Canada

Office: 1-613-598-4844 | Fax: 1-613-232-5324 | carolyn.roberts@ca.ey.com

EY/Comm: 3025243

Website: http://www.ey.com

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From: Veinot, Cindy (TBS) [mailto:Cindy.Veinot@ontario.ca]
Sent: Thursday, October 5, 2017 5:10 PM
To: Blake Langill <blake.w.langill@ca.ey.com>; Suzie Gignac <suzie.r.gignac@ca.ey.com>
Cc: Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>; Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>
Subject: FW: Ready for signature

Hi Blake and Suzie – as discussed at our in person meeting, KPMG has requested that we sign the attached letter before we can provide a copy of their memo to you. Please review and let me know if you can sign the attached.

Thanks,

From: Picard, Michel [mailto:mpicard@kpmg.ca]
Sent: October 5, 2017 3:40 PM
To: Veinot, Cindy (TBS)
Subject: Ready for signature

Cindy,

Please find enclosed the signed letter. I have accepted all your changes.

Michel Picard, CPA, CA

Partner, Accounting Advisory Services

KPMG LLP

333 Bay Street, Suite 4600

Toronto, Ontario, M5H 2S5

T 416 777 8414

M 416 560 2569

mpicard@kpmg.ca

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image002.pdf

EY

Correspondence 29 Aug 2017 IESO - OPCD - EY.pdf

KPMG LLP
Chartered Accountants
Bay Adelaide Centre
Suite 4600
333 Bay Street
Toronto ON
M5H 2S5

Telephone (416) 777-8500
Fax (416) 777-8818
www.kpmg.ca

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Ms. Cindy Veinot
Treasury Board Secretariat, Office of the Provincial Controller
Frost Building South
7 Queen's Park Crescent East
Toronto, Ontario, M7A 1Y7
Canada

August 29, 2017

Dear Madam:

In connection with the preparation of a technical accounting paper by the Office of the Provincial Controller Division, Treasury Board Secretariat (the "OPCD") related to the Fair Hydro Plan, 2017, KPMG LLP ("KPMG") understands that the OPCD has requested that a copy of our Memorandum to File dated July 25, 2017 be provided to their accounting adviser, Ernst and Young LLP ("EY"). In regards to this request, the Independent Electricity System Operator ("the IESO") has asked that we allow EY access to our Memorandum to File prepared in connection with our audit of the 2016 financial statements of the IESO. We have received authorization from IESO management to allow EY such access to our Memorandum prepared in the course of the audit.

Our audit of the 2016 financial statements of the IESO was conducted in accordance with generally accepted auditing standards, the objective of which was to form an opinion on whether the financial statements, which are the responsibility and representations of management of the IESO, present fairly, in all material respects, the financial position and results of operations and cash flows of the IESO in conformity with generally accepted accounting principles. Under those standards, we have the responsibility, within the inherent limitations of the auditing process, to design our audit to provide reasonable assurance of detecting errors and irregularities that are material to the financial statements and to exercise due care in the conduct of our audit. The concept of selective testing of the data being audited, which involves judgment regarding both the number of transactions to be audited and the areas to be tested, has been generally accepted as a valid and sufficient basis for an auditor to express an opinion on financial statements. Thus, our audit, based on the concept of selective testing, is subject to the inherent risk that material errors or irregularities, if they exist, will not be detected. In addition, an audit does not address the possibility that material errors or irregularities may occur in the future. The conduct of an audit requires the application of professional judgment and the assessment of materiality in connection with financial statement assertions.

Our audit of the IESO's 2016 financial statements was not planned or conducted in contemplation of the preparation of a technical accounting paper related to the Fair Hydro Plan and may not be appropriate for your purposes. Items of possible interest to OPCD may not have been specifically addressed.

We have not reported on the IESO's financial statements for any period subsequent to December 31, 2016 and significant events may have occurred since that date. Our Memorandum prepared in connection therewith and our responses to EY's questions, should not be taken to supplant other inquiries

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and procedures that OPCD should undertake for the preparation of the technical accounting paper described above or for any other purpose.

We accept no responsibility whatsoever for any reliance that OPCD, EY or any other person or body may place on the information provided by us.

In consideration of our permitting access to the Memorandum referred to above and for providing explanations relating to it if asked, and to the information contained therein, OPCD (on behalf of itself and all parties for which it is legally responsible - "the OPCD Parties") and EY agree that:

a) such access to our Memorandum and provision of information and explanations is not provided pursuant to any agreement or other arrangements of a contractually binding nature between our firm and any of the OPCD Parties or EY;

b) the OPCD Parties and EY do not acquire any rights against our firm or otherwise as a result of such access or as a result of what our Memorandum contain;

c) our firm, our partners and staff do not have any duties, responsibilities, liabilities, or obligations to the OPCD Parties or to EY as a result of permitting such access or providing such information and explanations;

d) the OPCD Parties and EY will not commence any action, suit or proceeding or make any demand, complaint or claim against us arising out of permitting such access or providing such information and explanation, or for any omission therein unless such action, suit or proceeding arises from our willful misconduct or failure to act in good faith in responding to specific questions raised by Ernst and Young.

OPCD also agrees that except as required by law, the information acquired as a result of the review of our Memorandum will be maintained in confidence and will not be disclosed to any third party (except as otherwise permitted herein) and will be used by it and EY in connection with the preparation of the technical accounting paper described above and that it will show this letter to, and secure the commitment to the provisions of this paragraph by EY.

Please confirm your agreement with the foregoing by signing and dating a copy of this letter and returning it to us.

Yours very truly

Michel Picard
Partner
416) 777 -8414

KPMG

We are in agreement with the terms of this letter.

Office of the Provincial Controller Department of the Province of Ontario

by: _____ _____

Signature: Date:

Name: Ms Cindy Veinot

Title: Treasury Board Secretariat, Office of the Provincial Controller

We acknowledge that we have read the foregoing and agree to be bound by the foregoing agreement in connection with our access to KPMG' Memorandum.

Ernst and Young LLP

by: L Lypnac October 10, 2017

Signature: Date:

Name:

Title:

Info.rtf

From: Virani, Shyrose (TBS) []
To: Langdon, J Mark (MGCS) [JMark.Langdon@ontario.ca]
Subject: Info
Date: Monday, February 06, 2017 12:09:19

Hi Mark

As per our telephone conversation, following are the staff from Deloitte that I requested the clearance for:

1. Trevor Gary
2. Kerry Danyluk
3. Claire Grindley

From Pricewater house coopers

1. Michael Hawtin

Thanks

Shyrose

Interim invoice.rtf

From: Picard, Michel [mpicard@kpmg.ca]
To: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
CC: Donaldson, Mark (TBS) [Mark.Donaldson@ontario.ca]
Subject: Interim invoice
Date: Friday, March 16, 2018 15:34:18
Attachment 1: MOF Invoice 3.16.18.pdf

Hi Shyrose,

Please find enclosed our interim invoice for RFS # TBS – OTB – OPCD-21.

Have a great weekend!

Regards,

Michel Picard, CPA, CA

Partner, Accounting Advisory Services

KPMG LLP

333 Bay Street, Suite 4600

Toronto, Ontario, M5H 2S5

T 416 777 8414

M 416 560 2569

mpicard@kpmg.ca

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MOF Invoice 3.16.18.pdf

KPMG LLP
Suite 4600 Bay Adelaide Centre
333 Bay Street
Toronto, ON M5H 2S5

Payment Address:
KPMG LLP, T4348
P.O. Box 4348, Station A
Toronto, ON M5W 7A6

March 16, 2018

Ministry Of Finance
7 Queen's Park Crescent
Toronto, ON M7A 1Y7
ATTN: Mr. Mark Donaldson
Director

Invoice	: 8001936069
Reference	: 2000700253
Client	: 1000015790
Contact	: Michel Picard
Telephone	: (416) 777-8414
Email	: mpicard@kpmg.ca

RFS # TBS – OTB – OPCD-21

Interim billing for professional services rendered to assist the Treasury Board Secretariat, Office of the Provincial Controller with accounting advisory services. Hours incurred for the period July 19, 2017 to March 15, 2018.

Michel Picard (9.1 days x $3,125)		$28,437.50	
Bailey Church (21.1 days x $2,000)		$42,200	
	Our Fee	$ 70,637.50	CAD
		$ **70,637.50**	CAD
	HST	9,182.88	
	Amount Due	$ **79,820.38**	CAD

Payment is due upon receipt
GST/HST Number 12236 3153 RT0001 QST Registration 1023774310 TQ0001

CAD Cheque Payments: KPMG LLP, T4348, P.O. Box 4348, Station A, Toronto, ON M5W 7A6
Please return remittance advice with cheque.

CAD Wire Payments: Beneficiary: KPMG LLP
Bank Details: TD Canada Trust, 55 King St. West, Toronto, ON M5K 1A2, Bank # 004, Transit # 10252, Account # 0938281, Swift Code TDOMCATTTOR
Please e-mail related wire payment details including invoice number to kpmg-ar@kpmg.ca

Invoice No: 8001936069 **Reference:** 2000700253 **Client:** 1000015790 **Amount:** $ 79,820.38 CAD

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Invoice for Services Rendered Enclosed.rtf

From: Carolyn Roberts [carolyn.roberts@ca.ey.com]
To: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
CC: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; Suzie Gignac [suzie.r.gignac@ca.ey.com]
Subject: Invoice for Services Rendered Enclosed
Date: Wednesday, May 17, 2017 13:59:57
Attachment 1: image003.jpg
Attachment 2: Invoice-C100085052.pdf

Please find attached our invoice for services provided under PO OSS 227152. If you need any further information, please do not hesitate to contact us. Thank you.

Best regards,

--

Carolyn Roberts | Executive Coordinator

Ernst & Young LLP

99 Bank Street, Suite 1200, Ottawa, Ontario K1P 6B9, Canada

Office: 1-613-598-4844 | Fax: 1-613-232-5324 | carolyn.roberts@ca.ey.com

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Invoice-C100085052.pdf

Ernst & Young LLP
Ottawa, ON

Invoice

Treasury Board Secretariat
Nadine Petsche
777 Bay Street, 25th Floor
Toronto, ON M5G 2E5
Canada

Invoice No.: CA01C100085052
Please include this number with payment

Invoice Date:	17 May 2017
Due Date:	Upon receipt
Client No.:	0011426981
Engagement No.:	E-65062708

Remit To:
P.O. Box 57104, Postal Station A
Toronto, Ontario M5W 5M5
A/R Queries:
1-416-943-3851
1-800-311-1104

Description of Services: RFS-TBS-OTB-OPCD-16 PO number OSS 227152

Time incurred with regards to Complex Accounting Support.

Blake Langill - 19 hrs
Lee Anne Probert - 41 hrs
Suzie Gignac - 30.5 hrs

		Net	Tax	Rate	Tax Amount	CAD Total
Fee		37,650.00	HST	13 %	4,894.50	42,544.50
		37,650.00			**4,894.50**	**42,544.50**
Invoice summary		**37,650.00**				
Tax :	13% HST				4,894.50	
Total:		**37,650.00**			**4,894.50**	**42,544.50**

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Send direct and pay to: Bank of Montreal, International Banking, H.O. Montreal, SWIFT BIC Address BOFMCAM2, Ernst & Young LLP, Transit #2411 Account #24111000237, 6 King Street West, Toronto, Ontario, Canada, M5H 1C3. Reference the name and address of remitter, invoice number and engagement number.

Invoice for complex accounting support.rtf

From: Carolyn Roberts [carolyn.roberts@ca.ey.com]
To: Donaldson, Mark (TBS) [Mark.Donaldson@ontario.ca]; Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
CC: Suzie Gignac [suzie.r.gignac@ca.ey.com]; Jeannie Kaminski [Jeannie.Kaminski@ca.ey.com]
Subject: Invoice for complex accounting support
Date: Monday, February 26, 2018 12:07:28
Attachment 1: image003.jpg
Attachment 2: Invoice-C100126897 - 26 Feb 2018 .pdf

Please find attached an invoice for the period from November 20th, 2017 through February 20th, 2018 for work regarding complex accounting support related to TWRC, pension accounting and FHP.

Thank you.

Best regards,

--

Carolyn Roberts | Executive Coordinator

Ernst & Young LLP

99 Bank Street, Suite 1200, Ottawa, Ontario K1P 6B9, Canada

Office: 1-613-598-4844 | Fax: 1-613-232-5324 | carolyn.roberts@ca.ey.com

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image003.pdf

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Invoice-C100126897 - 26 Feb 2018 .pdf

Ernst & Young LLP
Ottawa, ON

Invoice

Treasury Board Secretariat
7 Queen's Park Cres, 2nd Floor
Toronto, ON m7a 1y7
Canada

Invoice No.: CA01C100126897
Please include this number with payment

Invoice Date:	26 February 2018
Due Date:	Upon receipt
Client No.:	0011426981
Engagement No.:	E-65062708

Remit To:
P.O. Box 57104, Postal Station A
Toronto, Ontario M5W 5M5
A/R Queries:
EYCanadaInvoiceInquiry@ca.ey.com

Attention: Mark Donaldson PO No. OSS 227152

Description of Services: RFS-TBS-OTB-OPCD-16

Time incurred with regards to complex accounting support.

Blake Langill - 6.0 hrs @ $450
Christina Chan - 14.8 @ $200
Gregory Winston - 3.5 @ $375
Lee Anne Probert - 22.0 @ $375
Suzie Gignac - 13.3 @ $450
Uros Karadzic - 1.0 @ $450

		Net	Tax	Rate	Tax Amount	CAD Total
Fee		21,657.50	HST	13 %	2,815.48	24,472.98
		21,657.50			**2,815.48**	**24,472.98**
Invoice summary		**21,657.50**				
Tax :	13% HST				2,815.48	
Total:		**21,657.50**			**2,815.48**	**24,472.98**

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Terms: Payment due upon receipt. Interest is charged at the rate of 12 % per annum on balances unpaid after 30 days from date of invoice. Any disbursements not charged to your account on the date of this invoice will be billed later.
GST/HST: R130866262 **QST:** 1006241791

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Electronic payment instructions:
Send direct and pay to: Bank of Montreal, International Banking, H.O. Montreal, SWIFT BIC Address BOFMCAM2, Ernst & Young LLP, 6 King Street West, Toronto, Ontario, Canada, M5H 1C3.

Wire transfer instructions: Transit #2411 Account #24111000237. Reference the name and address of remitter, invoice number and engagement number.

Electronic fund transfer instructions: Bank ID: 0001 Transit# 24112 Account# 1000237. To ensure accurate allocation of funds sent electronically, please email your remittance detail to gss.canadaaccountsreceivable@xe02.ey.com including the amount paid, the invoice number and your company name.